

**TERMINAL ONE PROJECT
SETTLEMENT AND RELEASE AGREEMENT
(CCCPR)**

This settlement and release agreement (“Agreement”) is entered into as of April 23, 2010 (“Effective Date”), by and between Petitioners Coalition of Concerned Citizens of Point Richmond and Beverly Galloway (“Petitioners”), on the one hand, and Respondents City of Richmond, Richmond Community Redevelopment Agency and City Council of the City of Richmond (collectively, the “City”) and Real Parties in Interest Toll Bros., Inc. (“Toll”), on the other hand. The parties may be referred to in this Agreement individually as “Party” and collectively as the “Parties.”

RECITALS

- A. Petitioners are residents of the City of Richmond, Contra Costa County.
- B. Toll requested land use approvals from the City to develop the Point Richmond Shores project (“Project”) on a 13.36-acre site at 1500 Dornan Drive at Brickyard Cove, Point Richmond, commonly known as the Terminal One property and identified as Assessor’s Parcel Numbers 560-420-006, 560-420-007 and 560-420-010 in the City of Richmond, California (“Property”).
- C. On December 12, 2006, the City Council of the City of Richmond (“City Council”) certified the Environmental Impact Report (“Project EIR”) and approved a General Plan Amendment for the Project.
- D. On January 11, 2007, Petitioners filed a petition for writ of mandate challenging the City’s approval of the Project under the California Environmental Quality Act (“CEQA”) and California’s planning and zoning laws. Petitioners allege that the Project EIR does not satisfy the requirements of CEQA. City and Toll dispute any such allegations and claims.
- E. In April 2007, based on a series of community workshops regarding the Project in which the City, Toll, Petitioners, and others participated, the *Point Richmond Shores Design Principles Report* (“Design Principles Report”) was published by the firm Moore, Iacofano, Goltsman, Inc. The Design Principles Report is attached to this Agreement as Exhibit A and incorporated herein by reference. On June 19, 2007, the City Council approved revised project plans that emerged from the community workshops and that differed from the preliminary plan in the EIR regarding the number of units (reduced to 258), building configuration, road circulation, and other matters. Petitioners acknowledge that the approved plans, attached hereto as Exhibit B, are consistent with the Design Principles Report: Point Richmond Shores General Plan Amendment, Rezoning & Vesting Tentative Map sheets C1.0 Cover Sheet revised 5/7/07, C2.0 Existing Topography and Site Conditions revised 2/9/06, C3.0 General Plan Amendment Exhibit revised 5/7/07, C4.0 Rezoning Exhibit revised 5/7/07, C5.0 Vesting Tentative Map-Site Plan revised 5/7/07, C6.0 Vesting Tentative Map - Parcelization

Exhibit revised 5/7/07, C7.0 Building Setback Exhibit revised 5/7/07, Landscape Enlargements Brickyard Cove Intersections dated 6/12/07, C8.0 Grading Plan revised 5/7/07, C9.0 Utility Plan revised 5/7/07, C10.0 Phasing Plan revised 5/7/07, A1.1 Conceptual Site Plan Podium Level dated 5/7/07, A1.2 Conceptual Site Plan Parking Level 5/7/07, A3.1 Elevation Study View Building dated 5/7/07, A3.2 Elevation Study Terrace Building (North) dated 5/7/07, A3.3 Elevation Study Terrace Building (East) dated 5/5/07 and A5.0 Conceptual Unit Plans dated 5/7/07.

F. The Parties wish to settle all controversies among them and enter into an agreement whereby, in consideration for certain actions related to the Project, Petitioners will dismiss their lawsuit with prejudice.

AGREEMENT

NOW, THEREFORE, as part of the Agreement to resolve all disputes between them, and in light of the mutual covenants and consideration set forth below, the Parties agree to the following terms of settlement:

1. Dismissal. Upon execution of this Agreement by all Parties, Petitioners shall prepare a request for dismissal of *Coalition of Concerned Citizens of Point Richmond and Beverly Galloway v. City of Richmond, et al*, Contra Costa Superior Court Case Number NO7-0006 (the "Litigation") the petition for writ of mandate with prejudice (the "Dismissal") which shall be filed with the Court in accordance with the provisions of Paragraph 6 below, the obligation to file and deliver the Dismissal being subject to the conditions stated in Paragraph 6.

2. Point Richmond Shores Project. The Project, as approved by the City Council on June 19, 2007, and consistent with the Design Principles Report, except as to the medians for the proposed Ferry Point Way referenced on page 28 of that Report, may proceed to funding, construction, and operation in accordance with applicable law and the Project land-use approvals issued by the City, subject to the terms and conditions of this Agreement. The City will, prior to the approval of any building permits for the Project, require the developer, where feasible, to:

- A. Develop a plan that (i) incorporates a shoreline road as the primary connection between Dornan Drive and Brickyard Cove Road, (ii) opens the shoreline road and Bay Trail to the public at or before the start of construction of the Project if feasible, or, if not feasible, to execute a bond in an amount adequate to complete any work on the road not completed prior to the start of construction on the Project;
- B. Close that segment of Brickyard Cove Road north of the Project site to through vehicular traffic once the shoreline road and Bay Trail are completed; provided, however, that Brickyard Cove Road may remain open to Bay Trail users, private residential access to the Project, parking

access for Project residents, emergency vehicles, and at all times during construction;

- C. Mass building structures at the north of the Project site, near the East Bay Regional Park District property, while still allowing for emergency access;
- D. Provide for garbage collection at the north of the Project site, and not adjacent to the Richmond Yacht Club; and
- E. Adhere to a maximum unit count of 258 units

If the City determines that one or more provisions in subparagraphs A through E are not feasible to implement, the City shall consult with Petitioners concerning mutually agreeable alternative requirements (“Alternative Requirements”). If these Parties are not able to mutually agree on Alternative Requirements, then either of these Parties may invoke the dispute resolution process established in Paragraph 5 of this Agreement. For the purposes of this Agreement, “feasible” shall have the same meaning as provided under the CEQA Guidelines, 14 Cal.Code Reg. § 15364.

3. Scope of Agreement. Nothing in this Agreement shall require Toll to construct, or the City to issue further permit approvals or permits for, the Project. Likewise, nothing in this Agreement shall apply to any future project proposed for the Property that is substantially different than the Project (“Different Project”). In the event that a Different Project is proposed, the City may, in its sole discretion, choose to incorporate any applicable principles from the Design Principles Report, but it shall have no obligation under this Agreement to do so. Petitioners retain all rights to challenge or contest any such Different Project. As part of any request for proposals (“RFP”) it issues to potential developers of the Property or of the nearby “PG&E” and “Seacliff Marina” sites, the City will include a copy of the Design Principles Report and indicate that the principles set forth in that report are desired community principles of design.

4. BNSF Property. The City will use best efforts to purchase, or secure an easement for, the approximately 47,380 sq ft real property shown on Exhibit C from the BNSF Railway Company and to incorporate such real property into the Project site for landscaping. Upon request from Petitioners, the City will provide up to three status reports during each twelve (12) month period on its efforts towards obtaining such easements or ownership.

5. Dispute Resolution. If the City determines that one or more provisions of Paragraph 2, subparagraphs A-E, are not feasible, and the City and Petitioners are not able to agree on mutually acceptable Alternative Requirements, then either City or Petitioners shall have the option of requesting informal non-binding mediation of the dispute. In that event, they shall meet and confer in an effort to select a mutually acceptable mediator. The mediation shall be administered by JAMS. The City and Petitioners shall share equally the costs for any such mediator, but shall otherwise each bear all of their own fees and costs for participating in any mediation. Any informal

mediation under this Paragraph shall not extend beyond a period of forty-five (45) days after the initial request for mediation without the consent of both the City and Petitioners. If Petitioners are unsatisfied with the result of this informal mediation, and the City takes final action to approve any Alternative Requirements, then Petitioners may seek judicial review of such final action. The sole grounds for any such judicial challenge shall be that City's determination that the applicable provision(s) of Paragraph 2 are not feasible is not supported by a preponderance of the evidence.

6. Petitioners' Fees and Costs. In settlement of all of Petitioners' fees and costs in pursuing this action, including Petitioners' legal fees and costs, City and Toll shall each pay to Petitioners the sum of forty-five thousand dollars (\$45,000.00). Sums payable hereunder shall be made payable to "Buchalter Nemer Client Trust Account", with a memo notation that it is for CCCPR and B. Galloway Settlement, and delivered to the Richmond City Attorney's Office within ten (10) days of the Effective Date. When the Richmond City Attorney's Office notifies Petitioners' counsel in writing that it holds a cashier's check or checks totaling \$90,000 for delivery to Petitioners through their counsel, conditioned solely upon delivery by Petitioners' counsel of a file endorsed copy of the filed Dismissal, Petitioners' counsel shall file the Dismissal and meet a representative of the City Attorney's office to exchange a file endorsed copy of the Dismissal for the checks.

7. Voluntary Agreement/Release by Petitioners. Petitioners represent and warrant that Petitioners fully understand and voluntarily accept each of the terms of this Agreement and their consequences. It is the intention of Petitioners, on behalf of Petitioners, and their heirs, successors, coalition members, assigns, or agents, to fully, finally, and forever settle and release City and Toll of all action or actions, cause or causes of action in law, equity, indemnity, or otherwise, suits, debts, liens, contracts, agreements, promises, liabilities, claims, demands, damages, losses, costs, or expenses, of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, including all existing rights and claims that Petitioners may now have or may have by reason of any matter, cause, or thing, including, but not limited to, all claims that were made or could have been made by Petitioners in the Litigation based upon acts, errors, omissions, events, claims, demands, or other occurrences that occurred prior to the Effective Date of this Agreement; provided, however, that this release does not release or discharge any claim, debt, or obligation expressly created by this Agreement. Petitioners are aware of and waive their rights under California Civil Code section 1542, reproduced below:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

8. Non-Opposition to Further Project Approvals. Petitioners, and their heirs, successors, coalition members, assigns, or agents, shall not file or support in any way, financially or otherwise, any action of any kind that opposes, challenges, or seeks to delay, hinder, or modify financing, construction, or operation of, or existing or further approvals for, the Project that is the subject of this Litigation or of any other project for the Property that meets all of the criteria and restrictions stated in Paragraph 2, provided that nothing in this Paragraph 8 shall be construed as preventing any action brought by Petitioners to enforce this Agreement. Petitioners retain the right to raise questions during the City's administrative approval process for any further Project approvals concerning their compliance with this Agreement and to propose to the City mitigation measures to meet conditions or impacts that may arise in the future but that were not disclosed in the Project EIR or the process leading up to the City's certification of the Project EIR.

9. Recordation. Within 15 days of receiving a file-endorsed copy of the dismissal of the Litigation, the City shall submit for recordation with the Contra Costa County Recorder's Office a notarized Memorandum of this Agreement, which contains a legal description of the Property.

10. Notices. Any notice, demand, or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be sent to each Party at the following addresses. Notices may be given either by hand delivery, overnight courier, registered or certified mail, or facsimile if followed by a copy sent by hand delivery, courier or regular mail. Each Party may change its address from time to time by written notice to all the other Parties in accordance with this Paragraph.

To Petitioners:

Coalition of Concerned Citizens
of Point Richmond
1437 Sandpiper Spit
Point Richmond, California 94081
Attn: Beverly Galloway

Beverly Galloway
1437 Sandpiper Spit
Point Richmond, California 94081

To City of Richmond:

City of Richmond
450 Civic Center Plaza
Richmond, California 94804
Attn: City Manager

With copy to:

City of Richmond
450 Civic Center Plaza
Richmond, California 94804
Attn: City Attorney

To Toll Bros., Inc:

Toll Bros., Inc.
725 Town & Country Road
Suite 500
Orange, California 92868
Attn: Tim Hoban

With copy to:

Toll Bros., Inc.
100 Park Place
Suite 140
San Ramon, California 94583
Attn: Division President

11. Effect of the Agreement/No Third Party Beneficiaries. This Agreement is binding upon and shall inure to the benefit of the Parties, their respective agents, members, attorneys, and representatives, assigns, and successors-in-interest, to the extent permitted by law. The Parties agree that there are no third party beneficiaries to this Agreement.

12. Authority. Each person signing this Agreement on behalf of a Party represents and warrants that said person has full and complete authority from that Party to bind said Party to perform and comply with each and every term, obligation, condition, and covenant set forth in this Agreement.

13. Governing Laws. This Agreement shall be construed and governed in accordance with the laws of the State of California. Any litigation arising under this Agreement shall be prosecuted in the Superior Court of California, County of Contra Costa, and all Parties waive their respective rights to change venue pursuant to Section 394 of the Code of Civil Procedure.

14. Jointly Drafted. This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties.

15. Partial Invalidity. To the fullest extent they may effectively do so under applicable law, the Parties waive any provision of law which renders any provision of this Agreement invalid, illegal or unenforceable in any respect. Except for the releases set forth in paragraph 5, if any provision of this Agreement is held to be invalid, illegal,

or unenforceable, and the waiver in the immediately preceding sentence is ineffective to eliminate such invalidity, illegality, or unenforceability, such invalidity or illegality or unenforceability shall not invalidate the whole of this Agreement but, rather, the Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced to carry out the terms of the Agreement in a reasonable manner.

16. Further Action. The Parties agree to execute such other documents and take such other action as may be reasonably necessary to perform this Agreement.

17. Costs and Attorneys' Fees. The Parties each agree that this Agreement releases all claims for interest, penalties, costs, expenses, and attorneys' fees incurred in the Litigation, or any arising out of the City's approval of the Project.

18. Advice and Authority of Counsel. The Parties warrant and represent that in executing this Agreement they have relied on legal advice from the attorney of their choice, that the terms of this Agreement and its consequences have been completely read and explained to them by their respective attorneys, and that they fully understand the terms of this Agreement.

19. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any modification of or amendment to this Agreement will be of no force and effect unless it is in writing and signed by all Parties.

20. Agreement is Defense to Suit. This Agreement may be pleaded by any Party hereto as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted by any other Party bound by this Agreement in contravention or breach of this Agreement.

21. No Admission of Liability. The Parties' agreement to the terms of this Agreement and the obligations set forth herein, shall not be deemed an admission as to the existence and extent of liability concerning any of the underlying claims in the Litigation. Any such liability is expressly denied.

22. No Waiver. No failure or delay on the part of any Party in the exercise of any power or right hereunder shall operate as a waiver thereof. No single or partial exercise of any power or right hereunder shall operate as a waiver of such power or right or of any other power or right. Any waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach hereunder.

23. Covenants Not to Sue. The Parties covenant and agree that, except as required to enforce the Agreement, they will never, individually or with any other person

or entity, or through any agent or member, commence or prosecute against each other any action or proceeding for any claim or matter which is settled and released by this Agreement.

24. Headings. Paragraph headings used in this Agreement are for the convenience of the Parties only and shall not be considered in interpreting or construing this Agreement.

25. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one and the same instrument.

26. Attorneys' Fees. If any litigation, including but not limited to litigation to enforce the terms or conditions of this Agreement is instituted by one Party or Parties against the other Party or Parties, the prevailing Party or prevailing Parties in the action or proceeding shall be entitled to receive from the non-prevailing Party or non-prevailing Parties, who have actively participated in such litigation, the reasonable attorney's fees and costs (including expert witness fees and costs) incurred in the litigation by the prevailing Party or prevailing Parties. The prevailing Party's right to recover attorney's fees and costs is conditioned on the prevailing Party's compliance with the dispute resolution procedures set forth above in Paragraph 5.

IN WITNESS THEREOF, each Party has executed this Agreement as of the date set forth beside each signature below.

**COALITION OF CONCERNED CITIZENS
OF POINT RICHMOND**

By: _____ Date: _____
Name: _____
Its: _____

BEVERLY GALLOWAY, an individual

By: _____ Date: _____
Beverly Galloway

Approved as to Form:

By: _____ Date: _____
Howard Ellman
Counsel for Coalition of Concerned Citizens
of Point Richmond and Beverly Galloway

CITY OF RICHMOND, a California municipal corporation and charter city

By: _____ Date: _____

Bill Lindsay

Its: City Manager

CITY COUNCIL OF THE CITY OF RICHMOND

By: _____ Date: _____

Bill Lindsay

Its: City Manager

RICHMOND COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic

By: _____ Date: _____

Steve Duran

Its: Executive Director

Approved as to Form:

By: _____ Date: _____

Randy Riddle

Its: City/Agency Attorney

TOLL BROS. INC., a Pennsylvania corporation

By: _____ Date: _____

Its: _____

Approved as to Form:

By: _____ Date: _____

Tim Hoban

Counsel for Toll Bros. Inc.