

**207 Waiver**  
**Title**  
**Legal Description**  
**Policy or Appeals**  
**Correspondence Between Legal & Staff**  
**Letter of Authorization**

WHEN RECORDED RETURN TO:

CITY OF SCOTTSDALE  
ONE STOP SHOP RECORDS  
(Paul Basha)  
7447 East Indian School Road, Suite 205  
Scottsdale, AZ 85251

## DEVELOPMENT AGREEMENT

C.O.S. Contract No. 2017-071-COS  
(118<sup>th</sup> & Jomax)  
(Resolution No. 10797)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this 13<sup>th</sup> day of June, 2017, by and between the City of Scottsdale, an Arizona municipal corporation ("City") and Toll Brothers AZ Construction Company, an Arizona corporation ("Developer").

### RECITALS

A. Developer proposes to improve certain real property currently comprising approximately 80 acres located at the northeast corner of 118<sup>th</sup> Street and Jomax Road (the "Property"). The approximate current configuration of the Property is described on **Exhibit "A"** (the Legal Description) and is depicted on the map attached hereto as **Exhibit "B"** (the "Property Map").

B. Developer proposes to create a gated, single-family community with 51 lots for environmentally sensitive, luxury residences, including with lot and street layout that is planned to preserve natural features and vegetation on the Property as well as respect the existing terrain, (the "Project").

C. To establish the regulatory structure for future development of the Property and the Project, the Developer has made development applications to the City with associated development plans (collectively, the "Development Plan") for a Zoning District Map Amendment, Case No. 25-ZN-2016 that includes the stipulations governing the construction of the Project and that are attached as **Exhibit "C"** (collectively, the "Stipulations"). The Development Plan and the Stipulations establish the regulatory regime under which the Project and Property will be developed ("Regulatory Approvals"). The Development Plan is on file with the Clerk of the City, and is incorporated into this Agreement by this reference. This Agreement implements the Stipulations related to certain roadway and pathway improvements.

D. In connection with the Project, Developer would construct all of the roads internal to the Property, dedicate them and configure them to achieve the preservation of natural features and vegetation, all pursuant to and as described in the Development Plan and Stipulations. To

achieve these improvements and protections, Developer seeks to cause the City to abandon the current alignment of 120<sup>th</sup> Street through the Property, a portion of RedBird Road, and a portion of Jomax Road (collectively, the "ROW Abandonments"). The City has valued such areas at two hundred fifteen thousand eight hundred seventy-five dollars (\$215,875.00) the "ROW Abandonments Value". This Agreement describes the considerations the City will receive for undertaking the ROW Abandonments, and the means by which Developer will compensate the City for the ROW Abandonments.

E. Pursuant to the Stipulations, Developer will provide significant road improvements (1) to 118<sup>th</sup> Street from Jomax Road to Red Bird Road, pursuant to and as set forth in the Development Plan and Stipulations (the "118<sup>th</sup> Street Improvements"); (2) to Red Bird Road, from 118<sup>th</sup> Street to the termination of Red Bird Road just west of the McDowell Sonoran Preserve, pursuant to and as set forth in the Development Plan and Stipulations (the "Red Bird Road Improvements"); and (3) to Jomax Road, from 118<sup>th</sup> Street to the termination of Jomax Road, west of the McDowell Sonoran Preserve, pursuant to and as set forth in the Development Plan and Stipulations (the "Jomax Road Improvements"). In addition, to compensate the City for the ROW Abandonments the City seeks to cause 118<sup>th</sup> Street to be constructed on the segment from 660 feet north of Quail Track Drive to East Rio Verde Drive (the "Additional 118<sup>th</sup> Street Construction Project").

F. Pursuant to the Stipulations, Developer will dedicate the rights of way specified in the Project final plat in accordance with the table set forth in Section 7a of the Stipulations.

G. As part of the 118th Street Improvements, Developer will construct an 8-foot wide, unpaved trail within the right-of-way set forth in the 118th Street ROW Dedication Deed, all as set forth in the Development Plan and the Stipulations (the "118th Street Trail"). Developer also will construct an 8-foot wide, unpaved trail both within the Jomax Road right-of-way and within a Private HOA Tract along the northern boundary of Jomax Road (the "Tract") to the eastern edge of the Project entrance, all as set forth in the Development Plan and the Stipulations (the "Jomax Trail"). Further, the City seeks to acquire an easement from the Arizona State Land Department ("ASLD") to allow Developer to construct a trail from the eastern terminus of the Jomax Trail (at the eastern edge of the Project entrance) to the western boundary of the adjacent preserve, on land owned by ASLD and on land contained within the Tract (the "ASLD Trail"), all as set forth in the Development Plan and the Stipulations, and as subject to the terms of this Agreement. To the extent it is within the boundary of the Property, the Jomax Trail is to be constructed within a public non-motorized access easement to allow the residents of the City to be granted public access within the Tract in the form of and as shown on **Exhibit "D"** ("Non-Motorized Access Easement") for use of the Jomax Trail. The ASLD Trail will be located within property subject to permits issued by the ASLD.

H. To complete development as shown on the Site Plan, Developer seeks to cause the City to abandon the excess right-of-way along Red Bird Road and Jomax Road, and abandon any public utility easement along Red Bird Road (collectively, the "Minor PUE & ROW Abandonments"). Abandonment of the various rights of way will be processed separately through abandonment Resolution No. 10796.

I. City has authority under A.R.S. 9-500.05 et seq., A.R.S. 9-500.11, and other applicable statutes and laws (collectively the "Development Laws") to enter into agreements relating to economic development and the development and redevelopment of real property within City's territorial boundaries and economic development for the health, safety and welfare of City, its citizens and the public generally. This Agreement is entered into pursuant to the Development Laws.

J. This Agreement is consistent with the portions of City's general plan applicable to the Property on the date of this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and representations contained herein, Developer and City agree as follows:

1. Term and Conditions.

1.1 Recitals. The parties acknowledge and represent that the Recitals set forth above in this Agreement are true and correct in all material respects and are incorporated in this Agreement by this reference.

1.2 Commencement. The term of this Agreement shall commence on the date of this Agreement.

1.3 Normal Expiration. Except as otherwise expressly provided herein, this Agreement shall continue in effect until all obligations and rights of the parties under this Agreement have been performed, terminated or have expired. When the Project is completed, the parties shall record a memorandum reciting that this Agreement has terminated except for any ongoing indemnity and related obligations that are expressly set forth in such memorandum; any indemnity and related obligations not set forth in such memorandum thereafter shall be deemed to be terminated. For purposes of the preceding two sentences, the Project shall be deemed completed when the latter of the following occurs: (1) the City issues a Certificate of Occupancy for the last house built within the Project and all of the residential lots within the Project have had houses constructed thereon as contemplated by the Development Plan, and (2) Developer causes the construction of each of the 118<sup>th</sup> Street Improvements, the Red Bird Road Improvements, the Jomax Road Improvements, and the Additional 118<sup>th</sup> Street Construction Project and/or the Developer's obligation to construct such improvement(s) has terminated pursuant to the terms of this Agreement.

1.4 Effect of Termination or Expiration on Related Documents. Termination or expiration of this Agreement shall have no effect on the various rights, obligations, interests and conveyances under any documents completed in connection with this Agreement (the "Related Documents"), except in accordance with the terms of such Related Documents, all of which survive termination or expiration of this Agreement and continue to be enforceable according to their terms. Any notice of termination or expiration of this Agreement shall so state.

1.5 Effects of Termination or Expiration on Stipulations. Termination or expiration of this Agreement shall have no effect on the Stipulations, which shall continue to be enforceable according to their terms. Any notice of termination or expiration of this Agreement shall so state.

1.6 Early Termination. This Agreement may be terminated by either party only to the extent a termination right may be expressly provided in this Agreement. Terminations for failure of a condition or disruption of a closing due to failure of a condition shall not excuse failure to perform express obligations required to be performed prior to such termination.

1.7 Referendum. If the Regulatory Approvals are invalidated by a referendum, in whole or in part, then this Agreement shall be void *ab initio*.

1.8 Minor Date Adjustments. Closing dates and other dates stated in this Agreement, the Regulatory Approvals, and the Related Documents may be extended only by mutual written formal consent of City and Developer given or withheld in their sole and absolute discretion. City's city manager's authority to consent for City to extensions of any date is limited to extensions not exceeding three hundred sixty (360) days in the city manager's sole and absolute discretion.

1.9 Effective Date. This Agreement shall be effective upon, and only upon, the recording of this Agreement in the records of Maricopa County Recorder's Office.

2. Actions by the Parties. To allow the Property to be developed and improved in accordance with the Development Plan, the Stipulations, and the terms of this Agreement, each of Developer and City agree to and shall complete the following actions:

2.1 Developer's Road Improvements. Developer shall construct the 118<sup>th</sup> Street Improvements, the Red Bird Road Improvements, and the Jomax Road Improvements pursuant to the Stipulations, but Developer shall not be obligated to construct any portion of the intersections associated with such improvements that is located south of the south curb line of Jomax Road, north of the north curb line of Red Bird Road or west of the west curb line of 118<sup>th</sup> Street. Further, City acknowledges that the City shall be obligated to design, erect and maintain appropriate traffic controls and all associated elements for the 118<sup>th</sup> Street and Jomax intersection and the 118<sup>th</sup> Street and Red Bird intersection.

2.2 Construction of Trails. Pursuant to the Stipulations and this Agreement, and in accordance with the Development Plan, Developer shall cause the construction of the ASLD Trail, but only to the extent that the ASLD provides any required easement. Specifically as to the ASLD Trail, the City shall secure any necessary access and approval from the ASLD to allow Developer to construct the ASLD Trail ("ASLD Approval"). Developer shall be responsible for constructing the ASLD Trail following ASLD Approval, provided that Developer shall not be obligated to expend more than \$10,000 on the construction of the ASLD Trail. Further, the parties acknowledge that the proposed ASLD Trail may be deemed, by applicable regulatory authorities, including the ASLD, to cross one or more watercourses with respect to

which any construction of the ASLD Trail would require a permit under Section 404 of the Clean Water Act or any similar permit or regulatory requirement (each, a "Construction Limitation"). Accordingly, if the City does not secure ASLD Approval, the Developer expends at least \$10,000 on the construction of the ASLD Trail, and/or if there is imposed any Construction Limitation by any regulatory authority, Developer may proceed with the Project without undertaking any further work with respect to the ASLD Trail that at such time has not yet been undertaken and completed, and the City shall consider Developer to be in compliance with this Agreement as if the construction of the ASLD Trail was not a term of this Agreement, in which case, the Stipulations & Regulatory Approvals shall be deemed to be amended to conform to the Project as set forth in the Development Plan as if the construction of the ASLD Trail were not part of the Project. If Developer is not able to undertake construction of the ASLD Trail by the earlier of (1) the Developer's application for the City's final acceptance of the Project roadways internal to the Project, and (2) the expiration of ten (10) years from the date of this Agreement, Developer shall pay the City the sum of ten thousand dollars (\$10,000) and Developer's obligation to construct the ASLD Trail shall terminate. Notwithstanding the preceding sentence, Developer shall retain the right, but not the obligation, to undertake the construction of the ASLD Trail through the date on which the City issues a Certificate of Occupancy for the last house built within the Project and all of the residential lots within the Project have had houses constructed thereon as contemplated by the Development Plan.

### 2.3 Additional 118<sup>th</sup> Street Construction Project.

2.3.1 Right of Way Acquisition. In consideration of the City's undertaking the ROW Abandonments, Developer will construct the Additional 118<sup>th</sup> Street Construction Project, upon, but only upon, (1) the acquisition of all necessary and sufficient right of way by the City, and (2) the City issuing to Developer all necessary permits for the Additional 118<sup>th</sup> Street Construction Project. City will acquire such right of way for the Additional 118<sup>th</sup> Street Construction Project as determined necessary and sufficient by the City (the "Necessary 118<sup>th</sup> Street ROW") within 36 months of the execution date of this Agreement. If City does not acquire all such Necessary 118<sup>th</sup> Street ROW by the end of such 36-month period, Developer's obligation to construct the Additional 118<sup>th</sup> Street Construction Project shall terminate, but Developer shall instead immediately provide payment to City in the amount of the Right of Way Abandonments Value (Two Hundred Fifteen Thousand Eight Hundred Seventy-Five Dollars (\$215,875)) in consideration of the ROW Abandonments. If City acquires all the Necessary 118<sup>th</sup> Street ROW within the 36-month period, City shall notify Developer by written notice (the "City Notice of ROW Acquisition").

2.3.2 Developer Advancements for Right of Way Acquisition. To facilitate the City's acquisition of the Necessary 118<sup>th</sup> Street ROW, Developer shall advance to the City, when and as requested by City, funds for City's acquisition of any parcel of the Necessary 118<sup>th</sup> Street ROW (each, a "ROW Acquisition Advancement"). Developer shall provide City with a ROW Acquisition Advancement in an amount requested by City within twenty (20) business days of City's request. Thereafter, City shall repay Developer the amount of each ROW Acquisition Advancement within ninety (90) days of City's receipt from Developer of such ROW Acquisition Advancement. Further, Developer shall not be obligated to

provide more than a total of Six Hundred Fifty Thousand (\$650,000), in the aggregate, of all ROW Acquisition Advancements. If City fails or refuses to repay any ROW Acquisition Advancement within the required ninety (90) day period (an "Overdue Repayment"), Developer may: (1) refuse to make any further ROW Acquisition Advancements unless and until City pays Developer all Overdue Repayment amounts; (2) delay undertaking or continuing the construction of the Additional 118<sup>th</sup> Street Construction Project until the City pays all Overdue Repayments (in which case the time for Developer's performance in constructing the Additional 118<sup>th</sup> Street Construction Project set forth in subsection 2.3.3 shall be extended day-for-day for each day an Overdue Repayment is outstanding from and after the end of the applicable 90-day repayment period); and (3) offset against the amount of any payment of the Right of Way Abandonments Value and/or the Developer's Nonperformance Payment (defined below) the amount of any and all Overdue Repayments (the "Developer's Offset Amount"). If City fails to make an Overdue Repayment for more than twenty-four (24) months from the last day of the ninety (90) day period in which such repayment otherwise was due, Developer's obligation to construct the Additional 118<sup>th</sup> Street Construction Project shall terminate, in which case Developer shall instead immediately provide payment to City in the amount of the Right of Way Abandonments Value (Two Hundred Fifteen Thousand Eight Hundred Seventy-Five Dollars (\$215,875)) as reduced by Developer's Offset Amount.

2.3.3 Construction of Additional 118<sup>th</sup> Street. Subject to the terms of subsection 2.3.2, upon Developer's receipt of the City Notice of ROW Acquisition within the applicable 36-month period, Developer shall immediately prepare and expeditiously submit its application for right of way construction permits, including all assurances required for construction in the right-of-way, to City with respect to the Additional 118<sup>th</sup> Street Construction Project. City shall process the application and issue relevant permits in an expeditious manner. Upon Developer's receipt of all relevant permits from City, Developer shall begin construction of the Additional 118<sup>th</sup> Street Construction Project, shall diligently pursue such construction until completion, and Developer shall have one (1) year from the date the last required permit for the Additional 118<sup>th</sup> Street Construction Project is issued by City ("Permit Issuance Date") (as such time-period may be extended pursuant to subsection 2.3.2) to complete construction of the Additional 118<sup>th</sup> Street Construction Project (the "118<sup>th</sup> Street Completion Deadline").

2.3.4 Developer Nonperformance Consequences. If Developer, for any reason (except as provided in subsection 2.3.2) refuses or fails to continue diligently to pursue the construction and completion of the Additional 118<sup>th</sup> Street Construction Project after City gives written notice to Developer of such refusal or failure by Developer (a "City Notice of Developer Nonperformance"), Developer shall be required to make a payment to City for such nonperformance pursuant to the terms set forth in subsection 2.3.5 of this Agreement (the "Developer's Nonperformance Payment"). Further, if Developer does not complete the construction of the Additional 118<sup>th</sup> Street Construction Project by the 118<sup>th</sup> Street Completion Deadline, City may cease issuing building permits (but not Certificates of Occupancy) with respect to the Project until the Additional 118<sup>th</sup> Street Construction Project is completed or Developer pays to City the Developer's Nonperformance Payment.

2.3.5 Developer's Nonperformance Payment & Amount. If Developer is required to pay City the Developer's Nonperformance Payment, Developer shall make such payment to City within ten (10) days of the date of the City Notice of Developer Nonperformance and Developer's continuing refusal or failure diligently to pursue the construction and completion of the Additional 118<sup>th</sup> Street Construction Project. The payment of the Developer's Nonperformance Payment shall be made by cashier's check, wire transfer or other immediately available funds to City. The amount of such Developer's Nonperformance Payment shall be equal to the lesser of (1) One Million Five Hundred Thousand Dollars (\$1,500,000), and (2) Nine Hundred Thirty-One Thousand, Three Hundred Sixty-Seven Dollars (\$931,367) (the "Base Amount") as adjusted by adding to the Base Amount the product of multiplying the Base Amount by the "Percentage Change," (all as they may be reduced by the Developer's Offset Amount). For purposes of this subsection, the following terms shall apply:

(i) The "Index" shall mean the Engineering News-Record of Construction Cost Index (ENR CCI) (all cities average) or, if such index is at any time hereafter no longer published, the Producer Price Index Final Demand Construction (PPI FDC) published by the Bureau of Labor Statistics of the United States Department of Labor averaged on a calendar year basis;

(ii) The "Base Index" shall mean the Index for the calendar year 2017;

(iii) The "Adjustment Date" shall be the date of the City Notice of Developer Nonperformance;

(iv) The "Adjustment Index" shall mean the average Index for the 12 calendar months immediately preceding the month of the Adjustment Date;

(v) The "Percentage Change" shall mean the percentage equal to the fraction, the numerator of which shall be the Adjustment Index less the Base Index, and the denominator of which shall be the Base Index. This may be expressed as follows:

$$\text{Percentage Change} = \frac{\text{Adjustment Index} - \text{Base Index}}{\text{Base Index}}$$

2.3.6 Letter of Credit Security for Developer's Nonperformance Payment. As security for Developer constructing the Additional 118<sup>th</sup> Street Construction Project if Developer is obligated to do so pursuant to this Agreement, and for security for Developer's payment of the Developer's Nonperformance Payment, upon City providing Developer with the City Notice of ROW Acquisition, Developer shall deposit with the City a Letter of Credit in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000), in form and substance substantially of **Exhibit "E"** as it may be required to be revised in final form to be issued as determined by mutual agreement of the City's Treasurer, the issuing lender and Developer (the "Construction Letter of Credit"). If Developer does not make the deposit of the Construction Letter of Credit within thirty (30) days of Developer's receipt of the City Notice of ROW Acquisition, City may elect to cease issuing building permits (but not Certificates of

Occupancy) with respect to the Project until Developer deposits the Construction Letter of Credit with City or Developer makes the Developer's Nonperformance Payment. City shall be entitled to draw against the Construction Letter of Credit if Developer does not diligently pursue construction and completion of the Additional 118<sup>th</sup> Street Construction Project within ten (10) days of Developer's receipt of the City Notice of Developer Nonperformance. The amount that City may draw from the Construction Letter of Credit shall be equal to the amount of the Developer's Nonperformance Payment as determined pursuant to subsection 2.3.5 of this Agreement.

3. Closing Conditions & Procedures. The closing under this Agreement (the "Closing") shall occur on the tenth (10th) day after the date on which Developer's preliminary plat for the Property (the "Plat") is processed and recorded by the City with the Maricopa County Recorder (the "Closing Date"). The Closing shall be governed by the following:

3.1 Escrow Agent. Fidelity National Title Agency, 60 E Rio Salado Pkwy, Suite 1104, Tempe, AZ 85281 ("Escrow Agent"), Attention Patti Graham, VP/Branch Manager, shall administer transactions requiring escrow services when required by this Agreement. This Agreement shall constitute instructions to Escrow Agent for the transactions contemplated by this Agreement. By executing this Agreement or accepting any escrow hereunder, Escrow Agent agrees to perform the obligations imposed by this Agreement. Escrow Agent's liability under this Agreement is limited to performance of the duties and obligations imposed upon Escrow Agent. Escrow Agent shall in all cases be responsible for any liability or claim arising from its negligence, misconduct or other improper or unlawful act.

3.2 Developer to Open Escrow. Within five (5) days after the date of this Agreement, Developer shall cause Escrow Agent to establish an escrow on the terms set out in this Agreement and shall give City notice that the Escrow is open. Such notice shall be accompanied by a complete copy of this entire Agreement (including exhibits) with an original signature by Escrow Agent.

3.3 Closing Location. Not less than three (3) business days prior to the Closing, City shall designate a location for the Closing within Maricopa County, Arizona. Unless City designates a different location, the Closing shall occur in Escrow Agent's office.

3.4 General Closing Conditions. The Closing shall occur only upon satisfaction of all conditions to the Closing and the performance of all acts and delivery of all documents required to be performed or delivered at or prior to the Closing, or upon formal notice of waiver of any such conditions by the party for whose benefit such conditions exist. A party is not obligated to cause the Closing to occur if an event has occurred or circumstances exist that are (or with the passage of time or giving of notice, or both, would be) an event of default by the other party under this Agreement. Time is of the essence for the Closing.

3.5 Escrow Fees and Closing Costs. Developer shall pay the costs when due of all escrow and termination fees, recording fees, and similar costs.

3.6 Commissions and Fees. City shall not be liable for any real estate commissions or brokerage fees that may arise in connection with this Agreement or the transactions contemplated herein. To the extent any real estate commissions or brokerage fees may at any time be payable in connection with this Agreement, any transaction contemplated herein, or the Property, such shall be Developer's sole obligations, and Developer shall pay, indemnify, defend and hold City harmless therefrom.

3.7 Other City Property. Except as expressly provided herein, this Agreement does not entitle Developer to acquire any real property interest that is now held or may hereafter be acquired by City, and, except as expressly provided herein, City is not obligated to provide any of its own land or real estate interests for use in developing or operating the Project.

3.8 Deliveries. Recording or other official filing of a document as directed by this Agreement shall constitute delivery of the document to the grantee thereunder and acceptance by the grantee.

3.9 Return of Recorded and Filed Documents. Recorded documents shall be returned to the person designated by the forms attached to this Agreement or as executed by the parties (the "Return Person"). If no designation is made for any document, Escrow Agent shall mark the form prior to recording to indicate that City's city attorney is the Return Person. Escrow Agent and the parties shall not change the name or address of the Return Person on any document and shall immediately deliver to the Return Person any recorded document that may come into their possession. The same requirements apply to documents to be filed at any other governmental office.

3.10 Property Taxes. As between City and Developer, all property taxes, assessments, and similar charges applicable to the Property whether arising before or after the Closing shall be paid by Developer.

3.11 Expenses and Deposits. Except as otherwise expressly stated, the intent of this Agreement is that all real estate transactions of every description required by this Agreement or pursuant to this Agreement or in furtherance of this Agreement be accomplished at Developer's sole expense, and without any cost whatsoever to City.

3.12 Priority. All rights and interests held by City from time to time pursuant to this Agreement or pursuant to the Related Documents shall have the same priority as this Agreement. All rights and interests in the Property or this Agreement, or held by City from time to time pursuant to this Agreement or pursuant to the Related Documents, shall be senior in priority to any and all liens, interests or items that are created, claimed, arising, conveyed or existing after the date of this Agreement or that are subjected or subordinated to this Agreement or to any of the Related Documents. No act of Developer, City, or others, and no consent or other action or inaction by City, shall in any way subordinate or otherwise impair City's rights or interests or deprive City's rights or interests of their senior priority. Any real property interests hereafter acquired by Developer or its affiliates or their successors in the Property automatically shall be subject and subordinate to this Agreement and the applicable Related Documents regardless of the manner of acquisition. Upon request by City, Developer and its successors

shall from time to time cause to be executed, acknowledged and recorded instruments confirming the same. This paragraph shall not prohibit City from hereafter electing to execute and record a document explicitly subordinating a City interest in the Property, at the City's sole and absolute discretion.

3.13 Merger. City's real property interests shall not merge with any existing or future title held by City or conveyed to or by City in connection with this Agreement or the Related Documents. Developer's interests shall not merge with any existing or future title held by Developer or conveyed to or by Developer.

3.14 City Payment. City is not obligated to pay any amount to Developer in consideration of any conveyance to City whatsoever pursuant to this Agreement.

3.15 Land Acquisition by Eminent Domain. Notwithstanding anything in this Agreement or the Related Documents to the contrary, City is not committed in any way to use condemnation or eminent domain or to assist Developer in any other way to acquire any real property interests or other rights or interest held by third parties for the Project or this Agreement.

4. Closing. The Closing shall be accomplished as follows:

4.1 Closing Documents. On or prior to the Closing Date, City and Developer shall sign, acknowledge, and deposit (or cause to be signed, acknowledged and deposited by all applicable persons) with Escrow Agent the following items (collectively the "Closing Documents"):

4.1.1 Closing Deposits by City. City shall deposit:

4.1.1.1 This Agreement.

4.1.1.2 The Stipulations.

4.1.1.3 The Abandonment Resolutions.

4.1.2 Closing Deposits by Developer. Developer shall deposit:

4.1.2.1 This Agreement.

4.1.2.2 The Stipulations.

4.1.2.3 The Non-Motorized Access Easement

4.1.2.4 A waiver of claims for diminution of value in property (the "Waiver") in the form attached hereto as **Exhibit "F."**

4.1.2.5 Instruments in substantially the form attached hereto as **Exhibit "G"** (the "Lienholder Consents") executed and acknowledged by each person having or

claiming a lien, lease, or other interest that is or may become possessory in any part of the Property whereby such person joins in this Agreement and subjects and subordinates its interests to this Agreement and all requirements, provisions and conveyances of this Agreement. Lienholder Consents are not required from City.

4.1.2.6 Such other documents as Escrow Agent may reasonably request to accomplish the Closing as required by this Agreement.

4.2 Deliveries at Closing. The following shall occur at the Closing in the order listed:

4.2.1 Escrow Agent shall record all of the Closing Documents in the office of the Maricopa County Recorder in the order listed above.

4.2.2 Escrow Agent shall retain for itself Escrow Agent's escrow fee for the Closing.

4.3 Closing Outside Escrow. Unless City or Developer gives notice at least seven (7) days in advance of the Closing, the Closing shall occur outside escrow, with Developer performing the duties of Escrow Agent.

5. Project. Developer's development shall comply with the following:

5.1 No Construction Obligation. Notwithstanding anything else in this Agreement, the Related Documents, or the Stipulations, and specifically with respect to Section 2 of this Agreement, Developer has no obligation to develop the Property or undertake or complete the Project or any of the Developer Improvement Obligations, including with respect to any obligations in Section 2, and Developer may terminate Developer's further performance under this Agreement, the Related Documents, and the Stipulations to the extent any further performance would otherwise thereafter be required unless Developer can obtain financing, for any or all of the Project or any portion thereof, that is acceptable to Developer in Developer's sole and absolute discretion and unless and until Developer is able successfully to process a plat of the Property representing the Project as Developer seeks to develop such Project in its sole and absolute discretion.

5.2 Stipulations. Developer and City agree the Stipulations are incorporated into this Agreement as if they were set out in detail herein. If the City Council amends the Stipulations at the request of the Developer through a public hearing process, the City concurrently shall process and approve an amendment to this Agreement to amend the Stipulations and this Agreement.

5.3 Inspection. City shall have access to the portions of the Property that Developer owns at all times during normal business hours upon reasonable notice (and at all times and without notice in the event of an emergency) for the purpose of administering, monitoring Developer's compliance with, and enforcing this Agreement and the Related Documents, or evaluating the Property or exercising City's other rights hereunder. This right of

access is in addition to access rights for City inspectors or other employees and officers acting within their legal authority, but only may be exercised reasonably.

6. Breach. Developer materially shall comply with, perform and do each performance and thing required of Developer. Developer's material failure to do so shall be a breach by Developer of this Agreement.

6.1 Events of Default. Developer shall be in default (an "Event of Default") if Developer fails or neglects timely and completely to do or perform or observe any material provision of this Agreement or the Related Documents and such failure or neglect continues for a period of one hundred eighty (180) days after City has notified Developer in writing of such failure or neglect. The one hundred eighty (180) day period shall be extended an additional sixty (60) days upon Developer's request given by notice to City prior to the end of the first one hundred eighty (180) days. If performance to cure such Event of Default, in the exercise of reasonable diligence, would take longer than such period, such period shall be deemed to be extended to allow completion of performance reasonably and diligently pursued.

6.2 City's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, City may, at its option and from time to time, exercise any or all or any combination of the following cumulative remedies in any order and repetitively at City's option:

6.2.1 Terminate this Agreement.

6.2.2 Pay or perform, for Developer's account, in Developer's name, and at Developer's expense, any or all payments or performances required hereunder to be paid or performed by Developer.

6.2.3 Abate at Developer's expense any violation of this Agreement.

6.2.4 Be excused without any liability to Developer therefor from further performance of any or all of City's obligations under this Agreement.

6.2.5 Insist upon Developer's full and faithful performance under this Agreement during the entire remaining term of this Agreement.

6.2.6 Assert, exercise or otherwise pursue at Developer's expense any and all other rights or remedies, legal or equitable, to which City may be entitled.

6.2.7 Exercise any remedy provided to City in the Related Documents.

6.2.8 Notwithstanding the foregoing, Developer shall not be liable for the following:

6.2.8.1 Punitive or other exemplary or multiple damages.

6.2.8.2 Damages due to City's or the public's failure to receive the Community Benefits.

6.3 City Default and Developer's Remedies. Upon any material breach of this Agreement by City not cured within sixty (60) days after notice from Developer, Developer may pursue any and all remedies, legal, equitable or otherwise, to which Developer may be entitled. Notwithstanding the preceding sentence or anything else in this Agreement or the Related Documents and as a condition of City's willingness to enter into this Agreement, and notwithstanding anything else contained in this Agreement, or contained in any exhibit attached hereto, or contained in or related to this Agreement or the Related Documents, or any instrument or agreement now or hereafter related hereto, or existing or implied at law or equity, the following limits shall apply to this Agreement, the Related Documents, and all transactions related thereto:

6.3.1 In no event shall City be liable for any money damages other than payment of the actual amount that this Agreement requires City to pay but City wrongfully does not pay, and additional out-of-pocket expenses Developer incurs.

6.3.2 City shall not be liable for any other incidental or consequential damages or any punitive or other exemplary or multiple damages.

6.3.3 Developer hereby unconditionally and irrevocably waives on behalf of itself and all persons claiming through Developer or through this Agreement or under or related to this Agreement or the Related Documents any remedies inconsistent with these limitations.

6.3.4 All limitations on Developer's remedies shall also apply to all remedies against City's officers, employees and other agents and representatives and any other person for whom City may in any event be liable for any reason.

6.3.5 All limitations on Developer's remedies shall apply to Developer and to any person otherwise asserting against City, any claim whatsoever related to this Agreement or the Related Documents.

6.4 Non-waiver and City Contract Administrator Authority. No failure by City or Developer to demand any performance required of the other under this Agreement, and no acceptance by City or Developer of any imperfect or partial performance under this Agreement, shall excuse such performance, or waive or impair in any way the other's ability to insist, prospectively and retroactively upon full compliance with this Agreement. Only City's formally designated contract administrator (who shall be designated by City's city manager from time to time) shall be authorized to administer this Agreement and the Related Documents for City or speak for City regarding this Agreement or the Related Documents, except that the Stipulations shall be administered for City by City's planning and development services department through its normal processes. Upon execution of this Agreement, City and Developer shall each designate a contract administrator to coordinate the respective party's participation in carrying out its obligations under this Agreement. The City's initial contract administrator shall be the Transportation Director. A party's contract administrator need not be exclusively assigned to this Agreement. The City's contract administrator's authority is limited to the administration of the requirements of this Agreement. Whenever this Agreement requires

the notice, approval or consent of the City in writing, such notice, approval or consent shall be binding on the City when given by the Transportation Director. Developer shall be responsible for securing all zoning and other land use approvals, development review, building and other local, state, county or federal governmental approvals and for satisfying all governmental requirements pertaining to any of Developer's obligations under this Agreement and shall not rely on the City's contract administrator for any of the same.

6.5 Interest. Amounts due but unpaid by either party shall bear interest at the rate of one percent (1%) over the prime as announced by Bank of America until paid.

7. Condemnation. In the event of any taking or condemnation, the condemnation proceeds shall be divided between City and Developer as their interests may appear.

8. Indemnity and Insurance. Developer shall insure the Property and its property and activities at and about the Property and shall provide insurance and indemnification as follows:

8.1 Insurance. Developer shall provide insurance as required by this Agreement or applicable law, as set forth on **Exhibit "H,"** and third parties shall provide such insurance, where required, as set forth on **Exhibit "I."**

8.2 Indemnity. In addition to all other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Developer (and all other persons claiming through Developer or this Agreement) jointly and severally shall pay, indemnify, defend and hold harmless City and City's employees, officials, representatives, and agents (the "Additional Insureds") for, from and against any and all claims or harm related to Developer's ownership or other rights in the Property or arising from Developer's development of the Property pursuant to this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings) that may arise in any manner out of any of Developer's use of City's property pursuant to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in Developer's performances under this Agreement, including any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Property or surrounding areas pursuant to this Agreement, including without limitation, claims, liability, harm or damages caused in part by City or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Developer or City may be liable. The Indemnity shall also include and apply to any environmental injury, personal injury or other liability relating to City's or Developer's acquisition, ownership or use of real property developed, operated, owned, used, controlled or possessed by City or Developer under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

8.2.1 Claims arising only from the gross negligence of City.

8.2.2 Claims that the law prohibits from being imposed upon Developer.

8.3 Risk of Loss. City is not required to carry any insurance covering or affecting the Property or use of City's property related to this Agreement. If Developer secures other insurance related to the Property or any improvements, property or uses related thereto, Developer shall affect an endorsement under such policy waiving any and all insurer's rights of subrogation against City and the other Additional Insureds.

8.4 Insurance to be Provided by Others. Contractors or other persons occupying, working on or about, or using the Property pursuant to this Agreement must also provide for the protection of City and all other Additional Insureds all of the insurance and indemnification required by this Agreement. The preceding sentence does not require such persons to provide insurance that merely duplicates insurance Developer provides.

9 Developer's Records. City shall have access to records regarding the Project as follows:

9.1 Scope of Records. This Article applies only to records that evidence whether City and Developer are in compliance with this Agreement or the Related Documents.

9.2 Information. Developer shall furnish, from time to time, such information as City reasonably may request pertaining to Developer's and City's respective rights and obligations with respect to this Agreement as reasonably determined by City. Developer need not disclose information that is not related to City's rights and obligations related to the Project, this Agreement and the Related Documents.

9.3 Right of Inspection. Developer shall (i) permit and assist City and its representatives at all reasonable times to inspect, audit, copy and examine, as applicable, Developer's records, (ii) cause its employees and agents to give their full cooperation and assistance in connection with any such visits or inspections, and (iii) make available such further information concerning Developer's business and affairs relating to the Property as City may from time to time reasonably request. Such inspection shall be limited to matters relevant to City's and Developer's rights and obligations under this Agreement as reasonably determined by City.

10. Compliance with Law. Developer shall comply with all federal, state, county and local laws, ordinances, regulations or other rules or policies that affect the Property as are now in effect or as may hereafter be adopted or amended. Without limiting in any way the generality of the foregoing, Developer shall comply with all and each of the following:

10.1 Work on Public Land and Improvements. Prior to commencing construction on City rights-of-way or commencing construction of improvements for public use, Developer shall obtain City standard form encroachment permits (which City shall issue on the same terms City issues encroachment permits for other projects), if applicable, and shall provide

to City Public Improvements Covenant to Construct documents in the form attached hereto as **Exhibit "J,"** and any required performance bond in the form of **Exhibit "K."** Developer may elect to provide a single Public Improvements Covenant to Construct the entire Project or a separate Public Improvements Covenant to Construct for each portion of such construction. The blanks in each Public Improvements Covenant to Construct shall be completed as follows:

10.1.1 The date of the Public Improvements Covenant to Construct shall be a date prior to issuance of the building permits for the work thereunder.

10.1.2 The "Land Approvals" shall be the Stipulations as defined by this Agreement.

10.1.3 The "Approved Plans" shall be the final seated plans prepared by Developer's engineers for the proposed construction.

10.1.4 The "Estimated Cost" shall be Developer's engineer's estimate of the cost of the "Work", subject to review and approval by City, plus an additional amount of thirty percent (30%) of such estimate, except in the case of the Additional 118th Street Construction Project, in which case it shall be the Reimbursement Amount.

10.1.5 The completion deadline shall be two (2) years after the date of the Public Improvements Covenant to Construct.

10.2 Building and Other Permits. Developer shall obtain at its own expense all building or other permits in connection with all construction performed by Developer and shall comply with all zoning as of the date of this Agreement, building safety, fire and similar laws and procedures of every description.

10.3 Local Workers. If and to the extent A.R.S. §41-4401 is applicable to this Agreement, Developer shall comply with laws regarding workers as follows:

10.3.1 Developer warrants to City that Developer and all its subcontractors will comply with all federal immigration laws and regulations that relate to their employees and that Developer and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

10.3.2 A breach of the foregoing warranty by Developer shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement.

10.3.3 City retains the legal right to inspect the papers of any employee of Developer or any subcontractor who works on elements governed by this Agreement to ensure that they or the subcontractor is complying with the warranty given above.

10.3.4 City may conduct random reconciliation of Developer's and its subcontractors' employment records to ensure compliance with the warranty given above.

10.3.5 Developer shall indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations of the warranty given above.

11. Assignability. This Agreement is not assignable by Developer (and any assignment shall be void and vest no rights in the purported assignee) unless the assignment is made in compliance with the following:

11.1 Automatic Assignment. This Agreement runs with the land upon the Property and Developer's rights hereunder automatically shall be deemed to be assigned to and assumed by each successor in title to Developer. No other assignment shall occur without City's consent, which City may limit, condition or withhold in its absolute discretion.

11.2 Unified Project Intent. Until the Project is completed as governed by Section 1.3 of this Agreement (the "Completion"), any assignment must cover Developer's entire interest in the Property and this Agreement. Until Completion, City is entitled to hold the single Developer responsible for all of Developer's performances under this Agreement with respect to the Project. Until Completion, City and Developer expressly do not intend that Developer's rights under this Agreement be divisible for any reason into multiple contracts, agreements or other arrangements between City and numerous Property users. Until Completion, City and Developer intend that City only be obligated to deal with a single developer with respect to the Project with respect to Developer's obligations and not be burdened with any management, maintenance or other responsibilities related to development or occupation of the Property owned by Developer by multiple entities, such as resolving or being hindered by disagreements between entities regarding Developer's performance of its duties under this Agreement or the Related Documents with respect to the Project, and that City not be burdened by usage, financial or other issues among various persons using the Property owned by Developer pursuant to this Agreement or the Related Documents. Until Completion, all of those duties to be performed by Developer with respect to the Project are to be performed by a single developer who will be responsible to see that all persons developing or using the Property, including without limitation any owners' associations and their members, resolve among themselves their respective responsibilities for all performances under this Agreement, none of which limits or otherwise affects City's rights under this Agreement or the Related Documents.

11.3 Lien Priorities. In no event shall any lien or other interest arising after the date of this Agreement cover, affect or have any priority higher than or equal to, any of City's rights in the Property or under this Agreement at any time. The preceding sentence also establishes the senior priority of any and all rights and property interests of every description that City may hold at any time pursuant to this Agreement and the Related Documents.

12. Miscellaneous. The following additional provisions apply to this Agreement:

12.1 Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties.

12.2 Survival of Covenants, Warranties and Indemnifications. All covenants, representations, warranties and indemnifications contained in this Agreement shall survive the execution and delivery of this Agreement, the Closing, all conveyances contemplated by this Agreement, and the rescission, cancellation, expiration or termination of this Agreement for any reason.

12.3 Severability. If any term, condition, covenant, stipulation, agreement or provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement or provision shall in no way affect any other term, condition, covenant, stipulation, agreement or provision herein contained.

12.4 Conflicts of interest. No member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, which is prohibited by law.

12.5 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

12.6 Non-liability of City Officials and Employees. No member, official, representative or employee of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by City or for any amount that may become due to any party or successor, or with respect to any obligation of City related to this Agreement.

12.7 Notices. Notices hereunder shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to City:                      Planning and Development Director  
City Manager, City of Scottsdale  
7447 E. Indian School Rd.  
Scottsdale, AZ 85251

Copy to:                         Bruce Washburn  
City Attorney, City of Scottsdale  
3939 Drinkwater Blvd.  
Scottsdale, AZ 85251

If to Developer:               Toll Brothers Arizona Construction Company  
Kevin Duermit & Jeff Nielsen  
8767 Via De Ventura, Suite 390  
Scottsdale, AZ 8525  
Phone: (480) 586-8815

Copies to: Toll Bros., Inc.  
250 Gibraltar Road  
Horsham, PA 19044  
Attn: Mark J. Warshauer, Esq.  
Telephone: (215) 938-8260

And Copies to: John Berry, Esq.  
Berry & Riddell, LLC  
6750 E. Camelback Rd., Suite 100  
Scottsdale, AZ 85251  
Phone: (480) 385-2727

By notice from time to time, a person may designate any other street address within Maricopa County, Arizona as its address for giving notice hereunder. Any designation by Developer of a new address for notices by City to Developer (an "Address Change Notice") shall not be binding or effective on City unless the Address Change Notice is in the form attached hereto as **Exhibit "L"** and is recorded by Developer with the County Recorder of Maricopa County, Arizona. After the Project is completed, notices to Developer may also be hand delivered to Developer's management office at the premises of the Project. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

12.8 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft documents, discussion outlines, correspondence, memoranda or representation regarding the Property.

12.9 Governmental Powers Preserved. Developer acknowledges that this Agreement does not constitute, and City has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Developer with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by City or any other governmental body upon or affecting Developer, the Property or Developer's use of the Property. Developer acknowledges that all of Developer's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Developer. Developer further agrees that this Agreement is not intended to diminish any performances to City that would be required of Developer by law if this Agreement had been made between Developer and a private citizen. City has not relinquished or limited any right of condemnation or eminent domain over the Property. In the event of any condemnation or eminent domain involving property interests owned by Developer, Developer shall not be entitled to increased compensation attributable to this Agreement. This Agreement does not impair the City's power to enact, apply or enforce any laws or regulations. City's rights and remedies hereunder for Developer's failure to comply with all applicable laws supplement and are in addition to and do not replace all otherwise existing powers of the City of Scottsdale or any other governmental body. This Agreement includes, replaces and supersedes all economic

or other incentives from or through the City applicable to the Project. In the case of an existing ordinance or other existing law of the City authorizing a credit, reduction in tax or amount assessed, or any other benefit as a result of performances rendered under this Agreement, Developer expressly waives, relinquishes and repudiates all such benefits with respect to performances rendered under this Agreement.

12.10 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Developer or City. If there are conflicts between the terms of the Stipulations and this Agreement, this Agreement shall control.

12.11 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

12.12 No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. Neither City nor Developer shall have any liability to third parties for any approval of plans, Developer's construction of improvements, Developer's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Developer), or otherwise as a result of the existence of this Agreement or the Related Documents, and City shall have no liability to any third party for Developer's negligence.

12.13 Exhibits. All exhibits attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

12.14 Attorneys' Fees. Each party shall bear its costs, attorneys and witness fees and other litigation costs of defending or prosecuting, any claim, action or suit challenging the validity or enforceability of any provision of this Agreement or the Related Documents, in instances in which City and Developer are not adverse to one another, including when each party is represented by separate counsel of its own choosing. Further, in the event any other action or suit or proceeding is brought by either party to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any rights or remedies hereunder, the prevailing party in such proceeding (as determined by the court (and not a jury) in such proceeding) shall be entitled to recover from the other party such prevailing party's reasonable attorneys' fees and other reasonable litigation costs, provided, however, that (a) Developer shall, as a condition of such proceeding provide evidence to City of the rate of payment of Developer's attorneys' fees to its counsel and (b) City shall be entitled to recover payment for attorneys employed by City (including attorneys who are regular employees of City) on such proceeding at the same rate of payment if City is the prevailing party.

12.15 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.

12.16 Institution of Legal Actions. Legal actions regarding this Agreement shall be instituted in the Superior Court of the County of Maricopa, State of Arizona, or in the Federal District Court in the District of Arizona sitting in Maricopa County. City and Developer agree to the exclusive jurisdiction of such courts. Claims by Developer shall comply with time periods and other requirements of City's claims procedures from time to time.

12.17 Approvals and Inspections. All approvals, review and inspections by City under this Agreement or otherwise are for City's sole benefit.

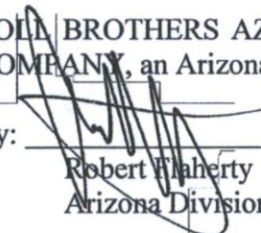
12.18 Statutory Cancellation Right. In addition to its other rights hereunder, City shall have the rights specified in A.R.S § 38-511.

EXECUTED as of the date first given above.

DEVELOPER:

TOLL BROTHERS AZ CONSTRUCTION COMPANY, an Arizona corporation

By: \_\_\_\_\_

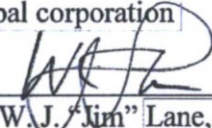
  
Robert Flaherty  
Arizona Division President

ATTEST:

  
Carolyn Jagger, City Clerk

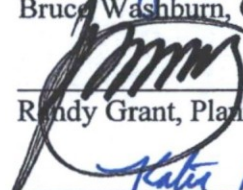
CITY OF SCOTTSDALE, an Arizona municipal corporation

By: \_\_\_\_\_

  
W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:

  
Bruce Washburn, City Attorney

  
Randy Grant, Planning and Development Director

  
Katie Callaway, Risk Management Director

  
Paul Basha, Transportation Director

ESCROW ACCEPTED AND AGREED TO BY:

Escrow Agent:

First American Title Insurance Company

By: \_\_\_\_\_

Its: Escrow Agent

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of June, 2017, by W. J. "Jim" Lane, Mayor of the City of Scottsdale, an Arizona municipal corporation.

My Commission Expires:

September 25, 2018

Erica W. Smith  
Notary Public

Erica Wyatt



STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

On June 1, 2017, before me, Kimberly Anne Westfall Notary Public, personally appeared Robert Flaherty, Arizona Division President, Toll Brothers AZ Construction Company, an Arizona corporation, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

My Commission Expires: May 18, 2020

Kimberly Anne Westfall  
Notary Public

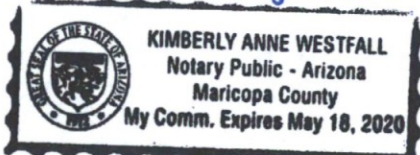


EXHIBIT A

LEGAL DESCRIPTION

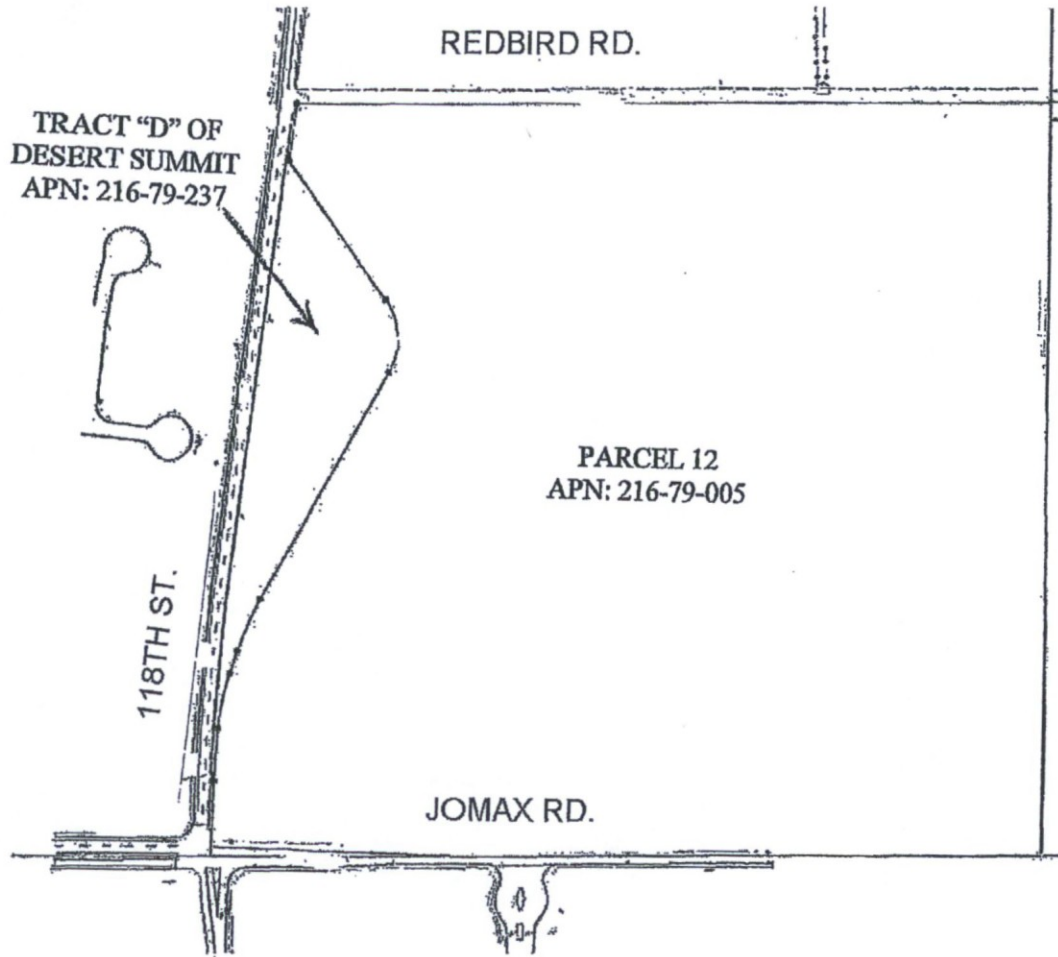
PARCEL 12, OF GOLDIE BROWN PINNACLE PEAK RANCH UNIT TWO, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 194 OF MAPS, PAGE 26;

EXCEPT ALL MINERALS AS RESERVED IN THE PATENT TO SAID LAND.

PARCEL 13, OF GOLDIE BROWN PINNACLE PEAK RANCH UNIT TWO, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 194 OF MAPS, PAGE 26;

EXCEPT ALL MINERALS AS RESERVED IN THE PATENT TO SAID LAND.

EXHIBIT B  
PROPERTY MAP



REDBIRD RD.

PARCEL 12  
APN: 216-79-005

Parcel 13  
APN: 216-78-002

JOMAX RD.

EXHIBIT C

STIPULATIONS

**Stipulations for the Zoning Application:**

**118th & Jomax**

**Case Number: 25-ZN-2016**

These stipulations are in order to protect the public health, safety, welfare, and the City of Scottsdale.

**SITE DESIGN**

CONFORMANCE TO CONCEPTUAL SITE PLAN. Development shall conform with the conceptual site plan submitted by AndersonBaron and Toll Brothers and with the city staff date of 3/28/2017, attached as Exhibit A to Exhibit 1. Any proposed significant change to the conceptual site plan, as determined by the Zoning Administrator, shall be subject to additional action and public hearings before the Planning Commission and City Council.

MAXIMUM DWELLING UNITS/MAXIMUM DENSITY. Maximum number of lots shall not exceed 51 lots as shown on the site plan exhibit, and maximum density shall not exceed .64 dwelling units per acre.

CONFORMANCE TO DEVELOPMENT AGREEMENT. Development shall conform to the development agreement which will be included with the City Council Report. Any change to the development agreement shall be subject to City Council approval.

BUILDING HEIGHT LIMITATIONS. No building on the site shall exceed 24 feet in height, measured as provided in the applicable section of the Zoning Ordinance, and limited to single story.

BOULDERS. Boulder easements shall be dedicated to the City at the time of Final Plat, in the locations shown on the Boulder Plan submitted by AndersonBaron and Toll Brothers with a date by City staff of 3/28/2017, attached as Exhibit B to Exhibit 1.

DESERT SCENIC ROADWAY SETBACKS LOCATION. The Desert Scenic Roadway setback width along E. Jomax Road shall be a minimum of 35 feet, and 30-feet along N. 118<sup>th</sup> Street, measured from edge of right-of-way. Unless otherwise approved by the Development Review Board, the Desert Scenic Roadway setback shall be left in or revegetated back to a natural condition.

**INFRASTRUCTURE AND DEDICATIONS**

CIRCULATION IMPROVEMENTS. Prior to any permit issuance for the development project the owner shall make required dedications and prior to issuance of any Certificate of Occupancy for the development project, the owner shall provide the required improvements in conformance with the Design Standards and Policies Manual and all other applicable city codes and policies.

a. STREETS. Dedicate the following right-of-way and construct the following street improvements:

Street Name	Street Type	Right-of-way Dedications	Improvements	Notes and Requirements
East Jomax Road	Rural/ESL Local Collector	35-feet along frontage.	Curb and gutter, sidewalk, and pavement, 8-foot trail	a.1., a.2., a.3
North 118 <sup>th</sup> Street	Rural/ESL Minor Corrector	45-feet along frontage.	Curb and gutter, sidewalk, and pavement, 8-foot trail	a.1., a.4.
East Redbird Road	Rural/ESL Local Residential Collector	20-feet along frontage and southern half of cul-de-sac at termination.	Curb and gutter, pavement, shoulder back of curb	a.1., a.5., a.6.
Internal Streets	Rural/ESL Local Residential	Minimum 40-foot Private Street Tracts	curb/gutter, pavement, shoulder back of curb	a.1., a.7.

- a.1. All street improvements (curb, gutter, sidewalk, curb ramps, driveways, pavement, concrete, etc.) shall be constructed in accordance with the applicable City of Scottsdale's Supplements to the Maricopa Association of Governments (MAG) Uniform Standard Specifications and Details for Public Works Construction, and Maricopa Association of Governments (MAG) Uniform Standard Specifications and Details for Public Works Construction and the Design Standards and Policies Manual.
- a.2. Eastern dedication of E. Jomax Road to include future Jomax Road alignment per the site plan submitted by AndersonBaron dated 3/01/2017.
- a.3. Improve E. Jomax Road to the full Rural/ESL local collector street along the site frontage. Improvements shall match the existing improvements to the south, with the exception of a sidewalk. The improvements shall be extended to the proposed subdivision entrance. The street cross section shall include the construction of an 8-foot wide non-paved multi-use trail within the right-of-way on the north side of the street and the continuation of the existing 6 foot wide sidewalk along the south side of the street.
- a.4. Improve N. 118th Street, from Jomax Road to Redbird Road, to match the existing street cross section immediately north of E. Redbird Road, consisting of one lane each direction with bike lanes on both sides. The street cross section shall include the construction of an 8-foot wide non-paved multi-use trail within the right-of-way.
- a.5. Improve E. Redbird Road to the full Rural/ESL local residential street along the site frontage. Improvements shall match the existing improvements to the north. The

improvements shall be extended from N. 118<sup>th</sup> Street east to the N. 121st Street alignment.

- a.6. Install a residential cul-de-sac at the termination of E. Redbird Road, per the Design Standards and Policies Manual.
- a.7. The internal streets shall be dedicated and constructed to the Rural/ESL local residential street cross section, Fig. 5.3-19. The private street tracts shall be dedicated to provide emergency and service vehicle access.
- b. VEHICLE NON-ACCESS EASEMENT. Prior to issuance of any building permits for the development project, the owner shall dedicate a one foot wide Vehicular Non-Access Easement (VNAE) on N. 118th Street, E. Jomax Road and portions of E. Redbird Road, along the site frontage, except at the approved street entrance(s).
- c. Prior to any Certificate of Occupancy, the owner shall construct 8-foot unpaved trail within the right-of-way along the north side of E. Jomax Road between N. 118<sup>th</sup> Street and the boundary of the Arizona State Land Department boundary. Maintenance of the unpaved trail will be the responsibility of the homeowners association.
- d. Before improvement plan submittal, the owner shall provide documentation of its efforts to coordinate with Arizona State Land Department regarding the trail connection to Arizona State Land Department property south of parcel 216-78-02.
- e. City of Scottsdale Preservation staff will be responsible for the final location, approval and securing the access agreement and approval from the Arizona State Land Department for the proposed trail along the E. Jomax road alignment from the subdivision entry road to the McDowell Sonoran Preserve boundary. If the City secures the access rights for the developer to construct the proposed trail, the developer shall construct the proposed trail subject to the conditions set forth in Development Agreement contract number 2017-071-COS.

**INTERSECTION IMPROVEMENTS.** Before improvement plan submittal the owner shall obtain the City of Scottsdale Traffic Engineering's approval for Intersection improvements at the E. Jomax Road and N. 118<sup>th</sup> Street intersection and off-site roadway improvements. The intersection improvements shall better align lanes north-south and east-west through the intersection. Prior to final plans approval, the developer shall submit an off-site paving plan and a pavement marking and signing plan addressing the modifications required to be made at this intersection.

**WATER AND SEWER IMPROVEMENTS.** Before Final Plat recordation the owner shall provide documentation that any and all sewer or water paybacks against parcels APN 219-79-005 and 216-78-002 have been resolved.

**WATER AND SEWER IMPROVEMENTS.** Prior to any right-of-way permit issuance, the owner shall provide documentation that the Desert Summit Subdivision Home Owners Association has been notified with a construction schedule for the construction of a sewer line connection to the existing sewer in E. Four Peaks Road.

EXHIBIT D

When Recorded Return to:

CITY OF SCOTTSDALE  
ONE STOP SHOP/RECORDS  
(Keith Niederer)  
7447 East Indian School Road  
3)  
Scottsdale, AZ 85251

Exempt from Affidavit of Value  
under A.R.S. § 11.1134(A)(2,



**CITY OF SCOTISDALE  
PUBLIC NON-MOTORIZED  
ACCESS EASEMENT**

C.O.S. Contract No. 2017-071-COS  
(118th & Jomax)  
(Resolution No. 10797)

FOR ONE DOLLAR (\$1.00) and other good and valuable consideration received Toll Brothers AZ Construction Company, an Arizona corporation, ("Grantor") does hereby grant to the City of Scottsdale, an Arizona municipal corporation ("Grantee"), a perpetual, non-exclusive easement upon, over, under and across the following real property legally described on Exhibit A (the "Property").

The purpose of the easement is for all forms of non-motorized transportation together with motorized emergency, law enforcement, and service vehicles, and for construction, operation, use, maintenance, repair, modification and replacement from time to time of improvements related thereto.

Grantor hereby warrants and covenants to Grantee and its successors and assigns that Grantor is lawfully seized and possessed of the Property; that Grantor has a good and lawful right to make the conveyance described herein; and that Grantee shall have title and quiet possession against the claims of all persons.

The person executing this document on behalf of a corporation, trust or other organization warrants his or her authority to do so and that all persons necessary to bind Grantor have joined in this document.

This document runs with the land in favor of Grantee's successors and assigns.

DATED this \_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF SCOTTSDALE  
an Arizona municipal corporation

GRANTOR:

TOLL BROTHERS AZ CONSTRUCTION  
COMPANY, an Arizona corporation

By: \_\_\_\_\_  
W.J. "Jim" Lane, Mayor

By: \_\_\_\_\_  
Robert Flaherty, Arizona Division  
President

STATE OF ARIZONA        )  
  ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2017, by W. J. "Jim" Lane, the Mayor of the City of Scottsdale, an Arizona municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ARIZONA        )  
  ) SS.  
COUNTY OF MARICOPA    )

On \_\_\_\_\_, 2017, before me, \_\_\_\_\_, Notary Public, personally appeared Robert Flaherty, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)

EXHIBIT A  
[LEGAL DESCRIPTIONS OF TRAILS]

EXHIBIT E

[Template – print final on bank safety paper]

**Irrevocable Letter of Credit  
(Construction)**

Date \_\_\_\_\_, 20\_\_

Letter of Credit No.: \_\_\_\_\_

City Treasurer  
City of Scottsdale  
Suite 210  
7447 E. Indian School Road  
Scottsdale, AZ 85251

Dear Sir or Madam:

We hereby establish our clean, unconditional and irrevocable Letter of Credit in favor of the City of Scottsdale (hereinafter called "you") at the request of Toll Brothers AZ Construction Company in the aggregate amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00).

We will honor and immediately pay to you each draft presented to us in compliance with the terms of this Letter of Credit. Drafts shall be in substantially the form attached hereto as **Schedule 1**. Partial draws are permitted. Each draft must be accompanied by a copy of this Letter of Credit. Within ten (10) days after we honor your draft, you must make the original of this Letter of Credit available to us in Maricopa County, Arizona upon which we may endorse our payment. If we fail to honor any draft, we will inform you (and your counsel) of the particular reason by telephone and in writing no later than 1:00 p.m. Arizona time on the first business day following presentation of the draft. Drafts may be presented by any of the following means:

1. By telefax to (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_.
2. By email to \_\_\_\_\_.
3. By hand or overnight courier service delivery to:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_,  
 \_\_\_\_\_, Maricopa County, Arizona.

This Letter of Credit is valid until the fifth annual anniversary of its issuance and shall thereafter be automatically renewed for successive one (1) year periods, unless at least one hundred twenty (120) days prior to the expiration date we notify you in writing, by either registered or certified mail, that we elect not to renew the Letter of Credit for such additional period. If we do so notify you, then,

[Template – print final on bank safety paper]

any then unused portion of the Letter of Credit shall be available upon your presenting to us your draft on or before the then current expiration date.

We certify that we are a federally insured financial institution with offices in Maricopa County, Arizona, at which drafts upon the Letter of Credit may be presented. We further certify that we are a member of the New York Clearing House Association and have a net worth of not less than \$1 billion.

This Letter of Credit is subject to the most recent edition as of the date of this Letter of Credit of the Uniform Customs and Practices for Documentary Credits published by the International Chamber of Commerce. This Letter of Credit is not assignable.

\_\_\_\_\_ [bank name] \_\_\_\_\_, a \_\_\_\_\_

By [bank officer's signature] \_\_\_\_\_

[bank officer's name printed] \_\_\_\_\_

Its [bank officer's title] \_\_\_\_\_

Phone: [bank officer's phone number] \_\_\_\_\_

Email: [bank officer's email address] \_\_\_\_\_

[Template – print final on bank safety paper]

**Form of Draft on Letter of Credit**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

From: City Treasurer  
City of Scottsdale  
Suite 210  
7447 E. Indian School Road  
Scottsdale, AZ 85253

Date: \_\_\_\_\_, 20\_\_\_\_

Ladies and Gentlemen:

Pursuant to your Letter of Credit No. \_\_\_\_\_, the City of Scottsdale hereby demands immediate cash payment in the amount of \_\_\_\_\_ (\$\_\_\_\_\_).

Please make your payment to the City of Scottsdale in the form of a wire deposit to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If such deposit cannot be accomplished immediately for any reason, please make your payment in the form of a cashier's check issued by your institution and hand-delivered, or delivered by registered mail, to me at the address listed above.

I certify that I am the City Treasurer of the City of Scottsdale.

If there is any imperfection or defect in this draft or its presentation, or you do not for any reason completely promptly pay the entire amount herein requested, please inform me of the reason immediately at \_\_\_\_\_ and in writing at the address given above so that I can correct any issue that may exist. Also, please immediately notify the City Attorney at 480-312-2405 and in writing at 3939 N. Drinkwater Boulevard, Scottsdale, AZ 85251.

Thank you.

\_\_\_\_\_  
City Treasurer, City of Scottsdale

EXHIBIT F

When Recorded Return To:

CITY OF SCOTTSDALE  
ONE STOP SHOP RECORDS  
(Brad Carr)  
7447 East Indian School Road, Suite 100  
Scottsdale, AZ 85251

C.O.S. Contract No. 2017-071-COS  
(118<sup>th</sup> & Jomax)  
(Resolution No. 10797)

**AGREEMENT FOR THE WAIVER OF CLAIMS  
FOR DIMINUTION IN VALUE OF PROPERTY**

THIS AGREEMENT FOR THE WAIVER OF CLAIMS FOR DIMINUTION IN VALUE OF PROPERTY (the "Agreement") is made in favor of the City of Scottsdale ("City") by Toll Brothers AZ Construction company, an Arizona corporation ("Owner").

**RECITALS**

A. Owner is the fee title owner of property, known by the "Property" set out on Exhibit A attached hereto (the "Property").

B. Owner acknowledges that Owner has made a request to the City for application of its zoning ordinance for the development of the Property and is under no compulsion, economic or otherwise, to enter into this Agreement.

C. Arizona statute ARS § 12-1134.A provides that a city must pay just compensation to a land owner, in some cases, if the city approves a land use law that reduces the fair market value of the owner's property. This law is sometimes referred to as "Proposition 207" or the "Private Property Rights Protection Act". (ARS 12-1131, et. seq.)

D. The Private Property Rights Protection Act (e.g., A.R.S. § 12-1134.I) authorizes private property owners to enter into agreements with political subdivisions to waive certain claims for diminution in value of their property.

E. City and Owner seek to resolve whether the rezoning of the Property constitutes a "diminution in value" of the Property entitling Owner to now seek compensation from the City under the Private Property Rights Protection Act.

Owner hereby makes the following acknowledgements and representations:

1. Owner acknowledges that:

Exhibit F  
Page 1 of 7

a. The recitals set forth above are true and correct and are incorporated herein by this reference.

b. Owner is aware of the Private Property Rights Protection Act. (ARS 12-1131, et. seq.)

c. Owner believes that the rezoning of the Property will not reduce the fair market value of the Property as of the date hereof.

d. Owner is aware that, as a condition of receiving City Council approval under the City's zoning ordinance, the City may impose requirements upon the Property, such as requirements for right-of-way dedications and other zoning case stipulations.

2. The undersigned Owner agrees as follows:

a. The Owner agrees that the stipulations set forth in Exhibit B shall be included as part of the ordinance that will be considered by the Scottsdale City Council. Owner agrees that good faith compliance with the stipulations set forth in Exhibit B will generally govern development of the property. Owner further understands and agrees that stipulations may be added or modified during the City Council public hearing process as part of the rezoning and that those stipulations and conditions will be incorporated into this Agreement.

b. Owner hereby waives and fully releases any and all injury that Owner may now have for any "diminution in value" under the Private Property Rights Protection Act based on the Owner's request in Case No. 25-ZN-2016.

c. This Waiver Agreement shall run with the land and shall be binding upon all present and future owners of any interest in the Property for a period three years. Owner consents to the recording of this Agreement with the County Recorder in which the Property is located.

3. Owner warrants and represents that Owner is the owner of the fee title to the Property.

4. The person who signs this Agreement on behalf of Owner personally warrants and guarantees to City that he has legal power to bind Owner to this Agreement.

Grantor: DEVELOPER:  
TOLL BROTHERS AZ  
CONSTRUCTION COMPANY  
An Arizona corporation

By: \_\_\_\_\_  
Robert Flaherty  
Arizona Division President

Exhibit F  
Page 2 of 7

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

On \_\_\_\_\_, 2017, before me, \_\_\_\_\_ Notary Public, personally appeared Robert Flaherty, Arizona Division President, Toll Brothers AZ Construction Company, an Arizona corporation, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

My Commission Expires:

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTIONS**

PARCEL 12, OF GOLDIE BROWN PINNACLE PEAK RANCH UNIT TWO, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 194 OF MAPS, PAGE 26;

EXCEPT ALL MINERALS AS RESERVED IN THE PATENT TO SAID LAND.

PARCEL 13, OF GOLDIE BROWN PINNACLE PEAK RANCH UNIT TWO, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 194 OF MAPS, PAGE 26;

EXCEPT ALL MINERALS AS RESERVED IN THE PATENT TO SAID LAND.

**EXHIBIT B**

**STIPULATIONS TO BE INCLUDED BY COS**

**Stipulations for the Zoning Application:**

**118th & Jomax**

**Case Number: 25-ZN-2016**

These stipulations are in order to protect the public health, safety, welfare, and the City of Scottsdale.

**SITE DESIGN**

**CONFORMANCE TO CONCEPTUAL SITE PLAN.** Development shall conform with the conceptual site plan submitted by AndersonBaron and Toll Brothers and with the city staff date of 3/28/2017, attached as Exhibit A to Exhibit 1. Any proposed significant change to the conceptual site plan, as determined by the Zoning Administrator, shall be subject to additional action and public hearings before the Planning Commission and City Council.

**MAXIMUM DWELLING UNITS/MAXIMUM DENSITY.** Maximum number of lots shall not exceed 51 lots as shown on the site plan exhibit, and maximum density shall not exceed .64 dwelling units per acre.

**CONFORMANCE TO DEVELOPMENT AGREEMENT.** Development shall conform to the development agreement which will be included with the City Council Report. Any change to the development agreement shall be subject to City Council approval.

**BUILDING HEIGHT LIMITATIONS.** No building on the site shall exceed 24 feet in height, measured as provided in the applicable section of the Zoning Ordinance, and limited to single story.

**BOULDERS.** Boulder easements shall be dedicated to the City at the time of Final Plat, in the locations shown on the Boulder Plan submitted by AndersonBaron and Toll Brothers with a date by City staff of 3/28/2017, attached as Exhibit B to Exhibit 1.

**DESERT SCENIC ROADWAY SETBACKS LOCATION.** The Desert Scenic Roadway setback width along E. Jomax Road shall be a minimum of 35 feet, and 30-feet along N. 118<sup>th</sup> Street, measured from edge of right-of-way. Unless otherwise approved by the Development Review Board, the Desert Scenic Roadway setback shall be left in or revegetated back to a natural condition.

**INFRASTRUCTURE AND DEDICATIONS**

**CIRCULATION IMPROVEMENTS.** Prior to any permit issuance for the development project the owner shall make required dedications and prior to issuance of any Certificate of Occupancy for the development project, the owner shall provide the required improvements in conformance with the Design Standards and Policies Manual and all other applicable city codes and policies.

f. STREETS. Dedicate the following right-of-way and construct the following street improvements:

Street Name	Street Type	Right-of-way Dedications	Improvements	Notes and Requirements
East Jomax Road	Rural/ESL Local Collector	35-feet along frontage.	Curb and gutter, sidewalk, and pavement, 8-foot trail	a.1., a.2., a.3
North 118 <sup>th</sup> Street	Rural/ESL Minor Corrector	45-feet along frontage.	Curb and gutter, sidewalk, and pavement, 8-foot trail	a.1., a.4.
East Redbird Road	Rural/ESL Local Residential Collector	20-feet along frontage and southern half of cul-de-sac at termination.	Curb and gutter, pavement, shoulder back of curb	a.1., a.5., a.6.
Internal Streets	Rural/ESL Local Residential	Minimum 40-foot Private Street Tracts	curb/gutter, pavement, shoulder back of curb	a.1., a.7.

a.8. All street improvements (curb, gutter, sidewalk, curb ramps, driveways, pavement, concrete, etc.) shall be constructed in accordance with the applicable City of Scottsdale's Supplements to the Maricopa Association of Governments (MAG) Uniform Standard Specifications and Details for Public Works Construction, and Maricopa Association of Governments (MAG) Uniform Standard Specifications and Details for Public Works Construction and the Design Standards and Policies Manual.

a.9. Eastern dedication of E. Jomax Road to include future Jomax Road alignment per the site plan submitted by AndersonBaron dated 3/01/2017.

a.10. Improve E. Jomax Road to the full Rural/ESL local collector street along the site frontage. Improvements shall match the existing improvements to the south, with the exception of a sidewalk. The improvements shall be extended to the proposed subdivision entrance. The street cross section shall include the construction of an 8-foot wide non-paved multi-use trail within the right-of-way on the north side of the street and the continuation of the existing 6 foot wide sidewalk along the south side of the street.

a.11. Improve N. 118th Street, from Jomax Road to Redbird Road, to match the existing street cross section immediately north of E. Redbird Road, consisting of one lane each direction with bike lanes on both sides. The street cross section shall include the construction of an 8-foot wide non-paved multi-use trail within the right-of-way.

- a.12. Improve E. Redbird Road to the full Rural/ESL local residential street along the site frontage. Improvements shall match the existing improvements to the north. The improvements shall be extended from N. 118<sup>th</sup> Street east to the N. 121st Street alignment.
- a.13. Install a residential cul-de-sac at the termination of E. Redbird Road, per the Design Standards and Policies Manual.
- a.14. The internal streets shall be dedicated and constructed to the Rural/ESL local residential street cross section, Fig. 5.3-19. The private street tracts shall be dedicated to provide emergency and service vehicle access.
- g. VEHICLE NON-ACCESS EASEMENT. Prior to issuance of any building permits for the development project, the owner shall dedicate a one foot wide Vehicular Non-Access Easement (VNAE) on N. 118th Street, E. Jomax Road and portions of E. Redbird Road, along the site frontage, except at the approved street entrance(s).
- h. Prior to any Certificate of Occupancy, the owner shall construct 8-foot unpaved trail within the right-of-way along the north side of E. Jomax Road between N. 118<sup>th</sup> Street and the boundary of the Arizona State Land Department boundary. Maintenance of the unpaved trail will be the responsibility of the homeowners association.
- i. Before improvement plan submittal, the owner shall provide documentation of its efforts to coordinate with Arizona State Land Department regarding the trail connection to Arizona State Land Department property south of parcel 216-78-02.
- j. City of Scottsdale Preservation staff will be responsible for the final location, approval and securing the access agreement and approval from the Arizona State Land Department for the proposed trail along the E. Jomax road alignment from the subdivision entry road to the McDowell Sonoran Preserve boundary. If the City secures the access rights for the developer to construct the proposed trail, the developer shall construct the proposed trail subject to the conditions set forth in Development Agreement contract number 2017-071-COS.

INTERSECTION IMPROVEMENTS. Before improvement plan submittal the owner shall obtain the City of Scottsdale Traffic Engineering's approval for Intersection improvements at the E. Jomax Road and N. 118<sup>th</sup> Street intersection and off-site roadway improvements. The intersection improvements shall better align lanes north-south and east-west through the intersection. Prior to final plans approval, the developer shall submit an off-site paving plan and a pavement marking and signing plan addressing the modifications required to be made at this intersection.

WATER AND SEWER IMPROVEMENTS. Before Final Plat recordation the owner shall provide documentation that any and all sewer or water paybacks against parcels APN 219-79-005 and 216-78-002 have been resolved.

WATER AND SEWER IMPROVEMENTS. Prior to any right-of-way permit issuance, the owner shall provide documentation that the Desert Summit Subdivision Home Owners Association has been notified with a construction schedule for the construction of a sewer line connection to the existing sewer in E. Four Peaks Road.

EXHIBIT G

CONFIRMATION OF DEVELOPMENT AGREEMENT

C.O.S. Contract No. 2017-071-COS  
(118<sup>th</sup> & Jomax)  
(Resolution No. 10797)

The undersigned, having or claiming a lien or other interest in the Property as defined in the Development Agreement to which this confirmation is attached hereby joins in said Development Agreement and subjects and subordinates its interests to said Development Agreement and its requirements.

EXECUTED as of the date of the said Development agreement.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

EXHIBIT H

DEVELOPER INSURANCE TERMS

INSURANCE TERMS

1. Liability Insurance Required. A party obligated to provide insurance ("Insurance") shall comply with the following:

1.1 General Liability. "Occurrence" form Commercial General Liability insurance with a limit of not less than One Million Dollars (\$1,000,000) for each occurrence, Two Million Dollars (\$2,000,000) Products and Completed Operations Annual Aggregate, and a limit of Two Million Dollars (\$2,000,000) General Aggregate Limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy shall not exclude liabilities arising out of explosion, collapse or underground hazards and will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any excess insurance is utilized to fulfill the requirements of this paragraph, such excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

1.2 Automobile Liability. Insured shall maintain Business Automobile Liability insurance with a limit of One Million Dollars (\$1,000,000) for each accident for Insured's owned, hired, and non-owned vehicles assigned to or used in the performance of the work or services at issue. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing Five Million Dollars (\$5,000,000) per occurrence limits of liability for bodily injury and property damage. If any excess insurance is utilized to fulfill the requirements of this paragraph, such excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

1.3 Professional Liability: If an undertaking includes site design or engineering or any professional site services, or if the party engages in any professional services adjunct or residual to performing the site work, the party must maintain, or cause to be maintained, Professional Liability insurance covering errors and omissions arising out of the site services performed by anyone whose acts, mistakes, errors and omissions for which the party is legally liable, with a liability limit of \$1,000,000 each claim and \$1,000,000 in the aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage will extend for 3 years past completion and acceptance of the work or services, and the party will submit Certificates of Insurance as evidence the required coverage is in effect. If there is no Professional Liability work or service for which a party must supply insurance, this obligation may be waived by the benefitting party in writing.

1.4 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) disease for each employee, Five Hundred Thousand Dollars (\$500,000) policy limit for disease. If Insured has no employees and otherwise qualifies, Insured shall provide a "sole proprietor waiver" signed by Insured in form and content acceptable to City. All contractors and subcontractors must provide like insurance.

2. Form of Insurance. All insurance policies shall meet the following requirements:

2.1 "Occurrence" coverage is required. "Claims made" insurance is not permitted.

2.2 Policies must also cover and insure Insured's activities relating to the business operations and activities.

2.3 Insured must clearly show by providing copies of insurance policies, certificates, formal endorsements or other documentation acceptable to City that all insurance coverage required is provided.

2.4 No retentions or "self-insured" amounts shall exceed One Hundred Thousand Dollars (\$100,000) in the aggregate per year. Insured shall be solely responsible for any self-insurance amount or deductible.

2.5 No retention or "self-insured" amount shall be applicable to coverage provided to City.

2.6 All liability policies must name City and City's employees, officials, representatives, officers, directors, and agents (collectively "Additional Insureds") as additional insureds. Insured shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement. City may give Insured notice of City's election from time to time that any or all of the Additional Insureds not be named as Additional Insureds with respect to specific insurance coverages.

2.7 All policies must provide City with at least thirty (30) days prior notice of any cancellation, reduction or other change in coverage.

2.8 All policies shall require that notices be given to City in the manner specified for notices to City under the Development Agreement.

2.9 All insurance policies shall contain a waiver of any transfer rights of recovery (subrogation) against City and all other Additional Insureds.

3. Insurance Certificates. Insured shall evidence all insurance by furnishing to City certificates of insurance annually and with each change in insurance coverage as follows:

3.1 Certificates must evidence that the policy referenced by the certificate is in full force and effect and that the policy satisfies each requirement of these terms applicable to the policy. For example, certificates must evidence that City and the other Additional Insureds are additional Insureds and that insurance proceeds will be paid as required by these terms. Certificates must be in a form acceptable to City.

3.2 All certificates are in addition to the actual policies and endorsements required. Insured shall provide updated certificates at City's request.

4. Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to City. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++6.

5. Other Insurance. The City may reasonably require, by written notice to the Insured, an increase in the limits or types of any insurance to account for inflation, change in risk or any other factor that the City reasonably determines to affect the prudent amount of insurance to be provided.

5.1 Primary Insurance. Insured's insurance shall be primary insurance. Any insurance or self-insurance maintained by City shall not contribute to Insured's insurance.

5.2 Risk of Loss. City is not required to carry any insurance related to the applicable insurance subject to these terms. Insured assumes the risk of any and all loss or damage related to Insured's use or activity throughout the term of the use or activity. City expressly disclaims any representation that required insurance is adequate to protect any person or land against any risks related to any activities, uses or improvements related to the activity or use for which these terms apply. Insured's obligations to indemnify do not diminish in any way Insured's obligations to insure as set forth in these terms; and Insured's obligations to insure do not diminish in any way Insured's obligations to indemnify or may otherwise be required. Insured's obligations to indemnify and provide insurance as set forth in these terms are in addition to, and do not limit, any and all other liabilities or obligations of Insured. In the event Insured secures additional liability insurance, Insured shall effect an endorsement under such policy waiving any and all insurer's rights of subrogation against City and the other Additional Insureds.

5.3 Subcontractor's and Consultant's Insurance. If services are subcontracted in any way, Insured shall execute a written agreement with its subcontractor or consultant that includes an indemnification and insurance clauses protecting the City to the same extent as set forth in the Development Agreement.

## EXHIBIT I

### THIRD PARTY INSURANCE TERMS

Use of Third Party Contractors & Subcontractors: If any work under this Agreement is contracted to contractors or subcontractors in any way, Developer shall execute a written agreement with such third party and such written agreement shall contain the same Indemnification Clause and Insurance Requirements as stated in this Agreement protecting City and Developer, provided that Developer may establish lower policy limits for the Insurance Requirements for any such third party. Notwithstanding the prior sentence, the lower limits for such Insurance Requirements will not affect Developer's liability or indemnity obligation to city under this Agreement. Further, Developer shall be responsible for executing the agreement with any such third party and obtaining Certificates of Insurance verifying the insurance requirements have been met.

EXHIBIT J

WHEN RECORDED, RETURN TO:

CITY OF SCOTTSDALE  
ONE STOP SHOP/RECORDS  
(ATTN: )  
7447 E. Indian School Road, Suite 100  
Scottsdale, AZ 85251

Project name: \_\_\_\_\_  
Plan check number: \_\_\_\_\_  
Case number: \_\_\_\_\_

INFRASTRUCTURE IMPROVEMENTS  
COVENANT TO CONSTRUCT

THIS INFRASTRUCTURE IMPROVEMENTS COVENANT TO CONSTRUCT (the "Covenant") is made and entered into \_\_\_\_\_, 20\_\_\_\_ by Toll Brothers AZ Construction Company, an Arizona corporation, ("Owner") in favor of the City of Scottsdale, an Arizona municipal corporation ("City").

RECITALS

A. Owner owns certain real property (the "Property") described on **Exhibit "A"** attached hereto.

B. Owner has requested the following City approvals (collectively the "Land Approvals") in connection with the development of the Property:

<u>Approval</u>	<u>Case</u>
_____	_____ 25-ZN-2016 _____

C. As a condition to City's approval of the Land Approvals, Owner is obligated to construct certain improvements (the "Infrastructure Improvements") as required by A.R.S. §9-463.01, S.R.C. §48-7(g), S.R.C. §48-101, and other applicable laws, rules and policies and to perform certain other obligations (collectively the "Work"). The Infrastructure Improvements include, without limitation, all labor, materials, permits, inspecting, financing, design, engineering, and all other costs and expenses of any description in connection with constructing the Infrastructure Improvements (collectively the "Construction Work"). In addition to the Construction Work, after Owner completes the Construction Work, Owner shall perform certain additional work (the "Warranty Work"). The Work includes all of the Construction Work and all of the Warranty Work.

D. The Infrastructure Improvements are shown upon the plans and specifications therefor sealed by \_\_\_\_\_ titled \_\_\_\_\_, and dated \_\_\_\_\_, 20\_\_\_\_ (the "Approved Plans").

E. City would not approve the Land Approvals without this Covenant. Owner gives this Covenant for the purpose of inducing City to approve the Land Approvals.

F. Owner and City estimate that the cost of the Work will be \_\_\_\_\_ dollars (\$ \_\_\_\_\_) (the "Estimated Cost").

NOW, THEREFORE, in consideration of the approval of the Land Approvals and in order to induce City to approve the Land Approvals in reliance on this Covenant and insure that Owner satisfactorily performs the Work, Owner covenants in favor of City as follows:

1. Performance of Work. Owner shall design and construct the Public Improvements and shall perform the rest of the Work at Owner's expense, in a good and workmanlike manner, to City's satisfaction in accordance with the Approved Plans, subject only to changes approved by City or that are required or ordered by City that in City's opinion are necessary or required to complete the Work.

2. Plans Approved. City approves the design of the Infrastructure Improvements to the extent set forth in the Approved Plans. Owner shall obtain City's approval for all changes to the Approved Plans and for all matters not clearly shown on the Approved Plans.

3. Work Standards. Owner shall perform all Work in accordance with the provisions of City's Design Standards and Policies Manual, the standards and specifications of the Maricopa Association of Governments, and all other applicable permits, laws, regulations, standards and requirements (collectively the "Standards").

4. Completion Deadline. Owner shall complete the Infrastructure Improvements according to the following schedule:

4.1 Owner shall complete the Infrastructure Improvements no later than the date (the "Deadline") \_\_\_\_\_ (\_\_\_\_) months after the date of this Covenant. No extensions of the Deadline in excess of one hundred eighty (180) days total are effective unless granted by City's director of Planning and Development Services, or designee, in his or her sole and absolute discretion.

4.2 Owner shall allow adequate time to complete the Construction Work before the Deadline despite design, construction, inspection and other delays.

4.3 The Construction Work shall not be deemed complete until construction has completely concluded and City has inspected the completed Infrastructure Improvements and issued a written notice of City's determination that the Construction Work has been properly completed and the warranty period has started. Such notice shall not be recorded. Owner shall not request a final inspection of the Infrastructure Improvements until Owner has paid for the Construction Work.

5. Warranty Period and Covenant Termination. If, within a period of one (1) year after completion, any Construction Work fails to fulfill any of the requirements of this Covenant, Owner, without delay and at Owner's expense, shall perform the Warranty Work. Without limitation,

Owner shall repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Construction Work and Warranty Work. The Warranty Work shall not be deemed complete until the warranty period has expired, all matters arising prior to the end of the warranty period have been resolved, and City has issued a written notice of City's determination that the Work has been properly completed. Such notice shall state that this Covenant is released and that release of this Covenant does not terminate whatever obligations Owner might have had to City with respect to the Work under normal City processes if Owner had performed the Work without entering into this Covenant. Owner shall record such notice.

6. Permits and Laws. Owner, at Owner's expense, shall obtain all necessary permits and licenses for the Work, pay all fees and taxes, and otherwise comply with the Standards. This Covenant does not grant Owner permission to work on City right-of-way or other land.

7. Assurance. Upon execution of this Covenant and until the Work is completed, Owner shall furnish to City at Owner's expense an assurance (the "Assurance") as follows:

7.1 The amount of the Assurance shall be the Estimated Cost. The Estimated Cost shall include an amount of ten percent (10%) of the Cost for the Construction Work to assure the Warranty Work. City shall have the right to require Owner's engineer to provide revised Estimated Cost calculations during the Work. The revised Estimated Cost calculations shall be subject to City approval. Owner shall furnish revised Assurances in the amount of the revised Estimated Cost.

7.2 The Assurance shall be in the form of a bond provided by an issuer satisfactory to City, or in such other form as may be provided for by City ordinance or policies, and shall comply with applicable city standards, policies and procedures.

7.3 The Assurance shall contain provisions and be in a form approved by City's city attorney.

7.4 Owner shall not have power to interfere in any way with City's obtaining or using the funds or other benefits of the Assurance.

8. Insurance Responsibility. Until the Work is completed, Owner shall insure the Property, the Work and Work related property, activities and conditions at and about the Property and shall provide insurance and indemnification as follows:

8.1 Insurance Required. Prior to commencing construction, and at all times thereafter, Owner shall obtain and cause to be in force and effect the following insurance:

8.1.1 Commercial General Liability. Unless the City specifically waives or reduces the coverage in writing, commercial general liability insurance with a limit of (\$1,000,000) for each occurrence, a limit of One Million Dollars (\$1,000,000) for products and completed operations annual aggregate, and a limit of Two Million Dollars (\$2,000,000) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising

injury, and liability assumed under an "insured contract" including this Covenant. The policy shall cover Owner's liability under the indemnity provisions of this Covenant. The policy shall contain a "separation of insureds" clause. The products and completed operations coverage shall be continued for three years following the completion of the Work

8.1.2 Automobile Liability. Unless the City specifically waives or reduces the coverage in writing, automobile liability insurance with a combined single limit of One Million Dollars (\$1,000,000) for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Owner's use of the Property. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and unloading.

8.1.3 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) disease for each employee, Five Hundred Thousand Dollars (\$500,000) policy limit for disease. If Owner has no employees, then Owner shall provide a "sole proprietor waiver" signed by Owner in form and content acceptable to City. All contractors and subcontractors must provide like insurance.

8.1.4 Structure Damage. Unless the City specifically waives or reduces the coverage in writing, all risk property insurance covering damage to or destruction of all building and other improvements to the Property, including without limitation, all improvements existing upon the Property prior to this Covenant or hereafter constructed in an amount equal to full replacement cost of all such improvements. Such insurance shall be special causes of loss policy form and include flood insurance if the work is located in a special hazards flood zone A or flood zone X. Coverage shall include pollutant clean up and removal with minimum limits of coverage Fifty Thousand Dollars (\$50,000).

8.1.5 Personal Property. Unless the City specifically waives or reduces the coverage in writing, special causes of loss personal property coverage, as defined by Insurance Services Office, Inc., in an amount per occurrence equal to full replacement cost of all personal property used in connection with the Property.

8.1.6 Builders' Risk and Installation Floater Property Insurance. Unless the City specifically waives or reduces the coverage, builders' risk insurance is as follows:

8.1.6.1 Builder's risk insurance must take effect prior to the commencement of any Work.

8.1.6.2 Builder's risk insurance must continue in effect without interruption until all of the following have occurred, whether or not the covered property is occupied:

8.1.6.2.1 All work is accepted by the City.

8.1.6.2.2 Final payment for the construction work and

materials has been made.

8.1.6.2.3 No person or entity other than the owner and the City has an insurable interest in the Premises.

8.1.6.3 The amount of builder's risk insurance shall be the amount of the entire cost of the Work as well as subsequent modifications thereto, and include the costs for scaffolding, false work, and temporary buildings at the site. This insurance must also cover the cost of removing debris, including demolition as may be legally required by operation of any law, ordinance, regulation or code.

8.1.6.4 Builder's risk insurance must be written on a special causes of loss (all-risk) or open perils coverage form and include coverage for flood if any of the Work is performed in a special hazards flood one A or zone X.

8.1.6.5 Builder's risk insurance shall cover property that is being transported to the construction site or on the construction site awaiting installation.

8.1.6.6 Builder's risk insurance shall be primary and not contributory.

8.1.6.7 Builder's risk insurance shall insure the interests of City, Owner, subcontractors and others involved in any Work during the course of any construction.

8.1.6.8 As between City and Owner, Owner bears full responsibility for loss or damage to all work being performed and to works under construction.

8.1.7 Other Insurance. Any other insurance City may reasonably require for the protection of City and City's employees, officials, representatives, officers, directors, and agents (all of whom, including City, are collectively "Additional Insureds"), the Property, surrounding property, Owner, or the activities carried on or about the Property. Likewise, City may elect by notice to Owner to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that City reasonably determines to affect the prudent amount of insurance to be provided.

8.2 Form of All Insurance. All insurance provided by Owner or third parties with respect to the Work, whether required by this Covenant or not, shall meet the following requirements:

8.2.1 "Occurrence" coverage is required. "Claims made" insurance is not permitted.

8.2.2 If Owner uses any excess insurance, then such excess insurance shall be "follow form" equal or broader in coverage than the underlying insurance.

8.2.3 Policies must also cover and insure Owner's activities

relating to the business operations and activities conducted away from the Premises.

8.2.4 Owner's insurance shall be primary insurance. Any insurance or self-insurance program of the City will be excess coverage and non-contributory.

8.2.5 Owner must clearly show by providing copies of insurance certificates, formal endorsements or other documentation acceptable to City that all insurance coverage required by this Covenant is provided.

8.2.6 Upon City's request, Owner shall provide to City copies of actual insurance policies, which Owner may redact as to information that does not affect the Property or the Work.

8.2.7 Liability insurance, including workers' compensation, shall waive transfer rights of recovery (subrogation) against City and the other Additional Insureds.

8.2.8 No deductible or self-insurance amount for any policy during any year shall exceed Twenty-Five Thousand Dollars (\$25,000.00) unless Owner provides to City a letter of credit satisfactory to City in the amount of the excess.

8.2.9 City may require Owner from time to time to secure payment of any deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

8.2.10 All policies shall contain provisions that insurance coverage provided to Owner shall not be affected by errors or omissions or by failure to follow claims reporting procedures.

8.2.11 All policies except workers' compensation shall name the City of Scottsdale, its agents, representatives, officers, directors, officials, and employees as Additional Insured, and the other Additional Insureds as additional insureds. Owner shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement.

8.2.12 All applicable property policies must name the City as a loss payee as respects proceeds relating to the Property and the Work.

8.2.13 All policies must provide City with at least thirty (30) days prior notice of any cancellation, reduction or other change in coverage.

8.2.14 All policies shall require that notices be given to City

in the manner specified for notices to City under this Covenant.

8.3 Evidence of Insurance. Owner shall provide evidence of all insurance as follows:

8.3.1 Owner shall provide to City certificates of liability and workers compensation insurance upon execution of this agreement. Certificates of property insurance shall be provided to the City prior to the commencement of any work. Renewal or replacement certificates for all policies shall be received by the City before the expiration of the existing coverage. Owner shall provide certificates at other times at City's request.

8.3.2 Certificates must evidence that the policy described by the certificate is in full force and effect and that the policy satisfies each requirement of this Covenant applicable to the policy. For example, certificates must evidence that Lessor and the other Additional Insureds are additional insureds.

8.3.3 Certificates must be in ACORD form or in an equivalent form acceptable to City.

8.3.4 Each insurance certificate provided to City constitutes a warranty and representation by Owner to City that policies, coverages and other matters are actually in effect as described in the certificate.

8.3.5 Upon City's request, Owner shall provide to City copies of actual insurance policies.

8.4 Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to City. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurers) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++6 or above, or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to City.

8.5 City's Election to Provide Insurance. City is not required to carry any insurance covering or affecting the Property or use of City's property related to this Covenant. If Owner fails to acquire all or any part of the insurance required by this Covenant, then City may elect to provide such insurance (with or without any other real property City may own, or control) and Owner shall pay to City the costs of such insurance as reasonably determined by City. Owner shall provide all required insurance not so provided by City. Any insurance or self-insurance maintained by City shall not contribute to Owner's insurance.

8.6 Insurance Proceeds. All property insurance proceeds (whether actually paid before or after termination of this Covenant) shall be paid directly to City for City's use in compensating City for the loss, protecting City, the Infrastructure Improvements and City's property from every other loss or exposure suffered by City, rebuilding the Infrastructure Improvements, and satisfying and securing Owner's obligations hereunder. Any remaining proceeds shall be allocated among City

and Owner as their interests may appear.

8.7 No Representation of Coverage Adequacy. By requiring insurance, City does not represent that coverage or limits will be adequate to protect Owner, City or others. City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Covenant but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Covenant or failure to identify any insurance deficiency shall not relieve Owner from, nor be construed or deemed a waiver of, Owner's obligation to maintain the required insurance at all times during the performance of the Covenant.

8.8 Use of Contractors. If Owner contracts or otherwise delegates any work or use of the Property under this Covenant, Owner shall cause the delegate and any sub-delegatees to execute and provide to City a writing executed by the delegatee containing at least the same indemnification clauses and insurance requirements set forth herein protecting City and Owner, or other insurance requirements approved by City.

8.9 Indemnity. In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Covenant and until all obligations and performances under or related to this Covenant are satisfied and all matters described in this paragraph are completely resolved, Owner (and all other persons using, acting, working or claiming through or for Owner or this Covenant (if they or their subcontractor, employee or other person or entity hired or directed by them participated in causing the claim in question)) shall jointly and severally pay, indemnify, defend and hold harmless City and all other Additional Insureds for, from and against any and all claims or harm related to the Performance of Owner's obligations under this Covenant or arising from the Work (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings) that may arise in any manner out of the Work or any actions, acts, errors, mistakes or omissions relating to the Work or services in the performance of or related to this Covenant, including any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Property or surrounding areas related to this Covenant, including without limitation, claims, liability, harm or damages caused in part by City or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Owner or City may be liable. As a condition to City's executing this Covenant, Owner specifically agrees that to the extent any provision of this paragraph is not fully enforceable against Owner for any reason whatsoever, this paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law. Notwithstanding the foregoing, the Indemnity does not apply to:

8.9.1 Claims arising only from the sole gross negligence of City.

8.9.2 Claims that the law prohibits from being imposed upon the indemnitor.

8.10 Risk of Loss. Owner assumes the risk of any and all loss, damage or claims to the Property or related to the Work, Owner's use of the Property, Owner or third parties throughout the term hereof. Owner shall be responsible for any and all damage to its property and equipment related to this Covenant.

8.11 Indemnities and Insurance Cumulative. Owner's obligations to indemnify do not diminish in any way Owner's obligations to insure; and Owner's obligations to insure do not diminish in any way Owner's obligations to indemnify. Owner's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Owner under or connected with this Covenant. The amount and type of insurance coverage required by this Covenant will in no way be construed as limiting the scope of the indemnities or other requirements of this Covenant.

8.12 Insurance to be Provided by Others. Any contractors or other persons occupying, working on or about, or using the Property pursuant to this Covenant, must also provide for the protection of City and all other Additional Insureds all of the insurance and indemnification required by applicable city processes and policies for the work they are performing. The preceding sentence does not require such person to provide insurance that merely duplicates insurance Owner provides.

9. Default. Owner shall be in default under this Covenant if any of the following occur (an "Event of Default"):

9.1 Owner refuses or fails to prosecute the Construction Work with such diligence as will insure its completion before the Deadline.

9.2 The Construction Work is not completed before the Deadline.

9.3 Owner refuses or fails to complete any Warranty Work within thirty (30) days after City's demand for such work. If the Warranty Work cannot be completed within thirty (30) days, then the thirty (30) day period shall be extended to a period in which the work can be completed and Owner shall diligently pursue the work to completion.

9.4 Owner allows the required financial assurance to lapse, or any required financial assurance is revoked by its issuer.

9.5 Owner sells or transfers the property without substituting new assurances.

9.6 Owner is insolvent or makes a general assignment for the benefit of Owner's creditors.

9.7 Owner, or any of Owner's contractors, subcontractors, agents, or employees, violates any of the provisions of this Covenant and such violation is not cured within thirty (30) days after notice by City demanding compliance.

10. City's Remedies. Upon the occurrence of any Event of Default, City may, at its option and from time to time, exercise at Owner's expense any combination of the following cumulative remedies in any order and repetitively at City's option:

10.1 Take over all or part of the Work and prosecute the same, by contract or by any other method City may deem advisable.

10.2 Take possession of, and use in pursuing the Work the materials, equipment, plant and other property on the site of or used for the Work.

10.3 Decline to process or issue building permits or other regulatory approvals or inspections.

10.4 Complete, modify or remove the Infrastructure Improvements in whole or in part.

10.5 Restore any disturbed land.

10.6 Otherwise mitigate the effects of Owner's failure to timely and properly construct the Infrastructure Improvements and perform the other Work.

10.7 Enforce a lien (which Owner hereby grants to City in addition to any statutory or other lien that may exist) upon all of Owner's real or personal property now or at any time hereafter at or pertaining or related to the Property or the Work.

10.8 Cause a receiver to be appointed for all or part of the Property and for the continuing performance of Owner's obligations under this Covenant.

10.9 Pay or perform, for Owner's account, in Owner's name, and at Owner's expense, any or all payments or performances required hereunder to be paid or performed by Owner.

10.10 If the Assurances are inadequate to cover the remaining Work, require Owner to increase the Assurances to cover the remaining Work and provide additional Assurances adequate in City's sole discretion to protect City, the Property, the Work and the Infrastructure Improvements.

10.11 Enforce the Assurances.

10.12 Assert, exercise or otherwise pursue at Owner's expense any and all other rights or remedies, legal or equitable, to which City may be entitled.

11. Reimbursement. Within thirty (30) days after City expends any funds to advance the Work or otherwise protect City's interests under this Covenant or Owner otherwise becomes indebted to City under this Covenant, Owner shall repay such amounts together with an administrative and management fee in the amount of fifteen percent (15%) of such funds. Any unpaid amount shall bear interest at the rate of one and five-tenths percent (1.5%) per month.

12. Miscellaneous. This Covenant is subject to the following additional provisions:

12.1 Binding Effect of Covenant. This Covenant shall be binding on and inure to the benefit of the parties to this Covenant and their heirs, personal representatives, successors and assigns. This Covenant shall run with the Property in favor of City.

12.2 Amendments. This Covenant may not be amended except by a formal writing executed by all of the parties.

12.3 Limited Severability. If any term, condition, covenant, stipulation, agreement or other provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of such provision shall in no way affect any other provision herein contained. Further, this Covenant shall be deemed automatically reformed to secure to City the legal, equitable, practical and other benefits of the provisions of this Covenant as written to the very maximum extent permitted by law.

12.4 Conflicts of Interest. No officer or employee of City shall have any direct or indirect interest in this Covenant, nor participate in any decision relating to the Covenant, that is prohibited by law.

12.5 No Partnership. This Covenant and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

12.6 Owner Not Agent of City. Owner, Owner's agents, and Owner's contractors are not agents of City in connection with the Work or otherwise.

12.7 Nonliability of City Officials and Employees. No official, representative or employee of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by City or for any amount that may become due to any party or successor, or with respect to any obligation of City or otherwise under the terms of this Covenant or related to this Covenant.

12.8 Time of Essence. Time is of the essence of each and every provision of this Covenant.

12.9 Integration. This Covenant constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence, memoranda and representation regarding the subject of this Covenant.

12.10 Construction. Whenever the context of this Covenant requires, the singular shall include the plural, and the masculine shall include the feminine. The terms of this Covenant were established in light of the plain meaning of this Covenant and this Covenant shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Owner.

12.11 No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Covenant or shall have any right or cause of action hereunder. City shall have no liability to third parties for any approval of plans, Owner's construction of improvements, Owner's negligence, Owner's failure to comply with the provisions of this Covenant (including any absence or inadequacy of insurance required to be carried by Owner), or otherwise as a result of the existence of this Covenant.

12.12 Attorneys' Fees. In the event any action or suit or proceeding is brought by City to collect the amounts due or to become due hereunder or to enforce compliance with this Covenant or for failure to observe any of the covenants of this Covenant or to vindicate or exercise any of City's rights or remedies hereunder, Owner agrees to pay City all costs of such action or suit and all expenses of such action or suit together with such sum as the court (and not a jury) may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

12.13 Choice of Law. This Covenant shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. City has not waived its claims procedures as respects this Covenant. Exclusive proper venue for any action regarding this Covenant shall be Maricopa County.

12.14 Approvals and Inspections. All approvals, reviews and inspections by City under this Covenant or otherwise are for City's sole benefit and not for the benefit of Owner, its contractors, engineers or other consultants or agents, or any other person.

12.15 Recording. Within ten (10) days after the date of this Covenant, Owner shall cause this Covenant to be recorded in the office of the Maricopa County Recorder. Within ten (10) days after any amendment of this Covenant, Owner shall cause the amendment to be recorded. This Covenant shall run with the land upon the Property in favor of City.

12.16 Statutory Cancellation Right. In addition to its other rights hereunder, City shall have the rights specified in A.R.S. § 38-511.

12.17 Other Interest Holders. Owner warrants and represents that instruments in substantially the form attached to this Covenant as **Exhibit "B"** (the "Lienholder Consents") have been executed by each holder of a lien or other interest in any part of the Property whereby such persons join in this Covenant and subject and subordinate their interests to this Covenant and that Owner has attached such Lienholder Consents to this Covenant and recorded them with this Covenant.

12.18 Notices. Notices hereunder shall be given in writing personally served upon the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to City:                      General Manager  
   Planning and Development Services  
   7447 East Indian School Road, Suite 105  
   Scottsdale, AZ 85251

Copies to:                      City Attorney  
   City of Scottsdale  
   3939 North Drinkwater Boulevard  
   Scottsdale, AZ 85251

If to Owner: Toll Brothers AZ Construction Company  
Robert Flaherty & Oscar Dominguez  
8767 Via De Ventura, Suite 390  
Scottsdale, AZ 8525  
Phone: (480) 586-8815

Copies to: Toll Brothers Inc.  
250 Gibraltar Road  
Horsham, PA 19044  
Attn: Mark J. Warshauer, Esq.  
Telephone: (215) 938-8260

or to such other street address within Maricopa County, Arizona as may be designated by the respective parties in writing from time to time. Notices to Owner may also be hand-delivered to the Owner's representative managing the Work or the Property. Service of notice by mail shall be deemed to be complete forty-eight (48) hours after the notice is deposited in the United States mail.

12.19 Legal Workers. Owner shall comply with laws regarding workers as follows:

12.19.1 As required by A.R.S. §41-4401, Owner warrants to City that Owner and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that Owner and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

12.19.2 A breach of this warranty by Owner or any of its subcontractors will be considered a material breach of this Covenant and may subject Owner or its subcontractor to penalties up to and including termination of this Covenant or any subcontract. Owner will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. Owner's failure to assure compliance by all subcontractors with the E-Verify Program may be considered by City a material breach of this Covenant.

12.19.3 City retains the legal right to inspect the papers of any employee of Owner or any subcontractor who works under this Covenant to ensure that they are complying with the warranty given above.

12.19.4 City may conduct random verification of Owner's and its subcontractors' employment records to ensure compliance with this warranty.

12.19.5 Owner shall indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

EXECUTED as of the date first given above.

OWNER: Toll Brothers AZ Construction Company, an  
Arizona corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM BY CITY:

\_\_\_\_\_  
\_\_\_\_\_  
General Manager, Planning and Development Services

\_\_\_\_\_  
\_\_\_\_\_  
Risk Manager

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
Bruce Washburn, City Attorney

By: \_\_\_\_\_

STATE OF ARIZONA     )  
  ) ss.  
County of Maricopa     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of the Owner, which is an  
Arizona corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**EXHIBIT A**

Formal, engineered legal description of Property

**EXHIBIT J**  
Page 15 of 17

**EXHIBIT B**

**CONSENT TO INFRASTRUCTURE IMPROVEMENTS COVENANT TO CONSTRUCT**

Project name: \_\_\_\_\_  
Plan check number: \_\_\_\_\_  
Case number: \_\_\_\_\_

The undersigned, having or claiming a lien or other interest in the Property as defined in the Infrastructure Improvements Covenant to Construct (the "Covenant") to which this consent is attached hereby joins in and subjects and subordinates its interest in the Property to said Covenant and agrees that the Covenant runs with the land and binds the interests of the undersigned and its successors and assigns. The person executing this consent warrants authority to bind the undersigned.

EXECUTED as of the date of the said Covenant.

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of the Owner, which is an  
Arizona corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

Project name: \_\_\_\_\_

Plan check number: \_\_\_\_\_

Case number: \_\_\_\_\_

**INFRASTRUCTURE IMPROVEMENTS  
NOTICE OF WARRANTY PERIOD**

City of Scottsdale, an Arizona municipal corporation gives this notice with respect to the Covenant to Construct Infrastructure Improvements (the "Covenant") made by

\_\_\_\_\_, a \_\_\_\_\_, an Arizona limited liability company ("Owner"), in favor of City dated \_\_\_\_\_, 20\_\_\_\_ and recorded \_\_\_\_\_, 20\_\_\_\_ at document No. \_\_\_\_\_ - \_\_\_\_\_ of the public records of Maricopa County, Arizona as follows:

1. The Construction Work under the Covenant has been completed.
2. The Warranty Work under the Covenant has not been completed.
3. This notice shall not be recorded.

EXECUTED as of \_\_\_\_\_, 20\_\_.

**CITY OF SCOTTSDALE**, an Arizona municipal corporation

By: \_\_\_\_\_

Its: Inspection Services Manager

EXHIBIT K

**PUBLIC IMPROVEMENTS  
CONSTRUCTION BOND**

THIS PUBLIC IMPROVEMENTS CONSTRUCTION BOND (the "Bond") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ ("Surety") in favor of the City of Scottsdale, an Arizona municipal corporation ("Obligee").

RECITALS

A. Toll Brothers AZ Construction Company, a corporation organized under the laws of the State of Arizona, ("Principal") is obligated to construct, or cause to be constructed, certain improvements for the project known as "118th & Jomax," as more specifically set forth in Zoning Case No: 25-ZN-2016 (the "Public Improvements") and defined in that Development Agreement between Principal and the City of Scottsdale ("Obligee") and dated June \_\_, 2017 (the "Development Agreement"). To implement this obligation, Principal has entered into a Covenant to Construct Public Improvements (the "Public Improvements Agreement"), dated \_\_\_\_\_, 20\_\_ whereby Principal has agreed to construct or pay for such construction by the Obligee and render various other performances (collectively, the "Work"), on the terms and conditions of the Development Agreement. Pursuant to the Development Agreement, principal is obligated to cause to be constructed or pay for the Obligee to cause to be constructed the Public Improvements.

B. Arizona statutes and the Scottsdale Revised Code require Principal to provide a bond or other financial assurance to protect Obligee against the failure of the Principal to timely complete the Work or pay for the Obligee's completion of the Work, and against the result of incomplete work or faulty materials or workmanship in, or other defects relating to, the Work. The Public Improvements Agreement requires Principal to furnish this Bond in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) (the "Bond Amount").

C. Obligee would not have granted the Land Approvals or allowed the Work or the Public Improvements Agreement without this Bond.

NOW THEREFORE, in consideration of the following, Surety hereby covenants to Obligee as follows:

1. Covenant to Construct. Surety hereby promises to Obligee that Surety will perform all of Principal's duties and obligations under the Case No. 25-ZN-2016, as described in the Development Agreement and the Public Improvements Agreement, and irrevocably and unconditionally covenants to Obligee to timely perform the Work at Surety's expense if Principal does not timely so perform. The Work includes all of the Construction Work and all of the Warranty Work, as set forth in the Public Improvements Agreement, and all duly authorized modifications of the Work that may hereafter be made, notice of which modifications to the Surety being hereby waived. If Principal does so timely perform, Surety shall have no obligation

under this Bond. Surety's obligation shall be as full and binding upon Surety as if the Public Improvements Agreement had been executed by Surety in favor of Obligee.

2. Reduction in Bond Amount. If the Construction Work is timely and properly completed, accepted, and paid for as required by the Public Improvements Agreement without Surety being required to perform under this Bond, then the Bond Amount shall thereafter be set at ten percent (10%) of the original Bond Amount for the Warranty Work.

3. Term of Bond. This Bond shall remain in full force and effect until one of the following has occurred:

3.1 The Work is properly completed, accepted, and paid for at no expense to Obligee, and either:

3.1.1 A new Warranty Bond or other Financial Assurance is in place, or

3.1.2 The Warranty period has expired.

3.2 Surety has paid to Obligee a cash payment in the amount of the lesser of the Bond Amount or an amount estimated by Obligee to be adequate to complete the Work.

3.3 Surety has expended cash, when added to the amount paid by Principal to Obligee, equals the Bond Amount to accomplish the Work.

3.4 The Completion Date has occurred.

4. Future Obligee Actions. Obligee may formally or informally alter, compromise, modify, accelerate, extend or change the time or manner for the performance of the Work or any other aspect of the Land Approvals or the Public Improvements Agreement upon such terms and at such times as Obligee deems best and without notice to Surety. None of such actions shall in any way affect, diminish, release or impair any of Surety's obligations hereunder or give Surety any recourse or defense against Obligee, regardless of any notice Obligee may or may not give to Surety.

5. Surety's Binding Covenant. Surety's obligations are subject to the following:

5.1 Surety shall keep itself fully informed about the Work and Principal's affairs. Surety waives any and all obligations of Obligee to communicate to Surety any information whatsoever regarding Principal or the progress of the Work.

5.2 Surety's obligations hereunder are joint and several with the obligations of Principal. Obligee may bring separate actions against Surety whether or not Obligee brings action against Principal or any other person, and whether or not Principal or any other person is joined in any actions.

5.3 Until the Work is completed, Surety shall have no right of subrogation and hereby waives any right to enforce any remedy that Obligee now has, or may hereafter have,

EXHIBIT K

Page 2 of 5

against Principal, and waives any benefit of, and any right to participate in, any security now or hereafter held by Obligee.

5.4 Surety shall remain responsible to perform the Work until the Work is completed, notwithstanding any act, omission or circumstance that might otherwise operate as a legal or equitable discharge of Surety or Principal.

6. Waivers. Surety hereby waives and agrees not to assert or take advantage of any of the following:

6.1 Any right to require Obligee to proceed against or exhaust its recourse against Principal or any other person, or any security or collateral held by Obligee at any time, or to use any other remedy in its power before proceeding against Surety.

6.2 Any statute of limitations or similar defense with respect to the Public Improvements Agreement or this Bond.

6.3 Any defense that may arise by reason of (i) the incapacity, lack of authority, death, bankruptcy, receivership, or disability of Principal or others; (ii) illegality or impossibility; (iii) Obligee's failure to file or enforce a claim against Principal, its successors or others, or their estates (either in administration, bankruptcy or any other proceeding); or (iv) inability or failure to enforce in whole or in part any document mentioned in this Bond or in the Public Improvements Agreement.

6.4 Formal presentment of this Bond, demand for performance, indulgences, and other formalities of any kind whatsoever.

7. Surety's Warranties. Surety hereby warrants and represents to Obligee that:

7.1 Surety has an AM Best, Inc. rating of at least A+VII.

7.2 Surety satisfies Obligee's current standards and requirements to issue this Bond.

7.3 Surety is fully informed about the Work and all aspects of Principal's affairs that Surety deems relevant to Surety's obligations under this Agreement.

8. Miscellaneous. This Bond is subject to the following additional provisions:

8.1 Binding Effect of Bond. This Bond shall be binding on and inure to the benefit of Obligee and Surety and their successors and assigns. Surety shall give Obligee notice of any merger or assignment.

8.2 Amendments. This Bond may not be amended except by a formal writing executed by Obligee and Surety.

8.3 Limited Severability. If any term, condition, covenant, stipulation, agreement or other provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of any such provision shall in no way affect any other provision herein contained. Further, this Bond shall be deemed automatically reformed to secure to Obligee the legal, equitable, practical and other benefits of the written provisions of this Bond to the very maximum extent permitted by law.

8.4 Time of Essence. Time is of the essence of each and every provision of this Bond.

8.5 Integration. This Bond constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding or negotiations or discussions regarding the subject matter hereof.

8.6 Construction. Whenever the context of this Bond requires, the singular shall include the plural, and the masculine shall include the feminine. The terms of this Bond were established in light of the plain meaning of this Bond and this Bond shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Surety.

8.7 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Bond.

8.8 No Third Party Beneficiaries. No person or entity (including Principal) shall be a third party beneficiary to this Bond or shall have any right or cause of action hereunder. Obligee shall have no liability to third parties for any approval of plans, Surety's construction of improvements, Surety's negligence, Surety's failure to comply with the provisions of this Bond (including any absence or inadequacy of insurance required to be carried by Surety), or otherwise as a result of the existence of this Bond.

8.9 Attorneys' Fees. If Obligee brings any action or suit or proceeding to enforce compliance with this Bond or for failure to observe any of the covenants of this Bond or to vindicate or exercise any of Obligee's rights or remedies hereunder, Surety shall pay Obligee all costs of such action or suit and all expenses of such action or suit together with such sum as the court (and not a jury) may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

8.10 Choice of Law. This Bond shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Obligee has not waived its claims procedures as respects this Bond. Exclusive proper venue for any action regarding this Bond shall be Maricopa County.

8.11 Statutory Cancellation Right. In addition to its other rights hereunder, Obligee shall have the rights specified in A.R.S. § 38-511.

8.12 Signatures. This Bond is effective when signed by Surety.

EXHIBIT K  
Page 4 of 5

8.13 Notices. Notices hereunder shall be given in writing personally served upon the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to Obligee: Director, Planning and Development Services  
7447 East Indian School Road, Suite 105  
Scottsdale, AZ 85251

Copies to: City Attorney  
City of Scottsdale  
3939 North Drinkwater Boulevard  
Scottsdale, AZ 85251

If to Surety: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other street address within Maricopa County, Arizona as may be designated by the respective parties in writing from time to time. Service of notice by mail shall be deemed to be complete forty-eight (48) hours after the notice is deposited in the United States mail.

MADE AS OF the date first above stated.

**SURETY:** \_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact

**BOND OFFERED BY PRINCIPAL:** Toll Brothers AZ Construction Company,  
an Arizona corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
\_\_\_\_\_, General Manager,  
Planning and Development Services

\_\_\_\_\_  
Bruce Washburn, City Attorney

EXHIBIT L

When Recorded Return To:

CITY OF SCOTTSDALE  
ONE STOP SHOP RECORDS  
7447 East Indian School Road, Suite 100  
Scottsdale, AZ 85251

C.O.S. Contract No. 2017-071-COS  
(118<sup>th</sup> & Jomax)  
(Resolution No. 10797)

ADDRESS CHANGE NOTICE

The undersigned authorized party under that certain Development Agreement between City of Scottsdale, an Arizona municipal corporation ("City"), and Toll Brothers AZ Construction Company, an Arizona corporation, ("Toll"), City of Scottsdale Contract No. 2017-071-COS (the "Development Agreement") recorded at document No. \_\_\_\_\_ of the public records of Maricopa County, Arizona hereby gives notice to the City that all future notices (until a subsequent Address Change Notice is recorded) under the Development Agreement shall be given to the persons and addresses shown on Exhibit M attached to the Development Agreement and that such future notices need not be given to any other person or address, including any person or address specified in any prior Address Change Notice. City shall be conclusively entitled to rely on this notice.

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, \_\_\_\_\_ of a \_\_\_\_\_.

My Commission Expires:

\_\_\_\_\_  
Notary Public

Project name: \_\_\_\_\_  
Plan check number: \_\_\_\_\_  
Case number: \_\_\_\_\_

RESOLUTION NO. 10797

A RESOLUTION OF THE CITY OF SCOTTSDALE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE DEVELOPMENT AGREEMENT NO. 2017-071-COS FOR PROPERTY GENERALLY LOCATED AT THE NORTHEAST CORNER OF N. 118TH STREET AND E. JOMAX ROAD

(118<sup>th</sup> Street and Jomax project)

WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with persons having an interest in real property located in the City; and

WHEREAS, it is in the best interest of the City and owner to enter into Development Agreement No. 2017-071-COS for construction of a single family residential development on the property generally located at the northeast corner of N. 118<sup>th</sup> Street and E. Jomax Road, and for the extension of 118<sup>th</sup> Street from 660 feet north of Quail Track Drive to East Rio Verde Drive; and

WHEREAS, this Development Agreement No. 2017-071-COS is consistent with the portions of the City's general plan applicable to the property on the date this Agreement is executed.

NOW, THEREFORE, LET IT BE RESOLVED, by the Council of the City of Scottsdale, as follows:

Section 1. That Mayor W. J. "Jim" Lane is authorized and directed to execute Development Agreement No. 2017-071-COS after it has been executed by all other parties.

Section 2. The Mayor, the City Manager or their designees are authorized to approve and execute such other documents as are necessary to carry out the purposes of Contract No. 2017-071-COS.

Section 3. A FY 2016/17 budget appropriation transfer is authorized totaling \$650,000 from four capital projects including \$100,000 from the Trail Improvement Program (YB71), \$150,000 from the Sidewalk Improvements project (YD20), \$250,000 from the Traffic Signal Construction project (YD23) and \$150,000 from the Bikeways Program project (YD28), to a newly created project to be titled 118<sup>th</sup> Street Ranch Gate to Dynamite Boulevard. The budget appropriation transfer will be funded by Transportation Sales Tax fund.


Section 4. The City Manager or his designee is authorized to accept from Developer a monetary contribution pursuant to the terms of the Development Agreement, paragraph 2 for use by the City.

Section 5. That the City Clerk is hereby directed to record Development Agreement No. 2017-071-COS with the Maricopa County Recorder within ten (10) days after its effective date.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Arizona, this 13<sup>th</sup>  
day of June, 2017.

ATTEST:

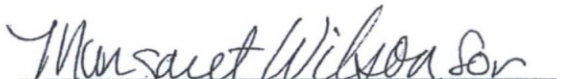
CITY OF SCOTTSDALE, an Arizona  
municipal corporation

By:   
Carolyn Jagger, City Clerk

By:   
W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

  
Bruce Washburn, City Attorney  
By: Margaret Wilson, Assistant City Attorney

**WHEN RECORDED RETURN TO:**

City of Scottsdale Case No. 25-ZN-2016

CITY OF SCOTTSDALE  
ONE STOP SHOP/RECORDS

( )

7447 East Indian School Road, Suite 100  
Scottsdale, AZ 85251

**AGREEMENT FOR THE WAIVER OF CLAIMS  
FOR DIMINUTION IN VALUE OF PROPERTY**

THIS AGREEMENT FOR THE WAIVER OF CLAIMS FOR DIMINUTION IN VALUE OF PROPERTY (the "Agreement") is made in favor of the City of Scottsdale ("City") by RED BIRD VISTAS LLC an Arizona limited liability ("Owner").

**RECITALS**

A. Owner is the fee title owner of property, Parcel No. 216-78-002 located east of the northeast corner of N. 118<sup>th</sup> Street and E. Jomax Road (the "Property").

B. Owner acknowledges that he/she has made a request to the City for application of its land use laws for the development of the Property and is under no compulsion, economic or otherwise, to enter into this Agreement.

C. Arizona statute ARS § 12-1134.A provides that a city must pay just compensation to a land owner, in some cases, if the city approves a land use law that reduces the fair market value of the owner's property. This law is sometimes referred to as "Proposition 207" or the "Private Property Rights Protection Act". (ARS 12-1131, et.seq.)

D. The Private Property Rights Protection Act (e.g., A.R.S. § 12-1134.I) authorizes private property owners to enter into agreements with political subdivisions to waive any claim for diminution in value of their property in connection with any action requested by the property owner.

E. City and Owner seek to resolve whether the application of the City's land use laws to the Property constitute a "diminution in value" of the Property or other harm entitling Owner, now or in the future, to seek compensation from the City under the Private Property Rights Protection Act.

**IT IS AGREED AS FOLLOWS:**

Owner hereby makes the following acknowledgements and representations:

1. Owner acknowledges that:

a. The recitals set forth above are true and correct and are incorporated herein by this reference.

b. Owner is aware of the Private Property Rights Protection Act. (ARS 12-1131, et. seq.)

c. Owner has independently determined and believes that the application of the City's land use laws to the Property will not reduce the fair market value of the Property.

d. Owner is aware that, as a condition of receiving approvals under the City's land use laws, the City may impose various requirements upon the Property, such as requirements for right-of-way dedications, time limitations for development, and other zoning ordinance stipulations and conditions.

2. The undersigned Owner agrees as follows:

a. The Owner agrees that the stipulations and conditions set forth in Case No. 25-ZN-2016 shall be included as part of the ordinance that will be considered by the Scottsdale City Council. Owner agrees that compliance with the stipulations and conditions set forth in Case No. 25-ZN-2016 will govern development of the property. Owner further understands and agrees that stipulations and conditions may be added or modified during the public hearing process and that those stipulations and conditions will be incorporated into this Agreement.

b. Owner hereby waives and fully releases any and all financial loss, injury, claims and causes of action that Owner may have, now or in the future, for any "diminution in value" and for any "just compensation" under the Private Property Rights Protection Act based on the Owner's request in Case No. 25-ZN-2016. This waiver constitutes a complete release of any and all claims and causes of action under the Private Property Rights Protection Act that may arise out of the Owner's request in Case No. 25-ZN-2016.

c. Owner hereby agrees to indemnify, hold harmless and defend City, its officers, employees and agents, from any and all claims, causes of actions, demands, losses and expenses, including reasonable attorney's fees and litigation costs asserted by or resulting from any of the present owners of any interest in the Property seeking any potential compensation, damages, attorney's fees or costs under the Private Property Rights Protection Act that they may have based on the Owner's request in Case No. 25-ZN-2016.

d. This Waiver Agreement shall run with the land and shall be binding upon all present and future owners of any interest in the Property. Owner consents to the recording of this Agreement with the County Recorder in which the Property is located.

e. The Owner agrees that, as of the effective date of this Agreement, he/she has received equal protection of the laws and due process of all claims and requests, and has not suffered any compensable regulatory taking (as those terms and their related claims are defined by Arizona state and federal constitutional jurisprudence).

3. Owner warrants and represents that Owner is the owner of the fee title to the Property.

4. The person who signs this Agreement on behalf of Owner personally warrants and guarantees to City that he has legal power to bind Owner to this Agreement.

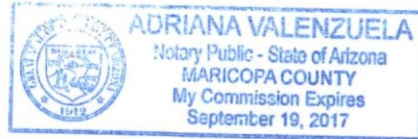
Owner: Zachary D. Sakas Its: PRESIDENT

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

Subscribed, sworn to and acknowledged before me  
by Zachary D. Sakas on this 30 day of May, 2017.

My commission expires:  
9/19/17

Adriana Valenzuela/Taylor  
Notary Public



**WHEN RECORDED RETURN TO:**  
CITY OF SCOTTSDALE  
ONE STOP SHOP/RECORDS  
( )  
7447 East Indian School Road, Suite 100  
Scottsdale, AZ 85251

City of Scottsdale Case No. 25-ZN-2016

**AGREEMENT FOR THE WAIVER OF CLAIMS  
FOR DIMINUTION IN VALUE OF PROPERTY**

THIS AGREEMENT FOR THE WAIVER OF CLAIMS FOR DIMINUTION IN VALUE OF PROPERTY (the "Agreement") is made in favor of the City of Scottsdale ("City") by Drain Reed, Manager of Cottville Real Estate Services, LLC ("Owner").

**RECITALS**

- A. Owner is the fee title owner of property, Parcel Nos. 216-79-005 located at the northeast corner of N. 118<sup>th</sup> Street and E. Jomax Road (the "Property").
- B. Owner acknowledges that he/she has made a request to the City for application of its land use laws for the development of the Property and is under no compulsion, economic or otherwise, to enter into this Agreement.
- C. Arizona statute ARS § 12-1134.A provides that a city must pay just compensation to a land owner, in some cases, if the city approves a land use law that reduces the fair market value of the owner's property. This law is sometimes referred to as "Proposition 207" or the "Private Property Rights Protection Act". (ARS 12-1131, et.seq.)
- D. The Private Property Rights Protection Act (e.g., A.R.S. § 12-1134.I) authorizes private property owners to enter into agreements with political subdivisions to waive any claim for diminution in value of their property in connection with any action requested by the property owner.
- E. City and Owner seek to resolve whether the application of the City's land use laws to the Property constitute a "diminution in value" of the Property or other harm entitling Owner, now or in the future, to seek compensation from the City under the Private Property Rights Protection Act.

**IT IS AGREED AS FOLLOWS:**

Owner hereby makes the following acknowledgements and representations:

1. Owner acknowledges that:

a. The recitals set forth above are true and correct and are incorporated herein by this reference.

b. Owner is aware of the Private Property Rights Protection Act. (ARS 12-1131, et. seq.)

c. Owner has independently determined and believes that the application of the City's zoning ordinance to the Property will not reduce the fair market value of the Property as of the date hereof.

d. Owner is aware that, as a condition of receiving approvals under the City's zoning ordinance, the City may impose requirements upon the Property, such as requirements for right-of-way dedications, time limitations for development, and other zoning ordinance stipulations.

2. The undersigned Owner agrees as follows:

a. The Owner agrees that the stipulations and conditions set forth in Case No. 25-ZN-2016 shall be included as part of the ordinance that will be considered by the Scottsdale City Council. Owner agrees that compliance with the stipulations and conditions set forth in Case No. 25-ZN-2016 will govern development of the property. Owner further understands and agrees that stipulations and conditions may be added or modified during the public hearing process and that those stipulations and conditions will be incorporated into this Agreement.

b. Owner hereby waives and fully releases any and all financial loss, injury, claims and causes of action that Owner may have, now or in the future, for any "diminution in value" and for any "just compensation" under the Private Property Rights Protection Act based on the Owner's request in Case No. 25-ZN-2016. This waiver constitutes a complete release of any and all claims and causes of action under the Private Property Rights Protection Act that may arise out of the Owner's request in Case No. 25-ZN-2016.

c. Owner hereby agrees to indemnify, hold harmless and defend City, its officers, employees and agents, from any and all claims, causes of actions, demands, losses and expenses, including reasonable attorney's fees and litigation costs asserted by or resulting from any of the present owners of any interest in the Property seeking any potential compensation, damages, attorney's fees or costs under the Private Property Rights Protection Act that they may have based on the Owner's request in Case No. 25-ZN-2016.

d. This Waiver Agreement shall run with the land and shall be binding upon all present and future owners of any interest in the Property for a period of three years from the date hereof. Owner consents to the recording of this Agreement with the County Recorder in which the Property is located.

e. The Owner agrees that, as of the effective date of this Agreement, he/she has received equal protection of the laws and due process of all claims and requests, and has not suffered any compensable regulatory taking (as those terms and their related claims are defined by Arizona state and federal constitutional jurisprudence).

3. Owner warrants and represents that Owner is the owner of the fee title to the Property.

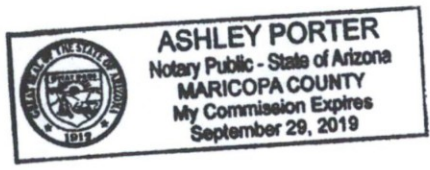
4. The person who signs this Agreement on behalf of Owner personally warrants and guarantees to City that he has legal power to bind Owner to this Agreement.

Owner: LeViville Real Estate Partners LLC *its* David Rauch Manager

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa       )

Subscribed, sworn to and acknowledged before me  
by David Rauch on this 26 day of May, 2017

My commission expires: September 29, 2019  
Ashley Porter  
Notary Public





DECLARATION OF  
CONFLICT OF INTEREST OR PERSONAL INTEREST

NAME: Prescott Smith

PUBLIC BODY: Planning Commission

DATE OF PUBLIC MEETING: 5/10/17 AGENDA ITEM NO.: 4 1/2

DESCRIPTION OF ITEM: 118th 1/2 Jomax

I declare that I have a "substantial interest" in the above-referenced decision or matter, as provided in A.R.S. § 38-501 et seq., and, therefore, declare that I have a conflict of interest in the decision or matter.

Describe the substantial interest held by you or your relative(s) referred to above:

I have done work on this project

I don't believe that I have a substantial interest in the above-referenced decision or matter and, therefore, do not have a conflict of interest as provided by Arizona law, but I believe that my active participation in the above-referenced decision or matter might raise the perception of undue influence or impropriety.

Explain: \_\_\_\_\_

To avoid a conflict of interest or the perception of undue influence or impropriety, as indicated above, I will refrain from participating in any manner in the decision(s) or matter(s) identified above.

  
Signature

5/10/17  
Date Signed

PLEASE NOTE: Completion and filing of this form with the City Clerk's Office is not, by itself, sufficient for a public officer to meet the requirements of the Conflict of Interest law and Code of Ethical Behavior (S.R.C. § 2-47 et seq.). To complete the requirements the public officer must state publicly at the meeting of the public body that he or she has a conflict of interest, or that participation might raise the perception of undue influence or impropriety; then recuse himself or herself, and leave the room while the matter is being discussed and acted upon by others on the public body.

A copy of this form will be filed as a supplement to the public officer's Personal Interest Disclosure form.



**NOTICE OF PLANNING COMMISSION HEARING**

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Scottsdale, Arizona, will hold a public hearing on May 10, 2017, at 5:00 P.M. in the City Hall Kiva, 3939 N. Drinkwater Boulevard, Scottsdale, Arizona, for the purpose of hearing all persons who wish to comment on the following:

**10-UP-2016** (Circle K) Request by owner for an amendment to a Conditional Use Permit for a Circle K Gas Station redevelopment and expansion on a +/- 41,398-square foot site with Highway commercial (C-3) zoning located at 10200 N. Scottsdale Rd. Staff contact person is Bryan Cluff, 480-312-2258. Applicant contact person is William Scarbrough, 480-334-3556.

**2-AB-2017** (118th & Jomax) Request by owner to abandon a 110-foot-wide Roadway and Public Utility Easement along the N. 120th Street alignment between E. Jomax road and E. Redbird Road; abandon 25-foot of Roadway and Public Utility Easement along the north side of E. Jomax Road between N. 118th Street and the N. 120th Street alignment, and abandon 15-foot of Roadway and Public Utility easement along the E. Redbird Road alignment, east of the dedicated but undeveloped cul-de-sac located east of the N. 121st Street alignment. Staff contact person is Keith Niederer, 480-312-2953. Applicant contact person is John Berry, 480-385-2727.

**25-ZN-2016** (118th & Jomax) Request by owner for a Zoning District Map Amendment from Single-Family Residential, Environmentally Sensitive Lands (R1-190 ESL) and Single-Family Residential, Environmentally Sensitive Lands (R1-130 ESL) to Single-Family Residential, Environmentally Sensitive Lands (R1-130 ESL) (+/- 6.7 acres), (R1-70 ESL) (+/- 12.9 acres) and (R1-43 ESL) (+/- 47.7 acres) on +/- 68 acres of a +/- 80 acre site, located at the northeast corner of N. 118th Street and E. Jomax Road. Staff contact person is Keith Niederer, 480-312-2953. Applicant contact person is John Berry, 480-385-2727.

**7-UP-2017** (Crown Castle Days Inn and Suites) Request by owner for a Conditional Use Permit for a new Type 4, Alternative Concealment Wireless Communication Facility (WCF) in the design of a +/- 62-foot, 6-inch tall artificial palm tree, located at the Days Inn and Suites Hotel at 7330 N. Pima Road with Multiple-family Residential, Planned Community District (R-5 PCD) zoning. Staff contact person is Keith Niederer, 480-312-2953. Applicant contact person is Mark Sawyer, 480-550-2088.

A case file on the subject properties is on file at 7447 E. Indian School Road, Suite 105, where it may be viewed by any interested person.

A COPY OF A FULL AGENDA, INCLUDING ITEMS CONTINUED FROM PREVIOUS MEETINGS IS AVAILABLE AT LEAST 24 HOURS PRIOR TO THE MEETING AT THE FOLLOWING

City Hall, 3939 N. Drinkwater Boulevard  
Online at: <http://www.ScottsdaleAZ.gov/Boards/planning-commission>

ALL INTERESTED PARTIES ARE INVITED TO ATTEND.

ALL NON-REMOTE SITE PUBLIC HEARINGS ARE HELD IN THE COUNCIL CHAMBERS, SCOTTSDALE CITY HALL, 3939 N. DRINKWATER BOULEVARD, SCOTTSDALE, ARIZONA.

CHAIRMAN

Attest  
LORRAINE CASTRO  
Planning Assistant

For additional information visit our web site at [www.scottsdaleaz.gov](http://www.scottsdaleaz.gov)

PERSONS WITH A DISABILITY MAY REQUEST A REASONABLE ACCOMMODATION BY CONTACTING LORRAINE CASTRO (480-312-7620). REQUESTS SHOULD BE MADE 24 HOURS IN ADVANCE, OR AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE ACCOMMODATION. FOR TTY USERS, THE ARIZONA RELAY SERVICE (1-800-367-8939) MAY CONTACT LORRAINE CASTRO (480-312-7620).

Utterville



Fidelity National Title Insurance Company

# COMMITMENT FOR TITLE INSURANCE

Issued by

**Fidelity National Title Insurance Company**

Fidelity National Title Insurance Company, a California corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 6 months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, Fidelity National Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

Countersigned by:

*Natalie Bombardieri*

Authorized Signature



By:

*Randy Quirk*

Randy Quirk, President

Attest:

*Michael Gravelle*

Michael Gravelle, Secretary

25-ZN-2016  
10/26/2016

**Fidelity National Title Agency, Inc.**  
60 E. Rio Salado Parkway Suite 1104  
Tempe, AZ 85281

**SCHEDULE A**

Title Officer: **Mike Bennett**  
Escrow Officer: **Patti Graham**

Order No.: **39003392-039-PG**  
Reference No.:

1. Effective Date: **September 23, 2016** at 7:30 a.m., Amendment Date: **October 4, 2016**, Amendment No.: **3/MB**
2. Policy or Policies to be issued: Amount of Insurance:  
**ALTA Extended Owners Policy (6-17-06)** **\$6,695,000.00**  
  
Proposed Insured:  
**Toll Brothers AZ Construction Company, an Arizona corporation**  
  
**None** **\$0.00**  
  
Proposed Insured:  
  
**None** **\$0.00**  
  
Proposed Insured:
3. The estate or interest in the land described or referred to in this Commitment and covered herein is:  
**A FEE**
4. Title to said estate or interest in said land is at the effective date hereof vested in:  
**Lettiville Park Partners, LLC, an Arizona limited liability company**
5. The land referred to in this commitment is described as follows:  
**See Exhibit A attached hereto and by reference made a part hereof.**



**EXHIBIT A**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF **MARICOPA**, STATE OF **ARIZONA**, AND IS DESCRIBED AS FOLLOWS:

**Parcel 12, of GOLDIE BROWN PINNACLE PEAK RANCH UNIT TWO, according to Book 194 of Maps, Page 26, records of Maricopa County, Arizona;**

**EXCEPT all minerals as reserved unto the United States of America in the Patent to said land.**

APN: 216-79-005



## SCHEDULE B – Section I REQUIREMENTS

The following are the requirements to be complied with:

1. Pay the agreed amounts for the interest in the Land and/or the mortgage to be insured.
2. Pay us the premiums, fees and charges for the policy.
3. Documents satisfactory to us creating the interest in the Land and/or the mortgage to be insured must be signed, delivered and recorded.
4. You must tell us in writing the name of anyone not referred to in this commitment who will get an interest in the Land or who will make a loan on the Land. We may then make additional requirements or exceptions.
5. INTENTIONALLY OMITTED
6. INTENTIONALLY OMITTED
7. The Company will require that an Owner's Affidavit be completed by the party(s) named below before the issuance of any policy of title insurance.

Party(s):                      Lettville Park Partners, LLC, an Arizona limited liability company

The Company reserves the right to add additional items or make further requirements after review of the requested Affidavit.

8. INTENTIONALLY OMITTED
9. The Company will require the following documents for review prior to the issuance of any title insurance predicated upon a conveyance or encumbrance from the entity named below:

Limited Liability Company:              Lettville Park Partners, LLC, an Arizona limited liability company

- a) A copy of its operating agreement, if any, and any and all amendments, supplements and/or modifications thereto, certified by the appropriate manager or member
- b) If a domestic Limited Liability Company, a copy of its Articles of Organization and all amendments thereto with the appropriate filing stamps
- c) If the Limited Liability Company is member-managed, a full and complete current list of members certified by the appropriate manager or member
- d) If the Limited Liability Company was formed in a foreign jurisdiction, evidence, satisfactory to the Company, that it was validly formed, is in good standing and authorized to do business in the state of origin
- e) If less than all members, or managers, as appropriate, will be executing the closing documents, furnish evidence of the authority of those signing.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

**SCHEDULE B – Section I**  
**(Continued)**

10. The Company will require the following documents for review prior to the issuance of any title insurance predicated upon a conveyance or encumbrance by the corporation named below:

Name of Corporation: Toll Brothers AZ Construction Company, an Arizona corporation

- a) A Copy of the corporation By-laws and Articles of Incorporation
- b) An original or certified copy of a resolution authorizing the transaction contemplated herein
- c) If the Articles and/or By-laws require approval by a 'parent' organization, a copy of the Articles and By-laws of the parent
- d) Evidence, satisfactory to the Company that the corporation was validly formed and is in good standing.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

11. Please be advised that our search did not disclose any open Deeds of Trust of record. If you should have knowledge of any outstanding obligation, please contact the Title Department immediately for further review prior to closing.

Upon confirmation by the owner of no open Deeds of Trust or Mortgages encumbering the Land described herein, furnish the Company an owner's Affidavit of no open Deed of Trust(s).

12. Furnish for recordation a Release or Satisfaction as to the following document:

Entitled: Notice of Sewer Line Reimbursement Requirement  
Amount: \$as set forth therein  
Recording Date: February 15, 2007  
Recording No: 20070191824

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

13. Furnish for recordation a Release or Satisfaction as to the following document:

Entitled: Notice of Water Line Reimbursement Requirement  
Amount: \$ as set forth therein  
Recording Date: February 15, 2007  
Recording No: 20070191845

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

**SCHEDULE B – Section I**  
**(Continued)**

14. Furnish for recordation a Release or Satisfaction as to the following document:

Entitled: Notice of Reimbursement Requirement for Water Line Extension  
Amount: \$ as set forth therein  
Recording Date: July 25, 2008  
Recording No: 20080648121

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

15. Furnish for recordation a deed as set forth below:

Grantor(s): Lettville Park Partners, LLC, an Arizona limited liability company  
Grantee(s): Toll Brothers AZ Construction Company, an Arizona corporation

Note: ARS 11:1133 may require the completion and filing of an Affidavit of Value.

16. Payment of taxes for the first half of the year 2016, plus interest and penalties, if any.

Tax Note:

Year:	2016
<u>Tax Parcel No:</u>	<u>216-79-005</u>
Total Tax:	\$7,230.40
First Installment Amount:	\$3,615.20
Second Installment Amount:	\$3,615.20

**END OF SCHEDULE B – SECTION I**



**SCHEDULE B – SECTION II**  
**EXCEPTIONS**

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

- A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
- B. Exceptions and Exclusions from coverage which will appear in the policy or policies to be issued as set forth in Attachment One attached.
  - 1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the second half of the year 2016.
  - 2. Water rights, claims or title to water, whether or not disclosed by the public records.
  - 3. Reservations contained in the Patent

From: The United States of America  
To: Ellsworth Brown  
Recording Date: November 26, 1948  
Recording No: Docket 304, Page 447

Which among other things recites as follows:

Subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of the courts, and the reservation from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

- 4. INTENTIONALLY OMITTED
- 5. INTENTIONALLY OMITTED
- 6. Covenants, conditions, restrictions and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording No: Docket 12580, Page 1614

- 7. INTENTIONALLY OMITTED
- 8. INTENTIONALLY OMITTED
- 9. INTENTIONALLY OMITTED
- 10. Rights of the public in and to that portion of the herein described Land as shown on the map

Recording No: Book 592 of Maps, Page 27



**SCHEDULE B – Section II  
(Continued)**

11. INTENTIONALLY OMITTED

12. INTENTIONALLY OMITTED

13. Matters contained in that certain document

Entitled: Developer Sewer Line Payback Agreement  
Dated: February 05, 2007  
Recording Date: February 15, 2007  
Recording No: 20070191829

Reference is hereby made to said document for full particulars.

14. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: water line  
Recording No: 20070757228

15. INTENTIONALLY OMITTED

16. Matters contained in that certain document

Entitled: Developer Water Line Payback Agreement  
Dated: June 20, 2008  
Recording Date: July 25, 2008  
Recording No: 20080648131

Thereafter, Assignment of Developer Water Line Payback Agreement recorded in Recording No. 20080721496.

Reference is hereby made to said documents for full particulars.

17. Any rights, interests, or claims which may exist or arise by reason of the following matters disclosed by survey,

Job No.: 000454100  
Dated: February 08, 2016  
Prepared by: Westwood Professional Services, Inc.  
Matters shown:

a. Gravel trails running throughout various portions of the subject property.

18. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the Public Records.

**END OF SCHEDULE B – SECTION II**

## CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org/>>.*



**Fidelity National Title Agency, Inc.**

**DISCLOSURE NOTICES**

**Good Funds Law**

Arizona Revised Statutes Section 6-843 regulates the disbursement of escrow funds by an escrow agent. The law requires that funds be deposited in the escrow agent's escrow account and available for withdrawal prior to disbursement. Funds deposited with the Company by wire transfer may be disbursed upon receipt. Funds deposited with the Company in the form of cashier's checks, certified checks or teller's checks, or checks which are made by an affiliate of a state or federally regulated depository institution when the check is drawn on that institution, may be disbursed the same day as deposited. If funds are deposited with the Company by other methods, recording and/or disbursement may be delayed.

**PURCHASER DWELLING ACTIONS NOTICE**

Pursuant to Arizona Revised Statutes Section 12-1363.N, notice is hereby provided to the purchaser of a dwelling of the provisions of Arizona Revised Statutes Sections 12-1361, 1362 and 1363. These statutory sections set forth the requirements to be met by a purchaser prior to bringing an action against the seller of a dwelling arising out of or related to the design, construction, condition or sale of the dwelling. "Dwelling" means a single or multifamily unit designed for residential use and common areas and improvements owned or maintained by an association or its members. "Seller" means any person, firm, partnership, corporation, association or other organization engaged in the business of designing, constructing or selling dwellings. The complete statutory sections can be viewed on the Arizona State Legislature's web site: [www.azleg.state.az.us/ars/ars.htm](http://www.azleg.state.az.us/ars/ars.htm).

**NOTICE:**

Pursuant to Arizona Revised Statutes 11-480, effective January 1, 1991, the County Recorder may not accept documents for recording that do not comply with the following:

1. Print must be ten-point type (pica) or larger.
2. Margins of at least one-half inch along the left and right sides one-half inch across the bottom and at least two inches on top for recording and return address information.
3. Each instrument shall be no larger than 8½ inches in width and 14 inches in length.

**NOTICE:**

Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirement cannot be met, please call the Company at the number provided in this report.



## FIDELITY NATIONAL FINANCIAL PRIVACY NOTICE

At Fidelity National Financial, Inc. and its majority-owned subsidiary companies (collectively, “FNF”, “our” or “we”), we value the privacy of our customers. This Privacy Notice explains how we collect, use, and protect your information and explains the choices you have regarding that information. A summary of our privacy practices is below. We also encourage you to read the complete Privacy Notice following the summary.

<p><b>Types of Information Collected.</b> You may provide us with certain personal information, like your contact information, social security number (SSN), driver’s license, other government ID numbers, and/or financial information. We may also receive information from your Internet browser, computer and/or mobile device.</p>	<p><b>How Information is Collected.</b> We may collect personal information directly from you from applications, forms, or communications we receive from you, or from other sources on your behalf, in connection with our provision of products or services to you. We may also collect browsing information from your Internet browser, computer, mobile device or similar equipment. This browsing information is generic and reveals nothing personal about the user.</p>
<p><b>Use of Your Information.</b> We may use your information to provide products and services to you (or someone on your behalf), to improve our products and services, and to communicate with you about our products and services. We do not give or sell your personal information to parties outside of FNF for their use to market their products or services to you.</p>	<p><b>Security Of Your Information.</b> We utilize a combination of security technologies, procedures and safeguards to help protect your information from unauthorized access, use and/or disclosure. We communicate to our employees about the need to protect personal information.</p>
<p><b>Choices With Your Information.</b> Your decision to submit personal information is entirely up to you. You can opt-out of certain disclosures or use of your information or choose to not provide any personal information to us.</p>	<p><b>When We Share Information.</b> We may disclose your information to third parties providing you products and services on our behalf, law enforcement agencies or governmental authorities, as required by law, and to parties with whom you authorize us to share your information.</p>
<p><b>Information From Children.</b> We do not knowingly collect information from children under the age of 13, and our websites are not intended to attract children.</p>	<p><b>Privacy Outside the Website.</b> We are not responsible for the privacy practices of third parties, even if our website links to those parties’ websites.</p>
<p><b>Access and Correction.</b> If you desire to see the information collected about you and/or correct any inaccuracies, please contact us in the manner specified in this Privacy Notice.</p>	<p><b>Do Not Track Disclosures.</b> We do not recognize “do not track” requests from Internet browsers and similar devices.</p>
<p><b>The California Online Privacy Protection Act.</b> Certain FNF websites collect information on behalf of mortgage loan servicers. The mortgage loan servicer is responsible for taking action or making changes to any consumer information submitted through those websites.</p>	<p><b>International Use.</b> By providing us with your information, you consent to the transfer, processing and storage of such information outside your country of residence, as well as the fact that we will handle such information consistent with this Privacy Notice.</p>
<p><b>Your Consent To This Privacy Notice.</b> By submitting information to us and using our websites, you are accepting and agreeing to the terms of this Privacy Notice.</p>	<p><b>Contact FNF.</b> If you have questions or wish to contact us regarding this Privacy Notice, please use the contact information provided at the end of this Privacy Notice.</p>

## FIDELITY NATIONAL FINANCIAL, INC. PRIVACY NOTICE

FNF respects and is committed to protecting your privacy. We pledge to take reasonable steps to protect your Personal Information (as defined herein) and to ensure your information is used in compliance with this Privacy Notice.

This Privacy Notice is only in effect for information collected and/or owned by or on behalf of FNF, including collection through any FNF website or online services offered by FNF (collectively, the "Website"), as well as any information collected offline (e.g., paper documents). The provision of this Privacy Notice to you does not create any express or implied relationship, nor create any express or implied duty or other obligation, between FNF and you.

### Types of Information Collected

We may collect two types of information: Personal Information and Browsing Information.

Personal Information. The types of personal information FNF collects may include, but are not limited to:

- contact information (e.g., name, address, phone number, email address);
- social security number (SSN), driver's license, and other government ID numbers; and
- financial account or loan information.

Browsing Information. The types of browsing information FNF collects may include, but are not limited to:

- Internet Protocol (or IP) address or device ID/UDID, protocol and sequence information;
- browser language;
- browser type;
- domain name system requests;
- browsing history;
- number of clicks;
- hypertext transfer protocol headers; and
- application client and server banners.

### How Information is Collected

In the course of our business, we may collect *Personal Information* about you from the following sources:

- applications or other forms we receive from you or your authorized representative, whether electronic or paper;
- communications to us from you or others;
- information about your transactions with, or services performed by, us, our affiliates or others; and
- information from consumer or other reporting agencies and public records that we either obtain directly from those entities, or from our affiliates or others.

We may collect *Browsing Information* from you as follows:

- Browser Log Files. Our servers automatically log, collect and record certain Browsing Information about each visitor to the Website. The Browsing Information includes only generic information and reveals nothing personal about the user.
- Cookies. From time to time, FNF may send a "cookie" to your computer when you visit the Website. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer's hard drive. When you visit the Website again, the cookie allows the Website to recognize your computer, with the goal of providing an optimized user experience. Cookies may store user preferences and other information. You can choose

not to accept cookies by changing the settings of your Internet browser. If you choose not to accept cookies, then some functions of the Website may not work as intended.

### Use of Collected Information

Information collected by FNF is used for three main purposes:

- To provide products and services to you, or to one or more third party service providers who are performing services on your behalf or in connection with a transaction involving you;
- To improve our products and services; and
- To communicate with you and to inform you about FNF's products and services.

### When We Share Information

We may share your Personal Information (excluding information we receive from consumer or other credit reporting agencies) and Browsing Information with certain individuals and companies, as permitted by law, without first obtaining your authorization. Such disclosures may include, without limitation, the following:

- to agents, representatives, or others to provide you with services or products you have requested, and to enable us to detect or prevent criminal activity, fraud, or material misrepresentation or nondisclosure;
- to third-party contractors or service providers who provide services or perform other functions on our behalf;
- to law enforcement or other governmental authority in connection with an investigation, or civil or criminal subpoenas or court orders; and/or
- to other parties authorized to receive the information in connection with services provided to you or a transaction involving you.

We may disclose Personal Information and/or Browsing Information when required by law or in the good-faith belief that such disclosure is necessary to:

- comply with a legal process or applicable laws;
- enforce this Privacy Notice;
- investigate or respond to claims that any information provided by you violates the rights of a third party; or
- protect the rights, property or personal safety of FNF, its users or the public.

We make efforts to ensure third party contractors and service providers who provide services or perform functions on our behalf protect your information. We limit use of your information to the purposes for which the information was provided. We do not give or sell your information to third parties for their own direct marketing use.

We reserve the right to transfer your Personal Information, Browsing Information, as well as any other information, in connection with the sale or other disposition of all or part of the FNF business and/or assets, or in the event of our bankruptcy, reorganization, insolvency, receivership or an assignment for the benefit of creditors. You expressly agree and consent to the use and/or transfer of this information in connection with any of the above-described proceedings. We cannot and will not be responsible for any breach of security by any third party or for any actions of any third party that receives any of the information that is disclosed to us.

### Choices With Your Information

Whether you submit your information to FNF is entirely up to you. If you decide not to submit your information, FNF may not be able to provide certain products or services to you. You may choose to prevent FNF from using your information under certain circumstances ("opt

out"). You may opt out of receiving communications from us about our products and/or services.

#### **Security And Retention Of Information**

FNF is committed to protecting the information you share with us and utilizes a combination of security technologies, procedures and safeguards to help protect it from unauthorized access, use and/or disclosure. FNF trains its employees on privacy practices and on FNF's privacy and information security policies. FNF works hard to retain information related to you only as long as reasonably necessary for business and/or legal purposes.

#### **Information From Children**

The Website is meant for adults. The Website is not intended or designed to attract children under the age of thirteen (13). We do not collect Personal Information from any person that we know to be under the age of thirteen (13) without permission from a parent or guardian.

#### **Privacy Outside the Website**

The Website may contain links to other websites, including links to websites of third party service providers. FNF is not and cannot be responsible for the privacy practices or the content of any of those other websites.

#### **International Users**

Because FNF's headquarters is located in the United States, we may transfer your Personal Information and/or Browsing Information to the United States. By using our website and providing us with your Personal Information and/or Browsing Information, you understand and consent to the transfer, processing and storage of such information outside your country of residence, as well as the fact that we will handle such information consistent with this Privacy Notice.

#### **Do Not Track Disclosures**

Currently, our policy is that we do not recognize "do not track" requests from Internet browsers and similar devices.

#### **The California Online Privacy Protection Act**

For some websites which FNF or one of its companies owns, such as the Customer CareNet ("CCN"), FNF is acting as a third party service provider to a mortgage loan servicer. In those instances, we may collect certain information on behalf of that mortgage loan servicer, including:

- first and last name;
- property address;
- user name and password;
- loan number;
- social security number - masked upon entry;
- email address;
- security questions and answers; and

- IP address.

The information you submit is then transferred to your mortgage loan servicer by way of CCN. **The mortgage loan servicer is responsible for taking action or making changes to any consumer information submitted through this website. For example, if you believe that your payment or user information is incorrect, you must contact your mortgage loan servicer.**

CCN does not share consumer information with third parties, other than those with which the mortgage loan servicer has contracted to interface with the CCN application. All sections of this Privacy Notice apply to your interaction with CCN, except for the sections titled Choices with Your Information, and Access and Correction. If you have questions regarding the choices you have with regard to your personal information or how to access or correct your personal information, contact your mortgage loan servicer.

#### **Access and Correction**

To access your Personal Information in the possession of FNF and correct any inaccuracies, please contact us by email at [privacy@fnf.com](mailto:privacy@fnf.com) or by mail at:

Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, Florida 32204  
Attn: Chief Privacy Officer

#### **Your Consent To This Privacy Notice**

By submitting Personal Information and/or Browsing Information to FNF, you consent to the collection and use of information by FNF in compliance with this Privacy Notice. We reserve the right to make changes to this Privacy Notice. If we change this Privacy Notice, we will post the revised version on the Website.

#### **Contact FNF**

Please send questions and/or comments related to this Privacy Notice by email at [privacy@fnf.com](mailto:privacy@fnf.com) or by mail at:

Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, Florida 32204  
Attn: Chief Privacy Officer

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EFFECTIVE AS OF APRIL 1, 2016

**ATTACHMENT ONE (01-01-08)**

**AMERICAN LAND TITLE ASSOCIATION  
RESIDENTIAL TITLE INSURANCE POLICY (6-1-87) EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

- land use
- improvements on the land
- land division
- environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:

- a notice of exercising the right appears in the public records on the Policy Date

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and the expenses resulting from:

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.

2. Any easements or liens not shown by the public records. This does not limit the lien coverage in Item 8 of Covered Title Risks.

• the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking.

3. Title Risks:

- that are created, allowed, or agreed to by you
- that are known to you, but not to us, on the Policy Date—unless they appeared in the public records
- that result in no loss to you
- that first affect your title after the Policy Date—this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:

- to any land outside the area specifically described and referred to in Item 3 of Schedule A
- OR
- in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks

3. Any facts about the land which a correct survey would disclose and which are not shown by the public records. This does not limit the forced removal coverage in Item 12 of Covered Title Risks.

4. Any water rights or claims or title to water in or under the land, whether or not shown by the public records.

**ATTACHMENT ONE  
(CONTINUED)**

**FORMERLY AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92)  
WITH A.L.T.A. ENDORSEMENT-FORM 1 COVERAGE  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured

mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or

- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgage insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (06-17-06)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

(i) the occupancy, use, or enjoyment of the Land;  
(ii) the character, dimensions, or location of any improvement erected on the Land;

(iii) the subdivision of land; or  
(iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

(a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

(c) resulting in no loss or damage to the Insured Claimant;

(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13 or 14); or

(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.

5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.

6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is

(a) a fraudulent conveyance or fraudulent transfer, or

(b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.

7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**FORMERLY AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy

which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage Policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (06-17-06)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

(a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

(c) resulting in no loss or damage to the Insured Claimant;

(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or

(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is

(a) a fraudulent conveyance or fraudulent transfer; or

(b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:

- a. building
- b. zoning
- c. Land use
- d. improvements on Land
- e. land division
- f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.

This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.

3. The right to take the Land by condemning it, unless:

a. notice of exercising the right appears in the Public Records at the Policy Date; or

b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.

4. Risks:

a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records.

b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;

c. that result in no loss to You; or

d. that first occur after the Policy Date—this does not limit the coverage described in Covered Risk 7, 8.d., 22, 23, 24 or 25.

5. Failure to pay value for Your Title.

6. Lack of a right:

a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and

b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 14, 15, 16, and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A. The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 14:	1% of Policy Amount or \$2,500.00 (whichever is less)	\$10,000.00
Covered Risk 15:	1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 16:	1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 18:	1% of Policy Amount or \$2,500.00 (whichever is less)	\$5,000.00

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (01-01-08)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
  - a. building;
  - b. zoning;
  - c. land use;
  - d. improvements on the Land;
  - e. land division; and
  - f. environmental protection.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date—this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$10,000.00
Covered Risk 18:	1% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 19:	1% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 21:	1% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$5,000.00

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvements now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14 and 16 of this policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss damage to the Insured Claimant;

(d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or

(e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.

5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth-in-lending law.

6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.

7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.

8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:

(a) The time of the advance; or

(b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.

9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (01-01-08)**

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
  - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.

Red Bird.



Fidelity National Title Insurance Company

# COMMITMENT FOR TITLE INSURANCE

Issued by

**Fidelity National Title Insurance Company**

Fidelity National Title Insurance Company, a California corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 6 months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, Fidelity National Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

Countersigned by:

*Natalie Bombardieri*

Authorized Signature



By:

*Randy Quirk*

Randy Quirk, President

Attest:

*Michael Gravelle*

Michael Gravelle, Secretary

25-ZN-2016  
10/26/2016

**Fidelity National Title Agency, Inc.**  
60 E. Rio Salado Parkway Suite 1104  
Tempe, AZ 85281

**SCHEDULE A**

Title Officer: **Mike Bennett**  
Escrow Officer: **Patti Graham**

Order No.: **39003393-039-PG**  
Reference No.:

1. Effective Date: **September 23, 2016** at 7:30 a.m., Amendment Date: **October 4, 2016**, Amendment No.: **4/MB**
2. Policy or Policies to be issued: Amount of Insurance:  
**ALTA Extended Owners Policy (6-17-06)** **\$5,400,000.00**  
  
Proposed Insured:  
**Toll Brothers AZ Construction Company, an Arizona corporation**  
  
**None** **\$0.00**  
  
Proposed Insured:  
  
**None** **\$0.00**  
  
Proposed Insured:
3. The estate or interest in the land described or referred to in this Commitment and covered herein is:  
**A FEE**
4. Title to said estate or interest in said land is at the effective date hereof vested in:  
**Red Bird Vistas, LLC, an Arizona limited liability company**
5. The land referred to in this commitment is described as follows:  
**See Exhibit A attached hereto and by reference made a part hereof.**



**EXHIBIT A**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF **MARICOPA**, STATE OF **ARIZONA**, AND IS DESCRIBED AS FOLLOWS:

**Parcel 13, of GOLDIE BROWN PINNACLE PEAK RANCH UNIT TWO, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 194 of Maps, Page 26;**

**EXCEPT all the minerals and except all uranium, thorium or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value as reserved unto the United States of America in the Patent to said land.**

**SCHEDULE B – Section I**  
**REQUIREMENTS**

The following are the requirements to be complied with:

1. Pay the agreed amounts for the interest in the Land and/or the mortgage to be insured.
2. Pay us the premiums, fees and charges for the policy.
3. Documents satisfactory to us creating the interest in the Land and/or the mortgage to be insured must be signed, delivered and recorded.
4. You must tell us in writing the name of anyone not referred to in this commitment who will get an interest in the Land or who will make a loan on the Land. We may then make additional requirements or exceptions.
5. Furnish satisfactory evidence to the Company that all regular and special assessments levied by Notice of Reimbursement for Water line Extension which are now due and payable are paid.
6. Furnish satisfactory evidence to the Company that all regular and special assessments levied by Notice of Reimbursement for Sewer line Extension which are now due and payable are paid.
7. The Company will require that an Owner's Affidavit be completed by the party(s) named below before the issuance of any policy of title insurance.

Party(s):                      Red Bird Vistas, LLC, an Arizona limited liability company

The Company reserves the right to add additional items or make further requirements after review of the requested Affidavit.

8. INTENTIONALLY OMITTED
9. INTENTIONALLY OMITTED
10. INTENTIONALLY OMITTED



**SCHEDULE B – Section I**  
**(Continued)**

11. The Company will require the following documents for review prior to the issuance of any title insurance predicated upon a conveyance or encumbrance from the entity named below:

Limited Liability Company: Red Bird Vistas, LLC, an Arizona limited liability company

- a) A copy of its operating agreement, if any, and any and all amendments, supplements and/or modifications thereto, certified by the appropriate manager or member
- b) If a domestic Limited Liability Company, a copy of its Articles of Organization and all amendments thereto with the appropriate filing stamps
- c) If the Limited Liability Company is member-managed, a full and complete current list of members certified by the appropriate manager or member
- d) If the Limited Liability Company was formed in a foreign jurisdiction, evidence, satisfactory to the Company, that it was validly formed, is in good standing and authorized to do business in the state of origin
- e) If less than all members, or managers, as appropriate, will be executing the closing documents, furnish evidence of the authority of those signing.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

12. The Company will require the following documents for review prior to the issuance of any title insurance predicated upon a conveyance or encumbrance by the corporation named below:

Name of Corporation: Toll Brothers AZ Construction Company, an Arizona corporation

- a) A Copy of the corporation By-laws and Articles of Incorporation
- b) An original or certified copy of a resolution authorizing the transaction contemplated herein
- c) If the Articles and/or By-laws require approval by a 'parent' organization, a copy of the Articles and By-laws of the parent
- d) Evidence, satisfactory to the Company that the corporation was validly formed and is in good standing.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

13. Please be advised that our search did not disclose any open Deeds of Trust of record. If you should have knowledge of any outstanding obligation, please contact the Title Department immediately for further review prior to closing.

Upon confirmation by the owner of no open Deeds of Trust or Mortgages encumbering the Land described herein, furnish the Company an owner's Affidavit of no open Deed of Trust(s).

**SCHEDULE B – Section I**  
**(Continued)**

14. Furnish for recordation a deed as set forth below:

Type of deed: Warranty Deed  
Grantor(s): Red Bird Vistas, LLC, an Arizona limited liability company  
Grantee(s): Toll Brothers AZ Construction Company, an Arizona corporation

Note: ARS 11:1133 may require the completion and filing of an Affidavit of Value.

15. Payment of taxes for the first half of the year 2016, plus interest and penalties, if any.

Tax Note:

Year:	2016
<u>Tax Parcel No:</u>	<u>216-78-002</u>
Total Tax:	\$6,944.14
First Installment Amount:	\$ 3,472.07
Second Installment Amount:	\$ 3,472.07

**END OF SCHEDULE B – SECTION I**

**SCHEDULE B – SECTION II**  
**EXCEPTIONS**

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

- A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
- B. Exceptions and Exclusions from coverage which will appear in the policy or policies to be issued as set forth in Attachment One attached.
  - 1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the second half year 2016.
  - 2. Reservations contained in the Patent

From: The United States of America  
Recording Date: 11/26/1948  
Recording No: Docket 304, page 447 and  
Recording Date: 12/01/1955  
Recording No: Docket 1771, page 110

Which among other things recites as follows:

Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by local customs, laws and decisions of courts and there is reserved a right of way thereon for ditches or canals constructed by the authority of the United States of America.

- 3. Water rights, claims or title to water, whether or not disclosed by the public records.
- 4. INTENTIONALLY OMITTED
- 5. INTENTIONALLY OMITTED
- 6. Covenants, conditions, restrictions and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document  

Recording No: Docket 12580, page 1614
- 7. INTENTIONALLY OMITTED
- 8. INTENTIONALLY OMITTED



**SCHEDULE B – Section II**  
**(Continued)**

9. Matters contained in those certain documents

Entitled: Notice of Reimbursement Requirement for Water line Extension  
Recording Date: 07/25/2008  
Recording No: 2008-648126

Entitled: Developer Water Line Payback Agreement  
Recording Date: 07/25/2008  
Recording No: 2008-648131

Thereafter, Assignment of said Developer Water Line Payback Agreement recorded 08/19/2008 in Recording No. 2008-721496.

Reference is hereby made to said documents for full particulars.

10. INTENTIONALLY OMITTED

11. INTENTIONALLY OMITTED

12. INTENTIONALLY OMITTED

13. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: Utilities  
Recording Date: 07/10/2013  
Recording No: 2013-626844

14. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the public records.

15. Any rights, interests, or claims which may exist or arise by reason of the following matters disclosed by survey,

Job No.: 000454100  
Dated: February 08, 2016  
Prepared by: Westwood Professional Services, Inc.  
Matters shown:

a. Gravel trails running throughout various portions of the subject property.

**END OF SCHEDULE B – SECTION II**



## CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org/>>.*



**Fidelity National Title Agency, Inc.**

**DISCLOSURE NOTICES**

**Good Funds Law**

Arizona Revised Statutes Section 6-843 regulates the disbursement of escrow funds by an escrow agent. The law requires that funds be deposited in the escrow agent's escrow account and available for withdrawal prior to disbursement. Funds deposited with the Company by wire transfer may be disbursed upon receipt. Funds deposited with the Company in the form of cashier's checks, certified checks or teller's checks, or checks which are made by an affiliate of a state or federally regulated depository institution when the check is drawn on that institution, may be disbursed the same day as deposited. If funds are deposited with the Company by other methods, recording and/or disbursement may be delayed.

**PURCHASER DWELLING ACTIONS NOTICE**

Pursuant to Arizona Revised Statutes Section 12-1363.N, notice is hereby provided to the purchaser of a dwelling of the provisions of Arizona Revised Statutes Sections 12-1361, 1362 and 1363. These statutory sections set forth the requirements to be met by a purchaser prior to bringing an action against the seller of a dwelling arising out of or related to the design, construction, condition or sale of the dwelling. "Dwelling" means a single or multifamily unit designed for residential use and common areas and improvements owned or maintained by an association or its members. "Seller" means any person, firm, partnership, corporation, association or other organization engaged in the business of designing, constructing or selling dwellings. The complete statutory sections can be viewed on the Arizona State Legislature's web site: [www.azleg.state.az.us/ars/ars.htm](http://www.azleg.state.az.us/ars/ars.htm).

**NOTICE:**

Pursuant to Arizona Revised Statutes 11-480, effective January 1, 1991, the County Recorder may not accept documents for recording that do not comply with the following:

1. Print must be ten-point type (pica) or larger.
2. Margins of at least one-half inch along the left and right sides one-half inch across the bottom and at least two inches on top for recording and return address information.
3. Each instrument shall be no larger than 8½ inches in width and 14 inches in length.

**NOTICE:**

Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirement cannot be met, please call the Company at the number provided in this report.



## FIDELITY NATIONAL FINANCIAL PRIVACY NOTICE

At Fidelity National Financial, Inc. and its majority-owned subsidiary companies (collectively, “FNF”, “our” or “we”), we value the privacy of our customers. This Privacy Notice explains how we collect, use, and protect your information and explains the choices you have regarding that information. A summary of our privacy practices is below. We also encourage you to read the complete Privacy Notice following the summary.

<p><b>Types of Information Collected.</b> You may provide us with certain personal information, like your contact information, social security number (SSN), driver’s license, other government ID numbers, and/or financial information. We may also receive information from your Internet browser, computer and/or mobile device.</p>	<p><b>How Information is Collected.</b> We may collect personal information directly from you from applications, forms, or communications we receive from you, or from other sources on your behalf, in connection with our provision of products or services to you. We may also collect browsing information from your Internet browser, computer, mobile device or similar equipment. This browsing information is generic and reveals nothing personal about the user.</p>
<p><b>Use of Your Information.</b> We may use your information to provide products and services to you (or someone on your behalf), to improve our products and services, and to communicate with you about our products and services. We do not give or sell your personal information to parties outside of FNF for their use to market their products or services to you.</p>	<p><b>Security Of Your Information.</b> We utilize a combination of security technologies, procedures and safeguards to help protect your information from unauthorized access, use and/or disclosure. We communicate to our employees about the need to protect personal information.</p>
<p><b>Choices With Your Information.</b> Your decision to submit personal information is entirely up to you. You can opt-out of certain disclosures or use of your information or choose to not provide any personal information to us.</p>	<p><b>When We Share Information.</b> We may disclose your information to third parties providing you products and services on our behalf, law enforcement agencies or governmental authorities, as required by law, and to parties with whom you authorize us to share your information.</p>
<p><b>Information From Children.</b> We do not knowingly collect information from children under the age of 13, and our websites are not intended to attract children.</p>	<p><b>Privacy Outside the Website.</b> We are not responsible for the privacy practices of third parties, even if our website links to those parties’ websites.</p>
<p><b>Access and Correction.</b> If you desire to see the information collected about you and/or correct any inaccuracies, please contact us in the manner specified in this Privacy Notice.</p>	<p><b>Do Not Track Disclosures.</b> We do not recognize “do not track” requests from Internet browsers and similar devices.</p>
<p><b>The California Online Privacy Protection Act.</b> Certain FNF websites collect information on behalf of mortgage loan servicers. The mortgage loan servicer is responsible for taking action or making changes to any consumer information submitted through those websites.</p>	<p><b>International Use.</b> By providing us with your information, you consent to the transfer, processing and storage of such information outside your country of residence, as well as the fact that we will handle such information consistent with this Privacy Notice.</p>
<p><b>Your Consent To This Privacy Notice.</b> By submitting information to us and using our websites, you are accepting and agreeing to the terms of this Privacy Notice.</p>	<p><b>Contact FNF.</b> If you have questions or wish to contact us regarding this Privacy Notice, please use the contact information provided at the end of this Privacy Notice.</p>

## FIDELITY NATIONAL FINANCIAL, INC. PRIVACY NOTICE

FNF respects and is committed to protecting your privacy. We pledge to take reasonable steps to protect your Personal Information (as defined herein) and to ensure your information is used in compliance with this Privacy Notice.

This Privacy Notice is only in effect for information collected and/or owned by or on behalf of FNF, including collection through any FNF website or online services offered by FNF (collectively, the "Website"), as well as any information collected offline (e.g., paper documents). The provision of this Privacy Notice to you does not create any express or implied relationship, nor create any express or implied duty or other obligation, between FNF and you.

### Types of Information Collected

We may collect two types of information: Personal Information and Browsing Information.

Personal Information. The types of personal information FNF collects may include, but are not limited to:

- contact information (e.g., name, address, phone number, email address);
- social security number (SSN), driver's license, and other government ID numbers; and
- financial account or loan information.

Browsing Information. The types of browsing information FNF collects may include, but are not limited to:

- Internet Protocol (or IP) address or device ID/UDID, protocol and sequence information;
- browser language;
- browser type;
- domain name system requests;
- browsing history;
- number of clicks;
- hypertext transfer protocol headers; and
- application client and server banners.

### How Information is Collected

In the course of our business, we may collect *Personal Information* about you from the following sources:

- applications or other forms we receive from you or your authorized representative, whether electronic or paper;
- communications to us from you or others;
- information about your transactions with, or services performed by, us, our affiliates or others; and
- information from consumer or other reporting agencies and public records that we either obtain directly from those entities, or from our affiliates or others.

We may collect *Browsing Information* from you as follows:

- Browser Log Files. Our servers automatically log, collect and record certain Browsing Information about each visitor to the Website. The Browsing Information includes only generic information and reveals nothing personal about the user.
- Cookies. From time to time, FNF may send a "cookie" to your computer when you visit the Website. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer's hard drive. When you visit the Website again, the cookie allows the Website to recognize your computer, with the goal of providing an optimized user experience. Cookies may store user preferences and other information. You can choose

not to accept cookies by changing the settings of your Internet browser. If you choose not to accept cookies, then some functions of the Website may not work as intended.

### Use of Collected Information

Information collected by FNF is used for three main purposes:

- To provide products and services to you, or to one or more third party service providers who are performing services on your behalf or in connection with a transaction involving you;
- To improve our products and services; and
- To communicate with you and to inform you about FNF's products and services.

### When We Share Information

We may share your Personal Information (excluding information we receive from consumer or other credit reporting agencies) and Browsing Information with certain individuals and companies, as permitted by law, without first obtaining your authorization. Such disclosures may include, without limitation, the following:

- to agents, representatives, or others to provide you with services or products you have requested, and to enable us to detect or prevent criminal activity, fraud, or material misrepresentation or nondisclosure;
- to third-party contractors or service providers who provide services or perform other functions on our behalf;
- to law enforcement or other governmental authority in connection with an investigation, or civil or criminal subpoenas or court orders; and/or
- to other parties authorized to receive the information in connection with services provided to you or a transaction involving you.

We may disclose Personal Information and/or Browsing Information when required by law or in the good-faith belief that such disclosure is necessary to:

- comply with a legal process or applicable laws;
- enforce this Privacy Notice;
- investigate or respond to claims that any information provided by you violates the rights of a third party; or
- protect the rights, property or personal safety of FNF, its users or the public.

We make efforts to ensure third party contractors and service providers who provide services or perform functions on our behalf protect your information. We limit use of your information to the purposes for which the information was provided. We do not give or sell your information to third parties for their own direct marketing use.

We reserve the right to transfer your Personal Information, Browsing Information, as well as any other information, in connection with the sale or other disposition of all or part of the FNF business and/or assets, or in the event of our bankruptcy, reorganization, insolvency, receivership or an assignment for the benefit of creditors. You expressly agree and consent to the use and/or transfer of this information in connection with any of the above-described proceedings. We cannot and will not be responsible for any breach of security by any third party or for any actions of any third party that receives any of the information that is disclosed to us.

### Choices With Your Information

Whether you submit your information to FNF is entirely up to you. If you decide not to submit your information, FNF may not be able to provide certain products or services to you. You may choose to prevent FNF from using your information under certain circumstances ("opt

out"). You may opt out of receiving communications from us about our products and/or services.

#### **Security And Retention Of Information**

FNF is committed to protecting the information you share with us and utilizes a combination of security technologies, procedures and safeguards to help protect it from unauthorized access, use and/or disclosure. FNF trains its employees on privacy practices and on FNF's privacy and information security policies. FNF works hard to retain information related to you only as long as reasonably necessary for business and/or legal purposes.

#### **Information From Children**

The Website is meant for adults. The Website is not intended or designed to attract children under the age of thirteen (13). We do not collect Personal Information from any person that we know to be under the age of thirteen (13) without permission from a parent or guardian.

#### **Privacy Outside the Website**

The Website may contain links to other websites, including links to websites of third party service providers. FNF is not and cannot be responsible for the privacy practices or the content of any of those other websites.

#### **International Users**

Because FNF's headquarters is located in the United States, we may transfer your Personal Information and/or Browsing Information to the United States. By using our website and providing us with your Personal Information and/or Browsing Information, you understand and consent to the transfer, processing and storage of such information outside your country of residence, as well as the fact that we will handle such information consistent with this Privacy Notice.

#### **Do Not Track Disclosures**

Currently, our policy is that we do not recognize "do not track" requests from Internet browsers and similar devices.

#### **The California Online Privacy Protection Act**

For some websites which FNF or one of its companies owns, such as the Customer CareNet ("CCN"), FNF is acting as a third party service provider to a mortgage loan servicer. In those instances, we may collect certain information on behalf of that mortgage loan servicer, including:

- first and last name;
- property address;
- user name and password;
- loan number;
- social security number - masked upon entry;
- email address;
- security questions and answers; and

- IP address.

The information you submit is then transferred to your mortgage loan servicer by way of CCN. **The mortgage loan servicer is responsible for taking action or making changes to any consumer information submitted through this website. For example, if you believe that your payment or user information is incorrect, you must contact your mortgage loan servicer.**

CCN does not share consumer information with third parties, other than those with which the mortgage loan servicer has contracted to interface with the CCN application. All sections of this Privacy Notice apply to your interaction with CCN, except for the sections titled Choices with Your Information, and Access and Correction. If you have questions regarding the choices you have with regard to your personal information or how to access or correct your personal information, contact your mortgage loan servicer.

#### **Access and Correction**

To access your Personal Information in the possession of FNF and correct any inaccuracies, please contact us by email at [privacy@fnf.com](mailto:privacy@fnf.com) or by mail at:

Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, Florida 32204  
Attn: Chief Privacy Officer

#### **Your Consent To This Privacy Notice**

By submitting Personal Information and/or Browsing Information to FNF, you consent to the collection and use of information by FNF in compliance with this Privacy Notice. We reserve the right to make changes to this Privacy Notice. If we change this Privacy Notice, we will post the revised version on the Website.

#### **Contact FNF**

Please send questions and/or comments related to this Privacy Notice by email at [privacy@fnf.com](mailto:privacy@fnf.com) or by mail at:

Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, Florida 32204  
Attn: Chief Privacy Officer

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EFFECTIVE AS OF APRIL 1, 2016

**ATTACHMENT ONE (01-01-08)**

**AMERICAN LAND TITLE ASSOCIATION  
RESIDENTIAL TITLE INSURANCE POLICY (6-1-87) EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

- land use
- improvements on the land
- land division
- environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:

- a notice of exercising the right appears in the public records on the Policy Date

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and the expenses resulting from:

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.

2. Any easements or liens not shown by the public records. This does not limit the lien coverage in Item 8 of Covered Title Risks.

• the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking.

3. Title Risks:

- that are created, allowed, or agreed to by you
- that are known to you, but not to us, on the Policy Date—unless they appeared in the public records
- that result in no loss to you
- that first affect your title after the Policy Date—this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:

- to any land outside the area specifically described and referred to in Item 3 of Schedule A
- OR
- in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks

3. Any facts about the land which a correct survey would disclose and which are not shown by the public records. This does not limit the forced removal coverage in Item 12 of Covered Title Risks.

4. Any water rights or claims or title to water in or under the land, whether or not shown by the public records.

**ATTACHMENT ONE  
(CONTINUED)**

**FORMERLY AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92)  
WITH A.L.T.A. ENDORSEMENT-FORM 1 COVERAGE  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured

mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or

- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.

4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (06-17-06)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13 or 14); or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**FORMERLY AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy

which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage Policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (06-17-06)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

(a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

(c) resulting in no loss or damage to the Insured Claimant;

(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or

(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is

(a) a fraudulent conveyance or fraudulent transfer; or

(b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:

- a. building
- b. zoning
- c. Land use
- d. improvements on Land
- e. land division
- f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.

This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.

3. The right to take the Land by condemning it, unless:

a. notice of exercising the right appears in the Public Records at the Policy Date; or

b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.

4. Risks:

a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records.

b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;

c. that result in no loss to You; or

d. that first occur after the Policy Date—this does not limit the coverage described in Covered Risk 7, 8.d., 22, 23, 24 or 25.

5. Failure to pay value for Your Title.

6. Lack of a right:

a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and

b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 14, 15, 16, and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A. The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 14:	1% of Policy Amount or \$2,500.00 (whichever is less)	\$10,000.00
Covered Risk 15:	1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 16:	1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 18:	1% of Policy Amount or \$2,500.00 (whichever is less)	\$5,000.00

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (01-01-08)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
  - a. building;
  - b. zoning;
  - c. land use;
  - d. improvements on the Land;
  - e. land division; and
  - f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.

3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.

4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date—this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.

5. Failure to pay value for Your Title.

6. Lack of a right:
  - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$10,000.00
Covered Risk 18:	1% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 19:	1% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 21:	1% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$5,000.00

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvements now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14 and 16 of this policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss damage to the Insured Claimant;

(d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or

- (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth-in-lending law.
6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.
7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:
  - (a) The time of the advance; or
  - (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.
9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (01-01-08)**

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

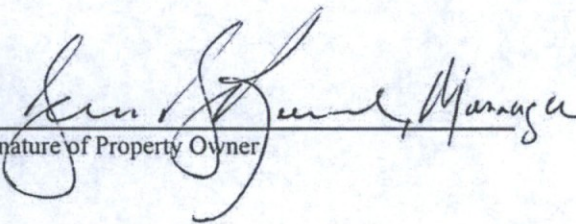
1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
  - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.

**Owner Certification  
Acknowledging Receipt  
Of  
Notice Of Right To Appeal  
Exactions And Dedications**

I hereby certify that I am the owner of property located at:

THE GOLDIE BROWN PINNACLE PEAK RANCH UNIT TWO PER SURVEY MCR 194-26 PARCEL 12  
(address where development approval, building permits, or city required improvements and dedications are being required)

and hereby certify that I have received a notice that explains my right to appeal all exactions and/or dedications required by the City of Scottsdale as part of my property development on the parcel listed in the above address.

  
Signature of Property Owner

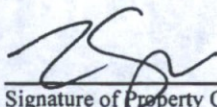
10-20-2016  
Date

**Owner Certification  
Acknowledging Receipt  
Of  
Notice Of Right To Appeal  
Exactions And Dedications**

I hereby certify that I am the owner of property located at:

THE GOLDIE BROWN PINNACLE PEAK RANCH UNIT TWO PER SURVEY MCR 194-26 PARCEL 13  
(address where development approval, building permits, or city required improvements and dedications are being required)

and hereby certify that I have received a notice that explains my right to appeal all exactions and/or dedications required by the City of Scottsdale as part of my property development on the parcel listed in the above address.



\_\_\_\_\_  
Signature of Property Owner

10/21/2016

\_\_\_\_\_  
Date



# Affidavit of Authority to Act as the Property Owner

1. This affidavit concerns the following parcel of land:

- a. Street Address: N/A
- b. County Tax Assessor's Parcel Number: 216-78-002
- c. General Location: NEC 120th Street & Jomax Road
- d. Parcel Size: Approximately 40 acres
- e. Legal Description: \_\_\_\_\_

(If the land is a platted lot, then write the lot number, subdivision name, and the plat's recording number and date. Otherwise, write "see attached legal description" and attach a legal description.)

2. I am the owner of the land or I am the duly and lawfully appointed agent of the owner of the land and have authority from the owner to sign this affidavit on the owner's behalf. If the land has more than one owner, then I am the agent for all of the owners, and the word "owner" in this affidavit refers to all of them.

3. I have authority from the owner to act for the owner before the City of Scottsdale with regard to any and all reviews, zoning map amendments, general plan amendments, development variances, abandonments, plats, lot splits, lot ties, use permits, building permits and other land use regulatory or related matters of every description involving the land, or involving adjacent or nearby lands in which the owner has (or may acquire) an interest, and all applications, dedications, payments, assurances, decisions, agreements, legal documents, commitments, waivers and other matters relating to any of them.

4. The City of Scottsdale is authorized to rely on my authority as described in this affidavit until three work days after the day the owner delivers to the Director of the Scottsdale Planning & Development Services Department a written statement revoking my authority.

5. I will immediately deliver to the Director of the City of Scottsdale Planning & Development Services Department written notice of any change in the ownership of the land or in my authority to act for the owner.

6. If more than one person signs this affidavit, each of them, acting alone, shall have the authority described in this affidavit, and each of them warrant to the City of Scottsdale the authority of the others.

7. Under penalty of perjury, I warrant and represent to the City of Scottsdale that this affidavit is true and complete. I understand that any error or incomplete information in this affidavit or any applications may invalidate approvals or other actions taken by the City of Scottsdale, may otherwise delay or prevent development of the land, and may expose me and the owner to other liability. I understand that people who have not signed this form may be prohibited from speaking for the owner at public meetings or in other city processes.

Name (printed)	Date	Signature
<u>Zach Sakas, President, Red Bird Vistas LLC</u>	<u>October 21, 2016</u>	<u>[Signature]</u>
_____	_____, 20__	_____
_____	_____, 20__	_____
_____	_____, 20__	_____

## Planning and Development Services

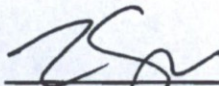
7447 E Indian School Road, Suite 105, Scottsdale, AZ 85251 • Phone: 480-312-7000 • Fax: 480-312-7088

**Owner Certification  
Acknowledging Receipt  
Of  
Notice Of Right To Appeal  
Exactions And Dedications**

I hereby certify that I am the owner of property located at:

THE GOLDIE BROWN PINNACLE PEAK RANCH UNIT TWO PER SURVEY MCR 194-26 PARCEL 13  
(address where development approval, building permits, or city required improvements and dedications are being required)

and hereby certify that I have received a notice that explains my right to appeal all exactions and/or dedications required by the City of Scottsdale as part of my property development on the parcel listed in the above address.

  
\_\_\_\_\_  
Signature of Property Owner

10/21/2016  
Date



# Affidavit of Authority to Act as the Property Owner

1. This affidavit concerns the following parcel of land:

- a. Street Address: 120 & Homax
- b. County Tax Assessor's Parcel Number: ~~216-79-002~~ 216-79-005
- c. General Location: 120 & Homax
- d. Parcel Size: 4.0 acres
- e. Legal Description: THE GOLDEN OAKS PHASE 2 PLANNED UNIT DEVELOPMENT SURVEY & R94 PARCEL 2112

(If the land is a platted lot, then write the lot number, subdivision name, and the plat's recording number and date. Otherwise, write "see attached legal description" and attach a legal description.)

2. I am the owner of the land or I am the duly and lawfully appointed agent of the owner of the land and have authority from the owner to sign this affidavit on the owner's behalf. If the land has more than one owner, then I am the agent for all of the owners, and the word "owner" in this affidavit refers to all of them.

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Name (printed)	Date	Signature
<u>DAVID RAUCH</u> <u>MANAGER</u>	<u>10-20</u> , 20 <u>16</u>	<u>[Signature]</u>
_____	_____, 20____	_____
_____	_____, 20____	_____
_____	_____, 20____	_____

## Planning and Development Services

7447 E Indian School Road, Suite 105, Scottsdale, AZ 85251 • Phone: 480-312-7000 • Fax: 480-312-7088

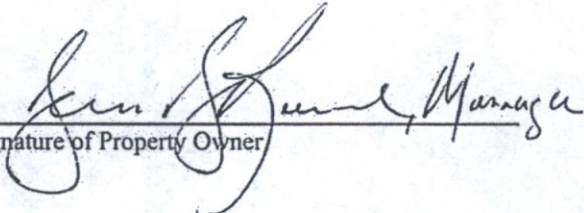
**25-ZN-2016**  
**02/10/17**

**Owner Certification  
Acknowledging Receipt  
Of  
Notice Of Right To Appeal  
Exactions And Dedications**

I hereby certify that I am the owner of property located at:

THE GOLDIE BROWN PINNACLE PEAK RANCH UNIT TWO PER SURVEY MCR 194-26 PARCEL 12  
(address where development approval, building permits, or city required improvements and dedications are being required)

and hereby certify that I have received a notice that explains my right to appeal all exactions and/or dedications required by the City of Scottsdale as part of my property development on the parcel listed in the above address.

      10 - 20 - 2016  
Signature of Property Owner                      Date

**25-ZN-2016  
02/10/17**