

Village of Yellow Springs, Ohio

RESOLUTION 2023-26

**AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN SUBDIVIDER'S
AGREEMENT WITH SPRING MEADOWS PROJECT I, LLC**

WHEREAS, Spring Meadows Subdivision requires the construction of Public Improvements i.e., those improvements required to be installed in the existing right of way or in right of way to be dedicated to and accepted by the Village at the completion of construction of the public improvements; and

WHEREAS, on October 11, 2022, the Planning Commission voted to recommend to Village Council approval of the Final Plat for Spring Meadows Subdivision consisting of 90 lots (hereinafter "Subdivision"); and

WHEREAS, following the October 11, 2022 Planning Commission meeting, Subdivider decided to build the Development in two separate phases instead of all at once (hereinafter referred to as "Phase 1" and "Phase 2"); and,

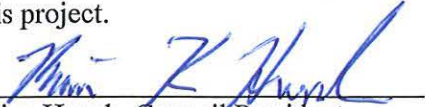
WHEREAS, since the October 11, 2022 Planning Commission meeting, Subdivider and Village have agreed to move forward per Yellow Springs Codified Ordinance Section 1226.09(a)(1) wherein Subdivider will construct all improvements directly affecting the subdivision, as required by the Village pursuant to the construction plan, approvals and the posting of inspection fees, prior to Council approval of the Phase 1 and Phase 2 final plats; and

WHEREAS, Subdivider desires to construct these public improvements for the Development under terms of this Subdivider's Agreement; and

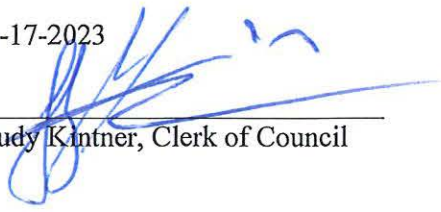
NOW, THEREFORE, be it resolved by Council for the Village of Yellow Springs, Ohio that:

Section 1. Village Council hereby authorizes the Village Manager to enter into a Subdivider's Agreement with Spring Meadows Project I, LLC under terms substantially similar to those described in the attached Exhibit A.

Section 2. The Village Manager is authorized to represent the Village in all matters related to this project.


Brian Housh, Council President

Passed: 4-17-2023

Attest: 
Judy Kintner, Clerk of Council

ROLL CALL

Brian Housh __Y__

Marianne MacQueen __Y__

Kevin Stokes __Y__

Carmen Brown __Y__

Gavin DeVore Leonard __Y__

EXHIBIT A to RESOLUTION 2023-26

SUBDIVIDER'S AGREEMENT

THIS AGREEMENT is entered into by and between **Spring Meadows Project I, LLC**, an Ohio Limited Liability Company, hereinafter referred to as "Subdivider", and the **VILLAGE OF YELLOW SPRINGS**, Greene County, Ohio, hereinafter referred to as "Village". "Council" as referred to herein, shall be the Village Council of Yellow Springs, Greene County, Ohio, and "Village Engineer" shall refer to the Village Engineer or the Village's Consulting Engineer hired to perform services on this project. The term "Development" shall refer to the land being developed as Springs Meadows Subdivision as further set out in the Final Plat as recommended for approval by Village Planning Commission.

WHEREAS, Spring Meadows Subdivision requires the construction of Public Improvements i.e., those improvements required to be installed in the existing right of way or in right of way to be dedicated to and accepted by the Village at the completion of construction of the public improvements; and

WHEREAS, on April 12, 2022, the Planning Commission voted to approve the Preliminary Plat for Spring Meadows Subdivision consisting of 90 lots (hereinafter "Subdivision"); and

WHEREAS, on October 11, 2022, the Planning Commission voted to recommend to Village Council approval of the Final Plat for Spring Meadows Subdivision consisting of 90 lots (hereinafter "Subdivision"); and

WHEREAS, following the October 11, 2022 Planning Commission meeting, Subdivider decided to build the Development in two separate phases instead of all at once (hereinafter referred to as "Phase 1" and "Phase 2"); and,

WHEREAS, since the October 11, 2022 Planning Commission meeting, Subdivider and Village have agreed to move forward per Yellow Springs Codified Ordinance Section 1226.09(a)(1) wherein Subdivider will construct all improvements directly affecting the subdivision, as required by the Village pursuant to the construction plan, approvals and the posting of inspection fees, prior to Council approval of the Phase 1 and Phase 2 final plats;

WHEREAS, engineering estimates and construction plans to construct Phase 1 public improvements have been agreed upon between the Subdivider and the Village Engineer; and

WHEREAS, Subdivider desires to construct these public improvements for the Development under terms of this Subdivider's Agreement; and

WHEREAS, Village will agree to such provisions as are necessary for the construction of these public improvements as set forth herein;

NOW, THEREFORE, THE FOLLOWING IS HEREBY AGREED TO BY AND BETWEEN THE SUBDIVIDER AND THE VILLAGE OF YELLOW SPRINGS, GREENE COUNTY, OHIO:

1. Construction of Public improvements.

The Subdivider is to construct and install, according to plans and specifications submitted and approved by the Village Engineer, all public improvements shown and set forth in the construction plans for Spring Meadows Subdivision Phase 1. Said construction and installation shall be a prerequisite to obtaining any occupancy permits. Subdivider's obligation to construct said public improvements shall not be conditioned upon sale of lots in this Subdivision. Subdivider intends to construct the public improvements in two phases as marked on the construction plans. Phase 1 shall include all public improvements located within the Phase 1 geographical area as depicted on Exhibit A to this Agreement, including the lift station and playground.

2. Engineer's Estimated Cost of Public improvements.

The Village Engineer has reviewed the estimated costs of construction of public improvements in Phase 1 as submitted by the Subdivider's Engineer and concurs with said estimated cost in the amount of \$3,495,100.48.

3. Timeline of Final Plats

Planning Commission approved the preliminary plat on April 12, 2022. Planning Commission recommended approval to Village Council of a final plat for an un-phased subdivision on October 11, 2022. Following that meeting, Subdivider decided to build the Development in two phases and therefore

Subdivider has since withdrawn the un-phased final plat prior to Village Council's consideration. Subdivider has also requested the ability to move forward per Yellow Springs Codified Ordinance Section 1226.09(a)(1) wherein Subdivider will construct all improvements directly affecting the subdivision, as required by the Village pursuant to the construction plans as approved by the Village Engineer, prior to final approval of the Phase 1 and Phase 2 plats.

Subdivider will submit a Phase 1 final plat prior to April 11, 2023 as per Section 1226.02(d) of the Yellow Springs Codified Ordinances, the final plat must be filed within twelve months of the approval of the preliminary plat. At the request of the Subdivider, the Village will hold the Phase 1 final plat and schedule it for review by the Planning Commission once the Subdivider has requested the Village to do so, but in no case later than December of 2023. The Phase 1 final plat will be scheduled for Planning Commission review once all improvements have been constructed and approved by the Village.

Subdivider, by signing this Agreement, waives any claims against the Village regarding the subdivision process, including, but not limited to, the timing of the approval of the final plat[s]. Further, Subdivider acknowledges that the Village cannot guarantee recommendation of approval of a final plat by Planning Commission, nor does the Village make any guarantees of approval of any final plat by Village Council.

4. Nonrefundable Fees and Deposit for Engineering, Construction Inspection, and Legal Fees.

Upon submission of any final plat, the Subdivider shall pay a nonrefundable fee of \$100.00 plus \$20.00 per developable lot which is \$1,800.00 (90x\$20), for total fee payment of \$1,900.00.

Upon submission of any final plat, the Subdivider shall deposit with the Village any sum necessary to defray the cost of inspection, review and legal services as required in Yellow Springs Codified Ordinance 1226.13(b)(2).

Should actual expenses exceed the required deposit, the Subdivider agrees to pay the additional amount prior to improvements being accepted by the Village. Failure to make the required deposits with the Finance Director within three (3) business days of a written request from the Village Manager shall

constitute and be considered cause for the Village to suspend any further development work by the Subdivider until such time as the Subdivider is in full compliance with this Section. The Village shall not accept public improvements in any Subdivision until all required fees have been paid.

Any deposit over and above actual expenses incurred by the Village shall be retained by the Village and shall be released to the Subdivider only after the completion of all public improvements for the entire Development to the satisfaction of the Village Engineer. A second fee shall be submitted prior to Council's approval of Phase 2. That second fee shall be 4% the estimated construction costs of Phase 2.

5. Indemnification and Liability Insurance.

The Subdivider hereby agrees to hold the Village of Yellow Springs, its officers, directors, agents and employees harmless and to indemnify them against all claims, expenses and liability as a result of loss or injury arising out of the clearing of land or construction of the Subdivision and public improvements.

Prior to the commencement of any construction on the Subdivision site, Subdivider agrees to provide the Village with proof of One Million (\$1,000,000.00) Dollars liability insurance protecting the Village from liability arising out of the development of the Subdivision and public improvements. Subdivider shall not allow this insurance to expire earlier than the effective period of any maintenance bond, and shall provide a copy of the insurance policy to remain, at all times, with the Village Manager.

6. Maintenance Bond.

Prior to each Phase being placed on Council's agenda for acceptance of public improvements in this Subdivision, Subdivider shall deposit with the Village Manager a one (1) year maintenance bond in the amount of 10% of estimated construction costs for public improvements as agreed to by the Village Engineer. Subdivider is therefore required to deposit two separate maintenance bonds, one for each phase prior to acceptance of public improvements.

7. Lift Station

Subdivider agrees to construct a lift station during Phase 1 located immediately south of Lot #48, as depicted on the final plat, in a manner as pre- approved by the Village Engineer and Village Director of

Public Works. The lift station will be accepted by the Village in the same manner and at the same time as acceptance of the other public improvements.

8. Park Land Dedication

Subdivider agrees to dedicate .98 acres of land to the Village for open space. This acreage is less than the required park land dedication set forth in Section 1226.07 of the Codified Ordinances of the Village of Yellow Springs. Therefore, Subdivider further agrees to provide at least seventy five thousand dollars (\$75,000.00) worth of playground equipment. The playground equipment must be pre-approved by the Village Manager or his or her designee.

9. Model Home.

The Village of Yellow Springs hereby grants Subdivider an exception to the Village's subdivision regulations and will allow a building permit for the construction of Two (2) model homes in the Subdivision prior to acceptance of dedication of public improvements by Village Council. However, prior to the issuance of said building permits, Subdivider must have constructed all utilities and a street in front of the model home(s). A sidewalk shall be constructed in front of the model home(s) immediately upon completion of the model home(s). No occupancy permit will be issued for the model home(s) until construction of all public improvements in the Subdivision is completed, and an ordinance accepting the dedication of public improvements in the Subdivision is passed by Village Council.

10. Assessments.

Subdivider agrees to pay all outstanding assessments to the appropriate governmental entity. Conclusive proof that said assessments have been paid must be submitted to the Village Manager prior to an ordinance being placed on Council's agenda for acceptance of public improvements in this Subdivision.

11. Payment or Satisfaction of Delinquent or Outstanding Obligations.

Unless otherwise specified in this document, prior to this Subdivider's agreement being placed on Council's Agenda for approval by ordinance, any monies owed by the Subdivider to the Village of Yellow Springs, as determined by the Village Manager shall be paid by the Subdivider or approved as satisfied by the Village Manager.

12. Miscellaneous Provisions.

Off-Site Public improvements.

Where applicable, the Subdivider agrees to construct and install off-site public improvements pursuant to plans and specifications approved by the Village of Yellow Springs. The financial guarantees for said off-site public improvements have been included in the Performance Bond and Maintenance Bond set forth in this Agreement.

13. Time for Completion of Public improvements.

All public improvements for Phase 1 are to be completed prior to Village Council approving the Phase 1 final plat. Subdivider has elected to install all improvements prior to approval of final plat as opposed to providing a performance bond and having Council approve the final plat prior to the installation of improvements. All public improvements for Phase 2 are to be completed prior to Village Council approving the Phase 2 final plat.

14. Actual Costs of Public improvements.

The Subdivider, prior to passage of ordinance accepting public improvements, shall submit to the Finance Director of the Village the actual costs of public improvements itemized as to roadway (length, width, type, unit cost, street name), traffic control (signalization, location, cost), sanitary sewers (length by size, unit cost, street location), storm sewers (length by size, unit cost, street location) water distribution (length by size, unit cost, street location), park/bike trail(s) (if applicable, length, width, unit cost, location) and pump station(s), lift station (if applicable, cost, location, description) and electric improvements that are to be accepted by the Village. The costs for these items shall include all incidentals such as hydrants, valves, manholes, catch basins, etc., as necessary to construct the improvement.

15. Engineer's As-Built Documents.

Subdivider shall file with the Village's Consulting Engineer as-built documents prior to an ordinance being placed on Council's agenda for acceptance of public improvements in this Subdivision. The as-built documents shall be submitted via PDF and by electronic copy on the appropriate digital media in DXF or DWG format.

16. Homeowners Association, Storm Water Detention Area, Common Areas and Easements.

Subdivider shall require the formation of a Homeowner's Association which shall assume responsibility for all maintenance, upkeep, repair, replacement and management of the storm water detention area or other common area. The rules of the Homeowner's Association shall prohibit the construction of any improvement or structure or the retention of any obstruction of any kind in the storm water detention area, common areas or easements.

Prior to an ordinance being placed on Council's agenda for acceptance of any public improvements in this Subdivision, the rules or bylaws of the Homeowner's Association shall be approved by the Village Solicitor. All conveyances by the Subdivider shall contain deed restrictions referring to the requirement of membership in the Homeowner's Association. Should the Homeowner's Association fail to maintain the storm water detention area or other common areas, the Village may enter upon the land and perform any necessary maintenance, repair or replacement, and shall charge all costs incurred by the Village, including legal and engineering fees, to the Homeowner's Association and/or the individual property owners in the Subdivision. Easements for this purpose, acceptable to the Village Engineer and Village Solicitor, shall be provided by Subdivider. Compliance with this Section shall be a condition precedent to issuance of Building Permits.

17. Maintenance and Repair of Storm Sewers Not Located Within The Village Right-of-Way.

The Homeowner's Association and/or individual property owners shall be responsible for the maintenance and repair of all storm sewers located within the Subdivision other than those located within the Village right-of-way. In the event that the Homeowner's Association and/or property owners fail to keep in good repair and maintain said storm sewers, the Village, upon notice to the Homeowner's Association and/or property owners, shall have the right to enter upon the Subdivision lands and perform any repairs deemed necessary to avoid or abate any conditions which obstruct the flow of storm water in order to assure proper drainage. All costs incurred by the Village for repairs and maintenance of the storm sewers shall be charged against the Homeowner's Association and/or individual property owners.

18. License to Enter Upon Private Streets, Driveways, and Parking Areas.

Subdivider herein agrees to grant to the Village of Yellow Springs (i.e., Police Department, Service Department and the like), a license to enter upon any private streets, driveways, or parking areas within the Subdivision for the purposes of carrying out patrolling and security and necessary governmental functions. While present on said private premises, public employees or agents for the various departments shall have those rights, privileges, defenses and immunities granted Village employees set forth in Ohio Revised Code including but not limited to Chapter 2744.

19. Other Applicable Requirements

Subdivider further agrees to perform all development and construction of improvements in accordance with all applicable laws and regulations including but not limited to Yellow Springs Codified Ordinances Chapter 1226 and Greene County regulations as applicable.

20. Breach of Contract

The Subdivider further agrees that any violation of or non-compliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract. A breach of contract shall also be deemed to have occurred in the event of the Subdivider's failure to perform work at the Subdivision for a period of One Hundred Twenty (120) days (except for between the completion of Phase 1 and the commencement of work in Phase 2), the Subdivider's insolvency, appointment of a receiver, filing of a voluntary or involuntary petition in bankruptcy, the commencement of a foreclosure proceeding of a lien against the Subdivision property, or its conveyance in lieu of foreclosure. The Village agrees that in the event of a breach, it shall provide Subdivider with notice thereof in writing. Should Subdivider fail to remedy the breach, to the satisfaction of the Village, within Thirty (30) days after receiving notice thereof from the Village, the Engineer of the Village shall have the right to stop the work forthwith and use Subdivider's guarantees for such purpose and require Subdivider to pay any additional amount required to complete the work.

21. Preservation and Restoration of Property

Subdivider shall maintain the work during construction and until final acceptance. This maintenance shall constitute continuous and effective work prosecuted as required with adequate equipment and forces to the end that the roadbeds, road surfaces and structures are kept in satisfactory condition at all times.

Subdivider shall be responsible for all damage or injury to property of any character, including roadbeds and road surfaces, during the prosecution of the work, resulting from any act, omission, neglect or misconduct in his manner or method of executing said work satisfactorily, or due to his non-execution of said work, or at any time due to defective work or materials, and said responsibility shall not be released until the work shall have been completed and accepted. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the work or in consequence of the non-execution thereof on the part of contractor, he shall restore, at his own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as may be directed, or he shall make good such damage or injury, in an acceptable manner.

In the event of any damage or injury to property as stated herein, all deposits and financial guarantees set forth in this Agreement shall be retained by the Village and not released until such time as the appropriate repairs are made and acceptable to the Village Engineer and Law Director.

22. Ingress and Egress.

Subdivider shall restrict all movement of loads, vehicles and other equipment into and from site in strict accordance with a route approved by the Village Service Director.

23. Cleaning Up.

During the construction, the Subdivider shall keep the site of the work and adjacent premises, including but not limited to Kenneth Hamilton Way, N. Wright St. and Dayton St., as free from material, debris and rubbish as is practicable and shall remove this waste entirely and at once, if, in the opinion of the Village Director of Public Works, such material, debris or rubbish constitutes a nuisance, a safety hazard or is objectionable in any way to the public.

Upon completion and before final acceptance of the work, the Subdivider shall remove from the site of the work and adjacent premises all machinery, equipment, surplus materials, false work, excavated and useless materials, rubbish, temporary buildings, barricades and signs, and shall restore the site to the same general conditions that existed prior to the commencement of its operations.

The Subdivider shall clean off all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, dirt, and any other foreign materials deposited or accumulated on any portion of its work, or existing work, due to its operations.

In the event Subdivider fails to comply as set forth herein, the Village shall perform the necessary work to accomplish the clean up set forth herein and shall charge the Subdivider for said work.

In the event of non-compliance as stated herein, all deposits and financial guarantees set forth in this Agreement shall be retained by the Village and not released until such time as the appropriate clean up is made and acceptable to the Village Engineer and Law Director.

24. Warranty Against Defects.

Subdivider shall warrant all Subdivision public improvements to be free from defects and shall make all necessary repairs or modification to the Subdivision for a period of One (1) year from acceptance of dedication of public improvements of each phase of the Subdivision by the Village of Yellow Springs. If the Subdivider fails to meet the warranty obligations in a timely manner, the Village of Yellow Springs may contract with any other party for the necessary work or use its own employees to perform the work and to be reimbursed by the Subdivider or, if sufficient funds are available, to draw upon the financial guarantees provided in this Agreement.

25. Village Ordinance and Regulations, Survival of Agreement, Non-Waiver.

Nothing in this Subdivider's Agreement shall constitute a waiver of the rights of the Parties, including local government sovereign immunity. All Village Ordinances and Regulations not inconsistent with this Agreement shall remain in full force and effect, and shall be binding upon and control construction and development of the Subdivision, and nothing contained in this Agreement, nor acceptance of dedication of public improvements by the Village, shall limit the effect of same, including, but not limited to, design

and construction, planting of trees, street lighting, conveyance of required easements, payment of storm drainage fees, park fees, sewer tap fees, and any other requirements of the Codified Ordinances of the Village.

26. Severability Clause.

If any part, clause, provision or condition of this Subdivider's Agreement is held to be void, invalid, or inoperative, such party, clause, provision or condition will be severed and will not render invalid the remaining portions of this Agreement.

27. Obligation to Notify.

Subdivider shall notify, in writing, any transferee of the Subdivision or any lot located in the Subdivision of the existence, terms and conditions contained in this Agreement and any easements or restrictions required hereunder. The Subdivider shall provide the Village with a copy of said written notification immediately thereafter.

28. Addresses of Parties for Purpose of Notice.

All notices and communications between parties pursuant to this Agreement shall be made upon the Village through the Office of the Village Manager at 100 Dayton Street; Yellow Springs, Ohio, 45387, and upon the Subdivider at DDC Management, 3601 Rigby Road, Suite 300, Miamisburg, Ohio, 45342.

29. Parties Bound.

This Agreement shall be binding upon and inure to the Subdivider, its developers, builders, contractors, subcontractors, its heirs, executors, administrators, agents and assigns, and shall further be binding upon and inure to the Village and its assigns.

30. Modification or Amendment.

This Subdivider's Agreement shall not be modified, amended or assigned except by a written instrument signed by Subdivider, the Subdivider's Assignee, and the Manager of the Village of Yellow Springs and approved by vote of a majority of the members of Village Council.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have affixed their signature hereto this ____ day of _____,
2023.

WITNESSES:

SPRING MEADOWS PROJECT I, LLC

BY: EBS Residential Development Fund IV, LLC,
an Ohio limited liability company

BY: Eubel Brady & Suttman Asset Management,
Inc., a Delaware Corporation, Its Manager

BY: _____

Mark E. Brady

Co-Chief Investment Officer

VILLAGE OF YELLOW SPRINGS

By: _____

Josue Salmeron, Village Manager

Approved as to Form

Amelia N. Blankenship, Esq.

Village Solicitor

Village of Yellow Springs