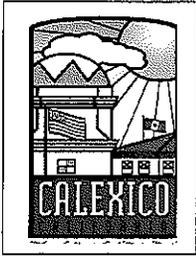


**AGENDA
ITEM**

12



AGENDA STAFF REPORT

DATE: April 21, 2015

TO: Mayor and City Council

APPROVED BY: Richard N. Warne, Interim City Manager *rw*

PREPARED BY: Richard N. Warne, Interim City Manager *rw*

SUBJECT: (1) Consideration of Potential Calexico Code of Ethics Violations by Council Member Luis Castro and (2) Consideration of a Resolution of the City Council of the City of Calexico Reprimanding and Censuring Council Member Castro for Violating the City of Calexico Code of Ethics and Stripping Him of all City Council Assignments.

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Recommendation:

(1) Determine if Council Member Castro has violated the City of Calexico Code of Ethics. If the City Council determines that there was a violation, (2) consider a Resolution of the City Council of the City of Calexico reprimanding and censuring Council Member Luis Castro for violating the City of Calexico Code of Ethics and stripping him of all City Council assignments.

Background:

The City Council adopted a Code of Ethics in Resolution No. 2015-08 on February 3, 2015 by a vote of 5-0. All City Council Members, including Council Member Luis Castro, publicly signed the Code of Ethics at the February 17, 2015, City Council meeting.

The City of Calexico Code of Ethics states: "The citizens and businesses of Calexico are entitled to have a fair, ethical and accountable local government which has earned the public's confidence for integrity. In keeping with the City of Calexico's commitment to excellence, the effective functioning of democratic government therefore requires that:

1. Public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the



operations of government;

2. Public officials be independent, impartial and fair in their judgment and actions;

3. Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

Discussion & Analysis:

During the March 3, 2015, City Council meeting, Council Member Luis Castro called the Mayor a “clown” on two occasions and during a recess called by the Mayor in response to Council Member Castro’s personal attack on the Mayor by calling him a “clown,” made an obscene gesture with his middle finger to a citizen from the City Council dais.

During the April 7, 2015, City Council meeting, Mayor Moreno withdrew his motion to approve the Resolution of the City Council of the City of Calexico Reprimanding and Censuring Council Member Castro for Violating the City of Calexico Code of Ethics and Stripping Him of all City Council Assignments.

Since the last City Council meeting on April 7, 2015, Council Member Castro has had an encounter with a business owner in which he called the business owner a “faggot” and suggested that the business owner perform a sex act on Council Member Castro that cannot be printed in this staff report. This encounter was caught on video and is available to members of the City Council.

It is alleged that Council Member Castro violated the City of Calexico Code of Ethics that requires all members of the City Council to ensure that “public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.”

In addition, it is alleged that Council Member Castro violated Principle 3, Principle 4 and Principle 5 of the City of Calexico Code of Ethics. They state:

Principle 3. Conduct of Members. The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, boards, commissions, committees, the staff or public.

Principle 4. Respect for the Process. Members shall perform their duties in accordance with the processes and rules of order established by the City Council, boards, commissions and committees governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council and by City staff.

Principle 5. Conduct of Public Meetings. Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business at hand, or otherwise interfering with the orderly conduct of meetings.

The Calexico Code of Ethics expresses standards of ethical conduct expected for members of the Calexico City Council, boards and commissions. Members themselves have the primary responsibility to assure that the ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

A Code of Ethics for members of the City Council and of the City's boards, commissions and committees helps assure public confidence in the integrity of Calexico City government and its effective and fair operation.

The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, boards, commissions, committees, the staff or public.

As an expression of the standards of conduct for members expected by the City, the Calexico Code of Ethics is intended to be self-enforcing. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions. Members entering office shall sign a statement affirming they read and understand the City of Calexico Code of Ethics.

The Mayor and the chair persons of City Council-appointed boards, commissions and committees have the additional responsibility to intervene when actions of members appear to be in violation of the Code of Ethics are brought to their attention.

The City Council may not remove a City Council Member from office. However, the City Council may impose sanctions on members whose conduct does not comply with the City's ethical standards, such as reprimand, formal censure, or loss of City Council assignments.

Fiscal Impact:

None.

Coordinated With:

City Manager's Office.

Attachments:

1. Resolution of the City Council of the City of Calexico reprimanding and censuring Council Member Luis Castro and stripping him of all City Council assignments.
2. Resolution 2015-08 Adopting City of Calexico Code of Ethics Signed by Council Member Castro.

RESOLUTION NO. 2015-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA REPRIMANDING AND CENSURING COUNCIL MEMBER LUIS CASTRO FOR VIOLATING THE CITY OF CALEXICO CODE OF ETHICS AND STRIPPING HIM OF ALL CITY COUNCIL OF ALL ASSIGNMENTS

WHEREAS, the citizens and businesses of the City of Calexico are entitled to have fair, ethical and accountable local government which has earned the public's full confidence; and

WHEREAS, in keeping with the City of Calexico's commitment to excellence, all public officials, both elected and appointed must comply with the letter and spirit of the laws and policies affecting the operation of government; and

WHEREAS, all public officials, both elected and appointed, are required to be impartial and fair in their judgment and actions and ensure that public office is used for the public good; and

WHEREAS, the City Council of the City of Calexico adopted on February 3, 2015, a Code of Ethics in Resolution No. 2015-08 for its members and the members of all City Council-appointed boards, committees and commissions to achieve these ends; and

WHEREAS, Council Member Luis Castro voted for the City of Calexico Code of Ethics on February 3, 2015, and publically signed the City of Calexico Code of Ethics at the February 17, 2015, City Council meeting; and

WHEREAS, the City of Calexico Code of Ethics expresses standards of ethical conduct expected for members of the Calexico City Council and members themselves have the primary responsibility to assure that the ethical standards are understood and met; and

WHEREAS, during the March 3, 2015, City Council meeting, Council Member Luis Castro called the Mayor a "clown" on two occasions and during a recess called by the Mayor in response to Council Member Castro's personal attack on the Mayor by calling him a "clown," made an obscene gesture from the City Council dais with his middle finger.

WHEREAS, since the last City Council meeting on April 7, 2015, Council Member Castro has had an encounter with a business owner in which he called the business owner a "faggot" and suggested that the business owner perform a sex act on Council Member Castro.

WHEREAS, the City of Calexico Code of Ethics that requires all members of the City Council to ensure that "public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility."

NOW, THEREFORE, be it resolved, determined, and ordered by the City Council of the City of Calexico:

Section 1. Findings. The City Council of the City of Calexico hereby finds and determines that the City of Calexico Code of Ethics requires all members of the City Council ensure that “public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility,”

The City Council further finds and determines Council Member Castrol has violated the following principles of the City of Calexico Code of Ethics:

Principle 3. Conduct of Members. The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, boards, commissions, committees, the staff or public.

Principle 4. Respect for the Process. Members shall perform their duties in accordance with the processes and rules of order established by The City Council, boards, commissions and committees governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council and by City staff.

Principle 5. Conduct of Public Meetings. Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business at hand, or otherwise interfering with the orderly conduct of meetings.

Section 2. Sanctions. The City Council of the City of Calexico hereby reprimands and censures Council Member Luis Castro for violations of the City of Calexico Code of Ethics and strips him of all City Council assignments.

Section 3. This Resolution shall become effective immediately upon passage.

PASSED, ADOPTED and APPROVED this 21st day of April, 2015, by the City Council of the City of Calexico.

John M. Moreno, Mayor

ATTEST:

Gabriela Garcia, Deputy City Clerk

Approved as to Form:

Jennifer Lyon, City Attorney

State of California)
County of Imperial) ss.
City of Calexico)

I, Gabriela T. Garcia, Deputy City Clerk of the City of Calexico do hereby certify the above Resolution No. 2015-_____ was approved at a regular City Council meeting held on the 21st day of April, 2015, by the following vote to-wit:

AYES: None
NOES: None
ABSTAIN: None
ABSENT: None

Gabriela T. Garcia, Deputy City Clerk

RESOLUTION NO. 2015-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA ADOPTING A CODE OF ETHICS FOR THE MEMBERS OF THE CITY COUNCIL AND FOR THE MEMBERS OF ALL BOARDS, COMMITTEES AND COMMISSIONS APPOINTED BY THE CITY COUNCIL

WHEREAS, the citizens and businesses of the City of Calexico are entitled to have fair, ethical and accountable local government which has earned the public's full confidence; and

WHEREAS, in keeping with the City of Calexico's commitment to excellence, all public officials, both elected and appointed must comply with the letter and spirit of the laws and policies affecting the operation of government; and

WHEREAS, all public officials, both elected and appointed, are required to be impartial and fair in their judgment and actions and ensure that public office is used for the public good; and

WHEREAS, the City Council of the City of Calexico has determined that the adoption of a Code of Ethics for its members and the members of all City Council-appointed boards, committees and commissions will assist in achieving these ends.

NOW, THEREFORE, be it resolved, determined, and ordered by the City Council of the City of Calexico:

Section 1. The City Council hereby approves and adopts the City of Calexico Code of Ethics as attached to Exhibit "A" to this Resolution.

Section 2. This Resolution shall become effective immediately upon passage.

PASSED, ADOPTED and APPROVED this 3rd day of February, 2015, by the City Council of the City of Calexico.



John M. Moreno, Mayor

ATTEST:

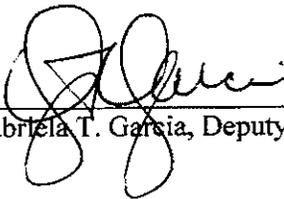


Gabriela Garcia, Deputy City Clerk

STATE OF CALIFORNIA)
CITY OF CALEXICO) ss.
COUNTY OF IMPERIAL)

I, Gabriela T. Garcia, Deputy City Clerk of the City of Calexico, do hereby certify under the penalty of perjury, that the foregoing Resolution No. 2015-08, was duly adopted by the City Council at a meeting of said City Council held on the 3rd day of February 2015, and that it was so adopted by the following vote:

AYES: Moreno, Kim, Castro, Real, Hurtado
NOES: None
ABSTAIN: None
ABSENT: None



Gabriela T. Garcia, Deputy City Clerk

CITY OF CALEXICO

CODE OF ETHICS

Preamble.

The citizens and businesses of Calexico are entitled to have a fair, ethical and accountable local government which has earned the public's confidence for integrity. In keeping with the City of Calexico's commitment to excellence, the effective functioning of democratic government therefore requires that:

1. Public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government;
2. Public officials be independent, impartial and fair in their judgment and actions;
3. Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Calexico City Council has adopted a Code of Ethics for members of the City Council and of the City's boards, commissions and committees to assure public confidence in the integrity of Calexico City government and its effective and fair operation.

Principles.

1. Act in the Public Interest. Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of Calexico and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the Calexico City Council, boards, commissions and committees.

2. Comply with the Law. Members shall comply with the laws of the nation, the State of California and the City of Calexico in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Members. The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety.

Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, boards, commissions, committees, the staff or public.

4. Respect for the Process. Members shall perform their duties in accordance with the processes and rules of order established by the City Council, boards, commissions and committees governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council and by City staff.

5. Conduct of Public Meetings. Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business at hand, or otherwise interfering with the orderly conduct of meetings.

6. Decisions Based on Merit. Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

7. Communication. Members shall publicly share substantive information that is relevant to a matter under consideration by the City Council or boards and commissions, which they may have received from sources outside of the public decision-making process.

8. Conflict of Interest. In order to assure their independent and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest or where they have an organizational responsibility or personal relationship, which may give the appearance of a conflict of interest. In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts, and they shall abstain from participating in deliberations and decision-making where conflicts may exist.

9. Gifts and Favors. Members shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, that are not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence.

10. Confidential Information. Members shall respect the confidentiality of information concerning the property, personnel or affairs of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

11. Use of Public Resources. Members shall not use public resources not available to the public in general such as City staff time, equipment, supplies or

facilities for private gain or personal purposes.

12. Representation of Private Interests. In keeping with their role as stewards of the public interest members of the City Council shall not appear on behalf of the private interests of third parties before the Council or any board, commission or proceedings of the City, nor shall members of boards and commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.

13. Advocacy. Members shall represent the official policies or positions of the City Council, board or commission to the best of their ability when designated as delegates for this purpose. When presenting their individual actions and positions, members shall explicitly state they do not represent their body or the City of Calexico, nor shall they allow the inference that they do.

14. Policy Role of Members. Members shall respect and adhere to the council-manager form of City government. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, boards and commissions, and City staff.

15. Independence of Boards and Commissions. Because of the value of the independent advance of boards and commissions to the public decision-making process, members of the City Council shall refrain from using their position to unduly influence the deliberations or outcomes of board and commission proceeding.

16. Positive Work Place Environment. Members shall support the maintenance of a positive and constructive work place environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

Implementation.

As an expression of the standards of conduct for members expected by the City, the Calexico Code of Ethics is intended to be self-enforcing. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions. For this reason, ethical standards shall be included in regular orientations for candidates for City Council, applicants to boards and commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming they read and understand the City of Calexico Code of Ethics. In addition, the Code of Ethics shall be annually reviewed by the City Council, boards and commissions and the City Council shall consider recommendations from boards and commissions and update it as necessary.

Compliance and Enforcement.

The Calexico Code of Ethics expresses standards of ethical conduct expected for members of the Calexico City Council, boards and commissions. Members themselves have the primary responsibility to assure that the ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

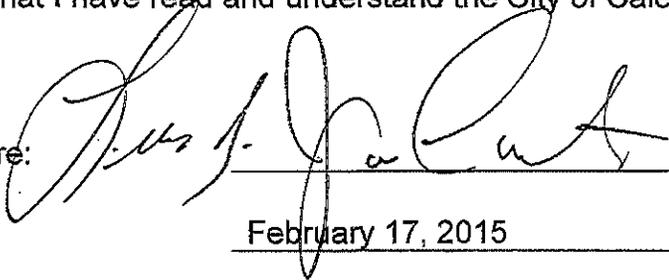
The Mayor and the chair persons of City Council-appointed boards, commissions and committees have the additional responsibility to intervene when actions of members appear to be in violation of the Code of Ethics are brought to their attention.

The City Council may impose sanctions on members whose conduct does not comply with the City's ethical standards, such as reprimand, formal censure, or loss of committee assignments. The City Council also may remove members of boards and commissions from office.

A violation of this Code of Ethics shall not be considered a basis for challenging the validity of a Council, board or commission decision.

I affirm that I have read and understand the City of Calexico Code of Ethics.

Signature:



Date:

February 17, 2015

Name (Print):

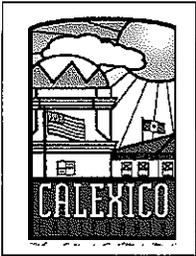
Luis J. Castro

Office:

City Council Member

**AGENDA
ITEM**

13



AGENDA STAFF REPORT

DATE: April 15, 2015

TO: Mayor and City Council

APPROVED BY: Richard N. Warne, Interim City Manager *REW*

PREPARED BY: Richard N. Warne, Interim City Manager *REW*
Marshall Linn, Financial Adviser

SUBJECT: Approve Agreement for the Exchange of Real Property and Joint Escrow Instructions Between Bordertown Investments, LP and the City of Calexico Subject to Final Review and Approval by the City Manager and City Attorney

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Recommendation:

Approve the Agreement for the Exchange of Real Property and Joint Escrow Instructions Between Bordertown Investments, LP and the City of Calexico subject to final review and approval by the City Manager and City Attorney.

Background:

The developer (Bordertown Investments, LP) of the Gran Plaza Outlets wishes to develop Phase IB and 2A of the retail center. Bordertown Investments, LP owns approximately 24.52 acres of land they wish to exchange with the City for 20.31 acres of airport property. The City contracted with an independent appraiser to determine the value of both parcels.

Discussion & Analysis:

At the present time, the City is taking steps to obtain any required approvals by the Federal Aviation Administration (FAA) in regards to the layout of the airport and is taking those steps necessary to terminate the streets offered for dedication on the developer's property.

The City and developer are currently negotiating an agreement regarding the development of City property and adjacent property referred to by the City and developer as Phase IB (Outlet Mall) and Phase II A & B (Power Center).

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After reviewing the appraisals valuing the subject properties, the City will end up owning land worth \$195,000 more than the property it will be exchanging.

Fiscal Impact:

The City will realize a net gain of \$195,000 in land value after the exchange of real property is completed. In addition, the Gran Plaza project expansion will be able to move forward.

Coordinated With:

City Financial Adviser.

Attachment:

1. Agreement for the Exchange of Real Property and Joint Escrow Instructions Between Bordertown Investments, LP and the City of Calexico.
2. Legal Descriptions of Property Exchange.

AGREEMENT FOR THE EXCHANGE OF REAL PROPERTY

THIS AGREEMENT FOR THE EXCHANGE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (this "Agreement" or "Exchange Agreement"), is made as of this _____ day of _____, 2015, ("Effective Date") by and between **BORDERTOWN INVESTMENTS, LP**, a Delaware Limited Partnership qualified and in good standing to do business in California ("DEVELOPER"), and the **CITY OF CALEXICO** ("CITY"), a California municipal corporation, on the other. DEVELOPER and CITY are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. DEVELOPER is the owner of that certain real property in the CITY of Calexico, County of Imperial, consisting of approximately 24.52 acres more particularly described in Exhibit "A" attached hereto along with any and all rights, privileges and easements currently owned by DEVELOPER which are appurtenant thereto, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under such real property as well as all air rights, water, water rights and water stock relating to that real property and any other easements, rights-of-way or appurtenances used in connection with its beneficial use and enjoyment of the real property (collectively, the "**DEVELOPER Property**").

B. CITY is the owner of that certain real property located in the CITY of Calexico, County of Imperial, consisting of approximately 20.31 acres more particularly described in Exhibit "B" attached hereto including all rights, privileges and easements currently owned by the CITY which are appurtenant thereto, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the real property, as well as all air rights, water, water rights and water stock relating to the real property and any other easements, rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the Land, (collectively, the "**CITY Property**").

C. The CITY immediately shall take the steps necessary to terminate the streets offered for dedication on the DEVELOPER property. The CITY immediately shall seek to obtain any required Federal Aviation Administration (FAA) approval for the revised Airport Layout Plan which shows the property exchange contemplated herein and realignment of second street.

D. The City and Developer is currently negotiating an agreement regarding the development of the City Property and adjacent property which adjacent property is referred to by the parties as Phase IB, (Outlet Mall) and Phases II A&B (Power Center). The agreement is referred to herein as the "Developer/City Agreement".

E. DEVELOPER desires to exchange the DEVELOPER Property for the CITY Property, and CITY desires to exchange the CITY Property for the DEVELOPER Property pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, based upon the foregoing facts, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Exchange.** Upon the satisfaction or waiver of all of the conditions precedent to the Close of Escrow set forth in Section 5 below, (a) DEVELOPER shall acquire the CITY Property from CITY and (b) CITY shall acquire the DEVELOPER Property from DEVELOPER (the "**Exchange**"). The DEVELOPER Property and the CITY Property shall be exchanged, AS IS, WHERE IS. The parties have determined, based on appraisals, that the CITY Property and DEVELOPER Property are of substantially equivalent value and, therefore, no other consideration will be paid.

2. **Escrow and Title.**

2.1 **Escrow Holder.** The Exchange shall be consummated through an escrow (the "**Escrow**") at First American Title Insurance Company, located at _____, _____, CA 9_____, senior escrow officer _____. (the "**Escrow Holder**").

2.2 **Title Company.** Any title policies issued for the benefit of the CITY with respect to the DEVELOPER Property and to DEVELOPER with respect to the CITY Property, respectively and as applicable, in connection with the Exchange shall be issued by First American Title Insurance Company, located at _____, _____, CA 9_____. (the "**Title Company**").

2.3 **Escrow Instructions.** Escrow shall be opened within three (3) days following the execution of this Agreement by delivery to Escrow and acceptance of this Agreement by Escrow Holder in writing. Escrow Holder shall open an Escrow for the consummation of the Exchange pursuant to the terms of this Agreement and this Agreement shall constitute the joint escrow instructions of the Parties to Escrow Holder. Upon Escrow Holder's receipt of the fully executed Agreement, Escrow Holder is authorized to act in accordance with the terms of this Agreement. Buyer and Seller shall execute Escrow Holder's general escrow instructions upon request; provided, however, that if there is any conflict or inconsistency between such general escrow instructions and this Agreement, this Agreement shall control.

2.4 **Definition of Close of Escrow.** For purposes of this Agreement, the term "**Close of Escrow**" shall mean the time when Escrow Holder shall have recorded the Grant Deeds as set forth in Section 6.4.5 below.

3. **DEVELOPER's Approval of Condition of Title / Due Diligence.**

3.1 **DEVELOPER's Review of Condition of Title.** Prior to the Effective Date, DEVELOPER has received and reviewed that certain Preliminary Title Report Order No. _____ dated _____, 2015 covering the CITY Property and issued by Title Company (the "**CITY Property Preliminary Title Report**"). Except as specifically noted in the CITY Property Preliminary Title Report, DEVELOPER hereby acknowledges that DEVELOPER has approved those exceptions listed in Schedule B of the CITY Property Preliminary Title Report. Those exceptions that DEVELOPER has approved on the CITY Property Preliminary Title Report are hereinafter referred to as the "**CITY Property Permitted Exceptions.**" The CITY Property

Permitted Exceptions shall exclude any delinquent taxes or any taxes due and payable prior to the Close of Escrow and any and all other monetary liens or encumbrances on the CITY Property.

3.2 **CITY Property Title Insurance Policy.** At the option and request of DEVELOPER, at the Close of Escrow and as a condition thereto, the Title Company shall issue to DEVELOPER a policy of title insurance (the "**CITY Property Title Policy**") as to the CITY Property, containing the terms and provisions set forth in this Section 3.2. The CITY Property Title Policy shall be an ALTA Standard Coverage Owner's Policy of Title Insurance issued by the Title Company in the amount of _____ (\$ _____), showing fee simple title to the CITY Property vested in DEVELOPER, subject only to non-delinquent taxes and assessments, the CITY Property Permitted Exceptions, and such other matters as to which DEVELOPER may consent in writing. The premium for the CITY Property Title Policy and any costs in connection with the search and examination of title and/or for the issuance of the CITY Property Preliminary Title Report shall be paid by DEVELOPER. The CITY Property Title Policy shall be issued without reliance on any indemnity of CITY or any third party to induce Title Company to issue the CITY Property Title Policy. If DEVELOPER so elects and the Title Company agrees, the CITY Property Title Policy may include such endorsements as DEVELOPER may reasonably request; provided, however, that all such endorsements shall be issued at DEVELOPER's sole cost and expense. In addition, if DEVELOPER so elects and the Title Company agrees to issue an ALTA Extended Coverage Owner's Policy (2006 Form), the CITY Property Title Policy shall be an ALTA Extended Coverage Policy rather than a ALTA Standard Coverage Policy, with all other elements remaining the same; provided however that such ALTA Extended coverage shall be issued at DEVELOPER's sole cost and expense.

3.3 **DEVELOPER Due Diligence.** DEVELOPER shall have the right but not the requirement to perform due diligence to investigate the suitability of the CITY Property for its intended uses, which may include, but is not limited to, environmental testing, review for conformity with State law and local codes, and review with State and local officials regarding use of the CITY Property ("**Due Diligence**"). The Due Diligence period shall be for _____ () days from the Effective Date ("**Due Diligence Period**"), during which time DEVELOPER shall have the absolute right to terminate the proposed Exchange for any reason, or no reason at all, without constituting a default under this Agreement.

3.4 **Waiver of Due Diligence Period.** DEVELOPER may waive all or a portion of such Due Diligence Period. Such waiver shall be in writing. Any such waiver shall be final. DEVELOPER confirms that such exchange is AS IS WHERE IS.

4. **CITY's Approval of Condition of Title.**

4.1 **CITY's Review of Condition of Title.** Prior to the Effective Date, the CITY has received and reviewed that certain Preliminary Title Report Order No. _____, dated _____, 2015, covering the DEVELOPER Property (the "**DEVELOPER Property Preliminary Title Report**"), issued by Title Company. Except as specifically noted in the DEVELOPER Property Preliminary Title Report, CITY hereby acknowledges that CITY has approved those exceptions listed on the DEVELOPER Property Preliminary Title Report. Those exceptions that CITY has approved on the DEVELOPER Property Preliminary Title Report are hereinafter referred to as the "**DEVELOPER Property Permitted Exceptions.**" The DEVELOPER Property Permitted Exceptions shall exclude any delinquent taxes or any taxes due and payable prior

to the Close of Escrow and any other monetary liens or encumbrances on the DEVELOPER Property.

4.2 **DEVELOPER Property Title Insurance Policy.** At the option and request of the CITY, at the Close of Escrow and as a condition thereto, the Title Company shall issue to CITY a policy of title insurance (the “**DEVELOPER Property Title Policy**”) as to the DEVELOPER Property, containing the terms and provisions set forth in this Section 4.2. The DEVELOPER Property Title Policy shall be an ALTA Standard Coverage Owner’s Policy of Title Insurance issued by the Title Company the amount of _____ \$ _____) in an amount determined by the CITY, showing fee simple title to the DEVELOPER Property, vested in CITY, subject only to non-delinquent taxes and assessments, the DEVELOPER Property Permitted Exceptions, and such other matters as to which CITY may consent in writing. The premium for the DEVELOPER Property Title Policy and any costs in connection with the search and examination of title and/or for the issuance of the DEVELOPER Preliminary Title Report shall be paid by the CITY. The DEVELOPER Property Title Policy shall be issued without reliance on any indemnity of DEVELOPER or any third party to induce Title Company to issue the DEVELOPER Property Title Policy, without the prior written consent of CITY. If CITY so elects and the Title Company agrees, the DEVELOPER Property Title Policy may include such endorsements, respectively and as applicable, as CITY may reasonably request; provided, however, that all such endorsements shall be issued at CITY’s sole cost and expense. In addition, if CITY so elects and the Title Company agrees to issue one or more ALTA Extended Coverage Owner’s Policy (2006 Form), the “**DEVELOPER Property Title Policy**” shall be an ALTA Extended Coverage Policy rather than an ALTA Standard Coverage policies, with all other elements remaining the same; provided however that such extended ALTA Extended coverage shall be issued at the CITY’s sole cost and expense.

4.3 **CITY Due Diligence.** CITY shall have the right but not the requirement to perform due diligence to investigate the suitability of the DEVELOPER Property for its intended uses, which may include, but is not limited to, environmental testing, review for conformity with State law and local codes, and review with State and local officials regarding use of the DEVELOPER Property (“**Due Diligence**”). The Due Diligence period shall be for _____ (____) days from the Effective Date (“**Due Diligence Period**”), during which time the CITY shall have the absolute right to terminate the proposed Exchange for any reason, or no reason at all, without constituting a default under this Agreement. Unless waived by CITY in writing, DEVELOPER shall, at DEVELOPER’s expense, furnish to CITY a Phase 1 Environmental Site Assessment with respect to the DEVELOPER Property within five (5) days of the Effective Date.

4.4 **Waiver of Due Diligence Period.** CITY may waive all or a portion of such Due Diligence Period. Such waiver shall be in writing. Any such waiver shall be final. CITY confirms that such exchange is AS IS, WHERE IS.

5. **Conditions Precedent to Close of Escrow.**

5.1 **DEVELOPER’s Conditions.** Each of the following shall constitute a condition precedent to the obligations of DEVELOPER to close the Escrow and may be waived only by a written waiver executed by DEVELOPER and delivered to CITY and to Escrow Holder:

5.1.1 **Documents.** The applicable documents described in Section 6.3.2 below shall have been deposited in Escrow by CITY.

5.1.2 Title Policy. The Title Company shall be irrevocably committed to issue the CITY Property Title Policy upon the Close of Escrow.

5.1.3 Acceptance of Property. DEVELOPER shall be satisfied, after reviewing Title and otherwise conducting Due Diligence as provided in Section 3.3, that the CITY Property is suitable for its intended uses and acceptable to DEVELOPER.

5.1.4 No Material Change. As of the Close of Escrow, there shall be no material change in the CITY Property that would materially impair DEVELOPER's use or development of the CITY Property.

5.1.5 Representations and Warranties. All of CITY's representations and warranties as set forth herein shall be true as of the Close of Escrow.

5.1.6 No Default. CITY shall not be in material default hereunder. If DEVELOPER does not give Escrow Holder written notice of CITY's default, for purposes of this Section 5.1.6 only, CITY shall be deemed not to be in default hereunder, and Escrow Holder shall proceed with the Close of Escrow as though CITY were not in default. DEVELOPER's failure to give such notice to Escrow Holder shall not excuse performance by CITY of any obligation hereunder.

5.1.7 FAA Approval. CITY shall have obtained approval by the FAA for the Airport Layout Plan which Airport Layout Plan shall be acceptable to Developer, in the sole and absolute discretion of the Developer.

5.2 CITY's Conditions. Each of the following shall constitute a condition precedent to the obligations of CITY to close the Escrow and may be waived only by a written waiver executed by CITY and delivered to DEVELOPER and to Escrow Holder:

5.2.1 Documents. The applicable documents described in Section 6.3.1 below shall have been deposited in Escrow by DEVELOPER.

5.2.2 Title Policy. The Title Company shall be irrevocably committed to issue the DEVELOPER Property Title Policy upon the Close of Escrow.

5.2.3 Acceptance of Property. The CITY shall be satisfied, after reviewing Title and otherwise conducting Due Diligence as provided in Section 4.3, that the DEVELOPER Property is suitable for its intended uses and acceptable to the CITY.

5.2.4 No Material Change. As of the Close of Escrow, there shall be no material change in the DEVELOPER Property that would materially impair CITY's use or development of the DEVELOPER Property.

5.2.5 Representations and Warranties. All of DEVELOPER's representations and warranties as set forth herein shall be true as of the Close of Escrow.

5.2.6 No Default. DEVELOPER shall not be in material default hereunder. If CITY does not give Escrow Holder written notice of DEVELOPER's default, for purposes of this Section 5.2.6 only, DEVELOPER shall be deemed not to be in default hereunder, and Escrow Holder shall proceed with the Close of Escrow as though DEVELOPER were not in default. CITY's failure

to give such notice to Escrow Holder shall not excuse performance by DEVELOPER of any obligation hereunder.

5.2.7 FAA Approval. CITY shall have obtained approval by the FAA of the Airport Layout Plan which Airport Layout Plan shall be acceptable to the CITY, in the sole and absolute discretion of the CITY.

5.2.8 Developer/City Agreement. The Developer and City have entered into the Developer/City Agreement.

6. **Close or Cancellation of Escrow.**

6.1 **Closing Date.**

6.1.1 Provided that this Agreement is not earlier terminated pursuant to the terms and provisions hereof and provided that all of the conditions precedent to the Close of Escrow have been satisfied or waived, the Parties agree that the Escrow shall close and Escrow Holder is instructed to close the Escrow on or before _____, 2015 (the "**Closing Date**"), unless extended as described in Section 6.1.2; provided however, that in no event shall the Closing Date be later than _____, 2015 ("**Outside Closing Date**"). Escrow Holder by closing the Escrow shall be deemed to have irrevocably committed to cause the Title Company to issue any requested DEVELOPER Property Title Policy and CITY Property Title Policy.

6.1.2 In the event that either Party believes it is necessary to extend the Closing Date in order to conduct additional Due Diligence as described in Section 2 or Section 3, above, as applicable, that Party shall have the right to unilaterally extend the Closing Date by ten (10) days by providing written notice to the other Party before the Closing Date. Each Party shall only be entitled to one unilateral extension. The Parties may subsequently extend the Closing Date only by written agreement of both Parties, except that in no event shall the Closing Date be later than the Outside Closing Date without the written agreement of both Parties.

6.1.3 In the event that the Close of Escrow fails to occur by the Outside Closing Date, and neither Party is in default of its obligations hereunder, then the Party for whose benefit the non-satisfied condition exists may cancel the Escrow by written notice to the other Party and to Escrow Holder. In the event that, due to an "**Event of Default**" by a "**Defaulting Party**" (as the quoted terms are defined in Section 9.1 below), the Close of Escrow fails to occur by the Outside Closing Date, then without waiving any rights or remedies which the non-Defaulting Party may have against the Defaulting Party under Section 9 of this Agreement, the non-Defaulting Party may cancel the Escrow upon written notice to the Defaulting Party and to Escrow Holder. In the event that the non-Defaulting Party elects not to terminate this Agreement, then the non-Defaulting Party may pursue the remedies for such Event of Default as provided in Section 9 below.

6.2 **Escrow Cancellation.**

6.2.1 If, for any reason, the Escrow is cancelled pursuant to Section 6.1.3 above, Escrow Holder shall return to the Parties delivering all instruments that are then held by Escrow Holder in connection with the Escrow.

6.2.2 If the Escrow is cancelled pursuant to Section 6.1.3 above and neither Party is in default of its obligations hereunder, this Agreement shall be deemed to be terminated (with the exception of those provisions which expressly state that they are to survive such termination), and DEVELOPER and CITY shall each bear one-half (1/2) of the title and Escrow fee and cancellation charges, if any. In such event, neither Party shall be obligated to the other to close the Escrow hereunder.

6.2.3 If the Escrow is cancelled pursuant to Section 6.1.3 above and DEVELOPER is the Defaulting Party, DEVELOPER shall pay the Escrow fee and cancellation charges.

6.2.4 If the Escrow is cancelled pursuant to Section 6.1.3 above and CITY is the Defaulting Party, CITY shall pay the Escrow fee and cancellation charges.

6.3 **Items to be Delivered into Escrow.**

6.3.1 DEVELOPER. On or before one (1) business day prior to the Closing Date, DEVELOPER shall execute and deposit in Escrow the following:

(a) Immediately available funds in the amount of DEVELOPER's share of costs and proration described in Sections 7.1 and 7.2 below;

(b) A fully executed conveying fee simple title to the DEVELOPER Property to the CITY (the "**DEVELOPER Grant Deed**"), in the form of Exhibit "C" attached hereto, in recordable form;

(c) A nonforeign transferor declaration (the "**Nonforeign Transferor Declaration**") in the form of Exhibit "E" attached hereto;

(d) A California state tax withholding certificate in accordance with the requirements of California Revenue and Taxation Code Sections 18805(d) and 26131 (California Form 593-W for Non-Individual Sellers and California Form 593-C for Individual Sellers), executed by DEVELOPER (the "**California Tax Certificate**"); and

(e) Such other documents as may be reasonably required by Title Company or Escrow Holder in order to issue one or more of the DEVELOPER Property Title Policy, if requested by the CITY, or otherwise required to transfer the DEVELOPER Property to CITY in accordance with the terms of this Agreement.

6.3.2 CITY. On or before one (1) business day prior to the Closing Date, CITY shall execute and deposit into Escrow the following:

(a) Immediately available funds in the amount of CITY's share of costs and proration described in Sections 7.1 and 7.3 below;

(b) A fully executed grant deed conveying fee simple title to the CITY Property to DEVELOPER (the "**CITY Grant Deed**"), in the form of Exhibit "D" attached hereto, in recordable form;

(c) A nonforeign transferor declaration (the “**Nonforeign Transferor Declaration**”) in the form of Exhibit “E” attached hereto;

(d) A California state tax withholding certificate in accordance with the requirements of California Revenue and Taxation Code Sections 18805(d) and 26131 (California Form 593-W for Non-Individual Sellers and California Form 593-C for Individual Sellers), executed by CITY (the “**California Tax Certificate**”); and

(e) Such other documents as may be reasonably required by Title Company or Escrow Holder in order to issue the CITY Property Title Policy, if requested, or otherwise required to transfer the CITY Property to DEVELOPER in accordance with the terms of this Agreement.

6.4 **Escrow Holder’s Instructions.** At such time as the conditions precedent to the Close of Escrow have been satisfied or waived, Escrow Holder shall:

6.4.1 Collate the counterparts of the Exchange Agreement into two fully executed counterparts;

6.4.2 Date, as of the Close of Escrow, all instruments calling for a date;

6.4.3 Record the DEVELOPER Grant Deed and the CITY Grant Deed in the Official Records of Imperial County, California (“**Official Records**”);

6.4.4 Give CITY and DEVELOPER telephonic and email notice that the Close of Escrow has occurred; and

6.4.5 Deliver to CITY the DEVELOPER Property Title Policy, and to DEVELOPER the CITY Property Title Policy, if so requested.

6.5 **Post-Closing Matters.** After the Close of Escrow, Escrow Holder shall deliver the following:

6.5.1 To CITY: A copy, as recorded, of the DEVELOPER Grant Deed for the DEVELOPER Property, the original Nonforeign Transferor Declaration executed by DEVELOPER, the original California Tax Certificate executed by DEVELOPER, and plain copies of the Nonforeign Transferor Declaration and the California Tax Certificate executed by CITY.

6.5.2 To DEVELOPER: A copy, as recorded, of the Grant Deed for the CITY Property, the original Nonforeign Transferor Declaration executed by CITY, the original California Tax Certificate executed by CITY, and plain copies of the Nonforeign Transferor Declaration and the California Tax Certificate executed by DEVELOPER.

6.6 **IRS Form 1099-S.** For purposes of complying with Section 6045 of the Code, as amended by Section 1521 of the Code, Escrow Holder shall be deemed the “person responsible for closing the transaction,” and shall be responsible for obtaining the information necessary to file and shall file within the time specified with the Internal Revenue Service Form 1099-S, “**Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions.**”

7. **Costs and Prorations.**

7.1 **Prorations.** Escrow Holder shall prorate all non-delinquent real property taxes and assessments as to the CITY Property between CITY and DEVELOPER as of the Close of Escrow based upon a 365-day year and based upon the latest available tax bill. Escrow Holder shall prorate all non-delinquent real property taxes and assessments as to the DEVELOPER Property, between DEVELOPER and CITY as of the Close of Escrow based upon a 365-day year and based upon the latest available tax bill for such property. The Parties agree that if such prorations are inaccurate because the latest available tax bill does not represent the taxes actually assessed, then the Parties will, as soon as tax bills actually covering the period during which the Close of Escrow takes place are available, make such further adjustments outside of the Escrow as may be appropriate so that each Party shall have borne all taxes allocable to the period during which it was the owner of its respective property.

7.2 **Costs to be Paid by DEVELOPER.** DEVELOPER shall pay the following costs:

7.2.1 The premium for the CITY Property Title Policy, if such policy is requested by DEVELOPER;

7.2.2 Documentary transfer taxes, if any, due with respect to the transfer of the DEVELOPER Property;

7.2.3 One-half (1/2) of the Escrow fee.

7.3 **Costs to be Paid by CITY.** CITY shall pay the following costs:

7.3.1 The premium for the DEVELOPER Property Title Policy, and to the extent applicable if one or more of such policies are requested by CITY;

7.3.2 Documentary transfer taxes, if any, due with respect to the transfer of the CITY Property;

7.3.3 One-half (1/2) of the Escrow fee.

8. **Representations and Warranties; Covenants.**

8.1 **DEVELOPER's Representations and Warranties.** As a material inducement to CITY to enter into this Agreement, DEVELOPER makes the following covenants, representations and warranties to CITY set forth in this Section 8.1 as of the date hereof and as of the Close of Escrow.

8.1.1 **Property Owner.** DEVELOPER is the owner of the DEVELOPER Property and has the right, power and authority to transfer the same to CITY pursuant to this Agreement.

8.1.2 **DEVELOPER's Authority to Execute Agreement.** DEVELOPER Bordertown Investments, LP, is duly organized and existing under the laws of the state of _____ and is duly registered and qualified to transact intrastate business in the State of California. Neither, the execution and delivery of this Agreement nor the performance or

consummation of the transactions contemplated by this Agreement will result in any breach of or constitute a default under or conflict with any agreement, covenant, law, regulation, ordinance or obligation binding upon DEVELOPER. No approvals, authorizations or consents of any public body or of any person are necessary in connection herewith. All individuals executing this Agreement and all other documents, instruments or agreements required hereunder, on behalf of DEVELOPER, have been properly authorized to do so.

8.1.3 Compliance with Law. DEVELOPER has no knowledge and has received no notice (i) that the DEVELOPER Property is in violation of any applicable statutes, ordinances, and regulations, including those relating to environmental and health and safety requirements including those governing the storage, discharge, use and cleaning of toxic or hazardous substances and materials; (ii) of any presently pending or threatened action or proceeding under any environmental or health and safety statutes, ordinances, or regulations; or (iii) of the existence of any present or pending order or directive of any CITY, county, state, or federal authority, or any agency thereof, requiring that any work or repair, maintenance, improvement, or pollution or contamination abatement be performed on the DEVELOPER Property.

8.1.4 No Litigation. There are no actions, suits, or proceedings of any kind or nature whatsoever, legal or equitable, pending or, to the best of DEVELOPER's knowledge, threatened against DEVELOPER or the DEVELOPER Property or relating to or arising out of the ownership, management, condition, or operation of the DEVELOPER Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency, or other governmental instrumentality.

8.1.5 No Mechanic's Liens. No work has been done upon, or materials delivered to, the DEVELOPER Property by or at the request of DEVELOPER, or with DEVELOPER's knowledge, which is not fully paid for, nor, to the best of DEVELOPER's knowledge, does any person, firm or corporation now have, nor, to the best of DEVELOPER's knowledge, will it have upon the giving of any notice or passage of time or otherwise, any mechanic's or materialman's lien rights with respect to the DEVELOPER Property or any part or parcel thereof.

8.1.6 No Adverse Agreements. There are no adverse possessors, tenancies or occupancy agreements affecting possession of the DEVELOPER Property, or any portion thereof, except as disclosed in this Agreement, nor has any option to purchase the DEVELOPER Property, or any portion thereof, been granted by DEVELOPER to any party. No party (other than the CITY pursuant to this Agreement) has the right to acquire the DEVELOPER Property.

8.1.7 No Bankruptcy Proceedings. DEVELOPER is not the subject of a bankruptcy, insolvency or similar proceeding.

8.1.8 Environmental Status. In accordance with California Health and Safety Code Section 25359.7, DEVELOPER warrants and represents to CITY that it is not aware that any release of Hazardous Materials has come to be located upon or under the DEVELOPER Property. Neither DEVELOPER nor, to the actual knowledge of DEVELOPER, without duty of inquiry, any third parties during the period of time the DEVELOPER Property has been owned by DEVELOPER have generated, handled, manufactured, stored, used, transported or discharged any Hazardous Materials on, in or under the DEVELOPER Property, the groundwater or any adjacent property. DEVELOPER is not aware of any underground storage tanks located on or under the

DEVELOPER Property. As used herein, the term "Hazardous Materials" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations promulgated thereto: (1) any "hazardous substance" within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. §9601, *et seq.* or the California Hazardous Substance Account Act, Cal. Health and Safety Code §25300 *et seq.* or the Porter-Cologne Water Quality Act, Cal. Water Code §13000 *et seq.* or the Hazardous Materials Transportation Act, 49 U.S.C. §1801, *et seq.*; (2) any "hazardous waste" within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; or (3) any other substance, chemical, waste, toxicant, pollutant or contaminant regulated by any federal, state or local law, statute, rule, regulation or ordinance for the protection of health or the environment, including, without limitation, any petroleum products or fractions thereof.

8.1.9 AS-IS. DEVELOPER acknowledges that, as of the Closing DEVELOPER will have inspected the CITY Property and made its own independent investigation of the CITY Property. DEVELOPER further acknowledges that it is acquiring the CITY Property "AS-IS," in reliance solely on its own inspection of the CITY Property and on CITY's representations and warranties as set forth herein.

8.2 CITY's Representations and Warranties. As a material inducement to DEVELOPER to enter into this Agreement, CITY makes the following covenants, representations and warranties to DEVELOPER set forth in this Section 8.2 as of the date hereof and as of the Close of Escrow.

8.2.1 Property Owner. CITY is the owner of the CITY Property to transfer the same to DEVELOPER pursuant to this Agreement.

8.2.2 CITY's Authority to Execute Agreement. CITY is a duly organized, validly existing public agency organized and existing under the laws of the State of California. Neither, the execution and delivery of this Agreement nor the performance or consummation of the transactions contemplated by this Agreement will result in any breach of or constitute a default under or conflict with any agreement, covenant, law, regulation, ordinance or obligation binding upon CITY. No approvals, authorizations or consents of any public body or of any person are necessary in connection herewith. All individuals executing this Agreement and all other documents, instruments or agreements required hereunder, on behalf of CITY, have been properly authorized to do so.

8.2.3 Compliance with Law. CITY has no knowledge and has received no notice (i) that the CITY Property is in violation of any applicable statutes, ordinances, and regulations, including those relating to environmental and health and safety requirements including those governing the storage, discharge, use and cleaning of toxic or hazardous substances and materials; (ii) of any presently pending or threatened action or proceeding under any environmental or health and safety statutes, ordinances, or regulations; or (iii) of the existence of any present or pending order or directive of any CITY, county, state, or federal authority, or any agency thereof, requiring that any work or repair, maintenance, improvement, or pollution or contamination abatement be performed on the CITY Property.

8.2.4 No Litigation. There are no actions, suits, or proceedings of any kind or nature whatsoever, legal or equitable, pending or, to the best of CITY's knowledge, threatened

against CITY or the CITY Property or relating to or arising out of the ownership, management, condition, or operation of the CITY Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency, or other governmental instrumentality.

8.2.5 No Mechanic's Liens. No work has been done upon, or materials delivered to, the CITY Property by or at the request of CITY, or with CITY's knowledge, which is not fully paid for, nor, to the best of CITY's knowledge, does any person, firm or corporation now have, nor, to the best of CITY's knowledge, will it have upon the giving of any notice or passage of time or otherwise, any mechanic's or materialman's lien rights with respect to the CITY Property or any part or parcel thereof.

8.2.6 No Adverse Agreements. There are no adverse possessors, tenancies or occupancy agreements affecting possession of the CITY Property, or any portion thereof, except as disclosed in this Agreement, nor has any option to purchase the CITY Property, or any portion thereof, been granted by CITY to any party. No party (other than DEVELOPER pursuant to this Agreement) has the right to acquire the CITY Property.

8.2.7 No Bankruptcy Proceedings. CITY is not the subject of a bankruptcy, insolvency or similar proceeding.

8.2.8 Environmental Status. In accordance with California Health and Safety Code Section 25359.7, CITY warrants and represents to DEVELOPER that it is not aware that any release of Hazardous Materials has come to be located upon or under the CITY Property. Neither CITY nor, to the actual knowledge of CITY, without duty of inquiry, any third parties during the period of time the CITY Property has been owned by CITY have generated, handled, manufactured, stored, used, transported or discharged any Hazardous Materials on, in or under the CITY Property, the groundwater or any adjacent property. CITY is not aware of any underground storage tanks located on or under the CITY Property. As used herein, the term "Hazardous Materials" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations promulgated thereto: (1) any "hazardous substance" within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. §9601, *et seq.* or the California Hazardous Substance Account Act, Cal. Health and Safety Code §25300 *et seq.* or the Porter-Cologne Water Quality Act, Cal. Water Code §13000 *et seq.* or the Hazardous Materials Transportation Act, 49 U.S.C. §1801, *et seq.*; (2) any "hazardous waste" within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; or (3) any other substance, chemical, waste, toxicant, pollutant or contaminate regulated by any federal, state or local law, statute, rule, regulation or ordinance for the protection of health or the environment, including, without limitation, any petroleum products or fractions thereof.

8.2.9 AS-IS. CITY acknowledges that, as of the Closing, CITY will have inspected the DEVELOPER Property and made its own independent investigation of the DEVELOPER Property. CITY further acknowledges that it is acquiring the DEVELOPER Property "AS-IS," in reliance solely on its own inspection of the DEVELOPER Property and on DEVELOPER's representations and warranties as set forth herein.

8.3 DEVELOPER's Covenants.

8.3.1 Operation of DEVELOPER Property. DEVELOPER shall not hypothecate, transfer, encumber or affirmatively take any other action with respect to the DEVELOPER Property that would render DEVELOPER unable to convey the DEVELOPER Property to CITY at the Close of Escrow.

8.4 **CITY's Covenants.**

8.4.1 Operation of CITY Property. CITY shall not hypothecate, transfer, encumber or affirmatively take any other action with respect to the CITY Property that would render CITY unable to convey the CITY Property to DEVELOPER at the Close of Escrow.

9. **Default.**

9.1 **Events of Default.** The failure of a Party (the "Defaulting Party") to perform any material act to be performed by such Party, to refrain from performing any material prohibited act, or to fulfill any condition to be fulfilled by such Party under this Agreement, or under any agreement referred to herein or attached hereto as an exhibit, within ten (10) days after written notice of such failure from the Non-Defaulting Party shall be an "Event of Default" by the Defaulting Party with respect to the Defaulting Party's obligations hereunder; provided, however, that if more than ten (10) days are reasonably required in order to cure such Event of Default, then the Defaulting Party shall be entitled to a maximum of thirty (30) days to effect such cure, provided the Defaulting Party commences cure within such ten (10) day period and diligently proceeds to complete such cure within such thirty (30) day period.

9.2 **Remedies.** Upon the occurrence of any Event of Default by a Defaulting Party, the non-Defaulting Party shall have such rights or remedies available to it under this Agreement or at law or in equity.

10. **Casualty Loss; Condemnation.**

10.1 **Notice Re Condemnation or Casualty; Election.** In the event that, prior to the Close of Escrow, all or any portion of the DEVELOPER Property or CITY Property is taken or proposed to be taken as a result of the exercise or proposed exercise of the power of eminent domain (a "Condemnation Action"), or all or any portion of the DEVELOPER Property or CITY Property is damaged by earthquake, flood or fire (a "Casualty"), then the Party that is the current property owner shall, within ten (10) days thereafter, give written notice of such Condemnation Action or Casualty to the other Party ("Noticed Party"). Such Noticed Party shall have thirty (30) days following receipt of such notice to elect in writing to accept or not to accept the DEVELOPER Property or CITY Property, as the case may be, subject to such Casualty or Condemnation Action. Failure of a Noticed Party to notify the other Party of its election within such thirty (30) day period shall be deemed an election not to accept the DEVELOPER Property or CITY Property, as the case may be, subject to such Casualty or Condemnation Action.

10.2 **Termination of Agreement.** In the event that a Noticed Party elects not to accept the DEVELOPER Property or CITY Property, as the case may be, subject to such Casualty or Condemnation Action as provided in Section 10.1 above, Noticed Party shall cancel the Escrow by written notice to Escrow Holder and the Party that is the current property owner and this Agreement shall be deemed to be terminated (with the exception of those provisions which expressly state that they are to survive such termination), and DEVELOPER and CITY shall each bear one-half (1/2) of

the Escrow fee and cancellation charges. In such event, neither Party shall be obligated to the other to close the Escrow hereunder.

10.3 **Proceeds of Condemnation or Casualty Insurance.** In the event that a Noticed Party, in that party's sole and absolute discretion, elects to accept the DEVELOPER Property or CITY Property, as the case may be, subject to a Casualty or Condemnation Action pursuant to Section 10.1 above, then the Party owning the property shall assign to the Noticed Party all rights, causes of action, claims, benefits, payments and awards arising from such Condemnation Action or Casualty (including, without limitation, any amount due from or paid by any insurance company or any other party as a result of the damage).

11. **Possession.** Possession of the DEVELOPER Property shall be delivered to CITY upon the Close of Escrow, subject only to the DEVELOPER Property Permitted Exceptions. Possession of the CITY Property shall be delivered to DEVELOPER upon the Close of Escrow, subject only to the CITY Property Permitted Exceptions.

12. **Brokerage Commissions.** Each Party warrants and represents to the other that no broker, finder or other intermediary hired or employed by it is entitled to a commission, finder's fee or other compensation based upon the transaction contemplated hereby and each Party shall defend, indemnify, and hold harmless the other Party from and against any and all claims, liabilities, losses, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and litigation expenses) caused by or arising out of the claim of any broker, finder or other intermediary alleging to have been employed or hired by such Party to a commission, finder's fee or other compensation based upon the transaction contemplated hereby. The obligations of DEVELOPER and CITY pursuant to this Section 12 shall survive beyond the Close of Escrow or if the Escrow is cancelled, beyond any termination of this Agreement.

13. **Miscellaneous.**

13.1 **Notices.** All notices or other communications between DEVELOPER and CITY required or permitted hereunder shall be in writing and personally delivered or sent by certified mail, return receipt requested and postage prepaid, sent by reputable overnight courier (such as Federal Express, UPS or DHL), or transmitted by electronic facsimile transmission (with electronic confirmation of receipt), to the following addresses:

If to DEVELOPER : Bordertown Investments, LP

Telephone: _____
Attention: Mark Gabay

with a copy to: Lewis Brisbois Bisgaard & Smith LLP
650 East Hospitality Lane, Suite 600
San Bernardino, California 92408
Telephone: 949-636-9737
Attention: Elizabeth Martyn

If to CITY: City of Calexico
608 Heber Avenue

Calexico, California 92231
Telephone: (760) 768-2110
Attention: CITY Manager
with a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Telephone: 949-725-4140
Attention: Thomas P. Clark, Jr.

A notice shall be effective on the date of personal delivery if personally delivered before 5:00 p.m. or otherwise on the day following personal delivery, or when received, if transmitted by electronic facsimile transmission (with electronic confirmation of receipt), or two (2) business days following the date the notice is postmarked, if mailed, or on the day following delivery to the applicable overnight courier, if sent by overnight courier. Either Party may change the address to which notices are to be given to it by giving notice of such change of address in the manner set forth above for giving notice.

13.2 **Time of the Essence.** Time is of the essence for this Agreement and each and every term and provision hereof.

13.3 **Interpretation; Governing Law.** This Agreement shall be construed as if prepared by both Parties. This Agreement shall be construed, interpreted and governed by the laws of the State of California and the laws of the United States of America prevailing in California.

13.4 **Severability.** In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void, or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

13.5 **Performance of Acts on Business Days.** Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days. In the event that the final date for payment of any amount or performance of any act hereunder falls on a Saturday, Sunday or holiday, such payment may be made or act performed on the next succeeding business day.

13.6 **Attorneys' Fees.** In the event of any legal action or other proceeding between the Parties regarding this Agreement, any of the documents attached hereto as exhibits, the DEVELOPER Property or the CITY Property (an "Action"), the prevailing Party shall be entitled to the payment by the losing Party of its reasonable attorneys' fees, court costs and litigation expenses, as determined by the court.

13.7 **Post-Judgment Attorneys' Fees.** The prevailing Party in any Action shall be entitled, in addition to and separately from the amounts recoverable under Section 13.6 above, to the payment by the losing Party of the prevailing Party's reasonable attorneys' fees, court costs and litigation expenses incurred in connection with (a) any appellate review of the judgment rendered in such Action or of any other ruling in such Action, and (b) any proceeding to enforce a judgment in such Action. It is the intent of the Parties that the provisions of this Section 13.7 be distinct and

severable from the other rights of the parties under this Agreement, shall survive the entry of judgment in any Action and shall not be merged into such judgment.

13.8 **Further Assurances; Survival.** Each Party will, whenever and as often as it shall be requested to do so by the other Party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all such further conveyances, assignments, approvals, consents and any and all other documents and do any and all other acts as may be necessary to carry out the intent and purpose of this Agreement.

13.9 **Entire Agreement; Amendments.** This Agreement, together with the other written agreements referred to herein, is intended by the Parties to be the final expression of their agreement with respect to the subject matter hereof, and is intended as the complete and exclusive statement of the terms of the agreement between the Parties. As such, this Agreement supersedes any prior understandings between the Parties, whether oral or written. Any amendments to this Agreement shall be in writing and shall be signed by all Parties hereto.

13.10 **No Waiver.** A waiver by either Party hereto of a breach of any of the covenants or agreements hereof to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

13.11 **Assignment.** Neither Party hereto shall assign its rights under this Agreement without the prior written consent of the other Party, which consent may be given or withheld in such Party's sole discretion.

13.12 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, representatives, successors and permitted assigns.

13.13 **Headings; Cross-References; Exhibits.** The headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All cross-references in this Agreement, unless specifically directed to another agreement or document, shall refer to provisions in this Agreement and shall not be deemed to be references to any other agreements or documents. Each of the exhibits attached to this Agreement is hereby incorporated into this Agreement by this reference.

13.14 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

13.15 **Effective Date.** This Agreement shall become effective on the date (the "Effective Date") this Agreement is executed by the last of the persons required to bind the parties hereto as set forth opposite their respective signatures below.

13.16 **Special Condition.** Notwithstanding any other term or provision to the contrary set forth in this Agreement, in no event shall this Agreement be interpreted to require a transfer of real property by either party unless the DEVELOPER Property (described in Exhibit "A" attached hereto) and the CITY Property (described in Exhibit "B" attached hereto) are deemed

suitable for transfer by both Parties, and are actually transferred to the other Party under the terms of this Agreement at the Close of Escrow.

13.17 **Incorporation of Recitals.** The Recitals are hereby incorporated into this Agreement as if fully and completely rewritten.

[Signatures Included on Following Page]

DRAFT

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date set forth opposite their respective signatures below.

Dated: _____

DEVELOPER

BORDERTOWN INVESTMENTS, LP,
a Delaware Limited Partnership

By: Peninsula, Inc., its General Partner

By: _____

Name: Mark Gabay

Title: _____

Dated: _____

CITY:

CITY OF CALEXICO
a California municipal corporation

By: _____

Name: _____

Title: _____

Approved as to Form:

CITY ATTORNEY

By: _____

Name: _____

ACCEPTANCE BY ESCROW HOLDER

Escrow Holder hereby acknowledges receipt of this fully executed Agreement on the _____ day of _____, 2015, and accepts the escrow instructions set forth herein.

ESCROW HOLDER:

By: _____

Name: _____

Title: _____

DRAFT

EXHIBIT "A"

Legal Description of DEVELOPER Property

DRAFT

EXHIBIT "B"

Legal Description of CITY Property

DRAFT

EXHIBIT "C"

DEVELOPER Grant Deed

DRAFT

EXHIBIT "D"

CITY Grant Deed

DRAFT

EXHIBIT "E"

Nonforeign Transferor Declaration

TRANSFEROR'S CERTIFICATION OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the Property and not the disregarded entity. To inform _____
_____ ("Transferee"), the transferee of that certain real property described in Schedule "1" attached hereto and incorporated herein by this reference, that withholding of tax is not required upon the disposition of the above-referenced real property by _____, a public agency ("Transferor"), the undersigned hereby certifies the following on behalf of the Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder); and
2. Transferor's taxpayer identification number is: _____; and
3. Transferor's address is: _____.

The Transferor understands that this Certification may be disclosed to the Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

The Transferor understands that the Transferee is relying on this Certification in determining whether withholding is required upon said transfer.

Under penalty of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Transferor.

Dated: _____, 20__

“TRANSFEROR”

By: _____

Name: _____

Title: _____

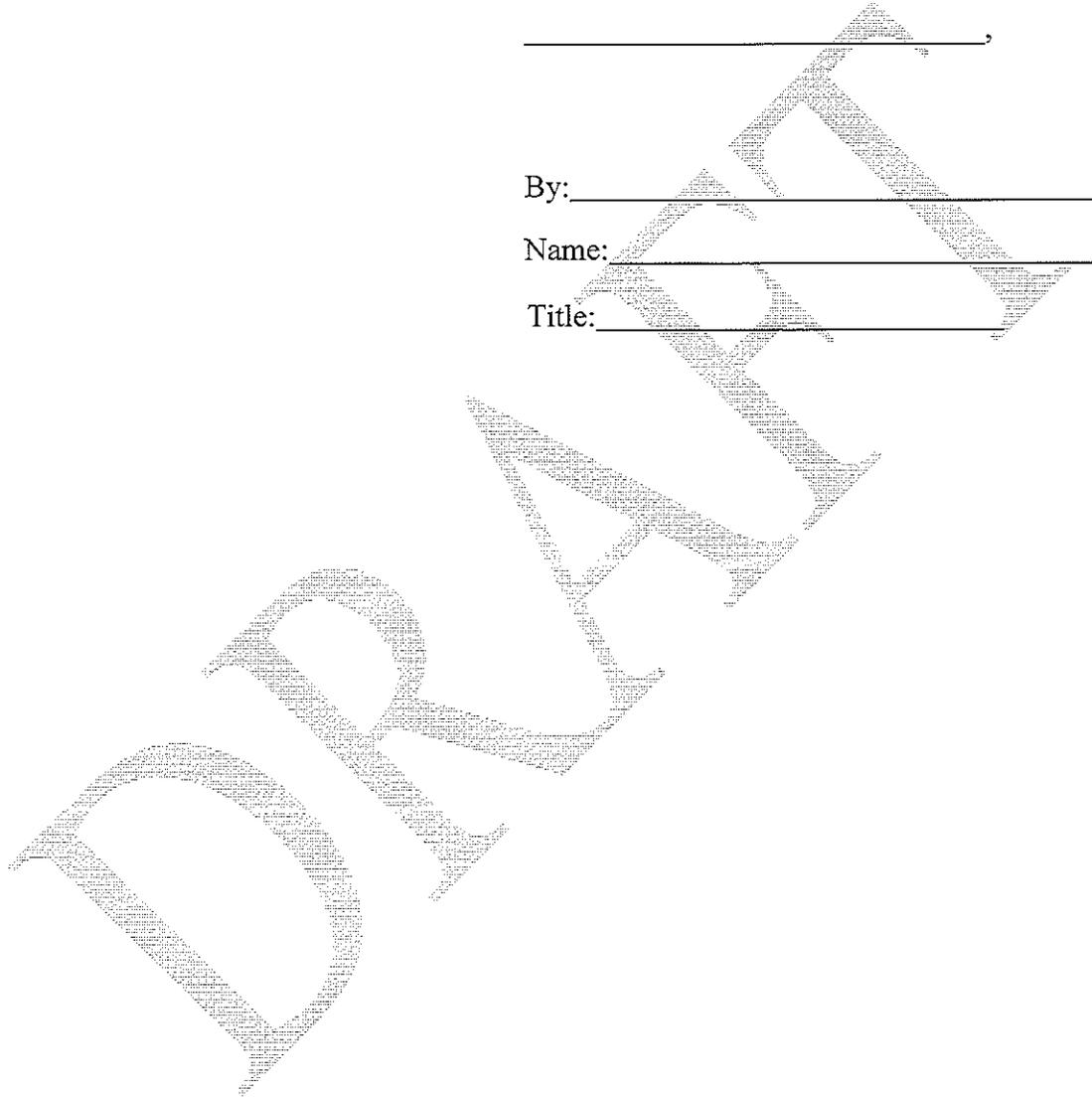


EXHIBIT "A"
LEGAL DESCRIPTION

A PORTION OF SECTIONS 15 AND SECTION 22, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.B.&M IN THE CITY OF CALEXICO, COUNTY OF IMPERIAL, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 15;

THENCE DUE SOUTH ALONG THE EAST LINE OF SAID SECTION 22, 340.03 FEET TO A POINT ON THE INTERNATIONAL BOUNDARY LINE;

THENCE SOUTH 84° 55' 10" WEST ALONG SAID INTERNATIONAL BOUNDARY LINE, 1,290.90 FEET TO THE SOUTHEAST CORNER OF LINE OF PARCEL 1, INCLUSIVE, OF CALEXICO AIRPORT INDUSTRIAL PARK UNIT NO. 1, IN THE CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO MAP ON FILE IN BOOK 16, PAGE 82 OF FINAL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY;

THENCE NORTH 03° 59' 57" WEST ALONG THE EAST LINE OF SAID PARCEL 1, 697.59 FEET TO A POINT BEING ON THE PROPOSED SOUTHERLY RIGHT-OF-WAY OF SECOND STREET DISTANT 50 FEET SOUTH OF THE CENTERLINE, OF SAID STREET MEASURED AT RIGHT ANGLES;

THENCE SOUTH 86° 59' 33" WEST, ALONG SAID PROPOSED SOUTHERLY RIGHT-OF-WAY LINE, 1,336.31 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 15;

THENCE SOUTH 00° 00' 09" EAST ALONG SAID EAST LINE OF SAID SECTION 15, 311.65 FEET TO THE **POINT OF BEGINNING.**

SAID DESCRIBED PARCEL CONTAINS 885,006 SQUARE FEET (20.32 ACRES), MORE OR LESS.

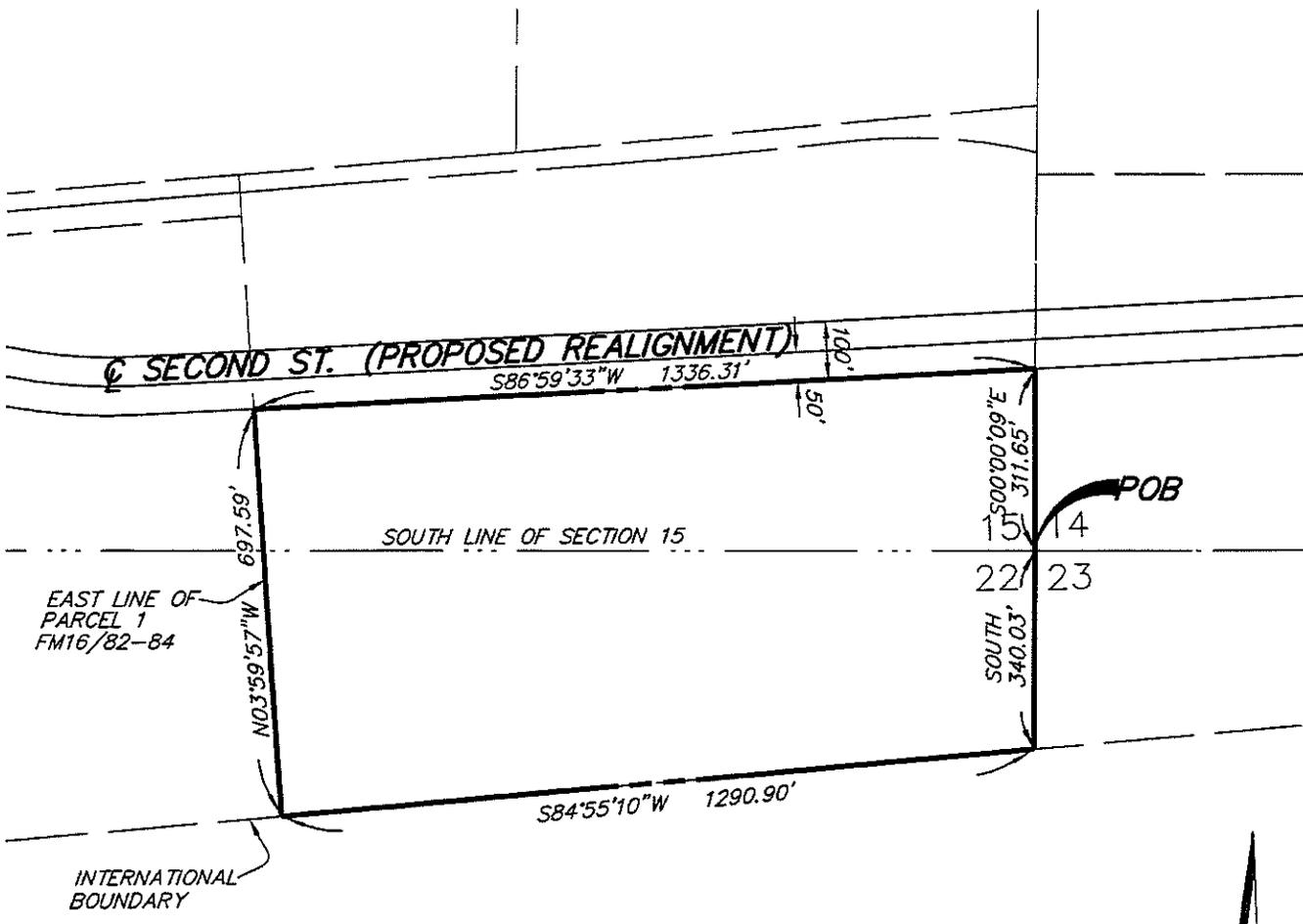
SEE ATTACHED EXHIBIT "B" HEREWITH AND BY THIS REFERENCE MADE A PART HEREOF.

THIS LEGAL DESCRIPTION WAS PREPARED UNDER MY DIRECTION

BY: _____
DENNIS C.FARNSWORTH,
RCE 31653, EXP. 12/31/14

DATE

EXHIBIT B



1" = 300'

LEGEND

- SECTION LINE
- EXISTING PROPERTY LINE

LAND DEVELOPMENT DESIGN COMPANY, LLC		2313 E. Philadelphia St., Ste. F ONTARIO, CA 91761 (909) 930-1466 FAX (909) 930-1468	
DATE: 11/10/14		SCALE: 1"=300'	
SHEET: 1 OF 1		JOB NO. 4996	
		PLANNING • CIVIL • SURVEYING	
		EXHIBIT B	

EXHIBIT "A"
LEGAL DESCRIPTION

A PORTION OF SECTION 15, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.B.&M IN THE CITY OF CALEXICO, COUNTY OF IMPERIAL, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 15;

THENCE SOUTH 89° 59' 00" WEST ALONG THE SOUTH LINE OF SAID SECTION 15, 1,317.57 FEET, TO A POINT ON THE EAST LINE OF PARCEL 1, INCLUSIVE, OF CALEXICO AIRPORT INDUSTRIAL PARK UNIT NO. 1, IN THE CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO MAP ON FILE IN BOOK 16, PAGE 82 OF FINAL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY;

THENCE NORTH 03° 59' 57" WEST ALONG SAID EAST LINE, 342.53 FEET TO A POINT BEING ON THE NORTHERLY RIGHT-OF-WAY OF SECOND STREET DISTANT 50 FEET NORTH OF PROPOSED CENTERLINE, OF SAID STREET, MEASURED AT RIGHT ANGLES;

THENCE SOUTH 86° 59' 33" WEST, ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, 200.86 FEET TO A POINT ON A 800 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHERLY TO WHICH A RADIAL LINE BEARS SOUTH 03° 00' 27" EAST;

THENCE WESTERLY ALONG SAID CURVE AND SAID NORTHERLY RIGHT-OF-WAY LINE, 357.66 FEET THROUGH A CENTRAL ANGLE OF 25° 36' 57" TO A POINT TO WHICH A RADIAL LINE BEARS SOUTH 22° 36' 30" WEST;

THENCE NORTH 67° 23' 30" WEST, 274.52 FEET, TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF SECOND STREET DISTANT 40 FEET SOUTH OF THE CENTERLINE OF SAID STREET;

THENCE NORTH 85° 16' 28" EAST, 811.62 FEET, ALONG SAID SOUTHERLY RIGHT-OF-WAY TO A POINT ON SAID EAST LINE;

THENCE SOUTH 03° 59' 57" EAST ALONG SAID EAST LINE, 231.42 FEET TO THE **TRUE POINT OF BEGINNING.**

SAID DESCRIBED PARCEL CONTAINS 131,024 SQUARE FEET (3.01 ACRES), MORE OR LESS.

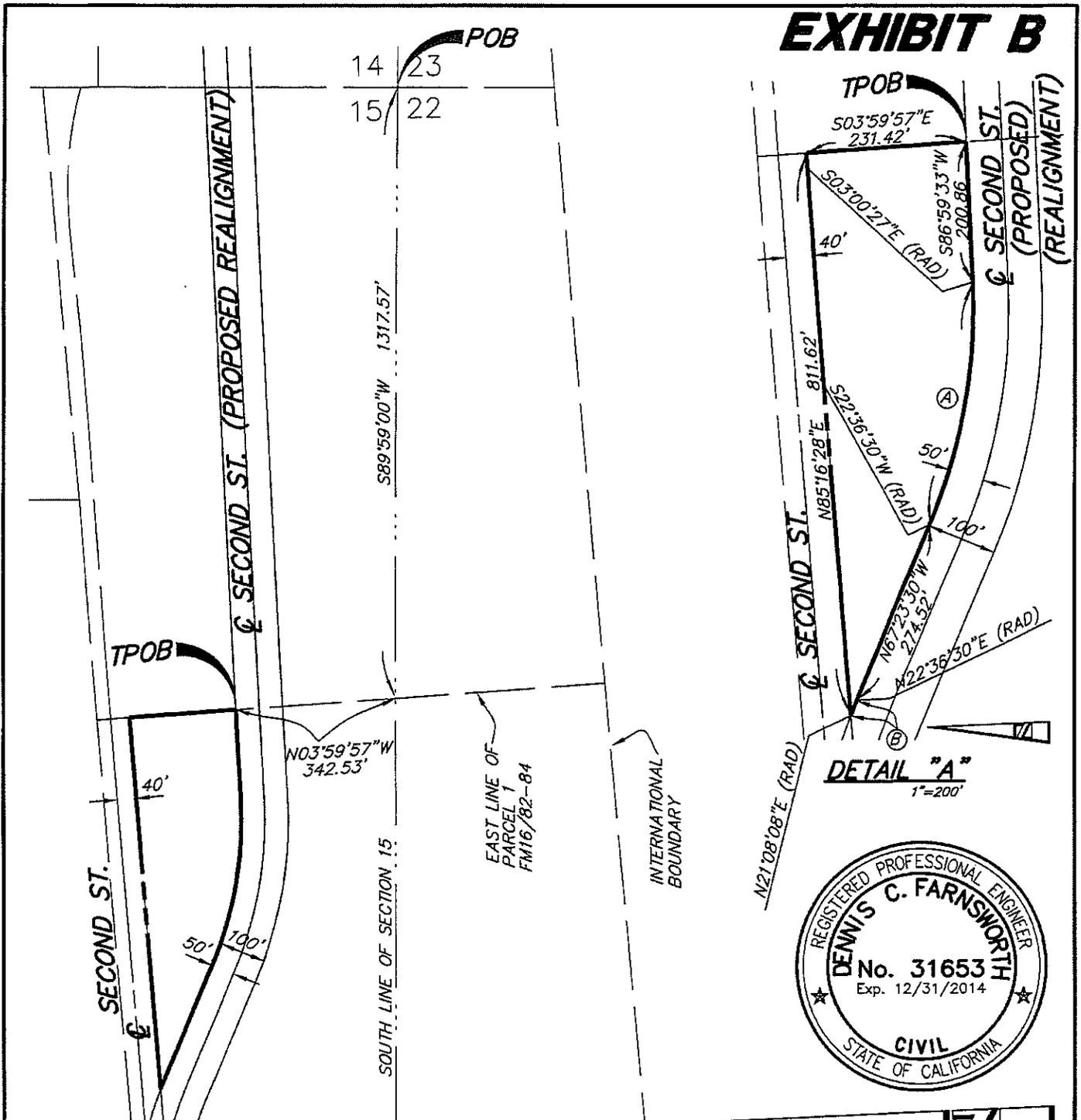
SEE ATTACHED EXHIBIT "B" HERewith AND BY THIS REFERENCE MADE A PART HEREOF.

THIS LEGAL DESCRIPTION WAS PREPARED UNDER MY DIRECTION

BY: _____
DENNIS C. FARNSWORTH,
RCE 31653, EXP. 12/31/14

DATE

EXHIBIT B



LEGEND

- SECTION LINE
- EXISTING PROPERTY LINE

CURVE DATA

NO.	ANGLE	RADIUS	TANGENT	LENGTH
Ⓐ	25°36'57"	800.00'	181.87'	357.66'
Ⓑ	01°28'22"	900.00'	11.57'	23.14'

LAND DEVELOPMENT DESIGN COMPANY, LLC

2313 E. Philadelphia St., Ste. F
 ONTARIO, CA 91761
 (909) 930-1466
 FAX (909) 930-1468

PLANNING • CIVIL • SURVEYING

DATE: 11/10/14	SCALE: 1"=300'	SHEET: 1 OF 1	JOB NO. 4996	EXHIBIT B
-------------------	-------------------	------------------	-----------------	-----------



1"=300'

EXHIBIT "A"
LEGAL DESCRIPTION

A PORTION OF SECTION 14, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.B.&M IN THE CITY OF CALEXICO, COUNTY OF IMPERIAL, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 14;

THENCE NORTH 00° 00' 09" WEST ALONG THE WEST LINE OF SAID SECTION 14, 411.79 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY OF SECOND STREET DISTANT 50 FEET NORTH OF THE CENTERLINE OF SAID STREET, MEASURED AT RIGHT ANGLES; SAID POINT BEING THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING NORTH 00° 00' 09" WEST ALONG SAID WEST LINE, 232.21 FEET;

THENCE NORTH 89° 58' 10" EAST, 1,295.55 FEET TO A POINT ON A 900 FOOT RADIUS NON-TANGENT CURVE, CONCAVE SOUTHERLY TO WHICH A RADIAL LINE BEARS NORTH 01° 55' 15" WEST; SAID POINT BEING ON SAID NORTHERLY RIGHT-OF-WAY LINE;

THENCE SOUTHWESTERLY ALONG SAID CURVE AND SAID NORTHERLY RIGHT-OF-WAY LINE, 327.88 FEET THROUGH A CENTRAL ANGLE OF 20° 52' 25" TO A POINT TO WHICH A RADIAL LINE BEARS NORTH 22° 47' 40" WEST;

THENCE SOUTH 67° 12' 20" WEST, ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, 190.23 FEET TO A POINT ON A 800 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHERLY TO WHICH A RADIAL LINE BEARS SOUTH 22° 47' 40" EAST; SAID POINT BEING ON SAID NORTHERLY RIGHT-OF-WAY LINE;

THENCE SOUTHWESTERLY ALONG SAID CURVE AND SAID NORTHERLY RIGHT-OF-WAY LINE, 276.28 FEET THROUGH A CENTRAL ANGLE OF 19° 47' 13" TO A POINT TO WHICH A RADIAL LINE BEARS SOUTH 03° 00' 27" EAST;

THENCE SOUTH 86° 59' 33" WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, 276.28 FEET TO THE **TRUE POINT OF BEGINNING**.

SAID DESCRIBED PARCEL CONTAINS 191,793 SQUARE FEET (4.40 ACRES), MORE OR LESS.

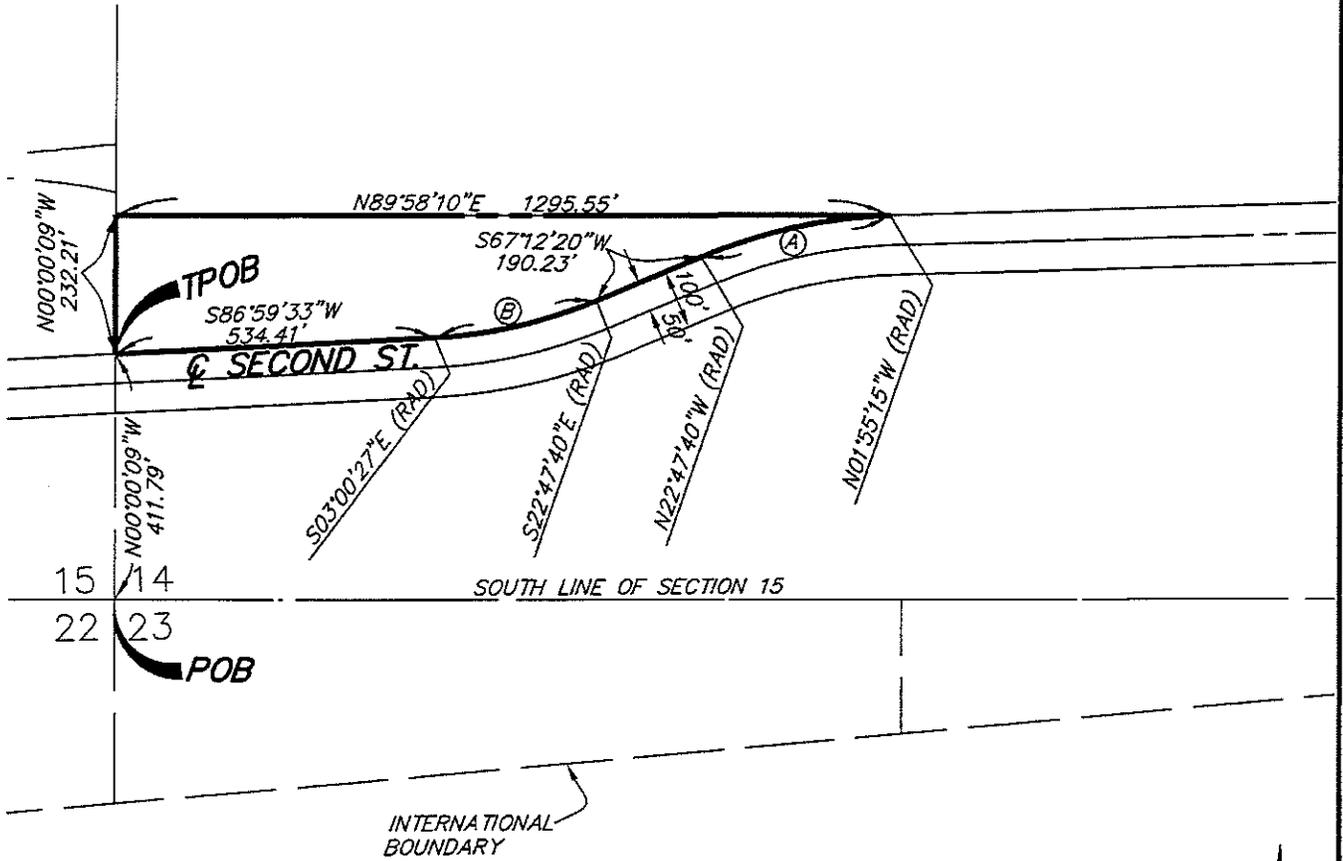
SEE ATTACHED EXHIBIT "B" HEREWITH AND BY THIS REFERENCE MADE A PART HEREOF.

THIS LEGAL DESCRIPTION WAS PREPARED UNDER MY DIRECTION

BY: _____
DENNIS C.FARNSWORTH,
RCE 31653, EXP. 12/31/14

DATE

EXHIBIT B



CURVE DATA

NO.	ANGLE	RADIUS	TANGENT	LENGTH
(A)	20°52'25"	900.00'	165.78'	327.88'
(B)	19°47'13"	800.00'	139.53'	276.28'



1" = 300'

LEGEND

- SECTION LINE
- EXISTING PROPERTY LINE

LAND DEVELOPMENT DESIGN COMPANY, LLC	2313 E. Philadelphia St., Ste. F ONTARIO, CA 91761 (909) 930-1466 FAX (909) 930-1468		
	PLANNING • CIVIL • SURVEYING		
DATE:	SCALE:	SHEET:	JOB NO.
11/10/14	1"=300'	1 OF 1	4996
			EXHIBIT B

EXHIBIT "A"
LEGAL DESCRIPTION

A PORTION OF SECTIONS 15, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.B.&M IN THE CITY OF CALEXICO, COUNTY OF IMPERIAL DESCRIBED AS FOLLOWS:

LOTS 1-8 OF CALEXICO AIRPORT INDUSTRIAL PARK UNIT NO.1, RECORDED FM 16/82-84, IN THE CITY OF CALEXICO, IMPERIAL COUNTY.

SAID DESCRIBED LOTS CONTAINS 297,160 SQUARE FEET (6.82 ACRES), MORE OR LESS.

SEE ATTACHED EXHIBIT "B" HERewith AND BY THIS REFERENCE MADE A PART HEREOF.

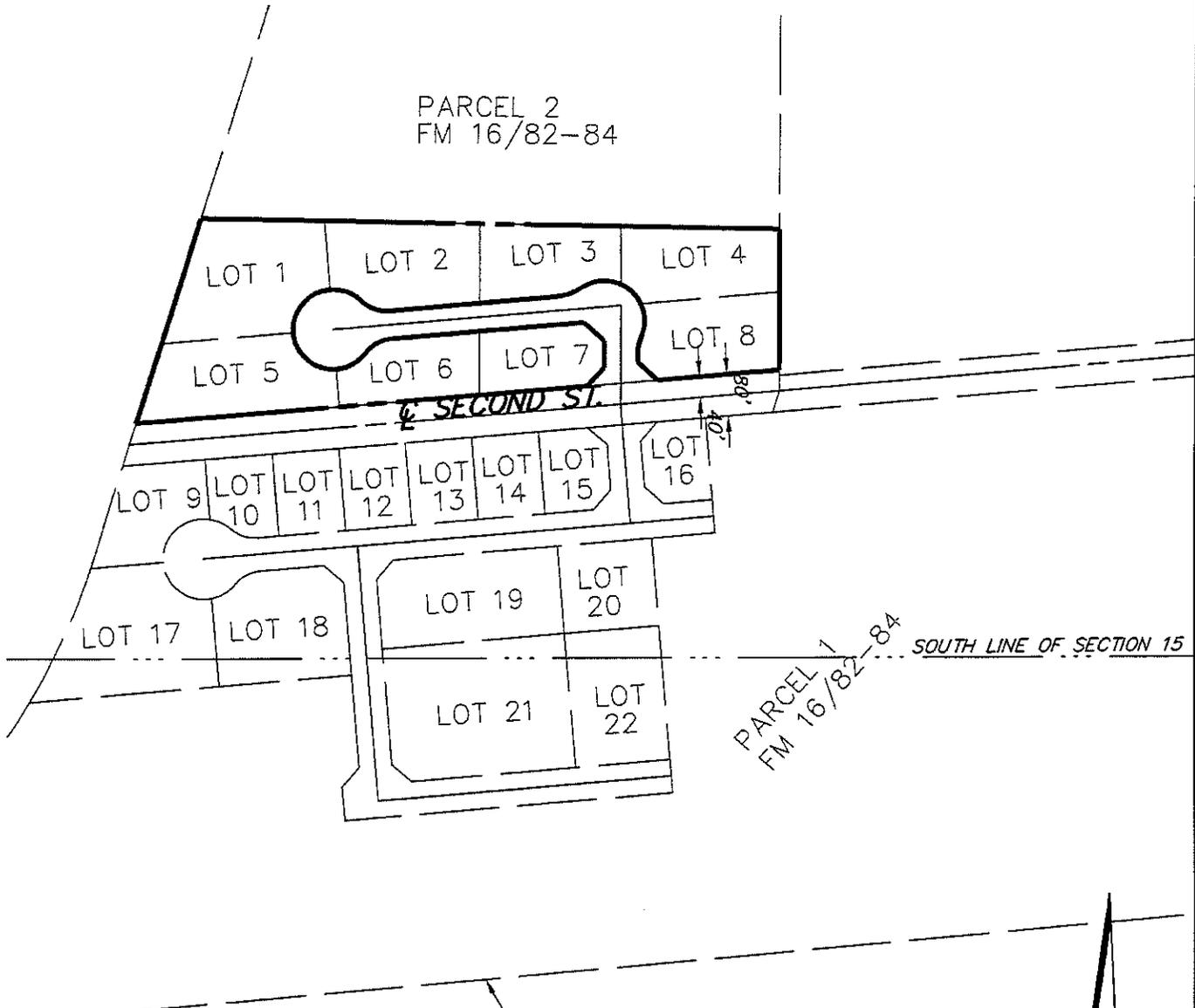
THIS LEGAL DESCRIPTION WAS PREPARED UNDER MY DIRECTION

BY: _____
DENNIS C.FARNSWORTH,
RCE 31653, EXP. 12/31/14

DATE

EXHIBIT B

PARCEL 2
FM 16/82-84



INTERNATIONAL
BOUNDARY



1" = 300'

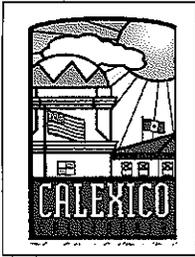
LEGEND

- SECTION LINE
- - - - - EXISTING PROPERTY LINE

LAND D DEVELOPMENT D DESIGN C COMPANY, LLC	2313 E. Philadelphia St., Ste. F ONTARIO, CA 91761 (909) 930-1466 FAX (909) 930-1468			
	PLANNING • CIVIL • SURVEYING			
DATE:	SCALE:	SHEET:	JOB NO.	
11/10/14	1"=300'	1 OF 1	4996	EXHIBIT B

**AGENDA
ITEM**

14



AGENDA STAFF REPORT

DATE: April 21, 2015

TO: Mayor and City Council

APPROVED BY: Richard N. Warne, Interim City Manager *RW*

PREPARED BY: Nick Servin, City Engineer
Ralph Morales, Building/Code Enforcement and Planning Manager

SUBJECT: Discussion and Potential City Council Guidance Regarding Dust Control Covering for Auto Storage and Parking Lots

=====

Recommendation:

Discuss and provide City Council guidance regarding dust control for auto storage and parking lots.

Background:

Council Member Armando Real has requested that this item be placed on the agenda.

Section 17.13.160 (Property Development Standards—Off Street Parking) of the Calexico Zoning Ordinance governs dust control covering and parking standards for the City of Calexico. A copy of this section of the Zoning Ordinance is attached for the City Council review.

Discussion & Analysis:

Since this a change to the zoning ordinance, any changes suggested by the City Council will need to be placed in ordinance form and taken to the Planning Commission for recommendation prior to being returned to the City Council for action.

Fiscal Impact:

None.

Coordinated With:

City Manager's Office.

Attachment:

Section 17.13.160 (Property Development Standards—Off Street Parking) of the Calexico Zoning Ordinance.

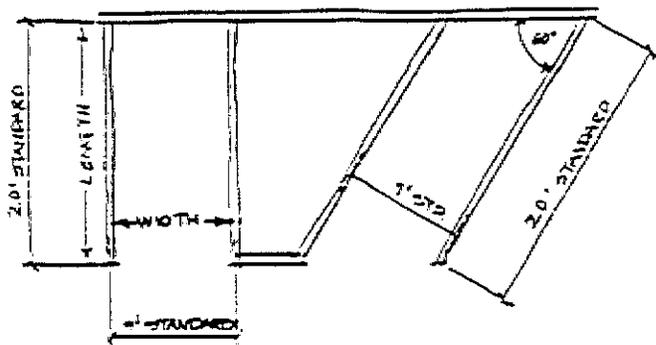
AGENDA
ITEM
14

17.13.160 - Property development standards—Off-street parking.

The following property development standards shall apply to all land, buildings, and uses authorized by the zoning ordinance.

A. General Requirements. The following are minimums unless otherwise stated:

1. Parking Space Dimensions	
a. Residential, commercial, and industrial (in feet)	
1. Covered in a garage/carport	9' x 20' ea. space
2. Uncovered	9' x 20' ea. space
b. Parallel parking space	8' x 22' ea. space
c. Motorcycle parking spaces	4 foot by 8 foot
d. Bicycle parking space	2 foot by 6 foot



2. Overall Parking Bay Width	Parking Angle (in degrees)			
	30	45	60	90
a. Parking bay widths for one-way traffic and double loaded aisles:				
1. Standard stall	43'	50'	56'	64'

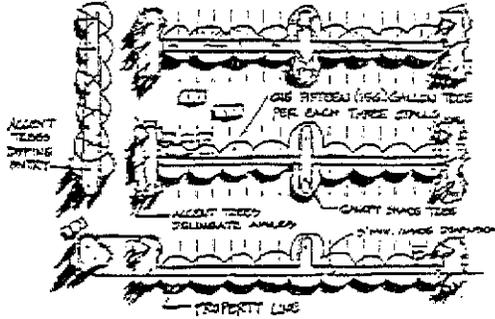
b. Parking bay width for one-way traffic and single loaded aisles:				
1. Standard stall	28'	32'	37'	46'
c. Parking bay widths for two-way traffic and double loaded aisles:				
1. Standard stall	51'	57'	60'	64'
d. Parking bay widths for two-way traffic and single loaded aisles:				
1. Standard stall	36'	39'	41'	46'

- 3. Automobile, Handicapped, Motorcycle, and Bicycle. All parking stalls and maneuvering areas shall be paved and permanently maintained with asphalt, concrete, or any other all-weather surfacing approved by the director of planning and subject to current city standards.
- 4. Striping and Identification.
 - a. Automobile. All parking stalls shall be clearly outlined with lines on the surface of the parking facility.
 - b. Handicapped. All handicapped spaces shall be striped and marked according to the applicable state standards.
 - c. Motorcycle. All motorcycle spaces shall have bollards installed and appropriately spaced to prevent automobile usage of the motorcycle area. Motorcycle spaces shall be marked so that they can be clearly identified for motorcycle usage.
 - d. Bicycle. All bicycle spaces shall be clearly identified.

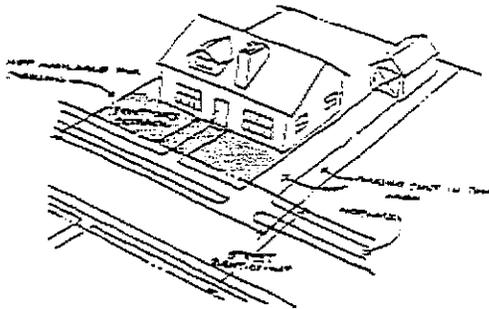
B. Special Requirements.

- 1. One five gallon tree, per city specifications, shall be provided for every three parking spaces.
- 2. Any unused space resulting from the design of the parking area shall be used for landscaped purposes.

- 3. All parking lot landscaped islands shall have a minimum inside dimension of four feet and shall contain a twelve inch wide walk adjacent to parking stall and be separated from vehicular areas by a six inch high, six inch wide Portland concrete cement curbing.



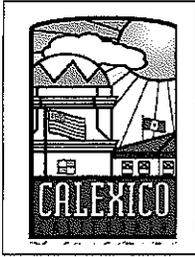
- 4. All landscaping areas shall be automatically irrigated and kept in a healthy and thriving condition free from weeds, debris and trash.
- 5. All parking facilities shall have lighting in accordance with the current city standards. The lighting shall be designed and installed so as to confine direct rays to the site. Parking lot lights shall be a maximum height of eighteen feet from the finished grade of the parking surface and directed away from all property lines and shall be low pressure sodium.
- 6. All parking facilities shall be graded and drained so as to provide for the disposal of all surface water on the site.
- 7. In any R zone except the RC and RA, parking of motorized and nonmotorized vehicles shall be subject to the following requirements and those shown in the example below:
 - a. No motorized or nonmotorized vehicle shall be parked, stored or kept in the front yard as shown below except on land adjacent to the driveway or the driveway. In all cases the surface shall be Portland concrete cement.
 - b. If motorized or nonmotorized vehicles are to be parked, stored, or kept on the lot, other than as permitted in subsection (B)(7)(a) of this section, they must be for the personal use of the resident.



(1992 zoning ord. (part))

**AGENDA
ITEM**

15



AGENDA STAFF REPORT

DATE: April 21, 2015

TO: Mayor and City Council

APPROVED BY: Richard N. Warne, Interim City Manager *RW*

PREPARED BY: Gabriela T. Garcia, Deputy City Clerk *GTG*

SUBJECT: Appointment by City Council of a Resident Commissioner to the Calexico Housing Authority Board.

=====

Recommendation:

City Council make the appointment of a Resident Commissioner to the Calexico Housing Authority Board.

Background:

A position of a resident Commissioner to the Housing Authority Board expired on February 18, 2015. The City Council as a whole needs to fill this position. The position was advertised on the City website, City Hall, Camarena Library and in the Calexico Chronicle.

Discussion & Analysis:

This item was carried over from the April 7, 2015 meeting in order to provide Council Members additional time to review the applicants. The applicants for this position must be residents of the Calexico Housing Authority. The following persons submitted applications for the position of Resident Commissioner:

Mario Acevedo
Maria Nunez
Monica Guillen
Raul Palomino

Fiscal Impact:

None.

Coordinated With:

None.

Attachment:

Applications from Mario Acevedo, Maria Nunez, Monica Guillen and Raul Palomino.





CITY OF CALEXICO
APPLICATION FOR CITY COMMISSION
 And
STATEMENT OF QUALIFICATIONS

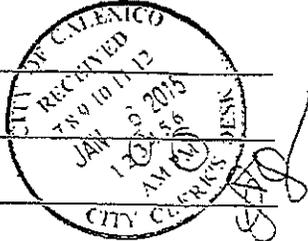
ALL APPLICANTS MUST EITHER RESIDE, BE EMPLOYED, OR REGISTERED TO VOTE IN THE CITY OF CALEXICO. PROOF IS REQUIRED WHEN SUBMITTING THIS APPLICATION.

APPLICATION IS FOR THE FOLLOWING COMMISSION:
 (A separate application is required for each commission)

Housing Authority

PERSONAL INFORMATION:

Name Maria Acevedo
 Residence Address 812 Nasctros
 Length of time at this Address: 4 yrs E-mail address: _____
 Home Phone No. 768-2271 Cell/Message Phone No. 556-7727
 Are you 18 years of age or older? Yes Are you registered to vote in the City of Calexico? Yes
 Do you currently serve as an elected or appointed official for any board and/or agency within the City of Calexico? No
 If yes, name of agency and position: _____



EDUCATION: Highest level of education completed: College

Name of Institution where Highest Level of Education was completed: Mexico City

Location of Institution: _____

EMPLOYMENT INFORMATION / EXPERIENCE:

Name and Address of Employer (s)	Position Title	Dates of Employment
<u>Retired</u>		

IMPORTANT: Read the following carefully and answer completely. A conviction is not an automatic bar to appointment. Each case is considered on its individual merits.

HAVE YOU EVER BEEN CONVICTED OF A FELONY OR MISDEMEANOR OTHER THAN A MINOR TRAFFIC VIOLATION? No
 If yes, Please list all offenses, date and place of offenses(s), and the sentence/fine received:

ACKNOWLEDGMENT/CERTIFICATION:
 I understand that upon filing, this application becomes a public record. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct

[Signature] 1/26/2015
 Signature and Date

Do Not Write Below this Line - For City Use Only

Applicant furnished proof of eligibility requirements via:

Proof of residency: Yes No
 Proof of employment: Yes No
 Voter Registration Verification: Yes No

Appointment By: _____
 Term Expires: _____
 Date & Clerk Verifying: _____

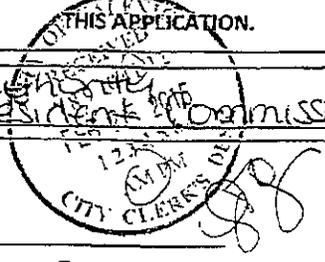


CITY OF CALEXICO
APPLICATION FOR CITY COMMISSION
 And
STATEMENT OF QUALIFICATIONS

ALL APPLICANTS MUST EITHER RESIDE, BE EMPLOYED, OR REGISTERED TO VOTE IN THE CITY OF CALEXICO. PROOF IS REQUIRED WHEN SUBMITTING THIS APPLICATION.

APPLICATION IS FOR THE FOLLOWING COMMISSION:
 (A separate application is required for each commission)

Housing ~~Commission~~
 Resident ~~Commissioner~~



PERSONAL INFORMATION:

Name Maria Alvarado
 Residence Address 19 Palm Dr., Calexico, CA 92231
 Length of time at this Address: 6 yrs E-mail address: _____
 Home Phone No. 760-768-1423 Cell/Message Phone No. 760-960-1305
 Are you 18 years of age or older? Yes Are you registered to vote in the City of Calexico? NO
 Do you currently serve as an elected or appointed official for any board and/or agency within the City of Calexico? NO
 If yes, name of agency and position: _____

EDUCATION: Highest level of education completed: T-VC
 Name of Institution where Highest Level of Education was completed: Imperial IVC
 Location of Institution: Imperial

EMPLOYMENT INFORMATION / EXPERIENCE:

Name and Address of Employer (s)	Position Title	Dates of Employment

IMPORTANT: Read the following carefully and answer completely. A conviction is not an automatic bar to appointment. Each case is considered on its individual merits.

HAVE YOU EVER BEEN CONVICTED OF A FELONY OR MISDEMEANOR OTHER THAN A MINOR TRAFFIC VIOLATION? NO
 If yes, Please list all offenses, date and place of offenses(s), and the sentence/fine received:

ACKNOWLEDGMENT/CERTIFICATION:

I understand that upon filing, this application becomes a public record. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

[Signature]
 Signature and Date

Do Not Write Below this Line - For City Use Only.

Applicant furnished proof of eligibility requirements via:

Proof of residency: Yes No
 Proof of employment: Yes No
 Voter Registration Verification: Yes No

Appointment By: _____
 Term Expires: _____
 Date & Clerk Verifying: _____



CITY OF CALEXICO
APPLICATION FOR CITY COMMISSION
 And
STATEMENT OF QUALIFICATIONS

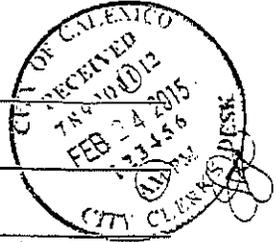
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 RESIDE, BE EMPLOYED, OR
 REGISTERED TO VOTE IN THE CITY
 OF CALEXICO. PROOF IS
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 THIS APPLICATION.

APPLICATION IS FOR THE FOLLOWING COMMISSION:
 (A separate application is required for each commission)

Housing Authority
Resident Commissioner

PERSONAL INFORMATION:

Name Monica Guillen
 Residence Address 1900 Rancho Frontera Ave D-28
 Length of time at this Address: 5yrs E-mail address: monijovi@yahoo.com
 Home Phone No. (760) 357-8270 Cell/Message Phone No. (760) 791-4739
 Are you 18 years of age or older? yes Are you registered to vote in the City of Calexico? yes
 Do you currently serve as an elected or appointed official for any board and/or agency within the City of Calexico? NO
 If yes, name of agency and position: _____



EDUCATION: Highest level of education completed: Some college
 Name of Institution where Highest Level of Education was completed: Calexico High School
 Location of Institution: Calexico, Ca

EMPLOYMENT INFORMATION / EXPERIENCE:

Name and Address of Employer (s)	Position Title	Dates of Employment
<u>Chili's 3303 S. Dogwood Rd</u>	<u>server</u>	<u>may 18, 2005</u>

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mgullien 2/23/2015
 Signature and Date

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Applicant furnished proof of eligibility requirements via:

Proof of residency: Yes No
 Proof of employment: Yes No
 Voter Registration Verification: Yes No

Appointment By: _____
 Term Expires: _____
 Date & Clerk Verifying: _____



CITY OF CALEXICO
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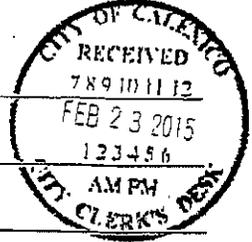
ALL APPLICANTS MUST EITHER RESIDE, BE EMPLOYED, OR REGISTERED TO VOTE IN THE CITY OF CALEXICO. PROOF IS REQUIRED WHEN SUBMITTING THIS APPLICATION.

APPLICATION IS FOR THE FOLLOWING COMMISSION:
 (A separate application is required for each commission)

Housing Authority Res. Comm

PERSONAL INFORMATION:

Name Raul Palomino
 Residence Address 830 E 7th street
 Length of time at this Address: 3 years E-mail address: _____
 Home Phone No. 760-357-5249 Cell/Message Phone No. 760-675-8165
 Are you 18 years of age or older? older Are you registered to vote in the City of Calexico? yes
 Do you currently serve as an elected or appointed official for any board and/or agency within the City of Calexico? _____
 If yes, name of agency and position: _____



EDUCATION: Highest level of education completed: High School
 Name of Institution where Highest Level of Education was completed: Profr. Manuel Covantes Rincon
 Location of Institution: clave, ESEPI-29 Seanexa Copia

EMPLOYMENT INFORMATION / EXPERIENCE: Board Member Since June 29-2005 to June 2011. 7 years.

Name and Address of Employer (s)	Position Title	Dates of Employment
	<u>Retired</u>	

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 If yes, Please list all offenses, date and place of offenses(s), and the sentence/fine received:

ACKNOWLEDGMENT/CERTIFICATION:

I understand that upon filing, this application becomes a public record. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Palomino
 Signature and Date

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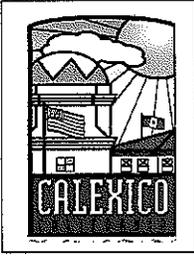
Applicant furnished proof of eligibility requirements via:

Proof of residency: Yes No
 Proof of employment: Yes No
 Voter Registration Verification: Yes No

Appointment By: Board Member, Housing Authority of Calexico
 Term Expires: _____
 Date & Clerk Verifying: February 20-2015.

AGENDA
ITEM

16



AGENDA STAFF REPORT

DATE: April 21, 2015

TO: Mayor and City Council

APPROVED BY: Richard N. Warne, Interim City Manager *RW*

PREPARED BY: Gabriela T. Garcia, Deputy City Clerk *GTG*

SUBJECT: Appointment by Council Member Real to the Street Naming Committee

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Recommendation:

Staff recommends appointments be made by Council Member Real to the Street Naming Committee.

Background:

In 2005, Council voted to change the way appointments were made to all City boards, commissions, and committees. The new ordinance states that the term of an appointee will run concurrently with the appointing councilmember's term, and the term of the appointee will automatically terminate at the time the election results are certified by the City. (Calexico Municipal Code section 2.19.050).

Pursuant to section 2.19.010, each councilmember will appoint one member to each board, commission or committee. No ratification/approval by the whole Council is required. All commissions, boards and committees are now composed of only five members. The criteria for an appointee to hold office is listed below:

To be eligible for, and to hold appointment, each appointee shall neither hold public office, or city employment, nor shall s/he be an officer of any local, state or national partisan official group. All members of commissions, boards and committees of the city shall be residents of the city or shall regularly work within the city. (§ 2.19.030.A)

Discussion & Analysis:

The following vacancy came about due to resignations of commissioner from the Street Naming Committee. The position was advertised for the required ten (10) days. Position was advertised on the City website, at City Hall and the Camarena Library. No applications were received.

Fiscal Impact:

None.



Coordinated With:

None.

Attachment:

None.