

RESOLUTION NO. 2022-2248

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING THE DEVELOPMENT AGREEMENT FOR LAKIN PARK; 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, W/C Lakin 1B VIII, L.L.C., a Delaware limited liability company ("Owner") owns approximately 83 acres of land generally located at the southwest corner of MC 85 and Cotton Lane, commonly known as Lakin Park, and as more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, for the City to provide sewer service to the Property, the Owner is required to install sewer infrastructure in accordance with engineering design plans approved by the City Engineer or his designee; and

WHEREAS, Owner failed to construct certain of the sewer improvements in accordance with the plans approved by the City Engineer or his designee and the City is unwilling to accept the improvements as constructed because they were not installed in accordance with the approved plans; and

WHEREAS, the cost of removing the improvements that were installed and replacing them with improvements in accordance with the approved plans, is cost-prohibitive and the City has been asked to allow the Owner to construct alternative improvements; and

WHEREAS, the City is willing to allow the installation of the proposed alternative improvements subject to the submittal of engineering plans demonstrating that they work as represented; and

WHEREAS, under applicable Development Regulations, no temporary certificates of occupancies or permanent certificates of occupancy for any structure within the Property can be issued until all of the sewer infrastructure identified in the approved plans has been completed and accepted by the City Engineer or his/her designee, subject to completion of the two-year warranty period; and

WHEREAS, Owner has a tenant for the Structure and has asked that the City issue a temporary certificate of occupancy for the Structure before the By-Pass Cotton Lane Force Main Casings have been completed and accepted by the City Engineer or his/her designee; and

WHEREAS, subject to the terms and conditions set forth herein, the City is willing to issue a temporary certificate of occupancy for the Structure; and

WHEREAS, 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 Property, intending this Agreement to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05; and

WHEREAS, the Mayor and Council of the City of Goodyear, Arizona find that the proposed development agreement is in the best interests of the City and its residents.

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 Lakin Park entered into by and between W/C Lakin 1B VIII, L.L.C., 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 thirty days after its passage and adoption 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 Lakin Park

(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 LAKIN PARK

This Development Agreement for Lakin Park is entered into by and between W/C Lakin 1B VIII, L.L.C., a Delaware limited liability company and the City of Goodyear, an Arizona municipal corporation. W/C Lakin 1B VIII, L.L.C., a Delaware limited liability company and the City of Goodyear are sometimes referred to individually as Party and collectively as Parties.

RECITALS

A. WHEREAS, W/C Lakin 1B VIII, L.L.C., a Delaware limited liability company owns approximately 83 acres of land generally located at the southwest corner of MC 85 and Cotton Lane commonly known as Lakin Park and as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. WHEREAS, for the City to provide sewer service to the Property, Owner is required to install sewer infrastructure in accordance with engineering design plans approved by the City Engineer or his/her designee.

C. WHEREAS, Owner submitted engineering plans titled Lift Station Force Main, Phase 1 Lakin Park (HTE 20-5472), which were approved on June 11, 2021 and which were subsequently amended three times.

D. WHEREAS, the Original Approved Plans, as defined below, identified the sewer infrastructure Owner was required to construct and/or install.

E. WHEREAS, the sewer infrastructure Owner is required to construct and/or install pursuant to the Original Approved Plans, included the construction of the Lakin Park Lift Station within Parcel A of the Minor Land Division for Lakin Park recorded in the Official Records of Maricopa County Recorder at Book 1588 of Maps Page 30, Instrument No. 2021 0480315 and the installation of a force main within the Cotton Lane alignment from the Lakin Park Lift Station to a sewer interceptor at Elwood Street (the "Cotton Lane Force Main").

F. WHEREAS, the Cotton Lane Force Main was to be encased in steel casings consistent with the Original Approved Plans where the Cotton Lane Force Main was to be installed under MC/85 and the Union Pacific Rail Road (“UPRR”) tracks and where the Cotton Lane Force Main was to be installed under Commerce Drive (collectively the “Cotton Lane Force Main Casings”).

G. WHEREAS, the Cotton Lane Force Main Casings are required to allow City staff to maintain the Cotton Lane Force Main located within the Cotton Lane Force Main Casings without tearing up MC/85 and Commerce Drive where the Cotton Lane Force Main crosses those roadways and without the need to work through UPRR’s processes.

H. WHEREAS, the Cotton Lane Force Main Casings were not installed in accordance with the Original Approved Plans.

I. WHEREAS, the City is unwilling to accept the Cotton Lane Force Main as constructed because the Cotton Lane Force Main Casings were not installed in accordance with the Original Approved Plans.

J. WHEREAS, the cost of removing the Cotton Lane Force Main Casings that were installed and replacing them with casings that were required in the Approve Plans is cost prohibitive and the City has been asked to allow by-pass casings that meet City requirements to be installed within the Cotton Lane alignment under MC/85 and the UPRR tracks and under Commerce Drive as an alternative solution to removing and replacing the Cotton Lane Force Main Casings that were improperly installed (the “By-Pass Cotton Lane Force Main Casings”).

K. WHEREAS, the City is willing to allow the installation of the By-Pass Cotton Lane Force Main Casings as an alternative to Owner removing and replacing the existing Cotton Lane Force Main Casings subject to the submittal of engineering plans demonstrating that the By-Pass Cotton Lane Force Main Casings will work as represented.

L. WHEREAS, under applicable Development Regulations, no temporary certificates of occupancies or permanent certificates of occupancy for any structure within the Property can be issued until all of the sewer infrastructure identified in the Approved Plans have been completed and accepted by the City Engineer or his/her designee, subject to completion of the two-year warranty period.

M. WHEREAS, Owner has a tenant for the Structure and has asked that the City issue a temporary certificate of occupancy for the Structure before the By-Pass Cotton Lane Force Main Casings have been completed and accepted by the City Engineer or his/her designee.

N. WHEREAS, subject to the terms and conditions set forth herein, the City is willing to issue temporary certificate of occupancy for the Structure.

O. WHEREAS, Owner and the City intend 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 Lakin Park by and between W/C Lakin 1B VIII, L.L.C., a Delaware limited liability company and the City of Goodyear, an Arizona municipal corporation, as it may be amended, restated and/or supplemented in writing from time to time, and all exhibits and schedules attached thereto.

2.2. “Approved By-Pass Cotton Lane Force Main Casings Plans” means the amended plans once approved by the City Engineer or his/her designee pursuant to Section 6.2.

2.3. “City” means the City of Goodyear, an Arizona municipal corporation.

2.4. “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.

2.5. “Original Approved Plans” are the plans titled Lift Station Force Main, Phase 1 Lakin Park (HTE 20-5472) that were approved December 2, 2021 as such plans have been amended as of the date this Agreement is executed.

2.6. “Owner” means W/C Lakin 1B VIII, L.L.C., a Delaware limited liability company and its Successors and Assigns.

2.7. “Structure” means that certain building located at 17315 West MC85, Goodyear, Arizona for which the City issued a building permit prior to the date this Agreement is executed.

2.8. “Successors and Assigns” means any person or entity that succeeds to or is assigned any interest in all or part of the Property except for any portion of the Property acquired by the City of Goodyear.

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, (ii) the date the Resolution approving this Agreement becomes effective, and (iii) the date the original executed Beneficiary Consent and Subordination to Development Agreement required in Section 26 below is received by the City, such later date hereafter defined as the “Effective Date.”

4. **EXPIRATION DATE.** This Agreement shall expire automatically upon the issuance of a permanent certificate of occupancy for the Structure. Notwithstanding the foregoing, this Agreement may be terminated earlier upon the mutual agreement, in writing, executed by the Parties. If requested by either of the Parties, each of the Parties will promptly execute and deliver a notice of expiration or termination of this Agreement, which instrument Owner may cause to be recorded in the Official Records of the Maricopa County Recorder.

GENERAL DEVELOPMENT OBLIGATIONS

5. **OWNER’S GENERAL OBLIGATIONS.** The following General Obligations apply to the development of the Property:

5.1. **OWNER’S OBLIGATION.** Except as otherwise expressly provided in this Agreement, any stipulation of approval by the Mayor and Council of the City of Goodyear, and/or any other written agreement between the City and Owner approved by the Mayor and Council of the City of Goodyear, and as a condition of development of the Property, Owner shall, at its sole cost, purchase all capital equipment, and design, install, and construct all public infrastructure,

within the boundaries of the Property and outside the boundaries of the Property as required in applicable Development Regulations, and as may be determined by the City Engineer or his/her designee as being reasonably necessary for the City to serve the Property based on approved studies and analysis required in the applicable Development Regulations, such as utility studies and traffic impact studies/analysis, at all phases of development through build-out. In addition, and except as otherwise expressly provided in this Agreement, any stipulation of approval by the Mayor and Council of the City of Goodyear, and/or any other written agreement between the City and Owner approved by the Mayor and Council of the City of Goodyear, and as a condition of development of the Property, Owner shall, at its sole cost convey, lien free, all rights-of-way and easements needed for the construction of public infrastructure Owner is required to construct.

5.2. 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.

5.3. 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.

5.4. 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.

6. SPECIFIC OBLIGATIONS. The following specific obligations apply to the development of the Property.

6.1. **AMENDED PLAN SUBMITTAL.** Owner shall submit to the City engineering plans to amend the Original Approved Plans to include the construction of the By-Pass Cotton Lane Force Main Casings. The submittal shall include all documents required by the City Engineer or his/her designee to evaluate the viability of the By-Pass Cotton Lane Force Main Casings. Owner shall obtain all applicable federal, state and local permits and approvals prior to the City approving the plans for the By-Pass Cotton Lane Force Main Casings. Owner shall pay all applicable fees required for such additional reviews, and permits.

6.2. **APPROVED BY-PASS CASINGS PLANS.** The City Engineer or his/her designee, shall review the amended engineering plans submitted pursuant to Section 6.1 above to determine whether the proposed By-Pass Cotton Lane Force Main Casings will be an effective transmission system if there are ever problems with the Cotton Lane Force Main Casings that were installed. If, in the exercise of his/her sole discretion, the City Engineer or his/her designee determines the proposed By-Pass Cotton Lane Force Main Casings will be an effective transmission system if there are ever problems with the Cotton Lane Force Main Casings that were installed, the City Engineer shall approve the amended engineering plans provided the amended engineering plans otherwise comply with all other applicable Development Regulations.

6.3. **CONSTRUCTION OBLIGATION.** Owner shall, at Owner's sole cost and expense, construct and/or install all sewer infrastructure improvements identified in the Approved By-Pass Cotton Lane Force Main Casings Plans.

6.4. **PERMIT AND FINANCIAL ASSURANCE.** Within five (5) business days of the date the Agreement is approved by the Goodyear City Council, Owner shall deposit with the City financial assurance in the form of a cash deposit in the amount of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00) (the "Initial Deposit") to secure either the completion of the By-Pass Cotton Lane Force Main Casings, if approved, or the removal and replacement of the Cotton Lane Main Casings with casings in conformance with the

Original Approved Plans (the "Repair Work"). Owner shall submit to the City an engineer's estimate of the cost of the Repair Work, and within five (5) business days of the engineer's cost estimate, either (i) in the event the Initial Deposit reflects more than 110% of the engineer's estimate (which amount is subject to approval by the City Engineer of his/her designee), the City will, within five (5) business days, return to Owner a portion of the Initial Deposit such that the remaining deposit represents 110% of the agreed cost estimate or (ii) in the event the Initial Deposit is less than 110% of the agreed cost estimate, Owner shall deposit additional funds with City such that the total deposit remitted to the City hereunder is in the amount of 110% of the agreed cost estimate. which amount is subject to approval by the City Engineer of his/her designee. All funds deposited with the City pursuant to this Section 6.4 shall be returned to W/C Lakin 1B VIII, L.L.C., a Delaware limited liability company (unless otherwise directed by such entity) within five (5) business days of the City's issuance of a permanent certificate of occupancy with respect to the Structure.

6.5. ACCEPTANCE OF INFRASTRUCTURE. The City Engineer shall accept, subject to Owner's satisfaction of its obligations with respect to the two-year warranty period, the infrastructure constructed pursuant to the Original Approved Plans, including the Cotton Lane Force Main Casings that were not installed in accordance with the requirements of the Original Approved Plans, upon the satisfaction of all of the following:

6.5.1. The Cotton Lane Force Main Casings included within the Original Approved Plans that were not installed in accordance with the Original Approved Plans have to be completed and a determination by the City Engineer or his/her designee that the grout was correctly installed and that the Cotton Lane Force Main Casings can be put into service.

6.5.2. All of the infrastructure included within the Original Approved Plans shall be completed in accordance with the Original Approved Plans except for the Cotton Lane Force Main Casings.

6.5.3. Owner has provided the Initial Deposit as required in Section 6.4 above.

6.6. BY-PASS OPTION NOT FEASIBLE. Notwithstanding anything to the contrary in this Agreement, if the By-Pass Casings Plans are not approved because the City Engineer or his/her designee determines the proposed By-Pass Cotton Lane Force Main Casings will not be an effective transmission system in the event of problems with the Cotton Lane Force Main Casings, Owner shall remove the Cotton Lane Force Main Casings installed and accepted by the City Engineer as set forth in Section 6.5 and replace them with casings that conform to the requirements of the Original Approved Plans.

6.7. TEMPORARY CERTIFICATE OF OCCUPANCY. Following the acceptance of the infrastructure constructed following the satisfaction of a requirements as set forth in Section 6.5 above and all subsections therein, the City shall issue a Temporary Certificate of Occupancy for the Structure. A permanent Certificate of Occupancy will not be issued for the

Structure until either of the following has occurred: (i) all of the infrastructure identified in the Approved By-Pass Cotton Lane Force Main Casings Plans has been completed and accepted by the City Engineer or his/her designee subject to Owner's satisfaction of its obligations with respect to the two-year warranty period or (ii) the by-Pass Cotton Lane Force Main Casings installed have been removed and replaced with casings that conform to the requirements of the Original Approved Plans (the "Replacement Infrastructure"), a new two-year warranty for the Replacement Infrastructure has been provided to the City, and the City Engineer or his/her designee has accepted the Replacement Infrastructure subject to Owner's satisfaction of its obligations with respect to the new two-year warranty period. Except for the issuance of a Temporary Certificate of Occupancy for the Structure pursuant to the terms of this Agreement, no Temporary Certificates of Occupancy and no Permanent Certificates of Occupancies shall be issued for any building within the Property until either (i) all of the infrastructure identified in the Approved By-Pass Cotton Lane Force Main Casings Plans has been completed and accepted by the City Engineer or his/her designee subject to Owner's satisfaction of its obligations with respect to the two-year warranty period; or (ii) the By-Pass Cotton Lane Force Main Casings installed and accepted by the City have been removed and replaced with casings that conform to the requirements of the Original Approved Plans (the "Replacement Infrastructure"), a new two-year warranty period for the Replacement Infrastructure has been provided to the City, and the City Engineer or his/her designee has accepted the Replacement Infrastructure subject to Owner's satisfaction of its obligations with respect to the new two-year warranty period.

GENERAL TERMS

7. **ENTIRE AGREEMENT.** This 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 Parties and/or by or between any of the Parties and any third parties regarding the matters covered herein.

8. **AMENDMENTS.** This Agreement shall only be modified, amended or restated by a writing executed by the Owner(s) and City. 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.

9. **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: W/C LAKIN 1B VIII, L.L.C. c/o Walton Street Capital 900 North Michigan Ave. Chicago, IL 60611 Attn: Jim Holmes
copy to: City of Goodyear Attn: Development Services Director 190 North Litchfield Road Goodyear, Arizona 85338	copy to: Clarius Partners, LLC 200 W. Madison Street, Suite 1625 Chicago, Illinois 60606 Attention: Steve Duncan
copy to: City of Goodyear Attn: City Attorney 190 North Litchfield Road Goodyear, Arizona 85338	copy to: Snell & Wilmer LLP Attn: Lawrence Brown One Arizona Center Phoenix, Arizona 85004

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.

10. COVENANTS RUNNING WITH THE LAND. Except as provided in Section 11, 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.

11. TERMINATION OF AGREEMENT AS TO CITY PROPERTY. 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 portion of the Property acquired by the City of Goodyear. The Parties agree that this Agreement shall terminate without the execution or recordation of any further document or instrument as to any portion of the Property acquired by the City of Goodyear and such Property 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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. The terms of this Section 17 shall survive the expiration or earlier termination of this Agreement.

18. 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 Section 18 waiving the right to a jury trial shall survive the expiration or earlier termination of this Agreement

19. 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 Section 19 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.

20. SECTION HEADINGS. The section 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.

21. 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 Section 21 shall survive the expiration or earlier termination of this Agreement.

22. 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 Section 22 shall survive the expiration or earlier termination of this Agreement.

23. 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 Section 23 to other provisions in the Agreement.

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

24.1. OWNERSHIP. W/C Lakin 1B VIII, L.L.C., a Delaware limited liability company 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 and matters of record.

24.2. 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.

24.3. 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.

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

25.1. 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.

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

26. BENEFICIARY CONSENT. A Beneficiary Consent and Subordination to Lakin Park Development Agreement in the form attached hereto as Exhibit B except as may be modified by the City Attorney or his designee in his/her sole discretion, shall be completed and executed by each entity that has a security interest in the Property as of the effective date this Agreement is recorded in the official records of Maricopa County.

27. 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 provided however, Owner shall deliver an original to the City for recordation in the Official Records of Maricopa County.

28. **PAGE NUMBERING.** The page numbering of this document is exclusive of the Exhibits attached hereto.

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.

OWNER:

W/C LAKIN 1B VIII, L.L.C.
a Delaware limited liability company

By: W/C Lakin JV VIII, L.L.C.
a Delaware limited liability company,
its Sole Member

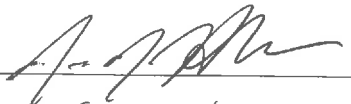
By: W/C Lakin Investors VIII, L.L.C.
a Delaware limited liability company,
its Member

By: Walton Acquisition Holdings VIII, L.L.C.,
a Delaware limited liability company,
its Sole Member

By: Walton Street Real Estate Fund VIII, L.P.,
a Delaware limited partnership,
its Managing Member

By: Walton Street Managers VIII, L.P.,
a Delaware limited partnership
its General Partner

By: WSC Managers VIII, Inc.,
a Delaware corporation
its General Partner

By: 

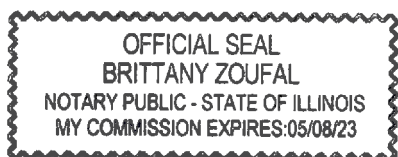
Name: JAMES HOLMES

Title: VICE PRESIDENT

Signatures, Acknowledgments and Exhibits on Following Pages

State of Illinois)
)ss
County of Cook)

On this 2 day of May, 2022, before me, Brittany Zoufal,
a Notary Public in and for said state, personally appeared James J. Holmes,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person
whose name is subscribed to the Development Agreement for Lakin Park by and between by W/C
Lakin 1B VIII, L.L.C., a Delaware limited liability company and the City of Goodyear, an Arizona
municipal corporation (the "Agreement"), and acknowledged to me that he/she executed the same
in his/her authorized capacity and that by his/her signatures on said Agreement, of W/C Lakin 1B
VIII, L.L.C., a Delaware limited liability company upon behalf of which he/she acted, executed
the Agreement.



Brittany Zoufal
Notary Public

CITY:

CITY OF GOODYEAR, an Arizona municipal corporation

By: _____
Julie Karins
Its: City Manager

Acknowledgments and Exhibits on Following Pages

STATE OF ARIZONA)
) ss.
County of Maricopa)

The Development Agreement for Lakin Park by and between by W/C Lakin 1B VIII, L.L.C., a Delaware limited liability company and the City of Goodyear, an Arizona municipal corporation (the “Agreement”) was acknowledged before me this _____ day of _____, 2022, by Julie Karins, 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

LEGAL DESCRIPTION

Lot 1 of the Minor Land Division for Lakin Park – Phase 1 according to the plat of record in Book 1588 of Maps Page 30, Official Records of Maricopa County, Arizona.

EXHIBIT B

BENEFICIARY CONSENT AND SUBORDINATION TO DEVELOPMENT AGREEMENT FOR LAKIN PARK

W/C LAKIN 1B VIII, LLC, a Delaware limited liability company (“Owner”) owns that certain property legally described in Exhibit “1”, attached hereto (the “Property”). Owner has sought certain concessions from the City of Goodyear regarding the development of Owner’s Property. Owner has requested that the City accept infrastructure improvement that was not installed in accordance with the approved plans and to allow Owner to install alternative infrastructure improvements rather than having the Owner remove and replace such infrastructure. In addition, Owner has asked the City to issue a temporary certificate of occupancy for the building on the Property that is under construction or that has been completed. The City is willing to agree to Owner’s request subject to the terms and conditions of the Development Agreement for Lakin Park, a copy of which is attached hereto as Exhibit “2” (the “Development Agreement”).

BMO HARRIS BANK N.A., a national banking association, is the Beneficiary under that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing dated February 24, 2021, and recorded on February 24, 2021 as Instrument No. 2021-0208368 of the official records of the County Recorder of Maricopa County, State of Arizona (the “Deed of Trust”). The Deed of Trust is secured by the Property. Because the Development Agreement will impact the future development of the Property and the issuance of a final certificate of occupancy for the building for which the temporary certificate of occupancy will be issued, the City requires that BMO HARRIS BANK N.A., a national banking association consent to the Development Agreement and subordinate the Deed of Trust to the Development Agreement.

BMO HARRIS BANK N.A., a national banking association, as Beneficiary under the Deed of Trust hereby consents to Owner entering into the Development Agreement and subordinates the Deed of Trust and the loan secured thereby to the Development Agreement. BMO HARRIS BANK N.A., a national banking association, on behalf of itself and all future successors and assigns agrees that any acquisition, transfer or sale of all or part of the Property pursuant to the provisions of the Deed of Trust, whether by foreclosure, deed-in-lieu or other means shall be subject to the Development Agreement for Lakin Park. The undersigned(s) represent they have full power and authority to execute this Beneficiary Consent and Subordination of Development Agreement for Lakin Park on behalf of BMO HARRIS BANK N.A., a national banking association.

IN WITNESS WHEREOF, BMO HARRIS BANK N.A., a national banking association has caused this Beneficiary Consent and Subordination to Development Agreement for Lakin Park to be signed by its duly authorized representative as of the date set forth below:

Signature, Acknowledgment, & Exhibits on Following Pages

BMO HARRIS BANK N.A.,
a national banking association

By: _____

Its: _____

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 2022, before me, personally appeared _____ as _____ of **BMO HARRIS BANK N.A., a national banking association** acknowledged that he/she being authorized to do so, executed this Beneficiary Consent and Subordination to the Development Agreement for Lakin Park for the purposes therein contained on behalf of said entity.

Notary Public