

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

227A



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
March 15, 2012

SUBJECT: Agreement for Satisfying Tract Map Conditions and Releasing Bond by and between the County of Riverside (COUNTY) and Ryland Homes of California, INC., a Delaware Corporation (RYLAND)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Agreement between the COUNTY and RYLAND for Satisfying Tract Map Conditions and Releasing Bond, and;
2. Authorize the Chairman of the Board to execute this Agreement on behalf of the COUNTY, and;

Juan C. Perez
Director of Transportation

(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/12
SOURCE OF FUNDS: N/A				Positions To Be Deleted Per A-30 <input type="checkbox"/>
				Requires 4/5 Vote <input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Tina Grande

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY:
MICHELLE CLACK
DATE: 3/15/12
Departmental Concurrence

Dept't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref. | District: 3/3 | Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.39

The Honorable Board of Supervisors

RE: Agreement for Satisfying Tract Map Conditions and Releasing Bond by and between the County of Riverside (COUNTY) and Ryland Homes of California, INC., a Delaware Corporation (RYLAND)

March 15, 2012

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3. Authorize the Director of Transportation to take all necessary actions to administer and implement the agreement.

BACKGROUND: This agreement provides for the fulfillment of the Conditions of Approval for Tract Map 28298 which was developed by RYLAND. The Transportation Department required RYLAND to post a bond to secure the work as part of their conditions to construct the Skyview Bridge and other associated improvements. These improvements are also secured by a bonding company associated with another tract and were a requirement of an adjacent development (Bellacap).

The Transportation Department has been working with the three parties (Bellacap, Ryland and the bonding company) to accomplish the construction of the needed work and obtain funding towards other transportation or planning efforts, through the cost savings achieved by dividing the improvement responsibility over the three parties, reducing the bridge improvement requirements, and providing flexibility in the timing of delivery of the improvements.

This agreement provides for RYLAND's negotiated contribution of \$800,000 to satisfy their bonding requirements. The County has entered into an agreement with Bellacap for their contribution, and is in negotiations with the bonding company.

**AGREEMENT FOR SATISFYING TRACT MAP CONDITIONS
AND RELEASING BOND**

This AGREEMENT FOR SATISFYING TRACT MAP CONDITIONS AND RELEASING BOND ("Agreement") dated March 27, 2012 is entered into by and between the COUNTY OF RIVERSIDE, a political subdivision of the State of California (the "County"), and RYLAND HOMES OF CALIFORNIA, INC., a Delaware corporation ("Ryland"). The County and Ryland are sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party".

RECITALS:

A. On July 8, 1997, the County approved Tentative Tract Map No. 28298 ("TTM 28298" or "Project"), which was developed by Warm Springs Investments ("Warm Springs").

B. Conditions of Approval 50 TRANS 11 and 90 TRANS 2 a) of TTM 28298 required Warm Springs to improve an off-site access road, the westerly extension of "A" Drive to Winchester Road ("Skyview Bridge COAs" or "Skyview Bridge Improvements").

C. Ryland subsequently acquired TTM 28298 from Warm Springs.

D. To secure Ryland's performance of the Skyview Bridge Improvements, Ryland posted Faithful Performance Bond No. 08813501 in the amount of \$2,454,000 ("Bond") issued by Fidelity and Deposit Company of Maryland ("FDC"). Ryland and the County also entered into a Subdivision Improvement Agreement ("Subdivision Agreement") in connection with the posting of the Bond.

E. Ryland has completed development of the Project, including satisfying all conditions of approval imposed by the County, except for the Skyview Bridge COAs.

F. Barratt Homes ("Barratt") obtained approvals from the County for Tentative Tract Map Nos. 29114 and 32049 ("Barratt TTMs"). In connection with approval of the Barratt TTMs, the County also required Barratt to construct the Skyview Bridge Improvements ("Barratt COAs").

G. On October 26, 2005, Barratt and Ryland entered into a Subdivision Improvement Cost Sharing Agreement ("Barratt-Ryland Agreement") to apportion the costs of constructing the Skyview Bridge Improvements.

H. Barratt posted payment and performance bonds issued by Arch Insurance Company ("Arch") to satisfy various conditions of approval imposed by the County in connection with approval of the Barratt TTMs.

I. Bellacap, LLC ("Bellacap") acquired the Barratt TTMs. In June 2010, Bellacap and Ryland entered into an Assignment and Assumption of the Barratt-Ryland Agreement ("Assignment"). Under the Assignment, Ryland agreed to accept Bellacap as an assignee of Barratt, and Bellacap agreed to assume Barratt's obligations created in the Barratt-Ryland Agreement.

J. In June 2010, Ryland, Bellacap and Eastern Municipal Water District ("EMWD") entered into a Memorandum of Understanding ("MOU"). Under the terms of the MOU, Ryland and Bellacap agreed to construct a 560-foot, eighteen inch water line, which is to be constructed in connection with the Skyview Bridge Improvements ("Water Line").

K. The County and Ryland agree that upon Ryland's payment of \$800,000 to the County ("County Payment"), Ryland will be deemed to have satisfied the Skyview Bridge COAs and the County will release the Bond and will deem that Ryland has completely performed all obligations created in the Subdivision Agreement.

L. The Parties acknowledge that County and Bellacap are negotiating a separate agreement that will contain similar language regarding Bellacap's release of Ryland from obligations under the Barratt-Ryland Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Recitals set forth above which are incorporated herein by this reference, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

A G R E E M E N T :

1. Payment to the County. Within thirty (30) calendar days of Ryland's receipt of written releases from Bellacap, Arch and EMWD, as discussed in more detail in Section 3 of this Agreement, Ryland shall make the County Payment.

2. County's Clearance of Skyview Bridge COAs and Bond Exoneration. Within thirty (30) calendar days of County's receipt of the County Payment, the County shall (i) issue written notification to Ryland that Ryland has completely satisfied the Skyview Bridge COAs; (ii) release the Bond; (iii) determine that Ryland has completely performed all obligations created in the Subdivision Agreement; and (iv) release Ryland and FDC from any liability or obligation for the construction of the Skyview Bridge and the Skyview Bridge Improvements set forth in Recital B herein.

3. Conditions Precedent to Ryland's Making the County Payment. Ryland's obligation to make the County Payment is expressly conditioned upon satisfaction of all of the following conditions precedent which may only be waived in the sole discretion of Ryland, as these conditions precedent are solely for the benefit of Ryland:

- a. Ryland and FDC obtaining full written releases from Bellacap and any related Bellacap entities and individuals including but not limited to, Global Investment & Development, LLC and Joseph Rivani (collectively, the "Bellacap Entities");
- b. Ryland and FDC obtaining full written releases from Arch and any related Arch entities (collectively, the "Arch Entities");
- c. Ryland obtaining final clearance from EMWD that the obligations created in the MOU have been satisfied or EMWD has waived Ryland's obligations created in the MOU; and

- d. All applicable statutes of limitation concerning a third party's ability to set aside or invalidate this Agreement have run.

4. Indemnification. Ryland shall defend, indemnify and hold harmless the County and its agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives' agents, officers and employees ("Indemnitees") from any claim, action, or proceeding brought or asserted by a third person or entity against the Indemnitees to attack, set aside, void, or annul this Agreement, or a writ of mandate, pursuant to California Code of Civil Procedure sections 1085 or 1094.5, brought by any third person or entity who had a contractual relationship with Ryland, with such claim, action, or proceeding or writ of mandate brought within the time period provided by law, including any claim for private attorney general fees claimed by or awarded to any party from the County.

Ryland shall defend, at its sole expense, all costs and fees including, but not limited to, attorney fees, cost of investigation, defense, and settlements or awards, the County, its agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action or writ of mandate based upon such alleged acts or omissions. Upon receiving written notice of a lawsuit filed, which is subject to this indemnification, the Parties agree to meet and confer and act in good faith to mutually agree upon how the litigation should be handled, including, but not limited to, possible settlement of the litigation, and selection of counsel to defend Ryland and the County. To the extent that the County uses any of its resources responding to such claim, action, or proceeding, Ryland will reimburse the County within thirty (30) calendar days of the submission of an itemized statement for these resources. Such resources include, but are not limited to the reasonable expenses and charges related to staff time, court costs, County Counsel's time at their regular rate for external or non-County agencies, or any other reasonable direct or indirect costs associated with responding to the claim, action or proceeding.

Ryland's obligation hereunder shall be satisfied when Ryland has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

5. Severability. Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, the remaining terms and conditions shall not be affected unless their enforcement under the circumstances would be unreasonable or inequitable or would otherwise frustrate the purposes of this Agreement. Should a court invalidate this Agreement, and such invalidation occurs after Ryland has made the County Payment, then the County shall refund the County Payment to Ryland, and the County shall reinstate the Skyview Bridge COAs. In such a situation, the Parties agree to meet and confer concerning how Ryland can satisfy the Skyview Bridge COAs.

6. Attorneys' Fees. In the event of the bringing of an action, or suit by a party hereto against another party hereunder by reason of a breach of any of the covenants, conditions, agreements or provisions by the other party arising out of this Agreement, the prevailing party may be entitled to reasonable attorneys' fees and costs if it has prevailed in a judgment by a court of competent jurisdiction.

7. No Waiver. Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

8. Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning settlement and supersede any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the parties to this Agreement concerning settlement. The parties to this Agreement each acknowledge that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this Agreement including, without limitation, any purported supplements, modifications, waivers or terminations of this Agreement, shall be valid or binding, unless executed in writing by all of the parties to this Agreement.

9. Manner of Construction. The parties to this Agreement, and each of them, acknowledge (a) this Agreement and its reduction to final written form is the result of extensive good faith negotiations between the parties and through their respective counsel, and (b) any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

10. Further Actions. Each of the parties hereto agrees to take any and all actions reasonably necessary to effectuate the intent, and to carry out the provisions, of this Agreement including, without limitation, executing other documents to accomplish the purposes of this Agreement.

11. Authority to Execute. Each individual signing this Agreement in a representative capacity represents that s/he is duly authorized to execute this Agreement on behalf of and to bind the entity on whose behalf his/her signature is affixed.

12. Counterparts. This Agreement may be executed in one or more counterparts and the counterparts signed in the aggregate shall constitute a single, original instrument.

13. Choice of Law. This Agreement has been made and entered into in the State of California and shall in all respects be interpreted, enforced and governed in accordance with the laws of California.

14. Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed in the consolidated Courts of Riverside County, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction.

15. Compliance with Laws and Regulations. By executing this Agreement, Ryland agrees to comply with all applicable federal, state and local laws, regulations and ordinances.

16. Termination. The Parties shall have the right to terminate this Agreement in the event that the other Party fails to perform, keep or observe any of its duties or obligations hereunder; provided however, the non-terminating Party shall have thirty (30) calendar days in which to correct such breach or default after written notice thereof has been provided by the terminating Party. In the event this Agreement is terminated, the Parties shall retain all rights to seek any and all remedies available at law or in equity.

17. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by any Party without the other Party's prior written consent, which shall not be unreasonably withheld, and any assignment of this Agreement or any of the rights, interests, or obligations hereunder shall be of no force or effect until the proposed assignee agrees in writing to be bound by all of the terms and conditions of this Agreement and such signed writing is delivered to the non-assigning Party. Subject to the foregoing restrictions, the provisions of this Agreement shall be binding upon and inure to the benefit of all affiliates, parent corporations, subsidiaries, assigns, successors-in-interest, personal representatives, administrators, heirs, devisees and legatees of the Parties.

18. Amendment. Except as otherwise provided in this Agreement, neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the Party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such writing.

19. Notices. Any notice, approval, consent, waiver or other communication required or permitted to be given or to be served upon either Party in connection with this Agreement shall be in writing. Such notice shall be personally served, sent by facsimile, or sent prepaid by registered or certified mail with return receipt requested, or sent by reputable overnight delivery service, such as Federal Express, and shall be deemed given: (1) if personally served, when delivered to the Party to whom such notice is addressed; (2) if given by facsimile when sent; (3) if given by prepaid or certified mail with return receipt requested, on the date of execution of the return receipt; or (4) if sent by a reputable overnight delivery service, such as Federal Express, when received. Any notice given by facsimile shall be confirmed in writing, and such confirmation shall be sent or delivered by any of the other means of delivery set forth in this Section, within forty-eight (48) hours after notice was sent by facsimile. Such notices shall be addressed to the Party to whom such notice is to be given at the Party's address set forth below or as such Party shall otherwise direct in writing to the other Party delivered or sent in accordance with this Section.

If to Ryland: Ryland Homes of California, Inc.
Attn: Richard P. Douglass
49 Discovery, Suite 250
Irvine, CA 92618

With a copy to: Allen Matkins Leck Gamble Mallory & Natsis LLP
Attn: John Condas, Esq.
1900 Main Street, 5th Floor
Irvine, CA 92879

If to County: County of Riverside Transportation Department
Attn: Juan Perez, Director of Transportation
4080 Lemon Street
Riverside, CA 92501

With a copy to: Office of County Counsel
Attn: Shellie Clack, Deputy County Counsel
3960 Orange Street, Suite 500
Riverside, CA 92501

20. No Third Party Beneficiaries. This Agreement does not create, and shall not be construed to create, any rights enforceable by any person, partnership, corporation, joint venture, limited liability company or other form of organization or association of any kind that is not a Party to this Agreement.

21. Effective Date. The effective date of this Agreement is the date the parties execute the Agreement. If the parties execute the Agreement on more than one date, then the last date the Agreement is executed by a party shall be the effective date.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates set forth hereinafter.


DATED: March __, 2012

"COUNTY"
COUNTY OF RIVERSIDE

By: _____
Name: _____
Its: _____

DATED: March 8, 2012

"RYLAND"
RYLAND HOMES OF CALIFORNIA, INC., a
Delaware corporation

By: 
Name: RICHARD P. DOUGLASS
Its: DIVISION PRESIDENT