

## RESOLUTION NO. 06-1074

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING A DEVELOPMENT AGREEMENT WITH WESTCOR/GOODYEAR, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY, FOR THE COMMERCIAL DEVELOPMENT ON APPROXIMATELY 341 ACRES AS PART OF A REGIONAL SHOPPING CENTER TO BE KNOWN AS ESTRELLA FALLS, GENERALLY LOCATED BETWEEN PEBBLECREEK PARKWAY AND BULLARD AVENUE, AND BETWEEN VIRGINIA AVENUE AND INTERSTATE 10 WITHIN THE CITY OF GOODYEAR; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED, by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, as follows:

WHEREAS, Globe Land Investors, LLC, a Delaware limited liability company ("Globe"), as the owner of approximately 383-acres of certain unimproved real property ("Property") generally located between PebbleCreek Parkway and Bullard Avenue, and between Virginia Avenue and Interstate 10 ("Property") in the City of Goodyear; and,

WHEREAS, Globe is executing this Agreement to consent to the Agreement; and,

WHEREAS, Westcor/Goodyear, L.L.C., an Arizona limited liability company ("Developer"), directly or through its Affiliates, either (i) owns, (ii) holds an option or other pecuniary or beneficial interest in, or (iii) has or shall have contractual right to develop or otherwise construct the Private Improvements and the Developer Public Improvements on the Property; and,

WHEREAS, the Developer proposes to develop approximately 2,100,000 square feet as a retail and commercial project, including but not limited to a regional center, a so-called "power center," certain mixed-use commercial developments, restaurants, hotels and motels, automobile sales facilities, amusement areas and theatres, and any uses related, appurtenant or ancillary thereto; and,

WHEREAS, the Agreement addresses phasing of improvements, infrastructure requirements, development fees and offsets, and other issues relating to development of the Property; and,

WHEREAS, Developer acknowledges that the development of the Project may generate substantial economic benefits for Developer, and that the Project is of such significance that the City requires certain assurances concerning the time schedule for the completion of certain improvements, the design and development of the Project in a consistent manner and with certain common architectural, aesthetic and thematic features, and such other assurances as are set forth in this Agreement; and,

WHEREAS, the City and Developer are desirous of reaching agreement on reimbursement of certain off-site public improvements in order to facilitate commercial development on the Property in the future; and,

WHEREAS, the proposed development and off-site public improvements have community-wide benefit and facilitate other commercial development in the general area; and,

WHEREAS, the Developer and the City of Goodyear are desirous of entering into an agreement and this Agreement is intended to be a "Development Agreement" pursuant to A.R.S. 9-500.05 and A.R.S. §9-500.11; and,

WHEREAS, the City adopted a notice of intent on August 28, 2006 to enter into this Agreement as per A.R.S. § 9-500.11.K and made the findings required by A.R.S. § 9-500.11.D, such findings having been verified by an independent third party.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Goodyear, Maricopa County, Arizona, as follows:

Section 1. That the Development Agreement with Westcor/Goodyear, L.L.C., a copy of the Agreement in its final form is attached hereto, and, by reference, made a part hereof, has been submitted to the City for adoption.

Section 2. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of, and entered into pursuant to the terms of, A.R.S. § 9-500.05, and that the terms of this Agreement shall constitute covenants running with the Property as more fully described in this Agreement.

Section 3. The Parties also understand and acknowledge that this Agreement is authorized by and entered into accordance with the terms of A.R.S. §9-500.11. The actions taken by the City pursuant to this Agreement are for economic development activities as that term is used in A.R.S. §9-500.11, will assist in the creation and retention of jobs, and will in numerous other ways improve and enhance the economic welfare of the residents of the City. Also, pursuant to A.R.S. § 9-500.11, as amended, the City has previously adopted a notice of intent to enter into this Agreement required by A.R.S. § 9-500.11.K and made the findings required by A.R.S. § 9-500.11.D, such findings having been verified by an independent third party before the City entered into this Agreement, and such findings by this reference being incorporated into this Agreement as though set forth in their entirety herein.

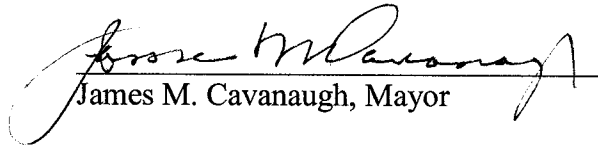
Section 4. That it is in the best interests of the City of Goodyear that this Development Agreement be adopted.

Section 5. The City is entering into this Agreement as an administrative act to implement the aforementioned Zoning for the Property legislatively enacted by the City and to facilitate development of the Project consistent with such Zoning.

BE IT FURTHER RESOLVED, by the Mayor and City Council of the City of Goodyear, Maricopa County, Arizona, as follows:

Section 6. That this Resolution shall become effective as provided by law.

PASSED AND ADOPTED this 11 day of Sept. 2006.

  
James M. Cavanaugh, Mayor

9-11-06  
Date

ATTEST:

*Dee Cockrum*

Dee Cockrum, City Clerk

APPROVED AS TO FORM:

*Roric Massey*  
Roric Massey, City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA )

COUNTY OF MARICOPA )

I, the undersigned Dee Cockrum, being the duly appointed, acting qualified City Clerk of the City of Goodyear, Arizona, certify that the foregoing Resolution No. 06-1074, passed and adopted at a City Council Meeting of the Council of the City of Goodyear, Maricopa County, Arizona held on the <sup>11, Sept</sup> ~~6~~ day of <sup>Sept</sup> ~~Sept~~, 2006, at which a quorum was present and, by a 6-1 vote, <sup>6</sup> voted in favor of said Resolution.

Given under my hand and seal, this 11 day of Sept., 2006.

Seal

*Dee Cockrum*

City Clerk



# Contract Routing Sheet



Please Route to Contract Administrator, Tracy DeSomma  
PRIOR to signatures of any party.  
PLEASE allow 2 weeks for processing.

Attached, please find:

CONTRACT       RENEWAL       AMENDMENT       CHANGE ORDER

Assigned Contract Number Dev-CX-0689-06

Brief Summary of the Service

Westcor Development Agreement

Dept.: EC Dev      Contact: Brian Dalke

Contractor: West Cor      Date: 9/14/06

Amount: \_\_\_\_\_      Begin: 9/12/06      End: open

Procurement Process Followed:

On-Call /Task Order     Less than \$1500     3 Verbal Quotes     3 Written Quotes     Budgeted     Yes     No  
 Formal Solicitation: RFP# \_\_\_\_\_      Responsible Party: \_\_\_\_\_

Please initial your approval:

<input checked="" type="checkbox"/> Contract Admin.	_____	Date: <u>9/14/06</u>
<input type="checkbox"/> Budget Analyst	_____	Date: _____
<input type="checkbox"/> Procurement	_____	Date: _____
<input type="checkbox"/> Risk Management	_____	Date: _____
<input checked="" type="checkbox"/> Legal	_____	Date: <u>9/12/06</u>
<input checked="" type="checkbox"/> City Manager	_____	Date: <u>9/12/06</u>

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE: If you are requesting changes of any of the Terms & Conditions, please attach a separate sheet outlining any recommended changes.

Route to City Clerk for retention COAC # 06-2966      Retention Date \_\_\_\_\_

Recording Number: 20061215606  
Time of Recording: 09/13/2006 10:49  
Filename: 062966-72-1-1--  
Affidavit: N  
Official Records of  
Maricopa County Recorder  
Helen Purcell

**WHEN RECORDED RETURN TO:**

**City of Goodyear  
Attn: City Clerk  
190 North Litchfield Road  
Goodyear, Arizona 85338**

Electronic Recording

DEV-CX-0689-06 (R.06-1074)

**DEVELOPMENT AGREEMENT**

**CITY OF GOODYEAR, ARIZONA,  
an Arizona municipal corporation**

**AND**

**WESTCOR/GOODYEAR, L.L.C.,  
an Arizona limited liability company**

**September 1, 2006**

**TABLE OF CONTENTS**

	<b>Page</b>
<b>1. DEFINITIONS</b> .....	<b>3</b>
<b>2. [INTENTIONALLY OMITTED.]</b> .....	<b>9</b>
<b>3. SCOPE AND REGULATION OF DEVELOPMENT</b> .....	<b>9</b>
3.1 DESIGN GUIDELINES; DEVELOPMENT PLANS .....	9
3.2 DEVELOPMENT REGULATION .....	11
3.3 CITY DEVELOPMENT FEES .....	12
<b>4. PRIVATE IMPROVEMENTS</b> .....	<b>14</b>
4.1 MINIMUM RETAIL IMPROVEMENTS .....	14
4.2 COMMENCEMENT OF CONSTRUCTION .....	14
4.3 COMPLETION OF CONSTRUCTION .....	14
4.4 CHANGES IN PLANS .....	14
4.5 QUALITY OF PRIVATE IMPROVEMENTS .....	14
4.6 CITY REVIEW AND APPROVAL OF PLANS .....	15
<b>5. PUBLIC IMPROVEMENTS</b> .....	<b>15</b>
5.1 DEVELOPER PUBLIC IMPROVEMENTS .....	15
5.2 ID IMPROVEMENTS .....	17
<b>6. ADDITIONAL MUNICIPAL BENEFITS</b> .....	<b>18</b>
6.1 PROHIBITED USES .....	18
6.2 SIGNAGE .....	18
6.4 CONSTRUCTION TRAILER .....	18
6.5 ACCESS .....	18
6.6 RADIO COVERAGE .....	19
6.7 EMERGENCY VEHICLE ACCESS .....	19
6.8 POLICE SUBSTATION .....	19
6.9 PUBLIC FACILITIES .....	19
6.10 ENHANCED POLICE SERVICES .....	20
<b>7. DEVELOPER ASSISTANCE</b> .....	<b>20</b>
<b>8. REIMBURSEMENTS</b> .....	<b>20</b>
8.1 SALES TAX REBATES .....	21
8.2 LIMITATIONS ON PAYMENTS TO DEVELOPER .....	23
8.3 DETERMINATION OF AMOUNT OF ALLOCATED REVENUES RECEIVED BY THE CITY .....	23
8.4 COMPUTATION AND REPORT OF SALES TAX REVENUES .....	23
8.5 CITY'S PREPAYMENT RIGHT .....	24
8.6 PRIOR DEVELOPMENT AGREEMENT .....	24
<b>9. INDEMNITY; RISK OF LOSS</b> .....	<b>24</b>

*Recorded 9/13/06 2006 1215206*

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
9.1 INDEMNITY BY DEVELOPER .....	24
9.2 INDEMNITY BY THE CITY .....	25
9.3 RISK OF LOSS .....	25
9.4 INSURANCE .....	25
<b>10. CITY REPRESENTATIONS .....</b>	<b>26</b>
<b>11. DEVELOPER REPRESENTATIONS .....</b>	<b>26</b>
<b>12. EVENTS OF NON-PERFORMANCE; REMEDIES.....</b>	<b>27</b>
12.1 EVENTS OF NON-PERFORMANCE BY THE DEVELOPER.....	27
12.2 EVENTS OF NON-PERFORMANCE BY THE CITY.....	28
12.3 GRACE PERIODS; NOTICE AND CURE .....	28
12.4 CONSEQUENCES OF NON-PERFORMANCE.....	29
12.5 DELAYS; WAIVERS .....	30
12.6 ENFORCED DELAY IN PERFORMANCE FOR CAUSES BEYOND CONTROL OF PARTY.....	30
12.7 RIGHTS AND REMEDIES CUMULATIVE .....	31
<b>13. COOPERATION AND ALTERNATIVE DISPUTE RESOLUTION .....</b>	<b>31</b>
13.1 REPRESENTATIVES .....	31
13.2 IMPASSE.....	31
13.3 MEDIATION.....	32
<b>14. MISCELLANEOUS PROVISIONS.....</b>	<b>32</b>
14.1 GOVERNING LAW; CHOICE OF FORUM.....	32
14.2 RESTRICTIONS ON ASSIGNMENT AND TRANSFER .....	33
14.3 LIMITED SEVERABILITY .....	35
14.4 CONSTRUCTION .....	35
14.5 NOTICES.....	35
14.6 TIME OF ESSENCE .....	37
14.7 SECTION HEADINGS .....	37
14.8 ATTORNEYS' FEES AND COSTS.....	37
14.9 WAIVER .....	37
14.10 THIRD PARTY BENEFICIARIES .....	38
14.11 EXHIBITS.....	38
14.12 INTEGRATION.....	38
14.13 FURTHER ASSURANCES.....	38
14.14 BUSINESS DAYS .....	38
14.15 CONSENTS AND APPROVALS .....	38
14.16 COVENANTS RUNNING WITH LAND; INUREMENT .....	38
14.17 RECORDATION .....	39
14.18 AMENDMENT .....	39
14.19 GOOD FAITH OF PARTIES .....	39
14.20 SURVIVAL .....	39

*Recorded 9/13/06 2066121526 06*



**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
14.21 RIGHTS OF LENDERS .....	39
14.22 PAD SITES AND ADJACENT PROPERTIES.....	40
14.23 NONLIABILITY OF CITY OFFICIALS, ETC., AND OF EMPLOYEES, MEMBERS AND PARTNERS, ETC. OF DEVELOPER.....	40
14.24 CONFLICT OF INTEREST STATUTE .....	40

Exhibits

- A Legal Description of Property
- B Conceptual Land Use Plan
- C ID Improvements
- D [Reserved]
- E Improvement District Property
- F Reimbursement Tax Base Additional Property
- G Prohibited Uses
- H Reimbursement Amount
- I Insurance Requirements
- J Non-Disturbance and Recognition Agreement

*Recorded 9/13/06*

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made as of the \_\_\_\_ day of September, 2006, by and between the CITY OF GOODYEAR, ARIZONA, an Arizona municipal corporation (the "City"); and WESTCOR/GOODYEAR, L.L.C., an Arizona limited liability company ("**Developer**"). The City and Developer are sometimes referred to herein collectively as the "**Parties**," or individually as a "**Party**." Globe Land Investors, LLC, a Delaware limited liability company ("**Globe**"), as the owner of the Property (as defined below) is executing this Agreement to consent to the Agreement's being recorded against the Property subject to and in accordance with Section 3.5 of this Agreement.

### RECITALS

A. As of the date of Developer's execution of this Agreement, Developer (directly or through its Affiliates) either (i) owns, (ii) holds an option or other pecuniary or beneficial interest in, or (iii) has or shall have contractual right to develop or otherwise construct the Private Improvements and the Developer Public Improvements (as defined below) and/or other improvements on, that certain unimproved real property located in the City, consisting of approximately 383.29 acres, the legal description of which is attached as Exhibit A hereto (the "**Property**"). It is the desire and current intention of Developer to develop the parcels that constitute the Property as a retail and commercial project, including but not limited to a regional center, a so-called "power center," certain mixed-use commercial developments, restaurants, hotels and motels, automobile sales facilities, amusement areas and theatres, and any uses related, appurtenant or ancillary thereto (collectively, the "**Project**," and each individually, an "**Applicable Property Area**"), and thereafter (subject to common area and other ownership interests to be retained by Developer or others) to lease or sell portions of the Property to others. The City recognizes that the nature, use, size, location and configuration of the improvements to be constructed on the Property may change, at any time, and from time to time, due to economic and other factors.

B. Developer acknowledges that the development of the Project may generate substantial economic benefits for Developer, and that the Project is of such significance that the City requires certain assurances concerning the time schedule for the completion of certain improvements, the design and development of the Project in a consistent manner and with certain common architectural, aesthetic and thematic features, and such other assurances as are set forth in this Agreement. In furtherance of these goals, Developer has submitted, or will submit, one or more Site Plans (each a "**Site Plan**," or collectively, the "**Site Plans**") for each phase of development of the Project, consistent with the terms of this Agreement.

C. The City acknowledges that the development of the Project is appropriate and beneficial, and that such development will generate substantial transaction privilege tax and similar revenues for the City, which revenues would not be generated without such development or which revenues will exceed those that would be generated by alternative uses of the Property. The City also believes that the development of the Property in conformity with the Site Plans will generate substantial non-monetary benefits for the City, including, without limitation, the creation of new jobs and facilitate the establishment of the City as a retail shopping destination for City residents as well as other residents of Maricopa County, including shoppers and visitors

from the metropolitan areas of nearby Phoenix.

D. The development of the Project is of such significance that the City desires to encourage and facilitate development of the Project. The Parties intend that the uses contemplated by this Agreement are consistent with the City's existing General Plan (the "**General Plan**").

E. The City also acknowledges its intention and ability to provide the undertakings described herein, as well as the City's willingness to approve the development of the Property in accordance with the conceptual land use plan attached as Exhibit B hereto (the "**Conceptual Land Use Plan**"), with portions of the Property contemplated for development principally as a retail and commercial center, including but not limited to shopping areas, restaurants, hotels and motels, automobile sales facilities, amusement areas and theatres and other uses related, appurtenant or ancillary thereto (the "**Retail Area**"). The City acknowledges that the **Conceptual Land Use Plan** may change from time-to-time (but always in a manner that is consistent with the Design Guidelines, Zoning, General Plan and the minimum retail and construction requirements set forth herein). Therefore, the City wishes to facilitate and encourage the development of the Property by Developer by, among other things, providing the City undertakings described in this Agreement, subject to the terms and conditions of this Agreement.

F. The City intends to form an Improvement District that includes the Property (as well as additional real property), and through which the City shall cause to be constructed, and paid for, certain improvements for which improvement districts may be formed (collectively, the "**ID Improvements**"). The City further intends that the ID Improvements shall be constructed concurrently with Developer's development of the Property.

G. As a condition of, and concurrent with, its development of the Property, and concurrent with the construction of the ID Improvements, and subject to all other terms and conditions of this Agreement, including but not limited to the reimbursement obligations of the City as described in this Agreement and Developer's right to construct the ID Improvements in accordance with the terms of Section 5.2(d), Developer shall dedicate rights-of-way and rights in additional land and shall advance or otherwise cause to be provided all funds required for, and otherwise to finance the construction and completion of, certain improvements for the benefit of the public in and around the Property that Developer is required to construct in connection with its development of the Minimum Retail Improvements (collectively the "**Developer Public Improvements**"). Developer previously has entered into a pre-funding agreement with the City, by which Developer, *inter alia*, has agreed (subject to certain reimbursement obligations of the City) to pay for certain engineering, consulting and legal expenses of the City in connection with the design of the ID Improvements, and Developer will consider in good faith further requests of the City in connection with related prefunding requirements subject to and in accordance with the terms of this Agreement.

H. The City also has determined that the development of the Project pursuant to this Agreement will result in significant planning, economic and other public benefits to the City and its residents by, among other things: (i) providing for the construction of the Public Improvements; (ii) providing for planned and orderly development of the Property consistent with the General Plan and the Zoning; (iii) increasing tax revenues to the City arising from or

Recorded 9/13/06

relating to the improvements to be constructed on the Property; (iv) creating a substantial number of new jobs and otherwise enhancing the economic welfare of the residents of the City; (v) providing a vibrant, new shopping area to benefit the City's residents and (vi) advancing the goals of the Zoning and the General Plan.

I. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of, and entered into pursuant to the terms of, A.R.S. § 9-500.05, and that the terms of this Agreement shall constitute covenants running with the Property as more fully described in this Agreement.

J. The Parties also understand and acknowledge that this Agreement is authorized by and entered into accordance with the terms of A.R.S. §9-500.11. The actions taken by the City pursuant to this Agreement are for economic development activities as that term is used in A.R.S. §9-500.11, will assist in the creation and retention of jobs, and will in numerous other ways improve and enhance the economic welfare of the residents of the City. Also, pursuant to A.R.S. § 9-500.11, as amended, the City has previously adopted a notice of intent to enter into this Agreement required by A.R.S. § 9-500.11.K and made the findings required by A.R.S. § 9-500.11.D, such findings having been verified by an independent third party before the City entered into this Agreement, and such findings by this reference being incorporated into this Agreement as though set forth in their entirety herein.

K. The City is entering into this Agreement as an administrative act to implement the aforementioned Zoning for the Property legislatively enacted by the City and to facilitate development of the Project consistent with such Zoning.

#### AGREEMENTS

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. **Definitions.**

In this Agreement, unless a different meaning clearly appears from the context:

(a) "Additional Municipal Benefits" means those undertakings not required by law which Developer has committed to perform pursuant to the express terms of this Agreement, which the City agrees will provide direct and indirect tangible and intangible benefits to the City, and which are described, in part, in Section 6 of this Agreement.

(b) "Affiliate", as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) "control" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) "person" means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, limited liability companies,

*Recorded 9/13/06*

limited liability partnerships, limited liability limited partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

(c) “**Agreement**” means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through J, inclusive, are incorporated herein by reference and form a part of this Agreement but are not intended to expand the scope, number or nature of Developer's obligations beyond those expressly set forth in the numbered sections of this Agreement.

(d) “**Anchor Retail Store**” or “**Anchor Retail Stores**” means a retail store or stores (expressly excluding so-called "grocery" stores and super discount retailers with a grocery component), containing not less than one hundred thousand (100,000) square feet of gross building area each and/or a multi-plex cinema consisting of not fewer than twelve (12) screens (regardless of gross building area). For the purposes of illustration only, and not by way of limitation, Anchor Retail Stores may consist of such traditional department stores as Dillard's, Kohl's, Nordstrom or Macy's.

(e) “**Applicable Interest**” means as defined in Exhibit H.

(f) “**Applicable Laws**” means as defined in Section 3.2(a).

(g) “**Applicable Property Area**” means as defined in Recital A.

(h) “**A.R.S.**” means the Arizona Revised Statutes as now or hereafter enacted or amended.

(i) “**Assessment**” means the assessment levied and assessed against the Property to pay or finance the costs and expenses of the ID Improvements.

(j) “**Bond Rate**” means the rate, as of the Completion of Construction and as determined by the City's then independent financial adviser, which is equal to the interest rate payable on and with the same compounding (if any) for general obligation bonds if then issued by the City or a municipal public corporation formed by the City.

(k) “**City**” means the Party designated as City on the first page of this Agreement.

(l) “**City Code**” means the Code of the City of Goodyear, Arizona, as amended from time to time.

(m) “**City Council**” means the City Council of the City.

(n) “**City Development Fee**” or “**City Development Fees**” means as defined in Section 3.3.

(o) “**City ID Payment Obligation**” means (i) if the Improvement District is formed and an Assessment is levied against the Property, the principal amount of the

*Recorded 9/13/06*

Assessment, not to exceed \$25,000,000.00, together with any Applicable Interest; or (ii) if the Improvement District is not formed and the Developer constructs all or any portion of the ID Improvements, the lesser of (X) \$25,000,000.00 or (Y) Developer's actual expenditures for ID Improvement-related costs, including (but not limited to) any amounts previously advanced or paid by Developer pursuant to pre-funding (or similar) agreements.

(p) **"City Representative"** means as defined in Section 13.1.

(q) **"Commencement of Construction"** means both (i) the obtaining of a building, excavation, grading or similar permit by Developer for the construction of the Minimum Retail Improvements, and (ii) the actual commencement of physical construction operations on the Property in a manner necessary to achieve Completion of Construction of the Minimum Retail Improvements. Notwithstanding the foregoing or anything in this Agreement to the contrary, Developer may phase all construction activities as Developer deems appropriate in its commercial discretion.

(r) **"Completion of Construction"** means the date on which (i) for the Minimum Retail Improvements, that one or more temporary or final certificates of occupancy have been issued by the City for the Minimum Retail Improvements, and that such Minimum Retail Improvements are open for business to the public; and (ii) for the Developer Public Improvements, acceptance by the City Council or appropriate administrative staff member of the City of the completed Developer Public Improvements for maintenance in accordance with the policies, standards and specifications contained in applicable City ordinances, which acceptance shall not be unreasonably withheld, conditioned or delayed, other than in a manner uniformly applied to similar properties within the City. Unless otherwise expressly stated, **"Completion of Construction"** means Completion of Construction of both the Minimum Retail Improvements and the Developer Public Improvements.

(s) **"Conceptual Land Use Plan"** means as defined in Recital E and as described in Exhibit B.

(t) **"Control"** means as defined in Section 14.2.

(u) **"Dedicated Property"** means as defined in Section 5.1(e).

(v) **"Denial"** means as defined in Section 12.6.

(w) **"Design Guidelines"** means as set forth in Section 3.1(a).

(x) **"Designated Lenders"** means as set forth in Section 14.21.

(y) **"Developer"** means the Party designated as Developer on the first page of this Agreement, and its successors and assigns that conform with the requirements of this Agreement.

(z) **"Developer Control Group"** means as defined in Section 14.2.

(aa) **"Developer ID Obligations"** means as defined in Section 5.2(c).

*Recorded 9/13/06*

- (bb) **“Developer Public Improvements”** means as defined in Recital G.
- (cc) **“Developer Public Improvement Costs”** means as described in Exhibit H.
- (dd) **“Developer Representative”** means as defined in Section 13.1.
- (ee) **“Effective Date”** means the date on which all of the following has occurred: this Agreement has been adopted and approved by the City Council, executed by duly authorized representatives of the City and Developer, and recorded in the office of the Recorder of Maricopa County, Arizona, subject only to the expiration of any applicable referral period.
- (ff) **“Enforced Delay”** means as defined in Section 12.6.
- (gg) **“Failure”** means as defined in Section 12.6.
- (hh) **“General Plan”** means as defined in Recital D.
- (ii) **“Globe”** means the Party designated as Globe in the first paragraph of this Agreement.
- (jj) **“Globe Retained Property”** means any portion of the Property that has not been conveyed by Globe either (i) to Developer (including its permitted successors and assigns), (ii) to a joint venture or similar relationship between Developer (including its permitted successors and assigns) and Globe (and its Affiliates), or (iii) to an unrelated third party.
- (kk) **“ID Improvement Costs”** means as defined in Section 5.2(d).
- (ll) **“ID Improvements”** means as defined in Recital F and described in Exhibit C.
- (mm) **“Improvement District”** means as defined in Section 5.2.
- (nn) **“Improvement District Bonds”** means as defined in Section 5.2.
- (oo) **“Improvement District Property”** means as defined in Section 5.2(a).
- (pp) **“Lender”** or **“Lenders”** means as defined in Section 14.21.
- (qq) **“Macerich Partnership”** means as defined in Section 14.2.
- (rr) **“Minimum Retail Improvements”** means Private Improvements consisting of either (i) not fewer than two (2) Anchor Retail Stores and Three Hundred Thousand (300,000) square feet of multi-tenant gross leasable floor area of the nature described in Section 4.5, or (ii) any combination of at least two (2) Anchor Retail Stores and multi-tenant gross leasable floor area of the nature described in Section 4.5, totaling not less than Five Hundred Thousand (500,000) gross leasable square feet.
- (ss) **“Monthly ADR Tax Report”** means as defined in Section 8.1(a).

*Recorded 9/13/06*

(tt) **"Multiple Location Taxpayer"** means as defined in Section 8.5.

(uu) **"Non-Performance"** or **"Event of Non-Performance"** means one or more of the events described in Section 12.1 or 12.2; provided, however, that such events shall not give rise to any remedy until effect has been given to all grace periods, cure periods and/or periods of Enforced Delay provided for in this Agreement and that in any event the available remedies shall be limited to those set forth in Section 12.

(vv) **"Order"** means as defined in Section 12.6.

(ww) **"Pad Sites"** means as defined in Section 14.22.

(xx) **"Party"** or **"Parties"** means as designated on the first page of this Agreement.

(yy) **"Private Improvements"** means the Minimum Retail Improvements and any other improvements constructed by Developer that constitute part of the Project but are not Developer Public Improvements.

(zz) **"Prior Development Agreement"** means that certain Development Agreement among the City, Globe (which was formerly known as Goodyear Investors, L.L.C., a Delaware limited liability company, and executed the Prior Development Agreement under such name) and Westcor Partners, dated as of February 12, 2001, and recorded as no. 2001-0117379 in the Official Records of Maricopa County, Arizona.

(aaa) **"Project"** means as defined in Recital A.

(bbb) **"Property"** means as defined in Recital A and as described in Exhibit A.

(ccc) **"Public Improvements"** means the Developer Public Improvements and the ID Improvements.

(ddd) **"Rebate Payments"** means as defined in Section 8.1(c).

(eee) **"Regional Shopping Center"** means that portion of the Project described or designated as "Regional Shopping Center" on Exhibit B.

(fff) **"Regional Shopping Center Opening"** means the date on which both of the following shall have occurred: (i) Completion of Construction of the Minimum Retail Improvements, and (ii) the Regional Shopping Center is open for retail business to the public, which date may be on or before the Completion of Construction. The City and Developer shall confirm in writing the date of the Regional Shopping Center Opening when the same becomes known.

(ggg) **"Reimbursement Account"** means as defined in Section 8.1(a).

(hhh) **"Reimbursement Amount"** means as defined in Exhibit H.

(iii) **"Reimbursement Period"** means as defined in Section 8.2.

*Recorded 9/13/06*



(jjj) **“Reimbursement Tax Base”** means, until such time as the City ID Payment Obligation has been satisfied, the Property, together with that additional property depicted on Exhibit F; and thereafter, the Property only.

(kkk) **“REIT”** means as defined in Section 14.2.

(lll) **“Restricted Period”** means as defined in Section 3.2(a).

(mmm) **“Retail Area”** means as defined in Recital E.

(nnn) **“RSC Development Fees Differential”** means as defined in Section 3.3(e).

(ooo) **“Sales Taxes”** means, for the purposes of this Agreement, that portion of the City’s transaction privilege taxes which are not transaction privilege tax rate increments approved by a majority of the City’s voters for specific uses (e.g., mountain preserve) and which are imposed on retail sales, amusements, admissions, restaurants, hotels and related hospitality activities, and related activities (all as described in and contemplated by Section 8.1 of this Agreement) under the Tax Code of the City of Goodyear, as the same are imposed and in effect as of the Effective Date; provided that, for the purposes of this Agreement, the rates of such Sales Taxes shall never be less than the Sales Tax rates imposed and in effect as of the Effective Date, notwithstanding any decreases in the City’s transaction privilege tax rate, changes in the unallocated portion of the City’s transaction privilege taxes, or for any other reason whatsoever; and the Parties agree and acknowledge that the applicable Sales Tax rates imposed and in effect as of the Effective Date, are as follows:

Retail (general)	2%
Retail (single item in excess of \$5,000)	1.2%
Hotel/Motel	2%
Transient Lodging (additional tax)	2.5%
Amusements (including but not limited to movie tickets)	2%

Sales or similar taxes collected with respect to construction or leasing activities shall not be deemed to be “Sales Taxes” for the purposes of this Agreement.

In the event the City no longer collects a transaction privilege tax or collects such transaction privilege tax at a rate below the rate (or rates) on the Effective Date (by way of illustration, and not of limitation, because of a change in the City’s tax structure), Sales Taxes shall be deemed collected and shall be paid by the City to the extent necessary to produce a reimbursement to Developer as though transaction privilege taxes on retail sales or related activities (as described in and contemplated by Section 8.1 of this Agreement) continued to be assessed and collected in the same manner and amount as on the Effective Date.

(ppp) **“Sales Tax Rebates”** means as defined in Section 8.1.

*Recorded 9/13/06*

(qqq) "**Site Plan**" or "**Site Plans**" means as defined in Recital B.

(rrr) "**Substation**" means as defined in Section 6.11.

(sss) "**Taxable Activities**" means as defined in Section 8.1.

(ttt) "**Term**" means the period commencing on the Effective Date and terminating on the date on which the Parties have performed all of their obligations hereunder; provided, however, that, except as provided in Section 12.6, if applicable, in no event shall the Term of this Agreement extend beyond the sixtieth (60th) anniversary of the Effective Date.

(uuu) "**Third Party**" means any person (as defined in Section 1(b) above) other than a Party, or an Affiliate of any Party.

(vvv) "**Transfer**" means as defined in Section 14.2.

(www) "**Transfer Notice**" means as defined in Section 14.2.

(xxx) "**TWC II**" means as defined in Section 14.2.

(yyy) "**WDP**" means as defined in Section 14.2.

(zzz) "**WDP Principals**" means as defined in Section 14.2.

(aaaa) "**Westcor Affiliate**" means as defined in Section 14.2.

(bbbb) "**WRLP**" means as defined in Section 14.2.

(cccc) "**Zoning**" means the current zoning classification or classifications of the Property, to permit the development of the Property in conformity with the Conceptual Land Use Plan.

2. [Intentionally Omitted.]

3. **Scope and Regulation of Development.**

3.1 **Design Guidelines; Development Plans.**

(a) **Design Guidelines.** Prior to the Commencement of Construction of the Minimum Retail Improvements, utilizing the process(es) specified in the conditions of the PAD or other zoning approval for the Property, Developer shall apply for and receive approval by the City of the Regional Shopping Center's design elements, including without limitation building materials, colors, architectural plans, landscaping, enhanced paving plans, irrigation, lighting, pedestrian linkages, signage and the character of the Regional Shopping Center (the "**Design Guidelines**"). The Design Guidelines shall include the approval process set forth in Section 3.1(c) below, where not inconsistent with the process(es) specified in the conditions of the PAD or other zoning approval for the Property. After construction of a building or site development within the Regional Shopping Center, any subsequent substantial and material alterations or changes to the exterior of any building or to the site development shall be reviewed

and approved in accordance with the Design Guidelines then in effect. Examples of such subsequent substantial and material alterations or changes shall be set forth in the Design Guidelines. The City and Developer acknowledge that amendments to the Design Guidelines may be necessary from time to time to reflect changes in market conditions and/or to satisfy new requirements of one or more users of any part of the Regional Shopping Center, and utilizing the process(es) specified in the conditions of the PAD or other zoning approval for the Regional Shopping Center, the Parties shall cooperate in good faith to agree upon any such amendments to the Design Guidelines. Any disputes between the City and Developer concerning the terms and provisions of the Design Guidelines or amendments thereto shall be resolved pursuant to Section 13, where not inconsistent with the process(es) specified in the conditions of the PAD or other zoning approval for the Regional Shopping Center.

(b) Site Plans. The City shall undertake review and approval of any Site Plans in accordance with its regular procedures, unless expedited as provided elsewhere in this Agreement.

(c) Approval Process. The process for the submittal, review and approval of (i) the Conceptual Land Use Plan, (ii) the Site Plans, and (iii) the Project's design elements, including without limitation building materials, colors, architectural plans, landscaping, enhanced paving plans, irrigation, lighting, pedestrian linkages, signage and the character of the Project, shall utilize the process(es) specified in the conditions of the PAD or other zoning approval for the Property, or if not set forth in the PAD or other zoning approval, then as set forth in the Design Guidelines. Absent specification in the PAD or other zoning approval for the Property, or if not set forth in the PAD or other zoning approval, then as set forth in the Design Guidelines, the City's ordinary submittal, review and approval processes then in effect shall apply, unless expedited as provided elsewhere in this Agreement. Subject to Sections 3.1(b) and 7 and to Applicable Laws, the City and Developer will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats or other development approvals requested by Developer in connection with development of the Project.

(d) Cooperation in the Implementation of the Site Plans. Developer and the City shall work together using reasonable best efforts throughout the pre-development and development stages to resolve any City comments regarding implementation of the Site Plans. If Developer reaches an impasse regarding development approval with the City's staff, the dispute shall be resolved as provided in Section 13.

(e) Amendments. The City and Developer acknowledge that amendments to the Conceptual Land Use Plan and Site Plans may be necessary from time to time to reflect changes in market conditions and development financing and/or to meet the new requirements of one or more of the potential users of any part of the Property. If and when the Parties find that changes or adjustments are necessary or appropriate, they shall, unless otherwise required by Applicable Laws as described in Section 3.2 of this Agreement, effectuate minor changes or adjustments through administrative amendments approved by the City Representative (as designated in Section 13.1) which, after execution, shall be recorded in the Office of the Recorder, Maricopa County, Arizona, and thereafter attached to the Site Plan as an addendum and become part thereof, and which may be further changed and amended from time to time as necessary, with the approval of the City and Developer. Unless otherwise required by law, no such minor amendment shall require notice or hearing. All major changes or amendments shall

*Recorded 9/13/08*

be subject to review and approval by the City Council. The following are examples of changes which constitute major amendments and require City Council approval (unless inconsistent with or violative of Applicable Laws): (i) a ten percent (10%) or greater increase in the number of dwelling units proposed in the approved Site Plan; (ii) a ten percent (10%) or greater increase in the amount of square footage on commercial sites proposed in the approved Site Plan, or (iii) a fifteen (15) foot or greater deviation in height from that proposed in the approved Site Plan. The Parties shall cooperate in good faith to agree upon, and use reasonable best efforts to process, any minor or major amendments to the Conceptual Land Use Plan or the Site Plans.

### 3.2 Development Regulation.

(a) Applicable Laws. For the purposes of this Agreement, the term "**Applicable Laws**" means the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which apply to the development of the Property as of the Effective Date. The Parties acknowledge and agree that the anticipated development of the Property, if any, beyond the Minimum Retail Improvements will likely occur over a period of years. Until the fourth (4th) anniversary of the Regional Shopping Center Opening (the "**Restricted Period**"), no City moratorium, or future ordinance, resolution or other land use rule or regulation imposing a limitation to the rate, timing or sequencing of the development of the Property and affecting the Property or any portion thereof shall apply to or govern the development of the Property, whether such ordinance, rule or regulation affects subdivision plats, building permits, occupancy permits, or other entitlements to use the Property issued or granted by the City, it being further agreed that during the Restricted Period:

(i) subject to the exceptions in Sec. 3.2(b) below, the development of the Property will be subject to the 2003 International Building Code with such modifications as may be adopted by the City and uniformly applied throughout the City, but which will not materially impair Developer's ability to develop the Property as contemplated by this Agreement, nor materially and adversely affect Developer's economic benefits as contemplated by this Agreement, which would have been realized without such modifications, and

(ii) the Developer shall pay all current City building permit, plan review, inspection and similar fees ("**City Building Permit Fees**") in effect on the date that the building or other permit is applied for or issued or plans are submitted, as provided in the applicable ordinance(s) as the triggering event for payment of all such **City Building Permit Fees**.

(b) Permissible Exceptions. Notwithstanding the provisions of Section 3.2 (a), the City may, at any time, and from time-to-time, enact the following Applicable Laws, and take the following actions, which shall be applicable to and binding on the development of the Property:

(i) Future land use ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which are consistent with the express provisions of this Agreement and not contrary to the existing land use regulations described in the first sentence of Section 3.2(a); provided that such future land use ordinances,

*Recorded 9/13/06*

rules, regulations, permit requirements and other requirements and official policies shall not materially impair Developer's ability to develop the Property as contemplated in this Agreement and are uniformly applied throughout the City;

(ii) Other future land use ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which Developer may agree in writing apply to the development of the Property;

(iii) Future land use, safety and construction ordinances, rules, regulations, permit requirements and other requirements and official policies of the City enacted as necessary to comply with mandatory requirements imposed on the City by county, state or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the City;

(iv) Future updates of, and amendments to, existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, and similar construction and safety related codes, such as the International Building Code, which updates and amendments are generated by a nationally recognized construction/safety organization, such as the International Code Council, or by the county, state or federal governments, and local amendments to such codes; provided that such updates and amendments shall not materially impair Developer's ability to develop the Property as contemplated in this Agreement, nor materially and adversely affect Developer's economic benefits as contemplated by this Agreement, which would have been realized without such updates or amendments and are uniformly applied throughout the City;

(v) Amendments to such construction and safety codes generated by the City for the purposes of conforming such codes to the conditions generally existing in the City; provided that such amendments shall not materially impair Developer's ability to develop the Property as contemplated in this Agreement and are uniformly applied throughout the City; and

(vi) Future imposition of taxes or City Development Fees (as defined in A.R.S. § 9-463.05 and Section 3.3) so long as such fees or financing mechanisms are uniformly imposed or charged by the City to all similarly situated persons and entities.

### 3.3 City Development Fees.

(a) Some of the Public Improvements that the Developer has agreed to install or otherwise provide pursuant to this Agreement are or may be included within the infrastructure improvements to be funded by various City impact, development, resource fees, or exactions, currently in effect or as may be adopted in the future (referred to individually as a "**City Development Fee**" or collectively as "**City Development Fees**"). The City expressly agrees that the Developer is entitled to receive a credit against such City Development Fees for the cost of acquisition and construction of such Public Improvements that are components (as reasonably determined by the City) of any particular City Development Fee payable by Developer for or in connection with development on the Property. The Developer may receive a credit for the purchase price of any real property necessary for the location of the Public Improvements (but only if such value is included as a component of that particular City

*Recorded 9/13/06*

Development Fee). In no event may the credits in each category of City Development Fees exceed the actual City Development Fees paid or to be paid by Developer for or in connection with development on the Property. By way of example only, if in the future the City Development Fee for transportation improvements includes a component for the design and construction of arterial roadways, then the Developer shall receive reimbursement or credit from the transportation City Development Fee collected from development on the Property for the portions, if any, of arterial roadways that Developer has designed and constructed on the Property, or will design and construct on the Property in the future, that are specifically included within the infrastructure improvements that were scheduled to be funded by the transportation City Development Fee, as reasonably determined by the City.

(b) The Parties expressly agree that Developer may apply, in accordance with A.R.S. §9-463.05(B)(4), for forbearance of the amount of City Development Fees the City may charge based on the development of the Property and the contribution Developer or its subsequent owners make or will make in the future in cash or by taxes, fees or assessments toward the capital costs of the necessary public services.

(c) Credits against City Development Fees or the City's forbearance of charging City Development Fees in reliance on the state law shall be included in the equation for determination of whether the City has paid the Total Reimbursement Amount.

(d) Subject only to the provisions of Sections 3.3(a) – (c) above and 3.3(e) below, and without limiting the provisions of Section 3.3(b), the Developer shall pay all then-current City Development Fees in accordance with Applicable Laws as the triggering event for payment of all such City Development Fees.

(e) As applicable only to the development of the Regional Shopping Center, Developer shall pay all City Development Fees then in effect as provided in Section 3.3(d) above; provided, however, that the increased amount actually paid by the Developer for any such City Development Fees over the amount the Developer would have been required to pay as or for the City Development Fees in effect on the Effective Date (the "**RSC Development Fees Differential**") shall be added, without interest, to the Reimbursement Amount for purposes of Section 8 and Exhibit H to this Agreement.

3.4 No Commitment to Future Approvals. Nothing in this Agreement shall be deemed to require the City to grant any future land use approvals (except as expressly set forth herein) or to form any improvement district.

3.5 Globe Retained Property. The City acknowledges that Globe is not an Affiliate of Developer, and the consequences of the construction of the Minimum Retail Improvements and the Developer Public Improvements inure solely to Developer, and not to Globe, unless Globe has expressly assumed such consequences of construction. Notwithstanding anything in this Agreement to the contrary, no approval, amendment or change in, of, or to any Design Guideline, Site Plan, Conceptual Land Use Plan, PAD, master sign plan or other matter that directly affects or relates to the Globe Retained Property shall be effective without the prior consent of Globe, which shall not be unreasonably withheld, and the Parties shall not jointly pursue any such approval, amendment or change without notice to, and participation by, Globe. Notwithstanding the foregoing, after the Restricted Period, the City may initiate any land use

*Recorded 9/13/06*

process or procedure that the City would be entitled to initiate in the absence of this Agreement, including by way of illustration and not by limitation, a General Plan Amendment, rezoning, subdivision, master plan amendment, etc. Subject to and without limiting the legal effect of recordation of this Agreement against the Globe Retained Property, no obligation or covenant of Developer in this Agreement is binding on Globe, unless Developer transfers all or part of the rights or obligations of Developer under this Agreement to Globe and Globe assumes same; provided, however, that this limitation shall not apply to Sections 6.1, 6.2 and 6.4 of this Agreement.

4. **Private Improvements.**

4.1 **Minimum Retail Improvements.** The Minimum Retail Improvements shall be developed within the Retail Area as an enclosed mall, a partially enclosed mall, a village center, a lifestyle center, or any other configuration (or combination thereof) deemed by Developer to be best suited for the commercial opportunities presented by the Retail Area at the time of planning such Minimum Retail Improvements. The Parties agree that Developer shall have no obligation to develop any more of the Project than the Minimum Retail Improvements. Developer will keep the City advised of Developer's specific development plans and provide the City with opportunities for the City's input; provided, however, that except as provided in this Agreement or by Applicable Laws, City approval of the size, form, nature, occupants or configuration of the Minimum Retail Improvements is not required.

4.2 **Commencement of Construction.** Developer currently intends that commencement of construction of the Minimum Retail Improvements ("**Commencement of Construction**") shall occur on or before December 31, 2009, subject to Enforced Delay.

4.3 **Completion of Construction.** Developer agrees that completion of construction of the Minimum Retail Improvements ("**Completion of Construction**") shall occur no later than December 31, 2012, subject to Enforced Delay. The City and Developer shall confirm in writing to the City the date of the Completion of Construction when the same becomes known.

4.4 **Changes in Plans.** Any site plans or similar land use plans for improvements other than the Minimum Retail Improvements prepared by or on behalf of Developer are aspirational and based upon Developer's current plans, themes and programs, any or all of which may change or be varied depending upon the circumstances and the plans and methods used by Developer to develop commercial centers or residential developments. The City acknowledges that those plans, themes and programs may change at any time, and from time to time, and that, in order to receive the benefits of this Agreement and to comply with the provisions hereof, Developer is obligated only for the Completion of Construction of the Minimum Retail Improvements on the Property and the construction of the Public Improvements in accordance with the Design Guidelines, Applicable Laws and the other requirements imposed by this Agreement.

4.5 **Quality of Private Improvements.** The Minimum Retail Improvements shall be deemed to include a Regional Shopping Center materially of the quality of Chandler Fashion Center, Kierland Commons, Scottsdale Fashion Center or Arrowhead Town Center, either enclosed or open in design and format (as Developer may elect in its sole and absolute

discretion), containing a mix of first quality national or regional major tenants such as Dillard's, Macy's, Bloomingdale's, Sears, JC Penney or Nordstrom, and national, regional or local specialty tenants selected by Developer in its discretion, both fashion-related and otherwise, such as Banana Republic, Ann Taylor, J. Jill, Chico's, Talbot's, Coldwater Creek, At Ease, Kenneth Cole, Bath and Body Works, Williams-Sonoma, Pottery Barn, Abercrombie, Aeropostale, Under Armor, Dolce Salon, The Children's Place, Gap Stores, Crate & Barrel, Buckle, Pac Sun, Harkins Theaters or Sega Gameworks; and restaurants, such as PF Chang's China Bistro, Red Robin, Someburros, Pei Wei and Bloom in addition to traditional "food court" tenants (with major tenants and specialty tenants being listed herein as examples only).

4.6 City Review and Approval of Plans. Developer recognizes that its development and construction of the Private Improvements pursuant to this Agreement are subject to the City's normal plan submittal, review and approval processes. The City will use its best efforts to expedite its regulatory processes, including but not limited to use permit, variance, design review and building permit processes, within the time normally associated with the City's expedited regulatory processes then in effect. In this regard, the City shall designate one or more of its planning and development staff as primary contact(s) for submittal and review of Developer applications, but shall not be required to dedicate staff exclusively to receipt, review or processing of Developer applications unless the Developer makes the election and complies with all requirements of Section 7 below on Developer Assistance. Any disputes over delay in the review and approval processes will be resolved as provided in Section 13.

4.7 Conditions to Reimbursement. The construction of any portion of the Minimum Retail Improvements by Developer (or Globe if Developer has Transferred to Globe its rights under this Agreement relating thereto) as described in this Agreement is not a covenant of Developer (or Globe, as applicable), or a contractual obligation of Developer (or Globe, as applicable), but rather is a condition precedent to the obligations of the City to reimburse Developer (or Globe, as applicable) as provided in this Agreement.

5. Public Improvements. It is contemplated that the Public Improvements shall be placed into two categories for the purpose of this Agreement: those Public Improvements for which an Improvement District may be formed (the "**ID Improvements**"); and those other Public Improvements which are required in connection with the Project but which will be financed by (and the cost of which will be reimbursed to) Developer in accordance with the terms of this Agreement (the "**Developer Public Improvements**").

5.1 Developer Public Improvements. Pursuant to A.R.S. § 34-201.L, as a condition of development of the Property imposed by the City as authorized by A.R.S. § 9-463.01, Developer at its sole cost shall design, construct or cause to be constructed and dedicate to the City the Developer Public Improvements subject to the terms and conditions of this Agreement (including the reimbursement obligations of the City as set forth in Article 8).

(a) Construction and Phasing. The Developer Public Improvements shall be constructed (and may be phased in Developer's discretion) in accordance with the Site Plans. In the absence of a schedule, Developer shall cause the Developer Public Improvements to be constructed in conjunction with Developer's phased construction of the Project, as Developer and the City mutually agree is appropriate.

*Recorded 9/13/06*



(b) Design, Bidding, Construction and Dedication. As a condition to the reimbursement to Developer of the Reimbursement Amount, the Developer Public Improvements shall be designed, bid, constructed and dedicated in accordance with Applicable Laws, including without limitation all Applicable Laws concerning the City's procurement and bidding procedures.

(c) City Review and Approval of Plans. Developer recognizes that its development and construction of the Developer Public Improvements pursuant to this Agreement are subject to the City's normal plan submittal, review and approval processes. The City will use its best efforts to expedite its regulatory processes, including but not limited to use permit, variance, design review and building permit processes, within the time normally associated with the City's expedited regulatory processes then in effect. In this regard, the City shall designate one or more of its planning and development staff. Any disputes over delay in the review and approval processes will be resolved as provided in Section 13.

(d) Payment of Developer Public Improvement Costs. Developer shall pay all Developer Public Improvement Costs as the same become due, subject to the reimbursement provisions of this Agreement, including but not limited to Section 8 *et seq.*

(e) City Acquisition of Necessary Property. The City to the extent then permissible under Applicable Laws, and to the extent required in the judgment of the City, after consultation with Developer, may purchase or use its power of eminent domain to acquire any necessary right-of-way and other property or property rights required for construction or maintenance of the Developer Public Improvements at the City's expense (including without limitation the cost of the land and the City's costs related to the acquisition); provided, that:

(i) Developer shall not be required to construct any Developer Public Improvements on any property or with respect to any property rights which are not acquired by the City for any reason; and

(ii) the City will grant to Developer all rights, licenses, easements, and rights of entry necessary to permit Developer to construct the Developer Public Improvements required for any existing rights-of-way as well as for the property or property rights acquired by the City pursuant to this Section 5.1.

Upon not less than ninety (90) days advance request by the City, or upon completion of any portion, segment or phase of the Developer Public Improvements offered for dedication by Developer and accepted by the City, Developer will dedicate and grant to the City any real property or real property interests owned by Developer which (x) constitute a part of the Property; (y) are reasonably necessary for right-of-way purposes or otherwise required for the construction, maintenance, or operation of the Public Improvements on or within the Property; and (z) do not materially interfere with the development of the Project as planned (the "**Dedicated Property**"). Developer shall make such dedications without the payment of any additional consideration by City; provided, however, that the fair market value of the Dedicated Property, at the time of requested dedication, shall constitute a Developer Public Improvement Cost included in the Reimbursement Amount in accordance with the terms of this Agreement.

*Recorded 9/13/06*

(f) Dedication, Acceptance and Maintenance of Developer Public Improvements. When the Developer Public Improvements or a discrete portion thereof are completed (e.g., all of the paving, curbs and gutters for a particular street within any Applicable Property Area or designated section or phase of an Applicable Property Area), then upon written request of the City or Developer, Developer shall dedicate and the City shall accept such Developer Public Improvements (or discrete portion thereof) in accordance with the Applicable Laws and upon such reasonable and customary conditions as the City may impose, including without limitation a two (2) year contractor's warranty for workmanship and materials. Upon acceptance by the City, the Developer Public Improvements shall become public facilities and property of the City; the City shall be solely responsible for all subsequent maintenance, replacement or repairs; and (except for matters covered by express warranties provided to the City), the City shall bear the risk of, and shall indemnify Developer and its successors, and their respective Affiliates, members, managers, agents and representatives, against any claim arising after the City's acceptance of the Developer Public Improvements from any injury (personal, economic or other) or property damage to any person, party or utility, arising from the condition, operation, or use of the Developer Public Improvements, except to the extent caused by the negligence or willful acts or omissions of Developer and its successors, and their respective Affiliates, members, managers, agents and representatives. With respect to any claims arising prior to acceptance of the Developer Public Improvements by the City, Developer shall bear all risk of, and shall indemnify the City and its officials, employees and City Council members, against any claim arising prior to the City's acceptance of the Developer Public Improvements from any injury (personal, economic or other) or property damage to any person, party or utility, arising from the condition, loss, damage to or failure of any of the Developer Public Improvements, except to the extent caused by the negligence or willful acts or omissions of the City and its officials, employees and City Council members, agents or representatives.

5.2 ID Improvements. Subject to Section 3.4, the City and Developer agree to form an improvement district (the "**Improvement District**") for the issuance and sale of bonds (the "**Improvement District Bonds**") to finance the ID Improvements.

(a) Improvement District Property. The Improvement District shall include the Property, and additionally shall include the property depicted on Exhibit E (collectively, the "**Improvement District Property**").

(b) Maximum Assessment. In no event shall the principal amount of the Assessment with respect to the Property exceed Seventy Million Dollars (\$70,000,000.00), to be adjusted downward, if applicable, in accordance with the actual costs of the items shown in the engineer's estimate of the Improvement District's costs allocable to the Property.

(c) Developer ID Obligations. All of Developer's payment obligations of any kind or nature arising out of or in connection with the Improvement District shall be referred to in this Agreement as "**Developer ID Obligations.**"

(d) Failure to Form Improvement District. In the event that an Improvement District is not formed, then (i) Developer may construct the ID Improvements in accordance with this Agreement; (ii) all such improvements constructed by Developer shall be deemed Developer Public Improvements; (iii) the Reimbursement Amount shall be increased by the cost to Developer of constructing the ID Improvements (the "**ID Improvement Costs**"); and (iv) the

*Recorded 9/13/06*

Reimbursement Amount, as increased pursuant to this Section 5.2(d), shall be calculated and paid in accordance with Section 8.1(c) and Exhibit H.

5.3 Conditions to Reimbursement. The construction of any portion of the Public Improvements by Developer (or Globe if Developer has Transferred to Globe its rights and obligations under this Agreement relating thereto and Globe has assumed such rights and obligations) as described in this Agreement is not a covenant of Developer (or Globe, as applicable) or a contractual obligation of Developer (or Globe, as applicable), but rather is a condition precedent to the obligations of the City to reimburse Developer (or Globe, as applicable) as provided in this Agreement.

6. Additional Municipal Benefits. In addition to the Public Improvements and the direct, pecuniary, indirect and intangible benefits which the City acknowledges it will realize as a consequence of construction of the Project within the City, and all other commitments of Developer pursuant to this Agreement (including but not limited to Developer's dedication of the Dedicated Property, Developer's support of the formation of the Improvement District and Developer's commitments pursuant to existing, written pre-funding agreements), Developer agrees to perform, supply or comply with the Additional Municipal Benefits set forth in this Section 6, the covenants, terms and provisions of which shall survive the expiration of the Term of this Agreement. The City agrees and acknowledges that these Additional Municipal Benefits are in addition to those matters that can be compelled or exacted by the City; are being performed, supplied or complied with voluntarily by Developer; and confer significant economic and non-economic benefits upon the City in excess of the economic and non-economic benefits conferred by Developer's construction of the Public Improvements.

6.1 Prohibited Uses. In addition to any uses prohibited by Applicable Laws, Developer shall prohibit the property uses listed on Exhibit G on the Property and Globe shall prohibit the property uses listed on Exhibit G on the Globe Retained Property, in either or both cases unless hereafter specifically approved by the City Council.

6.2 Signage. Notwithstanding anything to the contrary in the Goodyear City Code or elsewhere in the Applicable Laws, Developer (and Globe as to all Globe Retained Property) shall cause all signage for the Project and its tenants or occupants to comply with the more stringent provisions of a master sign program, if any, as approved in accordance with the Design Guidelines. Such master sign program shall include entry and exiting signs directing Project patrons and visitors to historic locations and/or other City facilities and points of interest suggested by the City.

6.3 Construction Trailer. During the construction of the Regional Shopping Center, Developer shall provide without charge to the City an on-site construction trailer (or, as Developer may elect, an area within Developer's on-site construction trailer), complete with bathroom facilities, electrical power, water, and HVAC at no cost, for use by the City for the development review and construction inspection process for the Regional Shopping Center.

6.4 Access. Developer (and Globe as to all Globe Retained Property) shall permit access to the Project by the City, its officials, personnel and designees, at reasonable times, subject to reasonable safety requirements as Developer (or Globe, as to any Globe

*Recorded 9/13/06*

Retained Property) may impose from time to time, to assure compliance with all Applicable Laws and with the terms of this Agreement.

6.5 Radio Coverage. Developer shall cause all improvements to be constructed in such a manner that reasonably facilitates adequate radio coverage for City emergency service workers.

6.6 Emergency Vehicle Access. Developer will grant to the City recorded emergency vehicle access and use easements over and through the main entrance to the Regional Shopping Center and other private roadways as may exist from time to time within the Regional Shopping Center, including without limitation those (if any) shown on the Conceptual Land Use Plan (the Parties anticipating, however, that the streets serving the Project will all be public streets and rights-of-way).

6.7 Police Substation. The Developer shall include within the Minimum Retail Improvements a vanilla-shell office area of approximately 550 square feet to be used by the City as a police substation (the "**Substation**"). The Substation shall be leased to the City, pursuant to Developer's (or its affiliate's) standard form shopping center lease (and subject to all rules and regulations in force for the Private Improvements within the Regional Shopping Center), for fifteen (15) years (with agreed-upon renewal and termination rights upon ninety days' prior written notice) at a gross annual rent of Ten Dollars (\$10.00) per square foot of the applicable leased area, payable on a monthly basis, to be increased (but not decreased) at each anniversary of the lease date on the basis of increases in the Consumer Price Index for the previous twelve-month period, utilizing the CPI adjustment formula set forth in such standard form lease. Notwithstanding anything to the contrary in said form lease, the gross annual rental rate to be paid by the City for use of the Substation shall be deemed to include all common area maintenance (CAM) charges, assessments and fees otherwise provided for under the standard form lease.

6.8 Public Facilities. Developer shall provide the following additional Public Facilities:

(a) One (1) community room (the "**Community Room**") of not less than one thousand (1000) square feet constructed by Developer within the Regional Shopping Center and supplied with electrical power at Developer's expense (as part of and to be included with the Minimum Retail Improvements). The Community Room shall be owned, maintained and managed by Developer, and Developer shall not charge the City for its use of the Community Room.

(b) A single informational kiosk, retail merchandise unit or similar structure (weatherproofed, if applicable), as selected by Developer (the "**Kiosk**"), to be located within the Regional Shopping Center. The Kiosk shall be leased to the City, pursuant to Developer's standard form lease for such structures (and subject to all rules and regulations in force for the Private Improvements within the Private Improvements within the Regional Shopping Center), for fifteen (15) years (with agreed-upon renewal and termination rights upon ninety days' prior written notice) at a gross annual rent of Ten Dollars (\$10.00) per square foot of the applicable leased area attributable to the Kiosk, payable on a monthly basis, to be increased (but not decreased) at each anniversary of the lease date on the basis of increases in the Consumer Price

*Recorded 9/13/06*

Index for the previous twelve-month period, utilizing the CPI adjustment formula set forth in such standard form lease. Notwithstanding anything to the contrary in said form lease, the gross annual rental rate to be paid by the City for use of the Kiosk shall be deemed to include all common area maintenance (CAM) charges, assessments and fees otherwise provided for under the standard form lease.

(c) A single public transit stop designed and constructed by Developer, consisting of a pullout, small shelter and benches (the "**Transit Stop**").

(d) The Community Room, Kiosk and Transit Stop shall be made available to the City subject to reasonable rules, regulations and use limitations (e.g., hours of use) promulgated or amended from time to time by Developer, and pursuant to such instruments (e.g., lease, license, etc.) reasonably required by Developer to preserve its rights and interest in its real property and improvements. The locations of the Community Room and Kiosk may be changed by Developer upon Developer's providing comparable facilities in reasonably comparable or better locations within the Regional Shopping Center; and the location of the Transit Stop may be changed upon the mutual written agreement of the City and Developer.

6.10 Enhanced Police Services. Developer recognizes that the City will be required to provide increased police and public safety services as a result of the development of the Project. Accordingly, Developer will enter into a municipal expense reimbursement agreement with the City for a period not to exceed three (3) years, commencing six (6) months from the Commencement of Construction of the Minimum Retail Improvements, to fund certain estimated or projected police and public safety "start-up" costs associated with the Project. Developer's aggregate responsibility for such enhanced police services shall not exceed \$600,000.00, payable in three (3) equal annual installments upon receipt of an invoice from the City for each such annual installment.

7. Developer Assistance. Notwithstanding anything contained herein to the contrary, Developer acknowledges that the City may not have a sufficient number of personnel to implement an expedited review, permit and construction inspection process. Developer, by notice to the City, may elect to have the City implement an expedited review, permit and construction inspection process, in which case the City may engage at Developer's cost such private independent consultants and advisors as are approved by and necessary to assist the City in the review, permits and inspection processes; provided, that such consultants and advisors shall take instruction from, be controlled by, and be responsible to the City rather than Developer; and provided further, that to the extent the City elects to use its own personnel (or to hire additional personnel to provide such services with respect to the Project), any salary (as to additional personnel) and/or overtime (as to existing personnel) and similar charges are incurred by the City, Developer shall be responsible for such costs, but only to the extent such persons are assigned or dedicated to the Project. For the purposes of this Section 7, Developer's obligation to pay the salary of additional personnel shall include reasonable employee benefits to which such personnel are entitled and other employer obligations with respect to such personnel, but not exceed 32% of any applicable salary amount.

8. Reimbursements. The City Council is of the opinion, and the City has determined, that the development of the Project (i) will substantially enhance the economic health of the City; (ii) will result in a net increase or retention of jobs in the City, (iii) will add to

*Revised 9/19/06*

the tax base, (iv) will otherwise improve or enhance the economic welfare of the residents or businesses of the City; (v) would not otherwise occur in the City without these incentives; and (vi) demonstrates the potential to generate revenues and other benefits to the City, which outweigh or are not disproportionate to the costs associated with these incentives. Accordingly, the City shall pay to Developer the following Rebate Payments (A) to reimburse Developer for the Developer ID Obligations and (B) to pay the Reimbursement Amount to Developer, all in the manner and within the timeframe contemplated by this Agreement:

8.1 Sales Tax Rebates. In consideration of Developer's agreeing to the Assessment, Developer's construction of the Developer Public Improvements and Developer's supplying the Additional Municipal Benefits and otherwise performing its obligations under this Agreement, the City shall rebate and pay to Developer transaction privilege taxes (the "**Sales Tax Rebates**") equal to fifty percent (50%) of the Sales Taxes imposed and actually received by the City for retail sales (which shall include, but not be limited to, automobile and motor vehicle sales and resales, service and repair, leasing and other related activities), admissions, exhibitions, amusements, restaurant, bar and hotel activities (collectively, the "**Taxable Activities**") occurring within the area that includes the Property (the "**Reimbursement Tax Base**"), on and after the Effective Date, but limited to the Reimbursement Period defined in Section 8.2 below. The Sales Tax Rebates shall be determined, deposited in the City's Reimbursement Account and payable as set forth in this Section 8.1.

(a) Reimbursement Account. The City shall deposit the Sales Tax Rebates in an account separate from the City's general fund, which deposit may (in the City's election) take the form of a separate or segregated accounting or journal entry (the "**Reimbursement Account**"). The first deposit into the Reimbursement Account shall be made after the Effective Date and within thirty (30) days following the City's receipt of its next monthly transaction privilege tax report from the Arizona Department of Revenue (the "**Monthly ADR Tax Report**") which includes Sales Taxes actually received by the City from any of the Taxable Activities, and subsequent deposits shall be made within thirty (30) days following the City's receipt of each subsequent Monthly ADR Tax Report which includes Sales Taxes actually received by the City from any of the Taxable Activities, until the Reimbursement Amount and the Developer ID Obligations have been paid to Developer, or until the expiration of the Reimbursement Period (as defined in Section 8.2 below), whichever first occurs. The City shall pay the Sales Tax Rebates described in Section 8.1 to Developer from the Reimbursement Account.

(b) Conditions Precedent. As an express condition of payment of any Sales Tax Rebates to the Developer, the Developer shall have no rights in the Reimbursement Account, and no payment of Sales Tax Rebates shall be made to Developer from the Reimbursement Account or otherwise, until the Completion of Construction of the Minimum Retail Improvements; and all rights of the Developer to payment by the City of Sales Tax Rebates or any other obligation under this Sec. 8 and Exhibit H shall be forfeited by Developer and the City shall be free of any claims by Developer and the City's obligation to maintain the Reimbursement Account shall thereupon terminate, if the Completion of Construction of the Minimum Retail Improvements has not occurred for any reason other than that specified in Section 12.6 on or before October 31, 2012, or if this Agreement is terminated by the City by reason of an Event of Non-Performance pursuant to Section 12. Notwithstanding the foregoing,

*Recorded 9/13/05*

the City is unconditionally obligated to pay to Developer Sales Tax Rebates equaling the amount of the City ID Payment Obligation, and the construction of the Minimum Retail Improvements shall not be a condition to the City's payment to Developer of the City ID Payment Obligation. The timing of the commencement of Rebate Payments as to the City ID Payment Obligation shall be as provided in Section 8.1(c) below.

(c) Rebate Payments. On the first day of the first full calendar quarter following Completion of Construction of the Minimum Retail Improvements, and on the first day of each calendar quarter thereafter until the Developer's ID Obligations and the Reimbursement Amount have been paid and reimbursed in full to Developer (but subject to the limitations of Section 8.2), the City shall pay to Developer all Sales Tax Rebates held by the City in the Reimbursement Account (the "**Rebate Payments**"). As to reimbursement of the City ID Payment Obligation only, the City's obligation to make Rebate Payments shall commence on the first full day of the first calendar quarter following the City's reasonable determination that the Sales Taxes collected from the Taxable Activities within the Reimbursement Tax Base have been received from a sufficient number of taxpayers, in a sufficient amount quarterly and/or cumulatively, as applicable, and through the application of other customary methods and parameters of privilege tax administration, so that release of the Rebate Payment or Rebate Payments to the Developer will not result in violation of statutory sales tax confidentiality laws. Developer shall apply all Rebate Payments received pursuant to this Section 8.1(c) first to the City ID Payment Obligation; then to the Reimbursement Amount; and thereafter to all other amounts required to be paid by the City, including but not limited to the balance of the Developer ID Obligations or the ID Improvement Costs (as applicable). Notwithstanding the earlier application by Developer of Rebate Payments to the Reimbursement Amount rather than to the Developer ID Obligations, or the insufficiency of the Rebate Payments to satisfy the Developer ID Obligations, Developer shall be responsible for the timely payment of all amounts required to be paid to the Improvement District on account of the Assessments, and Developer shall not be relieved of its obligation to pay all Assessments and related fees and charges. It is the express intent of the Parties that the City reimburse Developer as promptly as possible from the Sales Tax Rebates collected from the Taxable Activities. Not fewer than two times per year (at a time reasonably selected by the City and Developer after each assessment payment in connection with the Improvement District), representatives of the City and of Developer shall confer to review the status of all financial obligations, accounts and payments owing with respect to this Agreement.

(d) Limited Obligations. The City's obligation to rebate and pay the Sales Tax Rebates and any other amounts owing pursuant to this Agreement is limited to payment from Sales Taxes received from Taxable Activities from the Reimbursement Tax Base. Under no circumstances shall any obligation hereunder represent or constitute a general obligation of or pledge of the full faith and credit of the City, the State of Arizona or of any political subdivision thereof, nor require the levy of, or be payable from the proceeds of any ad valorem taxes. Other than the obligation of the City to levy Sales Taxes as set forth in this Agreement, the obligations to rebate or pay any amount pursuant to this Agreement shall not constitute an indebtedness of the City, the State of Arizona or any political subdivision thereof within the meaning of any Constitutional or statutory debt limitation or restriction or otherwise. The City and Developer agree and acknowledge that all obligations to pay Sales Taxes pursuant to this Agreement are subordinate and subject to the lien and pledge of excise taxes pledged as

*Recorded 9/13/06*

security for the payment of all obligations of the City and the City of Goodyear Public Improvement Corporation now or hereafter outstanding.

8.2 Limitations on Payments to Developer. Subject to the terms and conditions of Exhibit H, in no event shall any Sales Tax Rebates be payable for any period subsequent to the last to occur of (i) the twenty-fifty (25<sup>th</sup>) anniversary of the Completion of Construction, or (ii) December 31st of the fifth (5<sup>th</sup>) full calendar year after the last calendar year during which Developer incurs Public Improvement Costs (the “**Reimbursement Period**”); provided that, once the City has paid to Developer the City ID Payment Obligation, the entire Reimbursement Amount (or the Revised Reimbursement Amount, as applicable) pursuant to Exhibit H and all remaining amounts owing by Developer with respect to the Improvement District (including all unpaid and outstanding principal sums and any unpaid interest accrued to the date of payment on any Assessments) the City shall have satisfied its payment obligations to Developer and no further amounts shall be paid to Developer; and provided further that, unless the Reimbursement Amount (plus Applicable Interest) has then been paid to Developer, any accrued but undisbursed Sales Tax Rebates and Applicable Interest existing upon expiration of the Reimbursement Period shall be paid to Developer notwithstanding the fact that receipt thereof by the City and/or such disbursement occurs after the expiration of the Reimbursement Period. A Sales Tax Rebate shall be deemed to accrue during the Reimbursement Period if the Taxable Activities from which the Sales Tax Rebate arises occurred during the Reimbursement Period. The Reimbursement Amount may be modified from time-to-time only by written agreement of both the City and Developer.

8.3 Determination of Amount of Allocated Revenues Received by the City. The City Manager (or his designee) shall determine the amount of Sales Tax Rebates for each month (or partial month if applicable) held in the Reimbursement Account with respect to the Project. Any such determination may be audited and contested by Developer, subject to Applicable Laws which may prohibit or limit such audit or contest by Developer. The Developer agrees that its right to receive data on Sales Taxes collected by the City shall be subject to the City’s reasonable determination that the Sales Taxes collected from the Taxable Activities within the Reimbursement Tax Base have been received from a sufficient number of taxpayers, in a sufficient amount quarterly and/or cumulatively, as applicable, and through the application of other customary methods and parameters of privilege tax administration, so that release of the data on Sales Taxes collected by the City to the Developer will not result in violation of statutory sales tax confidentiality laws.

8.4 Computation and Report of Sales Tax Revenues. Within forty-five (45) days following the end of each City fiscal year, the City will deliver to Developer a statistical report of all Sales Taxes from Taxable Activities within the Reimbursement Tax Base. Such report shall specifically identify any offsets, credits, exclusions or other deductions from the Sales Taxes generated by or attributable to the Reimbursement Tax Base that have been utilized by the City in computing the Sales Tax Rebates for purposes of this Agreement. Any such report shall be subject to Applicable Laws that may prohibit or limit the dissemination or use of the foregoing information required for such report. The Developer agrees that its right to receive the statistical report required by this section containing data on Sales Taxes collected by the City shall be subject to the City’s reasonable determination that the Sales Taxes collected from the Taxable Activities within the Reimbursement Tax Base have been received from a sufficient

*Recorded 9/13/06*



number of taxpayers, in a sufficient amount quarterly and/or cumulatively, as applicable, and through the application of other customary methods and parameters of privilege tax administration, so that release of the statistical report and/or data on Sales Taxes collected by the City to the Developer will not result in violation of statutory sales tax confidentiality laws.

8.5 Multiple Business Locations. Since some businesses with multiple locations in the City (a “**Multiple Location Taxpayer**”) report their Sales Taxes on the basis of revenues for all their locations in the City, rather than separately for each location, Developer shall request each such Multiple Location Taxpayer located in the Project to separately report its Sales Taxes to or furnish the City with a certified break out worksheet showing its Sales Taxes for that location within the Project, along with the Multiple Location Taxpayer's name and City privilege tax identification number. To the extent such separate reporting is not received by the City for a Multiple Location Taxpayer, the Sales Taxes for its location (or locations) within the Project shall be equal to the total Sales Taxes reported for all of its locations in the City multiplied by a fraction, the numerator of which shall be the square footage of the Multiple Location Taxpayer's location in the Project, and the denominator of which shall be the total square footage of the Multiple Location Taxpayer's locations within the City. If the taxpayer's name and City privilege tax identification number is not received by the City for a Multiple Location Taxpayer, the City shall request such information from Developer which shall require such information from the Multiple Location Taxpayer in connection with any sale, lease, sublease, or other Taxable Activities involving any property located within the Center.

8.6 City's Prepayment Right. The City shall have the right to prepay all or any part of the Sales Tax Rebates at any time, including unpaid Applicable Interest (if any) accrued to the date of such prepayment.

8.7 Prior Development Agreement. The Parties intend that the payments owing pursuant to the Prior Development Agreement shall be included in the Reimbursement Amount, and that such payments be made pursuant to Article 8 of this Agreement. The rights of Globe and Westcor Partners under the Prior Development Agreement have been assigned to Developer; and upon commencement of Rebate Payments to Developer by the City pursuant to this Agreement, the Prior Development Agreement shall be superceded and extinguished, and the payment obligations of the City pursuant to the Prior Development Agreement shall be subsumed and incorporated into the City's obligations to make Rebate Payments pursuant to this Agreement.

9. **Indemnity; Risk of Loss.**

9.1 Indemnity by Developer. To the extent permitted by law, Developer (and/or Globe, as applicable) shall pay, defend, indemnify and hold harmless the City and its City Council members, officers and employees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys fees, experts' fees and court costs associated) which arise from or relate in any way to any act or omission by Developer (and/or Globe, as applicable), or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Developer's obligations under this Agreement. The provisions of this Section 9.1, however, shall not apply to loss or damage or claims therefore which are attributable to acts or omissions of the City, its agents, employees, contractors, subcontractors or representatives. Developer shall have no

*Recorded 9/13/06*

defense obligation in any instance in which a claim is asserted based, in whole or in part, upon an act or omissions of the City, its employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of Developer (and/or Globe, as applicable) shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

9.2 Indemnity by the City. To the extent permitted by law, the City shall pay, defend, indemnify and hold harmless Developer and its Affiliates (and Globe to the extent of its interest in the Property) and their respective partners, shareholders, officers, managers, members, agents and representatives (and their respective partners, shareholders, officers, managers, members, agents or representatives) from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities and suits (including attorneys' and experts' fees and court costs associated) which arise from or which relate in any way to any act or omission on the part of the City, its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of the City's obligations under this Agreement. The provisions of this Section 9.2, however, shall not apply to loss or damage or claims therefore which are attributable to acts or omissions of Developer and/or its Affiliates (and/or Globe, as applicable), or their respective agents, employees, contractors, subcontractors or representatives. The City shall have no defense obligation in any instance in which a claim is asserted based, in whole or in part, upon an act or omissions of Developer and/or its Affiliates (and/or Globe, as applicable), or their respective employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of the City shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

9.3 Risk of Loss. Developer assumes the risk of any and all loss, damage or claims to any portion of the Public Improvements unless and until title to the Public Improvements is transferred to the City. At the time title to the Public Improvements is transferred to the City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign to the City any unexpired warranties relating to the design, construction and/or composition of such Public Improvements. Acceptance of the Public Improvements shall be conditioned on the City's receipt of a two (2) year warranty of workmanship, materials and equipment, in form and content reasonably acceptable to the City, provided however that such warranty or warranties may be provided by Developer's contractor or contractors directly to the City and are not required from Developer, and that any such warranties shall extend from the date of substantial completion of any Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

9.4 Insurance. During the period of any construction involving the Public Improvements, and with respect to any construction activities relating to the Public Improvements, Developer will obtain and provide the City with proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry, builder's risk insurance, comprehensive general liability and worker's compensation insurance policies in amounts and coverages set forth on Exhibit J. Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written notice of cancellation to the City, and will name the City as an additional insured on such policies. In addition, so long as Globe owns any portion of the Globe

*Recorded 9/13/06*

Retained Property, Developer will, if practicable, name Globe as an additional insured on each such policy.

10. **City Representations.** The City represents and warrants to Developer that:

10.1 The City has the full right, power and authorization to enter into and perform this Agreement and each of City's obligations and undertakings under this Agreement, and the City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City Code.

10.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

10.3 The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

10.4 As of the date of this Agreement, the City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to Developer.

10.5 This Agreement (and each undertaking of the City contained herein), constitutes a valid, binding and enforceable obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. The City will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names the City as a party or which challenges the authority of the City to enter into or perform any of its obligations hereunder and will cooperate with Developer in connection with any other action by a Third Party in which Developer is a party and the benefits of this Agreement to Developer are challenged. The severability and reformation provisions of Section 14.3 shall apply in the event of any successful challenge to this Agreement.

10.6 The execution, delivery and performance of this Agreement by the City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City is a party or is otherwise subject.

10.7 The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

11. **Developer Representations.** Developer represents and warrants to the City that:

11.1 Developer has the full right, power and authorization to enter into and perform this Agreement and of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer has

*Recorded 9/13/06*

been duly authorized and agreed to in compliance with the organizational documents of Developer.

11.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

11.3 Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

11.4 As of the date of this Agreement, Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Developer, which could have a material adverse affect on Developer's performance under this Agreement that has not been disclosed in writing to the City.

11.5 This Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Developer will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party or which challenges the authority of Developer to enter into or perform any of its obligations hereunder and will cooperate with the City in connection with any other action by a Third Party in which the City is a party and the benefits of this Agreement to the City are challenged. The severability and reformation provisions of Section 14.3 shall apply in the event of any successful challenge to this Agreement.

11.6 The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Developer is a party or to which Developer is otherwise subject.

11.7 Developer has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

11.8 Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

12. **Events of Non-Performance; Remedies.**

12.1 Events of Non-Performance by the Developer. "Non-Performance" or an "Event of Non-Performance" by Developer under this Agreement shall mean one or more of the following:

*Recorded 9/13/05*

(a) Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or shall prove to be materially inaccurate during the Term;

(b) Developer fails to comply with the dates established in this Agreement for the Commencement of Construction or the Completion of Construction, for any reason other than an Enforced Delay;

(c) Foreclosure (or deed in lieu of foreclosure) upon any mechanic's, materialmen's or other lien on the Property prior to Completion of Construction or upon any improvements on such Property, excluding liens imposed in connection with Developer's financing or refinancing by Lenders which have entered into nondisturbance agreements with the City in substantially the same form as Exhibit K, but such lien shall not constitute a Non-Performance if Developer deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such liens in a customary fashion;

(d) Developer transfers or attempts to transfer or assign this Agreement in violation of Section 14.2; or

(e) Developer fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement.

12.2 Events of Non-Performance by the City. Non-Performance or an Event of Non-Performance by the City under this Agreement shall mean one or more of the following:

(a) Any representation or warranty made in this Agreement by the City was materially inaccurate when made or shall prove to be materially inaccurate during the Term;

(b) Subject to the terms of Section 8 of this Agreement, the City fails to make Rebate Payments to Developer as provided in this Agreement; or

(c) The City fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement.

12.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Non-Performance by any Party, such Party shall, upon written notice from the other Party, proceed immediately to cure or remedy such Non-Performance and, in any event, such Non-Performance shall be cured within thirty (30) days (or twenty (20) days in the event of a monetary Non-Performance or ninety (90) days if the Non-Performance relates to the date for Completion of Construction) after receipt of such notice, or, if such Non-Performance is of a nature is not capable of being cured within thirty (30) days (or ninety (90) days if the Non-Performance relates to the date for Completion of Construction) shall be commenced within such period and diligently pursued to completion. The foregoing cure periods are subject to the specific provisions of Section 12.4(a)(i) which grant a cure period of one hundred eighty (180) days for the consequences specified in Section 12.4(a)(i).

*Recorded 9/13/06*

12.4 Consequences of Non-Performance. Whenever any Event of Non-Performance occurs and is not cured (or cure undertaken) by the non-performing Party in accordance with Section 12.3 of this Agreement, the other Party may take any of one or more of the following actions:

(a) Remedies of the City. The City's exclusive remedies for an Event of Non-Performance by Developer shall consist of, and shall be limited to the following:

(i) If an Event of Non-Performance by Developer occurs prior to Completion of Construction and with respect to Developer's failure to construct or develop the Minimum Retail Improvements and/or the Public Improvements in accordance with the terms of this Agreement, the City, by written notice to Developer, may suspend any of its obligations under this Agreement, other than the deposit of the Sales Tax Rebates into the Reimbursement Account pursuant to Section 8.1(a), during the period of the Non-Performance.

(ii) If the Event of Non-Performance under Section 12.4(a)(i) is not cured within one hundred eighty (180) days after written notice by the City to Developer of such Non-Performance, the City may terminate this Agreement by written notice thereof to Developer, in which event the Reimbursement Account also shall terminate and all Sales Tax Rebates plus interest earned thereon shall be returned to the City free of any claims by Developer.

(iii) At any time, the City may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to undertake and to fully and timely address a public safety concern or to enjoin any construction or activity undertaken by Developer that is not in accordance with the terms of this Agreement.

(iv) Nothing in this Agreement shall be deemed to limit the City's administrative remedies.

(b) Remedies of Developer. Developer's exclusive remedies for an Event of Non-Performance by the City shall consist of and shall be limited to the following:

(i) Recovery of damages for unpaid amounts due in accordance with the provisions of this Agreement, particularly Section 8. Such damages shall consist of Developer's actual damages as of the time of entry of judgment (meaning the right to receive payments from the Reimbursement Account to be applied to the Assessment and Reimbursement Amount plus interest in accordance with and limited by this Agreement). Developer waives any right to seek consequential, punitive, multiple, exemplary or any other damages.

(ii) Notwithstanding any other provision of this Agreement to the contrary, if an Event of Non-Performance by the City occurs at any time, whether prior to or after Completion of Construction, Developer may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring the City to undertake and to fully and timely perform its obligations under this Agreement, including, but not limited to, the collection, deposit, allocation, and disbursement of Sales Tax Rebates to Developer in accordance with the terms of this Agreement.

*Recorded 9/13/06*

(iii) In the event of a breach by the City of a representation or warranty pursuant to Section 10, the Developer's sole remedy shall be to recover any monies previously collected and held by the City pursuant to Section 8 and to seek reformation of this Agreement pursuant to Section 14.3, with Developer expressly waiving any claim for future monetary damages with respect to such breach.

12.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Event of Non-Performance by the other Party shall not be considered as a waiver of rights with respect to any other Event of Non-Performance by the performing Party or with respect to the particular Event of Non-Performance except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Event of Non-Performance involved.

12.6 Enforced Delay in Performance for Causes Beyond Control of Party. Whether stated or not, all periods of time in this Agreement are subject to this Section (except for the expiration of the Reimbursement Period, and except for the due dates for the Sales Tax Rebates payable by the City to Developer, and the grace and cure periods in Sections 12.3 and 12.4). Neither the City nor Developer, as the case may be, shall be considered to have caused an Event of Non-Performance with respect to its obligations under this Agreement in the event of enforced delay (an "**Enforced Delay**") due to (1) causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, acts of public enemy, acts of the Federal, state or local government, acts of the other Party, acts of a Third Party, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, Office of Homeland Security (or equivalent) Advisory alert higher than grade "yellow," blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public, quasi-public or private entity; (2) the order, judgment, action, or determination of any court, administrative agency, governmental authority or other governmental body other than the City or the Council or one of its departments, divisions, agencies, commissions or boards (collectively, an "**Order**") which delays the completion of the work or other obligation of the Party claiming the delay; or the suspension, termination, interruption, denial, or failure of renewal (collectively, a "**Failure**") of issuance of any permit, license, consent, authorization, or approval necessary to Developer's undertakings pursuant to this Agreement, unless it is shown that such Order or Failure is the result of the fault, negligence or failure to comply with Applicable Laws by the Party claiming the delay; provided, however, that the contesting in good faith of any such Order or Failure shall not constitute or be construed or deemed as a waiver by a

*Recorded 9/13/06*

Party of Enforced Delay; (3) the denial of an application, failure to issue, or suspension, termination, delay or interruption other than by or from the City or the Council or one of its departments, divisions, agencies, commissions or boards (collectively, a “Denial”) in the issuance or renewal of any permit, approval or consent required or necessary in connection with Developer’s undertakings pursuant to this Agreement, if such Denial is not also the result of fault, negligence or failure to comply with Applicable Laws by the Party claiming the delay; provided that the contesting in good faith or the failure in good faith to contest any such Denial shall not constitute or be construed or deemed as a waiver by a Party of Enforced Delay; and (4) the failure of any contractor, subcontractor or supplier to furnish services, materials or equipment in connection with Developer’s undertakings pursuant to this Agreement, if such failure is caused by Enforced Delay as defined herein, if and to the extent, and only so long as the Party claiming the delay is not reasonably able, after using its best efforts, to obtain substitute services, materials or equipment of comparable quality and cost. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of portions of the Project, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Developer in connection with the Project, it being agreed that Developer will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this Section 12.6 shall, within thirty (30) days after such Party knows of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; provided, however, that either Party's failure to notify the other of an event constituting an Enforced Delay shall not alter, detract from or negate its character as an Enforced Delay if such event of Enforced Delay were not known or reasonably discoverable by such Party.

12.7 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Event of Non-Performance by the other Party.

### 13. Cooperation and Alternative Dispute Resolution.

13.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and Developer. The initial representative for the City shall be its Director of Community Development as designated by the City Manager from time to time (the “City Representative”) and the initial representative for Developer shall be its Project Manager, as identified by Developer from time to time (the “Developer Representative”). The City's and Developer's Representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property.

13.2 Impasse. The City acknowledges and agrees that it is desirable for Developer to proceed rapidly with the implementation of this Agreement and the development of the Property. Accordingly, to the extent not inconsistent with Applicable Laws, the Parties agree that if at any time Developer believes an impasse has been reached with the City staff on any

*Recorded 9/13/06*



issue affecting the Property which is not an Event of Non-Performance, Developer shall have the right to immediately appeal to the City Representative for an expedited decision pursuant to this Section. If the issue on which an impasse is reached is an issue where a final decision can be reached by the City staff, the City Representative shall give Developer a final administrative decision within seven (7) days after Developer's request for an expedited decision. If the issue on which an impasse has been reached is one where a final decision requires action by the City Council, the City Representative shall request a City Council hearing on the issue to take place as soon as practicable after Developer's request for an expedited decision; provided, however, that if the issue is appropriate for review by the City's Planning and Zoning Commission, the matter shall be submitted to the Planning and Zoning Commission as soon as practicable, and then to the City Council at its first meeting following the Planning and Zoning Commission hearing and the applicable public notice period. Both the City and Developer agree to continue to use reasonable good faith efforts to resolve any impasse pending such expedited decision.

13.3 Mediation. If there is a dispute hereunder which is not an Event of Non-Performance and which the Parties cannot resolve between themselves in the time frame set forth in Section 13.2, the Parties agree that there shall be a ninety (90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation; provided, however, that such moratorium shall not be deemed to extend any applicable limitation period or any notice-of-claim statute. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association but shall not be under the administration of the AAA unless agreed to by the Parties in writing, in which case all administrative fees shall be divided evenly between the City and Developer. The matter in dispute shall be submitted to a mediator mutually selected by Developer and the City. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the City and Developer shall request that the Presiding Judge of the Superior Court in and for the County of Maricopa, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the City and Developer. The results of the mediation shall be nonbinding with any Party free to initiate litigation upon the conclusion of the latter of the mediation or of the ninety (90) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238.

13.4 Disputes Involving Globe Retained Property. Notwithstanding anything in this Article 13 to the contrary, in the event that there is a dispute hereunder that directly involves or materially affects any Globe Retained Property, then no Party may proceed with any dispute resolution, mediation or other action relating thereto without notifying Globe in writing and granting to Globe the right to participate therein, whereupon Globe shall be entitled to participate in any such dispute resolution, mediation or other action relating thereto as if it were a Party for purposes of this Article 13.

#### 14. Miscellaneous Provisions.

14.1 Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be

*Recorded 9/13/06*

commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 14.1.

14.2 Restrictions on Assignment and Transfer.

14.2.1 Definitions. For purposes of Section 14.2 of this Agreement, the following terms shall have the meanings ascribed to them below:

(a) "Macerich Partnership" means The Macerich Partnership, L.P., a Delaware limited partnership;

(b) "REIT" means The Macerich Company, a Maryland corporation;

(c) "Macerich TWC II" means Macerich TWC II Corp., a Delaware corporation;

(d) "WRLP" means Westcor Realty Limited Partnership, a Delaware limited partnership;

(e) "Developer" shall have the meaning ascribed to such term in Section 1(x) of this Agreement;

(f) "WDP" means WDP Partners, LLC, an Arizona limited liability company;

(g) "WDP Principals" means Gilbert W. Chester, Brian M. Frakes, Robert G. Mayhall, John F. Razor, and Robert L. Ward;

(h) "TWC II" means The Westcor Company II, an Arizona limited partnership;

(i) "Westcor Affiliate" means Developer, Macerich Partnership, REIT, Macerich TWC II, WRLP, TWC II, WDP or WDP Principals, or an Affiliate of any of the foregoing;

(j) "Developer Control Group" means any Westcor Affiliate;

(k) "Globe" means as defined in the introductory paragraph;

(k) "Transfer" means a transfer or assignment of all or part of the rights or obligations of any person under this Agreement;

*Recorded 9/13/06*

(l) "Control" means the power to control the management and policies of a person, as a result of stock or membership interest ownership, operating agreement provisions, management agreement or otherwise;

(m) "Transfer Notice" means a prior written notice to be delivered to City not less than fifteen (15) days in advance of certain Transfers, describing the rights, obligations and/or interests to be transferred or assigned and providing the name and address of the transferee; and

(n) "Person" shall have the meaning ascribed to such term in Section 1(b)(ii) of this Agreement.

14.2.2 Restriction on Transfers. Except as provided in this Section 14.2, prior to Completion of Construction, no Transfer shall occur without the prior written consent of City, which consent may be given or withheld in the City's sole and unfettered discretion. The restrictions set forth in Section 14.2 of this Agreement shall terminate automatically, and without further notice or action, upon Completion of Construction. No voluntary or involuntary successor in interest to Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein.

14.2.3 Exclusions/Permitted Transfers. The restriction on Transfer set forth in Section 14.2.2 of this Agreement shall not apply to the following:

(a) any Transfer where after completion of the Transfer (i) Control of Developer and ownership of not less than fifty-one percent (51%) of the total ownership interests in Developer remains in the Developer Control Group, and (ii) a Westcor Affiliate shall Control the Developer Control Group;

(b) the exercise of remedies by any Lender referred to in Section 14.21 of this Agreement, which Lender has entered into a non-disturbance agreement with the City;

(c) a pledge, collateral assignment, encumbrance or similar financing or refinancing transaction (including, without limitation, assignment of any right to receive any payment or reimbursement from the City under this Agreement) to any Lender which provides acquisition, construction, permanent, working capital, tenant improvement or other financing, directly or indirectly, to Developer for all or any part of the Property;

(d) a Transfer to (i) a successor in interest to Developer with respect to all or part of the Property, if Developer remains responsible for the performance of its obligations under this Agreement (i.e., if the Transfer does not result in a novation), or (ii) Globe or an Affiliate of Globe, accompanied by express written assumption by Globe or the Affiliate of Globe, as applicable, of the Developer's rights and obligations under this Agreement as to the Property or portion of the Property to which the Transfer relates.

*Revised 9/13/06*

14.2.4 Notice of Transfer. Developer shall provide a Transfer Notice to City with respect to:

(a) any sale or assignment of any interest in Developer which results in (i) ownership of less than fifty-one percent (51%) of the total ownership interests in Developer being held by the Developer Control Group, or (ii) ownership by Westcor Affiliate not retaining Control of the Developer Control Group.

(b) any Transfer referred to in Section 14.2.3(c) or (d) of this Agreement.

14.2.5 Transfers by City. The City's rights and obligations under this Agreement shall be non-assignable and non-transferable, without the prior express written consent of Developer, which consent may be given or withheld in Developer's sole and unfettered description.

14.3 Limited Severability. The City and Developer each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City code or City charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by Applicable Law, the Parties further shall perform all acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

14.4 Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

14.5 Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or by

*Recorded 9/13/05*

telecopy facsimile machine, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

If to the City: City of Goodyear  
Attn: City Manager  
190 North Litchfield Road  
Goodyear, Arizona 85338  
Telephone: (623) 932-3910  
Facsimile: (623) 932-1177

With required copies to: City of Goodyear  
Attn: Roric V. Massey, City Attorney  
190 North Litchfield Road  
Goodyear, AZ 85338  
Telephone: (623) 932-3014  
Facsimile: (623) 932-0184

and

David A. Pennartz, Esq.  
Pennartz Law Firm, P.L.C.  
1601 North Seventh Street, Suite 260  
Phoenix, Arizona 85006  
Telephone: (602) 712-9939  
Facsimile: (602) 712-9949

If to Developer: Westcor/Goodyear, L.L.C.  
c/o Westcor Partners  
Attn: David C. Scholl,  
Senior Vice President Development  
11411 North Tatum Boulevard  
Phoenix, Arizona 85028  
Telephone: (602) 953-6271  
Facsimile: (602) 494-6132

With required copies to: The Macerich Company  
Attn: James H. Kinney, Senior Vice President  
3301 East Main Street, Suite 1  
Ventura, California 93003  
Telephone: (805) 642-6843  
Facsimile: (805) 642-8029

Westcor/Goodyear, L.L.C.  
c/o WDP Partners  
Attn: Robert C. Mayhall  
11411 North Tatum Boulevard  
Phoenix, Arizona 85028  
Telephone: (602) 953-6244  
Facsimile: (602) 953-6298

*Recorded 9/13/02*

Globe Land Investors, LLC  
Attn: George Getz  
6730 North Scottsdale Road, Suite 250  
Scottsdale, Arizona 85253

Mariscal, Weeks, McIntyre & Friedlander, P.A.  
Attn: Gary L. Birnbaum, Esq.  
2901 North Central, Suite 200  
Phoenix, Arizona 85012  
Telephone: (602) 258-5009  
Facsimile: (602) 258-5100

(b) Effective Date of Notices. Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any notice sent by telecopy facsimile machine shall be deemed effective upon confirmation of the successful transmission by the sender's telecopy facsimile machine. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. Any Party may designate a different person or entity or change the place to which any notice shall be given as herein provided.

(c) Payments. Payments shall be made and delivered in the same manner as Notices; provided, however, that payments shall be deemed made only upon actual receipt by the intended recipient.

(d) Notices to Globe. Any obligation to deliver notices to Globe shall exist and continue only for as long as there remains any Globe Retained Property.

14.6 Time of Essence. Time is of the essence of this Agreement and each provision hereof.

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

14.8 Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute shall be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

14.9 Waiver. Without limiting the provisions of Section 12.5 of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any

*Recorded 9/13/06*

right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

14.10 Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders under Section 14.2 to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement, and except that the indemnified Parties referred to in the indemnification provisions of Sections 9.1 and 9.2 (or elsewhere in this Agreement) shall be third party beneficiaries of such indemnification provisions.

14.11 Exhibits. Without limiting the provisions of Section 1 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

14.12 Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.

14.13 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

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

14.15 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

14.16 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Property shall run with the Property and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to such Property. Wherever the term "Party" or

*Records 9/13/06*

the name of any particular Party is used in this Agreement such term shall include any such Party's permitted successors and assigns.

14.17 Recordation. Within ten (10) days after this Agreement has been approved by the City and executed by the Parties (together with the execution of the Landowners' Consents hereto), the City shall cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

14.18 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by the City and Developer; provided, however, that no change, addition or amendment may be made to this Agreement with respect to or that involves the Globe Retained Property or any of Globe's rights arising under this Agreement without prior written consent of Globe. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to "Agreement" or "Development Agreement" shall mean the Agreement as amended by any subsequent, duly processed minor or major amendment, as defined in Subsection 3.1(d). The effective date of any duly processed minor or major amendment shall be the date on which the last representative for the Parties executes the Agreement. If, after the effective date of any amendment(s), the parties find it necessary to refer to this Agreement in its original, unamended form, they shall refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.

14.19 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

14.20 Survival. All indemnifications contained in Sections 9.1 and 9.2 of this Agreement shall survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section.

14.21 Rights of Lenders. The City is aware that Developer may obtain financing or refinancing for acquisition, development and/or construction of the real property and/or improvements to be constructed on the Property, in whole or in part, from time to time, by one or more Third Parties (individually a "Lender", and collectively the "Lenders"). In the event of an Event of Non-Performance by Developer, the City shall provide notice of such Event of Non-Performance, at the same time notice is provided to Developer, to not more than two (2) of such Lenders as previously designated by Developer to receive such notice (the "Designated Lenders") whose names and addresses were provided by written notice to the City in accordance with Section 14.5. The City shall give Developer copies of any such notice provided to such Designated Lenders and, unless Developer notifies the City that the Designated Lenders names or addresses are incorrect (and provides the City with the correct information) within three (3) business days after Developer receives its copies of such notice from the City, the City will be deemed to have given such notice to the Designated Lenders even if their names or addresses are

*Recorded 9/13/06*



incorrect. Developer may provide notices to other Lenders. If a Lender is permitted, under the terms of its nondisturbance agreement with the City to cure the Event of Non-Performance and/or to assume Developer's position with respect to this Agreement, the City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Developer under this Agreement. The City shall, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate or other document evidencing that this Agreement is in full force and effect and that no Event of Non-Performance by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Non-Performance). Upon request by a Lender, the City will enter into a separate nondisturbance agreement with such Lender, consistent with the provisions of this Section 14.21.

14.22 Pad Sites and Adjacent Properties. If at any time during the Reimbursement Period, any pads, lots or other portions of the Property are not owned by Developer (the "Pad Sites"), or if the Project includes pads or other real property which are not part of the Property legally described by Exhibit A hereto (also the "Pad Sites"), the Sales Taxes from Taxable Activities on those Pad Sites shall be included in the computation of Sales Taxes for purposes of this Agreement, and the development of such Pad Sites shall be subject to the same Design Guidelines and Applicable Laws which apply to the remainder of the Project owned by Developer. The foregoing provisions of this Section are not intended to impose the Design Guidelines and Applicable Laws upon any properties other than the Property and Pad Sites, but such foregoing provisions of this Section shall not prevent the City from imposing the same or similar Design Guidelines to any properties adjacent to the Project or elsewhere in the City.

14.23 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Developer. No City Council member, official, representative, agent, attorney or employee of the City shall be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Non-Performance or breach by the City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of the City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer under this Agreement shall be limited solely to the assets of Developer and shall not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of Developer; (ii) the shareholders, members or managers or constituent partners of Developer; or (iii) officers of Developer.

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

*Recorded 9/13/06*

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

WESTCOR/GOODYEAR L.L.C., an Arizona limited liability company ("Developer")

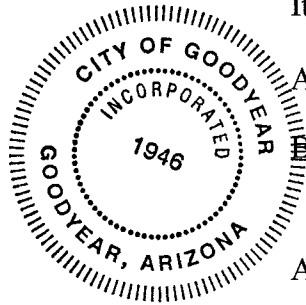
By: The Westcor Company II Limited Partnership, an Arizona limited partnership, its managing member

By: Macerich TWC II Corporation, a Delaware corporation, its general partner

By: [Signature]  
Its: Sr. V.P.

CITY OF GOODYEAR, ARIZONA, an Arizona municipal corporation ("City")

By: [Signature: Stephen Cleveland]  
Its: City Manager



ATTEST:

By: [Signature: Dee Coatsman]  
City Clerk

APPROVED AS TO FORM:

By: [Signature]  
City Attorney

The undersigned has executed this Agreement solely for the purpose of consenting to the recordation of this Agreement against the interest of Globe in and to the Property, subject to the provisions of Section 3.5 above.

Globe Land Investors, LLC, a Delaware limited liability company ("Globe")

*Recorded 9/13/06*

By Globe Corporation  
Its Managing Member

By: Raymond H. Carter  
Its: Vice President

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this 11th day of September, 2006, by Stephen Cleveland, City Manager of the City of Goodyear, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

Lynn J. Mulhall  
Notary Public

My commission expires:  
7/31/09



STATE OF Arizona        )  
  ) ss.  
COUNTY OF Maricopa    )

The foregoing instrument was acknowledged before me this 6th day of September, 2006, by David C. Scholl, the Senior VP of Westcor/Goodyear, L.L.C., an Arizona limited liability company.

Jessica L. Smith  
Notary Public



My commission expires:  
Sept. 23, 2009

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this 11th day of September, 2006, by Raymond H. Carter, Vice President of Globe Corporation, the Managing Member of Globe Land Investors, LLC, a Delaware limited liability company.

Recorded 9/13/06

*Nancy E. Laird*  
Notary Public

My commission expires:

March 17, 2007



Notary Public State of Arizona  
Maricopa County  
Nancy E. Laird  
Expires March 17 2007

*Revised 9/13/06*

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

A PORTION OF SECTION 32, TOWNSHIP 2 NORTH, RANGE 1 WEST, GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 32;

THENCE NORTH 00 DEGREES 13 MINUTES 29 SECONDS EAST, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION, A DISTANCE OF 65.00 FEET;

THENCE NORTH 89 DEGREES 28 MINUTES 03 SECONDS WEST, A DISTANCE OF 65.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 89 DEGREES 28 MINUTES 03 SECONDS WEST, ALONG A LINE THAT IS PARALLEL WITH AND 65.00 FEET NORTHERLY OF THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION, A DISTANCE OF 2554.42 FEET;

THENCE NORTH 89 DEGREES 27 MINUTES 45 SECONDS WEST, ALONG A LINE THAT IS PARALLEL WITH AND 65.00 FEET NORTHERLY OF THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION, A DISTANCE OF 2114.21 FEET TO THE BEGINNING OF A 2799.78 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHERLY;

THENCE DEPARTING SAID PARALLEL LINE, AND WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 08 DEGREES 11 MINUTES 30 SECONDS, AN ARC LENGTH OF 400.29 FEET;

THENCE NORTH 81 DEGREES 15 MINUTES 16 SECONDS WEST, A DISTANCE OF 31.63 FEET;

THENCE NORTH 00 DEGREES 20 MINUTES 32 SECONDS EAST, ALONG A LINE THAT IS PARALLEL WITH AND 75.00 FEET EASTERLY OF THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION, A DISTANCE OF 1995.60 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE ROOSEVELT IRRIGATION DISTRICT CANAL;

THENCE ALONG SAID SOUTH RIGHT OF WAY LINE THE FOLLOWING TWO COURSES:

THENCE NORTH 23 DEGREES 57 MINUTES 32 SECONDS EAST, A DISTANCE OF 358.33 FEET TO THE BEGINNING OF A 1492.40 FOOT RADIUS NON-TANGENT CURVE, FROM WHICH THE RADIUS POINT BEARS NORTH 66 DEGREES 02 MINUTES 28 SECONDS WEST;

THENCE NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 12 DEGREES 46 MINUTES 07 SECONDS, AN ARC LENGTH OF 332.59 FEET;

THENCE DEPARTING SAID EASTERLY RIGHT OF WAY LINE, SOUTH 89 DEGREES 39 MINUTES 26 SECONDS EAST, A DISTANCE OF 978.50 FEET

THENCE NORTH 00 DEGREES 20 MINUTES 34 SECONDS EAST, A DISTANCE OF 345.66 FEET;

THENCE NORTH 40 DEGREES 54 MINUTES 50 SECONDS EAST, A DISTANCE OF 999.02 FEET TO THE BEGINNING OF A 2545.00 FOOT RADIUS NON-TANGENT CURVE, FROM WHICH THE RADIUS POINT BEARS SOUTH 12 DEGREES 43 MINUTES 00 SECONDS WEST;

*Recorded 9/13/06*

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 20 DEGREES 12 MINUTES 27 SECONDS, AN ARC LENGTH OF 897.59 FEET;

THENCE SOUTH 57 DEGREES 04 MINUTES 33 SECONDS EAST, A DISTANCE OF 959.36 FEET TO THE BEGINNING OF A 2655.00 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHEASTERLY;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 32 DEGREES 21 MINUTES 09 SECONDS, AN ARC LENGTH OF 1499.17 FEET;

THENCE SOUTH 89 DEGREES 26 MINUTES 34 SECONDS EAST, A DISTANCE OF 140.47 FEET;

THENCE SOUTH 45 DEGREES 17 MINUTES 21 SECONDS EAST, A DISTANCE OF 42.55 FEET;

THENCE SOUTH 00 DEGREES 13 MINUTES 29 SECONDS WEST, ALONG A LINE THAT IS PARALLEL WITH AND 65.00 FEET WESTERLY OF THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION, A DISTANCE OF 2489.56 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 348.30 ACRES OR 15,171,809 SQUARE FEET, MORE OR LESS.

TOGETHER WITH A PORTION OF SECTION 5, TOWNSHIP 1 NORTH, RANGE 1 WEST, GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 5;

THENCE NORTH 89 DEGREES 28 MINUTES 03 SECONDS WEST, ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION, A DISTANCE OF 697.57 FEET;

THENCE DEPARTING SAID NORTH LINE, SOUTH 00 DEGREES 45 MINUTES 02 SECONDS WEST, A DISTANCE OF 55.00 FEET;

THENCE CONTINUING SOUTH 00 DEGREES 45 MINUTES 02 SECONDS WEST, A DISTANCE OF 1029.62 FEET TO THE BEGINNING OF A 11559.16 FOOT RADIUS NON-TANGENT CURVE, FROM WHICH THE RADIUS POINT BEARS SOUTH 07 DEGREES 23 MINUTES 29 SECONDS WEST;

THENCE WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01 DEGREES 03 MINUTES 03 SECONDS, AN ARC LENGTH OF 212.00 FEET;

THENCE NORTH 83 DEGREES 39 MINUTES 34 SECONDS WEST, A DISTANCE OF 370.00 FEET TO THE BEGINNING OF A 5829.58 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHWESTERLY;

THENCE WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 04 DEGREES 38 MINUTES 24 SECONDS, AN ARC LENGTH OF 472.08 FEET;

*Recorded 9/13/06*

THENCE NORTH 31 DEGREES 41 MINUTES 34 SECONDS WEST, A DISTANCE OF 1111.25 FEET TO A LINE WHICH IS PARALLEL WITH AND 55.00 FEET SOUTHERLY OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION;

THENCE SOUTH 89 DEGREES 28 MINUTES 03 SECONDS EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 1646.38 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 29.99 ACRES OR 1,306,571 SQUARE FEET, MORE OR LESS.



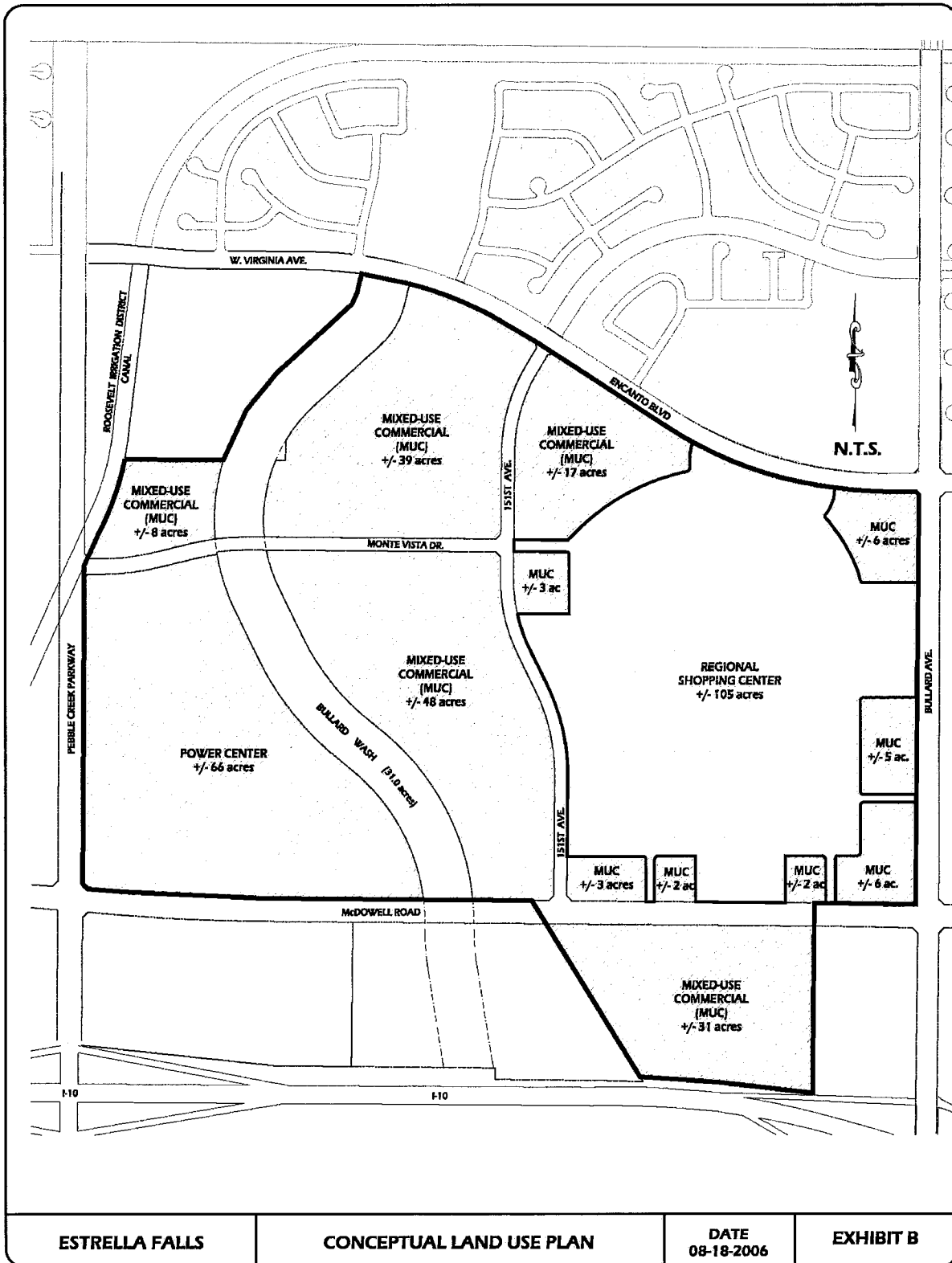
*Revised 9/13/06*

**EXHIBIT B**  
**CONCEPTUAL LAND USE PLAN**  
**(AVAILABLE IN THE CITY CLERK'S OFFICE)**

*Recorded 9/13/06*



# EXHIBIT B CONCEPTUAL LAND USE PLAN



**EXHIBIT C**  
**ID IMPROVEMENTS**

“ID Improvements” generally and preliminarily consist of the following:

1. Construction, widening and improvement (including the acquisition of any rights-of-way, easements or other property) of the following streets including underground utilities and improvements, street lights, landscaping, traffic signals, sidewalks and other associated improvements:
  - McDowell Road from PebbleCreek Parkway to Bullard Avenue (“McDowell Improvements”),
  - Monte Vista Drive from PebbleCreek Parkway to 151<sup>st</sup> Avenue (“Monte Vista Improvements”);
  - Encanto Avenue from 151<sup>st</sup> Avenue to Bullard Avenue (“Encanto Improvements”);
  - 151<sup>st</sup> Avenue from McDowell Road to Cambridge Avenue (“151<sup>st</sup> Improvements”);
  - Bullard Avenue from I-10 to Cambridge Avenue (“Bullard Improvements”);
  - PebbleCreek Parkway from I-10 to Thomas Road alignment (“PebbleCreek Improvements”);
2. Improvements to the Bullard Wash drainage channel and related park improvements from Encanto Avenue/Virginia Avenue to and under I-10;
3. Construction and installation of all Roosevelt Irrigation District facilities required by the District in connection with construction of the ID Improvements;
4. Construction and installation of the Bullard Avenue drainage pipe from McDowell Road to the flood control drainage basin west of Bullard Road;
5. Expenses relating to engineering firms, legal counsel and other professional services in order to: (i) design and engineer the ID Improvements; (ii) establish a preliminary estimate of costs for the ID Improvements; (iii) establish the area benefited by the ID Improvements; (iv) prepare certain documents and agreements related to the formation of the Proposed City Improvement District and funding of certain infrastructure costs; and (v) condemn or otherwise acquire any necessary rights-of-way, easements or other property required for construction of the ID Improvements.

*Recorded 9/13/06*

**EXHIBIT D  
[RESERVED]**

**(AVAILABLE IN THE CITY CLERK'S OFFICE)**

*Revised 9/13/06*

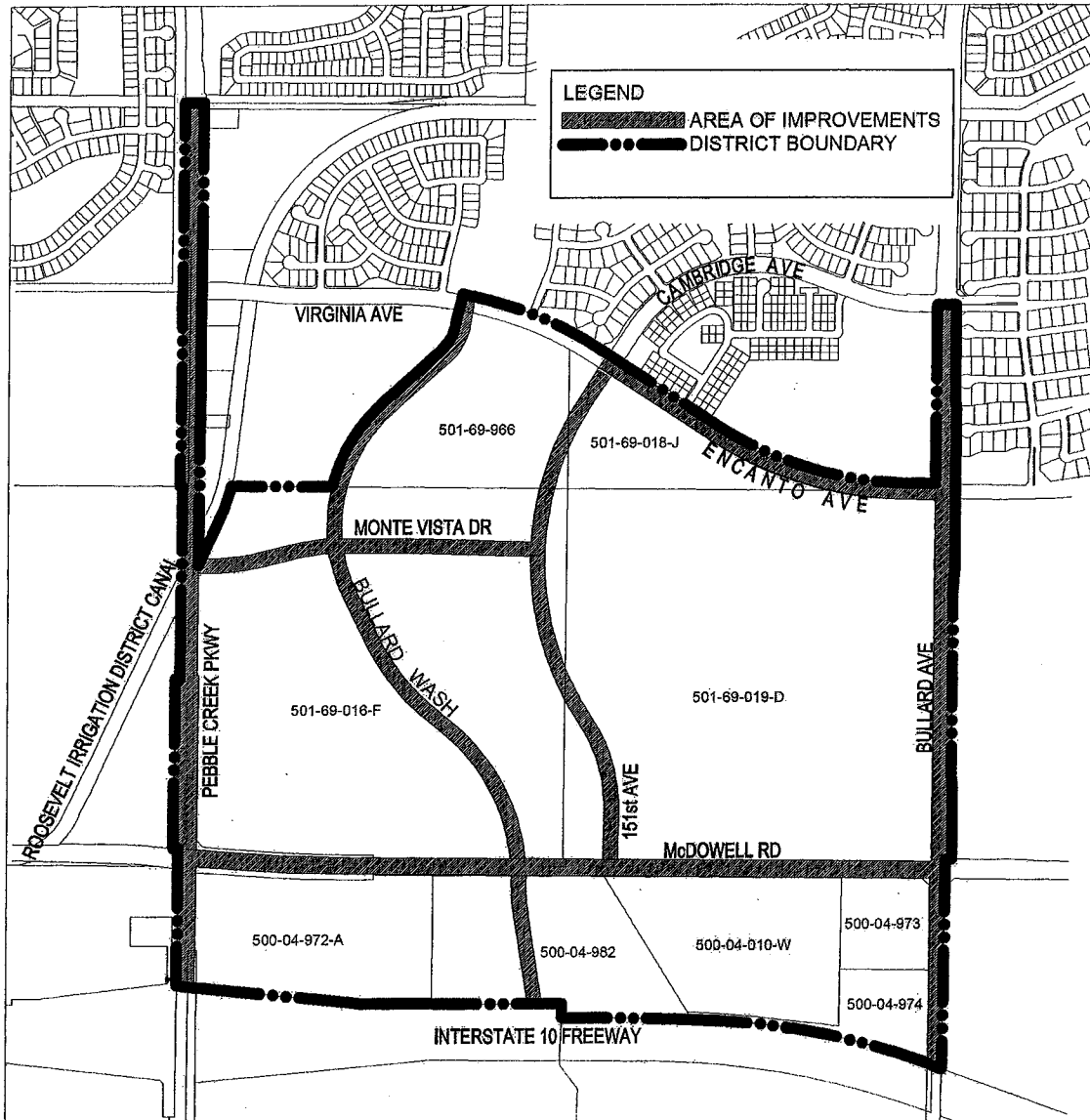
**EXHIBIT D**

**[RESERVED]**

**EXHIBIT E**  
**IMPROVEMENTS DISTRICT PROPERTY**  
**(AVAILABLE IN THE CITY CLERK'S OFFICE)**

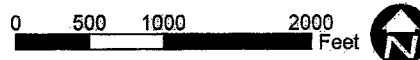
*Recorded 9/13/06*

# EXHIBIT E IMPROVEMENT DISTRICT PROPERTY



- PARCELS IN DISTRICT**  
 500-04-974  
 500-04-973  
 500-04-010-W  
 500-04-982  
 500-04-972-A  
 501-69-019-D  
 501-69-016-F  
 501-69-018-J  
 501-69-966

## CITY OF GOODYEAR McDOWELL ROAD COMMERCIAL CORRIDOR IMPROVEMENT DISTRICT

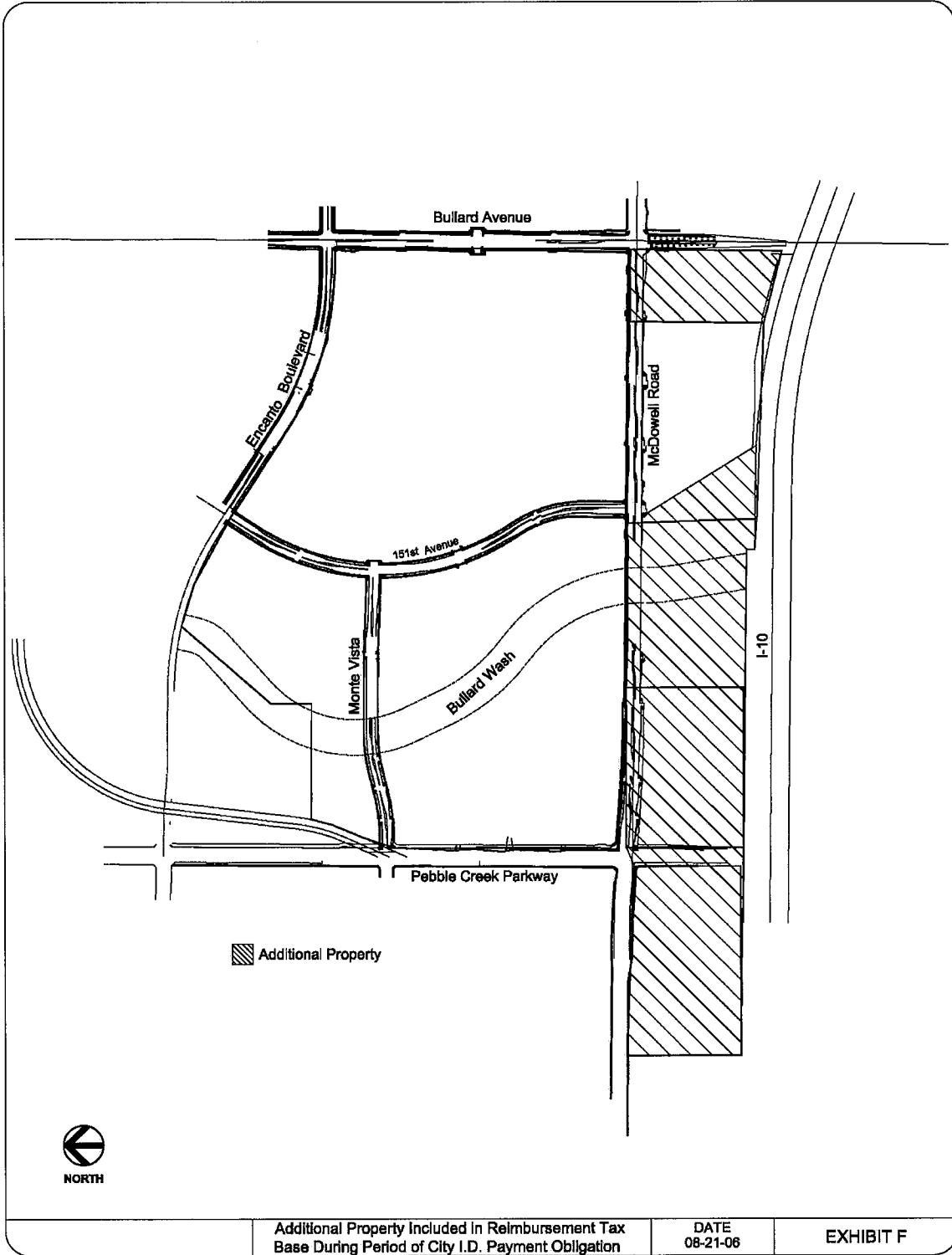


**EXHIBIT F**  
**ADDITIONAL PROPERTY INCLUDED IN REIMBURSEMENT**  
**TAX BASE DURING PERIOD OF ID PAYMENT OBLIGATION**

**(AVAILABLE IN THE CITY CLERK'S OFFICE)**

*Revised 9/13/06*

**EXHIBIT F  
 ADDITIONAL PROPERTY INCLUDED IN REIMBURSEMENT TAX BASE  
 DURING PERIOD OF CITY ID PAYMENT  
 OBLIGATION**





**EXHIBIT G**  
**PROHIBITED USES**

Notwithstanding the provisions of the City Zoning Code and other City codes and statutes, the following uses regardless of whether defined in the City of Goodyear Code are prohibited:

- Adult Businesses (as defined in the City's zoning ordinance as of the Effective Date)
- Billboard Sign(s)
- Industrial Use(s)
- Unscreened Outdoor Storage (visible from a public street)
- Warehouse(s) (as an exclusive use)
- Tattoo shops
- Massage parlors (provided however that this prohibition shall not prohibit or restrict massage or spa services and activities that are appurtenant or incidental to other permitted uses; nor shall it prohibit high-end, licensed massage services such as "Massage Envy")
- Body piercing studios (provided however that this prohibition shall not prohibit or restrict piercing that is appurtenant or incidental to other permitted uses, such as jewelry or accessory stores)

*Revised 9/13/06*

**EXHIBIT H**  
**REIMBURSEMENT AMOUNT**

1. Subject to the terms and conditions of Section 5.1, the “**Reimbursement Amount**” is the amount the City has determined is to be paid to Developer, without interest, as reimbursement to Developer for or in consideration of (i) the Developer Public Improvement Costs, and (ii) a portion of the tangible and intangible benefits to be derived from the Additional Municipal Benefits and otherwise from construction of the Project, or otherwise to incentivize the development of the Regional Shopping Center consistent with the terms of this Agreement, all in the manner and within the timeframe contemplated by this Agreement. The Reimbursement Amount is established as Ten Million and no/100 Dollars (\$10,000,000.00) (the “**Base Reimbursement Amount**”). The Base Reimbursement Amount shall be increased by the RSC Development Fees Differential, if any, provided for under Section 3.3(e) of this Agreement, in addition to the foregoing dollar amount.
2. Notwithstanding the foregoing, if Developer constructs the ID Improvements in accordance with Section 5.2(d) of the Agreement, then the Reimbursement Amount shall be increased by the Developer Public Improvement Costs incurred in connection with Developer's construction of the ID Improvements, *plus* the ID Improvement Costs, but only to the extent that the ID Improvement Costs are not included in the Developer Public Improvement Costs, *plus* any unreimbursed amounts owing to Developer by the City pursuant to "pre-funding" or similar agreements with the City (collectively, the “**ID Costs**”). The Base Reimbursement Amount, as increased by the ID Costs, shall thereupon constitute the new Reimbursement Amount, and shall be referred to as the “**Revised Reimbursement Amount**.”
3. “**Developer Public Improvement Costs**” means (i) all costs, expenses, fees and charges actually incurred and paid by or on behalf of Developer to contractors, architects, engineers, surveyors, governmental agencies and other Third Parties for materials, labor, design, engineering, surveying, site excavation and preparation, governmental permits, payment and performance bonds, property acquisition costs and all other costs and expenses reasonably necessary for the construction, installation, or provision of Public Improvements, plus (ii) the fair market value at the time of dedication of all Dedicated Property in connection with such Public Improvements.
4. Under any and all scenarios provided for in this Exhibit H and in the Agreement, the Base Reimbursement Amount (including the RSC Development Fees Differential, if any), and all portions of the Revised reimbursement Amount which equate to the Base Reimbursement Amount (including the RSC Development Fees Differential, if any), shall be reimbursed and paid to Developer without interest of any kind.
5. In the event that the Developer constructs the ID Improvements, then:

*Revised 9/13/06*

- (a) one-half of the Revised Reimbursement Amount in excess of the Base Reimbursement Amount (including the RSC Development Fees Differential, if any) shall bear interest at the City's Bond Rate commencing on the date which is one (1) year prior to Completion of Construction and extending to the date of Completion of Construction;
- (b) Thereafter, the entire Revised Reimbursement Amount in excess of the Base Reimbursement Amount (including the RSC Development Fees Differential, if any, and as reduced by any Sales Tax Rebates actually paid to Developer in accordance with Article 8 of this Agreement) shall bear interest at the City's Bond Rate from the date of Completion of Construction for a period of twenty-four (24) months.
- (c) Commencing twenty-four (24) months after the Completion of Construction, any unpaid balance of the Revised Reimbursement Amount in excess of the Base Reimbursement Amount (including the RSC Development Fees Differential, if any), plus any accrued but unpaid interest on said unpaid balance, shall bear interest at the rate of nine percent (9%) per annum until paid.
- (d) Any accrued but unpaid interest shall be added, on an annual basis, to the Revised Reimbursement Amount in excess of the Base Reimbursement Amount (including the RSC Development Fees Differential, if any) and shall thereafter bear interest as provided in this Exhibit H. The Parties acknowledge that the actual and intended effect of this provision is to provide for the payment of compound interest in certain circumstances.
- (e) Payments to Developer shall be applied first to the City ID Payment Obligation, then to the Base Reimbursement Amount (including the RSC Development Fees Differential, if any), and thereafter to accrued interest and then to principal with respect to the City's remaining obligations under this Agreement.
- (f) The interest rate described in this Exhibit H shall be deemed "**Applicable Interest.**" The City can prepay all or any portion of the Reimbursement Amount (including the RSC Development Fees Differential, if any), together with Applicable Interest, if any, at any time without penalty or requirement of notice.
- (g) The Reimbursement Period shall be extended for such period of time as is required for Developer to be reimbursed in full for the Revised Reimbursement Amount (together with Applicable Interest), but in no event shall such extension be later than December 31, 2060.

*Revised 9/13/06*

**EXHIBIT I**  
**CITY OF GOODYEAR INSURANCE REQUIREMENTS**

A. Property. The Developer if acting as general contractor, or the general contractor if not the Developer, shall provide builder's risk insurance, with the City as an additional insured, on an all-risk, replacement cost basis for the Public Improvements.

B. Liability. The Developer if acting as general contractor, or the general contractor if not the Developer, shall provide insurance covering the Developer and (as an additional insured) the City against liability imposed by law or assumed in any written contract, and/or arising from personal injury, bodily injury or property damage, with a limit of liability of \$5,000,000.00 per occurrence with a \$5,000,000.00 products/completed operations limit and a \$10,000,000.00 general aggregate limit. Such policy must be primary and written to provide blanket contractual liability, broad form property damage, premises liability and products and completed operations.

C. Contractor. During the period of any construction involving the Public Improvements, each of the general or other contractors with which the Developer contracts for any such construction shall be required to carry liability insurance of the type and providing the minimum limits set forth below:

i) Workman's Compensation insurance and Employer's Liability with limits of \$1,000,000.00 per accident, \$1,000,000.00 per disease and \$1,000,000.00 policy limit disease.

ii) Commercial general liability insurance on a \$4,000,000.00 per occurrence basis providing coverage for:

Products and Completed Operations  
Blanket Contractual Liability  
Personal Injury Liability  
Broad Form Property Damage  
X.C.U.

iii) Business automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than \$1,000,000.00 combined single limit for personal injury, including bodily injury or death, and property damage.

D. Architect. In connection with any construction involving the Public Improvements, the Developer's architect shall be required to provide architect's or engineer's professional liability insurance with a limit of \$1,000,000.00 per claim. This policy, or other policies, shall cover claims for a period of not less than three (3) years after the completion of construction involving the Public Improvements.

E. Engineer. In connection with any construction involving the Public Improvements, the Developer's soils engineer or environmental contractor shall be required to provide engineer's professional liability insurance with a limit of \$1,000,000.00 per claim. This policy, or other policies, shall cover claims for a period of not less than three (3) years after the completion of the construction involving the Public Improvements.

F. CPI Adjustments. The minimum coverage limits set forth above shall be adjusted as of

*Revised 9/13/06*

the commencement of any construction involving the Public Improvements, and every five (5) years thereafter during the period of any construction involving the Public Improvements by rounding each limit up to the million dollar amount which is nearest the percentage of change in the Consumer Price Index (the "CPI") determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the insurance limits, the CPI for the month of October in the year preceding the adjustment year, as shown in the column for "All Items" in the table entitled "All Urban Consumers" under the "United States City Averages" as published by the Bureau of Labor Statistics of the United States Department of Labor, shall be compared with the corresponding index number for the month of October in the year during which the Effective Date of the Development Agreement of which this Exhibit is a part occurs. However, in no event shall the adjusted, required minimum coverage limits exceed an amount which is reasonable and customary at the time of Commencement of Construction of the Public Improvements, or at the time of any subsequent adjustment, nor shall the minimum coverage limits exceed the then-current requirements of the City generally applicable to other large construction or development projects within the City.

G. Miscellaneous. All policies of insurance shall comply with the requirements of Section 9.4 of the Development Agreement of which this Exhibit is a part and, in addition, shall provide that no such policy may be amended, cancelled, terminated or permitted to expire without at least 30 days advance written notice to the City. References herein to the Agreement shall mean the Development Agreement of which this Exhibit is a part. Capitalized terms not defined in this Exhibit shall have the meanings ascribed to them in the Agreement.

*Record 9/13/06*

EXHIBIT J

When recorded, return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

=====

**NON-DISTURBANCE AND RECOGNITION AGREEMENT**

=====

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this "NDRA") is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) WESTCOR/GOODYEAR, L.L.C., an Arizona limited liability company ("**Developer**"); (b) \_\_\_\_\_ ("**Lender**"); and (c) City of Goodyear, Arizona, an Arizona municipal corporation ("**City**").

1. Recitals.

1.1 Developer is the present developer under a Development Agreement entered into with the City, dated September \_\_\_, 2005, and recorded in the Official Records of Maricopa County, Arizona, at \_\_\_\_\_ (the "**Agreement**"), which Agreement sets forth certain rights and responsibilities of Developer with respect to the development of that certain real property referred to in the Agreement (and herein) as the "**Property**," and more particularly described in Exhibit "A" attached hereto.

1.2 Developer's obligations arising under the Agreement include but are not limited to the acquisition and/or development of the Property, and/or the construction of improvements upon the Property, and the construction of certain "**Public Improvements**" as defined in the Agreement in and around the Property (collectively, the "**Obligations**").

1.3 Lender has agreed to lend money to Developer, and Developer will execute certain loan documents (the "**Loan Documents**") including but not limited to a *Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement* for the use and benefit of Lender (the "**Deed of Trust**") and a *Collateral Assignment of Rights under Development Agreement* (the "**Assignment**") to secure the loan from Lender to Developer (the "**Loan**"). The Deed of Trust and the Assignment will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the Property.

1.4 Lender has certain rights under the Loan Documents in the event of a Non-Performance by Developer of its obligations either under the Loan Documents or the Agreement, including but not limited to the right of Lender to be substituted for Developer under the Agreement and to assume Developer's position with respect to the Agreement; and the Agreement states in Section 14.21 thereof that a Lender may be allowed to assume Developer's rights and obligations (collectively, "**Developer's Position**") with respect to the Agreement.

1.5 Accordingly the parties have executed this NDRA to be effective as of the date set forth above.

*Recorded 9/13/06*

2. Subordination. Subject only to the specific provisions of (i) Section 3 hereof regarding the right of Lender to assume Developer's Position with respect to the Agreement and (ii) Section 4 hereof regarding non-disturbance and recognition, all rights of Developer and Lender under the Deed of Trust are and shall continue to be junior, inferior, subject and subordinate to the Agreement, as it may hereafter be modified, amended, restated or replaced.

3. Notice of Developer Non-Performance.

3.1 If Lender is a "Designated Lender" as defined in Section 14.21 of the Agreement, City shall give Lender written notice of any Event of Non-Performance by Developer (the "Notice") under the Agreement and 30 days following the expiration of Developer's cure period under the Agreement to cure such Event of Non-Performance (as the Agreement exists as of the date of this NDRA), prior to terminating the Agreement or invoking such other remedies as may be available to City under the Agreement.

3.2 Lender shall have the option, following Lender's receipt of the Notice, and within the time period set forth herein for curing an Event of Non-Performance of Developer, in its sole election either: (a) to cure the Event of Non-Performance of Developer, in which event Developer shall retain its position with respect to the Agreement; or (b) in addition to any other remedies available to Lender under law, equity or contract (including but not limited to the Deed of Trust and the Assignment) to assume Developer's Position with respect to the Agreement (to "Assume" or an "Assumption"). Lender shall give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender.

3.3 If Lender agrees to Assume Developer's Position with respect to the Agreement, Lender and City shall execute an amendment to the Agreement (an "Amendment") and shall cause the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment shall state that Lender has fully assumed Developer's Position with respect to the Agreement, and that Lender is thereafter substituted for Developer with respect to all Obligations, payment and performance rights and responsibilities arising under or in connection with the Agreement. The execution or approval by Developer of the Amendment shall not be necessary or required, and upon execution and recordation of the Amendment, City shall (i) look to Lender and/or Developer for performance of the Obligations under the Agreement and (ii) make to Lender all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.4 In connection with (i) any foreclosure by Lender (whether by notice or judicially) of the Deed of Trust, or any other acquisition by Lender of the Property in lieu of such foreclosure (collectively, a "Foreclosure") and (ii) the transfer of the Property to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or purchasers at a trustee's sale conducted pursuant to A.R.S. §33-810) concurrently with such Foreclosure or thereafter (a "Purchaser"), the Developer's Position under the Agreement shall accompany and be deemed covenants running with the Property, and the Purchaser shall be deemed to have assumed Developer's Position with respect to the Agreement. Upon the acquisition of the Property by a Purchaser, City shall (i) look to Purchaser and/or Developer for performance of the Obligations under the Agreement and (ii) make to Purchaser all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

*Revised 9/13/06*

3.5 Until an Assumption as defined herein, nothing in this NDRA shall constitute an assumption by Lender of any Obligation. Developer shall continue to be liable for all of the Obligations thereunder and shall perform all such Obligations, shall comply with all terms and conditions of the Agreement applicable to Developer, and shall take such steps as may be necessary or appropriate to secure performance by the City under the Agreement.

3.6 Whether before or after an Assumption as defined herein, nothing in this NDRA shall constitute a release of Developer of any Obligation.

4. Nondisturbance and Recognition.

4.1 In the event that City institutes any proceedings to enforce the Agreement, City agrees that, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) under the Agreement:

4.1.1 City shall not interfere with or disturb Lender's rights under the Agreement and this NDRA; and

4.1.2 Lender shall not be made a party to any proceeding commenced pursuant to the Agreement, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Deed of Trust or the Assignment, provided that nothing herein shall prevent City from giving any required notice to Lender.

4.2 Upon and following an Assumption, Lender shall recognize the City's rights under the Agreement for the balance of the Term thereof. The recognition described in this Section 4.2 shall automatically become effective upon an Assumption by Lender.

5. Estoppel

5.1 City and Developer hereby confirm to Lender that as of the date of this NDRA and to the best of their respective actual knowledge:

- a) There is no Event of Non-Performance applicable to either City or Developer under the Agreement;
- b) The Agreement has not been assigned, modified or amended in any way except as set forth in Recital 1.1;
- c) The Agreement is in full force and effect; and
- d) [IF APPROPRIATE] "Completion of Construction", as defined in the Agreement occurred on \_\_\_\_\_.

6. Miscellaneous.

6.1 This NDRA shall be binding upon and inure to the benefit of City, Developer and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale.

*Recorded 9/13/06*



6.2 Except as otherwise required by law, any notice required or permitted under this NDRA shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the parties at their respective addresses set forth below, or at such other address as such party may designate in writing pursuant to the terms of this Section, or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City: City of Goodyear  
Attn: City Clerk  
190 North Litchfield Road  
Goodyear, Arizona 85338

With required copies to: City of Goodyear  
Attn: City Manager  
190 North Litchfield Road  
Goodyear, Arizona 85338  
Telephone: (623) 932-3910  
Facsimile: (623) 932-1177

City of Goodyear  
Attn: City Attorney  
190 North Litchfield Road  
Goodyear, AZ 85338  
Telephone: (623) 932-3014  
Facsimile: (623) 932-0184

If to Developer: Westcor/Goodyear, L.L.C.  
c/o Westcor Partners  
11411 North Tatum Boulevard  
Phoenix, Arizona 85028  
Attn: David Scholl, Senior Vice President Development

With required copies to: The Macerich Company  
Attn: James H. Kinney, Senior Vice President  
3301 East Main Street, Suite 1  
Ventura, California 93003  
Telephone: (805) 642-6843  
Facsimile: (805) 642-8029

Westcor/Goodyear, L.L.C.  
c/o WDP Partners  
Attn: Robert C. Mayhall  
11411 North Tatum Boulevard  
Phoenix, Arizona 85028  
Telephone: (602) 953-6244  
Facsimile: (602) 953-6298

*Recorded 9/13/06*

Mariscal, Weeks, McIntyre & Friedlander, P.A.  
Attn: Gary L. Birnbaum, Esq.  
2901 North Central, Suite 200  
Phoenix, Arizona 85012  
Telephone: (602) 258-5009  
Facsimile: (602) 258-5100

If to Lender:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With Copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any party may designate a different person or entity or change the place to which any notice shall be given as herein provided, by giving notice to the other parties as provided in this Section 6.2.

6.3 This NDRA is delivered in and relates to property located in Maricopa County, Arizona, and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations, subject to Section 14.1 of the Agreement.

6.4 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the Agreement, and supersedes all prior oral or written agreements with respect to such subordination (only to the extent, however, as would affect the priority between the Agreement and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

6.5 This NDRA may be executed and acknowledged in one or more counterparts, each of which may be executed by one or more of the signatory parties. Signature and notary pages may be detached from the counterparts and attached to a single copy of this NDRA physically to form one legally effective document.

6.6 This NDRA is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

6.7 Each party to this NDRA represents and warrants to the others that all necessary company, corporate and/or governmental approvals, consents and authorizations have been

*Recorded 9/13/06*

obtained prior to the execution of this NRDA by such party, and that the person executing this NRDA on behalf of such party is duly authorized to do so to bind such party.

6.8 Capitalized terms not defined herein shall have the definitions set forth in the Agreement.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

*Recorded 9/13/06*

IN WITNESS WHEREOF, the parties hereto have each caused this NDRA to be executed on or as of the day and year first above written.

**“CITY”**

CITY OF GOODYEAR, an Arizona municipal corporation

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

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

**“DEVELOPER”**

WESTCOR/GOODYEAR, L.L.C., an Arizona limited liability company

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

Name: \_\_\_\_\_

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

**“LENDER”**

\_\_\_\_\_,  
a(n) Arizona \_\_\_\_\_

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

Name: \_\_\_\_\_

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

*Recorded 9/13/06*

**Acknowledgment by City**

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing was acknowledged before me this day of \_\_\_\_\_, 2006, by \_\_\_\_\_, the City \_\_\_\_\_ of the City of Goodyear, on behalf of the City.

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

My Commission Expires:  
\_\_\_\_\_

**Acknowledgment by Developer**

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

The foregoing was acknowledged before me this day of \_\_\_\_\_, 2006, by \_\_\_\_\_, the Manager of WESTCOR/GOODYEAR, L.L.C., an Arizona limited liability company, on behalf of the limited liability company.

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

My Commission Expires:  
\_\_\_\_\_

**Acknowledgment by Lender**

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

The foregoing was acknowledged before me this day of \_\_\_\_\_, 2006, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

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

My Commission Expires:  
\_\_\_\_\_

*Recorded 9/13/06*

**CITY OF GOODYEAR  
CITY COUNCIL ACTION FORM**

**SUBJECT:** Resolution 06-1074 authorizing the City to enter into a Development Agreement with Westcor/Goodyear, L.L.C. for reimbursement of certain public infrastructure

**STAFF PRESENTER:** Brian Dalke

**COMPANY CONTACT:** David Scholl, Westcor

**RECOMMENDATION:**

Council adopt Resolution No. 06-1074 by a two-thirds vote authorizing the City Manager to execute a Development Agreement with Westcor/Goodyear, L.L.C. for the reimbursement of certain public infrastructure with regards to the development of a major retail and commercial project generally located between PebbleCreek Parkway and Bullard Avenue, and between Virginia Avenue and Interstate 10, in the City of Goodyear.

**COMMUNITY BENEFIT:**

Westcor/Goodyear, L.L.C. (Westcor) plans to construct a major retail and commercial project of more than two million square feet. The proposed project will include a regional center (mall), a power center, certain mixed-use commercial developments, restaurants, hotels and motels, automobile sales facilities, amusement areas and theatres.

The community benefits resulting from this Development Agreement (DA) include:

- Goodyear will secure a regional mall, which has been a goal of the community for several years;
- It helps solidify Goodyear's strategy to become the premier regional destination for retail and commercial activity in the southwest valley;
- The construction of a fully-improved Bullard Wash public park between Virginia Avenue and McDowell Road, with planned improvements to include lakes, ramadas, shade structures, grass, equestrian trails and boardwalk;
- The mall will include a community room for use by the public;
- Westcor will advance the construction of public infrastructure that will benefit other properties in the vicinity. They will also design, construct, and install needed traffic signalization and other road improvements which will facilitate additional commercial development in the general area; and,
- Sales tax revenues generated from the project will provide significant revenues to the City that can be used for providing additional municipal services, projects and programs for the entire community.

**DISCUSSION:**

Westcor is acquiring the approximately 105 acre regional mall site from Globe Corporation, and is partnering with Globe Corporation on the remaining property 236 acres for the purpose of developing commercial and retail projects. The projects will be developed in various phases and uses as depicted on Exhibits A and B, respectively. The City has been working with Westcor and Globe for the past several years through the myriad of issues associated with a development of this complexity.

On February 12, 2001, the City Council approved a development agreement between Westcor and the City, which provided for compensation to Globe or Westcor for conveying 26.85 acres of arterial right-of-way to be deferred and paid from a future reimbursement agreement. This new proposed Development Agreement (DA) supersedes the original 2001 agreement. Since 2001, the right-of-way requirement has grown an additional 47.5 acres to a total of 75 acres, or about 23% of the 341 acres of property. This includes approximately 30 acres needed for the Bullard Wash regional park.

Now that the projects are nearing the active development stages, the City, Westcor and Globe seek to establish a DA that outlines the obligations of the parties. The purpose of this DA with Westcor is to establish a phasing plan for development and identify public infrastructure that has community benefit, while providing a method for reimbursement for the advancement of these improvements.

The DA between the City and Westcor focuses on two fundamental premises:

1. Development of a regional mall. While Westcor plans to build more than two million square feet of retail and commercial improvements, the differentiation for this project is the development of the regional mall.
2. Construction of public infrastructure. The public infrastructure/bundled benefits to support the mall and surrounding commercial development is being advanced by Westcor, totaling an estimated \$78 million as listed in Exhibit C.

Westcor plans to be part of the Improvement District (ID) that will encompass the properties of Globe/Westcor, Evergreen-Devco, Tang Realty and the Maricopa County Flood Control District as depicted in Exhibit E (note that the attached exhibits follow the DA and are not consecutive in the staff report attachments). The ID is considered the largest district established in the history of Arizona at nearly \$80 million and will be considered by Mayor/Council in October 2006. The proposed ID bond term is for 25 years.

In addition to the infrastructure listed on Exhibit C, the following will be provided by Westcor:

- A Police Substation of approximately 550 S.F. will be provided to the City at a nominal lease rate that will cover Westcor's estimated common area maintenance costs;
- One community room of not less than 1,000 square feet at its expense with free-of-charge use by the City;
- A single weatherproofed, informational kiosk, retail merchandise unit or similar structure will be provided to the City at a nominal lease rate that covers Westcor's estimated common area maintenance costs. The kiosk will be available to post city-related announcements, advertisements, and public information;
- A single public transit stop designed and constructed by Westcor, consisting of a pullout, small shelter and benches;
- Enhanced Police Services. Developer will provide the City funding for police staffing/equipment in the amount of \$600,000 over a period of three years, not subject to reimbursement;
- Equipment that will maintain radio coverage for emergency services within the mall area;

- Funding for additional planning and inspection staff as needed for the Mall, to include space for City/contract staff within an on-site job trailer;
- Additional prohibited land uses above and beyond City zoning restrictions, such as restrictions on adult businesses, industrial uses, unscreened outdoor storage, warehouses, tattoo shops, massage parlors and body piercing studios.

Arizona Revised Statute governs the application and requirements for economic development-related agreements. The City and Westcor understand and acknowledge that the DA is per the terms of A.R.S. § 9-500.05 and that the terms of this Agreement shall constitute covenants running with the Property.

The parties also understand and acknowledge that this Agreement is authorized by the terms of A.R.S. §9-500.11. The actions taken by the City pursuant to this Agreement are for economic development activities, which will assist in the creation and retention of jobs, and will in numerous other ways, improve and enhance the economic welfare of the residents of the City.

The City adopted a notice of intent on August 28, 2006 to enter into this Agreement as per A.R.S. § 9-500.11.K and made the findings required by A.R.S. § 9-500.11.D, such findings having been verified by an independent third party (Applied Economics) before the City entered into this Agreement. Attached is the verification letter from Applied Economics.

The DA provides for the general "quality" guidelines of the project, which are listed (A) below. Once again, the DA focuses on infrastructure, which will be constructed and funded over the next two years. The design elements and site plan of the project are very important to the City. Over the next several months, Westcor will be required to submit and receive approvals as outlined in (B) below. The Mayor and Council will consider approvals for design guidelines, PAD and site plan for the mall-portion of the development.

(A) Quality of Private Improvements.

The Regional Shopping Center (mall) is to be comparable to the quality of Chandler Fashion Center, Kierland Commons, Scottsdale Fashion Center or Arrowhead Town Center, either enclosed or open in design and format (as Developer may elect in its sole and absolute discretion), containing a mix of first quality national or regional major tenants such as Dillard's, Macy's, Bloomingdale's, Sears, JC Penney or Nordstrom, and national, regional or local specialty tenants selected by Developer in its discretion, both fashion-related and otherwise, such as Banana Republic, Ann Taylor, J. Jill, Chico's, Talbot's, Coldwater Creek, At Ease, Kenneth Cole, Bath and Body Works, Williams-Sonoma, Pottery Barn, Abercrombie, Aeropostale, Under Armor, Dolce Salon, The Children's Place, Gap Stores, Crate & Barrel, Buckle, Pac Sun, Harkins Theaters or Sega Gameworks; and restaurants, such as PF Chang's China Bistro, Red Robin, Someburros, Pei Wei and Bloom in addition to traditional "food court" tenants (with major tenants and specialty tenants being listed herein as examples only).

(B) Approval Process.

The process for the submittal, review and approval of the Conceptual Land Use Plan, the Site Plans, and the Project's design elements, including without limitation building materials, colors, architectural plans, landscaping, enhanced paving plans, irrigation,



lighting, pedestrian linkages, signage and the character of the Project, shall utilize the process(es) specified in the conditions of the PAD or other zoning approval for the Property, or if not set forth in the PAD or other zoning approval, then as set forth in the Design Guidelines.

### **FISCAL IMPACT:**

The development of the 341 acres by Westcor will generate an estimated \$384 million in retail sales tax revenues from 2008 through 2035. The revenue growth is tied to the project build-out, but will generally provide sales tax revenues from \$12 to \$20 million per year beginning in 2013. In addition, the City will receive an estimated \$9 million in construction sales tax revenue.

#### **Reimbursement Provisions of Development Agreement**

The Development Agreement provides for reimbursements totaling an estimated \$78 million for up to a 25-year period. Of the \$78 million, \$68 million is the portion of bonds for the improvement district (ID) and \$10 million is for the “bundled” improvements that include nearly 75 acres of ROW that will be dedicated to the City. The \$68 million ID assessment to Westcor/Globe is being finalized by the ID engineers (Wood-Patel) and may change, but is considered a near-final amount.

The Development Agreement provides for additional reimbursements as follows:

- Interest estimated at 4.5% on the Improvement District assessment (\$68 million) to Westcor until the principal amount of the assessment is retired. Once the principal is retired, Westcor will be responsible for all remaining interest payments. The City will not be subject to pre-payment penalties or interest. (No interest is applied to the bundled improvements, e.g. 75 acres of ROW).
- Westcor will be reimbursed the differential of development fees for the Regional Shopping Center (mall) portion of the development only. The balance of Westcor’s properties will be subject to prevailing development fees. Currently, the City’s non-utility development fees are a combined \$3.30 per square foot. For the mall area, Westcor will be required to pay the entire prevailing development fee, but will receive via sales tax revenue reimbursements, the differential between the current fee (\$3.30) and future fees.

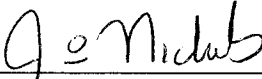
#### **Source of Funds to Provide Reimbursements**

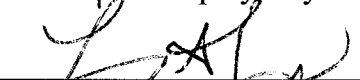
The DA provides for the reimbursement of infrastructure to Westcor as follows:


- The City will reimburse 50% of City sales tax revenues generated and received from Westcor/Globe properties that will be applied toward the \$78 million, applicable interest and differential in development fees.
- Westcor will also receive reimbursements of 50% of the sales tax generated by the Grace, Evergreen-Devco and Tang properties, until such time as the first \$25 million of estimated \$68 million of the ID principal is retired. The reason these properties, as depicted in Exhibit F, are included in the expanded sales tax area is that approximately \$25 million in regional infrastructure is being advanced by Westcor. These improvements are *italicized* on Exhibit C.

**REVIEWED BY:**

  
\_\_\_\_\_  
Brian Dalke – Deputy City Manager

  
\_\_\_\_\_  
Jim Nichols – Deputy City Manager

  
\_\_\_\_\_  
Larry Lange – Finance Director

  
\_\_\_\_\_  
Roric Massey – City Attorney

  
\_\_\_\_\_  
Stephen Cleveland – City Manager

**PREPARED BY:**

  
\_\_\_\_\_  
Brian Dalke – Preparer

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

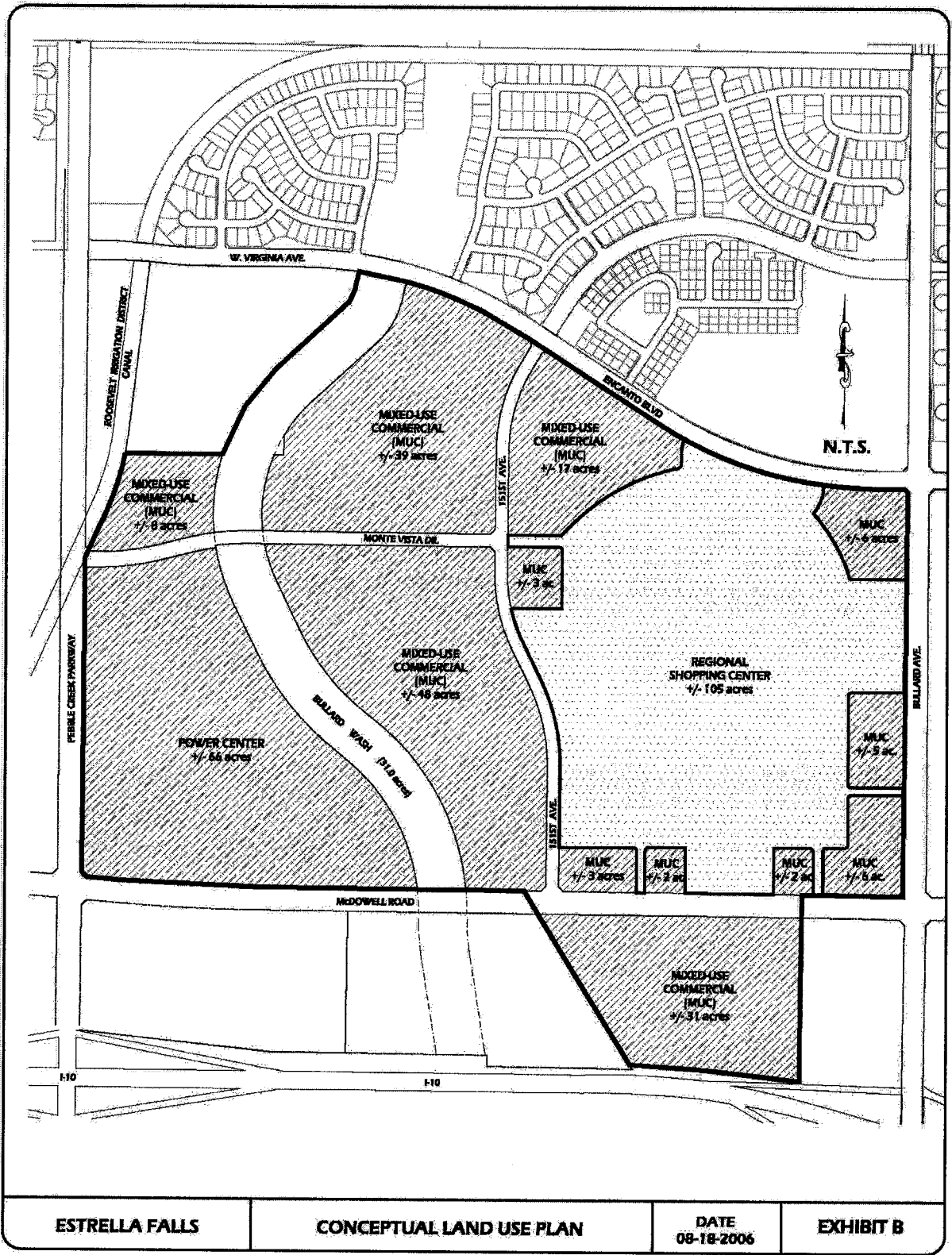
**EXHIBIT A**

**Projected Build-Out  
For  
Westcor Project**

<b>Development</b>	<b>Projected Completion</b>	<b>Square Feet</b>	<b>Construction Cost</b>	<b>Construction Sales Tax Revenues</b>
Power Center, Phase 1	April 2008	230,000		
Power Center, Phase 2	April 2010	244,000		
Power Center, Phase 3	April 2011 - 2012	300,000		
<b>Sub Total</b>		<b>774,000</b>	<b>\$ 143 MM</b>	<b>\$ 3.3 MM</b>
Mall, Phase 1	April - Oct 2009	850,000		
Mall, Future Phases (1)	April 2010-April 2018	500,000		
<b>Sub Total</b>		<b>1,350,000</b>	<b>\$ 250 MM</b>	<b>\$ 5.7 MM</b>
<b>Total</b>		<b>2,124,000</b>	<b>\$ 393 MM</b>	<b>\$ 9.0 MM</b>

(1) 2nd Dept Store, Peripheral Retail/Restaurants

**EXHIBIT B  
CONCEPTUAL LAND USE PLAN**

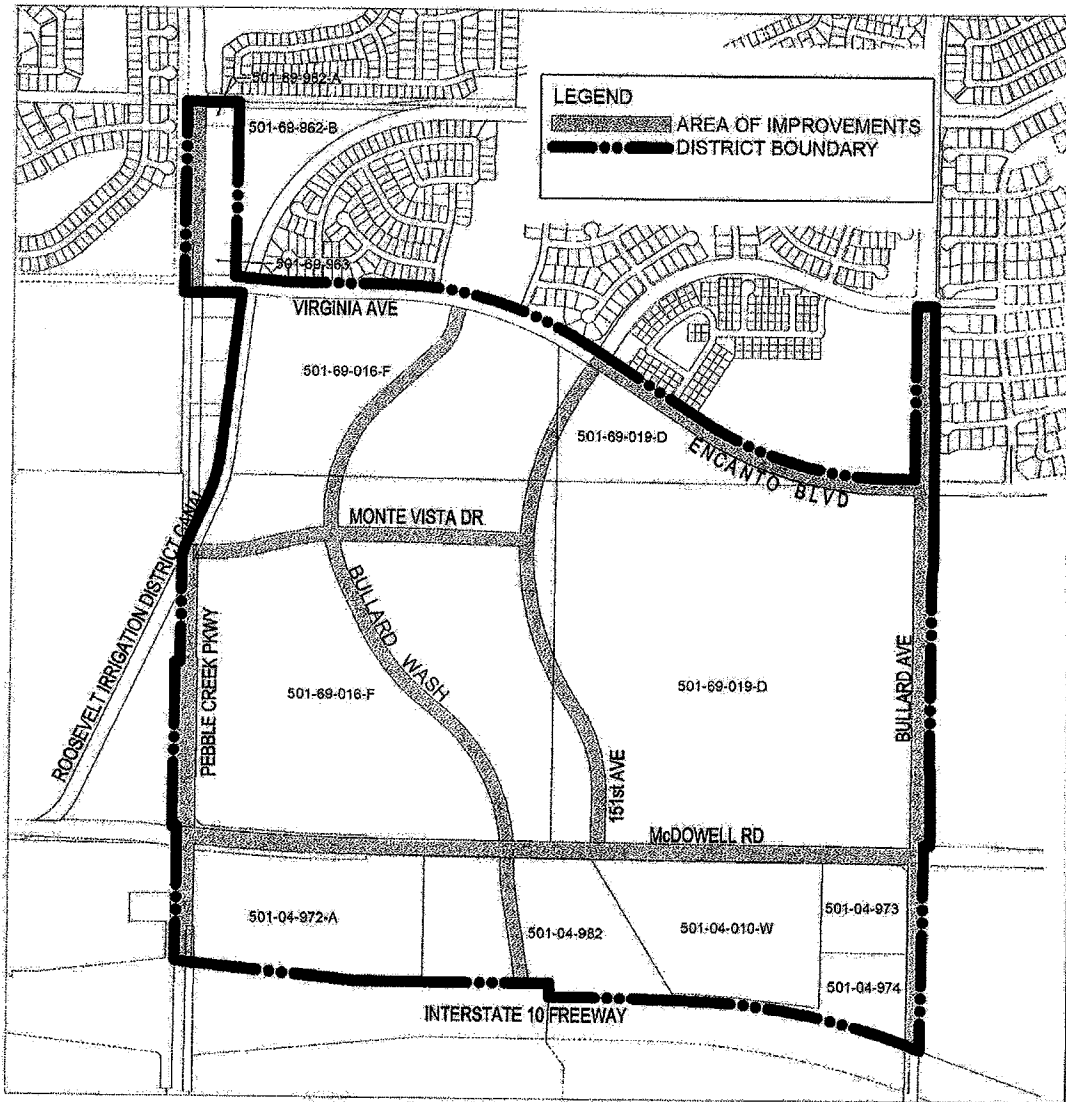


## EXHIBIT C

The infrastructure/bundled improvements estimated at \$78 million that are being advanced by Westcor are listed below. Those items that are italicized indicate regional improvements:

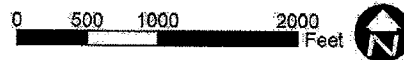
- *The regional lane widths on McDowell Road (2) from PebbleCreek Parkway to Bullard Avenue.*
- A pro-rata share of the costs for improving McDowell Road from PebbleCreek Parkway to Bullard Avenue.
- *The Bullard Avenue regional lanes (4) south of McDowell Road to the Interstate 10 Freeway intersection improvements.*
- *The regional lane widths on Bullard Avenue (2) from Cambridge Avenue to McDowell Road.*
- The improvements at the northwest quadrant of the intersection of McDowell Road and Bullard Avenue.
- *The bridge at Bullard Wash on McDowell Road.*
- *The Bullard Wash improvements from Virginia Avenue to the Interstate 10 Freeway, with planned improvements to include lakes, ramadas, shade structures, grass, equestrian trails and boardwalk.*
- Monte Vista Drive from PebbleCreek Parkway to 151<sup>st</sup> Avenue.
- The bridge over Bullard Wash on Monte Vista Drive.
- 151<sup>st</sup> Avenue from McDowell Road to Encanto Avenue.
- Encanto Avenue from 151<sup>st</sup> Avenue to Bullard Avenue.
- The northwest quadrant of the intersection of McDowell Road and Bullard Avenue.
- The west half of Bullard Avenue from McDowell Road to Cambridge Avenue.
- The median improvements on Bullard Avenue north of Encanto Avenue.
- The cost of improvements along the east half of PebbleCreek Parkway north of Virginia Avenue up to the power company property.
- The improvements constructed in Contract 1A for the east ½ of PebbleCreek Parkway (including ½ of RID bridge and ½ of the Monte Vista / PebbleCreek intersection) and the northeast quadrant of the intersection of McDowell Road and PebbleCreek Parkway.
- *The regional lane widths on PebbleCreek Parkway (2) from McDowell Road to Thomas Road alignment.*
- The improvements constructed in Contract 1B for the north ½ of McDowell Road from PebbleCreek Parkway to the easterly access drive of the Westcor Power Center and the diversion road.
- Seventy-five acres dedicated by Westcor to the City, of which 30 acres will be developed into a regional park at Bullard Wash.

**EXHIBIT E  
IMPROVEMENT DISTRICT PROPERTY**

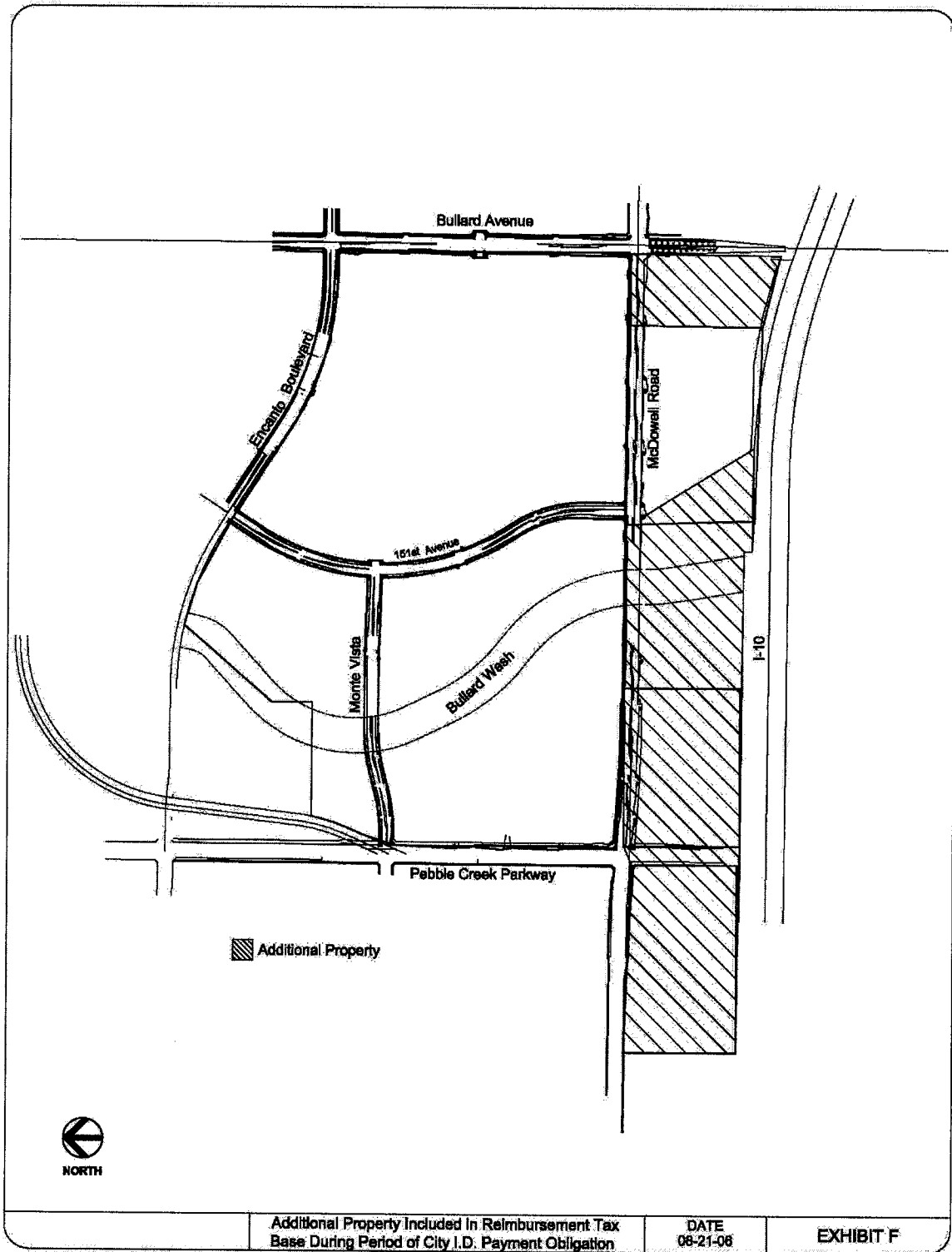


- PARCELS IN DISTRICT**  
 501-04-974  
 501-04-973  
 501-04-010-W  
 501-04-982  
 501-04-972-A  
 501-69-019-D  
 501-69-016-F  
 501-9-018-J  
 501-69-966  
 501-69-963  
 501-69-962-B  
 501-69-962-A

**CITY OF GOODYEAR  
McDOWELL ROAD  
COMMERCIAL CORRIDOR  
IMPROVEMENT DISTRICT**



**EXHIBIT F  
 ADDITIONAL PROPERTY INCLUDED IN REIMBURSEMENT TAX BASE  
 DURING PERIOD OF CITY ID PAYMENT OBLIGATION**





June 20, 2006

Mr. Brian Dalke  
Deputy City Manager  
City of Goodyear  
190 North Litchfield Road  
Goodyear, AZ 85338

Dear Mr. Dalke,

Applied Economics has been contracted by the City of Goodyear to perform an independent third party review of the development agreement between the City of Goodyear and Westcor/Goodyear, L.L.C. for the proposed 330 acre commercial development along McDowell Road between Pebble Creek Parkway and Bullard Avenue. This development agreement includes provisions for a sales tax incentive equal to 50 percent of non-designated sales taxes (as defined in the development agreement) generated by retail sales within the property. Per A.R.S. 9-500.11, it is required that any tax incentives offered to retail businesses do not exceed the total amount of revenue to be generated to the City by the project.

The proposed project would include up to 2.12 million square feet of commercial space. Westcor expects most of the construction to occur between 2008 and 2012. Three peripheral parcels would develop later between 2013 and 2018. We have prepared a detailed analysis of the sales tax that would be generated by the project over a 30 year time period relative to the amount of the proposed incentive.

Based on information about the development provided by Westcor/Goodyear L.L.C., we believe that the project would generate a significantly greater flow of sales tax revenues than the total amount of the incentive and that the flow of tax revenues would be sufficient to cover the reimbursement amount in the allotted time period.

. In order to arrive at this conclusion we evaluated the following assumptions:

- Retail sales per square foot;
- Annual sales growth;
- Development phasing;
- Occupancy rates;
- Local sales tax rates, differentiated by type of activity
- Interest rates on the reimbursable expenditures by the developer





Mr. Brian Dalke  
Page 2 of 2

Once completed, the project could generate an estimated \$6 million to \$7 million in annual sales tax revenues to the city during the incentive period and twice that much once the reimbursement amount had been paid in full.

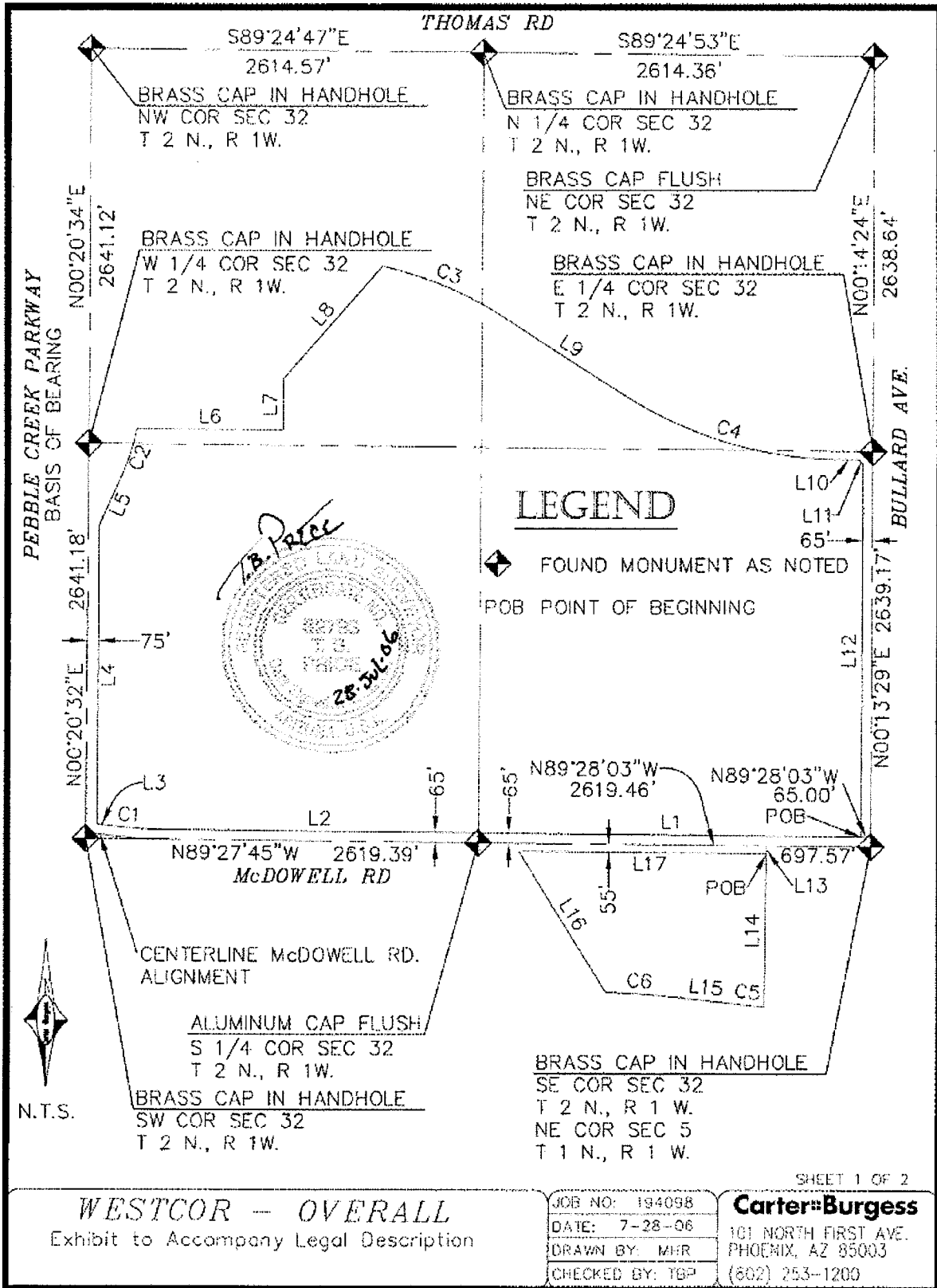
The second component of A.R.S. 9-500.11 requires that this development would not have occurred in the same time, place or manner in the absence of a tax incentive. Based on our knowledge of current and projected development in the expected trade area, and interviews with Westcor/Goodyear L.L.C., we believe that this type of development would not have occurred on the same timeline without the incentive. The cost of public infrastructure improvements, primarily roadway and utility improvements, required for access and service to the regional mall, power center and surrounding mixed use commercial and hotel development would not have been feasible without reimbursements.

Based on our review, we believe that the agreement meets the requirements of A.R.S. 9-500.11. Should you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads 'Sarah E. Murley'.

Sarah E. Murley  
Partner



**WESTCOR - OVERALL**  
 Exhibit to Accompany Legal Description

JOB NO: 194098  
 DATE: 7-28-06  
 DRAWN BY: MFR  
 CHECKED BY: TBP

**Carter-Burgess**  
 101 NORTH FIRST AVE.  
 PHOENIX, AZ 85003  
 (602) 253-1200

SHEET 1 OF 2

LINE TABLE		
LINE	LENGTH	BEARING
L1	2554.42	N89°28'03"W
L2	2114.21	N89°27'45"W
L3	31.63	N81°15'16"W
L4	1995.60	N00°20'32"E
L5	358.33	N23°57'32"E
L6	978.50	S89°39'26"E
L7	345.66	N00°20'34"E
L8	999.02	N40°54'50"E
L9	959.36	S57°04'33"E
L10	140.47	S89°26'34"E
L11	42.55	S45°17'21"E
L12	2489.56	S00°13'29"W
L13	55.00	S00°45'02"W
L14	1029.62	S00°45'02"W
L15	370.00	N83°39'34"W
L16	1111.25	N31°41'34"W
L17	1646.38	S89°28'03"E

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	400.29	2799.78	8°11'30"
C2	332.59	1492.40	12°46'07"
C3	897.59	2545.00	20°12'27"
C4	1499.17	2655.00	32°21'09"
C5	212.00	11559.16	1°03'03"
C6	472.10	5829.58	4°38'24"



SHEET 2 OF 2

**WESTCOR - OVERALL**  
Exhibit to Accompany Legal Description

JOB NO: 194098  
DATE: 7-28-06  
DRAWN BY: MHR  
CHECKED BY: TBP

**Carter-Burgess**  
101 NORTH FIRST AVE.  
PHOENIX, AZ 85003  
(602) 255-1200

Overall - North

-----  
Parcel name: Overall - North

North: 24113.5 East : 35439.6  
Line Course: N 89-28-03 W Length: 2554.42  
North: 24137.2 East : 32885.3  
Line Course: N 89-27-45 W Length: 2114.21  
North: 24157.0 East : 30771.2  
Curve Length: 400.29 Radius: 2799.78  
Delta: 8-11-30 Tangent: 200.49  
Chord: 399.95 Course: N 85-22-00 W  
Course In: N 00-32-15 E Course Out: S 08-43-45 W  
RP North: 26956.7 East : 30797.5  
End North: 24189.3 East : 30372.6  
Line Course: N 81-15-16 W Length: 31.63  
North: 24194.1 East : 30341.3  
Line Course: N 00-20-32 E Length: 1995.60  
North: 26189.7 East : 30353.2  
Line Course: N 23-57-32 E Length: 358.33  
North: 26517.2 East : 30498.7  
Curve Length: 332.59 Radius: 1492.40  
Delta: 12-46-07 Tangent: 166.99  
Chord: 331.90 Course: N 17-34-28 E  
Course In: N 66-02-28 W Course Out: S 78-48-35 E  
RP North: 27123.2 East : 29134.9  
End North: 26833.6 East : 30598.9  
Line Course: S 89-39-26 E Length: 978.50  
North: 26827.7 East : 31577.4  
Line Course: N 00-20-34 E Length: 345.66  
North: 27173.4 East : 31579.5  
Line Course: N 40-54-50 E Length: 999.02  
North: 27928.3 East : 32233.8  
Curve Length: 897.59 Radius: 2545.00  
Delta: 20-12-27 Tangent: 453.50  
Chord: 892.94 Course: S 67-10-46 E  
Course In: S 12-43-00 W Course Out: N 32-55-27 E  
RP North: 25445.8 East : 31673.5  
End North: 27582.0 East : 33056.8  
Line Course: S 57-04-33 E Length: 959.36  
North: 27060.6 East : 33862.1  
Curve Length: 1499.17 Radius: 2655.00  
Delta: 32-21-09 Tangent: 770.16  
Chord: 1479.33 Course: S 73-15-10 E  
Course In: N 32-55-24 E Course Out: S 00-34-15 W  
RP North: 29289.2 East : 35305.1  
End North: 26634.3 East : 35278.7  
Line Course: S 89-26-34 E Length: 140.47  
North: 26632.9 East : 35419.2  
Line Course: S 45-17-21 E Length: 42.55  
North: 26603.0 East : 35449.4  
Line Course: S 00-13-29 W Length: 2489.56  
North: 24113.5 East : 35439.6

Perimeter: 16138.94 Area: 15,171,809 sq. ft. 348.30 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0 Course: N 20-00-32 W  
Error North: 0.00 East : -0.00

Precision 1: 16,138,950,000.00

Overall - South

Parcel name: Overall - South

North: 10934.73 East : 14808.92  
Line Course: S 00-45-02 W Length: 1029.62  
North: 9905.20 East : 14795.43  
Curve Length: 212.00 Radius: 11559.16  
Delta: 1-03-03 Tangent: 106.00  
Chord: 212.00 Course: N 83-08-03 W  
Course In: S 07-23-29 W Course Out: N 06-20-26 E  
RP North: -1557.91 East : 13308.39  
End North: 9930.55 East : 14584.96  
Line Course: N 83-39-34 W Length: 370.00  
North: 9971.41 East : 14217.22  
Curve Length: 472.10 Radius: 5829.58  
Delta: 4-38-24 Tangent: 236.17  
Chord: 471.96 Course: N 85-58-46 W  
Course In: S 06-20-26 W Course Out: N 01-42-02 E  
RP North: 4177.49 East : 13573.41  
End North: 10004.50 East : 13746.41  
Line Course: N 31-41-34 W Length: 1111.25  
North: 10950.04 East : 13162.60  
Line Course: S 89-28-03 E Length: 1646.38  
North: 10934.74 East : 14808.91

Perimeter: 4841.34 Area: 1,306,571 sq. ft. 29.99 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.01 Course: N 78-45-06 W  
Error North: 0.002 East : -0.012  
Precision 1: 484,135.00



**EXHIBIT A  
TO  
NON-DISTURBANCE AND RECOGNITION AGREEMENT  
(LEGAL DESCRIPTION OF THE PROPERTY)**

---



September 14, 2006

Mr. David Scholl  
Westcor/Goodyear, L.L.C. C/O Westcor Partners  
11411 North Tatum Blvd.  
Phoenix, AZ 85028

RE: Development Agreement with City of Goodyear and Westcor/Goodyear, L.L.C

Dear Mr. Scholl:

Enclosed please find one original of the Development Agreement with City of Goodyear and Westcor/Goodyear, L.L.C. that was approved at the September 11, 2006 Council meeting. It has been recorded with the Maricopa County Recorder's Office.

Please contact me at 623-883-7827 if you have any questions.

Sincerely,

CITY OF GOODYEAR

A handwritten signature in cursive script that reads "Dee Cockrum".

Dee Cockrum, MMC  
City Clerk

Encl.

*Proud past. Vibrant future!*

Office of The City Clerk  
190 North Litchfield Road P.O. Box 5100 Goodyear, Arizona 85338  
623-882-7830 Fax 623-882-7832 1-800-872-1749 TDD 623-932-6500  
[www.goodyearaz.gov](http://www.goodyearaz.gov)

# THE PENNARTZ LAW FIRM, P.L.C.

7<sup>TH</sup> GATE CENTER

1601 NORTH SEVENTH STREET ♦ SUITE 260 ♦ PHOENIX ARIZONA 85006  
TELEPHONE 602.712.9939 ♦ FACSIMILE 602.712.9949

---

## LETTER AGREEMENT

September 11, 2006

Gary L. Birnbaum, Esq.  
Mariscal, Weeks, McIntyre, & Friedlander, P.A.  
2901 North Central Avenue, Suite 200  
Phoenix, Arizona 85012

Re: Goodyear-Westcor Development Agreement –  
LPSCO facilities and costs

Dear Mr. Birnbaum:

This letter agreement is in reference to the Development Agreement (“Development Agreement”), proposed to be entered into between the City of Goodyear (“City”) and Westcor/Goodyear, L.L.C. (“Westcor/Goodyear”) as to the terms and conditions under which a Regional Shopping Center is proposed to be constructed in Goodyear.

The Development Agreement refers in several respects to the ID Improvements, e.g., in Recital F and Exhibit C to the Development Agreement. It also refers to the manner of construction of the ID Improvements and financing of the ID Costs and to a Reimbursement Amount. As a matter of accurate interpretation and application of the ID Improvements term in the Development Agreement, this letter agreement confirms the parties’ contemporaneous meaning and intent that the ID Improvements do **not** include any water and/or sewer improvements or facilities that will be constructed by, owned by, conveyed to, or under agreement with the Litchfield Park Service Company (“LPSCO”). Similarly, the Development Agreement’s use of the terms ID Costs and Reimbursement Amount do **not** include costs of any kind that are associated with construction of the LPSCO facilities or provision of water and/or sewer service to any portion of the Property by LPSCO.

The purpose of this letter agreement is to avoid any misunderstanding or misapplication of the terms of the Development Agreement, referred to above, and more generally in the Development Agreement, as obligating the parties to the Development Agreement to construct, finance or reimburse the LPSCO facilities or costs of the same and to confirm that the LPSCO facilities and costs associated therewith are completely beyond the scope of the Development Agreement.



**LETTER AGREEMENT**

Gary L. Birnbaum, Esq.  
Mariscal, Weeks, McIntyre, & Friedlander, P.A.  
Re: Goodyear-Westcor Development Agreement –  
LPSCO facilities and costs  
September 11, 2006  
Page 2 of 2

This letter agreement has been signed in duplicate originals by an appropriate City representative below. Please have it signed by Westcor/Goodyear's representative, sign it yourself, and return one original to my office for forwarding to the City.

Sincerely,

**THE PENNARTZ LAW FIRM, P.L.C.**




David A. Pennartz

**AGREED:**

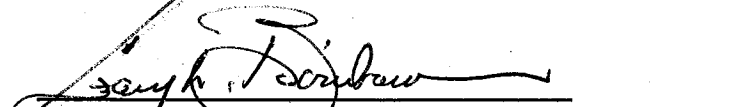
  
CITY OF GOODYEAR  
By Brian Dalke, Deputy City Manager

DATE September 11, 2006

**AGREED:**

  
WESTCOR/GOODYEAR, L.L.C.  
By David C. Scholl, Senior Vice-President Development  
Westcor

DATE 9-11-06

  
Gary L. Birnbaum, Esq.  
Mariscal, Weeks, McIntyre, & Friedlander, P.A.

DATE SEPTEMBER 11, 2006