

**SECOND AMENDED**

**LETTER OF INTENT**

**and**

**IMPACT ANALYSIS**

and

Other Material Required by  
City of Johns Creek Zoning Ordinance  
for the  
Rezoning Application

of

**TOLL BROS., INC**

for

± 204.1 Acres of Land  
Commonly known as 10505, 10555, 10655 Embury Farm Road  
Fulton County, Georgia

**From AG-1 to CUP**

Submitted for Applicant by:

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## I. INTRODUCTION

Toll Bros., Inc. (“Toll Bros.” or the “Applicant”) seeks to rezone a  $\pm$  204.10 acre assemblage known as Embry Farms, located at 10505, 10555 and 10655 Embry Farm Road (the “Subject Property”). The Subject Property is currently zoned AG-1 (Agricultural) and is partially located within the Chattahoochee River Corridor. The Applicant seeks to rezone the Subject Property to the CUP (Community Unit Plan) district to allow for a curated, executive-style, single-family residential community that emphasizes unique and crafted architecture and resort-like amenities consistent with the high standard of residential development in the area. To that end, home prices will range from \$1.5 to \$2 million. Further, the development has been designed to respect the natural assets surrounding the Subject Property and honor the role that the environment has in the character of surrounding communities. The development emphasizes open space and will have multiple connections to public trails and parks in the area. Approximately 65 acres (32%) of the Subject Property will be preserved for open spaces, including expansions of the Chattahoochee River Trail and other trail improvements that will provide connectivity between Cauley Creek Park and Shakerag Park. Additionally, the development contemplates significant upgrades to the immediate roadway network, designed to minimize and mitigate potential traffic impacts.

Initially, Toll Bros. requested 205 lots with a minimum lot size of 8,000 square feet and an overall density of .98 units per acre. Through this amended application, Toll Bros. submits a revised site plan that (a) lowers the unit count from 205 to 189; (b) increases the minimum lot size from 8,000 square feet (.184 acres) to 21,780 square feet (1/2 acre); and (c) reduces the overall density from .98 units per acre to .93 units per acre. Toll Bros.’ development complied with the City’s Comprehensive Plan (“Comp Plan) as originally proposed, offering single-family homes at a density of one unit per acre. As shown below, these most recent changes further align the

development with the Comp Plan, are consistent with existing development in the Shakerag Character Area and directly respond to neighbor issues and concerns.

**A. THE DEVELOPMENT PROPOSED IS CONSISTENT WITH THE COMP PLAN.**

The City's Comp Plan expressly identifies the Subject Property for future "build-out" and identifies the City's vision for the site. The adopted policy guide promotes single-family detached housing at a density of one unit per acre. It seeks a development that will provide a trail along the Chattahoochee River and maintain the areas' "pastoral feel" by among other things, providing sidewalks and trails along and near Rogers Circle. As explained above and below, the development proposed meets each aspiration.

**B. THE DEVELOPMENT PROPOSED IS CONSISTENT WITH ACTUAL DEVELOPMENT WITHIN THE SHAKERAG CHARACTER AREA.**

In its report, Planning Staff identified the 10 subdivisions closest to Embry Farms. Only three of the 10 were developed under the AG-1 zoning district, and two are old: Bellacree was developed in the 80's and Spring Meadow Farm in the 90's.

Of the remaining seven subdivisions, each was rezoned from AG-1. The density in those seven subdivisions ranges from .87 units per acre to 2.07 per acre, and the average is 1.45 units per acre. Toll Bros. is proposing a development at .93 units per acre, which is at the low end of that range. Further, six of the seven subdivisions have a smaller minimum lot size, in some cases significantly. Quail Hollow Estates has a minimum lot size of 8,500 square feet; Adair Manor, Belmont Farms and Parkside have a minimum lot size of 12,000 square feet; Blackstone has a minimum lot size of 15,000 square feet; and Tavistock has a minimum lot size of 18,000 square feet. Again, the minimum proposed by Toll Bros. at Embry Farms is 21,780 square feet.<sup>1</sup>

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<sup>1</sup> It is also important to note the proposed development provides significant, useable open space and active amenities on a scale that does not exist at these other nearby communities.

Tavistock is the most comparable subdivision in the Shakerag Character Area due to its immediate proximity. Tavistock has a minimum lot size of 18,000 square feet and is developed at a density of .98 units per acre. Hence, Tavistock's minimum lot size (18,000 sf) is 17% smaller than the minimum proposed for Embry Farms (21,780 sf) and the density five-percent higher (.98 u/a for Tavistock and .93 u/a for Embry Farms). Blackstone and Adair Manor are also informative, being in near proximity. Blackstone is developed at 1.8 units per acre with a 15,000 square foot minimum lot size and Adair Manor at 1.95 units per acre with a 12,000 square foot minimum lot size. The density in both is double what Toll is proposing and the lots significantly smaller (the Blackstone lots are 31% smaller (15,000 sf vs. 21,780 sf) and the Adair Manor 45% smaller (12,000 sf vs. 21,780 sf)). As this data establishes, the proposed development is consistent with the Shakerag Character Area.

### **C. THE DEVELOPMENT PROPOSED DIRECTLY RESPONDS TO NEIGHBOR ISSUES.**

There are three subdivisions on Rogers Circle: Spring Meadow Farm, Shakerag Manor and Tavistock. Toll Bros. has met with all three neighborhoods and in some cases multiple times. The primary objections to this request are from Spring Meadow Farm, the 13-home community adjacent and west of the Subject Property (the "Spring Meadow Neighbors").

Toll Bros. met with the Spring Meadow Neighbors before it filed this application. It has met multiple times since to listen to the neighbors' concerns and discuss changes to the site plan that might ameliorate any potential impacts. Initially, the Spring Meadow Neighbors made requests that seemed tied directly to the project and its potential impacts. For example, the Spring Meadow Neighbors wanted a planted buffer between their development and Tolls', they wanted larger lot sizes (particularly along the western boundary) and they wanted access to utilities, all requests Toll was open to. They also complained about traffic at Shakerag Elementary, which they said creates problems at certain times during the day currently. As time continued, however, the

demands began to drift away from actual project impacts. For example, the Spring Meadow Farm's neighbors wanted Toll Bros. to install a security gate at the entrance to their neighborhood—which Toll was open to discussing—but also wanted Toll Bros. to pay for security guards to man the security gate 24 hours a day, seven days a week and in perpetuity. Likewise, they wanted Toll Bros. to replace each of their 13 driveways, repave their road (Nellie Brook Court) and pay to maintain both in permanently. Some neighbors even asked for compensation (ie. One neighbor asked for \$6 Million for "pain and suffering"). As the demands strayed further from the concept of minimizing and mitigating actual impacts from project, talks broke down and Toll Bros. was unable to reach an agreement with Spring Meadow Farm.

Despite this fact, Toll Bros. has voluntarily incorporated into its site plan many of the project-related changes that the Spring Meadow Neighbors requested. For example, and as mentioned above, the Spring Meadow Neighbors asked that the lots abutting their western property boundary be at least one acre in size. Toll Bros. agreed and made that change. The neighbors wanted a 50-foot buffer where the Subject Property meets the eastern and southern boundary of Spring Meadow Farm. Toll Bros. acquiesced and modified the plan. Toll Bros. originally proposed a public park on the Subject Property and a public road to access the park. The neighbors did not like either so Toll Bros. removed both from the plan. There is no public park or public road on the Subject Property. The Spring Meadow Neighbors also expressed concerns about the lot sizes in general which, as noted above, were originally as small as 8,000 square feet. Again, Toll Bros. respected the neighbors' request and adjusted the minimum lot size one-half acre. Further, Toll Bros. plan involves a new, large, dedicated deceleration lane into Shakerag Elementary. This was not a problem that Toll Bros. caused but one it was willing to fix at the neighbors' request. There have been other changes, but the point is that while Toll Bros. could not reach an agreement with

the Spring Meadow Neighbors, it listened to their concerns, considered each of them and voluntarily made changes to the site plan that respond directly to many of them.

## **II. ZONING IMPACT ANALYSIS**

### **A. REZONING STANDARDS**

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#### **1. Does the zoning proposal permit a use that is suitable in view of the use and development of adjacent and nearby property?**

Yes. The development results in a minimum lot size of one-half acre and a density of .93 units per acre. As shown above, both the lot sizes proposed and density are consistent with or less than the minimum lot sizes and density in the surrounding Shakerag communities. The development abuts only one single-family detached neighborhood, the 13-home community known as Spring Meadow Farm. The Applicant has included special protections for that neighborhood, providing among other things a 50' buffer planted to City standards at the adjoining property line and one acre lots along the western boundary. The Applicant has also designed the development to aggregate green spaces in areas with more significant natural features which are emblematic of Embury Farms, such as the large open field bordering the Chattahoochee River. The result is greater open space, which should maintain the pastoral feel of the Shakerag Character Area as a whole.

#### **2. Does the zoning proposal adversely affect the existing use or usability of adjacent or nearby property?**

No. As noted above, the Applicant has included among other thing buffers, landscaping and one-acre lots on the western boundary to protect the only abutting 13-home neighborhood. Further, the Applicant has designed its community to be consistent in housing size, price and quality with adjacent and nearby property. The housing product envisioned will be developed to the highest standards, with the intended market being established professionals and executives looking to purchase homes within an amenitized and bespoke community. These low-density and

quality housing units are consistent with surrounding uses and will not impact the use of adjacent properties.

**3. Does the property to be rezoned have a reasonable economic use as currently zoned?**

No. The property has no reasonable economic use under its existing agricultural zoning. Surrounding developments have been permitted for similar residential uses with similar or greater densities and there is no feasible market for an agricultural use of this property.

**4. Will the zoning proposal result in a use that could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools?**

No. The development team submitted a traffic study to identify existing traffic capacities and to analyze impacts that additional residential units may have on the surrounding streets. As a result and working in collaboration with the City, Toll Bros. has committed to providing improvements to the existing infrastructure, including improvements to critical intersections. For example, Toll Bros. has agreed to construct at its own expense a roundabout on Rogers Circle, to contribute to improvements at the intersection of Rogers Circle and Bell Road (east) and install at its own expense a new deceleration lane for Shakerag Elementary. The Applicant's intent is to ensure that traffic impacts are minimized and mitigated.

The development's impact on schools is expected to be within existing capacities. Students living within the community are expected to attend Shakerag Elementary, River Trail Middle and Northview High School, all of which have capacity. Additionally, the area features numerous nearby private schools, such as Woodward Academy, that may service families within the development.

**5. Is the zoning proposal in conformity with the policies and intent of the land use plan?**

Yes. As indicated above, the Subject Property is located within the Shakerag Community Character Area in the Comprehensive Plan. Shakerag is characterized by conservation of natural

areas and a “pastoral” feel, with single-family communities integrated within surrounding natural features (Comp. Plan p. 136). Single family residences make up the largest land-use category within the community, comprising 58.6% of the total land area, as opposed to 18.6% reserved for recreational uses<sup>2</sup> (Comp. Plan p. 138).

The City’s vision for future development is reflected in the proposed community here. The Comprehensive Plan envisions that the area “will remain a premier residential community by maintaining its rural nature and developing a new recreational trail along the Chattahoochee River” (Comp. Plan p. 140). The Subject Property is specifically recognized in the Comprehensive Plan as being a property—indeed, the largest property in the community—identified for development and residential build-out (Comp. Plan p. 142).

The proposed development here contemplates a net density below the Comprehensive Plan’s call for one unit per acre. The density is consistent with low-intensity development and preserves existing pastureland. Similarly, the quality of development and the provisions for conserved open space will ensure that Shakerag remains a premier residential community that pays homage to the area’s rural history. Moreover, this is accomplished while expanding public amenities such as trails. The development will contribute large sections of connectivity along the Chattahoochee River and connect Cauley Creek Park to other large sections of trail in Johns Creek.

**6. Are there existing or changing conditions that affect the use and development of the property which support either approval or denial of the zoning proposal?**

Yes. Recent development trends in Johns Creek and across Metro-Atlanta have tended toward high-end, conservation style development, with greater amenities and civic space. As opposed to traditional larger lot developments, these smaller lot communities offer greater walkability and connectivity with active amenities. With the construction of Rogers Bridge and

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<sup>2</sup> This percentage includes properties zoned agricultural, including the Subject Property.



the expansion of Cauley Creek Park, opportunities for walkability and recreation are leveraged by this development's expansion of internal private and public trails. Critically, this is accomplished without overburdening the natural assets of the Subject Property. Large areas of wooded land and pasture land are preserved and incorporated within the mix of private development and publicly accessible trails.

**7. Does the zoning proposal permit a use that can be considered environmentally adverse to the natural resources, environment and citizens of the City of Johns Creek?**

No. The envisioned community utilizes a conservation style development to maximize greenspace and protect environmentally sensitive areas, such as the Chattahoochee River and existing perennial streams. The attached Environmental Site Analysis details environmentally sensitive areas and describes the development accommodations designed to address and protect those areas.

**III. NOTICE OF CONSTITUTIONAL CHALLENGE TO UNDERLYING ZONING AND PRESERVATION OF CONSTITUTIONAL RIGHTS.**

The Applicant respectfully submits that the current zoning classification of the Property and, any proposed intervening district, is unconstitutional and that rules relative to the Property owner's right to use the Property established in the City of Johns Creek Zoning Ordinance, to the extent they prohibit the requested use or variance, constitute an arbitrary, irrational abuse of discretion and unreasonable use of the zoning power because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant in violation of the due process and equal protection rights guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia. Further, the failure to allow the requested use or variance would constitute a taking of private property without just compensation and without due process in violation of the Fifth

Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia, and would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States.

The Applicant respectfully submits that the City Council's failure to approve the requested rezoning and/or variance would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Subject Property's owner and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

A refusal to allow the development in question would be invalid inasmuch as it would be denied pursuant to an ordinance which is not in compliance with the Zoning Procedures Law, O.C.G.A. § 36-66-1 *et seq.*, due to the manner in which the Ordinance as a whole and its map(s) have been adopted.

Opponents to this request, if any, lack standing; have failed to exhaust administrative remedies; and have waived their rights to appeal by failing to assert legal and constitutional objections.

#### **IV. CONCLUSION**

For the reasons discussed above, the Subject Property should be rezoned to CUP from AG-1 to permit the contemplated development and the requested variance granted. The development proposal provides a unique opportunity for quality residential development and the preservation of open spaces.

This 15th day of July, 2025.

Respectfully submitted,

/s/ *Dennis J. Webb, Jr.*

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