AGREEMENT/CONTRACT COVER SHEET

This form along with the original executed agreement/contract must be submitted to the City Clerk's Office. The Department contact listed below will be notified once the document(s) is available in OpenText.

ASSIGNED CONTRACT NO. C- **0689-06-A5** **REQUEST DATE:** 02/27/23

I. ROUTING & APPROVALS

		Initials/Approval	Date
	Name & Extension: Roric Massey		
	Department: Legal Services		
☑	**Legal:** City Attorney		
☐	**Procurement**: Jacque Behrens		
☑	**City Manager**: Wynette Reed *(if applicable)*		

II. GENERAL INFORMATION

To be completed by Department/Project Manager

Contract Type	Development Agreement Amendment	**Other**	
Does this contract need to be recorded with the **Maricopa County Recorder's Office?**			YES
Project Name - Description	Fifth Amendment to Development Agreement		
Business Name	RG Land Partners, LLC		
Name & Phone/Email			
Mailing Address			
City, State, Zip Code		**Contract Amount**	
Start Date	02/27/23	**End Date**	
Council Meeting Date	02/27/23	**Agenda Item**	**AI- 1313**
Link contract to –	CON 0689-06 RES 2021-2195, RES 14-1670		
Additional Comments	Please record upon Council Approval and send scanned copy to Roric Massey and cc: Wendy Corsi. Thank you.		

III. PROCUREMENT & INSURANCE REVIEW PROCUREMENT

All contracts are routed through Finance and Legal Services. Finance will assign a contract number. IGAs, Easements, Lease/Property Acquisition and Development Agreements DO NOT require procurement review. Contracts for Council approval must be reviewed and signed off by Procurement or the City Manager & City Attorney prior to going to Council.

To be completed by Procurement		Initials	Date
Insurance Certificate	☐		
Bid Bond	☐		
Performance Bond	☐		
Payment Bond	☐		

IV. CITY CLERK REVIEW

Retention		**Scanned into OpenText**	
Destruction		**Completed by**	

(revised 2023-02-21)

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
STEPHEN RICHER
20230118121 03/08/2023 03:51
ELECTRONIC RECORDING

2023061-23-1-1--
Garciac

When recorded, return to:

City of Goodyear, Arizona
Office of the City Clerk
1900 North Civic Square
Goodyear, Arizona 85340

FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT

This Fifth Amendment to Development Agreement (this "Amendment") is made to be effective as of 2-28, 2023 (the "Fifth Amendment Effective Date"), between the City of Goodyear, an Arizona municipal corporation ("City") and RG Land Partners, LLC, a Delaware limited liability company ("RGLP"). Each of City and RGLP 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 RGLP'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 has been amended four times:

(i) 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 (the "First Amendment"); and

(ii) 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 (the "Second Amendment");

(iii) by a Third Amendment to Development Agreement dated December 10, 2021, which was recorded in the Official Records on December 10, 2021, in Recording No. 20211312308 (the "Third Amendment"); and

(iv) by a Fourth Amendment to Development Agreement dated December 12, 2022, which was recorded in the Official Records on December 14, 2022 in Recording No. 2022-890069 (the "Fourth Amendment").

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

D. In accordance and compliance with Section 14.2.3 of the Development Agreement, and by the terms of an "Assignment and Assumption of Development Agreement" dated June 29, 2021, which was recorded in the Official Records on June 30, 2021, in Recording No. 20210720083, Globe Land Investors, LLC, a Delaware limited liability company ("Globe"), as the named Assignee, expressly and unconditionally succeeded to all of its predecessor's right, title and interest in and to the Development Agreement as "Developer" named in the Development Agreement (the "Original Developer").

E. In accordance and compliance with Section 14.2.3 of the Development Agreement, and by the terms of an "Assignment and Assumption of Development Agreement" dated 2-28, 2023, which was recorded in the Official Records on 3-1, 2023, in Recording No. 2023-0104226, RGLP (as an Affiliate of Globe) has expressly and unconditionally succeeded to all of Globe'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 RGLP's assumption. All references in the Development Agreement and this Amendment to "Developer," shall mean RG Land Partners, LLC, a Delaware limited liability company.

F. The world has changed monumentally since 2006, when a regional retail shopping mall within the City, with its appurtenant resources and related amenities, was a reasonable, comfortable and logical project well within the reach and expectation of an expanding urban community. But soon thereafter, and with a shocking unpredictability, the world confronted what has been commonly referred to as the Great Recession, in which development not only sputtered, but halted; and the frantic growth of on-line retailing – coupled with these recessive macroeconomic economic forces, including massive unemployment and the collapse of major financial institutions – transformed what seemed to be smooth roadway to significant economic growth and development for the City, into a stalled opportunity. The world sat back, took a deep breath, and slowly began to reassess and rebuild. Then, as the economy seemed to be recovering, came the pandemic – another unforeseen and unanticipated calamity -- which further eroded hopes, challenged physical growth, and called for a new vision of how people and institutions could successfully interact. Throughout, however, the City has kept its focus on the eventual development of the Property while remaining nimble in terms of its evolution and redefinition.

G. RGLP is a new company, but its principals and affiliates are neither new nor strangers to solid economic performance in this metropolitan area – and particularly during the

challenging times of the past decade and a half. They have functioned, prospered and grown during the recession and the pandemic, have seen the opportunities offered by the Property, have embraced its challenges, have committed to the community by their economic investment in the acquisition of the land, and now offer the City a re-imagined project that the City believes can fulfill the dreams and expectations that it envisioned earlier.

H. The Project, as presently proposed by Developer, includes and requires significantly more public infrastructure than would have been needed for the original regional shopping center, and costs of materials, labor and shipping have increased during the past sixteen years. In recognition of the value to the City from this additional level of Public Improvements to be designed and constructed by Developer, it is necessary for the City to re-evaluate its commitment to the Project and offer reasonable dollar-for-dollar reimbursement to the Developer for its actual expenditures.

H. Accordingly, and in view of (i) the assignment and assumption of the Development Agreement to RGLP, and the proven performance of RGLP's Affiliates both within the City and in the larger metropolitan community; (ii) subsequent changes in planning and zoning affecting the Property; (iii) the re-design of the Project and the increased and improved public infrastructure that will benefit the City; (iv) upheavals in the practice, logistics, conduct and economics of retail sales since the original date of execution of the Development Agreement in 2006, and (v) the revitalization and fresh, new vision of development of the Property proposed by Developer, 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 now amend the Development Agreement as more fully set forth in this Amendment.

3. Developer. City acknowledges the assignment of the Development Agreement to, and its assumption by, RGLP; and City recognizes RGLP as Developer in the Development Agreement for all purposes; provided, however, the City and RGLP acknowledge the continuation of certain reimbursement obligations to Original Developer with respect to the Developer ID Obligations.

4. Recitals. The Recitals in the Development Agreement are superseded to the extent that they are inconsistent with this Amendment.

5. Exhibits. Exhibit B to the Development Agreement is withdrawn and replaced in its entirety with Exhibit B attached to this Amendment. All of the other Exhibits to the Development Agreement are confirmed and ratified.

6. Deleted Definitions. The following definitions are deleted in their entirety:

A. Section 1(d) – "Anchor Retail Store" and "Anchor Retail Stores."

B. Section 1(w) – "Design Guidelines."

C. Section 1(rr) – "Minimum Retail Improvements."

D. Section 1(eee) – "Regional Shopping Center."

E. Section 1(fff) – "Regional Shopping Center Opening."

F. Section 1(mmm) – "Retail Area."

7. Revised Definitions. The following definitions are revised and amended:

A. Section 1(q) is deleted in its entirety and is replaced with the following:

"**Commencement of Construction**" means both (i) the obtaining of a building, excavation, grading or similar permit by Developer for the construction of any portion of the Private Improvements, the Public Roadway Improvements or any Phase of the Additional Developer Public Improvements, and (ii) the actual commencement of physical construction operations on the Property in a manner necessary to achieve Completion of Construction of the applicable improvements. Notwithstanding the foregoing or anything in this Agreement to the contrary, Developer may phase all construction activities within the Project (including but not limited to the construction of any Additional Developer Public Improvements) as Developer deems appropriate in its commercial discretion (each, a "**Phase**").

B. Section 1(r) is deleted in its entirety and is replaced with the following:

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

C. Section 1(yy) is deleted in its entirety and is replaced with the following:

"**Private Improvements**" means all improvements constructed by or on behalf of Developer that constitute part of the Project and are not Developer Public Improvements, Public Roadway Improvements or Additional Developer Public Improvements.

B. Section 1(aaa) is deleted in its entirety and is replaced with the following:

"**Project**" means the proposed mixed-use development of the Property that may incorporate all or any portion of the following: shopping and other retail uses; hotel, motel restaurant, bar and other hospitality uses; office uses; automobile sales, leasing and related facilities; amusement areas including theatres and arenas; recreational, park and open areas; residential development, including single-family, townhome and condominium, stand-alone multi-family, multi-family above retail or office, live-work units and high-density residential; and all other uses related, appurtenant or ancillary to the foregoing.

C. Section 1(ooo) is deleted in its entirety and is replaced with the following:

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

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

For the purposes of this Agreement, Construction Sales Taxes are not included within "Sales Taxes" for the purposes of Section 8 of this Agreement, but may be separately referenced in Section 8 for the purposes of calculating Tax Rebates.

In the event the City no longer collects a transaction privilege tax or collects such transaction privilege tax at a rate below the rate (or rates) on the Effective Date (by way of illustration, and not of limitation, because of a change in the City's tax structure), unless such cessation of or reduction in the City's transaction privilege tax is the result of the enactment by the State of Arizona of restrictions on the City's imposition and/or collection of transaction privilege taxes, Sales Taxes

(and Construction Sales Taxes) shall be deemed collected and shall be paid by the City to the extent necessary to produce a reimbursement to Developer as though transaction privilege taxes on retail sales or related activities (as described in and contemplated by Section 8.1 of this Agreement) continued to be assessed and collected in the same manner and amount as on the Effective Date.

8. New Definitions. The following definitions are added to and included in the Development Agreement:

A. A new Section 1(xxx) is added as follows:

"**Additional Developer Public Improvements**" means Developer Public Improvements, in addition to those Developer Public Improvements previously constructed by Original Developer prior to the Fifth Amendment Effective Date, that are constructed in accordance with the requirements of this Agreement from and after January 1, 2023.

B. A new Section 1(yyy) is added as follows:

"**Additional Reimbursement Amount**" means as defined in Section 6.2.

C. A new Section 1(zzz) is added as follows:

"**Construction Sales Taxes**" mean sales or similar taxes collected with respect to construction, contracting, and the sales and leasing of materials and equipment used in construction and contracting.

D. A new Section 1(aaaa) is added as follows:

"**Construction Tax Rebates**" means as defined in Section 8.1.

E. A new Section 1(bbbb) is added as follows:

"**Cost of Financing**" means as defined in Section in Section 6.2(c).

F. A new Section 1(cccc) is added as follows:

"**Public Procurement Laws**" means as defined in Section 6.1(e).

G. A new Section 1(dddd) is added as follows:

"**Public Roadway Improvements**" means all improvements (e.g., public roadway, utility, drainage and landscape) required in connection with the completion of construction of public roadway improvements connecting West Monte Vista Road and West Goodyear Way to North Bullard Avenue.

H. A new Section 1(eeee) is added as follows:

"**Public Health Event**" means any one or more of the following, but only if declared by an applicable governmental authority: epidemics; pandemics; plagues; viral, bacterial or infectious disease outbreaks; public health crises; national health or medical emergencies; governmental restrictions on the provision of goods or services or on citizen liberties, including travel, movement, gathering or other activities, in each case arising in connection with any of the foregoing, and including, but not limited to, governmentally mandated closure, quarantine, "stay-at-home", "shelter-in-place" or similar orders or restrictions; or workforce shortages or disruptions of material and/or supply chains resulting from any of the foregoing.

I. A new Section 1(cccc) is added as follows:

"**Public Roadway Reimbursable Costs**" means as defined in Section 6.1(a).

J. A new Section 1(dddd) is added as follows:

"**Public Improvement Reimbursable Costs**" means as defined in Section 6.2(b).

K. A new Section 1(eeee) is added as follows:

"**Tax Rebates**" means as defined in Section 8.1.

K. A new Section 14.25 is added as follows:

14.25 No Boycott of Israel. Developer certifies pursuant to A.R.S. §35-393.01 that it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel.

9. Further Amendments. The Development Agreement is further amended as follows:

A. Section 3.1(a) ["Design Guidelines"] is deleted in its entirety and is replaced as follows:

(a) [Reserved]

B. Section 3.1(c) is deleted in its entirety and is replaced with the following:

(c) Approval Process. The process for the submittal, review and approval of (i) the Conceptual Land Use Plan, (ii) the Site Plans, and (iii) the Project's design elements, including without limitation building materials, colors, architectural plans, landscaping, enhanced paving plans, irrigation, lighting, pedestrian linkages, signage and the character of the Project, shall utilize the process(es) specified in the conditions of the PAD or other zoning approval for the Property. Absent specification in the PAD or other zoning approval for the Property, the City's ordinary submittal, review and approval processes then in effect shall apply, unless

expedited as provided elsewhere in this Agreement. Subject to Section 3.1(b) and Section 7 and to Applicable Laws, the City and Developer will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats or other development approvals requested by Developer in connection with development of the Project.

C. Section 3.2(a) is deleted in its entirety and is replaced with the following:

(a) Applicable Laws. For the purposes of this Agreement, the term "**Applicable Laws**" means the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which apply to the development of the Property as of the Effective Date. The Parties acknowledge and agree that the anticipated development of the Property will likely occur over a period of years. Until December 31, 2055 (the **"Restricted Period"**), no City moratorium, or future ordinance, resolution or other land use rule or regulation imposing a limitation to the rate, timing or sequencing of the development of the Property and affecting the Property or any portion thereof shall apply to or govern the development of the Property, whether such ordinance, rule or regulation affects subdivision plats, building permits, occupancy permits, or other entitlements to use the Property issued or granted by the City, it being further agreed that during the Restricted Period:

D. Section 3.2(a)(ii) is deleted in its entirety and is replaced with the following:

(ii) through and including December 31, 2027, and provided that Developer is not in default of any term or condition of this Agreement, but only with respect to non-residential components of the Project constructed from and after the Fifth Amendment Effective Date, City will waive fifty percent (50%) of all current City building permit, plan review, inspection and similar fees, other than impact fees ("**City Building Permit Fees**") in effect on the date that the building or other permit is applied for or issued, or plans are submitted, as provided in the applicable ordinance(s) as the triggering event for payment of all such City Building Permit Fees.

E. Section 3.3(e) is deleted in its entirety.

Section 3.5 ["Globe Retained Property"] is deleted in its entirety.

F. Section 4.1 ["Minimum Retail Improvements"] is deleted in its entirety and is replaced with the following:

4.1 [Reserved]

G. Section 4.2 ["Commencement of Construction"] is deleted in its entirety and is replaced with the following:

4.2 [Reserved]

H. Section 4.3 is deleted in its entirety and is replaced with the following:

4.3 Completion of Construction. Developer agrees that Completion of Construction of the Private Improvements and of the final Phase of any Additional Developer Public Improvements shall occur no later than December 31, 2055, subject to Enforced Delay. The City and Developer shall confirm in writing to the City the date of the Completion of Construction when the same becomes known.

I. Section 4.5 ["Quality of Private Improvements"] is deleted in its entirety and is replaced with the following:

4.5 Quality of Private Improvements. The Private Improvements shall be constructed in such a manner as to be reasonably comparable in quality to mixed-use projects in the metropolitan Phoenix area, such as Kierland Commons, P83, Norterra and Main Street at Verrado.

J. Section 6 ["Additional Municipal Benefits"] is deleted in its entirety and is replaced with the following:

6. Reimbursement for Public Roadway Improvements and Additional Developer Public Improvements. In addition to the reimbursements provided to Developer in Section 8 of this Agreement, City will reimburse Developer for the Public Roadway Improvements and Additional Developer Public Improvements as follows:

6.1 Public Roadway Improvements. In addition to the reimbursements provided to Developer in Section 8 of this Agreement, at any time that Developer is not in default of any term or condition of this Agreement, City will reimburse Developer directly for its actual Public Roadway Reimbursable Costs as Developer submits draw requests to City not more frequently than once per month, up to a total reimbursement of Fifteen Million and no/100 Dollars ($15,000,000.00) for such Public Roadway Reimbursable Costs.

(a) For the purposes of this Agreement, **"Public Roadway Reimbursable Costs"** means all verifiable costs which are actually incurred by Developer in connection with Developer's design, governmental review, construction, installation and inspection of the Public Roadway Improvements and for public access, which costs shall include, but are not limited to: actual "hard" costs of construction together with costs for or associated with excavation, demolition and site work (including the removal of existing buildings, structures and utilities); engineers and other consultants (including design professionals); all plan review and application fees of all applicable governmental authorities; construction permits and other required permits; project bonding and insurance; third-party construction management, coordination, inspection and supervision; project bidding;); environmental reports, title reports, traffic reports, and other reports, studies and investigations specifically related to the Public Roadway Improvements for which reimbursement is sought; and the fair market value of real property and real property interests granted, conveyed or dedicated to the City (including exclusive or non-exclusive public access easements and public utility easements required for public utilities,

but shall not include reimbursement for any private or non-City owned utilities or any dedications required by the City for non-public development projects).

(b) For purposes of this Agreement, the "fair market value" of the real property and real property interests conveyed by Developer to the City shall be determined by computing the fair market value of the applicable real property or real property interest, as of the date such computation is made, assuming, for purposes of such valuation, that the real property or applicable real property interest is vacant land, unencumbered by this Agreement, and is being marketed for the then highest and best use of said real property interest permitted under the Zoning (including any approved PAD for such real property or real property interest) for said real property or real property interest. Within thirty (30) days of the commencement of construction by Developer of any Public Roadway Improvements or Additional Developer Public Improvements that will involve the granting, conveyance or dedication of real property or a real property interest to the City, the Parties shall mutually appoint an appraiser to determine the fair market value of said real property or real property interest. If the Parties are unable to mutually agree on an appraiser within said thirty (30) day period, then the Parties shall each appoint one (1) appraiser to prepare an appraisal of the applicable real property or real property interest in accordance with the provisions of this Section 6.1(b), whose appraisals shall be completed within thirty (30) days of the Parties' appointment of the appraisers. Provided there is no greater than a ten percent (10%) difference between the fair market values as estimated by the two appraisals, the fair market value of the real property or real property interest in question shall be the average of the two appraisals. In the event the two appraisals differ by more than ten percent (10%) in their estimates of the fair market value, the two appraisers chosen by the Parties shall then designate a third appraiser, who shall be commissioned to prepare a third appraisal of the fair market value of the applicable real property or real property interest, which appraisal shall be completed within thirty (30) days of the date the third appraiser is chosen. The fair market value of the applicable real property or real property interest shall then be the average of the value as estimated by the third appraisal and the value as estimated by whichever of the first two appraisals estimates a value closer to the value estimated by the third appraisal. All appraisers appointed pursuant to this Section 6.1(b) shall (i) be by profession an MAI appraiser, (ii) have no ongoing relationship with Developer or the City, (iii) be licensed as an appraiser by the State of Arizona and (iv) have been active over the five (5) year period ending on the date of such appointment in the appraisal of similar properties in the Phoenix, Arizona, metropolitan area. The cost of appraisers and the appraisal proceedings shall be borne as follows: each Party shall pay the cost of its own appraiser and, if applicable, shall share equally in the cost of any mutually approved appraiser or the third appraiser (if required).

(c) Reimbursements will be paid by the City to Developer within thirty (30) days of Developer's submission of its draw requests to City, including receipts for payment of Public Roadway Reimbursable Costs. Payment by the City of Developer's Public Roadway Reimbursable Costs is in addition (and unrelated) to the City's obligation to make Tax Rebates pursuant to Article 8 of this Agreement. In order to qualify for reimbursement pursuant to this Section 6(A), Developer must (a) cause Commencement of Construction of that portion of the Public Roadway Improvements comprising Goodyear Way to occur on or before April 1, 2024, and (b) cause Completion of Construction of the Public Roadway Improvements comprising Goodyear Way to occur on or before April 1, 2025.

(d) Developer shall construct the Public Roadway Improvements in accordance with the Supplemental Design Guidelines therefor approved by the City. Developer will be solely responsible at its own expense to secure all necessary licenses, permits and approvals required in connection with construction of the Public Roadway Improvements. The City will use its best efforts to promptly review and approve of any plans and specifications for the Public Roadway Improvements, and its acceptance of the Public Roadway Improvements upon completion by Developer shall not be unreasonably withheld, conditioned or delayed.

(e) All Public Roadway Improvements for which Developer seeks reimbursement under this Agreement must be procured by Developer using a public procurement process and shall comply with any applicable advertisement, notification and bonding provisions of A.R.S. §§ 34-101, *et seq.*, and the City's procurement code, to the extent applicable (the **"Public Procurement Laws"**).

(f) The City acknowledges that Developer may elect to construct and dedicate the Public Roadway Improvements in phases, as reasonably determined by Developer. When any phase of the Public Roadway Improvements is completed, then upon written request of the City or Developer, Developer shall dedicate to the City, and the City shall accept such phase of the Public Roadway Improvements in accordance with the Applicable Laws and upon such reasonable and customary conditions as the City may impose upon comparable dedications, including without limitation, a two (2) year contractor's warranty for workmanship and materials.

6.2. Additional Developer Public Improvements. In addition to (i) the reimbursement for the Public Roadway Improvements described in Section 6.1 above and (ii) the City ID Payment Obligation which City is obligated to pay to Original Developer, City now agrees to reimburse Developer in accordance with Section 8 of this Agreement, (x) Developer's Public Improvement Reimbursable Costs, up to a maximum reimbursement of Fifteen Million and no/100 Dollars ($15,000,000.00) (the "**Additional Reimbursement Amount**"), and (y) Developer's Cost of Financing incurred with respect to such Additional Developer Public Improvements, provided that the Additional Developer Public Improvements are constructed in accordance with the provisions of Section 5.1 of this Agreement.

(a) Prior to commencement of construction of any Additional Developer Public Improvements, Developer must submit to the City information (in form and detail as reasonably requested by the City) about the cost and type of the Additional Developer Public Improvements and obtain written approval from the City, not to be unreasonably withheld, conditioned or delayed. The City's approval under this Section 6.2(a) is separate from any regulatory approvals that Developer must obtain in connection with the construction of the Additional Developer Public Improvements.

(b) For the purposes of this Agreement, **"Public Improvement Reimbursable Costs"** means all verifiable costs which are actually incurred by Developer in connection with Developer's design, governmental review, construction, installation and inspection of the Additional Developer Public Improvements and for public access, which

costs shall include, but are not limited to: actual "hard" costs of construction together with costs for or associated with excavation, demolition and site work (including the removal of existing buildings, structures and utilities); engineers and other consultants (including design professionals); all plan review and application fees of all applicable governmental authorities; construction permits and other required permits; project bonding and insurance; third-party construction management, coordination, inspection and supervision; project bidding;); environmental reports, title reports, traffic reports, and other reports, studies and investigations specifically related to the Additional Developer Public Improvements for which reimbursement is sought; and the fair market value of real property and real property interests granted, conveyed or dedicated to the City in connection with the Additional Developer Public Improvements (including exclusive or non-exclusive public access easements and public utility easements required for public utilities, but shall not include reimbursement for any private or non-City owned utilities or any dedications required by the City for non-public development projects).

(c) For the purposes of this Agreement, Developer's "**Cost of Financing**" means Developer's debt service as reasonably pre-approved by the City, calculated on the basis of Developer's unreimbursed Public Improvement Reimbursable Costs, provided that the Cost of Financing will not exceed four percent (4%) per year, accruing beginning on the date Developer incurs such Public Improvement Reimbursable Costs and continuing for such portion of the Reimbursement Period as any unreimbursed Public Improvement Reimbursable Costs remain outstanding and unpaid; and further provided that City is not obligated to pay more than Five Million and no/100 Dollars ($5,000,000.00) as Developer's Cost of Financing during the remaining Term of this Agreement.

(c) All Additional Developer Public Improvements for which Developer seeks reimbursement under this Agreement must be procured by Developer using a public procurement process and shall comply with any applicable advertisement, notification and bonding provisions of A.R.S. §§ 34-101, et seq., and the City's procurement code, to the extent applicable (the **"Public Procurement Laws"**).

K. Section 8.1 is deleted in its entirety and replaced with the following:

8.1 Tax Rebates. The City shall rebate and pay to the applicable Person, transaction privilege taxes (collectively, "**Tax Rebates**") equal to (i) fifty percent (50%) of the Sales Taxes imposed and actually received by the City ("**Sales Tax Rebates**") occurring within the boundaries of the Property (the "**Reimbursement Tax Base**"), on and after the Effective Date of the 2006 Development Agreement, and (ii) solely in connection with City's reimbursement to Developer for the Additional Developer Public Improvements described in Section 6.2, fifty percent (50%) of all Construction Sales Taxes actually received by the City from the Reimbursement Tax Base (excluding only Construction Sales Taxes applicable to the construction of single-family residences and stand-alone multi-family residences and other residential that is not "residential-over-retail," collectively, the "**Construction Tax Rebates**") on and after the Fifth Amendment Effective Date. The Tax Rebates shall be determined, deposited in the City's Reimbursement Account and payable as set forth in this Section 8.1.

(a) Payments to Original Developer. In consideration of Original Developer's agreeing to the Assessment, and Original Developer's construction of the Developer Public Improvements, pursuant to the 2006 Development Agreement (as previously amended) the City has agreed to pay Sales Tax Rebates to Original Developer in the amount of, and in fulfillment of the City's obligation to pay the City ID Payment Obligation, which obligation is limited to the payment of the amount specified in the Third Amendment as constituting the maximum amount of the City ID Payment Obligation.

(b) Payments to Developer. In consideration of Developer's construction of the Additional Developer Public Improvements and otherwise performing its obligations under this Agreement, City shall pay Sales Tax Rebates and Construction Tax Rebates to Developer in the Additional Reimbursement Amount to reimburse Developer for the Additional Developer Public Improvements described in Section 6.2 and Developer's Cost of Financing; provided that the reimbursement to Developer for the Additional Developer Public Improvements shall not exceed the Additional Reimbursement Amount, and the reimbursement to Developer for Developer's Cost of Financing shall not exceed the limitations described in Section 6.2(c).

(c) Separate Accounting: Original Developer. Pursuant to the 2006 Development Agreement (as previously amended), the City has agreed to maintain separate accounting for Sales Tax Rebates for payment to Original Developer of the City ID Payment Obligation.

(d) Separate Accounting: Developer. The City will maintain separate accounting for Sales Tax Rebates and Construction Tax Rebates for reimbursement to Developer, which, (i) as to Sales Tax Rebates, will commence immediately following all required payments and reimbursements to Original Developer for the City ID Payment Obligation, and, (ii) as to Construction Tax Rebates, will commence upon Completion of Construction of each Phase of the Additional Developer Public Improvements. At no time shall any reimbursement to Developer exceed actual verifiable costs incurred by Developer for the work for the Additional Developer Public Improvements.

(e) Deposits into Reimbursement Account. The City shall deposit the Tax Rebates in accounts separate from the City's general fund, which deposit may (in the City's election) take the form of a separate or segregated accounting or journal entry (the "**Reimbursement Account**"). Deposits into the Reimbursement Account shall be made by the City within thirty (30) days following the City's receipt of each monthly transaction privilege tax report from the Arizona Department of Revenue (the "**Monthly ADR Tax Report**") which includes Sales Taxes and Construction Sales Taxes actually received by the City from the Reimbursement Tax Base. Payments will be made from the Reimbursement Account until the City ID Payment Obligation has been paid to Original Developer, and the Additional Reimbursement Amount and Developer's Cost of Financing have been paid to Developer, or until the expiration of the Reimbursement Period (as defined in Section 8.2 below), whichever first occurs. The City shall pay the Tax Rebates described in Section 8.1 to Developer from the Reimbursement Account.

(f) Conditions Precedent. As an express condition to the City's payment of any 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 Developer has complied with all of the terms and conditions of this Agreement (including, but not limited to, and with respect to the Additional Developer Public Improvements, compliance with Section 6.2 above). The construction of any Additional Developer Public Improvements shall not be a condition to the City's payment to Original Developer of the City ID Payment Obligation.

(g) Rebate Payments.

(1) The City shall pay to Original Developer all Sales Tax Rebates held by the City in the Reimbursement Account (the "**Rebate Payments**") until the City ID Payment Obligation has been paid and reimbursed in full to Original Developer (but subject to the limitations of Section 8.2). Pursuant to the 2006 Development Agreement (as previously amended), Original Developer has agreed (i) to be responsible for the timely payment of all amounts required to be paid to the Improvement District on account of the Assessments, and (ii) not to 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 Original Developer as promptly as possible from the Sales Tax Rebates collected from the Taxable Activities. Not fewer that two times per year (at a time reasonably selected by the City and Original Developer after each assessment payment in connection with the Improvement District), representatives of the City and of Original Developer shall confer to review the status of all financial obligations, accounts and payments owing with respect to this Agreement.

(2) With respect to the City's obligations to pay Tax Rebates to Developer, the City and Developer agree the Tax Rebates will be paid in accordance with the last sentence of Section 8.1 above. It is the express intent of the Parties that the City reimburse Developer as promptly as possible from the Reimbursement Account, subject to the express condition that no Sales Tax Rebates will be paid to Developer until the City ID Payment Obligation has been paid in full to Original Developer (although Construction Tax Rebates may be paid to Developer prior to the City's satisfaction of the City ID Payment Obligation). Not fewer that two times per year (at a time reasonably selected by the City and Developer), 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.

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

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

(i) Prepayment. Notwithstanding anything in this Agreement to the contrary, the City may prepay the City ID Payment Obligation, the Additional Reimbursement Amount, or Developer's Cost of Financing (if any, but only to the extent accrued at the time of such prepayment), in any order, and in whole or in part, at any time.

L. Section 8.2 is deleted in its entirety and replaced with the following:

8.2 Limitations on Payments to Developer. Subject to the terms and conditions of Exhibit H, in no event shall any Sales Tax Rebates be payable for any period subsequent to the twenty-fifty (25th) anniversary of the final payment to Original Developer by the City of the City ID Payment Obligation (including all unpaid and outstanding principal sums and any unpaid interest accrued to the date of payment on any Assessments, the "**Reimbursement Period**"); provided that, once the City has paid (x) to Original Developer the City ID Payment Obligation (including all unpaid and outstanding principal sums and any unpaid interest accrued to the date of payment on any Assessments), and (y) to Developer all remaining amounts owing with respect to Public Roadway Improvements, the Additional Reimbursement Amount, and Developer's Cost of Financing, the City shall have satisfied its payment obligations to Developer and no further amounts shall be paid to Developer; and provided further that, unless the Additional Reimbursement Amount and Developer's Cost of Financing has then been paid to Developer, any accrued but undisbursed Tax Rebates existing upon expiration of the Reimbursement Period shall be paid to Developer notwithstanding the fact that receipt thereof by the City or such disbursement occurs after the expiration of the Reimbursement Period. A Tax Rebate shall be deemed to accrue during the Reimbursement Period if the activity from which the Tax Rebate arises occurred during the Reimbursement Period. The Additional Reimbursement Amount may be modified from time-to-time only by written agreement of both the City and Developer.

M. Section 8.3 is deleted in its entirety and replaced with the following:

8.3 Determination of Amount of Allocated Revenues Received by the City. The City Manager (or designee) shall determine the amount of Tax Rebates for each month (or partial month if applicable) held in the Reimbursement Account with respect to the Project. Any such determination may be audited and contested by Original Developer (as to Sales Tax Rebates only) or by Developer (as to all Tax Rebates), subject to Applicable Laws which may prohibit or limit such audit or contest.

(a) Pursuant to the 2006 Development Agreement (as previously amended), Original Developer agreed that its right to receive data on Sales Taxes collected by the City shall be subject to the City's reasonable determination that the Sales Taxes collected from the Taxable Activities within the Reimbursement Tax Base have been received from a sufficient number of taxpayers, in a sufficient amount quarterly and/or cumulatively, as applicable, and through the application of other customary methods and parameters of privilege tax administration, so that release of the data on Sales Taxes collected by the City to Original Developer will not result in violation of statutory sales tax confidentiality laws.

(b) Developer agrees that its right to receive data on Sales Taxes and Construction Sales Taxes collected by the City shall be subject to the City's reasonable determination that the Sales Taxes and Construction Sales Taxes collected from the Taxable Activities within the Reimbursement Tax Base have been received from a sufficient number of taxpayers, in a sufficient amount quarterly and/or cumulatively, as applicable, and through the application of other customary methods and parameters of privilege tax administration, so that release of the data on Sales Taxes and Construction Sales Taxes collected by the City to the Developer will not result in violation of statutory sales tax confidentiality laws.

N. Section 8.4 is deleted in its entirety and replaced with the following:

8.4 Computation and Report of Transaction Privilege Tax Revenues. Within forty-five (45) days following the end of each City fiscal year, the City will deliver (i) to Original Developer a statistical report of all Sales Taxes from Taxable Activities within the Reimbursement Tax Base; and (ii) to Developer a statistical report of all Sales Taxes and Construction Sales Taxes received from taxpayers within the Reimbursement Tax Base. Such reports shall specifically identify any offsets, credits, exclusions or other deductions from the Sales Taxes and Construction Sales Taxes (as applicable) generated by or attributable to the Reimbursement Tax Base that have been utilized by the City in computing Tax Rebates for purposes of this Agreement. Any such report shall be subject to Applicable Laws that may prohibit or limit the dissemination or use of the foregoing information required for such report. The City's obligation to provide the information referenced in this Section 8.4 to Original Developer shall terminate as of the date on which City has paid the City ID Payment Obligation in full.

(a) Pursuant to the 2006 Development Agreement (as previously amended), Original Developer agreed that its right to receive the statistical report required by this section containing data on Sales Taxes collected by the City shall be subject to the City's reasonable determination that the Sales Taxes collected from the Taxable Activities within the Reimbursement Tax Base have been received from a sufficient number of taxpayers, in a sufficient amount quarterly and/or cumulatively, as applicable, and through the application of other customary methods and parameters of privilege tax administration, so that release of the statistical report and/or data on Sales Taxes collected by the City to the Original Developer will not result in violation of statutory sales tax confidentiality laws.

(b) Developer agrees that its right to receive the statistical report required by this section containing data on Sales Taxes and Construction Sales Taxes collected by the City shall be subject to the City's reasonable determination that the Sales Taxes and Construction Sales Taxes received from taxpayers 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 statistical report and/or data on Sales Taxes and Construction Sales Taxes collected by the City to the Original Developer will not result in violation of statutory sales tax confidentiality laws.

O. Section 8.5 is deleted in its entirety and replaced with the following:

8.5 Multiple Business Locations. Some businesses with multiple locations in the City (a "**Multiple Location Taxpayer**") report their Sales Taxes and Construction Sales Taxes on the basis of revenues for all their locations in the City, rather than separately for each location.

(a) Pursuant to the 2006 Development Agreement (as previously amended), Original Developer agreed to request each such Multiple Location Taxpayer located in the Project to separately report its Sales Taxes to or furnish the City with a certified break out worksheet showing its Sales Taxes for that location within the Project, along with the Multiple Location Taxpayer's name and City privilege tax identification number.

(b) Developer shall request each such Multiple Location Taxpayer located in the Project to separately report its Sales Taxes and Construction Sales Taxes to the City or furnish the City with a certified "break-out" worksheet showing its Sales Taxes (or Construction Sales Taxes, as applicable) for that location within the Project, along with the Multiple Location Taxpayer's name and City privilege tax identification number (or numbers, if applicable). To the extent such separate reporting is not received by the City for a Multiple Location Taxpayer, the Sales Taxes for its location (or locations) within the Project shall be equal to the total Sales Taxes reported for all of its locations in the City multiplied by a fraction, the numerator of which shall be the square footage of the Multiple Location Taxpayer's locations in the Project, and the denominator of which shall be the total square footage of the Multiple Location Taxpayer's locations within the City. If the taxpayer's name and City privilege tax identification number is not received by the City for a Multiple Location Taxpayer, the City shall request such information from Developer which shall require such information from the Multiple Location Taxpayer in connection with tax-generating activities within the Reimbursement Tax Base. To the extent that such separate reporting is not provided to the City relating to Construction Sales Tax, no rebate for Construction Sales Tax shall be provided.

P. Section 8.6 is deleted in its entirety and replaced with the following:

8.6 City's Prepayment Right. The City shall have the right to prepay all or any part of the Tax Rebates at any time.

Q. Section 12.6 is deleted in its entirety and replaced with the following:

12.6 Enforced Delay in Performance for Causes Beyond Control of Party. Whether stated or not, all periods of time in this Agreement are subject to this Section (except for the expiration of the Reimbursement Period, and except for the due dates for the Sales Tax Rebates payable by the City to Developer, and the grace and cure periods in Sections 12.3 and 12.4). Neither the City nor Developer, as the case may be, shall be considered to have caused an Event of Non-Performance with respect to its obligations under this Agreement in the event of enforced delay (an "**Enforced Delay**") due to (1) causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, acts of public enemy, acts of the Federal, state or local government, acts of the other Party, acts of a Third Party, litigation concerning the validity and enforceability of this Agreement or relating to

transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, Public Health Events, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, Office of Homeland Security (or equivalent) Advisory alert higher than grade "yellow," blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public, quasi-public or private entity; (2) the order, judgment, action, or determination of any court, administrative agency, governmental authority or other governmental body other than the City or the Council or one of its departments, divisions, agencies, commissions or boards (collectively, an "**Order**") which delays the completion of the work or other obligation of the Party claiming the delay; or the suspension, termination, interruption, denial, or failure of renewal (collectively, a "**Failure**") of issuance of any permit, license, consent, authorization, or approval necessary to Developer's undertakings pursuant to this Agreement, unless it is shown that such Order or Failure is the result of the fault, negligence or failure to comply with Applicable Laws by the Party claiming the delay; provided, however, that the contesting in good faith of any such Order or Failure shall not constitute or be construed or deemed as a waiver by a Party of Enforced Delay; (3) the denial of an application, failure to issue, or suspension, termination, delay or interruption other than by or from the City or the Council or one of its departments, divisions, agencies, commissions or boards (collectively, a "**Denial**") in the issuance or renewal of any permit, approval or consent required or necessary in connection with Developer's undertakings pursuant to this Agreement, if such Denial is not also the result of fault, negligence or failure to comply with Applicable Laws by the Party claiming the delay; provided that the contesting in good faith or the failure in good faith to contest any such Denial shall not constitute or be construed or deemed as a waiver by a Party of Enforced Delay; and (4) the failure of any contractor, subcontractor or supplier to furnish services, materials or equipment in connection with Developer's undertakings pursuant to this Agreement, if such failure is caused by Enforced Delay as defined herein, if and to the extent, and only so long as the Party claiming the delay is not reasonably able, after using its best efforts, to obtain substitute services, materials or equipment of comparable quality and cost. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of portions of the Project, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Developer in connection with the Project, it being agreed that Developer will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this Section 12.6 shall, within thirty (30) days after such Party knows of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; provided, however, that either Party's failure to notify the other of an event constituting an Enforced Delay shall not alter, detract from or negate its character as an Enforced Delay if such event of Enforced Delay were not known or reasonably discoverable by such Party.

R. Global Changes. Certain global changes in terms are required throughout the Agreement as a result of this Amendment:

(1) All references to "Minimum Retail Improvements" now means "Private Improvements."

(2) All references to "Regional Shopping Center" now means "Private Improvements."

10. Confirmations by the Parties. City and RGLP confirm their obligations and rights arising in and under the Development Agreement, including (but not limited to) the fact that the City's only obligations with respect to any Public Improvements constructed prior to January 1, 2023, are (a) the payment to Original Developer of the City ID Payment Obligation, in the amount specified in the Third Amendment (which the Parties acknowledge and agree remains in full force and effect notwithstanding the execution of this Fifth Amendment), and (b) acknowledgement that City Development Fees have been prepaid pursuant to the terms of the Development Agreement and remain available to RGLP as Developer to be applied toward payment of permit fees in connection with Developer's development of the Project, in the approximate amount of $1,700,000.00 (the "**Prepaid Fees**"). The Prepaid Fees shall be available to Developer from time-to-time, conditioned and commencing upon the issuance to Developer of a building permit for the construction of not less than 30,000 leasable square feet of newly constructed premises within the Project to be used by specialty grocers, entertainment venues, upscale retailers, or any combination of such uses.

11. Parties' Intentions; Miscellaneous. It is the intent of the City and Developer not to modify, restrict, limit or re-characterize any of the rights or obligations of Original Developer existing at the time of the assignment of this Agreement by Original Developer to Globe, and any apparent or inadvertent inconsistency between the 2006 Amendment, as previously amended, and this Amendment with respect to such rights or obligations, should be interpreted and resolved in favor of this stated intention, while preserving the rights and obligations of Developer as described in this Amendment to be as fully consistent therewith as possible. 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 municipal or company (as applicable) action.

Signatures of the Parties are on the following page.

Signature Page to Fifth 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: Wynette L. Reed
Printed Name: Wynette L. Reed
Its: City Manager
Date of Execution: 2/27/2023

Attest:

By: Darcie McCracken
City Clerk

Approved:

By:
City Attorney

RG Land Partners, LLC, a Delaware limited liability company

By:
Printed Name: George Getz
Title: President of Manager
Date of Execution: February 28, 2023

State of Arizona }
}
Maricopa County }

The foregoing Fifth 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 Manager of RG Land Partners, LLC, a Delaware limited liability company, who executed the same on behalf of the said company.

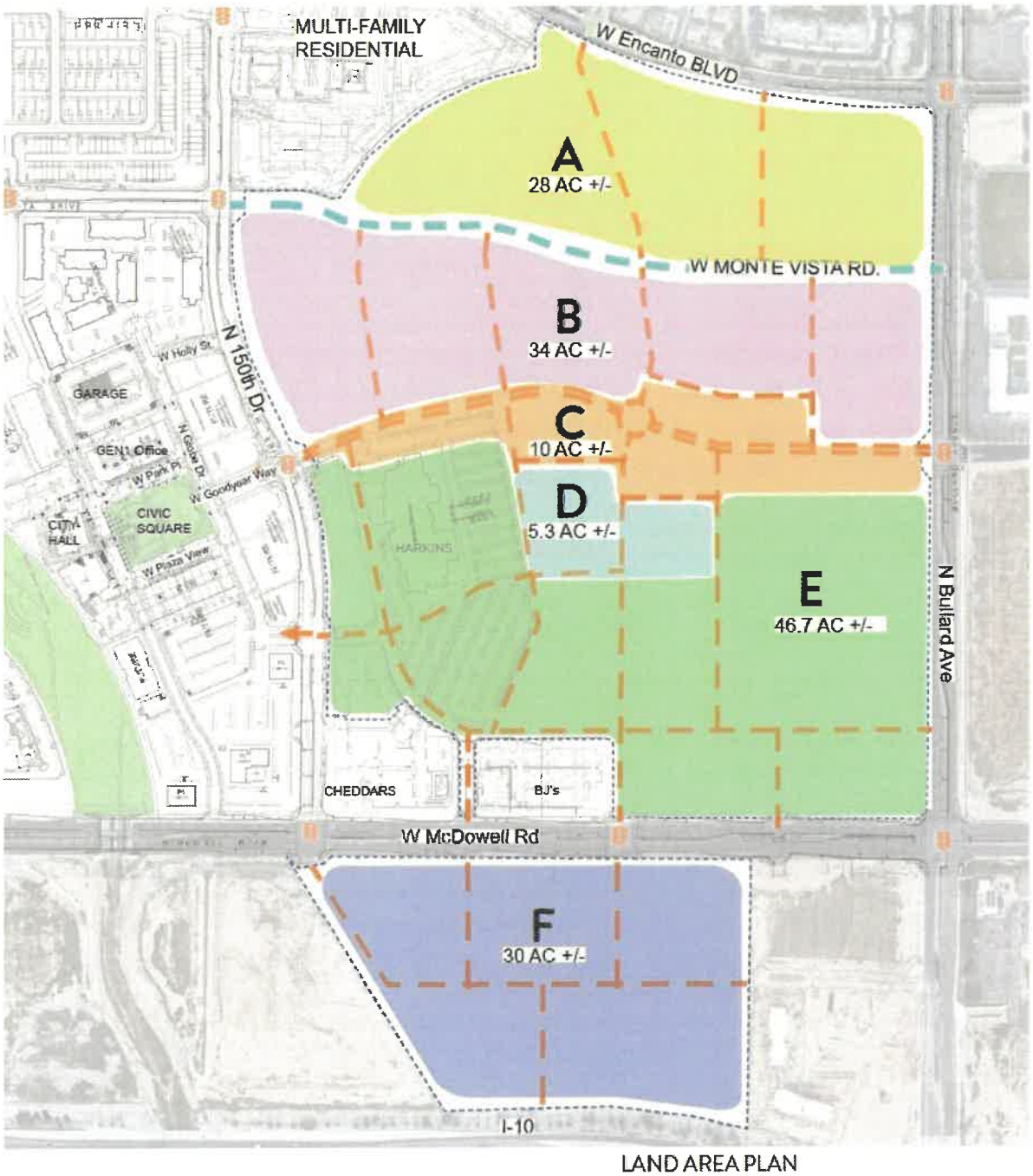
By:
Seal:

OFFICIAL SEAL
AMANDA DAWSON
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
COMM # 560802
My Comm. Expires April 19, 2023

EXHIBIT B

CONCEPTUAL LAND USE PLAN

EXHIBIT B TO
FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT
(page 1 of 2)



LAND AREA PLAN

EXHIBIT B TO
FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT
(page 2 of 2)

- Land Area A = residential and commercial
- Land Area B = commercial, residential, and hotel/conference center
- Land Area C = retail, entertainment, and open space
- Land Area D = more intense commercial, residential, entertainment, and hotel
- Land Area E = retail and entertainment
- Land Area F = commercial and automotive