

WHEN RECORDED, RETURN TO:

City of Goodyear, Arizona
Office of the City Clerk
190 North Litchfield Rd.
Goodyear, Arizona 85338

FOURTH AMENDMENT TO
AMENDED & RESTATED DEVELOPMENT AGREEMENT FOR PRADERA

This Fourth Amendment to Amended & Restated Development Agreement for Pradera (the “Fourth Amendment”) is entered into this ____ day of October, 2015, by and between Pradera Partners 160, LLC, a Washington limited liability company, and the City of Goodyear, an Arizona municipal corporation. The Owner and the City are hereinafter sometimes referred to hereinafter individually as the “Party” and collectively as the “Parties.”

RECITALS

A. WHEREAS, Owner and the City entered into that certain Amended & Restated Development Agreement for Pradera dated July 10, 2013 recorded in the official records of Maricopa County, Arizona as Record No. 2013 0631560 (“Pradera Amended & Restated Development Agreement”), which sets forth certain obligations and commitments of the Parties relative to the development of approximately 160 acres generally located at the northeast corner of Citrus Road and Lower Buckeye Road within the City of Goodyear, as more specifically described in Exhibit A, attached hereto (the “Property”).

B. WHEREAS, the Property is located within the West Goodyear Central Planning Area (“WGCPA”).

C. WHEREAS, Owner was and is a member of a group of owners of properties in the WGCPA (“WGCPA Properties”) who have been working with the City since 2005 to facilitate development in the WGCPA. The members of this group are known as “IDG Members” as that term is defined in the Pradera Amended & Restated Development Agreement, paragraph 2.4.

D. WHEREAS, the City and certain of the IDG Members, including Owner, have entered into amended and restated development agreements, one of the purposes of which was to facilitate the timely and orderly development of the WGCPA Properties.

E. WHEREAS, the Pradera Amended & Restated Development Agreement included a deadline for the recordation of the existing final plat for the Property.

F. WHEREAS, Owner and City entered into that certain First Amendment to the Amended & Restated Development Agreement dated December 3, 2013, recorded in the official records of Maricopa County, Arizona as record 2013 066174 (the “First Amendment”), which

amended terms related to Owner's obligations with respect to cost recovery payments for the construction of regional water and sewer lines that benefitted multiple properties within the WGCPA.

G. WHEREAS, Owner and the City entered into that certain Second Amendment to the Amended & Restated Development Agreement for Pradera dated May 19, 2014 recorded in the official records of Maricopa County, Arizona as Record No. 2014 0345308 (the "Second Amendment"), which, amended terms related to the deadline for recording existing approved final plats for the Property.

H. WHEREAS, Owner and the City entered into that certain Third Amendment to the Amended & Restated Development Agreement for Pradera dated June 16, 2015 recorded in the official records of Maricopa County, Arizona as Record No. 2015 0456921 (the "Third Amendment"), which, amended terms related to the deadline for recording existing approved final plats for the Property

I. WHEREAS, under the terms of the Pradera Amended & Restated Development Agreement, as amended, the existing approved final plat for Pradera will terminate if it is not recorded by October 31, 2015.

J. WHEREAS, City staff and certain West Goodyear Properties' owners, developers and/or their representatives are working on a new development strategy for the WGCPA Properties that is intended to spur the development of the WGCPA Properties.

K. WHEREAS, the outline of the strategy has been presented to Council during a work session, and the intent of the Parties is to present amended and restated development agreements for the WGCPA Properties to Council in January 2016.

L. WHEREAS, any amended and restated development agreement for Pradera will include an extension of time for the recordation of currently existing approved final plat for Pradera.

M. WHEREAS, in the interim and in order to allow City staff and West Goodyear Properties' owners, developers, and/or their representatives to work through the details of the amended and restated development agreements for the WGCPA Properties, the Parties desire to amend the Pradera Amended & Restated Development Agreement to extend the deadline for recording the currently existing approved final plat for Pradera to January 31, 2016.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Parties hereby adopt and incorporate, as if fully set forth herein, the Recitals stated above.

2. Definitions. Except as otherwise expressly provided in this Fourth Amendment, capitalized terms in this Fourth Amendment shall have the same meaning as those terms are defined in the Pradera Amended & Restated Development Agreement and amendments thereto.

3. Effective Date. The execution of this Fourth Amendment by the Parties and the approval of this Agreement by Resolution of the Goodyear City Council are conditions precedent to this Fourth Amendment becoming effective. This Fourth Amendment shall take effect upon the later of (i) the full execution of this Fourth Amendment by the Parties and (ii) the date the Resolution approving this Fourth Amendment becomes effective.

4. Existing Final Plats: Section 12.2 of the Agreement is hereby deleted and replaced with the following

12.2. Existing Final Plat. On August 25, 2008, the Goodyear City Council approved a final plat subdividing the Property as set forth in Recital N in the Pradera Amended & Restated Development Agreement (referred to as "Existing Final Plat"). With respect to the Existing Final Plat, the Parties agree that the approval of the Existing Final Plat shall automatically terminate on January 31, 2016, without further action on the part of the City and may not be recorded thereafter unless the Existing Final Plat is recorded by January 31, 2016. The Parties further agree that unless the Existing Final Plat has been recorded by January 31, 2016, the Preliminary Plat approved on July 10, 2006, shall automatically expire without further action on the part of the City. Prior to recording the Existing Final Plat, but no sooner than thirty (30) days prior to recordation, Owner shall provide the City Engineer an updated Title Report for the Property.

5. Impact of Recordation of Existing Final Plats: Section 12.5 of the Agreement is hereby deleted and replaced with the following:

12.5 Impact of Recordation of Existing Final Plat. The City recognizes and acknowledges that the Property has a current City Council approved final plat, and so long as the Existing Final Plat is recorded on or before January 31, 2016, as provided herein, the City will afford the Owner the same rights in said final plat that it provides to other similarly situated holders of recorded City Council approved final plats, including the City's intent to provide water source and water storage capacity along with wastewater treatment capacity and fire and EMT facilities for the platted lots pursuant to the City Codes, ordinance, policies, procedures, and budget constraints in place now or in the future. This does not restrict, in any way, the City's rights to take any other actions that are required by, allowed by and/or that are consistent with: the terms and conditions of the rezoning for the property; the terms of approval of the rezoning for the property; the terms of approval for the final plat; the terms of this Agreement; the applicable Development Regulations; and with applicable state and federal laws, including,

but not limited to the adoption of a moratorium on construction and/or land development as provided under Arizona State Statutes.

6. Entire Agreement. This Fourth Amendment and the exhibits referred to herein and attached hereto, along with the unchanged provisions in the Pradera Amended & Restated Development Agreement and the unchanged provisions in the First Amendment, the Second Amendment, and the Third Amendment constitute the sole and entire agreement between the Parties with respect to the matters covered herein and supersede any prior or contemporaneous agreements, understandings or undertakings, written or oral, by or between the Parties and/or by or between any of the Parties and any third parties. This Fourth Amendment shall be deemed to amend and supersede the Pradera Amended & Restated Development Agreement, the First Amendment, the Second Amendment, and the Third Amendment with respect to all terms, provisions and changes set forth in this Fourth Amendment. To the extent of any conflict between this Fourth Amendment, the Pradera Amended & Restated Development Agreement, the First Amendment, the Second Amendment, and/or the Third Amendment, this Fourth Amendment shall control. Except as amended by this Fourth Amendment, all terms, provisions and conditions of the Pradera Amended & Restated Development Agreement, the First Amendment, the Second Amendment, and the Third Amendment shall remain in full force and effect and shall apply to this Fourth Amendment.

7. Amendment. The Pradera Amended & Restated Development Agreement, the First Amendment, the Second Amendment, the Third Amendment, and this Fourth Amendment thereto, may not be changed modified or rescinded except in writing as agreed to and signed by the Parties hereto and approved by the Mayor and Council of the City of Goodyear.

8. Fair Interpretation. The terms and provisions of this Fourth Amendment represent the result of negotiations between the Parties, each of which has been represented 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 Fourth Amendment 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 Fourth Amendment or any earlier draft of same.

9. Severability. Any provision of this Fourth Amendment that is declared void or unenforceable shall be severed from this Fourth Amendment and the remainder of this Fourth Amendment shall otherwise remain in full force and effect.

10. Representations and Warranties of Owner. As of the date of Owner's execution of this Fourth Amendment, Owner represents and warrants the following:

10.1. Ownership. Owner is the owner of the Property and has the full right and authority to submit its interest in the Property to the obligations hereunder.

10.2. Authorization. Owner is a Washington limited liability company, in good standing; Owner (including the person signing for Owner) has the authority and the right to enter

into this Fourth Amendment as authorized by the manager of Owner, and Owner is not prohibited from executing this Fourth Amendment by any law, rule, regulation, instrument, agreement, order, or judgment.

10.3. Due Diligence. Owner reviewed this Fourth Amendment and reached its own conclusions as to the binding and enforceable nature thereof and all of the provisions contained therein, and has not relied on any representations or warranties of City other than those expressly provided in this Fourth Amendment.

11. Representations and Warranties of City. As of the date of the City's execution of this Fourth Amendment, the City represents and warrants the following:

11.1. Approval. City has approved the preparation and execution of this Fourth Amendment at a duly held and noticed public meeting by its Mayor and City Council, at which a quorum was duly present, and has authorized the execution hereof.

11.2. Authorization. City agrees that City's execution of this Fourth Amendment and the performance of its obligations hereunder will not violate the terms of its charter or any City ordinance and all hearings, ordinances, warrants, and approvals prerequisite to the execution and delivery of this Fourth Amendment and all hearing requirements under applicable laws have been fully complied with including, but not limited to, state open meeting laws, and the persons executing this Fourth Amendment on behalf of City have been duly authorized to do so.

IN WITNESS WHEREOF, and agreeing to be bound by the terms of this Fourth Amendment, the Parties have caused this Fourth Amendment to be executed by their duly appointed representatives.

OWNER:

PRADERA PARTNERS 160, LLC,
a Washington limited liability company

By: Crescent Capital X, LLC,
a Washington limited liability company
Its Manager

By: _____
Jeffery D. Gow, Manager

Signatures, Acknowledgements and Exhibits Continued on Following Page

STATE OF WASHINGTON)
) ss.
County of King)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by Jeffery D Gow, who, upon oath, acknowledged himself to be the Manager of Crescent Capital X, L.L.C., a Washington limited liability company, the Manager of PRADERA PARTNERS 160, LLC, a Washington limited liability company, and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf PRADERA PARTNERS 160, LLC.

Notary Public

CITY:

CITY OF GOODYEAR, an Arizona municipal corporation

By: _____
Brian Dalke
Its: City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Brian Dalke, the City Manager of the CITY OF GOODYEAR, an Arizona municipal corporation, for and on behalf thereof.

Notary Public

Acknowledgements and Exhibits Continued on Following Pages

ATTEST

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibits Continued on Following Pages

EXHIBIT A

Legal Description of Property

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 15;

THENCE SOUTH 89 DEGREES 55 MINUTES 30 SECONDS EAST ALONG THE MONUMENT LINE OF LOWER BUCKEYE ROAD, A DISTANCE OF 2641.59 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 15;

THENCE NORTH 00 DEGREES 00 MINUTES 59 SECONDS WEST ALONG THE NORTH-SOUTH CENTER LINE OF SAID SECTION 15, A DISTANCE OF 33.00 FEET TO THE SOUTHWEST CORNER OF THE TRACT HEREIN DESCRIBED AND THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTH-SOUTH CENTER LINE OF SAID SECTION 15, NORTH 00 DEGREES 00 MINUTES 59 SECONDS WEST, A DISTANCE OF 2613.86 FEET TO THE CENTER OF SAID SECTION 15 AND THE NORTHWEST CORNER OF THE TRACT HEREIN DESCRIBED;

THENCE SOUTH 89 DEGREES 58 MINUTES 29 SECONDS EAST ALONG THE EAST-WEST CENTER LINE OF SAID SECTION 15, A DISTANCE OF 2605.28 FEET TO THE NORTHEAST CORNER OF THE TRACT HEREIN DESCRIBED, SAID POINT ALSO BEING ON THE WEST RIGHT-OF-WAY LINE OF CITRUS ROAD;

THENCE CONTINUING ALONG SAID WEST RIGHT-OF-WAY LINE OF CITRUS ROAD SOUTH 00 DEGREES 00 MINUTES 16 SECONDS WEST, A DISTANCE OF 2569.25 FEET TO AN ANGLE POINT;

THENCE LEAVING SAID WEST RIGHT-OF-WAY LINE OF CITRUS ROAD SOUTH 45 DEGREES 02 MINUTES 28 SECONDS WEST, A DISTANCE OF 56.53 FEET TO AN ANGLE POINT, SAID POINT ALSO BEING ON THE NORTH RIGHT-OF-WAY LINE OF LOWER BUCKEYE ROAD;

THENCE CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE OF LOWER BUCKEYE ROAD NORTH 89 DEGREES 55 MINUTES 19 SECONDS WEST A DISTANCE OF 579.95 FEET TO AN ANGLE POINT;

THENCE CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE OF LOWER BUCKEYE ROAD SOUTH 00 DEGREES 04 MINUTES 41 SECONDS WEST A DISTANCE OF 7.00 FEET TO AN ANGLE POINT;

THENCE CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE OF SAID LOWER BUCKEYE ROAD, NORTH 89 DEGREES 55 MINUTES 19 SECONDS WEST, A DISTANCE OF 1984.37 FEET TO THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT AND THE TRUE POINT OF BEGINNING.