

After Recording Return to:

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

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**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT FOR  
WEST GOODYEAR SEWER AND WATER INFRASTRUCTURE**

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT FOR WEST GOODYEAR SEWER AND WATER INFRASTRUCTURE (this “**Amendment**”) is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2019 by and among TOFINO DEVELOPMENT COMPANY, a Washington corporation (“**Tofino**”) as successor to Pradera Partners 160, LLC, 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**”), and CITY OF GOODYEAR, an Arizona municipal corporation (“**City**”). Tofino, Hinton, Citrus, Melcor, Ventanas, and City are sometimes hereinafter referred to collectively as the Parties and individually as a Party

**RECITALS**

A. Tofino, as successor to Pradera Partners 160, LLC, Hinton, Citrus, Melcor, Ventanas, and the City are parties to that certain Development Agreement for West Goodyear Sewer and Water Infrastructure dated March 28, 2017, and recorded on March 29, 2017 as part of Instrument No. 2017-0220433, as amended by the First Amendment to Development Agreement for West Goodyear Sewer and Water Infrastructure dated \_\_\_\_\_, 2018, and recorded on \_\_\_\_\_, 2018 as Instrument No. 2018-\_\_\_\_\_ (collectively, the “**Agreement**”). All capitalized terms used but not defined in this Amendment shall have the same meaning given to them under the Agreement.

B. The Parties now desire to again amend the Agreement in certain respects, as more particularly set forth below.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above are incorporated herein and made a part of this Amendment to the same extent as if set forth herein in their entirety.

2. Completion of Construction. The first sentence of Section 4 of the Agreement is deleted in its entirety and replaced with the following:

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 twenty-eight (28) months from the Effective Date.

3. Flushing Program Cash In-lieu Lump Sum Payment. The City has determined that various portions of the Regional Wastewater Trunk Lines and the Durango Wastewater Line were constructed slightly below the approved engineered designed slopes, which constructed slopes may cause the sewage flows in those pipe sections to flow below the County and State minimum two (2) feet per second flow requirements. Consequently, the County and the State requires the City to implement and maintain an inspection, flushing and cleaning program for those pipe line sections, which program shall be in compliance with the requirements of Maricopa County, the Arizona Department of Environmental Quality or any other federal, state or local governmental or quasi-governmental entity or agency (the “**Flushing Program**”), and as such the City is unwilling to accept the Regional Wastewater Trunk Lines and the Durango Wastewater Line as constructed without funding for the required Flushing Program. To induce the City to accept the constructed Regional Wastewater Trunk Lines and the Durango Wastewater Line at slopes and flows lower than as engineered, Owners have agreed to make a one-time non-refundable lump sum cash in-lieu payment to the City of Two Hundred Thousand Dollars (\$200,000) (the “**In-Lieu Payment**”), in exchange for the City’s agreement to assume all obligations pertaining to and associated with the Flushing Program. City shall provide the Owners with a written final acceptance of the constructed Regional Lines and Durango Lines (the “**Letter of Acceptance**”) once the City has confirmed that, but for the portions of the Regional Wastewater Trunk Lines and the Durango Wastewater Line constructed slightly below the approved engineered designed slopes, the constructed Regional Lines and Durango Lines are otherwise satisfactory to the City. Concurrently with the execution of this Amendment, Owners and City shall amend the Escrow Agreement on mutually acceptable terms to provide for the Owners to deposit the In-Lieu Payment in cash into the Escrow and to irrevocably authorize the Escrow Agent to disburse the In-Lieu Payment to the City upon City’s delivery to the Escrow Agent of the City’s Letter of Acceptance of all Regional Lines and the Durango Lines. Notwithstanding anything to the contrary contained in the Agreement, following payment of the In-Lieu Payment, Owners shall have no obligations whatsoever with respect to any inspection, flushing or cleaning of the Regional Wastewater Trunk Lines or the Durango Wastewater Line including any Flushing Program required to comply with the requirements of Maricopa County, the Arizona Department of Environmental Quality or any other federal, state or local governmental or quasi-governmental entity or agency, nor any warranty or repair obligations under Section 12 of the Agreement associated with the flushing of the Regional Wastewater Trunk Lines and the Durango Wastewater Line having been installed with slopes and flows less than those indicated on the approved engineering plans. Notwithstanding the aforementioned limitations to the warranty or repair obligations

associated with the Flushing Program, Owners shall remain responsible for all other warranty or repair obligations for the Regional Wastewater Trunk Lines or the Durango Wastewater Line required under the standard warranty period for City accepted infrastructure.

4. Ratified and Confirmed. The Agreement, except as amended by this Amendment, is hereby ratified and confirmed and shall remain in full force and effect in accordance with its original terms and provisions. In the event of any conflict between the terms of this Amendment and the Agreement, this Amendment shall control.

5. Counterparts. This Amendment shall be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The parties agree that they may reflect and confirm their agreement to be bound hereby, and their execution and delivery of this Amendment, by transmitting a signed copy hereof, by facsimile or by emailing a Portable Document Format (PDF) file, to the other party hereto. Any of the parties hereto are authorized to remove the signature pages from duplicate identical counterpart versions of this Amendment and to attach such pages to a single version of this Agreement.

6. Recordation; Attach as Addendum. As contemplated by Section 7 of the Agreement, to become effective, after this Amendment is approved by the City Council and signed by all of the Parties, it shall be attached to the Agreement as an addendum. This Amendment shall also be recorded in the Official Records of Maricopa County within ten (10) days after execution.

*{ Signatures on following pages }*

IN WITNESS WHEREOF, the Parties have executed this Amendment effective as of the date first set forth above.

**OWNERS:**

TOFINO DEVELOPMENT COMPANY,  
a Washington corporation

By: \_\_\_\_\_

Its : \_\_\_\_\_

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, the \_\_\_\_\_ of TOFINO DEVELOPMENT COMPANY, a Washington corporation, for and on behalf thereof.

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

(Seal)





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  
\_\_\_\_\_, 2019, by \_\_\_\_\_, the \_\_\_\_\_ of MELCOR  
DEVELOPMENTS ARIZONA, INC., an Arizona corporation, for and on behalf thereof.

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

(Seal)

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 \_\_\_\_\_, 2019, 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)



**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 \_\_\_\_\_, 2019, by \_\_\_\_\_ the \_\_\_\_\_ of the CITY OF GOODYEAR, an Arizona municipal corporation, for and on behalf thereof.

(Seal)

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