

When Recorded Return to:
Terri Roth, City Clerk
City of Litchfield Park
214 W. Wigwam Boulevard
Litchfield Park, Arizona 85340

Exempt under A.R.S. § 11-1134(A)(2)

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this “Agreement”) is made and entered into as of this ___ day of _____, 2023, by **THE CHURCH AT LITCHFIELD PARK**, an Arizona domestic nonprofit corporation, 300 N. Old Litchfield Road, Litchfield Park, Arizona, 85340 (“Grantor”), in favor of **CITY OF LITCHFIELD PARK**, an Arizona municipal corporation, 214 W. Wigwam Blvd., Litchfield Park, Arizona 85340 (“Grantee”). Grantee and Grantor are hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Grantor owns certain real property located in the City of Litchfield Park, Maricopa County, Arizona, as more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference (the “Grantor Property”); and,

WHEREAS, Grantee intends to construct, install, maintain, use, operate, inspect, repair, replace and remove a storm water catch basin, landscape restoration and other associated improvements (collectively, “Improvements”) in, on, and through the Grantor Property, as more particularly described on Exhibit “B” attached hereto and incorporated herein (the “Easement Property”), all in accordance with detailed construction plans Grantee will provide Grantor prior to commencing any work (“Construction Plans”); and,

WHEREAS, Grantee desires to utilize currently available grant funding for installation of the Improvements that require incidental construction on Grantor Property.

AGREEMENT

NOW, THEREFORE, in consideration of the premises above and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee, intending to be legally bound, covenants and agrees for itself, its successors and assigns, as follows:

1. Effective Date. This Agreement will be effective as of the date that it is recorded in the Official Records of Maricopa County, Arizona (the “Official Records”).

2. Grant of Temporary Construction Easement. Grantor hereby grants to Grantee and its contractors, and their employees, agents, subcontractors, and suppliers (“Grantee’s Permittees”), a non-exclusive temporary construction easement, and license to access the Easement Property, as

necessary to construct the Improvements, over, above, on, under, in, across, along, and through the Easement Property for all purposes relating to completion of Improvements, (the “Construction Easement”).

3. Construction of Improvements.

3.1. The Easement Property contains existing improvements that are the property of Grantor (“Grantor's Improvements”). During its use of the Construction Easement, Grantee shall use commercially reasonable efforts to avoid damaging Grantor’s Improvements and, to the extent Grantee damages or destroys any of Grantor’s Improvements or the Easement Property, shall promptly repair, replace or restore Grantor’s Improvements or the Easement Property to the condition in which it existed prior to the Effective Date of the Construction Easement.

3.2. Grantee, at Grantee’s sole cost and expense, may clear or grade the Easement Property in connection with the construction of the Improvements.

3.3. Grantee’s use of the Easement Property shall comply with all applicable laws, rules, regulations and ordinances. Grantor retains the right to use the Easement Property for any purpose that does not unreasonably interfere with the rights granted to Grantee herein.

4. Indemnification. Grantee shall indemnify, defend, and hold harmless Grantor, and its successors and assigns, for, from, and against any and all claims, demands, suits, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees and other litigation related expenses) relating to or arising out of accidents, injuries, liens, loss, or damage of or to any person or property arising from Grantee or any of Grantee’s Permittees use of the Easement Property, except to the extent arising from the negligence or willful misconduct of Grantor or its contractors, employees, agents, invitees, licensees, and designees. The foregoing obligations under this Section 4 shall survive termination of this Agreement.

5. Insurance. At all times during Grantee’s construction of the Improvements, Grantee agrees to provide and maintain, and cause Grantee’s Permittees to provide and maintain, one or more policies of commercial general liability insurance and property damage insurance (including contractual liability arising under the indemnities contained in Section 4 above), occurring on or about the Easement Property, with combined single limit coverage of not less than \$2,000,000 (“Insurance Policy”). The Insurance Policy must be primary and not contributing with any Grantor policy or policies of insurance and shall name the owner of the Easement Property as an additional insured. The Insurance Policy must be issued by insurance companies authorized to do business in the State of Arizona having a rating in the then most current edition of Best’s Key Rating Guide (or equivalent) of A-/VII or better, must be written on an occurrence basis, and must include coverage for contractual liability and broad form property damage. Grantee and Grantee's Permittee's shall furnish Grantor with certificates of insurance (or, in the case of Grantee, evidence of self-insurance) indicating that insurance meeting the requirements hereof has been obtained and is in full force and effect within 10 days after written request by Grantor.

6. Covenants Running with the Land. The Construction Easement granted herein shall inure to the benefit of Grantee and its successors and assigns and shall be binding on Grantor and its successors and assigns, including, but not limited to, all subsequent owners of the Easement

Property and all persons claiming under them. From and after the date of conveyance of all or any portion of the Easement Property, the prior owner shall have no obligations or liabilities under this Agreement for matters occurring after such date with respect to such portion of the Easement Property.

7. Amendment. This Agreement may only be amended pursuant to a written agreement signed by both Grantor and Grantee and recorded in the Official Records.

8. Term. The Construction Easement shall automatically terminate on the later of the date that the Improvements are complete in accordance with the Construction Plans or six (6) months from the date that this Agreement is recorded ("Term"). Notwithstanding that the foregoing termination shall be effective without the need for further action by any Party, upon request by either Party on or after the date of such termination, the other Party shall execute, acknowledge, and deliver to the requesting Party for recording a termination of Construction Easement in a form reasonably requested by the requesting Party.

9. Term Expiration. At or prior to the expiration of the Term, Grantee shall remove all its property, supplies and equipment from the Easement Property and return the Easement Property to the condition it was in prior to the Effective Date, reasonable wear and tear excepted.

10. Non-Waiver. No delay or failure by either Party to exercise any right under this Agreement and no partial or single exercise of that right shall constitute a waiver of that or any other right.

11. Entire Agreement. This Agreement supersedes all agreements previously made between the Parties relating to its subject matter. There are no other understandings or agreements between the Parties with respect to the subject matter hereof.

12. Severability. Every provision of this Agreement is hereby declared to be independent of, and severable from, every other provision. If any provision is held to be invalid or unenforceable, that holding will be without effect upon the validity or enforceability of any other provision of this Agreement.

13. Applicable Laws. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

14. Attorney's Fees. In the event of any litigation or arbitration arising out of or related to this Agreement, the prevailing Party shall be entitled to recover from the other Party its costs and expenses, including, without limitation, reasonable attorneys' fees incurred in connection with such action, to be determined by the court and not a jury in any such litigation or the arbitrator.

15. Estoppel Certificate. Within 30 days after either Party's written request therefor, the other Party agrees to execute and deliver to the requesting Party a certificate (an "Estoppel Certificate") stating: (a) that the terms and provisions of this Agreement are unmodified and are in full force and effect or, if modified, identifying any such modifications; (b) whether there is any existing default hereunder with regard to such Party and, if so, specifying the nature and extent thereof; and (c) any unpaid amounts with regard to such Party.

16. Counterparts. This Agreement may be executed in two or more counterparts, each of which may contain fewer than all signatures but all of which, combined, shall constitute a single instrument. The Parties are authorized to attach the separate signature pages to a single Agreement.

CAUTION: The above-described easement may contain underground facilities the location of which must be verified as required by Arizona Revised Statutes, Section 40-360.21 *et seq.* (Arizona Blue Stake Law) *prior to* excavation.

[SIGNATURES ON FOLLOWING PAGES]

GRANTOR:

THE CHURCH AT LITCHFIELD PARK
an Arizona domestic nonprofit corporation

By: _____
Name: _____
Title: Authorized Representative

ACKNOWLEDGEMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ____ day of _____, 2023, before me, the undersigned Notary Public, personally appeared _____, the _____ Authorized Representative of The Church At Litchfield Park, an Arizona domestic nonprofit corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the Temporary Construction Easement on behalf of the Grantor.

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

Notary Public

My Commission Expires:

GRANTEE:

ACCEPTED BY THE CITY OF LITCHFIELD
PARK

Thomas L. Schoaf, Mayor
Date

ACKNOWLEDGEMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ____ day of _____, 2023, before me, the undersigned Notary Public, personally appeared Thomas L Schoaf, the Mayor of the City of Litchfield Park, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the Temporary Construction Easement on behalf of the Grantee.

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

Notary Public

My Commission Expires:

EXHIBIT "A"

**Grantor Property
Legal Description**

A parcel of land lying in the Southeast quarter of the Southeast quarter of Section 21, Township 2 North, Range 1 West of the Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Northeast corner of said Southeast quarter of the Southeast quarter,

Thence South along the East line of said Section 21 a distance of 65.23 feet to a point,

Thence North 89 degrees, 34 minutes West a distance of 38.00 feet to the True Point of Beginning,

Thence South 00 degrees, 13 minutes West along the West line of Litchfield Road a distance of 397.74 feet to a point,

Thence North 89 degrees, 37 minutes West a distance of 347.84 feet to a point,

Thence North 00 degrees, 21 minutes West a distance of 398.03 feet to a point,

Thence South 89 degrees, 34 minutes East a distance of 346.82 feet to the True Point of Beginning.

EXCEPT any portion of the above-described parcel located within the right-of-way of Old Litchfield Road.

EXHIBIT "B"

Temporary Construction Easement Depiction

(included on following pages)

Exhibit "A"
LEGAL DESCRIPTION
APN 501-68-114
TEMPORARY CONSTRUCTION EASEMENT

A parcel of land located in the Southeast Quarter of Section 21, Township 2 North, Range 1 West, Gila and Salt River Meridian, also being a portion of that certain parcel of land described in Docket 9047, Page 341, records of Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southeast corner of Section 21, T.2N., R.1W., from which the East quarter corner of said Section 21 bears North 00°16'18" East, a distance of 2710.59 feet;

THENCE along the East line of said Section 21, North 00°16'18" East, a distance of 897.31 feet;

THENCE North 89°43'42" West, a distance of 43.50 feet to the West Right of Way line of Old Litchfield Road and the **POINT OF BEGINNING**;

THENCE continuing North 89°43'42" West, a distance of 8.50 feet;

THENCE North 00°16'18" East, a distance of 36.00 feet;

THENCE South 89°43'42" East, a distance of 8.50 feet to the West Right of Way line of Old Litchfield Road;

THENCE along said Right of Way line South 00°16'18" West, a distance of 36.00 feet to the **POINT OF BEGINNING**.

Said parcel contains 306 square feet (0.007 acres), more or less.



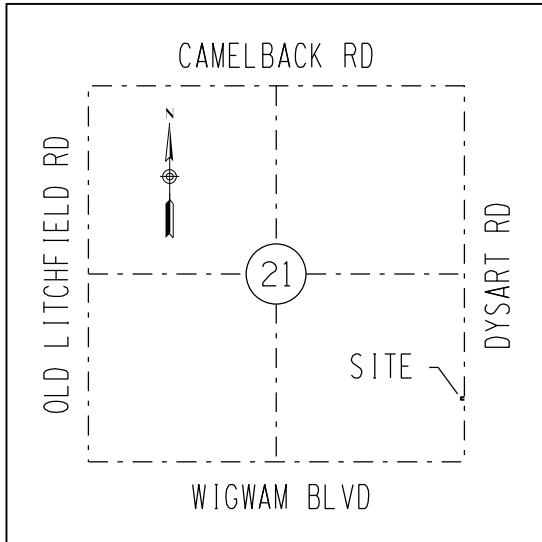
Daniel Hettinger



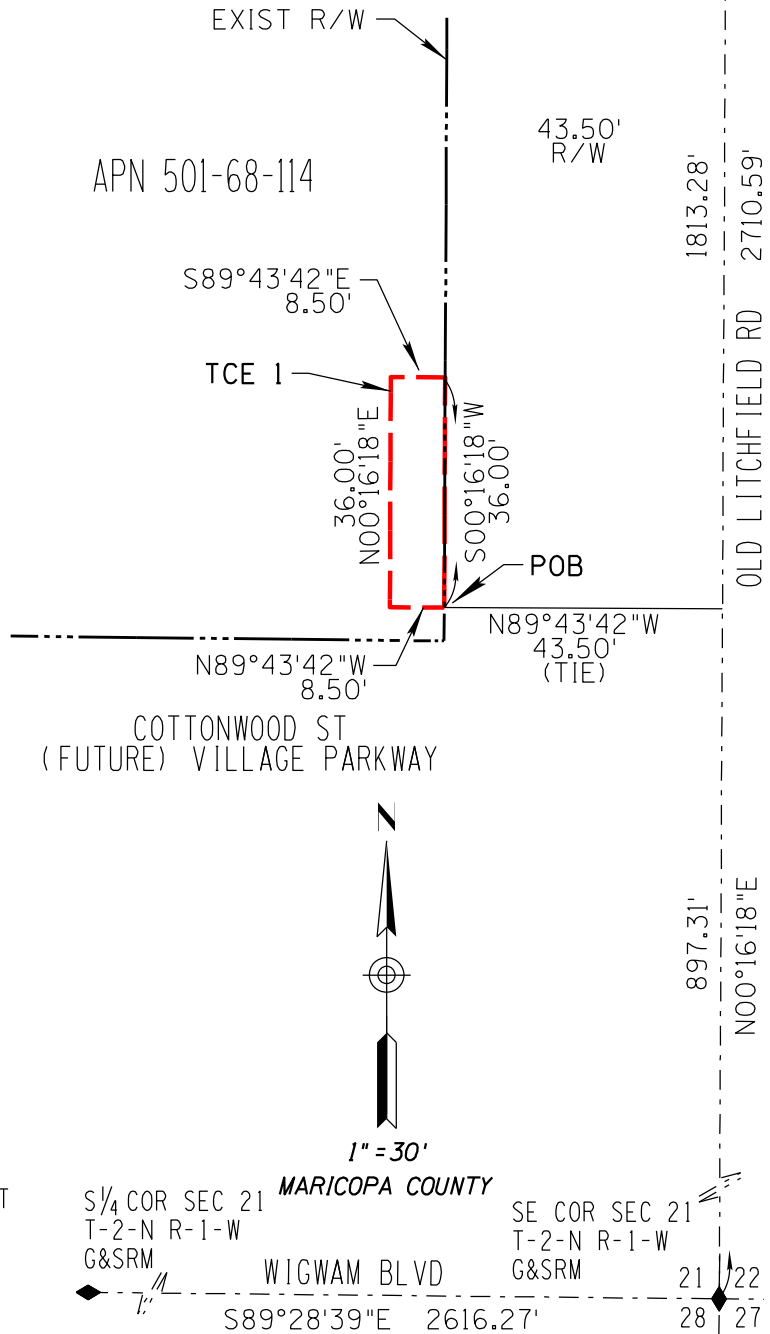
CITY OF
LITCHFIELD PARK

EXHIBIT "B"

E 1/4 COR SEC 21
T-2-N R-1-W
G&SRM



VICINITY MAP 2" = 1 MILE
SEC 22 T2N R1W
G&SRM



LEGEND

- SECTION AND CENTERLINE
- ROAD RIGHT OF WAY
- LIMITS OF EASEMENT
- PROPERTY LINE
- ◆ SECTION CORNER AS NOTED

ABBREVIATION TABLE

- COR CORNER
- G&SRM GILA AND SALT RIVER MERIDIAN
- POB POINT OF BEGINNING
- SEC SECTION
- TCE TEMPORARY CONSTRUCTION EASEMENT
- R/W RIGHT OF WAY

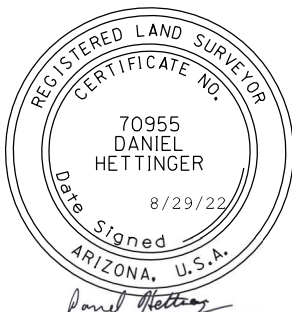


EXHIBIT: TEMPORARY CONSTRUCTION EASEMENT

TCE01

AZTEC TYPESA
501 N 44th St. Suite 300
Phoenix, AZ 85008-4505
Tel (602) 454-0402
Fax (602) 454-0403 www.aztec.us

PROJECT NAME:
**OLD LITCHFIELD ROAD
NEOLIN AVENUE
DOWNTOWN STORM DRAIN PROJECT PHASE IV/V**

LOCATION:
APN 501-68-114

SHEET NO.
1 OF 1