

After searching, Return to:  
Jody K Burnett  
Po Box 45678  
SLC, UT 84145

DEVELOPMENT AGREEMENT  
FOR THE WILD WILLOW SUBDIVISION  
TOWN OF FRANCIS, UTAH

This Development Agreement (hereinafter "Agreement") is entered into this 10<sup>th</sup> day of March, 1998, by and between Wild Willow Limited Company, a Utah limited liability company (the "Company"), as the owner and developer of certain real property on which Wild Willow proposes to develop a project known as "Wild Willow," and the Town of Francis, a municipality and political subdivision of the State of Utah (hereafter collectively referred to as the "Parties").

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ALAN SPRIGGS, SUMMIT COUNTY RECORDER  
1998 MAR 16 11:28 AM FEE \$ .00 BY DMG  
REQUEST: TOWN OF FRANCIS

RECITALS

WHEREAS, the Company owns approximately 183.5 acres of property now located in the Town of Francis, Summit County, State of Utah, as reflected by the legal description in Exhibit "A" attached hereto and incorporated herein by this reference, part of which has already been developed and part of which is proposed to be developed as follows:

PHASE I: Phase I consists of 56.27 acres and was approved for single family residential development in 1993, a final plat being filed in January of 1994, and has been almost entirely sold out and is partially built out as of the date of this Agreement;

PHASE II: The Company proposes to develop approximately 103.62 acres of property, identified as Phase II, into a single family residential development to be constructed in five sub-phases;

PHASE III: The Company proposes that the 18 acres identified as Reserved Commercial Area on the old Master Plan be utilized for commercial development; and

FARM HOUSE PROPERTY: The remaining 5.58 acres surrounds the existing farm house and is divided into three existing tax parcels of record which the Company does not intend to develop with the remainder of its property but wishes to preserve in its current status.

WHEREAS, the Company has already received certain approvals and entered into certain agreements with the Town of Francis, as follows:

1. The Company received Concept Plan approval and Master Plan approval for a Master Plan for three phases of development, in the summer of 1993;

2. The Town of Francis annexed property that was owned by the Company and located in unincorporated Summit County, and the Town of Francis zoned that annexed property as RR-2;

3. The Town of Francis issued a conditional use permit for Phase I and 80.11 acres of the proposed Phase II to be developed as a Planned Unit Development;

4. The Town of Francis gave Preliminary and Final Plat approval for Phase I in November and December of 1993;

5. The Company obtained the required signatures and filed the Final Plat for Phase I in January of 1994. An Amended Final Plat was filed in February 20 of 1997, a copy of which is attached as Exhibit B-1;

6. The Company and the Town of Francis entered into a Settlement Agreement in September of 1994 regarding the submission of an environmental impact analysis, the construction of on- and off-site improvements, and the minimum density for the planned unit development, a copy of which is attached as Exhibit B-2;

7. The Town of Francis gave Preliminary Plat Approval for Phase II as the Company had then proposed it, in September of 1996, subject to conditions set forth in a memorandum dated September 26, 1996, a copy of which is attached as Exhibit B-3; and

8. The Town of Francis accepted the dedication of streets and improvements in Phase I on November 16, 1996, subject to conditions which have since been satisfied.

WHEREAS, the Town of Francis has adopted, since giving Preliminary Approval for Phase II as earlier proposed, an Impact Fee Ordinance, a revised Development Code, and new Construction Specifications;

WHEREAS, the Company desires to amend the Master Plan and the plans for Phase II and is willing to meet the requirements of the new Town Development Code and Construction Specifications, except for certain instances for which it desires to maintain elements of design and layout already preliminarily approved in 1996; and

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WHEREAS, the Town, acting pursuant to its authority under Utah Code Annotated, Section 10-9-101, et seq. and its land use policies, ordinances and regulations and in the exercise of its legislative discretion, has elected to approve this Development

Agreement as a way to provide for the continuation of the prior historical approvals for the Wild Willow project and clarify the transition to the current land use policies, ordinances and regulations of the Town; and

WHEREAS, the Company and the Town mutually desire to:

1. Memorialize the approval of an Amended Master Plan, Amended Conditional Use Permit, and the Preliminary Approval of Phase II of the Master Plan;
2. Memorialize the procedure under which the Company will apply for Final Plat Approval for each sub-phase of Phase II;
3. Memorialize the delegation of technical approval of engineering plans, material lists, and guarantee requirements to the Town Engineer;
4. Clarify the status of previous approvals and agreements in light of the Company's new proposals and the adoption by the Town of Francis of new Codes and Ordinances; and
5. Define which of the procedural and design and layout considerations will be treated under the new and old Development and Engineering Codes.

NOW, THEREFORE, the Company and the Town of Francis agree as follows:

1. **Amended Master Plan:** The Town adopts an Amended Master Plan, attached as Exhibit "C" hereto.

1.1 **Contents of Master Plan:** The Amended Master Plan establishes that the Company's property shall be designated and treated as follows:

Phase I: 56.27 acres of property subdivided into 70 buildable lots and 8.3496 acres of Open Space;

Phase II: 103.62 acres of property subdivided into 117 buildable lots and 2.82 acres of Open Space;

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Phase III: 18 acres to be used as commercial property, recognizing and reaffirming that commercial zoning designation, which shall be subject to the application procedures and requirements set forth in the new Development Code;

Farm House Property: 5.58 acres to be left in its current status as three existing tax parcels of record along Hilltop Road.

**1.2 Master Plan Approval:** The Town hereby grants approval of the Amended Master Plan attached as Exhibit "C". As a way to provide for continuation of the previous development approvals for the Wild Willow project and provide for a transition to the new Development Code and Construction Specifications, Phase II shall follow the approval procedures set forth in this Agreement. Phase III shall follow the approval procedures set forth in the Development Code that is enacted and in place at the time that approval is sought for commercial uses.

**1.3 Duration of Master Plan Approval:** The approval shall last for a period of ten years from the date of this Agreement and may be renewed and extended if approved as provided under the Development Code that is enacted and in place at the time that an extension is sought.

**2. Amended Conditional Use Permit, Concept Plan and Preliminary Plan Approval for Phase II:**

Having held all necessary public hearings, including a public hearing before the Planning Commission on January 21, 1998, having obtained a favorable recommendation from the Planning Commission, and having held a public hearing before the Town Council on February 24, 1998, the Town Council hereby gives Concept Plan and Preliminary Plan Approval for Phase II, which is attached as Exhibit "D" hereto.

**2.1 Application and Concept Plan:** The Parties agree that for Phase II, the Company has satisfied all the steps in the Application Procedure Requirements of the Old Code (§ 13.4) up to but not including the preparation and submission of a Final Plat (§ 13.4(6)), which steps include without limitation the following: § 13.4(1) Notification of Intent, § 13.4(2) Concept Plan, § 13.4(3) Environmental Impact Statement and Vicinity Plan, § 13.4(4) Project Master Plan for Phased Projects, and § 13.5(5) Preliminary Plan. The Parties also agree that the Company has satisfied all the procedural steps, including the payment of all applicable fees, necessary to qualify to file an application for Final Plat under § 6.23 of the new Development Code except for the submission and approval of Construction Plans (§ 6.22.2(23) and § 6.22.3), which steps include without limitation the following: Concept Plan Application and Review (§ 6.12), Staff Review of Infrastructure (§ 1.13), Authorization to Prepare and Submit a Preliminary Plan (§ 6.12.4), and satisfaction of the Preliminary Plan requirements of § 6.22.

**2.2 Impact Analysis:** In giving Concept Plan and Preliminary Plan Approval for Phase II, the Parties agree that the EIS submitted by the Company to the Town of Francis pursuant to the 1994 Settlement Agreement shall be deemed to satisfy any and all requirements for impact analysis for Phase II under the old Development Code (including without limitation §§ 13.4 (2) and 13.4 (3)) and the new Development Code (including without limitation § 1.13.3 (.1-.4), § 3.30, § 6.16 (.1 and .2), and Chapter 8) and that no further impact analysis or studies are required. In addition, the Company has submitted a storm water analysis and will submit a soils analysis to the Town Engineer.

**2.3 Letters of Recommendation and Input:** In giving Concept Plan and Preliminary Plan Approval for Phase II, the Parties agree that the Town of Francis has obtained all letters of recommendation and input which it deems advisable and necessary for its consideration and approval, including without limitation the documentation described in § 13.4(5)(b) of the old Development Code and the reviews, recommendations and reports described in §§ 6.12 and 6.12.2 and Chapter 8 of the new Development Code.

**2.4 Development Standards:** The Town of Francis is giving Concept Plan and Preliminary Plan Approval to Phase II of the Wild Willow subdivision as having met the design, layout and development standards of the new Development Code including, without limitation, the applicable provisions of §§ 6.13, 6.14 and 6.15, except for the following specific items which the Town of Francis has previously approved for the project by virtue of earlier Master Plan and Preliminary Plan Approvals:

A. **Open Space:** Parcels C and D as identified on the Preliminary Plan for Phase II, Exhibit "D", are intended to satisfy the Open Space requirements of the Town. Those parcels are intended to be used as horse exercise areas in conjunction with easements for Horse Trails as identified on the Preliminary Plan. In order to insure that this property is used in a manner consistent with the purposes of Open Space, the Company shall prepare a Restrictive Covenant prohibiting building on Parcels C and D and shall form an Owner's Association of adjoining properties to be responsible for the maintenance, upkeep, and use of the Horse Exercise Areas, which shall be filed as set forth in this Agreement. Either the Restrictive Covenant or CC&Rs for the Horse Exercise Area Owners Association shall provide a right by the Town of Francis to preserve Parcels C and D as open space.

B. **Irrigation Easements:** The Company shall create easements for irrigation company ditches and the users of the private ditch that runs

through a portion of Phase II, which shall be filed as set forth in this Agreement.

C. Sub-phasing: Phase II will be constructed and developed in sub-phases as indicated on the Preliminary Plan, Exhibit "D". All sub-phases have received Preliminary Plan Approval. Each sub-phase must obtain Final Plat Approval prior to construction, as set forth in this Agreement. The first sub-phase will either contain a temporary cul-de-sac or will utilize the hammerhead at the junction of Wild Willow Drive and Willow Court as a temporary turnaround.

D. Highway 32: The Company will construct the entrance to the subdivision from Highway 32 in accordance with plans to be approved by UDOT.

E. CC&Rs: The CC&Rs for the subdivision shall include landscaping prohibitions within the snow removal easement, shall contain language alerting lot owners to the rights of irrigation companies with regard to irrigation ditches, and shall contain language alerting lot owners in cul-de-sacs that children may be required to walk to Wild Willow Drive to be picked up by the school bus.

F. Right to Farm Language: The final plat shall contain "Right to Farm" language consistent with the new Development Code.

G. Cul-de-sacs/Block Length: In recognition of the historical approvals for the Wild Willow Subdivision and in order to address the concern of the Town of Francis to avoid additional subdivision entrances onto Hilltop Road and discourage traffic through the Lemon Grove intersection, the cul-de-sac on Ash Court is hereby approved. The cul-de-sac on Willow Court is also approved as having met the requirements of the old Development Code at the time that the water line was installed along Wild Willow Drive which dictates the design and layout of lots in this portion of the subdivision. The street lengths of Wild Willow Drive and Aspen Lane are approved irrespective of block length requirements in the new Development Code as those streets were preliminarily approved (and the water line is already installed under Wild Willow Drive) and as drainage concerns have been addressed in the storm water analysis provided the Town.

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H. Curb and Gutter: Consistent with the rural and agricultural character of the community, Curb and Gutter shall not be required for any

portion of Phase II. Because of the topography of the property and the large lot size, storm drainage will be handled through on-site percolation and through a system of swales.

I. Lights: Street lights will not be required in Phase II of the subdivision except at the entrance to the subdivision at Highway 32.

J. Sidewalks: Sidewalks will not be required in Phase II of the subdivision. The Company has provided an extra five foot easement along Parcel B in the event that the property immediately to the north of Phase II is used by the South Summit School District for a school, in which event, the school district shall be responsible for constructing a sidewalk if one is necessary or desirable.

K. Stub Roads/Access to Adjoining Properties: The Company has provided access to adjoining properties as indicated on the Preliminary Plan as Parcels A, B and E. At the time of final plat approval and recordation, Company shall dedicate those parcels to the Town of Francis, but the Company is not required to extend services or utilities through those parcels to the adjoining property. As a condition of final plat approval for sub-phase IID, Company shall provide an appropriate form of sewer, water and utility easement to the adjoining property owned by Dale Thomas.

L. Water Dedication: As provided in the 1994 Settlement Agreement and because the Company has already obtained a Change Order from the State Engineer for Washington Irrigation water based on the dedication of one acre foot of water for each single family residence in Phase II, the Parties agree that the Company shall only be responsible for dedicating water rights equal to one acre foot of water for each buildable lot in the subdivision.

M. Ownership of Roads, Water Lines and Sewer Lines: After construction and acceptance by the Town of Francis, the roads, water lines, and sewer lines in each phase and sub-phase of the Wild Willow subdivision Phases I and II shall be owned by the Town of Francis.

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N. Fire Storage for Phase II: In the event that Wild Willow requests final approval for any sub-phase of Phase II prior to completion of a new water storage tank by the Town of Francis, Wild Willow may rent or purchase an auxiliary generator in order to provide adequate fire storage to the satisfaction of the Town Engineer. Wild Willow will bear the complete cost of that rental or purchase and shall be allowed to utilize all of the

hookups made possible by that rental or purchase. In the event that the auxiliary generator creates more hookups than Wild Willow and the Town agree will be necessary for all of the sub-phases which have been proposed for final approval as of that date, other applicants, at their discretion, may be allowed to elect to pay their proportionate share of the cost of the purchase or rental of the auxiliary generator, as determined by the Town Engineer, so that such other applicants may also receive hookups from the Town prior to the construction of a new water storage tank.

**2.5 Vested Rights:** Having obtained Concept Plan and Preliminary Plan Approval from the Town of Francis, this Agreement shall vest in the Company with respect to Phase II of the Wild Willow subdivision, the use, density and general configuration for 117 single family residential lots as reflected in the Preliminary Plan, Exhibit "D" hereto. Subject to the provisions of this Agreement, the Company shall have the right to have final subdivision plats for each sub-phase of Phase II approved by the Town of Francis and to develop and construct Phase II of the subdivision in accordance with the use, density, and general configuration as reflected in Exhibit "D" hereto and as limited by the provisions of this Agreement. This Preliminary Plan Approval shall be good for a period of ten years from the date of this Agreement unless the Agreement is earlier terminated or its term modified by a written amendment to this Agreement.

**3. Delegation of Construction Plan Review:** The Town of Francis hereby appoints the Town Engineer to serve as "Staff" as that term is used in the new Development Code and to review and approve construction plans for Phase II, as follows:

**3.1 Submission of Construction Plans:** The Company shall submit Construction Plans, as referred to in § 6.22.2(23) of the new Development Code and as described in § 6.23.3 of the new Development Code, for all sub-phases of Phase II to the Town Engineer for review and approval.

**3.2 Fees:** The Company shall be responsible for paying the fees of the Town Engineer for review of the Construction Plans. The Parties agree that the fee for review shall be billed by the Town Engineer on an hourly basis.

**3.3 No Further Public Hearing Required:** The Parties agree that all necessary public hearings have been held pursuant to § 6.22.4 and § 6.22.6 to consider the Company's request for Concept Plan and Preliminary Plan Approval of Phase II and that no further public hearings are required for approval of the Construction Plans.



4. **Procedure for Final Plat Approvals:** The Parties agree that the following procedure will be followed for Final Plat Approval for each of the sub-phases of Phase II:

4.1 **Preparation of Final Plats:** At any time prior to the submission of a Final Plat for approval, the Company may prepare Final Plats as described in § 6.23 of the new Development Code and may obtain any and all signatures except for the Town Attorney, who shall not sign the Final Plat until all requirements for Final Approval as set forth in this Agreement have been satisfied.

4.2 **No Further Public Hearings Required:** The Parties agree that no further public hearing shall be required, either before the Planning Commission or the Town Council, for approval of the Final Plat.

4.3 **Planning Commission Review:** The Company shall submit each Final Plat to the Planning Commission for review as provided in § 6.23.3 of the new Development Code.

4.4 **Town Council Review:** Following receipt of a recommendation from the Planning Commission, the Town Council shall Approve, Approve with Conditions, or Deny the Final Plat as provided in § 6.23.4 of the new Development Code.

4.5 **Dedications:**

A. Before or at the time that the Company requests Final Plat Approval for a sub-phase of Phase II of the development, the Company shall dedicate the water rights required in this Agreement (§ 2.4(F)) for that sub-phase, and shall tender a formal, irrevocable offer of dedication for the streets, access parcels, and utilities in that sub-phase.

B. Before or at the time that the Company requests Final Plat Approval for a sub-phase of Phase II of the development, the Company shall tender to the Town, for filing at the County Recorder's office, any irrigation company or private ditch easement concerning property included in that sub-phase and the License Agreement for any irrigation company or private ditch crossing in that sub-phase.

C. Before or at the time that the Company requests Final Plat Approval for the first sub-phase, the Company shall tender to the Town, for filing at the County Recorder's office, a Restrictive Covenant in a form acceptable to the Town Attorney, restricting the use of the Open Space/Horse Exercise Areas shown on the Preliminary Plan.

D. Before or at the time that the Company requests Final Plat Approval for the first sub-phase, the Company shall tender to the Town, for filing at the County Recorder's office, the Conditions, Covenants, and Restrictions for Phase II of the Wild Willow Subdivision and the Conditions, Covenants, and Restrictions for the Horse Owner's Association governing the use and maintenance of the horse exercise areas.

**4.6 Completion Guarantee:** On approval of the Final Plat for a sub-phase, the Company shall provide Performance Guarantees, as described in § 6.24.2 of the new Development Code, for that sub-phase. The Performance Guarantee shall be treated and released as provided in the new Development Code.

**4.7 Completion of Improvements:** The Company shall have two years from the date of Final Approval of a sub-phase to complete the required improvements for that sub-phase, though the Town Council may extend that period as provided in § 6.24.2 of the new Development Code.

**4.8 Acceptance of Improvements:** The Town of Francis shall accept the improvements in each sub-phase as those improvements are completed, on the recommendation of the Town Engineer.

**4.9 Maintenance of Improvements:** After acceptance of the improvements, the Company agrees to maintain the improvements until over 50 percent of the owners of lots within each sub-phase have obtained occupancy permits.

**4.10 Warranty:** The Company shall provide a guarantee to the Town not to exceed 10 percent of the original Performance Guarantee as determined by the Town Engineer pursuant to § 6.27.2 for a period of one year after the date of the acceptance of the improvements by the Town.

**4.11 Inspection:** The Town Engineer shall inspect the installation and construction of the improvements and the Company shall pay an inspection fee to the Town Engineer as billed on an hourly basis. **00501753 Bk01127 Pg00214**

**4.12 Application of New Development Code and New Construction Specifications:** Except as otherwise provided as part of the provisions of this Agreement, the Company and the Town will follow the procedures set forth in the new Development Code and new Construction Specifications for Final Plat Approval of each sub-phase and for the construction of improvements for each sub-phase after Final Plat Approval.

5. **Merger of Prior Agreements and Approvals:** This Agreement incorporates all prior approvals and agreements between the Parties to the extent that such approvals and agreements are consistent with this Agreement and supercedes all prior approvals and agreements between the Parties to the extent that such approvals and agreements are not consistent with this Agreement. Specifically, the following prior approvals and agreements are no longer valid or enforceable:

5.1. **Capital Facilities:** Because the Town of Francis has adopted an Impact Fee Ordinance providing for the imposition of impact fees to pay for the construction of water storage, water delivery, water source, sewer treatment, sewer delivery, and parks, those portions of the 1994 Settlement Agreement that pertain to the construction and cost of the improvements to the Town's capital facilities (§ 6 and § 7) are no longer valid or enforceable, except the provision regarding repayment of the water line along S.R. 35 (§ 6(A)).

6. **Disputes:** The Parties agree that they shall attempt to resolve all disputes amicably and through negotiation with the Town Attorney and Town Engineer and that neither Party shall file suit or issue Stop Orders until the other party has been given sixty days written notice within which to initiate mediation, except in the case of an emergency requiring an immediate response in order to protect the public health, safety and welfare, such as a sewer or water system emergency. Both Parties agree to submit to mediation within 60 days of any written notice of dispute provided that the mediation shall take place within 120 days of the written notice. Sixty days after the written notice, or 120 days after the written notice if mediation has been initiated within 60 days of the notice, the Party giving notice is free to issue a Stop Order or to file suit in Court. In the event that Statutes of Limitation are shorter than 120 days, this provision shall not apply.

7. **Amendment:** This Agreement may be amended only by the written agreement of both Parties.

8. **Reserved Legislative Powers:** Nothing in this Agreement shall limit the future exercise of the police power by the Town of Francis in enacting zoning, subdivision development, and related land use plans, policies, ordinances, and regulations after the date of this Agreement.

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9. **No Joint Venture, Partnership, or Third-Party Rights:** This Development Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto nor any rights or benefits to third parties.

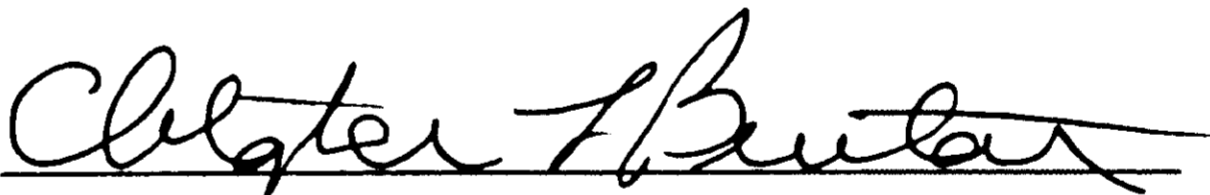
10. **Agreement to Run with the Land:** This Agreement shall be recorded against the property as described in Exhibit "A" hereto and shall be deemed to run with

the land and shall be binding on all successors and assigns of the Company in the ownership or development of any portion of the Property.

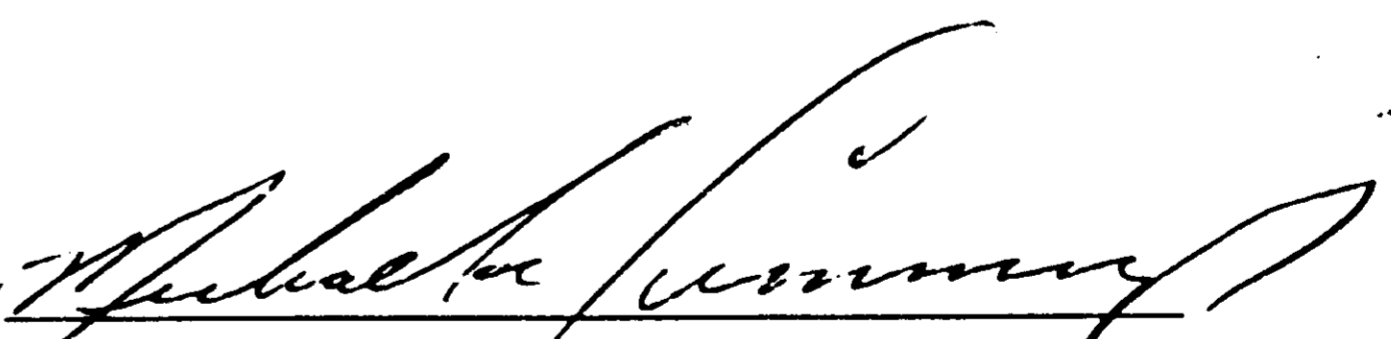
11. **Assignment:** Neither this Agreement nor any of the provisions hereof can be assigned to any other party, individual, or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of the Town of Francis, which review is intended to assure the financial capability of any assignee. Such consent shall not be unreasonably withheld. This requirement shall not apply to the sale of approved and platted lots within any phase of the Wild Willow subdivision.

12. **Severability:** If any part or provision of this Agreement shall be adjudged unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision determined to be unconstitutional, invalid, or unenforceable. If any condition, covenant, or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

WILD WILLOW LIMITED COMPANY

By   
Christopher L. Burton  
Managing Member

TOWN OF FRANCIS

By   
Mayor Michael Cummings

61901.1

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**EXHIBIT A**

EXHIBIT "A"  
LEGAL DESCRIPTION

Phase I

Beginning at a point S0°02'01"W 1993.07' and N89°21'13" E 30.00' from the Northwest Corner of Section 29, T2S, R6E, SLB&M and running thence: N89°21'13"E 2208.80' along an existing fence, thence S02°45'03"E 257.81', thence S37°43'57"W 216.31', thence S05°55'53"E 387.07', thence S09°51'57"E 233.45', thence S28°16'07"W 1040.00, thence N90°00'00"W 323.37', thence N54°57'54"W 158.73', thence N63°15'08"W 140.63', thence N68°56'12"W 88.83', thence N00°18'02"E 519.06' along an existing fence, thence S69°46'14"E 299.86' along an existing fence, thence N00°01'12"W 676.93', along an existing fence, thence S89°29'18"W 1298.58' along an existing fence, thence N00°02'01"E 667.59' to the Point of Beginning.

EXHIBIT "A"  
Phase II

DESCRIPTION

BEGINNING AT A POINT ON THE WEST LINE OF HIGHWAY 139/32, SAID POINT BEING NORTH 2028.78 FEET AND NORTH 8317.48° WEST 49.50 FEET FROM THE SOUTHEAST CORNER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 6 EAST, SALT LAKE BASE & MERIDIAN AND RUNNING THENCE NORTH 8917.48° WEST 406.52 FEET; THENCE NORTH 89°38'17" WEST 515.12 FEET; THENCE NORTH 89°30'53" WEST 346.50 FEET; THENCE SOUTH 00°08'51" EAST 512.16 FEET; THENCE SOUTH 00°22'37" WEST 173.22 FEET; THENCE NORTH 89°37'10" WEST 245.91 FEET; THENCE NORTH 88°00'36" WEST 169.71 FEET; THENCE SOUTH 89°49'26" WEST 215.37 FEET; THENCE NORTH 89°29'36" WEST 413.17 FEET; THENCE NORTH 89°31'08" WEST 617.55 FEET; THENCE NORTH 88°29'56" WEST 455.92 FEET; THENCE NORTH 45°00'00" WEST 170.50 FEET TO A POINT ON THE EAST LINE OF WILD WILLOW PLANNED DEVELOPMENT, AS SHOWN ON THE OFFICIAL PLAT HEREOF ON FILE IN THE OFFICE OF THE SUMMIT COUNTY RECORDER; THENCE NORTH 2816.07° EAST 908.55 FEET ALONG THE EAST LINE OF SAID PLANNED DEVELOPMENT; THENCE NORTH 03°51'57" WEST 233.45 FEET ALONG SAID EAST LINE; THENCE NORTH 05°55'55" WEST 387.07 FEET ALONG SAID EAST LINE; THENCE NORTH 37°43'57" EAST 216.31 FEET ALONG SAID EAST LINE; THENCE NORTH 02°45'03" WEST 257.81 FEET ALONG SAID EAST LINE; THENCE SOUTH 89° 21'13" EAST 919.37 FEET ALONG THE NORTH LINE OF SAID PLANNED DEVELOPMENT TO A POINT WHICH IS SOUTH 00°02'01" WEST 1993.07 FEET ALONG SECTION LINE AND NORTH 89°21'13" EAST 1313.43 FEET ALONG SAID NORTH LINE FROM THE NORTHWEST CORNER OF SAID SECTION 29. THENCE NORTH 00°33'15" EAST 272.39 FEET; THENCE NORTH 00°09'31" WEST 387.96 FEET; THENCE NORTH 86° 54'24" EAST 127.82 FEET; THENCE SOUTH 89°04'47" EAST 159.23 FEET; THENCE NORTH 89°24'56" EAST 527.03 FEET; THENCE SOUTH 89°25'21" EAST 196.71 FEET; THENCE NORTH 84°03'36" EAST 52.93 FEET; THENCE NORTH 83°46'00" EAST 267.35 FEET; THENCE SOUTH 00°06'38" WEST 110.91 FEET; THENCE SOUTH 00°45'27" WEST 135.16 FEET; THENCE SOUTH 01°25'04" EAST 131.21 FEET; THENCE SOUTH 00°27'00" WEST 650.48 FEET; THENCE SOUTH 05°33'08" EAST 109.03 FEET; THENCE SOUTH 00°03'59" EAST 164.95 FEET; THENCE NORTH 88°48'11" EAST 273.40 FEET; THENCE NORTH 89°44'00" EAST 408.41 FEET; THENCE NORTH 56°32'37" EAST 16.10 FEET; THENCE NORTH 89°22'39" EAST 389.64 FEET; THENCE SOUTH 89°26'15" EAST 260.45 FEET; THENCE NORTH 89°49'19" EAST 379.84 FEET; THENCE SOUTH 89°05'44" EAST 224.79 FEET; THENCE NORTH 89°25'41" EAST 193.11 FEET; THENCE NORTH 85°17'58" EAST 50.11 FEET; THENCE NORTH 89°08'54" EAST 293.31 FEET; THENCE SOUTH 00°43'31" EAST 344.10 FEET; THENCE SOUTH 32°45'10" EAST 146.75 FEET; THENCE SOUTH 88°39'07" EAST 99.90 FEET TO SAID WEST LINE OF HIGHWAY 189/32. THENCE SOUTH 183.66 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

CONTAINS: 103.622 ACRES.

EXHIBIT "A"

Phase III

Remaining Portion of Tax Parcel FT-2050-A and Tax Parcel FT-53-A.

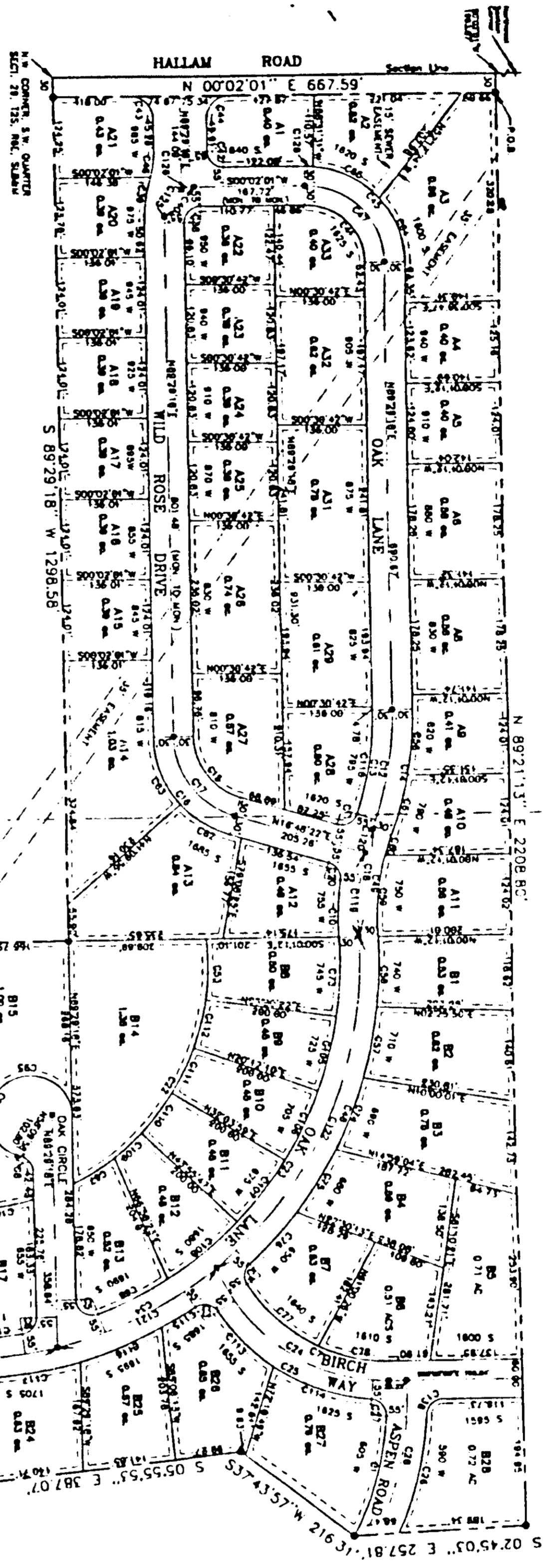
Farm House Property

Tax Parcels: FT-52, FT-52-B, and FT-52-B-3 and a portion of FT-52-B.



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**EXHIBIT B-1**



00501753 Bk01127 Pg00222

Lot No.	Area (Ac.)	Area (Sq. Ft.)	Remarks
A1	0.10	4356	
A2	0.10	4356	
A3	0.10	4356	
A4	0.10	4356	
A5	0.10	4356	
A6	0.10	4356	
A7	0.10	4356	
A8	0.10	4356	
A9	0.10	4356	
A10	0.10	4356	
A11	0.10	4356	
A12	0.10	4356	
A13	0.10	4356	
A14	0.10	4356	
A15	0.10	4356	
A16	0.10	4356	
A17	0.10	4356	
A18	0.10	4356	
A19	0.10	4356	
A20	0.10	4356	
A21	0.10	4356	
A22	0.10	4356	
A23	0.10	4356	
A24	0.10	4356	
A25	0.10	4356	
A26	0.10	4356	
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A99	0.10	4356	
A100	0.10	4356	

**OWNER'S DEDICATION.**  
 I, the undersigned, do hereby dedicate to the public use of the State of Utah the following described land, to-wit: ...  
 WILD WILLOW DRIVE  
 OAK LANE  
 BIRCH LANE  
 ASPEN ROAD

**BOUNDARY DESCRIPTION.**  
 Beginning at a point 2000.00' N 89°21'13" E 2208.80' ...  
 N 00°18'02" E 519.06'  
 S 68°46'14" E 259.86'  
 N 00°01'12" W 676.93'  
 S 89°29'18" W 1298.58'  
 S 05°55'54" E 387.07'  
 S 09°51'57" E 233.45'  
 S 89°29'18" W 1298.58'  
 N 00°01'12" W 676.93'  
 S 68°46'14" E 259.86'  
 N 00°18'02" E 519.06'

**ACKNOWLEDGEMENT.**  
 I, the undersigned, do hereby acknowledge the recording of the foregoing instrument in the public records of the State of Utah, and I do hereby certify that the same is a true and correct copy of the original as the same appears in the records of the State of Utah.

**PLANNING COMMISSION.**  
 I have reviewed this plan and the exhibits as shown are accurate and correct.  
 DATE: 10/09/93  
 BY: [Signature]

**ENGINEERS CERTIFICATE.**  
 I have reviewed this plan and the exhibits as shown are accurate and correct.  
 DATE: 10/09/93  
 BY: [Signature]

**TOWN BOARD APPROVAL AND ACCEPTANCE.**  
 APPROVED AND ACCEPTED BY THE TOWN BOARD OF FRANCIS TOWN, SALT LAKE CITY, UTAH, THIS 13th DAY OF OCTOBER, 1993.  
 BY: [Signature]

**RECORDED.**  
 STATE OF UTAH, COUNTY OF SALT LAKE, DEED BOOK 1753, PAGE 222.  
 RECORDED BY: [Signature]

**FRANCIS & ASSOCIATES.**  
 1708 EAST HARRISON DRIVE  
 SALT LAKE CITY, UTAH 84113

**WILD WILLOW PLANNED DEVELOPMENT - FINAL.**  
 SCALE: 1"=100'  
 JOB: [Blank]  
 DATE: 10/09/93  
 DRAWN BY: WDS  
 CHECKED BY: WS

**WILD WILLOW PLANNED DEVELOPMENT.**  
 AMENDED PLAT  
 WILD WILLOW L.L.C.  
 c/o C. J. WILSON, BURTON  
 3804 S. C. WILSON BLVD.  
 SALT LAKE CITY, UTAH 84108

**PLANNING COMMISSION.**  
 I have reviewed this plan and the exhibits as shown are accurate and correct.  
 DATE: 10/09/93  
 BY: [Signature]

**ENGINEERS CERTIFICATE.**  
 I have reviewed this plan and the exhibits as shown are accurate and correct.  
 DATE: 10/09/93  
 BY: [Signature]

**TOWN BOARD APPROVAL AND ACCEPTANCE.**  
 APPROVED AND ACCEPTED BY THE TOWN BOARD OF FRANCIS TOWN, SALT LAKE CITY, UTAH, THIS 13th DAY OF OCTOBER, 1993.  
 BY: [Signature]

**RECORDED.**  
 STATE OF UTAH, COUNTY OF SALT LAKE, DEED BOOK 1753, PAGE 222.  
 RECORDED BY: [Signature]

**FRANCIS & ASSOCIATES.**  
 1708 EAST HARRISON DRIVE  
 SALT LAKE CITY, UTAH 84113

**WILD WILLOW PLANNED DEVELOPMENT - FINAL.**  
 SCALE: 1"=100'  
 JOB: [Blank]  
 DATE: 10/09/93  
 DRAWN BY: WDS  
 CHECKED BY: WS

00501753 Bk01127 Pg00223

**EXHIBIT B-2**

LAW OFFICES OF  
**WILLIAMS & HUNT**  
A PROFESSIONAL CORPORATION

257 EAST 200 SOUTH, SUITE 500  
P.O. BOX 45678  
SALT LAKE CITY, UTAH 84145-5678

JODY K BURNETT

TELEPHONE (801) 521-5678  
FAX (801) 364-4500

**MEMORANDUM**

TO: Francis Town Planning Commission

FROM: Jody K Burnett

RE: Application for Preliminary Approval of Phase 2  
of the Wild Willow Subdivision

DATE: September 26, 1996

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Dear Chairman Thompson and Members of the Planning Commission:

In order to assist you in reviewing and taking action on the pending application for preliminary plan approval for Phase 2 of the Wild Willow Subdivision, I have reviewed the provisions of the Francis Town Development Code and the relevant materials submitted regarding this application, discussed the technical and engineering issues with Town Engineer Victor Hansen, and based on that information and analysis, I am providing you with the following review and recommendation:

Introduction and Background Regarding Master Plan and Conceptual Approval.

As you are aware, Wild Willow is a long-term, multi-phased, master planned development for which conceptual approval has previously been granted as part of the Mutual Release and Settlement Agreement dated September 8, 1994, a copy of which I am providing for your reference. Please see paragraph 10 on page 12 regarding this

Memo to  
Francis Town Planning Commission 2

September 26, 1996

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specific issue. A proposed Preliminary Plan has been submitted seeking approval of a total of 85 lots. My intent is to provide you with a checklist of the outstanding issues that ought to be resolved and be the subject of conditions on preliminary plan approval pursuant to the provisions of the Development Code of Francis Town and the Settlement Agreement. Many of these issues are a function of timing and need to be completed prior to final approval and recordation of the Subdivision Plat, but may appropriately be reflected as conditions of preliminary plan approval consistent with Section 13.4(5) of the Development Code.

1. Lot Size and Configuration Issues. Section 13.5(5) requires that all lots must meet the minimum frontage and setback requirements of the Code. There may be some question as to whether some of the lots depicted on the Preliminary Plan comply with 110 foot frontage requirement. I would recommend that a condition of final plat approval be verification that each lot meets those frontage requirements. If it is considered to be desirable from a design standpoint, you may wish to measure that frontage requirement from the setback line rather than at the point where the lot adjoins the public street.

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2. Street Access to Adjoining Property. On the proposed Preliminary Plat, Lots A and B appear to be set aside for future road access to adjoining properties. However, it is assumed that these improvements are not anticipated to be constructed as part of this project. Section 13.5(2)(k) of the Development Code requires that

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September 26, 1996

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streets in new developments make provisions for continuation to adjoining areas. That section further provides that the Planning Commission may require proposed streets be extended by dedication to the boundary of adjoining property where it is considered desirable to provide such access. Lots A and B, or adequate right-of-way for street access to adjoining properties at another acceptable location, should be provided to meet this requirement as a condition of final plat approval, although it may not be necessary for Wild Willow to construct the road improvements if they are not necessary to service or provide access to their development. The adjoining property owner would then be required to construct the improvements on those areas at the time of such development.

3. Water Rights. A portion of the water rights dedication requirement for Phase 2 has already been satisfied by the transfer of the Eskelson Spring water right and approval of Change Application No. a17832. A total of 119 acre feet of water right were approved by the State Engineer and transferred to the Town, which exceeds the water dedication requirement for Phase 1. That excess may be applied in partial satisfaction of the water dedication requirement for Phase 2. In addition, Change Application No. a20147 has been filed in the office of the State Engineer by Wild Willow based on shares of stock in the Washington Irrigation Company. This change application requests approval for the right to divert 207.59 acre feet annually from the Town's well. The filing of the change application appears to be adequate

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Francis Town Planning Commission 4

September 26, 1996

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documentation of the water right for the purposes of preliminary plat approval. As a condition of final plat approval, final approval of the change application, and an assignment of adequate shares of stock to the Town to fully satisfy the remainder of the water rights dedication requirement, should be completed. Final approval of the change application means approval by Memorandum Decision of the Utah State Engineer with any applicable appeal periods having expired without any party filing a judicial review action.

4. Ditch Crossings. As a condition of final plat approval for Phase 2, Wild Willow should be required to obtain the right to construct roads and other improvements across any irrigation ditches. Such a right shall be evidenced by an encroachment agreement or similar written approval signed by the irrigation company or person(s) owning the irrigation facility. Any such approval should indicate that the ditch owner has reviewed the crossing design to ensure that it will accommodate peaking high water flow events.

5. Ditch Easements. As a condition of final plat approval for Phase 2, Wild Willow should be required to obtain a written agreement with any impacted irrigation companies to confirm that the nature and scope of the ditch easements are adequate for the safe operation and maintenance of the ditches in light of the change in the nature of the use of the land from agricultural to residential.

6. Wetlands. As part of the environmental impact statement ("EIS"), approximately .91 acres of jurisdictional wetlands was identified which would impact Lots 63, 64 and 65 of the proposed Phase 2. Wild Willow has proposed that they be allowed to fill this property and convey it without restrictions in exchange for other restrictions being negotiated with the Army Corps of Engineers as part of a 404 permit involving the so-called "North 20" acres. As a condition of final plat approval, Wild Willow should be required to obtain the approval from the Army Corps of Engineers for a permit for any proposed disturbance of or impact on any jurisdictional wetlands within Phase 2.

7. Open Space/Parks. As a fundamental long-term policy issue, Francis Town needs to decide what it wants to do with open space that will be created as part of the development approval process. In the proposed preliminary plat for Phase 2, Wild Willow has depicted a 2.61 acre proposed park as Lot C and has an additional area of open space near the junction of Highway 32 consisting of .31 acres which should also be platted consistent with Section 13.6 of the Development Code. Since this involves a long-term policy decision for the Town of Francis which should include a dialogue with the Town Council, I would recommend that as a condition of final plat approval Wild Willow be required to dedicate all areas designated as open space on the plat for Phase 2 to an entity approved by the Town of Francis with appropriate provisions to ensure the long-term preservation of the area as open space.



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That way the final determination about what uses may be anticipated for the open space and who should hold title or be responsible for maintenance can be addressed prior to final plat approval.

8. Curb and Gutter. I am aware there has been considerable historical discussion about the appropriateness of curb and gutter in the Town of Francis generally and in this development in particular. Most of my clients in smaller areas that are trying to preserve a rural and agricultural character for their community are adopting development standards that do not require curb, gutter and sidewalk on the theory that such improvements create an urban atmosphere inconsistent with the rural and agricultural character the community is trying to promote and can create more problems with respect to storm drainage and related issues than they solve. Pursuant to Sections 13.5(2)(c) and 13.5(10) of the Development Code, curb and gutter is optional at the discretion of the Planning Commission in consultation with the Town Engineer based on what facilities are necessary to handle drainage. Under these circumstances, the addition of curb and gutter would create a drainage problem that may not otherwise exist. Therefore, I would recommend against requiring curb and gutter. The issue of snow storage should be addressed, and as a condition of final plat approval, Wild Willow should be required to provide an appropriate easement for snow removal and storage, including landscaping restrictions to avoid the placement of

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*Contingent upon Summit Land's willingness to continue to contract for road maintenance.*

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Francis Town Planning Commission 7

September 26, 1996

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large rocks, trees and other impediments in those easements for snow removal and storage.

9. Expansion of Storage Capacity for Water and Treatment Capacity for Sewer. The Settlement Agreement provided for the completion of a study of the Town water system and sewer system by Bingham Engineering, which was completed and submitted to the Town of Francis. The agreement further provides that other improvements which are necessary and directly related to the development of Phase 2 of Wild Willow, as indicated by the study, will be completed as part of the approval process for Phase 2. The Culinary Water and Sanitary Sewer Evaluation completed by Bingham Engineering recommends additional water storage capacity to service Phase 2 of the Wild Willow Subdivision and expansion of the existing treatment capacity of the sewer system to accommodate Phase 2. As a condition of final approval, Wild Willow should be required to participate in the construction of improvements intended to expand the storage capacity of the water system and treatment capacity of the sanitary sewer system according to plans and specifications to be approved by and under the direction of the Town Engineer on a proportionate share basis to the extent of the need created by the additional development proposed for Phase 2. That may involve either the construction of the appropriate facilities or participation with the Town in system improvements of a broader nature, as defined by the Town Engineer as part of the capital facilities planning process

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Memo to  
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September 26, 1996

10. Access to Highway 32. It is my understanding that Wild Willow has previously agreed to obtain the appropriate permits from the Utah Department of Transportation for encroachment upon and access to Highway 32 and to construct a street light at that intersection if required to do so by UDOT.

11. Items Specified by Development Code to be Shown on Plans. There are also a number of additional items specified by the Development Code which should be included on the final plat as provided in Section 13.4(5) and (6). Verification that all such information has been included on the final plat should be provided by the Town Engineer as an additional condition of final plat approval.

12. Other Development Code Requirements. The recommended conditions outlined above should be viewed as "in addition to" any other applicable final plat requirements set forth in the Development Code.

CONCLUSION. It is my recommendation that the Planning Commission grant preliminary plat approval for the proposed Phase 2 of the Wild Willow Subdivision subject to compliance with the conditions set forth above prior to approval of the final plat.

13. *Right to Farm language or note required on Final Plat*

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**EXHIBIT B-3**

7-26-74

Craig G. Adamson (0024)  
Eric P. Lee (4870)  
DART, ADAMSON & DONOVAN  
Attorneys for plaintiff  
310 South Main Street, Suite 1330  
Salt Lake City, UT 84101  
Telephone: (801) 521-6383

NO. \_\_\_\_\_  
**FILED**  
SEP 26 1994  
Clerk of Summit County  
By \_\_\_\_\_ *WTR*  
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

---oooOooo---

WILD WILLOW LIMITED	:	
COMPANY, a Utah Limited	:	MUTUAL RELEASE AND
Liability Company,	:	SETTLEMENT AGREEMENT
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THE TOWN OF FRANCIS, a	:	
Municipal corporation; BRAD	:	Civil No. 940300048CV
McNEIL, individually and as Mayor	:	
of the Town of Francis,	:	
	:	
Defendants.	:	

---oooOooo---

The plaintiff Wild Willow Limited Company, a Utah limited liability company, and each of its shareholders, members, directors, officers, successors, predecessors, assignees, agents, attorneys, servants and employees, and the Town of Francis, a municipal corporation and Brad McNeil, Individually and as the Mayor of the Town of Francis, together with their respective officers, successors, predecessors, assignees, agents, attorneys, servants and employees, for the

purpose of resolving all issues raised by the Complaint and Amended Complaint and Counterclaim in this matter, and after due consideration, negotiation and consultation with such parties and advisors as these parties deem appropriate, now enter into the following mutual release and settlement agreement for the purpose of compromising and dismissing the above-captioned litigation:

1. Settling Parties. It is understood that this Agreement shall constitute a settlement of all outstanding issues between the parties relative to the Wild Willow Project including, but not limited to, those issues raised in the Complaint, Amended Complaint and Counterclaim in this matter. This settlement agreement shall be binding upon and inure to the benefit of each of the parties, their successors and assigns. However, nothing herein shall be construed as a waiver or release by the Town of Francis for any act undertaken by any individual or entity acting as an official, employee, agent or independent contractor for the Town of Francis.

2. Dismissal with Prejudice. Upon execution of this Agreement the parties shall execute and file joint motions for dismissal, with prejudice, of all pending actions, including all matters pending before the Third Judicial District Court in and for Summit County and before the Utah Supreme Court. Upon execution of this Agreement the rights and remedies of the parties shall be governed by this Agreement and by applicable local, state and federal law.

3. Preparation of an Environmental Impact Statement (EIS). Plaintiff will cause a professional to prepare a document entitled Environmental Impact Statement as provided for in

¶13.4(3) of the development code of the Town of Francis. The EIS will be applicable to all phases of the development. The EIS shall contain the following:

A. A copy of the recorded plat map for Phase I which shall satisfy, in part or in whole, ¶13.4(3)(a) and (b) of the development code.

B. Three topography maps, the wetland study with map, and two additional contour maps showing existing ditches and irrigation canals, all of which shall satisfy the requirements of ¶13.4(3)(b) of the development code.

C. A copy of the geologic survey and map which is a part of the EIS generated in connection with the construction of the Jordanelle reservoir and dam. Such survey and map will address and satisfy the requirements of ¶(3)(b)(iii) of the development code.

D. A statement that no disturbance of the jurisdictional wetlands identified in the wetland study, as defined by the United States Corps of Engineers, shall be made except upon authorization of the Corps. It is agreed by the parties that the jurisdictional wetlands presently involve or touch lots A6, A7, A8 and A30, together with lots B5, and B6 of Phase I of the development. Such affected lots shall not be sold unless and until either a redetermination of the jurisdictional wetlands is made, or the appropriate authorization granted by the Corps of Engineers.

E. A statement as to the consequences the proposed development will have on soil drainage, flood hazards, underground drainage, surface drainage, wildlife and vegetation, in compliance with ¶13.4(3)(c) of the development code. The parties acknowledge that the property has been used for a number of years as cattle grazing and

that because of this fact no wildlife or vegetation will necessarily be disturbed. The EIS will also attach those portions of the EIS prepared for the Jordanelle dam, if any, which address wildlife mitigation in the area of the development.

F. A statement as to the estimated potential increase in property tax receipts to the Town as a result of Phase I of the development together with an estimate as to the increased costs to the Town of road maintenance by reason of Phase I.

G. A traffic study to be commissioned as set out below.

H. The EIS as described herein (with the exception of the traffic, water and sewer studies which are provided for elsewhere in this Agreement) shall be submitted to the Town within thirty (30) days of execution of this Agreement by all parties.

I. Submission of the EIS as described herein shall be construed as compliance with requirements of the Town of Francis Development Code.

4. Traffic Study. Plaintiff will promptly, at its sole cost and expense, commission, through Bingham Engineering or such other engineering firm as shall be agreed to by the parties, a traffic and/or transportation study relative to the Wild Willow development. This study shall be completed and submitted to the Town within sixty (60) days of the execution of this Agreement by all parties, subject to reasonable requests for extensions by the engineering firm. The plaintiff will, at its sole cost and expense, undertake the construction of Wild Willow Drive from Phase I to State Highway 32, as shown on the conceptual and master plan of the development, if construction of the same is indicated and/or required by the transportation study.



Plaintiff further agrees that it will undertake other reasonable measures with respect to the development as are indicated by the traffic study, within the following parameters:

A. Plaintiff will not be expected to reconfigure the streets presently within Phase I;

B. Plaintiff will not be required to build any other roads not shown on the plat for Phase I;

C. Plaintiff will not be required to reconfigure or improve, in any manner, Hilltop road, with the exception of the installation of concrete barriers as presently provided in the original plans and specification approved by the Town. The parties acknowledge, however, that the Town, in consultation with the plaintiff, shall be entitled to take any recommended steps to improve safety at or along Hilltop Road including such measures as making Hilltop Road and/or Oak Lane a one-way street.

5. Dedication of Water. Plaintiff has agreed that it shall provide one acre foot of culinary water for each of the 72 approved lots in Phase I of the development. This dedication of water will be accomplished in the following manner:

A. Plaintiff will, at its sole cost and expense, make application with the State Engineer's office for a change of use and diversion for such water rights as it deems appropriate including, but not limited to, Eskelson Springs, Beaver-Shingle Creek and/or South Kamas. The Town will officially notify the State Engineer's office and/or the affected water companies that it has no opposition to such change of use or point of diversion and will join in said applications as is necessary or appropriate. Any water

thus approved and received shall be, by appropriate documentation, transferred to the Town at the rate of one acre foot per each approved lot.

B. The parties acknowledge that an application for quantification of the Eskelson Spring water rights owned by the plaintiff is pending before the Utah State Engineer's office. In the event the quantification of Eskelson Springs does not equal or exceed 72 acre feet, the parties agree that the plaintiff shall deposit with the Town clerk, in an interest-bearing, federally-insured escrow account, the sum of \$5,000.00 for each acre foot represented by the difference. Said deposit shall be made as a condition of and at the time of the granting of every other of the next building permits represented by the difference. (Illustration: If Eskelson Springs is quantified at 60 acre feet the difference would be 12 acre feet. Plaintiff would be obligated to deposit in the escrow account the sum of \$5,000.00 for the second, fourth permits, etc. until \$5,000.00 has been escrowed for each of twelve acre feet.) However, the Town of Francis is not required to issue more than thirty-two (32) permits for which any acre foot of water rights has not been previously transferred to the Town by plaintiff.

C. In the event plaintiff, or any purchaser of a lot in the development, makes application for a building permit prior to the quantification of Eskelson Springs, the plaintiff shall deposit in the above-described interest escrow account the sum of \$5,000.00 per building permit issued, said deposit to be made at the time of and as a condition of the issuance of the building permit(s).

D. In the event the dedication from the quantification of Eskelson Springs (together with any deposits made for permits issued prior to quantification of Eskelson Springs) exceed 72 acre feet, the funds representing such excess water shall be immediately returned to plaintiff, together with any interest accrued thereon.

E. Plaintiff shall be entitled to transfer other quantified and approved water rights to the Town at any time prior to December 31, 1995 in order to meet the requirement of 72 acre feet. If, at any time prior to December 31, 1995 the plaintiff has transferred to the Town 72 acre feet of approved water, the balance in the escrow account, with all accrued interest, shall be immediately returned to plaintiff. If, on that same date, plaintiff has been unable to transfer 72 acre feet of usable water to the Town, the Town shall be entitled to withdraw from the escrow account the sum of \$5,000.00 per each acre foot not transferred together with accrued interest on said sum. The balance of said escrow account, if any, together with any accrued interest, shall be returned to plaintiff.

F. Under no circumstances shall the obligation of plaintiff to transfer usable water be greater than 72 acre feet. The obligation to transfer water by the plaintiff shall be met through the actual transfer of approved water or the deposit of \$5,000.00 per acre foot, or any combination thereof, on or before December 31, 1995.

G. If, on December 31, 1995, plaintiff can demonstrate a good-faith effort to obtain approval for the transfer of water rights from the appropriate sources, and in the event there is a reasonable likelihood that deficient water rights may yet be transferred, the parties will extend, as they shall reasonably agree, this deadline for a maximum

period of one (1) year; provided, however, that in the event plaintiff can demonstrate that the status of ongoing litigation or administrative proceedings are not likely to be terminated within said one-year extension, the deadline shall be extended as the parties shall agree.

H. Plaintiff shall give written notice to each purchaser of a lot in Phase I that the dedication of an acre foot of water or the deposit of \$5,000.00 in the escrow account is a condition precedent to the issuance of a building permit.

6. Water Study. The parties agree that the plaintiff shall, at its sole cost and expense, immediately commission a study of the Town water system by Bingham Engineering or such other engineering firm as the parties shall agree. This water study shall be for the purpose of analyzing the Town water system including water tank capacity and delivery systems. Said study shall assess not only the impact of Phase I on the system, but also the potential impacts of Phases II and III, together with the future needs of the Town with respect to its water system. The water study shall be completed within sixty (60) days of execution of this Agreement by all parties, subject to reasonable requests for extensions by the engineering firm. The study shall be included in and deemed a part of the EIS. Regarding the findings of the water study the parties agree as follows:

A. Unless otherwise contrary to the findings of the water study, plaintiff will, using its own funds, replace the existing Town water line which extends for approximately one mile east along S.R. 35 at its intersection with Highway 32, with a new water line as recommended by the study. Said water line shall be constructed in

accordance with plans and specifications to be approved by the Town. Construction shall be pursuant to and under the direction of the Town Engineer. Said water line, once constructed, shall be the sole property of the Town. Upon completion and acceptance, plaintiff shall be released from any further liability, past, present and future with regard to the construction of the line. The cost of construction, subject to verification by the Town, shall be repaid to plaintiff at the rate of \$1,000.00 per water hookup granted in the Wild Willow Subdivision Phases I, II and III until the entire cost of the line, with no interest, is repaid.

B. In the event the water study reveals the need for other improvements to the water system directly related to Phase I, plaintiff shall construct, using its own funds, all recommended or needed improvements identified, under the same terms as described in A, above.

C. In the further event that other improvements are necessary and directly related to the development of Phases II or III of Wild Willow, plaintiff agrees that the completion of such improvements may be required as a part of the approval process for Phases II and III. The parties agree that Wild Willow will only be responsible for improvements to the water and sewer systems (or portions thereof) which are necessitated by the development of Phases II and III.

D. The Town of Francis reserves the right, if otherwise allowed by law, to impose an additional impact fee at the time of issuance of building permits for Phase I, which fee is reasonably related to the actual impact of the development on the water

system as a whole, including the necessity for increasing or adding additional water storage tanks. Plaintiff, by its execution of this Agreement, takes no position as to the appropriateness of said impact fee.

7. Sewer Impact. Plaintiff shall commission, at its own cost and expense, a study and analysis of the current sewer system of the Town, said study to be accomplished by Bingham Engineering or other engineering firm as the parties shall agree. The sewer study shall be completed within sixty (60) days of the execution of this Agreement by all parties, subject to reasonable requests for extensions by the engineering firm. The study shall be included in and deemed a part of the EIS.

A. The parties agree that in the event the sewer study indicates the necessity for improvement and/or expansion of the sewer system in order to accommodate Phase I of the development, plaintiff will construct, using its own funds, such improvements or expansions subject to the mutual consent of the parties. The cost of such improvements or expansions, as verified by the Town, shall be reimbursed to plaintiff at the rate of \$1,000.00 per sewer hookup granted in Phases I, II and III of the development until the entire cost, with no interest accruing, has been reimbursed.

B. In the event the sewer study indicates the necessity for improvements in order to accommodate Phases II and III of the development, such improvements shall be undertaken on the same basis as the improvements for Phase I at the time approval is granted for such phases.

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C. It is understood by the parties that the intent of this provision is to establish, if possible, the present reserve capacity of the sewer system and to provide to the Town a similar reserve capacity at the completion of the development of Phases I, II and III of the development.

D. The Town of Francis reserves the right to impose an impact fee at the time of issuance of building permits for Phase I, which fee is reasonably related to the actual impact of the development on the sewer system as a whole, including the necessity for increasing sewer treatment plant capacity. Plaintiff, by its execution of this Agreement, takes no position as to the appropriateness of said impact fee.

8. Fire District Approval. Plaintiff shall, within thirty (30) days of execution of this Agreement by all parties, and subject to the limitations of the fire district meeting schedule, obtain the approval of the South Summit Fire District to the final plat of Phase I of the development as required by the ordinances and Development Code of the Town. The Town will cooperate in the granting of such approval and shall indicate its cooperation, if necessary, to the South Summit Fire District.

9. Right of Way Permit. The Town shall immediately withdraw any objection to the right of way encroachment permit application presently filed by plaintiff with the Utah Department of Transportation. The Town will cooperate in such application and agrees that such application may be processed and granted in the name of the Town. The plaintiff herewith agrees to indemnify and hold the Town harmless from and against any and all liability, damages

or causes of action which may arise as a result of the encroachment by plaintiff in the highway right of way. Such indemnity shall include, if applicable, reasonable attorney's fees and costs.

10. Approval of Phases II and III. The parties acknowledge that nothing in this Agreement, except as otherwise indicated, shall apply or be construed to be approval of Phases II and III of the development. By the same token, the Town, by this Agreement, acknowledges that conceptual approval for Phases II and III has been granted and has been made a part of the master plan for the area. The Town agrees that the minimum density set out in the master plan of 153 single-family lots shall not be reduced in connection with the subsequent approval of Phases II and III. With respect to the final approval of Phases II and III, plaintiff shall proceed in accordance with the Town Development Code and in the normal course.

11. Course of Proceedings. Upon the execution of this Agreement the following proceedings will apply:

A. Plaintiff will continue with the construction of the project in accordance with this Agreement, the plans and specifications and the inspections of the Town Engineer, Versar, Inc. The parties agree to instruct the Town Engineer, plaintiff's engineer and the contractor of the desire of these parties to mutually cooperate with regards to the development of this project. The parties agree to allow the Town Engineer, the project engineer and the contractor to resolve issues on site where reasonably possible and in accordance with the Town of Francis development code, building specifications, project specifications and sound engineering and construction practices.

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B. In the event a problem arises during the course of construction which problem cannot or is not resolved on site by the engineer and the contractor, the Town agrees not to issue a Stop Work Order until plaintiff has been given written notice of the problem and a fourteen-day opportunity to cure any deficiency. The above provision shall not apply to matters which are deemed of an emergency nature involving an immediate threat to health, safety or welfare. However, in such event, all reasonable efforts shall be made to give an opportunity for notice and a right to cure. Only after a right to cure has been given shall a Stop Work Order be issued.

C. During the performance of this Agreement, plaintiff and purchasers from plaintiff shall be entitled to and the Town shall grant building permit applications provided that the same are properly submitted in accordance with the Development Code of the Town of Francis. Each applicant for a building permit shall be required to pay all appropriate application fees, building permit fees, connection fees and impact fees. The approval of the Town Council with regard to the water and sewer hookups shall be deemed granted by this Agreement.

D. The Town may require, at its option, language found in ¶1.14 of the Town Development Code to be included in each building permit issued in Phase I of the development.

E. It is understood and agreed by the parties that all improvements and systems constructed within the Wild Willow development are, and will continue to be, subject to the inspection and final approval of the Town engineer and that occupancy permits may

be withheld until final approval of the same. Such approval shall be granted upon satisfactory completion of the systems within the development, regardless of the status of other improvements to be constructed outside of the physical boundaries of the Wild Willow development. Final approval and acceptance shall not be unreasonably withheld.

12. Resolution of Disputed Claims. It is agreed and understood by all parties hereto that this Mutual Release and Settlement Agreement constitutes a compromise of disputed claims and nothing contained herein shall be construed as an admission of fault or liability by any party hereto. The parties specifically understand and agree that the pending actions shall be dismissed with prejudice and on the merits, with each party to bear its own attorney's fees and costs.

13. Improvement Grant. Plaintiff shall contribute to the Town, for the purpose of assisting the Town in upgrading and revising its Development Code or any other purpose for the benefit of the Town as deemed appropriate by the Town Council, a grant of \$15,000.00, said sum to be delivered upon execution of this Agreement by all parties.

14. Miscellaneous.

A. The parties hereto expressly agree and understand that this Agreement has been freely and voluntarily entered into, and that no representations or promises of any kind other than those contained in this Agreement have been made by any party to induce another party to enter into this Agreement. The parties have read and understood this Agreement in its entirety. The parties have been represented and consulted with counsel in connection with the litigation and the negotiation, drafting and execution of this

Agreement. No party shall make any statement or representation which is contrary to the provisions of this Agreement.

B. This Agreement shall be construed in accordance with the laws of the State of Utah. All parties knowingly and voluntarily submit to the personal jurisdiction of the courts of the State of Utah for the purposes of any dispute arising out of this Agreement, including but not limited to breach of this Agreement.

C. The parties agree that this Agreement constitutes the entire agreement between the parties and may not be amended or modified except in writing signed by all parties.

D. In the event of a breach of this Agreement, the nonbreaching party shall be entitled to be awarded actual reasonable attorney's fees and costs incurred in enforcing this Agreement, whether through court proceedings or otherwise.

E. Nothing in this Agreement, including the actions of the parties in negotiating and complying with the is agreement shall be construed as a waiver of rights granted, if any, by Utah Code Ann. §10-9-808 et seq.

F. The execution of this Agreement by the Town of Francis has been authorized by the Town Council of the Town of Francis pursuant to a resolution

duly made and passed in a regularly-scheduled or special meeting of the Town Council  
held on September 8, 1994.

DATED this 8<sup>th</sup> day of September, 1994.

THE TOWN OF FRANCIS

By *Brad McNeil*  
Its Mayor

Attest

*Michelle Daid*  
Town Clerk

DATED this 8<sup>th</sup> day of September, 1994.

*Brad McNeil*  
Brad McNeil

DATED this 8<sup>th</sup> day of September, 1994.

TESCH, THOMPSON & SONNENREICH

*Joseph E. Tesch*  
Joseph E. Tesch  
Attorney for defendants

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DATED this 8 day of September, 1994.

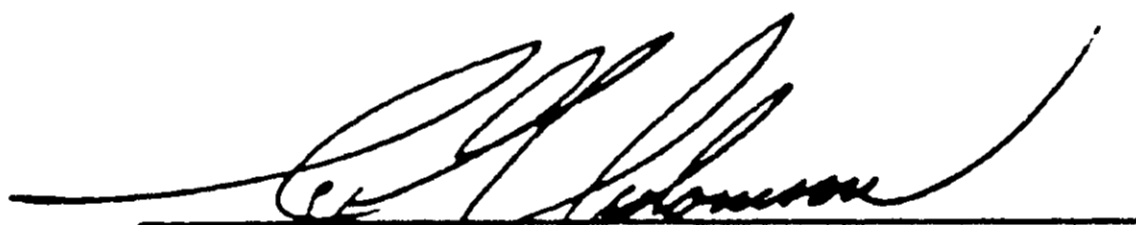
WILD WILLOW LIMITED COMPANY

By Chester Benter

Its Managing Member

DATED this \_\_\_ day of \_\_\_\_\_, 1994.

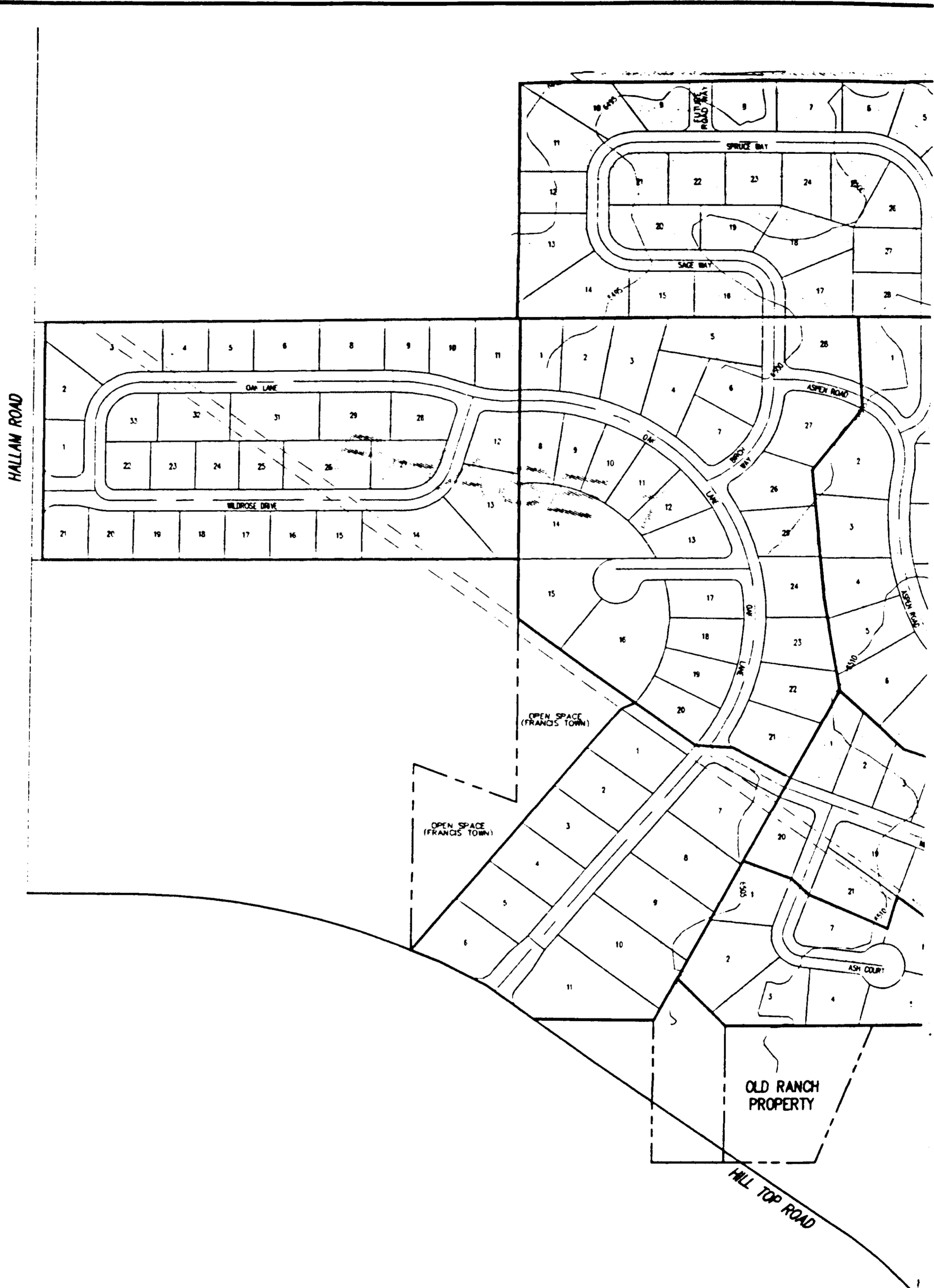
DART, ADAMSON & DONOVAN



CRAIG G. ADAMSON  
Attorney for plaintiff

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EXHIBIT C



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P: WILD CO WLD SUB CONCEPT DMC 1/28/96 PLOT SCALE 1:200

DRAWN	11/97	CHECKED	11/97
DATE		DATE	
DESIGNED		EFE	
DATE		PROJECT ENGINEER	
APPROVED		EFE	
DATE		PROJECT MANAGER	

**WILD WILLOW LIMITED COMPANY**

**FRANCIS, UTAH**







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**EXHIBIT D**



