



Davis County Recorder's Office

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
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Amendment No. 1 to Agreement

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AMENDMENT No. 1 TO AGREEMENT

THIS AMENDMENT TO AGREEMENT is made and entered into as of the 10 day of September, 2007, by and between **FARMINGTON CITY**, a Utah municipal corporation, hereinafter referred to as the "City", and **FARMINGTON LAND INVESTMENTS, LLC**, a Utah limited liability company, which has sold and assigned its right, title and interest in the Property and the Agreement to **FARMINGTON DEVELOPMENT CORPORATION**, a Utah corporation, hereinafter referred to as the "Developer".

RECITALS:

A. The parties previously entered into an Agreement on March 18, 2005, and desire to amend said Agreement as more particularly provided herein;

B. Developer's development (the "Project") includes the following: 1) the Farmington Crossing on Spring Creek Pond Planned Unit Development (PUD) consisting of 156 owner occupied "for sale" residential dwelling units on approximately 12.5 acres; 2) the Farmington Crossing South Phase 1 PUD consisting of 93 owner occupied "for sale" residential dwelling units on approximately 7 acres; 3) the Farmington Crossing South Phase 2 PUD consisting of approximately 1.5 acres to be developed in the future; and 4) the Farmington Crossing North PUD consisting of approximately 253 owner occupied "for sale" residential dwelling units and one site for a Church, which together comprises approximately 20 acres.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals. The above Recitals are by this reference incorporated into the Agreement.

2. Property. The area comprising the Property shall be enlarged to include the entire Project, which Property is more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof.

3. Highway 89 Slip Ramp Access. Developer shall participate in relocating the Property's existing Utah Department of Transportation ("UDOT") Highway 89 slip ramp access location which was previously approved by UDOT for the Property. The Developer will provide the City with proposed construction drawings for the City's review and approval, such approval only to be withheld in the event of patent design deficiency or other material defect. The Developer's desired slip ramp access location is shown on the attached **Exhibit "B"** (the "Relocated Access"). In anticipation of possible future approval and construction of the Relocated Access at the desired relocation point, Developer agrees to:

A. Provide a public improvement bond acceptable to the City, in the amount of estimated costs as prepared by the City Engineer, to construct the approved Relocated Access,

prior to or concurrent with the recordation of the subdivision plat for the last phase of the Farmington Crossing North PUD.

B. Commence construction of the Relocated Access, in accordance with final construction and engineering plans to be approved by the City, UDOT and Davis County, within 270 days to accommodate project bidding and construction season timing, following receipt of final approval from the City, UDOT and Davis County for the location and final construction and engineering plans for the proposed Relocated Access. In addition, upon receipt of an encroachment permit from UDOT, Developer agrees to rough in the slip ramp access and to use the access for construction vehicle ingress and egress to the Project.

4. Shepard Creek Parkway Road Repairs. The City desires to repair and resurface the existing asphalt on Shepard Creek Parkway (the "Parkway"), and the Developer agrees and recognizes that its construction traffic over the Parkway during construction of the Farmington Crossing project (the "Project") has contributed to a portion of the existing damage to the Parkway. The City and Developer have agreed that it is in the best interests of the parties to provide repairs to the Parkway in the following manner:

A. Prior to the asphalt overlay, the City's Public Works Department will provide patch work repair to the Parkway as deemed reasonable and necessary by the City;

B. The parties acknowledge that (i) Developer's excavation contractor for the Project obtained a truck haul route permit from the City but was not required to post a bond for such permit, however, the City now requires for such permits a bond to cover the cost of any road damage related thereto; (ii) The City does not have sufficient funds in its Class "C" road account to repair and advance the timing of an asphalt overlay prior to other resurfacing pre-programmed municipal projects that are critical in nature. Although the construction of commercial facilities was anticipated at the time the Parkway was designed and constructed, the City maintains that the intensity of construction related to the Project has increased the rate of deterioration on the Parkway and created the need for resurfacing work far in advance of its normal and customary life cycle; (iii) some of the construction impact on the Parkway is attributable to development and construction on other properties to the west of the Parkway and therefore should be the responsibility of the City; (iv) Developer has incurred approximately \$7,500.00 in expenses in order to finalize the work described in Section 5 below; and (v) the apparent repairs required on the Parkway do not appear to be similarly necessary on the adjacent Shepard Lane despite the fact that all construction traffic for the Project must travel on both the Parkway and Shepard Lane, nevertheless, it appears that each street was constructed to different standards.

Simultaneous with the issuance of Developer's final certificate of occupancy for the Project (not including Farmington Crossing South Phase 2 PUD or the proposed Church site) the Developer and the City will meet to determine a mutually satisfactory agreement as to what percentage of the cost of the resurfacing the entire Parkway should be paid by the Developer. In no event shall the Developer pay more than half the cost of the same.

5. Storm Drainage. Developer has provided temporary off-site detention which has been deemed satisfactory by the Davis County Public Works. Concurrently with providing such temporary detention, Developer shall participate in a share of a permanent storm water detention basin by completing one of the following, at the option of Developer: i) removing 11,300 cubic yards of material from locations on property owned by the City or Davis County before May 1, 2008, with Developer being granted two (2) ninety (90) day extensions of such date if reasonably necessary to accommodate Developer's construction scheduling, and such work shall be approved by the City and Davis County, or ii) providing a cash payment to the City in an amount matching the actual cost of removing 11,300 cubic yards of material as determined by the City Engineer, or (iii) a combination of (i) and (ii) above, as approved by the City. The City and/or Davis County shall be responsible for removing any material over and above the amount of 11,300 cubic yards in order to establish a permanent storm water detention basin.

City agrees to reimburse the Developer the cost of cleaning a concrete ditch located west of the Project via a cash payment or a credit for storm water impact fees prior to or concurrently with the recordation of a subdivision plat for the first phase of the Farmington Crossing North PUD.

6. Trail and Trail Head. City agrees to reimburse Developer for work completed on a trail traversing across off-site property west of the Project from "Point A" to "Point B" as shown on **Exhibit "D"**, attached hereto and by the reference made a part hereof, in accordance with provisions set forth in the Agreement. City also agrees to reimburse Developer for expanding the existing four (4) feet wide trail to total width of ten (10) feet or to install a new ten (10) feet wide trail, as directed by City, in the location from "Point Z" to "Point A" shown on Exhibit "D"; Prior to such reimbursements, Developer shall submit a detailed invoice for the work to be reviewed and approved by the City Engineer. The City agrees to reimburse Developer for costs incurred, or to provide a credit against currently owing Park Impact Fees within thirty (30) days of invoice from Developer.

City and Developer agree that the alignment of the Perimeter Trail referenced in the Agreement is hereby revised as shown on the attached **Exhibit "E."** In the event Developer shall secure necessary easements and/or approvals for the proposed relocation of the perimeter trail Developer shall also secure easements and/or permits as necessary for original alignment across those properties which are owned by Developer or by Davis County or UDOT. The parties acknowledge and agree that the original alignment is not optimal but is needed should the revised alignment be rendered unusable. Therefore, in addition to the new perimeter alignment, and the original alignment, Developer agrees to grant easements to the City to provide for access from the perimeter trail to the public right-of-way along the private street near the eastern boundary of the Project and connecting the perimeter trail segments as shown in Exhibit "E." Nothing herein shall be construed to alter any other provisions of ¶2 or ¶3 of the Agreement.

The Trail Head property shown on Exhibit "E" shall be landscaped and constructed by Developer and upon completion of construction by Developer shall be perpetually maintained by Developer or its assigns. City agrees to reimburse Developer for one-half (1/2) of the costs of landscaping and improvements to the Trail Head property, as shown on plans prepared by

Developer and approved by the City, such approval not to be unreasonably withheld. Developer agrees to grant a perpetual easement for the trail in the trailhead location.

All invoices submitted by Developer in accordance with this Amendment to Agreement shall be paid by City within thirty (30) days after receipt of invoice.

7. The parties hereby agree to enter into License Agreements and Service and Maintenance Agreements in a form substantially similar to those previously entered by the parties to support the development and the provision of public services to the future phases of the Project. Developer agrees to plant trees and other landscaping adjacent to Highway 89 as shown on the attached Exhibit "F", subject to receipt of approval for such landscaping from the applicable off-site property owner.

8. Except as expressly modified herein, the parties' Agreement dated March 18, 2005, shall remain in full force and effect; however, the 2 year deadline referenced in the Agreement for completion of construction of the Perimeter Trail shall be extended for an additional 2 years from the date of this Amendment.

9. This Amendment to Agreement shall be binding upon the parties hereto and their respective heirs, agents, representatives, officers, successors and assigns.

10. This Amendment to Agreement may be amended only in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to the Agreement by and through their respective, duly authorized representatives as of the day and year first herein above written.

ATTEST:

CITY:
FARMINGTON CITY

Margaret L. Lomas
City Recorder

By: Scott C. Harbertson
Scott C. Harbertson, Mayor



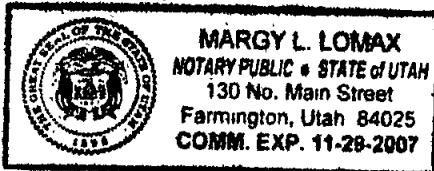
DEVELOPER:
FARMINGTON DEVELOPMENT CORP.,
a Utah corporation

By: Bryson Garbett
Bryson Garbett, President

CITY ACKNOWLEDGMENT

STATE OF UTAH)
:SS.
COUNTY OF DAVIS)

On the 18th day of September, 2007, personally appeared before me Scott C. Harbertson, who being duly sworn, did say that he is the Mayor of **FARMINGTON CITY**, 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 Scott C. Harbertson acknowledged to me that the City executed the same.

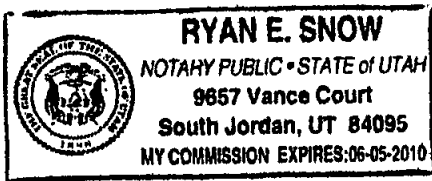


Margy L. Lomax
Notary Public

DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)
Salt Lake:SS.
COUNTY OF ~~DAVIS~~)

On the 25 day of September, 2007, personally appeared before me Bryson Garbett who being by me duly sworn did say that (s)he is the President of **FARMINGTON DEVELOPMENT CORPORATION**, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors; and they acknowledged to me that said corporation executed the same.



[Signature]
Notary Public

EXHIBIT "A"

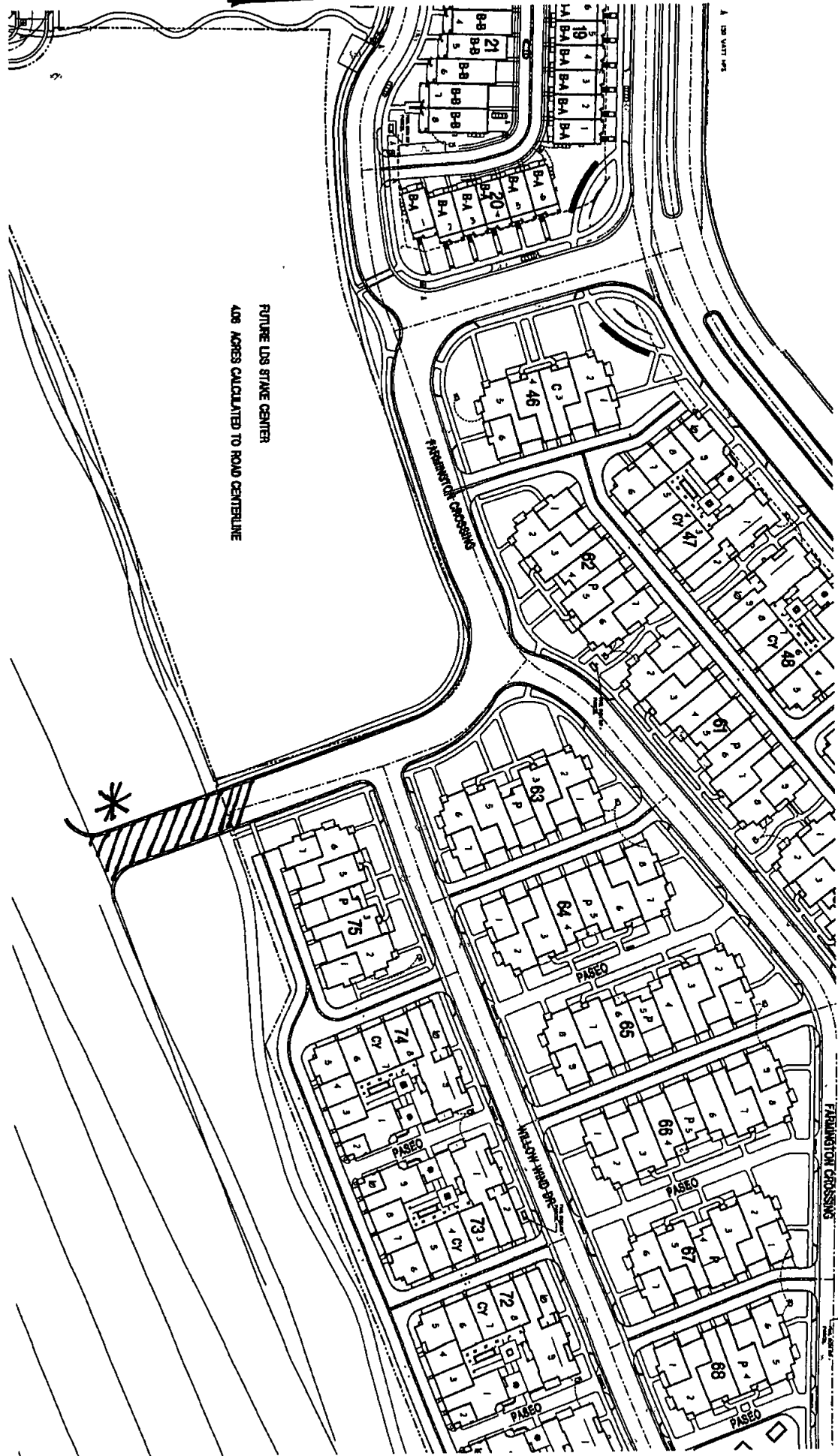
Parcel A and Parcel B, Farmington Crossing North, according to the official plat thereof recorded in the office of the Davis County Recorder.

Farmington Crossing On Spring Creek Pond PUD, Phase 1, Phase 2 and Phase 3, according to the official plats thereof recorded in the office of the Davis County Recorder.

Farmington Crossing South PUD, Phase 1, according to the official plat thereof recorded in the office of the Davis County Recorder.

Exhibit "B"

BK 5284 PG 111



FUTURE US STATE CENTER
408 ACRES CALCULATED TO ROAD CENTERLINE





11-19-06

FARMINGTON CROSSING
A TRISTAR DEVELOPMENT

garbellHOMES

Trail and Storm Water Analysis

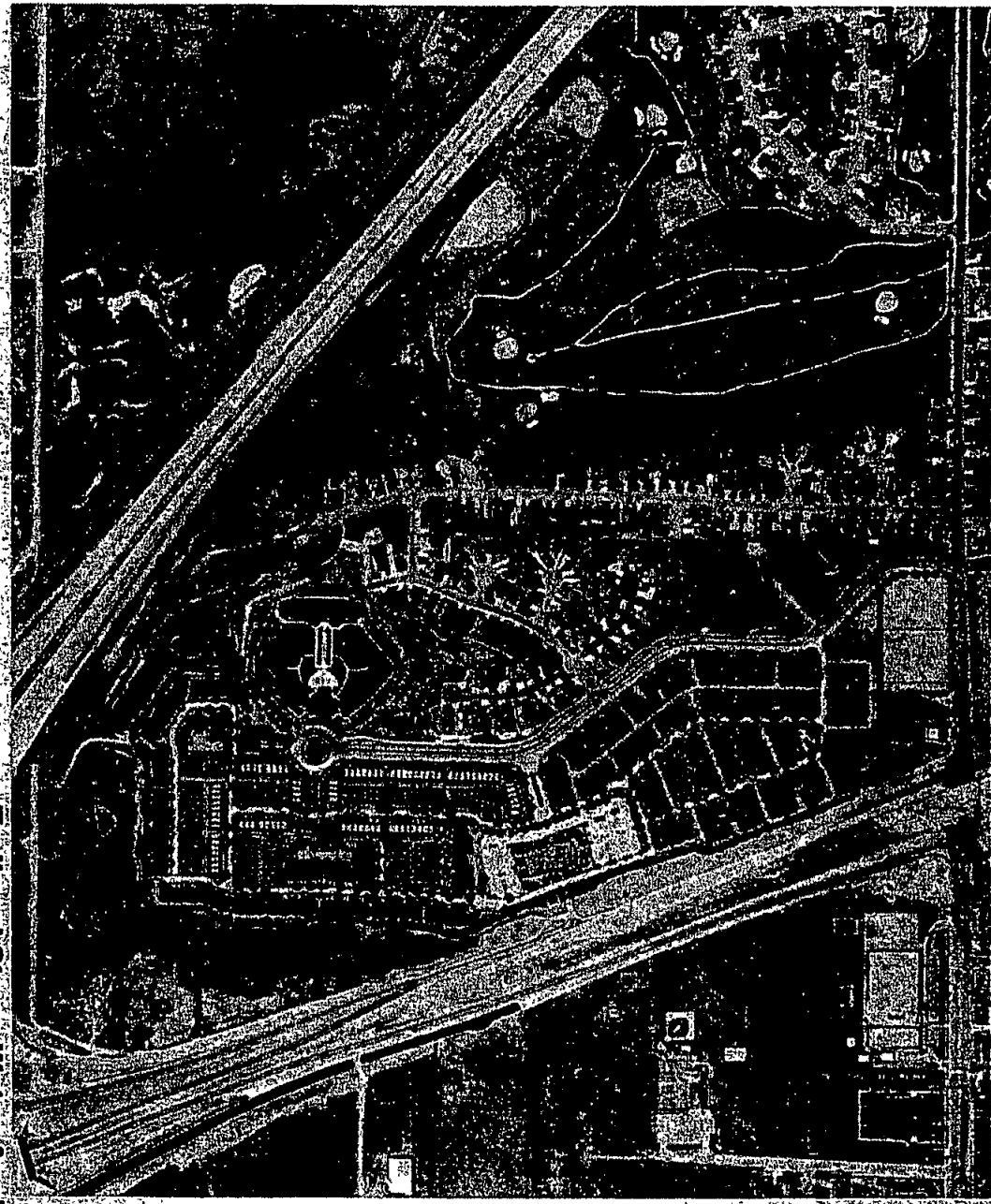


Exhibit "D"

TRAIL ANALYSIS

TRAIL AGREEMENT

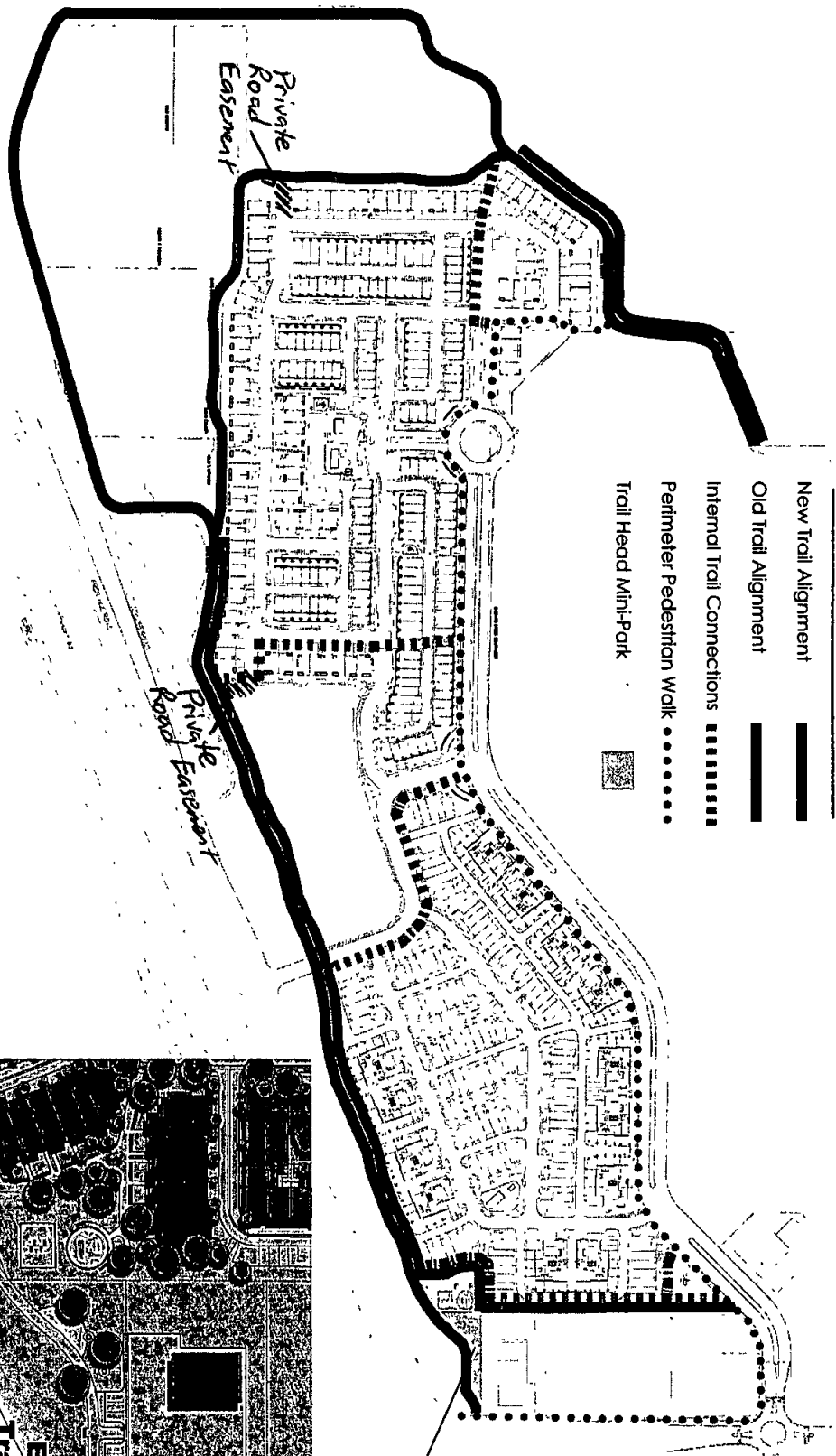
EXISTING TRAIL
4 FOOT ASPHALT TRAIL

STORM WATER MITIGATION TRAIL

- TRAIL ON RAISED DETENTION BERM
- A. 2300-3500 CU. YARDS OF EARTH WORK
- B. INCREASED STORAGE CAPACITY BY 12 ACRE FEET

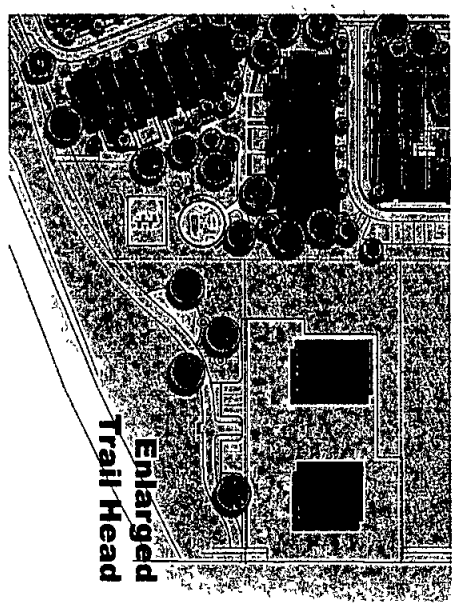
PRESERVE OUTLET
1000 FOOT DITCH CLEAN-OUT

Exhibit "E"



Legend

- New Trail Alignment
- - - Old Trail Alignment
- Internal Trail Connections
- Perimeter Pedestrian Walk
- Trail Head Mini-Park



TRAIL HEAD AREA



jsa architects

07-26-07

FARMINGTON CROSSING
ON SPAINING CREEK POND



garbETHOMES

Trail Plan

