

RETURNED

JUL 25 2018

DEVELOPMENT AGREEMENT
FOR SWAIN SUBDIVISION

E 3106877 B 7063 P 521-531
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
07/25/2018 01:05 PM
FEE \$0.00 Pgs: 11
DEP RTT REC'D FOR FARMINGTON CITY
CORP

08-044-0088

THE DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the 15 day of MAY, 2018, by and between FARMINGTON CITY, a Utah municipal corporation, hereinafter referred to as the "City," and HLS DEVELOPMENT, LLC, a Utah limited liability company, hereinafter referred to as the "Developer."

RECITALS:

A. Developer owns approximately 3.533 acres of property located within the City, which property is more particularly described in **Exhibit A** attached hereto and by this reference made a part hereof (the "Property").

B. Developer desires to develop a project on the Property to be known as the Swain Subdivision Planned Unit Development (PUD) (the "Project"). Developer has submitted an application to the City seeking approval of the Project as a planned unit development in accordance with the City's Laws.

C. On February 6, 2018, Developer received approval of a Final (PUD) Master Plan (the "Master Plan") for the Project from the Farmington City Council attached hereto as **Exhibit B** and by the reference made a part hereof. The Master Plan provides for the development of 10 single-family residential lots and approximately 9,248 square feet of open space designated as Area "A".

D. The Property is presently zoned under the City's zoning ordinance as LR-F. The Property is subject to all City ordinances and regulations including the provisions of the City's General Plan, the City's zoning ordinances, the City's engineering development standards and specifications and any permits issued by the City pursuant to the foregoing ordinances and regulations (collectively, the "City's Laws").

E. Persons and entities hereafter developing the Property or any portions of the Project thereon shall accomplish such development in accordance with the City's Laws, and the provisions set forth in this Agreement. This Agreement contains certain requirements and conditions for design and/or development of the Property and the Project in addition to those contained in the City's Laws.

AGREEMENT

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 City and Developer hereby agree as follows:

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into this Agreement.
2. **Development of the Project.** The Project shall be developed by Developer and/or Developer's successors and assigns in accordance with all of the requirements contained herein.

a. Compliance with City Laws and Development Standards. The Project and all portions thereof shall be developed in accordance with the City's Laws, the Preliminary Plat, the Final Plat, the Master Plan, and this Agreement.

b. Open Space and Entry Monuments.

i. The Developer shall preserve open space, or Area A, as shown on the Master Plan, in a manner acceptable to the City. Area A is part of Lot 110 as represented on the final plat and will be maintained by the owner of lot 110. Area A may be re-graded, landscaped and improved but other than structures like a gazebo, gas fire ring, pavers, etc., no permanent structure shall be placed thereon. All such improvements shall be accomplished in a way to preserve the oak trees closest to 1400 North Street.

ii. The Developer must provide two entry features, with accompanying landscaping, as illustrated on the Master Plan, and shall be responsible for the perpetual maintenance thereof, which includes the possibility, among other things, of causing adjacent property owners to be responsible for there continual maintenance.

c. Building Permits. The City shall not issue any building permit on any lot or for any unit within the Project until water, fully-operational fire hydrants, sewer and any utility located under the street surface, including necessary grading, storm drains and/or subsurface drainage facilities pursuant to a subdivision grading and drainage plan required and approved by the City for the Project, are installed by the Developer and accepted by the City and/or appropriate agencies. The Developer shall provide As-built drawings acceptable to the City which have been prepared and certified by an engineer licensed by the State of Utah for all required public improvements related to the Project within 60 days from the issuance of the first residential building permit. Developer hereby agrees to perform all work necessary to ensure that the streets will remain fully accessible at all times. The Developer agrees at the earliest time weather permits, to install, at Developer's sole expense, permanent hard surface material on all streets in the subdivision in accordance with the City's specifications.

d. Utilities and Infrastructure.

i. Developer shall install or cause to be installed natural gas, underground electrical service, sanitary sewer, culinary and pressure irrigation water supply systems, and storm drainage facilities as required by the City for the Project up to the boundary lines of the Project and any off-site improvements required to serve the Project. Such installations shall be done according to the reasonable and customary design and construction standards of the utility providers and the City Engineer.

ii. Developer shall make arrangements with and shall comply with the requirements of the Central Davis Sewer District to provide public sanitary sewer service to the Project and all phases thereof.

iii. All off-site improvements will be constructed and installed in a timely manner in order to coincide with development of the various phases of the Project.

iv. Developer shall make arrangements with and shall comply with all of the requirements of the Benchland Irrigation District ("Benchland") to provide secondary water service to each lot within the Project. Where appropriate, Developer shall construct secondary water lines and facilities for the Project in a manner acceptable to Benchland in order to ensure delivery of secondary water to properties located within the Project.

v. All public improvements for the Project shall be constructed and installed at the Developer's sole expense in accordance with the City's construction standards and the City's Laws.

e. Grading and Drainage, Storm-water Run-off, Erosion Control, and Revegetation Plans. Developer shall provide a grading and drainage, erosion control and revegetation plans for the Project for review and approval by the City. These plans shall identify the type and show the location of existing vegetation, the vegetation to be removed and method of disposal, or stabilization measures to be installed while new vegetation is being established. All areas of the Project cleared of natural vegetation in the course of construction shall be replanted with vegetation possessing erosion control characteristics at least equal to the natural vegetation which was removed. Developer shall prepare an erosion control plan and implement best management practices (BMP's) altogether acceptable to the City designed to minimize erosion and displacement of soils from the site consistent with the City's Storm Water Management Plan. Developer shall post a bond acceptable to the City to ensure implementation of the grading and drainage, erosion control, and revegetation plans for the Project. The warranty period for this bond shall not be less than two growing seasons from the time the planting of the revegetation is complete.

f. Easements. All required easements, including temporary construction easements, for infrastructure improvements will be granted at no cost to the City and its contractors by the Developer and its successors and assigns for the construction of any public improvements required by the City. These easements shall be subject to the approval of the City Engineer and the City Attorney. Developer hereby agrees to grant and convey at no cost to the City a satisfactory easement for drainage pipes across the Property to be shown on and dedicated as part of final plats for each phase of the Project in locations mutually satisfactory to the City and the Developer. The City shall have the right to determine the amount of flows to be passed through the easement. The drainage easements shall provide for the flow of water and drainage over and through the Property at the locations specified in said easements.

g. Dedication and Donation. Prior to, or concurrent with, the recording of the final plat for the Project in the office of the Davis County Recorder, the Developer agrees to dedicate, transfer and voluntarily donate to the City all required easements for the purposes of constructing, installing, operating, maintaining, repairing and replacing public utilities and improvements located within the Project by the Developer. Developer will take such actions as are necessary to obtain release of any monetary encumbrances on any property to be dedicated to the City at the time of final plat approval for the Project and to cause the owner of the Property to dedicate and donate the same without cost to the City.

h. Required Changes. If any revisions or corrections of plats or plans already approved by the City shall be required by any other governmental entity having jurisdiction or lending institutions involved in financing, the Developer and the City shall cooperate where appropriate to obtain or develop reasonable, mutually acceptable alternative plans or plats. Developer shall have the sole duty and responsibility to obtain approval from any other governmental entities having jurisdiction with respect to the Project as needed.

i. Construction Standards and Requirements. All construction shall be conducted and completed in accordance with the development standards of the City, the City's Laws and the terms of this Agreement. All required public improvements for the Project shall be constructed in accordance with the City's construction standards and shall be dedicated to the City. Prior to commencing any construction or development of any building, structures or other work or improvements within the Project, the Developer shall secure any and all permits which may be required by the City or any other governmental entity having jurisdiction over the work. The Developer shall construct, or cause to be constructed, all improvements for the Project in conformity with all applicable federal, state and/or local laws, rules and regulations.

i. Security. Developer shall provide the City with security in a form satisfactory to the City to guarantee the installation and completion of all public improvements to be constructed by Developer within the Project and/or the Property or any portion thereof, as required in accordance with the City's Laws.

Security provided by the Developer shall also include funds to ensure revegetation acceptable to the City consistent with a revegetation plan prepared by Developer and approved by the City for all cuts and fills or any and all graded and disturbed areas related to the Project.

ii. Inspection by the City. The City may, at its option, perform periodic inspections of the improvements being installed and constructed by the Developer and its assigns or their contractors. No work involving excavation shall be covered until the same has been inspected by the City's representatives and/or the representatives of other governmental entities having jurisdiction over the particular improvements involved. Developer, or its assigns as the case may be, shall warrant the materials and workmanship of all public improvements installed by Developer and its contractors within the Project and to be dedicated to the City for a period of twelve (12) months from and after the date of final inspection and approval by the

City of the improvements in that phase. All buildings shall be inspected in accordance with the provisions of the International Building Code.

iii. **Maintenance During Construction.** During construction, the Developer and the City and their contractors shall keep the Project and all affected public streets therein, free and clear from any unreasonable accumulation of debris, waste materials, mud, and any nuisances created by their actions, and shall contain their construction debris and provide dust and mud control so as to prevent the scattering via wind and/or water.

4. **Payment of Fees.** The Developer shall pay to the City all required fees in a timely manner. Fees shall be paid in those amounts which are applicable at the time of payment of all such fees, pursuant to and consistent with standard City procedures, requirements, adoption by City.

5. **City Obligations.** Subject to Developer complying with all of the City's Laws and the provisions of this Agreement, the City agrees to maintain the public improvements dedicated to the City following satisfactory completion thereof and acceptance of the same by the City and to provide standard municipal services to the Project including, but not limited to, police and fire protection subject to the payment of all fees and charges charged or levied therefor by the City.

6. **Indemnification and Insurance.** Developer hereby agrees to indemnify and hold the City and its officers, employees, representatives, agents and assigns harmless from any and all liability, loss, damage, costs or expenses, including attorneys fees and court costs, arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to property of any person which shall occur within the Property or any portion of the Project or occur in connection with any off-site work done for or in connection with the Project or any phase thereof which shall be caused by any acts or omissions of the Developer or its assigns or of any of their agents, contractors, servants, or employees at any time. Developer shall furnish, or cause to be furnished, to the City a satisfactory certificate of insurance from a reputable insurance company evidencing general public liability coverage for the Property and the Project in a single limit of not less than One Million Dollars (\$1,000,000) and naming the City as an additional insured.

7. **Right of Access.** Representatives of the City shall have the reasonable right of access to the Project and any portions thereof during the period of construction to inspect or observe the Project and any work thereon.

8. **Assignment.** The Developer shall not assign this Agreement or any rights or interests herein without giving prior written notice to the City. Any future assignee shall consent in writing to be bound by the terms of this Agreement as a condition precedent to the assignment.

9. **Notices.** Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To Developer: HLS Development, LLC
Attn: Lew Swain
1688 North Canyon Circle
Farmington, Utah 84025

To the City: Farmington City
Attn: City Manager
160 South Main Street
Farmington, Utah 84025-0160

10. **Default.** In the event any party fails to perform its obligations hereunder or to comply with the terms hereof, within thirty (30) days after giving written notice of default, the non-defaulting party may, at its election, have the following remedies:

- a. All rights and remedies available at law and in equity, including injunctive relief, specific performance and/or damages.
- b. The right to withhold all further approvals, licenses, permits or other rights associated with the Project or any development described in this Agreement until such default has been cured.
- c. The right to draw upon any security posted or provided in connection with the Project.
- d. The right to terminate this Agreement.
- e. The rights and remedies set forth herein shall be cumulative.

11. **Attorneys Fees.** In the event of any lawsuit between the parties hereto arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing party or parties shall be entitled, in addition to the remedies and damages, if any, awarded in such proceeding, to recover their costs and a reasonable attorneys fee.

12. **Entire Agreement.** This Agreement together with the Exhibits attached thereto and the documents referenced herein, and all regulatory approvals given by the City for the Property and/or the Project, contain the entire agreement of the parties and supersede any prior promises, representations, warranties or understandings between the parties with respect to the subject matter hereof which are not contained in this Agreement and the regulatory approvals for the Project, including any related conditions.

13. **Headings.** The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

14. **Non-Liability of City Officials, Employees and Others.** No officer, representative, agent, or employee of the City shall be personally liable to the Developer, or any successor-in-interest or assignee of the Developer in the event of any default or breach by the City or for any

amount which may become due Developer, or its successors or assigns, for any obligation arising under the terms of this Agreement unless it is established that the officer, representative, agent or employee acted or failed to act due to fraud or malice.

15. **Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns.

16. **No Third-Party Rights.** The obligations of Developer set forth herein shall not create any rights in and/or obligations to any persons or parties other than the City. The parties hereto alone shall be entitled to enforce or waive any provisions of this Agreement.

17. **Recordation.** This Agreement shall be recorded by the City against the Property in the office of the Davis County Recorder, State of Utah.

18. **Relationship.** Nothing in this Agreement shall be construed to create any partnership, joint venture or fiduciary relationship between the parties hereto.

19. **Termination.** Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the Project is not completed within five (5) years from the date of this Agreement or in the event the Developer does not comply with the City's Laws and the provisions of this Agreement, the City shall have the right, but not the obligation at the sole discretion of the City, which discretion shall not be unreasonably applied, to terminate this Agreement and/or to not approve any additional phases for the Project. Such termination may be effected by the City by giving written notice of intent to terminate to the Developer set forth herein. Whereupon, the Developer shall have sixty (60) days during which the Developer shall be given an opportunity to correct any alleged deficiencies and to take appropriate steps to complete the Project. In the event Developer fails to satisfy the concerns of the City with regard to such matters, the City shall be released from any further obligations under this Agreement and the same shall be terminated.

20. **Severability.** If any portion of this Agreement is held to be unenforceable or invalid for any reason by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

21. **Amendment.** This Agreement may be amended only in writing signed by the parties hereto.

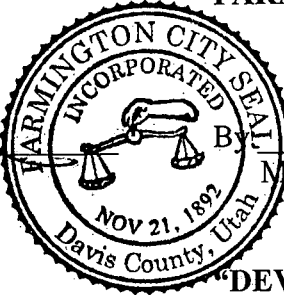
IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

“CITY”

FARMINGTON CITY

ATTEST:

Holly Gadd
City Recorder



H. James Talbot
Mayor

“DEVELOPER”

HLS DEVELOPMENT, LLC

By: H. Lewis Sevier
its: Manager

CITY ACKNOWLEDGMENT

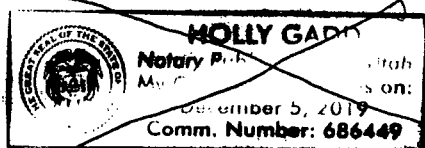
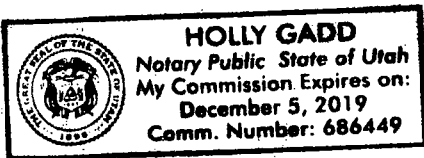
STATE OF UTAH)
)
:SS.
COUNTY OF DAVIS)

On the 15 day of May, 2018, personally appeared before me H. James Talbot, 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 H. James Talbot acknowledged to me that the City executed the same.

My Commission Expires:

12/05/2019

Holly Gadd
Notary Public
Residing at:
DAVIS COUNTY



DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this 1 day of ^{JUNE} 2018, personally appeared before me, H. Lewis Swain, who being by me duly sworn, did say that (s)he is a managing member of **HLS DEVELOPMENT, L.L.C**, a Utah Limited Liability Company, and that the foregoing instrument was signed on behalf of said limited liability company by authority of its Articles of Organization and duly acknowledgment to me that said limited liability executed the same.

My Commission Expires:

12/05/2019

Holly Gadd
Notary Public
Residing at:

Davis County

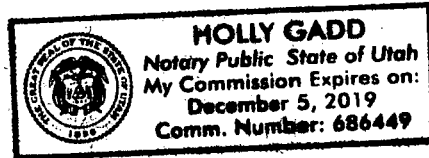


EXHIBIT A

Property Description

08-04-8084 0088

BEGINNING AT A POINT ON THE WEST RIGHT OF WAY LINE OF NORTH COMPTON ROAD AS DEDICATED BY THE OFFICIAL PLAT OF SHEPARD HEIGHTS SUBDIVISION; SAID POINT BEING WEST 1137.82 FEET AND SOUTH 186.43 FEET FROM THE EAST QUARTER CORNER OF SECTION 12, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE MERIDIAN AND RUNNING THENCE 8.03 FEET ALONG A 5.00 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD OF WHICH BEARS SOUTH 10°01'00" WEST 7.19 FEET); THENCE SOUTH 56°00'27" WEST, ALONG THE NORTH RIGHT OF WAY LINE OF 1400 NORTH STREET; 808.14 FEET; THENCE NORTH 37°53'23" WEST 17.90 FEET TO A POINT ON THE SOUTH LINE OF SHEPARD CREEK COUNTRY ESTATES PUD; THENCE NORTH 32°48'07" EAST, ALONG SAID SOUTH LINE, 708.11 FEET; THENCE NORTH 54°01'34" EAST 159.14 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF SAID NORTH COMPTON ROAD; THENCE ALONG SAID RIGHT OF WAY LINE THE FOLLOWING TWO (2) CALLS: 60.18 FEET ALONG A CURVE WITH A 330.00 FOOT RADIUS TO THE LEFT (LONG CHORD OF WHICH BEARS SOUTH 30°26'30" EAST 60.10 FEET); THENCE SOUTH 35°58'26" EAST 237.36 FEET TO THE POINT OF BEGINNING.

CONTAINS 3.444 ACRES AND 10 LOTS

Exhibit "B"

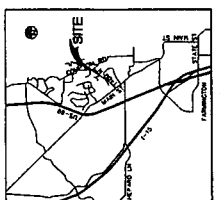
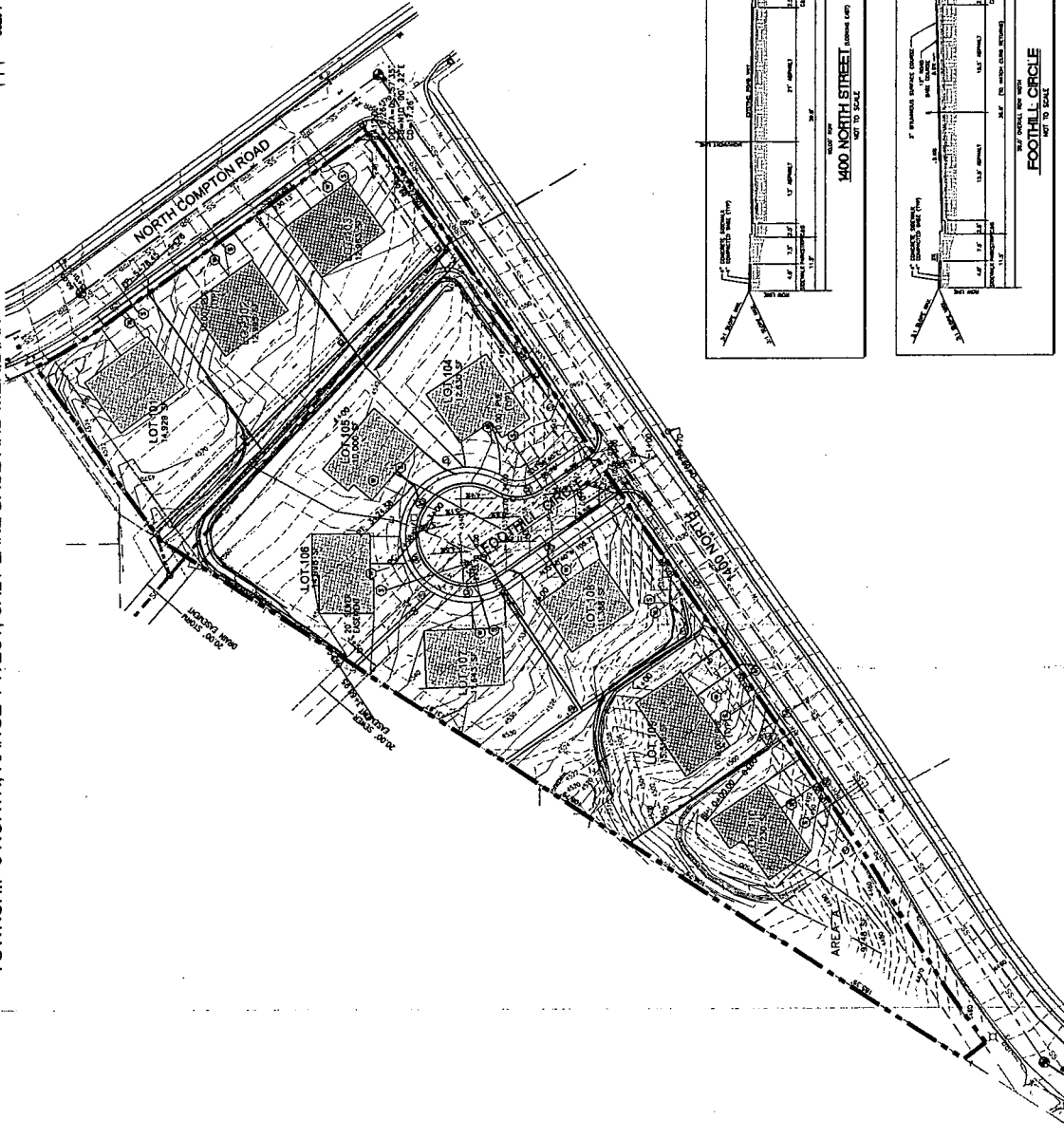
SWAIN SUBDIVISION

FINAL (PUD) MASTER PLAN
LOCATED IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 12,
TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN



1477 E. MAIN STREET, SUITE 200, WEST VALLEY CITY, UT 84113
TEL: 801.973.1111 FAX: 801.973.1112
WWW.WILDINGENGINEERING.COM

DISCLAIMER:
THIS PLAN IS THE PROPERTY OF WILDING ENGINEERING AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, 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 WILDING ENGINEERING. ANY REPRODUCTION OR TRANSMISSION OF THIS PLAN WITHOUT THE WRITTEN PERMISSION OF WILDING ENGINEERING IS STRICTLY PROHIBITED AND WILL BE SUBJECT TO LEGAL ACTION. WILDING ENGINEERING ASSUMES NO LIABILITY FOR ANY DAMAGE, INCLUDING CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OF THIS PLAN. THE USER OF THIS PLAN SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. WILDING ENGINEERING DOES NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN, AND THE USER SHALL BE RESPONSIBLE FOR VERIFYING THE ACCURACY AND COMPLETENESS OF THE INFORMATION CONTAINED HEREIN. WILDING ENGINEERING SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE, INCLUDING CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OF THIS PLAN.



DESCRIPTION	AREA (SQ FT)
TOTAL TRACT AREA	13,000
MINIMUM OPEN SPACE REQUIREMENT	3,750
PROPOSED OPEN SPACE	4,500
EXCESS OPEN SPACE	750
PERCENT EXCESS OPEN SPACE	5.8%

1. THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN IS THE SUBJECT TRACT.
2. THE TRACT IS BOUNDARY BY NORTH AND SOUTH BY THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN.
3. THE TRACT IS BOUNDARY BY WEST BY THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN.
4. THE TRACT IS BOUNDARY BY EAST BY THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN.

LEGEND

- PROPOSED WATERLINE
- EXISTING FIRE HYDRANT
- EXISTING FIRE HYDRANT
- EXISTING WATER METER
- 3/4" WATER SERVICE LATERAL
- EXISTING SEWER
- EXISTING LATERAL
- EXISTING SANITATION LINE
- EXISTING STORM SEWER
- EXISTING STORM MAIN
- EXISTING STORM MAIN
- EXISTING STREETLIGHT
- EXISTING STREETLIGHT
- NEW STORM SEWER PUMP

NO.	REVISION	DATE

SWAIN SUBDIVISION
PRELIMINARY (PUD) MASTER PLAN

FARMINGTON, UTAH
OWNER: ML
DESIGNER: DPW
PROJECT NO: 16229
DATE: 04/24/2017
SCALE: 1" = 40'
SHEET: 1 OF 1

