

## EXHIBIT "2"

### REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is made and entered into by and between CHEYENNE VALLEY LLC, a Nevada limited liability company, as to an undivided 54.11% interest, and OXNARD COMMERCEPLEX LLC, a Delaware limited liability company, as to an undivided 45.89% interest (hereinafter "Seller") and the CITY OF GOODYEAR, ARIZONA, an Arizona municipal corporation (hereinafter "Buyer"). The Effective Date of this Agreement is the date on which this Agreement is fully executed by all Parties hereto as indicated on the last date on the signature page of this Agreement. Buyer and Seller are sometimes referred to herein individually as "Party" and sometimes referred to herein collectively as the "Parties".

For and in consideration of the mutual covenants and agreements set for the herein, Seller shall sell and Buyer shall purchase 39,032 square feet (.90 acre), more or less, of real property legally described and depicted on Exhibit A, attached hereto and made a part hereof, which property is located between Van Buren Street and Celebrate Life Way west of 143<sup>rd</sup> Avenue in Goodyear Arizona, together with all improvements and fixtures situated thereon and all rights and appurtenances related thereto, including, but not limited to, any right, title and interest of Seller in and to adjacent streets, roads, alleys, access easements and rights-of-way and all water rights, but not mineral rights, related thereto (the "Property").

In consideration of the mutual promises of the Parties set forth in this Agreement, the receipt and sufficiency of which are acknowledged, Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property from Seller in accordance with the following terms and subject to the conditions set forth below:

1. **Purchase Price.** The price to be paid by Buyer to Seller for the Property is \$108,500.00 (the "Purchase Price").
2. **Marketable Title.** Seller agrees to convey by Special Warranty Deed, in the form attached hereto as Exhibit B ("Deed"), the Property "as is", free and clear of all recorded liens, charges, reservations, encumbrances, and restrictions of any kind or character, except the Permitted Exceptions and except for claims, if any, of third parties based on adverse possession or prescriptive uses, of which Seller has no knowledge. The Permitted Exceptions referred to herein are limited to the following:
  - 2.1. Those matters listed in the Title Commitment that appear as exceptions to title and that are not objected to, or with objection thereto waived, by Buyer; and
  - 2.2. Such acts or defects resulting from acts of Buyer or Buyer's agent; and
  - 2.3. The exceptions normally contained in an Owner's Policy of Title Insurance.

3. **Escrow.** Within three (3) calendar days after this Agreement has been fully executed and acknowledged by the Parties, the Parties hereby agree to establish an escrow with Colleen Stout, First American Title Insurance Company, 2425 E. Camelback Rd., Suite 300, Phoenix Arizona 85016, E-mail cstout@firstam.com, Telephone 602-567-8137, (“Escrow Agent”) for the purpose of facilitating the consummation of the transaction contemplated by this Agreement (“the Escrow”).

3.1. **Opening of Escrow.** The Escrow shall be deemed opened when a fully executed Purchase Agreement is delivered to the Escrow Agent (“Opening of Escrow”).

3.2. **Earnest Money.** Within seven (7) business days of Opening of Escrow (as defined in Section 3.1 of this Agreement), Buyer shall deposit Five thousand dollars (\$5,000.00) into Escrow (as defined in Section 3 of this Agreement) as (“Earnest Money”) for this transaction. At the Closing (as defined in Section 7 of this Agreement), the Earnest Money shall be applied toward the Purchase Price.

3.3. **Deposit of Balance of Funds.** Buyer shall, by wire transfer or in the form of a certified bank or cashier's check, deposit with Escrow Office the balance of the Purchase Price on or before the Closing, for disbursement to Seller at Closing.

3.4. **Lien Release(s).** At or prior to Closing, Seller shall obtain release of the Property from any monetary liens, encumbrances or security interests created by or through Seller

4. **Due Diligence Documentation.** The following documentation shall be provided for review during the Feasibility Period as described in Section 5 of this Agreement:

4.1. **From Seller:** Within five (5) business days following the Opening of Escrow, Seller shall provide Buyer copies of those materials described on Exhibit C attached hereto and made a part hereof (“Seller Materials”), in the form of hard copies, electronic format stored on a CD or “USB stick” and/or electronic format attached to e-mails.

4.2. **From Escrow Agent:** Within five (5) business days of the Opening of Escrow, Escrow Agent shall deliver to Buyer:

4.2.1. **Title Commitment.** A preliminary title report (“Title Commitment”) issued by First American Title Insurance Company or other title insurer acceptable to Buyer (the “Title Company”) for an Owner's Policy of Title Insurance in the amount of the Purchase Price, together with legible copies of all documents referred to therein. Escrow Agent shall give notice to Buyer and Seller of the date on which Escrow Agent delivers the Title Commitment to Buyer.

5. **Feasibility Period.** Unless otherwise requested by Buyer and agreed to by Seller, Buyer shall have up to ninety (90) days from the Opening of Escrow to satisfy itself as to the suitability of the Property for the Buyer's intended use ("Feasibility Period").

5.1. **Title Commitment Review.** Within ten (10) business days following receipt of the Title Commitment, Buyer shall give Seller and Escrow Agent notice of any objections Buyer has to the condition of title to the Property as shown in the Title Commitment. In the event Buyer does not timely tender such written notice, Buyer shall be deemed to have approved of the condition of title and the Title Commitment. If Buyer timely gives such notice, Seller shall have five (5) business days following the Seller's receipt of such notice to give Buyer and Escrow Agent notice of Seller's election to cure the item(s) objected to by the Buyer. If Seller does not give such notice with respect to the objectionable item(s), Seller shall be deemed to be unwilling or unable to cure such objectionable item(s), and Buyer shall, within five (5) business days thereafter give notice in writing to Seller and Escrow Agent of its election to either waive such objection(s) and proceed to the Closing or terminate this Agreement by disapproving the Title Commitment (with Buyer's failure to give notice being deemed Buyer's election to so waive such objection and proceed to Closing). If Seller gives notice of Seller's intent to cure such objectionable item(s) and fails to do so within a timely manner as determined by Buyer in Buyer's sole discretion, Buyer shall at or prior to Closing either notify Seller and Escrow Agent in writing that Buyer waives such objectionable item(s) and proceed to the Closing or terminate this Agreement by disapproving the Title Commitment.

5.2. **Amended Title Commitment.** In the event that the Title Commitment is subsequently amended ("Amended Title Commitment"), Escrow Agent shall deliver to Buyer and Seller the Amended Title Commitment, together with legible copies of any documents or instruments referred to therein. Escrow Agent shall give notice to Buyer and Seller of the date on which Escrow Agent delivers the Amended Title Commitment to Buyer. Within five (5) business days following receipt of the Amended Title Commitment, Buyer shall give Seller and Escrow Agent notice of any objections Buyer has to any new conditions of title to the Property as shown in the Amended Title Commitment that are not a result of Buyer's activities. If Buyer timely gives such notice, Seller shall have three (3) business days following the Seller's receipt of such notice to give Buyer and Escrow Agent notice of Seller's election to cure the item(s) objected to by the Buyer. If Seller does not give such notice with respect to the objectionable item(s), Seller shall be deemed to be unwilling or unable to cure such objectionable item(s), and Buyer shall, within three (3) business days thereafter give notice in writing to Seller and Escrow Agent of its election to either waive such objection(s) and proceed to the Closing or terminate this Agreement by disapproving the Amended Title Commitment (with Buyer's failure to give notice being deemed Buyer's election to so waive such objection and proceed to Closing). If Seller gives notice of Seller's intent to cure such objectionable item(s) and fails to do so within a timely manner as determined by Buyer in Buyer's sole discretion, Buyer shall at or prior to Closing notify Seller and Escrow Agent in writing that Buyer waives such objectionable item(s) and proceed to the Closing or terminate this Agreement by disapproving the Amended Title Commitment.

5.3. **Inspection.** Buyer shall be entitled to have ninety (90) days from the Opening of Escrow to: inspect the Property; conduct engineering and/or environmental studies (either personally or through its agents), including the review thereof; obtain the consent to execution and deliver by the Other Owner of the Declaration Amendments (as defined in and pursuant to Section 5.4 below); and otherwise determine the feasibility of developing the Property for its intended purpose, including the economic feasibility related to the cost of removing existing improvements and/or personal property, if any. Seller agrees to permit Buyer or Buyer's designated agent to enter the Property to perform any tests or studies, the costs of same to be paid by Buyer. Prior to performing any subsurface testing, drilling or excavation of the Property, Buyer shall obtain Seller's written approval which shall not be unreasonably delayed or withheld. Buyer shall defend, indemnify and hold Seller harmless from all losses and damages arising from inspection and testing of the Property. Prior to any entry upon the Property by any of Buyer or Buyer's consultants, engineers, agents or other designees ("Buyer Entry Parties"), Buyer shall: (1) cause to be procured and thereafter maintained commercial general liability insurance with a combined single limit of not less than \$1,000,000 and workmen's compensation insurance (all coverage to be primary, on a per occurrence and not claims made basis and with a waiver of subrogation endorsement) with respect to the Real Property covering all such actions of Buyer Entry Parties; (2) cause Seller to be named as an additional insured on such commercial general liability insurance policy; and (3) provide reasonable evidence of such insurance coverage to Seller (including Certificate of Insurance), with such coverage not to be reduced or cancelled without at least 30 days' prior written notice to Seller. Buyer shall restore the Property to a condition reasonably similar to its condition prior to its testing and inspections. Buyer's indemnification and restoration obligations under this Section 5.3 shall survive Closing or any termination of this Agreement.

5.4. **Declarations, Covenants and Restrictions.** Buyer acknowledges the Property is currently subject to the following documents/agreements, affecting other property owned by Seller ("Seller Remainder Property") and property previously conveyed by Seller to Fillmore 143, LLC ("Other Property", with the current owner of the Other Property referred to as "Other Owner"):

5.4.1. Declaration of Covenants and Use Restrictions – Recorded 10/16/2007, Document 20071127441 ("Use Declaration").

5.4.2. Property Declaration (Traffic Signal) – Recorded 6/7/2010, Document 20100483060 ("Traffic Declaration").

5.4.2. Property Declaration (Landscaping and Signage Maintenance) – Recorded 6/7/2010, Document 20100483061 ("Landscape Declaration").

Seller, as owner of the Seller Remainder Property, and Buyer each agree at Closing to execute and deliver an Amendment to Declarations and Use Restriction and Landscaping Agreement in the form of Exhibit D attached hereto and made a part hereof ("Amendment Agreement"). Buyer, and not Seller, shall be responsible for confirming the identity of the Other Owner, and

obtaining Buyer's desired approval, execution and delivery by the Other Owner of the Amendment Agreement (with the Amendment Agreement to be modified to conform to current ownership of the Other Property). The Amendment Agreement, if also executed and delivered by Other Owner to Escrow Agent for recordation at Closing, shall be recorded at Closing immediately following the Deed and, if not so timely executed and delivered by Other Owner, shall not be effective and shall not be recorded at Closing.

5.5. **Termination Notice.** If Buyer discovers any conditions to which it objects, Buyer shall, prior to the end of the ninety (90) day Feasibility Period discussed in this Section 5, provide Seller and Escrow Agent of written notice of the termination of this Agreement

6. **Termination During Feasibility Period.** If the Seller provides notice terminating this Agreement during the ninety (90) day Feasibility Period, the Purchase Price, including the Earnest Money, shall be refunded to Buyer, if same was provided to Escrow Agent, and this Agreement shall be terminated and of no further force and effect and the Parties hereto shall have no further obligation or liability to each other pursuant hereto except as otherwise expressly provided in the Agreement. If such written notice is not received by the Seller and Escrow Agent on or before 2:00 p.m., Mountain Standard Time before the end of Feasibility defined in Section 5, Buyer shall be deemed to have been satisfied with the condition of the title to be conveyed (including obtaining or not obtaining agreement of the Other Owner to the Declaration Amendments) and with the condition of the Property, including the environmental condition of the Property, and this condition to Closing shall be deemed waived. If Buyer terminates this Agreement as provided herein, Buyer shall promptly restore any damage to the Property after the entry thereon, and shall defend and indemnify Seller at all times from any damages, liability, loss, claims, costs, and fees resulting from said inspections. The terms of this Section 6 related to Buyers restoration of the Property shall survive the termination of this Agreement.

7. **Closing.** The Closing shall occur on the date requested by Buyer, upon not less than five (5) business days' prior written notice to Seller and Escrow Agent, but no later than thirty (30) days from the end of the Feasibility Period. As used in the Agreement, the terms "Closing" or "Close of Escrow" shall refer to the later of the dates on which the Special Warranty Deed conveying the Property to Buyer are recorded through Escrow in the Official Records of Maricopa County, Arizona.

7.1. **Closing Notification.** If Buyer seeks to complete Closing on the Property prior to the end of the Feasibility Period, Buyer shall provide Escrow Agent a written request notifying Escrow Agent of Buyer's intent to close, and upon receipt of such notification, Escrow Agent shall provide Buyer and Seller with a written Notification of Intent to Close. If the Closing occurs after the Feasibility Period, Escrow Agent shall provide Buyer and Seller written Notice of Expiration of Feasibility Period. Unless otherwise agreed to in writing by the Buyer, Seller shall, within three (3) business days of receiving from the Escrow Agent a Notification of Intent to Close or Notice of Expiration of Feasibility Period, deliver to Escrow

Agent fully acknowledged and executed copies of the Special Warranty Deed in the form attached as Exhibit B. If not already deposited with Escrow Agent, Buyer shall, within three (3) business days of receiving from the Escrow Agent a Notification of Intent to Close or Notice of Expiration of Feasibility Period, deposit with the Escrow Agent the balance of the Purchase Price as provided in Section 3.3 of this Agreement. In addition to the foregoing, Buyer and Seller shall execute, acknowledge, and deliver to Escrow Agent such other documents and/or instruments as may be reasonably requested by Buyer, Seller, and/or Escrow Agent to consummate the transaction provided for herein, provided, however, the Declaration Amendments shall be processed and recorded at Closing only if executed and delivered by the Other Owner at or prior to Closing.

7.2. **Owner's Title Insurance Policy.** Buyer's obligation to Close is conditioned upon Escrow Agent's irrevocable commitment to issue (and to issue promptly upon the Closing) Title Company's standard coverage Owner's Policy of Title Insurance (the "Title Policy") in the name of Buyer and containing no exceptions other than the "printed form" exceptions including within Title Company's customary form of such Policy and those additional exceptions approved or with objection thereto waived as provided herein. If the Title Company is unwilling or unable to issue a Title Policy in such form as of the Closing date described in Section 7, then this Agreement and the Escrow shall terminate and be of no further force and effect without liability of either Party to the other except as otherwise expressly provided in the Agreement; and all monies paid hereunder by Buyer to the Escrow Agent, including the Earnest Money, shall be returned to Buyer. If Buyer requests the Title Policy include extended coverage or endorsements, Buyer shall be responsible for satisfaction of all requirements and payment of all additional premiums for such extended coverage and endorsements, and such extended coverage and endorsements shall not be a condition to Buyer's obligations hereunder. Seller shall not be required to satisfy any requirements for extended coverage or endorsements, provided, Seller will at Closing provide Title Company with an Owner's Affidavit in substantially the form of Exhibit E attached hereto and made a part hereof.

8. **Adjustments, Apportionments and Closing Expenses.**

8.1. **Real Estate Taxes.** Real estate taxes and assessments (including for improvements) shall be apportioned between Seller and Buyer based on the proportion (by area) the Property being acquired represents to the tax or assessment parcel prior to this sale. The calculation of the real estate taxes and assessments shall be made as of midnight preceding the Closing and shall be based on the tax assessment and rate for the fiscal year for which assessed, except that, if the Closing occurs before the tax assessment and rates are fixed, the calculation shall be made as of midnight preceding the Closing and shall be based on the tax assessment and rate for the prior year.

8.2. **Personal Property Taxes.** No later than the Closing, Seller shall have paid all personal property taxes, if any, levied or assessed with respect to the Property covered by

any personal property tax return filed or required to be filed by or on behalf of Seller prior to the Closing.

8.3. **Assessments and Real Estate Taxes.** No later than the Closing, Seller shall pay all installments then due on any assessments (including for improvements) assessed prior to the Closing, and shall pay the portion of real estate taxes apportioned to Seller pursuant to Section 8.1 through Escrow if and to the extent real estate taxes and assessments are then known and payable or, to the extent not then known as payable, when such real estate taxes and assessments become due.

8.4. **Escrow Charges and Recording Fees.** Buyer and Seller shall each pay one-half of the customary escrow charges of Escrow Agent and recording fees.

8.5. **Standard Coverage Owner's Title Policy.** Seller shall pay for the standard coverage owner's title policy in the amount of the Purchase Price.

8.6. **Expenses.** Except as expressly provided herein, each Party to this Agreement shall pay his or its own costs and expenses related to the transaction contemplated herein.

9. **Representation and Warranties of Seller.** Seller represents and warrants to Buyer as follows, which representations and warranties shall survive the Closing and remain in full force and effect for one (1) year following Closing:

9.1. **Binding and Enforceability.** The individual and/or entity executing on behalf of the Seller is duly authorized to do so and, upon execution of this Agreement by said individual and/or entity and by Buyer, this Agreement shall be binding and enforceable against Seller in accordance with its terms.

9.2. **Authority to Perform.** Seller has full power and authority to enter into and perform this Agreement in accordance with its terms and that neither the execution of this Agreement nor the consummation of the transaction provided for herein constitutes, or will result in, any breach of any of the terms, conditions or provisions of, or constitutes a default under any judgment, decree, order, agreement or other instrument or document to which either Seller is a party or is subject.

9.3. **Ownership.** Seller warrants and represents that it is the sole fee simple owner of the Property and has all necessary authority to sell the Property; to Seller's knowledge, there are no other outstanding and enforceable contracts for sale or options involving the Property; and except as disclosed by the Title Commitment or Amended Title Commitment, to Seller's knowledge, no other party has any right, title or interest in the Property. Except as warranted and represented in the preceding sentence, the Property is being sold in an "as is" and "where is" condition.

9.4. **Litigation.** To Seller's knowledge, Seller is not a party to any pending or threatened action, suit, proceeding or investigation, at law or in equity or otherwise in, for or by any court or governmental board, commission, department or office arising from or relating to the Property or to the past or present operations and activities of Seller upon or relating to the Property.

9.5. **Governmental Restrictions.** To Seller's knowledge, Seller has not received, nor is it aware of any notifications, restrictions, or stipulations from the United States of America, the State of Arizona, Maricopa County, or any other governmental authority requiring any work to be done on the Property or threatening the use of the Property. To Seller's knowledge, there are no pending or threatened condemnation proceedings affecting any portion of the Property.

9.6. **Seller's Knowledge.** As used in this Agreement, "Seller's knowledge" shall mean, and be limited to, the actual (and not constructive or imputed) knowledge of Seller and its managers, without duty to investigate or inquire, and shall not include constructive or imputed knowledge resulting from, or by way of, public records or Seller's agents. This Agreement, and any references to "Seller's knowledge" shall not be deemed or applied to impose any personal liability on Seller's managers or members.

9.7. **Availability/Sufficiency/Quality of Water; Property Condition.** Notwithstanding anything contained in this Agreement to the contrary, Seller makes no representation or warranty whatsoever as to the: (i) availability, sufficiency and/or quality of water within the limits of the Property or any portion thereof; or physical condition of the Property.

10. **Representations and Warranties of Buyer.** Buyer represents and warrants to Seller as follows, which representations and warranties shall survive the Closing and remain in full force and effect for one (1) year following Closing except for Section 10.3 which shall remain in full force and effect for three (3) years following Closing:

10.1. **Binding and Enforceability.** The individual executing on behalf of the Buyer is duly authorized to do so and, upon execution of this Agreement by said individual and by Seller, this Agreement shall be binding and enforceable against Buyer in accordance with its terms.

10.2. **Authority to Perform.** Buyer has full power and authority to enter into and perform this Agreement in accordance with its terms and that neither the execution of this Agreement nor the consummation of the transaction provided for herein constitutes, or will result in, any breach of any of the terms, conditions or provisions of, or constitutes a default under any judgment, decree, order, agreement or other instrument or document to which either Buyer is a party or is subject.



10.3. **Compliance with A.R.S. § 38-511.** Buyer gives notice to Seller that A.R.S. §38-511 provides that Buyer may, within three years after its execution, cancel this Agreement without penalty or further obligation made by Buyer if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of Buyer is at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of the Seller in any capacity or a consultant to the Seller with respect to the subject matter of the Agreement.

10.3.1. As of the date of execution of this Agreement, Buyer is unaware of any person (without a duty of inquiry or investigation) significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of Buyer, who is an employee or agent of Seller in any capacity or a consultant to Seller with regard to the subject matter of this Agreement that would permit the exercise by Buyer of those remedies set forth in A.R.S. §38-511. Notwithstanding anything contained herein to the contrary, if during the course of this Agreement becomes aware or has reason to suspect that circumstances exist that would afford Buyer the right to elect its remedies under A.R.S. §38-511, Buyer shall notify Seller in writing of such circumstances.

11. **Mutual Representation and Indemnification – Commissions.** Each of the Parties represents to the other that it has not incurred and will not incur any liability for brokerage fees or agents' commissions in connection with this Agreement. Seller and Buyer each agree to indemnify and hold the other harmless from and against any and all claims or demands with respect to any brokerage fees or agents' commissions or other compensation asserted by any person, firm or corporation in connection with this Agreement or the transactions contemplated hereby, insofar as any such claim is based upon any conversation or contract with Seller or Buyer, respectively. The terms of this Section 11 shall survive Closing, or any expiration or termination of this Agreement, for one (1) year.

12. **Conditions to Buyer's Obligations.** Buyer's obligation to Seller to consummate the transaction are subject to the following conditions:

12.1. **Correctness of Representations and Warranties.** The representations, warranties and covenants of Seller set forth herein shall be true on and as of the Closing with the same force and effect as if the representations, warranties and covenants had been made on and as of the Closing.

12.2. **Title Insurance.** Buyer's obligation to Close is conditioned upon Escrow Agent's irrevocable commitment to issue (and to issue promptly upon the Closing) the Title Policy pursuant Section 7.2.

13. **Conditions to Seller's Obligations.** Seller's obligation to consummate the transaction is subject to the following conditions:

13.1. **Correctness of Representations and Warranties.** The representations, warranties and covenants of Buyer set forth herein shall be true on and as of the Closing with the same force and effect as if the representations, warranties and covenants had been made on and as of the Closing.

14. **Waiver of Conditions.** Either Party hereto may in writing waive any provision of this Agreement intended for its benefit; provided, however, such waiver shall in no way excuse the other Party from the performance of any of its other obligations under this Agreement unless otherwise provided herein or in such written waiver. Failure of any Party to exercise any right or option arising out of a breach of this Agreement shall not be deemed a waiver of any right or option with respect to any subsequent or different breach of the same or any other covenant or condition of this Agreement.

15. **Survival of Representations and Warranties.** Except as otherwise provided in this Agreement, each and all of the representations, warranties, covenants and agreements set forth in this Agreement, or in any exhibit hereto, or in any bill of sale, assignment or any other instrument or document to be delivered pursuant to this Agreement shall survive the Closing and the delivery of Seller's transfer documents conveying the Property for one (1) year.

16. **Risk of Loss.**

16.1. **Destruction or Damage Prior to Closing.** The risk of loss or damage to the Property by fire or other casualty, or liability to third persons, or its taking by eminent domain, prior to Closing is assumed by the Seller. Upon the happening of any material loss, damage or taking prior to the Closing, Buyer shall, within ten (10) days of Buyer's knowledge thereof, be entitled to terminate this Agreement by giving written notice thereof to Seller and Escrow Agent within said period. If Buyer does not terminate this Agreement, Buyer shall be entitled to any insurance monies collectible for such loss or damage, or the award of such taking by eminent domain. In no event shall the Purchase Price be reduced in the event of condemnation or damage, and in no event shall Seller be required to restore or to rebuild any part of or all of the Property or any improvements thereon. In the event of Buyer's termination of this Agreement pursuant to this provision, the Purchase Price deposited, if any shall be returned to Buyer and the possession of the Property shall be retained by Seller and the Parties hereunder shall be under no further obligation or liability to each other pursuant thereto except as otherwise expressly provided in the Agreement.

16.2. **Destruction or Damage After Closing.** The risk of loss or damage to the Property by fire or other casualty, or the taking by eminent domain, after the Closing shall be assumed by Buyer.

17. **Additional Acts and Documents.** Each Party hereto agrees to do all such things and take all such actions and to make, execute and deliver such other documents and

instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement.

18. **Disclaimers.** AS A MATERIAL CONSIDERATION FOR SELLER TO CONVEY PROPERTY PURSUANT TO THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT:

18.1 IT IS FULLY INFORMED AS TO ALL ASPECTS OF THE CONDITION OF THE PROPERTY, BASED SOLELY UPON ITS INDEPENDENT INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY (INCLUDING ENVIRONMENTAL MATTERS, IMPROVEMENTS AND PHYSICAL CONDITION), AND NOT IN RELIANCE UPON ANY INFORMATION PROVIDED BY SELLER.

18.2 THE PROPERTY IS BEING CONVEYED "AS IS", "WHERE IS" AND "WITH ALL FAULTS" AS OF CLOSING, WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER AS TO ITS CONDITION (ENVIRONMENTAL OR OTHERWISE), FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED.

18.3 BUYER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE PROPERTY.

18.4 EFFECTIVE AS OF CLOSING, SELLER SHALL BE AND HEREBY IS RELEASED FROM ANY AND ALL CLAIMS AND LIABILITIES WHICH BUYER MAY HAVE AGAINST SELLER IN ANY WAY ARISING OUT OF ANY ENVIRONMENTAL OR OTHER MATTERS INVOLVING THE CONDITION OR USE OF THE PROPERTY.

19. **Default.**

19.1. **Default by Seller.** If the Closing does not occur because of a breach of this Agreement by Seller and Seller fails to cure such breach within three (3) business days following written notice thereof given by Buyer to Seller, Buyer may (i) terminate this Agreement by written notice to Seller and to Escrow Agent in which event all monies paid by Buyer shall be immediately repaid to Buyer; (ii) waive such default and consummate the transaction contemplated hereby in accordance with terms hereof; or (iii) commence an action for specific performance of the terms of this Agreement; provided, however, if the remedy of specific performance is not available to Buyer because of the acts or omissions of Seller, Buyer shall be entitled to bring an action at law to recover its actual damages only, waiving any right to punitive, consequential or other non-actual damages.

19.2. **Default by Buyer.** If the Closing does not occur because of a breach of this Agreement by Buyer, including a breach arising from Buyer's failure to perform their duties and obligations assumed hereunder, the Seller's sole remedy is to: (i) terminate this Agreement and receive the Earnest Money; or (ii) bring an action at law to recover its actual damages, waiving any right to punitive, consequential or other non-actual damages.

20. **Notices.** Any notice, election or communication to be given to any Party or the Escrow Agent under the terms of this Agreement shall be in writing and delivered in person or deposited, certified or registered, in the United States mail, postage prepaid, addressed as set forth below or to such address as either Party may hereafter designate by written notice hereunder. Such notices shall be effective on the earlier of (i) the date when received by such Party if delivered via hand delivery if received prior to 5:00 p.m., Mountain Standard Time or (ii) the next day if delivered via hand delivery and received after 5:00 p.m. MST, or (iii) 48 hours after the date if sent by registered or certified mail, postage and fees prepaid and addressed as follows.

To Buyer:	City of Goodyear 190 North Litchfield Road Goodyear Arizona 85338 Attn: City Manager
With a copy to:	City of Goodyear 190 North Litchfield Road Goodyear Arizona 85338 Attn: City Attorney
To Seller:	Cheyenne Valley, LLC & Oxnard Commerceplex, LLC c/o Fred Stiles EJM Development Co. 7419 E. Helm Drive, Suite E Scottsdale, AZ 85260  With copy to: Robert L. Shaw, Esq. Robert L. Shaw, PLLC 1626 Palmcroft Way SE Phoenix, Arizona 85007
To Escrow Agent:	First American Title Insurance Company 2425 E. Camelback Rd., Suite 300 Phoenix Arizona 85016 Attn: Colleen Stout

21. **Assignments.** This Agreement shall be binding upon and inure to the benefit of the Seller and Buyer hereto and their respective successors in interest, heirs; personal representative, administrator and assigns. This Agreement and any of the interests being acquired

hereunder may be assigned by Buyer only to a related entity of Buyer, with Seller not bound by such assignment unless and until a copy thereof is received by Seller.

22. **Time.** Time is of the essence of this Agreement and each and every provision hereof. Any extension of time granted for the performance of any duty under this Agreement shall not be considered an extension of time for the performance of any other duty under this Agreement.

23. **Time Periods.** In the event the time for performance of any obligation hereunder, or any time period hereunder, expires on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next day that is not a Saturday, Sunday or legal holiday. In computing any period of time provided for in this Agreement, or provided for by my applicable statute, the day of the act, event or default from which the designated period begins to run shall not be included. The last day of the period of time shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the time period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday.

24. **Incorporation of Exhibits by Reference.** All exhibits referred to herein and/or attached to this Agreement are hereby deemed to be incorporated into this Agreement by reference as though set forth in full, and unless the context otherwise expressly requires, references to "this Agreement" shall also include all such exhibits; provided, however, any provisions of this Agreement which are inconsistent with any provisions contained in such exhibits shall take precedence over the provisions contained in the exhibits.

25. **Integration Clause; Oral Modification.** This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and all agreements entered into prior hereto are revoked and superseded by this Agreement, and no representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein or in other contemporaneous written agreements. This Agreement may not be changed, modified or rescinded except in writing signed by all Parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

26. **Captions.** Captions and section headings used herein are for convenience only and are not a part of this Agreement and shall not be deemed to limit or alter any provision hereof and shall not be deemed relevant in construing this Agreement.

27. **Choice of Law, Venue and Attorneys' Fees.** The terms and provisions of this Agreement represent the result of negotiations between the Parties, each of which has had the opportunity to consult with counsel of their own choosing and/or has been represented by counsel of their own choosing, and none of whom has acted under any duress or compulsion, whether economic or otherwise. Consequently, the Parties agree the terms and provisions of this Agreement shall be construed according to their usual and customary meanings, and the Parties each hereby waive the application of any rule of law (common law or otherwise) that ambiguous

or conflicting terms be resolved against the Party who prepared, or whose attorney prepared, the executed Agreement or any earlier draft of same. The terms of this Section 27 shall survive the expiration or earlier termination of this Agreement.

28. **Terminology.** To the extent permitted by the context in which used, (a) words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa, and (b) references to “persons” or “parties” in this Agreement shall be deemed to refer to natural persons, corporations, general partnerships, limited partnerships, trusts and all other entities.

29. **Fair Interpretation.** The terms and provisions of this Agreement represent the result of negotiations between the Parties, each of which has had the opportunity to consult with counsel of their own choosing and/or has been represented by counsel of their own choosing, and none of whom has acted under any duress or compulsion, whether economic or otherwise. Consequently, the Parties agree the terms and provisions of this Agreement shall be construed according to their usual and customary meanings, and the Parties each hereby waive the application of any rule of law (common law or otherwise) that ambiguous or conflicting terms be resolved against the Party who prepared, or whose attorney prepared, the executed Agreement or any earlier draft of same. The terms of this Section 29 shall survive the expiration or earlier termination of this Agreement.

30. **Waiver of Jury Trial.** UNLESS EXPRESSLY PROHIBITED BY LAW, BUYER AND SELLER KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY AND ALL ACTIONS OR OTHER LEGAL PROCEEDINGS AGAINST THE OTHER PARTY, ARISING OUT OF OR RELATING TO THIS RELEASE AND/OR THE TRANSACTIONS IT CONTEMPLATES, AND AGREES THAT ANY AND ALL ACTIONS OR OTHER LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS RELEASE, THE TRANSACTIONS IT CONTEMPLATES, AND/OR THE WORK PERFORMED PURSUANT TO THIS RELEASE SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THIS WAIVER APPLIES TO ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COMPETENT COUNSEL OR HAS HAD THE OPPORTUNITY TO CONSULT COMPETENT COUNSEL.

31. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement, binding on the Parties. Further this Agreement may be executed and delivered by electronic transmission. A manually signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

32. **Survival Clause**. All provisions in this Agreement that logically ought to survive the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement. This includes by way of example: all provisions imposing obligations that will not be triggered until the Agreement is terminated, all indemnification provisions; all limitation of remedies and damages provisions; all provisions waiving claims; and all provisions relieving any Party of liability for actions taken. The fact that certain provisions in this Agreement expressly state that such provisions shall survive the expiration or termination of this Agreement shall not be construed as limiting the application of the Survival Clause set forth in this Section 32 to other provisions in the Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES APPEAR ON FOLLOWING PAGES]**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed in the manner appropriate for each, as of the dates set forth below.

**“SELLER”**

<p>CHEYENNE VALLEY LLC, A Nevada limited liability company By: EJM Tri-State Properties II LLC, a Delaware limited liability company, its Member BY: EJM Development Co., A California Limited Partnership, a California limited partnership, its Manager By: EJM Operating Co., A Delaware Limited Liability Company, a Delaware limited liability company, its Managing General Partner</p> <p>By: _____ (Signature) Name: _____ (Printed Name) Its: _____</p>	<p>OXNARD COMMERCEPLEX LLC, A Delaware limited liability company By: EJM Tri-State Properties II LLC, a Delaware limited liability company, its Member BY: EJM Development Co., A California Limited Partnership, a California limited partnership, its Manager By: EJM Operating Co., A Delaware Limited Liability Company, a Delaware limited liability company, its Managing General Partner</p> <p>By: _____ (Signature) Name: _____ (Printed Name) Its: _____</p>
--	--

State of California

County of Los Angeles

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Notary Public, personally appeared who proved to me on the basis of satisfactory evidence to  
be the person whose name is subscribed to me within this instrument entitled “Real Estate  
Purchase Agreement” and who acknowledged to me that she/he executed the same in her/his  
authorized capacity as the \_\_\_\_\_ for EJM Operating Co., A Delaware  
Limited Liability Company, a Delaware limited liability company, and that by her/his signatures  
on this instrument, the entities upon which she/he acted, executed this 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 \_\_\_\_\_



**BUYER”**

CITY OF GOODYEAR,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Julie Arendall  
Its: City Manager

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

Attest:

\_\_\_\_\_  
Darcie McCracken, City Clerk

Approved as to Form:

\_\_\_\_\_  
Roric Massey, City Attorney

Exhibit A  
(Legal Description)  
on following page

LEGAL DESCRIPTION

OVER A PORTION OF APN 500-10-718

A PORTION OF LOT 1 AIRPORT GATEWAY AT GOODYEAR, RECORDED BOOK 1011, PAGE 44, RECORDS OF MARICOPA COUNTY (MCR) AND A PORTION OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 4, FROM WHICH THE SOUTHWEST CORNER OF SAID SECTION 4, BEARS NORTH 89 DEGREES 16 MINUTES 24 SECONDS WEST, A DISTANCE OF 2,626.78 FEET;

THENCE UPON AND WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 4, NORTH 89 DEGREES 16 MINUTES 24 SECONDS WEST, A DISTANCE OF 25.00 FEET;

THENCE DEPARTING SAID SOUTH LINE, NORTH 00 DEGREES 40 MINUTES 09 SECONDS EAST, A DISTANCE OF 47.00 FEET TO A POINT ON THE EXISTING NORTH RIGHT OF WAY LINE OF WEST VAN BUREN STREET AND THE SOUTHEAST CORNER OF THE AFORESAID LOT 1, SAID POINT BEING THE POINT OF BEGINNING;

THENCE UPON AND WITH SAID NORTH RIGHT OF WAY LINE, NORTH 89 DEGREES 16 MINUTES 24 SECONDS WEST, A DISTANCE OF 36.00 FEET TO THE WESTERLY LINE OF THE EASTERLY STRIP OF THE AFORESAID LOT 1;

THENCE DEPARTING SAID NORTH RIGHT OF WAY LINE, UPON AND WITH THE AFORESAID WESTERLY LINE, NORTH 00 DEGREES 40 MINUTES 09 SECONDS EAST, A DISTANCE OF 814.67 FEET TO THE NORTHEAST CORNER OF THE CERTAIN PARCEL DESCRIBED IN INSTRUMENT NO. 1992-0011166, MCR;

THENCE DEPARTING SAID WESTERLY LINE AND PARCEL CORNER, SOUTH 89 DEGREES 16 MINUTES 24 SECONDS EAST, A DISTANCE OF 61.00 FEET TO THE EAST LINE OF THE AFORESAID LOT 1 AND BEING THE WEST RIGHT OF WAY LINE OF NORTH 143RD AVENUE;

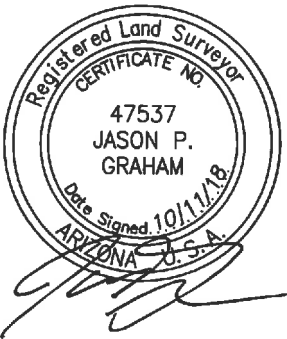
THENCE UPON AND WITH SAID EAST LINE AND THE WEST RIGHT OF WAY LINE, SOUTH 00 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 111.66 FEET;

THENCE SOUTH 04 DEGREES 11 MINUTES 55 SECONDS WEST, A DISTANCE OF 243.69 FEET;

THENCE SOUTH 00 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 205.70 FEET;

THENCE SOUTH 05 DEGREES 25 MINUTES 57 SECONDS WEST, A DISTANCE OF 120.42 FEET;

THENCE SOUTH 00 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 134.06 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 39,032 SQUARE FEET OR 0.896 ACRES OF LAND, MORE OR LESS.



**WEST CELEBRATE LIFE WAY**

PARCEL AREA:  
39,032 SF OR  
0.896 ACRES

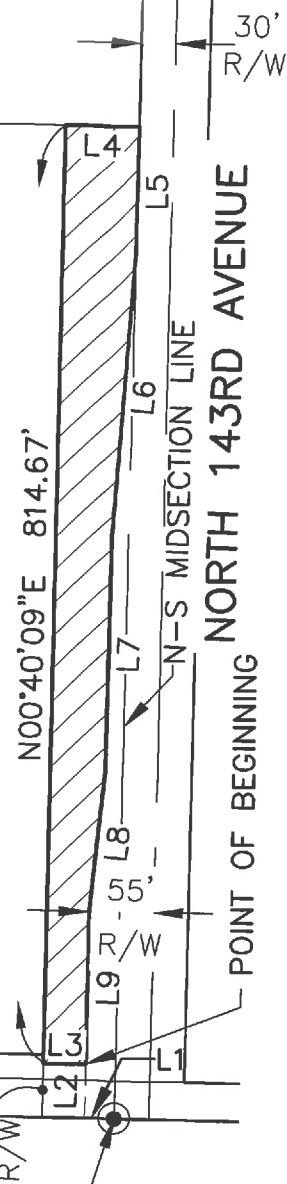
CHEYENNE VALLEY, LLC  
APN 500-10-718  
LOT 1

AIRPORT GATEWAY AT GOODYEAR  
BOOK 1011, PAGE 44, MCR



ADOT  
APN 500-04-002W  
INSTR 1992-0507107

ADOT  
APN 500-04-002U  
INSTR 1992-0011166



N89°16'24\"/>

**WEST VAN BUREN STREET**

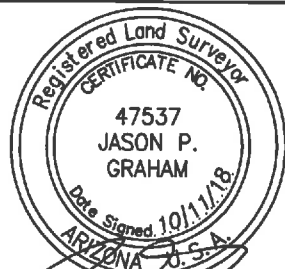
FD BRASS CAP IN HANDHOLE  
SW COR SEC 4  
T 1 N, R 1 W

FD BRASS CAP, FLUSH  
S 1/4 COR SEC 4  
T 1 N, R 1 W  
POINT OF COMMENCEMENT

THIS IS NOT A PROPERTY BOUNDARY SURVEY.



**Dibble  
Engineering**



Dibble Engineering  
Project No 1018006

**EXHIBIT "A"**

APN 500-010-718  
A PORTION OF THE SW QUARTER SECTION 4,  
T1N, R1W, GILA & SALT RIVER MERIDIAN,  
MARICOPA COUNTY, ARIZONA

DATE: SEPT 2018  
DRN: BAR  
CHK: CSD

PAGE 3 OF 4

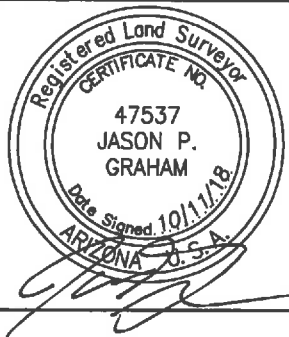
FILE:C:\Users\Beverlyross\AppData\Local\Temp\AcPublish\_12104\APN 500-10-718.dwg DATE:Oct, 11 2018 TIME: 10:02 am

LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N89°16'24"W	25.00'
L2	N00°40'09"E	47.00'
L3	N89°16'24"W	36.00'
L4	S89°16'24"E	61.00'
L5	S00°40'09"W	111.66'
L6	S04°11'55"W	243.69'
L7	S00°40'09"W	205.70'
L8	S05°25'57"W	120.42'
L9	S00°40'09"W	134.06'



**Dibble  
Engineering**

Dibble Engineering  
Project No 1018006



**EXHIBIT "A"**

APN 500-010-718  
A PORTION OF THE SW QUARTER SECTION 4,  
T1N, R1W, GILA & SALT RIVER MERIDIAN,  
MARICOPA COUNTY, ARIZONA

DATE: SEPT 2018  
DRN: BAR  
CHK: CSD

PAGE 4 OF 4

Exhibit B  
(Special Warranty Deed)  
on following page

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)

**SPECIAL WARRANTY DEED**

GRANTOR:

**CHEYENNE VALLEY LLC, a Nevada limited liability company, as to an undivided 54.11% interest, and OXNARD COMMERCEPLEX LLC, a Delaware limited liability company, as to an undivided 45.89% interest**

GRANTEE:

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

For the consideration of One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged **CHEYENNE VALLEY LLC, a Nevada limited liability company, as to an undivided 54.11% interest, and OXNARD COMMERCEPLEX LLC, a Delaware limited liability company, as to an undivided 45.89% interest**, (“Grantor”) does hereby grant and convey to the **CITY OF GOODYEAR, ARIZONA, an Arizona Municipal Corporation**, (“Grantee”), its successors and assigns, the following real property, together with all improvements thereon and all rights, privileges, easements, tenements, hereditaments and appurtenances pertaining thereto:

SEE EXHIBIT "A" and EXHIBIT B ATTACHED HERETO AND INCORPORATED  
HEREIN

SUBJECT ONLY TO current taxes and assessments, reservations in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, the Grantor hereby binds itself to warrant and defend the title as against all acts of the Grantor herein and no other.

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

*Signatures, Acknowledgments and Exhibits on Following Pages*



GRANTOR:

<p>CHEYENNE VALLEY LLC, A Nevada limited liability company, By: EJM Tri-State Properties II LLC, a Delaware limited liability company, its Member BY: EJM Development Co., A California Limited Partnership, a California limited partnership, its Manager By: EJM Operating Co., A Delaware Limited Liability Company, a Delaware limited liability company, its Managing General Partner By: _____ (Signature) Name: _____ (Printed Name) Its: _____</p>	<p>OXNARD COMMERCEPLEX, L.L.C. A Delaware limited liability company By: EJM Tri-State Properties II LLC, a Delaware limited liability company, its Member BY: EJM Development Co., A California Limited Partnership, a California limited partnership, its Manager By: EJM Operating Co., A Delaware Limited Liability Company, a Delaware limited liability company, its Managing General Partner By: _____ (Signature) Name: _____ (Printed Name) Its: _____</p>
--	--

State of California

County of Los Angeles

On \_\_\_\_\_, before me, \_\_\_\_\_  
Notary Public, personally appeared who proved to me on the basis of satisfactory evidence to  
be the person whose name is subscribed to me within this instrument entitled "Real Estate  
Purchase Agreement" and who acknowledged to me that she/he executed the same in her/his  
authorized capacity as the \_\_\_\_\_ for EJM Operating Co., A Delaware  
Limited Liability Company, a Delaware limited liability company, and that by her/his signatures  
on this instrument, the entities upon which she/he acted, executed this 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 \_\_\_\_\_

ACCEPTED by the CITY OF GOODYEAR, ARIZONA, an Arizona Municipal Corporation, the  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

Julie Arendall

Its: City Manager

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

State of Arizona     )  
                                  )ss.  
County of Maricopa   )

The foregoing instrument (Special Warranty Deed) was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Julie Arendall, as City Manager of the  
CITY OF GOODYEAR, ARIZONA, an Arizona municipal corporation, on behalf of said  
corporation.

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

*Exhibits on Following Pages*

Exhibit C  
Seller Materials

Exhibit D

Form of Amendment Agreement

**WHEN RECORDED, RETURN TO:**

EJM Development Co.  
7419 East Helm Drive  
Scottsdale, Arizona 85260  
Attention: Mr. Fred Stiles

---

**(FOR RECORDING INFORMATION ONLY)**

**AMENDMENT TO DECLARATIONS  
AND  
USE RESTRICTION, LANDSCAPING AND DRAINAGE AGREEMENT**

**THIS AMENDMENT TO DECLARATIONS AND USE RESTRICTION, LANDSCAPING AND DRAINAGE AGREEMENT (“Agreement”) is entered into effective \_\_\_\_\_, 201\_ (“Effective Date”), by and between THE CITY OF GOODYEAR, ARIZONA, a municipal corporation (“City”), CHEYENNE VALLEY LLC, a Nevada limited liability company (“Cheyenne”), OXNARD COMMERCEPLEX LLC, a Delaware limited liability company (“Oxnard”), 19<sup>TH</sup> AVENUE LLC, a Delaware limited liability company (“19<sup>th</sup> Avenue”), BULLARD II PROPERTIES I LLC, a Delaware limited liability company (“Bullard”) and FILLMORE 143 LLC, an Arizona limited liability company (“Fillmore”), with: (i) City, Cheyenne, Oxnard, 19<sup>th</sup> Avenue, Bullard and Fillmore sometimes referred to in the singular as a “Party” and in the plural as “Parties”; (ii) Cheyenne, Oxnard, 19<sup>th</sup> Avenue and Bullard sometimes referred to as “Cheyenne Parties”; and (iii) Cheyenne, Oxnard, 19<sup>th</sup> Avenue, Bullard and Fillmore sometimes referred to in the singular as “Owner Party” and in the plural as “Owner Parties”):**

**RECITALS:**

A. Cheyenne Parties entered into that Declaration of Covenants and Use Restrictions dated October 16, 2007, as recorded October 16, 2007, as Instrument No. 2007-1127441 (“Use Declaration”), with all recordation references in this Agreement referring to recordation in the Office of the Maricopa County Recorder, Arizona.

B. Cheyenne Parties and Fillmore entered into that Property Declaration (Traffic Signal) dated June 4, 2010, as recorded June 7, 2010, as Instrument No. 2010-0483060 (“Traffic Declaration”).

C. Cheyenne Parties and Fillmore entered into that Property Declaration (Landscaping and Signage Maintenance) dated June 4, 2010, as recorded June 7, 2010, as Instrument No. 2010-0483061 (“Landscaping Declaration”), providing, among other things, for the “Properties” to have certain obligations” with respect to “Common Benefit Landscaping”, as defined therein (“Common Benefit Landscaping”).

D. Cheyenne Parties and Fillmore own all properties (“Owner Properties”) subject to, benefitted and burdened by the Use Declaration, Traffic Declaration and Landscaping

Declaration (sometimes referred to herein as the “**Declarations**”), with right and power to amend each of the Declarations pursuant to the provisions thereof.

E. City is purchasing from Cheyenne and Oxnard (“**City Purchase**”) a portion of the Owner Properties: (1) in the City, fronting on the west side of 143<sup>rd</sup> Avenue from Van Buren Street north to a point south of Fillmore Street and more particularly described on **Exhibit A** (“**City Property**”); (2) subject to the Declarations; and (3) constituting that portion of the Owner Properties improved with Common Benefit Landscaping subject to the Landscaping Declaration.

F. Certain common drainage and water retention improvements providing for on-site retention and retention of drainage from 143<sup>rd</sup> Avenue (“**Common Drainage/Retention Improvements**”) were constructed on the City Property and certain of the Owner Properties adjacent to the north of the City Property, as described on **Exhibit B** attached hereto (“**Adjacent Owner Property**”) and owned by Cheyenne and Oxnard and their successors and/or assigns (“**Adjacent Property Owner**”), pursuant to those plans referenced on **Exhibit C** attached hereto (“**Existing Drainage/Retention Plans**”).

G. In connection with the City Purchase, City has requested, and Owner Parties are willing to agree to, amendment of the Declarations, provided City agrees to: (1) payment, maintenance and other obligations with respect to Common Benefit Landscaping; (2) certain use restrictions on the City Property; and (3) modification of the Common Drainage/Retention Improvements, on the terms and conditions set forth herein.

### **TERMS AND CONDITIONS**

**NOW, THEREFORE**, the Parties, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

1. **Recitals.** The Parties acknowledge and agree the **RECITALS** set forth above are: (a) true and correct; and (b) by this reference incorporated herein.

2. **Amendments of Declarations.** Owner Parties, as the current owners of all Owner Properties, hereby amend the Declarations as of the Effective Date as follows:

A. **Amendment to Use Declaration.** The Use Declaration is amended, pursuant to **Section 16** thereof, to delete the City Property from: (1) the “**Bullard Property**” (as defined therein); and (2) the force and effect of the Use Declaration.

B. **Amendment to Traffic Declaration.** The Traffic Declaration is amended, pursuant to **Section 14** thereof, to: (1) delete the City Property from: (a) the “**Cheyenne Property**” (as defined therein); and (b) the force and effect of the Traffic Declaration; and (2) adjust the “**Proportionate Share**” of “**Expenses**” payable by Cheyenne for the “**Traffic Signal**” (as those terms are defined therein) to exclude consideration (including area) of the City Property.

C. **Amendment to Landscaping Declaration.** The Landscaping Declaration is amended, pursuant to **Section 15** thereof, to: (1) confirm City as a Grantee of the City Property pursuant to **Section 7** thereof; (2) terminate all obligations of the City Property, other than for

Common Benefit Landscaping, with respect to Signage and Landscaping; (3) amend Section 3(b) thereof to allocate 100% of all Expenses for Common Benefit Landscaping to the City Property; and (4) incorporate the following:

(a) **Separation of Services.** City shall at its cost cause all water and electric lines, meters, drip/sprinkler and related systems ("**Facilities**") currently used for Common Benefit Landscaping to be separated from Facilities currently located on Adjacent Owner Property, such that the City Property has separate standalone Facilities for Common Benefit Landscaping ("**Separation**"). City shall complete the Separation: (i) within one (1) year following the Effective Date; (ii) in cooperation with and following written notice to Cheyenne; (iii) in a prompt, professional and lien-free manner; and (iv) without damage to Facilities, or interruption of watering for Landscaping, on the Adjacent Owner Property (with any such damage to be promptly repaired by City at its cost). Upon completion of the Separation, City shall give Maintenance Party written notice thereof, together with "as built" plans therefor.

(b) **Maintenance Prior to Separation.** During the period from the Effective Date until completion of the Separation, Maintenance of Common Benefit Landscaping shall be by Maintenance Party, with City to pay 100% of Expenses for such Maintenance within twenty (20) days following receipt of invoices therefor.

(c) **Maintenance after Separation.** From and after the Separation, City shall be responsible for and shall at its cost perform all Maintenance, and pay all Expenses, of Common Benefit Landscaping to the same extent as if City was the Maintenance Party.

(d) **City Maintenance Failure.** In the event City shall default in its obligations with respect to Common Benefit Landscaping (including performance of Maintenance or payment of Expenses), Maintenance Party shall have the right (but not the obligation), in the event such default is not cured within twenty (20) days following written notice to City, to terminate City's right to perform Maintenance of Common Benefit Landscaping and thereafter perform such Maintenance, with City to then: (i) upon request, cooperate with Maintenance Party to the extent reasonably required for Maintenance Party to perform such Maintenance and process all Expenses therefor, including changing addresses for utility billings, and providing plans for and access to Facilities; and (ii) to pay all Expenses for such Maintenance in accordance with the Landscaping Declaration.

Capitalized terms in this Section 2.C. not otherwise defined in this Agreement shall have the same meanings, if any, as in the Landscaping Declaration. In the event and to the extent of any conflict between the provisions of this Section 2.C. and the provisions of the Landscaping Declaration, the provisions of this Section 2.C. shall control.

3. **Use Restriction.** The City Property shall: (a) not be used for any purposes other than for driveway and other improvements for a fire station or other City service and similar facilities ("**City Improvements**"), or Common Benefit Landscaping in accordance with the Landscaping Declaration (as amended by this Agreement); and (b) all portions of the City Property not from time-to-time improved with and used for City Improvements shall be improved with and maintained as Common Benefit Landscaping in accordance with the

Landscaping Declaration (as amended by this Agreement) The terms provided for in this Section 3 shall terminate without any further action from any of the Parties herein twenty (20) years from the Effective Date.

4. **Drainage/Retention Modifications.** The City and Adjacent Property Owner agree that, upon the first to occur of development of the City Property or Adjacent Owner Property, the Common Drainage/Retention Plans shall be revised, updated or replaced, and the Common Drainage/Retention Improvements shall be modified, to provide that: (a) each of the City Property and Adjacent Owner Property shall be responsible for accepting and retaining on-site all rainfall and precipitation onto such Property on a standalone basis; and (b) the City Property shall be solely responsible for accepting and retaining on-site all water runoff from the crown of 143<sup>rd</sup> Avenue adjacent to the City Property ("**Drainage/Retention Modifications**"). City and Adjacent Property Owner shall each cooperate with the other to effect Drainage/Retention Modifications, including taking such acts, executing such documents and providing such approvals, as shall be reasonably required for the Drainage/Retention Modifications, with: (a) City responsible at its cost for all Drainage/Retention Modifications to be made to the City Property; and (b) Adjacent Property Owner responsible at its cost for all Drainage/Retention Modifications to be made to the Adjacent Owner Property.

5. **Notices.** Notices pursuant to this Agreement shall be in writing and delivered by personal delivery, certified mail (return receipt requested with postage prepaid), or by reputable overnight courier (marked for next business day delivery), to the addresses for the Parties listed below their signatures, or such other address as a Party shall notify the other Parties in accordance with this Section and as set forth in a recorded notice of change of address referencing this Agreement. Notice shall be deemed given and received on the earlier of: (a) the date of actual receipt, (b) the date of delivery or refusal, if hand-delivered or sent by overnight courier; or (c) three (3) days after the date of mailing, if mailed within the continental United States.

6. **Enforcement; Legal Fees/Costs.** In the event of a violation of this Agreement, any Party may pursue any remedy or enforcement action available at law or in equity, including injunctive relief. In such event, the prevailing Party in any such action shall be entitled to recover from its or their reasonable costs and attorneys' fees, as set by the Court, from the non-prevailing Party.

7. **Successors; Assigns.** All provisions of this Agreement shall: (a) inure to the benefit of and be binding upon the Parties and their respective successors in interest and assigns; and (b) be deemed to run with the land. The provisions of Sections 2, 3 and 4 shall be deemed to benefit each of the Owner Properties, and to burden the City Property.

8. **Amendment.** This Agreement shall be amended only upon recordation of written document duly executed, acknowledged by the then owners of the Owner Properties (including the City Property).

9. **Waiver.** No waiver of, acquiescence in, or consent to any breach of any provision of this Agreement shall be construed as, or constitute, a waiver of, acquiescence in, or



consent to any other, further, or succeeding breach of the same or any other provision of this Agreement.

10. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Arizona.

11. **References.** Each of the terms “include,” “includes” or “including” shall be deemed to be followed by the words “without limitation.”

12. **Counterparts.** This Agreement may be executed in counterparts.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;**

**SIGNATURES APPEAR ON FOLLOWING PAGES]**

IN WITNESS WHEREOF, this Agreement has been entered into as of the Effective Date.

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

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

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who acknowledged herself/himself to be the \_\_\_\_\_ of **CITY OF GOODYEAR, ARIZONA**, a municipal corporation, and that she/he, as such officer, being authorized so to do, executed the foregoing instrument on behalf of the City for the purposes therein contained.

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

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

My commission expires:

\_\_\_\_\_

**CHEYENNE:**

**CHEYENNE VALLEY LLC**, a Nevada limited liability company

By: EJM Tri-State Properties II LLC, a Delaware limited liability company, its Member

By: EJM Development Co., A California Limited Partnership, a California limited partnership, its Member

By: EJM Operating Co., A Delaware Limited Liability Company, a Delaware limited liability company, its Managing General Partner

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

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

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

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

**OXNARD:**

**OXNARD COMMERCEPLEX LLC**, a Delaware limited liability company

By: EJM Tri-State Properties LLC, a Delaware limited liability company, its Member

By: EJM Development Co., A California Limited Partnership, a California limited partnership, its Member

By: EJM Operating Co., A Delaware Limited Liability Company, a Delaware limited liability company, its Managing General Partner

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

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

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

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

**19<sup>TH</sup> AVENUE:**

**19<sup>TH</sup> AVENUE LLC**, a Delaware limited liability company

By: EJM Tri-State Properties II LLC, a Delaware limited liability company, its Member

By: EJM Development Co., A California Limited Partnership, a California limited partnership, its Member

By: EJM Operating Co., A Delaware Limited Liability Company, a Delaware limited liability company, its Managing General Partner

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

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

By: Pinnacle Valley LLC, a Delaware limited liability company, its Member

By: EJM Development Co., A California Limited Partnership, a California limited partnership, its Member

By: EJM Operating Co., A Delaware Limited Liability Company, a Delaware limited liability company, its Managing General Partner

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

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

**BULLARD:**

**BULLARD II PROPERTIES I LLC**, a Delaware limited liability company

By: EJM Tri-State Properties LLC, a Delaware limited liability company, its Member

By: EJM Development Co., A California Limited Partnership, a California limited partnership, its Member

By: EJM Operating Co., A Delaware Limited Liability Company, a Delaware limited liability company, its Managing General Partner

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

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

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA         )  
  ) ss.  
COUNTY OF LOS ANGELES     )

On October \_\_\_\_, 201\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose names are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the persons, 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: \_\_\_\_\_

**FILLMORE:**

**FILLMORE 143 LLC**, an Arizona limited liability company

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

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

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of **FILLMORE 143, LLC**, an Arizona limited liability company, and that he, as such officer, being authorized so to do, executed the foregoing instrument on behalf of the company for the purposes therein contained.

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

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

My commission expires:

\_\_\_\_\_

**Exhibit A**

**Description of City Property**

**Exhibit B**

**Description of Adjacent Owner Property**



## Exhibit C

### Description of Existing Drainage/Retention Plans

Offsite Grading and Drainage Plans for Fillmore St and 143<sup>rd</sup> Ave Improvements Airport Gateway at Goodyear (sheets 1-10) dated January 14, 2008, as prepared by Kimley-Horn and Associates, Inc., for its Project No. 191382000.

Exhibit E

Form of Owner's Affidavit

FIRST AMERICAN TITLE INSURANCE COMPANY

Commercial Owner's Affidavit

(Escrow No. [Insert Escrow Number])

The undersigned affiant ("**Affiant**") first being sworn, deposes and says:

1. That Affiant is the owner of certain real property in the State of Arizona described on **Exhibit A** attached hereto and made a part hereof (the "**Property**"), which is the subject of First American Title Insurance Company ("**FATCO**") Escrow No. [Insert Escrow Number] ("**Escrow**").
2. That Affiant provides this Affidavit to FATCO for use in connection with the Escrow and issuance of any policy of title insurance in connection therewith.
3. That: (a) Affiant is not a party to any agreement for any, and to Affiant's actual knowledge there are no: (i) construction, repairs, alterations, improvements made, ordered or contracted to be made on or to the Property; (ii) materials ordered for attachment to or use on the Property within the last 150 days which have not been paid for; or (iii) fixtures attached to the Property which have not been paid for in full; and (b) Affiant does not have any actual knowledge of any outstanding or disputed claims for any such work or item involving the Property, except:  

---

That the work of improvement, if any:

- Started on \_\_\_\_\_
- Was completed on \_\_\_\_\_
- Will be completed on \_\_\_\_\_

4. That: (a) to Affiant's actual knowledge there has been no work done on the Property within the last 150 days; and (b) Affiant has not received actual notice of any work to be done, by the city in which the Property is located, or at its direction, including but not limited to the

installation of water and sewer lines, or for improvements such as paving or repaving of streets or alleys, or the installation of curbs or sidewalks.

5. That Affiant is not a party to any, and to Affiant's actual knowledge there are no outstanding unrecorded leases or agreement affecting the Property. To Affiant's actual knowledge, except for matters as referenced in Schedule B Part Two of FATCO Commitment for Title Insurance No. [Insert Commitment Number] dated [Insert Commitment Date] as and if amended ("Commitment"), no one is in possession of or has access to the Property other than: **(enter N/A if such is true)**

the undersigned

tenants based on month-to-month rental agreements

lessees based on existing leases, copies of which are attached hereto

\_\_\_\_\_

6. That Affiant is not a party to any, and to Affiant's actual knowledge there are no, outstanding rights of first refusal or options to purchase all of any part of the Property except:

\_\_\_\_\_  
\_\_\_\_\_

7. That: (a) to Affiant's actual knowledge, there are no unpaid real estate taxes or assessments except as shown on the current tax roll for the Property; and (b) Affiant has not received any supplemental tax bill which is unpaid.
8. That no actions in bankruptcy have been filed by or against the Affiant in any federal court or other court of competent jurisdiction.
9. That: (a) there are no matters pending against the Affiant that could give rise to a lien that would attach to the Property between the most recent effective date of the Commitment and the recording of the interest in the Property to be insured under the Escrow; and (b) other than matters of record as of the date hereof, Affiant has not and will not execute any instrument that would adversely affect the title of interest in the Property to be so insured.
10. That this Affidavit is given for the purpose of inducing FATCO and/or its agent to issue its policies of title insurance pursuant to the Escrow which may provide coverage as the matters listed above. Affiant acknowledges it has read the foregoing and fully understands the legal aspects of any misrepresentation and/or untrue statements made herein.

DATED: \_\_\_\_\_, 201\_.

**[Insert Seller name, signature block and notarial acknowledgment]**