

SCH95BWY

TYPE OF RECORD:	NON-PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	JOHN SCHUMACHER AND MARY SCHUMACHER
SUBJECT/PROJECT:	LOT 3 OF OVERLOOK SUBDIVISION 540 SOUTH BROADWAY REIMBURSEMENT AGREEMENT DEVELOPER IS REQUIRED TO DISPOSE OF ITS SEWAGE WASTE THROUGH THE CITY-MANAGED SEWER SYSTEM. DEVELOPER DESIRES TO RECOUP SOME OF HIS COSTS INCURRED IN CONSTRUCTION OF TRUNK LINE EXTENSION
CITY DEPARTMENT:	UTILITIES AND STREETS
YEAR:	1995
EXPIRATION DATE:	12/31/06
DESTRUCTION DATE:	1/13

REIMBURSEMENT AGREEMENT

This agreement is made and entered into this 10th day of ~~May~~^{July}, 1995, by and between the City of Grand Junction, a Colorado home rule municipality ("City"), and Mr. John Schumacher and/or Mrs. Mary Schumacher, hereinafter referred to as Developer.

RECITALS:

The City is the manager of the Persigo Wastewater Treatment Facility and in such capacity controls the use of and tapping into the sewer facilities located within the 201 Study Area boundary as reflected by the map on record with the City Utilities Director. Developer represents that he is the owner of property as shown on Exhibit 1, attached hereto and incorporated herein by this reference, and with a street address of 540 South Broadway, Grand Junction, Colorado ("the property"). Developer is required to dispose of its sewage waste through the City-managed sewer system. Developer desires to recoup some of his costs incurred in construction of a trunk line extension, along with appurtenant facilities, such as manholes ("system") from persons who will in the future receive a benefit from use of the sewer system paid for and installed by the Developer (future users are those persons who develop within the area shown on the attached Exhibit 2 which, by this reference, is hereby incorporated herein). The City has sufficient capacity to provide the sewerage disposal and treatment for the Developer.

The City has determined that it is in the best interests of the system as a whole to install the system which will serve the Developers' property in order that future users will also tie into the system constructed by Developer. The City recognizes that future users will receive some benefit from this Developers construction in as much as future users will not have to construct as long of a line as such user(s) would otherwise have to do in order to receive sewer service. The Developer desires that the City act as a Developer's collection agent. The City, on the other hand, is only willing to enter into such collection efforts on behalf of the developer so long as: Developer waives and holds the City harmless from, and indemnifies the City with respect to any claims the Developer, his successors or assigns, may have with regard to the failure of the City to collect the fee relative to any development on the property; and so long as the City is fairly compensated for such collection efforts.

The parties have agreed as follows:

1. The above Recitals are intended to form a basis to construe the several provisions hereof in the event that there is an ambiguity or the intent of the parties is otherwise unclear.
2. Developer agrees to construct the system to serve his development and agrees to connect such system with the City's sewage collection and disposal facilities at such location as is required by the City. Such system shall be constructed in accordance with the engineering

standards then applicable as required by the City Engineer of the City.

3. One year following substantial completion, as determined by the City Engineer, of the system the City will assume ownership (for no consideration) of the system; the City agrees to accept the system if the system is then in good operating condition and has been constructed in accordance with the standards set by the City Engineer. Upon such acceptance the City shall thereafter own and operate the system.
4. The Developer shall obtain any required prior approvals in the name of the City at no cost to the City, as deemed necessary by the Engineer, for the construction, repair and maintenance of the system.
5. The City may require that, prior to construction, proposed lines or other facilities of the system be increased in size or in capacity, or both, in which event any increase in the costs of materials, as required by the City shall be paid for by the City.
6. The transfer to, and acceptance by, the City of the system shall only be for those portions of the system which are not service lines and not structures appurtenant to service lines. City agrees to permit the Developer the non-exclusive use of any easements obtained in the name of the City for the purposes of the construction of the Developer's system, but only so long

as Developer complies with the reasonable requirements of the City Engineer in such regard.

Transfer to and acceptance by the City shall constitute Developer's agreement to hold harmless and indemnify the City, its officers, and employees from any and all claims arising out of this agreement and the construction of the system, except causes of action or claims resulting from the sole misconduct of the City; said agreement includes Developer's promise to indemnify the City, its officers and employees, for all reasonable attorneys' fees incurred by the City, or the value thereof, including experts, fees and costs, and the Developer shall indemnify and hold harmless the City, its employees and officers from claims by the Developer, any purchaser of the Developer, and any third party, whether or not any such claim or cause of action is frivolous.

7. The Developer agrees that the construction of the system, and the possible acceptance in the future by the City of said system, does not waive or limit the payment by the Developer, or any purchaser of the Developer, of any costs, fees or charges such as plant investment fees, inspection fees, monthly sewer service charges, or any other charges or fees which the City is now, or may be in the future, entitled to charge the Developer or any user or person.

8. If the City accepts the improvements constructed by Developer, the Developer shall be entitled to be reimbursed by those person specially benefitted by the system for the reasonable and necessary costs incurred by the Developer for actual construction costs, as approved by the City Engineer, as follows:

a. Reimbursable costs are those costs actually paid which may include reasonable engineering fees, but not legal or other consulting fees, paid by the developer and actually required to design, construct, and inspect the system, but in no event shall reimbursable costs exceed \$3,895.00.

b. For a period of ten years following the substantial completion of the system, as evidenced by a writing from the City, or until the Developer is reimbursed for those costs set forth in (a.) above, whichever first occurs, the City agrees that it will not authorize any other person to use the system unless each future user first pays, in addition to all other applicable charges and fees, a sum calculated as follows:

$$\frac{RC}{A} + \left(\frac{RC}{A} \times i \right) + B$$

where:

RC = actual reimbursable costs incurred by Developer and approved by the City Utility Engineer.

i = 0.67 per month simple interest (interest rate per month may change as determined by City Finance Director) times the number of complete months (up to a maximum of 120 months) following the date of substantial completion.

B = $(RC/A) \times 10\%$ (this represents the amount to be paid to the City for administration of this agreement and will be paid by each future user to the City).

x = multiply.

A = Number of lots that could be served by the sewer extension as determined by the City Utility Engineer.

D = Number of lots located in a drainage basin in (A) above other than Developer's lots.

Once the reimbursable costs have been approved by the City Utility Engineer, the fee established by the above formula will be calculated and paid by each future user other than those users within the Developer's lots. Lots within the platted boundaries of the Developer's acreage are not subject to the terms of this "Reimbursement Agreement".

9. In the event the Developer does not substantially complete the construction of the system within one year of the execution of this agreement, this agreement shall terminate and shall be of no further force or effect.

10. Developer may assign his rights pursuant to this agreement, but only so long as notice of such assignment, with the address of the assignee, is made by certified mail to the City, in care of the City Utility Engineer.

If the City makes any collections pursuant to this agreement, the City shall be obligated only to mail a check to the Developer, or his properly designated assignee, to the last known address of the Developer or assignee; the City has no duty and is not obligated to locate a proper payee. In the event that any claim is made or cause of action is filed by any person alleging that this agreement is unconstitutional, unenforceable, or otherwise contrary to law, or that the interest payable to the Developer hereunder from such future user is excessive or is not enforceable in a court of law, the Developer agrees that he shall be bound by any settlement of such claim or cause of action, whether or not Developer or his assigns is a party hereto, and that he waives and releases the City, its officers and employees, from any claims or causes of action Developer may have due to the failure of the City to abide by or enforce this agreement.

11. To be entitled to be reimbursed, Developer shall present to the City Utility Engineer adequate documentation so that the City Engineer may determine the actual costs of construction. In the event that the City fails to collect the fee from any future user, the Developer has the right to sue such future user and the City agrees to cooperate, without expense to the City, in such collection efforts of the Developer.

12. In the event that the Developer is in default with regard to any other obligation of the Developer as it relates to this agreement and the several rights and duties of the parties reasonably related hereto, the City shall have the right to set off any reimbursements that may be due hereunder to satisfy in whole or in part any such default, in addition to any other remedy which the City may have.
13. In the event that the Developer has received reimbursement directly from any owner or developer of any property which may be subject to the fees in accordance with the terms of this agreement, the Developer shall immediately upon receipt thereof, notify the City Utility Engineer in writing of the amount collected, the name and address of the person from whom collection was made, and the property to which the collection is applicable.
14. This agreement shall bind the signatory parties and their respective heirs, successors and assigns.
15. At the time of acceptance of the system by the City, Developer shall convey to the City, at no cost to the City, by general warranty deed, marketable title, subject to no liens or encumbrances, to such rights of way as may be required by the City in order that the City may own, operate and maintain the system and the wastewater transmission and delivery system. Developer shall also supply evidence that establishes that such rights-of-way

are free from hazardous, toxic and other regulated materials and substances.

16. Upon request from the Developer, which request shall not occur more than once every twelve months, the City shall provide an accounting during the term of this agreement. Said accounting shall contain a listing of each Fee collected during the preceding twelve months, the name and address of the remitter of said Fee, the property address for which the Fee was paid, a current balance of the RC, and total interest credited to the Developer's account. The City shall pay all fees collected within the preceding twelve months at the time of each accounting, less amounts paid to the City for costs of administration.

Upon non-performance by the City pursuant to this Agreement, the Developer shall give notice of default specifying the action giving cause to said default. The City shall have 30 days from its receipt of said notice to correct the alleged default. Upon the correction of said default within the 30 days period the agreement shall be restored and all terms and conditions will be in full force and effect.

CITY OF GRAND JUNCTION

BY: Mark Eichen
City Manager

Date: 7/14/95

Attest: Stephanie Nye
City Clerk

Date: 7/14/95



DEVELOPER

BY: John Schumacher

Date: 7/10/95

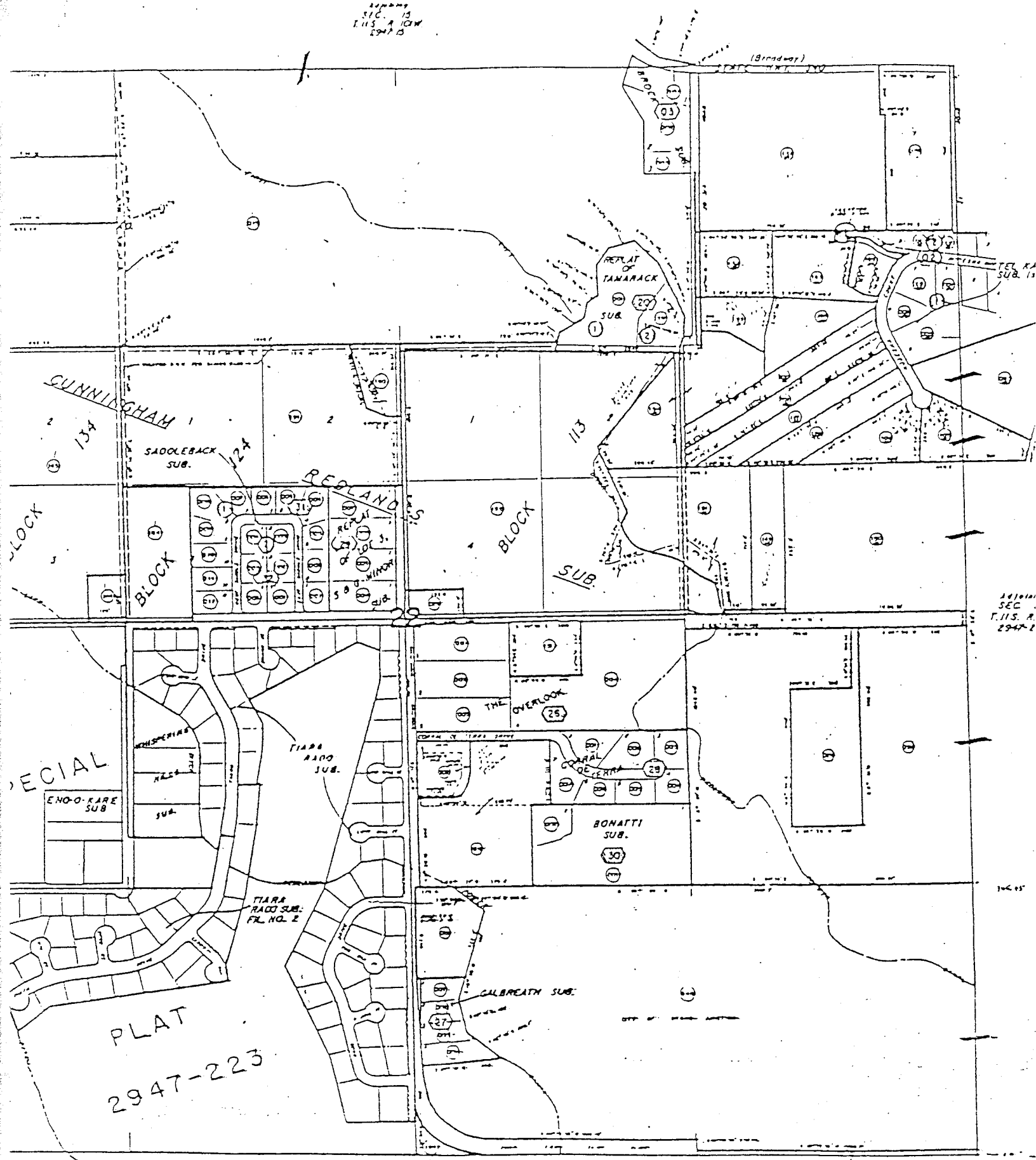
Address: 540 S. Broadway
Grand Jct. CO 81503

Attest: Mark Schumacher

Date: 7-10-95

file: bc\reimlots.agr

Map
SEC. 13
T. 115. N. R. 10W.
2947-2



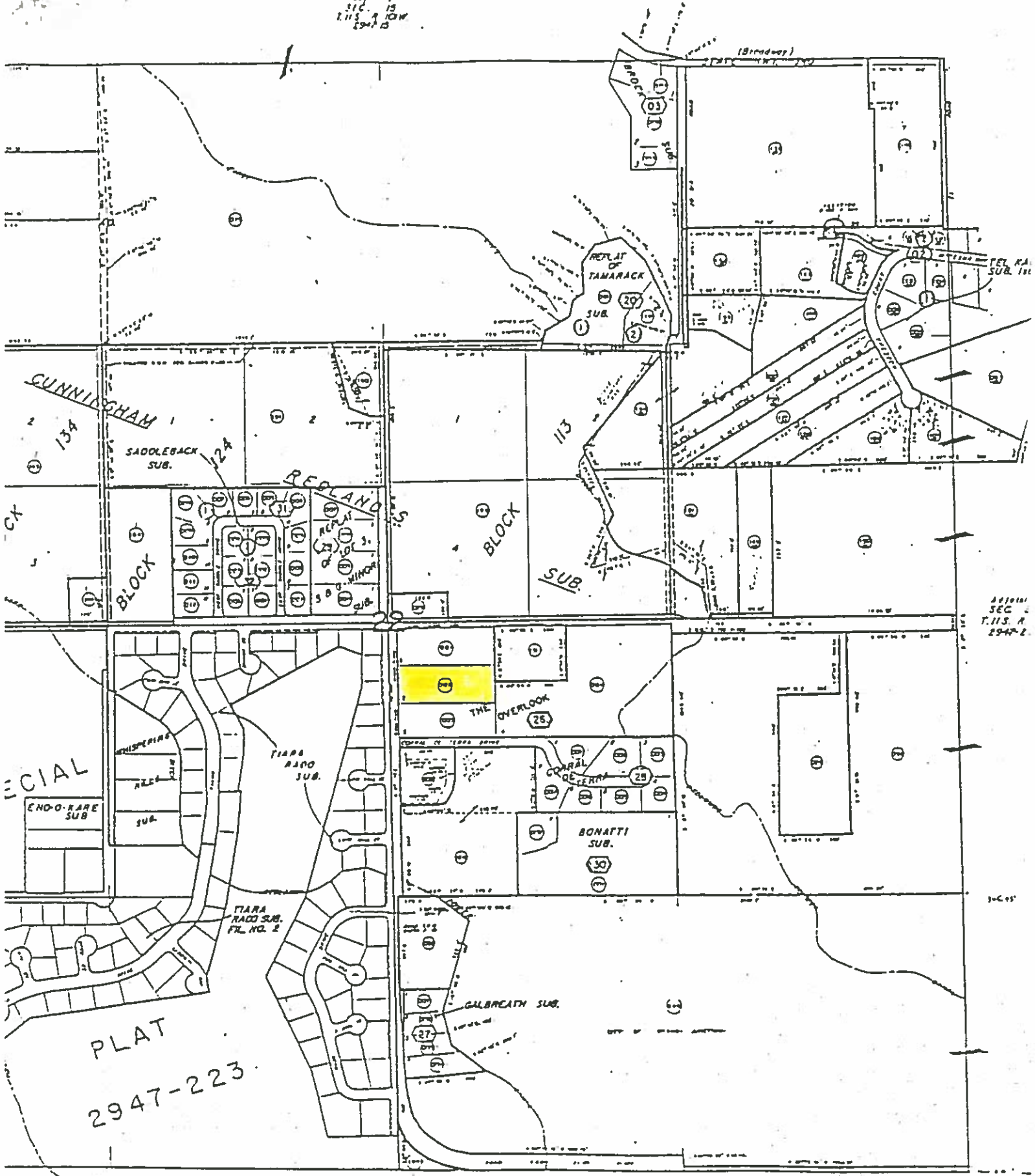
Map
SEC. 13
T. 115. N. R. 10W.
2947-2

Map
SEC. 27
E. 1/2, R. 10W.
2947-2

T. 115. N. R. 10W. SEC.
2947-2

Exhibit 1

ASSEMBLY
SIC. 13
T.I.S. R. 101W
2947-B



ASSEMBLY
SEC. 27
T.I.S. R.
2947-E

1-C-95

SPECIAL
PLAT
2947-223

ASSEMBLY
SEC. 27
T.I.S. R. 101W
2947-E

Exhibit 2

T.I.S. R. 101W SEC
2947-2