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When recorded mail to:

City of Goodyear
City Clerk's Office
190 N. Litchfield Road
Goodyear AZ 85338

RESOLUTION 14-1670
Second Amendment to the Development
Agreement with Westcor/Goodyear, LLC

DO NOT REMOVE

This is part of the official document

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RESOLUTION 14-1670

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING A SECOND 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 entered into a First Amendment to the development agreement providing for an extended timeline for completion of the minimum retail improvements of the regional mall (as defined in the development agreement) for the construction of a regional shopping mall located on the northwest corner of McDowell Road and Bullard Avenue, in Goodyear, Arizona, on December 7, 2009 pursuant to A.R.S. §§ 9-500.05 and 9-500.11; and

WHEREAS, Westcor remains committed to building the regional shopping center in Goodyear in a timing that is responsive to economic conditions;

WHEREAS, the City and Westcor/Goodyear LLC, and Globe Land Investors, LLC have been in active negotiations of a second amendment to the development agreement for the construction of a regional shopping mall located on the northwest 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 Second Amendment to the retail development incentive agreement on October 27, 2014; and

WHEREAS, the Second 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 Second Amendment to the Development Agreement with Westcor/Goodyear, L.L.C., a copy of the Second 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 Second Amendment to the Development Agreement be adopted.

Section 3. The City is entering into this Second 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 17th day of November, 2014.



Georgia Lord, Mayor

11-18-14

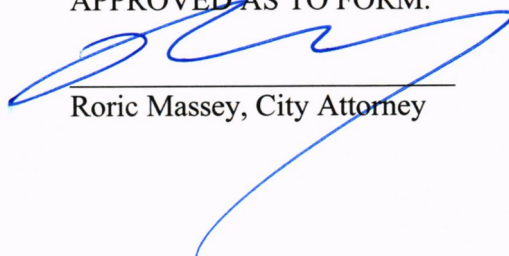
Date

ATTEST:



Maureen Scott, City Clerk

APPROVED AS TO FORM:



Roric Massey, City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA)

COUNTY OF MARICOPA)

I, the undersigned Maureen Scott, being the duly appointed, acting qualified City Clerk of the City of Goodyear, Arizona, certify that the foregoing Resolution 14-1670, passed and adopted at a City Council Meeting of the Council of the City of Goodyear, Maricopa County, Arizona held on the 17th day of November, 2014, at which a quorum was present and, by a 6-0 vote, voted in favor of said Resolution.

Given under my hand and seal, this 20th day of November, 2014.



Maureen Scott
City Clerk

**CITY OF GOODYEAR
CITY COUNCIL ACTION FORM**

SUBJECT: Adopt Resolution 14-1670 authorizing the City Manager to execute a Second 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,
City Manager

COMPANY CONTACT: Garrett Newland,
Westcor (now Macerich)

RECOMMENDATION:

ADOPT RESOLUTION 14-1670 APPROVING A SECOND 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.

PURPOSE:

The Second Amendment to the Development Agreement with Westcor outlines components of regional mall development that will proceed and be completed in order to extend the time frame for completion of the minimum improvements defined in the original agreement.

BACKGROUND AND COMMUNITY BENEFIT:

The original Development Agreement with Westcor/Goodyear LLC and Globe Land Investors, LLC anticipated the development of 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") for a variety of commercial uses, to include a regional shopping center, and required initial mall construction to be completed by December 31, 2012.

The City Council approved a First Amendment to this agreement on December 7, 2009, related to an extension of the timing of the development by the Developer and for a revised payment structure by Westcor to the City. It extended the completion date of the minimum retail improvements of the regional mall to December 31, 2014 upon Westcor submitting pre-payment of permit fees to the City in the amount of \$1,304,437. These fees were paid to the City in accordance with the amendment terms. It also contained an extension provision requiring pre-payment of development impact fees in the amount of \$1.25 M which would extend the completion date to December 31, 2016.

Westcor (now known as Macerich) remains fully committed to building a regional mall in Goodyear. The timing of the mall opening is driven by the anchor stores' decision of when

they are ready to proceed. Due to the continued economic recovery, the anchors have not yet fully committed to an opening date for the regional shopping center. The Second Amendment is being brought forward to modify certain elements of the agreement related to timing in order to keep the Development Agreement for the shopping center active and so the City ultimately receives all of the anticipated benefits the development would bring to the City.

The Second Amendment proposes that the construction of the Minimum Retail Improvements, as that term is defined in the original Development Agreement, is split into two phases, (Phase One and Phase Two). The Phase One improvements consist of the completion of a multi-plex cinema consisting of not fewer than twelve (12) screens and improving two pad sites adjacent to the multi-plex cinema, which are to be completed no later than December 31, 2016. The amendment is proposed include use restrictions for the improved pad sites, prohibiting drive through restaurants or bank uses until the Phase Two improvements are completed or until 6,000 sq ft of retail/entertainment use is completed. The Phase Two improvements consist of the remainder of the Minimum Retail Improvements, defined in the original Development Agreement, which are to be completed no later than December 31, 2021. The extended completion date for Phase Two is contingent upon meeting deadlines and requirements associated with Phase One.

Arizona Revised Statute governs the application and requirements for economic development-related agreements. The City and Westcor understand and acknowledge that the Second 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 Second 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 Second 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 October 27, 2014 to enter into this Second Amendment to the development agreement 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 development agreement was entered into by an independent third party (Applied Economics) before the City entered into the Agreement.

The community will ultimately benefit from the construction of a regional shopping mall that will provide sales tax proceeds, employment, entertainment and shopping opportunities. These benefits include:

- Providing short-term entertainment and retail development in the mall area, bringing options to citizens and generating activity adjacent to the future mall site;
- Providing flexibility regarding the timing of the of mall construction, which is ultimately driven by anchor stores;
- Generating revenues for the City more quickly by phasing the project and moving elements forward sooner;

- Providing better opportunities for desired quality of retail and the best chance for project success;
- Keeping the City and community benefits outlined in the original Development Agreement intact; and,
- Continuing Westcor's Improvement District assessment payments and bonds are being retired according to the original timing.

PREVIOUS ACTIONS AND DISCUSSION:

- Original Development Agreement approved September 11, 2006
- First Amendment to the Development Agreement approved December 7, 2009
- Notice of Intent to Enter Into a Second Amendment to the Development Agreement approved October 27, 2014

FISCAL IMPACT:

Approval of this amendment will allow the city to receive sales tax revenue from the theater starting in 2016.

ATTACHMENTS:

RES 14-1670
Applied Economics Letter
Second Amendment to the Westcor Development Agreement

CONTRACT COVER SHEET

For Contract Review - please route Contract through Fernando Camacho in Finance, Ext. # 7844.
 A contract number will be assigned when it starts the review process.
NOTE: Contract Numbers will not be issued via email or over the telephone.



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.

Date Submitted for Review: _____

Type (check one):

- Construction Contract Change Order/Modification #NA
 IGA Development Agreement Amendment #NA
 Easement Lease/Property Acquisition Other (please specify): _____

IDENTIFYING INFORMATION: (Please fill in each field)

Requesting Dept., Contact Name, Ext. #:
 CMO, Brian Dalke, 7070
 Contractor Name, Address, Tel. No.:
 Westcor/Goodyear LLC
 Assigned Contract Number: ~~CON 06-0689-A2~~
Dev-CX-0689-A2-06

Brief Summary of the Services to be provided:
 2nd Amendment to the Estrella Falls Development
Terms:
 Start: 11/17/14 Expire: n/a
 Contract Amount: \$
 Council Date: 11/17/14 COAC # 14-5383 N/A
 City Clerk's Office Use - Retention Date: **Perm.**

REVIEWED AND APPROVED:

- Procurement: _____ Date: _____ Contracts/Procured Services
 Legal: **(D)** _____ Date: **11.20.14** All documents
 City Manager: _____ Date: _____ When required

CONTRACT REVIEW REQUIREMENTS

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 Procurement or the City Manager & 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.

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

Additional Funding Source? Federal - Identify: _____ State - Identify: _____

Grant/Other - Identify: _____

*Attach all supporting documentation for funding source.

ADDITIONAL COMMENTS? _____

INSURANCE & BONDS (To be completed by Procurement Specialist)

- Insurance Certificate: Attached _____ Initial Date: _____
 Bid Bond: Attached _____ Initial Date: _____
 Performance Bond: Attached _____ Initial Date: _____
 Payment Bond: Attached _____ Initial Date: _____

Changes are required to this contract/document as follows:

WHEN RECORDED RETURN TO:

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

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (the "Amendment") is made as of the 17th day of November 2014, 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 and is incorporated herein by this reference.

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 ("Official Records"), 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. Following the approval of the Agreement, the Improvement District referred to in Section 5.2 of the Agreement was formed, the ID Improvements were constructed, and bonds totaling \$47,165,000.00 were issued to cover the cost of the ID Improvements

D. The \$47,165,000.00 was assessed against the Property and certain neighboring properties, the assessment against the Property totaled \$43,862,541.99 with the remainder being assessed against neighboring properties.

E. The \$43,862,541.99 plus interest constitutes the Developer's ID Obligations under the Agreement, a component of which is the City ID Payment Obligation, which amounts to \$25,000,000 plus interest.

F. The City is required to reimburse Developer for the City ID Payment Obligation regardless of whether Developer constructs the Minimum Retail Improvements within the time frames specified in the Agreement, and is required to reimburse Developer the remainder of the Developer ID Obligations if the Minimum Retail Improvements are constructed within the timeframes specified in the Agreement as it may be amended from time to time.

G. Developer has incurred significant costs and expenses in connection with its development of the Project (currently, millions of dollars), and continues to incur significant costs and expenses, as part, and in anticipation, of its performance under the Agreement, as amended.

H. Subsequent to the execution, delivery, and recordation of the Agreement by the Parties, economic and market conditions (not only locally, but also nationally) underwent 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 initial schedule for performance by Developer as previously set forth in the Agreement was determined no longer to be practicable or reasonably anticipated by City and/or Developer, and the City Council thereupon approved a "First Amendment to Development Agreement" dated as of December 14, 2009, that was recorded in the Official Records on December 14, 2009, as Recording No. 20091143945 ("First Amendment"). The First Amendment, *inter alia*, determined that a modification of the implementing provisions of the Agreement was required, and extended certain dates for Developer's performance.

I. Although the economy in the State has been slowly recovering since the date of the First Amendment, other portions of the country have been experiencing faster and fuller recoveries. Subsequent to the execution, delivery, and recordation of the First Amendment, Developer has determined that a further extension of the performance dates in the First Amendment is necessary to maximize the likelihood of successful development and leasing of the various Project components. Notwithstanding the foregoing, Developer still wishes to construct the Project, and City wishes to encourage the development of the Project.

J. City continues to recognize the value of performance by Developer of the Agreement (as previously amended), 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 and successful completion of the Project.

K. In order to provide Developer with a more pragmatic schedule for performance and to promote the likelihood of Developer's full and timely performance of the Agreement (as previously amended) for the benefit of City, Developer has requested, and City has agreed to grant, certain extensions for performance and otherwise to modify and clarify certain provisions of the Agreement that implement City's previously announced support for the Project, as more fully set forth in this Amendment.

L. The modifications granted and agreed to 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.

M. City and Developer desire further to amend the Agreement, as set forth herein, 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 4.3 of the Agreement shall be amended to read as follows:

4.3 Completion of Construction -- Phasing. City and Developer agree and acknowledge that the Minimum Retail Improvements shall be constructed in two phases. (a) **“Phase One”** of the Minimum Retail Improvements shall consist of (i) one (1) Anchor Retail Store which shall be a multi-plex cinema consisting of not fewer than twelve (12) screens (without regard to gross building area), and (ii) the Preparation of two pads (each, a **“Pad,”** or collectively, the **“Phase One Pads”**), which are to be located adjacent to McDowell Road on parcels 20, 21, or both as depicted in Exhibit 1 attached hereto. For the purposes of this Agreement (including specifically this Section 4.3), the term **“Preparation”** shall mean the completion of all off-site (infrastructure) improvements required to permit on-site construction, including construction or improvement of adjacent roadways, utilities stubbed to the boundary of the applicable Pad, and rough grading of the applicable Pad, if required. In addition, Developer shall prohibit the development or leasing of the Phase One Pads for banks and “fast-food” restaurants, which includes restaurants with drive-through lanes, except as agreed to in writing by the City Council at its sole discretion until the earlier of the following: (i) the Completion of Construction of Phase Two of the Minimum Retail Improvements (as defined below); (ii) Developer opens not less than 6,000 square feet of restaurant (non-fast food) or entertainments uses (other than the multi-plex cinema) within the area between N. 150th Dr. on the west and N. Bullard Ave. on the east and W. McDowell Rd on the south and W. Encanto Blvd on the north as depicted in Exhibit 1 attached hereto; (iii) December 31, 2021, or (iv) the expiration or termination of this Agreement in accordance with its terms (the **“Restricted Period”**), after which Restricted Period the Phase One Pads may be developed for any use permitted by Applicable Laws.

(b) **“Phase Two”** of the Minimum Retail Improvements shall be the balance of the Minimum Retail Improvements and the Developer Public Improvements.

(c) Completion of Construction of the Minimum Retail Improvements shall occur no later than December 31, 2016, subject to Enforced Delay; provided, however, in the event that Developer has achieved Completion of Construction of Phase One of the Minimum

Retail Improvements no later than December 31, 2016, subject to Enforced Delay (the “**Phase One Completion Date**”), and the Phase One multi-plex cinema has opened for business to the public on or before the Phase One Completion Date, then the date for Completion of Construction of Phase Two of the Minimum Retail Improvements shall be extended through and including December 31, 2021, subject to Enforced Delay. City and Developer shall confirm in writing the dates of the Completion of Construction of Phase One and Phase Two (as applicable) when the same become known.

B. Section 1(o) of the Agreement is amended to read as follows:

(o) “**City ID Payment Obligation**” means a portion of the Developer ID Obligations, in the principal amount of \$25,000,000 together with interest, which is to be reimbursed to Developer pursuant to the terms of the Agreement as amended regardless of whether Developer constructs the Minimum Retail Improvements within the time frames specified in the Agreement as amended.

C. Section 5.2(c) of the Agreement is amended to read as follows:

(c) Developer ID Obligations. The Developer’s payment obligations in connection with the Improvement District, which consists of principal in the amount of \$43,862,541.99 together with interest, shall be referred to in this Agreement as “**Developer ID Obligations**.”

D. Exhibit H to the Agreement is amended as follows:

Paragraphs 2, 3, 4, and 5(a-g) of Exhibit H are hereby deleted.

E. City and Developer acknowledge that an Improvement District has been formed pursuant to Section 5.2 of the Agreement, and the amount of the bonds (“**Bonds**”) assessed to Developer and Globe in connection with the Improvement District is \$43,862,541.99 plus interest. The payments of principal and all interest that has accrued and that continues to accrue on the Bonds, are the Developer ID Obligations as defined in the Agreement as amended.

F. Section 8.1(b) of the Agreement as amended 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 obligation to maintain the Reimbursement Account shall thereupon

terminate, if the completion of the Phase 1 Minimum Retail Improvements has not occurred for any reason other than that specified in Section 12.6 on or before December 31, 2016, and/or if the completion Phase 2 Minimum Retail Improvements has not occurred for any reason other than that specified in Section 12.6 on or before December 31, 2021 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. The timing of the commencement of Rebated Payments as to the City ID Payment Obligation shall be as provided in Section 8.1(c) below.

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

(c) If Developer completes the construction of Phase One of the Minimum Retail Improvements by December 31, 2016, and completes the construction of Phase Two of the Minimum Retail Improvements by December 31, 2021, the City's obligations for Rebate Payments is limited to the Developer's ID Obligations and the Reimbursement Amount, which is \$10,000,000 subject to the provisions of Exhibit H. If Developer fails to complete either Phase One of the Minimum Retail Improvements or Phase Two of the Minimum Retail Improvements within the time frames specified in the Agreement as amended, the City's obligations for Rebate Payments is limited to the portion of the Developer's ID Obligations defined as the City's ID Payment Obligation. The City shall pay to Developer all Sales Tax Rebates held by the City in the Reimbursement Account (the "**Rebate Payments**") as follows. The City shall begin making Rebate Payments 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 cumulative, as applicable, and through the application of other customary methods and parameters of privilege tax administration so that the release of the Rebate Payment or Rebate Payments to the Developer will not result in violation of sales tax confidentiality laws and shall continue making such Rebate Payments on the first day of each calendar quarter thereafter until the City ID Payment Obligation has been paid and reimbursed to the Developer; and if the conditions for such reimbursements have been met, until the remainder of the Developer's ID Obligations (Developer's ID Obligations less the City DI Payment Obligation) and Reimbursement Amount been paid and reimbursed to Developer. Developer shall apply all Rebate Payments received pursuant to this Section 8.1(c) first to the City's ID Payment Obligation; then to the remainder of the Developer's ID Obligations (i.e. the Developer's ID Obligations less the City ID Payment Obligation) if applicable; then to the then accrued interest on the City ID Payment Obligation and, if applicable, the remainder of the Developer's ID Obligations; and then to the Reimbursement Amount. Further, the Parties clarify and confirm that, upon and following timely Completion of Construction of Phase Two, regardless of the identity of the person or entity holding the Bonds, and further regardless of any prepayment of the Bonds or any Assessments relating to the

Bonds, City shall continue to make scheduled payments to Developer in the amount of principal and interest owing thereon for the term of the Bonds, as though the Bonds were not held by Developer or had not been prepaid in whole or in part. By way of example, and for illustrative purposes only, if Developer were to purchase or prepay the Bonds, in whole or in part, City will nevertheless continue to pay to Developer all principal and interest that would have been paid with respect to the Bonds under the terms of this Agreement, even though the Bonds may actually have been paid, otherwise satisfied, or then held by Developer.

H. Section 6.10 of the Agreement, as added by the First Amendment, shall be amended to read 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 development of 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 Phase One 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; and in the event that Developer has

achieved Completion of Construction of Phase Two of the Minimum Retail Improvements on or before December 31, 2021, 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; and further 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, 2024, any such uncredited amounts shall be the property of City and no longer available for credit against City Fees.

(d) Without limiting the provisions of the last sentence of Section 6.10(c), in the event that Developer has not achieved Completion of Construction of Phase One 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. In the event that Developer has achieved Completion of Construction of Phase One Minimum Retail Improvements by December 31, 2016, but has not achieved Completion of Construction of Phase Two of the Minimum Retail Improvements by December 31, 2021, 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, other than the City Fees collected pursuant to Section 6.10(a) or (b) of the Agreement as amended, is paid by Developer or by any third party subsequent to November 1, 2009 in connection with the development of the Project, rather than having the prepaid fees collected pursuant to Section 6.10 (a) or (b) of the Agreement as amended credited against the fees owed for such development, and provided the prepaid fees collected pursuant to Section 6.10 of the Agreement as amended have not been previously exhausted by application of the prepaid fees against City Fees owed in connection with the development of the Project, the City will repay to Developer the amount of such City Fee within forty-five (45) days of a written 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 (nor 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.

As of the date of execution of this Amendment, City acknowledges that Developer has paid and the City has received, the prepayment required by Section 6.10(a) of the Agreement as amended.

I. As portions of the Project between the western boundary of the Regional Shopping Center and Bullard Wash are developed, Developer agrees to collaborate and work cooperatively with City and its staff to review the feasibility of, and potential design alternatives for, an appropriate pedestrian connection linking the Regional Shopping Center with future development to the west; provided, however, that Developer's promise of collaboration and cooperation herein does not require a significant additional expenditure of monies or the unanticipated donation of land by Developer.

J. During the construction of the Minimum Retail Improvements, and at such time or times reasonably requested by City, Developer agrees to meet and confer with the City's staff in connection with marketing the Regional Shopping Center, and to provide data, schedules and narrative reports that generally describe Developer's construction and marketing efforts, summarize leasing activities, and provide projections and updates regarding leasing at the Market at Estrella Falls; and Developer further agrees to meet, upon reasonable request, from time-to-time, with the City Council (or its designated representatives) with respect to the reporting of such matters; provided, however, that nothing in this Section shall require Developer to disclose or divulge any commercial, proprietary, or confidential information of Developer or of any third party.

3. Full Force and Effect. Except as expressly modified and amended by this Amendment, all other terms, provisions and conditions of the Agreement (as previously amended) shall remain unchanged and in full force and effect. In the event of any conflict between the terms of this Amendment and the terms of the Agreement or the First Amendment, the provisions of this Amendment shall control.

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 (as previously amended).

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, (as previously amended) 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.

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

[SIGNATURES AND ACKNOWLEDGEMENTS ON FOLLOWING THREE PAGES]

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

By: Brian Dalke
Name: Brian Dalke
Its: City Manager

ATTEST:

By: maureen Scott
City Clerk

APPROVED AS TO FORM:

By: [Signature]
City Attorney

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 20th day of November, 2014, by Brian Dalke, the City Manager of the City of Goodyear, Arizona, an Arizona municipal corporation, who acknowledged that he signed the foregoing instrument on behalf of the City.

maureen G. Scott
Notary Public

My commission expires:
May 31, 2018



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 Corp., a Delaware corporation, its general partner

By: [Signature]
Name: Stephen L. Spector
Its: Senior Vice President, General Counsel

STATE OF CALIFORNIA)
) ss.
COUNTY OF Los Angeles)

On November 18, 2014, before me, Wilma A. Dennis, notary public, personally appeared Stephen L. Spector, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Wilma A. Dennis (Seal)

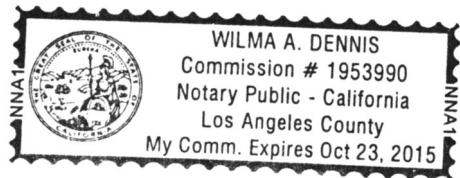
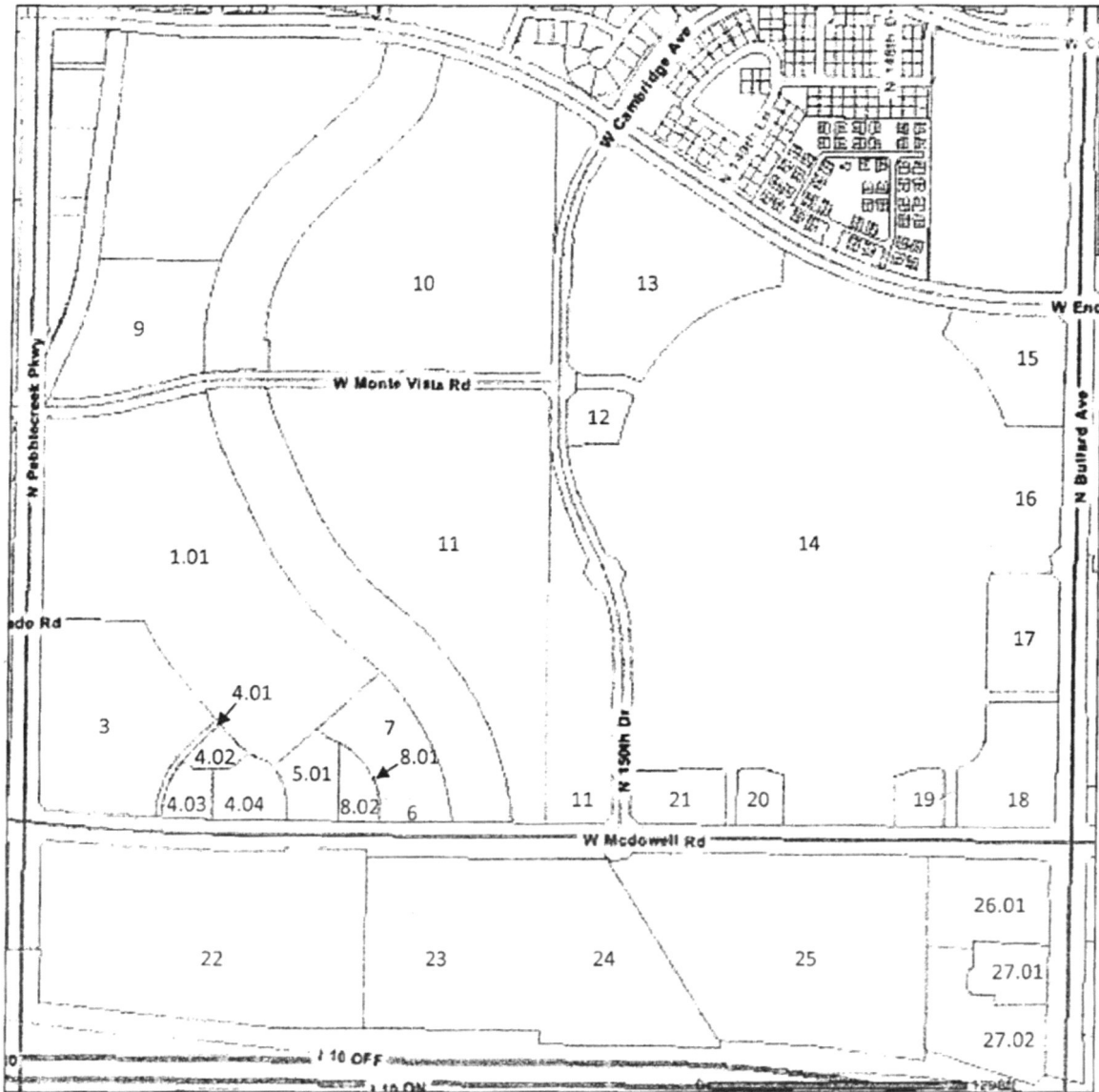


Exhibit 1

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Available at the Goodyear City Clerk's Office
190 N. Litchfield Rd.
Goodyear, AZ 85338
623-882-7830

EXHIBIT 1



Second Amendment of Westcor Development Agreement

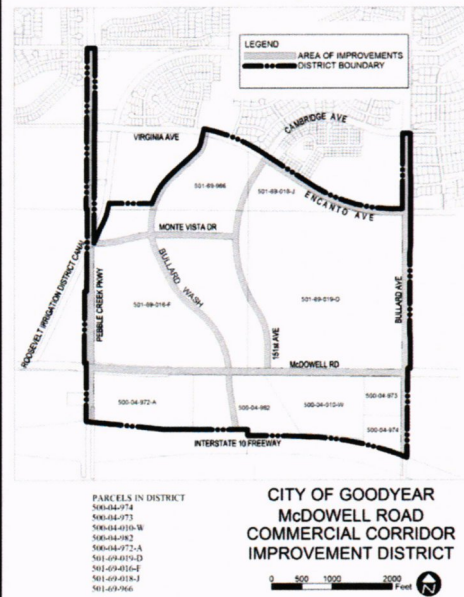
Goodyear City Council
November 17, 2014

Original Development Agreement

- Approved September 11, 2006
 - Defined Minimum Retail Improvements for Regional Mall
 - Two anchor stores, plus 300,000 gross leasable sq ft
 - Anticipated completion Dec 2012

Infrastructure Investment

- McDowell Rd Commercial Corridor - \$47 million
 - Roads shown on map and improved Bullard Wash park between Virginia & McDowell
- Necessary to Support Regional Development Including Mall
 - City Roadway Responsibility
 - Public Park – Bullard Wash Park
 - Reimbursements for Public Infrastructure
 - 50% of sales tax generated by Westcor development (performance based)



Agreement Amendments

- Westcor (Macerich) Committed to Regional Mall
- Anchors Determine Timing of Opening
- First Amendment in Dec 2009 – extended timeframe; prepayment of fees
 - 2014 Completion with 2016 Extension
- Need for Second Amendment Consideration
 - Great Recession
 - Commitment Remains; Needs to be Responsive to Market



Macerich – Estrella Falls

- National Portfolio
 - More than 52 properties and 55 million leasable square feet
- Acquired Arizona-based Westcor in 2002
- Delivers quality customized retail projects that reflect the unique character of each community and provides exciting customer experience
- Established success valley-wide
 - Scottsdale Fashion Square
 - Chandler Fashion Center
 - SanTan Village
 - Kierland
 - Arrowhead Towne Center
 - Superstition Springs Center

Macerich - Estrella Falls

- Commitment to Goodyear and the West Valley
 - Estrella Falls – 330 acre Commercial Core
 - Market at Estrella Falls
 - Estrella Falls Regional Mall
 - Peripheral Commercial Properties

Macerich - Estrella Falls

- Commitment to Goodyear and the West Valley
 - Market Conditions and Timing
 - Significant Investment
 - Community Partnerships

Macerich - Estrella Falls

- Commitment to Goodyear and the West Valley
 - Opportunity today – Phase 1 – Theatre
 - Opportunity tomorrow – Phase 2 – Regional Mall
 - And beyond – creating the Goodyear Commercial Core

Second Amendment Proposed Terms

- Phased Approach
 - Phase I – Completed December 31, 2016
 - Theater (not less than 12 screens)
 - Two pad-ready sites (retail/entertainment use)
 - Phase II – Contingent Upon Meeting Phase I Requirements
 - Completion of Minimum Retail Improvements (mall build out) by December 31, 2021

Points Intact from Original Agreement

- Additional planning and inspection staff as needed during project design and construction (developer funded)
- \$600,000 over three years for enhanced police services
- Equipment to maintain emergency services radio coverage within mall area
- Police Substation
- Community Room
- City Information Kiosk
- Continued Improvement District payments
 - \$3.3 million per year

Economic Impact Analysis

- Original Analysis: 2006
- Updated First Amendment: 2009
- Updated Second Amendment: 2014
- Conducted by Applied Economics
- Findings:
 - Project to generate \$9-10 Million in Sales Tax Revenue per year during reimbursement period (double after repayment)
 - Sufficient to cover reimbursement obligations in time frame
 - Validation that the development of the full project would not have occurred in the same time or location without infrastructure reimbursements

Recommendation

- Adopt resolution 14-1670 authorizing the City Manager to execute a Second Amendment to the Development Agreement with Westcor/ Goodyear LLC



October 20, 2014

Mr. Brian Dalke
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 second amendment to the development agreement between the City of Goodyear and Westcor/Goodyear, L.L.C. for the 330 acre commercial development along McDowell Road between Pebble Creek Parkway and Bullard Avenue. The terms of the agreement have been adjusted to reflect changes in economic and market conditions that will delay the project.

The 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 2.7 million square feet of commercial space, of which about 82 percent would be sales tax generating space. The Market at Estrella Falls is already about 50 percent complete. Westcor expects most of the construction on the remaining part of that phase to occur between 2015 and 2020, which is about five years later than originally planned. The Estrella Falls Mall is expected to begin construction in 2016 with the completion of a 12 screen theatre and preparation of two additional PAD sites stipulated in the development agreement as the phase one minimum retail improvements. These improvements must be completed by December 31, 2016.

The remaining parcels are expected to build out after 2018. Peripheral parcels, which are expected to include about 1.4 million square feet, would develop later between 2020 and 2027. By December 31, 2021, the developer must complete the remaining minimum retail improvements and developer public improvements, as specified in the original development agreement.

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. 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 our analysis as well as the amended development agreement and additional information provided by the city and



Mr. Brian Dalke
Page 2 of 2

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 reimbursement and that the flow of tax revenues would be sufficient to cover the reimbursement amount in the allotted time period.

Once completed, the project could generate an estimated \$9 million to \$10 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. This estimate is based on a general fund sales tax rate of 2.5 percent for standard retail, with projected restaurant sales taxed at 4 percent and hotel sales taxed at 5 percent.

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 discussions with Westcor/Goodyear L.L.C., we believe that this type of development would not have occurred on the same timeline, or perhaps at all, without the incentive. The cost of public infrastructure improvements, primarily roadway and utility improvements, required to make the site accessible for a regional mall 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 me.

Sincerely,

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

Sarah E. Murley
Principal



November 21, 2014

Ruth Peeples
Macerich
401 Wilshire Blvd. Suite 700
Santa Monica, CA 90401-1452

RE: 2nd Amendment to the Development Agreement for Estrella Falls in Goodyear.

Dear Ms. Peeples:

Enclosed is one recorded 2nd Amendment to the Development Agreement for Estrella Falls in Goodyear for your records.

If you have any questions, please feel free to contact me at 623-882-7828.

Sincerely,

CITY OF GOODYEAR

A handwritten signature in cursive script that reads "Maureen Scott".

Maureen Scott
City Clerk
City Clerk's Office
190 N Litchfield Rd
Goodyear, AZ 85338

Enclosures





November 21, 2014

Ruth Peeples
Macerich
401 Wilshire Blvd. Suite 700
Santa Monica, CA 90401-1452

RE: 2nd Amendment to the Development Agreement for Estrella Falls in
Goodyear.

Dear Ms. Peeples:

Enclosed is two more recorded 2nd Amendment to the Development Agreement
for Estrella Falls in Goodyear for your records. You should have already received
one original.

If you have any questions, please feel free to contact me at 623-882-7828.

Sincerely,

CITY OF GOODYEAR

A handwritten signature in cursive script that reads "Maureen Scott".

Maureen Scott
City Clerk
City Clerk's Office
190 N Litchfield Rd
Goodyear, AZ 85338

Enclosures





VIA EMAIL and FEDEX

November 18, 2014

Rob Bassett
AVP, Development
Macerich
11411 North Tatum Blvd.
Phoenix, AZ 85028-2399

Re: Second Amendment to Development Agreement
Estrella Falls, *Goodyear, AZ*

*Dmo
11/20/14*

Dear Rob:

Enclosed please find four originals of the above-referenced agreement executed by Developer, Westcor/Goodyear, L.L.C. Please remember to insert the date on page 1 when all parties sign and return a fully-executed original to my attention.

Also, please send us via email a conformed copy of the recorded Second Amendment when returned to you.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Ruth Peeples".

Ruth Peeples
Real Estate Paralegal to
Steven M. Kraus, VP, Senior Real Estate Counsel

/rlp
325935v1
Enclosures

cc by email w/ enclosure: Steve Kraus
Garrett Newland

WESTCOR/GOODYEAR, L.L.C.
c/o The Macerich Company
401 Wilshire Boulevard, Suite 700
Santa Monica, CA 90401

VIA FEDERAL EXPRESS

December 29, 2016

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

Re: Westcor/Goodyear, L.L.C. - Development Agreement (as defined below)

Dear Mr. Dalke,

Reference is hereby made to that certain Development Agreement, dated September 1, 2006 by and between the City of Goodyear, Arizona (“City”) and Westcor/Goodyear, L.L.C. (“Developer”) and recorded on September 13, 2006 in the Official Records of Maricopa County (the “Official Records”) as Instrument Number 20061215606 (the “Original Agreement”), as amended by that certain First Amendment to Development Agreement, dated December 14, 2009 by and between City and Developer and recorded on December 14, 2009 in the Official Records as Instrument Number 20091143945 (the “First Amendment”) and as further amended by that certain Second Amendment to Development Agreement, dated November 17, 2014 by and between City and Developer and recorded on November 20, 2014 in the Official Records as Instrument Number 20140769834 (the “Second Amendment” and, together with the Original Agreement and the First Amendment, the “Development Agreement”). All capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Development Agreement.

Pursuant to Section 4.3 of the Development Agreement (as amended in Section 2.A of the Second Amendment), this letter is being delivered to you to confirm that (a) the date of Completion of Construction of Phase One of the Minimum Retail Improvements is October 14, 2016 and (b) the Phase One multi-plex cinema opened for business to the public on October 14, 2016. The aforementioned dates occurred prior to the Phase One Completion Date, therefore, in accordance with Section 4.3 of the Development Agreement (as amended in Section 2.A of the Second Amendment), the date for Completion of Construction of Phase Two of the Minimum Retail Improvements is extended through and including December 31, 2021, subject to Enforced Delay.

Pursuant to Section 4.3 of the Development Agreement (as amended in Section 2.A of the Second Amendment), please kindly countersign this letter to confirm the date of Completion of Construction of Phase One of the Minimum Retail Improvements and the date that the Phase One multi-plex cinema opened for business to the public as set forth above. Please keep one original for the City’s records, return one (1) original to Alison Wais at the address listed above and return a PDF copy to Alison Wais at alison.wais@macerich.com.

Sincerely,

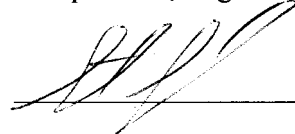
DEVELOPER:

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

By: THE WESTCOR COMPANY II
LIMITED PARTNERSHIP, an Arizona
limited partnership, its managing
member

By: MACERICH TWC II CORP.,
a Delaware corporation, its general
partner


By:
Name:
Title:



Stephen L. Spector
Senior Vice President, General Counsel

**PURSUANT TO SECTION 4.3 OF
THE DEVELOPMENT AGREEMENT,
ACKNOWLEDGED AND AGREED TO
BY CITY:**

CITY OF GOODYEAR, ARIZONA
an Arizona municipal corporation

By: 
Name: Brian Dalke
Title: City Manager

cc via Federal Express: City of Goodyear
Attn: Roric V. Massey, City Attorney
190 North Litchfield Road
Goodyear, AZ 85338

cc via e-mail: Garrett Newland (garrett.newland@macerich.com)
Jacob Knudsen (jacob.knudsen@macerich.com)
Alison Wais (alison.wais@macerich.com)