

**WHEN RECORDED, RETURN TO:**

City of Goodyear  
Attention: City Clerk/lrb  
190 North Litchfield Road  
Goodyear, Arizona 85338

**TEMPORARY**  
**NON-EXCLUSIVE EASEMENT TO MAINTAIN**  
**DRAINAGE FACILITIES**

(Maintenance of Drainage Improvements along Elwood Street Right of Way  
with Owner's Right to Relocate)

THIS TEMPORARY NON-EXCLUSIVE EASEMENT TO MAINTAIN DRAINAGE FACILITIES (this "Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date"), by and between the City of Goodyear, a municipal corporation of the State of Arizona (the "City") and GY160 Land Sub 3 LLC, an Arizona limited liability company ("Sub 3"), for the purposes herein stated. City and Sub 3 are herein individually referred to as a "Party" and collectively as the "Parties".

**RECITALS**

A. Sub 3 is the record owner of certain real property located in Maricopa County, Arizona as described and depicted on Exhibit "A" attached hereto and incorporated herein by this reference (the "Sub 3 Property").

B. Pursuant to that certain Development Agreement for Elwood Logistics Center by and between Elwood Logistics Center, LLC, a Delaware limited liability company ("Elwood Logistics"), and the City of Goodyear recorded on June 6, 2019 in the Official Records of Maricopa County, Arizona as Instrument No. 2019-0421761 (the "Elwood Logistics Development Agreement"), Elwood Logistics, as the owner of the property commonly known as Elwood Logistics Center as described in the Elwood Logistics Development Agreement (the "Elwood Logistics Center Property"), is required to construct certain infrastructure improvements within the Elwood Street alignment that will result in full street improvements being completed within the section of Elwood Street from Sarival Avenue to Estrella Parkway (the "Elwood Improvements").

C. A portion of the Elwood Improvements are to be constructed within the section of the Elwood Street alignment adjacent to the Sub 3 Property.

D. As part of the requirements for the construction of the Elwood Improvements, temporary drainage facilities have to be constructed on the Sub 3 Property to retain storm water run-off from the Sub 3 Property and from the adjacent section of Elwood Street.

E. Sub 3 has been working with Elwood Logistics to grant, provide and establish the necessary rights and privileges for the construction of the temporary drainage facilities, but once the drainage facilities are completed, the City has agreed to maintain such facilities until such time as the Sub 3 Property is developed and permanent drainage facilities are installed.

F. Accordingly, the City and Sub 3 desire to enter into this Agreement for Sub 3 to grant to the City a temporary, non-exclusive easement over the area depicted and described in Exhibit "B" attached hereto and incorporated herein by this reference (the "Easement Area") for the purposes of taking and retaining storm water run-off from Elwood Street and for operating, inspecting, maintaining, repairing, replacing or removing those certain drainage facilities (the "Facilities") to be constructed and installed by Elwood Logistics, as designed and in accordance with the Elwood Street Offsite \_\_\_\_\_ Plans dated \_\_\_\_\_, 20\_\_\_\_, prepared by Hunter Engineering and approved by the City on \_\_\_\_\_, 20\_\_\_\_ (the "Plans"), as more particularly described herein, subject to Sub 3's right to relocate the facilities in conjunction with the development of the Sub 3 Property.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grant of Easement. Sub 3 hereby grants and conveys to the City, subject to the terms and conditions herein, a temporary, non-exclusive easement over, through, under, upon, within and across the Easement Area, for or use by the City's employees and its representatives, agents, contractors, subcontractors and their respective employees (collectively, the "Related City Parties"), for the sole purposes of accepting storm water run-off from Elwood Street and retaining it within the Easement Area and for allowing the City and the Related City Parties to operate, inspect, maintain, repair, replace and/or remove the Facilities constructed and installed within the Easement Area (the "Easement") by Elwood Logistics.

2. Term; Termination. This Agreement shall otherwise be effective as of the Effective Date set forth above, but the Easement granted herein, and the City's obligations with respect thereto, shall only become effective upon the date the City Engineer or his/her designee issues a letter of acceptance, accepting the Facilities constructed by Elwood Logistics (the "Acceptance Date"), subject to the completion of the warranty period. Notwithstanding anything to the contrary, this Agreement and the Easement granted herein shall automatically terminate, expire and be of no further force and effect without the need for further notice or execution of any documentation by any party immediately upon the completion of earlier of the following (as applicable, the "Termination Date"): (a) the date a final plat for all or any part of the Sub 3 Property (a "Final Plat") is recorded in the Official Records of Maricopa County, Arizona, so long as such Final Plat provides terms for the retention of drainage required to be retained on the Sub 3 Property; or (b) the date a site plan for development within all or any portion of the Sub 3 Property (a "Site

Plan”) is approved by the City, so long as such Site Plan provides terms for the retention of drainage required to be retained on the Sub 3 Property; or (c) the date permanent drainage facilities are completed within the Sub 3 Property as required by the City of Goodyear Engineering Design Standards and Policies. Notwithstanding the foregoing, and concurrently with the execution of this Agreement, the City and Sub 3 shall execute, acknowledge and deliver to Fidelity National Title Agency, 14000 N. Pima Road, Suite 100 Scottsdale, Arizona 85260, Attn. Kristina Gooding (“Fidelity”) the Memorandum of Termination of Non-Exclusive Easement to Maintain Drainage Facilities in the form attached hereto as Exhibit “C” (the “Memorandum of Termination”). The Parties hereby agree that the Memorandum of Termination shall be held in an escrow with Fidelity until the Termination Date. Upon the Termination Date, the City and Sub 3 hereby authorize Fidelity, and Fidelity is hereby instructed, to insert the date and recording information of this Agreement, date the Memorandum of Termination and record the Memorandum of Termination in the Official Records of Maricopa County, Arizona without any further instruction from the City in order to provide all interested parties with actual and constructive notice of the termination of this Agreement and the Easement granted therein.

3. City Rights and Privileges. The rights and privileges herein granted to the City and the Related City Parties include, but are not limited to, the following: (a) the right and privilege to maintain the Facilities in accordance with the Plans; (b) uninterrupted and unimpeded right of ingress and egress as may be reasonably necessary or desirable for the maintenance of the Facilities; and (b) the right to remove such plant growth, dirt and other material from the Easement Area as necessary in connection with the maintenance of the Facilities.

4. City Obligations. Commencing on the Acceptance Date and terminating upon the Termination Date, the City shall be responsible for the maintenance of the Facilities and the Easement Area in accordance with the terms and conditions of this Agreement. The City and the Related City Parties shall at all times employ “best practices” in its use of the Easement and maintenance of the Facilities, and shall be responsible for complying with all federal, state and local regulations in connection therewith, including but not limited to, air quality, track-out, waste-fill hauling and all other applicable regulations. If any mechanic’s, construction or other liens are created or filed against the Sub 3 Property by reason of labor performed or materials furnished in connection with the City’s exercise of its rights and performance of its obligations under this Agreement, the City shall, upon demand by Sub 3, at the City’s sole cost and expense, promptly cause such lien or liens to be satisfied and discharged of record together with any lien claims that may have been filed.

5. Indemnification. In addition, and except as provided in Section 6 below, the City shall indemnify, defend and hold Sub 3, it’s successors, assigns, employees, officers, directors, partners, members, representatives and agents harmless for, from and against any and all claims (including, without limitation, claims for mechanics’ liens or materialmen’s liens), causes of action, demands, obligations, losses, damages, liabilities, judgments, injuries, proceedings, fines, penalties, regulatory enforcement actions, costs and expenses (including, without limitation, reasonable attorneys’ fees, charges, and disbursements) (collectively, “Claims”) resulting from the negligence or willful misconduct of the City or the Related City Parties in connection with the exercise of the rights granted herein. The City’s indemnification obligations under this section shall survive the termination of this Agreement.

6. Sub 3 Representation. Sub 3 represents that the Easement Area is not being and will not in the future be farmed, ranched, or otherwise used for agricultural purposes and the City's exercise of the rights granted herein will not interfere with any farming, ranching or agricultural operations on the Sub 3 Property now or in the future. Sub 3 shall indemnify, defend, and hold City, its elected officials, directors, officers, employees, agents, officers and directors harmless for, from and against any and all Claims arising from or related to farming or ranching operations within the Easement Area. Sub 3's indemnification obligations under this section shall survive the termination of this Agreement.

7. Running of Benefits and Burdens. This Agreement, and the benefits and burdens hereof, shall run with the Easement Area only.

8. General Terms. This Agreement shall be interpreted according to and governed by the procedural and substantive laws of the State of Arizona, and any action arising from this Agreement shall be brought in a court of competent jurisdiction in Maricopa County, Arizona. The successful Party in any court action brought to enforce or interpret any provision of this Agreement will be entitled to recover its reasonable attorney's fees and court costs from the unsuccessful Party.

9. Entire Agreement. This agreement is the entire agreement between Sub 3 and the City and supersedes any and all prior oral or written agreement or understanding between the Parties pertaining to the subject matter of this Agreement. Sub 3 and the City have made no representations, warranties or inducements, express or implied, other than as set forth in this Agreement.

10. No Waiver; Other Matters. No waiver of any term of this Agreement shall be deemed to be a continuing waiver of that term or a waiver, nor any other term of this Agreement. This Agreement may be signed in one or more counterparts, each of which together will form one binding agreement of the Parties. Time is of the essence in the performance of each and every provision of the Agreement. The provisions of this Agreement are not intended to and do not constitute a dedication for public use of the Easement Area and all the rights herein created are private and for the benefit only of the Parties, their successors and assigns. Notwithstanding anything herein contained to the contrary, Sub 3 shall have the right to terminate this Agreement at any time upon giving prior written notice to the City of a breach or default by the City under this Agreement, if the City has not commenced to cure such breach or default within thirty (30) days of the date of such notice and cures such breach or default within a reasonable amount of time given the nature of the cure required to cure the breach or default.

11. Notices. All notices to be given by either Party to the other shall be in writing and shall be served by personal delivery, a nationally recognized overnight courier, or by depositing such notice with the United States Postal Service, certified, return receipt requested, postage prepaid, addressed and delivered to the Party that is to receive the notice at the addresses set forth herein or at such other address as may be indicated by one Party to the other Party by written notice. Notices sent by personal delivery or by a nationally recognized overnight courier as set forth above shall be deemed to have been delivered on the date of delivery or on that date after delivery is refused. Notices sent by certified mail shall be deemed to have been delivered upon

the third (3<sup>rd</sup>) business day following the day on which such notice is deposited for delivery in any United States Postal Service mail box or branch office, as evidenced by postmark. If either Party refuses delivery or fails to receive any notice because such Party failed to advise the other Party of a change of address, such Party shall not be relieved of any obligations under this Agreement.

Notices to City:

City of Goodyear  
Attention: Legal Department  
190 North Litchfield Road  
Goodyear, Arizona 85338

Notices to Sub 3:

GY160 Land Sub 3 LLC  
Attention: Mike Kern  
7001 N. Scottsdale Road, Suite 1015  
Scottsdale, Arizona 85253

12. Reserved Rights. The City's and the Related City Parties' right to use the Easement Area is non-exclusive, and Sub 3 retains the right at all times to use, lease, maintain, develop and improve the Easement Area for any purpose that is not inconsistent with this Agreement. The Parties expressly agree that the use of the Easement Area for farming, ranching, and/or agricultural operations is inconsistent with the purpose of this Agreement. Nothing contained in this Agreement shall prohibit Sub 3 from conveying additional use or possessory rights or easements for access, construction, utility or other purposes through, over, under, upon, in, across and along the Easement Area to the owner of properties which abut the Easement Area, to individuals or enterprises constructing Elwood Street related improvements or to any governmental or quasi-governmental agencies or other third-party, including, without limitation, Elwood Logistics Center; provided however, that no such additional rights or easements shall materially and adversely impair the City's use of the Easement herein granted.

13. Cancellation by the City. This Agreement may be cancelled by the City pursuant to Arizona Revised Statutes Section 38-511.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date and year first written above.

GRANTOR: GY160 Land Sub 3 LLC,  
an Arizona limited liability company

By: GY160 CSW LLC,  
an Arizona limited liability company

Its: Manager

By: Communities Southwest Inc.,  
an Arizona corporation

Its: Manager

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

Name: \_\_\_\_\_

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

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

Name: \_\_\_\_\_

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

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ and \_\_\_\_\_ as \_\_\_\_\_ and \_\_\_\_\_, respectively, of Communities Southwest, Inc., an Arizona corporation, the Manager of GY160 CSW LLC, an Arizona limited liability company, as Manager of GY160 LAND SUB 3 LLC, an Arizona limited liability company, for and on behalf of the limited liability company.

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

GRANTEE:

City of Goodyear,  
a municipal corporation

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF MARICOPA )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me personally appeared \_\_\_\_\_ as, \_\_\_\_\_, an Arizona municipal corporation whose identity was proved to me on the basis of satisfactory evidence to be the person whose name in subscribed to this document, and who acknowledged that he signed this document.

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

**EXHIBIT “A”**

The Sub 3 Property

*[See Attached]*



**LEGAL DESCRIPTION  
GY160 LAND SUB 3 LLC**

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 1 NORTH, RANGE 1 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTHEAST CORNER OF SAID SECTION 19, BEING MARKED BY A BRASS CAP IN HAND HOLE, FROM WHICH POINT THE EAST QUARTER CORNER OF SAID SECTION 19, BEING MARKED BY A BRASS CAP IN HAND HOLE, BEARS SOUTH 00°07'05" WEST (BASIS OF BEARINGS), A DISTANCE OF 2661.38 FEET;

THENCE SOUTH 89°57'14" WEST, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 2598.60 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 19;

THENCE SOUTH 00°29'22" WEST, ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 1720.64 FEET TO THE **POINT OF BEGINNING**;

THENCE DEPARTING SAID WEST LINE, NORTH 90°00'00" EAST, A DISTANCE OF 1356.46 FEET;

THENCE SOUTH 00°00'48" EAST, A DISTANCE OF 55.01 FEET;

THENCE NORTH 89°59'12" EAST, A DISTANCE OF 50.00 FEET;

THENCE SOUTH 00°00'48" EAST, A DISTANCE OF 312.15 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT, CONCAVE EASTERLY AND HAVING A RADIUS OF 25.00 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 20°21'51", AN ARC DISTANCE OF 8.89 FEET TO THE BEGINNING OF A TANGENT REVERSE CURVE TO THE RIGHT, CONCAVE NORTHERLY AND HAVING A RADIUS OF 55.00 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 130°44'30", AN ARC DISTANCE OF 125.50 FEET TO THE BEGINNING OF A TANGENT REVERSE CURVE TO THE LEFT, CONCAVE SOUTHERLY AND HAVING A RADIUS OF 25.00 FEET;

THENCE WESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 20°21'51", AN ARC DISTANCE OF 8.89 FEET TO A POINT OF TANGENCY;

THENCE NORTH 90°00'00" WEST, A DISTANCE OF 135.32 FEET;

THENCE SOUTH 45°00'00" WEST, A DISTANCE OF 28.28 FEET;

THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 393.39 FEET;

THENCE SOUTH 89°52'03" EAST, A DISTANCE OF 89.75 FEET;

THENCE SOUTH 00°07'57" WEST, A DISTANCE OF 22.00 FEET TO THE NORTH LINE OF THE SOUTH 55 FEET OF SAID NORTHEAST QUARTER;

THENCE NORTH 89°52'03" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 1270.59 FEET TO THE WEST LINE OF SAID NORTHEAST QUARTER;

THENCE NORTH 00°29'22" EAST, ALONG SAID WEST LINE, A DISTANCE OF 877.69 FEET TO THE **POINT OF BEGINNING.**

CONTAINING 1,137,933 SQ.FT. OR 26.1233 ACRES, MORE OR LESS.



NORTH QUARTER CORNER  
SECTION 19, T1N, R1W  
FOUND A.C.F.

POINT OF COMMENCEMENT  
NORTHEAST CORNER  
SECTION 19, T1N, R1W  
FOUND B.C.H.H.

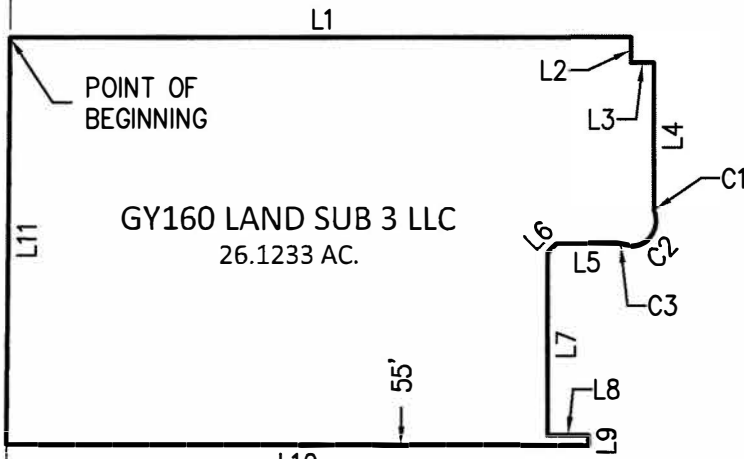
LOWER BUCKEYE ROAD S89°57'14"W 2598.60'



*Douglas B. Toney*

S00°29'22"W 2653.33'  
1720.64'

S00°07'05"W 2661.38'  
(BASIS OF BEARINGS)



GY160 LAND SUB 3 LLC  
26.1233 AC.

N89°52'03"W 2615.79'

ELWOOD STREET

CENTER OF SECTION 19  
NOTHING FOUND

EAST QUARTER CORNER  
SECTION 19, T1N, R1W  
FOUND B.CH.H.

SHEET 1 OF 2  
DATE: 12/5/19

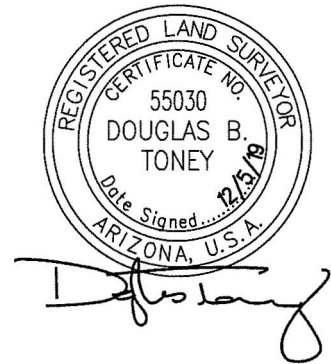
EXHIBIT GY160 LAND SUB 3 LLC		
BY: DT	CHK:	QC:
BCG PROJECT NO: 090568-01 TASK: 001 CLIENT REF NO:		

**Bowman**  
CONSULTING

1295 W Washington St, #108  
Tempe, AZ 85281  
Phone (480) 829-8830  
Fax (480) 829-8841  
www.bowmanconsulting.com

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	1356.46'	N90°00'00"E
L2	55.01'	S00°00'48"E
L3	50.00'	N89°59'12"E
L4	312.15'	S00°00'48"E
L5	135.32'	N90°00'00"W
L6	28.28'	S45°00'00"W
L7	393.39'	S00°00'00"E
L8	89.75'	S89°52'03"E
L9	22.00'	S00°07'57"W
L10	1270.59'	N89°52'03"W
L11	877.69'	N00°29'22"E

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	8.89'	25.00'	020°21'51"
C2	125.50'	55.00'	130°44'30"
C3	8.89'	25.00'	020°21'51"



SHEET 2 OF 2

EXHIBIT  
GY160 LAND SUB 3 LLC

DATE: 12/5/19

BY: DT    CHK:    QC:

BCG PROJECT NO: 090568-01 TASK: 001  
CLIENT REF NO:

**Bowman**  
CONSULTING

1295 W Washington St, #108  
Tempe, AZ 85281  
Phone: (480) 829-8830  
Fax: (480) 829-8841  
www.bowmanconsulting.com

**EXHIBIT “B”**

The Easement Area

*[See Attached]*

February 6, 2020  
Project # 090568-02-001

**LEGAL DESCRIPTION  
TEMPORARY DRAINAGE EASEMENT**

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 1 NORTH, RANGE 1 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE EAST QUARTER CORNER OF SAID SECTION 19, BEING MARKED BY A BRASS CAP IN HAND HOLE, FROM WHICH POINT THE NORTHEAST CORNER OF SAID SECTION 19, BEING MARKED BY A BRASS CAP IN HAND HOLE, BEARS NORTH 00°07'05" EAST (BASIS OF BEARINGS), A DISTANCE OF 2661.38 FEET;

THENCE NORTH 89°52'03" WEST, ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 2615.79 FEET TO THE CENTER OF SAID SECTION 19;

THENCE NORTH 00°29'22" EAST, ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 55.00 FEET TO THE NORTH LINE OF THE SOUTH 55 FEET OF SAID NORTHEAST QUARTER;

THENCE SOUTH 89°52'03" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 41.68 FEET TO THE **POINT OF BEGINNING**;

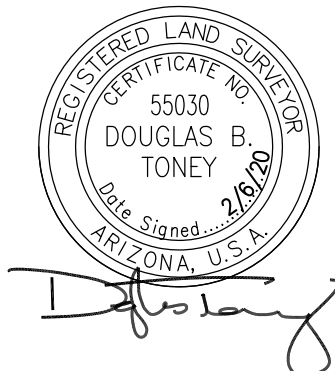
THENCE DEPARTING SAID NORTH LINE, NORTH 00°07'57" EAST, A DISTANCE OF 82.00 FEET;

THENCE SOUTH 89°52'03" EAST, A DISTANCE OF 456.00 FEET;

THENCE SOUTH 00°07'57" WEST, A DISTANCE OF 82.00 FEET TO THE NORTH LINE OF THE SOUTH 55 FEET OF SAID NORTHEAST QUARTER;

THENCE NORTH 89°52'03" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 456.00 FEET TO THE **POINT OF BEGINNING**.

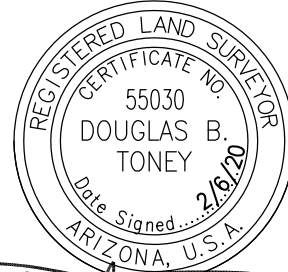
CONTAINING 37,392 SQ.FT. OR 0.8584 ACRES, MORE OR LESS.



NORTH QUARTER CORNER  
SECTION 19, T1N, R1W  
FOUND A.C.F.

NORTHEAST CORNER  
SECTION 19, T1N, R1W  
FOUND B.C.H.H.

LOWER BUCKEYE ROAD S89°57'14"W 2598.60'



*Douglas B. Toney*

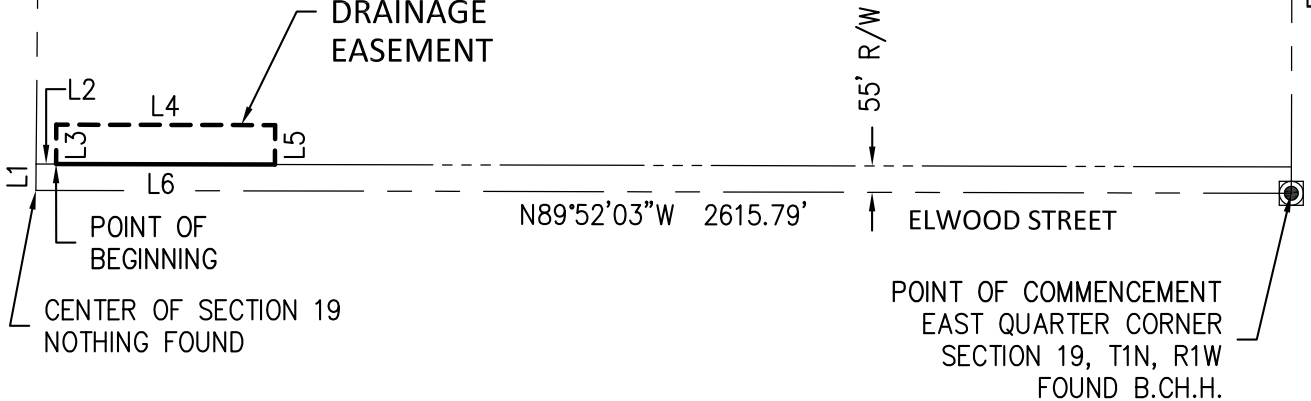
LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	55.00'	N00°29'22"E
L2	41.68'	S89°52'03"E
L3	82.00'	N00°07'57"E
L4	456.00'	S89°52'03"E
L5	82.00'	S00°07'57"W
L6	456.00'	N89°52'03"W

N00°29'22"E 2598.33'

N00°07'05"E 2661.38'  
(BASIS OF BEARINGS)

ESTRELLA PARKWAY

TEMPORARY  
DRAINAGE  
EASEMENT



CENTER OF SECTION 19  
NOTHING FOUND

POINT OF COMMENCEMENT  
EAST QUARTER CORNER  
SECTION 19, T1N, R1W  
FOUND B.C.H.H.

SHEET 1 OF 1  
DATE: 2/6/20

EXHIBIT TEMPORARY DRAINAGE EASEMENT			
BY: DT	CHK:	QC:	
BCG PROJECT NO: 090568-01 TASK: 001 CLIENT REF NO:			

**Bowman**  
CONSULTING

1295 W Washington St, #108  
Tempe, AZ 85281  
Phone: (480) 629-8830  
Fax: (480) 629-8841  
www.bowmanconsulting.com

**EXHIBIT “C”**

Form of Memorandum of Termination

*[See attached]*



**WHEN RECORDED, RETURN TO:**

GY160 Land Sub 3 LLC  
7001 N. Scottsdale Road, Suite 1015  
Scottsdale, AZ 85253  
Attn: Michael J. Kern

**MEMORANDUM OF TERMINATION OF  
NON-EXCLUSIVE EASEMENT TO MAINTAIN DRAINAGE FACILITIES**

THIS MEMORANDUM OF TERMINATION OF NON-EXCLUSIVE EASEMENT TO MAINTAIN DRAINAGE FACILITIES (this "Termination") is made as of \_\_\_\_\_, 20\_\_\_, by and between the City of Goodyear, a municipal corporation of the State of Arizona (the "City") and GY160 Land Sub 3 LLC, an Arizona limited liability company ("Sub 3").

**RECITALS**

A. The City and Sub 3 previously entered into that certain Temporary Non-Exclusive Easement to Maintain Drainage Facilities dated \_\_\_\_\_, 2020, recorded on \_\_\_\_\_, 2020, as Instrument No. 2020-\_\_\_\_\_ in the Official Records of Maricopa County, Arizona (the "Agreement"). All capitalized terms used in this Termination but not defined herein will have the meanings ascribed to them in the Agreement.

B. Pursuant to Section 2 of the Agreement, the Agreement automatically terminates, expires and is of no further force and effect without the need for further notice or execution of any documentation by any party immediately upon the earlier of the following (as applicable, the "Termination Date"): (a) the date a final plat for all or any part of the Sub 3 Property (a "Final Plat") is recorded in the Official Records of Maricopa County, Arizona, so long as such Final Plat provides terms for the retention of drainage required to be retained on the Sub 3 Property; or (b) the date a site plan for development within all or any portion of the Sub 3 Property (a "Site Plan") is approved by the City, so long as such Site Plan provides terms for the retention of drainage required to be retained on the Sub 3 Property; or (c) the date permanent drainage facilities are completed within the Sub 3 Property as required by the City of Goodyear Engineering Design Standards and Policies.

C. As of the date hereof, one of the conditions triggering the Termination Date has occurred, and as such the Agreement has terminated in accordance with its terms.

D. The City and Sub 3 now desire to execute this Termination to release the Property from the Agreement and to memorialize the termination of the Agreement in accordance with the terms and conditions set forth herein.

## **MEMORANDUM OF TERMINATION**

NOW, THEREFORE, in consideration of the agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Sub 3 hereby agree that the Agreement and every provision thereof shall terminate and be of no further force or effect as of the Termination Date and that the Property is hereby fully released from the Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the City and Sub 3 have executed this Termination as of the date set forth above.

SUB 3: GY160 Land Sub 3 LLC,  
an Arizona limited liability company

By: GY160 CSW LLC,  
an Arizona limited liability company  
Its: Manager

By: Communities Southwest Inc.,  
an Arizona corporation  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_ as \_\_\_\_\_, respectively, of Communities Southwest, Inc., an Arizona corporation, the Manager of GY160 CSW LLC, an Arizona limited liability company, as Manager of GY160 LAND SUB 3 LLC, an Arizona limited liability company, for and on behalf of the limited liability company.

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

THE CITY:

City of Goodyear,  
a municipal corporation

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF MARICOPA )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me personally appeared \_\_\_\_\_ as, \_\_\_\_\_, an Arizona municipal corporation whose identity was proved to me on the basis of satisfactory evidence to be the person whose name in subscribed to this document, and who acknowledged that he signed this document.

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