

RESOLUTION NO. 41-17  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Belinda Honley ON THE 17<sup>th</sup> DAY OF July, 2017.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A THIRD AMENDMENT TO THE SUBDIVIDER'S AGREEMENT WITH YANKEE TRACE WOODS, LLC FOR PROPERTY LOCATED IN THE CITY OF CENTERVILLE ALONG PARAGON ROAD.

WHEREAS, the City of Centerville and Yankee Trace Woods, LLC, the Owner and Developer of property located in City of Centerville along Paragon Road, had successfully negotiated a Subdivider's Agreement to allow property to be developed in the City and for the construction of both private and public improvements; and

WHEREAS, the Subdivider's Agreement was executed on September 14, 2015, and subsequently amended twice on May 12, 2016 and December 19, 2016, and contained contingencies; and

WHEREAS, said contingencies have not yet been completed; and

WHEREAS, it is the desire of the parties to the Subdivider's Agreement to again extend the deadline for completion of the contingencies for another two (2) years; and

WHEREAS, this Council has determined that it would be in the best interests of the citizens of Centerville to enter into said Amendment to the Agreement in order to extend the contingencies.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1. That the City Manager is authorized and directed to enter into a Third Amendment to the Subdivider's Agreement with Yankee Trace Woods, LLC to allow for the development of property located in City of Centerville, consisting of property along Paragon Road in accordance with the terms of said Amendment, a copy of which is attached hereto as Exhibit "A" and incorporated herein.

SECTION 2. This Resolution is to take effect at the earliest time allowed by law.

PASSED THIS 17<sup>th</sup> day of July, 2017.

  
\_\_\_\_\_  
Mayor of the City of Centerville, Ohio

ATTEST:

Carin R. Andrews

Clerk of Council  
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 41-17, passed by the Council of the City of Centerville, Ohio on the 17<sup>th</sup> day of July, 2017.

Carin R. Andrews

Clerk of the Council

Approved as to form, consistency  
with existing ordinances, the  
charter & constitutional provisions  
Department of Law  
Scott A. Liberman  
Municipal Attorney

**THIRD AMENDMENT TO SUBDIVIDER'S AGREEMENT**

**THIS AMENDMENT TO SUBDIVIDER'S AGREEMENT** made this \_\_\_\_\_ day of July, 2017, between **Yankee Trace Woods, LLC**, an Ohio limited liability company, hereinafter referred to as the "Developer", and the **CITY OF CENTERVILLE**, Montgomery County, Ohio, an Ohio municipal corporation, hereinafter referred to as "Centerville" or "City" (collectively "the Parties").

**WITNESSETH:**

**WHEREAS**, the Parties entered into a Subdivider's Agreement dated September 14, 2015 and amended on May 12, 2016 and December 19, 2016 (the "Agreement") relating to the record plan (plat) for the improvements and expansion of The Grove at Yankee Trace project located along Paragon Road, hereinafter referred to as the "Development", and

**WHEREAS**, the Agreement contemplates the satisfaction of certain contingencies established therein; and

**WHEREAS**, in consideration of the mutual benefits accruing hereunder, the Parties desire to amend the Agreement as hereinafter provided.

**NOW, THEREFORE**, it is agreed between Developer and Centerville to amend the Agreement as follows:

1. Paragraph 1 of the Agreement is hereby restated and amended in its entirety as follows:

1. Developer has obtained approval of the plat from the Planning Commission and the City Council of Centerville, and Developer has recorded the plat with the Recorder of Montgomery County, Ohio. As set forth in paragraph 14, Developer is permitted to assign this Agreement (including all amendments to the same), and to sell and transfer title to the entire plat to another entity or developer, but neither Developer nor any other entity or developer to which this Agreement is assigned, may sell or transfer a single lot, group of lots, a parcel or tract of the plat (in essence a subset of the plat) unless it receives further prior approval from the City of Centerville. Developer is permitted to proceed with construction grading or installation of the plat so long as Developer complies with the requirements set forth in paragraph 3, including the Subdivision

Regulations and performance bond requirements set forth in Section 9.17 of the Unified Development Code.

2. Paragraph 5 of the Agreement is hereby restated and amended in its entirety as follows:

5. Developer previously filed a Petition for Special Assessment for the public streets including sidewalks, curbs and gutters, and sanitary mains and laterals along, in and/or serving the Development (the "Improvements") and the City agreed by Resolution to levy a special assessment to pay for the Improvements to be paid in thirty annual installments of principal and interest, and the debt issuance shall include two (2) years of capitalized interest. Developer agrees to grant a first lien on all subdivided buildable lots within the Development to ensure construction of the Development. City agrees to release the lien at each parcel's individual closing. The cost to record the release shall be borne by the Developer at the time of closing. If the City fails to pass the Ordinance of Assessment by July 31, 2019, or Developer gives notice of its intent to no longer proceed with the project, this agreement shall be null and void and both parties shall cooperate in extinguishing the recorded plat.

3. Paragraph 6 of the Agreement is hereby restated and amended in its entirety as follows:

6. The amount of the Special Assessment for the Improvements including Auditor fees is capped at Seven Hundred and Eight Thousand, Seven Hundred Fifty and no/100 Dollars (\$708,750), calculated by the number of lots (27) times the annual special assessment of \$875/lot for thirty years. Subject to the City's prior approval, which approval shall not be unreasonably withheld, Developer shall have the option of having the City issue and sell the bonds at any time after the execution of this Agreement and the recording of the Plat and Developer may delay the issuance and sale of the bonds by the City until no later than July 31, 2019. From time to time upon the Developer's request, the City shall advise the Developer of the anticipated interest rate for the bonds and other issuance costs and whether the interest rate can be fixed or locked prior to issuance.

4. A Paragraph 14 is added to the Agreement as follows:

14. Developer may assign this Agreement to any other entity or developer up through July 31, 2019.

5. Except as modified, hereby, the Agreement is ratified and confirmed and remains in full force and effect. This Amendment may be executed in several

counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereunto have set their hands as of the day and year first above written.

Signed in the presence of:

**YANKEE TRACE WOODS, LLC**, an Ohio limited liability company

\_\_\_\_\_  
Witness for Developer

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

**CITY OF CENTERVILLE**

\_\_\_\_\_  
Witness for City

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_ City Manager

Approved as to form:

\_\_\_\_\_  
Scott A. Liberman, Municipal Attorney