

**Legislative #
130635 Mod**

TOLLING AGREEMENT

This Tolling Agreement (this “Agreement”) is made and entered into as of January _____, 2014 (the “Effective Date”), and is by and between Beazer East, Inc., a Delaware corporation, with a contact c/o Three Rivers Management, Inc., Manor Oak One, Suite 200, 1910 Cochran Road, Pittsburgh, PA 15220 (“Beazer”) and the City of Gainesville, Florida, a municipal corporation, organized and existing under the laws of the State of Florida, acting for itself for and on behalf of all its departments, divisions, directors and officers, including without limitation the Gainesville Regional Utilities, (collectively referred to herein as the “City”) whose principal place of business is 201 East University Avenue, Gainesville, Florida, 32601. Beazer and the City are collectively referred to herein as the “Parties,” and each individually as a “Party.”

RECITALS

WHEREAS, by written correspondence dated March 4, 2013, the City made a demand against Beazer for cost recovery under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) (“CERCLA Claim”) and for damages under Section 376.313, Florida Statutes (“Statutory Claim”) and proposed an offer to settle the CERCLA Claim and Statutory Claim (collectively referred to as the “Claims”, as further defined below) without resorting to litigation; and

WHEREAS, Beazer owns the former Koppers site, which consists of approximately 90 acres comprising the western portion of the Cabot/Koppers Superfund Site located in Gainesville, Florida (“Koppers Site”); and

WHEREAS, the City asserts, and Beazer denies, that Beazer is liable to the City for the CERCLA Claim and Statutory Claim; and

WHEREAS, the Parties wish to avoid the expense, delay, and uncertainty of litigating the CERCLA Claim and Statutory Claim, and have been accordingly working in good faith toward resolution of the Claims through settlement negotiations; and

WHEREAS, the City contends that a statute of limitations applicable to its Claims may expire on February 2, 2014, and the Parties believe that a temporary tolling of any and all applicable statute of limitations and time-related defenses will facilitate ongoing efforts to resolve the Claims without litigation.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. **Definition of "Claims"**. "Claims" as used above and herein shall mean any and all claims or counterclaims for cost recovery under Section 107 of CERCLA and for damages under Section 376.313, Florida Statutes, as well as any other similar and/or related claims allegedly arising from the monies allegedly expended by a Party in relation to the Koppers Site .

2. **Tolling**

- (a) Upon execution of this Agreement, each and every one of the Parties agrees that any claim or cause of action belonging to either Party against the other Party shall be preserved and tolled during the Tolling Period (as defined below) for purposes of all statutes of limitations, laches, and other time-related defenses.
- (b) The "Tolling Period" established by this Agreement shall be that period of time from the Effective Date (defined above) until the earlier of either (i) forty-five

(45) days has lapsed since a Party gives written notice terminating this Agreement or (ii) May 2, 2014, whichever shall first occur. Upon the termination of the Tolling Period, the dates for all statutes of limitations, laches, and other time-related defenses shall resume running. It is further agreed that this Tolling Agreement does not apply to any Claims that any Party may have against another as to which the applicable statute of limitations had already expired or which had already been barred by laches or other time-related defenses prior to the Effective Date of this Tolling Agreement set forth above, and, therefore, this Tolling Agreement will not bar any Parties from asserting a statute of limitations defense, the defense of laches or other time-related defenses or any responses thereto with respect to any claims or causes of action as to which the applicable statute of limitations had already expired or which had already been barred by laches or other time-related defenses prior to the Effective Date of this Tolling Agreement.

(c) During the Tolling Period, no Party to this Agreement will take or file any civil, administrative or regulatory action, claim or complaint against any other Party to this Agreement with respect to the claims and causes of action within the scope of this Agreement.

3. **Modification of Agreement and Merger.** This Agreement may be amended, altered, or modified only by a writing executed by all Parties. This Agreement constitutes the entire understanding of the Parties on the subject matter hereof and supersedes all prior or contemporaneous oral and written communications on the subject matter hereof.

4. **No Waiver of Claims or Defenses.** By entering into this Agreement, the Parties agree that, except as expressly provided in this Agreement, they are not waiving, relinquishing, or releasing any of their causes of action, rights, claims, counterclaims, cross-claims, issues or defenses arising under any applicable statute, any rule of equity, the common law or any other source of legal duties and obligations.
5. **No Admission.** Except as provided in this Agreement, nothing in this Agreement shall be construed as an admission and/or acknowledgement by any Party regarding the existence or validity of any alleged claim, counterclaim, cross-claim, cause of action, defense, right, or issue which may later be litigated against any other Party.
6. **Binding Agreement.** This Agreement has been duly authorized by all necessary action on the part of each Party, and has been duly executed and delivered by each Party, and neither the execution and delivery, nor compliance with the terms and provisions of this Agreement requires the approval or authorization of any other Party. This Agreement constitutes a legal, valid, and binding obligation of each Party and is enforceable against each Party. This Agreement shall be binding upon the Parties' successors, assigns, heirs, and legal representatives.
7. **Governing Law and Venue.** This Agreement and the rights and obligations of the Parties shall be governed by the laws of the State of Florida, without regard to any otherwise applicable principles of conflict of laws, and any and all actions, proceedings, or lawsuits to enforce the terms of this Agreement shall be brought in the United States District Court for the Northern District of Florida, Gainesville Division, or in the Circuit Court for the Eighth Judicial Circuit of the State of Florida, Alachua County.

8. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. The counterparts may be delivered electronically, and electronic copies of any executed counterparts shall be binding on the Parties to the same effect as an original counterpart.
9. **Notices.** Any communication given under this Agreement shall be in writing and delivered by U.S. Mail or e-mail to the address(es) of the respective parties listed below:

If to the City: Nicolle M. Shalley
City Attorney
City of Gainesville
PO Box 490, Station 46
Gainesville, FL 32627-0490
shalleynm@cityofgainesville.org

With a copy to: William L. Pence/Kristina R. Ramsey
Baker & Hostetler LLP
200 South Orange Avenue, Suite 2300
Orlando, FL 32801
wpence@bakerlaw.com
kramsey@bakerlaw.com

If to Beazer: Charles E. McChesney II, Esq.
Chief Legal Counsel
Three Rivers Management, Inc.
Agent for Beazer East, Inc.
Manor Oak One, Suite 200
1910 Cochran Road
Pittsburgh, PA 15220
Charles.McChesney@trmi.biz

With a copy to: Timothy C. Wolfson
Babst Calland
Two Gateway Center
603 Stanwix Street, 6th Floor
Pittsburgh, PA 15222
twolfson@babstcalland.com

AGREED AND EXECUTED:

CITY OF GAINESVILLE

BEAZER EAST, INC.

By: _____
Name: _____
Title: **City Manager**
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: **Interim General Manager for Utilities**
Date: _____