



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

# 31

JUN 13 2013

**MEMORANDUM Transportation & Development Department- Memo No. TDA13-095**

**DATE:** June 13, 2013

**TO:** MAYOR AND COUNCIL

**THRU:** RICH DLUGAS, CITY MANAGER <sup>RD</sup>  
MARSHA REED, ASSISTANT CITY MANAGER <sup>MR</sup>  
R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR <sup>RJZ</sup>  
DAVE NAKAGAWARA, INTERIM CITY ENGINEER <sup>DN</sup>

**FROM:** DARYL RACZ, DEVELOPMENT PROJECT ADMINISTRATOR <sup>DR</sup>

**SUBJECT:** Offsite Lump Sum Agreement with Ryland Homes of Arizona, Inc., for Finisterra Subdivision

RECOMMENDATION: Staff recommends approval of an offsite lump sum agreement with Ryland Homes of Arizona, Inc., deferring the construction of the median on Ocotillo Road as a condition of their development and accepting a lump sum payment of \$50,500.

BACKGROUND AND DISCUSSION: As a condition of development Finisterra Subdivision, located east of the southeast corner of Ocotillo Road and Lindsay Road, deferred roadway work on Ocotillo Road adjacent to their property in lieu of a lump sum payment of \$50,500 made to the City.

Construction of median on Ocotillo Road

This agreement is intended to cover the cost for the above mentioned work. A lump sum agreement was used to secure the developer's financial obligation to the City for the deferred work as well as release the developer from any future obligations. These improvements are being deferred for the future coordination and construction with the Town of Gilbert.

FINANCIAL IMPLICATIONS: Funds in the amount of \$50,500 have been received from the developer and are being held in an interest bearing account to use for the future construction of Ocotillo Road.

PROPOSED MOTION: Move City Council approve the offsite lump sum agreement with Ryland Homes of Arizona, Inc., deferring the construction of the median on Ocotillo Road as a condition of their development and accepting the lump sum payment of \$50,500 and authorize the Mayor to sign the agreement.

Attachments: Agreement No. OA12-001, Location Map



# OFFSITE IMPROVEMENT & CONSTRUCTION EASEMENT AGREEMENT NO. OA12-001



MEMO NO. TDA13-095

 PROJECT LOCATION



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)**

**AGREEMENT NUMBER: OA12-001**

This Agreement, effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is entered into by and between the CITY OF CHANDLER, an Arizona municipal corporation (the "City"), and Ryland Homes of Arizona, Inc., an Arizona corporation (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 Subdivision 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:

**SEE EXHIBIT "A", LEGAL DESCRIPTION, ATTACHED HERETO AND  
INCORPORATED HEREIN BY REFERENCE.**

F. The City's Public Works Director has determined that it is appropriate to defer construction of some of the required offsite improvements adjacent or related to the above-described real property for a fixed period of time. The offsite improvements which are appropriate to defer are described in paragraph 1 below.

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 for the offsite improvements described in paragraph 1 below provided that the Developer also covenants and agrees to grant an easement to the City granting 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:

#### **Construction of the median on Ocotillo Road**

2. The cost for the above referenced improvements is FIFTY THOUSAND FIVE HUNDRED Dollars and No Cents (\$50,500.00). 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, of the 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 hereby grants to the City, at no cost to the City, a construction easement giving 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 granted to the City, to be used and exercised, during the period of time when the above-described Offsites are being constructed. This easement granting 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.

12. Any amendment to this Agreement shall be in writing.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date and year first stated above.

Ryland Homes of AZ, Inc.

By: Robert Zambie

Its: ASST. VICE PRESIDENT

STATE OF ARIZONA     )  
  ) ss.  
County of Maricopa )

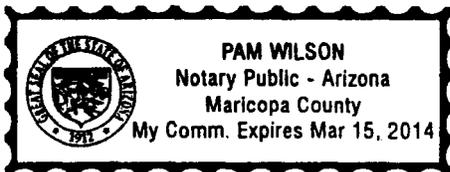
On this 1 day of MAY, 20 13, before me, the undersigned Notary Public, personally appeared ROBERT ZAMBIE, ASST. VICE PRESIDENT (Title), and being authorized so to do, executed the foregoing Agreement in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires:

3-15-2014

Pam Wilson  
Notary Public



CITY OF CHANDLER

\_\_\_\_\_  
MAYOR

ATTEST

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

APPROVED AS TO FORM:

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

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date and year first stated above.

FS 133, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ARIZONA     )  
                                  ) ss.  
County of Maricopa )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, (Title), and being authorized so to do, executed the foregoing Agreement in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires:

\_\_\_\_\_  
Notary Public

CITY OF CHANDLER

\_\_\_\_\_  
MAYOR

ATTEST

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

APPROVED AS TO FORM:

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

**EXHIBIT "A"  
LEGAL DESCRIPTION**

Finisterra, a subdivision, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 919, Page 47, except that portion of right-of-way dedicated for Ocotillo Road and 148th Street with said plat of record, and being more particularly described as follows:

Parcel 1 (Subdivision):

Commencing at the Northwest Corner of Section 20, Township 2 South, Range 6 East;  
Thence S89°00'01"E, along the North line of said Section 20, a distance of 1313.74 feet;

Thence S00°00'59"E a distance of 65.01 feet to a point on the South right-of-way line of Ocotillo and the POINT OF BEGINNING;

Thence continuing S00°00'59"E a distance of 1296.11 feet;

Thence S89°37'43"E a distance of 1273.78 feet to a point on the West right-of-way line of 148th Street;

Thence N00°01'32"W, along said West right-of-way line, a distance of 1267.15 feet;

Thence N44°30'47"W a distance of 21.40 feet to a point on the South right-of-way line of Ocotillo Road;

Thence N89°00'01"W, along said South right-of-way line, a distance of 1258.74 feet to the POINT OF BEGINNING;

Containing 1,641,779.96 square feet, or 37.6901 acres.

Parcel 2 (Ocotillo Road Right-of-way):

The South 32 feet of the North 65 feet of the Northeast Quarter of the Northwest Quarter of said Section 20;

Except the East 55 feet thereof;

Containing an area of 40,279.7 Square Feet or 0.92 Acres, more or less.

**EXHIBIT "B"**  
**COST BREAKDOWN OF DEFERRED IMPROVEMENTS**

Improvement costs of the offsites is FIFTY THOUSAND FIVE HUNDRED Dollars and No cents, (\$50,500.00) which has been determined as follows:

Description	Est Qty	Unit	Unit Price	Extended Price
Single Curb	1135	LF	\$9.54	\$10,827.90
Landscaping	8150	SF	\$2.50	\$20,375.00
Sawcut & Pavement Removal	1430	SY	\$2.73	\$3,903.90
Irrigation Booster Pump	1	EA	\$2,187.50	\$2,187.50
1" PVC Pipe - Irrigation purple	1109	LF	\$1.40	\$1,552.60
			Subtotal	\$38,846.90
			Engineering (10%)	\$3,884.69
			Contract Administration (10%)	\$3,884.69
			Contingencies (10%)	\$3,884.69
			Total	\$50,500.97