

RESOLUTION NO. 2022-2222

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING DEVELOPMENT AGREEMENT FOR ESTRELLA PARCEL 12.23 PHASE 2; PROVIDING AUTHORIZATION AND DIRECTION TO TAKE ACTIONS AND EXECUTE DOCUMENTS NECESSARY TO CARRY OUT THE INTENT OF THE RESOLUTION AND DEVELOPMENT AGREEMENT AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Estrella North, LLC, a Delaware limited liability company is the master developer of that certain master planned community currently known as Estrella and formerly known as Estrella Mountain Ranch; and

WHEREAS, Estrella North, a Delaware limited liability company ("Estrella North") owns approximately 16.79 acres of land commonly known as Estrella Parcel 12.23 Phase 2, which is generally located at the southeast corner of Estrella Parkway and W. Rock Wren Road (the "Property"); and

WHEREAS, Estrella North submitted an application for a final plat to subdivide the Property; and

WHEREAS, pursuant to applicable Development Regulations, property owners developing property within the City are responsible for the construction of certain public infrastructure improvements within the boundaries of their respective properties; along, on, or adjacent to the external boundaries of their respective properties; and, in some instances, outside their respective properties; and

WHEREAS, pursuant to applicable Development Regulations, property owners are required to provide a subdivision bond equal to 100% of the estimated cost to construct the public infrastructure improvements for which Owner is required to construct; and

WHEREAS, Estrella North is seeking a waiver of the bonding requirements for the construction of the public infrastructure improvements that are to be constructed within the boundaries of the Property (the "Internal Public Infrastructure improvements"); and

WHEREAS, to insure the completion of the Internal Public Infrastructure, Estrella North has proposed to enter an agreement under which the City can withhold Building Permits, until such time as the necessary Internal Public Infrastructure has been completed; and

WHEREAS, the proposed Development Agreement provides adequate assurance that the Internal Public Infrastructure will be completed, as the failure to do so will impair the ability of Owner to sell homes within the Property; and

WHEREAS, the proposed Development Agreement is in the best interests of the City because it provides the City with adequate assurances that the Internal Public Infrastructure will be timely completed while avoiding the deterrents to the development of the Property; and

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

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

SECTION 1. The Mayor and Council of the City of Goodyear hereby approve the Development Agreement for Estrella Parcel 12.23 Phase 2, entered into by and between Estrella North, LLC, a Delaware limited liability company and the City of Goodyear, an Arizona municipal corporation attached hereto as Exhibit A, (the "Development Agreement"), which is intended to be a development agreement pursuant to A.R.S. § 9-500.

SECTION 2. The City Manager is hereby authorized and directed to execute the Development Agreement attached hereto as Exhibit A and the City Manager or his/her designee is hereby authorized and directed to take any and all actions and to execute any and all documents necessary to carry out the intent of this Resolution and the terms of this Development Agreement.

SECTION 3. This Resolution shall become effective as provided by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, by a _____ vote, this _____ day of _____, 20_____.

Joe Pizzillo, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney

EXHIBIT 'A'

DEVELOPMENT AGREEMENT
FOR ESTRELLA PARCEL 12.23 PHASE 2

(On the following pages)

WHEN RECORDED, RETURN TO:
City of Goodyear, Arizona
Office of the City Clerk
190 North Litchfield Rd.
Goodyear, Arizona 85338

DEVELOPMENT AGREEMENT FOR ESTRELLA PARCEL 12.23 Phase 2

This Development Agreement for Estrella Parcel 12.23 Phase 2 is entered into by and between Estrella North LLC, a Delaware limited liability company and the City of Goodyear, an Arizona municipal corporation.

RECITALS

A. WHEREAS Estrella North LLC, a Delaware limited liability company is the master developer of that certain master planned community located south of the Gila River currently known as Estrella and formerly known as Estrella Mountain Ranch; and

B. WHEREAS Estrella North LLC, a Delaware limited liability company owns approximately 16.79 acres of land generally located at the southeast corner of Estrella Parkway and W. Rock Wren Road as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

C. WHEREAS, pursuant to applicable Development Regulations, property owners developing property within the City are responsible for the construction of certain public infrastructure improvements within the boundaries of their respective properties; along, on or adjacent to the external boundaries of their respective properties; and, in some instances, outside their respective properties; and

D. WHEREAS, pursuant to applicable Development Regulations, Owner is required to provide a subdivision bond equal to 100% of the estimated cost to construct the public infrastructure improvements for which Owner is required to construct; and

E. WHEREAS, pursuant to applicable Development Regulations, the amount of the bond is not to be determined by separate phasing limits on construction plans; and

F. WHEREAS, Owner will be constructing public infrastructure improvements required to support the construction and sale of homes that are to be constructed within the Property; and

G. WHEREAS, Owner is seeking a waiver of the bonding requirements for the construction of the Internal Public Infrastructure improvements; and

H. WHEREAS, to insure the completion of the Internal Public Infrastructure, Owner has proposed to enter an agreement under which the City can withhold Building Permits until such time as the necessary Internal Public Infrastructure has been completed, as more fully described below; and

I. WHEREAS, Owner's proposal provides adequate assurance that the Internal Public Infrastructure will be completed as the failure to do so will impair the ability of Owner to sell homes within the Property; and

J. WHEREAS, in an effort to avoid deterrents to the development of the Property, the City is willing to enter into an agreement pursuant to the terms set forth below to modify Owner's obligation to provide the City a subdivision bond; and

K. Owner and City desire to enter into this Agreement for the purpose of outlining and setting forth certain obligations and commitments of the Parties relative to the contemplated development of the Property, intending this document to be a Development Agreement within the meaning of A.R.S. § 9-500.05.

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. DEFINITIONS. Capitalized Terms not defined in the foregoing Recitals are defined as follows:

2.1. "Agreement" means this Development Agreement for Estrella Parcel 12.23 Phase 2 entered into by and between Estrella North LLC, a Delaware limited liability company and the City of Goodyear, an Arizona municipal corporation as it may be amended and restated and/or supplemented in writing from time to time, and all exhibits and schedules attached thereto.

2.2. "City" means the City of Goodyear, an Arizona municipal corporation.

2.3. "Development Regulations" means all applicable laws, codes, ordinances, rules, regulations, standards, guidelines, conditions of approval, and the like governing the development of property within the City as they may be amended from time to time. This includes, by way of example but not limitation: the Building Codes and Regulations (currently Chapter 9 of the Goodyear City Code), the Subdivision Regulations adopted by the City of Goodyear (currently Chapter 15 of the Goodyear City Code), the City's Zoning Ordinance, the City of Goodyear's Design Guidelines Standards, the City of Goodyear Engineering Design Standards and Policies as they all may be adopted and amended from time to time; ordinances rezoning the Property,

including stipulations and conditions of approval thereto; and stipulations; and conditions of approvals of approved preliminary and final plats for the Property.

2.4. “External Infrastructure” means public infrastructure improvements that are to be constructed along, on or adjacent to the external boundaries of the Property and public infrastructure improvements that are to be constructed off the Property.

2.5. “Internal Infrastructure” means public infrastructure improvements that are to be constructed within the boundaries of the Property.

2.6. “Master Developer” means Estrella North LLC, a Delaware limited liability company in its capacity as the Master Developer of Estrella and any successor or assign that becomes the Master Developer of Estrella.

2.7. “Owner” means Estrella North LLC, a Delaware limited liability company in its capacity as the owner of the Property and its Successors and Assigns.

2.8. “Party” means City or Owner individually depending upon the context.

2.9. “Parties” means City and Owner collectively.

2.10. “Platted Property” means the portion of the Property that is included within a recorded final plat.

2.11. “Successors and Assigns” means any person and/or entity that succeeds to, acquires, or is assigned any interest in all or part of the Property except as provided in Paragraph 14 below.

3. EFFECTIVE DATE. The execution of this Agreement by the Parties and the approval of this Agreement by Resolution of the Goodyear City Council are conditions precedent to this Agreement becoming effective. This Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties, and (ii) the date the Resolution approving this Agreement becomes effective.

4. EXPIRATION DATE: This Agreement shall expire after all of the External Infrastructure and Internal Infrastructure needed to serve the Property has been completed and the warranty period has expired. Notwithstanding the foregoing, this Agreement may be terminated earlier upon the mutual agreement, in writing, executed by the Parties or upon Owner posting alternate assurances as described in Section 6.1 and 6.2.

5. COMMENCEMENT OF CONSTRUCTION. Construction of all infrastructure improvements for which Owner is responsible for constructing pursuant to the Development Regulations that are not otherwise expressly addressed in this Agreement, shall commence within 180 days of the recordation of the final plat and shall then proceed in the customary and orderly sequence until completed.

6. FINANCIAL ASSURANCES. Except as expressly provided otherwise in this Agreement, the City agrees that compliance with the following terms and conditions shall satisfy the obligations under the applicable Development Regulations to provide financial assurances to ensure the construction of the External Infrastructure and Internal Infrastructure.

6.1. Internal Infrastructure. For Internal Infrastructure, Owner's financial assurance obligation shall, subject to the terms and conditions set forth in this Agreement, be satisfied by a Building Permit Hold as described herein. Except as otherwise provided herein, the City shall not issue any building permits for any residential or commercial structure within the portion of the Property that is subject to a recorded final plat until all of the Internal Infrastructure that is to be constructed within the Platted Property has been completed and accepted by the City or the City has been provided a subdivision bond that meets the requirements set forth in the City of Goodyear Engineering Design Standards and Policies as they may be amended from time to time. Except as otherwise expressly provided in this Agreement, the City, without liability to the City, shall be entitled to withhold building permits for residential and commercial structures within the Property as provided in this Paragraph 6.1.

6.2. External Infrastructure. For External Infrastructure Owner is required to construct in conjunction with the recordation of a final plat and/or approval of a site plan within the Property, Owner shall provide financial assurances in the form of: (i) a subdivision bond that meets the requirements set forth in the City of Goodyear Engineering Design Standards and Policies as they may be amended from time to time; (ii) the establishment of an escrow account with funds in an amount sufficient to cover the estimated costs of the External Infrastructure; or (iii) an irrevocable letter of credit, in a form acceptable to the City Attorney or his designee, in an amount sufficient to cover the estimated costs of the External Infrastructure as specified above. Except as otherwise expressly provided in this Agreement, the City shall be entitled, without liability to the City, to withhold permits for any and all construction within the Platted Property, including permits for horizontal construction activities such as grading, construction of infrastructure improvements and building permits until financial assurances for the External Infrastructure as provided herein have been provided.

6.3. Model Homes. Notwithstanding anything to the contrary in this Agreement, the City shall issue building permits for model homes within Platted Property prior to the completion of the Internal Infrastructure and External Infrastructure needed to serve such Platted Property or Phased Property upon the determination of the City Engineer or his/her designee that all of the External Infrastructure and Internal Infrastructure needed to serve the model homes has been constructed and the City shall issue certificates of occupancy for such model homes upon the determination of the Building Official or his/her designee that all the infrastructure needed to serve the model homes has been constructed and approved and the model homes comply with all other applicable Development Regulations. Notwithstanding anything to the contrary herein or anywhere else in this Agreement, no certificate of occupancy shall be issued for any residential or commercial structure within the Property unless the City Engineer or his designee determines that all of the External Infrastructure and Internal Infrastructure needed to serve the structure has been constructed and the structure otherwise complies with all other applicable Development Regulations.

7. AMENDMENTS. In order for an amendment of this Agreement to become effective, the Party seeking the amendment shall submit its proposed amendment in writing to the other Parties for review. To be effective, amendments shall be approved by the City Council, signed by the Parties and attached to this Agreement as an addendum. Amendments shall also be recorded in the Official Records of Maricopa County within ten (10) days after execution.

8. EXISTING AGREEMENTS. This Agreement and the exhibits referred to herein and attached hereto, constitute the sole and entire agreement between the Parties solely 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 regarding the matter covered herein. Except as expressly provided in this Agreement, this Agreement is not intended to, nor does it affect the Parties rights or obligations under any other existing agreements between the Parties or any existing agreements.

9. DEVELOPMENT REGULATIONS. Except as otherwise expressly provided in this Agreement and subject to the terms and conditions of this Agreement, the Parties agree that the development of the Property shall be governed by the Development Regulations in effect as of the date of this Agreement or in effect when the specific development application is approved, whichever is later. For example, future applications for rezoning, future site plans, future plats, construction permits, and/or building permits shall be subject to the Development Regulations in effect when the application is approved.

10. REQUIREMENTS NOT ADDRESSED. The Parties acknowledge and agree that this Agreement addresses only certain issues with respect to the development of the Property and provides only those rights expressly set forth in this Agreement. Except as expressly provided otherwise in this Agreement, this Agreement does not relieve Owner from constructing additional public or private infrastructure that may be required by Federal, State, County or City laws, ordinances, codes, rules, regulations, standards, guidelines, conditions of approval and the like, including by way of example but not limitation, infrastructure needed for drainage, internal roads, and emergency access roads. Except as expressly provided otherwise in this Agreement, this Agreement does not relieve Owner from complying with the City's requirements concerning the development process, including by way of example but not limitation, complying with procedures and processes governing submission requirements for zoning, preliminary subdivision plats, final subdivision plats and/or site plans, and paying all applicable costs, permit fees, development fees, application fees, and taxes.

11. FUTURE CONDITIONS and APPROVALS. The Parties acknowledge and agree that this Agreement addresses only limited issues relative to the development of the Property and that the Agreement does not limit or preclude the City from imposing additional restrictions, requirements, contributions, conditions or the like for the development of the Property that may be allowed by law, unless expressly addressed herein. The Parties agree that nothing in this Agreement shall be deemed to require the City to grant any future administrative or legislative approvals related to the development of the Property that would be in addition to those approvals the City has already provided to the Property as of the Effective Date of this Agreement provided, however, such approvals have not already expired or been terminated, do not expire or terminate pursuant to the terms of this Agreement, or are not revoked or terminated because of a breach of

this Agreement. Regardless of whether the action or payment is provided for in this Agreement, the Parties acknowledge and agree that the City is not required to undertake any action or make any payments if any federal, state, or local law requires formal action and approval by the City Council before undertaking such action or payment until the City Council has taken the required formal action and has approved the action or payment. The Parties agree that nothing in this Agreement shall affect the City's legislative authority to approve or deny zoning or other development related applications, including applications for preliminary and/or final plats and/or site plans, or the City's legislative authority to impose conditions on the development of the Property. Finally, the Parties agree that except as otherwise expressly provided herein, nothing in this Agreement shall restrict the Owner's rights to object to and pursue all legal remedies to obtain relief from any future conditions, stipulations, policies, procedures, resolutions or ordinances imposed by the City that Owner deems are illegal and/or beyond the scope of the City's statutory authority as applied to the Property.

12. Notices and Filings. Any and all notices, filings, approvals, consents or other communications required or permitted by this Agreement shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

The City: City of Goodyear Attn: City Manager 190 North Litchfield Road Goodyear, Arizona 85338	Owner and Master Developer: Estrella North LLC Attn: Timothy P. Brislin 17700 N. Pacesetter Way, Suite 100 Scottsdale, Arizona 85255
copy to: City of Goodyear Attn: Director of Engineering 190 North Litchfield Road Goodyear, Arizona 85338	copy to: Estrella North LLC Attn: Pete Teiche 10300 S. Estrella Parkway Goodyear, Arizona 85338
copy to: City of Goodyear Attn: City Attorney 190 North Litchfield Road Goodyear, Arizona 85338	copy to: Bergin, Frakes, Smalley & Oberholtzer PLLC Attn: Carolyn Oberholtzer 4343 E. Camelback Road, Suite 210 Phoenix, Arizona 85018

or to any other addresses as any of the Parties hereto may from time to time designate in writing and deliver in a like manner. Notices, filings, consents, approvals and communications shall be deemed to have been given as of the date of delivery if hand delivered, or as of twenty-four (24) hours following deposit in the U.S. Mail, postage prepaid and addressed as set forth above.

13. COVENANTS RUNNING WITH THE LAND. Except as otherwise provided in Paragraph 14, the rights and duties under this Agreement shall be for the benefit of, and a burden upon, the Property, and they shall be covenants running with the land.

14. SUCCESSORS AND ASSIGNS. Except as otherwise provided in Paragraph 14, the provisions of this Agreement are binding upon and shall inure to the benefit of the Parties, and all of their Successors and Assigns; provided, however, that Owner's rights and obligations hereunder may be assigned only upon prior written consent by the City, which shall not be unreasonably withheld, in whole or in part, by written instrument, however any assignment to any subsequent owner of all or any portion of the Property may be made without further consent from the City.

15. TERMINATION OF AGREEMENT AS TO RESIDENTIAL LOTS. The Parties hereby acknowledge and agree that this Agreement is not intended to and shall not create conditions or exceptions to title or covenants running with the Property for any lot within the Property that has been fully subdivided pursuant to a recorded final plat and for which a Certificate of Occupancy for a single family residence has been issued. The Parties agree that this Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot within the Property that has been fully subdivided pursuant to a recorded final plat and for which a Certificate of Occupancy for a single family residence has been issued, and such lot shall automatically be released from and no longer be subject to or burdened by the provision of this Agreement without the requirement of any further action by any Party.

16. NO AGENCY OR PARTNERSHIP. Neither City nor Owner is acting as the agent of the other with respect to this Agreement, and this Agreement shall not be deemed to create a partnership, joint venture, or other business relationship between the City and Owner.

17. CONFLICTS OF INTEREST. This Agreement is subject to the provisions of A.R.S. § 38-511, and may be terminated by the City in accordance with such provisions.

18. 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 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.

19. DEFAULTS AND REMEDIES. Any Party shall be in default under this Agreement ("Default") if it fails to satisfy any term or condition as required under this Agreement within thirty (30) business days following written notice from the other Party ("Notice"); provided, however, that the Notice shall set forth the specific reasons for the determination that the Party has failed to satisfy any term of condition hereof. A Party shall not be in Default if the Party

commences to cure any deficiencies within thirty (30) business days of receipt of Notice and cures such deficiencies within a reasonable time thereafter.

20. NO WAIVER. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or Owner of the breach of any covenant or condition of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

21. MEDIATION. If a dispute arises out of or related to this Agreement, or breach thereof, the Parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation, or some other dispute resolution. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, either Party may request a presiding judge of the Superior Court to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the Parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. The terms of this Paragraph 21 shall survive the expiration or earlier termination of this Agreement.

22. WAIVER OF JURY TRIAL. **UNLESS EXPRESSLY PROHIBITED BY LAW, EACH OF THE CITY AND OWNER KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY AND ALL ACTIONS OR OTHER LEGAL PROCEEDINGS AGAINST THE OTHER PARTY, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND/OR THE TRANSACTIONS IT CONTEMPLATES, AND AGREES THAT ANY AND ALL ACTIONS OR OTHER LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS IT CONTEMPLATES, AND/OR THE WORK PERFORMED PURSUANT TO THIS AGREEMENT SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THIS WAIVER APPLIES TO ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COMPETENT COUNSEL.** The terms of this Paragraph 22 waiving the right to a jury trial shall survive the expiration or earlier termination of this Agreement

23. LIMITATION ON CLAIMS. **IN NO EVENT SHALL CONSEQUENTIAL DAMAGES, EXPECTATION DAMAGES, AND/OR INCIDENTAL DAMAGES, WHICH INCLUDES, BUT IS NOT LIMITED, CLAIMS FOR LOST PROFITS, BE AWARDED AS DAMAGES FOR A BREACH OF THIS AGREEMENT, AND THE PARTIES EXPRESSLY WAIVE ANY RIGHT TO CONSEQUENTIAL DAMAGES, EXPECTATION DAMAGES, AND/OR INCIDENTAL DAMAGES IN THE EVENT OF A BREACH OF THIS AGREEMENT.** The terms of this Paragraph 23 limiting the remedies available to the Parties in the event of a breach of the Agreement shall survive the expiration or earlier termination of this Agreement.

24. PARAGRAPH HEADINGS. The paragraph headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

25. FAIR INTERPRETATION. The terms and provisions of this Agreement 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 Agreement 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 Paragraph 25 shall survive the expiration or earlier termination of this Agreement.

26. CHOICE OF LAW, VENUE, AND ATTORNEY'S FEES. In any dispute under this Agreement, the successful Party shall be entitled to collect from the other Party its reasonable attorneys' fees, and other costs as determined by a Court of competent jurisdiction. The Parties agree that any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be governed by the laws of the State of Arizona. The Parties further agree that the venue for any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be Maricopa County and that any action filed shall be heard in a court of competent jurisdiction located in Maricopa County. The Parties expressly waive the right to object, for any reason, to the venue of Maricopa County. The terms of this Paragraph 26 shall survive the expiration or earlier termination of this Agreement.

27. SURVIVAL CLAUSE: All provisions in this Agreement that logically ought to survive the expiration or earlier termination of this Agreement shall survive the expiration or earlier termination of this Agreement. This includes by way of example: all provisions imposing obligations that will not be triggered until the Agreement is terminated, all indemnification provisions; all limitation of remedies and damages provisions; all provisions waiving claims; and all provisions relieving any Party of liability for actions taken. The fact that certain provisions in this Agreement expressly state that such provisions shall survive the expiration or earlier termination of this Agreement shall not be construed as limiting the application of the Survival Clause set forth in this Paragraph 27 to other provisions in the Agreement.

28. REPRESENTATIONS AND WARRANTIES OF OWNER. As of the date of the execution of this Agreement, Owner represents and warrants the following:

28.1. Ownership. Owner is the owner of the Property and has the full right and authority to submit its interest in the Property to the obligations hereunder. Owner holds title free and clear of all liens other than liens for taxes not yet due and payable.

28.2. Authorization. Owner is a Delaware limited liability company, qualified to do business in Arizona and in good standing; Owner (including the person signing for Owner) has the authority and the right to enter into this Agreement as authorized by the manager of Owner,

and Owner is not prohibited from executing this Agreement by any law, rule, regulation, instrument, agreement, order or judgment.

28.3. Due Diligence. Owner reviewed this Agreement 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 Agreement.

29. REPRESENTATIONS AND WARRANTIES OF MASTER DEVELOPER. As of the date of the execution of this Agreement, Master Developer represents and warrants the following:

29.1. Master Developer Status. As the Master Developer of Estrella, Master Developer has the full right and authority to submit to the obligations hereunder.

29.2. Authorization. Master Developer is a Delaware limited liability company, qualified to do business in Arizona and in good standing; Owner (including the person signing for Master Developer) has the authority and the right to enter into this Agreement as authorized by the manager of Master Developer, and Master Developer is not prohibited from executing this Agreement by any law, rule, regulation, instrument, agreement, order or judgment.

29.3. Due Diligence. Master Developer reviewed this Agreement 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 Agreement.

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

30.1. Approval. City has approved this Agreement 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.

30.2. Authorization. City agrees that the persons executing this Agreement on behalf of City have been duly authorized to do so.

31. COUNTERPARTS. This Agreement 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 Agreement may be executed and delivered by electronic transmission. A manually signed copy of this Agreement 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 Agreement.

IN WITNESS WHEREOF, and agreeing to be bound by the terms of this Agreement the Parties have caused this Agreement to be executed by their duly appointed representatives.

Signatures, Acknowledgments, and Exhibits on Following Pages

OWNER and MASTER DEVELOPER:

ESTRELLA NORTH LLC,
a Delaware limited liability company

By: Estrella Partners LP, a Delaware limited partnership
Its: Sole Member and Manager

By: Goodyear EMR GP LLC a Delaware limited liability company
Its: General Partner

By: EMR Harvard LLC, an Arizona limited liability company
Its: Administrative Member

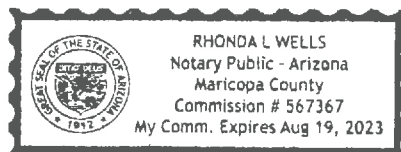
By: Harvard Investments, Inc., a Nevada Corporation
Its: Manager

By: [Signature]
Name: Timothy P. Brislin
Its: Authorized Representative

By: [Signature]
Name: Arthur W. Mellor
Its: ASST. TREASURER

STATE OF ARIZONA)
)
County of Maricopa) ss

The Development Agreement for Estrella Parcel 12.23 Phase 2 by and between Estrella North LLC, a Delaware limited liability company and the City of Goodyear, an Arizona municipal corporation was acknowledged before me this 14th day of March, 2022 by Timothy P. Brislin, the Authorized Representative and Arthur W. Mellor, the Asst. Treasurer of Harvard Investments, Inc., the Manager of EMR Harvard LLC, the Administrative Member of Goodyear EMR GP LLC, the General Partner of Estrella Partners LP, Sole Member and Manager of Estrella North LLC Inc.



[Signature]
NOTARY PUBLIC

Signatures, Acknowledgments, and Exhibits on Following Pages

CITY:

CITY OF GOODYEAR, an Arizona municipal corporation

By: _____
Julie Karins
Its: City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The Development Agreement for Estrella Parcel 12.23 Phase 2 by and between Estrella North LLC, a Delaware limited liability company and the City of Goodyear, an Arizona municipal corporation was acknowledged before me this _____ day of _____, 2022, 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 A

ESTRELLA MOUNTAIN RANCH PARCEL 12.23 PH2 LEGAL DESCRIPTION

The Land referred to herein below is situated in the County of Maricopa, State of Arizona, and is described as follows:

A PART OF SECTIONS 14 AND 23, TOWNSHIP 1 SOUTH, RANGE 2 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A GLO BRASS CAP, FOUND AT THE EAST QUARTER CORNER OF SAID SECTION 14, FROM WHENCE A GLO BRASS CAP, FOUND AT THE SOUTHEAST CORNER OF SAID SECTION BEARS SOUTH 0°14'25" WEST (BASIS OF BEARING), A DISTANCE OF 2,633.85 FEET;

THENCE ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 14, SOUTH 0°14'25" WEST, A DISTANCE OF 1,735.58 FEET;

THENCE DEPARTING SAID EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 14, NORTH 89°45'35" WEST, A DISTANCE OF 976.49 FEET, TO A POINT ON THE WEST LINE OF THE TRANSMISSION LINE EASEMENT, RECORDED UNDER INSTRUMENT NUMBER 88-243783, MARICOPA COUNTY RECORDS (MCR), AND TO THE TRUE POINT OF BEGINNING;

THENCE ALONG SAID WEST LINE OF THE TRANSMISSION LINE EASEMENT, SOUTH 10°36'09" EAST, A DISTANCE OF 372.68 FEET;

THENCE DEPARTING SAID WEST LINE OF THE TRANSMISSION LINE EASEMENT, SOUTH 61°48'28" WEST, A DISTANCE OF 123.06 FEET;

THENCE SOUTH 68°04'47" WEST, A DISTANCE OF 244.46 FEET;

THENCE SOUTH 55°13'59" WEST, A DISTANCE OF 47.84 FEET;

THENCE SOUTH 44°30'14" WEST, A DISTANCE OF 141.00 FEET;

THENCE SOUTH 28°53'18" WEST, A DISTANCE OF 48.80 FEET;

THENCE SOUTH 22°13'38" WEST, A DISTANCE OF 274.07 FEET;

THENCE NORTH 80°21'05" WEST, A DISTANCE OF 778.12 FEET, TO THE EASTERLY RIGHT-OF-WAY LINE OF ESTRELLA PARKWAY, AS SHOWN ON ESTRELLA PHASE ONE, MAP OF DEDICATION, RECORDED UNDER BOOK 318, PAGE 38, MCR, AND TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS POINT BEARING SOUTH 80°18'53" EAST, A DISTANCE OF 2,935.00 FEET;

THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE FOR ESTRELLA PARKWAY, ALONG SAID CURVE, A DISTANCE OF 342.44 FEET, THROUGH A CENTRAL ANGLE OF 6°41'06", SAID CURVE HAVING A CHORD OF NORTH 13°01'40" EAST, A DISTANCE OF 342.24 FEET, TO A POINT OF TANGENCY;

THENCE CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY LINE FOR ESTRELLA PARKWAY, NORTH 16°22'13" EAST, A DISTANCE OF 364.71 FEET;

THENCE DEPARTING SAID EASTERLY RIGHT-OF-WAY LINE FOR ESTRELLA PARKWAY, SOUTH 73°37'33" EAST, A DISTANCE OF 185.10 FEET;

THENCE SOUTH 16°22'27" WEST, A DISTANCE OF 137.26 FEET;

THENCE SOUTH 73°37'33" EAST, A DISTANCE OF 93.23 FEET;

THENCE NORTH 44°30'14" EAST, A DISTANCE OF 318.45 FEET;

THENCE NORTH 43°53'48" EAST, A DISTANCE OF 47.42 FEET;

THENCE NORTH 44°44'54" EAST, A DISTANCE OF 23.92 FEET;

THENCE NORTH 50°49'47" EAST, A DISTANCE OF 33.48 FEET;

THENCE SOUTH 39°10'13" EAST, A DISTANCE OF 115.00 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS POINT BEARING SOUTH 39°10'13" EAST, A DISTANCE OF 425.00 FEET;

THENCE NORTHEASTERLY, A DISTANCE OF 25.97 FEET, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 3°30'03", SAID CURVE HAVING A CHORD OF NORTH 52°34'49" EAST, A DISTANCE OF 25.96 FEET, TO A POINT OF NON-TANGENCY;

THENCE SOUTH 37°00'56" EAST, A DISTANCE OF 50.02 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS POINT BEARING SOUTH 35°29'23" EAST, A DISTANCE OF 375.00 FEET;

THENCE NORTHEASTERLY, A DISTANCE OF 42.04 FEET, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 6°25'26", SAID CURVE HAVING A CHORD OF

NORTH 57°43'20" EAST, A DISTANCE OF 42.02 FEET, TO A POINT OF NON-TANGENCY;

THENCE SOUTH 29°03'57" EAST, A DISTANCE OF 123.22 FEET;

THENCE NORTH 61°40'45" EAST, A DISTANCE OF 45.57 FEET;

THENCE NORTH 69°58'20" EAST, A DISTANCE OF 35.90 FEET;

THENCE NORTH 75°23'13" EAST, A DISTANCE OF 149.77 FEET;

THENCE NORTH 79°23'51" EAST, A DISTANCE OF 11.97 FEET;

THENCE NORTH 10°36'09" WEST, A DISTANCE OF 85.60 FEET;

THENCE NORTH 79°23'51" EAST, A DISTANCE OF 50.00 FEET;

THENCE NORTH 10°36'09" WEST, A DISTANCE OF 47.00 FEET;

THENCE NORTH 79°23'51" EAST, A DISTANCE OF 120.00 FEET, TO THE TRUE POINT OF BEGINNING.