

## PURCHASE AND SALE AGREEMENT

**DATE:** December \_\_\_, 2014

**SELLER:** KCI GOODYEAR NORTH, LLC,  
an Arizona limited liability company  
Address: 8160 North Hayden Road, Suite J-208  
Scottsdale, Arizona 85258  
Telephone: 480-951-1800  
Facsimile: 480-443-4887

**BUYER:** CITY OF GOODYEAR,  
an Arizona municipal corporation  
Attn: Linda R. Beals, Real Estate Division  
Address: 14455 W. Van Buren Street.  
Goodyear, Arizona 85338  
Telephone: 602-809-7280

**ESCROW AGENT:** FIRST ARIZONA TITLE AGENCY, LLC  
Address: 6263 North Scottsdale Road, Suite 190  
Scottsdale, Arizona 85250  
Telephone: 480-385-6520  
Facsimile: 480-385-6803  
Escrow Officer: William McCalmont

**PROPERTY:** The property ("Property") which is the subject of this Agreement is defined as that certain real property outlined in Exhibit A attached hereto together with (i) all and singular the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in anywise appertaining to such real property, and (ii) without warranty all right, title, and interest of Seller in and to all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining such real property.

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**ARTICLE 1**  
**AGREEMENT OF THE PARTIES**

1.1 Agreement. In consideration of the mutual promises and covenants set forth in this Agreement, Seller agrees to sell and Buyer agrees to buy the Property on the terms and conditions set forth in this Agreement.

**ARTICLE 2**  
**SALES PRICE AND PAYMENT TERMS**

2.1 Sales Price. The total sales price (the "Sales Price") shall be the product of the area of the Property multiplied by \$4.00. The area of the Property shall be determined by the Survey as described in Section 4.3 below. As an example, if the Property consists of seven acres or 304,920 square feet, the Purchase Price shall be \$1,219,680. The Sales Price shall be payable as follows:

2.1.1 Earnest Money. \$10,000.00 as an earnest money deposit (the "Earnest Money") which Buyer agrees to deposit in escrow within two (2) business days after receipt by Escrow Agent of a counterpart of this Agreement signed by Seller. Upon the expiration of the Contingency Period described in Article 5, the Earnest Money shall become non-refundable except in the event of Seller's default hereunder or as otherwise specifically provided herein.

2.1.2 Amount Payable at Closing. The balance of the Sales Price, increased or reduced by such amounts as are required to reflect the prorations and adjustments provided by this Agreement, by cashier's check payable to Escrow Agent, or by wire transfer of immediately available funds to the account of Escrow Agent, to be deposited in escrow no later than one (1) business day before the Close of Escrow or such other date as may be required by Escrow Agent such that Escrow Agent shall be in a position to disburse cash proceeds from the Closing to Seller on the Closing Date.

2.2 Earnest Money Provisions. All Earnest Money required by this Agreement shall be evidenced by a wire transfer in the amount of the required deposit. Escrow Agent is instructed to deposit all such payments in a federally-insured money market or other similar account, subject to immediate withdrawal, at a banking institution located in Phoenix, Arizona. If the Earnest Money is forfeited to Seller as provided by this Agreement, the Earnest Money shall be paid immediately to Seller. After the end of the Contingency Period, all Earnest Money shall become non-refundable to Buyer except in the event of Seller's default or as otherwise expressly provided in this Agreement. If the sale of the Property is consummated under this Agreement, the Earnest Money shall be applied to the payment of the Sales Price at Closing. If Buyer terminates this Agreement and is entitled to the return of the Earnest Money by the express terms of this Agreement, then the Earnest Money shall be returned to Buyer, and no party hereto shall have any further obligations under this Agreement except for such obligations which by their terms expressly survive the termination of this Agreement (the "Surviving Obligations").

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### ARTICLE 3 ESTABLISHMENT OF ESCROW

3.1 Escrow. An escrow for this transaction shall be established with Escrow Agent, and Escrow Agent is hereby engaged to administer the escrow. This Agreement constitutes escrow instructions to the Escrow Agent and a copy shall be deposited with Escrow Agent for this purpose. Should Escrow Agent require the execution of its standard form printed escrow instructions, Buyer and Seller agree to execute those instructions; however, those instructions shall be construed as applying only to Escrow Agent's engagement, and if there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement shall control.

3.2 Opening Date. Escrow shall be deemed open on the date (the "Opening Date") when one (1) fully executed original of this Agreement has been delivered to Escrow Agent. Escrow Agent shall advise Buyer and Seller in writing of the Opening Date.

3.3 Escrow Cancellation Charges. If the escrow fails to close because of Seller's default, Seller shall be liable for all customary escrow cancellation charges. If the escrow fails to close because of Buyer's default, Buyer shall be liable for all customary escrow cancellation charges. If the escrow fails to close for any other reason, Seller and Buyer shall each be liable for one-half (1/2) of all customary escrow cancellation charges.

3.4 IRS Reporting. By accepting this escrow, Escrow Agent agrees to be the designated "reporting person" under § 6045(e) of the U.S. Internal Revenue Code with respect to the real estate transaction described in this Agreement and to prepare, file and deliver such information, returns and statements as the U.S. Treasury Department may require by regulations or forms in connection therewith, including Form 1099-B.

3.5 Interpleader. Seller and Buyer mutually agree that in the event of any controversy regarding the Earnest Money, unless mutual written instructions are received by the Escrow Agent directing the Earnest Money's disposition, the Escrow Agent shall not take any action, but instead shall await the disposition of any proceeding relating to the Earnest Money or, at the Escrow Agent's option, the Escrow Agent may interplead all parties and deposit the Earnest Money with a court of competent jurisdiction in which event the Escrow Agent may recover all of its court costs and reasonable attorneys' fees. Seller or Buyer, whichever loses in any such interpleader action, shall be solely obligated to pay such costs and fees of the Escrow Agent, as well as the reasonable attorneys' fees of the prevailing party in accordance with the other provisions of this Agreement.

3.6 Liability of Escrow Agent. The parties acknowledge that the Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that the Escrow Agent shall not be deemed to be the agent of either of the parties, and that the Escrow Agent shall not be liable to either of the parties for any action or omission on its part taken or made in good faith,

and not in disregard of this Agreement, but shall be liable for its negligent acts and for any loss, cost or expense incurred by Seller or Buyer resulting from the Escrow Agent's mistake of law respecting the Escrow Agent's scope or nature of its duties. Seller and Buyer shall jointly and severally indemnify and hold the Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of the Escrow Agent's duties hereunder, except with respect to actions or omissions taken or made by the Escrow Agent in bad faith, in disregard of this Agreement or involving negligence on the part of the Escrow Agent.

#### **ARTICLE 4**

##### **MATTERS RELATING TO THE PERIOD PRIOR TO CLOSING**

4.1 Right to Enter and Inspect the Property. From time to time until the Close of Escrow, Buyer may enter upon the Property with Buyer's representatives and agents for the purpose of examining the Property and conducting tests and studies. Buyer agrees to indemnify Seller and hold Seller harmless from any injury, cost, liability or expense to persons or property arising out of Buyer's exercise of the rights granted by this Section, including without limitation repairing or restoring any damage to the Property, and this indemnity shall survive the Close of Escrow or the cancellation of this Agreement.

4.2 Information.

4.2.1 Title. Promptly after the Opening Date, Escrow Agent shall provide Buyer with a current preliminary title report and commitment for standard coverage title insurance on the Property (the "Report"). The Report shall show the status of title to the Property as of the date of the Report and shall be accompanied by legible copies of all documents referred to in the Report.

4.2.2 Seller's Information. Within five (5) days following the Opening Date, Seller shall provide Buyer with the following, at no cost to Buyer:

(a) Survey. An existing ALTA survey of the Property (which includes other real property owned by Seller), prepared by Hilgart Wilson, Project No. 1183, dated December 27, 2011.

(b) Phase I Report. An existing Phase I environmental report covering the Property (the "Phase I Report", which includes other real property owned by Seller), prepared by EDI, Job No. 11-782, dated November 6, 2011.

4.3 Survey. Immediately after the Opening Date, Buyer shall cause to be prepared and delivered to Escrow Agent and Seller an ALTA/ACSM Land Title Survey of the Property (the "New Survey"). The New Survey shall set forth the area of the Property, shall be certified to Buyer, Seller and Escrow Agent and shall be performed by a surveyor or engineer proposed by Buyer and reasonably acceptable to Seller. Buyer shall obtain the New Survey at Buyer's sole

cost and expense. Upon approval by Buyer and Seller of the legal description of the Property set forth in the New Survey, such legal description shall constitute the legal description of the Property and Buyer and Seller shall execute and deliver an amendment to this Agreement adopting such legal description.

4.4 Condemnation. In the event of the condemnation (or sale in lieu thereof) of more than ten percent (10%) of the total square footage of the Property prior to the Close of Escrow, Buyer shall have the right to cancel this Agreement by giving written notice of cancellation to Seller, in which event the Earnest Money shall be returned to Buyer and all obligations to buy or sell the Property shall terminate. If condemnation (or sale in lieu thereof) of less than ten percent (10%) of the total square footage of the Property occurs prior to the close of escrow or if Buyer elects to close the escrow notwithstanding the taking of more than ten percent (10%) of the Property prior to the close, Buyer shall receive all awards or payments made therefor by the condemning authority to which Seller is entitled and shall proceed to close the escrow and pay the total sales price provided herein.

4.5 Information Disclaimer. Except as otherwise expressly provided in this Agreement, neither Seller nor any of its representatives, affiliates, attorneys or advisors have made or are making any representation or warranty, express or implied, as to the accuracy or completeness of the Property Information and shall not be liable to Buyer or to any of Buyer's partners, representatives, advisors, successors or assigns for any loss or damage resulting from use of, or reliance on, the Property Information by Buyer or such parties. Buyer acknowledges that all of the Property Information that Buyer receives will be or have been furnished on the express condition that Buyer shall make its own independent verification of the accuracy, completeness and truth of the information contained therein. Buyer agrees that it shall not attempt to assert any claim or liability against Seller by reason of Seller or Seller's representatives, agents, advisors, or consultants having furnished any such information or by reason of any such information becoming or proving to have been incorrect, incomplete or inaccurate in any respect.

## **ARTICLE 5 BUYER'S INVESTIGATION**

5.1 Title Review. Buyer shall have until the tenth (10<sup>th</sup>) day after the Opening Date to disapprove the status of title as shown by the Report by giving written notice thereof to Seller and Escrow Agent. If Escrow Agent issues a supplemental or amended Report showing additional exceptions to title, including any exceptions arising from the New Survey, ("Additional Exceptions"), Buyer shall have ten (10) days from the date of receipt thereof in which to give written notice of dissatisfaction to Seller and Escrow Agent as to any such Additional Exceptions.

If in either case Buyer gives such notice (a "Title Notice"), Seller, at Seller's option, but without obligation or liability, may attempt to remove or obtain title insurance endorsements,

reasonably satisfactory to Buyer, against the matters specified in the Title Notice. If Seller does not so cure or agree in writing to cure such matters within five (5) days of Seller's receipt of the Title Notice, then Buyer may cancel this Agreement by giving written notice thereof to Escrow Agent on or before the tenth (10th) day after Seller's receipt of the Title Notice, or Buyer may waive its objections in writing and the transaction shall close as scheduled.

In each case, If Buyer does not give the appropriate written notice within the required time period, Buyer will be deemed to have approved the Report, the New Survey, or any Additional Exceptions, as applicable.

5.2 Buyer's Investigation. Buyer shall be satisfied with Buyer's investigations and inspections with respect to the Property and this transaction. In that regard, for a period ending at 5:00 o'clock p.m. (M.S.T.) on January 30, 2015 (the "Contingency Period"), Buyer shall have the right to cancel this Agreement for any reason whatsoever, in Buyer's sole and absolute discretion, by giving written notice thereof to Seller and Escrow Agent; provided, however, that until Buyer so cancels, Buyer shall proceed in good faith to carry out Buyer's preliminary investigatory steps with respect to this transaction. Unless Buyer gives written notice of cancellation prior to the expiration of the Contingency Period, Buyer shall be deemed to have elected not to cancel the Agreement under this provision.

5.3 Cancellation. In the event of cancellation under this Article, Buyer's Earnest Money shall be returned and all obligations to buy or sell the Property shall terminate except for the Surviving Obligations.

## **ARTICLE 6 CLOSING AND PRORATIONS**

6.1 Closing. The closing of this transaction and escrow (referred to in this Agreement as the "Closing" or the "Close of Escrow") shall occur on or before February 6, 2015 in the offices of Escrow Agent or such other place as may be agreed upon by Buyer and Seller.

6.2 Seller's Closing Documents. On or before the Close of Escrow, Seller shall deposit into escrow the following documents for delivery to Buyer, each of which shall have been duly executed and, where appropriate, acknowledged:

6.2.1 Deed. A Special Warranty Deed, in form attached hereto as Exhibit B;

6.2.2 Affidavit of Value. An Affidavit of Value as required by law;

6.2.3 Additional Documents. Such other documents as may be necessary or appropriate to transfer and convey all of the Property to Buyer and to otherwise consummate this transaction in accordance with the terms of this Agreement.

6.3 Buyer's Closing Documents. On or before the Close of Escrow, Buyer shall deposit into escrow the following documents for delivery to Seller, each of which shall have been duly executed and, where appropriate, acknowledged:

6.3.1 Affidavit of Value. An Affidavit of Value so required by law; and

6.3.2 Additional Documents. Such other documents as may be necessary or appropriate to consummate this transaction in accordance with the terms of this Agreement.

6.4 Title Policy. At the Close of Escrow, First American Title Insurance Company ("Title Insurer") shall provide Buyer with a standard coverage owner's policy of title insurance in the full amount of the sales price (or the unconditional commitment of the Title Insurer to issue such policy), effective as of the Close of Escrow, insuring Buyer that fee simple title to the Property is vested in Buyer, subject only to the usual printed exceptions and exclusions contained in such title insurance policies, to the matters approved by Buyer as provided in Section 5.1, and to any other matters approved by Buyer. If Title Insurer is unable to deliver such policy without additional exceptions, and such exceptions are not the result of Seller's intentional acts, Buyer's sole remedy shall be to cancel this Agreement and escrow by giving written notice to Seller and Escrow Agent, in which case Buyer's Earnest Money shall be refunded and all obligations to buy or sell the Property shall terminate.

6.5 Closing Costs.

6.5.1 Seller's Costs. Upon the close of escrow, Seller agrees to pay one-half (1/2) of the escrow charges and the entire cost of the standard coverage owner's policy of title insurance.

6.5.2 Buyer's Costs. Upon the close of escrow, Buyer agrees to pay one-half (1/2) of the escrow charges. If Buyer has elected to receive an ALTA extended owner's title insurance policy, the premium for such additional coverage shall be paid by Buyer, along with the cost of any endorsements to the policy requested by Buyer.

6.6 Additional Funds To Be Deposited by Buyer. On or before the Close of Escrow, Buyer shall deposit with Escrow Agent immediately available funds in an amount sufficient to pay all closing costs payable by Buyer.

6.7 Disbursements. Upon the Close of Escrow, all amounts payable according to Section 2.1, less any costs, prorations and commissions payable by Seller pursuant to this Agreement, shall be disbursed to Seller.

6.8 Taxes and Assessments. General real estate taxes and assessments imposed by governmental authorities ("Taxes") and any assessments by private covenant constituting a lien or charge on the Property for the then-current calendar year or other current tax period not yet

due and payable shall be apportioned and prorated between Seller and Buyer as of the close of the day preceding the Closing. If the Closing occurs prior to the receipt by Seller of the tax bills for the calendar year or other applicable tax period in which the Closing occurs, Buyer and Seller shall prorate Taxes for such calendar year or other applicable tax period based upon the most recent ascertainable assessed values and tax rates. All prorations shall be based upon a fraction determined by dividing the number of days elapsed through the Closing Date by 365.

## **ARTICLE 7 REPRESENTATIONS AND WARRANTIES**

7.1 Buyer's Representations. Buyer makes the following representations and warranties which are agreed to constitute a material part of the consideration hereunder, which Seller is relying upon in entering into this transaction, which are true and accurate as of the Opening Date, will be true and accurate as of the Close of Escrow, and which shall survive the Close of Escrow for a period of one (1) year.

7.1.1 Buyer has the legal power, right and authority to enter into this Agreement and the instruments to be executed by Buyer pursuant to this Agreement, and to consummate the transactions contemplated hereby.

7.1.2 All requisite action (corporate, trust, partnership or otherwise) has been taken by Buyer in connection with Buyer's execution of this Agreement and the instruments to be executed by Buyer pursuant to this Agreement, and the consummation of the transactions contemplated hereby.

7.1.3 The individuals executing this Agreement and the instruments to be executed by Buyer pursuant to this Agreement on behalf of Buyer have the legal power, right and authority to bind Buyer to the terms and conditions of this Agreement and such instruments.

7.2 Seller's Representations. Seller makes the following representations and warranties which are agreed to constitute a material part of the consideration hereunder, which Buyer is relying upon in entering into this transaction, which are true and accurate as of the Opening Date, will be true and accurate as of the Close of Escrow, and which shall survive the Close of Escrow for a period of one (1) year.

7.2.1 Seller has the legal power, right and authority to enter into this Agreement and the instruments to be executed by Seller pursuant to this Agreement, and to consummate the transactions contemplated hereby.

7.2.2 All requisite action (corporate, trust, partnership or otherwise) has been taken by Seller in connection with Seller's execution of this Agreement and the instructions to be executed by Seller pursuant to this Agreement and the consummation of the transactions contemplated hereby.



7.2.3 The individuals executing this Agreement and the instruments to be executed by Seller pursuant to this Agreement, on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms and conditions of this Agreement and such instruments.

7.2.4 Seller has received no written notice of any action or proceeding pending or overtly threatened against the Property, including condemnation proceedings, or against Seller that would challenge or impair Seller's ability to execute or perform its obligations under this Agreement.

7.2.5 Seller has not received written notice from any governmental entity of any violation by Seller of any law, rule or regulation affecting the Property or its use including any environmental law or regulation, nor any written notice that the Property is in violation of any applicable building or zoning code or ordinance, except for any such matters which may have been previously cured by Seller.

If prior to the Close of Escrow either party becomes aware of any facts or circumstances which would render any of such representations and warranties false or materially misleading, such party shall give written notice thereof to the other party. Seller, without obligation or liability, may attempt to rectify such matters, but if Buyer is not reasonably satisfied with such efforts, and such facts or circumstances are not the result of Seller's intentional acts, Buyer's sole remedies shall be: (i) to accept a modified representation or warranty and close escrow as provided herein, without adjustment to the Sales Price; or (ii) to cancel this Agreement and escrow by giving written notice to Seller and Escrow Agent on or before the earlier of the tenth (10<sup>th</sup>) day after receipt of notice of such facts or circumstances or Closing Date, in which case the Earnest Money shall be refunded to Buyer and all obligations under this Agreement shall terminate except for the Surviving Obligations.

## **ARTICLE 8 ADDITIONAL COVENANTS AND UNDERSTANDINGS**

### **8.1 Brokerage.**

8.1.1 Commission Payable. Each party shall be responsible for any fee or commission due to any broker representing such party, payable by separate agreement. No commission shall be due in the event of Buyer's default and the release of Earnest Money to Seller. Each party warrants to the other that the warranting party has incurred no obligation, by reason of this Agreement or the transaction contemplated hereby, for a real estate brokerage commission or finder's fee for which the other party could be liable.

8.1.2 Indemnity. If either party shall breach the warranty set forth in Section 8.1.1 above, the breaching party shall indemnify and hold the other party harmless from and against any claims arising with relation to such breach and all costs, expenses and liabilities

incurred in connection with any such claim or any action or proceeding brought on such claim, including, but not limited to, counsel and witness fees and court costs in defending against such claim. This indemnity shall survive the close of escrow or the cancellation of this Agreement.

8.1.3 Disclosure. Buyer acknowledges that Scott A. Seldin is a licensed Arizona real estate broker and the designated broker for Seldin Real Estate, Inc., a related party of Seller.

8.2 Certification as to "Nonforeign" Status. At the closing, Seller shall deliver or cause to be delivered to Buyer, at Seller's sole cost and expense, a certification in a form approved by Buyer, signed and acknowledged by Seller under penalties of perjury, certifying that Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of Section 1445 and 7701 of the Internal Revenue Code of 1986 and the Treasury Regulations thereunder.

8.3 Possession. Possession of the Property shall be delivered to Buyer upon the Close of Escrow.

8.4 Condition of Property. Buyer acknowledges that, as of the end of the Contingency Period, Buyer shall have investigated the Property to its satisfaction, and that, except as specifically set forth in this Agreement, Seller has not made, and does not make, any representations, warranties, promises, covenants, agreements, or guaranties of any kind whatsoever, whether express or implied, oral or written, relating to the Property. Buyer acknowledges that Buyer has not relied on any representations or guaranties of any kind of Seller or any agent of Seller relating to the Property that are not specifically set forth in this Agreement. Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. Buyer further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS IS" condition and basis with all faults, latent and apparent, known or unknown, and without representation or warranty, oral or written, express or implied, including without limitation, any warranties of fitness for a particular purpose, habitability, merchantability, suitability, quality, planning and/or zoning, all of such warranties Buyer hereby specifically disclaims. Any information relating to the Property furnished to Buyer by Seller is furnished on the express condition that Buyer shall make an independent verification of the accuracy of such information, all of which is furnished without warranty. The terms and conditions of this Section 8.4 shall expressly survive the Closing and not merge into the special warranty deed or other documents to be delivered by Seller to Buyer at Closing.

## **ARTICLE 9 REMEDIES**

9.1 Seller's Remedies. If Buyer fails to deposit the remainder of the Sales Price in the time and manner set forth in this Agreement or to perform when due any other act required by

this Agreement, Seller's sole and exclusive remedy shall be to cancel this Agreement and the escrow, such cancellation to be effective immediately upon Seller giving written notice of cancellation to Buyer and Escrow Agent. Upon such cancellation, Seller shall be entitled to receive, and Escrow Agent is hereby instructed to deliver to Seller, the Earnest Money, as liquidated damages and not as a penalty, the parties agreeing and hereby stipulating that the exact amount of damages would be extremely difficult to ascertain and that the Earnest Money constitutes a reasonable and fair approximation of such damages.

9.2 Buyer's Remedies. If Seller fails to perform when due any act required by this Agreement to be performed, then, as Buyer's sole remedies, Buyer may either: (i) upon giving written notice to Seller and Escrow Agent, terminate this Agreement and the escrow, whereupon the Earnest Money deposited in escrow shall be returned to Buyer, and neither party shall have any further obligations under this Agreement except for the Surviving Obligations; or (ii) bring an action against Seller to specifically enforce this Agreement, provided that any suit for specific performance must be brought within ninety (90) days of the scheduled Closing Date, to the extent permitted by law, Buyer waiving the right to bring suit at any later date. Buyer agrees not to file a lis pendens or other similar notice against the Property except in connection with, and after, the proper filing of a suit for specific performance.

## **ARTICLE 10 GENERAL PROVISIONS**

10.1 Assignment. Buyer may not assign its rights under this Agreement without Seller's prior written consent, which consent may be withheld in Seller's absolute discretion; provided however, that Buyer may assign such rights to any entity controlling, controlled by, or under common control with Buyer upon no less than five (5) business days' written notice to Seller, accompanied by the name of the assignee and reasonable evidence of such common control. No assignment shall release The City of Goodyear from any obligation hereunder relating to acts taken by such person or his agents.

10.2 Binding Effect. Except as set forth in Section 10.1, the provisions of this Agreement are binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

10.3 Attorneys' Fees. If any action is brought by either party in respect to its rights under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs as determined by the court.

10.4 Waivers. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.

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10.5 Construction. This Agreement shall be construed according to the laws of the state of Arizona, without giving effect to its conflict of laws principles. References in this Agreement to "Sections" or "Articles" are to the Sections and Articles in this Agreement, unless otherwise noted.

10.6 Notices. Notices shall be in writing and shall be given by personal delivery to a responsible person, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, by facsimile transmission, or by express delivery service, freight prepaid. Notices shall be delivered or addressed to Seller and Buyer at the addresses or facsimile numbers set forth on the first page of this Agreement or at such other address or number as a party may designate in writing. The date notice is deemed to have been given, received and become effective shall be the date on which the notice is delivered, if notice is given by personal delivery, or the date of actual receipt, if the notice is sent through the United States mail, by express delivery service, or by facsimile transmission.

Notice to Seller shall also be sent to:

Peter G. Santin  
Poli & Ball, P.L.C.  
2999 North 44th Street, Suite 500  
Phoenix, Arizona 85018  
Phone: 602-808-5818  
Facsimile: 602-840-4411

Roric Massey, City Attorney  
City of Goodyear  
190 North Litchfield Road  
Goodyear, Arizona 85338  
Phone: 623-882-7227  
Facsimile: 623-882-7230

10.7 Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

10.8 Time, Time Periods. Time is of the essence of this Agreement. Except as expressly provided for herein, the time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 o'clock p.m. (M.S.T.) on the last day of the applicable time period provided for herein. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

10.9 Headings and Counterparts. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

10.10 Acceptance. This Agreement shall be of no force and effect unless Buyer shall have executed and delivered a fully executed original to Escrow Agent on or before five o'clock p.m. (M.S.T.), on December 17, 2014.

10.11 No Partnership. Third Person. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other similar arrangement between Seller and Buyer. No term or provision of this Agreement is intended to benefit any person, partnership, corporation or other entity not a party hereto (including, without limitation, any broker), and no such other person, partnership, corporation or entity shall have any right or cause of action hereunder.

10.12 Tax Free Exchange. Buyer agrees to cooperate with Seller in an exchange of real property in accordance with the provisions of Sections 1031 or 1033 of the Internal Revenue Code of 1986, as amended (an "Exchange"), including entering into an irrevocable exchange trust agreement, provided that Buyer shall not be required to assume any obligations or pay any cash price in excess of the purchase price of the Property and shall not be personally liable in such transaction. Seller shall indemnify, defend, and hold Buyer harmless for, from and against any loss, costs, liabilities, claims, demands and expenses (including reasonable attorneys' fees) incurred or sustained by reason of Buyer's participation in an Exchange with Seller. Seller agrees to cooperate with Buyer in an exchange of real property in accordance with the provisions of Sections 1031 or 1033 of the Internal Revenue Code of 1986, as amended, including entering into an irrevocable exchange trust agreement, provided that Seller shall not be required to assume any obligations, take title to any other property, or receive less than the entire purchase price of the Property and shall not be personally liable in such transaction. Buyer shall indemnify, defend, and hold Seller harmless for, from and against any loss, costs, liabilities, claims, demands and expenses (including reasonable attorneys' fees) incurred or sustained by reason of Seller's participation in an Exchange with Buyer.

10.13 Entire Agreement. This Agreement, which includes Exhibits A and B, which Exhibits are incorporated herein by this reference, constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by Buyer and Seller.

[SIGNATURE PAGE FOLLOWS]

**SELLER:**

KCI GOODYEAR NORTH, LLC,  
an Arizona limited liability company

By: Belmont Management Company,  
an Arizona corporation, Manager

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

**BUYER:**

CITY OF GOODYEAR,  
an Arizona municipal corporation

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

ATTESTED TO BY:

\_\_\_\_\_  
City Clerk

Escrow Agent hereby accepts the  
engagement to handle the escrow  
established by this Agreement in  
accordance with the terms set forth  
in this Agreement.

FIRST ARIZONA TITLE AGENCY, LLC

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

“Escrow Agent”

## **EXHIBITS**

A – Property Outline

B - Deed



**EXHIBIT A**  
**PROPERTY OUTLINE**

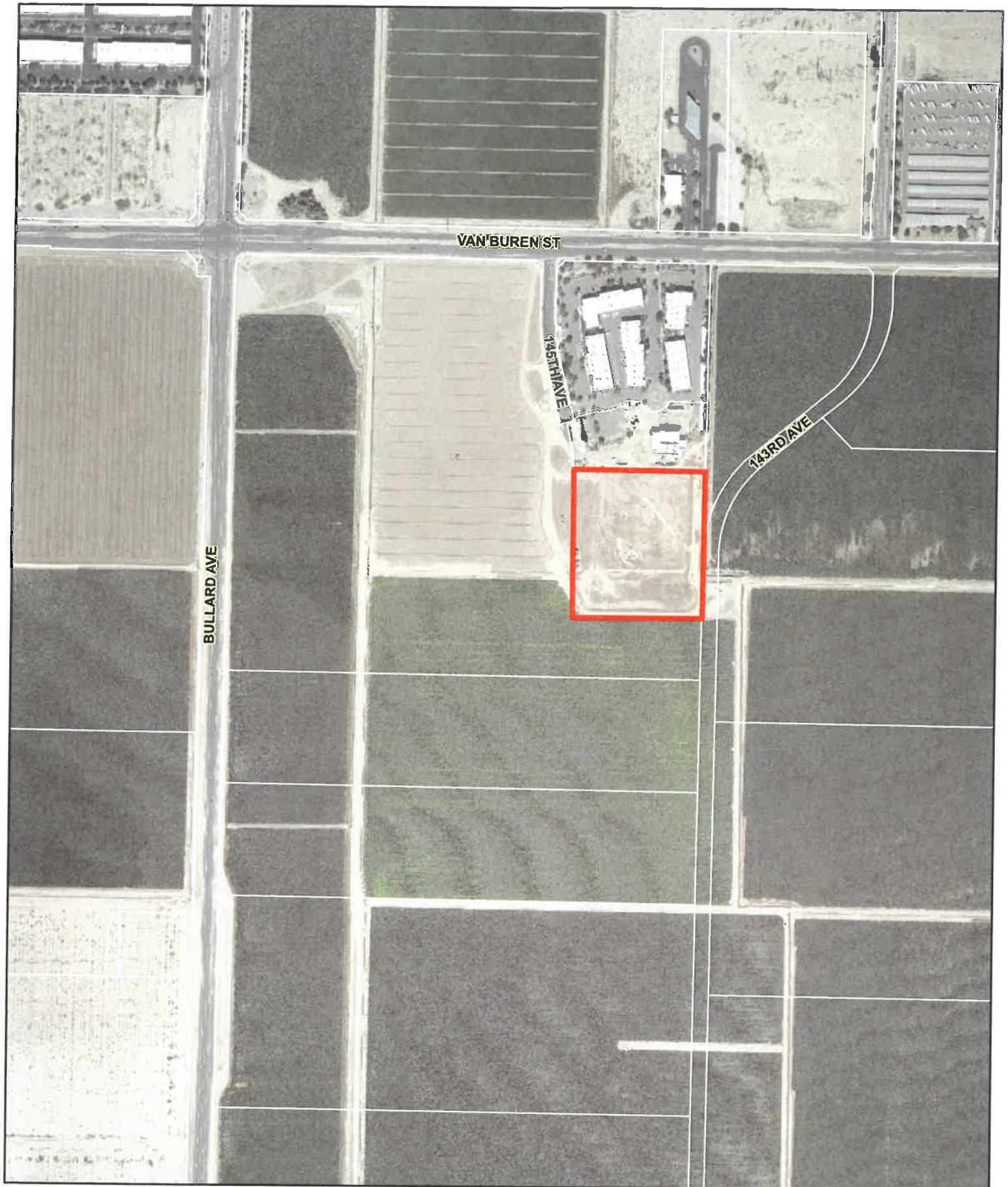
# Exhibit A Proposed Operations Site

## Legend

 Proposed 7 Acre Site



1 inch = 500 feet



**EXHIBIT B**

When recorded, return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SPECIAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS:

FOR THE CONSIDERATION of the sum of Ten Dollars (\$10.00) and other valuable considerations, \_\_\_\_\_ ("Grantor"), does hereby grant, sell, and convey to \_\_\_\_\_ the following real property situated in Maricopa County, Arizona:

See Exhibit A attached hereto and by this reference made a part hereof;

SUBJECT TO current taxes and other current assessments; patent reservations; all covenants, conditions, restrictions, reservations, easements and declarations, encumbrances, liens, obligations, liabilities or other matters of record or to which reference is made in the public record; any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; and the applicable zoning and use regulations of any municipality, county, state, or the United States affecting the Property;

And Grantor hereby binds itself and its successors to warrant and defend the title, as against all acts of Grantor herein and none other, subject to the matters above set forth.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
\_\_\_\_\_  
a(n),

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

"Grantor"

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2015, by \_\_\_\_\_, the  
\_\_\_\_\_ of \_\_\_\_\_, a(n)  
\_\_\_\_\_, on behalf of the \_\_\_\_\_.

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

My commission expires:  
\_\_\_\_\_