

After Recording Return to:

City of Goodyear
190 N. Litchfield Road
Goodyear, AZ 85388

**DEVELOPMENT AGREEMENT REGARDING THE CONSTRUCTION OF CERTAIN
INFRASTRUCTURE IMPROVEMENTS FOR HUDSON COMMONS**

(Van Buren Street-Half Street Improvements)

This DEVELOPMENT AGREEMENT REGARDING THE CONSTRUCTION OF CERTAIN INFRASTRUCTURE IMPROVEMENTS FOR HUDSON COMMONS is made by and between the City of Goodyear, an Arizona municipal corporation, and Estrella Van Buren Properties, Inc., an Arizona corporation.

RECITALS:

A. Estrella Van Buren Properties, Inc. is the owner of that certain real property and project known as Hudson Commons located in the City and generally located at the southwest corner of Van Buren Street and Estrella Parkway, legally described on Exhibit A attached hereto (the "Property").

B. The Residuary Trust U/W of E.W. Hudson, Jr. Deceased, dated March 30, 1966 (the "Lender") is the beneficiary under that certain the Deed of Trust and Assignment of Rents and Security Agreement dated January 13, 2017 by and between Estrella Van Buren Properties, Inc. as Trustor, Residuary Trust U/W of EW. Hudson Jr., dated March 30, 1996, as Beneficiary, and Douglas K. Cook, as Trustee and which is recorded as instrument 2017-0043517 in the Official Records of Maricopa County (the "Deed of Trust").

C. Owner is responsible for the construction of certain on-site and off-site infrastructure improvements needed to serve the Property, including, the construction of half-street improvements to the portion of Van Buren Street adjacent to the Property.

D. Owner will be required to construct the half-street improvements to the portion of Van Buren Street adjacent to the Property in connection with the recordation of a final master plat subdividing all of the Property.

E. The City plans to undertake the construction of improvements to portions of Van Buren Street.

F. To avoid having scalloped streets along the section of Van Buren Street adjacent to the Property, the City would like to include the half-street improvements for the portion of Van Buren Street adjacent to the Property, other than for the landscaping, in exchange for the owner of the Property's agreement to reimburse the City for the costs incurred in constructing such improvements as set forth in this Agreement.

G. As an incentive for Owner's agreement, the City is willing to phase the in-lieu payment as set forth in this Agreement.

H. The completion of the half-street improvements to the portion of Van Buren Street adjacent to the Property, requires the relocation of Roosevelt Irrigation District ("RID") improvements, and before the City can move forward with the project, the improvements RID identifies as being needed for such relocation must be constructed.

I. Owner is currently working with RID on the approval of plans for the relocation of the RID facilities and retaining a contractor to construct the relocated facilities.

J. The relocation of the RID facilities must occur during the period in which the RID canals and pipelines that are to be relocated are dry (scheduled to occur during November, 2017, the "2017 Dry Up Period").

K. Owner anticipates subdividing the Property into three (3) parcels.

L. As a result of the foregoing, the parties now desire to enter into this Agreement in order to set forth the terms on which (i) City will construct and complete the infrastructure improvements referred to herein, and (ii) Owner will reimburse City for the costs of such improvements.

M. Owner 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 development of the Property, 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 covenants herein and of the benefits to be provided hereunder, the Parties agree as follows:

1. Effective Date. The execution of this Agreement by the Parties, the execution of this Agreement by the Lender, 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 the Parties; (ii) the execution of the Lender Consent attached hereto as Exhibit B and (iii) the date the Resolution approving this Agreement becomes effective (the "Effective Date").

2. Entire Agreement. This Agreement, together with the attached Exhibits (which are incorporated herein by this reference) constitutes the entire Agreement between the Parties pertaining to the construction of the infrastructure improvements referred to in this Agreement and all prior and contemporaneous Agreements, representations, negotiations, and understandings of the Parties, oral or written pertaining to the subject matter of this Agreement are hereby superseded and merged herein.

(a) 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. Definitions. Capitalized Terms not otherwise defined in this Agreement are defined as follows:

(a) Agreement means the Development Agreement Regarding the Construction of Certain Infrastructure Improvements for Hudson Commons made by and between the City of Goodyear, an Arizona municipal corporation, and Estrella Van Buren Properties, Inc., an Arizona corporation and all amendments thereto.

(b) City means City of Goodyear, an Arizona municipal corporation.

(c) Hudson Commons Van Buren Improvements shall mean the improvements reflected in sheets 18-28, 33-37, 43-45, and 49-52 of that certain set of plans titled Van Buren Street Improvements Sarival Avenue to Estrella Parkway (Plan 2016-3114-C1) as prepared by HILGART WILSON, as approved by the City Engineer or his designee. Although not yet approved, a copy of sheets 18-28, 33-37, 43-45, and 49-52 of that certain set of plans titled Van Buren Street Improvements Sarival Avenue to Estrella Parkway (Plan 2016-3114-C1) as prepared by HILGART WILSON is attached hereto and as Exhibit C, and the final plans to be approved by the City Engineer shall be in substantial conformance to the plans attached as Exhibit C.

(d) Owner shall mean Estrella Van Buren Properties, Inc., an Arizona corporation and its Successors and Assigns.

(e) Parcel 2 means the parcel identified on the Preliminary Master Plat as Parcel 2 Single Family.

(f) Parcel 1 means the parcel identified on the Preliminary Master Plat as Parcel 1 Commercial.

(g) Parties means the City and Owner collectively.

(h) Party means the City or Owner individually as the context dictates.

(i) Preliminary Master Plat means the Preliminary Master Plat for Hudson Commons approved by the City of Goodyear on April 10, 2017, a copy of which is attached hereto as Exhibit D.

(j) RID Relocation shall mean the removal and relocation of RID improvements as reflected in the plans titled the Roosevelt Irrigation District Hudson Commons (Van Buren Street Improvements) Well No. 25 and Lateral 5.5 as prepared by Stantec Consulting Services and approved on September 1, 2017 by the City, a copy of which is attached hereto as Exhibit E, and the relocation of any conflicting utility improvements, including an existing street

light and an existing water line, that must be relocated prior to the removal and relocation of the RID improvements.

(k) Successors and Assigns means any person or entity that succeeds to or is assigned any interest in all or part of the Property except as provided in Paragraph 17(a) below.

(l) Vertical Construction means the construction of a building or an above ground structure.

4. Requirements Not Addressed. The Parties acknowledge and agree that this Agreement addresses only certain issues with respect to the development of the Property, and provides only those rights and obligations expressly set forth in this Agreement. This Agreement does not affect any other Agreement addressing other matters related to the development of the Property nor does it prevent the Parties from entering into additional agreements related to the development of the Property.

5. Half-Street Improvements to Van Buren Street. Subject to the terms and conditions of this Agreement, the City shall construct or cause to be constructed the Hudson Commons Van Buren Improvements.

6. Landscaping Adjacent to Van Buren Street. The Parties agree that the following terms apply to the installation of landscaping and improvements adjacent to Van Buren Street as required in the City of Goodyear Engineering Design Standards and Policies Manual (the "Landscaping").

(a) If, prior to the issuance of the first building permit for Vertical Construction within the Property, a final master plat consistent with the Preliminary Master Plat is approved and if the Property is being developed consistently with such final master plat, then the owners of Parcel 1 and Parcel 2 shall be jointly and severally responsible for installing the Landscaping. All Landscaping shall be completed by the owner of all or part of Parcel 1 or Parcel 2 that pulls the first permit for Vertical Construction within Parcel 1 and/or Parcel 2. Except as provided herein, no certificates of occupancy shall be issued within Parcel 1 and Parcel 2 until the Landscaping is completed and accepted by the City Engineer or his/her designee. If a certificate of occupancy within Parcel 1 and/or 2 is sought while the Landscaping is being installed but before it has been completed, the City Engineer may issue a certificate of occupancy if the owner responsible for the installation of the Landscaping has provided financial assurances in a form acceptable to the City Engineer to ensure the completion of the Landscaping.

(b) If, prior to the issuance of the first building permit for Vertical Construction within the Property, a final master plat consistent with the Preliminary Master Plat is not approved and/or if the Property is not developed consistently with such final master plat, then the Owner(s) of the Property shall be jointly and severally responsible for installing the Landscaping. All Landscaping shall be completed by the owner of all or part of the Property that pulls the first permit for Vertical Construction within the Property. Except as provided herein, no certificates of occupancy shall be issued within the Property until the Landscaping is completed and accepted by the City Engineer or his/her designee. If a certificate of occupancy

within the Property is sought while the Landscaping is being installed but before it has been completed, the City Engineer may issue a certificate of occupancy if the Owner responsible for the installation of the Landscaping has provided financial assurances in a form acceptable to the City Engineer to ensure the completion of the Landscaping.

7. Conditions to City's Construction Obligations. The City's obligation to construct the Hudson Commons Van Buren Improvements is subject to all of the following:

(a) The appropriation of funding by the City Council if the estimated cost of the Hudson Commons Van Buren Improvements exceeds the Original Estimate.

(b) Completion of the RID Relocation, which relocation is needed before the City can remove the existing RID improvements located within the area in which the Hudson Commons Van Buren Improvements are to be constructed.

8. RID Relocation. With respect to the RID Relocation:

(a) The City acknowledges that completion of the RID Relocation requires RID approvals outside the control of the Owner. City agrees to assist in coordinating with RID and shall use commercially reasonable efforts to assist Owner in obtaining approval of plans for and completion of the RID Relocation.

(b) Owner agrees to use commercially reasonable efforts to: (i) enter into a contract for the RID Relocation on or before September 30, 2017 and provide the City with evidence of such contract and (ii) complete the RID Relocation on or before December 31, 2017.

(c) If Owner has not entered into a contract for the RID Relocation on or before September 30, 2017, Owner agrees that the City shall be entitled to use Owner's RID approved plans and may, at City's discretion, enter into a contract for the RID Relocation using one of RID's Title 34 procured contractors to complete the RID Relocation during RID's 2017 Dry-Up Period.

(d) If the RID Relocation is not substantially completed and operational on or before December 31, 2017, Owner agrees that City shall be entitled to use Owner's RID approved plans and may, at City's discretion, complete the RID Relocation during RID's next dry-up period.

9. Commencement of Improvements. Subject to satisfaction of the conditions set forth in Paragraph 7 above, the City shall commence construction of the Hudson Commons Van Buren Improvements within six months after the RID Relocation is substantially completed and operational.

10. Owner's Rights. Notwithstanding anything to the contrary in this Agreement, if the Owner of all or part of the Property wants to proceed with the Hudson Commons Van Buren Improvements prior to the City undertaking the improvements as provided in this Agreement, Owner may do so. If the Owner of all or part of the Property undertakes the construction of the Hudson Commons Van Buren Improvements, the Owner shall comply

with all applicable requirements in the Engineering Design Standards and Policies Manual and the improvements shall be deemed complete when all applicable requirements have been satisfied, including the requirement that a two-year warranty and as-builts be provided to the City by the Owner upon whose behalf the Hudson Commons Van Buren Improvements were constructed, and the City Engineer has accepted the Hudson Commons Van Buren Improvements.

11. Reimbursement Amount for Hudson Commons Van Buren Improvements. The Parties' agree that the estimated costs of the Hudson Commons Van Buren Improvements, based on today's construction costs is \$649,383.93 as reflected in Exhibit F attached hereto ("Original Estimate"). Because a contract for the Hudson Commons Van Buren Improvements cannot be entered until after the RID Relocation has been completed and accepted by RID, the estimate may change. After the RID Relocation has been substantially completed and is operational, the City shall provide Owner with a copy of updated estimated costs of the Hudson Commons Van Buren Improvements, which will be based on the final contract price for the Hudson Commons Van Buren Improvements ("Updated Estimate"). The City agrees to use reasonable efforts, consistent with the requirements of Title 34 of the Arizona Revised Statutes, to minimize the cost to complete the Hudson Commons Van Buren Improvements.

(a) If the RID Relocation is substantially completed and operational by December 31, 2017 and if the Updated Estimate does not exceed the Original Estimate by more than 10%, the City shall be reimbursed for the actual cost of the Hudson Commons Van Buren Improvements in an amount not to exceed 100% of the Original Estimate as reflected in Exhibit F.

(b) If the RID Relocation is substantially completed and operational by December 31, 2017, and if the Updated Estimate exceeds the Original Estimate by more than 10%, the City shall be reimbursed for the actual cost of the Hudson Commons Van Buren Improvements in an amount not to exceed 90% of the Updated Estimate.

(c) If the RID Relocation is not substantially completed and operational by December 31, 2017, and if the Updated Estimate exceeds the Original Estimate, the City shall be reimbursed for the actual cost of the Hudson Commons Van Buren Improvements in an amount not to exceed 100% of the Updated Estimate.

(d) If the RID Relocation is not substantially completed and operational by December 31, 2017, and if the Updated Estimate does not exceed the Original Estimate, the City shall be reimbursed for the actual cost of the Hudson Commons Van Buren Improvements in an amount not to exceed 100% of the Original Estimate as reflected in Exhibit F.

12. Reimbursement Payments for Hudson Commons Van Buren Improvements. The reimbursements for the Hudson Commons Van Buren Improvements provided for in this Paragraph 12 shall be remitted as follows:

(a) If, prior to the issuance of the first building permit for Vertical Construction within the Property, a final master plat consistent with the Preliminary Master Plat is approved and if the Property is being developed consistently with such final master plat, then:

(i) the owner of any portion of the Parcel 1 shall pay the City 40% of the reimbursement obligation set forth in Paragraph 11 prior to or concurrently with the issuance of the first building permit for Vertical Construction located anywhere within Parcel 1. If the City is undertaking the construction of the Hudson Commons Van Buren Improvements but the improvements have not been completed by the time the first building permit for Vertical Construction is requested, the payment shall be based on the updated estimate. If the City's actual costs are less than the estimated costs, the City shall reimburse the entity that paid the reimbursement 40% of the difference between the estimated costs and the actual costs upon the written request of the entity entitled to the reimbursement.

(ii) the owner of any portion of the Parcel 2 shall pay the City 60% of the reimbursement obligation set forth in Paragraph 11 prior to or concurrently with the issuance of the first building permit for Vertical Construction located anywhere within Parcel 2. If the City is undertaking the construction of the Hudson Commons Van Buren Improvements but the improvements have not been completed by the time the first building permit for Vertical Construction is requested, the payment shall be based on the updated estimate. If the City's actual costs are less than the estimated costs, the City shall reimburse the entity that paid the reimbursement 60% of the difference between the estimated costs and the actual costs upon the written request of the entity entitled to the reimbursement.

(b) If, prior to the issuance of the first building permit for Vertical Construction within the Property, a final master plat consistent with the Preliminary Master Plat is not approved and/or if the Property is not developed consistently with such final master plat, then:

(i) the Owner of any portion of the Property seeking a building permit for Vertical Construction shall, unless otherwise provided by an amendment to this Agreement, pay the City 100% of the reimbursement obligation set forth in Paragraph 11 prior to or concurrently with the issuance of the first building permit for Vertical Construction located anywhere within the Property.

(c) The City shall make available to the person responsible for the reimbursements referred to herein any documentation in the City's position reasonably required to support the requested reimbursement.

13. Reimbursements for RID Relocation. If the City constructs all or part of the RID Relocation, Owner shall reimburse the City for all costs the City incurred in constructing all or part of the RID Relocation. The reimbursement to the City for the RID Relocation shall be paid within thirty (30) days of a written request from the City for such

reimbursement. Owner agrees that the City may, without liability, delay recording any approved final plats subdividing all or part of the Property and refuse to issue any permits for any construction within any part of the Property until the reimbursement for the RID Relocation is remitted to the City.

14. Withholding of Permits. Owner agrees the City may, without liability to the City withhold permits as follows:

(a) If, prior to the issuance of the first building permit for Vertical Construction, a final master plat consistent with the Preliminary Master Plat is approved and if the Property is being developed consistently with such final master plat, then the City may, without liability to the City withhold permits as follows:

(i) No building permits for Vertical Construction within Parcel 1 shall be issued within Parcel 1 until the reimbursements payment required under this Agreement have been made and at least one of the following conditions exists: (i) the Hudson Commons Van Buren Improvements have been completed, (ii) work on the Hudson Commons Van Buren Improvements has commenced by Owner and Owner has provided the City financial assurances in a form acceptable to the City to ensure the completion of the Hudson Commons Van Buren Improvements; or (iii) the City has commenced construction of the Hudson Commons Van Buren Improvements.

(ii) No building permits for Vertical Construction within Parcel 2 shall be issued within Parcel 2 until the reimbursements payments required under this Agreement have been made and at least one of the following conditions exists: (i) the Hudson Commons Van Buren Improvements have been completed, (ii) work on the Hudson Commons Van Buren Improvements has commenced by Owner and Owner has provided the City financial assurances in a form acceptable to the City to ensure the completion of the Hudson Commons Van Buren Improvements; or (iii) the City has commenced construction of the Hudson Commons Van Buren Improvements.

(iii) No certificates of occupancies shall be issued for any buildings within Parcel 1 and/or Parcel 2 until the Hudson Commons Van Buren Improvements have been completed and accepted by the City Engineer of his/her designee.

(b) If, prior to the issuance of the first building permit for Vertical Construction within the Property, a final master plat consistent with the Preliminary Master Plat is not approved and/or if the Property is not developed consistently with such final master plat, then the City may, without liability to the City withhold permits as follows:

(i) No building permits for Vertical Construction within the Property shall be issued until the reimbursements payment required under this Agreement have been made and at least one of the following conditions exists: (i) the Hudson Commons Van Buren Improvements have been completed, (ii) work on the Hudson Commons Van Buren Improvements has commenced by Owner and Owner has provided the City financial assurances in a form acceptable to the City to ensure the completion of the

Hudson Commons Van Buren Improvements; or (iii) the City has commenced construction of the Hudson Commons Van Buren Improvements.

(ii) No certificates of occupancies shall be issued for any buildings within the Property until the Hudson Commons Van Buren Improvements have been completed and accepted by the City Engineer of his/her designee.

(c) In addition to any other remedies available to the City, if Owner fails to comply with the terms of this Agreement, the City shall be entitled, without any liability to the City, to withhold certificates of occupancies within the Property until such time as Owner complies with all applicable terms of this Agreement.

15. Conveyance of Right-of-Way. Owner agrees to convey, in fee and lien free, all right-of-way needed for the Hudson Commons Van Buren Improvements if such right-of-way has not already been conveyed to the City. Owner agrees to convey the right-of-way as provided herein within thirty (30) days after the date the conveyance is requested by the City.

16. Covenants Running with the Land. Except as otherwise provided in Paragraph 17(a), the rights and duties under this Agreement shall be for the benefit of, and a burden upon, the Property, and they shall be covenants running with the land.

17. Binding on Successors. Except as otherwise provided in Paragraph 17(a) below, 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 Owner's 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 Property may be made without further consent from the City.

(a) 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 Property for any lot within the Property 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 Property 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.

18. Amendment of Agreement. This Agreement may be modified, amended or terminated, in whole or in part, only by the written consent of the Parties and their Successor and Assigns.

19. No Dedication for Public Use. This Agreement is not intended to, and does not, constitute a dedication for public use of all or any portion of the Property, and the rights granted herein are private and for the benefit only of the Parties.

20. 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 Attn: Development Services Director 190 North Litchfield Road P.O. Box 5100 Goodyear, Arizona 85338
With a copy to:	City of Goodyear Attn: City Attorney 190 North Litchfield Road P.O. Box 5100 Goodyear Arizona 85338
To Owner:	Estrella Van Buren Properties, Inc. Attn: Melvin Ekstrand, President 1203 E. Alameda Drive Tempe, Arizona 85282
With a copy to:	Berens Blonstein PLC Attn: Marc Blonstein 7033 E. Greenway Parkway Suite 210 Scottsdale, Arizona 85254

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.

21. Attorneys' Fees. In the event of any action or proceeding, including without limitation, any legal proceeding of insolvency, bankruptcy, appeals, arbitration or declaratory relief, concerning any controversy, claim or dispute between the Parties, arising out of or relating to this Agreement or the breach hereof, or the interpretation hereof, the prevailing Party in the action shall be entitled to recover from the losing Party reasonable expenses, attorneys' fees, and costs, as determined by a Court of competent jurisdiction, incurred in connection therewith or in the enforcement or collection of any judgment or award rendered therein. The terms of this Paragraph 21 shall survive the termination of this Agreement

22. Severability. The unenforceability, invalidity or illegality of any provision of this Agreement, as determined by a court of competent jurisdiction, shall not render the other provisions of this Agreement unenforceable, invalid or illegal.

23. Headings. The captions at the beginning of each paragraph of this Declaration are not part of and in no manner or way define, limit, amplify, change, or alter any term, covenant, or condition of this Declaration.

24. Representations and Warranties of Owner. As of the Effective Date, Owner, and the individual executing this agreement on behalf of Owner, represents and warrants the following:

(a) Estrella Van Buren Properties, Inc. is the sole Owner of the Property.

(b) The only lien on the Property is the \$12,490,000 indebtedness evidenced by a Promissory Note dated January 13, 2017 secured by the Deed of Trust and Assignment of Rents and Security Agreement dated January 13, 2017 by and between Estrella Van Buren Properties, Inc. as Trustor, Residuary Trust U/W of EW. Hudson Jr., dated March 30, 1996, as Beneficiary and Douglas K. Cook, as Trustee and recorded as instrument 2017 0043517 in the Official Records of Maricopa County.

(c) Estrella Van Buren Properties, Inc. is an Arizona corporation in good standing; Estrella Van Buren Properties, Inc. has the authority and the right to enter into this Agreement, and Estrella Van Buren Properties, Inc. not prohibited from executing this Agreement by any law, rule, regulation, instrument, Agreement, order or judgment.

(d) 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.

25. Representations and Warranties of City. As of the Effective Date, the City represents and warrants the following:

(a) 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.

(b) 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.

26. Choice of Law and Venue, and Attorney's Fees. 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 26 shall survive the termination of this Agreement.

27. Waiver of Jury Trial. UNLESS EXPRESSLY PROHIBITED BY LAW, EACH OF THE CITY AND 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 27 shall survive the termination of this Agreement.

28. 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.

29. No Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or Owner 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. The terms of this Paragraph 29 shall survive the termination of this Agreement.

30. 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.

31. Time of the Essence. Time shall be of the essence in the performance of any party's obligations hereunder.

32. Survival Clause. All provisions in this Agreement that logically ought to 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 32 to other provisions in the Agreement.

33. 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. Further this Agreement 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, provided however, the signing Party shall deliver an original to the City for recordation as provided in Paragraph 2(a).

34. Page Numbering. The page numbering of this document is exclusive of the Exhibits attached hereto.

[signatures appear on the following pages]

CITY:

CITY OF GOODYEAR, an Arizona municipal corporation

By: _____

Brian Dalke
City Manager

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA
County of Maricopa

On this _____ day of _____, 2017, before me personally appeared Brian Dalke, the City Manager for the CITY OF GOODYEAR, an Arizona municipal corporation, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he or she signed the above/attached document.

Notary Public

OWNER.:

ESTRELLA VAN BUREN PROPERTIES, INC, an
Arizona corporation

By: Mel C Ekstrand
Melvin C. Ekstrand
President
Date: 9-26-17

STATE OF ARIZONA
County of Maricopa

On this 26th day of September, 2017, before me personally appeared Melvin C. Ekstrand, the President of Estrella Van Buren Properties, Inc., an Arizona corporation, on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he or she signed the above/attached document.

Marc Blonstein
Notary Public

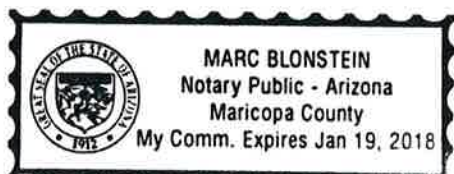


EXHIBIT A


Legal Description and Depiction of Hudson Commons

EXHIBIT B

EXISTING LENDER CONSENT

The undersigned, Residuary Trust U/W of E.W. Hudson, Jr. Deceased, dated March 30, 1966 (“Existing Lender”) as Beneficiary under that certain DEED OF TRUST by and between Residuary Trust U/W of E.W. Hudson, Jr. Deceased, dated March 30, 1966 as Beneficiary, Estrella Van Buren Properties, Inc. an Arizona corporation as Trustor, and Douglas K. Cook, Attorney at Law as Trustee, dated January 13, 2017 and recorded on January 19, 2017 at Document No. 2017 0043517 in the Official Records of Maricopa County, Arizona with respect to the real property that is the subject of that certain Development Agreement Regarding the Construction of Certain Infrastructure Improvements for Hudson Commons by and between the City of Goodyear, an Arizona municipal corporation and Estrella Van Buren Properties, Inc. an Arizona corporation to which this consent is attached the “Development Agreement”), hereby: (i) consents to the Development Agreement; (ii) acknowledges that the Development Agreement shall bind that portion of the real property that is subject to the Deed of Trust and subject to the Development Agreement; (iii) approves the recordation of the Development Agreement; (iv) agrees to execute, acknowledge and deliver such additional documents and instruments reasonably required to consummate, evidence, or carry out the matters contemplated by the Development Agreement and this Existing Lender Consent; (vii) agrees that the Development Agreement shall continue in full force and effect in the event of foreclosure or trustee’s sale pursuant to such Deed of Trust or any other acquisition of title by the undersigned, its successors, or assigns, or all or any portion of the real property covered by such Deed of Trust; (viii) represents and warrants that the undersigned has the requisite right, power and authorization to enter into, execute, and deliver this Existing Lender Consent on behalf of Beneficiary, and (ix) the execution and delivery of this Existing Lender Consent by Beneficiary is not prohibited by, and does not conflict with any other agreements or instruments to which Beneficiary is part.

Residuary Trust U/W of E.W. Hudson, Jr.
Deceased, dated March 30, 1966

By: 
Mona Ellen Ekstrand, Trustee

[acknowledgements appear on the following page]

STATE OF ARIZONA)

)

County of Maricopa)

On this 26th day of September, 2017, before me personally appeared Mona Ellen Ekstrand, the Trustee of the Residuary Trust U/W of E.W. Hudson, Jr. Deceased, dated March 30, 1966 on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he or she signed the above/attached document.



A handwritten signature in blue ink, appearing to read "Marc Blonstein", written over a horizontal line.

Notary Public

EXHIBIT C

Hudson Commons Van Buren Improvements

EXHIBIT D

Preliminary Master Plat

EXHIBIT E

RID Relocation

EXHIBIT F

Original Estimate