

WHEN RECORDED, RETURN TO:

City of Goodyear, Arizona
Office of the City Clerk
190 North Litchfield Rd.
Goodyear, Arizona 85338

FIRST AMENDMENT TO 2020 DEVELOPMENT AGREEMENT FOR PHX 70

This First Amendment to 2020 Development Agreement for PHX 70 (the “First Amendment”) is entered into by and between Microsoft Corporation, a Washington corporation (“Microsoft”) and the City of Goodyear, an Arizona municipal corporation (the “City”).

RECITALS

A. WHEREAS Microsoft owns approximately 145 acres of real property within the City of Goodyear generally located south east corner of Citrus Road and W Indian School Road, which Microsoft intends to develop under the name PHX 70 and is legally described in Exhibit 1 attached hereto and incorporated herein by this reference.

B. WHEREAS, Microsoft and the City entered into that Development Agreement for PHX 70 recorded on May 8, 2019 in the official records of Maricopa County, Arizona at instrument number 2019-0334649 (the “2019 PHX 70 Development Agreement”) pursuant to which the City agreed to issue a building permit for the first building to be constructed within the Property prior to the recordation of a final plat, and that certain 2020 Development Agreement for PHX 70 recorded on April 14, 2020, in the official records of Maricopa County, Arizona at instrument number 2020-0316155 (hereinafter referred to as the “2020 PHX 70 Development Agreement”), which addressed certain requirements regarding the development of the Property, including requirements for the final plat for the Property, street right of way dedications, and infrastructure that was to be completed before any certificate of completion and/or certificate of occupancy would be issued for the first building being constructed on the Property, and before building permits would be issued for additional buildings to be constructed on the Property.

C. WHEREAS, the 2020 PHX 70 Development Agreement provided that building permits would be issued for the first building before the final plat for the Property has been recorded, before the property interests needed for public infrastructure that is to be constructed pursuant to applicable Development Regulations is dedicated, before the completion of required off-site public infrastructure, and before the completion of other required on-site improvements.

D. WHEREAS, the 2020 PHX 70 Development Agreement set forth limitations on building permits for additional buildings on the Property, including recordation of the final plat for the Property, dedication of require street rights of way and easements, completion of require

public infrastructure and drainage facilities, payment of in lieu fees, completion of on site improvements, termination of APS easements, and satisfaction of Development Regulations for such permits.

E. WHEREAS, Microsoft has continued to experience delays in recording a final plat and designing and constructing required infrastructure improvements because the right-of-way that is to be conveyed to the City upon which public road improvements are to be constructed is encumbered by the Maricopa Water District (MWD) easements that must be removed before the City can accept the dedications.

F. WHEREAS, Microsoft is continuing to work with MWD to release the conflicting easements located in the areas that are to be dedicated to the City and for Microsoft to pay for the relocation of MWD'S existing facilities, and Microsoft has deposited the relocation costs into an escrow account pursuant to the 2020 PHX 70 Development Agreement and the Improvements Escrow Agreement between Microsoft and the City.

G. WHEREAS, Microsoft is seeking relief from the obligation in the 2020 PHX 70 Development Agreement that requires that a final plat for the Property be recorded and that all public infrastructure that is to be City owned and maintained and the dedication to the City of all required property interests needed for such public infrastructure be completed before a building permit can be issued for the second building on the Property.

H. WHEREAS, because the expedited development of the Property is in the best interests of the City, the City is willing to allow Microsoft to obtain a building permit before the final plat for the Property has been recorded, before the property interests needed for public infrastructure that is to be constructed pursuant to applicable Development Regulations is dedicated, before the completion of required off-site public infrastructure.

I. WHEREAS, because the expedited development of the Property is in the best interests of the City and because the terms and conditions set forth in the 2020 PHX 70 Development Agreement and below mitigate the risks to the City of allowing Microsoft to develop the Property pursuant to the terms and conditions outlined in the 2020 PHX 70 Development Agreement and this First Amendment.

J. WHEREAS, the intent of this First Amendment is to amend the 2020 PHX 70 Development Agreement to provide for building permits to be obtained for the second building on the Property.

K. WHEREAS, the City acknowledges the development of the Property is consistent with the City's general plan.

L. WHEREAS, Microsoft and the City intend this First Amendment to be a Development Agreement within the meaning of A.R.S. § 9-500.05 that binds Microsoft and all future owners of all or any portion of the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **INCORPORATION OF RECITALS.** The Parties hereby adopt and incorporate, as if fully set forth herein, the Recitals stated above.

2. **DEFINED TERMS.** All capitalized terms used but not defined in this First Amendment shall have the meanings ascribed to such terms in the 2020 PHX 70 Development Agreement.

3. **EFFECTIVE DATE.** The execution of this First Amendment by the Parties and approval of this First Amendment by Resolution of the Goodyear City Council are conditions precedent to this First Amendment becoming effective. This First Amendment shall take effect upon the later of dates each of the following conditions precedent have occurred: (i) the full execution of this First Amendment by the Parties and (ii) the date the Resolution approving this First Amendment becomes effective, such later date hereafter defined as the "First Amendment Effective Date".

4. **AMENDMENT TO SECTION 14.** The first paragraph contained in Section 14 of the 2020 PHX 70 Development Agreement is hereby deleted in its entirety and replaced with the following:

"14. LIMITATIONS ON FUTURE CONSTRUCTION PERMITS. The building permits for the second building on the Property, which is commonly referred to as "PHX 71", shall not be issued until the (a) the final plat referenced in Section 14.1 has been recorded and (b) Microsoft has obtained construction permits for the offsite public infrastructure improvements Indian School Road as set forth in Section 8 above, and started construction of said improvements by breaking ground or mobilizing equipment and showing the physical appearance of construction activity on site such determination and approval to be made by the City Engineer in his sole discretion. Except for the building permits necessary for the second building on the Property, which is commonly referred to as "PHX 71", no permits shall be issued for the construction of any other structure or building within the Property until all of the following have occurred. "

Nothing in this Section 4 shall amend or modify the requirements set forth in Sections 14.1 through 14.9 of the 2020 PHX 70 Development Agreement.

GENERAL TERMS

5. **ENTIRE AGREEMENT.** This First Amendment and the exhibit(s) referred to herein and attached hereto, along with the unchanged provisions in the 2020 PHX 70 Development Agreement constitute the sole and entire agreement between the Parties with respect to the matters covered herein and supersede any prior or contemporaneous agreements, understandings or

undertakings, written or oral, by or between the Parties, and/or by or between any of the Parties and any third parties. This First Amendment shall be deemed to amend and supersede the 2019 PHX 70 Development Agreement and the 2020 PHX 70 Development Agreement with respect to all terms, provisions and changes set forth in this First Amendment. To the extent of any conflict between this First Amendment and the 2019 PHX 70 Development Agreement and the 2020 PHX 70 Development Agreement, this First Amendment shall control. Except as amended by this First Amendment, all terms, provisions and conditions of the 2019 PHX 70 Development Agreement and the 2020 PHX 70 Development Agreement shall remain in full force and effect.

6 AMENDMENTS. The 2019 PHX 70 Development Agreement, the 2020 PHX 70 Development Agreement and this First Amendment thereto, may not be changed modified or rescinded except in writing as agreed to and signed by the Parties hereto and approved by a Resolution of the Mayor and Council of the City of Goodyear.

7. SECTION HEADINGS. The section headings contained in this First Amendment are for convenience in reference only and are not intended to define or limit the scope of any provision of this First Amendment.

8 FAIR INTERPRETATION. The terms and provisions of this First Amendment represent the result of negotiations between the Parties, each of which has had the opportunity to consult with counsel of their own choosing and/or has been represented by counsel of their own choosing, and none of whom has acted under any duress or compulsion, whether economic or otherwise. Consequently, the Parties agree the terms and provisions of this First Amendment shall be construed according to their usual and customary meanings, and the Parties each hereby waive the application of any rule of law (common law or otherwise) that ambiguous or conflicting terms be resolved against the Party who prepared, or whose attorney prepared, the executed Agreement or any earlier draft of same. The terms of this Section 9 shall survive the expiration or earlier termination of the Agreement.

9. REPRESENTATIONS AND WARRANTIES OF OWNER. As of the date of the execution of this First Amendment, Owner represents and warrants the following:

9.1 OWNERSHIP. Microsoft Corporation, a Washington corporation is the owner of the Property and has the full right and authority to submit its interest in the Property to the obligations hereunder. Microsoft holds title free and clear of all monetary liens other than liens for taxes not yet due and payable.

9.2 AUTHORIZATION. Microsoft is a Washington corporation qualified to do business in Arizona and in good standing; Microsoft (including the person signing for Microsoft) has the authority and the right to enter into this First Amendment as authorized by Microsoft, and Microsoft is not prohibited from executing this First Amendment by any law, rule, regulation, instrument, agreement, order or judgment.

9.3 DUE DILIGENCE. Microsoft reviewed this First Amendment and reached its own conclusions as to the binding and enforceable nature thereof and all of the provisions contained therein, and has not relied on any representations or warranties of City other than those expressly provided in this First Amendment.

10. REPRESENTATIONS AND WARRANTIES OF CITY. As of the First Amendment Effective Date of this Agreement, the City represents and warrants the following:

10.1 APPROVAL. City has approved this First Amendment at a duly held and noticed public meeting by its Mayor and City Council, at which a quorum was duly present, and has authorized the execution hereof.

10.2 AUTHORIZATION. City agrees that the persons executing this First Amendment on behalf of City have been duly authorized to do so, and City is not prohibited from executing this First Amendment by any law, rule, regulation, instrument, agreement, order or judgment.

11. COUNTERPARTS. This First Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement, binding on the Parties. Further this First Amendment may be executed and delivered by electronic transmission. A manually signed copy of this First Amendment delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this First Amendment provided however, Owner shall deliver an original to the City for recordation by the City in the Official Records of Maricopa County.

CITY:

CITY OF GOODYEAR, an Arizona municipal corporation

By: _____

Julie Arendall

Its: City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The First Amendment to 2020 Development Agreement for PHX 70 by and between Microsoft Corporation, a Washington corporation and the City of Goodyear, an Arizona municipal corporation was acknowledged before me this _____ day of _____, 2021, by Julie Arendall, the City Manager of the CITY OF GOODYEAR, an Arizona municipal corporation, for and on behalf thereof.

Notary Public

Attest:

Darcie McCracken, City Clerk

Approved as to Form:

Roric Massey, City Attorney

Exhibits on Following Pages

EXHIBIT “1”
Legal Description

PHX 70 DATA CENTER – LEGAL DESCRIPTION

ALL THAT CERTAIN LOT, TRACT, OR PARCEL OF LAND, SITUATED IN A PORTION OF THE WEST HALF OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AND BEING MORE COMPLETELY DESCRIBED AS FOLLOWS, TO-WIT:

COMMENCING AT A FOUND CITY OF GOODYEAR BRASS CAP IN HANDHOLE FOR THE NORTHWEST CORNER OF SAID SECTION 26, FROM WHICH A FOUND ALUMINUM CAP STAMPED “LS 21080” FOR THE NORTH QUARTER CORNER OF SAID SECTION 26 BEARS SOUTH 89 DEGREES 59 MINUTES 41 SECONDS EAST (BASIS OF BEARINGS) – 2639.84 FEET, AND FROM WHICH A FOUND CITY OF GOODYEAR BRASS CAP FLUSH FOR THE WEST QUARTER CORNER OF SAID SECTION 26 BEARS SOUTH 0 DEGREES 17 MINUTES 5 SECONDS WEST – 2642.19 FEET;

THENCE SOUTH 0 DEGREES 17 MINUTES 5 SECONDS WEST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 26, A DISTANCE OF 33.00 FEET;

THENCE SOUTH 89 DEGREES 59 MINUTES 41 SECONDS EAST BEING 33.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 26, A DISTANCE OF 33.00 FEET TO THE TRUE **POINT OF BEGINNING**;

THENCE SOUTH 89 DEGREES 59 MINUTES 41 SECONDS EAST BEING 33.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 26, A DISTANCE OF 2,523.09 FEET;

THENCE SOUTH 0 DEGREES 0 MINUTES 19 SECONDS WEST, A DISTANCE OF 1,531.08 FEET;

THENCE NORTH 89 DEGREES 59 MINUTES 41 SECONDS WEST, A DISTANCE OF 375.52 FEET;

THENCE SOUTH 0 DEGREES 0 MINUTES 0 SECONDS EAST, A DISTANCE OF 1,132.91 FEET;

THENCE NORTH 90 DEGREES 0 MINUTES 0 SECONDS WEST, A DISTANCE OF 2,108.68 FEET;

THENCE NORTH 44 DEGREES 51 MINUTES 24 SECONDS WEST, A DISTANCE OF 42.32 FEET;

THENCE NORTH 89 DEGREES 42 MINUTES 48 SECONDS WEST, A DISTANCE OF 22.00 FEET;

THENCE NORTH 0 DEGREES 17 MINUTES 12 SECONDS EAST BEING 33.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 26, A DISTANCE OF 24.93 FEET;

THENCE NORTH 0 DEGREES 17 MINUTES 5 SECONDS EAST BEING 33.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 26, A DISTANCE OF 2,609.18 FEET TO THE **POINT OF BEGINNING**.

DESCRIBED AREA ABOVE CONTAINS: 6,312,534 SQUARE FEET OR 144.91 ACRES MORE OR LESS.