

## **EXHIBIT C**

### **DEVELOPMENT AGREEMENT FOR AFFORDABLE HOUSING**

THIS DEVELOPMENT AGREEMENT FOR AFFORDABLE HOUSING (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 (“Effective Date”), by and between the City of Yuma, an Arizona municipal corporation (“City”) and the Arizona Housing Development Corporation, an Arizona non-profit corporation (“Developer”). The City and Developer may hereafter be referred to individually as a “Party” or collectively as “Parties.”

### **RECITALS**

WHEREAS the City Council has long recognized the need for affordable housing within the municipal boundaries and consistently seeks opportunities to facilitate the development of affordable housing units to address this need; and,

WHEREAS, the City owns three (3) residential lots consisting of approximately 14,060 square feet in the Mesa Heights neighborhood, identified as Yuma County Parcel Nos. 665-44-001, 665-44-002 and 665-44-193, and certain right-of-way consisting of approximately 3,210 square feet, which the City intends to vacate as surplus and transfer as part of this Agreement for purposes of construction of affordable housing (collectively the “Property”); and,

WHEREAS, the Property is legally described and depicted in Exhibit A, attached to this Agreement; and,

WHEREAS, the Property is suitable for the development of affordable housing units to serve as an extension of the Mesa Heights Apartments located at 2150 S. Arizona Ave., Yuma, Arizona, and will provide residents with access to nutrition, health, education, employment and recreation services and resources; and,

WHEREAS, the Developer has expressed an interest in developing the Property for the purpose of constructing affordable housing units in accordance with the City’s Request for Qualifications RFQ-23-108, Development of High-Quality Affordable Housing (“RFQ”), incorporated by this reference as part of this Agreement; and,

WHEREAS, the Developer has submitted a response to the RFQ (“RFQ Response”) for the proposed construction of six (6) two-bedroom affordable rental housing units for low to moderate income households that receive tenant-based rental assistance from the Housing Authority City of Yuma (“HACY”) or other qualifying non-profit and/or governmental agencies. The RFQ Response is incorporated herein by this reference; and,

WHEREAS, the City has determined that Developer’s response to the RFQ meets the needs of the City for the development of the Property for affordable housing and desires to enter into this Agreement for the purpose of such development; and,

WHEREAS, the City and Developer are entering into this Agreement pursuant to A.R.S. §§ 9-500.05 to facilitate the transfer of the Property from the City to Developer consistent with the terms and conditions of this Agreement and the City’s General Plan and Zoning Code.

NOW, THEREFORE, for and in consideration of the recitals above and the representations, mutual promises and covenants below, the Parties agree as follows:

## **AGREEMENT**

**1. Incorporations of Recitals.** The Parties acknowledge the foregoing Recitals are both accurate, material and incorporated as part of this Agreement.

**2. General Plan and Zoning.** The Property is zoned High Density Residential (R-3), which permits multiple-family dwelling units. The development of the Property for six (6) two-bedroom affordable rental housing units for low to moderate income households (the "Project") is consistent with the City's General Plan in effect on the Effective Date of this Agreement. Developer shall develop the Project in compliance with an approved Project design, the City's development standards, the requirements of this Agreement, and all applicable laws in effect at the time of this Agreement. Developer shall have a vested right to develop the Property in compliance with this Agreement for the Term, consistent with this Agreement.

**3. Developer Agreements.**

3.1 The Developer shall be responsible for the design, development, construction, and management of six (6) two-bedroom affordable rental housing units on the Property, in accordance with Developer's RFQ Response, and all applicable laws, regulations, and building codes and the terms of this Agreement.

3.2 Within thirty (30) days of the Effective Date of this Agreement, the Developer shall prepare and submit a Development Plan and proposed Project Schedule for the Property, which shall include the proposed design and layout of the affordable housing units and any necessary site improvements, such as parking, landscaping, and utilities ("Project"), including a lot-tie if required by the City's Department of Planning and Neighborhood Services. The Development Plan, Project Schedule, and lot-tie shall be subject to City's review and approval.

3.3 The Project shall include one wheelchair accessible unit, with four (4) units having a guest bathroom and a master bedroom with a second full bathroom. All units shall be approximately 800 square feet in size and upon completion shall be move-in ready with all necessary energy efficient appliances to include a washer, dryer, refrigerator, stove and microwave.

3.4 Developer shall construct the Project in accordance with the approved Development Plan and the Project Schedule and shall operate the rental units as affordable housing units in compliance with this Agreement and all applicable laws and regulations.

3.5 The Developer shall obtain all necessary permits, licenses, and approvals required for the development and construction of the Project.

3.6 Affordable Housing Requirements. The Developer agrees to develop a minimum of six (6) two-bedroom affordable housing units on the Property, subject to the approval of the City.

3.7 The affordable housing units shall be made available to low-income individuals or families, as detailed in the City's RFQ and Developer's RFQ Response, for a minimum period of thirty (30) years. This requirement shall be included in a covenant placed on the deed transferring the Property from the City to the Developer.

3.8 The affordable housing units shall be limited to those households that receive Tenant Based Rental Assistance ("TBRA"), Housing Choice Vouchers ("HCV"), Veteran Affairs Supportive Housing ("VASH"), Military Basic Allowance for Housing ("BAH") Emergency Housing Choice Voucher ("EHV"), or other similar forms of tenant-based rental assistance.

3.9 The Developer shall comply with all income verification and eligibility requirements for the allocation of the affordable housing units and shall insure that tenant's rent portion never exceeds thirty percent (30%) of their monthly income. Any rent modifications shall pass the Rent Reasonableness Valuation analysis on an annual basis and before any unscheduled changes.

3.10 Project Schedule. Developer shall comply with the following schedule:

3.11 Commencement of Construction of the Project shall be no later than one hundred twenty (120) days after close of escrow for the Property.

3.12 Completion of Construction of Project shall be three hundred sixty-five (365) days following Commencement of Construction, subject to extension as provided herein.

3.13 The City Administrator may approve one extension to the Project Schedule for Commencement of Construction and/or Completion of Construction, but in no event shall such extension exceed one hundred eighty (180) days.

3.14 Obligations to Reconvey by Developer to City. Notwithstanding anything to the contrary, in the event that the Commencement of Construction has not occurred on or before the date set forth in Paragraph 3.11 above (a "Reconveyance Event"), subject to any applicable extensions, the Developer shall be obligated, at the City's written election, to reconvey the Property to the City, free and clear of all liens and encumbrances (including without limitation, monetary liens) created after the date that the Developer obtained fee title to the Property. The delivery of written notice to Developer of a "Notice to Reconvey" shall obligate Developer to reconvey the Property to the City pursuant to the terms of this Paragraph 3.14 if Developer does not cure the event within 30 days after delivery of the written Notice to Reconvey. Upon the City's recording of the Notice to Reconvey with the Yuma County Recorder, such recording shall constitute a lien on the Property.

3.15 In addition to any and all other rights and remedies existing in law or equity in favor of the City as a result of a Reconveyance Event, the lien created by the recording of the Notice to Reconvey may be foreclosed by the City in accordance with the terms of A.R.S. Section 33-721, *et. seq.* Developer shall have the right to redemption set forth A.R.S. Section 33-726 which shall be satisfied by Developer complying with the Commencement of Construction prior to completion of the foreclosure and the payment of all reasonable fees and expenses incurred by the City due to the Reconveyance Event.

3.16 No Financial Obligation of the City. The City shall have no financial obligations of any kind with respect to the design and construction of the Project. Developer shall pay all

plan check, permit, site development, inspection and other fees required for construction of the Project.

#### **4. City Agreements.**

4.1 Within 30 days of the Effective Date, the City shall deliver a special warranty deed, free and clear of any liens or encumbrances, granting title to the Property to the Developer for the purpose of constructing and operating the affordable housing apartments,

4.2 The special warranty deed shall be subject to and include a covenant that the grantee will utilize the property for affordable housing as defined by HUD for a minimum of thirty (30) years from the date of recording.

4.3 Developer is acquiring the Property “as is.” The Developer shall be responsible for any costs associated with the transfer of title, including but not limited to title insurance, recording fees and taxes, and the cost of Developer’s due diligence.

**5 Term.** This Agreement shall remain in effect until the later of: (1) the affordable housing units have been constructed and are available for occupancy, or (2) the Developer has fulfilled all of Developer’s obligations under this Agreement to maintain affordable housing units for low to moderate income households during this Term.

**6. Applicable Laws.** The development of the Property shall be subject to (i) all federal, state and local laws and regulations applicable to the Property at the time of issuance of a building permit (“Applicable Laws”), and (ii) the Approved Project Design. Except for the following exceptions, the City shall not impose or enact any additional Applicable Laws that adversely impact the ability to develop the Property in accordance with the approved Project Design:

6.1 City ordinances and regulations specifically agreed to in writing by Developer;

6.2 Amended or new City ordinances or regulations necessary to comply with state and federal laws and regulations in effect at that time;

6.3 Changes to taxes, procedures, filing fees, review fees, or inspection fees that are imposed on or charged by the City to all similarly situated persons and entities; and

6.4 Future updates of, and amendments to, existing building, construction, plumbing, mechanical, electrical, drainage, and similar construction and safety-related codes provided that such building or safety code updates and amendments are not applied discriminatorily against any portion of the Property.

6.5 This Section 6 shall not be interpreted as relieving Developer from any obligations which Developer may have with respect to applicable federal or state regulations. Nothing in this Agreement shall alter or diminish the authority of the City to exercise eminent domain powers.

## **7.0 Notices and Filings.**

7.1 Manner of Service. All notices, demands or other communications given hereunder shall be in writing and shall be given by personal delivery, delivered by recognized national “overnight” courier service (such as UPS or FedEx), or by United States certified mail (return receipt requested), with all postage and other delivery charges prepaid, and addressed as follows:

To City of Yuma:                      City Administrator  
   One City Plaza  
   Yuma, Arizona 85364

With Copy To:                              City Attorney  
   One City Plaza  
   Yuma, Arizona 85364

To Developer:                              Arizona Housing Development Corporation  
   Attn: Fernando Quiroz, President  
   420 S. Madison Ave.  
   Yuma, Arizona 85364

7.2 Effective Date of Notices. No such notice, demand or other communication will be deemed effective absent documented confirmation in commercially acceptable form and, in such event, such notice, demand or other communication shall be deemed effective: (i) if delivered personally or delivered through a same day delivery/courier service, upon the date of such confirmation of delivery or refusal to accept delivery by the addressee, (ii) if delivered by U.S. Mail in the manner described above, upon actual receipt, and (iii) if delivered by a recognized national overnight delivery service, the date of such confirmation of delivery; in each case except delivery by U.S. Mail regardless of whether such notice, demand or other communication is actually received by any person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this Section 7. Any payment by any Party required or permitted under this Agreement may be made by personal delivery, U.S. Mail, recognized national overnight delivery service or, if the Party entitled to receive such payment provides wiring instructions to the Party obligated to make such payment, via wire transfer, provided if such payment is made in any manner described in the preceding sentence, such payment shall be deemed made at the time provided in this paragraph for notices, demands and other communications to be deemed effective.

## **8.0 Developer Representations.** Developer represents and warrants to the City that:

8.1 Developer has the full right, power and authorization to enter into this Agreement and to perform the obligations and undertakings under this Agreement. The execution, delivery and performance of this Agreement by the Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer. Developer is an Arizona non-profit corporation, validly organized and in good standing under the laws of the State of Arizona and holding all licenses and authorizations necessary to conduct business in the State of Arizona, and to enter into and perform all of the obligations under this Agreement.

8.2 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.

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

8.4 Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Developer, which could have a material adverse effect on Developer's performance under this Agreement that has not been disclosed in writing to the City.

8.5 This Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and duly authorized obligation of the Developer, enforceable according to the terms of the Agreement, 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. The Developer will, at Developer's sole cost and expense, defend the validity and enforceability of this Agreement and each of the Agreement's terms in the event of any proceeding or litigation which challenges the validity or enforceability of any provision, or the authority of the Developer or the City to enter into or perform any provision under this Agreement. Developer shall indemnify the City against any cost, expense, liability or judgment (including attorneys' fees, court costs and expert witnesses) incurred by the City in connection with any such litigation or proceeding, as well as any third party claim accruing after the transfer of the Property to Developer. The severability and reformation provisions of this Agreement shall apply in the event of any successful challenge to this Agreement; provided, however, that all economic risks associated with any determination of unenforceability or invalidity of this Agreement or any of its provisions shall be borne solely by Developer, which shall have no recourse against the City.

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

8.7 Developer 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, engineers and attorneys.

8.8 Developer has been assisted by counsel of Developer's own choosing in connection with the preparation and execution of this Agreement.

## **9.0 General Provisions.**

9.1 Indemnification. Developer shall indemnify, defend, pay, and hold the City, and City employees, agents, contractors, licensees or assignees (each, individually, a "***City Indemnified Party***," and collectively, the "***City Indemnified Parties***") harmless for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, judgments and causes of action including, without limitation, reasonable attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any one or more of the City Indemnified Parties relating to, arising out

of, or alleged to have resulted from acts, errors, mistakes, omissions caused by Developer, Developer's agents, employees or any subcontractor of Developer related to the performance of this Agreement or by reason of any statement, information, certificate or other official representation provided by Developer in this Agreement that is false, inaccurate, misleading or incomplete in any material respect, except to the extent caused by the gross negligence or intentional misconduct of the City Indemnified Party seeking indemnity hereunder. In the case of any claim, action or proceeding which is made or brought against any of the City Indemnified Parties by reason of any of the foregoing events, then Developer, upon prompt written notice from the City Indemnified Party will, at Developer's sole cost and expense, resist or defend such claim, action or proceeding, in the City Indemnified Party's name, if necessary, by counsel approved, in writing, by the City Indemnified Party, such approval not to be unreasonably withheld or delayed.

9.2 Designated Representatives. Whenever a term or condition of this Agreement refers to a "designated representative" of a Party, such reference shall be to the representative designated for such purpose in a notice by a Party to the other Party; provided if no such designation has occurred or if such designated representative is no longer employed by the Party or otherwise available, the "designated representative" for the City shall be deemed to be its City Administrator and for Developer its President.

9.3 Persons Not Liable. No shareholder, partner, member, manager, director, officer, official, council member, representative, agent, attorney or employee of either Party shall be personally liable to the other Party, or to any successor in interest to the other Party, in the event of any Default by a Party or for any amount which may become due to the other Party or any successor or assign, or with respect to any obligation of the City or Developer under the terms of this Agreement.

9.3 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

9.4 Further Assurances. 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 from time to time to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or to confirm the status of (a) this Agreement as in full force and effect, and (b) the performance of the obligations hereunder at any time during its Term.

9.5 Restrictions on Assignment and Transfer. No assignment, conveyance, or transfer of a Developer's rights under this Agreement (each, a "Transfer") shall occur or be permitted without the prior written consent of the City, which may withhold, in the City's discretion, such consent for any reason. Developer shall give the City at least thirty (30) days' written notice of a proposed Transfer of ownership. The City agrees to respond to Developer regarding the Transfer within thirty (30) days following the City's receipt of the notice. Failure to respond by the thirty-first (31) day that follows shall be deemed an approval. Any Transfer in violation of this Paragraph 9.5 shall be void, and not voidable, and shall vest no rights in the purported transferee or assignee.

9.6 The restrictions on Transfer shall not apply with respect to: (a) Developer's financing related to the Project or the exercise of any remedies by a lender of Developer under such financing; or (b) a Corporate Succession so long as Developer's successor-in-interest expressly assumes, in writing, the obligations under this Agreement. For the purposes of this Agreement, the term "Corporate Succession" means (i) a sale or transfer of all or substantially all of Developer's business assets to an Affiliate of which Developer owns a controlling interest, or (ii) a change in the form of business entity through which Developer conducts business. Developer shall promptly notify the City in writing of any event of Corporate Succession. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly authorized in this Section 9.6, and any Transfer in violation of the provisions of this Section 9.6 shall be void and shall vest no rights in the purported transferee.

9.7 Recordation. Recordation of this Agreement is a condition of transfer of the Property to Developer. This Agreement shall be recorded in its entirety by the City in the office of the Yuma County, Arizona, Recorder, not later than ten (10) days after this Agreement has been executed by the City and Developer, provided however, that the Parties shall not execute this Agreement prior to or during any applicable referendum period.

9.8 Waiver. The Parties agree neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

9.10 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 (whether by a Party, or by a permitted successor or assign to all or any interest of a Party) shall be commenced and maintained in the Superior Court for Yuma County, Arizona, and the Parties (and their successors and assigns) agree and consent to the exclusive jurisdiction of such Superior Court. Developer (and Developer's successors and assigns) waive all right to seek removal of any action to any court (federal or state) other than the Superior Court in and for Yuma County, Arizona.

9.11 Attorneys' Fees and Costs. In the event of commencement of a legal action or proceeding in an appropriate forum by a Party to enforce any covenant, term, provision or requirement of this Agreement, or any of such Party's rights or remedies under this Agreement, or in the event of commencement of any action or proceeding seeking a declaration of the rights of any Party or equitable or injunctive relief against any Party, the prevailing Party or Parties in any such action or proceeding shall be entitled to recovery of reasonable attorneys' fees, court costs and expenses, including, but not limited to, costs of expert witnesses, transportation, lodging and meal costs of the Parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental expenses associated with such dispute. The award shall be made by the Court and not by a jury.



9.12 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 Friday, Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended to end on the next succeeding day which is not a Friday, Saturday, Sunday or legal holiday.

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

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

9.15 Exhibits. Any exhibit attached hereto shall be deemed to have been incorporated into this Agreement by this reference with the same force and effect as if fully set forth in the body of this Agreement.

9.16 Successors and Assigns. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties pursuant to A.R.S. § 9-500.05(D).

9.17 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Property shall run with the land and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Project. 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.

9.18 Amendment. No change, addition or deletion is to be made to this Agreement, except by a written amendment approved by the City Council and executed by the Parties.

9.19 Limited Severability. The Parties each believe that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. In the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Applicable Law, constitutional provision, regulation, or City Code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect. If practical and legally permitted, this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed Agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required; and further provided that in no event shall the City be required to borrow funds, extend credit, make any expenditure from its General Fund, or take any other action determined by the City Attorney to be a violation of any Applicable Law. Unless prohibited by any Applicable Law, the Parties further shall perform all acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

9.20 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 the signatures of all Parties may be physically attached to a single document.

9.21 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written (including any term sheets, discussion outlines or similar documents) are hereby superseded and merged into this Agreement.

9.22 Survival. All agreements and indemnities in this Agreement expressly set forth to survive termination of this Agreement shall survive the cancellation, expiration or termination of this Agreement for the period of the applicable statute of limitations.

9.23 Conflict of Interest Statutes. This Agreement is subject to, and may be terminated by the City in accordance with the provisions of A.R.S. § 38-511.

9.24 Compliance Confirmation. Upon request by either Party, the other Party shall, within ten (10) calendar days, respond by written instrument to the other Party that (a) the approved Project Design is unmodified and in full force and effect, or if there have been modifications, that the approved Project Design is in full force and effect as modified, stating the nature and date of such modification, (b) this Agreement is unmodified and in full force and effect, or if there have been modifications, that the Agreement is in full force and effect as modified, stating the nature and date of such modification, (c) the existence of any default under the approved Project Design or this Agreement and the scope and nature of the default, and (d) any other matters that may reasonably be requested in connection with the development of the Property, any financing thereof, or any material aspect of the approved Project Design. In the event either Party has not received a response in connection with the compliance confirmation requested pursuant to this Paragraph 9.24 within thirty (30) days from the date of the request, then in such event, the requesting Party shall be entitled to prepare a written compliance confirmation and deliver the same to the other Party and such compliance confirmation shall be binding upon the other Party.

9.25 Default and Remedies. If Developer fails to perform Developer's obligations under this Agreement, and such failure continues for a period of thirty (30) days after receipt of written notice thereof from the City detailing the nature of the alleged default in accordance with this Agreement (the "Cure Period"), such failure shall constitute a Developer default under this Agreement ("Developer Default"); if more than thirty (30) days are required to cure the default, the Cure Period shall be extended for such additional time as reasonably necessary for Developer to cure the default provided Developer commences the cure within thirty (30) days and thereafter diligently pursues completion of the cure and such default does not otherwise extend the Completion of Construction. Whenever a Developer Default occurs and is not cured within the Cure Period, the City may pursue all of its legal rights and remedies including declaring this Agreement terminated. If this Agreement is terminated, the Property shall be reconveyed to the City. Any improvements constructed on the Property shall either become the property of the City, or alternatively, Developer shall pay the City the Fair Market Value of the Property as established by an appraiser acceptable to both the City and the Developer. For all other Defaults of Developer, the City may pursue all of its legal rights, including seeking specific performance, an injunction (whether characterized as mandamus, injunction or otherwise), special action, declaratory relief or other similar relief requiring the Developer to undertake and to fully and timely pay or perform Developer's obligations under this Agreement; provided, however, the City shall

not be entitled to the remedy of specific performance to force Developer to complete construction. Notwithstanding anything herein to the contrary, Developer's partners, shareholders, members, officers, or other principals shall not have any personal liability under this Agreement. The provisions of this Section 9.25 shall survive termination of this Agreement.

9.26 City Default: Cure Period: If the City fails to perform the City's obligations under this Agreement, and such failure continues for a period of thirty (30) days after notice from Developer in accordance with this Agreement, such failure shall constitute a City default under this Agreement. The Developer may pursue all of Developer's legal rights and remedies, including declaring this Agreement terminated. The provisions of this Section 9.26 shall survive termination of this Agreement.

9.27 Force Majeure. Developer or the City shall not be considered in breach of obligations under this Agreement as a result of any of the following: unanticipated delays with respect to governmental licenses, permits, and approvals; acts of God; acts of the public enemy; foreign or domestic terrorism; war; riots; sabotage; acts or failure to act of any governmental agency; any order, ruling, moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the Project, the affected Party or such Party's operations, or of any civil or military authority; insurrections; fires; windstorm; floods; washouts; droughts; tornadoes; hurricane; earthquakes; epidemics; pandemics (including COVID-19); quarantine restrictions; strikes, lockouts or other industrial disturbances (whether or not on the part of agents or employees of either Party); freight embargoes; unusually severe weather; unforeseeable environmental or archaeological conditions requiring investigation/mitigation pursuant to federal, state or local laws; orders of any kind of the government of the United States of America or of the state or any governing authority or any of their respective departments, agencies, political subdivisions or officials; explosions; entire failure of utilities; or any other cause or event not reasonably within the control of the Developer or the City (each, a "Force Majeure Event"). Notwithstanding the above, a Force Majeure Event does not include any government acts or orders by the City relating solely to the Developer or the Property or the Agreement. The Parties explicitly acknowledge that economic conditions are not an event subject to the benefit of this Paragraph 9.27.

**[SIGNATURES ON FOLLOWING PAGES.]**



**CITY:**

CITY OF YUMA,  
an Arizona municipal corporation

By: \_\_\_\_\_  
John D. Simonton, City Administrator

STATE OF ARIZONA        )  
  ) ss.  
County of Yuma            )

On this \_\_\_\_ day of October, 2023, before me, a notary public in and for said state, personally appeared John D. Simonton, the City Administrator of the City of Yuma, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the Agreement on behalf of the City of Yuma.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

My Commission Expires: \_\_\_\_\_  
Notary Public

**ATTEST:**

\_\_\_\_\_  
Lynda L Bushong, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Richard W. Files, City Attorney

## Exhibit A

### LEGAL DESCRIPTION OF PROPERTIES IN 1800 BLOCK OF SOUTH 4<sup>th</sup> AVENUE

APN 665-44-001

Lot 1, Block 1 of the Clarence Trigg Subdivision as recorded in the Book 3 of Plats, Page 49, Records of the Yuma County Recorder, less right-of-way dedicated to the City of Yuma by the Record of Survey recorded in Book 8 of Surveys, Pages 16 and 17 – Fee 2009-12811, Records of the Yuma County Recorder, in Section 33, Township 8 South, Range 23 West, Gila and Salt River Base and Meridian, Yuma County, Arizona, and more particularly described as:

Beginning at a point on the East Line of said Section 33 and at the intersection of the Centerline of 18<sup>th</sup> Street, at which point was found Brass Cap stamped LS 16592;

Thence South 00° 29' 21" West along the East line of Section 33 a distance of 30.00 feet;

Thence North 89° 25' 45" West along a line parallel and 30.00 feet south of the Centerline of 18<sup>th</sup> Street a distance of 61.50 feet;

Thence South 00° 29' 21" West along a line parallel to and 61.50 feet West of the East Line of Section 33 a distance of 25.00 feet to a point on the East Line of Lot 1 and the True Point of Beginning;

Thence South 00° 29' 21" West a distance of 24.77 feet (25.00 feet, prorated, as recorded per Book 3 of Plats, Page 49) to the Southeast Corner of Lot 1;

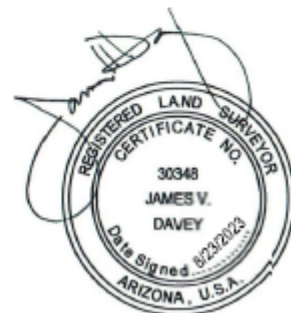
Thence North 89° 26' 49" West along the South Line of Lot 1 a distance of 96.23 feet to the Southwest Corner of Lot 1;

Thence North 00° 29' 29" East along the West line of Lot 1 a measured distance of 49.80 feet (50.00 feet per recorded Plat) to the Northwest Corner of Lot 1;

Thence South 89° 25' 45" East along the North line of Lot 1 a measured distance of 71.22 feet (71.32 feet, prorated, per recorded Plat);

Thence South 44° 28' 12" East a distance of 35.38 feet to the True Point of Beginning;

The above described property contains 4478 square feet, more or less.



APN 665-44-002

Lot 2, Block 1 of the Clarence Trigg Subdivision as recorded in the Book 3 of Plats, Page 49, Records of the Yuma County Recorder, less right-of-way dedicated to the City of Yuma by the Record of Survey recorded in Book 8 of Surveys, Pages 16 and 17 – Fee 2009-12811, Records of the Yuma County Recorder, in Section 33, Township 8 South, Range 23 West, Gila and Salt River Base and Meridian, Yuma County, Arizona, and more particularly described as:

Beginning at a point on the East Line of said Section 33 and at the intersection of the Centerline of 18th Street, at which point was found Brass Cap stamped LS 16592;

Thence South  $00^{\circ} 29' 21''$  West along the East line of Section 33 a distance of 30.00 feet;

Thence North  $89^{\circ} 25' 45''$  West along a line parallel and 30.00 feet south of the Centerline of 18th Street a distance of 61.50 feet;

Thence South  $00^{\circ} 29' 21''$  West along a line parallel to and 61.50 feet West of the East Line of Section 33 a distance of 49.77 feet to the Northeast Corner of Lot 2 and the True Point of Beginning;

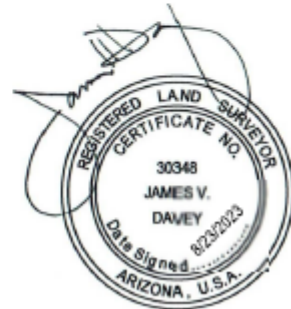
Thence South  $00^{\circ} 29' 21''$  West a distance of 49.77 feet (50.00 feet as recorded per Book 3 of Plats, Page 49) to the Southeast Corner of Lot 2;

Thence North  $89^{\circ} 27' 54''$  West along the South Line of Lot 2 a distance of 96.23 feet to the Southwest Corner of Lot 2;

Thence North  $00^{\circ} 29' 29''$  East along the West line of Lot 2 a measured distance of 49.80 feet (50.00 feet per recorded Plat) to the Northwest Corner of Lot 2;

Thence South  $89^{\circ} 26' 49''$  East along the North line of Lot 2 a measured distance of 96.23 feet (96.31 feet, prorated, per recorded Plat) to the Northeast Corner of Lot 2 and the True Point of Beginning;

The above described property contains 4791 square feet, more or less.



APN 665-44-193

Lot 3, Block 1 of the Clarence Trigg Subdivision as recorded in the Book 3 of Plats, Page 49, Records of the Yuma County Recorder, less right-of-way dedicated to the City of Yuma by the Record of Survey recorded in Book 8 of Surveys, Pages 16 and 17 – Fee 2009-12811, Records of the Yuma County Recorder, in Section 33, Township 8 South, Range 23 West, Gila and Salt River Base and Meridian, Yuma County, Arizona, and more particularly described as:

Beginning at a point on the East Line of said Section 33 and at the intersection of the Centerline of 18th Street, at which point was found Brass Cap stamped LS 16592;

Thence South 00° 29' 21" West along the East line of Section 33 a distance of 30.00 feet;

Thence North 89° 25' 45" West along a line parallel and 30.00 feet south of the Centerline of 18th Street a distance of 61.50 feet;

Thence South 00° 29' 21" West along a line parallel to and 61.50 feet West of the East Line of Section 33 a distance of 99.54 feet to the Northeast Corner of Lot 3 and the True Point of Beginning;

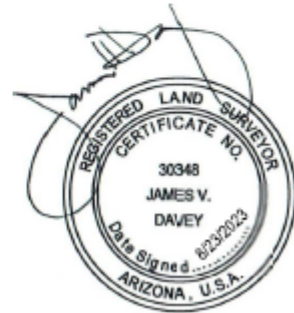
Thence South 00° 29' 21" West a distance of 49.77 feet (50.00 feet as recorded per Book 3 of Plats, Page 49) to the Southeast Corner of Lot 3;

Thence North 89° 27' 54" West along the South Line of Lot 3 a distance of 96.23 feet to the Southwest Corner of Lot 3;

Thence North 00° 29' 29" East along the West line of Lot 3 a measured distance of 49.81 feet (50.00 feet per recorded Plat) to the Northwest Corner of Lot 3;

Thence South 89° 26' 49" East along the North line of Lot 3 a measured distance of 96.23 feet (96.31 feet, prorated, per recorded Plat) to the Northeast Corner of Lot 3 and the True Point of Beginning;

The above described property contains 4792 square feet, more or less.



Descriptions Verified By:	Andrew McGarvie
City Engineering Department	Date: 8/24/23



## Exhibit B

### Legal Description of Right of Way to Be Vacated

A portion of the Northeast quarter of the Southeast quarter of the Northeast quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section 33, Township 8 South, Range 23 West of the Gila and Salt River Base and Meridian, City of Yuma, Yuma County, State of Arizona, also being a portion of Lots 1 through 3, Block 1, Clarence Trigg Subdivision, dated May 3, 1949, FEE # 2918, recorded in Book 3 of Plats, Page 49, also described in Record of Survey, dated May 6, 2009, FEE # 2009-12811, Recorded in Book 8 of Surveys, Pages 16 & 17, Yuma County Records:

Commencing at the Brass Cap stamped with LS#16592 located at the intersection of 18<sup>th</sup> St and Arizona Ave;

Thence South 00°29'21" West (record) along the East Section line of said Section 33, a distance of 30.00 feet (record) to a point;

Thence North 89°25'45" West (record) along a line parallel with and 30.00 feet south of the 18<sup>th</sup> St. centerline a distance of 33.00 feet (record) to the original Northeast corner of Lot 1, Block 1 of Clarence Trigg Subdivision;

Thence continuing North 89°25'45" West (calculated) along a line parallel with and 30.00 feet south of the 18<sup>th</sup> St. centerline, also being the original North line of said Lot 1, a distance 53.50 feet (record) to a point lying at the northern most Northeast corner of Lot 1, as shown in said Record of Survey, point also being the True Point of Beginning;

Thence South 89°25'45" East (record) along the said original North line of Lot 1, a distance of 21.50 feet (calculated) to a point;

Thence South 44°28'12" East (calculated) a distance of 35.38 feet (calculated) to a point lying 40.00 feet west of the East line of said Section 33;

Thence South 00°29'21" West (calculated) along a line parallel with and 40.00 feet West of the East line of said Section 33 a distance of 124.29 feet (calculated) to a point lying on the original South line of Lot 3, Block 1 of Clarence Trigg Subdivision;

Thence North 89°29'13" West (record) along the original South line of said Lot 3, a distance of 21.50 feet (calculated) to a point lying at the current southeast corner of Lot 3 as described in the said Record of Survey;

Thence North 00°29'21" East along the current east lines of Lots 3,2, and 1 as described in said record of survey, a distance of 124.31 feet (record) to a point;

Thence North 44°28'12" West (record) a distance of 35.38 feet (record) to the True Point of Beginning;

Containing 3,210 square feet or 0.0737 of an acre, more or less.

Descriptions Verified By:	Andrew McGarvie
City Engineering Department	Date: 8/24/23