

When recorded return to:

City Clerk/lrb
CITY OF GOODYEAR
190 North Litchfield Road
Goodyear, Arizona 85338

EXEMPT UNDER A.R.S. § 11-1134(A)(2)

**NONEXCLUSIVE EASEMENT
TO CONSTRUCT AND MAINTAIN
DRAINAGE FACILITIES**

(Installation of Drainage Improvements along 145th Avenue
With Owner's Right to Relocate)

THIS DRAINAGE EASEMENT AGREEMENT ("Agreement") is entered into this _____ day of _____, 2015, by and between the City of Goodyear, a municipal corporation of the State of Arizona ("City") and KCI Goodyear North, LLC, LLC, an Arizona limited liability company, ("KCI") for the purposes herein stated.

RECITALS

A. KCI is the record owner of certain real property depicted on Exhibit A, attached hereto and incorporated herein by this reference (the "KCI Property").

B. City and KCI desire to enter into this Agreement for KCI to grant to the City a temporary, nonexclusive easement (the "Easement") over the area depicted and described in Exhibit "B" (the "Easement Area") for the purposes of installing, operating, inspecting, maintaining, repairing, replacing or removing drainage facilities ("Facilities") as more particularly described herein, subject to the KCI's right to relocate the facilities in conjunction with development of all or any portion of the KCI 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, KCI and the City agree as follows:

1. Grant of Easement. KCI hereby grants and conveys to the City, its successors, assigns, contractors, subcontractors, permittees and employees, a nonexclusive Easement through over, under, upon, in, across and along the Easement Area for the benefit of the City, its successors, assigns, contractors, subcontractors, permittees and employees, for the purpose of

installing, operating, inspecting, maintaining, repairing, replacing or removing the Facilities in the Easement Area, subject to the right of KCI, its successors and assigns, to relocate the drainage facilities in conjunction with and to facilitate development of all or any portion of the KCI Property.

2. Purpose. The purpose of the Easement is for the installation, operation, inspection, maintenance, repair, replacement or removal of the Facilities.

3. KCI shall not be required to reimburse the City for the cost of any of the improvements that the City installs within the Easement area. This conveyance does not, however, preclude the City from requiring KCI, and /or its successors or assigns, at its sole cost, to complete, uncompleted portions of the half street improvements within the Easement Area and to relocate the Facilities and construct on the KCI Property drainage facilities needed for the retention of storm water run-off, including the run-off that had been draining into the Facilities, as required by any City Code, Ordinance, Rule or Regulation or as required by development agreements.

4. Term; Termination. This temporary Easement shall extend until the development of the real property under and abutting the Easement Area that is owned by KCI, its successors and assigns. When the real property, or any portion thereof, under and abutting the Easement Area develops, KCI shall incorporate the drainage handled by that portion of the Facilities into the development plans for that real property. The Facilities may be relocated, redesigned, removed, moved, reshaped, placed underground or otherwise modified to fit with KCI's development plans; provided it contains, at a minimum, the same run-off volume as the Facilities were designed to accommodate and complies with all applicable standards, codes, rules, or regulations of the City, Maricopa County, the State of Arizona or the federal government. If all or any portion of the drainage accommodated by the Facilities constructed by the City is handled by improvements constructed or installed by KCI, the City shall, following its approval of the development plans and, if Facilities are to be modified, the completion of the modified Facilities consistent with the approved development plans, record an instrument terminating the temporary Easement. If only a portion of the Facilities constructed by the City pursuant to this Agreement are incorporated into the development plans for the development of the real property under and abutting the Easement Area, the City shall, following its approval of the development plans and completion of the Facilities on the approved development plans, record an instrument modifying the Easement so that it is terminated as to that portion of the Easement Area upon which the drainage handled by the Facilities has been incorporated into the development plans. The owner of the Easement Area shall be responsible for notifying the City Engineering Staff of the City's obligation to terminate all or any portion of the temporary Easement as provided for herein when development plans for the real property under and abutting the Easement Area are submitted to the City. In the event the Easement is to be terminated as to portions of the Easement Area, the owner of the Easement Area to be terminated shall provide legal description(s) of the portion(s) of the Easement Area to be terminated. If, after being requested by the owner of the Easement Area to do so, the City fails to terminate all or any portion of the temporary Easement eligible for termination within sixty (60) days after receiving the information the owner of the Easement Area may record a copy of the Certificate of Completion or similar document provided by the

City of Goodyear and that document shall terminate the Easement as to that specific portion of the Easement Area for which the Facilities or modified Facilities have been completed.

5. Maintenance of the Easement. The rights and privileges herein granted are for the use and benefit of the City, together with its contractors, subcontractors, employees, agents and representatives, and such rights and privileges include, but are not limited to, the following: (i) the right and privilege of location, construction and installation of the Facilities. (ii) uninterrupted and unimpeded right of ingress and ingress as may be reasonably necessary or desirable to permit the installation of the Facilities; and (iii) except as otherwise limited herein, the right to remove such plant growth, dirt and other materials from the Easement Area as necessary in connection with the installation of the Facilities consistent with all applicable laws and regulations and subject to the City installing the Facilities in a good and workmanlike manner. The City shall at all times employ "best practices" in its use of the Easement Area and shall be responsible for complying with all federal, state and local regulations and including, but not limited to air quality, track-out, waste-fill hauling and all other applicable regulations. The City shall indemnify, defend and hold KCI harmless from and against any proceedings, fines, penalties, judgments or other regulatory enforcement actions or proceedings taken as a result of the City's construction and use of the Easement Area. The City shall provide at least five (5) days written notice before commencing construction on the Easement Area.

6. Running of Benefits and Burdens. This Agreement is entered into, and the benefits and burdens hereof, shall run with the land and are binding upon and inure to the assigns and successors, contractors and tenants shall be interpreted according to and governed by, the procedural and substantive laws of the State of 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 attorneys' fees and court costs from the unsuccessful party.

7. Entire Agreement. This Agreement is the entire agreement of the parties and supersedes any and all prior oral or written agreements or understandings between them pertaining to the subject matter of this Agreement. The Parties have made no representations, warranties or inducements, express or implied, other than as set forth in this Agreement.

8. 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 of 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 this Agreement. The provisions of this Agreement are not intended to and do not constitute a dedication for public use of the Easement Area, and the rights herein created are private and for the benefit only of the Parties, their successors and assigns, and the City's agents, employees, contractors and subcontractors. Notwithstanding anything herein contained to the contrary, KCI shall have the right to terminate this Agreement at any time upon prior written notice to the City in the event of a breach of or default by the City under this Agreement that has not been cured within a reasonable amount of time after the City has been notified, in writing of the breach and the steps required to cure such breach.

9. 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 in the United States mail, certified, return receipt requested, postage prepaid, addressed and delivered to the party to receive the notice at the addresses set forth herein or at such other address as set forth below or as may be subsequently 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 that delivery is refused. Notices sent by certified mail shall be deemed to have been delivered upon the third business day following the day on which such notice is deposited for delivery in any United States Postal Service mail box or branch office established by the United States Postal Service, as evidenced by the postmark. If either party refuses delivery or fails to receive any notice because such party failed to advise the other party of any change of address, such party shall not be relieved of any obligation under this Agreement.

Notice to KCI:

KCI GOODYEAR NORTH, LLC
8160 N. Hayden Road, Suite J-208
Scottsdale, Arizona 85258
Attn: Scott Seldin

Notice to City:

CITY OF GOODYEAR
PO Box 5100
190 N. Litchfield Road
Attn: City Engineer

10. Additional Easements. Nothing contained in this Agreement shall prohibit KCI from conveying additional easements for access, utility or other purposes through, over, under, upon, in, across and along the Easement Area to the owners of properties which abut the Easement Area or to governmental or quasi-governmental agencies, provided however, that no such additional rights or easements shall impair the City's use of the Easement herein granted.

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

Executed as of the date set forth below.

GRANTOR:

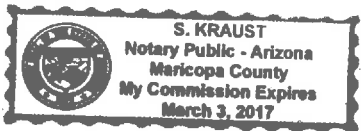
KCI GOODYEAR NORTH, LLC,
an Arizona limited liability company

By: Belmont Management Company,
an Arizona corporations, Manager

By: [Signature]
Its: Scott A. Seldin, President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 22 day of May, 2015 by SCOTT A. SELDIN, the President of Belmont Management Company, an Arizona corporation, the Manager of KCI GOODYEAR NORTH, LLC, an Arizona limited liability company, on behalf of the company.



[Signature]
NOTARY PUBLIC

GRANTEE:

CITY OF GOODYEAR, a municipal corporation

By: _____
Brian Dalke
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this ____ day of _____, 2015, before me personally appeared Brian Dalke, as City Manager of THE CITY OF GOODYEAR, an Arizona municipal corporation on behalf of the corporation.

Notary Public

EXHIBIT "B"

PAGE 1 OF 4

LEGAL DESCRIPTION

FOR

145TH AVENUE – TEMPORARY DRAINAGE EASEMENT

A PARCEL OF LAND SITUATED IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 9 FROM WHICH THE NORTHWEST CORNER THEREOF BEARS SOUTH 89 DEGREES 53 MINUTES 47 SECONDS WEST, 2,626.72 FEET;

THENCE SOUTH 89 DEGREES 53 MINUTES 47 SECONDS WEST, ALONG AND WITH THE NORTH LINE OF SAID NORTHWEST QUARTER, 1306.89 FEET;

THENCE DEPARTING SAID NORTH LINE, SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 293.00 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 750.00 FEET;

THENCE ALONG AND WITH THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 15 DEGREES 00 MINUTES 49 SECONDS, AN ARC LENGTH OF 196.53 FEET TO A POINT OF TANGENCY;

THENCE SOUTH 15 DEGREES 00 MINUTES 49 SECONDS EAST, 275.61 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 750.00 FEET;

THENCE ALONG AND WITH THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9 DEGREES 40 MINUTES 33 SECONDS, AN ARC LENGTH OF 126.65 FEET;

THENCE SOUTH 84 DEGREES 39 MINUTES 44 SECONDS WEST, 30.00 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL, SAID POINT LYING IN A CURVE WHOSE CENTER BEARS SOUTH 84 DEGREES 39 MINUTES 44 SECONDS WEST, 720.00 FEET;

THENCE ALONG AND WITH THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5 DEGREES 12 MINUTES 21 SECONDS, AN ARC LENGTH OF 65.42 FEET TO A POINT OF TANGENCY;

THENCE SOUTH 00 DEGREES 07 MINUTES 55 SECONDS EAST, 94.67 FEET;

THENCE SOUTH 89 DEGREES 52 MINUTES 05 SECONDS WEST, 60.00 FEET;

EXHIBIT "B"
PAGE 2 OF 4

THENCE NORTH 00 DEGREES 07 MINUTES 55 SECONDS WEST, 160.00 FEET;

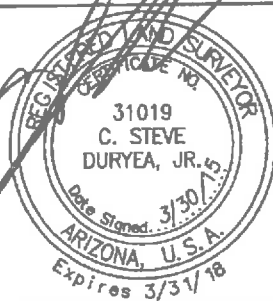
THENCE NORTH 89 DEGREES 52 MINUTES 05 SECONDS EAST, 57.03 FEET TO THE TRUE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 9,535 SQUARE FEET OR 0.220 ACRES OF LAND, MORE OR LESS.



SEE PAGE 4 FOR DATA TABLES



Dibble Engineering



Dibole Engineering
Project No 1015012

EXHIBIT "A"
TEMPORARY DRAINAGE EASEMENT
A PORTION OF THE NW QUARTER SECTION 9,
T1N, R1W, GILA & SALT RIVER MERIDIAN,
MARICOPA COUNTY, ARIZONA

DATE: MAR 2015
DRN: DBB
CHK: CSD

PAGE 3 OF 4

EXHIBIT "B"

PAGE 4 OF 4

LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	S89°53'47"W	1306.89'
L2	S00°00'00"E	293.00'
L3	S15°00'49"E	275.61'
L4	S84°39'44"W	30.00'
L5	S00°07'55"E	94.67'
L6	S89°52'05"W	60.00'
L7	N00°07'55"W	160.00'
L8	N89°52'05"E	57.03'
L9	S89°53'47"W	2626.72'

CURVE DATA TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	196.53'	750.00'	15°00'49"
C2	126.65'	750.00'	9°40'33"
C3	65.42'	720.00'	5°12'21"

THIS IS NOT A PROPERTY
BOUNDARY SURVEY.



Dibble
Engineering

Dibble Engineering
Project No 1015012

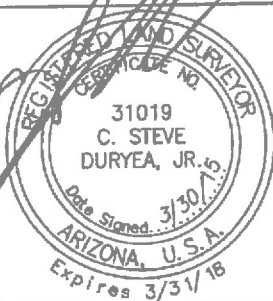


EXHIBIT "A"
RIGHT OF WAY

A PORTION OF THE NW QUARTER SECTION 9,
T1N, R1W, GILA & SALT RIVER MERIDIAN,
MARICOPA COUNTY, ARIZONA

DATE: MAR 30 2015
DRN: 30
CHK: 103

PAGE 4 OF 4