

CITY OF BLUFFDALE, UTAH

Resolution No. 2008-41

A RESOLUTION OF THE BLUFFDALE CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH SCENIC DEVELOPMENT, INC., FOR THE CONSTRUCTION AND WARRANTY OF CERTAIN PRIVATE IMPROVEMENTS IN THE FALLS AT BOULDEN RIDGE SUBDIVISION, PHASE 1, AND SIMULTANEOUSLY DELETING CERTAIN REQUIREMENTS FROM THE REQUIRED IMPROVEMENTS FOR THE SUBDIVISION.

WHEREAS Scenic Development, Inc. ("Developer") has substantially completed the required improvements in the Falls at Boulden Ridge Subdivision, Phase 1; and

WHEREAS the secondary water pump station and ornamental crosswalks remain incomplete; and

WHEREAS there is a substantial likelihood that the ornamental crosswalks could be damaged as construction progresses in Phases 2 and 3 and there is no significant public safety concern in having the ornamental crosswalks constructed; and

WHEREAS there is no immediate need for the secondary water pump station to be operational until the 2009 irrigation season begins; and

WHEREAS the Developer has proposed to construct the secondary water pump station before the 2009 irrigation season begins and to construct the ornamental crosswalks as part of Phase 3 of the overall development and has proposed an agreement (attached) to ensure the construction of those improvements;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BLUFFDALE AS FOLLOWS:

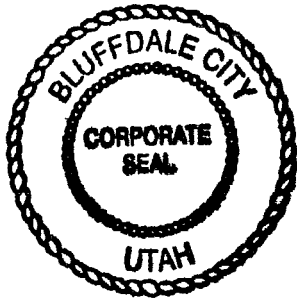
Section 1. Authorization to Execute Agreement. The Bluffdale City Council hereby authorizes the City Manager to execute the attached agreement.

Section 2. Deletion of Certain Requirements Originally Approved with the Subdivision. In consideration of the attached agreement the requirements that the secondary water pump station and the ornamental crosswalks be constructed as part of Phase 1 of the Falls at Boulden Ridge subdivision are hereby deleted.

Section 3. Effective Date. This Resolution shall become effective immediately upon

passage.

PASSED AND APPROVED this 7th day of October, 2008.



CITY OF BLUFFDALE

Mayor *Bill Moe*

ATTEST:

[seal]

Seddie K. Bee

City Recorder

Voting by the City Council:

Yes No

Councilmember Chisholm	<u> x </u>	<u> </u>
Councilmember Flanigan	<u> x </u>	<u> </u>
Councilmember Kartchner	<u> x </u>	<u> </u>
Councilmember Lord	<u>Absent</u>	<u> </u>
Councilmember Maxwell	<u>Abstain</u>	<u> </u>

ATTACHMENT

**AGREEMENT BETWEEN SCENIC DEVELOPMENT, INC.,
AND THE CITY OF BLUFFDALE**

COPY

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered this 23rd day of October, 2008 by and between SCENIC DEVELOPMENT, INC., a Utah corporation whose address is 14572 South 790 West, Unit A, Bluffdale, Utah 84065 ("Scenic Development"), and CITY OF BLUFFDALE, a municipal corporation of the State of Utah whose address is 14175 Redwood Road, Bluffdale, Utah 84065 (the "City").

RECITALS

- A. Scenic Development is the developer of a subdivision located in Bluffdale and known as the Falls at Boulden Ridge (the "Project").
- B. The Project has been approved for development in three phases (each, a "Phase").
- C. Scenic Development commenced construction of the first phase ("Phase 1") of the Project in or about April, 2007.
- D. Scenic Development has constructed all public improvements required for development of Phase 1.
- E. Scenic Development has not installed pumps for the Secondary Water System (as defined below) to create a pressurized irrigation system.
- F. Scenic Development also has elected to defer the installation of certain stamped concrete on the pedestrian cross walks within Phase 1 and the City has allowed the deferral in accordance with the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the parties hereby agree as follows:

1. Installation of Pumps for Secondary Water System. Scenic Development has installed a private secondary water system in Phase 1, which includes underground piping and an irrigation connection valve to each residential building lot in Phase 1, a weir turnout structure on the Welby-Jacobs canal adjacent to Phase 1, and a rotating screen for filtration purposes in the weir (the "Secondary Water System"). The City has required Scenic Development to provide pressure to the Secondary Water System in accordance with the level of service standards set forth in the Bluffdale City ordinances. To that end, Scenic Development agrees to (i) install, at its sole cost and expense, the pumps and related improvements required to pressurize the Secondary Water System for Phase 1 of the Project (the "Improvements") in accordance with the City's construction standards and ordinances, (ii) obtain confirmation from the Bluffdale City Engineer that the Improvements have been constructed in accordance with the City's construction standards and ordinances, and (iii) obtain approval of the Bluffdale City Council for the release of the Letter of Credit (as defined below) no later than May 12, 2009 (the "Mandatory Completion Date"). If Scenic Development fails to complete the installation and obtain the approvals required in the preceding sentence by the Mandatory Completion Date, Scenic

Development shall be in breach of this Agreement and the City shall charge Scenic Development \$100 per day from and after May 13, 2009 as liquidated damages (the "Liquidated Damages"). In the event of Scenic Development's breach hereunder, the City may require Scenic Development to complete the installation of the Improvements or engage another contractor to complete the installation of the Improvements and charge Scenic Development the actual cost to complete construction of the Improvements. Scenic Development shall have the right to continue to complete the installation of the Improvements after the Mandatory Completion Date until directed by the City in writing to cease work. Regardless of the remedy elected by the City, Scenic Development shall be required to pay the Liquidated Damages assessed hereunder within five (5) days of the City's written demand for same.

2. Inspection of Improvements. The Improvements shall be inspected at such times as required under the Bluffdale City ordinances. The City shall inspect the Improvements, and provide Scenic Development a written report, if requested, within one (1) business day of receiving an inspection request from Scenic Development. Scenic Development shall pay all inspection fees required by ordinance and/or resolutions of the City.

3. Letter of Credit. Scenic Development hereby files, as an independent guarantee with the City for the purpose of insuring construction and installation of the Improvements, an IRREVOCABLE LETTER OF CREDIT, (the "Letter of Credit"):

Letter of Credit Number: 9313019813

Issue Date: October 23, 2008

Issued By: First Utah Bank

Amount: \$45,000.00 (the "Available Credit").

Beneficiary: City of Bluffdale

Term: Until released by the City upon completion of the Improvements

The Letter of Credit is issued in favor of the City, and is made a part of this Agreement as Exhibit A.

4. Final Acceptance/Release of Letter of Credit. The Bluffdale City Engineer shall confirm installation the Improvements in accordance with the City's construction standards and ordinances. At that time, the City shall relinquish all rights to draw upon the Letter of Credit.

5. Warranty of Improvements. Scenic Development hereby warrants that the Improvements shall remain free from defects or damage, such that the Improvements continue to meet the City's standards, for one (1) year following the date on which the Bluffdale City Engineer confirms installation.

6. Demand for and use of Available Credit. In the event the Improvements are not installed pursuant to this Agreement and Bluffdale City ordinances by the Mandatory Completion Date, the entity issuing the Letter of Credit shall remit to the City, upon the City's written demand, the Available Credit (or the portion thereof required to complete the Improvements). The City may draw upon the Letter of Credit by one or more sight drafts signed by the Mayor. The City may make multiple draws upon the Letter of Credit.

7. Installation of Stamped Concrete. As a condition to receiving approval from the

City for Phase 3 of the Project, Scenic Development (or its successor or assign) agrees to install stamped concrete in the areas identified on the site plan attached hereto as Exhibit B and incorporated herein by reference during completion of the infrastructure improvements for Phase 3 (the "Stamped Concrete"). Installation of the Stamped Concrete shall be included in the bond for the Phase 3 improvements.

8. No Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the City and not to third parties, including, but not limited to, lot purchasers, contractors, subcontractors, laborers, suppliers, or others. The City shall not be liable to claimants or others for obligations of Scenic Development under this Agreement. The City shall further have no liability for payment of any costs or expenses of any party who attempts to make a claim under this Agreement, and shall have under this Agreement no obligation to make payments to, give notices on behalf of, or otherwise have obligations to any alleged claimants under this Agreement.

9. Scenic Development's Representations Regarding the Improvements. Scenic Development's obligation to complete the Improvements is not guaranteed under any letter of credit or improvements bond assuring completion of the public improvements within Phase 1, but only the Letter of Credit identified herein. Scenic Development acknowledges (a) that its contractual obligation to complete and warrant the Improvements pursuant to this Agreement is independent of any other remedy available to the City to secure proper completion of the Improvements; (b) that Scenic Development may not assert as a claim or defense that the City has remedies against other entities or has other remedies in equity or at law that would otherwise relieve Scenic Development of its duty to install the Improvements as outlined in this Agreement; and (c) that Scenic Development has a legal obligation, independent of this Agreement, to timely complete and pay for the Improvements in full.

10. Access to the Property. Should the City elect to use the Available Credit to complete the Improvements, Scenic Development expressly grants to the City, and any contractor or other agent hired by the City, the right of access to the Project to complete the Improvements.

11. Substandard Improvements. Should the Improvements prove to be substandard or defective within one-year after inspection of such Improvements by the City and commencement of the warranty period, the City shall notify Scenic Development in writing of such substandard or defective improvements. Scenic Development shall then have fifteen (15) days from written notice from the City in which to commence repair of the Improvements, and a reasonable amount of time as determined by the City, which shall be specified in the written notice, to repair of same. Should Scenic Development fail to either (i) commence repair of the Improvements or (ii) complete repair of the Improvements within the required time period, the City may exercise its option to remedy the defects by demand payment for such from Scenic Development.

12. Notice. Notice to Scenic Development or the City shall be mailed or delivered to the respective address set forth above. The date notice is received at the address shown in this Agreement shall be the date of actual notice, however accomplished. Any party with an address change must notify the other parties by giving written notice within fifteen (15) days of the change. All notices, requests, demands and other communications required under this Agreement shall be in writing. Such written communication shall be effective upon personal

delivery to any party or upon being sent by overnight mail service; by facsimile; or by regular mail, postage prepaid and addressed to the respective parties.

13. Attorneys' Fees. In the event there is a failure to perform under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith (whether such attorney be in house or outside counsel), either with or without litigation, on appeal or otherwise, the losing party to the controversy shall pay to the successful party's reasonable attorneys' fees, and, in addition, such costs and expenses as are incurred in enforcing this Agreement.

14. Time of Essence. Time is of the essence of this Agreement. In case either party shall fail to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party may pursue any and all remedies available in equity, or law.

15. Governing Law. This Agreement shall be interpreted pursuant to, and the terms thereof governed by, the laws of the State of Utah. This Agreement shall be further governed by Bluffdale City ordinances in effect at the time of the execution of this Agreement. However, the parties expressly acknowledge that any subdivision or other development regulations enacted after the execution of this Agreement, which are reasonably necessary to protect the health, safety, and welfare of the citizens of the City, shall also apply to the subdivision or development which is the subject of this Agreement.

16. Inducement; Integration; Modification; Captions; Severability.

a. The making and execution of this Agreement has been induced by no representations, statements, warranties, or agreements other than those herein expressed.

b. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter herein.

c. This Agreement may be amended or modified only by a written instrument executed by both parties.

d. If any portion of this Agreement is declared invalid by a court of competent jurisdiction, the remaining portions shall not be affected thereby, but shall remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]

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

CITY OF BLUFFDALE

By: Mark Reid
Mark Reid
Its: City Manager

Date: 10-23-2008

SCENIC DEVELOPMENT, INC.

By: Kim Rindlisbacher
Kim Rindlisbacher
Its: President

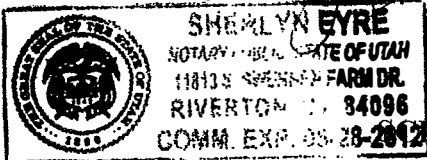
Date: 10-23-08

CITY ACKNOWLEDGMENT

On the 23 day of October, 2008, personally appeared before me Mark Reid, who being duly sworn, did say that he is the City Manager of the CITY OF BLUFFDALE, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Mark Reid acknowledged to me that the City executed the same.

Notary Public

My Commission Expires: May 23, 2012
Residing at: Salt Lake County, Utah



SCENIC DEVELOPMENT ACKNOWLEDGEMENT

On this 23rd day of OCTOBER, 2008, personally appeared before me Kim Rindlisbacher, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he is the President of Scenic Development, Inc., a corporation, and said document was signed by him/her in behalf of said corporation by authority of its Bylaws or of a Resolution of its Board of Directors, and he acknowledged to me that said corporation executed the same.

Notary Public

My Commission Expires: May 28, 2012
Residing at: Salt Lake County, Utah

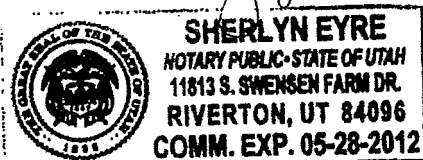


EXHIBIT A

Letter of Credit

[Attached]



THE SUM 45000 DOLLARS CTS

IRREVOCABLE STANDBY LETTER OF CREDIT #9313019813
FIRST UTAH BANK DATED OCTOBER 23, 2008

Bluffdale City, a Municipal Corporation of the State of Utah
14175 Redwood Road
Bluffdale, Utah 84065

Re: IRREVOCABLE STANDBY LETTER OF CREDIT NO. 9313019813

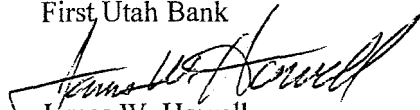
Gentlemen:

We hereby establish our Irrevocable Standby Letter of Credit #9313019813 in your favor for the account of Scenic Development, Inc., 14572 So. 790 W. Unit A, Bluffdale City, 84065 up to the aggregate amount of US \$45,000.00 (Forty Five Thousand dollars and no cents). Funds under this standby letter of credit are available to you by your drafts drawn at sight on First Utah Bank at 11027 South State Street, Sandy City, Utah 84070 accompanied by:

1. A statement purportedly signed by the Mayor of Bluffdale City that the improvements have not been completed according to the terms of the Agreement dated October 23, 2008 between Bluffdale City and Scenic Development, Inc., and that Scenic Development, Inc. has been notified of the default and it remains uncured.
2. All charges are for the account of the applicant.
3. This Irrevocable Standby Letter of Credit is non-transferable.
4. This Irrevocable Standby Letter of Credit is assignable.
5. Partial drawings are permitted and each draft must bear on its face the legend "Drawn under Irrevocable Standby Letter of Credit # 9313019813 of First Utah Bank dated October 23, 2008.

We hereby agree with drawers, endorsers and bonafide holders that all drafts drawn under and in compliance with the terms of this credit will be duly honored upon presentation and delivery of documents as specified to drawee if drawn and presented for negotiation on or before October 20, 2009 at this bank. This credit is issued subject to the Uniform Customs and Practices for Documentary Credits, 1993 revision, ICC Publication No. 500 (UCP).

First Utah Bank



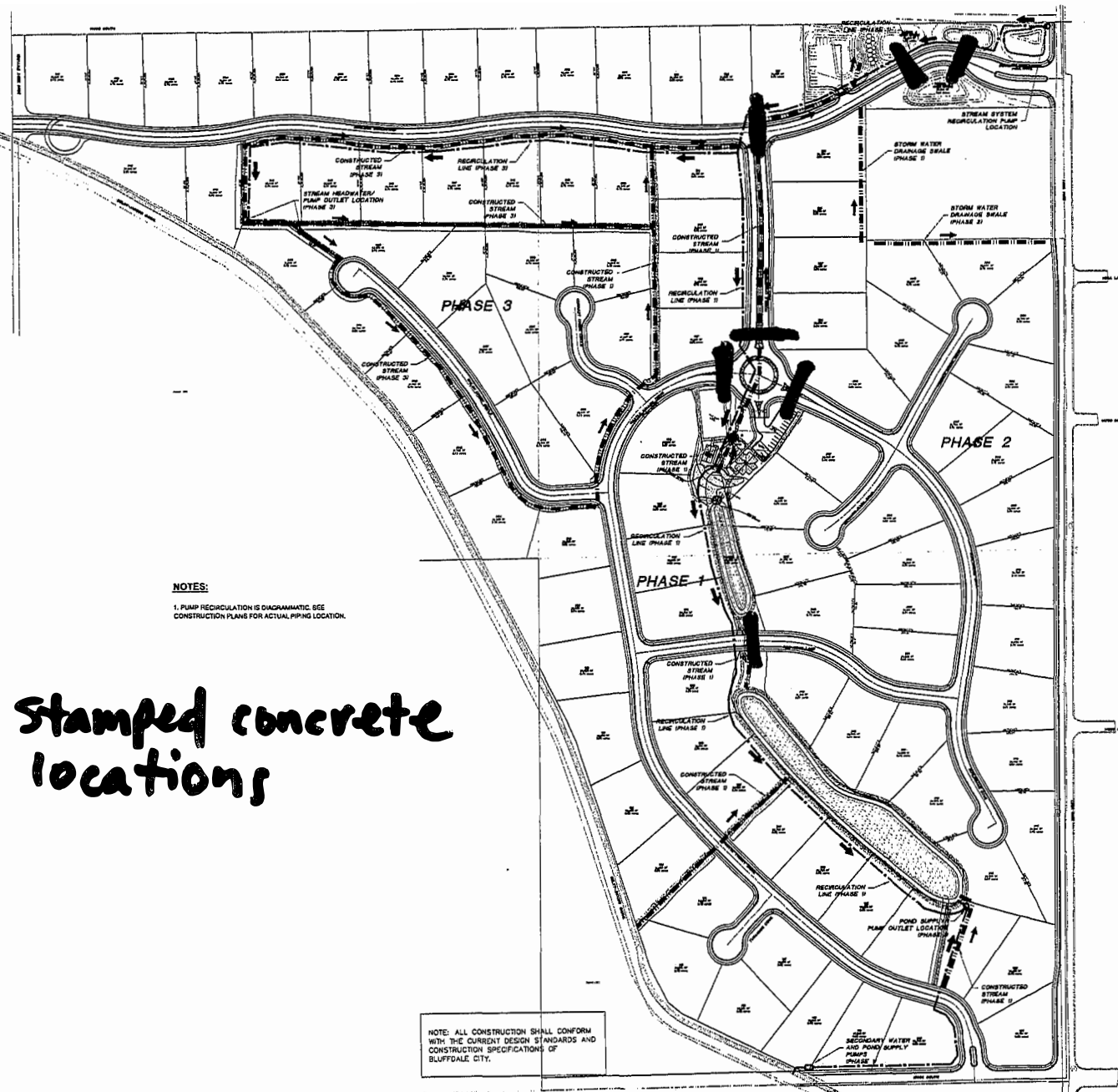
James W. Howell
Senior Vice President

11027 South State Street • Sandy, Utah 84070 • Phone: 801-307-2370 • Fax: 801-307-2413

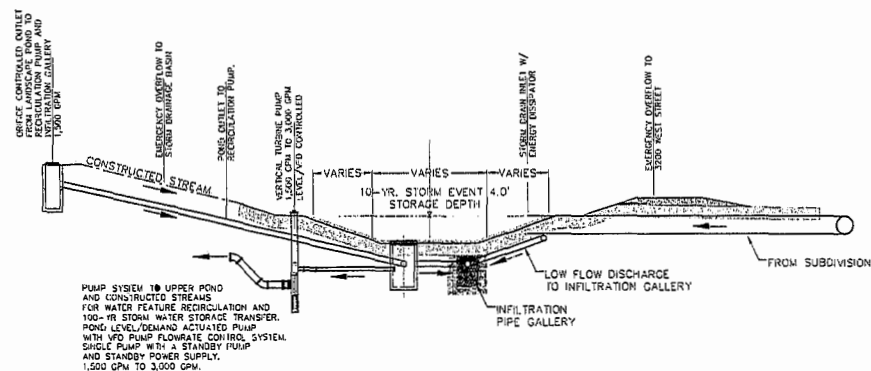
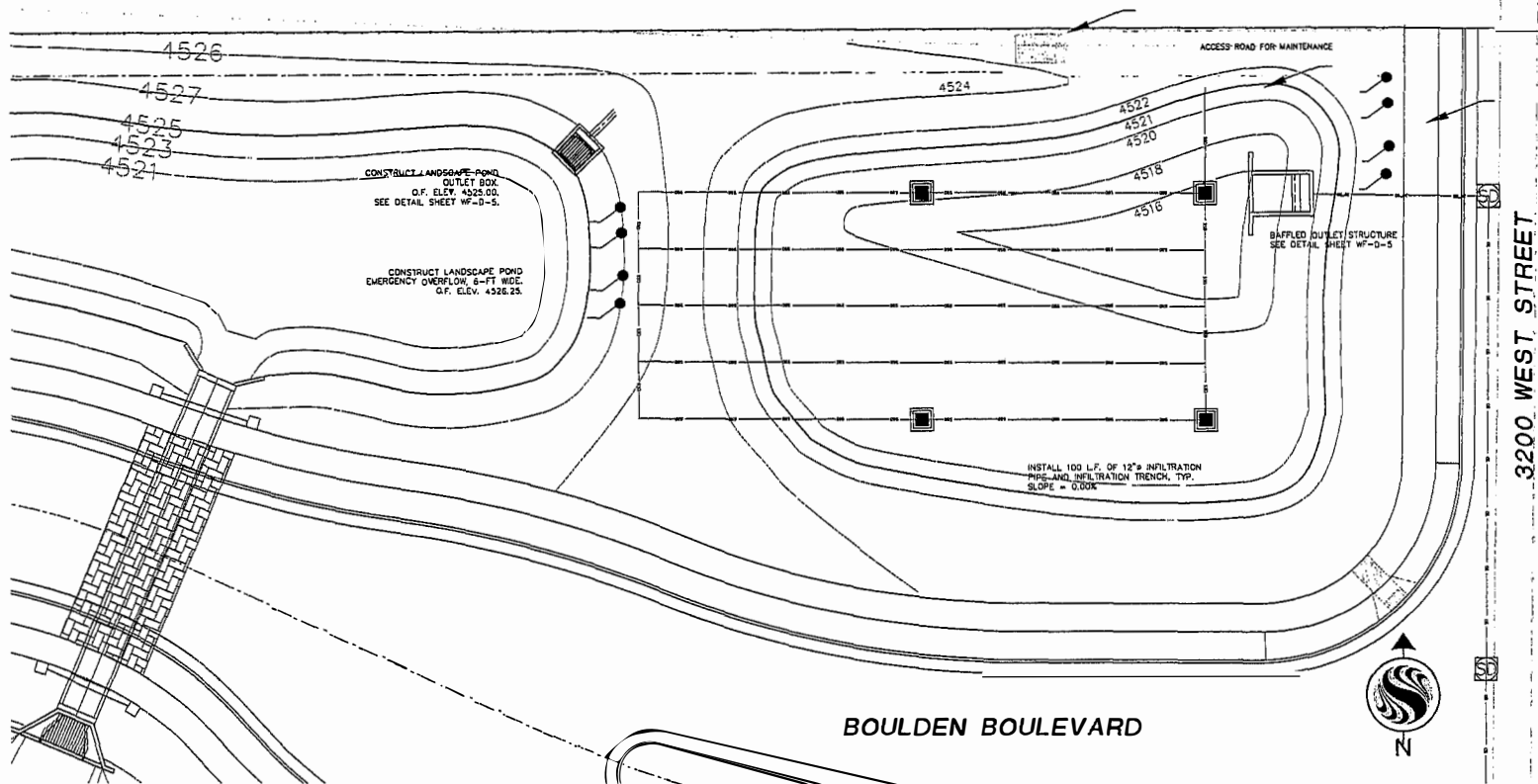
Member F.D.I.C.

EXHIBIT B

Site Plan Illustrating Location of Stamped Concrete



Drawing No.	Sheet	Revision
SW-2	of	0



SECTION B-B
DETENTION / INFILTRATION POND DETAIL
NOT TO SCALE



Stantec Consulting
Suite 200, 2965 South 700 East
Salt Lake City UT 84143
Tel: 801.261.0030
Fax: 801.266.1671
www.stantec.com

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The Contractor shall verify and be responsible for all dimensions. DO NOT verify the drawings - any errors or omissions shall be reported to Stantec within 90 days.
The Copyrights in all drawings and drawings are the property of Stantec. Reproduction or use for any purpose other than that authorized by Stantec is forbidden.

Legend

NOTE: ALL CONSTRUCTION SHALL CONFORM WITH THE CURRENT DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS OF BLUFFDALE CITY.

BENCHMARK
SOUTHEAST, NORTHEAST, & NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 1 WEST, SALT LAKE BASIN AND IFRIDIAN TOWNSHIP, CAP
E. BENCHMARK
ELEV. XXXXX.XX



Revision By Date 11/14/20

Issued By Date 11/14/20

File Name: s:\projects\186334\186334.dwg
User: Elder Date: 11/14/20
Title: Civil Date: 11/14/20



Client/Project
SCENIC DEVELOPMENT, INC
THE FALLS AT BOULDEN RIDGE
Bluffdale UT U.S.A.

Title
WATER FEATURE
SITE PLAN - INFILTRATION BASIN /
RECIRCULATION PUMPS

Project No. Scale
1863344600
Drawing No. Sheet Revision
WF-C-1 0

1863344600.dwg
11/14/20
R: Elder
P: Elder

PRINT SHEET - 11/14/20