

## TEMPORARY LICENSE AGREEMENT

THIS TEMPORARY LICENSE AGREEMENT (this "Agreement") is entered into as of August 23, 2017, by and between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and Toll Brothers AZ Construction Company. (the "Licensee").

### RECITALS

A. The Town owns certain real property located north of Eagle Ridge Drive and known as the Fountain Hills McDowell Mountain Preserve (the "Preserve"), as depicted on Exhibit A, attached hereto and incorporated herein by reference (the "Town Property").

B. The Town has stockpiled fill material on the Town Property for the trailhead parking lot and the trail roads (the "Stockpile") that it will not need for construction for a period of time.

C. The Licensee has requested to take approximately 30 end dump loads of screened 8"+ rock from the Stockpile. The rock is needed at Firerock Parcel B for a rip-rap protected corner of the job. In return, Licensee will replace each load taken from the Stockpile with a load of clean screened fill dirt from Firerock.

D. The Town and Licensee desire to enter into this Agreement to grant Licensee a temporary license (the "License") upon, over, across, in, through and under portions of the Town Property, as depicted and described on Exhibit A attached hereto and incorporated herein by reference (the "License Area") to perform the work related to removing and restoring materials to the Stockpile as described herein.

### AGREEMENT

NOW THEREFORE, in consideration of the foregoing introduction recitals, which are incorporated herein by reference, the promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Town and the Licensee hereby acknowledge, the Town and the Licensee hereto agree as follows:

1. Grant of License. The Town grants Licensee a temporary non-exclusive revocable license to occupy and use the License Area for the purposes set forth herein.

2. Term. This Agreement shall be effective from the date first set forth above and shall remain in effect until terminate or canceled as set forth in this Agreement (the "License Period").

3. Purpose. Licensee shall use the License Area only for the purpose of taking approximately 30 end dump loads of screened 8"+ rock from the Stockpile and replacing each load taken with an equal-sized load of clean screened fill dirt. All replacement materials shall be placed in the Stockpile not later than September 15, 2017.

4. Manner of Use of the License Area. Licensee shall use due care and diligence in the use of the License Area for the duration of the License Period and in the exercise of its rights hereunder, and it will at all times exercise its rights hereunder at such times and in such manner as approved by the Town and will not cause (i) any interference with the business operations (if any) on the Town Property, (ii) any interference with the customary access to or from the Town Property or (iii) any damage or injury to the Town Property, ordinary wear and tear excepted, or to any agents, employees or invitees of the Town. Licensee shall use the License Area in compliance with all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances. In exercising any rights and privileges under this License, the Licensee shall comply fully with all applicable permits, authorizations, approvals and other requirements.

5. Fill Material. Licensee shall ensure the fill material used to replace the removed fill material meets the standard set forth herein. Per approval by the Town, at a minimum, stockpiled materials shall be suitable for future Town usage in fill construction, in accordance with MAG Section 211, free from trash, debris, organic matter, soft spongy earth, or other matter of such nature that future compaction to the specified density will be unobtainable. Rock size shall not exceed six inches in any dimension, and no more than 25 percent by volume shall be rock larger than four inches in greatest dimension.

6. No Hazardous Materials. License shall not release, discharge or deposit any toxic, hazardous or petroleum products onto the Town Property or emit any obnoxious or offensive odor, dust, smoke, gas, noise, vibration, electromagnetic disturbance, radiation or other similar matter that is detrimental to the public health, safety or general welfare.

7. Nonexclusive Rights. This Agreement is non-exclusive and no interest whatsoever in the License Area, except as specifically expressed herein, shall pass to the Licensee, its directors, officers, employees, or agents. The Town, its successors and assigns, shall retain at all times a prior and superior right of access and use of the License Area to accomplish all of the Town's purposes and nothing in this Agreement shall be construed to deny or lessen the powers and privileges granted to Town by the laws of the State of Arizona. Neither Licensee nor its agents shall interfere with the use of the License Area by the Town or the interest of any other individual or entity in the License Area. Nothing herein shall preclude, interfere with, or prohibit the Town from controlling access to, entering upon, being upon, or using the License Area for any purposes whatsoever, or prohibit the Town from permitting another entity to access or use the License Area.

8. Liens and Encumbrances. This Agreement is subject to all existing easements, licenses and matters of record. Licensee represents and warrants that it will maintain the License Area free and clear from any liens or encumbrances of any nature whatsoever in connection with Licensee's use of the License Area.

9. Termination.

9.1 Convenience. The Town may, in its sole discretion, with or without cause, terminate this Agreement upon 30 days written notice to Licensee.

9.2 Conflict of Interest. This Agreement may be cancelled by the Town pursuant to the provisions of ARIZ. REV. STAT. § 38-511.

10. Indemnification. To the fullest extent permitted by law, Licensee shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the use of the License Area or performance of the work by Licensee, its officers, employees, agents, or any person or entity acting on behalf of, or at the direction of the Licensee.

11. Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto to the same extent and effect as the same are binding upon and inure to the benefit of the parties hereto. Licensee shall not assign this Agreement or the rights and privileges herein, in whole or in part, without prior, written consent of the Town signed by the Town Manager, which may be withheld for any reason and, absent such consent, any attempted assignment shall be void.

12. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in the Maricopa County, Arizona.

13. Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Licensee.

14. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth:

If to the Town:           Town of Fountain Hills  
16705 East Avenue of the Fountains  
Fountain Hills, Arizona 85268  
Attn: Grady E. Miller, Town Manager

With copy to:           GUST ROSENFELD, P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004  
Attn: Andrew J. McGuire, Esq.

If to Licensee : Toll Brothers AZ Construction Company  
8767 E Via de Ventura #390  
Scottsdale, Arizona 85258  
Attn: Oscar Dominguez, VP Land Development

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year set forth below.

**“Town”**

TOWN OF FOUNTAIN HILLS,  
an Arizona municipal corporation

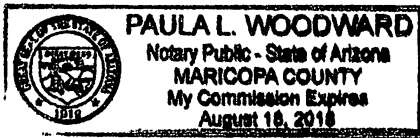
*Grady E. Miller*  
Grady E. Miller, Town Manager

ATTEST:

*Bevelyn J. Bender*  
Bevelyn J. Bender, Town Clerk

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On August 28, 2017, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.



*Paula L Woodward*  
Notary Public in and for the State of Arizona

(affix notary seal here)

“Licensee”

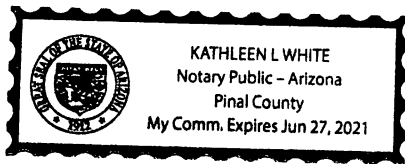
By: Oscar Dominguez

Name: Oscar Dominguez

Title: VP Land Development

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On August 28, 2017, before me personally appeared Oscar Dominguez the Land Development VP of Toll Brothers whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document, on behalf of the limited partnership.



Kathleen White  
Notary Public in and for

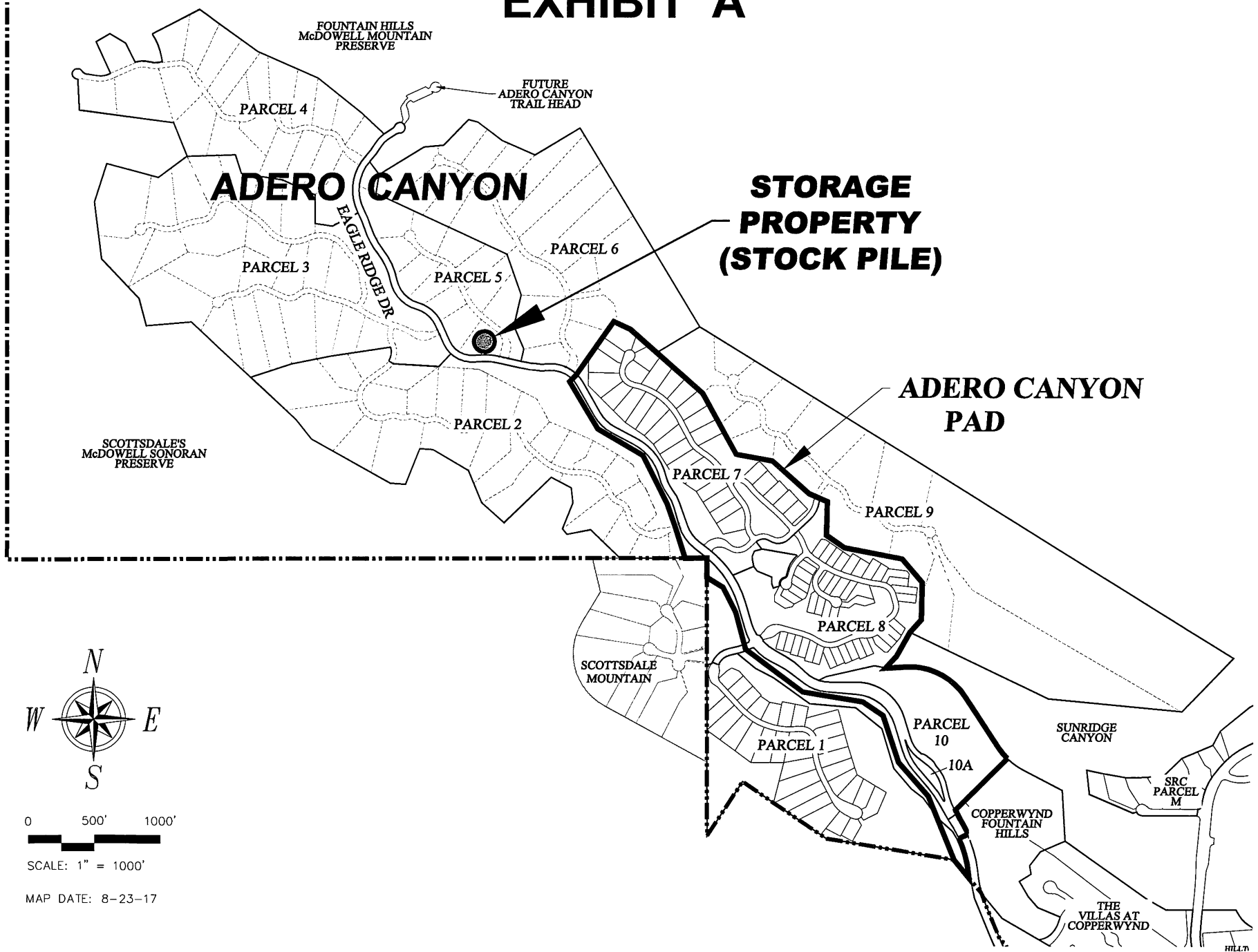
(affix notary seal here)

EXHIBIT A  
TO  
LICENSE AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
~~TOLL BROTHERS~~

[Map of License Area]

See following page.

# EXHIBIT A



FOUNTAIN HILLS  
McDOWELL MOUNTAIN  
PRESERVE

PARCEL 4

FUTURE  
ADERO CANYON  
TRAIL HEAD

## ADERO CANYON

### STORAGE PROPERTY (STOCK PILE)

PARCEL 3

EAGLE RIDGE DR

PARCEL 5

PARCEL 6

### ADERO CANYON PAD

SCOTTSDALE'S  
McDOWELL SONORAN  
PRESERVE

PARCEL 2

PARCEL 7

PARCEL 9

SCOTTSDALE  
MOUNTAIN

PARCEL 8

PARCEL 1

PARCEL 10

SUNRIDGE  
CANYON

10A

SRC  
PARCEL  
M

COPPERWYND  
FOUNTAIN  
HILLS

THE  
VILLAS AT  
COPPERWYND

HILL



0 500' 1000'

SCALE: 1" = 1000'

MAP DATE: 8-23-17