



Date of Council Meeting: July 26, 2016

**TOWN OF LEESBURG  
TOWN COUNCIL MEETING**

**Subject:** Agreement with Arcadia Communities, L.L.C.

**Staff Contact:** Barbara Notar, Town Attorney  
William Ackman, Director, Department of Plan Review  
Keith Wilson, Land Acquisition Manager, Public Works & Capital Projects

**Council Action Requested:** Authorization by Council for the Mayor to execute an Agreement to Dedicate Right-of-Way and Easement (“Agreement”) with Arcadia Communities, L.L.C (“Arcadia”).

**Staff Recommendation:** Staff recommends that Town Council authorize the Mayor to execute an Agreement to Dedicate Right-of-Way and Easement between Arcadia Communities, L.L.C. and the Town of Leesburg, Virginia.

**Commission Recommendation:** Not Applicable.

**Fiscal Impact:** None.

**Work Plan Impact:** None. These services are part of the current work plan for the Evergreen Mill Road Widening project.

**Executive Summary:** An Agreement to Dedicate Right-of-Way and Easements is necessary to allow Arcadia to dedicate the right-of-way and easements upon the Town’s completion of the design of the Evergreen Mill Road Widening construction plans. The specific location of and necessary right-of-way dedications and easements cannot be determined without completion of the road widening plans. Arcadia is required to dedicate the right-of-way and easements for the Evergreen Mill Road Widening project upon, over and across its properties as part of the subdivision approval process. The Agreement will allow the Town to complete the roadway design and construction plans before requiring Arcadia to dedicate the right-of-way and easements necessary for construction of the project.

**Background:** By Settlement Agreement dated September 22, 2009, by and between Washington-Virginia Traditional Development Sites, Inc. (“WVTDS”) and the Leesburg Town Council, WVTDS agreed to a dedication of rights-of-way and easements to accommodate the additional right-of-way for roadway improvements to Evergreen Mill Road. The Settlement Agreement required the dedication of the right-of-way and easements for Evergreen Mill Road to be effected by the documents and processes specifically authorized for recordation of the final subdivision plats. Arcadia, the successor in title to certain properties formerly owned by WVTDS, has submitted a land development application and plats which includes construction of a regional

AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN ARCADIA COMMUNITIES, L.L.C. AND THE TOWN OF LEESBURG, VIRGINIA FOR AN AGREEMENT TO DEDICATE RIGHT-OF-WAY AND EASEMENT FOR EVERGREEN MILL ROAD

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stormwater management facility adjacent to a section of Evergreen Mill Road. Arcadia is required to dedicate the right-of-way and easements necessary for the road widening as part of the approval of their site plans for development of its property. The Town's Evergreen Mill Road Widening project roadway design and construction plans have not been completed to determine the necessary right-of-way dedications and easements and their specific locations needed on the Arcadia properties. The Agreement sets forth the terms and conditions for Arcadia to dedicate the necessary right-of-way and easement to the Town upon the Town's request for the right-of-way dedications and easements for the Evergreen Mill Road widening project.

Attachments:

- 1) Resolution
- 2) Agreement to Dedicate Right-of-Way and Easements



**AGREEMENT TO DEDICATE RIGHT-OF-WAY AND EASEMENTS**

This Agreement ("**Agreement**") is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between **ARCADIA COMMUNITIES, L.L.C.**, a Virginia limited liability company, its successors and assigns (referred to herein as "**Arcadia**"), Grantor; and the **TOWN OF LEESBURG, VIRGINIA**, a municipal corporation (referred to herein as the "**Town**"), Grantee.

**RECITALS:**

A. Arcadia is the owner of certain real property located within the Town of Leesburg, Virginia, identified as Loudoun County PIN 233-46-5001, containing approximately 1.03 Acres of land, PIN 233-46-5002, containing approximately 0.85 Acres of land, PIN 233-46-5026, containing approximately 1.01 Acres, PIN 233-46-6346, containing approximately 0.79 Acres, and PIN 273-40-7805, containing approximately 79.44 Acres (collectively, the "**Arcadia Property**"), which property is more particularly shown on that certain plan and profile exhibit dated May 2016, revised through June 22, 2016, entitled "**Plan and Profile Leesburg South**," prepared by J2 Engineers, Inc. (the "**Road Plans**"), which Road Plans are attached hereto and incorporated herein as "**Exhibit A**."

B. The Road Plans show the approximate location of certain future Evergreen Mills Road (Route 621) road improvements, which shall be made by the Town or others, and include, without limitation, road widening, construction and installation of public water and sewer utilities, public trails and sidewalks, storm drainage, traffic signalization, and dedication of public street right-of-way and easements (collectively, the "**Road Facilities**").

C. Arcadia is developing the Arcadia Property and has submitted to the Town construction plans and profiles (the "**Arcadia Plans**"), which include the construction of a regional stormwater management facility on the Arcadia Property, adjacent to and in the vicinity of the proposed Road Facilities and improvements to Evergreen Mills Road (Route 621).

D. In order to permit flexibility for the Town to coordinate future construction of the Road Facilities with the Arcadia Plans, Arcadia has agreed to enter into this Agreement to dedicate and convey, at no cost to the Town, the public street right-of-way and easements required for construction and installation of the Road Facilities, in addition to other utility easements that may be required.

E. The general location of the Road Facilities to be installed on the Arcadia Property by the Town, or its agents, are shown and depicted on the Road Plans attached as Exhibit A.

F. The parties agree that the construction and installation of the Road Facilities, as shown on the Road Plans, will be mutually beneficial to both Arcadia and the Town.

AGREEMENT:

NOW, THEREFORE, in consideration of the facts reflected by the foregoing recitations, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged as evidenced by the signatures of the parties hereto, under seal, the parties hereby agree as follows:

1. The foregoing recitations and Exhibit A are a material part of this Agreement and are incorporated herein by this reference.

2. Arcadia shall, within fourteen (14) calendar days following submission by the Town to Arcadia, at no cost to the Town, execute such reasonable applications, easements, deeds, plats, licenses, or other instruments presented by the Town to support the creation,

establishment, dedication, grant, construction and/or use of the Road Facilities over, under and/or upon the Arcadia Property.

3. An easement, dedication, and/or facility to be established shall be deemed reasonable if located substantially within the area(s) depicted on Exhibit A. A deed, plat and/or other instrument shall be deemed reasonable if it is consistent with standard deeds and forms typically approved by the Town for the dedication of public streets, conveyance of easements, and creation and establishment of the such public infrastructure facilities.

4. Arcadia shall provide reasonable cooperation in the creation, establishment, dedication, grading and construction of the Road Facilities, both on and adjacent to the Arcadia Property, which cooperation shall include, but not be limited to, the vacation and/or relocation of all or a portion of the easement(s) as necessary for the dedication, grading and construction of the Road Facilities, further including, but not limited to, those referred to herein and pursuant to the final engineered construction plans for the Road Facilities prepared by the Town, its agents or contractors.

5. This Agreement is intended to be recorded among the land records of Loudoun County, Virginia (the "**Land Records**"), and shall be for the benefit of the parties and their successors and assigns in title and shall run with the land and portion thereof.

6. This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.

7. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement or the application of such term, covenant or condition to any other person or

circumstance shall not be affected thereby, and each such term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law.

8. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

9. At such time as construction and installation of the Road Facilities is complete and the Road Facilities are open for public use, the parties agree to mutually executed a release and termination of this Agreement, which release shall not be unreasonably withheld or delayed, and said release shall be recorded among the Land Records.

WITNESS the following signatures and seals:

[SIGNATURE PAGES FOLLOW]

ARCADIA COMMUNITIES, L.L.C.,  
a Virginia limited liability company

By: VMB Investments, L.L.C.,  
a Delaware limited liability company,  
Its Sole Member and Manager

By: VM Holdings III, L.L.C.,  
a Virginia limited liability company  
Its Managing Member

By: Van Metre Financial Associates, Inc.,  
a Virginia corporation  
Its Manager

By: Kenneth Ryan (SEAL)  
Name: Kenneth A Ryan  
Title: Chief Financial Officer

STATE/Commonwealth of VIRGINIA,  
CITY/COUNTY OF FAIRFAX, to wit:

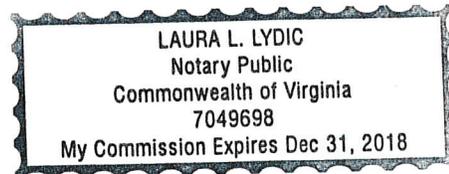
I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Kenneth A Ryan, as Chief Financial Officer of Van Metre Financial Associates, Inc., as Manager of VM Holdings III, L.L.C., as Managing Member of VMB Investments, L.L.C., as Sole Member and Manager of ARCADIA COMMUNITIES, L.L.C., whose name is signed to the foregoing Agreement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 20 day of JULY, 2016.

My commission expires:

12-31-18

Laura L Lydic  
Notary Public - Reg. No. 7049698



THE FOREGOING AGREEMENT IS HEREBY  
APPROVED ON BEHALF OF THE TOWN OF  
LEESBURG, VIRGINIA

APPROVED AS TO FORM:

THE TOWN OF LEESBURG, VIRGINIA

By: \_\_\_\_\_  
Name: Barbara Notar, Esq.  
Title: Town Attorney

By: \_\_\_\_\_  
Name: David S. Butler  
Title: Mayor

COMMONWEALTH OF VIRGINIA,  
COUNTY OF LOUDOUN, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that David S. Butler, as Mayor of THE TOWN OF LEESBURG, VIRGINIA, whose name is signed to the foregoing Agreement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

My commission expires:

\_\_\_\_\_  
Notary Public - Reg. No. \_\_\_\_\_

\_\_\_\_\_

PRESENTED July 26, 2016

RESOLUTION NO. 2016-

ADOPTED \_\_\_\_\_

A RESOLUTION: AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN ARCADIA COMMUNITIES, L.L.C. AND THE TOWN OF LEESBURG, VIRGINIA FOR AN AGREEMENT TO DEDICATE RIGHT-OF-WAY AND EASEMENT FOR EVERGREEN MILL ROAD

WHEREAS, Arcadia Communities, L.L.C. (“Arcadia”) is the successor in title to certain properties formerly owned by Washington-Virginia Traditional Development Sites, Inc. (“WVTDS”); and

WHEREAS, by Settlement Agreement between Washington-Virginia Traditional Development Sites, Inc. (“WVTDS”) and the Town Council of the Town of Leesburg, Virginia, dated September 22, 2009, WVTDS agreed to a dedication of rights-of-way and easements to accommodate the additional right-of-way for roadway improvements to Evergreen Mill Road; and

WHEREAS, Arcadia has submitted a land development application and plans for the development of a portion of their property adjacent to a section of Evergreen Mill Road; and

WHEREAS, as part of its Capital Projects Improvement program, the Town is in the process of selecting a design firm to prepare the necessary construction plans for the widening and improvements to Evergreen Mill Road; and

WHEREAS, to eliminate the requirement for Arcadia to dedicate the right-of-way and easement to the Town as part of their land development application, and give the Town the ability to complete the roadway design and construction plans for the Evergreen Mill Road Widening project, an Agreement to Dedicate Right-of-Way and Easements has been prepared by Arcadia to allow their continued development of their property while the Town completes

A RESOLUTION: AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT  
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LEESBURG, VIRGINIA FOR AN AGREEMENT TO DEDICATE RIGHT-  
OF-WAY AND EASEMENT FOR EVERGREEN MILL ROAD

the engineering design for the construction plans specifying the necessary land rights needed  
for construction of the Evergreen Mill Road Widening project upon, over, and across the  
Arcadia properties.

THEREFORE, RESOLVED, the Council of the Town of Leesburg in Virginia authorizes  
the Mayor to execute an Agreement to Dedicate Right of Way and Easements between Arcadia  
Communities, L.L.C. and the Town of Leesburg, Virginia.

PASSED the \_\_\_\_ day of July, 2016.

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David S. Butler, Mayor  
Town of Leesburg

ATTEST:

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Clerk of Council