

RESOLUTION NO. 2021-2195

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING THE THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT; PROVIDING AUTHORIZATION AND DIRECTION FOR EXECUTION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Goodyear and Westcor/Goodyear LLC (the Developer), first entered into a Development Agreement effective September 1, 2006 to provide for the planning and development of certain regional commercial and mixed-use development generally located northwest of McDowell Road and Bullard Avenue and recorded in the Official Records of Maricopa County, Arizona on September 13, 2006, in Recording No. 2006-1215606, referred hereafter as (the "2006 Development Agreement"); and

WHEREAS, the Developer and the City formed the McDowell Road Corridor Improvement District and the Developer then constructed approximately \$43 million in roadway, infrastructure, and park improvements to Bullard Wash Park to support the regional center and surrounding commercial development. The Developer then constructed the Market at Estrella Falls power center generally located at the intersection of McDowell Road and Pebblecreek Parkway; and

WHEREAS, the Great Recession delayed the construction of the planned regional mall and on December 14, 2009, the City and Macerich/Westcor entered into the First Amendment to the 2006 Development Agreement, recorded in the Official Records on December 14, 2009, in Recording No. 2009-1143945, to extend the time frames to meet certain milestones in the project development due to ongoing economic conditions; and

WHEREAS, the Second Amendment to the 2006 Development Agreement was entered into by the parties on November 17, 2014, and recorded in the Official Records on November 20, 2014, in Recording No. 2014-0769834; to redefine project milestones and provide for Phase I and Phase II Improvements for the project and further required the Phase II Improvements be completed no later than December 31, 2021 in order for certain incentives to remain in place; and

WHEREAS, the developer subsequently constructed the existing Harkins Theatre and developed a restaurant pad site for the Cheddar's Restaurant; and

WHEREAS, The 2006 Development Agreement, as amended, will be referred to in this Amendment as the (Development Agreement); and

WHEREAS, in 2021, Globe Land Investors, LLC, a Delaware limited liability company ("Globe"), purchased the approximate 150-acre regional center site from Macerich and by the terms of an "Assignment and Assumption of Development Agreement" recorded on June 30, 2021, in Recording No. 2021-0720083, has succeeded to all of its predecessor's right, title and interest in and to the Development Agreement as "Developer" named in the Development Agreement, and has assumed, and has agreed to be bound by, all of its predecessor's rights and obligations as "Developer" contained in the Development Agreement that first arise from and after the date of the assignment and Globe's assumption; and

WHEREAS, the City acknowledges the assignment of the Development Agreement to, and its assumption by, Globe; and recognizes Globe as Developer in the Development Agreement; and

WHEREAS, Globe is currently in the process of re-envisioning the development of the 150-acre site and has engaged a development partner in that process; In addition, Globe and the City have collaboratively begun working on this project and anticipate it will continue into 2022 and likely involve re-zoning the site, and a significantly restructured development agreement will need to be negotiated; and

WHEREAS, In view of the assignment and assumption of the Development Agreement, the changes in the practice, logistics, conduct and economics of retail sales since the original date of execution of the Development Agreement in 2006, and subsequent changes in planning and zoning affecting the Property, the Parties now wish to amend the Development Agreement as set forth in this Third Amendment, which is attached hereto this Resolution as Exhibit "A"; and

WHEREAS, this Third Amendment document will extend the deadline to construct Phase II improvements for one year until December 31, 2022, and will keep the associated incentives and pre-paid fees in place until that time to allow the parties to collaborate on a new vision for development of a commercial and mixed-use development on the site; and

WHEREAS, the City and Globe confirm their obligations and rights arising in and under the Development Agreement, including, but not limited to, reimbursements to Globe as successor to Developer, as well as acknowledgement of City fees that have been prepaid pursuant to the terms of the Development Agreement; and

WHEREAS, under the original Development Agreement there was a tiered-level of reimbursement to the Developer related to Improvement District costs expended for infrastructure improvements; and

WHEREAS, this Third Amendment will lock in the reimbursement at the lower City Improvement payment obligation under the terms of the original Development Agreement, than the higher reimbursement rate the Developer would have been eligible for, had they met their Phase II construction obligations by December 31, 2021; and

WHEREAS, notwithstanding anything in this Third Amendment to the contrary, the City's obligation to pay the Reimbursement Amount to Developer is expressly conditioned upon Developer's completion of construction of the Phase II Improvements prior to December 31, 2022.

WHEREAS, the this Third Amendment to Development Agreement is intended to be a development agreement pursuant to A.R.S. § 9-500.05;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. The Mayor and Council of the City of Goodyear hereby approve the Third Amendment to the Development Agreement with Globe Land Investors, LLC, a Delaware limited liability company, attached as Exhibit "A."

SECTION 2. The City Manager or her designee is hereby authorized and directed to sign and execute the Third Amendment to the Development Agreement and to take any and all actions necessary to carry out the intent of this Resolution and the terms of this Third Amendment Agreement.

SECTION 3. This Resolution shall become effective upon its adoption by the Mayor and Council of the City of Goodyear.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, by a 6-0 vote, this 6th day of December, 2021.

Georgia Lord
for Georgia Lord, Mayor

Date: 12.6.2021

ATTEST:

Darcie McCracken
Darcie McCracken, City Clerk

APPROVED AS TO FORM:

Roric Massey
Roric Massey, City Attorney



EXHIBIT 'A'

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

(On the following pages)

Recording Number:20211312308
Time of Recording:12/10/2021 03:50
File Name:AI571-3-1-1--
Affidavit: N
Official Records of
Maricopa County Recorder
Stephen Richer
Electronic Recording

When recorded, return to:
City of Goodyear
190 North Litchfield Road
Goodyear, Arizona 85338
Attn: City Manager

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This Third Amendment to Development Agreement (this "Amendment") is made to be effective as of December 10, 2021 (the "Effective Date") between the City of Goodyear, an Arizona municipal corporation ("City") and Globe Land Investors, LLC, a Delaware limited liability company ("Globe"). Each of City and Globe may be referred to in this Amendment as a "Party," or collectively as the "Parties."

1. Recitals. As background to this Amendment, the Parties state, recite and acknowledge the following recitals, each of which is fully incorporated into this Amendment as a material term:

A. City previously entered into a Development Agreement with Globe's predecessor as the party named in that agreement as "Developer." The Development Agreement was dated to be effective as of September 1, 2006, and was recorded in the Official Records of Maricopa County, Arizona (the "Official Records") on September 13, 2006, in Recording No. 2006-1215606 (the "2006 Development Agreement").

B. That 2006 Development Agreement was amended twice: by a First Amendment to Development Agreement dated December 14, 2009, which was recorded in the Official Records on December 14, 2009, in Recording No. 2009-1143945, and by a Second Amendment to Development Agreement dated November 17, 2014, which was recorded in the Official Records on November 20, 2014, in Recording No. 2014-0769834.

C. The 2006 Development Agreement, as amended, will be referred to in this Amendment as the "Development Agreement."

D. Globe, by the terms of an "Assignment and Assumption of Development Agreement" dated June 29, 2021, which was recorded on June 30, 2021, in Recording No. 2021-0720083, has succeeded to all of its predecessor's right, title and interest in and to the Development Agreement as "Developer" named in the Development Agreement, and has assumed, and has agreed to be bound by, all of its predecessor's rights and obligations as "Developer" contained in the Development Agreement that first arise from and after the date of the assignment and Globe's assumption.

E In view of (i) the assignment and assumption of the Development Agreement, (ii) changes in the practice, logistics, conduct and economics of retail sales since the original date of execution of the Development Agreement in 2006, and (iii) subsequent changes in planning and zoning affecting the Property, the Parties now wish to amend the Development Agreement as set forth in this Amendment.

2. Agreement. For Ten Dollars, the exchange of promises contained in this Amendment, and other valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

A. City acknowledges the assignment of the Development Agreement to, and its assumption by, Globe; and City recognizes Globe as Developer in the Development Agreement.

B. City and Globe confirm their obligations and rights arising in and under the Development Agreement, including (but not limited to) Section 8 (as to Reimbursements to Globe as successor to Developer) and acknowledgement of City Fees that have been prepaid pursuant to the terms of the Development Agreement and remain available to Globe as Developer until December 31, 2022; provided, however, that City and Globe acknowledge and agree that the City's obligation to make Rebate Payments pursuant to the Development Agreement shall hereafter be limited to (i) the portion of the Developer's ID Obligations defined as the City's ID Payment Obligation (i.e, the sum of \$25,000,000.00 plus interest thereon as specified in the Development Agreement) and (ii) the Reimbursement Amount in the amount of \$10,000,000. The City shall have no obligation to pay any portion of the Developer's ID Obligations that exceed the City's ID Payment obligation. The City's obligation for Rebate Payments shall be so limited regardless of whether Completion of Construction of the Phase II Improvements occurs prior to December 31, 2022. Notwithstanding anything in this Amendment to the contrary, the City's obligation to pay the Reimbursement Amount to Developer expressly conditioned upon Developer's Completion of Construction of the Phase II Improvements prior to December 31, 2022.

C. The date for Completion of Construction of the Phase II Improvements is hereby extended to December 31, 2022.

3. Miscellaneous. Terms not otherwise defined in this Amendment have the meanings attributed to them in the Development Agreement. Except as expressly modified by this Amendment, the Development Agreement is unchanged, and is in full force and effect. This Amendment may be executed by the Parties electronically and in counterparts. The Parties represent to each other that their execution and delivery of this Amendment has been authorized by all requisite corporate or company (as applicable) action.

Signatures of the Parties are on the following page.

Signature Page to Third Amendment to Development Agreement

Executed by the Parties to be effective as of the Effective Date set forth above.

City of Goodyear, an Arizona municipal corporation

By: Julie Karis
Printed Name: Julie Karis
Its: City Manager
Date of Execution: 12/10/21

Attest:

By: Darin McCracken
City Clerk



Approved:

By: [Signature]
City Attorney

Globe Land Investors, LLC, a Delaware limited liability company

By: George Getz
Printed Name: George Getz
Title: President
Date of Execution: 12/7/21

State of Arizona }
 }
Maricopa County }

The foregoing Third Amendment to Development Agreement was acknowledged before me, the undersigned Notary Public, by George Getz, known to me or otherwise proven to be the President of Globe Land Investors, LLC, who executed the same on behalf of the said company.

By: Amanda Dawson
Seal:

