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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
12/20/2013 12:24 PM
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REC'D FOR SOUTH WEBER CITY

DEVELOPMENT AGREEMENT (AMENDED)

This **DEVELOPMENT AGREEMENT** ("Agreement") is made and entered to be effective the 3 day of December, 2013, by and between SOUTH WEBER CITY, a Utah Municipal Corp. ("City"); and LAYNE KAP, CALVIN KAP, KEITH KAP ("Developers"). All parties shall hereinafter be referred to collectively as the "Parties" and sometimes individually as a "Party" or by said party's given name or individual designation as the case may be.

13-

RECITALS:

- A. The Developers represent that they own certain real property or authorized agent for certain real property located within the City. (The "Property" as referenced in "Exhibit A");
- B. The Developers wish to develop or otherwise improve the Property pursuant to the City's subdivision, zoning and land use planning ordinances and requirements, specifically development of Easton Village Subdivision;
- C. As such, the Developers would be required by ordinance to install a detention basin for each property or subdivision as the case may be;
- D. The City also has a desire to participate in the construction of a regional detention basin to serve as the primary detention for certain properties owned by the city upstream from the regional detention basin;
- E. Therefore, the City has determined that given the proximity of the respective properties of the Developers, it is not as cost effective to install, maintain and regulate several, separate detention basins and that one larger detention basin sufficient to service the Property is more feasible, cost effective and efficient;
- F. Said proposed combined detention basin reduces the City's long-term operation and maintenance costs and creates a better value for the city at large;
- G. The proposed Easton Village Subdivision itself requires at least two (2) ingress and egress routes independently to and from the subdivision in order to be approved and meet City ordinances, however;
- H. The current proposed subdivision, although proposing two roads in and out of the subdivision, effectively only contains one ingress and egress point, because the road (Lester Street) upon which the two roads internal to the subdivision empty, dead-ends or terminates just west of the proposed subdivision;
- I. The property or other rights necessary to achieve the required ingress and egress routes as established above has not yet been secured and the Developers desire to proceed with the approval process of the subdivision phase one and phase two.
- J. The Developer will not be allowed any additional development of the Property without the construction of a second ingress/egress route, conclusive with construction of phase three or up to 30 total units in the development (from the intersection of Lester Street and 1160 East)..

- K. Said ingress/egress road shall be connected to a viable public road that effectively allows ingress and egress to and from the subdivision in opposite directions and shall be constructed by the Developers to meet all current city standards at the time of development.
- L. Installation of fencing with reflective signs per MUTCD standards on the West-end terminus of Lester Drive.

NOW THEREFORE, the Parties hereto intending to be legally bound and in consideration of their respective undertakings made and described herein, and for other good and valuable consideration, do agree as follows:

- 1. **Recitals.** The above recitals are incorporated herein by reference and made a part thereof.
- 2. **Detention Basin Project.** The City desires to participate in the expansion of an existing regional detention basin located within the Easton Village Subdivision and adjacent to the Kap Subdivision located at approximately 1160 East Lester, South Weber City, Utah (the "Project"). The Project includes construction/expansion of the regional detention basin. The Project does not include any pipe up-sizing through the Property.

The Project results from the Developer's need to detain storm water runoff in connection with their development and the City's desire to consolidate detention basins and to mitigate against the increasing number of smaller detention basins throughout the City. The Project shall be managed and constructed by the Developers as designed by the Developers' Engineer and as approved by the City Engineer. The analysis giving rise to the specifications of the Parties' contributions is attached hereto as Exhibit "B." The Concept Plan for the Project and areas to be served by the Detention Basin is attached hereto as Exhibit "C." The estimated cost share analysis is attached hereto as Exhibit "D."

- A. **Consideration.** The Parties have agreed to participate jointly in the cost of construction of and land value for the Project, which will service all associated properties and alleviate the potential need for separate detention basins.

The Parties agree to participate on a percentage basis as follows:

South Weber City	55%
Developers: Layne Kap, Calvin Kap, Keith Kap	45%

The Project (including construction of the detention basin and the value of the property upon which the detention basin is located), is estimated to cost \$164,192.30 (\$58,000.00 for Construction and \$106,192.30 for Property), as shown in "Exhibit D." A "Detention Basin Cost Share Agreement" previously entered into by the City and Developers on this same property required the City to pay \$36,367.77 for property upon which the detention basin was located. The detention basin referenced in this previous agreement is being replaced by the detention basin referenced in this agreement. The

City is therefore receiving a credit of \$36,367.77 toward the property value portion of their obligation. Thus, the City's obligation in this agreement is \$53,367.77 and the Developer's obligation in this agreement is \$73,886.54. The Construction portion in this agreement is an estimate and could ultimately cost more or less, thereby decreasing or increasing each Party's ultimate contribution as the case may be. The respective shares are indicative of the amount of storm water each participating property, once developed, is likely to contribute to the regional basin, regardless of the actual amount of such storm water contribution ultimately. The City shall deposit with the Developers one quarter (1/4) of said respective estimated share of the total cost of construction within thirty (30) days of recordation of this agreement. The Developers will be responsible to hire any and all contractors and subcontractors and shall pay for the Project subject to the City's contributions and reimbursement obligations set forth herein. Once the Project is considered, by the Parties, to be substantially complete, the City shall pay one quarter of the the remaining portion every year of their respective share of the final construction cost to the Developers until the total cost of the detention basin construction is repaid to the Developers. The total or final construction cost shall include the entire gross amount of the contract, which shall include material and labor costs.

- B. **The Role of the Parties.** The Developers shall act as the Owner on the Project and the sole payer on the contract for the construction of the Project, subject to the Parties' payment obligations set forth herein. This Agreement does not create, nor is intended to create, a partnership, joint venture or any other business entity or relationship between the Parties, except for the express contractual and independent obligation of payment set forth herein. The Parties to this Agreement do not have the authority to bind or otherwise obligate any other Party to this Agreement individually or collectively to a third party or person in any capacity whatsoever.
- C. **Escrow:** The Developers shall escrow funds for the Project prior to recordation of the Easton Village Subdivision Phase 1 Plat.

3. **Ingress/Egress Road and Emergency Access:** The Developers are required to install at least two (2) ingress and egress routes for the subdivision with the next phase of development of the Property (phase three or 30 total units from the intersection of Lester Street and 1160 East).

Consideration and Developer Obligation. The Developers shall construct a second ingress/egress in the next phase of development (phase three or 30 total units from the intersection of Lester Street and 1160 East) of the property. Said ingress/egress road shall be connected to a viable public road and shall be constructed by the Developers to meet all current City standards at the time of development. By way of example and not limitation, an extension of Lester street west to a point allowing it to connect with another

City road allowing independent access to and from the subdivision in addition to the current access, shall be constructed by the Developers, and shall meet all current City standards at the time of development and construction. This obligation may require the Developer(s) to acquire additional properties or other necessary rights to use said properties in order to meet these obligations. Said acquisitions shall be the sole obligation of Developer(s) and shall be achieved at their sole cost and expense, unless otherwise agreed to by the City at City's sole and ultimate discretion and in compliance with all applicable ordinances and other similar requirements. Further approval of the subdivision beyond Phase I and Phase II (totaling no more than 30 units from the intersection of Lester Street and 1160 East)/or development and construction of the same may be denied or withheld by the City without evidence of said property and other rights having first been acquired.

- A. **The Role of the Parties.** The Developers shall act as the Owner on the Project and the sole payor on the contract for the construction of the development and the road. This Agreement does not create, nor is intended to create, a partnership, joint venture or any other business entity or relationship between the Parties, except for the express contractual and independent obligation of payment set forth herein. The Parties to this Agreement do not have the authority to bind or otherwise obligate any other Party to this Agreement individually or collectively to a third party or person in any capacity whatsoever.
- B. **Escrow:** The Developers shall escrow funds for the road prior to recordation of the next phase of development of the Property.

4. **Hold Harmless.** The Developers on behalf of their respective heirs, agents, successors and assigns, all affiliated persons and entities, dba's, attorneys, owners, officers, agents, directors, employees and family members, both past and present, shall hold the City harmless, and shall defend and indemnify the City and its related and affiliated persons or entities, officers, agents, directors, employees, council members, successors and assigns, and attorneys from any and all complaints, claims, demands, damages, actions, judgments, causes of action or suits of whatever kind or nature, both known and unknown, and which have existed, which now exist or which may hereafter accrue between the Parties and third parties because of or arising out of the Parties' obligations hereunder generally, and with respect to the hiring of the contractor and the construction of the Project specifically, so long as said claims, demands, damages, suits, etc. do not flow from the City's intentional or gross misconduct. Notwithstanding anything to the contrary in this Agreement generally, and this Section 5 specifically, the City's governmental immunity against any such claims, if any, pursuant to law, is not waived and shall remain in full force and effect. The Developers shall obtain and maintain liability insurance in the amount of \$1,000,000.00 during the entirety of the Project and shall provide the City a copy of the certificate of said insurance. Furthermore, the Developers warrant and guarantee that its employees and all sub-contractors employees are sufficiently covered by workers compensation insurance.

5. **Amendment.** Any amendment, modification, termination, or rescission affecting this Agreement shall be made in writing, signed by the Parties, and attached hereto.

6. **Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, such declaration shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as long as the effect, consideration and material intent of this Agreement as to each Party are achieved.

7. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah, and any dispute arising pursuant to this Agreement shall be subject to the jurisdiction of the Second Judicial District, Farmington Department, State of Utah.

8. **Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions. No waiver shall be binding unless executed in writing by the waiving Party.

9. **Captions.** The Captions preceding the paragraphs of this Agreement are for convenience only and shall not affect the interpretation of any provision herein.

10. **Integration.** This is a fully integrated agreement. As to all matters between the Parties, this Agreement contains the entire and integrated agreement of the Parties as of its date.

11. **Default.** Time is of the essence in strictly meeting the deadlines set forth within this Agreement, and failure to do so shall constitute a material breach hereof. Regardless of the type of default of this Settlement Agreement, which would include the filing of bankruptcy, by any Party or Parties under the terms of this Agreement, the non-defaulting Party or Parties shall, in addition to any other legal remedy or remedies, be entitled to collect from the defaulting Party or Parties all costs and attorney's fees reasonably incurred in enforcing this Agreement, regardless of whether suit is instituted or whether such fees or costs are incurred in connection with any bankruptcy matter or proceeding.

12. **Knowledge.** The Parties have sought legal representation in this matter and for purposes of entering into this Agreement and have read this Agreement and understand all of its terms.

13. **Covenant to Run with the Land.** This Agreement shall be recorded against the Developers Property so that it shall touch and concern any and all such Property or portions thereof and obligate any subsequent owners, successors, heirs, and grantees of the Property, or any portion thereof, including owners of finished or approved building lots, to its terms, rights and obligations. Upon full, timely and complete payment of a Party's payment obligation, and upon the request of each Party, the Agreement shall be released from said Party's property by way of a Release of Agreement, or some such equivalent document, releasing the Agreement from title to said Party's property.

14. **No Representations or Warranties.** Except for the duties, obligations and express warranties of the Parties set forth herein, including each Party's representation and warranty that each Party has authority to sign for and bind themselves and the persons or entities for whom they sign or for whom they imply to sign, the Parties make no representations or warranties of any kind or nature whatsoever.

15. **No Warranty of Subdivision Approval.** Nothing in this Agreement expressly or impliedly guarantees or otherwise warrants the approval, final or otherwise, of the City or any of its subdivisions of any subdivision or other land use application with respect to the Property or any portion thereof, inasmuch as said approval(s) is a legislative determination to be carried out independently by and through the different and varying bodies and commissions of the City, including, but not limited to, the City Council.

16. **The Parties.** South Weber City, 1600 East, South Weber Drive, South Weber, Utah 84405; Layne Kap, 244 West South Weber Drive, South Weber, Utah 84405; Calvin Kap, 985 East South Weber Drive, South Weber, Utah 84405; Keith Kap, 939 East South Weber Drive, South Weber, Utah 84405.

17. **Warranty and Escrow.**

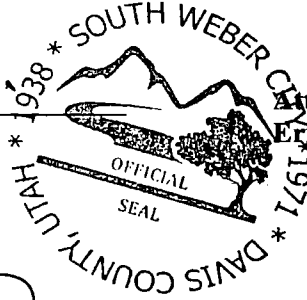
- A. Developers warrant to City that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all said materials and equipment will be of good quality, free from faults and defects and in conformance with all industry standards, plans, specifications and laws. All such material and equipment not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. If required by City, the Developers shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- B. Without limiting any special warranties contained herein, Developers guarantee that the Project and all portions thereof will be free from all defects in material and workmanship for a period of one (1) year following completion of the Project. As part of the guarantee, Developers agree to commence repair or replacement of any defective material or equipment and performance of any labor necessary to correct any such defect in the Project within fifteen (15) business days after receipt of notice thereof and thereafter to diligently prosecute all corrective work to completion, all at Developers' sole cost and expense.
- C. City shall retain the equivalent of 10% of the Developers' share of the cost of the Project in an escrow to be kept and maintained for one year commencing upon the date of final completion of the Project in order to insure compliance with the one year warranty set forth herein and the condition of the Project after the one year period. The money held in escrow shall be returned to Developers upon request for final inspection and after final acceptance by the City Council after one year from substantial completion of the Project.

Notwithstanding anything to the contrary, the money held in escrow may not be used by Developers during the one year period in order to perform warranty work as required under the warranty provisions set forth herein.

EXECUTED as of the day and year first above written.

SOUTH WEBER CITY:

Jeffery G. Monroe
Jeffery G. Monroe, Mayor



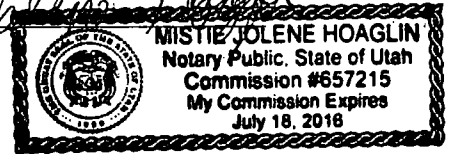
Attest: Erika J. Ahlstrom
Erika J. Ahlstrom, City Recorder

DEVELOPERS

Layne Kap
Layne Kap

In the State of Utah, County of Davis, on the 3rd day of December, 2012, Layne Kap personally appeared before me, and affixed his signature hereto.

Mistie Jolene Hoaglin
Notary Public



Keith Kap
Keith Kap

In the State of Utah, County of Davis, on the 3rd day of December, 2012, Keith Kap personally appeared before me, and affixed his signature hereto.

Mistie Jolene Hoaglin
Notary Public



Calvin Kap
Calvin Kap

In the State of Utah, County of Davis, on the 3rd day of December, 2012, Calvin Kap personally appeared before me, and affixed his signature hereto.

Mistie Jolene Hoaglin
Notary Public



Exhibit "A"

The Property

EASTON VILLAGE OVERALL BOUNDARY DESCRIPTION

PART OF THE NE 1/4 OF SECTION 33, T.5N., R. 1W., S.L.B & M., U.S. SURVEY

BEGINNING AT THE NW CORNER OF KAPP SUBDIVISION, SAID POINT BEING N89°49'39"W 389.57 FEET FROM THE NW CORNER OF SAID SECTION 33, THENCE SOUTH ALONG THE BOUNDARY OF KAPP SUBDIVISION 60.00 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF LESTER STREET; THENCE S89°49'39"E ALONG SAID RIGHT-OF-WAY 79.47 FEET TO THE EXTENSION OF THE WESTERLY BOUNDARY OF KAPP SUBDIVISION; THENCE ALONG THE BOUNDARY OF SAID KAPP SUBDIVISION THE FOLLOWING FOUR (4) COURSES: (1)S00°05'32"W 551.91 FEET ; (2)S89°54'28"E 160.00 FEET; (3)N00°05'32"E 29.34 FEET AND (4)N89°53'17"E 150.00 FEET; THENCE S00°05'32"W 863.67 FEET TO THE NORTH LINE OF THE WEBER-DAVIS CANAL COMPANIES EASEMENT; THENCE ALONG SAID NORTH LINE THE FOLLOWING SEVEN (7) COURSES: (1)N79°46'28"W 146.36 FEET; (2)N40°41'28"W 174.60 FEET; (3)N28°09'28"W 270.00 FEET; (4)N42°54'28"W 84.70 FEET; (5)N55°45'28"W 200.00 FEET; (6)N68°40'28"W 251.00 FEET AND (7)N59°29'28"W 143.06 FEET TO THE EASTERLY BOUNDARY LINE OF MITCHELL'S SUBDIVISION; THENCE N00°10'05"E ALONG SAID LINE 713.28 FEET TO THE NORTH LINE OF SECTION 33; THENCE ALONG SAID SECTION LINE S89°49'39"E 576.02 FEET TO THE POINT OF BEGINNING.

CONTAINING 819,849 SQUARE FEET AND 18.82 ACRES

Exhibit "B"

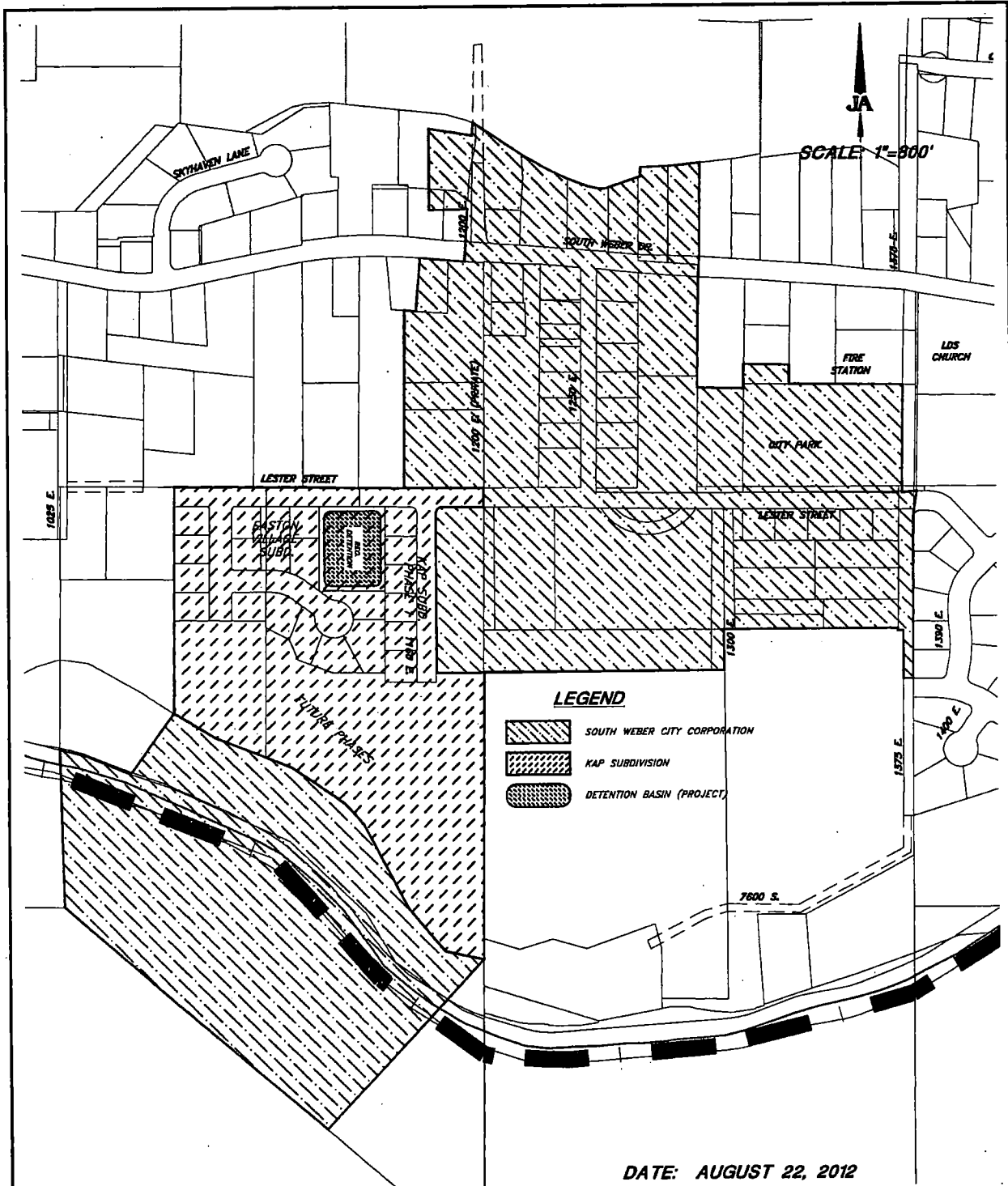
Detention Basin - Proportionate Share Analysis

Easton Village Regional Detention Basin

South Weber City

August 22, 2012

Description	Subbasin	Area (Ac)	10-yr (cfs)	100-yr (cfs)	Allowable Discharge (0.1cfs/Ac)	Volume, based on 2.0AF Total Volume (AF)	Volume, based on 2.0AF Total Volume (c.f.)	% of Total Volume
Easton Village - Phase 3	K1-10	4.5	2	4	0.45	0.19	8,283	10%
Easton Village - Phase 1	K1-20	6	2	4	0.6	0.25	11,043	13%
Easton Village - Det. Basin	K1-30	1.2	0	0.13	0.12	0.05	2,209	3%
Easton Village - Phase 2	K2-0	7	3	6	0.7	0.30	12,884	15%
Kap Subdivision - Phase 1	K2-10	2.6	1	3	0.26	0.11	4,785	5%
Easton Village Subtotals		21	8	17	2.1	0.90	39,204	45%
Hillside - Easton Village	K1-0	22	0.03	0.07	2.2	0.36	15,734	18%
Steven Poll-Shaw	K1-40	8	3	5	0.8	0.13	5,721	7%
1200 E. - Bluff	K1-50	4	0.3	1	0.4	0.07	2,861	3%
South Weber Elementary	K3-0	7	3	7	0.7	0.11	5,006	6%
Lester Dr. - East	K4-0	10	3	6	1.0	0.16	7,152	8%
Lester Dr. - West	K4-10	11	4	8	1.1	0.18	7,867	9%
1200 E. - South Weber Dr.	K5-0	5	1	3	0.5	0.08	3,578	4%
South Weber City Subtotals		67	14	30	6.7	1.10	47,916	55%
TOTALS		88	22	47	8.8	2.00	87,120	100%



JONES & ASSOCIATES
Consulting Engineers

1716 East 5600 South
South Ogden, Utah 84403
476-9767 FAX 476-9768

SOUTH WEBER CITY CORPORATION
EASTON VILLAGE REGIONAL DET. BASIN

EXHIBIT "C"

Exhibit "D"

Easton Village Regional Detention Basin - Cost Share Analysis*

Construction & Property Costs					
Item	Description	Qua.	Unit	Unit Price	Total
1	Excavate Detention Basin	1	l.s.	\$10,000.00	\$10,000.00
2	Fine Grade & Topsoil	1	l.s.	\$15,000.00	\$15,000.00
3	Sprinkler System & Sod	1	l.s.	\$33,000.00	\$33,000.00
Construction Subtotal =					\$58,000.00
4	Property (DSD Appr. - \$22,000 for 0.26Ac)	1.255	Ac.	\$84,615.38	\$106,192.30
Property Subtotal =					\$106,192.30

* These costs represent an estimate of work to be done. Final payment will be based upon actual costs incurred.

Responsible Party	% Share	Construction	Property
South Weber City	55%	\$31,900.00	\$58,405.77
Layne Kap, Calvin Kap & Keith Kap (Developers)	45%	\$26,100.00	\$47,786.54
Subtotals		\$58,000.00	\$106,192.30
<i>South Weber City -- Credit for property previously paid for as a part of the Cost Share Agreement with Kap Subdivision Phase 1</i>			<i>-\$36,938.00</i>

COST TOTALS	
South Weber City	\$53,367.77
Layne Kap, Calvin Kap & Keith Kap (Developers)	\$73,886.54