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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
10/10/2023 12:36 PM
FEE 0.00 Pgs: 10
DEP IC REC'D FOR LAYTON
CITY

RETURNED
OCT 10 2023

When recorded, mail to:
Layton City Corporation
Attn: Layton City Recorder
437 N. Wasatch Dr.
Layton, Utah 84041

Affects Parcel No(s): 09-422-0104

LAYTON CITY
STORM WATER FACILITIES
MAINTENANCE AGREEMENT

This Storm Water Facilities Maintenance Agreement ("Agreement") is made and entered into this 7TH day of AUGUST, 2023, by and between Layton City, a Utah municipal corporation ("City"), and Layton Antelope Retail, LLC, a Limited Liability Company ("Owner").

RECITALS

WHEREAS, the City is authorized and required to regulate and control the disposition of storm and surface waters within the City, as set forth in the Layton City Storm Water Ordinance, as amended ("Ordinance"), adopted pursuant to the Utah Water Quality Act, as set forth in *Utah Code Ann.* §§ 19-5-101, *et seq.*, as amended ("Act"); and

WHEREAS, the Owner hereby represents and acknowledges that it is the owner in fee simple of certain real property more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference ("Property"); and

WHEREAS, the Owner desires to build or develop the Property and/or to conduct certain regulated construction activities on the Property which will alter existing storm and surface water conditions on the Property and/or adjacent lands; and

WHEREAS, in order to accommodate and regulate these anticipated changes in existing storm and surface water flow conditions, the Owner desires to build and maintain at Owner's expense a storm and surface water management facility or improvements ("Storm Water Facilities"); and

WHEREAS, the Storm Water Facilities are more particularly described and shown in the final site plan or subdivision approved for the Property and related engineering drawings, and any amendments thereto, which plans and drawings are on file with the City and are hereby incorporated herein by this reference ("Development Plan"); and

WHEREAS, as a condition of Development Plan approval, and as required as part of the City's Small MS4 UPDES General Permit from the State of Utah, Owner is required to enter into this Agreement addressing the maintenance requirements for the Storm Water Facilities and control measures installed on the Property.

NOW, THEREFORE, in consideration of the benefits received and to be received by the Owner, its successors and assigns, as a result of the City's approval of the Development Plan, and the mutual covenants contained herein, the parties agree as follows:

1. Construction of Storm Water Facilities. The Owner shall, at its sole cost and expense, construct the Storm Water Facilities in strict accordance with the plans and specifications identified in the Development Plan, and any amendments thereto which have been approved by the City.
2. Maintenance of Storm Water Facilities. The Owner shall, at its sole cost and expense, adequately maintain the Storm Water Facilities. Owner's maintenance obligations shall include all pipes and channel built to convey storm water, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the storm water. Adequate maintenance, for purposes of this Agreement, is defined as good working condition so that the Storm Water Facilities are performing their design functions. The Owner shall, at its sole cost and expense, perform all work necessary to keep the Storm Water Facilities in good working condition. In the event that a maintenance schedule is set forth in the Development Plan, such maintenance schedule shall be followed.
3. Annual Inspection of Storm Water Facilities. The Owner shall, at its sole cost and expense, inspect the Storm Water Facilities and submit an inspection report and certification to the City annually. The purpose of the inspection and certification is to assure safe and proper functioning of the Storm Water Facilities. The annual inspection shall cover all aspects of the Storm Water Facilities, including, but not limited to, the structural improvements, berms, outlet structure, pond areas, access roads, vegetation, landscaping, etc. Deficiencies shall be noted in the inspection report. The report shall also contain a certification as to whether adequate maintenance has been performed and whether the structural controls are operating as designed to protect water quality. The annual inspection report and certification shall be due by July 31st of each year and shall be on forms acceptable to the City.
4. City Oversight Inspection Authority. The Owner hereby grants permission to the City, its authorized agents and employees, to enter upon the Property at their sole risk and hazard to inspect the Storm Water Facilities whenever deemed necessary by the City. Such inspections shall be conducted in a reasonable manner and at reasonable times, as determined appropriate by the City. The purpose of the inspection shall be to determine and ensure that the Storm Water Facilities are being adequately maintained, are continuing to perform in an adequate manner, and are in compliance with the Act, the Ordinance, and the Development Plan.
5. Notice of Deficiencies. If the City finds that the Storm Water Facilities contain any defects or are not being maintained adequately, the City shall send Owner written notice of the defects or deficiencies and provide Owner with a reasonable time to cure such defects or deficiencies. Such notice shall be hand-delivered to the Owner or sent certified mail to the Owner at the Property address.

6. Owner to Make Repairs. The Owner shall, at its sole cost and expense, make such repairs, changes or modifications to the Storm Water Facilities as may be determined as reasonably necessary by the City within the required cure period to ensure that the Storm Water Facilities are adequately maintained and continue to operate as designed and approved.
7. City's Corrective Action Authority. In the event the Owner fails to adequately maintain the Storm Water Facilities in good working condition acceptable to the City, after due notice of deficiencies as provided in Section 5 and reasonable cure periods, the City may enter upon the Property and take whatever steps necessary to correct deficiencies and to charge the costs of such repairs to the Owner. It is expressly understood and agreed that the City is under no obligation to maintain or repair the Storm Water Facilities, and in no event shall this Agreement be construed to impose any such obligation on the City. The actions described in this Section are in addition to and not in lieu of any and all legal remedies available to the City as provided by law for Owner's failure to remedy deficiencies or any other failure to perform under the terms and conditions of this Agreement.
8. Reimbursement of Costs. In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Owner shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City. After said thirty (30) days, such amount shall be deemed delinquent and shall be subject to interest at the rate of ten percent (10%) per annum. Owner shall also be liable for any collection costs, including attorneys' fees and court costs, incurred by the City in collection of delinquent payments.
9. Successors and Assigns. This Agreement shall be recorded in the Davis County Recorder's Office and the covenants and agreements contained herein shall run with the land and whenever the Property shall be held, sold, conveyed or otherwise transferred, it shall be subject to the covenants, stipulations, agreements and provisions of this Agreement which shall apply to, bind and be obligatory upon the Owner hereto, its successors and assigns, and shall bind all present and subsequent owners of the Property described herein.
10. Severability Clause. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof to the Owner, its successors and assigns, is held invalid, the remainder of this Covenant shall not be affected thereby.
11. Utah Law and Venue. This Agreement shall be interpreted under the laws of the State of Utah. Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in Davis County, Utah.
12. Indemnification. This Agreement imposes no liability of any kind whatsoever on the City, and the Owner agrees to hold the City harmless from any liability in the event the Storm Water Facilities fail to operate properly. The Owner shall indemnify and hold the City harmless for any and all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against the City from the construction, presence, existence, or maintenance of the Storm Water Facilities.

13. Amendments. This Agreement shall not be modified except by written instrument executed by the City and the Owner of the Property at the time of modification, and no modification shall be effective until recorded in the Davis County Recorder's Office.

14. Subordination Requirement. If there is a lien, trust deed or other property interest recorded against the Property, the trustee, lien holder, etc., shall be required to execute a subordination agreement or other acceptable recorded document agreeing to subordinate their interest to the Agreement.

[Signature and notary pages to follow]

IN WITNESS WHEREOF, the OWNER has executed this Storm Water Facilities Maintenance Agreement
this 7th day of AUGUST, 2023.

OWNER:



OWNER'S SIGNATURE
(Signature must be notarized on following pages)

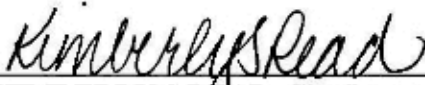
Kevin Garn – Manager – Layton Antelope Retail, LLC
OWNER'S NAME & TITLE

LAYTON CITY ACCEPTANCE:



ALEX R. JENSEN, City Manager

ATTEST:

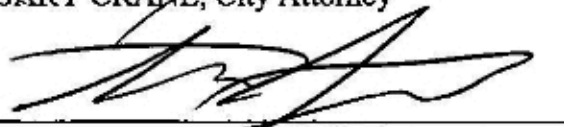


KIMBERLY S READ, City Recorder

Approved as to Form:



GARY CRANE, City Attorney

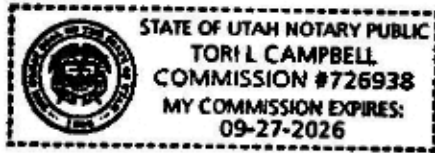


STEPHEN JACKSON, City Engineer

CITY ACKNOWLEDGMENT

STATE OF UTAH
COUNTY OF DAVIS §

On this 30th day of August, 2023, personally appeared before me Alex R. Jensen who being duly sworn, did say that he/she is the City manager of LAYTON CITY, a municipal corporation of the State of Utah, and that the foregoing Storm Water Facilities Maintenance Agreement was signed in his capacity as land use authority on behalf of the City for approval.



Tori L Campbell
NOTARY PUBLIC

OWNER NOTARY

(Complete only if signing as an Individual)

STATE OF _____
COUNTY OF _____ §

On this _____ day of _____, 20____, personally appeared before me _____ who being duly sworn, did say that he/she is the legal property owner of record of the property subject to this Storm Water Facilities Maintenance Agreement and that he/she has executed this Storm Water Facilities Maintenance Agreement with full authority to do so.

NOTARY PUBLIC

(Complete only if signing on behalf of a Corporation/Partnership)

STATE OF _____
COUNTY OF _____ §

On this _____ day of _____, 20____, personally appeared before me _____ who being by me duly sworn did say that he/she is the _____ of _____ a _____ corporation/partnership, and that _____ is the legal property owner of record of the property subject to this Storm Water Facilities Maintenance Agreement and that the foregoing Storm Water Facilities Maintenance Agreement was signed in behalf of said corporation/partnership by authority of its Board of Directors/by laws, and he/she acknowledged to me that said corporation/partnership executed the same.

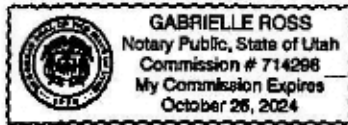
NOTARY PUBLIC

(See Following Page for Limited Liability Company & Trust Notaries)

(Complete only if signing on behalf of a Limited Liability Company)

STATE OF UTAH
COUNTY OF DAVIS §

On this 7th day of August, 20 23, personally appeared before me Kevin Garn, who being by me duly sworn did say that he/she is the Manager of Layton Antelope Retail, LLC, a limited liability company, that Layton Antelope Retail, LLC is the legal property owner of record of the property subject to this Storm Water Facilities Maintenance Agreement and that the Storm Water Facilities Maintenance Agreement was signed in behalf of said company by authority, and he/she acknowledged to me that said company executed the same.



Gabrielle Ross
NOTARY PUBLIC

(Complete only if signing on behalf of a Trust)

STATE OF _____
COUNTY OF _____ §

On this _____ day of _____, 20____, personally appeared before me _____ who being by me duly sworn did say that he/she is the Trustee of the _____ and that the _____ is the legal property owner of record of the property subject to this Storm Water Facilities Maintenance Agreement and that the foregoing Storm Water Facilities Maintenance Agreement was signed in behalf of said Trust by _____, Trustee, and he/she acknowledged to me that the Trust executed the same.

NOTARY PUBLIC

****IF ADDITIONAL SIGNERS AND/OR NOTORIAL WORDING ARE NECESSARY, PLEASE NOTATE ANY ADDITIONS ON THIS NOTARY PAGE AND ATTACH A STATE APPROVED NOTARIAL CERTIFICATE, WHICH IDENTIFIES THE DOCUMENT THE ATTACHED NOTARIAL CERTIFICATE RELATES TO, AS WELL AS, THE NUMBER OF PAGES IN THE DOCUMENT****



File Number: 168213-KAP

**EXHIBIT A
LEGAL DESCRIPTION**

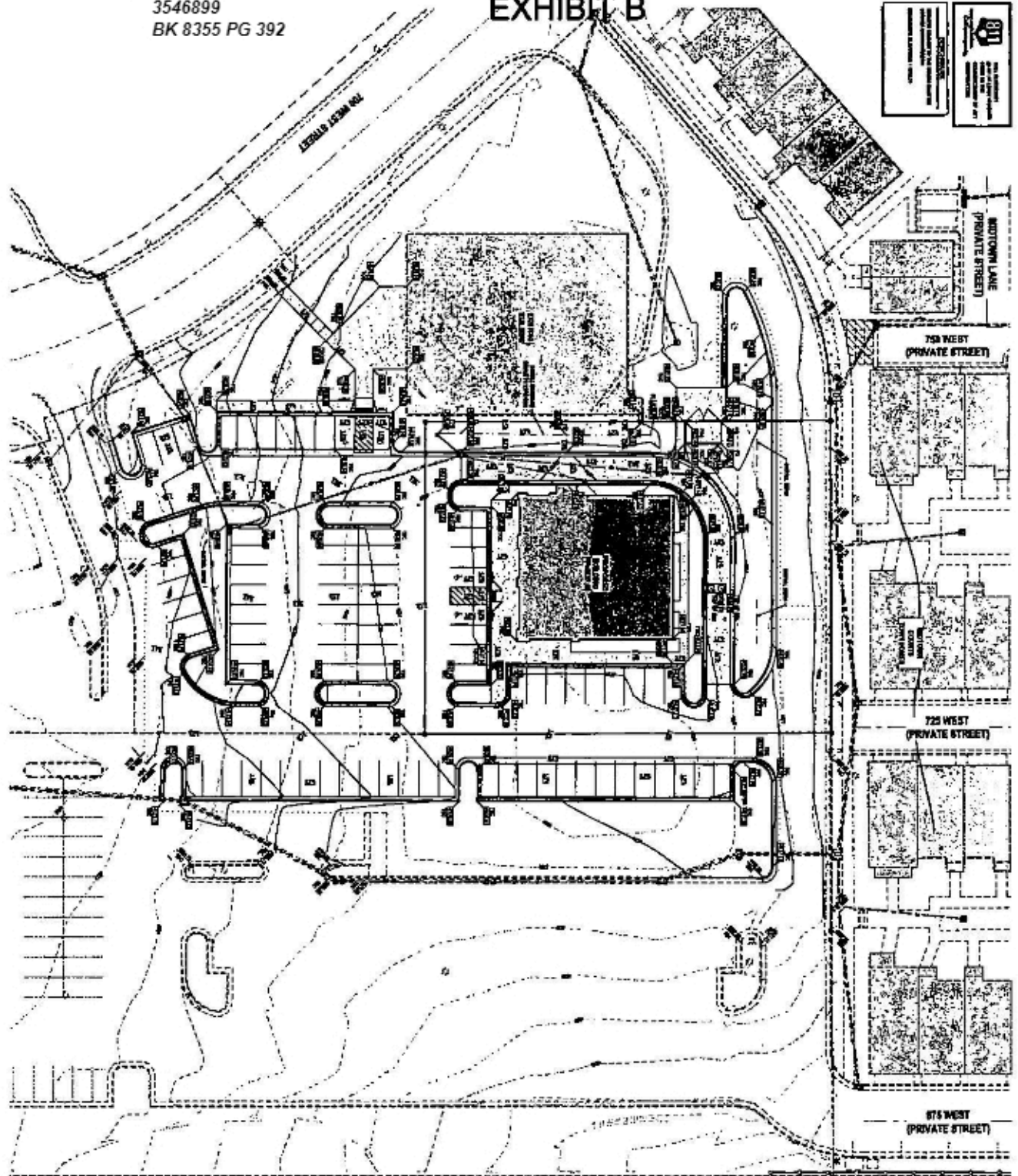
PARCEL 1:

Proposed Lot 204, of the Proposed HARRIS POINTE SUBDIVISION - SECOND AMENDMENT, said Proposed Lot 204 being more particularly described as follows:

A parcel of land situate in the Southwest quarter of Section 8, Township 4 North, Range 1 West, Salt Lake Base and Meridian, Layton City, Davis County, Utah, more particularly described as follows:

Beginning at a point which is South 89°55'10" West 197.34 feet along the Section line (NAD83 Bearing being North 89°44'19" West between the South quarter corner and Southwest corner of said Section 8, per the Davis County Township Reference Plat) and North 00°04'50" West 474.89 feet from the South quarter corner of Section 8, and running thence North 89°59'58" West 142.00 feet; thence North 00°00'02" East 185.79 feet to the Southerly line of Midtown Courts Townhomes; thence North 89°52'30" East 142.00 feet along said Southerly line; thence South 00°00'02" West 186.10 feet to the point of beginning.

EXHIBIT B

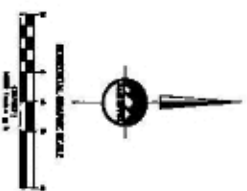


NOTICE
THIS PLAN IS THE PROPERTY OF ENSIGN ARCHITECTS AND ENGINEERS, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF ENSIGN ARCHITECTS AND ENGINEERS, INC.

ENSIGN ARCHITECTS AND ENGINEERS, INC.
1000 WEST 1000 SOUTH
SALT LAKE CITY, UT 84119
PHONE: (801) 466-1000
FAX: (801) 466-1001
WWW.ENSIGNARCHITECTS.COM

GENERAL NOTES

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
2. EXISTING UTILITIES ARE SHOWN AS DASHED LINES. ALL UTILITIES SHALL BE DEEPENED AND REINSTALLED TO MEET ALL APPLICABLE CODES AND STANDARDS.
3. ALL NEW UTILITIES SHALL BE INSTALLED TO MEET ALL APPLICABLE CODES AND STANDARDS.
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10. ALL NEW UTILITIES SHALL BE INSTALLED TO MEET ALL APPLICABLE CODES AND STANDARDS.





ENSIGN ARCHITECTS AND ENGINEERS, INC.
1000 WEST 1000 SOUTH
SALT LAKE CITY, UT 84119
PHONE: (801) 466-1000
FAX: (801) 466-1001
WWW.ENSIGNARCHITECTS.COM

LAYTON POINTE
DRIVE-THRU / RETAIL
2096 NORTH 700 WEST
LAYTON, UTAH

ENGIN
THE PIONEER OF PERFORMANCE

C-300

CALENDAR PLAN

DATE: 01/15/2010
BY: [Signature]