

DATE SUBMITTED 08/22/2022
 COMMUNITY DEVELOPMENT
 SUBMITTED BY DIRECTOR
 DATE ACTION REQUIRED 08/23/2022

COUNCIL ACTION (x)
 PUBLIC HEARING ()
 REQUIRED RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

**IMPERIAL CITY COUNCIL
AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: MORNING STAR SUBDIVISION UNIT 1B FINAL MAP

1. APPROVE FINAL MAP AND SUBDIVISION AGREEMENT FOR MORNING STAR SUBDIVISION UNIT 1B
2. AUTHORIZE CITY CLERK TO RECORD FINAL MAPS AND RELATED DOCUMENTS


DEPARTMENT INVOLVED: COMMUNITY DEVELOPMENT

BACKGROUND/SUMMARY:

Staff completed its review of the Final Map for Morning Star Subdivision Unit 1B and finds all items acceptable. See Exhibit 1 for details.

The approved cost estimate for required off-site improvements for said Unit 1B is \$2,418,206.31 which is included in the Subdivision Agreement. Security for the off-site improvements will be in the form of First Lien position in specific real estate property, similar to those approved in other subdivisions. There is sufficient value in the property involved to secure the required amount.

FISCAL IMPACT: NO FISCAL IMPACT

ADMIN SERVICES SIGN INITIALS 

STAFF RECOMMENDATION:

1. Staff recommends approval of the Final Map and Subdivision Agreement for Morning Star Subdivision Unit 1B.
2. Staff recommends to authorize City Clerk to record final maps and related documents.

DEPT. INITIALS DM

MANAGER'S RECOMMENDATION: *approve staff recommendation*

CITY MANAGER'S INITIALS DM

MOTION:

SECONDED: APPROVED () REJECTED ()
 AYES: DISAPPROVED () DEFERRED ()
 NAYES:
 ABSENT: REFERRED TO:

**SUBDIVISION AGREEMENT AND IMPROVEMENT SECURITY
(CITY OF IMPERIAL)**

(Government Code sections 66462 and 66463)

(S1) Subdivision: Morning Star Subdivision Unit No. 1B
(S2) Effective Date: August 23, 2022
(S3) Completion Period: August 23, 2022 – August 04, 2023

THESE PARTIES ATTEST TO THE PARTIES' AGREEMENT HERETO:

CITY COUNCIL

SUBDIVIDER

By: _____
Geoffrey Dale, Mayor

By: _____
Heritage at Dahlia Ranch, LLC

APPROVAL RECOMMENDED:

FORM APPROVED - CITY ATTORNEY:

By: _____
Othon Mora, Community Development Director

By: _____
Katherine Turner, City Attorney

(NOTE: All signatures to be acknowledged.
If Subdivider is incorporated, signatures
must conform with the designated
representative groups pursuant to
Corporations Code section 313).



1. PARTIES, DATE AND LEGAL DESCRIPTION
Effective on the above date, the City of Imperial, California, (hereinafter “City”), and the above-named Subdivider, enter into this Subdivision Agreement (“Agreement”) and mutually promise and agree as follows concerning this Subdivision. The legal description for this Subdivision is attached hereto as *Exhibit A*.

2. IMPROVEMENTS
Subdivider agrees to construct, install, and complete certain improvements (both public and private), including but not limited to the following: road, drainage, signs, (including appurtenant equipment), water, sewer, and such other improvements as required by City ordinance or regulation, conditions of approval for the Subdivision, mitigation measures set forth in environmental documentation, engineer’s estimates and as shown on improvement plans for this Subdivision as reviewed and on file with the City of Imperial, Public Services Department (including future amendments thereto), (hereinafter “Work”).

Subdivider shall complete all of said Work and improvements within the above completion period as required by the California Subdivision Map Act (Government Code sections 66410, *et seq.*), in a good workmanlike manner, in accordance with accepted construction practices and in a manner equal or superior to the requirements of the City Code and rulings made thereunder; and where there is a conflict between the improvement plans, City Code, or conditions of approval, the stricter requirements shall govern.

3. **IMPROVEMENT SECURITY:**

Upon executing this Agreement, the Subdivider shall, pursuant to Government Code § 66499, and the City Code, provide as security to the City a first lien (“First Lien”) on the real property described in Exhibit A (“Property”), which Property is free and clear of all encumbrances and liens having priority over or on a parity with this First Lien, in the sum of four million, eight hundred thirty six thousand, four hundred twelve dollars and sixty-two cents (\$4,836,412.62), which represents the combined amount of the security described below:

- A. **For Performance and Guarantee of the Work:** Subdivider shall provide security in the sum of two million, four hundred eighteen thousand two hundred six dollars and thirty -one cents (\$2,418,206.31), which represents the estimated cost of the Work.

Pursuant to Government Code section 66499.3(a), with this security, the Subdivider guarantees performance of all Work under this Agreement and maintenance of the Work for one (1) year after its completion and acceptance against any defective workmanship or materials or any unsatisfactory performance. Engineer’s estimates are for the purpose of estimating the cost of the Work for establishing the dollar value of the security and shall not define or limit the scope of the Subdivider’s obligation to perform all of the Work under this Agreement. The warranty period begins to run only upon completion of all of the Work called for by this Agreement and acceptance of such Work as complete by the City.

City agrees to subordinate its first position on the Property to a second position on portions of the Property in favor of a construction lender as Subdivider develops and constructs improvements required by the Agreement—as depicted on the attached Exhibit B; provided that a fund control is in place to assure payment directly to contractors for installation of such improvements and provided further that City receive a personal guarantee from the Owner for performance, labor and materials, and monumentation related to the subordinated amounts, and provided further that the City determines, in its sole discretion, that the City’s remaining first lien position on the Property is sufficient to secure Subdivider’s performance called for by this Agreement.

- B. **For Payment:** Corporate surety bond in a form acceptable to City in the sum of two million, four hundred eighteen thousand two hundred six dollars and thirty -one cents

(\$2,418,206.31), which represents one hundred percent (100%) of the estimated cost of the Work.

Pursuant to Government Code § 66499.3(b), with this security the Subdivider guarantees payment to the contractor, his subcontractors, and persons renting equipment or furnishing labor or materials to them or to the Subdivider.

City agrees to subordinate its first position in the Property to a second position on portions of the Property in favor of a construction lender as Subdivider develops and constructs improvements required by the Agreements as depicted on the attached Exhibit B; provided that a fund control is in place to assure payment directly to contractors for installation of such improvements and provided further that City receive a personal guarantee from the Owner for performance, labor and materials and monumentation related to the subordinated amounts and provided further that the City determines, in its sole discretion, that the City's remaining first lien position on the Property is sufficient to secure Subdivider's performance called for by this Agreement.

- C. Reduction of Security: Upon acceptance of the Work as complete by the City Council and upon request of the Subdivider, the amount of the securities may be reduced in accordance with Government Code sections 66497, *et. seq.* "Acceptance" as used in this subparagraph is solely for the purpose of considering whether security can be reduced. The improvement security required herein for faithful performance of this Agreement may be reduced in amount, but not more often than once per month, as the Work of improvement is completed. In no event shall this security be reduced until progress reports are submitted to the City, and the City determines 1.) that the Work in fact has been completed and 2.) the amount by which the security shall be reduced. The determination by the City as to the completion of Work or improvement and the amount by which the security shall be reduced shall be conclusive. The performance security shall not be reduced to an amount less than ten percent (10%) until the liability established by all parts and subsections of this Agreement is satisfied. Payment security may be reduced only in accordance with Government Code section 66499.7.

4. GUARANTEE AND WARRANTY OF WORK

Subdivider guarantees that said Work shall be free from defects in material or workmanship and shall perform satisfactorily for a period of one (1) year from and after the City Council accepts the Work as complete in accordance with Government Code section 66499.7. Subdivider agrees to correct, repair, or replace, at its expense, any defects in said Work.

5. PLANT ESTABLISHMENT WORK

Subdivider agrees to perform plant establishment work for landscaping installed under this Agreement. Said plant establishment work shall consist of adequately watering plants,

replacing unsuitable plants, doing weed, rodent and other pest control, and other work determined by the Public Services Department to be necessary to ensure establishment of plants. Said plant establishment work shall be performed for a period of one (1) year from and after the City Council accepts the work as completed.

6. IMPROVEMENT PLAN WARRANTY

Subdivider warrants the improvement plans for the Work are adequate to accomplish the Work as promised in Section 2. If, at any time before the City Council accepts the Work as complete or during the one-year guarantee period, said improvement plans prove to be inadequate in any respect, Subdivider shall make whatever changes are necessary to accomplish the Work as promised.

7. NO WAIVER BY CITY

Inspection of the Work and/or materials, or approval of Work and/or materials, or statement by any officer, agent or employee of the City indicating the Work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said Work and/or materials, or payments therefor, or any combination or all of these acts, shall not relieve the Subdivider of his obligation to fulfill this Agreement as prescribed; nor shall the City thereby be estopped from bringing any action for damages arising from the failure to comply with any of the terms and conditions hereof.

8. INDEMNITY

Subdivider shall defend, hold harmless, and indemnify the indemnitees from the liabilities as defined in this section:

- A. The indemnitees benefited and protected by this promise are the City and its elective and appointive boards, commissions, officers, agents, and employees.
- B. The liabilities protected against are any liability or claim for damage of any kind allegedly suffered, incurred, or threatened because of actions defined below, and including personal injury, death, property damage, inverse condemnation, or any combination of these, and regardless of whether or not such liability, claim, or damage was unforeseeable at any time before the City reviewed said improvement plans or accepted the Work as complete, and including the defense of any suit(s), action(s) or other proceeding(s) concerning said liabilities and claims, excepting only those claims arising from the sole negligence of City.
- C. The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this Agreement and attributable to the Subdivider, contractor, subcontractor or any officer, agent, or employee of one or more of these.
- D. Non-Conditions. The promises and Agreement in this section are not conditioned or

dependent on whether or not any indemnitee has prepared, supplied, or reviewed any plans or specifications in connection with this Work or Subdivision, or has insurance or other indemnification covering any of these matters, or that the alleged damage resulted partly from any negligent or willful misconduct of any indemnitee.

9. COSTS

Subdivider shall pay when due all the costs of the Work including inspections thereof and relocating existing utilities required thereby.

10. SURVEYS

Subdivider shall set and establish survey monuments in accordance with the filed map and to the satisfaction of the City Engineer before acceptance of any Work as complete by the City Council.

11. NON-PERFORMANCE AND COSTS

If Subdivider fails to complete the Work within the time specified in this Agreement and subsequent extensions, or fails to maintain the Work, the City may proceed to complete and/or maintain the Work by contract or otherwise, and Subdivider agrees to pay all costs and charges incurred by the City (including, but not limited to: engineering, inspection, surveys, contract, overhead, etc.) immediately upon demand.

Subdivider hereby consents to entry on the Subdivision property by the City and its forces, including contractors, in the event the City proceeds to complete and/or maintain the Work.

Once action is taken by City to complete or maintain the Work, Subdivider agrees to pay all costs incurred by the City, even if Subdivider subsequently completes the Work. Should City sue to compel performance under this Agreement or to recover costs incurred in completing or maintaining the Work, Subdivider agrees to pay all attorney's fees, and all other expenses of litigation incurred by City in connection therewith, even if Subdivider subsequently proceeds to complete the Work.

12. RECORD MAP

In consideration hereof, City shall allow Subdivider to file and record the Final Map for said Subdivision.

13. MONUMENTATION SECURITY

Subdivider shall file or deposit with the City a monument bond or security as applicable in an amount specified by the City Engineer pursuant to Sections 66496 and 66499 of the Government Code of the State of California.

14. ENGINEERING FEES

Subdivider shall pay such fees as have been duly established by City.

15. DATE OF COMPLETION

The completion of improvements required hereunder and the date of completion shall be determined and certified by the City Engineer.

16. FEES

Subdivider shall pay such fees as have been duly established by City.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Imperial)

On _____ before me, **Laura B. Gutierrez, Public Notary**
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

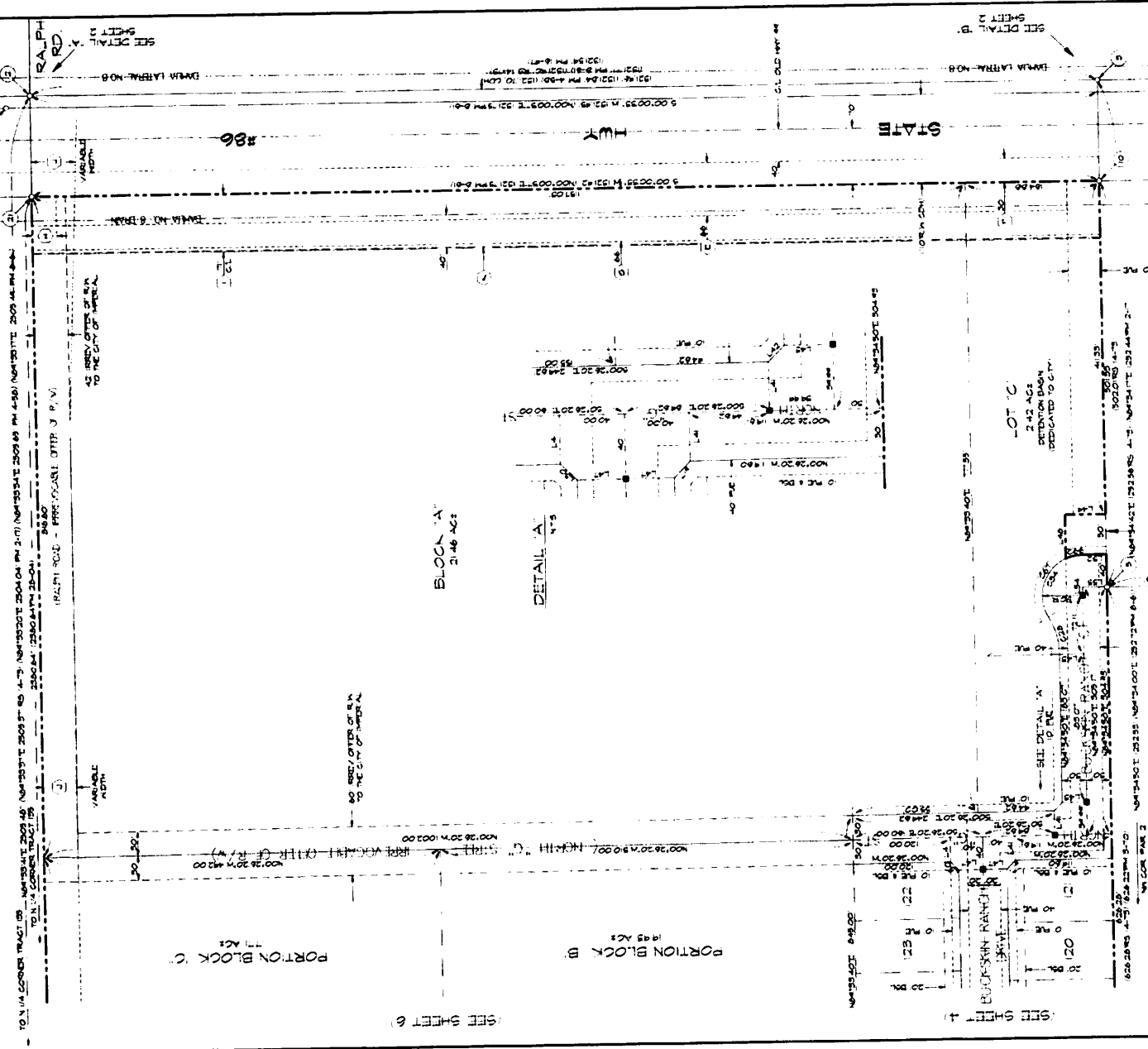
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

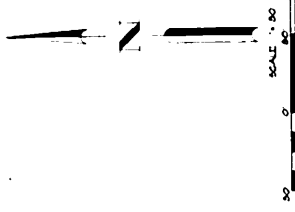
Signature _____ **(Seal)** _____

Exhibit 1

MORNING STAR SUBDIVISION UNIT NO. 1B A PORTION OF TRACT 135 T15 S. R13 E. S6M. IN THE CITY OF IMPERIAL CALIFORNIA



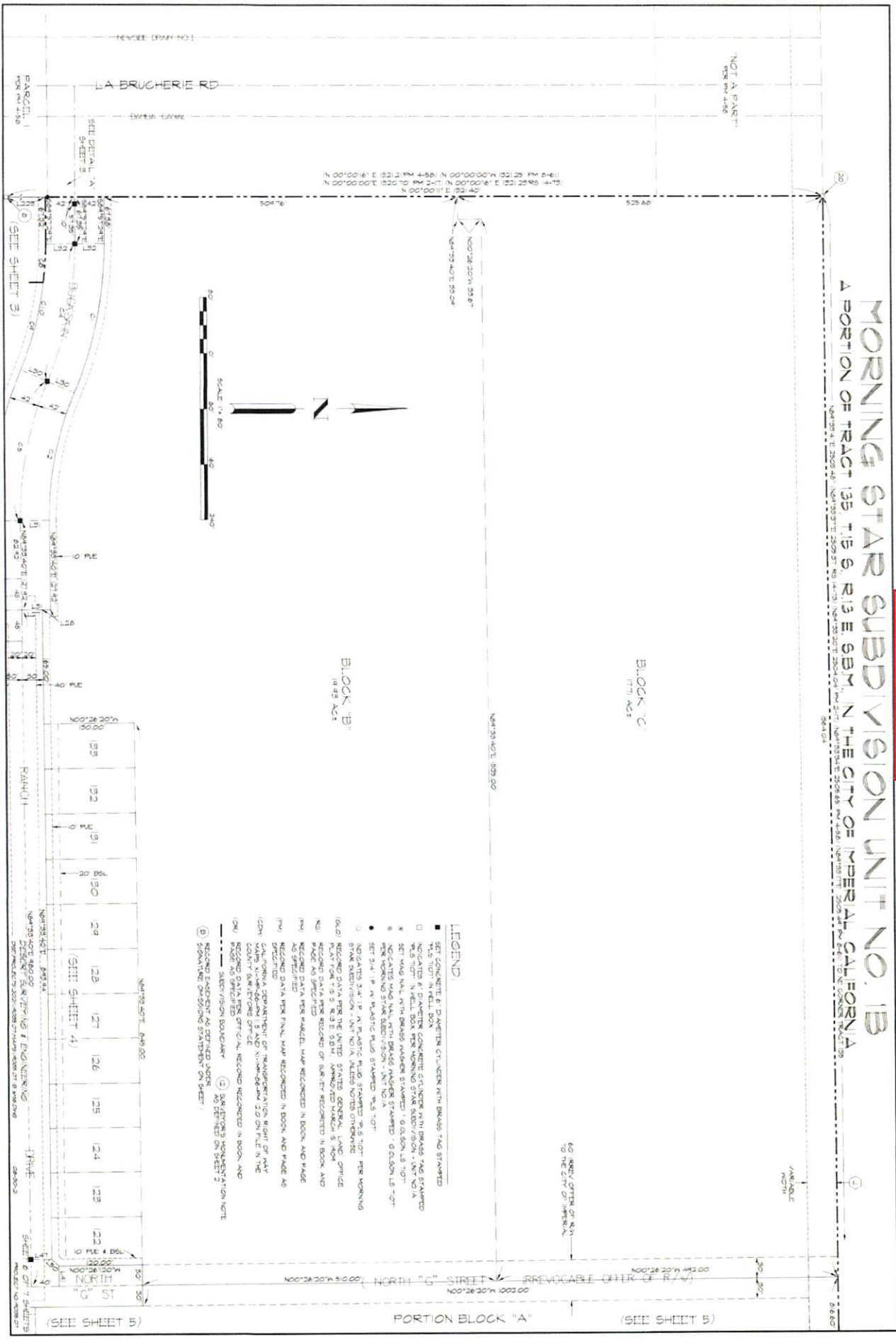
- LEGEND**
- 1 SET CONCRETE METER CYLINDER WITH BRASS TAG STAMPED "1" IN CENTER OF WELL
 - 2 INDICATED 8'-0" METER CONCRETE C/A MARK WITH BRASS TAG STAMPED "15" IN WELL. BOX PER WORKING STATE SUBDIVISION UNIT NO. A
 - 3 SET WOOD MARK WITH BRASS TAG STAMPED "GOLDEN IS" ON PER WORKING STAR SUBDIVISION UNIT NO. A
 - 4 SET 3" x 1 1/2" PLASTIC TUB STAMPED "15" ON PER WORKING STAR SUBDIVISION UNIT NO. A
 - 5 SET 3" x 1 1/2" PLASTIC TUB STAMPED "15" ON PER WORKING STAR SUBDIVISION UNIT NO. A
 - 6 (1) RECORD DATA PER THE UNITED STATES GENERAL LAND OFFICE PLAT FOR T15 S. R13 E. S6M APPROVED MARCH 5, 1968
 - 7 RECORD DATA PER RECORD OF SURVEY RECORDED IN BOOK AND PAGE AS SPECIFIED
 - 8 RECORD DATA PER PARCEL MAP RECORDED IN BOOK AND PAGE AS SPECIFIED
 - 9 RECORD DATA PER P.M.A. MAP RECORDED IN BOOK AND PAGE AS SPECIFIED
 - 10 CALIFORNIA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY CONSTRUCTION RECORD MAP RECORDED IN BOOK AND PAGE AS SPECIFIED
 - 11 RECORD DATA PER OFFICIAL RECORD RECORDED IN BOOK AND PAGE AS SPECIFIED
 - 12 SUBDIVISION BOUNDARY
 - 13 SET BY THE SURVEYOR
 - 14 RECORD BOUNDARY AS DETECTED UNDER
 - 15 500' x 100' 0" x 50' x 100' 0" x 50' x 100' 0"



DRAWN BY: [Name] CHECKED BY: [Name] DATE: [Date]
 SHEET 5 OF 5 SHEETS
 PROJECT NO. 10000

Exhibit 1

MORNING STAR SUBDIVISION UNIT NO. 1B A PORTION OF TRACT 13B, T13S, R13E, S34M, IN THE CITY OF IMPERIAL, CALIFORNIA



NOT A PART
PER PLAN 438

N 00°00'00" E 132.11 M 4.58' N 00°00'00" W 132.13 M 4.61'
N 20°00'00" E 132.10 M 4.57' N 00°00'00" E 132.12 M 4.59'
N 00°00'00" E 132.11 M 4.58'



BLOCK "B"
14 45 AC'S

BLOCK "C"
1771 AC'S

LEGEND:

- SET CONCRETE 6" DIAMETER CYLINDER WITH BRASS TAG STAMPED "1.5" 10" IN WELL BOX
- INDICATES 6" DIAMETER CONCRETE CYLINDER WITH BRASS TAG STAMPED "1.5" 10" IN WELL BOX PER MORNING STAR SUBDIVISION - UNIT NO. 1A
- * SET WOOD NAIL WITH BRASS WASHER STAMPED "10" 10" 10" 10"
- RECORD DATA FOR RECORD OF SURVEY RECORDED IN BOOK AND PAGE AS SPECIFIED
- SET 3/4" I.P. W. PLASTIC PIPES STAMPED "1.5" 10"
- INDICATES 3/4" I.P. W. PLASTIC PIPES STAMPED "1.5" 10" PER MORNING STAR SUBDIVISION - UNIT NO. 1A (ALSO NOTED ON DRAWING)
- (6A) RECORD DATA PER THE UNITED STATES GENERAL LAND OFFICE PLATON T13S, R13E, S34M, AMENDED MARCH 31, 1904
- (6B) RECORD DATA PER RECORD OF SURVEY RECORDED IN BOOK AND PAGE AS SPECIFIED
- (6C) RECORD DATA PER PARCEL MAP RECORDED IN BOOK AND PAGE AS SPECIFIED
- (6D) RECORD DATA PER FINAL MAP RECORDED IN BOOK AND PAGE AS SPECIFIED
- (6E) CALIFORNIA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY RECORD DATA PER OFFICIAL RECORD RECORDED IN BOOK AND COUNTY SURVEYING OFFICE (UNRECORDED 2.0 SHEET IN THE COUNTY RECORDS)
- (6F) RECORD DATA PER OFFICIAL RECORD RECORDED IN BOOK AND PAGE AS SPECIFIED
- (6G) SURVEY BOUNDARY
- (6H) SURVEY BOUNDARY
- (6I) RECORD EASEMENT AS DEFINED ABOVE
- (6J) RECORD EASEMENT AS DEFINED ABOVE
- (6K) SURVEY BOUNDARY
- (6L) SURVEY BOUNDARY
- (6M) SURVEY BOUNDARY
- (6N) SURVEY BOUNDARY
- (6O) SURVEY BOUNDARY
- (6P) SURVEY BOUNDARY
- (6Q) SURVEY BOUNDARY
- (6R) SURVEY BOUNDARY
- (6S) SURVEY BOUNDARY
- (6T) SURVEY BOUNDARY
- (6U) SURVEY BOUNDARY
- (6V) SURVEY BOUNDARY
- (6W) SURVEY BOUNDARY
- (6X) SURVEY BOUNDARY
- (6Y) SURVEY BOUNDARY
- (6Z) SURVEY BOUNDARY

PARCEL 1
PER PLAN 438

SEE DETAIL "A"
SHEET 2

(SEE SHEET 3)

SEE DETAIL "A"
SHEET 2

(SEE SHEET 3)

SEE DETAIL "A"
SHEET 2

(SEE SHEET 3)

SEE DETAIL "A"
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SEE DETAIL "A"
SHEET 2

(SEE SHEET 3)

MORNING STAR SUBDIVISION UNIT NO. 1B
 A PORTION OF TRACT 135 T1S 9 R13 E 6BM IN THE CITY OF IMPERIAL, CALIFORNIA

Exhibit 1

LINE	LENGTH	BEARING	AREA	REMARKS
1	0.00		0.00	
2	0.00		0.00	
3	0.00		0.00	
4	0.00		0.00	
5	0.00		0.00	
6	0.00		0.00	
7	0.00		0.00	
8	0.00		0.00	
9	0.00		0.00	
10	0.00		0.00	
11	0.00		0.00	
12	0.00		0.00	
13	0.00		0.00	
14	0.00		0.00	
15	0.00		0.00	
16	0.00		0.00	
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18	0.00		0.00	
19	0.00		0.00	
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99	0.00		0.00	
100	0.00		0.00	

LINE	LENGTH	BEARING	AREA	REMARKS
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195	0.00		0.00	
196	0.00		0.00	
197	0.00		0.00	
198	0.00		0.00	
199	0.00		0.00	
200	0.00		0.00	

LINE	LENGTH	BEARING	AREA	REMARKS
201	0.00		0.00	
202	0.00		0.00	
203	0.00		0.00	
204	0.00		0.00	
205	0.00		0.00	
206	0.00		0.00	
207	0.00		0.00	
208	0.00		0.00	
209	0.00		0.00	
210	0.00		0.00	
211	0.00		0.00	
212	0.00		0.00	
213	0.00		0.00	
214	0.00		0.00	
215	0.00		0.00	
216	0.00		0.00	
217	0.00		0.00	
218	0.00		0.00	
219	0.00		0.00	
220	0.00		0.00	
221	0.00		0.00	
222	0.00		0.00	
223	0.00		0.00	
224	0.00		0.00	
225	0.00		0.00	
226	0.00		0.00	
227	0.00		0.00	
228	0.00		0.00	
229	0.00		0.00	
230	0.00		0.00	
231	0.00		0.00	
232	0.00		0.00	
233	0.00		0.00	
234	0.00		0.00	
235	0.00		0.00	
236	0.00		0.00	
237	0.00		0.00	
238	0.00		0.00	
239	0.00		0.00	
240	0.00		0.00	
241	0.00		0.00	
242	0.00		0.00	
243	0.00		0.00	
244	0.00		0.00	
245	0.00		0.00	
246	0.00		0.00	
247	0.00		0.00	
248	0.00		0.00	
249	0.00		0.00	
250	0.00		0.00	
251	0.00		0.00	
252	0.00		0.00	
253	0.00		0.00	
254	0.00		0.00	
255	0.00		0.00	
256	0.00		0.00	
257	0.00		0.00	
258	0.00		0.00	
259	0.00		0.00	
260	0.00		0.00	
261	0.00		0.00	
262	0.00		0.00	
263	0.00		0.00	
264	0.00		0.00	
265	0.00		0.00	
266	0.00		0.00	
267	0.00		0.00	
268	0.00		0.00	
269	0.00		0.00	
270	0.00		0.00	
271	0.00		0.00	
272	0.00		0.00	
273	0.00		0.00	
274	0.00		0.00	
275	0.00		0.00	
276	0.00		0.00	
277	0.00		0.00	
278	0.00		0.00	
279	0.00		0.00	
280	0.00		0.00	
281	0.00		0.00	
282	0.00		0.00	
283	0.00		0.00	
284	0.00		0.00	
285	0.00		0.00	
286	0.00		0.00	
287	0.00		0.00	
288	0.00		0.00	
289	0.00		0.00	
290	0.00		0.00	
291	0.00		0.00	
292	0.00		0.00	
293	0.00		0.00	
294	0.00		0.00	
295	0.00		0.00	
296	0.00		0.00	
297	0.00		0.00	
298	0.00		0.00	
299	0.00		0.00	
300	0.00		0.00	

LINE	LENGTH	BEARING	AREA	REMARKS
301	0.00		0.00	
302	0.00		0.00	
303	0.00		0.00	
304	0.00		0.00	
305	0.00		0.00	
306	0.00		0.00	
307	0.00		0.00	</