

FORM APPROVED COUNTY COUNSEL  
 BY: GREGORY P. PRIAMOS  
 DATE: 8/31/16

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

603B  
 (2139)



**FROM:** TLMA – Transportation Department

**SUBMITTAL DATE:**  
 August 22, 2016

**SUBJECT:** Approval of Assumption of and Amendment to Cooperative Agreement between the County of Riverside, Riverside County Flood Control and Water Conservation District, and D.R. Horton CA3, Inc. for the Winchester MDP Line B and Winchester MDP Line B-4 Project Nos. 4-0-0555 and 4-0-0556 (Tract 30351). 3<sup>rd</sup> District; [\$0]

- RECOMMENDED MOTION:** That the Board of Supervisors:
1. Approve the Assumption of and Amendment to Cooperative Agreement (Agreement) between the County of Riverside (County), Riverside County Flood Control and Water Conservation District (District), and D.R. Horton CA3, Inc. (Developer); and
  2. Authorize the Chairman of the County Board of Supervisors to execute the same.

Departmental Concurrence

*Patricia Romo*

Patricia Romo  
 Director of Transportation

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (Per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

**SOURCE OF FUNDS:** N/A  
 Budget Adjustment: No  
 For Fiscal Year: N/A

**C.E.O. RECOMMENDATION:** APPROVE  
 BY: *Tina Grande*  
 Tina Grande  
 County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Ashley, seconded by Supervisor Washington and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley  
 Nays: None  
 Absent: None  
 Date: September 20, 2016  
 xc: Transp., Flood

Kecia Harper-Ihem  
 Clerk of the Board  
 By: *Kecia Harper-Ihem*  
 Deputy

Prev. Agn. Ref.: 04/26/05, Item 3.28 | District Companion Item | Agenda Number:

- Positions Added
- Change Order
- A-30
- 4/5 Vote

3-9

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**  
**FORM 11** Approval of Assumption of and Amendment to Cooperative Agreement between the County of Riverside, Riverside County Flood Control and Water Conservation District, and D.R. Horton CA3, Inc. for the Winchester MDP Line B and Winchester MDP Line B-4 Project Nos. 4-0-0555 and 4-0-0556 (Tract 30351). 3<sup>rd</sup> District; [\$0]

**DATE:** August 22, 2016

**PAGE:** 2 of 2

**BACKGROUND:**

**Summary**

The Assumption of and Amendment to Cooperative Agreement (Agreement) transfers the rights and responsibilities as established by the original cooperative agreement executed on April 26, 2005 (Board Agenda Item No. 3.28), from Osborne Development, the previous developer, to D.R. Horton CA3, Inc., the new developer (Developer).

Once the Agreement is executed, the Developer will assume responsibility for the construction of the drainage facility, as originally required as a condition of the development of Tract No. 30351. Upon completion of the facility's construction, the District will assume ownership, operation and maintenance of the mainline storm drains that are over 36 inches in diameter. The County will assume ownership and responsibility for operation and maintenance of storm drain facilities that are 36 inches or less in diameter and the project's associated appurtenances, such as catch basins and connector pipes within County right of way boundaries.

County Counsel has approved the Agreement as to legal form. A companion item appears on the Riverside County Flood Control and Water Conservation District Board agenda this same date.

**Impact on Residents and Businesses**

The developer's planned development will benefit from the new storm drain facilities constructed with this project, by managing storm flows and helping to mitigate flooding.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

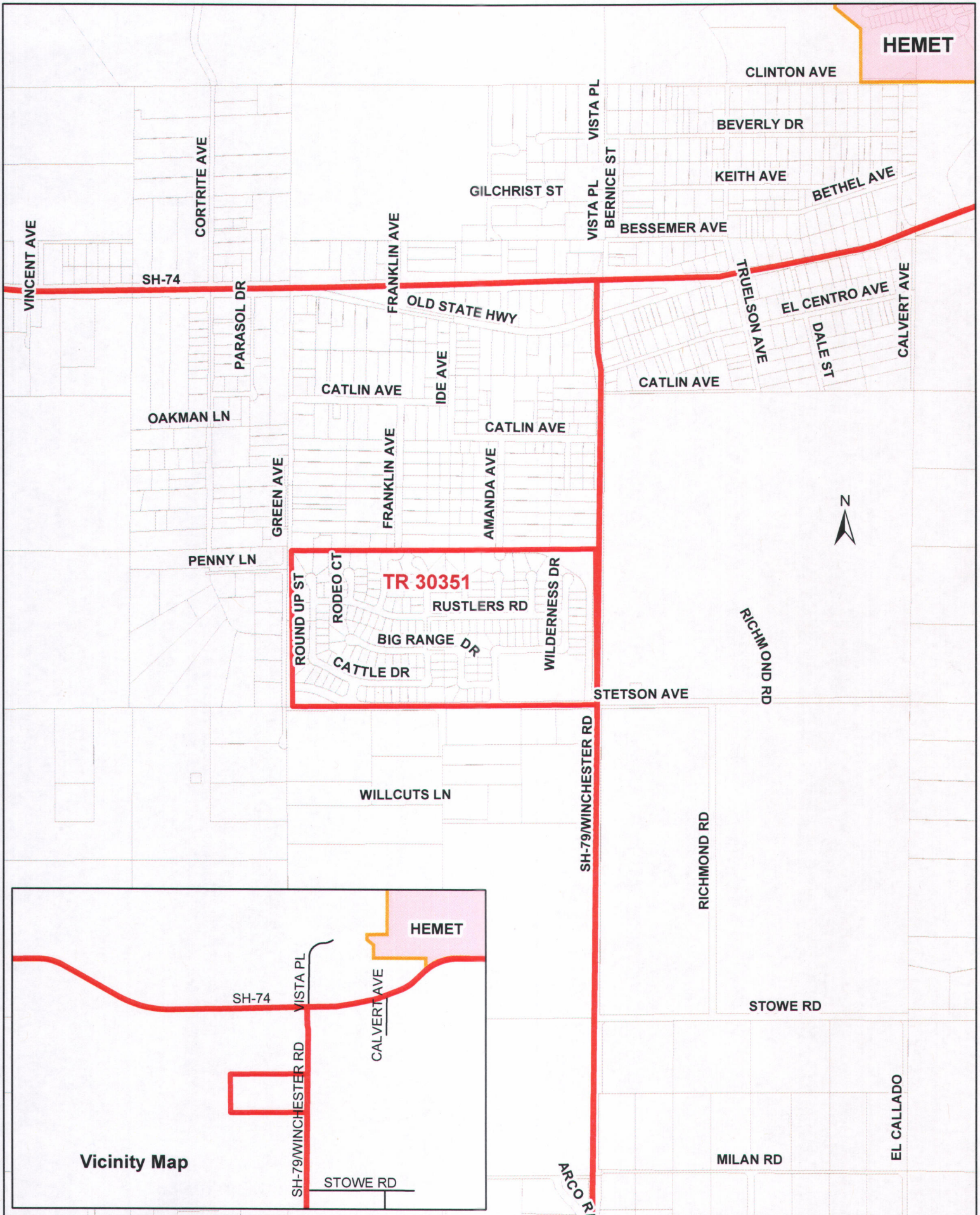
The Developer is funding all construction and construction inspection costs.

**ATTACHMENTS:**

Vicinity Map

Cooperative Agreement

Tract 30351  
Vicinity Map



ASSUMPTION OF AND AMENDMENT TO  
COOPERATIVE AGREEMENT

Winchester MDP Line B

Winchester MDP Line B-4

Project Nos. 4-0-0555 and 4-0-0556

(Tract No. 30351)

COPY

This Assumption of and Amendment to Cooperative Agreement (the "ASSUMPTION AND AMENDMENT") is made by and between (i) the Riverside County Flood Control and Water Conservation District (the "DISTRICT"); (ii) the County of Riverside (the "COUNTY") and (iii) D.R. Horton CA3, Inc., a Delaware corporation (the "DEVELOPER").

RECITALS

A. DISTRICT, COUNTY and Osborne Development – Winchester Ranch L.P. (the "PREVIOUS DEVELOPER"), have previously entered into that certain Agreement which was executed on April 26, 2005, and recorded as Document No. 2005 – 0399017 in the Official Records of the County of Riverside (the "AGREEMENT"), setting forth the parties' respective rights and obligations concerning PREVIOUS DEVELOPER'S proposed design and construction of certain flood control and drainage facilities required as a condition of approval for Tract No. 30351 located in the unincorporated western area of Riverside County, State of California (the "PROPERTY"); and

B. PREVIOUS DEVELOPER defaulted on its obligations contained in that certain Construction Deed of Trust for PROPERTY and has ceased operations of its business; and

C. DEVELOPER is now the sole owner of PROPERTY and plans to proceed in accordance with the AGREEMENT; and

D. A true copy of AGREEMENT, attached hereto as "EXHIBIT A" describes the terms and conditions by which those certain flood control and drainage improvements that are required in connection with the development of Tract No. 30351; and

E. DEVELOPER, COUNTY, and DISTRICT intend that, by execution of this ASSUMPTION AND AMENDMENT, DEVELOPER shall assume and agrees to perform all of PREVIOUS DEVELOPER'S rights and obligations as stated in AGREEMENT; and

F. In addition, DISTRICT desires to make certain amendments to AGREEMENT.

1 NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants  
2 hereinafter contained, the parties hereto do hereby mutually agree as follows:

3 1. The above Recitals are true and correct.

4 2. For the benefit of COUNTY and DISTRICT, DEVELOPER hereby agrees to be  
5 fully bound by the terms of the AGREEMENT that are stated and imposed on the PREVIOUS  
6 DEVELOPER in the AGREEMENT.

7 3. AGREEMENT is hereby amended as follows:

8 a) Section I.6 is revised to read:

9 "Prior to commencing PROJECT construction, furnish DISTRICT with  
10 copies of all permits, approvals or agreements required by any federal, state  
11 or local resource and/or regulatory agency for the construction, operation  
12 and maintenance of PROJECT. Such documents include but are not limited  
13 to those issued by the U.S. Army Corps of Engineers, California Regional  
14 Water Quality Control Board, California State Department of Fish and  
15 Wildlife, State Water Resources Control Board, and Western Riverside  
16 County Regional Conservation Authority."

17 b) Section I.8 is revised to read:

18 "Notify DISTRICT in writing (Attention: Administrative Services Section),  
19 at least twenty (20) days prior to the start of construction of PROJECT, BOX  
20 CULVERT and APPURTENANCES. Construction shall not begin on any  
21 element of PROJECT, BOX CULVERT and APPURTENANCES for any  
22 reason whatsoever, until DISTRICT has issued to DEVELOPER a written  
23 Notice to Proceed authorizing DEVELOPER to commence construction of  
24 PROJECT, BOX CULVERT and APPURTENANCES."

25 c) Section I. 14 is revised to read:

26 "Furnish DISTRICT with final mylar plans for PROJECT and assign their  
27 ownership to DISTRICT prior to the start on any portion of PROJECT,  
28 BOX CULVERT and APPURTENANCES construction."

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d) Section I.15 is revised to read:

"Comply with all Cal/OSHA safety regulations including regulations concerning confined space and maintain a safe working environment for DEVELOPER, COUNTY and DISTRICT employees on the site."

e) Section I.18 is omitted in its entirety.

f) Section I.19 is revised to read:

"DEVELOPER shall not commence operations until DISTRICT has been furnished with original certificate(s) of insurance and original certified copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section.

Without limiting or diminishing DEVELOPER'S obligation to indemnify or hold DISTRICT and COUNTY harmless, DEVELOPER shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement:

A. Workers' Compensation:

If DEVELOPER has employees as defined by the State of California, DEVELOPER shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of DISTRICT and COUNTY and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability,

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products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of DEVELOPER'S performance of its obligations hereunder. Policy shall name DISTRICT and COUNTY, its agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as additional insureds. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If DEVELOPER'S vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then DEVELOPER shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name DISTRICT and COUNTY, its agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as additional insureds.

D. Professional Liability:

DEVELOPER shall maintain Professional Liability Insurance providing coverage for DEVELOPER'S performance of work included within this Agreement, with a limit of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. If

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DEVELOPER'S Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and DEVELOPER shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that DEVELOPER has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) will continue as long as the law allows.

E. General Insurance Provisions – All Lines:

- a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the County Risk Manager. If the County Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- b. The DEVELOPER must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to DISTRICT, and at the election of the County Risk Manager, DEVELOPER'S carriers shall either:
  - 1) reduce or eliminate such self-insured retention with respect



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to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

c. DEVELOPER shall cause their insurance carrier(s) to furnish DISTRICT with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the County Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of sixty (60) days written notice shall be given to DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If DEVELOPER insurance carrier(s) policies does not meet the minimum notice requirement found herein, DEVELOPER shall cause DEVELOPER'S insurance carrier(s) to furnish a 60 day Notice of Cancellation Endorsement. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT receives, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. An individual authorized by the

- 1  
2 insurance carrier to do so on its behalf shall sign the original  
3 endorsements for each policy and the certificate of insurance.
- 4 d. It is understood and agreed by the parties hereto that  
5 DEVELOPER'S insurance shall be construed as primary  
6 insurance, and DISTRICT'S insurance and/or deductibles  
7 and/or self-insured retentions or self-insured programs shall  
8 not be construed as contributory.
- 9 e. If, during the term of this Agreement or any extension thereof,  
10 there is a material change in the scope of services or there is a  
11 material change in the equipment to be used in the  
12 performance of the scope of work which will add additional  
13 exposures (such as the use of aircraft, watercraft, cranes, etc.);  
14 or the term of this Agreement, including any extensions  
15 thereof, exceeds five (5) years, DISTRICT reserves the right  
16 to adjust the types of insurance required under this Agreement  
17 and the monetary limits of liability for the insurance coverages  
18 currently required herein, if, in the County Risk Manager's  
19 reasonable judgment, the amount or type of insurance carried  
20 by DEVELOPER has become inadequate.
- 21 f. DEVELOPER shall pass down the insurance obligations  
22 contained herein to all tiers of subcontractors working under  
23 this Agreement.
- 24 g. The insurance requirements contained in this Agreement may  
25 be met with a program(s) of self-insurance acceptable to  
26 DISTRICT.
- 27 h. DEVELOPER agrees to notify DISTRICT of any claim by a  
28 third party or any incident or event that may give rise to a  
claim arising from the performance of this Agreement.

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Failure to maintain the insurance required by this paragraph shall be deemed a material breach of this Agreement and shall authorize and constitute authority for DISTRICT, at its sole discretion, to provide written notice to DEVELOPER that DISTRICT is unable to perform its obligations hereunder, nor to accept responsibility for ownership, operation and maintenance of PROJECT due, either in whole or in part, to said breach of this Agreement."

9 g) Section I.24 is revised to read:

10 "Within two (2) weeks of completing PROJECT, BOX CULVERT and  
11 APPURTENANCES construction, provide DISTRICT (Attention:  
12 Development Review Section) and COUNTY with written notice that  
13 PROJECT, BOX CULVERT and APPURTENANCES construction is  
14 substantially complete and request that DISTRICT conduct a final  
15 inspection of PROJECT and COUNTY conduct a final inspection of BOX  
16 CULVERT and APPURTENANCES."

17 h) Section I. 27 is revised to read:

18 "Upon completion of construction of PROJECT, BOX CULVERT and  
19 APPURTENANCES but prior to DISTRICT acceptance of PROJECT for  
20 ownership, operation and maintenance, DEVELOPER'S civil engineer of  
21 record or construction civil engineer of record, duly registered in the State  
22 of California, shall provide DISTRICT a redlined "record drawings" copy  
23 of IMPROVEMENT PLANS. After DISTRICT approval of the redlined  
24 "record drawings", DEVELOPER'S engineer shall schedule with  
25 DISTRICT a time to transfer the redlined changes onto DISTRICT'S  
26 original mylars at DISTRICT'S office, after which the engineer shall review,  
27 stamp and sign IMPROVEMENT PLANS "record drawings."

28 i) Section I. 28 is added to read:

1 "Ensure that all work performed pursuant to this AGREEMENT by  
2 DEVELOPER, its agents or contractors is done in accordance with all  
3 applicable laws and regulations, including but not limited to all applicable  
4 provisions of the Labor Code, Business and Professions Code, and Water  
5 Code. DEVELOPER shall be solely responsible for all costs associated with  
6 compliance with applicable laws and regulations."  
7

8 j) Section II.9 is revised to read:

9 "Accept ownership and sole responsibility for the operation and  
10 maintenance of PROJECT upon (i) DISTRICT inspection of PROJECT in  
11 accordance with Section I.24., (ii) DISTRICT acceptance of PROJECT  
12 construction as being complete, (iii) DISTRICT receipt of stamped and  
13 signed "record drawings" of IMPROVEMENT PLANS, as set forth in  
14 Section I.27., (iv) recordation of all conveyance documents described in  
15 Section I.21., (v) COUNTY acceptance of BOX CULVERT and  
16 APPURTENANCES for ownership, operation, and maintenance, and (vi)  
17 DISTRICT'S sole determination that PROJECT are in a satisfactorily  
18 maintained condition."

19 k) Section II.11 is revised to read:

20 "Provide COUNTY with reproducible duplicate copies of "record  
21 drawings" IMPROVEMENT PLANS upon DISTRICT acceptance of  
22 PROJECT as being complete."

23 l) Section III.8 is added to read:

24 "Upon DISTRICT acceptance of PROJECT construction as being complete,  
25 accept sole responsibility for the adjustment of all PROJECT manhole rings  
26 and covers located within COUNTY rights of way which must be performed  
27 at such time(s) that the finished grade along and above the underground  
28 portions of PORJECT are improved, repaired, replaced or changed. It being

1 further understood and agreed that any such adjustments shall be performed  
2 at no cost to DISTRICT."

3 m) Section IV.4 is amended to read:

4 "DISTRICT acceptance of ownership and responsibility for the operation  
5 and maintenance of PROJECT shall be in a satisfactorily maintained  
6 condition as solely determined by DISTRICT. If, subsequent to the  
7 inspection and, in the sole discretion of DISTRICT, PROJECT are not in an  
8 acceptable condition, corrections shall be made at sole expense of  
9 DEVELOPER."

10 4. DEVELOPER agrees to complete construction of PROJECT as detailed in  
11 AGREEMENT within twelve (12) consecutive months after execution of this ASSUMPTION  
12 AND AMENDMENT and within one hundred twenty (120) consecutive calendar days after  
13 commencing work on PROJECT.

14 5. DISTRICT and COUNTY consent to DEVELOPER'S assumption of the  
15 AGREEMENT. In further clarification of the intent of the parties, DEVELOPER specifically  
16 agrees with DISTRICT that access and/or grant of real property interests required by DISTRICT  
17 pursuant to AGREEMENT, if any, shall be satisfied by DEVELOPER, and in regard to all financial  
18 obligations DISTRICT shall invoice DEVELOPER for all charges incurred pursuant to  
19 AGREEMENT.

20 6. This ASSUMPTION AND AMENDMENT is to be construed in accordance with  
21 the laws of the State of California.

22 7. Any and all notices sent or required to be sent to DEVELOPER arising from either  
23 this ASSUMPTION AND AMENDMENT, or the obligations contained in AGREEMENT will be  
24 mailed by first class mail, postage prepaid, to the following addresses:

25  
26 RIVERSIDE COUNTY FLOOD CONTROL  
27 AND WATER CONSERVATION DISTRICT  
28 1995 Market Street  
Riverside, CA 92501  
Attn: Administrative Services

COUNTY OF RIVERSIDE  
4080 Lemon St., 8th Floor  
Riverside, CA 92502-1090  
Attn: Transportation Department  
Plan Check Section  
Alan French

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D.R. HORTON CA3, INC.  
2280 Wardlow Circle, Suite 100  
Corona, CA 92880  
Attn: Dean Pernicone

8. The individuals executing this ASSUMPTION AND AMENDMENT on behalf of DEVELOPER hereby certify that they have the authority within their respective companies to enter into and execute this ASSUMPTION AND AMENDMENT, and have been authorized to do so by any and all boards of directors, legal counsel and/or any other board, committee or other entity within their respective companies which have the authority to authorize or deny entering into this ASSUMPTION AND AMENDMENT.

9. This ASSUMPTION AND AMENDMENT may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this ASSUMPTION AND AMENDMENT on \_\_\_\_\_  
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:  
DISTRICT

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION**

By \_\_\_\_\_  
JASON E. UHLEY  
General Manager-Chief Engineer

By \_\_\_\_\_  
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS  
County Counsel

KECIA HARPER-IHEM  
Clerk of the Board

By \_\_\_\_\_  
NEAL KIPNIS  
Deputy County Counsel


By \_\_\_\_\_  
Deputy

(SEAL)

Assumption of, and Amendment to, Cooperative Agreement: Tract No. 30351  
Winchester MDP Line B  
Winchester MDP Line B-4  
AMR:blm  
08/15/16

1 RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

2  
3 By   
4 PATRICIA ROMO  
Director of Transportation


By \_\_\_\_\_  
JOHN J. BENOIT, Chairman  
Board of Supervisors

6 APPROVED AS TO FORM:

ATTEST:

7  
8 GREGORY P. PRIAMOS  
County Counsel

KECIA HARPER-IHEM  
Clerk of the Board

9  
10 By  8/31/16  
11 MARSHA L. VICTOR  
12 ~~Principal~~ Deputy County Counsel  
*Chief*

By \_\_\_\_\_  
Deputy

(SEAL)

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Assumption of, and Amendment to, Cooperative Agreement: Tract No. 30351  
Winchester MDP Line B  
Winchester MDP Line B-4  
AMR:blm  
08/15/16



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**DEVELOPER**

**D.R. HORTON CA3, INC.**  
a Delaware corporation

By \_\_\_\_\_  
TODD FUNK  
Assistant Vice President

(ATTACH NOTARY ACKNOWLEDGEMENT  
WITH CAPACITY STATEMENT)

Assumption of, and Amendment to, Cooperative Agreement: Tract No. 30351  
Winchester MDP Line B  
Winchester MDP Line B-4  
AMR:blm  
08/15/16

PLEASE COMPLETE THIS INFORMATION

RECORDING REQUESTED BY:

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

**FREE RECORDING**

This instrument is for the benefit of the Riverside County Flood Control and Water Conservation District and should be recorded without a fee pursuant to Govt. Code 6103.

AND WHEN RECORDED MAIL TO:

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
1995 MARKET STREET  
RIVERSIDE, CA 92501-1770**

**DOC # 2005-0399017**

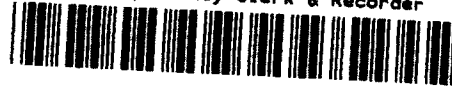
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Page 1 of 27

Recorded in Official Records  
County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



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AGREEMENT

Title of Document



**PROJECT:** Winchester MDP Line B  
Winchester MDP Line B-4

**PROJECT NOS:** 4-0-0555 and 4-0-0556

**TRACT MAP NO:** 30351

**DEVELOPER:** Osborne Development – Winchester Ranch L.P.

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(\$3.00 Additional Recording Fee Applies)

**EXHIBIT A**

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AGREEMENT

(Tract No. 30351)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the COUNTY OF RIVERSIDE hereinafter called "COUNTY", and OSBORNE DEVELOPMENT - WINCHESTER RANCH L.P., a California limited partnership, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DEVELOPER has submitted for approval Tract No. 30351 in western Riverside County and as a condition for approval DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER'S planned development; and

B. The required flood control facilities include construction of: 1) approximately 1,735 lineal feet of earthen and concrete trapezoidal channel and its associated inlet and outlet structures, hereinafter called "CHANNEL", as shown in concept in purple on Exhibit "A" attached hereto and made a part hereof; and 2) approximately 1,765 lineal feet of underground concrete pipe and associated its inlet and outlet structures, hereinafter called "STORM DRAIN", as shown in red on Exhibit "A". CHANNEL and STORM DRAIN are hereinafter collectively called "PROJECT"; and

C. Associated with the construction of PROJECT, is the construction of a two-cell reinforced concrete box culvert, hereinafter called "BOX CULVERT", as shown in green on Exhibit "A". Pursuant to a Memorandum of Understanding between COUNTY and DISTRICT, COUNTY is willing to accept ownership and responsibility for the structural integrity of BOX CULVERT and DISTRICT is willing to accept responsibility for keeping BOX CULVERT free and clear of debris; and

D. DEVELOPER and COUNTY desire DISTRICT to accept ownership and responsibility for the operation and maintenance of PROJECT. Therefore, DISTRICT must



2005-0399017  
05/19/2005 08:00A  
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1 review and approve DEVELOPER'S plans and specifications and subsequently inspect the  
2 construction of PROJECT; and

3 E. DEVELOPER and DISTRICT desire COUNTY to accept ownership and  
4 responsibility for the operation and maintenance of BOX CULVERT, and PROJECT'S  
5 associated catch basins, connector pipes and laterals located within COUNTY held easements or  
6 rights of way, hereinafter called APPURTENANCES. Therefore, COUNTY must review and  
7 approve DEVELOPER'S plans and specifications and subsequently inspect the construction of  
8 BOX CULVERT and APPURTENANCES; and

9 F. DISTRICT is willing to (i) review and approve DEVELOPER'S plans and  
10 specifications for PROJECT, BOX CULVERT and APPURTENANCES, (ii) inspect the  
11 construction of PROJECT, (iii) grant COUNTY the right to inspect, operate and maintain BOX  
12 CULVERT and APPURTENANCES within DISTRICT rights of way, and (iv) accept ownership  
13 and responsibility for the operation and maintenance of PROJECT, provided DEVELOPER (i)  
14 complies with this Agreement, (ii) pays DISTRICT the amounts specified herein to cover  
15 DISTRICT'S plan review and construction inspection costs for PROJECT, (iii) constructs  
16 PROJECT, BOX CULVERT and APPURTENANCES in accordance with plans and  
17 specifications approved by DISTRICT and COUNTY, (iv) obtains all necessary permits,  
18 regulatory permits, licenses and rights of entry as set forth herein, (v) accepts ownership and  
19 responsibility for the operation and maintenance of PROJECT, BOX CULVERT and  
20 APPURTENANCES following completion of PROJECT construction until such time as  
21 DISTRICT accepts ownership and responsibility for the operation and maintenance of PROJECT  
22 and COUNTY accepts ownership and responsibility for the operation and maintenance of BOX  
23 CULVERT and APPURTENANCES, and (vi) obtains and conveys to DISTRICT the necessary  
24 rights of way for the inspection, operation and maintenance of PROJECT as set forth herein; and

25 G. COUNTY is willing to (i) review and approve plans and specifications  
26 prepared by DEVELOPER for PROJECT, BOX CULVERT and APPURTENANCES, (ii)  
27 accept and hold faithful performance and payment bonds submitted by DEVELOPER for  
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1 PROJECT, (iii) grant DISTRICT the right to inspect, operate and maintain PROJECT within  
2 COUNTY rights of way, (iv) consent to the recordation and conveyance of Irrevocable Offer(s)  
3 of Dedication furnished by DEVELOPER as provided herein, and (v) accept ownership and  
4 responsibility for the operation and maintenance of BOX CULVERT and APPURTENANCES,  
5 provided PROJECT, BOX CULVERT and APPURTENANCES are constructed in accordance  
6 with plans and specifications approved by DISTRICT and COUNTY.

7 NOW, THEREFORE, the parties hereto mutually agree as follows:

8 SECTION I

9 DEVELOPER shall:

10 1. Prepare plans and specifications for PROJECT, BOX CULVERT and  
11 APPURTENANCES, hereinafter called "IMPROVEMENT PLANS", in accordance with  
12 DISTRICT and COUNTY standards, and submit to DISTRICT and COUNTY for their review  
13 and approval.

14 2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic  
15 billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by  
16 DISTRICT to cover DISTRICT'S costs associated with the review of IMPROVEMENT PLANS,  
17 review and approval of right of way and conveyance documents, and with the processing and  
18 administration of this Agreement.

19 3. Deposit with DISTRICT (Attention: Business Office - Accounts  
20 Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT  
21 construction as set forth in Section I.8. herein, the estimated cost of providing construction  
22 inspection for PROJECT, in an amount as determined and approved by DISTRICT in accordance  
23 with Ordinance Nos. 671 and 749 of the County of Riverside, including any amendments thereto,  
24 based upon the bonded value of PROJECT facilities to be inspected, operated and maintained by  
25 DISTRICT.

26 4. [Intentionally Left Blank]

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1           5. Secure, at its sole cost and expense, all necessary licenses, agreements,  
2 permits and rights of entry as may be needed for the construction, inspection, operation and  
3 maintenance of PROJECT. DEVELOPER shall furnish DISTRICT, at the time of providing  
4 written notice to DISTRICT of the start of construction as set forth in Section I.8., or not less  
5 than twenty (20) days prior to recordation of the final maps for Tract No. 30351 or any phase  
6 thereof, whichever occurs first, with sufficient evidence of DEVELOPER having secured such  
7 necessary licenses, agreements, permits and rights of entry, as determined and approved by  
8 DISTRICT.

9           6. Furnish DISTRICT with copies of all permits, approvals or agreements  
10 required by any Federal or State resource and/or regulatory agency for the construction,  
11 operation and maintenance of PROJECT. Such documents include but are not limited to those  
12 issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board,  
13 California State Department of Fish and Game and State Water Resources Control Board.

14           7. Provide COUNTY, at the time of providing written notice to DISTRICT of  
15 the start of construction as set forth in Section I.8. or not less than twenty (20) days prior to  
16 recordation of the final map for Tract No. 30351 or any phase thereof, whichever occurs first,  
17 with faithful performance and payment bonds, each in the amount of 100% of the estimated cost  
18 for construction of PROJECT facilities as determined by DISTRICT. The surety, amount and  
19 form of the bonds shall be subject to the approval of DISTRICT and COUNTY. The bonds shall  
20 remain in full force and effect until PROJECT is accepted by DISTRICT as complete; at which  
21 time the bond amount may be reduced to 10% for a period of one year to guarantee against any  
22 defective work, labor or materials.

23           8. Notify DISTRICT in writing (Attention: Administrative Services), at least  
24 twenty (20) days prior to the start of construction of PROJECT. Construction shall not begin on  
25 PROJECT, for any reason whatsoever, until DISTRICT has issued to DEVELOPER a written  
26 Notice to Proceed authorizing DEVELOPER to initiate construction.



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1           9. Grant DISTRICT and COUNTY, by execution of this Agreement, the right  
2 to enter upon DEVELOPER'S property where necessary and convenient for the purpose of  
3 gaining access to, and performing inspection service for, the construction of PROJECT as set  
4 forth herein.

5           10. Obtain and provide DISTRICT, at the time of providing written notice to  
6 DISTRICT of the start of construction of PROJECT as set forth in Section I.8. or not less than  
7 twenty (20) days prior to the recordation of the final maps for Tract No. 30351 or any phase  
8 thereof, whichever occurs first, with duly executed Irrevocable Offers(s) of Dedication to the  
9 public for flood control and drainage purposes, including ingress and egress, for the rights of  
10 way deemed necessary by DISTRICT for the construction, inspection, operation and  
11 maintenance of PROJECT, as shown in concept in purple, as shown in concept cross-hatched in  
12 blue and cross-hatched in red on Exhibit "B" attached hereto and made a part hereof. The  
13 Irrevocable Offer(s) of Dedication shall be in a form approved by DISTRICT and shall be  
14 executed by all legal and equitable owners of the property described in the offer(s).

15           11. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of Dedication  
16 as set forth in Section I.10. with Preliminary Reports on Title dated not more than thirty (30)  
17 days prior to date of submission of all the property described in the Irrevocable Offer(s) of  
18 Dedication.

19           12. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
20 the start of construction as set forth in Section I.8. with a complete list of all contractors and  
21 subcontractors to be performing work on PROJECT, including the corresponding license number  
22 and license classification of each. At such time, DEVELOPER shall further identify in writing  
23 its designated superintendent for PROJECT construction.

24           13. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
25 the start of construction as set forth in Section I.8. a construction schedule which shall show the  
26 order and dates in which the DEVELOPER or DEVELOPER'S contractor proposes to carry on  
27 the various parts of work, including estimated start and completion dates. As PROJECT  
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1 construction progresses, DEVELOPER shall update said construction schedule as requested by  
2 DISTRICT.

3 14. Furnish DISTRICT with final mylar IMPROVEMENT PLANS and assign  
4 their ownership to DISTRICT prior to the start of PROJECT construction.

5 15. Comply with all Cal/OSHA safety regulations including regulations  
6 concerning confined space and maintain a safe working environment for DEVELOPER and  
7 DISTRICT employees on the site.

8 16. Furnish DISTRICT, at time of providing written notice to DISTRICT of the  
9 start of construction as set forth in Section I.8. a confined space procedure specific to PROJECT.  
10 The procedure shall comply with requirements contained in California Code of Regulations,  
11 Title 8 Section 5158, Other Confined Space Operations, Section 5157, Permit Required Confined  
12 Space and DISTRICT Confined Space Procedures, SOM-18. The procedure shall be reviewed  
13 and approved by DISTRICT prior to the issuance of a Notice to Proceed.

14 17. Not permit any change to or modification of IMPROVEMENT PLANS  
15 without the prior written permission and consent of DISTRICT.

16 18. During the construction period of PROJECT, provide Workers'  
17 Compensation Insurance in an amount required by law. A certificate of said insurance policy  
18 shall be provided to DISTRICT and COUNTY at the time of providing written notice pursuant to  
19 Section I.8.

20 19. Commencing on the date notice is given pursuant to Section I.8. and  
21 continuing until DISTRICT accepts PROJECT for operation and maintenance:

- 22 (a) Provide and maintain or cause its contractor(s) to provide and maintain
- 23 comprehensive liability insurance coverage which shall protect
- 24 DEVELOPER from claim from damages for personal injury, including
- 25 accidental and wrongful death, as well as from claims for property
- 26 damage which may arise from DEVELOPER'S construction of
- 27 PROJECT or the performance of its obligations hereunder, whether



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1 such construction or performance be by DEVELOPER, by any of its  
2 contractors, subcontractors, or by anyone employed directly or  
3 indirectly by any of them. Such insurance shall name DISTRICT and  
4 COUNTY as additional insureds with respect to this Agreement and  
5 the obligations of DEVELOPER hereunder. Such insurance shall  
6 provide for limits of not less than two million dollars (\$2,000,000) per  
7 occurrence.

- 8 (b) Cause its insurance carrier(s) or its contractor's insurance carrier(s),  
9 who shall be authorized by the California Department of Insurance to  
10 transact business of insurance in the State of California, to furnish  
11 DISTRICT and COUNTY at the time of providing written notice to  
12 DISTRICT of the start of construction as set forth in Section I.8. with  
13 certificate(s) of insurance and applicable policy endorsements showing  
14 that such insurance is in full force and effect and that DISTRICT and  
15 COUNTY are named as additional insureds with respect to this  
16 Agreement and the obligations of DEVELOPER hereunder. Further,  
17 said certificate(s) shall state that the issuing company shall give  
18 DISTRICT and COUNTY sixty (60) days written notice in the event  
19 of any cancellation, termination, non-renewal or reduction in coverage  
20 of the policies evidenced by the certificate(s). In the event of any such  
21 cancellation, termination, non-renewal or reduction in coverage,  
22 DEVELOPER shall, forthwith, secure replacement insurance meeting  
23 the provisions of this paragraph.

24 Failure to maintain the insurance required by this paragraph shall be deemed  
25 a material breach of this Agreement and shall authorize and constitute authority for DISTRICT,  
26 at its sole discretion, to proceed to perform the remaining work pursuant to Section IV.3.



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1           20. Construct, or cause to be constructed, PROJECT, BOX CULVERT and  
2 APPURTENANCES at DEVELOPER'S sole cost and expense in accordance with DISTRICT  
3 and COUNTY approved IMPROVEMENT PLANS.

4           21. Upon completion of PROJECT construction, and upon acceptance of all  
5 street rights of way by COUNTY as deemed necessary by DISTRICT and COUNTY for the  
6 operation and maintenance of PROJECT, but prior to DISTRICT acceptance of PROJECT for  
7 ownership, operation and maintenance, convey, or cause to be conveyed to DISTRICT:

8                   (a) Fee simple title to the rights of way as shown in concept in purple on  
9                   Exhibit "B"; and

10                   (b) Flood control easement(s), including ingress and egress, in a form  
11                   approved by DISTRICT, for the rights of way as shown in concept  
12                   cross-hatched in blue and cross-hatched in red on Exhibit "B".

13           22. At the time of recordation of the conveyancing document(s) as set forth in  
14 Section I.21.(a), furnish DISTRICT with policies of title insurance, each in the amount of not  
15 less than one hundred percent (100%) of the estimated fee value, as determined by DISTRICT,  
16 for each fee parcel to be conveyed to DISTRICT, guaranteeing DISTRICT'S interest in said  
17 property as being free and clear of all liens, encumbrances, assessments, easements, taxes and  
18 leases (recorded or unrecorded), except those which, in the sole discretion of DISTRICT, are  
19 deemed acceptable.

20           23. At the time of recordation of the conveyancing document(s) as set forth in  
21 Section I.21.(b), furnish DISTRICT with policies of title insurance, each in the amount of not  
22 less than fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each  
23 easement parcel to be conveyed to DISTRICT, guaranteeing DISTRICT'S interest in said  
24 property as being free and clear of all liens, encumbrances, assessments, easements, taxes and  
25 leases (recorded or unrecorded), except those which, in the sole discretion of DISTRICT, are  
26 deemed acceptable.



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1           24. Within two weeks of completing PROJECT construction, provide  
2 DISTRICT with written notice (Attention: Contract Administration Section) that PROJECT  
3 construction is substantially complete and requesting that DISTRICT conduct a final inspection  
4 of PROJECT.

5           25. Accept ownership and sole responsibility for the operation and maintenance  
6 of PROJECT, BOX CULVERT and APPURTENANCES until such time as DISTRICT accepts  
7 ownership and responsibility for operation and maintenance of PROJECT and COUNTY accepts  
8 ownership and responsibility for operation and maintenance of BOX CULVERT and  
9 APPURTENANCES. Further, it is mutually understood by the parties hereto that prior to  
10 DISTRICT acceptance of ownership and responsibility for the operation and maintenance of  
11 PROJECT as set forth herein, PROJECT, BOX CULVERT and APPURTENANCES shall be in  
12 a satisfactorily maintained condition as solely determined by DISTRICT.

13           26. Pay, if suit is brought upon this Agreement or any bond guaranteeing the  
14 completion of PROJECT, all costs and reasonable expenses and fees, including reasonable  
15 attorneys' fees, and acknowledge that, upon entry of judgment, all such costs, expenses and fees  
16 shall be computed as costs and included in any judgment rendered.

17           27. Upon completion of construction of PROJECT, but prior to DISTRICT  
18 acceptance of PROJECT for ownership, operation and maintenance, DEVELOPER'S civil  
19 engineer of record or construction civil engineer of record, duly registered in the State of  
20 California, shall provide DISTRICT a redlined "as-built" copy of IMPROVEMENT PLANS.  
21 After DISTRICT approval of the redlined "as-built" drawings, DEVELOPER'S engineer shall  
22 schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT'S original  
23 mylars at DISTRICT'S office, after which the engineer shall review, stamp and sign PROJECT  
24 plans "AS-BUILT".

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SECTION II

DISTRICT shall:

1. Review and approve IMPROVEMENT PLANS prepared by DEVELOPER prior to the start of PROJECT construction.

2. Provide COUNTY an opportunity to review and approve IMPROVEMENT PLANS prior to DISTRICT'S final approval.

3. Upon execution of this Agreement, record or cause to be recorded, a copy of this Agreement in the Official Records of the Riverside County Recorder.

4. Record, or cause to be recorded, the Irrevocable Offer(s) of Dedication provided by DEVELOPER pursuant to Section I.10.

5. Inspect PROJECT construction.

6. Keep an accurate accounting of all DISTRICT costs associated with the review and approval of IMPROVEMENT PLANS, the review and approval of right of way and conveyance documents and the processing and administration of this Agreement.

7. Keep an accurate accounting of all DISTRICT construction inspection costs, and within forty-five (45) days after DISTRICT acceptance of PROJECT as being complete, submit a final cost statement to DEVELOPER. If the deposit, as set forth in Section I.3. exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty (60) days after DISTRICT acceptance of PROJECT as being complete. If at any time the costs exceed the deposit or are anticipated by DISTRICT to exceed the deposit, DEVELOPER shall pay such additional amount(s), as deemed reasonably necessary by DISTRICT to complete PROJECT, within thirty (30) days after receipt of billing from DISTRICT.

8. Grant COUNTY, by execution of this Agreement, the right to construct, inspect, operate and maintain BOX CULVERT and APPURTENANCES within DISTRICT rights of way.

9. Accept ownership and responsibility for the operation and maintenance of PROJECT and, upon (i) DISTRICT acceptance of PROJECT construction as being complete, (ii)



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1 recordation of all conveyancing documents described in Section I.21., and (iii) acceptance by  
2 COUNTY of all necessary street rights of way as deemed necessary by DISTRICT and  
3 COUNTY for the operation and maintenance of PROJECT, BOX CULVERT and  
4 APPURTENANCES.

5 10. Accept responsibility for keeping BOX CULVERT free and clear of debris  
6 upon COUNTY acceptance of BOX CULVERT for ownership, operation and maintenance.

7 11. Provide COUNTY with a reproducible duplicate copy of "as-built"  
8 IMPROVEMENT PLANS upon DISTRICT acceptance of PROJECT as being complete.

9 SECTION III

10 COUNTY shall: 1. Review and approve IMPROVEMENT  
11 PLANS prior to the start of PROJECT construction.

12 2. Accept COUNTY and DISTRICT approved faithful performance and  
13 payment bonds submitted by DEVELOPER as set forth in Section I.7. and hold said bonds as  
14 provided herein.

15 3. Consent, by execution of this Agreement, to the recording of any  
16 Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Agreement.

17 4. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication  
18 as set forth herein, and any other outstanding offers of dedication necessary for the construction,  
19 inspection, operation and maintenance of PROJECT, and convey sufficient rights of way to  
20 DISTRICT to allow DISTRICT to construct, inspect, operate and maintain PROJECT.

21 5. Grant DISTRICT, by execution of this Agreement, the right to construct,  
22 inspect, operate and maintain PROJECT within COUNTY rights of way as set forth herein.

23 6. Upon DISTRICT acceptance of PROJECT as being complete, accept  
24 ownership and responsibility for the operation and maintenance of BOX CULVERT and  
25 APPURTENANCES.

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1 7. Not grant any occupancy permits for any units within any portion of Tract  
2 No. 30351, or any phase thereof, until construction of PROJECT is complete, unless otherwise  
3 approved in writing by DISTRICT.

4 SECTION IV

5 It is further mutually agreed:

6 1. All work involved with PROJECT shall be inspected by DISTRICT and  
7 shall not be deemed complete until approved and accepted in writing as complete by DISTRICT.

8 2. COUNTY and DEVELOPER personnel may observe and inspect all work  
9 being done on PROJECT, but shall provide any comments to DISTRICT personnel who shall be  
10 solely responsible for all quality control communications with the DEVELOPER'S contractor(s)  
11 during the construction of PROJECT.

12 3. DEVELOPER shall complete construction of PROJECT within twelve (12)  
13 consecutive months after execution of this Agreement and within ninety (90) consecutive  
14 calendar days after commencing work on PROJECT. It is expressly understood that since time is  
15 of the essence in this Agreement, failure of DEVELOPER to perform the work within the agreed  
16 upon time shall constitute authority for DISTRICT to perform the remaining work and require  
17 DEVELOPER'S surety to pay to COUNTY the penal sum of any and all bonds. In which case,  
18 COUNTY shall subsequently reimburse DISTRICT for DISTRICT costs incurred.

19 4. [Intentionally Left Blank.]

20 5. DISTRICT shall endeavor to issue DEVELOPER a Notice to Proceed  
21 within twenty (20) days of receipt of DEVELOPER'S complete written notice as set forth in  
22 Section I.8.; however, DISTRICT'S construction inspection staff is limited and, therefore, the  
23 issuance of a Notice to Proceed is subject to staff availability.

24 In the event DEVELOPER wishes to expedite issuance of a Notice to  
25 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at  
26 DEVELOPER'S sole cost and expense. DEVELOPER shall furnish appropriate documentation  
27 of the individual's credentials and experience to DISTRICT for review and, if appropriate,  
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1 approval. DISTRICT shall review the individual's qualifications and experience and, upon  
 2 approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be  
 3 authorized to act on DISTRICT'S behalf on all PROJECT construction and quality control  
 4 matters. If DEVELOPER'S initial construction inspection deposit furnished pursuant to Section  
 5 I.3. exceeds five thousand dollars (\$5,000.00), DISTRICT shall refund to DEVELOPER up to  
 6 eighty percent (80%) of DEVELOPER'S initial inspection deposit within forty-five (45) days of  
 7 DISTRICT'S approval of DEPUTY INSPECTOR; however, a minimum balance of five  
 8 thousand dollars (\$5,000.00) shall be retained on account.

9           6. PROJECT construction work shall be on a five (5) day, forty (40) hour work  
 10 week with no work on Saturdays, Sundays or DISTRICT designated legal holidays, unless  
 11 otherwise approved in writing by DISTRICT. If DEVELOPER feels it is necessary to work  
 12 more than the normal forty (40) hour work week or on holidays, DEVELOPER shall make a  
 13 written request for permission from DISTRICT to work the additional hours. The request shall  
 14 be submitted to DISTRICT at least 72 hours prior to the requested additional work hours and  
 15 state the reasons for the overtime and the specific time frames required. The decision of granting  
 16 permission for overtime work shall be made by DISTRICT at its sole discretion and shall be  
 17 final. If permission is granted by DISTRICT, DEVELOPER will be charged the cost incurred at  
 18 the overtime rates for additional inspection time required in connection with the overtime work  
 19 in accordance with Ordinance Nos. 671 and 749, including any amendments thereto, of the  
 20 County of Riverside.

21           7. In the event that any claim or legal action is brought against DISTRICT or  
 22 COUNTY in connection with this Agreement because of the actual or alleged acts or omissions  
 23 by DEVELOPER, including but not limited to design, construction or failure of PROJECT, BOX  
 24 CULVERT or APPURTENANCES, DEVELOPER shall defend, indemnify and hold DISTRICT  
 25 and COUNTY harmless therefrom, without cost to DISTRICT or COUNTY. Upon  
 26 DEVELOPER'S failure to do so, DISTRICT and COUNTY shall be entitled to recover from  
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1 DEVELOPER all of their cost and expenses, including, but not limited to, reasonable attorneys'  
2 fees.

3 8. DEVELOPER shall defend, indemnify and hold DISTRICT and COUNTY,  
4 their respective officers, agents, employees and independent contractors free and harmless from  
5 any claim or legal action whatsoever, based or asserted, pursuant to Article I, Section 19 of the  
6 California Constitution, the Fifth Amendment of the United States Constitution, or any other law  
7 or ordinance which seeks to impose any other liability or damage caused by the diversion of the  
8 waters from the natural drainage patterns, save and except claims and litigation arising through  
9 the negligence or willful misconduct of DISTRICT or COUNTY, which claims shall be shared  
10 by the parties on a pro rata basis based on their respective responsibilities. DEVELOPER shall  
11 defend DISTRICT and COUNTY without cost to DISTRICT or COUNTY, and upon  
12 DEVELOPER'S failure to do so, DISTRICT and COUNTY shall be entitled to recover from  
13 DEVELOPER all of their costs and expenditures, including, but not limited to, reasonable  
14 attorneys' fees.

15 9. DEVELOPER for itself, its successors and assigns hereby releases  
16 DISTRICT and COUNTY, their respective officers, agents, and employees from any and all  
17 claims, demands, actions, or suits of any kind arising out of any liability, known or unknown,  
18 present or future, including, but not limited to any claim or liability, based or asserted, pursuant  
19 to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States  
20 Constitution, or any other law or ordinance which seeks to impose any other liability or damage,  
21 whatsoever, for damage caused by the discharge of drainage within or from PROJECT. Nothing  
22 contained herein shall constitute a release by DEVELOPER of DISTRICT or COUNTY, their  
23 officers, agents and employees from any and all claims, demands, actions or suits of any kind  
24 arising out of any liability, known or unknown, present or future, for the negligent maintenance  
25 of PROJECT, BOX CULVERT or APPURTENANCES, after the acceptance of PROJECT,  
26 BOX CULVERT and APPURTENANCES by DISTRICT and COUNTY, respectively.



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1           10. Any waiver by DISTRICT or by COUNTY of any breach of any one or  
2 more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or  
3 other breach of the same or of any other term hereof. Failure on the part of DISTRICT or  
4 COUNTY to require exact, full and complete compliance with any terms of this Agreement shall  
5 not be construed as in any manner changing the terms hereof, or estopping DISTRICT or  
6 COUNTY from enforcement hereof.

7           11. If any provision in this Agreement is held by a court of competent  
8 jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless  
9 continue in full force without being impaired or invalidated in any way.

10           12. This Agreement is to be construed in accordance with the laws of the State  
11 of California.

12           13. Any and all notices sent or required to be sent to the parties of this  
13 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

14 RIVERSIDE COUNTY FLOOD CONTROL  
15 AND WATER CONSERVATION DISTRICT  
16 1995 Market Street  
17 Riverside, CA 92501

COUNTY OF RIVERSIDE  
Post Office Box 1090  
Riverside, CA 92502-1090  
Attn: Transportation Department

18 OSBORNE DEVELOPMENT – WINCHESTER  
19 RANCH L.P.  
20 30001 Comercio  
21 Rancho Santa Margarita, CA 92688  
22 Attn: Stephanie Nichols

23           14. Any action at law or in equity brought by any of the parties hereto for the  
24 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of  
25 competent jurisdiction in the County of Riverside, State of California, and the parties hereto  
26 waive all provisions of law providing for a change of venue in such proceedings to any other  
27 county.

28           15. This Agreement is the result of negotiations between the parties hereto, and  
the advice and assistance of their respective counsel. The fact that this Agreement was prepared  
as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty



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or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

16. The rights and obligations of DEVELOPER shall inure to and be binding upon all heirs, successors and assignees.

17. DEVELOPER shall not assign or otherwise transfer any of its rights, duties or obligations hereunder to any person or entity without the written consent of the other parties hereto being first obtained. In the event of any such transfer or assignment, DEVELOPER expressly understands and agrees that it shall remain liable with respect to any and all of the obligations and duties contained in this Agreement.

18. The individual(s) executing this Agreement on behalf of DEVELOPER hereby certify that they have the authority within their respective company(ies) to enter into and execute this Agreement, and have been authorized to do so by any and all boards of directors, legal counsel, and or any other board, committee or other entity within their respective company(ies) which have the authority to authorize or deny entering into this Agreement.

19. This Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the parties hereto.

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IN WITNESS WHEREOF, the parties hereto have executed

this Agreement on 4-26-05  
(to be filled in by Clerk to the Board)

RECOMMENDED FOR APPROVAL:

By [Signature]  
WARREN D. WILLIAMS  
General Manager-Chief Engineer

RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT

By [Signature]  
~~VICE-CHAIRMAN~~  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

ATTEST:

NANCY ROMERO  
Clerk to the Board

By [Signature]  
Deputy  
(SEAL)

RECOMMENDED FOR APPROVAL:

By [Signature]  
GEORGE A. JOHNSON  
Director of Transportation

COUNTY OF RIVERSIDE

By [Signature]  
~~VICE-CHAIRMAN, BOARD OF SUPERVISORS~~  
County of Riverside Board of Supervisors

APPROVED AS TO FORM:

WILLIAM C. KATZENSTEIN  
County Counsel

By [Signature]  
LEE A. VINOCOUR  
Deputy County Counsel

ATTEST:

NANCY ROMERO  
Clerk to the Board

By [Signature]  
Deputy  
(SEAL)

Dated 2/5/05

Cooperative Agreement Tract 30351



2005-0339017  
05/13/2005 08:00A  
18 of 27

**OSBORNE DEVELOPMENT –  
WINCHESTER RANCH, L. P.**  
a California limited partnership

By: OSBORNE DEVELOPMENT CORP.  
a California corporation  
Its General Partner

By \_\_\_\_\_  
ROBERT E. OSBORNE  
President

(NOTARY)

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Cooperative Agreement Tract 30351  
AAM:MHW:bj  
02/10/2005



2005-0399017  
05/19/2005 08:00A  
19 of 27

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Orange } ss.

On 3/7/05 before me, Lori Ann Ferguson

Date

Name and Title of Officer (e.g. Jane Doe, Notary Public)

personally appeared Robert C. Osborne

Name(s) of Signer(s)

- personally known to me
- 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.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Cooperative Agreement Tract 30351

Document Date: 2/10/05 Number of Pages: 18 pages + 7 pages of Exhibits

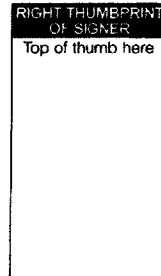
Signer(s) Other Than Named Above: \_\_\_\_\_

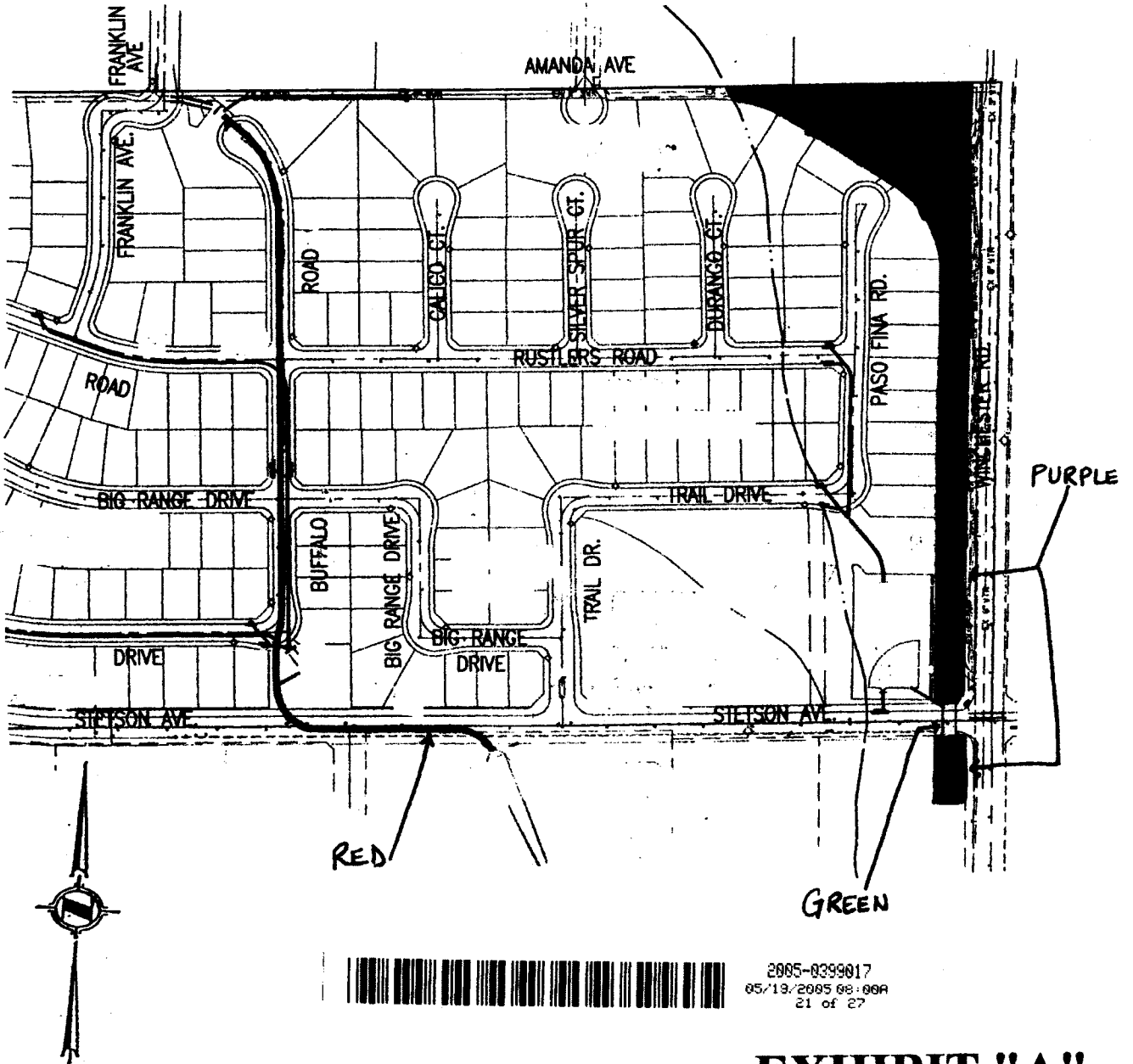
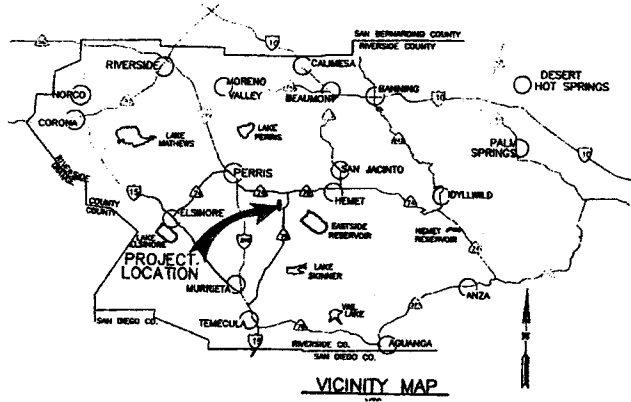
**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

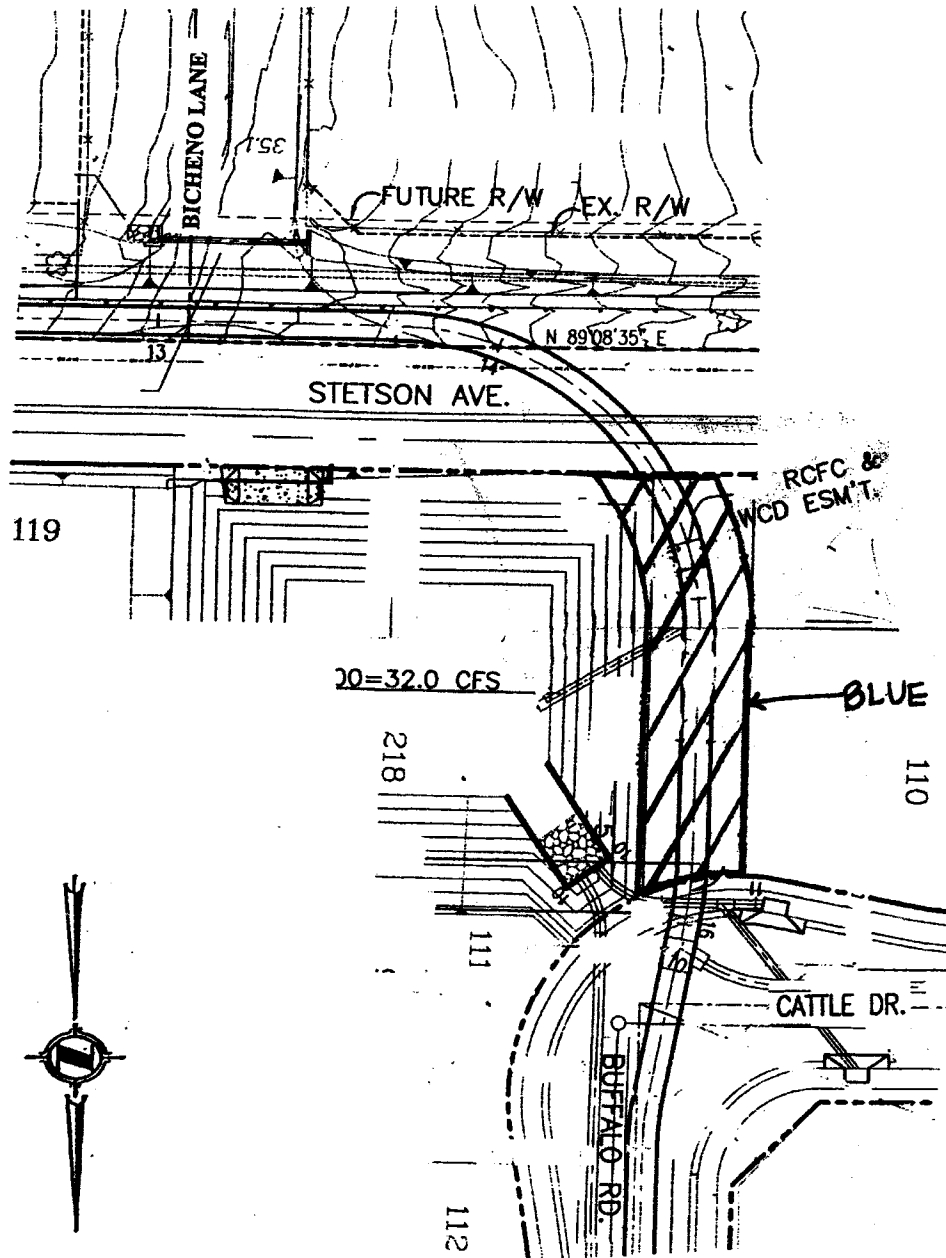
Signer Is Representing: \_\_\_\_\_





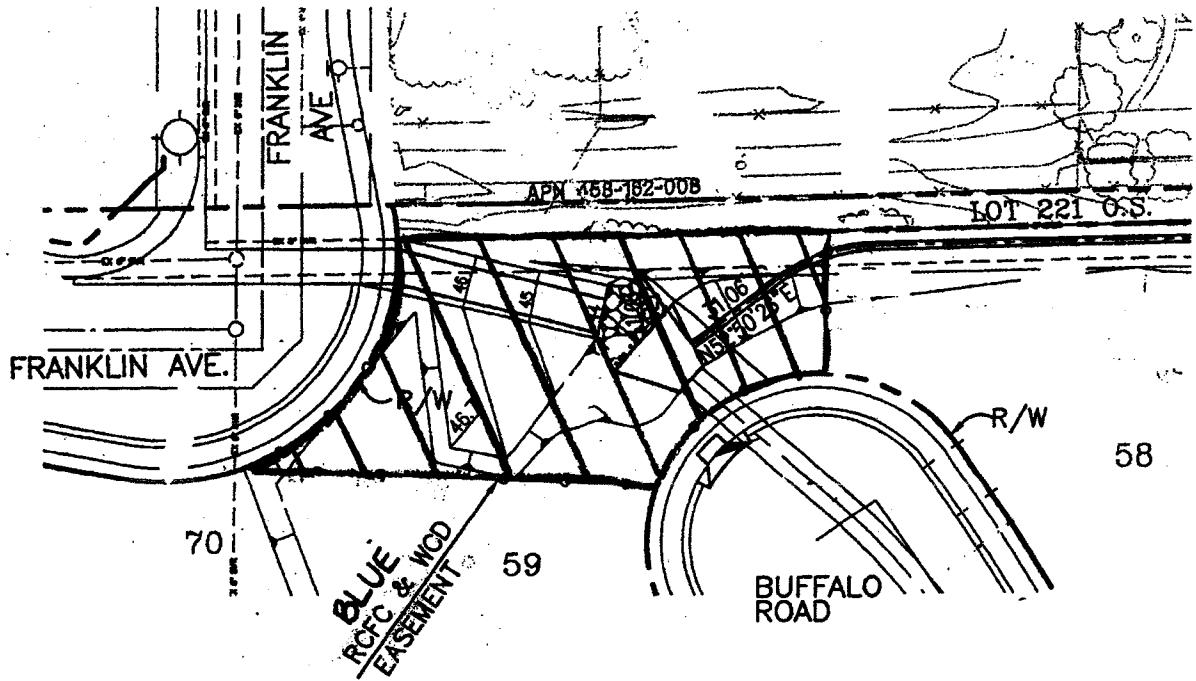
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# EXHIBIT "A"



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**EXHIBIT "B"**  
**1 OF 6**

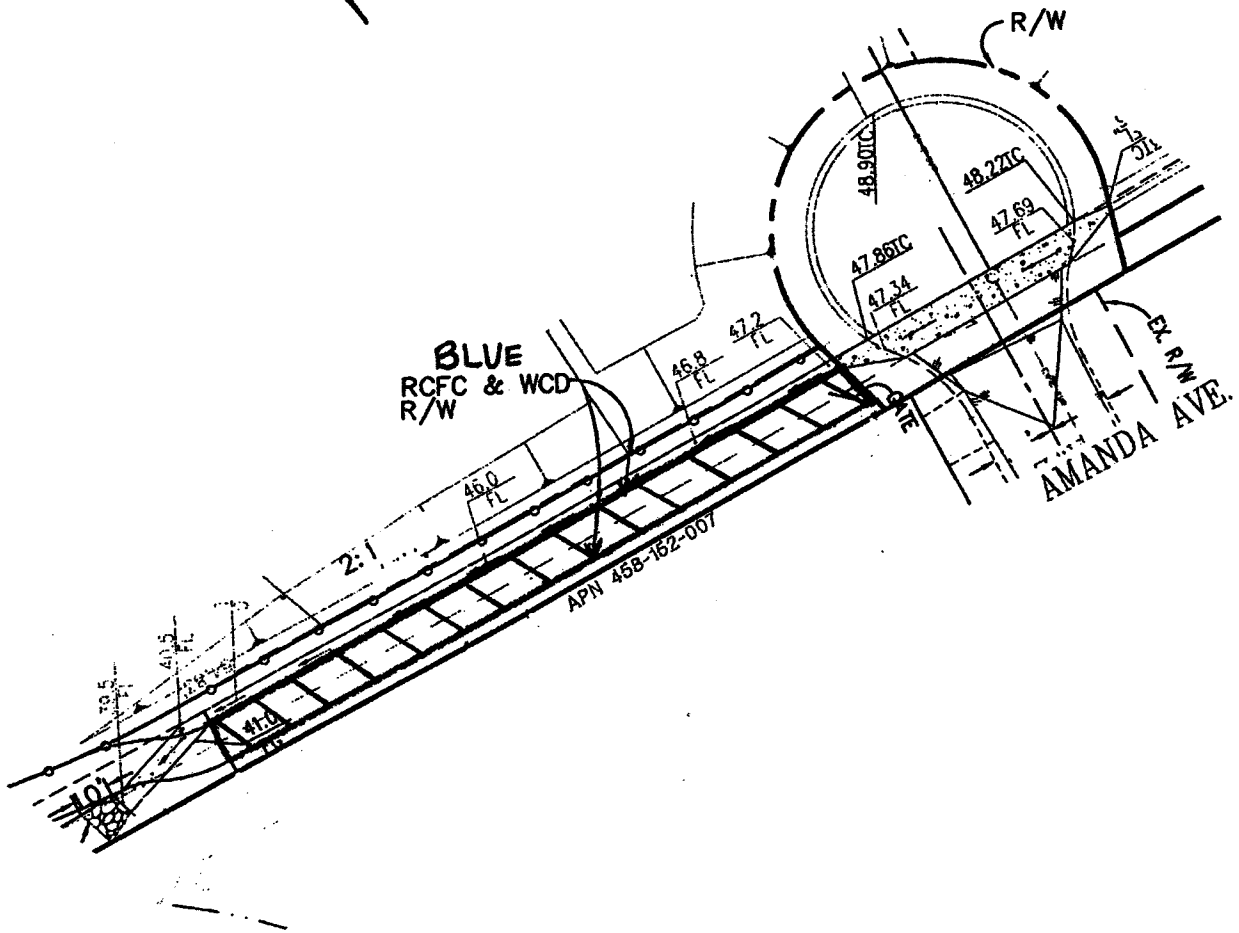
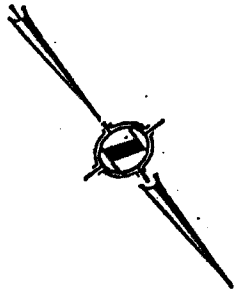


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05/19/2005 08:09A  
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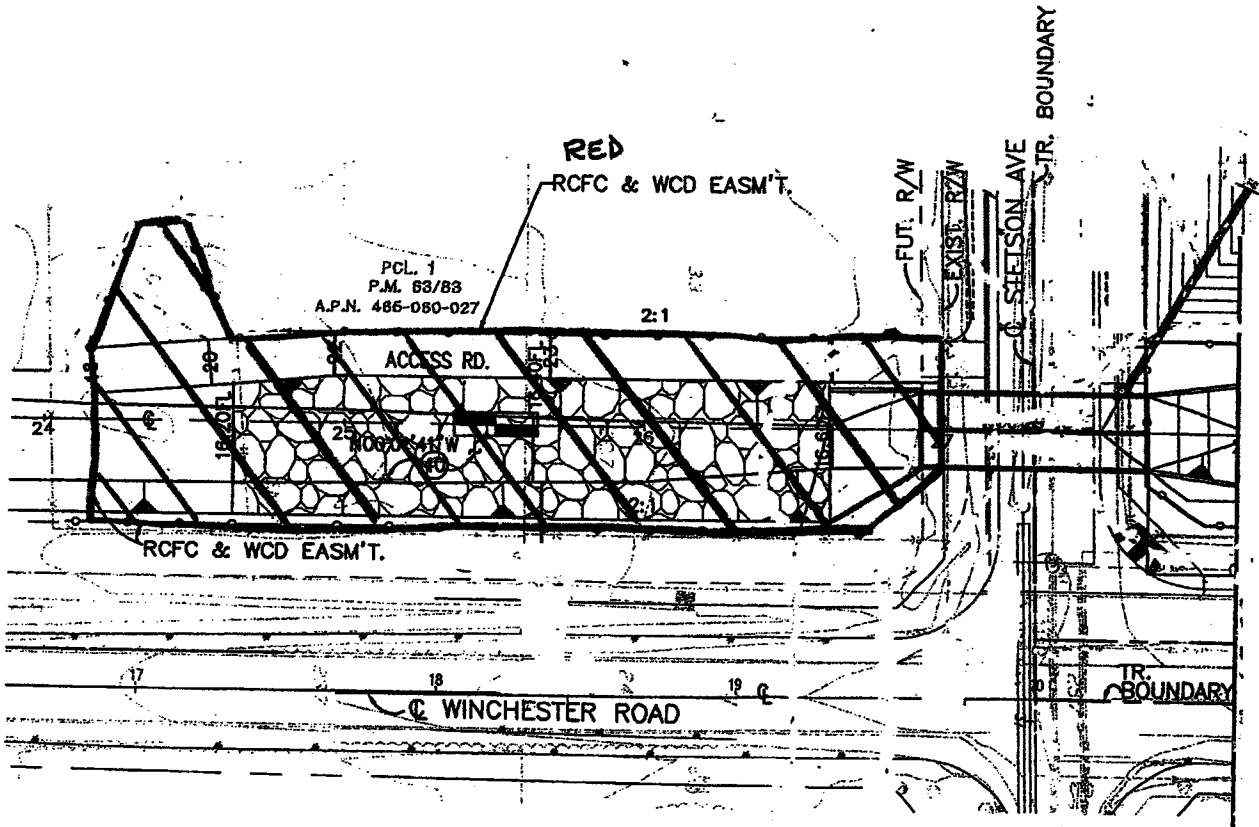
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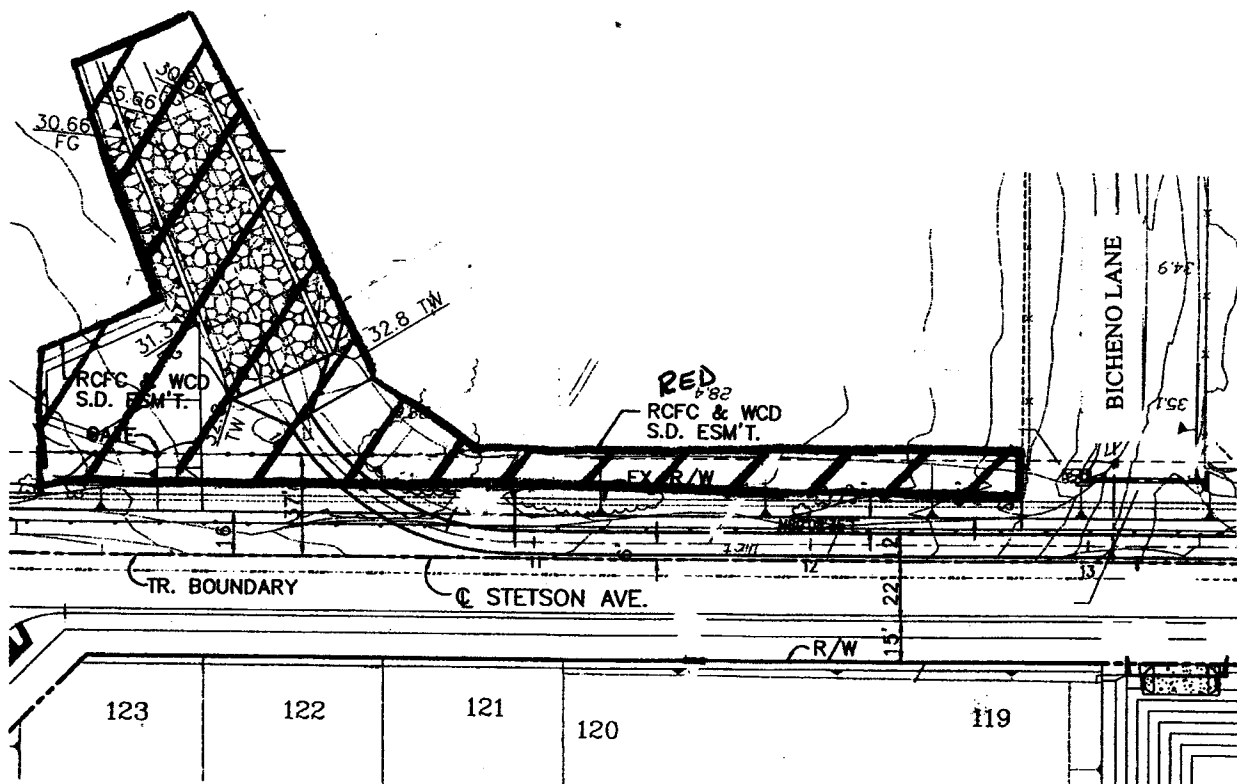
**EXHIBIT "B"**  
**3 OF 6**



**EXHIBIT "B"**  
**4 OF 6**



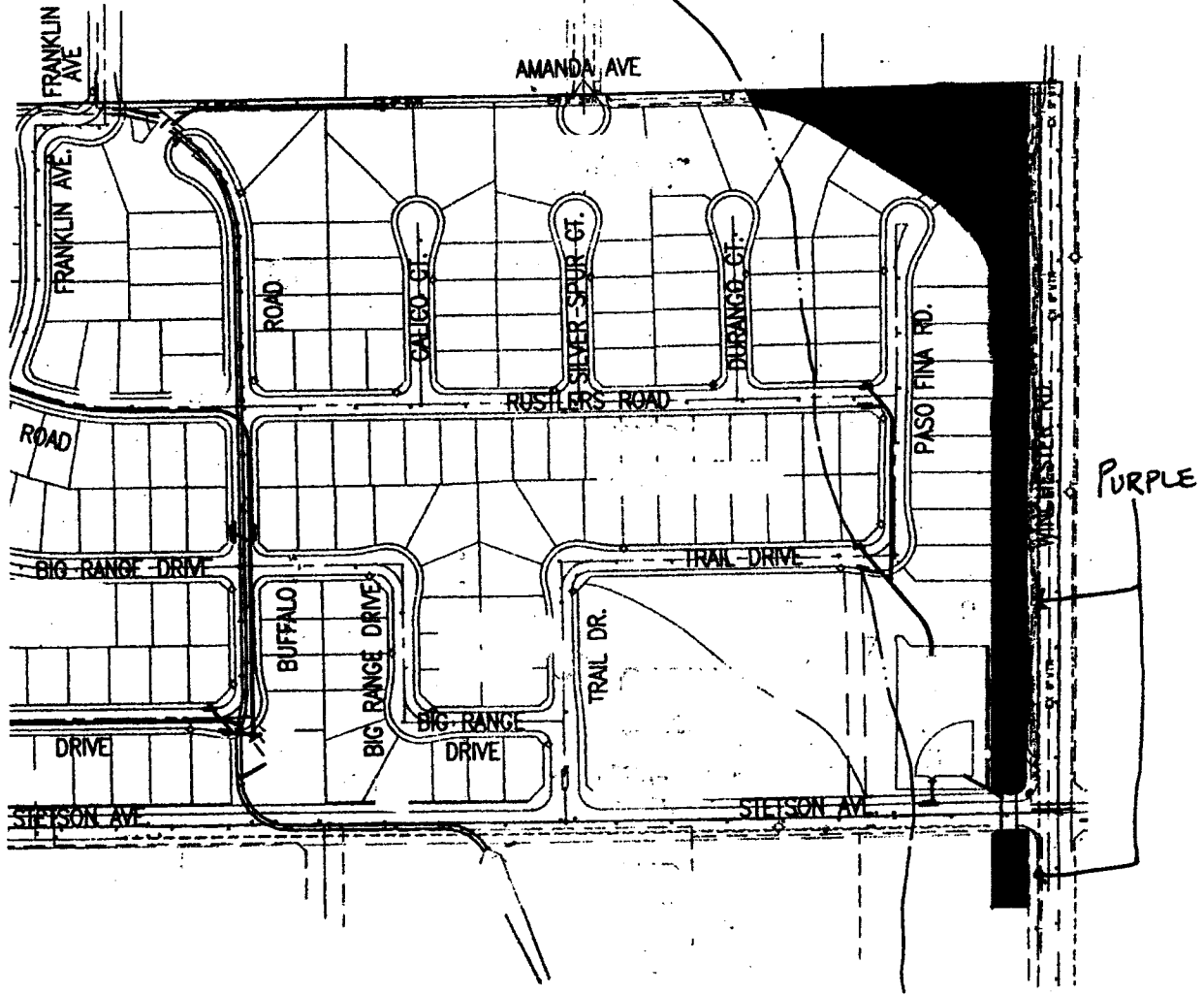
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**EXHIBIT "B"**  
**5 OF 6**



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05/13/2005 08:08A  
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**EXHIBIT "B"**  
**6 OF 6**