

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 EVERGREEN-ESTRELLA & I-10, LLC, an Arizona limited liability company (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”).

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, Declarant formerly owned property adjacent to the Property some of which was acquired by Fulton Homes, Corporation.

WHEREAS, Fulton Homes Corporation entered into 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 certain off-site improvements including street improvements to portions of Fillmore Road and Estrella Parkway adjacent to the Property.

WHEREAS, to construct the improvements to Fillmore Road and Estrella Parkway adjacent to the Property, drainage facilities that will accept, store and dispose of storm-water run-off from the portions of the Estrella Parkway and Fillmore Road 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 sections of Fillmore Road and 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, EVERGREEN-ESTRELLA & I-10 LLC, an Arizona limited liability company as Owner of the Drainage Covenant 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.

**EVERGREEN-ESTRELLA & I-10, LLC,
an Arizona limited liability company**

By: Evergreen Communities, LLC,
an Arizona limited liability company,
its Manager

By: _____
Name: Laura Ortiz
Its: Authorized Agent

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 Laura Ortiz, as the Authorized Agent of Evergreen Communities, LLC, an Arizona limited liability company, the Manager of Evergreen-Estrella & I-10, LLC, an Arizona limited liability company, on behalf of Evergreen-Estrella & I-10 LLC, an Arizona limited liability company.

Notary Public

GRANTEE:

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

By: _____

Julie Arendall
Its: City Manager

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 Julie Arendall, as City Manager 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 Estrella Commons Evergreen Property

Job No. 16-328

June 9, 2018

A portion of the West Half 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 flush City of Goodyear brass cap at the northwest corner of said Section 5 bears North 0 degrees 26 minutes 05 seconds East, at a distance of 2638.91 feet;

thence South 89 degrees 18 minutes 54 seconds East, along the south line of the Northwest Quarter of said Section 5, 110.00 feet to a point on the east line of the west 110.00 feet of the Northwest Quarter of said Section 5, said point being the POINT OF BEGINNING;

thence North 0 degrees 26 minutes 05 seconds East, along said east line, 40.00 feet to a point on the north line of the south 40.00 feet of the Northwest Quarter of said Section 5;

thence South 89 degrees 18 minutes 54 seconds East, along said north line, 900.01 feet;

thence South 0 degrees 26 minutes 05 seconds West, 1389.69;

thence North 89 degrees 18 minutes 04 seconds West, 309.61 feet;

thence South 86 degrees 05 minutes 31 seconds West, 273.91 feet;

thence North 89 degrees 18 minutes 04 seconds West, 17.73 feet to a point on the east line of Lot 4, Estrella Cross roads – Phase 2, Book 1098, Page 18 records of Maricopa County, Arizona;

thence North 0 degrees 16 minutes 20 seconds West, along said west line, 18.38 feet to the northeast corner of said Lot 4;

thence North 87 degrees 57 minutes 34 seconds West, along the north line of said Lot 4, 78.07 feet;

thence North 89 degrees 16 minutes 01 seconds West, along said north line, 221.71 feet to a point on the east line of the west 110.00 feet of the Southwest Quarter of said Section 5;

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

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thence North 0 degrees 27 minutes 10 seconds East, along said east line, 781.14 feet;

thence South 89 degrees 18 minutes 54 seconds East, 278.64 feet;

thence North 0 degrees 27 minutes 23 seconds East, 530.00 feet;

thence North 89 degrees 18 minutes 54 seconds West, 278.67 feet to a point on the east line of the west 110.00 feet of the Southwest Quarter of said Section 5;

thence North 0 degrees 27 minutes 10 seconds East, along said east line, 40.00 feet to the POINT OF BEGINNING.

An area containing 1,107,218 square feet or 25.4182 acres, more or less.



EXPIRES: 3/31/2021

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EXHIBIT "B"

**Legal Description
Estrella Commons
Drainage Easement
Estrella Parkway**

Job No. 16-238

July 18, 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, 868.63 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, 43.00 feet;

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

thence North 89 degrees 32 minutes 50 seconds West, 43.00 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 13,631 square feet or 0.3129 acres, more or less.



EXPIRES: 3/31/2021

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