

**RESOLUTION NO. 2019-1985**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING THE DEVELOPMENT AGREEMENT FOR CIVIC SQUARE AT ESTRELLA FALLS; DIRECTING THE CITY MANAGER TO EXECUTE THE DEVELOPMENT AGREEMENT FOR CIVIC SQUARE AT ESTRELLA FALLS; AUTHORIZING AND DIRECTING ACTIONS; AUTHORIZING EXPENDITURE OF FUNDS, AUTHORIZING BUDGET TRANSFERS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Mayor and Council approve Resolution 2019-1985 approving the development agreement for Civic Square at Estrella Falls; and

WHEREAS, the Mayor and Council of the city of Goodyear, Arizona are directing the City Manager to execute the development agreement for Civic Square at Estrella Falls; and

WHEREAS, the Mayor and Council of the city of Goodyear, Arizona are authorizing expenditure of funds and budget transfers for the Civic Square at Estrella Falls project; and

WHEREAS, the Mayor and Council of the city of Goodyear, Arizona are authorizing the City Manager and City Attorney to make non-substantive changes to the development agreement;

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 City Council approve the development agreement for Civic Square at Estrella Falls.

SECTION 2. The City Manager or her designee is authorized to execute the development agreement for Civic Square at Estrella Falls.

SECTION 3. The City Manager or her designee is authorized to expend funds and execute necessary budget transfers related to the Civic Square at Estrella Falls project.

SECTION 4. The City Manager and City Attorney are authorized to make any non-substantive development agreement changes.

PASSED AND ADOPTED by the Mayor and Council of the city of Goodyear, Maricopa County, Arizona, this 19 day of August, 2019.

  
Georgia Lord, Mayor

Date: August 19, 2019

ATTEST:

APPROVED AS TO FORM:

  
Darcie McCracken, City Clerk

  
Roric Massey, City Attorney

**CERTIFICATION OF RECORDING OFFICER**

STATE OF ARIZONA

)

) ss.

County of Maricopa

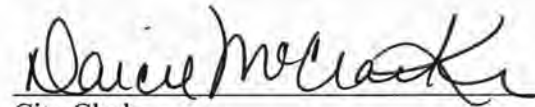
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I, the undersigned Darcie McCracken, being the duly appointed, qualified City Clerk of the city of Goodyear, Maricopa County, Arizona, certify that the foregoing Resolution No. 2019-1985 is a true, correct and accurate copy of Resolution No. 2019-1985, passed and adopted at a regular meeting of the Council of the city of Goodyear, Maricopa County, Arizona, held on the 19<sup>th</sup> day of August 2019, at which a quorum was present and, by a 7-0 vote, 7 voted in favor of said resolution.

Given under my hand and sealed this 20<sup>th</sup> day of August, 2019.

seal



  
City Clerk

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

Recording Number: 20190652583  
Time of Recording: 08/23/2019 09:21  
Filename: 20196728A-94-1-1-  
Affidavit: N  
Official Records of  
Maricopa County Recorder  
Adrian Fontes  
Electronic Recording

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this "**Agreement**") is made as of the 19<sup>th</sup> day of August, 2019 (the "**Effective Date**"), by and between the **CITY OF GOODYEAR, ARIZONA**, an Arizona municipal corporation (the "**City**"), **GLOBE LAND INVESTORS, LLC**, a Delaware limited liability company ("**Owner**") and **GLOBE CORPORATION**, an Illinois corporation ("**Globe**"). The City, Globe and Owner are sometimes referred to herein collectively as the "**Parties**", or, individually, as a "**Party**". Other capitalized terms used in this Agreement shall have the meanings ascribed to them parenthetically throughout this Agreement (inclusive of the Recitals below) or as specifically defined in Section 2 of this Agreement.

### RECITALS

A. Owner owns certain real property located within the city limits of the City, such real property consisting of approximately 47 acres, located on the southwest corner of 150th Avenue and Monte Vista Drive (the "**Property**"). Owner is a long-term holder of real property, and Owner is not a developer of, and will not develop, its real property. However, Owner shall enter into agreements with third parties, pursuant to which such third parties shall undertake the development and related activities described in this Agreement. Such third parties will consist of Globe, which will perform the development activities described in this Agreement relating to the City Improvements, and a joint venture which will consist of Globe or its affiliates and one or more third parties (the "**Joint Venture**"), which Joint Venture will be organized to own and develop the Joint Venture Property (as hereinafter defined) as contemplated by this Agreement.

B. Owner intends on donating a portion of the Property to the City, consisting of approximately 6.149 acres, as legally described and depicted in Exhibit A-1 hereto (the "**City Property**"), which includes one-half of each contemplated street adjacent to the City Property, in accordance with the terms hereof. Owner also intends to convey to the Joint Venture a portion of the balance of the Property as legally described and depicted in Exhibit A-2 hereto (the "**Joint Venture Property**"), for some or all of the uses as outlined in the Approved PAD Zoning (as defined below for the Property, as such Approved PAD Zoning may be amended from time to time) (collectively, the City Property and the Joint Venture Property are hereinafter referred to as the "**Project**"). It is presently contemplated that the City Property will also be developed with certain **Common Area(s)** (herein so called) presently contemplated to consist of a municipal park and related improvements for joint use by the Parties and the owner of the Joint Venture Property (the "**Public Square**"). Certain of the Common Areas may lie on the Joint Venture Property. For the avoidance of doubt, notwithstanding anything to the contrary in this



Agreement, this Agreement shall have no applicability to any real property other than the City Property and the Joint Venture Property.

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

D. On the City Property, City intends to retain Globe to cause to be constructed the City Improvements (as defined below), as contemplated hereby. In connection with the construction of the City Improvements, Globe will reasonably cooperate with City’s representatives in coordinating space planning, design and construction, all in accordance with the terms hereof. The City will contribute the sum of \$3,348,000.00 toward the cost of construction incurred in connection with the Project Infrastructure (as defined below) (the “**City Infrastructure Contribution**”).

E. The Planned Area Development rezoning of the Property was approved by the City pursuant to Ordinance No. 2019-1440 adopted by the City Council on July 8, 2019 and which was executed, and certified by the City Clerk, on July 9, 2019 (the “**Approved PAD Zoning**”). The Parties have agreed that the Approved PAD Zoning is in conformance with the City’s existing General Plan (the “**General Plan**”).

F. The City acknowledges its intention and ability to provide the undertakings described herein, as well as the City’s willingness to approve the development of the Joint Venture Property in accordance with the Approved PAD Zoning.

G. The City also has determined that the development of the Project pursuant to this Agreement will result in significant planning, economic and other public benefits to the City and its residents by, among other things: (i) providing for the construction of the City Improvements; (ii) providing for planned and orderly development of the Joint Venture Property consistent with the General Plan and the Approved PAD Zoning; (iii) increasing tax revenues to the City arising from or relating to the improvements to be constructed on the Joint Venture Property; (iv) creating new jobs and otherwise enhancing the economic welfare of the City; and (v) advancing the goals of the General Plan and the Approved PAD Zoning.

H. The Parties understand and acknowledge that this Agreement is a “**Development Agreement**” within the meaning, and entered into pursuant to the terms, of A.R.S. § 9-500.05, and that the terms of this Agreement shall constitute covenants running with the City Property and the Joint Venture Property, as more fully described in this Agreement. The Parties will cause this Agreement to be recorded in the office of the Maricopa County Recorder to give notice to all persons of the existence of this Agreement and of the Parties’ intent that the burdens and benefits contained herein be binding upon and inure to the benefit of the Parties and all of



their successors-in-interest and assigns and to implement the Parties' intent that development of the Project shall be subject to, and shall benefit from, the provisions of this Agreement.

## **AGREEMENTS**

Now, therefore, in consideration of the foregoing recitals and the representations and mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the Parties agree as follows:

1. **INCORPORATION OF RECITALS.** The accuracy of the above Recitals is confirmed and all of the above-mentioned Recitals are incorporated herein and are hereby made substantive provisions of this Agreement.

2. **DEFINITIONS.** In this Agreement, unless a different meaning clearly appears from the context:

(a) **"Access Facilities"** means as defined in Section 4.3(c).

(b) **"Additional City Parking Spaces"** means as defined in Section 14.27.

(c) **"Affiliate,"** as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) **"control"** (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) **"person"** means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

(d) **"Agreement"** means this Agreement and all Exhibits hereto, as amended and restated or supplemented in writing from time to time. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Recitals A through H, inclusive, are incorporated herein by reference and form a part of this Agreement.

(e) **"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 Project from time to time.

(f) **"Approved PAD Zoning"** means as defined in Recital E.

(g) **"A.R.S."** means the Arizona Revised Statutes as now or hereafter enacted or amended.

(h) **"Assignment of Warranties"** means a non-exclusive assignment of all warranties relating to the City Improvements in the form of Exhibit C attached hereto.

(i) **"Business Day"** means any day other than a Saturday, a Sunday or a public or bank holiday or the equivalent for banks generally under the laws of the State of Arizona. Use of the word "day," as opposed to "Business Day," means calendar day.

(j) **"City"** means the Party designated as City on the first page of this Agreement.

(k) **"City Code"** means the Code of the City of Goodyear, Arizona, as amended from time to time, including, without limitation, the City of Goodyear Zoning Ordinance of May, 1999, as amended from time to time.

(l) **"City Council"** means the City Council of the City.

(m) **"City Fee" or "City Fees"** means as defined in Section 4.5.

(n) **"City Improvements"** means as defined in Section 4.1(a).

(o) **"City Improvements Project Budget"** means as defined in Section 8.2(b)(iv).

(p) **"City Improvements Project Costs"** means as defined in Section 3.3.

(q) **"City Improvements Project Schedule"** means as defined in Section 8.2(b).

(r) **"City Infrastructure"** means as defined in Section 4.1(a)(ii).

(s) **"City Infrastructure Contribution"** means as defined in Recital D.

(t) **"City Off-Site Utility Contribution"** means fifty percent (50%) of the costs incurred by Globe in the construction and installation of the off-site wet and dry utilities that are a part of the Project Infrastructure, up to a maximum amount of \$500,000; for the avoidance of doubt, any advance-in-aid of construction or similar payments thereafter made shall be retained solely by Globe and the City shall have no interest therein.

(u) **"City Payments"** means as defined in Section 6.5.

(v) **"City Property"** means as defined in Recital B.

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

(x) **"City Spaces"** means as defined in Section 4.1(b)(i).

(y) **"Class A Standards"** means as defined in Section 4.1(b)(ii).

(z) **“Collateral Assignment – Design-Build Agreement”** means as defined in Section 8.4.

(aa) **“Commencement of Construction”** means as defined in Section 6.3(f).

(bb) **“Commitment”** means as defined in Section 7.5.

(cc) **“Common Area(s)”** means as defined in Recital B.

(dd) **“Completed”** means as defined in Section 14.28.

(ee) **“Completion of Construction”** means as defined in Section 6.3(f).

(ff) **“Construction Failure”** means as defined in Section 12.1(a).

(gg) **“Conveyance Date”** means as defined in Section 7.8.

(hh) **“Deed”** means as defined in Section 7.8

(ii) **“Denial”** means as defined in Section 12.6.

(jj) **“Design-Build Agreement”** means as defined in Section 8.2(b)(i).

(kk) **“Design-Builder”** means as defined in Section 8.2(b)(i).

(ll) **“Designated Lenders”** means as defined in Section 14.21.

(mm) **“Effective Date”** means the date on which this Agreement has been adopted and approved by the City Council and executed by duly authorized representatives of all Parties.

(nn) **“Enforced Delay”** means as defined in Section 12.6.

(oo) **“Escrowee”** means as defined in Section 7.14.

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

(qq) **“Exceptions”** means as defined in Section 7.5.

(rr) **“Exculpatory Language”** means the following language:

**[Insert name of Design-Builder]** acknowledges and agrees that (i) this **[insert title of Design-Build Agreement]** imposes no contractual obligation on the City of Goodyear; (ii) in the event of a default under this **[insert title of Design-Build Agreement]** of any kind or nature, **[insert**



**name of Design-Builder]** shall look solely to Globe Corporation at the time of default for remedy or relief; and (iii) no elected official, officer, employee, agent, independent contractor or consultant of the City of Goodyear shall be liable to **[insert name of Design-Builder]**, or any successor-in-interest to **[insert name of Design-Builder]**, with respect to this **[insert title of Design-Build Agreement]**.

(ss) **“Failure”** means as defined in Section 12.6.

(tt) **“Feasibility Period”** means as defined in Section 7.4.

(uu) **“Final Acceptance”** means as defined in Section 6.4(b).

(vv) **“Garage”** means as defined in Section 4.1(b)(i).

(ww) **“General Plan”** means as defined in Recital E.

(xx) **“Getz Immediate Family Member”** means as defined in Section 14.2(b)(v).

(yy) **“Globe”** means the Party designated as Globe on the first page of this Agreement and its successors and assigns that conform with the requirements of this Agreement.

(zz) **“Globe Fee”** means as defined in Section 3.3.

(aaa) **“Globe Representative”** means as defined in Section 13.1.

(bbb) **“GMP Amendment”** means as defined in Section 8.2(b)(ii).

(ccc) **“Governmental Authority”** means any federal, state and/or local agency, department, commission, board, bureau, administrative or regulatory body or other governmental instrumentality having jurisdiction over the City Improvements and/or the transactions contemplated by this Agreement.

(ddd) **“Initial Restriction Period”** means as defined in Section 5.2.

(eee) **“Joint Venture”** means as defined in Recital A.

(fff) **“Joint Venture Property”** means as defined in Recital B.

(ggg) **“Lender”** or **“Lenders”** means as defined in Section 14.21.

(hhh) **“Memorandum of Agreement”** means as defined in Section 7.5.

(iii) **“New City Hall”** means as defined in Section 4.1(a)(i).

(jjj) **“Notice to Confirm”** means as defined in Section 6.4(b).

(kkk) **“Office Building”** means as defined in Section 4.1(b)(ii).

(lll) **“Office Improvements”** means as defined in Section 4.1(b).

(mmm) **“Office Infrastructure”** means as defined in Section 4.1(b)(iii).

(nnn) **“Order”** means as defined in Section 12.6.

(ooo) **“Official Records”** means as defined in Section 7.5.

(ppp) **“Owner”** means the Party designated as Owner on the first page of this Agreement, and its successors and assigns that conform with the requirements of this Agreement.

(qqq) **“Owner Representative”** means as defined in Section 13.1.

(rrr) **“Parking Agreement”** means as defined in Section 14.27.

(sss) **“Party”** or **“Parties”** means as designated on the first page of this Agreement.

(ttt) **“Payment Request”** means as defined in Section 6.5(a).

(uuu) **“Performance Deed of Trust”** means as defined in Section 7.14.

(vvv) **“Permits”** means all permits, consents, approvals, authorizations, waivers, certificates and approvals from all Governmental Authorities and quasi-Governmental Authorities that are required for the planning, design, construction, completion and occupancy of the applicable portion of the City Improvements.

(www) **“Permitted Exceptions”** means as defined in Section 7.5.

(xxx) **“Permitted Liens and Encumbrances”** means as defined in Section 6.8.

(yyy) **“Personal Property”** means all tangible personal property described in the approved City Improvements Project Budget to be acquired by Globe, conveyed to the City and thereafter owned by the City and used in connection with the City Improvements.

(zzz) **“Phase I Environmental Site Assessment”** means as defined in Section 7.7.

(aaaa) **“Preliminary Budget”** means as defined in Section 3.3.

(bbbb) **“Prohibited Uses”** means those uses prohibited by the Approved PAD Zoning as defined in Section 5.3.

(cccc) **“Project”** means as defined in Recital B.

(dddd) **“Project Improvements”** means as defined in Section 4.1.

(eeee) **“Project Infrastructure”** means all of the infrastructure for the Project described in Exhibit D-2.

(ffff) **“Project Milestone Schedule”** means that Schedule attached hereto as Exhibit E setting forth significant Project Milestones.

(gggg) **“Property”** means as defined in Recital A.

(hhhh) **“Public Square”** means as defined in Recital B.

(iiii) **“REA”** means as defined in Section 14.26.

(jjjj) **“Separate City Costs”** means (a) the fees and costs of the City for outside services, including attorneys’ and consultants’ fees incurred (i) in negotiating, drafting and reviewing this Agreement; (ii) in consulting with the City and advising the City with respect to the construction and development of the City Improvements; (iii) in inspecting and reviewing the progress of such construction and development for the City; and (iv) in administering this Agreement for the City; (b) the costs of issuance of any City financial obligations in connection with the financing of the City Improvements; and (c) the cost of any bond reserves required in connection with any such City financial obligations.

(kkkk) **“Site Plan”** or **“Site Plans”** means as defined in Recital C.

(llll) **“Surface Parking”** means as defined in Section 4.1(a)(iii).

(mmmm) **“Survey”** means as defined in Section 7.2.

(nnnn) **“Survey Review Period”** means as defined in Section 7.2.

(oooo) **“Term”** means the period commencing on the Effective Date and terminating on the date on which the Parties have performed all of their obligations hereunder; provided, however, that in no event shall the Term of this Agreement extend beyond the fifth (5<sup>th</sup>) anniversary of the Effective Date; provided further, however, that all indemnities in favor of a Party shall extend for so long as any claim may be brought against such Party under the applicable statute of limitations or repose, which claims are subject to and/or covered by the provisions of such indemnity.

(pppp) **“Termination Date”** means as defined in Section 7.13.

(qqqq) **“Third Party”** means any person other than a Party or an Affiliate of any Party.

(rrrr) **“Title Company”** means as defined in Section 7.13(e).

(ssss) **“Title Policy”** means as defined in Section 7.13(e).

(tttt) **“Transfer”** means as defined in Section 14.2(b).



### **3. PARTIES AND PURPOSE OF THIS AGREEMENT.**

3.1 Parties to this Agreement. The Parties to this Agreement are the City, the Owner and Globe.

(a) The City. The City is a municipal corporation and a political subdivision of the State of Arizona, duly organized and validly existing under the laws of the State of Arizona, exercising its governmental functions and powers.

(b) The Owner. The Owner is GLOBE LAND INVESTORS, LLC, a Delaware limited liability company, together with its permitted successors in interest and assigns.

(c) Globe. Globe is GLOBE CORPORATION, an Illinois corporation, together with its permitted successors in interest and assigns.

3.2 Purposes. A material purpose of this Agreement, among others, is to provide for the development of the Office Improvements, construction of the City Improvements and development of the Project Infrastructure. The purposes of this Agreement are further described in the Recitals hereto.

3.3 Globe Fee. In consideration for Globe's development undertakings pursuant to this Agreement, the City agrees to pay to Globe a fee (the "**Globe Fee**") in an amount equal to the product of (i) three percent (3%) of (ii) the City Improvements Project Costs, less those costs expressly described in the second following sentence. For purposes hereof, the phrase "**City Improvements Project Costs**" means all hard costs and soft costs (including without limitation Design-Builder fees, including architectural costs, engineering costs and other expenses thereof, including those referred to in the Design-Build Agreement, consultant costs, brokers fees and taxes) incurred in connection with the City Improvements. A copy of the Preliminary Budget for the City Improvements Project Costs is attached hereto as Exhibit F ("**Preliminary Budget**"). Notwithstanding anything herein to the contrary, the following items shall not be considered for purposes of calculating the Globe Fee, but shall be considered as City Improvements Project Costs: (a) Separate City Costs; (b) legal fees incurred by Owner or Globe prior to the execution of this Agreement, it being the intent of the Parties that legal fees incurred in the negotiation of the referenced documents not be included in the City Improvements Project Costs for purposes of calculating the Globe Fee; (c) land leases; (d) in-house broker and leasing fees; (e) taxes and development fees, impact fees and permit fees due to the City; (f) financing costs; and (g) the costs of art or artwork and the costs of furniture, unattached trade fixtures and equipment. The Globe Fee shall be paid by the City based on monthly invoices received from Globe, which monthly invoices shall, to the extent applicable, be based on the monthly invoices received by Globe from the Design-Builder pursuant to the Design-Build Agreement. Upon completion of the City Improvements, the final portion of the Globe Fee shall be adjusted to reflect the final amount of the Globe Fee and shall be paid to Globe within thirty (30) days after completion of the City Improvements.

#### 4. SCOPE AND REGULATION OF DEVELOPMENT.

4.1 Project Improvements. The Project improvements anticipated on the City Property and on the Joint Venture Property consist of the City Improvements and the Office Improvements, respectively (collectively, the "**Project Improvements**"), as described below:

(a) The "**City Improvements**" are:

(i) construction of a complete warm building core and shell City Hall building (to consist of approximately 125,000 square feet of space) and customary tenant improvements (the "**New City Hall**"). The New City Hall shall be built to Class A Standards (as defined below) using material including pre-cast concrete, glass and metal panels and generally in accordance with the plans and specifications therefor as approved by Globe and the City in accordance with Section 4.3(b) hereof.

(ii) all on-site infrastructure for the New City Hall, the Surface Parking and the Public Square described in Exhibit D-1 attached hereto (the "**City Infrastructure**");

(iii) surface parking for the New City Hall, in accordance with the final mutually-approved plans and specifications for such surface parking on the north and south sides of the New City Hall, and the surface parking on the streets included within the City Property (the "**Surface Parking**"); and

(iv) the Public Square.

(b) the "**Office Improvements**" to be constructed on the Joint Venture Property shall consist of:

(i) an above-ground parking structure, to be located on the Joint Venture Property (the "**Garage**"), within which the greater of (a) 200 parking spaces or (b) the number of parking spaces equal to the quotient that results from dividing \$5,000,000 (the amount of the City's contribution toward the cost of the Garage) by the Per Space Cost (as defined in Section 14.27 below) (the "**City Spaces**") will be subject to an easement granted by the then owner of the Joint Venture Property in favor of the City for off-street public parking for use by the City and the general public at large (for the avoidance of doubt, there will be no parking charge required of the public for parking in the Garage at nights or on weekends), and which Garage will be completed prior to the completion of the New City Hall; and

(ii) one or more Class A office building(s) containing a minimum aggregate 100,000 square feet of space (collectively, the "**Office Building**"). The Office Building shall be built to Class A Standards using material including pre-cast concrete, glass and metal panels. The Office Improvements shall be initially designed to encourage uses from industry segments such as high tech, financial, medical, medical administration and communications. The Office Improvements shall also be designed to strengthen the pedestrian appeal while complementing the New City Hall. For purposes of this Agreement, "**Class A Standards**" shall mean office buildings which: (i) are constructed out of high quality building materials; (ii) incorporate higher ceilings along with flexible floor configurations; (iii) are

outfitted with top of the line fixtures; (iv) have aesthetically pleasing interior and exterior finishes; (v) incorporate high quality building infrastructure (such as appropriate elevator quantity and speed, appropriate HVAC capacity and state of the art digital infrastructure to support computing and electrical demands); (vi) good ingress and egress to the building; and (vii) close proximity to an appropriate number and sizes of parking spaces; and

(iii) all on-site and off-site infrastructure for the Garage and the Office Building described in Exhibit D-2 attached hereto which is not paid for by the City Infrastructure Contribution (the **"Office Infrastructure"**).

#### 4.2 Costs of Construction; Progress Reports.

(a) Except with respect to the City's obligation to (i) pay the costs of the design, permitting, construction, equipping, installation and City financing of the New City Hall and costs of the Personal Property, (ii) pay the costs of the design, permitting, construction, equipping, installation and City financing of the City Infrastructure, (iii) pay the costs of the design, permitting, construction, equipping, installation and City financing of the Surface Parking and the Public Square, (iv) pay the City's share of the costs of the design, permitting, construction, equipping, installation and City financing of the Garage, (v) pay the City Infrastructure Contribution from the City's funds as the City's share of the costs of the design, permitting, construction, equipping, installation and City financing of the Project Infrastructure costs as set forth in Recital D, and (vi) pay the costs of the items set forth in Sections 3.3(a), 3.3(e), 3.3(f) and 3.3(g), the cost of developing the Project and of constructing all improvements thereon shall be borne by Globe except as (I) expressly set forth in this Agreement, (II) expressly set forth in any City and Globe approved budget therefor, or (III) otherwise hereafter agreed by the City and Globe.

(b) During periods of construction, Globe shall submit to the City a written narrative report of the progress of the construction of the City Improvements when and as requested by the City, but not more frequently than once per calendar quarter. Globe shall have a reasonable period of time in which to prepare any such report requested by the City. Additionally, appropriate representatives of Globe, upon reasonable notice, will appear before the City Council or other agencies of the City, as reasonably requested, to provide oral updates and oral reports about the progress of construction.

4.3 Development Plans. Development of the Project shall be consistent with the Approved PAD Zoning and shall be governed by the provisions, requirements and restrictions contained in this Agreement and by Applicable Laws. The Joint Venture shall have the right to develop the Joint Venture Property with any mixture of the uses identified in the Approved PAD Zoning, up to the maximum densities and intensities reflected in the Approved PAD Zoning as may be amended from time to time. The Joint Venture shall have the right, in the Joint Venture's discretion, to allocate or relocate uses within the Joint Venture Property between parcels based upon market conditions and demand in accordance with the Approved PAD Zoning and through the City's administrative Site Plan review process, provided those uses are consistent with the Approved PAD Zoning.



(a) Submissions by Globe or the Joint Venture Owner; Scope of City Improvements. In connection with any proposed development of the Project by either Globe or the Joint Venture, each of Globe and/or the Joint Venture, as applicable, shall submit complete applications with respect to all aspects of its development of such portion of the Project, including reasonable information required by the City to review and process the applicable applications, and the City acknowledges that it will not impose greater obligations in this regard than generally required of Third Parties. Globe's or the Joint Venture's preliminary submissions shall include phasing schedules and a proposed timeline. With regard to the City Improvements, Globe shall work closely, and coordinate its work, with the City Representative to develop the plans and other development aspects therefor and thereof. City shall be responsible for timely providing information regarding the City Improvements requested by Globe so that Globe may integrate the same into its submissions.

Globe understands that in such efforts, the City will be relying on Globe's cost estimates in the City's determination of the scope and nature of the City Improvements. The City will make its decisions regarding the scope of the City Improvements based on cost analysis of each potential alternative prepared and evaluated during the design phase of the Design-Build Agreement. Globe shall reasonably cooperate with the City in producing such cost analyses during the design phase of the Design-Build Agreement. The City reserves the right to approve the scope and nature of the City Improvements as a portion of the design phase of the Design-Build Agreement, in its commercially reasonable discretion, and to reasonably limit or expand Globe's obligations in that regard; provided, however, that the City Improvements Project Budget shall be appropriately adjusted to reflect any limitation or expansion of Globe's obligations with respect to the City Improvements.

(b) Approval Process; Concerning City Improvements. The City shall undertake review and approval of the plans and specifications for the City Improvements as part of the design phase of the Design-Build Agreement in accordance with the City's ordinary submittal, review and approval processes then in effect. The final approved plans and specifications shall also reasonably provide for a more detailed description of the City Infrastructure, which plans and specifications shall also include the more detailed description of the Public Square required for the Project.

(c) The approved plans and specifications for the Office Improvements shall also provide plans and specifications for: (i) the location of the City Spaces included in the Garage and (ii) the entrances, exits, driveways and other paved areas proposed to be used to provide access to the City Spaces (the "**Access Facilities**"). Subject to Applicable Laws, the City and each of Globe and the Joint Venture, as applicable, will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats or other development approvals requested by Globe or the Joint Venture, as applicable, in connection with the development of the Project.

(d) Globe understands that the City is under no obligation to approve any plans and specifications with respect to the City Improvements or the Office Improvements which are not acceptable to the City in its reasonable judgment, and the City and Globe acknowledge that the obligations of Globe with respect to the commencement and completion of

the City Improvements shall be extended appropriately until such plans and specifications are approved by each of Globe and the City.

4.4 Zoning. This Agreement does not obligate the City to modify the Approved PAD Zoning and the City reserves the right to review such modifications in its discretion, as the City cannot guarantee that such modifications will be effected.

4.5 City Fees. Globe and the Joint Venture, as applicable, shall timely pay all then-current City development fees, permit fees, assessments or exactions or other charges of City-wide application, currently in effect or as may be adopted in the future (referred to individually as a “City Fee” or collectively as “City Fees”); provided, however the City shall be responsible for any City Fees payable in connection with the development of the City Improvements and no such City Fees shall be included in the Design-Build Agreement for the construction of the City Improvements. Globe shall be entitled to any offsets, credits, reimbursements or modifications of any City Fees as allowed or required by law.

4.6 Project Milestone Schedule. The Project Milestone Schedule, the initial version of which is attached as Exhibit E hereto, sets forth significant dates for Globe and the City to attempt to accomplish certain approvals, agreements and other items in order to proceed with the development and construction of the City Improvements and the development and construction of the Office Improvements in accordance with the terms set forth herein. In addition, Globe and the City shall use their commercially reasonable efforts and due diligence to accomplish the commencement and completion dates set forth in the City Improvements Project Schedule, as the same may be modified in accordance with the terms of the Design-Build Agreement.

4.7 Construction of the Garage. Owner or the Joint Venture, as applicable, shall reasonably consult with the City in connection with the design and construction of the Garage, which construction of the Garage is part of the Office Improvements, and which consultation shall include allowing the City’s representatives the right, on reasonable prior notice, to review the actual construction of the Garage and the status thereof.

## **5. OFFICE IMPROVEMENTS**

5.1 General. Subject to the terms and conditions of this Agreement, the Office Improvements shall be developed within the Joint Venture Property in such configuration as is deemed by the Joint Venture to be best suited for the commercial opportunities presented by the Joint Venture Property at the time of planning the Office Improvements. Owner or the Joint Venture, as applicable, shall keep the City advised of Joint Venture’s specific development plans. In connection with completion of the Office Improvements, the Joint Venture shall also complete all Project Infrastructure associated with the particular Office Improvements on or before the date specified in Section 6.3(c) and updates to the Joint Venture’s submissions described in Section 4.3(a) above. Owner or the Joint Venture, as applicable, shall coordinate its efforts and the efforts of its construction forces regarding the construction/development of various portions of the Office Improvements and/or the City Improvements, as applicable, so as to not materially interfere with or materially disrupt municipal business being conducted on the City Property from time to time.

5.2 Uses. Owner or the Joint Venture, as applicable, shall covenant and agree, for itself, its Affiliates and its successors and assigns, to devote the Joint Venture Property only for uses permitted by Applicable Laws and this Agreement and further, that regardless of the uses which would otherwise be allowed pursuant to the applicable zoning classification, the Joint Venture Property will be devoted only to uses other than those prohibited in the Approved PAD Zoning, except if the City, in its sole discretion, permits such uses. Owner or the Joint Venture, as applicable, shall further covenant and agree, for itself, its Affiliates and its successors and assigns, that (a) for a period of one (1) year from the date of Completion of Construction of the Office Improvements (the **“Initial Restriction Period”**), at least one (1) floor (other than the ground floor) of the Office Improvements shall be reserved for leasing to a single user and shall not be leased to more than one single user, and (b) in the event that the Joint Venture is unable to lease an entire floor of the Office Improvements to a single user during the Initial Restriction Period, then for an additional period of one (1) year, commencing on the expiration of the Initial Restriction Period and ending on the date that is one (1) year thereafter, at least 15,000 square feet of floor space in the Office Improvements shall be reserved for leasing to a single user and shall not be leased to more than one single user, unless the City, in its sole discretion, agrees to the leasing of said floor to more than one single user or to a user occupying less than 15,000 square feet of floor space, as applicable. For the avoidance of doubt, (a) there shall be no restriction on leasing in the Office Improvements from and after the date that is two (2) years from the date of Completion of Construction of the Office Improvements, and (b) a lease having a commencement date after the expiration of an applicable restrictive period may be executed by the Joint Venture without violating the restrictions set forth herein so long as at the time of the commencement date thereof such lease would not be in violation of such restrictions.

**6. CONCERNING THE PROJECT IMPROVEMENTS.** Each of Globe and the Joint Venture shall be involved in the design, construction and/or development/redevelopment of the Project Improvements subject to the terms and conditions of this Agreement.

6.1 Construction, Scope and Phasing. The Project Improvements shall be constructed (and may be phased) in accordance with the plans and specifications consistent therewith approved by the City from time to time. In addition, the Project Improvements shall also be governed by the City’s review and approval process described in Section 4.3 above.

6.2 Design, Bidding, Construction and Dedication. The City Improvements shall be designed, bid, constructed and conveyed to the City in accordance with the RFQ process, the Design-Build Agreement and Applicable Laws. The opinion of the City Attorney shall be determinative and binding upon the City and Globe with respect to conformance of any aspect of development of the City Improvements with any Applicable Laws.

6.3 Project Improvements Performance Benchmarks.

(a) Globe shall cause Commencement of Construction of the City Improvements pursuant to the approved Site Plan to occur on or before March 31, 2021, or (i) at such later date as may be mutually approved by the City and Globe, which approval shall not be unreasonably withheld, or (ii) at such later date as is promulgated in accordance with the approved City Improvements Project Schedule prepared by the Design-Builder, but in all events, Commencement of Construction shall occur not later than a date which allows the Completion of



Construction of the City Improvements to occur in compliance with the provisions of Section 6.3(b) below.

(b) Globe shall cause Completion of Construction of the City Improvements to occur on or before June 30, 2022, or by such later date as may be mutually approved by the City and Globe, which approval shall not be unreasonably withheld.

(c) Owner or Joint Venture, as applicable, shall cause Completion of Construction of the Office Improvements to occur on or before the later of the date of the Completion of Construction of the City Improvements or June 30, 2022, or by such later date as may be mutually approved by the City and the Joint Venture, which approval shall not be unreasonably withheld.

(d) Notwithstanding anything to the contrary in this Agreement, the City agrees to use commercially reasonable efforts at all times prior to Completion of Construction of the City Improvements to timely make decisions necessary so as not to delay the Commencement of Construction or the Completion of Construction of the City Improvements. The City agrees that, once it has granted its approval for any portion of the City Improvements, the City will not itself initiate any changes or amendments thereto, and if it does so, then each day of delay caused thereby shall extend day-for-day the dates referenced in Sections 6.3(a) and (b). In addition, the City agrees that it shall timely take the actions necessary by it, or timely grant such approvals or consents that are needed from it (as such actions, approvals or decisions are set forth in this Agreement), so as not to cause a delay in any of the dates set forth on the approved City Improvements Project Schedule, and to the extent of any such delay so caused, each day of delay caused thereby shall extend day-for-day the dates referenced in Sections 6.3(a-c).

(e) Notwithstanding anything in this Agreement to the contrary, if the obligations of Globe contained in Sections 6.3(a) or (b) are not satisfied because of a failure of Design-Builder to commence construction of, or to complete, the City Improvements within the time required by Sections 6.3(a) or (b), then the Parties have agreed that the sole and exclusive remedy(ies) of the City in either such event is/are that Globe shall pass through to the City the damages received by Globe under the Design-Build Agreement, so that the City's recovery for any damages caused thereby shall be its receipt from Globe of the damages paid by Design-Builder to Globe under the Design-Build Agreement.

(f) For the purposes of this Agreement, "**Commencement of Construction**" for the City Improvements shall mean both (i) the obtaining of a building excavation, grading or similar permit by Globe for the construction of the City Improvements, and (ii) the actual commencement of construction on the City Property. "**Completion of Construction**" shall mean issuance of a temporary or final certificate(s) of occupancy in such form as permits the City and/or the Joint Venture, as applicable, to legally occupy the applicable portion of the Project Improvements for the purpose for which such applicable portion was constructed, or similar approval of completion, with respect to the applicable portion of the Project Improvements.

#### 6.4 Dedication, Acceptance and Maintenance of City Improvements.

(a) The City Improvements shall be designed and constructed in accordance with applicable federal, state and City codes, ordinances, design standards, policies and guidelines, including the City's Engineering Design Standards and Policies in effect when the City Improvements are designed.

(b) Upon completion by Globe of any of the City Improvement(s), Globe shall notify the City in writing (the "**Notice to Confirm**") of the presumptive completion of such City Improvement(s) promptly following the completion of such City Improvement(s). After receipt of the Notice to Confirm, the City shall inspect the applicable City Improvement(s) identified therein as to whether it has been constructed in accordance with the approved plans and specifications therefor, as verified by the inspection of the completed City Improvement(s) by the City Engineer or designee. Upon completion of the inspection, the City shall deliver written notice to Globe within fifteen (15) days of the inspection either (1) approving construction ("**Final Acceptance**"), or (2) identifying, through a punch list, all specific items that are not in accordance with the specifications and that are to be corrected by Globe. Globe shall review any such punch list, and the City and Globe shall meet to agree upon a mutually approved punch list. Globe shall make or cause to be made all such mutually approved punch list corrections promptly after mutual agreement thereon. So long as such City Improvement(s) is/are constructed in accordance with the plans and specifications (as verified by the inspection of the completed City Improvement(s) by both of the City and Globe) and all mutually approved punch list items have been timely completed, the City shall accept such City Improvement(s) through the issuance of the Final Acceptance. Promptly after the issuance of the Final Acceptance, Owner shall deliver to the City "as built" plans for the City Improvements. Globe shall cause the direct non-exclusive assignment to the City of any warranties and guarantees applicable to the New City Hall and/or the Surface Parking and shall cause the City to be named as a dual obligee on any payment and performance bonds provided to Globe by the Design-Builder, if Globe elects to obtain any such bonds.

(c) Upon acceptance by the City, the New City Hall, the Public Square and the Surface Parking shall become public facilities and property of the City; the City shall be solely responsible (except for matters covered by express warranties provided to the City) for all subsequent maintenance, replacement and repairs. With respect to any claims arising prior to acceptance of the City Improvements by the City, Globe shall bear all risk of, and shall indemnify, defend, pay and hold harmless the City and its officials, employees and City Council members, for, from and against any claim of any Third Party arising from any injury (personal, economic or other) or property damage to any such Third Party, arising prior to the Conveyance Date from the condition, loss, damage to or failure of any of the City Improvements, or any work contracted by or for Globe, except to the extent caused solely by the negligent or willful acts or omissions of the City or its officials, employees and City Council members.

6.5 City Payments. Subject to the express limitations on the total amount of City Payments to be made by the City hereunder, the City shall pay the costs incurred in connection with the development of the City Improvements on a monthly progress basis, as follows (the "**City Payments**"):

(a) Globe or Design-Builder shall submit all monthly pay requests (each, a "**Payment Request**") to include the following:

(i) An Application and Certificate for Payment (AIA Document G702, or then equivalent AIA form) executed by the Design-Builder showing the percentages and value of work completed during the payment period and stating that all portions of the work for which payment is requested have been completed in accordance with the Design-Build Agreement and that all labor, materials and other items for which payment is requested have been paid in full with the exception of labor and materials supplied subsequent to the period covered by the last Application and Certificate for Payment;

(ii) A summary and supporting schedule identifying each line item on the approved City Improvements Project Budget by total amount, total previously disbursed, amount subject to the requested disbursement and balance after the requested disbursement.

(iii) Invoices and conditional lien waivers (in substantially the forms required by A.R.S. § 33-1008, as amended or superseded) from each person that has furnished a material amount (as agreed upon by the City and Globe) of labor or materials to or for the City Improvements for which payment is requested in the Payment Request. Lien waivers may be conditioned only upon payment under the disbursement being requested, and each lien waiver shall state the period during which labor and materials were furnished and the amount for which the lienholder's waiver is effective.

(iv) Invoices from Globe, with reasonable supporting documentation, for the Globe Fee, to the extent such Globe Fee is payable in connection with a Payment Request;

(v) A Continuation Sheet (AIA Document G-703, or the equivalent AIA form); and

(vi) The Design-Builder shall include with its monthly Application and Certificate for Payment copies of invoices with appropriate supporting documentation from all design professionals who performed work during the preceding month setting forth the amounts due for the payment period covered by the invoices, to the extent not included in (i) through (v) above.

(vii) Notwithstanding the foregoing, the City agrees that up to \$250,000 of architectural and engineering pre-development work may be completed by Globe prior to the date the applicable public procurement process has been initiated, and in such event, the cost of such work may be included in the City Improvements Project Costs and may be included for payment by the City to Globe in the first monthly pay request made by Globe to the City.

(b) Pursuant to the terms of the Design-Build Agreement, Globe shall provide its written approval of all monthly pay requests, except for those set forth in subsection (vi) above.



(c) Globe shall cause Payment Requests (approved pursuant to subparagraph (b) above) to be submitted to the City not more than once in each calendar month. In accordance with the requirements of A.R.S. §34-609(B)(2), the City shall review and approve or disapprove each Payment Request not later than seven (7) days after the City's receipt of such Payment Request. The City shall pay each approved Payment Request within fourteen (14) days after approval. If the City disapproves a Payment Request, the City shall provide to Globe notice of such disapproval, accompanied by a statement of the reasons for such disapproval, within such seven (7) day period.

(d) Unless the City otherwise consents, the approval by the City of any Payment Request with the knowledge that any condition to the requested payment is not fulfilled shall constitute a waiver of such condition only with respect to the particular payment requested, and such conditions shall continue to be a condition to the approval of all subsequent Payment Requests until fulfilled. In addition, and regardless of whether Globe thereafter requests any subsequent payment, the City's approval of a given Payment Request shall obligate Globe to promptly and diligently fulfill any conditions to the Payment Request that were not fulfilled at the time such Payment Request was submitted by Globe.

(e) The City may withhold approval of the whole or part of any Payment Request to such extent as may be reasonably necessary to protect the City from loss on account of (i) the occurrence and continuation of an event which constitutes an Event of Non-Performance by Globe which event has not been timely cured within the grace period provided in Section 12.3; (ii) defective work on the City Improvements not being remedied after Globe's receipt of notice thereof and expiration of any applicable cure periods; (iii) failure of Globe to make payments when due to the Design-Builder under the Design-Build Agreement, except if Globe has a bona fide disagreement with the Design-Builder; or (iv) a reasonable doubt that the City Improvements can be completed for the greater of the then undisbursed balance of the City Improvements Project Budget or the difference between the GMP than established pursuant to the GMP Amendment and the amount of the payments paid to the Design-Builder under the Design-Build Agreement. Upon the cure of all of the conditions described in clauses (i) through (iv) of the preceding sentence, the City shall approve the whole or the part of the Payment Request for which approval was withheld.

(f) In the event of a dispute with respect to amounts payable under a Payment Request, the City shall pay all undisputed amounts and Globe shall continue performing the remaining work called for hereunder. Any amounts in dispute and withheld by the City shall be promptly paid to Globe after the earlier of:

(i) Settlement of the dispute by execution of a Change Order or otherwise; or

(ii) Resolution of the dispute pursuant to Section 13 below.

6.6 Conditions to City's Final Payment Obligation. The City's obligation to make final payment to Globe for a City Improvement shall, in addition to the satisfaction of the other conditions set forth in this Section 6, be subject to the following conditions precedent,



which conditions precedent shall be completed within thirty (30) days after the date of Completion of Construction of the applicable City Improvement:

(a) The construction and installation of the City Improvements shall have been completed pursuant to the requirements of this Agreement and Applicable Laws (including the correction and completion of all "checklist" or "punch list" items);

(b) Any portion of the City Improvements requiring inspection or certification by any Governmental Authority shall have been inspected and certified as complete, a final certificate of occupancy for the City Improvement in question shall have been issued, if applicable to the City Improvement in question, and all other required approvals, licenses, exemptions and other authorizations of Governmental Authorities relating to the construction and installation of the City Improvements shall have been duly obtained;

(c) Globe shall have delivered to the City a certificate executed by the Design-Builder certifying to the City that the City Improvements have been completed in accordance with the approved plans and specifications therefor and with Applicable Laws, that no Governmental Authority has issued any notice of violation of, or non-conformity with, the approved plans and specifications for the City Improvements for which the violation or non-conformity remains uncured, that direct connection has been made to all abutting water, gas, sewer, telephone and electrical facilities necessary for the operation and use of the applicable City Improvement, and that the applicable portions of the City Improvements are ready for occupancy.

(d) Globe shall have delivered to the City a list describing the Personal Property, and Globe shall have conveyed such Personal Property to the City by executing and delivering to the City a Bill of Sale therefor.

(e) The City shall have received (i) a commitment from the Design-Builder to promptly deliver to the City, to the extent and in the manner required by the Design-Build Agreement, final "as built" plans or specifications or record drawings for the applicable City Improvements certified by the Design-Builder and its architect of record; (ii) copies of all operating manuals and instructions relating to the applicable City Improvements; and (iii) the Assignment of Warranties, together with copies of all warranties relating to the applicable City Improvements; provided, however, that in the event that the conditions set forth in subsections (a) through (d) above have been satisfied, the City shall release final payment for the applicable City Improvements to Globe, except for an amount equal to the cost of the final "as built" plans, specifications and/or record drawings, which amount shall be retained by the City until the City has received the items referenced in this subsection (e).

**6.7 Maximum City Payment Obligations.** The City's payment obligation with respect to the City Improvements shall be limited to, and shall not exceed an amount equal to: (a) that portion of the GMP established pursuant to Section 8.2(b) below allocable to the cost of construction of the New City Hall; (b) that portion of the GMP allocable to the cost of construction of the Surface Parking; (c) that portion of the GMP allocable to the cost of construction of the City Infrastructure; (d) that portion of the cost of the GMP allocable to the cost of construction of the Public Square; (e) that portion of the cost of the Project Infrastructure

equal to the City Infrastructure Contribution; and (f) any other amounts required to be paid by the City pursuant to the express terms of this Agreement. To the extent the cost of the City Improvements exceeds the GMP amount, the cost thereof shall be borne solely by Globe. In addition to the foregoing payment obligation, the City is also required to pay to Owner or the Joint Venture, as applicable, the sum of \$5,000,000.00, representing the City's share of the cost of construction of the Garage, and the City shall make payments thereon to Owner or the Joint Venture, as applicable, in proportion to the City's allocable percentage share (based on the number of parking spaces to which the City is entitled in, around or on the Garage pursuant to the provisions of this Agreement) from time to time of the costs then incurred in connection with the construction of the Garage as the Garage is being constructed, which payments shall be made by the City to Owner or the Joint Venture, as applicable, within thirty (30) days of the City's receipt of evidence of the incurrence of such costs by Owner or the Joint Venture, as applicable, and any remaining portion of such \$5,000,000.00 sum owed by the City to Owner or the Joint Venture, as applicable, shall in all events be paid within thirty (30) days of completion of the Garage. The City Infrastructure Contribution shall be paid by the City to Globe within thirty (30) days of the City's receipt of evidence of the incurrence of the Project Infrastructure costs by Globe. For the avoidance of doubt, the City is required to pay for all costs of the City Infrastructure, and no portion of the City Infrastructure Contribution shall be used to pay for City Improvements, City Infrastructure or any other costs other than the City's share of the Project Infrastructure represented by the City Infrastructure Contribution. The City Off-Site Utility Contribution shall be paid by the City to Globe on a monthly progress basis, with such City payments to be made as the applicable Project Infrastructure off-site wet and dry utilities are being designed, constructed and installed and, to the extent applicable, such City payments shall be made consistent with the provisions for the payment by the City of the City Payment referenced in Section 6.5 hereof. Globe shall be required to cause the wet and dry utilities to which the City Off-Site Utility Contribution is applicable to be stubbed to a point or points on the "Wet and Dry Utility Stub Boundary Line" as shown on Exhibit D-2 hereto.

6.8 Liens and Encumbrances. Neither Globe nor Owner shall place, or allow to be placed by the Joint Venture, any lien or encumbrance on any portion of the City Property, except for those liens and encumbrances, if any, listed in Exhibit H attached hereto ("**Permitted Liens and Encumbrances**"). In the event any unauthorized lien is placed against the City Property, Owner may either cause its removal or provide a bond necessary to remove it from the record.

## **7. CONVEYANCE OF CITY PROPERTY TO CITY.**

7.1 Agreement to Convey. Owner shall donate and convey to City, upon Completion of Construction of the City Improvements, and in consideration of the City's agreements as set forth herein, subject to the terms and conditions set forth, the City Property, including such other rights, interests and properties as may be specified in this Agreement to be donated by Owner to the City.

7.2 Survey. Within thirty-five (35) days of the Effective Date, Globe shall obtain, at Globe's sole cost and expense, and provide to the City an ALTA/NSPS survey of the City Property, prepared by an Arizona licensed land surveyor and certified to Owner, Globe and

the City (the "**Survey**"). The City shall have a period of thirty (30) days from its receipt of the Survey (the "**Survey Review Period**") to approve the Survey.

7.3 INTENTIONALLY OMITTED.

7.4 Feasibility Period.

(a) The City shall have sixty (60) days after the Effective Date (the "**Feasibility Period**") to perform studies and inspections to determine if the City Property, in the City's sole and absolute discretion, is suitable for the City's needs for the construction and operation of the City Improvements that are to be constructed on the City Property. The City hereby agrees and acknowledges that, prior to the expiration of the Feasibility Period, the City has (i) had the opportunity to enter the City Property and conduct any desired tests or studies; (ii) complied with all federal, state and local laws which might in any way relate to such examinations, inspections or tests; (iii) restored the City Property promptly after any such entry; and (iv) been permitted to conduct any drilling or soil borings on the City Property as mutually approved by Owner and the City. If the City wishes to engage in any testing which will damage or disturb any portion of the City Property, the City shall obtain Owner's prior written consent thereto, which may be conditioned as Owner may deem appropriate. If any mechanics' liens or materialmen's liens or any other lien, claim, judgment or other encumbrance, or claim thereof, at any time shall be filed against the City Property or any part thereof or against Owner as a result of any inspection or labor performed or materials or services furnished or claimed to have been performed or furnished to or on behalf of the City, then the City shall reimburse Owner for any cost incurred as a result thereof and shall cause the same to be released and discharged of record at the City's sole cost and expense. The City shall be liable for all claims resulting from, relating to or arising out of any entry on, or inspection or testing of, the City Property for or on behalf of the City, whether occasioned by the acts or omissions of any of the City or its City Council members, officers, employees, consultants or representatives, and, to the extent permitted by law, the City hereby agrees to reimburse Owner for any and all costs, liability, damage, loss, lien, expense and claims resulting from, relating to or arising out of any entry on, or inspection or testing of, the Project for or on behalf of the City. The City shall restore the City Property promptly after any such entry or inspection.

(b) In the event the City determines, in the City's sole discretion, that the City Property is unsuitable for the City's needs and gives written notice of same during the Feasibility Period, then this Agreement shall become null and void. In the event the City elects not to terminate this Agreement in accordance with the foregoing or fails to provide written notice of termination on or before 6:00 p.m., Phoenix time, on the last day of the Feasibility Period, then this Agreement shall remain in full force and effect and the transaction shall continue to consummate the conveyances contemplated hereby, subject to the other terms of this Agreement, and the City's right to terminate this Agreement as set forth in this Section 7.4 shall be deemed to have been waived and of no further force or effect.

7.5 Preliminary Title Report. Within thirty (30) days of the Effective Date, Globe shall deliver to the City a commitment for an ALTA Extended Coverage Owner's Title Insurance Policy (the "**Commitment**") and a link to a legible copy of all documents listed therein and relating to the City Property. The City shall have the right to request that the Commitment



reflect an amount equal to the then contemplated amount described in Section 7.13(e). Owner and the City acknowledge that although Owner shall not execute or agree in writing to any additional exceptions to be recorded, the City shall always have the right to further review and approve any amended title commitment if additional material adverse exceptions or matters are raised not resulting from the acts of the City. Owner and the City acknowledge that the City shall have the right to further review and approve any amended title commitment if such additional exceptions or matters are raised therein during the term of this Agreement and prior to the Conveyance Date. Owner shall be under an affirmative obligation to eliminate the following title matters on or before conveyance of the City Property to the City, and the City shall have no obligation to object to the same for such removal: (a) release of the City Property from the effect of that certain Memorandum of Agreement between Owner and Westcor/Goodyear, L.L.C., an Arizona limited liability company, dated as of April 18, 2002 and recorded on May 9, 2002 in Document No. 2002-481388 of the Official Records of Maricopa County, Arizona ("**Official Records**"), as amended by that certain First Amendment to Memorandum of Agreement dated of November 1, 2006 and recorded on November 15, 2006 in Document No. 2006-1502179 of the Official Records, that certain Second Amendment to Memorandum of Agreement dated as of December 6, 2007 and recorded on December 11, 2007 in Document No. 2007-1300463 of the Official Records, that certain Third Amendment to Memorandum of Agreement and Amendment of Deed dated as of September 15, 2010 and recorded on October 25, 2010 in Document No. 2010-930831 of the Official Records, that certain Fourth Amendment to Memorandum of Agreement and Further Amendment of Deed dated as of December 6, 2012 and recorded on December 11, 2012 in Document No. 2012-1128829 of the Official Records, and that certain Fifth Amendment to Memorandum of Agreement and Further Amendment of Deed dated as of February 27, 2015 and recorded on March 11, 2015 in Document No. 2015-162973 of the Official Records (collectively the "**Memorandum of Agreement**"), (b) any voluntary financing liens made by Owner against the City Property that may be satisfied by a cash payment, including, without limitation, any improvement district obligations applicable to the City Property, and (c) any judgment liens, mechanics' or materialmen's liens, tax liens, or other non-consensual monetary liens claiming against Owner, other than liens for non-delinquent real estate taxes and assessments and similar liens permitted by this Agreement. Owner is permitted to bond or insure over any mechanics' and materialmen's liens and other liens in accordance with Applicable Laws. The City shall give Owner written notice on or before the expiration of the Feasibility Period that the condition of title as set forth in the Commitment contain exceptions which are not satisfactory to the City, in the City's sole and absolute discretion. In such event, on or before the expiration of the Feasibility Period, the City shall state, in writing, which exceptions to the Commitment are not acceptable (the "**Exceptions**") and Owner shall have the right to use commercially reasonable efforts, without cost or obligation, to eliminate the Exceptions; provided, however, that as provided above in subparts (a), (b) and (c) of this Section 7.5, prior to conveyance of the City Property to the City certain encumbrances shall be satisfied by Owner. All exceptions not objected to by the City within the above described time period ("**Permitted Exceptions**") shall be deemed approved by the City. In the event Owner is unable to eliminate all of the Exceptions prior to the Conveyance Date, the City may, at its option, prior to the date that is twenty (20) days after the expiration of the Feasibility Period, (a) accept title subject to all uncured Exceptions, whereupon such previously objectionable Exceptions shall be deemed to be Permitted Exceptions, or (b) terminate this Agreement, whereupon notwithstanding anything in this Agreement to the contrary, this Agreement shall be of no further force and



effect; if such election is not made by the City, the City shall be deemed to have made the election pursuant to clause (b) of this sentence.

7.6 Permitted Exceptions. After the Permitted Exceptions are finally established pursuant to Section 7.5 above, the City's obligation to consummate the transactions evidenced hereby are conditioned on the City Property being conveyed to the City subject to no liens, assessments, charges, encumbrances, exceptions or reservations of any kind or character other than Permitted Exceptions, exceptions resulting from the actions of the City and those other exceptions waived by the City in writing.

7.7 Owner Deliveries. Owner has delivered to the City a true and correct copy of Owner's most current Phase I environmental site assessment which includes the City Property (the "**Phase I Environmental Site Assessment**"). Within thirty-five days of the Effective Date, Owner shall deliver to the City true and correct copies of any soils, hydrology, geological and similar reports which are in Owner's possession which relate to the City Property. Prior to the Conveyance Date, Globe shall cause the Phase I Environmental Site Assessment to be certified to the City.

7.8 Conveyance Date. The conveyance of the City Property to the City shall take place within ten (10) days of the Completion of Construction of the City Improvements (the "**Conveyance Date**"); provided, however, that in the event the conditions precedent to the City's obligations hereunder, as set forth in Section 7.13 below, have not been satisfied as of the Conveyance Date, the City shall have a one-time right to extend the Conveyance Date for a period not to exceed twenty (20) days for the purpose of satisfying said conditions. The City Property shall be conveyed to the City by means of a special warranty deed, in form for recording as set forth in Exhibit B hereto (the "**Deed**"). Nothing in this Section 7.8 shall be deemed to restrict the City's right to initiate an action seeking to specifically enforce Owner's obligations hereunder, including, without limitation, Owner's obligations to make the deliveries referenced in Section 7.13 below, in the event such deliveries have not been made by the Conveyance Date, as it may be extended hereunder.

7.9 Proration of Taxes and Assessments. Taxes for the City Property for the year in which the conveyance of the City Property takes place shall be prorated to the date of such conveyance and the amount of Owner's prorated share of taxes may be deducted from any remaining unpaid portion of the City Infrastructure Contribution. If the conveyance shall occur before the tax rate is fixed for the then current year, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation. Except as provided above with respect to real property taxes, all improvement district assessments, special assessments, communities facilities assessments, utility charges and other charges (if any) relating to the City Property and applicable to any period prior to the Conveyance Date shall be the sole responsibility of Owner and shall be paid in full prior to the conveyance of the City Property to the City.

7.10 Acts Affecting the City Property. From and after the date hereof, Owner, unless otherwise agreed to in writing by the City, will refrain from (a) creating or agreeing to any improvement districts, communities facilities district, lease, occupancy right, mortgage, lien, pledge or other encumbrances against the City Property, other than any lease or occupancy right

which will be terminated prior to the date of the conveyance of the City Property by Owner to the City; (b) forming an owners' or similar association for any portion of the City Property; and (c) creating any new exceptions to, or amending any Permitted Exceptions to, title to the City Property. Owner will pay taxes, prior to delinquency, on the City Property (including, if possible, not later than the date of conveyance to the City) for the period preceding such date of conveyance.

7.11 Entry. The City and its agents and representatives shall be entitled to enter upon the City Property for inspection, soils report, environmental report, examination and land-use planning prior to the Conveyance Date. To the extent permitted by law, the City hereby indemnifies, defends and holds Owner, Globe and the Joint Venture harmless from any out-of-pocket damages or liabilities (including reasonable attorney's fees) arising from the activities of the City, its agents or representatives on the City Property. Notwithstanding anything contained in this Agreement to the contrary, the City's obligation to restore the City Property and indemnify Owner, Globe and the Joint Venture shall survive the conveyance to the City of the City Property any termination of this Agreement.

7.12 Further Assurances. In addition to the provisions of Section 14.13, but without limitation thereof, Owner and the City agree to perform such other acts, and execute, acknowledge, and/or deliver, on or before the conveyance to the City of the City Property such other reasonable instruments, documents and other materials, necessary to vest title to the City Property in the City without payment of additional consideration.

7.13 Conditions to the City's Obligation to Accept Conveyance of the City Property. The obligation of the City to accept the conveyance of the City Property is subject to each of the following conditions (any of which may be waived in whole or in part in writing by the City):

(a) Evidence of Authority. Owner shall have delivered to the City evidence reasonably satisfactory to it of Owner's authority to execute and deliver the documents necessary to consummate the transaction contemplated hereby.

(b) Non-Foreign Person. Owner shall have executed, acknowledged and delivered to the City a certification in acceptable form that Owner is not a foreign person.

(c) Correctness of Representations and Warranties. The representations and warranties of Owner set forth herein shall be true as of the date made.

(d) Compliance by Owner. As of the Conveyance Date, Owner shall have performed, observed and complied with all of the covenants, agreements and conditions required by this Agreement to be performed, observed and complied with by Owner prior to or as of the Conveyance Date.

(e) Title Exceptions; Title Insurance. First American Title Insurance Company (the "**Title Company**") shall have irrevocably committed to deliver to the City an ALTA extended coverage policy of title insurance (the "**Title Policy**") issued by Title Company based on the Commitment, which shall insure that fee simple title to the City Property is vested

in the City for an amount not less than the sum of the City Infrastructure Contribution and the amounts paid by the City under the Design-Build Agreement, containing no exceptions to title to the City Property other than the Permitted Exceptions approved or deemed approved by the City pursuant to this Agreement. Owner shall pay the premium payable for standard coverage title insurance, inclusive of endorsements issued by the Title Company to cure any title defect. The City shall pay the additional premium for extended coverage owner's policy of title insurance and all title endorsements requested by the City.

(f) Platting. The City Property shall have been platted in conjunction with the Joint Venture Property (and possibly with other real property owned by Owner adjacent to the Joint Venture Property), as evidenced by the recordation of a Final Plat for said property, in form and substance reasonably acceptable to the City and Owner, in the Official Records of Maricopa County, Arizona. For purposes of this Agreement, "**Final Plat**" shall mean a final subdivision plat within the meaning of the Goodyear City Code.

Notwithstanding anything to the contrary in this Agreement, in the event the conditions set forth in (a) through (f) above have not been satisfied by the Conveyance Date, as it may be extended pursuant to Section 7.8 (the "**Termination Date**"), the City shall have the right to terminate this Agreement by delivering to Owner a notice in writing of the City's desire to terminate this Agreement. The City may waive any of the foregoing conditions precedent as set forth above by giving written notice to that effect to Owner on or before the Termination Date.

7.14 Performance Deed of Trust. To secure Owner's and Globe's respective obligations to convey the City Property and the City Improvements to the City at the time required by Sections 6.4 and 7.1 hereof, Owner and Globe shall, concurrently with Owner's and Globe's execution of this Agreement, execute, have acknowledged and deliver to the City for recordation in the Official Records a Performance Deed of Trust in the form attached as Exhibit G hereto (the "**Performance Deed of Trust**"). The Performance Deed of Trust shall constitute an encumbrance against the City Property and shall be recorded in the Official Records immediately following the recordation therein of this Agreement. Concurrently with the City's execution of this Agreement, City shall execute, have acknowledged and deliver to First American Title Insurance Company (Alix Graham) ("**Escrowee**") a Release and Termination of the Performance Deed of Trust, to be held by Escrowee pursuant to the terms of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, if the City defaults in its obligations under this Agreement and does not cure same within any applicable cure period provided in this Agreement, then Owner and/or Globe shall have the right to instruct Escrowee to immediately record such Release and Termination in the Official Records. The instructions contained in this Section 7.14 are irrevocable and may not be rescinded, objected to or otherwise modified or changed without the approval of each of Owner and the City, and Escrowee shall have no liability to either the City or Owner if Escrowee acts in accordance with the instructions contained in this Section 7.14. Escrowee is a third-party beneficiary of the provisions of this Section 7.14.

7.15 "As-Is" Conveyance. The City acknowledges that Owner has not made, and does not make, any representations, warranties, promises, covenants, agreements or guaranties of any kind whatsoever, whether express or implied, oral or written, relating to the City Property other than the express representations and warranties set forth in this Agreement



and in the Deed. The City acknowledges that the City has not relied on any representations or guaranties of any kind of Owner or any agent of Owner relating to the City Property that are not specifically set forth in this Agreement or in the Deed. Owner is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the City Property, or the operation thereof, furnished by Globe or any Third Party. The City further acknowledges and agrees that to the maximum extent permitted by law, the donation of the City Property as provided for herein by Owner to the City is made on an "AS IS" condition and basis with all faults, and that Owner has no obligations to make any improvements or changes to the City Property, acknowledging that Globe and the Joint Venture do have obligations with respect to the construction of the City Improvements and the Office Improvements. Any information relating to the City Property furnished to the City by Owner is furnished on the express condition that the City shall make an independent verification of the accuracy of such information, all of which is furnished without warranty. The City acknowledges that the City Property is undeveloped and will require various approvals from the applicable governmental entities and such approvals may include requirements for dedications, reimbursements or other exactions, all of which shall be the City's responsibility. Except for the City's rights under Owner's express representations made in this Agreement, the City, on behalf of itself and its successors and assigns, hereby irrevocably and unconditionally releases, discharges and forever acquits Owner and its managers, members, partners, stockholders, officers, directors, employees, and all Affiliates of any such persons or entities, from all claims of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, which the City now or hereafter has, owns, holds or claims to have, own or hold, or at any time heretofore had, owned, held or claimed to have, own or hold, against such entities or persons relating to the City Property, the physical condition of the City Property, any laws, regulations, environmental laws, zoning laws and land use laws, the development or future development of the City Property, the presence of any hazardous substances or hazardous materials on the City Property, or any other matter relating to the City Property, including any improvements or structures above or below ground.

## **8. DEVELOPMENT MANAGEMENT.**

### **8.1 General Agreements**

(a) Appointment. Globe shall act as Development Manager for the development of the City Improvements and shall perform the duties and services set forth in this Section 8.

(b) Authority and Responsibility.

(i) Globe and its partners, affiliates or consultants shall manage on a daily basis and be the primary point of contact for the development of the City Improvements. Globe shall assume all responsibilities and timely perform all services described herein, within the scope of best business practices, in order to complete the City Improvements within the timeframes required under this Agreement. In this role, Globe will use its experience and expertise with the goal of creating the best product for the budgeted cost, and advise the City in matters relating to concept, feasibility, design and construction. Globe shall provide sufficient organization, personnel and management to provide the services and carry out the requirements

of this Section 8 in an expeditious and economical manner consistent with the interests of the City.

(ii) The City may attend, at its discretion, all scheduled meetings involving the design and construction of the City Improvements, and the City agrees that it shall use commercially reasonable efforts to cause its representatives to so attend regularly scheduled design and construction meetings and participate therein, so that any design, construction or development issues can be resolved quickly and promptly.

## 8.2 Scope of Services.

(a) Overview of Basic Services. Globe shall manage the development of the City Improvements on a daily basis from inception to completion for all phases of the development process. Globe's basic services to be provided pursuant to this Section 8 are set forth in Exhibit I attached hereto and incorporated herein, together with such other services set forth below in this Section 8.

(b) Basic Services. In addition to the services set forth in Exhibit I hereto, Globe will provide the following services as a part of the development management process:

(i) Design-Build Selection. Globe will select a Design-Builder ("**Design-Builder**") to design and build the City Improvements described in Section 4.1(a) above through a design-build procurement process pursuant to A.R.S. § 34-603, and thereafter Globe will negotiate the terms and conditions of the design-build agreement, subject to the City's approval of the terms and conditions thereof, which approval shall not be unreasonably withheld (the "**Design-Build Agreement**"). Globe will contract with the Design-Builder directly, who will contract with the architect, and various design sub-consultants as needed. Globe will be responsible for overseeing and managing the Design-Builder's contract. Globe will evaluate in a timely manner each monthly invoice submitted by the Design-Builder (including reimbursables) to ensure that the billing is consistent with both the progress of the drawings and the language in the contract in order to make certain that the invoices are in the proper amount and are being submitted at the appropriate time.

The Design-Build Agreement shall include a two (2) year workmanship and materials contractor's warranty from the Design-Builder with respect to the City Infrastructure as such warranty obligations are more fully set forth in Exhibit D attached hereto and a one (1) year workmanship and materials contractor's warranty from the Design-Builder with respect to the remainder of the City Improvements; for the avoidance of doubt, such warranties are not required from Owner or Globe, and such warranties shall extend from the date of substantial completion of the City Improvements or any component thereof, as applicable.

(ii) Phased Delivery of Design-Build Services. Globe will employ a phased delivery approach for the Design-Build Services. Phase 1 will include Preconstruction Services and Design, including all engineering analysis, design, design review, value engineering and cost-model development services to bring the design to approximately 90%. The Design-Builder will develop a Guaranteed Maximum Price for Phase 2, Construction

Services and Design, which will result in a negotiated amendment to the Design-Build Agreement (the "**GMP Amendment**"). Phase 2, if exercised by Globe, will encompass completing the final design, permitting and regulatory assistance, construction services and all other services necessary for successful construction of the City Improvements. Globe will oversee and manage the work provided by the Design-Builder pursuant to the Design-Build Agreement, including development of preliminary construction cost estimates and construction schedules in addition to the performance of constructability reviews throughout the design of the City Improvements. Globe will evaluate in a timely manner each monthly invoice submitted by the Design-Builder (including reimbursables) to ensure that the billing is consistent with both the services provided and the requirements of the contract in order to make certain that the invoices are in the proper amount and are being submitted at the appropriate time.

(iii) Consultants Selection. Pursuant to the terms of the Design-Build Agreement, Design-Builder will select, retain and coordinate the professional services of such other consultants as may be required for the design and construction of the City Improvements and Design-Builder will negotiate the terms and conditions of the consultants' contracts, subject to Globe's approval of the terms and conditions thereof, which approval shall not be unreasonably withheld. Design-Builder shall oversee and manage the contracts with any consultants and all billing for such services shall be included in the Design-Builder's monthly Application and Certificate for Payment. In reviewing the Design-Builder's Application and Certificate for Payment, Globe will evaluate the billings for each consultant (including reimbursables) to ensure the billing is consistent with both the services provided and the requirements of the Design-Build Agreement in order to make certain that the billings for such services are in the proper amount and are being submitted at the appropriate time.

(iv) Scope Definition; Schedule and Budget. Design-Builder and its partners, affiliates or consultants will work with Globe and the City to further define the scope of the City Improvements within the budget approved by the City and as contemplated in the program for the City Improvements, as determined by the City. Design-Builder shall have primary responsibility, in consultation with Globe, to prepare all scopes of work for each stage of development of the City Improvements, including site work, design work and construction. Each scope of work shall be presented to Globe and the City for review and approval. Each scope of work shall include the preparation of a budget and time schedule for completion for the applicable stage of the work. Any modification to the scope of work, budget or time schedule shall be subject to approval by Globe and the City, subject to the limitations on the City's approval rights set forth in Section 8.3 below. Unless otherwise agreed to by Globe, the City and Design-Builder, the scope of the City Improvements and any changes thereto shall not adversely affect the City Improvements Project Budget or the City Improvements Project Schedule. The City acknowledges and agrees that it will not propose any changes or amendments to the City Improvements which would result in a delay in the City Improvements Schedule, and the City agrees that it will use commercially reasonable efforts to review and approve the work, and any changes thereto, referenced in this paragraph promptly to avoid any delay in the City Improvements Project Schedule.

Design-Builder shall prepare and periodically update a schedule for the City Improvements (the "**City Improvements Project Schedule**") for approval by Globe. Design-Builder, as part of the City Improvements Project Schedule, shall coordinate and



integrate all design and construction services and Globe's responsibilities, highlighting critical and long lead-time items. The construction schedule portion of the City Improvements Project Schedule, which shall be prepared by the Design-Builder, shall provide for phasing of construction, times of commencement and completion required of each major trade or construction element, ordering and delivery of equipment and products requiring long lead-time and the completion deadlines. Design-Builder shall expedite the ordering and delivery of materials, products and equipment requiring long lead-time. Design-Builder shall update and reissue the City Improvements Project Schedule as required to show current conditions.

Using its best judgment and based on programming for the City Improvements, design and other information provided by the Design-Builder, its architect and other Consultants, the Design-Builder shall prepare estimates of the cost for the construction of the City Improvements and its required elements (the "**City Improvements Project Budget**"). The initial approved City Improvements Project Budget is set forth in Exhibit F hereto, which shall be further modified and adjusted, from time to time, as set forth in this Agreement. Globe shall ensure that the Design-Builder provides, throughout the design and construction of the City Improvements, cost evaluations of alternative materials and systems. The City Improvements Project Budget and all changes to the City Improvements Project Budget shall be subject to approval by Globe, with the consent of the City acting through its City Representative, with respect to increases of less than ten percent (10%) of the City Improvements Project Budget, otherwise the City Council must approve the change order. Reallocations or reductions to the City Project Improvements Budget in all cases may be mutually approved by the Design-Builder and Globe, with the consent of the City Representative. Design-Builder shall monitor the approved City Improvements Project Budget and shall update and reissue the City Improvements Project Budget as required to show actual costs or revised estimates. Based upon the information provided by the Design-Builder, Globe shall develop cash flow reports and forecasts for the construction of the City Improvements and advise the City of variances between actual and budgeted or estimated costs. The scope of the City Improvements and the City Improvements Project Budget shall be the basis for the schematic design.

(v) Schematic Design. During the schematic design phase, Design-Builder will direct and oversee all programming meetings between the Design-Builder, its architect and other design consultants, Globe and the City to endeavor to have the architect incorporate each party's programming needs into the design of the City Improvements, provided such can be accomplished without adversely affecting constructability, the City Improvements Project Schedule or the City Improvements Project Budget. Design-Builder will also oversee all design meetings to make certain that the Design-Builder and design professionals are creating a project consistent with the design aesthetic and intent of Globe and the City. Design-Builder will join the consultant coordination meetings and use its best efforts to see that the drawings evolve in their state of design consistently across all disciplines. Design-Builder will review each update of the schematic design drawings for compliance with the established design intent and the City Improvements program and will recommend adjustments, if necessary, to the design. Design-Builder will work with its design consultants to ensure, using its best efforts, that the design and selection of building materials does not adversely affect the City Improvements Project Budget and will work with its architect and design consultants to provide value engineering options for Globe in the event that the construction estimate for schematic design exceeds the City Improvements Project Budget. Design-Builder shall consult with Globe, its

architect and design consultants and make recommendations whenever design details adversely affect constructability, the City Improvements Project Budget or the City Improvements Project Schedule. At the completion of the schematic design phase, Design-Builder will provide an updated City Improvements Project Budget that will include the construction cost estimate provided by the Design-Builder and will obtain approval from Globe prior to moving forward with the next phase of design; Globe shall consider any comments of the City thereon in connection with Globe's review, consideration and approval thereof. Design-Builder will coordinate the preparation of any material or presentation of the City Improvements for approval by the Goodyear City Council with the assistance of City staff.

(vi) Design Development. Design-Builder will oversee and manage the further development of the major architectural, structural, mechanical and electrical systems in the design development phase. In addition, the finishes on both the exterior and interior of the City Improvements will be defined. Design-Builder will continue to participate in all design and consultant coordination meetings to monitor the continuing evolution of the drawings and will review each update of the design development drawings for compliance with the established design intent and the City Improvements program, recommending adjustments to the design, if necessary. At the completion of the design development phase, Design-Builder will provide an updated City Improvements Project Budget that will include a comprehensive construction cost estimate provided by the Design-Builder and will obtain approval from Globe prior to moving forward with the next phase of design; Globe shall consider any comments of the City thereon in connection with Globe's review, consideration and approval thereof.

(vii) Construction Documents. The construction documents are being developed pursuant to the terms of the Design-Build Agreement. Design-Builder will coordinate with its architect and other design consultants to prepare the detailed drawings, specifications and other components of any additional contract documents necessary for calculating a GMP, obtaining permits and construction. The design development drawings will be expanded by the Design-Builder and its design consultants into details and calculations which will define the scope of work upon which the construction services will be based. Design-Builder will work closely with the consultants during the production of working drawings with the goal of designing the City Improvements so they can be constructed within the estimates set forth in the City Improvements Project Budget. At the completion of the construction documents phase, Design-Builder will provide a City Improvements Project Budget that will include an updated comprehensive construction cost estimate provided by the Design-Builder and its design consultants and will obtain approval from Globe and the City to move forward with the permitting process and final negotiations with Globe on the GMP Amendment to the Design-Build Agreement. In the event Globe, the City and Design-Builder cannot agree on the GMP Amendment to the Design-Build Agreement following their exercise of good faith efforts to do so, the City may terminate this Agreement for convenience upon ten (10) days written notice to Globe. Upon such termination for convenience by the City, Globe shall be paid any amounts due to Globe up to the date of notice of termination under the terms hereof, including the Globe Fee thereon, and the City and Globe shall thereafter have no further rights or obligations under this Agreement, except with respect to any rights or obligations which expressly survive termination of this Agreement. Upon election by the City, Globe shall assign the Design-Build Agreement to the City, including all rights held by Globe in the design of the City Improvements prepared by the Design-Builder as of the date of termination.



(viii) Design-Build Agreement/Permitting. As set forth in Section 8.2(b)(i) above, pursuant to the RFQ process prescribed by A.R.S. §34-603, Globe will enter into the Design-Build Agreement with the Design-Builder. The Design-Build Agreement will be established during the RFQ process and shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The Design-Build Agreement shall provide, among other things, for the following: (a) requiring that the Design-Builder provide, prior to the commencement of any construction services described in the Design-Build Agreement, a payment and performance bond in the amount set forth in the GMP Amendment to the Design-Build Agreement, naming Owner, Globe and the City as co-obligees and issued by a surety reasonably satisfactory to the City; (b) inclusion of the Exculpatory Language; (c) requiring that the Design-Builder agree to and acknowledge the City's inspection rights described in Section 8.2(b)(xii); (d) requiring that all subcontractors of the Design-Builder agree to and acknowledge the City's inspection rights described in Section 8.2(b)(xii); (e) payment on the basis of a guaranteed maximum price; (f) compliance with all Applicable Laws, ordinances and regulations regarding all work performed and/or improvements constructed pursuant to this Agreement; (g) completion of the City Improvements in accordance with the approved City Improvements Project Schedule prepared by the Design-Builder; (h) liquidated damages in the event of failure to so comply with the performance schedules, subject to events of Enforced Delay; (i) the posting of bonds, if requested by the City, if liens are filed against the City Property or any portion thereof; (j) retention of at least ten percent (10%) of each periodic payment until the work reaches 50% completion, at which point Globe would have the discretion to reduce further retention to 5% if so requested by the Design-Builder; (k) insurance in amounts and for coverage at least equal to that specified herein; (l) recognition of the City's right to assume control of the project in the place of Globe if there is a default under this Agreement by Globe relating to the construction or completion of the City Improvements, and agreement that such right will be reflected in any and all other contracts relating to the project entered into by the Design-Builder; (m) the use of lien waivers (partial and full), which comply with the requirements of applicable state law and which are in form and substance approved by the City; and (n) warranties for a minimum of two (2) years with respect to the City Infrastructure and a minimum of one (1) year with respect to the remainder of the City Improvements following final inspections and approvals of the applicable City Improvement pursuant to Section 6.5 hereof covering the work to be performed under the contract which are in form and substance approved by the City. Globe will also monitor the Design-Builder's selection of all the subcontractors. The Design-Builder will contract directly with the subcontractors. The Design-Build Agreement, including the GMP Amendment, covers the construction of all of the City Improvements. The Design-Builder, its architect and design consultants shall be responsible for complying with all applicable legal requirements, as well as any special rule and regulations of the State of Arizona or the City.

Globe will coordinate the permitting process with the Design-Builder, its architect and design consultants to ensure a timely receipt of the construction permit(s) and any other special permits. Globe shall assist the City and the Design-Builder in connection with the City's responsibility for filing documents required for approvals of any governmental authorities having authority over the City Improvements.

(ix) Amendment of Design-Build Agreement. Except for items which are customarily addressed in change orders, prior to the execution and/or implementation of any amendment to the Design-Build Agreement, Design-Builder shall submit a copy of such



proposed amendment to Globe for review and approval under this Section 8.2. Globe shall cause such amendment to be reviewed and a notice of approval or disapproval thereof to be given to Design-Builder within fifteen (15) Business Days after Globe's receipt of such amendment. A notice of disapproval of any such amendment shall state in reasonable detail the basis for such disapproval. The failure by Globe to give notice of approval or disapproval within such fifteen (15) Business Day period shall be deemed disapproval of such amendment. Any dispute regarding the approval or disapproval of any such amendment shall be resolved pursuant to Section 13. Globe shall keep the City informed as to all amendments proposed by the Design-Builder.

(x) Permits. The Design-Build Agreement shall provide that, before commencement of construction of any of the work described in the Design-Build Agreement, the Design-Builder must obtain, or cause to be obtained, all Permits required for such work. Design-Builder, Globe and the City acknowledge that permits may be obtained in phases for different phases of the work in order to expedite construction.

(xi) Construction Management. Globe will oversee, manage and administer the Design-Build Agreement on a commercially reasonable basis, however the City and Globe acknowledge that pursuant to the Design-Build Agreement all design and construction services shall be performed by the Design-Builder. Design-Builder shall coordinate schedules, activities and responsibilities of its architect and any other design consultants performing work in connection with the design and construction of the City Improvements. Upon commencement of construction, Design-Builder will oversee and use its best efforts to ensure the resolution of all construction issues. A person to serve as Globe Representative will be assigned by Globe to the City Improvements on a full-time basis during the construction and closeout phases of the City Improvements.

Design-Builder shall schedule and conduct meetings to discuss such matters as procedures, progress and scheduling. Design-Builder shall cause minutes of such meetings to be promptly prepared and distributed to Globe, the City, the Design-Builder's design consultants and other necessary persons or firms along with an updated City Improvements Project Schedule or City Improvements Project Budget. Design-Builder, in consultation with its design consultants, will update the City Improvements Project Schedule and the City Improvements Project Budget as required to show current conditions. Design-Builder shall record the progress of the City Improvements and submit written progress reports every month to Globe, or more frequently in the case of the occurrence of a material event. Globe shall review and make available to the City the daily log kept by the Design-Builder containing a record of jobsite conditions, such as weather, each contractor's work on the site, problems encountered and such other relevant data as the City may reasonably require, and shall regularly report to the City on the progress of the City Improvements.

Globe shall receive certificates of insurance and bonds, as required, from the Design-Builder and its subcontractors and forward copies thereof to the City. Globe shall review the safety programs developed by the Design-Builder in order to be aware of how the Design-Builder is coordinating its safety programs with those of its subcontractors. Globe shall not have control over or charge of and shall not be responsible for construction

means, methods, techniques, sequences or procedures, or for safety precautions and programs of the Design-Builder or any subcontractor, since these are the responsibility of the Design-Builder.

Globe shall develop and implement procedures for the timely review and processing of applications by the Design-Builder and other consultants for progress and final payments, which procedures shall ensure that the work has been performed and materials delivered or stored in an amount at least equal to the requested payment amount. The payment application shall be certified by the Design-Builder. Globe and the City are aware of the "prompt pay" requirements of Arizona law and shall manage the payment process in order to ensure that such "prompt pay" requirements are satisfied. Approval of a request for payment by Globe shall constitute a representation to City that, to the best of Globe's knowledge, information and belief, the recipient is entitled to payment for work represented by the payment request. Final payment to the Design-Builder shall not be made until such time as Globe has reviewed the final punch-list prepared by the Design-Builder and has advised the City that each punch-list item has been satisfactorily completed, and until the Design-Builder satisfies all conditions for final payment set forth in the Design-Build Agreement.

Globe shall review and evaluate change order requests submitted by the Design-Builder, negotiate such proposals, consult, as applicable with the Design-Builder, submit recommendations to the City and, if approved by the City, prepare the necessary documentation to incorporate the changes into the applicable documents.

(xii) Inspections. During the course of construction of the City Improvements, the City, its employees, agents, engineers and/or consultants shall have the rights, at reasonable times during construction hours, to be present at the site of such construction and to observe work being performed in connection with such construction; provided, however, that in exercising such rights, (i) the City shall be bound by Section 9.2; (ii) the City shall comply with Applicable Laws; (iii) the City shall give Globe and the Design-Builder reasonable advance notice of such presence; and (iv) the City shall not materially interfere with any construction activity at such site. The City, its employees, agents and/or consultants shall have the rights, at reasonable times and following reasonable notice, to inspect and review the books and records of Globe, the Design-Builder and its consultants and subcontractors, only to the extent that such inspection and review relates specifically to the development and construction of the City Improvements.

(xiii) Project Close-out. Design-Builder will coordinate the close-out process for the City Improvements with Globe, ensuring a completion of the punch-list and receipt of a Certificate of Substantial Completion from Globe. When Globe considers the City Improvements, or a designated portion thereof, substantially complete, Globe shall, with the Design-Builder, prepare a list of incomplete or unsatisfactory items and a schedule for their completion. Design-Builder shall oversee and manage the correction and completion of the work and, when completed, coordinate the final inspection. Globe will review the close-out documents (as-built drawings, warranties and Operations & Maintenance manuals) provided by the Design-Builder for compliance with the requirements of the Design-Build Agreement. With the Design-Builder and the City's maintenance personnel, Globe shall ensure that the Design-Builder has properly completed final testing and start-up of all utilities, operational systems and equipment included in the City Improvements. Design-Builder shall assist in obtaining the

assignment of all warranties and other items (keys, manuals, as-built plans, etc.) to Globe. As-built drawings and O&M manuals will be provided to Globe in electronic format, provided the costs for such are included in the City Improvements Project Budget, and Globe shall provide the same to the City. Globe will provide to City staff reasonable training on the O&M manuals, facilities and operating system prior to the City's acceptance of the City Improvements.

(c) Reporting.

(i) Reporting. Globe will continuously keep the City Representative informed and timely respond to all requests for information by the City Representative as to the progress of the City Improvements in order to allow the City Representative to: (a) properly exercise oversight responsibilities; (b) interface with various City departments and the Mayor and the City Council; (c) expedite matters requiring City review or approvals; and (d) timely assume remedial or curative activities. In addition to the communications required by this Agreement in other sections, the reporting systems used for the City Improvements will be as follows:

(aa) Monthly payment schedules showing payments to date, current application amount and balance to complete. All approved invoices will be included to support the current month's payment application amount;

(bb) Monthly construction cost reports showing budgeted amounts, costs-to-date and balances to complete; and

(cc) Monthly status reports listing all changes or proposed changes and responsibility therefor; contract status; drawing status (during the design phase); construction status (during the construction stage); change order log; and overall City Improvements Project Schedule status.

The foregoing information may be combined into one report in a format reasonably acceptable to the City Representative.

(ii) City Communications. So long as no uncured Event of Non-Performance on the part of Globe shall have occurred hereunder, the City shall, through the City Representative or his or her designee, direct its comments, questions, instructions and concerns pertaining to the design and construction of the City Improvements or any person providing goods or services to the City Improvements to the Owner and Globe and not to the person providing such goods or services.

(d) Standard of Care. In performing the services required pursuant to this Section 8, Globe will adhere to a standard of care and skills that professionals in the industry would exercise under similar conditions in the performance of the services required by this Section 8. Globe will promptly report observed defects, discrepancies, problems and cost additions to the City.

8.3 City Approvals. The City's rights of approval under this Section 8 are intended solely to enable the City to protect its interest in the City Improvements. No such rights shall be construed to create any obligation of the City to any person that is not a Party to this



Agreement, and the City shall have no liability to any such person with respect to the City's approval or disapproval of any matter under this Section 8. The City acknowledges and agrees that, notwithstanding anything in this Agreement to the contrary, once (a) Phase I of the Design-Build Agreement has been completed, (b) the City has approved the plans and specifications then existing for the City Improvements, and (c) the GMP Amendment has been approved by the City and executed by Globe and the Design-Builder, City's approval rights with respect to the Design-Build Agreement shall thereafter be limited to approval of modifications to the Design-Build Agreement, and only such modifications, that would (i) materially alter the approved design and scope of the City Improvements, (ii) increase the amount of the agreed-upon GMP or (iii) extend the date for Completion of Construction of the City Improvements past June 30, 2022.

8.4 Collateral Assignment of Design-Build Agreement. Promptly after the City's request after execution of the Design-Build Agreement, the rights of Globe under the Design-Build Agreement shall be collaterally assigned to the City to secure Globe's obligations under this Agreement, with such assignment to be evidenced by a collateral assignment substantially in the form of Exhibit J attached hereto (subject to reasonable modifications requested by the Design-Builder) (the "**Collateral Assignment - Design-Build Agreement**").

## **9. INDEMNITY; REIMBURSEMENT; RISK OF LOSS.**

9.1 Indemnity by Owner and Globe. Owner shall pay, defend, indemnify and hold harmless the City and its City Council members, officers and employees for, from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated therewith) which arise from or which relate in any way to any act by Owner, or its employees or representatives, undertaken in fulfillment of Owner's obligations under this Agreement. Globe shall pay, defend, indemnify and hold harmless the City and its City Council members, officers and employees for, from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated therewith) which arise from or which relate in any way to any act by Globe, or its employees, the Design-Builder and its subcontractors, agents or representatives, undertaken in fulfillment of Globe's obligations under this Agreement. The provisions of this Section 9.1, however, shall not apply to loss or damage or claims therefor which are attributable to the negligent or intentional acts or omissions of the City, its agents, employees, contractors, subcontractors or representatives. Neither Owner nor Globe shall have any defense obligation in any instance in which a claim is asserted based in whole or in part upon a negligent or intentional act or omission of the City, its employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of Owner and Globe shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period for any such claim or potential claim.

9.2 Reimbursement by City. To the extent permitted by law, the City shall reimburse Owner and Globe, and their Affiliates, agents or representatives, and their respective partners, shareholders, officers, managers, members, agents and employees, for all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities and suits (including attorneys' fees, experts' fees and court costs associated therewith) which

arise from or which relate in any way to any act on the part of or by the City, its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of the City's obligations under this Agreement. The provisions of this Section 9.2, however, shall not apply to loss or damage or claims therefor which are attributable to the negligent or intentional acts or omissions of Owner or Globe, as the case may be, and/or their Affiliates, or their respective agents, employees, Design-Builder and its subcontractors or representatives. The City shall have no obligation in any instance to the extent a claim is asserted based in whole or in part upon a negligent or intentional act or omission of Owner or Globe and/or their Affiliates, or their respective employees, Design-Builder and its subcontractors, agents or representatives. The foregoing obligations of the City shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period for any such claim or potential claim.

9.3 Risk of Loss. Globe assumes the risk of any and all loss, damage or claims to any portion of the City Improvements unless and until title to the City Improvements is transferred to the City. Without limiting the provisions of Section 9.1, during course of construction of the City Improvements, Globe shall carry course of construction insurance for such improvements. Globe shall use available course of construction insurance proceeds to remedy any casualty affecting the City Improvements (or any of them) during course of construction. Upon completion of construction of the City Improvements, risk of loss shall pass to the City.

9.4 Insurance. During the period of any construction involving the City Improvements, and with respect to any construction activities relating to the City Improvements, Globe will obtain and provide the City with proof of payment of premiums and certificates of insurance showing that Globe is carrying, or causing its Design-Builder or contractor(s) to carry, builder's risk insurance, comprehensive general liability and worker's compensation insurance policies in amounts and coverages set forth on Exhibit K. Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least ten (10) days advance written notice of cancellation to the City, and will name the City and Owner as additional insureds on such builder's risk and general liability policies.

**10. CITY REPRESENTATIONS.** The City represents and warrants to Owner and Globe that:

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

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

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

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

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

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

10.7 The City has not paid, given or received from, and will not pay, give or receive from, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

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

10.9 The City has no knowledge, and the City has received no notice, of any plan, study or effort of regulatory authorities which would materially adversely affect the use of the City Property, or any portion thereof, for its intended uses or any intended public improvements which will result in any charge being levied against, or any lien assessed upon, or any special assessment lien on the City Property or any portion thereof, and the City will not take any such action.

10.10 Except for assessments levied in connection with the existing McDowell Road Improvement District, the City has no knowledge of any improvement district assessments, special assessments or community facilities assessments which have been levied against the City Property or any existing water, sewer or building moratoria on the City Property.

**11. REPRESENTATIONS BY OWNER AND GLOBE.** Subject to the provisions of the due diligence material delivered pursuant to Section 7.7 above, Owner and Globe, as applicable, represent and warrant to the City that, as of the Effective Date:

11.1 Owner and Globe have the full right, power and authorization to enter into and perform this Agreement and each of the obligations and undertakings of Owner and Globe under this Agreement, and the execution, delivery and performance of this Agreement by Owner



and Globe have been duly authorized and agreed to in compliance with the organizational documents of Owner or Globe, as applicable.

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

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

11.4 As of the date of this Agreement, neither Owner nor Globe know of any litigation, proceeding or investigation pending or threatened against or affecting Owner and/or Globe, which could have a material adverse effect on Owner's or Globe's performance under this Agreement that has not been disclosed in writing to the City.

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

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

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

11.8 Owner has not paid, given or received from, and will not pay, give or receive from, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

11.9 Globe has not paid, given or received from, and will not pay, give or receive from, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys

11.10 Owner and Globe have been assisted by counsel of their own choosing in connection with the preparation and execution of this Agreement.

11.11 Owner has no knowledge, and Owner has received no notice, of any plan, study or effort of regulatory authorities which would materially adversely affect the use of the City Property, or any portion thereof, for its intended uses or any intended public improvements which will result in any charge being levied against, or any lien assessed upon, or any special assessment lien on the City Property or any portion thereof, and Owner will not take any such action.

11.12 Except for that certain Agricultural Lease dated January 1, 2015 between Owner and Miedema Produce, Inc., a Michigan corporation, as amended to date (and any successor lease which terminates prior to the Conveyance Date), Owner is not a party to any farm or other leases applicable to or affecting the City Property. To the extent that any such leases exist to which Owner is a party, at the request of the City, Owner shall obtain a termination thereof on or before the Conveyance Date for the portion of the City Property affected by the lease. During the term of this Agreement, Owner has not entered, and shall not enter, into any other contracts, options or other obligations or rights for the purchase or sale of the City Property, nor has Owner entered into any other leases, rights of occupancy or first refusal or options to purchase the City Property. No contract of any nature is assumed by the City with respect to the City Property. Notwithstanding the foregoing, nothing contained herein shall be deemed to prohibit Owner from entering into or continuing in place farm or other leases applicable to or affecting the Joint Venture Property, so long as such leases do not prevent completion of the Office Improvements by the date required by this Agreement.

11.11 Owner has no knowledge of any written notices of any uncured violations of any governmental regulations relating to the City Property being received by Owner or that any such uncured violations exist.

11.12 Except for assessments levied in connection with the existing McDowell Road Improvement District, Owner has no knowledge of any improvement district assessments, special assessments or community facilities assessments which have been levied against the City Property or any existing water, sewer or building moratoria on the City Property.

11.13 There are no mechanics' or materialmen's liens perfected against the City Property by parties claiming through Owner. If the provisions of the prior sentence are inaccurate, then as the City's sole remedy therefor, Owner shall cause to be released or discharged promptly, and shall indemnify, defend and hold harmless the City for, from and against, any liens filed against the City Property through parties claiming through Owner prior to the Conveyance Date in violation of this warranty.

11.14 To Owner's knowledge, there has been no production, disposal or storage by Owner on the City Property of any hazardous waste (or other toxic or radioactive substance or matter) in violation of Applicable Laws, nor has Owner received any written notices of any uncured violation of hazardous waste statutes or regulations relating to the City Property. To Owner's knowledge, as of the Effective Date, there is no proceeding or inquiry by any authority with respect to any uncured environmental law violations on the City Property, nor has Owner

received any written notice of any uncured violation of the above-mentioned statutes or regulations involving the City Property.

11.15 To Owner's knowledge, Owner has not received any written notice that any portion of the City Property is now being or has ever been used for the discharge or disposal of a pollutant or waste in violation of Applicable Laws which remains uncured, for the treatment or disposal of refuse or sewage in violation of Applicable Laws, or for the operation of any underground storage tanks in violation of Applicable Laws.

11.16 Owner will not, without the prior written consent of the City, consent in writing to or convey any interest in the City Property during the term of this Agreement, and Owner will not execute any occupancy right or any additional liens, encumbrances, covenants, conditions, easements or rights-of-way after the date of this Agreement affecting the City Property except as contemplated by this Agreement.

11.17 To Owner's knowledge, there are no boundary line disputes with respect to the City Property.

Where used herein any reference to Owner's knowledge shall mean the actual knowledge of George Getz, without obligation to independently or personally investigate such matters. George Getz shall have no personal liability hereunder. All of Owner's and Globe's representations and warranties set forth in this Agreement shall survive the Conveyance Date and not be deemed merged into any instruments of conveyance delivered on the Conveyance Date. Owner's and Globe's representations, agreements and warranties set forth above shall survive the conveyance of the City Property to the City for a period of one (1) year thereafter, whereupon such representations, agreements and warranties shall terminate and be of no further force or effect.

During the Feasibility Period, (i) if the City learns of any actual or alleged material inaccuracy in Owner's and/or Globe's representations, agreements or warranties after the Effective Date, the City shall promptly notify Owner and Globe thereof, and (ii) if Owner and/or Globe learns of any actual or alleged material inaccuracy in such representations, agreements or warranties, Owner or Globe, as applicable, shall promptly notify the City thereof. Owner or Globe, as applicable, shall have the right, but not the obligation, on or before the date fifteen (15) days after receiving such written notice from the City or of learning of such actual or alleged material inaccuracy, without cost or expense to Owner or Globe, as applicable, to cure such inaccuracy. Failing such cure by Owner or Globe, as applicable, the City's exclusive remedy in such event shall be to elect, on or before the date that is ten (10) days after the expiration of the 15-day period referenced in the preceding sentence, to either (y) waive such breach and proceed with the transaction contemplated by this Agreement, or (z) terminate this Agreement, whereupon none of the Parties will have any further rights or obligations regarding this Agreement or the Project except for any obligations which are to expressly survive the termination of this Agreement. Neither Owner nor Globe shall have any liability whatsoever to the City with respect to a breach of any of the representations, agreements and warranties herein contained if the City obtains knowledge of a fact or circumstance the existence of which would constitute a breach of Owner's and/or Globe's representations, agreements and warranties hereunder and the City proceeds under this Agreement, without exercising the right of termination set forth above, in which event each representation, agreement or warranty shall be deemed automatically amended



to conform with such knowledge of the City, and neither Owner nor Globe shall have any liability whatsoever for such previously inaccurate representation, agreement or warranty.

## **12. EVENTS OF NON-PERFORMANCE; REMEDIES.**

12.1 Events of Non-Performance by Owner and/or Globe. “**Event of Non-Performance**” by Owner and Globe under this Agreement shall mean one or more of the following, if any one or more of the following remain uncured after the expiration of the cure period therefor set forth in Section 12.3 hereof:

(a) Owner or Globe fails to comply with the dates established in this Agreement for the Commencement of Construction or the Completion of Construction (a “**Construction Failure**”);

(b) Any representation or warranty made in this Agreement by Owner or Globe was materially inaccurate when made or shall prove to be materially inaccurate during the Term, and which inaccuracy has a material adverse effect on the City;

(c) Foreclosure (or deed in lieu of foreclosure) upon any mechanic’s, materialmen’s or other lien on the City Property prior to Completion of Construction of the City Improvements or upon any improvements on the City Property, but such lien shall not constitute an Event of Non-Performance if Owner or Globe deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such liens in a customary fashion within a reasonable time after the assertion of such a lien;

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

(e) Owner or Globe fails to observe or perform an obligation relating to indemnity or insurance set forth in Sections 9.1 or 9.4 of this Agreement;

(f) Owner or Globe fails to observe or perform a reporting or certification obligation set forth in Section 4.2(b) or in the first sentence of Section 14.2(c) of this Agreement; or

(g) Owner or Globe fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement not described in subsections (a) through (f) above.

12.2 Events of Non-Performance by the City. “**Event of Non-Performance**” by the City under this Agreement shall mean one or more of the following, if any one or more of the following remain uncured after the expiration of the cure period therefor set forth in Section 12.3 hereof:

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

(b) Subject to the terms of Sections 6.5, 6.6 and 6.7 of this Agreement, the City fails to pay the City Payments or any part or installment thereof to Owner as provided in this Agreement; or

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

12.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Non-Performance by any Party, then any other Party shall provide written notice thereof to the non-performing Party, and such non-performing Party shall proceed promptly to cure or remedy such Event of Non-Performance and, in any event, such Event of Non-Performance shall be cured within thirty (30) days (or ten (10) days in the event of a monetary Event of Non-Performance or sixty (60) days in the case of an Event of Non-Performance subject to the provisions of Section 12.4(a)(i)) after receipt of such written notice or, if such Event of Non-Performance is of a nature that is not capable of being cured written thirty (30) days, shall be commenced by the non-performing Party within such period and diligently pursued to completion, such additional time to cure not to exceed an additional sixty (60) days.

12.4 Remedies for Event of Non-Performance. Whenever any Event of Non-Performance occurs and is not timely cured (or cure undertaken) by the non-performing Party within the grace periods set forth in Section 12.3 of this Agreement, then any other Party may take any of one or more of the following actions:

(a) Remedies of the City. Subject to the provisions of Sections 6.3(e) and 12.6, the City's remedies for an uncured Event of Non-Performance by Owner or Globe shall consist of the following:

(i) If the Event of Non-Performance by Globe is a Construction Failure related to the failure of Globe to cause Commencement of Construction of the City Improvements to occur on or before the date set forth in Section 6.3(a) hereof (subject to Enforced Delay) and, if such Event of Non-Performance is not cured within thirty (30) days after written notice by the City to Globe of such Event of Non-Performance, the City shall have the right to terminate this Agreement and the City shall have no further obligation to pay the City Payments to Globe for work first incurred after thirty (30) days following the date of termination and the City shall have the right to seek compensatory (which shall include, in the event the City exercises its right to complete the City Improvements, any costs incurred by the City in completing the City Improvements that exceed the GMP amount set forth in the GMP Amendment to the Design-Build Agreement), but not consequential, incidental, punitive or exemplary damages arising out of such Event of Non-Performance by Globe. In addition, the City may then exercise the City's rights under the Collateral Assignment – Design-Build Agreement and complete the City Improvements. If the Event of Non-Performance by Globe is a Construction Failure related to a failure by the Design-Builder to achieve Completion of Construction of the City Improvements on or before the date set forth in Section 6.3(b) hereof (subject to Enforced Delay), and the Event of Non-Performance is not cured by Design-Builder within thirty (30) days after written notice by the City to Globe of such Event of Non-Performance, Globe shall pay \$1,000 per day to City as liquidated damages, and not as a penalty, for each day thereafter until Completion of Construction of the City Improvements is

achieved, up to a maximum of one hundred eighty (180) days. In the event the failure to achieve Completion of Construction of the City Improvements extends beyond such one hundred eighty (180) day period, the City shall have no further obligation to pay the City Payments to Globe for work incurred after thirty (30) days following the date of termination of this Agreement and the City shall have the right to seek compensatory (which shall include any costs incurred by the City in completing the City Improvements that exceed the GMP amount set forth in the GMP Amendment to the Design-Build Agreement), but not consequential, incidental, punitive or exemplary damages arising out of such Event of Non-Performance by Globe. In addition, the City may terminate this Agreement by written notice thereof to Owner and Globe, and then exercise the City's rights under the Collateral Assignment – Design-Build Agreement and complete the City Improvements.

(ii) With respect to any other Event of Non-Performance by Owner or Globe, the City shall have all rights and remedies available at law or in equity, including the right to terminate this Agreement and to cease payment of any portion of the Globe Fee which is first due after the date of termination and the City shall thereafter have no further obligation to pay the remaining portion of the Globe Fee unless the Event of Non-Performance is cured by Owner or Globe, as applicable. Notwithstanding the foregoing, the City waives any right to seek recovery for consequential, incidental, punitive or exemplary damages arising from any Event of Non-Performance by Owner or Globe.

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

(iv) Subject to the foregoing, nothing in this Agreement shall be deemed to limit the City's administrative remedies generally applicable to construction and development projects within the City.

(b) Remedies of Owner and Globe. Subject to the provisions of Section 12.6, Owner's and Globe's, as applicable, exclusive remedies for an uncured Event of Non-Performance by the City shall consist of and shall be limited to the following:

(i) Recovery of damages for unpaid amounts owed by the City, including without limitation, City Payments and Globe Fee, in accordance with the provisions of this Agreement, and all actual damages of Owner and Globe, as applicable, as of the time of entry of judgment. Each of Owner and Globe waives any right to seek consequential, incidental, punitive or exemplary damages arising from any Event of Non-Performance by the City.

(ii) Notwithstanding any other provision of this Agreement to the contrary, if an Event of Non-Performance by the City occurs at any time, whether prior to or after Completion of Construction of the City Improvements, Owner or Globe, as applicable, may seek special action or other similar relief (whether characterized as mandamus, injunction or



otherwise), requiring the City to undertake and to fully and timely perform its obligations under this Agreement.

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

12.6 Enforced Delay in Performance for Causes Beyond Control of Party. Whether stated or not, all periods of time in this Agreement are subject to this Section 12.6. Neither the City nor Owner, nor Globe, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of unavoidable 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 and local government, acts of the other Party, acts of a Third Party, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, 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 City 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 removal (collectively, a “**Failure**”) of issuance of any permit, license, consent, authorization or approval necessary to Owner’s or Globe’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 an Enforced Delay; (3) the denial of an application, failure to issue, or suspension, termination, delay or interruption (collectively, a “**Denial**”) in the issuance or renewal of any permit, approval or consent required or necessary in connection with Owner’s or Globe’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 any Enforced Delay; (4) the failure of Design-Builder or any contractor, subcontractor or supplier to furnish services, materials or equipment in connection with Owner's or Globe's undertakings pursuant to this Agreement, if such failure is caused by Enforced Delay, 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; and (5) failure of a Party to meet the milestones set forth in the Project Milestone Schedule. Enforced Delay shall also include the discovery of differing subsurface site conditions or hazardous substances on, at or affecting the Property not disclosed by any applicable geotechnical report or environmental assessment or otherwise not known by or disclosed to the Party or Parties affected thereby; the discovery of funerary objects or archaeological resources or artifacts on, at or affecting the Property requiring repatriation, study, removal or further acts mandated by federal or state law; or the discovery of endangered species on, at or affecting the Property. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants of portions of the Joint Venture Property, nor from the unavailability for any reason of Design-Builder or any particular contractors, subcontractors, vendors, investors or lenders desired by Owner or Globe in connection with the Project. 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.

12.7 Rights and Remedies Cumulative. Except as otherwise expressly provided in this Agreement, the rights and remedies of the Parties in case of an uncured Event of Non-Performance are cumulative, and the exercise by a Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other uncured Event of Non-Performance by any other Party.

### 13. COOPERATION AND ALTERNATIVE DISPUTE RESOLUTION.

13.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, the City, Owner and Globe each shall designate and appoint a representative to act as a liaison among the City and its various departments, Owner and Globe. The initial representative for the City shall be the City Manager (the "**City Representative**") and the initial representative for Owner shall be its designee identified by Owner from time to time as its representative (the "**Owner Representative**"). In addition, the initial representative for Globe shall be its designee identified by Globe from time to time as its representative ("**Globe Representative**"). The City Representative and the Owner Representative, as well as the Globe Representative, shall be available at all reasonable times to discuss and review the performance of the Parties and the development of the Project.

13.2 Impasse. The City acknowledges and agrees that it is desirable for Owner and Globe to proceed rapidly with the implementation of this Agreement and the development of the Project. Accordingly, to the extent not inconsistent with Applicable Laws, the Parties agree that if at any time Owner or Globe believes an impasse has been reached with the City staff on any issue affecting the Project which is not an Event of Non-Performance, each of Owner and Globe shall have the right to immediately appeal to the City Representative for an expedited decision pursuant to this Section 13.2. If the issue on which an impasse is reached is an issue where a final decision can be reached by the City staff, the City Representative shall give Owner

and Globe, as applicable, a final administrative decision within seven (7) days after the request for an expedited decision. If the issue on which an impasse has been reached is one where a final decision requires action by the City Council, the City Representative shall request a City Council hearing on the issue to take place within thirty (30) days after Owner's or Globe's, as applicable, request for an expedited decision; provided, however, that if the issue is appropriate for review by the City's Planning and Zoning Commission, the matter shall be submitted to the Planning and Zoning Commission within thirty (30) days, and then to the City Council at its first meeting following the Planning and Zoning Commission hearing and the applicable public notice period. Each of the City, Owner and Globe agree to continue to use reasonable good faith efforts to resolve any impasse pending such expedited decision.

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

#### **14. MISCELLANEOUS PROVISIONS.**

14.1 Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Subject to the provisions of Section 13, any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 14.1.



#### 14.2 Restrictions on Assignment and Transfer.

(a) Owner acknowledges that the development of the Joint Venture Property and other undertakings pursuant to this Agreement are presently intended for the purpose of development of the Joint Venture Property and not for speculation in landholding of undeveloped land; Owner will not develop the Joint Venture Property, but it is intended that the Joint Venture shall do so. Owner further recognizes that the qualifications and identity of Owner, its managers and principals and Affiliates, are of particular concern to the City, in view of:

(i) the importance of the development of the Joint Venture Property to the general welfare of the community; and

(ii) the City Payments described in this Agreement that have been made available by law and by the government for the purpose of facilitating such development; and

(iii) the fact that a significant change in ownership or control of Owner is for practical purposes a transfer or disposition of the Joint Venture Property.

Owner further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with Owner. The ability of voluntary or involuntary successors in interest of Owner to acquire any rights or powers under this Agreement is expressly limited by the provisions of this Section 14.2. Notwithstanding anything to the contrary in this Agreement, the conveyance of the Joint Venture Property to the contemplated Joint Venture is expressly permitted hereunder, so long as such conveyance is made subject to the terms of this Agreement so that the Joint Venture Property must be developed in accordance with the terms of this Agreement and such conveyance is accompanied by the express written assumption by the Joint Venture of all of Owner's rights and obligations thereafter accruing under this Agreement relating only to the Joint Venture Property.

(b) Except as provided in Section 14.2(a) or elsewhere in this Agreement, subject to notice to Owner and Globe and Owner's and Globe's opportunity to cure, this Agreement may be terminated by the City if, prior to Completion of Construction of the City Improvements, Owner or Globe transfers, conveys, assigns or otherwise disposes of its interest in this Agreement or any portion of the Project or if there is any significant change (voluntary or involuntary) in the ownership or control of Owner or Globe (a "**Transfer**") which has not been approved in writing by the City at the time of such change (or thereafter ratified by the City), which approval (or ratification) may be granted or withheld in the City's sole and absolute discretion, or which is not otherwise expressly authorized in this Agreement. Notwithstanding the foregoing, the following described Transfers shall be permitted and this Agreement shall not be subject to termination as a result thereof:

(i) a Transfer between members of Owner provided George F. Getz remains the President or Co-CEO of the manager of Owner;

(ii) a pledge, assignment, mortgage, deed of trust, collateral assignment, encumbrance, agreement for sale or similar financing or refinancing transaction (including, without limitation, assignment of any right to receive any payment from the City under this Agreement) to any lender which provides construction, permanent, working capital, tenant improvement or other financing, directly or indirectly, to Owner or Globe for all or any part of the Project, or the exercise of remedies by any lender;

(iii) a Transfer to a successor in interest of Owner or Globe with respect to all or part of the Project if (A) Owner or Globe, as applicable, remains responsible for the performance of its obligations under this Agreement; (B) the Transfer does not result in a novation; (C) the Transfer is accompanied by the express written assumption by such successor of Owner's or Globe's, as applicable, rights and obligations thereafter accruing under this Agreement as to the Project or portion of the Project to which the Transfer relates; and (D) Owner or Globe, as applicable, remains in control of the Project through a management agreement, joint venture (or similar) agreement or otherwise through the completion of the City Improvements; and for the avoidance of doubt, if the interest of Owner or Globe in all or part of the Project is transferred by Owner or Globe to a limited liability company, partnership, corporation or joint venture which includes Owner or Globe as a manager, member, partner, stockholder or interestholder and includes as an additional manager, member, partner, stockholder or interestholder any entity affiliated with a well-known commercial developer in the metropolitan Phoenix area, then such transfer shall be deemed a permitted transfer hereunder;

(iv) any ordinary course of business lease or sublease of all or part of the Joint Venture Property, including, without limitation, a lease of a residential unit, retail or restaurant facility, hotel room or banquet facility, office, garage facilities or parking space(s); or

(v) any transfers of an ownership interest in Owner or Globe or any constituent owner, as applicable, to any of: (a) Bert A Getz, Sr., Sandra M. Getz, George F. Getz, Bert A Getz, Jr., Lindsay MacLean Getz, Bert Atwater Getz, III, Elsa Leesley Schmidt, Lachlan James Getz or Katherine MacLean Getz (individually and collectively, the "**Getz Immediate Family Member**"); (b) any of the lineal descendants of any Getz Immediate Family Member; (c) any family member of any Getz Immediate Family Member or any spouse of any Getz Immediate Family Member; or (d) any trust or other entity controlled by, controlling or under common control with any Getz Immediate Family Member or the trustee of any trust or trusts for the benefit of any Getz Immediate Family Member.

(c) Within ten (10) business days after receipt of a written request from the City, Owner or Globe shall provide the City with a copy of any contract, agreement, document and related papers which, directly or indirectly, conveys, assigns or reflects a change in management control of Owner or Globe, whether or not permitted hereunder. Owner agrees to and shall indemnify and hold harmless the City for, from and against any and all claims, demands and obligations asserted by any person who acquires any portion of the Joint Venture Property, and Owner and Globe agree to and shall indemnify and hold harmless the City for, from and against any and all claims, demands and obligations asserted by any person who acquires any portion of Owner's or Globe's interest in the Project in violation of this Section 14.2, and in each case where such person thereafter claims a right, interest or ownership in or to

this Agreement. Without limiting the foregoing, any transfer, conveyance or assignment of an interest in Owner, Globe, the Project or this Agreement in violation of the provisions of this Section 14.2 shall be void, of no force or effect, and shall vest no rights in any purported transferee or assignee.

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

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

14.5 Notices.

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

If to the City:

City of Goodyear  
190 North Litchfield Road  
Goodyear, Arizona 85338  
Attn: Ms. Julie Arendall, City Manager



With a required copy to:

Gust Rosenfeld PLC  
One East Washington, Suite 1600  
Phoenix, Arizona 85004  
Attn: Frank S. Tomkins, Esq.  
Telephone: (602) 257-7476  
Facsimile: (602) 254-4878

If to Owner or Globe:

Globe Land Investors, LLC  
c/o Globe Corporation  
6730 North Scottsdale Road, Suite 250  
Scottsdale, Arizona 85253  
Attn: George Getz and Michael J. Olsen  
Telephone: (480) 991-0500

With a required copy to:

Mast Law Firm, P.C.  
2415 East Camelback Road, Suite 455  
Phoenix, Arizona 85016  
Attn: Gregory L. Mast  
Telephone: (602) 852-5951

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

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

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

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

14.8 Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party or Parties in any such dispute shall be entitled to reimbursement of its reasonable attorneys' fees

and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the applicable Party and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

14.9 Waiver. Without limiting the provisions of Section 12.5 of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

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

14.11 Exhibits. Without limiting the provisions of Section 2 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes. To the extent that any Exhibits to the originally-recorded form of this Agreement are noted as "To be Added by Amendment," they shall be added at such time as said Exhibits are finalized and approved by the Parties.

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

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

14.14 Third Party Legal Actions. The Parties agree to participate, at their own expense, and to cooperate in the defense of any action, referendum or other proceeding seeking to challenge, limit or invalidate any provision of this Agreement or which challenges the authority of any Party to enter into this Agreement or to perform any of its obligations hereunder. The severability and reformation provisions of Section 14.3 shall apply in the event of any successful challenge to this Agreement.

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

14.16 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the City Property and the Joint Venture Property shall run with the City Property and the Joint Venture Property and shall be binding upon, and shall inure to the benefit of, the Parties and their respective permitted successors and assigns with respect to such City Property and such Joint Venture Property; provided, however, that no construction or similar performance obligation shall be imposed upon a purchaser of a "pad" or other parcel within the Joint Venture Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement, such term shall include any such Party's permitted successors and assigns.

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

14.18 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by all of the Parties. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to "Agreement" or "Development Agreement" shall mean this Agreement as amended by any subsequent amendment. The effective date of any duly processed minor or major amendment shall be the date on which the last representative for the Parties executes such amendment. If, after the effective date of any amendment(s), the Parties find it necessary to refer to this Agreement in its original, unamended form, they shall refer to it as the "Original Development Agreement". When the Parties mean to refer to any specific amendment to this Agreement which amendment is unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.

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

14.20 Survival. All obligations contained in Sections 7.4(a), 9.1 and 9.2 of this Agreement, and the provisions of Sections 3.3, 6.5, 6.6 and 6.7 (in each case through the date of termination of this Agreement) shall survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement upon the terms set forth in such Section.

14.21 Rights of Lenders. The City is aware that Owner may obtain financing or refinancing for acquisition, development and/or construction of the real property and/or



improvements to be constructed on the City Property and/or on the Joint Venture Property, in whole or in part, from time to time, by one or more Third Parties (individually a “**Lender**,” and collectively the “**Lenders**”). In the event of an Event of Non-Performance by Owner, the City shall provide notice of such Event of Non-Performance, at the same time notice is provided to Owner, to not more than two (2) of such Lenders as previously designated by Owner to receive such notice (the “**Designated Lenders**”) whose names and addresses were provided by written notice to the City in accordance with Section 14.5. The City shall give Owner copies of any such notice provided to such Designated Lenders and, unless Owner notifies the City that the Designated Lenders names or addresses are incorrect (and provides the City with the correct information) within three (3) business days after Owner receives its copies of such notice from the City, the City will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Owner may provide notices to other Lenders. Upon request by a Lender, the City will enter into a separate nondisturbance agreement with such Lender, consistent with the provisions of this Section 14.21. If a Lender is permitted, under the terms of its nondisturbance agreement with the City, to cure the Event of Non-Performance and/or to assume Owner’s position with respect to this Agreement, the City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Owner thereafter accruing under this Agreement. The City shall, at any time upon reasonable request by Owner, provide to any Lender an estoppel certificate or other document evidencing that this Agreement is in full force and effect and that no Event of Non-Performance by Owner exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Non-Performance).

14.22 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Owner. No member, official or employee of the City shall be personally liable to Owner or Globe, or any successor in interest of Owner or Globe, in the event of any Event of Non-Performance by the City or for any amount which may become due to Owner or Globe or any successor in interest, or on any obligation, under the terms of this Agreement. No member, manager, officer or employee of Owner or Globe, and no member, manager, partner, stockholder, director, officer or employee of any manager or member of Owner or Globe or any successor to Owner or Globe, and no Affiliate of any such persons or entities, shall be personally liable to the City in the event of any Event of Non-Performance by Owner or Globe or for any amount which may become due to the City, or on any obligation, under the terms of this Agreement.

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

14.24 Warranty Against Payment of Consideration for Agreement. Each of Owner and Globe warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, realtors and attorneys.

14.25 Waiver of Claims Pursuant to A.R.S. § 12-1134, et seq.. The Owner agrees, understands and acknowledges that the City is entering into this Agreement in good faith and at the specific request of Owner, and further with the understanding that, if the City acts

consistently with the terms and conditions herein, it will not be subject to a claim for diminished value of the City Property or the Joint Venture Property from the Owner. The Owner, on behalf of it and its successors and assigns, intends to encumber the City Property and the Joint Venture Property with the following agreements and waivers. Owner agrees and consents to all the conditions imposed by this Agreement, the General Plan, Applicable Laws and all permits and approvals issued or granted by the City in furtherance thereof, and by signing this Agreement waives any and all claims, suits, damages, compensation and causes of action the Owner may have now or in the future under the provisions of A.R.S. §§ 12-1134 through and including 12-1136 (but specifically excluding any provisions included therein relating to eminent domain) and resulting from the development of the City Property and/or the Joint Venture Property consistent with this Agreement, the General Plan, Applicable Laws and all permits and approvals issued or granted by the City in furtherance thereof or from any "land use law" (as such term is defined in the aforementioned statute paragraphs) permitted by this Agreement to be enacted, adopted or applied by the City now or hereafter. Owner acknowledges and agrees that the terms and conditions set forth in this Agreement, the General Plan, Applicable Laws and all permits and approvals issued or granted by the City in furtherance thereof cause the fair market value of the City Property and the Joint Venture Property to equal or exceed the fair market value of the City Property and the Joint Venture Property in the absence of this Agreement, the General Plan, Applicable Laws and all permits and approvals issued or granted by the City in furtherance thereof, and such "land use laws."

14.26 Reciprocal Easement Agreement. The City and Owner, or to the extent applicable the Joint Venture, shall enter into a recordable Reciprocal Easement Agreement (the "REA") to govern the rights of the Parties (and to the extent applicable the Joint Venture) with respect to the Project or such other area as may be mutually approved by the Parties or to the extent applicable the Joint Venture. The REA shall address matters such as: joint use rights for the City Property and the Joint Venture Property, access, utility and similar easements over the City Property and the Joint Venture Property, temporary construction easements or licenses for development of the City Property or the Joint Venture Property, encroachment easements for footings, awnings and similar matters, construction standards for the construction of buildings within the City Property and the Joint Venture Property, the maintenance of the City Property and the Joint Venture Property, maintenance of landscaping in the Common Areas and the sharing of costs with respect thereto, and such other matters as are typically set forth in reciprocal easement agreements for developments similar in nature to the one contemplated hereby, and, in addition, if reasonably agreed to by the Parties (and to the extent applicable, the Joint Venture) hereafter, the implementation of the master drainage plan for the Project and overseeding such mutually acceptable portions of the Project by the City to the extent the City's budget permits and the formation of an owners' association to govern the maintenance of certain portions of the Project. In all events, the REA shall provide that the surface parking spaces located on the streets in front of the building(s) on the City Property and on the streets in front of the building(s) located on the Joint Venture Property shall be subject to the exclusive control of such applicable property owner, so that the surface parking spaces on the half street in front of the building(s) constructed on the City Property shall be exclusively controlled by the then owner of the City Property and the surface parking spaces on the half street in front of the building(s) constructed on the Joint Venture Property shall be exclusively controlled by the then owner of the Joint Venture Property, so that each such owner may designate such parking spaces to be

used exclusively as required by such owner. The Parties shall use good faith efforts to reach agreement on the form of the REA and no Party shall be permitted to refuse to agree to the form of the REA on any basis other than the presence in the REA of a term, condition or provision that would have a material, adverse effect on said Party's proposed development or operation of the City Property or the Joint Venture Property, as applicable. The Parties shall use commercially reasonable efforts to agree on the form of the REA as soon as practicable after the recordation of this Agreement, but in all events the REA shall be in final form and executed by both the City and the then owner of the Joint Venture Property prior to the conveyance of the City Property to the City.

14.27 Parking Rights Agreement. The City and Owner or, to the extent applicable, the Joint Venture, shall enter into a recordable Parking Rights Agreement (the "**Parking Agreement**") to govern the rights of the City and the Joint Venture with respect to the Garage. The Parking Agreement shall address matters which are approved by both the City and Owner or, to the extent applicable, the Joint Venture, such as: (i) the grant to the City of a perpetual easement for and designation of the City Spaces, which City Spaces shall be located in such manner as is mutually acceptable to both Owner and the City; (ii) the grant to the City of access rights with respect to the Garage; (iii) Owner's or, to the extent applicable, the Joint Venture's rights to designate reserved parking spaces; (iv) maintenance and repair obligations; (v) the City's obligation to either lease or purchase a perpetual easement for such additional number of parking spaces as will, when added to the number of City Spaces to which the City is entitled pursuant to the provisions of Section 4.1(b)(1) above, total 400 parking spaces (the "**Additional City Parking Spaces**"), at a price per space equal to the cost per parking space incurred by Owner and/or the Joint Venture, as applicable, in constructing the Garage, which cost shall be calculated by dividing the total cost of construction of the Garage by the number of parking spaces located within the Garage upon completion thereof (the "**Per Space Cost**"); (vi) the calculation of the cost of the Additional City Parking Spaces and the terms of payment thereof, including the terms of payment if the Additional City Parking Spaces are initially leased and the timing of the acquisition and payment thereof when ultimately purchased by the City; (vii) the provision of public access to such portions of the Garage, as agreed upon by the City and the Joint Venture, after business hours, on holidays and on weekends; (viii) including protection for the City's rights with respect to the City Spaces and the Additional City Parking Spaces in the event of a foreclosure of any mortgage or deed of trust encumbering the Garage; and (ix) such other matters as are customarily included in similar agreements in the Phoenix, Arizona metropolitan area, including allocating the on-going costs of the maintenance, operation, repair and replacement of the Garage between the City and the Joint Venture based on a mutually acceptable formula relating to each Party's access to the parking spaces within the Garage. The City and Owner (and the Joint Venture, if applicable) each covenant to use good faith efforts to reach agreement on the form of the Parking Agreement and neither party shall be permitted to refuse to agree to the form of the Parking Agreement on any basis other than the presence in the Parking Agreement of a term, condition or provision that would have a material, adverse effect on said party's proposed development or operation of the City Property or the Joint Venture Property, as applicable. The City and Owner shall use commercially reasonable efforts to agree on the form of the Parking Agreement as soon as practicable after the recordation of this Agreement, but in all events the Parking shall be in final form and executed by both the City and



the Owner or the Joint Venture, as applicable, prior to the conveyance of the City Property to the City.

14.28 City Council Action Requirement. The City and Owner acknowledge that, notwithstanding any language of this Agreement or any subsequent additional document, no act, requirement, payment or other agreed-upon action to be done or performed by the City which would, under any federal, state or city constitution, statute, charter provision, ordinance or regulation, require formal action, approval or concurrence by the City Council, will be required to be done or performed by the City unless and until said formal City Council action has been taken and completed. “**Completed**” under this provision means that such City Council action is no longer subject to referendum action.

[SIGNATURES ON THE FOLLOWING PAGE – DEVELOPMENT AGREEMENT]

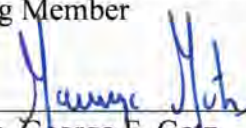
[SIGNATURES CONTINUED FROM PRECEDING PAGE –  
DEVELOPMENT AGREEMENT]

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

**OWNER**

**GLOBE LAND INVESTORS, LLC**, a Delaware  
limited liability company

By: Globe Corporation, an Illinois corporation, its  
Managing Member

By:   
Name: George F. Getz  
Title: President

STATE OF ARIZONA                    )  
  ) ss.  
COUNTY OF MARICOPA            )

The foregoing Development Agreement, consisting of 94 pages, including this page and all exhibits, was acknowledged before me this 16<sup>th</sup> day of August, 2019, by George F. Getz, the President of Globe Corporation, an Illinois corporation, the Managing Member of Globe Land Investors, LLC, a Delaware limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of the company.

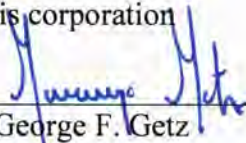
WITNESS my hand and official seal.

  
Notary Public



**GLOBE**

**GLOBE CORPORATION,**  
an Illinois corporation

By:   
Name: George F. Getz  
Title: President

STATE OF ARIZONA                    )  
  ) ss.  
COUNTY OF MARICOPA            )

The foregoing Development Agreement, consisting of 94 pages, including this page and all exhibits, was acknowledged before me this 16<sup>th</sup> day of August, 2019, by George F. Getz, the President of Globe Corporation, an Illinois corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the corporation.

WITNESS my hand and official seal.

  
Notary Public

(seal)





CITY

CITY OF GOODYEAR, ARIZONA,  
an Arizona municipal corporation

By: Julie Arendall  
Its: City Manager

ATTEST:

By: Dawn McCracken  
City Clerk

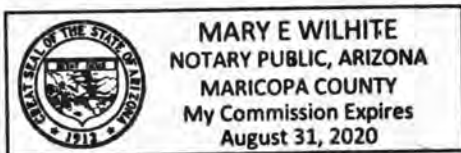


APPROVED AS TO FORM:

By: Sarah Chilton for  
City Attorney

STATE OF ARIZONA                    )  
  ) ss.  
COUNTY OF MARICOPA            )

The foregoing Development Agreement, consisting of 94 pages, including this page and all exhibits was acknowledged before me this 20th day of August, 2019, by Julie Arendall, the City Manager of the City of Goodyear, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the City.



Mary E. Wilhite  
Notary Public

## **LIST OF EXHIBITS**

Exhibit A-1	-	Legal Description of City Property
Exhibit A-2	-	Legal Description of Joint Venture Property
Exhibit B	-	Form of Special Warranty Deed
Exhibit C	-	Form of Assignment of Warranties
Exhibit D	-	Proposed Infrastructure
Exhibit D-1	-	City Infrastructure
Exhibit D-2	-	Project Infrastructure
Exhibit E	-	Project Milestone Schedule
Exhibit F	-	Preliminary Budget for City Improvements Project Costs
Exhibit G	-	Form of Performance Deed of Trust
Exhibit H	-	Permitted Liens and Encumbrances
Exhibit I	-	Overview of Scope of Services to be Provided by Globe Pursuant to Section 8
Exhibit J	-	Collateral Assignment of Design-Build Agreement and Plans and Specifications
Exhibit K	-	City of Goodyear Insurance Requirements

## EXHIBIT A-1

### LEGAL DESCRIPTION OF CITY PROPERTY

#### EXHIBIT A LEGAL DESCRIPTION GOODYEAR PARCEL

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

COMMENCING AT A 3" CITY OF GOODYEAR BRASS CAP STAMPED RLS 27238 2000 MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 32, FROM WHICH A 3" CITY OF GOODYEAR BRASS CAP, WITH NO STAMPING, MARKING THE SOUTHWEST CORNER OF SAID SECTION 32, BEARS N89°28'16"W A DISTANCE OF 2619.64 FEET, AND FROM WHICH A 3" CITY OF GOODYEAR BRASS CAP IN HANDHOLE, MARKING THE SOUTHEAST CORNER OF SAID SECTION 32, BEARS S89°28'03"E (BASIS OF BEARINGS), A DISTANCE OF 2619.43 FEET;

THENCE S89°28'03"E ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 32, A DISTANCE OF 370.14 FEET TO A 3" CITY OF GOODYEAR BRASS CAP FLUSH STAMPED RLS 27239 MARKING THE INTERSECTION OF THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 32 AND THE CENTERLINE OF N 150TH DRIVE ACCORDING TO THE MAP OF DEDICATION FOR MCDOWELL ROAD COMMERCIAL CORRIDOR IMPROVEMENT DISTRICT INFRASTRUCTURE, BOOK 956, PAGE 21, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE N00°32'01"E ALONG THE CENTERLINE OF SAID NORTH 150TH DRIVE, A DISTANCE OF 829.64 FEET TO A BRASS CAP FLUSH MARKING THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1200.00 FEET;

THENCE NORTHWESTERLY, ALONG SAID CENTERLINE AND THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 26°39'09", A DISTANCE OF 558.21 FEET;

THENCE N26°07'02"W CONTINUING ALONG SAID CENTERLINE, A DISTANCE OF 93.51 FEET;

THENCE LEAVING SAID CENTERLINE, S63°52'58"W A DISTANCE OF 298.76 FEET TO THE POINT OF BEGINNING;

THENCE S67°03'47"W, A DISTANCE OF 367.27 FEET;

THENCE N22°56'13"W, A DISTANCE OF 176.10 FEET;

THENCE S67°03'47"W, A DISTANCE OF 315.50 FEET;

THENCE S39°25'25"W A DISTANCE OF 64.37 FEET TO THE NORTHEASTERLY LINE OF THE BULLARD WASH, ACCORDING TO THE MAP OF DEDICATION FOR MCDOWELL ROAD COMMERCIAL CORRIDOR IMPROVEMENT DISTRICT BULLARD WASH, RECORDED IN BOOK 955, PAGE 42, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE S50°34'35"E A DISTANCE OF 113.22 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, FROM WHICH THE CENTER OF SAID CURVE BEARS S39°24'57"W, A DISTANCE OF 1500.00 FEET;

(CONTINUED ON PAGE 2)

PROJECT NO: 019-0925	EXHIBIT A		7250 North 18th Street Suite 210 Phoenix, AZ 85020-5282 TEL 602.748.1000 FAX 602.748.1001	EXHIBIT
DRAWN BY: GPT	LEGAL DESCRIPTION			
DATE: 07/30/2019	GOODYEAR PARCEL			1 - 3

Exhibit A-1  
(Page 1 of 3)



**EXHIBIT A  
LEGAL DESCRIPTION  
GOODYEAR PARCEL**

(CONTINUED FROM PAGE 1)

THENCE SOUTHEASTERLY, ALONG THE NORTHEASTERLY LINE OF SAID BULLARD WASH AND THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 20°55'34", A DISTANCE OF 547.84 FEET;

THENCE LEAVING SAID NORTHEASTERLY LINE, N67°03'47"E, A DISTANCE OF 159.04 FEET;

THENCE N22°56'13"W, A DISTANCE OF 182.54 FEET;

THENCE N67°03'47"E, A DISTANCE OF 367.27 FEET;

THENCE N22°56'13"W, A DISTANCE OF 292.00 FEET TO THE POINT OF BEGINNING.

SUBJECT TO: EXISTING RIGHTS OF WAY AND EASEMENTS.

SAID PARCEL CONTAINS 267,841 SQUARE FEET OR 6.149 ACRES, MORE OR LESS.



PROJECT NO: 019-0925	EXHIBIT A LEGAL DESCRIPTION GOODYEAR PARCEL	<b>olsson</b>	7250 North 16th Street Suite 210 Phoenix, AZ 85020-5282 TEL 602.748.1000 FAX 602.748.1001	EXHIBIT
DRAWN BY: GPT				2 - 3
DATE: 07/30/2019				

Exhibit A-1  
(Page 2 of 3)

FST/jem 892989.11 5/31/19  
4820-3391-8868v22/9799-0111

## EXHIBIT A-2

### LEGAL DESCRIPTION OF JOINT VENTURE PROPERTY

#### EXHIBIT A LEGAL DESCRIPTION OWNER PARCEL 1

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

COMMENCING AT A 3" CITY OF GOODYEAR BRASS CAP STAMPED RLS 27238 2000 MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 32, FROM WHICH A 3" CITY OF GOODYEAR BRASS CAP, WITH NO STAMPING, MARKING THE SOUTHWEST CORNER OF SAID SECTION 32, BEARS N89°28'16"W A DISTANCE OF 2619.64 FEET, AND FROM WHICH A 3" CITY OF GOODYEAR BRASS CAP IN HANDHOLE, MARKING THE SOUTHEAST CORNER OF SAID SECTION 32, BEARS S89°28'03"E (BASIS OF BEARINGS), A DISTANCE OF 2619.43 FEET;

THENCE S89°28'03"E ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 32, A DISTANCE OF 370.14 FEET TO A 3" CITY OF GOODYEAR BRASS CAP FLUSH STAMPED RLS 27239 MARKING THE INTERSECTION OF THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 32 AND THE CENTERLINE OF N 150TH DRIVE ACCORDING TO THE MAP OF DEDICATION FOR MCDOWELL ROAD COMMERCIAL CORRIDOR IMPROVEMENT DISTRICT INFRASTRUCTURE, BOOK 956, PAGE 21, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE N00°32'01"E ALONG THE CENTERLINE OF SAID NORTH 150TH DRIVE, A DISTANCE OF 829.64 FEET TO A BRASS CAP FLUSH MARKING THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1200.00 FEET;

THENCE NORTHWESTERLY, ALONG SAID CENTERLINE AND THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 26°39'09", A DISTANCE OF 558.21 FEET;

THENCE N26°07'02"W CONTINUING ALONG SAID CENTERLINE, A DISTANCE OF 93.51 FEET;

THENCE LEAVING SAID CENTERLINE, S63°52'58"W A DISTANCE OF 298.76 FEET TO THE POINT OF BEGINNING;

THENCE S67°03'47"W, A DISTANCE OF 367.27 FEET;

THENCE N22°56'13"W, A DISTANCE OF 499.95 FEET;

THENCE N67°03'47"E, A DISTANCE OF 367.27 FEET;

THENCE S22°56'13"E, A DISTANCE OF 499.95 FEET TO THE POINT OF BEGINNING.

SUBJECT TO: EXISTING RIGHTS OF WAY AND EASEMENTS.

SAID PARCEL CONTAINS 183,619 SQUARE FEET  
OR 4.215 ACRES, MORE OR LESS.



PROJECT NO: 019-0925	EXHIBIT A	<b>olsson</b>	7250 North 16th Street Suite 210 Phoenix, AZ 85020-5282 TEL 602.748.1000 FAX 602.748.1001	EXHIBIT
DRAWN BY: GPT	LEGAL DESCRIPTION			
DATE: 07/30/2019	OWNER PARCEL 1			1 - 2

Exhibit A-2  
(Page 1 of 2)



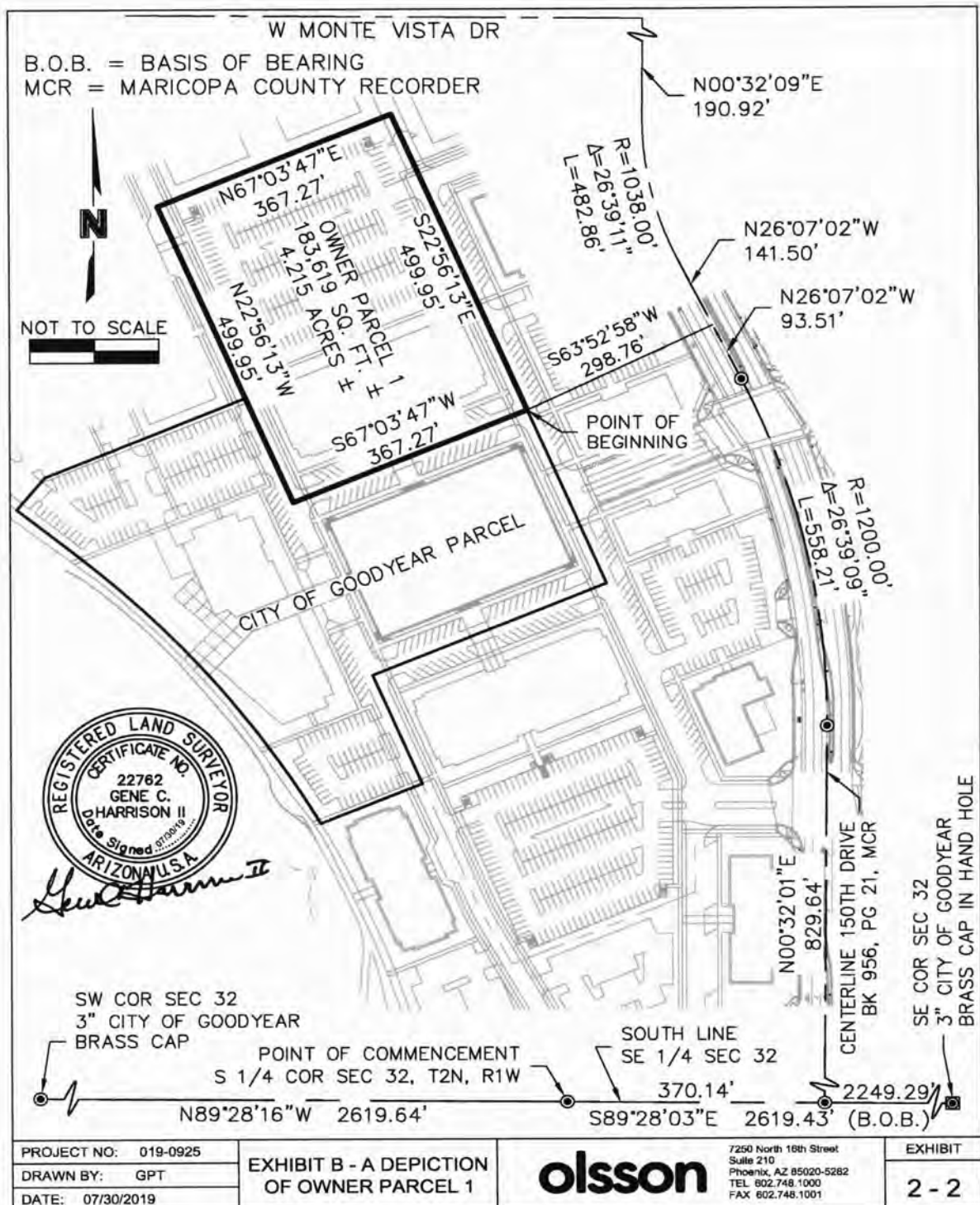


Exhibit A-2  
(Page 2 of 2)

## **EXHIBIT B**

### **FORM OF SPECIAL WARRANTY DEED**

After recording, please return to:

City of Goodyear  
190 North Litchfield Road  
Goodyear, Arizona 85338  
Attn: Ms. Julie Arendall  
City Manager

### **SPECIAL WARRANTY DEED**

For the consideration of Ten Dollars and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned, GLOBE LAND INVESTORS, LLC, a Delaware limited liability company (the "Grantor"), does hereby grant and convey to CITY OF GOODYEAR, ARIZONA, an Arizona municipal corporation, whose address is 190 North Litchfield Road, Goodyear, Arizona 85338, Attn: Ms. Julie Arendall, City Manager, that certain real property situated in the County of Maricopa, State of Arizona legally described as set forth on Exhibit A hereto (the "Property"), together with all rights and privileges appurtenant thereto.

The Property is conveyed subject to all taxes and other assessments, reservations in patents, any matters which would be shown or discovered by a survey or inspection of the Property, all easements, rights of way, encumbrances, leases, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, and all zoning ordinances and regulations and any other laws, ordinances or governmental regulations restricting or regulating the use, occupancy or enjoyment of the Property. The Grantor hereby binds itself and its successors to warrant and defend the title as against all acts of the Grantor herein and no other, subject to the matters above set forth.

[Signature appears on following page.]

Exhibit B  
(Page 1 of 3)

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**GRANTOR:**

**GLOBE LAND INVESTORS, LLC**, a Delaware  
limited liability company

By: Globe Corporation, an Illinois corporation, its  
Managing Member

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

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

Title: \_\_\_\_\_

STATE OF ARIZONA                    )  
  ) ss.  
COUNTY OF MARICOPA            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of Globe Corporation, an Illinois  
corporation, the Managing Member of Globe Land Investors, LLC, a Delaware limited liability  
company, who acknowledged that he/she signed the foregoing instrument on behalf of the  
company.

WITNESS my hand and official seal.

(seal)

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

Exhibit B  
(Page 2 of 3)



Exhibit A to Exhibit B  
Legal Description of Land

Exhibit B  
(Page 3 of 3)

## EXHIBIT C

### FORM OF ASSIGNMENT OF WARRANTIES

#### ASSIGNMENT OF WARRANTIES

For and in consideration of the sum of ten dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Globe Corporation, an Illinois corporation ("**Assignor**"), hereby transfers and assigns, on a non-exclusive basis, to the City of Goodyear, an Arizona municipal corporation ("**Assignee**"), all of Assignor's right, title, and interest in and to the warranties and guaranties listed on Exhibit "A" attached hereto. Notwithstanding the foregoing, Assignor shall retain the non-exclusive rights in and to such warranties and guaranties as necessary in order to pursue any rights it may have against the parties giving such warranties and guaranties independent of Assignee's rights, including, without limitation, rights to indemnity against such parties.

Assignor has executed this Assignment this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

#### **ASSIGNOR:**

**GLOBE CORPORATION,**

An Illinois corporation

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

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

Title: \_\_\_\_\_

## **EXHIBIT D**

### **PROPOSED INFRASTRUCTURE**

The City Infrastructure shall mean all on-site infrastructure for the New City Hall, the Surface Parking and the Public Square described in Exhibit D-1 attached hereto. The Project Infrastructure shall mean all on-site and off-site infrastructure for the Project described in Exhibit D-2 attached hereto. The Office Infrastructure shall mean all on-site and off-site infrastructure for the Garage and the Office Building described in Exhibit D-2 attached hereto which is not paid for by the City Infrastructure Contribution.

The City Infrastructure and the Project Infrastructure include, as applicable, those utility improvements required or as needed in accordance with City codes comprising fire line and water supply, sanitary sewer, storm sewer, electrical power and lighting distribution.

The City Infrastructure and the Project Infrastructure shall be designed and constructed in accordance with applicable federal, State and City codes, ordinances, policies and guidelines, including the City's Engineering Design Standards and Policies in effect when the applicable infrastructure, both within public right-of-way and City properties, is designed.

The Design-Builder shall warranty the City Infrastructure constructed by the Design-Builder within the City rights-of-way, tracts, property and easements for a period of two (2) years from the date of acceptance of the applicable infrastructure by the City Engineer, or his or her designee, and the contractor constructing any other portion of the Project Infrastructure within the City rights-of-way, tracts, property and easements shall warranty such portion of the Project Infrastructure for a period of two (2) years from the date of acceptance of the applicable infrastructure by the City Engineer, or his or her designee. Any material deficiencies in material or workmanship identified by the City Engineer during the two-year warranty period by timely written notice to the Design-Builder shall be promptly remedied by Design-Builder.

The City shall assume all maintenance of the improvements referenced herein within the public right-of-way from the date of acceptance by the City Engineer, or his or her designee. Standard and reasonable maintenance of these improvements shall not cause any warranty to become void, but the failure of the City to reasonably maintain the applicable on-site and off-site improvements shall void the Design-Builder's warranties relating to such applicable on-site or off-site improvements.



# EXHIBIT D-1

## CITY INFRASTRUCTURE

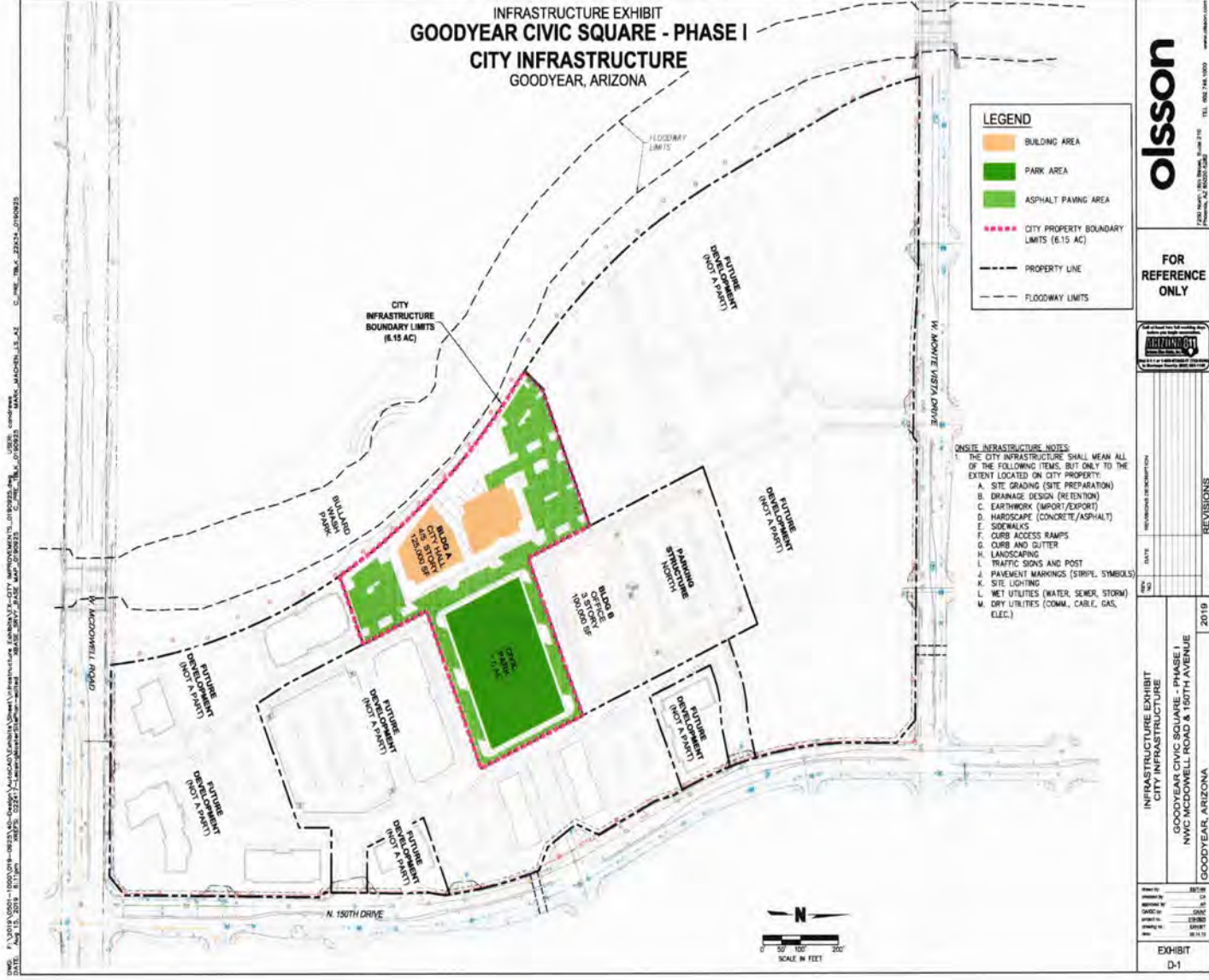


Exhibit D-1  
(Page 1 of 1)

# EXHIBIT D-2

## PROJECT INFRASTRUCTURE

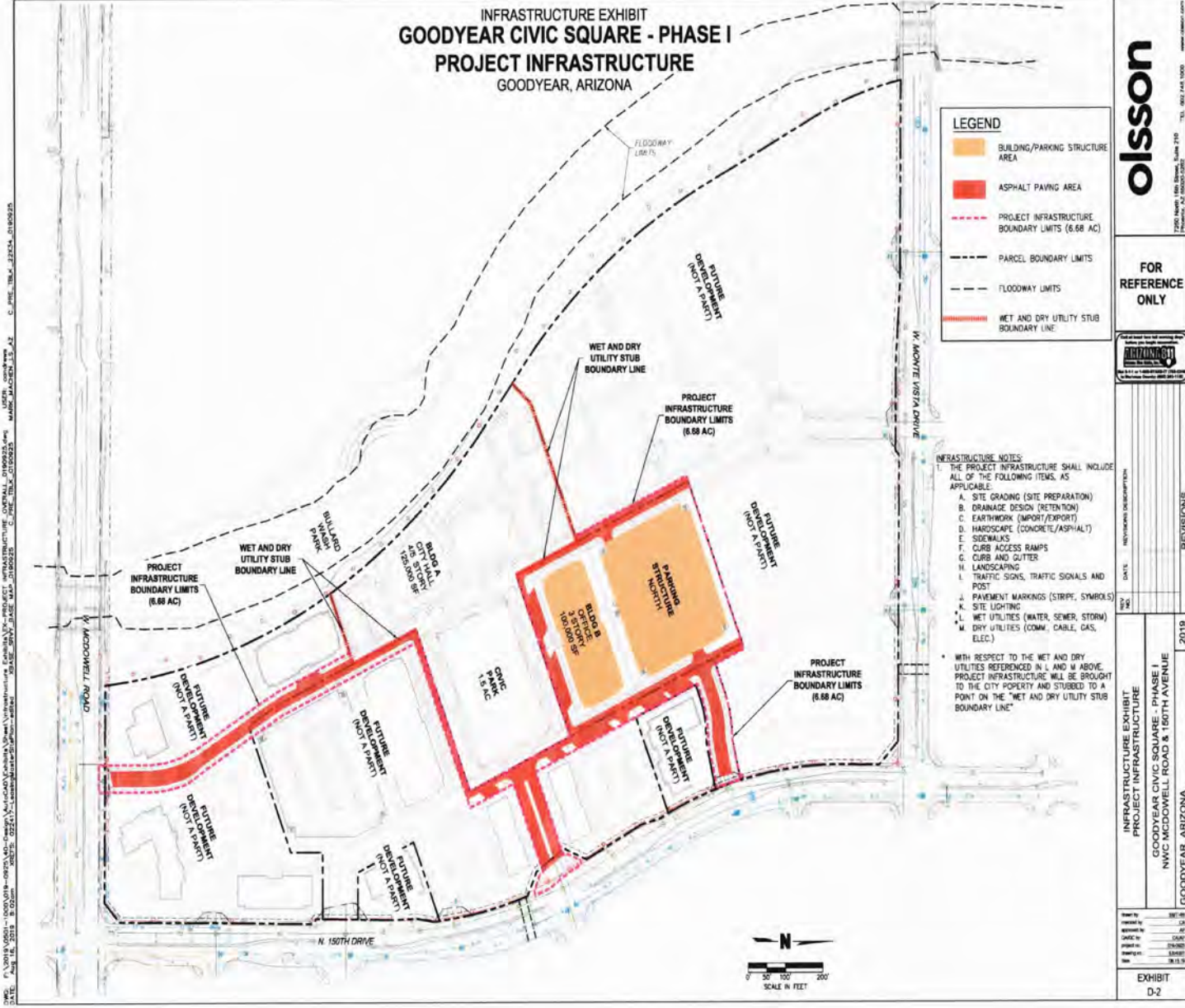


Exhibit D-2  
(Page 1 of 1)

**EXHIBIT E**  
**PROJECT MILESTONE SCHEDULE**

	<b>Task</b>	<b>Completion Date (Last Day of the Month Indicated)</b>
1.	Design Build Contract Signed	November 2019
2.	Construction Phase GMP Contract Award	September 2020
3.	City Hall Design Completed	January 2021
4.	City Infrastructure Plans Completed	January 2021
5.	Construction Notice to Proceed	March 2021
6.	Completion of City Improvements	June 2022

The Parties acknowledge that the Project Milestone Schedule set forth above is the currently contemplated schedule, but such schedule is subject to the schedule that will result from the RFQ process, and all such dates set forth above depend upon meeting all prior dates and tasks referenced in such schedule.



## EXHIBIT F

### PRELIMINARY BUDGET FOR CITY IMPROVEMENTS PROJECT COSTS

1.	Construction Hard Costs	\$ 44,816,800
2.	Additional Project Construction Costs	17,456,200
3.	Design Costs	5,598,200
4.	FF & E Costs	3,764,600
5.	Art Costs	470,600
6.	Other	<u>15,361,600</u>
	TOTAL:	<u>\$ 87,468,000</u>

## EXHIBIT G

### FORM OF PERFORMANCE DEED OF TRUST

When recorded, return to:  
Gust Rosenfeld PLC  
One East Washington, Suite 1600  
Phoenix, Arizona 85004  
Attn: Frank S. Tomkins, Esq.

### PERFORMANCE DEED OF TRUST

DATE: \_\_\_\_\_, 2019

TRUSTOR: Globe Land Investors, LLC and Globe Corporation  
c/o Globe Corporation  
6730 North Scottsdale Road, Suite 250  
Scottsdale, Arizona 85253  
Attn: George Getz and Michael J. Olsen

BENEFICIARY: City of Goodyear  
190 North Litchfield Road  
Goodyear, Arizona 85338  
Attn: Ms. Julie Arendall, City Manager

TRUSTEE: First American Title Insurance Company  
2415 East Camelback Road, Suite 300  
Phoenix, Arizona 85016  
Attn: Alix J. Graham  
E-mail: agraham@firstam.com

PROPERTY in Maricopa County, Arizona, described as (the "Real Property"):

See Exhibit A attached hereto

This Performance Deed of Trust (this "Trust") is made among Trustor, Beneficiary and Trustee who agree as follows:

1. **Grant and Conveyance.** For value received, Trustor irrevocably grants, conveys and assigns to Trustee in Trust, with power of sale, the Real Property, together with all of Trustor's right, title and interest in and to: (a) all buildings, structures, improvements, fixtures and built-in equipment and appliances now or hereafter placed thereon; (b) all

Exhibit G  
(Page 1 of 8)

present and future leases and all subleases executed with respect to the Real Property; (c) all rents, issues, profits, revenues and income of the Real Property, including all revenue, gross or net receipts, payments, and income derived from any business activity conducted by or on behalf of Trustor on the Real Property; (d) a non-exclusive interest in all easements, licenses, rights, minerals, oil and gas, appurtenances, abandoned or vacated streets, alleys and rights-of-way, privileges and interests now or hereafter attached to or used in connection with the Real Property; and (e) a non-exclusive interest in all water, drainage, irrigation and electrical or water user's rights appurtenant or related solely to the Real Property (hereinafter together with the Real Property collectively called the "Property"). All components of the Property are deemed encumbered hereby as an entity and are declared to be part of the real estate whether or not physically attached to the Real Property.

2. **Obligation Secured.** Trustor and Beneficiary are parties to that certain Development Agreement dated \_\_\_\_\_, 2019 and recorded concurrently herewith (the "Agreement"). This Trust secures the obligation of Trustor set forth in Section 7.1 of the Agreement, and for the avoidance of doubt, this Trust secures only such Section 7.1 obligation and no other obligations set forth in the Agreement (the "Obligation Secured").
3. **Protection by Trustor.** Trustor shall defend, at Trustor's expense, any action or proceeding purporting to affect Trustor's interest in the Property or the liens, rights or powers of Beneficiary or Trustee provided in this Trust or at law. Trustor shall and does hereby agree to indemnify and hold harmless Beneficiary and Trustee from any such action or proceeding.
4. **Protection by Beneficiary or Trustee; Reimbursement.** Beneficiary or Trustee or both of them are authorized at their election to appear in and defend any action or proceeding purporting to affect Trustor's secured interest in the Property or the liens, rights or powers of Beneficiary or Trustee provided in this Trust or at law; to pay, purchase, contest or compromise any encumbrance, charge or lien which is prior hereto; and, in exercising any such powers, to pay reasonable expenses, employ counsel, and to pay counsel's reasonable fees and costs. Neither Beneficiary nor Trustee shall be obligated to perform or discharge any obligation or duty to be performed or discharged by Trustor.
5. **Condemnation.** Any award of damages in connection with any condemnation or taking of or for injury to any of the Property by reason of public use or for damages for private trespass or injury thereto is assigned and shall be paid to Beneficiary to the extent of the Obligation Secured and as further security for all Obligation Secured. Upon receipt of such monies, Beneficiary shall hold the same as security for the Obligation Secured.
6. **Inspection.** Beneficiary may make or cause to be made reasonable entries on the Property to perform inspections of the Property at any time with written notice to Trustor.



7. **Default.** Trustor shall be in default hereunder to the extent permitted by law, if: (a) Trustor fails to perform the Obligation Secured; (b) Trustor breaches any other covenant or provision hereof and such failure continues for thirty (30) days after Trustor's receipt of written notice from Beneficiary; (c) Trustor voluntarily files any petition or case under any state insolvency law or any Federal Bankruptcy Code; (d) an involuntary petition or case is filed against Trustor under any state insolvency law or any Federal Bankruptcy Code and the petition remains pending for more than one hundred eighty (180) days or the court in which such petition is pending approves it or Trustor is adjudicated a bankrupt or becomes a debtor or debtor in possession in any such proceeding; (e) if the Property be attached or levied upon by any execution, attachment, tax levy or other writ which is not removed or bonded in a manner acceptable to Beneficiary within one hundred eighty (180) days thereof; or (f) a receiver, trustee, assignee, conservator, fiscal agent or liquidator be appointed for Trustor or for all or any part of the Property.
8. **Remedies.** Upon any default by Trustor which is not cured within any applicable cure period, then Beneficiary shall have the right to take any action permitted at law or in equity, including without limitation the right to cause Trustee to sell the Property or any part thereof as provided by applicable law. All provisions of the law of the state where the Real Property is located relating to deeds of trust are incorporated by reference herein. At Beneficiary's option, in lieu of sale pursuant to the power of sale conferred hereby, this Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. In any such judicial foreclosure, Beneficiary shall recover its reasonable attorneys' fees together with all costs and expenses, including without limitation, all court costs, experts' fees and cost of evidence of title. Beneficiary shall have all rights and remedies available to it hereunder and at law or in equity and all remedies shall be cumulative and may be pursued concurrently or consecutively to the extent permitted by law.
9. **Reconveyance.** At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary, without affecting the liability for performance of the Obligation Secured hereby, Trustee may reconvey without warranty any part of the Property, or join in granting any easement thereon or in any extension agreement or agreement subordinating the lien or charge hereof. Time is of the essence hereof. No extension of the time for performance of the Obligation Secured or the release from any liability shall affect the lien or priority of this Trust. The taking by Beneficiary of any other collateral for the Obligation Secured hereby shall in no way affect or impair the lien or priority of this Trust. Any forbearance by Beneficiary in exercising any remedy or right hereunder shall not be a waiver of or preclude the subsequent exercise of any such remedy or right. Trustee shall reconvey the Property, or portions thereof, without warranty to the person or persons legally entitled thereto. Such persons shall pay all costs of recordation and the release fees of Trustee, if any.
10. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Trustor provided for in this Trust shall be given by mailing such notice by certified mail, return receipt requested, addressed to Trustor at the above

address or at such other address as Trustor may designate by Request for Notice delivered to Beneficiary as provided herein, and (b) any notice to Beneficiary shall be given by certified mail, return receipt requested, to Beneficiary's address stated herein or to such other address as Beneficiary may designate by notice to Trustor as provided herein. Any notice provided for in this Trust shall be deemed to have been given to Trustor or Beneficiary when given in the manner designated herein. Unless a Request for Notice is recorded as provided by law, notice of any Trustee's sale shall be sent solely to Trustor's address set forth herein.

11. **Parties Bound.** This Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, personal representatives, administrators, executors, successors and assigns. In this Trust, whenever the context so requires, the masculine gender includes the feminine and neuter and conversely and the singular number includes the plural and conversely.
12. **Trustee.** Trustee accepts this Trust when this Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee may, but is not obligated to, notify any party hereto of any pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee. Beneficiary may appoint a successor Trustee in the manner prescribed by law. Trustor and beneficiary authorize Trustee, in the event any demand or notice is made or tendered to it concerning this Trust or the Property, to hold any money and documents and to withhold action or performance until an action shall be brought in a court of competent jurisdiction to determine the rights asserted or the propriety of the demand, notice or action requested and Trustee shall be without liability or responsibility for awaiting such court action. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all its predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by mailing or delivering notice thereof to Beneficiary and Trustor and, having so resigned, shall be relieved of all further liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Trustee shall not be liable for any action taken in its discretion and in good faith or upon advice of counsel or upon any information supplied or direction given by Beneficiary.
13. **Governing Law; Severability.** The state and local laws applicable to this Trust shall be the laws of the jurisdiction in which the Real Property is located. The foregoing sentence shall not limit the applicability of federal law to this Trust. In the event that any provision or clause of this Trust conflicts with applicable law, such conflict shall not affect other provisions of this Trust which can be given effect without the conflicting provision, and to this end the provisions of this Trust are declared to be severable.
14. **Integration.** This instrument, together with the Agreement, constitutes the entire understanding of parties, each of whom has been, or has had the opportunity to be, represented by counsel of each party's choosing, and have been bargained for and are negotiated agreements that set forth the entire agreement with respect to the terms thereof, and there are no oral or written statements, representations, agreements or

understandings which modify, amend or vary, or purport to modify, amend or vary any of the terms of such documents.

15. **Security Intended.** Notwithstanding any provision hereof to the contrary, the parties intend that this document constitute security for the performance of the Obligation Secured as provided elsewhere herein, and shall be a "deed of trust" as defined in A.R.S. §33-801. If despite that intention a court of competent jurisdiction shall determine that this document does not qualify as a "trust deed" or "deed of trust" within the meaning and purview of Chapter 6.1, Title 33, Arizona Revised Statutes, then, ab initio, this instrument shall be deemed a realty mortgage under A.R.S. §33-702, and shall be enforceable as such, the Trustor shall be deemed a "mortgagor," the Beneficiary shall be deemed a "mortgagee," the Trustee shall have no capacity but shall be disregarded and all references to the "Trustee" herein shall be deemed to refer to the "mortgagee" to the extent not inconsistent with interpreting this instrument as though it were a realty mortgage. As a realty mortgage, Trustor as mortgagor shall be deemed to have conveyed the Property ab initio to the Beneficiary as mortgagee, such conveyance as a security to be void upon condition that Trustor perform the Obligation Secured.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]



IN WITNESS WHEREOF, Trustor has executed this Trust effective as of the date first written above.

**TRUSTOR:**

**GLOBE LAND INVESTORS, LLC,**  
a Delaware limited liability company

By: Globe Corporation,  
an Illinois corporation  
Its Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ARIZONA                    )  
  ) ss.  
County of Maricopa                 )

The foregoing The foregoing Performance Deed of Trust, consisting of \_\_\_\_ pages, including this page and all exhibits was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as \_\_\_\_\_ of Globe Corporation, an Illinois corporation, the Managing Member of GLOBE LAND INVESTORS, LLC, a Delaware limited liability company, on behalf of the limited liability company.

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

My commission expires:

\_\_\_\_\_

Exhibit G  
(Page 6 of 8)

**GLOBE CORPORATION,**

an Illinois corporation

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

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

Title: \_\_\_\_\_

STATE OF ARIZONA                    )  
  ) ss.  
COUNTY OF MARICOPA            )

The foregoing Performance Deed of Trust, consisting of \_\_\_\_ pages, including this page and all exhibits, was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, the \_\_\_\_\_ of Globe Corporation, an Illinois corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the corporation.

WITNESS my hand and official seal,

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

(seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY



**EXHIBIT H**  
**PERMITTED LIENS AND ENCUMBRANCES**  
**[NONE]**

Exhibit H  
(Page 1 of 1)

## **EXHIBIT I**

### **OVERVIEW OF SCOPE OF SERVICES TO BE PROVIDED BY GLOBE PURSUANT TO SECTION 8**

Globe shall, or shall contract with the Design-Builder to:

#### **A. Preliminary Planning Services**

1. Define the details of the City Improvements' integration with ancillary private development and review the preliminary boundaries for the City Property.
2. Facilitate conceptual planning and programming the preliminary architectural and engineering design and cost estimating.
3. Establish with the City the budget and thereafter coordinate construction estimate submittals and work with the Design-Builder to confirm accurate cost estimates within the budget.
4. Create a preliminary City Improvements design and construction milestone schedule.

#### **B. General Management Services**

1. Perform day-to-day project management duties, including the managing, directing, monitoring and coordination of the Design-Builder and its architects, engineers, consultants, subcontractors and other third parties performing work on the City Improvements.
2. Provide the City with the information necessary to make timely decisions that affect the City Improvements' design, quality, budget and schedule.
3. Prepare, monitor and periodically update the detailed City Improvements development schedules, and provide to the City.
4. Prepare, monitor and periodically update the detailed City Improvements development budgets including cash flow projections for the City Improvements and provide to the City.
5. Coordinate all City Improvements related activities with the appropriate public agencies and authorities, including good faith efforts to obtain permits and approvals from such authorities, and provide information regarding the City Improvements to such authorities.
6. Cause the Design-Builder to review and process all City Improvements related invoices for the City in the form of monthly disbursement requests.

### **C. Design Management Services**

1. Supervise and manage the design process.
2. Manage and coordinate the selection of the Design-Builder pursuant to the requirements of A.R.S. §34-603, and prepare and negotiate the Design-Build Agreement with the approval of the City.
3. Review all design documents throughout each phase of design for general completeness and coordination.
4. Oversee the Design-Builder's completeness and construction feasibility reviews of the design documents.
5. Coordinate and review the Design-Builder's evaluation of building system alternatives with respect to cost, schedule impact, life cycle performance and impact on facility operations.
6. Provide to the City value engineering analysis for alternative materials, equipment and systems as recommended by the Design-Builder and its design consultants.
7. Coordinate any investigative work necessary, as identified by the consultants, to define the conditions of the site.
8. Review and monitor the preparation of construction documents for general completeness, compliance with the program and submit such documents, if necessary, to the City for approval.
9. Coordinate revisions to the design that can be accommodated within the budget and schedule, to accommodate design requirements of the adjacent ancillary development and submit to the City for approval if necessary.
10. Review final boundaries (and arrange for survey) of the parcels of real property and easements established by the Design-Builder.

### **D. Construction Management Services**

1. Manage and coordinate the selection of the Design-Builder pursuant to the requirements of A.R.S. §34-603, for services through the design phase and the construction phase, with the City's assistance if necessary, and prepare and negotiate the Design-Build Agreement with the approval of the City.
2. Manage and coordinate the development of the Design-Builder's site logistics and phasing plan.



3. Review Design-Builder's subcontractors and material suppliers for quality and timeliness.
4. Prepare and negotiate the terms and conditions for the Design-Build Agreement and the GMP Amendment to the Design-Build Agreement, subject to the City's consent.
5. Coordinate all inspections and testing and monitor Design-Builder's performance with respect to governmental and other required inspections.
6. Review and monitor the Design-Builder's safety program.
7. Review, negotiate and process construction change orders and additional services authorizations.
8. Coordinate with the Design-Builder and the City the procurement of all fixtures, furnishings and equipment.
9. Oversee the Design-Builder's preparation of the punchlist and list of close-out items necessary for completion of the fully operational City Improvements.

#### **E. Interface with City Representative**

1. Establish scopes of work and schedules for the Design-Build Agreement and submit to the City for review and approval.
2. Advise City Representative of its management and direction efforts of the Design-Builder and its architect and other design consultants.
3. Present all change orders, together with information on the impact to the scope, schedule and budget, to the City Representative for review and approval.
4. Present, as far in advance as possible, matters that, either: (i) will require expedited processing by the City, (ii) require long lead time ordering, or (iii) require City Council approval.
5. Obtain the bonds and evidence of insurance, additional insured riders and evidence of requirements to notify the insureds in event of cancellation from all parties and consultants as may be required by the applicable contracts.
6. Provide the City with any information known to Globe, concerning any alleged breach, claim or default by Design-Builder, its design consultants, subcontractors, vendors, suppliers or materialmen or other person providing goods or services for the City Improvements.

7. Provide the City with monthly status reports in a form suitable for mayor and council review, and provide budget and schedule variances.
8. Attend public meetings with respect to the City Improvements and appear before mayor and council to provide updates regarding the status of the City Improvements.

## EXHIBIT J

### FORM OF COLLATERAL ASSIGNMENT – DESIGN-BUILD AGREEMENT

#### COLLATERAL ASSIGNMENT OF DESIGN-BUILD AGREEMENT AND PLANS AND SPECIFICATIONS

THIS COLLATERAL ASSIGNMENT OF DESIGN-BUILD AGREEMENT (the "Collateral Assignment") is made as of \_\_\_\_\_, \_\_\_\_\_ by **GLOBE CORPORATION**, an Illinois corporation ("Globe"), to and for the benefit of the **CITY OF GOODYEAR**, an Arizona municipal corporation (the "City"), with the attached consent to Collateral Assignment and Agreement of \_\_\_\_\_ (the "Design-Builder").

A. Globe Land Investors, LLC, a Delaware limited liability company ("Owner"), Globe and the City are parties to a Development Agreement dated \_\_\_\_\_, 2019 (the "Development Agreement") relating to the development of a new city hall and related infrastructure improvements (the "City Improvements", as defined therein).

B. Pursuant to the Development Agreement, Globe and the Design-Builder have entered into a Design-Build Agreement dated \_\_\_\_\_, 2019, with respect to the City Improvements (the "Design-Build Agreement"). All of Globe's right, title and interest in all plans, specifications, drawings, working papers and other documents prepared by the Design-Builder or its design consultants under the Design-Build Agreement are referred to herein as the "Plans and Specifications".

C. Pursuant to the Development Agreement, Globe has agreed to collaterally assign the Design-Build Agreement and the Plans and Specifications to the City as security for the performance by Globe of its obligations under the Development Agreement.

NOW THEREFORE, the City and Globe hereby agree as follows:

#### 1. COLLATERAL ASSIGNMENT, CONVEYANCE AND TRANSFER

Globe hereby non-exclusively collaterally assigns, conveys, and transfers to the City, as security for Globe's obligations under the Development Agreement, all of Globe's right, title, interest, privilege, benefit and remedies in and to the Design-Build Agreement and any other agreements now or hereafter entered into by Globe with the Design-Builder in connection with construction or development of the City Improvements or any portion thereof and any and all present and future amendments, modifications, supplements, change orders and addenda to any of the foregoing (together, the "Agreement") together with all right, title and interest of Globe to the Plans and Specifications.

Globe warrants that a true, correct and complete copy of the Agreement as of the date hereof has been provided to the City prior to the execution of this Collateral Assignment.

The references in this Section I to other agreements, or to amendments, modifications, supplements, change orders or addenda, do not authorize Globe to enter into any such agreement, amendment, modification, supplement, change order or addendum except in compliance with the provisions of the Development Agreement.

## **2. CONSENTS**

### **2.1 Consent**

Attached hereto is the Consent to Collateral Assignment and Agreement of the Design-Builder.

### **2.2 No Reduced Liability/No Assumption by the City**

This Collateral Assignment does not relieve Globe of its obligations under the Agreement. The City does not hereby assume any of Globe's obligations or duties concerning the Agreement, including, without limitation, thereto except as set forth below.

## **3. RIGHT TO EXERCISE**

Upon the occurrence of an uncured event of default by Globe under the Development Agreement, the City may, at its option, upon written notice to the Design-Builder, exercise any or all of the rights and remedies granted to Globe under the Design-Build Agreement as if the City had been an original party to such Agreement. If the City, in its sole and absolute discretion, desires that the Design-Builder continue to provide services under the Design-Build Agreement, the City shall cure any existing monetary defaults and assume all future obligations to the Design-Builder under the Agreement, without releasing Globe from its obligations to the Design-Builder and to the City.

The City shall have all rights and remedies under the Uniform Commercial Code to the full extent the same are applicable to this Collateral Assignment, and any notices required to be given to Globe under such Code shall be deemed to be reasonably given if addressed to Globe at the address appearing beneath its signature below.

## **4. ATTORNEY-IN-FACT**

Globe hereby irrevocably constitutes and appoints the City as its attorney-in-fact, which power is coupled with an interest, so that the City shall have the right hereunder (and only the right) upon the occurrence and continuation of an uncured event of default by Globe under the Design-Build Agreement to demand, receive and enforce Globe's rights with respect to the Design-Build Agreement, to give appropriate receipts, releases and take actions for and on behalf of Globe with respect to the Design-Build Agreement, and to do any and all acts in the name of Globe or in the name of the City with the same force and effect as Globe could have done with respect to the Design-Build Agreement or the Plans and Specifications.



## **5. NO PREVIOUS ASSIGNMENT**

Globe hereby represents and warrants to the City that no previous assignment of the Design-Build Agreement or the Plans and Specifications has been made, and Globe agrees not to assign, sell, pledge, transfer or otherwise encumber its interest in the Design-Build Agreement or the Plans and Specifications so long as this Collateral Assignment is in effect. Globe agrees not to modify the Design-Build Agreement, except in compliance with the provisions of the Design-Build Agreement. Notwithstanding the foregoing, Globe and the City acknowledge and agree that Globe shall have the right to collaterally assign the Design-Build Agreement, and the Plans and Specifications, to any lender providing financing for the construction of the City Improvements and related costs associated with the Project and City Infrastructure (as defined in the Development Agreement).

## **6. SEVERABILITY AND AMENDMENTS**

If any provision of this Collateral Assignment shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality and enforceability of the other provisions of this Collateral Assignment or of the Development Agreement. This Collateral Assignment may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought.

## **7. INDEMNIFICATION**

Globe shall indemnify and hold harmless the City for, from and against any liabilities, claims, costs or expenses, including reasonable attorneys' fees, incurred by the City as a result of this Collateral Assignment or the City's proper exercise of its rights hereunder, except to the extent attributable to the City's negligence or willful misconduct.

## **8. FURTHER ASSIGNMENT RIGHTS**

This Collateral Assignment shall be binding upon Globe and its successors and assigns and shall inure to the benefit of the City and its successors and assigns.

## **9. TERMINATION**

Upon the earlier of (a) the satisfaction of all obligations of Globe to the City under the Development Agreement or (b) the completion of the City Improvements, this Collateral Assignment shall terminate. Within thirty (30) days of the termination of this Collateral Assignment pursuant to this Section 9, the City shall execute and deliver to Globe a release and termination of this Collateral Assignment.

## **10. GOVERNING LAW**

This Collateral Assignment shall be governed by and construed in accordance with the laws of the State of Arizona.

Exhibit J  
(Page 3 of 5)

**IN WITNESS WHEREOF**, Globe and the City have caused this Collateral Assignment to be executed as of the date first set forth above.

**GLOBE CORPORATION**,  
an Illinois corporation

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Address:**  
Globe Corporation  
6730 North Scottsdale Road, Suite 250  
Scottsdale, Arizona 85253  
Attn: George Getz and Michael J. Olsen

**Address:**  
City of Goodyear  
190 North Litchfield Road  
Goodyear, Arizona 85338  
Attn: Ms. Julie Arendall, City Manager

## CONSENT TO COLLATERAL ASSIGNMENT AND AGREEMENT

The undersigned, as the Design-Builder under the Agreement (the "**Agreement**") referred to in the foregoing Collateral Assignment, hereby consents to the foregoing Collateral Assignment (as to both the Agreement and the Plans and Specifications) to and for the benefit of the City. The undersigned agrees to perform pursuant to the terms and conditions of the Agreement. If requested by the City in the exercise of the City's rights under the Collateral Assignment, the undersigned shall continue to perform its obligations under the Agreement for which the undersigned shall be compensated in accordance with the Agreement. The undersigned also agrees that, in the event of a breach by Globe of any of the terms and conditions of the Agreement, the undersigned will concurrently provide a copy of any written notice of a breach by Globe under the Agreement, which copy will be sent to the City at the City's address specified in the Collateral Assignment. The City shall have thirty (30) days from the receipt of such notice of breach to remedy or cure any monetary breach and sixty (60) days from the receipt of such notice of breach (or any longer time period specified in the Agreement) to remedy or cure any other breach; provided, however that neither the Collateral Assignment nor this Consent to Collateral Assignment and Agreement (the "**Consent**") shall require the City to cure said breach, but the City shall, in its sole discretion, have the option to do so. The undersigned acknowledges that the City is relying on this Consent and the assurances herein. All capitalized terms used in this Consent shall have the same meaning as in the Collateral Assignment. The undersigned warrants that the Agreement is in full force and effect as of the date hereof.

DATED as of \_\_\_\_\_, 2019.

### DESIGN-BUILDER:

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

Address:

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

## EXHIBIT K

### CITY OF GOODYEAR INSURANCE REQUIREMENTS

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A. Property. Globe shall require the Design-Builder to provide builder's risk insurance for the Owner and Globe, with the City as an additional insured, on an all-risk, replacement cost basis for the City Improvements.

B. Liability. Globe shall require the Design-Builder to provide insurance covering the Owner and (as additional insureds) Globe and the City against liability imposed by law or assumed in any written contract, and/or arising from personal injury, bodily injury or property damage, with a minimum limit of liability of \$2,000,000.00 per occurrence with a \$2,000,000.00 products/completed operations minimum limit and a \$4,000,000.00 general aggregate minimum limit. Such policy must be primary and written to provide blanket contractual liability, broad form property damage, premises liability and products and completed operations.

C. Design-Builder. During the period of any construction involving the City Improvements, the Design-Builder shall, in addition to the Commercial General Liability insurance required by Section B above, also be required to carry liability insurance of the type and providing the minimum limits set forth below:

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

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

D. Errors and Omissions. In connection with any construction involving the City Improvements, the Design-Builder shall be required to provide errors and omissions professional liability insurance with a minimum limit of \$1,000,000.00 per claim. This policy, or other policies, shall cover claims for a period of not less than three (3) years after the completion of construction involving the City Improvements.

E. CPI Adjustments. The minimum coverage limits set forth above shall be adjusted as of the commencement of any construction involving the City Improvements and every five (5) years thereafter during the period of any construction involving the City Improvements by rounding each limit up to the million dollar amount which is nearest the percentage of change in the Consumer Price Index (the "CPI") determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the insurance limits, the CPI for the month of October in the year preceding the adjustment year, as shown in the column for "All Items" in the table entitled "All Urban Consumers" under the "United States City Averages" as published by the Bureau of Labor Statistics of the United States Department of Labor, shall be compared with the corresponding index number for the month of October in the year during which the Effective Date of the Development Agreement of which this Exhibit is a



part occurs. However, in no event shall the adjusted, required minimum coverage limits exceed an amount which is reasonable and customary at the time of Commencement of Construction of the City Improvements, or at the time of any subsequent adjustment, nor shall the minimum coverage limits exceed the then-current requirements of the City generally applicable to other large construction or development projects within the City.

F. Miscellaneous. All policies of insurance shall comply with the requirements of Section 9.4 of the Development Agreement of which this Exhibit is a part and, in addition, shall provide that no such policy may be amended, cancelled, terminated or permitted to expire without at least 10 days advance written notice to the City. References herein to the Agreement shall mean the Development Agreement of which this Exhibit is a part. Capitalized terms not defined in this Exhibit shall have the meanings ascribed to them in the Agreement.

AGENDA ITEM #: 11.

DATE: August 19, 2019

CAR #: 2019-6728



## CITY COUNCIL ACTION REPORT

**SUBJECT:** Development Agreement for Civic Square at Estrella Falls

**STAFF PRESENTER(S):** Julie Arendall, City Manager

**OTHER PRESENTER(S):** None

**Summary:** Adopt the resolution approving the Development Agreement for Civic Square at Estrella Falls and direct the City Manager to execute the development agreement.

**Recommendation:**

ADOPT RESOLUTION NO. 2019-1985 APPROVING THE DEVELOPMENT AGREEMENT FOR CIVIC SQUARE AT ESTRELLA FALLS; DIRECTING THE CITY MANAGER TO EXECUTE THE DEVELOPMENT AGREEMENT FOR CIVIC SQUARE AT ESTRELLA FALLS; AUTHORIZING AND DIRECTING ACTIONS; AUTHORIZING EXPENDITURE OF FUNDS, AUTHORIZING BUDGET TRANSFERS AND PROVIDING FOR AN EFFECTIVE DATE.

**Fiscal Impact:**

As part of a public-private partnership, Globe Corporation, who through their master developer, will construct the Civic Square as well as a privately owned and financed Class A office complex. The nature of the private partnership requires changes to the timing of how the city typically budgets for capital projects. There is no change in the total city portion of the project budget or in the sources of funding resulting from the development agreement.

The voters of Goodyear have previously approved a City Hall/Street Infrastructure project with bond authority up to \$53M. Overall funding of this project is from this existing bond authority, general funds reserved in the five-year Capital Improvements Program, and a dedication of one-time revenues received above our current five-year revenue forecast used to develop our fully funded Capital Improvements Program.

This Civic Square project is included in the FY2020-24 CIP in the total amount of \$87,468,000. An additional \$250,000 in one-time General Funds approved in FY2019 for space planning will be consolidated into this project for a total authorized project budget of \$87,718,000.

Budget transfers are required for the unbudgeted space planning carryover of \$250,000 and for budget authority to cover FY2020 estimated expenses including those associated with the development agreement terms. The required budget will be transferred first from General Funds set-aside in FY2020 for this project, from one-time FY2019 year-end General Fund savings

consistent with the stated funding plan, and from funding programmed in FY2021 in the five-year CIP as necessary. These budget transfers will not change the total project budget, planned funding sources, or the citywide FY2020 total adopted annual budget.

Approval of this item will authorize the expenditure of all programmed funds associated with this project (\$87,718,000), including those that will be procured directly by the City separate from the development agreement with Globe, such as space planning, owners representative, artwork, etc... Future council action will be required to issue General Obligation bonds to fund a large portion of this project. Timing of this bond issuance will be driven by the cash flow needs of the project and bond market conditions.

## **Background and Previous Actions**

The city of Goodyear has considered constructing a purpose-built City Hall since purchasing 40 acres on the northeast corner of Bullard Avenue and I-10 in 1984. Citizen committees were created in 1985, 1987, 2001 and 2004 to provide input on what residents would like to see in a City Hall project. The consistent theme from all of these efforts were to create (1) a dedicated space designed for consolidated public services, (2) a gathering place for public events, and (3) economic vitality through mixed-use development.

On March 25, 2019, staff presented Council with a new opportunity to create a public-private partnership with The Globe Corporation (Globe) to pursue this long-awaited project. The Letter of Intent (LOI) was approved to pursue the project on April 8, 2019. On July 8, 2019, Council approved the rezoning of the Globe property in order to create a new Planned Area Development (PAD) that will permit the development of a mix of uses.

The City and Globe teams have been working diligently and collaboratively to negotiate the Development Agreement that is being brought for Council consideration tonight.

The highlights from the Development Agreement are as follows:

### **Globe Obligation**

- Donate 6.15 acres of land for the City Hall and Park
- Construct all infrastructure, buildings and park through their master developer
  - City Hall with Library and Park will be build-to-suit to our budget with ownership transferred upon completion of project
  - Deed of Trust will be filed to protect the city's interest prior to conveyance
  - Globe to construct 100,000 square feet of Class A office space with one floor dedicated to a single tenant; if unleased after one year 15,000 square feet would be reserved for a single tenant for the 2<sup>nd</sup> year, with no restriction thereafter

### **City Obligation**

- Fund, through construction draws, all costs for improvements of the donated 6.15 acres
- Pay a 3% management fee to Globe to manage and deliver the project

- Contribute \$3.3M for site infrastructure with an additional ½ the cost of offsite wet/dry utilities up to a maximum of \$500,000
- Pay \$5M toward structured parking garage and receive 200 dedicated spaces with an option to purchase or lease 200 additional spaces

### **Staff Analysis**

The Civic Square at Estrella Falls project will include a City Hall with Library, 2-acre park and gathering place, and a Class A speculative office product.

### **Attachments**

Resolution No. 2019-1985  
Development Agreement