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April 26, 2018

By Overnight Mail

Civil Clerk's Office  
Middlesex Superior Court  
200 Trade Center  
Woburn, MA 01801

RE: Starr Capital Partners, LLC et al. v. Toll Brothers, Inc. et al.,  
Middlesex Superior Court C.A. No.: 1781CV2659

Dear Sir/Madam:

Enclosed for filing in the above referenced matter please find:

1. Plaintiffs' Emergency Motion for Preliminary Injunction; and
2. Memorandum in Support of Motion for Preliminary Injunction.

The Plaintiffs have filed this Emergency Motion and require a Hearing on or before May 2, 2018. Please bring these filings to the attention of the Session Clerk for the sitting Judge.

Please do not hesitate to contact me if you have any questions or concerns. Thank you for your attention to this filing.

Very truly yours,  
Rubin and Rudman LLP

A handwritten signature in black ink, appearing to read 'Robert A. Fasanella', written over a light gray circular stamp.

Robert A. Fasanella

Enclosures

cc: Jed DeWick, Esq.  
Christopher Starr, Manager, Smith Legacy Partners LLC

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX

SUPERIOR COURT

C.A. NO.:

STARR CAPITAL PARTNERS, LLC, SMITH  
LEGACY PARTNERS SERIES, LLC, SMITH  
LEGACY PARTNERS II, LLC, 505-507 COMMON  
STREET, LLC, and 527 COMMON STREET, LLC,  
Plaintiffs,

v.

TOLL BROTHERS, INC., and BELMONT  
RESIDENTIAL, LLC, Defendants.

**EMERGENCY MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Massachusetts Rule of Civil Procedure 65, the Plaintiffs Starr Capital Partners, LLC; Smith Legacy Partners Series, LLC; Smith Legacy Partners II, LLC; 505-507 Common Street, LLC; and 527 Common Street, LLC (collectively, the “Plaintiffs” or “SLP”) respectfully request that this Court enter a Preliminary Injunction restraining and prohibiting the Defendants Toll Brothers, Inc. and Belmont Residential, LLC (the “Toll Defendants” or “Toll”), and any and all of their agents, from demanding payment by SLP of \$2,211,016.65, as was demanded in Toll’s April 2, 2018 letter and invoice to be paid in 30 days, or by May 2, 2018. The agreed-upon Remediation Budget prevents the Toll Defendants from demanding payment of the Invoice, which is allegedly owed by Plaintiffs in order to exercise Plaintiffs’ right to purchase the Retail Space in the development known as Cushing Village. For the reasons described within the Memorandum in support of this Motion, filed herewith, the numbers leading to the Invoice

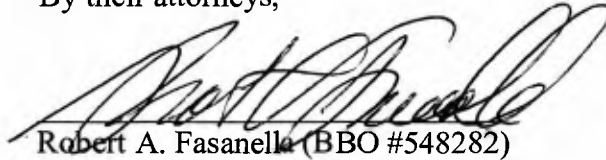
being demanded to be paid are drastically inflated as they include Non-Remediation Costs, costs stemming from gross mismanagement by Toll, and costs related to egregious billing errors.

The Plaintiffs further request that this Court issue a preliminary injunction preventing the Toll Defendants from allowing any third parties other than the SLP entities to exercise the Option to Purchase the Retail Units until a final decision, including all rights of appeal, is concluded in this action.

Facts in the Verified Complaint (Exhibit 1 to the Memorandum), the Affidavit of James T. Curtis (Exhibit 2 to the Memorandum), and the Affidavit of Christopher Starr (Exhibit 3 to the Memorandum) demonstrate that the Plaintiffs have a high likelihood of success on all counts of their Complaint; that the Plaintiffs will suffer irreparable harm, including the payment of increased remediation and construction costs, and the loss of profits due to the inability to exercise the Option to purchase the Retail Units; and that there is no substantial risk to the Defendants that outweighs the immediate risk of harm to the Plaintiffs. The Plaintiffs are unaware of any liability insurance that would be available to the Defendants to pay for the damages that may be incurred by the Plaintiffs.

**WHEREFORE**, for the reasons contained in the associated Memorandum, the Plaintiffs respectfully request that this Court issue a Preliminary Injunction preventing the Defendants from demanding payment by SLP to the Toll Defendants by May 2, 2018 and until this matter is fully litigated and all appeals have expired. The Plaintiffs further request that the Defendants be prevented from allowing any other third party except for the SLP entities to exercise the Option to Purchase the Retail Units until a final decision, including all rights of appeal, is concluded in this Action.

Respectfully submitted,  
STARR CAPITAL PARTNERS, LLC, SMITH  
LEGACY PARTNERS SERIES, LLC, SMITH  
LEGACY PARTNERS II, LLC, 505-507  
COMMON STREET, LLC, AND 527 COMMON  
STREET, LLC,  
By their attorneys,



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Rubin and Rudman, LP

53 State Street, Floor 15

Boston, MA 02109

(617)330-7000

Dated: April 26, 2018

**CERTIFICATE OF SERVICE**

I, Robert A. Fasanella, attorney for the Plaintiff, hereby certify that on April 26, 2018, a true copy of the above document was served on the Defendants by first class mail.



Robert A. Fasanella

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX

SUPERIOR COURT

C.A. NO.:

STARR CAPITAL PARTNERS, LLC, SMITH  
LEGACY PARTNERS SERIES, LLC, SMITH  
LEGACY PARTNERS II, LLC, 505-507 COMMON  
STREET, LLC, and 527 COMMON STREET, LLC,  
Plaintiffs,

v.

TOLL BROTHERS, INC., and BELMONT  
RESIDENTIAL, LLC, Defendants.

**MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR  
PRELIMINARY INJUNCTION**

Pursuant to Massachusetts Rule of Civil Procedure 65, the Plaintiffs Starr Capital Partners, LLC; Smith Legacy Partners Series, LLC; Smith Legacy Partners II, LLC; 505-507 Common Street, LLC; and 527 Common Street, LLC (collectively, the “Plaintiffs” or “SLP”) respectfully request that this Court enter a Preliminary Injunction restraining and prohibiting the Defendants Toll Brothers, Inc. and Belmont Residential, LLC (the “Toll Defendants” or “Toll”), and any and all of their agents, from demanding payment by SLP of \$2,211,016.65, as was demanded in Toll’s April 2, 2018 letter and invoice, (the “Invoice,” Exhibit A to the Affidavit of James T. Curtis, the “Curtis Aff.,” which is Exhibit 2 to this Memorandum), to be paid in 30 days, or by May 2, 2018. The agreed-upon Remediation Budget prevents the Toll Defendants from demanding payment of the Invoice, which is allegedly owed by Plaintiffs in order to exercise Plaintiffs’ right to purchase the Retail Space in the development known as Cushing Village. For the reasons described within this Memorandum, the numbers leading to the Invoice

being demanded to be paid are drastically inflated as they include Non-Remediation Costs, costs stemming from mismanagement by Toll, and costs related to billing errors.

The Plaintiffs further request that this Court issue a preliminary injunction preventing the Toll Defendants from allowing any third parties other than the SLP entities to exercise the Option to Purchase the Retail Units until a final decision, including all rights of appeal, is concluded in this action.

Facts in the Verified Complaint (“Complaint,” attached, without Exhibits due to volume, as Exhibit 1), the Curtis Aff. (attached as Exhibit 2), and the Affidavit of Christopher Starr (“Starr Aff.,” attached as Exhibit 3) demonstrate that the Plaintiffs have a high likelihood of success on all counts of their Complaint; that the Plaintiffs will suffer irreparable harm, including the payment of increased remediation and construction costs, and the loss of profits due to the inability to exercise the Option to purchase the Retail Units; and that there is no substantial risk to the Defendants that outweighs the immediate risk of harm to the Plaintiffs. The Plaintiffs are unaware of any liability insurance that would be available to the Defendants to pay for the damages that may be incurred by the Plaintiffs.

### **Condensed Factual Background**

The Plaintiffs filed a Verified Complaint for breach of contract, breach of the covenant of good faith and fair dealing, and misrepresentation. The Plaintiffs further brought claims pursuant to M.G.L. c.93A and declaratory judgment against the Toll Defendants. The Plaintiffs seek damages, including property and economic damages, attorney fees, and other costs and interests as well as injunctive relief. Due to the long and detailed factual background of this matter, the Plaintiffs refer the Court to the Complaint, Ex. 1, the Curtis Aff., Ex. 2, and the Starr Aff., Ex. 3,

if the Court wishes to review a more detailed factual background. However, the Plaintiffs include in this Memorandum all facts relevant to the instant Motion.

### **Argument**

A Court may issue a preliminary injunction when (i) there is a likelihood of success on the merits of Plaintiffs' claims, (ii) there exists an immediate danger of irreparable harm, and (iii) there is no substantial risk of harm to the Defendants that outweighs the immediate risk of harm to Plaintiffs. *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609 (1980).

Here, the Plaintiffs have provided the Court with a Verified Complaint, the Curtis Aff., and the Starr Aff. demonstrating that there is a high likelihood of success on the merits of their claims, there exists an immediate danger of irreparable harm, including that the Plaintiffs will incur immediate and significant increased remediation and construction costs that are not justified and mutually approved by Plaintiff, and that the Plaintiffs will lose the ability to exercise the Option to purchase the Retail Units. The Plaintiffs have also demonstrated that there is no substantial risk of harm to the Defendants that outweighs the immediate risk of harm to evidence to the Plaintiffs.

#### **I. The Plaintiffs Are Likely To Succeed On All Counts Of Their Verified Complaint.**

##### **a. Breach of Contract**

First, the Plaintiffs are likely to succeed on Count I of their Verified Complaint, which is their breach of contract claim.

##### **i. Background and Terms of Agreement**

The Plaintiffs entered into an Agreement of Sale dated March 14, 2016, a First Amendment dated April 13, 2016, a Second Amendment dated September 2, 2016, and Third Amendment dated September 28, 2016 with the Toll Defendants (collectively as amended, the

"Agreement"). Complaint, ¶12. In the Agreement, the Plaintiffs agreed to sell to the Toll Defendants certain property, consisting of the several parcels of land (hereinafter referred to as "Parcels", the "Property" or the "Project"). Complaint, ¶13. The "Property" also included, among other things as described by the Agreement... (v) all rights, title and interest in and to an Option Agreement with purchase additional Property from the Town of Belmont and an Option to Buy the Retail Space of the Cushing Village Project (as hereinafter defined and defined with the Agreement)...." Complaint, ¶14.

Key to the Agreement was the Remediation Budget. The Remediation Budget was originally prepared by SLP, shared with Toll during the Due Diligence period, and then mutually agreed upon by both parties. Complaint, ¶20. The Remediation Budget was created based upon informed input from numerous contractors, environmental and various other sources obtained over several years as a result of SLP's extensive due diligence, site assessments, and remediation at the Property. All of this information was shared with Toll during and after its Due Diligence Period. Complaint, ¶21.

A Remediation Budget and Scope of \$1,310,000 was prepared and integrated into the Agreement and ratified and referenced in the First and Second Amendment to the Agreement at Section 26 (b)(4). Complaint, ¶22. SLP shared with Toll at least three versions of the Remediation Budget in the form of Excel spreadsheets prior to the end of the Due Diligence Period; these versions ranged from \$1,310,000 to approximately \$1,366,000, all of which included a ten percent (10%) contingency. Complaint, ¶26. The parties agreed to a concept of a range of costs, with the Plaintiffs taking on more risks, including the Plaintiffs bearing more than a pro-rata share of the total costs of the development beyond the square foot total costs of the Retail Space that the Plaintiffs have an option to buy, if the remediation of the Existing and



Unknown Conditions exceeded the mutually agreed upon Remediation Budget of \$1,310,000. Complaint, ¶27. The Plaintiffs were confident in this budget and believed that the parties would work in “good faith” to mutually agree upon any Remediation Budget increases, and thus was prepared to bear more of the risk. Complaint, ¶28.

While the Agreement stated that the costs of Remediation may exceed the “mutually agreed Remediation budget” in amended Section 26(b)(4), the Agreement also stated that the parties agree that “the budget for the Remediation of the Existing Environmental Conditions is \$1,310,000...” and further that “any changes in the scope of work for the Remediation will be subject to the parties’ mutual approval, not to be unreasonably withheld or delayed.” (Emphasis added.) Complaint, ¶29.

Fundamental to the Agreement is the Plaintiffs’ right to exercise their Option to Purchase the Retail Unit of the Cushing Village Development provided under Section 26. “The Seller’s right to purchase the Retail Unit was a material inducement for its agreement to sell the Property to Buyer.” See Section 26. Provided the Plaintiffs are not in default of the Agreement, they have a right to exercise the Option to Buy 100% of the Retail Unit. Complaint, ¶32.

Under the Agreement, as the costs of the remediation of the Site increase, the Plaintiffs are obligated to bear more than their pro-rata share of costs based on the square footage cost to construct the development, including the Retail Unit. Section 26(b) of the Agreement defines specifically how the costs of Remediation are borne. Complaint, ¶33. For example, if the cost of Remediation of the Existing Environmental Conditions for the Project exceeds One Million Four Hundred Forty One Thousand and no/100 Dollars (\$1,441,000), then if the Plaintiffs exercise their right to purchase the Retail Unit, they will be responsible for 100% of remediation overruns for known conditions, and not simply the pro-rate portion thereof attributable to the Retail Unit.

See Section 26(b)(2). Complaint, ¶34. Further, if the cost of Remediation of the Existing Environmental Conditions and any Unknown Conditions exceeds Two Millions Five Hundred Thousand and no/100 Dollars (\$2,500,000), then the Plaintiffs will pay the actual amount of all such Remediation costs in excess of the “Upset Threshold” as such costs are incurred and billed to the Plaintiffs by Buyer (not as an increase in the Retail Price, but to be paid irrespective of whether the Plaintiffs elect to purchase the Retail Unit, failing which the Plaintiffs will forfeit their right to purchase the Retail Unit under this Section). Complaint, ¶35. It is this final provision that is at issue here.

**ii. Changes to Remediation Budget and Scope After Closing**

Following the closing on the Property, which occurred on October 19, 2016, the parties worked in good faith to assign permitting and approval rights to construct Cushing Village. The Plaintiffs also worked diligently and in good faith to secure the most cost-efficient methods to implement further assessment and remediation. This included among other things the need to complete additional soil sampling and selecting locations for trucking and disposal of non-hazardous and hazardous soil to the most cost-efficient locations as well as on-site remediation to reduce the volume of materials that would have to be disposed of as hazardous waste. Complaint, ¶36.

A revised Response Action Measure (“RAM”) Plan was prepared by Sage for Toll and presented to the public and DEP during a Public Involvement Plan (PIP) process in late 2016 and early 2017. The initial plan and the subsequent version were not shared with SLP prior to making them public, and Toll ignored almost all of SLP’s comments. Complaint, ¶38. Despite the Plaintiffs’ multiple requests that Sage and Toll properly define the boundaries of the Disposal Site to include only those areas where oil and/or hazardous materials (OHM) have come to be

located based on extensive testing in accordance with the DEP requirements, Sage and Toll have continued to define the Disposal Site to include the entire Property – even those areas that have not been affected by contaminants. This definition of a Disposal Site is not in compliance with the Massachusetts Contingency Plan (MCP). Complaint, ¶39.

The Plaintiffs, since early February 2017, attended many meetings, convened conference calls, and sent emails to attempt to obtain data and/or an explanation from Toll to support its purported Disposal Site, sought answers to many questions regarding the RAM Plan, among other inquiries regarding expected costs to attempt to come to agreement on reasonable assumptions and a reasonable and mutually agreeable Remediation Budget. Many of the Plaintiffs' requests have been ignored. Complaint, ¶¶40-41. During January and February 2017, and specifically on February 1, 2017 during a meeting with the Plaintiffs, Toll proposed to update the Remediation Budget from the mutually agreed upon Remediation Budget of \$1,310,000 to an expanded proposed budget of \$1,900,000. Complaint, ¶42. Approximately one month later, Toll forwarded a new proposed budget that had ballooned to over \$4,200,000, without any explanation or legitimate justification. Complaint, ¶44. In contrast, the Plaintiffs and Cooperstown Environmental provided to Toll updated detailed estimates showing that Toll could have disposed of contaminated materials at considerably lower costs than they cited in their updated budget (in-line with the mutually agreed upon Remediation Budget and estimates provided by SLP under the Agreement). Complaint, ¶45.

Throughout meetings in the Winter and Spring of 2017, Toll mentioned several times to the Plaintiffs that it had other persons and business partners that would be interested in purchasing the Retail Unit in the event that the Plaintiffs could not meet their obligations to pay the remediation cost beyond the \$1,410,000 as provided in the Agreement. Complaint, ¶48. The

Plaintiffs have since learned that that Toll has an equity partner, the Davis Companies (“Davis”), and that Davis has likely been interested in the Retail Space as the Plaintiffs are aware that Davis has been interested in the Retail Space as the Plaintiffs previously met with and considered working with Davis in a joint venture before it decided to sell the Property to the Defendants. Starr Aff., ¶¶16-18.

The Plaintiffs viewed these statements by Toll, especially given that Toll knew of the Plaintiffs’ dire financial position prior to the closing, as threats to bring in other interested parties and to breach the contractual rights of the Plaintiffs by deliberately inflating the remediation costs to a level where the Plaintiffs could not pay and would be forced to give up their Option to Buy the Retail Space. Complaint, ¶49.

**iii. Drastic Increase in Purported Remediation Costs in April Invoice**

On or about April 2, 2018, the Toll Defendants presented a demand letter and an Invoice to Mr. Christopher Starr in his capacity as Manager of a group of LLCs, including Smith Legacy Partners Series, LLC. The Toll Defendants demanded the amount of \$2,211,016.65, and that amount was described as the Remediation Costs in excess of the \$2,500,000 Upset Threshold in the Agreement. Starr Aff., ¶24. The total purported Remediation costs presented in the Invoice were \$4,711,016.65, which number is \$2,211,016.65 more than the \$2,500,000 Upset Threshold. Starr Aff., ¶25. As described in detail in the Curtis Aff., the purported Remediation costs include an amount of \$3,696,158.86 that is excessive and unjustified. See Curtis Aff. Therefore, when subtracting the excess of \$3,696,158.86 from \$4,711,016.65, the actual costs of Remediation through January 31, 2018 total \$1,014,857.79, which is well below the Upset Threshold. Starr Aff., ¶25. If the Remediation costs were accurately calculated, the Plaintiffs would not be required to pay the \$2,211,016.65 to exercise the Retail Option.

James T. Curtis, Licensed Site Professional and President of Cooperstown Environmental, LLC), has detailed in his affidavit how \$3,696,158.86 of the purported Remediation costs was excessive.

First, excessive costs included were Non-Remediation Costs in the amount of \$1,434,325.85. Curtis Aff., ¶31. The definition of Remediation Costs is addressed in “An Act Relative to Environmental Cleanup and Promoting the Redevelopment of Contaminated Property,” Chapter 206 of the Acts of 1998, also known as the “Brownfields Act” as “net response and removal costs,” which is defined to include “expenses paid by the taxpayer for the purpose of achieving a permanent solution or remedy operation status in compliance with Chapter 21E.” Curtis Aff., ¶18. Further, Paragraph 17(b) of the Agreement defines Remediation as the “remediation of the Existing Environmental Conditions” and refers to the “Remediation process which will be pursued by the Buyer with the goal of prosecuting the Remediation of the Existing Environmental Conditions to achieve Permanent Solution Status without conditions as defined in the MCP, all in conformance with M.G.L. c.21E and the Massachusetts Contingency Plan (MCP).…” Curtis Aff., ¶12.

The Non-Remediation Costs included in the Invoice were neither directly related to the cleanup nor necessary to reach a Permanent Solution, and thus do not qualify as Remediation Costs. Curtis Aff., ¶19. These Non-Remediation Costs include, among others, increased Dewatering Costs of at least \$166,769.83 because the costs related to dewatering should be considered construction costs since the site would need to be dewatered regardless of the contamination since construction extended below the groundwater elevation. Curtis Aff., ¶21. Non-Remediation Costs also include Soil Transport and Disposal Costs totaling \$459,141.51 because many of those costs were due to soil being removed during the construction process that

was non-hazardous. These soils comprise more than 41 percent of the total soil excavated. Curtis Aff., ¶¶22-24. The Non-Remediation Costs include Construction Costs, such as moving things like gravel, soil piles, and tanks which are purely construction-related. Curtis Aff., ¶25. The Non-Remediation Costs also include a “Delay Claim” of approximately \$679,633 by the general contractor Nauset as a result of a delay in a National Grid gas line that was unrelated to Remediation. Curtis Aff., ¶¶26-29.

Second, excessive costs include those resulting from mismanagement by Toll and total \$2,204,433.13. Curtis Aff., ¶64. Mr. Curtis observed few if any examples of Toll looking for competitive rates on pricing or questioning any drastic increase in budgets. Curtis Aff., ¶33. Mismanagement costs included excessive Professional Services Costs with unnecessary staffing. Curtis Aff., ¶¶38-42. They also include Featherbedding, such as a worker charging 24 hours in one day to a project. Curtis Aff., ¶¶43-45. Toll mismanaged Soil Treatment as Toll spent \$569,150 to “treat” the soil with chemicals to attempt to render it non-hazardous even though the contaminant levels did not fall below MCP S-1 standards and in many cases, soil that had been “treated” and tested was remixed for further treatment, increasing, by approximately 10 times, the volume of contaminated soil. Curtis Aff., ¶¶46-51. There was also mismanagement in the amount of soils labeled as hazardous, as the initial volume of soils labeled as hazardous was 600 cy and the final total was 8,000 cy. Curtis Aff., ¶¶52-55. Mismanagement also included ignoring the Plaintiffs’ suggestions to reduce costs, issues with soil labeling, among others. Curtis Aff., ¶¶56-64.

Third, excessive costs included those related to errors in the “Marcum Backup” document, which total \$24,990.91, Curtis Aff., ¶¶65-73 and errors, mistakes and false charges on invoices to Toll which total \$32,408.97. Curtis Aff., ¶¶74-85. Some of these errors include

double billing and even invoices totaling \$58,850.55 for a completely different project. Curtis Aff., ¶83.

**iv. Breach of Contract Claim**

Here, the Agreement clearly provided in the amended Section 26(b)(4) that “any changes in the scope for work for the Remediation will be subject to the parties’ mutual approval, not to be unreasonably withheld or delayed.” (emphasis added.) As stated in detail above, Toll drastically increased the Remediation Budget of \$1,310,000 to \$4,200,000 with one month’s time with no change in the scope of work. While the Plaintiffs attempted numerous times to come to an agreement as to a revised Remediation Budget, for example, as described, by providing detailed facts and explanations for why the \$4,200,000 proposal was much too high, Toll failed to provide similar details that may have helped the parties to agree to an increase in the Remediation Budget that was reasonable. Most recently as identified in the Invoice, the purported Remediation Budget ballooned to \$4,711,016.55 as of January 31, 2018, and is projected to cost as much as \$7,649,642 in the Invoice presented as of April 2, 2018. See Invoice, attached as Ex. A to Curtis Aff. These costs are significantly higher than the agreed-upon Remediation Budget of \$1,310,000 and are inaccurate and unjustified as explained above and as detailed in the Curtis Aff. In summary, Toll’s drastic increase in the Remediation Budget and refusal to compromise is unreasonable and in breach of Section 26(b)(4).

**b. Breach of the Implied Covenant of Good Faith and Fair Dealing**

Second, the Plaintiffs are likely to succeed on Count II of the Complaint, which is a claim for the breach of the implied covenant of good faith and fair dealing.

Contracts in Massachusetts have an implied covenant of good faith and fair dealing. *Anthony's Pier Four, Inc. v. HBC Assocs.*, 411 Mass. 451, 471 (1991). This covenant provides

that neither party "shall do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *Id.* at 471-72. This covenant does not create rights and duties not otherwise provided for in the existing contractual relationship. *Uno Rests., Inc. v. Boston Kenmore Realty Corp.*, 441 Mass. 376, 385 (2004).

Toll also breached the implied covenant of good faith and fair dealing by drastically increasing the Remediation Budget, as detailed above, to a number that it knew the Plaintiffs could not afford and threatening that other parties would purchase the Retail Unit, which will have the effect of destroying or injuring the right of the Plaintiffs to receive the fruits of the contract. As stated, it is clear that the "fruits" or central aspect to the Agreement was that the Plaintiffs would have the Option to Purchase the Retail Unit. Toll's actions, as described in detail above, are clearly a breach of this covenant.

**c. M.G.L. c.93A, §11**

Third, the Plaintiffs are likely to succeed on Count III of their Verified Complaint, which is a claim under M.G.L. c.93A, § 11, because they have demonstrated that the Defendants knowingly and willfully engaged in unfair or deceptive acts and practices in the conduct of commerce in violation of M.G.L. c.93A, §2.

Chapter 93A, Section 2 provides that (a) unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. Chapter 93A, Section 11, provides that "any person who engages in the conduct of any trade or commerce and who suffers any loss of money or property, real or personal, as a result of the use or employment by another person who engages in any trade or commerce of an unfair method of competition or an unfair or deceptive act or practice declared unlawful by section two...may...bring an action in the superior court..." Further, pursuant to Section 11, "such person, if he has not suffered any



loss of money or property, may obtain such an injunction if it can be shown that the aforementioned unfair method of competition, act or practice may have the effect of causing such loss of money or property."

A party bringing an action under Chapter 93A must establish that defendants' actions fall at least within penumbra of some common law, statutory, or other established concept of unfairness, or were immoral, unethical, oppressive or unscrupulous, and resulted in substantial injury to competitors or other business people. *Brennan v. Carvel Corp.* 929 F2d 801, (1991). However, a Chapter 93A claim does not require showing that defendant's unfair or deceptive conduct was knowing or willful. *Giannasca v. Everett Aluminum, Inc.*, 13 Mass App 208 (1982). If the Court finds for the plaintiffs, recovery shall be in the amount of actual damages, or up to three, but not less than two, times that amount if the court finds that the use or employment of the method of competition or the act or practice was a willing or knowing violation of Section 2. G.L. c.93A, §11.

An unfair act is not defined by G.L. c. 93A, but is to be determined on case by case basis. Standards for determining whether trade practice is "unfair" include whether (1) it is within penumbra of common law, statutory or other established concept of unfairness, (2) it is immoral, unethical, oppressive or unscrupulous, or (3) it causes substantial injury to consumers or competitors or other businessmen. *PMP Associates, Inc. v. Globe Newspaper Co.*, 366 Mass. 593 (1975).

A practice may be "deceptive" if it could reasonably be found to have caused person to act differently from way he otherwise would have acted. *Purity Supreme, Inc. v. Attorney Gen.* 380 Mass. 762 (1980). Deceptive conduct is violation of a statute even if it is not actually false, as long as it is likely to mislead a plaintiff acting reasonably under the circumstances. *Sladen v.*

*Passaro*, 1994 Mass. App. Div. 29, 1994. Failure to disclose any fact disclosure of which may have influenced person not to enter into transaction is violation of G.L. c. 93A. *Grossman v. Waltham Chemical Co.*, 14 Mass. App. 932 (1982).

Here, Toll's actions, as described in detail above, are both unfair and deceptive in violation of M.G.L. c.93A, §11. As stated, key to the Agreement and expressly included in the Agreement was the Remediation Budget of \$1,310,000. As a result of the Plaintiffs believing that the parties would work in good faith to mutually agree upon any Remediation Budget increases, as set forth in Section 26(b)(4) and as a result of the extensive due diligence on the property and discussions with Toll, the Plaintiffs were willing to bear more risk as part of the Agreement. For example, the Plaintiffs agreed that if the cost of Remediation of the Existing Environmental Conditions and any Unknown Conditions exceeds \$2,500,000, then the Plaintiffs will pay the actual amount of all such Remediation costs in excess of the Upset Threshold – this is the precise provision at issue here. However, the Plaintiffs reasonably believed that the parties would mutually agree on Remediation Budget increases and that any minor increases would be reasonable and so they were willing to take this risk.

However, as stated above, from the period of January to February 2017, the Remediation Budget increased from the mutually agreed upon Budget of \$1,310,000 to a proposed budget of \$1,900,000. Further, a month later, the budget ballooned to \$4,200,000 without any legitimate justification. Despite the Plaintiffs' repeated efforts and request orally in meetings and by numerous emails, Toll has refused to provide documentation of its alleged costs, and intentionally misrepresented these costs. Further, as detailed, the Toll Defendants during meetings mentioned that it had other persons and business partners that would be interested in purchasing the Retail Unit, likely Davis, as discussed above, in the event that the Plaintiffs could

Toll's actions and increase in the Remediation Budget and recent demand of the amount of \$2,211,016.65 are being used to prevent the Plaintiffs from an opportunity to exercise the Option to Purchase the Retail Unit, especially, as stated, that Toll mentioned it has other interested buyers. The Plaintiffs cannot and should not have to pay the \$2,211,016.65 demanded as they do not have the sufficient liquid assets and despite their diligent efforts, they have been unable to identify a legitimate funding source to finance the payment under commercially reasonable terms. Starr Aff., ¶¶31-32. They have been unable to obtain financing as a result of Toll's unfair and deceptive actions because Toll has failed to provide to the Plaintiffs, upon numerous requests, information regarding lease space which was necessary for the Plaintiffs to enter into notices of intent or contracts to lease and the ability to use these prospective leases to secure short and long term financing. Starr Aff., ¶¶19-21.

These actions are unfair because they not only are contrary to the established concept of fairness, but they also will cause substantial injury to the Plaintiffs as they will lose a significant business opportunity that they intended to have in exercising the Option to Purchase the Retail Unit. See *PMP Associates, Inc. v. Globe Newspaper Co.*, 366 Mass 593 (1975). Further, the above described actions are deceptive because the Plaintiffs, if they had not thought that the agreed Remediation Budget of \$1,310,000 was a fair budget and may only be increased to reasonable levels, would not have entered into the Agreement as the Option to Purchase was a material inducement of the agreement. Toll's representations that it would work in good faith to an agreed upon Remediation Budget misled the Plaintiffs to enter into the Agreement. Those representations by Toll were clearly false as is seen in Toll's drastic increase in the Budget without any legitimate reasons, and pressure on the Plaintiffs that other parties' may exercise the option. See *Purity Supreme, Inc. v. Attorney Gen.*, 380 Mass 762 (1980).

Moreover, as described, since Toll's actions were also clearly willful, knowing, and in bad faith, a Court can award damages up to three, but not less than two times the amount. See *Heller v. Silverbranch*, 376 Mass. 621 (1978).

**d. Misrepresentation**

Fourth, the Plaintiffs are likely to succeed on Count IV of their Complaint, which is their misrepresentation claim, because the Plaintiffs, as described in detail above, particularly in the discussion of the Chapter 93A claim, have demonstrated that the Defendants' actions and inactions constitute intentional and/or negligent misrepresentation because the Defendants made false statements of material fact, both orally and in written correspondence, to induce the Plaintiffs to enter the Agreement, and the Plaintiffs relied on those statements to their detriment.

**e. Declaratory Judgment**

Fifth, the Plaintiffs are likely to succeed on Count V of their Complaint, which is their claim for Declaratory Judgment. An actual controversy exists as to whether the Toll Defendants are liable for breach of contract, breach of the implied covenant of good faith and fair dealing, misrepresentation, and whether they are liable pursuant to M.G.L. c.93A, and as described in detail above, the Plaintiffs are likely to be successful on these claims.

**II. The Plaintiffs Will Suffer Immediate Irreparable Harm if a Preliminary Injunction Does Not Issue.**

The Plaintiffs will suffer immediate irreparable harm if a preliminary injunction does not issue. Pursuant to Section 11, "such person, if he has not suffered any loss of money or property, may obtain such an injunction if it can be shown that the aforementioned unfair method of competition, act or practice may have the effect of causing such loss of money or property."

Here, the Plaintiffs have described in detail above how the Toll Defendants' unjustified drastic increase in the Remediation Budget and unfair and deceptive actions will result in the

Plaintiffs losing their ability to exercise the Option on the Retail Units in a timely fashion as the Plaintiffs will in essence be unable to afford to exercise their Retail Option when the Remediation Budget increased from \$1,310,000 to at least \$4,711,016.65, and is projected to be as much as \$7,649,642 as of April 2, 2018. If the Court does not issue an injunction preventing the Toll Defendants from demanding immediate payment from SLP, the Plaintiffs will either lose the Option or be required to expend funds of at least \$2,211,016.65. The Plaintiffs cannot and should not have to pay the \$2,211,016.65 demanded as they are unjustified and they do not have the sufficient liquid assets and despite their diligent efforts, they have been unable to identify a legitimate funding source to finance the payment under commercially reasonable terms. Starr Aff., ¶¶31-32. As indicated, they have been unable to obtain financing as a result of Toll's unfair and deceptive actions because Toll has failed to provide to the Plaintiffs, upon numerous requests, information regarding lease space which was necessary for the Plaintiffs to enter into notices of intent or contracts to lease and the ability to use these prospective leases to secure short and long term financing. Starr Aff., ¶¶19-21.

The loss of the profits resulting from the inability to exercise this Option is expected to be from approximately \$24 to \$28 million. Starr Aff., ¶34.

The Plaintiffs will further suffer immediate irreparable harm if the Court does not prevent the Toll Defendants from allowing a third party, as Toll has suggested it would do, to exercise the Option to Purchase the Retail Units. If a third party exercises that option, the Plaintiffs will permanently lose the ability to exercise the Option to Purchase, which was a critical component to the Agreement and a significant loss of profits estimated at approximately \$24 to 28 million.

**III. There Is No Substantial Risk of Harm to the Defendants that Outweighs the Immediate Risk of Harm to the Plaintiffs.**

If the Court restrains the Toll Defendants from demanding payment from the Plaintiffs in the amount of \$2,211,016.65 and/or any amount, the Court would simply be requiring Toll to do what it already agreed to in the Agreement, which was to reach a mutually agreed upon Remediation Budget with the Plaintiffs. The discovery period and trial would allow the parties to fully document their position and reasonable costs of any alleged overruns. Further, an injunction preventing the Toll Defendants from allowing any third party to exercise the Option to Purchase the Retail Units would also not harm the Toll Defendants, as they agreed to allow solely the Plaintiffs to exercise the Option to Purchase the Retail Units. Simply put, an injunction would only require the Toll Defendants to comply with the current Agreement and would not cause them any harm.

Rather, there is an immediate risk of harm to the Plaintiffs, because as described in detail above, the Toll Defendants' unjustified and exorbitant increase in the Remediation Budget and unfair and deceptive actions will result in the Plaintiffs losing their ability to exercise the Option on the Retail Units. The Plaintiffs cannot afford to pay \$2,211,016.65 to exercise this option because they do not have the sufficient liquid assets and despite their diligent efforts, they have been unable to identify a legitimate funding source to finance the payment under commercially reasonable terms as a result of unfair and deceptive practices by Toll. Starr Aff., ¶¶31-32. The loss of the profits resulting from the ability to exercise this Option is expected to be approximately \$24 and \$28 million. The Plaintiffs will further suffer immediate irreparable harm if the Court does not prevent the Toll Defendants from allowing a third party, as Toll has suggested it would do, to exercise the Option to Purchase the Retail Units. If a third party

exercises that Option, the Plaintiffs will permanently lose the ability to exercise the Option to Purchase, which was a critical component to the Agreement.

### **Conclusion**

For the reasons stated above, the Plaintiffs respectfully request that this Court issue a Preliminary Injunction preventing the Defendants from demanding payment by SLP to the Toll Defendants by May 2, 2018 and until this matter is fully litigated and all appeals have expired. The Plaintiffs further request that the Defendants be prevented from allowing any other third party except for the SLP entities to exercise the Option to Purchase the Retail Units until a final decision, including all rights of appeal, is concluded in this Action.

Respectfully submitted,  
STARR CAPITAL PARTNERS, LLC, SMITH  
LEGACY PARTNERS SERIES, LLC, SMITH  
LEGACY PARTNERS II, LLC, 505-507  
COMMON STREET, LLC, AND 527 COMMON  
STREET, LLC,  
By their attorneys,



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53 State Street, Floor 15

Boston, MA 02109

(617)330-7000

Dated: April 26, 2018

**CERTIFICATE OF SERVICE**

I, Robert A. Fasanella, attorney for the Plaintiff, hereby certify that on April 26, 2018, a true copy of the above document was served on the Defendants by first class mail.



Robert A. Fasanella



## EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX

SUPERIOR COURT  
C.A. NO.:

STARR CAPITAL PARTNERS, LLC, SMITH  
LEGACY PARTNERS SERIES, LLC, SMITH  
LEGACY PARTNERS II, LLC, 505-507 COMMON  
STREET, LLC, and 527 COMMON STREET, LLC,  
Plaintiffs,

v.

TOLL BROTHERS, INC. and BELMONT  
RESIDENTIAL, LLC, Defendants.

**VERIFIED COMPLAINT**

Starr Capital Partners, LLC; Smith Legacy Partners Series, LLC; Smith Legacy Partners II, LLC; 505-507 Common Street, LLC; and 527 Common Street, LLC (collectively, the “Plaintiffs”) hereby bring this action against Toll Brothers, Inc. and Belmont Residential, LLC (collectively, the “Toll Defendants”) for breach of contract, breach of the covenant of good faith and fair dealing, and misrepresentation. The Plaintiffs further bring claims pursuant to M.G.L. c. 93A and declaratory judgment against the Toll Defendants. The Plaintiffs further seek that a temporary restraining order or preliminary injunction against the Toll Defendants.

**I. PARTIES**

1. The Plaintiff Starr Capital Partners, LLC is a Delaware limited liability company with a principal place of business located at 6 Littlefield Road, Acton, Massachusetts, 01720.

2. The Plaintiff Smith Legacy Partners Series, LLC is a Delaware limited liability company with a principal place of business located at 6 Littlefield Road, Acton, Massachusetts, 01720.
3. The Plaintiff Smith Legacy Partners II, LLC is a Massachusetts limited liability company with a principal place of business located at 6 Littlefield Road, Acton, Massachusetts, 01720.
4. The Plaintiff 505-507 Common Street, LLC is a Massachusetts limited liability company with a principal place of business located at 6 Littlefield Road, Acton, Massachusetts, 01720.
5. The Plaintiff 527 Common Street, LLC is a Massachusetts limited liability company with a principal place of business located at 6 Littlefield Road, Acton, Massachusetts, 01720.
6. The above Plaintiffs will be collectively referred to as “SLP,” “Starr,” “Seller,” or “Plaintiffs.”
7. The Defendant Toll Brothers, Inc. is a Pennsylvania corporation with a principal place of business at 250 Gibraltar Road, Horsham, Pennsylvania, 10944. Toll conducted business in and purchased real estate, which is the subject of this action, in Belmont, Middlesex County, Massachusetts.
8. Belmont Residential, LLC is a Delaware limited liability company with its principal place of business located at 250 Gibraltar Road, Horsham, Pennsylvania, 19044. Belmont Residential, LLC conducted business in and purchased real estate, which is the subject of this action, in Belmont, Middlesex County, Massachusetts.
9. Toll Brothers, Inc. and Belmont Residential, LLC will collectively be referred to as “Toll” or the “Buyer.”

## **II. JURISDICTION**

10. The Court has jurisdiction over the parties pursuant to M.G.L. c. 223A, §§2 and 3.
11. Venue is proper pursuant to M.G.L. c. 223 as the cause of action arises out of Middlesex County, Massachusetts.

**III. FACTS COMMON TO ALL COUNTS**  
**(Background and Terms of Agreement)**

12. The Sellers entered into an Agreement of Sale dated March 14, 2016, a First Amendment dated April 13, 2016, a Second Amendment dated September 2, 2016, and Third Amendment dated September 28, 2016 (collectively as amended, the "Agreement"). See Agreement of Sale and Associated Amendments, Exhibit 1.
13. In the Agreement, the Seller agreed to sell to Toll certain property, consisting of the several parcels of land (hereinafter referred to as "Parcels," the "Property" or the "Project"), being more particularly bounded and described as set forth on Exhibit "A" to the Agreement. See Site Plan, Exhibit 2.
14. The "Property" also included, among other things as described by the Agreement, (iv) all of the rights, title, interest, powers, privileges, benefits and options of Seller, or otherwise accruing to the owner of the Property...(v) all rights, title and interest in and to an Option Agreement with purchase additional Property from the Town of Belmont and an Option to Buy the Retail Space of the Cushing Village Project (as hereinafter defined and defined with the Agreement)...." See Agreement.
15. Seller provided to Buyer complete copies of Seller's Plans, numerous Environmental Assessment Reports, a Remediation Budget estimate (which included at least three independent cost estimates) and numerous other documents as required under the Agreement, on or before the date on which the Due Diligence Period (as hereinafter defined) commenced and later terminated as described and attached to Exhibit C of the Agreement as referenced thereafter and hereto as (the "Existing Environmental Condition").

16. The Existing Environmental Condition included Environmental Reports provided by Seller to the Buyer and listed in Exhibit C of the Agreement that existed at the time and represented to the best of Seller's then current and actual knowledge of the conditions of the Property that contained any hazardous, toxic, chemical or radioactive substance, contaminant or pollutant (together, "Hazardous Substances") as defined in the Agreement and under applicable laws or which may require cleanup, remediation or other corrective action.
17. Toll engaged in extensive additional due diligence on its own including on-site and off-site properties assessments, including but not limited to additional soil, soil gas, groundwater, and indoor air testing on-site and off-site.
18. The Seller fully cooperated and extended the Due Diligence several times to enable Toll to have a total of at least six months of Due Diligence from the entering of Toll's first Offer and/or the Agreement. Toll completed its Due Diligence on September 2, 2017 at the time the Second Amendment to the Agreement was executed by the parties.
19. The Purchase Price (the "Purchase Price") for the Property was in total Fourteen Million Two Hundred Sixty Thousand and no/100 Dollars (\$14,260,000.00) based upon a per unit price of One Hundred Twenty-four Thousand and no/100 Dollars (\$124,000.00) (the "Per Unit Price") for one hundred fifteen (115) residential Units (as hereinafter defined) as set forth in Seller's Plans for which the development approvals and assignments of all rights were delivered at a closing.
20. Key to the Agreement was the Remediation Budget. The Remediation Budget was originally prepared by SLP, was shared with Toll during the Due Diligence period, and then mutually agreed upon by both parties.

21. The Remediation Budget was created based upon informed input from numerous contractors, environmental consultants (including CHA, AEI, and Cooperstown Environmental) and various other sources obtained over several years as a result of SLP's extensive due diligence, site assessments, and remediation at the Property. All of this information was shared with Toll during and after its Due Diligence Period.
22. A Remediation Budget and Scope of \$1,310,000 was prepared and integrated into the Agreement signed on March 14, 2016 and ratified and referenced in the First Amendment dated April 13, 2016 and the Second Amendment at Section 26(b)(4) dated September 2, 2016. SLP also shared with Toll at least three versions of the Remediation Budget in the form of Excel spreadsheets prior to the end of the Due Diligence Period on September 2, 2016, which was extended numerous times and lasted for over seven months. (See Second Amendment to Agreement,)
23. The Remediation Budget also included a detailed Scope of Work and narrative which was sent by Chris Starr, Managing Member of SLP to Bill Lovett, Senior Development Manager of Toll Brothers in August 2016. (See Remediation Budget and Narrative, Exhibit 3).
24. The narrative Scope of the Remediation was discussed by Mr. Starr and Mr. Lovett on numerous occasions throughout the Due Diligence period including several times during the month of August 2016.
25. Instead of including the detailed narrative with the Remediation Budget in the Agreement, Mr. Lovett insisted on a shorter and general statement called the Remediation Scope (referenced as Exhibit C to the Second Amendment). At the time, Mr. Lovett claimed that Toll did not have sufficient time for the narrative Remediation Scope to be reviewed

internally and that a more detailed narrative scope could be agreed upon later, after the closing. Mr. Lovett stated that the Remediation Budget and conceptual scope was of most importance.

26. SLP shared with Toll at least three versions of the Remediation Budget in the form of Excel spreadsheets prior to the end of the Due Diligence Period; these versions ranged from \$1,310,000 to approximately \$1,366,000, all of which included a ten percent (10%) contingency.
27. Mr. Starr and Mr. Lovett agreed to a concept of a range of costs, with the Seller taking on more risks, including the Seller bearing more than a pro-rata share of the total costs of the development beyond the square foot total costs of the Retail Space that Seller has an option to buy, if the remediation of the Existing and Unknown Conditions exceeded the mutually agreed upon Remediation Budget of \$1,310,000.
28. SLP was confident with its remediation scope and budget and believed that the parties would work in "good faith" to mutually agree upon any Remediation Budget increases, as was required by the Agreement, and thus was prepared to bear more of the risk.
29. While the Agreement stated that the costs of Remediation may exceed the "mutually agreed Remediation budget," the amended Section 26(b)(4) (attached as Ex. J to the Second Amendment), of the Agreement also stated that the parties agree that "the budget for the Remediation of the Existing Environmental Conditions is \$1,310,000..." and further that "any changes in the scope of work for the Remediation will be subject to the parties' mutual approval, not to be unreasonably withheld or delayed." (Emphasis added.)

30. Section 26(b)(4) clearly addresses the Remediation Budget of \$1,310,000 and no other budget or scope, and thus the Remediation budget is clearly subject to the parties' mutual approval.
31. It should be noted that Exhibit C of the Second Amendment defines the Remediation Scope as "all costs associated with the onsite, or offsite cleanup or remediation associated with the property..." Given that this definition "scope" is "costs" and vice versa, changes in costs are changes to scope, and thus are subject to mutual approval.
32. Fundamental to the Agreement is the Seller's right to exercise its Option to Purchase the Retail Unit of the Cushing Village Development provided under Section 26. "The Seller's right to purchase the Retail Unit was a material inducement for its agreement to sell the Property to Buyer." In fact, SLP borrowed an additional \$4,000,000 in funds to buy a municipal parking lot from the Town of Belmont and clear the title (e.g, pay off architects, debtors, etc.) all of which debts SLP anticipated recovering from the leasing of the Retail Unit over a period of time. See Section 26. Provided the Seller is not in default of the Agreement, the Seller has a right to exercise the Option to Buy 100% of the Retail Unit.
33. Under the Agreement, as the costs of the remediation of the Site increase, the Seller is obligated to bear more than its pro-rata share of costs based on the square footage cost to construct the development, including the Retail Unit. Section 26(b) of the Agreement defines specifically how the costs of Remediation are borne.
34. For example, if the cost of Remediation of the Existing Environmental Conditions for the Project exceeds One Million Four Hundred Forty One Thousand and no/100 Dollars (\$1,441,000), then if SLP exercise its right to purchase the Retail Unit, it will be



responsible for 100% of remediation overruns for known conditions, and not simply the pro-rata portion thereof attributable to the Retail Unit. See Section 26(b)(2).

35. Further, if the cost of Remediation of the Existing Environmental Conditions and any Unknown Conditions exceeds Two Millions Five Hundred Thousand and no/100 Dollars (\$2,500,000), then SLP will pay the actual amount of all such Remediation costs in excess of the upset threshold as such costs are incurred and billed to Seller by Buyer (not as an increase in the Retail Price, but to be paid irrespective of whether Seller elects to purchase the Retail Unit, failing which Seller will forfeit its right to purchase the Retail Unit under this Section). See Section 26(b)(3).

**Changes to Remediation Budget and Scope After Closing and Related Issues**

36. Following the closing on the Property, which occurred on October 19, 2016, the Parties worked in good faith to assign permitting and approval rights to construct Cushing Village. SLP also worked diligently and in good faith to secure the most cost-efficient methods to implement further assessment and remediation. This included among other things the need to complete additional soil sampling and selecting locations for trucking and disposal of non-hazardous and hazardous soil to the most cost-efficient locations as well as on-site remediation to reduce the volume of materials that would have to be disposed of as hazardous waste.
37. Extensive soil sampling and remediation planning was done prior to the Due Diligence Period by CHA on behalf of SLP (over 100 samples at the cost of approximately \$225,000) and additional soil samples were collected by Sage for Toll.
38. A revised Response Action Measure ("RAM") Plan was prepared by Sage for Toll and presented to the public and DEP during a Public Involvement Plan (PIP) process in late

2016 and early 2017. The initial RAM Plan and subsequent version prepared by Sage were not shared with SLP prior to making them public and Toll and Sage ignored almost all of SLP's comments on the Plan.

39. .Despite SLP's multiple requests that Sage properly define the boundaries of the Disposal Site to include only those areas where oil and/or hazardous materials (OHM) have come to be located based on extensive testing, in accordance with the DEP requirements, Sage and Toll has continued to define the Disposal Site to include the entire Property – even those areas that have not been affected by contaminants. This definition of a Disposal Site was not in compliance with the Massachusetts Contingency Plan (MCP).
40. SLP and Cooperstown, since early February 2017, attended many meetings, convened conference calls, and sent emails to attempt to obtain data and/or an explanation from Sage and Toll to support its purported Disposal Site, questions regarding the RAM Plan, and inquiries regarding expected costs to attempt to come to agreement on reasonable assumptions and a reasonable and mutually agreeable Remediation Budget.
41. Many of SLP's requests have been ignored and when responded to by Toll or Sage these requests were often addressed with incomplete, illegible, or in some cases even inaccurate information and misrepresentations.
42. During January and February 2017, and specifically on February 1, 2017 during a meeting with SLP, Toll proposed to update the Remediation Budget from the mutually agreed upon Remediation Budget of \$1,310,000 to an expanded proposed budget of \$1,900,000.
43. At that meeting in February 2017, Mr. Lovett suggested that it would be in SLP's best interest to sell its option to buy the Retail Unit to another interested party if it could not afford the Remediation Budget increase. Mr. Lovett told SLP that it had a short window of

time to act to transfer the option to another interested party. Mr. Starr rejected this proposal and made it clear that SLP had no interest in selling its Option to Buy the Retail Unit to another third party.

44. Approximately one month later, Toll forwarded a new proposed budget that had ballooned to over \$4,200,000, without any explanation or legitimate justification based in empirical data, accurate assumptions, or valid changes in scope or the underlying environmental conditions of the site.
45. In contrast, SLP and Cooperstown Environmental provided to Toll updated detailed estimates showing that Toll could have disposed of contaminated materials at considerably lower costs than they cited in their updated budget (in-line with the mutually agreed upon Remediation Budget and estimates provided by SLP under the Agreement).
46. Toll has repeatedly refused to explain or justify its decision to use a higher priced contractor or the decision to dispose of non-hazardous material as hazardous or rational means to save money on disposal costs.
47. Additional meetings were held in March and April with Sage and Toll in an attempt to obtain meaningful data to support assumptions made by Sage. SLP and Cooperstown tried repeatedly to obtain consensus with Toll on assumptions and cost estimate, but most requests have gone unanswered or dismissed without justification.
48. Throughout meetings in the Winter and Spring of 2017, Toll mentioned several times to SLP that it had other persons and business partners that would be interested in purchasing the Retail Unit in the event that SLP could not meet its obligations to pay the remediation cost beyond the \$1,410,000 as provided in the Agreement.

49. SLP viewed these statements by Toll, (especially given that Toll knew of SLP's dire financial position prior to the closing and having to contribute an additional \$4,000,000 to the deal) as threats to bring in other interested parties and to breach the contractual rights of SLP by deliberately inflating the remediation costs to a level where SLP could not pay causing SLP would be forced to give up its Option to Buy the Retail Space.
50. Toll has attempted to argue that SLP has no approval rights over Remediation costs by citing to the "Nauset Scope" and a provision from Section 4(C) of the Second Amendment to the Agreement, which are inapplicable and irrelevant. Section 4(C) refers to the general project construction budget and specifically the Starbucks's location, and clearly does not apply to the Remediation budget. The "Nauset Scope" expressly states, "This Budget is exclusive of any Starbucks Closure Costs, delivery, delay, penalties, rent offsets or fees or Environmental Costs other than those in the Nauset Scope." There are few Environmental Costs in the Nauset Scope. This is because the Environmental costs are addressed in the Remediation Budget, which was an entirely different Excel spreadsheet as referenced in the Agreement and Second Amendment.
51. Toll has also inaccurately stated that SLP did not reserve "approval rights over costs." The provision in the Second Amendment regarding limiting Seller's approval rights over costs that Toll refers to is located in Section 4(C) of the Agreement and relates to Non-Closure Costs, as opposed to Remediation costs. Non-Closure costs are irrelevant here because they only result if Starbucks had not timely vacated the Property. Starbucks timely vacated the Property in June of 2017 as agreed and accepted by Toll, thus Non Closure costs were not incurred.

52. Most recently, on May 23, 2017, Mr. Starr sent an email to Mr. Weiss responding to the latest proposed Toll Remediation estimate along with a detailed Memorandum from James Curtis, LSP, PE and President of Cooperstown. (See May 23, 2017 Email, Exhibit 4) which explains how the new budget of approximately \$4,200,000 was excessive.
53. Toll responded to this email but failed to address most of the points and questions raised by SLP and Cooperstown, and instead attempted merely to compare on a summary basis the costs of the mutually agreed upon Remediation Budget and a new proposed \$4,000,000 dollar budget. (See May 30, 2017 Email, Exhibit 5)
54. SLP sent a detailed follow-up letter dated June 6, 2017 (See June 6, 2017 Letter, Exhibit 6) to Toll and a summary Memo and plan of the Disposal Site prepared by Cooperstown. SLP reiterated many of the points made throughout the process and provided additional detail regarding the Remediation Budget. SLP did not receive much of the requested information nor has Toll identified any underlying environmental conditions that would account for such a drastic and dramatic budget increase despite repeated requests for such information. SLP reiterated that many of its requests for information or recommendations to save costs have been ignored or Toll has provided it inaccurate and misleading information, particularly as relates to the following, as detailed further in the June 6, 2017 letter: dewatering, soil disposal, on-site soil treatment, and professional services.
55. For example, as relates to dewatering costs, SLP explained in its June 6, 2017 letter that dewatering costs are required at any site that encounters groundwater regardless if any contamination is present and de-watering permitting, discharge oversight, and removal of non-MCP contaminants (e.g., particulates) are all necessary regardless of contamination;

therefore, much of these are not considered environmental remediation costs or incremental environmental costs, but rather they are normal construction costs.

56. SLP provided an estimate of \$50,000 for the incremental environmental costs associated with dewatering, as opposed to Toll's Budget Comparison of \$330,000, which clearly includes costs that are unnecessary and excessive, including multiple personnel to monitor dewatering continuously throughout the construction project because such costs are unreasonable and simply unnecessary, as SLP has pointed out repeatedly.
57. As to soil disposal, SLP stated in its June 6, 2017 letter that all soils are not required to be disposed of as Remediation Waste because extensive pre-characterization of soils justified much lower quantities of Remediation Waste.
58. Limiting the scope of the "Disposal Site" that requires remediation based on extensive pre-characterization of soil is imperative to correctly estimating the Remediation Budget, rather than considering the entire property as the Disposal Site.
59. Excavation, transportation and disposal of relatively clean (<RCS-1) or uncontaminated soils, as well as the monitoring of such soils, are not environmental costs but rather construction costs and should be removed from the Remediation Budget.
60. Multiple environmental consultants are not needed to manage and supervise soil characterization and disposal; Toll/Sage's estimate of \$262,000 is excessive and unnecessary (SLP's estimates in the mutually agreed upon Remediation Budget ranged from \$57,090 to \$76,000). One technical field person (instead of three) is sufficient to supervise soil disposal.
61. The estimate for equipment rental to perform monitoring (e.g., ambient air monitoring) during excavation of \$150,000 is excessive and unnecessary and not required by DEP

regulations or guidance. It should be drastically reduced or eliminated to only that monitoring that is required to meet DEP's requirements.

62. The costs presented by Toll for soil transport and disposal appear excessive and do not reflect more cost-effective options; a proposal to SLP from TAZ Enterprises is about \$450,000 less than Toll's price from WL French. It is not clear why a reasonable person would select a much higher-priced proposal.
63. There also may be double-counting of soil costs in both the soil treatment line item and the soil T&D line items. SLP requested greater transparency regarding the soil costs especially considering that this is the largest cost driver.
64. As to costs related to On-Site Soil Treatment, SLP stated in its June 6, 2017 letter that Onsite treatment originally was estimated by SLP at \$167,500; Sage's estimate in March 2017 was \$427,000, which later was inexplicably was raised to \$882,000. That cost is excessive, unjustified based on the extensive soil characterization, and is misleading.
65. Also chem ox on-site treatment was used as opposed to the thermal treatment, which was not approved by SLP. This type of remediation scope change increased costs drastically and was ineffective. Not only did the chem ox treatment not work in reducing the mass of contamination, but it made the hazardous release and conditions worse since chem ox generated break-down products from the PCE such as TCE, DCE and VC which are much more difficult to remedy and are more toxic to humans at lower concentrations. These costs include \$399,000 for the treatment of the actual PCE-contaminated soil (1900 cy).
66. An additional \$374,000 was included in the soil treatment budget for non-PCE-contaminated soil (PCE levels of <1 ppm) "to facilitate the treatment of the PCE-contaminated soil" (approximately doubling the volume and cost).

67. An additional \$109,000 was included for removing and disposing non-PCE-contaminated soil that simply happens to be near the clean treated soil that is near the dirty treated soil.
68. SLP questioned the volume, merits, and cost estimate given the extensive soil testing performed to date that justifies a much smaller volume, disputed that Sage's estimate was accurate or appropriate, and asked that the budget for treated soil be recast as the actual cost for soil that requires in situ treatment and not the other, surrounding soil.
69. As to professional services fees, SLP stated in its June 6, 2017 demand letter that Sage had provided an "updated" cost estimate for their Professional Services of \$1,112,900, which included costs for certain items that had not been included in SLP's cost estimate and were not agreed to by SLP thus changing not only the scope but the cost significantly and materially of the mutually agreed upon Remediation Budget.
70. SLP updated its original cost estimates for professional services (based on three separate consultants' estimates that were relatively consistent) to reflect reasonable costs to compare to Sage's estimates. Even when using very conservative assumptions regarding the ultimate scope of services and pricing, Cooperstown's updated number on behalf of SLP is \$338,000 versus Sage's proposed cost of \$1,112,900.
71. SLP observed that Sage's (undocumented) "billed to date" (\$388,364) is far higher than Sage's budget for the entire project that was provided in March of 2017, just weeks earlier. During these weeks, there were no additional analytical data that could have conceivably changed the fundamental cost assumption. This is clearly evidence that costs are completely out of control and that Toll and Sage have failed to adequately forecast and manage their costs.



72. SLP demanded a process and protocol where SLP and Toll would mutually agree upon any substantial deviation from the remediation budget.
73. SLP demanded that any requests for cost reimbursement would have to be documented by detailed invoices, timesheets, personnel qualifications and expense reimbursements and any and all additional reasonable documentation that is typically required for any reimbursement scenario. Toll provided no response to these multiple requests.
74. SLP disagrees with the need to prepare any Phase II, III or IV reports since those filings are unnecessary as the updated Phase II information can be included in the Permanent Solution expected at the completion of the remediation.
75. SLP believes that significant costs allegedly spent on the Phase II and RAM plan process were redundant and excessive, particularly seeing that CHA, a vendor that Toll has worked with extensively in the past, drafted a reasonable RAM Plan. These efforts were duplicated without justifiable reason.
76. SLP stated that Sage's estimated time to complete the remediation (six months) is excessive and misleading because once the areas of the building foundations are excavated, and the soil removed and disposed, the work will transition from remediation to construction and Sage will not need to be present daily for MCP purposes.
77. SLP also objected to Sage's budget for on-site supervision, which included 24 person-hours per day, contending that Sage should limit personnel to supervising remediation activities only at periodic and reasonable times. Sage's estimated monthly supervision costs \$45,950 (and 6-month budget of \$434,300) for excavation monitoring is ridiculous and irrational, far above any reasonable budget.

78. SLP pointed out that the proposed extensive confirmatory soil sampling post remediation or removal (estimated at \$95,000 by Sage) cannot be justified since most of the excavation will proceed to the underlying bedrock. Cooperstown noted that cost of post-excavation testing, assuming two samples per grid within the disposal site that are analyzed for EPH, VPH, VOCs, and metals (the contaminants of concern) would be, at most, \$10,000 - \$15,000.
79. SLP's letter to Toll provided Toll with another two weeks to respond (until June 21, 2017). Toll provided no meaningful or substantive response and rather suggested a meeting at the Cushing Village property for the parties to review the progress made so far with the excavation and remediation of the Site.
80. A site visit did occur on June 28, 2017 and in light of the results of the post-treatment soil samples, which appear to show that the on-site treatment by chem ox performed by Toll's vendor had no discernible effect in reducing contaminant concentrations. SLP requested the opportunity to perform independent testing at the Site to confirm the current concentrations of contamination in the soil. Toll refused to allow such testing without justification.
81. On June 30, 2017, the Plaintiffs sent a Demand Letter pursuant to Chapter 93A to the Defendants in this action. See Demand Letter, Exhibit 7.
82. Toll requested an extension of time to respond to the Demand Letter and SLP provided another week. Toll sent a response to SLP's Demand Letter on July 7, 2017 refuting many of SLP's claims and providing some information that had been requested by SLP for months. Toll provided a limited but unacceptable settlement offer as it addressed only two (2) issues of the myriad of concerns presented by SLP as stated above: namely disposal of

clean fill as hazardous material and the dewatering of the construction site, which are normal construction costs and were not remediation costs to begin with.

83. The information provided by Toll in its Response to SLP's Demand Letter included documentation of excessive and unjustified costs that Toll is attempting to characterize as Remediation Costs and that Toll expects SLP to pay that are not required or justified under the Agreement. As one example, Toll included in a summary of Environmental costs that totaled approximately \$1,900,000 as of that date, which included approximately \$600,000 of due diligence costs it allegedly incurred on Sage for several months prior to the closing that occurred on October 19, 2016. Nothing in the Agreement requires the Seller, SLP to pay for the Buyer's Toll's due diligence costs. Moreover, these due diligence activities and corresponding costs were not included the mutually agreed Remediation budget. This is only one example of the numerous unscrupulous, deceitful and unfair practices of Toll as further elaborated above with respect to its business dealings with SLP during the past year or more relating to Cushing Village.

#### **Damages**

84. As a result of the Defendants actions, including but not limited to misrepresenting and attempting to force SLP to immediately pay exorbitant and inflated remediation costs beyond \$2,500,000 dollars to the estimated current Remediation Budget of at least \$4,200,000 or more, SLP expects to lose the ability to exercise its Option on the Retail Units, which it expects to be approximately \$14,000,000 to \$15,000,000 in net profit.

85. Further, SLP expects that unjustified increases in the remediation costs based on Sage and Toll's misrepresented and exaggerated costs of \$4,200,000 could be approximately \$3,000,000 more than the mutually agreed upon budget of \$1,300,000.

86. Moreover, based on numerous requests by SLP of Toll to provide new and updated estimated construction budgets and cooperate with SLP in its efforts to build out and lease the Retail Space, most of which have been unanswered or ignored by Toll since the February 2017 meeting, SLP believes that Toll will attempt to shift costs from the Remediation Budget to general Construction costs and exaggerate construction costs as well and which could be at least \$2,000,000 to \$3,000,000 in line with the Remediation Budget exceedances.
87. SLP further expects to incur additional attorney fees and consulting fees as a result of the Defendants' actions to be approximately \$250,000 to \$400,000.
88. All of such costs and losses will collectively amount to approximately \$19,000,000 to \$20,000,000 in damages and losses to SLP which should be doubled or trebled as a result of the unfair and deceptive practices in violation of c. 93A by Toll.

**COUNT I**  
**(Breach of Contract – Toll Defendants)**

89. The Plaintiffs repeat and reallege the allegations in paragraphs 1 – 88 of the Complaint.
90. The Agreement clearly provided in the amended Section 26(b)(4) that “any changes in the scope for work for the Remediation will be subject to the parties’ mutual approval, not to be unreasonably withheld or delayed.” (Emphasis added.)
91. As stated in detail above, Toll drastically increased the Remediation Budget of \$1,310,000 to \$4,200,000 with one month’s time and changed the scope of work which was not approved or consented to by SLP.
92. While the Seller attempted numerous times to come to an agreement as to a revised Remediation Budget, for example, as described above, by providing detailed facts, assumptions and explanations for why the \$4,200,000 proposal was much too high, Toll

failed to provide similar details that may have helped the parties to agree to an increase in the Remediation Budget that was reasonable.

93. Toll's drastic and unjustified increase in the Remediation Budget and scope, and refusal to cooperate and agree upon a mutually agreed upon and reasonable Remediation Budget and scope is unreasonable and in breach of Section 26(b)(4).

94. As a result of this breach, SLP will suffer significant damages, including a loss in profits on the Retail Unit due to its inability to exercise the Option to purchase the Retail Units, increased remediation and construction costs, attorney fees, and consulting fees.

## **COUNT II**

### **(Breach of Implied Covenant of Good Faith and Fair Dealing – Toll Defendants)**

95. The Plaintiffs repeat and reallege the allegations in paragraphs 1 – 94 of the Complaint.

96. Contracts in Massachusetts have an implied covenant of good faith and fair dealing. *Anthony's Pier Four, Inc. v. HBC Assocs.*, 411 Mass. 451, 471 (1991). This covenant provides that neither party "shall do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *Id.* at 471-72.

97. Toll breached the implied covenant of good faith and fair dealing in the Agreement by increasing the Remediation Budget and changing the Scope to a cost that it knew or suspected the Seller could not afford and threatening that other parties would purchase the Retail Unit, which will have the effect of destroying or injuring the right of the Seller to receive the benefits of the contract.

98. As stated, it is clear that central aspect and material inducement to the Agreement was that the Seller would have the Option to Purchase the Retail Unit. Toll's actions, as described in detail above, are clearly a breach of this covenant.

99. As a result of this bad faith breach, SLP will suffer significant damages, including a loss in profits due to the inability to exercise the Option to purchase the Retail Units, increased remediation and construction costs, attorney fees, and consulting fees.

**COUNT III**  
**(M.G.L. c.93A, §11 – Toll Defendants)**

100. The Plaintiffs repeat and reallege the allegations of paragraphs 1 – 99 of the Complaint.

101. The Defendants knowingly and willfully engaged in unfair or deceptive acts and practice in the conduct of commerce in violation of M.G.L. c.93A, §2.

102. Chapter 93A, Section 11, provides that "any person who engages in the conduct of any trade or commerce and who suffers any loss of money or property, real or personal, as a result of the use or employment by another person who engages in any trade or commerce of an unfair method of competition or an unfair or deceptive act or practice declared unlawful by section two...may...bring an action in the superior court..."

103. Further, pursuant to Section 11, "such person, if he has not suffered any loss of money or property, may obtain such an injunction if it can be shown that the aforementioned unfair method of competition, act or practice may have the effect of causing such loss of money or property."

104. Here, Toll's actions, as described in detail above, are both unfair and deceptive in violation of M.G.L. c.93A, §11. As stated, key to the Agreement and expressly included in the Agreement was the Remediation Budget of \$1,310,000, which was mutually agreed upon by SLP and Toll during the Due Diligence period as a result of an extensive compilation of data, site assessment and remediation, proposals, consultant and contractor bids and estimates, and detailed plans.

105. While the Agreement did state that the costs of remediation may exceed the mutually agreed Remediation Budget, the amended Section 26(b)(4) also clearly stated that “any changes in the scope for work for the Remediation will be subject to the parties’ mutual approval, not to be unreasonably withheld or delayed.” (Emphasis added.)
106. As a result of the Seller believing that the parties would work in good faith to mutually agree upon any Remediation Budget increases, as set forth in Section 26(b)(4) and as a result of the extensive due diligence on the property and discussions with Toll, the Seller was willing to bear more risk as part of the Agreement. For example, the Seller agreed that if the Remediation Budget exceeded \$1,310,000, the Seller would bear more of a pro-rata share of the total costs of the development beyond the square foot total costs of the Retail Space that the Seller has the option to buy.
107. This Seller’s Option to Purchase the Retail Unit of the Cushing Village Development pursuant to Section 26 was fundamental to the Agreement, and was “a material inducement for its [the Seller] agreement to sell the Property to Buyer.” See Section 26. However, the Seller reasonably believed that the parties would mutually agree on Remediation Budget increases, any change of scope, and that any increases would be reasonable and so was willing to take this risk.
108. However, as stated above, from the period of January to February 2017, the Remediation Budget increased from the mutually agreed upon Budget of \$1,310,000 to a proposed budget of \$1,900,000. Further, a month later, the budget ballooned to \$4,200,000 without any legitimate justification. In addition, Toll and Sage materially changed the scope and costs of the Remediation Budget as comprehensively set forth above and herein.

109. Despite SLP's repeated efforts and request orally in meeting and by numerous emails and written correspondence, Toll has refused to provide material and accurate documentation of the its alleged costs, and intentionally misrepresented these costs.
110. Further, during meetings between the Seller and Toll in February and March 2017, Toll mentioned to SLP that it had other persons and business partners that would be interested in purchasing the Retail Unit, in the event that the Seller could not meet its obligations to pay the remediation costs beyond the \$1,310,000 Remediation Budget.
111. The Seller viewed these statements by Toll as threats to bring in interested parties by intentionally inflating the actual remediation costs to a number that the Seller could not afford, given that Toll knew of the Seller's dire financial position prior to the closing on the Property.
112. The above actions by Toll were unfair and deceptive. It is clear that Toll's and Sage's actions and increase in the Remediation Budget are being used to prevent the Seller from an opportunity to exercise the Option to Purchase the Retail Unit, especially, as stated, that Toll mentioned it has other interested buyers.
113. These actions are unfair because they not only are contrary to the established concept of fairness, but they also will cause substantial injury to the Seller as the Seller will lose a significant business opportunity that he intended to have in exercising the Option to Purchase the Retail Unit. Further, the above described actions are deceptive because the Seller, SLP if it had not thought that the agreed Remediation Budget of \$1,310,000 was a fair budget and may only be increased to reasonable levels, would not have entered into the Agreement as the Option to Purchase was a material inducement of the agreement.



114. Toll's representations that it would work in good faith to an agreed upon Remediation Budget, even if it increased slightly, misled the Seller to enter into the Agreement. Those representations by Toll were clearly false and misleading as is seen in Toll's drastic increase in the Budget and pressure on the Seller that other parties' may exercise the option.

115. Moreover, as described, since Toll's actions were also clearly willful, knowing, and in bad faith, a Court can award damages up to three, but not less than two times the amount. See *Heller v. Silverbranch*, 376 Mass. 621 (1978).

116. As a result of the Defendants' actions, SLP will suffer significant damages, including a loss of its ability to raise the funds at any reasonable interest rates given escalating environmental cost projections necessary to purchase the Retail Unit and thus significant loss in profits due to the inability to exercise the Option to purchase the Retail Units, unjustified and unreasonable increased remediation and construction costs, attorney fees, and consulting fees, and are entitled to double or triple these costs.

**COUNT IV**  
**(Misrepresentation – the Toll Defendants)**

117. The Plaintiffs repeat and reallege the allegations in paragraphs 1 - 116 of the Complaint.

118. The Toll Defendants' actions and inactions constitute intentional and/or negligent misrepresentation because the Defendants made false statements of material fact, both orally and in written correspondence, to induce the Plaintiffs to enter the Agreement, and the Plaintiffs relied on those statements to their detriment all as provided above including but not limited to multiple factual and legal allegations that amount to c. 93A violations as well.

119. The Plaintiffs relied on the Toll Defendants' statements to their detriment and will suffer significant damages, including a loss in profits due to the inability to exercise the Option to purchase the Retail Units, increased remediation costs, attorney fees, and consulting fees.

**COUNT V**  
**(Declaratory Judgment – Against Toll Defendants)**

120. The Plaintiffs repeat and reallege the allegations in paragraphs 1 – 119 of this Complaint.

121. An actual controversy exists as to whether the Toll Defendants are liable for breach of contract, breach of the implied covenant of good faith and fair dealing, misrepresentation, and whether the Toll Defendants is liable pursuant to M.G.L. c.93A.

122. Wherefore, the Plaintiffs request a declaration that the Defendants are liable under the above claims, a declaration of what are fair and reasonable Remediation and construction costs, and seek damages, including a loss of profits due to the inability to exercise the Option to purchase the Retail Units, increased remediation and construction costs, attorney fees, and consulting fees.

**COUNT VI**  
**(Injunctive Relief - Temporary Restraining Order/Preliminary Injunction – Toll Defendants)**

123. The Plaintiffs repeat and reallege the allegations of paragraphs 1 - 127 of the Complaint.

124. Pursuant to Chapter 93A, Section 11, "such person, if he has not suffered any loss of money or property, may obtain such an injunction if it can be shown that the aforementioned unfair method of competition, act or practice may have the effect of causing such loss of money or property."

125. The Plaintiffs request that this Court issue a temporary restraining order or a preliminary injunction preventing the Defendants, and any and all of their agents from increasing the

Remediation Budget over an amount that is not mutually agreed upon by the parties as is required by the Agreement.

126. The Plaintiffs further request that this Court issue a temporary restraining order or a preliminary injunction preventing the Toll Defendants to allow any third party other than the SLP entities to exercise the Option to Purchase the Retail Units until a final decision including all rights of appeal is concluded is issued in this civil action.

127. Without this injunction, the Plaintiffs will suffer significant damages, including a loss of profits due to the inability to exercise the Option to purchase the Retail Units, increased remediation and construction costs, attorney fees, and consulting fees.

### **JURY CLAIM**

Plaintiffs demand Trial by Jury on all triable claims.

### **RELIEF REQUESTED**

**WHEREFORE**, the Plaintiffs move that this Court enter judgment against the Defendants and award the following relief:

1. Award the Plaintiffs damages, including property and economic damages, and attorney fees in an amount to be determined at trial related their breach of contract, breach of the implied covenant of good faith and fair dealing, misrepresentation, and M.G.L. c.93A claims;
2. Award the Plaintiffs damages, including double or treble damages, pursuant to M.G.L. c. 93A;
3. Award the Plaintiffs attorney fees, expert fees and other costs and interest;
4. Issue a Temporary Restraining Order and/or a Preliminary Injunction preventing the Defendants from increasing the Remediation Budget to an amount not agreed

upon by the parties as required in the Agreement, increasing unjustifiably and unreasonably the construction budget, and preventing the Defendants from allowing any other third party except for the SLP entities to exercise the Option to Purchase the Retail Units.

5. Award the Plaintiffs any other relief the Court deems appropriate.

Respectfully submitted,

STARR CAPITAL PARTNERS, LLC, SMITH  
LEGACY PARTNERS SERIES, LLC, SMITH  
LEGACY PARTNERS II, LLC, 505-507  
COMMON STREET, LLC, AND 527 COMMON  
STREET, LLC,

By their attorney,



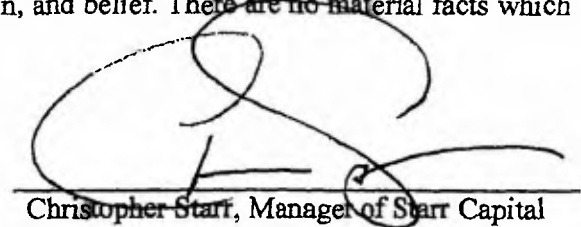
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(617) 330-7000

Dated: September 7, 2017

**CERTIFICATION OF VERIFICATION**

I, Christopher Starr, Manager of Starr Capital Partners, LLC; Smith Legacy Partners Series, LLC; Smith Legacy Partners II, LLC; 505-507 Common Street, LLC; and 527 Common Street, LLC (collectively, the "SLP" or "Plaintiffs") hereby subscribe and swear under the pains and penalties of perjury, that I have read the foregoing Verified Complaint and that the allegations set forth are true, except for those made upon information and belief, which are true to the best of my personal knowledge, information, and belief. ~~There are no material facts which~~ have been omitted from the Complaint.

A handwritten signature in black ink, appearing to be 'CS', is written over a horizontal line.

Christopher Starr, Manager of Starr Capital Partners, LLC; Smith Legacy Partners Series, LLC; Smith Legacy Partners II, LLC; 505-507 Common Street, LLC; and 527 Common Street, LLC

Dated: September 7, 2017

## EXHIBIT 2

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX

SUPERIOR COURT  
C.A. NO.: 1781CV2659

STARR CAPITAL PARTNERS, LLC, SMITH  
LEGACY PARTNERS SERIES, LLC, SMITH  
LEGACY PARTNERS II, LLC, 505-507 COMMON  
STREET, LLC, and 527 COMMON STREET, LLC,  
Plaintiffs,

v.

TOLL BROTHERS, INC. and BELMONT  
RESIDENTIAL, LLC, Defendants.

**AFFIDAVIT OF JAMES T. CURTIS, P.E., LSP**

I, James T. Curtis, attest to the following facts:

1. I am President of Cooperstown Environmental LLC ("Cooperstown"), a consulting firm, founded in 2004, that provides environmental engineering and consulting services primarily related to response actions at oil and hazardous material (OHM) release sites. Cooperstown also is an acknowledged authority regarding the Massachusetts Brownfields Tax Credit program, having prepared more than 250 such applications for submittal to the state agency (the Department of Revenue ("DOR")) that implements this program.
2. I am a Licensed Site Professional ("LSP") in the Commonwealth of Massachusetts. LSPs are registered by the Board of Registration of Hazardous Waste Site Cleanup Professionals (LSP Board) to administer M.G.L. c. 21E and its Regulations known as the Massachusetts Contingency Plan ("MCP" 310 CMR 40.0000). I am also a Registered Professional Engineer (PE) in Massachusetts, New Hampshire, Maine, and formerly New Jersey (I allowed my status to lapse).
3. I have a Bachelor of Science in Engineering (B.S.E.) from Princeton University and a Master of Science in Environmental Engineering from Northeastern University. I have completed hundreds of hours of LSP Board-approved Continuing Education. I have written and had published books and book chapters on environmental remediation; have lectured at academic settings including Harvard, MIT, Kansas State University and others; and have

given presentations and short courses at many professional settings and events throughout the United States, on diverse topics related to environmental protection.

4. I have 25 years of experience as an environmental consultant and spent nearly seven more years as Senior Environmental Officer and Institute LSP at the Massachusetts Institute of Technology (MIT) in Cambridge, Massachusetts. I have reviewed and remediated hundreds of Sites involving OHM during my career (see attached CV).
5. I can be considered an environmental cost expert based on my review of the costs of hundreds of site remediations in Massachusetts over the past ten years through my work preparing Brownfields Tax Credit applications. During this process, I review invoices from LSPs and site contractors for a wide variety of site conditions and cleanups in Greater Boston and around the state and have a very good understanding of the typical billing rates, invoicing structures, and remediation costs. I have provided litigation support on numerous legal cases and appeals related to costs on Brownfields tax credits.
6. I have reviewed numerous environmental reports, historical documents, and discovery documents related to the site formerly known as Cushing Village aka The Bradford located at Common Street and Trapelo Road in Belmont, Massachusetts (the "Property"), currently owned by Belmont Residential LLC, and am familiar to a reasonable degree of certainty with the environmental conditions at the Property as well as the prior operations at the Site.

**Toll Invoice to Smith Legacy Partners Series, LLC et al.**

7. On or about April 2, 2018, Belmont Residential LLC, a single-purpose entity under the control of Toll Brothers ("Toll") presented an invoice (the "Invoice") to Mr. Christopher Starr in his capacity as Manager of a group of Limited Liability Companies (LLCs) including Smith Legacy Partners Series LLC and referred to collectively as "SLP." The invoice total was \$2,211,016.65 and the description was "Remediation costs in excess of Upset Threshold." Toll demanded payment of the invoice within thirty days of the invoice date (April 2, 2018). Please see the "Invoice," attached as **Exhibit A**.
8. The Invoice was accompanied by a 19-page document prepared by Marcum ("Marcum"), an accounting firm, entitled Cushing Village Project Remediation Costs, dated April 2, 2018, purportedly comprising backup for the amount demanded by the Toll invoice. As described in the Marcum document, the costs for "Remediation of Existing Environmental Conditions as of 1/31/18" was alleged to be \$4,711,016.65.



9. With reference to the Agreement of Sale dated March 14, 2016 (the “Agreement”), Section 26(b)(2), the amount of costs exceeding the Upset Threshold (\$2,500,000) was \$2,211,016.65, the amount demanded by Toll on its invoice.

**The Toll Invoice is Incorrect**

10. Staff at Cooperstown Environmental LLC and I have reviewed the invoice, the Marcum cost summary, the backup provided with the invoice, and other information. The invoice and associated backup contain numerous errors, mistakes, and contain unsupported, ineligible, and incorrect charges. The total demanded in the Invoice does not represent “costs for the Remediation of Existing Environmental Conditions as of 1/31/18” that are “exceeding the Upset Threshold” of \$2,500,000.
11. There are at least four categories of costs included in the Invoice that are objectionable: A) charges that are incorrectly included in the Invoice because they are not Remediation Costs; B) excessive costs stemming from mismanagement by Toll including costs related to Professional Services provided by Sage Environmental (“Sage”); C) costs related to errors created by or introduced in Marcum’s backup; and D) errors in the invoices presented by contractors and subcontractors to Toll, which were mistakenly paid by Toll and are now being billed to SLP.

**Definitions of Remediation Costs per the Agreement and the Brownfields Act**

12. Paragraph 17(b) of the Agreement of Sale between the parties (dated 14 March 2016) defines Remediation as the “remediation of the Existing Environmental Conditions” and refers to the “Remediation process which will be pursued by Buyer with the goal of prosecuting the Remediation of the Existing Environmental Conditions to achieve Permanent Solution Status without conditions as defined in the MCP, all in conformance with M.G.L. c.21E and the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000 et seq.”
13. A Remediation Budget and Scope of \$1,310,000 was included in the Agreement at Section 26(b)(4) and referenced in the Second Amendment to the Agreement. The Second Amendment further described the scope of work for the Remediation as actions “with the intended goal of obtaining "Permanent Solution Status without Conditions".

14. The Remediation Budget was originally prepared by SLP, was shared with Toll during the Due Diligence period, and then mutually agreed upon by both parties as part of the sale. The Remediation Budget contained a ten percent (10%) contingency.
15. SLP created the Remediation Budget based upon informed input from environmental consultants, contractors, soil transport and disposal vendors, and other sources and was developed over several years. The budgets and underlying assumptions were based on the extensive amount of due diligence, site assessments, and remediation that had been completed at the Property since 2004 by Licensed Site Professionals (LSPs) and site contractors.
16. Although the Agreement stated that the costs of Remediation may exceed the “mutually agreed Remediation budget,” (Amended Section 26(b)), the Agreement also stated that the parties agree that “the budget for the Remediation of the Existing Environmental Conditions is \$1,310,000” and further that “Any changes in the scope of work for the Remediation will be subject to the parties’ mutual approval, not to be unreasonably withheld or delayed.” (Emphasis added.) (26)(b)(4).
17. The definition of Remediation Costs does not appear in the Massachusetts Contingency Plan (“MCP”), nor am I aware of a definition of that term in the law (c. 21E). The definition of Remediation Costs, however, is addressed in Chapter 206 of the Acts of 1998, “An Act Relative to Environmental Cleanup and Promoting the Redevelopment of Contaminated Property,” a.k.a., the “Brownfields Act.”
18. The Brownfields Act, among other things, allows a tax credit based on a taxpayer’s “net response and removal costs” which is defined to include only “expenses paid by the taxpayer for the purpose of achieving a permanent solution or remedy operation status in compliance with chapter 21E” and excludes all other costs. Guidance issued by the Massachusetts Department of Revenue (“DOR”), and attached here as **Exhibit B**, further elaborates and provides examples of such response costs, noting that they qualify only “where such costs are a direct and necessary part of attaining a permanent solution or remedy operation status.”

**A. Non-Remediation Costs Included in Invoice**

19. Toll’s Invoice includes many instances where ineligible, Non-Remediation Costs have been included, and claims that SLP must pay them because they constitute “Remediation

Costs” under the Agreement. As discussed above, however, if the costs were neither directly related to the cleanup or if they were not necessary to reach a Permanent Solution, they do not qualify as Remediation Costs and thus are excluded from the expense base.

20. Some of these charges might arguably be in a “gray area” as to whether they could be considered Remediation Costs, while others obviously do not qualify. Many of the individual charges may be trivial in the context of a \$44,000,000 construction project, while others are quite significant. Even the smaller charges, however, serve to demonstrate how Toll appears to consider a wide range of its costs to be “Remediation Costs,” even though such costs do not qualify as Remediation Costs pursuant to the Agreement and the Brownfields Act.
21. **Dewatering.** Toll and SLP had agreed long ago that the costs related to dewatering were to be considered construction costs – because the site would need to be dewatered regardless of contamination since construction extended below the ground water elevation on the Property. Only in the single instance of granular activated carbon (GAC), which is used to remove contaminants from the water, would those dewatering-related expenses be considered remediation costs. Yet, the Toll invoice includes \$166,769.83 for “dewatering” for costs that are not related to contamination but rather directly attributable to construction costs (see Marcum p.10). These are Non-Remediation Costs and should be removed from the Invoice.
22. **Soil Transport & Disposal (T&D).** A very large percentage of the soil removed and trucked away from the property during the construction project was not impacted by oil and/or hazardous materials (“OHM”) at concentrations exceeding those that are allowed in the MCP for unrestricted use (310 CMR 40.0900). Therefore, by definition, that soil did not have to be removed “for the purpose of achieving a Permanent Solution under c. 21E” and costs related to that soil are not Remediation Costs.
23. *Per se*, all soil taken to St. Mary’s Cemetery, Westford, and Dudley Landfill does not constitute Remediation Costs as this soil was all classified as “<RCS-1,” meaning it contained no contaminants above regulated levels. This soil was transported under a Material Shipping Record (MSR), not a Bill of Lading (BOL), as would have been required if it was Remediation Waste. These soils comprise more than 41% of the total soil excavated through January 31, 2018.

24. The costs for transportation and disposal for these non-hazardous soils was \$459,141.51. The costs for Sage's labor to oversee the excavation of these soils is, conservatively, \$42,750. The additional Sage labor costs related to these soils are \$29,654.70. Overall, costs related to these non-Remediation Waste are at least \$531,546.21 (Exhibit C). These are not Remediation Costs, yet Toll includes them on its invoice and demands SLP pay these costs.
25. **Construction Costs.** Many of the costs listed by Marcum as Excavation Costs (p.2 and p.9) are logistical in nature and purely construction-related. For example, several charges are Baystate Engineering (the excavation subcontractor) requesting change orders from Nauset, the General Contractor (all of which were paid by Toll and now included on the Invoice) for routine activity around the job site that was occasioned by Toll's and Nauset's normal project management – which Toll now claims are Remediation Costs. Examples are numerous and include moving things (mud mats, soil piles, gravel, tanks) out of the way so other activities could proceed, bringing materials (stone) to the job site for road construction, or relocating roadways or soil piles so that other construction activities could proceed. These charges (\$36,814.44) are clearly construction costs and not Remediation Costs because they are not in any way “a direct and necessary part of attaining a permanent solution.”
26. **Delay Claim.** Perhaps most egregiously, Toll has demanded that SLP pay \$679,633 for a delay claim related to “extended general conditions” issued by Nauset as a proposed change order. Toll had not paid this invoice, which was dated after the end date of the period covered by the invoice, and it is not clear that Toll even agrees with the change order in principle or the specific calculations (Nauset originally had asked for \$875,348.24).
27. The premise of the charge was that Nauset expected the project to end on a certain date and the job was dragged out longer than planned, causing Nauset's costs to rise. The costs covered by the delay claim are not Remediation Costs, as they include reproduction, postage, toilets, rat control, insurance, etc. in addition to labor for Nauset's staff. Nauset is billing Toll \$4,786.15 per day for 142 days for these items.
28. Nauset's January 8, 2018 letter in support of this proposed change order specifically cites “NGrid gas impact” as the basis of at least some of the delay. This refers to the fact that a 2-inch gas line crossed the site and had to be removed to allow excavation to proceed.

Nauset vainly attempted to motivate National Grid to perform this work for months, based on evidence in our possession. This was a cause for delays and increased costs.

29. While we do not dispute that Nauset (and thus Toll) may have incurred additional costs because the project did not proceed as quickly as planned, Toll must bear these costs and not pass them to SLP as they do not constitute Remediation Costs. The entire amount of \$679,633 must be removed from the Invoice.
30. **Miscellaneous Minor Costs.** Examples of other charges that are included in the Invoice as Remediation Costs are: costs for an employee to receive training; one hundred or more bags of sand and “tube sand;” the electricity used on site; charges for water from a hydrant; Toll’s generous offer to reimburse the Town of Belmont for the cost of its engineer – which was then included in its Invoice to SLP; wooden stakes, hand tools, and dozens or scores of rolls of polyethylene – with no explanation of how it might be connected to remediation. These costs total \$19,562.37.
31. **The total of the Non-Remediation costs** being demanded by the Toll Invoice is at least \$1,434,325.85 (**Exhibit D**).

**B. Costs Resulting from Mismanagement by Toll.**

32. The Invoice contains a large amount of costs from a wide variety of sources that are a result of mismanagement of the project by Toll and its contractors. A core observation after being involved prior to and during the project, and after reviewing tens if not hundreds of thousands of pages of discovery materials, was the apparent lack of any type of any cost controls, whatsoever, on the part of Toll throughout the project, particularly beginning around late March 2017.
33. We noted few if any examples of Toll communicating or signaling to any vendor at any time that minimizing costs was an objective; few if any examples of Toll asking for or receiving competitive rates or special pricing (e.g., volume discounts) consistent with the scale of this project; few if any examples of Toll asking for or receiving justification or explanations for increases in costs above budget – even when, such as with Sage, their costs increased by more than five hundred percent (500%) from \$332,000 to more than \$1,700,000 and growing.
34. Toll’s apparent lack of attention to or concern for charges being incurred is unprecedented in my experience of more than 30 years in the environmental field and my knowledge of

the costs of hundreds of remediation projects. I am not familiar with another project where the costs reached such excessive heights (approximately five times the original budget) and did so without a single identified comment from the owner about the exploding costs or any apparent attempts to reduce or minimize them. It is extraordinary.

35. We have found numerous examples of errors in invoicing to Toll, many described below, that were approved and paid incorrectly; in one case, Toll paid a bill for more than \$60,000 in charges from another project in another Town, that was only corrected weeks later because the contractor caught the mistake. These errors further indicate Toll's lack of quality control and general mismanagement of the remediation.
36. The most important of these instances of Toll's general mismanagement, which resulted in excessive, unnecessary, and unjustified charges, are listed here. There were additional instances that are not included here.
37. It is also important to note that SLP and its consultants and legal advisors attempted to work with the Toll team to provide peer review, suggest alternative approaches, and identify money-saving strategies, only to be ignored by Toll. Toll is now including these exorbitant charges on its Invoice to SLP that resulted from its own poor decisions, its mismanagement, its failure to adequately supervise its contractors, and its refusal to confer with SLP and accept any of its cost-saving suggestions.
38. **Professional Services Costs (Sage).** Perhaps the single most obvious example of Toll's mismanagement and lack of concern with costs is exemplified by the billings of Sage. The working cost number in the mutually agreed-upon budget for Professional Services was \$233,150. After taking over the project as the LSP-of-Record, Sage prepared a budget of \$335,000 and shared this with Toll on January 20, 2017 (Toll 06753) and with SLP in a February 1, 2017 meeting in Needham, MA. Sage stated at that meeting that \$107,000 of this total was related to recent changes to air monitoring requirements recently imposed by the Massachusetts Department of Environmental Protection (DEP), and which were not included in the original budget. Thus, Sage contended, its budget was fairly consistent with SLP's original estimates excluding these recent costs (Sage's adjusted budget was \$228,000 vs. the agreed-upon \$233,150).
39. By April 10, 2017, Toll was aware (Toll006741) that Sage's costs through March 2017 already totaled \$261,541.49, almost as much as Sage's entire budget for the project, even

though the soil removal was still weeks away from starting. By April 26, 2017, two weeks later, Toll was aware that Sage now was predicting its final cost to complete the project work would be \$1,280,000 – yet there is no evidence in the file of Toll requesting any explanation of the increase.

40. The scope of work was essentially unchanged between the dates when Sage presented a budget for its work of \$335,000 in February and a revised budget of approximately \$1,280,000 presented to SLP in a meeting on April 26, 2017. No justification was provided by Toll or Sage at that time (nor since) despite requests by SLP.
41. An additional two weeks later a budget document prepared by Sage (dated May 12, 2017) was provided to SLP as way of explanation for Toll's newly revised budgets. That document now showed Sage's budget to be \$1,413,864 (including \$388,364 spent through April and a cost to complete of \$1,025,500), or an increase of more than \$134,000 just in the intervening two weeks. Again, with no change in the project that would serve to explain or justify the change in cost.
42. Sage's excessive budget costs were arrived at by using unnecessary staffing with respect to level of effort required; using higher than standard labor billing rates; and significantly padding expense totals across the board including rental equipment, laboratory expenses, and others.
43. **Featherbedding.** During much of the work, overcharging by field staff resulted in increased costs far beyond what was required, necessary, or justified. Nearly always there were two Sage employees on-site simultaneously, often three and sometimes even more; and typically, each worker would charge 10-12 hours to the project per day on his or her timecard. One ambitious worker (Brent Beauchene) on June 19, 2017 charged 24 hours to the project, as he claimed to be monitoring the excavation, the dewatering, and the *in-situ* soil treatment – and charging Toll for each task (which Toll paid).
44. Comparing the days where Sage charged time for “excavation monitoring/oversight” to the days where soil was transported off the site, we noted 112 days (in the period covering May - January) where soil was removed compared with 211 days when Sage staff charged for monitoring the excavation – a total of 99 days of oversight of non-existing excavation. Even more curious, six of these 99 days were on weekends. As shown in **Exhibit E**, Sage's labor cost for the days when no soil left the site was \$100,045 (travel costs were not

calculated). An additional 350 hours (approximately \$35,000) had been charged to “excavation oversight” in the days and weeks prior to any soil leaving the site.

45. In all, an incredible total labor amount (during the period covered by the Invoice) of \$320,000 was charged for “Excavation Oversight & Monitoring;” and additional \$62,500 in labor for Soil Disposal Characterization and Coordination with Soil Disposal Facilities; and \$46,790 in labor for Soil Disposal Oversight and Documentation.” Expenses for these three categories were additional and significant. In other words, Sage was paid more than \$425,000 to monitor and coordinate the excavation and disposal of the soil from the site (with more than two months of additional time to be spent after January 31, 2018).
46. **Soil Treatment Failure.** Toll decided to attempt to treat the hazardous soil on the site using chemicals to render it non-hazardous, in theory making the removal of this soil less expensive. SLP’s Remedial scope and mutually agreed upon approach similarly had planned to perform treatment but proposed a thermal treatment approach considered more reliable at an estimated cost of \$167,500 based on a bid SLP had obtained. Sage and Toll also considered thermal treatment but instead decided to use chemical oxidation, a riskier approach, despite warnings from SLP and the Town of Belmont’s LSP (Waypoint Environmental) that “ChemOx” was not a prudent approach at this site due to the high clay content in the soil.
47. Toll’s decision to utilize chemical injections also resulted in the involvement of DEP, since any proposal to inject chemicals within 100 feet of a residence required their specific approval. DEP’s involvement and conditions added additional complications to the project.
48. Toll retained Strategic Environmental Services (SES) to perform the ChemOx. SES, in turn, retained Redox Technologies, another vendor, to perform the work. Sage confirmed to SLP in the February 1, 2017 meeting that SES would provide a performance guarantee if requested. Toll, however, signed a contract with SES without a performance guarantee and with payment terms of “Net 30” with no reference to effectiveness (**Exhibit F**).
49. After completing the chemical injections, Redox invoiced SES for treatment of 5,250 tons of soil (its contracted amount) at a total cost of \$369,464. SES then surcharged and invoiced Toll \$569,150.00, claiming to have treated 6,133 tons. SES claimed it treated 15 cells of dimensions 20’x23’x16’ deep, whereas Redox field notes show that it treated 14 cells of dimensions 20’x20’x15’ deep. The slight discrepancy in the numbers added 17% to the



volume of soil allegedly treated and was responsible in part for the \$199,686 upcharge that SES added to Redox' invoice before passing it along to Toll. We have seen no evidence that Toll or Sage verified the quantities for which SES was invoicing or noted that the numbers were not consistent.

50. After the soil treatment failed to produce acceptable post-treatment test results, additional rounds of treatment were implemented repeatedly throughout the coming five months; a total of six rounds of treatment failed to reduce the concentrations of contamination to non-hazardous levels. Throughout this process, Sage continued its testing and retesting the soil at great expense. Sage's testing procedures were inconsistent; typically, in a scenario such as this, once a test confirms that results are sufficiently low, further treatment and testing of that soil would be suspended. Instead, in many cases soil that had been treated and tested was remixed for further treatment, the volume of contaminated soil increased, and the soil that had tested clean then failed subsequent tests.
51. In the end, Toll paid SES \$569,150 for "treating" the soil even though the soil was not treated in the sense that the resulting contaminant levels did not fall to below the MCP S-1 standards.
52. **Enormous Increase in the Amount of Soil Managed as "Hazardous".** The hazardous soil, also referred to as the "F-listed" soil, has had an interesting and colorful path starting with an estimated volume of 600 cy requiring treatment in the original Remediation Scope with an additional 1300 cy termed "lightly impacted." Sage's documentation throughout the period of January - March 2017 showed they anticipated that all 1,900 cy would need to be treated. This volume was described as soil that was both hazardous in nature *and* needed to be removed for construction purposes.
53. On March 23, 2017, Sage noted that the volume in the blocks that contain the F-listed (hazardous) soil was 8,250 (**5,500** cy) and that all this soil "requires removal to facilitate construction plans" [SAGE 113567-113569]. It was recognized that 3500 cy (5,250 tons) of this soil would need to be treated. A report by the Town's LSP on May 22, 2017 stated that the volume needing treatment had grown again to "6100 tons" because soil was "consolidated from the edges." This mirrors the SES invoice, on which they claimed to have treated 6,133 tons (or 4,089 cy).

54. By October 2017, the volume of the F-listed soil apparently and without explanation had grown to **6,000** cy (9000 tons) according to a proposed change order (PCO #16) issued by Nauset Construction (**Exhibit G**). Based on the records we have reviewed through March 2018 the final total was 12,089 tons or about **8,000** cy of soils removed from the site as F-listed.
55. Throughout this period there was no change in the fundamental underlying environmental conditions at the site that would justify these vast increases in the hazardous soil volume from 600 cy to 8,000 cy. Rather, it appears that the increases were the result of changes in the construction plans, a failure to supervise the contractors, a casual attitude regarding costs, the failure to properly segregate hazardous from non-hazardous soils – in general, simply Toll’s failure to properly manage the project, ultimately leading to a bill for the disposal of this soil of **\$2,999,925.47**, which was vastly higher than it would have been under better controls. To be conservative, all of this extra cost is assumed to be incurred after the January 31, 2018 Invoice and so is not counted as part of the total herein.
56. **“Contained in Determination” Fiasco.** The process whereby DEP approves the classification of otherwise “listed hazardous waste” to allow it to be treated as non-hazardous is referred to as a Contained in Determination (“CID”). After the multiple rounds of treatment were completed, Sage spent \$35,408.19 to prepare a CID application, which DEP approved. This CID covered 1,183 cubic yards of soil that testing had shown to be of sufficiently low concentrations to be considered non-hazardous (**Exhibit H**).
57. According to a DEP filing (**Exhibit I**) dated February 13, 2018, however, even after spending the time, effort, and money to document that this soil was non-hazardous, with DEP’s agreement, Toll excavated and disposed of it as hazardous “due to logistical problems with segregating the Contained-in Soils from the TCE-Contaminated soils.” The extra disposal cost of sending that approved soil off as “hazardous waste” rather than landfill soil was \$399,138.29 – in addition to the cost (\$35,408.19) of the application itself. Purely due to Toll’s and Sage’s mismanagement of the soil pile and failure to properly segregate the soil types, an extra and completely unnecessary \$434,546.48 was incurred that is not SLP’s responsibility.
58. **Cooperstown’s Suggestion to Reduce Soil Costs Ignored.** On November 15, 2017, Cooperstown and Sage collected soil samples for laboratory analysis of the “soil pile” that

- was intended to be sent off-site as hazardous after Toll had given up hope of meeting the non-hazardous criteria, based on Sage's reports that testing data was insufficiently low. Sage and Cooperstown collected 25 split samples (i.e., each party collected a sample from the same location) from 11 separate locations and multiple depths at each location. The intent was to allow SLP to verify the reports that the in-situ treatment was not successful.
59. The results of both firms' testing were quite similar and showed approximately 75% of the soil samples passed the standards that would allow the soil to be classified as non-hazardous if a CID application were submitted.
60. Cooperstown spoke to Ms. Rosemary Knox of MassDEP and confirmed that its idea would be acceptable: i.e., the remaining soil could be separated into individual stockpiles of 250 cy each, and a sample would be collected from each pile and analyzed for volatile organic compounds (VOCs). For every pile where concentrations were sufficiently low, the soil in that pile would go through the CID process, allowing it to be trucked off as non-hazardous.
61. Based on the differing disposal costs of hazardous versus non-hazardous soil, it was calculated that the cost savings would be 375 tons x \$224.93/ton or \$84,350 for each pile that passed. Based on the November 15, 2017 testing results, it would be reasonable to assume that approximately 75% of the piles would have passed. Considering that Toll ultimately sent more than 12,000 tons off site as hazardous, this math would suggest that the cost of disposal could have been reduced by more than \$2,024,000! The cost savings attributed to only the costs on the 1-31-18 Invoice) would have been \$469,872.37. The savings would be reduced by the cost to stockpile the soil and test it – for which a reasonable cost estimate would be perhaps \$50,000, so net extra costs were \$419,872.37. The time to complete all segregating and testing would be approximately 3-4 weeks, with another week or two to get DEP's agreement on the samples that passed.
62. Cooperstown made this suggestion in a letter report dated November 30, 2018. The hazardous soil was removed from the site starting December 1, 2018. Clearly, neither Toll nor Sage vigorously pursued cost savings that were readily available to the project.
63. **Soil Hauler (W.L. French)** Another example of Toll's substandard management approach is its selection and oversight of the soil hauler, W.L. French ("WLF"). Toll received competitive bids from other vendors that were much lower in cost yet chose to work with a higher-priced contractor. Toll apparently did not ask for competitive pricing for the

various disposal options but rather simply accepted the pricing supplied by WLF. When Cooperstown asked Toll how it was verifying that WLF was trucking the soil to the lowest-cost destination, Toll confirmed that it did not know if French was doing so but hoped it would. Basically, Toll completely abdicated its responsibility to oversee this vendor. While we have not calculated the potential cost penalty from this naïve approach, we note that through March 2018 WLF has charged Toll more than \$5,000,000 with little if any oversight – all which Toll has paid (even at times for soil from another project).

64. **The total costs** of Toll’s mismanagement being demanded by the Toll Invoice is at least \$2,204,433.13 (**Exhibit D**), which extends only to the costs through January 31, 2018. Costs after that date are more than \$3,000,000.

### **C. Errors, Mistakes, and False Charges Introduced in Marcum Backup**

65. The 19-page documentation package prepared by Marcum to accompany Toll’s invoice to SLP itself had several errors, in addition to the errors on the original invoices paid by Toll.
66. **Unknown Environmental Conditions.** Marcum’s summary purports to document the costs related to the “Known Environmental Conditions” (see p.1) yet the total includes costs for Unknown Environmental Conditions. For example, during construction underground storage tank (USTs) were discovered that were previously unknown. \$3,393.40 of costs related to these USTs appeared on Sage’s August and September bills. In addition, blue soil was discovered at the site, presumably impacted by cyanide. Sage’s response to this unknown condition was documented on its bills from September, October, and November, with labor charges totaling \$3,470 as well as expenses of \$2,257.30. None of these costs Remediation Costs per the definition in the Agreement. The total for these two unknowns is \$9,120.70.
67. **Costs Outside the Date Range.** The Marcum summary purports to cover costs incurred “through January 31, 2018” yet on p.13 there is a charge for \$679,633 from an invoice dated in February 2018. This charge should be removed for this reason alone, as well as being a Non-Remediation Costs (associated with construction delays) as earlier discussed.
68. **Unpaid Charges.** Referring to the same charge from paragraph 33, the backup states that Toll has not paid this invoice, possibly because it is in dispute (the draft invoice has already been revised at least once). This charge should be removed for this reason alone.

69. **Simple Mistakes.** Marcum's backup (p.9) shows a miscellaneous charge on Nauset's draw #3 of \$663.00. The actual amount of this charge on the bill was \$89.19. Toll has included this erroneous charge (an additional total of \$573.81) on its invoice to SLP.
70. **Recategorization of Charges.** Marcum inexplicably recoded charges that Nauset had charged to other accounts and created a new account that had not existed previously. For example, charges that appears on Nauset's draw #8 under for "soil" are on Marcum's summary under dewatering, including costs for "fire retardant poly". Marcum also created a category called Town of Belmont apparently to disguise Toll's attempt to saddle SLP with a bill from another vendor to the Town, which Toll magnanimously offered to pay on the Town's behalf, but then billed to SLP. These costs total \$9,662.37.
71. Despite having a line item in its budget for temporary electricity, on at least six occasions (Draws 8, 9, 11R, 12, 14, and 15) Nauset slipped the invoice from Belmont Light for site electricity into its "soil remediation" budget. Not counting the final two bills as they are past January 31, 2018, the electric charges total \$7,052.36. The bill from August 2017, which Marcum listed under dewatering, has already been excluded; the others total \$5,405.34.
72. Similarly, Nauset was billed \$6,905.06 by the Town of Belmont for water and included the costs therefore as "soil hauling" including bills for April, May, July, September, and December. Emails indicated that the water was being added to the site from nearby hydrants because the site was so dry that the dewatering pumps were in danger of burning out. Marcum slyly termed three of these water bills "Permits" and listed them under Town of Belmont, its created category, while two others (\$228.69) were buried in with soil hauling.
73. **Total.** The total of the Errors, Mistakes, and False Charges Introduced in Marcum Backup being demanded on the Toll Invoice is at least \$24,990.91 (**Exhibit D**).

#### **D. Errors, Mistakes, and False Charges on Invoices to Toll**

74. **Math Errors.** In multiple instances, invoices to Toll from its contractor and subcontractors contained mathematical errors that were not noted by Toll, causing Toll to incorrectly overpay. Toll then demanded that SLP must pay these inflated invoices.
75. For example, Sage's invoice 15347 dated June 30, 2017 (**Exhibit J**) shows the total as \$135,997.02, an amount that Toll paid. However, the amounts in the invoice summary do

not match the totals from the invoice backup. There were two discrepancies: for the task “RAM - Excavation Oversight & Monitoring” the summary understated the actual totals by \$258.25, whereas for the task RAM - Dewatering & Groundwater Treatment the summary overstated the actual totals by \$6,599. Toll did not notice the discrepancy or if so, ignored it and therefore overpaid Sage’s invoice by a net \$6,340.75. Toll has included these erroneous charges on its invoice to SLP.

76. On that same invoice, the hours and dollars listed for one employee day by day do not sum to the total listed for the month, leading to another apparent overpayment. While the dollar amount is only \$38.25, this type of discrepancy calls into doubt the accuracy and validity of Sage’s billing software as well as Toll’s degree of diligence in paying its invoices. Toll has included these erroneous charges on its invoice to SLP.
77. Nauset’s invoice for March 2017 indicates \$17,295.50 for “cost code 2-090 Soil Remediation,” yet the total cost of the individual bills included as backup sum to \$16,721.69. Nauset’s bill was inflated by \$573.81, plus Nauset’s 4% markup, meaning that Toll overpaid Nauset by \$596.76 – again, a small amount but further evidence that Toll did not institute proper quality control procedures for reviewing its invoices. Toll has included these erroneous charges on its invoice to SLP.
78. Nauset’s bill for December 2017 included a charge from its subcontractor, Baystate Engineering, in the amount of \$6,099.97 and showed Nauset’s 4% markup as \$984.65, rather than the correct mathematical total of \$243.98, meaning Toll overpaid by \$740.67. Toll has included these erroneous charges on its invoice to SLP.
79. **Sales Tax.** W.L. French mistakenly charged sales tax on numerous invoices, most of which were later revised and resubmitted to Nauset without the tax. Invoice 37536, however, was not revised but rather was overpaid by \$515.73 by Nauset, and from Toll to Nauset at cost plus 4%, or \$536.36. Toll has included this erroneous charge on its invoice to SLP.
80. **Double Billing.** On multiple occasions, we have noted instances of the same costs being duplicated on invoices to Toll. Toll did not notice these discrepancies or if so, ignored them and therefore overpaid these invoices by tens of thousands of dollars.
81. Nauset’s Requisition 6 contains WL French invoices #37748 and #37732, totaling \$19,894.10. Nauset’s Requisition 8 also contains WL French invoices # 37748 and 37732, totaling \$19,894.10. Nauset marked up its subcontractor’s invoices by 4%. Both

Requisition 6 and 8 were paid by Toll, and therefore it overpaid these invoices by \$20,689.86. Toll has included these erroneous charges on its invoice to SLP.

82. Nauset's Requisition 7 contains a bill from Baystate Engineering for \$3,333.00 that is included twice. Both instances are included in Nauset's total to Toll, with its 4% markup. Toll did not notice this duplication or if so, ignored it and therefore overpaid Nauset by \$3,466.32. Toll has included these erroneous charges on its invoice to SLP.

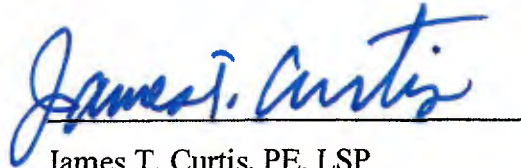
83. **Invoices for Unrelated Projects.** On Nauset's revised Requisition to Toll for November 2017, it included two WL French invoices, #37748 and #37732, totaling \$58,850.55. The invoices clearly show that they were for service performed at a completely different site in Cambridge. Toll paid Nauset's requisition including its 4% markup, or a total of more than \$61,000.00

84. Nauset's December requisition to Toll included a credit for the erroneous invoices on its November requisition, so that these charges have not been passed along to SLP. The incident, however, further demonstrates Toll's lack of diligence, quality control, and negligence in reviewing its contractor invoices and calls into question all the costs being assessed to SLP.

85. **The total of the Errors, Mistakes, and False Charges** being demanded by the Toll Invoice is at least \$32,408.97 (**Exhibit D**).

86. **THE TOTAL EXCESSIVE COSTS** on this Invoice are at least **\$3,696,158.86** of the overall costs through January 31, 2018 that were cited in the Marcum backup. This amount is inclusive of Non-Remediation costs improperly included on the Invoice, costs stemming from Toll's own mismanagement, charges resulting from Marcum's errors, and simple mistakes and errors that were not noticed and were paid by Toll that should not have been paid, and for which SLP cannot be held responsible. This amount far exceeds the "remediation overruns" of \$2,211,016.65, which is the amount of the Invoice. Therefore, it is my opinion that SLP should not have to pay any amount in response to the Invoice.

I swear under the pains and penalties of perjury the above facts are true and accurate to my best of personal knowledge.

A handwritten signature in blue ink, reading "James T. Curtis", is written over a horizontal line.

James T. Curtis, PE, LSP

President

Cooperstown Environmental LLC

Dated: April 26, 2018



## EXHIBITS & ATTACHMENTS

Paragraph	Exhibit	What
4		CV (Resume)
7	A	Invoice
18	B	MassDOR Guidance on Remediation Costs
24	C	Costs related to <RCS-1 Soil
31	D	Total Non-Remediation Costs
44	E	Sage oversight w/o Soil T&D
48	F	SES Contract
54	G	Nauset PCO#16
56	H	CID Application Dec '17
57	I	DEP Filing 2-13-18
75	J	Sage invoice 6-30-17

## **SUMMARY**

Mr. Curtis, a registered Professional Engineer and Licensed Site Professional, has more than 25 years of progressive managerial and technical experience in a wide range of fields related to environmental management. With a strong educational preparation, experience, and relevant licenses, Mr. Curtis can demonstrate success in environmental compliance, site investigation and remedial programs, and construction-related project management. Mr. Curtis has lectured at MIT, Harvard, Cornell, and numerous other universities and professional venues on various environmental topics.

As co-founder and President of Cooperstown Environmental LLC, a consulting firm providing environmental, LSP, and engineering services to commercial/industrial, institutional, and government clients, he oversees operations and has responsibility for the firm's financial performance. Mr. Curtis formerly maintained an appointment as the Senior Environmental Officer and Institute Licensed Site Professional at the Massachusetts Institute of Technology (MIT) following an extended tenure as a senior engineer at CDM, an international consulting firm.

Mr. Curtis is an acknowledged authority on the Massachusetts Brownfields Tax Credit Program and the firm has recovered tens of millions of dollars for clients.

## **EXPERIENCE HISTORY**

### ***Cooperstown Environmental LLC* (2004 – present)**

Andover, Massachusetts  
President

### ***Massachusetts Institute of Technology* (1999 - 2006)**

Cambridge, Massachusetts  
MIT Senior Environmental Officer and Institute Licensed Site Professional

### ***Curtis Woodlands LLC* (1994 – present)**

Cooperstown, New York  
Founder & Chief Financial Officer

### ***Camp Dresser & McKee Inc.* (1986 - 1999)**

Cambridge, Massachusetts  
Senior Environmental Engineer & Project Director

### ***Park Middlesex LLC, HOF Solar LLC, SBI Solar LLC, Milford SBS LLC***

Principal & Founder

## **EDUCATION**

***Princeton University***, B.S.E. - Civil Engineering (Water Resources)

***Northeastern University***, M.S. - Civil (Environmental) Engineering

***MIT (Sloan School & Center for Real Estate)*** - Graduate Coursework, Real Estate Investments & Finance, Green Development

## **REGISTRATIONS, CERTIFICATIONS, & DISTINCTIONS**

- Registered Professional Engineer (Environmental): Massachusetts (#45965)
- Licensed Professional Engineer New Hampshire (#14584)
- Registered Professional Engineer (Civil) – Maine (#6998)
- Licensed Site Professional (LSP): Massachusetts (#1548)
- Licensed Wastewater Treatment Plant Operator – Grade 2-Industrial (#13239)
- Licensed Site Professional Association (LSPA) Regulations Committee
- Former Town of Andover (MA) Recycling Committee (Chair)
- Former Ballardvale Fire Station Building Committee (Vice Chair)
- Former Treasurer (elected) – Campus Consortium for Environmental Excellence (C2E2)
- American Society of Civil Engineering (ASCE) – Member Grade
- Board of Directors, Center for Northern Woodlands Education, Hanover, NH
- Board of Directors, Massachusetts Fiscal Alliance, Boston
- New York State “Master Forest Owner” (Cornell University)
- Outstanding Environmental Education Award from Environmental Business Council of New England for the “Environmental Virtual Campus” (2003) <http://www.c2e2.org/evc/home.html>

## **PUBLICATIONS – BOOKS AND BOOK CHAPTERS**

- Noonan, David C. and James T. Curtis, 1990. *Groundwater Remediation and Petroleum: A Guide for Underground Storage Tanks* (Chelsea, MI: Lewis Publishers, Inc.).
- Pedersen, Tom A. and James T. Curtis. 1991. *Soil Vapor Extraction Technology* (Park Ridge, NJ: Noyes Data Corporation).
- Curtis, James T., 1992. “Managing a Leaking Tank Case.” In: Liability for Storage Tanks, M.L. Italiano et al (New York City: Practising Law Institute). 2nd Ed.
- Curtis, James T., 1992. “Contaminants That Have Diffused Into Mineral Grains or Rocks in Either the Unsaturated or Saturated Zone.” In: Mobility and Degradation of Organic Contaminants in Subsurface Environments, W.J. Lyman et al (Chelsea, MI: C.K. Smoley).

## **OTHER SELECTED PUBLICATIONS**

- Curtis, James T. and David C. Noonan, 1987. Corrective Action Technologies and Their Cost-Effectiveness. Proceedings of the Focus on Eastern Regional Groundwater Issues, Burlington, VT.
- Noonan, D.C., J.T. Curtis, T.A. Pedersen, and J. Durant, 1988. Cleanup of Releases from Petroleum USTs: Selected Technologies. EPA/530/UST-88/001.
- Camp Dresser & McKee, 1990. Assessing UST Corrective Action Technologies: Site Assessment and Selection of Unsaturated Zone Treatment Technologies (EPA/600/2-90/011).
- Curtis, James T., Tom A. Pedersen, and Chi-Yuan Fan, 1990. Soil Vapor Extraction Technology Assessment. Proceedings of the Sixteenth Annual EPA Hazardous Waste Research Symposium, Cincinnati, OH. April 3-5.
- Pedersen, Tom A. and James T. Curtis, 1991. Soil Vapor Extraction Technology: Reference Handbook. EPA/540/2-91/003.
- Curtis, James T., 1992. Soil Vapor Extraction Removes Subsurface Volatiles. Pollution Engineering, 24(8):56-59
- Curtis, James. T. and Peter J. Connolly, 1993. “The Use of a Mobile SVE Trailer for Quick, Effective VOC Removal.” Chapter 20 in *Hydrocarbon Contaminated Soils*, Volume III. Chelsea, MI (Lewis Publishers).
- Curtis, James. T. et al., 2001. *An Environmental Health and Safety Management System (EHSMS) for MIT*. <http://web.mit.edu/is/discovery/ehss/notebook/report/final-report.pdf>.

## **SELECTED PRESENTATIONS**

2009 – 2016 (annually). Westborough, MA. Presenter – *MCP for Everyone*. LSP Association course.

May 2014. Waltham, MA. Invited Speaker, *Who's Paying for this Cleanup? Insurance at CERCLA and 21E Sites*. LSP Association.

June 2006. Waltham, MA. Coordinator and Speaker, *Spring 2006 LSP Exam Refresher Course*. LSP Association.

January 2006. Cambridge, MA. *How Not to Fail Your EHS-MS Audit*. 2006 MIT IAP Course (non-credit).

June 2005. Manhattan, KA (Invited). *Improving Environmental Performance Using the Environmental Virtual Campus (EVC)*". 2005 Kansas State University College and University Hazardous Waste Workshop.

January 2004. Cambridge, MA. *MIT's Model Environment, Health & Safety Management System*. 2004 Massachusetts Institute of Technology, Independent Activities Period (IAP) Course (non-credit).

July 2003. Nashville, TN. *Environmental Virtual Campus: A Free On Line Tool to Improve University EHS Compliance*. National Conference of the Campus Safety Health Environmental Management Professionals.

June 2003. Ithaca, NY. *MIT's EHS Management System: Organizational Changes Key to Success*. Cornell University "Advanced EMS Workshop"

May 2003. Boston. *MIT's Environmental Virtual Campus: An Engaging Approach to EHS Awareness*. EnviroExpo.

April 2003. Cambridge, MA. *C&D Recycling: An Owner's Perspective*. Harvard University, Best Practices Exchange.

January 2003. Cambridge, MA. *Why Is Everyone Talking About EHS Management Systems?* 2003 Massachusetts Institute of Technology, IAP Course (non-credit).

October 2000. Cambridge, MA. *Sustainability Practices at Colleges and Universities*. Campus Environmental Leadership Summit, Harvard University.

## EXHIBIT A

Belmont Residential LLC  
250 Gibraltar Road  
Horsham, PA 19044

April 2, 2018

**VIA Electronic Mail (chrisstarr123@gmail.com) and Overnight UPS**

Starr Capital Partners, LLC, Smith Legacy Partners Series, LLC,  
Smith Legacy Partners II, LLC, 505-5-7 Common Street, and  
527 Common Street, LLC  
Attn: Christopher L. Starr, Manager  
6 Littlefield Road, Acton, MA 01720

**Re: Agreement of Sale dated March 14, 2016 (as amended, the "Agreement") with respect to property in Belmont, Massachusetts between Starr Capital Partners, LLC, Smith Legacy Partners Series, LLC, Smith Legacy Partners II, LLC, 505-5-7 Common Street, and 527 Common Street, LLC (collectively, "Seller") and Belmont Residential LLC ("Buyer")**

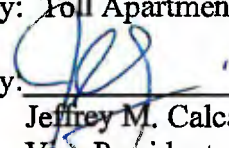
Mr. Starr:

Pursuant to Section 26(b)(3) of the Agreement, Seller is hereby advised that the cost of Remediation of Existing Environmental Conditions and any Unknown Conditions currently exceeds the \$2,500,000 Upset Threshold as confirmed by the enclosed materials.

If Seller fails to pay the actual amount of all Remediation costs in excess of the Upset Threshold as such costs are incurred and billed to Seller, the Seller will forfeit its right to purchase the Retail Unit under Section 26 of the Agreement.

As set forth in the enclosed invoice, the current costs of Remediation in excess of the Upset Threshold are Two Million Two Hundred Eleven Thousand Sixteen and 65/100 dollars (\$2,211,016.65), with payment being due within thirty (30) days.

The enclosed media contains supporting documentation.

Belmont Residential LLC  
By: Toll Apartments, LP  
By: Toll Apartments GP, LLC  
By:   
Jeffrey M. Calcagni  
Vice President

cc: Rubin & Rudman LLP, Attn: Robert A. Fasanella and Michael Novaria via e-mail and overnight UPS

## Belmont Residential LLC

# INVOICE

250 Gibraltar Road  
Horsham, PA 19044  
Phone 215/938-8000

**INVOICE #:** 2018-01  
**DATE:** 04/02/18

### TO

Starr Capital Partners, LLC, Smith Legacy Partners Series,  
LLC, Smith Legacy Partners II, LLC, 505-5-7 Common  
Street, and 527 Common Street, LLC  
6 Littlefield Road, Acton, MA 01720  
Attn: Christopher L. Starr, Manager

### Description

### Amount

Remediation costs in excess of Upset Threshold

**\$2,211,016.65**

### Total

**\$2,211,016.65**

Make all checks payable to Belmont Residential LLC  
Payment is due within 30 days of the invoice date.

# **Cushing Village Project Remediation Costs**

**April 2, 2018**





**Arrowood LLP - Toll Brothers**  
**Invoice Summary**

**Exhibit 1**

(US\$)

**Remediation Overruns - Known Conditions**

Remediation of Existing Environmental Conditions as of 01/31/18	\$ 4,711,016.65 [a]
Less: Agreement of Sale Remediation Threshold	<u>1,441,000.00 [b]</u>
Remediation Overruns - Known Conditions	<u>\$ 3,270,016.65</u>

**Remediation Overruns - Known Conditions Exceeding Upset Threshold**

Remediation of Existing Environmental Conditions as of 01/31/18	\$ 4,711,016.65 [a]
Less: Agreement of Sale Upset Threshold	<u>2,500,000.00 [c]</u>
Remediation Overruns - Known Conditions Exceeding Upset Threshold	<u>\$ 2,211,016.65</u>

**Notes:**

[a] Refer to Exhibit 2

[b] Refer to Agreement of Sale dated March 14, 2016 "Agreement of Sale.pdf" page 28 section 26(b)(2)

[c] Refer to Agreement of Sale dated March 14, 2016 "Agreement of Sale.pdf" page 28 section 26(b)(3)

**Arrowood LLP - Toll Brothers  
Remediation Summary**

**Exhibit 2**

<b>Category</b>	<b>Amount Invoiced to TB [a]</b>	<b>Non-Remediation Amount</b>	<b>Remediation Amount</b>
Soil Disposal - Landfill	\$ 1,520,451.14	\$ -	\$ 1,520,451.14
Soil Transportation - Landfill		<i>[combined with above]</i>	
Professional Fees	1,032,893.89	37,136.19	995,757.70 [b]
On-Site Soil Treatment	569,150.00	-	569,150.00
Excavation	45,979.62	-	45,979.62
Dewatering	690,552.45	502,887.12	187,665.33 [c]
Town of Belmont	9,662.37	-	9,662.37
F Listed Removal	702,717.49	-	702,717.49
Delay Claim	679,633.00	-	679,633.00
<b>Total</b>	<b>\$ 5,251,039.96</b>	<b>\$ 540,023.31</b>	<b>\$ 4,711,016.65</b>

Notes:

[a] Refer to Exhibit 3.

[b] "As-Needed Consulting Services" invoiced by Sage were excluded. Refer to Exhibit 5.1.

[c] Non-Environmental dewatering cost invoiced by Sage were excluded. Refer to Exhibit 5.2.

**Arrowood LLP - Toll Brothers  
Reconciliation Summary**

**Exhibit 3**

Category	Amount Invoiced to TB	Amount Paid by TB [a]	Amount Not Yet Paid	Amount Per Projection [b]	Amount To Complete
Soil Disposal - Landfill	\$ 1,520,451.14 [c]	\$ 1,520,451.14	\$ -	\$ 1,929,150.00	\$ 408,698.86 [d]
Soil Transportation - Landfill	<i>[combined]</i> [d]	<i>[combined with above]</i>		<i>[combined with above]</i>	[d]
Professional Fees	1,032,893.89 [e]	1,032,893.89	-	1,338,931.38	306,037.49 [f]
On-Site Soil Treatment	569,150.00 [g]	569,150.00	-	569,150.00	-
Excavation	45,979.62 [h]	45,979.62	-	114,333.00	68,353.38
Dewatering	690,552.45 [i]	690,552.45	-	708,782.62	18,230.17 [j]
Town of Belmont	9,662.37 [k]	9,662.37	-	9,662.37	- [l]
F Listed Removal	702,717.49 [m]	702,717.49	-	2,300,000.00	1,597,282.51
Delay Claim	679,633.00 [n]	-	679,633.00	679,633.00	- [o]
Total	<u>\$ 5,251,039.96</u>	<u>\$ 4,571,406.96</u>	<u>\$ 679,633.00</u>	<u>\$ 7,649,642.37</u>	<u>\$ 2,398,602.41</u>

**Notes:**

[a] Refer to Exhibit 6

[b] Refer to Toll Brothers Summary Projection "Budget break down 1.29.18.xlsx"

[c] Refer to Exhibit 4.1

[d] Total soil removal cost per Toll Brother Summary Projection includes both "Soil Disposal - Landfill" and "Soil Transportation - Landfill"

[e] Refer to Exhibit 4.3. Professional Fees total \$1,556,676.51. However, this amount includes dewatering costs of \$523,782.62 which were identified by the vendor. Refer to Exhibit 5.2. These costs were excluded from the Professional Fees category and included in the Dewatering category.

[f] As indicated in note 'e' above, the Professional Fees category includes additional Dewatering costs invoiced by Sage. The projected Professional Fees amount of \$1,862,714 was therefore reduced by the invoiced dewatering costs of \$523,782.62. No additional adjustments were made to projected Professional Fees.

[g] Refer to Exhibit 4.4

[h] Refer to Exhibit 4.5

[i] Refer to Exhibit 4.6. Dewatering totals \$166,769.83. However as indicated in note 'e' above, the Professional Fees category included dewatering costs of \$523,782.62 which were identified by the vendor. Refer to Exhibit 5.2. These costs were excluded from the Professional Fees category and included in the Dewatering category.

[j] As indicated in note 'i' above, the Dewatering category excludes additional Dewatering costs invoiced by Sage. The projected Dewatering amount of \$185,000 was therefore increased by the invoiced dewatering costs of \$523,782.62. No additional adjustments were made to projected Dewatering.

[k] Refer to Exhibit 4.7

[l] The Town of Belmont category was not separately stated and therefore the total amount was added as a projected amount with full completion.

[m] Refer to Exhibit 4.8

[n] Refer to Exhibit 4.9

[o] The delay claim cost was negotiated subsequent to the most recent projected amount of \$875,348.24. Therefore the projected amount was revised to the actual amount of \$679,633.

**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Soil Disposal**

**Exhibit 4.1**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments [a]
Nauset	02-108/02-109	xxxxxxxx132	05/31/17	WL French	\$ 12,003.98	Soil Disposal
Nauset	02-108/02-109	Draw #5		WL French	21,745.88	Soil Disposal
Nauset	02-108/02-109			WL French	23,147.24	Soil Disposal
Nauset	02-108/02-109			WL French	12,026.70	Soil Disposal
Nauset	02-108/02-109			WL French	12,886.01	Soil Disposal
Nauset	02-108/02-109			WL French	63,600.40	Soil Disposal
Nauset	02-108/02-109			WL French	2,631.75	Soil Disposal
Nauset	02-108/02-109			WL French	9,101.93	Soil Disposal
Nauset	02-108/02-109			Jackson Lumber	247.99	Miscellaneous
Nauset	02-108/02-109			Pro Tool	663.00	Miscellaneous
Nauset	02-108/02-109			Pro Tool	663.00	Miscellaneous
Nauset	02-108/02-109	xxxxxxxx170	06/30/17	WL French	25,789.22	Soil Disposal
Nauset	02-108/02-109	Draw #6		WL French	8,251.74	Soil Disposal
Nauset	02-108/02-109			WL French	2,798.06	Soil Disposal
Nauset	02-108/02-109			WL French	17,096.04	Soil Disposal
Nauset	02-108/02-109			WL French	14,264.25	Soil Disposal
Nauset	02-108/02-109			WL French	35,099.51	Soil Disposal
Nauset	02-108/02-109			WL French	7,300.65	Soil Disposal
Nauset	02-108/02-109			WL French	19,575.58	Soil Disposal
Nauset	02-108/02-109			WL French	13,799.19	Soil Disposal
Nauset	02-108/02-109			WL French	1,081.85	Soil Disposal
Nauset	02-108/02-109			WL French	7,724.74	Soil Disposal
Nauset	02-108/02-109			WL French	4,122.41	Soil Disposal
Nauset	02-108/02-109			Pro Tool	663.00	Miscellaneous
Nauset	02-108/02-109	xxxxxxxx193	07/31/17	WL French	13,772.85	Soil Disposal
Nauset	02-108/02-109	Draw #7		WL French	15,928.44	Soil Disposal
Nauset	02-108/02-109			WL French	69,787.56	Soil Disposal
Nauset	02-108/02-109			WL French	17,128.33	Soil Disposal
Nauset	02-108/02-109	xxxxxxxx231	08/31/17	WL French	60,986.61	Soil Disposal
Nauset	02-108/02-109	Draw #8		WL French	52,788.02	Soil Disposal
Nauset	02-108/02-109			WL French	27,705.71	Soil Disposal
Nauset	02-108/02-109			WL French	17,096.04	Soil Disposal
Nauset	02-108/02-109			WL French	99,235.98	Soil Disposal
Nauset	02-108/02-109			WL French	6,047.25	Soil Disposal

**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Soil Disposal**

**Exhibit 4.1**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments [a]
Nauset	02-108/02-109			WL French	2,798.06	Soil Disposal
Nauset	02-108/02-109			WL French	39,849.62	Soil Disposal
Nauset	02-108/02-109			WL French	115,095.09	Soil Disposal
Nauset	02-108/02-109			WL French	29,114.51	Soil Disposal
Nauset	02-108/02-109			WL French	900.00	Soil Disposal
Nauset	02-108/02-109			WL French	15,713.45	Soil Disposal
Nauset	02-108/02-109	xxxxxxxx245	09/30/17	WL French	10,707.37	Soil Disposal
Nauset	02-108/02-109	Draw #9		WL French	9,710.40	Soil Disposal
Nauset	02-108/02-109			WL French	13,516.34	Soil Disposal
Nauset	02-108/02-109			WL French	75,230.87	Soil Disposal
Nauset	NA	xxxxxxxx257	10/31/17	WL French	244,368.26	Soil Disposal
Nauset	NA	Draw #10		Nauset	9,775.58	Soil Disposal
Nauset	NA	xxxxxxxx273	11/30/17	WL French	240,219.01	Soil Disposal
Nauset	NA	Draw #11		Nauset	9,607.35	Soil Disposal
Nauset	NA	xxxxxxxx319	12/31/17	WL French	6,099.67	Soil Disposal
Nauset	NA	Draw #12		Nauset	984.65	Soil Disposal
Total					<u>\$ 1,520,451.14</u>	

Note:

[a] As indicated by Toll Brothers management.

Arrowood LLP - Toll Brothers  
Invoiced to Toll Brothers - Soil Transportation

Exhibit 4.2

Vendor	Cost Code	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments
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[combined with Soil Disposal - Landfill]      Refer to Exhibit 4.1

**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Professional Fees**

**Exhibit 4.3**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments [a]
Sage	60-100	14867	12/31/16	NA	\$ 32,577.13	Professional Service
Sage	60-100	14940	01/31/17	NA	46,897.91	Professional Service
Sage	60-100	15020	02/28/17	NA	16,677.79	Professional Service
Sage	60-100	15096	03/31/17	NA	165,388.66	Professional Service
Sage	60-100	15175	04/30/17	NA	121,116.11	Professional Service
Sage	60-100	15257	05/31/17	NA	117,578.76	Professional Service
Sage	60-100	15347	06/30/17	NA	135,997.02	Professional Service
Sage	60-100	15426	07/31/17	NA	94,858.51	Professional Service
Sage	60-100	15428	07/31/17	NA	40,451.17	Professional Service
Sage	60-100	15499	08/31/17	NA	103,296.40	Professional Service
Sage	60-100	15509	08/31/17	NA	34,447.58	Professional Service
Sage	60-100	15582	09/30/17	NA	87,559.44	Professional Service
Sage	60-100	15595	09/30/17	NA	44,135.47	Professional Service
Sage	60-100	15648	10/31/17	NA	76,086.91	Professional Service
Sage	60-100	15678	10/31/17	NA	42,554.13	Professional Service
Sage	60-100	15765	11/30/17	NA	67,297.49	Professional Service
Sage	60-100	15768	11/30/17	NA	57,079.27	Professional Service
Sage	60-100	15861	12/31/17	NA	82,533.37	Professional Service
Sage	60-100	15862	12/31/17	NA	49,203.11	Professional Service
Sage	60-100	15928	01/31/18	NA	64,618.66	Professional Service
Sage	60-100	15948	01/31/18	NA	76,321.62	Professional Service
Total					<u>\$ 1,556,676.51</u>	

Note:

[a] As indicated by Toll Brothers management.

**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Soil Treatment**

**Exhibit 4.4**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments
Strategic Environmental Services	60-600	17-0159-1	05/19/17	NA	\$ 569,150.00	
Total					<u>\$ 569,150.00</u>	

Note:

[a] As indicated by Toll Brothers management.



**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Excavation**

**Exhibit 4.5**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments [a]
Nauset	02-108/02-109	xxxxxxxx73	03/31/17	Baystate Engineering	\$ 12,858.00	Excavation
Nauset	02-108/02-109	Draw #3		Baystate Engineering	1,012.00	Excavation
Nauset	02-108/02-109			Pro Tool	884.00	Miscellaneous
Nauset	02-108/02-109			Pro Tool	110.50	Miscellaneous
Nauset	02-108/02-109			Pro Tool	663.00	Miscellaneous
Nauset	02-108/02-109			Pro Tool	884.00	Miscellaneous
Nauset	02-108/02-109			Pro Tool	884.00	Miscellaneous
Nauset	02-108/02-109	xxxxxxxx170	06/30/17	Baystate Engineering	1,551.00	Excavation
Nauset	02-108/02-109	Draw #6		Baystate Engineering	1,188.00	Excavation
Nauset	02-108/02-109	xxxxxxxx193	07/31/17	Baystate Engineering	3,333.00	Excavation
Nauset	02-108/02-109	Draw #7		Pro Tool	754.59	Miscellaneous
Nauset	02-108/02-109			Pro Tool	663.00	Miscellaneous
Nauset	02-108/02-109			Baystate Engineering	3,333.00	Excavation
Nauset	02-108/02-109			Safety Unlimited	234.50	Miscellaneous
Nauset	02-108/02-109	xxxxxxxx231	08/31/17	Baystate Engineering	1,969.00	Excavation
Nauset	02-108/02-109	Draw #8		Pro Tool	91.59	Miscellaneous
Nauset	02-108/02-109			Baystate Engineering	1,034.00	Excavation
Nauset	02-108/02-109			Pro Tool	663.00	Miscellaneous
Nauset	NA	xxxxxxxx273	11/30/17	Nauset	13,869.44	Excavation
Total					<u>\$ 45,979.62</u>	

Note:

[a] As indicated by Toll Brothers management.

**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Dewatering**

**Exhibit 4.6**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments [a]
Griffin Dewatering	NA	610053	04/25/17	NA	\$ 127,939.00	Dewatering well drilling
Griffin Dewatering	NA	610058	06/08/17	NA	8,500.00	Dewatering equipment rental
Griffin Dewatering	NA	610063	07/12/17	NA	11,500.00	Dewatering equipment rental
Griffin Dewatering	NA	610068	08/23/17	NA	8,500.00	Dewatering equipment rental
Griffin Dewatering	NA	610070	09/26/17	NA	8,500.00	Dewatering equipment rental
Nauset	02-108/02-109	xxxxxxxx231	08/31/17	Belmont Light	1,647.02	Electric for dewatering
Nauset	02-108/02-109	Draw #8	08/31/17	Pro Tool	183.81	Miscellaneous
Total					<u>\$ 166,769.83</u>	

Note:

[a] As indicated by Toll Brothers management.

**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Town of Belmont**

**Exhibit 4.7**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments [a]
Town of Belmont	53-101	2017-01	02/23/17	NA	\$ 3,000.00	Reimbursement for Town LSP services
Nauset	02-108/02-109	xxxxxxx170	06/30/17	Town of Belmont	3,304.85	Permits
Nauset	02-108/02-109	Draw #6		Town of Belmont	2,336.62	Permits
Nauset	02-108/02-109	xxxxxxx231	08/31/17	Town of Belmont	<u>1,020.90</u>	Permits
Total					<u>\$ 9,662.37</u>	

Note:

[a] As indicated by Toll Brothers management.

**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Soil Disposal**

**Exhibit 4.8**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments [a]
Nauset	NA	xxxxxxxx319	12/31/17	WL French	\$ 702,717.49	Soil Disposal
Total					<u>\$ 702,717.49</u>	

Note:

[a] As indicated by Toll Brothers management.

Arrowood LLP - Toll Brothers  
Invoiced to Toll Brothers - Delay Claim

Exhibit 4.9

Vendor	Cost Code	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments
Nauset	NA	26R	02/07/18	NA	\$ 679,633.00	
Total					\$ 679,633.00	

**Arrowood LLP - Toll Brothers  
Adjustment - Professional Fees**

**Exhibit 5.1**

<b>Vendor</b>	<b>Invoice Number</b>	<b>Invoice Date</b>	<b>Adjustment Amount [a]</b>	<b>Comments</b>
Sage	14867	12/31/16	\$ 3,323.75	As-Needed Consulting Services
Sage	14940	01/31/17	7,417.24	As-Needed Consulting Services
Sage	15020	02/28/17	3,045.29	As-Needed Consulting Services
Sage	15096	03/31/17	4,942.86	As-Needed Consulting Services
Sage	15175	04/30/17	1,132.50	As-Needed Consulting Services
Sage	15257	05/31/17	5,190.00	As-Needed Consulting Services
Sage	15347	06/30/17	3,967.50	As-Needed Consulting Services
Sage	15426	07/31/17	5,598.30	As-Needed Consulting Services
Sage	15428	07/31/17	-	
Sage	15499	08/31/17	797.50	As-Needed Consulting Services
Sage	15509	08/31/17	-	
Sage	15582	09/30/17	326.25	As-Needed Consulting Services
Sage	15595	09/30/17	-	
Sage	15648	10/31/17	615.00	As-Needed Consulting Services
Sage	15678	10/31/17	-	
Sage	15765	11/30/17	210.00	As-Needed Consulting Services
Sage	15768	11/30/17	-	
Sage	15861	12/31/17	435.00	As-Needed Consulting Services
Sage	15862	12/31/17	-	
Sage	15928	01/31/18	135.00	As-Needed Consulting Services
Sage	15948	01/31/18	-	
Total			<u>\$ 37,136.19</u>	

Note:

[a] "As-Needed Consulting Services" excluded at the direction of Toll Brothers management.

**Arrowood LLP - Toll Brothers**  
**Adjustment - Dewatering**

**Exhibit 5.2**

Vendor	Description	Invoice Number [a]	Total Amount	Non-Environmental Amount [b]	Environmental Amount [b]
Sage	Labor & Travel	All	\$ 227,396.84	\$ 227,396.84	\$ -
Sage	Dewatering Well Installation	All	9,905.63	9,905.63	-
Sage	Frac Tank Rentals	All	42,460.35	42,460.35	-
Sage	Filter Rental & Media	All	163,375.01	163,375.01	-
Sage	Pumps, Hoses & Miscellaneous Expendables	All	40,046.11	40,046.11	-
Sage	Hazardous Waste Carbon Disposal	All	20,895.50	-	20,895.50
Sage	Testing	All	19,703.18	19,703.18	-
Total			<u>\$ 523,782.62</u>	<u>\$ 502,887.12</u>	<u>\$ 20,895.50</u>

Notes:

[a] Dewatering costs were identified within all Sage invoices by the vendor.

[b] Based on representation from the licensed site professional, all dewatering cost components contribute to environmental remediation as well as construction. However, only carbon disposal can be specifically attributed to remediation. For the sake of conservatism, only the carbon disposal costs were included.

**Arrowood LLP - Toll Brothers**  
**Invoices and Payments Analysis**

**Exhibit 6**

Vendor	Subcontractor	Per Invoice [a]			Check Number [b]	Amount Paid [b]	Comments
		Invoice Date	Invoice Number	Invoice Amount			
Sage							
Sage	NA	12/31/16	14867	\$ 32,577.13	02351163	\$ 32,577.13	
Sage	NA	01/31/17	14940	46,897.91	02367269	46,897.91	
Sage	NA	02/28/17	15020	16,677.79	02368872	16,677.79	
Sage	NA	03/31/17	15096	165,388.66	02377138	165,388.66	
Sage	NA	04/30/17	15175	121,116.11	02387840	121,116.11	
Sage	NA	05/31/17	15257	117,578.76	02387840	117,578.76	
Sage	NA	06/30/17	15347	135,997.02	02395175	135,997.02	
Sage	NA	07/31/17	15426	94,858.51	02406186	94,858.51	
Sage	NA	07/31/17	15428	40,451.17	02407887	40,451.17	
Sage	NA	08/31/17	15499	103,296.40	02411447	103,296.40	
Sage	NA	08/31/17	15509	34,447.58	02411447	34,447.58	
Sage	NA	09/30/17	15582	87,559.44	02420960	87,559.44	
Sage	NA	09/30/17	15595	44,135.47	02420960	44,135.47	
Sage	NA	10/31/17	15648	76,086.90	02426805	76,086.90	"Consulting with Davis" excluded by Toll Brothers
Sage	NA	10/31/17	15678	42,554.13	02426805	42,554.13	
Sage	NA	11/30/17	15765	67,297.49	02437602	67,297.49	
Sage	NA	11/30/17	15768	57,079.27	02437602	57,079.27	
Sage	NA	12/31/17	15861	82,533.37	02441661	82,533.37	
Sage	NA	12/31/17	15862	49,203.11	02441661	49,203.11	
Sage	NA	01/31/18	15928	64,618.66	02448821	64,618.66	
Sage	NA	01/31/18	15948	76,321.62	02448821	76,321.62	
Town of Belmont							
Town of Belmont	NA	02/23/17	2017-01	3,000.00	02374709	3,000.00	Check request for Belmont for Waypoint Environmental Consulting Services
Strategic Environmental Services							
Strategic Environmental Services		05/19/17	17-0159-1	569,150.00	02433785	569,150.00	



**Arrowood LLP - Toll Brothers**  
**Invoices and Payments Analysis**

**Exhibit 6**

Vendor	Subcontractor	Per Invoice [a]			Check Number [b]	Amount Paid [b]	Comments
		Invoice Date	Invoice Number	Invoice Amount			
Griffin Dewatering							
Griffin Dewatering	NA	04/25/17	610053	127,939.00	09899073 and 09899086	127,939.00	
Griffin Dewatering	NA	06/08/17	610058	8,500.00	09899073 and 09899086	8,500.00	
Griffin Dewatering	NA	07/12/17	610063	11,500.00	09899073 and 09899086	11,500.00	
Griffin Dewatering	NA	08/23/17	610068	8,500.00	09899073 and 09899086	8,500.00	
Griffin Dewatering	NA	09/26/17	610070	8,500.00	09930966	8,500.00	
Nauset							
Nauset	Baystate Engineering	03/31/17	20154400073	12,858.00	02372347	12,858.00	Draw #3
Nauset	Baystate Engineering	03/31/17	20154400073	1,012.00	02372347	1,012.00	Draw #3
Nauset	Pro Tool	03/31/17	20154400073	884.00	02372347	884.00	Draw #3
Nauset	Pro Tool	03/31/17	20154400073	110.50	02372347	110.50	Draw #3
Nauset	Pro Tool	03/31/17	20154400073	663.00	02372347	663.00	Draw #3
Nauset	Pro Tool	03/31/17	20154400073	884.00	02372347	884.00	Draw #3
Nauset	Pro Tool	03/31/17	20154400073	884.00	02372347	884.00	Draw #3
Nauset	WL French	05/31/17	20154400132	12,003.98	02391119	12,003.98	Draw #5
Nauset	WL French	05/31/17	20154400132	21,745.88	02391119	21,745.88	Draw #5
Nauset	WL French	05/31/17	20154400132	23,147.24	02391119	23,147.24	Draw #5
Nauset	WL French	05/31/17	20154400132	12,026.70	02391119	12,026.70	Draw #5
Nauset	WL French	05/31/17	20154400132	12,886.01	02391119	12,886.01	Draw #5
Nauset	WL French	05/31/17	20154400132	63,600.40	02391119	63,600.40	Draw #5
Nauset	WL French	05/31/17	20154400132	2,631.75	02391119	2,631.75	Draw #5
Nauset	WL French	05/31/17	20154400132	9,101.93	02391119	9,101.93	Draw #5
Nauset	Jackson Lumber	05/31/17	20154400132	247.99	02391119	247.99	Draw #5
Nauset	Pro Tool	05/31/17	20154400132	663.00	02391119	663.00	Draw #5
Nauset	Pro Tool	05/31/17	20154400132	663.00	02391119	663.00	Draw #5
Nauset	WL French	06/30/17	20154400170	25,789.22	02394855	25,789.22	Draw #6
Nauset	WL French	06/30/17	20154400170	8,251.74	02394855	8,251.74	Draw #6
Nauset	WL French	06/30/17	20154400170	2,798.06	02394855	2,798.06	Draw #6
Nauset	WL French	06/30/17	20154400170	17,096.04	02394855	17,096.04	Draw #6
Nauset	WL French	06/30/17	20154400170	14,264.25	02394855	14,264.25	Draw #6
Nauset	WL French	06/30/17	20154400170	35,099.51	02394855	35,099.51	Draw #6

**Arrowood LLP - Toll Brothers**  
**Invoices and Payments Analysis**

**Exhibit 6**

Vendor	Subcontractor	Per Invoice [a]			Check Number [b]	Amount Paid [b]	Comments
		Invoice Date	Invoice Number	Invoice Amount			
Nauset	WL French	06/30/17	20154400170	7,300.65	02394855	7,300.65	Draw #6
Nauset	WL French	06/30/17	20154400170	19,575.58	02394855	19,575.58	Draw #6
Nauset	WL French	06/30/17	20154400170	13,799.19	02394855	13,799.19	Draw #6
Nauset	WL French	06/30/17	20154400170	1,081.85	02394855	1,081.85	Draw #6
Nauset	WL French	06/30/17	20154400170	7,724.74	02394855	7,724.74	Draw #6
Nauset	WL French	06/30/17	20154400170	4,122.41	02394855	4,122.41	Draw #6
Nauset	Town of Belmont	06/30/17	20154400170	3,304.85	02394855	3,304.85	Draw #6
Nauset	Pro Tool	06/30/17	20154400170	663.00	02394855	663.00	Draw #6
Nauset	Baystate Engineering	06/30/17	20154400170	1,551.00	02394855	1,551.00	Draw #6
Nauset	Baystate Engineering	06/30/17	20154400170	1,188.00	02394855	1,188.00	Draw #6
Nauset	Town of Belmont	06/30/17	20154400170	2,336.62	02394855	2,336.62	Draw #6
Nauset	WL French	07/31/17	20154400193	13,772.85	02404306	13,772.85	Draw #7
Nauset	WL French	07/31/17	20154400193	15,928.44	02404306	15,928.44	Draw #7
Nauset	WL French	07/31/17	20154400193	69,787.56	02404306	69,787.56	Draw #7
Nauset	WL French	07/31/17	20154400193	17,128.33	02404306	17,128.33	Draw #7
Nauset	Baystate Engineering	07/31/17	20154400193	3,333.00	02404306	3,333.00	Draw #7
Nauset	Pro Tool	07/31/17	20154400193	754.59	02404306	754.59	Draw #7
Nauset	Pro Tool	07/31/17	20154400193	663.00	02404306	663.00	Draw #7
Nauset	Baystate Engineering	07/31/17	20154400193	3,333.00	02404306	3,333.00	Draw #7
Nauset	Safety Unlimited	07/31/17	20154400193	234.50	02404306	234.50	Draw #7
Nauset	WL French	08/31/17	20154400231	60,986.61	02413047	60,986.61	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	52,788.02	02413047	52,788.02	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	27,705.71	02413047	27,705.71	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	17,096.04	02413047	17,096.04	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	99,235.98	02413047	99,235.98	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	6,047.25	02413047	6,047.25	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	2,798.06	02413047	2,798.06	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	39,849.62	02413047	39,849.62	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	115,095.09	02413047	115,095.09	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	29,114.51	02413047	29,114.51	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	900.00	02413047	900.00	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	15,713.45	02413047	15,713.45	Draw #8Rev2
Nauset	Baystate Engineering	08/31/17	20154400231	1,969.00	02413047	1,969.00	Draw #8Rev2
Nauset	Pro Tool	08/31/17	20154400231	91.59	02413047	91.59	Draw #8Rev2
Nauset	Belmont Light	08/31/17	20154400231	1,647.02	02413047	1,647.02	Draw #8Rev2
Nauset	Pro Tool	08/31/17	20154400231	183.81	02413047	183.81	Draw #8Rev2
Nauset	Baystate Engineering	08/31/17	20154400231	1,034.00	02413047	1,034.00	Draw #8Rev2
Nauset	Pro Tool	08/31/17	20154400231	663.00	02413047	663.00	Draw #8Rev2

**Arrowood LLP - Toll Brothers  
Invoices and Payments Analysis**

**Exhibit 6**

Vendor	Subcontractor	Per Invoice [a]			Check Number [b]	Amount Paid [b]	Comments
		Invoice Date	Invoice Number	Invoice Amount			
Nauset	Town of Belmont	08/31/17	20154400231	1,020.90	02413047	1,020.90	Draw #8Rev2
Nauset	WL French	09/30/17	20154400245	10,707.37	02424421	10,707.37	Draw #9
Nauset	WL French	09/30/17	20154400245	9,710.40	02424421	9,710.40	Draw #9
Nauset	WL French	09/30/17	20154400245	13,516.34	02424421	13,516.34	Draw #9
Nauset	WL French	09/30/17	20154400245	75,230.87	02424421	75,230.87	Draw #9
Nauset	WL French	10/31/17	20154400257	244,368.26	02426512	244,368.26	Draw #10
Nauset	Various	10/31/17	20154400257	9,775.58	02426512	9,775.58	Draw #10
Nauset	WL French	11/30/17	20154400292	240,219.01	02435294	240,219.01	Draw #11R
Nauset	Various	11/30/17	20154400292	9,607.35	02435294	9,607.35	Draw #11R
Nauset	Various	11/30/17	20154400292	13,869.44	02435294	13,869.44	Draw #11R
Nauset	WL French	12/31/17	20154400319	6,099.67	02443257	6,099.67	Draw #12
Nauset	Various	12/31/17	20154400319	984.65	02443257	984.65	Draw #12
Nauset	WL French	12/31/17	20154400319	702,717.49	02443257	702,717.49	Draw #12
Nauset	NA	02/07/18	PCO 26R	679,633.00	NA	-	As of the issuance of this exhibit, payment was still in processing given the standard lag time for Toll Brothers in the ordinary course of business.
Total				<u>\$ 5,251,039.95</u>		<u>\$ 4,571,406.95</u>	

Notes:

[a] Refer to various vendor invoices provided by Toll Brothers management.

[b] Refer to various checks provided by Toll Brothers management. Note that in some instances multiple invoices were paid via one check.

## EXHIBIT B

# Form BCA Instructions

## What is the Brownfields Credit?

Non-profit organizations and taxpayers subject to tax under G. L. c. 62 and c. 63 are allowed a credit for incurring eligible costs to remove oil or hazardous materials on property the taxpayer owns or leases for business purposes and which is located within an economically distressed area. See G.L. c. 62, § 6(j) and G.L. c. 63, § 38Q. In general, the amount of the credit will be either 25% or 50% of the net response and removal costs incurred between August 1, 1998 and January 1, 2019, provided that the applicant commences and diligently pursues an environmental response action before August 5, 2018.

## Who is Eligible for the Credit?

Only a non-profit organization or taxpayer that is an eligible person as defined in G.L. c. 21E, § 2 and is not subject to any enforcement action pursuant to G.L. c. 21E may receive a credit.

An eligible person is defined as an owner or operator of a site from which there has been a release of oil or hazardous material who did not cause or contribute to the release and did not own or operate the site at the time of the release.

## What Properties are Eligible for the Credit?

**Eligible property where all three conditions must be met:**

1. The property is owned or leased by the applicant for business purposes.
2. The property has been reported to the Department of Environmental Protection (DEP).
3. The property is located in an economically distressed area. A list of economically distressed areas is available from the DEP website at: <http://www.mass.gov/eea/agencies/massdep/cleanup/programs/list-of-economically-distressed-areas.html>.

## Limitations on the Credit

**There are two types of limitations on the credit:**

- Fifty-percent limitation for G.L. c. 62 taxpayers: the maximum amount of credit that may be taken may not exceed fifty percent (50%) of the tax liability for the taxable year;
- Fifty-percent limitation for business corporations: the maximum amount of credit that may be taken may not exceed fifty percent (50%) of the excise tax for the taxable year;
- Minimum excise limitation for business corporations: the credit may not be used to reduce the tax liability below the minimum excise which is currently \$456.

## Carryover of Credit

An unused credit may be carried over for up to five succeeding tax years. However, in no event may the taxpayer apply the credit in any taxable year in which it has ceased to maintain the remedy operation status or the permanent solution for which the credit was granted.

## Corporations Filing Combined Returns

Pursuant to G.L. c. 63, § 32B, for tax years beginning on or after January 1, 2009, a credit that may be validly claimed by a taxable member of a combined group and that is attributable to the combined group's unitary business may be shared with the other taxable members of the combined group to the extent such sharing of the credit is consistent with the statutory requirement for claiming the credit, taking into account the nature of the business and activities of each of the taxable members that seek to share the credit.

## Financial Aid Received by All Taxpayers

Taxpayers may claim this credit even if they receive financial assistance from the Brownfields Development Fund or from the Redevelopment Access to Capital (RAC) Program. However, the amount of state funds received from either of these funds must be deducted from the expense base for which the credit is available.

With reference to RAC, the amount of state financial assistance is calculated as the amount of state funds paid on behalf of the borrower for participation in the program. If the taxpayer has borrowed funds subject to a state guarantee in order to finance the expenses of remediation, the amount of the loan is permitted to be included in the expense base for which the credit is available. However, if the borrower defaults on the loan and the guarantee is invoked, any credit taken for the amount of the loan will be recaptured as taxes due in the year the loan is paid.

## Eligible Costs

The Brownfields Act states that eligible costs are net response and removal costs paid by the taxpayer for the purpose of achieving a permanent solution or remedy operation status in compliance with G.L. c. 21E. The Department in conjunction with DEP has determined that the following costs are eligible for consideration as net response and removal costs where such costs are a direct and necessary part of attaining a permanent solution or remedy operation status and where such costs have been incurred by the taxpayer while the taxpayer owned or leased the property:

- Any assessment, removal, or containment action as required under G.L. c. 21E;
- Assessment activities performed prior to notification that identify an obligation to notify DEP;
- Preparation of phase reports, status reports, or other submittals required by the Massachusetts Contingency Plan (MCP) pursuant to 310 CMR 40.0000;
- Removal, assessment, containment, treatment, transport, storage, reuse, recycling and/or disposal of soil, groundwater, surface water or sediments that contain oil and/or hazardous materials;
- Development and implementation of assessment and remediation plans, including pilot testing and treatability tests;
- Geotechnical or environmental testing; Demolition or repair of buildings;
- Replacement or repair of blacktop or concrete;
- Hydrogeologic/aquifer tests;
- Provisions for the temporary and/or permanent replacement or treatment of potable drinking water supply contaminated by oil and/or hazardous materials;
- Installation of test borings, monitoring wells, recovery wells, and/or gaseous injection or extraction wells;
- Attorney fees for "compliance assistance" in the preparation of submittals documenting response actions required pursuant to the MCP;
- Permit fees, cost of paid police details and security details;
- Closure or removal of components of an Underground Storage Tank System pursuant to 527 CMR 9.07(H), 9.07(I), or 310 CMR 80.00 et. seq., as the case may be; and



- Rental of temporary storage tanks for the management of remediation wastes.

**Costs that are not eligible for the Brownfields credit include the following:**

- Retro-fitting, relining or replacing UST Systems;
- Loss of business revenue because of shutdown of business due to a release or the performance of response actions;
- Landscaping expenses including expenses related to the loss, replacement, or installation of trees, shrubs, or signs;
- All governmental, federal, state and local oversight fees;
- Compliance fees, punitive damages, civil or administrative penalties, and criminal fines;
- Interest payments or any finance charges;
- Small tools;
- Costs incurred prior to notification to the DEP of the release and the receipt of a DEP tracking number that are not otherwise eligible;
- Ordinary business expenses or capital improvements, including expenses that would have been incurred in the ordinary course of development of the property in the absence of contamination, oil and hazardous materials management, and replacement of tanks;
- Insurance costs associated with remediation;
- Costs attributable to the time and expense of an owner, operator, or principal;
- Any other costs that are not a direct and necessary part of attaining a permanent solution or remedy operation status and incurred by the taxpayer while the taxpayer owned or leased the property;
- Any costs for which the taxpayer received or anticipates reimbursement; and
- Any other costs not expressly listed as eligible.

## **Additional Requirements**

**Please submit the following along with this application:**

- A copy of the Response Action Outcome Report/Remedy Operation Status Report/Permanent Solution Statement prepared by the Licensed Site Professional hired for this project;
- Documentation showing the assessed value of the property prior to remediation;
- The deed or lease agreement for the property;
- A description of the business purpose for which the property is owned or leased, i.e., the current business activity that is taking place on this site;
- Copies of all correspondence sent to and received from the DEP relating to the cleanup and outcome of this property.

The following requirement should be submitted in an electronic format. **Note:** This must be in a standard database spreadsheet format:

- A complete list of all eligible costs. This list should include the invoice date, invoice number, vendor, eligible net response and removal costs and a brief description of the service(s) provided.

Questions or concerns relating to the Brownfields Credit Application should be directed to the Brownfields Unit at 617-887-6725.

Mail completed application to: **Massachusetts Department of Revenue, Audit Division, 200 Arlington Street, Room 4300, Chelsea, MA 02150; Attn.: Brownfields Unit.**

## EXHIBIT C

Total Cost Associated with the Transport and Disposal of <RCS-1 Soils  
Through January 31, 2018

Total Cost of Soil Moved to <RCS-1 Facilities	\$ 459,141.51
Labor to Oversee Excavation of Soils to < RCS-1 Facilities	\$ 42,750.00
Soil Disposal Coordination and Oversight*	\$ 29,654.70
Total Costs Related to <RCS-1 Soils	\$ 531,546.21

\* Based on a percentage of total tonnage sent to <RCS-1 soils facilities (sent offsite with an MSR) through 1/31/2018



Soil Transported and Disposed at <RCS-1 Facilities and Associated Labor  
May 1, 2017 through January 31, 2018

INVOICE #		Date Soil Moved	Tonnage	Disposal Location	Total Cost	Excavation Oversight/Monitoring Fieldwork Hours										Labor Cost for		T&D to Other Facilities on this Date?		
						Cousineau	Boynes	Bauchene	Cote	Gonsalves	Meyer	Butterworth	Saccoccio	Barton	Gagne	Hauser	Excavation Oversight/Monitoring Fieldwork			
374-0R	5/3/2017	704.59	St Marys Tewksbury	\$ 10,321.15	8	0	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,787.50	No
374-0R	5/4/2017	299.13	Westford	\$ 5,234.78	8	1	9.5	0	0	0	0	0	0	0	0	0	0	\$ 200.00	\$ 1,997.50	No
374-0R	5/4/2017	788.78	St Marys Tewksbury	\$ 12,236.09	3	8	8.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37494	5/5/2017	181.56	Westford	\$ 3,177.30	8	8	9.5	0	0	0	0	0	0	0	0	0	0	\$ 150.00	Not Included	Yes
37494	5/8/2017	39.42	Westford	\$ 689.85	8	8	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37509	5/10/2017	259.1	Westford	\$ 4,534.25	0	8	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37441R	5/10/2017	224.6	St Marys Tewksbury	\$ 3,481.30	0	8	11.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37509	5/12/2017	284.32	Westford	\$ 4,975.60	0	8	11.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37441R	5/11/2017	371.74	St Marys Tewksbury	\$ 5,761.97	0	8	11.5	0	0	0	0	0	0	0	0	0	0	\$ 150.00	Not Included	Yes
37509	5/12/2017	143.82	Westford	\$ 2,516.85	0	8	11.5	0	0	0	0	0	0	0	0	0	0	\$ 2,007.50	\$ 2,007.50	No
37441R	5/12/2017	806.62	St Marys Tewksbury	\$ 12,507.61	8	0	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,787.50	No
37463R	5/15/2017	774.45	St Marys Tewksbury	\$ 12,003.98	8	0	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37571	5/22/2017	104.42	Westford	\$ 1,827.35	8	0	8.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37571	5/23/2017	312.76	Westford	\$ 5,473.30	0	8	7.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37522R	5/23/2017	169.79	St Marys Tewksbury	\$ 2,631.75	0	8	7.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,617.50	No
37536	5/26/2017	532.37	St Marys Tewksbury	\$ 8,251.74	0	8	2.8	0	0	0	0	0	0	0	0	0	0	\$ 500.00	\$ 1,150.00	No
37576	6/8/2017	431.47	St Marys Tewksbury	\$ 6,687.79	3	0	8	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,110.00	No
37576	6/9/2017	831.47	St Marys Tewksbury	\$ 12,887.79	6	0	8	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37628	6/12/2017	427.77	St Marys Tewksbury	\$ 6,630.44	6	0	8	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37679	6/12/2017	61.82	Westford	\$ 1,081.85	0	8	0	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37678	6/13/2017	462.5	St Marys Tewksbury	\$ 7,168.75	6	0	8	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,440.00	No
37680	6/14/2017	498.37	St Marys Tewksbury	\$ 7,724.74	6	0	8	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,440.00	No
37708	6/26/2017	702.99	St Marys Tewksbury	\$ 10,896.35	8	0	7	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,575.00	No
37708	6/27/2017	960.83	St Marys Tewksbury	\$ 14,892.87	6	0	8	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,440.00	No
37732	6/28/2017	1102.97	St Marys Tewksbury	\$ 17,096.04	6	0	8	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,440.00	No
37748	6/29/2017	180.52	St Marys Tewksbury	\$ 2,798.06	2.5	0	8	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,055.00	No
37811	6/29/2017	512.68	Westford	\$ 8,971.90	0	8	0	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37811	6/30/2017	274.34	Westford	\$ 4,800.95	8	0	8	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37896	7/5/2017	383.11	Westford	\$ 6,704.43	6.5	0	8	2	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,795.00	No
37896	7/16/2017	1101.22	Westford	\$ 19,271.35	3.5	0	6	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 995.00	No
37896	7/12/2017	1064.5	Westford	\$ 18,628.75	6.5	0	9.5	1.5	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,847.50	No
37896	7/13/2017	652.16	Westford	\$ 11,412.80	8	0	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,787.50	No
37865	7/13/2017	369.76	Dudley	\$ 6,101.04	0	8	0	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,055.00	No
37896	7/14/2017	189.85	Westford	\$ 3,322.38	0	8	0	0	0	0	0	0	0	0	0	0	0	\$ 50.00	\$ 857.50	No
37865	7/14/2017	595.6	Dudley	\$ 9,827.40	0	8	0	0	0	0	0	0	0	0	0	0	0	\$ 50.00	\$ 857.50	No
37929	7/20/2017	502.25	Dudley	\$ 8,287.13	8	0	9.5	1	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37929	7/21/2017	535.83	Dudley	\$ 8,841.70	8	0	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,787.50	No
37953	7/24/2017	746.49	Dudley	\$ 12,317.09	8	0	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
37953	7/31/2017	205.84	Dudley	\$ 3,396.36	0	9	0	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
38060	8/1/2017	859.27	Dudley	\$ 14,177.96	0	9	0	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,672.50	No
38060	8/2/2017	747.97	Dudley	\$ 12,241.51	0	9	0	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,787.50	No
38060	8/3/2017	1165.66	Dudley	\$ 19,233.39	8	0	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
38060	8/4/2017	281.11	Dudley	\$ 4,638.32	8	0	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
38060	8/7/2017	74.21	Dudley	\$ 1,224.47	8	0	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
38060	8/8/2017	680.38	Dudley	\$ 11,226.27	8	0	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 2,312.50	No
38060	8/9/2017	587.89	Dudley	\$ 9,700.19	8	0	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,677.50	No
38060	8/10/2017	911.55	Dudley	\$ 15,040.58	8	0	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
38060	8/11/2017	706.26	Dudley	\$ 11,653.29	7	0	9.5	0	0	0	0	3.5	0	0	0	0	0	\$ 100.00	\$ 2,312.50	No
38097	8/14/2017	366.5	Dudley	\$ 6,047.25	8	0	9.5	0	0	0	0	0	0	0	0	0	0	\$ 100.00	\$ 1,677.50	No
38361	9/14/2017	554.88	Westford	\$ 9,710.40	0	0	7.75	0	0	0	0	0	0	0	10.5	0	0	\$ 100.00	Not Included	Yes
38391	9/21/2017	68.79	Dudley	\$ 1,135.04	0	0	8	0	0	0	0	0	0	0	0	0	0	\$ 100.00	Not Included	Yes
38400	9/21/2017	1051.01	Westford	\$ 18,392.68	0	0	8	0	0	0	0	0	10.75	0	0	0	0	\$ 100.00	\$ 1,962.50	No
38970	11/30/2017	497.88	Dudley	\$ 8,215.02	0	0	12	0	0	0	0	0	7	0	0	0	0	\$ 100.00	\$ 1,890.00	No

Total Tons of Soil to <RCS-1 Facilities	\$ 27,942.19
Total Tons of Soil Removed from Site	\$ 67,507.62
Percent of Total Soils to <RCS-1 Facilities	41%

Total Cost of Soil Moved to <RCS-1 Facilities	\$ 459,141.51
Labor to Oversee Excavation of Soils to <RCS-1 Facilities	\$ 42,750.00

Notes:  
1. Costs and calculations for site activities as of January 31, 2018  
2. Labor from days where soils went to a >RCS-1 facility was not included in the cost calculation  
3. Employee rates used in calculations are the lowest billed within the date range

## EXHIBIT D

## EXHIBIT D

### A. Non-Remediation Costs

Dewatering	\$ 166,769.83
Less-Than-RCS1 Soil	\$ 531,546.21
Construction Costs	\$ 36,814.44
Delay Claim	\$ 679,633.00
Miscellaneous	\$ 19,562.37
	<u>\$ 1,434,325.85</u>

### B. Mismanagement Costs

Allowing Sage overbilling vs. budget	\$ 1,215,410.76
SES in-situ treatment - failure	\$ 569,150.00
Volume increase <sup>1</sup>	\$ -
Contained in Determination Fiasco <sup>2</sup>	\$ -
Ignoring Cooperstown suggestion <sup>3</sup>	\$ 419,872.37
	<u>\$ 2,204,433.13</u>

### C. Errors Introduced in Marcum Backup

Unknown Environmental Conditions	\$ 9,120.70
Math Error	\$ 573.81
"Town of Belmont" Charges	\$ 9,662.37
Electricity (not inc. dewatering)	\$ 5,405.34
Town of Belmont Water Department	\$ 228.69
	<u>\$ 24,990.91</u>

### D. Errors, Mistakes, and False Charges

Sage Invoice 15347	\$ 6,340.75
Sage Invoice 15347	\$ 38.25
Nauset March 2017 Invoice	\$ 596.76
Nauset December 2017 Invoice	\$ 740.67
Sales Tax	\$ 536.36
Double Billing - WL French Soil	\$ 20,689.86
Double Billing - Baystate Change Order	\$ 3,466.32
	<u>\$ 32,408.97</u>

**TOTAL OVERBILLING on INVOICE**                      **\$ 3,696,158.86**

<sup>1</sup> Table assumes this cost (\$2,999,925.47) was not part of the 1-31-18 Invoice

<sup>2</sup> Table assumes this cost (\$434,546.48) was not part of the 1-31-18 Invoice

<sup>3</sup> Only applied to the F-listed total on the 1-31-18 Invoice

## EXHIBIT E

Sage Excavation Oversight/Monitoring Fieldwork on Days with No Soil Transport for Disposal  
May 1, 2017 to January 31, 2018

Date of Fieldwork	Fieldwork - Excavation Oversight/Monitoring Hours											Labor Cost for Excavation Oversight/Monitoring Fieldwork
	Cousineau	Boynes	Beauchene	Cote	Gonsalves	Meyer	Butterworth	Saccoccio	Barton	Gagne	Hauser	
	\$ 110.00	\$ 110.00	\$ 85.00	\$ 150.00	\$ 85.00	\$ 110.00	\$ 150.00	\$ 110.00	\$ 85.00	\$ 85.00	\$ 85.00	
5/13/2017	0	9.5	0									\$ 1,045.00
5/16/2017	8	0	9.5									\$ 1,215.00
5/17/2017	8	0	9.5									\$ 1,215.00
5/18/2017	8	0	9.5									\$ 1,215.00
5/19/2017	8	0	9.5									\$ 1,215.00
5/24/2017	8	0	9.5									\$ 1,215.00
5/25/2017	8	0	9.5									\$ 1,215.00
5/30/2017	8	0	10									\$ 1,270.00
5/31/2017	8	0	10									\$ 1,270.00
6/1/2017	6		8	1.5								\$ 1,347.50
6/2/2017	6		8									\$ 1,220.00
6/5/2017	6		3									\$ 670.00
6/6/2017	6		8									\$ 1,220.00
6/7/2017	6		8									\$ 1,220.00
6/15/2017	6		8	1								\$ 1,305.00
6/16/2017			8									\$ 880.00
6/19/2017	11		9		7.5							\$ 2,455.00
6/20/2017	6		8.5									\$ 1,275.00
6/21/2017	6		8									\$ 1,220.00
6/22/2017	6		8									\$ 1,220.00
6/23/2017			8									\$ 880.00
7/10/2017	8		8									\$ 1,135.00
7/11/2017	8		9.5									\$ 1,215.00
7/17/2017	8		9.5									\$ 1,215.00
7/26/2017			9.5									\$ 1,045.00
7/27/2017			9.5	1								\$ 1,130.00
8/15/2017	8		9.5									\$ 1,045.00
8/22/2017			7					8.5				\$ 2,045.00
8/25/2017			7					9.5				\$ 2,195.00
8/28/2017			8.5					8				\$ 2,135.00
8/29/2017			9.5					8.75				\$ 2,357.50
8/30/2017			7.5					9.25				\$ 2,212.50
9/19/2017			8					10.5				\$ 2,455.00
9/20/2017			4									\$ 440.00

Notes:

- Employee rates used in calculations are the lowest billed within the date range.
- Green highlighting reflects a weekend day.

Sage Excavation Oversight/Monitoring Fieldwork on Days with No Soil Transport for Disposal  
May 1, 2017 to January 31, 2018

Date of Fieldwork	Fieldwork - Excavation Oversight/Monitoring Hours											Labor Cost for Excavation Oversight/Monitoring Fieldwork
	Cousineau	Boynes	Beauchene	Cote	Gonsalves	Meyer	Butterworth	Saccoccio	Barton	Gagne	Hauser	
	\$ 110.00	\$ 110.00	\$ 85.00	\$ 150.00	\$ 85.00	\$ 110.00	\$ 150.00	\$ 110.00	\$ 85.00	\$ 85.00	\$ 85.00	
10/3/2017			10.75					11				\$ 2,832.50
10/7/2017								8.5				\$ 1,275.00
10/13/2017			8					10				\$ 2,380.00
10/16/2017			7.25					10				\$ 2,297.50
10/17/2017			7.25					10.75				\$ 2,410.00
10/20/2017			7					11.5				\$ 2,495.00
10/23/2017			9					9.75				\$ 2,452.50
10/24/2017			9.5					6				\$ 1,945.00
10/25/2017								7				\$ 1,050.00
10/26/2017			3					7.5				\$ 1,455.00
11/1/2017								2				\$ 300.00
11/2/2017								6				\$ 900.00
11/3/2017								3.5				\$ 525.00
11/6/2017			8.5					3.75				\$ 1,497.50
11/7/2017			8.75					3.5				\$ 1,487.50
11/8/2017			8.25					3				\$ 1,357.50
11/9/2017			7.75					4.5				\$ 1,527.50
11/12/2017								1				\$ 150.00
11/13/2017			9.5					2				\$ 1,345.00
11/14/2017			9.75					3				\$ 1,522.50
11/15/2017			9.5									\$ 1,045.00
11/16/2017			6.5					3				\$ 1,165.00
11/17/2017			13					3				\$ 1,880.00
11/20/2017			9					3				\$ 1,440.00
11/22/2017			4					3.5				\$ 965.00
11/27/2017			9					3				\$ 1,440.00
11/28/2017			10					9				\$ 2,450.00
12/8/2017			8.75									\$ 962.50
12/12/2017			6									\$ 660.00
12/13/2017			8.5									\$ 935.00
12/16/2017			7.5									\$ 825.00
12/22/2017			3							7		\$ 925.00
12/26/2017										4		\$ 340.00
1/2/2018			5									\$ 550.00

Notes:

1. Employee rates used in calculations are the lowest billed within the date range.
2. Green highlighting reflects a weekend day.

Sage Excavation Oversight/Monitoring Fieldwork on Days with No Soil Transport for Disposal  
May 1, 2017 to January 31, 2018

Date of Fieldwork	Fieldwork - Excavation Oversight/Monitoring Hours											Labor Cost for Excavation Oversight/Monitoring Fieldwork
	Cousineau	Boynes	Beauchene	Cote	Gonsalves	Meyer	Butterworth	Saccoccio	Barton	Gagne	Hauser	
	\$ 110.00	\$ 110.00	\$ 85.00	\$ 150.00	\$ 85.00	\$ 110.00	\$ 150.00	\$ 110.00	\$ 85.00	\$ 85.00	\$ 85.00	
1/3/2018			2									\$ 220.00
1/4/2018			2									\$ 220.00
1/8/2018			9							4		\$ 1,330.00
1/9/2018			11.5							4		\$ 1,605.00
1/12/2018										3		\$ 255.00
1/16/2018			8.5				4			4		\$ 1,715.00
1/18/2018										6		\$ 510.00
1/20/2018			8									\$ 880.00
1/28/2018			1									\$ 110.00
TOTAL	161	9.5	532.5	3.5	7.5	0	4	203.25	0	32	0	\$ 100,045.00

Notes:

1. Employee rates used in calculations are the lowest billed within the date range.
2. Green highlighting reflects a weekend day.

## EXHIBIT F



**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES FOR THE  
<BELMONT, MA PROJECT**

**THIS AGREEMENT FOR PROFESSIONAL DESIGN SERVICES** (the "Agreement") is made as of this 2nd day of May, 2017 by and between Belmont Residential LLC ("Owner"), and Strategic Environmental Services, Inc ("Consultant").

Consultant agrees to perform certain services for Owner upon the following terms and conditions:

**1. Description of Services**

1.1 Consultant shall perform **treatment and removal of F Isited waste for Cushing Village, Belomnt, MA** (the "Project"). The Consultant shall provide all **Soil treatment and disposal** services as described in Exhibit "A" attached hereto and made a part hereof and referred to hereinafter as the "Services." Consultant shall perform the Services in accordance with the terms and conditions of this Agreement and with the degree of skill and care ordinarily exercised by members of its profession under similar circumstances practicing in the same or similar locality at the time the Services are provided. It is the responsibility of the Consultant to act with such ordinary professional skill and care to reasonably insure that any plans, designs, specifications, or other documents prepared as part of or relating to the Services (collectively the "Instruments of Service") are prepared in accordance with and meet the requirements of applicable laws, ordinances, regulations and other governmental requirements. The design of the Project as shown in the Instruments of Service shall comply with requirements imposed by governmental or quasi-governmental authorities (including, without limitation, boards of fire underwriters) having jurisdiction over the Project, including requirements that have been enacted (or whose enactment is pending or reasonably anticipated) but are not yet effective, unless it appears that (1) the construction of the Project will be completed before such effective date and (2) Owner concurs that the failure to respond to the new enactment does not raise an issue of negligence or defective design. The Services shall be deemed to include all services which are reasonably necessary to provide the services described on Exhibit "A", whether or not such services are specifically listed on Exhibit "A" including without limitation, consulting with public or governmental agencies and review of legal or governmental requirements. Only those services identified in Exhibit "A" and services which are reasonably necessary to provide the services described in Exhibit "A", shall be part of the Consultant's scope of basic services included within this Agreement. All other services are outside the scope of this Agreement and shall be provided only as additional services, to be charged in accordance with Schedule 3.1, as Changes in Services pursuant to paragraph 4 herein.

## 1.2 Specific Authorization and Approval

The Consultant's Services shall be performed consistently with the time parameters set forth in Schedule 1.2 attached hereto, and otherwise as expeditiously as possible consistent with the orderly progress of the Project. The Consultant shall submit for Owner's approval a schedule for the performance of the Consultant's Services which initially shall be consistent with the time periods established in Schedule 1.2 and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for Owner's review, for the performance of Owner's Consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by Owner shall not, except for reasonable cause, be exceeded by the Consultant.

## 2. Owner's and Consultant's Responsibilities

2.1 Unless otherwise provided for under this Agreement, Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

2.2 Owner shall establish and periodically update Owner's budget for the Project. If Owner increases or decreases Owner's budget for the construction cost by 10% or greater, Owner shall notify the Consultant. Owner and the Consultant shall thereafter agree to a corresponding change in the Project's scope. In such an event, the Contract Sum (as defined in Article 3, below) and/or completion date will be equitably adjusted pursuant to Article 4 herein.

2.3 The Owner's designated representative authorized to act on Owner's behalf with respect to the Project is:

Bill Lovett  
Director of Acquisitions and Development  
Toll Brothers Apartment Living  
189 B Street  
Needham, MA 02494  
Phone: (781) 202-9456

2.4 Owner shall render decisions and approve or take other appropriate action with respect to the Consultant's recommendations or requests for authorizations or approvals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's Services.

2.5 Owner has furnished surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings,

other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey is referenced to a Project benchmark.

2.6 Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

2.7 Owner will retain engineering consultants and/or other professionals to provide professional design, engineering and/or other services to Owner for the Project, including but not limited to the preparation of plans and specifications, as designated on Schedule 2.7 attached hereto. Such engineering consultants and/or other professionals retained directly by Owner shall be referred to herein as "Owner's Consultants." Subject to the provisions of Paragraph 1 above, and Exhibit "A", Owner shall coordinate the services of Owner's Consultants with those services provided by the Consultant. Owner and/or Owner's Consultants shall provide to Consultant all drawings, specification and/or materials prepared by Owner's Consultants for the Project, and Owner shall obtain and grant an exclusive license to Consultant to reproduce and use Owner's Consultant's documents prepared for the Project for the sole purpose of completing the Project. Upon Consultant's request, Owner shall furnish copies of the scope of services in the contracts between Owner and Owner's Consultants. Owner shall furnish the services of consultants other than those designated to in this Agreement, or authorize the Consultant to furnish them as an Additional Service, when the Consultant requests such services and demonstrates that they are reasonably required by the scope of the Project. Owner shall require that Owner's Consultants maintain professional liability insurance as appropriate to the services provided.

2.8 Owner shall furnish tests, inspections, reports and other documents and/or materials not required as part of the Consultant's Services, including those prepared by Owner's Consultants, as required by law and/or the Construction Documents.

2.9 Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet Owner's needs and interests.

2.10 Owner shall provide prompt written notice to the Consultant if Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Consultant's Instruments of Service, as defined herein.

2.11 Before executing a contract for construction with any contractor or entering into an agreement with a construction manager, Owner shall coordinate Consultant's duties and responsibilities set forth in the contract(s) for construction and the Owner/construction manager agreement with the Consultant's services set forth in this Agreement and Exhibit "A". Owner shall provide the Consultant a copy of the executed agreement between the Owner and the construction manager (if any), excluding confidential terms therein, and a copy of the executed agreement between the Owner and any contractor or contractors on the Project, including the general conditions of the contract(s) for construction.

2.12 Owner shall provide the Consultant access to the Project site prior to commencement of the Work and shall obligate the contractor(s) to provide the Consultant access to the Work wherever it is in preparation or progress.

2.13 The Consultant's designated representative authorized to act on Consultant's behalf with respect to the Project is:

**Ross Hartman**  
**Strategic Environmental Services, Inc.**  
**362 Putnam Hill Road**  
**Sutton, MA 01590**  
**508-757-7782**

2.14 The Consultant shall provide prompt written notice to Owner if the Consultant becomes aware of any errors, omissions or inconsistencies in any material or information supplied to Consultant by Owner, Owner's Consultants or others Owner or Owner's Consultants may hire to provide services on the Project, and shall refrain from relying thereon absent confirmatory instructions in writing from Owner.

2.15 Consultant shall notify Owner of any failure by Owner's Consultants to provide complete and timely information to Consultant. Consultant will provide timely information to Owner's Consultants when and to the extent needed for Owner's Consultants to perform their respective services in connection with Consultant's services under this Agreement. Consultant is responsible for properly coordinating its Instruments of Service with those of Owner's Consultants, and for advising Owner of conflicts that arise. This provision does not require Consultant to review or verify the computations of Owner's Consultants or their design of components of the Project for accuracy, adequacy, safety or compliance with legal requirements, but Consultant is responsible for ensuring that the finished document package for all aspects of the Project (and including the instruments of service of Owner's Consultants) is consistent, practically buildable, and includes the instruments of service prepared by Owner's Consultants.

2.16 Consultant may retain third-party consultants and/or other professionals to provide professional design, engineering and/or other services in connection with Consultant's Services for the Project. All such sub-consultants are subject to Owner's prior approval, which may be withdrawn at any time for any reason that Owner finds sufficient. Consultant will identify any sub-consultant at least ten (10) business days before engaging such consultant. Consultant will furnish complete information concerning the education, experience, billing rates, current and anticipated future engagements of each sub-consultant prior to engaging the sub-consultant for the Project. Owner may at any time and on any reasonable basis require Consultant to discharge a sub-consultant and to replace the sub-consultant or perform the services previously committed to the sub-consultant. Each subcontract entered into by Consultant, the form of which shall be reviewed and approved by Owner, shall provide that: (i) the sub-consultant, to the extent of the services to be performed by such sub-consultant, shall be bound by the terms of this Agreement and shall assume toward the Consultant all of the obligations and responsibilities which the Consultant by this Agreement assumes toward the Owner; (ii) the sub-consultant shall be directly liable and the Consultant shall be jointly and severally liable to the Owner for the performance of

the sub-consultant's services designated in each of the subcontracts and for errors and omissions in the performance of such services; (iii) each sub-consultant shall consent to the Consultant's assignment to the Owner of all of the Consultant's right, title and interest in and to all subcontracts, together with any and all extensions, modifications, amendments and renewals thereof, which assignment shall be exercisable upon termination of this Agreement, in whole or in applicable part, by the Owner; and (iv) each sub-consultant shall agree that upon receipt of written notice from the Owner that the Owner has terminated this Agreement in whole or as to the portion of the Work being furnished by such sub-consultant, such sub-consultant shall, if requested by the Owner, continue to perform all of its obligations, covenants and agreements under its subcontract for the benefit of the Owner, provided that the Owner shall reimburse such sub-consultant, in accordance with its subcontract, for all services rendered to the Owner. Other than as provided in the previous sentence, the Owner shall not have, nor be deemed to have, any direct contractual relationship with any sub-consultant retained by Consultant and shall not be liable to pay, nor be liable for the non-payment of, the fees and costs of any such consultant, such fees and costs being the obligation of the Consultant.

2.17 Consultant acknowledges that, notwithstanding anything to the contrary contained in Section 2.7, the Architect retained by Owner for the Project (the "Architect") may be responsible for (i) coordinating the time schedules of the Sub-Consultants and Owner's Consultants so that the design of the Project can proceed in an orderly and efficient manner and (ii) properly coordinating and integrating the Instruments of Service prepared by the Sub-Consultants and Owner's Consultants. Accordingly, if directed to do so by Owner, the Sub-Consultants and Owner's Consultants shall take direction from the Architect with respect to such matters.

### 3. Contract Sum and Payments

3.1 Owner shall pay Consultant for the Basic Services included within this Agreement a total amount of \$ 735,000.00 ("Contract Sum") payable as set forth in Schedule 3.1 attached hereto. Progress payments based on said Contract Sum shall be invoiced monthly. Payments for design services shall be prorated on the percentage of completion of those services and payments for contract administration services, if any, shall be prorated on the percentage of completion of the Work. Payments for optional or additional services to be provided by the Consultant and for services provided pursuant to Paragraph 4, below, shall be compensated by an hourly fee in accordance with the fee schedule set forth in Schedule 3.1 attached hereto. Owner's payment of an invoice does not constitute acceptance of the work performed by the Consultant.

### 4. Changes in the Services

Owner may, without invalidating this Agreement, order changes in the Services. In the event that Consultant believes that such changes require an increase in the Contract Sum or in the time required to complete the Services, Consultant shall notify Owner in writing within three (3) business days after receiving Owner's changes and Owner and Consultant shall work together to reasonably agree upon any changes to the Contract Sum and completion date. In the event that Owner and Consultant are unable to agree upon changes to the Contract Sum and/or the completion date, Consultant may, pursuant to the dispute resolution process set forth in Paragraph 8, herein, seek additional compensation and/or adjustment to the Contract Sum and/or completion date. Under no

circumstances may the Contract Sum be increased without the prior written approval of Owner. In the event that Consultant fails to notify Owner as required, the requested change shall be deemed to be insubstantial and neither the Contract Sum nor the completion date shall be changed. Consultant shall not be entitled to any change in the Contract Sum or completion date for any concealed or unknown condition encountered in the performance of the Services if the existence of any such condition should have been known to Consultant and addressed within the Instruments of Service (as defined in Paragraph 5.1) with the exercise of reasonable professional skill, care and judgment. Consultant shall be entitled to a change in the Contract Sum and/or the completion date in the event that Owner orders changes in the Services in order to address any errors, omissions, acts or failures to act by Owner, Owner's Consultants, contractors retained by Owner or any subconsultants or subcontractors thereto.

## **5. Use of Instruments of Service**

5.1 Drawings, specifications and other documents, including those in electronic form, prepared by Consultant or Consultant's sub-consultants for the Project are Instruments of Service which were prepared for use solely with respect to the completion and maintenance of the Project. The Consultant shall provide such Instruments of Service in hard copy and electronically in CAD format to Owner.

5.2 Upon execution of this Agreement, Consultant grants to Owner and Owner's Consultants, an exclusive license to reproduce and use the Instruments of Service prepared for the Project for the sole purpose of completing, constructing, using, maintaining, repairing, restoring, and making future alterations and additions to the Project for which the Instruments of Service were prepared. Such license to use shall continue until such time ownership of the Instruments of Service transfers to Owner per the conditions contained in Paragraph 5.3, below, and provided that, Owner shall continue to perform its obligations hereunder, including payment for all undisputed Services performed. Consultant's sub-consultants shall obtain similar licenses from any subconsultants consistent with this Agreement.

5.3 All right, title and interest, including all rights under federal and state copyright and intellectual property laws, in the Instruments of Service (and the electronic methods of reproducing such documents, including, but not limited to, computer tapes or discs) shall be transferred by Consultant and the Consultant's sub-consultants to Owner conditioned upon actual receipt of final payment for all undisputed services rendered and reimbursable expenses incurred, if any, or in the event that Consultant is terminated for cause. In the instance of a termination not caused by the fault of the Consultant, Owner shall not be deemed to have made final payment until Consultant receives compensation in accordance with this Agreement. Owner shall obtain legal title to such Instruments of Service, whether or not the Project for which they are made is completed, provided that the Consultant has been paid all compensation due under this Agreement for the services completed by the Consultant and its consultants as conditioned by the preceding sentence. Consultant represents that the Instruments of Service do not infringe any copyrights, trade secrets or other similar property rights of any third-party. Consultant agrees, upon request of Owner, to join in the execution of any reasonable documentation that may be deemed necessary by Owner to vest in it all rights and privileges of a copyright holder.

5.4 Owner agrees not to reuse, or allow others to use, the Instruments of Service in their entirety for another project without written permission of Consultant. Further, Owner recognizes, acknowledges, understands, and agrees that the Instruments of Service are not intended or suitable for modifications, alterations, expansions or additions to the Project or for other projects.

5.5 The foregoing notwithstanding, Consultant and its consultants shall retain their rights to all standard elements contained within the Instruments of Service, including standard details, specifications, or other design materials generated and authored by Consultant and its consultants for its repeated, regular and ongoing use in plans, specifications, reports or other instruments of service for its clients.

5.6 In the event Owner uses the Instruments of Service, otherwise than in connection with the Project, without retaining the author of the Instruments of Service, Owner releases the Consultant and Consultant's sub-consultants from all claims and causes of action arising from such uses. Further, in the event of Owner's use or modification of the Instruments of Service, without retaining the author of the Instruments of Service, Owner shall, to the extent permitted by law, indemnify, defend, and hold harmless, Consultant, its Consultants, and their respective officers, directors, shareholders, agents, employees, successors and assigns from and against any and all claims, damages, suits, judgments, damages, costs, and expenses (including attorneys' fees, and court and expert costs) arising out of or resulting from Owner's unauthorized use or modification of the Instruments of Service. The terms of this Section shall not apply if the Owner rightfully terminates this Agreement for cause.

## **6. Insurance**

The Consultant shall comply with the insurance requirements set forth on Exhibit "B" attached hereto.

## **7. No Liens**

To the extent permitted by applicable law, Consultant, for itself and for all parties claiming or who may claim under or through Consultant, hereby waives and releases any right it may now or hereafter have to file a lien against any property of Owner or any other entity in regard to the services performed by Consultant under this Agreement. If requested by Owner, Consultant shall execute and deliver a recordable waiver of lien to Owner. In the event that Consultant or any party claiming under or through Consultant files a lien against any property of Owner or any other entity as a result of or related to this Agreement, Consultant shall take all steps necessary to have such lien removed within twenty (20) days and shall indemnify, defend, protect, save and hold Owner harmless for any loss or liability of any nature incurred by Owner as a result of such lien.

## **8. Dispute Resolution**

Consultant and Owner agree that if a dispute between them arises concerning any aspect of performance by either party under the terms of this Agreement, prior to seeking any other remedies through arbitration, the party seeking relief shall give written notice to the other party describing the disputed issues and the reasons why that party is entitled to the resolution of those issues sought. Within thirty (30) calendar days after the receipt of

such a notice, the parties shall meet in an effort to resolve the matters in dispute. If after such meeting any aspect of the dispute remains unresolved then Consultant and Owner agree that any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association, or its successor, under its Construction Industry Arbitration Rules, and a judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All arbitrator(s) shall be experienced in the issue with which the arbitration is concerned and shall have been actively engaged in commercial construction, or consulting or law practice relating thereto, for a period of at least 10 years prior to the date of his or her appointment hereunder.

## **9. Termination or Suspension of the Agreement**

### **9.1 Termination for Cause**

9.1.1 If Owner fails to make payments to the Consultant in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement. If the Consultant elects to suspend services or terminate this Agreement under this subparagraph, the Consultant shall give fifteen (15) days' written notice to Owner before suspending services or terminating this Agreement and the Owner shall have an opportunity to cure such monetary default during that 15-day period. Upon a suspension or termination under this subparagraph, Consultant shall, prior to the effectiveness of the termination or suspension, turn over to Owner every thing created by Consultant under this Agreement for which payment has been effected. Such turnover shall be effected in all media (including, without limitation, electronic, magnetic, optical, or demonstrative media). In the event of a rightful suspension of services, the Consultant shall have no liability to Owner for delay or damage caused Owner because of such suspension of services. Before resuming services following a rightful suspension, the Consultant shall be paid all sums due prior to suspension and any reasonable expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted if necessary for Owner to compensate Consultant for the actual, documented costs to Consultant resulting from its rightful suspension of services.

9.1.2 This Agreement may be terminated by the Consultant upon not less than fifteen (15) days' written notice to the Owner should the Owner fail to perform a non-monetary obligation in accordance with the terms of this Agreement through no fault of the Consultant; provided, however, if such default is not reasonably susceptible of being cured within that 15-day period, the Owner shall not be in default if the Owner commences to cure such default within that 15-day period and thereafter diligently proceeds to effectuate a cure.

9.1.3 If the Consultant fails to perform the services required to be performed in this Agreement in accordance with the Agreement; or (b) any representation made by the Consultant to Owner or a contractor hereunder shall prove to be false or misleading on the date such representation was made; or (c) the Consultant persistently fails to make payments due its sub-consultants; or (d) the Consultant is declared to be bankrupt or insolvent or the Consultant files a voluntary petition in bankruptcy or insolvency and such petition or proceedings is not set aside within thirty (30) days, then Owner may declare the Consultant to be in default under this Agreement and may exercise any remedies available to it, including, but not limited to, the following: (a) Owner may terminate the Agreement in accordance with Paragraph 9.1; or (b) Owner



may proceed against the Consultant to recover all losses, damages, costs, fees and expenses incurred by Owner as a result of the occurrence of such default; or (c) Owner may pursue such other remedies, causes of action or other rights as Owner may have under law or equity.

## **9.2 Termination or Suspension Without Cause**

9.2.1 This Agreement may also be terminated by Owner upon seven (7) days written notice, without regard to any fault or failure to perform by any party, and solely for the Owner's convenience. In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with reimbursable expenses then due.

9.2.2 The Owner may suspend or abandon the Project in whole or in part. If Owner suspends or abandons the Project, the Consultant shall be compensated for services performed prior to notice of such suspension or abandonment. If the Project is resumed after being suspended for more than ninety (90) days, the Consultant shall be compensated for reasonable expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.

9.2.3 If Owner suspends the Project for more than one hundred eighty (180) cumulative days for reasons other than the fault of the Consultant, the Consultant may terminate this Agreement by giving not less than seven (7) days' written notice.

9.2.4 Owner's rights to use the Instruments of Service in the event of a termination of this Agreement are set forth in Article 5.

## **9.3 Selection of New Consultant by the Owner Upon Termination of Consultant**

9.3.1 In the event of any termination for cause by Owner under this Paragraph 9, the Consultant consents to Owner's selection of a new consultant of Owner's choice to assist Owner in any way in completing the Project. The Consultant further agrees to cooperate and provide any information requested by Owner in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the design of the Project by the Owner and such other consultant as Owner may desire. Any services provided by the Consultant which are requested by Owner after termination shall be fairly compensated by Owner. In the event of termination not due to any fault of the Consultant, Owner's use of Instruments of Service shall be in accordance with Article 5 and any further assistance or services by the Consultant shall only be upon negotiated terms and conditions.

## **10. Indemnification**

10.1 Consultant hereby agrees, to the fullest extent permitted by law, to indemnify and hold harmless Owner and Owner's Consultants, including their respective directors, officers, agents, subcontractors and employees (the "Owner Indemnified Parties"), from any damage, claim, lien, liability, loss or cost, including reasonable attorney's fees and other legal costs (collectively, "Losses"), resulting from any claim, act or proceeding (whether threatened or otherwise) ("Claims"), made or brought against the Owner Indemnified Parties to the extent caused by (i) negligent acts, willful misconduct, errors or omissions of Consultant, Consultant's employees, or anyone for whom Consultant is legally liable in the performance of services under this Agreement or (ii) breach of this Agreement by Consultant, which breach is not cured, if curable, within ten (10) days after notice thereof is given to Consultant by Owner.

10.2 Owner hereby agrees, to the fullest extent permitted by law, to indemnify and hold harmless Consultant, including its directors, officers, agents, subcontractors and employees (the "Consultant Indemnified Parties") from and against any Losses resulting from any Claims made or brought against the Consultant Indemnified Parties to the extent caused by (i) negligent acts, willful misconduct, and material errors or omissions of Owner or Owner's Consultants, unless in the case of material errors or omissions in the documents or information supplied to Consultant by Owner or Owner's Consultants, Consultant was aware of such errors or omissions prior to relying on them or (ii) use of the Instruments of Service for other projects without retaining the author of the Instruments of Service.

10.3 Upon the assertion of any claim or the commencement of any suit or proceeding against an indemnified party by any third party that may entitle such indemnified party to indemnification by an indemnitor under this Paragraph 10, the indemnified party shall promptly notify the indemnitor of the existence of such claim and shall give the indemnitor reasonable opportunities to defend and/or settle the claim at its own expense and with counsel of its own selection. The indemnified party shall at all times have the right to fully participate in any settlement which it reasonably believes would have an adverse effect on its business. The indemnified party shall make available to the indemnitor all books and records relating to the claim, and the parties agree to render to each other such assistance as may reasonably be requested in order to ensure a proper and adequate defense. An indemnified party shall not make any settlement of any claim which might entitle such indemnified party to indemnification by an indemnitor under this Paragraph 10 without the prior written consent of the indemnitor.

10.4 This paragraph 10, insofar as it applies to services undertaken while this Agreement is in effect, shall survive the termination of this Agreement.

10.5 Neither party nor its directors, officers, agents, subcontractors and employees shall be liable to the other, or any other party, for indirect, incidental, consequential, special or exemplary damages arising in any manner from the activities contemplated by this Agreement, whether under contract, tort, or any other cause of action, even if that party has been advised of the possibility of such damages, such as, but not limited to, loss of revenue or anticipated profits or lost business.

## 11. Assignment

Consultant may not assign its rights hereunder and may not subcontract the Services or engage third parties to perform all or portions of the Services without the prior written consent of Owner.

## **12. Notice**

Notices to be given hereunder shall be deemed given three (3) days after being mailed by certified mail, or upon receipt if given via electronic mail or facsimile (with original sent by certified or regular mail), hand delivery, or by overnight delivery service. Notices shall be addressed as follows:

### **If to Owner:**

Bill Lovett  
c/o Toll Brothers Apartment Living  
189 B Street  
Needham, MA 02494  
Phone: 781-202-9456  
Attn: Director of Acquisitions and Development

### **With Copies to:**

Toll Bros., Inc.  
250 Gibraltar Road  
Horsham, PA 19044  
Fax: 215-938-8255  
Attn: General Counsel

Toll Bros., Inc  
250 Gibraltar Road  
Horsham, PA 19044  
Fax: 215-938-8255  
Attn: Charles Elliott

### **If to Consultant:**

Ross Hartman  
Strategic Environmental Services, Inc.  
362 Putnam Hill Road  
Sutton, MA 01590  
401-391-8052  
508-363-2346

Either party may change the foregoing address by giving prior written notice pursuant to this paragraph.

## **13. Relationship of Parties**

The Consultant warrants and represents to Owner that it is fully experienced and properly qualified to perform the Services required by this Agreement and that it is properly licensed, equipped, organized and financed to perform such Services. Consultant shall finance its own operations, shall operate as an independent contractor and not as an agent, joint venturer or partner of Owner.

#### **14. Confidentiality Agreement**

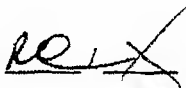
14.1 The Consultant recognizes that as a result of Consultant providing services relating to the Project for Owner its subsidiaries and affiliates, Consultant may have access to certain trade secrets, proprietary and technical information, and other confidential information relating to Owner including but not limited to plans, drawings, specifications, contract documents, and other information considered by Owner to be of a sensitive or confidential nature (hereinafter "Confidential Information"). Consultant covenants and agrees to keep in strict confidence and not disclose to any third party (other than as necessary to Consultant's employees and approved sub-consultants as necessary for performance of the Services) or use for the Consultant's own benefit any such Confidential Information acquired by the Consultant.

14.2 Consultant understands that this Confidentiality Agreement is a material part of the contractual agreement(s) between the Consultant and Owner and that Owner would not have entered into the contractual agreement(s) if Consultant had not agreed to the terms set forth herein. In the event of a breach of any of the terms, conditions or covenants of this Confidentiality Agreement by the Consultant, Owner may exercise any and all rights and remedies available to it at law or in equity, including the right to injunctive relief. In addition, the Consultant agrees to reimburse Owner for any and all attorney fees, court costs, and other related expenses incurred by Owner arising out of any breach by the Consultant of the terms and conditions of this Agreement.

#### **15. Entire Agreement**

It is expressly understood and agreed by the parties that this Agreement and the exhibits and schedules, if any, attached hereto, constitutes the entire agreement between the parties relating in any way to the Services and that all prior discussions, agreements and understandings have been incorporated into this Agreement. This Agreement supersedes all prior discussions, agreements and understandings between the parties relating in any way to the Services. This Agreement may not be modified except by written agreement between the parties.

[SIGNATURES FOLLOW]

Initials: 

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this Agreement to be executed by their authorized representatives.

Owner

~~Bill Lovett~~

Belmont Industries LLC

By: 

Name: Bill Lovett

Title: Owner of Belmont Industries LLC

Consultant

Ross Hartman

By: 

Name: Ross Hartman

Title: Executive Vice President

## **Exhibit "A"**

### **Scope of Services**

Base contract includes on site treatment and disposal of 3,500 cubic yards (5,250 tons) of F listed waste per the unit costs listed below.

#### **ASSUMPTIONS AND EXCLUSIONS**

- All excavating and loading to be performed by others, at no cost to SES
- SES will arrange for the transportation and disposal of the soils.
- Bedrock must be 12-inch minus in all directions and less than 10% of each load by volume.
- SES will provide Client copies of all facility signed shipping documents and weight slips for all shipments.
- Full waste characterization data, signed waste profile(s), and samples must be provided to obtain final approval. Client is responsible for all analytical necessary for the disposal facilities.
- SES to provide waste profiles for any/all soil types listed on this quotation, and coordinate the approvals into the disposal facilities.
- Proposal assumes treatment of soil based on analytical previously provided.
- Final pricing will be determined once the required waste profile(s), analytical, and sample(s) are submitted and review by the disposal facility(s).
- Pricing does not include provisions for winter conditions, inclement weather or acts of God.
- Frozen loads may require an additional fee, if offloading assistance is needed.
- Trucks ordered and cancelled may require a cancellation fee.
- Trucks for loading which are detained at the site due to conditions not caused by SES, may require an overnight stay charge for the transporter.
- A demurrage charge of \$150.00/hour will apply for loading or unloading wait times of greater than 1/2-hour.
- Generator will provide all required certifications and signatures for waste shipping and disposal documents at no cost to SES.
- Work shall be performed during normal business hours (M-F, 0800-1630) at non-union wage rates. Prevailing wage rates have not been assumed to apply and have not been included herein.
- Any state taxes are the responsibility of the Client and would be in addition to the price.
- Regarding the December 2016 analytical, samples 1,5,7,8,9,11,13, & 15 do not meet the MA COMM-97 policy, based on their current VOC levels.
- Samples 1-15 were not tested for Metals, TPH, PCBs or SVOCs SES is therefore unable to determine if these sample IDs will be acceptable under the MA COMM-97 Policy once treated.

#### **Backfill & Import and Placement of Fill Material**

- To be performed by others if necessary

**Working Hours:**

**Limits regarding noise, vibration, dust and blocking of any Town roads.**

**Hours of operation - Monday to Friday from 7:00 AM to 6:00 PM,**

**Saturday from 8:00 AM to 5:00 p.m.**

**No work on any Sunday or state or federal holidays.**

**The contract vaule above is based on the following units costs:**

**Treatment of Soil, per ton: \$100.00**

**Transportation & Disposal: Treated soil shipping under the Contained In Policy via truck. Per ton: \$40.00. One set of analytical per 500 cyds. Soil must meet COMM -97 acceptance criteria. 30 ton minimum charge per load. Owner shall approve any cost increase beyound those costs listed above.**

**EXHIBIT "B"**  
**INSURANCE REQUIREMENTS**

- 1) Prior to commencing the Services, Consultant shall maintain at its own expense the following insurance coverages as provided in this Exhibit against claims for injuries to persons or damages to property which may arise out of or result from the performance of the Consultant, or its consultants, by anyone directly or indirectly employed by any of them, or by anyone, for whose acts any of them may be liable.
- 2) The following policies and coverages shall be furnished by Consultant.
  - a) Professional Liability (a.k.a. Errors & Omissions) coverage in the amount of \$1,000,000 with all coverage retroactive to the earlier of the date of this Agreement or the commencement of Consultant's services in relation to the Project. Coverage shall not contain any exclusions for Bodily Injury and/or Property Damage.
    - i) Professional Liability deductible or self-insured retention not to exceed \$50,000 on a per claim basis, unless agreed to in advance by Owner.
  - b) Commercial General Liability Insurance written on an ISO (or comparable) Occurrence form including a per project aggregate and broad form contractual liability in the amount of:
    - i) Personal liability, Bodily injury and Property damage  
Each Occurrence \$1,000,000
    - ii) General Aggregate \$2,000,000
  - c) General Liability Deductible or self-insured retention not to exceed \$50,000 on a per occurrence basis, unless agreed to in advance by Owner.
  - d) Owner, Toll Brothers, Inc., Toll Bros., Inc., and their subsidiaries and affiliates are to be included as additional insured on a primary & non-contributory basis for ongoing operations. The additional insured coverage provided to TBI shall apply to "bodily injury" or "property damage" for the statutory period of limitations for such claims in the state where the Work is performed.
  - e) Commercial Automobile Coverage including owned, long term leased, hired and non-owned automobiles (including medical payments on uninsured motorists coverages) in the minimum amount of \$1,000,000 Combined Single Limit for Bodily Injury & Property Damage.
  - f) All vehicle liability policies shall include a specific endorsement naming "Owner, Toll Brothers, Inc., Toll Bros., Inc., and their subsidiaries and affiliates" as additional insureds with respect to liability arising out of Consultant's Work, including but not limited to liability arising out of the existence, driving, loading or unloading of Consultant's vehicles.



- g) Automobile coverage provided for the benefit of Owner shall be considered primary and non-contributory, notwithstanding any insurance policies maintained by Owner. In no event shall Owner's own insurance inure to the benefit of Consultant
  - h) Workers' Compensation Insurance in the amount not less than the limits required by law, with employers' liability insurance, in a minimum amount of \$500,000.
  - i) Umbrella Liability Insurance providing coverage in excess of the limits specified above for Commercial General Liability, Automobile and Employers Liability Insurance (except Worker's Compensation Insurance) in a minimum amount of \$2,000,000 per occurrence and in the aggregate.
- 3) General Liability, Automobile and Workers Compensation insurance policies must:
- a) Be endorsed to provide sixty (60) days notice of cancellation, non-renewal and/or material change to Owner.
  - b) Include an endorsement by which the insurer waives its subrogation rights against Owner.
- 4) Consultant agrees to require each of its consultants to maintain the insurance required by this Agreement, and to name "Owner, Toll Brothers, Inc., Toll Bros., Inc., and their subsidiaries and affiliates" as additional insureds under each such consultants commercial general liability and vehicle liability insurance coverages.
- 5) Consultant and its sub-consultants waive any provision of state, federal or local workers' compensation law that prevents the Owner from seeking contribution, indemnification or damages from Consultant and/or its sub-consultants if any employee, agent or invitee of Consultant or its consultants commences litigation or makes a demand against the Owner for any injury or damage actually or allegedly arising from the performance of the Services.
- 6) The required policies are to be placed with insurance carriers with a current A.M. Best rating of "B+" or higher and the Financial Size Category (FSC) must be at least IX.
- 7) Within 30 days of signing this Agreement, but before Consultant commences Services, Consultant shall furnish Owner with Accord form Certificate of Insurance and a copy of the additional insured endorsements evidencing coverage required under this Agreement. The certificate of insurance and endorsements for each policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. Consultant thereafter shall provide Owner with renewal Certificates of Insurance and endorsements upon each policy renewal for the duration of this Agreement and for two years thereafter.
- 8) Other Provisions:
- a) The insurance provisions set out above shall not be considered as a limitation of the liability of the Consultant.
  - b) All deductibles and self-insured retention amounts are the responsibility of the Consultant, and not that of Owner.

- c) Except as otherwise provided, it is expressly agreed and understood that the cost of premiums for insurance maintained by Consultant shall be at their own expense and shall not be reimbursed by Owner.
- d) The required limits may be satisfied by any combination of primary, umbrella or excess liability insurances, provided the primary policy complies with the above requirements and the excess umbrella is following-form.
- e) The insurance coverage's required by this Agreement cannot contain any exclusionary language or limitations applicable to the additional insured, that are not applicable to the named insured.
- f) Consultant, upon Owner's demand, shall provide Owner with complete copies of any insurance policies that Consultant is required to maintain pursuant to this Agreement.
- g) The failure of the Consultant and its consultants to fully and strictly comply at all times with the insurance requirements set forth herein shall be deemed a material breach of this Agreement.

## SCHEDULE 1.2

### TIME PARAMETERS

The time parameters are:

- ☐ Completion of all construction by:
- ☐ Completion of identified milestone or portion of Services:

- 1). Concept Design Phase:
- 2). Schematic Design Phase:
- 3). Design Development/Permit Progress Set:
- 4). Construction Document Phase:

☐ Other (specify) **Treatment complete within 2 weeks of start of work. Removal complete within 2 weeks of final approvals.**

## SCHEDULE 2.7

### Owner's Consultants

The Owner's Consultants are:

*(List discipline and, if known, identify them by name and address)*

None

- ☐ Landscape Architect:
- ☐ Civil Engineer:
- ☐ Geotechnical Engineer:
- ☐ Structural Engineer:
- ☐ Mechanical, Electrical & Plumbing Engineer:
- ☐ Food Service Designer:
- ☐ Interior Designer:
- ☐ Lighting Consultant:
- ☐ Acoustical Consultant:
- ☐ Owner's Other Consultant(s) (specify):

Environmental: SAGE Environmental, Inc., 172 Armistice Blvd., Pawtucket, RI 02860

### **SCHEDULE 3.1**

#### **Schedule For Payment of Contract Sum/Hourly Rates Of Compensation**

**Invoices are due net 30 days from date of invoice approval**

**All invoices should be sent to:**

**Kim Miccile**

**Project Cost Analyst | Toll Brothers Apartment Living**


**189 B Street | Needham, MA 02494**

**kmiccile@tollbrothersinc.com | TollBrothersApartmentLiving.com**

**T: 781.202.9458**

**with copy to oweiss@tollbrothersinc.com**

ND/4820-8539-1889, v. 3

Initials: LO / 

## EXHIBIT G



# NAUSET CONSTRUCTION CORP.

10 KEARNEY ROAD, SUITE 307, NEEDHAM, MA 02494  
TEL: 781.453.2220, FAX: 781.453.2250, WEB: WWW.NAUSETCONSTRUCTION.COM

## PROPOSED CO

To: Otto Weis  
Belmont Residential LLC  
250 Gibraltar Road, 3 West  
Horsham, PA 19044

Number: 16  
Date: 10/24/2017  
Job: 2017-01 Cushing Village  
Phone:

**Description:** Load and dispose of F-listed soil

We are pleased to offer the following specifications and pricing to make the following changes:

- The contaminated soil has had a significant impact on the project schedule. As requested, we are not including time delays in this proposal. Time delays will be addressed separately based on our revised schedule impact once all contaminated soil is removed.
- This proposal is an estimated cost only based on 6,000 CYs or 9,000T of Type F removal. Final costs will be based on actual tonnage of materials disposed at the facility and
- This proposal assumes that the designated facility will take the contaminated soil. All terms and conditions in the WL French proposal are hereby incorporated into this proposal. If the designated facility will not approve the soil disposal, then we reserve the right to void this proposal and resubmit based on disposal at another facility.

The total direct cost to perform this work is .....				\$2,266,020.00
(Please refer to attached sheet for details.)				
	Nauset 4% OH & P	\$2,266,020.00	4.00%	\$90,640.80
			<b>Total:</b>	<b>\$2,356,660.80</b>

If you have any questions, please contact me at .

Submitted by: Rob Johnstone

Approved by: \_\_\_\_\_  
Date: \_\_\_\_\_

Cc:





**PROPOSED CO 16 Price Breakdown  
Continuation Sheet**

**Description:** Load and dispose of F-listed soil

Description	Labor	Material	Equipment	Subcontract	Other	Price
Load approximate 6,000 CYs of F listed soil @ \$6/CY				\$36,000.00		\$36,000.00
Dispose of approximately 9,000T of F-listed soil per attached proposal 9,000T x \$247.78/T				\$2,230,020.00		\$2,230,020.00

**Subtotal: \$2,266,020.00**

## Rob Johnstone

---

**From:** Rich Gordon <rich65@gmail.com>  
**Sent:** Tuesday, October 24, 2017 8:22 AM  
**To:** Rob Johnstone  
**Cc:** Scott Southwick  
**Subject:** Re: Pricing

Due to the fact it will take a dozer, and an excavator to load, that would be six dollars per cubic yard. Fairly standard number.

Sent from my iPhone

On Oct 24, 2017, at 7:29 AM, Rob Johnstone <[rjohnstone@nauset.com](mailto:rjohnstone@nauset.com)> wrote:

Rich,

Please provide pricing per CY to load up WL French trucks with the F listed soils. There are 6,000 CYs +/-  
. Thanks.

**Rob Johnstone**  
Senior Project Manager

Nauset Construction Corp.  
10 Kearney Road, Suite 307 | Needham, MA 02494  
Direct: 781.400.8090 | Main: 781.453.2220 | Cell: 339.225.8507

<image001.jpg>

*Build with Confidence<sup>SM</sup>*

**NAUSET.COM**

The content of this email is the confidential property of Nauset Construction and should not be copied, modified, retransmitted, or used for any purpose except with Nauset Construction's written authorization. If you are not the intended recipient, please delete all copies and notify us immediately.



## W. L. FRENCH EXCAVATING CORPORATION

COMMERCIAL SITE DEVELOPMENT • CONTRACT TRUCKING • ENVIRONMENTAL MANAGEMENT

October 23, 2017

Nauset Construction  
Attention: Rob Johnstone  
10 Kearney Road, Ste. 307  
Needham, MA 02494

RE: Cushing Village – Belmont, MA

W. L. French Excavating Corporation (WLF) appreciates the opportunity to submit the following pricing for Nauset Construction.

Disposal Category	Description	Unit Price
F002 Hazardous Soil	Transportation and disposal of F002 Hazardous Waste Soil by dump trailer and railcar from Cushing Village Belmont, MA.	\$247.78 Per ton

### FACILITY TERMS AND CONDITIONS

- **Disposal Facility:** Heritage Environmental Services Subtitle (HES) C Landfill, Roachdale, Indiana  
EPA ID No. IND 980 503 890
- **Rate includes applicable Indiana disposal tax**
- **Quoted price includes diesel fuel at current market rates**
- **Quoted pricing requires a minimum of three (3) turns per dump truck per day from the project site to Worcester, MA.**

1. **For the hazardous constituents, the contaminated soil must be less than or equal to 10x Universal Treatment Standard (UTS) and conform to the requirements of 40 CFR 268.49. HES can accept soils that meet the following criteria, along with all of permit required samples and physical testing: not to exceed 10x UTS for the applicable waste code(s), and identification of all underlying hazardous constituents (UHC's) greater than 10x UTS at the point of generation. UHC's cannot exceed 10x the 268.48 universal treatment standard at the point of disposal.**
2. **Waste materials should not contain any debris larger than 1 ft x 1 ft x 1 ft, be free of protruding rebar, and be loaded safely and in such a manner as to not damage the equipment during loading, shipment, or offloading.**
3. **Gondola rail transportation: Loads from the project site must be received each day in approximately 100-ton increments to ensure maximum railcar payload utilization. Customer will be charged a 100-ton minimum per railcar on daily gondola shipments, including the final railcar(s) loaded at the end of a shipping campaign.**
4. **Customer is responsible to work with the transporter(s) and the rail transload facility to ensure individual railcars are not overloaded. Most railcars provided by MHF can haul 108 tons**



## W. L. FRENCH EXCAVATING CORPORATION

COMMERCIAL SITE DEVELOPMENT • CONTRACT TRUCKING • ENVIRONMENTAL MANAGEMENT

5. Appropriate quantities of material must be offered by customer daily to meet scheduled rail equipment capacity.
6. Waste materials must pass paint filter liquids test. Waste shipped to the landfill must have minimum 1,000-lbs/sq. ft shear strength or 2,000-lbs/sq. ft unconfined compressive strength upon receipt, including materials requiring solidification prior to transportation. Dusty materials should not be shipped without dust suppression being applied at the project site. Frozen materials that would otherwise contain free liquids cannot be accepted for shipment or disposal.
7. Each waste stream will require the proper documentation, review and approval prior to acceptance of the material. Generator / customer must supply:
  - a. Waste determination data, which includes TCLP metals, pH, Ignitability, Reactive cyanide and Reactive sulfide.
  - b. Total PCBs, volatiles, semi-volatiles, pesticides and herbicides on representative samples of the waste materials. Totals will be used in lieu of TCLP testing to demonstrate that RCRA characteristics do not exceed 20X the TCLP limit. Additionally, the totals data will be needed to demonstrate these constituents do not exceed 10X the UTS limits.
  - c. Representative samples are also required for Heritage to conduct landfill permit testing. By permit, this testing must be performed at the Pace Laboratories in Indianapolis, IN.
8. Damaged Equipment: damages to equipment (beyond normal wear and tear) resulting from improper preparation of the material prior to loading, loading of non-conforming material, improper handling of equipment during loading, or overloading of the containers will be charged to customer at a rate of cost plus 15%.
9. Heritage will require at least 10 business days advance written notice to begin the project in order to allow sufficient time to stage railcars and equipment, as well as for any major changes in the schedule or required equipment.
10. Certified scales will determine measurement for payment.
11. This quotation is valid for 30 days.

### W. L. FRENCH TERMS AND CONDITIONS:

Prior to the commencement of services, this proposal and / or a Purchase Order or a Subcontract Agreement issued by the Client (which acknowledges the terms of this proposal) must be executed.

- This pricing shall be held for (30) days.
- WLF reserves the right to modify the proposed pricing based upon additional information provided after the submittal of this proposal.
- This quote is contingent upon working during regular business hours, Monday through Friday 7:00AM - 4:00PM. Work performed outside these hours, night work or holiday work shall be subject to renegotiation.



## **W. L. FRENCH EXCAVATING CORPORATION**

COMMERCIAL SITE DEVELOPMENT • CONTRACT TRUCKING • ENVIRONMENTAL MANAGEMENT

- Please note that the above pricing does not reflect prevailing wage rates, union labor rates or certified payroll. WLF reserves the right to modify this pricing should any of these items apply.
- If this project is tax exempt, Client must provide the tax exemption certificate prior to the commencement of work.
- Payment in full is due (60) days from the date of the invoice. WLF reserves the right to suspend work should the outstanding balance exceed 30 days past due.
- No Retainage to be held on this project.
- Payment – As liquidated damages and not as a penalty, Client shall be obligated to pay on all accounts not paid on the due date of invoices, 1.5% per month [18% annually] on the outstanding account balance together with all attorney fees incurred by WLF to collect delinquent accounts. Client agrees that notwithstanding any endorsements of legend appear on Clients checks, drafts, or other orders of payment for money, such as endorsements of legend or otherwise shall not necessarily be construed to constitute payment in full or settlement of the account. A failure of WLF to exercise any right accruing from a default of Client shall NOT impair WLF rights in a case of any subsequent default by Client. [In plain words – NO WAIVER]
- WLF reserves the right to cancel or restrict orders due to severe weather conditions or safety concerns. Client agrees to hold harmless WLF for any loss of production or delays related thereto.
- To the fullest extent permitted by law, the client hereby acknowledges and agrees that it shall indemnify, hold harmless and defend WLF and the Owner, and each of their officers, directors, members, employees, agents, affiliates, subsidiaries and partners from and against all claims, damages, judgments, settlements, losses and expenses including but not limited to, attorney fees, arising out of or resulting from the performance of the client's Work and / or arising out of or resulting from any act or omission of the client its employees, agents or subcontractors.
- Please note WLF has included a Credit Card Authorization form for your payment convenience (optional.) Please note that a 1.5% processing fee will be applied to all Visa MasterCard and Discover card payments. Please note a 3% processing fee will be applied to all AMEX card payments.
- This agreement is to be construed under the governing laws of the Commonwealth of Massachusetts.
- By signing this proposal you are agreeing to the terms of this proposal and these terms supersede any other document signed on this project unless specified in writing by WLF.

### **SUMMARY**

\_\_\_\_\_ WLF Initials \_\_\_\_\_ Client Initials

Page 3 of 4



## W. L. FRENCH EXCAVATING CORPORATION

COMMERCIAL SITE DEVELOPMENT • CONTRACT TRUCKING • ENVIRONMENTAL MANAGEMENT

This proposal is based on working (5) days per week and (8) hours per day during normal working hours and assume work is performed during a period of time that does not include any holidays.

Sincerely,

\_\_\_\_\_  
Jarrett Everton  
Project Manager  
W.L. French Excavating Corporation

### Proposal Acceptance/Subcontract Agreement

#### Project: Cushing Village – Belmont, MA

Acknowledgement by Authorized Officer of Nauset Construction Corp (Client).

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## EXHIBIT H

\_\_\_\_\_





December 4, 2017

Ms. Rosemary Knox  
Massachusetts Department of Environmental Protection (MassDEP)  
Bureau of Waste Site Cleanup (BWSC)  
1 Winter Street  
Boston, Massachusetts 02108

**Re:    *Contained-In Determination Petition for Soil  
Partial In-Situ Treatment Areas (Grid Cells F2, G2, G1)  
Belmont, Massachusetts  
Release Tracking Number (RTN) 3-0023300***

Dear Ms. Knox,

SAGE Environmental, Inc. (SAGE) has prepared the subject "Contained-In" determination petition for approximately 1,200 cubic yards of soil from the following M.G.L. c. 21E Disposal Site (the Site) that are contaminated with F-listed chlorinated solvents, including perchloroethylene (PCE) as well as trichloroethylene (TCE), and associated daughter breakdown compounds (i.e. cis-1,2-dichloroethylene (cis-1,2-DCE) and vinyl chloride (VC) due to a historical release of dry cleaning solvents.

Further specific details relative to the Disposal Site include the following:

RTN:	3-0023300
Site Name:	Cushing Village
Street Address:	495 Common Street
City/Town:	Belmont, Massachusetts

The subject soils applicable to this request contain concentrations of listed hazardous waste with waste code F002, which the U.S. Environmental Protection Agency (USEPA) has authorized Massachusetts Department of Environmental Protection (MassDEP) to regulate under the Resource Conservation and Recovery Act (RCRA).

The identity of the grid cells for which this petition is being submitted as well as the depth and quantity of the subject soil is summarized in the following table.

**Environmental, Health & Safety Services**

172 Armistice Blvd., Pawtucket, RI 02860 | 300 Myles Standish Blvd., Taunton, MA 02780  
10 Post Office Square, Boston, MA 02109 | 888.723.9920 | [sage-enviro.com](http://sage-enviro.com)



**Table 1 – Subject Contained-In Petition Grid Cell Portions**

Portion of Grid Cell	Grid Cell Area Portion	Soil Depth (feet bgs)	Soil Volume (CY)
G1	200 ft <sup>2</sup>	0-15	111
F2	800 ft <sup>2</sup>	0-15	444
G2	1,150 ft <sup>2</sup>	0-15	638
<b>Total</b>			<b>1,193</b>

Please note the soils subject to this petition include portions of the aforementioned grid cells that were found to achieve compliance post *in-situ* soil blending treatment *via* various remedial additives. Treatment of the subject soils was conducted under a MassDEP approved Release Abatement Measure (RAM) Plan. The intent of the *in-situ* treatment was to lower the overall concentrations of chlorinated VOCs in soil to a level compliant with MassDEP Method 1 S-1/GW-1 Soil Standards, thus supportive of a contained-in petition.

In summary, several rounds of *in-situ* treatment were performed on soils located within Grid Cells F1/G1 and F2/G2. Remedial additives administered, in chronological order, included potassium permanganate, zero valent iron, hydrogen peroxide (two rounds), and potassium permanganate. After each event, soil samples were collected from the treatment area to evaluate concentrations of VOCs. A summary of the chronology and details of *in-situ* treatment events has been provided in Table 2, below. Treatment areas and sample locations are depicted on Figure 1.

The boundary of soils subject to this contained-in petition, was established by extending a line which transects compliant boring locations within cells noted in Table 1, above. The boundary line and the corresponding areas are depicted on Figure 1.

**Table 2 – *In-Situ* Soil Treatment Remedial Additive Event Chronology**

<b><i>In-Situ</i> Event Completion Date</b>	<b>Additive Applied</b>	<b>Amount Applied (units)</b>	<b>Application Area</b>	<b>Confirmatory Soil Sampling Series</b>
May 16, 2017	Potassium Permanganate	65,000 lbs. (dry weight)	F1/G1 and F2/G2	100 Series Borings
July 14, 2017	Zero-Valent Iron	22,000 lbs. (dry weight)	F1/G1 and F2/G2	200 & 300 Series Borings (300 series borings advanced in those areas where further treatment time was allowed)
August 26, 2017	Hydrogen Peroxide	~2,475 gallons of 34.9 weight percent hydrogen peroxide diluted and applied at a less than an 8 percent weight solution	F1 and Portions of F2, G1, & G2 (treatment in locations of Borings 304, 306, 308, 309, 311, 312, 313, 314, 315 & 316)	400 Series Borings

**Table 2 (Continued) – In-Situ Soil Treatment Remedial Additive Event Chronology**

September 28, 2017	Hydrogen Peroxide	~1,650 gallons of 34.9 weight percent hydrogen peroxide diluted and applied at a less than an 8 percent weight solution	F1 and Portions of F2, G1, & G2 (treatment in locations of Borings 404, 406, 408, 409, 411, 412, 413, 414, 415 & 416	500 Series Borings
October 20, 2017	Potassium Permanganate	6,000 lbs. (dry weight)	Portions of F2 & G2 (treatment in locations of Borings 504, 511, & 512)	600 Series Borings

Post treatment concentrations of F-listed VOCs were evaluated by collection of soil samples from four borings placed within each grid cell. Soil samples were collected at four foot depth intervals to and slightly beyond the proposed 15 foot below surface grade (bsg) final construction excavation depth. Sample intervals completed at each test boring included the 0-4', 4'-8', 8'-12', and 12'-16' depth intervals. Analytes germane to the subject treatment and contained-in evaluation are F-002-listed chlorinated VOCs (i.e. PCE, TCE, Cis-1,2-DCE, and VC). A summary table of post treatment VOC confirmatory sample analysis results has been provided as **Attachment 1**. Note, each post treatment confirmatory soil sample was first submitted for laboratory analysis of VOCs *via* EPA Method 8260C. Additional treatment was not performed in areas where post treatment soil sample analysis indicated compliance with contained-in criteria. Areas with compliant VOC concentrations were subject to additional laboratory analysis of soils to comply with disposal facility acceptance criteria.

Disposal facility waste characterization analysis results were evaluated to determine if soils compliant with contained-in criteria exhibited underlying hazardous characteristics pursuant to 301 CMR 30.120. This evaluation was performed by using the 20X rule to compare mass concentrations of detected analytes to the Resource Conservation and Recovery Act toxicity characteristic threshold concentrations at 40 CFR 261.24. This evaluation indicted that the soils do not exhibit underlying hazardous characteristics.

A summary of the sample analytical data used in support of this petition is provided as **Attachment 2**. Analytical data for soil samples collected during the course of the treatment rounds, including soils within and outside the area subject to this contained-in petition have been provided in **Attachment 3**.

### **Background**

This Disposal Site is subject to a redevelopment project that is described in a RAM Plan that was submitted to MassDEP on March 11, 2017. RAM activities include the excavation of soils which will transported for off-site re-use, recycling, or disposal at appropriately licensed facilities.

The project site divided into geometric grids to facilitate characterization of soils prior to excavation. These grid cells are depicted on **Figure 1**. Because stockpiling of soils is not practical due to space constraints, the intent of the grid cells is to provide a layout to support the *in-situ* pre-characterization of

the soil for disposal purposes. Generally, a five-foot lift within each grid represents a grid cell with a volume of approximately 500 cubic yards or less.

Historical evaluation of soils at the Site delineated areas containing F002-listed chlorinated solvents at concentrations exceeding Method 1 S-1/GW-1 Soil Standards. Releases of F002-listed wastes occurred to the ground surface at a dry cleaner that formerly occupied a portion of Grids F1, F2, G1, G2 and X6. Contamination migrated downward through relatively permeable vadose zone soils until it contacted less permeable, dense, silty soils at a depth of approximately 8 to 10 feet BSG, which is approximately 2 feet below the depth of the water table. Contamination then spread laterally along the top of, and penetrated into, the denser underlying soil layer and the underlying bedrock.

This Contained-In petition is being submitted for a partial area of grid cells G1 and F2/G2 that post-treatment soil sample analysis has determined to be compliant with Contained-in policy criteria. These soils represent a volume of approximately 1,200 cubic yards. Soils outside the area subject to this contained-in petition have been permitted for off-site transport and disposal as a hazardous waste.

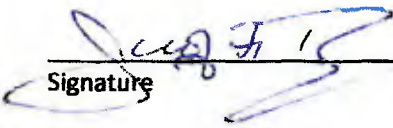
### **Management of Soils**

Soil grids have been surveyed and staked out in the field prior to excavation. Depth of excavation will be controlled by elevation measurements during excavation. Field screening will be performed at each 1 foot-depth interval during excavation and commensurate with the environmental monitoring being performed as part of the RAM. Soils removed from all excavations will be loaded directly into trucks or lined roll-off containers for transportation to approved disposal facilities. Soils will not be stockpiled on site, unless conditions warrant temporary storage.

We understand that our request for a Contained-In determination petition is subject to a 21-day waiting period, during which the determination is subject to review by the MassDEP. SAGE acknowledges that the soil cannot be handled as non-hazardous waste until the 21-day review period passes without objection from MassDEP or USEPA.


We also understand that if the soil is to be transported out-of-state, it must first be determined if the operator of the landfill or other receiving facility and the relevant state agency (or the relevant USEPA region, if the state does not administer the RCRA program) are willing to accept contained-in determination petitions performed by a Massachusetts Licensed Site Professional. In doing so, the process by which Contained-In determination petitions are performed in Massachusetts will be explained to the relevant parties. Proper documentation of all such communications will be retained.

I, Jacob H. Butterworth, attest under the pains and penalties of perjury (i) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this submittal, (ii) that, based on my inquiry of those individuals immediately responsible for obtaining the information, the material information contained in this submittal is, to the best of my knowledge and belief, true, accurate and complete, and (iii) that I am fully authorized to make this attestation on behalf of the entity legally responsible for this submittal. The entity on whose behalf this submittal is made aware that there are significant penalties, including, but not limited to, possible fines and imprisonment, for willfully submitting false, inaccurate or incomplete information.

By:   
Signature

12/4/2017  
Date

LSP #: 8119  
LSP Name: Jacob H. Butterworth  
Telephone: 888-723-9920 ext: 123 fax: 401-723-9973

For:   
Belmont Residential, LLC  
Agent for  
Title

**Figure:**

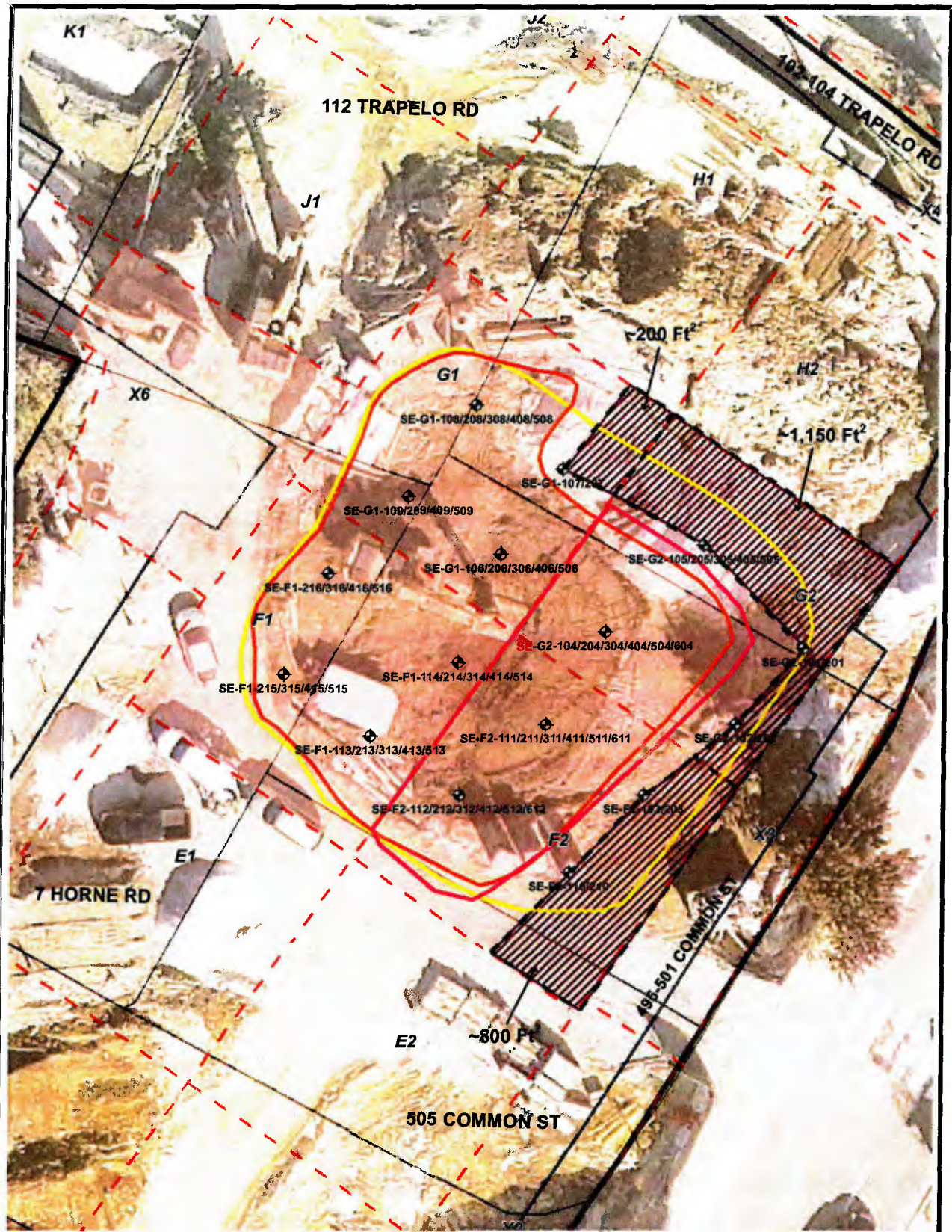
Figure 1 Soil Sample Location Plan

**Attachments:**

Attachment 1	Running VOC Soil Analysis Summary Table
Attachment 2	Subject Contained-In Petition Soil Analytical Summary Table
Attachment 3	Soil Analytical Reports
Attachment 4	Letter of Agency

## FIGURES





★ Site Location

Data Provided by MassGIS  
Orthoimagery Provided by Nearmap

Date: 11/30/2017  
Job #: R090  
Created By: ALM

### In-Situ Treatment Area

The Bradford  
Along Trapelo Road and Common Street  
Belmont, Massachusetts

- ◆ Soil Boring Locations (100, 200, etc. SAGE Boring Locations)
- ▨ Subject Contained-In Soil Area Request
- Approximate Extent of Initial Potassium Permanganate & Zero-Valent Iron Treatment
- Approximate Extent of 1<sup>st</sup> and 2<sup>nd</sup> Hydrogen Peroxide Soil Blending
- Approximate Extent of 2<sup>nd</sup> Potassium Permanganate Soil Blending
- - - Grid Cell Boundary
- F-Listed Area



Figure



**ATTACHMENT 1**



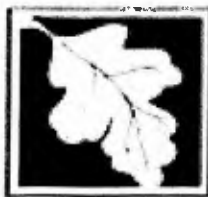
First Hydrogen Peroxide Bleeding										Post First Hydrogen Peroxide Bleeding										Pre Blending										Post Second Potassium Permanganate Bleaching												
Station ID	Depth	Date	Flow	Temp	DO	pH	ORP	Chlorine	Residual Chlorine	Station ID	Depth	Date	Flow	Temp	DO	pH	ORP	Chlorine	Residual Chlorine	Station ID	Depth	Date	Flow	Temp	DO	pH	ORP	Chlorine	Residual Chlorine	Station ID	Depth	Date	Flow	Temp	DO	pH	ORP	Chlorine	Residual Chlorine			
01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0
01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0
01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0
01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0
01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0
01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0
01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0
01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0	01-01-01	0-4	16/10/2017	0.00	18.0	10.0	7.0	100	0.0	0.0	0.0
01-01-01	0-4	16/10/2017	0.00	18.0																																						

**Note:**

	Method 1 SL/SW-1 (ppm)
"C6" Cis-1,2-Dichloroethene	0.3
"PCE" Tetrachloroethene	1.0
"TCE" Trichloroethene	0.3
"VC" Vinyl Chloride	0.9



## EXHIBIT I



**RELEASE AMENDMENT FORM**

**A. RELEASE OR THREAT OF RELEASE LOCATION:**

1. Release Name/Location Aid: TOPS CLEANERS  
2. Street Address: 495 COMMON ST  
3. City/Town: BELMONT 4. ZIP Code: 024780000

**B. THIS FORM IS BEING USED TO: (check all that apply)**

1. Date of Response(s): 2/13/2018 Start Time : 11:00 ☒ AM ☐ PM  
(mm/dd/yyyy) (hh:mm)

2. Record Field Visits:

- ☐ a. Initial Compliance Field Response – Announced ☒ d. Compliance Field Response – Unannounced  
☐ b. Initial Compliance Field Response – Unannounced ☐ e. Follow-up or Other Field Response  
☐ c. Compliance Field Response – Announced ☐ f. Field Response - Direct Oversight

3. Record an Activity:

- ☐ a. Follow-up Office Response ☐ b. Meeting with PRP or PRP Representative

4. Record IRA Activities (also complete Section D, if applicable):

- ☐ a. IRA Assessment Only ☐ e. IRA Written Plan Approved  
☐ b. IRA Oral Plan Approved ☐ f. IRA Written Plan Denied  
☐ c. IRA Oral Plan Denied and/or Request for Written Plan ☐ g. Imminent Hazard Termination Approved  
☐ d. IRA Oral Modified Plan Approved

5. Record IRA Department (IRA-D) Oversight Activities:

- ☐ a. IRA-D Work Started ☐ d. IRA-D Modification Plan Recorded  
☐ b. IRA-D Assessment Only ☐ e. IRA-D Work Completed  
☐ c. IRA-D Plan Recorded

6. Record URAM Activities:

- ☐ a. Notice of Intent to Conduct a URAM ☐ c. URAM Notification of a Previously Existing RTN  
☐ b. URAM Work Started

☐ 7. Correct or Add **Data to WSC Database** otherwise not specified on this form. (Record in Section F)

☐ 8. Identify or Update a **PRP or Other Person Associated with Release** (Fill out Section C)

☐ 9. **Record Other Staff Activities** not specified above. (Record in Section F)



Massachusetts Department of Environmental Protection  
Bureau of Waste Site Cleanup

RELEASE AMENDMENT FORM

BWSC 102

Release Tracking Number

3 - 23300

C. PRP OR OTHER PERSON ASSOCIATED WITH RELEASE:

1. Check all that apply: ☐ a. change in contact name ☐ b. change of address ☐ c. new person associated with release

2. Name of Organization: SAGE ENVIRONMENTAL INC

3. Contact First Name: MOLLY

4. Last Name: COTE

5. Street: 172 ARMISTICE BLVD

6. Title: PROJECT MANAGER

7. City/Town: PAWTUCKET

8. State: RI

9. ZIP Code: 028600000

10. Telephone: 4017239900

11. Ext: \_\_\_\_\_

12. EMail: \_\_\_\_\_

13. Relationship of Person to Release: ☐ PRP ☒ OTHER c. Type(e.g. Current Owner): Consultant for PRP Not an LSP

☐ 14. No Person associated with activity specified in Section B.

D. ENTER ORAL RESPONSE ACTION PLAN (if applicable): (check all that apply)

☐ 1. Assessment and/or Monitoring only

☐ 6. Temporary Evacuation or Relocation of Residents

☐ 2. Temporary Covers or Caps

☐ 7. Product or NAPL Recovery

☐ 3. Deployment of Absorbent or Containment Materials

☐ 8. Fencing and Sign Posting

☐ 4. Temporary Water Supplies

☐ 9. Groundwater Treatment Systems

☐ 5. Structure Venting Systems

☐ 10. Soil Vapor Extraction

☐ 11. Check here if modifying amount of authorized excavated soils:

Amount not to exceed \_\_\_\_\_ ☐ cubic yards ☐ tons

☐ 12. Other Response Actions

Describe: \_\_\_\_\_

E. MassDEP STAFF AND FORM PREPARER:

1. MassDEP Staff: THOMPSON VALERIE

☐ b. Check here, if Unassigned (or staff name not applicable)

2. Preparer Signature: VALERIE A THOMPSON

3. Date :

2/13/2018

(mm/dd/yyyy)



**RELEASE AMENDMENT FORM**

Release Tracking Number

3 - 23300

**F. DESCRIPTION OF ACTIVITIES RECORDED BY THIS FORM:**

I PERFORMED AN UNANNOUNCED COMPLIANCE INSPECTION AT THE SUBJECT SITE. SOIL WAS BEING EXCAVATED FROM THE TCE HOT SPOT AREA AND LOADED INTO A TRUCK FOR OFF-SITE DISPOSAL. THE TRUCK EXITING THE SITE WAS COVERED AND CLEANED OF LOOSE SOIL AND DEBRIS WITH WATER PRIOR TO EXITING THE SITE. SOIL AND CRUSHED ROCK FROM THE SOUTHERN END OF THE SITE WAS BEING STOCKPILED NEAR THE EXIT ROAD OF THE SITE FOR OFF-SITE DISPOSAL. I SPOKE TO THE PROJECT MANAGER ON SITE FROM SAGE ENVIRONMENTAL. HE INFORMED ME THAT 250 TRUCKLOADS OF TCE-CONTAMINATED SOILS HAVE BEEN EXCAVATED FROM THE SITE TO DATE. ANOTHER 75 TRUCKLOADS OF TCE-CONTAMINATED SOIL ARE EXPECTED TO BE EXCAVATED AND DISPOSED OF OFF-SITE AS HAZARDOUS WASTE. HE ALSO SAID THAT THE SOILS FROM THE SECOND CONTAINED-IN PETITION, WHICH WAS APPROVED BY MASSDEP, WERE EXCAVATED AND DISPOSED OF AS HAZARDOUS WASTE DUE TO LOGISTICAL PROBLEMS WITH SEGREGATING THE CONTAINED-IN SOILS FROM THE TCE-CONTAMINATED SOILS. I OBSERVED AIR MONITORING EQUIPMENT SET UP AROUND THE PERIMETER OF THE SOIL MANAGEMENT AREAS. THE PM FROM SAGE INFORMED ME THAT THERE HAVE NOT BEEN ANY EXCEEDANCES OF VOCs TO DATE FROM THE AIR MONITORING BEING CONDUCTED AT THE SITE. A WIND SOCK WAS SHOWING THE WIND DIRECTION TO BE BLOWING IN A NORTHWESTERLY DIRECTION DURING MY TIME ON SITE. NO VISIBLE DUST WAS OBSERVED DURING EXCAVATION OR LOADING OPERATIONS. NO ODORS WERE OBSERVED EMANATING FROM THE TCE SOIL EXCAVATION AREA. CONSTRUCTION OF THE STEEL FRAME OF THE BUILDING WAS OCCURRING ON THE NORTHWESTERN PORTION OF THE SITE. I TOOK PHOTOS OF THE CURRENT SITE CONDITIONS PRIOR TO EXITING THE SITE.

☐ Check here if additional information is provided in an attachment.

## EXHIBIT J



**Sage Environmental**  
172 Armistice Boulevard  
Pawtucket, RI 02860  
(401) 723-9900

Toll Brothers Apartment Living  
134 Flanders Road, Suite 275  
Westborough, MA 01581  
William Lovett

Invoice number 15347  
Date 06/30/2017

Project R090 ENVIRONMENTAL SERVICES -  
CUSHING VILLAGE, BELMONT, MA

Environmental Services provided during the period of June 1, 2017 through June 30, 2017 including: continued dewatering and treatment operations, including assisting Schnabel with dewatering of soldier piles; continued excavation transport and disposal oversight and monitoring; post-treatment soil sampling and analysis; continued MCP submittal preparation and coordination with the Massachusetts Department of Environmental Protection (MassDEP); and services associated with coordination with prior owner.

PROJECT ADDRESS: Cushing Village  
Along Trapelo Road & Common Street  
Belmont, Massachusetts

PROJECT WORK ORDER #001

**As-needed Consulting Services**

Professional Fees

	Hours	Rate	Billed Amount
Principal	6.00	195.00	1,170.00
Senior Project Manager	17.25	150.00	2,587.50
Administrative Assistant	1.75	60.00	105.00
Consultant			
	Units	Rate	Billed Amount
Consultant as Employee			
The Personnel People, Inc.	1.75	60.00	105.00
Administrative Assistant			
Administrative Assistant			
Administrative Assistant			
Phase subtotal			3,967.50

**Soil Disposal Characterization and Coordination with Disposal/Treatment Facilities**

Professional Fees

	Hours	Rate	Billed Amount
Senior Project Manager	10.25	150.00	1,537.50
Environmental Scientist II	18.00	110.00	1,980.00
Environmental Scientist I	15.25	85.00	1,296.25
Technical Writer	2.00	75.00	150.00
CAD/Draftperson	2.50	60.00	150.00
Administrative Assistant	1.50	60.00	90.00



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

# **Soil Disposal Characterization and Coordination with Disposal/Treatment Facility**

Consultant

	Units	Rate	Billed Amount
Consultant as Employee			
The Personnel People, Inc.	2.75	60.00	165.00
Administrative Assistant			
Administrative Assistant			
Administrative Assistant			
Administrative Assistant			
Phase subtotal			5,368.75

## **Public Involvement Plan Updates**

Professional Fees

	Hours	Rate	Billed Amount
Administrative Assistant	0.75	60.00	45.00

## **Phase II Comprehensive Site Assessment**

Professional Fees

	Hours	Rate	Billed Amount
Senior Project Manager	4.00	150.00	600.00

## **Release Abatement Measure Activities**

**Excavation Oversight & Monitoring**

Professional Fees

	Hours	Rate	Billed Amount
Senior Project Manager	14.25	150.00	2,137.50
Environmental Scientist II	110.50	110.00	12,155.00
Environmental Scientist I	179.00	85.00	15,215.00
Administrative Assistant	0.25	60.00	15.00

Reimbursables

	Units	Rate	Billed Amount
Days	43.00	50.00	2,150.00

Days

Vehicle Charge - P (6/30/17)

Ford Transit (6/1, 6/2, 6/5, 6/6, 6/7, 6/9, 6/12, 6/13, 6/14, 6/15, 6/19, 6/20, 6/21, 6/22, 6/26, 6/27, 6/28 & 6/29)

Ford F250 Truck

Vehicle Charge - P (6/1, 6/2, 6/5, 6/6, 6/7, 6/8, 6/9, 6/12, 6/13, 6/14, 6/15, 6/16, 6/19, 6/20, 6/21, 6/22, 6/23,

6/26, 6/27, 6/28, 6/29 & 6/30)

Vehicle Charge - P (5/26/17)

Postage

34.17

06/10/17 UPS Inv.0000X28F32237

Supplies

2,233.39



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Release Abatement Measure Activities

#### Excavation Oversight & Monitoring

##### Reimbursables

	Units	Rate	Billed Amount
06/23/17 Home Depot Credit Services Inv.9698 (06/17)			
06/7/17 SKC RM (taxable)			
06/02/17 The Home Depot BTC (taxable)			
06/02/17 Walgreens BTC (taxable)			
06/26/17 SKC RM (taxable)			
06/30/17 Winters Hardware BTC (taxable)			
06/20/17 93 Food Mart BTC			
06/01/17 93 Food Mart BB (taxable)			
06/01/17 93 Food Mart BB			

Equipment Rental 26,070.85

06/28/17 US Environmental Rental Corp. Inv.R1036765  
06/27/17 KD Analytical Consulting, LLC Inv.103264  
06/07/17 KD Analytical Consulting, LLC Inv.102745

##### Consultant

	Units	Rate	Billed Amount
Consultant as Employee			
The Personnel People, Inc.	0.25	60.00	15.00
Administrative Assistant			

##### Laboratory

New England Testing Laboratory, Inc. 747.50  
06/30/17 New England Testing Laboratory, Inc. Inv.141232

##### Other Consultant

Hugh Dorsky 517.50  
06/24/17 Hugh Dorskey Inv.062417  
6/30/17 Hugh Dorskey Inv.063017  
06/17/17 Hugh Dorskey Inv.061717

Detail adds to  
\$61,549.16

Phase subtotal

61,290.91

### Dewatering & Groundwater Treatment

#### Professional Fees

	Hours	Rate	Billed Amount
Senior Project Manager	18.00	150.00	2,700.00
Environmental Scientist II	69.00	110.00	7,590.00
Environmental Scientist I	44.00	85.00	3,740.00
Administrative Assistant	0.75	60.00	45.00

##### Reimbursables

	Units	Rate	Billed Amount
Days	1.00	50.00	50.00

Vehicle Charge - P (6/10/17)

Supplies 4,925.50





Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

## Release Abatement Measure Activities

### Dewatering & Groundwater Treatment

#### Reimbursables

	Units	Rate	Billed Amount
06/29/17 Mahoney Oil RM (taxable)			
06/23/17 Mahoney Oil RM (taxable)			
06/01/17 Carbon Filtration Systems, Inc. Inv.SE 17-3			
06/28/17 John H. Collins & Son Co., Inc. Inv.062817			
06/23/17 Home Depot Credit Services Inv.9698 (06/17)			
06/23/17 F.W. Webb Company Inv.55207979 (taxable)			
06/21/17 F.W. Webb Company Inv.55218363 (taxable)			
06/21/17 F.W. Webb Company Inv.55218487 (Taxable)			
06/17/17 The Home Depot HD (taxable)			
06/24/17 Hugh Dorsky Inv.06/24/17E (taxable)			
06/24/17 Hugh Dorsky Inv.06/24/17E (taxable)			
06/24/17 Hugh Dorsky Inv.06/24/17E (taxable)			
05/06/17 Winters Hardware HD (taxable)			
05/31/17 The Home Depot HD (taxable)			
05/04/17 Leslie's Pool Supplies (taxable)			
05/17/17 Plumbers' Supply Co HD (taxable)			
06/20/17 The Hose Connection, Inc. Inv.201516 (taxable)			
06/20/17 The Hose Connection, Inc. Inv.201514 (taxable)			
06/12/17 The Hose Connection, Inc. Inv.201335 (taxable)			
06/30/17 Hugh Dorsky Inv.06/30/17E (taxable)			
06/30/17 Hugh Dorsky Inv.06/30/17E (taxable)			
06/29/17 Mahoney Oil RM (taxable)			
06/07/17 Staples RM (taxable)			
06/20/17 Mahoney Oil RM (taxable)			
Equipment			772.80
06/01/17 Tsurumipumpsales.com RM			
Units per Months	4.00	500.00	2,000.00
Dewatering - Bag Filters (25 & 10 Microns) (4\Four units for One Month)			
Units per Months	1.00	3,950.00	3,950.00
Dewatering - 1,000 lb Greensand Filter (One Unit for One Month)			
Units per Months	2.00	3,600.00	7,200.00
Dewatering - 2,000 lb. Carbon Vessels (Two Units for One Month)			
Units per Months	1.00	1,750.00	1,750.00
Dewatering - Pump/Hoses/Flow Meters (One for One Month)			
Equipment Rental			4,606.10
06/21/17 Broadway Leasing Corp. RM (taxable)			
06/02/17 Newton B. Washburn, LLC Inv.3932			
Consultant			
	Units	Rate	Billed Amount
Consultant as Employee			
The Personnel People, Inc.	1.25	60.00	75.00
Administrative Assistant			
Administrative Assistant			
Laboratory			
New England Testing Laboratory, Inc.			1,573.20



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

**Release Abatement Measure Activities**  
**Dewatering & Groundwater Treatment**  
Consultant

	Units	Rate	Billed Amount
Laboratory			
06/07/17 New England Testing Laboratory, Inc. Inv.140283			
06/07/17 New England Testing Laboratory, Inc. Inv.140330			
06/07/17 New England Testing Laboratory, Inc. Inv.140284			
Other Consultant			
AquaRep, Inc.			4,629.79
06/16/17 AquaRep, Inc. Inv.2063			
Hugh Dorsky			6,037.50
06/10/17 Hugh Dorsky Inv.061017			
06/17/17 Hugh Dorsky Inv.061717			
06/03/17 Hugh Dorsky Inv.060317			
06/24/17 Hugh Dorsky Inv.062417			
06/30/17 Hugh Dorsky Inv.063017			

Detail totals to  
just \$45,045.89

Subtotal 10,667.29  
Phase subtotal 51,644.89

**In Situ Soil Treatment & Contained-In Determination(s)**  
Professional Fees

	Hours	Rate	Billed Amount
Senior Project Manager	24.25	150.00	3,637.50
Environmental Scientist II	9.00	110.00	990.00
Technical Writer	0.25	75.00	18.75
Administrative Assistant	0.75	60.00	45.00
Consultant			

Units	Rate	Billed Amount
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Laboratory			
New England Testing Laboratory, Inc.			2,576.00
06/26/17 New England Testing Laboratory, Inc. Inv.140746			
Driller			
Crawford Drilling Services, LLC			4,133.10
06/20/17 Crawford Drilling Services, LLC Inv.2575			
Phase subtotal			11,400.35

**2017 RGP NOI Application**  
Professional Fees

	Hours	Rate	Billed Amount
Environmental Scientist II	9.00	110.00	990.00
Administrative Assistant	0.75	60.00	45.00



Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

JUL 07 2017

Toll Brothers  
Apartment Living

Invoice number 15347  
Date 06/30/2017

## 2017 RGP NOI Application

### Consultant

**The Personnel People, Inc.**

**Administrative Assistant**

Units	Rate	Billed Amount
1.50	60.00	90.00

Phase subtotal

Release Abatement Measure Activities subtotal

**1,125.00**

125,461.15

Invoice subtotal	135,442.40
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Sales tax	554.62
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Invoice total	135,997.02
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*We Gladly Accept Visa, Mastercard, American Express & Discover Cards  
Please call (401) 723-9900 ext. 122 to pay by credit card*

Company # 00

Contract #	001	APP -	
Vendor #	378575	PRICE	
Invoice #	15347	QUANTITY	
Cost Center	3988020002	P.M.	
Invoice Amt.	135,997.02		
Invoice Date	6/30/17	RETN:	

Cost Center	Acct.	Cost Code	Option	Amt
3988020002	1581	1352	60-100	135,997.02

Logged - 7/10/17

\* All booked to 39F8020002 to correct YTD Split \*



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Invoice Supporting Detail

R090 Environmental Services - Cushing Village, Belmont, MA

Release Abatement Measure Implementation Activities  
Excavation Oversight & Monitoring

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
------	-------	------	--------

#### Labor

WIP Status: Billable

Senior Project Manager

Jacob H. Butterworth

Project Management

06/05/2017 1.00 150.00 150.00

Subtotal 1.00 150.00

Margaret O. Cote

Project Management

06/19/2017 0.50 150.00 75.00

Project Management

06/21/2017 0.50 150.00 75.00

Project Management

06/23/2017 0.25 150.00 37.50

Project Management

06/29/2017 0.75 150.00 112.50

Project Management

06/30/2017 0.50 150.00 75.00

Client/Regulatory Meeting

06/08/2017 2.00 150.00 300.00

Client/Regulatory Meeting

06/15/2017 0.75 150.00 112.50

Client/Regulatory Meeting

06/29/2017 3.00 150.00 450.00

Site Visit

06/01/2017 1.50 150.00 225.00

Site Visit

06/08/2017 2.50 150.00 375.00

Site Visit

06/15/2017 1.00 150.00 150.00

Subtotal 13.25 1,987.50

Environmental Scientist II

Bradford T. Cousineau

Project Management

06/30/2017 1.00 110.00 110.00

Field Note Transcription/Document Prep

06/08/2017 1.00 110.00 110.00

Field Work

06/01/2017 6.00 110.00 660.00

Field Work

06/02/2017 6.00 110.00 660.00

Field Work

06/05/2017 6.00 110.00 660.00

Field Work

06/08/2017 6.00 110.00 660.00

Field Work

06/07/2017 6.00 110.00 660.00

Field Work

06/09/2017 3.00 110.00 330.00

Field Work

06/12/2017 6.00 110.00 660.00

Field Work

06/13/2017 6.00 110.00 660.00

Field Work

06/14/2017 6.00 110.00 660.00

Field Work

06/15/2017 6.00 110.00 660.00

Field Work

06/19/2017 11.00 110.00 1,210.00

Field Work

06/20/2017 6.00 110.00 660.00

Field Work

06/21/2017 6.00 110.00 660.00

Field Work

06/22/2017 6.00 110.00 660.00

Field Work

06/26/2017 8.00 110.00 880.00



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Invoice Supporting Detail

R090 Environmental Services - Cushing Village, Belmont, MA

Release Abatement Measure Implementation Activities  
Excavation Oversight & Monitoring

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
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#### Labor

W/P Status: Billable

Environmental Scientist II

Bradford T. Cousineau

Field Work	06/27/2017	6.00	110.00	660.00
Field Work	06/28/2017	6.00	110.00	660.00
Field Work	06/29/2017	2.50	110.00	275.00
Subtotal		112.50		12,375.00

Environmental Scientist I

Brent R. Beauchene

Field Work	06/01/2017	8.00	85.00	680.00
Field Work	06/02/2017	8.00	85.00	680.00
Field Work	06/05/2017	3.00	85.00	255.00
Field Work	06/06/2017	8.00	85.00	680.00
Field Work	06/07/2017	8.00	85.00	680.00
Field Work	06/08/2017	8.00	85.00	680.00
Field Work	06/09/2017	8.00	85.00	680.00
Field Work	06/12/2017	8.00	85.00	680.00
Field Work	06/13/2017	8.00	85.00	680.00
Field Work	06/14/2017	8.00	85.00	680.00
Field Work	06/15/2017	8.00	85.00	680.00
Field Work	06/16/2017	8.00	85.00	680.00
Field Work	06/19/2017	9.00	85.00	765.00
Field Work	06/20/2017	8.50	85.00	722.50
Field Work	06/21/2017	8.00	85.00	680.00
Field Work	06/22/2017	8.00	85.00	680.00
Field Work	06/23/2017	8.00	85.00	680.00
Field Work	06/26/2017	7.00	85.00	595.00
Field Work	06/27/2017	8.00	85.00	680.00
Field Work	06/28/2017	8.00	85.00	680.00
Field Work	06/29/2017	8.00	85.00	680.00
Field Work	06/30/2017	8.00	85.00	680.00
Subtotal		171.95		14,615.75

should be 171.50  
and \$14,577.50.

Matthew A. Gonsalves

Field Work	06/19/2017	7.50	85.00	637.50
Subtotal		7.50		637.50

Administrative Assistant

Amy Mulhern



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Invoice Supporting Detail

#### R090 Environmental Services - Cushing Village, Belmont, MA

##### Release Abatement Measure Implementation Activities Excavation Oversight & Monitoring

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
------	-------	------	--------

#### Labor

WIP Status: Billable

Administrative Assistant

Amy Mulhern

Word Processing

06/01/2017 0.25 60.00 15.00

Subtotal 0.25 15.00

Labor total 306.45 29,780.75

#### Expense

WIP Status: Billable

Home Depot Credit Services

Supplies

06/23/2017 1,088.88

Subtotal 1,088.88

In-house Expense

Vehicle Charge (0-100 Miles)

06/15/2017 18.00 50.00 900.00

Vehicle Charge (0-100 Miles)

06/19/2017 1.00 50.00 50.00

Subtotal 2.00 100.00

KD Analytical Consulting, LLC

Equipment Rental

06/07/2017 6,727.50

Equipment Rental

06/27/2017 12,610.05

Subtotal 19,337.55

Sarah Fillipino

Vehicle Charge (0-100 Miles)

06/30/2017 1.00 50.00 50.00

Subtotal 8.00 400.00

UPS

Postage

06/10/2017 34.17

Subtotal 34.17

US Environmental Rental Corp.

Equipment Rental

06/28/2017 6,733.30

Subtotal 6,733.30

Bradford T. Cousineau

Expense Report

Supplies

06/02/2017 22.97

Supplies

06/02/2017 31.69

Supplies

06/20/2017 4.58

Supplies

06/27/2017 14.94

Subtotal 74.18

Brent R. Beauchene

Expense Report

Vehicle Charge (0-100 Miles)

06/30/2017 22.00 50.00 1,100.00



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Invoice Supporting Detail

#### **R090 Environmental Services - Cushing Village, Belmont, MA**

##### **Release Abatement Measure Implementation Activities Excavation Oversight & Monitoring**

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
------	-------	------	--------

#### Expense

WIP Status: Billable

Brent R. Beauchene

Expense Report

Supplies	06/01/2017		3.89
Supplies	06/01/2017		4.58
Subtotal	64.00		3,208.47

Daniel Boynes

Expense Report

Vehicle Charge (0-100 Miles)	05/26/2017	1.00	50.00	50.00
	Subtotal	96.00		4,800.00

Richard J. Mandile

Expense Report

Supplies	06/07/2017		520.78
Supplies	06/26/2017		541.08
Subtotal			1,061.86
Expense total	170.00		36,838.41

#### Consultant

WIP Status: Billable

Hugh Dorsky

Other Consultant	06/17/2017		172.50
Other Consultant	06/24/2017		172.50
Other Consultant	06/30/2017		172.50
Subtotal			517.50

New England Testing Laboratory, Inc.

Laboratory	06/30/2017		747.50
Subtotal			747.50

The Personnel People, Inc.

Consultant as Employee	06/30/2017	0.25	60.00	15.00
	Subtotal	0.25		0.00
	Consultant total	0.25		1,265.00

#### **Release Abatement Measure Implementation Activities Dewatering & Groundwater Treatment**

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
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#### Labor

WIP Status: Billable

Senior Project Manager

Margaret O. Cote



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Invoice Supporting Detail

R090 Environmental Services - Cushing Village, Belmont, MA

Release Abatement Measure Implementation Activities  
Dewatering & Groundwater Treatment

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
------	-------	------	--------

#### Labor

WIP Status: Billable

Senior Project Manager

Margaret O. Cote

Project Management	06/01/2017	1.50	150.00	225.00
Project Management	06/02/2017	0.50	150.00	75.00
Project Management	06/04/2017	0.50	150.00	75.00
Project Management	06/05/2017	0.75	150.00	112.50
Project Management	06/06/2017	0.50	150.00	75.00
Project Management	06/08/2017	0.75	150.00	112.50
Project Management	06/09/2017	1.25	150.00	187.50
Project Management	06/11/2017	0.50	150.00	75.00
Project Management	06/12/2017	1.00	150.00	150.00
Project Management	06/14/2017	1.00	150.00	150.00
Project Management	06/16/2017	1.50	150.00	225.00
Project Management	06/19/2017	1.25	150.00	187.50
Project Management	06/21/2017	0.50	150.00	75.00
Project Management	06/22/2017	0.75	150.00	112.50
Project Management	06/23/2017	0.25	150.00	37.50
Project Management	06/26/2017	0.50	150.00	75.00
Project Management	06/28/2017	0.50	150.00	75.00
Project Management	06/29/2017	0.50	150.00	75.00
Client/Regulatory Meeting	06/15/2017	0.75	150.00	112.50
Site Visit	06/01/2017	1.00	150.00	150.00
Site Visit	06/08/2017	1.50	150.00	225.00
Site Visit	06/15/2017	0.75	150.00	112.50

Subtotal 18.00 2,700.00

Environmental Scientist II

Bradford T. Cousineau

Field Work	06/01/2017	4.00	110.00	440.00
Field Work	06/02/2017	4.00	110.00	440.00
Field Work	06/05/2017	4.00	110.00	440.00
Field Work	06/06/2017	4.00	110.00	440.00
Field Work	06/07/2017	4.00	110.00	440.00
Field Work	06/12/2017	4.00	110.00	440.00
Field Work	06/13/2017	4.00	110.00	440.00
Field Work	06/14/2017	4.00	110.00	440.00
Field Work	06/15/2017	4.00	110.00	440.00





Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Invoice Supporting Detail

**R090 Environmental Services - Cushing Village, Belmont, MA**  
**Release Abatement Measure Implementation Activities**  
**Dewatering & Groundwater Treatment**

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
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**Labor**

WIP Status: Billable

**Environmental Scientist II**

Bradford T. Cousineau

Field Work	06/19/2017	4.00	110.00	440.00
Field Work	06/20/2017	4.00	110.00	440.00
Field Work	06/21/2017	4.00	110.00	440.00
Field Work	06/22/2017	4.00	110.00	440.00
Field Work	06/26/2017	4.00	110.00	440.00
Field Work	06/27/2017	4.00	110.00	440.00
Field Work	06/28/2017	4.00	110.00	440.00
Field Work	06/29/2017	4.00	110.00	440.00
Subtotal		34.00		3,740.00

John L. Meyer

Client/Regulatory Meeting

06/06/2017	1.00	110.00	110.00
Subtotal	1.00		110.00

**Environmental Scientist I**

Brent R. Beauchene

Field Work	06/01/2017	2.00	85.00	170.00
Field Work	06/02/2017	2.00	85.00	170.00
Field Work	06/05/2017	2.00	85.00	170.00
Field Work	06/06/2017	2.00	85.00	170.00
Field Work	06/07/2017	2.00	85.00	170.00
Field Work	06/08/2017	2.00	85.00	170.00
Field Work	06/09/2017	2.00	85.00	170.00
Field Work	06/12/2017	2.00	85.00	170.00
Field Work	06/13/2017	2.00	85.00	170.00
Field Work	06/14/2017	2.00	85.00	170.00
Field Work	06/15/2017	2.00	85.00	170.00
Field Work	06/16/2017	2.00	85.00	170.00
Field Work	06/19/2017	2.00	85.00	170.00
Field Work	06/20/2017	2.00	85.00	170.00
Field Work	06/21/2017	2.00	85.00	170.00
Field Work	06/22/2017	2.00	85.00	170.00
Field Work	06/23/2017	2.00	85.00	170.00
Field Work	06/26/2017	2.00	85.00	170.00
Field Work	06/27/2017	2.00	85.00	170.00
Field Work	06/28/2017	2.00	85.00	170.00



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Invoice Supporting Detail

#### **R090 Environmental Services - Cushing Village, Belmont, MA**

##### **Release Abatement Measure Implementation Activities Dewatering & Groundwater Treatment**

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
------	-------	------	--------

#### Labor

WIP Status: Billable

##### **Environmental Scientist I**

Brent R. Beauchene

Field Work 06/29/2017 2.00 85.00 170.00

Field Work 06/30/2017 2.00 85.00 170.00

Subtotal 11.00 935.00

##### **Administrative Assistant**

Amy Mulhern

Data Acquisition/Reduction/Analysis 06/07/2017 0.25 60.00 15.00

Word Processing 06/07/2017 0.50 60.00 30.00

Subtotal 0.75 45.00

Labor total 64.75 7,530.00

#### Expense

WIP Status: Billable

##### **Carbon Filtration Systems, Inc.**

Supplies 06/01/2017 1,150.00

Subtotal 1,150.00

##### **F.W. Webb Company**

Supplies 06/21/2017 201.14

Supplies 06/21/2017 33.22

Supplies 06/23/2017 177.10

Subtotal 411.46

##### **Home Depot Credit Services**

Supplies 06/23/2017 315.92

Subtotal 315.92

##### **Hugh Dorsky**

Vehicle Charge (0-100 Miles) 06/10/2017 1.00 50.00 50.00

Supplies 06/06/2017 112.68

Supplies 06/06/2017 172.80

Supplies 06/06/2017 43.68

Supplies 06/06/2017 60.95

Supplies 06/17/2017 191.05

Supplies 06/24/2017 18.57

Supplies 06/24/2017 18.57

Supplies 06/24/2017 28.74

Supplies 06/30/2017 20.67

Supplies 06/30/2017 140.14

Subtotal 65.00 4,057.85



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

## Invoice Supporting Detail

### R090 Environmental Services - Cushing Village, Belmont, MA

#### Release Abatement Measure Implementation Activities Dewatering & Groundwater Treatment

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
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#### Expense

WIP Status: Billable

##### In-house Expense

Dewatering - Bag Filters (25 & 10 Microns)	06/01/2017	4.00	500.00	2,000.00
Dewatering - 1,000 lb Greensand Filter	06/01/2017	1.00	3,950.00	3,950.00
Dewatering - 2,000 lb. Carbon Vessels	06/01/2017	2.00	3,600.00	7,200.00
Dewatering - Pump/Hoses/Flow Meters	06/01/2017	1.00	1,750.00	1,750.00
Subtotal		8.00		14,900.00

John H. Collins & Son Co., Inc.

Supplies	06/28/2017			34.50
Subtotal				34.50

Newton B. Washburn, LLC.

Equipment Rental	06/02/2017			3,039.73
Subtotal				3,039.73

The Hose Connection, Inc.

Supplies	06/12/2017			1,020.10
Supplies	06/20/2017			29.67
Supplies	06/20/2017			212.69
Subtotal				1,262.46

Richard J. Mandile

##### Expense Report

Supplies	06/07/2017			33.33
Supplies	06/20/2017			102.94
Supplies	06/23/2017			384.82
Supplies	06/29/2017			214.13
Supplies	06/29/2017			208.09
Equipment	06/01/2017			772.80
Equipment Rental	06/21/2017			1,566.37
Subtotal				3,282.48
Expense total		73.00		28,454.40

#### Consultant

WIP Status: Billable

AquaRep, Inc.

Other Consultant	06/16/2017			4,629.79
Subtotal				4,629.79

Hugh Dorsky

Other Consultant	06/03/2017			1,207.50
Other Consultant	06/10/2017			1,207.50
Other Consultant	06/17/2017			1,207.50



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Invoice Supporting Detail

#### R090 Environmental Services - Cushing Village, Belmont, MA

#### Release Abatement Measure Implementation Activities Dewatering & Groundwater Treatment

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
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#### Consultant

WIP Status: Billable

Hugh Dorsky

Other Consultant 06/24/2017 1,207.50

Other Consultant 06/30/2017 1,207.50

Subtotal 6,037.50

New England Testing Laboratory, Inc.

Laboratory 06/07/2017 402.50

Laboratory 06/07/2017 149.50

Laboratory 06/07/2017 1,021.20

Subtotal 1,573.20

The Personnel People, Inc.

Consultant as Employee 06/12/2017 0.50 60.00 30.00

Consultant as Employee 06/26/2017 0.75 60.00 45.00

Subtotal 1.25 0.00

Consultant total 1.25 12,240.49

#### Release Abatement Measure Implementation Activities In Situ Soil Treatment & Contained-In Determination(s)

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
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#### Labor

WIP Status: Billable

Senior Project Manager

Jacob H. Butterworth

Project Management 06/19/2017 1.50 150.00 225.00

Telecons/Emails 06/08/2017 2.00 150.00 300.00

Telecons/Emails 06/09/2017 1.00 150.00 150.00

Telecons/Emails 06/29/2017 1.00 150.00 150.00

Telecons/Emails 06/30/2017 1.00 150.00 150.00

Data Acquisition/Reduction/Analysis 06/26/2017 1.00 150.00 150.00

Subtotal 7.50 1,125.00

John L. Meyer

Data Acquisition/Reduction/Analysis 06/20/2017 2.00 150.00 300.00

Subtotal 2.00 300.00

Margaret O. Cote

Telecons/Emails 06/08/2017 1.00 150.00 150.00

Telecons/Emails 06/09/2017 1.00 150.00 150.00

Telecons/Emails 06/11/2017 0.50 150.00 75.00



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Invoice Supporting Detail

#### **R090 Environmental Services - Cushing Village, Belmont, MA**

#### **Release Abatement Measure Implementation Activities In Situ Soil Treatment & Contained-In Determination(s)**

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
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#### Labor

WIP Status: Billable

##### Senior Project Manager

Margaret O. Cote

Telecons/Emails	06/12/2017	1.00	150.00	150.00
Telecons/Emails	06/13/2017	1.25	150.00	187.50
Telecons/Emails	06/15/2017	0.75	150.00	112.50
Telecons/Emails	06/16/2017	0.75	150.00	112.50
Telecons/Emails	06/23/2017	1.25	150.00	187.50
Telecons/Emails	06/26/2017	0.75	150.00	112.50
Telecons/Emails	06/27/2017	1.00	150.00	150.00
Telecons/Emails	06/28/2017	1.00	150.00	150.00
Telecons/Emails	06/29/2017	1.50	150.00	225.00
Telecons/Emails	06/30/2017	1.25	150.00	187.50
Data Acquisition/Reduction/Analysis	06/07/2017	0.75	150.00	112.50
Site Visit	06/01/2017	1.00	150.00	150.00

Subtotal 14.75 2,212.50

##### Environmental Scientist II

Bradford T. Cousineau

Field Work

06/19/2017	9.00	110.00	990.00
Subtotal	9.00		990.00

##### Technical Writer

Cathy A. Racine

Telecons/Emails

06/15/2017	0.25	75.00	18.75
Subtotal	0.25		18.75

##### Administrative Assistant

Amy Mulhern

Data Acquisition/Reduction/Analysis

Data Acquisition/Reduction/Analysis

06/26/2017	0.25	60.00	15.00
06/30/2017	0.25	60.00	15.00
Subtotal	0.50		30.00

Cathy A. Racine

Telecons/Emails

06/27/2017	0.25	60.00	15.00
Subtotal	0.25		15.00

Labor total 34.25 4,691.25

#### Consultant

WIP Status: Billable

Crawford Drilling Services, LLC

Driller

06/20/2017			4,133.10
Subtotal			4,133.10



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Invoice Supporting Detail

#### R090 Environmental Services - Cushing Village, Belmont, MA

##### Release Abatement Measure Implementation Activities In Situ Soil Treatment & Contained-In Determination(s)

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
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**Consultant** WIP Status: Billable

New England Testing Laboratory, Inc.  
Laboratory

06/26/2017			2,576.00
Subtotal			2,576.00
Consultant total			6,709.10

##### Release Abatement Measure Implementation Activities 2017 RGP NOI Application

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
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**Labor** WIP Status: Billable

Environmental Scientist II  
John L. Meyer

Correspondence/Report Prep	06/30/2017	1.00	110.00	110.00
Client/Regulatory Meeting	06/01/2017	2.00	110.00	220.00
Client/Regulatory Meeting	06/02/2017	1.00	110.00	110.00
Client/Regulatory Meeting	06/07/2017	2.00	110.00	220.00
Client/Regulatory Meeting	06/13/2017	1.00	110.00	110.00
Client/Regulatory Meeting	06/19/2017	2.00	110.00	220.00
Subtotal		9.00		990.00

Administrative Assistant

Cathy A. Racine  
Word Processing  
Word Processing

06/01/2017	0.25	60.00	15.00
06/19/2017	0.50	60.00	30.00
Subtotal	0.75		45.00
Labor total	9.75		1,035.00

**Consultant** WIP Status: Billable

The Personnel People, Inc.  
Consultant as Employee

06/30/2017	1.50	60.00	90.00
Subtotal	1.50		0.00
Consultant total	1.50		0.00



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Invoice Supporting Detail

R090 Environmental Services - Cushing Village, Belmont, MA

As-needed Consulting Services

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
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#### Labor

WIP Status: Billable

##### Principal

Richard J. Mandile

Office Meetings	06/02/2017	1.00	195.00	195.00
Office Meetings	06/19/2017	0.50	195.00	97.50
Office Meetings	06/28/2017	1.00	195.00	195.00
Office Meetings	06/28/2017	3.00	195.00	585.00
Telecons/Emails	06/27/2017	0.50	195.00	97.50
Subtotal		6.00		1,170.00

##### Senior Project Manager

Jacob H. Butterworth

Site Visit	06/28/2017	5.00	150.00	750.00
Subtotal		5.00		750.00

Margaret O. Cote

Correspondence/Report Prep	06/19/2017	2.00	150.00	300.00
Correspondence/Report Prep	06/20/2017	1.75	150.00	262.50
Correspondence/Report Prep	06/21/2017	1.00	150.00	150.00
Correspondence/Report Prep	06/26/2017	1.00	150.00	150.00
Correspondence/Report Prep	06/27/2017	0.75	150.00	112.50
Client/Regulatory Meeting	06/28/2017	2.50	150.00	375.00
Consulting Services	06/09/2017	1.00	150.00	150.00
Consulting Services	06/15/2017	0.75	150.00	112.50
Consulting Services	06/16/2017	1.50	150.00	225.00
Subtotal		12.25		1,837.50

##### Administrative Assistant

Carrie B. Middleton

Word Processing	06/01/2017	0.25	60.00	15.00
Word Processing	06/05/2017	1.50	60.00	90.00
Subtotal		1.75		105.00
Labor total		25.00		3,862.50

#### Consultant

WIP Status: Billable

The Personnel People, Inc.

Consultant as Employee	06/19/2017	1.25	60.00	75.00
Consultant as Employee	06/26/2017	0.25	60.00	15.00
Consultant as Employee	06/30/2017	0.25	60.00	15.00
Subtotal		1.75		0.00
Consultant total		1.75		0.00



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Invoice Supporting Detail

#### R090 Environmental Services - Cushing Village, Belmont, MA

##### Soil Disposal Characterization and Coordination w/ Disposal/Treatment Facilities

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
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#### Labor

WIP Status: Billable

##### Senior Project Manager

Jacob H. Butterworth

Project Management	06/15/2017	2.50	150.00	375.00
Data Acquisition/Reduction/Analysis	06/07/2017	1.00	150.00	150.00
Subtotal		3.50		525.00

John L. Meyer

Data Acquisition/Reduction/Analysis	06/12/2017	1.00	150.00	150.00
Subtotal		1.00		150.00

Margaret O. Cote

Telecons/Emails	06/05/2017	1.25	150.00	187.50
Telecons/Emails	06/06/2017	1.00	150.00	150.00
Telecons/Emails	06/12/2017	1.00	150.00	150.00
Telecons/Emails	06/21/2017	0.75	150.00	112.50
Telecons/Emails	06/22/2017	1.25	150.00	187.50
Telecons/Emails	06/26/2017	0.50	150.00	75.00
Subtotal		5.75		862.50

##### Environmental Scientist II

John L. Meyer

Correspondence/Report Prep	06/12/2017	2.00	110.00	220.00
Correspondence/Report Prep	06/20/2017	2.00	110.00	220.00
Correspondence/Report Prep	06/22/2017	2.00	110.00	220.00
Correspondence/Report Prep	06/23/2017	1.00	110.00	110.00
Correspondence/Report Prep	06/26/2017	1.00	110.00	110.00
Correspondence/Report Prep	06/27/2017	1.00	110.00	110.00
Correspondence/Report Prep	06/29/2017	2.00	110.00	220.00
Correspondence/Report Prep	06/30/2017	1.00	110.00	110.00
Consulting Services	06/13/2017	2.00	110.00	220.00
Consulting Services	06/14/2017	4.00	110.00	440.00
Subtotal		18.00		1,980.00

##### Environmental Scientist I

Arianne W. Barton

Field Note Transcription/Document Prep	06/20/2017	1.50	85.00	127.50
Prep Time	06/29/2017	0.75	85.00	63.75
Field Work	06/19/2017	13.00	85.00	1,105.00
Subtotal		15.25		1,296.25

##### Technical Writer

Cathy A. Racine





Toil Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Invoice Supporting Detail

#### R090 Environmental Services - Cushing Village, Belmont, MA

#### Soil Disposal Characterization and Coordination w/ Disposal/Treatment Facilities

Phase Status: Active

Billing Cutoff: 06/30/2017

Date	Units	Rate	Amount
------	-------	------	--------

#### Labor

WIP Status: Billable

##### Technical Writer

Cathy A. Racine

Correspondence/Report Prep 06/13/2017 1.00 75.00 75.00

Correspondence/Report Prep 06/14/2017 1.00 75.00 75.00

Subtotal 2.00 150.00

##### CAD/Draftperson

Amy Mulhern

CAD/GIS Analysis 06/13/2017 0.75 60.00 45.00

CAD/GIS Analysis 06/14/2017 1.00 60.00 60.00

CAD/GIS Analysis 06/30/2017 0.75 60.00 45.00

Subtotal 2.50 150.00

##### Administrative Assistant

Amy Mulhern

Word Processing 06/30/2017 0.25 60.00 15.00

Subtotal 0.25 15.00

Cathy A. Racine

Telecons/Emails 06/29/2017 0.25 60.00 15.00

Word Processing 06/13/2017 0.25 60.00 15.00

Word Processing 06/27/2017 0.25 60.00 15.00

Prep Time 06/29/2017 0.50 60.00 30.00

Subtotal 1.25 75.00

Labor total 49.50 5,203.75

#### Consultant

WIP Status: Billable

The Personnel People, Inc.

Consultant as Employee 06/26/2017 1.50 60.00 90.00

Consultant as Employee 06/26/2017 0.25 60.00 15.00

Consultant as Employee 06/30/2017 0.50 60.00 30.00

Consultant as Employee 06/30/2017 0.50 60.00 30.00

Subtotal 2.75 0.00

Consultant total 2.75 0.00



Toll Brothers Apartment Living  
Project R090 ENVIRONMENTAL SERVICES - CUSHING VILLAGE, BELMONT, MA

Invoice number 15347  
Date 06/30/2017

### Invoice Supporting Detail

#### R090 Environmental Services - Cushing Village, Belmont, MA

##### MCP Submittals

##### Public Involvement Plan Updates

Phase Status: Active

Billing Cutoff: 06/30/2017

##### Labor

WIP Status: Billable

Administrative Assistant

Cathy A. Racine

Word Processing

06/01/2017 0.50 60.00 30.00

Word Processing

06/02/2017 0.25 60.00 15.00

Subtotal 0.75 45.00

Labor total 0.75 45.00

#### Phase II Comprehensive Site Assessment

Phase Status: Active

Billing Cutoff: 06/30/2017

##### Labor

WIP Status: Billable

Senior Project Manager

Margaret O. Cote

Correspondence/Report Prep

06/02/2017 1.00 150.00 150.00

Correspondence/Report Prep

06/05/2017 1.00 150.00 150.00

Correspondence/Report Prep

06/06/2017 1.00 150.00 150.00

Correspondence/Report Prep

06/13/2017 1.00 150.00 150.00

Subtotal 4.00 600.00

Labor total 4.00 600.00

## EXHIBIT 3

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX

SUPERIOR COURT  
C.A. NO.: 1781CV2659

STARR CAPITAL PARTNERS, LLC, SMITH  
LEGACY PARTNERS SERIES, LLC, SMITH  
LEGACY PARTNERS II, LLC, 505-507 COMMON  
STREET, LLC, and 527 COMMON STREET, LLC,  
Plaintiffs,

v.

TOLL BROTHERS, INC. and BELMONT  
RESIDENTIAL, LLC  
Defendants.

**AFFIDAVIT OF CHRISTOPHER STARR**

1. I, Christopher Starr, am Manager Member of Starr Capital Partners, LLC, Smith Legacy Partners Services, LLC, ("SLP") Smith Legacy Partners II, LLC, 505-507 Common Street, LLC and 527 Common Street, LLC which were collectively, known as the Plaintiffs, "SLP" or "Sellers" of property located in Belmont, Massachusetts that is the subject of the above captioned civil action.
2. The Sellers entered into a Purchase Agreement with Buyers, namely Toll Brothers, Inc. and Belmont Residential, LLC (collectively "Buyers").
3. The Sellers entered into an Agreement of Sale dated March 14, 2016, a First Amendment dated April 13, 2016, a Second Amendment dated September 2, 2016 and a Third Amendment dated September 28, 2016 (collectively and as amended, the "Purchase Agreement"). The Purchase Agreement was attached as Exhibit I to the Verified Complaint in the above-captioned matter.
4. A background of the Purchase Agreement and circumstances surrounding it are detailed in the Verified Complaint in Paragraphs 12 -54 and 79-83.
5. Key to the Purchase Agreement was the mutually agreed upon Remediation Budget. The Remediation Budget was originally prepared by the Sellers, was shared with Toll during the Due Diligence Period and mutually agreed upon by both parties.

6. A Remediation Budget and Scope of \$1,310,000.00 was prepared and integrated into the Purchase Agreement signed on March 14, 2016, ratified and referenced in the First Amendment and the Second Amendment at Section 26(b)(4) dated September 2, 2016.
7. The Sellers also shared with the Buyers at least three (3) versions of the Remediation Budget in the form of detailed Excel spreadsheets prior to the end of the Due Diligence Period which ended on September 2, 2016, which was previously extended numerous times by Sellers and lasted over seven (7) months.
8. While the Purchase Agreement stated that the costs of Remediation may exceed the "mutually agreed upon Remediation Budget" (see Amended Section 26(b)(4) attached as Exhibit J to the Second Amendment), the Agreement also stated that the parties agreed that "the budget for the remediation of the Existing Environmental Conditions is \$1,310,000.00..." and further "any changes in the scope of work for the Remediation will be subject to the parties' mutual approval, not to be unreasonably withheld or delayed." (Emphasis added). This provision was essential to the Sellers as it provided a means to prevent the Defendant Buyers from manipulating the Remediation Budget and unnecessarily expanding the scope without Sellers' approval. The scope of work was radically changed throughout the Remediation process, without SLP's approval, resulting in much of the over-charges that Toll currently seeks payment from SLP.
9. Fundamental to the Agreement is the Sellers' right to exercise its Option to Purchase the Retail Unit of the Cushing Village Development provided under Section 26. That Section stated "The Sellers right to purchase the retail unit was a material inducement for its agreement to sell the property to Buyer." At closing, SLP paid out approximately \$4,000,000 in project costs, with the expectation that these costs would be recouped upon the exercising of the Retail Option. The Retail Option represented the payment of these costs as well as a portion of SLP's expected profit for its ten years of work put into the project.
10. If the cost of Remediation of the Existing Environmental Conditions and any unknown conditions exceeds \$2,500,000, then the Agreement provided that SLP would have to pay the actual amount of all such Remediation Costs in excess of the upset threshold as such costs are incurred and billed to Sellers by Buyer, not as an increase in the Retail Price, but to be paid irrespective of whether the Sellers elect to purchase the Retail Unit, failing which Sellers will forfeit their rights to purchase the Retail Unit under this Section (See Section 26(b)(3)). It is through this provision that the Sellers have obtained clear and convincing evidence that the Buyers/Defendants and third parties have manipulated, exaggerated and contrived Remediation Costs to attempt to eliminate Sellers' right to exercise the Retail Unit Option.
11. Following the Closing on the Property which occurred on October 19, 2016 the Sellers worked in good faith to assign permitting and approval rights to construct Cushing Village. The Sellers also worked diligently in good faith to recommend the Buyers select the most cost efficient methods to implement further assessment and remediation this included among other things additional soil sampling, selecting locations for

trucking and disposal of non-hazardous and hazardous soil to the most cost efficient disposal locations as well as using efficient onsite thermal remediation to reduce the volume of material that would have to be disposed of as hazardous waste.

12. Over the course of the past twelve (12) to sixteen (16) months, the mutually agreed upon Remediation Budget of \$1.3 million escalated without any approval by Sellers to \$1.9 million (estimated in January 2017), then to \$2.3 million (estimated in February 2017), then to \$3.2 million (estimated in March 2017), then to \$4.2 million (estimated in March/April 2017) to now more than \$7.6 million (as estimated in April 2018).
13. Throughout meetings and correspondence during the winter and spring of 2017, Sellers and its consultant Cooperstown tried repeatedly without success to obtain any reasonable or rational justification for the exorbitant budget increases and attempt to control Remediation Costs. The Buyers and Sage ignored all of Sellers questions, comments and attempts to contain Remediation costs and changed the Scope of the Remediation without Sellers approvals.
14. During this same time in March/April of 2017, Bill Lovett of Toll mentioned several times to Sellers that he had a business partner that would be interested in purchasing the Retail Unit in the event that Sellers could not meet its obligations to pay the Remediation costs beyond the \$1.4 million or \$2.5 million thresholds as provided in the Agreement.
15. I viewed these statements made by Bill Lovett of Toll to me and others in my presence as thinly veiled threats to bring in other interested parties and subsequent unapproved Remediation Budget escalations as an intentional and unfair breach the contractual rights of the Sellers by deliberately inflating the Remediation Budget to a level where Toll knew or believed Sellers could not pay for such costs thus forcing Sellers to give up its Option-to-Buy the Retail Unit space.
16. Sellers have since learned through preliminary documentation including emails provided in discovery that Toll has an equity partner, namely The Davis Companies ("Davis") who is not only an equity partner in the Belmont Cushing Village project but also an equity partner in several other developments.
17. The Sellers reasonably believe that Davis was and still is interested in purchasing the Retail Unit space if the Sellers are unable or unwilling to exercise the option by paying out the exorbitant and unjustified costs for the Remediation Budget demanded by the Defendants.
18. The Sellers are also aware that Davis has been interested in the Retail Space since the Sellers had met with and previously considered working with Davis in a joint venture before it decided to sell the property to Toll and retain its option to buy the Retail Space from Toll. The Sellers believed that Davis always wanted a much larger interest (if not the entire interest in the Cushing Village development) than SLP was willing to sell and thus it did not consummate a joint venture partnership with Davis.

19. The Sellers have always planned to rely on conventional financing for costs associated with remediation and construction costs in order to exercise their option to purchase the Retail Space. Based upon standard industry lending ratios, SLP and related companies have adequate equity to borrow the money to pay reasonable construction, environmental and leasing costs to exercise the Option according to conversations with numerous lenders and financial brokers.
20. The Sellers have retained numerous professional mortgage brokers and sought conventional financing for short and long term financing to pay for legitimate, environmental Remediation costs and to exercise its Option to buy back the Retail Unit Space.
21. Over the past 12-18 months since the Closing, Sellers have repeatedly requested basic information from Toll on the lease space including but not limited to simply knowing when it expected the lease space to become available for build out and tenant improvements.
22. Toll continually and deliberately has refused to provide any detailed information responsive to SLP basic questions regarding lease space and cooperation despite numerous written requests from both Sellers and their counsel over the past twelve (12) months.
23. As a result of the lack of cooperation in providing even the most fundamental and basic lease information requested by SLP, Sellers have lost potential tenants including anchor tenants that it has negotiated with in good faith and had expected those tenants to enter notices of intent or contracts to lease the Retail space, thus, suffering reasonably expected profits and the ability to use these prospective leases to secure short and long term financing.
24. On or about April 2, 2018, the Buyers presented an invoice (the "Invoice") to Mr. Christopher Starr in his capacity as Manager of a group of Limited Liability Companies (LLCs) including Smith Legacy Partners Series LLC. The invoice total was \$2,211,016.65 and the description was "Remediation costs in excess of Upset Threshold." Toll demanded payment of the invoice within thirty days of the invoice date (April 2, 2018). Please see the "Invoice," attached as Exhibit "1" to this Affidavit
25. According to my expert's review of the April 2, 2018 invoice, there are a myriad of reasons why the alleged Remediation costs are patently wrong, are not actual Remediation Costs as defined by the Purchase Agreement and law, are excessive, incorrectly accounted, and add up to far less than alleged or surpass the \$2.5 Million threshold. If the \$3,696,158.86 in overbillings cited by Mr. Curtis are deducted from the purported Invoice of \$4,711,016.65, the actual costs of Remediation through 1/31/18 total \$1,014,857.79, which is only 21.5% of the invoiced cost. Toll projects that an additional \$2,938,625.72 will be needed to be complete the Remediation. If these projected future costs are as inflated as the invoiced costs, then the true projected costs

would be \$631,804.53. Taking the actual Remediation costs as of January 31, 2018 added to the true projected costs then the total Remediation should cost \$1,646,662.32, which is well below the Upset Threshold. Therefore, Sellers do not owe Defendants any monies at this time and the Defendants can wait until the Retail Space is completed to pay the Remediation Costs as part of the Retail Unit Option costs per the Agreement.

26. However, I am also deeply concerned that, if these overbillings in the purported Invoice are ignored now or in the future, SLP could be considered a party to fraud against the Commonwealth of Massachusetts as these costs could be presented by the Defendants as Brownfield Remediation Costs and potentially be incorporated into a Brownfields Tax Credit application under the Agreement. SLP cannot stand idly by and allow this type of scheme to happen, despite the fact that SLP could be beneficiary of a large portion of these tax credits issued by the Massachusetts Department of Revenue, in accordance with the P&S agreement.
27. These highly suspect and unjustified Remediation Costs have been explained in detail by my environmental remediation expert, James Curtis, PE, LSP in his Affidavit which is incorporated by reference. (See Affidavit of James Curtis dated April 26, 2018)
28. Moreover, as a result of the lack of basic cooperation by Defendants, the stigma of the law suit, its impact on the collateral value, and the unknown and skyrocketing Remediation Costs, the Plaintiffs have been unable to secure short-term conventional financing to pay the amount demanded under the Invoice.
29. The Plaintiffs have also suffered significant economic damages by the Defendants attempts to extract outrageous and unjustified environmental Remediation costs due to its deliberate, unfair and deceptive conduct and mismanagement of the environmental remediation.
30. In addition, the Plaintiffs have lost large, prospective anchor tenants and other perspective smaller tenants due to the Defendants' conduct. The grossly escalating environmental Remediation costs, loss of prospective tenants and unfair and deceptive conduct by the Defendants have caused most if not all traditional and conventional lenders not to commit to financing.
31. Sellers have been presented with unconventional and unjustified financing terms by manipulative hard money lenders. To date, despite SLP's diligent efforts, Plaintiffs have been unable to identify a legitimate funding source that will finance the payment demanded by Toll under commercially reasonable terms.
32. The Plaintiffs do not have sufficient liquid assets to pay for grossly exaggerated and exorbitant Remediation costs presented by the Defendants in the form of a very suspect Remediation Invoice, which it expects Sellers to pay on or before May 2, 2018 to preserve their rights to purchase the Retail Unit space when the Retail Space become due for occupancy.



33. The Plaintiffs have also suffered damages by the Defendants attempts to extract outrageous and unjustified environmental Remediation costs due to its deliberate, unfair and deceptive conduct and mismanagement of the environmental remediation.
34. If the Plaintiffs lose their ability to exercise the Retail Option, by failing to pay the exorbitant Remediation cost overruns (which it should not have to pay) it will lose the net value of the Retail Option of \$24M to \$28M. This net Retail Option value has been revised based on updated market rent estimates provided by our leasing agents, which is materially higher than the valuation included in Plaintiffs' Interrogatory Answers to Defendants. (See Exhibit "2")
35. These projected net lease profits are supported by Plaintiffs' expert real estate leasing and financial brokers which are expected to testify based on current and projected real estate comparables at the time of trial.

I swear under pains and penalties of perjury that the foregoing statements of facts are true and accurate to the best of my personal knowledge.



Christopher Starr, Managing Member  
Starr Capital Partners, LLC  
Smith Legacy Partners Series, LLC  
Smith Legacy Partners II, LLC  
505-507 Common Street LLC  
527 Common Street, LLC

## EXHIBIT 1

Belmont Residential LLC  
250 Gibraltar Road  
Horsham, PA 19044

April 2, 2018

**VIA Electronic Mail (chrisstarr123@gmail.com) and Overnight UPS**

Starr Capital Partners, LLC, Smith Legacy Partners Series, LLC,  
Smith Legacy Partners II, LLC, 505-5-7 Common Street, and  
527 Common Street, LLC  
Attn: Christopher L. Starr, Manager  
6 Littlefield Road, Acton, MA 01720

**Re: Agreement of Sale dated March 14, 2016 (as amended, the "Agreement") with respect to property in Belmont, Massachusetts between Starr Capital Partners, LLC, Smith Legacy Partners Series, LLC, Smith Legacy Partners II, LLC, 505-5-7 Common Street, and 527 Common Street, LLC (collectively, "Seller") and Belmont Residential LLC ("Buyer")**


Mr. Starr:

Pursuant to Section 26(b)(3) of the Agreement, Seller is hereby advised that the cost of Remediation of Existing Environmental Conditions and any Unknown Conditions currently exceeds the \$2,500,000 Upset Threshold as confirmed by the enclosed materials.

If Seller fails to pay the actual amount of all Remediation costs in excess of the Upset Threshold as such costs are incurred and billed to Seller, the Seller will forfeit its right to purchase the Retail Unit under Section 26 of the Agreement.

As set forth in the enclosed invoice, the current costs of Remediation in excess of the Upset Threshold are Two Million Two Hundred Eleven Thousand Sixteen and 65/100 dollars (\$2,211,016.65), with payment being due within thirty (30) days.

The enclosed media contains supporting documentation.

Belmont Residential LLC  
By: Toll Apartments, LP  
By: Toll Apartments GP, LLC  
By:   
Jeffrey M. Calcagni  
Vice President

cc: Rubin & Rudman LLP, Attn: Robert A. Fasanella and Michael Novaria via e-mail and overnight UPS

**Belmont Residential LLC**

**INVOICE**

250 Gibraltar Road  
Horsham, PA 19044  
Phone 215/938-8000

**INVOICE #:** 2018-01  
**DATE:** 04/02/18

**TO**  
Starr Capital Partners, LLC, Smith Legacy Partners Series,  
LLC, Smith Legacy Partners II, LLC, 505-5-7 Common  
Street, and 527 Common Street, LLC  
6 Littlefield Road, Acton, MA 01720  
Attn: Christopher L. Starr, Manager

Description	Amount
Remediation costs in excess of Upset Threshold	\$2,211,016.65

<b>Total</b>	<b>\$2,211,016.65</b>
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Make all checks payable to Belmont Residential LLC  
Payment is due within 30 days of the invoice date.

# **Cushing Village Project Remediation Costs**

**April 2, 2018**

**MARCUM**  
ACCOUNTANTS ▲ ADVISORS

Arrowood LLP - Toll Brothers  
Invoice Summary

Exhibit 1

(US\$)

Remediation Overruns - Known Conditions

Remediation of Existing Environmental Conditions as of 01/31/18	\$ 4,711,016.65 [a]
Less: Agreement of Sale Remediation Threshold	<u>1,441,000.00 [b]</u>
Remediation Overruns - Known Conditions	<u>\$ 3,270,016.65</u>

Remediation Overruns - Known Conditions Exceeding Upset Threshold

Remediation of Existing Environmental Conditions as of 01/31/18	\$ 4,711,016.65 [a]
Less: Agreement of Sale Upset Threshold	<u>2,500,000.00 [c]</u>
Remediation Overruns - Known Conditions Exceeding Upset Threshold	<u>\$ 2,211,016.65</u>

Notes:

[a] Refer to Exhibit 2

[b] Refer to Agreement of Sale dated March 14, 2016 "Agreement of Sale.pdf" page 28 section 26(b)(2)

[c] Refer to Agreement of Sale dated March 14, 2016 "Agreement of Sale.pdf" page 28 section 26(b)(3)

**Arrowood LLP - Toll Brothers  
Remediation Summary**

**Exhibit 2**

<b>Category</b>	<b>Amount Invoiced to TB [a]</b>	<b>Non-Remediation Amount</b>	<b>Remediation Amount</b>
Soil Disposal - Landfill	\$ 1,520,451.14	\$ -	\$ 1,520,451.14
Soil Transportation - Landfill		<i>[combined with above]</i>	
Professional Fees	1,032,893.89	37,136.19	995,757.70 [b]
On-Site Soil Treatment	569,150.00	-	569,150.00
Excavation	45,979.62	-	45,979.62
Dewatering	690,552.45	502,887.12	187,665.33 [c]
Town of Belmont	9,662.37	-	9,662.37
F Listed Removal	702,717.49	-	702,717.49
Delay Claim	679,633.00	-	679,633.00
<b>Total</b>	<b>\$ 5,251,039.96</b>	<b>\$ 540,023.31</b>	<b>\$ 4,711,016.65</b>

**Notes:**

[a] Refer to Exhibit 3.

[b] "As-Needed Consulting Services" invoiced by Sage were excluded. Refer to Exhibit 5.1.

[c] Non-Environmental dewatering cost invoiced by Sage were excluded. Refer to Exhibit 5.2.

**Arrowood LLP - Toll Brothers  
Reconciliation Summary**

**Exhibit 3**

Category	Amount Invoiced to TB		Amount Paid by TB [a]	Amount Not Yet Paid	Amount Per Projection [b]	Amount To Complete	
Soil Disposal - Landfill	\$ 1,520,451.14	[c]	\$ 1,520,451.14	\$ -	\$ 1,929,150.00	\$ 408,698.86	[d]
Soil Transportation - Landfill	<i>[combined]</i>	[d]	<i>[combined with above]</i>		<i>[combined with above]</i>		[d]
Professional Fees	1,032,893.89	[e]	1,032,893.89	-	1,338,931.38	306,037.49	[f]
On-Site Soil Treatment	569,150.00	[g]	569,150.00	-	569,150.00	-	
Excavation	45,979.62	[h]	45,979.62	-	114,333.00	68,353.38	
Dewatering	690,552.45	[i]	690,552.45	-	708,782.62	18,230.17	[j]
Town of Belmont	9,662.37	[k]	9,662.37	-	9,662.37	-	[l]
F Listed Removal	702,717.49	[m]	702,717.49	-	2,300,000.00	1,597,282.51	
Delay Claim	679,633.00	[n]	-	679,633.00	679,633.00	-	[o]
Total	<u>\$ 5,251,039.96</u>		<u>\$ 4,571,406.96</u>	<u>\$ 679,633.00</u>	<u>\$ 7,649,642.37</u>	<u>\$ 2,398,602.41</u>	

**Notes:**

- [a] Refer to Exhibit 6
- [b] Refer to Toll Brothers Summary Projection "Budget break down 1.29.18.xlsx"
- [c] Refer to Exhibit 4.1
- [d] Total soil removal cost per Toll Brother Summary Projection includes both "Soil Disposal - Landfill" and "Soil Transportation - Landfill"
- [e] Refer to Exhibit 4.3. Professional Fees total \$1,556,676.51. However, this amount includes dewatering costs of \$523,782.62 which were identified by the vendor. Refer to Exhibit 5.2. These costs were excluded from the Professional Fees category and included in the Dewatering category.
- [f] As indicated in note 'e' above, the Professional Fees category includes additional Dewatering costs invoiced by Sage. The projected Professional Fees amount of \$1,862,714 was therefore reduced by the invoiced dewatering costs of \$523,782.62. No additional adjustments were made to projected Professional Fees.
- [g] Refer to Exhibit 4.4
- [h] Refer to Exhibit 4.5
- [i] Refer to Exhibit 4.6. Dewatering totals \$166,769.83. However as indicated in note 'e' above, the Professional Fees category included dewatering costs of \$523,782.62 which were identified by the vendor. Refer to Exhibit 5.2. These costs were excluded from the Professional Fees category and included in the Dewatering category.
- [j] As indicated in note 'i' above, the Dewatering category excludes additional Dewatering costs invoiced by Sage. The projected Dewatering amount of \$185,000 was therefore increased by the invoiced dewatering costs of \$523,782.62. No additional adjustments were made to projected Dewatering.
- [k] Refer to Exhibit 4.7
- [l] The Town of Belmont category was not separately stated and therefore the total amount was added as a projected amount with full completion.
- [m] Refer to Exhibit 4.8
- [n] Refer to Exhibit 4.9
- [o] The delay claim cost was negotiated subsequent to the most recent projected amount of \$875,348.24. Therefore the projected amount was revised to the actual amount of \$679,633.



**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Soil Disposal**

**Exhibit 4.1**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments [a]
Nauset	02-108/02-109	xxxxxxxx132	05/31/17	WL French	\$ 12,003.98	Soil Disposal
Nauset	02-108/02-109	Draw #5		WL French	21,745.88	Soil Disposal
Nauset	02-108/02-109			WL French	23,147.24	Soil Disposal
Nauset	02-108/02-109			WL French	12,026.70	Soil Disposal
Nauset	02-108/02-109			WL French	12,886.01	Soil Disposal
Nauset	02-108/02-109			WL French	63,600.40	Soil Disposal
Nauset	02-108/02-109			WL French	2,631.75	Soil Disposal
Nauset	02-108/02-109			WL French	9,101.93	Soil Disposal
Nauset	02-108/02-109			Jackson Lumber	247.99	Miscellaneous
Nauset	02-108/02-109			Pro Tool	663.00	Miscellaneous
Nauset	02-108/02-109			Pro Tool	663.00	Miscellaneous
Nauset	02-108/02-109	xxxxxxxx170	06/30/17	WL French	25,789.22	Soil Disposal
Nauset	02-108/02-109	Draw #6		WL French	8,251.74	Soil Disposal
Nauset	02-108/02-109			WL French	2,798.06	Soil Disposal
Nauset	02-108/02-109			WL French	17,096.04	Soil Disposal
Nauset	02-108/02-109			WL French	14,264.25	Soil Disposal
Nauset	02-108/02-109			WL French	35,099.51	Soil Disposal
Nauset	02-108/02-109			WL French	7,300.65	Soil Disposal
Nauset	02-108/02-109			WL French	19,575.58	Soil Disposal
Nauset	02-108/02-109			WL French	13,799.19	Soil Disposal
Nauset	02-108/02-109			WL French	1,081.85	Soil Disposal
Nauset	02-108/02-109			WL French	7,724.74	Soil Disposal
Nauset	02-108/02-109			WL French	4,122.41	Soil Disposal
Nauset	02-108/02-109			Pro Tool	663.00	Miscellaneous
Nauset	02-108/02-109	xxxxxxxx193	07/31/17	WL French	13,772.85	Soil Disposal
Nauset	02-108/02-109	Draw #7		WL French	15,928.44	Soil Disposal
Nauset	02-108/02-109			WL French	69,787.56	Soil Disposal
Nauset	02-108/02-109			WL French	17,128.33	Soil Disposal
Nauset	02-108/02-109	xxxxxxxx231	08/31/17	WL French	60,986.61	Soil Disposal
Nauset	02-108/02-109	Draw #8		WL French	52,788.02	Soil Disposal
Nauset	02-108/02-109			WL French	27,705.71	Soil Disposal
Nauset	02-108/02-109			WL French	17,096.04	Soil Disposal
Nauset	02-108/02-109			WL French	99,235.98	Soil Disposal
Nauset	02-108/02-109			WL French	6,047.25	Soil Disposal

**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Soil Disposal**

**Exhibit 4.1**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments [a]
Nauset	02-108/02-109			WL French	2,798.06	Soil Disposal
Nauset	02-108/02-109			WL French	39,849.62	Soil Disposal
Nauset	02-108/02-109			WL French	115,095.09	Soil Disposal
Nauset	02-108/02-109			WL French	29,114.51	Soil Disposal
Nauset	02-108/02-109			WL French	900.00	Soil Disposal
Nauset	02-108/02-109			WL French	15,713.45	Soil Disposal
Nauset	02-108/02-109	xxxxxxx245	09/30/17	WL French	10,707.37	Soil Disposal
Nauset	02-108/02-109	Draw #9		WL French	9,710.40	Soil Disposal
Nauset	02-108/02-109			WL French	13,516.34	Soil Disposal
Nauset	02-108/02-109			WL French	75,230.87	Soil Disposal
Nauset	NA	xxxxxxx257	10/31/17	WL French	244,368.26	Soil Disposal
Nauset	NA	Draw #10		Nauset	9,775.58	Soil Disposal
Nauset	NA	xxxxxxx273	11/30/17	WL French	240,219.01	Soil Disposal
Nauset	NA	Draw #11		Nauset	9,607.35	Soil Disposal
Nauset	NA	xxxxxxx319	12/31/17	WL French	6,099.67	Soil Disposal
Nauset	NA	Draw #12		Nauset	984.65	Soil Disposal
Total					<u>\$ 1,520,451.14</u>	

Note:

[a] As indicated by Toll Brothers management.

Arrowood LLP - Toll Brothers  
Invoiced to Toll Brothers - Soil Transportation

Exhibit 4.2

Vendor	Cost Code	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments
<i>[combined with Soil Disposal - Landfill]      Refer to Exhibit 4.1</i>						

**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Professional Fees**

**Exhibit 4.3**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments [a]
Sage	60-100	14867	12/31/16	NA	\$ 32,577.13	Professional Service
Sage	60-100	14940	01/31/17	NA	46,897.91	Professional Service
Sage	60-100	15020	02/28/17	NA	16,677.79	Professional Service
Sage	60-100	15096	03/31/17	NA	165,388.66	Professional Service
Sage	60-100	15175	04/30/17	NA	121,116.11	Professional Service
Sage	60-100	15257	05/31/17	NA	117,578.76	Professional Service
Sage	60-100	15347	06/30/17	NA	135,997.02	Professional Service
Sage	60-100	15426	07/31/17	NA	94,858.51	Professional Service
Sage	60-100	15428	07/31/17	NA	40,451.17	Professional Service
Sage	60-100	15499	08/31/17	NA	103,296.40	Professional Service
Sage	60-100	15509	08/31/17	NA	34,447.58	Professional Service
Sage	60-100	15582	09/30/17	NA	87,559.44	Professional Service
Sage	60-100	15595	09/30/17	NA	44,135.47	Professional Service
Sage	60-100	15648	10/31/17	NA	76,086.91	Professional Service
Sage	60-100	15678	10/31/17	NA	42,554.13	Professional Service
Sage	60-100	15765	11/30/17	NA	67,297.49	Professional Service
Sage	60-100	15768	11/30/17	NA	57,079.27	Professional Service
Sage	60-100	15861	12/31/17	NA	82,533.37	Professional Service
Sage	60-100	15862	12/31/17	NA	49,203.11	Professional Service
Sage	60-100	15928	01/31/18	NA	64,618.66	Professional Service
Sage	60-100	15948	01/31/18	NA	76,321.62	Professional Service
Total					<u>\$ 1,556,676.51</u>	

Note:

[a] As indicated by Toll Brothers management.

**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Soil Treatment**

**Exhibit 4.4**

<b>Vendor</b>	<b>Cost Code [a]</b>	<b>Invoice Number</b>	<b>Invoice Date</b>	<b>Subcontractor</b>	<b>Invoice Amount</b>	<b>Comments</b>
Strategic Environmental Services	60-600	17-0159-1	05/19/17	NA	\$ 569,150.00	
Total					\$ 569,150.00	

Note:

[a] As indicated by Toll Brothers management.

**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Excavation**

**Exhibit 4.5**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments [a]
Nauset	02-108/02-109	xxxxxxxx73	03/31/17	Baystate Engineering	\$ 12,858.00	Excavation
Nauset	02-108/02-109	Draw #3		Baystate Engineering	1,012.00	Excavation
Nauset	02-108/02-109			Pro Tool	884.00	Miscellaneous
Nauset	02-108/02-109			Pro Tool	110.50	Miscellaneous
Nauset	02-108/02-109			Pro Tool	663.00	Miscellaneous
Nauset	02-108/02-109			Pro Tool	884.00	Miscellaneous
Nauset	02-108/02-109			Pro Tool	884.00	Miscellaneous
Nauset	02-108/02-109	xxxxxxxx170	06/30/17	Baystate Engineering	1,551.00	Excavation
Nauset	02-108/02-109	Draw #6		Baystate Engineering	1,188.00	Excavation
Nauset	02-108/02-109	xxxxxxxx193	07/31/17	Baystate Engineering	3,333.00	Excavation
Nauset	02-108/02-109	Draw #7		Pro Tool	754.59	Miscellaneous
Nauset	02-108/02-109			Pro Tool	663.00	Miscellaneous
Nauset	02-108/02-109			Baystate Engineering	3,333.00	Excavation
Nauset	02-108/02-109			Safety Unlimited	234.50	Miscellaneous
Nauset	02-108/02-109	xxxxxxxx231	08/31/17	Baystate Engineering	1,969.00	Excavation
Nauset	02-108/02-109	Draw #8		Pro Tool	91.59	Miscellaneous
Nauset	02-108/02-109			Baystate Engineering	1,034.00	Excavation
Nauset	02-108/02-109			Pro Tool	663.00	Miscellaneous
Nauset	NA	xxxxxxxx273	11/30/17	Nauset	13,869.44	Excavation
Total					<u>\$ 45,979.62</u>	

Note:

[a] As indicated by Toll Brothers management.

**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Dewatering**

**Exhibit 4.6**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments [a]
Griffin Dewatering	NA	610053	04/25/17	NA	\$ 127,939.00	Dewatering well drilling
Griffin Dewatering	NA	610058	06/08/17	NA	8,500.00	Dewatering equipment rental
Griffin Dewatering	NA	610063	07/12/17	NA	11,500.00	Dewatering equipment rental
Griffin Dewatering	NA	610068	08/23/17	NA	8,500.00	Dewatering equipment rental
Griffin Dewatering	NA	610070	09/26/17	NA	8,500.00	Dewatering equipment rental
Nauset	02-108/02-109	xxxxxxxx231	08/31/17	Belmont Light	1,647.02	Electric for dewatering
Nauset	02-108/02-109	Draw #8	08/31/17	Pro Tool	183.81	Miscellaneous
Total					<u>\$ 166,769.83</u>	

Note:

[a] As indicated by Toll Brothers management.

**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Town of Belmont**

**Exhibit 4.7**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments [a]
Town of Belmont	53-101	2017-01	02/23/17	NA	\$ 3,000.00	Reimbursement for Town LSP services
Nauset	02-108/02-109	xxxxxxxx170	06/30/17	Town of Belmont	3,304.85	Permits
Nauset	02-108/02-109	Draw #6		Town of Belmont	2,336.62	Permits
Nauset	02-108/02-109	xxxxxxxx231	08/31/17	Town of Belmont	1,020.90	Permits
Total					<u>\$ 9,662.37</u>	

Note:

[a] As indicated by Toll Brothers management.



**Arrowood LLP - Toll Brothers**  
**Invoiced to Toll Brothers - Soil Disposal**

**Exhibit 4.8**

Vendor	Cost Code [a]	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments [a]
Nauset	NA	xxxxxxx319	12/31/17	WL French	\$ 702,717.49	Soil Disposal
Total					<u>\$ 702,717.49</u>	

Note:

[a] As indicated by Toll Brothers management.

Arrowood LLP - Toll Brothers  
Invoiced to Toll Brothers - Delay Claim

Exhibit 4.9

Vendor	Cost Code	Invoice Number	Invoice Date	Subcontractor	Invoice Amount	Comments
Nauset	NA	26R	02/07/18	NA	\$ 679,633.00	
Total					<u>\$ 679,633.00</u>	

**Arrowood LLP - Toll Brothers  
Adjustment - Professional Fees**

**Exhibit 5.1**

Vendor	Invoice Number	Invoice Date	Adjustment Amount [a]	Comments
Sage	14867	12/31/16	\$ 3,323.75	As-Needed Consulting Services
Sage	14940	01/31/17	7,417.24	As-Needed Consulting Services
Sage	15020	02/28/17	3,045.29	As-Needed Consulting Services
Sage	15096	03/31/17	4,942.86	As-Needed Consulting Services
Sage	15175	04/30/17	1,132.50	As-Needed Consulting Services
Sage	15257	05/31/17	5,190.00	As-Needed Consulting Services
Sage	15347	06/30/17	3,967.50	As-Needed Consulting Services
Sage	15426	07/31/17	5,598.30	As-Needed Consulting Services
Sage	15428	07/31/17	-	
Sage	15499	08/31/17	797.50	As-Needed Consulting Services
Sage	15509	08/31/17	-	
Sage	15582	09/30/17	326.25	As-Needed Consulting Services
Sage	15595	09/30/17	-	
Sage	15648	10/31/17	615.00	As-Needed Consulting Services
Sage	15678	10/31/17	-	
Sage	15765	11/30/17	210.00	As-Needed Consulting Services
Sage	15768	11/30/17	-	
Sage	15861	12/31/17	435.00	As-Needed Consulting Services
Sage	15862	12/31/17	-	
Sage	15928	01/31/18	135.00	As-Needed Consulting Services
Sage	15948	01/31/18	-	
Total			<u>\$ 37,136.19</u>	

**Note:**

[a] "As-Needed Consulting Services" excluded at the direction of Toll Brothers management.

**Arrowood LLP - Toll Brothers  
Adjustment - Dewatering**

**Exhibit 5.2**

<b>Vendor</b>	<b>Description</b>	<b>Invoice Number [a]</b>	<b>Total Amount</b>	<b>Non-Environmental Amount [b]</b>	<b>Environmental Amount [b]</b>
Sage	Labor & Travel	All	\$ 227,396.84	\$ 227,396.84	\$ -
Sage	Dewatering Well Installation	All	9,905.63	9,905.63	-
Sage	Frac Tank Rentals	All	42,460.35	42,460.35	-
Sage	Filter Rental & Media	All	163,375.01	163,375.01	-
Sage	Pumps, Hoses & Miscellaneous Expendables	All	40,046.11	40,046.11	-
Sage	Hazardous Waste Carbon Disposal	All	20,895.50	-	20,895.50
Sage	Testing	All	19,703.18	19,703.18	-
<b>Total</b>			<b>\$ 523,782.62</b>	<b>\$ 502,887.12</b>	<b>\$ 20,895.50</b>

Notes:

[a] Dewatering costs were identified within all Sage invoices by the vendor.

[b] Based on representation from the licensed site professional, all dewatering cost components contribute to environmental remediation as well as construction. However, only carbon disposal can be specifically attributed to remediation. For the sake of conservatism, only the carbon disposal costs were included.

Arrowood LLP - Toll Brothers  
Invoices and Payments Analysis

Exhibit 6

Vendor	Subcontractor	Per Invoice [a]			Check Number [b]	Amount Paid [b]	Comments
		Invoice Date	Invoice Number	Invoice Amount			
Sage							
Sage	NA	12/31/16	14867	\$ 32,577.13	02351163	\$ 32,577.13	
Sage	NA	01/31/17	14940	46,897.91	02367269	46,897.91	
Sage	NA	02/28/17	15020	16,677.79	02368872	16,677.79	
Sage	NA	03/31/17	15096	165,388.66	02377138	165,388.66	
Sage	NA	04/30/17	15175	121,116.11	02387840	121,116.11	
Sage	NA	05/31/17	15257	117,578.76	02387840	117,578.76	
Sage	NA	06/30/17	15347	135,997.02	02395175	135,997.02	
Sage	NA	07/31/17	15426	94,858.51	02406186	94,858.51	
Sage	NA	07/31/17	15428	40,451.17	02407887	40,451.17	
Sage	NA	08/31/17	15499	103,296.40	02411447	103,296.40	
Sage	NA	08/31/17	15509	34,447.58	02411447	34,447.58	
Sage	NA	09/30/17	15582	87,559.44	02420960	87,559.44	
Sage	NA	09/30/17	15595	44,135.47	02420960	44,135.47	
Sage	NA	10/31/17	15648	76,086.90	02426805	76,086.90	"Consulting with Davis" excluded by Toll Brothers
Sage	NA	10/31/17	15678	42,554.13	02426805	42,554.13	
Sage	NA	11/30/17	15765	67,297.49	02437602	67,297.49	
Sage	NA	11/30/17	15768	57,079.27	02437602	57,079.27	
Sage	NA	12/31/17	15861	82,533.37	02441661	82,533.37	
Sage	NA	12/31/17	15862	49,203.11	02441661	49,203.11	
Sage	NA	01/31/18	15928	64,618.66	02448821	64,618.66	
Sage	NA	01/31/18	15948	76,321.62	02448821	76,321.62	
Town of Belmont							
Town of Belmont	NA	02/23/17	2017-01	3,000.00	02374709	3,000.00	Check request for Belmont for Waypoint Environmental Consulting Services
Strategic Environmental Services							
Strategic Environmental Services		05/19/17	17-0159-1	569,150.00	02433785	569,150.00	

Arrowood LLP - Toll Brothers  
Invoices and Payments Analysis

Exhibit 6

Vendor	Subcontractor	Per Invoice [a]			Check Number [b]	Amount Paid [b]	Comments
		Invoice Date	Invoice Number	Invoice Amount			
Griffin Dewatering							
Griffin Dewatering	NA	04/25/17	610053	127,939.00	09899073 and 09899086	127,939.00	
Griffin Dewatering	NA	06/08/17	610058	8,500.00	09899073 and 09899086	8,500.00	
Griffin Dewatering	NA	07/12/17	610063	11,500.00	09899073 and 09899086	11,500.00	
Griffin Dewatering	NA	08/23/17	610068	8,500.00	09899073 and 09899086	8,500.00	
Griffin Dewatering	NA	09/26/17	610070	8,500.00	09930966	8,500.00	
Nauset							
Nauset	Baystate Engineering	03/31/17	20154400073	12,858.00	02372347	12,858.00	Draw #3
Nauset	Baystate Engineering	03/31/17	20154400073	1,012.00	02372347	1,012.00	Draw #3
Nauset	Pro Tool	03/31/17	20154400073	884.00	02372347	884.00	Draw #3
Nauset	Pro Tool	03/31/17	20154400073	110.50	02372347	110.50	Draw #3
Nauset	Pro Tool	03/31/17	20154400073	663.00	02372347	663.00	Draw #3
Nauset	Pro Tool	03/31/17	20154400073	884.00	02372347	884.00	Draw #3
Nauset	Pro Tool	03/31/17	20154400073	884.00	02372347	884.00	Draw #3
Nauset	WL French	05/31/17	20154400132	12,003.98	02391119	12,003.98	Draw #5
Nauset	WL French	05/31/17	20154400132	21,745.88	02391119	21,745.88	Draw #5
Nauset	WL French	05/31/17	20154400132	23,147.24	02391119	23,147.24	Draw #5
Nauset	WL French	05/31/17	20154400132	12,026.70	02391119	12,026.70	Draw #5
Nauset	WL French	05/31/17	20154400132	12,886.01	02391119	12,886.01	Draw #5
Nauset	WL French	05/31/17	20154400132	63,600.40	02391119	63,600.40	Draw #5
Nauset	WL French	05/31/17	20154400132	2,631.75	02391119	2,631.75	Draw #5
Nauset	WL French	05/31/17	20154400132	9,101.93	02391119	9,101.93	Draw #5
Nauset	Jackson Lumber	05/31/17	20154400132	247.99	02391119	247.99	Draw #5
Nauset	Pro Tool	05/31/17	20154400132	663.00	02391119	663.00	Draw #5
Nauset	Pro Tool	05/31/17	20154400132	663.00	02391119	663.00	Draw #5
Nauset	WL French	06/30/17	20154400170	25,789.22	02394855	25,789.22	Draw #6
Nauset	WL French	06/30/17	20154400170	8,251.74	02394855	8,251.74	Draw #6
Nauset	WL French	06/30/17	20154400170	2,798.06	02394855	2,798.06	Draw #6
Nauset	WL French	06/30/17	20154400170	17,096.04	02394855	17,096.04	Draw #6
Nauset	WL French	06/30/17	20154400170	14,264.25	02394855	14,264.25	Draw #6
Nauset	WL French	06/30/17	20154400170	35,099.51	02394855	35,099.51	Draw #6

**Arrowood LLP - Toll Brothers**  
**Invoices and Payments Analysis**

**Exhibit 6**

Vendor	Subcontractor	Per Invoice [a]			Check Number [b]	Amount Paid [b]	Comments
		Invoice Date	Invoice Number	Invoice Amount			
Nauset	WL French	06/30/17	20154400170	7,300.65	02394855	7,300.65	Draw #6
Nauset	WL French	06/30/17	20154400170	19,575.58	02394855	19,575.58	Draw #6
Nauset	WL French	06/30/17	20154400170	13,799.19	02394855	13,799.19	Draw #6
Nauset	WL French	06/30/17	20154400170	1,081.85	02394855	1,081.85	Draw #6
Nauset	WL French	06/30/17	20154400170	7,724.74	02394855	7,724.74	Draw #6
Nauset	WL French	06/30/17	20154400170	4,122.41	02394855	4,122.41	Draw #6
Nauset	Town of Belmont	06/30/17	20154400170	3,304.85	02394855	3,304.85	Draw #6
Nauset	Pro Tool	06/30/17	20154400170	663.00	02394855	663.00	Draw #6
Nauset	Baystate Engineering	06/30/17	20154400170	1,551.00	02394855	1,551.00	Draw #6
Nauset	Baystate Engineering	06/30/17	20154400170	1,188.00	02394855	1,188.00	Draw #6
Nauset	Town of Belmont	06/30/17	20154400170	2,336.62	02394855	2,336.62	Draw #6
Nauset	WL French	07/31/17	20154400193	13,772.85	02404306	13,772.85	Draw #7
Nauset	WL French	07/31/17	20154400193	15,928.44	02404306	15,928.44	Draw #7
Nauset	WL French	07/31/17	20154400193	69,787.56	02404306	69,787.56	Draw #7
Nauset	WL French	07/31/17	20154400193	17,128.33	02404306	17,128.33	Draw #7
Nauset	Baystate Engineering	07/31/17	20154400193	3,333.00	02404306	3,333.00	Draw #7
Nauset	Pro Tool	07/31/17	20154400193	754.59	02404306	754.59	Draw #7
Nauset	Pro Tool	07/31/17	20154400193	663.00	02404306	663.00	Draw #7
Nauset	Baystate Engineering	07/31/17	20154400193	3,333.00	02404306	3,333.00	Draw #7
Nauset	Safety Unlimited	07/31/17	20154400193	234.50	02404306	234.50	Draw #7
Nauset	WL French	08/31/17	20154400231	60,986.61	02413047	60,986.61	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	52,788.02	02413047	52,788.02	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	27,705.71	02413047	27,705.71	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	17,096.04	02413047	17,096.04	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	99,235.98	02413047	99,235.98	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	6,047.25	02413047	6,047.25	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	2,798.06	02413047	2,798.06	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	39,849.62	02413047	39,849.62	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	115,095.09	02413047	115,095.09	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	29,114.51	02413047	29,114.51	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	900.00	02413047	900.00	Draw #8Rev2
Nauset	WL French	08/31/17	20154400231	15,713.45	02413047	15,713.45	Draw #8Rev2
Nauset	Baystate Engineering	08/31/17	20154400231	1,969.00	02413047	1,969.00	Draw #8Rev2
Nauset	Pro Tool	08/31/17	20154400231	91.59	02413047	91.59	Draw #8Rev2
Nauset	Belmont Light	08/31/17	20154400231	1,647.02	02413047	1,647.02	Draw #8Rev2
Nauset	Pro Tool	08/31/17	20154400231	183.81	02413047	183.81	Draw #8Rev2
Nauset	Baystate Engineering	08/31/17	20154400231	1,034.00	02413047	1,034.00	Draw #8Rev2
Nauset	Pro Tool	08/31/17	20154400231	663.00	02413047	663.00	Draw #8Rev2



**Arrowood LLP - Toll Brothers  
Invoices and Payments Analysis**

**Exhibit 6**

Vendor	Subcontractor	Per Invoice [a]			Check Number [b]	Amount Paid [b]	Comments
		Invoice Date	Invoice Number	Invoice Amount			
Nauset	Town of Belmont	08/31/17	20154400231	1,020.90	02413047	1,020.90	Draw #8Rev2
Nauset	WL French	09/30/17	20154400245	10,707.37	02424421	10,707.37	Draw #9
Nauset	WL French	09/30/17	20154400245	9,710.40	02424421	9,710.40	Draw #9
Nauset	WL French	09/30/17	20154400245	13,516.34	02424421	13,516.34	Draw #9
Nauset	WL French	09/30/17	20154400245	75,230.87	02424421	75,230.87	Draw #9
Nauset	WL French	10/31/17	20154400257	244,368.26	02426512	244,368.26	Draw #10
Nauset	Various	10/31/17	20154400257	9,775.58	02426512	9,775.58	Draw #10
Nauset	WL French	11/30/17	20154400292	240,219.01	02435294	240,219.01	Draw #11R
Nauset	Various	11/30/17	20154400292	9,607.35	02435294	9,607.35	Draw #11R
Nauset	Various	11/30/17	20154400292	13,869.44	02435294	13,869.44	Draw #11R
Nauset	WL French	12/31/17	20154400319	6,099.67	02443257	6,099.67	Draw #12
Nauset	Various	12/31/17	20154400319	984.65	02443257	984.65	Draw #12
Nauset	WL French	12/31/17	20154400319	702,717.49	02443257	702,717.49	Draw #12
Nauset	NA	02/07/18	PCO 26R	679,633.00	NA	-	As of the issuance of this exhibit, payment was still in processing given the standard lag time for Toll Brothers in the ordinary course of business.
Total				<u>\$ 5,251,039.95</u>		<u>\$ 4,571,406.95</u>	

**Notes:**

[a] Refer to various vendor invoices provided by Toll Brothers management.

[b] Refer to various checks provided by Toll Brothers management. Note that in some instances multiple invoices were paid via one check.



## EXHIBIT 2

## Income Cap Value (Affidavit)

### Value of Option on Retail Space

*Calc Used in Interrogs*

#### Assumptions

Blended Rent (NNN)*	\$55.00	
Rentable Area (RSF)	37,500	
Cap Rate Range	4.70%	5.10%

#### Calculation of Net Option Value

	<u>High</u>	<u>Low</u>
Income-Cap Value of Stabilized Retail	\$43,882,978.72	\$40,441,176.47
Less Hard Costs	\$10,300,000.00	\$10,300,000.00
Less Remediation Costs	\$1,300,000.00	\$1,300,000.00
Less Soft Costs (incl. Toll Management Fee)	\$1,000,000.00	\$1,000,000.00
Less Tenant Improvement Allowance (\$40/RSF)	\$1,500,000.00	\$1,500,000.00
Less Leasing Fees (5% of 10Yr Rents)	\$800,000.00	\$800,000.00
Less SLP Management, Overhead & Contingency	\$500,000.00	\$500,000.00
Less Carrying Costs (4% for 1 Year)	\$600,000.00	\$600,000.00
UNDISCOUNTED OPTION VALUE	\$27,882,978.72	\$24,441,176.47

\*Based on maket rent estimates provided by leasing agent