

CONDITIONAL SETTLEMENT AND RELEASE AGREEMENT

This Conditional Settlement and Release Agreement (this “Agreement”) is entered into by and between the City of Yuma, an Arizona municipal corporation (the “City”), on the one hand, and Avenue 6E Investments, LLC, an Arizona limited liability company, and Saguaro Desert Land, Inc., an Arizona corporation, (collectively, “Plaintiffs”), on the other hand. Plaintiffs and the City are collectively referred to herein as the “Parties” and singularly referred to herein as a “Party.”

RECITALS

A. In 2008, Plaintiffs submitted an application (the “Rezoning Application”) seeking to rezone approximately 42 acres of land on the west side of Avenue 6E and south of the 36th Street alignment in a development known as Belleza II (the “Subject Property”). The rezoning would have permitted a maximum of 198 lots under R-1-6 zoning (minimum 6,000 square foot lots) from the existing 145 lots of R-1-8 zoning (minimum 8,000 square foot lots) preliminarily platted on the Subject Property.

B. Neighbors from two sides of the Subject Property and other individuals protested the Subject Rezoning Application (the “Opposition”), and in September 2008, the Yuma City Council denied the Rezoning Application for the Subject Property (the “Rezoning Denial”).

D. In 2009, Plaintiffs filed a lawsuit against the City in the matter captioned *Avenue 6E Investments, LLC, et al. v. City of Yuma*, Case No. 2:09-CV-00297-JJT-PHX (the “Lawsuit”).

E. In the Lawsuit, Plaintiffs currently are alleging the following claims against the City as a result of the Rezoning Denial: (1) a disparate treatment claim under both the Fair Housing Act (“FHA”) and 42 U.S.C. § 1983; and (2) a disparate impact claim under the FHA (collectively, the “Claims”).

F. The City denies each of Plaintiffs’ claims and any and all allegations or assertions of wrongdoing asserted by Plaintiffs against the City, the City Council of Yuma, or any of the City’s representatives, officials, officers, staff, or employees relating to the Subject Property, the Rezoning Application, the Opposition, the Rezoning Denial, the Lawsuit, or the Claims (the “Disputed Issues”). Similarly, Plaintiffs deny any and all allegations or assertions of wrongdoing asserted by the City against Plaintiffs or any of Plaintiffs’ representatives, officers, or employees relating to the Disputed Issues.

G. Despite the Parties’ respective denials of any wrongdoing relating to the Disputed Issues, the Parties recognize the cost and risk of further litigation relating to the Disputed Issues, and therefore desire to put the Disputed Issues behind them. To that end, the Parties, intending to be legally bound, and contingent upon and subject to the terms set forth in this Agreement, desire to forever discharge, release, compromise, settle, and resolve any and all claims, disputes, or causes of action of any kind Plaintiffs had, have, or may have had against the City as of the Final Settlement Date (as defined below), relating to the Disputed Issues.

H. The Parties agree that the settlement embodied in this Agreement is made in good faith.

AGREEMENT

For and in consideration of the foregoing recitals, the promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Parties agree that the above recitals are correct and accurate and are hereby incorporated into and made part of this Agreement.

2. Denial of Liability. This Agreement represents a compromise of any and all claims Plaintiffs had, have or may have had against the City, in any way relating to the Disputed Issues. The Parties enter into this Agreement, because they recognize the costs, inconvenience, and uncertainty that are inherent in litigation, and not the worthiness of the claims, allegations, or defenses of the other Party with respect to the Disputed Issues. To the contrary, each Party disputes the claims, allegations and/or defenses set forth by the other Party, in any way relating to the Disputed Issues. As a result, nothing contained in this Agreement or the consideration provided herein shall be construed as an admission of liability or a concession of any kind by either Party relating to any allegations, claims, and/or defenses of the Parties.

3. Consideration. The Parties hereby represent and acknowledge that this Agreement is supported by fair and adequate consideration sufficient to support a binding agreement.

4. Plaintiffs' Affiliated Companies. The Parties agree that Plaintiffs' rights and benefits under this Agreement shall be assignable to and inure to the benefit of any company affiliated with or related to Plaintiffs, including, but not limited to, any company owned or controlled by Brian Hall (the "Hall Affiliated Companies").

5. Rezoning 360 Acres (the "Rezoning Actions"). Subject to Section 6 of the Agreement, the City shall complete all administrative and legislative acts required, including any general plan amendments and rezoning actions ("Rezoning Actions"), to rezone 360 acres of the property commonly known as the "Ocotillo Desert Conceptual Master Plan" as depicted in Exhibit A attached hereto to an average density of five dwelling units per acre (a maximum of 1800 dwelling units for the 360 acres). The Rezoning Actions shall rezone 120 acres within each of the 160 acre parcels labeled A, B and C on Exhibit A to the desired density of five dwelling units per acre average or a maximum of 600 dwelling units per 120 acres. The remaining 40 acres in each of the three 160 acre parcels shall not be included within the Rezoning Actions, and shall remain subject to ordinary and standard rezoning requirements. A concept drawing is attached as Exhibit B, but it is agreed that Plaintiffs may select the mixture and location of the Rezoning Actions covering the 120 acres so long as the resulting average density over each of the designated 120 acres does not exceed five dwelling units per acre. The Rezoning Actions shall not add conditions or any deadline for submission or recording a plat, other than comments that: the developer will dedicate a minimum of 10 acres for a public park at the time of platting (which may be used by the Hall Affiliated Companies as a retention/detention basin), creation of a Maintenance Improvement District at the time of platting, and that standard development requirements, road dedications and engineering issues shall be addressed at such time as Plaintiffs submit preliminary plats and final plats for a specific parcel. The dismissal of the Lawsuit shall be contingent upon the completion of the Rezoning Actions, but is not in any way whatsoever contingent on the platting of any property.

6. Satisfaction of the Rezoning Actions. The Parties shall use their best efforts, and perform all actions necessary or useful to satisfy the Rezoning Actions in accordance with the schedule set forth under Section 7 of this Agreement. The Parties acknowledge that General Plan amendments, action on the rezoning applications, and final plat approval are legislative actions in the sole legislative discretion of the Yuma City Council, are subject to referenda by the residents of Yuma, and that those actions cannot be accomplished by contract other than a covenant in the settlement agreement that City staff will support the proposed legislative action.

7. Schedule of Implementation of Rezoning Actions. The Parties shall use their best efforts and work in good faith to complete the Rezoning Actions in accordance with the following schedule:

- ***June 15, 2019:*** Plaintiffs or Hall Affiliated Companies file application for Major Plan Amendment.
- ***August 29, 2019:*** Plaintiffs or Hall Affiliated Companies file Hall Rezoning Application.
- ***September 9, 2019:*** City will hold its first Yuma Planning & Zoning Commission hearing on Major Plan Amendment involving the Proposed Hall Rezone.
- ***September 23, 2019:*** City will hold its second Yuma Planning & Zoning Commission hearing on Major Plan Amendment involving the Proposed Hall Rezone.
- ***October 16, 2019:*** Yuma City Council will hear and decide whether to adopt Major Plan Amendment involving the Proposed Hall Rezone.
- ***October 28, 2019:*** City will hold its Yuma Planning & Zoning Commission hearing on the Hall Rezoning Application.
- ***November 16, 2019:*** The Major Plan Amendment involving the Proposed Hall Rezone shall become effective thirty (30) days after the Yuma City Council approves the Major Plan Amendment involving the Proposed Hall Rezone.
- ***November 20, 2019:*** Yuma City Council will introduce a rezoning ordinance to approve the Hall Rezoning Application.
- ***December 4, 2019:*** Yuma City Council will hear and decide whether to adopt the rezoning ordinance approving the Hall Rezoning Application.
- ***January 4, 2020:*** The Proposed Hall Rezone shall become effective thirty (30) days after the Yuma City Council approves the Hall Rezoning Application (“Effective Date of Hall Rezone”).

Assuming that the Parties are using their best efforts and are working in good faith to accomplish the foregoing schedule, neither Party shall be liable for the failure to comply with the foregoing schedule.

8. Joint Notice and Stipulation of Settlement Terms. The Parties agree that by or before June 17, 2019, the Parties shall file a joint notice of settlement, request to stay the Lawsuit, and request for the Court to retain jurisdiction of the Lawsuit pending the completion of settlement terms in the form attached as Exhibit C to this Agreement.

9. Completion of 40th Street. Following the Effective Date of Hall Rezone, the City shall construct 40th Street from Avenue 6 $\frac{3}{4}$ E to Avenue 7 $\frac{1}{2}$ E as an open-bid project on the City's schedule in the Capital Improvement Program consisting of both roadway costs (which include roads and lighting improvements) and utility costs (including water, sewer and all appurtenances) (cost estimate \$1,808,319.25). Plaintiffs shall not be separately charged by way of plat conditions or other exactions for this project, but each dwelling unit within the 360 designated acres, along with all other new construction in the City, shall be charged for this segment of 40th Street, which will include a proportional share per dwelling unit for such fees.

10. Completion of the 40th Street/Avenue 7E Box Culvert Bridge Crossing the A Canal. Following the Effective Date of Hall Rezone, and provided there is no opposition from Plaintiffs or Plaintiffs' agents and affiliates and the 40th Street/Avenue 7E box culvert at the A Canal is legislatively added to the Infrastructure Improvements Plan (IIP), which will result in an increase in street facilities development fees payable by new construction throughout the City, the City agrees to construct (as an open-bid project on the City's Capital Improvement Program schedule) the 40th Street/Avenue 7E box culvert bridge at the A Canal (cost estimate \$1,870,000). Plaintiffs shall not be separately charged by way of plat conditions or other exactions for this project, but each dwelling unit within the 360 designated acres, along with all other new construction in the City, shall be charged for the 40th Street/Avenue 7E box culvert bridge at the A Canal, upon addition of the bridge to the IIP, which will include a proportional share per dwelling unit for such fees. If the City Council does not add the 40th Street/Avenue 7E Bridge into the IIP, neither the City nor Plaintiffs shall have any obligation to construct the 40th Street/Avenue 7E Bridge crossing the A Canal.

11. Settlement Amount. The City shall pay to Plaintiffs the sum of two million eight hundred fifty thousand dollars and no cents (\$2,850,000.00) (the "Settlement Amount") within one (1) business day following the Effective Date of Hall Rezone. The date upon which the Settlement Amount is received by Plaintiffs is referred to as the "Final Settlement Date."

12. Dismissal of the Lawsuit with Prejudice. Within ten (10) days of the Final Settlement Date, Plaintiffs shall prepare, and the Parties shall file, a joint stipulation to dismiss the Lawsuit with prejudice, each side to bear its own costs and attorneys' fees. The Parties agree that the dismissal of this Lawsuit and the effect of the mutual release shall be contingent upon completion of the Rezoning Actions but shall not be contingent on the platting of the parcels subject to the Rezoning Actions.

13. Jurisdiction Retained and Status Reports to Court. To effectuate the provisions of Section 14 of this Agreement, the Parties agree that a material condition of this Agreement is that the Court agrees to retain jurisdiction of the Lawsuit until the Rezoning Actions are completed and the Lawsuit is dismissed with prejudice pursuant to Section 12 of this Agreement. The Parties agree further that, until this Lawsuit is dismissed with prejudice, they will file a joint status report every 60 days, or as required by the Court, apprising the Court of the status of the completion of the settlement terms.

14. Motion to Lift Stay of the Lawsuit and Set Matter for Trial. The Parties agree that, if either Party believes in good faith that the Rezoning Actions cannot be completed in spite of the Parties' best and good faith efforts, then the Party may move the Court to lift the stay and set the matter for trial.

15. Mutual Contingent Release.

a. Plaintiffs' Release of the City. Except as otherwise set forth in this Agreement, automatically effective on, and contingent upon, the Final Settlement Date, Plaintiffs, on behalf of themselves and their past, present, or future representatives, agents, and assigns, including, but not limited to, their past, present, or future affiliates (including the Hall Affiliated Companies), divisions, parent entities, subsidiaries, principals, owners, shareholders, managers, investors, members, officers, board members, employees, partners, attorneys, beneficiaries, executors, trusts, trustees, transferees, successors and predecessors-in-interest, administrators, heirs, and all or any other persons or entities claiming by, through, under, or on behalf of Plaintiffs, hereby, knowingly and voluntarily, forever waive, covenant not to sue, release, discharge and covenant not to pursue, against the City, or the City's past, present, or future representatives, agents, and assigns, including, but not limited to, the City's employees, elected and appointed public officials including members of the City Council, officers, agencies, departments, special purpose districts, affiliates, or entities, and any and all other persons or entities claiming by, through, under, or on behalf of the City, on or from any or all claims, demands, obligations, contracts, actions and causes of action, or causes of liability, rights, or offset rights, whether at law or in equity, whether known or unknown, suspected or unsuspected, matured or unmatured, discovered or undiscovered, asserted or unasserted, including, without limitation, any form of injunctive or equitable relief, any award of statutory, actual, consequential, incidental, liquidated, or other types or categories of damages or relief, any form of recoupment, any award of punitive, treble, or exemplary damages, any claims for attorneys' fees or costs or expenses of litigation, or any other type of relief which Plaintiffs, or any other person or entity claiming by, through, under, or on behalf of Plaintiffs, had, have or may have had as of the Final Settlement Date, relating to any or all of the Disputed Issues.

b. The City's Release of Plaintiffs. Except as otherwise set forth in this Agreement, automatically effective on, and contingent upon, the Final Settlement Date, the City, on behalf of itself, and its past, present, or future representatives, agents, and assigns, including, but not limited to, its past, present, or future employees, elected and appointed public officials including members of the City Council, officers, agencies, departments, special purpose districts, affiliates, or entities, and any and all other persons or entities claiming by, through, under, or on behalf of the City, hereby, knowingly and voluntarily, forever waive, covenant not to sue, release, discharge and covenant not to pursue, against Plaintiffs, or Plaintiffs' past, present, or future representatives, agents, and assigns, including, but not limited to, Plaintiffs' past, present, or future affiliates (including the Hall Affiliated Companies), divisions, parent entities, subsidiaries, principals, owners, shareholders, managers, investors, members, officers, board members, employees, partners, attorneys, beneficiaries, executors, trusts, trustees, transferees, successors and predecessors-in-interest, administrators, heirs, and all or any other persons or entities claiming by, through, under, or on behalf of Plaintiffs, any or all claims, demands, obligations, contracts, actions and causes of action, or causes of liability, rights, or offset rights, whether at law or in equity, whether known or unknown, suspected or unsuspected, matured or unmatured, discovered or undiscovered, asserted or unasserted, including, without limitation, any form of injunctive or

equitable relief, any award of statutory, actual, consequential, incidental, liquidated, or other types or categories of damages or relief, any form of recoupment, any award of punitive, treble, or exemplary damages, any claims for attorneys' fees or costs or expenses of litigation, or any other type of relief which the City, or any other person or entity claiming by, through, under, or on behalf of the City, had, has or may have had as of the Final Settlement Date, relating to any or all of the Disputed Issues.

16. Attorneys' Fees and Costs. Subject to the other terms and conditions of this Agreement, the Parties shall bear their own costs, inclusive of attorneys' fees and expenses, relating to this Agreement, the negotiations leading up to this Agreement, or the Disputed Issues.

17. Cooperation; Further Reasonably Necessary Steps. The Parties agree in good faith to cooperate and take all steps that may reasonably be required to assist and facilitate with the coordination and completion of any steps that may reasonably be necessary or appropriate to effectuate and fully carry out the intent of this Agreement, including, but not limited to, preparation of all necessary documentation.

18. Integration. This Agreement, together with any exhibits, constitutes the entire, complete, and final agreement and understanding of the Parties relating to the subject matter of this Agreement, and supersedes any prior written or oral representations between the Parties. The Parties specifically disclaim any reliance upon any and all prior written or oral representations by any of the Parties. This Agreement may not be altered or amended except by a writing signed by all of the Parties to this Agreement expressly stating that such modification is intended.

19. Fully Informed Parties. The Parties hereto have been represented in the negotiations for and in the preparation of this Agreement by counsel of their own choosing and have had the opportunity to consult with counsel concerning the legal consequences of this Agreement; the Parties have reviewed and understand the provisions of this Agreement; the Parties have had this Agreement explained to them by their counsel or have had the opportunity to consult with counsel; and the Parties are fully aware of and understand this Agreement's contents and its legal effect and consequences and sign it voluntarily.

20. Interpretation and Construction. This Agreement shall be deemed to have been jointly prepared by the Parties' attorneys. Any ambiguity or uncertainty that may exist regarding any language of this Agreement shall not be interpreted for or against any of the Parties. Each Party has had input into the language of this Agreement, and in the event a dispute concerning the language of this Agreement arises, this Agreement shall be construed in a fair manner to carry out the intentions of the Parties without any regard as to who drafted any portion of this Agreement.

21. No Other Parties with Interest. The Parties represent and warrant that no other person or entity has any interest in the claims, demands, obligations, or causes of action referred to in this Agreement, except as otherwise set forth herein, that they have the sole right and exclusive authority to execute this Agreement, that the individuals executing this Agreement have lawful authority and good right to execute this Agreement, and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement.

22. Warranty of Capacity to Sign. Each person executing this Agreement hereby represents and warrants that he or she is the duly authorized representative of the Party for which he or she acts and is fully and legally empowered to execute and deliver this Agreement on behalf of the Party for which he or she acts.

23. Successors in Interest and Execution. Unless otherwise noted in this Agreement, this Agreement shall be binding upon the heirs, legal representatives, successors in interest, and assigns of the Parties hereto, and shall become binding and effective upon execution of delivery to the original Parties.

24. Captions. The section captions set forth in this Agreement are for the convenience of the Parties and do not modify, limit, or otherwise affect the express provisions of this Agreement.

25. Counterparts. This Agreement may be executed in as many counterparts and by electronic transmission (including PDF or similar scanned format) or photocopies as may be deemed necessary or convenient, and by the Parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, together, shall constitute one and the same instrument. A photocopy or scanned signature may be treated as an original signature.

26. Choice of Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Arizona without reference to its conflict of laws provisions.

27. Notices. All notifications required to be given or sent pursuant to this Agreement, shall be given or sent to the Parties' respective counsel as set forth in this section, by personal delivery; or mailed by United States registered or certified mail, return receipt requested, postage prepaid; or transmitted by electronic mail followed by mailed notice. Notices shall be deemed effective on the date of receipt or within forty-eight (48) hours after deposit by either Party of any such notice sent by United States registered or certified mail, return receipt requested, postage prepaid. Any Party may change its address for the service of notice by giving notice of such change ten (10) Business Days prior to the effective date of such change. For purposes of this Agreement, "Business Day" means a day that is not a Saturday, Sunday, or legal holiday.

If to City of Yuma:

Richard W. Files, Esq.
City Attorney
City of Yuma
One City Plaza
Yuma, Arizona 85364
Phone: (928) 373-5000
Email: richard.files@yumaaz.gov

With a copy to:

Snell & Wilmer L.L.P.
c/o Vaughn Crawford, Esq.
Adam E. Lang, Esq.
Snell & Wilmer L.L.P.
One Arizona Center
400 East Van Buren
Phoenix, Arizona 85004-2202
Phone: (602) 382-6522
Email: vcrawford@swlaw.com
alang@swlaw.com

If to Plaintiffs:

Brian Hall
Halls' General Contractor
3064 South Avenue B
Yuma, Arizona 85365

With a copy to:

Brancart & Brancart
c/o Christopher Brancart
P.O. Box 686
Pescadero, California 94060
Phone: (650) 879-0141
Email: cbrancart@brancart.com

[SIGNATURE PAGES TO FOLLOW]

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

CITY OF YUMA, an Arizona Municipal Corporation

By: _____
Name: John D. Simonton _____
Its: Interim City Administrator DATE

AVENUE 6E INVESTMENTS, LLC, an Arizona limited liability company

By: _____
Name: Brian Hall _____
Its: Manager DATE

SAGUARO DESERT LAND, INC., an Arizona corporation

By: _____
Name: Brian Hall _____
Its: President DATE

Attest:

By: _____
Name: Lynda L. Bushong _____
Its: City Clerk DATE

Approved as to Form:

By: _____
Richard W. Files
City Attorney

[illegible]

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160 Acre Parcel – For Discussion Only

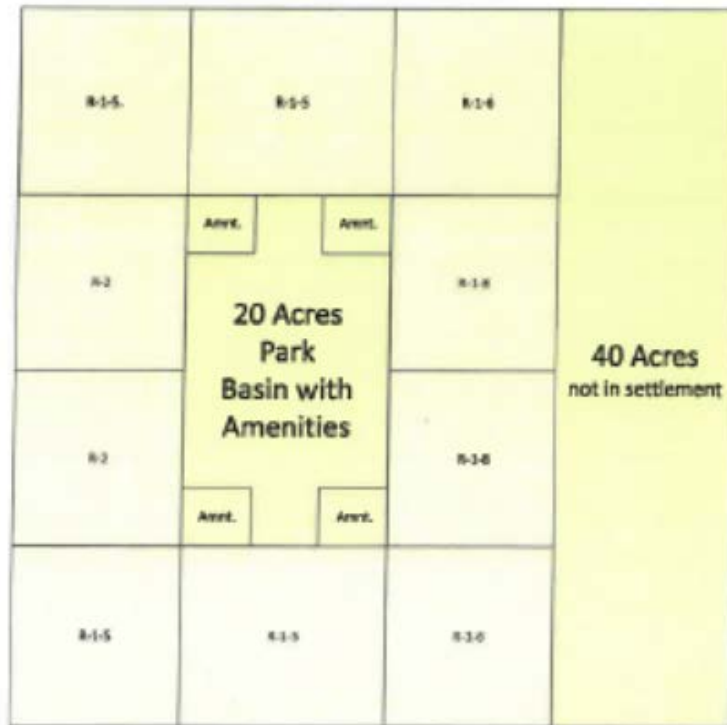


EXHIBIT B

EXHIBIT C

4816-9081-5640