

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 AMBER  
MEADOWS

This First Amendment to Second Amended & Restated Development Agreement for Amber Meadows (the "First Amendment to 2<sup>nd</sup> ARDA") is entered into this 9<sup>th</sup> day of January, 2017, 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, Owner and the City entered into that certain Second Amended and Restated Development Agreement for Amber Meadows dated April 27, 2016, recorded in the official records of Maricopa County, Arizona as Record No 2016-0289084 (the "2<sup>nd</sup> ARDA"), which, *inter alia*, superseded the First Amended and Restated Development Agreement for Amber Meadows (and all five related Amendments) and stated new terms related to the development of the Property, as legally described in the attachment to this First Amendment to 2<sup>nd</sup> ARDA, as well as to the deadline for recording the existing approved final plat for the Property.

B. WHEREAS, on September 25, 2006, the Goodyear City Council approved a final plat for the Property.

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

D. WHEREAS, 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

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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 desire to amend the Amber Meadows 2<sup>nd</sup> ARDA to extend the deadline for recording the currently existing approved final plat for Amber Meadows 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 2<sup>nd</sup> ARDA, capitalized terms in this First Amendment to 2<sup>nd</sup> ARDA shall have the same meaning as those terms are defined in the 2<sup>nd</sup> ARDA.

3. Effective Date. The execution of this First Amendment to the 2<sup>nd</sup> ARDA by the Parties and the approval of this First Amendment to the 2<sup>nd</sup> ARDA by Resolution of the Goodyear City Council are conditions precedent to this First Amendment to the 2<sup>nd</sup> ARDA becoming effective. This First Amendment to the 2<sup>nd</sup> ARDA shall take effect upon the later of (i) the full execution of this First Amendment to the 2<sup>nd</sup> ARDA by the Parties; and (ii) the date the Resolution approving this First Amendment to the 2<sup>nd</sup> ARDA becomes effective.

4. Existing Final Plats: Section 12.4 of the 2<sup>nd</sup> ARDA is hereby deleted and replaced with the following:

12.4. 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 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 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 Final Plats: Section 12.4.2 of the 2<sup>nd</sup> ARDA is hereby deleted and replaced with the following:

12.4.2. 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 2<sup>nd</sup> ARDA and the exhibit(s) referred to herein and attached hereto, along with the unchanged provisions in the 2<sup>nd</sup> 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 2<sup>nd</sup> ARDA shall be deemed to amend and supersede the 2<sup>nd</sup> ARDA with respect to all terms, provisions and changes set forth in this First Amendment to the 2<sup>nd</sup> ARDA. To the extent of any conflict between this First Amendment to the 2<sup>nd</sup> ARDA and the 2<sup>nd</sup> ARDA, this First Amendment to the 2<sup>nd</sup> ARDA shall control. Except as amended by this First Amendment to the 2<sup>nd</sup> ARDA, all terms, provisions and conditions of the 2<sup>nd</sup> ARDA shall remain in full force and effect and shall apply to this First Amendment to the 2<sup>nd</sup> ARDA.

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

9. Severability. Any provision of this First Amendment to the 2<sup>nd</sup> ARDA that is declared void or unenforceable shall be severed from this First Amendment to the 2<sup>nd</sup> ARDA and the remainder of this First Amendment to the 2<sup>nd</sup> 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 2<sup>nd</sup> 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 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 First Amendment to the 2<sup>nd</sup> ARDA as authorized by the manager of Owner, and Owner is not prohibited from executing this First Amendment to the 2<sup>nd</sup> ARDA by any law, rule, regulation, instrument, agreement, order, or judgment.

10.3. Due Diligence. Owner reviewed this First Amendment to the 2<sup>nd</sup> 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 2<sup>nd</sup> ARDA.

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

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

*Signature Pages and Exhibit to Follow*

IN WITNESS WHEREOF, and agreeing to be bound by the terms of this First Amendment to the 2<sup>nd</sup> ARDA, the Parties have caused this First Amendment to the 2<sup>nd</sup> ARDA to be executed by their duly appointed representatives.

OWNER:

HTNTON AMBER MEADOWS, LLP,  
an Arizona limited liability partnership

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

By Brad Clough  
Brad Clough, President

CANADA )  
 ) ss.  
Province of Alberta )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of January, 2017 by Brad Clough, who, upon oath, acknowledged himself to be the President 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 of HINTON AMBER MEADOWS, LLP.

GIVEN at the City of Edmonton, in the Province of Alberta this 9<sup>th</sup> day of January, 2017, under my hand and seal of office.

T. Weinberger  
Signature

**TANNA MICHELE WEINBERGER**  
**A COMMISSIONER FOR OATHS IN AND**  
**FOR THE PROVINCE OF ALBERTA**  
**MY COMMISSION EXPIRES: AUG. 11, 2018**  
**APPOINTEE NO. #0736990**

\_\_\_\_\_  
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 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

*Attachment Follows*

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;

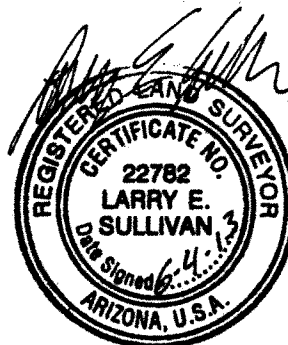
Thence North 00°16'35" East, along said parallel line, a distance of 1,178.47 feet to a point on the Southerly right-of-way line of the Roosevelt Irrigation District Canal as depicted on the plat of said White Tank Citrus Tract, Plat B;

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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