

RESOLUTION NO. 2023-2354

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING THE FORM OF A DEVELOPMENT AGREEMENT FOR AIRPORT GATEWAY SOUTH, CONDITIONALLY AUTHORIZING ITS EXECUTION, PROVIDING DIRECTION AND AUTHORIZATION, PROVIDING FOR THE TERMINATION OF THE APPROVALS AND AUTHORIZATIONS PROVIDED IN THE RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Airport Gateway South Property LLC, a Delaware limited liability company ("Owner"), owns approximately 30.27 acres of land currently consisting of two lots located at 14160 and 14170 West Yuma Road, Goodyear, Arizona (collectively the "Property") upon which Owner constructed two shell industrial buildings; and

WHEREAS, in support of the development of the two shell industrial buildings located on the Property, Owner submitted the Final Sewer Report for Airport Gateway South West Yuma Road East of 143rd Avenue Goodyear, Arizona dated April 2021 (the "2021 AGS Sewer Report") and the Final Water Basis of Design Report for Airport Gateway South West Yuma Road East of 143rd Avenue Goodyear, Arizona dated March 2021 (the "2021 AGS Water Report"); and

WHEREAS, according to the 2021 AGS Water Report, the average day demand for the two buildings and the landscaping for the Property was 64,138 gallons per day; and

WHEREAS, according to the 2021 AGS Sewer Report, the average daily wastewater flow to be discharged to the City's 157th Avenue Water Reclamation Facility (the "157th Ave WRF") was 24,678 gallons per day for both buildings located at the Property; and

WHEREAS, water infrastructure improvements and wastewater infrastructure improvements were constructed to handle the delivery of the volume of water reflected in the 2021 AGS Water Report and the 2021 AGS Sewer Report respectively; and

WHEREAS, on November 15, 2021, Owner and Factor 75, LLC, a Delaware limited liability company ("Tenant") entered into a Lease Agreement for the lease of the building located on approximately 17.52 acres (the "Factor Property") pursuant to which Tenant intended to operate a production and distribution facility (the "Business"); and

WHEREAS, pursuant to the terms of its lease, Tenant submitted an amended site plan and construction documents for the Tenant improvements required for the operation of the Business on the Factor Property; and

WHEREAS, in support of its site plan amendment and construction documents for the Tenant improvements on the Factor Property, Tenant submitted letters to the City advising that the proposed development plans did not require any amendment to the 2021 AGS Sewer Report or the 2021 AGS Water Report; and

WHEREAS, the City issued Tenant a Temporary Certificate of Occupancy on August 1, 2023; and

WHEREAS, the water demand of the Business far exceeds the volumes reflected in the 2021 AGS Water Report and flows of wastewater being discharged to the 157th Ave WRF exceed the volumes reflected in the 2021 AGS Sewer Report; and

WHEREAS, Tenant approximates that the full build-out average daily water demand for the Business on the Factor Property must increase from 30,537 gpd to 180,000 gpd, and the wastewater flows that will be discharged to the 157th Ave WRF from the Factor Property must increase from 14,729 gpd to 150,500 gpd; and

WHEREAS, the proposed Development Agreement sets forth the terms and conditions pursuant to which the City has agreed to provide additional water to the Factor Property and to accept additional wastewater discharges at the 157th Ave WRF from the Property; and

WHEREAS, upon its execution, Owner, the City, and Tenant intend for the Development Agreement for Airport Gateway South to be a Development Agreement within the meaning of A.R.S. § 9-500.05 that binds the Owner and Tenant of the Factor Property and all future owners of all or any portion of the Factor Property.

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 find the terms set forth in the Development Agreement for Airport Gateway South, a copy of which is attached hereto as Exhibit 1 and incorporated herein by this reference, to be in the best interest of the City of Goodyear, and hereby approve the form of the Development Agreement for Airport Gateway South.

SECTION 2. The City Attorney or his designee is hereby authorized to make non-substantive changes to the form of the Development Agreement for Airport Gateway South attached hereto as Exhibit 1 prior to its execution.

SECTION 3. The City Manager is hereby authorized to execute the Development Agreement for Airport Gateway South as it may be modified by the City Attorney or his designee upon the satisfaction of all of the following by no later than December 11, 2023:

- The finalization of the Development Agreement for Airport Gateway South to include the non-substantive changes made by the City Attorney or his designee; and
- Receipt of documentation demonstrating that the person executing the Development Agreement for Airport Gateway South for the Owner and Tenant are authorized to do so; and
- Receipt of an original Development Agreement for Airport Gateway South as it may be modified by the City Attorney or his designee executed by Owner and Tenant.

SECTION 4. The City Manager or her designee is hereby authorized and directed to take any and all actions and to execute all the documents necessary to carry out the intent of this Resolution and the terms of the Development Agreement for Airport Gateway South as it may be modified by the City Attorney or his designee.

SECTION 5. The approvals and authority granted in this Resolution 2023-2354 shall terminate if the Development Agreement for Airport Gateway South as it may be modified by the City Attorney or his designee is not fully executed and Recorded by October 16, 2023.

SECTION 6. Following the execution of the Development Agreement for Airport Gateway South by the City, the Owner of the Factor Property, and the Tenant, the City Clerk shall record the Agreement with the Maricopa County Recorder's Office.

SECTION 7. This Resolution 2023-2354 shall be 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 1

AIRPORT GATEWAY SOUTH DEVELOPMENT AGREEMENT

(On the following pages)

When recorded return to:

City Clerk's Office
City of Goodyear
1900 N. Civic Square
Goodyear, AZ 85395

With a copy to:

Gammage & Burnham, PLC
Attn: Ashley Z. Marsh, Esq.
40 N. Central, 20th Floor
Phoenix, AZ 85020

Berry Riddell LLC
Attn: Wendy Riddell, Esq.
6750 E Camelback Rd., #100
Scottsdale, AZ 85251

DEVELOPMENT AGREEMENT FOR AIRPORT GATEWAY SOUTH

This Development Agreement for Airport Gateway South is entered into by and among the City of Goodyear, an Arizona municipal corporation ("City"), Airport Gateway South Property, LLC, a Delaware limited liability company ("Owner"), and Factor 75, LLC, a Delaware limited liability company ("Tenant"). City, Owner, and Tenant may each be referred to as "Party" or "Parties" as the context may require.

RECITALS

A. The Parties are authorized pursuant to A.R.S. 9-500.05 and the related provisions of the City code and ordinances to enter into this Agreement. The Parties intend for this Agreement to be recorded only against the Factor Property and not the South Property as defined herein.

B. Owner owns approximately 30.27 acres of land commonly referred to as Airport Gateway South, currently consisting of two lots located at 14160 and 14170 West Yuma Road, Goodyear, Arizona 85338, upon which Owner constructed two industrial buildings.

C. One of the buildings is located on approximately 17.52 acres, which is legally described on **Exhibit A** attached hereto and incorporated herein by this reference (the "Factor Property").

D. The other building is located on approximately 12.75 acres, adjacent and to the south of the Factor Property (the "South Property"). The Factor Property and the South

Property are collectively referred herein to as the “Property.”

E. In support of the development of the two industrial buildings located on the Property, Owner submitted the Final Sewer Report for Airport Gateway South West Yuma Road East of 143rd Avenue Goodyear, Arizona dated April 2021 (the “2021 AGS Sewer Report”) and the Final Water Basis of Design Report for Airport Gateway South West Yuma Road East of 143rd Avenue Goodyear, Arizona dated March 2021 (the “2021 AGS Water Report”).

F. According to the 2021 AGS Water Report, the average daily demand for the two buildings and the landscaping was 64,138 gallons per day, which was the anticipated demand for both buildings and for the landscaping for the Property.

G. According to the 2021 AGS Sewer Report, the average daily wastewater flow to be discharged to the City’s 157th Avenue Water Reclamation Facility (the “157th Ave WRF”) was 24,678 gallons per day for both buildings located at the Property.

H. Water infrastructure improvements were constructed to handle the delivery of the volume of water reflected in the 2021 AGS Water Report.

I. Wastewater infrastructure improvements were constructed to handle the delivery of the volume of wastewater that would be discharged to the 157th Ave WRF as reflected in the 2021 AGS Sewer Report.

J. On November 15, 2021, Owner and Tenant entered into a Lease Agreement for the lease of the Factor Property (the “Lease”) pursuant to which Tenant intended to operate a production and distribution facility on the Factor Property (“Business”).

K. Under the terms of the Lease, Tenant is responsible for processing and obtaining approvals of an amendment to the existing site plan for the Factor Property required as a result of the operations of the Business; designing, obtaining permits for and constructing modifications to the Factor Property needed to conform to such amended site plan; designing, obtaining permits for and constructing additional public infrastructure required as a result of the operations of the Business; and designing, obtaining permits for, and constructing all tenant improvements required for the operation of the Business.

L. Tenant submitted an amended site plan and construction documents for the tenant improvements required for the operation of the Business on the Factor Property.

M. In support of its site plan amendment and construction documents for the tenant improvements on the Factor Property, Tenant submitted letters to the City advising that the proposed development plans did not require any amendment to the 2021 AGS Sewer Report or the 2021 AGS Water Report.

N. The City issued Tenant a Temporary Certificate of Occupancy on August 1, 2023.

O. Tenant utilized water from a fire hydrant from August 18, 2023 to August 21, 2023 to deliver water to the Business. This use has since been suspended.

P. The water demand of the Business exceeds the volumes reflected in the 2021 AGS Water Report and flows of wastewater being discharged to the 157th Ave WRF exceed the volumes reflected in the 2021 AGS Sewer Report.

Q. The 2021 AGS Water Report and the 2021 AGS Sewer Report approximate the full build-out:

- i. water demand for the Property landscaping is 11,390 gallons per day (“gpd”);
- ii. water demand for the South Property is 22,210.50 gpd;
- iii. wastewater flows from the South Property to the 157th Ave WRF are 10,391 gpd;
- iv. water demand for the Factor Property is 30,537 gpd; and
- v. wastewater flows from the Factor Property to the 157th Ave WRF are 14,729 gpd.

R. Tenant approximates that the full build-out average daily water demand for the Business and building on the Factor Property must increase from 30,537 gpd to 180,000 gpd, and the wastewater flows that will be discharged to the 157th Ave WRF from the building on the Factor Property must increase from 14,729 gpd to 150,500 gpd.

S. To meet that full build-out daily water demand, Tenant is now seeking to install a larger 4-inch water meter for the Factor Property, and to increase the water and wastewater service allocations for the building on the Factor Property.

T. The City has asked Tenant to provide updated information on the increase in the volume of water required for the operation of the Business and the increase in the volume of wastewater flows that will be delivered to the 157th Ave WRF from the Business.

U. According to the City, the volume of water required and the volume of wastewater flows that will be discharged to the 157th Ave WRF for the operation of the Business exceed the volumes allocated to light industrial development in the City’s Integrated Water Master Plan.

V. According to the City, the existing water and sewer infrastructure, including, by way of example, but not limitation, water delivery lines, wastewater trunk lines, and lift stations, have been sized to accommodate deliveries of water and discharges of wastewater based on the allocations in the City’s Integrated Water Master Plan.

W. Tenant has not yet provided information that reflects the impact the increase in the volume of water required to support Tenant’s operations has on the City’s Water System or the impact the increase in wastewater flows to the 157th Ave WRF as on the City’s Wastewater System.

X. This Agreement sets forth the terms and conditions pursuant to which the City has agreed to provide the Additional Water to the Factor Property and to accept the Factor Property’s

Additional Wastewater Discharge.

Y. WHEREAS, the Parties intend this document to be a Development Agreement within the meaning of A.R.S. § 9-500.05.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the Parties hereto state, confirm and agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The Parties acknowledge the accuracy of the foregoing Recitals, which are hereby incorporated into this Agreement as though fully restated herein.

2. **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, such later date hereafter defined as the "Effective Date."

3. **Definitions:** Capitalized terms not defined in the foregoing Recitals are defined as follows:

3.1. "Additional Water" means 149,463 gpd which represents the difference between the average daily demand of 30,537 gpd reflected in the 2021 AGS Water Report for the Factor Property and the average daily demand of 180,000 gpd identified by Tenant as the full build-out water demand for the Factor Property.

3.2. "Additional Wastewater Discharges" means 135,771 gpd which represents the difference between the average daily discharges of 14,729 gpd reflected in the 2021 AGS Sewer Report for the Factor Property and the average daily discharges of 150,500 gpd approximated as the full build-out wastewater discharge demand for the Factor Property.

3.3. "Agreement" means this Development Agreement for the Factor Property entered into by and among the City of Goodyear, an Arizona municipal corporation, Airport Gateway South Property, LLC, a Delaware limited liability company, and Factor 75, LLC, a Delaware limited liability company.

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

3.5. "City Engineer" means the City of Goodyear Director of Engineering or his or her designee.

3.6. "Development Application" means an application for the approval of

any development related activities within all or part of the Factor Property, including applications for zoning, use permits, preliminary plats, final plats, site plans, construction plans, and construction, including building, permits.

3.7. “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 Manual as they all may be adopted and amended from time to time; master plans and studies, such as the City of Goodyear Integrated Water Master Plan, and the Goodyear Transportation Master Plan, ordinances rezoning the Property, including stipulations and conditions of approval thereto; stipulations; and conditions of approvals of approved site plans, preliminary plats, and final plats for the Property.

3.8. “EDS&PM” means the City of Goodyear Engineering Design Standards and Policies Manual in effect at the time of construction.

3.9. “Existing Capacity” means there is sufficient capacity at the 157th Ave WRF to accommodate the Additional Wastewater Discharges, as determined by the City of Goodyear Water Services Director or her designee.

3.10. “Owner” means Airport Gateway South Property, LLC, a Delaware limited liability company and its Successors and Assigns.

3.11. “Parties” means Owner, City and Tenant collectively.

3.12. “Party” means Owner, City, or Tenant individually depending upon the context.

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

3.14. “Surrounding Properties” mean those properties, developed and undeveloped, that based on the City’s Integrated Water Master Plan, will use any of the water infrastructure improvements that are being used to deliver water to the Property and that are using wastewater infrastructure improvements that are being used to deliver wastewater discharges from the Property to the 157th Ave WRF.

3.15. “Tenant” means Factor75, LLC, a Delaware limited liability company and its Successors and Assigns.

3.16. “Water Resources” means renewable supplies of water that satisfy the

requirements of the Arizona Department Resources to increase the City's water portfolio in its Designation of Assured Water Supply.

3.17. "Water Services Director" means the City of Goodyear Water Services Director or his or her designee.

3.18. "Wastewater System" means the infrastructure needed for the City to treat and dispose of wastewater discharges from the City's 157th Ave WRF and includes, by way of example, but not limitation, the treatment plant, recharge facilities, delivery lines and brine disposal facilities.

3.19. "Water System" means the infrastructure improvements needed for the City to develop potable water and includes, by way of example, but not limitation, wells, improvements needed to deliver surface water supply to the City and infrastructure improvement needed to treat raw water to a potable standard.

4. Updated Utility Reports. Tenant shall submit, and obtain the City Engineer's approval of, a new water report and a new sewer report (together, the "Updated Utility Reports"). The water report shall include modeling to account for: the average full build-out daily water demands of the Factor Property of 180,000 gpd; the average daily water demands of the South Property of 22,210.50 gpd; the average daily water demands of landscaping on the Property of 11,390 gpd of water; and the average daily water demands of the Surrounding Properties, using the City's Integrated Water Master Plan for the various zoned property uses and the EDS&PM. The sewer report shall include modeling to account for: the average full build-out daily sewer demands of the Factor Property of 150,500 gpd for wastewater discharges from the Factor Property; the average daily sewer demands of the South Property of 10,391 gpd for wastewater discharges from the South Property; and the average daily sewer demands of the Surrounding Properties, using the City's Integrated Water Master Plan for the various zoned property uses and the EDS&PM. The modeling shall include all infrastructure that will be used to deliver water to the Property and all infrastructure that will be used to deliver wastewater discharges from the Property to the 157th Ave WRF. The new water report shall comply with the requirements of the EDS&PM and shall identify all additional on-site and off-site infrastructure that will be required to accommodate the average daily delivery of water to the Property (180,000 gpd for water for the Factor Property, 22,210.50 gpd of water for the South Property and 11,390 gpd of water for landscaping on the Property), the peak water demands, and fire flow needs while accounting for the demands of the Surrounding Properties. The new sewer report shall comply with the requirements of the EDS&PM and shall identify all additional on-site and off-site infrastructure required to accommodate the average daily wastewater discharges to the 157th Ave WRF from the Property (150,500 gpd for wastewater discharges from the Factor Property and 10,391 gpd of discharges from the South Property) while accounting for the demands of the Surrounding Properties.

4.1. Tenant shall submit the Updated Utility Reports to the City no later than sixty (60) days following the Effective Date and shall obtain final approval of the Updated Utility Reports by the City within sixty (60) days following the date the Updated Utility Reports are received by the City unless the deadlines set forth herein have been

extended by the City Engineer or his designee in a written document, which deadlines shall be extended upon a showing of good cause for the delays as determined by the City Engineer or his designee. If Tenant fails to submit or obtain approval of the Updated Utility Reports within the time frames set forth herein due to Tenant delay, the City shall be entitled to revoke the Temporary Certificate of Occupancy Tenant has been operating under pursuant to the terms of Section 15 below.

5. Discharge Permit. Tenant shall obtain a wastewater discharge permit pursuant to the requirements of Article 12-A of the Goodyear City Code as it may be amended from time to time (the “Discharge Permit”). No later than ten (10) days following the Effective Date, Tenant shall submit to the City an application for a Discharge Permit.

5.1. Tenant shall, at Tenant’s sole cost and expense, install all pretreatment facilities identified in the Discharge Permit as being needed to comply with the requirements of Article 12-A of the Goodyear City Code as it may be amended from time to time by December 31, 2023 unless the deadlines set forth herein have been extended by the City of Goodyear Water Services Director or her designee in a written document, which deadlines shall be extended upon a showing of good cause for the delays as determined by the City of Goodyear Water Services Director or her designee.

5.2. If Tenant fails to submit an application for a Discharge Permit within ten (10) days following the Effective Date or fails to obtain a Discharge Permit, and/or fails to complete the installation of all pretreatment facilities identified in the Discharge Permit by December 31, 2023, the City shall be entitled to revoke the Temporary Certificate of Occupancy Tenant has been operating under pursuant to the terms of Section 15 below until such time as the Discharge Permit is obtained and/or the installation of all such pretreatment facilities are completed.

6. Payment for Additional Water Supply. Tenant shall remit a payment to the City in the amount of \$4,468,633.79, which represents a contribution of \$2,226,688.79 toward the cost of the Water Resources for the Additional Water that will be treated to potable standards and delivered to the Factor Property and a contribution of \$2,241,945.00 towards the cost of the Water System that will produce the Additional Water that will be delivered to the Factor Property. The payment required herein shall be made prior to the City’s issuance of a 4-inch water meter and prior to the City’s delivery of Additional Water and acceptance of Additional Wastewater Discharges as set forth in Section 13 below.

6.1. Tenant shall remit the payment as set forth in Section 6 above within thirty (30) days after receiving written notice from the City that it has Existing Capacity and has presented reasonable evidence of said capacity. Written notice shall be provided consistent with Section 24 and via email to us-legal@hellofresh.com.

7. Payment for Additional Wastewater Discharges. Tenant shall remit a payment to the City in the amount of \$5,430,840.00, which represents a contribution towards the cost of Wastewater System that will treat and dispose of the Additional Wastewater Discharges that will be discharged to the 157th Ave WRF. The payment required herein

shall be made prior to the City's issuance of a 4-inch water meter and prior to the City's delivery of Additional Water and acceptance of Additional Wastewater Discharges as set forth in Section 13 below.

7.1. Tenant shall remit the payment as set forth in Section 7 above within thirty (30) days after receiving written notice from the City that it has Existing Capacity and has presented reasonable evidence of said capacity. Written notice shall be provided consistent with Section 24 and via email to us-legal@hellofresh.com.

8. Payment for Unmetered Water Usage. Tenant shall remit a payment to the City in the amount of \$9,148.00, which represents an agreed upon payment in full of the cost of the water that Tenant utilized from a fire hydrant to deliver water to the Business and the cost of treating the discharges of this water at the 157th Ave WRF (the "Unmetered Water Usage").

8.1. Tenant shall remit the payment as set forth in Section 8 above within thirty (30) days of the Effective Date of this Agreement.

9. Infrastructure Improvements.

9.1. Construction of Infrastructure Improvements. Tenant shall:

- 9.1.1. Construct all on-site and off-site water infrastructure improvements required for the City to deliver the Additional Water to the Factor Property, including peak water demands, and fire flow needs, as identified in the new water report Tenant is to provide pursuant to Section 4 above. For avoidance of doubt, Owner consents to Tenant performing the construction and work provided in this Section 9; provided Tenant complies with the terms and conditions of the Lease related to construction of improvements on the Factor Property.
- 9.1.2. Construct all on-site and off-site wastewater infrastructure improvements required for the delivery of the Additional Wastewater Discharges to the 157th Ave WRF from the Factor Property as identified in the new sewer report Tenant is to provide pursuant to Section 4 above; and
- 9.1.3. Commence the construction of the improvements required in Sections 9.1.1 and 9.1.2 above within six (6) months following the date the Updated Utility Reports are approved by the City Engineer unless the deadline for commencing construction required herein has been extended by the City Engineer in a written document, which deadlines shall be extended upon a showing of good cause for the delays as determined by the City Engineer or his designee. If Tenant has not commenced

construction of the improvements required to be constructed in Sections 9.1.1 and 9.1.2 within the timeframes set forth herein or if Tenant fails to timely complete them, the City shall be entitled to revoke the Temporary Certificate of Occupancy Tenant has been operating under pursuant to the terms of Section 15 below until Tenant completes such improvements.

10. Development Impact Fees. The City shall not charge Owner or Tenant any wastewater development impact fee or water development impact fee that would otherwise be owed as a result of the City's commitment to deliver the Additional Water to the Factor Property or to accept the Additional Wastewater Discharges from the Factor Property to the 157th Ave WRF, including any impact fees that would normally be charged in connection with the issuance of additional water meters, including the 4-inch water meter referenced in Section 11 below.

11. Issuance of 4-inch Water Meter. The City shall not issue Tenant a 4-inch water meter to allow the delivery of the Additional Water to the Factor Property until: (i) the City has received the payment for the Unmetered Water Usage, for the Additional Water, and for the Additional Wastewater Discharges as set forth in Sections 6, 7, and 8 above; (ii) there is Existing Capacity at the 157th Ave WRF; (iii) Tenant has obtained a Discharge Permit; and (iv) all pretreatment facilities identified in the Discharge Permit Tenant is required to obtain pursuant to Section 5 have been completed.

11.1. Upon satisfaction of the foregoing conditions in Section 11 above, the City shall issue approval to construct a 4-inch water for the Factor Property.

11.2. No earlier than November 1, 2023, and subject to Tenant's having submitted and obtained approval of all construction documents required by the City for the construction of a 4-inch water meter, Tenant may elect to begin construction of the 4-inch water meter at risk. The parties understand that this at-risk construction will in no way alter the water and sewer service entitlement adjustments further outlined in Sections 12 and 13 below or the requirements for the issuance of the 4-inch water meter as outline in Section 11 above.

12. City's Commitment to Deliver Interim Water. Tenant shall be entitled to receive up to 85,000 gpd of potable water from the City from the Effective Date until November 1, 2023. Beginning on November 1, 2023, Tenant shall be entitled to receive up to 110,000 gpd of potable water from the City until such time as Tenant has installed a 4-inch water meter subject to the terms set forth in Section 11 above.

13. Entitlement to Additional Water and Additional Wastewater Discharges. Tenant shall be entitled to receive the Additional Water from the City and to deliver the Additional Wastewater Discharges to the 157th Ave WRF, increasing its average daily potable water and sewer service allocations to up to 180,000 gpd and 150,500 gpd, respectively, after all of the following have occurred:

13.1. The City has received the payment for the Unmetered Water Usage,

for the Additional Water, and for the Additional Wastewater Discharges as set forth in Sections 6, 7, and 8 above;

13.2. Tenant has submitted and received approval of the Updated Utility Reports as set forth in Section 4 above;

13.3. Tenant has obtained a Discharge Permit and all pretreatment facilities identified in the Discharge Permit have been completed, unless the Water Services Director has modified the timing for completing the required pretreatment facilities as set forth in Section 5 above;

13.4. Tenant has installed a 4-inch water meter subject to the terms set forth in Section 11 above; and

13.5. There is Existing Capacity available at the city's 157th Ave WRF.

14. Certificate of Occupancy. The City shall not issue Tenant a permanent certificate of occupancy for the Factor Property until all of the following have been satisfied:

14.1. the Updated Utility Reports have been submitted and approved by the City Engineer in accordance with the provisions of Section 4 above;

14.2. Tenant has completed the construction of all infrastructure improvements Tenant is required to construct pursuant to Sections 9.1.1 and 9.1.2 above;

14.3. Tenant has installed a 4-inch water meter subject to the terms of Section 11 above; and

14.4. Tenant has obtained a Discharge Permit and all pretreatment facilities identified in the Discharge Permit as being needed to comply with the requirements of Article 12-A of the Goodyear City Code as it may be amended from time to time have been completed.

Upon the satisfaction of the foregoing conditions, the City shall issue Tenant a permanent certificate of occupancy for the Factor Property.

15. Temporary Certificate of Occupancy. Until the City issues Tenant a permanent certificate of occupancy for the Factor Property pursuant to Section 14 above:

15.1 The City shall allow Tenant to operate under a temporary certificate of occupancy, unless:

15.1.1 Tenant has not obtained a permanent certificate of occupancy for the Factor Property by December 31, 2024; provided, however, that this deadline may be extended by the City Engineer, or his designee, in a written document, which deadline shall be extended upon a showing of good cause for

the delay in completing the requirements for the issuance of a permanent certificate of occupancy, as set forth in Section 14 and all subsections therein, as determined by the City Engineer or his designee.

15.1.2 The temporary certificate of occupancy issued for the Factor Property has been revoked pursuant to the terms of this Agreement.

15.2 If the City determines that Tenant is in breach of its obligations set forth in Sections 4 through 9 above, then the City shall send a written notice of the breach to Tenant and Owner. The City shall not revoke Tenant's temporary certificate of occupancy earlier than thirty (30) days following delivery of such written notice and provided the City may not revoke Tenant's temporary certificate of occupancy if Tenant has then cured any breach claimed by the City to have occurred.

16 Limitation of Water Deliveries. The City's obligation to deliver water to the Factor Property is limited as follows:

16.1 Owner and Tenant agree that the City shall not be required to deliver water to the building constructed on the Factor Property in excess of the average daily demand of 180,000 gpd unless an updated water report is submitted and approved by the City Engineer and all conditions required by the City for providing additional water have been satisfied.

16.2 The conditions required by the City for providing additional water in excess of an average daily demand 180,000 gpd shall be memorialized in an amendment to the Agreement executed by the Parties and approved by the Goodyear City Council and may include payments toward the cost of the additional Water Resources that will be treated to a potable standards and delivered to the Factor Property in excess of an average daily demand 180,000 gpd, a contribution towards the cost of the Water System that will produce the potable water that will be delivered to the Factor Property in excess of an average daily demand of 180,000 gpd, and the construction of additional infrastructure (on-site and off-site) identified in the updated water report as being needed for the City to deliver more than an average daily demand of 180,000 gpd, including peak water demands, and fire flow needs, to the Factor Property.

17 Limitation of Wastewater Discharges. The City's obligation to accept deliveries of wastewater discharges from the Factor Property at the 157th Ave WRF is limited as follows:

17.1 Owner and Tenant agree that the City shall not be required to accept additional wastewater discharges from the building constructed on the Factor Property in excess of average daily discharges of 150,500 gpd unless an updated sewer report is submitted and approved by the City Engineer and all conditions required by the City for accepting additional wastewater discharges have been satisfied.

17.2 The conditions required by the City for accepting additional wastewater discharges in excess of average daily discharges of 150,500 gpd shall be memorialized in an amendment to this Agreement executed by the Parties and approved by the Goodyear City Council and may include a contribution towards the cost of Wastewater System that will treat and dispose of the additional wastewater flows that will be discharged to the 157th Ave WRF in excess of average daily discharges of 150,500 gpd and the construction of additional infrastructure (on-site and off-site) identified in the updated sewer report as being needed for the delivery of the additional wastewater discharges to the 157th Ave WRF from the Factor Property.

18 Enforcement. Because City equipment does not allow the City to decrease water or wastewater flows once meters have been issued, the Parties agree that until the City issues approval to install a 4-inch water meter pursuant to Section 11 above, the City shall be entitled to take all actions required to enforce the limitations on the volume of water delivered to the Factor Property and the volume of wastewater discharged to the 157th Ave WRF from the Factor Property to the volumes set forth in this Agreement as it may be amended, including by way of example, but not limitation, terminating utility services to the Factor Property and revoking temporary certificates of occupancies and permanent certificates of occupancy of the breaching occupants of the Factor Property in the manner provided for in this Agreement. Before terminating utility services, revoking temporary certificates of occupancies, or revoking permanent certificates of occupancy, the City shall provide Owner and the breaching occupant notice of the breach and an opportunity to take actions to cure the breach. The City shall be entitled to take any of the foregoing actions if the breaching occupant fails to cure the breach within thirty (30) days following receipt of written notice, or the time frame agreed to in writing by the City and the breaching occupant or Owner, as applicable.

19 No Owner Obligations. The City acknowledges and agrees that the obligations set forth in Sections 4 through 9 of this Agreement are obligations of Tenant and not of Owner. Under no circumstances will Owner be required to perform the obligations set forth in Sections 4 through 9 of this Agreement or pay any amounts owed or accruing thereunder. Notwithstanding the foregoing, in the event Tenant fails to satisfy or perform its obligations under Sections 4 through 9 of this Agreement, the City shall provide notice to Owner and Owner shall have the right, but not the obligation, to satisfy or perform such obligations on Tenant's behalf.

20 Entire Agreement and Waiver. This Agreement and the exhibits referred to herein and attached hereto, 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; and OWNER HEREBY WAIVES ANY AND ALL CLAIMS OWNER MAY HAVE AGAINST THE CITY, ITS STAFF AND REPRESENTATIVES RELATED TO OR ARISING FROM DISCUSSIONS, COMMUNICATIONS, REPRESENTATIONS AND THE LIKE THAT OCCURRED PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT.

21 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. If an amendment does not affect all of the Owner(s) or Tenant, the Amendment shall be effective when approved by the City Council, signed by the City and affected Owner(s) or Tenant and shall not be binding on any Owner or Tenant that does not sign the Amendment.

22 Covenants Running with the Land. The rights and duties under this Agreement shall be for the benefit of, and a burden upon, the Factor Property except for any portion of the Factor Property conveyed to the City, and the rights and duties under this Agreement shall be covenants running with the land.

23 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.

24 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
1900 North Civic Square
Goodyear, Arizona 85395

The Owner:

Airport Gateway South, LLC
c/o Baker Development Corporation
2222 North Elston Avenue, Suite 100
Chicago, Illinois 60614
Attn: Daniel J. Slack

copy to:

City of Goodyear
Attn: Director of Engineering
1900 North Civic Square
Goodyear, Arizona 85395

copy to:

Berry Riddell LLC
6750 E Camelback Rd., #100
Scottsdale, AZ 85251
Attn: Wendy Riddell

copy to:

City of Goodyear
Attn: City Attorney
1900 North Civic Square
Goodyear, Arizona 85395

The Tenant:

FACTOR75, LLC
Attn: Legal Department
28 Liberty St., 10th Floor
New York, New York 10005
Email: us-legal@hellofresh.com

copy to:

Gammage & Burnham, PLC
Attn. Ashley Marsh, Esq.

40 North Central Avenue, 20th Floor
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. The City shall copy Owner on any notices given by the City to Tenant under this Agreement.

25 **No Agency of Partnership.** Neither City, Tenant, nor Owner are 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, Tenant, and Owner.

26 **Third Parties.** There are no thirty party beneficiaries to this Agreement.

27 **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.

28 **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 or 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 (or such other time period as agreed upon in writing by the Parties) and cures such deficiencies within a reasonable time thereafter.

29 **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.

30 **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 30 shall survive the expiration or earlier termination of this Agreement.

31 **WAIVER OF JURY TRIAL.** UNLESS EXPRESSLY PROHIBITED BY LAW, EACH OF THE CITY, TENANT 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 31 waiving the right to a jury trial shall survive the expiration or earlier termination of this Agreement.

32 **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 32 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.

33 **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.

34 **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 34 shall survive the expiration or earlier termination of this Agreement.

35 **Choice of Law, Venue and Attorneys' 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 35 shall survive the expiration or earlier termination of this Agreement.

36 **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; and all provisions waiving claims. 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 36 to other provisions in the Agreement.

37 **Pronouns.** All pronouns contained herein, and any variations thereof, shall be deemed to refer to the masculine, feminine or neutral, singular or plural, as to the identity of the parties hereto may require.

38 **Recording.** No later than ten (10) days after this Agreement has been executed by the City, Owner, and Tenant, it shall be recorded by the City in the official records of Maricopa County, Arizona. The City shall only record this Agreement against the Factor Property, and not against the South Property, notwithstanding references in this Agreement to the Property and the South Property.

39 **Authority.** The Parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement and the individuals signing on behalf of each Party is duly authority to bind such Party.

40 **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 and Tenant shall deliver an original to the City for recordation in the Official Records of Maricopa County.

41 **Page Numbering.** The page numbering of this Agreement is exclusive of the Exhibit 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 of the Parties Appear on the Following Pages]

CITY OF GOODYEAR,
an Arizona municipal corporation:

By: Wynette Reed
Its: City Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument 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 of the municipal corporation.

Notary Public

My Commission Expires: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

OWNER:

AIRPORT GATEWAY SOUTH PROPERTY LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument entitled Development Agreement for Airport Gateway South consisting of ____ total pages was acknowledged before me this ____ day of _____, 2023, by _____, _____ who acknowledged that he signed the foregoing instrument on behalf of the Owner.

Notary Public

My Commission Expires:

TENANT:

Name

FACTOR75, LLC, a Delaware limited liability company

By: _____
Name

Its: _____

STATE OF _____)
County of _____) ss.

The foregoing instrument entitled Development Agreement for Airport Gateway South consisting of ____ total pages was acknowledged before me this ____ day of _____ 2023, by _____, _____ who acknowledged that he signed the foregoing instrument on behalf of the Tenant.

Notary Public

My Commission Expires:

LENDER CONSENT:

The undersigned, as beneficiary under that certain deed of trust and fixture filing recorded in the official records of Maricopa County, AZ at Document No. [ENTER RECORDING INFORMATION], dated April 13, 2021, encumbering all or part of the Factor Property, hereby expressly consents to and joins in the execution and recording of this Development Agreement for Airport Gateway South. The undersigned represents that he or she has full power and authority to execute this Lender's consent on behalf o the lender, as beneficiary under that certain deed of trust and fixture filing recorded in the official records of Maricopa County, AZ at Document No. [ENTER RECORDING INFORMATION].

[BANK NAME]

By: _____

Name: _____

Its: _____

Dated: _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument entitled Development Agreement for Airport Gateway South consisting of ____ total pages was acknowledged before me this ____ day of _____ 2023, by _____, _____ who acknowledged that he signed the foregoing instrument on behalf of the Lender.

Notary Public

My Commission Expires:

EXHIBIT A

Legal Description of the Factor Property

Lot 6B-2 of the Minor Land Division for Airport Gateway South, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona in Book 1696 of Maps, Page 4 (Instrument 2022-0724154).