

RESOLUTION NO. R2020-058

EXHIBIT B

MARTIN PROPERTY

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2020 by and between **PASQUE PARTNERS**, an Arizona Limited Liability Limited Partnership (“Owner”), and **CITY OF YUMA**, an Arizona municipal corporation (“City”), hereinafter referred to individually as the “Party” and collectively as the “Parties.”

RECITALS

A. Owner owns real property within the corporate limits of the City of Yuma consisting of the Martin Property, comprised of approximately 33.3 acres \pm at the southwest corner of 32nd Street and Avenue 5E, more particularly described on Exhibit 1 attached hereto and incorporated herein by this reference (“Property”).

B. Arizona Revised Statutes (“A.R.S.”) § 9-500.05 authorizes the City to enter into an agreement with any person or entity having an interest in real property providing for the development of such property and certain development rights thereon. The Parties understand and acknowledge that this Agreement is a “Development Agreement” within the meaning of and entered into pursuant to the terms of A.R.S. § 9-500.05, in order to facilitate the proper municipal zoning designation and development of the Property by providing for, among other things: (i) the permitted uses for the Property; (ii) the density and intensity of such uses; and (iii) other matters related to the development of the Property. The terms of this Agreement shall constitute covenants running with the Property as more fully described in this Agreement.

C. The City has determined that encouraging and supporting the development of the Property pursuant to this Agreement will result in significant planning, economic and other public purpose benefits to the City and its residents by, among other things: (i) the construction of public improvements; (ii) the development of the Property in a manner consistent with the City’s General Plan; (iii) an increase in revenues and development fees to the City arising from or relating to the development of the Property; (iv) the development of additional housing

options within the City and (v) the creation of new jobs and otherwise enhancing the economic welfare of the residents of the City.

D. Owner and City acknowledge that the development of the Property is a major undertaking for Owner and that the marketing, economic and investment conditions and magnitude of the development require the development to be constructed over a period of years. Therefore, Owners require assurances and protection of the protected development rights as set forth in A.R.S. § 9-1202 in order that Owners or their successors will be allowed to complete the development of the Property in accordance with the proposed development plan. Likewise, City requires assurances from Owner the development of the Property will comply with the development plan as contemplated herein and upon the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations contained herein and for good and valuable consideration, the receipt of which is hereby acknowledged, Owner and City agree as is more specifically set forth in this Agreement:

1. **INCORPORATION OF RECITALS:** The accuracy of the above Recitals is confirmed and all of the above-mentioned Recitals are incorporated herein and are hereby made provisions of this Agreement with the same force and effect as if set forth in the “Agreement” section of this Agreement.

2. **TERM.** This Agreement will commence and become operative upon the date first written above (the “Effective Date”), and will terminate thirty six (36) months from the Effective Date.

3. **NO EFFECT ON DEVELOPMENT RIGHT PLAN, ZONING OR DEVELOPMENT.** The Parties agree that nothing in this Agreement shall affect the City’s legislative authority to approve or deny the Development Plan for the Property and/or the contemplated zoning for the Property, and/or impose other conditions on the development of the Property. The Parties further agree that nothing in this Agreement shall require the Owner to proceed with the proposed development of the Property.

4. **PROTECTED DEVELOPMENT RIGHT PLAN:** This Agreement is submitted as a “Protected Development Right Plan” pursuant to A.R.S. §9-1201(4). Owner intends to develop

the Property consistent with the intensities, densities and land uses described on Exhibit 2 (the “Development Plan”), attached hereto and incorporated herein by this reference. Prior to the vesting of the Development Plan pursuant to A.R.S. §9-1201, Owner shall i) to the extent the Development Plan conflicts with the City’s General Plan, submit an application to amend the City’s General Plan to conform the General Plan to the Development Plan; and ii) submit application[s] for the rezoning of the Property consistent with the City’s General Plan and the uses contemplated in the Development Plan; and iii) comply with the requirements of Title 9, Chapter 11, Article 1 of the Arizona Revised Statutes.

5. ADHERENCE TO DEVELOPMENT PLAN. Owner acknowledges and agrees City is materially relying on Owner’s representations regarding its intended use and development of the Property as generally depicted on the Development Plan in entering into this Agreement. Owner agrees to only submit Rezoning Applications consistent with the Development Plan for development of the Property.

6. DEVELOPMENT FEES AND WATER AND SEWER CAPACITY CHARGES. Any development and use of the Property shall require the payment of City of Yuma Development fees in the amounts established and in existence at the time of the issuance of a building permit. In the event building permits are obtained at different times, the Development Fee applicable to any specific building permit is the Development Fee in effect at the time the building permit is issued. The City of Yuma Development Fees include development fees in five (5) fee categories: (i) Parks and Recreation facilities, (ii) Police facilities, (iii) Fire facilities, (iv) General Government facilities, and (v) Streets facilities (collectively “Development Fees”). Based on the public improvement obligations of Owner identified in Section 6 above, Owner is not entitled to any rebate, reimbursement, credit, offset, reduction or waiver of any Development Fees. In addition to Owners’ obligation to pay Development Fees, Owner shall be responsible for the payment of any other fees or charges associated with the development of the Property, including but not limited to, water and sewer capacity, connection, and service charges in accordance with City of Yuma Utility Regulations, and building permits and plan review charges for new construction.

7. CONSTRUCTION OF PUBLIC IMPROVEMENTS. Any public improvements required for development of the Property shall be designed, constructed, and dedicated in

accordance with Applicable Laws, including, without limitation, City's normal plan submittal, review and approval processes, day-to-day inspection requirements, insurance requirements, and financial assurance requirements. Unless stated otherwise in this Agreement:

a. Owner is responsible for assuring all Public Improvements are constructed in accordance with the designs, plans and specifications approved by the City. Construction may not commence until written approval of the plans and specifications has been given and if required, an access/encroachment permit for the Public Improvements has been issued by the City. The City shall have the right to inspect the construction work for compliance with specifications, plans, codes, ordinances and other regulations or laws that may apply.

b. All costs of the Public Improvements design, construction, inspection and testing, including without limitation, the costs of construction permits, development fees, water and sewer connection and capacity charges and performance bonds, shall be paid for by Owner.

8. UTILITY SERVICE. The City acknowledges that the property is within the City of Yuma potable water and sanitary sewer franchise service area, as approved by Yuma County. Upon application to the State of Arizona, Department of Environmental Quality for a Notice of Intent to Discharge and Approval to Construct Water Facilities, the City will issue the appropriate "Authorization to Connect to Public Sewer" and "Authorization to Connect to Public Water Service" letters for both water and sewer service.

9. DEVELOPMENT STANDARDS. The development and use of the Property shall be subject to all applicable county, state, and federal laws, regulations, rules, policies, standards, and fees in effect at the time of such development ("Applicable Laws").

10. NOTICE. Except as otherwise required by law, any notice, demand or other communication given shall be in writing by personal delivery or sent by certified or registered U.S. Mail, return receipt requested, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph, or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid:

To City:

To Owners:

City Administrator
One City Plaza
Yuma, Arizona 85364-1436

Pasque Partners
PO Box 2949
Yuma, Arizona 85366

All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee, and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer (in each case regardless of whatever such notice, demand or other communication is received by any other person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this paragraph). Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee.

11. OWNER REPRESENTATIONS. Owner represents and warrants that:

a. Owner has the full right, power and authorization to enter into and perform this Agreement and the obligations and undertakings of Owner under this Agreement, and the execution, delivery and performance of this Agreement by Owner has been duly authorized, agreed to, and is in compliance with any organizational documents of Owner.

b. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, deliver and performance.

c. Owner will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

d. As of the date of this Agreement, Owner knows of no litigation, proceeding or investigation pending or threatened against or affecting Owner, which could have

material adverse effect on Owners' performance under this Agreement that has not been disclosed in writing to City.

e. This Agreement (and each undertaking of Owner contained herein) constitutes a valid, binding and enforceable obligation of Owner according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principals, whether considered at law or in equity.

f. The execution, delivery and performance of this Agreement by Owner is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Owner is a party or to which owner is otherwise subject.

g. Owner has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs or conducting business and costs of professional services such as the services of architects.

h. Owner has had opportunity for independent legal review of this Agreement by counsel of its choosing prior to the execution hereof.

12. CITY OF YUMA REPRESENTATIONS. City represents and warrants to Owner that:

a. City has the right, power and authorization to enter into and perform this Agreement and each of City's obligations and undertakings under this Agreement, and City's execution, delivery and performance of this Agreement has been duly authorized and agreed to in compliance with the requirements of the Yuma City Charter and the Yuma City Code.

b. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

c. City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

d. City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to Owner.

e. This Agreement (and each undertaking of City contained herein), constitutes a valid, binding and enforceable obligation by City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, referendum, and other laws of general application affecting creditor's rights and by equitable principles, whether considered at law or in equity.

f. The execution, delivery and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which City is a party or is otherwise subject.

g. City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

13. Assignment and Transfer.

13.1. Restrictions on Assignment and Transfer. Except in connection with (i) obtaining financing or refinancing or (ii) the exercise of remedies by Lender which have entered into non-disturbance agreements with City, Owner shall not transfer or assign all or any part of its right or obligations under this Agreement without the prior express written consent of City, which approval may be given or withheld in City's reasonable discretion. For the purposes of this Agreement, "transfer or assign" shall include any change in the identify of Owner, in which event Owner shall promptly notify City of any and all anticipated changes at least thirty (30) days in advance thereof. No voluntary or involuntary successor in interest of Owner shall acquire any rights or powers under this Agreement except as expressly set forth herein. The foregoing restrictions in this Section shall terminate when the obligations of the Parties are full complied with, or when the Parties mutually provide for termination in writing, whichever occurs first.

13.2. City of Yuma's Rights and Obligations. City's rights and obligations under this Agreement shall be non-assignable, without the prior express consent of Owner, which consent may be given or withheld in Owners' reasonable discretion.

14. Attorneys' Fees and Costs. In the event of commencement of a legal action in an appropriate forum by a Party to enforce any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing Party in any such action shall be entitled to reimbursement of its reasonable attorneys' fees and litigation costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the Party and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

15. Miscellaneous.

15.1. Consents and Approvals. Whenever this Agreement requires or permits the consent or approval of a Party to any act, document, use, or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

15.2. Governing Law/Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of laws principles). Any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Yuma (or, as may be appropriate, in the Justice Courts of Yuma County, Arizona, or the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts and agree not to seek transfer or removal of any action commenced by or through the subject of this Agreement.

15.3. Construction; Severability. Captions of the paragraphs are for convenience only and shall not govern the interpretation of the terms and provisions hereof. This

Agreement represents the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each waive the application of any rule of law that ambiguous or conflicting terms or provisions shall be interpreted or construed against the Party who prepared the Agreement.

If any term, covenant, condition or provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses City or Owners from undertaking any contractual commitment to perform under any provision hereunder, the remaining portions of this Agreement shall remain in full force and effect, and the Parties will negotiate diligently in good faith for such amendments of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.

15.4. Entire Agreement. This Agreement, together with the following Exhibits attached hereto (which are incorporated herein by this reference) constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement. Copies of Exhibits 1 and 2 to this Agreement are maintained on file in the Office of the City Clerk of the City of Yuma.

Exhibit 1: Legal Description and depiction of Property

Exhibit 2: Development Plan

All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement.

15.5. 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 arrangement between the Parties. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, corporation or other entity not a Party to this

Agreement (including, without limitation, any broker), and no such other person, firm, corporation or entity shall have any right or cause of action hereunder, except for permitted transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Owners under this Agreement.

15.6. Counterparts. For the convenience of the Parties, this Agreement may be executed in two or more counterparts and each executed counterpart shall for all purposes be deemed an original and shall have the same force and effect as an original, but all of which together shall constitute in the aggregate but one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document. Neither Party shall have any right, duty or obligation under this Agreement unless nor until this Agreement or counterparts have been executed by both Parties and approved by the Yuma City Council

15.7. Successors and Assigns; All Terms and Covenants Run With Land. All of the provisions hereof shall inure to the benefit of and be binding upon the successors in interest and assigns of each of the Parties and will run with the land during the Term of the Agreement or such longer period where the covenant expressly survives the termination of this Agreement. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term shall include any such Party's permitted successors and assigns, tenants, lessees and sublessees.

15.8. A.R.S. § 38-511 and A.R.S. § 35-393.01 (Boycott of Israel). Notice is hereby given of the applicability of A.R.S. § 38-511 to this Agreement. Additionally, pursuant to A.R.S. § 35-393.01, Owners certify that they are not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agree for the duration of this Agreement to not engage in a boycott of Israel.

15.9. Recordation. City shall record a copy of this Agreement no later than ten (10) days from the date of entering into this Agreement pursuant to A.R.S. § 9-500.05.

15.10. Estoppel Certificate. The Parties agree that, upon not less than twenty one (21) business days prior written request, a requested Party shall execute, acknowledge and deliver to the Party making such request a written statement certifying to the current status of the Agreement, including whether or not, the requested Party has actual knowledge that any Party is in default of any obligation or duty set forth in this Agreement. Any such certificate may be relied on by a prospective sub-lessee, or any prospective Lender.

15.11. Further Acts. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (i) this Agreement as in full force and effect, and (ii) the performance of the obligations hereunder at any time.

15.12. Amendment. No change or addition is to be made to this Agreement except by written amendment executed by City and Owner. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Yuma County, Arizona.

15.13. Individual Nonliability. In the event of any default or breach by City, no Yuma City Council member, official, representative, agent, attorney or employee shall be personally liable to any of the other Parties hereto, or to any successor in interest to such Parties, nor for any amount which may become due to a Party or its successor, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Owner shall be limited solely to the Property and the assets of Owner related to the Property, and shall not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are members, stockholders, officers, agents, trustees, or beneficiaries of Owner.

15.14. Proposition 207 Waiver. Owner waives and releases City from any and all claims under A.R.S. § 12-1134, *et seq.*, including any right to compensation for reduction to the fair market value of the Property or any portion thereof, as a result of City's approval of this

Agreement, including the loss, failure, lapse, revocation or other impairment to any protected development right contemplated herein caused solely or partially by the City of Yuma. The terms of this waiver shall run with the land and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the termination of this Agreement.

15.15. Avigation Easement. Owners acknowledge the subject Property is located within the vicinity of the Yuma County International Airport and the United States Marine Corps Air Station, both of which may result in aircraft overflight, vibrations or related noise as may be inherent in the operation of aircraft now known or hereafter used for flying within Navigable Airspace.

15.16. Termination Upon Sale of Residential Lots. Except as otherwise provided herein, 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 Residential Lots within the Property. Therefore, in order to alleviate any concern as to the effect of this Agreement on the status of title to any of the Property, so long as not prohibited by law, this Agreement shall terminate without the execution or recordation of any further document or installment as to any Residential Lot, and thereupon such Residential Lot shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

APPROVED:

“CITY”

CITY OF YUMA

“OWNER”

PASQUE PARTNERS, an Arizona limited Liability, Limited Partnership

By _____
Philip A. Rodriguez
City Administrator

By: _____

Its: _____

ATTEST:

By _____
Lynda L. Bushong
City Clerk

APPROVED AS TO FORM:

By _____
Richard W. Files
City Attorney

ACKNOWLEDGEMENTS

State of _____)
 _____) ss
 County of _____)

The foregoing instrument was acknowledged before me this ____ of _____, 20__ by _____ as the Managing Partner of Pasque Partners, an Arizona limited Liability, Limited Partnership on behalf of the partnership.

My commission expires: _____ By: _____
Notary Public

[illegible]

The foregoing instrument was acknowledged before me this ____ of _____, 20__ by Philip A. Rodriguez, City Administrator, on behalf of the City of Yuma, an Arizona municipal corporation.

My commission expires: _____ By: _____
Notary Public

EXHIBIT 1
Legal Description of Parcel A
MARTIN PROPERTY

NE1/4, NE1/4 OF SECTION 7, T.9S., R.22W., G&SRB&M
EXCEPT WEST 145 FEET OF NW1/4, NE1/4, NE1/4
EXCEPT ROAD RIGHT-OF-WAY
EXCEPT CANAL RIGHT-OF-WAY

EXHIBIT 2
Development Plan
MARTIN PROPERTY

