

WHEN RECORDED, RETURN TO:
City of Goodyear, Arizona
Office of the City Clerk
1900 North Civic Square
Goodyear, Arizona 85395

DEVELOPMENT AGREEMENT FOR BULLARD AVENUE IMPROVEMENTS

This Development Agreement for Bullard Avenue Improvements is entered into by and between Squaw Peak Goodyear, LLC, an Arizona limited liability company (“Squaw Peak Goodyear”) and the City of Goodyear, an Arizona municipal corporation (the “City”). Squaw Peak Goodyear and the City are sometimes referred to individually as Party and collectively as Parties.

RECITALS

A. WHEREAS, Squaw Peak Goodyear owns approximately 12 acres of land generally located at the southwest corner of Van Buren Street and Bullard Avenue and as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Property”).

B. WHEREAS, the Property was part of an approximate 95-acre parcel of land commonly known as Goodyear Airport Commons that was re-zoned by ordinance 2019-1422 adopted by the Goodyear City Council on February 11, 2019 and subdivided into three lots by that certain Minor Land Division for Goodyear Airport Commons recorded on March 29, 2019 in the official records of the Maricopa County Recorder at Book 1450 of Maps Page 8 (Instrument 2019 0222179) (collectively the three lots are referred to as the “Goodyear Airport Property”).

C. WHEREAS, under the conditions/stipulations of approval of Ordinance 2019-1422, the owner(s) of the property subject to the ordinance, are required to dedicate to the City right-of-way needed for the completion of the improvements for the full half-street improvements to the west-half of the section of Bullard Avenue located within the Bullard Avenue alignment and public utility easement(s) (“PUE”) along the frontage of Bullard Avenue.

D. WHEREAS, under the conditions/stipulations of approval of Ordinance 2019-1422, the owner(s) of the property subject to the ordinance, are required to construct full half-street improvements required for a major arterial for the section of Bullard Avenue fronting the Goodyear Airport Commons Property when the Goodyear Airport Commons Property develops and the improvements are to be constructed in substantial conformance with the design strategies as established within that certain document titled Bullard Avenue Corridor Design Treatment

Strategies November 2018, which document was declared a public record by Resolution No. 2019-1927.

E. WHEREAS, under applicable Development Regulations, the owners of properties adjacent to public right of way are required to accept storm water flows from adjacent roadways and to provide the City with a drainage easement to accommodate such flows.

F. WHEREAS, the Goodyear City Council has expressed a desire to eliminate scalloped streets when financially feasible to do so, and as such, the City is desirous of completing the Bullard Avenue Improvements (defined below) before the Property is developed and the obligation to construct the Bullard Avenue Improvements is triggered under Ordinance 2019-1422.

G. WHEREAS, because the Property is the only private property benefitted by the Bullard Avenue Improvements, the City and Squaw Peak Goodyear have agreed to enter this reimbursement agreement for Squaw Peak Goodyear's payment for the Bullard Avenue Improvements rather than the City seeking cost recovery for the costs of the Bullard Avenue Improvements through the cost recovery process.

H. WHEREAS, Squaw Peak Goodyear 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 elsewhere in this Agreement are defined as follows:

2.1. "Agreement" means this Development Agreement for Bullard Avenue Improvements by and between Squaw Peak Goodyear LLC, an Arizona 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. "Bullard Avenue Improvements" means the improvements reflected in the preliminary plans a copy of which is attached hereto as Exhibit "B" and which is hereby referred to and incorporated herein by this reference as if fully set forth herein, which reflect the half-street

improvements required in the applicable Development Regulations for a major arterial for the west-half of the section of Bullard Avenue fronting the Property excluding landscaping required to be installed back of curb and any improvements necessitated by the development of the Property such as turn lanes, traffic signal and the like.

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. “Successors and Assigns means any person or entity that succeeds to or is assigned any interest in all or part of the Property except any portion of the Property conveyed to the City.

3. **EFFECTIVE DATE.** The execution of this Agreement by the Parties and the approval of this Agreement by Resolution of the Goodyear City Council. 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 the obligations of the Parties have been fully satisfied. Notwithstanding the foregoing, this Agreement may be terminated earlier upon the mutual agreement, in writing, executed by the Parties.

THE PARTIES OBLIGATIONS

5. **OWNER’S OBLIGATIONS.** Owner agrees as follows:

5.1. **DEDICATIONS.** If Owner has not previously done so, Owner shall dedicate to the City the following interests in the Property:

5.1.1. Right-of-way needed for the Bullard Avenue Improvements, which shall be dedicated in fee and in the form attached hereto as Exhibit “C”, which is hereby referred to and incorporated herein by this reference as if fully set forth herein.

5.1.2. A PUE generally located in the area reflected in Exhibit “D” attached hereto, which is hereby referred to and incorporated herein by this reference as if fully set forth herein.

5.1.3. A Temporary Drainage Easement generally located in the area reflected in Exhibit “E” attached hereto, which is hereby referred to and incorporated herein by this reference as if fully set forth herein.

5.1.4. A Temporary Construction Easements generally located in the areas reflected in Exhibit “F” attached hereto, which is hereby referred to and incorporated herein by this reference as if fully set forth herein.

5.2. IN-LIEU PAYMENT. Prior to the issuance of any construction permits for any work within the Property, Owner shall make an in-lieu payment for the cost of the Bullard Avenue Improvements as described herein and subject to the City’s satisfaction of the conditions set forth herein.

5.2.1. If the City has completed the construction of the Bullard Avenue Improvements prior to Owner’s request for a construction permit for any work within the Property, Owner shall remit to the City a payment for the actual costs the City incurs in constructing such improvements, which shall not exceed \$1,261,271.50, as reflected in the document titled Opinion of Maximum Probably Cost for West Property Cost Recovery Funds, a copy of which is attached hereto as Exhibit G (the “Estimated Maximum Probable Cost”). City shall provide Owner documentation establishing the actual costs the City incurred in the construction of the Bullard Avenue Improvements.

5.2.2. If the City has entered into a contract for the construction of the Bullard Avenue Improvements but the improvements have not been completed, Owner shall remit the Estimated Maximum Probable Cost of \$1,261,271.50 prior to the issuance of any construction permits for any work within the Property. Upon completion of the Bullard Avenue Improvements, the City shall provide Owner documentation establishing the actual costs the City incurred in the construction of the Bullard Avenue Improvements. If the actual costs the City incurred are less than the Estimated Maximum Probable Cost, the City shall reimburse Owner the difference between the Estimated Maximum Probable Cost and the actual costs of the Bullard Avenue Improvements.

5.3. COMPLETION OF BULLARD AVENUE IMPROVEMENTS. If the City constructs the Bullard Avenue Improvements as defined in this Agreement, Owner’s remaining obligations for the Bullard Avenue are as follows:

5.3.1. Owner shall install right-of-way improvements to the section of Bullard Avenue fronting the Property necessitated by the design and development of the Property, such as turn lanes, traffic signals and the like, and shall convey to the City, at no cost to the City, the additional right-of-way required for such improvements. The conveyances required herein shall be in fee, lien free and free of all encumbrances unless specifically agreed to by the City.

5.3.2. Owner shall install landscaping within the Bullard Avenue right-of-way located back of curb required by applicable Development Regulations for a major arterial for the west-half of the section of Bullard Avenue fronting the Property modified by the requirements

of condition of approval/stipulation 12 of Ordinance 2019-1422, which requires that the Property be developed in substantial conformance with the design strategies as established with that certain document title "Bullard Avenue Corridor Design Treatment Strategies 2018, which document was declared a public record by Resolution No. 2019-1927, three copies of which are on file with the City Clerk of the city of Goodyear and which is referred to and made a part hereof as if fully set forth in this Ordinance.

5.4. OBLIGATIONS IF CITY DOES NOT CONSTRUCT. If the City has not commenced construction of the Bullard Avenue Improvements as defined in this Agreement and has not entered into a contract for the construction of the Bullard Avenue Improvements, Owner shall be responsible for constructing all improvements, except for ½ of the required median and ½ the required median landscaping, needed for the completion of the full half-street improvements for the east half of the section of Bullard Avenue along the frontage of the Property required for a Major Arterial as set forth in the Engineering Design Standards in effect at the time of construction as modified by the requirements of condition of approval/stipulation 12 of Ordinance 2019-1422, which requires that the Property be developed in substantial conformance with the design strategies as established with that certain document title "Bullard Avenue Corridor Design Treatment Strategies 2018, which document was declared a public record by Resolution No. 2019-1927, three copies of which are on file with the City Clerk of the City of Goodyear and which is referred to and made a part hereof as if fully set forth in this Ordinance. If Owner is required to construct the improvements described in this Section 5.4, Owner shall make an in-lieu payment for ½ the cost of a full median and ½ the cost of full median landscaping. The in-lieu payment required herein shall be paid prior to the issuance of any construction permit for work within the Property and shall be based on the actual costs if already completed or the costs as estimated by the City Engineer or his/her designee.

5.5. CONDITIONS OF APPROVAL IN ORDINANCE 2019-1422. Owner shall be responsible for satisfying all other conditions of approval in Ordinance 2019-1422, including but not limited to, making the payment for the costs of the Van Buren Improvements described in condition of approval/stipulation 13 of Ordinance 2019-1422 as modified by the Development Agreement for the Reimbursement and Allocation of Cost Recovery Payment recorded in the Official Records of Maricopa County, Arizona on October 10, 2019 as Instrument Number 2019 0807081, and the contribution for the traffic signal at the intersection of Van Buren Street and Bullard Avenue as set forth in condition of approval/stipulation 14 of Ordinance 2019-1422.

GENERAL TERMS

6. 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.

7. **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.

8. **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.

9. **AMENDMENTS.** This Agreement shall only be modified, amended or restated by a writing executed by the Owner 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.

10. **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:

City: City of Goodyear Attn: City Manager 1900 N. Civic Square Goodyear, Arizona 85395	Squaw Peak Goodyear, LLC: Squaw Peak Goodyear LLC Attn: Thomas Palmer, Manager 4231 E. Marlette Avenue Paradise Valley, Arizona 85253
copy to: City of Goodyear Attn: City Attorney 1900 N. Civic Square Goodyear, Arizona 85395	

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.

11. **COVENANTS RUNNING WITH THE LAND.** 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 except the Parties hereby acknowledge and agree that this Agreement is not intended to and shall not create conditions or exceptions to title or covenants on any portion of the Property conveyed to the City.

12. **SUCCESSORS AND ASSIGNS.** 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.

13. **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.

14. **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.

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. 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 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. **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.

20. **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 20 shall survive the expiration or earlier termination of this Agreement.

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

22. **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 22 to other provisions in the Agreement.

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

23.1. **OWNERSHIP.** Squaw Peak Goodyear, LLC, an Arizona 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.

23.2. **AUTHORIZATION.** Owner is an Arizona 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.

23.3. **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.

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

24.1. **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.

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

25. **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.

26. **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.

Signatures, Acknowledgments and Exhibits on Following Pages

OWNER:

Squaw Peak Goodyear LLC, an Arizona limited liability company

By: _____

Thomas P. Palmer

Its: Manager

State of Arizona)
)ss
County of Maricopa)

The Development Agreement for Bullard Avenue Improvements by and between Squaw Peak Goodyear LLC, an Arizona limited liability company and the City of Goodyear, an Arizona municipal corporation was acknowledged before me this ____ day of _____, 2023, by Thomas P. Palmer, Manager of Squaw Peak Goodyear LLC, an Arizona limited liability company, and who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the and acknowledged to me that he being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of Squaw Peak Goodyear LLC, an Arizona limited liability company.

Notary Public

Signatures, Acknowledgments and Exhibits on Following Pages

CITY:

CITY OF GOODYEAR, an Arizona municipal corporation

By: _____
Wynette Reed
Its: City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The Development Agreement for Bullard Avenue Improvements by and between Squaw Peak Goodyear LLC, an Arizona limited liability company and the City of Goodyear, an Arizona municipal corporation was acknowledged before me this ____ day of _____, 2023, by Wynette Reed, 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