

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT  
FOR  
LAS QUINTAS DE SAN LUIS II SUBDIVISION**

This amendment is made and entered into this \_\_\_\_\_ day of March, 2017 between Nieves Riedel and Riedel Holdings, L.L.C., "Owner", and the City of San Luis, Arizona, "City", hereinafter collectively referred to as the "Parties".

**WHEREAS**, Owner and City entered into a Development Agreement for the development of the subdivision known as Las Quintas De San Luis II dated the 25<sup>th</sup> day of May, 2016 ("Development Agreement");

**WHEREAS**, City has negotiated an Intergovernmental Agreement with the Yuma Union High School District #70 ("School District") regarding the joint development and construction of infrastructure and ancillary facilities located on School District property, hereinafter referred to as the "IGA";

**WHEREAS**, the IGA provides for a necessary easement for the development of needed and necessary wastewater mains to support the development of Las Quintas De San Luis II and the cost of acquisition of the easement as well as the cost of development of the wastewater treatment main is the sole legal responsibility and burden of Owner;

**WHEREAS**, the consideration required of the City by the School District includes but is not limited to the development of a concession stand, offset of future fees and charges that may be imposed by the City against School District, providing for certain design and construction so as to allow School District to use the wastewater main, and requiring actual development of the wastewater main; and

**WHEREAS**, it is the desire of the Parties to enter into an amendment to the Development Agreement so as to provide for the legal obligation of Owner to bear the cost and all financial burdens associated with the acquisition of the easement and the development of the wastewater main;

NOW THEREFORE, IN CONSIDERATION of the mutual promises, benefits and agreements of the Parties herein contained and as more fully set forth below, it is agreed as follows:

1. The Intergovernmental Agreement with the Yuma Union High School District #70 ("School District") and the City of San Luis regarding the joint development and construction of infrastructure, a utility easement and ancillary facilities located on Yuma Union High School District #70 property, hereinafter referred to as the "IGA" is hereby reincorporated as though fully set forth again in full and attached as Exhibit A.

2. Owner agrees to perform all work and bear all financial costs and burdens associated with the acquisition of the easement provided by the IGA and the development of all infrastructure and associated facilities required by the IGA, of whatsoever kind or nature, known or unknown, and agrees to indemnify and hold City harmless therefrom. To this end, Owner agrees to perform all acts, actions, and work needed or necessary to design and/or construct the wastewater line and to conform to all requirements of the State of Arizona, the City, and the IGA.

3. Owner agrees to deposit the sum of \$19,500.00 with the City as the funds required by Sections 5.C.x and 6.C for the concession stand/restroom and the Fee Fund as required by Section 5.C.i of the IGA. City acknowledges by this agreement that the Owner has deposited said funds in full with the City.

(a) City agrees to deposit the \$15,000.00 for the Concession Stand and Restroom Fund in an interest bearing account controlled by City. In the event School District directs the City to pay over funds from this account for the purposes as stated in the IGA, these funds will be used to pay the demand of the School District in accordance with the terms of said IGA. Any funds remaining in this account that are not used for the Concession Stand and Restroom contemplated by said IGA or are not paid over to the School District by City as provided by the terms of said IGA shall be returned to Owner.

(b) Owner understands and acknowledges that the School District has placed no time limit on when it may draw upon the \$4,500.00 Fee Fund and, as a result, agrees that such moneys may be received by the City and kept as payment in full for that obligation of the City to School District and said monies will not be returned to Owner at any time, under any circumstances, whatsoever.

4. It is agreed that the Development Agreement dated May 25, 2016 (attached as Exhibit B) was the final development agreement between the parties, and that the termination provisions of Section 2.1 therein have no legal force or effect.

5. School District has required that City commit to the construction of the wastewater main contemplated by the IGA as an obligation of City. Owner agrees that the engineer's cost estimate for the development of Las Quintas De San Luis II subdivision will include sufficient sums to design and construct the wastewater main as contemplated by the IGA and to perform all work contained in the IGA related to said construction, and that the Letter of Credit being supplied as the financial assurances for the development of Las Quintas De San Luis II will be of sufficient amount to include this estimated cost and the Letter of Credit will include and provide financial assurance of the work and development of infrastructure required by the IGA.

6. No Personal Liability. No member, official or employee of the City of San Luis shall be personally liable to Owner, 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 Owner or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

7. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

8. 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 of the Agreement.

9. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Owner represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Owner and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party or parties on whose behalf each individual is signing. The Owner represents to the City that by entering into this Agreement, the Owner has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

10. Entire Agreement. This Amendment and the Development Agreement dated May 25, 2016 constitutes the entire agreement between the parties. Unless specifically modified herein, the provisions of the Development Agreement of May 25, 2016 shall remain in full force and effect.

11. Severability. If any provision of this Amendment or the Development Agreement of May 25, 2016 is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

12. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Yuma County, Arizona, and the parties hereby waive any right to object to such venue.

13. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

14. No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

15. Non-Liability of City Officials and Employees Except for mandamus and other special actions, no member, official or employee of the City of San Luis shall be personally liable to Owner, or any successor in interest, in the event of any default or breach by the City for any amount that may become due to the Owner, or under any obligation under the terms of this Amendment or the Development Agreement dated May 25, 2016.

16. This Amendment and the Development Agreement shall be subject to the cancellation provisions of A.R.S. §38-511.

17. Immigration. Pursuant to the provisions of A.R.S. §41-4401, Owner hereby warrants (i) that it and any of its contractors or subcontractors will comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. §23-214, subsection A, (ii) that a breach of this warranty shall be deemed a material breach of the contract that is subject to the penalties of A.R.S. §41-4401.A.2, and (iii) that the City shall have the right to random verification of employment records of Owner, its contractors, or subcontractors to ensure compliance with this warranty.

18. Israel Boycott. Owner shall execute a certification regarding whether it is boycotting Israel as provided by A.R.S. §35-393.01.

19. Recording. This amendment shall be recorded pursuant to the provisions of A.R.S. §9-500.05.

In witness whereof the parties have executed this agreement as of the day and year first written above.

CITY OF SAN LUIS

RIEDEL HOLDINGS, L.L.C.

By: \_\_\_\_\_  
Gerardo Sanchez  
Mayor

By: \_\_\_\_\_  
Nieves Riedel  
Owner

Attest:

Approved as to form:

\_\_\_\_\_  
Sonia Cornelio  
City Clerk

\_\_\_\_\_  
Kay Marion Macuil  
City Attorney

All materials submitted as part of a response to a solicitation are subject to Arizona public records law and will be disclosed if there is an appropriate public records request at the time of or after the award of the contract. Legislation has been enacted to prohibit the state and its political subdivisions from contracting with companies currently engaged in a boycott of Israel. To ensure compliance with A.R.S. §35-393.01, this form must be completed and returned with the response to the solicitation and any supporting information to assist the State in making its determination of compliance.

As defined by A.R.S. §35-393.01:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
  - (a) In compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4607(c) applies.
  - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, and includes a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate.
3. "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.
4. "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the state treasurer or retirement system owns shares or interests either:
  - (a) together with other investors that are not subject to this section.
  - (b) that are held in an index fund.
5. "Public entity" means this State, a political subdivision of this STATE or an agency, board, commission or department of this state or a political subdivision of this state.
6. "Public fund" means the state treasurer or a retirement system.
7. "Restricted companies" means companies that boycott Israel.
8. "Retirement system" means a retirement plan or system that is established by or pursuant to title 38.

**All offerors must select one of the following:**

\_\_\_\_\_ My company **does not** participate in, and agrees not to participate in during the term of the contract a boycott of Israel in accordance with A.R.S. §35-393.01. I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.

\_\_\_\_\_ My company **does** participate in a boycott of Israel as defined by A.R.S. §35-393.01.:

By submitting this response, proposer agrees to indemnify and hold the State, its agents and employees, harmless from any claims or causes of action relating to the State's action based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the State in defending such an action.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Person Authorized to Sign

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Title

# Exhibit A

**INTERGOVERNMENTAL AGREEMENT BETWEEN YUMA UNION HIGH SCHOOL DISTRICT #70 (SAN LUIS HIGH SCHOOL) AND THE CITY OF SAN LUIS REGARDING THE JOINT DEVELOPMENT AND CONSTRUCTION OF INFRASTRUCTURE, A UTILITY EASEMENT AND ANCILLARY FACILITIES LOCATED ON YUMA UNION HIGH SCHOOL DISTRICT #70 PROPERTY**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 by and between the CITY OF SAN LUIS, a municipal corporation of the State of Arizona, hereinafter referred to as "CITY" and the YUMA UNION HIGH SCHOOL DISTRICT #70, hereinafter referred to as "DISTRICT"; the CITY and DISTRICT hereinafter collectively referred to as the "PARTIES."

**WHEREAS**, the CITY is authorized by A.R.S. §11-952 to enter into this Agreement; and

**WHEREAS**, the DISTRICT is authorized by A.R.S. §11-952 to enter into this Agreement; and

**WHEREAS**, pursuant to Section 11-951 *et seq.*, cities and Arizona Union School Districts (districts) may enter into agreements for the cooperative development, design, construction, maintenance, and operation of essential infrastructure, the development of Ancillary Facilities and the use of Recreational Facilities utilizing said infrastructure on property used for public purposes if the governing bodies having charge and control of such properties give their consent and cooperation; and

**WHEREAS**, the DISTRICT has recreation facilities such as baseball fields, football fields, a running track and additional space for other and Ancillary Facilities, that could be used for community health, education, and enrichment opportunities provided through the CITY during non-school hours as previously agreed upon in a separate Agreement entitled " Intergovernmental Agreement Regarding Joint Use of Recreational Facilities at Yuma Union High School District #70 (San Luis High School) and the City of San Luis" dated February 24, 2016; and

**WHEREAS**, the CITY and the DISTRICT have an interest in developing a wastewater line, to service those above-described DISTRICT facilities and the CITY must address the growth of the public needs in and around the DISTRICT property due to the development of a residential subdivision in the vicinity; and

**WHEREAS**, the CITY shall cause a wastewater line to be constructed by Riedel Holdings, L.L.C. (DEVELOPER or DEVELOPER's successor or assign) in the utility easement that is the subject of this Agreement.

**WHEREAS**, it is the intent that through the collaborative efforts of the PARTIES, that (1) the DISTRICT's property will be enhanced by the development of such a

wastewater line on the DISTRICT's property, (2) the wastewater line will include three (3) stub-outs for the DISTRICT's use for a concession stand, restroom and as the DISTRICT further desires, (3) that the CITY shall cause a concession stand and restroom to be constructed (the "Construction") on the property at issue in this agreement, to the DISTRICT's reasonable satisfaction or alternatively the CITY will establish a fund (Concession Stand and Restroom Fund) in the amount of Fifteen Thousand Dollars (\$15,000.00) payable to the DISTRICT for the same purpose. At the DISTRICT's written election the CITY shall cause said Construction to be initiated no later than forty-five (45) days after completion of the wastewater line and said Construction to be completed one hundred and eighty (180) days after initiation or, as the DISTRICT may direct, the CITY shall pay over to the DISTRICT the Fifteen Thousand Dollar (\$15,000.00) Concession Stand Fund upon completion of the wastewater line and upon forty-five (45) days written demand by the DISTRICT. (4) that the DEVELOPER will dedicate the wastewater line to the CITY and the CITY will operate, maintain and otherwise be responsible for the wastewater line.

**WHEREAS**, it is the desire of the PARTIES to act collaboratively in developing the mutually needed infrastructure and in the development and use of Recreational Facilities and Ancillary Facilities to support the Recreational Facilities to provide essential services and to conduct recreational programs that provide maximum public benefit; and

**WHEREAS**, it is good policy to cooperate in the development of the infrastructure and ancillary facilities noted above that can enhance the DISTRICT's current use and ensure adequate infrastructure for further development and that can be used for school enrichment, physical fitness, athletics, and public recreation.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises, benefits and agreements of the PARTIES herein contained and as more fully explained below, it is agreed as follows:

### **Section 1. Purpose**

The purpose of this Agreement is to establish the rights, duties and responsibilities of the PARTIES for the development, design, construction, maintenance and operation of the above-referenced infrastructure ("wastewater line") and the collaboration of the PARTIES for obtaining Ancillary Facilities in the joint use of Recreational Facilities owned by the DISTRICT as represented in the picture attached hereto and made a part hereof as Exhibit A. The Facilities identified on the attached Exhibit "A" are the property of the DISTRICT and shall be referred to herein individually as a "DISTRICT Facility," and collectively as the "DISTRICT Facilities" as further defined in Section 4. A separate agreement between these parties addresses the joint use of DISTRICT Facilities. That agreement is dated February 24, 2016 and is entitled "Intergovernmental Agreement Regarding Joint Use of Recreational Facilities at Yuma Union High

School District #70 (San Luis High School) and the City of San Luis" (passed by CITY Resolution Number 1130).

## **Section 2. Term**

This Agreement will become effective as of the date indicated above, and will terminate ten (10) years thereafter, unless terminated earlier as provided in Section 3, or renewed. However, Section 3 and 5 of this Agreement, the utility easement ("Easement") and understandings and conditions relative thereto as described herein and in the document granting the Easement, shall survive the term and remain in full force and effect subject to the specific terms and conditions of said Utility Easement (see Section 5).

## **Section 3. Termination**

This Agreement may be terminated at any time by mutual agreement of the PARTIES or either PARTY may terminate this Agreement, with or without cause, upon one hundred eighty (180) days written notice to the other PARTY of intent to terminate. In the event of any termination of this Agreement, the Easement and understandings and conditions relative thereto as described herein and in the Easement, shall survive and remain in full force and effect subject to the specific terms and conditions of said Easement (see Section 5). Further, the DISTRICT's right to the Concession Stand\Restroom Fund and Fees Fund as noted at Section 5 (C) (i) and (C) (x) respectively shall survive the expiration of the Term noted in Section 2 above and any other termination and be valid and enforceable rights of the DISTRICT unless the Easement has been surrendered by the CITY and the Easement property has been returned in its pre-agreement condition. Said funds shall remain due and payable regardless of any termination unless the Easement has been so surrendered and returned.

## **Section 4. Facilities**

The Facilities identified on the attached Exhibit "A" are the property of the DISTRICT and shall be referred to herein individually as the "DISTRICT Facility," and collectively as the "DISTRICT Facilities." Facilities may include, but not be limited to, buildings and grounds, recreational or athletic facilities, parking areas, concession stand, restroom and other Ancillary Facilities.

Ancillary Facilities are the facilities that may be developed by the PARTIES pursuant to Section 6 herein in support of the Recreational Facilities.

## **Section 5. Infrastructure Wastewater Line**

A. The PARTIES shall collaborate regarding the plans for development, design, construction, operation and maintenance of the wastewater line on the North border of the San Luis High School campus as depicted on the aerial photograph attached hereto and made a part hereof as Exhibit A, and as

legally described in the legal description attached hereto and made a part hereof as Exhibit B.

B. The DISTRICT will grant to the CITY a limited, non-exclusive, 30-foot wide, utility easement ("Easement") for a wastewater line as depicted on Exhibit A and legally described in Exhibit B, subject to terms and conditions as set forth herein and in the Easement. The proposed Easement document is attached as Exhibit C.

C. As consideration for the Easement, as required by A.R.S. §15-342(10), the CITY will do the following:

i. the CITY will enhance the value of the DISTRICT's undeveloped property with a wastewater line and, as is required by A.R.S. §9-500.18, exempt the DISTRICT from CITY development fees and provide a fund ("Fees Fund") of up to \$4,500.00 for use by the DISTRICT toward any and all non-exempt wastewater related development, impact and/or connection fees of the CITY which may or could be assessed against the DISTRICT for any and all improvements which the DISTRICT may develop, construct or implement at any time in the future.;

ii. the CITY shall cause the fence, which is currently in place along the length of the Easement, to be relocated ten (10) feet south of its current location and in its current or improved condition. The PARTIES shall collaborate regarding the relocation plan for said fence and all other details relative to said relocation. The fence shall be relocated as stated above within ninety (90) days of the completion of the wastewater line.

iii. the CITY will install sufficient backflow or other such devices as necessary and as approved by the DISTRICT; provide to the DISTRICT a sealed engineer's report confirming the adequacy of the lift station presently in place for current and foreseeable usage; maintain, repair and replace as necessary the lift station associated with the wastewater line; and, install, construct, maintain, repair and replace other such devices in the wastewater line to preclude blockages, back-ups or discharges relative to the wastewater line which may intrude upon or impact DISTRICT property, operations, programs or the health, safety and welfare of DISTRICT's students, staff and guests and shall repair and remediate any such occurrence at CITY's sole cost;

iv. the CITY shall cause three (3) stub-outs to the wastewater line to be provided for DISTRICT's use to serve the planned concession stand, restroom and other DISTRICT uses as noted on Page 2 above. The location of the stub-outs shall be approved by the DISTRICT and approval shall not be unreasonably withheld;

v. the CITY not the DISTRICT shall be responsible for a

suitable and safe development, design, and construction of the wastewater line and the CITY not the DISTRICT shall be responsible for maintenance, repair, and replacement of the wastewater line and related systems, including all cost and claims of any nature arising therefrom;

vi. the CITY will timely provide to the DISTRICT written notice of any intended construction, modification or maintenance to be performed by the CITY and/or by the DEVELOPER at least sixty (60) days prior to said action, plan all such activities with the DISTRICT to minimize any impact on DISTRICT operations or programs, and to further ensure the health, safety and welfare of students, staff and DISTRICT guests;

vii. the CITY will provide plans to the DISTRICT for any and all proposed construction or modifications of the wastewater line and related systems for DISTRICT's review and approval, which approval shall not be unreasonably withheld;

viii. the CITY will cause a wastewater line to be developed, designed, constructed, maintained and operated in a manner that will cause minimal interruption to DISTRICT operations, programs and events, minimal limitation of DISTRICT use of the Easement area and create the least possible threat to the health, safety and welfare of DISTRICT's students, staff and guests;

ix. the CITY and the DISTRICT may collaborate to develop Recreational Facilities ("Ancillary Facilities"), as the PARTIES may mutually agree during the life of this Agreement as defined in Section 4; and

x. the CITY shall, at the DISTRICT's discretion, cause a concession stand and restroom to be constructed (the "Construction") on the property at issue in this agreement, without cost to the DISTRICT and to the DISTRICT's reasonable satisfaction or alternatively the CITY will establish a fund (Concession Stand and Restroom Fund) in the amount of Fifteen Thousand Dollars (\$15,000.00) payable to the DISTRICT for the same purpose. At the DISTRICT's written election the CITY shall cause said Construction to be initiated no later than forty-five (45) days after completion of the wastewater line and said Construction to be completed one hundred and eighty (180) days after initiation or, as the DISTRICT may direct, the CITY shall pay over to the DISTRICT the Fifteen Thousand Dollar (\$15,000.00) Concession Stand Restroom Fund upon completion of the wastewater line and upon forty-five (45) days written demand by the DISTRICT.

D. In consideration of the benefits granted to the DISTRICT by the CITY as set forth in Section 5 above, the DISTRICT shall grant a non-exclusive, 30-foot wide, utility easement ("Easement") to the CITY subject to the terms and conditions as follows:

i. Said Easement shall be limited to the right to install wastewater line and any other water or wastewater lines as mutually agreed to by the CITY and the DISTRICT. Said Easement shall include the right to install necessary related fixtures and equipment, below the ground, as may be necessary for the proper operation of the wastewater line or agreed upon water utility services, within the Easement area upon the DISTRICT's land as identified in Exhibits A and B hereto;

ii. The CITY agrees not to construct above ground lines, structures, markers, fixtures or any other similar objects without the express written agreement of the DISTRICT;

iii. The DISTRICT reserves the right to use the land within the utility easement in any manner that is not inconsistent with the rights DISTRICT grants to the CITY in said Easement;

iv. CITY agrees to take reasonable steps upon completion of construction, maintenance and other activities related to CITY's use of the Easement to restore Easement and all other adjacent or related DISTRICT property effected by such activities, to the extent practicable, to preconstruction / use conditions at CITY's sole cost;

v. CITY shall limit access to the Easement to ensure minimal impact on DISTRICT operation and programs and in a manner to ensure the health, safety and welfare of students, staff and DISTRICT guests;

vi. The CITY shall provide reasonable notice to the DISTRICT prior to coming on to DISTRICT property or the Easement, except under exigent circumstances, and shall provide such notice and engage in consultation with the DISTRICT at least ninety (90) days prior to coming on to DISTRICT property or the Easement except during construction and before acceptance of the line from the DEVELOPER at which time the notice shall be sixty (60) days. Shorter notice may be mutually agreed to;

vii. CITY understands that the DISTRICT is an Arizona Union School District and that the area contained within the Easement is adjacent to DISTRICT Recreational Facilities and is used by the DISTRICT for its programs, operations and activities involving students, staff, parents and other DISTRICT guests and CITY will use the Easement in a manner which considers DISTRICT activities as noted above and the safety of students, staff, parents and guests;

viii. For the purpose of DISTRICT's consideration and approval (which will not be unreasonably withheld) CITY shall provide DISTRICT with copies of plans and specifications for any proposed construction, modification or other similar activities at least ninety (90) days prior to the intended initiation of such activities except during construction and before

acceptance of the wastewater line from the DEVELOPER at which time the notice shall be sixty (60) days;

ix. If the CITY ceases or fails to use the Easement for a wastewater line for a period of more than five (5) consecutive years, CITY shall re-convey said Easement to the DISTRICT or successor by a duly executed quit claim deed;

x. CITY shall provide DISTRICT with a final copy of the as-builts for any construction or modifications of the wastewater line and related construction within thirty (30) days of completion of the project to assist the DISTRICT in avoiding any possible interference with the CITY's use of the Easement.

### **Section 6. Ancillary Facilities**

A. Within sixty (60) days of the full execution of this Agreement, a team of members appointed by the DISTRICT shall meet and initiate plans for the development of a concession stand and restroom hereinbefore identified as Ancillary Facilities, to be developed, designed and constructed to serve the existing Recreational Facilities. The team shall complete a plan or plans for the Concession Stand and Restroom ("Concession Stand\Restroom") to be submitted by the DISTRICT for formal approval within one hundred eight (180) days of the initial team meeting. The DISTRICT shall agree upon the plan for the Concession Stand and Restroom within ninety (90) days of the presentation of a plan or plans to the DISTRICT by the team.

B. At the DISTRICT's election, as noted above, the CITY shall cause the Concession Stand and Restroom to be constructed as planned and without cost to the DISTRICT or pay over the Concession Stand\Restroom Fund as noted below and herein.

C. The CITY shall establish a Concession Stand\Restroom Fund to pay for costs associated with building the Concession Stand\Restroom Fund up to a cap of Fifteen Thousand (\$15,000.00) Dollars. The CITY's obligation to pay the DISTRICT the said fund shall survive any termination of the Agreement unless the Easement is surrendered by the CITY and Easement property returned to its pre-agreement condition as more fully explained in Section 3 above. The Fifteen Thousand (\$15,000.00) Dollar fund shall be paid by the CITY to the DISTRICT within and upon forty-five (45) days written request for said fund by the DISTRICT.

D. Should the DISTRICT elect to receive the Concession Stand\Restroom Fund, the DISTRICT shall be responsible for the procurement of the design, construction and other services necessary to design and construct the Ancillary Facilities and shall perform related oversight functions.

E. Should the DISTRICT elect to receive the Concession Stand\Restroom Fund, except for the Fifteen Thousand (\$15,000.00) Dollar Concession Stand\Restroom Fund, all expenses related to the procurement of said design, construction and related services and the cost of all such services and expenses related thereto and related to the Concession Stand, Restroom, are the responsibility of the DISTRICT.

F. After identification of the concession stand and restroom and development of plans therefore, the DISTRICT shall notify the CITY the terms and conditions of the CITY's use of the concession stand and restroom. The concession stand and restroom shall be the sole and exclusive property of the DISTRICT.

G. The PARTIES may collaborate to develop other Ancillary Facilities within the Recreational Facilities as the PARTIES may mutually agree during the life of this Agreement as defined in Section 4.

### **Section 7. General Terms and Conditions**

A. Finance and Budget: Each PARTY shall establish and maintain its own budget according to its established rules and policies and shall be responsible for financing its own activities undertaken under this Agreement. In the event of non-appropriation of funds by either PARTY for any Fiscal Year this Agreement is effective, this Agreement will terminate at the end of period for which funds are appropriated unless the PARTIES agree to a modification of this Agreement.

B. Notice: Notices or other communications to the CITY regarding this Agreement shall be either delivered personally by process service or sent by registered or certified mail, postage prepaid, addressed to:

If to CITY: Tadeo A. De La Hoya, City Manager  
1090 East Union Street (personal service)  
P.O. Box 1170 (by registered or certified mail)  
San Luis, Arizona 85349

If to DISTRICT: Lisa Anderson, Associate Superintendent  
YUHSD  
3150 S. Avenue A  
Yuma, Arizona 85364

or such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective.

C. Indemnification: To the extent permitted by law, each PARTY does hereby covenant and agree to indemnify, defend, and hold harmless the other PARTY from and against any and all fines, suits, claims, demands, defense costs, losses, liability, actions and/or causes of action of any kind and nature (hereinafter collectively referred to as "Claims") for personal injury (including death) or property damage that may arise from that PARTY's use, operation, maintenance, or repair of the Facilities; except for those Claims which arise out of the negligent or willful misconduct of the other PARTY, its agents or employees and up to the percentage of fault of the indemnifying party for said claims.

D. Non-Discrimination Requirements: The PARTIES shall comply with State Executive Order #2009-09, which mandates that all persons, regardless of race, color, religion, sex, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable federal and state laws, rules and regulations, including Title VI, and all other federal and state employment and educational opportunity laws, rules and regulations, including Title VII of the Civil Rights Act of 1964, P.L. 88-854 (1964), and the Americans with Disabilities Act of 1999.

E. The PARTIES by their signatures below warrant and certify that they have reviewed A.R.S. Section 15-512 including but not limited to subparagraph H and further warrant that each and all of their employees, subcontractors and those for whom they have directed and direct responsibility, shall comply and cause any employee, subcontractor or employee of subcontractor or others for whom they are responsible (hereinafter "agents") to comply with A.R.S. Section 15-512. All parties, subcontractors and agents shall each obtain and possess a valid fingerprint clearance card pursuant to Title 41, Chapter 12, Article 3.1 of the Arizona Revised Code prior to coming on to DISTRICT property and failure to do so shall be a substantial breach of this Agreement.

F. Employment Eligibility: The PARTIES warrant, and shall require their subcontractors to warrant, that each is in compliance with all federal immigration laws and regulations that relate to their employees and with A.R.S. § 23-214 relating to verification of employment eligibility. A breach of this warranty shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of this Agreement. Each PARTY retains the legal right to inspect the papers of the other PARTY's employee or subcontractor employee who works on this Agreement to ensure that the PARTY or its subcontractors are complying with this warranty. Employees hired by either PARTY to provide services, whether providing those services on premises owned by the CITY or the DISTRICT, shall be the employee of the hiring PARTY only.

H. Insurance requirements:

i. Liability Insurance: DISTRICT and CITY shall each

keep and maintain in force, during the term of this Agreement and at their own expense, liability insurance of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate covering their respective activities and for the CITY, \$5,000,000.00 per occurrence for first responder training including, but not limited to police department, fire department, and emergency medical technician training. This insurance may be comprised of self-insurance retention ("SIR") and insurance, so long as the combination of the two equals the minimum required amounts stated above. Each PARTY shall provide to the other a certificate of insurance showing such coverage. The amount of insurance shall be reviewed, and may be adjusted, every 3 years.

ii. Workers' Compensation: For purposes of workers' compensation, an employee of a PARTY to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another PARTY pursuant to this Agreement, is deemed to be an employee of both the PARTY who is his or her primary employer and the PARTY under whose jurisdiction or control or within whose jurisdictional boundaries he or she is then working, as provided in A.R.S. §23-1022(D). The primary employer of such employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each PARTY herein shall comply with the provisions of A.R.S. §23-1022(E) by posting the notice required.

I. Risk of Loss: The PARTY sponsoring and supervising a particular event shall bear the risk of loss, including, but not limited to, loss caused by theft, vandalism or property damage or claims arising therefrom.

J. Dispute Resolution: The PARTIES agree to make all reasonable efforts to resolve disputes arising under this Agreement. Upon written request by either PARTY, a dispute shall be submitted to mediation with a trained and neutral mediator. If mediation is unsuccessful, the PARTIES mutually agree, remaining claims, disputes, or other matters in question shall be submitted for arbitration and decided according to the Arizona Uniform Rules of Procedure for Arbitration. Request for arbitration must be filed in writing with the other PARTY to this Agreement.

K. Costs and Attorney Fees: In the event any action, suit, or proceeding is brought for failure to observe any of the terms, covenants, or provisions of this Agreement, the prevailing PARTY shall be entitled to recover as part of such action or proceeding, all litigation and collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney's fees.

L. Assignments and Successors: Neither PARTY shall assign its rights, nor delegate its duties, or otherwise dispose of any right, title, or interest in all or any part of this Agreement, or assign any monies due or payable hereunder without the prior written consent of the other PARTY. Such consent shall not be unreasonably withheld.

M. Entire Agreement: This Agreement contains the entire agreement between the PARTIES, and no oral or written statement, promises, or inducements made by either PARTY or agent of either PARTY that is not contained in this written Agreement or specifically referred to in this written Agreement shall be valid or binding. This Agreement may not be enlarged, modified, or altered except in writing signed by the PARTIES and endorsed herein.

N. Conflicts of Interests Provisions: This Agreement is subject to the conflict of interest provisions of A.R.S. §38-511.

O. Venue: The PARTIES must initiate and maintain any mediation, arbitration, legal actions or other judicial proceedings arising from this Agreement in a court of competent jurisdiction in Yuma County, Arizona.

P. Disposal of Property: The PARTIES do not anticipate that there will be any personal property to be disposed of upon partial or complete termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner.

Q. Construction: Headings are solely for the PARTIES' convenience, are not a part of this Agreement, and shall not be used to interpret this Agreement. This Agreement shall not be construed as if it had been prepared by one of the PARTIES, but rather as if both PARTIES have prepared it.

R. Counterparts: This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

S. Governing Law: The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance.

T. Independent entities: DISTRICT and CITY are independent entities and contractors. Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the PARTIES or constitute any PARTY or its agent, representative, or employee to be the agent, representative, or employee of the other PARTY for any purpose. Employees of the DISTRICT and the CITY shall not be personally liable under this Agreement.

U. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

V. Amendment of the Agreement. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the PARTIES to this Agreement.

W. Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

X. Time is of the essence.

Y. The PARTIES acknowledge that the CITY's performance of the Agreement is contingent in part upon the DEVELOPER's performance of third party agreements between CITY and DEVELOPER. Failure of DEVELOPER to perform said third party agreements shall be grounds for termination of this Agreement and obligations thereunder except for obligations that expressly survive any termination as set forth in the Agreement.

[Intentionally left blank, signatures continue on next page]

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017

CITY OF SAN LUIS,  
a municipal corporation

YUMA UNION HIGH SCHOOL  
DISTRICT#70

By \_\_\_\_\_  
Gerardo Sanchez  
Mayor

By \_\_\_\_\_  
Toni Badone  
Superintendent

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By \_\_\_\_\_  
Kay Marion Macuil  
San Luis City Attorney

By \_\_\_\_\_  
\_\_\_\_\_  
YUHSD Attorney

ATTEST:

\_\_\_\_\_  
Sonia Cornelio  
San Luis City Clerk

I hereby state that I am an attorney for the City of San Luis, State of Arizona, and pursuant to the provisions of A.R.S. 11-952(D) have determined that the foregoing agreement is in proper form and is within the powers and authority granted to the City of San Luis, Arizona under the laws of the State of Arizona.

I hereby state that I am an attorney for Yuma Union High School District #70 (YUHSD), State of Arizona, and pursuant to the provisions of A.R.S. 11-952(D) have determined that the foregoing agreement is in proper form and is within the powers and authority granted to YUHSD under the laws of the State of Arizona.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017

By \_\_\_\_\_  
Kay Marion Macuil  
San Luis City Attorney

By \_\_\_\_\_  
\_\_\_\_\_  
YUHSD Attorney

**Exhibit "A"**

**Exhibit "B"**

**Exhibit "C"**

**Exhibit "D"**

# Exhibit B



# Resolution

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

NO. 1145

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA APPROVING LAS QUINTAS DE SAN LUIS II DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN LUIS, ARIZONA AND RIEDEL HOLDINGS, L.L.C.**

**WHEREAS**, Nieves Riedel, Riedel Holdings, L.L.C.; Owner, desires to enter into a development agreement for Las Quintas de San Luis II project to be located in San Luis, Arizona; and

**WHEREAS**, Edais Engineering, Inc. is agent for the Owner; and

**WHEREAS**, A.R.S. § 9-500.05 grants power to a municipality to enter into development agreements; and

**WHEREAS**, the parties desire to enter into such agreement; and

**WHEREAS**, the applicant and the city staff agreed to all matters in the City's proposed development agreement; and

**WHEREAS**, A.R.S. § 9-462.01 grants power to a municipality to impose conditions upon a change of zoning;

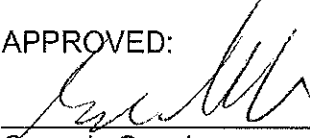
**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the City of San Luis, State of Arizona, as follows:

**SECTION 1.** That the development agreement proposed by the staff of the City of San Luis, Arizona attached hereto as Exhibit "A", is hereby approved contingent upon rezoning to R1-6 passing;


**SECTION 2.** That the development agreement proposed by city staff is a condition upon rezoning to R1-6 if the rezoning passes.

**PASSED AND ADOPTED** by the Mayor and City Council of the City of San Luis, Arizona, this 25<sup>th</sup> day of May, 2016.

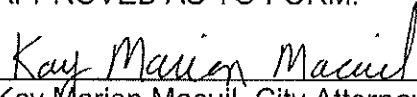
APPROVED:

  
\_\_\_\_\_  
Gerardo Sanchez  
Mayor

ATTEST:

  
\_\_\_\_\_  
Sonia Cornelio, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kay Marion Macuil, City Attorney

## DEVELOPMENT AGREEMENT NUMBER 1

### Rezoning Case Number 2016-065

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is entered into as of 25<sup>th</sup> day of May, 2016 ("**Effective Date**") by and between the City of San Luis an Arizona municipal corporation (the "**City**") and Nieves Riedel, Riedel Holdings, L.L.C., (the "**Owner**"). This Agreement is entered into pursuant to City Resolution Number 1145-Las Quintas de San Luis II.

### RECITALS

- A. WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property that is located in the City; and
- B. WHEREAS, Nieves Riedel, Riedel Holdings, L.L.C.; Owner, owns approximately 27.58 acres located in the municipal limits of the City (the "**Property**") real property located south of County 22 Street roughly between the East Main Canal, Las Quintas Subdivision, and Bienestar Estates #7 which is more specifically described herein; and
- C. WHEREAS, Edais Engineering, Inc. is agent for the Owner; and
- D. WHEREAS, the Owner has requested rezoning of the Property from Rural Area Residential (RA-10) to Medium Density Residential (R1-6); and
- E. WHEREAS, this Agreement is consistent with the portions of the City's General Plan applicable to the Property on the date this Agreement is executed; and
- F. WHEREAS, this is a preliminary agreement solely to approve the Conceptual Plan and to outline some of the provisions to be included in plats and site plans submitted by the Owner in connection with the Development of the Property; and
- G. WHEREAS, following additional revisions to the Conceptual Plan and submission to the City for review and approval, this Agreement shall be replaced by an Amended and Restated Development Agreement ("**Amended Agreement**"); and
- H. WHEREAS, the City's governing body has authorized execution of this Agreement by Resolution No. 1145, a draft of which is attached to this Agreement.

NOW, THEREFORE, the parties agree as follows:

## AGREEMENT

### ARTICLE 1. DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1. Certificate of Completion as used in this Agreement, shall mean a final written acceptance of the completed and inspected project issued by the Development Services Department and Public Works Department. A certificate of completion will not be issued until the entire project is completed in conformance with this Agreement and accepted by the City.

1.2. City shall mean and refer to the City of San Luis, an Arizona municipal corporation, and any successor public body or entity.

1.3. Owner shall mean and refer to Nieves Riedel, Riedel Holdings, L.L.C. and any successor in ownership.

1.4. Improvements shall mean and refer to all public and private improvements which may be constructed from time to time on the Property, including, without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration of the natural terrain to be built by the Owner or the City, as the case may be, pursuant to the terms of the Amended Agreement.

1.5. Property as used in this Agreement shall mean and refer to all of the real property which is legally described in Exhibit A.

### ARTICLE 2. DEVELOPMENT PLAN

2.1. Duration of Development Agreement. The term of this Agreement shall continue until the date of the Amended Agreement, at which time this Agreement shall terminate.

2.2. Failure of Timely Performance. In the event that either party hereto fails to perform any of its obligations which are set forth in or contemplated by this Agreement in a timely manner, and should such failure not otherwise be excused by agreement of the parties or by the terms of this Agreement, such failure shall be considered to be a breach of this Agreement and the nonbreaching party shall have their respective remedies set forth in Section 6.3 of this Agreement.

2.3. Approval and Processing of Plans. The City hereby acknowledges and agrees that development of the Property may occur over a span of a number of years and will require the City's ongoing participation in the review and approval of modifications and amendments to any site plans, infrastructure plans, drainage plans, design plans, building plans, grading permits, building permits, archaeological and historic preservation review and disposition, and other plans, permit applications and inspections which are a part of the City's building and development requirements (hereinafter collectively called "**Approval Requests**"). City

approves the Conceptual Plan attached hereto as Exhibit B for the development of the Property and agrees that said Plan can be built by Owner by complying with this Development Agreement and consistent with new zoning of Medium Density Residential (R1-6) which the Owner has requested and in accordance with City's rules regulations and ordinances, as amended from time to time, and that it is consistent with the General Plan of the City. Owner will be entitled to build the heights, densities, and intensity of uses as shown on Exhibit B, provided that Owner complies with all development and zoning processes, as amended from time to time. City agrees that in connection with all approvals required by the development and zoning processes relating to the development of the Property, no extraordinary plan or review requirements will be imposed on the Owner.

2.4. Review Process. The City acknowledges the necessity for expeditious review by the City of all plans and other materials ("**Submitted Materials**") submitted by the Owner to the City hereunder or pursuant to any zoning procedure, permit procedure, or other governmental procedure pertaining to the development of the Property and agrees to use its reasonable efforts accomplish such an expeditious review of the Submitted Materials whenever possible.

2.5. Manager's Power to Consent. The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect the Owner and/or the development of the Property, and hereby authorizes and empowers the City Manager to consent to any and all requests of the Owner requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law. Upon the City Manager's receipt of a request for consent from the Owner, the City Manager will advise the Owner if the request is one for which the City Manager is authorized to act. If the request is not one for which the City Manager is authorized to act, the City Manager will place the matter on an agenda for Council consideration.

### **ARTICLE 3. SOME PROVISIONS FOR ROADS, STREET LIGHTS, AND HOUSING CONSTRUCTION TO BE INCLUDED IN AMENDED AGREEMENT**

3.1 Owner agrees all houses and buildings located in lots 1 thru 37, as shown in Exhibit B, shall be single story not to exceed 15 feet at the roof ridge.

3.2 City agrees to provide 50% of the installation cost of street lighting on the off-site road commonly known as Sidewinder Road as more fully described in Exhibit D.

3.3 Owner agrees to sign a street lighting improvement district for the subdivision of the rezoned parcels and provide 50% of the installation cost of street lighting on the off-site road commonly known as Sidewinder Road as more fully described in Exhibit D.

3.4 Owner agrees to redesign and rebuild County 22<sup>nd</sup> Street between Sidewinder Road and 10<sup>th</sup> Avenue in order to address visibility and safety concerns presented by the hill and curves in the road. Redesign shall comply with Yuma County Standards, AASHTO guidelines and with the engineering comments of Douglas J. Nicholls, PE in his November 4, 2014 letter to the City and incorporated in this Development Agreement as Exhibit C.

3.5 Owner agrees to provide street lighting, curb, gutter and sidewalk on the south side of County 22<sup>nd</sup> Street between Las Quintas De San Luis II subdivision and 10<sup>th</sup> Avenue.

3.6 A traffic study must be conducted. Owner agrees to pay said traffic study and provide any infrastructure needed according to the findings of the study.

#### **ARTICLE 4. INDEMNIFICATION**

4.1. Owner agrees to defend, indemnify and hold harmless City, its officers, officials and employees ("**Indemnified Group**") for liability from and against claims, damages, losses and expenses of any nature whatsoever (including but not limited to reasonable attorney fees, court costs, the costs of appellate proceedings, and all claim adjusting and handling expense), relating to, arising out of, resulting from or alleged to have resulted from the Owner's acts, errors, mistakes or omissions relating to any action or inaction of the Owner under this Agreement, including but not limited to work or services in the performance of this Agreement by any subcontractor or anyone directly or indirectly employed by or contracting with the Owner or a subcontractor or anyone for whose acts any of them may be liable.

4.2. If any claim, action or proceeding is brought against the Indemnified Group, by reason of any event that is the subject of this Agreement, Owner (at its sole cost and expense) shall pay, resist or defend such claim or action on behalf of the Indemnified Group by the attorney of the Owner, or if covered by insurance, Owner's insurer, all of which must be approved by City, which approval shall not be unreasonably withheld or delayed. The City shall cooperate with all reasonable efforts in the handling and defense of such claim. Notwithstanding the foregoing, the City may engage its own attorney to defend or assist in its defense, and the Owner shall pay the reasonable costs and expenses thereof.

4.3. Any settlement of claims must fully release and discharge the Indemnified Group from any liability for such claims. The release and discharge shall be in writing and shall be subject to approval by the City, which approval shall not be unreasonably withheld or delayed. If Owner neglects or refuses to defend any of the Indemnified Group as required by this Agreement, any recovery or judgment against the Indemnified Group for a claim covered by this Agreement shall conclusively establish Owner's liability to the Indemnified Group in connection with such recovery or judgment. If the City desires to settle such dispute, the City shall be entitled to settle such dispute in good faith and Owner shall be liable for the amount of such settlement, and all expenses in connection with such settlement.

4.4. The indemnity provisions of this Agreement shall survive the termination of this Agreement.

#### **ARTICLE 5. SUBAGREEMENTS**

5.1. Subordinate Development Agreements. The City and Owner hereby acknowledge that the development of the Property may be accomplished by Owner through a series of sales, leases, joint ventures and/or other agreements and arrangements with experienced developers, investors and/or owners of real property. In connection therewith, it is anticipated and contemplated by the parties that such developers, investors or owners may desire to negotiate

and enter into separate and subordinate development agreements with the City and/or Owner with respect to infrastructure Improvements, uses, plan approvals and other similar matters which may be the subject of separate agreements between such developers, investors and owners and the City and/or Owner, all to be set forth in the Amended Agreement. The parties hereby agree that any and all development agreements entered into with any such developer, investor or owner of any parcels of the Property shall be subordinate in all respects to the terms and conditions of this Agreement and the Amended Agreement, and, in the event of any conflict or discrepancy between the provisions of any such development agreement and the terms and conditions of this Agreement or the Amended the Agreement, this Agreement or the Amended Agreement (as the case may be) shall govern and control.

#### **ARTICLE 6. MEDIATION AND DEFAULT**

6.1. Representatives. To further the cooperation of the parties in implementing this Agreement, the City and Owner each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Owner. The initial representative for the City (the "**City Representative**") shall be the City Manager and the initial representative for the Owner shall be its project manager, as identified by the Owner from time to time (the "**Developer Representative**"). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property.

6.2. Mediation. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the presiding judge of the Superior Court of Yuma County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

6.3. Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of ten (10) days after written notice thereof from another party shall constitute a default under this Agreement. If the default is of a nature which is not capable of being cured within ten (10) days, the cure shall be commenced within such period, and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all such sums from the date said sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are paid in full.

#### **ARTICLE 7. CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE**

7.1. Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this

Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

7.2. No Personal Liability. No member, official or employee of the City shall be personally liable to Owner, 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 Owner or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

## ARTICLE 8. MISCELLANEOUS PROVISIONS

8.1. Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City:           City Administrator  
                                  City of San Luis  
                                  P.O. Box 1170  
                                  1090 E. Union Street  
                                  San Luis, Arizona 85349

If to the Owner:        Nieves Riedel, Riedel Holdings, L.L.C.  
                                  1694 N. 9<sup>th</sup> Avenue  
                                  San Luis, Arizona 85349

or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

8.2. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

8.3. 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 of the Agreement.

8.4. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Owner represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Owner and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Owner represents to the City that by entering into this Agreement, the

Owner has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

8.5. Entire Agreement. This Agreement, including the following exhibits, constitutes the entire agreement between the parties. This provision applies only to the entirety of Agreement Number 1 only; additional and separate zoning stipulations and agreements with the City may apply to the Property, and this provision has no effect on them.

- Exhibit A      Legal Description of Property
- Exhibit B      Conceptual Plan
- Exhibit C      Engineering Comments by Douglas J. Nicholls  
dated November 4, 2014
- Exhibit D      Description of road commonly known as "Sidewinder Road."

8.6. Amendment of the Agreement. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the parties to this Agreement or by their successors in interest or assigns. The City shall record the amendment or cancellation in the official records of the Yuma County Recorder.

8.7. Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

8.8. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Yuma County, Arizona, and the parties hereby waive any right to object to such venue.

8.9. Recordation of Agreement and Subsequent Amendment; Cancellation. This Agreement, and any amendment or cancellation of it shall be recorded in the official records of the Yuma County Recorder no later than ten (10) days after the City and the Owner execute such agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

8.10. Attorneys' Fees and Costs. If either party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.

8.11. Notice of Conveyance or Assignment. The Owner shall give notice to the City of any sale of the entire Property at least ten (10) days prior to the effective date of the sale.

8.12. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

8.13. No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

8.14. Non-Liability of City Officials and Employees. Except for mandamus and other special actions, no member, official or employee of the City shall be personally liable to Owner, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Owner or successor, or under any obligation under the terms of this Agreement. IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE CITY OF SAN LUIS,  
an Arizona municipal corporation

THE OWNER, Nievas Aledel

By: [Signature]  
Mayor

By: [Signature]  
Its: OWNER

**ATTEST:**

By: [Signature]  
City Clerk

**APPROVED AS TO FORM:**

[Signature]  
City Attorney

STATE OF ARIZONA     )  
  ) ss.  
County of Yuma         )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of June, 2016 by Gerardo Sanchez, Mayor of the City of San Luis, Arizona, a municipal corporation.

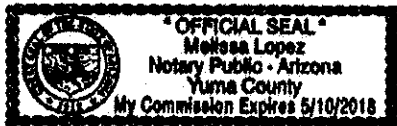


Melissa Lopez  
Notary Public

My Commission Expires: 5/10/2018

STATE OF ARIZONA     )  
  ) ss.  
County of Yuma         )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of June, 2016, by Nieves Riedel, on behalf of Nieves Riedel an owner.



Melissa Lopez  
Notary Public

My Commission Expires: 5/10/2018

# **Exhibit A**

**Legal Description of Property**

**Development Agreement Las Quintas de San Luis II**

Exhibit A

Assessor Parcel ID No. 776903003

***LEGAL DESCRIPTION:***

That part of the NW  $\frac{1}{4}$  NE  $\frac{1}{4}$  Section 6 Township 11S Range 24W lying east of East Main Canal G.&S.R.&M.

Assessor Parcel ID No. 77611001

***LEGAL DESCRIPTION:***

That part of the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  Section 6 Township 11S Range 24W lying east of the East Main Canal G.&S.R.&M.

# **Exhibit B**

**Conceptual Plan**

**Development Agreement Las Quintas de San Luis II**

Exhibit B















Core Engineering Group, PLLC  
200 E. 16<sup>th</sup> Street, Suite # 180  
Yuma, Arizona 85364

voice 928-344-5931  
fax 928-344-5932  
www.CoreEngineeringGroup.com

November 4, 2014

John Starkey  
Director of Building Safety  
Department of Public Works  
1090 E. Union Street  
PO Box 3780  
San Luis, AZ 85349B

Re: Las Quintas de San Luis 2 Subdivision - Tentative Plat  
Edias Engineering Job No. 14-015

Dear Mr. Starkey:

The below comments on the Las Quintas de San Luis 2 subdivision tentative plat submittal are based on the Subdivisions Regulations of the City of San Luis.

**Tentative Plat - Sheets 1 and 2**

- 1) Sheets 1 and 2 are titled "Tentative Paving & Grading Plan" on the bottom right portion of the sheet. Revise to say "Tentative Plat".
- 2) Section 4.3 (1): The legal description of the property references the "Barkley Property - San Luis, Boundary Survey Conducted by Dahl, Robin & Associates, Inc" and the "Barkley Lot Split No. 2 as recorded in Book \_\_\_ of Plats, Page \_\_\_ Y.C.R.O., Yuma County, Arizona." Have these maps been recorded? If so, list the recording FEE# or map designation.
- 3) Section 4.3 (10): Label street names
- 4) Section 4.3 (14): List Curve Radii. Curve designations are shown, but no curve data (Radii, tangent length, etc.) has been provided. Similarly, line designations are shown, but no line data has been provided.
- 5) Section 4.3 (15): Show and label widths of all proposed easements (PUE, NAE, drainage, etc.)
- 6) Section 4.3 (21): List lands and parks to be dedicated to public use (if any).
- 7) Section 4.3 (26): What is the use of the property south of the subdivision?
- 8) Section 4.3 (30): List owner's name of the adjoining property.
- 9) Lot shown on Sheet 2 east of the proposed roadway between the proposed road right-of-way and subdivision boundary, north of lot 17, does not have a lot/tract designation. Please provide.

**Tentative Paving & Grading Plan - Sheets 3 and 4**

- 10) Section 3.21 (2): Per the drainage calculations, Retention Basin #1 (Tract "A") has a depth of 4 feet. A maximum basin depth of 3.5 feet is required unless approved by the City Engineer. If approved, a 6 foot high wrought iron fence and a 16 foot wide wrought iron gate with lock is required.
- 11) Cross Section A/4: Slopes no steeper than 3:1 are required unless specified in a Geotechnical report. Please revise or provide Geotechnical report allowing steeper slopes.

- 12) Cross Section A/4: Please provide protection to the proposed retaining wall. The wall is to be protected by a side slope no steeper than 3:1 away from the retaining wall.
- 13) Cross Section A/4: A drainage easement shall be provided to prevent construction within the drainage channel created by the cross section.
- 14) Section 3.21(4): How will the drainage channels of the west side lots connect to the retention basins? Based on top of wall elevations provided in the retaining wall enlargement details, the drainage channel is approximately 10 feet below Retention Basin # 1.
- 15) Section 3.28: While the San Luis subdivision regulations allow a 4' minimum sidewalk width, the 2010 ADA Standards for Accessible Design (Section 403.5.3) and 2011 Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (Section R302.4) require a minimum 5' x 8' passing space at intervals of 200' maximum. Provide passing spaces as required.
- 16) Please note that all sidewalk ramps shall meet ADA requirements. Current Yuma County standard drawings may require alteration to meet ADA requirements.
- 17) Modify the location of the horizontal s-curve along Co. 22<sup>nd</sup> Street based on the analysis of horizontal and vertical sight distances per AASHTO guidelines.
- 18) Provide existing grades of the east adjoining properties to allow grading analysis.
- 19) How will the proposed east side roadway shown on sheet 4 be constructed per cross section C/4? Based on the existing contours, the roadway is approximately 15 feet lower in elevation. Assuming a 2:1 slope is allowed by a geotechnical investigation, there would need to be about 30 feet from the eastern existing subdivision screen wall for construction.

**Tentative Water & Sewer Plan - Sheets 5 and 6**

- 20) Provide sewer manhole between lots 105 and 99 to allow sufficient area for sewer line maintenance within the right-of-way.
- 21) Lower invert elevations on manholes 17 to 22 to provide drainage of manhole 13. Manhole 13 has an invert of 117.14, while the downstream manhole (MH 17) has an invert of 120.04.
- 22) The sewer line from manhole 17 to 22 is approximately 20 feet lower than existing ground elevation. How will this be constructed in regards to eastern adjoining property? Provide grades of the east adjoining properties to allow analysis.

Please contact us if you have any questions.

Sincerely,  
Core Engineering Group, PLLC

  
Douglas J. Nicholls, PE, RLS



EXP. 3/31/16

# **Exhibit D**

**Description of road commonly known as "Sidewinder Road"**

**Development Agreement Las Quintas de San Luis II**

Exhibit D

2015-03579 WARRANTY DEED  
02/19/2015 03:41:04 PM Pages: 5 Fees: \$10.00  
Requested By: DAHL ROBINS & ASSOCIATES INC  
Recorded By: despinoza  
Robyn Stallworth Pouquette County Recorder, YUMA County AZ



When Recorded Mail To:  
City of San Luis  
P.O. Box 1170  
1090 E. Union Street  
San Luis, Arizona 85349

**WARRANTY DEED**

<b>GRANTOR (Name, Address, Zip Code)</b>	<b>GRANTEE (Name, Address, Zip Code)</b>
Barkley Limited Partnership 1818 Letvin Avenue South Yuma, Arizona 85365	City of San Luis A Municipal Corporation P.O. Box 1170 1090 E. Union Street San Luis, Arizona 85349

**Subject Real Property (Legal Description)**

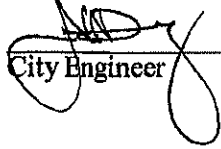
That portion of Section 6, Township 11 South, Range 24 West, Gila & Salt River Base & Meridian, Yuma County, Arizona, more particularly described as follows:

Beginning at the northwest corner of the SE $\frac{1}{4}$  of said Section 6;  
Thence N 89°58'48" E along the north line on said SE $\frac{1}{4}$  of Section 6 a distance of 297.12 feet;  
Thence N 30°05'55" E a distance of 59.02 feet to the beginning of a curve, concave northwesterly having a radial bearing of South 59°54'05" East;  
Thence northeasterly along said curve, concave northwesterly, of radius 1487.00 feet through a central angle of 23°20'42" an arc distance of 605.88 feet to the end of said curve;  
Thence N 06°45'13" E a distance of 634.07 feet to the beginning of a curve, concave northwesterly having a radial bearing of South 83°14'47" East;  
Thence northeasterly along said curve, concave northwesterly, of radius 457.00 feet through a central angle of 10°11'50" an arc distance of 81.34 feet to the TRUE POINT OF BEGINNING;  
Thence continuing northeasterly along said curve, concave northwesterly, of radius 457.00 feet through a central angle of 07°01'47" an arc distance of 56.07 feet to the beginning of a curve, concave southeasterly having a radial bearing of South 79°31'36" West;  
Thence northeasterly along said curve, concave southeasterly, of radius 273.00 feet through a central angle of 61°59'57" an arc distance of 295.41 feet to the end of said curve;

Thence N 51°31'33" E a distance of 136.00 feet to the beginning of a curve, concave northwesterly having a radial bearing of South 38°28'27" East;  
 Thence northeasterly along said curve, concave northwesterly, of radius 277.00 feet through a central angle of 44°51'17" an arc distance of 216.85 feet to the end of said curve;  
 Thence N 06°40'16" E a distance of 351.00 feet to the beginning of a curve, concave southwesterly having a radial bearing of South 83°19'44" East;  
 Thence northwesterly along said curve, concave southwesterly, of radius 277.00 feet through a central angle of 39°17'34" an arc distance of 189.96 feet to the beginning of a curve, concave northeasterly having a radial bearing of South 57°22'41" West;  
 Thence northeasterly along said curve, concave northeasterly, of radius 323.00 feet through a central angle of 29°35'26" an arc distance of 166.81 feet to the end of said curve;  
 Thence S 89°28'53" E a distance of 92.67 feet to the westerly right-of-way line of the East Main Canal and the beginning of a curve, concave northeasterly having a radial bearing of South 84°14'46" West;  
 Thence Southeasterly along said curve, concave northeasterly, of radius 465.30 feet through a central angle of 22°51'24" an arc distance of 185.62 feet to the end of said curve;  
 Thence S 28°36'38" E along said westerly right-of-way line of the East Main Canal a distance of 55.90 feet to the beginning of a curve, concave southwesterly having a radial bearing of North 61°23'22" East;  
 Thence Southwesterly along said curve, concave southwesterly, of radius 138.20 feet through a central angle of 44°00'00" an arc distance of 106.13 feet to the end of said curve;  
 Thence S 15°23'22" W along said westerly right-of-way line of the East Main Canal a distance of 62.70 feet to the beginning of a curve, concave southeasterly having a radial bearing of North 74°36'38" West;  
 Thence Southwesterly along said curve, concave southeasterly, of radius 771.80 feet through a central angle of 07°20'00" an arc distance of 98.78 feet to the end of said curve;  
 Thence S 08°03'22" W along said westerly right-of-way line of the East Main Canal a distance of 279.80 feet to the beginning of a curve, concave northwesterly having a radial bearing of South 81°56'38" East;  
 Thence Southwesterly along said curve, concave northwesterly, of radius 232.90 feet through a central angle of 44°50'00" an arc distance of 182.24 feet to the end of said curve;  
 Thence S 52°53'22" W along said westerly right-of-way line of the East Main Canal a distance of 139.40 feet to the beginning of a curve, concave southeasterly having a radial bearing of North 37°06'38" West;  
 Thence Southwesterly along said curve, concave southeasterly, of radius 248.20 feet through a central angle of 57°30'00" an arc distance of 249.08 feet to the end of said curve;  
 Thence S 04°36'38" E along said westerly right-of-way line of the East Main Canal a distance of 48.80 feet to the beginning of a curve, concave northwesterly having a radial bearing of North 85°23'22" East;  
 Thence Southwesterly along said curve, concave northwesterly, of radius 355.30 feet through a central angle of 01°26'36" an arc distance of 8.95 feet to the end of said curve;  
 Thence N 89°44'59" W a distance of 65.08 feet to the TRUE POINT OF BEGINNING.

Exempt from Affidavit and Filing fees (A.R.S. 11-1134 A.3.)

Description Verified by:


  
\_\_\_\_\_  
City Engineer

2/17/2015  
Date



Acceptance:

City of San Luis

  
\_\_\_\_\_  
Robert A. Eads  
City Manager

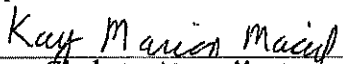
2/18/15  
Date

Attest:

  
\_\_\_\_\_  
Sonia Cornelio  
City Clerk

2/18/2015  
Date

Approved as to Form:

  
\_\_\_\_\_  
~~Glenn Gumbut~~ Kay Marion Macuil  
Asst. City Attorney

2-18-2015  
Date