

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

DESMOND LOWREY, On Behalf of Himself ) Civ. Action No.  
and All Others Similarly Situated, )  
 ) CLASS ACTION  
 )  
Plaintiff, )  
 )  
vs. ) COMPLAINT FOR VIOLATION OF THE  
 ) SECURITIES EXCHANGE ACT OF 1934  
 )  
TOLL BROTHERS, INC., BRUCE E. TOLL )  
and ROBERT I. TOLL, )  
 )  
Defendants. )  
 )  

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 ) DEMAND FOR JURY TRIAL

## **INTRODUCTION**

1. This is a securities class action on behalf of all purchasers – between 12/9/04 and 11/8/05 (the “Class Period”) – of the common stock of Toll Brothers, Inc. (the “Company” or “Toll Brothers”), a publicly owned and traded, New York Stock Exchange (“NYSE”) listed, home builder which specializes in building large, expensive homes. The defendants are Toll Brothers, Robert I. Toll (CEO) and Bruce E. Toll (Vice Chairman). These defendants made a series of false and misleading statements indicating that Toll Brothers’ business model, *i.e.*, developing expensive homes for a niche market of high-end buyers, was unique and thus immune from the adverse impact of rising interest rates and other negative macro-economic factors that appeared to be negatively impacting the home-building industry during 2004 and 2005. Defendants’ false and misleading statements drove Toll Brothers’ stock price from below \$25 per share in the fall of 2004 to a Class Period high of \$58.25 per share on 7/20/05. As the truth was revealed – namely, the actual deteriorating state of demand for Toll Brothers’ homes, its constrained and shrinking number of active selling communities, the insufficient inventory of lots for Toll Brothers to achieve 20% net income growth in 2006 and 2007, and the actual adverse impact of rising interest rates and negative macroeconomic trends on traffic to Toll Brothers communities and demand for its homes and thus its future prospects – Toll Brothers stock cratered from its \$58.25 per share Class Period high to as low as \$33.72 per share on 11/9/05, a 42% drop. This drop in the price of Toll Brothers stock, which was caused by the revelation of company-specific adverse information that had previously been misrepresented to or withheld from the market, proximately caused huge damages to investors who purchased Toll Brothers stock during the Class Period.

## **PARTIES**

2. Plaintiff Desmond Lowrey purchased the common stock of Toll Brothers at artificially inflated prices during the Class Period as detailed in the attached certification, and was damaged thereby.

3. Defendant Toll Brothers is a public corporation with its executive offices in Horsham, Pennsylvania. Toll Brothers builds and sells high-end, *i.e.*, expensive, homes. During the Class Period, Toll Brothers stock traded on the NYSE, a highly efficient market. Toll Brothers filed periodic public reports with the SEC. Toll Brothers regularly communicated with the investment community through press releases and had other communications with the financial press. Toll Brothers was followed by several securities analysts who wrote reports that were widely distributed.

4. (a) Defendant Robert I. Toll (“R. Toll”) is CEO and Chairman of Toll Brothers. During the Class Period, R. Toll sold shares of his Toll Brothers common stock for millions in insider trading proceeds.

(b) Defendant Bruce E. Toll (“B. Toll”) is Vice Chairman of Toll Brothers. During the Class Period, B. Toll sold shares of Toll Brothers stock for millions of dollars in insider trading proceeds.

(c) Defendants R. Toll and B. Toll are sometimes referred to herein as the “Individual Defendants.”

### **JURISDICTION AND VENUE**

5. The claims asserted in this complaint arise under and pursuant to §§10(b) and 20(a) of the Securities Exchange Act of 1934 (“1934 Act”) [15 U.S.C. §§78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. §240.10b-5]. Toll Brothers is headquartered in this district.

### **CLASS PERIOD STATEMENTS**

6. On 12/9/04, Toll Brothers issued a release officially reporting its 4thQ F04 and F04 results, stating:

Toll Brothers, Inc., the nation’s leading builder of luxury homes, today reported record fourth-quarter and fiscal-year-end results for earnings, revenues, contracts and backlog for the period ended October 31, 2004.

\* \* \*

Robert I. Toll, chairman and chief executive officer, stated:

\* \* \*

*“With demand outpacing supply in most of our affluent markets, we believe the 60,000 lots we now control represent a five- to six-year pipeline for continued growth. Since we plan to continue increasing our selling communities over the coming years, we believe we are positioned to produce net income and revenue growth of at least 20% in Fiscal 2006 and subsequent years.”*

7. On 12/9/04, Toll Brothers held a telephone conference call for analysts to discuss its business and its 4thQ F04 and F04 results. During the call, the following occurred:

**Robert Toll – Toll Brothers, Inc. – Chairman, CEO**

. . . With me are Joel Rassman, Chief Financial Officer [and] Joe Sicree, Chief Accounting Officer . . . . Before I begin I ask you to read the statement of forward-looking information in today’s release and on our website. I caution you that many statements on this call are based on assumptions about the economy, world events, housing, financial markets, weather and other factors obviously beyond our control and that could significantly affect future results. . . .

*. . . Demand for our luxury homes remained tremendous in fiscal 2004 and has continued to this day.*

\* \* \*

*[W]e already have strong visibility . . . into the first quarter of ‘06.*

In answer to a question, R. Toll stated:

*I think our Company has the ability to double itself without entering any markets just by increasing its production in the various markets that we are in . . . . And I would guess that we could do that certainly within a three-year period. I don’t see any reason for us not to be able to hit 20 percent a year minimum; at least all signs seem to point in that direction.*

8. On 12/9/04, Dow Jones Newswire reported:

**Toll Brothers Sees Net Up 40% In 2005, 20% In 2006**

. . . Luxury home builder Toll Brothers posted record-breaking results in its fiscal 2004 fourth quarter, as revenue increased 62% and earnings climbed 93%. And Chairman and Chief Executive Robert Toll *said the run is far from over.*

*He’s predicting . . . at least 20% growth in fiscal 2006.*

9. On 12/9/04, Wachovia Securities issued a report on Toll Brothers based on the recent conference call and follow-up comments with R. Toll and with Joel Rassman (“Rassman”), Toll Brothers’ CFO. The report stated:

**Conference Call Color**

*. . . TOL reaffirmed its guidance of 20% net income growth in FY 2006.* Toll’s guidance is done on a bottom-up basis. Projections are done at the local level and rolled up into corporate projections. Corporate then analyzes each community’s projections based on local managements [sic] ability to deliver, local product, and local labor, instilling greater confidence in the company’s ability to meet and more often exceed its external targets.

10. On 12/9/04, JP Morgan issued a report on Toll Brothers based on the recent conference call and follow-up conversation with R. Toll and with Rassman. The report stated:

[T]he company . . . *reiterated 2006 guidance of 20%+ NI growth.*

11. On 12/10/04, BB&T Capital Markets issued a report on Toll Brothers based on the recent conference call and follow-up conversation with R. Toll and with Rassman. The report stated:

*Management continues to expect net income growth of at least 20% for 2006 and subsequent years.*

\* \* \*

*For the periods beyond 2005, management continues to expect to post net income growth of at least 20%.*

12. On 12/10/04, CS First Boston issued a report on Toll Brothers based on the recent conference call and follow-up conversation with R. Toll and with Rassman. The report stated:

- TOL . . . maintained its 20% growth outlook for FY06. . . .
- We believe TOL is one of the best-positioned companies to manage profitability in a rising rate environment given its focus on high-end buyers that are less dependent on affordability, its above average geographic profit diversification, and its less direct competition with other large, public builders.

13. On 12/10/04, Raymond James issued a report on Toll Brothers based on the recent conference call and follow up conversation with R. Toll and/or Rassman. The report stated:

***Management continues to expect 20% growth in revenues and earnings in FY06 and subsequent years.***

14. In late 12/04, Toll Brothers issued its F04 Annual Report for the year ended 10/31/04.

The report contained a letter signed by R. Toll, B. Toll and Zvi Barzilay which stated:

### **An Extraordinary Year With More To Come**

***Demand for luxury homes remained tremendous in Fiscal Year (FY) 2004 and has continued through the early part of our FY 2005. . . . Our revenues, contracts, and backlog increased in every region of the country. Investors took notice, as our stock price rose 74% from [\$18.42] per share at Fiscal Year End (FYE) 2003 to [\$32.00] per share as of this writing.***

***And the beat goes on! . . .***

. . . Our community count, which hit a record 220 at FYE 2004, should reach about 240 by FYE 2005. With that expansion ahead, we think that in FY 2006 we will achieve net income growth of at least 20%.

### **Fundamentals Drive Demand**

\* \* \*

For at least the past five or six years, it has been argued that a housing “bubble” has been created which is about to pop. ***We strongly disagree: we believe demand is being driven by fundamental demographics and home prices are rising due to imbalance between supply and demand.***

\* \* \*

### **Expanding The Brand By Staying Focused On Luxury**

***Our luxury brand continues to get stronger as demand accelerates. . . .***

. . . During tough economic times, affluent buyers are less impacted by a struggling economy, as our strong performance through the recent recession and stock market crash attests. ***And they are less affected by rising mortgage rates. . . . We believe it should be a long time before rates make a difference to our luxury home buyers.***<sup>1</sup>

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<sup>1</sup> Share and per-share prices have been adjusted for the Company’s two-for-one stock split in 7/05.

15. The positive statements, assurances and forecasts made between 12/9/04 and the issuance of Toll Brothers' F04 Annual Report were false and misleading when made. The true facts, which were known to or recklessly disregarded by the defendants, were that:

(a) the traffic in Toll Brothers' active selling communities had declined materially;

(b) demand for Toll Brothers' new homes was softening materially;

(c) the number of contracts Toll Brothers was actually signing for future sales/delivery of its homes was slowing;

(d) Toll Brothers was encountering increasing difficulties in bringing new active selling communities online;

(e) Toll Brothers' business model, *i.e.*, selling very expensive homes to a "niche" market of high-end buyers, did not make it immune from the adverse impact of rising interest rates or other adverse macroeconomic factors negatively impacting home-building/home-buying activity; and

(f) as a result of the foregoing, there was no basis in fact for the forecasts of "approximately" or "at least" 20% net income growth for Toll Brothers during either F06 or F07.

16. On 2/8/05, Toll Brothers preliminarily reported its 1stQ F05 results – the period ending 1/31/05. On 2/8/05, Toll Brothers held a conference call for analysts to discuss its business and its 1stQ F05 results. During this call the following occurred:

With me today are Joel Rassman, Chief Financial Officer [and] Joe Sicree, Chief Accounting Officer . . . Before I begin I ask you to read the statement on forward-looking information in today's release and on our website. I caution you many statements on this call are based on assumptions about the economy, world events, housing and financial markets, weather and other factors obviously beyond our control that could significantly affect future results.

\* \* \*

***[D]emand for our luxury homes remains very strong. . . . Therefore, we are very optimistic about a great start to fiscal 2006.***

In addition, we project our community count which now stands at a record 225, will reach about 240 by fiscal year end 2005. We have over 60,000 home sites under our control. ***This is a 5 to 6-year supply based on our historical pace of growth. We see a continuing and growing imbalance between increasing demand*** from growing numbers of affluent households, and a constrained supply of building lots due to antigrowth politics which slows the approval process. Therefore, we believe our land holdings position us for further growth and market share gains in the coming years.

17. On 2/23/05, Toll Brothers reported its 1stQ F05 results – the period ending 1/31/05 – via a release headlined and stating:

**Toll Brothers' Record 1st Qtr Net Income Rises 120% to \$110.2 Million . . .**

. . . Toll Brothers, Inc., the nation's leading builder of luxury homes, today reported record results for earnings, revenues, contracts and backlog for its first quarter ended January 31, 2005. . . .

Robert I. Toll, chairman and chief executive officer, stated: ***"We are enjoying strong pricing power and increasing profit margins as demand for luxury homes continues to outpace supply."***

\* \* \*

Robert Toll continued: ***"Continuing strong demand . . . and our growing portfolio of well-positioned communities in upscale markets all bode well for our future prospects. Based on these factors, as we have previously discussed, we believe fiscal 2006 will be another record year."***

" . . . In response to the widening gap between tight supply and growing demand, we continue to expand our pipeline of land under development. We now control over 63,000 home sites – a five-to-six year supply based on our historic pace of expansion. With this land, attractive demographics, our diversity of products and our highly respected brand name in the luxury market, ***we believe we are well-positioned for continued growth in the years ahead.***"

18. On 2/23/05, Toll Brothers held a conference call for analysts to discuss its business and its 1stQ F05 results. During this call the following occurred:

**Robert Toll – Toll Brothers – Chairman and Chief Executive Officer**

. . . With me today are Joel Rassman, Chief Financial Officer [and] Joe Sicee, Chief Accounting Officer . . . .

Before I begin, I ask you to read the statement on forward-looking information in today's release and on our Web site. I caution you that many statements on this call are based on assumptions about the economy, world events,

housing and financial markets, weather and other factors obviously beyond our control that could significantly affect future results.

\* \* \*

With this backlog, which already contains most of fiscal year '05 deliveries, *we are increasing our guidance for revenues and earnings . . . . We are enjoying strong pricing power and increasing profit margins as demand for luxury homes continues to outpace supply. Due to this demand . . . we believe fiscal 2006 will be another record year. . . .*

\* \* \*

*[W]e believe we're well positioned for continued growth in the years ahead.*

\* \* \*

**Lorraine Maikis – Merrill Lynch – Analyst**

. . . I just wanted to talk for a minute about 2006. I didn't see anything in the press release about reaffirming the 20 percent EPS growth. Is that still the case?

**Robert Toll – Toll Brothers – Chairman, CEO**

*Lorraine, I believe that we will certainly do, as we have said before, 20 percent on top of 40 percent. . . . My best guess currently is we will do somewhere between 18 and 22, so approximately 20, but in the last press release, I said at least 20, so I'm not as certain that I will do at least 20, but I believe it will do approximately 20.*

19. On 2/23/05, Dow Jones Newswire reported:

**Toll CEO Sees Net Growth of 60% In '05, 20% In '06**

*. . . Toll Brothers Inc. is on track to see earnings rise 60% in fiscal 2005 and about 20% in 2006, Chairman and Chief Executive Robert Toll said during a conference call Wednesday.*

*. . . He affirmed guidance of 20% earnings growth in 2006, which is tweaked slightly from previous projections of "at least 20%" growth.*

20. On 2/23/05, R. Toll was interviewed by Bloomberg. The following occurred:

SUZY: So . . . you crushed the first quarter of 2005 estimates. Obviously, also raising '05 guidance as well. . . . [Y]ou're also in the rare position to have visibility well into 2006, what do you see that far out?

ROBERT: Uh, we don't see any abatement. . . . So, I see nothing but good times for us.

21. The positive statements, assurances and forecasts made between 2/8/05-2/23/05 were false and misleading when made. The true facts, which were known to or recklessly disregarded by the defendants, were that:

(a) the traffic in Toll Brothers' active selling communities had declined materially;

(b) demand for Toll Brothers' new homes was softening materially;

(c) the number of contracts Toll Brothers was actually signing for future sales/delivery of its homes was slowing; and

(d) as a result of the foregoing, there was no basis in fact for the forecasts of "approximately" or "at least" 20% net income growth for Toll Brothers during either F06 or F07.

22. On 5/10/05, Toll Brothers issued a release reporting its 2ndQ F05 results and discussing the state of its business, which was headlined and stated:

**Toll Brothers' Record FY 2005 2nd Qtr Contracts Grow 38% to \$2.2 Billion vs. FY 2004 . . .**

. . . *Toll Brothers*, Inc., the nation's leading builder of luxury homes, today reported record second-quarter and six-month results for contracts, backlog and home building revenues for the period ended April 30, 2005.

\* \* \*

Robert I. Toll, chairman and chief executive officer, stated: "*Demand for luxury homes remains strong, and we continue to enjoy solid pricing power. Based on the pace of current demand and our record backlog, which now includes many deliveries stretching into the second quarter of FY 2006, we remain on track for what we believe will be . . . approximately 20% net income growth in FY 2006.*

"*. . . We believe this strong demand, coupled with our record backlog and the increase in our community count – from 205 a year ago to 227 this second quarter-end – will contribute to our growth in FY 2006.*

\* \* \*

"Our contracts rose in every region but the West Coast (California). *The decline in California was not due to a lack of demand, but rather to a lack of supply as we've sold out of several communities at a faster pace than we have been able to open up*

*new ones. We have a number of new sites in the approval pipeline that should increase our California community count in the coming year.*

“We currently control approximately 68,000 lots, compared to 58,000 one year ago, and continue to see attractive land buying opportunities in most markets. *We believe this lot position in affluent markets, which represents a five-to six year supply based on our historic pace of growth, positions us well for future growth.*”

23. On 5/10/05, Toll Brothers held a conference call for analysts to discuss its 2ndQ F05 results. During the call the following occurred:

**Robert Toll – Toll Brothers, Inc. – Chairman, Chief Executive Officer**

. . . With me is Joel Rassman Chief Financial Officer . . . .

Before I begin, I ask you to read the statement on forward-looking information in today’s release and on our website. I caution you that many statements during this call are based on assumptions of that economy, world events, housing, financial markets, revenue and other factors beyond our control that could significantly affect future results.

\* \* \*

*Demand for luxury homes remains strong, and we continued to enjoy strong pricing power. Based on the pace of current demand and our all-time record backlog, which now includes many deliveries stretching into the second quarter of fiscal your ‘06, we remain on track for . . . approximately 20% net income growth in fiscal year ‘06.*

24. On 5/10/05, JP Morgan issued a report on Toll Brothers based on the recent conference call and follow-up conversations with R. Toll and/or Rassman. The report stated:

*[M]anagement reaffirmed its . . . FY06 net income guidance of . . . 20% . . . .*

25. On 5/11/05, Credit Suisse First Boston issued a report on Toll Brothers based on the recent conference call and follow-up conversations with R. Toll and/or Rassman. The report stated:

- *TOL maintained its guidance of increasing net income [of] at least . . . 20% in FY06 based primarily on its current backlog, community count growth expectations and strong underlying demand.*

26. On 5/11/05, BB&T Capital Markets issued a report on Toll Brothers based on the recent conference call and follow-up conversations with R. Toll and/or Rassman. The report stated:

*With the positive demand management sees for its luxury homes . . . and the current pace of backlog, management reiterated its guidance for net income growth . . . [of] “approximately 20%” for FY’06.*

27. On 5/24/05, Rassman was interviewed on *Bloomberg* and the following occurred:

ERIN: . . . Recently you said profits could grow about 60% this year, 20% next year. First, talk to me a little bit about what explains the slowdown in that growth rate that you expect to see.

JOEL: Uh, I don’t think it’s a slowdown. It’s based on our increased acquisition of land that we uh implemented about two years ago and we expected that to pay off in increased deliveries, which it has. And now we’re growing at what has been our traditional pace of growth, about 20% plus a year.

28. On 5/26/05, Toll Brothers issued a release reporting its 2ndQ F05 results – the period ended 4/30/05 – which stated:

Toll Brothers, Inc. the nation’s leading builder of luxury homes, today reported record second-quarter and six-month results for earnings, contracts, revenues and backlog for the period ended April 30, 2005. The value of the company’s second-quarter contracts and backlog were the highest for any quarter in its history.

\* \* \*

Joel H. Rassman, chief financial officer, stated: “Our record earnings, contracts and backlog reflect the strong demand and accompanying pricing power we have enjoyed over the past twelve months. . . . ***Based on our backlog and expected community growth, . . . we still believe net income will rise approximately 20% in FY 2006 over FY 2005.***”

29. On 5/26/05 Toll Brothers held a conference call for analysts to discuss its business and its 2ndQ F05 results. During the call, the following occurred:

With me today are Joel Rassman, Chief Financial Officer [and] Joe Sicree, Chief Accounting Officer . . . .

Before I begin, I ask you to read the statement on forward looking information in today’s release and on our website. I caution you that many statements on this call are based on assumptions about the economy, world events, housing and financial markets, weather and other factors beyond our control that could significantly effect [sic] future results.

\* \* \*

***We believe that based upon our record backlogs and current estimates for the remainder of the year, that even with our increase in guidance for fiscal 2005, we***

*can achieve approximately 20%, which we define as between 17 and 23% growth in net income in 2006.*

30. On 5/26/05, *Midnight Trader* reported:

*Based on its backlog and expected community growth, even with this increased projection, [Toll Brothers] still believes earnings will rise approximately 20% in FY 2006 over FY 2005.*

31. On 5/26/05, Rassman appeared on CNBC to discuss Toll Brothers' business. The following occurred:

CLAMAN: Phenomenal quarter, but, you know, for a company where you make a lot of your money in the high-end home building sector, *how is that market doing right now?*

\* \* \*

RASSMAN: *Home building looks terrific and the demographics seem to point to continued strength in our area.*

32. On 5/27/05, BB&T Capital Markets issued a report on Toll Brothers based on the recent conference call and follow-up conversations with R. Toll and/or Rassman. The report stated:

*Demand trends remain strong, as evinced by . . . management's comments . . . . Moreover, the company appears well positioned by virtue of its robust pipeline and plans for new community openings to continue to take advantage of this strength.*

33. The positive statements, assurances and forecasts made between 5/10/05-5/26/05 were false and misleading when made. The true facts, which were known to or recklessly disregarded by the defendants, were that:

(a) the traffic in Toll Brothers' active selling communities had declined materially;

(b) demand for Toll Brothers' new homes was softening materially;

(c) the number of contracts Toll Brothers was actually signing for future sales/delivery of its homes was slowing;

(d) Toll Brothers was encountering increasing difficulties in bringing new active selling communities online;

(e) Toll Brothers' business model, *i.e.*, selling very expensive homes to a "niche" market of high-end buyers, did not make it immune from the adverse impact of rising interest rates; and

(f) as a result of the foregoing, there was no basis in fact for the forecasts of "approximately" or "at least" 20% net income growth for Toll Brothers during either F06 and F07.

34. On 8/4/05, Toll Brothers reported its 3rdQ F05 results – the period ending 7/31/05 – via a release headlined and stating:

**Toll Brothers' Record FY 2005 3rd Qtr Home Bldg Revenues Rise 55% to \$1.54 Billion . . .**

. . . Toll Brothers, Inc. . . . today reported record third-quarter and nine-month results for home building revenues, backlog and contracts for the period ended July 31, 2005. The value of the Company's third-quarter backlog and revenues were the highest for any quarter in its history.

\* \* \*

Robert I. Toll, chairman and chief executive offer, stated: . . . ***"With more than 60% of FY 2006's projected deliveries already in our backlog, we continue to believe that net income in FY 2006 should be approximately 20% higher than in FY 2005."***

35. On 8/4/05, Toll Brothers held a conference call for analysts to discuss its 3rdQ F05 results. During the call, Toll Brothers for the first time mentioned a "cooling" in "some local markets" and the following occurred:

**Bob Toll – Toll Brothers, Inc. – Chairman & CEO**

. . . With me today by phone are Joel Rassman, Chief Financial Officer; Fred Cooper, Senior Vice President of Finance and Investor Relations; Joe Sicree, Chief Accounting Officer; and Kira McCarron, Chief Marketing Officer.

Before I begin I ask you to read the statement on forward-looking information in today's release and on our website. I caution you that many statements on this call are based on assumptions about the economy, world events, housing and financial markets, weather and other factors beyond our control that could significantly affect future results.

\* \* \*

***We ended this quarter with 230 selling communities and expect to end fiscal '05 with approximately 237 selling communities compared to 220 at fiscal year end '04. We project to reach about 265 selling communities by fiscal year end '06 – assuming continued healthy demand. This should put us on track to increase net income approximately 20% in fiscal year '07 over fiscal year '06.***

36. On 8/4/05, Reuters reported:

***Some of the hottest U.S. upscale home markets may be cooling off,*** the head of luxury home builder Toll Brothers said on Thursday.

***“We do see cooling in some local markets that were red hot a few months ago,”*** Robert Toll, chairman and chief executive of Toll Brothers, said during a conference call with analysts.

\* \* \*

***“It’s still hotter than a normal market, but not as hot as it was,”*** Toll said.

\* \* \*

***[M]arkets, such as Phoenix, Arizona, are still searing,*** Toll said.

37. On 8/4/05, JP Morgan issued a report on Toll Brothers based on the recent conference call and follow-up conversations with R. Toll and with Rassman. The report stated:

***Also, critically, TOL reaffirmed its FY05 and FY06 net income guidance of 70% and 20%, respectively.***

38. On 8/5/05, Susquehanna Group issued a report on Toll Brothers based on the recent conference call and follow-up conversations with R. Toll and with Rassman. The report stated:

***Our post conference call view actually brightens a bit despite some conservative posturing by management. Given the trends in place, we believe 30% earnings growth is possible for fiscal 2006.***

39. On 8/5/05, Janney Montgomery Scott issued a report on Toll Brothers based on the recent conference call and follow-up conversations with R. Toll and with Rassman. The report stated:

***We believe even more strongly about the positive three-year outlook for Toll following the call. The single most important factor affecting long-term growth is the lot pipeline. Lots controlled by Toll in 3Q05 rose 25.7% versus a year ago. In terms of the near term, momentum remains strong . . . .***

40. On 8/25/05, Toll Brothers issued a release reporting its 3rdQ F05 results – the period ended 7/31/05 – which stated:

Toll Brothers, Inc. . . . today reported record third-quarter and nine-months results for earnings, revenues, backlog and contracts for the periods ended July 31, 2005. The Company's third-quarter net income, revenues and backlog were the highest for any quarter in its history.

Robert I. Toll, chairman and chief executive officer, stated: "We attribute these tremendous results to our team's diligence, our strong land position and the pricing power we enjoy in our affluent markets. While the supply of buildable lots seems increasingly to be constrained by governmental regulation, *demographics-driven demand continues to grow. These dynamics have put us on track for . . . approximately 20% net income growth in both FY 2006 and FY 2007.*

41. On 8/25/05, Toll Brothers held a conference call for analysts to discuss its business and its 3rdQ F05 results. During the call the following occurred:

**Robert Toll – Toll Brothers – Chairman, CEO**

. . . With us today by phone are Joel Rassman, Chief Financial Officer . . . and Joe Sicree, Chief Accounting Officer.

Before I begin I ask you to read the statement on forward-looking information in today's release and on our website. I caution you that many statements on this call are based on assumptions about the economy, world events, housing and financial markets, weather and other factors beyond our control that could significantly affect future results. . . .

We are very pleased . . . with our prospects for the future.

\* \* \*

We attribute these tremendous results to . . . the pricing power we enjoy in our affluent markets. While the supply of buildable lots seems increasingly to be constrained by governmental regulation, demographics-driven demand continues to grow. *These dynamics have put us on track for our 13th consecutive year of record earnings in fiscal year '05 and assuming continued healthy demand, we believe approximately 20% net income growth in both fiscal year '06 and '07.*

42. On 8/25/05, Dow Jones Newswire reported:

Luxury homebuilder *Toll Brothers Inc. appeared to see no signs of a housing slowdown as its revenue rose 54% and earnings more than doubled in its fiscal third quarter.*

*Chairman and Chief Executive Robert Toll is bullish about his company's outlook, as he's predicting 20% earnings growth in fiscal 2006 and 2007.*

43. On 8/25/05, *Reuters* reported:

***The company also said it was on track for fiscal 2007 revenue growth of 20 percent.***

44. On 8/25/05, JP Morgan issued a report on Toll Brothers based on the recent conference call and follow-up conversations with R. Toll and/or Rassman. The report stated:

**Toll Brothers: Strong 3Q Reported; FY06 Guidance Conservative**

\* \* \*

***Importantly, . . . reiterated 20%+ NI growth for FY06 and FY07.***

45. On 8/25/05, Lehman Brothers issued a report on Toll Brothers based on the recent conference call and follow-up conversations with R. Toll and/or Rassman. The report stated:

- ***Company maintained its 20% net income growth outlook for '06 and '07 . . . .***

46. On 8/25/05, BB&T Capital Markets issued a report on Toll Brothers based on the recent conference call and follow-up conversations with R. Toll and/or Rassman. The report stated:

***The company continues to expect approximately 20% growth in net income for FY'06 and FY'07.***

47. On 8/26/05, Susquehanna Financial Group issued a report on Toll Brothers based on the recent conference call and follow-up conversations with R. Toll and/or Rassman. The report stated:

***[T]he fiscal 2006 guidance stayed unchanged at 20% growth.***

48. On 8/26/05, Wachovia Capital Markets issued a report on Toll Brothers based on the recent conference call and follow-up conversations with R. Toll and/or Rassman. The report stated:

***TOL maintained FY06 and FY07 net income guidance at +20% yr/yr . . . raising 2006 guidance by 6% based on the increase to 2005 guidance.***

49. On 8/26/05, Janney Montgomery Scott issued a report on Toll Brothers based on the recent conference call and follow-up conversation with R. Toll and/or Rassman. The report stated:

***We believe strongly that TOL can grow EPS by 20% or more in 2006 and 2007.***

50. The positive statements, assurances and forecasts made between 8/4/05-8/25/05 were false and misleading when made. The true facts, which were known to or recklessly disregarded by the defendants were that:

(a) the traffic in Toll Brothers' active selling communities had declined materially;

(b) demand for Toll Brothers' new homes was softening materially;

(c) the number of contracts Toll Brothers was actually signing for future sales/delivery of its homes was slowing;

(d) Toll Brothers was encountering increasing difficulties in bringing new active selling communities online; and

(e) as a result of the foregoing, there was no basis in fact for the forecasts of "approximately" or "at least" 20% net income growth for Toll Brothers during either F06 and F07.

51. On 9/13/05, R. Toll appeared on CNBC to discuss Toll Brothers' business. The following occurred:

KUDLOW: What do you say to these pessimists? Why is it that everyone wants to deride the homebuilding industry, and the housing boom or the housing rally or whatever? . . .

TOLL: . . . *I think the problem with all of those people that are predicting the demand or the pop of the bubble are that it comes from people that just haven't bought in the last five years and I think they've got sour grapes at this point.*

\* \* \*

KUDLOW: . . . First of all, is there a softening in housing prices and a softening in condo prices?

TOLL: *There hasn't been a softening. . . . You still have terrific demand but it's not ferocious as it was.*

52. The 10/16/05 *New York Times* contained an article about Toll Brothers that was based on an interview with R. Toll and stated:

His experience with Nimby opposition, Toll added, leads him to believe that the political resistance to land development around the country will get more intense in the coming years. When I spoke with him in September, he noted that a drop in consumer confidence in the wake of Hurricane Katrina was not a good sign for an economy “that runs on confidence.” *Still, he said, the fundamentals were the same as before; the supply of developable acreage in many markets would remain limited, ensuring big profits.* Indeed, Toll seemed certain that firms like his – with an expertise at finding and developing land – would become increasingly successful. *The company expects to grow by 20 percent for the next two years and then will strive for 15 percent annually after that.*

53. Then on 11/8/05, Toll Brothers stated it was seeing a “*softening of demand,*” which was “*pretty much across the board*” – a “*decrease in overall demand.*”

54. Upon these revelations of the serious problems with Toll Brothers’ business, and the fact that its prior assurances and forecasts for F06 and F07 were not true, Toll Brothers’ stock fell sharply.

55. Even after the Class Period, Toll Brothers continued to suffer the sort of setbacks from which the Company had claimed to be immune. In *The Philadelphia Inquirer* on 8/23/06, R. Toll admitted that the Company had been forced to enter into “substantial cutback mode.” Indeed, the Company had reduced the number of lots it controlled, cancelled land-purchase options as an increased number of buyers initiated contract cancellations, experienced dramatic decreases in both contracts for new homes and total contracts, shifted toward lower-priced homes, and repurchased millions of Toll Brothers shares.

56. In the financial year after the Class Period, Toll Brothers’ net income declined 15% and the Company was forced to take write-downs of \$92.7 million. By the 4thQ F06, profits had fallen 19%, sales had dropped by 48%, and shares in Toll Brothers had lost 57% of their value since 7/05. During that quarter alone, orders plummeted by 58%, as more than one-third of customer contracts were cancelled. By year-end F06, the number of contracts held by Toll Brothers had plunged 41% and the backlog of new orders was down 27% compared to F05.

57. In the first quarter of F07, Toll Brothers reported a 67% drop in profits, a decline in net profit of almost \$110 million, a 19% decline in revenue, and a 34% drop in net signed contracts. In the same quarter, Toll Brothers was forced to write down \$96.9 million in costs related to land and housing stock the Company no longer could sell at a profit.

58. These developments only exacerbated the plight of outside investors who unknowingly purchased the artificially inflated Toll Brothers shares that Toll insiders dumped on the market in 2005. As reported by *TheStreet.com* on March 7, 2007, “The shares [sold by defendants] began to collapse almost immediately afterward, as the housing market turned tail. At last week’s price of just under \$30 a share, these outside investors are sitting on losses of \$153 million. In other words, they have already lost 34 cents of every dollar they invested.” In contrast, Toll Brothers insiders cashed out at or near the stock’s peak and continue to pad their own pockets with substantial salaries and bonuses, including a \$17.5 million bonus paid to R. Toll for F06.

### **SCIENTER AND SCHEME ALLEGATIONS**

59. During the Class Period, the defendants had both the motive and opportunity to conduct fraud. They also had actual knowledge of the falsity of the statements they made or acted in reckless disregard of the truth or falsity of those statements. In so doing, the defendants participated in a scheme to defraud and committed acts, practices and participated in a course of business that operated as a fraud or deceit on purchasers of Toll Brothers stock during the Class Period.

60. Both the Individual Defendants were Toll Brothers’ top directors and/or officers charged with not only developing Toll Brothers’ business strategy, but also overseeing the implementation and execution of that strategy during the Class Period. Due to the circumstances described in this Complaint, nothing was more important to them than convincing the public marketplace that they were continuing to open new selling communities, maintaining high levels of traffic in Toll Brothers’ existing communities, continuing home price appreciation to generate

“inventory profits,” and continuing to grow at the 20% rate, because their jobs and millions of dollars in salaries, bonuses, stock option profits and other benefits depended on their doing so.

61. In addition, the Individual Defendants took advantage of material, nonpublic information concerning Toll Brothers’ business, its finances and its future prospects when they engaged in massive insider trading during the Class Period to reap millions of dollars of proceeds.

### **NO SAFE HARBOR**

62. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded in this Complaint were not identified as “forward-looking statements” when made. To the extent forward-looking statements were identified when made, specific meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements were not presented. Toll Brothers’ 10-Qs, 10-Ks, Annual Reports and press releases, before and during the Class Period, used boilerplate language in connection with its forward-looking statements.

### **CLASS ACTION ALLEGATIONS**

63. This is a class action on behalf of purchasers of Toll Brothers common stock during the Class Period, excluding defendants (the “Class”). Excluded from the Class are officers and directors of the Company, as well as their families and the families of the defendants. Class members are so numerous that joinder of them is impracticable.

64. Common questions of law and fact predominate and include whether defendants: (i) violated the 1934 Act; (ii) omitted and/or misrepresented material facts; (iii) knew or recklessly disregarded that their statements were false; and (iv) artificially inflated the price of Toll Brothers common stock and the extent of and appropriate measure of damages, as well as loss causation.

65. Plaintiff’s claims are typical of those of the Class. Prosecution of individual actions would create a risk of inconsistent adjudications. Plaintiff will adequately protect the interests of the

Class. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

## COUNT I

### **Violation of §10(b) of the 1934 Act and Rule 10b-5 Promulgated Thereunder Against All Defendants**

66. Plaintiff repeats and realleges each and every allegation contained in ¶¶1-65.

67. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did deceive the investing public, including plaintiff and other Class members, as alleged in this Complaint and caused plaintiff and other members of the Class to purchase Toll Brothers stock at artificially inflated prices. In furtherance of this unlawful scheme and course of conduct, defendants, and each of them, took the actions set forth in this Complaint.

68. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements made not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort to maintain artificially high market prices for Toll Brothers stock in violation of §10(b) of the 1934 Act and Rule 10b-5. All defendants are sued as primary participants in the wrongful and illegal conduct and fraudulent scheme and course of business charged in this Complaint.

69. These defendants employed devices, schemes and artifices to defraud. While in possession of material adverse non-public information, they engaged in acts, practices, and a scheme as alleged herein in an effort to assure investors of Toll Brothers' business and financial success and prospects for continued substantial growth. This included the making of, or the participation in the making of, untrue statements of material fact and concealing facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

This conduct artificially inflated the price of Toll Brothers stock and operated as a fraud and deceit upon the purchasers of Toll Brothers stock during the Class Period, proximately causing them economic loss and damage.

70. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth in this Complaint, or acted with reckless disregard of the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them.

71. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Toll Brothers stock was artificially inflated during the Class Period. Relying directly or indirectly on the false and misleading statements made by defendants or upon the integrity of the market in Toll Brothers stock, plaintiff and the other members of the Class purchased Toll Brothers stock during the Class Period at artificially high prices and were damaged thereby.

72. At the time of defendants' misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity. Had plaintiff and the other members of the Class and the market known the truth which was not disclosed by defendants, plaintiff and other members of the Class would not have purchased their Toll Brothers stock, or, if they had acquired such stock during the Class Period, they would not have done so at the artificially inflated prices which they paid.

73. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's stock during the Class Period.

## **COUNT II**

### **Violation of §20(a) of the 1934 Act Against All Defendants**

74. Plaintiff repeats and realleges each and every allegation contained in ¶¶1-73.

75. The Individual Defendants acted as controlling persons of Toll Brothers within the meaning of §20(a) of the 1934 Act as alleged in this Complaint. By virtue of their business expertise, their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations, accounting policies and methods, and/or intimate knowledge of the financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

76. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations, and in the accounting policies and practices of the Company and, therefore, each is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged in this Complaint, and exercised the same. The Company controlled the Individual Defendants and all of its employees.

77. As set forth above, Toll Brothers and the Individual Defendants each violated §10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the defendants are liable pursuant to §20(a) of the 1934 Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's stock during the Class Period.

## **PRAYER**

WHEREFORE, plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action, certifying plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure and designating this Complaint as the operable complaint for class purposes;

B. Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity and the federal statutory provisions sued hereunder, pursuant to Rules 64 and 65 to assure that the Class has an effective remedy;

D. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

E. Awarding such other and further relief as the Court may deem just and proper.

## **JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury

DATED: April 16, 2007

BERGER & MONTAGUE, P.C.  
SHERRIE R. SAVETT  
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