

AGREEMENT FOR FINANCIAL ASSURANCES FOR SUBDIVISION

Date:

Beneficiary

Developer

City of San Luis
Public Works Department
1090 E. Union Street
San Luis, AZ 85349

Greater Yuma Port Authority
P.O. Box 4601
Yuma, AZ 85366-4601

Amount of Financial Assurances Being Posted: \$1,348,000.00

Subdivision: Magrino Industrial Park No. 3

This Agreement made this 17 day of March, 2020 between the City of San Luis, an Arizona municipal corporation and political subdivision, hereinafter (the "City"), Greater Yuma Port Authority, (the "Developer") and Pioneer Title Agency (the "Escrow Agent"). Developer is developing the subdivision known as Magrino Industrial Park No. 3 (the "Subdivision"). Section 6.2 of the Subdivision Regulations of the City provide for the requirement of the posting of financial assurances in an amount of one hundred percent of the cost of all required improvements as estimated by the Public Works Director. The purpose of this Agreement is to set forth the terms and conditions upon which Developer will deposit the financial assurances with the Escrow Agent.

AGREEMENT FOR ASSURANCES

Prior to the City's issuance of any building permits for the Subdivision, Developer agrees to post with the Escrow Agent as financial assurances for the completion of all required improvements for the Subdivision the amount of \$1,348,000.00 to be held and administered in escrow by the Escrow Agent in accordance with this Agreement. The amount to be deposited will be deposited by Developer in phases pursuant to the following schedule:

1. 1st Phase: \$350,000 deposit by check from Developer
2. 2nd Phase: \$107,000 within 45 days of opening escrow account (Labrie Sales Proceeds)
3. 3rd phase: \$54,000 within 120 days of opening escrow account (Jones Sales Proceeds)
4. 4th phase: \$115,000 within 120 days of opening escrow account (Jones Sales Proceeds)
5. 5th phase: \$722,000 line of credit through lending institution (1st Bank Yuma) and/or combination of cash and line of credit to be provided within 6 months of opening escrow account.

Partial and multiple draws by Developer from Escrow are permitted under this Agreement upon the City's review and written approval of the Developer's draw request. Upon the City's review and approval of a draw request, the City shall sign a Reduction Certificate to be delivered to the Escrow Agent authorizing the amount of the draw request. The aggregate amount available under this Agreement at any time shall be the initial stated amount minus the aggregate amount approved as a result of a Reduction Certificate.

Developer may apply for a Reduction Certificate during the construction of improvements of the Subdivision. Developer must describe the improvements that have been completed to the point that a reduction in the posted assurances are sought, the application must be approved by the Public Works Director, and the Public Works Director must find, in his sole discretion, that the aggregate amount remaining as posted assurances, or to be deposited pursuant to the aforesaid schedule, will be adequate as financial assurances for the completion of all required improvements plus ten percent for the two year warranty period required by Sections 6.2 and 6.5 of the Subdivision Regulations. Upon the City's written approval of an application for Reduction Certificate by the Public Works Director, the amount of the approved reduction shall be released by the Escrow Agent to Developer. By this method of reduction of the posted financial assurances the posted financial assurances may be reduced to a maximum of 90 percent of the original sum deposited with the Escrow Agent. The remaining 10 percent shall be retained by the Escrow Agent until final acceptance of the Subdivision Improvements and as assurances for the two year warranty period required by the City's Subdivision Regulations, unless an alternate assurance is provided and accepted by City.

This Agreement shall remain in force until: 1) all improvements of said Subdivision have been satisfactorily completed and accepted by the City; 2) final acceptance of the Subdivision has been made by the City; and 3) the two year warranty period as required by the Subdivision Regulations has been satisfied, or an alternate form of assurance has been provided to and accepted by City.

In the event that improvements are not satisfactorily completed or corrected in a timely manner as directed by the City, the City may then, in its sole discretion, without notice, provide to the Escrow Agent an Escrow Directive to release the posted assurances to complete or correct all or part of the required improvements. Upon receipt of the City's Escrow Directive the Escrow Agent shall release to the City the sum requested by the City pursuant to the Escrow Directive. In the event that financial assurances are not posted as scheduled, Developer agrees that the City may revoke any and all construction permits and may proceed to revoke approval of the subdivision plat.

The City and Developer agree the Escrow Agent is authorized to rely upon any signed Reduction Certificate or Escrow Directive provided to the Escrow Agent pursuant to the terms and conditions of this Agreement. The Developer agreed to release, defend, hold harmless and indemnify the Escrow Agent for the services provided by the Escrow Agent pursuant to this Agreement, other than the gross negligence or intentional misconduct of the Escrow Agent. Developer shall pay all fees and costs incurred by the Escrow Agent in providing services under this Agreement.

At such time as all improvements have been satisfactorily completed or corrected and the warranty period has expired, as evidenced in writing by the City, or an alternate form of assurance has been provided to and accepted by City, all remaining funds in the escrow with the Escrow Agent will be returned by the Escrow Agent to Developer.

General Provisions

A. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Developer or City of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

B. Attorneys' Fees. In the event any party finds it necessary to bring any action at law or other proceeding, including arbitration, against the another party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in any such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other party, and in the event any judgment is secured by said prevailing party, all such costs and attorneys' fees shall be included therein, such fees to be set by the court and not by jury.

C. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall 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 signature of all parties may be physically attached to a single document.

D. 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.

F. Time of the Essence. Time is of the essence of this Agreement.

G. No Partnership and Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other similar arrangement between Developer or City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

H. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

I. Amendment. No change or additions are to be made to this Agreement except by a written amendment executed by the parties hereto.

J. Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38 511.

L. Venue. Any legal action relating to this Agreement shall be brought in either the Yuma County Superior Court at the election of the plaintiff in such legal action, provided, however, that nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

M. Severability. Every provision of this Agreement is, and will be construed to be, a separate and independent covenant. If any provision of this Agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this Agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability, and each provision of this Agreement will be valid and will

be enforced to the extent permitted by the law, and the parties will negotiate in good faith for such amendments of this Agreement which may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

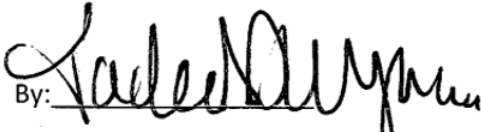
N. No Personal Liability. No member, official or employee of the City shall be personally liable to Developer, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Developer or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

O. Developer hereby certifies that it is not boycotting Israel.

The parties have executed this Agreement on the day and year first above written.

City of San Luis

Greater Yuma Port Authority

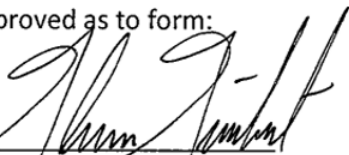
By: 
Tadeo de la Hoya, City Manager

By: _____
Tony Reyes, Vice-Chairman

Pioneer Title Agency

By: 
Authorized Signature

Approved as to form:

By: 
Asst. City Attorney

be enforced to the extent permitted by the law, and the parties will negotiate in good faith for such amendments of this Agreement which may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

N. No Personal Liability. No member, official or employee of the City shall be personally liable to Developer, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Developer or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

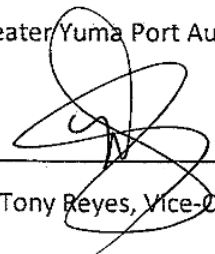
O. Developer hereby certifies that it is not boycotting Israel.

The parties have executed this Agreement on the day and year first above written.

City of San Luis

Greater Yuma Port Authority

By: _____

By:  _____

Tadeo de la Hoya, City Manager

Tony Reyes, Vice-Chairman

Pioneer Title Agency

By: _____

Authorized Signature

Approved as to form:

By:  _____

Asst. City Attorney