

FIRST AMENDMENT TO
OPTION TO LEASE REAL PROPERTY

This First Amendment to Option to Lease Real Property ("First Amendment") is made this ___ day of July, 2020 (the "Effective Date"), by and between CAPISTRANO UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and laws of the State of California ("Optionor") and TOLL BROS., INC, a Pennsylvania corporation ("Optionee") (collectively, Optionor and Optionee are referred to herein as the "Parties").

RECITALS:

WHEREAS, the Parties entered into that certain Option to Lease Real Property dated January 15, 2019 (the "Agreement"), in which Optionor grants to Optionee an option to lease the Property known as 26126 Victoria Blvd., Dana Point, California and as more fully described in the Agreement (the "Property"); and

WHEREAS, the Parties desire to amend the Agreement as set forth herein.

NOW THEREFORE, in consideration of the premises, the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree to amend the Agreement as follows:

1. Incorporation. The Parties confirm the accuracy of the Recitals set forth above. Each capitalized term used in this First Amendment but not otherwise defined in this First Amendment shall have the meaning ascribed to it in the Agreement.

2. Option Term Extensions. The first sentence of Section 1.2 is hereby deleted in its entirety and replaced with the following:

Optionee may extend the Option Term for up to four (4) consecutive "**Option Term Extensions**" by delivering to Optionor and "Escrow Holder" (as defined below), on or before the expiration of the Option Term, (i) written notice of Optionee's election to exercise such extension right and (ii) the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) (each, an "**Extension Payment**") for each Option Term Extension when exercised, which Option Term Extensions shall each extend the otherwise then-applicable expiration of the Option Term as follows: the first (1st) Option Term Extension shall be for a period of Two Hundred Seventy (270) days; the second (2nd) Option Term Extension shall be for a period of Ninety (90) days; the third (3rd) and fourth (4th) Option Term Extensions shall each be for a period of One Hundred Eighty (180) days each. Optionee agrees that the third (3rd) and fourth (4th) Option Term Extensions shall only be available to Optionee for the purpose of addressing issues or delays in obtaining the Project Entitlements caused by or resulting from Optionee's dealings with the California Coastal Commission, the COVID-19

pandemic and events directly and indirectly related thereto (the “COVID Issues”), or such other issues as are referenced in Section 9.13 of the Agreement. For clarity’s sake, none of the Extension Payments shall be applied against the Lease as Rent.

3. Deposits. Sections 1.5(b), 1.5(c) and 1.5(d) of the Agreement shall be deleted in their entirety and replaced with the following, and Section 1.5(e) shall be added to the Agreement as follows:

(b) An additional amount of Two Hundred Thousand Dollars (\$200,000) from the Deposit was released to the Optionor on May 31, 2020 and was deemed non-refundable to the Optionee if Optionee chooses to not exercise its right to lease the Property for any reason whatsoever during the Option Term or should the Optionee not lease the Property for any reason.

(c) An additional amount of Two Hundred Thousand Dollars (\$200,000) from the Deposit shall be deemed non-refundable to the Optionee and released to the Optionor on the date which is: 1) August 31, 2020 or 2) one day after the Final Approval Date (as defined in Section 3.1 below), whichever is sooner, if Optionee chooses to not exercise its right to lease the Property for any reason whatsoever during the Option Term or should the Optionee not lease the Property for any reason.

(d) An additional amount of Three Hundred Thousand Dollars (\$300,000) from the Deposit shall be deemed non-refundable to the Optionee and released to the Optionor on the date which is: 1) December 7, 2020 or 2) one day after the Final Approval Date (as defined in Section 3.1 below) whichever is sooner, if Optionee chooses to not exercise its right to lease the Property for any reason whatsoever during the Option Term or should the Optionee not lease the Property for any reason.

(e) The remaining deposit amount of Three Hundred Thousand Dollars (\$300,000) shall be deemed non-refundable to the Optionee and released to the Optionor on the date which is: 1) May 31, 2021 or 2) one day after the Final Approval Date, whichever is sooner, if Optionee chooses to not exercise its right to lease the Property for any reason whatsoever during the Option Term or should the Optionee not lease the Property for any reason.

The remainder of Section 1.5 shall remain in full force and effect.

4. COVID-19-Related Delays. Optionee and Optionor hereby reference that Optionee has claimed that the COVID Issues have created hardship and delays with respect to the Project Entitlements. Optionee hereby confirms that the relief provided in this First Amendment satisfies Optionee with respect to any relief that Option may desire with respect to the COVID Issues known to Optionee as of the date hereof, provided that Optionee reserves all

rights and remedies that may be available to Optionee pursuant to the Agreement and/or at law and/or equity with respect to COVID Issues that may arise from and after the date hereof.

5. Terms, Conflict. Except as otherwise expressly modified in this First Amendment, the terms and conditions of the Agreement are and shall remain in full force and effect. In the event of any conflict or inconsistency between the terms and provisions of the Agreement and the terms and provisions of this First Amendment, the terms and provisions of this First Amendment shall govern and control.

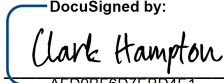
6. Counterparts. This First Amendment may be executed in any number of counterparts, all of which together shall be deemed to constitute one instrument, and each of which shall be deemed an original. The Parties acknowledge that facsimile or electronically transmitted signatures shall be valid for all purposes, and once signed and delivered in such fashion, each such party shall thereafter, upon request of any other party, execute and deliver to the requesting party a signed original counterpart of this First Amendment.

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SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed by their respective duly authorized representatives under seal, all as of the day and year first written above.

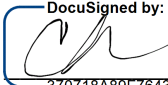
OPTIONOR:

CAPISTRANO UNIFIED SCHOOL DISTRICT


By: 
Name: _____
Title: _____

OPTIONEE:

TOLL BROS., INC.,
a Pennsylvania corporation

By: 
Name: Charles Elliott
Title: President

Approved as to form:



Andreas C. Chialtas
Atkinson, Andelson, Loya, Ruud & Roma,
Counsel for Capistrano Unified School District