

<p>ELLEN NEVINS</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>TOLL BROS. INC, and ESTATES AT RIVERS EDGE, LP,</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION - SOMERSET COUNTY CIVIL ACTION</p> <p>DOCKET NO. L-1102-01</p>
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SETTLEMENT AGREEMENT AND GENERAL RELEASE

NOW, this ____ day of July, 2005, Defendants, Toll Bros., Inc. and Estates at Rivers Edge, LP (collectively "Defendants" or "Toll Brothers") and Ellen Nevins ("Plaintiff" or "Ms. Nevins") (together with Toll Brothers, the "Parties") hereby enter into this Settlement Agreement and General Release (the "Settlement") to resolve disputes relating to Ms. Nevins' house and which are the subject of the Superior Court action pending in the Somerset County Law Division, captioned *Ellen Nevins v. Toll Brothers, et al*, Docket No. L-1102-01 (the "Action" or the "Litigation"):

WHEREAS, on July 22, 1995 Plaintiff executed an Agreement of Sale (the "Agreement") with the Estates at Rivers Edge, LP, to purchase the premises known as 1 Silverthorn Lane, Belle Mead, New Jersey (the "Property") (a copy of the Agreement is attached hereto as Exhibit "A"); and

WHEREAS, a dispute arose regarding the condition of the home; and

WHEREAS, on July 19, 2001, Ms. Nevins filed the above-referenced Action in Superior Court, Somerset County seeking damages allegedly due to construction defects; and

WHEREAS the Parties to this Settlement desire to settle all of the rights, obligations and disputes asserted or that could have been asserted in the Litigation; and

WHEREAS, the Parties to this Settlement continue to deny any and all liability to one another, but while denying any and all liability, nevertheless recognize that, should the dispute proceed further, substantial expenses would be incurred; and

WHEREAS, this Settlement has been negotiated at arm's length, and the Parties each believe that this Settlement is fair and equitable, and in their own best interests; and

requisitions approved by the Manager. Despite the fact that Toll Brothers shall pay the contractors directly, such contractors shall have absolutely no recourse against Toll Brothers.

3. If the Manager deems it necessary and appropriate, he or she may recommend that Ms. Nevins be provided alternate housing during the repair of the defects on the Property. The cost of such alternate housing will be paid by Toll Brothers up to an amount of One Hundred and Fifty (\$150) Dollars per day.

4. The HOW warranty issued to Ms. Nevins in connection with her purchase of the Property shall remain in effect according to its terms. Nothing in this Settlement is designed or intended to in any way limit, modify, extend, supplement or override the terms and conditions stated in the HOW Warranty and it shall continue to operate in accordance with its terms unimpacted by this Settlement.

5. By August 12, 2005,, Toll Brothers shall pay to Ms. Nevins the sum of Eighty Thousand (\$80,000) Dollars as additional compensation.

6. Toll Brothers agrees to execute the accompanying Consent Order of Dismissal with Prejudice to close all matters in dispute between the Parties.

7. In consideration of the execution of this Settlement and the terms and provisions contained herein, the receipt and legal sufficiency of which consideration is hereby acknowledged, Toll Brothers, for and through itself, its officers, shareholders, parent companies and subsidiaries agents, employees, attorneys, insurers and all manner of successors and assigns, hereby agrees that it shall not pursue any further litigation or dispute resolution procedures against Ellen Nevins (with the possible exception of dispute resolution to enforce the terms of this Settlement—should that become necessary)—and further hereby unconditionally and irrevocably forever discharges, acquits, releases, and remises Ellen Nevins and her heirs, executors, estates, insurers and all manner of successors and assigns, jointly and severally, all and singularly, of and from all manner of actions and causes of action, suits, debts, accounts, bonds, covenants, contracts, agreements, judgments, liabilities, claims and demands of whatsoever kind, in law or in equity, known or unknown, foreseen and unforeseen, from the beginning of the world to the date of this Settlement, arising out of or relating to the Property that were brought or that could have been brought in this Litigation, whether they arise under federal law, state law, or any other jurisdiction of any kind, provided however, that nothing herein shall constitute a release or discharge with respect to any party's right to enforce this Release or the terms of this Settlement.

B. **Ms. Nevins' Consideration.** In exchange for the mutual releases, promises and other good and valuable consideration referenced in this Settlement, Ms. Nevins will provide to Toll Brothers, the following:

1. Stipulation of Dismissal with Prejudice: Ms. Nevins agrees to execute the accompanying Consent Order of Dismissal with Prejudice to close all matters in dispute between the Parties.

2. Release: In consideration of the execution of this Settlement and the terms and provisions contained herein, the receipt and legal sufficiency of which consideration is hereby acknowledged, Ms. Nevins, for and through herself, her agents, employees, attorneys, insurers and all manner of heirs, successors and assigns, hereby agrees that she shall not pursue any further litigation or dispute resolution procedures against Toll Brothers or any entity related in any way to Toll Brothers (with the possible exception of dispute resolution to enforce the terms of this Settlement should that become necessary) or any of Toll Brothers' insurers and further hereby unconditionally and irrevocably forever discharges, acquits, releases, and remises Toll Brothers and its subsidiaries, officers, directors, employees, affiliates, contractors, heirs, executors, estates, insurers and all manner of successors and assigns, jointly and severally; all and singularly, of and from all manner of actions and causes of action, suits, debts, accounts, bonds, covenants, contracts, agreements, judgments, liabilities, claims and demands of whatsoever kind, in law or in equity, known or unknown, foreseen and unforeseen, from the beginning of the world to the date of this Settlement, arising out of or relating to the Property that were brought or that could have been brought in this Litigation, including without limitation claims for negligence, breach of fiduciary duty, fraud, Consumer Fraud, breach of contract, breach of covenant of good faith and fair dealing, intentional or negligent misrepresentation, unjust enrichment, indemnity, negligence or for attorneys' fees or costs, whether they arise under federal law, state law, or any other jurisdiction of any kind, provided however, that nothing herein shall constitute a release or discharge with respect to any party's right to enforce this Release or the terms and conditions of this Settlement.

3. Assignment of Rights and Claims: Ms. Nevins hereby transfers and assigns to Toll Brothers all rights and claims she has or may have or may have had, against all contractors, subcontractors, sub-subcontractors, third-party defendants, defendants, suppliers, insurers and any and all other parties involved in any way with the design, construction, development, repair, installation and sale of the Property or any of its components, fixtures and improvements, such that Ms. Nevins shall have no further rights whatsoever to pursue any claim, for herself or any other person, against any party in any way, form or forum, who is or was in any way connected with the original construction of the Property, except by reason of a summary action against Toll Brothers to enforce this Settlement. Ms. Nevins agrees that Toll Brothers may pursue, or not, at Toll Brothers' option, all such rights and interests transferred and assigned to Toll Brothers as Toll Brothers sees fit, in order to recover, if possible, some of the cost associated with this settlement and the repair and/or replacement of any defects determined to exist at the Property. In the event Toll Brothers seeks to pursue any claims or rights referenced herein in an attempt to recover some or all of the expense and costs associated with this Settlement, Plaintiff agrees to cooperate with Toll Brothers in any way necessary to prosecute the rights and claims that Ms. Nevins has transferred and assigned. Such cooperation shall include, but not be limited to, providing access to the Property on reasonable notice, and providing written or verbal testimony regarding her observations at any judicial or quasi judicial proceeding where those claims are being heard or addressed and supplying, if called upon to do so, signed and sworn statements concerning the nature, extent and scope of all such claims. Any and all expenses of such cooperation shall be borne by Toll Brothers.

It is expressly understood that this provision relating to assignment is limited to the original construction of the house and does not apply to any rights of Ms. Nevins against contractors and the like who participate in the repairs contemplated by this Settlement.

4. **No Assignment:** Ms. Nevins warrants to Defendants that she has not assigned, nor will assign, any claim or cause of action which she has or may have against any person referenced in the Assignment, above, to any other person or party. In the event such an assignment has been or is made following the execution of this Settlement, Ms. Nevins agrees to defend, indemnify and hold Defendants harmless from any claim pursued by a party asserting a claim as Ms. Nevins' assignee.

5. **Defense and Indemnity:** Ms. Nevins specifically and expressly agrees to defend, indemnify and hold Toll Brothers harmless, for, from and against any claims or actions of any kind whatsoever, brought by the Manager or the contractors referenced herein with whom Ms. Nevins alone will be in privity of contract and for any claim arising out of her acts or omissions

C. **No Further Litigation.** In the manner set forth in detail herein, it is the intention of the Parties that neither Toll Brothers nor Ellen Nevins, nor their successors, assigns, heirs, agents, employees, attorneys, insurers or other persons who may have rights in this matter, will initiate or pursue future litigation regarding the Property against one another (with the exception, if necessary, of actions designed and intended to enforce this Settlement or its separate provisions).

D. **Entire Agreement.** This Settlement contains the sole and entire agreement between the Parties, and fully supersedes any and all prior agreements and understandings pertaining to the subject matter hereof. The Parties represent and acknowledge that, prior to executing this Settlement, each consulted with its counsel, each party obtained the advice of its counsel prior to making the decision to execute this Settlement, and that each party has not relied upon any representation or statement not set forth in this Settlement made by any party thereto, or their counsel or representatives, with regard to the subject matter of this Settlement. No other promises or agreements shall be binding unless in writing, signed by the Parties hereto, and expressly stated to represent an amendment to this Settlement.

E. **Confidentiality and Non-disparagement.**

1. Following the completed execution of this Settlement, the Parties (which for purposes of this paragraph shall include Ms. Nevins, her attorneys, agents, and experts) and Toll Brothers (which for purposes of this paragraph shall include its officers, directors, agents, employees, attorneys and insurance carriers) shall neither convey nor confirm the specific terms of this Settlement to any person, individual or entity. If asked, the Parties may say that "All disputes have been resolved," and, if further information is sought, they may say that "the Parties have agreed not to disclose further information about the case." The Parties shall not make any statement, hold any press conference, issue any press release, speak to any journalist, reporter or media representative, or in any other way issue, release, mention, communicate or make known, nor by effect of action cause to be made known, information to any person or the public regarding the terms or the conditions contained in this Settlement or the Litigation after

September 22, 2004, nor through action or context created after September 22, 2004, in a manner that would cause a reasonably informed person to understand the identity of the other party from the communication itself or from any direct references within the communication, including without limitation, Toll Brothers, its parents, officers, directors, subsidiaries, affiliates, related entities and employees or Ms. Nevins. Neither of the Parties shall make any derogatory statement, or any other statements that may harm or disparage the other Party, their relations or motives, or their representatives with respect to either the Litigation or this Settlement and Release. Nothing in this Settlement shall prevent either Party from speaking, writing or otherwise communicating about the residential home construction industry as long as they do not identify after September 22, 2004, nor through action or context created after September 22, 2004, cause a reasonably informed person to understand the identity of the other party from the communication itself or from any direct references within the communication, including without limitation, Toll Brothers, its parents, officers, directors, subsidiaries, affiliates, related entities and employees or Ms. Nevins.

The Parties expressly agree that Ms. Nevins shall be released from her obligations under this Section E in the event that Toll Brothers fails to obey a ruling of Judge Derman pursuant to Section F, below.

2. EXCEPTION: MS. NEVINS SPECIFICALLY AND EXPRESSLY AUTHORIZES TOLL BROTHERS TO DISCLOSE ALL OR CERTAIN PROVISIONS OF THIS SETTLEMENT AGREEMENT IN ORDER TO PURSUE THE ASSIGNED CLAIMS AGAINST THE PARTIES THAT MAY HAVE BEEN RESPONSIBLE FOR THE DESIGN, CONSTRUCTION AND INSTALLATION OF THE ORIGINAL WORK AT THE PROPERTY TOGETHER WITH THEIR RESPECTIVE INSURANCE CARRIERS. SUCH DISCLOSURE DOES NOT CONSTITUTE A VIOLATION OF THIS SECTION AND IS ACKNOWLEDGED BY THE PARTIES AS NECESSARY IN ORDER FOR DEFENDANTS TO BE ABLE TO PURSUE THE CLAIMS AND RIGHTS ASSIGNED TO THEM BY MS. NEVINS. IF IT BECOMES NECESSARY FOR EITHER PARTY TO DISCLOSE THIS DOCUMENT TO A CARRIER OR THIRD OR FOURTH-PARTY IN ORDER TO PURSUE THE ASSIGNED RIGHT AGAINST THAT CARRIER OR ITS INSURED, OR TO OBTAIN OR MAINTAIN INSURANCE, OR COVERAGE FROM AN INSURER, THE PARTY SEEKING DISCLOSURE SHALL SEEK TO HAVE THE RECEIVING PARTY EXECUTE AN APPROPRIATE CONFIDENTIALITY AGREEMENT IN ORDER TO ENSURE THAT THE CONTENTS OF THIS SETTLEMENT ARE PROTECTED IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH "E". TO THE EXTENT INFORMATION OTHERWISE COVERED UNDER THIS SETTLEMENT NEEDS TO BE DISCLOSED TO THE MANAGER REFERENCED HEREIN, THE PARTIES SHALL ONLY DO SO AFTER CONSULTATION AND AGREEMENT AS TO THE SCOPE OF SUCH DISCLOSURE HAS BEEN REACHED.

3. The Parties agree that any of them may disclose the existence of this Settlement, or the provisions hereof, in connection with that party's income tax returns or other tax information submitted to local, county, state and federal taxing authorities based on the obligations of the various taxing authorities to maintain such information as CONFIDENTIAL. The Parties may also disclose the existence of this Settlement, or the provisions hereof, to government agencies in connection with any legal process or request for information from such

agency. The Parties will provide written notice to each other of any legal process or request for information within one (1) business day of the receipt thereof and such notice will specify the response date required. The Party that is the subject of the request for disclosure may make such disclosure on or after the required response date unless, prior to the required response date, the other Party has sought the appropriate legal action to suppress the information, quash the subpoena or otherwise protect the contents hereof from disclosure. In that event, and if consistent with applicable law, no disclosure shall be made until such legal action is resolved in favor of disclosure.

4. In the event one Party (the "Claimant") intends to claim that another Party (the "Respondent") has violated the terms set forth in paragraph "E" of this Settlement, the Claimant shall deliver to the Respondent written notice of its intention to claim such a violation. The Respondent will then have five (5) days from the date of receipt of the claim notice to provide a written response. The response may either be a written acknowledgment of the violation, in which case the Respondent would then automatically be required to pay the Claimant liquidated damages in the amount of five thousand dollars (\$5,000) per violation within thirty (30) days of the written acknowledgment, or the Respondent may provide written notice that it disputes the claim and a summary of the facts upon which Respondent bases that dispute. In the event there is a dispute under this provision, it shall be submitted pursuant to the Dispute Resolution Procedure set forth below. For purposes of this paragraph, each communication, or quotation by the Respondent that shall be deemed to have violated this Settlement shall be considered a separate violation. (e.g. if a single article contains ten (10) quotations attributable to the Respondent, then Respondent shall be liable to Claimant for \$50,000.00 in damages). Such liquidated damages are considered by the Parties to be a reasonable approximation of the damages that will be sustained in the event of a violation of this confidentiality provision and are not designed or intended to be a penalty.

F. Dispute Resolution Procedure. Any and all disputes arising out of this Settlement shall be submitted on ten (10) days notice to the Hon. Harriet Derman of the Superior Court, Somerset County, who has agreed to retain jurisdiction of this matter for purposes of resolving any disputes under this Settlement. The opposing party may then submit any opposition to the original submission. There will be no further submissions by any party unless specifically requested or allowed by Judge Derman. The submissions will be by letter and need not be in the form of a formal application. Judge Derman will make a determination based on the submissions of the Parties, or, if requested by Judge Derman, based upon a submission of additional evidence, and her ruling shall be final. The Parties agree to waive any right to appeal from her ruling.

G. Successors. The terms of this Settlement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Parties hereto, and any third party taking by, through or under any party hereto.

H. Agreement not to be Construed against Drafter. The Parties acknowledge that each of them participated in the negotiation and drafting of this Settlement with the assistance of

counsel and waive the defense of *contra proferentum*, i.e., that this Settlement or any part thereof may be ambiguous and therefore construed against any party as the drafter thereof.

I. **Severability.** If any term of this Settlement, or the application thereof to any person or circumstances shall to any extent be held invalid or unenforceable, the remainder of this Settlement, or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term of this Settlement shall be valid and enforceable to the fullest extent permitted by law.

J. **Applicable Law.** This Settlement shall be interpreted under the laws of the State of New Jersey. It is agreed that neither this Settlement nor any of the terms hereof may be offered into evidence or otherwise used for any purpose in any subsequent litigation other than to enforce the provisions contained herein.

K. **Copies.** This Settlement may be executed in counterparts, and multiple copies of this Settlement may be executed, each of which, however, shall be one and the same document. Facsimile signatures shall be binding to the same effect as originals and the Parties agree to be bound thereby and to waive any argument that such facsimile signatures are invalid.

L. **Headings.** Any headings in this Settlement are for convenience of reference only and are not a material part of this Settlement.

M. **Authority.** Each party represents and warrants that he/she/it has the authority to enter into, and be bound by, this Settlement.

N. **Notice.** All notices required pursuant to this Settlement shall be delivered to the addresses of each party or attorney set forth below. The Parties agree that, in order to comply with specific terms hereof calling for notice or delivery of payments directly to a party, the other party or its attorneys may contact the party receiving said notice directly and without communication through counsel.

To Ms. Nevins:

Ellen Nevins
1 Silverthorn Lane
Belle Mead, NJ 08502

To Ms. Nevins' attorneys:

Geoffrey Johnson, Esq.
Johnson & Conway, LLP
Suite 201
18 Sycamore Avenue
Ho Ho Kus, NJ 07423
201-447-2080 (telecopier)

To Toll Brothers:

Jeffrey A. Bartos, Esq.
Toll Brothers Legal Department
3103 Philmont Avenue
Huntingdon Valley, PA 19006
215-938-8255 (telecopier)

To Toll Brothers' Attorneys:

James A. Kozachek, Esq.
FLASTER/GREENBERG, P.C.
Commerce Center
1810 Chapel Avenue
West Cherry Hill, New Jersey 08002
856-661-1919 (telecopier)

IN WITNESS WHEREOF, the undersigned, being duly authorized, have caused this Settlement Agreement and General Release to be executed this ___ day of July, 2005.

ELLEN NEVINS

Dated: July 19, 2005

Ellen E. Nevins

TOLL BROTHERS, INC.

Dated: 8/1/05

By: [Signature]

Name: Rick Hartman
Title: Sr. Vice President