

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 & RETENTION WALL  
EASEMENT AGREEMENT**

THIS PERIMETER FENCE & RETENTION WALL EASEMENT AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2016, by and between BYRD ENTERPRISES OF ARIZONA, INC., an Arizona corporation ("Grantor"); FIRSTBANK, a Colorado banking corporation; ("Beneficiary") and CITY OF GOODYEAR, an Arizona municipal corporation ("Grantee"). Grantor and Grantee are 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, the Grantor's Property is subject to a certain Deed of Trust and Assignment of Rents dated January 19, 2016 and recorded on January 20, 2016 as Instrument No. 2016-0038668 of the official records of the County Recorder of Maricopa County, State of Arizona ("Deed of Trust"), wherein the Property was conveyed to Trustee in trust to secure repayment of certain indebtedness as more specifically set forth therein.

C. WHEREAS, Fidelity National Title Insurance Company is the Trustee and FirstBank, a Colorado banking corporation, is the Beneficiary under the Deed of Trust.

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

E. WHEREAS, in connection with the development of the Grantee's Property, the City placed an approximate 10-foot galvanized steel fence along the perimeter of Grantee's Property adjacent to portions of Grantor's Property (the "Perimeter Fence") and a block retention wall along the perimeter of Grantor's Property adjacent to the southern boundary of Grantee's Property (the "Retention Wall"). Portions of the Perimeter Fence and the Retention Wall are located on Grantee's Property in the area legally described in Exhibit C, attached hereto (the "Easement Area").

F. WHEREAS, upon the terms and conditions set forth below, Grantor and Trustee are willing to grant the City an easement to allow for the use, maintenance, repair and replacement of the Perimeter Fence and Retention Wall.

G. WHEREAS, it is the desire and intent of Beneficiary to consent to the grant of such easement and to subordinate the Deed of Trust and the underlying loan to the Perimeter Fence & Retention Wall Easement Agreement.

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 and Trustee hereby grant to Grantee, its successors and assigns, for the use and benefit of Grantee and its Permittees, as an appurtenance to the Grantee Parcel, an exclusive, perpetual easement ("Perimeter Fence & Retention Wall Easement") in, upon, over, above, under and across the Easement Area for the fence, retention wall, footings and any other existing incidental encroachment of the Perimeter Fence and the Retention Wall into the Easement Area. Grantee shall have the right to maintain, reconstruct, replace, and repair the Perimeter Fence and the Retention Wall within the Easement Area.

2. Effective Date. This Agreement, and the Perimeter Fence & Retention Wall Easement granted herein shall be effective on the later of the dates this Agreement is executed by the Grantor, Grantee, and the Beneficiary, which date shall be inserted in the first paragraph of this Agreement by the Grantee.

3. 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 be 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.

IN WITNESS WHEREOF, the parties have executed this Agreement.

**GRANTOR:** **BYRD ENTERPRISES OF ARIZONA, INC.,**  
an Arizona corporation

By: Virginia B Byrd  
Name: VIRGINIA B BYRD  
Its: PRESIDENT  
Date: February 4, 2016

STATE OF ARIZONA       )  
  )ss.  
COUNTY OF MARICOPA   )

On this 4<sup>th</sup> day of February, 2016, before me, personally appeared Virginia B. Byrd as President of BYRD ENTERPRISES OF ARIZONA, INC., an Arizona corporation and acknowledged that he is authorized so to do, executed this Perimeter Fence & Retention Easement Agreement for the purposes therein contained on behalf of said entity.

Susan Brungardt  
Notary Public



*Signatures, Acknowledgements, and Beneficiary Consent Continued on Following Pages*

TRUSTEE:

FIDELITY NATIONAL TITLE INSURANCE COMPANY

By: Not Required

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

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

Date: \_\_\_\_\_

State of Arizona     )  
                                  )ss  
County of Maricopa   )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, personally  
appeared \_\_\_\_\_ as \_\_\_\_\_ of  
Fidelity National Title Insurance Company and acknowledged that he/she authorized so  
to do, executed this Perimeter Fence & Retention Easement Agreement for the purposes  
therein contained on behalf of said entity, solely in its capacity as Trustee under that  
certain Deed of Trust and Assignment of Rents dated January 19, 2016 and recorded on  
January 20, 2016 as Instrument No. 2016-0038668 of the official records of the County  
Recorder of Maricopa County, State of Arizona.

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

*Signatures, Acknowledgements, and Beneficiary Consent Continued on Following  
Pages*

**GRANTEE:** CITY OF GOODYEAR, a municipal corporation

By: \_\_\_\_\_  
Name: Brian Dalke  
Its: City Manager  
Date: \_\_\_\_\_

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 & Retention Easement Agreement.

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

APPROVED AS TO FORM:

ATTEST:

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

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

*Signatures, Acknowledgements, and Beneficiary Consent Continued on Following Pages*

BENEFICIARY CONSENT

NOW THEREFORE, FirstBank, a Colorado banking corporation, as the Beneficiary under that certain Deed of Trust and Assignment of Rents dated January 19, 2016 and recorded on January 20, 2016 as Instrument No. 2016-0038668 of the official records of the County Recorder of Maricopa County, State of Arizona hereby consents to Byrd Enterprises of Arizona, Inc. granting to the City of Goodyear the Perimeter Fence & Retention Wall Easement granted herein and unconditionally subordinates the Deed of Trust and the loan secured thereby to the Perimeter Fence & Retention Wall Easement and agrees that any acquisition, transfer or sale of the Grantor's Property legally described on Exhibit A attached hereto made under the provisions of the Deed of Trust, whether by foreclosure, deed-in-lieu or other means shall be subject to the Perimeter Fence & Retention Wall Easement.

IN WITNESS WHEREOF, Beneficiary has caused this Perimeter Fence & Retention Easement Agreement to be signed by its duly authorized representative as of the date set forth below:

DATE: 3/2/2016

**BENEFICIARY:** FIRSTBANK, a Colorado banking corporation

By: [Signature]

Name: BJ Gildea

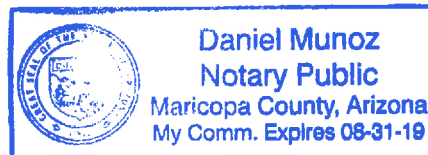
Its: Senior Vice President

Date: 3/2/2016

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa       )

On this 2<sup>ND</sup> day of MARCH, 2016, before me, personally appeared BJ GILDEA as SENIOR VICE PRESIDENT of FirstBank, a Colorado banking corporation and acknowledged that he/she authorized so to do, executed this Perimeter Fence & Retention Easement Agreement for the purposes therein contained on behalf of said entity.

[Signature]  
Notary Public



[Exhibits Continued on Following Pages]

EXHIBIT A  
(Legal Description – Grantor's Property)

Lot 15, 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)

Lots 10 and 16, 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 15 Encroachment Attached)

**PARCEL DESCRIPTION  
FOR  
LOT 15 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 15 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 52 DEGREES 33 MINUTES 56 SECONDS EAST, 1072.36 FEET TO THE MOST NORTHERLY SOUTHWEST CORNER OF SAID LOT 15 AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;

THENCE NORTH 00 DEGREES 51 MINUTES 28 SECONDS WEST, ALONG AND WITH THE WEST LINE OF SAID LOT 15, 85.72 FEET;

THENCE DEPARTING SAID WEST LINE, NORTH 89 DEGREES 25 MINUTES 06 SECONDS EAST, 1.98 FEET;

THENCE SOUTH 00 DEGREES 33 MINUTES 13 SECONDS EAST, 84.03 FEET;

THENCE NORTH 88 DEGREES 37 MINUTES 13 SECONDS EAST, 22.96 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY, WHOSE CENTER BEARS SOUTH 04 DEGREES 05 MINUTES 51 SECONDS EAST, 54.24 FEET;

THENCE ALONG AND WITH THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 43 DEGREES 23 MINUTES 41 SECONDS, AN ARC LENGTH OF 41.08 FEET;

THENCE SOUTH 45 DEGREES 58 MINUTES 14 SECONDS EAST, 173.43 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, WHOSE CENTER BEARS SOUTH 46 DEGREES 07 MINUTES 27 SECONDS WEST, 52.70 FEET;

THENCE ALONG AND WITH THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 39 DEGREES 25 MINUTES 54 SECONDS, AN ARC LENGTH OF 36.27 FEET;

THENCE SOUTH 00 DEGREES 56 MINUTES 25 SECONDS EAST, 49.58 FEET;

THENCE NORTH 89 DEGREES 21 MINUTES 59 SECONDS EAST, 124.70 FEET;

THENCE SOUTH 00 DEGREES 38 MINUTES 01 SECONDS EAST, 6.45 FEET TO THE SOUTH LINE OF THE AFORESAID LOT 15;

THENCE ALONG AND WITH SAID SOUTH LINE, SOUTH 89 DEGREES 08 MINUTES 32 SECONDS WEST, 126.20 FEET TO THE MOST SOUTHERLY SOUTHWEST CORNER OF SAID LOT 15;

THENCE ALONG AND WITH THE WEST LINE OF SAID LOT 15, NORTH 00 DEGREES 51 MINUTES 28 SECONDS WEST, 53.13 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 50.00 FEET;

THENCE CONTINUING ALONG AND WITH SAID WEST LINE, SAME BEING THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 45 DEGREES 00 MINUTES 00 SECONDS, AN ARC LENGTH OF 39.27 FEET TO A POINT OF TANGENCY;

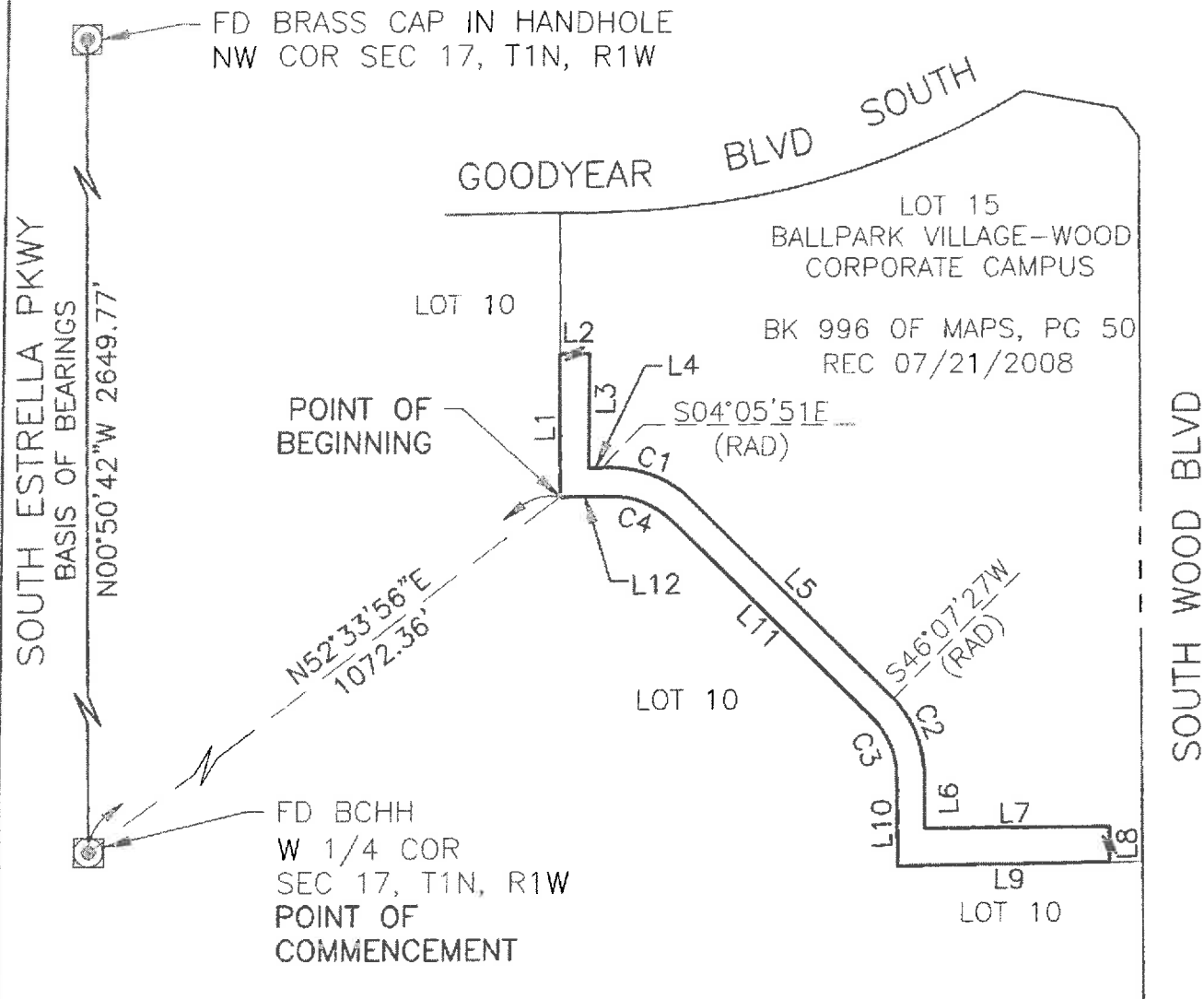
THENCE CONTINUING ALONG AND WITH SAID WEST LINE, NORTH 45 DEGREES 51 MINUTES 28 SECONDS WEST, 168.61 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 50.00 FEET;

THENCE CONTINUING ALONG AND WITH SAID WEST LINE, SAME BEING THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 45 DEGREES 00 MINUTES 00 SECONDS, AN ARC LENGTH OF 39.27 FEET TO A POINT OF TANGENCY;

THENCE CONTINUING ALONG AND WITH SAID WEST LINE, SOUTH 89 DEGREES 08 MINUTES 32 SECONDS WEST, 28.84 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 1545 SQUARE FEET OR 0.036 ACRES OF LAND, MORE OR LESS.



FILE V:\PROJECTS\2013\101334.04 Goodyear Ballpark\CAD\EXHIBITS\LOT 15.dwg DATE: Jan, 07 2016 TIME: 09:56 am



SEE SHEET 4 OF 4 FOR  
CURVE AND COURSE DATA

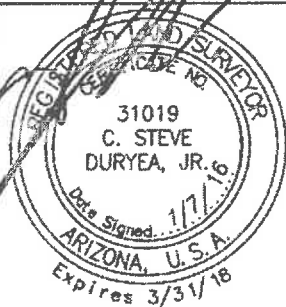
PARCEL AREA:  
1545 SF OR  
0.036 ACRES



THIS IS NOT A PROPERTY  
BOUNDARY SURVEY.



**Dibble**  
Engineering



Dibble Engineering  
Project No 101334.04

**EXHIBIT "A"**  
**LOT 15 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

PAGE 3 OF 4

LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N00°51'28"W	85.72'
L2	N89°25'06"E	1.98'
L3	S00°33'13"E	84.03'
L4	N88°37'13"E	22.96'
L5	S45°58'14"E	173.43'
L6	S00°56'25"E	49.58'
L7	N89°21'59"E	124.70'
L8	S00°38'01"E	6.45'
L9	S89°08'32"W	126.20'
L10	N00°51'28"W	53.13'
L11	N45°51'28"W	168.61'
L12	S89°08'32"W	28.84'

CURVE DATA TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	41.08'	54.24'	43°23'41"
C2	36.27'	52.70'	39°25'54"
C3	39.27'	50.00'	45°00'00"
C4	39.27'	50.00'	45°00'00"

THIS IS NOT A PROPERTY  
BOUNDARY SURVEY.



**Dibble**  
Engineering



Dibble Engineering  
Project No 101334.04

**EXHIBIT "A"**  
**LOT 15 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

PAGE 4 OF 4