

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 LA JOLLA VISTA

This Fourth Amendment to Amended & Restated Development Agreement for La Jolla Vista (the "Fourth Amendment") is entered into this ____ day of October, 2015, by and between Citrus & Lower Buckeye, LLC, an Arizona 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 La Jolla Vista dated June 26, 2013 recorded in the official records of Maricopa County, Arizona as Record No. 2013 0594314 ("La Jolla Vista Amended & Restated Development Agreement"), which sets forth certain obligations and commitments of the Parties relative to the development of approximately 198.5 acres generally located east of Citrus Road, North of West Lower Buckeye Road, and West of 173rd Avenue 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 La Jolla Vista 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 La Jolla Vista Amended & Restated Development Agreement included a deadline for the recordation of the existing final plats for the Property.

F. WHEREAS, Owner and City entered into that certain First Amendment to the Amended & Restated Development Agreement for La Jolla Vista (“First Amendment”) dated January 16, 2014, recorded in the official records of Maricopa County, Arizona as Record No. 2014 0040963, which amended terms related to Owner’s obligations with respect to the 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 La Jolla Vista dated May 19, 2014 recorded in the official records of Maricopa County, Arizona as Record No. 2014 0373259 (the “Second Amendment”), which, among other things, amended terms related to Owner’s obligations with respect 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 La Jolla Vista dated June 12, 2015 recorded in the official records of Maricopa County, Arizona as Record No. 2015 0457194 (the “Third Amendment”), which amended terms related to Owner’s obligations with respect to the deadline for recording existing approved final plats for the Property.

I. WHEREAS, under the terms of the La Jolla Vista Amended & Restated Development Agreement, as amended, the existing approved final plats will terminate if the La Jolla Vista Master Plat and at least one of the Parcel Plats that have been approved are 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 La Jolla Vista will include an extension of time for the recordation of currently existing approved final plats for La Jolla Vista.

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 La Jolla Vista Amended & Restated Development Agreement to extend the deadline for recording at least one of the approved Parcel Plats for La Jolla Vista 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 La Jolla Vista Amended & Restated Development Agreement and amendments thereto.

3. Effective Date. The execution of this Fourth Amendment by the Parties, the approval of this Fourth Amendment by Resolution of the Goodyear City Council, and the execution of an Existing Lender Consent, in the form attached hereto as Exhibit B, by the existing lender on the Property 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 execution and delivery of an Existing Lender Consent in the form attached hereto as Exhibit B by the existing lender on the Property and (iii) 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. City Council has previously approved five (5) final plats for the Property as set forth in Recital N of the La Jolla Vista Amended and Restated Development Agreement (collectively referred to as the "Existing Final Plats.") With respect to the Existing Final Plats, the Parties agree that the approval of all of the Existing Final Plats shall automatically terminate on January 31, 2016 without further action on the part of the City and none of the Existing Final Plats may be recorded thereafter unless the La Jolla Vista Master Plat and at least one of the Parcel Plats are recorded by January 31, 2016. The Parties further agree that the La Jolla Vista Master Plat shall be recorded prior to or concurrently with the recordation of any one of the four Parcel Plats. The Parties further agree that unless the La Jolla Vista Master Plat and at least one of the four Parcel Plats have been recorded by January 31, 2016, the Preliminary Plat approved on March 20, 2006 shall automatically expire without further action on the part of the City. Prior to recording each Existing Final Plat, but no sooner than thirty (30) days prior to recordation, Owner shall provide the City Engineer an updated Title Insurance Report for the Property

5. Impact of Recordation of Existing Final Plats: Section 12.6 of the Agreement is hereby deleted and replaced with the following:

12.6 Impact of Recordation of Existing Final Plats. The City recognizes and acknowledges that the Property has current City Council approved final plats, and so long as the Master Plat and at least one of the Parcel Plats are recorded on or before January 31, 2016, as provided herein, the City will afford the Owner the same rights in said final plats 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 La Jolla Vista 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 La Jolla Vista 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 La Jolla Vista 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 La Jolla Vista 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 La Jolla Vista 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 an Arizona 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:

CITRUS & LOWER BUCKEYE LLC, an Arizona limited liability company

By: Hinton Financial Services Inc., a Colorado corporation, its Manager

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 manager of CITRUS & LOWER BUCKEYE LLC, an Arizona limited liability company, and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf CITRUS & LOWER BUCKEYE LLC.

Signatures, Acknowledgements and Exhibits Continued on Following Pages

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

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 June,
2015, by _____, 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 on Following Pages

EXHIBIT A

Legal Description of Property

That part of the South Half of Section 14, Township 1 North, Range 2 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Beginning at the Maricopa County Aluminum Cap marking the South Quarter Corner of said Section 14;

Thence North $89^{\circ}45'07''$ West, along the South line of the Southwest Quarter of said Section 14, a distance of 2,646.05 feet to the Maricopa County Aluminum Cap in a pothole marking the Southwest Corner of said Section 14;

Thence North $00^{\circ}20'07''$ East, along the West line of the Southwest Quarter of said Section 14, a distance of 2,609.33 feet to a point on a line which is parallel with and 40.00 feet Southerly, as measured at right angles, from the North line of the Southwest Quarter of said Section 14;

Thence South $89^{\circ}41'47''$ East, along said parallel line, a distance of 2,644.21 feet to a point on the East line of the Southwest Quarter of said Section 14;

Thence South $00^{\circ}17'41''$ West, along said East line, a distance of 1,283.38 feet to the Northwest Corner of the Southwest Quarter of the Southeast Quarter of said Section 14;

Thence South $89^{\circ}44'17''$ East, along the North line of the Southwest Quarter of the Southeast Quarter of said Section 14, a distance of 1,321.85 feet to the Northeast Corner thereof;

Thence South $00^{\circ}14'38''$ West, along the East line of the Southwest Quarter of the Southeast Quarter of said Section 14, a distance of 1,322.85 feet to the Southeast Corner thereof;

Thence North $89^{\circ}45'39''$ West, along the South line of the Southeast Quarter of said Section 14, a distance of 1,323.03 feet to the Point of Beginning;

Containing 198.54 Acres, more or less.

Exhibit B

EXISTING LENDER CONSENT

The undersigned, J W Ventures, LLC, an Arizona limited liability company, as Beneficiary (“Existing Lender”) under that certain DEED OF TRUST by and between Citrus & Lower Buckeye, LLC, an Arizona limited liability company as Trustor, and First American Title Insurance Company, a California corporation, as Trustee, dated July 25, 2003 and recorded on July 25, 2003 at Document No. 20030991339 in the Official Records of Maricopa County, Arizona with respect to the real property that is the subject of that certain Amended & Restated Development Agreement by and between the City of Goodyear, an Arizona municipal corporation and Citrus & Lower Buckeye, LLC, an Arizona limited liability company approved by the Mayor and Council of the City of Goodyear by Resolution 13-1560, that certain First Amendment to Amended & Restated Development Agreement for La Jolla Vista by and between the City of Goodyear, an Arizona municipal corporation and Citrus & Lower Buckeye, LLC, an Arizona limited liability company approved by the Mayor and Council of the City of Goodyear by Resolution 13-1589 (the “First Amendment”), that certain Second Amendment to Amended & Restated Development Agreement for La Jolla Vista by and between the City of Goodyear, an Arizona municipal corporation and Citrus & Lower Buckeye, LLC, an Arizona limited liability company approved by the Mayor and Council of the City of Goodyear by Resolution 14-1629 (the “Second Amendment”), that certain Third Amendment to Amended & Restated Development Agreement for La Jolla Vista by and between the City of Goodyear, an Arizona municipal corporation and Citrus & Lower Buckeye, LLC, an Arizona limited liability company approved by the Mayor and Council of the City of Goodyear by Resolution 15-1708 (the “Third Amendment”) and that certain Fourth Amendment to Amended & Restated Development Agreement for La Jolla Vista by and between the City of Goodyear, an Arizona municipal corporation and Citrus & Lower Buckeye, LLC, an Arizona limited liability company (the “Third Amendment”) to which this Existing Lender Consent is attached (collectively the Development Agreement, the First Amendment, the Second Amendment, Third Amendment, and the Fourth Amendment are referred to as the “Agreement”), hereby: (i) consents to the Agreement; (ii) acknowledges that the Agreement shall bind that portion of the real property that is subject to the Deed of Trust and subject to the Agreement; (iii) approves the recordation of the Agreement; (iv) agrees to execute, acknowledge and deliver such additional documents and instruments reasonably required to consummate, evidence, or carry out the matters contemplated by the Agreement and this Existing Lender Consent; (vii) agrees that the Agreement shall continue in full force and effect in the event of foreclosure or trustee’s sale pursuant to such

