

WHEN RECORDED, RETURN TO:

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

FOURTH AMENDMENT TO
AMENDED & RESTATED DEVELOPMENT AGREEMENT FOR AMBER MEADOWS

This Fourth Amendment to Amended & Restated Development Agreement for Amber Meadows (the "Fourth Amendment") is entered into this ____ day of October, 2015, by and between Hinton Amber Meadows, LLP, an Arizona limited liability partnership and the City of Goodyear, an Arizona municipal corporation. The Owner and the City are hereinafter sometimes referred to individually as the "Party" and collectively as the "Parties."

RECITALS

A. WHEREAS, Pacific Capital Meadows, L.L.C. ("Pacific Capital") and the City entered into that certain Amended & Restated Development Agreement for Amber Meadows dated June 26, 2013, recorded in the official records of Maricopa County, Arizona as Record No. 2013 0595601 ("Amber Meadows Amended & Restated Development Agreement"), which sets forth certain obligations and commitments of the Parties relative to the development of approximately 108.5 acres generally located at the southeast corner of Van Buren Road and Perryville Road within the City of Goodyear, as more specifically described in the Exhibit attached hereto (the "Property").

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

C. WHEREAS, Pacific Capital was 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 Amber Meadows Amended & Restated Development Agreement, paragraph 2.4.

D. WHEREAS, the City and certain of the IDG Members, including Pacific Capital 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, Hinton Amber Meadows, LLP, an Arizona limited partnership, having acquired the Property, succeeded to the interests of Pacific Capital in the Property and in the Amber Meadows Amended & Restated Development Agreement, and has become an "Owner" as that term is defined in the Amber Meadows Amended & Restated Development Agreement.

F. WHEREAS, the Amber Meadows Amended & Restated Development Agreement included a deadline for the recordation of the existing final plat for the Property.

G. WHEREAS, Owner and the City entered into that certain First Amendment to the Amended & Restated Development Agreement for Amber Meadows dated January 16, 2014, recorded in the official records of Maricopa County, Arizona as Record No. 2014 0040954 (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.

H. WHEREAS, Owner and the City entered into that certain Second Amendment to the Amended & Restated Development Agreement for Amber Meadows dated May 19, 2014, recorded in the official records of Maricopa County, Arizona as Record No. 2014 0335363 (the "Second Amendment"), which amended terms related to the deadline for recording the existing approved final plat for the Property.

I. WHEREAS, Owner and the City entered into that certain Third Amendment to the Amended & Restated Development Agreement for Amber Meadows dated June 12, 2015, recorded in the official records of Maricopa County, Arizona as Record No. 20154 0457221 (the "Third Amendment"), which amended terms related to the deadline for recording the existing approved final plat for the Property.

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

K. 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.

L. 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.

M. WHEREAS, any amended and restated development agreement for Amber Meadows will include an extension of time for the recordation of the currently existing approved final plats for Amber Meadows.

N. 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 Amber Meadows Amended & Restated Development Agreement to extend the deadline for recording the currently existing approved final plat for Amber Meadows 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 Amber Meadows Amended & Restated Development Agreement and amendments thereto.

3. Effective Date. The execution of this Fourth Amendment by the Parties and the approval of this Fourth Amendment 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 Plats: On September 25, 2006, the Goodyear City Council approved a final plat subdividing the Property (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 November 14, 2005, 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 Amber Meadows Amended & Restated Development Agreement and the unchanged provisions in the First Amendment, Second Amendment, and 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 Amber Meadows 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 Amber Meadows 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 Amber Meadows 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 Amber Meadows 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 the 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 an Arizona limited liability partnership 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 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:

HINTON AMBER MEADOWS, LLP,
an Arizona limited liability partnership

By: Hinton Financial Services Inc.,
a Colorado corporation,
Its General Partner

By: _____
Brad Clough, Secretary

CANADA)
) ss.
Province of Alberta)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by Brad Clough, who, upon oath, acknowledged himself to be the Secretary of Hinton Financial Services, Inc., a Colorado corporation, the General Partner of HINTON AMBER MEADOWS, LLP, an Arizona limited liability partnership, and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf HINTON AMBER MEADOWS, LLP.

GIVEN at the City of Edmonton, in the Province of Alberta this ____ day of _____, 2015, under my hand and seal of office.

Signature

Name of Notary Public
A NOTARY PUBLIC IN AND FOR THE PROVINCE OF
ALBERTA

Signatures, Acknowledgements and Exhibits Continued on Following Pages

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 _____, the City Manager of the CITY OF GOODYEAR, an Arizona municipal corporation, for and on behalf thereof.

Notary Public

ATTEST

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit on Following Page

June 4, 2013

LEGAL DESCRIPTION FOR
AMBER MEADOWS
ANNEXATION PARCEL

That part of Lots 25 through 48 inclusive, White Tank Citrus Tract, Plat B, according to Book 21 of Maps, Page 28, Records of Maricopa County, Arizona, together with that portion of Jefferson Street abandoned by Road Abandonment (Road File No. 5120) as recorded in Document No. 2000-0024101, Maricopa County Records, together with that part of the Northwest Quarter of Section 10, Township 1 North, Range 2 West of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the Aluminum Cap Flush marking the West Quarter Corner of said Section 10, from which the Maricopa County Highway Department Brass Cap in handhole marking the Northwest Corner of said Section 10 bears North 00°16'35" East, a distance of 2,645.27 feet;

Thence South 89°46'45" East, along the South line of the Northwest Quarter of said Section 10, a distance of 43.00 feet to a point on a line which is parallel with and 43.00 feet Easterly, as measured at right angles, from the West line of the Northwest Quarter of said Section 10, and the True Point of Beginning;

Thence North 00°16'35" East, along said parallel line, a distance of 1,178.47 feet to a point on the Southerly right-of-way line of the Roosevelt Irrigation District Canal as depicted on the plat of said White Tank Citrus Tract, Plat B;

Thence North 64°05'34" East, along said Southerly right-of-way line, a distance of 2,898.04 feet to a point on the East line of the Northwest Quarter of said Section 10;

Thence South 00°15'41" West, along said East line, a distance of 2,454.71 feet to the chiseled "X" in a concrete ditch marking the Center of said Section 10;

Thence North 89°46'45" West, along the South line of the Northwest Quarter of said Section 10, a distance of 2,601.31 feet to the True Point of Beginning.

Containing 108.474 Acres, more or less.



Expires: 6/30/2013

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