

SECOND AMENDMENT TO  
OPTION TO LEASE REAL PROPERTY

This Second Amendment to Option to Lease Real Property ("Second Amendment") is made this 17<sup>th</sup> day of December, 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 "Original Agreement"), as amended by that certain First Amendment to Option to Lease Real Property dated July 27, 2019 (the "First Amendment," and together with the Original Agreement, 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 Second Amendment but not otherwise defined in this Second 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 seven (7) 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 ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) for the 1<sup>st</sup> and 2<sup>nd</sup> Option Term Extensions and the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) for the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Option Term Extensions (each, an "Extension Payment") for the respective 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 (1<sup>st</sup>) Option Term Extension shall be for a period of Ninety (90) days; and the second (2<sup>nd</sup>), the third (3<sup>rd</sup>), the fourth (4<sup>th</sup>), the fifth (5<sup>th</sup>), the sixth (6<sup>th</sup>), and the seventh (7<sup>th</sup>) Option Term Extensions shall each be for a period of One

Hundred Eighty (180) days each. For clarity's sake, none of the Extension Payments shall be applied against the Lease as Rent.

3. Deposit. Sections 1.5(d) and 1.5(e) of the Agreement shall be deleted in their entirety and replaced with the following:

(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) ten (10) business days following the date on which the City of Dana Point circulates the Project's Draft Environmental Impact Report (DEIR) for public comment 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) ten (10) business days following the date on which the Project has received Final Approval from the City of Dana Point of the Project's Specific Site Plan and CEQA 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. Terms, Conflict. Except as otherwise expressly modified in this Second 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 Second Amendment, the terms and provisions of this Second Amendment shall govern and control.

5. Counterparts. This Second 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 Second Amendment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties have caused this Second 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: DocuSigned by:  
Clark Hampton  
AFD9BF0D7EBD4E1  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OPTIONEE:**

TOLL BROS., INC.,  
a Pennsylvania corporation

By: DocuSigned by:  
Charles Elliott  
370748A80F76430  
Name: Charles Elliott  
Title: President

Approved as to form:

DocuSigned by:  
Andreas Chialtas  
509EFDAB14F047C  
Andreas C. Chialtas  
Atkinson, Andelson, Loya, Ruud & Roma,  
Counsel for Capistrano Unified School District