

CITY COUNCIL REPORT



Meeting Date: February 5, 2013
 General Plan Element: *Provide for the orderly administration of the affairs of the City*
 General Plan Goal: *Fiscal management*

ACTION

Adopt Resolution No. 9330 authorizing Contract No. 2013-035-COS providing for settlement of *Edmunds-Toll Construction Company v. City of Scottsdale*, Maricopa County Superior Court Case No. CV2012-018283.

Background

Suit has been brought against the City by Edmunds-Toll Construction Company (Toll Brothers) seeking damages and injunctive relief primarily with respect to the City's alleged breach of its Development Agreement with Toll Brothers by failing to issue building permits for Toll Brothers' Windgate Ranch subdivision pursuant to the City's past Floodplain Ordinance, which was in place at the time the Development Agreement was executed. Toll Brothers claims that its damages are still accruing, but that they could total as much as forty-six million dollars. The injunctive relief being sought pertains to the City's issuance of building permits for vacant lots located in the AO Flood Zone. The City denies that it is in breach of the development agreement or any other legal or contractual obligation it owes to Toll Brothers.

In an effort to resolve this matter Toll Brothers and the City have agreed to a settlement of the litigation, subject to Council approval. The terms of the settlement are set forth in Contract No. 2013-035-COS. The settlement is fairly complex, but the basic concept is that Toll Brothers will dismiss its lawsuit and the City will process Toll Brothers' applications for building permits under the terms of the floodplain ordinance in place at the time the Development Agreement was executed, which grandfathers certain historical regulations and standards, **with the expressed new requirement that all new construction must meet minimum FEMA/NFIP standards** as more fully detailed in the settlement agreement. The agreement further provides that the City and Toll Brothers will act cooperatively towards the end of having Toll Brothers receive a Letter of Map Revision (LOMR) for its subdivision, which Toll Brothers will pay its engineer to prepare and process (likely costing Toll Brothers upwards of \$300,000) and the City will pay Toll Brothers \$400,000 for all of the damages claims it has waived in exchange for the dismissal of its lawsuit. However, if the LOMR is not timely approved or is approved with overly costly or onerous conditions, the City has agreed that Toll Brothers may refile a portion of its current case against the City, which would be limited to the damages Toll can prove it suffered for the lots which had not yet had building permits issued, in addition to its attorneys' fees, provided that Toll Brothers is successful in its breach of

contract (development agreement) and other regulatory claims it has asserted against the City. Although future litigation is uncertain, the City believes that it may prove difficult for Toll Brothers to prevail upon any such future claims.

ANALYSIS & ASSESSMENT

Recent Staff Action

The City Attorney's office, assisted by other City staff, has worked to negotiate the proposed settlement.

Policy Implications

The circumstances giving rise to Toll Brothers' lawsuit are unique, so there are no broader policy implications from the City's entering into this settlement.

Significant Issues to be Addressed

The City needs to decide whether to accept the proposed settlement, allow Toll Brothers to move forward with development pending the outcome of the LOMR application, and limit its risk in any future litigation.

Community Involvement

No community involvement is necessary on this item.

RESOURCE IMPACTS

Available funding

A contingency fund transfer is required to fund the settlement and is included in Resolution No. 9330.

Staffing, Workload Impact

Staff from the City Attorney's Office, assisted by other departments, are participating in the defense of this matter. Substantial staff time will be saved if the litigation is terminated.

Future Budget Implications

Depending on whether any future litigation occurs, and the outcome of that litigation, limiting the potential damages could have future budget implication.

Cost Recovery Options

None.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 9330 authorizing Contract No. 2013-035-COS providing for settlement of Edmunds-Toll Construction Company v. City of Scottsdale, Maricopa County Superior Court Case No. CV2012-018283.

Description of Option B

Not approve Resolution No. 9330 and continue the litigation.

Proposed Next Steps

If the contract is approved the actions set forth in the contract necessary for the settlement of *Edmunds-Toll Construction Company v. City of Scottsdale*, Maricopa County Superior Court Case No. CV2012-018283, will be taken by staff.

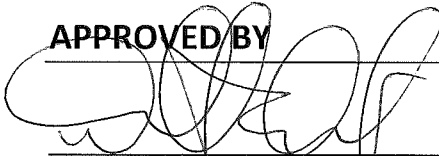
Responsible Department(s):

Planning, Neighborhood and Transportation
City Attorney's Office

STAFF CONTACTS (S)

Randy Grant, Director, Planning, Neighborhood and Transportation, rgrant@scottsdaleaz.gov
Bruce Washburn, City Attorney, bwashburn@scottsdaleaz.gov

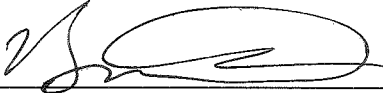
APPROVED BY



Dan Worth, Acting City Manager

2-4-13

Date



Bruce Washburn, City Attorney
(480) 312-2405
bwashburn@scottsdaleaz.gov

2/4/13

Date

ATTACHMENTS

1. Resolution No. 9330
2. Contract No. 2013-035-COS

RESOLUTION NO. 9330

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, CONCERNING *EDMUNDS-TOLL CONSTRUCTION COMPANY V. CITY OF SCOTTSDALE*, CASE NO. CV2012-018283, CURRENTLY PENDING IN THE SUPERIOR COURT IN AND FOR MARICOPA COUNTY, ARIZONA, AUTHORIZING CONTRACT NO. 2013-035-COS TO SETTLE THE PENDING LITIGATION

WHEREAS, Edmunds-Toll Construction Company has brought suit against the City of Scottsdale, Maricopa County Superior County Case No. CV2012-018283; and

WHEREAS, it is in the best interest of the City to effectuate a settlement of the pending litigation on the terms and conditions set forth in Contract No. 2013-035-COS;

NOW, THEREFORE, BE IT RESOLVED by the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. That the City Council hereby authorizes and directs the Mayor to execute Contract No. 2013-035-COS.

Section 2. That the City Treasurer is authorized and directed to make a budget transfer of \$400,000 from the adopted FY 2012/13 General Fund operating contingency account to the City Attorney's Division for the purpose of paying the settlement amount provided for in Contract No. 2013-035-COS.

Section 3. That the City Manager, the City Attorney, the City Treasurer and their respective staffs are authorized and directed to execute such documents and take such other actions as are necessary to carry out the purpose of this Resolution and the provisions of Contract No. 2012-035-COS.

PASSED AND ADOPTED by the Council of the City of Scottsdale this _____ day of February, 2013.


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

By:  _____
Bruce Washburn, City Attorney

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "Agreement") is dated as of February __, 2013 by and between the CITY OF SCOTTSDALE, an Arizona municipal corporation, and MICHAEL CLACK (collectively "City"), and TOLL BROTHERS AZ CONSTRUCTION COMPANY, an Arizona corporation formerly known as EDMUNDS-TOLL CONSTRUCTION COMPANY, TOLL BROTHERS, INC., a Delaware corporation, and their subsidiaries (collectively, "Toll Brothers"). Scottsdale and Toll Brothers are collectively referred to herein as the "Parties" and each individually as a "Party."

RECITALS

A. Toll Brothers is the developer of the housing development known as the Windgate Ranch Subdivision ("Windgate Ranch"), located near 104th Street and Bell Road in Scottsdale, Arizona. The development is subject to Development Agreement 2004-026-COS entered into between the City and Edmunds-Toll Construction Company on April 1, 2004, amended by Amendment No. 1 on May 17, 2004, ("Development Agreement").

B. On December 12, 2012, Toll Brothers filed a Verified Complaint against the City in Maricopa County Superior Court (Case No. CV2012-018283) (the "Lawsuit"), asserting causes of action for Declaratory Judgment (Count I), Injunctive Relief (Count II), Mandamus (Count III), Violation of Proposition 207 (Count IV), Breach of Contract/Development Agreement (Count V), and Violation of Nonconforming Grandfathered Rights (Count VI) (collectively, the "Claims").

C. The City denies any liability to Toll Brothers in the Lawsuit.

D. The Parties now desire to enter into this Agreement to resolve their disputes.

AGREEMENT

In consideration of the above and other good and valuable consideration, deemed sufficient by the Parties, the Parties agree as follows:

1. Incorporation of Recitals. The Parties incorporate herein the Recitals above.
2. Application of this Agreement. This Agreement applies to, is binding upon, and inures to the benefit of the City and Toll Brothers, and its successors and assigns.
3. Definitions. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in Title 44, Part 59 of the Code of Federal Regulations shall have the meaning assigned to them therein as of the Effective Date of this Agreement. Whenever the terms listed below are used in this Agreement, the following definitions shall apply:
 - a. "18 Lots" means and includes the 18 lots in Windgate Ranch listed in Exhibit A.
 - b. "Agreement" means this Settlement Agreement.

c. "AO Zone" refers to the 100-year floodplain as defined by 44 C.F.R. § 64.3(a)(1) and as marked on the official Flood Insurance Rate Map ("FIRM") as of the Effective Date of this Agreement. A copy of the FIRM is attached as Exhibit C.

d. "Building Official" means that term as defined in Scottsdale Revised Code § 31-32(a)(103.1).

e. "Toll Brothers" means and includes Toll Brothers AZ Construction Company, formerly known as Edmunds-Toll Construction Company, Toll Brothers, Inc., Toll Holdings, Inc., and all subsidiaries, including but not limited to all corporate entities that may be able to assert claims on behalf of those entities.

f. "Process" means to review for completeness and judge according to the applicable ordinance and/or historical practice, as described below.

g. "Claims" means the causes of actions set forth in the Complaint and set forth in the above recitals.

h. "Effective Date" means the date this Agreement is executed by the Mayor of Scottsdale, following its approval by vote of the City council at a public Council meeting.

i. "Additional Lots" means other lots within the AO Flood Zone at Windgate Ranch other than the 18 Lots.

j. "Final FEMA Determination" means a written decision by FEMA regarding a Letter of Map Revision ("LOMR") for Windgate Ranch, which shall be deemed to be a denial if no written decision is provided by FEMA within twenty four (24) months of the Effective Date.

k. "Interim Procedures" means the items set forth in Paragraph 15.

l. "Reopen" litigation means the items set forth in Paragraph 6(b).

4. Compensation by the City. The City shall pay Toll Brothers the sum of Four Hundred Thousand Dollars (\$400,000) as part of its consideration for this Agreement. That payment shall be made by a single cash payment within ten (10) business days of dismissal of the Lawsuit as provided in Paragraph 5.

5. Dismissal of Lawsuit. Within three (3) business days of the Effective Date of this Agreement, the Parties shall file a stipulation for dismissal of the Lawsuit. Such dismissal shall be without prejudice, with each Party to bear its attorneys' fees and other litigation expenses.

6. Limited Release and Covenant Not to Sue.

a. Except as set forth in Paragraph 6(b), Toll Brothers hereby releases and covenants not to sue Michael Clack and the City, its elected and non-elected officials, representatives, and agents, on any claims, of any kind whatsoever, including money damages, attorneys' fees, and engineering fees incurred as of the Effective Date of this Agreement with

regard to the 18 Lots or the Additional Lots. This limited release and covenant not to sue also includes any future costs of "building up" the 18 Lots per Exhibit A, and Paragraph 7, below. Furthermore, this limited release and covenant not to sue also includes any future costs of "building up" for any Additional Lots actually permitted and so "built up," per Exhibit C and Paragraph 7 below

b. Except as set forth in Paragraph 6(a) above, Toll Brothers reserves all matters raised and all Claims as set forth in the Verified Complaint and may refile or "reopen" the litigation as set forth in the Verified Complaint and as protected by the Tolling set forth in Paragraph 14, below, subject only to the qualifications specifically identified in this Paragraph 6(b) as follows. As an initial threshold requirement of any such Reopener of the Claims in the Verified Complaint, Toll Brothers must reasonably believe that it has suffered damages (excluding damages released in Paragraph 6(a), above) in excess of \$250,000, also excluding attorneys' fees and engineering fees relating to the LOMR application. If that threshold requirement has been met, then Toll Brothers, in its sole discretion without any consent or consultation with the City of any kind whatsoever, shall be entitled to Reopen the Claims in the Verified Complaint by filing a new Complaint and lawsuit for damages of any kind whatsoever and other appropriate relief subject to an absolute cap/limitation on the recovery of any such proved damages of fifteen million dollars (\$15,000,000) plus an additional cap of one million two hundred fifty thousand dollars (\$1,250,000) of recoverable attorneys' fees in any such Reopened litigation. By way of example, and not intended to be exhaustive by any means, if a jury verdict in the Reopened litigation for Toll Brothers were to be \$25,000,000, in damages then the final judgment would nevertheless state an amount of \$15,000,000 plus court awarded attorneys' fees, if any, up to an additional cap of \$1,250,000. The Parties further agree that Toll Brothers shall not file any such Reopened litigation for damages, even if the threshold requirement has been met, prior to the earlier of the date that FEMA gives written notice to the Parties of a final determination on the LOMR application or eighteen (18) months from the Effective Date of this Agreement, whichever occurs first. Notwithstanding, in the event of a breach of this Agreement, Toll Brothers may immediately seek non-monetary relief under the Interim Procedures set forth in Paragraph 15 below.

7. Processing of Building Permit Applications.

a. Toll Brothers submitted standard plan building permit applications for 18 Lots in July and/or August of 2012, prior to the effective date of the City's newly amended Floodplain Ordinance. The modified building permits for those lots, as set forth in the building permit plans Toll Brothers has submitted and which are on file with the City's Building Official, have been reviewed. Upon the Effective Date of this Agreement, the City's Building Official will issue building permits for the 18 Lots as set forth in the modified building permits currently on file, as soon as Toll Brothers pays the necessary building permit fees. Toll Brothers agrees to submit elevation certificates completed by a surveyor reflecting the final elevation measured from finished grade at the completion of construction of each of the 18 Lots. The Parties agree that the permits for the 18 Lots are part of the consideration for this Agreement, and may be enforced under the terms of this Agreement.

b. Prior to the time FEMA issues a determination on the LOMR application for Windgate Ranch, the City shall issue additional requested permits for other lots currently identified as

Windgate Ranch in the AO Flood Zone ("Additional Lots") under the following criteria: Upon the Building Official or designee's direct receipt of the complete building permit applications to build any one of the previously approved standard plans currently on file with the City of Scottsdale for Windgate Ranch, the Building Official or his designee will process said permit applications within three business days, using the same standards and timelines applicable in August 2012, subject only to the requirement that the permit plans also satisfy FEMA's minimum flood protection standards measured from natural grade (finished floors must be built up one-foot above natural grade, including the lowest floor in garages unless the garages are flood proofed as allowed by FEMA requirements). Examples of the required buildup for Additional Lots are set forth in the attached Exhibit B. Toll Brothers may, in its discretion, satisfy these criteria by building up from natural grade of the lot and/or by increasing the thickness of the slab and/or by other reasonable means mutually agreed upon between the City and Toll Brothers. Toll Brothers agrees to submit elevation certificates completed by a surveyor reflecting the final elevation measured from natural grade at the completion of construction. Building permits for the Additional Lots will be issued by the Building Official or his designee, pursuant to these criteria, as further described in Paragraph 7(c-i).

c. In the event that one of the building permit applications for the Additional Lots is incomplete or otherwise deficient, the Building Official or his designee shall so notify Toll Brothers within three business days. Upon receipt of the corrected building permit application, the City shall process the application within three business days. In the event that the City requests corrections or modifications to an application and Toll Brothers' engineer or architect disagree that the requested correction is necessary, Toll Brothers' agent or representative must notify the Building Official or his designee of the disagreement, and the Building Official or his designee shall make himself available expeditiously in order to discuss the building permit application at issue. If the Building Official or his designee determines in good faith that the correction is necessary, the City will process the application within three business days of receiving the corrected building permit application. If the Building Official or his designee determines that the correction is unnecessary, the building permit shall be issued promptly.

d. Toll Brothers may seek to amend its permits and permit plans for the 18 Lots or Additional Lots pursuant to the City's regular practice prior to the completion of construction. Any such amendments must meet the requirements for the 18 Lots or Additional Lots as provided herein.

e. The maximum building height of the buildings set forth on the previously approved standard plans for Windgate Ranch, which are currently on file with the City's Building Official, for the Additional Lots that must be elevated in order to meet FEMA's minimum standards will be measured pursuant to the method set forth in the current zoning ordinance or in Amendment No. 1 to the Development Agreement, whichever method best allows the height set forth in the previously approved standard plans, provided the overall maximum building height set forth in the originally approved standard plan Toll Brothers has selected shall be no less or no greater than what could have been achieved under the previously approved and entitled Windgate Ranch development prior to this Agreement and before the elevation necessary to meet FEMA's minimum standards.

f. Driveway slopes for 18 Lots or Additional Lots that must be elevated in order to meet FEMA's minimum NFIP standards will be allowed to exceed 12%.

g. If height of no more than three additional feet is required to be added onto retaining walls within Windgate Ranch as a result of the need to elevate any of the 18 Lots or Additional Lots in order to meet FEMA's minimum flood protection standards, this work may be done pursuant to a fence permit and the retaining walls will not be required to be stepped back.

h. If the permits for the 18 Lots or Additional Lots call for a modification of what is reflected in the improvement plans, approvals of said permits are sufficient to reflect the approved modification and no new improvement plans will be required to be submitted.

i. The City will promptly issue a Certificate of Occupancy for all houses constructed on the 18 Lots so long as the houses are built according to the approved plans as of the Effective Date of this Agreement, and will promptly issue a Certificate of Occupancy for all houses to be constructed on the Additional Lots, so long as the houses are built according to their standard and already approved plans, as of the Effective Date.

j. Copies of the approved plans for the Windgate Ranch subdivisions have previously been approved by the City of Scottsdale. Regarding areas where infrastructure has not yet been built, Toll Brothers may, at its option, decide to modify lot, road, and infrastructure elevations to meet FEMA requirements as specifically set forth in this Agreement. If so, Toll agrees to submit road and infrastructure changes to the City and the City agrees to expedite reviews and approvals of any such modifications by following the same types of procedures as set forth above in this Paragraph 7 and its subparts.

k. This paragraph, among others in the Agreement, shall be enforceable by the Interim Procedures in Paragraph 15 below in the event of breach.

8. LOMR Application. At its own expense, Toll Brothers agrees to file and pursue the Windgate Ranch LOMR application with FEMA. The City and Toll Brothers will cooperate in good faith to expedite as much as reasonably possible the formal application and approval of the LOMR. The City, including its Floodplain Administrator, has reviewed the LOMR application and will fully support the LOMR Application, including the proposed Flood Zone designations and boundaries.

9. Hearing Vacated. The Order to Show Cause hearing set for February 8, 2013 will be vacated by stipulation of the parties, with such stipulation to be filed with the Court upon Toll Brothers' execution of a formal Settlement Agreement.

10. Limited Scope of Agreement. Nothing in this Settlement shall affect lots at Windgate Ranch that are not in the AO Flood Zone.

11. Agreement Controls. To the extent, if any, that a term of the Agreement is specifically inconsistent with the Development Agreement, then this Agreement shall control. To the extent, if any, that it may be necessary to regard a term of this Agreement as an amendment to the Development Agreement, then this Agreement is hereby deemed as Amendment No. 2 to the Development Agreement. The Parties hereby reaffirm and represent

and warrant to each other that the Development Agreement is and remains valid and binding on the Parties in all other respects.

12. Notice. Any notices required to be sent pursuant to this Agreement shall be provided as follows:

a. TO: City of Scottsdale

Bruce Washburn
City Attorney
City of Scottsdale
3939 North Drinkwater Boulevard
Scottsdale, AZ 85251

b. TO: Toll Brothers

Mark Bailey
Vice-President
Toll Brothers Construction Company
Windgate Ranch
18570 North Thompson Peak Parkway
Scottsdale, Arizona 85255

And

Office of General Counsel
Toll Brothers
250 Gibraltar Road
Horsham, PA 19044

13. Effect of Settlement. This Agreement was negotiated and executed by the City and Toll Brothers in good faith and at arm's length and is a fair and equitable compromise of claims, which were vigorously contested. Each Party has had the opportunity to obtain, and has obtained to the extent deemed appropriate, legal advice and counsel regarding this Agreement. The Parties agree that neither Party shall be deemed to be the drafter or author of this Agreement, and in the event this Agreement is subject to interpretation or construction by a court of law, such court shall not construe this Agreement or any portion thereof against any Party as the drafter of this Agreement. This Agreement shall not constitute nor be construed as an admission of liability by the City, nor is it an admission or denial of any factual allegation or an admission of violation of any law, rule, regulation, or policy by any of the Parties to this Agreement. The provisions of this Agreement shall bind and inure to the benefit of the Parties and their respective successors.

14. Tolling. To ensure the ability of Toll Brothers to Reopen its Claims as allowed under Paragraph 6(b) of the Agreement the Parties agree that the running of all applicable statutes of limitations, whether set forth in Ariz. Rev Stat. § 12-821 *et seq.* (including but not limited to Ariz. Rev Stat. § 12-821.01) or otherwise, for filing a notice of claim or for

commencement of a civil action relating to this Agreement and/or the matters and claims set forth in Toll Brothers' Verified Complaint, shall be tolled and extended from the date of the filing of the Verified Complaint through the earlier of two years after the Effective Date of this Agreement or the date when Toll Brothers receives a final written determination from FEMA on Toll Brothers' LOMR application regarding Windgate Ranch or the date on which Toll Brothers Reopens its Claims for money damages as allowed under Paragraph 6(b) (the "Tolling Period"). The Parties further agree that all periods of limitation or defenses based on delay of any nature, whether statutory, common law, laches, legal, equitable or otherwise, affecting any claims under this Agreement or Toll Brothers' Verified Complaint shall be tolled during the Tolling Period, and, accordingly, that the Parties will not assert, plead, argue, or raise any defense or avoidance based upon the running of any statute(s) of limitation or any other time bar or time related defense as a result of the accrual of time during the Tolling Period. The Parties further agree that the matters and Claims set forth in the Verified Complaint may be reopened, pursuant to Paragraph 6 above, by the filing of a new Complaint and lawsuit, as if litigation of the Verified Complaint had continued and with the Tolling Period given full effect. The Parties do not waive any rights, claims, or defenses except as expressly stated in this Agreement.

15. Interim Procedures and Specific Performance. If any Party to this Agreement breaches, or fails or refuses to perform its duties under any provision of the Agreement, the non-defaulting Party shall be entitled to seek all non-monetary remedies available at both law and in equity, including, but not limited to specific performance, at any time after a breach, notwithstanding Paragraph 6 (b). The other Party reserves all rights and defenses with regard to any remedies sought.

16. Integration. With respect to the subjects addressed herein, including without limitation all matters incorporated herein by reference, this Agreement is a complete integration and final expression of the Parties' rights and duties, and except for the Development Agreement there are no other agreements or understandings between the Parties to the contrary. This Agreement supersedes all prior discussions, drafts, and writings; such drafts, discussions, and writings may not be used to vary or contest the terms of this Agreement.

17. Counterparts. The Parties may execute this Agreement in counterparts, both of which shall be deemed to constitute one in the same instrument, and each counterpart is deemed an original of that instrument.

18. Headings. The headings in this Agreement are used solely for convenience and shall not be used to provide any inference, intent, or meaning of the terms of this Agreement.

19. Dispute Resolution. In the event that a dispute arises under this Agreement, the Parties agree to meet and confer regarding the nature of the dispute once prior to initiating litigation.

20. Authority to Execute Agreement. This Agreement is voluntarily entered into by the Parties, and the persons executing this Agreement each expressly warrant and represent that they are authorized to execute this Agreement on behalf of the Party they represent. Without limitation, the signatory for Edmunds-Toll Construction Company and Toll Brothers, Inc., and

their affiliates warrants and represents that he has authority to execute the Agreement on behalf of all such parties.

21. Cancellation Pursuant to A.R.S. § 38-511. The City may, within three years after its execution, cancel this agreement without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the City either is, at any time while the agreement or any extension of the agreement is in effect, an employee or agent of any other party to the agreement in any capacity or a consultant to any other party to the agreement with respect to the subject matter of the agreement.

22. Attorneys' Fees and Costs. The prevailing party in any legal action brought because of a breach of this Agreement or to enforce a provision of this Agreement shall be entitled to recover its reasonable attorneys' fees, taxable costs, reasonable expert witness fees, and any other reasonable expenses of such legal action.

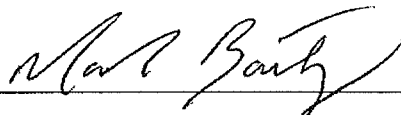
23. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The Parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction in Maricopa County, Arizona.

24. Time is of the Essence. Time is of the essence of this Agreement in each and every provision hereof. In the event the last day permitted for any performance under this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

25. Further Assurances and Documents. Each Party agrees to perform such other and further acts and to execute and deliver such additional documents, as any other Party may reasonably request to consummate, evidence, confirm or carry out the matters contemplated by this Agreement.

TOLL BROTHERS AZ CONSTRUCTION
COMPANY, TOLL BROTHERS, INC., TOLL
HOLDINGS, INC. AND THEIR SUBSIDIARIES:

Dated: 2/5/13

By: 

Its: VICE PRESIDENT

Contract No. 2013-035-COS


CITY OF SCOTTSDALE, an Arizona
municipal corporation

W.J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:



Bruce Washburn, City Attorney

Contract No. 2013-035-COS

Exhibit A

WGR	Parcel	Lot No.	Improv.Plans	Fine Grade	COS	Elev Diff
Plat			LF _{ss} (ft)	Elevation (ft)	LF _{ss} (ft)	Imp Pln vs LF (ft)
Ph 2 C	A	452	1644.4	1.0	1644.4	0.0
		453	1645.4	1.0	1645.4	0.0
		455	1647.7	1.0	1647.7	0.0
		456	1648.7	1.0	1648.7	0.0
		457	1650.4	1.0	1650.4	0.0
Ph 2 B	B	460	1654.0	1.0	1654.0	0.0
		461	1654.7	1.0	1654.7	0.0
		439	1675.0	0.9	1675.1	0.1
Ph 2 A	DE/FG	444	1665.7	0.9	1665.8	0.1
		359	1622.0	0.8	1622.2	0.2
		360	1621.0	0.8	1621.2	0.2
		383	1630.7	0.8	1630.9	0.2
		398	1633.4	0.8	1633.6	0.2
		400	1628.7	0.8	1628.9	0.2
		401	1626.7	0.8	1626.9	0.2
Ph 1 A	I	12	1625.4	0.7	1625.7	0.3
Ph 1 B	L	167	1591.0	0.8	1591.2	0.2
		168	1590.4	0.8	1590.6	0.2

Exhibit A

Contract #2013-035-COS

Page 1 of 1

Contract No. 2013-035-COS

Exhibit B

WGR	Parcel	Lot No.	Improv.Plans LF _{ss} (ft)	Bldg. Envelope Highest Natural Grade (ft)	FEMA LF _{ss} (ft)	LOW FLOOR LF _{ss} (ft)	Elev Diff Imp Pln vs LF (ft)
Ph 2 C	A	462	1656.4	1657.8	1658.8	1658.8	2.4
		463	1658.4	1659.0	1660.0	1660.0	1.6
		464	1660.0	1660.5	1661.5	1661.5	1.5
		465	1661.7	1661.6	1662.6	1662.6	0.9
		466	1663.7	1663.5	1664.5	1664.5	0.8
		467	1664.7	1666.3	1667.3	1667.3	2.6
		468	1666.7	1669.0	1670.0	1670.0	3.3
		469	1668.7	1670.3	1671.3	1671.3	2.6
		472	1673.7	1673.0	1674.0	1674.0	0.3
		473	1674.7	1673.7	1674.7	1674.7	0.0
		474	1675.7	1675.0	1676.0	1676.0	0.3
		475	1677.4	1677.0	1678.0	1678.0	0.6
		476	1678.7	1678.5	1679.5	1679.5	0.8
		477	1679.4	1678.5	1679.5	1679.5	0.1
		478	1679.7	1680.0	1681.0	1681.0	1.3
		479	1678.4	1678.5	1679.5	1679.5	1.1
		480	1676.7	1677.0	1678.0	1678.0	1.3
		493	1657.4	1656.3	1657.3	1657.3	-0.1
		494	1657.7	1657.6	1658.6	1658.6	0.9
		495	1659.7	1659.5	1660.5	1660.5	0.8
		496	1661.7	1661.5	1662.5	1662.5	0.8
		497	1663.7	1663.1	1664.1	1664.1	0.4
		498	1665.7	1665.0	1666.0	1666.0	0.3
		499	1667.7	1666.7	1667.7	1667.7	0.0
		500	1669.7	1669.0	1670.0	1670.0	0.3
		501	1663.7	1664.5	1665.5	1665.5	1.8
		502	1661.7	1662.0	1663.0	1663.0	1.3
		503	1659.7	1659.5	1660.5	1660.5	0.8
		504	1658.0	1659.5	1660.5	1660.5	2.5
		505	1656.7	1657.8	1658.8	1658.8	2.1
		506	1655.7	1655.9	1656.9	1656.9	1.2
		507	1654.7	1654.5	1655.5	1655.5	0.8
		508	1652.7	1653.1	1654.1	1654.1	1.4
		509	1651.7	1652.0	1653.0	1653.0	1.3
		510	1650.4	1649.9	1650.9	1650.9	0.5
		511	1648.4	1647.8	1648.8	1648.6	0.4
Ph 2 B	B	438	1676.7	1676.2	1677.2	1677.2	0.5
		441	1670.7	1671.0	1672.0	1672.0	1.3
		442	1668.7	1669.6	1670.6	1670.6	1.9
		445	1665.4	1665.0	1666.0	1666.0	0.6
Ph 2 A	DE/FG	446	1664.7	1664.0	1665.0	1665.0	0.3
		312	1632.7	1632.7	1633.7	1633.7	1.0
		317	1640.0	1638.1	1639.1	1639.1	-0.9
		318	1641.0	1639.1	1640.1	1640.1	-0.9
		319	1643.0	1641.4	1642.4	1642.4	-0.6
		342	1632.7	1632.0	1633.0	1633.0	0.3
		343	1633.7	1635.1	1636.1	1636.1	2.4
		346	1638.0	1636.2	1637.2	1637.2	-0.8
		348	1640.7	1641.2	1642.2	1642.2	1.5
		349	1638.7	1639.0	1640.0	1640.0	1.3
		350	1636.7	1637.0	1638.0	1638.0	1.3
		351	1634.7	1635.4	1636.4	1636.4	1.7
		352	1632.7	1633.4	1634.4	1634.4	1.7
		353	1630.7	1631.1	1632.1	1632.1	1.4
		354	1627.7	1629.0	1630.0	1630.0	2.3
		355	1626.4	1627.1	1628.1	1628.1	1.7
		356	1624.7	1627.1	1628.1	1628.1	3.4
		374	1614.2	1613.2	1614.2	1614.2	0.0
		375	1614.7	1614.8	1615.8	1615.8	1.1
		376	1616.7	1617.2	1618.2	1618.2	1.5
		377	1618.7	1619.5	1620.5	1620.5	1.8
		378	1620.7	1620.7	1621.7	1621.7	1.0
		379	1622.7	1622.5	1623.5	1623.5	0.8
		385	1626.4	1624.9	1625.9	1625.9	-0.5
		388	1619.0	1619.1	1620.1	1620.1	1.1
		391	1620.7	1622.3	1623.3	1623.3	2.6
		394	1628.7	1630.6	1631.6	1631.6	2.9
		395	1631.7	1632.3	1633.3	1633.3	1.6
		396	1634.0	1634.1	1635.1	1635.1	1.1
		397	1636.0	1634.2	1635.2	1635.2	-0.8
		399	1630.7	1631.0	1632.0	1632.0	1.3
		402	1626.7	1626.1	1627.1	1627.1	0.4
Ph 1 A	I	19	1616.7	1616.2	1617.2	1617.2	0.5
		34	1605.4	1603.7	1604.7	1604.7	-0.7
Ph 1 B	L	47	1621.0	1619.4	1620.4	1620.4	-0.6
		176	1594.7	1594.6	1595.6	1595.6	0.9
Ph 1 C	M	191	1582.7	1581.2	1582.2	1582.2	-0.5

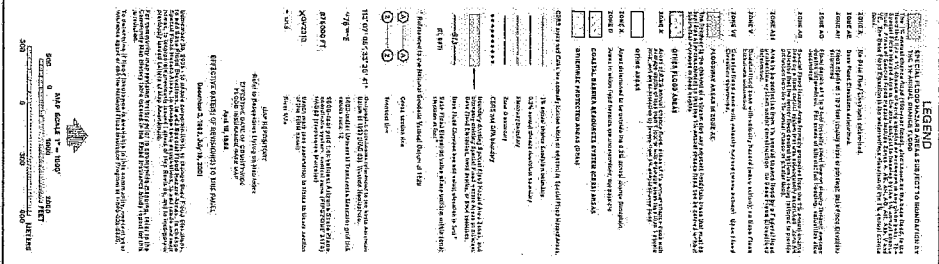
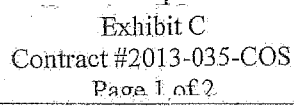
Exhibit B

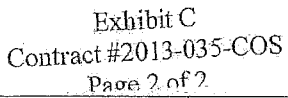
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