



FEE #: 2007-17209

05/09/2007 02:40 PAGES: 0025
FEES: 25.00 4.00 1.00 .00 .00
REQ BY: EAGLES NEST YUMA
RFP BY: PATTY MAGANA

When recorded please return to:

Paul Muthart
Eagles Nest Yuma, LLC
PO Box 2949
Yuma Arizona 85366

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

(Olde 80 Business Park)

This Declaration of Easements, Covenants, Conditions and Restrictions (the "Declaration") is made as of APRIL 11, 2007 by Eagle's Nest Yuma, LLC, an Arizona limited liability company ("Declarant").

RECITALS

A. Declarant owns the parcel of real property located in Yuma, Arizona described in Exhibit A (the "Property"). The Property is in the process of being subdivided into platted Lots, generally as shown on Exhibit B. Boundary lines between adjacent Lots may be relocated on the recorded Plat.

B. Declarant intends to develop the Property as a mixed use commercial and industrial business park to be known as Olde 80 Business Park. Lots 1 through 7, inclusive, are to be used for light industrial purposes permitted by this Declaration (the "Industrial Lots"). Lots 8 through 13, inclusive, are to be used for commercial purposes permitted by this Declaration (the "Commercial Lots").

C. The purpose of this Declaration is to impose certain real covenants, easements, and restrictions on the Property in order to promote its orderly and harmonious development and use and to preserve its value for the benefit of all existing and future Owners and Occupants.

NOW, THEREFORE, the following easements, covenants, conditions, restrictions, and equitable servitudes are created and established:

ARTICLE 1

DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following meanings:

1.1 "Administrative Agent" shall mean: (i) so long as Declarant is an Owner of any Parcel, Declarant; and (ii) thereafter, the Association.

1.2 "Assessments" shall mean the assessments levied pursuant to ARTICLE 9.

1.3 "Association" shall mean the non-profit Arizona corporation formed as an owners' association pursuant to Section 8.3.

1.4 "Enforcing Party" shall mean Administrative Agent or an enforcing Owner, as applicable, as provided in Section 10.2.

1.5 "Improvements" shall mean all structures and appurtenances thereto of every kind, whether above or below the land surface, including, but not limited to, buildings, utility systems, walkways, slopes, parkways, driveways, parking areas, loading areas, landscaping, irrigation, fences, walls, decks, stairs, poles, signs, exterior fixtures and paint, and any other structure of any kind, whether interior or exterior.

1.6 "Occupant" shall mean the actual occupant of a Parcel or portion thereof, whether Owner, tenant, subtenant, or licensee.

1.7 "Owner" shall mean, with respect to any Parcel: (a) the person or entity, if any, having a leasehold interest in said Parcel pursuant to a ground lease of an initial term of 35 years or more, and (b) if no such ground lease exists, then the person or entity holding fee simple interest of record. If more than one person holds the ground leasehold or fee interest in said Parcel, then those persons or entities owning at least 51% of the interest in such Parcel shall be entitled to act on behalf of and bind all the Owners thereof for purposes of this Declaration.

1.8 "Parcel" shall mean any lot or parcel identified as such on a Plat; provided, however, that a condominium unit as shown on a condominium plat shall not be a parcel.

1.9 "Plat" shall mean a recorded subdivision plat, as amended from time to time, of the Property.

1.10 "Project" shall mean the Olde 80 Business Park.

1.11 "Project Sign Monument" shall mean the monument sign identified on the Plat and located on Parcel 11 that bears the name of the Project.

ARTICLE 2

ESTABLISHMENT OF RESTRICTIONS

The Property is now held and shall hereafter be held, transferred, sold, leased, conveyed and occupied subject to the easements, covenants, conditions and restrictions (the "Easements and Restrictions") set forth in this Declaration. Each Owner, tenant, or other user or occupant of a Parcel shall comply with the Easements and Restrictions that apply to that Parcel.

17209

ARTICLE 3

USE OF THE PROPERTY

3.1 General.

(a) Commercial Lots may be used for any purpose permitted by City of Yuma zoning category General Commercial/Aesthetic Overlay (B-2/AO) that is not otherwise prohibited by this Declaration.

(b) Industrial Lots may be used for any purpose permitted by City of Yuma zoning category Light Industrial (L-I) that is not otherwise prohibited by this Declaration.

3.2 Outdoor Uses.

(a) Industrial Lots may be used for outdoor purposes and activities, provided that such outdoor uses are adequately screened by a solid block wall that conforms to the Design Guidelines attached as Exhibit C. The standard for adequate screening shall be that the wall is high enough so that the outdoor use is not visible from streets, driveways, or the Commercial Lots.

(b) No Commercial Lot may be used for any purpose or activity that is not performed or carried out entirely within an enclosed building. Outdoor storage, except temporary storage ancillary to construction during the course of construction, is prohibited. Notwithstanding the forgoing, the following outdoor uses shall be allowed on Commercial Lots: outdoor seating and dining areas, such as patios or terraces; food and beverage sales, such as coffee bars and food carts; displays or decorations; and promotional activities, such as sidewalk sales.

Prohibited Uses. The following uses are prohibited on the Property:

- (a) fortune telling, tarot card reading or similar paranormal or occult activities;
- (b) tattoo parlors;
- (c) stores primarily in the business of selling sexually explicit books, video tapes, DVDs or other media or sexually-oriented products;
- (d) abortion clinics, provided, however, that medical offices performing abortions on an incidental basis, such as a full-service obstetrics and gynecology practice not specializing in or emphasizing abortions, are not prohibited; and
- (e) sales of motor vehicles such as automobiles, motorcycles, and motorhomes, unless all of the activity is within a building.

3.3 Character of Development. The Property is to be developed as a mixed use industrial and commercial business park. Occupants shall conduct their respective businesses, subject to the requirements and restrictions of this Declaration, in a commercially reasonable manner and shall use commercially reasonable efforts to avoid interfering with the business of any other Occupant, but no Owner or Occupant shall have grounds for complaint about levels of

17209

noise, traffic, or other matters that are usual and customary in comparable industrial and commercial business park developments.

3.5 Shared Improvements.

(a) Grading Plan. All grading and Improvements of Parcels shall comply with the grading plan for the Property approved or adopted by the City of Yuma, as amended from time to time (the "Grading Plan") and no Owner shall do or allow any improvement or alteration on its Parcel in violation of the Grading Plan.

(b) Shared Improvements. If Owners of adjacent Parcels agree to a "Shared Improvement" including, without limitation, a shared stormwater retention basin, or driveway, along a common boundary or otherwise, such agreement shall be reflected in a recorded instrument. Unless otherwise provided by written instrument, each Owner shall bear half the cost of construction, maintenance, repair and replacement of the Shared Improvement.

3.6 Party Walls.

(a) General. Subject to the Design Guidelines and the Administrative Agent's approval, Owners of adjacent Parcels may agree to construct and maintain party walls along the property line between their Parcels. Unless otherwise provided by written instrument, each Owner shall bear half the cost of construction, maintenance, repair, and replacement of a party wall. Owners shall have the right to integrate and connect any party wall adjoining its Parcel to walls on its Parcel.

(b) Required Party Walls. With respect to Lots 7 and 8, a party wall shall be constructed to separate the Commercial Lot from the Industrial Lot (the "Required Party Wall"). The first Owner of the two adjoining Parcels to construct a building on its Parcel shall, as part of the initial development of the Parcel, construct the Required Party Wall on or immediately adjacent to the common boundary. Such constructing Owner shall maintain the Required Party Wall at its sole expense until Declarant has sold the adjoining Parcel to a purchaser. Upon such event, the purchaser of the adjoining Parcel shall reimburse the constructing Owner for half of the cost of constructing the Required Party Wall, within 30 days of its receipt of a request for reimbursement and reasonable supporting documentation. Thereafter, the Owner of the Industrial Lot adjoining the Required Party Wall shall be responsible for repair, maintenance, and upkeep of the Required Party Wall, and the Owner of the adjoining Commercial Lot shall reimburse the Owner of the Industrial Lot half of the cost for such repair, maintenance, and upkeep within 30 days of its receipt of a request for reimbursement and reasonable supporting documentation.

3.7 Temporary Structures. No structure of a temporary character, trailer, camper, boat or similar vehicle or equipment, except a construction trailer during the course of construction on the Parcel, shall be permitted to remain upon any Parcel.

3.8 Outside Speakers and Amplifiers. No radios, stereos, broadcast or loudspeaker units and no amplifiers of any kind shall be placed on or outside, or be directed to the outside of

any building so as to produce sounds or noises which are offensive to persons owning or occupying another Parcel.

3.9 **Signs.** Subject to the provisions of Section 6.3, all exterior signs on Industrial Lots and the Project Sign Monument shall conform to the Design Guidelines attached as Exhibit C, as modified from time to time by Administrative Agent.

3.10 **Parking.**

(a) Except as may be provided in any separate license or easement agreements between Owners of the affected Parcels, no Owner or Occupant of a Parcel shall permit parking of any vehicle owned by it or owned by its tenants and their respective employees, contractors, customers and invitees on another Owner's Parcel.

(b) Each Parcel shall be improved by its Owner with sufficient parking and delivery facilities contained entirely within that Parcel to accommodate the parking and delivery needs of that Parcel. All vehicular traffic and parking areas shall be paved with adequate asphalt or concrete paving materials and curbing at the sole cost and expense of the Owner of that Parcel. Each lease of space within a Parcel entered into after the date of this Declaration shall contain a provision limiting the number of parking spaces used by the tenant and its employees and providing adequate visitor parking such that the aggregate parking demand of all occupants of the Parcel will not result in violations of the provisions of Subsection 3.10(a).

(c) If an Owner or Occupant of a Parcel or an employee or invitee of an Owner or Occupant of a Parcel parks his or her vehicle on another Parcel, and if the Owner or Occupant of the latter Parcel causes the vehicle to be towed in accordance with applicable law, then the Owner or Occupant of the former Parcel upon written demand shall reimburse the Owner or Occupant of the latter Parcel for all reasonable towing costs so incurred.

ARTICLE 4

MAINTENANCE

4.1 **Maintenance.** Except as provided in Sections 3.5, 3.6 and 5.5, the Owner of each Parcel shall be solely responsible for repair, maintenance, and upkeep of all Improvements, driveways, parking areas, and landscaped areas on its Parcel.

4.2 **Maintenance Standards.** The Owner of each Parcel, at all times shall keep, or cause to be kept, all Improvements, driveways, parking areas, and landscaped areas located on its Parcel in good condition and repair, including repainting of exterior walls as reasonably necessary and prompt removal of all graffiti. The Administrative Agent, acting reasonably and in good faith, shall have the right to establish specific written "Maintenance Standards." The Owner of each Parcel shall comply with such Maintenance Standards, if established.

4.3 **Rubbish.**

(a) Each Owner shall cause all rubbish, trash and garbage to be regularly removed from its Parcel and shall keep such rubbish in covered containers. All containers shall be adequately screened from all occupied improvements.

(b) Any Occupant that generates Medical Waste shall provide for the regular, safe and sanitary storage, removal and disposal of Medical Wastes from its Parcel, and shall comply with all laws, ordinances, and regulations related to the handling, storage, and disposal of Medical Wastes. Before an Occupant commences any use that generates Medical Waste, the Occupant shall provide the Administrative Agent with written evidence of the Occupant's contract with a qualified hazardous and medical waste disposal vendor, and will provide at all times evidence of each renewal of such contract prior to expiration or termination of the contract. Occupant shall also establish on its Parcel a secure and sanitary area for temporary storage of such Medical Wastes between routine removal intervals. The term "Medical Wastes" includes, but is not limited to, virulent infectious wastes and materials (liquid and solid), bandages and dressings, sharps, needles, syringes, lancets, human blood and blood products, body fluids, radioactive waste, human tissue, cultures of viable disease-causing agents and any other medical wastes or by-products which pose risk of injury or disease to human beings.

(c) Occupants shall comply with all federal, state and local laws, rules, orders, or regulations pertaining to health or the environment.

4.4 Damaged Improvements. In the event of any damage to or destruction of the buildings or other Improvements upon any Parcel, the Owner of such Parcel shall, at its election, and with all due diligence, either (i) repair, restore and rebuild such building or buildings; or (ii) at its sole cost and expense, tear down and remove all parts of damaged and destroyed building or buildings and other Improvements then remaining and the debris resulting therefrom and otherwise clean and restore the Parcel affected by such casualty to a level and clean condition.

ARTICLE 5

EASEMENTS

5.1 Access Easement. In the event a driveway on a common boundary of two or more adjacent Parcels is constructed, then there is hereby established a non-exclusive easement of ingress and egress for such shared driveway for the benefit of the adjacent Parcels.

5.2 Utilities.

(a) There is hereby established for the use and benefit of each Parcel a perpetual non-exclusive easement for the construction, installation, operation, inspection, maintenance, repair, and replacement of utility facilities (including without limitation water, sewer, electrical power, gas, telephone, fiber optic cable, and other communications facilities) across all portions of other Parcels not improved with a building or other structure, but only if and to the extent that utility services are not available by means of connection to utility facilities in adjacent public rights of way or roadways. The location of any utility facilities over or through the Parcel shall be subject

to the reasonable approval of the Owner of the burdened Parcel. The Owner of the burdened Parcel shall not construct structures, barriers or other Improvements (except normal paving and landscaping materials) over such utility facilities.

(b) If an Owner, in the course of constructing, installing, operating, inspecting, maintaining, repairing, or replacing utility facilities on another Parcel, damages pavement, landscaping, or other Improvements on that Parcel, the constructing Owner shall promptly repair, at its sole cost and expense, all such damage and restore such Parcel substantially to its prior condition.

(c) The Owner of a burdened Parcel, at its sole cost and expense, may relocate utility facilities on its Parcel that serve other Parcels so long as the function and accessibility of such utility facilities is not materially adversely affected. Any such relocation shall be coordinated and scheduled with all affected Owners and any interruption of utility service shall be minimized and avoided to the extent practicable.

(d) No Owner shall have the right to tie into utility facilities installed to serve another Parcel without the prior written consent of the Owner of the other Parcel.

(e) Upon Declarant's request, any Owner shall grant or join in any dedication of customary public utility easements as may be required by the City of Yuma.

5.3 Administrative Agent. There is hereby established for the use and benefit of the Administrative Agent an easement to and across every Parcel for the purpose of performing its rights and obligations under this Declaration.

5.4 Drainage Easements.

(a) All Parcels are subject to an easement for the benefit of the other Parcels for drainage in accordance with the Grading Plan.

(b) In the event that the Owners of adjoining Parcels, by agreement, construct a shared retention basin, a drainage easement shall be established across each Parcel for the benefit of the other Parcel to direct the flow of stormwater in accordance with a drainage plan for such Parcels approved by the City of Yuma. The easement shall include the right to construct, install, operate, inspect, maintain, repair, and replace associated stormwater drainage facilities.

5.5 Project Sign Monument. There is hereby established an easement on Lot 10 in the location generally shown on Exhibit B for the operation, repair, maintenance, and replacement from time to time of the Project Sign Monument for the benefit of the Association. The Association shall be solely responsible for operation, repair, maintenance, and replacement, if necessary, of the Project Sign Monument. Electrical power provided to the Project Sign Monument shall be separately metered.

5.6 Wall Easements.

(a) Temporary Construction Easement. In the event that the Owners of adjacent Parcels agree to or are required to construct a party wall along a shared property boundary, then there is hereby established for the use and benefit of those adjoining Parcels a temporary easement to enter upon those Parcels for the purpose of constructing such wall.

(b) Encroachment. There is hereby established for the use and benefit of adjoining Parcels upon which a party wall has been constructed a perpetual easement for the encroachment of such wall onto each Parcel.

(c) Maintenance. There is hereby established for the use and benefit of adjoining Parcels a perpetual easement for the repair, maintenance, and replacement from time to time of any wall that is a party wall.

(d) Integration. Each Owner shall have the right to integrate and connect any wall on its Parcel to a party wall adjoining its Parcel.

ARTICLE 6

ARCHITECTURAL APPROVAL

6.1 **Design Approval.** No building on any Commercial Lot or Industrial Lot shall be constructed, reconstructed, restored or altered except in accordance with a design that is architecturally compatible and harmonious with the buildings located on the remainder of the Property, as determined and approved in writing by the Administrative Agent in its discretion prior to commencement of the construction, reconstruction, restoration, or alteration work.

6.2 **Submittals.** Prior to construction of any building on a Parcel, and prior to any subsequent work that affects its exterior appearance, there shall be submitted in writing to the Administrative Agent for approval: (i) scaled exterior elevations (which shall include building signs), with materials, colors and window treatments specified, (ii) a site and parking plan for the Parcel, including plans for screening walls, if applicable, and (iii) associated landscape plans (collectively, the "Plans"). The Plans shall be modified to satisfy any reasonable objection made by Administrative Agent. Buildings and improvements shall be constructed on the Parcel only in accordance with drawings and specifications that effectuate the approved Plans.

6.3 **Variances.** The Administrative Agent, acting reasonably and in good faith, shall have the exclusive right to waive or vary the Restrictions in particular respects whenever in the opinion of the Administrative Agent such waiver or variance will not be detrimental to the general intent and purpose of the Declaration. Notwithstanding the foregoing or any other provision of this Declaration, the Administrative Agent's right to waive or vary the restrictions may be exercised with respect to a particular Parcel rather than all of the Property so that any such waiver or variance may apply to such Parcels as the Administrative Agent may determine in its discretion.

17209

ARTICLE 7

DEVELOPMENT STANDARDS

7.1 **Design & Landscape.** All sitework, site walls, paving, walks, patios, buildings and other Improvements on Industrial Lots shall conform to the Design Guidelines attached as Exhibit C. All landscaping plant materials and hardscape on Industrial Lots shall conform to the Landscape Guidelines attached as Exhibit D.

7.2 **Review Fee.** Administrative Agent may impose a fee for review of proposed Plans to cover estimated costs of professional fees or other expenses that will be incurred in connection with the review.

7.3 **Construction Activities.** During the course of construction of Improvements on any Parcel, the Owner of the Parcel shall implement appropriate dust-control measures and shall manage construction traffic in a manner that does not interfere with convenient access to all other Parcels.

ARTICLE 8

ADMINISTRATIVE AGENT

8.1 **Powers and Duties.** The Administrative Agent is charged with the duties and invested with the powers prescribed in this Declaration. The Association shall have all powers permitted by law and as set forth in the articles of incorporation and the bylaws of the Association. The provisions of this Declaration shall control in the event of any conflict with the articles of incorporation or the bylaws of the Association. Without limiting the generality of the foregoing, the Administrative Agent shall have the following powers:

(a) To levy and collect the Assessments in the manner set forth in this Declaration and to authorize and make expenditures of funds as described in this Declaration;

(b) To pay all taxes and assessments or similar levies assessed against any personal property owned by the Administrative Agent and used by the Administrative Agent in that capacity and any income or other taxes imposed upon or assessed against the Administrative Agent arising in connection with the exercise of its rights or duties as Administrative Agent;

(c) To maintain such policies of casualty, liability or other insurance as deemed necessary or desirable to further the purposes of and protect the interest of the Administrative Agent, its members, the members of the Board of Directors and the officers of the Association;

(d) To employ a manager or other persons to perform all or any part of the duties of the Administrative Agent;

17209

(e) To purchase or hire any materials, equipment, supplies, labor or other items which in the discretion of the Administrative Agent shall be necessary, proper or desirable to carry out the Administrative Agent's powers and duties hereunder;

(f) To operate, maintain, repair, and replace, and supply electric power to the Project Sign Monument; and

(g) To enforce the provisions of this Declaration by all appropriate means, including without limitation, the expenditure of funds to employ legal counsel to pursue collection of delinquent assessments.

8.2 Limitation of Liability. Neither the Administrative Agent nor any member of the Administrative Agent or any employer or affiliate thereof or member of the Board of Directors of the Association or any committee of the Association, or any officer of the Association, shall be personally liable to any Owner, or to any other person, including without limitation, the Association, for any damage, loss or prejudice of any kind suffered or claimed on account of any act, omission, error or negligence of the Administrative Agent, the Association, the Board or any officer, representative or employee of the Association or any other committee, provided that such person has, upon the basis of such information as may be possessed by him or her, acted in good faith without willful or intentional misconduct.

8.3 Formation of Association. Prior to the date that the Association becomes the Administrative Agent pursuant to Section 1.1, Declarant shall cause to be formed a non-profit corporation under the laws of the State of Arizona to act as the Association pursuant to this Declaration. Three directors elected in accordance with the articles of incorporation and by-laws shall constitute the Board of Directors of the Association. If Declarant fails to do so, the Owners, acting jointly, shall form the Association.

8.4 Members. Upon the formation of the Association, every Owner shall automatically be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Parcel, and any attempt to convey or otherwise deal with a membership separate from ownership of a Parcel shall be absolutely void and of no force or effect whatsoever.

8.5 Voting Rights. Each Owner shall have with respect to its Parcel or Parcels a number of votes as a member of the Association equal to the number of square feet of land area contained in such Parcel or Parcels.

ARTICLE 9

ASSESSMENTS

9.1 Obligation of Each Owner. Each Owner covenants and agrees to pay to the Administrative Agent the Assessments levied with respect to its Parcel or Parcels.

9.2 Budget and Report. The amount of the Assessments to be levied in each calendar year against each Parcel shall be based upon the current and anticipated costs of exercising the Administrative Agent's powers and performing the Administrative Agent's duties and the future needs of the Administrative Agent plus any deficit from operations within the

previous two years. The Administrative Agent shall establish a budget for the estimated costs and expenses to be incurred by the Administrative Agent during each calendar year in performing its functions hereunder (including a reasonable allowance for overhead and delinquent accounts) and the amount of the Assessments shall be based on such budget and deficits of the prior two years, if any, and shall give notice to each Owner of the amount of the assessment on its Parcel with a copy of the budget. Until a budget has been approved for any calendar year and the amount of the Assessments established for such year, Administrative Agent shall continue to levy and collect Assessments at the level of the previous calendar year. Beginning with the second budget, Administrative Agent shall provide a written report with respect to actual expenditures incurred during the previous calendar year, Assessments collected from Owners, and the resulting surplus or deficit.

9.3 Mid-Year Adjustment. If circumstances arise following the establishment of the annual budget that cause the budgeted Assessment to be insufficient to pay for performance of Administrative Agent's obligations, then Administrative Agent may modify the amount of the Assessment by notice to all Owners explaining the amount of the adjustment and the reason therefor.

9.4 Apportionment. Assessments shall be prorated among the Owners and assessed against each Parcels in proportion to the respective areas of all Parcels.

9.5 Quarterly Payments. The Assessments for a calendar year shall be paid by each Owner, in advance, in quarterly installments.

9.6 Payment Certificates. The Administrative Agent shall upon request of an Owner furnish a certificate in writing signed by an authorized agent of the Administrative Agent setting forth the date to which Assessments on such Owner's Parcel have been paid and the amount of any delinquency. A reasonable charge may be made for the issuance of the certificate. Any Owner, purchaser, encumbrancer or tenant may rely upon a duly issued certificate as conclusive evidence of payment of any assessment therein stated to have been paid or the amount of any delinquency as stated therein.

ARTICLE 10

ENFORCEMENT

10.1 Condominium. Notwithstanding anything to the contrary in this Declaration, if a Parcel is made subject to a condominium declaration, then: (a) Assessments with respect to that Parcel shall be billed to and paid by the applicable condominium association and reallocated among unit owners as a common expense in accordance with the condominium declaration; (b) any lien established pursuant to Section 10.4 shall attach to all condominium units on that Parcel until paid; (c) the membership rights of that Parcel in the Association, when formed, shall be exercised on behalf of the condominium unit owners by the condominium association, which shall cast the votes allocable to the Parcel; and (d) obligations of Owners under this Declaration may be performed by the condominium association to the extent provided in the condominium declaration.

10.2 Power to Enforce. The Easements and Restrictions may be enforced exclusively by the Administrative Agent; provided, however, if the Administrative Agent fails or refuses to enforce the Easements or Restrictions within thirty days after receipt of written demand from any adversely affected Owner, then the Easement or Restriction may be enforced by such Owner; and provided, further, that the provisions of Section 3.10(c) shall be enforced by the aggrieved Parcel Owner or Occupant and not by the Administrative Agent.

10.3 Abatement and Suit. In the event of the violation or breach of any provision of these Easements and Restrictions and the continuation of such failure for a period of thirty days after receipt of written notice from the Enforcing Party (or for such longer period as is necessary for the cure, provided the cure is commenced within the original thirty day period and thereafter diligently and continuously pursued), the Enforcing Party shall have the right to enter upon the defaulting Owner's Parcel at reasonable times: (a) to determine the compliance of any Improvements thereon with the provisions of this Declaration; and (b) to repair, replace or maintain any Improvements located thereon which are not in substantial compliance with the provisions of this Declaration. An Enforcing Party may prosecute a proceeding at law or in equity against the Owner or other person who has violated or is attempting to violate any of the Easements and Restrictions and seek an injunction or recover damages, including reasonable attorneys fees, for such violation. Any costs or expenses paid or incurred by the Enforcing Party in abating such violation or prosecuting any such remedies (including all reasonable attorneys' fees and costs of collection) shall be immediately due and payable by the defaulting Owner to the Enforcing Party.

10.4 Lien Right. Any Assessments not paid when due and any amounts payable to an Enforcing Party under Section 3.10(c), 10.3, 10.5, 10.6, or any other provision of this Declaration shall be secured by a lien against the defaulting Owner's interest in the Parcel or Parcels from and after the notice of lien described below is filed. The lien provided for in this ARTICLE 10 shall be filed of record by the Administrative Agent or the Enforcing Party, as applicable, as a notice of lien against the defaulting Owner or Owners in the Office of the County Recorder, signed and verified, which shall contain at least:

- (a) A statement of the unpaid amount of costs and expenses;
- (b) A legal description of the defaulting Owner's Parcel that is subject to the lien; and
- (c) The name of the Owner or reputed Owner of the Parcel that is subject to the lien and the nature of that Owner's interest (fee or leasehold) in the Parcel.

Such lien, when so established against the defaulting Owner's fee or leasehold interest in the Parcel described in said lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing such lien. Such lien shall be subordinate to any mortgage or deed of trust encumbering a Parcel recorded prior to the recording of a lien pursuant to this Section 10.4. Whenever the Owner of a Parcel holds a leasehold interest, the lien shall attach only to such leasehold interest and not to the fee interest of the ground lessor. Such lien shall be for the use and benefit of the Enforcing Party during the default of the defaulting Owner or Owners and may be enforced and foreclosed in a suit or action brought in any

court of competent jurisdiction in the manner provided for the foreclosure of mortgages or other applicable law. If the violations recited in such notice of lien are totally cured and all amounts paid, the Enforcing Party shall forthwith record an appropriate release of such lien at the defaulting Owner's sole expense.

10.5 **Interest.** Interest shall accrue on all amounts owed to the Administrative Agent or to an Enforcing Party under this Declaration at the rate of 15% per annum (or at the maximum interest rate permitted by law if less than 15% per annum) from the date incurred until paid.

10.6 **Attorneys' Fees.** In the event of any legal or equitable proceedings for the enforcement of or to restrain a violation of this Declaration or any provision hereof, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other costs to which such party is entitled.

10.7 **Remedies Cumulative.** All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

ARTICLE 11

TERMINATION AND AMENDMENT

11.1 **Term.** These Easements and Restrictions shall be binding from the date hereof until December 31, 2100 and shall thereafter be automatically renewed and extended for successive periods of twenty years each, unless terminated in accordance with Section 11.2.

11.2 **Termination or Amendment.** These Easements and Restrictions may be terminated or amended by written instrument, recorded in the office of the County Recorder, signed and acknowledged by all Owners of all Parcels and, if any Owners hold leasehold interests in their Parcels, by the fee owners of such Parcels as well. Notwithstanding the foregoing, Declarant shall have the right and power, without consent or joinder by any other Owners, to amend this Declaration as may be required to obtain the approval of the City of Yuma as provided in the applicable zoning stipulations, by written instrument, recorded in the office of the County Recorder, signed and acknowledged by Declarant.

ARTICLE 12

MISCELLANEOUS

12.1 **Implied Consent.** Any person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and easement contained herein, whether or not any reference to this Declaration is contained in the instruments by which such person acquired an interest in the Property.

12.2 **Mutuality, Reciprocity, Run with Land.** All the Easements and Restrictions contained herein are made for the direct, mutual and reciprocal benefit of each Parcel and, create an equitable servitude upon each Parcel as the servient tenement in favor of every other Parcel as the dominant tenement and create reciprocal rights and obligations among the respective

Owners, and privity of contract and estate among all grantees of the Parcel, their heirs, successors and assigns. In addition, each of the Easements and Restrictions, as applicable to a Parcel, shall operate as a covenant running with the land for the benefit of the Property and each Parcel, and shall inure to the benefit of all grantees hereof, their heirs, successors and assigns, and shall apply to and bind the grantees of the Parcels, their heirs, successors and assigns.

12.3 **Severability.** If any provision of this Declaration is held to be invalid by any court having jurisdiction thereof, the invalidity of such provision shall not affect the validity or enforceability of the remaining provisions of this Declaration.

12.4 **City Requirements.** Nothing contained herein shall take precedence over, and any development of the Property shall be subject to, all applicable ordinances, regulations and requirements of the City of Yuma, Yuma County and any other governmental authorities having jurisdiction thereof. Notwithstanding the foregoing, where the Easements and Restrictions of this Declaration are more stringent than the regulations and requirements of such governmental authority, the Easements and Restrictions of this Declaration shall apply.

12.5 **Change in Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions hereof.

12.6 **Notices.** All notices, consents, requests, approvals and other communications required or permitted herein, shall be in writing and shall be deemed to have been duly given upon personal delivery or 48 hours after deposited in United States mail registered or certified with return receipt requested, postage prepaid, to the intended recipient party at such person's last known address.

12.7 **Governing Law.** This Declaration shall be governed by the laws of the State of Arizona.

DECLARANT:

EAGLE'S NEST YUMA, LLC,
an Arizona limited liability company

By: Gary J. Pasquonelli

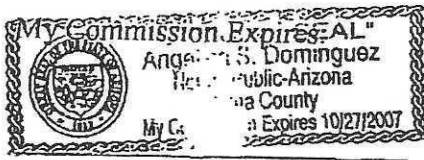
Its: Managing Member

17209

STATE OF ARIZONA)
) ss.
County of Yuma)

Acknowledged before me this 11 day of April, 2007 by Gary Pasquini
of Eagle's Nest Yuma, LLC, an Arizona limited liability company, on behalf of
the limited liability company.

Angel S. Dominguez
Notary Public



17209

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Olde 80 Business Park

**A Subdivision of a portion of the SE1/4 SW1/4 of Section 6, T9S, R22W, G&SRB&M,
Yuma County, Arizona**




17209

EXHIBIT C

COLOR DESIGNATIONS

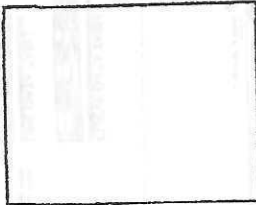
The building and construction materials at Olde 80 Business Park will inevitably vary with each individual property owner and the use of uniform color designations will serve to maintain the cohesive identity of the park.

The predominant overall building color shall be equal to "Dorian Gray" SW7017 as manufactured by Sherwin Williams and as illustrated below. This color shall apply to stucco, metal building panels, EIFS, or any other exterior building cladding or finish. Any proposed deviations from this color designation shall be submitted for approval by the Olde 80 Business Park Administrative Agent.



"Dorian Gray" SW7017
(Actual color may vary)

All exterior building appurtenance (i.e. downspouts, scuppers, gutters, awnings, trims, etc etc) shall be equal to "Fired Brick" SW6335 as manufactured by Sherwin Williams and as illustrated below. Any proposed deviations from this color designation shall be submitted for approval by the Olde 80 Business Park Administrative Agent.



"Fired Brick" SW6335
(Actual color may vary)

EXHIBIT C 1 of 7

17209

E X H I B I T C

MONUMENT SIGN

The design of the individual business monument sign is intended to enhance the overall design theme at Olde 80 Business Park.

The construction of the sign shall be per the following architectural construction drawing and similar to the following architectural illustration.

Construction material of the monument sign shall be:

- 8" x 8" x 16" center-scored standard grey concrete masonry unit
- Rusty corrugated 22 gauge metal panel.
- Wrought iron tube steel for support of corrugated metal panel.

Address numbers shall be individual 8" high 18 gauge rusty metal Helvetica style stud mounted to concrete block per attached construction drawing.

Material and mounting technique of business name lettering and/or logo may vary per individual business owner.

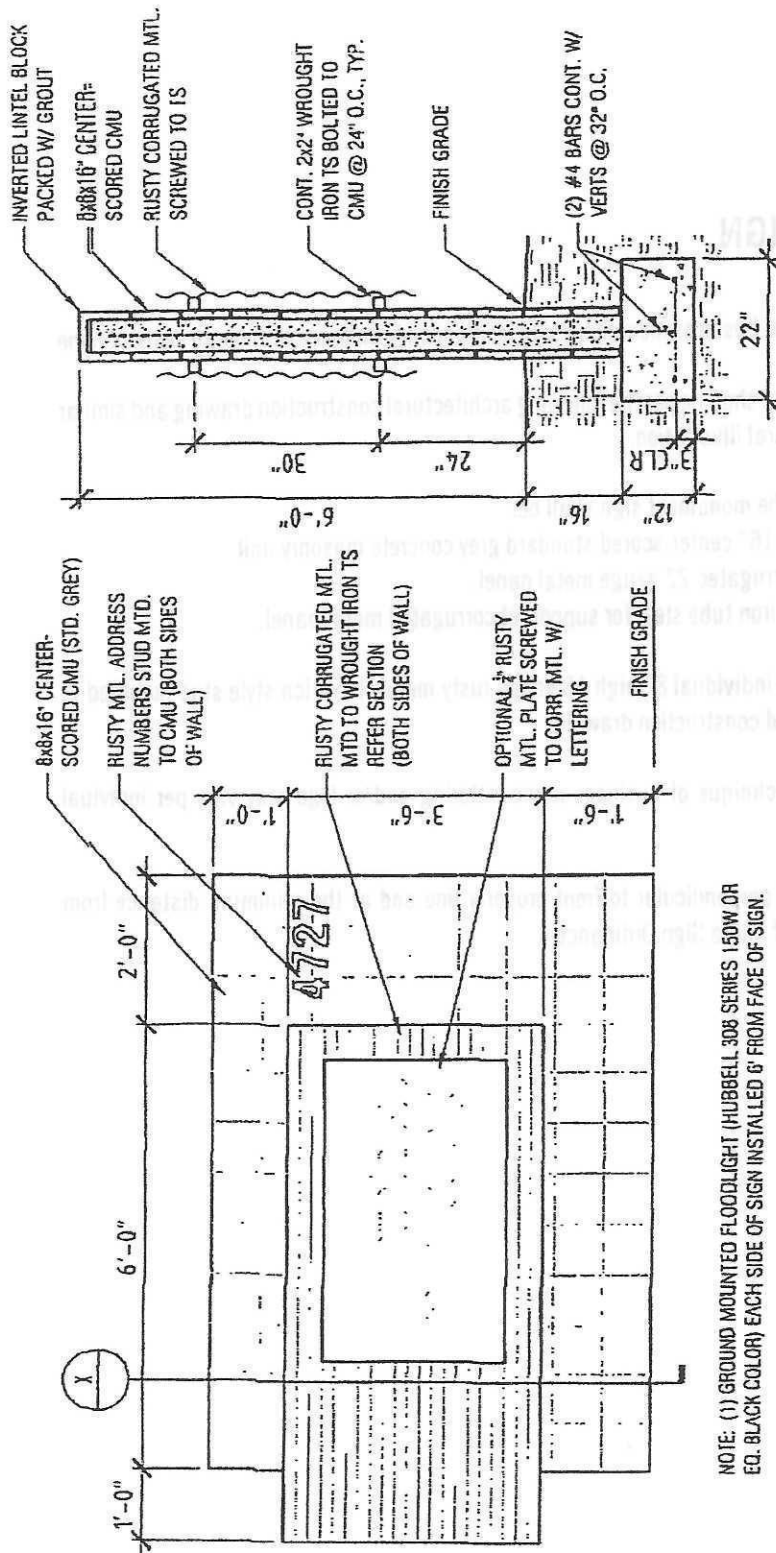
Sign shall be constructed perpendicular to front property line and at the minimum distance from property line as per City of Yuma Sign Ordinance.



EXHIBIT C 2 of 7

17209

MONUMENT SIGN CONSTRUCTION DRAWING



NOTE: (1) GROUND MOUNTED FLOODLIGHT (HUBBELL 308 SERIES 150W OR EQ. BLACK COLOR) EACH SIDE OF SIGN INSTALLED 6' FROM FACE OF SIGN.

MONUMENT SIGN

SCALE: 1/2" = 1'-0"

SECTION THRU SIGN

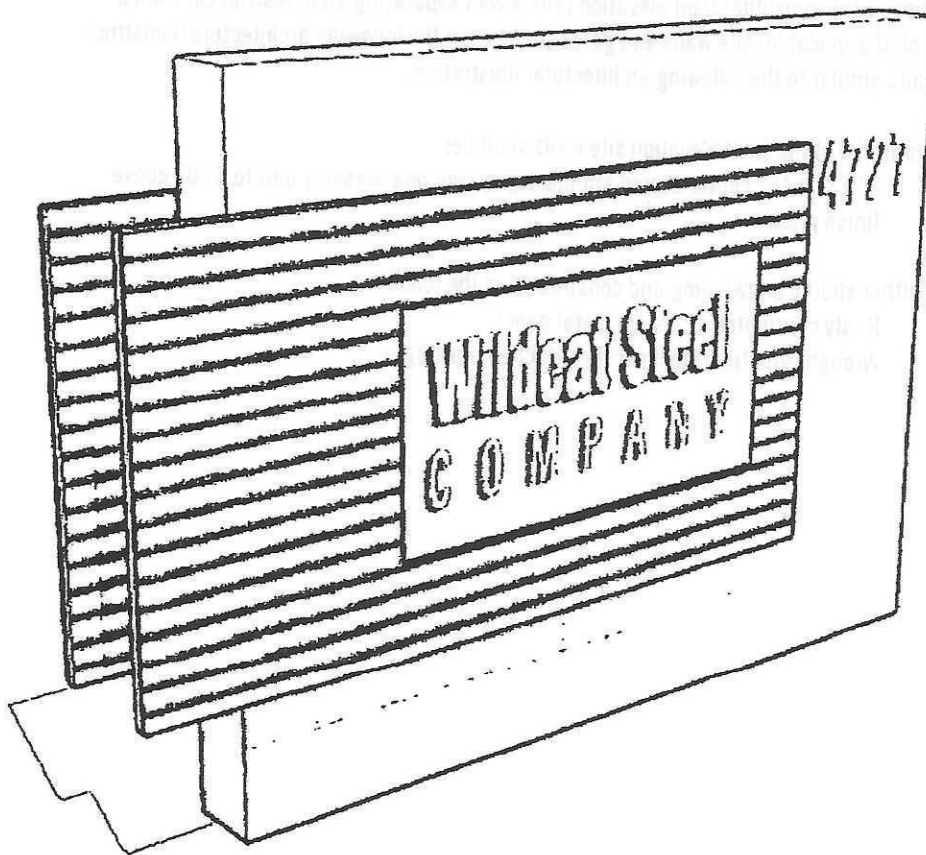
SCALE: 1/2" = 1'-0"

barry
patterson
architects

EXHIBIT C 3 of 7

17209

MONUMENT SIGN
illustration



barry
patterson
architects

EXHIBIT C 4 of 7

17209

WALLS AND GATES

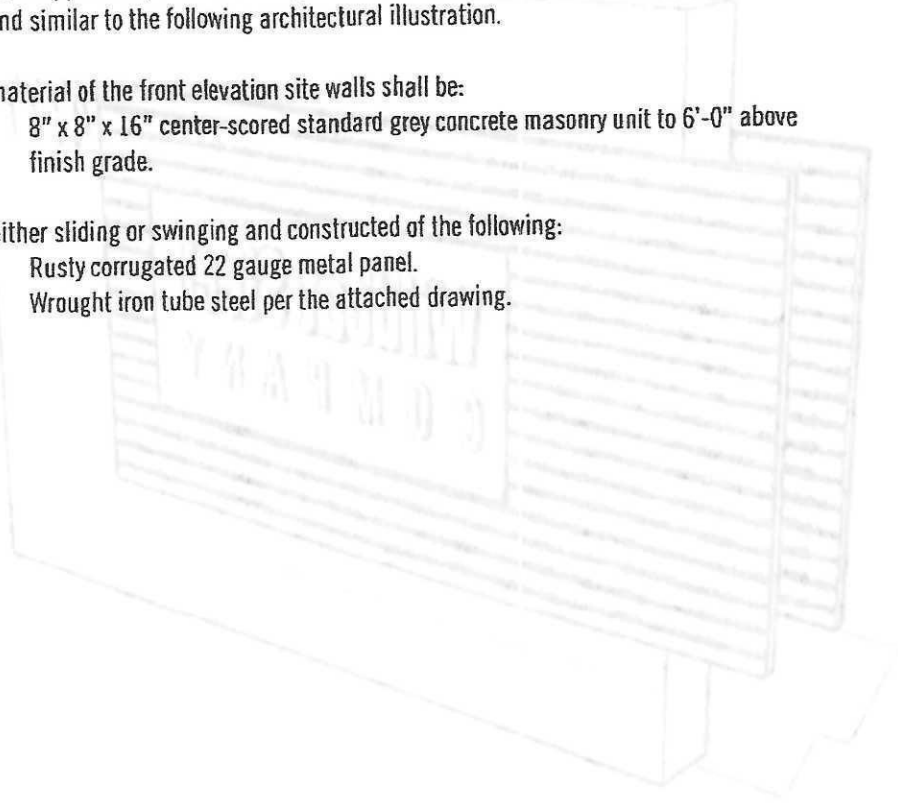
Walls and gates are a major component in achieving an overall identity at Olde 80 Business Park. The construction of the individual front elevation (and a wall separating an Industrial Lot from a Commercial Lot, if applicable) site walls and gates shall be per the following architectural construction drawing and similar to the following architectural illustration.

Construction material of the front elevation site walls shall be:

- 8" x 8" x 16" center-scored standard grey concrete masonry unit to 6'-0" above finish grade.

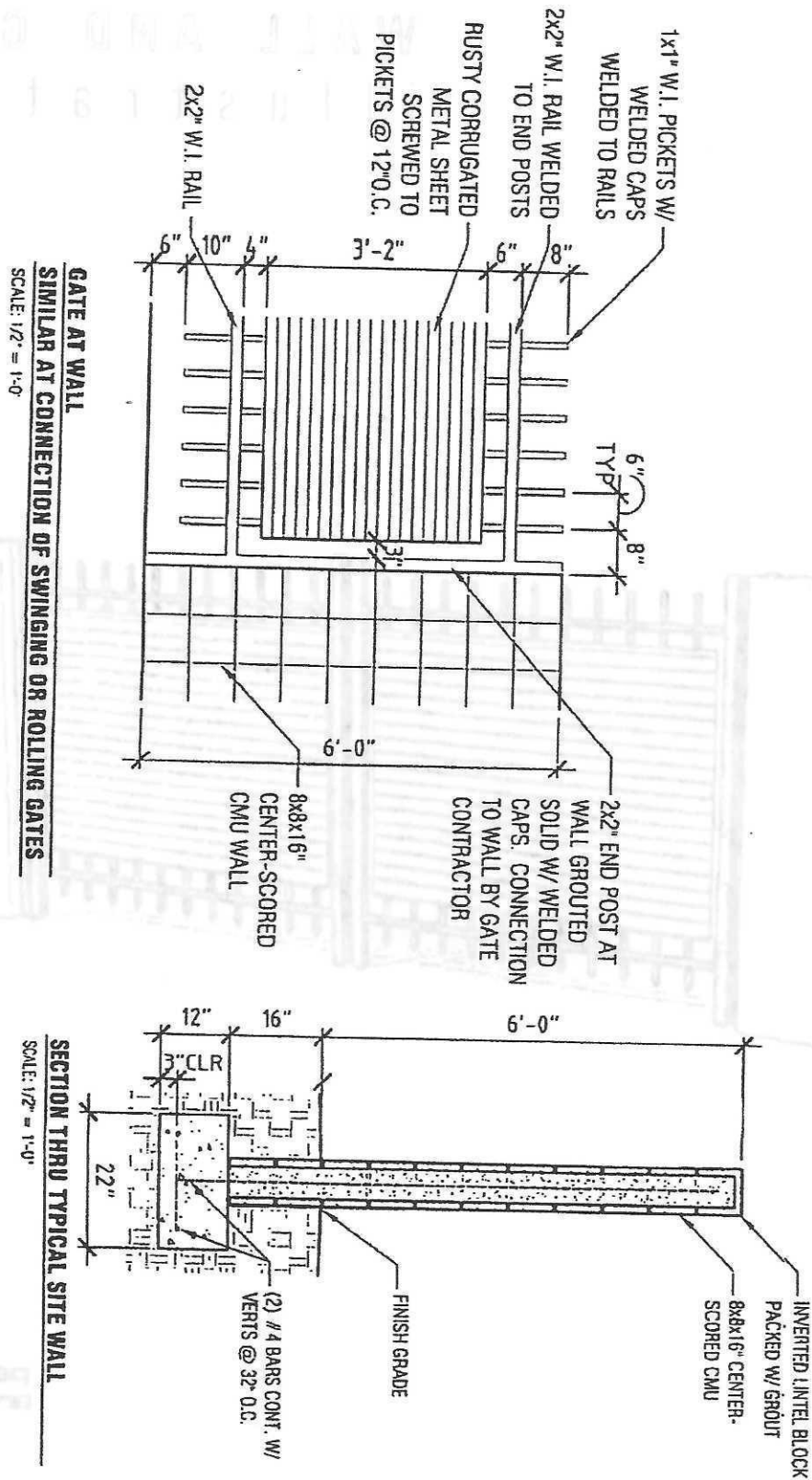
Gates will be either sliding or swinging and constructed of the following:

- Rusty corrugated 22 gauge metal panel.
- Wrought iron tube steel per the attached drawing.



Architectural
Illustration

WALL AND GATE CONSTRUCTION DRAWING

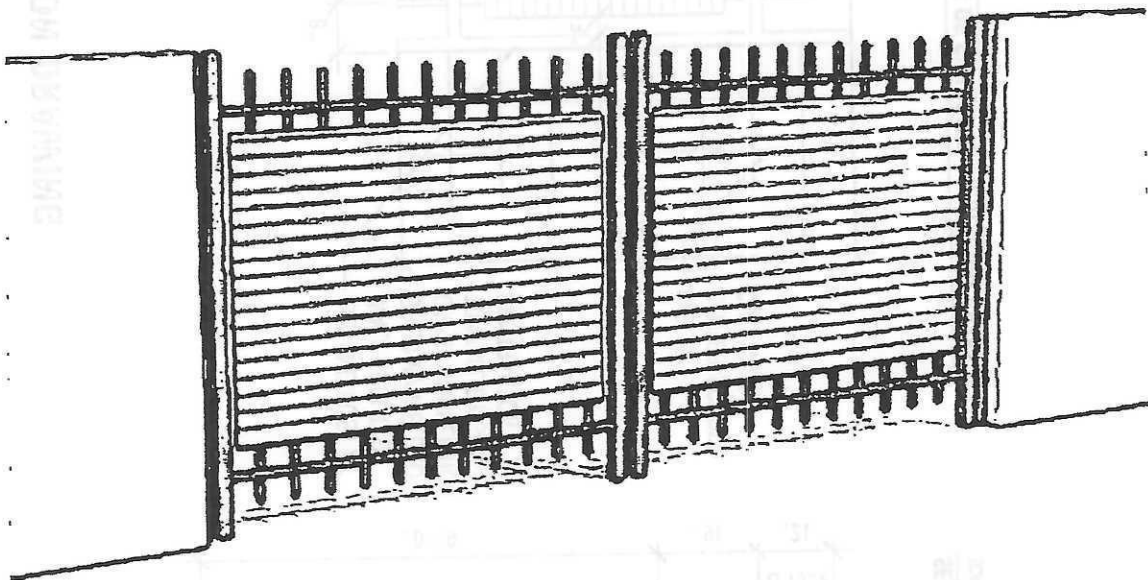


betty
patterson
architects

EXHIBIT C 6 of 7

1.7209

WALL AND GATE illustration



barry
patterson
architects

EXHIBIT C 7 of 7

17209

E X H I B I T D

LANDSCAPING AND GROUNDCOVERS

The landscape materials and groundcovers listed have been selected for their appropriateness to the project theme, climatic conditions, soil composition, and long-term maintainability. Use of these materials will emphasize development continuity. Refer to current edition of the City of Yuma Landscape ordinance for required number, location and acceptable landscape materials.

TREES

Sissoo
Chilean Mesquite
Bottle Tree
Palo Verde

SHRUBS

Red Yucca
Agave Weberi
Smooth Agave
Deer Grass
Purple Prickly Pear
Golden Barrel
Slipper Plant
Texas Sage

GROUNDCOVER

VEGETATIVE

Verbena
Desert Carpet
Cassia
Trailing Lantana
Myoporum
Dwarf Jade (Elephant Food)
Blue Sage

NON-VEGETATIVE

1/4" minus Apache Brown (Gold) Decomposed Granite
River rock runs of Apache Brown (Gold) Rip Rap 3"-6" size

EXHIBIT D 1 of 1

17209

