

RESOLUTION NO. 2324-23

RESOLUTION OF THE BOARD OF TRUSTEES OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT APPROVING A FOURTH AMENDMENT TO THE OPTION TO LEASE REAL PROPERTY WITH TOLL BROS., INC., AND APPROVING A DEVELOPMENT AGREEMENT WITH TOLL BROS., INC. AND THE CITY OF DANA POINT

(“SOUTH BUS YARD PROPERTY”)

WHEREAS, the Capistrano Unified School District (“District”) owns an approximately 5.51 acre property located at 26126 Victoria Blvd, Dana Point, CA 92624 (“Property”); and

WHEREAS, following the request for proposals and waiver process applicable to the Property, the District sought and received various proposals from interested parties to lease the Property, and the District’s Board provided authorization and direction for the District to enter into an “Option to Lease Real Property” agreement with Toll Bros., Inc. (“Toll Bros.”) dated January 15, 2019; and

WHEREAS, the District and Toll Bros. then agreed to amend the Option to Lease Real Property as follows: 1) a First Amendment to the Original Option Agreement dated July 27, 2019; 2) a Second Amendment to Original Option Agreement dated December 17, 2020; and 3) and a Third Amendment to the Original Option Agreement dated December 14, 2022; and accordingly, the Option to Lease Real Property, together with amendments, constitute the current Option to Lease Real Property; and

WHEREAS, the Option to Lease Real Property grants Toll Bros. an option term during which Toll Bros. can review the Property and seek entitlements from the City of Dana Point (“City”) to determine whether or not it will proceed with a proposed 99-year term ground lease in exchange for lease payments to the District (the “Option Term”); and

WHEREAS, the Option to Lease Real Property also grants Toll Bros. the right to extend the Option Term by making specific monetary extension payments, and releasing portions of its deposit based on trigger events; and

WHEREAS, Toll Bros. recently made its “Sixth Option Term Extension Payment,” thereby extending the Option Term to April 17, 2024; and

WHEREAS, Toll Bros. has requested modifications to the extension payment structure of the Option to Lease Real Property’s Option Term by way of a proposed Fourth Amendment to the Option to Lease Real Property, in order to allow more time for Toll Bros. to review the Property and obtain the necessary entitlements; and

WHEREAS, Toll Bros. has also requested modifications to the Lease Agreement rent amount by way of the same proposed Fourth Amendment to the Option to Lease Real Property, which would reduce the minimum Annual Rent for Year 5 of the Term of the Lease Agreement to no less than Two Million One Hundred Thousand Dollars (\$2,100,000); and

WHEREAS, District staff, in consultation with legal counsel, have prepared a Fourth Amendment to the Option to Lease Real Property establishing the terms set forth above, which Fourth Amendment is attached hereto as attached hereto as Exhibit “A” (the “Fourth Amendment”); and

WHEREAS, additionally, the City of Dana Point has requested that the District approve a Development Agreement whereby the District agrees to be a party to the Development Agreement related to Toll Bros.’ proposed development of the Property, and which Development Agreement would clarify the District’s use of the ground lease revenue derived from the Lease Agreement between the District and Toll Bros; and

WHEREAS, District staff, in consultation with legal counsel, have reviewed and negotiated with the respective parties for a suitable Development Agreement establishing the District’s use of such ground lease revenue, which Development Agreement is attached hereto as Exhibit “B” (the “Development Agreement”).

NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT DOES HEREBY FIND, RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. All of the recitals herein contained are true and correct.

Section 2. The Board hereby approves the Fourth Amendment in the form attached hereto as Exhibit “A.” The Superintendent, or his designee, is hereby authorized to finalize and execute the Fourth Amendment, subject to any non-substantive changes as deemed appropriate by District staff in consultation with legal counsel, subject to ratification of the Board, as necessary.

Section 3. The Board hereby approves the Development Agreement in the form attached hereto as Exhibit “B.” The Superintendent, or his designee, is hereby authorized to finalize and execute the Development Agreement, subject to any non-substantive changes as deemed appropriate by District staff in consultation with legal counsel, subject to ratification of the Board, as necessary.

Section 4. The Superintendent or his designee is hereby authorized and directed, for and in the name of and on behalf of the District, to take any further action necessary to effectuate this Resolution.

Section 5. This Resolution shall take effect upon adoption.

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ADOPTED, SIGNED AND APPROVED this 17th day of April, 2024.



Krista Castellanos
President of the Board of Trustees
of the Capistrano Unified School District

I, Amy Hanacek, Clerk of the Board of Trustees of Capistrano Unified School District, do hereby certify that the foregoing Resolution was adopted by the Board of Trustees of said District at a meeting held on the 17th day of April, 2024, and that it was so adopted by the following vote:

AYES: 6

NOES: 0

ABSTAIN: 0

ABSENT: 1

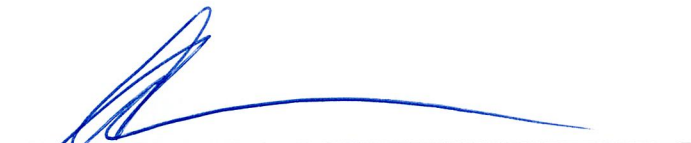

Amy Hanacek
Clerk of the Board of Trustees
of the Capistrano Unified School District

Exhibit "A"

FOURTH AMENDMENT TO
OPTION TO LEASE REAL PROPERTY

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This Fourth Amendment to Option to Lease Real Property ("Fourth Amendment") is made this 17th day of April, 2024 (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").

R E C I T A L S:

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 as amended by that certain Second Amendment to Option to Lease Real Property dated December 17, 2020 (the "Second Amendment," and as amended by that certain Third Amendment to Option to Lease Real Property dated December 14, 2022 (the "Third Amendment," and together with the Original Agreement, the First Amendment, and the Second Amendment, hereinafter 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 further 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 Fourth Amendment but not otherwise defined in this Fourth Amendment shall have the meaning ascribed to it in the Agreement.
2. Option Term. The sixth (6th) Option Term is currently set to expire on April 17, 2024 ("Current sixth (6th) Option Expiration).
3. Option Term Extensions. The Parties agree that the sixth (6th) and seventh (7th) Option Terms described in Section 1.2 of the Agreement shall be modified as follows:
 - a. The sixth (6th) Option Term shall be extended for a period of ninety (90) days from the Current sixth (6th) Option Expiration, and therefore, as of the Effective Date of this Fourth Amendment, the sixth (6th) Option Term shall expire on July 16, 2024.
 - b. The seventh (7th) Option Term Extension shall be for a period of Three Hundred Sixty (360) days, and therefore, will extend the Option Term until July 11, 2025 upon Optionee's deposit of Two Hundred Fifty Thousand Dollars (\$250,000).

4. Application of Deposit Amount. In exchange for Optionor granting the additional time for the Option Term as set forth above, Optionee agrees that the Three Hundred Thousand Dollars (\$300,000) of Deposit funds originally intended to be “applied to the Base Rent first coming due in Year 2” as set forth in Section 1.5(d) of the Agreement, and similarly intended to be credited “against Annual Rent due in Year 2, which credit shall be applied against the first monthly installments of Annual Rent due during Year 2” as set forth in Section 2.1(a) of the Ground Lease, shall no longer be so applied or credited. Instead, Optionee agrees that said Three Hundred Thousand Dollars (\$300,000) of Deposit funds shall, immediately as of the Effective Date of this Fourth Amendment, be rendered non-applicable to Annual Rent as set forth herein, and remain non-refundable to Optionee.

5. Rent pursuant to the Ground Lease. Optionee intends to develop a project on the Property that will remain within the following parameters: A two (2) to five (5) story apartment complex, not to exceed three hundred six (306) total units, consisting of no more than 260 market rate units and no less than forty-six (46) affordable units, with an attached six-story (seven level) parking structure, with no less than one-third (1/3) of the Affordable Units shall be rented as Very Low Income Housing and no less than one-third (1/3) of the Affordable Units shall be rented as Low Income Housing (“Intended Final Project Unit Count”). Provided that Final Approval (as defined by Sections 3.1 and 4.2 of the Agreement) for the project consists of this Intended Final Project Unit Count, the parties agree Section 2.1(c) of the Ground Lease shall hereby be deleted in its entirety and replaced with: “The Annual Rent during Year 5 of the Term shall be TWO MILLION ONE HUNDRED THOUSAND DOLLARS (\$2,100,000).” Should Optionee’s project’s Final Approval include more than the Intended Final Project Unit Count, specifically, more than the three hundred six (306) total units, more than 260 market rate units, more than forty-six (46) affordable units, or less than the one-third (1/3) Very Low Income Housing or Low Income Housing units assumed in the Intended Final Project Unit Count, then Optionee shall have the option to either: 1) Build its project no greater than the Intended Final Project Unit Count; or 2) Propose to build greater than the Intended Final Project Unit Count and negotiate with Optionor a mutually acceptable modified minimum Annual Rent to be established for Year 5 of the Term of the Lease Agreement as described above; provided, however, that in the event the Parties fail to reach a mutually acceptable modified Annual Rent as described herein and Optionee still elects to build its project greater than the Intended Final Project Unit Count, this Fourth Amendment, Section 5 will immediately be rendered moot and the minimum Annual Rent established for Year 5 of the Term of the Lease Agreement as set forth in Section 2.1(c) of the Ground Lease shall revert back to the language which existed prior to this Fourth Amendment.

6. Limitations on Future Unit Count. The Parties agreed that each of the Parties, and their respective successors and assigns, will not (i) seek a density bonus or other incentive in connection with the development of the Property beyond the maximum unit counts specified in the Intended Final Project Unit Count, (ii) apply for or allow the addition of any accessory dwelling units on the Property, (iii) apply for or allow an urban lot split on the Property, or (iv) exercise any right to augment the density or intensity of the Project on the Property beyond the maximum unit counts specified in the Intended Final Project Unit Count.

7. New Ground Lease. Exhibit “B” to the Agreement (the Ground Lease) shall be revised to reflect the amended terms set forth in Sections 4, 5, and 6 herein.

8. Terms, Conflict. Except as otherwise expressly modified in this Fourth 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 Fourth Amendment, the terms and provisions of this Fourth Amendment shall govern and control.

9. Counterparts. This Fourth 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 Fourth Amendment.

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SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties have caused this Fourth 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

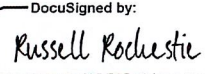
By: 

Name: Clark Hampton


Title: Deputy Superintendent

OPTIONEE:

TOLL BROS., INC.,
a Pennsylvania corporation

By: 
Name: Russell R. Rochestie
Title: Sr. Vice President

Approved as to form:



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

Exhibit "B"

DEVELOPMENT AGREEMENT