



This Stipulation of Settlement dated October 25, 2010 (the “Stipulation”), is made and entered into pursuant to Rule 23 of the Federal Rules of Civil Procedure and contains the terms of a settlement (the “Settlement”) by and among the following Settling Parties to the above-captioned litigation (the “Litigation”): (i) Lead Plaintiffs The City of Hialeah Employees’ Retirement System and Laborers Pension Trust Fund for Northern California (on behalf of themselves and each of the Settlement Class Members, as defined below); and (ii) Defendants Toll Brothers, Inc. (“Toll Brothers” or the “Company”), Bruce E. Toll, Robert I. Toll, Zvi Barzilay, Robert S. Blank, Richard Braemer, Paul E. Shapiro, Carl B. Marbach and Joseph R. Sicree (collectively, “Defendants”), by and through their respective undersigned counsel of record in the above-captioned matter.<sup>1</sup>

This Stipulation is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims against the Released Persons, upon and subject to the terms and conditions hereof and subject to the approval of the Court.

## **I. THE LITIGATION**

In April 2007, a complaint was filed in the United States District Court for the Eastern District of Pennsylvania (the “Court”), seeking to bring claims against Defendants for alleged violations of the Securities Exchange Act of 1934 on behalf of all purchasers of Toll Brothers common stock between December 9, 2004 and November 8, 2005, inclusive. By Order dated June 29, 2007, the Court appointed the Lead Plaintiffs, and approved Coughlin Stoia Geller Rudman & Robbins LLP and Berger & Montague, P.C. as Lead Counsel.<sup>2</sup>

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<sup>1</sup> Joel H. Rassman was dismissed without prejudice on October 6, 2010 following his death. His dismissal without prejudice will convert to a dismissal with prejudice upon final approval by the Court of the Settlement.

<sup>2</sup> On March 31, 2010, Coughlin Stoia Geller Rudman & Robbins LLP changed its name to Robbins Geller Rudman & Dowd LLP.

On August 13, 2007, Lead Plaintiffs filed an amended complaint (the "Complaint") against Defendants contending, among other things, that Defendants made or were responsible for alleged misstatements or omissions during the Settlement Class Period relating to Toll Brothers.

On October 1, 2007, Defendants moved to dismiss the Complaint. Lead Plaintiffs opposed this motion on November 19, 2007. On September 2, 2008, the Court denied Defendants' motion to dismiss. On October 29, 2008, Defendants answered the Complaint and moved for judgment on the pleadings, for reconsideration, and/or for certification for interlocutory appeal pursuant to 28 U.S.C. §1292(b). On September 21, 2009, the Court declined to grant Defendants' motion for judgment on the pleadings or for reconsideration, but agreed to certify the case for immediate interlocutory appeal to the United States Court of Appeals for the Third Circuit. On November 3, 2009, the Third Circuit denied Defendants' petition to appeal.

The Settling Parties have engaged in class certification briefing and discovery. Both Lead Plaintiffs and their investment advisors during the Settlement Class Period, as well as Lead Plaintiffs' economics expert, have been deposed by Defendants. On May 14, 2010, Lead Plaintiffs filed their opening class certification brief. Defendants' opposition brief was filed on June 15, 2010. The Settling Parties reached an agreement-in-principle to settle the Litigation before Lead Plaintiffs' reply brief in support of class certification was due.

In an effort to resolve the Litigation, the Settling Parties participated in a mediation session before the Honorable Layn R. Phillips (Ret.). Following that mediation session, the Settling Parties reached an agreement-in-principle to settle the Litigation on the terms set forth herein.

## **II. CLAIMS OF LEAD PLAINTIFFS AND BENEFITS OF SETTLEMENT**

Lead Counsel have conducted an investigation relating to the claims and the underlying events and transactions alleged in the Complaint. Lead Plaintiffs believe that the claims asserted in the Litigation have merit. However, Lead Plaintiffs and Lead Counsel recognize the expense,

length, and complexity of continued proceedings necessary to prosecute the Litigation against Defendants through trial and appeal. Lead Plaintiffs and Lead Counsel also have taken into account the uncertain outcome and the risk of litigation, especially in complex actions such as the Litigation, as well as the difficulties and delays inherent in such litigation. Lead Counsel also are mindful of the inherent problems of proof of, and possible defenses to, the allegations and claims asserted in the Litigation.

Based upon their investigation, Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate to Lead Plaintiffs and the Settlement Class, and in their best interests. Lead Counsel and Lead Plaintiffs believe that the Settlement set forth in this Stipulation confers substantial benefits upon the Settlement Class and each of the Settlement Class Members, and have agreed to settle the claims raised in the Litigation pursuant to the terms and provisions of this Stipulation, after considering: (a) the benefits that Lead Plaintiffs and the Members of the Settlement Class will receive from the settlement of the Litigation; (b) the attendant risks of continuing litigation; and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

### **III. NO ADMISSION OF WRONGDOING BY DEFENDANTS**

Defendants deny that they have committed or intended to commit any wrongdoing or violations of law arising out of any of the conduct, statements, acts, or omissions alleged in the Litigation, and maintain that their conduct was at all times proper and in compliance with applicable provisions of law. Defendants further deny that they made any material misstatements or omissions in Toll Brothers' public filings, press releases, or other public statements, that Lead Plaintiffs or the Settlement Class have suffered any damages, or that Lead Plaintiffs or the Settlement Class were harmed by any conduct alleged in the Litigation or that could have been alleged therein. Each of the

Individual Defendants further asserts that, at all relevant times, they acted in good faith and in a manner they reasonably believed to be in the best interests of the Company and its shareholders.

Defendants, however, recognize the uncertainty and the risk inherent in any litigation, especially complex securities litigation, and the difficulties and substantial burdens, expense, and length of time that may be necessary to defend this proceeding through the conclusion of discovery, summary judgment motions, trial, post-trial motions, and appeals. Defendants wish to eliminate the uncertainty, risk, burden and expense of further litigation, and to permit the operation of the Company's business without further distraction and diversion of the Company's executive personnel with respect to the Litigation and related matters. Defendants have therefore determined to settle the Litigation on the terms and conditions set forth in this Stipulation and to put the Released Claims to rest finally and forever, without in any way acknowledging any wrongdoing, fault, liability, or damages to Lead Plaintiffs and the Settlement Class.

#### **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Lead Plaintiffs (on behalf of themselves and each of the Settlement Class Members) and Defendants, by and through their respective undersigned counsel or attorneys of record, that, subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, all Released Claims shall be finally, fully, and forever compromised, settled, and released and the Litigation shall be dismissed with prejudice as to all Released Persons, upon and subject to the following terms and conditions:

##### **1. Definitions**

As used in this Stipulation, the following terms have the meanings specified below:

1.1 "Action" or "Litigation" means the putative shareholder class action captioned *The City of Hialeah Employees' Retirement System and Laborers Pension Trust Fund for Northern*

*California v. Toll Brothers, Inc., et al.*, Civ. Action No. 07-1513 filed in the United States District Court for the Eastern District of Pennsylvania.

1.2 “Authorized Claimant” means any Settlement Class Member whose claim for recovery has been allowed pursuant to the terms of this Stipulation.

1.3 “Claims Administrator” means The Garden City Group, Inc.

1.4 “Defendants” means Toll Brothers and the Individual Defendants.

1.5 “Defendants’ Affiliates” means any and all of Defendants’ respective present, former and future officers, directors, employees, managers, members, managing members, fiduciaries, managing directors, agents, managing agents, attorneys, legal counsel, advisors, consultants, insurers, co-insurers, reinsurers, accountants, auditors, trustees, underwriters, financial advisors, commercial bank lenders, investment bankers, associates, representatives, affiliates, parents, subsidiaries, partnerships, member firms, partners, joint ventures, limited liability companies, corporations, divisions, shareholders, principals, trusts, foundations, family members, beneficiaries, distributors, heirs, executors, personal representatives, estates, administrators, predecessors, successors and assigns, and their respective former, current and future direct or indirect equity holders, controlling persons, stockholders, general or limited partners or partnerships, or assignees and including, but not limited to, any directors, officers, agents, partners, members, managers, or employees of any of the foregoing.

1.6 “Effective Date” means the date upon which the Settlement contemplated by this Stipulation shall become effective, as set forth in ¶9.1 below.

1.7 “Escrow Agent” means Robbins Geller Rudman & Dowd LLP or its successor(s).

1.8 “Final” means: (i) the date of final affirmance on an appeal of the Final Judgment and Order, the expiration of the time for a petition for or a denial of a writ of certiorari to review the Final Judgment and Order and, if certiorari is granted, the date of final affirmance of the Final

Judgment and Order following review pursuant to that grant; or (ii) the date of final dismissal of any appeal from the Final Judgment and Order or the final dismissal of any proceeding on certiorari to review the Final Judgment and Order; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Court's Final Judgment and Order. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any plan of allocation and/or application for attorneys' fees and expenses, shall not in any way delay or preclude the Final Judgment and Order from becoming Final.

1.9 "Final Judgment and Order" means the proposed order to be entered by the Court approving the Settlement, substantially in the form attached hereto as Exhibit B.

1.10 "Individual Defendants" means Bruce E. Toll, Robert I. Toll, Zvi Barzilay, Robert S. Blank, Richard Braemer, Paul E. Shapiro, Carl B. Marbach and Joseph R. Sicree.

1.11 "Lead Counsel" means Robbins Geller Rudman & Dowd LLP (formerly known as Coughlin Stoia Geller Rudman & Robbins LLP), or its successor(s) and Berger & Montague, P.C. or its successor(s).

1.12 "Lead Plaintiffs" means The City of Hialeah Employees' Retirement System and Laborers Pension Trust Fund for Northern California.

1.13 "Notice" means the Notice of Pendency and Proposed Settlement of Class Action and Motion for Award of Attorneys' Fees and Expenses, which is to be sent to all Settlement Class Members, substantially in the form attached hereto as Exhibit A-1, or as modified pursuant to agreement of the Settling Parties or order of the Court.

1.14 "Person" means any individual, corporation, limited liability company, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political

subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.15 “Preliminary Approval Order” means the proposed order to be entered by the Court preliminarily approving the Settlement and directing notice thereof to the Settlement Class, substantially in the form of Exhibit A attached hereto.

1.16 “Proof of Claim” means the proposed Proof of Claim and Release form to be submitted by Settlement Class Members, substantially in the form attached hereto as Exhibit A-2.

1.17 “Released Claims” means all of the Released Plaintiffs’ Claims and all of the Released Defendants’ Claims.

1.18 “Released Defendants’ Claims” is defined in ¶10.3 of this Stipulation.

1.19 “Released Persons” is defined in ¶10.1 of this Stipulation.

1.20 “Released Plaintiffs’ Claims” is defined in ¶10.2 of this Stipulation.

1.21 “Settlement” means the settlement embodied in this Stipulation.

1.22 “Settlement Class,” “Settlement Class Members” or “Members of the Settlement Class” mean all Persons who purchased or acquired Toll Brothers common stock during the period beginning December 9, 2004 through and including November 8, 2005. Excluded from the Settlement Class are: Defendants, and members of the families of each of the Individual Defendants; any parent, subsidiary, affiliate, partner, officer, executive or director of Toll Brothers during the Settlement Class Period in their capacity as such; any entity in which any such excluded Person has a controlling interest or is a beneficiary and the legal representatives, heirs, successors and assigns of any such excluded party. Also excluded from the Settlement Class are any Settlement Class Members who timely and validly exclude themselves from the Settlement Class in accordance with the requirements set forth in the Notice.

1.23 “Settlement Class Period” means the period between December 9, 2004 and November 8, 2005, inclusive.

1.24 “Settlement Hearing” means the final hearing to be held by the Court to determine whether to approve the settlement of the Litigation as set forth herein.

1.25 “Settling Parties” means, collectively, each of the Defendants and Lead Plaintiffs on behalf of themselves and each of the Settlement Class Members.

1.26 “Summary Notice” means the Summary Notice to be published in *Investor’s Business Daily*, substantially in the form attached hereto as Exhibit A-3, or as modified pursuant to agreement of the Settling Parties or order of the Court.

1.27 “Unknown Claims” means any Released Plaintiffs’ Claim which the Lead Plaintiffs or any Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons, which, if known by him, her or it, would or might have affected his, her or its settlement with and release of the Released Persons, or would or might have affected his, her or its decision not to object to this Settlement; and any Released Defendants’ Claim which any Defendant does not know or suspect to exist in his or its favor at the time of the release of the Released Persons, which, if known by him or it, would or might have affected his or its decision(s) with respect to the Settlement. Lead Plaintiffs or the Settlement Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Plaintiffs’ Claims, but Lead Plaintiffs and the Settlement Class Members shall expressly, upon the Effective Date, be deemed to have, and by operation of the Final Judgment and Order shall have, fully, finally, and forever settled and released any and all Released Plaintiffs’ Claims (including Unknown Claims, as defined herein), known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity

now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Likewise, Defendants may hereafter discover facts in addition to or different from those which he or it now knows or believes to be true with respect to the subject matter of the Released Defendants' Claims, but Defendants shall expressly waive, and by operation of the Final Judgment and Order shall have fully, finally, and forever settled and released any and all Released Defendants' Claims (including Unknown Claims, as defined herein), known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiffs and Defendants acknowledge, and the Settlement Class Members by operation of law shall be deemed by operation of the Final Judgment and Order to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Plaintiffs' Claims and Released Defendants' Claims was separately bargained for and was a key element of the Settlement, of which this release is a material and essential part, and expressly waive the benefits of (i) the provisions of §1542 of the California Civil Code, which provides that:

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,

and (ii) any and all provisions or rights conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542.

**2. Scope and Effect of Settlement**

2.1 The satisfaction of the obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Litigation and any and all Released Claims.

2.2 Upon the Effective Date, Lead Plaintiffs and Members of the Settlement Class, on behalf of themselves and each of their heirs, executors, administrators, successors, and assigns shall, with respect to each and every Released Plaintiffs' Claim, release and fully, finally, and forever discharge, and shall forever be enjoined from prosecuting, any Released Plaintiffs' Claim against any of the Released Persons.

2.3 Upon the Effective Date, each of the Released Persons, on behalf of themselves and their heirs, executors, administrators, successors, and assigns, shall release and fully, finally, and forever discharge each and every one of the Released Defendants' Claims, and shall forever be enjoined from prosecuting the Released Defendants' Claims.

**3. The Settlement Consideration**

**a. The Settlement Fund**

3.1 In full settlement of the Released Plaintiffs' Claims, within twenty (20) business days after the later of (i) the Court's entering of the Preliminary Approval Order, and (ii) Defendants' receipt of all required payment information from Lead Counsel, including wire instructions and a completed Form W-9, Defendants shall cause to be paid the sum of Twenty-Five Million Dollars (\$25,000,000) in cash (the "Settlement Amount") into a separate escrow account maintained by the Escrow Agent. The Settlement Amount plus any income earned thereon shall be the "Settlement Fund."

3.2 The Settlement Fund shall be applied as follows:

- (a) to pay the Notice and Administration Costs referred to in ¶5.2 hereof;
- (b) to pay the attorneys' fee and expense award referred to in ¶¶6.1-6.4 hereof;

(c) to pay the Taxes and Tax Expenses described in ¶3.7 hereof; and

(d) to distribute the balance of the Settlement Fund (the “Net Settlement Fund”)

to Authorized Claimants as provided in ¶¶7.1-7.5 hereof.

3.3 Other than cooperating as necessary with respect to the “relation-back election” as set out in ¶3.7 hereof, the Released Persons shall have no responsibility for maintaining or investing the Settlement Amount or the Settlement Fund, for the establishment or maintenance of the escrow account, for the payment of Taxes or Tax Expenses, or for the distribution of the Settlement Fund or the administration of the Settlement. The Released Persons shall have no further or other liability or obligations to Lead Plaintiffs, Lead Counsel, or any Member of the Settlement Class with respect to the Released Claims except as expressly stated in this Stipulation.

**b. The Escrow Agent**

3.4 The Escrow Agent shall invest any funds in the Settlement Fund in excess of One Hundred Thousand Dollars (\$100,000) in instruments directly or indirectly backed by the full faith and credit of the United States Government or fully insured by the United States Government, or any agency thereof, and shall reinvest the proceeds of those instruments as they mature in similar instruments at their then-current market rates. Any funds held by the Escrow Agent in escrow hereunder in an amount of less than One Hundred Thousand Dollars (\$100,000) shall be held in an interest-bearing bank account insured by the FDIC. The Settlement Fund shall bear all risks related to the investment of the Settlement Fund invested in accordance with the investment guidelines set forth in this paragraph and shall indemnify the Released Persons and hold them harmless from and against any losses related to investment of the Settlement Fund.

3.5 All funds held by the Escrow Agent shall be deemed and considered to be in the custody of the Court, and shall remain subject to the jurisdiction of the Court until such time as such

funds shall be distributed or returned to the Person(s) paying the same pursuant to this Stipulation and/or further order(s) of the Court.

3.6 The Escrow Agent shall not disburse the Settlement Fund except as provided in this Stipulation, by an order of the Court, or with the prior written agreement of counsel for Defendants and Lead Counsel.

**c. Taxes and Tax Expenses**

3.7 (a) The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treasury Reg. §1.468B-2(k)(1). In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provision of this ¶3.7, including the “relation-back election” (as defined in Treasury Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall timely and properly file, or cause to be timely and properly filed, all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Reg. §1.468B-2(k)). Such returns (as well as the election described in ¶3.7(a) hereof) shall be consistent with this ¶3.7 and in all events shall reflect that all Taxes (including any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶3.7(c) hereof.

(c) All (i) Taxes (including any estimated Taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriment that

may be imposed upon the Released Persons with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”), and (ii) expenses and costs incurred in connection with the taxation of the Settlement Fund and operation and implementation of this ¶3.7 (including, without limitation, expenses of tax attorneys and/or accountants) and mailing and distribution costs and expenses related to filing (or failing to file) the returns described in this ¶3.7 (“Tax Expenses”) shall be paid out of the Settlement Fund. Defendants and their Released Persons shall have no liability or responsibility for the payment of any Taxes or Tax Expenses. From the Settlement Fund, the Escrow Agent shall indemnify and hold each of the Defendants and the Released Persons harmless for any Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund, and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treasury Reg. §1.468B-2(1)(2)); neither Defendants nor the Released Persons are responsible nor shall they have any liability therefore. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to execute appropriate documentation as reasonably necessary to carry out the provisions of this ¶3.7.

(d) For the purpose of this ¶3.7, references to the Settlement Fund shall include both the Settlement Fund and the Notice and Administration Fund and shall also include any earnings thereon.

**d. Termination of Settlement**

3.8 In the event that the Stipulation is not approved, or is terminated, cancelled, or fails to become effective for any reason, the Settling Parties shall be deemed to have reverted to their respective status in the Litigation as of the date one day prior to the execution of the Settlement Term Sheet dated July 12, 2010. In such event, the terms and provisions of this Stipulation, with the exception of ¶¶3.4-3.8 and 11.1-11.2 hereof, shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation, and any judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*. The Settlement Fund (including accrued interest), plus any amount then remaining in the Notice and Administration Fund (including accrued interest), less any Taxes or Tax Expenses actually incurred or due and owing in connection with the Settlement, shall be refunded directly to such Person(s) that paid the Settlement Amount, *pro rata* in accordance with the amounts paid by such Person(s).

**4. Preliminary Court Approval, Notice to Settlement Class Members, and Settlement Hearing**

4.1 As soon as practicable following execution of the Stipulation, Lead Plaintiffs and Defendants jointly shall submit the Stipulation, together with its Exhibits, to the Court and shall apply for entry of a Preliminary Approval Order, substantially in the form of Exhibit A hereto, requesting, *inter alia*, the preliminary approval of the Settlement set forth in the Stipulation, and approval for the mailing of the Notice and the Proof of Claim and publication of the Summary Notice.

4.2 Lead Plaintiffs and Defendants jointly shall request that the Court hold a hearing (the “Settlement Hearing”), after the Notice and the Proof of Claim are mailed and the Summary Notice is published, to consider and determine whether to approve the Settlement as fair, reasonable, and adequate, and whether the Final Judgment and Order, substantially in the form of Exhibit B attached hereto, should be entered approving the Settlement as set forth herein and dismissing the Litigation

with prejudice. At or after the Settlement Hearing, Lead Counsel will also request that the Court approve the proposed Plan of Allocation and the Fee and Expense Application, as defined below.

**5. Administration of the Settlement Fund**

5.1 The Claims Administrator shall administer the Settlement subject to the jurisdiction of the Court. The Claims Administrator, subject to such supervision and direction of the Court and/or Lead Counsel as may be necessary or as circumstances may require, shall administer the Settlement, including administering and calculating the claims submitted by Settlement Class Members, and shall oversee distribution of the Net Settlement Fund to Authorized Claimants. Toll Brothers, through its counsel, shall provide, without charge to Lead Plaintiffs or the Settlement Class, information from Toll Brothers' stock transfer records or Toll Brothers' stock transfer agent's records concerning the names and addresses of Settlement Class Members as soon as practicable following the execution of this Stipulation.

5.2 All costs and expenses of notice to Settlement Class Members, and administration of the Settlement Fund, escrow fees, taxes, custodial fees, and expenses incurred in connection with processing Proofs of Claim or distributing the Settlement Fund (the "Notice and Administration Costs"), shall be paid from the Settlement Fund, and in no event shall any of the Defendants or their counsel bear any responsibility for any such costs or expenses. Upon the establishment and funding of the Settlement Fund, a sum not to exceed Five Hundred Thousand Dollars (\$500,000) of the Settlement Fund shall be allocated for the purpose of providing notice of the Settlement and to administer the Settlement pursuant to the terms of the Preliminary Approval Order ("Notice and Administration Fund"), and unspent funds shall be returned to the Settlement Fund. Funds may be disbursed from the Notice and Administration Fund for these purposes without further approval of Defendants or the Court. The Notice and Administration Fund shall be administered by the Escrow Agent as part of the Settlement Fund. Upon the Effective Date, Lead Counsel, without further

approval of Defendants or the Court, may pay from the Settlement Fund any Notice and Administration Costs associated with the administration of the Settlement, the processing of claims, and distribution of the Net Settlement Fund to Authorized Claimants in excess of the Notice and Administration Fund.

**6. Plaintiffs' Counsel's Fees and Expenses**

6.1 Lead Counsel will apply to the Court for an award from the Settlement Fund of attorneys' fees and expenses in connection with prosecuting the Litigation, plus interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid), in an amount to be approved by the Court (the "Fee and Expense Application"). Such attorneys' fees and expenses, as are awarded by the Court, shall be paid from the Settlement Fund to Lead Counsel immediately upon award by the Court, notwithstanding any objection, appeal or collateral attack on the Settlement or any part thereof, subject to Lead Plaintiffs' counsel's joint and several obligation to make appropriate refunds or repayments to the Settlement Fund plus accrued interest at the same net rate as is earned by the Settlement Fund, if and when, as a result of any successful collateral attack, the fee or cost award is reduced or reversed. Lead Counsel shall allocate the attorneys' fees amongst plaintiffs' counsel in a manner which they, in good faith, believe reflects the contribution of such counsel to the institution, prosecution and settlement of the Litigation.

6.2 In the event that the Effective Date does not occur, or the Final Judgment and Order or the order approving the Fee and Expense Application is reversed or modified, and after the conclusion of any appeals from any order relating to such reversal or modification, or the Stipulation is terminated or cancelled for any reason, and in the event that any attorneys' fees and/or expenses have been paid to any extent, plaintiffs' counsel who received such fees, expenses, and costs shall, within five (5) business days from receiving notice from Defendants' counsel or from a court of

appropriate jurisdiction, have a joint and several obligation to refund to the Settlement Fund the fees and expenses previously paid to them from the Settlement Fund plus interest thereon at the same rate as earned on the Settlement Fund in an amount consistent with such reversal or modification. Each law firm, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees that the law firm and its partners and/or shareholders are liable for any refund required by this ¶6.2, and are subject to the jurisdiction of the Court for purposes of enforcing the provisions of this paragraph.

6.3 The procedure for and the allowance or disallowance by the Court of any applications by Lead Counsel for attorneys' fees, expenses, and costs to be paid out of the Settlement Fund are not part of the Settlement set forth in this Stipulation, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation, and any order or proceeding relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of the Order and Final Judgment approving the Stipulation and the Settlement set forth herein.

6.4 The Released Persons shall have no responsibility for, and no liability whatsoever with respect to, any payment of attorneys' fees and expenses to Lead Plaintiffs' counsel over and above payment from the Settlement Fund. The Released Persons shall have no responsibility for, and no liability whatsoever with respect to, the allocation among Lead Plaintiffs' counsel, and/or any other Person who may assert some claim thereto, of any Fee and Expense Application, or any award relating thereto that the Court may make in the Litigation.

## **7. Distribution to Authorized Claimants**

7.1 The Net Settlement Fund shall be distributed to Authorized Claimants substantially in accordance with the Plan of Allocation to be described in the Notice and approved by the Court.

7.2 The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's claim (as defined in the Plan of Allocation described in the Notice attached hereto as Exhibit A-1, or in such other Plan of Allocation as the Court approves).

7.3 The Plan of Allocation proposed in the Notice is not a necessary term of this Stipulation and it is not a condition of this Stipulation that the Plan of Allocation be approved. Any order or proceeding relating to the Plan of Allocation, or any appeal from any order or proceeding relating to the Plan of Allocation, shall not operate to terminate or cancel the Stipulation, or affect or delay the Effective Date and the finality of the Final Judgment and Order approving the Settlement.

7.4 Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its claim compared to the total claims of all Authorized Claimants. Defendants shall have no involvement in reviewing or challenging claims. Defendants and Defendants' counsel have no responsibility for the Plan of Allocation or, if approved by the Court, its implementation.

7.5 Lead Counsel shall have the right, but not the obligation, to waive what they deem to be immaterial or technical defects in any Proofs of Claim submitted in the interests of achieving substantial justice.

7.6 For purposes of determining the extent, if any, to which a Settlement Class Member shall be entitled to be treated as an "Authorized Claimant," the following conditions shall apply:

(a) Each Settlement Class Member shall be required to submit a Proof of Claim (substantially in the form of Exhibit A-2 attached hereto), supported by such documents as are designated therein, including proof of the Settlement Class Member's loss, or such other documents or proof as Lead Counsel, in their discretion, may deem acceptable;

(b) All Proofs of Claim must be submitted by the date specified in the Notice unless such period is extended by order of the Court. Notwithstanding the foregoing, Lead Counsel shall have the right, but not the obligation, to accept late submitted claims so long as the distribution of the Net Settlement Fund is not materially delayed thereby. Any Settlement Class Member who fails to submit a Proof of Claim by such date shall be forever barred from receiving any payment pursuant to this Stipulation (unless, by order of the Court, a later submitted Proof of Claim by such Settlement Class Member is approved), and shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Final Judgment and Order to be entered in the Litigation and the releases provided for herein, and will be barred from bringing any action against the Released Persons concerning the Released Claims. A Proof of Claim shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope and if mailed by First-Class Mail and addressed in accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator;

(c) Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator who shall determine the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below;

(d) Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the Settlement Class Member in order to remedy the curable deficiencies in the Proof of Claim submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all Settlement Class Members whose Proofs of Claim it proposes to reject in whole or in part, setting forth the reasons therefore, and shall indicate in such notice that the Settlement Class Member whose claim is

to be rejected has the right to a review by the Court if the Settlement Class Member so desires and complies with the requirements of subparagraph (e) below; and

(e) If any Settlement Class Member whose claim has been rejected in whole or in part desires to contest such rejection, the Settlement Class Member must, within twenty (20) calendar days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the Settlement Class Member's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court.

7.7 Each Settlement Class Member shall be deemed to have submitted to the jurisdiction of the Court with respect to the Settlement Class Member's claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Settlement Class Member's status as a Settlement Class Member and the validity and amount of the Settlement Class Member's claim.

7.8 Payment pursuant to this Stipulation shall be deemed final and conclusive against all Settlement Class Members. All Settlement Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Final Judgment and Order to be entered in the Litigation and the releases provided for herein, and will be barred from bringing any action against the Released Persons concerning the Released Claims.

7.9 All proceedings with respect to the administration, processing, and determination of claims described by ¶¶7.1-7.13 of this Stipulation and the determination of all controversies relating

thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

7.10 The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator only after the Effective Date.

7.11 If any funds remain in the Net Settlement Fund by reason of uncashed checks, or otherwise, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, then any balance remaining in the Net Settlement Fund shall be used: (a) first, to pay any amounts mistakenly omitted from the initial distribution to Authorized Claimants or to pay any late, but otherwise valid and fully documented claims received after the cut-off date used to make the initial distribution; (b) second, to pay any additional settlement administration fees and expenses; and (c) finally, to make a second distribution to Authorized Claimants who cashed their checks from the initial distribution, after payment of the estimated additional costs or fees to be incurred in administering the Net Settlement Fund and in making this second distribution, if such second distribution is economically feasible. If after six (6) months following such second distribution, if undertaken, or if such second distribution is not undertaken, any funds remain in the Net Settlement Fund, such funds shall be contributed to an appropriate non-profit, non-sectarian organization.

7.12 This is not a claims-made settlement and, if all conditions of the Stipulation are satisfied and the Effective Date occurs, no portion of the Settlement Fund will be returned to such Person(s) that paid the Settlement Amount. The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the investment or distribution of the Net Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes, or any losses incurred in connection therewith.

7.13 No Person shall have any claim against Lead Plaintiffs or Lead Plaintiffs' counsel, based on the administration of the Settlement, including, without limitation, the processing of claims and distributions made in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation or further order(s) of the Court.

**8. Termination of Settlement and Supplemental Agreement**

8.1 Simultaneously herewith, Lead Plaintiffs and Defendants are executing a confidential "Supplemental Agreement" setting forth certain conditions under which this Stipulation may be terminated at the discretion of Defendants. Pursuant to the Supplemental Agreement, Defendants have the option (which option must be exercised unanimously) to terminate the Settlement in the event that the aggregate number of shares of Toll Brothers common stock purchased or acquired during the Settlement Class Period by Persons who would otherwise be entitled to participate as Members of the Settlement Class, but who timely and validly request exclusion, equals or exceeds the percentage of the total number of shares of Toll Brothers common stock traded during the Settlement Class Period set forth in the Supplemental Agreement.

8.2 The Supplemental Agreement shall not be filed with the Court unless and until the Court asks the Settling Parties to do so or a dispute arises between Lead Plaintiffs and Defendants concerning its interpretation or application. In either of those events, the Settling Parties shall seek to file the Supplemental Agreement under seal. In the event of an objection to the Settlement based upon the confidentiality of the percentage stated in the Supplemental Agreement, and notwithstanding anything to the contrary in this Paragraph or the Supplemental Agreement, Lead Plaintiffs and Defendants (by a unanimous determination) each shall have the option to waive confidentiality, upon three (3) business days notice communicated by facsimile or e-mail addressed to Lead Counsel or Defendants' counsel, as appropriate.

8.3 In the event that Defendants elect to terminate the Stipulation in accordance with ¶8.1 and such withdrawal is not nullified in accordance with the terms of the Supplemental Agreement, the Stipulation shall be withdrawn and terminated and deemed null and void, and the provisions of ¶3.8 shall apply.

**9. Effective Date of Settlement, Waiver, or Termination**

9.1 The Effective Date of the Settlement shall be one (1) business day following the latest of the following events:

(a) entry of the Preliminary Approval Order in all material respects in the form attached hereto as Exhibit A;

(b) payment of the Settlement Amount to the escrow account by Defendants or on their behalf;

(c) approval by the Court of the Settlement, following notice to the Settlement Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure;

(d) expiration of the time for Defendants to exercise their option to terminate the Stipulation in accordance with the terms of the Supplemental Agreement, without the exercise of that option; and

(e) entry by the Court of a Final Judgment and Order, in all material respects in the form set forth in Exhibit B attached hereto, which Final Judgment and Order has become Final, or, in the event that the Court enters an order and final judgment in a form other than that described above (the "Alternative Judgment") and Defendants do not elect to terminate this Settlement, the date that such Alternative Judgment becomes Final.

9.2 Upon the occurrence of all of the events referenced in ¶9.1 hereof, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be extinguished.

9.3 Defendants' counsel or Lead Counsel shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so ("Termination Notice") to all other Settling Parties within thirty (30) days of: (a) the Court's declining to enter the Preliminary Approval Order in any material respect; (b) the Court's refusal to approve this Stipulation or any material part of it; (c) the Court's declining to enter the Final Judgment and Order in any material respect; (d) the date upon which the Final Judgment and Order is modified or reversed in any material respect by any court; or (e) the date upon which an Alternative Judgment is modified or reversed in any material respect by any court. Lead Counsel shall also have the right to terminate the Settlement thirty (30) calendar days after Defendants' failure to timely pay the Settlement Amount.

9.4 In the event that the Settlement is terminated or fails to become effective in accordance with its terms for any reason, then the terms of ¶3.8 shall apply.

## **10. The Releases**

10.1 Upon the Effective Date, the following persons (the "Released Persons") will be fully, finally, and forever released, relinquished, and discharged with respect to the Released Plaintiffs' Claims: Defendants and any and all of Defendants' Affiliates.

10.2 Upon the Effective Date, the following claims (the "Released Plaintiffs' Claims") will be fully, finally, and forever released, relinquished, and discharged with respect to the Released Persons: any and all actions, claims, debts, demands, causes of action and rights and liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, or liability whatsoever), in law or in equity, or whatever kind or nature, whether known or unknown, suspected or unsuspected, fixed or contingent, against Defendants and their corresponding Released Persons, belonging to Lead Plaintiffs and/or any or all Settlement Class Members (whether or not such Settlement Class Member executes and delivers the Proof of Claim and Release) and their present or past heirs, executors, estates,

administrators, predecessors, successors, assigns, parents, subsidiaries, associates, affiliates, employers, employees, agents, insurers, reinsurers, directors, managing directors, officers, partners, principals, members, managing members, attorneys, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities, including, without limitation, any claims, causes of action and rights, whether direct, representative or in any other capacity, arising under federal, state, local or foreign, statutory or common law or any other law, rule or regulation, including the law of any foreign jurisdiction, that relate in any way to any violation of state, federal, or any foreign jurisdiction's securities laws, any misstatement, omission, or disclosure, any breach of duty, any negligence or fraud, or any other alleged wrongdoing or misconduct by Defendants and/or the corresponding Released Persons, including both known claims and Unknown Claims (as defined in ¶1.27 above), in connection with, arising out of, related to, based upon, in whole or in part, directly or indirectly, both the purchase or other acquisition of Toll Brothers common stock during the Settlement Class Period and any allegation, transaction, fact, matter, event, occurrence, representation, action, disclosure, statement, omission, or failure to act and/or to supervise Toll Brothers officers or employees that was alleged, involved, set forth, referred to, or that could have been alleged in the Action.

10.3 Upon the Effective Date, the following claims (the "Released Defendants' Claims") will be released with respect to Lead Plaintiffs, Lead Counsel, any other counsel for any other plaintiff or plaintiffs in the Litigation, and/or any or all Members of the Settlement Class and their counsel: any and all actions, claims, debts, demands, causes of action and rights and liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, or liability whatsoever), whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, including both known claims and Unknown Claims (as defined in ¶1.27 above), that have been or could have been asserted

by the Defendants or the Released Persons against Lead Plaintiffs, Lead Plaintiffs' counsel, any of the Settlement Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Litigation.

10.4 Notwithstanding anything to the contrary above, the Released Claims do not include claims (i) to enforce the Final Judgment and Order and the Settlement, and any or all of their terms, including, but not limited to, the releases provided for in the Final Judgment and Order, or (ii) belonging to Defendants against their insurers or any other Person not a party hereto.

#### **11. No Admission of Wrongdoing**

11.1 Whether or not the Settlement is approved by the Court, and whether or not the Settlement is consummated, the fact and terms of this Stipulation, including its Exhibits, all negotiations, discussions, drafts, and proceedings in connection with the Settlement, and any act performed or document signed in connection with the Settlement, shall not, in this or any other court, administrative agency, arbitration forum, or other tribunal, constitute an admission of, or evidence of, or be deemed to create any inference of, (i) any acts of wrongdoing or lack of wrongdoing; (ii) any liability on the part of any of the Defendants or the Released Persons to Lead Plaintiffs, the Settlement Class, or anyone else; (iii) any deficiency of any claim or defense that has been or could have been asserted in this Litigation; (iv) any damages, or lack of damages, suffered by Lead Plaintiffs, the Settlement Class, or anyone else; or (v) that the Settlement Amount (or any other amount) represents the amount that could or would have been recovered from Defendants in the Litigation if the Litigation was not settled.

11.2 The fact and terms of this Stipulation, including Exhibits, all negotiations, discussions, drafts, and proceedings in connection with the Settlement, and any act performed or document signed in connection with the Settlement, shall not be offered by the Settling Parties or received in evidence or used for any other purpose in this or any other proceeding in any court,

administrative agency, arbitration forum, or other tribunal, except as necessary to enforce the terms of the Settlement, including, but not limited to, the Preliminary Approval Order, the Notice, the Final Judgment and Order, and the releases provided for in the Final Judgment and Order. Defendants and any Released Persons may file the Stipulation, the Preliminary Approval Order, the Notice, and the Final Judgment and Order in any other action or proceeding that may be brought against them in any forum in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release and discharge, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. Lead Plaintiffs understand, acknowledge, and agree that Defendants have denied and continue to deny all claims of wrongdoing, liability, and damages alleged in the Litigation.

**12. Miscellaneous Provisions**

12.1 All of the Exhibits attached to this Stipulation are material and integral parts hereof, and are hereby incorporated by reference as though fully set forth herein.

12.2 The Settling Parties: (a) acknowledge that it is their intent to consummate this Settlement; (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation; and (c) agree to exercise their best efforts to accomplish the foregoing terms and conditions of this Stipulation.

12.3 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation, including, but not limited to, all facts and claims that were asserted or which could be asserted by Lead Plaintiffs and the Settlement Class Members against the Released Persons with respect to the Released Plaintiffs' Claims, and shall not be deemed an admission or concession of any nature whatsoever by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that the amount paid to the Settlement Amount and the other terms of the Settlement were negotiated at arm's length in good faith by the

Settling Parties, and reflect a Settlement that was reached voluntarily after consultation with experienced legal counsel. The Settling Parties shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Litigation, and the Final Judgment and Order shall contain a provision that during the course of the Litigation, the Settling Parties and their respective counsel at all times hereto complied with and satisfied the requirements of Federal Rule of Civil Procedure 11.

12.4 If a case is commenced with respect to a Defendant under Title 11 of the United States Bankruptcy Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of the Settlement Fund, or any portion thereof, by or on behalf of the Defendants to be a preference, voidable transfer, fraudulent transfer, or similar transaction and requiring a refund of the Settlement Fund or any portion thereof, then, at Lead Plaintiffs' option, the releases given and judgment entered in favor of the Defendants pursuant to this Stipulation shall be null and void.

12.5 Each Defendant warrants and represents as to itself or himself only, that it or he is not "insolvent" within the meaning of 11 U.S.C. §101(32) as of the time this Stipulation is executed and as of the time the Settlement Amount is transferred or paid to the Escrow Agent provided by this Stipulation.

12.6 All agreements made and orders entered during the course of this Litigation relating to the confidentiality of documents and information shall survive this Stipulation pursuant to their terms.

12.7 This Stipulation may not be modified or amended in any way, nor may any of its provisions be waived, except by a writing signed by or on behalf of all Settling Parties or their respective attorneys, or successors-in-interest.

12.8 The headings and captions in this Stipulation are used for the purpose of convenience only and are not meant to have any legal effect on the meaning or interpretation of this Stipulation or any of its terms or provisions.

12.9 The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court and the Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Stipulation and for the purpose of entering orders approving a Plan of Allocation or providing for awards of attorneys' fees and expenses to Lead Plaintiffs' counsel.

12.10 The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

12.11 This Stipulation, the Exhibits attached hereto, and the Supplemental Agreement constitute the entire agreement among the Settling Parties concerning the settlement of the Litigation, and no representations, warranties, or inducements have been made by any party hereto concerning this Stipulation and its Exhibits and the Supplemental Agreement other than those contained and memorialized in such documents. Except as provided herein, each Settling Party shall bear its own costs.

12.12 This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

12.13 This Stipulation shall be binding upon, and inure to the benefit of, the heirs, successors, and assigns of the Settling Parties.

12.14 The construction, interpretation, operation, effect, and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the laws of the State of Pennsylvania without regard to any choice of law principle, except to the extent that federal law requires that federal law governs.

12.15 This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties and all Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

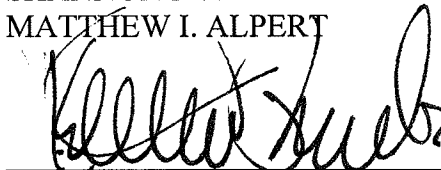
12.16 All counsel and any other Person executing this Stipulation and any of the Exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

12.17 The Settling Parties and their counsel agree that they will refrain from disparaging the Settlement or each other with respect to the Litigation in any press releases or statements to the media, or in any other communications.

12.18 This Stipulation supersedes the Settlement Term Sheet dated July 12, 2010.

IN WITNESS WHEREOF, the Settling Parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys, dated October 25, 2010.

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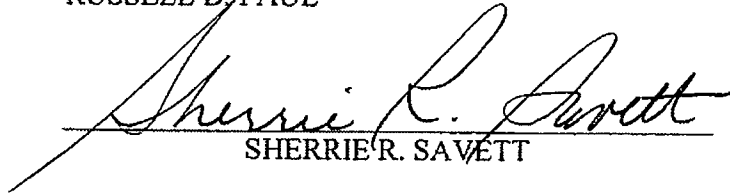


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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2010, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 28, 2010.

s/ Keith F. Park

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## Mailing Information for a Case 2:07-cv-01513-CDJ

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### **Manual Notice List**

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)