

When recorded Mail to:

City of Goodyear
City Clerk / LRB
190 N. Litchfield Road
P.O. Box 5100
Goodyear, Arizona 85338

**DECLARATION OF AFFIRMATIVE AND RESTRICTIVE COVENANTS AND
EASEMENT**

THIS DECLARATION OF AFFIRMATIVE AND RESTRICTIVE COVENANTS AND EASEMENT (the “Easement”) is made this ____ day of _____, 2018 by ALDI (ARIZONA) LLC, a Delaware limited liability company (“Aldi” or “Declarant”).

WHEREAS, Declarant is the owner of certain real property located in Maricopa County, Arizona, more particularly described in Exhibit A attached hereto (the “Property”), which prior to a recent rezoning, was part of a planned area development known as Estrella Commons.

WHEREAS, to develop property within the City of Goodyear, property owners are required under applicable City of Goodyear ordinances, codes, rules and regulations, including the City of Goodyear Engineering Design Standards and Policies Manual, to provide for the construction and maintenance of drainage facilities to accept, store and dispose of storm water and historical flows from the property and from storm water run-off from the adjacent roadways.

WHEREAS, prior to Aldi’s acquisition of the Property, Fulton Homes Corporation acquired property within Estrella Commons and entered into various agreements related to development of the Property, including a Development Agreement with Evergreen-Estrella & I-10 LLC recorded in the official records of Maricopa County at document number 2017-0930027 pursuant to which Fulton Homes Corporation was required to construct street improvements to a section of Estrella Parkway adjacent to the Property.

WHEREAS, to construct the improvements to the section of Estrella Parkway adjacent to the Property, drainage facilities that will accept, store and dispose of storm-water run-off from the portions of Estrella Parkway adjacent to the Property must be constructed.

WHEREAS, prior to the recordation of a Map of Dedication for the dedication of right-of-way needed for the construction of the section of Estrella Parkway adjacent to the Property, Declarant is required to provide easements in form acceptable to the City Attorney for the construction and maintenance of the necessary drainage facilities.

NOW THEREFORE, ALDI (ARIZONA) LLC, a Delaware limited liability company as Owner of the Drainage Area, on behalf of itself and its successors and assigns agree as follows:

1. Covenants. Declarant hereby covenants and agrees that the Drainage Area described in Exhibit "B" is hereby reserved for the installation of drainage facilities and basins for the conveyance and storage of storm water from the portion of Estrella Parkway adjacent to the Property per approved improvement plans on file with the City of Goodyear "Approved Plans" as required by the City of Goodyear's Engineering Standards and Design Policies and Goodyear City Code, together with the right of ingress and egress to maintain said drainage facilities and retention areas.

a. Declarant hereby agrees to install and maintain or cause to be installed and maintained, drainage facilities such as catch basins, scuppers, storm drains, headwalls and erosion control facilities downstream of storm drain outlets and retention areas adequate to convey and store storm water from the portion of Estrella Parkway adjacent to the Property per the Approved Plans.

2. Amendment. This Easement may only be amended by a recorded document signed by the City of Goodyear and the Declarant.

a. Provided such relocation provides the necessary drainage needed to accommodate the storm water from the portion of Estrella Parkway adjacent to the Property, this Easement may be revised and amended to reflect the new location of the drainage facilities, in conformity with improvement plans approved by the City of Goodyear, which approval shall not be unreasonably withheld. Declarant and its successors and assigns shall be responsible for construction and maintenance of the replacement drainage facilities.

3. Enforcement. This Easement can be enforced by the City of Goodyear and any person or persons who have been damaged by the violations or attempted violations of any of these covenants can bring proceedings at law or in equity to enforce these covenants and the party seeking to enforce these covenants shall have the right to recover, in addition to any damages, their costs, including court costs and reasonable attorneys' fees. If Declarant fails to maintain the drainage facilities installed within the Drainage Area per the approved plans, the City shall have the right, but not the obligation, to access, repair and/or replace such drainage facilities and recover the costs incurred from the Declarant. Declarant hereby grants the City an easement over, under, and across the Drainage Area described in Exhibit B for the purposes of accessing, repairing and/or replacing drainage facilities as provided in this Paragraph 3.

4. Recording. This Easement shall be recorded in the Official Records of the Maricopa County Recorder by the City of Goodyear. A copy of the recorded document shall be provided to the Declarant.

5. Running with the Land. The agreements and covenants contained herein shall be covenants running with the land, and upon recording shall be binding upon any subsequent owner(s) of all or portions of the Property.

6. Termination. This Easement shall continue until Declarant provides the City of Goodyear with a Declaration of Affirmative and Restrictive Covenants and Easement for the permanent location for the construction and maintenance of drainage facilities that will

accommodate historical flows from the Property, storm water from the Property from a 100 year 6 hour storm event, and storm water run-off from the roadways adjacent to the Property, at which time, the City of Goodyear shall terminate this Easement.

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, 2018.

ALDI (ARIZONA) LLC,
a Delaware limited liability company

By: Aldi Inc.,
an Illinois corporation
Its: Sole member

By: _____
Paul Piorkowski
Regional Vice President

State of California
County of Riverside

On _____, 2018, before me, _____, Notary Public, personally appeared Paul Piorkowski, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

GRANTEE:

ACCEPTED by the CITY OF GOODYEAR, ARIZONA, an Arizona Municipal Corporation, the day of _____, 2018.

By:_____

Its:_____

State of Arizona)
)ss.

County of Maricopa)

The foregoing instrument (Declaration of Affirmative and Restrictive Covenants and Easement) was acknowledged before me this ____ day of _____, 2018 by , as _____ of the CITY OF GOODYEAR, ARIZONA, an Arizona municipal corporation, on behalf of said corporation.

Notary Public

Exhibit(s) on Following Page(s)

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel No. 1:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED GOODYEAR, IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

Being a portion of the Southwest quarter of Section 5, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and described as follow:

COMMENCING at the West quarter corner of said Section 5;

THENCE North 89 degrees 56 minutes 58 seconds East, along the East-West mid-section line of said Section 5, a distance of 110.00 feet to a point on the East right of way line for Estrella Parkway;

THENCE South 00 degrees 16 minutes 45 seconds East, along said East right of way line, a distance of 40.00 feet to a point on the future South right of way line for Roosevelt Street and the POINT OF BEGINNING;

THENCE North 89 degrees 56 minutes 58 seconds East, along said future South right of way line for Roosevelt Street, a distance of 265.00 feet;

THENCE departing said future South right of way line for Roosevelt Street, South 00 degrees 16 minutes, 45 seconds East, a distance of 530.00 feet;

THENCE South 89 degrees 56 minutes 58 seconds West, a distance of 265.00 feet to a point on said East right of way line for Estrella Parkway;

THENCE North 00 degrees 16 minutes 45 seconds West, along said East right of way line for Estrella Parkway, a distance of 530.00 feet to the POINT OF BEGINNING.

APN: 500-04-971U

TOGETHER WITH

Parcel No. 2:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 5;

THENCE NORTH 89 DEGREES 56 MINUTES 58 SECONDS EAST, ALONG THE EAST-WEST MID-SECTION LINE OF SAID SECTION 5, A DISTANCE OF 110.00 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE FOR ESTRELLA PARKWAY;

THENCE SOUTH 00 DEGREES 16 MINUTES 45 SECONDS EAST, ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 40.00 FEET TO A POINT ON THE FUTURE SOUTH RIGHT OF WAY LINE FOR ROOSEVELT STREET;

THENCE NORTH 89 DEGREES 56 MINUTES 58 SECONDS EAST, ALONG SAID FUTURE SOUTH RIGHT OF WAY LINE FOR ROOSEVELT STREET, A DISTANCE OF 265.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 89 DEGREES 56 MINUTES 58 SECONDS EAST, A DISTANCE OF 13.67 FEET;

THENCE DEPARTING SAID FUTURE SOUTH RIGHT OF WAY LINE FOR ROOSEVELT STREET, SOUTH 00 DEGREES 16 MINUTES, 45 SECONDS EAST, A DISTANCE OF 530.00 FEET;

THENCE SOUTH 89 DEGREES 56 MINUTES 58 SECONDS WEST, A DISTANCE OF 13.67 FEET TO A POINT ON SAID EAST RIGHT OF WAY LINE FOR ESTRELLA PARKWAY;

THENCE NORTH 00 DEGREES 16 MINUTES 45 SECONDS WEST, ALONG SAID EAST RIGHT OF WAY LINE FOR ESTRELLA PARKWAY, A DISTANCE OF 530.00 FEET TO THE POINT OF BEGINNING.



Exhibit "B"

Legal Description Estrella Commons Drainage Easement 2 Estrella Parkway

Job No. 16-238

July 17, 2018

A portion of the Southwest Quarter of Section 5, Township 1 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a City of Goodyear brass cap in a handhole at the west quarter corner of said Section 5, from which a City of Goodyear brass cap in a handhole at the southwest corner of said Section 5 bears South 0 degrees 27 minutes 10 seconds West, at a distance of 2640.84 feet;

thence South 0 degrees 27 minutes 10 seconds West, along the west line of the Southwest Quarter of said Section 5, 245.91 feet;

thence South 89 degrees 32 minutes 50 seconds East, 110.00 feet to a point on the east line of the west 110.00 feet of the Southwest Quarter of said Section 5, said point being the POINT OF BEGINNING;

thence South 89 degrees 32 minutes 50 seconds East, 42.00 feet;

thence South 0 degrees 27 minutes 10 seconds West, 317.00 feet;

thence North 89 degrees 32 minutes 50 seconds West, 42.00 feet to a point on said east line;

thence North 0 degrees 27 minutes 10 seconds East, along said east line, 317.00 feet to the POINT OF BEGINNING.

An area containing 13,314 square feet or 0.3056 acres, more or less.

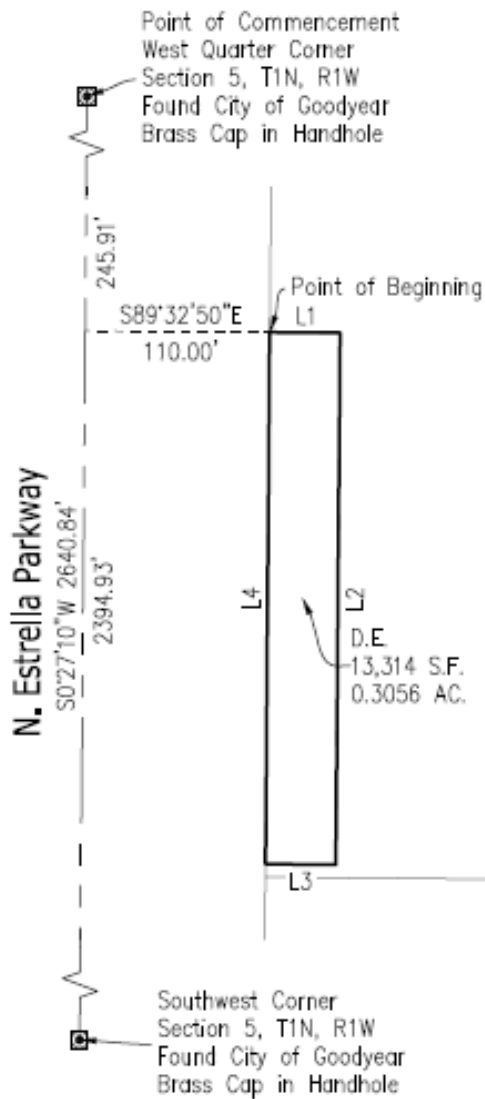


EXPIRES: 3/31/2021

EPS Group, Inc. • 2045 S. Vineyard, Suite 101 • Mesa, AZ 85210

Tel (480) 503-2250 • Fax (480) 503-2258

S:\Projects\2016\16-328\Legal Survey\Legals\For Plat\16-328 - Estrella Parkway DE2.docx



LINE TABLE		
LINE	BEARING	LENGTH
L1	S89°32'50"E	42.00'
L2	S00°27'10"W	317.00'
L3	N89°32'50"W	42.00'
L4	N00°27'10"E	317.00'



EXPIRES: 3/31/2021



16-328

Exhibit

Drainage Easement 2
N. Estrella Parkway

