FOR CLERK USE ONLY
City Council
Item No. 14

CITY COUNCIL AGENDA

FACT SHEET

Utility Services
Department

May 18, 2010
Requested Date

1. Request:

Council Approval	☒	Information Only/ Presentation	☐
Other (specify)	☐	Hearing	☐

2. Requested Action:

Memorandum of Understanding by and between the City of Calexico, the Community Redevelopment Agency of the City of Calexico and Corsair, LLC with respect to the proposed realignment of West 2nd Street in the vicinity of the Calexico International Airport and the proposed development of a commercial shopping center between the realigned West 2nd Street and the International Border

3. Fiscal Impact:

Revenue	Increase	☐	Source:
	Decrease	☐	Amount:
Cost:	Increase	☐	Source:
	Decrease	☐	Amount:

4. Reviewed By:

Finance Dept. on _____ By: _____
Comments:

City Attorney on _____ By: _____
Comments:

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., Tuesday, prior to the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE:

Action	☐	Filing	☐
Consent	☐	Presentation	☐
Hearing	☐	Other (specify)	☐

Reviewed by: City Clerk _____ City Manager _____

Date _____ Date _____

Form FIN038 (Revised 02/2008)

CITY COUNCIL
AGENDA REPORT

SUBJECT: Memorandum of Understanding by and between the City of Calexico, the Community Redevelopment Agency of the City of Calexico and Corsair, LLC with respect to the proposed realignment of West 2nd Street in the vicinity of the Calexico International Airport and the proposed development of a commercial shopping center between the realigned West 2nd Street and the International Border

AGENDA DATE: May 18, 2010

PREPARED BY: Victor M. Carrillo, City Manager/Executive Director
Marshall F. Linn, Urban Futures, Inc., Financial Advisor
Luis Estrada, Project Manager

APPROVED FOR AGENDA BY: Victor Carrillo, City Manager

RECOMMENDATION: It is recommended the City Council approve the following:

1. That the City Council of the City of Calexico approve a Memorandum of Understanding by and between the City of Calexico, the Community Redevelopment Agency of the City of Calexico and Corsair, LLC with respect to certain matters related to the proposed realignment of West 2nd Street in the vicinity of the Calexico International Airport and the proposed development of a commercial shopping center between the realigned West 2nd Street and the International Border.

2. That the Community Redevelopment Agency of the City of Calexico approve a Memorandum of Understanding by and between the City of Calexico, the Community Redevelopment Agency of the City of Calexico and Corsair, LLC with respect to certain matters related to the proposed realignment of West 2nd Street in the vicinity of the Calexico International Airport and the proposed development of a commercial shopping center between the realigned West 2nd Street and the International Border.

FISCAL IMPACT: See below

BACKGROUND INFORMATION: (Prior action/information)
The City plans to realign and reconstruct a portion of West 2nd Street in the City of Calexico in the general area that is bounded on the east by Hwy. 111 and on the west by the All American Canal (the "2nd Street Realignment Plan"), all as more specifically described within the City's plans for the 2nd Street Realignment Project. The City's plans for the 2nd Street Realignment Project also provide residual real property for the purpose of a future expansion of the Calexico International Airport. Implementation of the 2nd Street Realignment and the Airport Expansion Plans will require the City and

Corsair, LLC (the "Developer") to agree on the exchange of certain real property as generally described in the attached MOU. The City and the Developer are amenable to exchanging certain real property for the purpose of assisting the City Projects, subject to further negotiations as provide for in the MOU and ultimately jointly confirmed within a future exchange agreement (the "Exchange Agreement").

The City is the present owner of certain real property consisting of approximately, 13.44 acres generally located between the International Border and the proposed 2nd Street Realignment Project (APN: 058-824-032), that could be included within a future Exchange Agreement (the "City Exchange Property"). The Developer is the present owner of certain real property consisting of approximately, 20.68 acres generally located on the north side of the proposed 2nd Street Realignment Project (APN: portion of 058-824-033 and 058-180-020), that could be included within a future Exchange Agreement (the "Developer Exchange Property"). The difference in size between the City Exchange Property and the Developer Exchange Property is approximately 7.24 acres in the favor of the City. Among other things, the future Exchange Agreement will require City and Developer to concur on a monetary value for the approximately 7.24 acres of property that the Developer would contribute for the City Projects that is larger in area than the property the City would contribute to the Developer.

Subsequent to the fulfillment of the Exchange Agreement, City will use certain grant funds it has obtained from the U. S. Federal Aviation Administration (the "FAA") to develop the 2nd Street Realignment Project, which will primarily include street and appurtenant improvements within the northern portion of the West 2nd Street right-of-way.

The Agency is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.; hereinafter, the "CCRL") and is responsible for the administration of redevelopment activities within the City of Calexico. The Redevelopment Plan for the Merged Central Business District and Residential Redevelopment Project Area was adopted and approved by Ordinance No. 864 of the City of Calexico adopted on July 20, 1982 and subsequently amended by Ordinance Nos. 905 (on July 18, 1989), 920 (on June 30, 1992) and 930 (on December 29, 1993) (as so amended, the "Redevelopment Plan"). The redevelopment project area for the Redevelopment Plan as so amended constitutes the "Project Area".

Consistent with the Redevelopment Plan, the Developer proposes to develop an approximately 487,600 square foot retail shopping center (the "Shopping Center Project") within the Project Area in two approximately equally-sized phases on an approximately 53.5 acre site located between the realigned West 2nd Street and the International Boarder (the "Shopping Center Site"). The Shopping Center Site consists of:

i. An approximately 52.2-acre portion of Developer's property that is residual to the subsequent exchange of property with the City pursuant to the Exchange Agreement; and

ii. An approximately 1.3-acre parcel owned by the Agency located at 270 West Second Street, Calexico (APN 058-400-039), commonly called the Horatio Luna Gun Club site (the "Gun Club Site").

The Gun Club Site is surrounded on three sides by property owned by Developer and on one side by West 2nd Street. The Developer has proposed to purchase the Gun Club Site from the Agency for its fair market appraised value. The Developer has also requested up to $7,000,000-worth of assistance from the Agency for the purpose of funding the cost of developing certain community-benefitting public infrastructure improvements (the "Shopping Center Project Infrastructure") that would be a condition of development of the Shopping Center Project (the "Proposed Agency Assistance") that are not otherwise funded by the FAA grant. Developer has proposed entering into an Owner Participation and Disposition and Development Agreement (the "OP/DDA") with the Agency with respect to the purchase and sale of the Gun Club Site and formalizing the Proposed Agency Assistance.

The term of the MOU shall be from May 18, 2010 to September 7, 2010 (the "Term"). It is the goal of the Parties that the proposed Exchange Agreement and OP/DDA are to be considered for approval by the City Council and the Agency Board on or before September 7, 2010, unless prerequisite CEQA/NEPA compliance requires a later date of consideration. If it is required that the proposed Exchange Agreement and OP/DDA be considered on a date later than September 7, 2010 due delays in completing the prerequisite CEQA/NEPA compliance, then the Term shall automatically be extended to such later date, but in any event not later than December 31, 2010 (the "Outside Date"). Any extensions in the Term beyond the Outside Date will require a written amendment to the MOU approved by the Parties. Further, the action of approving the MOU is not a project, and is exempt from review under the California Environmental Quality Act ("CEQA") because such action does not cause either a direct change in the environment, or a reasonably foreseeable indirect change in the environment (Public Resources Code Section 21065).

The purpose of the attached MOU is to provide a method by which the Parties will pursue and complete negotiations in good faith with respect to the Exchange Agreement and OP/DDA consistent with the obligations and conditions defined in the MOU.

Fiscal Impact:

By its approval of the MOU, the City and the Agency are not committing themselves to or agreeing to undertake:

i. The disposition of land to the Developer; or
ii. Any other acts or activities requiring the subsequent independent exercise of discretion by the City, the City Council, the Agency, the Agency Board or any entity or department thereof.

The MOU does not constitute a disposition of property or exercise of control over property by the City/Agency. Approval of the MOU by the City/Agency is merely an agreement to enter into a period of negotiations according to the terms specified in the MOU, reserving final discretion and approval by the City/Agency as to any Exchange Agreement and OP/DDA and all proceedings and decisions in connection therewith.

However, pursuant to the MOU, the Agency will begin the process required to issue it 2010 Tax Allocation Bonds (the "TABs"). If ultimately approved, the proceeds of the TABs would assist in funding the Agency's obligation related to the OP/DDA. Therefore, other than the time of the City/Agency's staff and consultants needed to carry-out the City's and Agency's good faith negotiations related to the MOU, there is no fiscal impact related to the approval of the MOU.

Attachment: Memorandum of Understanding

Agenda Item No. ____

Page_____ Of _____

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this 18th day of May, 2010 ("Effective Date"), by and between the City of Calexico, a California municipal corporation (the "City"), the Community Redevelopment Agency of the City of Calexico, a public body, corporate and politic (the "Agency"), and Corsair LLC, a Nevada limited liability company, (the "Developer"). Further, City, Agency and Developer are sometimes individually referred to hereinafter as a "Party" and, together, as the "Parties."

WITNESSETH THAT:

WHEREAS, City plans to realign and reconstruct a portion of West 2nd Street in the City of Calexico in the general area that is bounded on the east by California State Route 111 and on the west by the All American Canal (the "2nd Street Realignment Project"), all as more specifically described within the City's plans for the 2nd Street Realignment Project; and

WHEREAS, City's plans for the 2nd Street Realignment Project also provide residual real property for the purpose of a future expansion of the Calexico International Airport (the "Airport Expansion Project"); and

WHEREAS, Implementation of the 2nd Street Realignment and the Airport Expansion Projects (collectively, the "City Projects") will require City and the Developer to agree on the exchange of certain real property as generally described in this MOU; and

WHEREAS, City and Developer are amenable to exchanging certain real property for the purpose of assisting the City Projects, subject to further negotiations as provide for in this MOU and ultimately jointly confirmed within a future exchange agreement (the "Exchange Agreement"); and

WHEREAS, City is the present owner of certain real property consisting of approximately, 13.44 acres generally located between the International Border and the proposed 2nd Street Realignment Project (APN: 058-824-032), that could be included within a future Exchange Agreement (the "City Exchange Property"); and

WHEREAS, Developer is the present owner of certain real property consisting of approximately, 20.68 acres generally located on the east and west sides of the proposed 2nd Street Realignment Project (APN: portion of 058-824-033 and 058-180-020), that could be included within a future Exchange Agreement (the "Developer Exchange Property"); and

WHEREAS, The City Exchange Property is approximately 7.24 acres smaller than the Developer Exchange Property; and

WHEREAS, Among other things, the future Exchange Agreement will require City and Developer to agree on a monetary value to be paid or credited to the Developer for the difference in value between the Developer Exchange Property and the City Exchange Property; and

WHEREAS, Subsequent to the close of the exchange of the Developer Exchange Property and the City Exchange Property as contemplated by the Exchange Agreement, the City

will use certain grant funds it has obtained from the U. S. Federal Aviation Administration (the "FAA") to develop the 2nd Street Realignment Project, that will primarily include street and appurtenant improvements within the northern portion of the West 2nd Street right-of-way; and

WHEREAS, The Agency is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*; hereinafter, the "CCRL") and is responsible for the administration of redevelopment activities within the City of Calexico; and

WHEREAS, The Redevelopment Plan for the Merged Central Business District and Residential Redevelopment Project Area was adopted and approved by Ordinance No. 864 of the City of Calexico adopted on July 20, 1982 and subsequently amended by Ordinance Nos. 905 (on July 18, 1989), 920 (on June 30, 1992) and 930 (on December 29, 1993) (as so amended, the "Redevelopment Plan"); and

WHEREAS, The redevelopment project area for the Redevelopment Plan as so amended constitutes the "Project Area"; and

WHEREAS, Consistent with the Redevelopment Plan, Developer proposes to develop an approximately 487,600 square foot retail shopping center (the "Shopping Center Project") within the Project Area in two approximately equally-sized phases on an approximately 53.5 acre site located between the realigned West 2nd Street and the International Boarder (the "Shopping Center Site"); and

WHEREAS, The Shopping Center Site consists of: i) an approximately 52.2-acre portion of Developer's property that is residual to the exchange of property with the City pursuant to the Exchange Agreement: and ii) an approximately 1.3-acre parcel owned by the Agency located at 270 West Second Street, Calexico (APN 058-400-039), commonly called the Horatio Luna Gun Club site (the "Gun Club Site"); and

WHEREAS, The Gun Club Site is surrounded on three sides by property owned by Developer and on one side by West 2nd Street; and

WHEREAS, Developer has proposed to purchase the Gun Club Site from the Agency for its fair market appraised value; and

WHEREAS, Developer has requested financial assistance in the amount of up to $7,000,000 from the Agency for the purpose of funding the cost of developing certain community-benefitting public infrastructure improvements (the "Shopping Center Project Infrastructure") that would be a condition of development of the Shopping Center Project (the "Proposed Agency Assistance") that are not otherwise funded by the FAA grant; and

WHEREAS, Developer has proposed entering into an Owner Participation and Disposition and Development Agreement (the "OP/DDA") with the Agency with respect to the purchase and sale of the Gun Club Site and formalizing the Proposed Agency Assistance; and

WHEREAS, the Parties are desirous of entering into this MOU for the purpose of pursuing and completing negotiations in good faith with respect to the Exchange Agreement and OP/DDA consistent with the obligations and conditions defined herein.

WHEREAS, the City, as the lead agency under CEQA, is prohibited under applicable law from making a binding commitment to approve or carry out a proposed project prior to the completion of the environmental and public review process (including but not limited to the approval of the City Council and the Agency) ("Required Approvals") which would include the written certification of the City for the Final EIR or other environmental document for the Exchange Agreement and the OP/DDA (Proposed Projects), and accordingly, may approve or not approve the Proposed Projects or may select any alternatives, including the "No Project" alternative of not going forward with the Proposed Projects, or adopt an mitigation measure or condition which the City determines is necessary and appropriate to reduce or avoid any potential environmental impact of the Proposed Projects or to comply with any applicable law or regulation; and

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the mutual covenants listed herein, the Parties agree as follows:

1. **City/Agency Obligations**. City/Agency, as applicable, shall use its best efforts to achieve the following:

   a. City/Agency shall cooperate with Developer to ensure that the environmental impacts of the City Projects and the Shopping Center Project are managed in full accordance with the California Environmental Quality Act (the "CEQA") and, as applicable, the National Environmental Policy Act (the "NEPA"). The schedule of environmental review and entitlements is attached hereto as Exhibit "A".

   b. The Agency will sell to the Developer, the Gun Club Site at a fair market price as defined in item Section 3, paragraph h, of this MOU. In addition, the Agency shall enter into an Agreement to Negotiate Exclusively (the "ANE") with the Developer, in accordance with the Schedule of Performance, Exhibit "B", attached hereto, which shall also include the action steps, timeframe and responsible parties with respect to negotiating, drafting and processing for approval consideration the OP/DDA.

   c. Upon the full execution of the OP/DDA, the City/Agency will cooperate with the Developer for the construction of the Shopping Center Project Infrastructure consistent with the provisions of the OP/DDA.

   d. The City/Agency will work as quickly and as expeditiously as possible to secure the FAA grant needed for the 2nd Street Realignment Project.

   e. The Proposed Agency Assistance provided for the Shopping Center Project Infrastructure shall be in such a form that is most beneficial to the Agency/City; however, such assistance shall be no more than $7,000,000. The Developer shall be responsible for <u>all</u> costs associated with the Shopping Center Project Infrastructure exceeding $7 million.

f. Upon the full execution of the OP/DDA, the Agency will immediately commence its program to secure financing for its obligations related the Shopping Center Project Infrastructure, which shall include, but not be limited to the issuance of its first series of tax allocation bonds and notes. In that regard, the Agency intends to authorize the issuance of its 2010 Tax Allocation Bonds immediately subsequent to the Agency's approval and the Developer's execution of the OP/DDA.

g. Upon the issuance of building permits to the Developer for the first phase of the Shopping Center Project, the Agency intends to immediately commence the issuance of its 2010 Tax Allocation Notes.

h. The Exchange Agreement will include a provision that provides the Developer a 36-month long "First Right of Refusal" to purchase at fair market appraised value the approximately ___-acre parcel located at ___ West 2nd Street (APN 058-400-0__), commonly referred to as the "Finnigan Property". The First Right of Refusal to purchase the Finnigan Property shall not be a part of the 2nd Street Realignment Project and not involve the FAA. If the First Right of Refusal to purchase the Finnigan Property is ultimately consummated, the Parties would enter into a separate purchase and sale agreement.

i. The City shall fully cooperate with the Developer in the fulfillment of the Exchange Agreement once entered into.

2. **<u>Conditions of Agency Funding</u>**. The provision of funding by Agency for the Shopping Center Project Infrastructure will be conditioned upon the following:

a. The total assistance by the Agency will not exceed $7 million (the "Maximum Agency Assistance").

b. Use of any Agency funds committed to the Project will be limited to direct project related costs. "Project Related Costs" shall mean all construction costs and soft costs related to construction such as architectural design and engineering work. Project Related Costs shall not include Developer's overhead.

c. The schedule and method of distribution of Agency funds will be set forth in the OP/DDA.

d. The Agency's agreement to provide assistance will be contingent upon the Developer demonstrating that it has secured the necessary non-City/Agency financing or funding capability for the Shopping Center Project, Developer submitting to the Agency its detailed construction budget to the Agency and the Developer ensuring that the Shopping Center Project Infrastructure is developed in full accordance with all applicable sections of the California Labor Code.

e. The amount contributed by the City/Agency, will be dependent upon the actual construction costs for the Shopping Center Project Infrastructure.

f. The Agency will pursue and negotiate the OP/DDA with Developer in good faith and complete it as soon as possible. The OP/DDA, including the procedure and processes required for its consideration by the Agency Board, shall conform to the applicable provisions of the CCRL.

3. **Developer's Obligations**. Developer shall use its best efforts to achieve the following:

a. Developer shall cooperate with Agency/City to ensure that the environmental impacts of the City Projects and the Shopping Center Project are managed in full accordance with CEQA and, as applicable, NEPA. The schedule of environmental review and entitlements is attached hereto as Exhibit "A".

b. Developer will pursue and negotiate the OP/DDA and Exchange Agreement with City/Agency in good faith and complete it pursuant to the schedule in Exhibit "B". Pursuant to the OP/DDA, Developer shall develop the Shopping Center Project, which shall consist of an approximately 487,600 square foot retail shopping center (in two approximately equally-sized phases).

c. It is understood that, due to the uncertainty of the market place and the economy, Phase 2 may be delayed. However, the OP/DDA shall provide that construction of the Shopping Center Project's Phase 2 shall begin no later than 60 months after the issuance of a Certificate of Completion for Phase 1.

d. The OP/DDA shall provide that if the construction of Phase 2 is delayed past the 60 month period for any reason other than *Force Majeure*, and provided the Agency and Developer do not agree, in writing otherwise prior to the expiration of such sixty (60) month period, the Developer will reimburse the Agency a portion of the Agency's ultimate assistance with respect to the Shopping Center Project Infrastructure (the "Reimbursement") in an amount not greater than $2,700,000. If the Agency assistance is less than $7 million, then such Reimbursement shall be proportionately adjusted. The Maximum Agency Assistance represents funding intended to benefit the entire Shopping Center Site (i.e., Phases 1 and 2). The Reimbursement payment to the Agency shall be made from the Developer's net operating income from the operation of the Shopping Center Project and shall be payable from 5% of the Developer's net operating revenues for Phase 1, on an annual basis, until the full Reimbursement is paid, plus interest. Interest shall be assigned at the rate of the cost of Agency funds, not to exceed 5%.

e. The Developer shall acquire the Gun Club Site at the price determined as set forth in Section 3 of this MOU as a prerequisite to the Agency's provision of the Proposed Agency Assistance and shall otherwise confirm that it owns the entire Shopping Center Site.

f. The Developer will construct all "on-site" improvements to include electricity, water, gas, sewer and storm drains, landscaping, lighting, striping, paving, etc.

The Agency shall have the right to review, without any right of approval, all Developer initiated construction bids for the on-site work.

g. The Developer shall fully cooperate with the City in the fulfillment of the Exchange Agreement.

h. The Developer will acquire from the Agency, the Gun Club Site at a fair market price in accordance with the procedure described in Section 3, paragraph I of this MOU. In addition, the Agency shall enter into an Agreement to Negotiate Exclusively (the "ANE") with the Developer, in accordance with the Schedule of Performance, Exhibit "A", attached hereto.

i. The Developer shall purchase the Gun Club Site from the City at its fair market value. In the event that there is disagreement over the value of the property, the Developer shall have the right to obtain its own independent appraisal. If the two appraisers are unable to agree upon a value, then the appraisers will mutually agree upon a third appraiser to perform an appraisal. If the three appraisers are still unable to agree upon a market value, then the average of the three appraisals shall be used to determine the fair market value of the Gun Club Site. In all cases, appraisers must hold a Member American Institute "MAI" designation.

j. The Developer shall make its best efforts to "open" Phase 1 of the Shopping Center Project within twelve (12) months of the initiation of construction of improvements.

k. Subject to paragraph d above, the Developer will initiate construction of Phase 2 of the Shopping Center Project upon its receipt of letters of intent from prospective tenants of no less than 50% of the square footage planned for Phase 2 or within 60 months of completion of Phase 1.

l. Developer shall cooperate and coordinate with the City/Agency with respect to the development of the Shopping Center Project Infrastructure and the 2nd Street Realignment Project.

m. In the event that the FAA funding is insufficient to develop the 2nd Street Realignment Project (i.e., predominately the northern half of West 2nd Street), then Developer and Agency shall cooperate to develop the Shopping Center Project Infrastructure (i.e., predominantly the southern half of West 2nd Street) on a stand-alone basis. In such an event, and further assuming that Developer's Phase 2 improvements are delayed beyond the 60-month time frame, as described in paragraph d of this Section 3, then the 60-month time frame shall automatically be extended on a month-for-month basis until the 2nd Street Realignment Project is completed.

n. The City/Agency shall cooperate with Developer to the fullest extent possible to ensure the most effective and efficient use of the FAA funding to develop the 2nd Street Realignment Project.

o. In the event that construction of Phase 2 Shopping Center Project improvements are not commenced within the 60 month period, as described in paragraph d of this Section 3, but are subsequently commenced by Developer (subject to the approval of the Agency) before the Reimbursement is fully paid, then such Reimbursement shall terminate as of the date of the commencement of construction of the Phase 2 Shopping Center Project improvements and that portion of the Reimbursement that has previously been paid by the Developer to the Agency shall be refunded to the Developer.

4. Special Provisions.

a. Term of MOU. The term of the MOU shall be from the Effective Date to September 7, 2010 (the "Term"). The Parties concur that it is their goal that the proposed Exchange Agreement and OP/DDA are to be considered for approval by the City Council of the City and the Agency Board of the Agency on or before September 7, 2010, unless prerequisite CEQA/NEPA compliance requires a later date of consideration. If it is required that the proposed Exchange Agreement and OP/DDA be considered on a date later than September 7, 2010 due delays in completing the prerequisite CEQA/NEPA compliance, then the Term shall automatically be extended to such later date, but in any event not later than December 31, 2010 (the "Outside Date"). Any extensions in the Term beyond the Outside Date will require a written amendment to the MOU approved by the Parties.

b. Real Estate Commissions. The City/Agency shall not be liable for any real estate commission or brokerage fees that may arise. The City/Agency represents that it has engaged no broker, agent or finder in connection with this transaction, and Developer shall hold the City/Agency harmless from any claim by any broker, agent or finder retained by Developer.

c. Press Releases. Developer shall discuss any press releases with a designated City/Agency representative before disclosure in order to assure accuracy and consistency of the information.

d. Non-liability of Officials and Employees. No City Council member, Agency Board member, official, consultant, attorney or employee shall be personally liable to Developer, or any successor, assign or any person claiming under or through them, in the event of any default or breach by the City/Agency or for any amount which may become due to Developer or to its successor, or on any obligations arising under this MOU. No Developer official, consultant, attorney or employee shall be personally liable to the City, or any successor, assign or any person claiming under or through them, in the event of any default or breach by Developer or for any amount which may become due to the City or to its successor, or on any obligations arising under this MOU.

e. Conflicts of Interest. No City Council member, Agency Board member, official, consultant, attorney or employee of the City shall have any personal interest, direct or indirect, in this MOU nor shall any such member, official or employee participate in

any decision relating to this MOU which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

f. Hold Harmless. Developer hereby agrees to, and shall defend, save and hold City and Agency and its elected and appointed boards, commissions, officers, agents, and employees harmless from, any and all claims, costs and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Developer's or Developer's contractors', subcontractors', agents or employees' operations under this MOU, whether such negligent operations be by Developer or by any of Developer's contractors, subcontractors, agents or employees. City shall retain the right to select the attorney of its choice to defend any action requiring a defense under this section.

g. Indemnification. Developer shall defend, indemnify and hold harmless City and Agency and its agents, officers and employees against and from any and all liabilities, demands, claims, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), which any or all of them may suffer, incur, be responsible for or pay out as a result of or in connection with any challenge to the legality, validity, adequacy, or performance of the obligations of any of the following: (i) this MOU; (ii) the environmental impact reports prepared in connection with the adoption of the City Projects and the Shopping Center Project; and (iii) the proceedings undertaken in connection with the adoption or approval of any of the above. City shall retain the right to select the attorney of its choice to defend any action requiring a defense under this section.

h. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

i. Warranty Against Payment of Consideration for MOU. Developer represents and warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this MOU, other than payments to consultants and legal counsel retained by Developer to assist it in the negotiation of this MOU, excepting however, any payments or expenditures which this MOU requires Developer to make.

j. No Third Party Beneficiaries. This MOU is for the sole and exclusive benefit of the Parties. No other persons or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the Parties' obligations under this MOU.

k. Integration. This MOU constitutes the entire understanding and agreement of the Parties, and supersede all negotiations or previous agreements between the Parties, with respect to all or any part of the subject matter hereof.

l. Titles and Captions. Titles and captions of this MOU are for convenience of reference only and do not define, describe or limit the scope or the intent of this MOU

or any of its terms. References to section numbers are to sections in this MOU unless expressly stated otherwise.

m. Interpretation. This MOU is the product of mutual arms-length negotiation and drafting and each Party represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this MOU. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this MOU. In any action or proceeding to interpret or enforce this MOU, the finder of fact may refer to such extrinsic evidence not in direct conflict with any specific provision of this MOU to determine and give effect to the intention of the Parties hereto.

n. Termination. If Developer fails to complete any of the obligations under Section 3 above or if the City/Agency is unable to secure the necessary financing to meet its fiduciary responsibilities described in Sections 1 and 2 above and the conditions of Section 2 above has been fulfilled and Agency/City finds that it has a reasonable basis not to fulfill its obligations under this MOU, then Developer's exclusive remedy for an uncured City/Agency default is to terminate this MOU with 10 days of notice. If an Exchange Agreement and an OP/DDA have not been entered into by the Outside Date of this MOU, either party may terminate this MOU with 10 days notice to the other party. This MOU can also be terminated at any time upon mutual agreement of the parties.

o. Severability. Each provision, term, condition, covenant and/or restriction, in whole and in part, of this MOU shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, of this MOU is declared invalid, unconstitutional or void for any reason by a court of competent jurisdiction, such provision or part thereof shall be severed from this MOU and shall not affect any other provision, term, condition, covenant and/or restriction of this MOU, and the remainder of this MOU shall continue in full force and effect unless to do so would deprive one of the Parties of a material benefit of its bargain.

p. Nondiscrimination. With respect to Developer' obligations and performance hereunder, Developer shall not discriminate in any matter on the basis of race, creed, color, religion, gender, material status, national origin or ancestry.

q. Notice. All notices given or required to be given hereunder shall be in writing and addressed to the Parties set out below, or to such other address as may be noticed under and pursuant to this paragraph. Any such notice shall be considered served when actually received by the Party intended, whether personally served or sent postage prepaid by registered or certified mail, return receipt requested.

City/Agency: City of Calexico/Calexico Redevelopment Agency
608 Heber Avenue
Calexico, California 92231
Attn: City Manger/Executive Director

Developer:	Corsair, LLC 9034 West Sunset Boulevard West Hollywood, California 90069 Attn: President-CEO
With copies to:	Office of the Calexico City Attorney c/o McDougal, Love, Eckis, Boehmer & Foley 8100 La Mesa Boulevard, Suite 200 La Mesa, California 91942 Attn: Jennifer M. Lyon, Esq.

r. Warranty of Signators. The signatories to this MOU represent and warrant that they have the authority to execute this MOU on behalf of the principals they represent.

s. Limitations of this MOU. By its execution of this MOU, the City/Agency is not committing itself (themselves) to or agreeing to undertake: (a) the disposition of land to Developer; or (b) any other acts or activities requiring the subsequent independent exercise of discretion by the City, the City Council, the Agency, the Agency Board or any entity or department thereof. This MOU does not constitute a disposition of property or exercise of control over property by the City/Agency. Execution of this MOU by the City/Agency is merely an agreement to enter into a period of negotiations according to the terms hereof, reserving final discretion and approval by the City/Agency as to any Exchange Agreement and OP/DDA and all proceedings and decisions in connection therewith.

t. Exemption from CEQA. The City Council of the City and the Agency Board of the Agency, in connection with its approval of this MOU, hereby determines that the action of such approval is not a project, and exempt from review, under the California Environmental Quality Act ("CEQA") because such action does not cause either a direct change in the environment, or a reasonably foreseeable indirect change in the environment (Public Resources Code Section 21065).

u. Entire Agreement. This MOU constitutes the complete and exclusive statement of Agreement between the City, Agency and Developer with respect to the subject matter of this MOU. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this MOU.

v. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

w. Amendments to MOU. Any amendment to this MOU shall be in writing and signed by the appropriate authorities of the Parties.

x. Public Meeting. Any Exchange Agreement and OP/DDA resulting from the negotiations hereunder shall become effective only after and if such Exchange Agreement and OP/DDA have been considered and approved by the City Council of the City and Agency Board of the Agency after a public hearing called for such purpose.

y. No Limitation on the City's Discretion. The City reserves all discretion to take or not take any discretionary action upon completion of the environmental and public review process and prior approval of the Exchange Agreement and OP/DDA. In particular, the City, in its sole and absolute discretion, may certify or not certify the Final EIR for the proposed projects, may approve or not approve the proposed projects, and may adopt any mitigation measures or may approve any alternative, including the "No Project" alternative, which the City deems necessary and appropriate to reduce any environmental impact or comply with any applicable law or regulation. Nothing in this MOU limits the City's discretion or commits the City to take any course of action that would result in the approval of or commitment to the Exchange Agreement or OP/DDA or any aspect thereof. Accordingly, the City's approval of this MOU would not in any way commit the City to carry out or approve the Exchange Agreement or OP/DDA or any aspect thereof prior to approval of such agreements.

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized officers, have caused this MOU to be executed as of the Effective Date.

CITY OF CALEXICO
a California Municipal Corporation

By: _____
David B. Ouzan, Mayor

COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO, a public body, corporate and politic

By: _____
David B. Ouzan, Chairman

ATTEST:

By: _____
Lourdes Cordova,
City Clerk/Agency Secretary

APPROVAL AS TO FORM:

By: _____
Jennifer M. Lyon
City Attorney/Agency Counsel

CORSAIR LLC,
a Nevada limited liability company, ("

By: _____

Its: _____

By: _____

Its: _____

*Notes: If the Developer is a Corporation, then this document must be executed by the Corporation's Chief Executive Officer, President or Vice-President, on the one hand, and the Corporations' Chief Financial Officer, Treasurer, Assistant Treasurer or Secretary on the other hand. Developer's signature must be notarized.

EXHIBIT "A"

Calexico Gran Plaza (EIR and Entitlements) Schedule

Proposed EIR and Entitlements Schedule as of Monday, May 10, 2010

No.	Task	Date to Begin Task	Time Frame	Date to End Task	Responsible Party/Comments
1	Complete DEIR	5/3/2010	5 weeks	6/7/2010	Environmental Consultant to complete DEIR and City staff (City Attorney) to review and approve for release
2	Release DEIR	6/7/2010	45 days	7/23/2010	DEIR released for 45 day review period
3	Response to Comments	7/23/2010	2 weeks	8/9/2010	City/Consultants prepare response to comments
4	Attorney Review	8/9/2010	1 week	8/16/2010	City Attorney to review final EIR
5	PC Hearing	8/23/2010	1 day	8/23/2010	Public Hearing held by Planning Commission
6	CC Hearing	9/7/2010	1 day	9/7/2010	City Council/CRA Public Hearing to Certify Final EIR, approve entitlements and agreements
7	NOD	9/8/2010	30 days	10/8/2010	NOD Filed with County Clerk

Total Time Frame: Approximately 4.5 months from May 3, 2010

Source: MG Resolutions, Inc., with revisions by Urban Futures, Inc. based on City staff comments.

EXHIBIT "B"

SCHEDULE OF PERFORMANCE
MEMORANDUM OF UNDERSTANDING

Owner Participation/Dispositions and Development Agreement(OP/DDA)

Task No.	Start	End	Elapsed	Description
1.	5/18/10	5/18/10	1 day	CC & RDA consider MOU
2.	5/21/10	5/21/10	1 day	Agency and Developer exchange appraisals relative to Gun Club Site
3.	5/22/10	6/4/10	14 days	Agency and Developer arrive at value of Gun Club Site per MOU procedures
4.	5/18/10	6/7/10	20 days	Developer and Agency finalize ANE
5.	6/15/10	6/15/10	1 day	Agency Board considers ANE
6.	6/16/10	6/25/10	10 days	First draft of OP/DDA is prepared and promulgated
7.	6/26/10	7/8/10	12 days	First set of comments on draft OP/DDA are submitted
8.	7/9/10	7/15/10	7 days	Second draft of OP/DDA is drafted and promulgated
9.	7/15/10	7/15/10	1 day	All-hands meeting to review draft OP/DDA
10.	6/16/10	7/22/10	7 days	Second set of comments on draft OP/DDA are submitted
11.	7/23/10	7/29/10	7 days	Final draft of OP/DDA is drafted and promulgated
12.	7/30/10	8/5/10	7 days	Final set of comments on draft OP/DDA are submitted
13.	7/30/10	8/5/10	7 days	33433 Report prepared
14.	8/18/10	8/20/10	3 days	Public Hearing notice prepared and submitted to newspaper
15.	8/24/10	8/31/10	7 days	Public Hearing notice publication dates **(no later)**
16.	8/23/10	8/23/10	1 day	OP/DDA and 33433 Report are made available for public review
17.	8/23/10	8/23/10	1 day	Reports and documents are filed with City Clerk/Agency Secretary
18.	9/7/10	9/7/10	1 day	OP/DDA and related documents considered by Agency Board and City Council

Tax Allocation Bonds (TAB)

Task No.	Start	End	Elapsed	Description
1.	5/18/10	7/12/10	56 days	First Draft of TAB documents are prepared by finance team
2.	7/12/10	7/12/10	1 day	First draft of TAB documents are distributed for review
3.	7/13/10	7/19/10	7 days	Comments received on first draft of TAB documents
4.	7/20/10	7/26/10	7 days	Second Draft of TAB documents are prepared by finance team
5.	7/27/10	7/27/10	1 day	Second draft of TAB documents are distributed for review
6.	7/28/10	8/2/10	6 days	Comments received on second draft of TAB documents
7.	8/3/10	8/6/10	4 days	Final Draft of TAB documents, Including first draft of POS are prepared by finance team
8.	8/7/10	8/12/10	6 days	Comments received on first draft of POS
9.	8/13/10	8/18/10	6 days	Final Draft of POS prepared by finance team
10.	8/19/10	8/23/10	5 days	Final comments submitted on TAB documents
11.	8/23/10	8/23/10	1 day	Reports and documents are filed with City Clerk/Agency Secretary
12.	9/7/10	9/7/10	1 day	City Council and Agency Board consider TAB documents
13.	9/9/10	9/9/10	1 day	Distribute POS
14.	9/14/10	9/15/10	2 days	Pre-pricing and pricing of TABs
15.	9/28/10	9/29/10	2 days	Pre-closing and Closing

Notes:

1. With respect to all matters related to the OP/DDA, the responsible parties are the City/Agency (including their attorneys and consultants) and the Developer (including its attorneys and consultants).

2. With respect to all matters related to the TABs, the responsible parties are the City/Agency and its finance team.