

### **Conditional Zoning Statement of Conditions**

This Conditional Zoning Statement of Conditions (“Statement of Conditions”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Ann Arbor (“City”), a Michigan municipal corporation, with offices located at 100 N. Fifth Avenue, Ann Arbor, Michigan 48107, and Toll Bros., Inc. (“Developer”), a Pennsylvania corporation, with principal address at 28004 Center Oaks Ct, Suite 200, Wixom, Michigan 48933.

#### **Recitals**

- A. The Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended) allows for conditional zoning of land when the City is amending its zoning map, or a conditional zoning when the city is zoning property in MCL 125.3405.
- B. The City of Ann Arbor recognizes that there are certain instances where it would be in the best interest of the City, as well as advantageous to the Developer, that certain conditions could be proposed as part of a request for rezoning or a request for an amendment to the zoning map.
- C. On July 28, 2014, Developer applied for an amendment to the zoning map for certain land in the City of Ann Arbor site planned as Nixon Farm South as more fully described on the attached Exhibit A (the “Property”).
- D. On December 14, 2014 the Planning Commission, after public hearing, recommended approval of the zoning of the Property to R4A (Multiple-Family Dwelling District). The Developer also submitted a Site Plan showing the specific proposed use and site design of the property.

- E. Subsequently, the Developer voluntarily offered in writing conditions regarding the use and development of the land to be incorporated into the zoning of the Property.
- F. On \_\_\_\_\_, the City approved the conditional rezoning subject to this Statement of Conditions.
- G. Based on the specific facts and circumstances regarding this property, the City has decided to accept the Developer's offer of conditional zoning.
- H. By executing this Statement of Conditions, the City and the Developer desire to set forth and confirm the conditions under which the City granted conditional zoning of this Property.

NOW, THEREFORE, Developer and City agree:

- 1. Conditions Running with the Property. This Statement of Conditions covers the Property described in the attached Exhibit A. The Statement of Conditions is incorporated into the zoning of the Property and shall be binding upon and inure to the benefit of the Developer and the City, and their heirs, successors and assigns, and shall run with the Property.
- 2. Site Plan. The conditional zoning was granted by the City based, in part, by the Developer's stated proposed use of the Property as a residential, multi-family development, as shown in the proposed Site Plan filed with the City of Ann Arbor.
- 3. List of Conditions. The conditional zoning was granted to the Developer based on conditions that were voluntarily offered by the Developer. The City and Developer agree that the reconfiguration of the intersection of Nixon Road, Dhu Varren Road, and Green Road at the northeastern corner of the Property is necessary for use and development of the land to provide for safe and efficient traffic flow, and to accommodate additional traffic from the development of the Property. The conditions which form the basis of the City's grant of the conditional zoning are as follows:
  - i. Developer shall grant the City an easement for construction, use, and maintenance of public right-of-way as depicted in the City's conceptual plan for the reconfiguration of the intersection of Nixon Road, Green Road and Dhu Varren Road as generally shown in Exhibit B. The easement shall include utilities and wetland mitigation adjacent to and within the intersection. The reconfiguration of the intersection shall be consistent with the Site Plan as approved by City Council and may change from the

conceptual plan consistent with the final design, as well as engineering design standards and best practices.

- ii. Developer shall pay the City \$1,025,460.00, which shall be the Developer's contribution to the cost of construction of the reconfiguration of the intersection. (Fifty percent of this amount shall be contributed for this Property and 50% for the adjacent property, site planned as Nixon Farms North.) This contribution is a maximum payment for 50% of the estimated cost of the intersection, and the City shall return to the Developer its 50% share of any difference between the actual and the projected cost.
  - iii. Developer shall only construct and develop the Nixon Farms South Site Plan for this Property as approved by the Ann Arbor City Council on \_\_\_\_\_ as well as administrative amendments to the Site Plan. No administrative amendment may contain more dwelling units than the number shown on the Site Plan. (The complete, approved Site Plan is on file with the City of Ann Arbor, with an excerpt attached as Exhibit C.)
  - iv. Developer shall not request the issuance of any certificate of occupancy for the Property (and the City shall not grant them) prior to April 1, 2017, and Developer shall not request the issuance of more than 50 certificates of occupancy for the Property (and the City shall not grant them) prior to October 30, 2017.
4. Applicable Time Period / Rezoning. If all of the conditions are not satisfied by November 15, 2017 (with the exception of completion of construction), then in accordance with MCL 125.3405(2) the Property shall revert to its former zoning classification, which is Ann Arbor Township – General Agricultural District. If for any reason the designation as this zoning district fails by reason of law or unavailability of the district, then the designated zoning district will be the City's AG (Agricultural-Open Space) District, until such time that the City Council takes action to rezone the property to another zoning district.
  5. Developer Acknowledgment. Developer acknowledges that it voluntarily offered and consented to the provisions contained in this Statement of Conditions. Developer agrees that the conditions contained herein are fair, reasonable and equitable requirements and conditions; agrees that the Statement of Conditions does not constitute a taking of property for any purpose or a violation of any constitutional right; and agrees to be bound by each and every provision of this Statement of Conditions. Furthermore, it is agreed and acknowledged that any improvements and undertakings described herein are necessary and roughly proportional to the burden imposed by the conditional zoning, and are necessary to insure capability with adjacent and surrounding uses of land; to promote use of the Property in a

socially and economically manner; and to achieve other legitimate objectives of the City authorized by law.

6. Authority to Execute. This Statement of Conditions has been authorized by all necessary action of Developer, and Developer acknowledges that it is the owner of the Property or has been authorized by the owner to conditionally zone this Property. Furthermore, the signatory for Developer acknowledges that he is authorized to enter and execute this Statement of Conditions on behalf of Developer, and bind the Developer to its terms.
7. City Approval. The Statement of Conditions and the City's approval of these conditions is based on the particular facts and circumstances presented, as well as the surrounding land uses and other characteristics regarding this property, and approval of these conditions for this Property may not be relied on as precedent by any other property owner seeking a conditional zoning.
8. Obligation to Obtain Other Approvals. Developer acknowledges that any use or development approved by this conditional zoning that may require a special land use permit, a variance, or site plan approval under the terms of the Ann Arbor City Code, may only be commenced if such special land use permit, variance, and/or site plan approval is ultimately granted in accordance with the terms of the Ann Arbor City Code.
9. Amendment. This Statement of Conditions may only be amended in the same manner as prescribed for a rezoning of property under the terms of Ann Arbor City Code.
10. Compliance with Statement of Conditions. Developer shall continuously operate and maintain the development and/or use of the Property in full compliance with all of the conditions set forth in this Statement of Conditions. Any failure to comply fully with the conditions contained with the Statement of Conditions shall constitute a violation of the Zoning Ordinance of Ann Arbor City Code, and shall be punished accordingly. Any such violation shall be deemed a nuisance per se and subject to judicial abatement, or any other remedy as provided by law.
11. Rezoning. Developer acknowledges that nothing in this Statement of Conditions shall prohibit the City from exercising its right to rezone the property at any time as allowed by law. The City acknowledges that nothing in this Statement of Conditions shall prohibit the Developer to request a rezoning of the Property at any time, or to continue an existing nonconforming use as allowed by law if the Property is rezoned by the City.

CITY OF ANN ARBOR  
a Michigan municipal corporation

By: \_\_\_\_\_  
Christopher Taylor, Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

DEVELOPER

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MICHIGAN        )  
  ) ss  
COUNTY OF WASHTENAW )

The foregoing Agreement was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Christopher Taylor and Jacqueline Beaudry, the Mayor and City Clerk respectively of the City of Ann Arbor, a Michigan municipal corporation, on behalf of said corporation.

\_\_\_\_\_, Notary Public  
Acting in the County of Washtenaw  
My Commission Expires: \_\_\_\_\_

STATE OF MICHIGAN        )  
  ) ss  
COUNTY OF WASHTENAW )

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, of Toll Bros., Inc., a Pennsylvania corporation, on behalf of said corporation.

\_\_\_\_\_, Notary Public  
Acting in the County of Washtenaw  
My Commission Expires: \_\_\_\_\_

**Consent of Owner**

Betty N. Spurway, as Trustee of the Betty N. Spurway Trust under the Trust Agreement dated September 10, 1985, as amended and restated and Betty N. Spurway, as the Successor Trustee of the Don Lewis Nixon Trust under the Trust Agreement dated May 24, 1989, as amended and restated, as the co-owners of the Property (the "Co-Owners"), authorize and consent to the Developer offering the City conditions related to the zoning of the Property as incorporated into the above Conditional Zoning Statement of Conditions (the "Statement of Conditions") and further consent to and agree that the obligations and conditions contained in the Statement of Conditions shall run with the Property and shall be binding on and inure to the Co-Owners and any successors and assigns in ownership of the Property. For avoidance of doubt, the Co-Owners, while authorizing the Developer to commit to and fulfill the obligations and conditions contained in the Statement of Conditions, do not by this authorization and consent commit or obligate themselves to fulfill any of the obligations and conditions stated in Section 3 of the Statement of Conditions (including, without limitation, the commitment to make the payment prescribed in Section 3(ii) of the Statement of Conditions) and the Co-Owners acknowledge that if the Developer does not fulfill the obligations and conditions stated in Section 3 of the Statement of Conditions the zoning of the Property will revert as provided in Section 4 of the Statement of Conditions.

CO-OWNERS

Betty N. Spurway Trust

Don Lewis Nixon Trust

By: \_\_\_\_\_  
Betty N. Spurway, Trustee

By: \_\_\_\_\_  
Betty N. Spurway, Successor Trustee

STATE OF MICHIGAN )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Betty N. Spurway, Trustee of the Betty N. Spurway Trust, on behalf of said trust.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
Acting in the County of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF MICHIGAN            )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Betty N. Spurway, Successor Trustee of the Don Lewis Nixon Trust, on behalf of said trust.

\_\_\_\_\_, Notary Public  
Acting in the County of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

## **Exhibit A**

A 40.864 ACRE PARCEL OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 15, T2S, R6E, ANN ARBOR TOWNSHIP, WASHTENAW COUNTY, MICHIGAN:

BEGINNING at the North 1/4 corner of Section 15, T2S, R6E, Ann Arbor Township, Washtenaw County, Michigan; thence N88°16'54"E 1316.90 feet along the centerline of Dhu Varren Road (66 feet wide) and the North line of said Section 15; thence S01°36'10"E 1353.65 feet along the centerline of Nixon Road (variable width) and the East line of the Northwest 1/4 of the Northeast 1/4 of said Section 15, as monumented; thence S88°24'03"W 1315.77 feet along the South line of the Northwest 1/4 of the Northeast 1/4 of said Section 15, as monumented; thence N01°39'01"W (recorded as N01°11'07"W) 1350.91 feet along the North-South 1/4 line of said Section 15 and along the East line of Traver Lakes Subdivision No.1, recorded in Liber 20 of plats, page 33, Washtenaw County Records and along the East line of Traver Vistas Subdivision, recorded in Liber 22 of plats, page 79, Washtenaw County Records and along the East line of Fox Ridge Commons Condominium, Washtenaw County Condominium Subdivision Plan No. 176 to the Place of Beginning, being a part of the Northeast 1/4 of said Section 15 and containing 40.864 acres of land, more or less. Being subject to the rights of the public over the Easterly 33 feet thereof as occupied by said Nixon Road, also subject to the rights of the public over the Northerly 33 feet thereof as occupied by said Dhu Varren Road, also being subject to easements, conditions, restrictions and exceptions of record, if any.



**Exhibit B**

Conceptual Plan for Reconfiguration of the Intersection

**Exhibit C**

Excerpts from the Site Plan as approved by City Council