

WHEN RECORDED, RETURN TO:

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

FIRST AMENDMENT TO
SECOND AMENDED & RESTATED DEVELOPMENT AGREEMENT FOR PRADERA

This First Amendment to Second Amended & Restated Development Agreement for Pradera (the "First Amendment to 2nd ARDA") is entered into this ____ day of January, 2017, 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 Second Amended and Restated Development Agreement for Pradera dated April 27, 2016, recorded in the official records of Maricopa County, Arizona as Record No 2016-0290253 (the "2nd ARDA"), which, *inter alia*, superseded the First Amended and Restated Development Agreement for Pradera (and all five related Amendments) and stated new terms related to the development of the Property, legally described in Exhibit A attached hereto, as well as to the deadline for recording the existing approved final plat for the Property.

B. WHEREAS, on August 25, 2008 the Goodyear City Council approved a final plat for the Property.

C. WHEREAS, under the terms of the 2nd ARDA, the existing approved final plat will terminate if it is not recorded by January 24, 2017.

D. WHEREAS, City staff and certain West Goodyear Properties' owners (including this Property owner), developers and/or their representatives have developed a new infrastructure construction strategy for some of the WGCPA Properties that would install Regional Lines to these properties with the intent to spur the development of this Property and other WGCPA Properties.

E. WHEREAS, in the interim and in order to allow City staff, the owner of this Property and other West Goodyear Properties' owners, developers and/or their representatives to work through the details of a new Agreement with the City for the construction of certain identified Regional Water Delivery Lines and Regional Wastewater Trunk Lines, the Parties {00031503.DOCX / 2}

desire to amend the Pradera 2nd ARDA to extend the deadline for recording the currently existing approved final plat for Pradera for a period of the earlier to occur; (i) three months from January 24, 2017 to April 24, 2017 or (ii) upon the Council approval of any new Agreement that addresses the new terms regarding this Property's approved final plat.

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 First Amendment to 2nd ARDA, capitalized terms in this First Amendment to 2nd ARDA shall have the same meaning as those terms are defined in the 2nd ARDA.
3. Effective Date. The execution of this First Amendment to the 2nd ARDA by the Parties and the approval of this First Amendment to the 2nd ARDA by Resolution of the Goodyear City Council are conditions precedent to this First Amendment to the 2nd ARDA becoming effective. This First Amendment to the 2nd ARDA shall take effect upon the later of (i) the full execution of this First Amendment to the 2nd ARDA by the Parties; and (ii) the date the Resolution approving this First Amendment to the 2nd ARDA becomes effective.
4. Existing Final Plats: Section 12.4 of the 2nd ARDA is hereby deleted and replaced with the following:

12.4. 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 Second Amended & Restated Development Agreement for Pradera (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 April 24, 2017, without further action on the part of the City and may not be recorded thereafter unless the Existing Final Plat is recorded by April 24, 2017. The Parties further agree that unless the Existing Final Plat has been recorded by April 24, 2017, 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 Final Plats: Section 12.4.1 of the 2nd ARDA is hereby deleted and replaced with the following:

12.4.1. Impact of Recordation of Final Plats. 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 April 24, 2017, 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. Following the recordation of any other approved final plat subdividing all or part of the Property, 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, police 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 First Amendment to the 2nd ARDA and the exhibit(s) referred to herein and attached hereto, along with the unchanged provisions in the 2nd ARDA 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 First Amendment to the 2nd ARDA shall be deemed to amend and supersede the 2nd ARDA with respect to all terms, provisions and changes set forth in this First Amendment to the 2nd ARDA. To the extent of any conflict between this First Amendment to the 2nd ARDA and the 2nd ARDA, this First Amendment to the 2nd ARDA shall control. Except as amended by this First Amendment to the 2nd ARDA, all terms, provisions and conditions of the 2nd ARDA shall remain in full force and effect and shall apply to this First Amendment to the 2nd ARDA.

7. Amendment. The 2nd ARDA and this First Amendment to the 2nd ARDA 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 First Amendment to the 2nd ARDA 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 First Amendment to the 2nd ARDA 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 First Amendment to the 2nd ARDA or any earlier draft of same.

9. Severability. Any provision of this First Amendment to the 2nd ARDA that is declared void or unenforceable shall be severed from this First Amendment to the 2nd ARDA and the remainder of this First Amendment to the 2nd ARDA shall otherwise remain in full force and effect.

10. Representations and Warranties of Owner. As of the date of the execution of this First Amendment to the 2nd ARDA, 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 First Amendment to the 2nd ARDA as authorized by the manager of Owner, and Owner is not prohibited from executing this First Amendment to the 2nd ARDA by any law, rule, regulation, instrument, agreement, order, or judgment.

10.3. Due Diligence. Owner reviewed this First Amendment to the 2nd ARDA 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 First Amendment to the 2nd ARDA.

11. Representations and Warranties of City. As of the date of City's execution of this First Amendment to the 2nd ARDA, the City represents and warrants the following:

11.1. Approval. City has approved the preparation and execution of this First Amendment to the 2nd ARDA 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 First Amendment to the 2nd ARDA 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 First Amendment to the 2nd ARDA 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 First Amendment to the 2nd ARDA on behalf of City have been duly authorized to do so.

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 January,
2017 by Brian Dalke, 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(s) 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.
