

After Recording Return to:

City of Goodyear  
190 N. Litchfield Road  
Goodyear, Arizona 85338

---

**DEVELOPMENT AGREEMENT FOR WEST GOODYEAR  
SEWER AND WATER INFRASTRUCTURE**

THIS DEVELOPMENT AGREEMENT FOR WEST GOODYEAR SEWER AND WATER INFRASTRUCTURE ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between **PRADERA PARTNERS 160, LLC**, a Washington limited liability company, **HINTON AMBER MEADOWS, LLP**, an Arizona limited liability partnership, **CITRUS & LOWER BUCKEYE, LLC**, an Arizona limited liability company, **MELCOR DEVELOPMENTS ARIZONA, INC.**, an Arizona corporation, **LAS VENTANAS I, LLC**, an Arizona limited liability company, and **CITY OF GOODYEAR**, an Arizona municipal corporation.

**RECITALS**

A. Pradera Partners 160, LLC, a Washington limited liability company ("Pradera 160"), owns approximately 160 acres of land that are more particularly described on Exhibit A-1 attached hereto and incorporated herein by this reference (the "Pradera Property"). The Pradera Property, which is commonly known as Pradera, is located in the West Goodyear Central Planning Area (the "WGCPA"), which is generally bounded by Interstate 10 on the north, MC 85 on the south, Cotton Lane on the east and Perryville Road on the west.

B. Hinton Amber Meadows, LLP, an Arizona limited liability partnership ("Hinton"), owns approximately 108.5 acres of land that are more particularly described on Exhibit A-2 attached hereto and incorporated herein by this reference (the "Hinton Property"). The Hinton Property, which is commonly known as Amber Meadows, is located in the WGCPA.

C. Citrus & Lower Buckeye, LLC, an Arizona limited liability company ("Citrus"), owns approximately 198.5 acres of land that are more particularly described on Exhibit A-3 attached hereto and incorporated herein by this reference (the "Citrus Property"). The Citrus Property, which is commonly known as La Jolla Vista, is located in the WGCPA.

D. Melcor Developments Arizona, Inc., an Arizona corporation ("Melcor"), owns approximately 120 acres of land that are more particularly described on Exhibit A-4 attached hereto and incorporated herein by this reference (the "Melcor Property"). The Melcor Property, which is commonly known as Paseo Place Parcel 1 & 2, is located in the WGCPA.

E. Las Ventanas I, LLC, an Arizona limited liability company (“Ventanas”), owns approximately 160 acres of land that are more particularly described on Exhibit A-5 attached hereto and incorporated herein by this reference (the “Ventanas Property”. The Ventanas Property, which is commonly known as Las Ventanas, is located in the WGCPA.

F. The Ventanas Property together with the Pradera Property, the Hinton Property, the Citrus Property and the Melcor Property, hereinafter referred to collectively as the “Properties.”

G. On April 25, 2016, the City and Pradera 160 entered into the Second Amended and Restated Development Agreement for Pradera, which was recorded in the Official Records of Maricopa County, Arizona on April 29, 2016, as Instrument No. 2016-0290253 (the “Pradera SARDA”).

H. On April 25, 2016, the City and Hinton entered into the Second Amended and Restated Development Agreement for Amber Meadows, which was recorded in the Official Records of Maricopa County, Arizona on April 29, 2016, as Instrument No. 2016-0289084 (the “Hinton SARDA”).

I. On April 29, 2016, the City and Citrus entered into the Second Amended and Restated Development Agreement for La Jolla Vista, which was recorded in the Official Records of Maricopa County, Arizona on April 29, 2016, as Instrument No. 2016-0288863 (the “Citrus SARDA”).

J. On August 22, 2016, the City and Melcor entered into the Second Amended and Restated Development Agreement for Paseo Place Parcel 1 & 2, which was recorded in the Official Records of Maricopa County, Arizona on August 26, 2016, as Instrument No. 2016-0614477 (the “Melcor SARDA”).

K. On November 15, 2016, the City and Ventanas entered into the Second Amended and Restated Development Agreement for Las Ventanas, which was recorded in the Official Records of Maricopa County, Arizona on November 17, 2016, as Instrument No. 2016-0849033 (the “Ventanas SARDA”).

L. The City has also entered into various other development agreements with other owners of real property located in the WGCPA.

M. Because of the downturn in the economy, the City approved final plats for the Pradera Property, the Hinton Property and the Citrus Property have not been recorded and none of the financial contributions contemplated in the Pradera SARDA, the Hinton SARDA nor the Citrus SARDA have been made.

N. Although the Owners have been provided relief from various entitlement standards and financial obligation standards according to the terms of each of the respective Existing Development Agreements, the Owners are seeking additional concessions that are intended to spur development in the WGCPA.

O. The City is willing to enter into this agreement to encourage commencement of construction of the Regional Wastewater Trunk Lines and the Regional Water Delivery Lines, which may spur development of the Properties and other properties within the WGCPA.

P. Owners and City desire to enter into this Agreement for the purpose of outlining and setting forth certain obligations and commitments of the Parties relative to the contemplated Regional Wastewater Trunk Lines and the Regional Water Delivery Lines development to serve the Properties, as well as other properties in the WGCPA, and intending this document to be a Development Agreement within the meaning of A.R.S. § 9-500.05.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owners and City agree as is more specifically set forth in this Agreement.

1. **INCORPORATION OF RECITALS.** The accuracy of the above Recitals is confirmed and all of the above-mentioned Recitals are incorporated herein and are hereby made provisions of this Agreement with the same force and effect as if set forth fully in this Paragraph 1.

2. **DEFINITIONS:** Capitalized Terms not identified in the foregoing Recitals are defined as follows:

2.1. “Agreement” means this Development Agreement, as it may be amended and restated and/or supplemented in writing from time to time, and all exhibits and schedules attached thereto. References to Paragraphs or Exhibits are to this Agreement unless otherwise specified.

2.2. “Approval Date” means the date the Goodyear City Council approves this Agreement by resolution.

2.3. “Benefitted Owners” means, with respect to each Line, the Owners benefitted by construction of that Line as listed on Exhibit C.

2.4. “City” means the City of Goodyear, an Arizona municipal corporation.

2.5. “Commence Construction” means that both of the following have occurred (i) a fully completed permit application has been submitted to the City for construction of the Regional Lines and Durango Lines pursuant to the consolidated plans for the construction of such improvements as approved by the City, which consolidated plans shall include applicable sections of the plans reflected in Exhibit D; and (ii) survey staking of any of the Regional Lines or the Durango Lines has commenced.

2.6. “Cost Recovery Resolution – Water Delivery Lines” shall mean Resolution of Intention No. 06-1064, as amended by Resolution No 14-1621, and Resolution No. 16-1747.

2.7. “Cost Recovery Resolution – Wastewater Trunk Lines” shall mean Resolution of Intention No. 06-1065, as amended by Resolution No 14-1622, and Resolution No. 16-1748.

2.8. “Durango Lines” means the Durango Water Line and the Durango Wastewater Line.

2.9. “Durango Water Line” means the water delivery lines identified as such on Exhibit C and depicted on Exhibit B, which are attached hereto.

2.10. “Durango Wastewater Line” means the wastewater lines identified as such on Exhibit C and depicted on Exhibit B, which are attached hereto.

2.11. “Escrow” means the escrow established with Escrow Agent as contemplated by the Escrow Agreement.

2.12. “Escrow Agent” means First American Title Insurance Company.

2.13. “Escrow Agreement” means the Agreement between the Owners and Escrow Agent in the form attached hereto as Exhibit E pursuant to which funds will be deposited into the Escrow to finance the cost of constructing the Regional Lines and the Durango Lines.

2.14. “Event of Force Majeure” means an event beyond the control of the Party invoking this provision, which was unforeseeable and prevents such Party from complying with any of its obligations under this Agreement, including but not limited to:

- (a) act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods, unseasonable weather events);
- (b) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo;
- (c) rebellion, revolution, insurrection, or military or usurped power, or civil war;
- (d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
- (e) riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to employees of the Owners; or

(f) acts or threats of terrorism or

(g) material shortages or delays caused by unforeseeable events beyond the control of the Owners.

An Event of Force Majeure do not include delays caused by financial inability of the Party invoking this provision nor the efforts required to obtain easements and/or rights of way from third parties needed for the Regional Lines and Durango Lines.

2.15. “Existing Development Agreements” means, collectively, the Pradera SARDA, the Hinton SARDA, the Citrus SARDA, the Melcor SARDA and the Ventanas SARDA as well as any Amendments to those SARDA’s approved by Council prior to the Effective Date of this Agreement.

2.16. “Line” means any one of the Regional Water Delivery Lines, Regional Wastewater Trunk Lines or Durango Lines listed in Tables 1, 2 or 3 on Exhibit C.

2.17. “Owners” means, collectively (i) Pradera Partners 160, LLC, a Washington limited liability company, (ii) Hinton Amber Meadows, LLP, an Arizona limited liability partnership, (iii) Citrus & Lower Buckeye, LLC, an Arizona limited liability company, (iv) Melcor Developments Arizona, Inc., an Arizona corporation, and (v) Las Ventanas 1, LLC, an Arizona limited liability company, and each of their respective Successors and Assigns. The term “Owner” shall mean any of the Owners.

2.18. “Owners Funding Agreement” means a joint development agreement or similar private construction and funding agreement pertaining to the construction of all of the Regional Lines and the Durango Lines entered into by and between the Owners on such terms and conditions as may be determined solely by the Owners.

2.19. “Party” means City or any Owner individually depending upon the context.

2.20. “Parties” means City and Owners collectively.

2.21. “Regional Lines” means the Regional Wastewater Trunk Lines and the Regional Water Delivery Lines.

2.22. “Regional Wastewater Trunk Lines” means the wastewater lines identified on Exhibit C and depicted on Exhibit B, which are attached hereto.

2.23. “Regional Water Delivery Lines” means the water delivery lines identified Exhibit C and depicted on Exhibit B, which are attached hereto.

2.24. “Successors and Assigns” means any person or entity that succeeds to or is assigned any interest in all or part of the Properties except as provided in Paragraph 16.3 below.

2.25. “Vesting Period” means the period commencing on the Effective Date and expiring the earlier of the following: ten (10) years following the Effective Date or the date the Agreement is terminated as provided herein.

3. EFFECTIVE DATE. The execution of this Agreement by all of the Parties and the approval of this Agreement by Resolution of the Goodyear City Council are conditions precedent to this Agreement becoming effective. This Agreement shall take effect upon the later of (i) the full execution of this Agreement by all of the Parties, and (ii) and the date the Resolution of the Goodyear City Council approving this Agreement becomes effective (the Effective Date”).

3.1. Recordation. The City shall record this Agreement in the Official Records of Maricopa County, Arizona within ten days after the Agreement has been approved by the City Council and the Agreement has been fully executed by the Parties.

3.2. Waiver of Plat Recordation Deadlines. The Pradera SARDA, the Hinton SARDA and the Citrus SARDA each include final plat recordation deadlines. The Parties agree that if this Agreement is approved by the City Council prior to such recordation deadlines and if this Agreement becomes effective, the City waives its right to enforce such recordation deadlines.

4. OWNERS’ CONSTRUCTION OBLIGATIONS. Within 90 days of the Effective Date, Owners shall Commence Construction of the Regional Lines and the Durango Lines and shall, subject to extension on account of any delays resulting from the occurrence of any Force Majeure Event, complete the construction of such Lines within a commercially reasonable timeframe, but in any event within eighteen (18) months from the Effective Date. Each field construction contract in excess of \$50,000 that Owners enter for construction of the Regional Lines and the Durango Lines shall contain provision that, effective after City exercises its takeover rights to construct the Regional Lines and the Durango Lines pursuant to the Escrow Agreement, the contractor shall upon receipt of written notice from the City recognize the City’s right to enforce such contract, and provided the City assumes the Owners obligations under such contract, the contractor shall agree to perform its obligations for the benefit of the City as if it were the Owners under the contract, but that the City shall have no liability or obligation under such contract for obligations already incurred prior to delivery of such notice from the City. If the City exercises its takeover rights as defined in Section 8 of the Escrow Agreement and expends City funds in completing a Line in excess of funds available to the City in the applicable Allocation Account for that Line as contemplated by the Escrow Agreement, the City shall be entitled to offset the amount of City funds so expended from any cost recovery payments payable to any of the Benefitted Owners of such Line. . Additionally, if the City exercises the takeover right in Section 8 of the Escrow Agreement and expends City funds in completing a Line, until the City has been fully reimbursed, through the offsets or otherwise, for the amount of all City funds expended in completing that Line, the City shall be entitled to withhold consent to recordation of plats and issuance of building permits for development within the Properties of only those Benefitted Owners of such Line.

5. AUTOMATIC TERMINATION PROVISIONS. The following automatic termination provisions shall apply to this Agreement.

5.1.1. Automatic Termination. This Agreement shall automatically terminate unless the following conditions are satisfied (the “Continuation Conditions”):

(A) On or before sixty (60) days following the Effective Date the City has received:

- (i) a copy of a fully executed Owners Funding Agreement;
- (ii) confirmation from the Escrow Agent that the Escrow contemplated in Paragraph 10 of this Agreement has been established;
- (iii) a fully executed original of the Escrow Agreement contemplated by this Agreement; and
- (iv) confirmation from the Escrow Agent that the Escrow has been fully funded as contemplated by the Escrow Agreement.

and

(B) Within 90 days of the Effective Date, Owners have Commenced Construction.

5.1.2. Failure of Conditions. If any of the Continuation Conditions described in subparagraph 5.1.1 (A) above are not timely satisfied, City shall deliver written notice to the Owners (the “Notice of Failure”) identifying the unsatisfied Continuation Condition(s) and Owners shall have ten (10) business days following receipt of such Notice of Failure to satisfy all unsatisfied Continuation Condition(s) listed in the Notice of Failure. If Owners fail to satisfy all unsatisfied Continuation Condition(s) listed in the Notice of Failure within such ten (10) business day period, this Agreement shall automatically terminate pursuant to the provisions set forth herein, the City shall promptly record a Notice of Termination referring to the provision under which the Agreement is Automatically Terminated and the date of the termination (“Agreement Termination Date”).

5.1.3. Satisfaction of Conditions. If the Continuation Conditions described in subparagraph 5.1.1 (A) and 5.1.1 (B) above are satisfied, the City shall have no right to record a Notice of Termination and this Agreement shall remain in full force and effect and shall no longer be subject to any termination. If the Continuation Conditions described in subparagraph 5.1.1(A) and 5.1.1 (B) are satisfied, following written request from any Owner the City shall promptly provide to the Owners a written confirmation (in a recordable form provided by the requesting Owner and otherwise reasonably acceptable to the City) of the satisfaction of the Continuation Conditions. Any third party may rely on the City confirmation of the satisfaction of the Continuation Conditions for confirmation that the Agreement has not terminated. Moreover, to enable any interested person, including any title company issuing title insurance with respect to any of the Properties to confirm whether the Continuation Conditions have been satisfied, if the



City has not recorded a Notice of Termination within one hundred and twenty (120) days following the Effective Date, the Continuation Conditions shall be deemed to have been satisfied.

5.2. Plat Approved Prior to the Approval Date. If this Agreement is automatically terminated pursuant to the provisions set forth in Paragraph 5 and the subparagraphs therein, Owners shall have thirty (30) days from the Agreement Termination Date within which to record any final plats approved prior to the Approval Date. If such final plats have not been recorded within the specified time period, such final plats and the preliminary plats pursuant to which such final plat(s) were approved shall automatically expire without further action on the part of the City thirty (30) days from the Agreement Termination Date. The terms of this Paragraph 5.2 shall survive the expiration or earlier termination of this Agreement.

5.3. Plat Approved Between the Approval Date and Agreement Termination Date. If this Agreement is automatically terminated pursuant to the provisions set forth in this Paragraph 5 and the subparagraphs therein, Owners shall record final plats approved after the Approval Date but before the Agreement Termination Date by the later of the following: (i) thirty (30) days from the Agreement Termination Date (ii) ninety (90) days from the date Council approved such final plats; and (iii) the expiration of any extension Council approved pursuant to Goodyear City Code 15-2-15(I). If such final plats have not been recorded within the specified time period, such final plats and the preliminary plats pursuant to which such final plat(s) were approved shall automatically expire without further action at the later of the following: (i) thirty (30) days from the Agreement Termination Date (ii) ninety (90) days from the date Council approved such final plats; and (iii) the expiration of any extension Council approved pursuant to Goodyear City Code 15-2-15(I). The terms of this Section 5.3 shall survive the expiration or earlier termination of this Agreement.

6. ENTIRE AGREEMENT – CONFLICT. This Agreement, together with the attached Exhibits (which are incorporated herein by this reference) constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement, and all prior and contemporaneous agreements, representations, negotiations, and understandings of the Parties, oral or written pertaining to such subject matter are hereby superseded and merged herein. The terms and conditions of the Existing Development Agreements shall continue with respect to any terms and conditions thereof that are either not covered by the terms and conditions in this Agreement or that are not in conflict with the terms and conditions of this Agreement. Should any term or condition of this Agreement conflict with any term or condition of any Existing Development Agreements, the term or condition of this Agreement are intended to and shall control.

7. AMENDMENTS. For an amendment to this Agreement to become effective, the Party seeking the amendment shall submit its proposed amendment in writing to the other Parties for review. To be effective, amendments shall be approved by the City Council, signed by all of the Parties and attached to this Agreement as an addendum. Amendments shall also be recorded in the Official Records of Maricopa County within ten (10) days after execution.



8. IMPROVEMENT PLANS.

8.1. Timely Process: The City will provide timely review and approval of the following items: (i) a Phased Section 10 Regional Water Loop System to allow for the build-out of the Ventanas Property and the Melcor Property, (ii) any new review or re-review approval or re-approval, and permitting of all civil engineering plans for the Regional Lines, the Durango Lines and related improvements.

8.2. General: City acknowledges that certain civil engineering plan sets described on Exhibit D attached hereto have been approved and City fees with respect thereto have been paid independently for various portions of the Regional Lines and the Durango Lines. City shall allow the Regional Lines to be permitted by consolidating such existing City-approved project plan sets, and City shall not charge any additional review fees in connection with reviewing and approving the consolidated plans sets. City shall allow the permitting of these improvements to be granted through the various improvement plans that exist with respect to the Properties and/or through the aforementioned consolidated plan sets and shall reasonably assist in the coordination and timely approvals of all improvement plans for the Regional Lines and the Durango Lines by the Roosevelt Irrigation District and Maricopa County Environmental Services Department.

8.3. Vesting of Approved Plats and Plans. Unless this Agreement is terminated pursuant to the terms set forth in Section 5 and all subsections therein, then the following provisions shall become effective:

8.3.1. Existing Plats. All preliminary and final plats for all or any part of any of the Properties approved by the City Council prior to the Approval Date, including the conditions and stipulations of approval thereto, shall be deemed vested and such vested approval shall not expire until the end of the Vesting Period, and, during the Vesting Period, shall not be subject to any re-approval by the City Council. Any and all final plats for all or any part of any of the Properties approved by the City Council prior to the Approval Date shall automatically expire if not recorded prior to the end of the Vesting Period and the preliminary plats pursuant to which such final plats were approved shall automatically expire. Each, such preliminary and final plat previously approved by the City shall be deemed an "Approved Plat" and, collectively, the "Approved Plats" as defined in the Existing Development Agreements. The vesting provided hereunder terminates as to any approved final plat which an Owner seeks to modify and such amended or restated final plat shall be treated as a new plat subject to the vesting provision set forth in Paragraph 8.3.2 below.

8.3.2. New Plats. All final plats for all or any part of any of the Properties approved after the Approval Date shall be deemed vested and such vested approval, including the conditions and stipulations of approval thereto, shall not expire until the end of the Vesting Period, and, during the Vesting Period, unless changes are made to the plat that pursuant to State or local law require Council approval, shall not be subject to any re-approval by the City Council. Any and all final plats for all or any part of any of the Properties approved by the City Council after the Approval Date shall automatically expire if not recorded prior to the end of the Vesting Period and

the preliminary plats pursuant to which such final plats were approved shall simultaneously automatically expire.

8.3.3. Obligation to Serve. Notwithstanding anything to the contrary contained in the Existing Development Agreements, at any time during the Vesting Period, any preliminary or final plat pertaining to any of the Properties shall be processed by the City for approval, and the City recognizes that granting such final plat approvals shall commit the City to provide water source and wastewater treatment, as well as other City services and/or facilities to serve the Properties as proposed to be developed.

8.3.4. Existing Plans. All engineering and improvement plans for all or any part of any of the Properties approved by the City prior to the Effective Date shall remain valid and effective for a period of two (2) years following the Effective Date, after which time those Plan approvals shall again be subject to the City's standard time periods for the validity of engineering and improvement plans. However, if prior to the aforementioned expiration, application is made to extend the validity of any approved improvement plans, City shall allow such improvement plans to be extended up to two times each for a one year period. Upon application to extend, City shall only review the existing improvement plans for the limited purpose of confirming compliance with any new City standards, codes and ordinances. Any fees for such extension review shall be strictly limited to a per sheet fee based solely on the number of plan sheets needing to be reviewed for the purpose of confirming compliance with any new City standards, codes and ordinances. City will provide timely review and approval of all such engineering and improvement plans.

8.3.5. New Plans. All engineering and improvement plans for all or any part of any of the Properties that have not been approved by the City as of the Effective Date shall, once approved, remain valid and effective for a period of two (2) years after the date approved by the City, after which time those Plan approvals shall again be subject to the City's standard time periods for the validity of engineering and improvement plans. If prior to the aforementioned expiration, application is made to extend the validity of any approved improvement plans, City shall allow such improvement plans to be extended up to two times each for a one year period. Upon application to extend, City shall only review the existing improvement plans for the limited purpose of confirming compliance with any new City standards, codes and ordinances. Any fees for such extension review shall be strictly limited to a per sheet fee based solely on the number of plan sheets needing to be reviewed for the purpose of confirming compliance with any new City standards, codes and ordinances. City will provide timely review and approval of all such engineering and improvement plans.

## 9. OFFSITE EASEMENTS; CONDITION OF RIGHT-OF-WAY.

9.1. Right-of-Way. Owners shall acquire and dedicate to the City, at no cost to the City, the rights-of-way and/or easements needed to install Regional Lines and the Durango Lines. This includes, but is not limited to, an easement for a portion of the Durango Lines that are to be installed within the future Durango Road Alignment, which lies between Pradera and Paseo Ridge, and easement(s) for sections of Regional Lines that will be located in Maricopa County

right-of-way. Any easements provided the City shall be in a form reasonably acceptable to the City. The City shall have no liability or responsibility for acquiring any rights-of-way and/or easements needed for the Regional Lines and or the Durango Lines. Notwithstanding the foregoing, the City shall cooperate and work with the Owners in an effort to have the County approve the construction (including if needed the City being the permittee) of City utility lines within an easement in County right of way installed to City standards rather than County standards, including the City agreeing with the County to an easement that obligates the City to repair any damage caused to the County's roadway because the utility lines were built to the City's standards rather than the County's standards. If the County will not allow the utility lines that will be constructed within the County right of way to be constructed to meet City standards, Owners may, at Owner's option, construct the line to County standards, or pursue with the City annexation of the County right of way or seek other design alternatives acceptable to the City Engineer and County Engineer, which such determination shall be subject to the approval at the City's discretion.

9.2. Road Improvements. City acknowledges that certain of the lines to be constructed pursuant to this Agreement are to be constructed within existing City rights-of way, wherein the existing roadway improvements do not meet current City roadway standards. City agrees that the City's acceptance of the Regional Lines shall not require any upgrade or improvements to the existing roadway improvements to meet current City roadway standards, and that after completion of the lines, Owners shall only be obligated to restore such roadway improvements back to the condition existing prior to the construction of such lines; provided, however, to the extent the existing condition of any portion of the roadway or utility easement area is comprised of a dirt road or no road, Owners shall be obligated to install such limited improvements as decomposed granite or chip seal reasonably necessary to facilitate access for City service vehicles only. Nothing contained in the foregoing shall alter or limit the obligation to complete roadway improvements within or adjacent to any of the Properties in accordance with then existing City roadway standards and Property improvement plans at the time such Properties are developed.

10. FINANCIAL ASSURANCES. Notwithstanding anything to the contrary contained in the Existing Development Agreements, City agrees that the establishment and funding of the Escrow in compliance with the Escrow Agreement shall satisfy any obligations under the applicable Development Regulations to provide financial assurances to ensure the construction of the Regional Lines and the Durango Lines.

11. WELL SITE DEDICATION. As provided below, each Owner agrees to convey, at no cost to the City and lien free, one well site, and any necessary temporary easements needed to access such well site, within each of Owners' respective Properties (each of the Properties hereinafter being referred to as a "**Project**"). Any well site area required to be conveyed hereunder shall be no larger than are area that is 100 feet x100 feet. Except as provided below, the well site shall be within areas designated as open space in an approved preliminary or final plat and located adjacent to an existing roadway or aligned roadway identified on a preliminary or final plat. The well site area shall not adversely affect drainage or other development requirements associated with that open space area.

11.1. Until one well site in a Project has been conveyed to the City, each time an Owner intends to submit to the City a final plat for a Project for execution and recordation by the City, such Owner shall provide the City with forty-five (45) days advance notice to provide the City with time to determine whether a well site should be located in the area to be platted. When such Owner submits the final plat for execution and recordation by the City the City may identify a proposed well site area by providing written notice to the Owner submitting such plat together with providing the Owner a legal description of the proposed well site (the “**Well Site Notice**”). The well site area shall after recordation of the plat be conveyed to the City by a separate mutually acceptable instrument (i.e., the conveyance shall not be a condition to, nor delay, recordation of the plat) and the applicable Owner shall be entitled to reserve easements in favor of their Property’s Homeowners Association for installation and maintenance of landscaping that will not interfere with use of the well site area as a municipal well site and limit the City’s use of the well site area for a municipal well site only. If the City fails to provide a Well Site Notice to an Owner of a Project prior to the recordation of that final plat, the City may thereafter no longer require dedication of any well site within the area platted.

11.2. Notwithstanding the foregoing, until one well site in a Project has been conveyed to the City, the City may elect to require the conveyance of a well site and temporary access easement located within a Project that is subject to a preliminary or final plat prior to the time the Owner of such Project seeks to record a final plat. The temporary access easement shall only be required to be provided in an area consistent with the right of way alignment on the preliminary or final plat and in a fashion that causes minimal interference with farming of the land and the form of such easement shall be reasonably acceptable to the granting owner. In such cases, the City may identify a proposed well site area and temporary access easement by providing to the owner a Well Site Notice, and subject to the following conditions, Owner shall convey, by mutually acceptable instrument, the well site and temporary access easement area. As a condition to any Owner being obligated to convey a well site and temporary access easement hereunder, the City shall compensate the conveying Owner for all damages (other than damages associated with the land value or the lost rental income of the well site and access area) suffered by such Owner on account of such request and early conveyance. Such damages shall be substantiated and documented by Owner, and shall include, without limitation, damages resulting from claims by lessees and the costs incurred to relocate any irrigation facilities made necessary by such conveyance. To mitigate the damages, the City shall have the right, but not the obligation, to undertake modifications to irrigation facilities as a result of the conveyances provided herein so long as such modifications do not interfere with or alter continued farming operations. Owner shall reasonably cooperate with the City to minimize any such damages if provided advance notice from the City of the City’s intent to require conveyance of a well site and temporary access easement early. Upon request of the City, the Owner shall provide a temporary construction easement to allow early access to the well site prior to conveyance to allow construction of the well to commence. Payment of the damages referred shall be a condition precedent to the conveyance of the well site

11.2.1. If an Owner of a Project fails to convey the well sites and/or grant temporary access as provided above, the City shall be entitled to pursue the acquisition of the well site from that non-performing Owner through the use of its powers of eminent domain. The non-performing Owner shall be liable to the City and shall reimburse the City for: (i) all costs incurred

by the City, including the payments to such Owner, including but not limited to payments for the well site, easement and any other damages, in any such action (including the initial demand) or settlement thereof; and (ii) the costs and expenses (including reasonable attorneys' fees) the City incurred in pursuit of any such action (including the initial demand). Notwithstanding anything to the contrary, the City shall be entitled to withhold recordation of any future plats and the issuance of any building permits only within that non-performing Owner's Project until such time as the reimbursement required herein has been paid.

11.2.2. Each Owner's obligation under this provision are several and not joint and shall be limited solely to the conveyance of the well site and granting of any necessary temporary access easement and no Owner shall have any obligation to install any improvements (onsite or offsite) associated with the well, maintain, or to repair or replace any improvements to any such well site area, nor contribute toward the cost of any such improvements, nor shall any Owner be in breach hereunder or otherwise suffer any adverse consequences on account of another Owner's failure to comply with this Section.

12. WARRANTY REQUIREMENTS. Following completion and acceptance of the construction of any Line, the Benefitted Owners of that Line shall provide City a two (2) year warranty. Because the Line may not be immediately utilized after completion and acceptance of construction, Owners agree that if no Owner or other third party connects to and begins utilizing the Line within one (1) year from the date of City acceptance of a Line, then, in addition to the foregoing, a one (1) year warranty shall commence at the time any Owner or other third party is allowed to connect to and utilize the Line. The one (1) year warranty may in whole or in part run concurrently with the original two (2) year warranty if any Owner or other third party is allowed to connect to and utilize the Line within two (2) years following completion and City acceptance of the Line. No financial assurance shall be required to be provided or maintained for any such warranty. Only the Benefitted Owners of the Line shall be responsible, jointly, for all warranty obligations with respect to that Line. Any repairs identified as being needed as a result of the testing discussed below shall be considered discovered during the warranty period.

12.1. Owners agree that after completion and acceptance of the construction of any Line, City may require additional testing of that Line, as applicable, prior to allowing any of the Properties to connect to, utilize, or otherwise access the completed segment as set forth below. If no one has connected to and begun utilizing a completed Line within the two (2) year period following final completion and the date of City acceptance of construction of that Line, then as a condition precedent to allowing anyone to connect to, utilize, or otherwise access the Line, City may require, at the City's expense or the expense of the property owner first seeking to connect to that Line, completion of video testing, bacteriological testing, pressure testing and/or any other testing determined reasonably by the Director of Public Works as being needed of the applicable Line, to the satisfaction of the City. The Benefitted Owners of that Line shall be responsible for reimbursing the City and/or any land owner (other than an Owner or Successor or Assign) for the costs incurred in the testing referred to herein. The City may offset such cost incurred from any cost recovery payments due to the City with respect to such Line and the applicable Benefitted Owners agree that any payments due under an applicable reimbursement agreement with the City shall be reduced to the extent of any such offset. To the extent, without

double counting, the City and/or any land owner is not able to fully offset any such testing expenses incurred against cost recovery payments due with respect to such Line, the applicable Benefitted Owners shall be responsible for reimbursing the City and/or landowner the excess costs not offset.

12.2. Should any of the applicable Benefitted Owners fail to comply with their respective warranty obligations or testing and inspection obligations described above, City shall be entitled to withhold consent to recordation of plats and issuance of building permits for development within the applicable Properties of those Benefitted Owners responsible for compliance until such obligations have been fully satisfied.

12.3. Additionally, City agrees that if it receives written notice from three (3) or more Owners, who are participants (or any Successor or Assigns thereof) to the Owners Funding Agreement, indicating that any other Owner who is a signatory to the Owners Funding Agreement (or any successor who acquired any portion of the Properties from such signatory) has not paid or performed its obligations under the Owners Funding Agreement or under this Agreement, then the City will not allow any portion of such defaulting Owner's Property to connect to, utilize, or otherwise access the Regional Lines or Durango Lines until all amounts and obligations due from such Owner under the Owners Funding Agreement and under this Agreement have been paid and performed in full and the City receives written verification from the original notifying Owners confirming same, or City otherwise receives directions of a final order or judgment of a court of competent jurisdiction. Owners expressly waive any and all claims against the City related to the City's performance under this provision and the Owners jointly and severally agreed to defend and hold harmless the City from any and all claims and liabilities, including but not limited to damages, fees, costs, expenses and reasonable attorneys fees, that arise from or are alleged to arise from the City's refusal to allow any of the Properties to connect to or use the Regional Lines or the Durango Lines pursuant to the written notice received for Owners as provided in the preceding sentence.

12.4. If, after demand, the applicable Benefitted Owners fail to comply with their warranty obligations and as such the City incurs any costs in connection with making any repairs to a Line during the applicable warranty period, then the Benefitted Owners of the Line for which the warranty work was performed by the City shall jointly and severally be liable to reimburse the City for the costs the City incurred in making any repairs to such Line during the applicable warranty period. The City shall be entitled to offset any cost recovery payments that are to be disbursed to any such Benefitted Owners (but not others) by the amounts expended by the City in completing such repairs, and shall be entitled to withhold from all applicable Benefitted Owners collectively (but not others) consent to recordation of final plats and issuance of building permits for development within the applicable Properties of those Benefitted Owners until such time as the City has been fully reimbursed hereunder.

13. **COST RECOVERY.** The Regional Wastewater Trunk Lines are included in the Cost Recovery Resolution – Wastewater Trunk Lines and the Regional Water Delivery Lines are included in the Cost Recovery Resolution – Water Delivery Lines. Except as modified herein, the terms of the Existing Development Agreements related to Cost Recovery, including the terms related to the cost recovery payments that are to be made, apply to the Regional Lines.

13.1. Completed Regional Lines Only Benefitting Owner(s). Under the terms of the Existing Development Agreements, Owners are required to make various cost recovery payments. The money collected would then be reimbursed pursuant to a reimbursement agreement with the City if the party constructing is eligible pursuant to those terms of the Existing Development Agreements related to Cost Recovery. Because Regional Wastewater Trunk Lines G1, G2, and H1 as well as a partial completion of Regional Water Trunk Line F are to be fully constructed and paid for by all of the Owner(s) of the properties identified in the Cost Recovery Resolution – Wastewater Delivery Lines and Cost Recovery Resolution – Water Delivery Lines as benefitting from these lines and because these Owner(s) have allocated their contributions among themselves based on the proportionate benefit each of their respective Properties receives, the goals of the cost recovery resolutions have been achieved and a modification to the cost recovery reimbursement process is warranted with respect to the foregoing Regional Wastewater Trunk Lines and portion of the Regional Water Delivery Line.

13.1.1. Provided 100% of the Regional Wastewater Trunk Lines G1, G2, and H1 are completed by or on behalf of the Owners, and not the City, the Parties agree as follows:

13.1.1.1. the City shall not collect from the Owners or others any cost recovery payments contemplated in the Existing Development Agreements for Regional Wastewater Trunk Lines G1, G2, and H1;

13.1.1.2. Owners shall not seek a reimbursement agreement for cost recovery for Regional Wastewater Trunk Lines G1, G2, and H1;

13.1.1.3. the City shall not be required to make any reimbursement payments pursuant to the Cost Recovery Resolution – Wastewater Trunk Lines for Regional Wastewater Trunk Lines G1, G2, and H1,; and

13.1.1.4. Owners agree that the City's obligations under the Cost Recovery Resolution – Wastewater Trunk Lines will have been fully satisfied and Owners expressly release and discharge the City from any and all liability and obligations under the Existing Development Agreements and the Cost Recovery Resolution – Wastewater Trunk Lines with respect to Regional Wastewater Trunk Lines G1, G2, and H1.

13.1.2. Partially Completed Regional Water Trunk Line. Provided 100% of the portion of Regional Water Delivery Line F described in Exhibit C and depicted on Exhibit B ("Water Line Segment F") is completed by or on behalf of the Owners, and not the City, the Parties agree as follows:



13.1.2.1. the City shall collect from the Owners cost recovery payments as described in the Existing Development Agreements discussing the administration of cost recovery for phased lines;

13.1.2.2. Upon completion of Water Line Segment F and provided Owner(s) have provided the documentation required to obtain cost recovery reimbursements as set forth in the City's Cost Recovery Ordinance, the Cost Recovery Resolution – Water Trunk Lines, upon a written request to do so, the City shall enter into a reimbursement agreement as contemplated in the Existing Development Agreements. The reimbursement agreement shall be a joint agreement with all of the Owner(s) who contributed toward payment of constructing Water Line Segment F and shall provide for the establishment of an escrow account with an escrow agent who will be responsible for receiving cost recovery payments distributed by the City and who will be responsible for distributing the cost recovery payments among the Owner(s) that are party to the reimbursement agreement. The reimbursement agreement shall include provision(s) that the City's obligations and responsibilities under the Existing Development Agreements, this Agreement and the applicable cost recovery resolution are fully satisfied as to payments made to the escrow agent and that Owners expressly release and discharge the City from any and all liability and obligations under the Existing Development Agreements, this Agreement and the applicable cost recovery resolution with respect to the distribution of the cost recovery payments made to the escrow agent.

13.2. Lines Benefiting Others. Under the terms of the Existing Development Agreements, any cost recovery payments to be made by the City are to be made to a single entity. Because this Agreement contemplates the construction on a joint basis of Regional Lines for which properties other than the Properties covered by this Agreement, the provisions of the Existing Development Agreements need to be modified as respect to the reimbursement agreement.

13.2.1. Provided 100% of Regional Wastewater Trunk Line F and Regional Water Delivery Line E are completed by or on behalf of the Owners, and not the City, the City shall collect applicable cost recovery payments contemplated in the Existing Development Agreements, including collecting the cost recovery payments for Regional Wastewater Trunk Line F and Regional Water Delivery Line E from third parties other than the Owners.

13.2.2. Provided Regional Wastewater Trunk Line F is completed by or on behalf of Owners and not the City, and provided such Owner(s) have provided the documentation required to obtain cost recovery reimbursements as set forth in the City's Cost Recovery Ordinance, the Cost Recovery Resolution – Wastewater Trunk Lines, upon a written request to do so, the City shall enter into a reimbursement agreement as contemplated in the Existing Development Agreements. Provided Regional Water Delivery Line E is completed by or on behalf of Owners and not the City, and provided such Owner(s) have provided the documentation required to obtain cost recovery reimbursements as set forth in the City's Cost Recovery Ordinance, the Cost Recovery Resolution – Water Delivery Lines, upon a written request to do so,

the City shall enter into a reimbursement agreement as contemplated in the Existing Development Agreements. Any such reimbursement agreement shall be subject to the following:

13.2.2.1. There shall be a separate reimbursement agreement acceptable to the City for Regional Wastewater Trunk Line F and Regional Water Delivery Line E for which a cost recovery reimbursement is being sought (the “Reimbursement Line”).

13.2.2.2. The reimbursement agreement shall be a joint agreement with all of the Owner(s) who contributed toward payment of constructing the Reimbursement Line and shall provide for the establishment of an escrow account with an escrow agent who will be responsible for receiving cost recovery payments distributed by the City and who will be responsible for distributing the cost recovery payments among the Owner(s) that are party to the reimbursement agreement.

13.2.2.3. The reimbursement agreement shall include terms that the City’s obligations under the reimbursement agreement is to collect cost recovery payments solely from property owners whose properties are identified as benefitting (“third party benefitted owners”) from the Reimbursement Line in the applicable cost recovery resolution. The reimbursement agreement shall also include a provision pursuant to which Owners agree that the City’s obligations under the applicable cost recovery resolution is fully satisfied with respect to the Reimbursement Line except for the collection of cost recovery payments from the third party benefitted owners pursuant to the terms of the applicable cost recovery resolution and that Owners expressly release and discharge the City from any and all liability and obligations under the Existing Development Agreements and the applicable cost recovery resolution with respect to the Reimbursement Line except for the collection of the cost recovery payments from the third party benefitted owners as described herein. Lastly, the reimbursement agreement shall include provision(s) that the City’s obligations and responsibilities under the Existing Development Agreements, this Agreement and the applicable cost recovery resolution are fully satisfied as to payments made to the escrow agent and that Owners expressly release and discharge the City from any and all liability and obligations under the Existing Development Agreements, this Agreement and the applicable cost recovery resolution with respect to the distribution of the cost recovery payments made to the escrow agent.

14. **IMPACT FEES.** The terms of the Existing Development Agreements related to Impact Fees apply to the construction of the Regional Lines.

14.1. **Amendment of IIP and Development Fees.** Under the terms of the Existing Development Agreements, the City is entitled adopt updated Infrastructure Improvement Plans and Development Impact Fees that do not include any of the Regional Water Delivery Lines and/or

any of the Regional Wastewater Trunk Lines, and that if that occurs, there shall be no impact fee reimbursements for any of the Regional Water Delivery Lines and/or Regional Wastewater Trunk Lines no longer included in a development impact fee and Owner's sole source of recovery shall be pursuant to the applicable cost recovery resolutions. Owners acknowledge that the City intends to amend its IIP to delete the Regional Lines and to recalculate its development fees accordingly and that once the updated development fees are adopted, Owners shall not be entitled to any impact fee reimbursements pursuant to the provisions of the Existing Development Agreements related to the Regional Lines.

15. TITLE 34. To be eligible for any reimbursement under this Agreement or the Existing Development Agreements, Owner shall comply with all applicable state laws governing the procurement of services related to the design, installation and construction of public infrastructure for which reimbursement is sought, including the requirements of Title 34 of the Arizona Revised Statutes. Owners shall not be entitled to any reimbursement from any source for the costs incurred in designing and constructing the Regional Lines unless they have complied with all applicable state laws governing the procurement of services related to the design, installation and construction of public infrastructure, including Title 34 of the Arizona Revised Statutes.

16. GENERAL TERMS.

16.1. Covenants Running with the Land. Except as otherwise provided in Paragraph 16.3, the rights and duties under this Agreement shall be for the benefit of, and a burden upon, the Properties, and they shall be covenants running with the land.

16.2. Successors and Assigns. Except as otherwise provided in Paragraph 16.3, the provisions of this Agreement are binding upon and shall inure to the benefit of the Parties, and all of their Successors and Assigns; provided, however, that Owners' rights and obligations hereunder may be assigned only upon prior written consent by the City, which shall not be unreasonably withheld, in whole or in part, by written instrument. However, any assignment to any subsequent owner of all or any portion of the Properties may be made without further consent from the City.

16.3. Termination of Agreement as to Residential Lots. The Parties hereby acknowledge and agree that this Agreement is not intended to and shall not create conditions or exceptions to title or covenants running with the Properties for any lot within the Properties that has been fully subdivided pursuant to a recorded final plat and for which a Certificate of Occupancy for a single family residence has been issued. The Parties agree that this Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot within the Properties that has been fully subdivided pursuant to a recorded final plat and for which a Certificate of Occupancy for a single family residence has been issued, and such lot shall automatically be released from and no longer be subject to or burdened by the provision of this Agreement without the requirement of any further action by any Party.

16.4. No Agency or Partnership. Neither City nor any Owner is acting as the agent of the other with respect to this Agreement, and this Agreement shall not be deemed to create a partnership, joint venture or other business relationship between the City and Owners.

16.5. Conflicts of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511, and may be terminated by the City in accordance with such provisions.

16.6. Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

16.7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement, binding on the Parties. This Agreement also may be executed and delivered by electronic transmission. A manually signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

16.8. No Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or Owners of the breach of any covenant or condition of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

16.9. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

16.10. Fair Interpretation. The terms and provisions of this Agreement represent the result of negotiations between the Parties, each of which has been represented by counsel of their own choosing, and none of whom has acted under any duress or compulsion, whether economic or otherwise. Consequently, the terms and provisions of this Agreement shall be construed according to their usual and customary meanings, and the Parties each hereby waive the application of any rule of law that ambiguous or conflicting terms be resolved against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of same.

16.11. Choice of Law, Venue, and Attorney's Fees. In any dispute under this Agreement, the successful Party shall be entitled to collect from the other Party its reasonable attorneys' fees, and other costs as determined by a Court of competent jurisdiction. The Parties agree that any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be governed by the laws of the State of Arizona. The Parties further agree that the venue for any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be Maricopa County and that any action filed shall be heard in a court of competent jurisdiction located in Maricopa County. The Parties expressly waive the right to object,

for any reason, to the venue of Maricopa County. The terms of this Paragraph 16.11 shall survive the termination of this Agreement.

16.12. Defaults and Remedies: Any Party shall be in default under this Agreement (“**Default**”) if it fails to satisfy any term or condition as required under this Agreement within thirty (30) business days following written notice from the other Party (“**Notice**”); provided, however, that the Notice shall set forth the specific reasons for the determination that the Party has failed to satisfy any term of condition hereof. A Party shall not be in Default if the Party commences to cure any deficiencies within thirty (30) business days of receipt of Notice and cures such deficiencies within a reasonable time thereafter.

16.13. Mediation. If a dispute arises out of or related to this Agreement, or breach thereof, the Parties may try to settle the dispute through mediation before resorting to arbitration, litigation, or some other dispute resolution. If the Parties agree to pursue mediation but cannot agree upon the selection of a mediator within seven (7) days, either Party may request a presiding judge of the Superior Court to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool. The terms of this Paragraph 16.13 shall survive the termination of this Agreement.

16.14. Waiver of Jury Trial. UNLESS EXPRESSLY PROHIBITED BY LAW, EACH OF THE CITY AND EACH OWNER KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY AND ALL ACTIONS OR OTHER LEGAL PROCEEDINGS AGAINST THE OTHER PARTY, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND/OR THE TRANSACTIONS IT CONTEMPLATES, AND AGREES THAT ANY AND ALL ACTIONS OR OTHER LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS IT CONTEMPLATES, AND/OR THE WORK PERFORMED PURSUANT TO THIS AGREEMENT SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THIS WAIVER APPLIES TO ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COMPETENT COUNSEL. The terms of this Paragraph 16.14 waiving the right to a jury trial shall survive the termination of this Agreement.

16.15. Limitation on Claims. THE PARTIES AGREE THAT IN THE EVENT OF A BREACH OF THIS AGREEMENT, THE PARTIES SOLE REMEDY IS TO SEEK SPECIFIC PERFORMANCE, DECLARATORY RELIEF AND/OR INJUNCTIVE RELIEF (COLLECTIVELY REFERRED TO AS “EQUITABLE RELIEF”). IF EQUITABLE RELIEF IS NOT AVAILABLE AS A REMEDY, THE NON-BREACHING PARTY MAY PURSUE A CLAIM FOR ACTUAL DAMAGES. IN NO EVENT SHALL CONSEQUENTIAL DAMAGES, EXPECTATION DAMAGES AND/OR INCIDENTAL DAMAGES, WHICH INCLUDES, BUT IS NOT LIMITED TO, CLAIMS FOR LOST PROFITS, BE AWARDED FOR A BREACH OF THIS AGREEMENT, AND THE PARTIES EXPRESSLY WAIVE ANY RIGHT TO CONSEQUENTIAL DAMAGES, EXPECTATION DAMAGES, AND/OR INCIDENTAL DAMAGES IN THE EVENT OF A

**BREACH OF THIS AGREEMENT.** The terms of this Paragraph 16.15 limiting the remedies available to the Parties in the event of a breach of the Agreement shall survive the termination of this Agreement.

16.16. Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, this Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties.

16.17. Severability. If any provision of this Agreement or the application thereof to any person or circumstance is held to be invalid, illegal, or unenforceable to any extent in an arbitration or court proceeding and such holding has become final and non-appealable, the remainder of this Agreement and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

16.18. Survival Clause: All provisions in this Agreement that logically should survive the expiration or earlier termination of this Agreement shall survive the expiration or earlier termination of this Agreement. This includes by way of example: all provisions imposing obligations that will not be triggered until the Agreement is terminated, all indemnification provisions; all limitation of remedies and damages provisions; all provisions waiving claims; and all provisions relieving any Party of liability for actions taken. The fact that certain provisions in this Agreement expressly state that such provisions shall survive the expiration or earlier termination of this Agreement shall not be construed as limiting the application of the Survival Clause set forth in this Paragraph 16.18 to other provisions in the Agreement.

17. REPRESENTATIONS AND WARRANTIES OF OWNER. As of the date of the execution of this Agreement, each Owner represents and warrants the following as to itself only:

17.1. Pradera 160 is the owner of the Pradera Property and has the full right and authority to submit its interest in the Property to the obligations hereunder.

17.2. Hinton is the owner of the Hinton Property and has the full right and authority to submit its interest in the Property to the obligations hereunder.

17.3. Citrus is the owner of the Citrus Property and has the full right and authority to submit its interest in the Property to the obligations hereunder.

17.4. Melcor is the owner of the Melcor Property and has the full right and authority to submit its interest in the Property to the obligations hereunder.

17.5. Ventanas is the owner of the Ventanas Property and has the full right and authority to submit its interest in the Property to the obligations hereunder.

17.6. Pradera 160 is a Washington limited liability company, in good standing; Pradera 160 (including the person signing for Pradera 160) has the authority and the right to enter into this Agreement as authorized by the manager of Pradera 160, and Pradera 160 is not prohibited

from executing this Agreement by any law, rule, regulation, instrument, agreement, order or judgment.

17.7. Hinton is an Arizona limited liability partnership, in good standing; Hinton (including the person signing for Hinton) has the authority and the right to enter into this Agreement as authorized by the general partner of Hinton, and Hinton is not prohibited from executing this Agreement by any law, rule, regulation, instrument, agreement, order or judgment.

17.8. Citrus is an Arizona limited liability company, in good standing; Citrus (including the person signing for Citrus) has the authority and the right to enter into this Agreement as authorized by the manager of Citrus, and Citrus is not prohibited from executing this Agreement by any law, rule, regulation, instrument, agreement, order or judgment.

17.9. Melcor is an Arizona corporation, in good standing; Melcor (including the person signing for Melcor) has the authority and the right to enter into this Agreement as authorized by the board of directors of Melcor, and Melcor is not prohibited from executing this Agreement by any law, rule, regulation, instrument, agreement, order or judgment.

17.10. Ventanas is an Arizona limited liability company, in good standing; Ventanas (including the person signing for Ventanas) has the authority and the right to enter into this Agreement as authorized by the manager of Ventanas, and Ventanas is not prohibited from executing this Agreement by any law, rule, regulation, instrument, agreement, order or judgment.

17.11. Each Owner reviewed this Agreement 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 Agreement.

18. REPRESENTATIONS AND WARRANTIES OF CITY. As of the Effective Date of this Agreement, the City represents and warrants the following:

18.1. Approval. City has approved this Agreement 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.

18.2. Authorization. City agrees that City's execution of this Agreement 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 Agreement 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 Agreement on behalf of City have been duly authorized to do so.

19. NOTICES. Any and all notices, filings, approvals, consents, or other communications required or permitted by this Agreement shall be given in writing and (i) personally delivered, (ii) sent by first-class mail, postage prepaid, (iii) sent by Federal Express, Airborne, U.P.S. or other similar nationally recognized overnight courier, addressed as follows:



|                 |   |
|-----------------|---|
| To City:        | City of Goodyear<br>190 North Litchfield Road<br>P.O. Box 5100<br>Goodyear, Arizona 85338<br>Attn: Engineering Director   |
| With a copy to: | City of Goodyear<br>190 North Litchfield Road<br>P.O. Box 5100<br>Goodyear, Arizona 85338<br>Attn: City Attorney  |
| To Owners:      | <p>Pradera Partners 160, LLC<br/>c/o Shelter Holdings LLC<br/>11624 SE 5<sup>th</sup> Street, Ste. 200<br/>Bellevue, Washington 98005-3590<br/>Attn: Jeffery Gow</p> <p>Hinton Amber Meadows, LLP<br/>c/o Hinton Financial Services, Inc.<br/>11219 100<sup>th</sup> Ave.<br/>Edmonton, Alberta Canada T5K0J1<br/>Attn: Brad Clough</p> <p>Citrus &amp; Lower Buckeye, LLC<br/>c/o Hinton Financial Services, Inc.<br/>11219 100<sup>th</sup> Ave.<br/>Edmonton, Alberta Canada T5K0J1<br/>Attn: Brad Clough</p> <p>Melcor Developments Arizona, Inc.<br/>6930 E. Chauncey Lane, Suite 135<br/>Scottsdale, AZ 85054<br/>Attn: Graeme Melton</p> <p>Las Ventanas I, LLC<br/>3131 E. Camelback Road, Suite 310<br/>Phoenix, Arizona 85016<br/>Attn: Tom Tait, Sr.</p> |
| with a copy to: | Philip Miller, President/Owner<br>Philip Miller Consultants, LLC<br>16 Spur Circle<br>Scottsdale, Arizona 85251   |

|                     |  |
|---------------------|--|
|                     |  |
| and with a copy to: | Stephen C. Earl<br>EARL, CURLEY & LAGARDE, P.C.<br>3101 North Central Avenue, Suite 1000<br>Phoenix, Arizona 85012 |
|                     |  |

or to any other addresses as either Party may from time to time designate in writing and deliver in a like manner. Notices, filings, consents, approvals, and communication shall be deemed to have been given as of the date of the date of delivery if hand delivered or sent by overnight courier, or as of three (3) days following deposit in the U. S. Mail.

*[Signatures on next page]*

IN WITNESS WHEREOF, and agreeing to be bound by the terms of this Agreement, the Parties have caused this Agreement to be executed by their duly appointed representatives.

**OWNERS:**

PRADERA PARTNERS 160, LLC,  
a Washington limited liability company

By: Crescent Capital X, L.L.C.,  
a Washington limited liability company,  
its Manager

By: \_\_\_\_\_  
Jeffery D. Gow, Manager

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of March, 2017, by Jeffery D. Gow, the Manager of Crescent Capital X, L.L.C., the Manager of PRADERA PARTNERS 160, LLC, a Washington limited liability company, for and on behalf thereof.

Notary Public

(Seal)

[Signatures continue on next page]

HINTON AMBER MEADOWS, LLP,  
an Arizona limited liability partnership

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

By: \_\_\_\_\_  
Brad Clough, President

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of March, 2017, by Brad Clough, President of Hinton Financial Services, Inc., the General Partner of HINTON AMBER MEADOWS, LLP, an Arizona limited liability partnership, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

(Seal)

*[Signatures continue on next page]*

CITRUS & LOWER BUCKEYE, LLC,  
an Arizona limited liability company

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

By: \_\_\_\_\_  
Brad Clough, President

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of March, 2017, by Brad Clough, President of Hinton Financial Services, Inc., the Manager of CITRUS & LOWER BUCKEYE, LLC, an Arizona limited liability company, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

(Seal)

*[Signatures continue on next page]*

MELCOR DEVELOPMENTS ARIZONA, INC.,  
an Arizona corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA        )  
                                      ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of March, 2017, by  
\_\_\_\_\_, the \_\_\_\_\_ of MELCOR DEVELOPMENTS  
ARIZONA, INC., an Arizona corporation, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

(Seal)

*[Signatures continue on next page]*

LAS VENTANAS I, LLC,  
an Arizona limited liability company

By: Two T & W, LLC,  
an Arizona limited liability company,  
its Manager

By: \_\_\_\_\_  
Tom Tait, Sr., Manager

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of March, 2017, by Tom Tait, Sr., the Manager of Two T & W, LLC, the manager of LAS VENTANAS I, LLC, an Arizona limited liability company, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

(Seal)

*[Signatures continue on next page]*



**CITY:**

CITY OF GOODYEAR,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_ the \_\_\_\_\_ of the CITY OF GOODYEAR, an Arizona municipal corporation, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

(Seal)

EXHIBIT A-1

LEGAL DESCRIPTION OF PRADERA PROPERTY

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.

EXHIBIT A-2

LEGAL DESCRIPTION OF HINTON PROPERTY

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

N:\030103\ADMIN\G-L\ANNEX-060413.docx

Page 1 of 1

4550 North 12th Street | Phoenix, AZ 85014-4291 | 602.264.6831 | (F) 602.264.0928

**CVL**

EXHIBIT A-3

LEGAL DESCRIPTION OF CITRUS PROPERTY

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.



EXHIBIT A-4

LEGAL DESCRIPTION OF MELCOR PROPERTY

**Parcel No. 1:**

That portion of the Southwest quarter of Section 10, Township 1 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the South quarter corner of said Section 10 marked with a brass cap whence the Southwest corner of said Section 10 marked with an aluminum cap lies West 2,644.93 feet;

Thence North 00 degrees 03 minutes 17 seconds West along the East line of the Southwest quarter of said Section 10 a distance of 33.00 feet to the Point of Beginning;

Thence West parallel with and 33.00 feet North of the South line of said Southwest quarter a distance of 1,312.20 feet to a point that lies 1,332.73 feet East of the West line of said Southwest quarter;

Thence North 00 degrees 01 minutes 07 seconds West parallel with and 1,332.73 feet East of said West line a distance of 557.00 feet;

Thence West parallel with and 590.00 feet North of the South line of said Southwest quarter a distance of 156.50 feet;

Thence North 00 degrees 01 minutes 07 seconds West parallel with and 1,176.23 feet East of the West line of said Southwest quarter a distance of 764.39 feet to the North line of the South 1,354.38 feet of said Southwest quarter;

Thence East parallel with and 1,354.38 feet North of the South line of said Southwest quarter a distance of 1,467.84 feet to the East line of said Southwest quarter;

Thence South 00 degrees 03 minutes 17 seconds East along said East line a distance of 1,321.39 feet to the Point of Beginning.

**Parcel No. 2:**

The West half of the Northeast quarter of Section 15, Township 1 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

EXHIBIT A-5  
LEGAL DESCRIPTION OF VENTANAS PROPERTY

EXHIBIT A

Legal Description of Property

PARCEL NO. 1:

LOTS 1 AND 2 OF SECTION 15 OF THAT PLAT OF RESURVEY OF TOWNSHIP 1 NORTH, RANGE 2 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, APPROVED BY FRANK S. INGALLS, SURVEYOR GENERAL, DECEMBER 16, 1907 AND ON FILE IN THE UNITED STATES GENERAL LAND OFFICE; AND

THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT ANY PORTION LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY:

THAT PART OF THE EAST HALF OF THE NORTHWEST 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:

BEGINNING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 15;

THENCE SOUTH 0 DEGREES 10 MINUTES 30 SECONDS EAST ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 15 A DISTANCE OF 583.65 FEET;

THENCE WEST ALONG A LINE PARALLEL TO AND 583.65 FEET SOUTHERLY OF THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 15 A DISTANCE OF 412.00 FEET;

THENCE NORTH 0 DEGREES 10 MINUTES 30 SECONDS WEST ALONG A LINE PARALLEL TO AND 412.00 FEET WESTERLY OF THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 15 A DISTANCE OF 583.65 FEET TO A POINT ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 15;

THENCE EAST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 15 A DISTANCE OF 412.00 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 2:

THAT PART OF THE EAST HALF OF THE NORTHWEST 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:

BEGINNING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 15;  
THENCE SOUTH 0 DEGREES 10 MINUTES 30 SECONDS EAST ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 15 A DISTANCE OF 583.65 FEET;

THENCE WEST ALONG A LINE PARALLEL TO AND 583.65 FEET SOUTHERLY OF THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION IS A DISTANCE OF 412.00 FEET;

THENCE NORTH 0 DEGREES 10 MINUTES 30 SECONDS WEST ALONG A LINE PARALLEL TO AND 412.00 FEET WESTERLY OF THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION IS A DISTANCE OF 583.65 FEET TO A POINT ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 15;

THENCE EAST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION IS A DISTANCE OF 412.00 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 3:

THAT PART OF TRACT NO. 37 (OF THAT PLAT OF RESURVEY OF TOWNSHIP 1 NORTH, RANGE 2 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, APPROVED BY FRANK S. INGALLS, SURVEYOR GENERAL, DECEMBER 16, 1907 AND ON FILE IN THE UNITED STATES GENERAL LAND OFFICE), TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH BEARS SOUTH 0 DEGREES 01 MINUTES EAST 1854 FEET FROM THE POINT OF INTERSECTION OF THE EAST LINE OF SECTION 9, TOWNSHIP 1 NORTH, RANGE 2 WEST PROLONGED SOUTHERLY WITH THE NORTH LINE OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 2 WEST PROLONGED WESTERLY AND WHICH POINT OF INTERSECTION IS SOMETIMES DESIGNATED AS THE NORTHWEST CORNER OF SECTION 15, TOWNSHIP 1 NORTH RANGE 2 WEST;

THENCE EAST 180.79 FEET PARALLEL TO THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION PROLONGED WESTERLY TO THE EAST LINE OF SAID TRACT NO. 37;

THENCE SOUTH 0 DEGREES 04 MINUTES 40 SECONDS EAST 787.9 FEET MORE OR LESS, ALONG THE EAST LINE OF SAID TRACT NO. 37 TO THE SOUTHWEST CORNER OF LOT 2 OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 2 WEST;

THENCE ALONG THE WESTERLY PROLONGATION OF THE SOUTH LINE OF LOT 2, A DISTANCE OF 178 FEET, MORE OR LESS, PARALLEL TO THE NORTH LINE OF NORTHWEST QUARTER OF SAID SECTION 15 AS PROLONGED WESTERLY TO THE CENTER OF THE COUNTY ROAD;

THENCE NORTH 0 DEGREES 01 MINUTES WEST 787.9 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL NO. 4:

THAT PART OF TRACT 37 (OF THAT PLAT OF RESURVEY OF TOWNSHIP 1 NORTH, RANGE 2 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, APPROVED BY FRANK S. INGALLS, SURVEYOR GENERAL, DECEMBER 16, 1907 AND ON FILE IN THE UNITED STATES GENERAL LAND OFFICE), TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH BEARS SOUTH 0 DEGREES 01 MINUTES EAST 295.00 FEET FROM THE POINT OF INTERSECTION OF THE EAST LINE OF SECTION 9, TOWNSHIP 1 NORTH, RANGE 2 WEST PROLONGED SOUTHERLY WITH THE NORTH LINE OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 2 WEST PROLONGED WESTERLY AND WHICH POINT OF INTERSECTION IS SOMETIMES DESIGNATED AS THE NORTHWEST CORNER OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 2 WEST;

THENCE EAST 178.65 FEET, PARALLEL TO THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 15, AS PROLONGED WESTERLY TO THE EAST LINE OF SAID TRACT 37;

THENCE SOUTH 0 DEGREES 04 MINUTES 40 SECONDS EAST 1559 FEET ALONG THE EAST LINE OF SAID TRACT 37;

THENCE WEST 180.79 FEET, PARALLEL TO THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 15, AS PROLONGED WESTERLY;

THENCE NORTH 0 DEGREES 01 MINUTES WEST 1559 FEET TO THE POINT OF BEGINNING.

## EXHIBIT B

### DEPICTION OF REGIONAL LINES

An Exhibit depicting the Regional Water Delivery Lines and Durango Water Lines and an Exhibit depicting the Regional Wastewater Lines and Durango Wastewater Lines, each prepared by CVL Consultants, is on file with City of Goodyear Engineering Department

## EXHIBIT C

### Description Regional Water Delivery Lines, Regional Wastewater Trunk Lines, and Durango Lines to be Constructed by the Owners

| <b>Table 1. Regional Water Delivery Lines*</b>                                       |   |               |  |
|--|---|---------------|--|
| <u>Line Name</u>   | <u>Location</u>   | <u>Length</u> | <u>Benefitted Owners</u>   |
| Line E   | Yuma Road:<br>Citrus Road to<br>183 <sup>rd</sup> Ave.            | 2,535 feet    | Las Ventanas<br>Paseo Place I<br>Paseo Place II<br>Amber Meadows |
| Portion of Line<br>F (1,312.15 feet<br>of 2,640 feet or<br>49.7% of total<br>length) | Yuma Road:<br>183 <sup>rd</sup> Ave. to<br>185 <sup>th</sup> Ave. | 1,275 feet    | Las Ventanas<br>Paseo Place I<br>Paseo Place II<br>Amber Meadows |

| <b>Table 2. Regional Wastewater Trunk Lines**</b> |   |               |  |
|---|---|---------------|--|
| <u>Line Name</u>                                  | <u>Location</u>   | <u>Length</u> | <u>Benefitted Owners</u>                                   |
| Line F  | Lower Buckeye<br>Road: Cotton to<br>173 <sup>rd</sup> Ave.  | 1,050 feet    | Las Ventanas<br>Paseo Place I<br>Pradera<br>La Jolla Vista |
| Line G1   | Lower Buckeye<br>Road: 177 <sup>th</sup> Ave.<br>to Citrus Road,<br>and Citrus Road:<br>Lower Buckeye<br>Road to Watkins<br>Street. | 2,624 feet    | Las Ventanas<br>Paseo Place I<br>Pradera                   |
| Line G2   | Lower Buckeye<br>Road: 173 <sup>rd</sup> Ave.<br>to 177 <sup>th</sup> Ave.  | 2,690 feet    | Las Ventanas<br>Paseo Place I<br>Pradera<br>La Jolla Vista |
| Line H1   | Citrus Road:<br>Watkins Street to<br>Durango Street,<br>and Durango<br>Street: Citrus   | 2,570 feet    | Las Ventanas<br>Paseo Place I                              |



|  |                                |  |  |
|--|--------------------------------|--|--|
|  | Road to 181 <sup>st</sup> Ave. |  |  |
|--|--------------------------------|--|--|

| <b>Table 3. Durango Lines</b> |  |               |  |
|-------------------------------|--|---------------|--|
| <u>Line Name</u>              | <u>Location</u>  | <u>Length</u> | <u>Benefitted Owners</u>                 |
| Durango Water Line            | Durango Street: Citrus Road to 183 <sup>rd</sup> Ave.            | 2635.91 feet  | Las Ventanas<br>Paseo Place I<br>Pradera |
| Durango Wastewater Line       | Durango Street: 181 <sup>st</sup> Ave. to 183 <sup>rd</sup> Ave. | 1,322.63 feet | Las Ventanas<br>Paseo Place I            |
|                               |  |               |  |

\* The Lines reflected in Table 1 correspond to the Lines identified in the Cost Recovery Resolution – Water Delivery Lines Resolution of Intention No. 06-1064 as amended by Resolution No 14-1621 and Resolution No. 16-1747.

\*\* The Lines reflected in Table 2 correspond to the Lines identified in the Cost Recovery Resolution – Wastewater Trunk Delivery Lines Resolution of Intention No. 06-1065 as amended by Resolution No 14-1622 and Resolution No. 16-1748.

A description of the Regional Water Delivery Lines to be constructed follows:

**Line E:** a 12” (twelve-inch) water line which will be installed in Yuma Road between Citrus Road and 183<sup>rd</sup> Avenue with an approximate length of 2,535 feet.

**Line F (Partial):** a 12” (twelve-inch) water line which will be installed in Yuma Road between 183<sup>rd</sup> Avenue and 185<sup>th</sup> Avenue with an approximate length of 1,275 feet (This 1275 feet is about 48.3% of the total length of Line F which is 2,640 feet).

A description of the Regional Wastewater Trunk Lines it be constructed follows:

**Line F:** an 18” (eighteen-inch) wastewater line which will be installed in Lower Buckeye Road between Cotton Lane and 173<sup>rd</sup> Avenue with an approximate length of 1,050 feet.

**Line G1:** a 15” (fifteen-inch) wastewater line which will be installed in Lower Buckeye Road between 177<sup>th</sup> Avenue and Citrus Road with an approximate length of 1,280 feet, and a 12” (twelve-inch) wastewater line which will be installed in Citrus Road between Lower Buckeye Road and Watkins Street with an approximate length of 1,330 feet.

**Line G2:** an 18” (eighteen-inch) wastewater line which will be installed in Lower Buckeye Road between 173<sup>rd</sup> Avenue and 175<sup>th</sup> Avenue with an approximate length of 1,325 feet and a 15”

(fifteen-inch) wastewater line which will be installed in Lower Buckeye Road between 175<sup>th</sup> Avenue and 177<sup>th</sup> Avenue with an approximate length of 1,380 feet.

**Line H1:** a 12" (twelve-inch) wastewater line which will be installed in Citrus Road between Watkins Street and Durango Street with an approximate length of 1,380 feet and a 12" (twelve-inch) wastewater line which will be installed in Durango Street between Citrus Road and 181<sup>st</sup> Avenue with an approximate length of 1,300 feet.

A description of the Durango Lines to be constructed follows:

**Durango Water Line:** a twelve inch (12") water line which will be installed within the Durango Street alignment between Citrus Road and 183<sup>rd</sup> Avenue with an approximate length of 2635.91 feet.

**Durango Wastewater Line:** a ten inch (10") wastewater line which will be installed within the Durango Street alignment between 181<sup>st</sup> Avenue and 183<sup>rd</sup> Avenue with an approximate length of 1,322.63 feet.

## EXHIBIT D

### LIST OF PLANS

Offsite Water Plans for Pradera, Goodyear, Arizona – 2013-3750-C4 Durango Water  
by Cardno USA, Inc. dated/sealed 10/10/16

Offsite Sewer Plans for Pradera, Goodyear, Arizona – 2013-3750-C3 Pradera Offsite Sewer  
by Cardno USA, Inc. dated/sealed 10/10/16

Durango Street Sewer Line, Offsite Water & Sewer, Goodyear, Arizona  
by Rick Engineering Company dated/sealed 11/02/16

La Jolla Vista 1, Offsite Sewer Plans, Goodyear, Arizona – 2013-3706-C3  
by CVL, Inc. dated/sealed 06/06 & 09/09/14

West Goodyear Section 10 Water Mains, Goodyear, Arizona – 2013-4230-C4  
by CVL, Inc. dated/sealed 7/15/15

EXHIBIT E  
ESCROW AGREEMENT  
attached

## EXHIBIT E

### FORM OF ESCROW AGREEMENT

#### ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2017 by and among PRADERA PARTNERS 160, LLC, a Washington limited liability company (“**Pradera 160**”), HINTON AMBER MEADOWS, LLP, an Arizona limited liability partnership (“**Hinton**”), CITRUS & LOWER BUCKEYE, LLC, an Arizona limited liability company (“**Citrus**”), MELCOR DEVELOPMENTS ARIZONA, INC., an Arizona corporation (“**Melcor**”), LAS VENTANAS I, LLC, an Arizona limited liability company (“**Ventanas**”), CITY OF GOODYEAR, an Arizona municipal corporation (“**City**”), and FIRST AMERICAN TITLE INSURANCE COMPANY (“**Escrow Agent**”). Escrow Agent, Pradera 160, Hinton, Citrus, Melcor, Ventanas, and City are sometimes hereinafter referred to collectively as the Parties and individually as a Party.

#### BACKGROUND:

A. Pradera 160, Hinton, Citrus, Melcor and Ventanas (each, an “**Owner**” and, collectively, the “**Owners**”) each owns certain real property located in the City of Goodyear, Maricopa County, Arizona.

B. The Owners and the City are parties to that certain Development Agreement for West Goodyear Sewer and Water Infrastructure of even date herewith (the “**Development Agreement**”). Capitalized terms used but not otherwise defined herein shall have the meanings given thereto in the Development Agreement.

C. Pursuant to the Development Agreement, Owners agreed to construct certain infrastructure improvements generally described in Exhibit A attached hereto and incorporated herein (the “**Regional Lines and Durango Lines**”). Each of the Regional Lines and Durango Lines (each, a “**Line Segment**”) is described in Tables 1, 2 and 3 of Exhibit A. Certain Owners shall be responsible for an allocable share of the costs of some of the Line Segments, but not others, as more particularly set forth on the allocation schedule attached hereto as Exhibit A-1 (the “**Allocation Schedule**”).

D. Pursuant to the Development Agreement, the Owners agreed to enter into this Escrow Agreement and to fund the Escrow contemplated hereby in the amount of \$\_\_\_\_\_, which represents 110% of the stamped engineer's estimate prepared by Coe & Van Loo Consultants, Inc. for the cost of the Regional Lines and the Durango Lines and a 10% contingency amount (the "**Total Funding**"). The Allocation Schedule allocates the Total Funding to each Line Segment.

E. Prior to constructing the Regional Lines and Durango Lines, Owners are required to provide financial assurances for such improvements in a form acceptable to the City Engineer of his designee. The City Engineer has agreed that this Agreement, upon full execution by all Parties hereto and funding of the Escrow as set forth in Section 5 will constitute an acceptable financial assurance in full satisfaction of Owners' financial assurance obligation.

F. The Owners and the City have requested Escrow Agent to act in the capacity of escrow agent under this Agreement, and Escrow Agent, subject to the terms and conditions hereof, has agreed so to do.

#### **AGREEMENT:**

**NOW, THEREFORE**, in consideration of the promises and mutual covenants and agreements contained herein, the parties hereto hereby agree as follows:

1. *Incorporation of Recitals.* The Parties hereby acknowledge and agree to the Recitals set forth above, which are incorporated herein by this reference.

2. *Definitions.* As used in this Agreement, the following terms shall have the respective meanings as set forth below.

2.1. "**Draw Request**" means a written demand for payment made to the Escrow Agent that satisfies the requirements for draw requests set forth in Paragraph 1 of Exhibit C (Draw Procedures) attached hereto and incorporated herein.

2.2. "**Escrow Funds**" means the Initial Deposits and the Letter of Credit Proceeds.

2.3. **“Event of Force Majeure”** means an event beyond the control of the Party invoking this provision, which was unforeseeable and prevents such Party from complying with any of its obligations under this Agreement, including but not limited to:

- (a) act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods, unseasonable weather events);
- (b) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo;
- (c) rebellion, revolution, insurrection, or military or usurped power, or civil war;
- (d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
- (e) riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to employees of the Owners; or
- (f) acts or threats of terrorism or
- (g) material shortages or delays caused by unforeseeable events beyond the control of the Owners.

An Event of Force Majeure do not include delays caused by financial inability of the Party invoking this provision nor the efforts required to obtain easements and/or rights of way from third parties needed for the Regional Lines and Durango Lines.

2.4. **“Initial Deposits”** means the cash and/or irrevocable letters of credit that are to be delivered to the Escrow Agent pursuant to the terms of section 5.1.

2.5. **“Letter of Credit Proceeds”** means the cash that is to be delivered to the Escrow Agent pursuant to the terms of section 5.3.

2.6. **“Owners Funding Agreement”** means a joint development agreement or similar private construction and funding agreement pertaining to the construction of all of the

Regional Lines and the Durango Lines entered into by and between the Owners on such terms and conditions as may be determined solely by the Owners.

2.7. **“Project Manager”** means that person appointed by Owners to act as the exclusive agent for and on behalf of the Owners in connection with the construction of the Regional Lines and Durango Lines and who shall be entitled to require Escrow Agent to disburse Escrow Funds as provided in this Agreement.

2.8. **“Takeover Right”** means the right, but not the obligation, of the City to assume and take over the construction of the Regional Lines and Durango Lines as provided in Section 8 below.

3. *Construction of Improvements.* Owners shall be responsible for the construction and completion of the Regional Lines and Durango Lines in accordance with the Development Agreement and this Agreement, subject to the City Takeover Right.

4. *Appointment of Escrow Agent.* Each of the Owners and the City hereby appoints First American Title Insurance Company, 9000 E Pima Center Parkway, Scottsdale, Arizona 85258, Telephone (602) 685-7000 Attention Sandi Overbey, as the escrow agent under this Agreement, and Escrow Agent hereby accepts such appointment. As set forth on the Allocation Schedule, only certain Owners are responsible for the costs associated with certain Line Segments and, therefore, only funds paid by or from letters of credit deposited into the Escrow by those Owners listed on the Allocation Schedule as responsible for the costs of a particular Line Segment shall be used to fund each Allocation Account (as defined below) and pay for costs associated with that particular Line Segment. Escrow Agent shall maintain separate records and account for all funds deposited and letters of credit held on the basis of each Owner’s respective share of the costs of each Line Segment as reflected on the Allocation Schedule and further allocate all such sums to the Lines Segments for which same were deposited so that Escrow Agent shall maintain a sub-escrow and a separate record (each an **“Allocation Account”**) of cash funds deposited (including from any draw of a letter of credit) and portions of each letter of credit held on a Line Segment by Line Segment basis, for the purpose of facilitating the payment of the costs associated with the construction of the Regional Lines and the Durango Lines. For example, if Pradera deposits a letter of credit in the amount of \$\_\_\_\_\_ and Pradera is responsible to contribute only \$\_\_\_\_\_ toward the Durango Water Line, \$\_\_\_\_\_ toward Wastewater Line Segment F, \$\_\_\_\_\_ toward Wastewater Line Segment G1 and \$\_\_\_\_\_ toward Wastewater Line Segment G2, then Escrow Agent shall separately account for such sums accordingly and shall not utilize any sums deposited for a particular purpose for other purposes (e.g., funds deposited for Wastewater Line Segment G1 shall not be used to pay for costs of the Durango Water Line or Wastewater Line Segment G2 or any other costs relating to the Regional Lines or Durango Lines. Unless and until the City exercises its Takeover Right, the Escrow Agent shall maintain a single escrow from which cash funds will be disbursed to each sub-escrow Allocation Account to then pay costs associated with each Line Segment; however, once all letters of credit have been replaced with cash and the City exercises



its Takeover Right, Escrow Agent shall fund each Allocation Account on a Line Segment by Line Segment basis from cash held in the Escrow based on the then intended balance of each Allocation Account as reflected in the latest Allocation Direction (as defined on in paragraph 1(ix) of Exhibit C attached hereto) prepared by Project Manager. City and Owners release Escrow Agent from any and all liability for funding the Allocation Accounts in amounts consistent with Allocation Direction prepared by Project Manager. Once such funding occurs, City may, as described below, draw funds from each Allocation Account without regard to each Owner's share of the funds in that Allocation Account, but the City may not draw funds from an Allocation Account other than to pay costs associated with the Line Segment for which such Allocation Account was established (e.g., the City may not draw funds from the Allocation Account established for the Durango Water Line for use in paying costs of the Durango Wastewater Line or any of the Regional Lines).

5. *Funding of the Escrow.*

5.1. Initial Deposits. The Owners and City agree that (i) \$\_\_\_\_\_ is equal to 110% of the stamped engineer's estimate prepared by Coe & Van Loo Consultants, Inc. of all of the anticipated costs associated with the construction of the Regional Lines and the Durango Lines and (ii) the amount equal to 110% of the stamped engineer's estimate prepared by Coe & Van Loo Consultants, Inc. of all of the anticipated costs associated with the construction of each Line Segment is accurately set forth on the Allocation Schedule. On or before the date that is sixty (60) days after the execution of the Development Agreement, the Owners shall deliver to the Escrow Agent cash and/or irrevocable letters of credit, issued by recognized financial institutions and in a form as provided herein, or any combination thereof which total \$\_\_\_\_\_ to be held in the escrow established hereunder by Escrow Agent (the "**Escrow**") in accordance with the terms hereof. Subject to and in accordance with the terms and conditions hereof, Escrow Agent agrees that it shall receive, hold in escrow, invest and release or distribute the Escrow Funds. Escrow Agent shall invest any cash portion of Escrow Funds deposited by or for the benefit of an Owner in separate interest-bearing money market accounts at a bank insured by the FDIC and all interest and other earnings on such cash shall become a part of the Escrow Funds for all purposes. If requested by Escrow Agent, the Owners shall provide Escrow Agent with their respective taxpayer identification numbers documented by an appropriate Form W-9 upon execution of this Agreement.

5.2. Restriction on Reductions of Letter of Credits. The Owners intend for the Escrow Funds to at all times equal at least 110% of the amount of all anticipated remaining costs associated with the construction of the Regional Lines and the Durango Lines as reflected in the cost-to-complete disbursement report provided to Escrow Agent with each Draw Request. If at any time, the City believes (and has evidence reasonably supporting such belief) that the amount of the Escrow Funds is less than 110% of the amount of all anticipated remaining costs associated with the construction of the Regional Lines and the Durango Lines, City may object to any letter of credit reductions with respect to one or more Line Segments by delivering written notice (the "**City Objection**") to Escrow Agent and to the Owners and delivering the supporting documentation for such objection. The City Objection shall indicate at what point letter of credit

reductions with respect to each Line Segment referenced in the City Objection may resume (i.e., if the City has supporting documentation that the costs to complete the Durango Water Line are \$50,000 more than the Escrow Funds accounted for in the Durango Water Line Allocation Account, then no letter of credit reductions with respect to the Escrow Funds accounted for in the Durango Water Line Allocation Account shall be allowed until additional draws in excess of \$50,000 have been made from the Escrow Funds accounted for in the Durango Water Line Allocation Account to pay for costs of constructing the Durango Water Line).

5.3. Letter of Credit Proceeds. If an Owner has deposited a letter of credit into the Escrow and a sufficient amount of cash to fund that Owner's share of a Draw Request has not been funded by that Owner in the respective Allocation Accounts, then upon receipt of a written request by the Project Manager or Escrow Agent, a copy of which is to be provided to the City, Owner shall, within ten (10) business days thereafter, pay to Escrow Agent by wire transfer of immediately available funds the amount equal to its share of the Draw Request. This payment shall be due regardless of whether an objection is made. If an Owner fails to pay such amount within such time, and fails to cure within five (5) business days after receipt of written notice from any of Escrow Agent, Project Manager, City, or any other Owner, then Escrow Agent shall immediately thereafter draw on the full amount of the letter of credit deposited by such Owner, which funds shall then be disbursed by Escrow Agent into the respective applicable Allocation Accounts associated with each of the Line Segments for which that Owner is responsible for an allocable share of costs based on the latest Allocation Direction (as defined on Exhibit C) prepared by Project Manager and thereafter disbursed as though a cash deposit had been made.

6. *Letter of Credit Provisions.*

6.1. Requirements for Letter of Credit. Any letter of credit comprising a portion of the Escrow Funds must be irrevocable and be issued by a lending institution that is a member of the Federal Deposit Insurance Corporation and shall be in a form acceptable to the City attorney or its designee. The letter of credit shall have an expiration date of no earlier than one year from the date of issuance. Any letter of credit shall be issued to the Escrow Agent and/or its successor under this Agreement, as the beneficiary thereof, and shall provide for a single draw. Each letter of credit shall provide that a single draw may be made thereunder based solely upon presentment of a draw request signed by a representative of Escrow Agent certifying that either: (a) The amounts required to be paid by \_\_\_\_\_ (*name of owner*), were not timely paid as required by the provisions of Paragraph \_\_\_\_\_ of that certain Escrow Agreement dated \_\_\_\_\_, 2017 (the "**Escrow Agreement**") and all notice and cure periods have expired; or (b) It is more than twenty (20) business days from the date the City has given notice that it is exercising its Takeover Right pursuant to Section 8 of the Escrow Agreement and \_\_\_\_\_ (*name of owner*) has failed to replace same with cash; or (c) It is less than forty-five (45) calendar days prior to the scheduled expiration date of the letter of credit, and the applicable Owner has failed to either deliver to Escrow Agent (i) a replacement letter of credit with an expiration date twelve (12) months later than the subject letter of credit in the then amount of such letter of credit, or (ii) cash in the amount of the then amount of such letter of

credit to be deposited into the Escrow to be administered as provided in this Agreement. Any letter of credit may provide that it may be reduced from time to time.

6.2. Letter of Credit Reductions. To the extent an Owner who deposited with Escrow Agent a letter of credit makes cash payments to Escrow Agent, and such payments are then disbursed by the Escrow Agent through Allocation Accounts to cover the cost of a pending Draw Request after satisfaction of the requirements of paragraph 1 of Exhibit C, and so long as the City has not objected to the reduction pursuant to Section 5.2 above (or if such objection has been made the City has either (i) withdrawn its objection or (ii) sufficient additional amounts equal to or in excess of the shortage identified in the City Objection described in Section 5.2 have been paid toward costs of constructing the Line Segment identified in the City's Objection, or (iii) the City has consented in writing to the reduction of such Owner's letter of credit), then such Owner may reduce the letter of credit by up to ninety percent (90%) of the amount of cash payments made; provided, that the Project Manager has certified in the Draw Request or otherwise, prior to any such reduction, that, after reduction of the letter of credit, the remaining Escrow Funds in Escrow will equal at least 110% of the anticipated costs associated with completing construction of the Regional Lines and Durango Lines. Escrow Agent shall following written request of an Owner execute from time to time such authorizations as may be necessary to cause a letter of credit to be reduced as provided in the foregoing sentence. At any time and from time to time any letter of credit held by Escrow Agent in an Owner's Account shall be released by Escrow Agent to the applicable Owner for whom such Owner's Account was established if such Owner has either: (i) deposited with Escrow Agent a cash amount which is equal to the then available amount of such letter of credit, or (ii) the Regional Lines and Durango Lines have been fully completed and all costs thereof have been paid as described in the attached Draw Procedure (Exhibit "C" Paragraph 3).

7. *Disbursement of Escrow Funds.* Escrow Agent is hereby authorized to make disbursements of the Escrow Funds only as follows:

7.1. No Default. Unless and until the City exercises its Takeover Right, the Escrow Agent shall make disbursements of the Escrow Funds in accordance with the terms and conditions of the draw procedures set forth on Exhibit "C" attached hereto (the "**Draw Procedures**").

7.2. City Takeover. If the City exercises its Takeover Right, then the City shall notify each Owner, Project Manager and Escrow Agent and if any cash and/or letter of credit remains in the Escrow after the passage of twenty (20) calendar days after Escrow Agent's and the Owner's receipt of such notice, Escrow Agent shall then immediately draw on all such letters of credit and deposit the cash, including the letter of credit proceeds, into the respective applicable Allocation Accounts associated with each of the Line Segments for which that Owner is responsible for an allocable share of costs based on the latest Allocation Direction (as defined on Exhibit C) prepared by Project Manager. At such time as the City exercises its Takeover Right, Project Manager shall continue to perform its duties under this Agreement (including,

without limitation providing certifications contemplated by Exhibit C and identifying amounts to be withdrawn from each Allocation Account to pay costs incurred by the City) without cost to the City, and so long as Project Manager is performing its duties, Escrow Funds shall be disbursed in accordance with the terms and conditions of the Draw Procedures to the extent needed to pay costs incurred by the City to complete the Improvements. If at any time after City exercises its Takeover Right Project Manager ceases performance of such duties, City shall have the right to have Escrow Funds disbursed to the City to reimburse City for costs incurred by the City to complete each Line Segment from each Allocation Account (but only from the Allocation Account applicable to the particular Line Segment for which City has expended funds), and following delivery to Escrow Agent and to the Owners of a draw request, accompanied by copies of invoices, lien waivers as contemplated by Paragraph 1(viii) of Exhibit “C”, applications for payment and other reasonable supporting evidence of the costs and expenses for which payment is sought, Escrow Agent shall make disbursements consistent with the City’s draw request. For avoidance of doubt, City may not draw funds from an Allocation Account other than to pay costs associated with the Line Segment for which such Allocation Account was established (e.g., the City may not draw funds from the Allocation Account established for the Durango Water Line for use in paying costs of the Durango Wastewater Line or any of the Regional Lines).

7.2.1. If the City exercises its Takeover Right, and if the remaining Escrow Funds are insufficient to pay all costs to complete all of the Regional Lines and Durango Lines, the City shall complete the Line Segments for which sufficient funding exists and shall have no obligation or responsibility to complete the others, in which case Owners shall be responsible for completing the Regional Lines and Durango Lines that are needed to serve their respective properties when they develop their respective properties are developed.

7.3. If there is any portion of the Escrow Funds left in an Allocation Account after completion of the applicable Line Segment by the City and the payment of all costs incurred by the City in connection therewith, such excess funds shall be returned to the applicable Owners who funded the Account established for that Line Segment as set forth on the Allocation Schedule in the same proportions as funded by each Owner. Should the Escrow Agent resign and a new Escrow Agent is not appointed and as such City exercises its Takeover Right, the Escrow Funds would be disbursed to the City to hold in escrow on an Allocation Account by Allocation Account basis, and thereafter if there is any portion of the Escrow Funds held in escrow by the City remaining after completion of any Line Segment by the City and the payment of all costs incurred by the City in connection therewith, such excess funds shall be returned to the Owners who funded the Allocation Account established for that Line Segment as set forth on the Allocation Schedule pursuant to a written agreement executed by such Owners advising the City as to how the funds should be distributed and in the absence of such agreement, the City shall be entitled institute a petition for interpleader in any court of competent jurisdiction to determine the rights of the parties hereto. Should a petition for interpleader be instituted, or should the City be threatened with litigation or become involved in litigation in any manner whatsoever in connection with this Agreement or the Escrow Funds, those Owners involved in the dispute hereby jointly and severally agree to reimburse the City for its reasonable attorney’s

fees incurred by the City in connection with or resulting from such threatened or actual litigation prior to any disbursement hereunder.

8. *City Takeover Rights.*

8.1. Conditions of Takeover. The City has the right, but not the obligation to take over the construction of the Regional Lines and Durango Lines under any of the following conditions:

8.1.1. If Owners default in their obligations to construct the Regional Lines and the Durango Lines in accordance with the terms of the Development Agreement and/or fail to comply with the City approved improvement plans for the Regional Lines and Durango Lines in either case such default is not cured within thirty (30) days after written notice from the City is delivered to Owners and Escrow Agent (provided that if such failure cannot reasonably be cured within thirty (30) days, Owners shall not be in default of this Agreement so long as Owners notify the City and Escrow Agent of same and commence to correct such failure within the aforementioned thirty (30) day cure period and diligently pursue such cure thereafter). If there is a default hereunder, then the City shall have the right, but not the obligation, to take over the construction of the Regional Lines and Durango Lines. If pursuant to the foregoing, the default is not cured and the City elects to take over the construction of the Regional Lines and Durango Lines, City shall deliver to Owners and Escrow Agent a written notice of City's elect to take over the construction of the Regional Lines and Durango Lines ("**Construction Takeover Notice**"), and thereafter the City may draw on the Escrow Funds from each Allocation Account as provided in Section 7.2 above for the cost of completing the construction of each applicable Line Segment; or

8.1.2. If, after commencement of construction of the Regional Lines and Durango Lines, the Owners abandon construction of the Regional Lines and Durango Lines for a period of sixty (60) continuous calendar days without first obtaining the City's written consent for any such stoppage, and such default or abandonment is not cured within thirty (30) days after written notice from the City is delivered to Owners and Escrow Agent (provided that if such failure cannot reasonably be cured within thirty (30) days, Owners shall not be in default of this Agreement so long as Owners notify the City and Escrow Agent of same and commence to correct such failure within the aforementioned thirty (30) day cure period and diligently pursue such cure thereafter). If pursuant to the foregoing, the default is not cured and the City elects to take over the construction of the Regional Lines and Durango Lines, City shall deliver to Owners and Escrow Agent a Construction Takeover Notice, and thereafter the City may draw on the Escrow Funds from each Allocation Account as provided in Section 7.2 above for the cost of completing the construction of each applicable Line Segment, or

8.1.3. If Owners fail to complete construction of the Regional Lines and the Durango Lines by the date that is eighteen (18) months following the date that all Escrow

Funds have been deposited into Escrow (as same may be extended on account of any delays resulting from the occurrence of an Event of Force Majeure) and Escrow Agent has sent written notice to all other Parties of such full funding (each, a “**Construction Failure**”), then the City shall have the right, but not the obligation, to take over the construction of the Regional Lines and Durango Lines. Upon the occurrence of a Construction Failure the City may elect to take over the construction of the Regional Lines and Durango Lines. If as a result of the Construction Failure the City elects to take over the construction of the Regional Lines and Durango Lines, City shall deliver to Owners and Escrow Agent a Construction Takeover Notice, and thereafter the City may draw on the Escrow Funds from each Allocation Account as provided in Section 7.2 above for the cost of completing the construction of each applicable Line Segment; or

8.1.4. If Escrow Agent sends a Notice of Resignation as provided in Section 16 below and Owners fail to designate a substitute escrow agent and have such substitute escrow agent assume the Escrow Agent’s duties hereunder within twenty (20) days after the date of the Escrow Agent’s Notice of Resignation, Owners shall be in default under this Agreement and as a result the City may elect to take over the construction of the Regional Lines and Durango Lines. If pursuant to the foregoing the City elects to take over the construction of the Regional Lines and Durango Lines, City shall deliver to Owners and Escrow Agent a Construction Takeover Notice, and thereafter the City may draw on the Escrow Funds from each Allocation Account as provided in Section 7.2 above for the cost of completing the construction of each applicable Line Segment.

8.2. City Indemnification. Owners hereby agree to jointly and severally indemnify the City against all costs, damages, expenses and liabilities, including, without limitation, attorneys’ fees, which the City may incur or sustain in connection with complying with this Agreement or as a result of any court action arising therefrom, except any claims arising out of City’s willful misconduct, gross negligence, bad faith, recklessness, intentional misconduct or breach of this Agreement.

9. *Condition Precedent*. If the Owners have not entered into the Owners Funding Agreement and have not fully funded the Escrow with the Budgeted Funds as contemplated hereby with cash or letters of credit on or before the date that (60) days after the execution of the Development Agreement, this Agreement shall terminate and shall be *void ab initio*. Upon any such termination, Escrow Agent shall return any cash or letter of credit to the Owner who deposited same with Escrow Agent.

10. *Scope of Undertaking*. Escrow Agent’s duties and responsibilities in connection with this Agreement shall be purely ministerial and shall be limited to those expressly set forth in this Agreement. The parties hereto understand that the Escrow Agent is acting as a disbursing/holding agent whose duties may include servicing draw requests, managing Letters of Credit, managing interest-bearing accounts and holding documents. Notwithstanding anything in this Agreement to the contrary, Escrow Agent shall not be bound by any term or provision in an agreement to which it is not a party. Escrow Agent is not a principal, participant or beneficiary in

any transaction underlying this Agreement and shall have no responsibility or obligation of any kind in connection with this Agreement or the Escrow Funds and shall not be required to deliver the Escrow Funds or any part thereof or take any action with respect to any matters that might arise in connection therewith, other than to receive, hold, invest and deliver the Escrow Funds as herein provided. It is understood by the parties that the Escrow Agent is not providing management nor oversight functions with respect to a payment made on behalf of another, nor has significant economic interest in connection with the payment; and therefore, would not be responsible for issuing information returns to the IRS under IRC section 6041 and/or Rev. Rul. 73-90. Except as otherwise expressly provided in this Agreement, specifically including the provisions of paragraph 4 of Exhibit C, Escrow Agent shall not be liable for any error in judgment, any act or omission, any mistake of law or fact, or for anything it may do or refrain from doing in connection herewith, except for its own negligence, willful misconduct or gross negligence.

11. *Reliance; Liability; Indemnity.*

11.1. Reliance. Escrow Agent may rely on, and shall not be liable for acting or refraining from acting in accordance with, any written notice, instruction or request or other paper furnished to it hereunder or pursuant hereto and believed by it to have been signed or presented by the proper party or parties.

11.2. Limitation of Liability. Escrow Agent shall be responsible for holding, investing and disbursing the Escrow Funds pursuant to this Agreement; *provided, however*, that Escrow Agent shall have no liability for any loss arising from any cause beyond its control. Escrow Agent is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of the subject matter of this Agreement or any part hereof or for the transaction or transactions requiring or underlying the execution of this Agreement, the form or execution hereof or for the identity or authority of any person executing this Agreement or any part hereof or depositing the Escrow Funds. Escrow Agent may consult with its counsel or other counsel satisfactory to it concerning any question relating to its duties or responsibilities hereunder or otherwise in connection herewith and shall not be liable for any action taken, suffered or omitted by it in good faith upon the advice of such counsel.

11.3. Escrow Agent Indemnification. The Owners hereby indemnify Escrow Agent to the extent of their respective shares set forth in the Owners Funding Agreement against all costs, damages, expenses and liabilities, including, without limitation, attorneys' fees, which Escrow Agent may incur or sustain in connection with complying with this Agreement or as a result of any court action arising therefrom, except any claims arising out of Escrow Agent's negligence, bad faith, recklessness, intentional misconduct or breach of this Agreement.

12. *Right of Interpleader.* Should any controversy arise involving the parties hereto or any of them or any other person, firm or entity with respect to this Agreement or the Escrow

Funds, or should a substitute escrow agent fail to be designated as provided in Section 16 hereof, or if Escrow Agent should be in doubt as to what action to take, Escrow Agent shall have the right, but not the obligation, either to (a) withhold delivery of the Escrow Funds until the controversy is resolved, the conflicting demands are withdrawn or its doubt is resolved or (b) institute a petition for interpleader in any court of competent jurisdiction to determine the rights of the parties hereto. Should a petition for interpleader be instituted, or should Escrow Agent be threatened with litigation or become involved in litigation in any manner whatsoever in connection with this Agreement or the Escrow Funds, the Owners, but not the City, hereby jointly and severally agree to reimburse Escrow Agent for its reasonable attorney's fees incurred by Escrow Agent in connection with or resulting from such threatened or actual litigation prior to any disbursement hereunder.

13. *Compensation and Reimbursement of Expenses.* The Owners agree to pay Escrow Agent for its services hereunder in accordance with Escrow Agent's fee schedule as attached as Exhibit "B" hereto as in effect from time to time and to pay all expenses incurred by Escrow Agent in connection with the performance of its rights hereunder and otherwise in connection with the preparation, operation, administration and enforcement of this Agreement. Escrow Agent is hereby authorized to deduct from first monies available its fees. **Note: A reasonable charge will be made for extraordinary services rendered.**

14. *Notices.* Any and all notices, filings, approvals, consents, or other communications required or permitted by this Agreement shall be given in writing and (i) personally delivered, (ii) sent by first-class mail, postage prepaid, (iii) sent by Federal Express, Airborne, U.P.S. or other similar nationally recognized overnight courier, or (iv) sent by electronic mail addressed as follows:

|                 |  |
|-----------------|--|
| To City:        | City of Goodyear<br>Attn: Engineering Director<br>190 North Litchfield Road<br>P.O. Box 5100<br>Goodyear, Arizona 85338<br>Email: <a href="mailto:rebecca.zook@goodyearaz.gov">rebecca.zook@goodyearaz.gov</a> |
| with a copy to: | City of Goodyear<br>Attn: City Attorney<br>190 North Litchfield Road<br>P.O. Box 5100<br>Goodyear Arizona 85338<br>Email: <a href="mailto:roric.massey@goodyearaz.gov">roric.massey@goodyearaz.gov</a>         |
| To Owners:      | Pradera Partners 160, LLC<br>c/o Shelter Holdings LLC<br>11624 SE 5 <sup>th</sup> Street, Ste. 200<br>Bellevue, Washington 98005-3590<br>Attn: Jeffery Gow   |



|                 |   |
|-----------------|---|
|                 | <p>Email: _____</p> <p>Hinton Amber Meadows, LLP<br/>c/o Hinton Financial Services, Inc.<br/>11219 100<sup>th</sup> Ave.<br/>Edmonton, Alberta<br/>Canada T5K 0J1<br/>Attn: Brad Clough<br/>Email: _____</p> <p>Citrus &amp; Lower Buckeye, LLC<br/>c/o Hinton Financial Services, Inc.<br/>11219 100<sup>th</sup> Ave.<br/>Edmonton, Alberta<br/>Canada T5K 0J1<br/>Attn: Brad Clough<br/>Email: _____</p> <p>Melcor Developments Arizona, Inc.<br/>6930 E. Chauncey Lane, Suite 135<br/>Scottsdale, AZ 85054<br/>Attn: Ryan Mott<br/>Email: _____</p> <p>Las Ventanas I, LLC<br/>3131 E. Camelback Road, Suite 310<br/>Phoenix, AZ 85016<br/>Attn: Tom Tait, Sr.<br/>Email: _____</p> |
| with a copy to: | <p>Philip Miller, President/Owner<br/>Philip Miller Consultants, LLC<br/>16 Spur Circle<br/>Scottsdale, AZ 85251<br/>Email: <a href="mailto:developaz@gmail.com">developaz@gmail.com</a></p>  |
|                 | <p>Stephen C. Earl<br/>Earl, Curley &amp; Lagarde, P.C.<br/>3101 North Central Avenue, Suite 1000<br/>Phoenix, AZ 85012<br/>Email: _____</p>  |
|                 | <p>Neil D. Biskind<br/>Biskind, Hunt &amp; Semro, PLC</p>   |

|                  |  |
|------------------|--|
|                  | 8501 North Scottsdale Road, Suite 155,<br>Scottsdale, AZ 85253<br>Email: <a href="mailto:neil@biskindlaw.com">neil@biskindlaw.com</a>  |
| To Escrow Agent: | Sandi Overbey<br>First American Title Insurance Company<br>PO Box 52023<br>Phoenix, Arizona 85072<br>9000 E. Pima Center Parkway<br>Scottsdale, Arizona 85258<br>Attn: Trust Department<br>Email: <a href="mailto:soverbey@firstam.com">soverbey@firstam.com</a> |

or to any other addresses as either Party may from time to time designate in writing and deliver in a like manner. All notices shall be deemed to have been given three (3) days following deposit in the United States Postal Service (postage prepaid) or, upon receipt, if sent by overnight delivery service, courier, electronic mail, or personally delivered. Notice to a party shall not be effective unless and until each required copy of such notice is given. Any notice given after 5:00 p.m., Arizona time, or on a Saturday, Sunday or legal holiday, shall be deemed given and received on the immediately succeeding business day. The inability to deliver a notice because of a changed address of which no notice was given, or any rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by legal counsel for such party.

15. *Choice of Laws.* This Agreement shall be construed under, and governed by, the laws of the State of Arizona, excluding, however, its choice of law rules. The parties hereto agree that the forum for resolution of any dispute arising under this Agreement shall be Maricopa County, Arizona, and each of the parties hereby consents, and submits itself, to the jurisdiction of any state or federal court sitting in Maricopa County, Arizona.

16. *Resignation.* Escrow Agent may resign hereunder upon thirty (30) days' prior notice to Owners and the City ("Notice of Resignation"). Upon the effective date of such resignation, Escrow Agent shall deliver the Escrow Funds to any substitute escrow agent designated by the Owners in writing who agrees in writing to assume the obligations of Escrow Agent arising hereunder from and after the effective date of such assumption. If Owners fail to designate a substitute escrow agent and have such substitute escrow agent assume the Escrow Agent's duties hereunder as described above within twenty (20) days after the date of Owner's receipt of the Notice of Resignation, Owners shall be in default under this Agreement and if the City exercises its Takeover Right, Escrow Agent shall immediately cause all letters of credit then held by Escrow Agent to be presented for full payment. Escrow Agent's sole responsibility after

such 30 day notice period expires shall be to hold the Escrow Funds (without any obligation to reinvest the same) and to deliver the same to a designated substitute escrow agent, if any, or in accordance with the directions of a final order or judgment of a court of competent jurisdiction, at which time of delivery Escrow Agent's obligations hereunder shall cease and terminate, or to cause all letters of credit then held by Escrow Agent to be presented for full payment and deliver the Escrow Funds to the City as and when required by the provisions of Section 16.1 below. If Owners fail to designate a substitute escrow agent and City fails to deliver a Construction Takeover Notice within forty-five (45) days after the date of Owner's receipt of the Notice of Resignation, Escrow Agent may institute a petition for interpleader.

16.1. Notwithstanding the foregoing, if the Escrow Agent resigns before or after the City issues a Construction Takeover Notice, and Owners fail to designate a substitute escrow agent and have such substitute escrow agent assume the Escrow Agent's duties hereunder as described above within twenty (20) days after the date of Owner's receipt of the Notice of Resignation, Escrow Agent shall immediately thereafter cause all letters of credit then held by Escrow Agent, if any, to be presented for full payment and shall deliver to the City the Escrow Funds, which funds the City shall hold in escrow for use solely toward payment of the cost of completing the Regional Lines and the Durango Lines.

17. *Severability.* If one or more of the provisions hereof shall for any reason be held to be invalid, illegal or unenforceable in any respect under applicable law, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, and the remaining provisions hereof shall be given full force and effect.

18. *Termination.* This Agreement shall terminate upon the disbursement, in accordance with Sections 7.3 or 9 hereof, of the Escrow Funds in full; *provided, however*, that if all fees, expenses, costs and other amounts required to be paid to Escrow Agent hereunder are not fully and finally paid prior to termination, the provisions of Section 13 hereof shall survive the termination hereof.

19. *General.* The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. This Agreement and any affidavit, certificate, instrument, agreement or other document required to be provided hereunder may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. All signatures may be transmitted by facsimile or in .pdf format, and such facsimile or .pdf will, for all purposes, be deemed to be an original. Unless the context shall otherwise require, the singular shall include the plural and vice-versa, and each pronoun in any gender shall include all other genders. This Agreement or any provision hereof may be amended, modified, waived or terminated only by written instrument duly signed by the Parties hereto. This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their

respective heirs, devisees, executors, administrators, personal representative, successors, trustees, receivers and assigns.

*[signature pages follow]*

IN WITNESS WHEREOF, and agreeing to be bound by the terms of this Agreement, the Parties have caused this Agreement to be executed by their duly appointed representatives.

**OWNERS:**

PRADERA PARTNERS 160, LLC,  
a Washington limited liability company

By: Crescent Capital X, L.L.C.,  
a Washington limited liability company,  
its Manager

By: \_\_\_\_\_  
Jeffery D. Gow, Manager

HINTON AMBER MEADOWS, LLP,  
an Arizona limited liability partnership

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

By: \_\_\_\_\_  
Brad Clough, President

CITRUS & LOWER BUCKEYE, LLC,  
an Arizona limited liability company

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

By: \_\_\_\_\_  
Brad Clough, President

MELCOR DEVELOPMENTS ARIZONA, INC.,  
an Arizona corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

LAS VENTANAS I, LLC,  
an Arizona limited liability company

By: Two T & W, LLC,  
an Arizona limited liability company,  
its Manager

By: \_\_\_\_\_  
Tom Tait, Sr., Manager

**CITY:**

CITY OF GOODYEAR,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**ESCROW AGENT:**

FIRST AMERICAN TITLE INSURANCE  
COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## ESCROW AGREEMENT EXHIBIT A

### Description Regional Water Delivery Lines, Regional Wastewater Trunk Lines, and Durango Lines to be Constructed by the Owners

| <b>Table 1. Regional Water Delivery Lines*</b>                           |   |            |  |
|--|---|------------|--|
| Line Name  | Location  | Length     | Benefitted Owners  |
| Line E   | Yuma Road:<br>Citrus Road to<br>183 <sup>rd</sup> Ave.            | 2,535 feet | Las Ventanas<br>Paseo Place I<br>Paseo Place II<br>Amber Meadows |
| Portion of Line F (1,312.15 feet of 2,640 feet or 49.7% of total length) | Yuma Road:<br>183 <sup>rd</sup> Ave. to<br>185 <sup>th</sup> Ave. | 1,275 feet | Las Ventanas<br>Paseo Place I<br>Paseo Place II<br>Amber Meadows |

| <b>Table 2. Regional Wastewater Trunk Lines**</b> |   |            |  |
|---|---|------------|--|
| Line Name   | Location  | Length     | Benefitted Owners  |
| Line F  | Lower Buckeye Road: Cotton to 173 <sup>rd</sup> Ave.  | 1,050 feet | Las Ventanas<br>Paseo Place I<br>Pradera<br>La Jolla Vista |
| Line G1   | Lower Buckeye Road: 177 <sup>th</sup> Ave. to Citrus Road, and Citrus Road: Lower Buckeye Road to Watkins Street. | 2,624 feet | Las Ventanas<br>Paseo Place I<br>Pradera                   |
| Line G2   | Lower Buckeye Road: 173 <sup>rd</sup> Ave. to 177 <sup>th</sup> Ave.  | 2,690 feet | Las Ventanas<br>Paseo Place I<br>Pradera<br>La Jolla Vista |
| Line H1   | Citrus Road: Watkins Street to  | 2,570 feet | Las Ventanas<br>Paseo Place I                              |

|  |   |  |  |
|--|---|--|--|
|  | Durango Street,<br>and Durango<br>Street: Citrus<br>Road to 181 <sup>st</sup><br>Ave. |  |  |
|--|---|--|--|

| <b>Table 3. Durango Lines</b> |   |               |  |
|-------------------------------|---|---------------|--|
| Line Name                     | Location  | Length        | Benefitted Owners                        |
| Durango Water Line            | Durango Street: Citrus<br>Road to 183 <sup>rd</sup> Ave.            | 2635.91 feet  | Las Ventanas<br>Paseo Place I<br>Pradera |
| Durango<br>Wastewater Line    | Durango Street: 181 <sup>st</sup><br>Ave. to 183 <sup>rd</sup> Ave. | 1,322.63 feet | Las Ventanas<br>Paseo Place I            |
|                               |   |               |  |

\* The lines reflected in Table 1 correspond to the lines identified in the Cost Recovery Resolution – Water Delivery Lines Resolution of Intention No. 06-1064 as amended by Resolution No 14-1621 and Resolution No. 16-1747.

\*\* The Lines reflected in Table 2 correspond to the lines identified in the Cost Recovery Resolution – Wastewater Trunk Delivery Lines Resolution of Intention No. 06-1065 as amended by Resolution No 14-1622 and Resolution No. 16-1748.

A description of the Regional Water Delivery Lines to be constructed follows:

**Line E:** a 12” (twelve-inch) water line which will be installed in Yuma Road between Citrus Road and 183<sup>rd</sup> Avenue with an approximate length of 2,535 feet.

**Line F (Partial):** a 12” (twelve-inch) water line which will be installed in Yuma Road between 183<sup>rd</sup> Avenue and 185<sup>th</sup> Avenue with an approximate length of 1,275 feet (This 1275 feet is about 48.3% of the total length of Line F which is 2,640 feet).



A description of the Regional Wastewater Trunk Lines to be constructed follows:

**Line F:** an 18" (eighteen-inch) wastewater line which will be installed in Lower Buckeye Road between Cotton Lane and 173<sup>rd</sup> Avenue with an approximate length of 1,050 feet.

**Line G1:** a 15" (fifteen-inch) wastewater line which will be installed in Lower Buckeye Road between 177<sup>th</sup> Avenue and Citrus Road with an approximate length of 1,280 feet, and a 12" (twelve-inch) wastewater line which will be installed in Citrus Road between Lower Buckeye Road and Watkins Street with an approximate length of 1,330 feet.

**Line G2:** an 18" (eighteen-inch) wastewater line which will be installed in Lower Buckeye Road between 173<sup>rd</sup> Avenue and 175<sup>th</sup> Avenue with an approximate length of 1,325 feet and a 15" (fifteen-inch) wastewater line which will be installed in Lower Buckeye Road between 175<sup>th</sup> Avenue and 177<sup>th</sup> Avenue with an approximate length of 1,380 feet.

**Line H1:** a 12" (twelve-inch) wastewater line which will be installed in Citrus Road between Watkins Street and Durango Street with an approximate length of 1,380 feet and a 12" (twelve-inch) wastewater line which will be installed in Durango Street between Citrus Road and 181<sup>st</sup> Avenue with an approximate length of 1,300 feet.

A description of the Durango Lines to be constructed follows:

**Durango Water Line:** a twelve inch (12") water line which will be installed within the Durango Street alignment between Citrus Road and 183<sup>rd</sup> Avenue with an approximate length of 2635.91 feet.

**Durango Wastewater Line:** a ten inch (10") wastewater line which will be installed within the Durango Street alignment between 181<sup>st</sup> Avenue and 183<sup>rd</sup> Avenue with an approximate length of 1,322.63 feet.

## **ESCROW AGREEMENT EXHIBIT A-1**

### **Allocation Schedule**

**To list Owner by Owner the exact amount of cash and letter of credit to be deposited and the breakdown of all such sums on an Allocation Account by Allocation Account basis**

## **ESCROW AGREEMENT EXHIBIT B**

### **FIRST AMERICAN TITLE INSURANCE COMPANY TRUST DEPARTMENT**

#### **SPECIAL COLLECTION ACCOUNT FEE SCHEDULE**

**Effective 08/01/2016**

|  |           |
|--|-----------|
| ACCEPTANCE AND SET UP FEE                        | \$ 400.00 |
| Set Up Accounting of each Allocation Account     | \$ 150.00 |
| ADDITIONAL DEPOSIT (Not in Investment Account)   | \$ 25.00  |
| SET UP FEE OF INVESTMENT ACCOUNT (per account)   | \$ 75.00  |
| Additional Deposits (each check )                | \$ 25.00  |
| Withdrawals (each )                              | \$ 25.00  |
| Each DISBURSEMENT (includes 2 remittances)       | \$ 75.00  |
| Each additional remittance                       | \$ 25.00  |
| Annual Fee in advance <sup>1</sup>               | \$ 400.00 |
| Annual Fee in advance of each Allocation Account | \$ 200.00 |
| Courier Fee                                      | \$ 20.00  |
| NSF Fee  | \$ 25.00  |
| Assignment and Assumption                        | \$ 200.00 |
| Amendment / Modification                         | \$ 200.00 |
| Accounting Review/ Analysis Fees (per hour)      | \$ 100.00 |
| Letters of Credit (LOC's)                        | \$ 100.00 |
| Renewal  | \$ 75.00  |
| Modification (Reduction/Extension)               | \$ 75.00  |
| Termination                                      | \$ 75.00  |
| Deed of Trust (Full or Partial Release)          | \$ 75.00  |
| Termination/Close out Fee                        | \$ 300.00 |

The above charges are the minimum charges and First American Title Insurance Company reserves the right to amend this schedule from time to time as deemed necessary.

1: Annual Fee of \$400.00 covers the first \$50,000 of projected project cost as outlined by the agreement between parties. The annual fee shall increase \$1.00 per every \$1,000.00 thereafter in estimated project cost; or increment thereof. Should the actual project costs be amended and/or exceed the estimated project costs the annual fee will be adjusted accordingly at the time of the next annual billing.

In addition to the basic fees described above, all parties will be required to pay for additional services in terminating the account or accounts and in performing services in connection with the transmission of any Notices required to be transmitted under terms of the Agreement.

The fees in this Section are based on present costs and are subject to change, without written notice or otherwise, in accordance with costs of operation.

#### Other Fees

Specific charges for letters of credit renewal, increases or decreases required pursuant to terms of the Agreement will be determined by the type of transaction, complexity of administration and/or accounting services required. These charges and any additional work will range from a minimum of **\$75.00** to a maximum of \$1,000.00 depending on the services required. (First American Title Insurance Company will require written instructions concerning the handling of these accounts along with a completed (IRS) W-9 Form.

## ESCROW AGREEMENT EXHIBIT C

### Draw Procedures

Draw Procedure. The Project Manager, as appointed by the Owners, shall act as the exclusive agent for and on behalf of the Owners and shall be entitled to require Escrow Agent to disburse (subject to the provisions of Paragraph 2 below) all or any part of the Escrow Funds at any time or from time to time, as necessary, in the reasonable judgment of Project Manager, to pay all costs incurred in connection with the construction and installation of the Regional Lines and Durango Lines (the “**Improvements**”). Phillip Miller Consultants LLC, has been appointed as the initial Project Manager.

1 Draw Request Project Manager may instruct Escrow Agent to disburse funds from each Account to contractors engaged by Owners from time to time following delivery to Escrow Agent, the City, and to the Owners of a draw request that:

- (i) is signed by the Project Manager; and
- (ii) sets forth the total amount to be withdrawn from the Escrow Funds and to be paid to each payee/contractor/subcontractor as well as the total paid pursuant to prior Draw Requests for each payee/contractor/subcontractor; and
- (iii) is accompanied by copies of invoices, applications for payment and other reasonable supporting evidence of the costs and expenses for which payment is sought; and
- (iv) allocates the total amount of the draw request among the line items on the budget for the Improvements approved by the Owners; and
- (v) identifies (i) the amount to be withdrawn from each Account (i.e., allocates the amount to be disbursed among the Owners with respect to each Line Segment in accordance with their respective proportionate shares as set forth in the Allocation Schedule) and (ii) the amount of each Letter of Credit which, if drawn, is to be placed into each Account, and
- (vi) includes a certification of the Project Manager that confirms that the percentage of value of the total work on each Line Segment that have been completed through the date of the current draw request (the “**Completion Percentage**”); and
- (vii) includes Project Manager’s estimate of the cost to complete the Improvements and a certification that, after payment of the Draw Request and any corresponding letter of credit

reduction, sufficient Escrow Funds in each Account remain available to pay 110% of the cost of completing the Improvements with respect to the applicable Line Segment,

(viii) is accompanied by conditional lien waivers executed by all Lien Claimants (as hereinafter defined) for all labor and materials supplied by such Lien Claimants from the last Draw Request through the date of the current Draw Request and unconditional lien waivers executed by all Lien Claimants (as hereinafter defined) for all labor and materials supplied by such Lien Claimants through the date of the current Draw Request for First Tier Lien Claimants (as hereinafter defined) and through the date of the Draw Request delivered immediately prior to the current Draw Request for Lower Tier Lien Claimants. If any lien waivers described above are not available, then Project Manager shall provide such other information, documentation or assurances reasonably satisfactory to the Owners as may be appropriate to evidence the termination or non-existence of any such lien rights. As used herein, the term “Lien Claimants” shall mean (a) contractors and material suppliers who have a written contract (direct privity) with the Owners to perform services or supply materials in connection with the construction of the Improvements (“**First Tier Lien Claimants**”), and (b) any other contractor or supplier that has filed a preliminary 20-day lien notice in connection with the Improvements or any component thereof, to the extent that notice of such preliminary 20-day lien notice has been given to Project Manager and the City (“**Lower Tier Lien Claimants**”); and

(ix) includes Project Manager’s calculation (based on the provisions of Sections 4 and 5.2 of the Escrow Agreement) of (a) the amount of the unfunded balance of each Owner’s Letter of Credit should be if reduced (or cash if and to the extent then held in an Owner’s escrow account) following payment of the amount set forth in such Draw Request and (b) the amount to be allocated from the unfunded balance of each Owner’s Letter of Credit after reduction (or cash if and to the extent then held in an Owner’s escrow account after payment of the Draw Request) into each Account (the “**Allocation Direction**”).

2     Objections to Draw Requests; Payment of Draw Requests by Escrow Agent. So long as the terms of Paragraph.1 above have been satisfied, the Owners shall have no right to delay the payment of any Draw Request. If an Owner believes that the work performed or material supplied for which payment is sought on a Draw Request does not comply with the Plans and Specifications, the terms of the Owners Funding Agreement or is otherwise defective or has not been completed to the percentage of completion set forth on the Draw Request or that the payee/contractor/subcontractor to be paid pursuant to the Draw Request has otherwise failed to perform as required under its Contract, then an Owner can object to the Draw Request only for those specific reasons; provided, however, the failure of an Owner to object shall in no event constitute a waiver of any claim or otherwise constitute an acceptance of the Improvements identified on the Draw Request. If any Owner objects to any line item amount reflected as due in a Draw Request based on the above, the objecting party must deliver to Escrow Agent, Project

Manager and all other Owners written notice of its objection to the disbursement of such amount by Escrow Agent (specifically identifying the objectionable item(s) and providing an explanation as to why the objecting party believes such item to be inappropriate) within ten (10) days following receipt of the Draw Request. If Escrow Agent receives objections to disbursement in accordance with the preceding sentence to any line item amount of a Draw Request from any Owner, then, notwithstanding anything to the contrary contained herein, Escrow Agent shall not be authorized to disburse to the payee the funds paid on account of such disputed line item amount (but Escrow Agent shall be authorized to disburse all other amounts) unless and until Escrow Agent receives authorization to do so from the Owner(s) who objected to the disbursement, or until Escrow Agent receives written direction from a majority of the Owners. Escrow Agent shall make disbursements of all sums contemplated by the Draw Request that are not objected to within two (2) business days after Escrow Agent has cash funds available to make payment. If Project Manager receives objections to the disbursement of any line item amount of a Draw Request from any Owner, Project Manager shall notify each Owner and Escrow Agent, and within five (5) Business Days after receiving a notice of objection, Project Manager and the Owners shall meet (via teleconference or in person) and in good faith attempt to resolve all objections and provide direction to Escrow Agent to disburse mutually-acceptable amounts to the appropriate payees. If Escrow Agent fails to receive written direction from the objecting Owner(s) or a majority of the Owners within said five (5) Business Day period, then (i) the full Draw Request, including the amount previously objected to, shall be deemed approved. Escrow Agent shall disburse all funds subject to any objection within two (2) business days after the objection is resolved or deemed resolved. Funds shall be disbursed to Project Manager by Escrow Agent pursuant to Draw Requests by check made payable to the contractor(s), subcontractor(s) or material supplier(s) identified in the Draw Request.

3           Final Disbursement. Upon receipt of City's written notice of completion of the Improvements, Project Manager shall submit to Escrow Agent and the Owners a final Draw Request containing the information described in Paragraph 1, together with a reasonably detailed breakdown of the actual Cost of each component of the Improvements. Payment of the final Draw Request shall be subject to the provisions of Paragraph 2. Following payment of the final Draw Request, Escrow Agent shall disburse to each Owner any of such Owner's remaining funds based on the escrow deposit amounts an Owner has funded in cash in accordance with the terms hereof and return any letters of credit remaining in each applicable Account. On or before thirty (30) days after payment of the final Draw Request, Project Manager shall deliver to each Owner copies of unconditional lien waivers executed by all Lien Claimants for all labor and materials paid for pursuant to the final Draw Request.

4.           Expiration of Letter of Credit. If any letter of credit being held by Escrow Agent is within forty-five (45) days from its scheduled expiration date, Escrow Agent shall provide written notice thereof to Project Manager and each Party. If the letter of credit that is about to expire has not been replaced by cash or a letter of credit (with an expiration date that is at least six (6) months later than the then existing expiration date) in the amount of the then outstanding balance of the about to expire letter of credit by the date that is fifteen (15) days from the scheduled expiration date of the letter of credit, Escrow Agent is hereby irrevocably authorized and directed, notwithstanding any contrary direction received by Escrow Agent, to cause the letter of credit to be presented for full payment prior to its expiration date and to then hold all cash funds obtained in that Owner's Account in Escrow in accordance with the provisions of this Agreement.

Project Manager and each Party hereby fully release and relieve Escrow Agent from any and all claims and liability that may arise as a result of Escrow Agent's compliance with the foregoing. Escrow Agent shall indemnify and hold harmless Project Manager, City and each Owner (other than Owner who's letter of credit is about to expire) for any loss suffered or cost incurred as a result of Escrow Agent's failure to strictly comply with the provisions of this Paragraph 4 and to fully draw any letter of credit prior to its expiration date.