

REAL PROPERTY EXCHANGE AND DEVELOPMENT AGREEMENT

EXHIBIT A to ORDINANCE NO. O2020-022

This Real Property Exchange and Development Agreement (“**Agreement**”) is made and entered into this _____ day of _____, 2020 (“**Effective Date**”), by and between Birmingham, L.L.C., an Arizona limited liability company (“**Owner**”), and the City of Yuma, an Arizona municipal corporation (“**City**”). Collectively, Owner and the City are referred to as the “**Parties**” or individually as a “**Party**.” The provisions of this Agreement shall inure to the benefit of and be binding upon the successors in interest and assigns of each of the Parties. The term "Party" or the name of a particular Party shall therefore include any such Party's permitted successors and assigns.

RECITALS

WHEREAS, Owner is the owner of certain real property at the southwest corner of 32nd Street and Avenue 7E in Yuma, Arizona as depicted in Exhibit 1 (“**Property**”); and,

WHEREAS, the City of Yuma Transportation Master Plan identifies Avenue 7E as a collector street requiring a total right-of-way width of eighty (80) feet, with the west half being forty (40) feet in width; and,

WHEREAS, the City currently has acquired only thirty-three (33) feet of right-of-way on the west half of Avenue 7E with Owner holding title to the underlying fee interest; and,

WHEREAS, the City has determined the acquisition of 7 feet of additional right-of-way from the east end of the Property (for a total 40 feet width ROW to the Avenue 7E centerline), described in Exhibit 2 (“**7E Property**”), is necessary for the eventual development of Avenue 7E; and,

WHEREAS, subject to the terms and conditions of this Agreement, Owner is willing to transfer all of its property rights to the 7E Property to the City; and,

WHEREAS, the City of Yuma 2005 Major Roadways Plan identifies 32nd Street as an Expressway with a total right-of-way width of one hundred sixty (160) feet, with the south half right-of-way being eighty (80) feet in width; and,

WHEREAS, the State of Arizona Highway Department previously obtained a one hundred (100) foot wide roadway easement over the south half of 32nd Street as indicated in that certain instrument dated July 8, 1948 and recorded at Docket 111, Page 30 in the Official Records of the Yuma County Recorder (“**ADOT Easement**”); and,

WHEREAS, the Owner owns the underlying fee title of the area included in the ADOT Easement; and,

WHEREAS, the City obtained ownership of the ADOT Easement as evidenced by the Resolution of Abandonment recorded as Instrument Number 2010-22898 on September 20, 2010 in the Official Records of the Yuma County Recorder; and,

WHEREAS, the City has determined the acquisition of the remaining property rights for eighty-feet of the area included in the ADOT Easement, as depicted in Exhibit 3 ("**32nd Street Property**"), is necessary for the eventual development and improvement of 32nd Street; and,

WHEREAS, the south twenty (20) feet of the ADOT Easement, as depicted in Exhibit 4 ("**Excess Property**"), is not necessary for the development of 32nd Street; and,

WHEREAS, Owner has agreed to transfer all of its property rights to the 32nd Street Property to the City in exchange for the City transferring all of its property rights to the Excess Property to Owner; and,

WHEREAS, as a result of the transfer of the 32nd Street Property and the Excess Property, access from the Property onto 32nd Street must be modified; and,

WHEREAS, the City, in exchange for Owner transferring its ownership interest in the 7E Property and the 32nd Street Property, will make certain improvements to the Property consisting of a private roadway and two (2) access points onto 32nd Street, as more specifically described in this Agreement and as conceptually depicted on Exhibit 5 ("**Conceptual Plan**"); and,

WHEREAS, the Parties have entered into this Agreement to provide for the transfer and exchange of the 7E Property, the 32nd Street Property and the Excess Property and for the design, construction and installation of the private roadway and access points as conceptually described on the Conceptual Plan, all in accordance with the terms and conditions contained herein.

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

1. Development Agreement. This Agreement, together with all attached exhibits, is a Development Agreement within the meaning of Arizona Revised Statutes § 9-500.05.
2. Recitals. Each of the above recitals is true and accurate and incorporated herein as a material part of this Agreement.
3. Purpose. The Purpose of the Agreement is to facilitate the development plans relating to 32nd Street, Avenue 7E and the Property and to return surplus City property to a productive use, improve access conditions for 32nd Street operations, and acquire necessary

public right-of-way for City roadway improvements.

4. Term. It is the intent of the Parties that this Agreement will commence and become operative on the Effective Date and will terminate when the obligations of both Parties are fully complied with.

5. Development Standards. The development and use of the Property shall be subject to all applicable city, county, state and federal laws, regulations, rules, policies and, fees in effect at the time of development ("**Applicable Laws**").

6. Transfer and Exchange of Property.

6.1. Escrow. The Parties acknowledge that escrow for the exchange of the 7E Property and the 32nd Street Property from Owner to the City ("**Owner Exchange Property**") and the Excess Property from the City to Owner shall be opened with Pioneer Title Agency.

6.2 Escrow Instructions. The terms and conditions set forth in this Agreement shall constitute both an Agreement between Owner and the City, and escrow instructions to the Escrow Agent for the Escrow. The Parties agree to promptly execute and deliver to Escrow Agent any separate or additional escrow instructions requested by Escrow Agent which are consistent with the terms of this Agreement. In the event of a conflict, any separate or additional instructions shall not modify or amend the provisions of this Agreement unless authorized in writing by both Owner and the City.

6.3 Opening of Escrow. Delivery of a fully executed copy, or counterparts, of this Agreement to Escrow Agent and acceptance of this Agreement by Escrow Agent, shall be deemed the date of "**Opening of Escrow**." No later than five (5) days prior to the Closing Date (defined in Section 6.5 of this Agreement), each of the Parties shall deposit an amount requested by the Escrow Agent for the purpose of funding any necessary closing costs, recording fees, escrow costs and title insurance associated with the real property exchange. Each party shall pay one-half of the closing costs, recording fees and Escrow costs and the acquiring Party shall pay for its own title insurance on the parcel(s) acquired. "**Close of Escrow**" or "**Closing**" shall mean the recording of the warranty and Quitclaim deeds described in Section 7 of this Agreement in the official records of Yuma County, Arizona.

6.4 Investment of Deposits. Any sums deposited into Escrow may be placed in an interest-bearing account or invested in interest-bearing securities by Escrow Agent for the benefit of the Party making such deposit and in accordance with that Party's further instructions.

6.5 Closing Date. The Close of Escrow, shall be held on _____ 2020 (the "**Closing Date**") upon the full and complete satisfaction of all conditions and requirements for the real property exchange, unless otherwise extended in writing, signed and agreed to by both Parties.

6.6 Title Report. As soon as reasonably possible after Opening of Escrow, the Escrow Agent shall issue a preliminary title report (together with copies of all Schedule B items) to Owner concerning condition of title of the Exchange Property to be acquired by Owner, and a preliminary title report (together with copies of all Schedule B items) to City concerning condition of title of the Owner Exchange Property to be acquired by City.

6.7 Review of Title (Excess Property). The state of title to the Excess Property shall be subject to valid existing rights, easements, and rights-of-way, and reviewed by Owner and Owner's attorneys to determine condition of title.

6.8 Review of Title (Owner Exchange Property). The state of title to the Owner Exchange Property shall be subject to valid existing rights, easements and rights-of-ways and reviewed by the City Attorney and the City of Yuma Right of Way Agent to determine condition of title.

6.9 Notice of Title Objection. If any matters indicated as exceptions in the preliminary title report or any amended report (other than the standard printed exclusions) affect the acquiring Party's contemplated use of the property, that Party shall be entitled to object to such matters by delivering written notice of such objection ("**Notice of Title Objection**") to the other Party and Escrow Agent on or before ten (10) days after receipt of the preliminary title report. Such Notice of Title Objection shall specify in reasonable detail the matter objected to and the manner in which the objection affects the contemplated use of the property. The Parties shall be deemed to have approved the condition of title if no such Notice of Title Objection is delivered by said date.

If within fifteen (15) days after receipt of any Notice of Title Objection, the matter objected to has not been eliminated or insured over, Owner shall be entitled to either (i) terminate this Agreement by written notice to the other Party and Escrow Agent, or (ii) waive its objection by written notice of waiver of the title objection delivered to the other Party and Escrow Agent. If the objecting Party does not waive its objection, this Agreement shall automatically terminate and the Escrow Agent shall promptly return all monies and other deposits, less the administrative costs of escrow, to the Parties making such deposit, and the Parties hereto shall have no further obligations to each other. If the matter objected to is eliminated or the Escrow Agent agrees to insure over said matters or if the purchasing Party waives its objection, Close of Escrow shall occur on the later of (i) five (5) days after the Parties' receipt of notification thereof or (ii) the Closing Date.

6.10 Exchange of Land. The City agrees to deliver and exchange fee simple title to the Excess Property, subject to valid existing rights, easements, and rights-of-way by executing a quit claim deed, in substantially similar form as Exhibit 6 and depositing the quit claim deed in Escrow no later than five (5) days prior to the Closing Date. Owner agrees to deliver and exchange fee simple title to the Owner Exchange Property, subject to valid existing rights, easements, and rights-of-way, by executing a special warranty deed, in substantially similar form as Exhibit 7, and depositing the special warranty deed in Escrow

no later than five (5) days prior to the Closing Date.

6.11 Title Insurance. Each of the acquiring Parties shall pay for a Standard Owner's Policy as of the date and time of Close of Escrow insuring title to the property being acquired, and subject to exceptions not objected to under the Notice of Title Objection described in Section 6.9 of this Agreement. If additional title insurance beyond a Standard Owner's Policy is required, the acquiring Party shall pay the additional cost of the extended policy or policies or endorsements.

7. City Improvements to Owner's Property.

7.1 Frontage Road and Access onto 32nd Street. City, at its sole cost and expense, shall design, construct and install a private access frontage road, entirely within the Excess Property, and two (2) access driveways connecting the Excess Property to 32nd Street for the purposes of vehicular ingress and egress into the Property ("**Improvements**"). The Improvements shall be in substantially similar quality and design as those improvements depicted on the Conceptual Plan, however the City, in its sole and absolute discretion may relocate the placement of the two (2) access driveways based on site and safety considerations. Owner shall be responsible for the detection, relocation, or removal of any portion of the septic system or any other utilities serving, or having served, the Property that may be located within the area of the Improvements or installed within the Excess Property. The City shall not be responsible for any damage, disruption or impairment of any septic system or utility serving, or having served, the Property as a result of the construction and installation of the Improvements, nor shall the City be responsible for locating, relocating or removing any portion of any septic system, septic lines, or any other utilities within the Excess Property, the access driveways, or the private access frontage road.

7.2 Timing of Improvements. City shall install the Improvements contemporaneous with the installation of a dedicated right turn lane from 32nd Street onto southbound Avenue 7E, or commence installation of the Improvements upon the expiration of ten (10) years from the Effective Date of this Agreement, whichever is the soonest to occur. City shall provide Owner with at least ninety (90) days advance notice of the commencement of the construction of the Improvements and Owner shall use its best effort to notify all residents living within the Property of the commencement of the installation of the Improvements. Owner acknowledges that during the installation and construction of the Improvements, access to the Property will be maintained, although in a different configuration than access to the Property existing prior to the commencement of the installation of the Improvements.

7.3 Maintenance of Improvements. Upon completion of the Improvements, Owner shall be responsible for all costs associated with the maintenance, upkeep and repair of the Improvements.

7.4 Median Disclosure. Owner acknowledges that in the future a median or other roadway improvements may be constructed within the public right-of-way of 32nd Street or

Avenue 7E which may limit turning motions into and out of the Property. Owner agrees to hold City harmless from any harm, damage or cause of action arising or resulting from the installation of a median in the public right-of-way of 32nd Street or Avenue 7E. This Median Disclosure shall run with the Property as a perpetual covenant and survive the termination of this Agreement.

7.5 Avenue 7E ROW Landscaping. There are existing landscaping improvements consisting of mature Oleander bushes located along the western edge of the Avenue 7E Owner Exchange Property (“Landscape Improvement”). The Parties agree the Landscape Improvement shall remain, in substantially similar condition, for so long as the Landscape Improvement remains undisturbed by the City. If the City, in order to install the Avenue 7E roadway improvements, must remove the Landscape Improvement the City shall, within ninety (90) days of completion of the Avenue 7E roadway improvements, install a CMU block wall, approximately six (6) feet in height, in any location where the Landscape Improvement was disturbed (“Screen Wall”). The City shall have no obligation to maintain the Landscape Improvement nor maintain any portion of the Screen Wall.

8. Land Representations and Warranties.

8.1 Authority. The individuals signing this Agreement on behalf of their respective entities have the power and authority to consummate the transactions contemplated by this Agreement. This Agreement and all instruments, documents and agreements to be executed by the undersigned Parties in connection herewith are, or when delivered will be, duly authorized, executed and valid, binding and enforceable obligations.

8.2 Title. Upon Close of Escrow, unless otherwise noted in this Agreement, each of the Parties will acquire good, marketable and insurable title to their respective properties, all free and clear of any liens, encumbrances, security interests, liabilities, assessments, pending assessments, agreements, leases, judgments, and claims, but subject to valid existing rights and easements.

8.3 Litigation. There are no actions, suits or proceedings pending, or to the best knowledge of the Parties, threatened, nor are there any facts or circumstances which could reasonably form the basis for any such suits, actions or proceedings before any judicial body or any governmental authority, against or affecting any of the properties, including the Owner Exchange Property and Excess Property contemplated for exchange.

8.4 Violations. There are no violations or infringements of any laws, rules, regulations, ordinances, codes, covenants, conditions, restrictions, or agreements or rights applicable to or affecting any of the properties contemplated for exchange, and the exchanging Party has received no notices from any governmental agencies, insurance companies, or from any other source with respect to any such violations or alleged violations.

8.5 Condemnation. There are no condemnation proceedings threatened or pending with respect to any part of the properties contemplated for exchange.

8.6 Commissions. Both Parties represent to each other that they have not dealt with any broker or agent or with any finder concerning the property exchange. Each Party shall defend and hold the other harmless from all liability and expense, including, without limitation, attorneys' fees, arising from any claim by any broker, agent or finder for commissions, finder's fees or similar charges because of any act of such Party.

9. Environmental Considerations. Each of the Parties shall have determined, prior to Close of Escrow, to its sole satisfaction, which environmental considerations on the property are and are not likely to prevent immediate or long-term use of the property for the uses contemplated.

9.1 Study Period. Within five (5) days after Opening of Escrow, the Parties shall deliver all environmental studies, tests, reports and other tangible materials in their possession or control that pertain to the properties contemplated for exchange. Each acquiring Party shall have the right to conduct various investigations, studies and reviews of the property to be acquired, including any environmental assessment or Phase I or Phase II environmental study during a period of time beginning on the date of Opening of Escrow and ending five days before the Closing Date ("**Study Period**"). Either Party shall be entitled to terminate this Agreement by written notice to the other Party and Escrow Agent at any time prior to the expiration of the Study Period. In the event of such termination, the Escrow Agent shall promptly return all monies and other deposits, less the administrative costs of escrow, free of any interest or claim of the other Party, and the Parties hereto shall have no further obligations to each other.

9.2 Indemnification. Each exchanging Party shall indemnify, protect, defend and hold the acquiring Party harmless for, from and against any and all claims, costs, liabilities, judgments, losses or expenses (including, without limitation, attorneys' fees and costs) arising out of, resulting from, or connected with any matters or conditions first occurring as a result of that Party's activities (and the activities of its employees, agents, contractors and representatives) on the exchanged property prior to the Close of Escrow (or dedication, quitclaim or grant, as the case may be) and each of the acquiring Parties shall indemnify, protect and defend and hold the exchanging Party harmless for, from and against any and all claims, costs, liabilities, judgments, losses or expenses (including, without limitation, attorneys' fees and costs) arising out of, resulting from, or connected with any matters or conditions first occurring as a result of the acquiring Party's activities (and those of its employees, agents, contractors and representatives) on the acquired property following the Close of Escrow and during the acquiring Party's ownership of the property. This Section 9.2 shall survive Closing and the termination or expiration of this Agreement.

9.3 Environmental Indemnification. Each exchanging Party assures the acquiring Party that to the best of the exchanging Party's knowledge, the property to be exchanged, including without limitation, the subsurface soils and ground water, are now and as of the Close of Escrow will be: (a) free of any hazardous substances, pollutants or contaminants as these terms are defined in CERCLA, 42 U.S.C. § 9601 *et seq.*, including

petroleum products such as crude oil or any fraction thereof (defined herein as “Hazardous Substances”), and (b) in compliance with any Federal, State or local laws, regulations, ordinances, and rules relating to the release of Hazardous Substances into the environment.

Each exchanging Party agrees to indemnify, hold harmless, protect and defend against the acquiring Party having to respond to the presence of Hazardous Substances on the acquired property where such presence is attributable to the conduct of the exchanging Party or its employees or agents. These assurances to indemnify, hold harmless, protect and defend include remediation costs, if any, necessary to ensure that the acquiring Party may continue to use the acquired property for non-residential purposes. The exchanging Party shall only be required to take such actions, and assume such costs, necessary to meet applicable current state and federal requirements for ensuring the property’s continued use as a non-residential property. This Section 9.3 shall survive Closing as a covenant.

10. Possession and Entry. Exclusive possession of the exchanged properties shall be delivered to the acquiring Party at Close of Escrow. The acquiring Party or its agents shall have the right during the Study Period to enter the property to be acquired at reasonable times for the purpose of conducting examinations, inspections or testing which the acquiring Party deems reasonably necessary to determine if the City Property is suitable for the contemplated use.

11. Closing. Not less than five (5) business days prior to the Closing Date, each of the Parties shall deposit the following into Escrow:

(a) The appropriately executed special warranty deeds and Quitclaim deed.

(b) An affidavit or qualifying statement satisfying the requirements of Section 1445 of the Internal revenue Code of 1986, as amended, and the regulations thereunder (the Non-Foreign Affidavit).

(c) Such other instruments and funds as are reasonably required by the Escrow Agent or otherwise required to close the Escrow and consummate the exchange of the properties in accordance with the terms of this Agreement.

11.1 Proration. Real estate taxes, if any, shall be prorated on the basis of the most recent tax statement for the applicable property. Such proration shall be made as of 12:01 a.m. on the day the Close of Escrow occurs on the basis of a 365 day year. At least five (5) business days prior to the Closing Date, Escrow Agent shall deliver to the Parties a tentative proration schedule setting forth a preliminary determination.

11.2 Closing Conditions. Escrow Agent shall hold the Close of Escrow on the Closing Date if: (a) Escrow Agent has received in a timely manner all the funds and documents required for Closing; (b) Escrow Agent has received the appropriate commitments for each of the parcels and there is no pending Notice of Title Objection; (c) all of the conditions to Closing have been satisfied.

11.3 Actions by Escrow Agent. To Close Escrow, the Escrow Agent shall:

- (a) Cause the respective special warranty deeds and quit claim deed to be recorded by the County Recorder of the County of Yuma, Arizona and thereafter mailed to the acquiring Party;
- (b) Deliver the appropriate Owner's Policy and any Non-Foreign Affidavit to the acquiring Party;
- (c) Deliver any excess funds to the appropriate Party depositing such funds.

11.4 Conflicting Demands. Should Escrow Agent receive or become aware of conflicting demands or claims with respect to the Escrow, the rights of any Party to this Agreement, or funds, documents or property deposited with Escrow Agent, the Escrow Agent shall have the right to discontinue any further acts until such conflict is resolved to Escrow Agent's satisfaction.

11.5 Failure to Close: Cancellation. If the Escrow Agent is not in a position to close Escrow on the Closing Date, Escrow Agent shall close Escrow as soon thereafter as possible; provided, however, that unless the Closing Date is extended in writing by both Parties, if the Closing has not occurred by the thirtieth (30th) day following the Closing Date, then Escrow Agent shall return to the depositor thereof any funds or other materials previously placed into Escrow (including any interest on any such funds). No such return shall relieve either Party of liability for any failure to comply with the terms of this Agreement and shall be in addition to any other rights such Party may have at law or in equity.

12. Encroachment and Right-of-Way Permits and Licenses Required. Owner acknowledges and agrees that any work performed in the public right-of-way, or the construction, installation or maintenance of any facility or other improvement in the public right-of-way requires a permit, license, franchise, or similar authorization issued by the controlling agency (the "**Permitting Agency**") through the Permitting Agency's normal and customary process for such issuance. Owner further acknowledges and agrees that City approval of any Site Plan or Plat over all or any portion of the Property does not constitute authorization for work or improvements in the public right-of-way or any grant or waiver of any permitting requirements of the Permitting Agency. Owner shall meet all permitting requirements of the Permitting Agency, and shall obtain all necessary permits prior to commencing such work or improvements in the public right-of-way.

13. Notice. Except as otherwise required by law, any notice, demand or other communication given hereunder, shall be in writing and shall be given by personal delivery or be 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 electronic mail, facsimile

machine 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:
City Administrator
One City Plaza
Yuma, Arizona 85364-1436

To Owner:
Birmingham, LLC
77 W. Chicago Street, Suite 4
Chandler, AZ 85225

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 whether 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. Any notice sent by email or facsimile machine shall be deemed effective upon confirmation of the successful transmission by the sender's electronic mail system or facsimile machine. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee.

14. Default. If either party defaults (the “**Defaulting Party**”) with respect to any of such party's obligations, then the other party (the “**Non-Defaulting Party**”) shall give written notice in the manner described in Section 13 above to the Defaulting Party. The notice shall state the nature of the default claimed and make demand that such default be corrected. The Defaulting Party shall then have:

- a. twenty (20) days from the date of receipt of such notice within which to correct such default if it can be reasonably corrected by the payment of money, or
- b. sixty (60) days from the date of receipt of such notice to cure such default if action other than payment of money is reasonably required, or
- c. if any such non-monetary default cannot reasonably be cured within sixty (60) days for reasons beyond its control (financial inability, construction delays and market conditions excepted), then such longer period as may be reasonably required, provided and so long as such cure is promptly commenced within such period and diligently prosecuted to completion.

14.1 Remedies. If the default is not corrected within the time periods described in Section 14 above, the Non-defaulting Party shall have all remedies available to it at law or in equity, subject to the limitations set forth herein. Owner or City, or any successor-in-interest or assignee, may institute a legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including but not limited to suits for declaratory relief, specific performance, relief in the nature of

mandamus and actions for damages, provided that claims for damages shall be limited to actual damages as of the time of entry of judgment. The Parties hereby waive any right to seek consequential, punitive, multiple, exemplary or any damages other than actual damages.

14.2 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default by the non-defaulting Party or with respect to the particular default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the default involved.

14.3 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other default by the other Party.

15. Representations

15.1 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, delivery 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 a material adverse effect on Owner's 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 principles, 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 of 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.

15.2. City 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 have 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 of City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency 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.

16. Rights of Lenders. Financing or refinancing for acquisition, development and/or construction of the Property and/or improvements may be provided, in whole or in part, from

time to time, by one or more Third Parties (individually a “**Lender**”, and collectively “**Lenders**”). If a Lender is permitted, under the terms of a non-disturbance agreement with the City to cure the event of default and/or to assume Owner’s position with respect to this Agreement, If requested by a Lender, the City will enter into a separate non-disturbance agreement with the Lender, so long as such non-disturbance agreement does not result in a novation. Under the non-disturbance agreement, the City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Owner under this Agreement.

17. Attorneys’ Fees. 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 court 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.

18. Successors and Assigns. 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 pursuant to A.R.S. § 9-500.05D, and will run with the land during the Term of the Agreement as defined in Section 4 or such longer period where the covenant expressly survives the termination of this Agreement.

19. Miscellaneous.

19.1 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 law 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 in 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 for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 19.1.

19.2 A.R.S. § 38-511. Notice is hereby given of the applicability of A.R.S. § 38-511.

19.3 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.

19.4 Recordation. 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.

19.5 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, 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 purchaser of any lot within the Property, or any prospective Lender.

19.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute 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.

19.7 Headings. The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning of construction of any of the provisions hereof.

19.8 Exhibits and Recitals. Any exhibit attached or referred to in this Agreement shall be deemed to have been incorporated by this reference with the same force and effect as if fully set forth in the body hereof. The Recitals set forth at the beginning of this Agreement are acknowledged and incorporated and the Parties confirm the accuracy thereof.

19.9 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.

19.10 Time is of the Essence. Time is of the essence in implementing the terms of this Agreement.

19.11 No Partnerships; Third Parties. 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 or entity not a Party hereto, and no such other person or entity shall have any right or cause of action hereunder, except for transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Owner under this Agreement.

19.12 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.

19.13 Severability. If any 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 Owner 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.

19.14 Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

19.15 Individual Nonliability. No 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, in the event of any default or breach by City, or 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 to the Property and any improvements thereon, and the corporate assets of any successor incorporated owner or principal.

19.16 Proposition 207 Waiver. Owner hereby waives and releases City from any and all claims under Arizona Revised Statutes § 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 or failure to approve this Agreement, the Annexation Ordinance, or adoption or failure to adopt the zoning designation, and all related annexation, zoning, land use, building and development matters arising from, relating to, or reasonably inferable from this Agreement, including the approval, rejection or imposition of conditions or stipulations upon the approval of the zoning designation. 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 expiration or earlier termination of this Agreement.

[Signatures appear on following page]

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

Dated this _____ day of _____, 2020.

APPROVED:

CITY OF YUMA

BIRMINGHAM, L.L.C.

By _____
Philip A. Rodriguez
Its: City Administrator

By: _____
James Watson
Its: Manager

ATTEST:

By _____
Lynda L. Bushong
City Clerk

APPROVED AS TO FORM:

By _____
Richard W. Files
City Attorney

ACKNOWLEDGEMENTS

State of Arizona)
) ss
County of Yuma)

The foregoing instrument was acknowledged before me this _____ of _____, 2020 by James Watson, manager of Birmingham, L.L.C., on behalf of the company.

My commission expires:

By: _____
Notary Public

EXHIBIT 1

Owners Property Legal Description

A portion of the Northeast quarter of the Northeast quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 9, Township 9 South, Range 22 West of the Gila and Salt River Base and Meridian, City of Yuma, Yuma County, State of Arizona, also described in Special Warranty Deed, dated 6/15/2018, recorded as 2018-15525, Yuma County Records, and more particularly described as follows:

The East half of the Northeast quarter of the Northeast quarter of the Northeast quarter (E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$) of said Section 9;

AND

The West 486 feet of the East 816 feet of the North half of the Northeast quarter of the Northeast quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$) of said Section 9;

EXCEPT that part which lies within the East half of the Northeast quarter of the Northeast quarter of the Northeast quarter (E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$) of said Section 9.

Containing a total of 438,877 square feet or 10.075 acres, more or less.

EXHIBIT 2
LEGAL DESCRIPTION
FOR DEDICATION OF
AVENUE 7E RIGHT-OF-WAY

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 9 SOUTH, RANGE 22 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, YUMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MONUMENTED NORTHEAST CORNER (FOUND 3" BRASS CAP "LS 19329, 2003") OF SAID SECTION 9 WITH A BASIS OF BEARING TO THE NORTHWEST CORNER (FOUND 3" BRASS CAP WITH PUNCH MARK IN HAND HOLE) OF THE NORTHEAST QUARTER OF SAID SECTION 9 OF SOUTH 89°47'10" WEST;

THENCE SOUTH 00°08'11" EAST ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 A DISTANCE OF 80.00 FEET TO A POINT, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 00°08'11" EAST ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 A DISTANCE OF 580.84 FEET;

THENCE SOUTH 89°50'00" WEST A DISTANCE OF 40.00 FEET TO A POINT ON THE NEW RIGHT-OF-WAY LINE;

THENCE NORTH 00°08'11" WEST ALONG THE NEW RIGHT-OF-WAY WHICH IS ALSO PARALLEL TO AND 40 FEET WEST OF THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 A DISTANCE OF 540.81 FEET;

THENCE NORTH 45°10'31" WEST A DISTANCE OF 56.53 FEET TO A POINT 80 FEET SOUTHERLY OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9;

THENCE NORTH 89°47'10" EAST PARALLEL TO AND 80 FEET SOUTHERLY OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 A DISTANCE OF 80.00 FEET TO THE TRUE POINT OF BEGINNING;

AFOREMENTIONED AREA CONTAINS 0.5517 ACRES, MORE OR LESS.



EXHIBIT 3
LEGAL DESCRIPTION
FOR DEDICATION OF
32ND STREET RIGHT-OF-WAY

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 9 SOUTH, RANGE 22 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, YUMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MONUMENTED NORTHEAST CORNER (FOUND 3" BRASS CAP "LS 19329, 2003") OF SAID SECTION 9 WITH A BASIS OF BEARING TO THE NORTHWEST CORNER (FOUND 3" BRASS CAP WITH PUNCH MARK IN HAND HOLE) OF THE NORTHEAST QUARTER OF SAID SECTION 9 OF SOUTH 89°47'10" WEST, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE SOUTH 00°08'11" EAST ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 A DISTANCE OF 80.00 FEET;

THENCE SOUTH 89°47'10" WEST ALONG THE NEW RIGHT-OF-WAY FOR 32ND STREET WHICH IS ALSO PARALLEL TO THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 A DISTANCE OF 816.00 FEET;

THENCE NORTH 00°08'11" WEST A DISTANCE OF 80.00 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9;

THENCE NORTH 89°47'10" EAST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 A DISTANCE OF 816.00 FEET TO THE TRUE POINT OF BEGINNING;

AFOREMENTIONED AREA CONTAINS 1.4986 ACRES, MORE OR LESS.



EXHIBIT 4
LEGAL DESCRIPTION
FOR ABANDONMENT OF A PORTION OF THE
32ND STREET ADOT EASEMENT AS RECORDED
IN DOCKET 111, PAGE 30, Y.C.R.

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 9 SOUTH, RANGE 22 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, YUMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MONUMENTED NORTHEAST CORNER (FOUND 3" BRASS CAP "LS 19329, 2003") OF SAID SECTION 9 WITH A BASIS OF BEARING TO THE NORTHWEST CORNER (FOUND 3" BRASS CAP WITH PUNCH MARK IN HAND HOLE) OF THE NORTHEAST QUARTER OF SAID SECTION 9 OF SOUTH 89°47'10" WEST;

THENCE SOUTH 00°08'11" EAST ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 A DISTANCE OF 80.00 FEET;

THENCE SOUTH 89°47'10" WEST PARALLEL TO AND 80 FEET SOUTHERLY OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 A DISTANCE OF 80.00 FEET TO A POINT, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE SOUTH 45°10'31" EAST A DISTANCE OF 28.27 FEET TO A POINT 100 FEET SOUTHERLY OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 AND 60 FEET WESTERLY OF THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9;

THENCE SOUTH 89°47'10" WEST PARALLEL TO AND 100 FEET SOUTHERLY OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 A DISTANCE OF 756.00 FEET;

THENCE NORTH 00°08'11" WEST A DISTANCE OF 20.00 FEET TO A POINT LYING 80 FEET SOUTHERLY OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9;

THENCE NORTH 89°47'10" EAST PARALLEL TO AND 80 FEET SOUTHERLY OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 A DISTANCE OF 736.00 FEET TO THE TRUE POINT OF BEGINNING;

AFOREMENTIONED AREA CONTAINS 0.3425 ACRES,
MORE OR LESS.



[illegible]

EXHIBIT 6
QUIT CLAIM DEED

GRANTOR	GRANTEE
City of Yuma, a Municipal Corporation One City Plaza P.O. Box 13012 Yuma, AZ 85366-3012	Birmingham, L.L.C. an Arizona Limited Liability Company 77 W. Chicago Street, Suite 4 Chandler, AZ 85225

EXEMPT from affidavit and filing fees (A.R.S. 11-1134 A.3.)

For valuable consideration Grantor hereby quit claims to Grantee all right, title and interest of Grantor in the real property legally described on Exhibit 4 together with all rights and privileges appurtenant, or to become appurtenant, to the real property so described as of the effective date, being the date and time of recordation of this instrument.

City of Yuma, a Municipal Corporation

Dated: _____

Philip A. Rodriguez
City Administrator

Attest:

Dated: _____

Lynda L. Bushong
City Clerk

Approved as to form:

Dated: _____

Richard W. Files
City Attorney

Legal Description Verified by City Engineer	
Date	

NOTARIAL ACKNOWLEDGEMENT

State of Arizona)
) ss
County of Yuma)

The foregoing instrument was acknowledged before me this _____ of _____,
2020 by Philip A. Rodriguez, City of Yuma City Administrator, on behalf of the City of
Yuma.

My commission expires:

By: _____
Notary Public

EXHIBIT 4
LEGAL DESCRIPTION
FOR ABANDONMENT OF A PORTION OF THE
32ND STREET ADOT EASEMENT AS RECORDED
IN DOCKET 111, PAGE 30, Y.C.R.

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 9 SOUTH, RANGE 22 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, YUMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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THENCE SOUTH 00°08'11" EAST ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 A DISTANCE OF 80.00 FEET;

THENCE SOUTH 89°47'10" WEST PARALLEL TO AND 80 FEET SOUTHERLY OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 A DISTANCE OF 80.00 FEET TO A POINT, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE SOUTH 45°10'31" EAST A DISTANCE OF 28.27 FEET TO A POINT 100 FEET SOUTHERLY OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 AND 60 FEET WESTERLY OF THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9;

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THENCE NORTH 89°47'10" EAST PARALLEL TO AND 80 FEET SOUTHERLY OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9 A DISTANCE OF 736.00 FEET TO THE TRUE POINT OF BEGINNING;

AFOREMENTIONED AREA CONTAINS 0.3425 ACRES,
MORE OR LESS.



EXHIBIT 7
WARRANTY DEED
BIRMINGHAM, L.L.C. TO CITY OF YUMA

RECORDING REQUESTED BY

City of Yuma
c/o Right-of-Way Agent
One City Plaza
Yuma, Arizona 85365

ESCROW NO:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Special Warranty Deed

EXEMPT from Affidavit and Filing Fees (A.R.S. 11-1134 A.3.)

For the consideration of Ten Dollars and other valuable consideration, Birmingham, L.L.C. (**Grantor**) does hereby grant and convey to the **City of Yuma**, an Arizona municipal corporation (**Grantee**) the following real property situated in Yuma County, Arizona:

See Exhibit 2 and Exhibit 3 attached and by this reference made a part hereof.

SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record. Grantor hereby binds itself and its successors to warrant and defend the title, against all acts of the Grantor herein, and no other, subject to the matters set forth.

Dated this _____ day of _____, 2020

GRANTOR:

Birmingham, L.L.C. an Arizona Limited Liability Company.

James Watson, Manager Birmingham L.L.C.

NOTARIAL ACKNOWLEDGEMENT

State of Arizona)
) ss.
County of Yuma)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by James Watson, as manager of Birmingham L.L.C., an Arizona limited liability company.

IN WITNESS WHEREOF, I have hereunto set by hand and official seal.

Notary Public

My Commission Expires:

EXHIBIT 2
LEGAL DESCRIPTION
FOR DEDICATION OF
AVENUE 7E RIGHT-OF-WAY

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 9 SOUTH, RANGE 22 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, YUMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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THENCE SOUTH 89°50'00" WEST A DISTANCE OF 40.00 FEET TO A POINT ON THE NEW RIGHT-OF-WAY LINE;

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AFOREMENTIONED AREA CONTAINS 0.5517 ACRES, MORE OR LESS.



EXHIBIT 3
LEGAL DESCRIPTION
FOR DEDICATION OF
32ND STREET RIGHT-OF-WAY

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AFOREMENTIONED AREA CONTAINS 1.4986 ACRES, MORE OR LESS.

