

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 LA JOLLA VISTA

This First Amendment to Second Amended & Restated Development Agreement for La Jolla Vista (the “First Amendment to 2nd ARDA”) is entered into this 9th day of January, 2017, 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 individually as the “Party” and collectively as the “Parties.”

RECITALS

A. WHEREAS, Owner and the City entered into that certain Second Amended & Restated Development Agreement for La Jolla Vista dated April 27, 2016 recorded in the official records of Maricopa County, Arizona as Record No. 2016-0288863 (“2nd ARDA”), which, *inter alia*, superseded the First Amended and Restated Development Agreement for La Jolla Vista (and all five related Amendments) and stated new terms related to the development of the Property, as 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 March 26, 2007, the Goodyear City Council approved the following five plats for the Property: the La Jolla Vista Master Plat subdividing the Property into 8 Parcels; a final plat subdividing Parcel 1; a final plat subdividing Parcel 2; a final plat

{00031502.DOCX / 2}

subdividing Parcel 3; and a final plat subdividing Parcel 5.

C. WHEREAS, under the terms of the 2nd ARDA, 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 January 24, 2017.

D. WHEREAS, 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 desire to amend the La Jolla Vista 2nd ARDA to extend the deadline for recording the La Jolla Vista Master Plat and at least one of the approved Parcel Plats for La Jolla Vista 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.

1. 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.

2. Effective Date. The execution of this First Amendment to 2nd ARDA by the Parties and the approval of this First Amendment to 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 {00031502.DOCX / 2}

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.

3. Existing Final Plats: Section 12.4 of the 2nd ARDA is hereby deleted and replaced with the following:

12.4. Existing Final Plats. City Council has previously approved five (5) final plats for the Property as set forth in Recital M in the Second Amended & Restated Development Agreement for La Jolla Vista (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 April 24, 2017 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 April 24, 2017. 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 April 24, 2017, 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.

4. Impact of Recordation of Final Plats: Section 12.4.2 of the 2nd 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 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 April 24, 2017, 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. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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 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 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.

10. 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.

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

Signature Pages and Exhibits to Follow

OWNER:

CITRUS & LOWER BUCKEYE LLC, an
Arizona limited liability company

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

By: Brad Clough
Brad Clough, President

CANADA)
) ss.
Province of Alberta)

The foregoing instrument was acknowledged before me this ____ 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 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 of CITRUS & LOWER BUCKEYE LLC.

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

T. Weinberger
Signature

Name of Notary Public

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

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

Exhibit(s) Continued 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°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°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°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°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°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°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°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.

-