



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: November 22, 2016

Title: Agreement of Termination of amended Diablo Village Development Agreement between Pima County, Arizona, Flood Control District, and RES-AZ DVL, LLC (Resolution)

Introduction/Background:

A development agreement with the owner of Diablo Village Estates was approved in 2005 and amended in 2007. Certain requirements of the development agreement such as the conveyance of a portion of the property to the County and the payment of past taxes have been completed. Other requirements of the development agreement have been met or will be met through other regulatory processes. The current owner of the remaining Diablo Village wishes to terminate the agreement subject to conditions specified in the termination agreement.

Discussion:

The requirements of the amended development agreement will have been met when the agreement to terminate the amended development Agreement becomes effective or will be met through the Pima County code. The requirements include conveyance of property to Pima County, provision of improvements, taxes paid, and recordation of Notice of Letter of Map Revision.

Conclusion:

The owner of the Diablo Village "East and Townhouse Lots" (RES-AZ DVL, LLC) wishes to terminate the amended development agreement stating that the requirements have been met or will be met when the termination agreement becomes effective. Applicable County departments have reviewed and agreed to the termination agreement.

Recommendation:

Staff recommends that the Board of Supervisors approve this Resolution.

Fiscal Impact:

0

Board of Supervisor District:

- 1 2 3 4 5 All

Department: Development Services Department - Planning Telephone: 520-724-9000

Department Director Signature/Date:  10-31-16

Deputy County Administrator Signature/Date:  11/1/16

County Administrator Signature/Date:  11/2/16



TO: HONORABLE BOARD OF SUPERVISORS

FROM: Chris Poirier, Planning Official

DATE: October 7, 2016

SUBJECT: **AGREEMENT FOR TERMINATION OF DIABLO VILLAGE ESTATES DEVELOPMENT AGREEMENT BETWEEN PIMA COUNTY, ARIZONA, PIMA COUNTY FLOOD CONTROL DISTRICT, AND RES-AZ DVL, LLC**

The above referenced Agreement for Termination of Development Agreement is scheduled for the Board of Supervisors' **TUESDAY, NOVEMBER 22, 2016** hearing.

Background

In 2005, the Board of Supervisors entered into a development agreement with the original owner of 226 acres of rezoned property known as Diablo Village Estates, comprised of the "East Lots", "West Lots", and "Townhome Lots", and located southeast of the intersection of Vahalla and Valencia Roads. The development agreement primarily addresses drainage and road improvements, payment of taxes, and conveyance of the "West Lots" to Pima County. In 2007, the development agreement was amended primarily to extend the closing date for conveying the "West Lots" to Pima County.

The "West Lots" portion of the property is now owned by Pima County. Other requirements of the amended development agreement either have been met or will be met through compliance with the Pima County code. The District and the owner are working on a Letter of Map Revision (LOMR) for the Federal Emergency Management Agency (FEMA) confirming the "East and Townhouse Lots" are not within the FEMA Special Flood Hazard Area.

The owner now wishes to terminate the amended development agreement, proposing the attached termination agreement. In addition to termination, the attached agreement specifies that the owner, County, and District shall continue to work effectively toward approval of the LOMR. The agreement also addresses the costs entailed with the LOMR and that if approved by FEMA, a Notice of Letter of Map Revision will be done. As proposed, upon recordation of the Notice, the amended development agreement will then be terminated. The attached agreement does not affect the conveyance of the "West Lots" or the application of County regulations.

Recommendation

Staff recommends that the Board of Supervisors approve the agreement for termination of the amended development agreement as presented.

Sincerely,


Chris Poirier, Planning Official

Attachments

c: C.H. Huckelberry, County Administrator
John Bernal, Deputy County Administrator for Public Works
Carmine DeBonis, Jr., Director, Development Services
Andrew Flagg, Deputy County Attorney

One South Church Avenue
Suite 1500
Tucson, Arizona 85701-1630
520.882.1200
520.884.1294 (Fax)
www.swlaw.com

Marc G. Simon
(520) 882-1233
msimon@swlaw.com

DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
RENO
SALT LAKE CITY
TUCSON

June 13, 2016

VIA ELECTRONIC AND U. S. MAIL

Chris Poirier
Assistant Planning Director
Pima County Department of Development Services
201 North Stone Avenue, 2nd Floor
Tucson, Arizona 85701

Re: RES-AZ, LLC – Diablo Village

Dear Chris:

We talked a short while back about terminating the Development Agreement for Diablo Village, a copy of which is attached. Also attached is an updated title report showing title to the property vested in our client, RES-AZ DVL, LLC, together with a proposed form of Agreement for Termination of Development Agreement.

As I believe is now well-established both by the Real Estate Department and the Floodplain Department, there will be no need for the floodplain improvements and detention/retention facilities contemplated by the Development Agreement once the new Letter of Map Revision is approved by FEMA authorities in conjunction with the efforts of our client and Pima County. Further, the remainder of the Development Agreement is unnecessary, as those provisions merely recite requirements that will exist by law and by County Ordinance in any event. In fact, as you can see by the attached Assurance Agreements, any issues of roads or utilities must, in any event, be addressed prior to sale or disposition other than in bulk, as a release of assurance will be required for the lots remaining to be developed.

To address the situation logically, and to permit you to transmit a recommendation for approval to the County Administrator, we have drafted the Agreement for Termination so that it is effective upon execution, but actual termination is only effective upon approval of the Letter of Map Revision.

Please let me know what comments you may have on the draft Agreement for Termination and whether we can schedule the matter for approval. At your direction, I will have one or more executed counterparts of the agreement delivered to your office.

Chris Poirier
June 13 2016
Page 2

Thanks for your assistance and please call with any question.

Very truly yours,

Snell & Wilmer L.L.P.



Marc G. Simon

MGS:mjs
Enclosures

RESOLUTION 2016-FC_____

RESOLUTION 2016-_____

A JOINT RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS AND THE BOARD OF DIRECTORS OF THE PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT; APPROVING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT TO TERMINATE AN AMENDED DEVELOPMENT AGREEMENT BETWEEN PIMA COUNTY, PIMA COUNTY FLOOD CONTROL DISTRICT, AND RES-AZ DVL, LLC.

The Pima County Board of Supervisors and the Board of Directors of the Pima County Regional Flood Control District find that:

1. Pima County (the "County") may, pursuant to A.R.S. § 11-1101, enter into development agreements relating to property located in unincorporated Pima County and may terminate development agreements by mutual consent of the parties.
2. The County, Pima County Flood Control District ("the Flood Control District"), and the previous owner Origin Properties L.L.C., a Nevada limited liability company, previously entered into a development agreement, and subsequently amended it (the "Development Agreement").
3. The current owner RES-AZ DVL, L.L.C., a Florida limited liability company, has asked to terminate that amended development agreement because the provisions have been met including the conveyance of the "West Lots" to Pima County, or will be met through adherence to the Pima County code, or will be met by approval of a Letter of Map Revision jointly proposed by the owner and the Flood Control District.
4. The termination of the amended development agreement would be effective upon recordation of a Notice of Letter of Map Revision for the "East and Townhouse Lots".

NOW, THEREFORE, IT IS RESOLVED:

1. An agreement to terminate the amended development agreement, in the form presented to the Board of Supervisors and the Board of Directors of the Pima County Regional Flood Control District, is approved.
2. The Chair of the Board is authorized and directed to sign the agreement to terminate on behalf of the County and the Flood Control District.
3. The various officers and employees of the County are authorized and directed to perform all acts necessary and desirable to give effect to this Resolution and the agreement to terminate the development agreement.

Passed and adopted, this _____ day of _____, 2016.

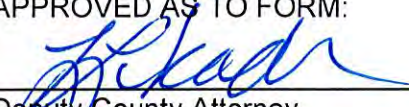
Chair, Pima County Board of Supervisors

Chair, Pima County Regional Flood Control District
Board of Directors

ATTEST:


Clerk of the Board

APPROVED AS TO FORM:



Deputy County Attorney
Lesley M. Lukach

APPROVED:



Executive Secretary
Planning and Zoning Commission

WHEN RECORDED, RETURN TO:

Snell & Wilmer L.L.P.
One South Church Avenue, Suite 1500
Tucson, Arizona 85701
Attn: Marc Simon

For Recorder's Use

AGREEMENT FOR TERMINATION OF DEVELOPMENT AGREEMENT

This Agreement for Termination of Development Agreement (this "**Agreement**") is entered into as of this ____ day of _____, 2016 (the "**Effective Date**"), by and between RES-AZ DVL, LLC, a Florida limited liability company ("**Owner**"), PIMA COUNTY, a body politic and political subdivision of the State of Arizona ("**County**") and the PIMA COUNTY FLOOD CONTROL DISTRICT, a body politic and political subdivision of the State of Arizona ("**District**").

RECITALS

A. Origin Properties L.L.C., a Nevada limited liability company, County and District entered into that certain Development Agreement, dated January 6, 2005 and recorded on February 2, 2006 at Instrument No. 20060220527 (re-recorded on December 1, 2006 at Instrument No. 20062310006), as amended by that certain Amendment to Development Agreement, dated August 1, 2007 and recorded on August 16, 2007 at Instrument No. 20071590498 (collectively, the "**Development Agreement**"), all in the Official Records of Pima County, Arizona, which pertains to certain real property located in Pima County, Arizona, as further described therein (the "**Property**").

B. A portion of the Property, described in the Development Agreement as the "**West Lots**", was to be conveyed to District. Such conveyance has occurred, and District currently holds title to the West Lots. Owner has acquired title to the remainder of the Property.

C. The purpose of the Development Agreement was, among other things, to see that certain delinquent taxes owing to County were paid, and that certain flood control improvements were developed on the West Lots, primarily benefiting portions of the Property now owned by Owner, all based upon understandings at the time with respect to flood zone and hydrology information current at the time (the "**Flood Control Improvements**").

D. Owner and the District have been working cooperatively on a Letter of Map Revision to be approved by the Federal Emergency Management Agency ("**FEMA**"), confirming that based upon subsequent studies and findings, the East Lots and the Townhouse Lots are not within the FEMA Special Flood Hazard Area, but may be impacted by locally identified regulatory floodplain, as governed by County flood control ordinances. The removal of the East

Lots and Townhouse Lots from the Special Flood Hazard Area makes the Development Agreement unnecessary. Reference herein to the "LOMR" shall mean a formal Letter of Map Revision from FEMA.

E. Because conveyance of the West Lots to District has occurred, and because Flood Control Improvements will, upon approval of the LOMR, no longer be necessary, the parties hereto desire to terminate the Development Agreement, but contingent upon approval of the LOMR.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Effective Date of Agreement. This Agreement shall take effect upon approval by County and District. The date by which the last of County and District have so approved, shall be the Effective Date, and such date shall, at the time of execution, be inserted where shown above.
2. Cooperative Effort for Approval of LOMR. Owner, County and District agree to continue efforts after the Effective Date to work cooperatively toward approval of the LOMR. Owner shall be responsible for the cost of all hydrology, engineering, and other studies necessary for submittals to FEMA for approval of the LOMR, but Owner shall not be required to pay any costs or fees to County other than usual and typical filing and review fees charged by County to any other person or entity submitting a LOMR. The parties expect the LOMR to be approved by late 2016.
3. Condition of Agreement; Approval of LOMR. After the effective date of the LOMR approved by FEMA, the Chief Engineer of the District and the County Administrator shall execute a "Notice of Letter of Map Revision." Owner may record such notice, making reference to the Development Agreement, and to this Agreement. Upon recordation of same, the Development Agreement shall be deemed terminated in its entirety and of no further force or effect. The conveyance to District of the West Lots, which has already occurred, remains valid, intact and unaffected by any termination of the Development Agreement.
4. Release; Standard Regulations. Upon termination of the Development Agreement, the parties hereby shall be deemed to have released each other from any further liability under the Development Agreement, but nothing herein shall be deemed to alter or change the ordinances, rules or regulations that will govern Owner's land, including its lots shown on the plat for Diablo Village Estates, as recorded Book of Maps 29 and Plats at Page 74 thereof, Pima County Records. Without limitation, all otherwise applicable rules pertaining to infrastructure, roads, utilities, drainage channel bank stabilization, native plant protection, and subdivision assurances shall continue to apply.

5. Binding Effect. This Agreement shall inure to the benefit of and bind the parties' heirs, personal representatives, successors and assigns.

6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one instrument.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this Termination Agreement as of the date and year first above written.

COUNTY:

PIMA COUNTY, a body politic and political subdivision of the State of Arizona

Chair, Pima County Board of Supervisors

OWNER:

RES-AZ DVL, LLC, a Florida limited liability company

By: Matthew M. Arshami
Name: MATTHEW M. ARSHAMI
Title: VICE PRESIDENT

DISTRICT:

PIMA COUNTY FLOOD CONTROL DISTRICT,
a body politic and political subdivision
of the State of Arizona

Chair, Pima County Flood Control District

ATTEST:

Clerk of the Board and District Board

APPROVED AS TO FORM:

Regina Nassen
Deputy County Attorney

REGINA NASSEN

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Sharon Bronson, the Chair of the Pima County Board of Supervisors, on behalf of Pima County, a body politic and political subdivision of the State of Arizona.

Notary

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Pima)

The forgoing instrument was acknowledged before me this ____ day of _____, 2016, by Sharon Bronson, the Chair of the Pima County Flood Control District, on behalf of the district, a body politic and political subdivision of the State of Arizona.

Notary

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of ~~Pima~~ MARICOPA)

The foregoing instrument was acknowledged before me this 16th day of Sept., 2016 by Matthew M. Avrami, the VICE PRESIDENT of RES-AZ DVL, LLC, a Florida limited liability company, on behalf of the company.

Dayle A. Moses
Notary

My Commission Expires:

4/16/2017
23957789.5



F. ANN RODRIGUEZ, RECORDER
RECORDED BY: C_V
DEPUTY RECORDER
1016 PE4



DOCKET: 13120
PAGE: 2012
NO. OF PAGES: 9
SEQUENCE: 20071590498
08/16/2007
AAG 16:20
PICKUP
AMOUNT PAID \$ 0.00

P0230
PIMA CO CLERK OF THE BOARD
PICK UP
ATTN LISA

CONTRACT
NO. 11-590-139820-0807
AMENDMENT NO.
This number shall prevail on all
invoices, contracts and
documents pertaining to this
contract

When Recorded Return to:
Pima County Real Property Services
201 N. Stone Avenue, 6th Floor
Tucson, AZ 85701-1215

AMENDMENT TO DEVELOPMENT AGREEMENT

This AMENDMENT TO DEVELOPMENT AGREEMENT (the "Amendment") is entered into by and between Origin Properties, L.L.C., a Nevada limited liability company, (the "Developer"); Pima County, a body politic and political subdivision of the State of Arizona (the "County"); and the Pima County Flood Control District, a body politic and political subdivision of the State of Arizona (the "District").

RECITALS

A. Developer owns certain real property in Pima County, Arizona, commonly known as Diablo Village Estates, located generally south and east of Valencia Road and Valhalla Road (the "Property"). As defined in the Agreement (defined below), the Property is comprised of three sections, namely, the "West Lots", the "East Lots", and the "Townhouse Lots".

B. Developer entered into a Development Agreement (the "Agreement") with County and District on January 6, 2005, which Agreement was recorded on February 2, 2006, in Docket 12733, Page 1881, and re-recorded to add missing exhibits thereto on December 1, 2006, in Docket 12942, Page 19, Office of the Pima County Recorder.

C. The Agreement provided, among other things, that Developer would convey title to certain real property known as Lots numbered 512 through 888 and Block A of Diablo Village Estates (the "West Lots") to the District, free and clear of all liens and encumbrances, for the purchase price of \$1.00 (the "Purchase Price") payable to Developer at the close of escrow (the "Closing") for said conveyance.

D. In accordance with the terms and conditions of the Agreement, Developer intends to convey the West Lots to the District for the construction of certain necessary flood control facilities (the "Flood Control Facilities"), and to develop the adjacent East Lots and Townhouse Lots as a residential subdivision (the "Subdivision"). Pursuant to the Agreement and the additional terms of this Amendment, Developer shall retain certain rights to excavate and use material from the West Lots for the development of the Subdivision.

11-590-139820-0807

9

E. The Flood Control Facilities and the Subdivision projects are subject to section 404 permit review by the United States Army Corps of Engineers (the "Corps"), file number 2005-01601-MB, pursuant to its authority under the federal Clean Water Act (33 U.S.C. Section 1344). The Corps has directed that the two projects be issued separate and independent permits under the section 404 program (the "404 Permits"). Pursuant to this direction, the District shall be the permittee for the Flood Control Facilities and Developer shall be the permittee for the Subdivision.

F. The Closing referenced in Recital C above, was to have occurred no later than February 18, 2005 (the "Original Closing Date"). Due to unanticipated factors beyond the parties' control, the Closing did not occur by the Original Closing Date and has not occurred to date.

G. The Agreement provided that at the time of Closing, in addition to the payment of the Purchase Price to the Developer, District would pay to the County Treasurer the outstanding property taxes, penalties and interest due on the West Lots calculated as of the Original Closing Date.

H. The outstanding property taxes, penalties and interest due on the West Lots as of the Original Closing Date totaled \$1,326,843.62.

I. Additional property taxes, penalties and interest have accrued on the West Lots from the Original Closing Date in the sum of \$244,410.06, calculated through August 30, 2007.

J. Title to the West Lots is now held in the name of Lawyers Title Trust Number 8060-T (the "Trust"), of which Developer is the sole named beneficiary.

K. The parties intend to clarify herein certain rights and responsibilities among themselves, including issues relating to impacts and mitigation measures relevant to the Flood Control Facilities and the Subdivision, and have agreed to amend the Agreement, according to the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Incorporation of Recitals. The recitals set forth above are hereby incorporated as if fully set forth herein.
2. Extension of Closing Date. The deadline for Closing of the conveyance of the West Lots to District is hereby extended to not later than August 17, 2007. This deadline may only be extended in writing signed by the parties to this Amendment.

13-11-07 09:01:13

3. Conveyance of the West Lots. Prior to Closing, Developer shall cause the Trust to execute and deposit into escrow a Warranty Deed conveying fee title to the West Lots to the District free and clear of all liens and encumbrances, subject only to those title exceptions reasonably acceptable to the District, and those specifically authorized herein relating to property taxes.

4. Waiver of Requirement of the Purchase Price. The cash payment of the Purchase Price from District to Developer due at Closing is hereby waived and will no longer be required as a condition of the conveyance of the West Lots.

5. Payment of Delinquent Property Taxes, Penalties and Interest. All property taxes, penalties and interest due on the West Lots shall be paid by the parties to the Pima County Treasurer in the following amounts:

- a. District shall pay \$1,326,843.62, which sum represents the unpaid property taxes, penalties and interest which were due on the West Lots as of Original Closing Date.
- b. District shall also pay \$122,205.03, representing one-half (1/2) of the property taxes, penalties and interest accrued on the West Lots since the Original Closing Date and calculated through August 30, 2007.
- c. Developer shall pay \$122,205.03, representing one-half (1/2) of the property taxes, penalties and interest accrued on the West Lots since the Original Closing Date and calculated through August 30, 2007.

6. Payment of Escrow Fees and Closing Costs. All escrow fees and closing costs associated with the Closing shall be paid by the parties in the following amounts:

- a. Developer will pay the full cost of a standard ALTA Title Insurance Policy insuring title to the West Lots in the amount of \$1,450,000.00 in favor of the District.
- b. Developer and District will each pay fifty percent (50%) of any remaining escrow fees and closing costs, the total of which are estimated to be \$2,150.

7. District's Payments Not to Exceed Figure. Payments by the District pursuant to this Agreement shall not exceed a total of \$1,465,673.65, without prior authorization from the District Board of Directors. This Not to Exceed Amount is included for the County's internal accounting purposes and is not a reflection of the specific amounts to be paid under this Agreement. The District's Not to Exceed Amount is comprised of the following:

- a. District's share of property taxes, penalties and interest on West Lots as of Closing \$ 1,449,048.65

b.	<u>District's reimbursement to Developer for Mitigation as referenced in Paragraph 10b below</u>	\$ 15,300.00
c.	District's estimated fifty percent share of escrow fees and closing costs	\$ 1,325.00
DISTRICT'S TOTAL NOT TO EXCEED		\$ <u>1,465,673.65</u>

8. Preservation Plan. Developer has provided a Biological Assessment and associated work for a Pima Pineapple Mitigation Plan ("PPMP") that has been approved by the United States Fish and Wildlife Service. The parties agree that this approved PPMP shall constitute the Native Plant Preservation Plan described in the Agreement.

9. Mitigation Credits. To the fullest extent that Pima pineapple cactus mitigation is required pursuant to the PPMP, the parties agree that such mitigation shall be through acquisition of mitigation credits, in such ratios as are required. The District shall bear the full cost of acquiring such credits and shall assign such credits to Developer to enable Developer to achieve compliance with any such mitigation requirements.

10. Section 404 Permits.

a. Timing. The parties acknowledge and agree that time is of the essence and that they shall make all reasonable and diligent efforts to process and comply with the requirements of the Corps in relation to the issuance of the 404 Permits. The parties further agree that Westland Resources, Inc. will continue to act as agent for both the Developer and the District to process and obtain the 404 Permits in accordance with the current contractual obligations.

b. Mitigation. Mitigation measures required under the 404 Permits, including mitigation for Waters of the United States, shall be the sole responsibility of the individual permittees in accordance with the terms of their respective 404 Permits. Final approved mitigation measures consisted solely of in-lieu fee payments by the Developer totaling \$20,250.00 for mitigation of 0.33 acres on the East Lots and 1.02 acres on the West Lots to a Corps-approved third party entity (the Audubon Society). The District's payment obligation to the Developer for mitigation is \$15,300.00, and such payment shall be paid from escrow at Closing of the West Lots.

11. Historic Properties. One archeological site has been found on the Property, located entirely within the West Lots. Implementation of any mitigation and data recovery obligations required for compliance with Section 106 of the National Historic Act, or any other applicable "historic property" regulations related to this site, including trenching, sampling, preservation, recovery or other requirements, shall be the sole responsibility of the District.

EXHIBIT 1

12. Approval of Plans. County and District shall continue to work diligently with Developer's engineer, Castro Engineering, to process the paving, grading, drainage and excavation plans for the Subdivision and the Flood Control Facilities (collectively, the "Plans") for approval by County and District, once all requirements therefor have been met by Developer.

13. Excavation of West Lots. Developer, or its successors and assigns, shall commence excavation of the West Lots, as provided in the Agreement, within 180 days following the latter of: i) final approval by the County and the District of the Plans, and ii) receipt of the 404 Permits. Developer, or its successors and assigns, shall have the right to excavate material from the West Lots for a period of four (4) years following commencement of such excavation, subject to all other terms and conditions of the Agreement.

14. Notice to Developer. Unless otherwise designated in writing, all notices to Developer shall hereafter be directed to:

Brad Burns
Diablo Village, LLC
2670 Crimson Canyon Drive, Suite 110
Las Vegas, NV 89128

15. Other Terms Remain the Same. All other terms and conditions of the Agreement remain the same as first agreed to and executed by the parties on January 6, 2005.

103120 000010

DATED as of the 1st day of August, 2007.

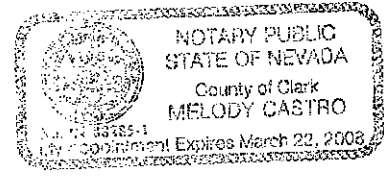
ORIGIN PROPERTIES, L.L.C., a
Nevada limited liability company
By: BFB Enterprises, L.L.C., Manager

By: *[Signature]*
Bradley F. Burns, Manager

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The foregoing was acknowledged
before me this 1st day of August,
2007, by Bradley F. Burns,
on behalf of Origin Properties, LLC,
a Nevada limited liability company.

[Signature]
Notary Public
My Commission Expires: 3-22-08



143100 000017

PIMA COUNTY BOARD OF SUPERVISORS

[Signature]
VICE Chairman, Pima County Board of Supervisors
AUG 07 2007

PIMA COUNTY FLOOD CONTROL DISTRICT

[Signature]
VICE Chairman, Pima County Flood Control District Board
AUG 07 2007

ATTEST:

[Signature]
Clerk of the Board and the District Board

APPROVED AS TO FORM:

[Signature]
Deputy Pima County Attorney

APPROVED AS TO CONTENT:

[Signature]
Director, Pima County Flood Control District

13-03-00-100

RESOLUTION AND ORDER NO. 2007 - 199

RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN PIMA COUNTY, PIMA COUNTY FLOOD CONTROL DISTRICT AND ORIGIN PROPERTIES, L.L.C.

WHEREAS, Pima County (the "County"), Pima County Flood Control District ("District") and Origin Properties, L.L.C., a Nevada Limited Liability Company (the "Developer"), entered into a Development Agreement on January 6, 2005, pertaining to the development of certain real property owned by Developer and located generally south and east of the intersection of Valencia and Valhalla Roads, in Pima County (the "Property"), and

WHEREAS, the referenced Development Agreement was entered into pursuant to Pima County Resolution Numbers 2004-348 and Flood Control District Resolution Number 2004-FC13, and

WHEREAS, it has become necessary to extend certain deadlines set forth in the Development Agreement and to provide for payment by District of additional property taxes having accrued since February, 2005, in consideration for the conveyance by Developer to District of that portion of the Property known as the "West Lots", and

WHEREAS, it is necessary to amend the Development Agreement to effectuate the changes in terms set forth above,

NOW, THEREFORE, UPON MOTION DULY MADE, SECONDED AND CARRIED, BE RESOLVED THAT:

1. The Amendment to the Development Agreement is hereby approved.
2. The Chairman of the Board is hereby authorized and directed to sign the Amendment to Development Agreement for the Pima County Board of Supervisors.
3. The various officers and employees of Pima County are hereby authorized and directed to perform all acts necessary and desirable to give effect to this Resolution.

PASSED, ADOPTED AND APPROVED this 7th day of August 2007.

PIMA COUNTY BOARD OF SUPERVISORS:

James Valadez
VICE Chairman

ATTEST
Lee Rodoshum
Clerk Board of Supervisors

APPROVED AS TO FORM:
[Signature]
Deputy County Attorney

10-10-07

RESOLUTION OF THE PIMA COUNTY FLOOD CONTROL DISTRICT BOARD APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN PIMA COUNTY, PIMA COUNTY FLOOD CONTROL DISTRICT AND ORIGIN PROPERTIES, L.L.C.

WHEREAS, Pima County (the "County"), Pima County Flood Control District ("District") and Origin Properties, L.L.C., a Nevada Limited Liability Company (the "Developer"), entered into a Development Agreement on January 6, 2005, pertaining to the development of certain real property owned by Developer and located generally south and east of the intersection of Valencia and Valhalla Roads, in Pima County (the "Property"), and

WHEREAS, the referenced Development Agreement was entered into pursuant to Pima County Resolution Number 2004-348 and Flood Control District Resolution Number 2004-FC13, and

WHEREAS, it has become necessary to extend certain deadlines set forth in the Development Agreement and to provide for payment by District of additional property taxes having accrued since February, 2005, in consideration for the conveyance by Developer to District of that portion of the Property known as the "West Lots", and

WHEREAS, it is necessary to amend the Development Agreement to effectuate the changes in terms set forth above,

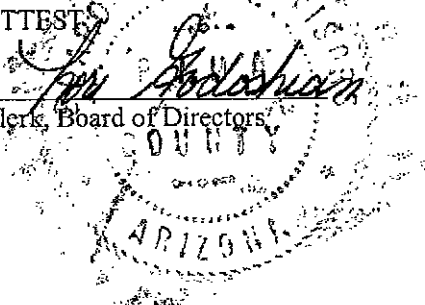
NOW, THEREFORE, UPON MOTION DULY MADE, SECONDED AND CARRIED, BE IT RESOLVED THAT:

1. The Amendment to the Development Agreement is hereby approved.
2. The Chairman of the District Board is hereby authorized and directed to sign the Amendment to Development Agreement for the Pima County Flood Control District Board of Directors.
3. The various officers and employees of Pima County acting for the Pima County Flood Control District are hereby authorized and directed to perform all acts necessary and desirable to give effect to this Resolution.

PASSED, ADOPTED AND APPROVED this 7th day of August 2007.

PIMA COUNTY BOARD OF DIRECTORS OF THE PIMA COUNTY FLOOD CONTROL DISTRICT:

Liam Valdez
VICE Chairman

ATTESTS
[Signature]
Clerk, Board of Directors


APPROVED AS TO FORM
[Signature]
Deputy County Attorney

103-1030 000000

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: C_D
DEPUTY RECORDER
0224 PE3

PCREA
PIMA CO REAL PROPERTY SERVICES
PICK UP
ATTN SHERRY



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PAGE: 19
NO. OF PAGES: 25
SEQUENCE: 20062310006
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WHEN RECORDED RETURN TO:

DEBBIE KNUTSON
REAL PROPERTY SERVICES
PIMA COUNTY PUBLIC WORKS
201 N. STONE AVE., 6TH FLOOR
TUCSON, AZ 85701

DOCUMENT TITLE: DEVELOPMENT AGREEMENT

THIS DOCUMENT IS BEING RE-RECORDED TO ADD THE EXHIBITS.

01-000 124-001

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: SGP
DEPUTY RECORDER
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P1580
PIMA CO FLOOD CONTROL DISTRICT
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PAGE: 1881
NO. OF PAGES: 15
SEQUENCE: 20060220527
02/02/2006
AG 16:03
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AMOUNT PAID \$ 0.00

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this 10th day of ~~December, 2004~~ ^{January, 2005}, by and between Origin Properties L.L.C., a Nevada limited liability company, referred to herein as the "Developer," and Pima County, a body politic and political subdivision of the State of Arizona, referred to herein as the "County," and the Pima County Flood Control District, a body politic and political subdivision of the State of Arizona, referred to herein as the "District." This Agreement is entered into pursuant to Pima County Resolution Numbers 2004-348 and 2004-FC13.

RECITALS

A. A.R.S. §11-1101 authorizes the County to enter into development agreements with landowners and persons having an interest in real property that is located in the County.

B. The Developer is the owner of approximately 226 acres of certain real property, referred to herein as the "Property," located generally south and east of the intersection of Valencia Road and Valhalla Road in Pima County and described as follows:

1. Lots numbered 115 through 178, 209 through 222 and 254 through 511 of Diablo Village Estates, as shown on the plat recorded in 1976, in Book 28 at Page 33 of Maps and Plats in the Office of the Pima County Recorder, referred to herein as the "East Lots." The East Lots are shown on Exhibits 1A and 1B, attached hereto.
2. Lots numbered 512 through 888 and Block A of Diablo Village Estates, as shown on the plat recorded in 1978, in Book 29 at Page 74 of Maps and Plats in the Office of the Pima County Recorder, referred to herein as the "West Lots." The West Lots are shown on Exhibits 2A and 2B attached hereto.
3. Diablo Village Estates Townhouses Lots numbered 1 through 59 and Common Areas A and B as shown on the Plat recorded in 1980, in Book 32 at Page 96 of Maps and Plats in the Office of the Pima County Recorder). All of these lots, referred to herein as the "Townhouse Lots," are shown on Exhibit 3 attached hereto.

C. The Property is currently undeveloped, with the exception of the Townhouse Lots which have existing infrastructure sufficient to serve said lots. Five of the Townhouse Lots had structures which have been condemned and which have been demolished by the Developer. In addition, there are existing single family homes on subdivided land adjacent to and north of the East Lots. This development is on Lots 1 through 114, Lots 179 through 208 and Lots 223 through 253 of Diablo Village Estates, recorded in Book 28 at Page 33 of Maps and Plats in the Office of the Pima County Recorder, and is referred to herein as the "Developed Lots."

D. The Property currently lacks sufficient flood control and drainage structures to address conditions on the Property as well as drainage from the surrounding property. There is an existing drainage channel on the East Lots as shown on Exhibits 4A, 4B, 5A, and 5C (the "Channel"), but it is currently not functioning as a flood control structure to provide downstream flood protection of the Developed Lots.

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RECORDED BY: SGP

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E. Property taxes on the Property are currently due, as are penalties and interest.

F. The Developer wishes to develop the Property. The County and the District desire that certain flood control and roadway improvements are made on the Property as a condition of development.

G. This Agreement is consistent with the portions of the County's Comprehensive Plan applicable to the Property on the date this Agreement is executed.

H. The County's and the District's governing body has authorized execution of this Agreement by Resolutions numbered 2004-348 and 2004-FC13, drafts of which are attached to this Agreement as Exhibits 6 and 7.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated in their entirety as if fully set forth herein.

2. Developer Obligations. The Developer shall be subject to the following specific duties, obligations and responsibilities:

a. Development of the East Lots. The Developer may develop the East Lots as currently platted; provided however, such development shall conform in all respects to the requirements of the Pima County Code existing at the time of permitting, except those requirements of Pima County Code Section 18.69.090 set forth in Paragraph 3(f) below, and any applicable provisions of the Endangered Species Act. The Developer shall prepare improvement plans subject to approval of the County's Development Services Department and shall post assurances pursuant to Pima County Code Section 18.69.070 to ensure completion of required subdivision improvements pursuant to the approved improvement plans. In addition, the Developer shall enter into a new Sewer Service Agreement with the County's Wastewater Management Department regarding sewage treatment and conveyance capacity for the proposed development. In the event the Developer wishes to proceed with any aspect of development of the existing plat that would be inconsistent with the Pima County Code, the Developer shall first obtain a variance or other approval from the appropriate Pima County administrative official, committee, board or commission before proceeding with such development. Building setback lines depicted on the plat for the East Lots may be modified by the Board of Supervisors but only after a public hearing following standard Pima County procedures for such plat modifications. Nothing in this agreement shall be construed as requiring the granting of the variances or modifications described herein.

b. Native Plant Preservation. In order to comply with the requirements of Chapter 18.72 (Native Plant Preservation) of the Pima County Code, the Developer shall prepare a Native Plant Preservation Plan, referred to herein as the "Plan," for both the East Lots and West Lots. The Developer may use a combined approach of selective plant preservation, plant appraisal method, and set-aside under Sections 18.72.090(A), (B) and (C), respectively, for the East and West Lots. The Plan may

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provide that the West Lots, including that portion to be used as detention basins, described in sub-paragraph (e) below, may be used for transplant and mitigation requirements.

- c. Endangered Species Surveys. Because the land that makes up the East and West Lots is potential habitat for the endangered Cactus Ferruginous Pigmy Owl ("CFPO") and the Pima Pineapple Cactus, the Developer has conducted and shall continue to conduct surveys for the presence of both such species on the East and West Lots unless the United States Fish and Wildlife Service ("USFWS") waives such survey requirements. The surveys shall be conducted by qualified personnel and pursuant to the most recent USFWS protocol.
- d. Conveyance of the West Lots. The Developer shall convey to the District fee title to the West Lots free and clear of all liens and encumbrances. The purchase price shall be \$1.00, payable in cash at closing. Closing shall take place no later than 30 business days following execution of this Agreement, unless the parties agree in writing to a later date. Prior to closing, the Developer shall deposit into escrow a special warranty deed conveying fee title to the West Lots to the District. Title shall be conveyed to the District free and clear of all liens and encumbrances, and subject only to those title exceptions reasonably acceptable to the District and those specifically authorized herein relating to property taxes. At the time of conveyance of the West Lots to the District, Developer shall provide at no cost to the District a standard ALTA policy of title insurance in favor of the District insuring the District's title to the property conveyed, subject only to those exceptions permitted hereunder.
- e. Design and Completion of Flood Control Improvements. The Developer shall design, at its own cost and expense, water detention basins (the "Basins") on the West Lots to control on-site and off-site sheet flooding for a 100 year storm event. Upon the granting of a license by the District, as described in Paragraph 3(e) below, the Developer, at its own cost and expense, shall excavate a minimum of 100,000 cubic yards of soil as part of the first phase(s) of construction of the Basins. The Developer, at its own cost and expense, shall also design and improve drainageways (the "Channels") depicted on the plat of the East Lots, along Los Reales Road and from the northern boundary of the East Lots to Valencia Road, all as depicted in Exhibit 5. All designs, plans, specifications and construction pertaining to the Basins and the Channels shall be coordinated with and subject to the approval of the District and shall be prepared and submitted to the District no later than 120 calendar days from execution of this Development Agreement by the Board of Supervisors. Within 10 business days of approval of the construction plans for the Basin and the Channels, the Developer shall post assurances pursuant to Pima County Code Section 18.69.070 to assure timely completion of the Basin and Channels in accordance with the approved designs, plans and specifications. Construction of the Basin and the Channel shall be completed not later than 120 calendar days from the date the District gives final approval of the construction plans.
- f. Removal of the East Lots and the Townhouse Lots from the FEMA Floodplain Limits. The Developer shall cause the East Lots, the Townhouse Lots and the Developed Lots to be removed from the FEMA Floodplain. The Developer may use the soil excavated as part of the initial construction of the Basins, as provided in paragraph 2(e) to increase the elevations of the East Lots; provided, however, that such actions are in conformance with Title 16 of the Pima County Code and the Floodplain and Erosion Hazard Management Ordinance.

- g. Design and Construction of Improvements to Los Reales Road and Victor Drive. The Developer shall design and construct, at its own cost and expense improvements to those portions of Los Reales Road adjacent to the Property and to Victor Drive from Los Reales Road to Valencia Road (the "Transportation Improvements"). The nature of such improvements shall be determined by the Pima County Department of Transportation and shall address the traffic impacts caused or necessitated by development of the Property. The Transportation improvements shall result in Victor Drive from Los Reales Road to Valencia Road being improved to Pima County road design standards such that it can be accepted into the County's Maintenance System. All designs, plans, specifications and construction pertaining to the Transportation Improvements shall be coordinated with and subject to the approval of the Pima County Department of Transportation and shall be prepared and submitted to the Department no later than 120 calendar days from execution of this Development Agreement by the Board of Supervisors. The Developer shall post assurances pursuant to Pima County Code Section 18.69.070 to assure timely completion of the Transportation Improvements in accordance with the approved designs, plans and specifications.
- h. Payment of Taxes, Interest and Penalties. Within six (6) months of the closing of the sale of the West Lots to the District, the Developer shall pay to the Pima County Treasurer all delinquent and all year 2004 property taxes as they become due and all penalties and interest due on the East Lots and the Townhouse Lots together with an amount equal to one half of the accrued interest on the East Lots and the Townhouse Lots, through the month in which closing takes place. The Developer shall also redeem all tax liens pursuant to A.R.S. § 42-18151 *et seq.*; provided however, that Developer shall not be required by this Agreement to redeem certificates or pay taxes within the six month period on the five Townhouse Lots on which the Developer demolished structures. The five Townhouse lots are described as Lots 32, 33, 34, 35 and 44 of Diablo Village Estates Townhouses Lots numbered 1 through 59 and Common Areas A and B as shown on the Plat recorded in 1980, in Book 32 at Page 96 of Maps and Plats in the Office of the Pima County Recorder) and bear the following Tax Parcel Nos.: 210-35-0320, 210-35-0330, 210-35-0340, 210-35-0340 and 210-35-0440, respectively, and are referred to herein as the "Lien Lots." Nothing in the foregoing paragraph shall be construed as a waiver of the County's ability to collect taxes, interest and penalties on the Lien Lots.
- i. Release of Building Permits. The Developer shall not be entitled to, nor shall receive, building permits for any structures on the East Lots and the Townhouse Lots unless and until the Developer's obligations under this Paragraphs 2 have been satisfied and assurances have been released. Nothing in this paragraph shall prevent the County or the District, at their discretion, from releasing assurances and issuing permits for a portion of the proposed development pursuant to Section 18.69.070(H).
3. County and District Obligations. The County and District, respectively, shall be subject to the following specific duties, obligations and responsibilities as indicated herein:
- a. Environmental Contingency. This Development Agreement shall be subject to the performance of a Phase I Environmental Assessment or a Transaction Screen pursuant to the most current protocol of the American Society of Testing and Material, demonstrating that no recognized environmental conditions exist affecting the West Lots (the "Environmental Contingency"). The District shall be

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responsible for the performance of the Environmental Site Assessment which shall be completed prior to closing. The District may waive the Environmental Condition, however, any such waiver shall be in writing.

- b. Payment of taxes, penalties and interest. In addition to the cash payment to the Developer of the purchase price set forth in Paragraph 2(d) above, the District shall pay to the County Treasurer the outstanding property taxes, penalties and interest due on the West Lots at the time of closing set forth in Paragraph 2(d) above.
- c. Waiver of Right to Compensation. The District shall not require the Developer to provide additional compensation to the District or the County for the value of the soil excavated from the West Lots pursuant to Paragraph 2(e) above provided that the amount of excavated soil does not exceed that which is called for in the approved construction plans for the Basins as provided in Paragraph 2(e) above. The District and the County hereby acknowledge the significant public benefit to be achieved by the expeditious removal of the soil at issue. The Developer may continue to excavate soil for a period not exceeding four years from the date of the District's approval of the construction plans for the Basins as called for in Paragraph 2(e) of this Agreement, provided however, that, at any time after two years from the date of the execution of this Agreement, the County may terminate Developer's right hereunder to excavate upon thirty (30) days written notice to Developer. Excavation of the West Lots of more than 100,000 cubic feet of soil shall be coordinated with the District and the County so as not to unreasonably interfere with the construction of a regional park.
- d. Calculation of Amounts of Taxes, Interest and Penalties. The amounts of taxes, interest and penalties due for each tax parcel comprising the West Lots, the East Lots, and the Townhouse Lots shall be as reflected in the records of, or as calculated pursuant to statutes governing, the Pima County Treasurer.
- e. License to Developer. Subject to compliance with the Indemnification and Insurance provisions set forth in Paragraphs 4 and 5 below, the County and the District hereby grant to the Developer a license to enter onto property owned by the County or the District as reasonably necessary to perform those activities set forth in paragraphs 2(b, c, e, f, g).
- f. Modification and Waiver of Fees. The County agrees not to pursue imposition of in-lieu fees for residential recreation areas under Pima County Code Section 18.69.090(C) for the development of the existing subdivisions on the East Lots and the Townhouse Lots and, in the event of a re-zoning, for development resulting in an increase in density of twenty five percent or less units. Furthermore, for a period of five years from the execution of this agreement, the Developer may develop the East Lots and the Townhouse Lots under the current Roadway Development Fees set forth in Title 19 of the Pima County Code.
4. Indemnification.
 - a. The Developer agrees to defend, indemnify and hold harmless the County and the District, their respective officers, officials and employees ("Indemnified Group") for liability from and against claims, damages, losses and expenses of any nature whatsoever (including but not limited to reasonable attorney fees, court costs, the costs of appellate proceedings, and all claims adjusting and handling expenses),

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relating to, arising out of, resulting from or alleged to have resulted from the Developer's acts, errors, mistakes or omissions relating to any action or inaction of the Developer under this Agreement, including but not limited to work or services in the performance of this Agreement by any subcontractor or anyone directly or indirectly employed by or contracting with the Developer or a subcontractor or anyone for whose acts any of them may be liable.

- b. If any claim, action or proceeding is brought against the Indemnified Group, by reason of any event that is the subject of this Agreement, the Developer, at its sole cost and expense, shall pay, resist or defend such claim or action on behalf of the Indemnified Group by the attorney of the Developer, or if covered by insurance, the Developer's insurer, all of which must be approved by the County and the District, which approval shall not be unreasonably withheld or delayed. The County and the District shall cooperate with all reasonable efforts in the handling and defense of such claim. Notwithstanding the foregoing, the County or the District may engage its own attorney to defend or assist in its defense, and the Developer shall pay the reasonable costs and expenses thereof.
- c. Any settlement of claims must fully release and discharge the Indemnified Group from any liability for such claims. The release and discharge shall be in writing and shall be subject to approval by the County and the District, which approval shall not be unreasonably withheld or delayed. If the Developer neglects or refuses to defend any of the Indemnified Group as required by this Agreement, any recovery or judgment against the Indemnified Group for a claim covered by this Agreement shall conclusively establish the Developer's liability to the Indemnified Group in connection with such recovery or judgment. If the County or the District desires to settle such dispute, the County or the District shall be entitled to settle such dispute in good faith and the Developer shall be liable for the amount of such settlement, and all expenses in connection with such settlement.
- d. Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this Agreement and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions of this Agreement. The indemnity provisions of this Agreement shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions of this Agreement.
- e. The indemnity provisions of this Agreement shall survive the termination of this Agreement.

5. Insurance.

- a. Developer Insurance. During the term of this Agreement, the Developer shall maintain insurance coverages (i) for general liability in the amount of One Million Dollars (\$1,000,000) per occurrence, (ii) for automobile liability in the minimum amount of One Million Dollars (\$1,000,000) per occurrence with respect to owned, hired or non-owned vehicles, (iii) for property damage of One Hundred Thousand Dollars (\$100,000) per occurrence, (iv) workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Developer, its employees or both engaged in activities relating to this Agreement and employers' liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) disease for each employee and Five hundred Thousand Dollars

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(\$500,000) disease policy limit; and (v) pollution liability coverage with minimum amounts of (\$1,000,000) per loss and Two Million Dollars (\$2,000,000) annual aggregate for losses caused by pollution conditions that arise from activities of the Developer Parties (defined below) on the Property, which coverage shall include (A) bodily injury, sickness, death, mental anguish and shock, (B) property damage or destruction including loss of use of tangible property not physically injured or destroyed and (C) defense costs, including, without limitation, charges and expenses for investigation and claims adjustment. The liability and environmental insurance coverage of the Developer shall be primary and not contributing with respect to any insurance maintained by the County and the District. The County and the District shall be named as additional insureds on the Developer's insurance coverage to the extent of the acts or omissions of the Developer or the Developer Parties (defined below). The Developer's insurance coverage shall be on the basis that coverage will not be invalidated due to any act or omission of the County or the District or the officers, employees, or agents of any of them. The Developer will deliver to the County a certificate insurance showing such insurance coverages within 10 business days after execution of this Agreement and before any of the Developer Parties enter upon the West Lots. The Developer's coverages will include acts and omissions of Developer Parties occurring on County property. "Developer Parties" means the following: the Developer's directors, officers, partners, members, managers, employees, agents or contractors entering upon the West Lots or otherwise acting in connection with this Agreement.

- b. To the extent that the Developer maintains any required insurance coverage through an insurer in addition to or instead of self insurance:
 - (i) The insurance policy must contain a provision requiring the insurer to notify the County in writing of any cancellation, alteration or non-renewal at least 30 days prior thereto, except in the case of a cancellation or non-renewal for failure to pay a premium payment, in which case the insurer must notify the County no less than 10 days prior to cancellation or renewal.
 - (ii) If the Developer fails to carry and maintain the required insurance or to deliver certificates of insurance (in either case within 15 days after receipt of written notice from the County), then, in addition to being an event of default by the Developer under this Agreement, the County will be entitled, but not obligated, to obtain the policies at the Developer's expense, and the cost thereof will be deemed to be a payment due by the Developer to the County and shall be due and payable by the Developer to the County upon demand.
 - (iii) Upon request by the County, the Developer will provide the County with certified copies of any and all insurance policies and endorsements.
- c. None of the provisions of this Agreement shall affect or impair any right of subrogation of any insurer of the County.

6. Sub-agreements. The County and the Developer hereby acknowledge that the development of the Property may be accomplished by the Developer through a series of sales, leases, joint ventures and/or other agreements and arrangements with other experienced developers, investors and owners of real property. In connection therewith, it is anticipated and

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contemplated by the parties that such developers, investors or owners may desire to negotiate and enter into separate and subordinate development agreements with the County, District and/or the Developer with respect to infrastructure Improvements, uses, plan approvals and other similar matters which may be the subject of separate agreements between such developers, investors and owners and the County, District and/or the Developer. The parties hereby agree that any and all development agreements entered into with any such developer, investor or owner of any parcels of the Property shall be subordinate in all respects to the terms and conditions of this Agreement and, in the event of any conflict or discrepancy between the provisions of any such development agreement and the terms and conditions of this Agreement, this Agreement shall govern and control.

7. Mediation and Default

a. Representatives. To further the cooperation of the parties in implementing this Agreement, the County, the District and the Developer each shall designate and appoint a representative to act as a liaison between the County and its various departments and the Developer. The initial representative for the County (the "County Representative") and the District shall be the County Administrator or his designee and the initial representative for the Developer shall be its project manager, as identified by the Developer from time to time (the "Developer Representative"). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property.

b. Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within 7 calendar days, any of the parties may request the presiding judge of the Superior Court of Pima County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

c. Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of 10) business days after written notice thereof from another party shall constitute a default under this Agreement. If the default is of a nature which is not capable of being cured within 10 days, the cure shall be commenced within such period, and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all such sums from the date said sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are paid in full.

8. Termination

a. Development Rights in the Event of Termination. Upon the termination of this Agreement as provided herein, the Developer shall have no further rights to develop the Property pursuant to this Agreement.

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- b. Term of Agreement. This agreement shall become effective upon its execution by all parties and the effective date of the resolutions adopted by the Board of Supervisors and the Board of Directors of the Flood Control District approving this Agreement (the "Effective Date"). The term of this Agreement shall commence upon the Effective Date and shall terminate when the Developer has completed all of its obligations under this Agreement.

9. Conflict of Interest; Representatives Not Individually Liable

- a. Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the County or the District shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested.
- b. No Personal Liability. No member, official or employee of the County or the District shall be personally liable to the Developer, or any successor or assignee, (a) in the event of any default or breach by the County or by the District, (b) for any amount which may become due to the Developer or its successor or assign, or (c) pursuant to any obligation of the County under the terms of this Agreement.

10. Miscellaneous Provisions

- a. Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the County or the District:

John Bernal
Deputy County Administrator for Public Works
130 West Congress, 10th Floor
Tucson, Arizona 85701

If to the Developer:

Philip L. Aries
Aries Realty
6325 North Pinnacle Ridge Drive
Tucson, Arizona 85718

or to such other addresses as either party may from time to time designate in writing and deliver such written notice to the other party. Any such change of address notice shall be given at least 10 days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

- b. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach

of the same or of any other provision of this Agreement.

- c. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of this Agreement.
- d. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement; and that all necessary actions have been taken to give full force and effect to this Agreement. The Developer represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Developer, the District and the County warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Developer represents to the County and the District that by entering into this Agreement, the Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of this Agreement.
- e. Entire Agreement. This Agreement, including the following exhibits, constitutes the entire agreement between the parties.
- f. Amendment of the Agreement. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the parties to this Agreement or by their successors in interest or assigns. The amendment or cancellation shall be recorded in the official records of the Pima County Recorder.
- g. Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.
- h. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Pima County, Arizona, and the parties hereby waive any right to object to such venue.
- i. Recording of Agreement and Subsequent Amendment; Cancellation. This Agreement, and any amendment or cancellation of it shall be recorded in the official records of the Pima County Recorder no later than ten (10) days after the County and the Developer execute such agreement, amendment, or cancellation, as required by A.R.S. § 11-1101.
- j. Attorneys Fees and Costs. If any party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.
- k. Notice of Conveyance or Assignment. The Developer shall give notice to the County and the District of any sale of the entire Property at least 10 days prior to the effective date of the sale.
- l. No Third-Party Beneficiaries. There are no third-party beneficiaries to this

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Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

- m. No Agency Created Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.
- n. Non-Liability of County and District Officials and Employees Except for mandamus and other special actions, no member, official or employee of the County or the District shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the County or for any amount that may become due to the Developer or successor, or under any obligation under the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

PIMA COUNTY BOARD OF SUPERVISORS

Sharon Burns
 Chair, Pima County Board of Supervisors
 DEC 14 2004
 PIMA COUNTY FLOOD CONTROL DISTRICT

Sharon Burns
 Chair, Pima County Flood Control District Board
 DEC 14 2004

ATTEST:

Rohi Brigade, Deputy
 Clerk of the Board and District Board

APPROVED AS TO FORM:

[Signature]
 Deputy County Attorney

ORIGIN PROPERTIES L.L.C., a Nevada limited liability company

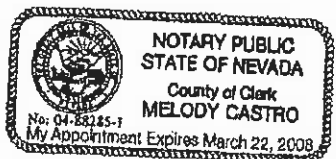
By: [Signature]
 Its: [Signature]

NEVADA
 STATE OF ~~ARIZONA~~ } ss.
 County of Pima/Clark

The foregoing instrument was acknowledged before me this 14th day of ~~December, 2004~~, Jan. 2005 by Bradley F. Burns, on behalf of Origin Properties, L.L.C., a Nevada limited liability company.

Melody Castro
 Notary Public

My Commission Expires: March 22, 2008



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RESOLUTION AND ORDER NO. 2004- FC 13

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE PIMA COUNTY FLOOD CONTROL DISTRICT APPROVING AND AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN PIMA COUNTY, THE PIMA COUNTY FLOOD CONTROL DISTRICT AND ORIGIN PROPERTIES L.L.C., A NEVADA LIMITED LIABILITY COMPANY

WHEREAS, the Pima County Flood Control District is authorized by A.R.S. §48-3603 to enter into agreements with Pima County and others to acquire property for flood control purposes and to construct and maintain flood control works;

WHEREAS, Origin Properties, L.L.C., is the owner of approximately 226 acres of land located south and east of the intersection of Valencia and Valhalla Roads in unincorporated Pima County ("the Property");

WHEREAS, development of the Property cannot occur unless certain infrastructure improvements, including flood control improvements, are made to the Property; and

WHEREAS, Pima County, the Pima County Flood Control District and Origin Properties, L.L.C., wish to enter a development agreement setting forth their respective responsibilities regarding the development of the Property and the design and construction of required infrastructure improvements.

NOW THEREFORE, UPON MOTION DULY MADE, AND CARRIED, BE IT RESOLVED THAT:

1. The Pima County Flood Control District shall enter into a development agreement with Pima County and Origin Properties, L.L.C., setting forth their respective responsibilities regarding the development of approximately 226 acres of land located south and east of the intersection of Valencia and Valhalla Roads and the design and construction of required infrastructure improvements relating to such land.
2. The Chair of the Pima County Flood Control District Board of Directors is hereby authorized and instructed to sign said development agreement on behalf of the Pima County Flood Control District.
3. The various Pima County Flood Control District officers and employees be, and hereby are, authorized and directed to perform all acts necessary and desirable to give effect to this Resolution.

H-30000 124-01

RESOLVED by the Board of Directors of the Pima County Flood Control District this 14th
day of December, 2004.

**BOARD OF DIRECTORS OF THE PIMA
COUNTY FLOOD CONTROL DISTRICT**

Sharon Brunson

Chair, Pima County Flood Control
District Board of Directors

DEC 14 2004

ATTEST:

Rohi Brigode, Deputy

Clerk of the Pima County Flood Control
District Board of Directors

APPROVED AS TO FORM:

[Signature]

Deputy County Attorney

11-10-04 00:00:00

11-10-04 00:00:00

RESOLUTION AND ORDER NO. 2004- 348

A RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS APPROVING AND AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN PIMA COUNTY, THE PIMA COUNTY FLOOD CONTROL DISTRICT AND ORIGIN PROPERTIES L.L.C., A NEVADA LIMITED LIABILITY COMPANY

WHEREAS, Pima County is authorized by A.R.S. §11-1101 to enter into development agreements relating to property located outside of the incorporated area of a city or town;

WHEREAS, Origin Properties, L.L.C., is the owner of approximately 226 acres of land located south and east of the intersection of Valencia and Valhalla Roads in unincorporated Pima County ("the Property");

WHEREAS, development of the Property cannot occur unless certain infrastructure improvements, including flood control improvements, are made to the Property; and

WHEREAS, Pima County, the Pima County Flood Control District and Origin Properties, L.L.C., wish to enter a development agreement setting forth their respective responsibilities regarding the development of the Property and the design and construction of required infrastructure improvements.

NOW THEREFORE, UPON MOTION DULY MADE, AND CARRIED, BE IT RESOLVED THAT:

1. Pima County shall enter into a development agreement with the Pima County Flood Control District and Origin Properties, L.L.C., setting forth their respective responsibilities regarding the development of the approximately 226 acres of land located south and east of the intersection of Valencia and Valhalla Roads and the design and construction of required infrastructure improvements relating to such land.
2. The Chair of the Board of Supervisors is hereby authorized and instructed to sign said development agreement on behalf of Pima County.
3. The various Pima County officers and employees be, and hereby are, authorized and directed to perform all acts necessary and desirable to give effect to this Resolution.

1-11-04 11:00 AM

1-11-04 11:00 AM

RESOLVED by the Board of Supervisors, Pima County, Arizona, this 14th day of
December, 2004.

PIMA COUNTY BOARD OF SUPERVISORS

Sharon Bronson

Chair, Pima County Board of Supervisors

DEC 14 2004

ATTEST:

Robin Briggode, Deputy

Clerk of the Board of Supervisors

APPROVED AS TO FORM:

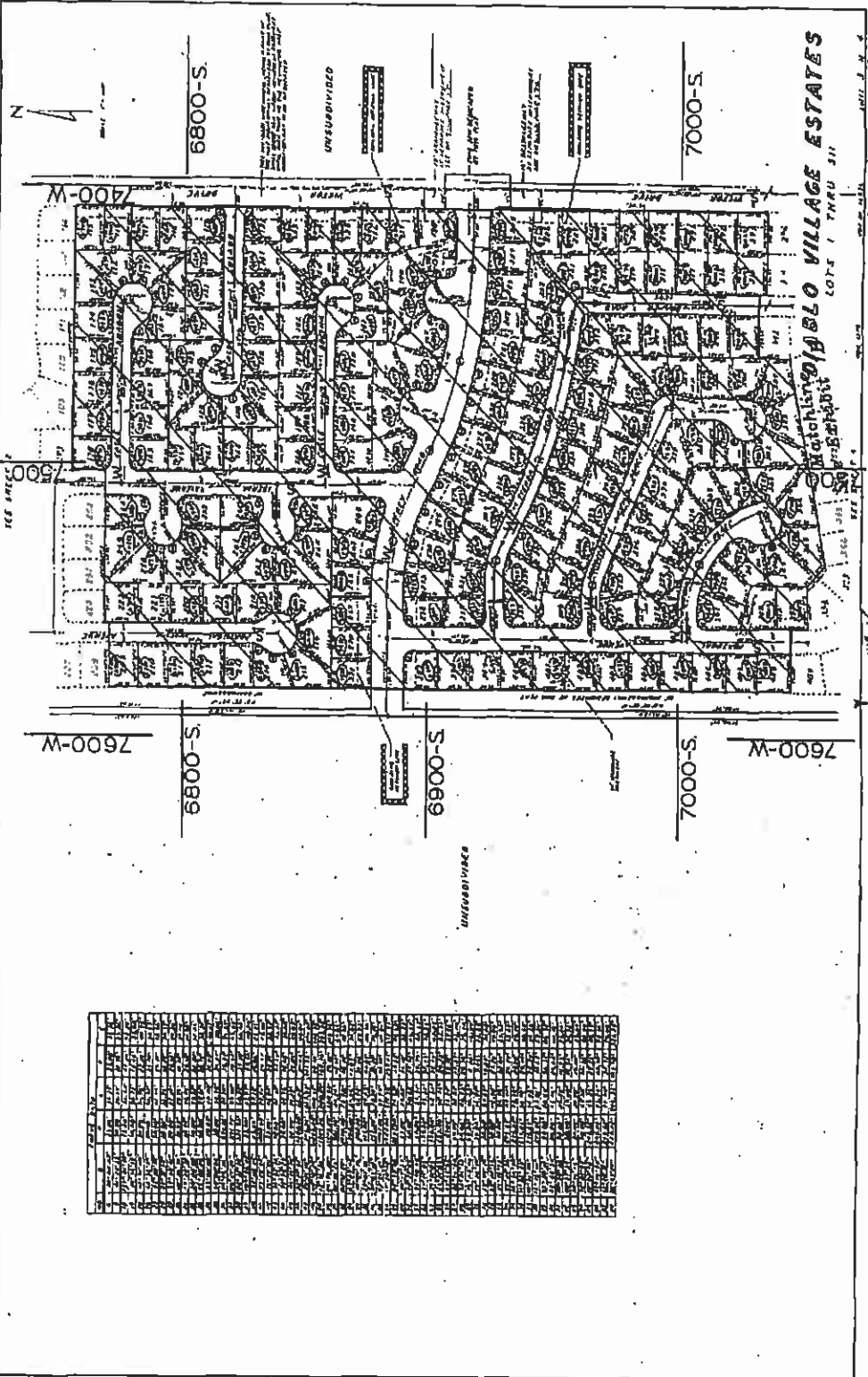
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Deputy County Attorney

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01000-02-000-0001

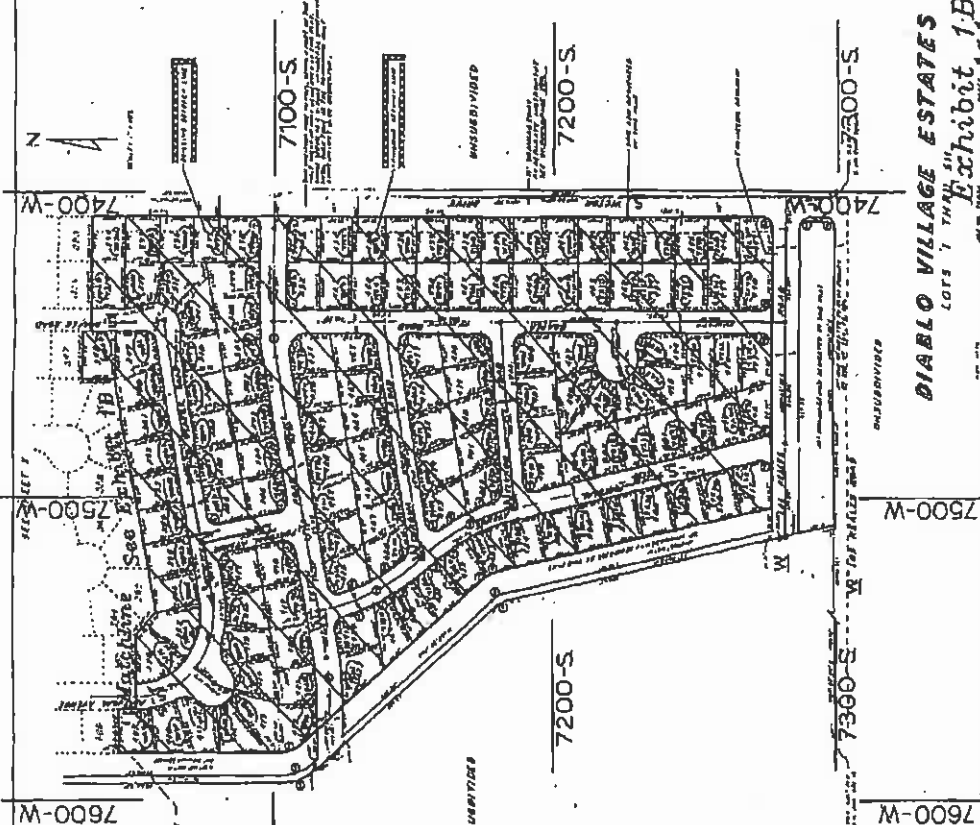
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BOOK 28 PAGE 33



BOOK 28 PAGE 33
Exhibit 1A

UNRECORDED



DIABLO VILLAGE ESTATES
 LOTS 1 THROUGH 11
 Exhibit 1.B
 BOOK 28 PAGE 35

Lot No.	Area (sq. ft.)	Owner	Remarks
1	10,000	John Doe	Residential
2	10,000	Jane Smith	Residential
3	10,000	Bob Johnson	Residential
4	10,000	Alice Brown	Residential
5	10,000	Charlie White	Residential
6	10,000	Diana Green	Residential
7	10,000	Frank Black	Residential
8	10,000	Grace King	Residential
9	10,000	Henry Lee	Residential
10	10,000	Ivy Hill	Residential
11	10,000	Jack Adams	Residential
12	10,000	Karen Baker	Residential
13	10,000	Larry Clark	Residential
14	10,000	Mary Evans	Residential
15	10,000	Ned Foster	Residential
16	10,000	Olivia Garcia	Residential
17	10,000	Peter Hall	Residential
18	10,000	Quinn Ives	Residential
19	10,000	Rachel Jones	Residential
20	10,000	Samuel King	Residential
21	10,000	Tina Lee	Residential
22	10,000	Uma Miller	Residential
23	10,000	Victor Nelson	Residential
24	10,000	Wendy Owen	Residential
25	10,000	Xavier Parker	Residential
26	10,000	Yvonne Quinn	Residential
27	10,000	Zoe Reed	Residential
28	10,000	Adam Scott	Residential
29	10,000	Bella Stone	Residential
30	10,000	Carl Taylor	Residential
31	10,000	Dora White	Residential
32	10,000	Eugene Young	Residential
33	10,000	Fiona Zane	Residential
34	10,000	George Bell	Residential
35	10,000	Helen Wood	Residential
36	10,000	Isaac King	Residential
37	10,000	Julia Lee	Residential
38	10,000	Kyle Miller	Residential
39	10,000	Laura Nelson	Residential
40	10,000	Mark Owen	Residential
41	10,000	Nancy Parker	Residential
42	10,000	Oscar Quinn	Residential
43	10,000	Pamela Reed	Residential
44	10,000	Robert Scott	Residential
45	10,000	Sarah Stone	Residential
46	10,000	Thomas Taylor	Residential
47	10,000	Uma White	Residential
48	10,000	Victor Young	Residential
49	10,000	Wendy Zane	Residential
50	10,000	Xavier Bell	Residential
51	10,000	Yvonne Wood	Residential
52	10,000	Zoe King	Residential
53	10,000	Adam Lee	Residential
54	10,000	Bella Miller	Residential
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57	10,000	Eugene Parker	Residential
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59	10,000	George Reed	Residential
60	10,000	Helen Scott	Residential
61	10,000	Isaac Stone	Residential
62	10,000	Julia Taylor	Residential
63	10,000	Kyle White	Residential
64	10,000	Laura Young	Residential
65	10,000	Mark Zane	Residential
66	10,000	Nancy Bell	Residential
67	10,000	Oscar Wood	Residential
68	10,000	Pamela King	Residential
69	10,000	Robert Lee	Residential
70	10,000	Sarah Miller	Residential
71	10,000	Thomas Nelson	Residential
72	10,000	Uma Owen	Residential
73	10,000	Victor Parker	Residential
74	10,000	Wendy Quinn	Residential
75	10,000	Xavier Reed	Residential
76	10,000	Yvonne Scott	Residential
77	10,000	Zoe Stone	Residential
78	10,000	Adam Taylor	Residential
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81	10,000	Dora Zane	Residential
82	10,000	Eugene Bell	Residential
83	10,000	Fiona Wood	Residential
84	10,000	George King	Residential
85	10,000	Helen Lee	Residential
86	10,000	Isaac Miller	Residential
87	10,000	Julia Nelson	Residential
88	10,000	Kyle Owen	Residential
89	10,000	Laura Parker	Residential
90	10,000	Mark Quinn	Residential
91	10,000	Nancy Reed	Residential
92	10,000	Oscar Scott	Residential
93	10,000	Pamela Stone	Residential
94	10,000	Robert Taylor	Residential
95	10,000	Sarah White	Residential
96	10,000	Thomas Young	Residential
97	10,000	Uma Zane	Residential
98	10,000	Victor Bell	Residential
99	10,000	Wendy Wood	Residential
100	10,000	Xavier King	Residential

DIABLO VILLAGE ESTATES

COPY

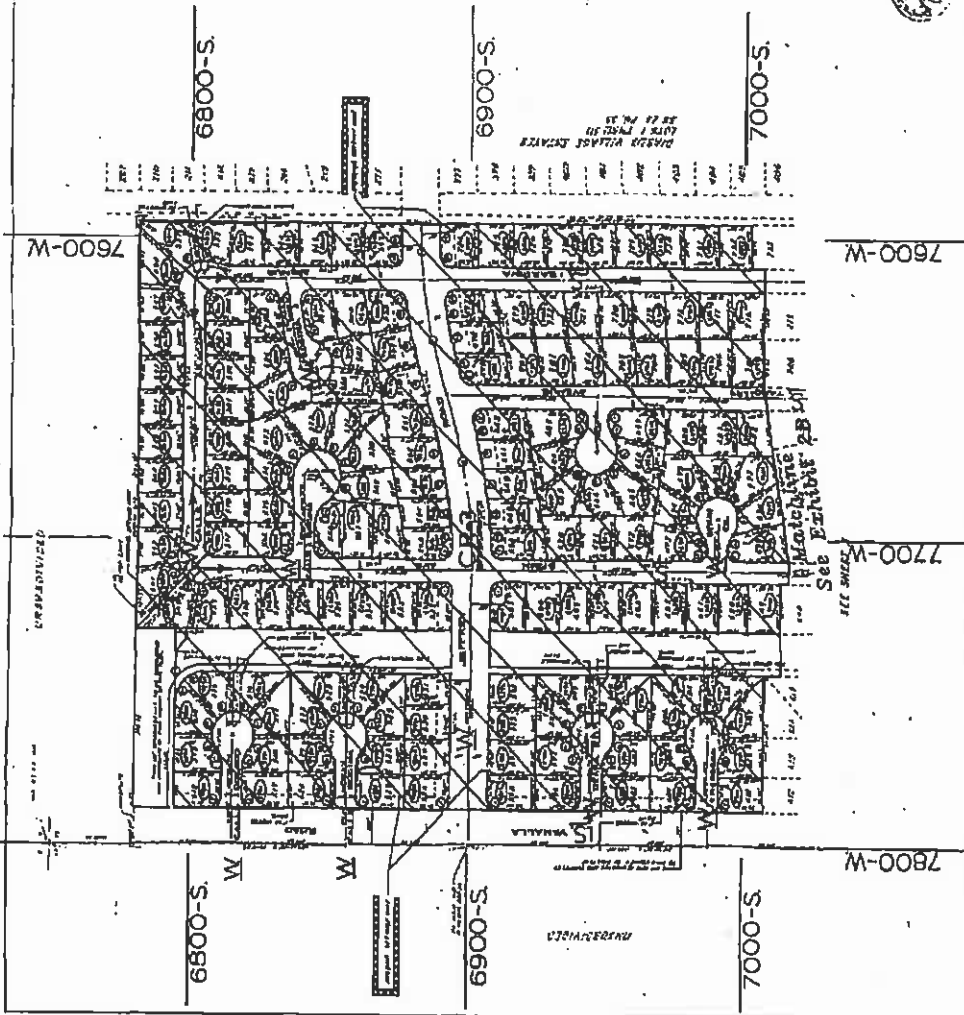
BOOK 24 PAGE 24



NOT TO SCALE
 THIS PLAN IS FOR INFORMATION ONLY
 AND DOES NOT CONSTITUTE A CONTRACT



LOT NO.	AREA (SQ. FT.)	AREA (SQ. YD.)	AREA (AC.)
1	1000	72.7	0.023
2	1000	72.7	0.023
3	1000	72.7	0.023
4	1000	72.7	0.023
5	1000	72.7	0.023
6	1000	72.7	0.023
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DIABLO VILLAGE ESTATES
 LOTS 1 THRU 100, BLOCK A
 Exhibit 2A

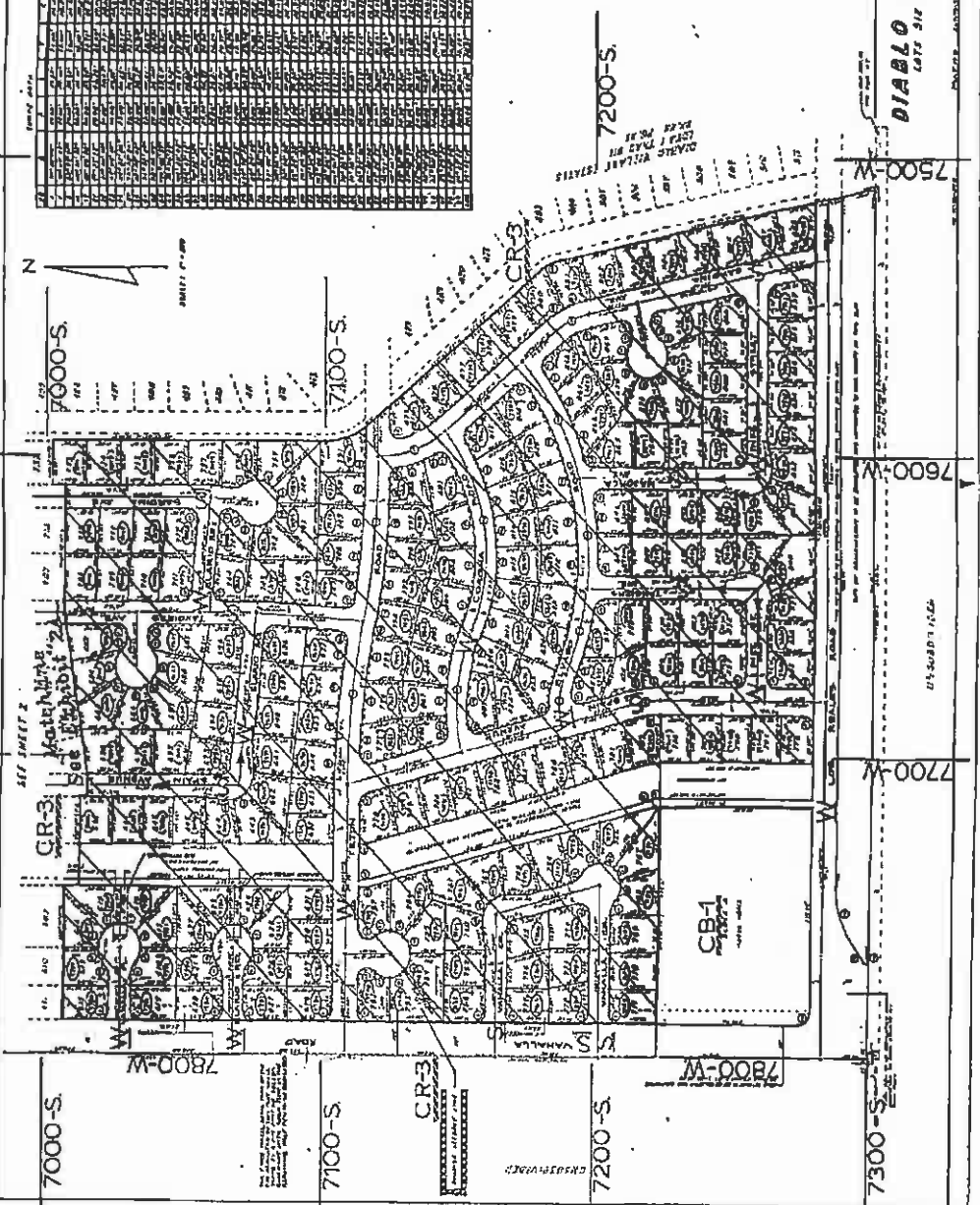
BOOK 24 PAGE 24

TOWN OF...

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TRACT NO.	ACRES	OWNER	DATE	REMARKS
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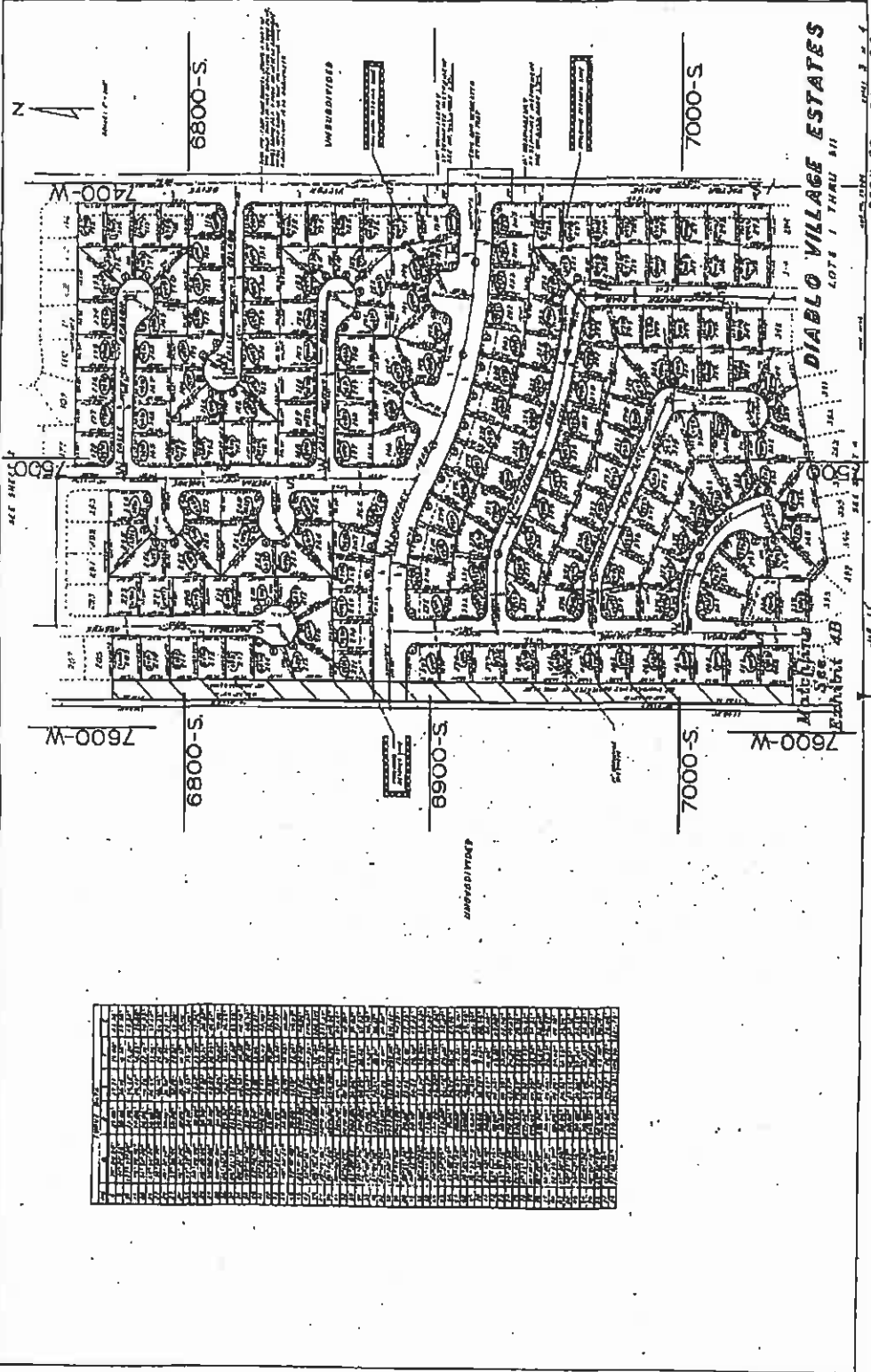


DIABLO VILLAGE ESTATES
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 Exhibit 2B
 BOOK 23 PAGE 24

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BOOK 28 PAGE 33



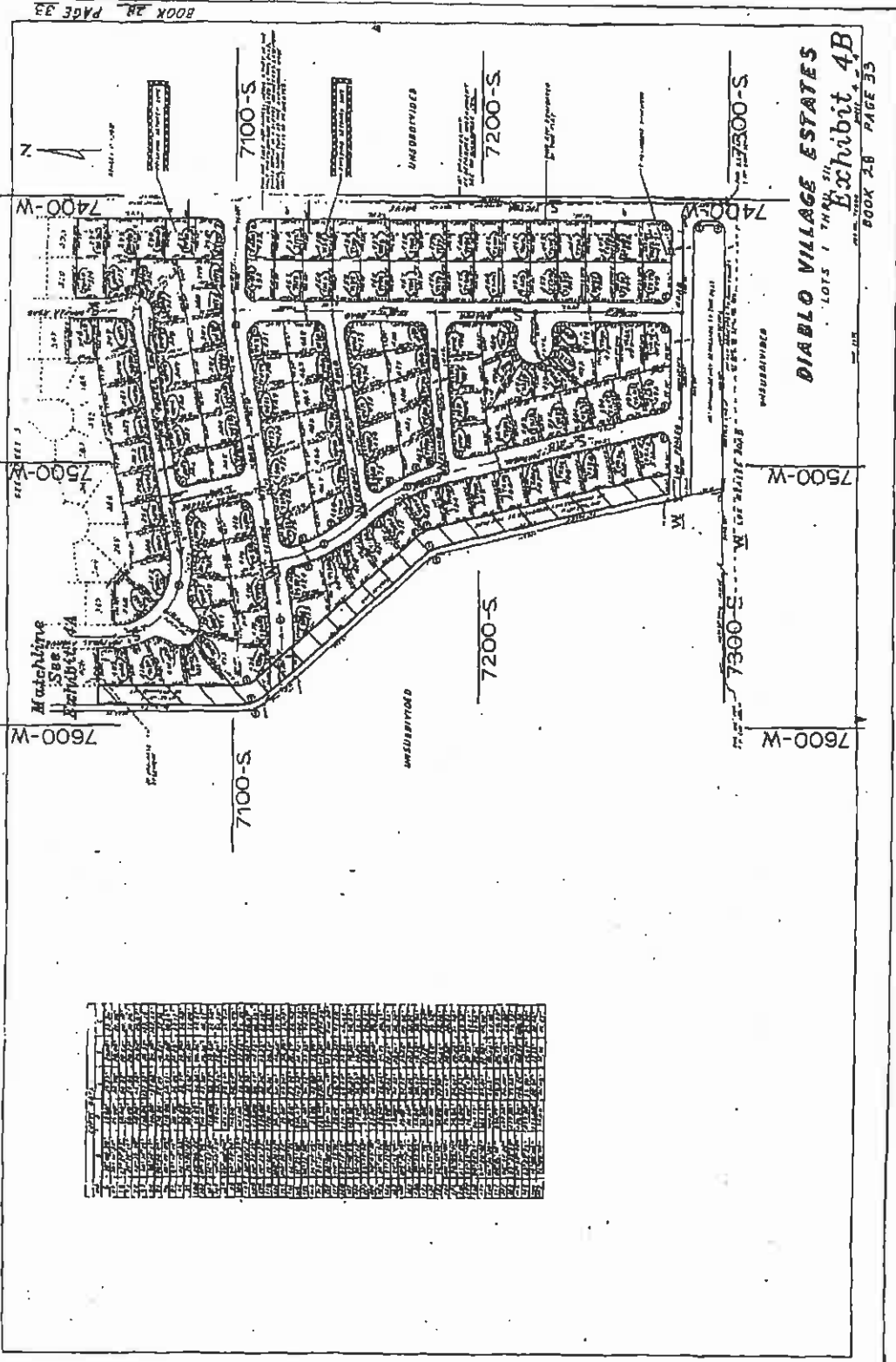
BOOK 28 PAGE 33

Exhibit 4A

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BOOK 28 PAGE 33



DIABLO VILLAGE ESTATES

LOTS 1 THROUGH 44

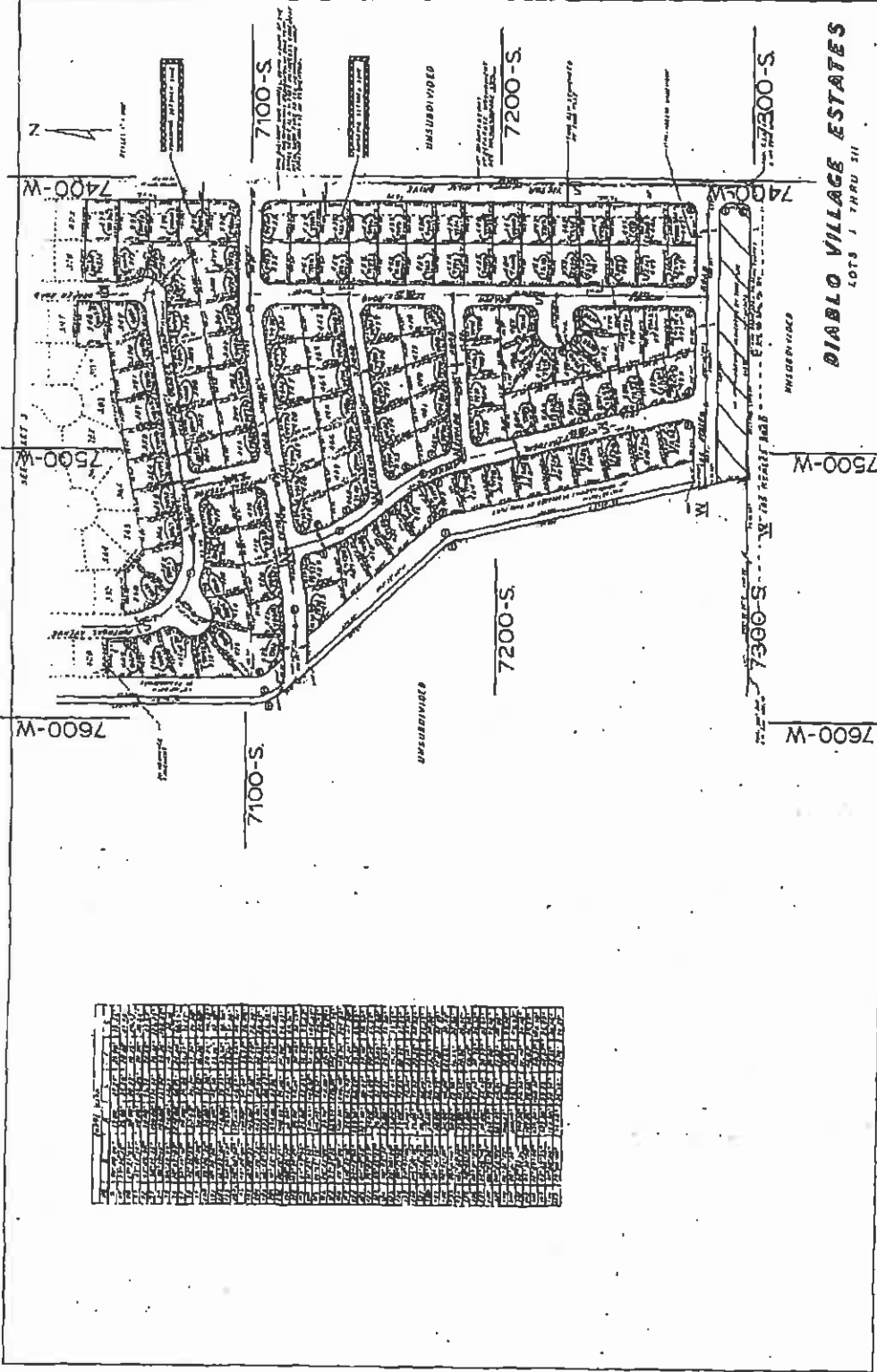
Exhibit 4B

BOOK 28 PAGE 33

TYPING ROOM

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BOOK 28 PAGE 33



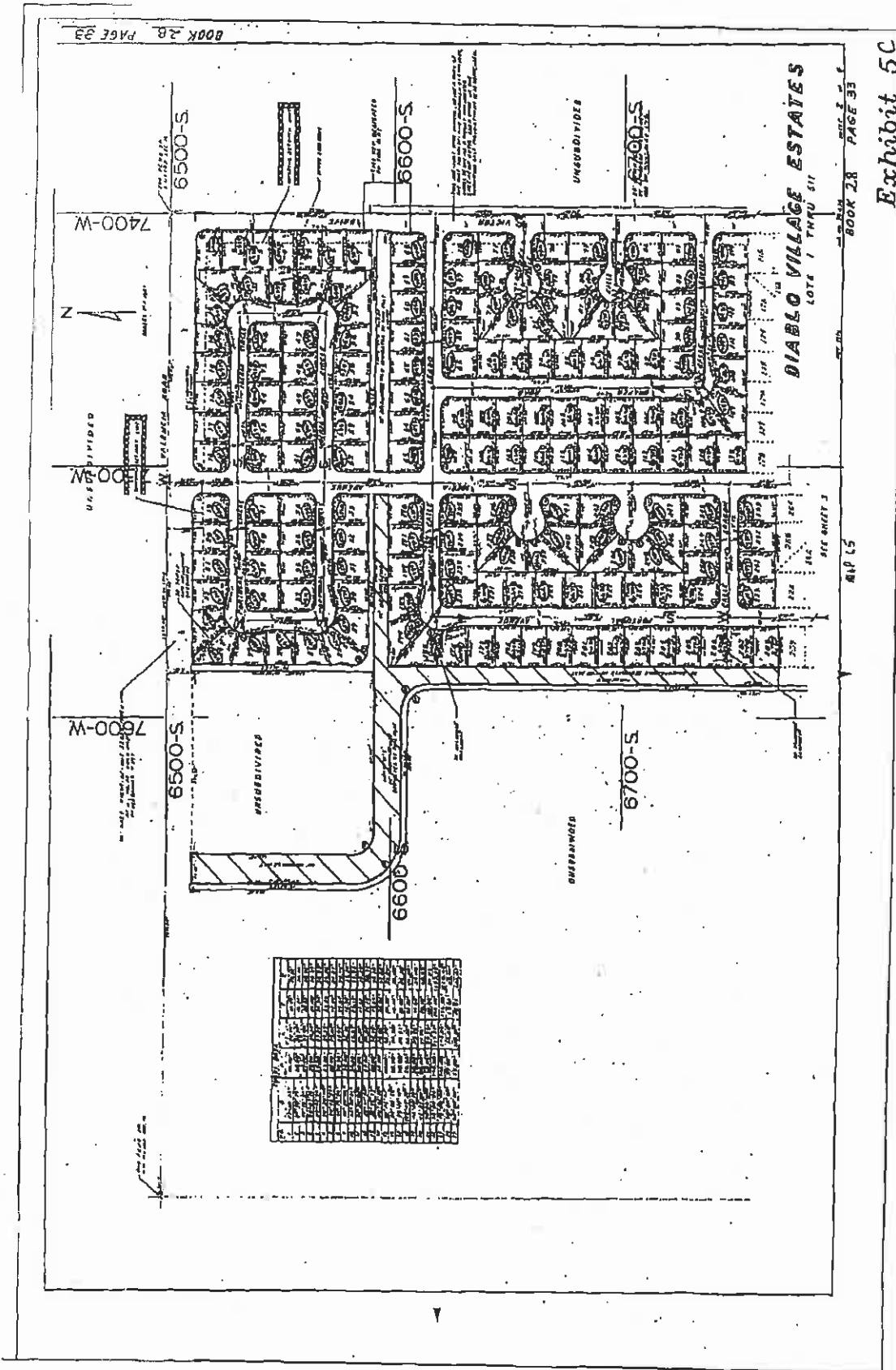
DIABLO VILLAGE ESTATES

LOTS I THRU III

BOOK 28 PAGE 33
Exhibit 5A

100420042

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BOOK 28 PAGE 33

BOOK 28 PAGE 33

Exhibit 5C

UNSUBDIVIDED