

#4  
AUG 18 2011



**Chandler • Arizona**  
*Where Values Make The Difference*

**MEMORANDUM**                      **Real Estate Council Memo No. RE12-010**

**DATE:**            AUGUST 18, 2011

**TO:**                MAYOR AND COUNCIL

**THRU:**            RICH DLUGAS, CITY MANAGER *RD*  
                          ROBERT ZEDER, TRANSPORTION & DEVELOPMENT DIRECTOR *RZ*  
                          SHEINA HUGHES, CITY ENGINEER *SH*

**FROM:**            ERICH KUNTZE, REAL ESTATE COORDINATOR *EK*

**SUBJECT:**        RESOLUTION NO. 4530 AUTHORIZING AND APPROVING THE RELEASE  
                          OF AN OFFSITE IMPROVEMENT AND CONSTRUCTION EASEMENT  
                          BETWEEN THE CITY OF CHANDLER AND WIJOMI NO. OA07-008 VINA  
                          SOLANA PHASE 2.

RECOMMENDATION: Staff recommends that Council pass and adopt Resolution No. 4530 authorizing and approving the release of an Offsite Improvement and Construction Easement between the City of Chandler and WIJOMI No. OA07-008 Vina Solana Phase 2.

BACKGROUND/DISCUSSION: The original Offsite Improvement and Construction Easement between the City of Chandler and WIJOMI Development was never paid for by WIJOMI. WIJOMI went out of business and filed bankruptcy. Subsequently, a new company, Southeast Financial, LLC entered into a new Offsite Improvement and Construction Easement Agreement with the City. The new easement was recorded by the City. The old easement with WIJOMI still shows on the title to the property. Southeast Financial, LLC needs to have the old WIJOMI easement removed from their title and has asked the City to sign the attached release.

FINANCIAL IMPLICATIONS:

Cost:	N/A
Savings:	N/A
Long Term Costs:	N/A

Resolution No. 4530  
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Page Two.

PROPOSED MOTION: Move that Council pass and adopt Resolution No. 4530 authorizing and approving the release of an Offsite Improvement and Construction Easement between the City of Chandler and WIJOMI No. OA07-008 Vina Solana Phase 2.

Attachments:            Location Map  
                                 Resolution No. 4530  
                                 Release

RESOLUTION NO. 4530

A RESOLUTION OF THE COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING THE RELEASE OF AN OFFSITE IMPROVEMENT AND CONSTRUCTION EASEMENT BETWEEN THE CITY OF CHANDLER AND WIJOMI NO. OA07-008 VINA SOLANA PHASE 2.

WHEREAS, the City of Chandler entered into an Offsite Improvement and Construction Easement Agreement with WIJOMI Development No. OA07-008 Vina Solana Phase 2 recorded as document number 2007-0715002, records of Maricopa County, Arizona, and attached hereto as Exhibit "A"; and,

WHEREAS, VIJOMI did not fulfill its obligations under said Offsite Improvement and Construction Easement Agreement.

WHEREAS, Southeast Financial, LLC, entered into a new Offsite Improvement and Construction Easement Agreement with the City of Chandler for the same purpose and paid the City as required in said agreement; and

WHEREAS, in order to obtain clear title to its property, Southeast Financial, LLC has requested that the City sign a release of the prior Offsite Improvement and Construction Easement Agreement with WIJOMI Development.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, as follows:

**Section 1.** That the City of Chandler is authorized to release the Offsite Improvement and Construction Easement Agreement with WIJOMI Development No. OA07-008 Vina Solana Phase 2 as described in Exhibit "A" attached hereto and made a part hereof.

**Section 2.** The document used to release said Offsite Improvement and Construction Easement Agreement shall be in the form as approved by the City Attorney (Exhibit "B") attached hereto and made a part hereof..

**Section 3.** That the Mayor of the City of Chandler is authorized to execute and deliver all documents necessary to effect said Offsite Improvement and Construction Easement Agreement with WIJOMI Development.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this  
\_\_\_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4530 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2011, and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK

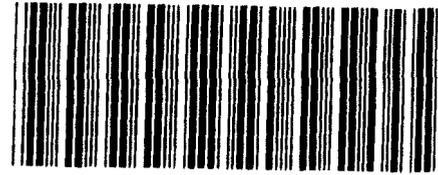
APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY



EXHIBIT "A"

Offsite Improvement and Construction Easement Agreement  
with WIJOMI Development No. OA07-008 Vina Solana Phase 2



12-152

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
2007-0715002 06/21/07 02:31 PM  
1 OF 2

FLORESC

After Recording, Return  
Original Document to:

Chandler City Clerk  
PO Box 4008  
Mail Stop 606  
Chandler, AZ 85244-4008

**OFFSITE IMPROVEMENT  
AND CONSTRUCTION EASEMENT AGREEMENT  
(Lump Sum Payment)  
OA07-008**

This Agreement, effective as of this 15 day of June, 2007, is entered into by and between the CITY OF CHANDLER, an Arizona municipal corporation (the "City"), and WIJOMI Development, LLC, an Arizona limited liability company (the "Developer").

RECITALS

A. Chapters 47 and 48 of the Chandler City Code require the Developer to prepare plans and specifications and to construct certain offsite improvements in conformance with municipal standards and requirements.

B. Under Arizona law, the City is required to receive assurances from the Developer that the offsite improvements will be constructed.

C. Under Section 48-12.2 of the Chandler City Code, the Developer is permitted to meet his responsibilities for construction of offsite improvements by participating in an improvement district if one is organized at the discretion of the City and the participating property owners.

D. Under Section 47-11 of the Chandler City Code, the City's Public Works Director is authorized to defer construction of offsite improvements under certain conditions where the construction of such offsite improvements would not be practical at the present time.

E. The Developer has prepared plans and specifications accepted by the City in connection with the required offsite improvements adjacent or related to the following described real property:

**VINA SOLANA – PHASE 2: A PORTION OF THE NORTHWEST QUARTER OF SECTION 24 TOWNSHIP 2 SOUTH, RANGE 5 EAST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AND A REPLAT OF LOT 14 OF VINA SOLANA, BOOK 736, PAGE 26, RECORDS OF MARICOPA COUNTY, ARIZONA.**

F. The City's Public Works Director has determined that it is appropriate to defer construction of required offsite improvements adjacent or related to the above-described real property for a fixed period of time.

G. In lieu of deferring construction of the offsite improvements for a fixed period of time through the posting of a bond or other security, the Developer desires to make a single lump sum payment to the City of the estimated total costs of his improvement obligation (the "Improvement Costs"), thereby making full satisfaction of that obligation.

H. The City is willing to accept such a lump sum payment as full satisfaction of the offsite improvement obligation provided that the Developer also covenants and agrees to grant to the City the right to use the above-described real property to the extent required by the City to complete the construction of the Offsites (described below).

**COVENANTS**

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set forth below, the parties agree as follows:

1. Except as otherwise provided herein, the Developer is responsible for construction of the following offsite improvements (the "Offsites"), adjacent or related to the above-described property:

**Full median in Cooper Road across the frontage of the property.**

2. The cost for the above referenced improvements is Twenty One Thousand, Eight Hundred Three Dollars and No Cents (\$21,803.00). This amount has been determined by the City's Public Works Director or designee based upon estimates more fully itemized in Exhibit "B", attached hereto and incorporated by this reference, and is accepted by the Developer.

3. In conjunction with final approval of the Developer's site plan for the above-described real property, the Developer shall pay to the City in a single, lump sum payment, the

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costs as set out in "Exhibit B". Said payment in full shall constitute full satisfaction of the Developer's improvement obligation for all of the above-described offsite improvements and the Developer shall then have no further obligation with respect to the design and construction of the above-described improvements or for payment thereof.

4. The monies received by the City shall be placed in a separate fund and accounted for separately and, until such time as the Offsites are completed, shall only be used for the purpose of completing the improvements at a future date determined by the City.

5. The Developer represents and warrants that the Developer is the owner in fee of the above-described real property. As the owner of the above-described real property, the Developer covenants and agrees to grant to the City, at no cost to the City, the right to use the above-described real property to the extent determined by the City to be necessary to complete the construction of the Offsites. This right of use is a temporary use which is to be made available to the City, at the request of the City, during the period of time that the Offsites are constructed. This covenant to grant such use shall run with the land and is intended to survive and be in effect beyond the date that Developer pays in full the above-stated amount.

6. This Agreement shall be construed in accordance with the laws of the State of Arizona.

7. If any court of competent jurisdiction declares any portion or portions of this Agreement invalid, the remaining provisions hereof shall remain in full force and effect provided that the purpose and intent of the parties in entering into this Agreement is met.

8. This Agreement may be enforced by either party in a court of law or equity and the prevailing party may be entitled to recover any costs and expenses including reasonable attorneys' fees. Nothing herein shall prevent or prohibit the City from enforcing this Agreement through such other non-judicial means as may be permitted by law, including, but not limited to, the withholding of building permits.

9. Time is of the essence in this Agreement.

10. In this Agreement, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

11. This Agreement shall run with the land and inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns.

**EXHIBIT "B"**  
**VINA SOLANA – PHASE 2**  
**COST BREAKDOWN OF DEFERRED IMPROVEMENTS**

Improvement costs of the offsites is Twenty One Thousand, Eight Hundred Three Dollars and No cents, which has been determined as follows:

Description	Est. Qty.	Unit	Unit Price	Extended Price
Sawcut	368	LF	2.00	736.00
Pavement Removals	387	SY	5.00	1,935.00
Install single curb	355	LF	14.00	4,970.00
Pavement Replacement	82	SY	35.00	2,870.00
Install Landscape	2,563	SF	\$2.20	5,639.00
			<i>Subtotal</i>	\$16,150.00
			Engineering (15%)	\$2,423.00
			Contract Administration (10%)	\$1,615.00
			Contingencies (10%)	\$1,615.00
			<b><i>Grand Total -</i></b>	<b>\$21,803.00</b>

EXHIBIT "B"

Release of Offsite Improvement and Construction  
Easement Agreement WIJOMI Development

**Recording Requested By:**  
Stewart Title & Trust of Phoenix, Inc.  
**When Recorded Mail to:**  
Stewart Title & Trust of Phoenix, Inc.  
Nikki Leonard  
2930 E. Camelback Road  
Suite 210  
Phoenix, AZ 85016

Escrow No. 11100512

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**RELEASE OF OFFSITE IMPROVEMENT AND CONSTRUCTION**  
**EASEMENT AGREEMENT**  
**(Lump Sum Payment)**  
**OA07-008**

KNOW ALL PERSONS BY THESE PRESENTS:

That the Offsite Improvement and Construction Easement Agreement executed by the  
CITY OF CHANDLER, an Arizona municipal corporation, the "City"

AND

WIJOMI Development, LLC, an Arizona limited liability company, the Developer

Dated June 15, 2007 and Recorded on June 21, 2007 in Document No. 2007-0715002 in  
the office of the County Recorder of Maricopa County, Arizona is hereby released and  
cancelled.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

City:  
City of Chandler, an Arizona  
Municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF ARIZONA            )  
  )SS.  
COUNTY OF MARICOPA        )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011  
by \_\_\_\_\_, the Mayor of the City of Chandler, an Arizona  
municipal corporation.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:

APPROVED AS TO FORM

\_\_\_\_\_  
CITY ATTORNEY