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 15 STONEBRAE L.P.

16 **UNITED STATES DISTRICT COURT**
 17 **NORTHERN DISTRICT OF CALIFORNIA**
 18 **(SAN FRANCISCO DIVISION)**

19 STONEBRAE L.P., a Delaware limited
 20 partnership,

21 Plaintiff,

22 v.

23 TOLL BROS., INC.; a Pennsylvania
 corporation; TOLL BROTHERS, INC., a
 24 Pennsylvania corporation; DOES 1 through 15,
 inclusive,

25 Defendants.

Case No. C 08-00221-EMC

**STIPULATION AND [PROPOSED]
 ORDER RE STONEBRAE L.P.'S
 PARTIAL SUMMARY JUDGMENT
 MOTION (DKT. # # 149 -151)**

Trial Date: February 28, 2010

1 Plaintiff and Counter-Defendant Stonebrae L.P. ("Stonebrae) and Defendant
2 and Counter-Claimant Toll Bros., Inc. ("Toll"), by and through their respective attorneys
3 of record, hereby stipulate and agree as follows:

4 1. On or about February 16, 2010, Stonebrae filed a motion for partial
5 summary judgment. (Dkt. ## 149-151.) That motion addresses four issues: (i)
6 construction of a permanent clubhouse; (ii) reduction of 3.25 acres of public park spaces;
7 (iii) construction of "high quality amenities"; and (iv) issuance by the City of Hayward to
8 Toll of 10 building permits. (Dkt. # 149, at p. 1.)

9 2. The Court continued the hearing on the motion to May 12, 2010.

10 3. On April 8, 2010, the Court issued its ruling on Stonebrae's motion to
11 dismiss Toll's Counterclaim for breach of the implied covenant of good faith and fair
12 dealing. (Dkt. # 164.)

13 4. On April 15, 2010, Toll's counsel wrote Stonebrae's counsel advising
14 that Toll was no longer pursuing a claim that Stonebrae breached the Village B Purchase
15 Agreement based on the reduction of 3.25 acres of public parks or the City of Hayward's
16 failure to issue 10 building permits by the scheduled closing date. A true and correct copy
17 of Toll's April 15, 2010 letter is attached hereto as Exhibit A.

18 5. Toll's withdrawal of its claim that the reduction in the public park
19 space or the City's failure to issue 10 building permits was an event of default entitling
20 Toll to terminate the Village B Purchase Agreement moots those issues in Stonebrae's
21 pending motion for partial summary judgment. (Dkt. # 149.)

22 6. With respect to the remaining two issues (i.e., construction of a
23 permanent clubhouse or other "high quality amenities"), in light of the Court's ruling on
24 Stonebrae's motion to dismiss (Dkt. # 164), Stonebrae agrees to withdraw its motion for
25 partial summary judgment as to those issues, without prejudice to its right to move for
26 partial summary judgment on these issues at a future date.

27 7. This Stipulation resolves Stonebrae's pending motion for partial
28 summary judgment. (Dkt. # 149.)

1 Dated: April 19, 2010

2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

3 COOPER & KIRKHAM P.C.

4
5 By /s/ Philip F. Atkins-Pattenson

6 PHILIP F. ATKINS-PATTENSON

7 Attorneys for Plaintiff and Counter-Defendant
8 STONEBRAE L.P.

9 Dated: April 19, 2010

10 KASOWITZ BENSON TORRES & FRIEDMAN LLP

11
12 By /s/ Christopher J. McNamara

13 CHRISTOPHER J. MCNAMARA

14 Attorneys for Defendant and Counter-Claimant
15 TOLL BROS., INC.

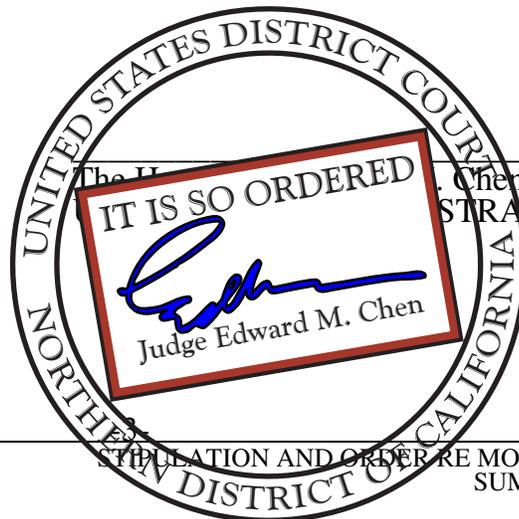
16 **ORDER**

17 Having considered the foregoing Stipulation, and good cause appearing in
18 support thereof,

19 IT IS HEREBY ORDERED that the parties' Stipulation is approved.

20 IT IS FURTHER ORDERED that Stonebrae's pending motion for partial
21 summary judgment is decided on the basis set forth in the Stipulation, and the hearing date
22 of May 12, 2010 is vacated.

23
24 Dated: 4/20/10



25 The Honorable Edward M. Chen
26 STRATE JUDGE

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

A NEW YORK LIMITED LIABILITY PARTNERSHIP

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April 15, 2010

Via Email and First Class Mail

Phillip F. Atkins-Pattenson
Sheppard, Mullin, Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4109

Re: *Stonebrae L.P. v. Toll Bros., Inc.*; Case No. 08-0221-EMC

Dear Phil:

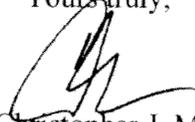
This is a follow up to our telephone conversation on Monday regarding Stonebrae's motion for partial summary judgment.

This will confirm that Toll is not asserting a claim or affirmative defense based on Stonebrae's removal of the 3.25 acres of parks from Village B or the City's failure to issue ten building permits prior to the scheduled closing date.

Please confirm that Stonebrae will withdraw its motion for partial summary judgment. As we discussed on Monday, in light of the Court's ruling on Stonebrae's motion to dismiss and Toll's confirmation that it is not pursuing claims based on the parks or the building permits, Stonebrae's motion should be withdrawn without prejudice to bringing it again at a later date.

Please let me know by the close of business today if Stonebrae will not withdraw its motion so that we may proceed accordingly.

Yours truly,


Christopher J. McNamara

cc: Joseph D. Cooper
Tracy R. Kirkham

EXHIBIT A