



# *Resolution*

## NO. 725

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN LUIS, ARIZONA AND BORDER RANCHES, L.L.C.-II**

**WHEREAS**, Border Ranches, L.L.C.-II (“Developer”) desires to enter into a development agreement (“Development Agreement”) with the City of San Luis, Arizona (“City”);

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

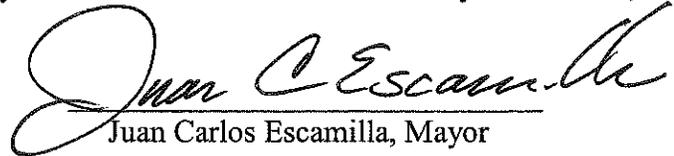
**WHEREAS**, the parties to the Development Agreement desire to enter said agreement;

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

Section 1: That the Development Agreement between the City of San Luis, Arizona and Border Ranches, L.L.C.-II as attached hereto as Exhibit “A”, is hereby approved.

Section 2: That the appropriate City Officials are hereby authorized and directed to enter into said agreement on behalf of the City and take any and all actions as may be necessary to effectuate said agreement.

**PASSED AND ADOPTED** by the Mayor and Common Council of the City of San Luis, Arizona, this 18<sup>th</sup> day of April, 2007.

  
Juan Carlos Escamilla, Mayor

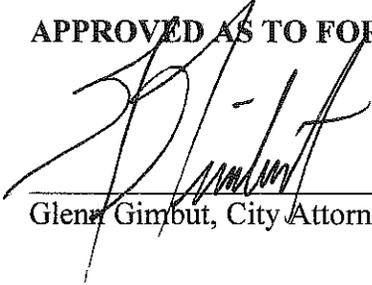
**ATTEST:**

  
\_\_\_\_\_  
Sonia Sanchez, City Clerk

Resolution No. 725

Page 2

**APPROVED AS TO FORM:**



\_\_\_\_\_

Glena Gimbut, City Attorney

OFFICIAL RECORDS OF  
YUMA COUNTY RECORDER  
SUSAN MARLER



**FEE #: 2007 – 14500**

04/19/2007 11:45 PAGES: 0010  
FEES: 5.50 4.00 1.00 .00 .00  
REQ BY: CITY OF SAN LUIS  
REC BY: PATTY MAGANA

The above area is to be reserved for recording information

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**CAPTION HEADING:**

CITY OF SAN LUIS, ARIZONA

DEVELOPMENT AGREEMENT  
BETWEEN  
THE CITY OF SAN LUIS  
AND

BORDER RANCHES II, L.L.C.  
DATED THE 18<sup>TH</sup> OF APRIL, 2007

## Development Agreement

Agreement entered into on the 18<sup>th</sup> day of April, 2007, between the City of San Luis, State of Arizona, a municipal corporation, herein referred to as City and Border Ranches II, L.L.C., of 2285 S. 4<sup>th</sup> Ave., Suite C, Yuma, AZ 85364, Yuma, Arizona, an Arizona Limited Liability Company Authorized to carry on business in the State of Arizona, herein referred to as Developer.

### Recitals

- A. Developer is the owner of a tract (s) of land located in the County of Yuma east of the municipal limits of City as further described on exhibit A and attached hereto, and, by this reference, Inc. in and made a part of this agreement.
- B. City and Developer desire to enter into an agreement described on exhibit A in into the municipal limits of City, and further provide for terms and conditions regarding the zoning and development of said land.

In consideration of the mutual agreements and covenants set forth herein, the parties agree as follows:

### Section One

#### Purpose

This property was the subject of a preannexation development agreement made and entered into on January 28, 1999 with preceding owner of the property, Border Ranches, L.L.C. Border Ranches II, L.L.C. is a separate and distinct entity from Border Ranches, L.L.C. and is a successor in interest as that term is known is Section 6 of that agreement. The purpose of this development agreement is to provide terms and conditions for implementation of the preannexation development agreement of January 28, 1999.

### Section Two

#### Development Agreement

This Agreement is a "Development Agreement" within the meaning of Arizona Revised Statutes §9-500.05.

### Section Three

#### Effective Date and Term

The term of this agreement shall be for a period of fifteen years from the effective date of this agreement, unless otherwise modified or terminated pursuant to the terms and agreements herein contained.

## Section Four

### Consistency With General Plan

As required by State law, the City and Developer stipulate that the development of the property is or will be consistent with the City's General Plan, as amended. In the event that it is not presently consistent, to the extent permitted by law, City promises, within the limitations of its police power and legal authority, to amend the General Plan so that development, as contained in this agreement will be so consistent.

## Section Five

### Use Of Property; Zoning

In the January 28, 1999 agreement, the City recognized that the territory of Developer is suitable for multiple uses consisting of different zoning classifications. The City further recognized that development of this land would occur over a period of time greater than ten years from the date of that agreement. The City anticipated the development of a new commercial port of entry in the vicinity of the property of Developer. Both Developer and City agree that the development of this proposed new port of entry will have great impact upon the proper development. Pursuant to the terms of the Agreement of January 28, 1999, Developer, as a successor in interest, has selected desired zoning classifications. City agrees, within the limits of its police power and legal authority, to grant the following zoning classifications to Developer on the following terms and conditions:

- 1) For the portion of property of Developer known as 2 ½ acres at the north-east corner of County 24th Street and Avenue F ½, zoning will be changed from RA-10 to C-2 on the following terms and conditions. a) Dedication of forty feet of right-of-way along Avenue F ½, b) Dedication of an additional seventeen feet of right-of-way along County 24th Street.
- 2) For the portion of the property of Developer known as approximately 40 acres located at the northwest corner of 24<sup>th</sup> Street and Ave. E, zoning will be changed from RA-10 to C-2 on 25 acres and from RA-10 to High Density Residential on 15 acres as shown on the map attached as Exhibit "B" hereto, on the following terms and conditions: 1) Dedication of an additional seventeen feet of street right-of-way along County 24th Street.
- 3) For the portion of the property of Developer known as approximately Forty acres at the northeast corner of Avenue E ½ and County 24 ½ Street. zoning will be changed from RA-10 to Light Industrial on the following terms and conditions: dedication to the City forty feet of right-of-way along Avenue E ½ and forty feet of right-of-way along 24 ½ Street as it borders this piece of property.

City and Developer acknowledge that the development agreement of January 28, 1999 pledged that the City would assist in the facilitation of the development of infrastructure, but the burden of development of infrastructure remained with the landowners in the area, and that until or unless proper infrastructure was built, the land could not be developed. As a result, the parties hereto acknowledge and agree until proper infrastructure is built or developed, including but not limited to, roads, water, sewer, telephone, electric and gas power, no building permits may be issued.

Developer agrees that as a condition of the issuance of any building permits, Developer and any successor in interest, must either build appropriate infrastructure, participate in an appropriate development district which will build the infrastructure, or pay the fair share pursuant to a pay-back agreement, or participate in some other appropriate legal vehicle. The burden of providing proper utility service and street and roadway access and development of the same to appropriate legal standards to the subject property remains with the property owner. Until and unless proper street and road development and proper development of utility service to the property occurs, no building permit can or will be issued. City hereby agrees that by this requirement that appropriate infrastructure to appropriate standards servicing the property must be built, that it is not requiring Developer or any successor to sign or be a party to that certain document entitled "Joint Development Agreement" dated the 16<sup>th</sup> day of March, 2007 between Border Ranches, L.L.C., Comite De Bien Estar, Inc., and Sam Group.

## Section Six

### General Provisions

#### A. Time is of Essence; Binding Effect

Time is of the essence of this agreement. Such agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties.

#### B. Notifications

(i) All notices, demands or other communications must be in writing and are deemed newly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

To City: City Manager, City of San Luis, 767 N. First Avenue, P.O. Box 1170, San Luis, Arizona, 85349.

To Developer: Nels Timothy Rogers and/or Martha Ruth Rogers, Manager Border Ranches II, L.L.C., P.O. Box 1034., Yuma, AZ 85366

(ii) If either party changes addresses, they must give written notice to the other party. Notice of a change of address is deemed effective five days after mailing by the party changing address.

#### C. Successor and Assigns

This Agreement is assignable. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both parties.

#### D. Waiver

If either party fails to require the other party to perform any provision of this Agreement, that failure does not prevent the party from later enforcing that provision. Neither party is released from any responsibilities or obligations imposed by law or this Agreement if the other party fails to exercise a right or remedy.

#### E. Governing Law and Venue

(i) The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance. The parties must institute and maintain any legal actions or other judicial

proceedings arising from this Agreement in a court of competent jurisdiction in Yuma County, Arizona.

(ii) This agreement is subject to the cancellation provisions of Arizona Revised Statute §38-511, As amended.

F. Severability

If any terms, parts, or provisions of this Agreement are for any reason invalid or unenforceable, The remaining terms, parts, or provisions are nevertheless valid enforceable.

G. Counterparts

This agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

H. Attorney Fees and Costs

If either party brings an action or proceeding for failure to observe any of the terms or provisions of this agreement, the prevailing party may recover, as part of the action or proceeding, all litigation, arbitration and collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorneys fees.

I. Integration

This Agreement contains the entire agreement between the parties, and any oral or written statements, promises, or inducements made by either party or its agents not contained or specifically referred to in this Agreement are not valid or binding. All modifications to this agreement must be in writing, signed and endorsed by the parties.

In witness whereof, the parties hereto have executed this agreement on the day and year first above written, and written below.

DATED this 18<sup>th</sup> day of April, 2007

CITY OF SAN LUIS



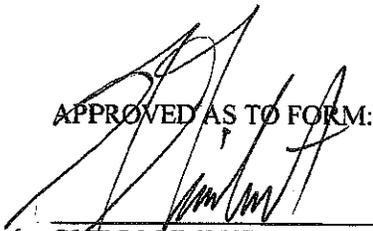
Lee Maness  
City Manager

ATTEST:



Sonia Sanchez  
City Clerk

APPROVED AS TO FORM:



GLENN GIMBUT  
City Attorney

DEVELOPER

BORDER RANCHES II, L.L.C.

By:   
Manager

State of Arizona )  
                                  )ss  
County of Yuma )

The foregoing instrument was acknowledged before me this 18 day of April 2007  
By Nels Timothy Rogers and/or Martha Ruth Rogers, Manager of Border Ranches II, L.L.C.

Sonia Sanchez  
Notary Public

My commission expires:

6/30/2010



State of Arizona )  
                                  )ss  
County of Yuma )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of April  
2007 by Lee Maness, City Manager of the City of San Luis, Arizona.

Sonia Sanchez  
Notary Public

My commission expires:

6/30/2010



**EXHIBIT A**  
**LEGAL DESCRIPTION**  
**(Consisting of 3 parcels)**

**Parcel 1**

The Southeast quarter (SE ¼) of the Southeast quarter (SE ¼) of Section Ten (10), Township Eleven (11) South, Range Twenty-four (24) West, Gila and Salt River Base and Meridian, Yuma County, Arizona.

**Except** an undivided 1/16 of all oil, gases, and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizer of every name and description and except all uranium, thorium, or any other material which is or may be determined by the laws of the State of Arizona, the United States of America, or decisions of courts to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in Section 37-231 Arizona Revised Statutes

**Except** 1/8<sup>th</sup> of all oil, gas, and other minerals other than materials which may be essential to the production of fissionable materials, such reserved interest to be in the nature of a free royalty interest in production only and to absorb the 1/16<sup>th</sup> free royalty interest of the state of Arizona, as reserved in Arizona revised statutes. The interest in the mineral estate so conveyed by Seller to Buyer shall entitle Buyer to receive 1/16<sup>th</sup> of the oil and gas produced and marketed under the provisions of the existing oil and gas lease insofar as it covers the property only, by instrument recorded in Docket 1483, page 18, records of Yuma County, Arizona.

**Except** the East and South 33 feet thereof;

**Subject to existing non-access easements:**

A portion of the Southeast quarter of Section 10, Township 11 South, Range 24 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona, more particularly described as follows:

The West 42 feet of the East 75 feet of the Southeast quarter of Section 10;

**Also a strip of land described as follows:**

BEGINNING at the Southeast corner of Section 10;  
Thence West along the South Section Line 75 feet;  
Thence North parallel to the East Section Line 33 feet to  
THE POINT OF BEGINNING;  
Thence West parallel to the South Section Line 300 feet;  
Thence North parallel to the East Section Line 7 feet;  
Thence East parallel to the South Section Line 275 feet;  
Thence Northeast to a point 75 feet West of the East Section Line and 65 feet North of the South Section Line;  
Thence South parallel to the East Section Line 32 feet back to  
THE POINT OF BEGINNING.

**Also a one foot non-access easement:**

A (1.0') foot Non-Access Easement on the Easterly portion of the Southeast quarter of Section 10, Township 11 South, Range 24 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona, more particularly described as follows:

Beginning at the Southeast corner of Section 10;

Thence West along the South Section line 275 feet, more or less;

Thence North parallel to the East Section Line 40 feet, more or less, to the POINT OF BEGINNING;

Thence East 175 feet, more or less, parallel to the South Section Line to a point 100 feet, more or less, West of the East Section Line and 40 feet, more or less, North of the South Section Line;

Thence North Easterly to a point 75 feet, more or less, West of the East Section line and 65 feet, more or less, North of the South Section Line;

Thence North parallel to the East Section Line to a point 75 feet, more or less, West of the East Section Line and 55 feet, more or less, South of the Mid-Section Line;

Thence Northwest to a point 100 feet, more or less, West of the East Section Line and 30 feet, more or less, South of the Mid-Section Line;

Thence West 175 feet, more or less, to a point 275 feet, more or less, West of the East Section Line and 30 feet, more or less, South of the Mid Section Line;

Thence South One (1) foot, more or less, parallel to the East Section Line to a point 31 feet, more or less, South of the Mid Section Line and 275 feet, more or less, West of the East Section Line;

Thence East 174.59 feet, more or less, to a point 100.41 feet, more or less, West of the East Section Line and 31 feet, more or less, South of the Mid Section Line;

Thence Southeasterly to a point 76 feet, more or less, West of the East Section Line and 55.41 feet, more or less, South of the Mid Section Line;

Thence South parallel to the East Section Line to a point 76 feet, more or less, West of the East Section Line and 65.41 feet, more or less, North of the South Section Line;

Thence Southwest to a point 100.41 feet, more or less, West of the East Section Line and 41 feet, more or less, North of the South Section Line;

Thence West 174.59 feet, more or less, to a point 275 feet, more or less, West of the East Section Line and 41 feet, more or less, North of the South Section Line;

Thence South parallel to the East Section Line One (1) foot", more or less, back to THE POINT OF BEGINNING.

## Parcel 2

The Southwest quarter (SW ¼) of the Northeast quarter (NE ¼) of Section Fifteen (15), Township Eleven (11) South, Range Twenty-four (24) West, Gila and Salt River Base and Meridian, Yuma County, Arizona.

**Except** an undivided 1/16 of all oil, gases, and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizer of every name and description and except all uranium, thorium, or any other material which is or may be determined by the laws of the State of Arizona, the United States of America, or decisions of courts to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in Section 37-231 Arizona Revised Statutes

**Except** 1/8<sup>th</sup> of all oil, gas, and other minerals other than materials which may be essential to the production of fissionable materials, such reserved interest to be in the nature of a free royalty interest in production only and to absorb the 1/16<sup>th</sup> free royalty interest of the state of Arizona, as reserved in Arizona revised statutes. The interest in the mineral estate so conveyed by Seller to Buyer shall entitle Buyer to receive 1/16<sup>th</sup> of the oil and gas produced and marketed under the provisions of the existing oil and gas lease insofar as it covers the property only, by instrument recorded in Docket 1408, page 552, records of Yuma County, Arizona.

## Parcel 3

The Southwest quarter (SW ¼) of the Southwest quarter (SW ¼) of the Southwest quarter (SW ¼) of the Southeast quarter (SE ¼) of Section Nine (9), Township Eleven (11) South, Range Twenty-four (24) West, Gila and Salt River Base and Meridian, Yuma County, Arizona.

**Except** an undivided 1/16 of all oil, gases, and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizer of every name and description and except all uranium, thorium, or any other material which is or may be determined by the laws of the State of Arizona, the United States of America, or decisions of courts to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in Section 37-231 Arizona Revised Statutes

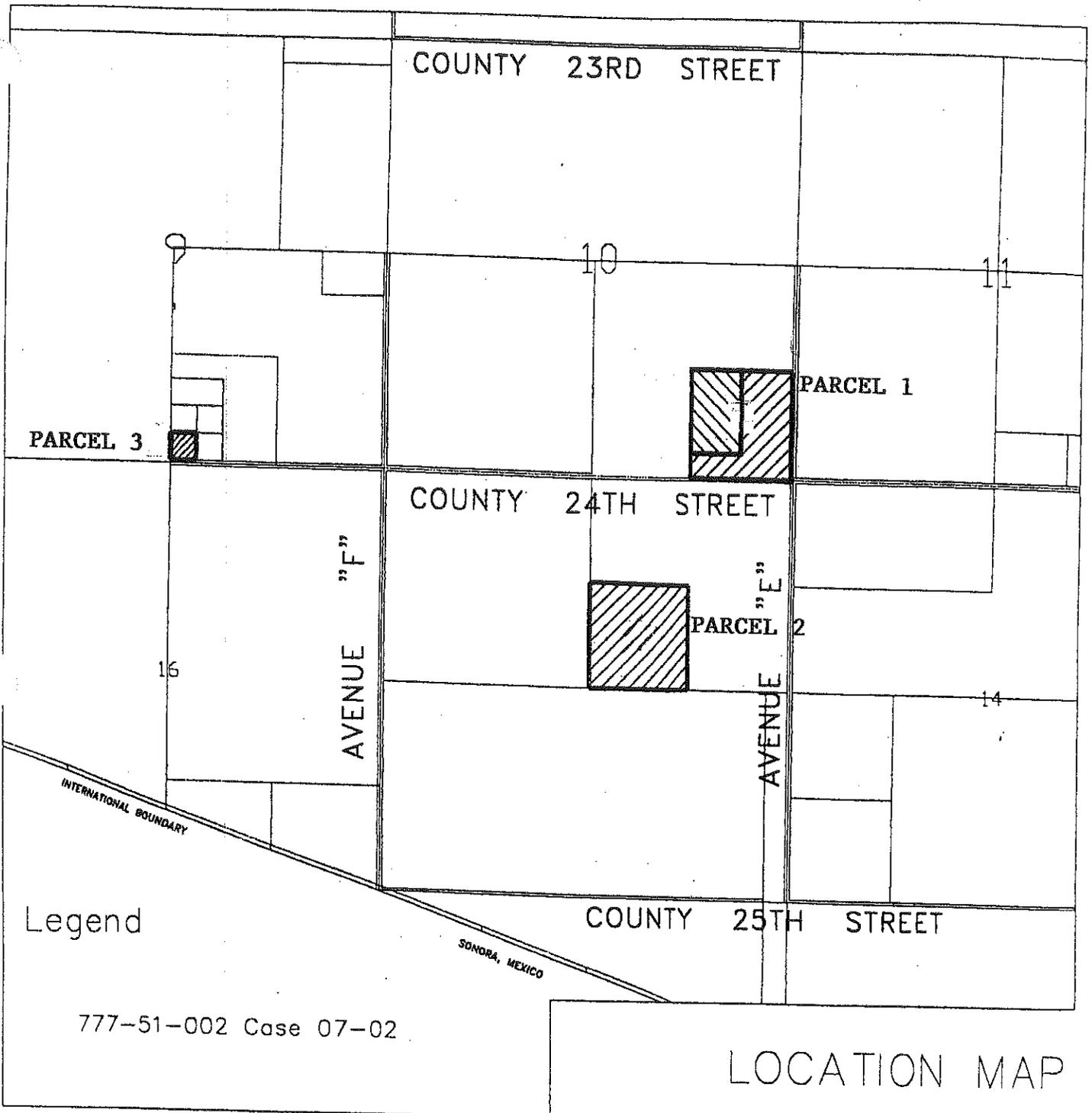
**Except** 1/8<sup>th</sup> of all oil, gas, and other minerals other than materials which may be essential to the production of fissionable materials, such reserved interest to be in the nature of a free royalty interest in production only and to absorb the 1/16<sup>th</sup> free royalty interest of the state of Arizona, as reserved in Arizona revised statutes. The interest in the mineral estate so conveyed by Seller to Buyer shall entitle Buyer to receive 1/16<sup>th</sup> of the oil and gas produced and marketed under the provisions of the existing oil and gas lease insofar as it covers the property only, by instrument recorded in Docket 1451, page 227, records of Yuma County, Arizona.

**Except** the South 33 feet thereof.

39218

14500

EXHIBIT B



14500

Rezoning

	Prepared By: DMS	Planning & Zoning GIS Work 	Date: 1/22/07	Case No.
	Checked By:		Revised:	07-01 07-02 07-03