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MAY 27 2004

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RICHARD T. MAUGHAN, DAVIS CNTY RECORDER  
2004 MAY 27 7:46 AM FEE .00 DEP MT  
REC'D FOR LAYTON CITY CORP

### DETENTION BASIN EASEMENT AGREEMENT

This Detention Basin Easement Agreement ("Agreement") is made this 18 day of MAY, 2004, by and between LAYTON POINTE, LC, a Utah limited liability company ("Layton Pointe") and LAYTON CITY, a municipal corporation (the "City").

#### RECITALS

A. Layton Pointe is the owner of the following described property located in Davis County, Utah (the "Layton Property"): See Exhibit A attached.

B. Layton Pointe also is the owner of the adjacent property which it is developing as a shopping center (the "Shopping Center Property").

C. Some surface waters from the Shopping Center Property are initially discharged into the City's drainage system (the "System"), where it is commingled with water from other sources. Other surface water from the Shopping Center Property, overflow water from the System and storm water can be temporarily accumulated in a detention basin to be constructed on the Layton Property.

D. Layton Pointe has received approval from the City to cause the water that accumulates in the detention basin to be released into the System in regulated amounts specified by the City, based upon the capacity of the System.

E. Subject to the terms and conditions of this Agreement, Layton Pointe is willing to grant a detention basin easement to the City for the purpose of temporarily storing overflow water from the System and storm water (collectively "Overflow Water") in the detention basin for subsequent release back into the System in accordance with the City's regulations.

F. Subject to the terms and conditions of this Agreement, the City desires to be granted the detention basin easement referred to in this Agreement.

NOW, THEREFORE, in consideration of the promises and covenants of the parties contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Layton Pointe and the City agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are incorporated as part of this Agreement.
2. Detention Basin Easement. Layton Pointe hereby grants, transfers and conveys to the City a non-exclusive detention basin easement over and across the following described property for the purpose of allowing Overflow Water to flow on and over, percolate in and be temporarily stored on the following described property for eventual discharge and release into the System consistent with the City's regulations and ordinances. The detention basin

easement contains approximately \_\_\_\_\_ square feet, as more particularly described on Exhibit B attached.

3. Construction of Detention Basin. Layton Pointe shall construct a detention basin on the Layton Property of sufficient capacity to temporarily store the estimated drainage from the Shopping Center Property and the Overflow Water. The cost to construct the detention basin shall be borne by Layton Pointe.

4. Relocation. Should Layton Pointe, in its sole discretion, determine that it is in the best interest of Layton Pointe to relocate the detention basin to a different part of the Layton Property, it may do so and shall grant to the City a detention basin easement at the new location, whereupon the location of the easement granted pursuant to this Agreement shall be changed to the new location and an amended legal description of the new location shall be recorded with the Davis County Recorder.

5. Costs and Expenses Relating to Maintenance of Detention Basin. Layton Pointe shall maintain and keep in good repair the detention basin at its sole cost and expense.

6. Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the area of the detention basin to or for the general public or for general use, it being the intention of Layton Pointe and the City that the use of the detention basin easement will be strictly limited to and for the purpose expressed in this Agreement.

7. Indemnification. The City shall indemnify and hold Layton Pointe harmless from and against any liability, damage, expense, cause of action, suit, claim and/or judgment for injury to person or property, including Layton Pointe's agents, representatives, tenants and licensees arising from the City's use of the detention basin easement for Overflow Water.

8. Binding Effect. The easement and all rights and obligations created by this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

9. Attorneys' Fees. In the event of any default under this Agreement, the defaulting party shall pay to the non-defaulting party all costs and expenses, including reasonable attorney's fees, that arise from or are related to the enforcement of the terms and conditions of this Agreement, whether enforcement is sought by litigation or otherwise.

10. Entire Agreement. This Agreement constitutes the entire agreement of the parties and any and all oral and written agreements, understandings, representations, promises and statements to the parties, and of their respective officers, directors, partners, agents, brokers and representatives with respect to the subject matter of this Agreement shall be deemed to be merged into this Agreement and shall not be effective or binding for any reason or purpose unless specifically so stated in this Agreement.

DATED this 14 day of May, 2004.

LAYTON POINTE, LC, a Utah limited liability company, by its Manager, Eagle Pointe Financial Group, Inc.

By [Signature]  
Gary L. Howland, President

LAYTON CITY

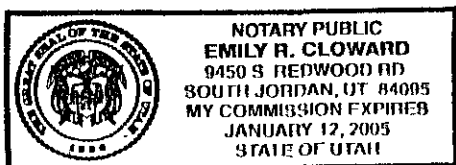
By [Signature]  
Its Mayor

APPROVED AS TO FORM

BY [Signature] 5/20/04

STATE OF UTAH                    )  
  :SS.  
COUNTY OF SALT LAKE        )

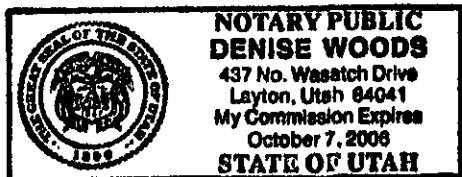
On this 18 day of May, 2004, personally appeared before Gary L. Howland, who is personally known to me and who duly acknowledged to me that he is authorized to execute the foregoing Agreement on behalf of Eagle Pointe Financial Group, Inc., the Managing Member of Layton Pointe, LC.



[Signature]  
Notary Public

STATE OF UTAH                    )  
  :SS.  
COUNTY OF DAVIS            )

On this 20th day of May, 2004, personally appeared before me Jerry Stevenson, the Mayor of Layton City, who is personally known to me and who duly acknowledged to me that he/she is duly authorized to execute this Agreement on behalf of Layton City and did so for its stated purpose.

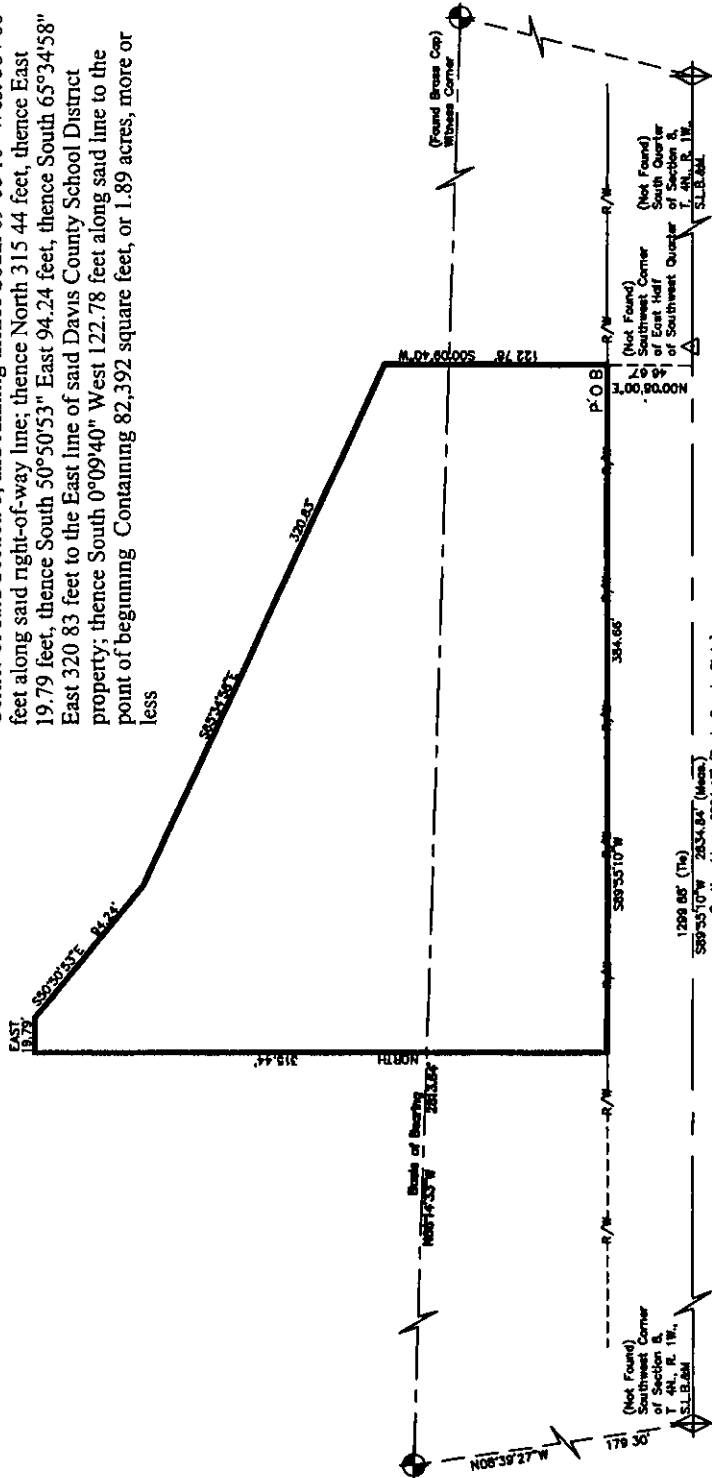


[Signature]  
Notary Public

**South Detention Basin Description**

A tract of land being a part of the Davis County School District Property, recorded as book 368 and page 466 in the Davis County Recorders Office, which property being located in the Southwest Quarter of Section 8, Township 4 North, Range 1 West, Salt Lake Base and Meridian, Layton City, Davis County, State of Utah. The tract of land being more particularly described as follows:

Beginning at a point on the North right-of-way line of Antelope Drive (SR-108), which point being North 89°55'10" East 1299 88 feet along the section line, and North 0°08'00" East 46 67 feet from the Southwest Corner of said Section 8; and running thence South 89°55'10" West 384 66 feet along said right-of-way line; thence North 315 44 feet, thence East 19 79 feet, thence South 50°50'53" East 94.24 feet, thence South 65°34'58" East 320 83 feet to the East line of said Davis County School District property; thence South 0°09'40" West 122.78 feet along said line to the point of beginning. Containing 82,392 square feet, or 1.89 acres, more or less



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DRAWN BY JJP CHECKED BY RDP PAGE NUMBER 1	ORIGINAL DATE OF DRAWING 4/8/2004 REVISIONS DATE OF SHEET 040111	PROJECT NUMBER 040111 PROJECT Davis School District Detention Basin Davis School District 800 W Antelope Dr Layton, Utah	CLIENT JS Engineering 588 East 10600 South Sandy, Utah 84070	A CONSULTING FLINT CONSULTING 197 61 1686861
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North Detention Basin Description:  
 A tract of land being a part of the Davis County School District Property, recorded as book 368 and page 466 in the Davis County Records Office, which property being located in the Southwest Quarter of Section 8, Township 4 North, Range 1 West, Salt Lake Base and Meridian, Layton City, Davis County, State of Utah. The tract of land being more particularly described as follows:

Beginning at a point on the East boundary line of the said Davis County School District property, which point is North 89°55'10" East 1299.88 feet along the section line, North 0°08'00" East 46 67 feet, and North 0°09'40" East 122 78 feet from the Southwest corner of said Section 8; and running thence North 65°34'58" West 43.94 feet; thence North 0°10'43" East 194.09 feet; thence East 40.00 feet to the said East line of the Davis County School District; thence along said line South 0°09'40" West 212.25 feet to the point of beginning. Containing 8,133 square feet, or 0 19 acres, more or less

