### MIDVALE CITY, UTAH RESOLUTION 2015-R-16

### A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DEVELOPMENT AGREEMENT BETWEEN MIDVALE CITY CORPORATION AND RIVERWALK INVESTMENTS II, LLC FOR THE TOPGOLF PROJECT

WHEREAS, pursuant to Section 10-9a-102 (2) of the Utah State Code, the City is authorized as follows: "To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, and height and location of vegetation, trees, and landscaping, unless expressly prohibited by law"; and

WHEREAS, due to the unique circumstances involved in the development of the Midvale Slag Superfund Site, the City has found it necessary and beneficial to the Property Owner and the City to enter into a Development Agreement detailing improvements to be installed by all parties, time frames in which they must be completed, and limits to the cost of those improvements; and

WHEREAS, the parties have negotiated such agreement, and, as of the date of this Resolution, agree to enter into said agreement; and

WHEREAS, the City Council has thoroughly reviewed said Development Agreement and agrees that entering into such agreement will help further the development of the area and protect the community.

### NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MIDVALE CITY, STATE OF UTAH, AS FOLLOWS:

Section 1. The Midvale City Council has thoroughly reviewed the attached Development Agreement between Midvale City Corporation and Riverwalk Investments II, LLC.

Section 2. The Midvale City Council, through its understanding of the development challenges associated with the development of the Topgolf property believe it is in the best interest of the Property Owner and the City to enter into such Development Agreement.

Section 3. The Midvale City Council on this date does hereby authorize the Mayor to enter into the attached agreement on behalf of the City.

PASSED AND APPROVED this 144 day of ADRIL , 2015. ON JoAnn B. Seghini, Mayor ATTES CITY STA, MIDLA Andreason Rofi City Recorder NCORPORATED NLY 1, 190 4 Voting by City Council Stephen Brown "Nay" "Aye" CORPORATE Paul Glover Paul Hunt Wayne Sharp Quinn Sperry

### Parc 1 No. 21-26-226-020

12058117 05/27/2015 11:24 AM ≢0.00 Book - 10327 Pg - 7963-8033 GARY W. OTT RECORDER, SALT LAKE COUNTY, UTAH MIDUALE CITY 7505 S HOLDEN ST MIDUALE UT 84047 BY: SMA, DEPUTY - WI 71 P.

When recorded, return to:

Midvale City 7505 S. Holden Street Midvale City, UT 84047 Attn: Midvale City Recorder

### DEVELOPMENT AGREEMENT (TOPGOLF PROJECT)

Midvale City, Utah

THIS DEVELOPMENT AGREEMENT (this "Development Agreement") is entered into as of this 15 day of April, 2015 by and between Riverwalk Investments II, LLC, a Utah limited liability company ("Developer"), and Midvale City Corporation, a Utah municipal corporation ("Midvale City" or "City"). Developer and City are sometimes referred to herein, individually, as a "Party," and collectively, as the "Parties."

A. <u>Property</u>. Developer is the owner of certain real property within Midvale City (as more particularly defined below, the "Property").

B. <u>Topgolf Project</u>. Developer has entered into a long-term lease (the "Ground Lease") with TopGolf USA Midvale, LLC (together with permitted successors and assigns, the "Lessee"). The Lessee intends to construct on the Property a family entertainment facility, including a golf driving range (as more particularly defined below, the "Topgolf Project").

C. <u>Master Development Agreement, Riverwalk Sub Area Agreement and Riverwalk West</u> <u>Retail Agreement</u>. The Property is subject to that certain Master Development Agreement for the Bingham Junction Project between Littleson, Inc. and Midvale City, dated April 6, 2005 and recorded on March 10, 2006 in Book 9265 at Page 4838 as Entry No. 9659803 (the "MDA"), and to that certain Development Agreement for the Riverwalk Sub Area of the Bingham Junction Project between Mercer Bingham Junction, LLC and Midvale City dated August 1, 2006 (the "Riverwalk Sub Area Agreement") and to that certain Development Agreement for Riverwalk West at Bingham Junction Retail between Riverwalk Investment Holdings, LLC and Midvale City dated April 15, 2010 and recorded on December 9, 2010 in Book 9887 at Page 4676 as Entry No. 11093332 (the "Riverwalk West Retail Agreement").

D. <u>Large Scale Master Plan</u>. The Midvale City Planning Commission (the "Planning Commission") approved a Large Scale Master Plan for the Riverwalk West at Bingham Junction Retail Project on January 13, 2010 with an amendment to such plan on November 15, 2012 (the "Large Scale Master Plan"). The conditions of approval of the Amended Large Scale Master Plan are set forth in a letter dated November 15, 2012 from the City to Developer, a copy of which is attached as **Exhibit B** (the "Large Scale Master Plan Conditions").

E. <u>Small Scale Master Plan</u>. The Planning Commission approved a Small Scale Master Plan for the Topgolf Project on December 17, 2014 (the "Small Scale Master Plan"). The conditions of approval of the Small Scale Master Plan are set forth in a letter dated December 18, 2014 from the City to Developer, a copy of which is attached as **Exhibit C** (the "Small Scale Master Plan Conditions").

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F. <u>Conditional Use Permit</u>. The Planning Commission approved a Conditional Use Permit to allow certain uses in the Topgolf Project on December 18, 2014 (the "Conditional Use Permit"). The conditions of approval of the Conditional Use Permit are set forth in the letter from the City to Developer attached as **Exhibit C**.

G. <u>Final Site Plan</u>. The City approved the Final Site Plan for the Topgolf Project on April 9, 2015, subject to the Developer's execution of this Agreement, and a copy of the Final Site Plan stamped as "approved" by the City is attached as **Exhibit D** (the "Final Site Plan").

H. <u>CC&R's</u>. Developer executed that certain Declaration of Covenants, Conditions and Restrictions which was recorded on March 15, 2013 in Book 10117 at Page 4719-4758 as Entry No. 11597237 (as amended, the "CC&R's") with respect to the Property and certain adjoining property more particularly defined therein (the "Adjoining Property").

I. <u>State Authority</u>. Pursuant to Section 10-9a-102 of the Utah Code, Midvale City is authorized to enter into development agreements as provided therein and, as a legislative act, desires to enter into this Development Agreement in order to obtain the benefits for the City provided herein.

NOW THEREFORE, in consideration of the above recitals, terms of this Development Agreement, and the mutual benefits to be derived herefrom, the Parties agree as follows:

### Article 1 The Topgolf Project

1.1 <u>Legal Description of Property</u>. The property owned by Developer that is covered by this Agreement consists of approximately 12.75 acres of land located at 920 West Jordan River Boulevard with property frontage on River Gate Drive and Bingham Junction Boulevard, and is more fully described in **Exhibit A** (the "Property").

1.2 Description of Project. The Lessee's proposed project for the Property consists of approximately 65,000 square feet of building space comprised of 102 climate-controlled hitting bays, full-service restaurant, bar, lounges, corporate event meeting space, open air rooftop terrace with stage for live entertainment and family entertainment area (the "Topgolf Project"). The Topgolf Project includes: (a) an approximate 4.7 acre outfield with multiple illuminated round targets and enclosed with a perimeter steel mesh net fence ranging in height from 90 to 170 feet, (b) parking fields with shared drive access and circulation with adjacent development pads/lots, (c) certain interior landscaping and related irrigation equipment and installations as shown and described on the Final Site Plan (the "Landscaping Work"), and (d) certain other improvements as shown and described on the Final Site Plan (the "Other Site Improvements").

1.3 <u>MDA, Riverwalk Sub Area Agreement and Riverwalk West Retail Agreement</u>. Developer acknowledges and agrees that each of the MDA, Riverwalk Sub Area Agreement and the Riverwalk West Retail Agreement is in full force and effect and is binding upon and inures to the benefit of the Parties in the ownership and development of the Property; <u>provided</u>, however, (a) the City agrees that Developer has no further obligations under Section 4 of the MDA, (b) Developer agrees that the City has no further obligations under Section 7 of the MDA and that Developer has no rights under Section 7 of the MDA, and (c) Developer agrees that it has no rights to construct any residential housing on the Property pursuant to Section 9 of the MDA or otherwise. 1.4 <u>Large Scale Master Plan and the Small Scale Master Plan</u>. The Large Scale Master Plan and the Small Scale Master Plan shall be deemed to qualify, as to the Property and the Topgolf Project, as the Developer's submittal of a Large Scale Master Plan and a Small Scale Master Plan under the MDA.

### 1.5 <u>The Topgolf Project Approval.</u>

1.5.1 <u>Approval</u>. Pursuant to the provisions of the Amended BJ Zone (Chapter 17-7-9 of the Midvale City Municipal Code) (the "Amended BJ Zone Ordinance") and the Riverwalk Overlay (Chapter 17-7-9.12.1 of the Midvale City Municipal Code) (the "Riverwalk Zone Ordinance") in effect as of the date of this Agreement (together, the "Zoning Ordinances"), the Topgolf Project has been approved by the City, subject to the provisions of the Zoning Ordinances in effect on the date hereof, the MDA, the Riverwalk Sub Area Agreement, the Riverwalk West Retail Agreement, the Large Scale Master Plan Conditions, the Small Scale Master Plan Conditions, the Conditional Use Permit, the Final Site Plan, and this Agreement.

1.5.2 <u>Vested Rights</u>. The City acknowledges and agrees that Developer has the vested right to develop and construct the Topgolf Project in accordance with the provisions of the Zoning Ordinances in effect on the date hereof, the MDA, the Riverwalk Sub Area Agreement, the Riverwalk West Retail Agreement, the Large Scale Master Plan Conditions, the Small Scale Master Plan Conditions, the Conditional Use Permit, the Final Site Plan, and this Agreement; <u>provided</u>, <u>however</u>, that Developer acknowledges and agrees that the construction and operation of the Topgolf Project is subject to all Applicable Laws (as defined in Section 3.3).

Reserved Legislative Powers and Zoning Authority of the City. Notwithstanding the provisions of Section 1.5.2, Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations, and exceptions set forth herein are intended to reserve to the City all of its police power that cannot, as a matter of law, be limited by contract. The City agrees, however, that notwithstanding the retained power of the City to enact legislation under its police powers, such legislation (which, as the Parties agree, includes without limitation legislation that amends any Applicable Laws in existence on the date hereof) shall not modify the vested rights of Developer under the terms of this Agreement unless such legislation is based upon policies, facts, and circumstances that are sufficient to satisfy the compelling countervailing public interest exception to the vested rights doctrine of the State of Utah. The City further agrees that any such proposed legislative changes that may affect the vested rights of the Project shall be of general application to all development activity within the City. The City further agrees that unless in good faith the City declares an emergency, Developer and Lessee shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed legislative change that may modify vested rights under this Agreement under the compelling, countervailing public interest exception to the vested rights doctrine.

1.5.4 <u>Amendments to Final Site Plan</u>. In the event that Developer desires in the future to amend the Final Site Plan in any respect, and if the Lessee and the City approve of such amendment in accordance with all Applicable Laws, including without limitation, the zoning ordinances in effect as of the date of such amendment, the Parties (and Lessee) may enter into an agreement that approves the substitution of the new approved Final Site Plan to replace the original Final Site Plan. Notwithstanding anything contained herein, Developer shall have no vested right to such amendment as provided above, but rather the approval by the City of any such amendment to the Final Site Plan shall be subject to Developer's compliance with the then Applicable Laws, including without limitation the then existing zoning ordinances.

### Article 2 Conditions of Master Planned Development

2.1 <u>Final Site Plan</u>. Developer agrees that the Topgolf Project will be constructed as shown on the Final Site Plan and in accordance with the Large Scale Master Plan Conditions and the Small Scale Master Plan Conditions.

2.2 Agreement to Comply with Specific Conditions of Approval.

2.2.1 <u>Emergency Access</u>. Developer agrees that the Topgolf Project will be constructed with emergency access to the northeast and northwest corners of the building. Access gates shall be constructed adjacent to stairwells in locations shown on the Final Site Plan to allow emergency personnel access on the north side of the building. These access gates shall be a minimum of six feet wide and eight feet high, with the final design reviewed and approved by the Fire Marshal. These gates shall be constructed and accepted by the Fire Marshal before the Certificate of Occupancy may be issued with respect to the Topgolf Project. This emergency access shall be maintained at all times.

- 2.2.2 Landscaping Work. Developer agrees that:
  - 2.2.2.1 All of the Landscaping Work must be installed and in working order in accordance with the Final Site Plan prior to the issuance of the Certificate of Occupancy with respect to the Topgolf Project.
  - 2.2.2.2 If seasonal conditions or site construction issues make such installation unfeasible at the time Developer requests such Certificate of Occupancy, Developer shall guarantee the same through an irrevocable commitment of funds in the form of a check to be provided by Developer and deposited by the City in a reserve account established for such purpose.
  - 2.2.2.3 In the event Developer shall so guarantee the same, then the Landscaping Work shall be completed within six months of the Certificate of Occupancy being issued with respect to the Topgolf Project. The irrevocable commitment of funds shall be made available to the City to pay for and complete the Landscaping Work, if Developer fails to complete this requirement within the allotted time frame, which shall be the City's sole remedy in the event of any such failure. The fund balance shall be in the amount that the City estimates it will cost to purchase the materials and to complete the Landscaping Work.

2.2.3 <u>Other Site Improvements</u>. All Other Site Improvements must be completed before the Certificate of Occupancy may be issued with respect to the Topgolf Project.

2.2.4 <u>Parking Field</u>. In connection with the approvals granted pursuant to the Conditional Use Permit, the Final Site Plan and this Agreement as to the development of the Property, including without limitation provisions regarding access and parking, Developer acknowledges that the City has taken into account the rights granted to the owners of the Adjoining Property under the CC&R's. Accordingly, Developer agrees that it will not amend the CC&R's to remove from the coverage thereof any of the Adjoining Property unless the access and parking requirements for such Adjoining Property (either on-site or off-site) have been approved by the City. 2.3 <u>Institutional Controls</u>. Developer agrees that the Property shall be maintained, at a minimum, in accordance with the "Institutional Controls" set forth in Chapter 8.10 of the Midvale City Municipal Code (the "Institutional Controls").

2.4 <u>Noise and Lighting</u>. The operations of the facilities on the roof of the main building are subject to all Applicable Laws.

The Small Scale Master Plan and the Conditional Use Permit require that Lessee will continually work with the City in addressing and attenuating any noise and lighting impacts on the surrounding area. In the event that the City receives legitimate, verifiable complaints regarding noise and/or lighting, and the City reasonably determines that there are negative, adverse impacts to the surrounding property owners with respect to noise and lighting issues, the City may give written notice to Developer and Lessee, and the City may propose one or more mitigation measures with respect to such issues. The Parties and Lessee agree to negotiate in good faith to reach a mutually acceptable agreement with respect to Lessee's operations that addresses such issues. If the Parties are not able to reach a mutually acceptable agreement within one hundred eighty (180) days after receipt of the City's written notice, any one of the Parties and/or Lessee may commence dispute resolution in accordance with Section 3.14 hereof and if applicable, Section 3.15.

2.5 Fencing and Rooftop Lights. The fencing for the driving range and the rooftop lights illuminating the driving range, in each case as shown on the Final Site Plan, were approved in the Conditional Use Permit for the purpose of facilitating the commercial recreation uses specified in the Conditional Use Permit (the "Driving Range Improvements"). In the event that Lessee ceases operations at the Property as a driving range and in such event, if neither Lessee nor Developer is able (or elects not) to replace Lessee with an operator of a golf driving range within two and one-half  $(2\frac{1}{2})$  years thereafter, then the City may give written notice to Developer that the Driving Range Improvements must be removed from the Property, and that failure to do so entitles the City to exercise its remedies under the Administrative Abatement provisions of the Midvale City ordinances. Developer shall, within one hundred eighty (180) days following receipt of such notice, remove the Driving Range Improvements and reclaim the affected areas to a safe condition. If Developer fails to remove the Driving Range Improvements within such one hundred eighty (180) day period, the City may exercise its remedies under the Administrative Abatement provisions of the Midvale City Ordinances, including without limitation by causing the removal of the Driving Range Improvements and charging Developer for the costs thereof, and recovering the costs thereof by any available legal method.

### Article 3

### **General Terms and Conditions**

3.1 <u>Rights of Access</u>. For the purpose of assuring compliance with this Development Agreement, upon reasonable advanced notice to Developer and Lessee, representatives of the City shall have the right of access to the Property and all buildings and structures thereon without charges or fees, during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in connection with the completion of the Landscape Work and the Other Site Improvements. Such representatives shall comply with all safety rules of Developer and Lessee and its general contractor, including signing a standard construction area release. In addition, upon reasonable advanced notice to Developer and Lessee, the City shall have the right to enter the Property or any buildings or improvements thereon at all reasonable times for the purpose of exercising the City's remedies, including cure rights contained in this Agreement and for the construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Property.

3.2 <u>Construction of Agreement</u>. This Development Agreement shall be constructed and interpreted to ensure that the Developer complies with the requirements and conditions of the Large Scale Master Plan, the Small Scale Master Plan, the Conditional Use Permit and the Zoning Ordinances.

3.3 <u>Applicable Laws</u>. As used herein, "Applicable Laws" shall mean all present and future requirements, administrative and judicial orders, laws, statutes, ordinances, and regulations of any federal, state, county and municipal offices having jurisdiction over the Property and/or the Topgolf Project.

3.4 <u>Agreements to Run with the Land</u>. This Development Agreement shall be recorded against the Property. The agreements contained herein shall be deemed to run with the land and shall be binding on and shall inure to the benefit of all successors and assigns of the Developer in the ownership or development of any portion of the Topgolf Project or the Property.

3.5 <u>Release of Developer</u>. In the event of a transfer of the Property, Developer shall obtain an assumption by the transferee of the Developer's obligations under this Development Agreement and, in such an event, the transferee shall be fully substituted as Developer under this Development Agreement and the Developer executing this Development Agreement shall be released from any further obligations with respect to this Development Agreement.

3.6 <u>Duration; Survival of Developer's Obligations and Rights</u>. The term of this Development Agreement shall commence on the date this Development Agreement is executed by both Parties and shall continue until either terminated as provided herein or by agreement by both parties, but in no event shall the term hereof be longer than twenty-five (25) years, except for Section 2.5, which shall continue to be in full force and effect so long as the Conditional Use Permit is in full force and effect. Notwithstanding the foregoing, Developer's rights, remedies, obligations and responsibilities under this Development Agreement shall survive and continue beyond termination of this Development Agreement as to subdivisions and/or site plans that have been given final approval and have been recorded and for all offsite or other improvements that Developer was obligated to construct or make in connection with or as a condition of such final approval.

3.7 <u>Notices</u>. Any notice, confirmation or other communication hereunder shall be given in writing by hand delivery (receipted), nationally-recognized, overnight courier service, United States mail, or facsimile (confirmed) to the following addresses or numbers:

Midvale City:

Midvale City Manager MIDVALE CITY CORPORATION 7505 S. Holden Street Midvale City, UT 84047 FAX: (801) 567-0518

Midvale City Community Development Director MIDVALE CITY CORPORATION 7505 S. Holden Street Midvale City, UT 84047 FAX: (801) 567-0518 Midvale City Attorney MIDVALE CITY CORPORATION 7505 S. Holden Street Midvale City, UT 84047 FAX: (801) 567-0518

Developer:

Riverwalk Investments II, LLC 166 East 14000 South, Suite 210 Draper, UT 84020

with a copy to:

TopGolf USA Midvale, LLC 1717 McKinney Avenue, Suite 800 Dallas, Texas 75202 Attn: Legal Department

Any Party hereto may change its address by notice given to the other Parties in the manner required for other notices above.

3.8 <u>Savings Clause; Severability</u>. If any provision of this Development Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remaining provisions of this Development Agreement, or the application of such provision to the persons or circumstances other than those to which it is held invalid, shall not be affected thereby or considered invalid. If any part or provision of this Development Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Development Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Development Agreement scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

3.9 <u>No Third Party Rights</u>. Except for rights accruing for the benefit of Lessee, this Development Agreement does not create any third party beneficiary rights. It is specifically understood by the Parties that: (a) the development of the Property under this Development Agreement is a private development, (b) the City has no interest in or responsibilities for or duty to third parties concerning any improvements on the Property except as they may pertain to Developer and Lessee, and (c) Developer shall have full power over and exclusive control of the Property subject to the Ground Lease, the obligations of Developer under this Development Agreement, the other agreements referred to in Article I above and all Applicable Laws.

3.10 <u>Integration</u>. Except as otherwise specified and agreed in writing, this Development Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature, and may only be modified by a subsequent writing duly executed by the Parties hereto. By this reference, the foregoing recitals and the attached exhibits are incorporated in and made a part of this Development Agreement by this reference.

3.11 <u>Further Assurances</u>. The Parties to this Development Agreement agree to reasonably cooperate with each other in effectuating the terms and conditions of this Development Agreement and,

further, agree to execute such further agreements, conveyances and other instruments as may be required to carry out the intent and purpose of this Development Agreement.

3.12 <u>Waiver: Time of Essence</u>. No failure or delay in exercising any right, power or privilege hereunder on the part of any Party shall operate as a waiver hereof. No waiver shall be binding unless executed in writing by the Party making the waiver. Time is of the essence of this Development Agreement.

3.13 Obligations and Rights of Mortgage Lenders. Developer or Lessee (as the case may be) may finance the Property and/or Topgolf Project and may execute one or more mortgages, deeds of trust or other security arrangements with respect to the Property and/or Topgolf Project and may assign this Development Agreement to a holder of any such financial instrument without prior written notice to or consent of the City. The holder of any mortgage, deed of trust, or other security arrangement with respect to the Property and/or Topgolf Project, or any portion thereof, shall not be obligated under this Development Agreement by virtue of such assignment to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Development Agreement which pertain to the Property and/or Topgolf Project or such portion thereof in which it holds an interest. Any such holder who comes into possession of the Property and/or Topgolf Project, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property and/or Topgolf Project, or such portion thereof, subject to all requirements and obligations of this Development Agreement and any pro rata claims for payments or charges against the Property and/or Topgolf Project, or such portion thereof, deed restrictions, or other obligations which accrue prior to the time such holder comes into possession. Nothing in this Development Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Development Agreement, and, as would be the case in any assignment, the purchaser of the Property and/or Topgolf Project from the holder shall be subject to all of the terms and conditions of this Development Agreement, including the obligation to complete all required amenities and improvements. Additionally, nothing herein shall be so construed as to prohibit a mortgage or deed of trust holder from providing security for the standard installation of development improvements pursuant to the Applicable Laws.

3.14 <u>Disputes</u>. In the event that a dispute arises in the interpretation or administration of this Development Agreement or if the default mechanism contained herein shall not resolve a default under this Development Agreement, then prior to taking any action to terminate this Development Agreement every continuing dispute, difference, and disagreement shall be referred to a single mediator agreed upon by the Parties. If no single mediator can be agreed upon, a mediator or mediators shall be selected from the mediation panel maintained by the United States District Court for the District of Utah in accordance with any designation process maintained by such court. The Parties shall mediate such dispute, difference, or disagreement in a good faith attempt to resolve such dispute, difference or disagreement. The mediation shall be non-binding. Notwithstanding the foregoing, the Parties agree that the City retains the right to exercise enforcement of its police powers in the event Developer is in direct violation of a provision of this Development Agreement or of any Applicable Law.

3.15 <u>Institution of Legal Action; Restriction on Remedies</u>. In the event that the mediation does not resolve a dispute, either Party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in this Development Agreement or to enjoin any threatened or attempted violation of this Development Agreement, or to terminate this Development Agreement; provided, however, the Parties agree that in no event shall either Party seek or be entitled to money damages for any breach, default or violation of this Development Agreement. Legal

actions shall be instituted in the Third Judicial District Court of the County of Salt Lake, State of Utah. For purposes of Section 3.14 and Section 3.15, the term "Parties" shall also include Lessee.

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3.16 <u>Counterparts</u>. This Development Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

3.17 <u>Costs and Expenses: Attorneys' Fees</u>. Except as otherwise specifically provided herein, each Party shall bear its own costs and expenses (including legal and consulting fees) in connection with this Development Agreement and the negotiation of all agreements and preparation of documents contemplated by this Development Agreement. In the event of a breach or dispute arising under this Development Agreement, the nonbreaching Party or the Party prevailing in such dispute shall be entitled to recover from the breaching or nonprevailing Party its costs, including, without limitation, court costs, reasonable attorneys' fees, expert witness fees, fax, copy, telephone and other incidental charges.

IN WITNESS WHEREOF, this Development Agreement has been executed by Midvale City Corporation, acting by and through the Midvale City Council, and by a duly authorized representative of Riverwalk Investments II, LLC, as of the above stated date.

[signature and acknowledgment pages follow]

CITY:

	MIDVALE CITY CORPORATION
	By: Olen Bleghini
ATPEST?	JoAnn Seghini, Mayor
Rori L. Andreason, MMC	DT CITY STATE OF
	INCORPORATED GT
APPROVED AS TO FORM:	S JULY 1, 1909 S C ORACE SENT
Print Name: CHAO Wootay City Attorney	ORATE ST
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STATE OF UTAH	)
COUNTY OF SALT LAKE	: ss )

On the  $15^{\text{th}}$  day of  $40^{\text{th}}$ , 2015, personally appeared before me JoAnn Seghini, who being by me duly sworn did say she is the Mayor of Midvale City Corporation, and that the within and foregoing instrument was signed on behalf of such Corporation.

ndicasor Notary Public Residing at:

My Commission Expires:

11-01- 201Le



**DEVELOPER:** 

RIVERWALK INVESTMENTS II, LLC, a Utah limited liability company

By: Wadsworth Riverwalk II, LLC, a Utah limited liability company Its: Manager

By: Wadsworth & Sons III, LLC, a Utah limited liability company Its: Manager

By: Kip L. Wadsworth Its: Executive Manager

STATE OF ) )ss COUNTY OF ,

On this  $\underline{M}$  day of  $\underline{M}$ , 2015, personally appeared before me Kip L. Wadsworth, Executive Manager of Wadsworth & Sons III, LLC, a Utah limited liability company, the Manager of Wadsworth Riverwalk Investments II, LLC, a Utah limited liability company, the Manager of Riverwalk Investments II, LLC, a Utah limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the foregoing Lease in the capacity therein stated and as the act and deed of said limited liability company.

My commission expires:

10)11/15\_\_\_\_\_Residing at Draper, Utah

Notary 1 done



CONSENT:

TopGolf USA Midvale, LLC, as the "Lessee" under the "Ground Lease" referred to in the recitals in the foregoing Development Agreement, hereby consents to the Development Agreement and agrees that its rights as the Lessee under the Ground Lease shall be bound by the terms thereof.

TOPGOLF USA MIDVALE, LLC

By: \_\_\_ W.A Name: Its:

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April 3, 2015

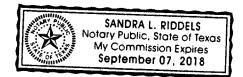
STATE OF TULLS )ss COUNTY OF Dallas

On this 13<sup>th</sup> day of April , 2015, personally appeared before me William Davenport, Manager of \_\_\_\_\_\_, a \_\_\_\_\_, the Manager of TopGolf USA Midvale, LLC, a <u>Delaware</u> limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the foregoing Lease in the capacity therein stated and as the act and deed of such limited liability company.

My commission expires: September 7,2015 Residing at Dallas County

Riddels

Notary Public



### EXHIBIT A

### Legal Description

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Lot 1 of the River Walk at Bingham Junction, Phase 2 Amended, as recorded with the Official Records of Salt Lake County on February 19, 2015 as Entry No. 11995626.

### EXHIBIT B

### Large Scale Master Plan Conditions



655 West Center Street Midvale, 11 84047 Phone (801) 567-7200 Fax (801) 567-0518

November 15, 2012

Mr. Marty B.Ijanie Wadsworth Development Group 16n F. 14000 S. #210 Draper, UT 84020

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Subject: Large Scale Master Plan Amendment - Riverwalk West at Bingham Junction Retail Project (Riverwalk II Shopping Center)

Dear Marty:

This letter is to confirm action taken by the Midvale City Planning Commission at its meeting held on November 15, 2012 regarding your request to amend the Large Scale Master Plan for the Riverwalk West project located in the Riverwalk area of Bingham Junction. Based on the proposed amended Large Scale Master Plan complying with the intent and general development standards for the Bingham Junction Zone and Riverwalk Overlay and providing a solid toundation for more detailed development plans to be submitted under the Small Scale Master Plan provision in the future, it was the decision of the Planning Commission to approve the 2<sup>nd</sup> Proposed Amended Large Scale Master Plan for the Riverwalk West at Bingham Junction Retail Project (attached) with the following conditions:

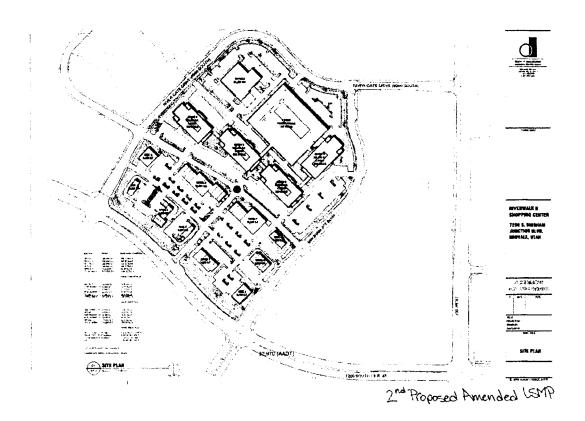
- 1. The original conditions of approval from January 13, 2010 (Attachment A) shall remain.
- Circulation and connectivity between all projects within the 1 SMP area shall be a priority.
- 3. The open space along 7200 South and the 7200 South access road shall be enhanced to include additional landscaping to ensure the original intent of this area remains visually pleasing and functional for the community.
- 4. The 7200 South access is contingent upon UDOT's written approval. If this access is not approved by UDOT, the area on the south side of the east-west road through the plan area shall revert to the 2010 original I SMP layout.

If you have any questions, please call me at (801) 567-7229.

Sincerely Leslex Burns

I esley Burns City Planner

Attachments



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### ATTACHMENT A

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### Riverwalk West at Bingham Junction Retail Project Large Scale Master Plan Original Conditions of Approval (January 13, 2010)

- All development within the large scale master plan shall comply with the Development Standards in Section 17-7-9.12.1.6 of the Zoning Ordinance, including but not limited to a maximum building height of 32 feet for a flat roof for portions of the structure within 100 feet of a single family attached or detached residential structure.
- 2. All development within the large scale master plan shall comply with the Landscaping Standards in Section 17-7-9.12.1.7 of the Zoning Ordinance. Landscaping plans shall incorporate the street trees required as part of the Riverwalk Thematic Design Elements. Landscape screening of maintenance buildings, trash collection and recycling, storage and service areas, mechanical equipment and loading doeks, particularly where viewed from residential areas and public vantage puints will be required.
- 3. All development within the large scale master plan shall comply with the Architectural Standards in Section 17-7-9.12.1.8 of the Zoning Ordinance, including but not limited to drive aisles located between the building and the street being minimized as much as possible with berming and landscaping and complying with the specific development standards in the ordinance; and loading docks and service areas where visible from streets and residential buildings being screened with walls and dense landscaping.
- All development within the large scale master plan shall comply with Sections 17-7-9.5 Common Development Standards and 17-7-9.6 Parking of the Zoning Ordinance.
  All development within the large scale master plan the large scale
- 6. All drive/road accesses shall comply with the requirements of the City Engineer.

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### EXHIBIT C

Small Scale Master Plan Conditions



7505 South Holden Street Midvale, Utah 84047 Phone (801) 567-7200 www.midvalecity.org

December 18, 2014

Mr. Zach Shor Top Golf 1717 McKinney Ave. #800 Dallas, TX 75202

Subject:Small Scale Master Plan and Conditional Use Permit Approval – Top Golf<br/>Entertainment Center a approx. 920 W. River Gate Dr.

Dear Mr. Shor:

This letter is to confirm action taken by the Midvale City Planning Commission at its meeting held on December 17. 2014 regarding the above project. It was the decision of the Planning Commission to approve the Small Scale Master Plan and Conditional Use Permit with the following conditions:

- 1. This approval is contingent upon the City Council's adoption of the proposed text amendments regarding fencing and lighting for outdoor athletic facilities.
- 2. All requirements of the Fire Marshal shall be appropriately addressed.
- 3. The landscape plan shall address the following items:
  - Additional evergreen trees shall be added to the plan to comply with the minimum 25% evergreen requirement.
  - Trees, shrubs and plants shall be added in the open space at the driveway entrance on 7200 South, including in the landscaped island, to enhance the landscaping in this area.
  - The amount of interior parking lot landscaping shall be verified to ensure the plan complies with the required 10% minimum.
  - An irrigation plan, complying with Section 17-7-9.5 E of the zoning ordinance shall be submitted.
  - The Poplar trees shall be replaced with a longer living tree.
- The exterior stairs on the west and east building elevations shall be painted to match the adjacent building walls on all sides, including underneath.
- An exterior lighting plan, to include light locations, fixture details, photometric information, and a summary of this information, as required in Section 17-7-9.6 F of the Zoning Ordinance and the Riverwalk Thematic Elements, shall be prepared and submitted.

- 6. All signs shall be reviewed under the applicable sign requirements and approved through the sign permit process.
- 7. All requirements of the Building Official, Fire Marshal and the City Engineer shall be satisfied.
- 8. The final site plan shall be prepared in accordance with Section 17-3-3 E of the Zoning Ordinance and shall be reviewed and approved by the City Engineer, Fire Marshal and City Planner. The final site plan shall address the conditions of this approval.
- The applicant shall work with the City in drafting a Development Agreement for this project site. This agreement will need to be executed prior to Building Permit issuance.
- 10. The applicant will be required to continually work with the City in addressing and attenuating any noise and lighting impacts on the surrounding area. This may include limiting the hours of the rooftop terrace.

If you have any questions regarding this decision, please contact me at (801) 567-7229,

Sincerely,

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Lesley Burns City Planner

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### EXHIBIT D

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Final Site Plan



# TOPGOLF

### 920 WEST JORDAN RIVER BLVD **MIDVALE, UTAH**

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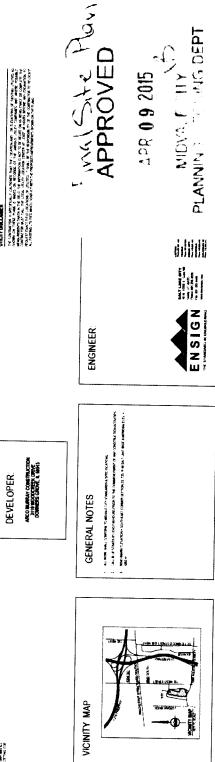
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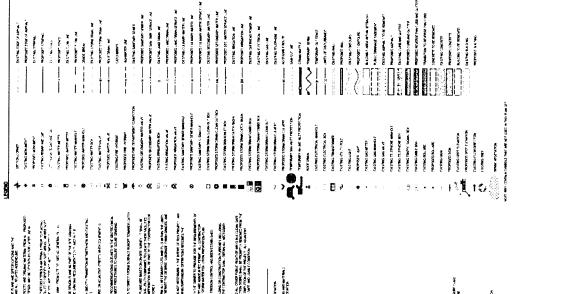


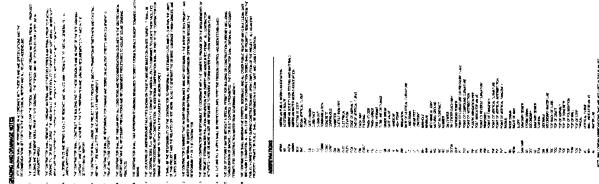
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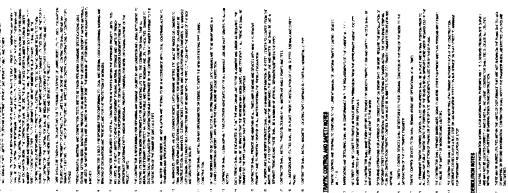
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TOPGOLF - APRIL 9, 2015

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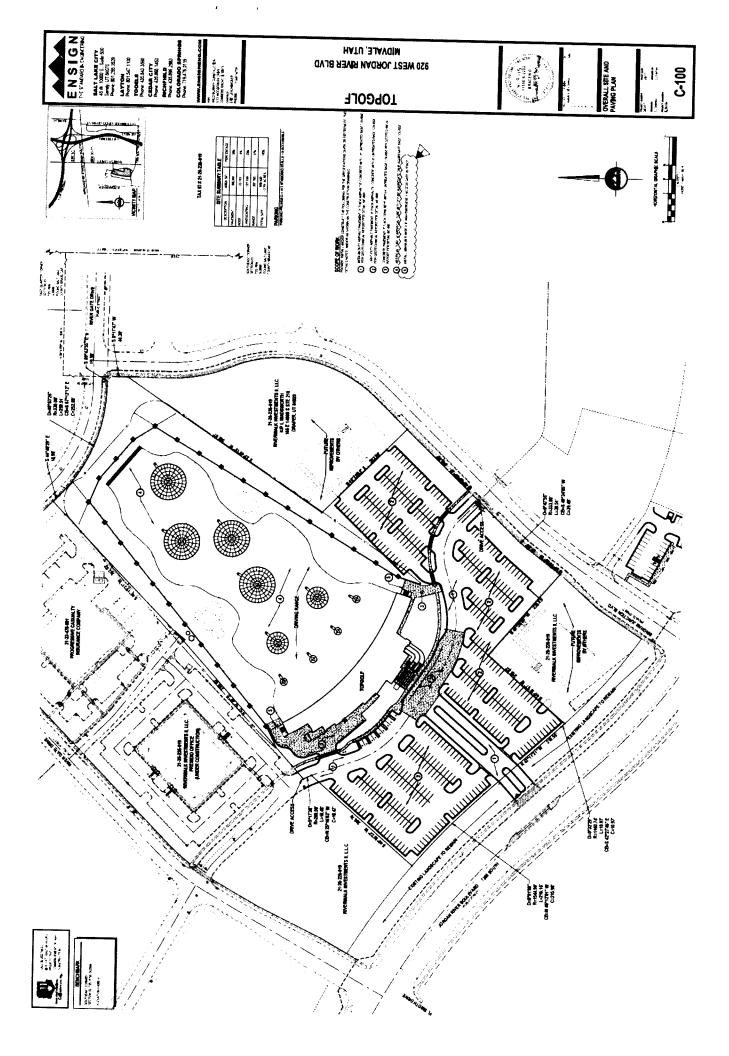
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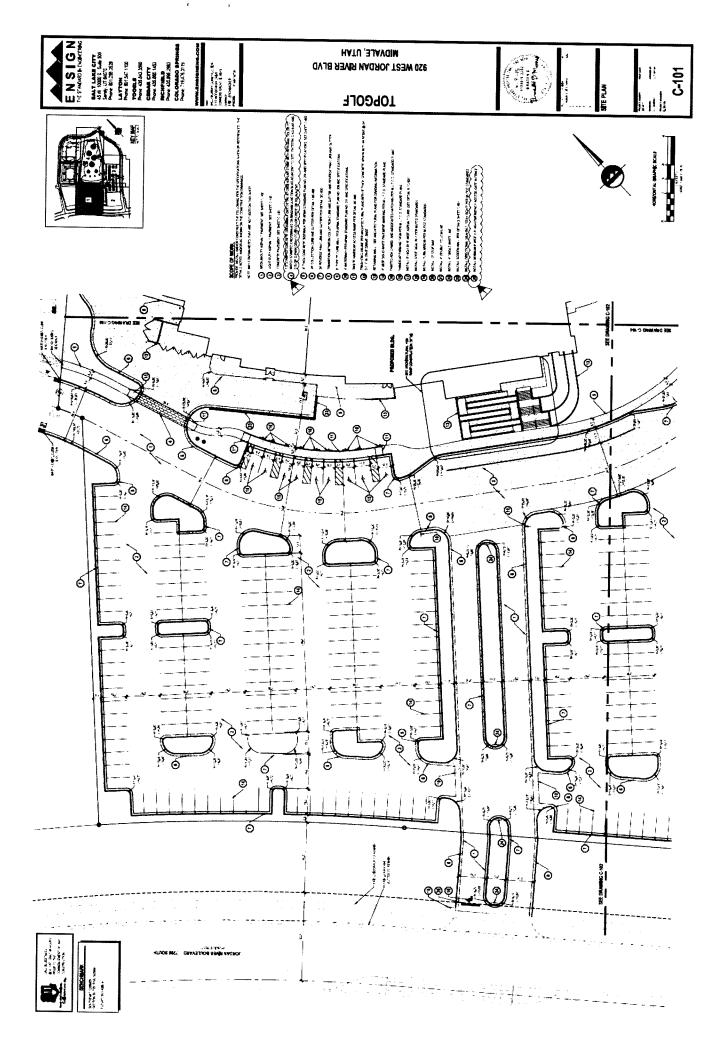
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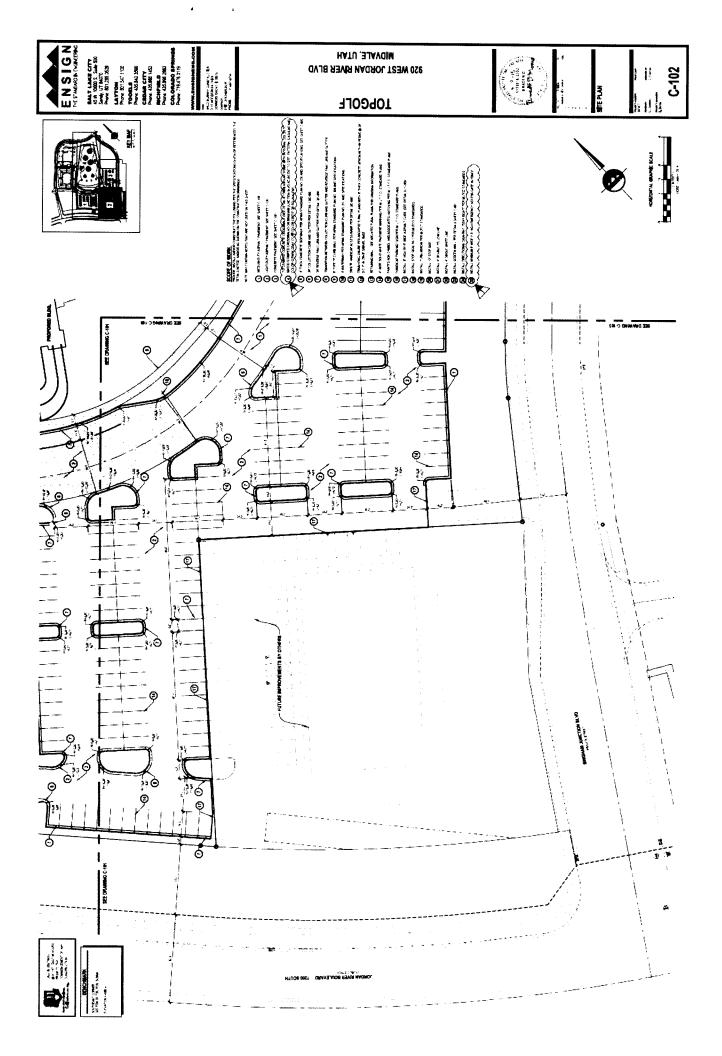
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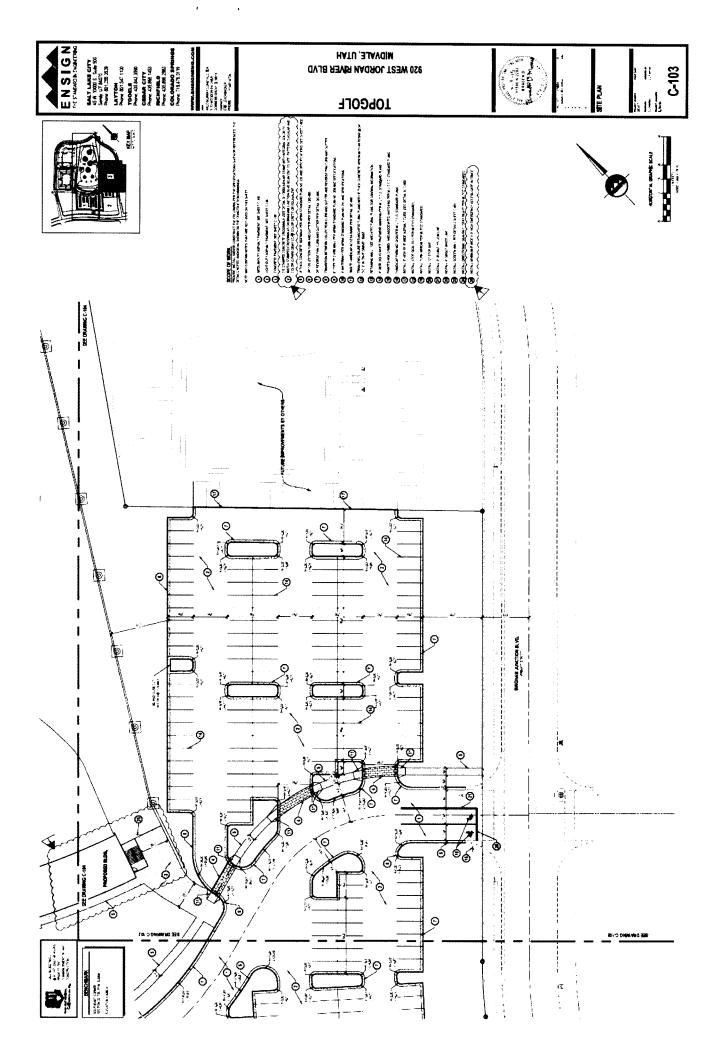
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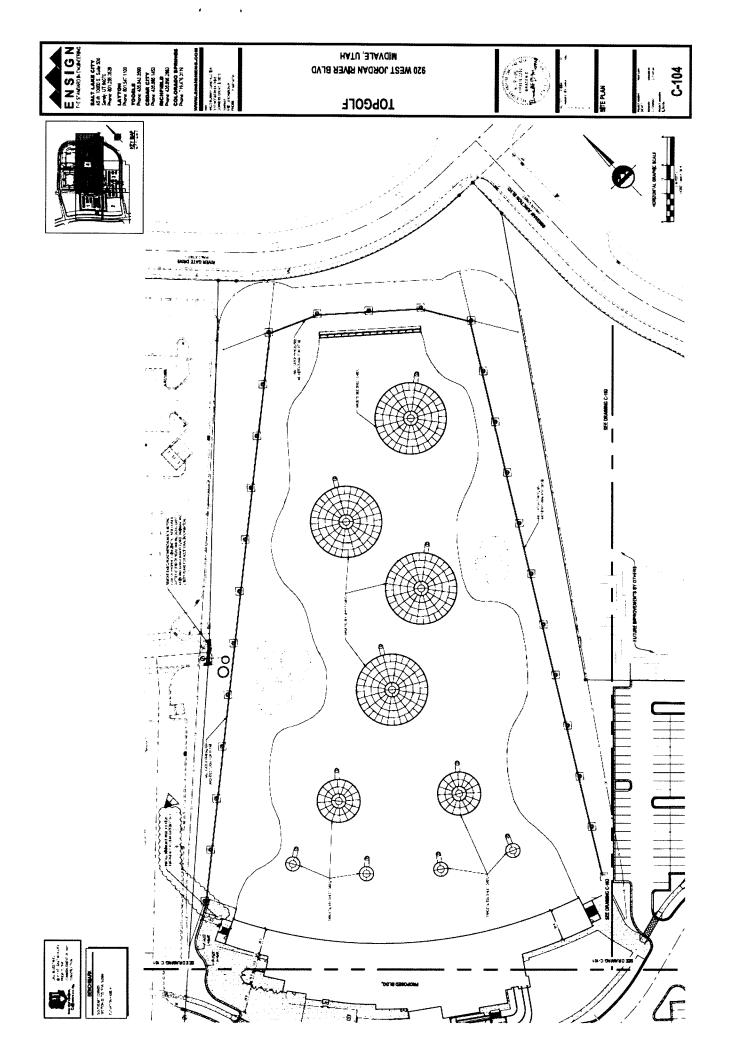
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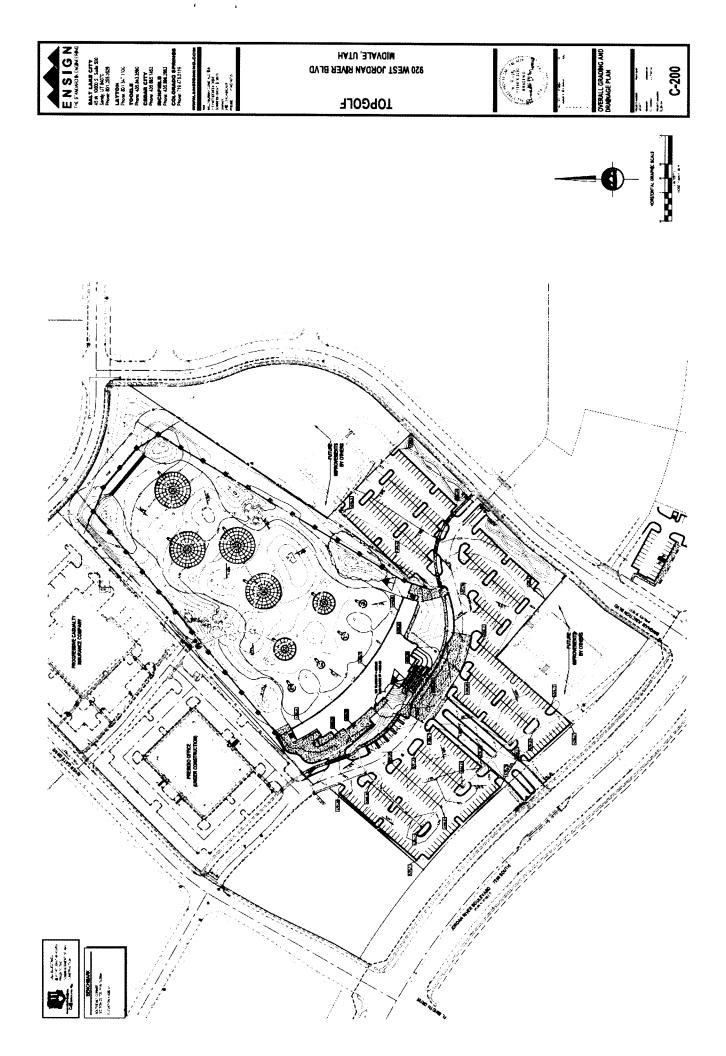


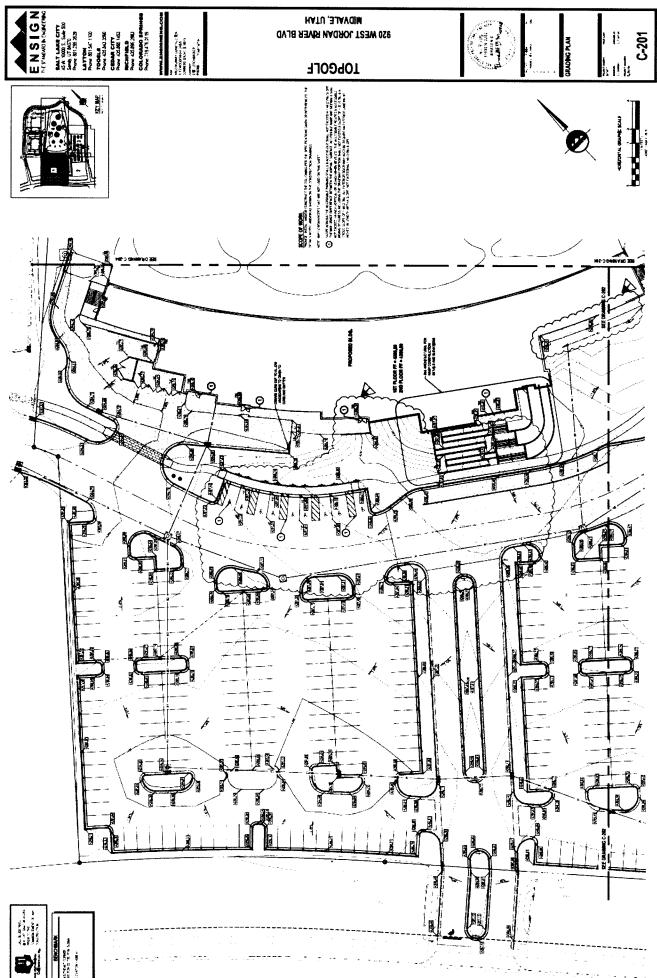






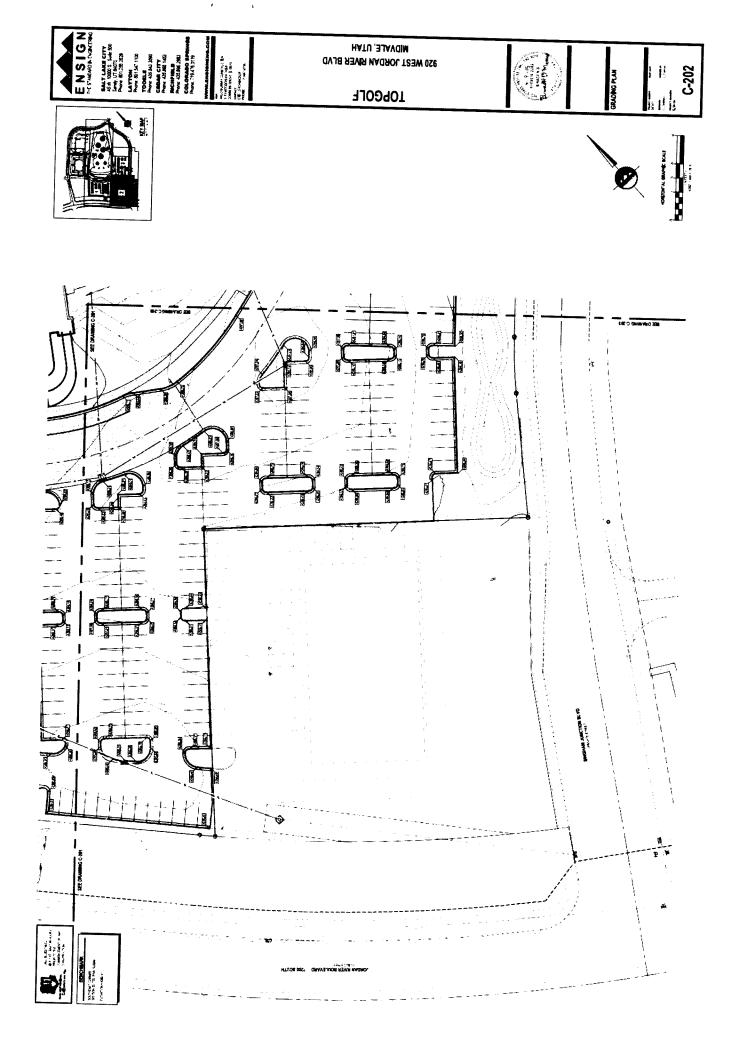


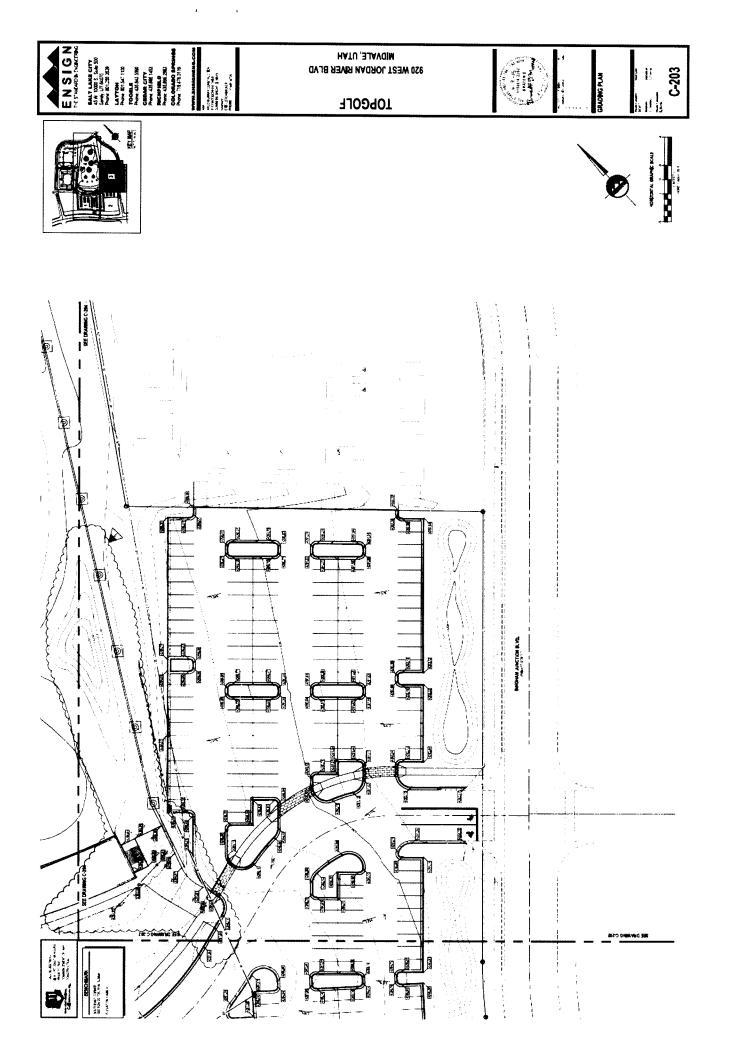


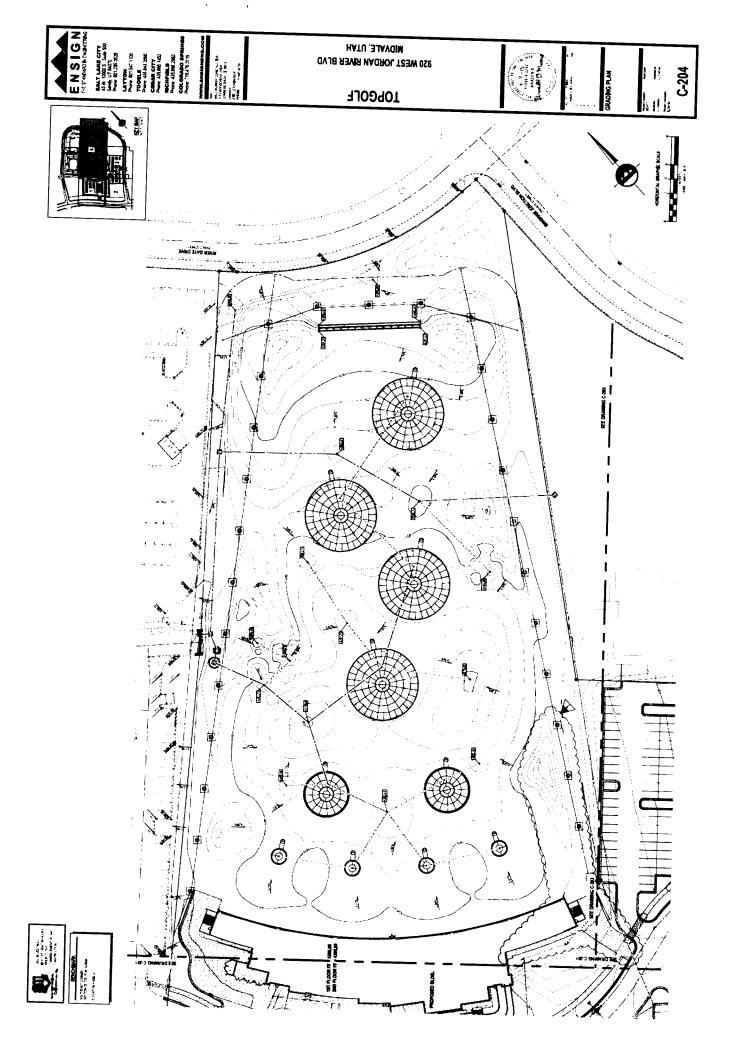


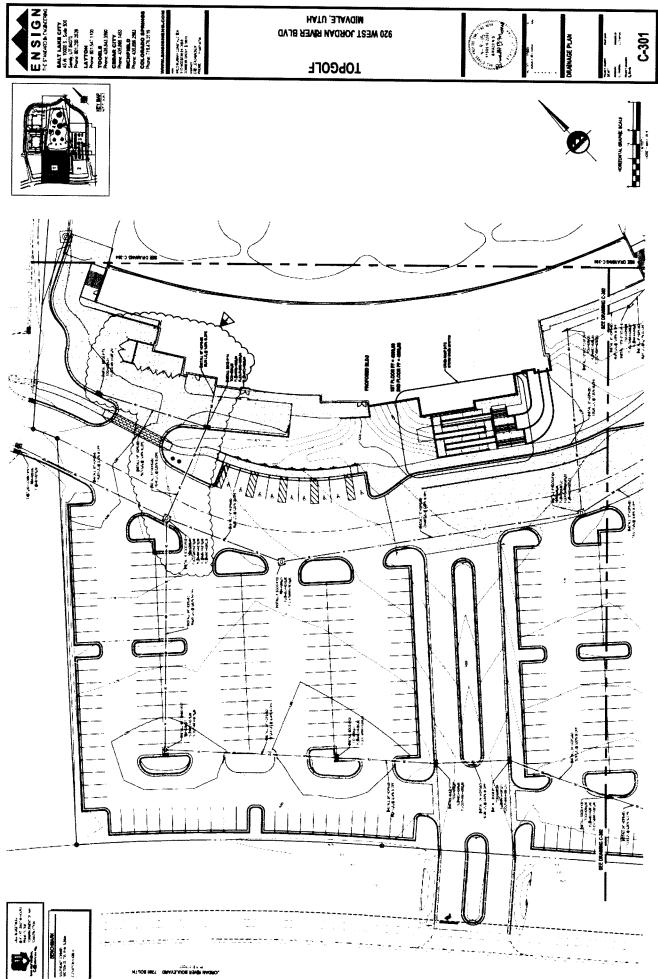
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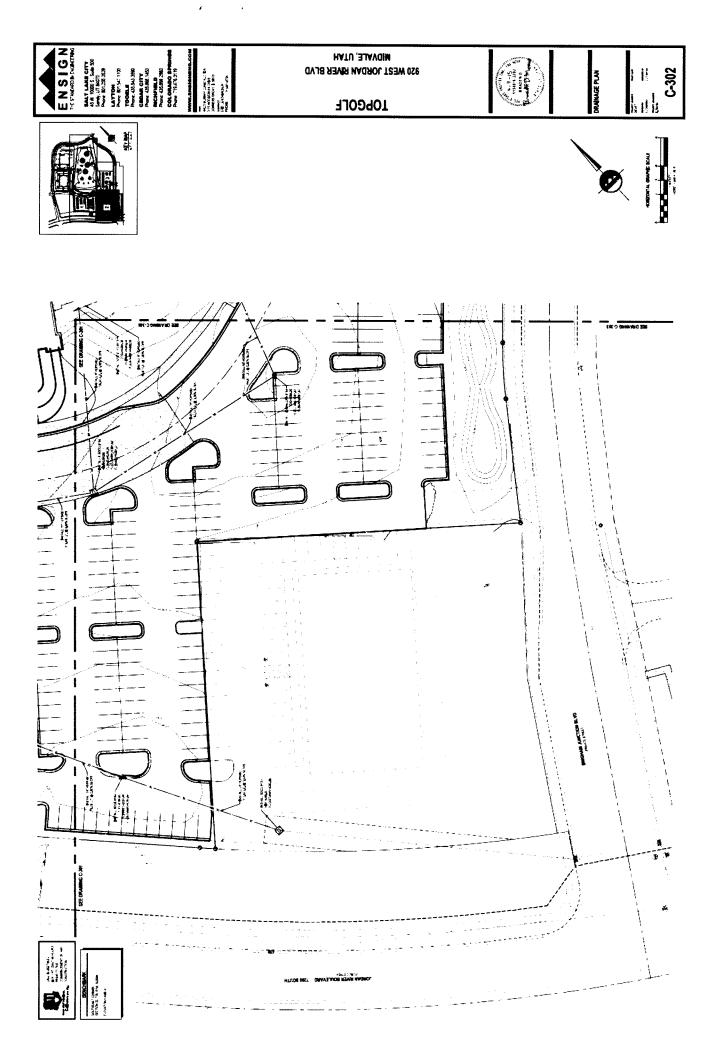


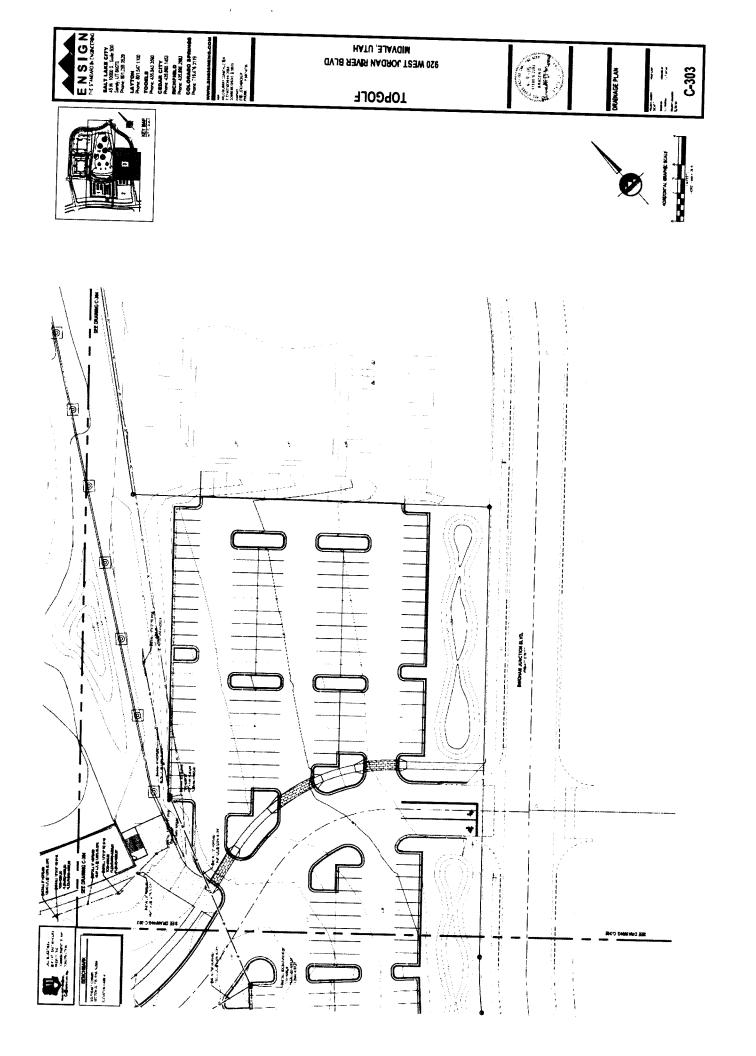


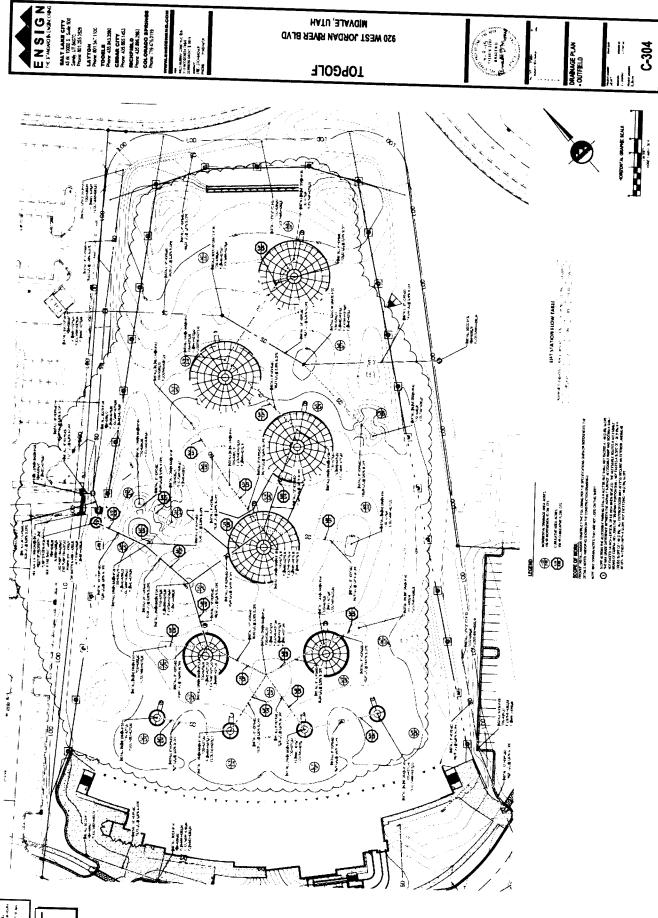


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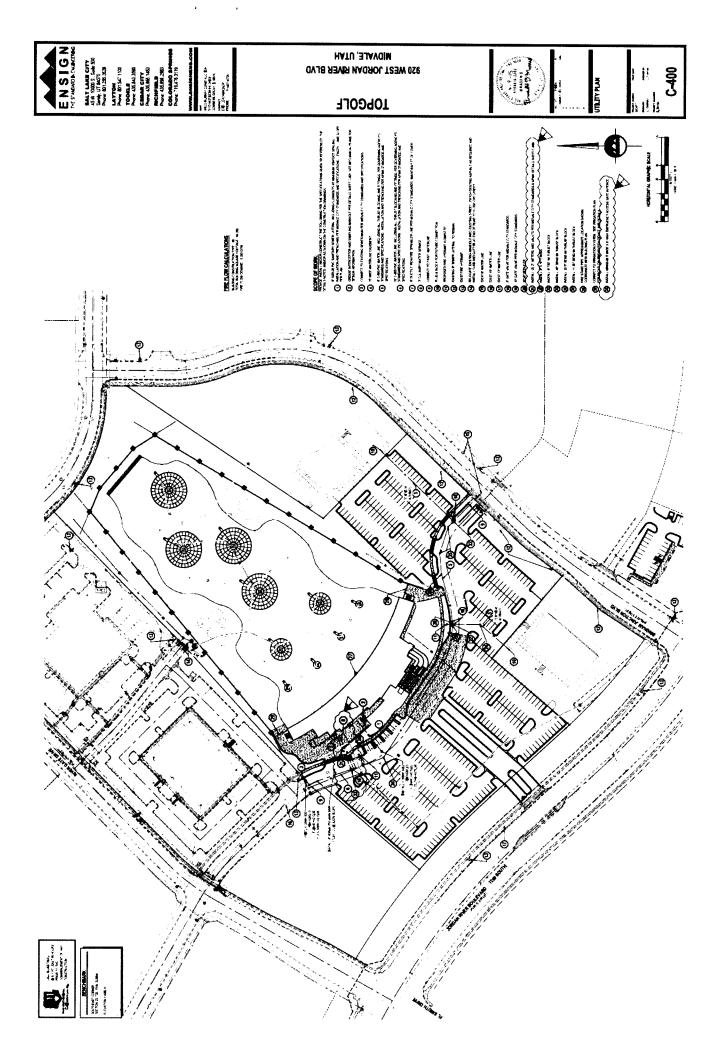
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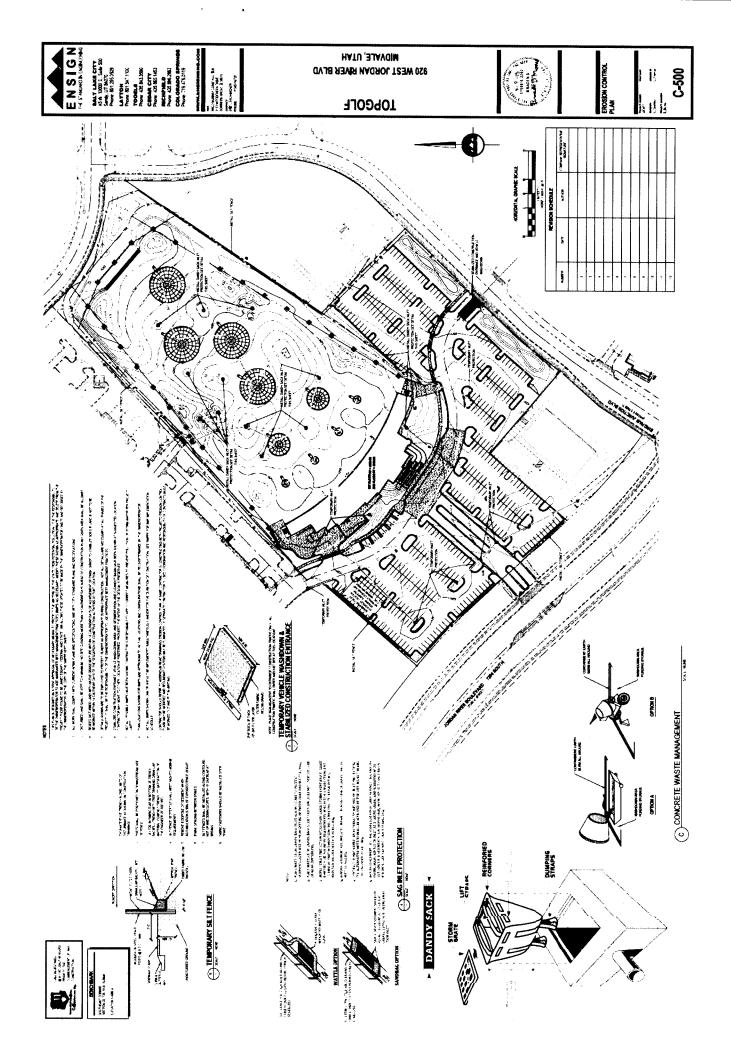


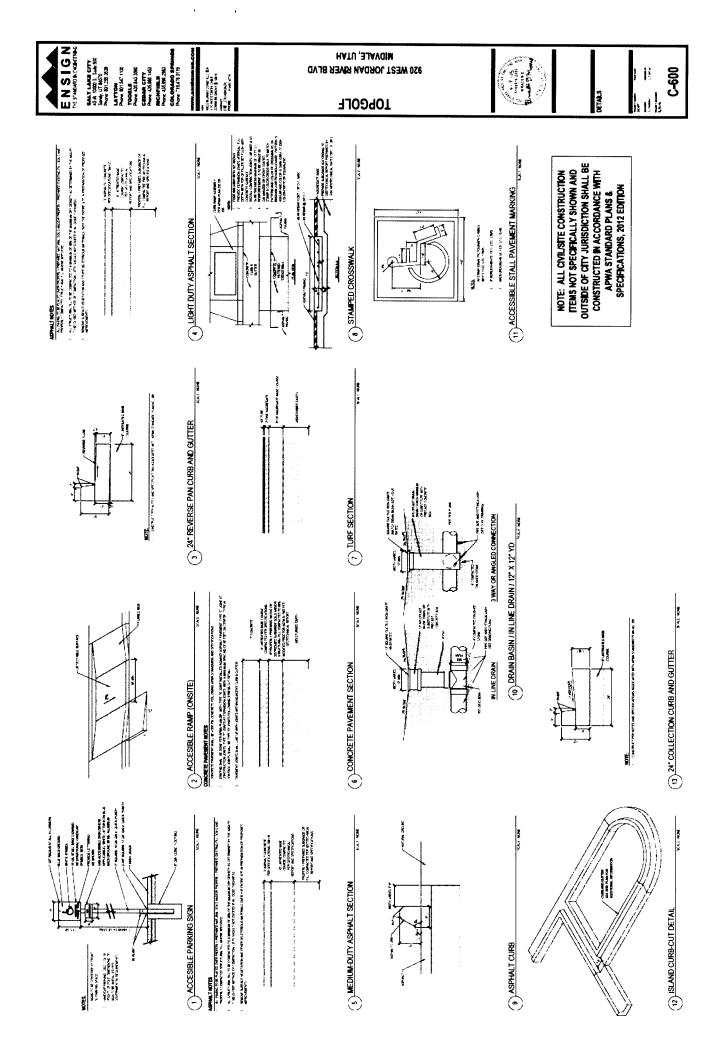


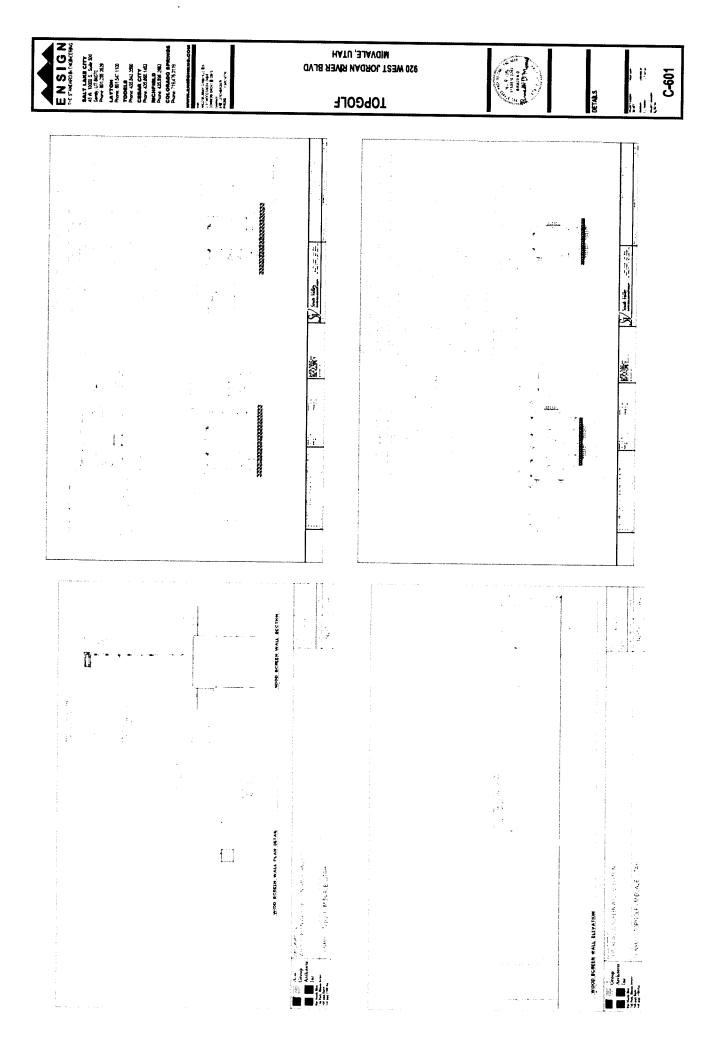


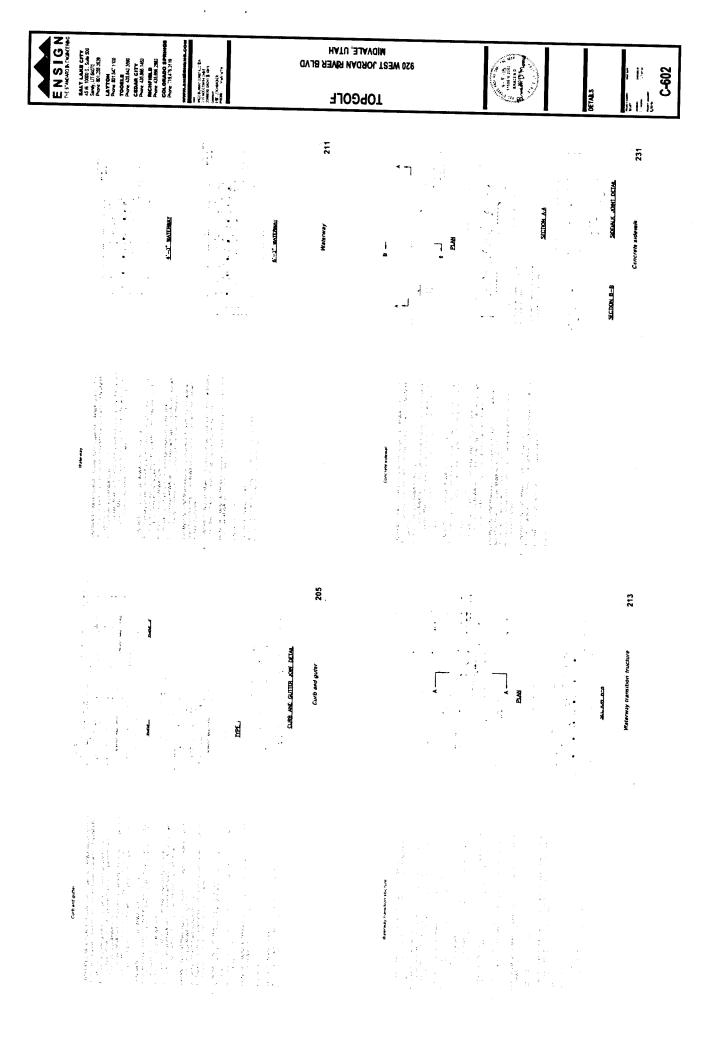


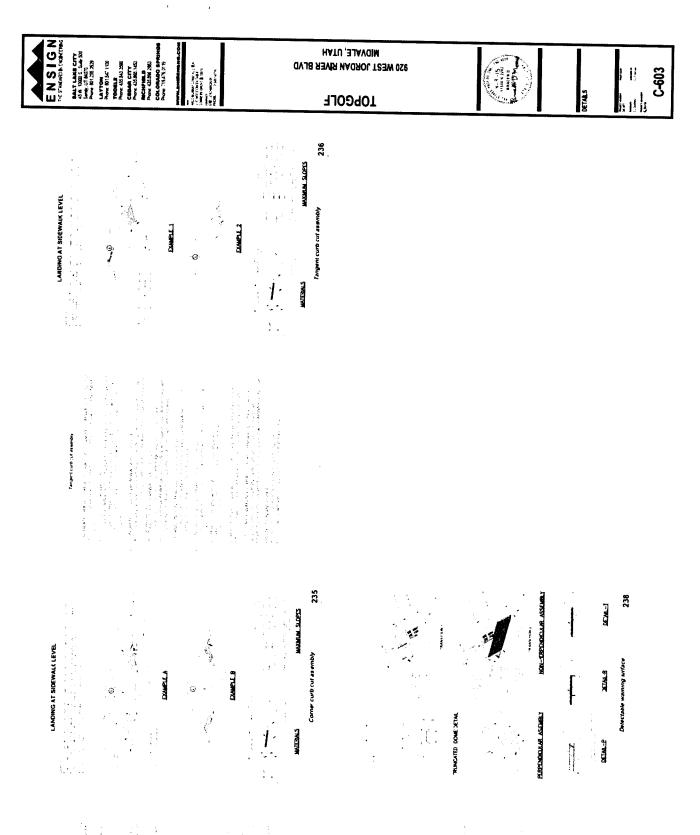










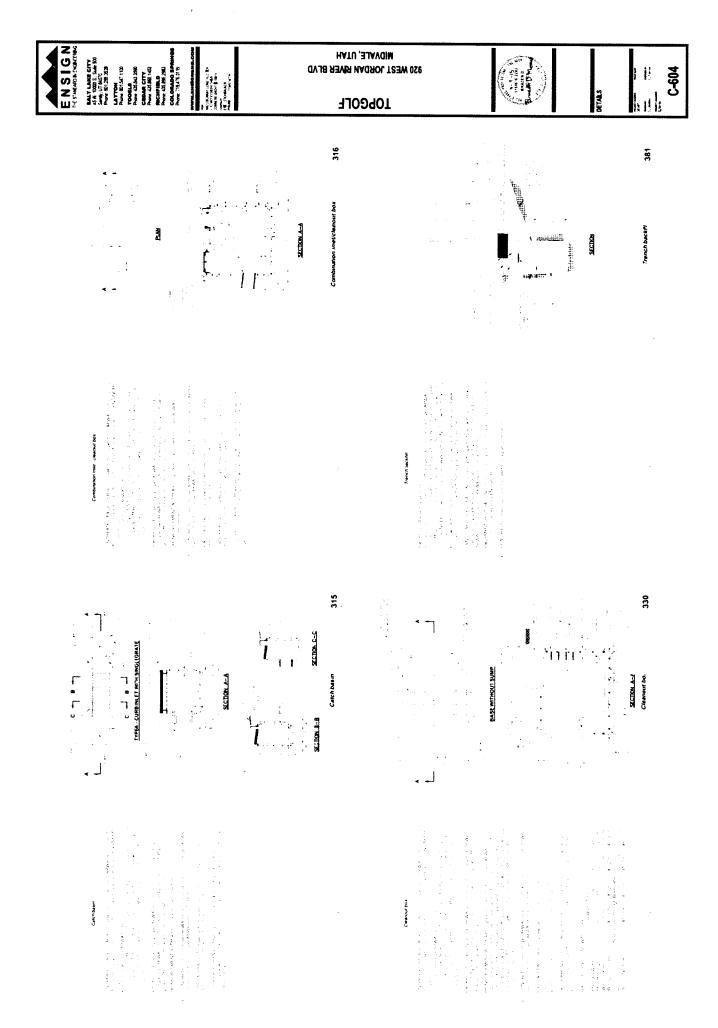


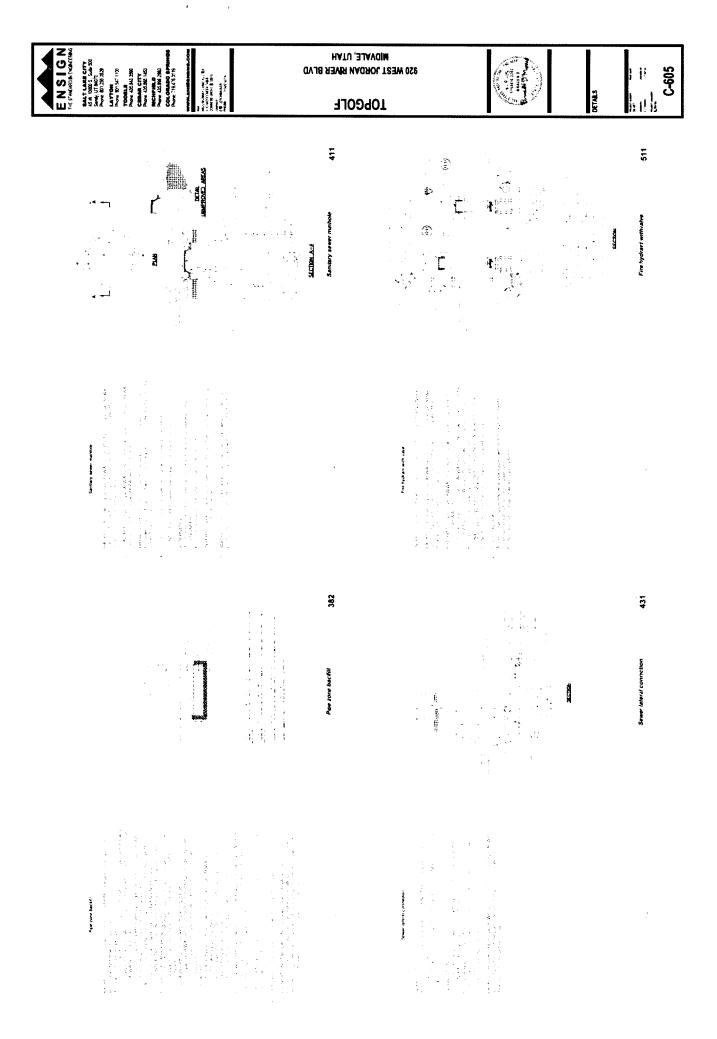


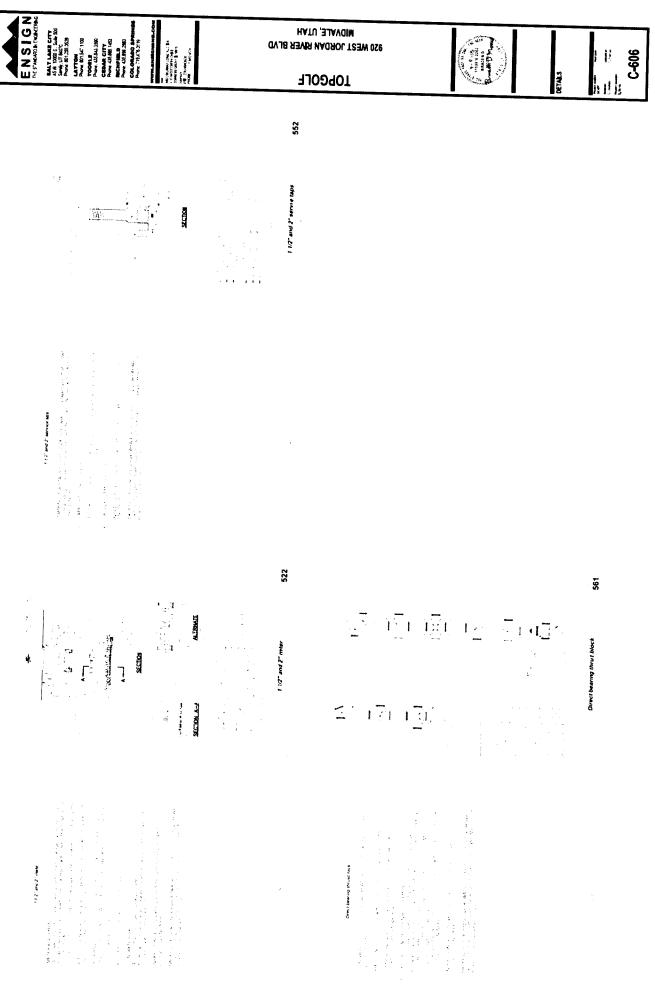
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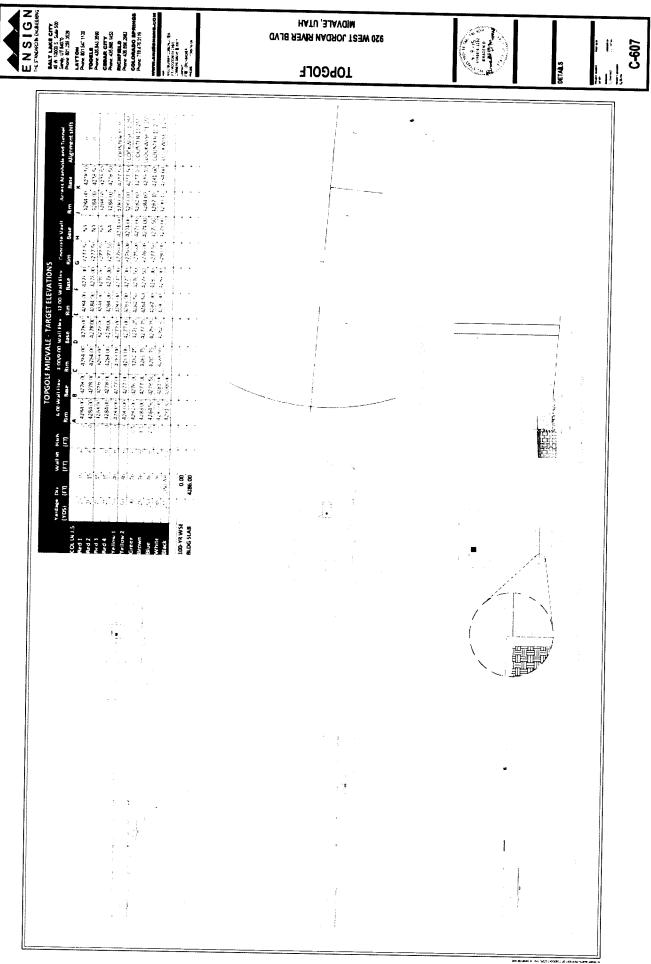
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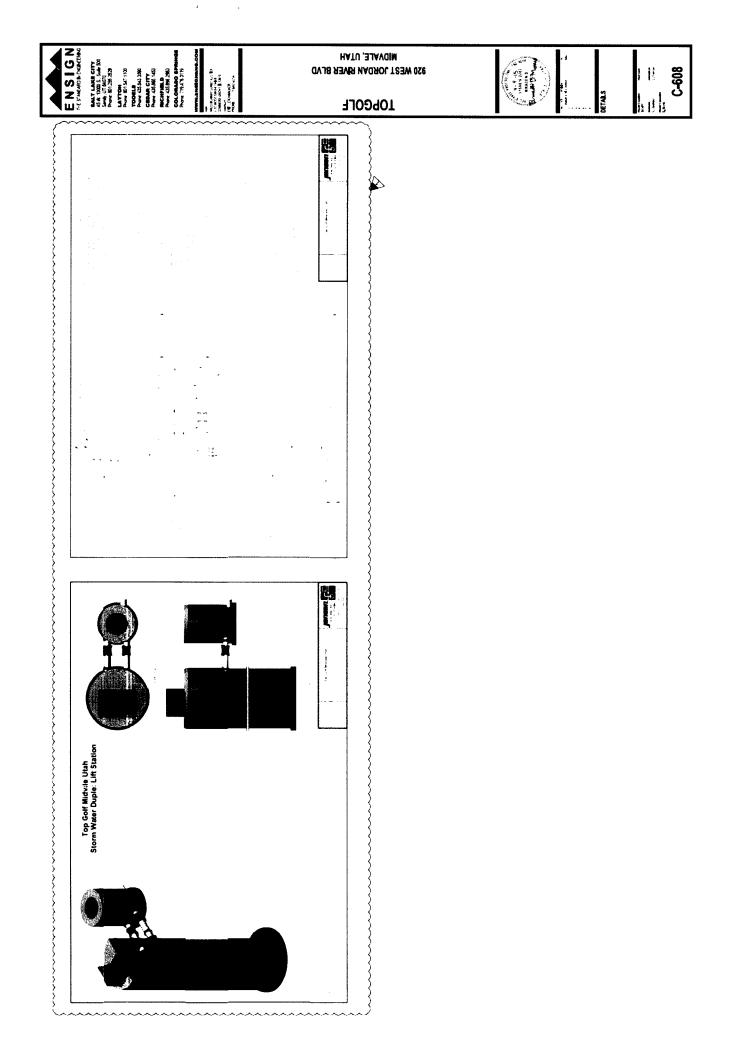


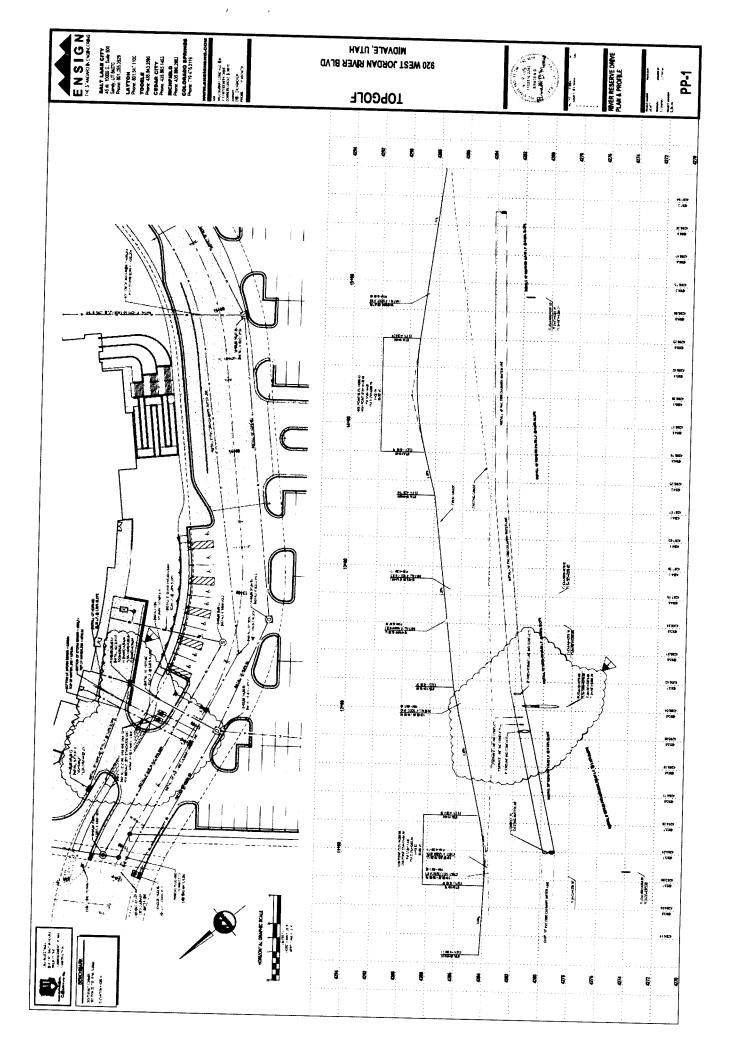


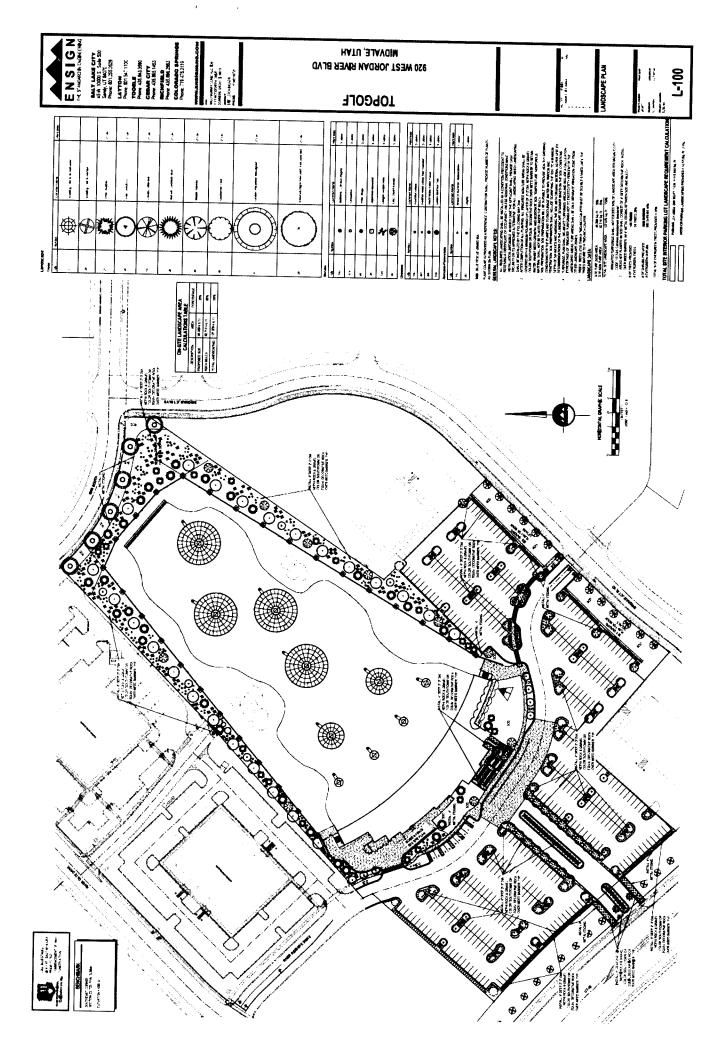


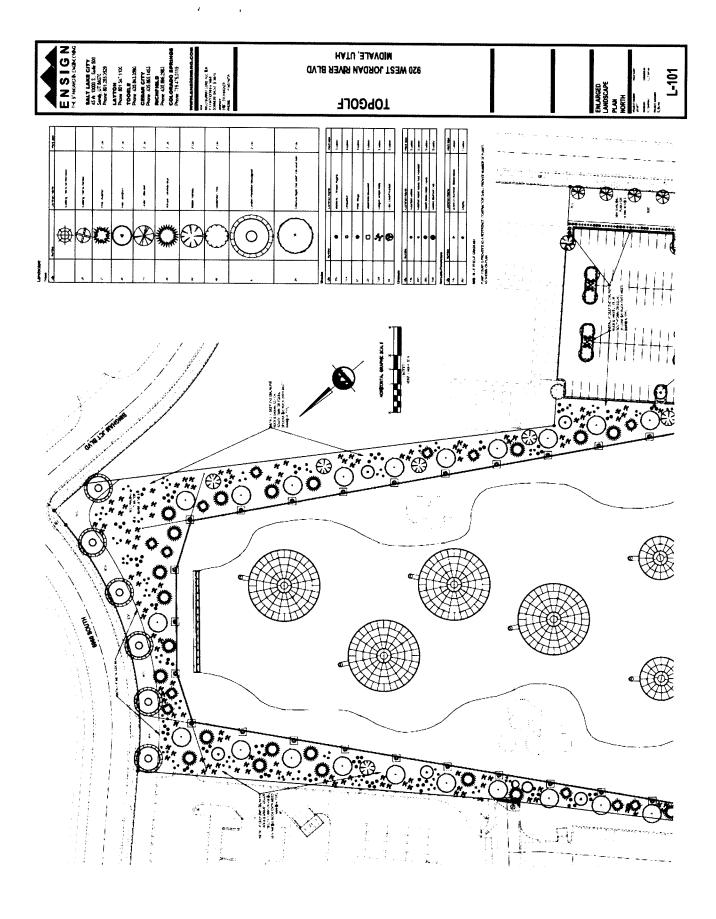


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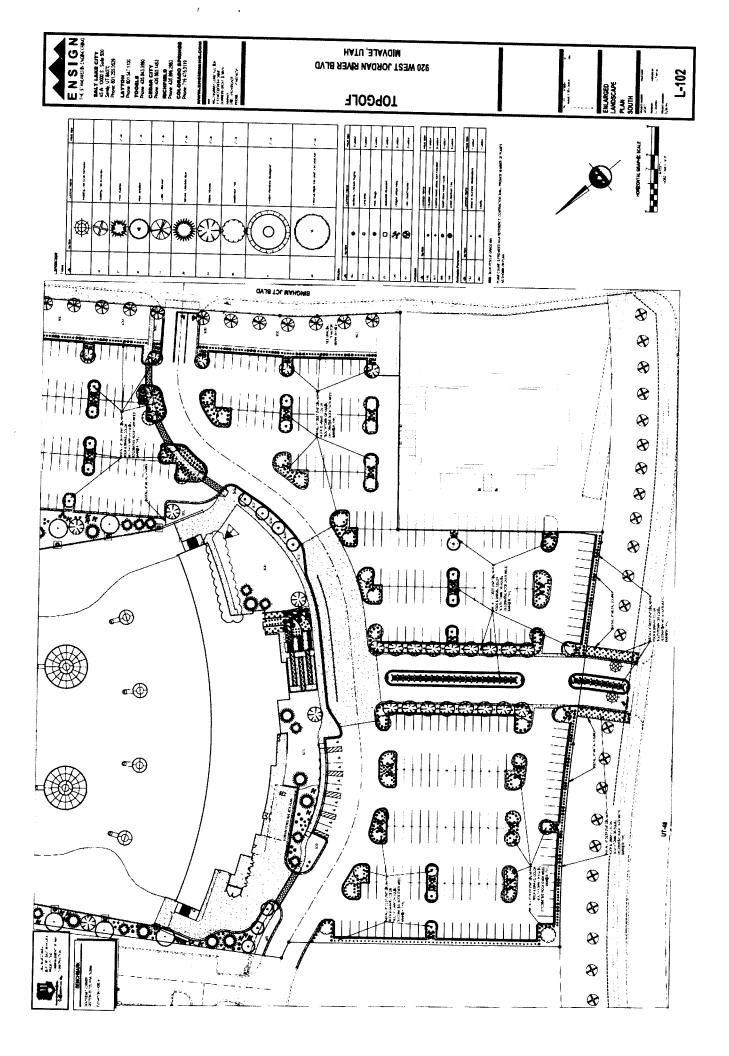


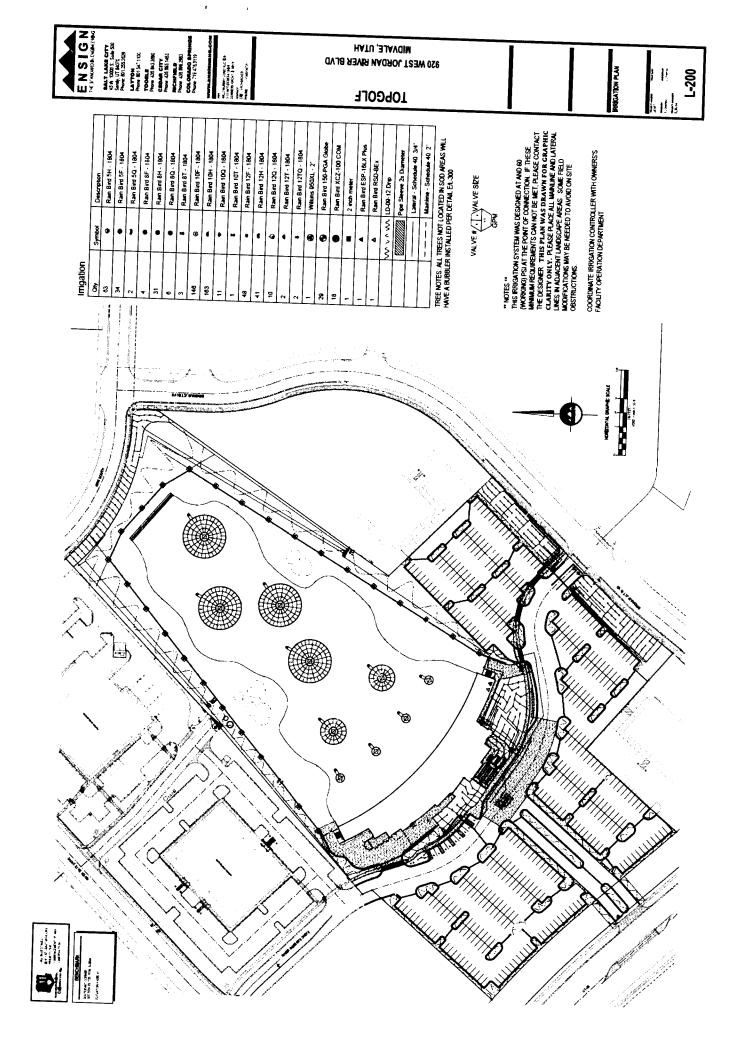


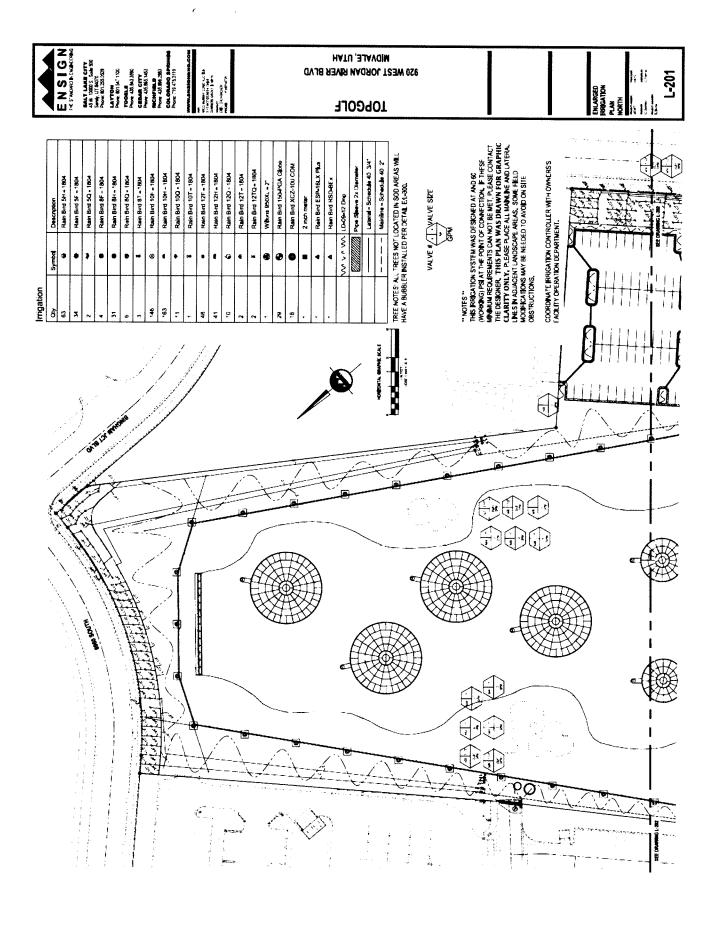




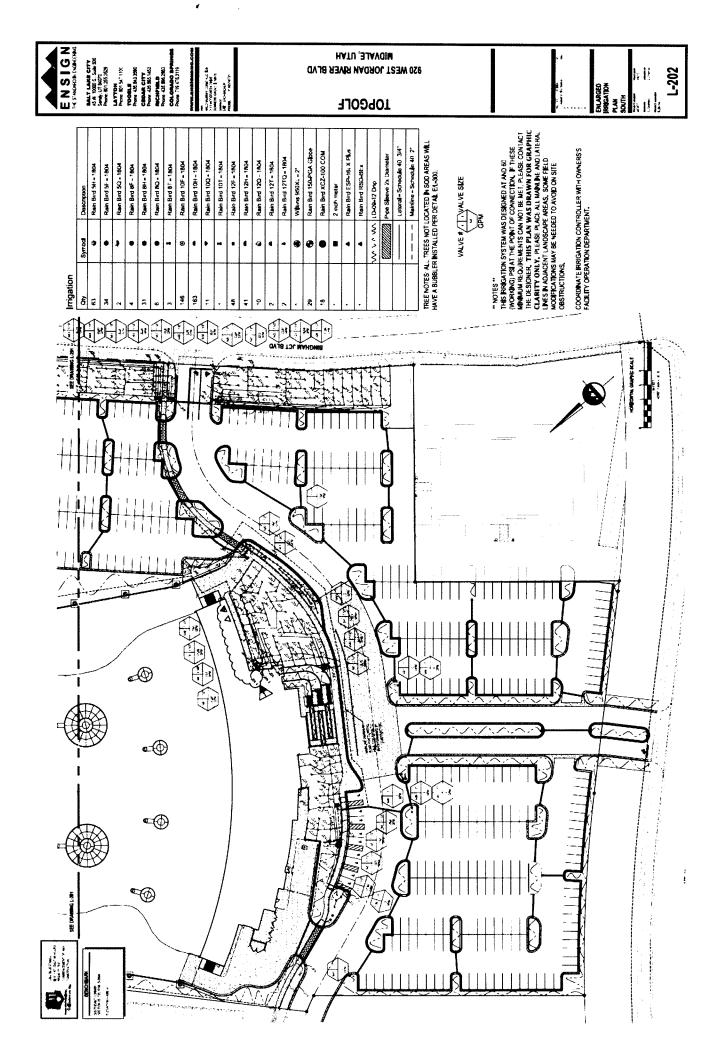


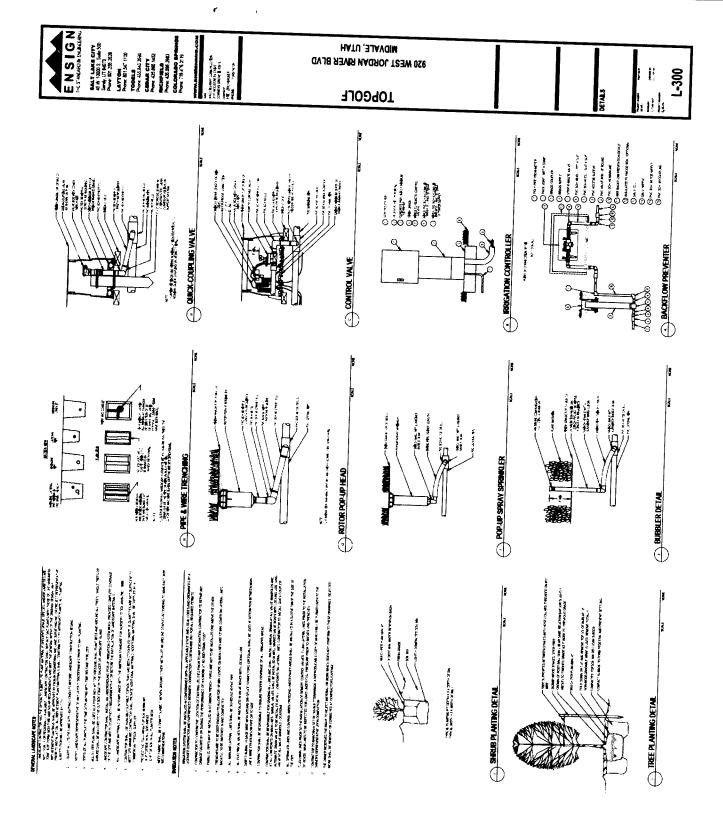


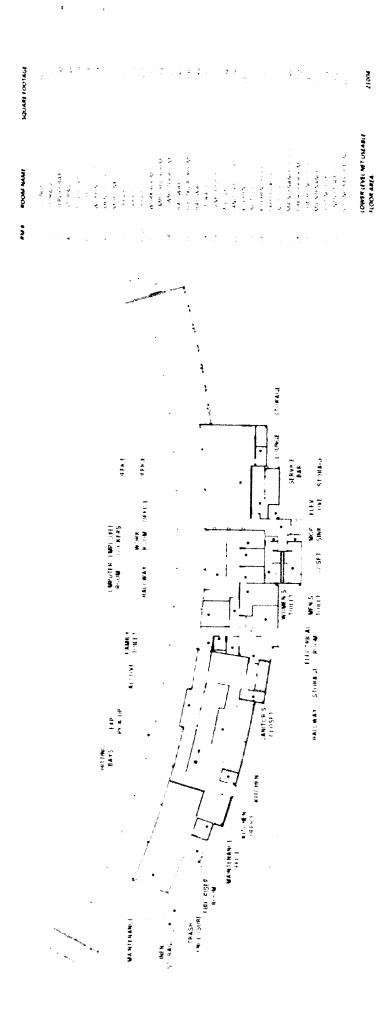










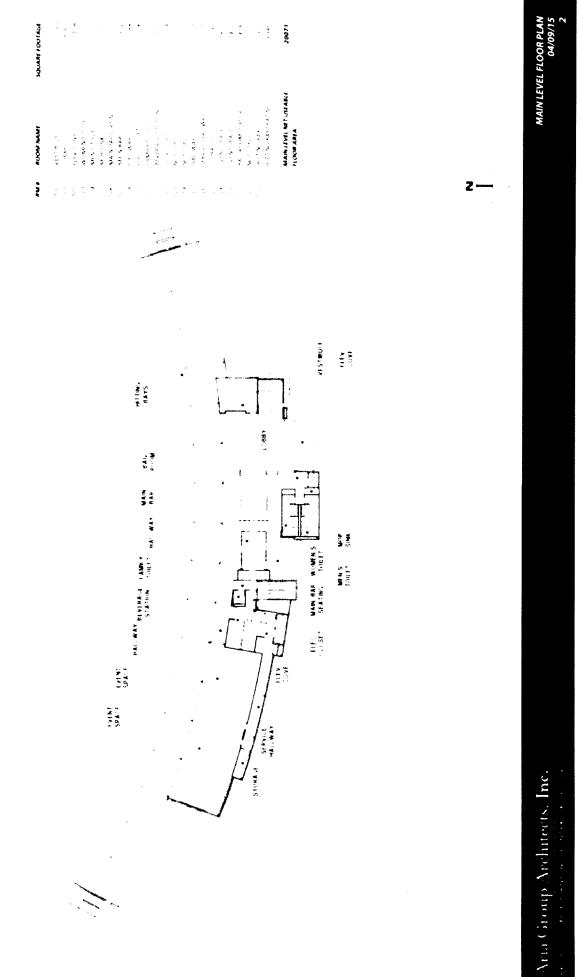


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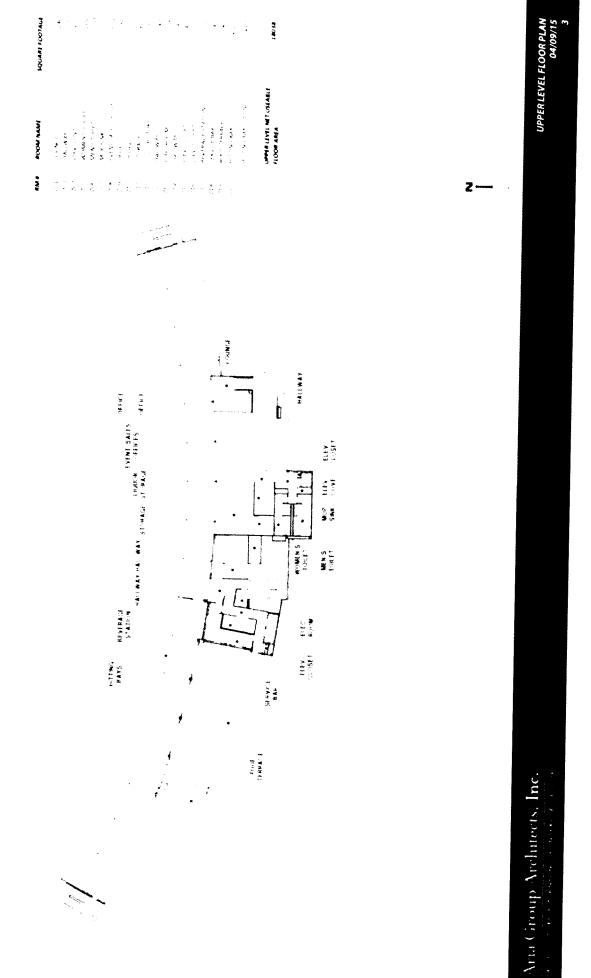
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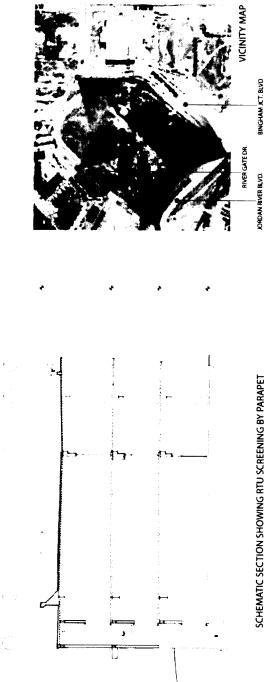
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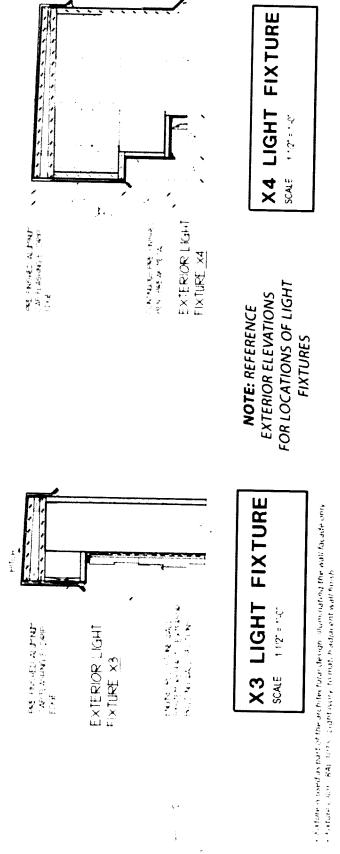
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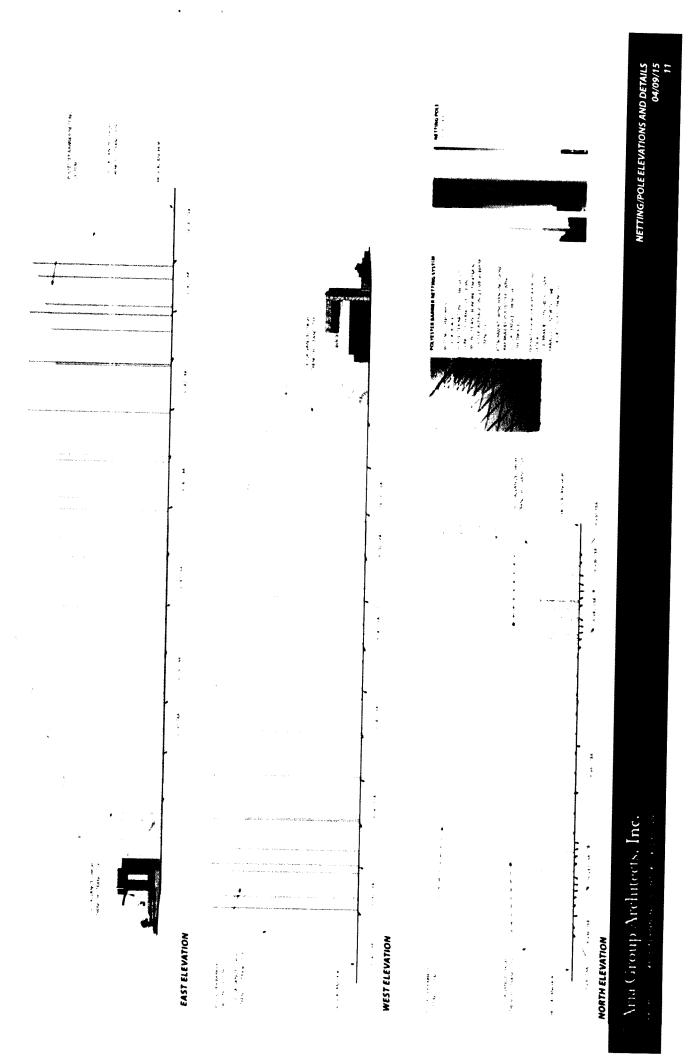
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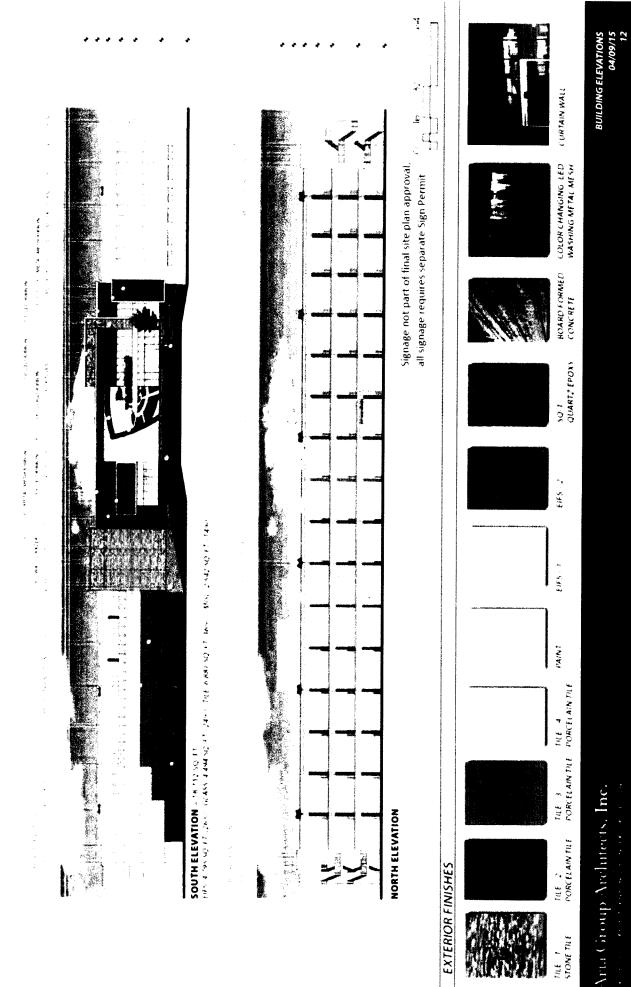
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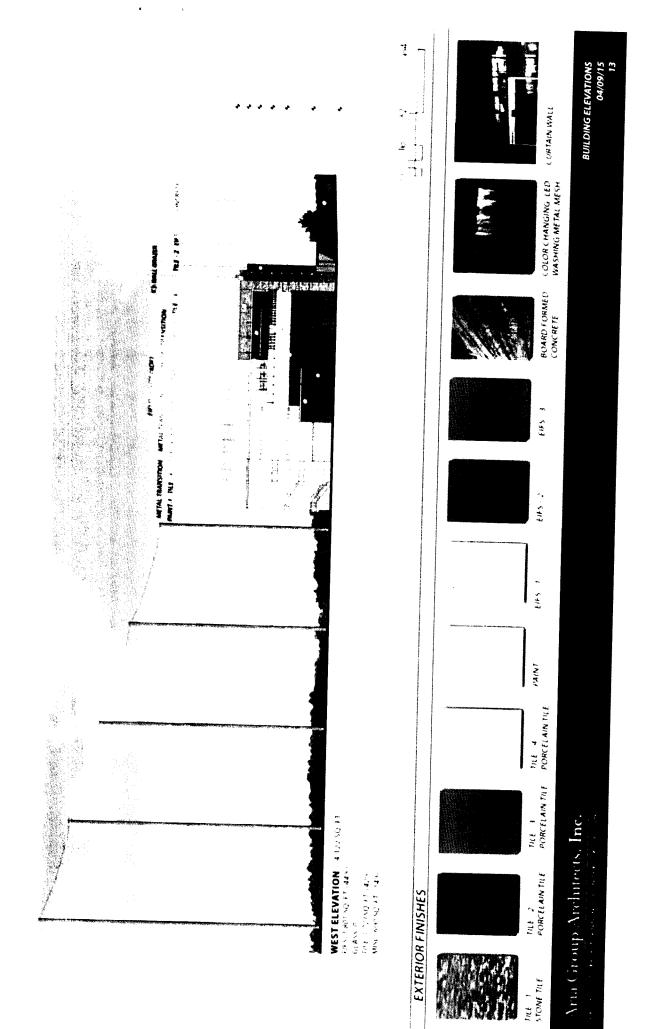


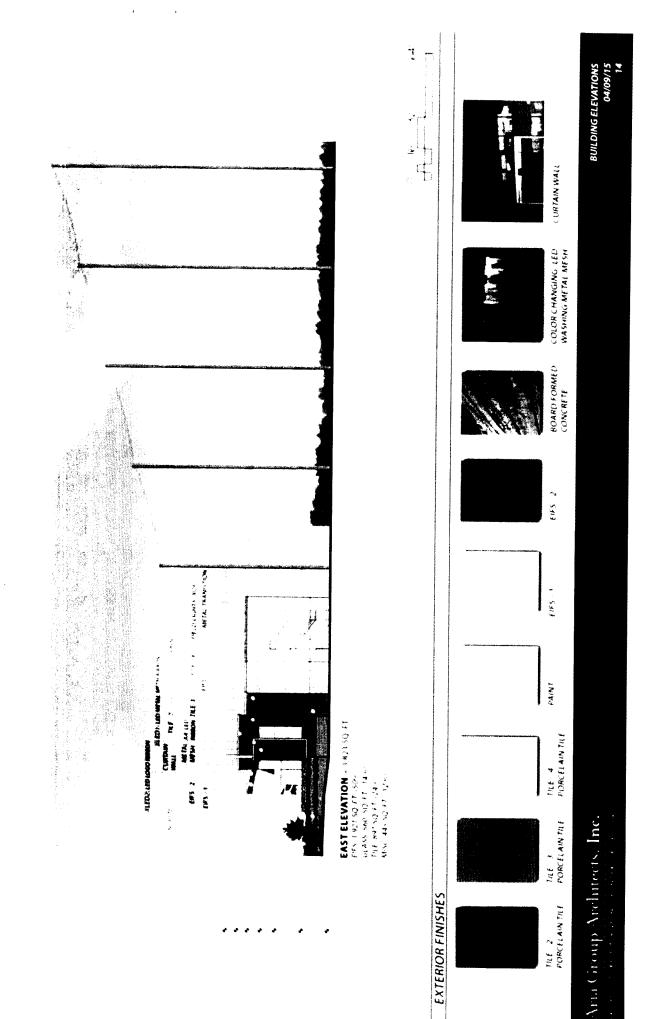


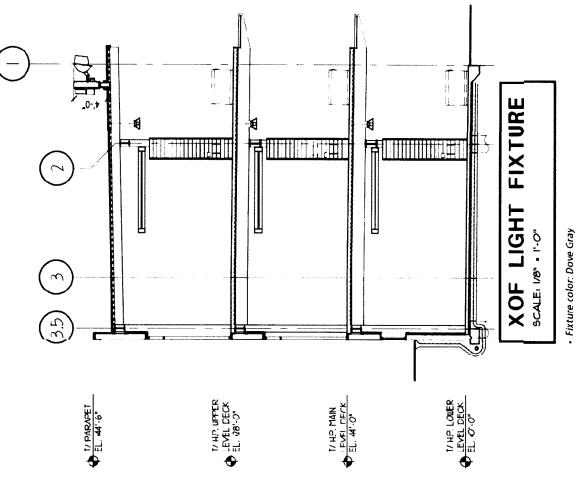
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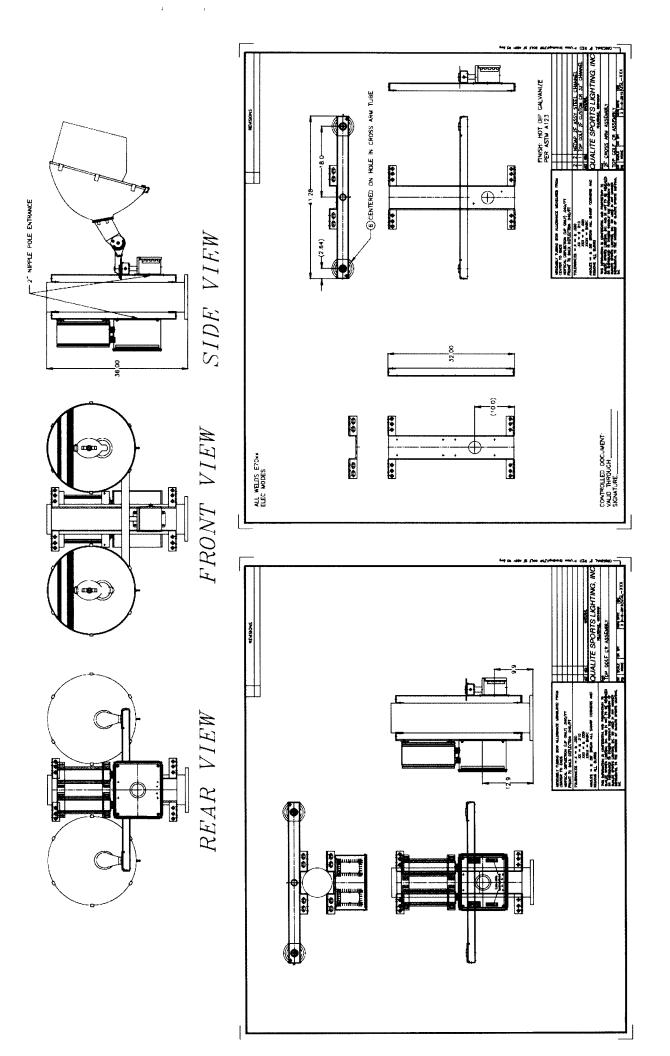


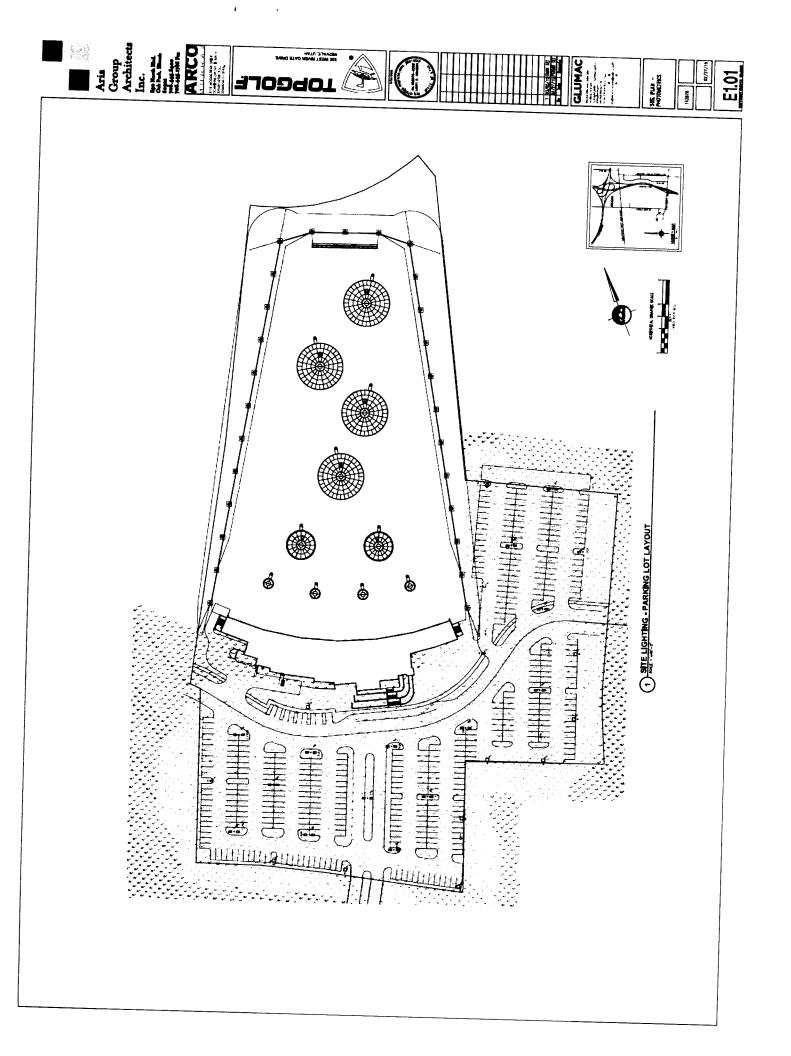


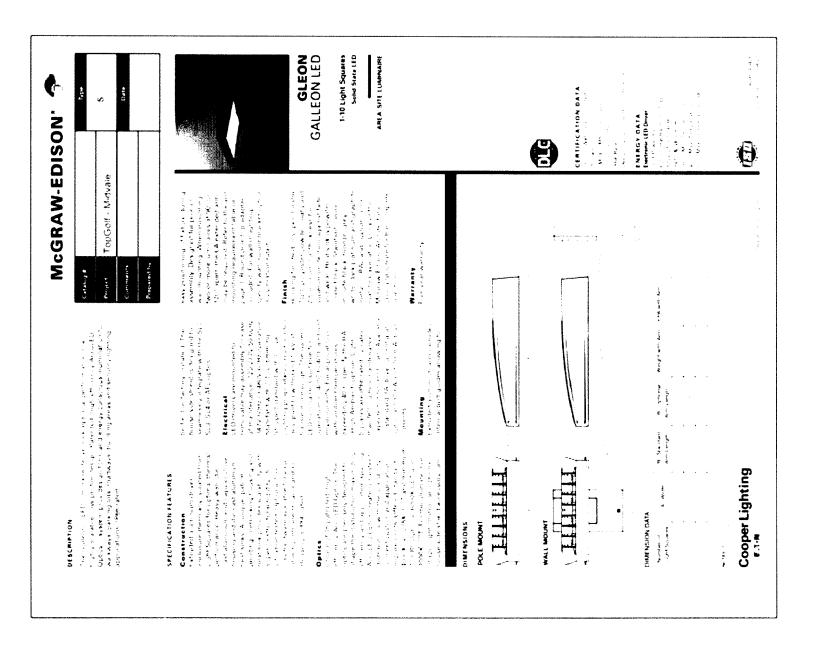
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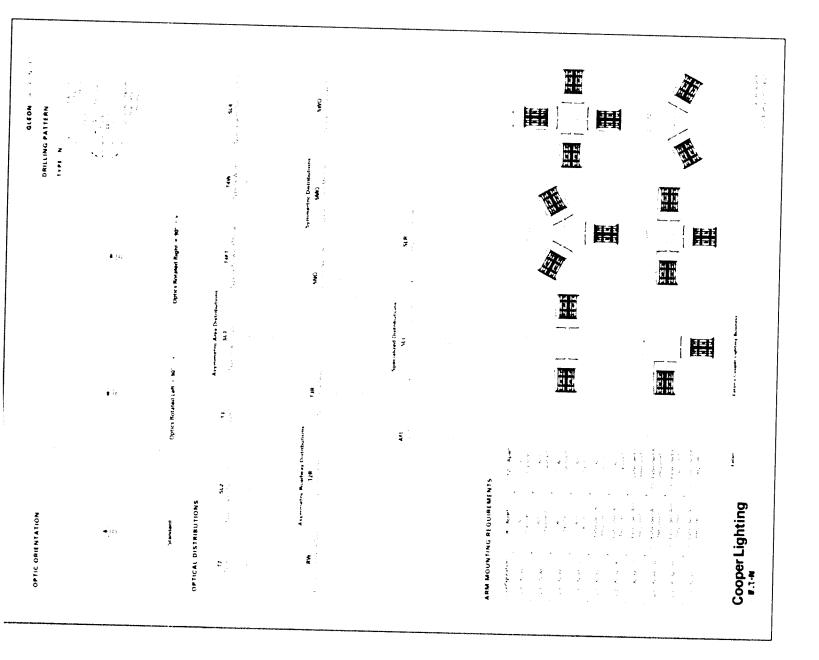
EXTERIOR LIGHTING DETAILS 04/09/15 15



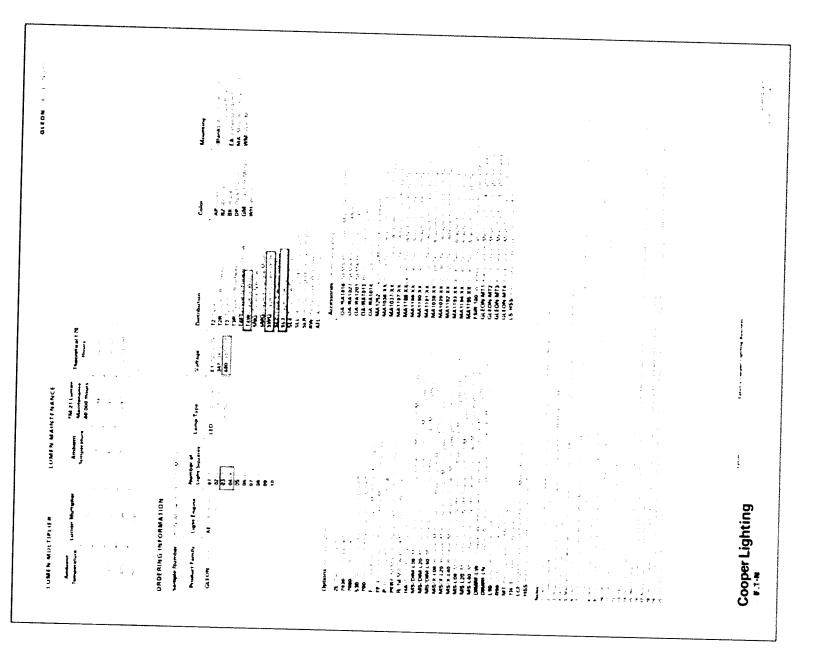




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0.0:1 0.1 1 0 1 1			DASK ON 17' SOUNDE SILLE POLE W/ 3'	ACK ON 17' SOLARE STEEL POLE W/ 3'	MOUNT ON 17" SOUVRE STEEL MOLE #/ 3"	NOUNI ON 11, SOUND STLLL POLL W/ 3'	INTERVISE SERVICE STRUCT	MARIEN IN LUMPANIE BUREDULL		
14.4; I 3.8; I 14.4; N/A	SITE LUMINAIRE SCHEDULE		1 LED. 4000K	1 11.0. 40004	1 110. 4000	1 LED, 40004	di cc550/3 - cou arti centore Ac int	e to constitute a complete installation with options as in		
AVP			ITTE 3 LED POLE UGHT W/ 400	TYPE 4 LED POLE LICHT 480	+ - 1794 5 LED POLE LIGHT	100+ 1441 1441 1441 - 2	PART BASE FINISHES MUST BE PECOS BER			
Striftics Purifies Dutside Parking Lot Property Boundary + +		HUNDRADY, NOOD, & OCHLOO MARCH	NCGRAIN EDISON JOLEON AED3-LED 400-543-M55	WCGKAN LDYSON JOLLON-ALD4-LLD-480-14W-HSS	מכמאות ונוגיטה ¢כורנטת-אנס2-ונוז-אפט-אמיים	WCCRAM EDISON #GLEON-AE02-LED-400-520-H55	1 ALL DRUG AND POLE FINASAGS MUST BE BLACK. FOLE BASE FINISHES MUST BE PECOS BEGEL CC350/3 - COLOR-CRETE OR LOUMALENT 1 ALL DRUG AND POLE FINASAGS MUST BE BLACK. FOLE BASE FINISHES MUST BE PECOS BEGEL CC350/3 - COLOR-CRETE OR LOUMALENT 1 ALL DRUG AND POLE FINASAGS MUST BE BLACK.	A PROVING AND SUCCESSION OF THE REPORT OF		

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