RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

McMillin Otay Ranch, LLC 2727 Hoover Avenue National City, CA 91950 Attention: Robert Anselmo

(Space Above This Line for Recorder's Office Use Only)

RIGHT OF WAY AGREEMENT AND AGREEMENT TO

REIMBURSE CONSTRUCTION COSTS

THIS RIGHT OF WAY AGREEMENT AND AGREEMENT TO REIMBURSE CONSTRUCTION COSTS ("Agreement") is entered into as of May 10, 2004 by and between McMillin Otay Ranch, LLC, a Delaware limited liability company ("McMillin"), and Otay Project, L.P., a California limited partnership ("OP"), with McMillin and OP being referred to herein from time to time individually as a "Party" and collectively as the "Parties").

RECITALS

- A. McMillin owns fee title to that certain real property located in the City of Chula Vista ("City"), State of California more particularly described on Exhibit "A" attached hereto and incorporated herein by reference ("McMillin Property").
- B. OP owns fee title to that certain real property adjacent to the McMillin Property located in the City and more particularly described on <u>Exhibit "B"</u> attached hereto and incorporated herein by reference ("OP Property").
- C. The McMillin Property and the OP Property shall be collectively referred to herein as the "Properties" and shall be individually referred to herein as a "Property."
- D. McMillin has processed and will be receiving approval for City of Chula Vista Mass Grading Plans for McMillin Otay Ranch Village 12 FC Document numbers 03070-01 through 03070-14.
- E. Performance of work in connection with the construction of portions of Commercial Promenade Street A ("Street A") by McMillin will require the dedication of a right of way and other easements, and the entry by McMillin (or a contractor hired by McMillin) upon the OP Property for the purposes set forth herein. In addition, the possible mass grading of the OP Property by McMillin (or a contractor hired by McMillin) will require entry upon the OP Property. As such, the Parties, on behalf of themselves and their successors and assigns, desire to enter into this Agreement to grant such rights of way, easements and licenses as are set forth below.

F. In the event McMillin undertakes construction of work on Street A, or the mass grading of the OP Property, the OP Property will be benefited by such work and the Parties have agreed that McMillin shall be entitled to reimbursement from OP of an agreed upon sum of money as a result of McMillin's performance of such work as more particularly set forth herein.

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

- 1. Grant of Right of Way. In order to facilitate the improvement of Street A, within ten (10) days of McMillin's or the City's request therefore, OP agrees to deliver an executed irrevocable dedication of right away document in the form of Exhibit C in order to grant, dedicate and convey to the City a right of way for Street A (the "Right of Way"), and to grant such other easements or licenses associated therewith as may be requested by the City in connection with the use, grading, construction and operation of Street A (the "IOD Documents"). The Parties contemplate that the alignment of the Right of Way and configuration for Street A across the OP Property shall be consistent with the street section and alignment described in the City's Freeway Commercial SPA Plan, as amended (the "SPA"), that certain tentative map recorded against the Properties described as City of Chula Vista Tract #03-11 as adopted by resolution # 2003-165 on April 15th, 2003, the current alignment of which is described in Exhibit C attached. Notwithstanding the foregoing, McMillin will cooperate with any efforts OP conducts to eliminate the need for the mass transit easement in the median of Street A. McMillin shall hold the IOD Documents while OP attempts to obtain the removal of the mass transit easement from the median of Street A. If OP is successful in obtaining the removal of the mass transit easement from the median of Street A, McMillin and OP shall modify the IOD Documents accordingly. If OP is not successful in obtaining the removal of the mass transit easement from the median of Street A by December 31, 2004, then McMillin will be able to record the IOD Documents and proceed with the design and construction of Street A as described in Exhibit C. The Parties understand that the alignment of Street A across the McMillin Property is currently contemplated to be a private loop road similar to the design shown in Exhibit D attached and that such alignment may change from time to time as the development plans for the McMillin Property are finalized. Notwithstanding the foregoing, nothing herein shall be deemed to prohibit OP from objecting to and opposing any amendments to the Street A design across the OP Property which are materially inconsistent with that shown on Exhibit C attached, but OP shall not unreasonably object to any such amendment. OP shall deliver to McMillin or the City, within ten (10) days of McMillin's or the City's request therefore, such deeds, grants, offers to dedicate and other instruments and documents, executed and acknowledged by OP, as McMillin or the City may request from time to time to cause such Right of Way and other easements to be granted, dedicated, improved and conveyed to the City. Such deeds, grants, offers to dedicate and other instruments and documents shall be in the form reasonably requested by the City. OP shall reimburse McMillin for all improvement costs to design and build Street A across the OP Property pursuant to Section 6 below.
- 2. Grant of Entry Permit/Letter of Permission. In connection with the improvement of portions of Street A and the possible mass grading of the OP Property, OP shall execute and deliver to McMillin, within ten (10) days of McMillin's request therefore, an entry permit (the "Entry Permit") in the form of Exhibit E attached hereto. In addition, within ten (10) days of McMillin's request therefore, OP shall execute and deliver to McMillin and the City a letter of

permission in the form of Exhibit F attached (the "Letter of Permission") to mass grade the OP Property from its present condition to the condition described in City of Chula Vista Grading Plan Documents 03070-01 through 03070-14 attached hereto as Exhibit G and which will be attached as a schedule to the Letter of Permission (the "Grading Plan"). OP agrees that the form of Entry Permit and/or the form of Letter of Permission will be modified to a form reasonably satisfactory to the City, if so required by the City.

- Mass Grading of the OP Property. If OP has not previously delivered the OP Election Notice to McMillin as provided in Section 4 below, McMillin agrees that, no sooner than 30 days prior to such time as McMillin intends, in good faith, to commence mass grading operations on the McMillin Property, it shall provide written notice (the "Grading Notice") to OP of McMillin's intent to commence mass grading on the OP Property as well, consistent with the Grading Plan McMillin and OP shall (i) execute a competitively bid grading contract specifying a price for the combined mass grading of the McMillin Property and the OP Property, and (ii) in good faith attempt to cause the grading of the Properties in a manner that minimizes, to the extent reasonably practicable, (a) the amount of materials required to be exported from the Properties to the EUC, and (b) the cost to export such materials. McMillin shall have no obligation to perform any work beyond the work shown in the Grading Plan (e.g., OP shall be solely responsible for all other grading and other work on the OP Property, including, without limitation, finish and remedial grading work). OP shall reimburse McMillin for OP's share of all grading costs pursuant to Section 6 below. Upon Completion of the mass grading work as described in Section 6.3 below, OP shall be deemed to have accepted same in its "as is" condition and McMillin shall have no liability or responsibility for same.
- QP's Election to Grade. If McMillin has not given OP a Grading Notice by November 30, 2004, OP shall have the right to grade the OP Property at its own expense. After McMillin has delivered the Grading Notice to OP, then OP shall not have the right to grade the OP Property at its own expense and will only have the right to reimburse McMillin for the grading of the OP Property pursuant to Section 6 below. In the event that OP elects to grade the OP Property, OP shall promptly deliver to McMillin written notice of such election (the "OP Election Notice"). In such event, McMillin shall allow OP to use the disposal site in the EUC described in Exhibit H attached (the "Disposal Site") for purposes of exporting materials from the OP Property, and shall execute any and all entry permits (in a form substantially similar to Exhibit E), licenses and other documents reasonably necessary to provide OP haul route access over the McMillin Property subject, however, to the following conditions, the satisfaction of which shall be at the sole cost and expense of OP:
- 4.1. OP shall establish, to the reasonable satisfaction of McMillin, and OP shall thereafter ensure, that the timing of the OP grading work and the export of materials will not conflict with McMillin's use, work or operations in the EUC or any other construction operation being conducted by McMillin or its contractors;
- 4.2. OP shall establish, to the reasonable satisfaction of McMillin, and OP shall thereafter ensure, that OP's grading of the OP Property will commence and be completed before McMillin commences grading the McMillin Property;

- 4.3. OP shall establish, to the reasonable satisfaction of McMillin, and OP shall thereafter ensure, that transport of dirt to the Disposal Site will be completed before the commencement of grading for the SR125 toll road;
- 4.4. OP shall establish, to the reasonable satisfaction of McMillin, and OP shall thereafter ensure, that all fill will consist of materials reasonably acceptable to McMillin, and such fill will be placed, and the Disposal Site prepared and left in a manner and condition reasonably acceptable to McMillin's geotechnical consultant, including, without limitation, the removal and compaction of alluvium, the installation of canyon subdrains, and any remedial grading or interim drainage infrastructure reasonably deemed necessary by such consultant;
- 4.5. OP shall execute and deliver to McMillin an entry permit, in a form and content acceptable to McMillin, covering the actions and omission of OP and its contractors associated with the export and disposal of all such materials (the form of such entry permit shall be similar in form to the Entry Permit described in Exhibit E, modified by McMillin as appropriate for such entry by OP and its contractors); and
- 4.6. OP shall establish, to the reasonable satisfaction of McMillin, and OP shall thereafter ensure, that, once the export operation is complete, (i) any haul route shall be reasonably restored to the condition that existed prior to the hauling of materials, (ii) all disturbed or graded areas to be as-built as directed by McMillin's civil engineer and the revised topography prepared, and (iii) all erosion control measures set forth in McMillin's Storm Water Pollution Prevention Plan and all requirements of the City shall be completed and implemented.
- 5. Landscape Buffer. If McMillin chooses to develop the retail power center currently contemplated in the SPA plan for the McMillin Property or otherwise proposes a site plan or architectural treatment that (a) requires the backs of buildings or back of building type operations (i.e., dumpsters, loading docks, etc). to be adjacent to the OP Property and (b), in OP's reasonable judgment, creates an adverse impact on OP then so long as OP delivers written notice of such election to McMillin prior to the commencement of construction work on the McMillin Property, OP may require that McMillin install a ten (10) foot landscape buffer on the McMillin Property as depicted in Exhibit 8 of the SPA prior to occupancy of any of the permanent commercial buildings on either the McMillin Property or the OP Property.

6. Cost Reimbursements.

McMillin to OP of an invoice setting forth the "OP Street A Costs" (as defined below) or (ii) the date a subdivision or parcel map is recorded with respect to all or any portion of the OP Property, OP shall pay to McMillin 100% of the OP Street A Costs. As used herein, the term "OP Street A Costs" shall include all costs and expenses of any nature incurred or payable by McMillin or its successors or assigns with respect to the design, grading, construction or improvement of Street A north of the southern boundary of the OP Property, as such boundaries exist as of the date of this Agreement. Such costs shall not include any interest, debt service, or other opportunity costs associated with McMillin providing design, construction, or improvement of Street A at an earlier time than McMillin would normally provide such work.McMillin will provide to OP supporting documentation for such OP Street A Costs, together with lien releases

or other evidence demonstrating that no liens arising from the improvement work on Street A performed by McMillin encumber the OP Property. In the event McMillin receives reimbursement or credits for the OP Street A Costs from any governmental entity or improvement bond funding, then OP shall be entitled to receive such credits or reimbursements, but in no event to exceed the amount of OP Street A Costs actually paid by OP to McMillin.

Prior to commencing any mass grading work on the OP Property, McMillin shall cause its engineer to provide OP with the estimated amount of materials that will be required to be exported from the Properties to the EUC (the "Export Amount") and the estimated cost to (i) grade the OP Property in accordance with the Grading Plan, (ii) export the Export Amount to from the Properties to the EUC, and (iii) design and build Street A across the OP Property. OP shall have five (5) business days following receipt of written notice to deliver its written notice to McMillin of OP's objection to the Export Amount or the estimated costs described in the notice from McMillin. If OP does not deliver written notice of objection to such stated Export Amount or estimated costs to McMillin within such five (5) business day period, then OP shall be deemed to have approved such Export Amount and estimated costs. If OP objects to such Export Amount, then Hunsacker & Associates shall make the determination of the Export Amount, which determination shall be binding upon the Parties. OP understands and agrees that the actual quantities may change during grading operations due to field conditions, and the Export Amount shall be adjusted accordingly. In this regard, the parties agree that OP shall be entitled to monitor the activities and soils calculations of the grading contractor and other consultants on site. Any disputes as to the on site calculations shall be resolved by Hunsacker and Associates.OP acknowledges that the McMillin Property balances for grading purposes and that the only reason the export of materials from the Property could be required is because the OP Property requires the export of material. Therefore, OP agrees to pay for all costs and expenses associated with exporting the actual quantity of materials determined upon completion of the grading work in accordance with the provisions of Section 3 above. In addition, both parties agree the estimated costs will be estimates for planning purposes and the actual costs will be determined by the contracts described in Section 3 above. 6.3 In the event McMillin mass grades all or any portion of the OP Property as provided in Section 3 above, OP shall pay to McMillin 100% of the total costs and expenses incurred or payable by McMillin or its successors or assigns which are solely related to the mass grading of the OP Property (the "OP Grading Costs") consistent with the provisions of Section 3 above. The OP Grading Costs shall include, without limitation, 100% of the total cost for the grading on the OP Property as shown in the Grading Plan, together with 100% of any additional costs or expenses incurred or payable in connection with removal, transport and disposition of any excess materials from the Properties to the Disposal Site. In addition, the OP Grading Costs shall include, and OP shall be solely responsible for, 100% of any and all costs and expenses associated with any special or extraordinary soils or other conditions on or under the OP Property which affect the grading work. Similarly, McMillin shall be solely responsible for 100% of any and all costs and expenses associated with any special or extraordinary soils or other conditions on or under the McMillin Property which affect the grading work As used herein, "Completion" of the grading work on the OP Property performed by McMillin shall be deemed to have occurred on the later to occur of (a) when the substantial completion of such work in accordance with the City approved mass grading plans has been certified to have occurred by the civil engineer of the Party undertaking the Grading Work (and when the other Party has been provided a copy of such certification), and (b) when the Party performing the grading work has provided to the other Party copies of full lien releases

for all of the grading work related to the OP Property. OP shall pay to McMillin all of the OP Grading Costs within twenty (20) days of the later to occur of (i) the Completion of the mass grading work for the OP Property, or (ii) the delivery by McMillin to OP of an invoice setting forth the OP Grading Costs, together with reasonable supporting documentation.

- 6. Termination; Quitclaim. Upon termination of a Party's rights, or certain of them, under this Agreement, that Party agrees that it shall, within five (5) business days from written request by the other Party, execute, deliver and permit to be recorded a quitclaim deed or other instrument in a form reasonably requested by the other Party evidencing a termination of that Party's particular rights. The Parties acknowledge that the rights of each Party hereunder may not terminate concurrently and, in such event, the terms of this Agreement shall survive execution, delivery and recordation of a quitclaim by one Party as necessary to preserve the rights of the other Party hereunder and/or as necessary to preserve the remaining rights hereunder of the Party delivering the quitclaim until its rights similarly terminate.
- 7. Amendment. This Agreement or any portion hereof may be amended or modified, except where otherwise provided in this Agreement, only by the written assent or vote of both Parties.
- 8. <u>Successors and Assigns</u>. The covenants, obligations, rights, burdens and agreements contained in this Agreement shall run with the land and be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns and successors in interest, as the case may be. As used in this Agreement, the term "Party" and "Parties" shall include the original parties to this Agreement as well as the successor owners of the Properties.
- 9. <u>Notices</u>. All written notices required to be given pursuant to the terms hereof shall be sent by (a) personal delivery, (b) a nationally recognized overnight courier service, or (c) United States first class mail, registered or certified return receipt requested and postage prepaid as expressly provided herein.

All notices shall be addressed as follows:

To McMillin:

McMillin Otay Ranch, LLC

2727 Hoover Avenue National City, CA 91950

Attention: Mr. Robert Anselmo

To OP:

The Otay Ranch Company

350 West Ash Street, Suite 730San Diego, CA 92101

Attn: Robert Cameron

The foregoing addresses may be changed by written notice. All notices shall be deemed received on the earliest to occur of (a) actual delivery, (b) the next business day following timely

deposit with an overnight courier service, or (c) three (3) business days following deposit in the U.S. Mail, as provided above.

- 10. Attorneys' Fees. If one of the Parties defaults in the performance or observance of any provision of this Agreement, and the Party entitled to enforce the provisions thereof has obtained the services of an attorney with respect to the defaults involved, the Party who is in default agrees to pay to such Party, as a condition of settlement of such default, any costs or fees involved, including reasonable attorneys' fees. In the event an action is commenced to enforce any of the provisions contained herein, the prevailing Party shall be entitled to recover from the other party reasonable attorneys' fees and costs of such suit (including, without limitation, expert witness fees and costs of appeal, if applicable), whether or not such action proceeds to final judgment.
- 11. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but when taken together shall constitute but one agreement.
- 12. <u>Severability</u>. In the event any provision of this Agreement, shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- 13. Governing Law. This Agreement shall be construed and interpreted in accordance with and shall be governed and enforced in all respects according to the laws of the State of California.
- 14. Entire Agreement/Enforceability. This Agreement contains the entire understanding of the parties and supersede any and all other written or oral understandings. The Parties agree to record this Agreement within three days of the execution and delivery hereof by both Parties.
- 15. <u>Waiver</u>. The waiver by any party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or of another provision hereof.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date and year first above written.

McMILLIN:

McMillin Otay Ranch, LLC, a Delaware limited liability company

By: McMillin Companies, LLC,

a Delaware limited liability company

By:

Its:

By: E

Its:

OP:

Otay Project, L.P., a California limited partnership

By: Otay Project LLC, a California

limited liability company

Its: General Partner

By: Otay Ranch Development,

LLC, a Delaware limited

liability company,

Its: Authorized Member

By:

Its: Vie Freuden

STATE OF CALIFORNIA	.}
	} ss
COUNTY OF SAN DIEGO	}

On this 10th day of June, 2004, before me, Joyce Rooks, a Notary Public in and for said State, personally appeared ROBERT ANSELMO, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature(s) on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

STATE OF CALIFORNIA	}
	} s
COUNTY OF SAN DIEGO	}

On this 10th day of June, 2004, before me, Joyce Rooks, a Notary Public in and for said State, personally appeared VINCENT G. FERRER, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California County of State Of Canal	}_ss-
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personally appeared . Rhp. + /	Name and the of outside (e.g., Jack Dody Notary suffici)
150000	Mame(s) of Signer(s)
	Expersonally known to me proved to me on the basis of satisfact evidence
MORA KAY KELLER	to be the person(s) whose name(s) (s) subscribed to the within instrument acknowledged to me that he/b/e/they execu
Commission # 1275364 Notary Public - California & San Diego County My Comm. Expires Feb 25, 2005	the same in his/bet/their authorize capacity(ies), and that by his/her/th signature(s) on the instrument the person(s) the entity upon behalf of which the person
	acted, executed the instrument.
	WITNESS my hand and official soal.
	Ma Kay Luller
	Signature of Politic Public
Though the information below is not required by law, it may prov	
	nt at this lenn to enother document.
Description of Attached Document	
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Title or Type of Document: Document Date: Signer(s) Other Than Named Above: Capacity(ies) Claimed by Signer Signer's Name: Individual Corporate Officer — Title(s):	Number of Pages:
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EXHIBIT "A" LEGAL DESCRIPTION OF McMILLIN PROPERTY

J-13715M

EXHIBIT "A"

Legal Description for the Freeway Commercial

Parcel 2 In the City of Chula Vista according to the Parcel Map thereof No. 18481, on file in the Office of the County Recorder of San Diego County, State of California.

Excepting therefrom SR-125 Right-of-way as granted per Document No. 2003-0604600.

OF CALIFOR

James M. Coram, L.S. 5059

Jb/13715m.015

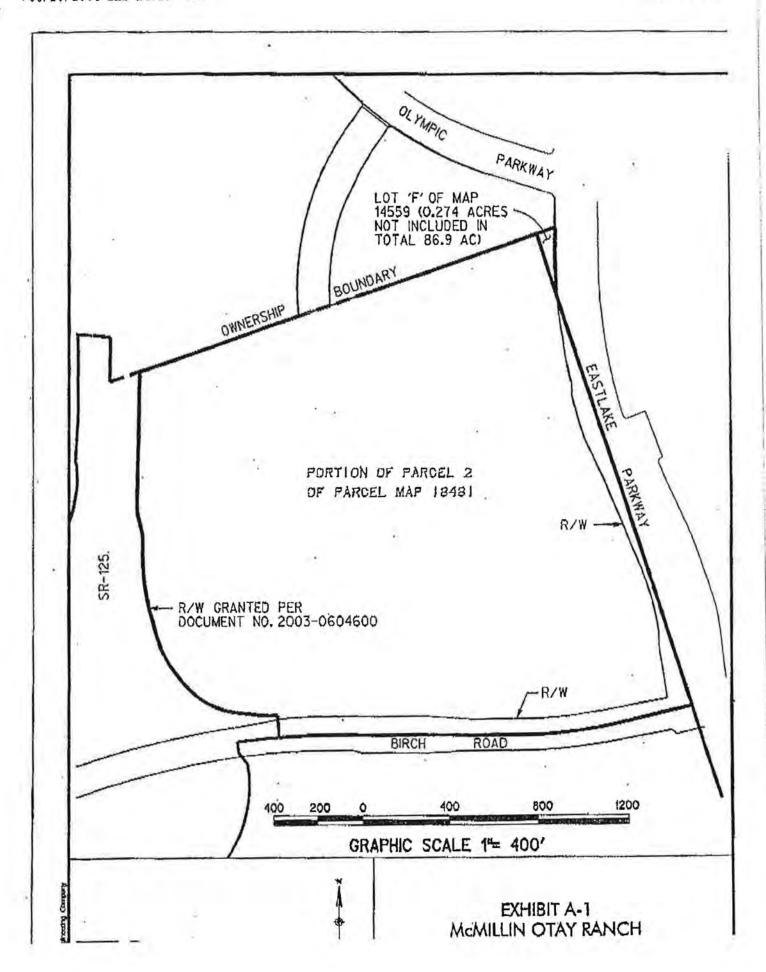


EXHIBIT "B" LEGAL DESCRIPTION OF OP PROPERTY

Order Number: DIV-1193467 Page Number: B

EXHIBIT "B"

LEGAL DESCRIPTION

Real property in the City of Chula Vista, County of San Diego, State of California, described as follows:

PARCEL A:

THAT PORTION OF THE FRACTIONAL SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 18 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE EAST QUARTER CORNER OF SECTION 3, TOWNSHIP 18 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN; THENCE ALONG THE EASTERLY LINE OF SAID SECTION 3 SOUTH 00 DEGREES 41'24" WEST 2332,04 FEET TO THE NORTHERLY LINE OF SAID LOT 11 OF OTAY RANCH, MAP NO. 862 ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY: THENCE ALONG SAID NORTHERLY LINE OF SAID LOT 11, SOUTH 71 DEGREES 56"55" WEST 261.61 FEET TO THE BEGINNING OF A NON-TANGENT 2000,00 FOOT RADIUS CURVE CONCAVE NORTHERLY, A RADIAL LINE TO SAID CURVE BEARS SOUTH 15 DEGREES 18'48" WEST, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE LEAVING THE NORTHERLY LINE OF SAID LOT 11 WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01 DEGREES 05'43" AN ARC DISTANCE OF 38.23 FEET; THENCE TANGENT TO SAID CURVE NORTH 73 DEGREES 35'29" WEST 618,51 FEET TO THE BEGINNING OF A 1600.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 38 DEGREES 34'39" AN ARC DISTANCE OF 1077.29 FEET; THENCE TANGENT TO SAID CURVE NORTH 35 DEGREES 00'50" WEST 370.00 FEET TO THE BEGINNING OF A TANGENT 1600.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 31 DEGREES 25'13" AN ARC DISTANCE OF 877.42 FEET TO THE WESTERLY LINE OF SAID FRACTIONAL SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 18 SOUTH, RANGE I WEST, SAN BERNARDINO MERIDIAN.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA IN DEED RECORDED MAY 22, 2003 AS FILE NO. 2003-0604615 OF OFFICIAL RECORDS.

PARCEL B:

PARCEL 2 OF PARCEL MAP NO. 18789, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 7, 2001 AS FILE NO. 01-0642802 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION LYING WITHIN CHULA VISTA TRACT NO. 02-05, OTAY RANCH VILLAGE SIX "A" MAP NO. 1, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14446 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, ON SEPTEMBER 18, 2002.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA IN DEED RECORDED MAY 22, 2003 AS FILE NO. 2003-0604615 OF OFFICIAL RECORDS.

APN: 643-020-28-00

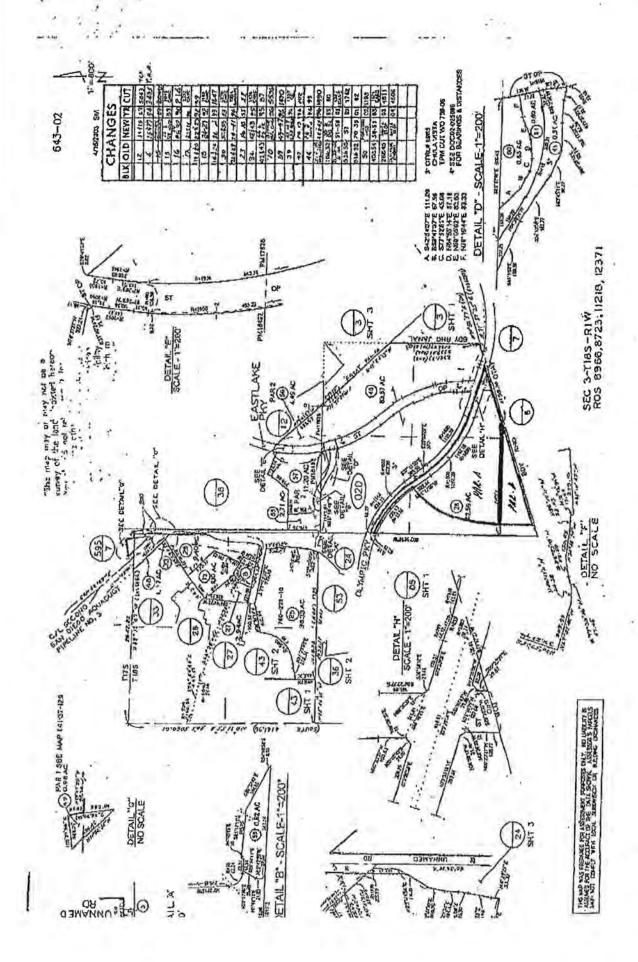


EXHIBIT "C" PROPOSED ALIGNMENT OF STREET A

Recording requested by and please return to:

City Clerk City of Chula Vista P.O. Box 1087 Chula Vista, CA 91912

This instrument benefits City, only. No fee required

(This space for Recorder's use, only)

APN(s) 643-020-28, 643-051-29

C.V. File No.

IRREVOCABLE OFFER OF DEDICATION OF FEE INTEREST

FOR A	VALUABLE	CONSIDERATION	V, receipt of	of which is hereb	y acknowledged,

Otay Project L.P.

represents that, as the owner(s) of the herein-described real property, (in the case of multiple owners, collectively referred to as "Grantor"), Grantor hereby makes an Irrevocable Offer of Dedication of fee interest to THE CITY OF CHULA VISTA, A MUNICIPAL CORPORATION, the hereinafter described real property for the following public purpose:

PUBLIC STREET

The real property referred to above is situated in the City of Chula Vista, County of San Diego, State of California, and is more particularly described as follows:

SEE ATTACHED:

EXHIBIT A FOR LEGAL DESCRIPTION

EXHIBIT B FOR PLAT

This Offer of Dedication is made pursuant to Section 7050 of the Government Code of the State of California and may be accepted at any time by the City Clerk of the City of Chula Vista.

This Offer of Dedication of fee interest shall be irrevocable and shall be binding on the Grantor, its heirs, executors, administrators, successors and assigns.

Page 1 of 2

SIGNATURE PAGE

Signed this	day of	, 20	
Grantor Signatures:			
(1)	lotary Acknowledge	nent Required for Each Signatory)	
agency, is hereby acknopursuant to authority c	owledged by the unders onferred by Resolution	erty offered herein to the City of Chula Vis signed, City Clerk, on behalf of the Chula No. 15645 of the Chula Vista City Counc ecordation thereof by its duly authorized o	Vista City Council il adopted on June
SUSAN BIGELOW CITY CLERK			
Ву:		Date:	-

EXHIBIT "A" OTAY OFFSITE DEDICATION

Parcel "A"

That portion of Parcel 2 of Parcel Map No. 18789 and that portion of the Southeast Quarter of Section 3, Township 18 South, Range 1 West, San Bernardino Meridian, in the City of Chula Vista, County of San Diego, State of California, described as follows:

Commencing at a point on the Southeasterly line of sald Parcel 2 being the Northwesterly corner of Parcel 2 of Parcel Map No. 18481; thence North 71°57'24" East along said Southeasterly line of Parcel 2 of Parcel Map No. 18789 a distance of 906.57 feet to the TRUE POINT OF BEGINNING, and the beginning of a non-tangent 1171.00 foot radius curve concave Southeasterly, to which a radial line bears South 83°58'44" West; thence leaving said line Northeasterly along the arc of said curve through a central angle of 42°36'31" a distance of 870.82 feet; thence North 36°35'15" East 113.39 feet to a point on the Southwesterly Right-of-way line of Olympic Parkway, recorded December 17. 2002 as Document No. 2002-1153497 and the beginning of a non-tangent 1680.00 foot radius curve concave Northeasterly, to which a radial line bears South 39°00'35" West; thence Southeasterly along the arc of said curve and said Southwesterly Right-of-way line through a central angle of 05°09'06" a distance of 151.05 feet; thence leaving said Right-of-way line South 36°35'15" West 113.79 feet to the beginning of a tangent 1020.00 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of 10°00'24" a distance of 178.14 feet; thence South 26°34'51" West 83.52 feet to the beginning of a tangent 636.93 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of 12°18'01" a distance of 136.74 feet to the beginning of a compound 1029.00 foot radius curve concave Easterly; thence Southerly along the arc of said curve through a central angle of 18°36'45" a distance of 334.27 feet to a point on said Southeasterly line of Parcel 2 of Parcel Map No. 18789: thence South 71°57'24" West along said Southeasterly line 145.64 feet to the TRUE POINT OF BEGINNING.

B. 5059

TE OF CALIF

Containing 3.065 acres, more or less.

James M. Coram, L.S. 5059

Jb/14190h.001

EXHIBIT "B" 300 150 SCALE 1"= 300' OLYMPIC PARKWAY REC. 12-17-2002 AS DOC. NO. 2002-1153497, O.R. CHAMPIC PARKWA PARCEL "A" STREET DEDICATION -HEREON, 3,065 ACRES *5'09'06" R-1680.00' L-151.05' N3635151E 113.79 SE 1/4 V-10.00.54" W-1050'00. [-118'14. SEC. 3 T 18 9; N26'34'51"E 83.52" Δ-12'18'01" R-636.93' L-136.74' RIW S.B.M. N75'43'09W(R) PARCEL 2 PM 18789 N85'40'06"E(R) N83'58'44"E(R) - 145.64 1052.21 TRUE POINT OF BEGINNING N7157-24"E POINT OF COMMENCEMENT L.S. 5059 Exp. 12-31-08 PARCEL 2 PIN 18481 TE OF CALIFOR J. 14130-H RICK STREET DEDICATION ENGINEERING OVER A PORTION OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 18 SOUTH, RANGE 1 WEST, COMPANY SAN BERNARDINO MERIDIAN AND A PORTION OF PARCEL 2 OF PARCEL MAP 18789 9-30-03 CORAM, LS 5059 DATE SHEET 1 OF 1 SHEET

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Recording Requested by and Please Return to: City Clerk City of Chula Vista P.O. Box 1087 Chula Vista, California 91912 This Instrument Benefits City Only. . This Space for Recorder's Use Only . No Fee-Required APN(s) 643-020-28, 643-051-29 C.V. File No. SUBORDINATION AGREEMENT WHEREAS, the owner of that certain property hereinafter described has granted to the City of Chula Vista, a municipal corporation, in the County of San Diego, State of California, the permanent easement and right of way. (LEGAL DESCRIPTION OF PROPERTY IS ATTACHED) AND WHEREAS, First Bank and Trust, a California Corporation is hereinafter known as the "Beneficiary"; and First Bank and Trust, a California Corporation is hereinafter known as the "Trustee" as of the date of this instrument under that certain Deed of Trust executed by Otay Project L.P., a California Limited Partnership to secure (a) note(s) for Fourteen million dollars (\$ 14,000,000.00) with interest dated May 14 , 20 02 and recorded on June 7 20 02 in Official Records of the San Diego County Recorder, covering the property hereinabove described, as Document No. 02-0485732 AND WHEREAS, the Beneficiary affirms that he/she/it/they is/are the owner and holder of the hereinabove described Trust Deed not and do(es) hereby direct and authorize said Trustee to join in the execution of this instrument. NOW, THEREFORE, for and in consideration of the benefits to accrue to the above described land by acceptance of said easement by said City of Chula Vista, the undersigned expressly subordinates all right, title

and interest in and to that portion of said premises described, covered by said Deed of Trust, to the interest of said City of Chula Vista in said easement with the intent that said easement shall be prior and superior to the

IN WITNESS WHEREOF, Beneficiary and Trustee have caused this instrument to be executed this

lien of the Deed of Trust hereinabove described.

day of ______, 20___.

AS TRUSTEE:	AS BENEFICIARY:	
Signature/Title	Signature/Title	
Signature/Title	Signature/Title	

(Notary Acknowledgment Required for Each Signatory)

jb/subagreement_chulavista.

EXHIBIT "D" ALLIGNMENT OF STREET A ON MCMILLIN PROPERTY

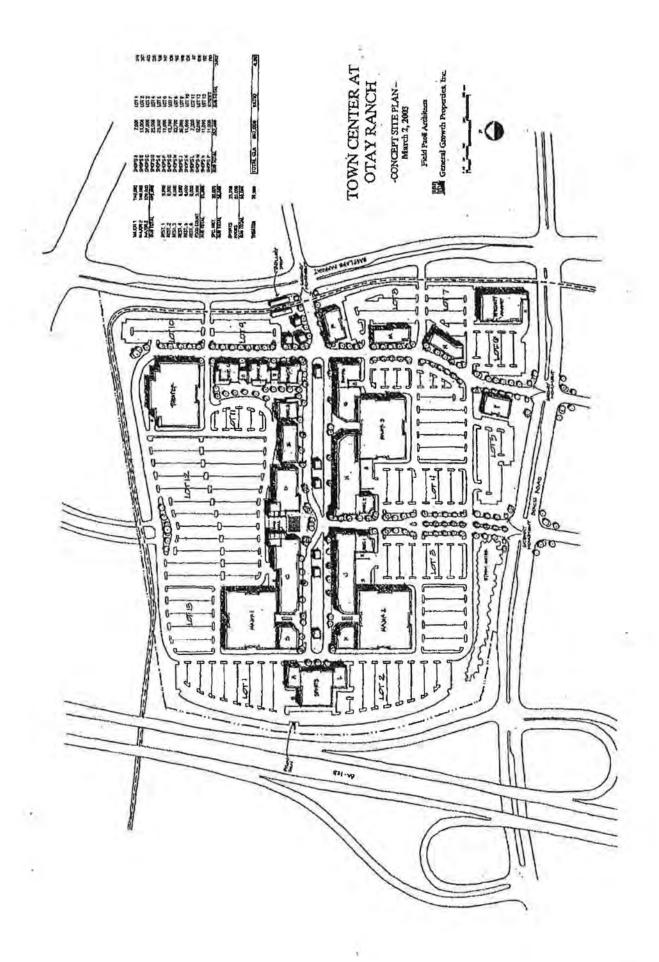


EXHIBIT "E"

FORM OF ENTRY PERMIT

ENTRY PERMIT

THI	S ENTRY PERMIT is made as of this	day of	. 2003. by and
	ay Project L. P., a California limited partn		
	tay Ranch, LLC (hereinaster "Licensee").		
	RECITAL	S	
A.	Licensee owns certain real property (")	Licensee's Property	") in the City of Chula
Vista ("City	"), more particularly described in Exhibit	A attached.	
В.	Licensor owns certain real property (ty") located adjacent to
Licensee's l	Property and described in Exhibit B attach	ed.	
	Licensor and Licensee have entered in		
Agreement'	To Reimburse Construction Costs dated as	of	_, 2003 (the
"Construction	on and Grading Agreement") which pro- ight of way for the construction of a stre	vides, among othe	r things, for Licensor's
along with t	he possible mass grading of Licensor's Pr	operty by Licensee.	

D. Licensee desires to come on Licensor's Property for the purpose of (i) constructing certain street improvements in accordance with the plans (the "Street Improvement Plans") described in Exhibit C, and (ii) [insert if under the terms of the Construction and Grading Agreement Licensee is required to mass grade the OP Property] grading Licensor's Property in accordance with the plans (the "Grading Plans") described in Exhibit D.

TERMS AND CONDITIONS

NOW, THEREFORE, the parties hereto agree as follows:

1. License to Enter and Use Property. Subject to the terms and provisions hereof, Licensor hereby grants to Licensee an irrevocable, non-exclusive license to enter upon Licensor's Property solely for the purpose of performing the construction [and grading] work in substantial accordance with the Street Improvement Plans [and the Grading Plans], subject to Licensee's compliance with all the terms of this Entry Permit. This license and permission extends to Licensee's duly authorized representatives, agents, employees or contractors (collectively "Representatives") in connection with their entry upon Licensor's Property hereunder.

- 2. Term. The term of this Entry Permit shall commence as of the date hereof and the right to enter Licensor's Property shall automatically terminate without further instructions from the party upon the completion of the work.
- 3. Government Regulations and Other Obligations of Licensee. Licensor agrees to execute documents necessary for Licensee to obtain all governmental permits and authorizations. While on Licensor's Property, Licensee will comply, and will cause all of its Representatives on Licensor's Property to comply, with all applicable governmental laws and regulations. All persons who enter upon Licensor's Property pursuant to this Entry Permit do so at their own risk.
- Liens. So long as Licensor pays to Licensee all amounts due to Licensee pursuant to the Construction and Grading Agreement, Licensee shall not suffer or permit to be imposed on or enforced against Licensor's Property, or any part thereof, any mechanics', materialmen's, contractors', subcontractors' or other liens or any claim for damage arising from any activities or work conducted on or about Licensor's Property by or on behalf of Licensee, and Licensee shall pay or cause to be paid any liens, claims or demands before any action is brought to enforce the same against Licensor's Property. Licensee hereby agrees to indemnify, defend and hold Licensor and Licensor's Property free and harmless from all liability for any and all such liens, claims and demands, together with reasonable attorneys' fees and all costs and expenses in connection therewith. Notwithstanding anything to the contrary set forth above, if Licensee shall in good faith contest the validity of any such lien, claim or demand, then Licensee shall, at its expense, defend itself and Licensor against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against Licensor or Licensor's Property, and, if Licensor shall require, Licensee shall procure and record or furnish to Licensor a surety bond or other acceptable security satisfactory to Licensor in an amount at least equal to one and one-half times such contested lien, claim or demand indemnifying Licensor against liability for the same and holding Licensor's Property free from the effect of any lien or claim. Licensor reserves the right at any time and from time to time to post and maintain on Licensor's Property or any portion thereof or improvement thereon such notices of nonresponsibility or otherwise as may be necessary to protect Licensor against liability for any such liens and claims.
- 5. Notice of Nonresponsibility. Immediately upon entry upon any portion of Licensor's Property for the purpose of commencing the activity permitted under this Entry Permit, Licensee shall provide immediate written notice of such activity to Licensor so that Licensor can post on Licensor's Property and record a notice of nonresponsibility.
- 6. Licensor Not Liable. As a material part of the consideration for this Entry Permit, Licensee hereby waives and agrees to indemnify, defend and hold harmless Licensor and its lenders, agents, employees and contractors from and against any loss, damage, injury, accident, fire or other casualty, liability, claim, cost or expense (including but not limited to attorneys' fees) of any kind or character arising from (i) any bodily injury, property damage, accident, fire or other casualty on Licensor's Property directly resulting from Licensee's or its Representatives' activities on Licensor's Property, (ii) any violation or alleged violation by Licensee or its Representatives on Licensor's Property of any law, ordinance, or regulation now

or hereafter enacted, or (iii) any default or breach by Licensee of its obligations under this Entry Permit.

- 7. Insurance. Prior to Licensee commencing any work on Licensor's Property, and until Licensee ceases such activities, Licensee shall at its expense maintain, with a reputable company or companies qualified to do business in California, a policy or policies of commercial general liability insurance with respect to the operations on behalf of Licensee on or about the property, with a liability limit of not less than \$2,000,000. Licensee shall name Licensor as an "Additional Insured" on all such policies of insurance prior to commencement of any work. Certificates of Insurance and Additional Insured endorsements evidencing all such insurance shall be provided to Licensor prior to Licensee entering Licensor's Property, and shall be maintained by Licensee until completion of work.
- 8. Vacation. Licensor acknowledges that this Entry Permit is solely a license and that Licen see has no rights as an owner, purchaser or tenant by virtue hereof. Upon termination of this Entry Permit for any reason, Licensee shall promptly vacate Licensor's Property.
- 9. Inspection. Licensor and any authorized representative, employee, agent or independent contractor shall be entitled to enter and inspect Licensor's Property or any portion thereof or improvements or work of Licensee thereon at any time and from time to time.
- Assignability. This Entry Permit shall be binding upon the parties hereto and their respective heirs, successors, representatives and assigns.
- 11. Cost of Enforcement. In the event it is necessary for either party to employ an attorney or other person or commence an action to enforce any of the provisions of this Entry Permit, the prevailing party, as determined by the court, shall be entitled to receive from the other party all costs of enforcement in connection therewith, including, but not limited to, court costs and attorneys' fees.
- 12. Exhibits. The following exhibits attached hereto are incorporated herein by reference:

Exhibit A--Licensee's Property

Exhibit B-Licensor's Property

Exhibit C - Street A IOD

Exhibit D - Grading Plans [if applicable]

13. Miscellaueous. No supplement, modification or amendment of this Entry Permit shall be binding unless in writing and executed by the parties hereto. No waiver of any of the provisions of this Entry Permit shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. This Entry Permit shall be construed and enforced in accordance with, and governed by, the laws of the State of California. The headings of this Entry Permit are for purposes of reference only and shall not limit or define

the meaning of the provisions hereof. This Entry Permit may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

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

LICENSEE:

McMillin Otay Ranch, LLC, a Delaware limited liability company

By: McMillin Companies, LLC,

a Delaware limited liability company

By: Its:

By: Its: LICENSOR:

Otay Project, L.P., a California limited partnership

By: Otay Project LLC, a California

limited liability company

Its: General Partner

By: Otay Ranch Development,

LLC, a Delaware limited

liability company,

Its: Authorized Member

By:

Its:

EXHIBIT "F" FORM OF LETTER OF PERMISSION

June 8, 2004



THE OTAY RANCH COMPANY

Mr. Alex Al-agha City Engineer City of Chula Vista 276 Fourth Avenue Chula Vista, CA 91910

Re: Offsite Letter of Permission to Grade

McMillin Otay Ranch Planning Area 12

Dear Mr. Alex:

We are the owners of the following described property: A portion of Parcel 2 of Parcel Map No. 18789, and a portion of the fractional southeast quarter of Section 3, Township 18 south, range 1 west, San Bernardino Meridian, all in the City of Chula Vista, County of San Diego, State of California.

We hereby grant McMillin Otay Ranch LLC, or its successors and assigns, permission to enter upon and perform grading operations, consistent with our executed Entry Permit, on the above-described property in substantial conformance with City Drawing Numbers: 03070-01 through 03070-14.

Sincerely,

Otay Project L.P., a California limited partnership,

By: Otay Project LLC a California limited liability company, its General Partner,

> By: Otay Ranch Development, LLC a Delaware limited liability company, its Authorized Member,

> > Vice President

Date

EXHIBIT "G" GRADING PLAN

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MCMILLIN OTAY RANCH - VILLAGE 12

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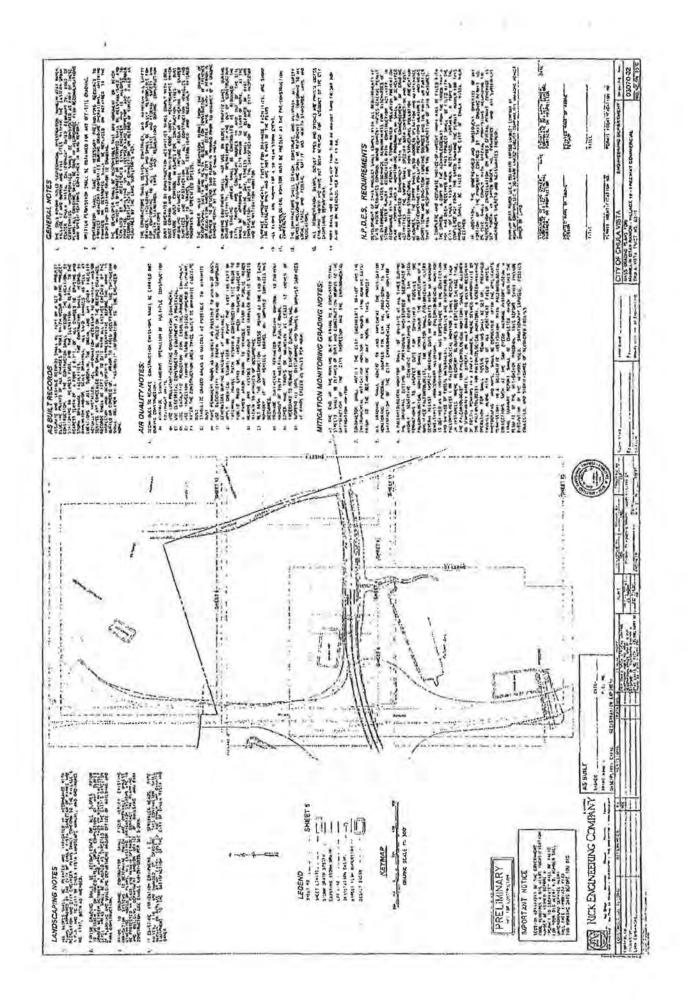
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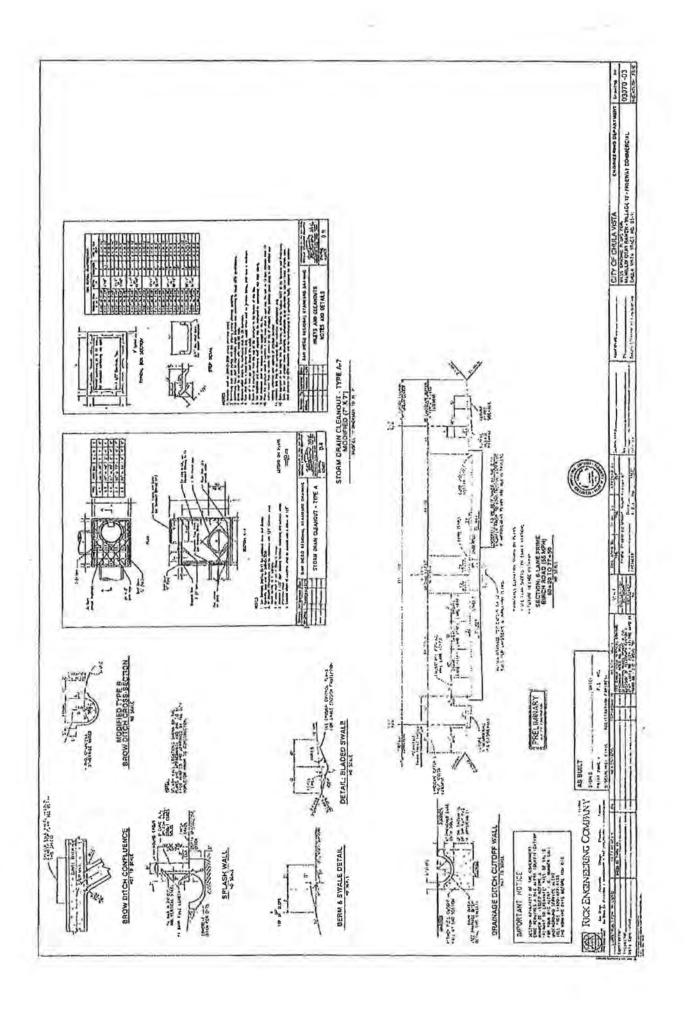
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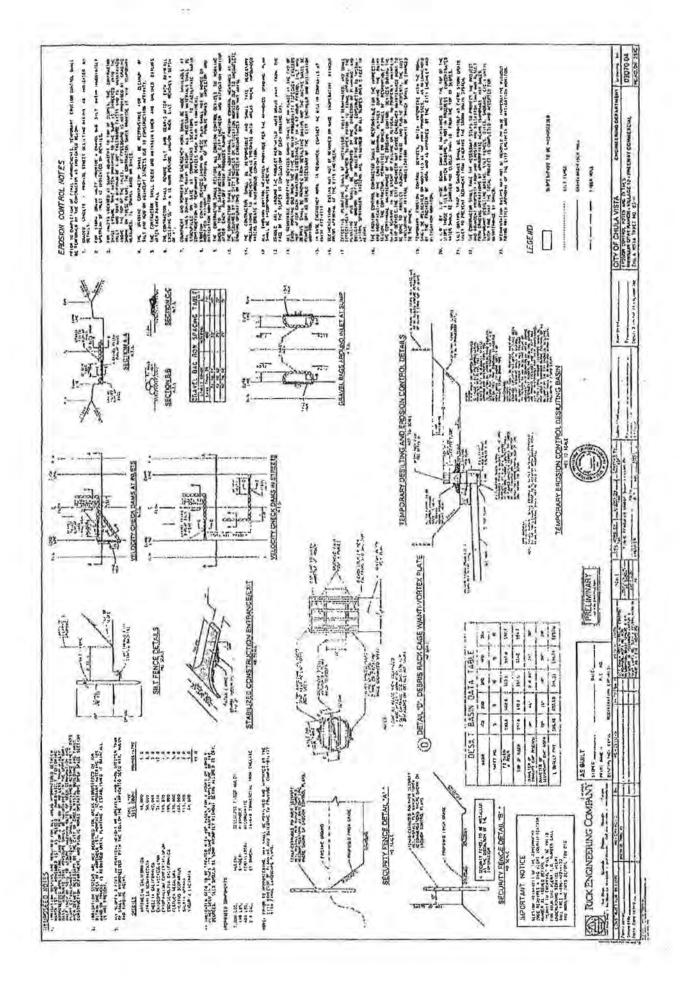
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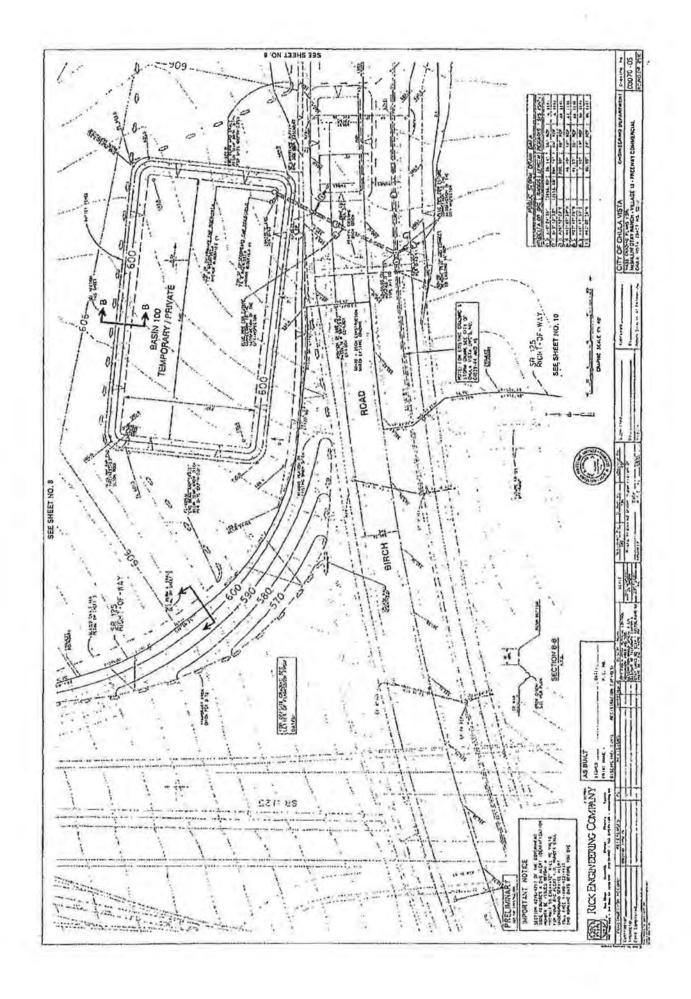
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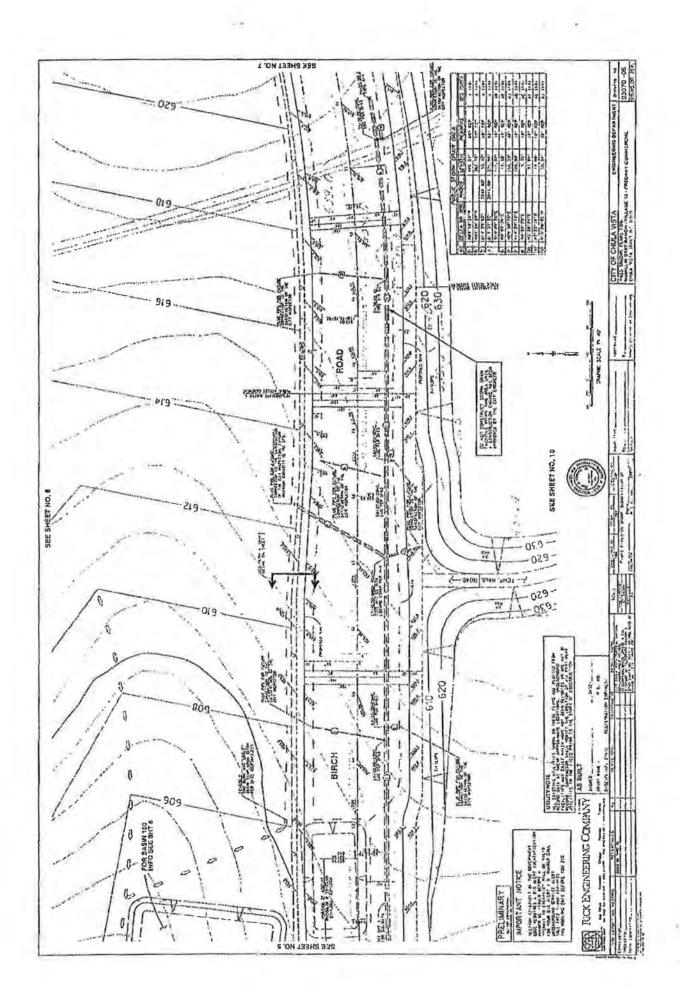
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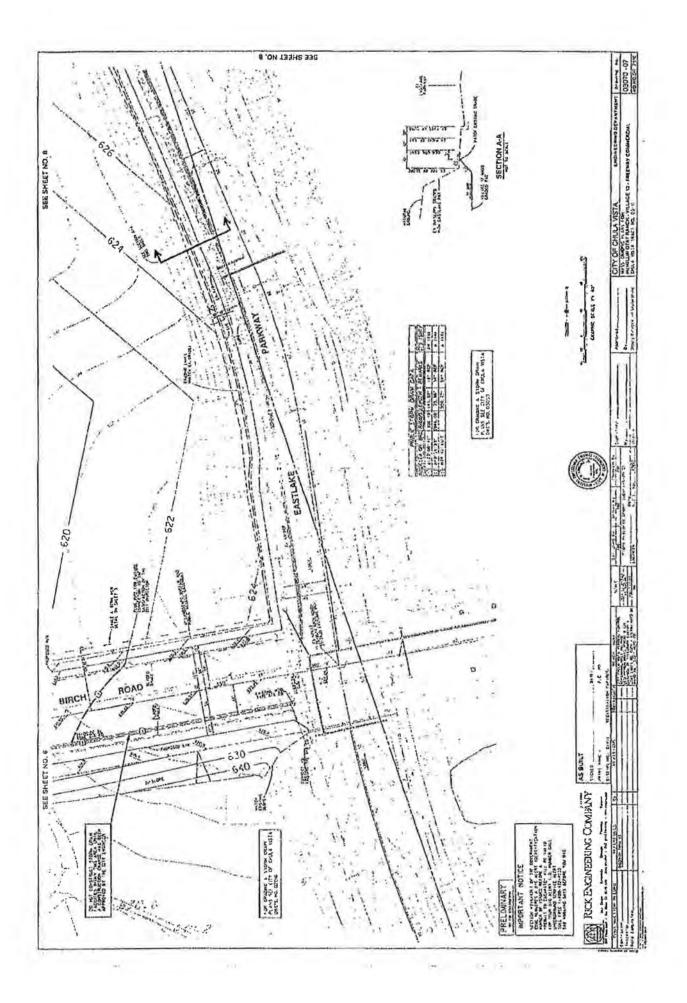


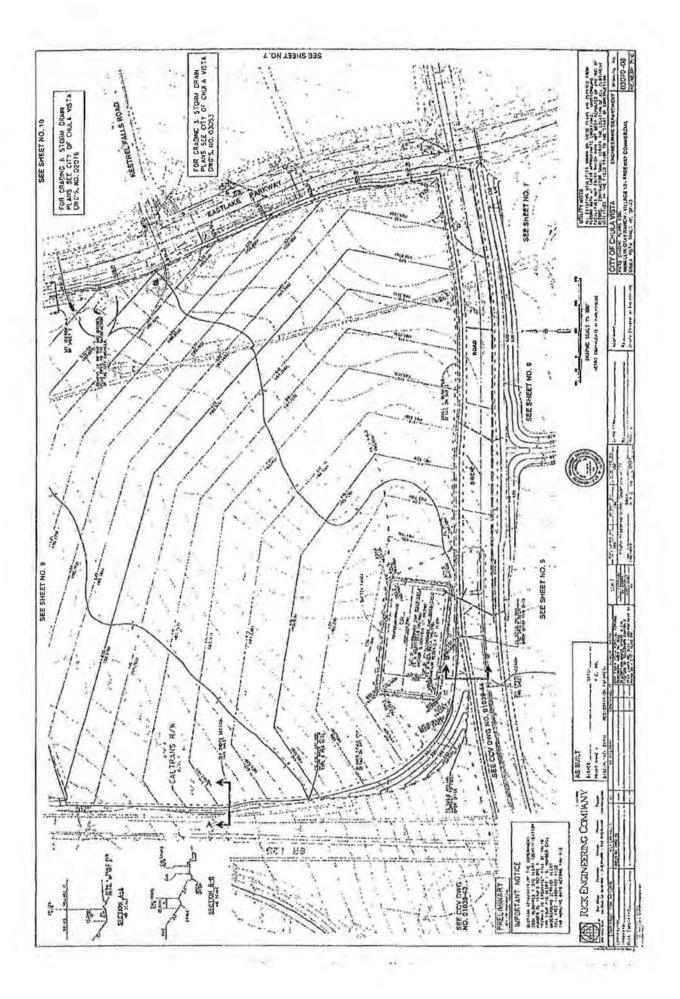


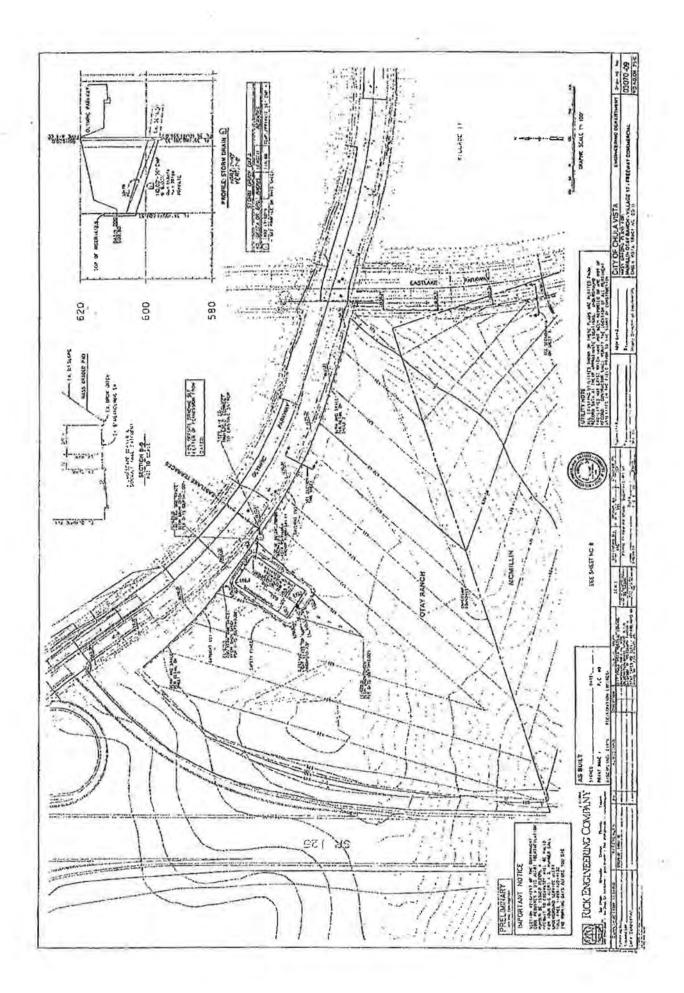


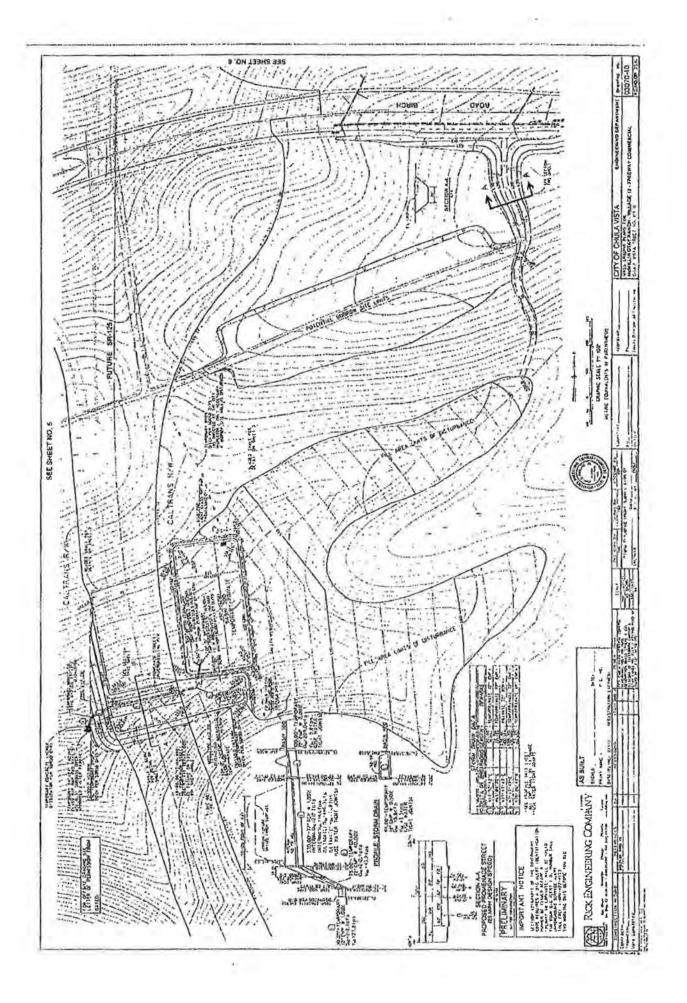


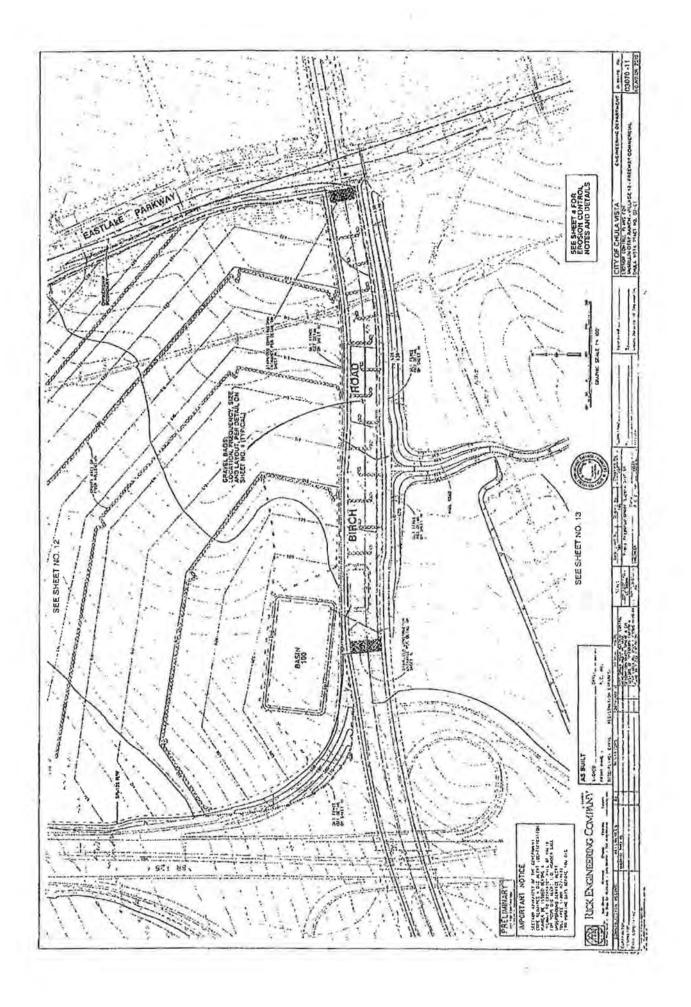


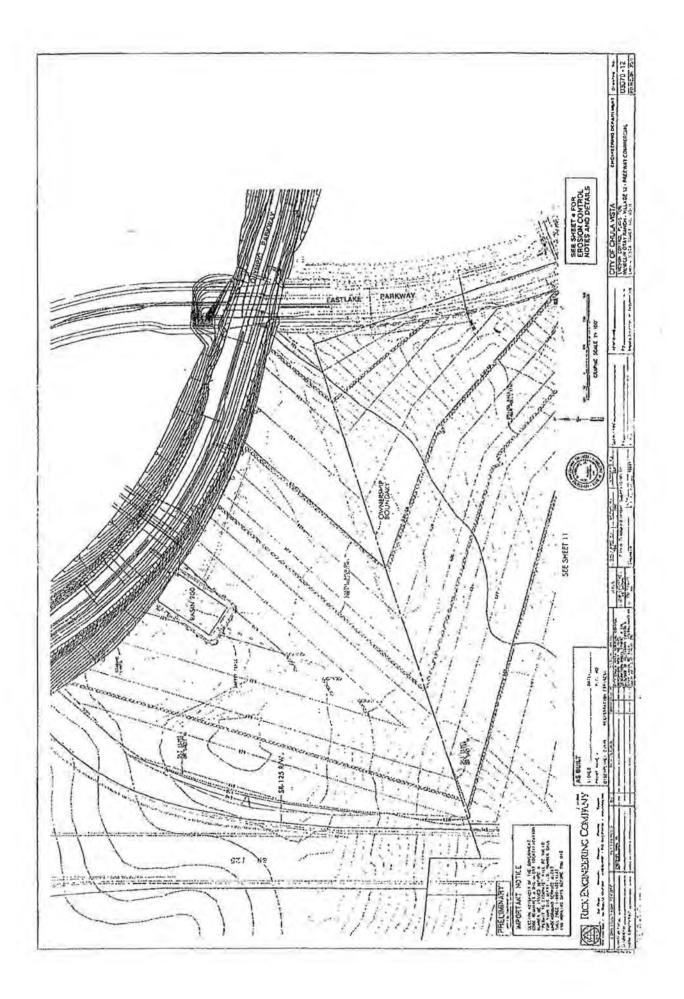


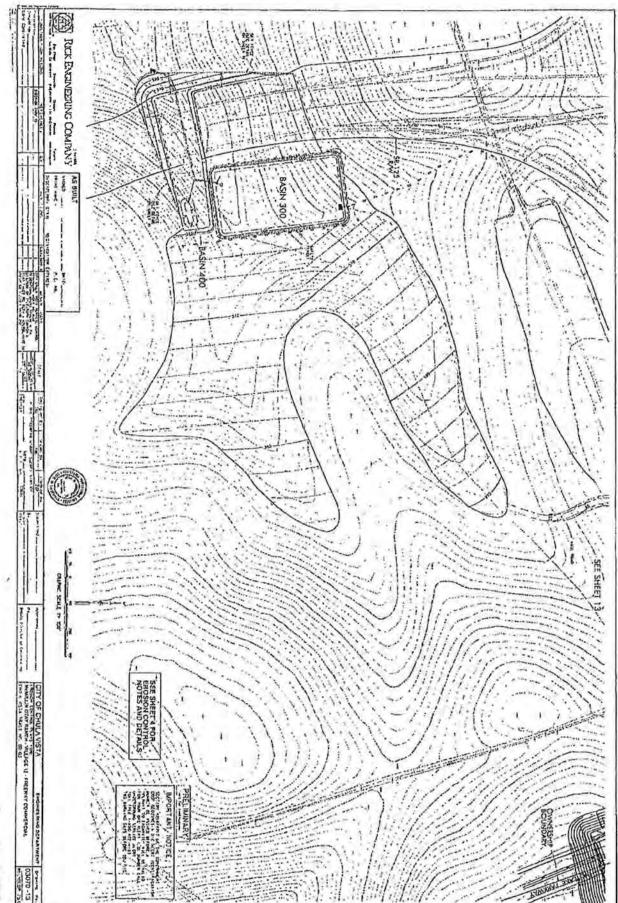












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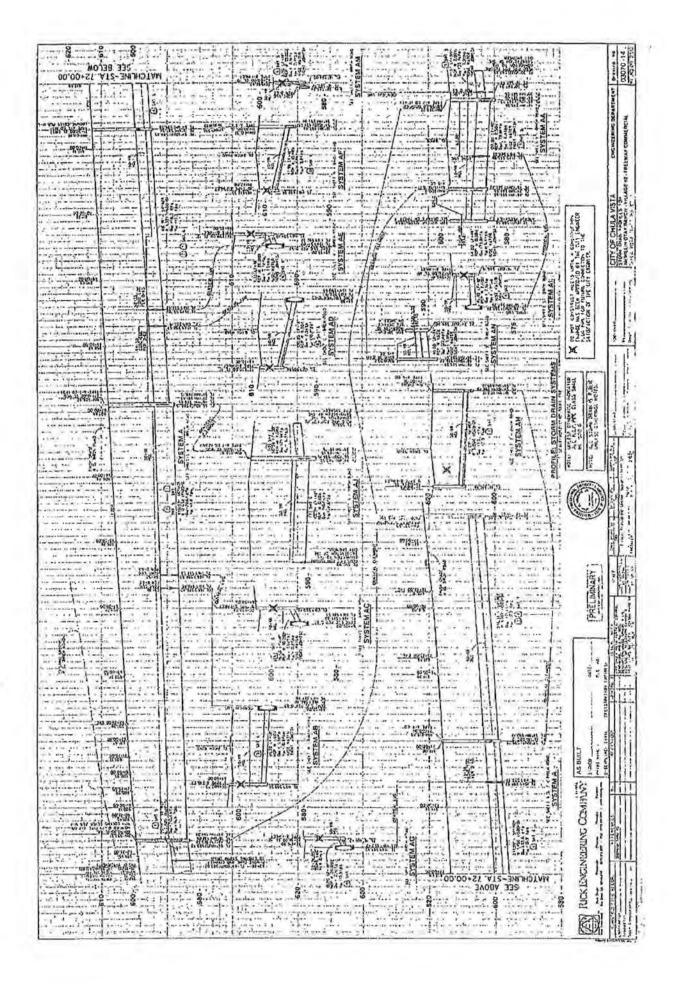


EXHIBIT "H"

DISPOSAL SITE