

WHEN RECORDED, RETURN TO:

City of Goodyear  
Office of the City Clerk  
190 North Litchfield Rd.  
Goodyear, Arizona 85338

FIRST AMENDMENT TO  
DEVELOPMENT AGREEMENT FOR RAINBOW VALLEY

This First Amendment to Development Agreement for Rainbow Valley (the "First Amendment") is entered into by and between Rainbow Valley 2011, LLC, an Arizona limited liability company, and the City of Goodyear, an Arizona municipal corporation. Rainbow Valley 2011, LLC and the City of Goodyear are sometimes referred to individually as Party and collectively as Parties.

RECITALS

A. WHEREAS, Rainbow Valley 2011, LLC, an Arizona limited liability company, owns approximately 1,000 acres of land generally located at the northwest corner of the W. Queen Creek Road alignment and Rainbow Valley Road commonly known as Rainbow Valley and as more particularly described in Exhibit 1-A attached hereto and incorporated herein by this reference (the "Property").

B. WHEREAS, on October 22, 2018 the Mayor and Council of the City of Goodyear adopted Ordinance 2018-1409, rezoning the Property from the Agricultural and Agricultural Urban zoning districts to the Final Planned Area Development zoning district for the development of a mixed-use project known as "Rainbow Valley," which at full build out is expected to result in the development of approximately 2900 residential dwelling units, commercial uses and non-residential uses (the "Project").

C. WHEREAS, on the same day that the Mayor and Council of the City of Goodyear adopted Ordinance 2018-1409, the Mayor and Council of the City of Goodyear adopted Resolution No. 2018-1908, approving that certain Development Agreement for Rainbow Valley entered into by and between Rainbow Valley 2011, LLC, an Arizona limited liability company, and the City of Goodyear, an Arizona municipal corporation and recorded as Instrument No. 2018-0796627 in the official records of Maricopa County, State of Arizona (the "Rainbow Valley Development Agreement").

D. WHEREAS, compliance with the Rainbow Valley Development Agreement is a condition of approval of Ordinance 2018-1409.

E. WHEREAS, the City's longstanding policy is that "growth pays for growth" and, in furtherance of this policy, the Rainbow Valley Development Agreement set forth the Owner's general obligations and certain specific obligations regarding the purchase of capital equipment, the dedication of rights-of-way, and the construction of public infrastructure required for the City to provide City services to the Property.

F. WHEREAS, the Parties anticipated that there would be numerous amendments or separate agreements that will provide more detail during the development process, and this First Amendment is the first of these documents.

G. WHEREAS, the Property is currently not being served by City water or wastewater facilities and is not located within the City's current Designation of Assured Water Supply service area.

H. WHEREAS, when the Rainbow Valley Development Agreement was finalized, the City had not committed to providing water and wastewater service to the Property, and the Rainbow Valley Development Agreement expressly provided that the decision as to whether the City would provide water and wastewater service to the Property was to be made at the City's sole discretion.

I. WHEREAS, the Rainbow Valley Development Agreement included terms for the provision of water service to the Property that would apply if the City were to provide water, which involved water service being provided within a new City water service area that was not within the City's current Designation of Assured Water Supply service area.

J. WHEREAS the Rainbow Valley Development Agreement included provisions that would allow for the City to provide water service under the City's current Designation of Assured Water Supply subject to the Parties reaching a separate written agreement setting forth the terms of such service.

K. WHEREAS, the City was not able to secure the regulatory approvals needed for the City to provide water services to the Property within a new City water service area that was not within the City's current Designation of Assured Water Supply.

L. WHEREAS, the City wants to provide water and wastewater services to the Property.

M. WHEREAS, Owner and the City have met and conferred and reached an agreement as to the terms for the City providing water service under its current Designation of Assured Water Supply.

N. WHEREAS, this First Amendment amends the Rainbow Valley Development Agreement to set forth the terms under which the City will be providing water service to the Property and amends terms as needed to clarify that the City will be providing wastewater to the service to the Property.

O. WHEREAS, Rainbow Valley 2011, LLC, an Arizona limited liability company, and the City intend 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 other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Parties hereby adopt and incorporate, as if fully set forth herein, the Recitals stated above.

2. Definitions. Except as otherwise expressly provided in this First Amendment, capitalized terms in this First Amendment shall have the same meaning as those terms are defined in the Rainbow Valley Development Agreement and amendments thereto.

3. Effective Date. The execution of this First Amendment by the Parties, the approval of this First Amendment by Resolution of the Goodyear City Council, and the execution of an Existing Lender Consent attached hereto as Exhibit 1-B are conditions precedent to this First Amendment becoming effective. This First Amendment shall take effect upon the later of (i) the full execution of this First Amendment by the Parties, (ii) the execution and delivery of the Existing Lender Consent in the form attached hereto as Exhibit 1-B, and (iii) the date the Resolution approving this Agreement becomes effective.

4. Water Infrastructure and Water Service: Section 6 Water Infrastructure and Water Service and all subsections therein, including 6.1, 6.1.1, 6.1.2, 6.2, 6.3, 6.3.1, 6.3.1.1, 6.3.2, 6.3.3, 6.4, and 6.5 are hereby deleted in their entirety and replaced with the following:

### 6. WATER INFRASTRUCTURE AND WATER SERVICE.

6.1. CITY SERVICE USING CITY'S DESIGNATION OF ASSURED WATER SUPPLY. The City has determined that it will serve the Rainbow Valley PAD property with groundwater physically available and withdrawn from the Property ("on-site groundwater") within the Rainbow Valley Sub-basin pursuant to the City's Designation of Assured Water Supply (DAWS). The City agrees to serve the Property with water subject to the conditions set forth below.

6.1.1. Maximum Water Supply. Owner holds Analysis of Assured Water Supply No. 28-700794.0000 ("AAWS") approved by the Arizona Department of Water Resources ("ADWR") that identifies a volume of groundwater physically available to serve the Property. Owner agrees to transfer to the City all of Owner's rights under the AAWS, and the City shall apply to ADWR to include the total volume of groundwater available under the AAWS in the City's application to renew and extend the DAWS, which the City anticipates submitting on or before June 30, 2023. The City's application will include its two-hundred seventy-four (274) acre-feet per year of water determined physically available within the Rainbow Valley Sub-basin in the City's current DAWS and the volume of groundwater determined to be physically available to serve the Property in Owner's AAWS. If during the City's DAWS renewal process, ADWR indicates in writing that ADWR intends to reduce the quantity of groundwater determined available in Owner's AAWS or the combined total of groundwater available in Owner's AAWS and the City's current DAWS when the water is incorporated into the City's DAWS, or if ADWR's final decision makes such a reduction, then the amount of physically available on-site groundwater available to the Property for development under this Agreement will be reduced in such amount unless the water supply for the Property is otherwise supplemented by the Owner. City will provide a copy of the City's designation modification application to Owner upon Owner's request, and City will notify the Owner if City receives notice of ADWR intent to reduce the AAWS available through the City's DAWS for the Property. If it is not possible to attribute any ADWR reductions in Rainbow Valley Sub-Basin groundwater supplies to the City's groundwater supply (i.e. the 274 acre-feet per year) or any particular property's groundwater supply (i.e. the AAWS), then both the City and Owner agree to share such reductions on the same proportioned basis (i.e. each accepts an equal percentage reduction based upon the total overall percentage reduction). The maximum amount of on-site groundwater available for development of the Property under this Agreement is the amount of the groundwater determined physically available from Owner's AAWS that is actually incorporated into the City's updated DAWS, as may be allocated herein (the "Maximum Water"). All actual water production serving the property, including water delivered from any on-site or off-site wells, and all on-site Type 1 Non-Irrigation Grandfathered Groundwater Withdrawal Right ("Type 1 Right") water uses withdrawals, shall be included in determining whether the amount of water use has reached the Maximum Water limit. The City's obligations in this Section 6.1.1 are specifically subject to the special limitation for interim water commitments in Section 6.1.2 below.

6.1.2. Interim Water Supply Limitation. Currently, the City has approximately two-hundred seventy-four (274) acre-feet per year of water determined physically available within the Rainbow Valley Sub-basin in the City's DAWS (the "City's Available Water") that could be used to support the development of the Property on an interim basis. Upon confirmation by the City that Owner's AAWS is still in effect and reflects the physical availability of at least

two-hundred seventy-four (274) acre-feet per year, the City will make the City's Available Water available to support the development of the Property prior to June 30, 2023, as provided herein. The City agrees to allocate up to two-hundred seventy-four (274) acre-feet per year of potable water supplies developed by Owner to support development within the Property, regardless of the use. The allocations of the City's Available Water will be made at the time of final plat approval, development plan approval and site plan approval. For interim water allocation purposes, the estimated water demand of the development proposed in the final plat and site plan will be based upon the then-current standard ADWR generic demand calculator (or any similar ADWR replacement thereof) with reasonable water use assumptions but not including estimated demand for water losses for water treatment processes and not including any credit for effluent recharge. The Owner may commit on a permanent basis to use Owner's Type 1 Non-Irrigation Grandfathered Groundwater Withdrawal Rights for non-potable landscape irrigation purposes to the maximum extent practicable in lieu of using City-allocated potable water, and, for interim water allocation purposes only, such Type 1 Right uses will not be deducted from the interim water available under this Section 6.1.2, but will be applied against the Maximum Water limit described in Section 6.1.1. Owner will provide the estimated Type 1 Right water demands to City at the time other potable water demands are provided, and the estimated quantity of Type 1 Right water will be applied against the Maximum Water limit described in Section 6.1.1 until actual Type 1 withdrawal amounts are known. To the extent potable water supplies are used for irrigation purposes, the potable water to be used for irrigation purposes will be deducted from the amount of the City's Available Water available for interim use for the Property. By way of example, if a final plat for residential development is submitted, and under ADWR's generic demand calculator, the development has a total estimated potable water demand of ten (10) acre-feet per year, the City would allocate ten (10) acre-feet per year, thereby reducing the City's Available Water for subsequent developments to 264 acre-feet per year.

6.1.2.1. Plan and Plat Approvals During Interim Period. So long as sufficient City's Available Water is not committed already to development of the Property, the City agrees to review and process any and all plans and plats without unreasonable delay as such plans and plats are submitted prior to June 30, 2023. From June 30, 2023 until the sooner of (i) the date the City's application to renew and extend its DAWS is approved, or (ii) ADWR indicates in writing during the City's application review that ADWR intends to reduce the amount of the Owner's AAWS or the combined total of groundwater available in Owner's AAWS and the City's current DAWS to be incorporated into the City's updated DAWS and the volume of groundwater available to the Property is allocated as provided in 6.1.1 above, the City agrees that it will continue to process and approve final plats, development plans, and site plans acknowledging that the Property has met the assured water supply requirement at the time of approval in the usual course without regard to the availability of any remaining City's Available Water or status of

completion of the DAWS review. In no event, however, shall the total amount of water committed to the Property exceed the lesser of (1) volume of groundwater determined to be physically available to serve the Property under the Owner's AAWS or (2) the Maximum Water defined in Section 6.1.1.

6.1.3. Water Demand Estimates. Prior to the City's acceptance, consideration and approval of each final plat, Owner shall, at its sole cost, submit to the City updated estimated water demand calculations and current subtotals for the whole Property, and for the portion of the Property for which the approval is sought, including any backup data supporting the estimated water demands such as landscape plans.

6.1.3.1. Adequacy of Supply. The water demand estimates and backup data together with the water infrastructure plan(s) referred to in Section 6.1.3, shall demonstrate to the Public Works Director or his/her designee, in his or her reasonable discretion that: (i) the total water demand for any proposed final plat(s) and all previously approved development does not exceed the water supply amounts as described in 6.1.1 and 6.1.2 above, (ii) the groundwater can be reasonably treated to the then-existing applicable standards; and (iii) unless waived by the Public Works Director or his/her designee, that the proposed infrastructure designs when constructed will comply with then-applicable standards for delivering water to the Property, and also provide for reasonable operational and maintenance efficiency considering the projected treatment costs, maintenance costs, and management of byproducts from the treatment processes.

6.1.4. On-Site Groundwater. Owner shall be allowed to use on-site groundwater to provide water to the Property if the groundwater meets the requirements pursuant to Sections 6.1.1, 6.1.2 and 6.1.3.1 above.

6.1.5. Off-Site Water Source. If the Public Works Director or his/her designee determines in his or her reasonable discretion that the water demand estimates provided pursuant to Section 6.1.3, together with the water infrastructure plans referred to in Section 6.3 below, do not demonstrate that groundwater pumped from the Property can be developed to meet the demands of the development both in terms of quantity and quality as set forth in Sections 6.1.1, 6.1.2, and 6.1.3.1, Owner and City shall mutually agree upon an acceptable alternative solution. In the case of a lack of physically available water, the Owner may reduce the number of lots to be developed to that amount that can be supported by the available water, or shall provide to the City, at Owner's sole cost, the legal rights to an acceptable physically available alternative water source in an amount sufficient to serve the remainder of the Property. In the case of poor water quality which would result in unusually high water treatment costs, Owner shall investigate alternative offsite water solutions. If an offsite alternative water solution is available at a reasonable cost, as mutually agreed to by the Owner and the City, then the Owner shall provide to the City, at Owner's sole cost, the legal rights to the alternative water source in an amount sufficient to serve the remainder of the Property. In the case of poor

water quality, if an offsite alternative water solution is not found mutually agreeable to both the Owner and the City, then the Owner at Owner's cost will permit and construct the water treatment required to meet all City and ADEQ applicable standards, which would result in unusually high water treatment costs, and the City shall have the right to charge rates to recover the higher treatment costs pursuant to the City's water rate authority set forth in Section 6.5 below. An alternative water supply is acceptable if: it is consistent with the City's adopted Integrated Water Master Plan in effect at the time of development, if any; will support the water demands of the Property at build-out for 100 years, and that meets the requirements of ADWR for proof of an assured water supply; it can be treated to a level equivalent to the then-existing applicable water quality standards; and, unless waived by the Public Works Director or his/her designee, that the proposed infrastructure designs when constructed will comply with then-applicable standards for delivering water to the Property. If an off-site water source is deemed suitable as a source of water, Owner shall convey to the City, at its sole cost, the rights to the off-site water supply that will be needed to serve the Property at build-out for a one hundred (100) year period. The City shall not approve any final plat supported by the water supply until the conveyance required herein has been finalized.

6.2. LEGAL AUTHORITY. Owner, at its sole cost, and prior to the City's approval of the earlier of the (i) initial final plat or commercial site plan or (ii) the actual start of City water service for the Property, shall be responsible for acquiring physically available water in an amount sufficient to serve the Property at build-out for a one hundred (100) year period, accounting for estimated water losses. The Maximum Water described in 6.1.1 may be used to satisfy this 100-year obligation. The Owner's obligations in this Section 6.2 include the establishment of a new City service area groundwater withdrawal right at the Property in accordance with ADWR service area establishment requirements and obtaining well permits in the City's name that together authorize withdrawal of the maximum day capacity required for service to the Property if the highest output well is assumed to be out of service. If after consultation with ADWR regarding service area establishment requirements it is not reasonable for Owner to establish for the City a new service area withdrawal right prior to the approval of the initial final plat, then City will not withhold approval of a the initial final plat for the Property on that basis, but the Owner must then establish a City service area withdrawal right prior to the actual start of City water service to the Property.

6.3. WATER INFRASTRUCTURE PLAN. Owner, at its sole cost, shall be responsible for the preparation of infrastructure plans detailing public infrastructure requirements and capital equipment determined by the City as being necessary to allow the City to provide water service to the Property at build out consistent with the uses, densities and intensities reflected in the Final PAD. The water infrastructure plans required hereunder shall be funded by Owner, at its sole cost, and shall be prepared and sealed by a registered engineer. Unless advised by the Director of Public Works or his/her designee that a water infrastructure plan and/or

an updated water infrastructure plan is not required, Owner shall, prior to the City's approval of any application for any final plat and/or site plan, secure City approval of a water infrastructure plan. Water infrastructure plans required herein shall be consistent with all applicable Development Regulations, including by way of example, but not limitation, Subdivision Regulations, Engineering Design Standards and Guidelines, Engineering Standard Details, and the like, and all applicable Utility Master Plans that are in effect when the application for approval of the water infrastructure plan is submitted to the City. Unless waived by the Public Works Director or his/her designee, the proposed infrastructure designs when constructed will comply with then-applicable standards for delivering water to the Property. The water infrastructure plan shall be designed so that the system has enough redundancy in equipment so that it can meet the continuous maximum day capacity required for potable service to the Property. The water infrastructure plan may include a proposed separate Non-Potable Irrigation System and irrigation well(s) for irrigation of one or more homeowner's association(s) and commercial parcels, to be owned and operated by the Property homeowner's association and to be constructed at Owner's sole expense without reimbursement. The City is in the process of updating its Integrated Water Master Plan, but until that is completed and adopted by City Council, the water infrastructure plans referred to herein shall be consistent with the policies and requirements included in the 2016 Integrated Water Master Plan as amended.

6.4. WATER INFRASTRUCTURE. Regardless of the source of the water that is to be used to serve the Property (on-site or off-site), as a condition of development, Owner shall, at its sole cost, except as expressly provided in this Agreement, design, install, and/or construct, all infrastructure, on-site and/or off-site, convey all land necessary for such infrastructure, and acquire all capital equipment necessary to allow the City to provide water service to the Property at build out. This includes, but is not limited to, costs associated with land and infrastructure needed to address byproducts of the treatment process (such as brine) and land and infrastructure needed for production well fields, storage facilities, treatment infrastructure, recharge and direct reuse facilities, and delivery infrastructure.

6.5. WATER RATES AND FEES. The City shall be entitled to adopt differentiated rates and fees for water services specific to the Property as reasonably determined by the City to as being needed to cover the costs of providing water services to the Property and for providing for replacement of infrastructure, including the adoption of a rate or surcharge at a level sufficient to pass through to City water customers within the Property the City's costs for CAGRD replenishment and membership costs related to groundwater used within the Property.



5. Wastewater Infrastructure and Wastewater Service: Section 7 Wastewater Infrastructure and Wastewater Service and all subsections therein, including 7.1 and 7.2 are hereby deleted in their entirety and replaced with the following:

7. **WASTEWATER INFRASTRUCTURE AND WASTEWATER SERVICE**. Owner shall, at its sole cost, except as expressly provided in this Agreement, design, install, and/or construct, all infrastructure, on-site and off-site, convey all land necessary for such infrastructure, and acquire all capital equipment necessary to allow the City to provide wastewater service to the Property, which may include, by way of example and as applicable, storage facilities, Reclaimed Water and recharge facilities, treatment facilities capable of treating wastewater to the standard required to allow Reclaimed Water to be used for recharge, direct reuse, lift stations, and transmission lines. Owner will not be required to design, install, and/or construct a direct potable reuse system for the Property unless and until the City adopts updated standards that require all new City water treatment facilities to incorporate direct potable reuse.

7.1. **WASTEWATER INFRASTRUCTURE PLAN**. Owner, at its sole cost, shall be responsible for the preparation of infrastructure plans detailing public infrastructure requirements and capital equipment determined by the City as being necessary to allow the City to provide wastewater service to the Property consistent with the uses, densities and intensities reflected in the Final PAD. The infrastructure plans required hereunder shall be funded by Owner, at its sole cost, and shall be prepared and sealed by a registered engineer. Unless advised by the Director of Public Works or his/her designee that a wastewater infrastructure plan and/or an update wastewater infrastructure plan is not required, Owner shall, prior to the City's approval of any application for any final plat and/or site plan, secure City approval of a wastewater infrastructure plan. Wastewater infrastructure plans required herein shall be consistent with all applicable ordinances, resolutions, regulations, guidelines, standards (including by way of example, but not limitation, Subdivision Regulations, Engineering Design Standards and Guidelines, Engineering Standard Details, and the like), and all applicable Utility Master Plans that are in effect when the application for approval of the wastewater infrastructure plan is submitted. To the extent practical, the wastewater infrastructure plan shall be designed in a cost-effective manner so that the then-existing wastewater rates and fees are sufficient to cover at least ninety percent (90%) of the costs of providing wastewater services to the Property. Wastewater infrastructure plans for any water reclamation facility that is to serve the Property shall be governed by the following minimum design requirements: (a) the type of treatment process and all equipment shall be specified and approved by the City; (b) the size of the plant shall be sufficient to serve the Property at buildout and be of a minimum size for operating efficiencies, as specified and approved by the City, nonetheless, Owner may, as approved by the Director of Public Works, construct the plant in phases; and (c) the design of the treatment plant shall readily accommodate incremental

expansion of minimum sizes necessary for operating efficiencies, as specified and approved by the City. In the event the public infrastructure reflected in an approved infrastructure plan has not been constructed prior to any applicable Utility Master Plan being updated or revised by the City, Owner shall, at its sole cost, update the infrastructure plan in accordance with the updates or revisions to the updated Utility Master Plan. The City is in the process of updating its Integrated Water Master Plan, but until that is completed and adopted by the City, the wastewater infrastructure plans referred to herein shall be consistent with the policies and requirements included in the 2016 Integrated Water Master Plan as amended.

7.2. **WASTEWATER RATES AND FEES.** The City shall be entitled to adopt differentiated rates and fees for wastewater services specific to the Property as reasonably determined by the City to as being needed to cover the costs of providing wastewater services to the Property (including costs of operating recharge facilities) and for providing for replacement of infrastructure.

6. **Reclaimed Water:** Section 8 Reclaimed Water and all subsections therein, including 8.1 and 8.2 are hereby deleted in their entirety and replaced with the following:

8. **RECLAIMED WATER.** The City shall own all Reclaimed Water produced through the wastewater treatment process. All Reclaimed Water will be recharged underground in an underground storage facility constructed and permitted in the City's name for water storage by the Arizona Department of Water Resources, unless the City in the future determines that Reclaimed Water should be used for other reuse purposes that benefit the residents of the Property. Owner shall, as a condition of development, and at its sole cost, except as expressly provided in this agreement, design and install and/or construct all infrastructure, on-site and/or off-site, convey all land necessary for such infrastructure, and acquire capital equipment necessary to allow the Reclaimed Water to be stored underground and recovered by the City on an annual basis or longer term basis as authorized by law. Any Reclaimed Water underground storage facility and recovery infrastructure designed and constructed pursuant to the requirements of this Section 8 shall be owned and operated by the City.

7. **City Ownership:** Section 9 City Ownership is hereby deleted in its entirety and replaced with the following:

9. **CITY OWNERSHIP.** All water and wastewater infrastructure improvements (with the exception of any Non-Potable Irrigation System) constructed pursuant to this Agreement shall be owned and maintained by the City. Owner shall dedicate to the City, lien free, and, except as otherwise provided in this Agreement, at no cost to the City.

8. **Entire Agreement.** This First Amendment and the exhibit(s) referred to herein and attached hereto, along with the unchanged provisions in the Rainbow Valley

Development Agreement constitute the sole and entire agreement between the Parties with respect to the matters covered herein and supersede any prior or contemporaneous agreements, understandings or undertakings, written or oral, by or between the Parties, and/or by or between any of the Parties and any third parties. This First Amendment shall be deemed to amend and supersede the Rainbow Valley Development Agreement with respect to all terms, provisions and changes set forth in this First Amendment. To the extent of any conflict between this First Amendment and the Rainbow Valley Development Agreement, this First Amendment shall control. Except as amended by this First Amendment, all terms, provisions and conditions of the Rainbow Valley Development Agreement shall remain in full force and effect and shall apply to this First Amendment.

9. Amendment. The Rainbow Valley Development Agreement and this First Amendment thereto, may not be changed modified or rescinded except in writing as agreed to and signed by the Parties hereto and approved by the Mayor and Council of the City of Goodyear.

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

11. Severability. Any provision of this First Amendment that is declared void or unenforceable shall be severed from this First Amendment and the remainder of this First Amendment shall otherwise remain in full force and effect.

12. Representations and Warranties of Owner. As of the date of the execution of this First Amendment, Owner represents and warrants the following:

12.1. Ownership. Rainbow Valley 2011, LLC, an Arizona limited liability company is the owner of the Property and has the full right and authority to submit its interest in the Property to the obligations hereunder.

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

12.3. Due Diligence. Owner reviewed this First Amendment and reached its own conclusions as to the binding and enforceable nature thereof and all of the provisions

contained therein, and has not relied on any representations or warranties of City other than those expressly provided in this First Amendment.

13. Representations and Warranties of City. As of the date of City's execution of this First Amendment, the City represents and warrants the following:

13.1 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.

13.2. Authorization. City agrees that the persons executing this Agreement on behalf of City have been duly authorized to do so.

14. 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, Owner shall deliver an original to the City for recordation in the Official Records of Maricopa County

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

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

*Signatures on Following Pages*

**OWNER:**

Rainbow Valley 2011, LLC, an Arizona limited liability company

By: Michael L. Merriman  
Michael L. Merriman  
Its: Manager

State of Arizona                    )  
  )ss  
County of Maricopa                )

The First Amendment to Development Agreement for Rainbow Valley by and between Rainbow Valley 2011, LLC, an Arizona limited liability company and the City of Goodyear, an Arizona municipal corporation was acknowledged before me this 17th day of October, 2019, by Michael L. Merriman, the Manager of Rainbow Valley 2011, LLC, an Arizona limited liability company, and who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the and acknowledged to me that he being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of Rainbow Valley 2011, LLC, an Arizona limited liability company.

Sienna Myers  
Notary Public



**CITY:**

CITY OF GOODYEAR, an Arizona municipal corporation

By: \_\_\_\_\_  
Julie Arendall  
Its: City Manager

STATE OF ARIZONA        )  
                                      ) ss.  
County of Maricopa        )

The First Amendment to Development Agreement for Rainbow Valley by and between Rainbow Valley 2011, LLC, an Arizona limited liability company and the City of Goodyear, an Arizona municipal corporation was acknowledged before me this \_\_\_\_ day of October, 2019, by Julie Arendall, the City Manager of the CITY OF GOODYEAR, an Arizona municipal corporation, for and on behalf thereof.

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

Attest:

\_\_\_\_\_  
Darcie McCracken, City Clerk

Approved as to Form:

\_\_\_\_\_  
Roric Massey, City Attorney

*Exhibits on Following Pages*

**EXHIBIT 1-A**

**LEGAL DESCRIPTION**

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE SOUTH HALF OF SECTION 3 AND ALL OF SECTION 10, IN TOWNSHIP 2 SOUTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

**EXHIBIT 1-B**

**EXISTING LENDER CONSENT**



## EXISTING LENDER CONSENT

The undersigned, Great Western Bank, a South Dakota banking corporation, as Beneficiary under that certain DEED OF TRUST by and between Rainbow Valley 2011, LLC, an Arizona limited liability company ("Trustor"), Chicago Title Agency, Inc. ("Trustee") and Great Western Bank ("Beneficiary") dated January 15, 2015 and recorded on January 16, 2016 in the Official Records of Maricopa County, Arizona as Document No. 2015-0031769 as amended by that certain document titled Amendment to Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated March 22, 2016 and recorded on March 24, 2017 in the Official Records of Maricopa County, Arizona as Document No. 2016-0192397 with respect to the real property that is the subject of that certain First Amendment to Development Agreement for Rainbow Valley by and between the City of Goodyear, an Arizona municipal corporation and Rainbow Valley 2011 an Arizona limited liability company (the "First Amendment"), a copy of which is attached hereto as Exhibit 1, which First Amendment is to be or has been approved by the Mayor and Council of the City of Goodyear by Resolution 2019-2009, hereby: (i) consents to the First Amendment; (ii) acknowledges that the First Amendment shall bind that portion of the real property that is subject to the Deed of Trust and subject to the First Amendment; (iii) approves the recordation of the First Amendment; (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 First Amendment and this Existing Lender Consent; (vii) agrees that the First Amendment 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.

DATED: October 17, 2019

BENEFICIARY

GREAT WESTERN BANK,  
a South Dakota banking corporation

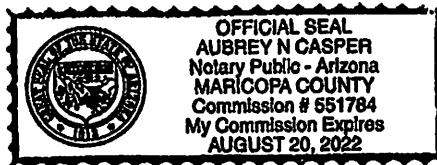
By: Matt Arnold

Name: MATT ARNOLD

Its: Agri Banker

*Acknowledgment on following page*

STATE OF ARIZONA     )  
                                      ) ss.  
County of Maricopa     )



The foregoing instrument (the Existing Lender Consent) was acknowledged before me this 17<sup>th</sup> day of October, 2019, by Matt Arnold, as Agri Banker of Great Western Bank, a South Dakota banking corporation, and that he/she, being authorized to do so, executed the Existing Lender Consent for the purposes therein contained on behalf of Great Western Bank, a South Dakota banking corporation.

Aubrey Casper  
Notary Public