

# PLACER COUNTY

## REDEVELOPMENT AGENCY

### MEMORANDUM

**TO:** Honorable Members of the Redevelopment Agency Board  
**FROM:** Rich Colwell, Chief Assistant CEO-Redevelopment Director  
Jim LoBue, Deputy Director  
**DATE:** May 26, 2009  
**SUBJECT:** Adopt a Resolution Authorizing the Chief Assistant CEO-Redevelopment Director or Designee to Execute an Option Agreement with Domus Development, LLC for Conveyance of Redevelopment Agency-Owned Property, valued at \$280,000, at Lots 17/18 Brook Avenue in Kings Beach, Assessor Parcel Number 090-182-024.

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**ACTION REQUESTED:** Adopt a resolution authorizing the Chief Assistant CEO-Redevelopment Director or designee to execute an Option Agreement with Domus Development, LLC for conveyance of Redevelopment Agency (Agency)-owned property, valued at \$280,000, at Lots 17/18 Brook Avenue in Kings Beach, Assessor Parcel Number 090-182-024.

**BACKGROUND:** On July 23, 2007 your Board approved an Exclusive Negotiating Rights Agreement (ENRA) with Domus Development, LLC for the development of new affordable housing and associated improvements at scattered sites in Kings Beach. Included in the properties identified in the ENRA were the Agency-owned Brook Avenue Lots 17/18 (see attached location map). These parcels were acquired by the Agency in 2006 with Kings Beach Housing Assistance Funds for the purpose of providing new affordable housing.

On February 26, 2008, your Board authorized the purchase of other properties in Kings Beach as well as the execution of an Option Agreement with Domus Development, LLC. The agreement provides for the Agency conveyance of these properties to the developer when all required conditions are satisfied and the housing development project is ready to proceed with full financing and construction. The Brook Avenue property is not included in that Option Agreement.

Since that time the Agency has acquired the additional properties, Domus Development, LLC has submitted development permit applications to the County and Tahoe Regional Planning Agency, and environmental review for the proposed housing development project is underway. It is anticipated that Domus Development, LLC will be applying to the California Tax Credit Allocation Committee for an award of 2009 Affordable Housing 9% tax credits as well as Federal Economic Stimulus Bill supplemental funding. The announced deadline for that application is June 9, 2009 and a stated requirement for award eligibility is the applicant must demonstrate site control. It is proposed that the attached Option Agreement be executed in order to demonstrate the applicant's site control. Actual conveyance of the property would not occur unless and until the project received all necessary environmental review certifications, entitlement permit approvals, and full financing. In addition, it is anticipated that a disposition and development agreement will be brought to your Board to establish in

more detail all the requirements and obligations of the developer and Agency in order to implement the project.

The property in question is a 6,250 square foot parcel on Brook Avenue in Kings Beach. Current plans propose the development of two new housing units on the site.

**ENVIRONMENTAL STATUS:** This is an action to authorize the execution of an option agreement and, as such, does not result in a potential impact to the environment as such is understood in the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3). If this option is exercised, at that time additional CEQA compliance review will be performed. Any development project application submitted by Domus Development, LLC to the County of Placer shall be subject to the County's environmental review procedures and requirements.

**FISCAL IMPACT:** No expenditure authorization is associated with this action. The eventual conveyance of the property would result in the change in ownership of an Agency-owned fixed asset currently estimated at \$280,000 in value.

**RECOMMENDATION:** Adopt a resolution authorizing the Chief Assistant CEO-Redevelopment Director or designee to execute an Option Agreement with Domus Development, LLC for conveyance of Agency-owned property at Lots 17/18 Brook Avenue in Kings Beach, Assessor Parcel Number 090-182-024.

Attachment: Resolution  
Option Agreement  
Property Map

cc: Karin Schwab, Agency Counsel

**Before the Placer County  
Redevelopment Agency Board of Directors  
County of Placer, State of California**

In the matter of:

Authorizing the Chief Assistant CEO-Redevelopment Director or designee to execute an Option Agreement with Domus Development, LLC for conveyance of Redevelopment Agency-owned property, valued at \$280,000, at Lots 17/18 Brook Avenue in Kings Beach, Assessor Parcel Number 090-182-024

Resol. No: \_\_\_\_\_

Ord. No: \_\_\_\_\_

First Reading: \_\_\_\_\_

The following Resolution was duly passed by the Redevelopment Agency Board of the County of Placer at a regular meeting held \_\_\_\_\_,

by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:

\_\_\_\_\_  
Chair, Agency Board

Clerk of said Board  
  
\_\_\_\_\_

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WHEREAS, the Placer County Redevelopment Agency (Agency) has adopted the North Lake Tahoe Redevelopment Plan (Plan);

WHEREAS, the Agency is responsible for administering the Plan to carry out redevelopment efforts within the North Lake Tahoe Redevelopment Project Area;

WHEREAS, the Agency wishes to encourage and support affordable housing development in the North Lake Tahoe Redevelopment Project Area;

WHEREAS, there is no expenditure authorization associated with this action;

WHEREAS, the proposed agreement is an administrative action and exempt from environmental review under the California Environmental Quality Act per Guidelines Section 15178(b)(5);

WHEREAS, the Agency owns real property located at Lots 17/18 Brook Avenue, Kings Beach, CA, also known as Assessor Parcel Number 090-182-024 (Property);

WHEREAS, the Agency entered into an Exclusive Negotiating Rights Agreement with Domus Development, LLC to support the development of an affordable housing project in Kings Beach; and

WHEREAS, the Agency is desirous of entering into an Option Agreement with Domus Development, LLC for the eventual conveyance of Property for affordable housing development, once all conditions and obligations have been satisfied.

NOW, THEREFORE, BE IT RESOLVED that the Agency Board authorizes the Chief Assistant CEO-Redevelopment Director or designee to execute an Option Agreement with Domus Development for conveyance of Property.

Recording Requested by  
and when Recorded, return to:

Placer County Redevelopment Agency  
P.O. Box 7096  
Auburn, CA 95604-7096  
Attn: Deputy Director, Redevelopment

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

### OPTION AGREEMENT

This Option Agreement (this "**Agreement**") is entered into effective as of \_\_\_\_\_, 2009 ("**Effective Date**") by and between the Placer County Redevelopment Agency, a public body corporate and politic ("**Agency**") and Domus Development, LLC, a California limited liability company ("**Developer**"). Agency and Developer are hereinafter collectively referred to as the "**Parties**."

- A. Agency is the owner of that certain real property (the "Agency Parcels") consisting of Brook Avenue Lots 17/18 in Kings Beach, California and known as Placer County Assessor's Parcel Number 090-182-024 in unincorporated Placer County ("**Property**").
- B. The Property is located within the Kings Beach Redevelopment Project Area (the "**Project Area**") established by the Redevelopment Plan adopted for the Project Area pursuant to Ordinance No. 4753-B, adopted on July 16, 1996 (as subsequently amended, hereafter the "**Redevelopment Plan**").
- C. The Agency seeks development of the Property consistent with the Redevelopment Plan and the Tahoe Regional Planning Agency ("**TRPA**") Lake Tahoe Community Enhancement Program Guidelines adopted by TRPA (the "**Guidelines**").
- D. The Developer has proposed the development of a scattered-site affordable housing/mixed use development (the "**Project**") on the Property and other property located in the Project Area.
- E. At its meeting of July 23, 2007, the Agency's governing board ("**Agency Board**") directed staff to pursue negotiations with Developer regarding Developer's proposed development of the Project, and authorized Agency staff to prepare an agreement granting Developer exclusive rights to negotiate for the purpose of reaching agreement on one or more disposition and development agreements and/or owner participation agreements (hereinafter referred to collectively as "**DDA**") and related documents whose terms and conditions would govern the conveyance of the Property and the development of the Project.

F. Developer and Agency have entered into that certain Exclusive Negotiating Rights Agreement (the "ENA") and that certain Predevelopment Loan Agreement (the "Predevelopment Loan Agreement"), each dated as of July 23, 2007, pursuant to which the Agency agreed to provide funding for certain predevelopment activities associated with the development of the Project.

G. Developer, Agency and Domus Management Company, LLC ("Manager") have entered into that certain Property Management Agreement dated as of February 26, 2008 (the "Property Management Agreement"), pursuant to which Manager will manage the Property while Developer seeks entitlements and financing for the redevelopment of the Property for the Project.

H. Developer desires to acquire an option to purchase the Property, and in consideration for Developer's and Manager's services provided pursuant to the Property Management Agreement, Agency has agreed to provide Developer an option to acquire the Property, on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. Grant of Option. Agency hereby grants to Developer, and Developer hereby accepts, an exclusive option to purchase the Property (the "Option") on the following terms and conditions.

2. Term of Option. Provided that no Event of Default shall have arisen and remained uncured beyond any applicable cure period under Property Management Agreement, the Predevelopment Loan Agreement, the ENA or this Agreement, the Developer may exercise the Option with respect to each parcel comprising the Property during the period (the "Option Term") commencing upon the date that all Conditions Precedent (defined in Section 4 below) have been satisfied with respect to such parcel and ending (i) on December 31, 2012 for the Brook Avenue Lots 17/18 (APN 090-182-024).

3. Exercise of Option. At any time during the Option Term, Developer may exercise the Option with respect to one or more parcels comprising the Property by delivering written notice to Agency that it intends to exercise the Option, together with evidence acceptable to Agency that Developer has satisfied all Conditions Precedent with respect to such parcel(s).

4. Conditions Precedent to Exercise of Option. With respect to each parcel comprising the Property, all of the following conditions ("Conditions Precedent") must be satisfied prior to Developer's exercise of the Option for such parcel:

(a) Developer shall have received entitlements from Placer County and from TRPA.

(b) Developer shall have received commitment(s) for construction and permanent financing for that portion of the Project to be developed on the parcel(s) for which Developer intends to exercise the Option, conditioned only upon Developer's acquisition of such parcels and other commercially reasonable conditions.

(c) Agency and Developer shall have executed a DDA for such parcel(s) consistent with Section 7 below.

(d) Developer shall have provided to Agency evidence reasonably satisfactory to Agency that (i) Developer is duly organized, validly existing and in good standing under the laws of the State of California, (ii) Developer has duly authorized the acquisition of the Property, the development of the Project, and the execution of all documents and the undertaking of all actions required in connection with the conveyance of the Property, and the financing, development and operation of the Project, and (iii) Developer has assembled a construction, financing and management team with adequate capacity to develop, own and operate the Project.

5. Restrictions on Use of Property. Agency and Developer shall execute, and concurrently with the conveyance to Developer of each parcel comprising the Property, shall record in the Official Records of Placer County, an Affordable Housing Regulatory Agreement ("**Regulatory Agreement**") which shall, for a term of not less than fifty-five (55) years: (i) restrict use of the Property for the development of affordable multifamily rental housing (and ancillary commercial uses), (ii) require the residential units developed on the Property to be occupied by, or if vacant, available for occupancy by low- and very low-income households at affordable rents in accordance with the requirements of Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (the "**CRL**"). Agency and Developer shall work in good faith to reach agreement on affordability restrictions that comply with the CRL and make the Project financially feasible.

6. Purchase Price. The purchase price payable by Developer for each parcel comprising the Property shall be equal to the fair reuse value as determined pursuant to CRL Section 33433 but in no event greater than the purchase price paid by the Agency for such parcel.

In Agency's sole discretion, in order to increase the affordability of the residential units to be developed on the Property, Agency may provide financing to assist Developer to acquire the Property on such terms as shall be mutually agreed upon and pursuant to such documentation as shall be approved by Agency's governing board.

7. Disposition and Development Agreements. Agency and Developer shall negotiate in good faith one or more DDAs which shall describe the terms and conditions for conveyance and development of the Property. Developer acknowledges that the Agency is required to comply with the requirements of the CRL, including without limitation, CRL Section 33433 which requires the Agency to prepare a report and hold a public hearing prior to the disposition of property acquired with tax increment funds.

Agency and Developer acknowledge and agree that the DDAs shall include, among other provisions, a schedule for construction of the Project, a financing plan, requirements regarding compliance with the Regulatory Agreement and with applicable local, state and federal laws and regulations, and provisions relating to insurance requirements.

8. Prorations at Closing.

(a) Real property taxes and assessments, and water, sewer and utility charges, shall be prorated as to each parcel comprising the Property as of the date of recordation of the grant deed conveying such parcel to Developer.

(b) Developer shall pay all premiums for any policies of title insurance required by Developer, and transfer taxes, escrow fees and recording fees for any documents recorded for the benefit of Developer. Agency shall pay recording fees for documents, if any, recorded for Agency's benefit.

9. Condition of Title. At the closing for conveyance of each parcel comprising the Property, Agency shall convey a fee interest in such parcel to Developer, subject only to easements and exceptions of record as of the date of this Agreement, the Redevelopment Plan, the Regulatory Agreement and the DDA, liens for real estate taxes and assessments not yet due or payable, liens for Agency financing provided to Developer pursuant to the Predevelopment Loan Agreement or otherwise, standard printed exceptions, as shown on the preliminary title report for the Property, and such other exceptions reasonably approved by Developer.

10. No Assignment. The Option is personal to Developer, and may not be transferred, assigned or hypothecated by operation of law or otherwise absent the prior written consent of the Agency. Any attempt to assign, hypothecate or otherwise transfer the Option absent such consent shall be null and void. Notwithstanding the foregoing, the Agency shall not unreasonably withhold its consent to an assignment: (i) to a nonprofit corporation which is under the direct control or under the common control of Developer ("**Controlled Affiliate**"), or (ii) to a limited partnership in which Developer or a Controlled Affiliate is the general partner; provided that prior to any such assignment, Developer shall deliver to Agency for its review and approval, a copy of the assignee's organizational documents and the final form of the assignment and assumption agreement effectuating such assignment.

11. Developer's Right to Inspections. Developer and Developer's agents and employees shall have the right, upon reasonable notice to Agency, to enter upon the Property for the purpose of inspecting, examining, surveying and reviewing the Property during the Option Term. Agency may require Developer to execute a right of entry agreement satisfactory to Agency prior to entry onto the Property for such purpose. Developer's inspection, examination, survey and review of the Property shall be at Developer's sole expense. Developer shall obtain Agency's advance consent in writing to any proposed physical testing of the Property by Developer or Developer's agents,

which consent shall not be unreasonably conditioned, withheld or delayed. Developer shall repair, restore and return the Property to its original condition after such physical testing, at Developer's sole expense. Developer shall schedule any such physical tests during normal business hours unless otherwise approved by Agency. Developer shall at all times keep the Property free and clear of all liens and encumbrances affecting title to the Property. Developer shall indemnify, defend (with counsel approved by Agency) and hold Agency and its elected and appointed officers, officials, employees, contractors, agents and representatives (all of the foregoing, collectively hereinafter the "**Indemnitees**") harmless from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) (all of the foregoing, collectively hereinafter "**Claims**") resulting from or arising in connection with entry upon the Property by Developer or Developer's agents, employees, consultants, contractors or subcontractors pursuant to this Section 11. Developer's indemnification obligations set forth in this Section 11 shall survive the close of escrow for conveyance of the Property to Developer and the termination of this Agreement. Prior to Developer's entry upon the Property, Developer shall provide Agency with a certificate or other proof of insurance meeting Agency's current requirements. Developer shall provide Agency with copies of all environmental, geotechnical and other investigative reports undertaken in connection with Developer's investigation of the Property.

12. Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**") which shall entitle the Agency to terminate this Agreement:

(a) An Event of Default is declared under the ENA, the Loan Agreement or the Property Management Agreement.

(b) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Developer (or any member or manager thereof) (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer (or any member or manager thereof) in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer (or any member or manager thereof); (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(c) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Developer (or any member or manager thereof) in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Developer (or any member or manager thereof) or substantially all of such entity's assets, (iii) orders the liquidation of Developer (or any member or manager thereof), or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or

the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

13. Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a party may designate by written notice delivered to the other parties in accordance with this section. All such notices shall be sent by:

(i) personal delivery, in which case notice is effective upon delivery;

(ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

(iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

**Agency:** Placer County Redevelopment Agency  
3091 County Center Drive, Suite 260  
P.O. Box 7096  
Auburn, CA 95603  
Attn: Deputy Director

**Developer:** Domus Development, LLC  
594 Howard Street, Suite 204  
San Francisco, CA 94105  
Attn: Meea Kang, President

with a copy to:

Domus Development, LLC  
9 Cushing, Suite 200  
Irvine, CA 92618  
Attention: Monique Hastings

14. Governing Law; Attorneys' Fees. This Agreement shall be governed by the laws of the State of California. In any action at law or in equity, arbitration or other proceeding arising in connection with this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

15. Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as may be reasonably necessary to accomplish the purposes of this Agreement. If this Agreement is terminated, Developer agrees if requested by Agency, to execute, acknowledge and deliver quit claim deeds within ten (10) days following termination and to execute, acknowledge and deliver such other documents reasonably necessary to remove the cloud of this Agreement from title to the Property.

16. Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

17. Action by the Agency. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Agency is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Agency Executive Director or by any person who shall have been designated by the Agency Executive Director, without further approval by the Agency Board.

18. Non-Liability of Agency and Agency Officials, Employees and Agents. No member, official, employee or agent of the Agency shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the Agency, or for any amount of money which may become due to Developer or its successor or for any obligation of Agency under this Agreement.

19. Waiver. A waiver by either Party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenant or condition.

20. No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

21. Headings; Construction. The headings of the sections and paragraphs of this Agreement have been inserted for convenience only and shall not be used to construe this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Time is of the essence in the performance of this Agreement.

22. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

23. Entire Agreement; Amendments; Exhibits. This Agreement, together with the Exclusive Negotiation Agreement, the Predevelopment Loan Agreement, and the Property Management Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibit A attached hereto is incorporated herein by this reference. This Agreement may be modified only by a written instrument signed by both Parties.

24. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

25. Memorandum of Option. The Parties shall execute and record in the Official Records of Placer County, a memorandum of this Agreement.

**SIGNATURES ON FOLLOWING PAGE**

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

**PLACER COUNTY REDEVELOPMENT AGENCY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Authorized Signatory - Placer County Redevelopment Agency

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Agency Counsel

**DOMUS DEVELOPMENT, LLC**  
a California limited liability company

By: Monique Hastings  
Monique Hastings

Its: Member and Authorized Signatory

**SIGNATURES MUST BE NOTARIZED.**

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

State of California )  
County of Orange )

On May 12, 2009 before me, Apryll S. Bashore <sup>Notary Public</sup> (here insert name and title of the officer), personally appeared Monique Hastings, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature ASB (Seal)

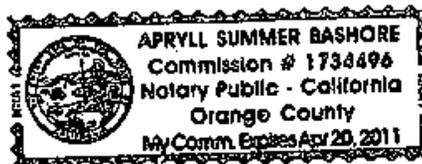
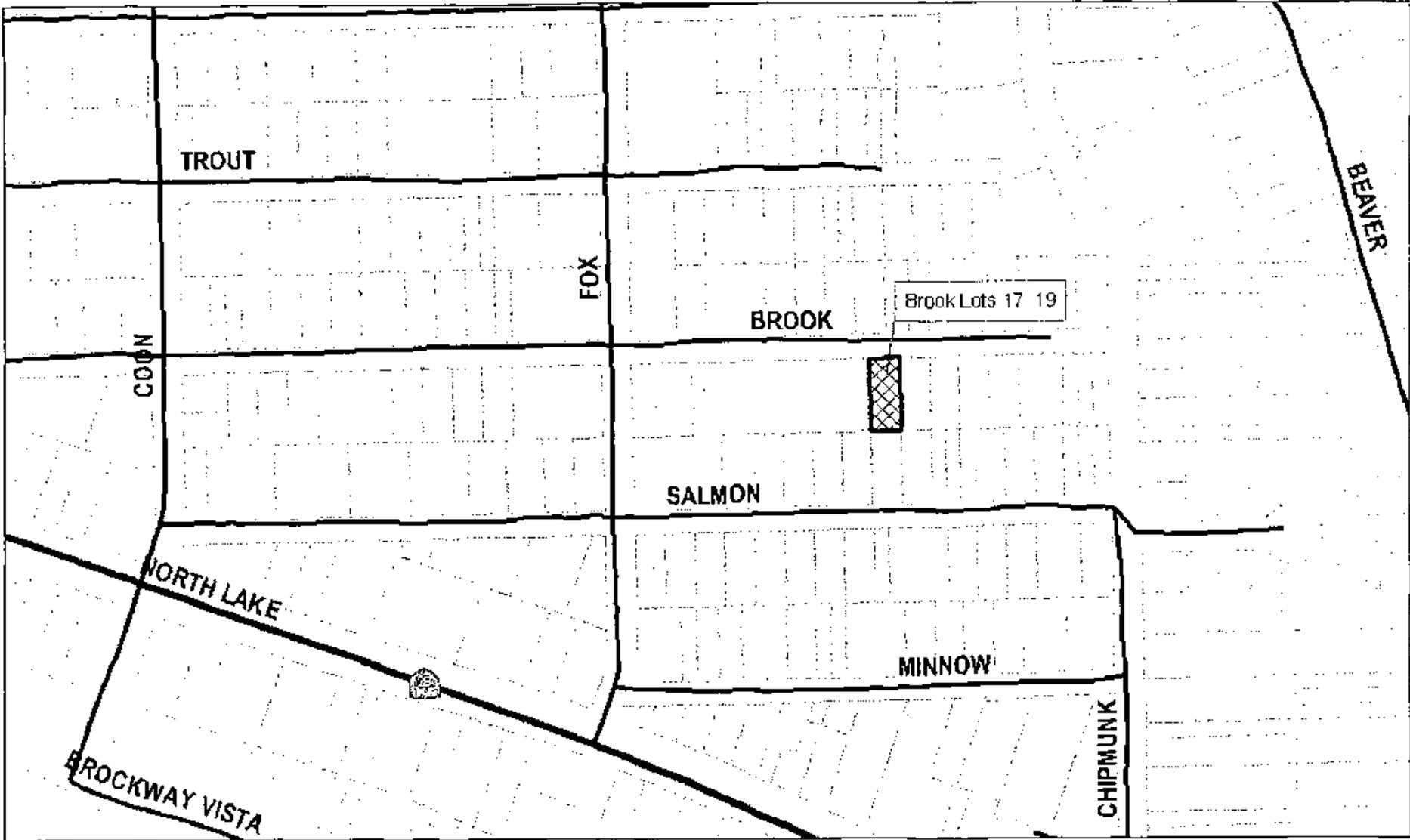


Exhibit A

LEGAL DESCRIPTION OF PROPERTY

[Attach legal description of Property.]



Brook Avenue - Lots 17 & 18  
Kings Beach  
APN # 090-182-024