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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE FORMAL
COMPLAINT OF WESTCOR/ GOODYEAR,
L.L.C. and GLOBE LAND INVESTORS, L.L.C.
AGAINST LITCHFIELD PARK SERVICE
COMPANY

DOCKET NO. SW-01428A-08-0234

1 In accordance with the September 19, 2008, Procedural Order in this docket,
2 Westcor/Goodyear, L.L.C., and Globe Land Investors, L.L.C., hereby file the Direct Testimony
3 of Garrett Newland In Support of Request for Approval of Settlement Agreement

4 RESPECTFULLY SUBMITTED on September 22, 2008.

Craig A Marks

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Arizona Corporation Commission

DOCKETED

SEP 22 2008

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9 **Copies of the foregoing delivered on**
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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMPANY

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**DIRECT TESTIMONY
OF
GARRETT NEWLAND
IN SUPPORT OF REQUEST FOR
APPROVAL OF SETTLEMENT AGREEMENT
ON BEHALF OF
WESTCOR/ GOODYEAR, L.L.C.
SEPTEMBER 22, 2008**

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SEPTEMBER 22, 2008**

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

I	INTRODUCTION	1
II	PURPOSE OF TESTIMONY.....	2
III	THE ESTRELLA FALLS DEVELOPMENT	2
IV	WATER AND WASTEWATER SERVICE	3
V	NATURE OF DISPUTE	4
VI	SETTLEMENT AGREEMENT	6
VII	SETTLEMENT AGREEMENT BENEFITS.....	7
VIII	REQUESTED RELIEF.....	9

1 **I INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND TELEPHONE**
3 **NUMBER.**

4 A. My name is Garrett Newland. My business address is 11411 N Tatum Blvd., Phoenix,
5 AZ 85028, and my business phone is (602) 953-6200.

6 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

7 A. I am employed by Westcor as Vice President, Development.

8 **Q. WHAT ARE YOUR RESPONSIBILITIES AS WESTCOR'S VICE PRESIDENT,**
9 **DEVELOPMENT?**

10 A. I manage regional retail development and redevelopment projects for Westcor in the
11 Phoenix Metropolitan area. My current projects include development of San Tan Village,
12 a ground up, more than 2-million-square-foot, super-regional retail destination in Gilbert,
13 Arizona, and Estrella Falls, a new super-regional retail center in Goodyear, Arizona.

14 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL EXPERIENCE.**

15 A. I received Master of Business Administration and Bachelor of Arts in Government
16 degrees from New Mexico State University in Las Cruces, New Mexico.

17 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

18 A. Before joining Westcor, I served as Economic Development Director for the City of
19 Chandler, Arizona and as Vice President of Business Development for the Greater
20 Phoenix Economic Council. Overall, I have more than 17 years experience in real estate,
21 economic development and project management in Arizona and New Mexico.

22 **Q. DO YOU HAVE ANY PROFESSIONAL AFFILIATIONS?**

1 A. Yes. I am an active member of the International Council of Shopping Centers and the
2 Valley Partnership, and serve on the Board of Director's for the East Valley Partnership.
3 I am also the Immediate-Past President of the Board of the Arizona Association for
4 Economic Development.

5 **II PURPOSE OF TESTIMONY**

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS CASE?**

7 A. I am supporting the September 12, 2008, Settlement Agreement by and between
8 Westcor/Goodyear, L.L.C. and Globe Land Investors, L.L.C. ("collectively
9 "Developers") and Respondent Litchfield Park Service Company ("Utility").

10 **III THE ESTRELLA FALLS DEVELOPMENT**

11 **Q. WHAT IS WESTCOR/GOODYEAR, L.L.C.?**

12 A. Westcor/Goodyear, L.L.C. ("Westcor") is a subsidiary of the Macerich Company, which
13 is traded on the New York Stock Exchange. Westcor is the master developer of public
14 and private infrastructure for Estrella Falls. Among other things, Westcor and Globe
15 Land Investors, L.L.C. ("Globe") share the cost of planning and constructing
16 improvements necessary for the provision of water and wastewater service to the project.

17 **Q. WHAT IS THE ESTRELLA FALLS DEVELOPMENT?**

18 A. Developers are working together to develop a project known as "Estrella Falls." Estrella
19 Falls is a 330-acre master-planned, mixed-use, land development north of Interstate 10
20 between Pebble Creek Parkway and Bullard Avenue in the City of Goodyear. I have
21 attached a copy of the Conceptual Master Plan for Estrella Falls to my testimony as
22 Exhibit GN-1.

23 **Q. HOW WILL ESTRELLA FALLS BE DEVELOPED?**

1 A. Estrella Falls is being developed in phases. Phase I of Estrella Falls is a portion of a 66-
2 acre retail "power center" on the northeast corner of McDowell Road and Pebble Creek
3 Parkway (the "Power Center"). The Power Center will include major tenants, shops and
4 pad buildings, plus hotels. Phase II of the Estrella Falls project involves the remainder of
5 the Power Center, development of a regional center known as the Estrella Falls Mall on
6 the northwest corner of McDowell Road and Bullard Avenue, and additional commercial
7 development. I have attached a copy of the Site Plan for the Estrella Falls Mall as
8 Exhibit GN-2.

9 **Q. WHAT IS THE STATUS OF ESTRELLA FALLS?**

10 A. The Power Center has opened and tenants are entering leases. Additional tenants are
11 being added. Westcor is now ready to begin construction of the Estrella Falls Mall.

12 **IV WATER AND WASTEWATER SERVICE**

13 **Q. WHAT ENTITY IS CERTIFICATED TO SUPPLY WATER AND**
14 **WASTEWATER SERVICE FOR ESTRELLA FALLS?**

15 A. All but 30 acres of Estrella Falls is located within Utility's water and wastewater
16 treatment Certificate of Convenience and Necessity ("CC&N"). The remainder is within
17 the City of Goodyear's service territory.

18 **Q. DID DEVELOPERS ENTER INTO ANY AGREEMENTS WITH UTILITY**
19 **CONCERNING WATER AND WASTEWATER SERVICE?**

20 A. Yes. In 2001, Globe and Utility entered into four agreements concerning how Utility
21 would provide, and Developers would fund, water and wastewater service for Estrella
22 Falls:

- 23 1. The Commercial Wastewater Facilities Agreement, dated June 1, 2001 ("the
24 Commercial Wastewater Agreement");

2. The Commercial Water Facilities Agreement, dated June 1, 2001;
3. The Residential Wastewater Facilities Agreement, dated June 1, 2001; and
4. The Residential Water Facilities Agreement, dated June 1, 2001.

The Commercial Wastewater Agreement is the one at issue in this case.

Q. HOW MUCH WASTEWATER SERVICE WILL ESTRELLA FALLS REQUIRE?

A. Phase I, which is underway, will require 60,000 gallons per day (gpd) of wastewater collection and treatment service. Developers have made all payments required for this capacity and Utility has agreed to provide service for Phase I of Estrella Falls. Developers estimate that Phase II— the Estrella Falls Mall, the remainder of the Power Center, and additional commercial development—will require an additional 558,780 gpd of wastewater service at buildout.

Q. CAN DEVELOPERS BEGIN PHASE II OF ESTRELLA FALLS WITHOUT WASTEWATER SERVICE?

A. No. Lenders will not fund construction and tenants will not enter into leases without committed wastewater service. Once approved by the Commission, the Settlement Agreement provides that commitment.

V NATURE OF DISPUTE

Q. WHAT IS THE DISPUTE BETWEEN DEVELOPERS AND UTILITY?

A. The dispute is more fully set forth in Developers' Complaint in this docket. In summary, the Commercial Wastewater Agreement requires Developers to make phased payments to secure wastewater collection and treatment service for Estrella Falls. The purpose of the payments was to fund, as an advance, Developers' share of the treatment capacity that Utility would build to serve Estrella Falls. The Phase I capacity payment, which secured treatment capacity for Phase I of Estrella Falls, has been made and is not at issue. The

1 major issue in this case is the amount of the payment that the Commercial Wastewater
2 Agreement requires Developers to pay for treatment capacity to serve Phase II of Estrella
3 Falls.

4 **Q. WHAT DO DEVELOPERS BELIEVE IS THE REQUIRED PAYMENT FOR**
5 **TREATMENT CAPACITY FOR PHASE II OF ESTRELLA FALLS?**

6 A. In 2001, when the Commercial Wastewater Agreement was executed, Utility did not have
7 any treatment facilities to serve Estrella Falls. Section I(B)(1) of the Commercial
8 Wastewater Agreement provided that Utility would build a new treatment plant to serve
9 Estrella Falls..

10 Wastewater service will be provided by Company by building a new water
11 reclamation facility. Owner agrees to advance funds for the additional wastewater
12 treatment capacity necessary to treat the computed wastewater flows from all
13 phases of the Development ("Wastewater Treatment Capacity").

14 Exhibit D provided that Developers' advance for Phase II would be "\$2,538,000 or
15 additional capacity cost, whichever is higher." To this would be added a 2%
16 administrative fee, which brought the total Phase II payment to \$2,588,760.

17 Utility then constructed the 4.1 mgd Palm Valley Treatment Facility. After construction
18 was completed, Utility and Developers continued to agree that Developers would owe
19 \$2,588,760 for Phase II capacity when they were ready to proceed with Phase II.

20 **Q. DID UTILITY CHANGE ITS POSITION CONCERNING WHAT PAYMENT IT**
21 **WOULD REQUIRE FROM DEVELOPERS FOR PHASE II CAPACITY?**

22 A. Yes. In the fall of 2007, Utility for the first time maintained that the Phase II Capacity
23 Payment would be based on Utility's cost to construct a new treatment plant on Sarival
24 Road, along with a new force main. Developers estimated that associated Phase II

1 Capacity Payment would be approximately \$14.5 million. Developers were unable to
2 resolve this issue with Utility. Developers then filed their Complaint with the
3 Commission in this docket to allow resolution of this issue, along with several ancillary
4 issues. Simultaneously, Developers also filed a complaint in Superior Court concerning
5 some of the same issues.

6 **VI SETTLEMENT AGREEMENT**

7 **Q. PLEASE DESCRIBE THE SETTLEMENT NEGOTIATIONS BETWEEN**
8 **DEVELOPERS AND UTILITY.**

9 A. The content of the discussions is privileged, but I can characterize the discussions as
10 spirited and difficult. We met numerous times, either directly or through our attorneys,
11 and exchanged many draft proposals. I can confidently say that each side expended
12 hundreds of person-hours before we were able to reach agreement. I would especially
13 like to thank Judge Nodes and Commissioner Mayes for helping us to narrow the issues
14 and for encouraging us to continue negotiations.

15 **Q. PLEASE SUMMARIZE THE SETTLEMENT AGREEMENT.**

16 A. The Settlement Agreement is short and speaks for itself. Briefly, the Settlement
17 Agreement fixes Developers' cost for Phase II capacity at \$8.67/gallon and stipulates that
18 Phase II capacity is 558,780 gpd. Therefore, provided that the Commission approves the
19 Settlement Agreement's payment provisions no later than October 22, 2008, Developers
20 will tender a check to Utility for \$4,844,623 (\$8.67/gallon x 558,780 gallons).

21 Another key provision is the requirement that Utility will execute a Memorandum of
22 Agreement with the City of Goodyear, whereby the City will provide back-up treatment
23 capacity to Utility. This will allow Estrella Falls to receive treatment service for the mall
24 and other planned tenants, even if Utility's planned treatment expansion were delayed.

1 The Settlement Agreement also includes form water and wastewater line-extension
2 agreements for future on-site facilities at Estrella Falls. This will reduce the time needed
3 to complete future construction, because the parties will not have to negotiate line-
4 extension agreements from scratch.

5 Finally, assuming that the Commission timely provides approval, the Settlement
6 Agreement resolves all issues in this docket (the Commission Complaint Case) and the
7 Superior Court Complaint Case.

8 **VII SETTLEMENT AGREEMENT BENEFITS**

9 **Q. HOW DOES THE SETTLEMENT AGREEMENT BENEFIT DEVELOPERS?**

10 A. The Settlement Agreement benefits Developers in numerous ways. First, by successfully
11 resolving the Commission and Superior Court complaint cases, the Parties will avoid
12 protracted litigation that would likely have consumed hundreds of thousands of dollars
13 and thousands of person-hours for each party. The Settlement Agreement provides a
14 certain, timely, outcome, without the expense, uncertainty, and time commitment
15 associated with protracted commercial litigation. It also conserves the resources of the
16 Commission, its Utilities Division Staff, the Court, and the parties by ending all
17 litigation.

18 **Q. YOU MENTIONED A TIMELY OUTCOME: WHY IS A TIMELY OUTCOME**
19 **IMPORTANT TO DEVELOPERS?**

20 A. As I previously testified, without assured wastewater service, Lenders will not fund
21 construction and tenants will not enter into leases. This means, among other things that
22 Developers could not proceed with financing, engineering, and construction of the
23 Estrella Falls Regional Mall. This mall has already been delayed once for a year.
24 Westcor currently plans to open the mall in the third quarter of 2010, in time for the fall

1 and holiday buying season. If Developers could not obtain Utility's commitment to
2 provide wastewater service for the mall and other projects, Westcor would have no
3 choice but to again delay the mall's opening.

4 **Q. WOULD DELAYING THE MALL HARM DEVELOPERS?**

5 A. Definitely. Developers would incur significant, continuing, consequential damages. If
6 construction does not begin this fall, Westcor could lose key tenants, thereby causing
7 enormous monetary losses for Developers. In addition, Developers must begin making
8 Improvement District Assessment payments in January 2010. Developers expected that
9 there would be sales tax receipts from mall and other tenants by that date to offset these
10 payments. Because of the initial mall delay, there will now not be any sales-tax revenue
11 from mall tenants until at least the third quarter of 2010. Developers must make up any
12 shortfalls. Additional delays for the mall would correspondingly delay sales-tax revenue,
13 thereby causing even more serious, irreparable, financial harm to Developers.

14 **Q. WOULD THERE BE ANY OTHER CONSEQUENCES FOR DEVELOPERS IF**
15 **WASTEWATER SERVICE WERE DELAYED?**

16 A. Yes. Without wastewater service, additional development at Estrella Falls would be
17 impossible. Without wastewater service, no tenant would sign a lease and no lender
18 would finance construction. There would be no additional tenants for the Power Center
19 and no other commercial development within Estrella Falls. The financial impact for
20 Developers would be enormous.

21 **Q. IF WASTEWATER SERVICE WERE DELAYED, WOULD THERE BE ANY**
22 **OTHER HARM?**

23 A. Certainly. Based on Westcor's experience with similar projects like the Chandler
24 Regional Mall, we estimate that the Estrella Falls Regional Mall will provide

1 approximately two thousand jobs for residents of the City of Goodyear and neighboring
2 communities. Further, we estimate that the mall and other development will generate
3 millions of dollars in annual sales and property-tax revenues for the City. Consequently,
4 delaying the mall and other development would delay the associated jobs and directly
5 cost the City millions of dollars annually.

6 **Q. WHY DOES THE SETTLEMENT AGREEMENT REQUIRE A FINAL ORDER**
7 **FROM THE COMMISSION APPROVING THE SETTLEMENT AGREEMENT**
8 **BY OCTOBER 22, 2008?**

9 A. As I just discussed, further delay of the mall and other development would seriously
10 damage Developers, postpone thousands of new jobs, and cost the City of Goodyear
11 millions in sales and property tax revenues. If the Settlement Agreement is approved by
12 October 22, 2008, Developers will still be able to proceed with mall construction and
13 leasing Phase II of the Power Center. If the Commission cannot act by that date,
14 Developers will have no choice but to delay the mall and will be unable to lease to any
15 tenants for Phase II of the Power Center.

16 **VIII REQUESTED RELIEF**

17 **Q. WHAT ARE DEVELOPERS ASKING THE COMMISSION TO DO?**

18 A. We respectfully request that the Commission issue a Decision and Order no later than
19 October 22, 2008, which unconditionally approves the Settlement Agreement, or
20 alternatively, approves the financing and funding provisions contained in Section 4.

21 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

22 A. Yes.

ESTRELLA FALLS

Estrella Falls Site Data	63 acres
The Market at Estrella Falls 500,000 sq.ft. Opening Fall 2008	105 acres
Estrella Falls Regional Center 1,200,000 sq.ft. Opening Fall 2010	162 acres
Peripheral Retail/Mixed Use	330 acres
TOTAL	330 acres

Key Legend

-  Retail
-  Estrella Falls Regional Center
-  Office/ Commercial
-  Multifamily/Condominium Residential
-  Hotel



ESTRELLA FALLS

