

660 EARHART DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the City of Ann Arbor, a Michigan municipal corporation, with principal address at 301 East Huron Street, Ann Arbor, Michigan 48107, hereinafter called the CITY; and Toll Brothers Incorporated, with principal address at 26200 Town Center Drive, Suite 200, Novi, MI 48375, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as 660 Earhart, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 660 Earhart, and desires Site Plan for City Council and development agreement approval thereof, and

WHEREAS, the DEVELOPER desires to build or use certain Improvements with and without the necessity of special assessments by the CITY, and

WHEREAS, the CITY desires to ensure that all of the Improvements required by pertinent CITY ordinances and regulations be properly made, and that the DEVELOPER will install these Improvements prior to any permits being issued.

THE DEVELOPER(S) HEREBY AGREE(S):

(P-1) To prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for construction of public water main, public sanitary sewer mains, private storm water management system, public sidewalk, private sidewalk, and street lights ("the Improvements") provided that no work on said Improvements shall be commenced until the Plans have been approved by the City Administrator or designee, and until such other relevant information to CITY service areas as shall be reasonably required has been provided.

(P-2) To construct all Improvements set forth in Paragraph P-1 of this Agreement in accordance with the approved Plans and to repair all defects in the Improvements that occur within one year from the date of acceptance of the Improvements by the CITY, commencing on the latest date of the acceptance of any Improvements by the CITY. If the DEVELOPER fails to construct the Improvements, the CITY may send notice via first class mail to the DEVELOPER at the address listed above requiring it to commence and complete the Improvements in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the DEVELOPER, if the DEVELOPER does not complete the work within the time set forth in the notice. Every owner of a portion of the property, including co-owners of condominium units, shall pay a pro-rata share of the cost of the work. That portion of the cost of the work attributable to each condominium unit shall be a lien on that Property and may be

collected as a single tax parcel assessment as provided in Chapter 13 of the Ann Arbor City Code.

(P-3) To furnish, within 30 days of completion, an engineer's certificate that the construction of the public Improvements set forth in Paragraph P-1 above have been completed in accordance with the specifications of the CITY in accordance with the approved plans. The engineer's certificate will cover only those items the DEVELOPER'S engineer inspects.

(P-4) To grant an easement to the CITY for public water main and public sanitary sewer as shown on the Site Plan, subject to City Council approval. DEVELOPER shall submit legal descriptions and survey drawings for the easements prior to the request for and issuance of building permits, and the easements shall be granted to the CITY in a form reasonably acceptable to the CITY Attorney. The easements must be accepted by City Council prior to the request for and issuance of any temporary or final certificate of occupancy, although the easements may be accepted at a later time as determined by the CITY Public Services Area.

(P-5) To provide, prior to the issuance of building permits, a signing plan to the Fire Department and install all street name signs according to CITY specifications and to provide and install such temporary warning signs during the construction period as are appropriate to protect the health, safety and welfare of the public.

(P-6) Prior to issuance of building permits for the condominium units, to install the condominium unit monuments and condominium unit corners or provide escrow funds to ensure placement of monuments and condominium unit corners in accordance with section 125 of Public Act No. 288, Subdivision Control Act, for all condominium units and assign condominium unit numbers in the master deed that conform to those on the approved site plan.

(P-7) To install all water mains, storm sewers, sanitary sewers and private streets, through the first course of asphalt, pursuant to CITY approved plans and specifications, necessary to connect the site with existing CITY systems adjacent to the site prior to the issuance of any building permits. Building permits may be issued for the construction of up to three model homes prior to the first course of asphalt, provided that the road meets Fire Department requirements. The final course of asphalt paving shall be completed prior to the issuance of a certificate of occupancy on the site.

(P-8) To be included in a future special assessment district, along with other benefiting property, for the construction of additional Improvements to Earhart Road ,such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along Earhart Road frontage when such Improvements are determined by the CITY to be necessary. And, to include a provision in the master deed stating that if the CITY undertakes to establish a special assessment district to improve Earhart Road. Each unit shall be assessed its pro rata share of the cost of Improvements allocable to the Property.

(P-9) To indemnify, defend and hold the CITY harmless from any claims, losses, liabilities, damages or expenses (including reasonable attorney fees) suffered or incurred by the CITY based upon or resulting from any acts or omissions of the DEVELOPER, its employees, agents, subcontractors, invitees, or licensees in the design, construction, maintenance or repair of any of the Improvements required under this Agreement and the approved site plan.

(P-10) To cause to be maintained General Liability Insurance and Property Damage Insurance in the minimum amount of \$1,000,000 per occurrence and naming the CITY as

additional insured to protect and indemnify the CITY against any claims for damage due to public use of the public improvement(s) in the development prior to final written acceptance of the public improvement(s) by the CITY. Evidence of such insurance shall be produced prior to any construction of improvement and a copy filed with the City Clerk's Office and shall remain in full force and effect during construction of the public improvement(s) and until notice of acceptance by the CITY of the Improvements.

(P-11) Existing woodland trees and landmark trees shown on the site plan as trees to be saved shall be maintained by the Toll Brothers or subsequent owners in good condition for a minimum of three years after acceptance of the public Improvements by the CITY or granting of final Certificate of Occupancy. Existing woodland trees and landmark trees that are determined by the CITY to be dead, dying or severely damaged due to construction activity within three years after acceptance of the public Improvements or granting Final Certificate of Occupancy shall be replaced by the DEVELOPER as provided by Chapter 55 of the Ann Arbor City Code.

(P-12) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$35,625 to the CITY Parks and Recreation Services Unit prior to the issuance of any certificate of occupancy for Improvements to nearby Parks and/or related facilities.

(P-13) To deposit, prior to any building permits being issued, a street tree planting escrow account with the Public Services Unit in the form of a check payable to the City of Ann Arbor. The escrow amount of \$845 shall be based on the CITY policy in effect at that time and is to include all on-site public streets. The City Administrator may authorize the DEVELOPER to install the street trees if planted in accordance with CITY standards and specifications. If the street trees are found to be acceptable by the CITY, the escrow amount will be returned to the DEVELOPER one year after the date of acceptance by the CITY.

(P-14) To create an association composed of all owners of 660 Earhart condominium, hereinafter called the "Association", in which membership shall be required by covenants and restrictions recorded as part of the master deed for 660 Earhart. The association(s) shall be responsible for and shall execute the appropriate documents insuring perpetual maintenance and ownership of the landscape materials, exterior lighting, driveways, private on-site storm water management system, and all other common elements.

(P-15) To construct, repair and/or adequately maintain on-site storm water management system. If the DEVELOPER fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the DEVELOPER at the address listed above, requiring it to commence and complete the items stated in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the DEVELOPER if the DEVELOPER does not complete the work within the time set forth in the notice.

(P-16) After construction of the private on-site storm water management system, to maintain it until non-developer co-owners elect one or more directors to the Association's board of directors. Thereafter, by provision in the master deed, the Association shall own and maintain the storm water management system. Any proposed changes to the system must be approved by the City of Ann Arbor Systems Planning and Planning and Development Services Units. If the DEVELOPER or Association, as appropriate, fails to maintain any portion of the system, the CITY may send notice via first class mail to the DEVELOPER, or Association, at the address listed above, requiring it to commence and complete the maintenance stated in the

notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the DEVELOPER or Association if the DEVELOPER or Association does not complete the work, as appropriate, within the time set forth in the notice. If the CITY completes the work, and the costs remain unpaid by the Association for 60 days after notice via first class mail, the CITY may bill each condominium unit for the pro rata share of the total cost, or assess the pro rata share of those costs to each condominium unit as a single tax parcel assessment as provided in Chapter 13 of Ann Arbor City Code. Provisions for maintenance and responsibility for the storm water management system, as well as the pro rata share of each condominium unit shall be included by the DEVELOPER in the master deed.

(P-17) After construction of the private on-site storm water management system, to commission an annual inspection of the system by a registered professional engineer evaluating its operation and stating required maintenance or repairs, and to provide a written copy of this evaluation to the CITY Public Services Area.

(P-18) Prior to the issuance of any permits, to submit to the CITY Land Development Coordinator for review and approval a Wetland Monitoring Plan, to implement the plan concurrently with construction of the site Improvements, and to submit an annual report regarding implementation of the Wetland Monitoring Plan recommendations to the CITY following issuance of certificates of occupancy.

(P-19) To prepare and submit to the Planning and Development Services Unit one copy of the Master Deed, along with the required review fee, prior to issuance of building permits.

(P-20) To design, construct, repair and maintain this development in accordance with the provisions of Chapter 119 (Noise Control) to ensure that any noise emanating from said development will not impact nearby residents or businesses. In addition, DEVELOPER shall review existing noise sources surrounding said development and incorporate necessary design and construction techniques to ensure that future tenants will not be exposed to noise sources in violation of Chapter 119.

(P-21) To include the elevation drawings, as submitted to City Council, as part of the approved site plan and to construct all buildings consistent with said elevation drawings. If the DEVELOPER proposes any substantive changes to the approved building elevations, setbacks, aesthetics, or materials, that those changes be brought back to the City Council for consideration. The DEVELOPER is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-22) To remove all discarded building materials and rubbish from the development at least once each month during construction of the development Improvements, and within one month after completion or abandonment of construction.

(P-23) No lot in 660 Earhart may be divided such that an additional building parcel is created.

(P-24) Pathways/pedestrian easements if these are being conveyed.

(P-25) DEVELOPER is the sole title holder in fee simple of the land described below except for any mortgage, easements and deed restrictions of record and that the person(s) signing below on behalf of DEVELOPER has (have) legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-26) Failure to construct, repair and/or maintain the site pursuant to the approved site plan and/or failure to comply with any of this approved Agreement's terms and conditions shall constitute a material breach of the Agreement and the CITY shall have all remedies in law and/or in equity necessary to ensure that the DEVELOPER complies with the approved site plan and/or the terms and conditions of the approved Agreement. The DEVELOPER shall be responsible for all costs and expenses including reasonable attorney fees incurred by the CITY in enforcing the terms and conditions of the approved site plan and/or Agreement.

(P-27) In addition to any other remedy set forth in this Agreement or in law or equity, if DEVELOPER fails to make a timely or full payments to the CITY as set forth elsewhere in the Agreement to the CITY in the agreed upon manner, any unpaid amount(s) shall become a lien, as provided under Ann Arbor City Code and recorded with the Washtenaw County Register of Deeds, against the land described below and may be placed on the CITY tax roll as a single lot assessment, or if the development is converted to condominium ownership, every owner of a portion of the property shall pay a pro-rata share of the amount of the payments attributable to each condominium unit. If the unpaid amount(s), in whole or in part, has been recorded as a lien on the CITY'S tax roll and with the Washtenaw County Register of Deeds, upon payment of the amount in full along with any penalties and interest, the CITY, upon request, will execute an instrument in recordable form acknowledging full satisfaction of this condition.

(P-28) To pay for the cost of recording this Agreement with the Washtenaw County Register of Deeds, and to pay for the cost of recording all documents granting easements to the CITY.

THE CITY HEREBY AGREES:

(C-1) In consideration of the above undertakings, to approve the 660 Earhart Drive.

(C-2) To use the park contribution described above for Improvements to nearby parks and/or related facilities.

(C-3) To provide timely and reasonable CITY inspections as may be required during construction.

(C-4) To record this Agreement with the Washtenaw County Register of Deeds.

GENERAL TERMS

Both the DEVELOPER and the CITY agree as follows:

(T-1) This Agreement is not intended to create a contractual right for third parties.

(T-2) This Agreement and any of its terms, conditions, or provisions cannot be modified, amended, or waived unless in writing and unless executed by both parties to this Agreement. Any representations or statements, whether oral or in writing, not contained in this Agreement shall not be binding on either party.

(T-3) This Agreement and any of its terms or conditions shall not be assigned or transferred to any other individual or entity unless prior approval of the CITY is received. Such approval shall not be withheld unreasonably.

(T-4) The obligations and conditions on the DEVELOPER, as set forth above in this Agreement and in the approved site plan, shall be binding on any successors and assigns in ownership of the following described parcel:

PROPERTY LOCATED IN THE CITY OF ANN ARBOR, WASHTENAW COUNTY, STATE OF MICHIGAN:

PART OF PARCEL ID #09-09-25-200-111 & #09-09-26-400-008, CITY OF ANN ARBOR ASSESSING RECORDS.

A PARCEL OF LAND LOCATED IN THE NORTHWEST 1/4 AND THE SOUTHWEST 1/4 OF SECTION 25, TOWN 2 SOUTH, RANGE 6 EAST, WASHTENAW COUNTY, MICHIGAN, DESCRIBED AS COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION 25; THENCE N01°26'01"W 792.00 FEET ALONG THE WEST LINE OF SAID SECTION 25 AND THE CENTERLINE OF EARHART ROAD; THENCE S89°28'01"E 44.03 FEET TO THE EAST 44 FOOT RIGHT OF WAY LINE OF SAID EARHART ROAD FOR A PLACE OF BEGINNING. THENCE CONTINUING S89°28'01"E 665.21 FEET; THENCE S01°26'01"E 172.05 FEET; THENCE S89°28'01"E 93.47 FEET; THENCE S01°34'01"E 24.01 FEET; THENCE S89°28'01"E 667.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 23; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 23 THE FOLLOWING THREE COURSES: S01°34'01"E 595.92 FEET TO THE EAST-WEST 1/4 LINE OF SAID SECTION 25; S01°25'30"E 873.36 FEET AND S13°12'25"W 39.44 FEET; THENCE N85°22'12"W 206.50 FEET; THENCE N40°59'47"W 794.74 FEET; THENCE N60°48'09"W 168.89 FEET TO THE EAST LINE OF PINE BRAE ESTATES SUBDIVISION, AS RECORDED IN LIBER 31, PAGES 30-34, WASHTENAW COUNTY RECORDS, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 20 OF SAID PINE BRAE ESTATES; THENCE ALONG THE EAST AND NORTH LINE OF SAID PINE BRAE ESTATES THE FOLLOWING THREE COURSES: N29°26'45"W 327.71 FEET; N73°36'42"W 300.90 FEET AND S88°31'15"W 118.96 FEET TO THE EAST 44 FOOT RIGHT OF WAY LINE OF SAID EARHART ROAD; THENCE N01°26'01"W 650.57 FEET ALONG SAID EAST 44 FOOT RIGHT OF WAY LINE TO THE POINT OF BEGINNING, CONTAINING 34.052 ACRES OF LAND, MORE OR LESS.

(T-5) In addition to any other remedy in law or in equity failure to comply with all of the above paragraphs on the part of the DEVELOPER, or any part of the approved site plan, in part or in whole, shall give the CITY adequate basis and cause to issue a stop work order for any previously-issued building permits and shall be an adequate basis and cause for the CITY to deny the issuance of any building permits, certificates of occupancy, or any other permits unless and until the CITY has notified the DEVELOPER in writing that the DEVELOPER has satisfactorily corrected the item(s) the DEVELOPER has failed to perform.

(T-6) This Agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor City Code. DEVELOPER submits to the personal jurisdiction of any competent court in Washtenaw County, Michigan, for any action arising out of this Agreement. DEVELOPER also agrees that no action will be commenced against the City because of any matter arising out of this Agreement in any courts other than those in the County of Washtenaw, State of Michigan, unless original jurisdiction can be established in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court, or the Michigan Court of Appeals.

CITY OF ANN ARBOR, MICHIGAN
301 East Huron Street
Ann Arbor, Michigan 48107

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

John Fournier, Acting City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

TOLL BROTHERS

By: _____
Alex Martin, Division President

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by Christopher Taylor, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

NOTARY PUBLIC
County of Washtenaw, State of Michigan
My Commission Expires: _____
Acting in the County of Washtenaw

