

EXHIBIT A

RESOLUTION No. R2019-012 CASTLE DOME DEVELOPMENT AGREEMENT

This CASTLE DOME DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2019, by and between the NELSON FAMILY TRUST, dated 4-13-95 and the KERRY & GAIL SCHIMPF TRUST, dated 11-19-03, each a California trust, and KYLE P. NELSON, an individual (collectively “Owners”), and the City of Yuma, Arizona, an Arizona municipal corporation (“Yuma”). The Owners and Yuma are collectively referred to herein as the “Parties,” and individually as a “Party”.

RECITALS

WHEREAS, Owners hold fee title to approximately twenty-five (25) acres of real property within the corporate limits of Yuma located at or near the intersection of South Castle Dome Avenue and East 8th Street in Yuma, Arizona, known as Yuma County Parcel #180-22-016, and more particularly described and depicted in the attached Exhibit 1 (the “Property”); and,

WHEREAS, the Property is located immediately west of, and adjacent to, the Pacific Avenue Athletic Complex (“PAAC”), a fully operational public regional park and sports complex with numerous weekly, monthly and yearly events open to, and well attended, by the public; and,

WHEREAS, the Property is designated as High Density Residential in the City of Yuma 2012 General Plan (“General Plan”) and currently zoned General Commercial District (B-2) but undeveloped and in agricultural production; and,

WHEREAS, Owners desire and intend to develop the Property for a mix of uses, including residential and commercial uses, which said residential uses are not fully permitted in the current B-2 zoning designation and which will require Owners to file a rezoning application; and,

WHEREAS, Owners have presented a conceptual plan for the intended development of the Property which includes construction of a hotel and several commercial lots as well as market-rate apartments or townhomes; and,

WHEREAS, Yuma believes Owners’ conceptual plan depicting the intended development of the Property provides benefits to the immediate area and the addition of market-rate apartments and/or townhomes will provide additional regional benefits; and,

WHEREAS, Yuma is the water and wastewater service provider for the Property; and,

WHEREAS, in addition to Owners’ onsite public infrastructure obligations, Owners have agreed to contribute their proportionate share for roadway improvements to Giss Parkway, East

8th Street and South Pacific Avenue for which Yuma intends to make applications for federal or state grant fund awards to fund all or portions of such improvements; and,

WHEREAS, Owners and Yuma are entering into this Agreement pursuant to the provisions of ARIZ. REV. STAT. § 9-500.05 in order to facilitate the proper municipal zoning application and development of the Property by providing for, among other things the conditions, terms, restrictions and requirements for the construction and installation of public services/infrastructure improvements related directly or indirectly to the development of the Property; and,

WHEREAS, development of the Property in accordance with this Agreement will result in the planning, design, engineering, construction, acquisition, installation, and/or provision of public services/infrastructure improvements that will support development of the Property and should generate substantial economic benefits for the Owners; and,

WHEREAS, improving the Property will enhance the general area around the Property, and be of a public benefit; and,

WHEREAS, the Parties understand and acknowledge that the terms of this Agreement shall constitute and be interpreted as covenants running with the Property as more fully described in this Agreement.

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

1. Incorporation of Recitals. The foregoing Recitals are incorporated into this Agreement by reference as though fully restated.

2. Term. This Agreement will commence and become operative upon the date of its execution by both Parties (the “Effective Date”), and will terminate when the obligations of the Parties have been completed including the completion of the dedication of public rights-of-way, construction, dedication and final Yuma acceptance of the public improvements contemplated herein, and any Owner surcharge or financial contribution contemplated by this Agreement has expired or been paid in full, or, if Yuma does not approve a Final subdivision plat for the Property as noted below or, the Parties mutually provide for termination in writing, or, if no vertical construction requiring a building permit has commenced on the Property, upon the expiration of three (3) years from the Effective Date, whichever occurs first. Notwithstanding the provisions of Section 3.1 and any other term of this Agreement, express covenants shall survive the term of this Agreement and shall run with the land.

3. Development of the Property.

3.1. Subdivision and Rezoning Submittals. Owners desire to establish land use designations and zoning districts consistent with the designations and zoning districts identified on Exhibit 2, attached and incorporated herein by reference (“Conceptual Plan”). Owners acknowledge that, among other applications, Owners may need to (i) submit for Yuma consideration a subdivision plat for the Property; and (ii) apply to rezone a portion or portions of

the Property to use the Property as Owners desire and as depicted on the Conceptual Plan (rezoning application[s] are collectively referred to herein as the “Rezoning Application”). Owners shall submit a Rezoning Application for the entire Property necessary to authorize Owner’s intended use of the Property to Yuma within six (6) months of the Effective Date. Yuma acknowledges Owners have not fully completed the site analysis and planning necessary to establish a site plan for the residential portion of the Property. Accordingly, Owners and Yuma agree that any Rezoning Application relating to the residential uses intended for the Property, submitted to Yuma pursuant to this Section 3.1, are conceptual in nature and subject to further refinement and modification pending a full site analysis of the Property. In the event either Yuma fails to approve Owners’ Rezoning Application or if Owner fails to submit any required Rezoning Application within the required time period, this Agreement shall immediately terminate and all rights and obligations contained therein shall be null and void. While the Parties agree that the Conceptual Plan, as presented, should bring a recommendation of approval from Yuma staff, Owners acknowledge the actual approval, denial or modification of the Rezoning Application is a legislative decision to be made by the Yuma City Council, in their sole and absolute discretion, and may in part be based on Owners’ covenants and promises herein. Owners further acknowledge the City Council cannot be contractually bound to approve future legislative decisions and no assurances regarding the outcome of any legislative decision on Owner’s Rezoning Application relating to the Property are made by any reference, provision or term in this Agreement and that future legislative decisions may be subject to referendum.

3.2. Adherence to Conceptual Plan. Owner acknowledges and agrees Yuma is materially relying on Owners representations regarding its intended use and development of the Property as generally depicted on the Conceptual Plan in entering into this Agreement. Owners agree to only submit Rezoning Applications consistent with the Conceptual Plan for development of the Property.

4. Acknowledgment of PAAC Activities. Owners acknowledge and understand the PAAC is actively being marketed and utilized for community events and that events may take place at the PAAC every day of any year. By entering this Agreement, Owners, and any of Owners’ successor and/or assigns, tenants, lessees and sublessees of any part or portion of the Property waive any claims attributable to noise, light, or community activities or events taking place on or in the vicinity of the PAAC, including but not limited to nuisance, quiet enjoyment, intrusion upon seclusion, intentional or negligent infliction of emotional distress, or trespass against Yuma and its elected officials, employees, or volunteers. Owners agree that this waiver will act as a covenant on the Property and run with the land.

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

6. Public Infrastructure.

6.1. Street Improvements.

A. Castle Dome Avenue/Giss Parkway-East 8th Street Intersection. No later than thirty (30) days from the time a final subdivision plat for the property is approved by Yuma, Owners shall make a one-time payment to Yuma in the amount of Two Hundred Seventy-Nine Thousand Eight Hundred Thirty dollars (\$279,830.00) for Owners share of the costs (“Owners Financial Obligation”) associated with the street improvements to the intersection of Castle Dome Avenue and Giss Parkway/East 8th Street, identified in Exhibit 3 and incorporated herein by reference, required for the development of the Property (“Projected Intersection Improvements”). Owners’ Financial Obligation referenced in this Section 6.1(A) is Owners’ sole financial obligation relating to the Projected Intersection Improvements, however, Owner is not relieved of its obligation to dedicate to Yuma the property rights, including easements, right-of-way or any other property right as identified on the Final Plat for the Property, depicted on Exhibit 4 and incorporated herein by reference, necessary or required to complete the Projected Intersection Improvements. Yuma shall be responsible for the design, construction, installation and maintenance of the Intersection Improvements. Notwithstanding the foregoing, Owners shall submit a final subdivision plat for the Property within ninety (90) days from the Effective Date of this Agreement. The Owners Financial Obligation referenced in this Section 6.1(A) shall be non-refundable upon acceptance by Yuma.

B. 8th Street/Pacific Avenue Intersection. Owner, in lieu of its obligation to make improvements to the East 8th Street and Pacific Avenue roadways required by the development of the Property, shall contractually require the collection of a one percent (1%) development surcharge (the “Development Surcharge”) on all transactions or activities now or hereafter subject to any transaction privilege taxes levied or imposed under the City of Yuma Tax Code (“Taxable Activities”) that occur within any hotel, motel or temporary lodging (“Lodging Facility”) developed on the Property. For each Lodging Facility developed on the Property during the Term of this Agreement the Development Surcharge shall be imposed for a duration commencing upon the first transaction recorded by the Lodging Facility (“Development Surcharge Commencement Date”) and terminating on the day that is the first day of the eighth (8th) year anniversary of the First Transaction Date (“Development Surcharge Termination Date”). The Development Surcharge shall be collected and reported to Yuma not more frequently than monthly and in such manner as Yuma shall determine from time to time. Owner and its permitted successors and assigns shall require that all development agreements, sub-agreements, leases, management contracts, or any other document that implements the development, leasing, and operation of any Lodging Facility, contain provisions requiring the payment, collection and reporting of the Development Surcharge to Yuma until the Development Surcharge Termination Date. At the end of the Development Surcharge Termination Date for any Lodging Facility subject to the Development Surcharge, including any extensions thereof, the collection of the Development Surcharge will terminate as to that Lodging Facility. The Parties further agree to develop and execute any additional agreements or documents, including entering into Third Party agreements, necessary to implement this Section 6.1(B), including specifically the development of collection and reporting procedures to ensure that the Development Surcharge is collected and then reported and paid to Yuma.

C. Castle Dome Avenue Extension North. Pursuant to A.R.S. § 34-201, as a condition to development of the Property imposed by Yuma and as authorized by A.R.S. § 9-463.01 and Yuma City Code, Chapter 153 or any successor provisions, Owners, at Owners’ sole cost and expense, shall design, and subject to the Yuma City Engineer’s approval,

construct or cause to be constructed and dedicated to Yuma, the extension of Castle Dome Avenue north of 8th Street as depicted on Exhibit 5, attached hereto and incorporated herein (“Castle Dome Avenue Extension”). Owners shall pay all costs associated with the design, construction, management, installation and financing of the Castle Dome Avenue Extension from the southern boundary of the Property to its terminus within the Property. The Castle Dome Avenue Extension shall be constructed to meet all applicable Yuma roadway design and construction standards in existence as of the Effective Date of this Agreement or as are otherwise applicable pursuant to Section 5 above.

D. Ongoing Roadway Improvements/Raised Medians. Pursuant to the terms of this Agreement, Yuma is responsible for the design, construction and installation of the East 8th Street, Pacific Avenue, Giss Parkway and Castle Dome Avenue improvements (but not the Castle Dome Extension improvements) referenced herein. Owners acknowledge the improvements to East 8th Street, Pacific Avenue, Giss Parkway and Castle Dome Avenue will occur over a period of years and may result in significant disruptions to traffic flow and may cause diminished access to the Property and the creation of noise, dust, smoke, vibrations, traffic and other construction related attributes. Yuma will use its best efforts to coordinate street improvements and other public improvements with Owners to cause the least impact to the Property and the operation of businesses established within the Property. As referenced above, Yuma is currently seeking funding through federal and state grants to assist with roadway improvements and Owners acknowledge that the intended improvements will be constructed with raised medians in the rights of way and potentially, intersectional round-a-bouts.

6.2. Utilities.

A. In anticipation of the development of the Property, Yuma has extended water and sanitary sewer connections to the eastern edge of the Property boundary. Completion of these water and sanitary sewer connections, or in the event Owners elect to relocate or establish new water and/or sanitary sewer service connections to the Property, and making connections with other approved utility providers, such as licensed or franchised electric, natural gas, cable and/or other telecommunication providers (collectively, the “Utility Service Providers” or individually “Utility Service Provider”) is the responsibility of the Owners. Owners, at Owners’ sole cost and expense, shall secure all easements, consents, and rights-of-way needed for Owners’ construction and connection of utility service lines to allow Utility Service Providers to serve the Property.

B. Yuma acknowledges that the Property is within the City of Yuma potable water and sanitary sewer franchise service area, as approved by Yuma County. Upon execution of this Agreement and application to the State of Arizona, Department of Environmental Quality, for any required Notice of Intent to Discharge, the City will issue the appropriate “Authorization to Connect to Public Sewer” and “Authorization to Connect to Public Water Service” letters for both water and sanitary sewer service.

7. Development Fees and Water and Sewer Capacity Charges. Any development and use of the Property shall require the payment of City of Yuma Development fees in the amounts established and in existence at the time of the issuance of a building permit. In the event

building permits are obtained at different times, the Development Fee applicable to any specific building permit is the Development Fee in effect at the time the building permit is issued. The City of Yuma Development Fees include development fees in five (5) fee categories: (i) Parks and Recreation facilities, (ii) Police facilities, (iii) Fire facilities, (iv) General Government facilities, and (v) Streets facilities (collectively “Development Fees”). Based on the public improvement obligations of Owner identified in Section 6 above, Owner is not entitled to any rebate, reimbursement, credit, offset, reduction or waiver of any Development Fees. In addition to Owners’ obligation to pay Development Fees, Owner shall be responsible for the payment of any other fees or charges associated with the development of the Property, including but not limited to, water and sewer capacity, connection, and service charges in accordance with City of Yuma Utility Regulations, and building permits and plan review charges for new construction.

8. Right-of-way Dedications. It is anticipated the internal streets, sidewalks and/or other internal right-of-way improvements, but excluding the Castle Dome Extension, in the development of the Property will not be dedicated for public use and will be part of a homeowners’ association and/or an Improvement District. Owners shall grant to Yuma an easement for police, fire, ambulance, garbage collection, wastewater line installation and repair, and other similar public purposes, over any private streets within the Property. Owners hereby covenant and agree that prior to the issuance of a permanent water meter or issuance of any building permit or conveyance of any part or portion of the Property, Owner or Owners’ successors shall dedicate the required rights of way to the City of Yuma in fee simple, either by deed, recorded lot tie/lot split, or by plat. The dedications shall be free and clear of all liens and encumbrances and any existing easements shall be vacated prior to or concurrently with the right of way dedication. Notwithstanding the foregoing, Owners may specifically request approval of an existing easement located within a proposed dedication or grant by submitting a written request to Yuma, and receiving from Yuma, in connection with Yuma’s acceptance of the right of way dedication, written approval from the City of Yuma Engineer accepting title to the right of way subject to the specifically presented existing easement. In no event shall any easement or license on the Property require a Yuma approved Utility Service Provider to: (a) pay to cross or use the easement or license to reach any structure within the Property; or (b) prevent any Utility Service Provider from providing service to any structure within the Property.

9. Improvement Districts. Subject to the Applicable Laws, Owners hereby consent to the formation of a Maintenance Improvement District for the purpose of providing irrigation and maintenance of landscaping, drainage, and storm water retention areas adjacent to and along the public roadways and internal roadways/pathways within the proposed district on the Property (“District”). Owners shall execute any required petitions and other documentation necessary for the formation of the District, pay all costs associated with the formation thereof, and provide Yuma at Owners’ cost with the necessary surveys, engineering work, and dedication of the required maintenance easements to Yuma, prior to the conveyance or other transfer of any portion of the Property to a Third Party unless such Third Party is a successor in interest, approved in writing by Yuma. As a condition to such transfer to a Third Party, the Third Party shall be bound by this consent provision to form a Maintenance Improvement District. Any such District shall include the entirety of the Property within its boundaries and extend to the centerline of all adjacent roadways and shall include any medians. Owners may elect to form a homeowner’s association on the Property to satisfy the duties of the Districts. If Owners’ elect

to form a homeowner's association, the Owners will form a District as a back-up entity should the homeowner's association fail or dissolve. The District shall be formed as a condition precedent to any rezone on the Property.

10. Construction and Dedication of Public Improvements. All other public improvements required for development of the Property, not otherwise referenced in this Agreement, shall be designed, constructed, and dedicated in accordance with all Applicable Laws. Owners are responsible for assuring all public improvements are constructed in conformance with the designs, plans, and specifications approved by Yuma. Yuma shall have the right to inspect the construction work for compliance. All costs of the public improvement design, construction, inspection, and testing, including without limitation, the cost of construction permits, development fees, water and sewer connection and capacity charges, and performance bonds, shall be paid by Owner.

11. Notice. Except as otherwise required by law, any notice, demand or other communication given shall be in writing by personal delivery or 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 any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid:

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

To Owners:
Commercial Properties Group
2295 Fletcher Parkway, Suite 200
San Diego, California 92020

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 whatever 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. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee.

12. 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 11 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 unexpected market conditions), 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.

13. Owners' Representations. Owners represent and warrant that:

A. Owners have the full right, power and authorization to enter into and perform this Agreement and the obligations and undertakings of Owners under this Agreement, and the execution, delivery and performance of this Agreement by Owners have been duly authorized, agreed to, and is in compliance with any organizational documents of Owners.

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, deliver and performance.

C. Owners 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, Owners know of no litigation, proceeding or investigation pending or threatened against or affecting Owners, which could have material adverse effect on Owners' performance under this Agreement that has not been disclosed in writing to Yuma.

E. This Agreement (and each undertaking of Owners contained herein) constitutes a valid, binding and enforceable obligation of Owners according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principals, whether considered at law or in equity.

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

G. Owners have 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 or conducting business and costs of professional services such as the services of architects.

H. Owners have had opportunity for independent legal review of this Agreement by counsel of its choosing prior to the execution hereof.

14. Yuma Representations. Yuma represents and warrants to Owners that:

A. Yuma has the right, power and authorization to enter into and perform this Agreement and each of Yuma's obligations and undertakings under this Agreement, and Yuma's execution, delivery and performance of this Agreement has 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. Yuma will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

D. Yuma knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of Yuma or its officials with respect to this Agreement that has not been disclosed in writing to Owners.

E. This Agreement (and each undertaking of Yuma contained herein), constitutes a valid, binding and enforceable obligation by Yuma, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, referendum, 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 Yuma is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which Yuma is a party or is otherwise subject.

G. Yuma has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

15. 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 the "Lenders"). If a Lender is permitted, under the terms of a non-disturbance agreement with Yuma to cure the event of default and/or to assume Owners' position with respect to this Agreement, Yuma agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the right and obligations of Owners under this Agreement.

16. Assignment and Transfer.

16.1. Restrictions on Assignment and Transfer. Except in connection with (i) obtaining financing or refinancing or (ii) the exercise of remedies by Lender which have entered into non-disturbance agreements with Yuma, Owners shall not transfer or assign all or any part of its right or obligations under this Agreement without the prior express written consent of

Yuma, which approval may be given or withheld in Yuma's reasonable discretion. For the purposes of this Agreement, "transfer or assign" shall include any change in the identify of Owners, in which event Owners shall promptly notify Yuma of any and all anticipated changes at least thirty (30) days in advance thereof. No voluntary or involuntary successor in interest of Owners shall acquire and rights or powers under this Agreement except as expressly set forth herein. The foregoing restrictions in this Section shall terminate when the obligations of the Parties are full complied with, or when the Parties mutually provide for termination in writing, whichever occurs first.

16.2. Yuma's Rights and Obligations. Yuma's rights and obligations under this Agreement shall be non-assignable, without the prior express consent of Owners, which consent may be given or withheld in Owners' reasonable discretion.

17. Attorneys' Fees and Costs. 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 litigation 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. Miscellaneous.

18.1. Consents and Approvals. Whenever this Agreement requires or permits the consent or approval of a Party to any act, document, use, or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

18.2. 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 laws 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 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 and agree not to seek transfer or removal of any action commenced by or through the subject of this Agreement.

18.3. Construction; Severability. Captions of the paragraphs are for convenience only and shall not govern the interpretation of the terms and provisions hereof. This Agreement represents the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each waive the application of any rule of

law that ambiguous or conflicting terms or provisions shall be interpreted or construed against the Party who prepared the Agreement.

If any term, covenant, condition or 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 Yuma or Owners 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.

18.4. Entire Agreement. This Agreement, together with the following Exhibits attached hereto (which are incorporated herein by this reference) constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement. Copies of Exhibits 1, 2, 3, 4 and 5 to this Agreement are maintained on file in the Office of the City Clerk of the City of Yuma.

Exhibit 1: Legal Description and depiction of the Property

Exhibit 2: Conceptual Plan

Exhibit 3: Projected Intersection Improvements

Exhibit 4: Final Plat

Exhibit 5: Castle Dome Extension

All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement.

18.5. No Partnership, Third Person. 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, firm, corporation or other entity not a Party to this Agreement (including, without limitation, any broker), and no such other person, firm, corporation or entity shall have any right or cause of action hereunder, except for permitted transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Owners under this Agreement.

18.6. Counterparts. For the convenience of the Parties, this Agreement may be executed in two or more counterparts and each executed counterpart shall for all purposes be deemed an original and shall have the same force and effect as an original, but all of which together shall constitute in the aggregate but 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. Neither Party shall have any right, duty or obligation under this Agreement unless nor until this Agreement or counterparts have been executed by both Parties and approved by the Yuma City Council

18.7. Successors and Assigns; All Terms and Covenants Run With Land. 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 and will run with the land during the Term of the Agreement or such longer period where the covenant expressly survives the termination of this Agreement. 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, tenants, lessees and sublessees.

18.8. A.R.S. § 38-511 and A.R.S. § 35-393.01 (Boycott of Israel). Notice is hereby given of the applicability of A.R.S. § 38-511 to this Agreement. Additionally, pursuant to A.R.S. § 35-393.01, Owners certify that they are not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agree for the duration of this Agreement to not engage in a boycott of Israel.

18.9. Recordation. Yuma shall record a copy of this Agreement no later than ten (10) days from the date of entering into this Agreement pursuant to A.R.S. § 9-500.05.

18.10. Estoppel Certificate. The Parties agree that, upon not less than twenty one (21) business days prior written request, 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 sub-lessee, or any prospective Lender.

18.11. 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.

18.12. Amendment. No change or addition is to be made to this Agreement except by written amendment executed by Yuma and Owners. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Yuma County, Arizona.

18.13. Individual Nonliability. In the event of any default or breach by Yuma, no Yuma 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, nor for any amount which may become due to a Party or its successor, or with respect to any obligation of Yuma under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Owners shall be limited solely to the Property and the assets of Owners related to the Property, and shall not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are members, stockholders, officers, agents, trustees, or beneficiaries of Owners.

18.14. Proposition 207 Waiver. Owners waive and release Yuma from any and all claims under A.R.S. § 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 Yuma's approval or failure to approve this Agreement. 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 termination of this Agreement.

18.15. Avigation Easement. Owners acknowledge the subject Property is located within the vicinity of the Yuma County International Airport and the United States Marine Corps Air Station, both of which may result in aircraft overflight, vibrations or related noise as may be inherent in the operation of aircraft now known or hereafter used for flying within Navigable Airspace.

18.16. Termination Upon Sale of Residential Lots. Except as otherwise provided herein, the Parties hereby acknowledge and agree that this Agreement is not intended to and shall not create conditions or exceptions to title or covenants running with the Residential Lots within the Property. Therefore, in order to alleviate any concern as to the effect of this Agreement on the status of title to any of the Property, so long as not prohibited by law, this Agreement shall terminate without the execution or recordation of any further document or installment as to any Residential Lot, and thereupon such Residential Lot shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

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

YUMA:
City of Yuma, an Arizona municipal corporation

By:

Gregory K. Wilkinson

City Administrator

OWNERS:
Nelson Family Trust dated 4-13-95, a California trust

By:

Its:

Trustee

Kerry & Gail Schimpf Trust, dated 11-19-03, a California trust

By:

Its:

Trustee

Kyle P. Nelson, an Individual

ATTEST

By: _____
Lynda L. Bushong
City Clerk

APPROVED AS TO FORM

By: _____
Richard W. Files
City Attorney

**EXHIBIT 1
PROPERTY DESCRIPTION**



Site Overview

YUMA, AZ 85365

Location		Owner	
Site Address :		Owner Name :	NELSON FAMILY TRUST (4-13-95) 49.9 & NELSON KYLE P
Parcel No. (APN) :	180-22-016	Owner Address :	PO BOX 27240 SAN DIEGO, CA 92198
Legal Information :	SECTION: 22 TOWNSHIP: 08S RANGE: 23W W 25 ACRES OF S2 SE4 LYING N OF CO 8TH ST R/W PER 997/609, 973/576 AKA PARCEL A PEACH	Owner Vesting Code :	

Exhibit 3: Projected Intersection Improvements



