



Legislation Text

File #: R-03-16, Version: 1

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

**CITY COUNCIL OF THE
City of Annapolis**

Resolution 3-16

Introduced by: Alderman Kirby and Alderman Pfeiffer

**Referred to
Economic Matters
Environmental Matters
Rules and City Government**

A **RESOLUTION** concerning

AMENDED AGREEMENT

Street Rights-of-Way in the Thomas Woods Planned Development

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

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

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

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

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

NOW THEREFORE BE IT RESOLVED BY THE ANNAPOLIS CITY COUNCIL that pursuant to Section 20.20.01.A of the Code of the City of Annapolis regarding the City of Annapolis' ownership and maintenance of certain street rights-of-way, the City of Annapolis shall not take ownership of or maintenance responsibilities for the street rights-of-way within the boundaries of the Thomas Woods residential planned development, and said street rights-of-way shall be privately owned and maintained by the Thomas Woods Homeowner's Association with the Association assuming responsibility and liability for the same in accordance with the Amended Agreement made a part of this Resolution by and among the City of Annapolis and ETN GLOBAL, LLC, a Maryland limited liability company, and THE THOMAS WOODS HOMEOWNERS ASSOCIATION, LLC, a Maryland limited liability company.

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

EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.

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

Underlining indicates amendments.

**CITY OF ANNAPOLIS PRIVATE RIGHTS-OF-WAY
AMENDED AGREEMENT**

THIS PRIVATE RIGHTS-OF-WAY AMENDED AGREEMENT ("Amended Agreement") is made this ____ day of _____, 2016, by and among the City of Annapolis, a municipal corporation of the State of Maryland ("City"), ETN Global, LLC, a Maryland limited liability company (the "Developer"), and Thomas Woods Homeowners Association, LLC, a Maryland limited liability company (the "Association").

WHEREAS, a development is underway for certain property owned by the Developer consisting of approximately 1.44 acres, more or less, located at Tax Map 56C, Block 5, Parcels 523 and 559 in Annapolis, Maryland and as more accurately described in a deed recorded at Liber 24488, folio 004 among the Land Records of Anne Arundel County (collectively, the "Property"); and

WHEREAS, the development of the Property shall be comprised of the Thomas Woods Planned Development, a ten (10) lot subdivision with eight (8) townhomes and two (2) single family homes (the "Project") per the site plan dated May 26, 2015 (the "Plan"), attached hereto and incorporated herein as **Attachment A**; and

WHEREAS, the Plan was approved by the City of Annapolis Planning Commission on July 15, 2015 (the "Approval"); and

WHEREAS, the Approval for the Project was based upon the Plan that specifies that all road/street rights-of-way within the Project shall be privately owned and maintained by the future residents of the Project acting collectively as the Association; and

WHEREAS, pursuant to § 20.20.010(A) of the Code of the City of Annapolis (the "Code"), as may be amended, a community association may assume responsibility and liability for roads/streets within the boundaries of its community, which roads/streets shall remain privately owned by that community association

instead of the City taking ownership of or maintenance responsibilities for such streets/roads; and

WHEREAS, the Association has agreed to assume responsibility and liability for the roads/streets of the Project pursuant to § 20.20.010(A) of the Code; and

WHEREAS, such private ownership of all the Project's roads/streets shall be indicated on the recorded subdivision plat for the Project (the "Subdivision Plat"), which Subdivision Plat is incorporated herein by reference; and

NOW THEREFORE, in consideration of these premises and the mutual covenants and promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

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

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

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

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

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

2. Easements to the City.

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

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

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

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

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

4. Recordation; Binding.

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

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

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

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

5. Disclosure.

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

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

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

6. City Re-Acquire Ownership of Streets.

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

7. Indemnification.

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

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

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

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

e. The Developer shall reimburse the City, within thirty (30) calendar days after invoicing for such reimbursement, for any damage to the City's streets, utility systems, water and/or sewer mains, facilities, equipment or other property caused by the negligence or willful misconduct of the Developer, its officers,

agents, employees, contractors, patrons, volunteers, guests or invitees.

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

8. Waiver.

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

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

9. No Partnership.

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

10. Severability.

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

11. Governing Law.

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

12. Captions and Headings.

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

13. Integration; Modification.

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

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

14. Counterparts.

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

15. Notice.

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

- To the City: Department of Public Works
145 Gorman Street, 2nd Floor
Annapolis, Maryland 21401
Attn: Director
- With a Copy to: City Attorney
160 Duke of Gloucester Street
Annapolis, Maryland 21401
- To the Developer: ETN Global, LLC
45 Old Solomon’s Island Road, Unit 201
Annapolis, Maryland 21401
Attn: Dimitri Sfakiyanudis, Managing Member
- To the Association: Thomas Woods Homeowners Association, LLC
45 Old Solomon’s Island Road, Unit 201
Annapolis, Maryland 21401
Attn: Dimitri Sfakiyanudis, Managing Member

16. Authorization.

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

IN WITNESS WHEREOF, the parties have caused this Amended Agreement to be executed under Seal as of the day and year written below.

ETN GLOBAL, LLC

Witness

By: _____
Dimitri Sfakiyanudis
Managing Member

STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL to wit:

I hereby certify that on this ____ day of _____, 2015, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Dimitri Sfakiyanudis, and he/she has

signed this Amended Agreement in my presence and acknowledged that it is his/her free and voluntary act and the free and voluntary act of ETN Global, LLC made for the purposes set forth therein.

Witness my signature and Notary Seal.

NOTARY PUBLIC

THOMAS WOODS HOMEOWNERS
ASSOCIATION, LLC

By:

Dimitri Sfakiyanudis
Managing Member

Witness

STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL to wit:

I hereby certify that on this ____ day of _____, 2015, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Dimitri Sfakiyanudis, and he/she has signed this Amended Agreement in my presence and acknowledged that it is his/her free and voluntary act and the free and voluntary act of the Thomas Woods Homeowners Association, LLC made for the purposes set forth therein.

Witness my signature and Notary Seal.

NOTARY PUBLIC

[Signatures Continue on Following Pages]

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