

When recorded, return to:

City of Casa Grande
510 E. Florence Boulevard
Casa Grande, Arizona 85122
Attention: City Attorney

DEVELOPMENT AGREEMENT

CITY OF CASA GRANDE,
an Arizona municipal corporation

and

NELSON COMMERCIAL PROPERTIES LLC, a Texas limited liability company

Approved by City Council

_____, 2017

Effective Date

_____, 2017

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made by and between the CITY OF CASA GRANDE, an Arizona municipal corporation ("Casa Grande") and NELSON COMMERCIAL PROPERTIES LLC, a Texas limited liability company ("Nelson"). Casa Grande and Nelson shall be referred to in this Agreement, collectively as "Parties," and individually as a "Party."

RECITALS

A. Nelson intends to acquire fee title to that certain real property legally described on Exhibit A attached hereto (the "Property") located within the corporate limits of Casa Grande. Following such acquisition, Nelson shall construct or cause to be constructed on the Property a facility to be used for offices, vehicle dismantling, warehouse storage and outdoor storage yard, all substantially as described and depicted in the Major Site Plan and Conditional Use Permit (the "Project"), as approved by Casa Grande on April 6, 2017 which, at capacity, will employ approximately 80 full time employees.

B. Casa Grande and Nelson hereby acknowledge and agree that (i) Nelson's obligation to develop the Project will result in significant direct and indirect benefits accruing to Casa Grande and the general public, including, without limitation, expansion of the employment base within Casa Grande, increased property values, increased tax revenues, increased opportunities for commercial property development within Casa Grande, and incentivizing the development of adjacent properties and will otherwise improve or enhance the economic welfare of the inhabitants of Casa Grande, and (ii) Nelson is obligated to dedicate the Dedication Parcels (as defined below) to Casa Grande.

C. This Agreement is intended to set forth the obligations of the Parties with respect to the contemplated off-site street improvements adjacent to the Project. The Parties intend for this Agreement to be a "Development Agreement" within the meaning of A.R.S. §9-500.05.

D. Casa Grande has determined that the proposed development in accordance with this Agreement is consistent with Casa Grande's General Plan.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and representations and the mutual covenants and conditions in this Agreement, the Parties agree as follows:

SECTION 1. DEFINITIONS. In this Agreement, unless a different meaning clearly appears from the context:

1.1 "Affiliate" means as described in Section 5.10.

1.2 "Agreement" means as defined in the introductory paragraph, as amended or supplemented in writing from time to time, and includes all exhibits and schedules hereto. .

1.3 “**Applicable Laws**” means the federal, state, county and local laws (statutory and common law), charter provisions, codes, ordinances, rules, regulations which apply to the development of all or any part of the Property.

1.4 “**A.R.S.**” means the Arizona Revised Statutes as now or hereafter enacted or amended.

1.5 “**Casa Grande**” means as defined in the introductory paragraph.

1.6 “**Certificate of Occupancy**” means a certificate issued by Casa Grande certifying that a building or other improvement is fit for occupancy in accordance with Applicable Laws.

1.7 “**City Code**” means the Code and Ordinances of the City of Casa Grande, Arizona, as designated in Section 1.01 thereof.

1.8 “**Closing Date**” means the date on which Nelson acquires title to the Property.

1.9 “**Conditional Use Permit**” means the Conditional Use Permit No. DSA-17-00006, as approved by Casa Grande on April 6, 2017.

1.10 “**Dedication Parcels**” means as described in Section 2.2.

1.11 “**Effective Date**” means the date this Agreement shall have been duly executed by the Parties, such date being the date set forth on the cover page of this Agreement.

1.12 “**Force Majeure Event**” means any event which prohibits or materially interferes with, delays or alters the performance of the applicable duty under this Agreement, including, but not limited to the following: strikes or lockouts; shortages of material or labor (excluding those caused by lack of funds); acts of the public enemy; confiscation or seizure by any government or public authority; injunction, restraining order or other court order or decree, initiative or referendum action; wars or war-like action (whether actual and pending or expected, and whether de jure or de facto); blockades; insurrections; riots; civil disturbances; and acts of God; but excluding delays caused by lack of funds.

1.13 “**Major Site Plan**” means the Major Site Plan No. DSA-17-00007 as approved by Casa Grande on April 6, 2017.

1.14 “**Owner**” means Auza Ranches, L.L.C., an Arizona limited liability company, which is the current owner of the Property.

1.15 “**Party**” and “**Parties**” mean as described in the introductory paragraph.

1.16 “**Person**” means and includes any and all natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts, and other groups and organizations, whether or not legal entities. Without limiting the foregoing, each and every form of media shall constitute a “Person”.

1.17 “**Project**” means as described in paragraph A of the Recitals.

1.18 “**Project Improvements**” means the initial building and other improvements to be constructed on the Property by Nelson pursuant to the Major Site Plan, which will include initial building improvements that contain approximately 100,000 total square feet, and require a capital investment of approximately \$25 million. At full capacity, Nelson anticipates that the Project Improvements will provide approximately 80 full-time jobs and nearly \$3.6 million in annual wages. Nelson anticipates that within 120 days following the Nelson Opening Date, the Project Improvements will provide approximately 55 full-time jobs.

1.19 “**Property**” means as described in paragraph A of the Recitals.

1.20 “**Public Offsite Improvements**” means as described in Section 2.2.

1.21 “**Nelson**” means as described in the introductory paragraph.

1.22 “**Nelson Commencement Date**” means as described in Section 2.1.A.

1.23 “**Nelson Completion Date**” means as described in Section 2.1.B.

1.24 “**Nelson Opening Date**” means as described in Section 2.1.B.

SECTION 2. DEVELOPMENT MATTERS.

2.1 Project Improvements. Nelson shall develop the Project Improvements pursuant to, and substantially in accordance with, the following requirements:

A. Nelson Commencement Date. Nelson shall commence construction of the Project Improvements (the “Nelson Commencement Date”) within twelve (12) months from the Closing Date, but in no event later than 90 days after issuance by Casa Grande of a building permit for all of the Project Improvements . For purposes of this Agreement, the Nelson Commencement Date shall be deemed to have occurred upon the later to occur of (i) the execution by Nelson of a construction contract for the Project Improvements, (ii) the issuance of a building permit for the Project Improvements and (iii) commencement of grading for the Project Improvements.

B. Nelson Completion Date. Nelson shall complete the Project Improvements, as evidenced by obtaining the final Certificate of Occupancy for the Project Improvements, no later than twenty-eight (28) months after the Nelson Commencement Date (the “Nelson Completion Date”) and shall make reasonable efforts to have the Project Improvements open for business (i.e., the date the first vehicle is dismantled on the Property) (the “Nelson Opening Date”) by September 1, 2018.

C. Extension of Time. The Nelson Commencement Date, the Nelson Completion Date, and the Nelson Opening Date, as applicable, shall be extended for each and every Force Majeure Event. Nelson shall notify Casa Grande of the occurrence of a Force Majeure Event affecting the Nelson Commencement Date, the Nelson Completion Date or the Nelson Opening Date, and the time for commencement and completion of the Project

Improvements and the opening of the Project Improvements for business shall be extended day for day during the continuance of any Force Majeure Event. In addition, and notwithstanding anything herein to the contrary, the Nelson Commencement Date, the Nelson Completion Date, and the Nelson Opening Date, as applicable, shall be extended if the San Carlos Irrigation and Drainage District or its affiliate (“SCIDD”) fails to issue any permit or license necessary for the Project within 90 days after Nelson submits a request for such permit or license; the time for commencement and completion of the Project Improvements and the opening of the Project Improvements for business shall be extended day for day until SCIDD issues the necessary permit or license.

D. Failure to Commence, Complete, or Open. If Nelson fails to commence construction of the Project Improvements by the Nelson Commencement Date (as the same may be extended for Force Majeure Events or a SCIDD delay as described in Section 2.1.C above) or to complete construction of the Project Improvements by the Nelson Completion Date (as the same may be extended for Force Majeure Events or a SCIDD delay as described in Section 2.1.C above), or if within one hundred twenty (120) days from the Nelson Opening Date (as the same may be extended for Force Majeure Events or a SCIDD delay as described in Section 2.1.C above), the Project Improvements do not provide a minimum of fifty-five (55) full-time employees at an average annual wage of forty-five thousand four hundred fifty-four dollars (\$45,454), then Casa Grande, as its sole remedy, may terminate this Agreement effective sixty (60) days following Casa Grande’s delivery of written notice to Nelson, unless Nelson remedies the alleged breach prior to the end of said 60 day period.

2.2 Off-Site Public Improvements.

A. Nelson has agreed, at its expense, to construct the offsite improvements more particularly described on Exhibit B (the “Public Offsite Improvements”). In connection with construction of the Public Offsite Improvements and other improvements to be constructed in the future by the City, Nelson agrees to dedicate, to Casa Grande the portions of the Property depicted on Exhibit C (the “Dedication Parcels”). Nelson has determined that the portion of the purchase price of the Property attributable to the Dedication Parcels is approximately three hundred ten thousand three hundred dollars (\$310,300.) The dedication of the Dedication Parcels shall be at no cost to Casa Grande, and Nelson hereby waives any claim of exaction related to such dedication.

B. As part of the future expansion of Thornton Road, the Parties recognize that the irrigation canal owned and operated by SCIDD and located adjacent to the Project (the “Canal”) must either be abandoned or relocated. Nelson shall notify the City of the Closing Date. Within two days after the Closing Date, Nelson shall cause to be placed into escrow with a title company reasonably acceptable to Nelson and Casa Grande, for the benefit of Casa Grande, the sum of \$200,000, which may be used by Casa Grande solely for the abandonment and/or relocation of the Canal (the “Canal Funds”). Casa Grande will use reasonable commercial efforts to secure the abandonment of the Canal within eighteen months from the Closing Date. If and at such time as Casa Grande secures such abandonment, the escrow agent shall be directed to pay to Nelson the Canal Funds, and Nelson shall pay to the City the costs (if any) incurred by the City for the abandonment. If Casa Grande or Nelson is unable to secure the abandonment of the Canal within eighteen months of the Closing Date, the escrow agent shall be directed to pay to

Casa Grande the Canal Funds. Casa Grande shall separately account for the Canal Funds in accordance with generally accepted governmental accounting standards, and may use the Canal Funds to abandon and/or relocate the Canal. If SCIDD or its affiliate abandons the Canal prior to its relocation, Casa Grande shall promptly refund the Canal Funds to Nelson or what remains of the Canal Funds after the abandonment is accomplished. If the cost to relocate the Canal is less than \$200,000, then Casa Grande shall refund to Nelson the remaining portion of the Canal Funds upon completion of the abandonment and/or relocation, as appropriate. If the cost to relocate the Canal is greater than \$200,000, such excess cost shall be borne exclusively by Casa Grande.

C. Casa Grande hereby acknowledges and agrees that, except as provided in this Agreement, (a) no offsite improvements shall be required by Casa Grande, now or in the future, in connection with the development of the Project Improvements or any other improvements shown on the Major Site Plan, and neither Nelson nor any current or future owner of the Property will be required to contribute to the cost of any such other offsite improvements, and (b) neither Nelson nor any current or future owner of the Property will be required to dedicate portions of the Property for public improvements in connection with the Project Improvements or any other improvements shown on the Major Site Plan. Nelson shall pay all applicable development impact fees when due.

SECTION 3. DEFAULTS.

3.1 Events of Default. Except as provided in Section 2.1, it shall be a default hereunder if either Party fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after written notice from the non-defaulting Party specifying in reasonable detail the nature of the failure; provided that if the nature of the default is such that it cannot reasonably be cured within the 30-day period, no default shall be deemed to exist if the Party failing to perform commences a cure within that 30-day period and diligently and expeditiously pursues such cure to completion.

3.2 Remedies. In the event of a default hereunder and failure by the defaulting Party to timely cure the default as provided in Section 3.1, then except to the extent remedies are specifically limited in this Agreement, the non-defaulting Party shall have all remedies available to it at law or in equity. Without limiting the foregoing, Casa Grande or Nelson, or any successor-in-interest or assignee, may institute a legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages, provided, however, that claims for damages shall be limited to actual damages. The Parties hereby waive any right to seek consequential, punitive, multiple, exemplary or any other damages other than actual damages for a breach of this Agreement by either Party.

3.3 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights

with respect to any other default by the non-defaulting Party or with respect to the particular default except to the extent specifically waived in writing.

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

SECTION 4. **REPRESENTATIONS.**

4.1 Casa Grande Representations. Casa Grande represents and warrants to Nelson that:

A. Casa Grande is duly formed and validly existing under Arizona law and that the individual(s) executing this Agreement on behalf of Casa Grande is authorized and empowered to bind Casa Grande.

B. Casa Grande has the full right, power and authorization to enter into and perform this Agreement and each of Casa Grande's obligations and undertakings under this Agreement, and Casa Grande's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of its Charter and Arizona law.

C. 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.

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

4.2 Nelson Representations. Nelson represents and warrants to Casa Grande that:

A. Nelson is duly formed and validly existing under Texas law and that the individual(s) executing this Agreement on behalf of the Nelson is authorized and empowered to bind Nelson.

B. Nelson has the full right, power and authorization to enter into and perform this Agreement and of the obligations and undertakings of Nelson under this Agreement, and the execution, delivery and performance of this Agreement has been duly authorized and agreed to in compliance with its organizational documents and Arizona law.

C. 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.

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

SECTION 5. MISCELLANEOUS.

5.1 Term. This Agreement shall be effective for all purposes on the Effective Date. The term of this Agreement shall be fifteen (15) years from the Nelson Opening Date.

5.2 Notices. Except as otherwise required by law, any notice, demand or other communication given hereunder, shall be in writing and shall be given by personal delivery or be sent by certified or registered U.S. Mail, return receipt requested, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph, or by electronic mail 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 Nelson: Nelson Commercial Properties LLC
5005 Riverway Dr., Suite 150
Houston, Texas 77056
Attention: James Nelson, President
Email: jfnelson@nelsoncommercial.com

With copies to: LKQ Corporation
500 West Madison Street, Suite 2800
Chicago, IL 60661
Attention: General Counsel

and

Gallagher & Kennedy, P.A.
2575 E. Camelback Road
Phoenix, AZ 85016
Attention: Dana Stagg Belknap
Email: dsb@gknet.com

To Casa Grande: City of Casa Grande
510 E. Florence Boulevard
Casa Grande, AZ 85122
Attention: Larry Rains, City Manager
Email: larryr@casagrandeaz.gov

With a copy to: City of Casa Grande
510 E. Florence Boulevard
Casa Grande, AZ 85122
Attention: Brett Wallace, City Attorney
Email: bwallace@casagrandeaz.gov

5.3 Effective Date of Notices. All such notices, demands or other communications will (i) if delivered personally or delivered through a same day deliver/courier service be deemed effective upon receipt or refusal to accept delivery by the addressee, and (ii) if delivered by U.S.

mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer (in each case regardless of whether such notice, demand or other communication is received by any other Person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this paragraph). Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice sent by electronic mail shall be deemed effective upon sender's confirmation of the successful transmission. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee.

5.4 Waiver of Right to Trial by Jury. The Parties expressly covenant and agree that in the event of a dispute arising from this Agreement, each Party waives any right to a trial by jury. In the event of litigation, the Parties agree to submit to a trial before the court.

5.5 Attorneys' Fees. In the event of commencement of a legal action in an appropriate forum by a Party to enforce any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing Party in any such action shall be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the Party and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

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

5.7 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona, including the applicability of A.R.S. § 38-511.

5.8 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses Casa Grande 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.

5.9 Recordation. This Agreement shall be recorded in its entirety in the Official Records of Pinal County, Arizona not later than ten (10) days after execution of the Agreement by the Parties.

5.10 Successors and Assigns. Nelson may assign all or any portion of its rights hereunder to any one or more Persons, on such terms and conditions as Nelson may deem appropriate, provided, however, that Nelson may not convey all or any portion of its rights hereunder without the consent of Casa Grande unless Nelson assigns to (i) an Affiliate of Nelson, or (ii) an Affiliate of LKQ Corporation, a Delaware corporation ("LKQ"), which acquires the

Property to develop the Project Improvements. Notice of the assignment and assumption of Nelson's obligations shall be reflected in a document that shall be executed by Nelson and the assignee and recorded by Nelson in the land records of Pinal County, Arizona. Upon the recordation of such document and the assignee's written agreement to assume the obligations under this Agreement corresponding to such assignment, Nelson will be released from the obligations assumed by the assignee. An "Affiliate", as applied to Nelson and LKQ, means any Person directly or indirectly wholly controlled by Nelson or LKQ, as the case may be. The burdens of this Agreement bind, and the benefits of this Agreement inure to, the Parties hereto and their successors in interest and assigns as provided in A.R.S. § 9-500.05.D, except to the extent an assignment is not authorized in this Section 5.10.

5.11 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as the 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.

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

5.13 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

5.14 No Partnerships, Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Nelson and Casa Grande. No term or provision of this Agreement is intended to, or shall, be for the benefit of any Person not a Party hereto, and no such other Person 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 Nelson under this Agreement.

5.15 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all so executed shall constitute one agreement, binding on the Parties.

5.16 Nonrecourse. No Casa Grande Council member, Casa Grande official, representative, agent, attorney or employee shall be personally liable to Nelson or to any successor in interest Nelson, in the event of any default or breach by Casa Grande or for any amount which may become due to Nelson or its successor, or with respect to any obligation of Casa Grande under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Nelson under this Agreement shall be limited solely to

the Property including all improvements located on the Property and shall not extend to or be enforceable against: (i) the other assets of Nelson, (ii) the individual assets of any of the individuals or entities who are shareholders, members, managers, constituent partners, officers or directors of the general partners, managers or members of Nelson; or (iii) the officers, shareholders, members or managers or constituent partners of Nelson.

5.17 Recitals, Exhibits. The Recitals set forth in Paragraphs A through D, inclusive, are incorporated herein by reference and form a part of this Agreement. The Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated in and made an integral part of this Agreement for all purposes. References to Sections or Exhibits are to this Agreement unless otherwise qualified.

5.18 Entire Agreement. This Agreement and all Exhibits hereto constitute the entire agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are hereby superseded and merged herein.

5.19 Additional Provisions. Nelson agrees to and does knowingly waive any and all rights to compensation for diminution in value pursuant to A.R.S. § 12-1134 that may now or in the future exist as a result of the approval or performance of, and all conditions, terms and agreements contained in this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Casa Grande has caused this Agreement to be duly executed in its name and behalf by its City Manager, and Nelson has signed the same, on or as of the day and year first above written.

CASA GRANDE:

CITY OF CASA GRANDE,
an Arizona municipal corporation

By: _____

Name: _____

Its: _____

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CASA GRANDE CITY ATTORNEY

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2017, by _____, the City Manager of City of Casa Grande, an Arizona municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

CONSENT OF OWNER

The undersigned, as the Owner of the Property, hereby consents to this Development Agreement and the recordation hereof in the records of Pinal County, Arizona.

Auza Ranches, L.L.C., an Arizona limited liability company

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this _____ day of _____, 2017, by _____, the _____, of Auza Ranches, L.L.C., an Arizona limited liability company.

Notary Public

My Commission Expires:
