

When recorded Mail to:  
City of Goodyear  
City Clerk/LRB  
190 N. Litchfield Road  
P.O. Box 5100  
Goodyear, Arizona 85338

EXEMPT UNDER A.R.S., § 11-1134(A)(2)

## PUBLIC UTILITY EASEMENT AND SUBORDINATION AGREEMENT

This Public Utility Easement and Subordination Agreement ("EASEMENT") is made this \_\_\_\_ day of February, 2015 by and among **BASIS Schools, Inc., an Arizona nonprofit corporation** ("OWNER") **First American Title Insurance Company** ("TRUSTEE"), **CLI Capital a real estate investment trust** ("BENEFICIARY") and the City of Goodyear, an Arizona municipal corporation (the "CITY"). (OWNER, TRUSTEE, BENEFICIARY and the CITY may be referred to individually as PARTY and collectively as PARTIES.) :

### RECITALS

WHEREAS, OWNER is the owner of certain real property legally described in Exhibit B attached hereto and incorporated herein by this reference (the "PROPERTY").

WHEREAS, the PROPERTY is subject to a certain Deed of Trust dated December 23, 2014 and recorded on December 23, 2014 as Instrument No. 2014 0846427 of the official records of the County Recorder of Maricopa County, State of Arizona (the "DEED OF TRUST") wherein the PROPERTY was conveyed to the TRUSTEE in trust to secure repayment of certain indebtedness as more specifically set forth therein.

WHEREAS TRUSTEE is the trustee and BENEFICIARY is the beneficiary under the DEED OF TRUST.

WHEREAS, pursuant to the terms of that certain Purchase Agreement and Escrow Instructions between the CITY and OWNER, OWNER is required to dedicate to the CITY, at no cost to the CITY, a ten foot Public Utility Easement along the southern boundary of the PROPERTY adjacent to the Sherman Street alignment.

WHEREAS, it is the desire and intent of OWNER to grant and convey to the CITY its successors, assign, and permittees, an easement in the location and for the public purposes as more specifically set forth herein.

WHEREAS, it is the desire and intent of BENEFICIARY and TRUSTEE to consent to the grant and conveyance of such EASEMENT and to subordinate the DEED OF TRUST and the underlying lien to the EASEMENT.

## EASEMENT TERMS

NOW, THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms contained herein, and for other good and valuation consideration, the receipt of which is hereby acknowledged, OWNER hereby grants and conveys to the **CITY OF GOODYEAR, ARIZONA, an Arizona Municipal Corporation**, its successors, assigns (collectively "GRANTEE") a permanent, perpetual nonexclusive easement upon, over, under, across, above, and through the real property described and depicted in Exhibit "A," attached hereto and incorporated herein by this reference (the "EASEMENT AREA") for the purposes of entering, locating, constructing, maintaining, repairing, replacing, and operating utility facilities necessary for the operation of utility systems, including water; storm drainage, gas; electricity, communications and sewer utility systems and/or authorizing permittees to locate, construct, maintain, repair, replace, and operate utility facilities necessary for the operation of utility systems together with the right of access to the easement for the purposes stated herein.

The GRANTEE shall have all rights and privileges necessary or convenient for the full use and enjoyment of the EASEMENT AREA, servitude and privileges herein granted for the purposes herein described.

This EASEMENT shall run with the land for the benefit of the GRANTEE, its successors and assigns.

OWNER and its successors and assigns shall not have any responsibility or liability for the construction, operation, maintenance, or repair of any facilities constructed pursuant to the rights granted by this EASEMENT unless installed by it.

OWNER reserves for itself and its successors and assigns, all such rights and privileges in the EASEMENT as may be used without unreasonably interfering with or abridging the rights granted herein.

OWNER and its successors and assigns hereby waive and release GRANTEE from any liability for damage to the EASEMENT AREA and/or the PROPERTY that results or arises from the exercise of the rights under this Easement PROVIDED that as soon as practicable, GRANTEE restores the PROPERTY, including the EASEMENT AREA to the condition of the PROPERTY before such damage occurred.

To the extent permitted by Arizona law, the CITY hereby covenants to indemnify and save OWNER harmless from any liabilities for injuries or damages to persons or property resulting from or arising out of the exercise of the rights under this EASEMENT except that such indemnification and hold harmless shall not apply to claims arising from or alleged to arise from the negligent or willful acts or omissions of OWNER or to claims arising from or alleged to arise from OWNER's breach of the terms of the EASEMENT.

GRANTEE shall, and hereby agrees to, keep the EASEMENT AREA free and clear of construction, mechanics', materialmans' or other liens or encumbrances of any kind.

OWNER hereby warrants and covenants to GRANTEE that every lender, easement holder or other person having any interest in the EASEMENT AREA adverse to or inconsistent with the conveyances or

other property interests created or transferred by this EASEMENT has consented to the conveyance of the this EASEMENT.

This EASEMENT will be governed by and construed according to the internal, substantive laws of the State of Arizona, without reference to any conflicts of law principles.

If a proceeding is commenced or an attorney is retained to enforce the terms of this EASEMENT, regardless of whether a law suit is actually filed, the prevailing PARTY shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation, cost of appeal and other related expenses incurred in connection therewith.

#### CONSENT

NOW THEREFORE, the BENEFICIARY and TRUSTEE hereby consent to the EASEMENT and agree that any acquisition, transfer or sale of the PROPERTY made under the provisions of the DEED OF TRUST, whether by foreclosure, deed-in-lieu or other means shall be subject to this EASEMENT.

#### GENERAL TERMS

This EASEMENT, including any exhibits or schedules referenced herein, contains the entire agreement between the PARTIES with respect to the terms of the easement being granted herein and supersedes all prior or contemporaneous understandings or agreements in regard thereto.

Each PARTY hereby warrants that the persons executing this EASEMENT on behalf of such PARTY has the authority to do so and that all persons necessary to bind the PARTIES to this EASEMENT have joined in this document.

This EASEMENT may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together shall constitute one agreement binding on the PARTIES.

The date of the EASEMENT set forth above shall be the date of execution by the last PARTY to execute the EASEMENT, and the CITY shall be entitled to fill in that date upon receipt of the fully executed EASEMENT.

*Signatures, Acknowledgements and Exhibits on Following Pages*

IN WITNESS WHEREOF, OWNER has caused this EASEMENT to be signed by its duly authorized representative as of the date set forth below:

DATE: \_\_\_\_\_

OWNER: **BASIS Schools, Inc.,  
an Arizona nonprofit corporation.,**

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

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

Title: \_\_\_\_\_

State of Arizona        )  
                                  )ss  
County of Maricopa    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by \_\_\_\_\_, as \_\_\_\_\_ of BASIS Schools, Inc., an Arizona nonprofit corporation and that he/she being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of BASIS Schools, Inc., an Arizona nonprofit corporation.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

*Signatures, Acknowledgements and Exhibits on Following Pages*

IN WITNESS WHEREOF, TRUSTEE has caused this EASEMENT to be signed by its duly authorized representative as of the date set forth below:

DATE: \_\_\_\_\_

TRUSTEE: **First American Title Insurance Company**  
as TRUSTEE, under the above described DEED OF  
TRUST, in its Trustee capacity only, not in its  
corporate capacity and not personally

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

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

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

State of Arizona       )  
                                  )ss  
County of Maricopa    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by \_\_\_\_\_, as \_\_\_\_\_ of First American Title Insurance Company, and that he/she being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of First American Title Insurance Company, as TRUSTEE, under the above described DEED OF TRUST, in its trustee capacity only, not in its corporate capacity and not personally.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

*Signatures, Acknowledgements and Exhibits on Following Pages*

IN WITNESS WHEREOF, BENEFICIARY has caused this EASEMENT to be signed by its duly authorized representative as of the date set forth below:

DATE: \_\_\_\_\_

BENEFICIARY:     CLI CAPITAL,  
                         A real estate investment trust

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

Name:   Travis David

Its:       Senior Vice President and Chief Operating Officer

STATE OF TEXAS            )  
   ) ss.

County of Potter            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015 by Travis David, Senior Vice President and Chief Operating Officer of CLI Capital , a real estate investment trust, and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of CLI Capital, a real estate investment trust.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

*Signatures, Acknowledgements and Exhibits on Following Pages*

ACCEPTED by the CITY OF GOODYEAR, ARIZONA, an Arizona Municipal Corporation, this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

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

Brian Dalke

Its: City Manager

State of Arizona       )  
                                  )ss.  
County of Maricopa    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015  
by Brian Dalke, as the City Manager of the City of Goodyear, an Arizona municipal corporation, and that  
he being authorized to do so executed the foregoing instrument for the purposes therein contained on behalf  
of the City of Goodyear, an Arizona municipal corporation.

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

Approved as to Form:

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

*Exhibits on Following Pages*



## EXHIBIT A

### LEGAL DESCRIPTION

A PUBLIC UTILITY EASEMENT OVER THAT TRACT AS CONVEYED TO BASIS SCHOOLS, INC. BY DEED OF RECORD IN INSTRUMENT NUMBER 2014-0846426, MARICOPA COUNTY RECORDS (MCR) AND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA & SALT RIVER MERIDIAN, CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 7 (3" CITY OF GOODYEAR BRASS CAP IN HANDHOLE) FROM WHICH POINT THE EAST QUARTER CORNER THEREOF (3" MARICOPA COUNTY HIGHWAY DEPARTMENT BRASS CAP IN HANDHOLE) BEARS N00°26'39"E A DISTANCE OF 2638.27 FEET;

THENCE N47°57'59"W A DISTANCE OF 2007.57 FEET TO THE SOUTHEAST CORNER OF SAID BASIS SCHOOLS TRACT, (ON THE NORTH LINE OF THE PROPOSED 38' RIGHT-OF-WAY) WITH SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE N89°33'13"W, ALONG THE SOUTH LINE OF SAID BASIS SCHOOLS TRACT, A DISTANCE OF 851.00 FEET TO A SOUTHWEST CORNER THEREOF;

THENCE N44°33'13"W, ALONG A WEST LINE OF SAID BASIS SCHOOLS TRACT, A DISTANCE OF 14.14"

THENCE S89°33'13"E, ACROSS SAID BASIS SCHOOLS TRACT, ALONG A LINE 10.00 FEET NORTH OF AND PARALLEL TO SAID SOUTH LINE THEREOF, A DISTANCE OF 861.00 FEET TO A POINT ON THE EAST LINE THEREOF;

THENCE S00°26'47"W, ALONG SAID EAST LINE, A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED EASEMENT CONTAINS 8,560.00 SQUARE FEET (0.1965 ACRE) OF LAND, MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS N00°26'39"E FOR THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA & SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY - MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY RECORDED IN BOOK 694, PAGE 38. MARICOPA COUNTY RECORDS.

Sheet 1 of 3

Professional Land  
Surveyor AZ No. 33868

Date:  
2015.01.07  
12:09:16  
-07'00'

*Froyla A. Fay*

(Expires 6/30/17)  
ELECTRONIC SEAL  
<http://www.btr.state.az.us/>

Preparing Firm: RITTOCH-POWELL & ASSOCIATES, INC.

Address: 5727 N. 7TH STREET, SUITE 120 PHOENIX, AZ 85014

Phone: 602-263-1177

Fax: 602-277-6286





# EXHIBIT A

## SKETCH

NOTE: APN \*\*  
NO PARCEL NUMBER HAS  
BEEN ASSIGNED AS OF THE  
DATE OF PRODUCTION OF  
THIS EXHIBIT.

APN 500-05-009Z  
CITY OF GOODYEAR  
INST. NO. 2004-0234018,MCR

APN \*\*  
BASIS SCHOOLS, INC.  
INST. NO. 2014-0846426,MCR

10' PUE  
AREA #7  
8,560.00 S.F.  
(0.1965 ACRE)

PROPOSED  
38' ROW

42' ROW  
INST. NO.  
2009-0812733,MCR

APN 500-10-723  
AGUA FRIA UNION  
HIGH SCHOOL DISTRICT  
NO. 216  
INST. NO. 2000-0213307,MCR

YUMA ROAD  
N89°31'58"W

S 1/4 COR.  
SEC. 7, T1N, R1W,  
3" COG BRASS FLUSH

SE COR.  
SEC 7, T1N, R1W,  
3" COG BRASS  
CAP IN HANDHOLE

E 1/4 COR.  
SEC. 7, T1N, R1W,  
3" MCHD BRASS CAP  
IN HANDHOLE

2638.27'

ESTRELLA PARKWAY

N00°26'39"E  
(BASIS OF BEARINGS)

SCALE:  
1"=300'  
SE 1/4  
SEC 7  
T 1 N  
R 1 W

Sheet 2 of 3

Professional Land  
Surveyor AZ No. 33868

Date:  
2015.01.07  
12:09:30  
-07'00'

*Frog A. Long*

(Expires 6/30/17)  
ELECTRONIC SEAL  
<http://www.btr.state.az.us/>

Preparing Firm: RITICH-POWELL & ASSOCIATES, INC.

Address: 5727 N. 7TH STREET, SUITE 120 PHOENIX, AZ 85014

Phone: 602-263-1177

Fax: 602-277-6286

\*\* SEE LINE  
TABLE ON SHEET 3 \*\*



# EXHIBIT A

## SKETCH

LINE TABLE		
LINE	BEARING	LENGTH
L1	N47°57'59"W	2007.57'
L2	N89°33'13"W	851.00'
L3	N44°33'13"W	14.14'
L4	S89°33'13"E	861.00'
L5	S00°26'47"W	10.00'

Sheet 3 of 3

Professional Land  
Surveyor AZ No. 33868

Date:  
2015.01.07  
12:09:44  
-07'00'

*Froyla A. Ray*

(Expires 6/30/17)  
ELECTRONIC SEAL  
<http://www.btr.state.az.us/>

Preparing Firm: RITTOCH-POWELL & ASSOCIATES, INC.

Address: 5727 N. 7TH STREET, SUITE 120 PHOENIX, AZ 85014

Phone: 602-263-1177

Fax: 602-277-6286

## EXHIBIT B

### **PARCEL DESCRIPTION**

OF BASIS GOODYEAR PARCEL, GOODYEAR BOULEVARD  
AND ESTRELLA PARKWAY, GOODYEAR, ARIZONA

A portion of that property described in Special Warranty Deed recorded as 2004-0234018, records of Maricopa County, Arizona, lying within the Southeast quarter of Section 7, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the Southeast corner of said Section 7 from which the East quarter corner of said Section 7 bears North 00 degrees 07 minutes 41 seconds West 2638.31 feet;

THENCE North 00 degrees 07 minutes 41 seconds West 1332.55 feet along the East line of said Southeast quarter;

THENCE South 89 degrees 52 minutes 29 seconds West 1501.49 feet to the POINT OF BEGINNING;

THENCE continuing South 89 degrees 52 minutes 29 seconds West 851.00 feet along a line which is 38.00 feet North of and parallel with the South line of the property described in said Special Warranty Deed recorded as Document Number 2004-0234018, records of Maricopa County, Arizona;

THENCE North 45 degrees 07 minutes 31 seconds West 28.28 feet;

THENCE North 00 degrees 07 minutes 31 seconds West 530.00 feet;

THENCE North 89 degrees 52 minutes 29 seconds East 871.00 feet;

THENCE South 00 degrees 07 minutes 31 seconds East 550.00 feet to the POINT OF BEGINNING.

Comprising 10.993 acres or 478,850 square feet more or less, subject to all easements of record.

THE DESCRIPTION ABOVE WAS PREPARED BASED ON RESULTS OF AN A.L.T.A./A.C.S.M. LAND TITLE SURVEY RECORDED IN BOOK 1011 OF MAPS, PAGE 45, RECORDS OF MARICOPA COUNTY, ARIZONA WITHOUT VERIFICATION BY THE SURVEYOR.



EXPIRES 3/31/17

  
**SUPERIOR**  
SURVEYING SERVICES, INC.

DATE: 12/22/14

21415 N. 23rd Avenue  
Phoenix, AZ 85027  
623-869-0223 (office)  
623-869-0726 (fax)  
[www.superiorsurveying.com](http://www.superiorsurveying.com)  
[info@superiorsurveying.com](mailto:info@superiorsurveying.com)

JOB NO.: 141023