

RESOLUTION 09-1349

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING A FIRST AMENDMENT TO THE 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, 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 City and Westcor/Goodyear LLC, and Globe Land Investors, LLC entered into a development agreement for the construction of a regional shopping mall located on the northeast corner of McDowell Road and Bullard Avenue, in Goodyear, Arizona, on September 11, 2006 pursuant to A.R.S. §§ 9-500.05 and 9-500.11; and

WHEREAS, the City and Westcor/Goodyear LLC, and Globe Land Investors, LLC have been in active negotiations of a first amendment to the development agreement for the construction of a regional shopping mall located on the northeast corner of McDowell Road and Bullard Avenue, in Goodyear, Arizona; and

WHEREAS, pursuant to Arizona law the City Council of the City of Goodyear adopted the Notice of Intent to enter into a First Amendment to the retail development incentive agreement on November 16, 2009; and

WHEREAS, the First Amendment addresses the extension of time to complete the construction of the initial mall construction; and

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

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 First Amendment to the Development Agreement with Westcor/Goodyear, L.L.C., a copy of the First Amendment in its final form is

attached hereto, and, by reference, made a part hereof, has been submitted to the City for adoption.

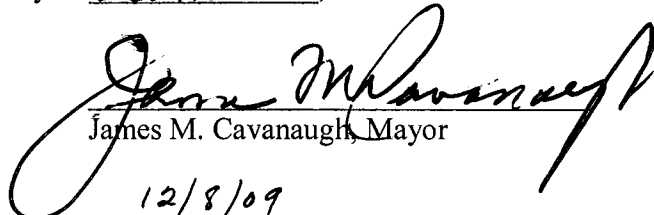
Section 2. That it is in the best interests of the City of Goodyear that this First Amendment to the Development Agreement be adopted.

Section 3. The City is entering into this First Amendment to the Agreement as an administrative act to further the original intent and provisions of the Agreement legislatively enacted by the City to facilitate development of the Project consistent with such Agreement.


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 7 day of December, 2009.


James M. Cavanaugh, Mayor
12/8/09
Date

ATTEST:


Lynn Mulhall, City Clerk

APPROVED AS TO FORM:


Roric Massey, City Attorney

CERTIFICATION OF RECORDING OFFICER

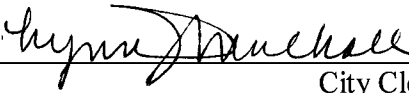
STATE OF ARIZONA)

COUNTY OF MARICOPA)

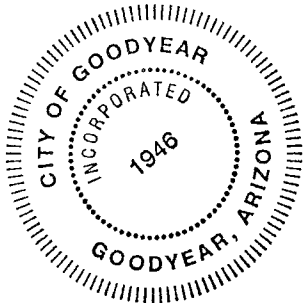
I, the undersigned Lynn Mulhall, being the duly appointed, acting qualified City Clerk of the City of Goodyear, Arizona, certify that the foregoing Resolution 09-1349, passed and adopted at a City Council Meeting of the Council of the City of Goodyear, Maricopa County, Arizona held on the 7th day of December, 2009, at which a quorum was present and, by a 6-0 vote, 6 voted in favor of said Resolution.

Given under my hand and seal, this 10 day of December, 2009.

Seal



City Clerk



CONTRACT COVER SHEET

For Contract Review - please route Contract through Fernando Camacho in Finance, Ext. # 7844. (A contract number will be assigned after approval)



Please fill out this form completely or it will be returned to you prior to review, approval, or filing in LaserFiche. If a response is not applicable, please use "N/A" - Do Not Leave Any Blanks.

Type (check one): Contract Change Order/Modification #NA Amendment #1
IGA Easement Lease/Property Acquisition Development Agreement
Other (please specify):

IDENTIFYING INFORMATION: [Please fill in each field]

Requesting Dept., Contact Name, Ext. #:
Legal Services - Roric Massey x 7227
Contractor Name, Address, Tel. No.:
Westcor
Garrett Newland, Vice President
11411 N. Tatum Blvd
Phoenix, AZ 85028
602-953-6200
Assigned Contract Number: **CON-CX-0689-A1-10**

Brief Summary of the Services to be provided:
Extention of time to complete Estrella Falls Mall
Terms:
Start: Expire: 12/31/2014
Contract Amount: \$
Council Date: **12/7/09** COAC # 09-4313 N/A

City Clerk's Office Use - Retention Date:

Please Link to orig. DA - DEN - CX - 0689 - 06

Reviewed and approved:

<input type="checkbox"/> Procurement:	<u>N/A</u>	Date: _____	Contracts/Procured Services
<input checked="" type="checkbox"/> Legal:	<u>[Signature]</u>	Date: <u>12/14/09</u>	All documents
<input type="checkbox"/> City Manager:		Date: _____	When required

CONTRACT REVIEW REQUIREMENTS

Date Submitted for Review: _____

PROCUREMENT PROCESS – NOTE: IGAs, Easements, Lease/Property Acquisition and Development Agreements do not require Procurement Review. However, they must still be seen by Legal Services.
All Contracts must be reviewed and signed off by both Procurement & Legal Services prior to going to Council.

Designate what method you used to arrive at this contract and whether the item is budgeted for:

Less than \$5000 \$5,000 to \$50,000 – 3 written quotes Cooperative Agreement On-Call /Task Order
 Formal Solicitation, Incl. Solicitation Number: OP-

Other – please name (e.g., sole source, demo, etc. & attach RAP (Request for Alternate Procurement) approved by Procurement Manager) **Attach COAC**

Budgeted: Yes No Requires Council Action: Yes No If yes, Council Date: _____ COAC # _____

Additional Funding Source? Federal – Identify: _____

Grant/Other – Identify: _____

*Attach all supporting documentation for funding source.

ADDITIONAL COMMENTS? _____

Changes are required to this contract/document as follows:

Recording Number: 20091143945
Time of Recording: 12/14/2009 04:08
Filename: 094313-8-1-1--
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

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the "Amendment") is made as of the 14 day of December, 2009, by and between the CITY OF GOODYEAR, ARIZONA, an Arizona municipal corporation ("City"); and WESTCOR/GOODYEAR, L.L.C., an Arizona limited liability company ("Developer").

1. Recitals. As background to this Amendment, the Parties recite the following, each of which is a material term and provision of this Amendment.

A. On or about September 1, 2006, City and Developer executed and delivered a "Development Agreement" entered into pursuant to A.R.S. §9-500.05 and A.R.S. §9-500.11 (the "Agreement"). The Agreement was subsequently recorded on September 13, 2006, in the Official Records of Maricopa County, Arizona, as Recording Number 20061215606.

B. The approval of the Agreement by City was a legislative act that declared and/or prescribed a new public purpose, policy or plan, to provide economic incentives for the Project, as defined in the Agreement.

C. Developer has incurred significant costs and expenses (well in excess of \$50 million), and continues to incur significant costs and expenses, as part, and in anticipation, of its full performance under the Agreement.

D. Subsequent to the execution, delivery and recordation of the Agreement by the Parties, economic and market conditions (not only locally, but also nationally and globally) have undergone significant and unforeseen deterioration, causing uncertainty in business planning and projections, attenuation of credit markets and financing, and constriction of leasing and retail opportunities. As a result of this economic turbulence, compliance with the schedule for performance by Developer as previously set forth in the Agreement is no longer practicable or reasonably anticipated by City and/or Developer, and the City Council has determined that a modification of the implementing provisions of the Agreement is required.

E. City recognizes the value of the performance by Developer of the Agreement, including but not limited to the construction of the Public Improvements and the provision of other economic benefits (both tangible and intangible) to City by, and as a result of, Developer's performance.

F. In order to provide Developer with a schedule for performance and other modifications to the Agreement that are more pragmatic in view of changing and uncertain economic conditions, to promote the likelihood of Developer's full and timely performance of the Agreement for the benefit of City, and to provide revenues to City in the form of voluntary prepayments of certain fees, Developer has requested, and City has agreed to grant, certain extensions for performance and other modifications that implement City's previously enacted policy as more fully set forth in this Amendment.

G. The modifications granted by City in this Amendment are (and are intended to be) administrative acts designed to implement City's previously announced public policy as reflected in the Agreement.

H. City and Developer desire to amend the Agreement in accordance with the provisions of Section 14.18 of the Agreement.

2. Amendment. For Ten Dollars and other valuable consideration, and in consideration of the mutual covenants set forth in this Amendment and in the Agreement as amended, the receipt and sufficiency of which consideration the Parties hereby acknowledge, the Agreement shall be and hereby is amended as follows:

A. Section 4.2 of the Agreement shall be deleted in its entirety.

B. Section 4.3 of the Agreement shall be amended to read as follows:

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, 2016, subject to Enforced Delay. City and Developer shall confirm in writing to City the date of the Completion of Construction when the same becomes known.

C. The Parties acknowledge that Section 6.9 of the Agreement was intentionally deleted from the Agreement; and Section 6.10 of the Agreement ("Enhanced Police Services") is hereby renumbered as Section 6.9.

D. A new Section 6.10 shall be added as follows:

6.10 Prepayment of Certain City Fees. In order to provide an assured revenue stream to City based upon projected fees to be paid by Developer during the course of Developer's construction of the Project, the Parties agree as follows:

(a) Developer shall pay to City the sum of \$1,304,437.00, as a prepayment of Project permit, plan review, inspection, development, impact and related fees and charges anticipated to be paid to City in connection with the Project (collectively, "**City Fees**"); provided, however, that the prepayment described in this Section 6.10(a) shall not be applicable to development and impact fees. Upon payment, this amount shall be available as a credit to Developer (and Globe or such other persons as Developer may

designate) against any and all fees, charges, expenses, exactions and other payments required to be paid to the City in connection with the construction of the Project.

(b) In the event that Developer has not achieved Completion of Construction of the Minimum Retail Improvements on or before December 31, 2014, Developer shall pay to City an additional sum of \$1,250,000.00, as an additional prepayment of City Fees; provided, however, that the prepayment described in this Section 6.10(b) may, at Developer's sole election, be applicable to development and impact fees. Upon payment, this amount shall be available as a credit to Developer (and Globe or such other persons as Developer may designate) against any and all fees, charges, expenses, exactions and other payments required to be paid to the City in connection with the construction of the Project.

(c) In the event that Developer has achieved Completion of Construction of the Minimum Retail Improvements on or before December 31, 2016, any amounts that have been prepaid by Developer pursuant to Section 6.10(a) or Section 6.10(b) (if applicable), but have not been credited against City Fees, may be used as credits against City Fees for any subsequent phase or portion of the Project, until such amounts have been exhausted; provided, however, that to the extent such amounts have not been credited against City Fees (or reimbursed pursuant to Section 6.10(f) below) by December 31, 2019, any such uncredited amounts shall be the property of City and no longer available for credit against City Fees.

(d) In the event that Developer has not achieved Completion of Construction of the Minimum Retail Improvements on or before December 31, 2016, any amounts that have been prepaid by Developer pursuant to Section 6.10(a) or Section 6.10(b) (if applicable), but have not been credited against City Fees (or reimbursed pursuant to Section 6.10(f) below) shall be the property of City and no longer available for credit by Developer against City Fees.

(e) Notwithstanding the prepayment of City Fees by Developer pursuant to this Section 6.10, Developer (or such other persons designated by Developer) shall pay City Fees in accordance with rates and fee schedules in effect and uniformly applied at the time the applicable permits, inspections, approvals and other actions of City are requested by Developer.

(f) If any City Fee with respect to the Project is paid by Developer or by any third party subsequent to November 1, 2009, rather than having been credited against any amounts that have been prepaid by Developer pursuant to Section 6.10(a) or Section 6.10(b) (if applicable), and such prepaid amounts have not been previously exhausted by application against City Fees, then City will repay to Developer the amount of such City Fee within forty-five (45) days of request by Developer for repayment.

(g) The Parties recognize that certain City Fees applicable to construction and other activities at the property have been paid by Developer (or third parties) prior to November 1, 2009, and due to the passage of time such fees have or would otherwise have expired. Neither Developer (or the third parties that have paid such City Fees) shall have any recourse against City for reimbursement of such previously-paid City Fees or for the extension of such City Fees.

E. Section 8.1(b) of the Agreement shall be amended to read as follows:

(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 subject to the notice and cure provisions set forth in Section 12.3, all rights of the Developer to payment by the City of Sales Tax Rebates or any other obligation under this Section 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 December 31, 2016, or if this Agreement is terminated by the City by reason of an Event of Non-Performance pursuant to Section 12.1. Notwithstanding the foregoing, 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.

F. Section 8.1(c) of the Agreement shall be amended to read as follows:

(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 amounts required to be paid by the City to Developer (other than the Reimbursement Amount), including but not limited to the balance of the Developer ID Obligations or the ID Improvement Costs (as applicable), and thereafter to the Reimbursement Amount. Notwithstanding 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 as provided in this Agreement, including without limitation all Assessment (principal, interest and other charges) payable by Developer to the Improvement District. 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.

G. Section 12.1(b) of the Agreement shall be amended to read as follows:

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

3. Full Force and Effect. Except as expressly modified and amended by this Amendment, all other terms, provisions and conditions of the Agreement shall remain unchanged and in full force and effect.

4. Defined Terms. Defined terms used in this Amendment, if not specifically defined in this Amendment, shall have the meanings ascribed to them in the Agreement.

5. Limited Severability. City and Developer each believes that the execution, delivery and performance of this Amendment are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Amendment is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws), such provision shall be deemed severed from this Amendment; and the Agreement, together with this Amendment, shall otherwise remain in full force and effect; provided that this Amendment shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed Amendment provides essentially the same rights and benefits to the Parties as if such severance and reformation were not required. Unless prohibited by Applicable Laws, 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 Amendment and the Agreement as amended and reformed.

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

7. Recordation; Effective Date. Within ten (10) days after this Amendment has been approved by City and executed by the Parties, City shall cause this Amendment to be recorded in the Official Records of Maricopa County, Arizona. Notwithstanding the foregoing, this Amendment shall be effective only when (i) Developer has delivered to City the prepayment described in Section 6.10(a) of the Agreement, as amended by this Amendment, and (ii) Developer has delivered to City a written statement that it has determined, in good faith, that there are no legal or other impediments to its being bound hereby (collectively, the "**Developer's Conditions to Effectiveness**"). In the event that the Developer's Conditions to Effectiveness have not been satisfied (or waived by Developer in its sole election) by January 22, 2010, then this Amendment (unless otherwise provided by law) shall be deemed withdrawn by the City and shall be of no further force and effect, and neither Developer, Globe nor City shall have any rights or obligations under this Amendment (although the Agreement, as originally approved and adopted, shall continue in force and effect in accordance with its terms).

8. Signature and Delivery. The Parties have executed and delivered this Amendment to be effective as of the date first set forth above.

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

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

By: John F. Miller
Its: City Manager

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

ATTEST:

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

By: Lynne Mulhall
City Clerk

[Signature]
UP - DEVELOPMENT

APPROVED AS TO FORM:

By: [Signature]
City Attorney



The undersigned has executed this Amendment solely for the purpose of consenting to the recordation of this Amendment against the interest of Globe in and to the Property, subject to the provisions of Section 3.5 of the Agreement, as amended by this Amendment. Neither Globe nor its property has any responsibility or obligation to the City under Section 6.10 above with respect to the prepayment of City Fees (unless Globe has succeeded to the interest of Developer under this Agreement).

Globe Land Investors, LLC, a
Delaware limited liability company

By: Globe Corporation
Its: Managing Member

By: [Signature]
Its: President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 14 day of December 2009, by John Fischbach, the 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.

Janet LeBlanc
Notary Public

My commission expires:
1-16-2012

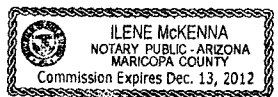


STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 14 day of December, 2009, by Garrett Newland, the VP Development of Westcor/Goodyear, L.L.C., an Arizona limited liability company.

Ilene McKenna
Notary Public

My commission expires:
12/13/2012



STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 14th day of December 2009, by Berge Beth, the President of Globe Corporation, as the Managing Member of Glob Land Investors, LLC, a Delaware limited liability company, on behalf of the limited liability company.

Twyla Mishler
Notary Public

My commission expires:
7-25-2013



**CITY OF GOODYEAR
CITY COUNCIL ACTION FORM**

SUBJECT: Adopt Resolution 09-1349 authorizing the City Manager to execute a First Amendment to the Development Agreement with Westcor/ Goodyear, L.L.C. for reimbursement of certain public infrastructure, and setting an effective date

STAFF PRESENTER: Brian Dalke,
Deputy City Manager

COMPANY CONTACT:

Con C4-0689-A1-10

RECOMMENDATION:

COUNCIL ADOPT RESOLUTION 09-1349 BY A TWO-THIRDS VOTE AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO THE RETAIL DEVELOPMENT TAX INCENTIVE AGREEMENT WITH WESTCOR/GOODYEAR LLC, AND GLOBE LAND INVESTORS, LLC, FOR REIMBURSEMENT OF CERTAIN PUBLIC INFRASTRUCTION FOR THE CONSTRUCTION OF A REGIONAL SHOPPING MALL ON THE NORTHEAST CORNER OF MCDOWELL ROAD AND BULLARD AVENUE.

EXECUTIVE SUMMARY:

The First Amendment to the Development Agreement with Westcor extends the construction timeline to allow full commitments by mall anchors and provides Westcor with additional time to finance the regional mall. The City will receive immediate financial benefits through payments from Westcor in the amount of \$1.3 million to be used in FY10 for the General Fund and in the event of an additional extension option payment to the City in the amount of \$1.25 million for capital projects.

COMMUNITY BENEFIT:

The community will ultimately benefit through the construction of a regional shopping mall that will provide sales tax proceeds, employment, entertainment and shopping opportunities for the City's residents.

DISCUSSION:

On November 16, 2009, Council approved a Notice of Intent to enter into a First Amendment to the Development Agreement (DA) between the City of Goodyear and Westcor/Goodyear LLC, and Globe Land Investors, LLC.

The First Amendment to the DA relates to an extension of the timing of the development by the Developer and/or other entities for the certain acreage located within the City and owned by Globe, generally, between Bullard Avenue and PebbleCreek Parkway, McDowell Road and Virginia Avenue, although one portion of the acreage is located south of McDowell Road, between Bullard Avenue and PebbleCreek Parkway (collectively, the "Property") and for a revised payment structure by Westcor to the City.

This First Amendment is necessary in that mall anchors have not fully committed to an opening date to Westcor, and total financing is not currently available to Westcor. Westcor however, is committed to building a regional mall in Goodyear. To ensure the development goes forward, and the City ultimately receives all of the anticipated benefits the development would bring to the City, the City commenced discussions with Westcor regarding the need to make adjustments to the Development Agreement.

The original DA that was approved by Council on September 11, 2006, (DEV-CX-0689-06) anticipates the development of the Property for a variety of commercial uses, to include a regional shopping center, and required initial mall construction to be completed by 12/31/2012. This First Amendment extends the completion date to 12/31/2014, with Westcor submitting payment to the City in the amount of \$1,304,437 within thirty (30) days of agreement approval. This payment includes pre-payment of permit fees valid through construction 2016-2019, forfeits \$200,407 in fees that were paid in FY09, which include permit fees for the Mall and Harkins Theaters, and allows the City to utilize these funds for General Fund expenses in the current fiscal year.

An additional extension option is available to require initial mall construction to be completed by 12/31/2016, with additional payment by Westcor to the City of \$1,250,000.

Benefits that the First Amendment provides include:

- Flexibility for Westcor regarding timing of the mall construction, which is ultimately driven by anchor stores;
- Westcor will have the ability to finance the project;
- Revenues for the City will be generated more quickly (\$7-20 million per year) than without the agreement;
- The extension will provide better opportunities for desired quality of retail and the best chance for success;
- The City will receive pre-payment of fees (\$1.3 million to be used immediately in FY10 as projected in the approved budget);
- The City and community benefits outlined in the original Development Agreement will remain intact; and
- ID assessments are still being paid by Westcor and bonds are being retired according to the original timing.

Arizona Revised Statute governs the application and requirements for economic development-related agreements. The City and Westcor understand and acknowledge that the First Amendment to 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 First Amendment to the Agreement is authorized by the terms of A.R.S. §9-500.11. The actions taken by the City pursuant to this First Amendment 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 November 16, 2009 to enter into this First Amendment to the DA as per A.R.S. § 9-500.11.K. In addition, the City verified the findings required by

A.R.S. § 9-500.11.D, when the original DA was entered into by an independent third party (Applied Economics) before the City entered into that Agreement.

FISCAL IMPACT:

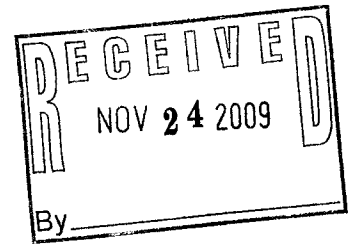
The City would still be able to eventually receive the benefit of new sales tax generated from the regional shopping mall. Additionally, payments will be received from Westcor within thirty (30) days of the signing of the First Amendment to the Development Agreement in the amount of \$1.3 million. A portion of the sales tax generated would be reimbursed to the Developer as detailed in the original Development Agreement.

westcor

WESTCOR/GOODYEAR, LLC

November 24, 2009

Mr. John Fishbach, City Manager
City of Goodyear, Arizona
190 North Litchfield Road
Goodyear, Arizona 85338



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

Dear John:

This letter will confirm our understanding of how the reimbursement obligations of the City of Goodyear ("City") to Westcor/Goodyear, L.L.C. ("Developer") work in the context of the Development Agreement dated September 1, 2006, and amended by the First Amendment dated December 7, 2009 (collectively, the "Agreement").

To establish context, we note that an Improvement District was formed for the construction of the ID Improvements. The principal amount of the bonds assessed to Developer and Globe Land Investors, LLC ("Globe"), in connection with the Improvement District ("Bonds") is approximately \$47,165,000.00. Accordingly, the concepts that we are dealing with are what are described and defined in the Agreement as the "City ID Payment Obligation" and the "Developer ID Obligations."

The City is unconditionally committed to reimburse Developer the amount of \$25,000,000.00, as the City ID Payment Obligation pursuant to Section 8.1(b) of the Agreement. The source of this reimbursement is the portion of Sales Taxes received by the City from the Property and from the additional property depicted on Exhibit F to the Agreement.

In the event that Developer has not timely constructed the Minimum Retail Improvements in accordance with the Agreement, as amended, then the City has no further reimbursement obligation beyond that described above.

In the event that Developer has timely constructed the Minimum Retail Improvements, then the difference between the City ID Payment Obligation (i.e., \$25,000,000.00) and the amount of the Developer ID Obligations (the principal sum of \$47,165,000.00, plus all interest that has accrued and continues to accrue on the Bonds), shall be reimbursed to Developer from Sales Taxes in the manner described in the Agreement; provided, however, that the area from which Sales Taxes shall be collected for reimbursement of the Developer ID Obligations shall be restricted solely to the Property.

11411 N. Tatum Boulevard
Phoenix, AZ 85028
P: 602.953.6200 | F: 602.953.1964
www.westcor.com

In the event the City has reimbursed Developer the full amount of the City ID Payment Obligation, the full principal portion of the Developer ID Obligations plus all interest payments then due and payable according to the assessment payment schedules, the City shall have no further obligation with respect to future interest payments not yet due and payable. Developer may elect to pay the Bonds in accordance with their scheduled payment dates, which may extend payment by Developer beyond the date on which the City has completed its reimbursement obligations to Developer with respect to the City ID Payment Obligation and the Developer ID Obligations.

Example: The attached Exhibit A shows the anticipated assessment payment schedule for Developer and Globe. Assume that it is June 2, 2030, Developer has timely constructed the Minimum Retail Improvements, and the City has reimbursed to Developer \$78,383,425.00. At this point, the City will have first, fully reimbursed the City ID Payment Obligation (\$25,000,000.00); second, reimbursed the Principal portion of the Developer ID Obligations (\$22,165,000.00); and third, reimbursed all interest payments that are due and payable through June 2, 2030 (\$31,218,424.93). In this example, the remaining interest payments (\$327,853.09) would not be reimbursable.

Following reimbursement by the City of the City ID Payment Obligation and the Developer ID Obligations, the City is obligated (subject to the other terms of the Agreement, as amended) to pay to Developer the Base Reimbursement Amount (\$10,000,000) and the RSC Development Fees Differential, if any (collectively, the "Reimbursement Amount").

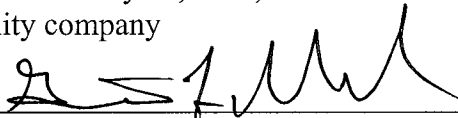
A summary of the reimbursement items and the anticipated reimbursement amounts is attached as Exhibit B to this letter.

Defined terms used in this letter shall have the meanings given to them in the Agreement, as amended. This letter is intended solely to establish a common understanding between City and Developer with respect to the timing and sequencing of payment obligations by the City, and is not intended to amend or modify the Agreement, as amended.

The signatures of the Parties on this letter shall signify their mutual acceptance of the matters described in this letter.

Very truly yours,

Westcor/Goodyear, LLC, an Arizona limited liability company

By: 
Its: Garrett Newland, Vice President – Development

Approved and accepted:
City of Goodyear

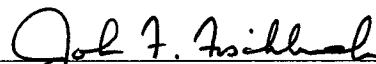
By: 
John Fishbach, City Manager

EXHIBIT A - ANTICIPATED ASSESSMENT SCHEDULE

GN 11-24-09

City of Goodyear, Arizona
 McDowell Road Commercial Corridor Improvement District
 Improvement Bonds

Date	Principal (a)	Interest	Total Debt Service	Fiscal Year Debt Service
12/1/2009	\$ 1,105,000.00	\$ 1,151,391.72	\$ 2,179,020.44	
06/1/2010	\$ -	\$ 1,124,416.47	\$ 1,124,416.47	\$ \$ 3,303,436.91
12/1/2010	\$ 1,160,000.00	\$ 1,124,416.47	\$ 2,203,194.14	0
06/1/2011	\$ -	\$ 1,096,098.55	\$ 1,096,098.55	\$ 3,299,292.69
12/1/2011	\$ 1,225,000.00	\$ 1,096,098.55	\$ 2,235,324.97	0
06/1/2012	\$ -	\$ 1,066,193.87	\$ 1,066,193.87	\$ 3,301,518.84
12/1/2012	\$ 1,285,000.00	\$ 1,066,193.87	\$ 2,261,219.14	0
06/1/2013	\$ -	\$ 1,034,824.46	\$ 1,034,824.46	\$ 3,296,043.60
12/1/2013	\$ 1,355,000.00	\$ 1,034,824.46	\$ 2,294,948.37	0
06/1/2014	\$ -	\$ 1,001,746.20	\$ 1,001,746.20	\$ 3,296,694.57
12/1/2014	\$ 1,425,000.00	\$ 1,001,746.20	\$ 2,326,968.77	0
06/1/2015	\$ -	\$ 966,959.10	\$ 966,959.10	\$ 3,293,927.87
12/1/2015	\$ 1,500,000.00	\$ 966,959.10	\$ 2,361,930.22	0
06/1/2016	\$ -	\$ 930,341.12	\$ 930,341.12	\$ 3,292,271.34
12/1/2016	\$ 1,580,000.00	\$ 930,341.12	\$ 2,399,710.70	0
06/1/2017	\$ -	\$ 891,770.16	\$ 891,770.16	\$ 3,291,480.86
12/1/2017	\$ 1,660,000.00	\$ 891,770.16	\$ 2,435,538.20	0
06/1/2018	\$ -	\$ 851,246.26	\$ 851,246.26	\$ 3,286,784.46
12/1/2018	\$ 1,750,000.00	\$ 851,246.26	\$ 2,478,712.56	0
06/1/2019	\$ -	\$ 808,525.27	\$ 808,525.27	\$ 3,287,237.83
12/1/2019	\$ 1,840,000.00	\$ 808,525.27	\$ 2,519,689.85	0
06/1/2020	\$ -	\$ 763,607.19	\$ 763,607.19	\$ 3,283,297.04
12/1/2020	\$ 1,940,000.00	\$ 763,607.19	\$ 2,567,769.85	0
06/1/2021	\$ -	\$ 716,247.92	\$ 716,247.92	\$ 3,284,017.77
12/1/2021	\$ 2,040,000.00	\$ 716,247.92	\$ 2,613,408.65	0
06/1/2022	\$ -	\$ 666,447.46	\$ 666,447.46	\$ 3,279,856.11
12/1/2022	\$ 2,145,000.00	\$ 666,447.46	\$ 2,661,256.18	0
06/1/2023	\$ -	\$ 614,083.72	\$ 614,083.72	\$ 3,275,339.90
12/1/2023	\$ 2,260,000.00	\$ 614,083.72	\$ 2,715,840.21	0
06/1/2024	\$ -	\$ 558,912.63	\$ 558,912.63	\$ 3,274,752.84
12/1/2024	\$ 2,375,000.00	\$ 558,912.63	\$ 2,767,616.91	0
06/1/2025	\$ -	\$ 500,934.12	\$ 500,934.12	\$ 3,268,551.03
12/1/2025	\$ 2,500,000.00	\$ 500,934.12	\$ 2,825,885.99	0
06/1/2026	\$ -	\$ 439,904.13	\$ 439,904.13	\$ 3,265,790.12
12/1/2026	\$ 2,635,000.00	\$ 439,904.13	\$ 2,890,403.41	0
06/1/2027	\$ -	\$ 375,578.54	\$ 375,578.54	\$ 3,265,981.95
12/1/2027	\$ 2,770,000.00	\$ 375,578.54	\$ 2,951,625.21	0
06/1/2028	\$ -	\$ 307,957.32	\$ 307,957.32	\$ 3,259,582.53
12/1/2028	\$ 2,915,000.00	\$ 307,957.32	\$ 3,018,851.21	0
06/1/2029	\$ -	\$ 236,796.35	\$ 236,796.35	\$ 3,255,647.56
12/1/2029	\$ 3,070,000.00	\$ 236,796.35	\$ 3,091,837.25	0
06/1/2030	\$ -	\$ 161,851.53	\$ 161,851.53	\$ 3,253,688.78
12/1/2030	\$ 3,230,000.00	\$ 161,851.53	\$ 3,165,689.36	0
06/1/2031	\$ -	\$ 83,000.78	\$ 83,000.78	\$ 3,248,690.14
12/1/2031	\$ 3,400,000.00	\$ 83,000.78	\$ 3,244,935.34	0
06/1/2032	\$ -	\$ -	\$ -	\$ 3,244,935.34
TOTAL	\$ \$ 47,165,000.00	\$ \$ 31,546,278.02	\$ \$ 75,408,820.08	\$ \$ 75,408,820.08

Exhibit B - Summary of Reimbursement Items and Amounts

GW 11.24-09

Reimbursement Item		Reimbursement Amount	Reimbursement Qualification or Limitation
1	City ID Payment Obligation	\$ 25,000,000.00	Unconditionally reimbursable
2	Developer ID Obligations		Reimbursable upon timely construction of Minimum Retail Improvements (MRI)
	- Principal (Estimate)	\$22,165,000	Full amount reimbursable upon timely construction of MRI
	- Interest (Estimate)	\$31,546,278	Reimbursable upon timely construction of MRI, however, In the event the City has reimbursed City ID Payment Obligation, the full principal portion of the Developer ID Obligations plus all interest payments then due and payable, then the City shall have no further obligation with respect to future interest payments not yet due and payable
	- Total P & I	\$ 53,711,278.00	
3	Base Reimbursement Amount before RSC Development Fees Differential	\$ 10,000,000.00	Reimbursable upon timely construction of Minimum Retail Improvements (MRI)
4	RSC Development Fees Differential	TBD	Reimbursable upon timely construction of Minimum Retail Improvements (MRI)

westcor

X's to City Clerk
Brian
Mario
Mark G.
Larry L.
JL
1/19

HAND-DELIVERED

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

January 19, 2010

Re: Westcor/Goodyear, L.L.C.
Development Agreement dated as of September 1, 2006 [as amended]

Dear Mr. Fischbach:

The City of Goodyear, Arizona ("City") and Westcor/Goodyear, L.L.C., an Arizona limited liability company ("Developer") previously executed and delivered a "Development Agreement" on or about September 1, 2006 (the "Agreement"). Thereafter, the City and Developer executed and delivered a "First Amendment to Development Agreement" on or about December 14, 2009 (the "Amendment").

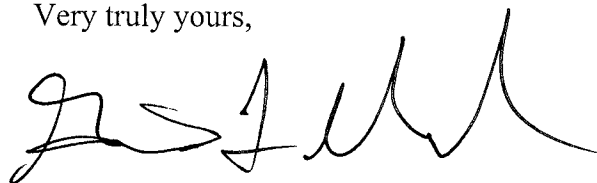
This letter is the Developer's written statement to the City pursuant to Section 7 of the Amendment.

Please be advised that the Developer has determined, in good faith, that there are no legal or other impediments to Developer's being bound by the Agreement, as amended by the Amendment.

Accordingly, we are delivering herewith Developer's check in the amount of \$1,304,437.00, representing Developer's prepayment of City Fees (as defined in the Amendment) as described in Section 6.10(a) of the Agreement, as amended by the Amendment.

Upon our delivery to you of the foregoing prepayment, and this written statement, the Amendment shall be deemed fully effective as between City and Developer.

Very truly yours,



Garrett Newland,
Vice President, Development

Encl.

RES-09-1349
Con-EX-0689

11411 N. Tatum Boulevard
Phoenix, AZ 85028
P: 602.953.6200 | F: 602.953.1964
www.westcor.com

cc: City of Goodyear
Attn: Roric V. Massey, City Attorney
190 North Litchfield Road
Goodyear, AZ 85338
(By Courier)

David A. Pennartz, Esq.
Pennartz Law Firm, P.L.C.
1601 North Seventh Street, Suite 260
Phoenix, Arizona 85006
(By Courier)

David A. Pennartz, Esq.
Gust Rosenfeld PLC
201 E. Washington Street, Suite 800
Phoenix, Arizona 85004
(By Courier)



Void after 180 days

- Westcor Goodyear RSC LLC

11411 North Tatum Blvd.
Phoenix, AZ 85028

Wells Fargo Bank, N.A.
Phoenix, AZ 85038

21-2
1221

CHECK DATE CHECK NUMBER CHECK AMOUNT
08-JAN-10 20380 *\$1,304,437.00

PAY One Million Three Hundred Four Thousand Four Hundred Thirty-Seven Dollars And 00 Cents *****

WZ238979C-05-08

TO
THE
ORDER
OF

City of Goodyear
190 North Litchfield Road
Goodyear, AZ 85338
United States

[Signature]
Authorized Signature

[Signature]
Authorized Signature

⑈00 20380⑈ ⑆ 122100024⑆ 70786 166 2⑈

- Westcor Goodyear RSC LLC

No. 20380

Date: 08-JAN-10 Vendor Name: City of Goodyear Vendor No: 21238

Invoice No. / Description	Invoice Date	Net Paid	Discount
010610/3557 Prepaid Permits & Fees/Dev A	06-JAN-10	1,304,437.00	0.00
<p>PLEASE DETACH AND RETAIN THIS STATEMENT AS YOUR RECORD OF PAYMENT.</p> <p>For inquires please call (866) 333-6306</p>		<p><i>Thank you</i></p> <p>1,304,437.00</p>	0.00