

When recorded mail to:  
City of Goodyear  
City Clerk/lrb  
190 N. Litchfield Road  
P.O. Box 5100  
Goodyear, Arizona 85338

EXEMPT UNDER A.R.S. § 11-1134(A)(2)

## TEMPORARY CONSTRUCTION AND ACCESS EASEMENT

GRANTOR:

**CITY OF GOODYEAR, ARIZONA, an  
Arizona Municipal corporation**

GRANTEE:

**ESTRELLA VAN BUREN PROPERTIES,  
INC., an Arizona corporation**

In consideration of the mutual covenants set forth herein, the consideration of One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the **CITY OF GOODYEAR, ARIZONA, an Arizona Municipal Corporation**, ("GRANTOR") does hereby grant and convey to **Estrella Van Buren Properties, Inc., an Arizona corporation** ("GRANTEE") a Temporary Construction and Access Easement ("TCE") in, upon, over, under and across that certain real property situated in Maricopa County, Arizona, and more particularly described as follows:

### **EXHIBIT "A" attached hereto (the "TCE Area")**

GRANTOR grants to GRANTEE the right to construct, maintain, inspect, modify, repair, remove, and/or replace the sewer line facilities that are to be constructed within the TCE Area as per the 2017-2157-C3-001 Off-Site Sewer Plans Hudson Commons approved by the City Engineer or her designee on September 27, 2017 ("GRANTEE'S Construction Project") and to use the TCE Area for all purposes incidental to GRANTEE'S Construction Project. GRANTOR'S property shall be restored by GRANTEE to an "as good as" condition as existed prior to construction.

GRANTEE shall be responsible for the maintenance, inspection, modification, repair, removal and/or replacement the sewer line facilities constructed by GRANTEE, until such time as GRANTOR accepts the sewer line facilities, in writing, following the expiration of the applicable warranty period ("Acceptance"), provided, however, the need for such work is not caused by GRANTOR'S negligent or intentional wrongful operation of such sewer line facilities. Upon Acceptance of the sewer line facilities following the expiration of the warranty period, GRANTOR shall be responsible for the maintenance, inspection, modification, repair, removal and/or replacement of the sewer line facilities constructed by GRANTEE.

GRANTOR shall be responsible for the operation of the sewer line facilities constructed by GRANTEE upon the commencement of the GRANTOR'S warranty period for the sewer line facilities.

GRANTEE shall keep the TCE Area free and clear of construction, mechanics', materialmans' or other liens or encumbrances of any kind related to or arising from GRANTEE'S exercise of its rights under this Easement. The provisions in this paragraph shall survive the expiration or earlier termination of this Easement.

To the extent allowed by law, GRANTEE shall defend, indemnify, release, and hold harmless GRANTOR, and its directors, officers, employees, agents, successors and assigns thereof, against and from any claim, demand, lawsuit or action of any kind for damages or loss, whether such damage or loss is to person or property, arising out of or alleged to have arisen from acts or omissions of GRANTEE, acts or omissions of GRANTEE'S agents, representative and employees, and/or acts or omissions of all contractors and subcontractors and their respective employees, agents and representatives working on GRANTEE'S Construction Project that are related to: (a) the use or occupancy of the TCE Area,, including, but not limited to, claims by third parties who are invited or permitted onto the TCE Area, either expressly or impliedly; (b) the exercise of rights granted under this Easement; and/or (c) the failure to comply with or fulfill its obligations established by this Easement or by law. Such obligation to indemnify shall extend to and encompass all costs incurred by GRANTOR in defending against such claims, demands, lawsuits or actions, including but not limited to attorney, witness and expert witness fees, and any other litigation related expenses. GRANTEE'S obligation pursuant to this paragraph shall not extend to liability attributable to the gross negligence or willful action of GRANTOR, its directors, officers, employees, agents, successors or assigns. This provisions of this paragraph shall survive the expiration or earlier termination of this Easement.

GRANTEE shall, during the entire term this Easement is in effect, maintain and keep in full force and effect commercial general liability insurance with a combined single limit for bodily injury and property damage of at least \$1,000,000 per occurrence with an aggregate limit of no less than \$2,000,000 insuring against all liability that arises out of any of the matters covered by this Easement, which includes, but is not limited to: the use of the TCE Area and the installation and construction of the improvements being constructed within the TCE Area pursuant to this Easement. Such insurance policy shall name the City of Goodyear, an Arizona municipal corporation, as an additional insured and provide that notice shall be given to the City no less than thirty (30) days prior to cancellation of such policy. GRANTEE shall also require all contractors and subcontractors to carry that same insurance coverage GRANTEE is required to carry and to comply with the same requirements regarding such coverage (i.e. the City being named as an additional insured with at least thirty (30) days' notice of cancellation). GRANTEE shall provide the City with certificates evidencing such insurance coverage prior to entry onto the TCE Area. Further, GRANTEE shall not assign or delegate any of its rights hereunder or permit any contractor, subcontractor or materialman to enter upon the TCE Area for any purpose unless such person or entity is duly licensed, bonded and insured to the extent set forth herein. GRANTEE shall maintain evidence of compliance with this provision and shall provide such evidence to the GRANTOR upon written requests.

This Easement is personal to GRANTEE and may not be assigned without the written consent of the City of Goodyear.

This Easement shall automatically terminate without further action required on the part of the City as follows. Unless GRANTEE has pulled a permit and has commenced work on GRANTEE'S Construction Project by September 27, 2019, this Easement shall terminate on September 27, 2019. If GRANTEE has pulled a permit and has commenced work on GRANTEE'S Construction Project by September 27, 2019, this Easement shall terminate upon the end of the two-year warranty period, which is two years after the acceptance letter is issued by the City Engineer or his/her designee. Following the termination of this Easement as provided herein, and if requested by the City, GRANTEE shall execute any documents prepared by the City that will clear the title to the Easement Area.

IN WITNESS WHEREOF, GRANTOR (the City of Goodyear) has caused this Temporary Construction and Access Easement to be signed by its duly authorized representative as of the date set forth below.

GRANTOR:

**CITY OF GOODYEAR, ARIZONA, an Arizona Municipal Corporation**

By: \_\_\_\_\_

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

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

State of Arizona        )  
                                  )ss.  
County of Maricopa    )

The foregoing instrument (Temporary Construction and Access Easement) was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018 by Julie Arendall, as the City Manager of the City of Goodyear, an Arizona municipal corporation, and that he being authorized to do so executed the foregoing instrument for the purposes therein contained on behalf of the City of Goodyear, an Arizona municipal corporation.

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

IN WITNESS WHEREOF, GRANTEE, Estrella Van Buren Properties, Inc., an Arizona corporation, has caused this Temporary Construction and Access Easement to be signed by its duly authorized representative as of the date set forth below.

GRANTEE:

**ARIZONA ESTRELLA VAN BUREN PROPERTIES, INC., an Arizona Corporation**

By: \_\_\_\_\_

Melvin C. Ekstrand

Its: President

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

State of Arizona )

)ss

County of Maricopa )

The foregoing instrument (Temporary Construction and Access Easement) was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by Melvin C. Ekstrand, as the President of Estrella Van Buren Properties, Inc., an Arizona corporation and that he/she being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of said corporation.

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

*Exhibits on following page*

**EXHIBIT "A"**  
**HUDSON COMMONS**  
**SEWER EASEMENT**  
**LEGAL DESCRIPTION**

A strip of land being situated within the Northeast Quarter of Section 7, Township 1 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

**COMMENCING** at a found brass cap in hand hole accepted as the East Quarter corner of said Section 7 from which a found brass cap in hand hole accepted as the Northeast corner of said Section 7 thereof bears North 00°10'47" East, 2638.71 feet;

Thence North 89°42'20" West, 75.00 feet along the south line of the Northeast Quarter of said Section 7 to the west Right-of-Way line of Estrella Parkway as shown in Book 490, Page 20 records of Maricopa County, Arizona;

Thence leaving said south line, North 00°10'47" East, 5.00 feet along said west Right-of-Way to a point on a line being 5.00 feet north of and parallel with the south line of the Northeast Quarter of said Section 7 to the **POINT OF BEGINNING**;

Thence leaving said west Right-of-Way, North 89°42'20" West, 722.39 feet along said parallel line;

Thence leaving said parallel line, North 00°00'15" East, 81.32 feet;

Thence South 89°49'13" East, 30.00 feet;

Thence South 00°00'15" West, 51.38 feet to a line being 35.00 feet north of and parallel with the south line of the Northeast Quarter of said Section 7;

Thence South 89°42'20" East, 692.48 feet along said parallel line to the aforesaid west Right-of-Way line of Estrella Parkway;

Thence leaving said parallel line, South 00°10'47" West, 30.00 feet along said west Right-of-Way to the **POINT OF BEGINNING**.

Said strip of land containing 23,213 sq.ft., or 0.533 acres, more or less and being subject to any easements, restrictions, and/or rights-of-way.

This description shown hereon is not to be used to violate subdivision regulations of the state, county and/or municipality of any other land division restrictions.

Prepared by: HilgartWilson, LLC  
2141 E. Highland Avenue, Suite 250  
Phoenix, AZ 85016  
Project No. 1365  
Date: July 2017



