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COUNTY, UTA

EAST JORDAN IRRIGATION COMPANY ENCROACHMENT AGREEMENT WITH SANDY PARKING PROPERTIES, LLC

This Agreement is made and entered into among the East Jordan Irrigation Company, a Utah non-profit corporation, hereinafter referred to as "Company," and Sandy Parking Properties, LLC, herein referred to as "Applicant."

# **RECITALS**

- A. Company is a non-profit corporation that owns the East Jordan Canal ("Canal.")
- B. Company owns parcel No. 27014770250000 located in Sandy, Utah. Adjacent to the west runs a Canal used by the Company to deliver irrigation water to its shareholders and has done so for over a century. Applicant desires to construct a box culvert inside company's canal, over which Applicant will park cars for Real Salt Lake Games at no cost to its patrons.
- C. Directly adjacent to the west of the canal is parcel No. **27014760290000** owned by The Sandy Redevelopment Co., LLC. Applicant, as indicated in Exhibits 1-14. Applicant has right to use privileges on this parcel through an affiliated company, Utah Soccer Stadium Owner, LLC.
- D. Applicant desires to obtain Company's consent to encroach upon its Canal to install a box culvert on the portion of the Canal that flows through Applicant's property, as set forth in Exhibits 1-14. Applicant's project and any related facilities are herein referred to as the "Works."
- E. This Agreement fully preserves in the Company all of its rights to continue operating and conveying water through its Canal.
- F. The Company has agreed to allow Applicant to encroach on its Canal, provided Applicant strictly adheres to the terms of this Agreement and provided the Works, and any associated facilities, do not in any manner whatsoever interfere with the Company's use, operation, maintenance, and repair of its Canal and related facilities.

# **AGREEMENT**

NOW, THEREFORE, in consideration of the Recitals set forth above, for the mutual benefits which will accrue to the parties hereto, and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which the Parties hereby acknowledge, the Parties, agree as follows:

1. Purpose.

The purpose of this Agreement is to set forth the conditions under which Applicant may install the Works. The purpose of this Agreement is also to protect and preserve the

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Company's present right and ability to use, operate, maintain, and repair its Canal and related facilities, which right and ability shall not be affected by this Agreement. This Agreement shall be limited to said purposes.

#### Period.

The term of this Agreement shall be 25 years, unless terminated earlier pursuant to the Termination paragraph below. If no party terminates the Agreement prior to its expiration, it shall automatically be extended for successive 25-year periods without any action of the parties.

#### 3. <u>Termination</u>.

The Company, at its option, may terminate this Agreement if Applicant fails to begin construction of the Works, as determined by Company, within two (2) years of the date this Agreement is signed by both parties. Upon a good faith determination by the Company Board of Directors that Applicant failed to strictly comply with the terms of this Agreement, Company may, at its option, terminate this Agreement after notice of a period of 30 days to cure the breach and Applicant's failure to cure the breach within the 30 days, as determined by Company. If Company ceases to use the Canal or formally abandons it, this Agreement will automatically terminate.

The notice required by this section shall be sent to Applicant at:

Sandy Parking Properties, LLC 595 S. Riverwoods Pkwy, Suite 400 Logan, UT 84621

Applicant shall update this notice information with Company, if it changes.

# 4. Location.

The Works shall be located on the Canal at the location shown on Exhibits 1-14.

# 5. <u>Design, Construction and Installation</u>.

The Applicant submitted drawings of the Works to the Company, copies of which are attached as Exhibits 1-14 and incorporated as part of the Agreement. The Applicant shall construct and install the Works strictly in accordance with these drawings, any red-line drawings or instructions, and the provisions of this Agreement, as determined by the Company. Applicant has no right to make any other alterations or changes to the Company's Canal or properties. Any notes or conditions included in the attached drawings are incorporated herein as conditions of this Agreement. The Company and the Company's engineers shall under no circumstances have any responsibility for design or construction of the Works. The Applicant must obtain Company's written approval to deviate from the attached drawings at Exhibits 1-14 or to alter the Works in any manner in constructing the Works or after Applicant constructs the Works.

# 6. Rights Reserved; Continued Operation of the Canal.

This Agreement, the Works, and any interest Applicant acquires by this Agreement, is subordinate and subject to the rights of the Company to use, operate, maintain and repair its Canal and related facilities, which rights are unaffected by this Agreement. Applicant's construction of the Works shall not in any manner whatsoever interfere with the Company's use, operation, maintenance, and repair of its canal and related facilities, including the section of the Canal affected by the Works. The Works built by the Applicant pursuant to this Agreement shall be owned by and the sole responsibility of the Applicant for purposes of ongoing maintenance and repair, but the Canal shall continue to be owned and used exclusively by the Company for its ongoing delivery of water to its shareholders. Company shall have exclusive use of the box culvert for carrying and delivering water. Any future repairs, excavation, removal or other work on the Works structure shall be the responsibility of Applicant, but subject to advanced review and approval by Company and its engineers, which shall not be unreasonably withheld. The Company reserves the right to allow others to encroach upon the canal property to construct facilities that do not materially interfere with the Applicant's Works.

### 7. Maintenance.

Applicant shall repair, maintain, inspect and replace the box culvert, or any other works Applicant constructs under Agreement, as determined by the Company to be necessary to keep the Works in good repair, and to ensure the Works do not impair or threaten the operation or safety of the Company's Canal, as determined by Company. Applicant will perform any maintenance and repair any disrepair or wear of the Works that adversely affects or threatens to adversely affect operation of the Canal, as determined by Company. Applicant shall have 30 days to make any maintenance or repairs identified by Company. The maintenance and repair of the box culvert or any other works Applicant constructs under this Agreement and any and all associated facilities shall be the sole responsibility of Applicant.

# 8. Hold Harmless-Indemnification.

- a. Company does not assume any liability and Applicant assume all liability resulting from this Agreement or the exercise thereof by Applicant, or as a result of the design, construction, use, repair, or maintenance of the Works Applicant constructs.
- b. Applicant shall indemnify, defend and hold Company and all of its respective officials, board members, officers, managers, agents, and employees harmless from any injury or damage, or any other claim (whether meritorious or not), to any persons or property that may result from, or is claimed to result from, or is related to, in whole or in part (1) the Works; (2) any design, construction, operation, use maintenance, repair or replacement of any part of the Works constructed by Applicant; (3) any act, error, or omission or fault of the Applicant in exercising any of the privileges herein conferred.
- c. Applicant shall defend the Company from and against any action challenging Applicant's use of the land and Canal subject to this Agreement.

- d. Applicant shall not interfere with the operation, maintenance and repair of the Company's Canal. As determined by Company, Applicant shall be strictly responsible for any damage to, obstruction of, or interference with the use, operation, maintenance, repair, or replacement of the Canal or related facilities caused in whole or in part by Applicant, the Works, or any design, construction, operation, use, repair or replacement the Works constructed by Applicant. Applicant agrees that if the operation, maintenance or repair of its Canal is made more expensive by reason of this Agreement or the Works, Applicant will reimburse the Company the full amount of such reasonable additional expenses within 30 days of receipt of an itemized bill.
- e. Company makes no warranty, express or implied, as to its title to the Canal or related land or facilities, or as to the validity of any other rights granted under this Agreement.
- f. Applicant warrants that any and all contractors or other persons performing earthwork, construction work or other work in constructing the Works or otherwise affecting the Company's canal, on behalf of Applicant will provide a broad form general liability insurance policy in a form reasonably acceptable to Company in amounts of not less than \$1,000,000 combined single limit per occurrence, for personal injury and property damage, naming Company, and its officers, directors and employees as additional insured for claims arising out of the work of the contractors on or near the Company's Canal.

### 9. <u>Assignment</u>.

This Agreement shall not be assigned or transferred by Applicant without the prior written consent of the Company. Such written consent shall not be unreasonably withheld and any objections shall be delivered in writing to the Applicant within ten (10) business days.

# 10. Entire Agreement.

This Agreement constitutes the entire agreement between the parties and cannot be altered except through a written instrument signed by each of the parties.

### 11. Governing Law.

This Agreement shall be enforced and governed under the laws of the State of Utah, and jurisdiction for any action based on this Agreement shall be with the District Court of Salt Lake County, State of Utah.

### 12. Attorneys' Fees/Costs.

In the event of a suit between the parties, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees, engineering fees, or other professional and expert fees.

### 13. Exhibits.

The attached Exhibits 1-14 are incorporated into this Agreement as if fully set forth herein.

### 14. Knowledge.

The parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and risks and having had the opportunity to obtain legal counsel of their choice.

# 15. Drafting Party.

This Agreement has been and shall be deemed to be a product of joint drafting by the parties and there shall be no presumption otherwise.

## 16. Modification.

This Agreement may not be modified or amended except by the express written agreement of the parties.

## 17. No Waiver.

Any party's failure to enforce any provision of the Agreement shall not constitute a waiver of the right to enforce such provision or any other provision, nor shall any such waiver constitute a continuing waiver. The provisions of this Agreement may be waived only in writing by the party intended to benefit by the provisions, and a waiver by a party of a breach hereunder by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

### 18. <u>Severability</u>.

If any portion of the Agreement is held to be unenforceable, the remaining provisions hereof shall continue in full force and effect.

### 19. <u>Cooperation</u>.

The Parties shall cooperate together, and each Party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as any Party may reasonably request or as may be reasonably necessary or appropriate to effectuate, consummate, or perform any of the terms, provisions, or conditions of this Agreement.

### 20. No Relationship.

Nothing in this Agreement shall be construed to create any partnership, joint venture, or fiduciary relationship between the Parties.

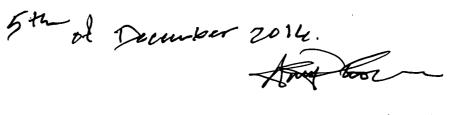
### 21. Successors in Interest.

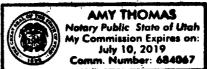
This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, legatees, devisees, administrators, personal representatives, executors, successors, and permitted assigns.

#### 24. Fees

Applicant will reimburse Company any professional fees Company incurs in finalizing this Agreement, within 30 days of receiving an invoice. Such costs shall not exceed \$1,000.00.

The parties have executed this Agreement to be, 2016.	effective the day of
EAST JORDAN IRRIGATION COMPANY	SANDY PARKING PROPERTIES, LLC
Bill Marcovecchio, President	Printed Name: CEMILE WHIFTIN'  Its: VICE PRESIDENT:  Attest: Super-Intendent  Title: WAS ATCHT COMMERCIAL BUILDERS





State of Utah

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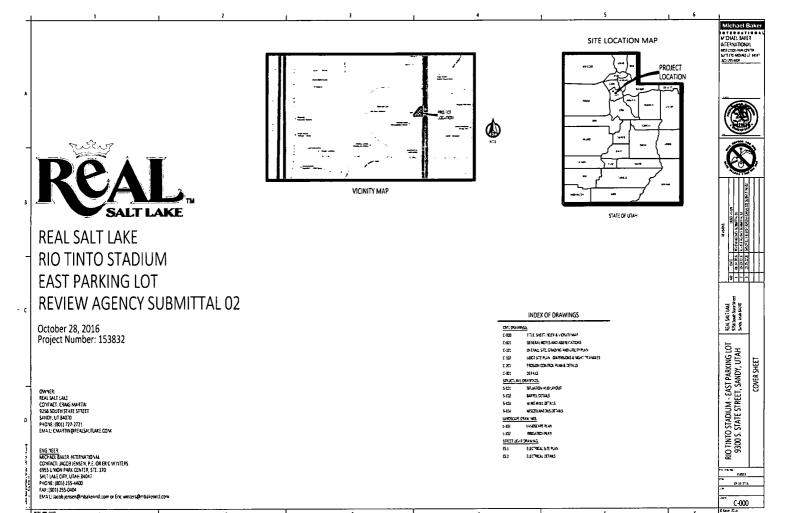
County of Salt Lake :

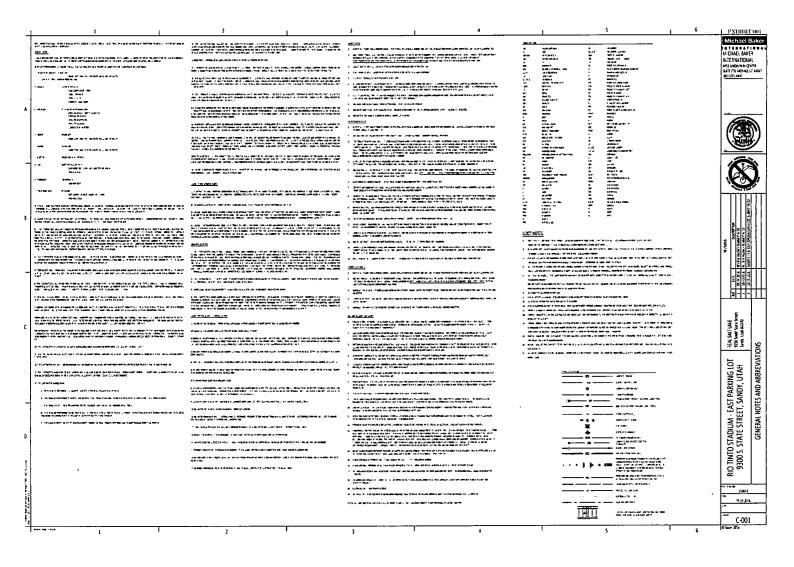
On this <u>Techniler</u>, 2016, before me, Amy Thomas, a Notary Public, personally appeared Bill Marcovecchio, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same.

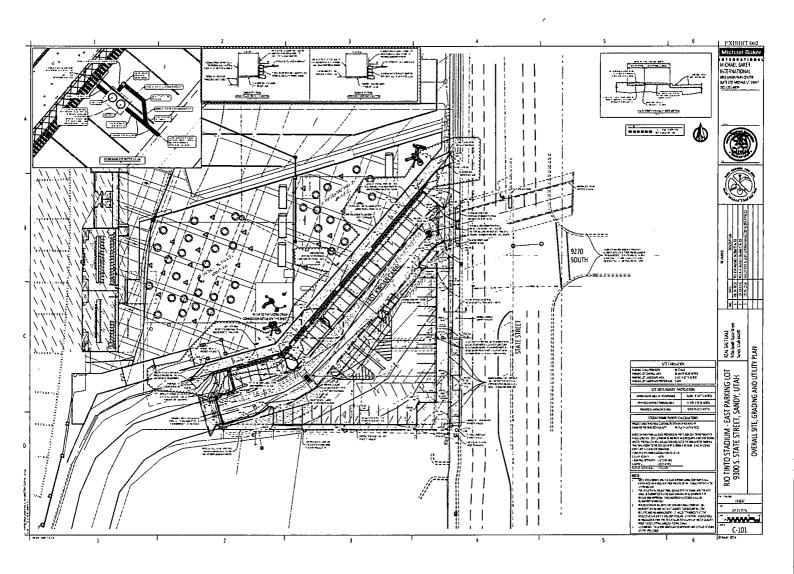
Witness my hand and official seal

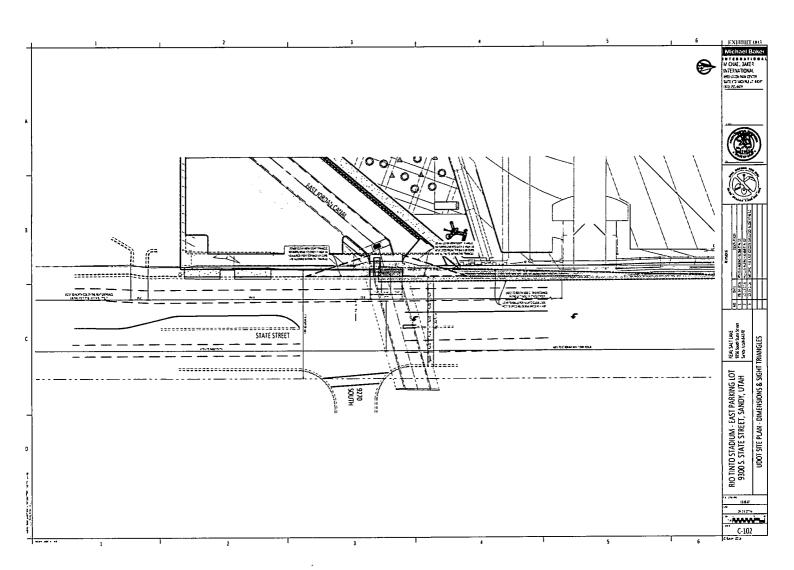
Notary Public

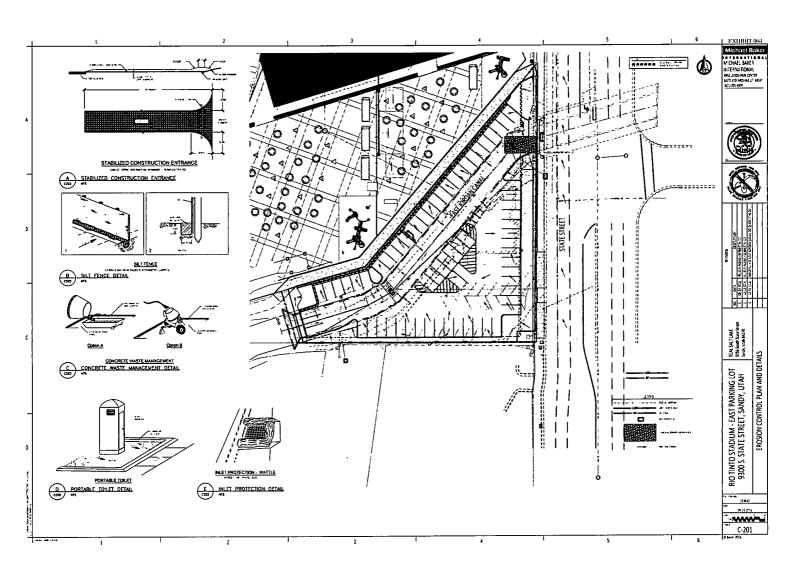
AMY THOMAS
Notary Public State of Utah
Notary Public State of Utah
July 10, 2019
Comm. Number: 684067

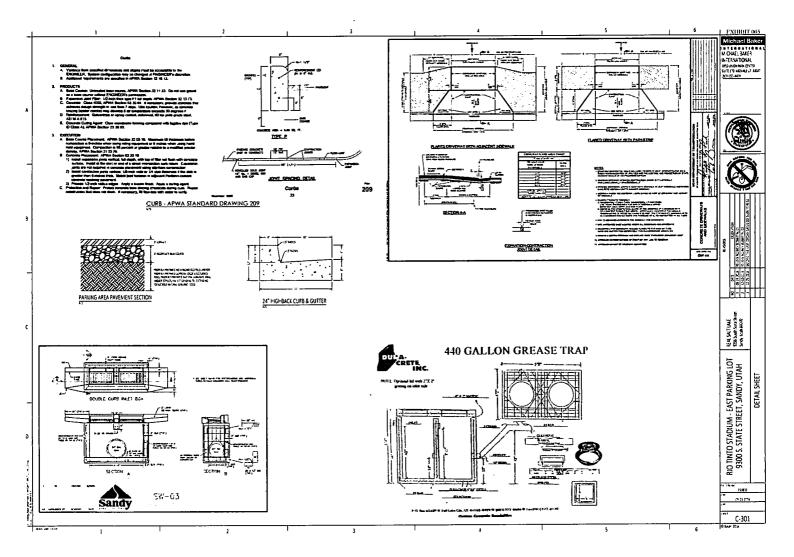


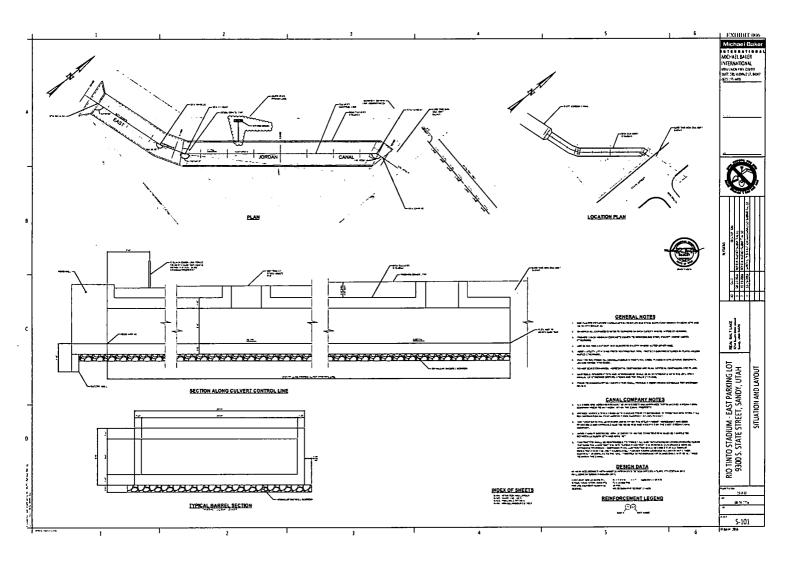


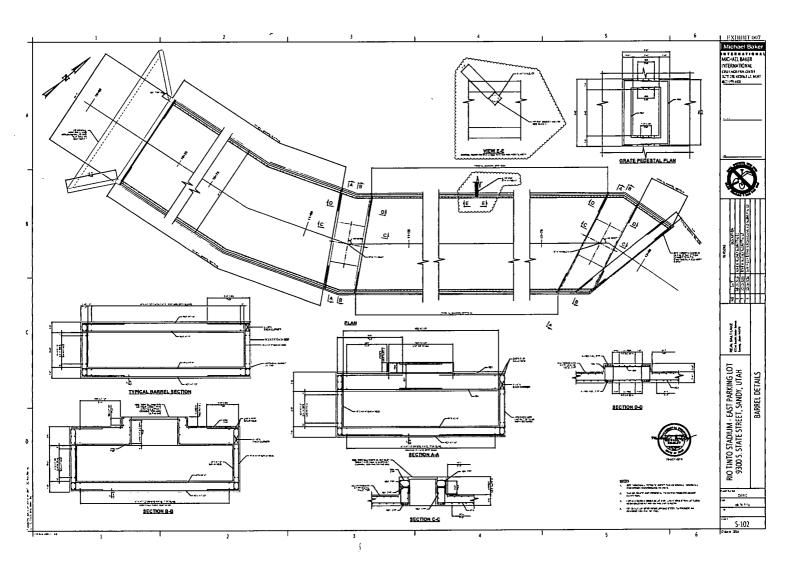


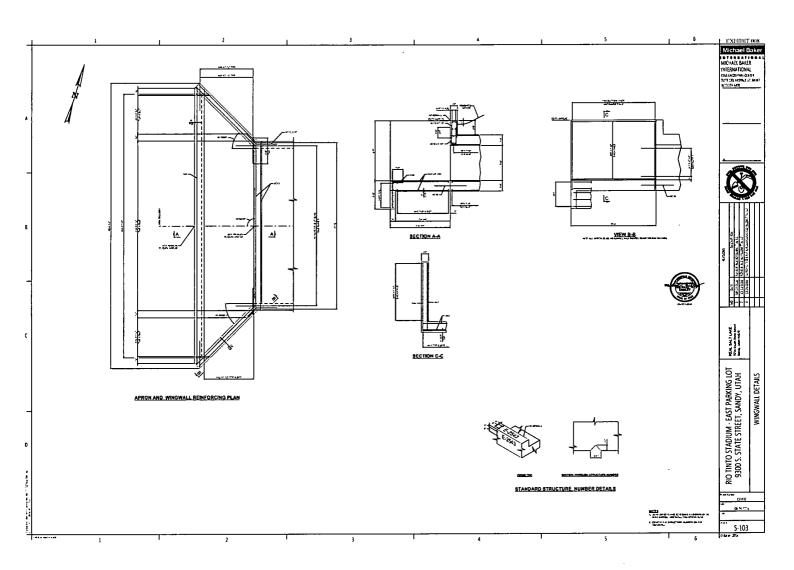


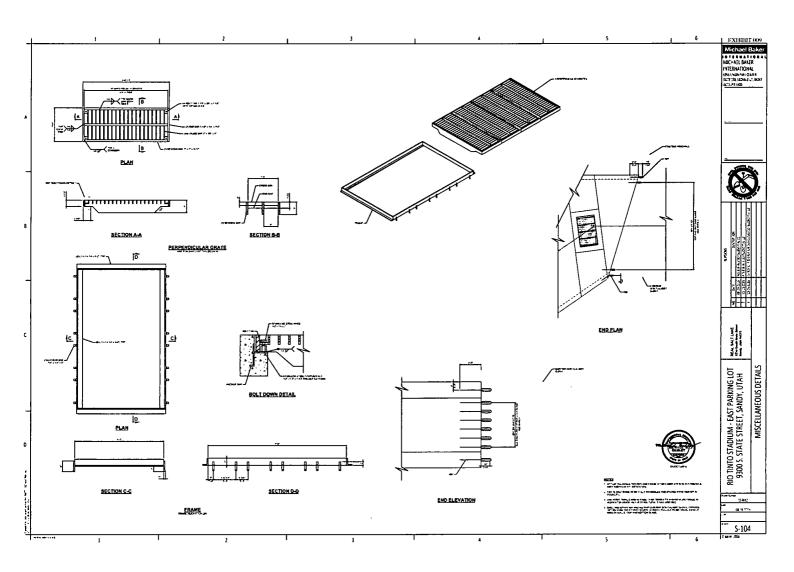


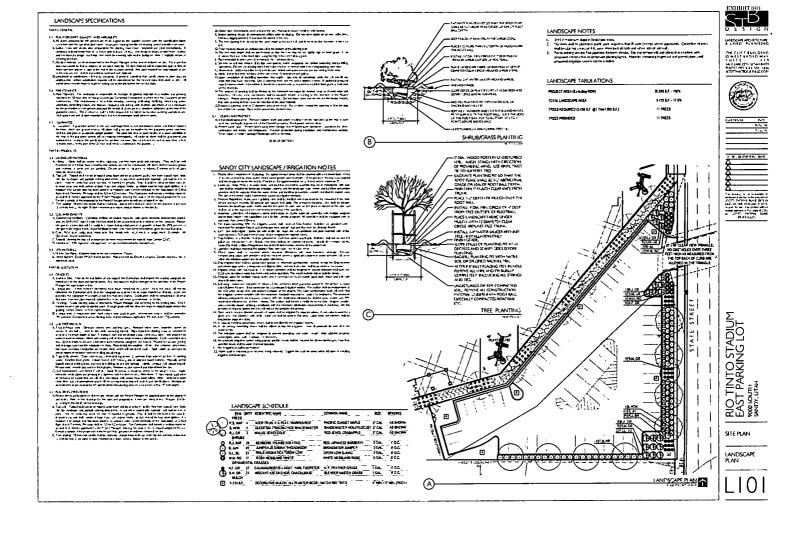


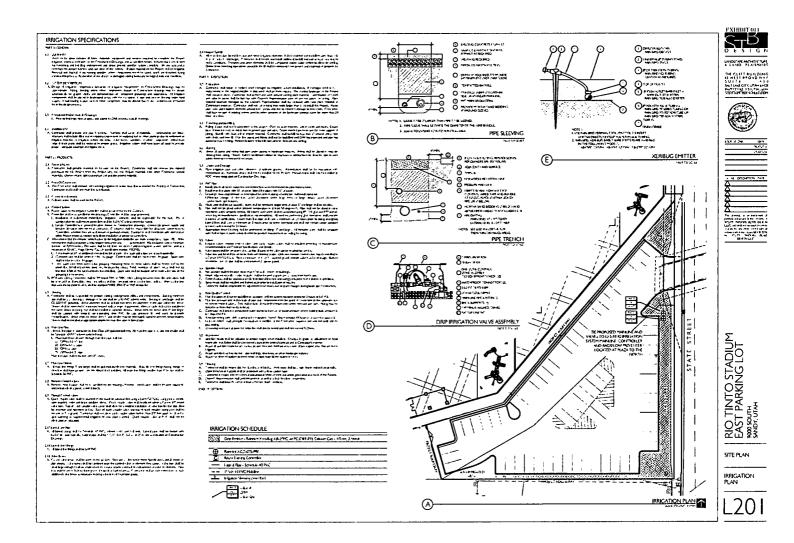


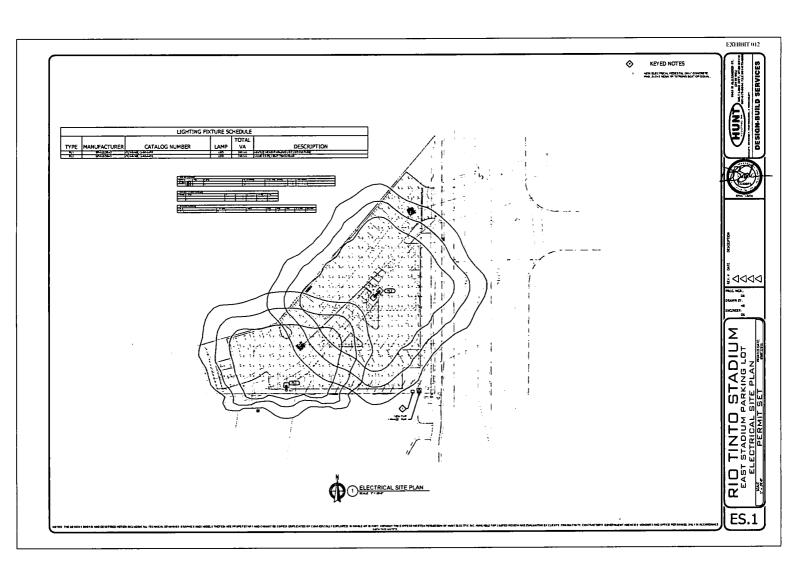


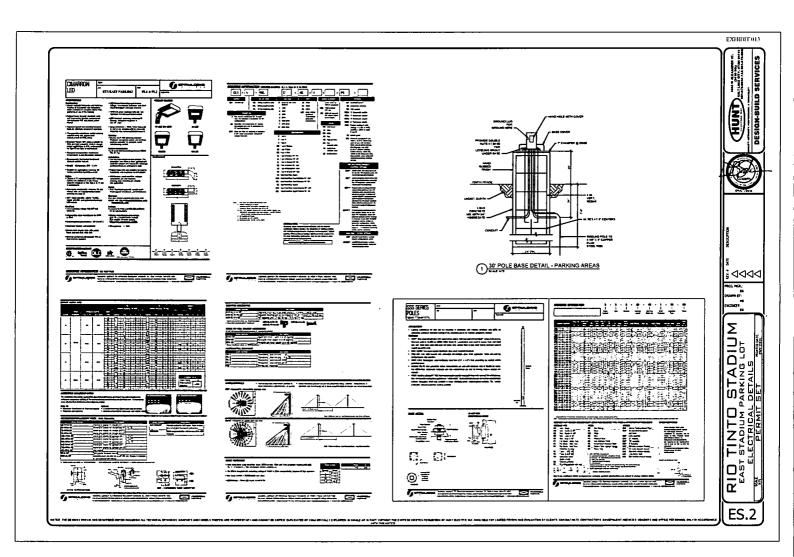












 VTDI 27-01-477-025-0000
 DIST 35
 TOTAL ACRES
 0.36

 SANDY PARKING
 TAX CLASS
 UPDATE
 REAL ESTATE
 371900

 PROPERTIES, LLC
 LEGAL
 BUILDINGS
 15500

 PRINT
 P
 TOTAL VALUE
 387400

9256 S STATE ST NO:

9784-8274

SANDY UT 84070260456 EDIT 1 FACTOR BYPASS

LOC: 9300 S STATE ST EDIT 0 BOOK 10432 PAGE 3226 DATE 05/19/2016

SUB: SEC 01 TWNSHP 3S RNG 1W

12/05/2016 PROPERTY DESCRIPTION FOR TAXATION PURPOSES ONLY
BEG N 776.76 FT & E 41.9 FT TO W LINE OF STATE STREET FR SE
COR SEC 1, T 3S, R 1W, SLM; S 0-02'40" W ALG SD LINE 50 FT;
W 219 FT TO CEN OF CANAL; N 60- E ALG SD CANAL 100 FT; E
132.44 FT TO BEG. ALSO BEG E 42 FT & N 776.84 FT M OR L FR
SE COR SEC 1, T 3S, R 1W, SLM; N 112.69 FT; N 89-54'17" W
14.15 FT TO E BANK OF CANAL; SW'LY ALG CANAL TO PT DUE W FR
BEG; E 133.1 FT M OR L TO BEG. 0.36 AC. 6337-1704 9375-4088

PFKEYS: 1=RXPH 4=VTAU 6=NEXT 7=RTRN VTAS 8=RXMU 10=RXBK 11=RXPN 12=PREV

SANDY REDEVELOPMENT CO LLC TAX CLASS UPDATE REAL ESTATE LEGAL BUILDINGS 1.17 819800 0 819800

9256 S STATE ST SANDY UT NO:

84070260456 EDIT 1 FACTOR BYPASS SANDY UT

EDIT 0 BOOK 09930 PAGE 5000 DATE 06/16/2011 LOC: 9256 S STATE ST

SUB: REAL SALT LAKE TYPE SUBD PLAT

12/05/2016 PROPERTY DESCRIPTION FOR TAXATION PURPOSES ONLY

LOT 3, REAL SALT LAKE SUB.

PFKEYS: 1=RXPH 4=VTAU 6=NEXT 7=RTRN VTAS 8=RXMU 10=RXBK 11=RXPN 12=PREV