

JOINT DEVELOPMENT AND JOINT USE AGREEMENT
BETWEEN CAPISTRANO UNIFIED SCHOOL DISTRICT AND
THE CITY OF SAN JUAN CAPISTRANO

THIS JOINT DEVELOPMENT AND JOINT USE AGREEMENT (this "Agreement") is made and entered into this 25 day of MAY, 1999 by and between Capistrano Unified School District (the "District"), a school district duly organized and operated under the laws of the State of California, and the City of San Juan Capistrano (the "City"), a California municipal corporation, both of whom shall be collectively referred to as the "Parties," and is based upon the following:

R E C I T A L S :

WHEREAS, Section 10900 et seq. of the Education Code of the State of California authorizes the City and the District to contract with one another to establish, construct, improve, operate and maintain recreational facilities and programs; and

WHEREAS, the City and the District have approved a joint plan (the "Master Plan") that provides for the development and shared use of a portion of a school site owned by the District known as the Marco Forster Middle School (hereinafter the "School Site"). The Master Plan and all related documents are attached hereto as Exhibit A and incorporated herein as if fully set forth; and

WHEREAS, the Master Plan envisions development of a roller hockey rink facility, other related recreation oriented improvements (the "Facilities") upon the School Site which will provide an important educational and recreational opportunity to District students and to the community of San Juan Capistrano; and

ATTACHMENT 1

WHEREAS, both the District and the City wish to have the rights to use those Facilities which are to be constructed on the School Site in the manner and at the times indicated in this Agreement; and

WHEREAS, District is willing to grant to City the right to allow the public to use the Facilities on the School Site in exchange for the City's performance hereunder.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

SECTION 1 CONSTRUCTION

1.1 Compliance with the Division of State Architect. The architect's plans and specifications for the Facilities shall be submitted to the Division of the State Architect (DSA) for approval. The construction and installation of the Facilities to be placed on the School Site shall comply with all requirements of the Division of the State Architect (DSA).

1.2 Construction of the Facilities. City shall construct or cause to be constructed at its sole cost and expense the Facilities as provided in the plans and specifications and agrees to provide to District information regarding the award of a construction contract and the progress of the construction of the Facilities.

1.3 Change Orders. Except as provided below, City shall have the exclusive authority to approve change orders applicable to the Facilities if the same become necessary. City agrees to supply information regarding the change orders to the

District prior to the work commencing on the change order.

1.4 Additional Work. City and District may mutually amend this Agreement, in writing, to modify the scope of the work related to the Facilities to include other construction work. District shall be responsible for any and all costs associated with such additional work which is solely for the benefit of the District. City shall be responsible for any and all costs associated with additional work which solely benefit the City.

1.5 Cooperation Between the City and the District. City and District shall cooperate in the construction of the Facilities and shall use all reasonable diligence in granting and/or obtaining any and all approvals necessary for the construction of the Facilities.

1.6 Schedule for Development. District and City shall mutually agree in writing upon a development schedule for the construction of the Facilities which will not disrupt the normal use and operation of the Marco Forster Middle School such that it hampers the school's ability to properly function and carry out its educational purposes.

1.7 Notice of Completion. Upon City and District approval of the final inspection of the Facilities, City shall issue a Notice of Completion and mail such notice to District.

SECTION 2

OPERATION

Except as otherwise provided in this Agreement, City shall be responsible for the operation of the Facilities and for all costs associated with the operation of the Facilities on the School Site. City agrees to annually pay District twenty percent (20%) of the amount that City is to contractually receive from City's Operator of the Facilities. At the end of each fiscal year, City shall certify to District the exact amount of revenue City has received from the City's Operator. Within thirty (30) days of said certification, City shall then transmit the amount due and owing to the District.

SECTION 3

MAINTENANCE

3.1 Maintenance Costs. Except as otherwise set forth in this Agreement, City shall maintain the Facilities at its sole cost and expense during the term of this Agreement and any extensions thereof. City agrees to take all necessary action to maintain and preserve the Facilities in a safe, healthy and good working order condition satisfactory to the District and in compliance with all applicable laws.

3.2 Acts of God. The above notwithstanding, City shall not be responsible to repair or replace the Facilities if they are partially or totally damaged or destroyed by an act of God, including but not limited to occurrences such as earthquake, flood, fire or storm. In the event of such occurrence, the Parties will consider what action, if any, shall be taken to restore the Facilities.

3.3 Abatement of Dangerous Conditions. City shall be responsible to take appropriate action to abate any dangerous conditions. Any costs incurred by District to abate the dangerous condition shall be reimbursed by City within thirty (30) days of City's receipt of notice of such costs.

3.4 Closure for Maintenance. Any maintenance procedure which shall require the temporary closure of the Facilities for more than twenty-four (24) hours shall occur at times mutually agreed upon in writing between the Parties.

3.5 Utilities. City shall provide for and install all utilities necessary for the proper functioning of the Facilities. City shall pay all costs for the operation, repair and maintenance of the utilities for the Facilities during the term of this Agreement and any extensions thereof.

SECTION 4 JOINT USE OF THE FACILITIES

4.1 District's Apportionment of Use. District shall have the right to the exclusive use of the Facilities located on the School Site during normal school hours. for the purposes of this Agreement, the term "normal school hours" shall be from 8:00 a.m. to 3:15 p.m., Monday through Friday, for each day that school is in session, including lunch hour. It is understood and agreed that the starting and ending times for school hours may change from school year to school year, and that for each school year, the actual starting and ending times will be those hours that school classes start and end as determined for each school year by the District.

4.2 City's Apportionment of Use. The City shall have the right to the exclusive use of the Facilities and the nonexclusive use of any existing parking spaces located at the front of the School Site at all times other than normal school hours.

4.3 Scheduling. City and District agree that within thirty (30) days from the date of execution of this Agreement, City and District shall establish a system to provide for the coordination and scheduling of the use of the Facilities. Such system shall include a procedure for reserving the use of the Facilities and priorities for use of the Facilities. The District will be given first priority in the use of the Facilities provided District give advance written notice to City in compliance with the Parties' reservation policy and procedure in effect at the time such notice is required.

SECTION 5 TERM/EXTENSIONS

5.1 Initial Term. The Initial Term of this Agreement shall be for a period of eight (8) years commencing on the date this Agreement is fully executed by both Parties. City shall have the right to exercise an option to renew the Agreement for another two (2) years by giving written notice of the option renewal to District by not later than six (6) months from the end of the Initial Term.

5.2 Termination due to Default. In the event of default by City, District may terminate City's right to operate on the School Site at any time within the Initial Term by providing City written notice of the effective date of termination. City shall not be deemed to be in default in the performance of any obligation required to be performed by it unless and until it has failed to perform

such obligation within thirty (30) days after written notice by District to City specifying in reasonable detail the nature and extent of any such failure; provided, however, that if the nature of the City's obligation is such that more than thirty (30) days are required for its performance, then City shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In the event of default, each party shall bear its own attorneys' fees and costs.

SECTION 6 OWNERSHIP OF FACILITIES: PURCHASE

6.1 Title and Ownership. District owns and holds title to the entire Marco Forster Middle School upon which will be constructed the Facilities. City shall own and hold title to the roller hockey rink and accompanying fixtures installed or constructed as part of the rink. District shall own and hold title to any and all parking lots and accompanying fixtures installed or constructed as part of the parking lots.

6.2 Option to Purchase Upon Termination. Within ninety (90) days of the termination of this Agreement or any extension thereof pursuant to Section 5 above, the District shall have the first option to purchase the Facilities. If the District decides not to exercise the right to purchase, then the Parties may agree to other terms and conditions regarding disposition of the Facilities. Transfer of title as a result of the purchase shall occur in the same manner as outlined in Section 6.3 below. District's purchase of the Facilities shall result in City's rights pursuant to Section 4.2 "City's Apportionment of Use" being terminated.

6.3 Transfer of Title. Transfer of title and ownership from City to District of the Facilities installed or constructed shall be deemed complete after City Council's and District Governing Board's approval of such transfer and District's delivery to City of funds necessary for the purchase of the Facilities. Transfer of title from City to District of the Facilities permanently and immediately terminates any and all of City's rights and obligations under this Agreement with regard to those Facilities and such Facilities shall be operated in District's sole discretion.

6.4 Purchase by Third Party. City agrees that the Facilities shall not be sold to any third party at any time without the prior written consent of the District.

SECTION 7 INDEMNIFICATION/INSURANCE

7.1 District's Obligation of Indemnification. Neither City nor any officer or employee of City shall be responsible for any personal injury or property damage or liability occurring by reason of any negligent acts or negligent omissions on the part of District, its officers, employees or agents in connection with this Agreement. Additionally, District shall fully indemnify, defend and hold the City harmless from and against any liability imposed as a result of any injury whatsoever occurring by reason of any negligent acts or negligent omissions on the part of District, its officers, employees or agents in connection with this Agreement.

7.2 City's Obligation of Indemnification. Neither District nor any officer or employee of District shall be responsible for any personal injury or property damage or liability occurring by reason of any negligent acts or negligent omissions on the part of

City, its officers, employees or agents in connection with this Agreement. Additionally, City shall fully indemnify, defend and hold District harmless from and against any liability imposed as a result of any injury whatsoever occurring by reason of any negligent acts or negligent omissions on the part of the City, its officers, employees or agents in connection with this Agreement. City agrees to require City's Operator of the Facilities to contractually enter into an appropriate indemnity covenant in favor of City and District.

7.3 District's Insurance Obligations. District shall maintain general liability insurance with combined single limit of not less than \$1 million per occurrence for the entire term of this Agreement and any extensions thereof. Such insurance shall name City, its officers, employees and agents as additional insured.

District shall furnish properly executed certificates of insurance to City within thirty (30) days of entering into this Agreement, which certificates shall clearly evidence all coverages required above and provide that such insurance shall not be materially changed, terminated or allowed to expire except on thirty (30) days prior written notice to City.

7.4 City's Insurance Obligations. City shall provide a certificate to District establishing that it is part of the Southern California Joint Powers Insurance Authority under which City is provided with general liability insurance of not less than \$1 million dollars. Such insurance shall name District, its Governing Board, its officers, employees, and agents as additional insureds and shall be primary with respect to insurance or self-insurance programs maintained by District.

City shall furnish properly executed certificates of insurance to District within thirty (30) days of entering into this Agreement, which certificates shall clearly evidence all coverages required above and provide that such insurance shall not be materially changed, terminated or allowed to expire except on thirty (30) days prior written notice to District.

City shall require any City Operator to acquire and maintain at all times general liability insurance with a combined single limit of not less than five million dollars (\$5,000,000.00) per occurrence for property damage and personal injury with respect to all activities of the City's Operator in the operation of the Facilities and shall require the City Operator to name the City and District as additional insured.

SECTION 8 GENERAL PROVISIONS

8.1 Notice. Every notice, demand, request, designation, consent, approval or other document or instrument delivered pursuant to this Agreement shall be in writing and shall be either personally delivered, sent by Federal Express or other reputable overnight courier, sent by facsimile transmission with the original subsequently delivered by other means within three (3) working days of the facsimile transmission, or sent by registered or certified United States Mail (postage prepaid, return receipt requested), to the addresses set forth below or to such other addresses as the Parties may designate from time to time:

If to District: Capistrano Unified School District
32972 Calle Perfecto
San Juan Capistrano, California 92675
Attention: Daniel J. Crawford
Assistant Superintendent

If to City: City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, California 92675
Attention: City Manager

Written notice served by registered or certified mail shall be deemed delivered forty-eight (48) hours after the date mailed. Other notices shall be effective upon delivery.

8.2 Taxes To the extent that there may be any possessory interest taxes arising out of this Agreement or the construction and operation of the Facilities, District shall not be responsible for those taxes.

8.3 Covenants and Conditions. Each term and each provision of this Agreement performable by either party shall be deemed both a covenant and a condition.

8.4 Partial Invalidity. If any term or provision of this Agreement or any extension or application thereof to any party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or any extension shall be valid and enforced to the fullest extent permitted by law.

8.5 Waiver. No delay or omission in the exercise of any right or remedy of a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. City's consent or approval of any action by the District requiring City's consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of District. District's consent or approval of any

action by the City requiring District's consent or approval shall not be deemed to waive or render unnecessary District's consent to or approval of any subsequent act of City. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

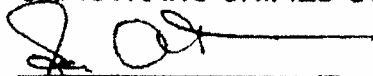
8.6 Entire Agreement. This Agreement represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered by this Agreement. This Agreement shall be governed by the laws of the State of California and construed as if drafted by both City and District. This Agreement may not be modified, altered or amended except in writing by the Parties.

8.7 Successors and Assigns. The terms and conditions of this Agreement shall be binding on the successors and assigns of the Parties to this Agreement.

8.8 Headings. Headings at the beginning of each numbered article and section of this Agreement are solely for the convenience of the Parties and are not part of this Agreement. As they are intended for reference only, no legal significance of any kind shall be attached to such headings.

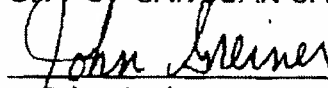
IN WITNESS WHEREOF, City and District have executed this Agreement in one or more counterpart which, taken together, shall constitute one Agreement as of the date indicated above.

CAPISTRANO UNIFIED SCHOOL DISTRICT




Dr. James A. Fleming
Superintendent

CITY OF SAN JUAN CAPISTRANO

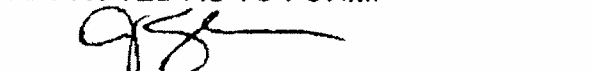


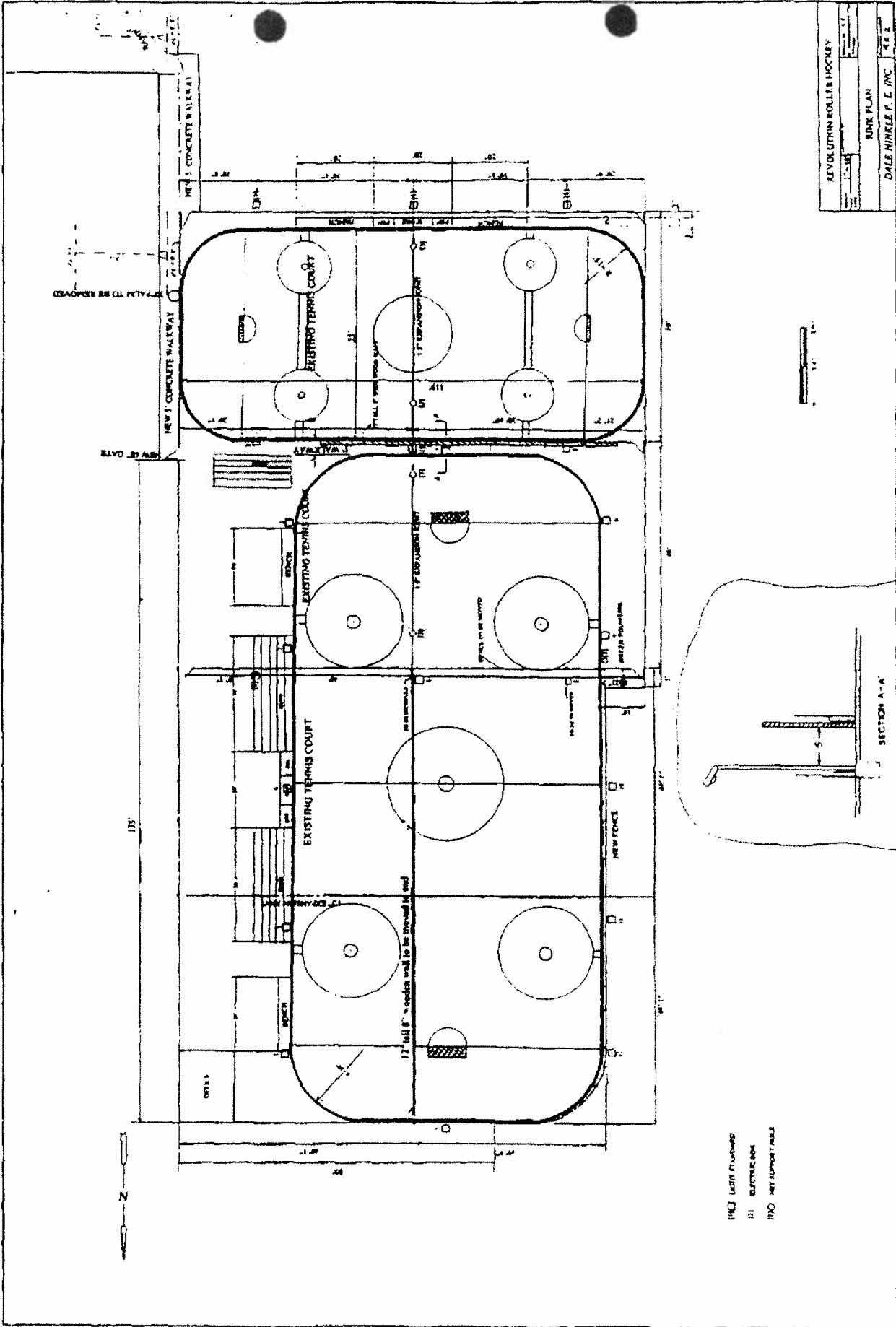
John Greiner, Mayor

ATTEST:


Cheryl Johnson, City Clerk

APPROVED AS TO FORM:


City Attorney



REVOLUTION ROLLER HOCKEY	
DATE	12-1-68
BY	J. L. HARRIS
CHKD BY	J. L. HARRIS
DATE	12-1-68
RINK PLAN	
DATE	DALE HINCKLE P. E. INC
SCALE	1/4" = 1'-0"

EXHIBIT A - MASTER PLAN

- (1) LIGHT FIXTURES
- (2) ELECTRIC BOX
- (3) NET SUPPORTS

SECTION A-K

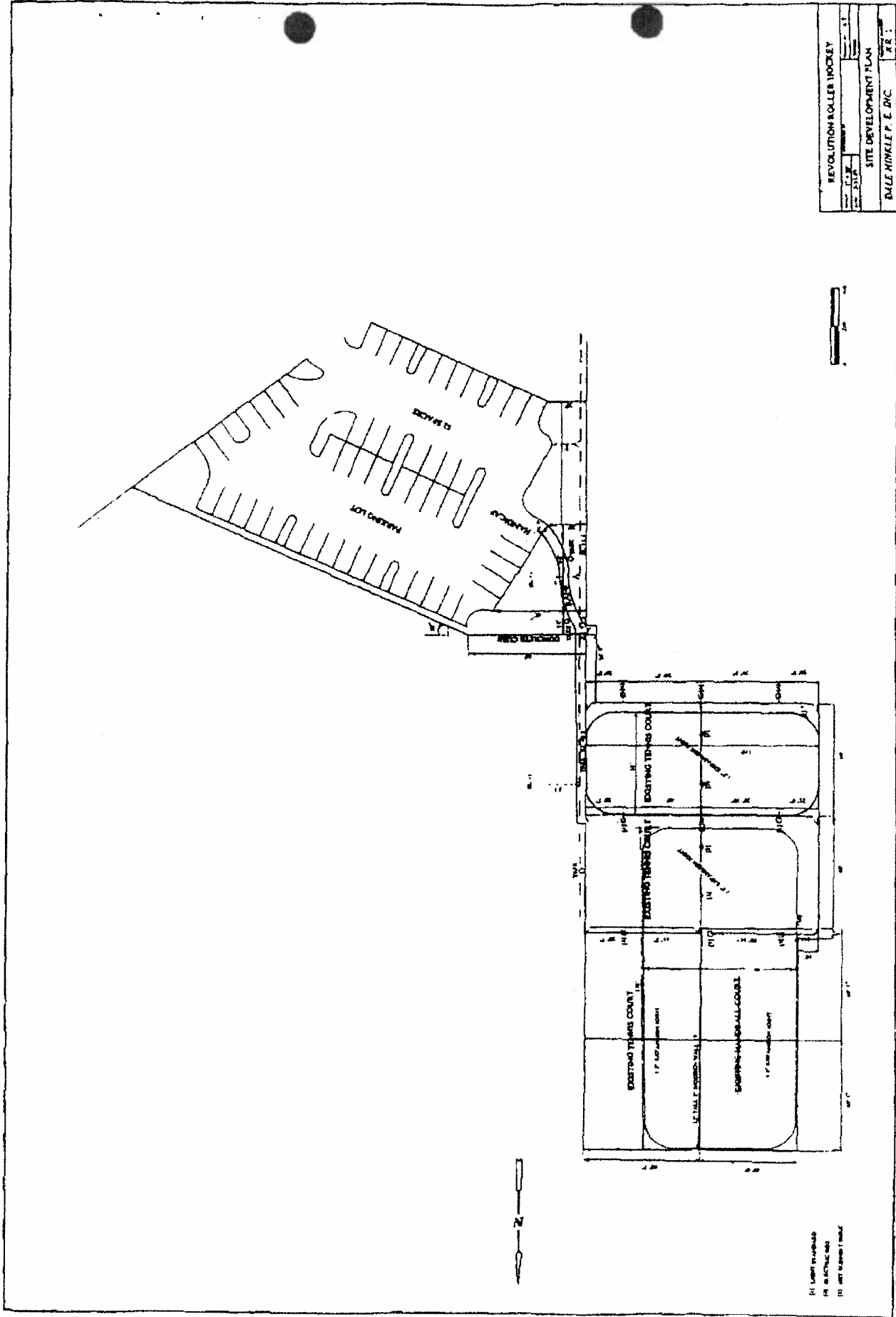


EXHIBIT A - MASTER PLAN

THE CITY OF SAN JUAN CAPISTRANO



**Marco Forster Middle School
Roller Hockey/Multipurpose Facility
3 Via Positiva
San Juan Capistrano, CA 92675**

