

TEMPORARY SURFACE USE LICENSE AGREEMENT

THIS TEMPORARY SURFACE USE LICENSE AGREEMENT (this “**Agreement**”) is entered into this 4th day of August, 2021 (the “**Effective Date**”), by and between Toll Southwest LLC, DBA Toll Brothers (“**Licensor**”) and **CRESTONE PEAK RESOURCES OPERATIONS LLC**, a Delaware limited liability company (“**Licensee**”). Licensor and Licensee are at times referred to herein individually as “**Party**” and collectively as “**Parties**.”

RECITALS

A. Licensor is the owner of certain real property located in Adams County, Colorado (the “**Property**”).

B. Licensee desires a temporary, non-exclusive SURFACE USE license on, over, across, under and through portions of the Property (the “**License**”). Licensor is willing to issue the License to Licensee for the purposes more particularly described herein, subject to the terms and conditions set forth herein.

C. That portion of the Property upon which the License lies (the “**License Area**”) is more particularly described in the legal description on Exhibit A and depicted on Exhibit B, both of which are attached hereto and incorporated herein by this reference. Should there be any discrepancy between the legal description on Exhibit A and the depiction on Exhibit B, the legal description on Exhibit A shall control.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the conditions set forth below, the Parties agree as follows:

1. **Issuance of License.** Licensor hereby issues to Licensee, without warranty, a temporary, non-exclusive License on, over, and across the License Area. The License shall be for the sole purpose of entering the License Area to enter and re-plug and abandon the previously plugged and abandoned Medsker 1-28 Well (API No. 05-005-06515) (the “**Well**”) located on the Property and to do all things reasonably necessary to access, locate, enter, re-enter, and plug and abandon the Well (“**License Activities**”). The License Activities shall be performed in a good and workmanlike manner and in compliance with any laws, rules, regulations, and policies of applicable governing authorities and agencies, including, but not limited to the Colorado Oil and Gas Conservation Commission and the City of Aurora. Licensor shall have the right to confirm that the License Activities have been completed to its satisfaction.

2. **Term.** The License granted herein will automatically terminate, without the requirement of any action by Licensor, on the earlier to occur of: (i) the completion of the License Activities; or (ii) ninety (90) days from the Effective Date.

3. **Access.** Licensee and its agents, servants, employees, consultants, contractors and subcontractors (collectively, “**Licensee’s Agents**”) shall have the right of vehicular and pedestrian ingress and egress to and from the License Area and for use by Licensee and Licensee’s Agents for the purposes permitted by this Agreement. Licensee shall enter upon the License Area at its sole risk and hazard, and Licensee and its successors and assigns, hereby release Licensor from any and all claims relating to the condition of the License Area and the entry upon the License Area by Licensee and Licensee’s Agents. To

the extent possible, Licensee and Licensee's Agent shall enter the License Area from existing paths and roads.

4. **Maintenance and Restoration.** Licensee, at its sole cost and expense, shall promptly repair any damage to the Property and any of Licensors' improvements located thereon (including, without limitation, any and all landscaping, trees, fences, water and/or irrigation pipes, lines and ditches, curbs, gutters, asphalt and/or concrete surfaces, fences, signs, lighting, buildings, etc.) caused by Licensee and/or Licensee's Agents, and shall restore in a workmanlike manner the Property and Licensors' improvements to the same or better condition as they existed prior to any entry onto or work performed on the Property by Licensee and Licensee's Agents. Licensee's restoration responsibilities shall also include, but not be limited to, leaving the Property in a condition which is clean, free of debris and hazards created by Licensee which may be caused by the Licensee's activities, and subject to neither environmental hazards nor liens caused by the Licensee's activities. In the event Licensee needs to perform any maintenance, repair, or restoration work on the License Area, Licensee shall use reasonable efforts to minimize any interference or disruption to Licensors' use and occupancy of the License Areas.

5. **Condition of the License Area.** Licensee accepts the License Area and all aspects thereof in "AS IS," "WHERE IS" condition, without warranties, either express or implied, "with all faults," including but not limited to both latent and patent defects. Licensee and its successors and assigns hereby release, waive and forever discharge Licensors from any claims, demands, damages, liabilities costs, expenses, actions and causes of action of every kind and nature whatsoever, whether now known or unknown, suspected or unsuspected, relating to the condition of the License Area and the entry upon the License Area by Licensee and Licensee's Agents.

Licensee hereby waives all warranties, express or implied, regarding title, condition and use of the License Area, including, but not limited to, any warranty of merchantability or fitness for a particular purpose. Without limiting the generality of the foregoing, the License is granted without warranty whatsoever and subject to: (i) any state of facts which an accurate ALTA survey (with all Table A items) and/or physical inspection of the License Area might show, (ii) all land use and zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and (iii) reservations, easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, and encumbrances and all other matters of record or enforceable at law or in equity.

6. **Compliance with Laws.** Licensee will comply with all present or future applicable laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governing authorities, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, relating to the License Activities and Licensee's use of the License Area.

7. **Hazardous Substances.** Except for motor fuels used by vehicles and construction equipment and materials and products used in connection with the License Activities, Licensee agrees not to generate, store, dispose of, release, or use any Hazardous Substances on the Property. As used in this Agreement, the term "**Hazardous Substances**" means all hazardous and toxic substances, wastes or materials, including without limitation, hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable materials, explosives, urea formaldehyde insulation, radioactive materials, biologically hazardous substances, PCBs, pesticides, herbicides, and any other kind and/or type of pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), sewage sludge, industrial slag, solvents and/or any other similar substances or materials which, because of toxic, flammable, ignitable, explosive, corrosive, reactive, radioactive, or other

properties may be hazardous to human health or the environment and are included under, subject to or regulated by any Hazardous Waste Laws. Licensee agree to immediately notify Licensor of any leaking or spillage of Hazardous Substances on the Property by Licensee or Licensee's Agents. Licensee shall be exclusively liable for all cleanup and remediation costs thereof.

As used in this Agreement, the term "**Hazardous Waste Laws**" means any and all present and future applicable (i) federal, state and local statutes, laws, rules or regulations governing Hazardous Substances; (ii) judicial or administrative interpretations thereof, including any judicial or administrative orders or judgments; and (iii) ordinances, codes, plans, injunctions, decrees, permits, demand letters, concessions, grants, franchises, easements, agreements, notices, or other governmental restrictions, relating to the protection of the public health, welfare, and the environment, or to any actual, proposed or threatened storage, holding, existence, release, emission, discharge, spilling, leaking, pouring, pumping, injection, dumping, discarding, burying, abandoning, generation, processing, abatement, treatment, removal, disposition, handling, transportation or other management of any Hazardous Substance or any other activity or occurrence that causes or would cause any such event to exist.

8. **Indemnification.** Licensee hereby agrees to indemnify, save, defend (with counsel reasonably acceptable to Licensor) and hold harmless Licensor, and any entity controlling, controlled by, or under control with Licensor, and its and their affiliates' officers, directors, employees, managers, members, agents and servants ("**Affiliates**") from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damages that may be incurred by Licensor or its Affiliates as a result of any liabilities, damages, judgments, costs, expenses, penalties, and/or injuries to persons or property caused by or arising out of, either directly or indirectly, (i) the use of the License Area by Licensee and/or Licensee's Agents; (ii) any entry onto License Area and/or the Property by Licensee and/or Licensee's Agents; and (iii) any work performed on the License Area by Licensee and/or Licensee's Agents, including but not limited to the License Activities, except to the extent caused directly by the gross negligence and/or willful act or omission of Licensor and/or its Affiliates.

9. **Insurance.** Prior to entering onto the License Area, Licensee and any of its agents or independent contractors shall maintain, or shall cause to be maintained, policies which, at a minimum, provide Licensor the protections set forth below. Such insurance may be carried under a "blanket" policy or "blanket" policies covering other properties of Licensee, and may be subject to such self-insured retentions as Licensee may desire, provided actuarially sound reserves are maintained.

a. **Liability Insurance Coverage and Limits.** A commercial general liability insurance policy insuring Licensee's interests against claims for personal injury, bodily injury, death, property damage occurring on, in or about the License Area and the ways immediately adjoining the License Area, with a "Combined Single Limit" covering personal injury liability, bodily injury liability and property damage liability) of not less than Two Million Dollars (\$2,000,000.00). The coverage set forth above shall be primary coverage and shall apply specifically to the License Area, the Property, and adjacent areas;

b. **Workers' Compensation Insurance.** All Workers' Compensation and Employers' Liability Insurance required under applicable Workers' Compensation Acts and/or applicable law; and

c. **Automobile Insurance.** Automobile Liability Insurance with a minimum limit of not less than One Million Dollars (\$1,000,000.00) Combined Single Limit per accident, and coverage applying to "Any Auto."

10. **Liens.** Licensee shall keep the Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Licensee, and shall indemnify, hold harmless and agree to defend Licensor from any liens that may be placed on the Property

pertaining to any work performed, materials furnished or obligations incurred by, though, for, or under Licensee or any of Licensee's Agents.

11. **Notices.** Except as otherwise required by law, any notice, demand or request given in connection with this Agreement shall be in writing and shall be given by either (i) personal delivery, (ii) electronic mail, (iii) facsimile, (iv) overnight courier service, or (v) United States certified mail, return receipt requested, postage or other delivery charge prepaid, addressed to Licensor or Licensee at the following addresses (or at such other address as Licensor or Licensee or the person receiving copies may designate in writing given in accordance with this Section):

LICENSOR:

LICENSEE:

Crestone Peak Resources Holdings LLC
Attn: Bob Bresnahan
1801 California Street
Denver, CO 80202
Email: bob.bresnahan@crestonepr.com

12. **No Public Use/Dedication.** The Property is and shall at all times remain the private property of Licensor. The use of the Property is permissive and shall be limited to the express purposes contained herein by Licensee. Neither Licensee, nor its successors or assigns, nor the public shall acquire nor be entitled to claim or assert any rights to the Property beyond the express terms and conditions of this Agreement.

13. **Miscellaneous.**

a. **Binding Effect.** Except as expressly stated herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto, as well as the successors and assigns of such Party.

b. **Partial Invalidity.** If any term, covenant or condition of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

c. **Captions.** The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein.

d. **Gender.** In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

e. Relationship of the Parties. Nothing contained herein shall be construed to make the Parties hereto partners or joint venturers, or render any of such Parties liable for the debts or obligations of the other Party hereto.

f. Amendment. This Agreement may be canceled, changed, modified or amended in whole or in part only by the written and recorded agreement of the Parties or their successor and assigns (as determined by the provisions herein).

g. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one Agreement.

h. Attorneys' Fees. In the event any legal action or proceeding for the enforcement of any right or obligations herein contained is commenced, the prevailing Party in such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

i. Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Agreement shall be strictly limited to and for the purposes herein expressed. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not specifically benefited by the terms and provisions hereof. Licensor shall have the right to perform any act, or do anything, from time to time that Licensor may deem necessary or desirable to assure that no public gift dedication (or deemed gift dedication) occurs.

j. Assignment. Licensee may, at any time during this Agreement, assign its rights and obligations under this Agreement without the prior written consent of Licensor.

k. Recording. The Parties agree that this Agreement shall **not** be recorded nor any memorandum thereof.

[signatures to follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

LICENSOR:

Toll Brothers
LAND DEVELOPMENT

PAVING THE WAY FOR AMERICA'S LUXURY HOMEBUILDER

Digitally signed by Kyle W Ninness
DN: cn=Kyle W Ninness, o=Toll Brothers,
ou=Senior Land Development Manager,
email=kninness@tollbrothers.com, c=US

Date: 2021.08.04 13:40:22 -06'00'

By: _____

Name: Kyle Ninness

Its: Senior Land Development Manager

LICENSEE:

**CRESTONE PEAK RESOURCES
OPERATIONS HOLDINGS LLC,**
a Delaware limited liability company

By:  _____

Name: Shea Kauffman

Its: VP of Land

Exhibit A

SOUTHSHORE AT AURORA FILING 17 TRACT L
AURORA, COLORADO

Exhibit B

