

ORDINANCE NO. O23-21

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF AN AVIGATION AND NOISE EASEMENT IN FAVOR OF THE CITY OF GLENDALE RELATING TO PROPERTY LOCATED AT THE SOUTHWEST CORNER OF 99TH AVENUE AND BETHANY HOME ROAD AND DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THIS ORDINANCE.

WHEREAS, Streamliner Aldea, LLC, wishes to construct a residential development in proximity to the Glendale Municipal Airport; and

WHEREAS, the Glendale Municipal Airport has expressed concerns regarding the interaction between residential development and the Airport; and

WHEREAS, the City of Glendale and Streamliner Aldea, LLC wish to provide adequate notice of the Airport to residents and future owners of the Property through this avigation easement.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the Glendale City Council approves entering into the Avigation and Noise Easement attached to the ordinance as Attachment 1.

SECTION 2. That the City Clerk is accordingly instructed and authorized to forward a certified copy of this ordinance and its attachments for recording to the Maricopa County Recorder's Office.

SECTION 3. That the provisions of this ordinance shall become effective thirty (30) days after passage of this ordinance by the Glendale City Council.

[SIGNATURES ON THE FOLLOWING PAGE]

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 27th day of June, 2023.

Mayor Jerry P. Weiers

ATTEST:

Julie K. Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey, City Attorney

REVIEWED BY:

Kevin R. Phelps, City Manager

Ordinance # _____
SWC 99th Avenue & Bethany Home Road

WHEN RECORDED, RETURN TO:

City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Attention: Airport Manager

AVIGATION AND NOISE EASEMENT

This Avigation and Noise Easement. ("**Easement**") is made and entered into this _____ day of _____, 2023 by and between the City of Glendale, an Arizona municipal corporation ("**Airport**"), as Grantee, and the undersigned ("**Owner**"), as Grantor.

RECITALS

- A. The City of Glendale is the owner and operator of the Glendale Municipal Airport located at 6801 N. Glen Harbor Blvd., Glendale, AZ 85307 ("**Airport**").
- B. The Owner owns the real property legally described on Exhibit A, attached hereto and generally located at the northwest corner of 99th Avenue and West Montebello Avenue (the "**Property**").
- C. Owner and Airport wish to provide adequate notice of the Airport to residents and future owners of the Property.

AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby mutually acknowledged, the Parties for themselves and their successors and assigns agree as follows:

- 1. The Recitals are a material part of this Easement and are incorporated herein by this reference.
- 2. This Easement is effective on the date set forth above and shall terminate when the Airport is no longer used for airport purposes.
- 3. Owner hereby grants and conveys to Airport and its successors and assigns a perpetual non-exclusive, assignable avigation and noise easement upon and over the Property for noise and other negative impacts caused by aircraft flying to and from the Airport, including, but not limited to, climbing and descending, takeoff and landing, and all related activities in compliance with all laws and regulations relating to same and otherwise in compliance with this Easement ("**Airport Operations**"). This Easement permits the imposition of light, smoke, air currents, electronic and other emissions, noise, illumination, loss of privacy, odors, vibrations, discomfort, inconvenience, and interference with the use and quiet enjoyment of the Property caused by Airport Operations, including interference with sleep, communications, or other effects. "**Aircraft**" means any type of vehicle, now or hereafter known or used, designed for navigation of or flight in the air by buoyancy or by the dynamic action of air on the vehicle's surfaces, including jet airplanes, propeller-driven airplanes, helicopters, gliders, ultralights, drones, model airplanes, hot air balloons, and blimps.
- 4. The rights granted to Airport under this Easement include the following, all of which may be exercised only in a manner consistent with applicable law and with Owner's ability to develop the Property in any permissible manner not inconsistent with the Easement granted herein:

- A. The right of Airport, the general public, and any person to fly or permit the flight of any Aircraft in, through, across, and about the airspace that is above the Horizontal Surface over the Property as defined and calculated pursuant to Part 77 of the Federal Aviation Regulations. The Horizontal Surface is situated above the runway at 150 feet above the surface and extends outward approximately 5000 feet in all directions (also known in this Easement as the (“Airspace”)).
 - B. The right of Airport, the general public, and any person to cause, create, or permit to be caused, or created within the Airspace such noise, vibration, dust, air currents, illumination, fuel consumption, and other impacts that may result from Airport Operations, Aircraft operations that interfere with other uses of the Property, those that annoy or bother users of the Property, and those that are caused or made worse by any of the following:
 - 1. Any and all temporary and permanent increases and other changes and variation in size, number, method of propulsion, weight, noisiness, design, fuel category, type or other characteristics of Aircraft and any permanent, temporary, seasonal time-of-day, or other practices, laws, rules, policies, circumstances, customs, protocols or procedure related to such increases, changes, and variations.
 - 2. Any and all temporary and permanent changes and variations in Airport size, orientation, configuration, layout, location, runway length, numbers of runways, boundaries, improvements or other characteristics and any permanent, temporary, seasonal time-of-day, or other practices, laws rules, policies, circumstances, customs, protocols or procedures related to such changes and variations.
 - 3. Any and all temporary and permanent changes and variations at the Airport in flight paths, flight frequency, flight timing, Airport Operations, climbing and descending, altitudes, takeoff and landing, air traffic control and any permanent, temporary, seasona4 time-of-day or other practices, laws rules, policies, circumstances, customs, protocols or procedures related to such changes and variations.
 - C. The right of the Airport to enter the Property to enforce its rights under this Easement.
 - D. The right of Airport to enter the Property to remove any building, structure, improvement, or other object that extends into the Airspace.
 - E. The right of Airport to enter the Property to eliminate or abate any interference with radio communications or radar operations between the Airport and any Aircraft, whether or not the Aircraft is above the Property or in the Airspace.
5. For the benefit of Airport, and the general public, Owner, on behalf of itself and its successors and assigns, hereby agrees to the following restrictive covenants on the Property:
- A. Owner shall keep the Airspace free and clear of all obstructions of any kind. Owner shall not construct, install, or allow any person to construct or install any building, structure, improvement, or other object, including trees, that extends into the Airspace or that constitutes an obstruction to air navigation.

- B. Owner shall not create, cause, or allow any person to create or cause on the Property any electrical or electronic interference with radio communications or radar operations between the Airport and any Aircraft, whether or not the Aircraft is above the Property or in the Airspace.
- C. The Owner shall not use or allow others to use the Property in any manner that may interfere with Airport Operations or that may constitute a hazard to the Airport or any Aircraft, whether or not the Aircraft is above the Property or in the Airspace.
- D. The Owner shall not use the Property in any manner that is inconsistent with this Easement or that may be incompatible with Airport Operations.
- E. The Owner has been advised and understands that: all or a portion of the Property is located in a noise-influence area, Airport Operations might be annoying to users of the Property and might interfere with the unrestricted use and enjoyment of the Property, and Aircraft Operations may increase over time.

6. This Easement is appurtenant to and is for the benefit of the Airport and shall further be deemed in gross, being conveyed to the Airport for the benefit of the Airport and any and all members of the general public who may use said Easement or right-of-way, in landing at, taking off from or operating aircraft in or about the Airport or in otherwise flying through said Airspace in compliance with this Easement.

7. This Easement binds Owner and its successors and assigns and is a covenant that runs with the Property. Owner, together with its successors in interest and assigns, hereby waives its right to legal action against Airport, its successors or assigns for monetary damages or other redress due to impacts (as described in Paragraphs 3 and 4 of this Easement detailing the granted rights of easement), associated with Aircraft operation in the air or on the ground at the Airport, including future increases in the volume or changes in location of said operations. Furthermore, the Airport, its successors and assigns shall have no duty to avoid or mitigate such damages through physical modification of Airport facilities or establishment or modification of Aircraft operational procedures or restrictions. Except as to the releases granted by Owner in the preceding sentences, once Owner has transferred the Property, or any portion thereof, to a successor or assign, Owner shall be released hereunder as to the Property or portion thereof actually transferred, with such successor or assign thereafter being liable hereunder.

8. This Easement shall only be effective upon approval of the final site plan for the development depicted in City of Phoenix Application No. KIVA 09-4501 . The Owner shall cause this Easement to be recorded in the Office of the Maricopa County Recorder within five (5) days of the issuance of the final approval of the site plan for the Property.

[signatures on the following page]

GRANTEE:

City of Glendale,
an Arizona municipal corporation

By: City of Glendale

By: _____
City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, as the Authorized Agent of the City of Glendale, Arizona.

Notary Public

My Commission expires:

OWNER/GRANTOR:

STREAMLINER ALDEA, LLC,
an Arizona limited liability company

By: Streamliner Aldea Holdings, LLC
a Delaware limited liability company,
Manager and Member

By: Greenlight Streamliner Aldea Manager, LLC
an Arizona limited liability company,
Manager

By: Greenlight Communities, LLC,
an Arizona limited liability company,
Manager

By: RDP Commercial, LLC,
an Arizona limited liability company,
Member

By: _____
Pat Watts
Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before this ____ day of _____, 2023 by Pat Watts, as the Manager of RDP Commercial, LLC, an Arizona limited liability company, as the Member of Greenlight Communities, LLC, an Arizona limited liability company, as the Manager of Greenlight Streamliner Aldea Manager, LLC, an Arizona limited liability company, as the Manager of Streamliner Aldea Holdings, LLC, a Delaware limited liability company, as the Manager and Member of Streamliner Aldea, LLC, an Arizona limited liability company, on behalf of aid company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires:

EXHIBIT A
Legal Description of the Property

**LEGAL DESCRIPTION
NORTHERLY PORTION
OF LOT 2 – BK.1482, PG.08
PHOENIX, ARIZONA**

March 1, 2023
Job No. 6544
Page 1 of 1

A NORTHERLY PORTION OF LOT 2, ALDEA CENTRE, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1482 OF MAPS, PAGE 8, AND THEREAFTER AFFIDAVIT OF CORRECTION RECORDED IN DOCUMENT NO. 2021-1368429, LOCATED IN THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 2 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST QUARTER OF SAID SECTION 17, FROM WHICH THE EAST QUARTER OF SAID SECTION 17 BEARS SOUTH 00 DEGREES 53 MINUTES 49 SECONDS WEST, A DISTANCE OF 2,637.88 FEET;

THENCE ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, SOUTH 00 DEGREES 53 MINUTES 49 SECONDS WEST, A DISTANCE OF 394.72 FEET;

THENCE DEPARTING SAID EAST LINE, SOUTH 89 DEGREES 27 MINUTES 54 SECONDS WEST, A DISTANCE OF 55.02 FEET TO A POINT ON A LINE 55.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 17, SAID POINT BEING THE **POINT OF BEGINNING** OF THE PARCEL HEREIN DESCRIBED;

THENCE ALONG SAID PARALLEL LINE, SOUTH 00 DEGREES 53 MINUTES 49 SECONDS WEST, A DISTANCE OF 329.80 FEET;

THENCE DEPARTING SAID PARALLEL LINE, NORTH 89 DEGREES 06 MINUTES 22 SECONDS WEST, A DISTANCE OF 659.94 FEET;

THENCE NORTH 00 DEGREES 52 MINUTES 50 SECONDS EAST, A DISTANCE OF 642.81 FEET TO A POINT ON THE SOUTH LINE OF THE GRAND CANAL;

THENCE ALONG SAID SOUTH LINE, NORTH 86 DEGREES 40 MINUTES 18 SECONDS EAST, A DISTANCE OF 321.60 FEET;

THENCE DEPARTING SAID SOUTH LINE, SOUTH 00 DEGREES 56 MINUTES 12 SECONDS WEST, A DISTANCE OF 345.17 FEET;

THENCE NORTH 89 DEGREES 27 MINUTES 54 SECONDS EAST, A DISTANCE OF 339.74 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 320,359 SQUARE FEET OR 7.354 ACRES, MORE OR LESS.



N.1/4 SEC.17
T.2N., R.1E.

P.O.C. NE COR
SEC.17, T.2N., R.1E.

N89°27'10"E 2702.07'

APN: 102-15-002M
SRPAI&PD

APN: 102-15-001B
SRPAI&PD

N86°40'18"E 321.60'

APN: 102-15-001D
SRPAI&PD

S0°56'12"W 345.17'

S0°53'49"W
394.72'

LOT 1C - BK.1577, PG.04
APN: 102-15-012
JAMES CAMPBELL COMPANY ET. AL.

N0°52'50"E 642.81'

S89°27'54"W
55.02'

N89°27'54"E 339.74'

P.O.B.

S0°53'49"W 329.80'

S0°53'49"W 2637.88'
99th AVENUE

55' R/W
BK.1482,
PG.08

N89°06'22"W 659.94'

E.1/4 SEC.17
T.2N., R.1E.



NTS

RICK
ENGINEERING COMPANY

22425 N 16TH STREET SUITE #1
PHOENIX, AZ 85024
480.922.0780

rickengineering.com

San Diego - Riverside - San Luis Obispo - Sacramento - Orange - Tucson - Phoenix - Las Vegas - Denver

EXHIBIT
N. PORTION OF LOT 2 -
BK.1482, PG.08
PHOENIX, ARIZONA

DRAWING:	6544_LGL BASE.DWG		
JOB#	P6544	SCALE:	NTS SHT: 1 OF 1
DRAFTER:	TLH	CHK:	ELS DATE: 3/1/23