

1 **..Title**

2 **AMENDED AGREEMENT Street Rights-of-Way in the Thomas Woods Planned**
3 **Development** - For the purpose of amending the Agreement for the privatization of street rights-
4 of-way in the Thomas Woods Planned Development.

5 **..Body**

6 **CITY COUNCIL OF THE**
7 **City of Annapolis**

8
9 **Resolution 3-16**

10
11 **Introduced by: Alderman Kirby and Alderman Pfeiffer**

12
13 **Referred to**
14 **Economic Matters**
15 **Environmental Matters**
16 **Rules and City Government**

17
18 **A RESOLUTION** concerning

19
20 **AMENDED AGREEMENT**
21 **Street Rights-of-Way in the Thomas Woods Planned Development**

22
23 **FOR** the purpose of amending the Agreement for the privatization of street rights-of-way in the
24 Thomas Woods Planned Development.

25
26 **WHEREAS**, on October 26, 2015, the City Council approved R-23-15 and a corresponding
27 agreement permitting ETN Global, LLC and the Thomas Woods Homeowners
28 Association, LLC to retain private ownership of the streets/roads within the
29 boundaries of its community, pursuant to § 20.20.010(A) of the Code of the City of
30 Annapolis; and

31
32 **WHEREAS**, the City Council-approved agreement was then circulated for signatures, and
33 signed by Dimitri Sfakiyanudis, as managing member of both ETN Global, LLC and
34 the Thomas Woods Homeowners Association, LLC; and

35
36 **WHEREAS**, Mr. Sfakiyanudis now requests an amendment be made to the City Council-
37 approved agreement; and

38
39 **WHEREAS**, justifications for this amendment are summarized in the attached letter from his
40 legal counsel, Alan J. Hyatt, dated January 5, 2016.

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42
43 **NOW THEREFORE BE IT RESOLVED BY THE ANNAPOLIS CITY COUNCIL** that
44 pursuant to Section 20.20.01.A of the Code of the City of Annapolis regarding the City of
45 Annapolis' ownership and maintenance of certain street rights-of-way, the City of Annapolis
46 shall not take ownership of or maintenance responsibilities for the street rights-of-way within the

1 boundaries of the Thomas Woods residential planned development, and said street rights-of-way
2 shall be privately owned and maintained by the Thomas Woods Homeowner’s Association with
3 the Association assuming responsibility and liability for the same in accordance with the
4 Amended Agreement made a part of this Resolution by and among the City of Annapolis and
5 ETN GLOBAL, LLC, a Maryland limited liability company, and THE THOMAS WOODS
6 HOMEOWNERS ASSOCIATION, LLC, a Maryland limited liability company.

7
8 **NOW THEREFORE BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY**
9 **COUNCIL** that this Resolution shall become effective on the date of its adoption by the City
10 Council.

11
12 **EXPLANATION**

13 CAPITAL LETTERS indicate matter added to existing law.

14 ~~Strikethrough~~ indicates matter stricken from existing law.

15 Underlining indicates amendments.
16

1 **1. Ownership and Maintenance of Private Road/Street Rights-Of-Way.**
2

3 a. Upon recordation of the Subdivision Plat and the Developer's conveyance of the
4 road/street rights-of-way of the Project (collectively, the "Streets") to the Association, the
5 Association shall have exclusive ownership of all Streets within the Project, which shall be so
6 indicated on the recorded Subdivision Plat and shall be based upon the Plan.
7

8 b. The Association shall be the fee simple owner of the Streets, and the appurtenances
9 thereto and shall, at its own cost and expense, be solely responsible for any and all maintenance,
10 both preventative and routine, reconstruction, construction and/or repair of the Streets or any
11 portions thereof, and any and all costs and expenses therefore. Said maintenance shall include,
12 but not be limited, to the following, along any and all Streets within the Project:
13

- 14 1. Routine maintenance, both preventative and routine, of all Streets, alleys,
15 sidewalks and other vehicular and pedestrian ways within the Project.
- 16 2. Maintenance, removal and planting of trees and other vegetation along or
17 near the Streets.
- 18 3. All maintenance and energy costs associated with lighting the Streets.
- 19 4. Maintenance and operation of all stormwater management facilities and
20 drainage facilities for the Streets subject to a maintenance agreement to be
21 executed after the execution of this Amended Agreement (the
22 "Maintenance Agreement"), which Maintenance Agreement is
23 incorporated herein by reference.
- 24 5. Snow removal for the Streets, with the additional provision that no snow
25 shall be plowed into, or disposed of in, any City street.
- 26 6. Street sweeping.
- 27 7. Litter, trash, garbage, yard waste and refuse removal and recycling for the
28 Project, except as otherwise provided in Paragraph 3 of this Amended
29 Agreement.
- 30 7. All requirements of the Real Property Article, Title II of the Annotated
31 Code of Maryland, as may be amended, and all standards for public streets
32 as determined by the City Director of Public Works.
33

34 c. Neither the Association, nor the individual property owners within the Property or
35 the Project (collectively, the "Individual Owners"), shall petition the City to modify Paragraphs
36 1(a) or 1(b) of this Amended Agreement.
37

38 **2. Easements to the City.**
39

40 a. In advance of the granting of any other rights-of-way or easements, or fee simple
41 transfer of property, the Developer shall reserve unto itself easements for the construction,
42 reconstruction, repair, inspection and other activities as may be necessary by the City
43 Department of Public Works for the operation of water and sanitary sewer on the Property and
44 for the Project. Such easement widths and locations shall be as specified by the City Department
45 of Public Works.
46

1 b. In advance of granting of any other rights-of-way or easements or fee simple
2 transfer of the property, the Developer shall reserve unto itself rights to establish an easement for
3 police and fire vehicular and personnel access via the Streets within the Project.
4

5 c. At the time of the release of the Developer's bond for the Project, as required by
6 the City, the Developer shall transfer the easement rights indicated in Paragraphs 2(a) and 2(b) to
7 the City in accordance with the terms and conditions of instruments to be prepared by, and
8 satisfactory to, the City. These easement rights shall be perpetual and subject to no liens of any
9 mortgages or deeds of trust.
10

11 **3. Trash, Garbage, Refuse, Yard Waste and Recycling Removal from the Property.**

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13 All trash, garbage, yard waste, refuse, and recyclable collection and removal for the
14 Project shall be privately contracted.
15

16 **4. Recordation; Binding.**

17

18 a. This Amended Agreement, the Subdivision Plat and the Maintenance Agreement
19 shall all be recorded among the Land Records of Anne Arundel County at the Association's sole
20 cost and expense, and the duties and responsibilities of this Amended Agreement shall run with
21 the title(s) to the Property and the Project, including all those portions individually owned by the
22 Individual Owners and their successors and assigns.
23

24 b. The Subdivision Plat shall include the following notation: "Thomas Trail owned
25 and maintained by the Homeowner's Association."
26

27 c. The parties and their respective successors, assigns and purchasers shall be
28 entitled to all of the rights and privileges of this Amended Agreement and shall be bound by all
29 of its duties and responsibilities. All references to the "Property Owner" herein shall be
30 interpreted to specifically refer to all of the Developer's and Association's respective successors,
31 assigns and purchasers, without regard to privity with the City under this Amended Agreement.

32 d. The terms of this Amended Agreement shall be binding upon and shall inure to
33 the benefit of the parties, any successor municipal authorities of the City or any successor quasi-
34 governmental authority. Successor owners of record of the Property and/or the Project, or any
35 respective portion thereof, and/or the successors and assigns of the Individual Owners may
36 assign their benefits, rights, duties and obligations hereunder either as part of the conveyance of
37 the Property and/or the Project as an entirety or severally as part of the conveyances of portions
38 of the Property and/or the Project.

39 **5. Disclosure.**

40

41 a. The Developer shall incorporate, within the bylaws of the Association, a
42 provision memorializing this Amended Agreement (the "Provision"). This Provision shall not be
43 incorporated into the bylaws of the Association until reviewed and approved, in writing, by the
44 City Office of Law, after consultation with the City Department of Public Works.
45

1 b. The Provision shall be recited within all deeds transferring real property fee
2 simple rights to any property within the Property and/or the Project. All such deeds shall include
3 an acceptance signature line by the new owners, including, but not limited to, the Individual
4 Owners.

5
6 c. The Developer and all Individual Owners shall disclose in writing to each
7 potential buyer of the Property and/or the Project the contents of this Amended Agreement. The
8 Individual Owners and each potential buyer shall be provided a copy of this Amended
9 Agreement by the Developer or the Association prior to any contract of sale being executed for
10 any portion of the Property and/or the Project.

11 12 **6. City Re-Acquire Ownership of Streets.**

13
14 If the City, at any time, should agree through City Council resolution to re-acquire
15 ownership of the Streets, whether pursuant to Chapter 20.20 or Chapter 14.28 of the Code, as
16 either may be amended, then the Association shall be required to bring the Streets into
17 compliance with all federal, state, local and City standards (including, but not limited to, those
18 required in Chapters 20.20 and 14.28 of the Code) prior to the City assuming any ownership,
19 liability, obligations and/or other responsibilities of or for the Streets.

20 21 **7. Indemnification.**

22 a. The Developer shall forever indemnify, defend and hold harmless the City, its
23 elected officials, appointees, directors, employees, agents, contractors and representatives from
24 and against all liability for injuries to persons, including death, and damage to City property and
25 other property arising from acts or omissions of the Developer, its officers, agents, employees,
26 contractors, patrons, volunteers, guests or invitees resulting in connection with this Amended
27 Agreement or the Streets of the Project.

28 b. The Association shall forever indemnify, defend and hold harmless the City, its
29 elected officials, appointees, directors, employees, agents, contractors and representatives from
30 and against all liability for injuries to persons, including death, and damage to City property and
31 other property arising from acts or omissions of the Association, its officers, agents, employees,
32 members, contractors, patrons, volunteers, guests or invitees resulting in connection with this
33 Amended Agreement or the Streets of the Project.

34 c. Developer and/or Association indemnification does not limit any immunity which
35 the City, its elected officials, appointed officers, directors, employees, agents, contractors and
36 representatives are entitled to assert, and includes all costs and expenses, including attorney's
37 fees, whether or not related to administrative or judicial proceedings.

38 d. The City, in its sole discretion, may participate in handling its own defense or
39 exclusively handle its own defense, and select its own attorneys, including the City Attorney.
40 The indemnification for attorney fees applies whether or not the City Attorney or other attorney
41 handles the defense.

42 e. The Developer shall reimburse the City, within thirty (30) calendar days after
43 invoicing for such reimbursement, for any damage to the City's streets, utility systems, water

1 and/or sewer mains, facilities, equipment or other property caused by the negligence or willful
2 misconduct of the Developer, its officers, agents, employees, contractors, patrons, volunteers,
3 guests or invitees.

4 f. The Association shall reimburse the City, within thirty (30) calendar days after
5 invoicing for such reimbursement, for any damage to the City's streets, utility systems, water
6 and/or sewer mains, facilities, equipment or other property caused by the negligence or willful
7 misconduct of the Association, its officers, agents, employees, members, contractors, patrons,
8 volunteers, guests or invitees.

9 **8. Waiver.**

10 a. No delay or omission on the part of the City to exercise any right granted to the
11 City under this Amended Agreement, in any one or more instances shall constitute a waiver of
12 the City's rights hereunder and each such right shall remain continuously in full force and effect.

13 b. The parties hereby understand and agree that this Amended Agreement shall not
14 waive any rights, powers or remedies that the City may have pursuant to the Code, as may be
15 amended.

16 **9. No Partnership.**

17 Nothing contained in this Amended Agreement shall be construed in a manner to create
18 any relationship between the parties other than expressly specified herein, and the parties shall
19 not be considered partners or co-venturers for any purpose on account of this Amended
20 Agreement.

21 **10. Severability.**

22 In the event any one or more of the provisions of this Amended Agreement shall for any
23 reason be held by a court or other lawful authority to be invalid, illegal or unenforceable, in
24 whole or in part or in any other respect, the remaining provisions hereof shall not be affected
25 thereby, and the Amended Agreement shall remain operative and in full force and effect and
26 shall in no way be affected, prejudiced or disturbed thereby.

27 **11. Governing Law.**

28 This Amended Agreement and its interpretation shall be governed by Maryland law. The
29 venue for all actions pursuant to this Amended Agreement shall be the Courts of Anne Arundel
30 County, Maryland. The parties waive trial by jury in all actions brought pursuant to this
31 Amended Agreement.

32 **12. Captions and Headings.**

33 The captions and headings contained in this Amended Agreement are included herein for
34 convenience of reference only and shall not be considered a part hereof and are not in any way
35 intended to limit or enlarge the terms hereof.

36

1 **13. Integration; Modification.**

2 a. This Amended Agreement is the final and entire agreement of the parties
3 concerning all matters having to do with the Streets of the Project. The parties acknowledge that
4 there are no other understandings or representations, oral or written, regarding the subject or
5 matters having to do with the Streets of the Project.

6 b. None of the terms or provisions of this Amended Agreement may be changed,
7 waived, or modified exempt by written instrument executed by all parties hereto.

8 **14. Counterparts.**

9 This Amended Agreement may be executed in any number of counterparts and by the
10 parties hereto in separate counterparts, each of which when so executed and delivered shall be
11 deemed to be an original and all of which taken together shall constitute but one and the same
12 instrument.

13 **15. Notice.**

14 Any notice required to be delivered shall be deemed to have been received when the
15 notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered with
16 signed receipt to the following address and individual or such other address and/or such other
17 individual as a party may identify in writing to the other party:

18 To the City: Department of Public Works
19 145 Gorman Street, 2nd Floor
20 Annapolis, Maryland 21401
21 Attn: Director
22

23 With a Copy to: City Attorney
24 160 Duke of Gloucester Street
25 Annapolis, Maryland 21401
26

27 To the Developer: ETN Global, LLC
28 45 Old Solomon's Island Road, Unit 201
29 Annapolis, Maryland 21401
30 Attn: Dimitri Sfakiyanudis, Managing Member
31

32 To the Association: Thomas Woods Homeowners Association, LLC
33 45 Old Solomon's Island Road, Unit 201
34 Annapolis, Maryland 21401
35 Attn: Dimitri Sfakiyanudis, Managing Member
36

37 **16. Authorization.**

38 This Amended Agreement is authorized by the City Council pursuant to Resolution No.
39 R-3-16.
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ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

By: _____
Michael J. Pantelides, Mayor (Seal)

APPROVED FOR FINANCIAL SUFFICIENCY: REVIEWED AND APPROVED BY:

Bruce T. Miller, Director
Finance Department

Thomas C. Andrews, City Manager

REVIEWED AND APPROVED BY:

David Jarrell, Director
Department of Public Works

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

OFFICE OF THE CITY ATTORNEY