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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF **CLAYTON ELLIOTT McFALL** TO PRACTICE AS A LAND SURVEYOR IN THE STATE OF UTAH	)))))	**STIPULATION AND ORDER** CASE NO. DOPL 2010- 209

CLAYTON ELLIOTT McFALL ("Respondent") and the **DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING** of the Department of Commerce of the State of Utah ("Division") stipulate and agree as follows:

1. Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action.

2. Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily.

3. Respondent understands that Respondent has the right to be represented by counsel in this matter and Respondent's signature below signifies that Respondent has either consulted with an attorney or Respondent waives Respondent's right to counsel in this matter.

4. Respondent understands that Respondent is entitled to a hearing before the State of Utah's Professional Engineers and Professional Land Surveyors Licensing Board ("the Board"), or other Division Presiding Officer, at which time Respondent may present evidence on Respondent's own behalf, call witnesses, and confront adverse witnesses. Respondent understands that by signing this document Respondent hereby waives the right to a hearing, the right to present evidence on Respondent's own behalf, the right to call witnesses, the right to confront adverse witnesses, and any other rights to which Respondent may be entitled in connection with said hearing. Respondent understands that by signing this document Respondent waives all rights to any administrative and judicial review as set forth in Utah Code Ann. §§ 63G-4-301 through 63G-4-405 and Utah Administrative Code R151-46b-12 through R151-46b-15. Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code Ann. § 63G-4-102(4).

5. Respondent waives the right to the issuance of a Petition and a Notice of Agency Action in this matter.

6. Respondent understands that this Stipulation and Order, if adopted by the Director of the Division, will be classified as a public document. The Division may release this Stipulation and Order, and will release other information about this disciplinary action against Respondent's license, to other persons and entities.

7. Respondent admits the following facts are true:

   a. Respondent was first licensed to practice as a professional land surveyor in the State of Utah on or about March 6, 2007.

   b. On or about February 4, 2009 Respondent submitted an application for renewal of licensure as a professional land surveyor in the State of Utah. Respondent answered "yes" to the application question that asked in part if Respondent was under investigation or criminal action was pending against him.

   c. On or about December 30, 2009 Respondent was convicted of one count of sexual exploitation of a minor, a 2nd degree felony, and one count of attempted sexual exploitation of a minor, a 3rd degree felony, in Second District Court, Ogden, Weber County, Utah. The court placed Respondent on probation with the Utah Department of Corrections for a period of thirty-six months. The listed convictions were due to Respondent being in possession of child pornography that was downloaded from the internet and stored on Respondent's personal computer. These convictions are the Respondent's only criminal convictions.

8. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and (c). Respondent agrees by engaging in such conduct the Division is justified in taking disciplinary action against Respondent's license pursuant to Utah Code Ann. § 58-1-401(2)(a) and (b). Respondent agrees that an Order, which constitutes disciplinary action against Respondent's license by the Division pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann. § 58-1-401(2), may be issued in this matter providing for the following action against Respondent's license:

(1) Respondent's license shall be subject to a term of probation for a period of three years. The period of probation shall commence on the date the Division Director signs the accompanying Order. During the period of probation Respondent's license shall be subject to all of the following terms and conditions. If the Board or Division later deems any of the conditions unnecessary such deletions may be made by an amended order issued unilaterally by the Division.

a. Respondent shall meet with the Board within thirty (30) days, or as directed by the Division, of the signing of the accompanying Order. Respondent shall meet with an assigned Division staff member prior to Respondent's first meeting with the Board for the purposes of education and completing any documentation regarding this Stipulation and Order as it pertains to his probation with the Division. Respondent shall meet with Division staff and the Board whenever requested by the Division.

b. Respondent shall complete all terms and conditions of any criminal sanctions, incurred before or during the period of this agreement, including probation or parole. If Respondent has not successfully completed all the terms and conditions of Respondent's criminal probation at the time Respondent's administrative probationary period ends, the period of Respondent's administrative probation shall be extended until all the conditions of Respondent's criminal probation have been successfully completed. If Respondent fails to comply with the terms of his criminal probation and his criminal probation is unsuccessfully terminated, Respondent shall be deemed to be in violation of this agreement.

c. Respondent shall not work with or near any person who is under eighteen years of age.

d. Respondent shall provide a copy of this Stipulation and Order to his employer. Respondent's employer shall, initially within thirty days and quarterly thereafter, provide the Division with progress reports that summarize the Respondent's work attendance, behavior, quality of work product, ability to get along with others. If Respondent voluntarily leaves his employment or is terminated, Respondent's employer shall inform the Division of the reason for Respondent's leaving or termination.

e. Respondent shall notify the Division in writing within one (1) week of any change of employer, employer status, or practice status. This notification is required regardless of whether Respondent is employed in Respondent's profession.

f. If Respondent leaves the State of Utah for a period longer than sixty (60) days, Respondent shall notify the Division in writing of the dates of Respondent's departure and return. The licensing authorities of the jurisdiction to which Respondent moves shall be notified by Respondent in writing of the provisions of this Stipulation and Order. Periods of residency or practice outside the State of Utah may apply to the reduction of the period this Stipulation and Order is in effect, if the new state of

residency places equal or greater conditions upon the Respondent as those contained in this Stipulation and Order.

g. If Respondent is arrested or charged with a criminal offense by any law enforcement agency, in any jurisdiction, inside or outside the State of Utah, for any reason, or should Respondent be admitted as a patient to any institution in this state or elsewhere for treatment regarding the abuse of or dependence of any chemical substance, or for treatment for any emotional or psychological disorder, Respondent agrees to cause the Division to be notified immediately. If Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, including an offense based on the conduct described in this Stipulation and Order, or enters a plea in abeyance or diversion agreement to a criminal offense of any kind, including a pending criminal charge, the Division may take appropriate action against Respondent, including imposing appropriate sanctions, after notice and opportunity for hearing. Such sanctions may include revocation or suspension of Respondent's license, or other appropriate sanctions.

h. Respondent shall provide the Division with criminal history report(s) from any state and any documentation pertaining to any new arrests or charges whenever requested by the Division. Respondent shall obtain all reports and requested documentation at his own expense. The Division may deny renewal of Respondent's license if any of the documentation listed in this paragraph and the employer reports listed above in subparagraph (d) are not provided by the Respondent within twenty days after being requested by the Division.

i. Respondent shall maintain a current license at all times during the period of this agreement.

j. Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.

9. Upon approval by the Director of the Division, this Stipulation and Order shall be the final compromise and settlement of this non-criminal administrative matter. Respondent acknowledges that the Director is not required to accept the terms of this Stipulation and Order and that if the Director does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Division and the Respondent waive any claim of bias or

prejudgment they might otherwise have with regard to the Director by virtue of his having reviewed this Stipulation, and this waiver shall survive such nullification.

10. Respondent shall abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice. If the Division files a Petition alleging that Respondent has engaged in new misconduct or files an Order to Show Cause Petition alleging that Respondent has violated any of the terms and conditions contained in this Stipulation and Order, the period of Respondent's probation shall be tolled during the period that the Petition or Order to Show Cause Petition has been filed and is unresolved.

11. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements that modify, interpret, construe or affect this Stipulation. Respondent agrees not to take any action or make any public statement, that creates, or tends to create, the impression that any of the matters set forth in this Stipulation and Order are without factual basis. A public statement includes statements to one or more Board members during a meeting of the Board. Any such action or statement shall be considered a violation of this Stipulation and Order.

12. The accompanying Order becomes effective immediately upon the approval of this Stipulation and signing of the Order by the Division Director. Respondent shall comply with all the terms and conditions of this Stipulation immediately following the Division Director's signing of the Order page of this Stipulation and Order. Respondent shall comply with and timely complete all the terms and conditions of probation. If a time period for completion of a term or condition is not specifically set forth in the Stipulation and Order, Respondent agrees that

the time period for completion of that term or condition shall be set by the Board. Failure to comply with and timely complete a term or condition shall constitute a violation of the Stipulation and Order and may subject Respondent to revocation or other sanctions.

13. If Respondent violates any term or condition of this Stipulation and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.

14. Respondent has read each and every paragraph contained in this Stipulation and Order. Respondent understands each and every paragraph contained in this Stipulation and Order. Respondent has no questions about any paragraph or provision contained in this Stipulation and Order.

DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

BY: _____
DENNIS MESERVY
Bureau Manager

DATE: July 15, 2010

RESPONDENT

BY: Clayton E McFall
CLAYTON ELLIOTT McFALL
Respondent

DATE: 6-29-2010

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: _____
L. MITCHELL JONES
Counsel for the Division

DATE: 15 July 2010

ORDER

THE ABOVE STIPULATION, in the matter of **CLAYTON ELLIOTT McFALL**, is hereby approved by the Division of Occupational and Professional Licensing, and constitutes my Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann. § 58-1-401(2). The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED this 20th day of July, 2010.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING

MARK B. STEINAGEL
Director

Investigator: Dennis Meservy