

**Minutes**  
**Meeting of The Executive Committee**  
**of**  
**The Board of Directors of Sun Valley Elkhorn Association**  
October 28, 2024

**CALL TO ORDER**

President Clark Furlow called the meeting to order at 1:01 p.m.

**ESTABLISHMENT OF A QUORUM**

Jeff Mihalic (Vice President), Bob Diercks (Secretary), and Tom Ecklund (Treasurer) were present, and together with Clark, they constituted all of the members of the Executive Committee. They all stated they had received valid notice of the meeting and waived any defect in notice, if one were determined to exist. Accordingly, a quorum was established.

Also in attendance was Linda Horensavitz, SVEA's General Manager.

Clark called the meeting to order

**BUSINESS**

1. Clark asked the Committee for approval to sign a Settlement Agreement between SVEA and TVIV. By way of background, Clark reported the following information:
  - a. TVIV Sunshine, LLC ("**TVIV**") is a Delaware limited liability authorized to do business in the State of Idaho;
  - b. TVIV is the developer of a townhouse project known as "Sunshine Townhomes" located on a parcel of land facing Elkhorn Way between Indian Springs Lane and Angani Way in Elkhorn Village (the "**Sunshine Parcel**");
  - c. The Sunshine Parcel is governed by the Master Declaration of Covenants, Conditions and Restrictions of Elkhorn at Sun Valley (the "**Master Declaration**");
  - d. Sun Valley Elkhorn Association ("**SVEA**") is the "Master Association" as defined in the Master Declaration;
  - e. On January 1, 1984, SVEA made a special assessment in the amount of \$5,000 against the then owner of the Sunshine Parcel for the purpose of defraying costs associated the Harker Center (the "**Second Harker Assessment**");
  - f. The then owner of the Sunshine Parcel failed to pay the \$5,000 assessment and the Sunshine Parcel was accordingly burdened with an obligation to pay the assessment;
  - g. By 2020, the delinquent Second Harker Assessment, with accrued fees and interest had reached a total of \$107,219.09 and continued to burden the Sunshine Parcel;

- h. In July of 2020, TVIV made an application to SVEA's Architectural Design Committee (the "**ADC**") for approval of its plans to develop 48 townhouses on the Sunshine Parcel;
  - i. SVEA refused to consider TVIV's application until it has satisfied its obligation as the current owner of the Sunshine Parcel to pay the delinquent Second Harker Assessment;
  - j. TVIV disputed its liability to pay the delinquent Second Harker Assessment, and SVEA, having been advised by its legal counsel that its claim against TVIV might be compromised by various legal issues, directed its counsel to seek to resolve the matter by a settlement agreement;
  - k. After negotiation, SVEA and TVIV entered into a settlement agreement, a copy of which was circulated to members of the Committee in advance of this meeting, and a copy of which is attached hereto as Exhibit A (the "**Settlement Agreement**");
  - l. Under the terms of the Settlement Agreement, SVEA agreed that its ADC would review TVIV's application for approval of its plan to build 48 townhouses on the Sunshine Parcel, provided TVIV agree that SVEA could keep the otherwise refundable "Completion Deposit" of \$1,000 per unit paid by TVIV as part of its ADC application, and SVEA agreed that it would accept TVIV's forfeited Completion Deposit (which totaled \$48,000) in satisfaction of its claim for the delinquent Second Harker Assessment;
  - m. Pursuant to that Settlement Agreement, SVEA allowed TVIV's application to be considered by its ADC, and SVEA recorded the forfeited Completion Deposit as payment in full of the Second Harker Assessment;
  - n. Thus, the Settlement Agreement has been fully performed by both parties.
2. Clark reported that although the Settlement Agreement had been fully performed by both parties, SVEA has not found a copy of the Settlement Agreement signed by a representative of SVEA. Accordingly, Clark asked if any member would make a motion authorizing him to sign the Settlement Agreement on behalf of SVEA and thus memorialize SVEA's continuing adherence to its terms.

3. After an extensive discussion by members of the Committee of all the issues under consideration, Bob made the following motion:  
I MOVE that the Executive Committee of the SVEA Board of Directors authorize Clark W. Furlow, the current president, to sign the Settlement Agreement on behalf of SVEA.
4. Tom seconded the motion, and it was adopted unanimously.
5. The Committee directed Clark to write a response to the email from Bailey Harrington of Timberline Real Estate Partners (the representative of TVIV) (Exhibit B) explaining why SVEA is rejecting TVIV's request that SVEA refund the Completion Deposits.
6. There being no further business, the meeting was adjourned at 3:45 p.m.

#### Follow Up Business

On the day after the meeting, Clark prepared a response (Exhibit C) to Bailey Harrington's email. That response was approved by all members of the Committee. It was emailed to Mr. Harrington on Wednesday, October 30, 2024.

Respectfully Submitted

Robert J. Diercks  
Bob Diercks

October 30, 2024

Date

Notes: TVIV responded after October 30, 2024, in agreement with the SVEA's decision.

**SETTLEMENT AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_ day of September, 2020, by and between **SUN VALLEY ELKHORN ASSOCIATION, INC.**, an Idaho corporation ("SVEA") and **TVIV SUNSHINE, LLC**, a Delaware limited liability company ("TVIV").

**RECITALS:**

- A. TVIV owns certain real property in Sun Valley, Idaho on which it intends to develop a townhouse project of approximately 48 units (the "Sunshine Parcel").
- B. The Sunshine Parcel located in that portion of the City of Sun Valley generally known and referred to as "Elkhorn".
- C. Recorded against the certain real property situated in Elkhorn are certain restrictive covenants set forth in the Replacement Master Declaration of Covenants, Conditions and Restrictions of Elkhorn at Sun Valley, recorded May 20, 1987, as Instrument No. 284533; amended by Instrument No. 292649, recorded February 29, 1988; by Instrument No. 400792, recorded April 11, 1997; by Instrument No. 437922, recorded April 4, 2000 and by Instrument No. 534284, recorded on April 14, 2006; all in the records of Blaine County, Idaho ("Master Declaration").
- D. SVEA was created as the "Master Association" defined in the Master Declaration, for the purpose of enforcing the provisions thereof, including all rules promulgated pursuant thereto, and to otherwise carry out the duties and obligations imposed upon it by the terms of said Master Declaration.
- E. On January 1, 1984, the Master Association made a special assessment in the amount of \$5,000 against the then owner of the Sunshine Parcel, Recreations Group for the purpose of defraying costs associated with the Harker Center in Elkhorn (the "Second Harker Assessment"). Terms were adopted with respect to the Second Harker Assessment which provided for payment at the time of development at a base amount per developed unit plus interest, and that the SVEA Architectural Design Committee ("ADC") would not review plans for development ("Design Review") until all past due amounts were paid on proposed units.
- F. As of 2020, SVEA calculates the accrued amount of the Second Harker Assessment to be \$107,219.09 ("Assessment Amount").
- G. A dispute has arisen between the parties as to the legal validity of the Second Harker Assessment, SVEA's ability to enforce the Second Harker Assessment

against the current owner, TVIV, and the validity of the Assessment Amount (collectively the "Assessment Dispute").

- H. The parties hereto desire by this Agreement to resolve the Assessment Dispute and allow Design Review to proceed for the proposed development on the Sunshine Parcel.

NOW, THEREFORE, the parties hereto, for themselves and their successors, do hereby agree as follows:

1. TVIV agrees to pay one thousand dollars (\$1,000.00) for each developed unit on the Sunshine Parcel in full and complete satisfaction of the Second Harker Assessment ("Assessment Payment"). The Assessment Payment for each unit shall be paid as follows: *A Completion Deposit of \$1,000 is required to be deposited with SVEA pursuant to Section 4.3.3 of the ADC Manual. Upon completion of each Unit, the Completion Deposit will be retained by SVEA as the Assessment Payment for that Unit and will not be refunded as set forth in the ADC Manual.* The forfeiture of said Completion Deposits as the Units are built in the development of the Sunshine Parcel shall be in full and complete satisfaction of all amounts due under the Second Harker Assessment.

2. SVEA agrees that it will immediately commence processing the Sunshine Parcel Development application for Design Review and will utilize special meetings of the ADC (rather than waiting for regularly scheduled meetings) to the extent reasonably possible and practical for the purpose of reducing the time to process the application while still complying with all notice, review and meeting requirements of the ADC Manual and the Master Declaration. To the extent there are issues with design review, the ADC will promptly provide comprehensive feedback regarding any deficiencies.

3. Except with respect to the obligations created or acknowledged by or arising out of this Agreement, each Party, for itself, himself, herself or themselves and their present, past and future parent and subsidiary corporations, divisions, affiliates, predecessors, partners, and joint venturers, and any and all of their officers, directors, shareholders, agents, employees, insurers, successors, or assigns of such persons or entities, does hereby release and absolutely and forever discharge the other Party and his, her, its or their present, past and future parent and subsidiary corporations, divisions, affiliates, predecessors, partners, and joint venturers, and any and all of their officers, directors, shareholders, agents, employees, insurers, successors, or assigns of such persons or entities, from any and all claims, demands, damages, injuries, losses, debts, liabilities, accounts, reckonings, obligations, costs, expenses, compensation, liens, actions and causes of action of every kind and nature whatsoever, whether or not now known or unknown, suspected or unsuspected, matured or unmatured, fixed or contingent, direct or indirect, which either Party ever had, now has, or may claim to have from the beginning of time against the other Party arising out of or relating to the claims set forth in the Assessment Dispute (the "Released Matters"). It is the intention of the Parties that the mutual release contained herein shall be effective as a full and final accord and satisfaction and release of and from all of the Released Matters, and that each Party released hereby will have no liability to any Party granting such release by reason of

anything occurring prior to the effective date of the release relating to the claims covered by this Agreement.

4. Each party hereto represents and warrants that he/she/it/they has been duly authorized to execute and deliver this Agreement and to act in any manner both necessary and proper to the exercise of the power to execute and deliver this Agreement. Any person signing this Agreement on behalf of a corporate or trust entity represents and warrants that he/she is duly authorized and has all requisite power to enter into this Agreement on behalf of such entity, and to perform all transactions contemplated by this Agreement.

5. If any term, provision, paragraph, or condition of this Agreement is held or determined by any arbitrator or court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall be deemed severable therefrom, shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.

6. This Agreement constitutes the final, complete and exclusive agreement between the Parties relating to the matter set forth herein and supersedes any and all other agreements, understandings, negotiations or discussions, either oral or in writing, either express or implied, between the Parties hereto. Each Party to this Agreement acknowledges that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, and that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty.

7. This Agreement may not be amended except by an agreement in writing signed by the Party to be charged or bound by such amendment. If such a written amendment is entered into, it shall modify only the provision(s) of this Agreement specifically modified, and shall be deemed to publish, unchanged, all remaining provisions of this Agreement.

8. Any term or provision of this Agreement may be waived in writing at any time by the Party which is entitled to the benefits thereof. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

9. The Parties hereto and their respective counsel have cooperated in the drafting and preparation of this Agreement. In the event of a dispute hereunder, the Agreement shall be interpreted in accordance with its fair meaning and shall not be interpreted, nor any ambiguity resolved, for or against any Party hereto on the ground that any such Party drafted or caused to be drafted this Agreement or any part hereof. Paragraph headings are for reference purposes only and shall not be considered in the interpretation of this Agreement.

10. Each Party shall pay its/their respective attorneys' fees and costs incurred in connection with the Released Matters, including matters related to effectuating and consummating this Agreement, but excluding any fees or costs incurred in attempting to enforce the terms of this Agreement in the event of a default or breach by any Party hereto with respect to the terms or conditions of the Agreement. In the event of a default or breach by any Party with respect to the terms or conditions of the Agreement, the defaulting or breaching Party shall pay to the non-defaulting or non-breaching Party the reasonable attorneys' fees and costs incurred by the non-defaulting or non-breaching Party in enforcing this Agreement.

11. This Agreement may be executed in counterparts, with the same effect as if all Parties have signed the same document, and each such executed counterpart shall be deemed to be an original instrument.

12. The date of the last signature placed on this Agreement shall be known as the "effective date" of this Agreement.

20. This Agreement shall be governed and construed in accordance with the laws of the State of Idaho, without regard to the conflict of laws principles of such state.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

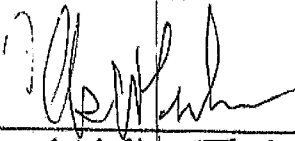
"SVEA"

"TVIV"

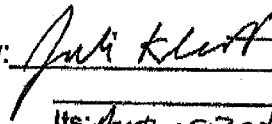
SUN VALLEY ELKHORN  
ASSOCIATION, INC.

TVIV SUNSHINE, LLC

By:

  
\_\_\_\_\_  
CLARK FURLOW  
Its: PRESIDENT  
SVEA

By:

  
\_\_\_\_\_  
Its: Authorized Signatory

## Exhibit B

**From:** Bailey Harrington <[bailey@timberlinerep.com](mailto:bailey@timberlinerep.com)>  
**Sent:** Thursday, September 19, 2024 9:56 AM  
**To:** Sue Ahern <[Sue@elkhorninsunvalley.com](mailto:Sue@elkhorninsunvalley.com)>  
**Cc:** Bill Roesch <[bill@timberlinerep.com](mailto:bill@timberlinerep.com)>  
**Subject:** Sunshine Questions

Good morning Sue,

I have a few questions relating to Sunshine I was hoping you could please clarify:

1. Now that we have completed product in Phase 1 associated with our architectural committee approvals, do we need to continue to extend that approval for Phase 1 for the remaining buildings, or is it considered effectively vested with the tax parcel?
2. Regardless of the above, we would like to formally request an extension of the Phase 2 approval (attached) to November 2026. We obtained an extension of the City of Sun Valley Design Review for this phase last week until 2028, so looking to just make sure the city and SVEA approvals remain consistent
3. Now that we have certificates of occupancy for the first 7 units, can you please confirm how we obtain a refund for the completion deposits associated with these units?

I am happy to jump on a call to discuss any of the above if helpful for you.

Bailey

Bailey Harrington, P.E. // [bailey@timberlinerep.com](mailto:bailey@timberlinerep.com) // +1.915.491.3253 (m)  
1204 S. Congress Avenue, Suite 200  
Austin, TX 78704



This e-mail, including any attachments, is intended for the exclusive use of the person(s) to which it is addressed and may contain confidential or privileged information. If the reader of this e-mail is not the intended recipient or his or her authorized agent, any review, disclosure, distribution, printing or copying of this e-mail is prohibited. If you think that you have received this e-mail in error, please advise the sender by reply e-mail and delete this e-mail immediately.



RE: Sunshine Questions



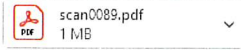
Clark Furlow

**Exhibit C**

To: Bailey Harrington  
Cc: Bill Roesch; Sue Ahern; Linda Horensavitz



Wed 10/30/2024 12:19 PM



**CORRECTION**  
My email below refers to 48 townhouses. That is the number that was identified in Paragraph A of the Settlement Agreement. At the end of the approval process, SVEA approved 42 townhouses. Accordingly, the total amount of the forfeited completion deposits was \$42,000.  
The settlement agreement is attached  
Clark

**From:** Clark Furlow  
**Sent:** Wednesday, October 30, 2024 11:57 AM  
**To:** Bailey Harrington <[bailey@timberlinerep.com](mailto:bailey@timberlinerep.com)>  
**Cc:** Bill Roesch <[bill@timberlinerep.com](mailto:bill@timberlinerep.com)>; Sue Ahern <[Sue@elkhorninsunvalley.com](mailto:Sue@elkhorninsunvalley.com)>; Linda Horensavitz <[linda@elkhorninsunvalley.com](mailto:linda@elkhorninsunvalley.com)>  
**Subject:** FW: Sunshine Questions

Good morning, Mr. Harrington;

I have been asked to respond to "Point 3" of your email to Sue Ahern, below, in which you ask SVEA to refund to Timberline Real Estate Partners the completion deposits associated with the seven Sunshine Townhomes for which you have obtained certificates of occupancy.

I understand that Timberline Real Estate Partners is functioning as an agent for TVIV Sunshine, LLC ("TVIV") the owner of record for Sunshine Townhomes.

You may not be familiar with the history of the development of the Sunshine Townhomes. Let me review that history so that you will understand why TVIV is not entitled to the refund you have requested.

In July of 2020, TVIV made an application to SVEA's Architectural Design Committee for approval of its plan to develop 48 townhouses on land known as the Sunshine Parcel. SVEA refused to consider that application because the Sunshine Parcel was burdened with an unpaid delinquency in the amount of \$107,219.09 on a special assessment that had been levied against the land in 1984.

TVIV disputed its liability to pay the delinquent assessment. That dispute was resolved by a settlement agreement between SVEA and TVIV. Under the terms of the Settlement Agreement, SVEA agreed that it would review TVIV's application for approval of its plan to develop Sunshine Townhomes, provided TVIV would agree that SVEA could keep the otherwise refundable "completion deposit" of \$1,000 per unit paid by TVIV as part of its application. In exchange, SVEA agreed that it would accept TVIV's forfeited completion deposit (which totaled \$48,000) in satisfaction of its claim for the delinquent \$107,219.09 assessment.

Pursuant to that Settlement Agreement, SVEA reviewed and approved TVIV's application to develop Sunrise Townhouses, and TVIV forfeited its right to have its completion deposit refunded. The Settlement Agreement having been fully performed by both parties; it follows that TVIV is no longer entitled to a refund of its completion deposits. I enclose a copy of the Settlement Agreement which I recently signed for SVEA to manifest SVEA's continuing adherence to the terms of the Settlement Agreement.

Please call me if you have any questions regarding TVIV's forfeited completion deposits, and please call Sue to discuss the other points in your email

Clark Furlow  
President of Sun Valley Elkhorn Association