

## **RESOLUTION NO. 2025-2483**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR FULTON HOMES AT BALLPARK VILLAGE.

WHEREAS, Fulton Homes Corporation, an Arizona corporation (“Fulton Homes”) owns approximately 156 acres of land generally located at the southeast corner of S. Estrella Parkway and W. Yuma Road commonly known as Fulton Homes at Ballpark Village (the “Property”); and

WHEREAS, on April 18, 2022, the Mayor and City Council adopted Ordinance No. 2022-1535, re-zoning the Property to the Planned Area Development (PAD) Zoning District to be developed in accordance with the Fulton Homes at Ballpark Village Planned Area Development as amended by the stipulations of approval set forth in Ordinance No. 2022-1535; and

WHEREAS, on January 23, 2023, the Mayor and City Council adopted Ordinance No. 2023-1567, amending the PAD Zoning District for the Property to be developed in accordance with the Fulton Homes at Ballpark Village 1st Amended PAD as amended by the stipulations set forth in Ordinance No. 2023-1567; and

WHEREAS, Fulton Homes, as the owner of the Property, is required to dedicate various property interests, construct various infrastructure improvements unless constructed by others and make various in-lieu payments; and

WHEREAS, the City is desirous of minimizing scalloped streets and of avoiding disruptions to the traveling public that result from the piecemeal construction of major arterials such as W. Yuma Road; and

WHEREAS, Fulton Homes is willing to construct various improvements including a bridge or culvert over Bullard Wash on W. Yuma Road, a full traffic signal at the intersection of W. Yuma Road and S. Goodyear Boulevard East and road improvements to sections of Yuma Road that are not along the frontage of its Property subject to the City funding all or portions of the construction of such improvements; and

WHEREAS, on April 10, 2023, the Mayor and City Council adopted Resolution No. 2023-2302 and entered into a Development Agreement for Fulton Homes at Ballpark Village, recorded in the official records of Maricopa County Recorder as Document No. 2023-0187535 (the “Original Agreement”); and

WHEREAS, the Original Agreement intended to address Fulton Homes’ and the City’s obligations with respect to the required improvements to W. Yuma Road, the bridge or culvert over the Bullard Wash, and the traffic signal at the intersection of W. Yuma Road and S. Goodyear Boulevard East and the City’s obligation to reimburse Fulton Homes for a portion of the costs incurred in constructing such improvements after the improvements were constructed; and

WHEREAS, certain costs related to the required improvements to W. Yuma Road, the bridge or culvert over the Bullard Wash, and the traffic signal at the intersection of W. Yuma Road and S. Goodyear Boulevard East have increased significantly since Fulton Homes and the City entered into the Original Agreement; and

WHEREAS, Fulton Homes and the City now desire to amend and restate the Original Agreement in its entirety in order to establish a more appropriate means to provide for the funding and construction of the infrastructure improvements in the Amended and Restated Development Agreement for Fulton Homes At Ballpark Village; and

WHEREAS, the Amended and Restated Development Agreement for Fulton Homes At Ballpark Village will now require the City and Fulton Homes to fund an escrow account that will be used to disburse amounts for the construction of the infrastructure improvements; and

WHEREAS, Fulton Homes and the City intend the Amended and Restated Development Agreement for Fulton Homes At Ballpark Village to be a development agreement within the meaning of A.R.S. § 9-500.05 that binds Fulton Homes and all future owners of all or any portion of the Property.

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

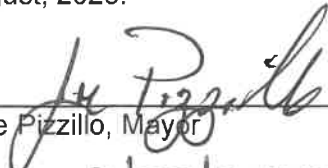
SECTION 1. The Mayor and Council of the city of Goodyear find the approval of the Amended and Restated Development Agreement for Fulton Homes At Ballpark Village, a copy of which is attached hereto as Exhibit 1 and incorporated herein by this reference, to be in the best interest of the City of Goodyear, and hereby approve the Amended and Restated Development Agreement for Fulton Homes At Ballpark Village.

SECTION 2. The City Manager or designee is hereby authorized and directed to execute the Amended and Restated Development Agreement for Fulton Homes At Ballpark Village attached hereto as Exhibit 1.

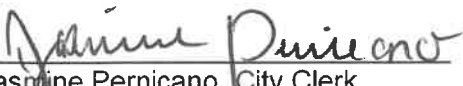
SECTION 3. The City Manager or designee is hereby authorized and directed to take any and all actions and to execute all the documents necessary to carry out the intent of this Resolution and the terms of the Amended and Restated Development Agreement for Fulton Homes At Ballpark Village.

SECTION 4. Unless referred to the voters as provided by law, Resolution 2025-2483 shall be effective thirty (30) days after its adoption by the Mayor and Council of the City of Goodyear. If referred to the voters, Resolution 2025-2483 shall become effective as provided by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, by a 7-0 vote, this 25th day of August, 2025.

  
\_\_\_\_\_  
Joe Pizzillo, Mayor  
Date: 8/27/2025

ATTEST:

  
\_\_\_\_\_  
Jasmine Pernicano, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Roric Massey, City Attorney



Exhibit 1

Amended and Restated Development Agreement for Fulton Homes at Ballpark Village

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

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT  
FOR  
FULTON HOMES AT BALLPARK VILLAGE**

This Amended and Restated Development Agreement for Fulton Homes at Ballpark Village (the “Agreement”) by and between Fulton Homes Corporation, an Arizona corporation (“Owner”) and the City of Goodyear, an Arizona municipal corporation (“City”) is entered into this \_\_\_\_ day of August, 2025.

**RECITALS**

A. WHEREAS, Owner owns approximately 156 acres of land generally located at the southeast corner of S. Estrella Parkway and W. Yuma Road commonly known as Fulton Homes at Ballpark Village as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference as if fully set forth herein (the “Property”).

B. WHEREAS, on April 18, 2022, the Mayor and City Council adopted Ordinance No. 2022-1535, re-zoning the Property to the Planned Area Development (PAD) Zoning District to be developed in accordance with the Fulton Homes at Ballpark Village Planned Area Development (March 2022) as amended by the conditions and stipulations of approval set forth in Ordinance No. 2022-1535.

C. WHEREAS, on January 23, 2023, the Mayor and City Council adopted Ordinance No. 2023-1567, amending the Planned Area Development (PAD) Zoning District for the Property to be developed in accordance with the Fulton Homes at Ballpark Village 1<sup>st</sup> Amended Planned Area Development (January 2023) as amended by the conditions and stipulations of approval set forth in Ordinance No. 2023-1567.

D. WHEREAS, pursuant to the terms of Ordinance No. 2023-1567, the Owner of the Property is required to dedicate various property interests, construct various infrastructure improvements unless constructed by others, and make various in-lieu payments including, but not limited to, the following:

- a. Owner is required to construct full half-street improvements for the south-half of the section of W. Yuma Road along or adjacent to the frontage of the Property required for a Scenic Arterial, as set forth in the Engineering Design Standards in effect when the improvements are constructed, except for the construction of

½ the median and ½ median landscaping, including, but not limited to, pavement, curb and gutter, sidewalks, street frontage landscape and landscape irrigation, and street lighting.

- b. If the W. Yuma Road improvements described above have been completed or are being completed by the others when development occurs on the Property, Owner is required to remit a reimbursement payment for the costs incurred in the design and construction of the W. Yuma Road improvements or the City Engineer's estimated costs of the W. Yuma Road improvements if the improvements have not been completed.
- c. If requested by the City, Owner is required to construct full median with full median landscaping within the section of W. Yuma Road along or adjacent to the frontage of the Property subject to the City's reimbursement to Owner for 50% of the cost of constructing the full median with full median landscaping.
- d. Unless Owner constructs the full median with full median landscaping within the section of W. Yuma Road along the frontage of the Property, Owner is required to remit to the City an in-lieu payment for one-half the cost of a full median and one-half the cost of full-median landscaping for the median within the section of W. Yuma Road along or adjacent to the frontage of the Property, based on the actual cost incurred if previously constructed by others, or based on the City Engineer's estimated cost.
- e. Owner is required to either construct the full traffic signal, or remit to the City an in-lieu payment for a proportionate share of the costs of the full traffic signal at the intersection at W. Yuma Road and S. Goodyear Boulevard East. Owner is responsible for the costs of 50% of the full traffic signal (four legs) or for constructing the full traffic signal subject to a reimbursement from the City of 50% of the cost of the full traffic signal.
- f. Owner is required to relocate or replace existing traffic signal improvements (the existing pole and mast arm) to its ultimate locations at the southeast corner of the intersection of S. Estrella Parkway and W. Yuma Road and to make any necessary modifications to mast arm, pedestrian push button poles, ADA ramps, or other improvements impacted by widening of W. Yuma Road and S. Estrella Parkway to their ultimate configurations.
- g. Unless Owner constructs a bridge or culvert over Bullard Wash on W. Yuma Road pursuant to the terms of a development agreement with the City, Owner is required to remit an in-lieu payment representing 25% of the full cost of the bridge or culvert.

E. WHEREAS, the City is desirous of minimizing scalloped streets and of avoiding disruptions to the traveling public that results from the piecemeal construction of major arterials such as W. Yuma Road.

F. WHEREAS, subject to the terms and conditions set forth in this Agreement, Owner is willing to undertake the construction of certain infrastructure improvements for which Owner would not be responsible for constructing and/or for which Owner is only partially responsible.

G. WHEREAS, this Agreement is intended to address the Parties' obligations with respect to the required improvements to W. Yuma Road, the bridge or culvert over the Bullard Wash, and the traffic signal at the intersection of W. Yuma Road/S. Goodyear Boulevard East.

H. WHEREAS, for that purpose, the Parties previously entered into that certain Development Agreement for Fulton Homes at Ballpark Village dated April 10, 2023, recorded in the official records of the Maricopa County, Arizona Recorder as Document No. 2023-0187535 (the "Original Agreement").

I. WHEREAS, the Parties now desire to amend and restate the Original Agreement in its entirety in order to establish a more appropriate means to provide for the funding and construction of the subject infrastructure improvements.

J. WHEREAS, the Parties 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. "Bullard Wash" means the approximate three hundred foot (300') wide strip of land owned by the City that intersects with W. Yuma Road and contains the Bullard Wash drainage feature.

2.2. "City's Yuma Road Improvements" means; (i) the full half-street improvements for the north half of the section of W. Yuma Road from the west side of the intersection with S. Goodyear Boulevard East (including the intersection) to the centerline of the Bullard Wash, and (ii) full street improvements (both the north and south sides of W. Yuma Road) for the section of W. Yuma Road from the centerline of the Bullard Wash to approximately 550 feet (550') east of the centerline of the Bullard Wash, required for a scenic arterial as set forth in the Engineering Design Standards (as defined below) in effect when the improvements are constructed, including but not limited to the median and median landscaping, pavement, curb and gutter, sidewalks, street frontage landscape and landscape irrigation, and street lighting. The City's Yuma Road Improvements also include the relocation of utilities as may be needed, as well as

City's pro-rata share of the associated Design Costs (as defined below). The City's Yuma Road Improvements are included in the Final Plans – Yuma Road Improvements (as defined below). The City's Yuma Road Improvements represent the portion of the W. Yuma Road improvements attributable to the Centerra Village property, as well as the properties at the southeast corner and the northeast corner of W. Yuma Road and the Bullard Wash.

2.3. “Design Costs” means all consultant, design, bonding and warranty costs incurred by Owner associated with the Escrow Funded Improvements (as defined below).

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 (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 (the “Engineering Design Standards”) 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. “Escrow Agent” means a qualified escrow agent from a title insurance company with a local office, mutually agreed upon by Owner and City.

2.6. “Escrow Funded Improvements” means; (i) the Fulton Homes Yuma Road Improvements – Phase 2 (as defined below), (ii) the City's Yuma Road Improvements, (iii) the Yuma Road Bridge (as defined below), and (iv) the Goodyear Blvd/Yuma Road Traffic Signal (as defined below), all of which are subject to the funding requirements in Section 8 of this agreement.

2.7. “Final Cost Estimate” means the updated Preliminary Cost Estimate (as defined below) approved by the City Engineer or his/her designee as set forth in Section 6.6 below.

2.8. “Final Plans – Goodyear Blvd/Yuma Road Traffic Signal” means the City approved final construction plans for the Goodyear Blvd/Yuma Road Traffic Signal (as defined below), which shall generally be in conformance with the improvement plans titled Yuma Rd & 153<sup>rd</sup> Ave Traffic Signal Plan, prepared by Wright Engineering Corporation and dated October 14, 2024.

2.9. “Final Plans - Yuma Road Improvements” means the final construction plans for the improvements to W. Yuma Road consisting of; (i) the City's Yuma Road Improvements, (ii) the Yuma Road Bridge (as defined below), and (iii) the Fulton Homes Yuma Road Improvements – Phase 2 (as defined below), prepared by EPS Group and approved by the City in February 2025, a detailed list of which is attached hereto as **Exhibit B** and incorporated herein by this reference. The Final Plans – Yuma Road Improvements and the Final Plans – Goodyear Blvd/Yuma Road Traffic Signal are collectively referred to herein as the “Final Plans”.

2.10. “Fulton Homes Yuma Road Improvements – Phase 1” means the full half-street improvements for the south-half of the section of W. Yuma Road along or adjacent to the frontage of the Property between S. Estrella Parkway and the east side of the intersection with S. Goodyear Boulevard East (including the intersection) required for a scenic arterial as set forth in the Engineering Design Standards in effect when the improvements are constructed, except for the construction of ½ the median and ½ median landscaping, including, but not limited to, pavement, curb and gutter, sidewalks, street frontage landscape and landscape irrigation, and street lighting. The Fulton Homes Yuma Road Improvements – Phase 1 also includes the relocation of utilities, including undergrounding of utilities (as may be required) and the relocation of existing traffic signal infrastructure at the intersection of S. Estrella Parkway and W. Yuma Road, as may be needed for the construction of the full street improvements (north half and south half) for the section of W. Yuma Road from S. Estrella Parkway to the east side of the intersection with S. Goodyear Boulevard East (including the intersection) required for a scenic arterial. The Fulton Homes Yuma Road Improvements – Phase 1 are not included in the Final Plans – Yuma Road Improvements.

2.11. “Fulton Homes Yuma Road Improvements – Phase 2” means the full half-street improvements for the south-half of the section of W. Yuma Road along or adjacent to the frontage of the Property from the east side of the intersection with S. Goodyear Boulevard East to the centerline of the Bullard Wash for a scenic arterial as set forth in the Engineering Design Standards in effect when the improvements are constructed including, but not limited to the construction of ½ the median and ½ median landscaping, pavement, curb and gutter, sidewalks, street frontage landscape and landscape irrigation, and street lighting. The Fulton Homes Yuma Road Improvements – Phase 2 also includes the relocation of utilities as may be needed for the construction of the full half-street improvements for south-half of the section of W. Yuma Road from the east side of the intersection with S. Goodyear Boulevard East to the centerline of the Bullard Wash required for a scenic arterial, as well as Owner’s pro-rata share of the associated Design Costs. The Fulton Homes Yuma Road Improvements – Phase 2 are included in the Final Plans – Yuma Road Improvements.

2.12. “Goodyear Blvd/Yuma Road Traffic Signal” means a full traffic signal (traffic signal improvements at all four corners of the intersection) at the intersection of the S. Goodyear Boulevard East alignment and W. Yuma Road as required in the Engineering Design Standards in effect when the traffic signal is constructed, including all associated utility relocations and Design Costs. The Goodyear Blvd/Yuma Road Traffic Signal is not included in the Final Plans – Yuma Road Improvements but rather the Final Plans – Goodyear Blvd/Yuma Road Traffic Signal.

2.13. “Parties” means Owner and the City collectively.

2.14. “Party” means Owner or the City individually.

2.15. “Phase 1A Property” means the portion of the Property identified as Phase 1A in Sheet 1 of the Fulton Homes Ballpark Village Phasing Plan, attached hereto as **Exhibit C**, which is the area in red.

2.16. “Phase 1B Property” means the portion of the Property identified as Phase 1B in Sheet 1 of the Fulton Homes Ballpark Village Phasing Plan, attached hereto as **Exhibit C**, which is the area in light blue.

2.17. “Phase 2 Property” means the portion of the Property identified as Phase 2 in Sheet 1 of the Fulton Homes Ballpark Village Phasing Plan, attached hereto as **Exhibit C**, which is the area in yellow.

2.18. “Phase 3 Property” means the portion of the Property identified as Phase 3 in Sheet 1 of the Fulton Homes Ballpark Village Phasing Plan, attached hereto as **Exhibit C**, which is the area in green.

2.19. “Preliminary Cost Estimate” means the Yuma Road Improvements Cost Estimate prepared by EPS Group, dated February 26, 2025, a copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference as if fully set forth herein. The Preliminary Cost Estimate outlines the current estimated Design Costs and construction costs of the Escrow Funded Improvements.

2.20. “Successors and Assigns” means any person or entity that succeeds to or is assigned any interest in all or part of the Property except as provided in Section 13 below.

2.21. “Yuma Road Bridge” means; (i) an arch culvert crossing over the Bullard Wash on W. Yuma Road that can convey up to the 100-year peak flow under W. Yuma Road, that is designed to meet the minimum City standards applicable to such structures and the drainage standards in effect at the time of development, and (ii) the associated temporary bypass road, grading/earthworks, headwalls, 20 foot (20’) wide trail, riprap/shotcrete, and low flow channels within the Bullard Wash. The Yuma Road Bridge also includes the relocation of utilities as may be needed, as well as the associated pro-rata share of the Design Costs (including LOMR costs). The Yuma Road Bridge is included in the Final Plans – Yuma Road Improvements.

3. **EFFECTIVE DATE.** The execution of this Agreement by the Parties and the approval of this Agreement by Resolution of the City Council as provided in Section 26 below 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.”

4. **EXPIRATION DATE.** This Agreement shall expire after the obligations of the Parties have been fully satisfied, at which time the Parties shall execute and cause to be recorded a formal termination of this Agreement following the written request by Owner. Notwithstanding the foregoing, this Agreement may be terminated earlier upon the mutual agreement, in writing, executed by the Parties.

## **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 City Council, and/or any other written agreement between the City and Owner approved by the Mayor and City Council, 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 City Council, and/or any other written agreement between the City and Owner approved by the Mayor and City Council, 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. **OWNER'S SPECIFIC OBLIGATIONS.** The following specific obligations apply to the development of the Property with respect to Owner's obligations for the Fulton Homes Yuma Road Improvements – Phase 1 (including the traffic signal at the intersection of W. Yuma Road/S. Estrella Parkway) and the Escrow Funded Improvements:

6.1. **FULTON HOMES YUMA ROAD IMPROVEMENTS – PHASE 1.** Owner's obligations for the Fulton Homes Yuma Road Improvements – Phase 1 are as follows:

6.1.1. Owner shall, at no cost to the City, convey to the City as right-of-way via a recorded plat or special warranty deed, the portion of the Property needed for construction of the Fulton Homes Yuma Road Improvements – Phase 1. The conveyance required herein shall be in fee, lien free, and free of all encumbrances unless expressly consented to by the City Engineer or his/her designee. The conveyance required herein shall be made prior to Owner causing the construction of the Fulton Homes Yuma Road Improvements – Phase 1 or upon the written request by the City, whichever is earlier.

6.1.2. Unless constructed or being constructed by others, Owner shall, at Owner's sole cost and expense, cause the construction of the Fulton Homes Yuma Road Improvements – Phase 1. Owner shall cause the construction of the Fulton Homes Yuma Road Improvements – Phase 1 as part of the off-site public infrastructure improvements that are required to be constructed with an approved and recorded final plat that includes all or part of the Phase 1A Property or the Phase 1B Property. Except for model homes, no temporary certificates of occupancy, permanent certificates of occupancy or certificates of completion shall be issued for any building located within the Phase 1A Property, Phase 1B Property or the Phase 2 Property until the Fulton Homes Yuma Road Improvements – Phase 1 have been completed and accepted

by the City Engineer or his/her designee, subject to completion of the two-year warranty period. The Fulton Homes Yuma Road Improvements – Phase 1 are not included in the Final Plans – Yuma Road Improvements and are not subject to the funding requirements of Section 8 below.

6.1.3. Owner shall remit an in-lieu payment for one-half the cost of a full median and one-half the cost of full-median landscaping for the median within the section of W. Yuma Road along or adjacent to the frontage of the Property between S. Estrella Parkway and the west side of the intersection with S. Goodyear Boulevard East. The in-lieu payment shall be one-half the actual costs incurred in the design and construction of the full median and full median landscaping if such improvements have been completed or the City Engineer's estimated costs of the improvements if the improvements have not been completed. The in-lieu payment required herein shall be paid prior to the recordation of the first final plat including all or part of the Phase 1A Property, or the Phase 1B Property or Phase 2 Property or the issuance of construction permits for work within the Phase 1A Property, or the Phase 1B Property, whichever is earlier.

6.1.4. If the Fulton Homes Yuma Road Improvements – Phase 1 have been constructed or are being constructed by others when Owner seeks to record a final plat that includes all or part of the Phase 1A Property, or the Phase 1B Property, Owner shall remit an in-lieu payment for one hundred percent (100%) of the cost of the Fulton Homes Yuma Road Improvements – Phase 1. The in-lieu payment shall be the actual costs incurred in the design and construction of the Fulton Homes Yuma Road Improvements – Phase 1 if such improvements have been completed or the City Engineer's estimated costs of the improvements if the improvements have not been completed. The in-lieu payment required herein shall be paid prior to the recordation of the first final plat that includes any part of the Phase 1A Property, or the Phase 1B Property.

6.1.5. Unless the Fulton Homes Yuma Road Improvements – Phase 1 have been constructed or are being constructed by others, prior to recording a final plat that includes all or part of the Phase 1A Property, Phase 1B Property or all of the Phase 2 Property, Owner shall provide financial assurances in the full amount of the estimated cost of the Fulton Homes Yuma Road Improvements – Phase 1 and the financial assurances shall be in a form as required by the City of Goodyear Engineering Design Standards and Policies in effect at the time of plat recordation.

6.2. FULTON HOMES YUMA ROAD IMPROVEMENTS – PHASE 2. Owner's obligations for the Fulton Homes Yuma Road Improvements – Phase 2 are as follows:

6.2.1. Owner shall, at no cost to the City, convey to the City as right-of-way via a recorded plat or special warranty deed, the portion of the Property needed for construction of the Fulton Homes Yuma Road Improvements – Phase 2. The conveyance required herein shall be in fee, lien free, and free of all encumbrances unless expressly consented to by the City Engineer or his/her designee. The conveyance required herein shall be made prior to Owner causing the construction of the Fulton Homes Yuma Road Improvements – Phase 2 or upon the written request by the City, whichever is earlier.

6.2.2. Unless constructed or being constructed by others, Owner shall, at Owner's sole cost and expense, cause the construction of the Fulton Homes Yuma Road

Improvements – Phase 2. Owner shall cause the construction of the Fulton Homes Yuma Road Improvements – Phase 2 pursuant to the Final Plans – Yuma Road Improvements as part of the off-site public infrastructure improvements that are required to be constructed with an approved and recorded final plat that includes all or part of the Phase 2 Property and/or the Phase 3 Property. No residential building permits shall be issued (i) for more than fifty percent (50%) of the lots within the Phase 2 Property and (ii) within all of the Phase 3 Property, until the Fulton Homes Yuma Road Improvements – Phase 2 have been completed and accepted by the City Engineer or his/her designee subject to completion of the two-year warranty period. If the Owner submits a revised phasing plan which subdivides the Phase 2 Property, no residential building permits shall be issued within any new phase or combination of phases of the subdivided Phase 2 Property that, individually or collectively, include more than fifty percent (50%) of the total lots within the Phase 2 Property until the Fulton Homes Yuma Road Improvements – Phase 2 have been completed and accepted by the City Engineer or his/her designee subject to completion of the two-year warranty period. The Fulton Homes Yuma Road Improvements – Phase 2 are included in the Final Plans – Yuma Road Improvements and are subject to the funding requirements of Section 8 below.

6.2.3. If the Fulton Homes Yuma Road Improvements – Phase 2 have been constructed or are being constructed by others when Owner seeks to record a final plat that includes all or part of the Phase 2 Property and/or the Phase 3 Property, Owner shall remit an in-lieu payment for one hundred percent (100%) of the cost of the Fulton Homes Yuma Road Improvements – Phase 2. The in-lieu payment shall be the actual costs incurred in the design and construction of the Fulton Homes Yuma Road Improvements - Phase 2 if such improvements have been completed or the estimated costs of the improvements as reflected in the Preliminary Cost Estimate if the improvements have not been completed. The in-lieu payment required herein shall be paid prior to the recordation of the first final plat that includes any part of the Phase 2 Property and/or the Phase 3 Property.

6.2.4. Unless the Fulton Homes Yuma Road Improvements – Phase 2 have been constructed or are being constructed by others, prior to recording a final plat that includes all or part of the Phase 2 Property and/or Phase 3 Property, Owner shall provide financial assurances in the full amount of the estimated cost of the Fulton Homes Yuma Road Improvements – Phase 2 as reflected in the Preliminary Cost Estimate, which shall be in a form as required by the City of Goodyear Engineering Design Standards and Policies in effect at the time of plat recordation. In the event Owner has satisfied the funding requirements for the Fulton Homes Yuma Road Improvements – Phase 2 outlined in Section 8 below prior to recording a final plat that includes all or a part of the Phase 2 Property and/or the Phase 3 Property, such funding shall constitute the required financial assurances for the Fulton Homes Yuma Road Improvements – Phase 2.

6.3. CITY'S YUMA ROAD IMPROVEMENTS. Owner's obligations for the City's Yuma Road Improvements are as follows:

6.3.1. Unless constructed, being constructed by others, or the City is unable to secure the necessary temporary construction easements outside of the boundaries of the Property needed for the construction of the City's Yuma Road Improvements pursuant to Section 7.1 below, Owner shall cause the construction of the City's Yuma Road Improvements pursuant

to the Final Plans - Yuma Road Improvements. Except as otherwise provided in this Agreement, Owner shall cause the construction of the City's Yuma Road Improvements as part of the off-site public infrastructure improvements that are required to be constructed with an approved and recorded final plat that includes all or part of the Phase 2 Property and/or Phase 3 Property. No residential building permits shall be issued (i) for more than fifty percent (50%) of the lots within the Phase 2 Property and (ii) within all of the Phase 3 Property, until the City's Yuma Road Improvements have been completed and accepted by the City Engineer or his/her designee subject to completion of the two-year warranty period. If the Owner submits a revised phasing plan which subdivides the Phase 2 Property, no residential building permits shall be issued within any new phase or combination of phases of the subdivided Phase 2 Property that, individually or collectively, include more than fifty percent (50%) of the total lots within the Phase 2 Property until the City's Yuma Road Improvements have been completed and accepted by the City Engineer or his/her designee subject to completion of the two-year warranty period. The City's Yuma Road Improvements are included in the Final Plans – Yuma Road Improvements and are subject to the funding requirements of Section 8 below.

6.4. YUMA ROAD BRIDGE. Owner's obligations for the Yuma Road Bridge are as follows:

6.4.1. Unless constructed, being constructed by others, or the City is unable to secure the necessary temporary construction easements outside of the boundaries of the Property pursuant to Section 7.1 below, Owner shall cause the construction of the Yuma Road Bridge pursuant to the Final Plans – Yuma Road Improvements. Except as otherwise provided in this Agreement, Owner shall cause the construction of the Yuma Road Bridge as part of the off-site public infrastructure improvements that are required to be constructed with an approved and recorded final plat that includes all or part of the Phase 2 Property and/or the Phase 3 Property. No residential building permits shall be issued (i) for more than fifty percent (50%) of the lots within the Phase 2 Property and (ii) within all of the Phase 3 Property, until the Yuma Road Bridge has been completed and accepted by the City Engineer or his/her designee subject to completion of the two-year warranty period. If the Owner submits a revised phasing plan which subdivides the Phase 2 Property, no residential building permits shall be issued within any new phase or combination of phases of the subdivided Phase 2 Property that, individually or collectively, include more than fifty percent (50%) of the total lots within the Phase 2 Property until the Yuma Road Bridge has been completed and accepted by the City Engineer or his/her designee subject to completion of the two-year warranty period. The Yuma Road Bridge is included in the Final Plans – Yuma Road Improvements and is subject to the funding requirements of Section 8 below.

6.4.2. If the Yuma Road Bridge has been constructed, is being constructed by others, or the City is unable to secure the necessary temporary construction easements outside of the boundaries of the Property pursuant to Section 7.1 below when Owner seeks to record a final plat that includes all or part of the Phase 2 Property and/or the Phase 3 Property, Owner shall remit an in-lieu payment for the cost of the Yuma Road Bridge. The in-lieu payment shall be twenty-five percent (25%) of the actual costs incurred in the design and construction of the Yuma Road Bridge if it has been completed or the estimated costs of the improvements as reflected in the Preliminary Cost Estimate if it has not been completed. The in-lieu payment required herein

shall be paid prior to the recordation of the first final plat that includes any part of the Phase 2 Property and/or the Phase 3 Property.

6.4.3. Unless the Yuma Road Bridge has been constructed, is being constructed by others, or Owner is relieved of the obligations to cause the construction of the Yuma Road Bridge pursuant to Section 7.1 below, prior to recording a final plat that includes all or part of the Phase 2 Property and/or Phase 3 Property, Owner shall provide financial assurances in the amount of 25% of the estimated cost of the Yuma Road Bridge as reflected in the Preliminary Cost Estimate, which shall be in a form as required by the City of Goodyear Engineering Design Standards and Policies in effect at the time of plat recordation. In the event Owner has satisfied the funding requirements for the Yuma Road Bridge outlined in Section 8 below prior to recording a final plat that includes all or a part of the Phase 2 Property and/or the Phase 3 Property, such funding shall constitute the required financial assurances for the Yuma Road Bridge.

6.5. GOODYEAR BLVD/YUMA ROAD TRAFFIC SIGNAL. Owner's obligations for the Goodyear Blvd/Yuma Road Traffic Signal are as follows:

6.5.1. Owner shall, at no cost to the City, convey to the City as right-of-way via a recorded plat or special warranty deed, the portion of the Property needed for construction of the Goodyear Blvd/Yuma Road Traffic Signal. The conveyance required herein shall be in fee, lien free, and free of all encumbrances unless expressly consented to by the City Engineer or his/her designee. The conveyance required herein shall be made prior to Owner's construction of the Goodyear Blvd/Yuma Road Traffic Signal or upon the written request by the City, whichever is earlier.

6.5.2. Unless constructed, being constructed by others, or the City is unable to secure the necessary temporary construction easements outside of the boundaries of the Property pursuant to Section 7.1 below, Owner shall cause the construction of the Goodyear Blvd/Yuma Road Traffic Signal pursuant to the Final Plans - Goodyear Blvd/Yuma Road Traffic Signal approved by the City. No residential building permits shall be issued for any lots located within the Phase 2 Property and/or the Phase 3 Property until the Goodyear Blvd/Yuma Road Traffic Signal has been completed and accepted by the City Engineer or his/her designee subject to the completion of the two year warranty period. . The Goodyear Blvd/Yuma Road Traffic Signal is subject to the funding requirements of Section 8 below.

6.5.3. If the Goodyear Blvd/Yuma Road Traffic Signal has been constructed, is being constructed by others, or the City is unable to secure the necessary temporary construction easements outside of the boundaries of the Property pursuant to Section 7.1 below when Owner is required to cause the construction of the Goodyear Blvd/Yuma Road Traffic Signal, Owner shall remit an in-lieu payment to City for fifty percent (50%) of the cost of the Goodyear Blvd/Yuma Road Traffic Signal. The in-lieu payment shall be the actual costs incurred in the design and construction of the Goodyear Blvd/Yuma Road Traffic Signal if such improvements have been completed or the estimated costs of the improvements as reflected in the Preliminary Cost Estimate if the improvements have not been completed. The in-lieu payment required herein shall be paid prior to the recordation of the first final plat that includes any part of the Phase 2 Property or Phase 3 Property.

6.5.4. Unless the Goodyear Blvd/Yuma Road Traffic Signal has been constructed, is being constructed by others, or Owner is relieved of the obligations to cause the construction of the Goodyear Blvd/Yuma Road Traffic Signal pursuant to Section 7.1, Owner shall provide financial assurances in the amount of 50% of the estimated cost of the Goodyear Blvd/Yuma Road Traffic Signal as reflected in the Preliminary Cost Estimate, which shall be in a form as required by the City of Goodyear Engineering Design Standards and Policies in effect when a permit for the construction of the Goodyear Blvd/Yuma Road Traffic Signal is issued. In the event Owner has satisfied the funding requirements for the Goodyear Blvd/Yuma Road Traffic Signal outlined in Section 8 below prior to recording a final plat that includes all or a part of the Phase 2 Property and/or the Phase 3 Property, such funding shall constitute the required financial assurances for the Goodyear Blvd/Yuma Road Traffic Signal.

6.6. FINAL COST ESTIMATE. Prior to City's issuance of permits for construction of the Escrow Funded Improvements, City and Owner shall agree upon the final estimated costs of the Escrow Funded Improvements as follows:

6.6.1. Owner shall update the Preliminary Cost Estimate to reflect the estimated cost of the Escrow Funded Improvements based on general contractor bid(s) on the Final Plans (the "Final Cost Estimate"). The Preliminary Cost Estimate shall not be updated to the Final Cost Estimate until Owner has a firm and guaranteed quote for the cost of the Escrow Funded Improvements from a general contractor mutually agreed upon by the Parties (the "Selected General Contractor"). To be eligible for any funding by City pursuant to the requirements of Section 8 below, Owner shall comply with all applicable state laws governing the procurement of services related to the design, installation, and/or construction of public infrastructure for which City funds are sought, including the requirements of Title 34 of the Arizona Revised Statutes. The Parties agree to cooperate to ensure compliance with the requirements of Title 34. The Parties hereby acknowledge that the Design Costs included in the Final Cost Estimate will not be based on bids from general contractors. Owner has already incurred the majority of the Design Costs and will incur additional Design Costs prior to and during construction of the Escrow Funded Improvements.

6.6.2. The Final Cost Estimate shall include a separate, additional twenty percent (20%) contingency amount to cover unanticipated additional costs, including but not limited to, change orders, resulting from unexpected, yet required improvements not shown on the Final Plans (the "Contingency Amount"). All change orders and/or additional costs incurred in the construction of the Escrow Funded Improvements, which will be funded under the Contingency Amount, shall require review and approval of the Owner and the City Engineer or his/her designee, which approval shall not be unreasonably withheld.

6.6.3. Within thirty (30) days of the date Owner submits the Final Cost Estimate to the City, it must be reviewed and either approved or returned with comments by the City Engineer or his/her designee, the City Engineer or his/her designee may only reject the submitted Final Cost Estimate for reasonable cause made in good faith. Upon approval this Final Cost Estimate shall establish the allocation of the costs of the Escrow Funded Improvements in accordance with the terms of this Agreement, including a corresponding allocation of the Contingency Amount if used. Each Party's allocable share of the Final Cost Estimate plus the

corresponding Contingency Amount shall establish the amount required to be deposited by each Party into the Construction Escrow, as defined below, (the “Maximum Cost Share”).

6.6.4. The City’s portion of the Maximum Cost Share shall be equal to (i) 100% of the estimated cost of the City’s Yuma Road Improvements as identified in the Final Cost Estimate (ii) 75% of the estimated cost of the Yuma Road Bridge as identified in the Final Cost Estimate, and (iii) 50% of the estimated cost of the Goodyear Blvd/Yuma Road Traffic Signal, as identified in the Final Cost Estimate.

6.6.5. Owner’s portion of the Maximum Cost Share shall be equal to (i) 100% of the estimated cost of the Fulton Homes Yuma Road Improvements – Phase 2, as identified in the Final Cost Estimate, (ii) 25% of the estimated cost of the Yuma Road Bridge, as identified in the Final Cost Estimate, and (iii) 50% of the estimated cost of the Goodyear Blvd/Yuma Road Traffic Signal, as identified in the Final Cost Estimate.

7. **CITY’S OBLIGATIONS.** The following specific obligations apply with respect to the City’s obligations for the Escrow Funded Improvements:

7.1. **CITY EASEMENT OBLIGATIONS.** Prior to issuing permits for the construction of the Escrow Funded Improvements, the City shall be responsible for acquiring, at its sole cost and expense, all temporary construction easements located outside the boundaries of the Property needed for the construction of the Escrow Funded Improvements and for providing Owner, at no cost to Owner, access to such temporary construction easements.

7.2. **NOTICE TO PROCEED.** The Parties hereby agree that the City Engineer’s or his/her designee’s approval of the Final Cost Estimate shall constitute written notice to Owner to proceed to cause the construction of the Escrow Funded Improvements (the “Notice to Proceed”).

7.3. **UTILITY RELOCATIONS.** To the extent provided for by the City’s existing licenses and/or franchise agreements with local utility companies, the City shall, in collaboration with Owner, endeavor to cause any and all existing utilities in conflict with the Escrow Funded Improvements to be relocated at the sole cost and expense of the owners and operators of such utilities. However, nothing in this Section shall guarantee any or all existing utilities in conflict with the Escrow Funded Improvements will be relocated at the sole cost and expense of the owners and operators of such utilities.

7.4. **EXPEDITED PLAN REVIEW.** Subject to the terms set forth herein, City agrees to provide expedited plan review for all construction plans for improvements subject to this Agreement, including the Escrow Funded Improvements and the Fulton Homes Yuma Road Improvements – Phase 1. Expedited plan reviews shall be completed within twelve (12) business days of the City’s receipt of an administratively complete submittal. Owner shall pay the fees for expedited plan reviews. The City will reimburse Owner 100% of the expedited plan review fees collected upon completion of the Escrow Funded Improvements.

8. **FUNDING OF IMPROVEMENTS.** Subject to the terms set forth herein, the Parties agree to fund their respective portion of the Maximum Cost Share for the Escrow Funded Improvements as follows:

8.1. **FUNDING REQUIREMENTS.** Prior to City issuing permits for the construction of the Escrow Funded Improvements, the Parties shall each deposit an amount equal to their portion of the Maximum Cost Share of the Escrow Funded Improvements, as identified in the Final Cost Estimate and pursuant to Section 6.6.4 above, into an escrow account with Escrow Agent, to fund and secure Owner's obligation to cause the completion of the Escrow Funded Improvements, and to be held and disbursed pursuant to this Agreement ("Construction Escrow"). The total funds deposited by the Parties into the Construction Escrow (the "Total Maximum Cost") shall be deemed "Escrowed Funds". Interest accruing on the Escrowed Funds shall belong proportionately to each Party.

8.2. **DISBURSEMENT OF CONSTRUCTION ESCROW.** Disbursement of Escrowed Funds shall be disbursed from the Construction Escrow as follows:

8.2.1. As construction of the Escrow Funded Improvements by the Selected General Contractor progresses, Escrow Agent shall pay to Selected General Contractor from the Escrowed Funds from time to time (but no more frequently than monthly), the portion of the Total Maximum Cost incurred in the construction of the Escrow Funded Improvements as of the date of the request submitted by the Selected General Contractor which were not covered in a previous request. Escrow Agent shall make such payment to Selected General Contractor within fifteen (15) business days or twenty-one (21) calendar days, whichever is sooner, following delivery to Escrow Agent and the Parties of a written disbursement request together with evidence of; (i) appropriate contractors' lien waivers (i.e., conditional lien waivers for current periods and unconditional lien waivers for prior periods); (ii) copies of receipts, invoices, bills or such other commercially reasonable documentation of the costs incurred; and (iii) evidence that the portion of the Escrow Funded Improvements subject to the disbursement request have passed all required inspections by the City (a "Disbursement Request"). Unless Owner or City delivers to Escrow Agent written notice of an objection to such Disbursement Request within such fifteen (15) business day or twenty-one (21) calendar day period, Escrow Agent is instructed to disburse the amount shown in the Disbursement Request for payment to Selected General Contractor. Owner and City shall have the right to review and object to any Disbursement Request. In order to object, a Party must have a good faith reasonable basis for any such objection and shall specifically set forth the amount in dispute, and the details of and basis for such objection in the written notice of objection delivered to Escrow Agent. Escrow Agent shall disburse the amount not in dispute to Selected General Contractor.

8.2.2. Upon commencement of construction of the Escrow Funded Improvements, Owner may submit to Escrow Agent a Disbursement Request from time to time (but no more frequently than monthly) for the portion of the Design Costs incurred by Owner as of the date of said Disbursement Request which were not covered under a previous Disbursement Request from Owner. Within five (5) business days of such Disbursement Request, Escrow Agent shall pay to Owner from the Escrowed Funds said portion of the Design Costs. Unless City delivers to Escrow Agent written notice of an objection to such Disbursement Request within such five (5)

business day period, Escrow Agent is instructed to disburse the amount shown in the Disbursement Request for payment to Owner. City shall have the right to review and object to any such Disbursement Request. In order to object, City must have a good faith reasonable basis for any such objection and shall specifically set forth the amount in dispute, and the details of and basis for such objection in the written notice of objection delivered to Escrow Agent. Escrow Agent shall disburse the amount not in dispute to Owner.

8.2.3. The Parties shall proceed in good faith to resolve promptly any objection to a Disbursement Request so as not to delay the construction of the Escrow Funded Improvements. In the event a written objection to a Disbursement Request is made pursuant to Section 8.2.2 above which is not resolved within ten (10) business days thereafter, or in the event conflicting demands are otherwise made on Escrow Agent concerning the Escrowed Funds, or in the event the Escrowed Funds have not been disbursed in full within two (2) years following the date hereof, Escrow Agent has the right, at its election, to hold the Escrowed Funds until an action is brought in a court of competent jurisdiction to determine the respective rights of the Parties, or Escrow Agent may interplead the Escrowed Funds. Any cost relative to interpleader shall be deducted from the Escrowed Funds. Deposit by Escrow Agent of said funds and documents with the court in any such action shall relieve Escrow Agent of all further liability and responsibility under this Agreement (exclusive of liability for negligence or failure to comply with the expressed instructions contained in this Agreement).

8.2.4. Final disbursement shall not be made by Escrow Agent until all of the following have occurred: (i) the Escrow Funded Improvements have been conveyed to the City lien free; (ii) the City has accepted, subject to completion of the two-year warranty period, the Escrow Funded Improvements; and (iii) all documentation reasonably requested by the City Engineer or his/her designee to establish the right to final disbursement, such as documentation establishing compliance with Title 34, lien releases, documents establishing Selected General Contractor's actual final actual costs of the Escrow Funded Improvements and Owner's actual final Design Costs (the "Actual Cost"), documents confirming approval of change orders, and/or additional costs subject to the Contingency Amount, etc. have been provided to Escrow Agent, City and Owner for approval by Selected General Contractor and Owner. In no event shall the total funds disbursed to Selected General Contractor and Owner by Escrow Agent exceed the Actual Cost. In the event the Escrowed Funds exceed the Actual Cost, the balance of the Escrowed Funds and any interest accrued will be released to the Parties proportionately following the final disbursement.

## **GENERAL TERMS**

9. **ENTIRE AGREEMENT.** This Agreement, constitutes the sole and entire agreement between the Parties with respect to the matters covered herein and supersedes 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.

10. **AMENDMENTS.** This Agreement shall only be modified, amended or restated by a written amendment 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.

11. **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:

|                                                                                                                               |                                                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| <b>The City:</b><br>City of Goodyear<br>Attn: City Manager<br>1900 N. Civic Square<br>Goodyear, Arizona 85395                 | <b>Owner:</b><br>Fulton Homes Corporation<br>Attn: Norm Nicholls<br>9140 S. Kyrene Road, Suite 202<br>Tempe, Arizona 85284 |
| <b>copy to:</b><br>City of Goodyear<br>Attn: Development Services Director<br>1900 N. Civic Square<br>Goodyear, Arizona 85395 | <b>copy to:</b><br>Rose Law Group pc<br>Attn: Chris Webb<br>7144 E. Stetson Drive, Suite 300<br>Scottsdale, Arizona 85251  |
| <b>copy to:</b><br>City of Goodyear<br>Attn: City Attorney<br>1900 N. Civic Square<br>Goodyear, Arizona 85395                 | <b>copy to:</b><br>Fulton Homes Corporation<br>Attn: Tom Abraham<br>9140 S. Kyrene Road, Suite 202<br>Tempe, Arizona 85284 |

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.

12. **COVENANTS RUNNING WITH THE LAND.** Except as provided in Section 13 below, 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.

13. **TERMINATION OF AGREEMENT AS TO CERTAIN 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 on: (i) any portion of the Property conveyed to the City; (ii) any portion of the Property conveyed to any political subdivision; and (iii) any lot within the Property that has been fully subdivided pursuant to a recorded final plat and for which a certificate of occupancy for a single family residence has been

issued; and the owners of such portions of the Property are not Successors and Assigns under this Agreement. 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 conveyed to the City, any portion of the Property conveyed to any political subdivision, and any residential lot within the Property that has been fully subdivided pursuant to a recorded final plat and for which a certificate of occupancy for a single family residence has been issued, and such portions of the 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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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 19 shall survive the expiration or earlier termination of this Agreement.

20. **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 20 waiving the right to a jury trial shall survive the expiration or earlier termination of this Agreement

21. **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 21 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.

22. **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.

23. **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 23 shall survive the expiration or earlier termination of this Agreement.

24. **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 24 shall survive the expiration or earlier termination of this Agreement.

25. **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 25 to other provisions in the Agreement.

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

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

26.2. **AUTHORIZATION.** Owner is an Arizona corporation 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.

26.3. **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.

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

27.1. **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.

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

28. **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.

29. **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.

*Acknowledgments and Exhibits on Following Pages*

**OWNER:**

Fulton Homes Corporation,  
an Arizona corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

Its: \_\_\_\_\_

State of \_\_\_\_\_ )  
 )ss  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2025, before me, \_\_\_\_\_,  
a Notary Public in and for said state, personally appeared \_\_\_\_\_,  
\_\_\_\_\_, the \_\_\_\_\_ of FULTON  
HOMES CORPORATION, an Arizona corporation, personally known to me or proved to me on  
the basis of satisfactory evidence to be the person whose name is subscribed to the Amended and  
Restated Development Agreement for Fulton Homes at Ballpark Village by and between Fulton  
Homes Corporation, an Arizona Corporation and the City of Goodyear, an Arizona municipal  
corporation (the “Agreement”), and who acknowledged to me that he/she is authorized to execute  
the Agreement and acknowledged to me that he/she executed the Agreement as his/her voluntary  
act and deed on behalf of FULTON HOMES CORPORATION, an Arizona corporation.

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Notary Public

My Commission Expires:

*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 Amended and Restated Development Agreement for Fulton Homes at Ballpark Village by and between Fulton Homes Corporation, an Arizona Corporation and the City of Goodyear, an Arizona municipal corporation (the “Agreement”) was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by Wynette Reed, the City Manager of the City of Goodyear, an Arizona municipal corporation, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Jasmine Pernicano, City Clerk

Approved as to Form:

\_\_\_\_\_  
Roric Massey, City Attorney

*Exhibits on Following Pages*

**EXHIBIT A**  
**FULTON HOMES AT BALLPARK VILLAGE LEGAL DESCRIPTION**

*Exhibit on the following pages*

## Legal Description

### PARCEL NO. 1:

The Northwest quarter of the Northwest quarter of Section 17, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the West 40 feet and the North 40 feet;

Except the following as set forth in Special Warranty Deed to Maricopa County recorded in Document No. 00-0253687:

EXCEPT the East 45 feet of the West 85 feet, Except the North 75 feet thereof;

EXCEPT the South 35 feet of the North 75 feet, Except the West 40 feet thereof;

EXCEPT a triangular parcel of land lying within said NW1/4 of NW1/4 described as follows:

BEGINNING at the Point of Intersection of the South line of the North 75 feet and the East line of the West 85 feet;

THENCE Southerly along said East line a distance of 45 feet to a point;

THENCE leaving said East line in a Northeasterly direction to a point on said South line of the North 75 feet;

THENCE along said South line, Westerly 45 feet to the Point of Intersection.

### PARCEL NO. 2:

The East half of the Northwest quarter of Section 17, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 33 feet;

EXCEPT that portion as set forth in Special Warranty Deed to Maricopa County, recorded in Document No. 20000253689, described as follows:

The South 42 feet of the North 75 feet of the East half of the Northwest quarter of Section 17, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT that portion as set forth in Quitclaim Deed to the City of Goodyear, Arizona, recorded in Document No. 20160852690, described as follows:

A PORTION OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 17, MONUMENTED BY A BRASS CAP IN HANDHOLE, FROM WHICH THE NORTHWEST CORNER OF SAID SECTION 17, MONUMENTED BY A 3 INCH BRASS CAP IN HANDHOLE, BEARS AS A BASIS OF BEARINGS NORTH 00°50'40" WEST, A DISTANCE OF 2649.74 FEET;

THENCE NORTH 00°50'40" WEST ALONG THE WESTERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 17, A DISTANCE OF 1035.34 FEET;

THENCE NORTH 89°09'20" EAST, A DISTANCE OF 1299.56 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 01°04'08" WEST, A DISTANCE OF 261.12 FEET;

THENCE SOUTH 89°35'29" EAST, A DISTANCE OF 75.02 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, WHOSE RADIUS POINT BEARS SOUTH 88°55'08" WEST, A DISTANCE OF 485.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 32°18'06", AN ARC DISTANCE OF 273.43 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO 3:

The West half of the Northeast quarter of Section 17, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 33 feet;

EXCEPT that portion as set forth in Quit Claim Deed to the City of Goodyear recorded in Document No. 20160852687, described as follows:

The West 1525 feet of the South 42 feet of the North 75 feet of the Northeast quarter of said Section 17;

EXCEPT all those portion of said West half of the Northeast quarter lying Easterly of the Western boundaries as set forth in Special Warranty Deeds to the City of Goodyear recorded in Document No. 20091042745, 20140567661 and 20140564662.

PARCEL NO. 4:

The Northeast quarter of the Southwest quarter of Section 17, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT those portion lying within said Northeast quarter of the Southwest quarter, set forth as follows:

All those portions of land lying South of the North boundary line as set forth on Lower Buckeye Parkway Map of Dedication recorded in Book 332 of Maps, Page 4, except that portion of Lower Buckeye Parkway set forth in Book 963 of Maps, Page 22;

All those portions of land lying South of the North boundary line of Lower Buckeye Parkway and those portions lying East of the West line of Bullard Avenue, as set forth on Goodyear Right of Way Map of Dedication recorded in Book 963 of Maps, Page 22;

All those portions of land lying in Ballpark Village-Wood Corporate Campus recorded in Book 996 of Maps, Page 50.

**EXHIBIT B**  
**FINAL PLANS – YUMA ROAD IMPROVEMENTS**

1. Yuma Road – Improvement Plans for Ballpark Village, prepared by EPS Group, Inc., dated February 10, 2025, and stamped approved by the City on February 11, 2025.
2. Fulton Homes Ballpark Village Yuma Road – Offsites, Landscape Construction Documents, prepared by EPS Group, Inc., dated February 7, 2025, and stamped approved by the City on February 10, 2025.
3. Fulton Homes Ballpark Village Yuma Rd Street Light Plan, prepared by Wright Engineering Corporation, dated January 28, 2025, and stamped approved by the City on February 10, 2025.

*On file at the Goodyear City Clerk's Office*

*1900 N. Civic Square  
Goodyear, AZ 85395  
(623) 882-7830*

**EXHIBIT C**  
**SHEET 1 OF THE FULTON HOMES BALLPARK VILLAGE**  
**PHASING PLAN**

*On file at the Goodyear City Clerk's Office*

*1900 N. Civic Square  
Goodyear, AZ 85395  
(623) 882-7830*

**EXHIBIT D**  
**PRELIMINARY COST ESTIMATE**  
**PREPARED BY EPS GROUP**

*Exhibit on the following pages*



### Yuma Road Arch Culvert Cost Estimate

|                                          | <i>Fulton Homes<br/>(SW Corner)</i> | <i>SE Corner</i>       | <i>Centerra Village<br/>(NW Corner)</i> | <i>Compass Data<br/>(NE Corner)</i> |
|------------------------------------------|-------------------------------------|------------------------|-----------------------------------------|-------------------------------------|
| <i>Roadway Hard Costs</i>                | \$ 1,643,908.85                     | \$ 474,235.30          | \$ 2,412,957.35                         | \$ 544,237.30                       |
| <i>Culvert Hard Costs</i>                | \$ 803,881.00                       | \$ 803,881.00          | \$ 803,881.00                           | \$ 803,881.00                       |
| <i>Soft Costs*</i>                       | \$ 1,038,352.45                     | \$ 542,176.94          | \$ 1,364,582.83                         | \$ 571,871.78                       |
| <i>Total</i>                             | <b>\$ 3,486,142.30</b>              | <b>\$ 1,820,293.24</b> | <b>\$ 4,581,421.17</b>                  | <b>\$ 1,919,990.09</b>              |
| <i>Contingency<br/>20%</i>               | \$ 697,228.46                       | \$ 364,058.65          | \$ 916,284.23                           | \$ 383,998.02                       |
| <i>Grand Total</i>                       | \$ 4,183,370.76                     | \$ 2,184,351.89        | \$ 5,497,705.41                         | \$ 2,303,988.11                     |
| <b>Overall Improvements Grand Total:</b> |                                     |                        | <b>\$</b>                               | <b>14,169,416.16</b>                |

\*Soft Costs - See Next Sheet for Details