

OFFSITE ESCROW AGREEMENT

This Offsite Escrow Agreement (this "**Agreement**") is made and entered into as of _____, 20____, by and among **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation ("**Escrow Agent**"), **AL ARIZONA DC LLC**, a Delaware limited liability company ("**Aldi**"), **RP PV VI LLC**, a Delaware limited liability company ("**RP**"), and the **CITY OF GOODYEAR, ARIZONA**, a municipal corporation under the laws of the State of Arizona ("**City**"). Escrow Agent, Aldi, RP and the City are sometimes hereinafter referred to collectively as the "**Parties**" and individually as a "**Party**."

RECITALS

A. Aldi, as purchaser, and RP, as seller, have entered into that certain Agreement for Sale and Purchase dated _____, 2017 (as amended, the "**RP Purchase Agreement**"). The Closing (as defined in the RP Purchase Agreement) will occur concurrently with the execution of this Agreement by the Parties, pursuant to which RP will convey to Aldi certain real property described in **Exhibit A-1** attached hereto.

B. Aldi, as purchaser, and the City, as seller, have entered into that certain Agreement for Sale and Purchase dated _____, 2017 (as amended, the "**City Purchase Agreement**"). The Closing (as defined in the City Purchase Agreement) will occur concurrently with the execution of this Agreement by the Parties, pursuant to which the City will convey to Aldi certain real property described in **Exhibit A-2** attached hereto.

C. The land described in **Exhibit A-1** and **Exhibit A-2** is sometimes hereinafter collectively referred to as the "**Aldi Site**." Prior to or concurrently with the above-described Closings, there will be recorded that certain _____ [*describe Plat*], pursuant to which the Aldi Site will be platted and consolidated as a single lot or parcel of land for Aldi's use and development (the "**Plat**").

D. The Parties are entering into this Agreement pursuant to the RP Purchase Agreement and the City Purchase Agreement, in order to set forth the terms under which (i) RP will cause certain offsite infrastructure improvements to be constructed, which improvements are generally described in **Exhibit B** attached hereto and incorporated herein (the "**Improvements**"), and (ii) the City and RP will deposit with Escrow Agent the estimated cost of the Improvements (the City's contribution toward which will be capped as hereinafter provided), which funds will be held by Escrow Agent and disbursed in accordance with the terms of this Agreement.

E. Upon full execution by all parties hereto and funding of the Initial Deposit as defined and described in **Section 5.1**, this Agreement shall constitute an acceptable financial assurance for the Improvements as required by law in connection with the recordation of the Plat.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Parties hereto, intending to be legally bound hereby, mutually 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 "**Applicable Recipient**" means (A) the City, as to the roadway and other improvements described as the "City Improvements" in **Exhibit B**, (b) EPCOR Water, as to the water distribution lines and water distribution systems described as the "EPCOR Improvements" in **Exhibit B**, and (c) Liberty Utilities, as to the sewer collection systems described as the "Liberty Improvements" in **Exhibit B**.
- 2.2 "**Bank**" means a federally insured commercial bank.
- 2.3 "**Budget**" means the budget setting forth the estimated Cost (as hereinafter defined) of the Improvements, as attached hereto as **Exhibit C** and as hereafter updated from time to time in accordance with **Section 5.2**.
- 2.4 "**Category**" means each line item category of Improvements, as set forth in the Budget.
- 2.5 "**Complete**" or "**Completion**" means that RP (or the Other Constructing Party, if applicable) has delivered all of the following to Escrow Agent and the other Parties:
- 2.5.1 A certification signed by RP's Arizona licensed professional engineer (or the licensed professional engineer of the Other Constructing Party, if applicable), stating that the Improvements have been completed in accordance with the applicable plans therefor (which plans are described in **Exhibit B** hereto) and are useable for the purpose for which they are intended;
- 2.5.2 Written evidence of final inspection approval of the particular Improvements duly executed by the Applicable Recipient thereof (i.e., the City, as to the "City Improvements" described in **Exhibit B**; EPCOR Water, as to the "EPCOR Improvements" described in **Exhibit B**; and Liberty Utilities, as to the "Liberty Improvements" described in **Exhibit B**), which approval is conditioned only upon the provision of a warranty in the form and for the term required by such Applicable Recipient and the correction of any items noted in connection with any end of warranty inspection thereunder; and
- 2.5.3 A statement signed by RP (or the Other Constructing Party, if applicable) naming each contractor, subcontractor, and materialman that has supplied labor or materials in connection with the Improvements, and certifying that each contractor, subcontractor and materialman named therein has executed a full, final and unconditional mechanics lien waiver in connection therewith, together with a copy of each such lien waiver in the statutory form prescribed by Arizona Revised Statutes Section 33-1008(D)(4).
- 2.6 "**Cost**" means the actual out-of-pocket cost incurred to construct and Complete the Improvements, provided that any costs that are subject to public procurement as described in **Section 4** shall be in accordance with the bids selected pursuant to the public procurement process described in **Section 4** and the construction and other contracts entered into in connection therewith.

- 2.7** "**Default Condition**" means the Aldi Default Condition or the City Default Condition, as applicable. The term "**Aldi Default Condition**" means that Aldi is entitled to take over construction of the Incomplete Improvements pursuant to the terms of Section 8 of the RP Purchase Agreement. The term "**City Default Condition**" means that (a) construction of the Improvements has been abandoned or has otherwise ceased for a period of at least forty-five (45) continuous days, and such abandonment or cessation is not due to an Uncontrollable Event, and (b) such abandonment or cessation is not cured on or before fifteen (15) days after written notice thereof is delivered by the City to Escrow Agent, Aldi and RP.
- 2.8** "**Deposit**" means all of the following, collectively: (i) the Initial Deposit (as defined below) that is paid to Escrow Agent pursuant to **Section 5.1**, (ii) any additional amount(s) paid by RP pursuant to **Section 5.2**, (iii) any additional amount(s) paid by the City pursuant to **Section 5.2**, and (iv) and interest earned on any of the foregoing while invested as provided in **Section 5.3**.
- 2.9** "**Draw Request**" means a written demand for disbursement of the Deposit, which satisfies all of the following requirements:
- 2.9.1** It is signed by the Party entitled to obtain the disbursement pursuant to the terms of this Agreement (i.e., RP or an Other Constructing Party, as applicable);
- 2.9.2** It contains the Budget update required pursuant to **Section 5.2** (or a statement that the then-existing Budget remains in effect with no update required);
- 2.9.3** It contains a certification by such Party which (i) states the amount of Costs incurred by such Party in connection with the construction of the Improvements for which payment is sought pursuant to the current demand (the "**Total Draw Amount**"), (ii) allocates the Total Draw Amount among each Category of Improvements for which payment is sought pursuant to the current demand, (iii) allocates the total amount for each Category between the City and RP in accordance with **Section 3**, (iv) totals the amounts in item (iii) to arrive at the total amount to be paid from City funds and the total amount to be paid from RP funds pursuant to the current demand, and (for purposes of the disbursement to be made hereunder) instructs Escrow Agent to use funds in the City's account to pay the City total and to use funds in RP's account to pay the RP total, (v) sets forth any additional amount that is required to be deposited by RP and/or the City pursuant to **Section 5.2** and the updated Budget described above, (vi) shows the percentage of value of the total work on the Improvements that have been completed through the date of the current demand (the "**Completion Percentage**"), and (vii) confirms that the Draw Request is in conformance with the Budget and the terms of this Agreement; and
- 2.9.4** It is accompanied by (i) copies of invoices, paid receipts, applications for payment, or other reasonable supporting evidence of the Costs for which payment is sought, and (ii) partial unconditional mechanics lien waivers executed by each contractor, subcontractor, sub-subcontractor or material supplier paid from all Deposit disbursement(s) prior to the date of the current demand, to the extent not previously provided in connection with a prior demand hereunder.

- 2.10** "**Incomplete Improvements**" means the Improvements that are not Complete on the date that either (a) a Aldi Default Condition occurs and Aldi elects to assume and take over the construction of the Improvements as described in **Section 6.2**, or (b) a City Default Condition occurs and the City elects to assume and take over the construction of the City Improvements as described in **Section 6.3**.
- 2.11** "**Other Constructing Party**" means Aldi or the City, if and to the extent either of them has assumed and taken over construction of the Incomplete Improvements in accordance with **Section 6**.
- 2.12** "**Retainage**" shall have the following meaning, as applicable:
- 2.12.1** If the Completion Percentage for the Improvements as certified in a Draw Request is less than fifty percent (50%), then the "Retainage" shall be an amount equal to ten percent (10%) of that Draw Request amount; and
- 2.12.2** If the Completion Percentage for the Improvements as certified in a Draw Request is equal to or greater than fifty percent (50%), then the "Retainage" shall be five percent (5%) of that Draw Request amount.
- 2.13** "**Self-Help Costs**" means the Costs (as hereinafter defined) incurred by an Other Constructing Party in connection with its construction and Completion of the Incomplete Improvements after it assumes construction thereof as provided in this Agreement.
- 2.14** "**Uncontrollable Events**" means delays in the progress of construction and/or Completion of the Improvements due to strikes, riots, acts of war, acts of violence, unseasonable and intemperate weather that is not reasonably expected in the geographic location of the property on which the Improvements are located, material shortages, acts of God, delays by utility companies or any governmental agencies having jurisdiction over the Improvements. Notwithstanding the foregoing, Uncontrollable Events do not include: financial inability to pay amounts owed by RP hereunder; delays or failures to perform resulting from lack of funds or which can be cured with the payment of money; delays in obtaining goods, materials or equipment due to failure to adequately plan for purchases or deliveries; economic hardship; design errors; or equipment failure.

3. Allocation of Cost.

- 3.1** **City Cost Allocation.** The City agrees to pay up to a maximum of Two Million Eight Hundred Ten Thousand One Hundred Forty-one and 52/100 Dollars (\$2,810,141.52) toward the total Cost of the following Improvements (it being agreed that if the actual total Cost of the Improvements described below is less than Two Million Eight Hundred Ten Thousand One Hundred Forty-one and 52/100 Dollars (\$2,810,141.52), then the City's contribution shall be limited to such actual total Cost amount):
- 3.1.1** All improvements (described in Item F of **Exhibit B**) within the approximately 1,075 linear foot ("**LF**") portion of the Indian School Road half-street right-of-way located adjacent to Assessor's Parcel No. 502-30-008L (which right-of-way is depicted in gold and labeled as "Indian School Road & N. Cotton Lane MOD – City of Goodyear" in the map attached hereto as **Exhibit D**), including the waterline

(described in Item A of **Exhibit B**) located within this approximately 1,075 LF portion of Indian School Road;

- 3.1.2** All improvements (described in Item G of **Exhibit B**) within the approximately 1,206 LF portion of the Cotton Lane half-street right-of-way located adjacent to the portion of Assessor's Parcel No. 502-30-008L depicted in green in **Exhibit D** (these improvements are a portion of the Cotton Lane right-of-way depicted in gold and labeled as "Indian School Road & N. Cotton Lane MOD – City of Goodyear" in the map attached hereto as **Exhibit D**), including the sewerline stub (described in Item E of **Exhibit B**) located within this approximately 1,206 LF portion of Cotton Lane;
- 3.1.3** Fifty percent (50%) of the Cost of the improvements within the approximately 444 LF portion of the Cotton Lane half-street right-of-way located adjacent to the portion of Assessor's Parcel No. 502-30-008L depicted in pink in **Exhibit D** (these improvements are a portion of the Cotton Lane right-of-way depicted in gold and labeled as "Indian School Road & N. Cotton Lane MOD – City of Goodyear" in the map attached hereto as **Exhibit D**);
- 3.1.4** All improvements within the area depicted in orange and labeled as "City of Goodyear Stormwater Retention Basin" in the map attached hereto as **Exhibit D**, and as more particularly described in Item H of **Exhibit B**; and
- 3.1.5** Fifty percent (50%) of the Cost of the traffic signal at the intersection of Cotton Lane and Indian School Road (described as part of the improvements in Item F of **Exhibit B**).

3.2 **RP Contribution.** RP agrees to pay (a) that portion (if any) of the total Cost of the Improvements described in **Section 3.1** above that exceeds the City's Two Million Eight Hundred Ten Thousand One Hundred Forty-one and 52/100 Dollars (\$2,810,141.52) contribution, and (b) the total Cost of the following Improvements:

- 3.2.1** All improvements (described in Item F of **Exhibit B**) within the approximately 1,520 LF portion of the Indian School Road half-street right-of-way located adjacent to Assessor's Parcel No. 502-30-008H (which right-of-way is depicted in olive and labeled as "Indian School Road MOD – RP PV VI LLC") in the map attached hereto as **Exhibit D**), including the waterline (described in Item A of **Exhibit B**) located within this approximately 1,520 LF portion of Indian School Road;
- 3.2.2** Fifty percent (50%) of the Cost of the improvements within the approximately 444 LF portion of the Cotton Lane half-street right-of-way located adjacent to the portion of Assessor's Parcel No. 502-30-008L depicted in pink in **Exhibit D** (these improvements are a portion of the Cotton Lane right-of-way depicted in gold and labeled as "Indian School Road & N. Cotton Lane MOD – City of Goodyear" in the map attached hereto as **Exhibit D**);
- 3.2.3** Approximately 1,261 LF of waterline in Minnezona Avenue at the western boundary of the Aldi Site (within the area depicted in red and labeled as "Future

W Minnezona Ave" in the map attached hereto as **Exhibit D**), as described in Item B of **Exhibit B**;

3.2.4 EPCOR water campus connection consisting of approximately 2,200 LF of waterline as described in Item C of **Exhibit B**;

3.2.5 Completion of EPCOR water loop connection consisting of approximately 2,600 LF of waterline as described in Item D of **Exhibit B**; and

3.2.6 Fifty percent (50%) of the Cost of the traffic signal at the intersection of Cotton Lane and Indian School Road (described as part of the improvements in Item F of **Exhibit B**).

3.3 **All Improvements Covered.** The Improvements listed in **Sections 3.1.1 through 3.1.5** and **Sections 3.2.1 through 3.2.6** together comprise all of the Offsite Improvements described in **Exhibit B**.

4. **Construction of the Improvements.** RP shall be responsible for construction and Completion of the Improvements in accordance with the RP Purchase Agreement and this Agreement, subject to the rights of Aldi and the City to assume and take over such construction as provided in **Section 6**. Work and materials necessary to construct and Complete the Improvements for which the City will contribute funds (as set forth in **Section 3.1**) shall be provided by contractors and material suppliers selected utilizing an approved public procurement process, it being agreed that RP and any Other Constructing Party shall be required to use such process.

5. **Escrow of the Deposit.**

5.1 **Initial Deposit.**

5.1.1 **City Initial Deposit.** Concurrently with the Closing under the City Purchase Agreement, the City shall pay to Escrow Agent the sum of _____ Dollars (\$_____) [*insert amount of estimated Cost of the Improvements in **Section 3.1**, per the Updated Offsite Budget (per Section 6(C) of the Agreement for Sale and Purchase between Aldi and RP), plus 10% contingency, with the total amount not to exceed \$2,810,141.52*] in cash or other immediately available funds. As set forth in **Section 3.1**, the City's financial contribution under this Agreement is capped at Two Million Eight Hundred Ten Thousand One Hundred Forty-one and 52/100 Dollars (\$2,810,141.52), it being agreed that any Cost to construct and Complete the Improvements in excess of the foregoing amount shall be the responsibility of RP as provided in **Section 3.2**.

5.1.2 **RP Initial Deposit.** Concurrently with the Closing under the RP Purchase Agreement, RP shall pay to Escrow Agent the sum of _____ Dollars (\$_____) [*insert amount equal to the total estimated Cost of the Improvements per the Updated Offsite Budget (per Section 6(C) of the Agreement for Sale and Purchase between Aldi and RP), plus 10% contingency, minus amount of City contribution in **Section 5.1.1** above*] in cash or other immediately available funds.

The amounts paid by the City and RP pursuant to this **Section 5.1** are sometimes collectively referred to in this Agreement as the "**Initial Deposit.**" The amounts paid by City and RP respectively pursuant to this Agreement shall be held in escrow by Escrow Agent in separate segregated escrow accounts, as further described in **Section 6.4.**

- 5.2** **Budget Updates; Additional Deposits.** Concurrently with the delivery of each Draw Request hereunder (or, if no Draw Request will be delivered hereunder with respect to a particular month, then on or before the fifth (5th) business day of that month), RP shall provide Escrow Agent, Aldi, and the City, with an updated Budget reflecting RP's then-current estimate of the Cost (determined in good faith in a commercially reasonable manner) to Complete the Improvements, broken down among the various Categories of the Improvements. If the Deposit then held by Escrow Agent is less than one hundred ten percent (110%) of the of the total remaining Cost as shown on any Budget delivered by RP pursuant to this Section, then the following provisions shall apply:
- 5.2.1** RP shall, concurrently with the delivery of such Budget, deliver written notice to the Parties setting forth the amount of any additional deposit to be made by RP and/or the City (with the calculation of the additional deposit payable by each of them to be made in accordance with **Section 3**, and subject to the \$2,810,141.52 limitation on the City's total contribution hereunder) in order to cover the deficient amount, so that the total Deposit amount (including any Retainage) held by Escrow Agent is equal to one hundred ten percent (110%) of the estimated Cost to Complete the Improvements as set forth in such Budget;
- 5.2.2** RP shall, concurrently with the delivery of such Budget, deposit with Escrow Agent the deficient amount payable by RP pursuant to **Section 5.2.1** as an addition to the Deposit; and
- 5.2.3** The City shall, on or before ten (10) days after the delivery of the notice in **Section 5.2.1**, deposit with Escrow Agent the deficient amount payable by the City pursuant to **Section 5.2.1** as an addition to the Deposit.
- 5.3** **Investment by Escrow Agent.** Escrow Agent shall invest the Deposit in insured (subject to dollar-amount limitations from time to time), money market, interest-bearing demand deposit accounts with a Bank, which accounts shall be established for the joint benefit of RP, Aldi, Escrow Agent and the City. The Parties acknowledge that any interest or other income payable with respect to the Deposit accounts may be variable and subject to change from time to time due to fluctuations in the money market or other factors. Escrow Agent shall file at the appropriate time(s) any required report with the United States Internal Revenue Service in connection with the payment of such interest. Upon execution of this Agreement, RP and the City shall each provide its federal tax identification number to Escrow Agent on an executed Form W-9 for purposes of investing the Deposit.
- 5.4** **Disbursement by Escrow Agent.** This Agreement shall constitute an escrow agreement and instructions to Escrow Agent. The Deposit shall be disbursed and otherwise dealt with by Escrow Agent only in strict accordance with the terms of this Agreement.
- 5.5** **Term of Agreement.** Notwithstanding any contrary provision, the Parties anticipate that the term of this Agreement shall be twenty-four (24) months following the completion of Closing

under the RP Purchase Agreement, the City Purchase Agreement and the funding of this Agreement. If the term of this Escrow Agreement is greater than said twenty-four (24) months, RP and Aldi shall deliver to Escrow Agent a joint written instruction setting forth the anticipated extension of the term of this Escrow Agreement.

6. Draws Upon the Deposit.

6.1 By RP. Provided RP has complied with the provisions of **Section 5.2**, RP shall have the right, on a monthly basis, to draw upon the Deposit, in payment of Costs incurred by RP in connection with its construction of the Improvements. The foregoing monthly progress draws shall be paid by Escrow Agent to RP upon presentation to Escrow Agent and the other Parties of a Draw Request in compliance with the provisions of **Section 2.9** above, signed by RP. Within five (5) business days after its receipt of a Draw Request, Aldi and the City shall each deliver to Escrow Agent and RP either (i) an Objection Notice as permitted under **Section 6.1.2** below, or (ii) written approval of the Draw Request ("**Draw Approval**") (provided, however, that such written notice shall not be required, it being agreed that if either the City or Aldi fails to deliver either a Draw Approval or an Objection Notice prior to expiration of the foregoing five (5) business day period, then that Party shall be deemed to have delivered a Draw Approval as of the last day of such period and shall be deemed to have waived any objection to the disbursement of the amount due under the Draw Request). If both Aldi and the City deliver (or are deemed to have delivered) a Draw Approval, then the next business day following the expiration of such five (5) business day period, Escrow Agent shall disburse a portion of the Deposit to RP from the funds available for the construction of the Improvements for which payment is being made, which disbursement shall be in the amount set forth in the Draw Request and shall be allocated between City funds and RP funds as set forth in the Draw Request (subject to the deduction for any required Retainage, the amount of which shall be specified in the Draw Request). Aldi and the City shall have the right to object to a Draw Request in accordance with and subject to the following terms and conditions, and the procedure for dealing with any such objection (including, but not limited to, the disbursement of the Deposit following such objection) shall be as set forth below in this **Section 6.1**:

6.1.1 Basis for Objection. The City or Aldi shall be entitled to object to the payment of all or any portion of the amount due under a Draw Request delivered by RP hereunder (the Party delivering such objection being hereinafter referred to as the "objecting Party"), to the extent reasonably necessary to protect the objecting Party from any of the following, as reasonably determined by the objecting Party based on the objecting Party's physical inspection of the Improvements and/or the status of completion of the Improvements as set forth in Draw Request:

- (a)** The Draw Request does not accurately state the Completion Percentage as to one or more Categories; or
- (b)** The objecting Party has provided RP with written notice that the work (or material) covered by such Draw Request is not in accordance with the requirements of this Agreement, and RP has failed to cause such work (or

material) to be corrected within fifteen (15) days after its receipt of such notice;

- (c) The Draw Request as submitted by RP is incomplete and/or does not conform to the requirements of this Agreement;
- (d) RP is otherwise in breach of this Agreement;
- (e) The existence of third-party claims (or reasonable evidence that such are likely);
- (f) The Draw Request does not correctly allocate Costs thereunder between the City and RP in accordance with **Section 3**; or,
- (g) Failure of RP to make timely payments for materials or labor.

6.1.2 Objection Notice; Effect of Objection. Aldi and the City shall each have the right to object to any Draw Request delivered hereunder (but only for a reason stated in **Section 6.1.1** above), by delivery of written notice of such objection (an "**Objection Notice**") to RP, Escrow Agent, and the other Party to this Agreement, within five (5) business days after Aldi's (or the City's, as applicable) receipt of such Draw Request (which Objection Notice shall state in reasonable detail the basis for such objection). If Aldi or the City delivers a timely Objection Notice, then (a) the due date for all (or the portion, as applicable) of the disbursement as to which objection was made shall be delayed until (i) the date on which the objecting Party and RP mutually agree that such payment shall be released to RP, or (ii) if the objecting Party and RP are unable to reach agreement as provided in clause (i), the date on which such payment is determined to be due pursuant to the mediation provisions set forth in **Exhibit E** attached hereto, and (b) the balance of such disbursement (if any) shall be paid by Escrow Agent in accordance with the provisions initially set forth in this **Section 6.1**.

6.2 By Aldi. If an Aldi Default Condition occurs and as a result thereof Aldi elects to assume and take over the construction and Completion of the Incomplete Improvements as provided in Section 8.5 of the RP Purchase Agreement, Aldi shall have the right to draw upon the Deposit from time to time, on a monthly basis, in payment of Self-Help Costs incurred by Aldi together with fifteen percent (15%) of such Self-Help Costs as an administrative fee to be paid only from funds deposited by RP pursuant to **Section 5.1.2** above and any additional funds thereafter deposited by RP with Escrow Agent pursuant to this Agreement. The foregoing draws shall be paid by Escrow Agent to Aldi upon presentation to Escrow Agent, the City, and RP of a Draw Request signed by Aldi certifying the Self-Help Costs that Aldi is entitled to be paid. If the Deposit is insufficient to pay all Self-Help Costs, together with the aforesaid administrative fee, then RP shall nevertheless remain unconditionally obligated to pay to Aldi upon demand any amounts owed by RP to Aldi pursuant to Section 8.5(C) of the RP Purchase Agreement, in accordance with the terms and provisions of that Section.

6.3 By the City. If a City Default Condition occurs, the City shall have the right, but not the obligation, to assume and take over the construction of all or part of the Incomplete Improvements, in accordance with the following:

- 6.3.1** The City shall give written notice to RP, Aldi and Escrow Agent stating that a City Default Condition has occurred and of its intent to take over the construction of all or part of the Incomplete Improvements. The notice required hereunder shall identify the Incomplete Improvements for which the City intends to take over the construction and shall be delivered within five (5) business days after the occurrence of a City Default Condition.
- 6.3.2** If, at the time such notice is delivered by the City, RP is the Party responsible for construction of the Improvements (i.e., Aldi has not assumed and taken over construction as described in **Section 6.2** above), Aldi shall have the right to assume and take over construction of the Incomplete Improvements by delivery of written notice to RP, the City and Escrow Agent of its election to do so, which notice shall be delivered (if at all) on or before fifteen (15) days after the date on which the City's notice is delivered pursuant to **Section 6.3.1** above. If such notice is timely delivered by Aldi, then a Aldi Default Condition shall be deemed to have occurred and Aldi shall have the right to draw upon the Deposit from time to time in payment of Self-Help Costs as described in **Section 6.2** above, including Aldi's administrative fee. If such notice is not timely delivered by Aldi (or if Aldi, within such fifteen (15) day period, delivers notice to the City, RP and Escrow Agent indicating that it has elected not to assume and take over construction of the Incomplete Improvements), then the following provisions shall apply:
- (a)** The City shall have the right, but not the obligation, at any time prior to Completion of the Improvements, by giving written notice to RP, Aldi and Escrow Agent of its election to do so, to assume and take over the construction and Completion of all or part of the Incomplete Improvements;
 - (b)** If the City takes over construction of all or part of the Incomplete Improvements as provided above, then the City shall be responsible for constructing and Completing all of the Incomplete Improvements as soon as reasonably practicable, provided that adequate funds are available to do so;
 - (c)** If the City takes over construction of all or part of the Incomplete Improvements as provided above, the City shall have the right to draw upon the Deposit from time to time, on a monthly basis, in payment of the Self-Help Costs incurred by the City;
 - (d)** The foregoing draws shall be paid by Escrow Agent to the City upon presentation to Escrow Agent, Aldi and RP of a Draw Request in compliance with **Section 2.9** above, signed on behalf of the City certifying the Self-Help Costs that the City is entitled to be paid;
 - (e)** If the Deposit is insufficient to pay all Self-Help Costs, then RP shall nevertheless remain unconditionally obligated upon demand to pay to the City the difference between the balance of the Deposit and the City's actual Costs of completing the Improvements (subject to the City's obligation to fund the cost of certain Improvements as set forth in **Section 3.1**).

6.4 Separate Accounting. Escrow Agent shall maintain separate accounts and separate account balances for RP and the City, based upon the portion of the Initial Deposit paid by each of RP and the City pursuant to **Section 5.1** (together with interest earned thereon), any additional amounts paid by either of them pursuant to **Section 5.2** (together with interest earned thereon), and any subsequent disbursements of the foregoing amounts pursuant to Draw Request amounts paid pursuant to this Agreement. All allocations of Cost to RP and the City shall be based upon the allocations set forth in **Section 3** and the allocation information provided in Draw Requests delivered to Escrow Agent hereunder.

6.5 Disbursement Upon Completion. Upon Completion of all Improvements, the entire remaining balance of the Deposit (including any Retainage that has been withheld) shall be released and disbursed by Escrow Agent, as follows:

6.5.1 To City. If and to the extent that any portion any funds paid by the City pursuant to **Sections 5.1 or 5.2** (and/or any interest earned thereon) remain in the escrow account following disbursement of the final Draw Request (and all prior Draw Requests), such funds shall be disbursed to the City; and,

6.5.2 To RP. If and to the extent that any portion any funds paid by RP pursuant to **Sections 5.1 or 5.2** (and/or any interest earned thereon) remain in the escrow account following disbursement of the final Draw Request (and all prior Draw Requests), such funds shall be disbursed to RP.

The foregoing disbursements shall be made by Escrow Agent five (5) business days after RP delivers a written demand therefor to Escrow Agent and Aldi, together with the following: (i) the final Draw Request; and (ii) all items required to satisfy the definition of "Completion" as set forth in **Section 2.5**, together with written evidence of Aldi's approval of same (which approval shall not be unreasonably withheld, conditioned, or delayed by Aldi).

7. Escrow Agent Provisions – Standard Conditions.

7.1 Third Parties. This Agreement is made and executed for the sole benefit of the Parties to this Agreement, including Escrow Agent. It is the intention of the Parties hereto that no materialman or supplier concerned with the construction of any improvements described herein shall be or shall be considered to be a third party beneficiary, either incidentally or directly, of this Agreement.

7.2 Limited Role. The Parties hereto understand that the extent of the obligation of Escrow Agent hereunder is to receive and disburse monies in the manner set forth in this Agreement, and Escrow Agent shall have no other obligations whatsoever hereunder to the parties hereto. ACCORDINGLY, IT IS UNDERSTOOD AND AGREED THAT THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE MINISTERIAL IN NATURE, AND ESCROW AGENT WILL NOT BE MAKING ANY DETERMINATIONS AS TO THE ADEQUACY, ACCEPTABILITY OR COMPLETENESS OF ANY DOCUMENTATION PRESENTED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, **SECTIONS 2, 5 AND 6.**

- 7.3 Not Bound by Other Agreements.** Notwithstanding anything in this Agreement to the contrary, neither Escrow Agent nor the City shall be bound by any term or provision in an agreement to which they are not a party.
- 7.4 Disbursements.** Escrow Agent shall disburse funds, subject to the terms of this Agreement, in accordance with the express terms of this Agreement or as otherwise authorized pursuant to a written authorization executed by Aldi, RP and the City or their respective designated agent as identified by a Party pursuant to **Section 7.8** (a "**Designated Agent**").
- 7.5 Requests of Accounting.** Upon request of any Party hereto, a copy of Escrow Agent's record of accounting for funds received and disbursed, on Escrow Agent's form, shall be furnished to the Parties hereto.
- 7.6 Indemnification.** The Parties hereto hereby indemnify and promise to hold harmless Escrow Agent against but not limited to all costs, damages, attorneys' fees, expenses and liabilities which Escrow Agent may incur or sustain in connection with this Agreement, or any court action arising therefrom, and will pay the same upon demand, except claims arising out of Escrow Agent's negligence, bad faith, recklessness, intentional misconduct or breach of this Agreement.
- 7.7 Conflicting Demands.** If conflicting demands are made upon Escrow Agent, Escrow Agent may hold any money or documents subject to such conflicting demands until the rights of the Parties making such conflicting demands be determined by court action. Escrow Agent may interplead said money or documents, whereupon Escrow Agent shall be fully relieved of any and all liability in regard to such demands and the Parties hereunder.
- 7.8 Specimen Signatures.** Each of the Parties hereto shall furnish to Escrow Agent such information as may be required by Escrow Agent setting for the names and specimen signatures of its Designated Agent whose signature Escrow Agent may accept.
- 7.9 Instruction to Escrow Agent.** This Agreement shall constitute joint instructions to Escrow Agent from the Parties and the amounts deposited shall be disbursed and dealt with by Escrow Agent in strict accordance with the following:
- 7.9.1 Money Market Account.** Escrow Agent may deposit or invest the amounts deposited in a money market account reasonably acceptable to Parties (provided the deposited amounts are available for immediate withdrawal, as and when required under the Agreement). Interest on monies earned on such money market account(s) will be added to the Escrow Account funds to be utilized for costs and fees related to this Agreement. 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.
- 7.9.2 Limitation of Liability.** Notwithstanding any other provisions of this Agreement, Escrow Agent has no responsibility nor liability for completion of any improvements described in this Agreement; or to guarantee that the funds deposited into the Escrow Account are sufficient to complete any improvements described in this

Agreement; or for any mechanic's or materialmen's liens that may be filed except to the extent that Escrow Agent fails to properly disburse monies pursuant to this Agreement. Escrow Agent shall not be liable for any action taken or omitted by it, except for its own negligence, bad faith or willful misconduct; nor shall it be liable or responsible for the validity, enforceability or sufficiency of any document furnished to it pursuant to any provision thereof; nor shall it be responsible for any representation or statements made in any of those documents. Any disbursement by Escrow Agent of any advance shall not be deemed to be approved by Escrow Agent of any work performed or any materials furnished with respect thereto or a representation by Escrow Agent that the unused portion of the total cumulative sum is sufficient to pay any remaining construction costs. IT IS EXPRESSLY UNDERSTOOD THAT NO TITLE INSURANCE OR MECHANICS' LIEN COVERAGE IS BEING PROVIDED BY ESCROW AGENT IN CONJUNCTION WITH THIS AGREEMENT AND THAT BY ENTERING INTO THIS AGREEMENT, ESCROW AGENT IS IN NO WAY AGREEING TO, MODIFYING, EXPANDING OR EXTENDING ANY COVERAGE(S) PREVIOUSLY PROVIDED, IF ANY.

7.9.3 Advice of Counsel. Escrow Agent shall be entitled to rely upon advice of counsel concerning legal matters and upon any document or notice delivered to it hereunder which it believes to be genuine or to have been presented by a proper person.

7.9.4 Compensation. Escrow Agent shall be entitled to receive compensation for its services hereunder in the amount of \$500.00 as an initial set-up fee for each account, together with \$200.00 for each disbursement under this Agreement. Escrow Agent is hereby authorized to deduct from first monies available its fees. Aldi and RP shall each be responsible for payment of fifty percent (50%) of each such fee, as and when it is due and payable to Escrow Agent. **Note: A reasonable charge will be made for extraordinary services rendered.**

7.9.5 Rights of Escrow Agent. In the event this Agreement is cancelled and terminated by either party or a default by Aldi, RP or City under this Agreement occurs, and in the absence within a reasonable time of an agreement between those Parties to release the Deposit, Escrow Agent shall have the right to take no action or at its option and in its sole discretion, may pay the Deposit into Court and is authorized to deduct from the Deposit such reasonable costs, expenses and attorney's fees as are thereby incurred.

7.10 Cancellation. This Agreement may be canceled only upon written approval of all Parties hereto except as otherwise provided in this Agreement. The Escrow Agent's action upon cancellation shall consist of final disbursement of funds upon written direction of the Parties or by court action, whichever is applicable.

7.11 Agreement Controls. To the extent of any conflicts between the provisions of this **Section 7** and any other provision of this Agreement concerning the obligations of the Escrow Agent, the provisions of this **Section 7** shall control.

7.12 Resignation. Escrow Agent has the right to resign upon written notice thereof mailed to the Parties thirty (30) days prior to the effective date of such resignation. If such right is exercised, all funds and documents shall be delivered to a mutually appointed successor Escrow Agent or as otherwise directed in writing by the Parties hereto. In the event that a successor Escrow Agent is not appointed within thirty (30) days after Escrow Agent's notice of resignation or the Parties have not provided written directions as to the distribution of the Deposit and documents within thirty (30) days after Escrow Agent's notice of resignation, Escrow Agent may petition a court of competent jurisdiction to name a successor Escrow Agent and Escrow Agent herein shall be fully relieved of all liability under this Agreement to any and all Parties arising from actions occurring after the transfer of the Deposit and documents to the successor Escrow Agent either designated by the Parties or appointed by the court.

7.13 Party. Whenever the context of this instrument so requires words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation, company, partnership or association, or society as well as a natural person. Every reference to any Party or to the Parties collectively shall be deemed to constitute a reference to all successors in interest or assigns of the Party referred to.

8. Notices. All notices, demands, or other communications of any type given one Party to any other Party to this Agreement, whether required by this Agreement or in any way related to this Agreement, shall be null, void and of no effect unless given in accordance with the provisions of this Section. All notices shall be in writing and delivered to the person to whom the notice is directed, either by national overnight delivery service who provides proof of delivery or attempted delivery, by facsimile transmission accompanied by a simultaneous deposit of such notice with a national overnight delivery service who provides proof of delivery or attempted delivery (in which event delivery shall be deemed to have been made when the facsimile was transmitted and confirmed by sender's equipment), or by United States mail, as a registered or certified item, return receipt requested. A true copy of all notices shall also be emailed to all Parties. For purposes of delivery of each Draw Request, updated Budget, Objection Notice, and/or Draw Approval pursuant to this Agreement, notice is acceptable if delivered by email only to Escrow Agent and to all Parties. A copy of any Draw Request, updated Budget, Objection Notice, and/or Draw Approval sent by e-mail pursuant to the preceding sentence shall also be sent to the recipients thereof via one of the other delivery methods described above in this **Section 8**. All notices shall be addressed as follows (or to such other address as may be designated by a Party by written notice to the other Parties given in accordance with this Section):

If to Escrow Agent: First American Title Insurance Company
National Commercial Services
Attn: Alan M. Gottlieb, VP
Two Liberty Place
50 South 16th Street
Suite 3010
Philadelphia, PA 19102
Telephone: 215-606-3625
Facsimile: 215-567-0375
E-Mail: agottlieb@firstam.com

If to Aldi: Al Arizona DC LLC
12661 Aldi Place
Moreno Valley, CA 92555
Attention: Paul Piorkowski
Telephone: 951-530-5750
Facsimile: 951-530-5775
E-Mail: Paul.Piorkowski@aldi.us

With a copy to: Aldi Inc.
Attn: Brian McGee,
Group Director of Real Estate
12661 Aldi Place
Moreno Valley, CA 92555
Telephone: 951-530-5750
Facsimile: 951-530-5775
E-Mail: brian.mcgee@aldi.us

And additional copy to: Richard J. Goldstein, Esquire
Hangley Aronchick Segal Pudlin & Schiller
20 Brace Road, Suite 201
Cherry Hill, NJ 08034
Telephone: 856-616-2172
Facsimile: 856-616-2170
E-Mail: rgoldstein@hangley.com

If to RP: RP PV VI LLC
c/o Sunbelt Holdings
6720 North Scottsdale Road, Suite 250
Scottsdale, AZ 85253-4424
Attn: Sean T. Walters
Telephone: (480) 905-0770
Fax: (480) 905-1419
Email: swalters@sunbeltholdings.com

With a copy to: Maguire, Pearce & Storey, PLLC
2999 N. 44th Street, Suite 650
Phoenix, AZ 85018
Attn: Lesa Storey, Esq.
Telephone: (602) 639-5300
Fax: (602) 277-2199
Email: lstorey@azlandandwater.com

If to the City: City of Goodyear
190 North Litchfield Road
P.O. Box 5100
Goodyear, Arizona 85338
Attn: Brian Dalke, City Manager
Telephone: (632) 882-7051
Facsimile: (632) 882-7091
E-Mail: Brian.Dalke@goodyearaz.gov

With a copy to: City of Goodyear
190 North Litchfield Road
P.O. Box 5100
Goodyear, Arizona 85338
Attn: Roric Massey, City Attorney
Telephone: (623) 882-7227
Fax: (623) 882-7230
E-Mail: Roric.Massey@goodyearaz.gov

9. **Miscellaneous.**

- 9.1 **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.
- 9.2 **Interpretation and Applicable Law.** THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN MARICOPA COUNTY, ARIZONA. The Parties agree that the proper venue for any legal proceedings arising out of this Agreement shall be Maricopa County, Arizona, and the parties hereby consent to the jurisdiction of the state and federal courts within such County. Where required for proper interpretation, words in the singular shall include the plural; and words of any gender shall include all genders. The descriptive headings of the articles, sections, and paragraphs in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
- 9.3 **Amendment.** This Agreement may not be amended except by an agreement in writing signed by all Parties.
- 9.4 **Attorneys' Fees.** If a Party institutes an action in connection with this Agreement, including a mediation proceeding, the Party that prevails in such action shall be entitled to recover from the non-prevailing Party, in addition to all other remedies or damages as limited herein,

reasonable attorneys' fees and costs of court incurred in such lawsuit. The provisions of this section shall survive the termination of this Agreement.

- 9.5 Limitations on Liability.** In no event shall any officer, director, shareholder, partner, member, employee, agent or affiliate of any Party have any personal liability hereunder, nor shall any of them be named personally in any suit, action or proceeding concerning any matter hereunder, nor shall any of their assets be attached, liened or levied upon or in any other way held liable for any of the obligations of such Party, respectively. Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party be entitled to recover monetary damages from any other Party in connection with any claim arising out of or relating to this Agreement or any representation made herein, except for the actual out-of-pocket damages, including attorneys' fees and costs, sustained by the claiming party, each Party hereby waiving and covenanting not to assert any right to seek or obtain any other damages (including, but not limited to, special, punitive, incidental or consequential damages).
- 9.6 Land Use Compliance.** Subject to the City's obligations to follow its own standards and procedures and so long as such action is not arbitrary and capricious, nothing in this Agreement is intended to nor does it prevent the City from taking any administrative action requested of the City that is subject to the City's review and/or approval, including: (a) the withholding of permits and/or certificates of occupancy, provided for in the City of Goodyear Engineer Design Standards and Guidelines; (b) the Zoning Ordinance of the City of Goodyear; (c) the Goodyear City Code, including but not limited to the provisions of Chapter 9 regulating Buildings and Chapter 15 regulating subdivisions; (d) the ordinance(s) including, but not limited to, the conditions and stipulations thereto, applicable to the zoning of the lots platted in the Plat; and (e) the Plat, including, but not limited to, the conditions and stipulations thereto.
- 9.7 Entire Agreement.** Except for the incorporation of or reference to certain provisions of the Purchase Agreement as provided herein, this Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the Parties, either written or oral, in connection therewith. To the extent that the terms of this Agreement are inconsistent with the terms of the RP Purchase Agreement and/or the City Purchase Agreement, the terms of this Agreement shall control. It is hereby acknowledged that RP and the City have entered into that certain Agreement for Sale and Purchase dated _____, 2017 (the "**City/RP Purchase Agreement**"), which contains provisions relating to the Improvements and other matters addressed in this Agreement. This Agreement has no affect on the City/RP Purchase Agreement, it being agreed that to the extent that the terms of this Agreement are inconsistent with the terms of the City/RP Purchase Agreement, the terms of this Agreement shall control.
- 9.8 Multiple Counterparts.** This Agreement may be executed in duplicate counterparts, and the counterparts together shall constitute the single binding agreement of the Parties. Facsimile transmission of a counterpart signed by a Party shall be deemed as signed by such Party for purposes hereof.

- 9.9 Effective Date; Dates.** The effective date of this Agreement shall be the date on which a fully executed copy of this Agreement has been executed by all Parties to this Agreement. Any act performable on an official United States holiday or a Saturday or Sunday shall be extended so that it shall fall on and be performable on the next business day following such date.
- 9.10 Construction.** The Parties acknowledge that they have had the opportunity to be represented by counsel in connection with this transaction and that this Agreement shall be interpreted according to its fair construction and shall not be construed against any Party.
- 9.11 Invalidity.** If any provision in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 9.12 Time is of the Essence; Waiver.** Time is of the essence with respect to every provision of this Agreement. No waiver by any Party of any of its rights or remedies hereunder or otherwise shall be considered a waiver of any other subsequent right or remedy.

[NO FURTHER TEXT ON THIS PAGE - SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

ALDI:

AL ARIZONA DC LLC,
a Delaware limited liability company

By: Aldi (Arizona) LLC,
a Delaware limited liability company, its sole member

By: Aldi Inc.,
an Illinois corporation, its sole member

By: _____
Print Name: Terry E. Pfortmiller
Title: Secretary/Treasurer

RP:

RP PV VI LLC,
a Delaware limited liability company

By: _____
Sean T. Walters, its Vice President

ESCROW AGENT:

FIRST AMERICAN TITLE INSURANCE COMPANY,
a Nebraska corporation

By: _____
Name: _____
Title: _____

CITY:

CITY OF GOODYEAR, ARIZONA,
a municipal corporation under the laws of the State of
Arizona

Approved as to Form:

Roric Massey, City Attorney

By: _____
Brian Dalke, City Manager

EXHIBIT A-1
to
Offsite Escrow Agreement

Legal Description of Land Conveyed by RP

All that certain lot, tract, or parcel of land, situated in a portion of the North half of Section 26, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and being more completely described as follows, to-wit:

COMMENCING at a found City of Goodyear brass cap flush for the Northeast corner of said Section 26, from which a found aluminum cap stamped "LS 21080" for the North Quarter corner of said Section 26 bears North 89 deg. 59 min. 49 sec. West (Basis of Bearings) – 2639.88 feet;

THENCE North 89 deg. 59 min. 49 sec. West along the North line of the Northeast Quarter of said Section 26, a distance of 1094.01 feet;

THENCE South 00 deg. 17 min. 08 sec. West departing said North line, a distance of 65.00 feet to the TRUE POINT OF BEGINNING;

THENCE South 00 deg. 17 min. 08 sec. West, a distance of 1166.15 feet;

THENCE North 89 deg. 59 min. 41 sec. West, a distance of 1583.75 feet;

THENCE North 00 deg. 00 min. 19 sec. East, a distance of 1133.08 feet;

THENCE North 45 deg. 00 min. 19 sec. East, a distance of 46.67 feet;

THENCE South 89 deg. 59 min. 41 sec. East, being 65.00 feet South of and parallel with the North line of the Northwest Quarter of said Section 26, a distance of 10.91 feet;

THENCE South 89 deg. 59 min. 49 sec. East, being 65.00 feet South of and parallel with the North line of the Northeast Quarter of said Section 26, a distance of 32.60 feet;

THENCE South 81 deg. 03 min. 58 sec. East, a distance of 25.77 feet;

THENCE South 89 deg. 59 min. 49 sec. East, being 69.00 feet South of and parallel with the North line of the Northeast Quarter of said Section 26, a distance of 40.62 feet;

THENCE South 00 deg. 00 min. 11 sec. West, a distance of 6.00 feet;

THENCE South 89 deg. 59 min. 49 sec. East, being 75.00 feet South of and parallel with the North line of the Northeast Quarter of said Section 26, a distance of 26.89 feet;

THENCE North 74 deg. 37 min. 37 sec. East, a distance of 8.41 feet;

THENCE North 00 deg. 00 min. 11 sec. East, a distance of 6.22 feet;

THENCE North 74 deg. 37 min. 37 sec. East, a distance of 5.83 feet;

THENCE South 89 deg. 59 min. 49 sec. East, being 65.00 feet South of and parallel with the North line of the Northeast Quarter of said Section 26, a distance of 1406.25 feet to the POINT OF BEGINNING, containing 1,849,050 square feet or 42.448 acres of land, more or less.

EXHIBIT A-2
to
Offsite Escrow Agreement

Legal Description of Land Conveyed by City

All that certain lot, tract, or parcel of land, situated in a portion of the Northeast Quarter of Section 26, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and being more completely described as follows, to-wit:

COMMENCING at a found City of Goodyear brass cap flush for the Northeast corner of said Section 26, from which a found aluminum cap for the East Quarter corner of said Section 26 bears South 00 deg. 17 min. 08 sec. West (Basis of Bearings) - 2641.42 feet;

THENCE South 00 deg. 17 min. 08 sec. West along the East line of the Northeast Quarter of said Section 26, a distance of 1231.19 feet;

THENCE North 89 deg. 59 min. 41 sec. West departing said East line, a distance of 55.00 feet to the TRUE POINT OF BEGINNING;

THENCE North 89 deg. 59 min. 41 sec. West, a distance of 1039.01 feet;

THENCE North 00 deg. 17 min. 08 sec. East, a distance of 1166.15 feet;

THENCE South 89 deg. 59 min. 49 sec. East, being 65.00 feet South of and parallel with the North line of the Northeast Quarter of said Section 26, a distance of 10.00 feet to the West line of a tract described in a deed to Epcor Water Arizona, Inc. recorded in Document No. 2004-0561498, MCR;

THENCE South 00 deg. 17 min. 08 sec. West along the West line of said Epcor Water Arizona, Inc. tract, a distance of 78.00 feet to the Southwest corner of same;

THENCE South 89 deg. 59 min. 49 sec. East along the South line of said Epcor Water Arizona, Inc. tract, a distance of 75.00 feet to the Southeast corner of same;

THENCE North 00 deg. 17 min. 08 sec. East along the East line of said Epcor Water Arizona, Inc. tract, a distance of 78.00 feet;

THENCE South 89 deg. 59 min. 49 sec. East departing said East line and being 65.00 feet South of and parallel with the North line of the Northeast Quarter of said Section 26, a distance of 415.82 feet;

THENCE South 85 deg. 45 min. 37 sec. East, a distance of 270.74 feet;

THENCE South 89 deg. 59 min. 49 sec. East, being 85.00 feet South of and parallel with the North line of the Northeast Quarter of said Section 26, a distance of 235.09 feet;

THENCE South 44 deg. 51 min. 20 sec. East, a distance of 46.55 feet;

THENCE South 00 deg. 17 min. 08 sec. West, being 55.00 feet West of and parallel with the East line of the Northeast Quarter of said Section 26, a distance of 51.74 feet;

THENCE South 09 deg. 12 min. 58 sec. West, a distance of 12.88 feet;

THENCE South 00 deg. 17 min. 08 sec. West, being 57.00 feet West of and parallel with the East line of the Northeast Quarter of said Section 26, a distance of 42.51 feet;

THENCE North 89 deg. 42 min. 52 sec. West, a distance of 6.00 feet;

THENCE South 00 deg. 17 min. 08 sec. West, being 63.00 feet West of and parallel with the East line of the Northeast Quarter of said Section 26, a distance of 25.00 feet;

THENCE South 15 deg. 05 min. 26 sec. East, a distance of 10.37 feet;

THENCE South 89 deg. 42 min. 52 sec. East, a distance of 5.25 feet;

THENCE South 00 deg. 17 min. 08 sec. West, being 55.00 feet West of and parallel with the East line of the Northeast Quarter of said Section 26, a distance of 971.21 feet to the POINT OF BEGINNING, containing 1,196,823 square feet or 27.475 acres of land, more or less.

EXHIBIT B
to
Offsite Escrow Agreement

Description of Improvements

EPCOR Improvements

- A. Installation of a 16" DIP waterline in Indian School Road from Minnezona Avenue east approximately 2,694 LF towards Cotton Lane, in accordance with the City standards and approved Engineering Plans.
- B. Installation of a 12" DIP waterline in Minnezona Avenue from Indian School Road south approximately 1,261 LF towards the south boundary of Assessor's Parcel No. 502-30-008H, in accordance with the City standards and approved Engineering Plans.
- C. EPCOR water campus connection, consisting of installation of a 12" DIP waterline in the Minnezona Avenue alignment from the existing EPCOR water campus south approximately 2,200 LF to Indian School Road, in accordance with the City standards and approved Engineering Plans.
- D. Installation of a 16" DIP waterline in Indian School Road from Minnezona Avenue west approximately 2,600 LF to Citrus Road to complete the EPCOR water loop connection, in accordance with the City standards and approved Engineering Plans.

Liberty Improvements

- E. Installation of an 8" PVC sewerline stub to the Aldi Site in Cotton Lane at Station 50+78.30, in accordance with the City standards and approved Engineering Plans.

City Improvements

- F. Installation of half-street roadway improvements (as required by the City of Goodyear) to Indian School Road from the Cotton Lane intersection west to the Minnezona Avenue alignment. Improvements shall include all electric, traffic signal, curbs, gutters, sidewalks, paved streets, storm drainage and retention and detention facilities in accordance with the City standards and approved Engineering Plans.
- G. Installation of half-street roadway improvements (as required by the City of Goodyear) to Cotton Lane from Indian School Road south to the south boundary of Assessor's Parcel No. 502-30-008L, including all electric, curbs, gutters, sidewalks, paved streets, storm drainage and retention and detention facilities in accordance with the City standards and approved Engineering Plans.
- H. Installation of 4-acre stormwater basin improvements (as required by the City of Goodyear) on the north-west corner of the intersection of Indian School Road and Cotton Lane, including all storm drainage and retention and detention facilities in accordance with the City standards and approved Engineering Plans.

The approved Engineering Plans applicable to the above improvements are described with particularity on the following page.

[The "Approval Status" column in the chart below will be updated prior to Closing, to refer to the engineer's seal date and City approval date of each referenced plan set]

| Engineer | Job Number | Plan Type/Title | Approval Status |
|--------------------|-------------------|--|------------------------|
| Goodwin & Marshall | 10590A | Paving, Grading & Storm Drain Improvement Plans for PV303 West North Cotton Lane Phase 1 | Draft |
| Goodwin & Marshall | 10590A | Sewer Improvement Plans for PV303 West North Cotton Lane Phase 1 | Draft |
| Goodwin & Marshall | 10590A | Signing & Striping Improvement Plans for PV303 West North Cotton Lane Phase 1 | Draft |
| Goodwin & Marshall | 10590A | Storm Water Pollution Prevention Plan for PV303 West North Cotton Lane Phase 1 | Draft |
| Goodwin & Marshall | 10590A | Paving, Grading & Storm Drain Improvement Plans for PV303 West West Indian School Road | Draft |
| Goodwin & Marshall | 10590A | Water Improvement Plans for PV303 West West Indian School Road | Draft |
| Goodwin & Marshall | 10590A | Signing & Striping Improvement Plans for PV303 West West Indian School Road | Draft |
| Goodwin & Marshall | 10590A | Storm Water Pollution Prevention Plan for PV303 West West Indian School Road | Draft |
| Goodwin & Marshall | 10590A | Minor Land Division Map of PV303 West III-A | Draft |
| Goodwin & Marshall | 10590A | Minor Land Division Map of PV303 West III-B | Draft |
| Goodwin & Marshall | 10590A | Map of Dedication of West Indian School Road and North Cotton Lane | Draft |
| Goodwin & Marshall | 10590A | Map of Dedication of West Indian School Road (City property) | Draft |
| Goodwin & Marshall | 10590A | Map of Dedication of West Indian School Road (RP PV VI property) | Draft |
| Goodwin & Marshall | 10590A | Water Improvements for PV303 West Indian School Road Phase 1 | Draft |

Hunter Engineering

SBHD001

Infrastructure Water Plans for Minnezona Ave.

2nd Review

EXHIBIT C
to
Offsite Escrow Agreement

Budget

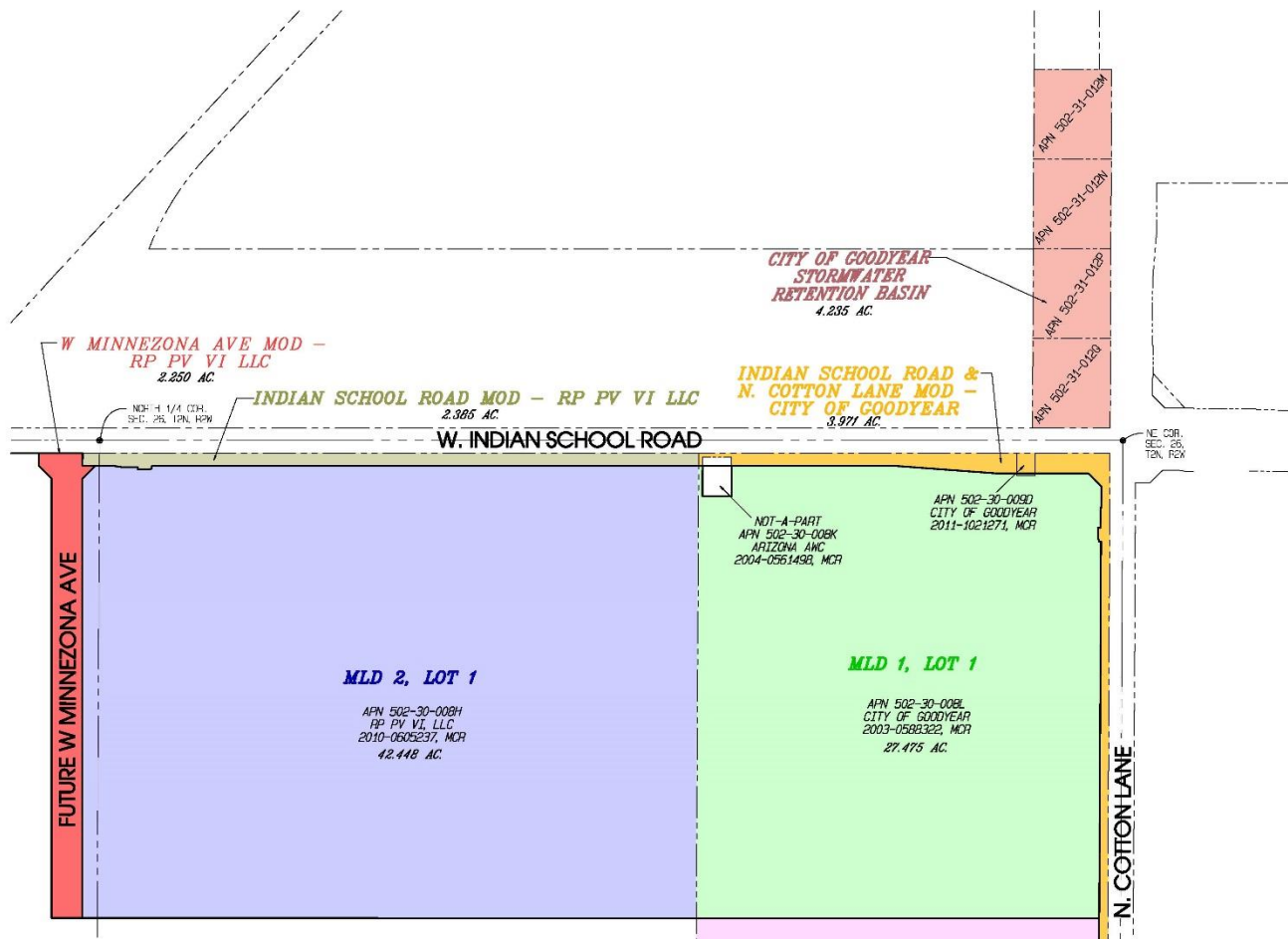
[NOTE: BUDGET BELOW IS THE CURRENT DRAFT BUDGET, AND IS TO BE REPLACED BY THE UPDATED OFFSITE BUDGET (PER SECTION 6(C) OF THE AGREEMENT FOR SALE AND PURCHASE BETWEEN ALDI AND RP) PRIOR TO SIGNING THIS AGREEMENT].

| Improvements to City-owned property | Estimated Cost |
|--|------------------------|
| Indian School Rd 1/2 Street (waterline Included) (1075 LF) | \$ 964,835.12 |
| Cotton Ln 1/2 Street (Project Oak frontage) (1206 LF) | \$ 963,273.79 |
| 1/2 Cotton Ln 1/2 Street (Future RP PV VI frontage) (444 LF) | \$ 178,126.37 |
| 4 Acre Basin - Drainage Structure | \$ 273,438.83 |
| 1/2 Traffic Signal | \$ 175,000.00 |
| Total Estimated City Cost to Improve – City | \$ 2,554,674.11 |
| Plus Contingency (10%) | \$ 255,467.41 |
| Total Initial Deposit - City | \$ 2,810,141.52 |
| | |
| Improvements to RP PV VI-owned property | Estimated Cost |
| Indian School Rd 1/2 Street (1,520 LF) | \$ 1,383,200.00 |
| 1/2 Cotton Ln 1/2 Street (Future RP PV VI frontage) (444 LF) | \$ 178,126.37 |
| Minnezona Road Waterline (1,261 LF) | \$ 151,320.00 |
| EPCOR Wtr Campus Connect (Minnezona Ave Alignment 2,200 LF) | \$ 280,000.00 |
| Indian School RD/Citrus Waterline Loop - (2,600 LF) | \$ 390,000.00 |
| 1/2 Traffic Signal | \$ 175,000.00 |
| Total Estimated Cost to Improve – RP PV VI | \$ 2,557,646.37 |
| Plus Contingency (10%) | \$ 255,764.64 |
| Total Initial Deposit - RP PV VI | \$ 2,813,411.01 |
| Total Escrow Funding (At Closing) – City and RP PV VI | \$ 5,623,552.53 |

EXHIBIT D
to
Offsite Escrow Agreement

Map Depicting Improvements

(see attached)



LEGEND

- INDIAN SCHOOL ROAD MOD - RP PV VI LLC - 2.385 AC.
- INDIAN SCHOOL ROAD & N. COTTON LANE MOD - CITY OF GOODYEAR - 3.971 AC.
- W. MINNEZONA AVE. MOD - RP PV VI LLC - 2.250 AC.
- MLD 2, LOT 1 - 42.448 AC.
- MLD 1, LOT 1 - 27.475 AC.
- MLD 1, LOT 2 - 10.592 AC.
- STORMWATER RENTENTION BASIN - CITY OF GOODYEAR - 4.235 AC.



PREPARED BY:
GOODWIN MARSHALL
 CIVIL ENGINEERS - PLANNERS - SURVEYORS
 2705 S. Alma School Road, Ste. 2
 Chandler, Arizona 85286
 (602) 218-7286

EXHIBIT MAP
 OF
"PROJECT OAK"
 CITY OF GOODYEAR

EXHIBIT E
Mediation Procedures

*This Exhibit sets forth the procedures that shall govern the mediation of any dispute regarding an objection to a Draw Request as set forth in **Section 5.1** of this Agreement (a "**Draw Request Dispute**"). As used below, the terms "party" and "parties" mean a party (or the parties, as applicable) to any such Draw Request Dispute.*

- 1) **Mediation.** Any Draw Request Dispute shall be subject to non-binding mediation according to the procedures set forth in this **Exhibit E** as a condition precedent to any court action filed by one of the parties hereto against the other with respect to any such Draw Request Dispute.
- 2) **Qualification of Mediators.** Each proposed mediator shall have at least ten (10) years' experience with construction matters of the type contemplated in this Agreement.
- 3) **Initiation of Proceeding.** If any Draw Request Dispute shall arise, then, subject to applicable statutes of limitation, a party (the "**Initiating Party**") may initiate mediation by serving written notice on the other party (the "**Responding Party**") of its intention to mediate the Draw Request Dispute. The Initiating Party shall include with such notice a list of no fewer than five (5) proposed mediators not affiliated with the Initiating Party who are qualified pursuant to **paragraph 2** above to act as a mediator. Within two (2) business days of receipt of such notice, the Responding Party shall provide the Initiating Party with a list of one (1) or more mediators from the list provided by the Initiating Party that are agreeable to the Responding Party whereupon the parties shall arrange for one (1) of the mutually agreeable mediators (the "Mediator") to conduct the mediation as soon as possible, provided that in the absence of a timely response from the Responding Party, the Initiating party shall be entitled to make such arrangement with any of the mediators on the Initiating Party's list. If the parties are unable to agree as to a Mediator, either party may request that the Mediator be selected by the American Arbitration Association. At least five (5) days prior to the date of the mediation session, the Initiating Party and the Responding Party shall each provide the Mediator with a statement setting forth a description of the nature of the Draw Request Dispute and, if applicable, the remedy sought by such party.
- 4) **Mediation.** The Mediator shall be sworn faithfully and fairly to determine the question at issue and, immediately following appointment, the Mediator shall provide written notice to the parties to the Draw Request Dispute indicating the time and location of the scheduled mediation session. The mediation session must be held as soon as possible. The Mediator shall fix and establish any and all rules as the Mediator shall consider appropriate, in his or her discretion, to govern the proceedings before the Mediator, including any and all rules of procedure and evidence. Consistent with the provisions of this Exhibit E, the Mediator shall endeavor to assist the parties in reaching a resolution to which both agree. The Mediator shall not have any liability whatsoever for any acts or omissions performed or omitted in good faith pursuant to the provisions of this Exhibit E. The mediation shall take place in Phoenix, Arizona and the scope of the mediation shall be limited to the matters that are the basis of the Draw Request Dispute and shall include no other matters.

- 5) **Conduct of parties.** The parties to a Draw Request Dispute agree that with respect to all aspects of the mediation they will conduct themselves in a manner intended to assure the integrity and fairness of that process. To that end, if a Draw Request Dispute is submitted to mediation, the parties agree that they will not contact or communicate with the Mediator with respect to any Draw Request Dispute either *ex parte* or outside of the contacts and communications contemplated by this Exhibit E, and the parties further agree that they will cooperate in good faith in the production of documentary and testimonial evidence in a prompt and efficient manner to permit the review and evaluation thereof by the other party.

- 6) **Fees and Costs.** The Mediator shall be compensated for any and all services rendered under this Exhibit E at a rate of compensation equal to the then-prevailing rate for mediators of similar experience and qualifications as the Mediator, plus reimbursement for any and all expenses incurred in connection with the rendering of such services, payable in full promptly upon conclusion of the proceedings before the Mediator. Such compensation and reimbursement shall be paid by the party which is not the prevailing party. For purposes of this paragraph, the term "prevailing party" shall be determined by the Mediator, and shall mean (i) with respect to the claimant, one who is successful in obtaining substantially all of the relief sought, and (ii) with respect to the respondent, one who is successful in denying substantially all of the relief sought by the claimant. If neither party substantially prevails, then the Mediator's compensation and reimbursement shall be paid equally by each party.

- 7) **Appointment of Successor.** If any Mediator appointed pursuant to this Exhibit shall thereafter die or become unable or unwilling to act, his or her successor shall be appointed in the manner provided in paragraph 3.