

RESOLUTION NO. 36-23
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Duke Lunford ON THE 3rd
DAY OF April, 2023.

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

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 four times on May 12, 2016, December 19, 2016, July 18, 2019, and August 17, 2022; and

WHEREAS, it is the desire of the parties to the Subdivider's Agreement to allow Developer to assign the Subdivider Agreement to the Builder, Doliboa Construction, Inc., dba Catalyst Homes; and

WHEREAS, the City agrees that if the Developer does assign to Doliboa Construction, Inc., dba Catalyst Homes, then the City agrees to a Mutual Release of all rights and obligations of Yankee Trace Woods, LLC; 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 and the Mutual Release in order to allow the assignment of rights and obligations for the Development.

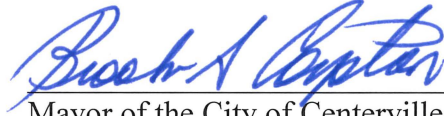
NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1. That the City Manager is authorized and directed to enter into a Fifth 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. That the City Manager is authorized and directed to enter into a Mutual Release Agreement with Yankee Trace Woods, LLC, which is effective only upon assignment to Doliboa Construction, Inc., dba Catalyst Homes and which assignment will only be allowed up to June 30, 2023. A copy of the Mutual Release is attached hereto as Exhibit "B" and incorporated herein.

SECTION 3. This Resolution is to take effect at the earliest time allowed by law.

PASSED THIS 3rd day of April, 2023.



Mayor of the City of Centerville, Ohio

ATTEST:



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. 36-23, passed by the Council of the City of Centerville, Ohio on the 3rd day of April, 2023.



Clerk of the Council

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

FIFTH AMENDMENT TO SUBDIVIDER'S AGREEMENT

THIS AMENDMENT TO SUBDIVIDER'S AGREEMENT made this _____ day of April, 2023, 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 Developer and the City entered into a Subdivider's Agreement dated September 14, 2015; amended on May 12, 2016; December 19, 2016, July 18, 2017, and August 17, 2022 (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 contemplated the satisfaction of certain contingencies and obligations of the Parties established therein; and

WHEREAS, pursuant to a prior amendment to the Agreement, Developer had the contractual right to assign its rights and obligations under the Agreement within a certain time frame, which has expired; and

WHEREAS, Developer desires to extend the deadline to assign all rights and obligations of this Agreement to a third party; and

WHEREAS, the City is willing to agree to said extension of assignment deadline if assigned to the current builder, Doliboa Construction, Inc., dba Catalyst Homes; and

WHEREAS, in consideration of the mutual benefits accruing hereunder, the Parties desire to amend the Agreement as hereinafter provided in order to allow this Agreement and all obligations of the Developer to be assigned to a third party that is acceptable to the City.

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

1. Paragraph 14 of the Agreement is hereby restated and amended in its entirety as follows:

14. Developer may assign this Agreement to Doliboa Construction, Inc., dba Catalyst Homes up through June 30, 2023.

2. 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: Wayne S. Davis
Its: City Manager

Approved as to form:

Scott A. Liberman, Municipal Attorney

MUTUAL RELEASE

This Mutual Release (“Agreement”) is made and entered into by and 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 entitled “the Parties”).

WHEREAS, Developer and City are parties to a Subdivider’s Agreement dated September 14, 2015; amended on May 12, 2016; December 19, 2016, July 18, 2017, and August 17, 2022 (the “Subdivider 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, Developer and City agreed to execute a Fifth Amendment to the Subdivider Agreement, which allow Developer to assign the Agreement to Doliboa Construction, Inc., dba Catalyst Homes that will take over all rights and obligations of Developer concerning the Development; and

WHEREAS, the Parties are entering into this Agreement to resolve any and all claims the Parties have or may have against each other that could be alleged or have been alleged with regards to the Development, and the Parties expressly understand that this Agreement will not be effective until the effective date of a subsequent, separate contract between Developer and another party wherein Developer will assign all of its rights and obligations concerning the Development to another party.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, the Parties hereby agree as follows:

1. RELEASE OF CLAIMS

1.1 Mutual Release of All Claims. Developer does hereby, for itself and its members, officers, managers, employees (past and present), agents, representatives, and attorneys, release and absolutely and forever discharge the City and its elected and appointed officials, employees (past and present), officers, directors, board members, agents, related organizations, sponsors, contributors, supporters, divisions, subsidiaries, parent corporations, members, affiliates, successors, assigns, attorneys, insurers, and any and all entities owned or controlled in whole or part by the City, or any of them, from any and all claims, demands, damages, debts, liabilities, attorneys’ fees, experts’ fees, accounts, reckonings, obligations, costs, expenses, liens, actions and causes of action of every kind and nature whatsoever, which the Developer possesses or claims to possess against the City, arising from and/or relating in any way to the Development and all claims that were alleged or could have been alleged with regards to the Development.

The City does hereby, for itself and its elected and appointed officials, employees (past and present), officers, directors, board members, agents, related organizations, sponsors, contributors,

supporters, divisions, subsidiaries, parent corporations, members, affiliates, successors, assigns, attorneys, insurers, and any and all entities owned or controlled in whole or part by the City, or any of them, absolutely and forever discharges Developer and its members, officers, managers, employees (past and present), agents, representatives, insurers, and from any and all claims, demands, damages, debts, liabilities, attorneys' fees, experts' fees, accounts, reckonings, obligations, costs, expenses, liens, actions and causes of action of every kind and nature whatsoever, which the City possesses or claims to possess against the Developer, arising from and/or relating in any way to the Development and all claims that were alleged or could have been alleged with regards to the Development.

The City and Developer expressly understand and agree that this Agreement, including the foregoing mutual release of claims, will not be effective until the effective date of a subsequent, separate contract between Developer and another party wherein Developer will assign all of its rights and obligations concerning the Development to Doliboa Construction, Inc., dba Catalyst Homes.

2. CONSIDERATION

In consideration of this Agreement the parties agree to execute the Fifth Amendment to Subdivider Agreement allowing the assignment of the Development from Developer to Catalyst.

3. GENERAL

4.1 Agreement Governed by Ohio Law. Ohio law shall govern all disputes, controversies, litigation, and interpretive matters arising under this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the Parties.

4.2 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. The terms of this Agreement are contractual and not a mere recital. This Agreement is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. The Parties have carefully read this Agreement, have had the opportunity to have their respective attorneys review the Agreement, and sign the same of their own free will. This Agreement may not be altered or amended except by an instrument in writing executed by all of the Parties to this Agreement.

4.4 No Admission of Liability. Parties acknowledge and agree that all Parties deny any wrongdoing and any liability for any obligation to, or damage allegedly suffered by, any of the Parties. This Agreement is not and shall not be construed to be an admission of wrongdoing or liability on the part of the Parties.

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: Wayne S. Davis
Its: City Manager

Approved as to form:

Scott A. Liberman, Municipal Attorney