

When Recorded Mail To:
City of Goodyear
City Clerk
190 N. Litchfield Road
P.O. Box 5100
Goodyear, Arizona 85338

EXEMPT UNDER A.R.S. § 11-1134(A)(3)

**PERIMETER FENCE
EASEMENT AGREEMENT**

THIS PERIMETER FENCE AGREEMENT (this "Agreement") is entered into as of April 7th, 2016, by and between CSWR141 GOODYEAR 17, LLC, an Arizona limited liability company ("Grantor") and CITY OF GOODYEAR, an Arizona municipal corporation ("Grantee"). Grantor and Grantee are sometimes individually referred to herein as a "Party" and collectively referred to herein as the "Parties".

RECITALS

A. WHEREAS, Grantor is the owner of certain real property generally located in the City of Goodyear ("City"), Arizona and legally described on Exhibit A attached hereto ("Grantor's Property").

B. WHEREAS, Grantee is the owner of certain real property legally described on Exhibit B attached hereto ("Grantee's Property").

C. WHEREAS, in connection with the development of the Grantee's Property, Grantee placed an approximate 9-foot galvanized steel fence and surface concrete along the perimeter of Grantee's Property adjacent to portions of Grantor's Property (collectively, the "Perimeter Fence"). Portions of the Perimeter Fence are located on Grantee's Property in the area legally described in Exhibit C, attached hereto (the "Easement Area").

D. WHEREAS, upon the terms and conditions set forth below, Grantor is willing to grant Grantee an easement to allow for the use, maintenance, repair and replacement of the Perimeter Fence.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. Easement. Grantor hereby grants to Grantee, its successors and assigns, for the use and benefit of Grantee and its Permittees, as an appurtenance to the Grantee Parcel, a non-exclusive, perpetual easement ("Perimeter Fence Easement") in, upon, over, above, under and across the Easement Area for the fence and any other existing incidental encroachment of the Perimeter Fence into the Easement Area. Grantee shall

have the right and obligation to maintain, reconstruct, replace, and repair the Perimeter Fence within the Easement Area. As consideration for the granting of the Perimeter Fence Easement, Grantee agrees that all future setback requirements, lot coverage areas or any other development standards for the Grantor's Property shall be calculated inclusive of the Easement Area and as if the Perimeter Fence Easement did not exist.

2. Miscellaneous:

(a) Covenants Run With the Land. All of the provisions, agreements, rights, powers, covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the Parties, and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, and all other persons or entities acquiring fee title to the Grantee's Property and/or the Easement Area, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall constitute equitable servitudes and be covenants running with the land pursuant to applicable law.

(b) Indemnification. Grantee shall indemnify, defend, and hold harmless Grantor and its officers, employees, agents, representatives, successors, and assigns, from and against any loss, actions, claims, suits, penalties, obligations, liabilities, expense, damages to property, environmental claims, or injuries to persons (including without limitation, reasonable attorneys' fees, expert witness and litigation consultant expenses, and costs to any adjudicatory body or tribunal), each individually or together a "Claim," that may be caused by any breach or default of the Grantee's obligations under this Agreement or by the activities of the Grantee, pursuant to this Agreement; provided, however, in no event shall Grantee be responsible to Grantor for any Claims that may be claimed or asserted against Grantor relating to: (1) the acts or negligence of Grantor or any of its employees, agents, successors and assigns, or (2) Grantor's failure to comply with any of its covenants or obligations under this Agreement.

(c) Invalidity. If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and, provided that the fundamental terms and conditions of this Agreement, specifically, the grant of the easement in Paragraph 1, remains legal and enforceable, the remainder of this Agreement shall remain operative and binding upon the Parties.

(d) Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and both of which, together, shall constitute one and the same instrument. Each signature page to any counterpart of this Agreement may be detached from such counterpart without impairing the legal effect of the signatures hereon and thereafter attached to another counterpart of this Agreement identical thereto except having attached to it additional signature pages. The Parties intend that an electronic copy of counter parts of this Agreement containing original signatures of a Party is binding upon that Party.

(e) Attorney Fees. If any Party shall bring suit to enforce the terms and provisions hereof, or to recover damages for the breach of this Agreement, the prevailing Party shall be entitled to recover from the other Party all costs, expenses and reasonable attorneys' fees incurred in connection with the exercise by the prevailing Party of its rights and remedies hereunder as determined by a Court of competent jurisdiction. For purposes of this Section, the term "prevailing party" shall mean, in the case of the plaintiff or claimant, one who is successful in obtaining substantially all of the relief sought, and in the case of the defendant or respondent, one who is successful in denying substantially all of the relief sought by the claimant.

(g) Governing Law. This Agreement shall be governed by the laws of the State of Arizona, without regard to conflict of law provisions. The Parties further agree that the venue for any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be Maricopa County and that any action filed shall be heard in a court of competent jurisdiction located in Maricopa County.

(i) Headings and Interpretation. Headings in the Agreement are for convenience only and shall not define or limit the provisions hereof. This Agreement shall be construed according to its ordinary meaning and shall not be strictly construed for or against any Party hereto.

(j) Final Agreement of the Parties. This Agreement is an integrated agreement and hereby expresses the Parties' complete agreement and understanding. Any and all prior or contemporaneous oral agreements or prior written agreements between the Parties regarding the subject matter hereof are merged herein and hereby extinguished. Any modification or waiver of any term of this Agreement, including a modification or waiver of this term, must be in writing signed by the Party or Parties against which enforcement of the modification or waiver is sought.

[Signature Pages & Exhibits Follow]

GRANTEE: CITY OF GOODYEAR, a municipal corporation

By: _____
Brian Dalke
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this ____ day of _____, 2016 , before me personally appeared Brian Dalke, as City Manager of THE CITY OF GOODYEAR, an Arizona municipal corporation whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he signed this Perimeter Fence Easement Agreement.

Notary Public

[Exhibits Continued on Following Pages]

EXHIBIT A
(Legal Description – Grantor's Property)

Lot 14, Ballpark Village-Wood Corporate Campus, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 996 of Maps, Page 50.

EXHIBIT B
(Legal Description of Grantee's Property)

Lot 10, Ballpark Village-Wood Corporate Campus, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 996 of Maps, Page 50.

EXHIBIT C
(Legal Description of Easement Property)
(Lot 14 Encroachment Area Attached)

**PARCEL DESCRIPTION
FOR
LOT 14 ENCROACHMENT**

A PARCEL OF LAND SITUATED IN THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 1 WEST OF GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AND BEING A PORTION OF LOT 14 OF BALLPARK VILLAGE – WOOD CORPORATE CAMPUS AS RECORDED IN BOOK 996 OF MAPS ON PAGE 50, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 17 FROM WHICH THE NORTHWEST CORNER THEREOF BEARS NORTH 00 DEGREES 50 MINUTES 42 SECONDS WEST, 2649.77 FEET;

THENCE NORTH 33 DEGREES 03 MINUTES 13 SECONDS EAST, 799.83 FEET TO THE SOUTHWEST CORNER OF SAID LOT 14 LYING IN THE EAST RIGHT OF WAY LINE OF SOUTH BALLPARK WAY AND BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;

THENCE NORTH 00 DEGREES 50 MINUTES 26 SECONDS WEST, ALONG AND WITH SAID EAST RIGHT OF WAY LINE, 1.81 FEET;

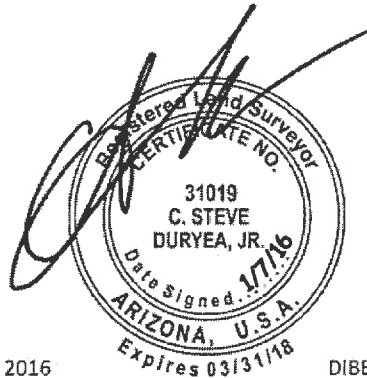
THENCE NORTH 89 DEGREES 11 MINUTES 15 SECONDS EAST, 342.98 FEET;

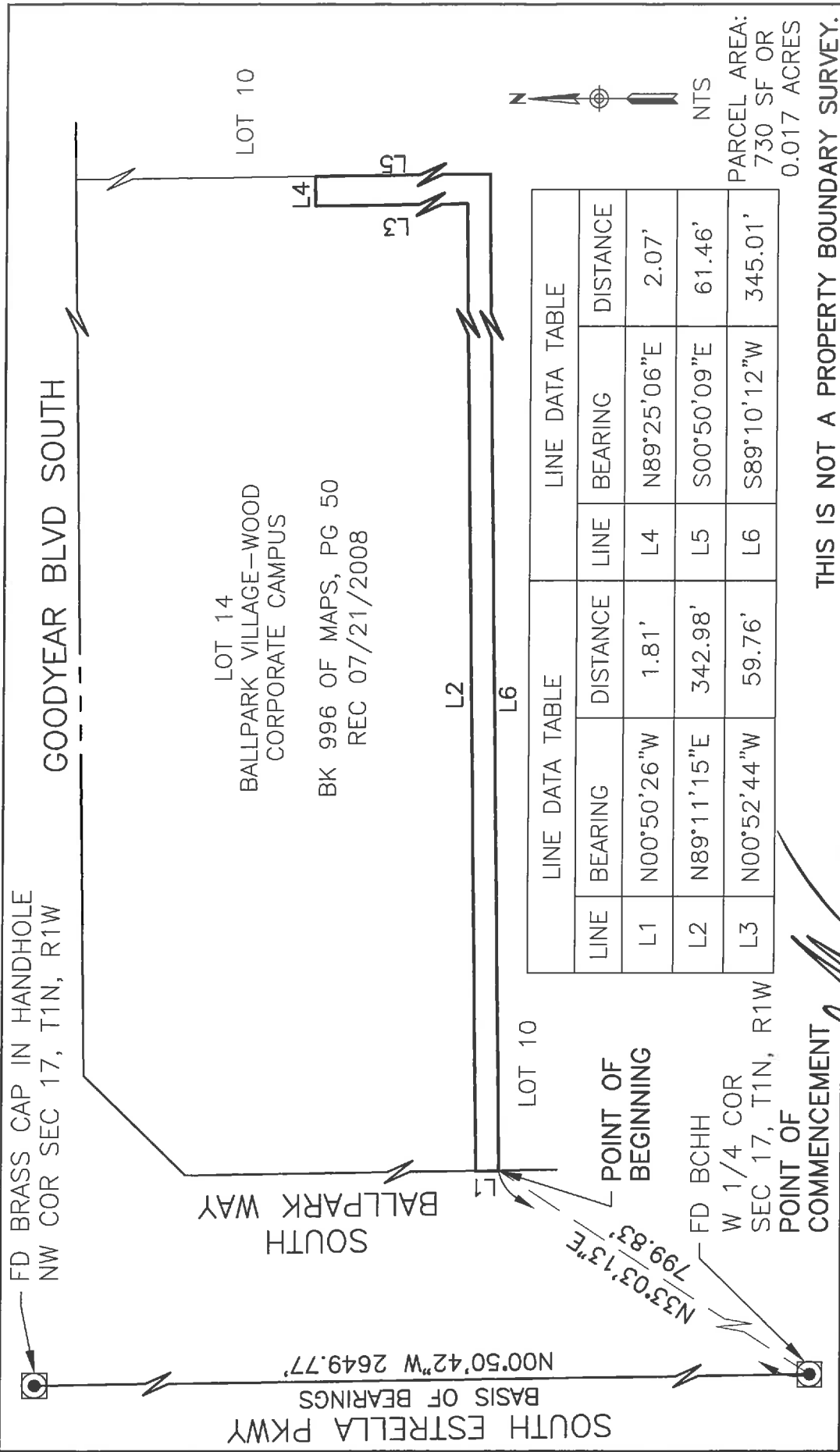
THENCE NORTH 00 DEGREES 52 MINUTES 44 SECONDS WEST, 59.76 FEET;

THENCE NORTH 89 DEGREES 25 MINUTES 06 SECONDS EAST, 2.07 FEET TO THE EAST LINE OF THE AFORESAID LOT 14;

THENCE ALONG AND WITH SAID EAST LINE, SOUTH 00 DEGREES 50 MINUTES 09 SECONDS EAST, 61.46 FEET TO THE SOUTHEAST CORNER OF SAID LOT 14;


THENCE ALONG AND WITH THE SOUTH LINE SAID LOT 14, SOUTH 89 DEGREES 10 MINUTES 12 SECONDS WEST, 345.01 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 730 SQUARE FEET OR 0.017 ACRES OF LAND, MORE OR LESS.





LINE DATA TABLE			LINE DATA TABLE		
LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1	N00°50'26"W	1.81'	L4	N89°25'06"E	2.07'
L2	N89°11'15"E	342.98'	L5	S00°50'09"E	61.46'
L3	N00°52'44"W	59.76'	L6	S89°10'12"W	345.01'

PARCEL AREA:
730 SF OR
0.017 ACRES



Dibble
Engineering

Dibble Engineering
Project No 101334.04

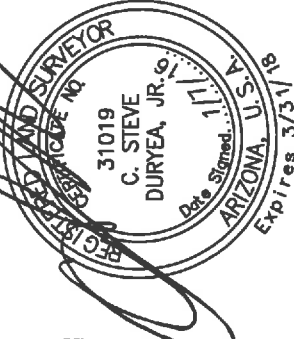


EXHIBIT "A"
LOT 14 ENCROACHMENT
A PORTION OF THE NORTHWEST QUARTER SECTION 17,
T1N, R1W, GILA & SALT RIVER MERIDIAN,
MARICOPA COUNTY, ARIZONA

DATE: JAN 2016
DRN: BAR
CHK: CSD

THIS IS NOT A PROPERTY BOUNDARY SURVEY.

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