

EXHIBIT A
RESOLUTION NO. R2019-018
DEVELOPMENT AGREEMENT
LIVINGSTON RANCH PHASE 1

This Development Agreement (“Agreement”), in accordance with Arizona Revised Statutes (A.R.S.) § 9-500.05, is by and between Hacienda Homes, LLC, an Arizona corporation, formerly known as Kamman Development AZ LLC., (“Owner”), as owner of the real property described in the Livingston Ranch Phase 1 amended plat, dated 12/02/2008, recorded as Yuma County Assessor’s Fee #: 2008-23220, Book 24 of Plats, Pages 83 and 84, plus Livingston Ranch Phase 1 lot tie/splits numbers 1 through 19, lots are hereby referenced by Yuma County assessor’s parcel numbers,

694-50-156	694-49-304	694-50-283	694-49-299	694-49-107	694-50-291	694-50-294
694-50-155	694-49-288	694-50-192	694-49-123	694-50-242	694-50-290	694-50-295
694-49-137	694-49-322	694-49-317	694-49-122	694-49-093	694-50-289	694-50-296
694-49-321	694-49-323	694-49-316	694-49-100	694-49-092	694-50-288	694-57-069
694-49-301	694-50-284	694-49-315	694-49-102	694-49-091	694-502-87	694-57-067
694-49-302	694-49-319	694-50-225	694-49-103	694-49-090	694-50-286	694-57-296
694-49-303	694-49-182	694-50-227	694-49-098	694-50-292	694-50-293	694-57-297
694-57-004	694-58-029	694-57-016	694-57-014	694-58-011	694-57-023	694-58-026
694-57-029	694-58-028					

(the “Property”) and the City of Yuma, an Arizona municipal corporation (“City”).

RECITALS

WHEREAS, the City desires to obtain those public benefits which accrue from the development of the Property and include (but are not limited to) the creation and retention of jobs, stimulation of further economic development within the City, increased property tax values based on improvements to be constructed on the Property, and by generation of additional sales tax revenues through increased business activity; and,

WHEREAS, A.R.S. § 9-463.05(B)(10) permits the deferral of payment of development fees for residential units when supported by appropriate security and included as part of a development agreement; and,

WHEREAS, for the mutual benefit of both parties, the sufficiency of which is acknowledged, the parties have entered into this Agreement to provide for the deferral of payment of City of Yuma Development Fees and City of Yuma water and sanitary sewer capacity charges and connection fees upon the terms and conditions contained herein.

NOW THEREFORE, in consideration of the above recitals, the parties agree as follows:

1. Term. This Agreement shall be effective (the “Effective Date”) upon execution by all of the parties and the payment to the City of a five hundred dollar (\$500.00) deferral fee. This Agreement shall expire three (3) years from the Effective Date (the “Expiration”

Date”) unless the parties mutually agree to an earlier termination.

2. Vesting. Vesting of deferred fees and charges shall accrue on a lot by lot basis. To vest the right to deferral, the residential unit must pass the under slab plumbing and building setback inspection (“underground inspection”) within 30 days of the date of issuance of the building permit. Time is of the essence. If the underground inspection is not successfully completed within 30 days of the issuance of the building permit, no right to deferral shall vest, and Owner shall either: (1) be issued a refund of 80% of the cost of the building permit and the building permit shall expire; or (2) all deferral amounts shall immediately be due and payable to the City to prevent the building permit from expiring. At the expiration or termination of this Agreement, any vested lot shall continue to enjoy the deferral benefit unless construction is abandoned by Owner. On the Expiration Date, the deferral benefit shall expire for any non-vested lot.
3. Deferral Benefits. Deferral of certain described City of Yuma Development Fees and water and sewer capacity charges shall be available to the Property throughout the term of this Agreement. An expired building permit shall not prohibit Owner from reapplying for the deferral benefit provided that a new building permit is applied for. When vested in accordance with paragraph 2 above, the deferral benefit shall include:
 - a. Deferral of Payment of Citywide Development Fees and Water and Sewer Capacity Charges. For any platted lot within the Property, payment of City of Yuma Development Fees (the parks and recreational facilities development fee, the police facilities development fee, the fire facilities development fee, the general government facilities development fee, and the streets facilities development fee), and water and sewer capacity charges may, upon written request on a form provided by City staff, be deferred from the time of application for a building permit.
 - b. Application. At the time of application for the first building permit on the Property, Owner shall submit and sign a “Request for Deferral of City of Yuma Development fees and/or Water and Sewer Capacity Charges” (City of Yuma Form J) together with payment of a five hundred (\$500.00) dollar deferral fee (which shall cover the deferral costs for all of the Property for the term of this Agreement), payable to the City of Yuma. The deferred amount shall be calculated at the rate in effect at the time of construction permit or water meter issuance, signed by Owner and the City Administrator or the City Administrator’s designee, and shall constitute an enforceable contract for the payment to the City of all deferred amounts. The completed Request for Deferral of City of Yuma Development Fees and Water and Sewer Capacity Charges, together with this Development Agreement, shall serve as the security required by statute for payment thereof. During the Term of this Agreement, any subsequent building permit application on the Property for which deferral is sought shall require Owner’s signature on a City of Yuma Form J.
 - c. Period of Deferral. Payment in full of the deferred fees and charges shall be made to the City of Yuma no later than the date of issuance of any certificate of

occupancy, whether temporary or otherwise. In the case of residential property, in the event that Owner does not request a residential certificate of occupancy, then the “date of final inspection” shall be substituted for “date of issuance of a certificate of occupancy.”

- d. Deferred Amount Due Upon Sale. Notwithstanding any sales contract or agreement to the contrary between Owner and the purchaser of any lot, part or portion of the Property which has a vested deferral, Owner shall pay all deferred amounts to the City prior to recording any deed transferring ownership or entering into a lease of lot.
4. Notice. All notices, demands or other communications must be in writing and are deemed duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

OWNER:

Hacienda Homes LLC
1818 South Letvin Ave
Yuma AZ, 85365

CITY:

City Administrator
City of Yuma
One City Plaza
Yuma, Arizona 85364-1436

If either party changes address, written notice of the change of address must be given to the other party. Notice of change of address is deemed effective five (5) days after mailing by the party changing address.

5. Successors and Assigns. This Agreement is binding upon the heirs, executors, administrators, successors, and assigns of both Parties.
6. Waiver. If either party fails to require the other party to perform any provision of this Agreement, that failure does not prevent the other party from later enforcing that provision. Neither party is released from any responsibilities or obligations imposed by law or this Agreement if the other party fails to exercise a right or remedy. No waiver of any provisions of this Agreement shall be binding upon either party unless in writing signed by both Parties.
7. Governing Law and Venue. The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance. The Parties shall institute and maintain any legal action or other judicial proceeding arising from this Agreement in a court of competent jurisdiction in Yuma County, Arizona.

8. Severability. If any terms, parts, or provisions of this Agreement are for any reason invalid or unenforceable, the remaining terms, parts, or provisions are nevertheless valid and enforceable.
9. Costs and Attorney Fees. If either party brings an action or proceeding for failure to observe any of the terms or provisions of this Agreement, the prevailing party shall recover, as part of such action or proceeding, all reasonable costs, expenses, and attorney fees as determined by the Court and not by a jury.
10. Integration. This Agreement contains the entire agreement between the parties, and no oral or written statements, promises, or inducements made by either party or its agents not contained or specifically referred to in this Agreement is valid or binding. All modifications to this Agreement must be in writing, signed and endorsed by the parties.
11. Recordation. The City shall record a copy of this Agreement no later than ten (10) days from date of entering into this Agreement pursuant to A.R.S. § 9-500.05.
12. Estoppel Certificate. The parties agree that, upon not less than twenty one (21) business days prior written request from a party to this Agreement, 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, a party is in default of any obligation or duty set forth within the Agreement. Any such certificate may be relied on by a prospective purchaser of any lot within the Property, or any prospective lender.
13. No Partnership. This Agreement does not create and is not intended to imply a partnership or joint venture between Owner and City.
14. Good Standing; Authority. Each of the parties represents and warrants to the other that it is duly formed and validly existing under the laws of Arizona and that the individual(s) executing this Agreement on behalf of their respective party is authorized and empowered to bind the party on whose behalf each such individual is signing.

IN WITNESS WHEREOF, the parties have executed this Agreement through their authorized representatives.

DATED this _____ day of _____, 2019.

CITY OF YUMA:

OWNER: HACIENDA HOMES LLC

By: _____
John D. Simonton
Interim City Administrator

By: _____
Toburn C. Jones
Manager, Hacienda Homes LLC

ATTEST:

By: _____

Lynda L. Bushong
City Clerk

APPROVED AS TO FORM:

By: _____

Richard W. Files
City Attorney

ACKNOWLEDGEMENT

State of _____)
) ss
County of _____)

The foregoing instrument was acknowledged before me this _____ of _____, 2019
by Toburn C. Jones, manager of Hacienda Homes LLC., an Arizona corporation.

In witness whereof, I have set my hand and official seal

My commission expires:

By: _____
Notary Public