

ADA COUNTY RECORDER  
J. DAVID NAVARRO  
BOISE, IDAHO

2000 NO 29 AM 10:49

RECORDED - REQUEST OF

FEE 18.00 DEPUTY J. Harper

100096169

**DECLARATION OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**MATLOCK PLACE SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for Matlock Place Subdivision is made effective the 29 day of NOVEMBER, 2000, by Hillview Development Corporation, (hereinafter "Grantor" or "Declarant").

**ARTICLE 1: RECITALS**

**1.1 Property Covered.** The property subject to this Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as "Declaration" or "CC&R's") for Matlock Place Subdivision is that property in Ada County, State of Idaho, which is described on Exhibit A attached hereto, together with any property included as Common Area and identified in this Declaration or owned by the Association. Provided, however, that Lot 1, Block 2 shall not be subject to this Declaration. The "Common Area" Lots and other "Common Areas" for this Subdivision are set out in Section 4.35 below.

**1.2 Purpose of Declaration.** Matlock Place Subdivision is a residential development, which Grantor intends to develop in accordance with governmental approvals. The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions and equitable servitudes that will apply to the development and use of the Property. This Declaration is designed to preserve the Property's value, desirability and attractiveness, and to guarantee adequate maintenance of the Common Area, and any Improvements located thereon.

## ARTICLE 2: DECLARATION

**2.1 Grantor Declaration.** Grantor declares that all the Property described on Exhibit A (except for Lot 1, Block 2), together with any additional Common Areas set out herein or owned by the Association, shall be held, sold, transferred, encumbered, leased, used, occupied and improved subject to these CC&R's. Each Owner accepting a deed to any of the property agrees that these CC&R's are for the protection, maintenance, improvement and enhancement of the Property and agrees to be bound by these CC&R's and the covenants and restrictions contained herein. Lot 1, Block 2 is excluded entirely from the force and effect of these CC&R's.

**2.2 Runs With The Land.** These CC&R's shall run with the land described on Exhibit A (except for Lot 1, Block 2) and shall be binding upon all persons with any right, title or interest in the land. They are for the benefit of all the property and bind all successors.

**2.3 Enforcement.** These CC&R's may be enforced by Grantor, any Class A Lot Owner or by the Association.

**2.4 Grantor's Rights; Model Homes and Sales Office.** Notwithstanding the foregoing or any provision contained herein, no provision of this Declaration shall be construed as to prevent or limit Grantor's right to complete development of the Property and to construct improvements thereon. Grantor, Grantor's agents or Grantor's real estate professionals may maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property, including the Common Area or any public right-of-way. Grantor may also post signs incidental to construction, sales or leasing.

## ARTICLE 3: DEFINITIONS

**3.1 "Articles"** shall mean the Articles of Incorporation of the Association or other organizational or charter documents of the Association.

**3.2 "Matlock Place Subdivision"** shall mean the Property described in Exhibit A, together with any additional Common Areas described herein or owned by the Association.

**3.3 "Assessments"** shall mean those payments required of Class A Owners and Association Members (excluding Declarant) and include but are not limited to all Assessments (whether regular, start-up, special or limited), late

charges, attorneys' fees, interest, and other charges set out in these CC&R's.

3.4 "**Association**" shall mean Matlock Place Neighborhood Association, Inc., a nonprofit corporation organized under the laws of the State of Idaho, its successors and assigns.

3.5 "**Board**" shall mean the Board of Directors or other governing board or individual, if applicable, of the Association and includes its authorized agents and representatives.

3.6 "**Building Lot**" shall mean one or more Lots as specified or shown on any Plat upon which Improvements may be constructed. The term "Building Lot" shall not include any Common Area, any area dedicated to the public, or any Lots deeded to an irrigation entity for an irrigation pump facility.

3.7 "**By-laws**" shall mean the By-laws of the Association (a copy of which is attached hereto as Exhibit B).

3.8 "**Common Area**" shall mean all Lots or other Common Areas of Matlock Place Subdivision that are designated herein or on the Plat as private streets or drives, common open space, common areas, common drainage easement areas, and common landscaped areas. All Common Areas are set out in section 4.35 below and shall be managed and maintained by the Matlock Place Neighborhood Association. Any Common Area Lots which have a separate lot and block legal description shall be deeded by Grantor to the Association.

3.9 "**Declaration**" shall mean this Declaration as it may be amended from time to time.

3.10 "**Grantor**" shall mean Hillview Development Corporation and any successor in interest, or any person or entity to whom the rights under this Declaration are expressly transferred by grantor or its successor. Grantor may also be referred to as the "Declarant".

3.11 "**Improvement**" shall mean any improvement or object, whether permanent or temporary, which is erected, constructed or placed upon, under or in any portion of the Property, including but not limited to buildings, fences, driveways, landscaping, signs, lights, mail boxes, recreational facilities, and fixtures of any kind.

3.12 "**Limited Assessment**" shall mean a charge against a particular Owner and such Owner's Building Lot, directly attributable to the Owner, equal to the cost (plus a management fee equal to 10% of the cost) incurred by the Grantor or the Association for corrective action performed pursuant to the provisions of this Declaration. (See Corrective Action, Section 9.1.1 below.)

3.13 "**Member**" shall mean each person or entity holding a membership in the Association. Members must be either a Class A Lot Owner or Grantor.

3.14 "**Owner**" shall mean the person or other legal entity, including Grantor, holding fee simple interest of record to a Building Lot which is a part of the Property, but excludes those having an interest merely as security for the performance of an obligation. A "Class A" Owner shall be any Owner of a Building Lot other than Grantor. Lots deeded to irrigation districts for pump stations are not Building Lots.

3.15 "**Person**" shall mean any individual, partnership, corporation or other legal entity.

3.16 "**Plat**" shall mean any subdivision plat covering any portion of the Property as recorded at the office of the County Recorder.

3.17 "**Property**" shall mean all of the Property described herein including each Lot or portion thereof, including all water rights associated with or appurtenant to such property.

3.18 "**Regular Assessment**" shall mean the regular assessments assessed against all Class A Owners to defray the cost of maintaining, improving, repairing, managing and operating the Common Areas and all Improvements located thereon, and the other costs and expenses of the Association.

3.19 "**Start-up Assessment**" shall mean that initial fee payable to start-up the Association and related activities. This one time start-up fee is assessed against the buyer of each Lot upon the first purchase of each Lot.

3.20 "**Special Assessment**" shall mean the portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments.

3.21 "**Transfer Special Assessment**" shall mean that transfer fee assessed against each Lot transferred, to be paid to the Association on each transfer of legal title and recording of a deed to a Lot in this subdivision.

#### **ARTICLE 4: GENERAL AND SPECIFIC RESTRICTIONS**

4.1 **Prior Plan Approval.** No improvement or obstruction shall be placed or permitted to remain upon any part of the property unless a written request for approval, containing the plans, specifications, and exterior color scheme, has been approved by the Board or a person designated by the Board to approve same. (See Article 6 below.) The approval of the Board will not be unreasonably withheld if the plans and specifications comply with these CC&R's, government ordinances, and are in general in harmony with the existing structures located in this Subdivision.

4.2 **Government Rules.** In the event any of these CC&R's are less

restrictive than any governmental rules, regulations or ordinances, then the more restrictive governmental rule, regulation or ordinance shall apply.

**4.3. Use and Size of Dwellings; Basements.** All Building Lots shall be used exclusively for one or two-story single-family homes or one story single family townhouse duplexes as set out herein:

**4.3.1 Single Family Homes.** All single family homes not on duplex lots (set out below) shall be at least 1,300 square feet in size. Eaves, steps, open porches, garages and patios shall not be included in the computation of square footage. These single family dwellings may be one or two story. If two story, then the main floor must contain a minimum of 850 square feet.

**4.3.2 Townhouse Duplexes.** The following Building Lots in this subdivision are designated as Townhouse Duplex Lots. The following Lots which are listed together shall have one Townhouse Duplex built on the two of them with the common party wall on the lot line between the two listed Lots:

Lots 2 and 3	Block 2
Lots 4 and 5	Block 2
Lots 7 and 8	Block 2
Lots 9 and 10	Block 2
Lots 11 and 12	Block 2
Lots 13 and 14	Block 2
Lots 15 and 16	Block 2
Lots 17 and 18	Block 2
Lots 19 and 20	Block 2
Lots 5 and 6	Block 1
Lots 7 and 8	Block 1
Lots 9 and 10	Block 1

Each of the Townhouse units in a duplex shall be a single family "home" and shall limited to one story in height. Each unit shall contain at least 900 square feet. (Eaves, steps, open porches, garages and patios shall not be included in the computation of square footage.)

**4.3.3 Townhouse Zero Lot Line Party Walls.** Each Owner on each side of a duplex shall be subject to the following:

A) **General Rules of Law Apply.** Each zero lot line party wall which is built as a part of the construction of any of the Townhouse Duplexes, and which is placed on the dividing line between the lots, shall constitute a party wall, and to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or wilful acts or omissions shall apply thereto. Except for repairs after a casualty, no Owner shall be allowed to penetrate any party wall.

B) **Sharing of Repair and Maintenance.** The cost of reasonable structural repair and maintenance of a party wall shall be shared equally by the owners who make use of the wall. Each owner shall be solely responsible for maintenance and repairs to the interior surface of the wall in each Owner's own duplex, provided, however, that in the event an Owner's interior surface is damaged by the other Owner to the party wall or the other Owner's occupants, then the other Owner shall be liable for the repairs.

C) **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or wilful acts or omissions.

D) **Weatherproofing.** Notwithstanding any other provisions of this Section, an Owner who by his negligent or wilful act causes the party wall to be exposed to the elements shall bear the whole cost of repair to such party wall and the furnishing of the necessary protection against such elements.

E) **Utilities.** Any utilities or utility services located within the party walls shall be maintained by each Owner using the utility.

F) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

4.3.4 **Basements.** No basements shall be allowed on any Lot in

this subdivision.

**4.4 Accessory Structures.** There shall be no metal or wood storage attachments to any dwelling except as approved by the Board. Storage sheds attached to the residential structure, and patio covers, shall be constructed of, and roofed with, the same materials, and with similar colors and design, as the residential structure on the applicable Building Lot. Only one outbuilding per Lot shall be allowed, and it shall be a) constructed of quality material; b) completed, finished and painted in the same general color as the main house; and, c) approved by the board.

**4.5 Setbacks.** All setbacks shall comply with the pertinent local government Ordinances; Provided, however, that the set backs on the lots subject to the special easements set out in Section 4.35.4 below, shall be 20 feet back from the 30 foot special easement area (or a total of 50 feet back from the eastern property line).

**4.6 Garages.** All residential homes and each Townhouse unit shall have an attached enclosed garage which holds no less than two cars and shall be constructed of the same materials and colors as the main building or as approved by the Board. Garages shall not to be used as living quarters nor to be used primarily as storage. Garages are primarily for the parking of vehicles. In no case shall a garage be used for storage leaving no room therein for the parking of vehicles.

**4.7 Exterior; Appearance.** Each dwelling and Townhouse unit in this subdivision shall have either; A) Full wainscoting of brick, stone or stucco across the entire front of the structure, or; B) Brick, stone or stucco full column heights on both sides of the garage. Encouraged are covered front porches, bay windows, broken roof lines, gables and hip roofs. No vinyl or metal siding shall be allowed. Each Townhouse unit in one duplex must be identical in exterior appearance to the sister unit in the same duplex. (Ie...the entire duplex must have the same colors and exterior appearance for each unit. The different duplexes, however, may differ from each other in color and appearance.)

**4.8 Solar Access Ordinances.** All structures and landscaping shall comply with any and all Boise City ordinances governing solar access.

**4.9 Driveways.** All Building Lots shall have a concrete driveway and a

minimum of two concrete car parking spaces within the boundaries of each Lot. No driveway or parking area shall be asphalt, dirt, rock or gravel.

**4.10 Roofs.** Roofs must be of at least 5 in 12 pitch. No gravel roofs are allowed. Roofing materials shall be 20 year composition shingles and shall be of "weathered wood" or similar color.

**4.11 Colors.** Exterior colors of earth tones or light blues or greys shall be encouraged for the body of the dwelling. Bright, bold, yellow, or very dark body colors shall be discouraged. Approval of exterior colors must be obtained from the Board, and any future changes to colors or exterior must be approved by the Board.

**4.12 (Intentionally Omitted)**

**4.13 Landscaping.** Berms and sculptured planting areas are strongly encouraged. Landscaping of the front yard shall be completed within thirty (30) days after occupancy of the home (weather permitting) and such landscaping shall be the responsibility of each respective Owner of the Lot. The "front yard" shall be defined as that portion of the Building Lot from one side Lot line to the opposite side Lot line lying in front of the front exposure of the structure. For Building Lots on corners, the "front yard" shall also include that portion of the Building Lot from the front of the structure to the rear of the structure to the side street (i.e., the side yard next to the side street). Landscaping, at a minimum, shall include sod in the front yard and at least two (2) trees of 2" caliper in the front yard. Grass in the back yard shall be planted, hydro-seeded or sodded within one year of occupancy.

**4.14 Fences.**

**4.14.1 Subdivision Perimeter Fences.** Grantor may construct a perimeter fence around portions of the exterior of this subdivision property (except for entrance or exit roadways or waterway crossings). After Grantor has transferred title to any Lot which contains a portion of this perimeter fence it shall be the responsibility thereafter of the Owner of that Lot to maintain, repair and/or replace as needed that portion of the perimeter fence on that Owner's Lot. The maintenance, repairs and/or replacement shall be performed so as to keep the perimeter fencing uniform, attractive and harmonious. Provided, however, the Association shall maintain the common area wrought

iron fence along the northern boundary of this subdivision and may, in it's sole discretion, maintain some or all of the other perimeter fencing as a Common Area expense. (Fences along Micro-Path Lots shall be maintained by the Association.)

**4.14.2 Other Owner Fences.** Other Owner fences are not required. If a fence is desired, plans for it shall be approved by the Board prior to construction. Fences shall be of good quality and workmanship and shall be properly finished and maintained and comply with all governmental Ordinances. No fence shall be constructed on any Lot closer to the front Lot line than the front edge of the dwelling. For corner Lots, the fence shall be at least ten (10) feet from the side lot line adjacent to the street, or as allowed by City Ordinances then in effect, whichever is greater. Chain link fences are not allowed except along ditches or water retention areas.

**4.15 Construction.** No pre-existing, mobile home or prefabricated home shall be moved onto any Lot. All homes in this Subdivision must be constructed on the Lot. Once construction has begun, completion of each building or other improvement shall be diligently pursued and completed within 12 months.

**4.16 Antennae.** No TV or radio antennae extending above the roof line of the house shall be permitted except with the specific approval of the Board. Any other antennae or satellite dishes, while permitted, shall be located, and screened from view of the other Lot Owners, in a place and manner approved by the Board.

**4.17 No Further Subdivision.** No Building Lot may be split or subdivided without the prior written approval of the Board.

**4.18 Nuisances.** No rubbish, grass clippings or other debris of any kind shall be placed on, dumped on, or allowed to accumulate anywhere on the Property, including Common Areas or vacant Building Lots. No unsanitary, unsightly, or offensive conditions shall be permitted to exist on any part of the Property. Noise or other nuisances in violation of local ordinances are prohibited. No Owner shall permit any noise, party or other activity in the Common Area which unreasonably interfere with the peace and quiet of the other Owners or occupants.

**4.19 Exterior Maintenance; Owner's Obligations.** All Improvements, especially the exterior appearance of the home, lawn, trees, fencing and landscaping shall be kept in good condition and repair. In the event an Owner permits an Improvement to fall into disrepair, or to create a dangerous, unsafe, hazardous, unsightly or unattractive condition, then the Board or Grantor, after thirty (30) days prior written notice to the offending Owner, shall have the right to enter upon that Owner's property to correct such condition. Owner shall be obligated to reimburse the Board or Grantor for all of the costs of the corrective action as set out in Article 8 and 9 below.

**4.20 Unsightly Articles.** No unsightly articles shall be permitted to remain on any property so as to be visible from any other Owner's property. Trash is to be kept in containers and areas approved by the Board. Clothing or fabrics are not to be hung or aired in such a way as to be visible to other property. No equipment, containers, lumber, firewood, grass, shrub or tree clippings, metals, bulk material, disabled vehicles, or scrap shall be kept, stored or allowed to accumulate on any property except within an enclosed structure or screened from view. Vacant residential structures shall not be used for storage.

**4.21 No Temporary Structures.** No house trailer, mobile home, tent, shack or other temporary building, improvement or structure shall be placed upon any portion of the Property or on any streets. Temporary construction structures are permitted only during the time of construction.

**4.22 No Unscreened Boats, Campers and Other Vehicles.** No boats, trailers, campers, all-terrain vehicles, motorcycles, recreational vehicles, motor homes, bicycles, dilapidated or unrepaired and unsightly vehicles or similar equipment shall be placed or stored upon any portion of the Property (including, without limitation, streets, parking areas, front yards, side and rear yards and any driveways) unless enclosed by a concealing structure approved by the Board. Notwithstanding anything contained herein, a boat, camper, trailer or motor home may be parked in a driveway on a private Lot or in the public street in front of the Owners Lot (if permitted by local ordinances) for a temporary time not to exceed three days. Under no circumstances shall any vehicles be allowed to park for any length of time in any common driveway areas, common access points or in the special easement areas, set out in section 4.35 below.

**4.22.1 Removal of Vehicles; Warning; Costs.** The Board or its

representatives may remove any vehicles in violation of this section at any time after giving the Owner fifteen (15) days written notice of its intent to do so; provided, however, that any vehicles parked in any common driveway area or common access point may be removed by the Board on no notice. For any such vehicles removed, the Owner shall reimburse the Board, as a limited assessment, the costs thereof plus a management fee equal to ten percent (10%) of the costs. (See Article 9 below)

**4.23 Animals/Pets.** No farm animals, animals creating a nuisance, or animals in violation of governmental ordinances shall be kept on any Property. Chronic dog barking shall be considered a nuisance. No more than two domestic cats and no more than two domestic dogs shall be allowed to inhabit any one Lot. All dogs outside the home or outside the Lot fence must be leashed. Pets shall not be allowed in the Common Areas unless leashed. Any kennel or dog run must be screened, placed inside the Lot fences, and approved by the Board.

**4.24 Signs.** No sign shall be displayed to public view without the approval of the Board except: (1) signs used by Grantor in connection with the development and sale of the Property; (2) signs identifying the development; (3) informational signs by the Board displayed on Common Areas; (4) one sign of less than 12 square feet displayed by an Owner (other than Grantor) on that Owner's property advertising the home for sale or lease; and (5) signs required by the governing authorities. No signs other than Grantor's shall be placed in the Common Area without the written approval of the Board.

**4.25 Additional Easements.** In addition to the easements shown on the recorded plat, an easement is further reserved and each Lot shall be subject to an easement five (5) feet on each side of all other Lot lines for installation and maintenance of utilities, irrigation and drainage.

**4.26 Exemption of Grantor.** Nothing contained in these CC&R's shall limit the right of Grantor; to subdivide or re-subdivide any portion of the Property owned by Grantor; to grant easements, licenses, or to reserve rights-of-way with respect to Common Areas; to complete excavation, grading and construction of any portion of the Common Areas, or Property owned by Grantor; to alter construction plans and designs; to construct additional improvements; to erect, construct and maintain structures and displays as necessary for the conduct of Grantor's business. Prior to transferring title to a Building Lot Grantor shall have the right to grant, establish and/or reserve on

that Building Lot additional licenses, reservations and rights-of-way to Grantor, to utility companies, or to others. Grantor may use any structures owned by Grantor on the Property as model home complexes or real estate sales or leasing offices. The rights of Grantor may be assigned by Grantor to any successor in interest by a written assignment recorded in the Office of the County Recorder.

#### **4.27    Water.**

**4.27.1    Water For Matlock Place Subdivision.** Each party accepting and recording a deed to any property in this Subdivision or occupying any property in this Subdivision acknowledges and understands and agrees to the following:

A) that such property is in the jurisdiction of the Boise Valley Irrigation Ditch Company, Inc. and certain shares of stock in this Irrigation Ditch Company represent the water rights for this subdivision, and these shares of stock shall be owned by the Association;

B) that all property and all Lots in Matlock Place Subdivision are subject to that "**AGREEMENT REGARDING IRRIGATION WATER IN MATLOCK PLACE SUBDIVISION**" which is attached hereto as Exhibit C and incorporated herein as if set forth in full;

C) that each Owner of any Lot, through the Association, is subject to all assessments levied by the Irrigation Ditch Company;

D) each Owner or occupant of any Lot in Matlock Place Subdivision specifically releases and waives any and all claims of any kind against Declarant, its agents, employees, officers and directors relating to irrigation water in Matlock Place Subdivision;

E) that Boise Valley Irrigation Ditch Company, Inc. shall have no responsibility to deliver any water to this Subdivision through its ditch system.

**4.27.2    Drainage District Agreements.** The property and Lots in Matlock Place Subdivision shall be subject to any existing or future recorded agreements or license agreements with Ada County Drainage District No. 2 regarding this Subdivision, including but not limited to, the following existing agreement(s) or licenses and any addendums thereto:

A) That License Agreement recorded the 6th day of September, 2000, in Ada County as Instrument No. 100071557, together with that Addendum thereto recorded November 2, 2000 as Instrument No. 100088414, which are incorporated herein as if set forth in full.

**4.27.3      Pressurized Irrigation System.** Irrigation water, when seasonally available, will be supplied via a pressurized urban irrigation system (PUIS). This system shall be owned, maintained and operated by the Association with all operation and maintenance costs to be paid by all Lot Owners. Each Lot Owner shall pay an equal share of the costs of maintenance and operation of the PUIS attributable to Matlock Place Subdivision.

Each individual Lot will have a control valve on the pressurized irrigation system to allow irrigation water onto that individual Lot. Each Lot Owner shall be responsible for that Owner's own irrigation system on the Lot downstream from this control valve (e.g. filters, screens, sprinkler lines and sprinkler heads). Each Owner shall install a sufficient sand screen or similar filter set up to keep sand and other irrigation ditch debris out of the Owner's irrigation system. Each Owner shall clean and maintain their own screens and filter systems.

The Association shall not be responsible for the maintenance of any part of the PUIS, pipes, filters, or sprinkler systems downstream from the control valve on the Lot. Any Owner damaging the main PUIS system shall be responsible for all of the costs of that damage.

**4.27.4      PUIS Ownership; Easements; Warranty.** Grantor will construct the pumping station and pressurized urban irrigation system (PUIS) for the Subdivision. Following completion of each portion of the irrigation system, Grantor shall transfer title and ownership of that completed portion of the system to the Association which shall perform all routine maintenance of the PUIS. A perpetual easement as necessary for access to repair and maintain the common PUIS and common irrigation lines is reserved on each Lot in the Subdivision.

Grantor warrants to all Lot Owners and the Association that each portion of the system as it is completed will be free of defects, including workmanship, for one full year following the date that construction of each portion of the system is completed. In the event a defect is discovered within one year of completion of that portion of the PUIS, Grantor will, at Grantor's expense, repair or remedy that defect. One year after completion of the construction of any portion of the system there shall be no further warranties by Grantor as to that portion of the system. Any further necessary repairs thereafter shall be the responsibility solely of the Association and Grantor shall have no further liability relating thereto. After Grantor has transferred ownership of any portion of the common pressurized irrigation system to the Association, the routine maintenance and repair of the system shall be the responsibility of the Association as a Common Area expense.

**4.27.5     Water Costs:** All irrigation water costs shall be assessed by the Association to each Lot equally regardless of the amount of water used on that Lot. Each Lot Owner shall use all reasonable efforts to conserve and not waste irrigation water.

**4.27.6     Water Unreliable:** The area of the country where this subdivision is located is desert. While Declarant will construct a pressurized irrigation system, irrigation water for that pressurized system is not always reliable and is not unlimited. Irrigation water may not be available due to drought, harsh weather conditions, low ground water levels, government actions, system breakdowns, transmission failures, overuse by Lot Owners, lack of ground water recharge, or any other causes.

**4.27.7     Rotation:** No Lot in Matlock Place Subdivision shall have any right to, or assurance of, a continuous or unlimited supply of irrigation water from the PUIS. Nor is any Lot guaranteed enough water from the PUIS to irrigate all of the landscaping on the Lot. Each Lot shall be subject to, and each Lot Owner by accepting a deed to a Lot in this subdivisions agrees to be bound by and to comply with, any rules or regulations for the use and rotation of irrigation water between the Lots as set out by the Association. The Board may establish a water rotation schedule for all Lots and common areas in this Subdivision and general rules for the times and use of irrigation water. All Lot Owners and occupants shall follow said water rotation schedules and any rules promulgated relative to the use of irrigation water. Failure to adhere to the rotation schedule or rules may, following notice from the Board, result in suspension of the right to use irrigation water.

**4.27.8     No Liability:** Neither Boise Valley Irrigation Ditch Company, Inc., the Association, nor the Declarant (nor any of their members, agents, employees, officers, directors or shareholders) shall have any liability OF ANY KIND to any Lot Owner, Tenant, the Association, member of the Association or any others for any losses or damages relating in any respect to the irrigation system, or irrigation water, or the lack thereof, including but not limited to damages to, or loss of lawns, landscaping, trees, shrubs, gardens or the like caused by the lack of, or shortage of, or unavailability of, irrigation water. Each Owner accepts the risk of loss or damage due to the unavailability, shortage or lack of irrigation water. Each Lot Owner, by accepting a deed to the property, and each Tenant or occupant, by occupying the premises, specifically

waives any and all claims of any kind against the Association, Boise Valley Irrigation Ditch Company, Inc. and Declarant, their agents, employees, officers directors, members, and shareholders for any loss or damage relating in any respect to the water, lack of water or the supply of water. Each Lot Owner and occupant agrees, during times of shortage or lack of water, to use their own domestic water supply for irrigation of their Lot.

**4.28 Lot Grading and Drainage Requirements.** Each Lot Owner shall grade and maintain their individual Lot to prevent the runoff of irrigation water or storm water onto adjacent Owner's Lots. All Lots are to be graded at the time of building so that the front, side and rear yards drain sufficiently away from the foundation and away from neighboring Lots with a proper slope so that drainage is directed towards the front, sides and rear of the Lot in accordance with all local building code requirements.

**4.29 Sewer Monthly Charges.** Each Owner shall connect to the Boise City public sewer system when a dwelling is constructed. A monthly sewer charge must be paid by each Owner after connecting to that Boise City public sewer system, according to the ordinances and laws of Boise City.

**4.30 Sewer Inspection.** Each Owner shall submit to inspection by either the Department of Public Works or the Department of Building whenever a Lot is to be connected to the Boise City public sewage system and a building sewer is constructed or installed on or within the Owner's property.

**4.31 Sewer Collections; City Power.** Boise City is hereby vested with the right and power to bring any and all actions against an Owner of a Lot or any part thereof for collection of any sewer charges or to enforce any of the sewer conditions contained herein. Each Lot in this subdivision shall be subject to these powers and these powers shall run with the land.

**4.32 Annexation to City of Boise.** The recording of the plat to this subdivision shall be deemed and construed as a request for, and the consent to, the annexation of the property in this subdivision to the corporate limits of Boise City. This request for, and consent to, annexation shall be continuing and each Owner of any Lot in this subdivision shall be bound by this request and consent to annexation.

**4.33 Street Lights.** Any street lights installed by Declarant shall be

maintained and operated by the Association as a common area expense until such time as the City of Boise or other governmental agency takes over the maintenance and operation thereof. Maintenance and operation shall include all repairs and costs of power.

**4.34 Laws; Ordinances.** These CC&R's are subject to all rules, regulations, laws and ordinances of all applicable governmental bodies. In the event a governmental rule, regulation, law or ordinance would render a part of these CC&R's unlawful, then in such event that portion shall be deemed to be amended to comply with the applicable rule, regulation, law or ordinance.

**4.35 Common Areas.**

**4.35.1 Micro-Path Lots and Easement Areas.** The following Common Area Lots: Lot 4, Block 1; Lot 6, Block 1; and Lot 6, Block 3 in Matlock Place Subdivision shall contain a Micro-Path and landscaping area. These Micro-Path Lots shall be landscaped as approved by the City of Boise and shall contain a paved Micro-Path the entire length of the easement area as approved by the City of Boise. These Lots shall be owned and maintained by the Association and such maintenance shall comply with all Boise City requirements and regulations for Micro-Path easement areas. These Micro-Path easements and the maintenance responsibilities relating thereto shall not be dissolved without the express written permission of the City of Boise. Any fences adjacent to the Micro-Path area shall conform to all Boise City Ordinances and all fences adjacent to Micro-Path Lots shall be maintained by the Association as a Common Area expense. Lot 4, Block 1 is also subject to a blanket easement to the City of Boise for the maintenance, operation and repair of a sanitary sewer line.

**4.35.2 Association Park.** Common Area Lot 35, Block 2 is a Common Area Park to be owned and maintained by the Association and is for the use and benefit of the Members of the Association.

**4.35.3 Common Landscape and Traffic Island Lots.** The following Common Area Lots are either landscape lots or traffic island landscaped lots that are to be owned and maintained by the Association: Lot 11, Block 1; Lot 21, Block 2; Lot 1, Block 5; and Lot 1, Block 6.

**4.35.4 Special Common Driveway, Access, Sidewalk,**

**Landscaping and Utility Easement Area.** Lots 1-10, Block 1 and Lots 2-20, Block 2 are all subject to a special permanent and perpetual easement which is reserved over, across and under the eastern 30 feet of all of these lots. This special easement shall run with the land and this special easement area is shown on the plat of this subdivision. The purpose of this easement area is as follows:

A) The installation and maintenance of any utilities.

B) The installation and maintenance of a sidewalk. For the maintenance of this sidewalk, Ada County Highway District is hereby granted a perpetual easement over and across the easement areas described herein for that maintenance.

C) The installation and maintenance of a common driveway and access area for the ingress and egress of vehicle, bicycle, and pedestrian traffic.

D) The installation and maintenance of traffic dividing landscaping in this special easement area (which may also be constructed and maintained in the Ada County Highway District right-of-way along Duncan Lane).

This special easement area shall be for the use and benefit of the Association; all Owners of Lots in this subdivision and their tenants, families, guests and invitees; and any utilities with utility lines in the easement area.

While the Association will not own the fee title to this 30 foot wide special easement area, it shall be the responsibility of the Association to operate, manage and maintain all portions of this special easement area (except for any sidewalk area that is actually maintained by Ada County Highway District), together with the Common Access Points to this special easement area which are identified on the plat. The Association shall also have the responsibility to operate, manage and maintain the traffic dividing landscaping along Duncan Lane, part of which is in the special easement area.

**NO PARKING SHALL BE ALLOWED AT ANY TIME IN THIS SPECIAL EASEMENT AREA.** Nor shall any buildings, structures or other impediments be constructed or permitted on any portion of this special easement area or the Common Access Areas shown on the plat. No party shall be allowed to obstruct, block or otherwise hinder the use of this special easement area by any other parties or Owners of the Lots which are subject to this special easement area. The Board shall have the authority to immediately remove any obstructions in this special easement area without notice and the offending party shall reimburse the Association for all costs relating thereto plus a management fee equal to 10% of those costs.

Direct access to Duncan Lane is prohibited from the Lots on the eastern side of this subdivision, and from the common driveway in the special easement

area except via the four "Common Access Points" to Duncan Lane which are set out on the plat. (These four "Common Access Points" connect Duncan Lane to the special driveway and easement area set out in this section.)

**4.35.5 Special Common Area and Special Drainage Easement Area Adjacent to Matlock Place Subdivision.** Lot 21, Block 1 is a Common Area Lot to be owned and maintained by the Association. This Common Area Lot is for the maintenance and operation of drainage as set out in Paragraph 4.36 below.

Adjacent to the northern boundary of Matlock Place Subdivision is a special Common Area owned and maintained by the Association and which is legally described in that Agreement titled "**QUIT CLAIM DEED AND CONVEYANCE OF ADDITIONAL "COMMON AREA" FOR MATLOCK PLACE SUBDIVISION and AGREEMENT REGARDING THAT COMMON AREA**". This Agreement is attached hereto as Exhibit D and is incorporated herein as if set forth in full.

**4.35.6 No Liability.** Each Lot Owner by accepting a deed to a Lot in this Subdivision and each occupant by occupying a Lot, and each user of any Common Areas specifically agrees that the Declarant, its agents, officers, directors, employees and shareholders shall have no liability of any kind whatsoever relating in any way to the use of any of the Common Areas, including, but not limited to, any accidents or bodily injuries which result from or are related to that use. All claims or future claims relating thereto are specifically waived and released. Nor shall the Association, its officers, directors, agents, or employees have any such liability. All Lot Owners, occupants and users specifically assume the risk and waive any and all claims relating to the use of the Common Areas.

**4.36 Water Drainage and Retention Pond; Easement Areas; Maintenance; ACHD Easement; Special Covenants.** Common Area Lot 21, Block 1 and the special Common Area (and special drainage area) described in Paragraph 4.35.5 above have special circumstances which require special covenants and restrictions for drainage, retention ponds and ACHD easements. These are as follows:

**4.36.1 ACHD Storm Water and Drainage Easement.** ACHD already has a blanket easement over the special drainage easement area described in Exhibit D attached hereto.

ACHD is hereby also granted a perpetual blanket storm water and drainage easement over Common Area Lot 21, Block 1 for access and drainage to that special drainage easement area. Together these easements are for access, to retain water, and to construct, install, maintain and replace the storm water and drainage system and all facilities relating thereto. The storm drain system also includes the street gutters, drop inlets, storm drain pipes and all related facilities.

**4.36.2 Special Drainage Easement Area Restrictions.** The Association shall maintain a paved pathway and adjacent lawn and/or landscaping on Lot 21, Block 1 and shall keep that lawn mowed and the area free of trash and debris. Any landscaping on Lot 21, Block 1, shall not interfere with ACHD's access or easements nor shall it interfere with the buried storm drainage piping system. No permanent buildings, fences, trees, or any structures shall be placed in the special drainage easement area.

**4.36.3 "Heavy" Maintenance of Drainage and Retention Area.** Heavy maintenance consists of periodically inspecting the retention and drainage facility to ensure it is functioning properly; cleaning out the facility piping and mucking out the facility when the sediment level exceeds the designed storage level. All other maintenance shall be referred to herein as "light" maintenance. ACHD has opted to perform this "heavy" maintenance and shall be allowed to perform this maintenance work. In the event the ACHD shall decide not to do such "heavy" maintenance, then the Association shall do so.

**4.36.4 "Light" Maintenance.** The Association shall provide all "light" maintenance of the drainage/retention and easement areas as set out in the Operation and Maintenance Manual for Matlock Place Subdivision. This Manual is on file with ACHD and the relevant portions of that Manual are attached hereto as Exhibit E.

**4.36.5 Association Failure to Maintain; ACHD Remedies.** In the event that ACHD determines, in its sole discretion, that the Association is not adequately performing its maintenance responsibilities set out in the Manual above, then ACHD shall, before undertaking maintenance of said area, provide written notice of its intention to begin maintenance after a thirty (30) day period. Within that 30 days Association may undertake to initiate and conclude all maintenance defects as identified by ACHD. In the event that the Association

shall fail to commence and conclude maintenance to the extent said items of specific maintenance are identified by ACHD within the prescribed thirty (30) days, then in that event, ACHD may begin to undertake such maintenance. ACHD is hereby granted an irrevocable license and easement to enter upon any portion of the common area to perform such inspection and maintenance of the Common Areas identified herein.

Should ACHD engage in maintenance of the defined common area or facility after having provided notice to the Association and having provided the Association an opportunity to undertake said maintenance, the Association shall pay all of the costs of the maintenance. ACHD shall first bill the Association and if such bill shall not be paid within sixty (60) days, then ACHD shall be entitled and empowered to file a taxable lien against all lots within this subdivision with power of sale as to each and every lot in order to secure payment of any and all assessments levied against all lots pursuant to the CC&R's as if said maintenance had been performed by the Association, together with interest at the rate which accrues on judgments thereon and all costs of collection which may be paid or incurred by ACHD.

The Association shall not be dissolved or relieved of its responsibility to maintain the defined common area and facilities contained therein without the prior written approval from ACHD.

The Association and all lot owners by accepting title to a lot agree that all lot owners within these subdivisions are benefitted property owners of such maintenance.

**4.37 Lateral Ditch 36.** In various portions of this subdivision there is an 18 inch underground pipe that carries the water in Lateral Ditch 36. It shall be the responsibility of the Association to maintain this ditch pipeline inside of Matlock Place Subdivision even if on a private Lot. The only duty on any Owner whose Lot contains this pipe shall be to report any observed problems to the Association or to Boise Valley Irrigation Ditch Company. No Lot or owner in Matlock Place Subdivision shall be allowed to remove any water from this ditch.

## **ARTICLE 5: MATLOCK PLACE NEIGHBORHOOD ASSOCIATION, INC.**

**5.1 Organization of Matlock Place Neighborhood Association, Inc.**  
Matlock Place Neighborhood Association, Inc. (the "Association") shall be initially organized by Grantor as an Idaho non-profit corporation under the

provisions of the Idaho Code relating to general non-profit corporations and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws (attached hereto as Exhibit B) and this Declaration. Neither the Articles nor the Bylaws shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**5.2 Membership.** Each Owner of a Lot subject to assessment, (including contract sellers), by virtue of being an Owner, and for so long as such Ownership is maintained, shall be a Member of the Association. The memberships in the Association shall not be transferred, pledged, assigned or alienated except upon the transfer of Owner's title the transferee of such title. Any prohibited membership transfer shall be void and will not be reflected on the books of the Association.

**5.3 Voting.** Voting in the Association shall be carried out by Members (including Grantor) who shall cast the votes attributable to the Building Lots which they own. The number of votes any Member may cast on any issue is determined by the number of Building Lots owned. When more than one person holds an interest in any Building Lot, all such persons shall be Members but shall share the vote attributable to the Building Lot. One Lot, one vote. For voting purposes, the Association shall have two (2) classes of Members:

**5.3.1 Class A Members.** Owners other than Grantor shall be Class A Members. Each Class A Member shall be entitled to cast one (1) vote for each Building Lot owned by such Class A Member(s) on the day of the vote. One Lot, one vote.

**5.3.2 Class B Member.** The Grantor shall be the Class B Member, and shall be entitled to five (5) votes for each Building Lot owned by Grantor. The Class B Member shall cease to be a voting Member in the Association at the time the Grantor deeds the last Building Lot in the subdivision.

**5.3.3 No Fractional Votes or Severance from Land.** Fractional votes are not allowed. If joint Owners cannot agree how their vote will be cast, they lose their right to vote on the matter being put to a vote. A vote cast will be conclusive for all purposes that the Owner had authority and consent of all joint Owners. Votes may not be severed from the Building Lot. However, an Owner may give a revocable proxy, or assign the Owner's right to vote to a lessee, mortgagee, beneficiary or contract purchaser of the Building Lot

concerned, for the term of the lease, mortgage, deed of trust or contract. Any sale, transfer or conveyance of a Building Lot to a new Owner automatically transfers the voting right to the new Owner.

**5.4 Board of Directors and Officers.** The affairs of the Association shall be managed by a Board of Directors ("Board") and such officers or agents as the Board may elect or appoint as provided in the Bylaws. The Board shall be elected in accordance with the Bylaws.

**5.5 Power and Duties of the Association.** The Association shall have all the powers of a corporation organized under the laws of the State of Idaho subject only to the limitations set forth in the Articles, Bylaws, and this Declaration. The Association shall have the power to appoint representatives and the power to perform all acts which may be necessary or incidental to discharge it's duties and responsibilities and to manage and operate the Association's Common Areas and assets. The Association's powers include, but are not limited to, the following:

**5.5.1 Assessments.** The power to levy Assessments on any Class A Owner as set out herein and to force payment as provided in this Declaration.

**5.5.2 Enforcement.** The power and authority in its own name, or on behalf of any Owner who consents, to file and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration, the Articles or the Bylaws; and to file and maintain any action to enforce the terms thereof.

**5.5.3 Emergency Powers.** The power to enter upon any property (but not inside any building) in any emergency where there is potential danger to life or property or when necessary to protect or maintain Improvements for which the Association is responsible. The Association may also enter upon any property to prevent the waste of irrigation water. Such entry shall be made with as little inconvenience to the Owner as practicable. Any damage caused by the Association shall be repaired by the Association.

**5.5.4 Licenses, Easements and Rights-of-Way; Cooperative Agreements.** The Association shall have the power to enter into any cooperative or license agreements regarding water or irrigation systems. The

# ***Engineering North West, LLC***

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Boise, Idaho 83704

(208) 376-5000 • Fax (208) 376-5556

Project No. 00-012-00

Date: July 14, 2000

## **MATLOCK PLACE SUBDIVISION**

Lots 19, 22 and 23 of Roberts and Hill Subdivision, as same is recorded in Book 4 of Plats at Page 159, including that portion shown as Lot 2 of the Dodgins Tract as same is recorded in Book 8 of Plats at Page 372, and Lots A through J of Lot 18 of Plat showing Division of Lots 15 and 18, Roberts and Hill subdivision, as same is recorded in Book 4 of Plats at Page 166, all records of Ada County, Idaho, all being located in the NW 1/4 of the SE 1/4 of Section 14, T.4N., R.1E., B.M., Ada County, Idaho, more particularly described as follows:

Commencing at the Section corner common to Sections 23, 24, 13 and the said Section 14;

thence North 88°46'02" West, 2631.68 feet to the 1/4 corner common to said Sections 14 and 23;

thence along the North-South mid-section line North 00°32'46" East, 1309.11 feet to the C-S 1/16 corner and the southwest corner of said Lot 23 of Roberts and Hill Subdivision, said point being the **REAL POINT OF BEGINNING**;

thence continuing and along the West boundary of said Roberts and Hill Subdivision, North 00°32'46" East, 1294.11 feet to the northwest corner of Lot 18 of said subdivision, from which the center of said Section 14 bears North 00°32'46" East, 15.00 feet;

thence South 88°50'39" East, 646.29 feet to the northeast corner of said Lot 18;

thence South 00°33'36" West, 1294.72 feet to the southeast corner of said Lot 23;

thence North 88°47'24" West, 645.98 feet to the Point of Beginning. Containing 19.20 acres, more or less.

**PREPARED BY:**  
**Engineering North West, LLC**



Association shall have the power to grant and convey to any third party licenses, easements and rights-of-way in, on or under the Common Area or in any easement areas of any Lots as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Property and Common Area, and for the preservation of the health, safety, convenience and welfare of the Owners. The right to grant such licenses, easements and rights-of-way are hereby expressly reserved to the Association and may be granted at any time prior to twenty-one (21) years from the date of recording of these CC&R's.

**5.6. Duties of the Association.** In addition to duties necessary and proper to carry out the powers delegated to the Association by this Declaration, the Articles and Bylaws, the Association shall have the authority to perform, without limitation, each of the following duties:

**5.6.1 Operation and Maintenance.** Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the Common Area, and, at the discretion of the Board, provide for: a) the cleaning and sweeping of the streets in the subdivision to keep construction mud and debris to a minimum; b) mowing the vacant Lots and maintaining right of way areas in or adjacent to the subdivision to keep the subdivision as a whole as aesthetically pleasing as possible.

**5.6.2 Taxes and Assessments.** Pay all real and personal property taxes and assessments including but not limited to water costs separately levied against the Common Area or against the Association and/or any other property in this Subdivision owned or managed by the Association. Taxes, assessments and water costs may be contested or compromised by the Association and the costs are a common area expense. The Association shall pay any applicable federal, state or local taxes levied against the Association.

**5.6.3 Water and Other Utilities.** Acquire, provide and pay for water, utilities, maintenance, operations costs, and other necessary services for the Common Areas or any pressurized urban irrigation system.

**5.6.4 Insurance.** Acquire insurance coverage as the Board deems necessary or advisable, from insurance companies authorized to do business in the State of Idaho, and maintain any insurance policies including, but not limited to the following: (1) Comprehensive public liability insurance insuring the Board, the Association, the Grantor and/or the individual grantees and agents and

employees of each against any liability incident to the Ownership and/or use of the Common Area; (2) Directors' and officers' liability insurance; (3) Motor vehicle insurance and Workmen's Compensation insurance; (4) Performance, fidelity and other bonds the Board deems necessary to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of Association funds or other property. The Association shall be deemed trustee of the interests of all Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive the Owner's interests in such proceeds. All proceeds shall be used for Association purposes. Insurance premiums for the above insurance coverage shall be a common expense to be included in the Regular Assessments levied by the Association.

**5.6.5 Enforcement of Restrictions and Rules.** Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably advisable or necessary to enforce any of the provisions of this Declaration, the Articles or the Bylaws.

**5.7 No Liability.** No Board member, committee member, Association officer, Grantor or its officers, directors or shareholders (collectively herein "Grantor") shall be personally liable to any Owner, or any other party, including the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of that person provided that the person has acted in good faith and without gross, willful or intentional misconduct.

**5.8. Budgets; Operating Statement; Balance Sheet; Inspection.** Within sixty (60) days after the close of each calendar year, the Association shall cause to be prepared and shall make available for inspection by any Owner; (1) a balance sheet as of the last day of the Association's calendar year; (2) an annual operating statement reflecting the income and expenditures of the Association for its last calendar year; and (3) a proposed budget and schedule of Assessments for the current year. Notice of scheduled Assessments due shall be given at least once a year.

**5.9 Meetings of Association; Notice of Meeting and Assessments.** Each year the Association shall hold at least one annual meeting of the Members on April 30, or some other date set by the board between April 15 and May 31.

If any meeting date falls on a weekend or holiday then the meeting shall be on the next following business day. Notice of such meeting shall be given at least 10 and no more than 30 days prior to the meeting and such notice may include notice of the Assessments scheduled due for the coming year. Only Members or their proxies shall be entitled to attend Association meetings. All other persons may be excluded. Notice for all Association meetings, regular or special, shall be given by regular mail to all Members, at the address for the Lot in the subdivision or the address supplied in writing to the Association. This notice shall set forth the place, date and hour of the meeting and the nature of the business to be conducted. All meetings shall be held within the Property, or as close thereto as practical, at a reasonable place selected by the Board. The presence at any meeting of the Class B Member (or representative) where there is such a Member, and of Class A Members representing Owners holding at least ten percent (10%) of the total votes of all Class A Members, shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the Members present may adjourn the meeting to another time not more than thirty (30) days from the time the original meeting was scheduled. If the rescheduled meeting is more than 30 days then additional notice of the next meeting shall be given. At any subsequent meeting properly called, the presence of any Member shall constitute a quorum.

#### **ARTICLE 6: ARCHITECTURAL CONTROL**

No building, structure, fence, wall, hedge, landscaping, painting, obstruction, berm, driveway, or Improvement shall be placed on, under, over or across any part of Matlock Place Subdivision unless a written request (given to one of the Board of Directors of the Association or a person designated by the Board) for approval thereof containing the plans and specifications therefor, including exterior color scheme, has been approved, in writing, by a member of the Board or any person designated by the Board. The initial Board is as follows:

1. Jim Merkle, 2150 N. Canter Place, Eagle, Idaho 83616
2. Don Hutt, 1393 S. Loder, Meridian, Idaho 83642
3. Chuck Roscoe, 6933 West Emerald, Boise, Idaho 83704

In the event the Board fails to approve or disapprove such request within thirty (30) days after such request has been submitted in writing, approval shall not be required and this Article will be deemed to have been complied with.

## ARTICLE 7: RIGHTS TO COMMON AREAS

**7.1 Use of Common Area.** Every Owner shall have the equal right to enjoy the use of those Common Areas or common facilities which are designed and built for such use. The Association may make reasonable rules governing use of the Common Areas and facilities, and the use of such common Areas as canals may be prohibited. All Common Area Lots shall be owned by the Association. The Association shall have the power to suspend the use of all common areas to Members who are in arrears for non-payment of Assessments. However the Association may not suspend street or sidewalk access to a members Lot or home. The Association may dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes agreed to by the Members. No dedication, mortgage or transfer of said Common Area shall be effective unless an instrument agreeing to such dedication or transfer is signed by the Grantor (if Grantor still owns any of the Building Lots), and two-thirds (2/3) of the Class A Members. Transfer must also be approved by any local government having jurisdiction over the transfer. Said transfer shall become effective when the instrument is recorded. In the event that an Owner's access to his Lot is over any Common Area, then any transfer of that Common Area shall be subject to an easement for the access of the Owner.

**7.2 Damages.** Any Owner shall be liable for damage to any Common Area which may be sustained by reason of the negligence or willful misconduct of the Owner, the Owner's tenant, or the Owner's family, guests, agents, contractors or invitees. In the case of joint Ownership the liability of such Owners shall be joint and several. The cost of correcting the damage shall be treated as a Limited Assessment against the Owner and Building Lot and may be collected as provided herein. No Owner shall be liable for any amounts greater than is legally allowable under Idaho law.

## ARTICLE 8: ASSESSMENTS

**8.1 Covenant to Pay Assessments.** By acceptance of a deed to any property in Matlock Place Subdivision, each Class A Owner hereby covenants and agrees to pay, when due, all Assessments or charges made by the Association pursuant to this Declaration. In the event this subdivision is developed in phases, the Lots in uncompleted phases shall not be assessed until they become Class A Owner's Lots. Declarant shall not pay any Assessments

for Lots owned by Declarant. No Mortgagee shall be required to collect any assessments.

**8.1.1 Assessment Constitutes Lien.** Such Assessments and charges set out herein, together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a continuing lien upon the property against which each such Assessment or charge is made.

**8.1.2 Assessment Personal Obligation.** Each Assessment obligation set out herein which accrues during the time of Ownership shall also be the personal obligation of the Owner beginning the time the Assessment falls due. This personal obligation for Assessments shall remain Owner's personal obligation regardless of whether he remains an Owner. Notwithstanding anything contained herein, the failure to pay assessments does not constitute a default on an Owner's federally insured mortgage.

**8.2 Regular Assessments.** All Class A Owners are obligated to pay Regular Assessments to the Association on a schedule of payments established by the Board.

**8.2.1 Initial Regular Assessment:** The initial Regular Assessment for the year is to be one hundred and ninety five (\$195) per calendar year per Lot. This initial assessment is due upon sale of a Lot from Grantor and shall be prorated on a calendar year basis based on the date of closing and shall be paid to the Association by the Buyer upon closing of the first transfer of the Lot from the Declarant to the Buyer.

**8.2.2 Regular Assessments.** The proceeds from Regular (and other) Assessments are to be used to pay for all costs and expenses incurred by the Association, including but not limited to; **(1)** legal, accounting, management, and professional fees; **(2)** the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Areas, special easement areas, and common facilities; **(3)** an amount allocated to an adequate reserve fund, established by the Board, for repairs, replacement, maintenance and improvement of those elements of the Common Area, or other property of the Association that must be replaced and maintained; **(4)** the cleaning and sweeping of the streets in the subdivision to keep construction mud and debris to a minimum; and **(5)** mowing the vacant lots and maintaining right of way areas in or adjacent to the subdivision to keep

the subdivision as a whole aesthetically pleasing.

**8.2.3 Computation of Regular Assessments.** The Association shall compute the amount of its Expenses on an annual calendar basis and shall Assess each Class A Owner's Lot equally for all Assessments (except the Limited Assessments which are on a Lot by Lot basis). Regular Assessments for the calendar year shall be pro-rated as of the date of closing.

**8.2.4 Amounts Paid by Owners.** The Board can require, in its discretion payment of Regular Assessments in monthly, quarterly, semi-annual or annual installments. The Regular Assessment to be paid by any particular Owner for any given calendar year shall be computed by dividing the Association's total advance estimate of expenses by the total number of Class A Building Lots in the Property (i.e, each Class A Owner of a Building Lot shall pay an equal share of Regular Assessments).

**8.3 Special Assessments.**

**8.3.1 Transfer Special Assessment.** Upon each transfer of any Lot in the subdivision and the recording of the deed each Buyer at closing shall pay to the Association a special transfer assessment of Fifty (\$50.00) Dollars which shall be used for general Association purposes.

**8.3.2 Start-up Development Assessment.** Upon the first sale of each lot in this subdivision from the Declarant, the Buyer shall pay to the Association at closing an initial Association Start-up fee equal to one hundred and ninety five (\$195) Dollars to be used for general Association purposes. This fee shall be a one time initial Start-up fee, and shall not be prorated for any time left in the calendar year. This Start-up fee assessment shall be paid in full regardless of the time of year of the closing but shall only be paid once per lot.

**8.3.3 Special Short Fall Assessments.** In the event that the Board shall determine that its respective Regular Assessment for a given calendar year is or will be short to meet the Expenses of the Association for any reason, including but not limited to costs of construction, reconstruction, unexpected repairs or replacement of capital improvements upon the Common Area, attorney's fees and/or litigation costs, other professional fees, the Board shall determine the approximate amount necessary to defray such expenses and levy an Excess or Special Assessment equally to all Class A Owners. No such

Assessment shall be levied which exceeds thirty-five percent (35%) of the budgeted expenses of the Association for that calendar year, without the vote or written assent of 2/3 of the Class A Owners. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

**8.4 Limited Assessments.** Notwithstanding the above provisions with respect to Regular and Special Assessments, the Board may levy a Limited Assessment against a Building Lot and the Owner thereof personally as a remedy to reimburse the Association for costs (together with the 10% management fee, interest and attorneys fees as provided in Article 9 below) incurred in bringing the Owner and/or such Owner's Building Lot into compliance with the provisions of these CC&R's.

**8.5 Notice and Assessment Due Date.** Except for the Special Transfer Assessment, the Start-up Assessment and initial prorated Regular Assessment, written notice of all other assessments shall be given to the Owner at the property address in the property covered by this Declaration or to such other address as the Owner supplies in writing to the Board. Such notice shall set out the amounts due and the date(s) due. Each installment of Assessments shall become delinquent if not paid within ten (10) days after the levy and notice thereof. The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Building Lot as more fully provided herein.

**8.6 Late Fees; Interest on Past Due Assessments:** Assessments of any kind which are not paid within thirty (30) days of the due date shall be assessed an additional late charge of \$25.00. In addition, interest shall be paid on the unpaid assessment at the highest rate allowed by law.

**8.7 Estoppel Certificate.** The Association, upon at least twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether or not, to the knowledge of the Association, a particular Building Lot Owner is in default of this Declaration, and further stating the dates to which any Assessments have been paid by the Owner. Any such certificate delivered pursuant to this paragraph may be relied upon by any prospective purchaser or Mortgagee of the Owner's Building Lot. Reliance on such Certificate may not extend to any default as to which the signor shall have had no actual knowledge.

## **ARTICLE 9: ENFORCEMENT OF COVENANTS AND ASSESSMENTS; LIENS**

**9.1     Right to Enforce; Attorneys Fees.** The Association has the right to enforce these covenants and to collect and enforce its Assessments. Each Owner of a Building Lot, by accepting a deed to a Building Lot, covenants and agrees to comply with the terms, covenants, conditions and restrictions contained herein and to pay each Assessment provided for in this Declaration and agrees to the enforcement of all covenants and Assessments in the manner herein specified and/or by law. In the event an attorney or attorneys are employed for the enforcement of any covenants or the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorney's fees in addition to any other relief or remedy against such Owner. The Board or its authorized representative may enforce these covenants or the obligations of the Owner hereunder by: (1) direct corrective action against the Owner or the offending violation; (2) litigation at law or in equity; (3) foreclosure of the liens created herein; (4) expenditure of funds to remedy any violations; and/or (5) any other lawful action.

**9.1.1   Corrective Action.** In the event an Owner fails to comply with any provisions of these Declarations, the Board shall have authority to take appropriate corrective action against said Owner. Each Owner who is the subject of such corrective action agrees to and shall pay all the costs of said corrective action, plus interest on all expended funds from the date of expenditure at the rate of 1-1/2% per month, plus a management fee equal to ten percent (10%) of all the costs expended for the corrective action, and all attorneys fees incurred. Such shall be a Limited Assessment against that Lot and that Lot Owner and shall create a lien enforceable in the same manner as other assessments set forth in these CC&R's. If such an assessment is not paid within ten (10) days of notice of the limited assessment, the Owner shall also be subject to late fees set out herein.

**9.1.2   Notice of Corrective Action:** Prior to taking corrective action the Board, or its authorized representative, shall give notice to the Owner of the violation of these Declarations, the remedy necessary and the date by which the remedy must be completed. In the event the Owner has not remedied the violation by the time set out in the notice the Owner consents to corrective action by the Board or its representatives and shall pay all the costs

of such corrective action as set out in this Declaration.

**9.2 Assessment Liens.** There is hereby created a lien with power of sale on each and every Building Lot to secure payment of any and all Assessments levied against such Building Lot together with other charges as provided in this Declaration. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective Building Lots upon recording of a claim of lien with the County Recorder. Such lien shall be prior and superior to all other liens or claims created subsequent to the recording of the claim of lien except for tax liens for real property taxes on any Building Lot and Assessments on any Building Lot in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

**9.2.1 Claim of Lien.** Upon default of any Owner in the payment of any Assessment, the Association may cause to be recorded in the office of the County Recorder a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording), a sufficient legal description of the Building Lot(s) against which the same have been assessed, and the name of the record Owner (or reputed Owner) thereof. Each default shall constitute a separate basis for a claim of lien, but any number of defaults may be included within a single claim of lien. Upon payment to the Association of all Assessments and all other charges of any kind set out in this Declaration or other satisfaction thereof, the Association shall cause to be recorded a notice releasing the lien. The Association may demand and receive the cost of preparing and recording such release before recording the same.

**9.3 Method of Foreclosure.** The lien may be foreclosed like a mortgage; ; foreclosed by power of sale; foreclosed pursuant to Idaho Code 45-507; or foreclosed by any other appropriate action in court. The Owner shall pay all of the Association's attorneys fees and costs of the action if the Association prevails. Any sale shall be conducted in accordance with Idaho law applicable to the exercise of powers of sale. The Board is authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure to the extent allowed by law.

**9.4 Action at Law.** The Association may, in it's discretion, elect not to foreclose the lien and simply file an action at law against the Owner for the

monies due. The Owner shall pay all of the Association's attorneys fees and costs of the action if the Association prevails.

**9.5 Required Notice.** Any claim of lien shall be recorded with the County Recorder. In the event that the Association elects to file a lien and foreclose pursuant to Idaho Code 45-507 then the Association shall serve the copy of the recorded lien on the Owner within 24 hours of the recording of the lien as required by 45-507. No foreclosure action may be brought to foreclose the lien, whether judicially, by power of sale or otherwise, until the expiration of thirty (30) days after a copy of such claim of lien has been deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Building Lot(s) described in the claim of lien, and to the person in possession of such Building Lot(s). No prior notice to the Owner is required for the Association to file an action at law for the monies due; provided, however, that no action at law can be filed until an Assessment is more than 60 days in default.

**9.6 Subordination to Certain Trust Deeds.** The lien for the Assessments provided for herein shall be subordinate to the lien of any first deed of trust or first mortgage given and made in good faith and for value that is of record as an encumbrance against such Building Lot prior to the recording of a claim of lien for the Assessments. The transfer of any Lot pursuant to a foreclosure of a first deed of trust or mortgage shall extinguish the lien of the Assessments which came due before the foreclosure. Otherwise, the sale or transfer of any Building Lot shall not affect any liens or lien rights that Association has in this Declaration. Nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for Assessments.

**9.7 Rights of Mortgagees.** Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat the rights of the Beneficiary under any deed of trust upon a Building Lot made in good faith and for value, and recorded prior to the recording of such amendment, provided that after the foreclosure of any such deed of trust such Building Lot shall remain subject to this Declaration as amended. Any Mortgagee requesting in writing shall be given notice of any default in the payment of Assessments for the Lot the subject of the mortgage.

## ARTICLE 10: EASEMENTS

**10.1 Easements of Access.** Grantor expressly reserves for the benefit of all the Property and Owners reciprocal easements of access, ingress and egress to and from their respective Building Lots. These reserved easements are for; (1) installation and repair of utility services in the easement areas identified on the plat; (2) drainage of water (by buried pipe and not by flooding) across and under adjacent Building Lots and Common Areas in the drainage easement areas shown on the plat; (3) reasonable and necessary access by adjacent Owners for the maintenance and repair of fencing, retaining walls, lighting facilities, mailboxes, sidewalk abutments, trees, landscaping and the like. Such easements may also be used as necessary by Grantor and the Association.

**10.2 Utility Easements.** This Declaration is subject to all easements granted by Grantor before or after this Declaration for the installation and maintenance of utilities, drainage facilities, sewer, water, irrigation systems and the like that are required for the development of the Property. Grantor reserves, for the benefit of the Association, the right to grant additional easements and rights-of-way over the Property to utility companies and public agencies as necessary or expedient for the proper development of the Property.

**10.2.1 Improvement of Drainage and Utility Easement Areas.** No permanent structures or Improvements shall be constructed on any drainage or utility easement areas which would interfere with or prevent the easement from being used for it's intended purpose. Landscaping and fences in these easement areas are permitted in this Declaration if they do not interfere with the use of the easement.

## ARTICLE 11: MISCELLANEOUS

**11.1 Term.** The easements granted in this Declaration shall be perpetual. These CC&R's shall run with the land, and remain in effect, until December 31, 2025, unless amended as provided. After December 31, 2025, these CC&R's shall be automatically extended for successive periods of ten (10) years each, unless amended or terminated by a recorded instrument executed by Members holding at least three-fourths (3/4) of the voting power of the Association. The Association shall not be dissolved without the prior written approval of the City having jurisdiction of this Subdivision.

**11.2 Amendment By Grantor.** Until the recording of the first deed to a Building Lot, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to or terminated by Grantor alone by recording a written instrument setting forth such amendment or termination.

**11.3 Amendment By Owners.** Any amendment to this Declaration, shall be by an instrument in writing signed and acknowledged by the President and Secretary of the Association certifying and attesting that such amendment has been approved by the vote, or written consent, representing two thirds (2/3) or more of the votes in the Association. Any amendment shall be effective upon recording with the County Recorder of such amendment.

**11.4 Effect of Amendment.** Any amendment of this Declaration approved in the manner specified above shall be binding on all Owners and all Property, notwithstanding that some Owners may not have voted for or consented to such amendment. Amendments may add to and increase the covenants, conditions, restrictions and easements applicable to the Property but no amendment shall prohibit or unreasonably interfere with the allowed uses of any Owner's property which existed prior to the said amendment.

**11.5 Annexation of Additional Area.** Declarant shall have the right to annex and include additional and similar areas owned by Declarant into these Declarations and to make these additional areas or subsequent phases of this subdivision subject to the jurisdiction of these CC&R's and the Association. Declarant may annex these additional areas by recording a "Declaration of Annexation" with the County Recorder describing the additional property to be annexed and referring to these Declarations and specifically stating in the notice any other or modified or additional restrictions that apply to the additional lands. Upon recording of the Notice of Annexation, these CC&R's shall apply to the additional lands (as added to or modified by the Declaration of Annexation) as if the additional land were originally covered by this Declaration. Thereafter, the rights, privileges, duties and liabilities of all parties with respect to the additional lands and the lands described in this Declaration will be governed by these Declarations and the Declaration of Annexation as if all had been done together originally. The Association shall manage all the lands together.

**11.6 Mortgage Protection.** No amendment of this Declaration shall operate to defeat or render invalid the rights of the beneficiary under any first deed of trust made in good faith and for value, and recorded prior to the

recording of such amendment, provided that after foreclosure of any first deed of trust such Building Lot shall remain subject to this Declaration, as amended.


**11.7 Notices.** Any notices required by these CC&R's shall be in writing and may be delivered either personally, by mail, or by overnight courier. Delivery shall be complete when served personally, posted prepaid at the Post Office or delivered prepaid to the overnight courier. Notices shall be sent to Owners at the address of the property or if the Owner has given a different address to the Association in writing then notices shall be given to that address. Such address may be changed from time to time by notice in writing to the Association.

**11.8 Enforcement and Non-Waiver.** These CC&R's may be enforced by Declarant, the Board, the Association or any Owner. Failure to enforce any of the terms of this Declaration at any time shall not be a waiver of the right to do so thereafter. Nothing contained herein shall be construed as an obligation of the Declarant, Board, or Matlock Place Neighborhood Association to enforce any of these CC&R's. Neither Declarant, Board nor Matlock Place Neighborhood Association shall have any liability of any kind to any person or Lot Owner for failing to enforce any of these CC&R's.

**11.9 Successors and Assigns.** All references herein to Declarant, Owners, the Association or person shall be construed to include all heirs, successors, assigns, partners and authorized agents of such Grantor, Owners, Association or person.

DATED THIS 29<sup>th</sup> day of NOV, 2000.

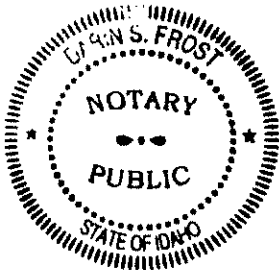
Hillview Development Corporation

By   
(Title) PRESIDENT

STATE OF IDAHO, )  
( ss.  
COUNTY OF ADA, )

On this 29 day of Nov, 2000, before me, a notary public in and for said State, personally appeared JAMES MERKIE, known or identified to me to be the PRESIDENT of Hillview Development Corporation the Corporation that executed the foregoing instrument and acknowledged to me that such Corporation executed the same, and acknowledged to me that he executed the same on behalf of the Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Lynn S. Frost  
Notary Public for Idaho  
Residing in Middleton Idaho  
My Commission Expires:  
5/26/06

**BY-LAWS  
OF  
MATLOCK PLACE NEIGHBORHOOD ASSOCIATION, INC.**

**ARTICLE 1. GENERAL PLAN OF OWNERSHIP**

1.1 Name. The name of the corporation is Matlock Place Neighborhood Association, Inc. (hereinafter "Corporation" or "Association"). The principal office of the Association shall be located at 2150 Canter Place, Eagle, Idaho 83616.

1.2 By-laws Applicability. The provisions of these By-laws are applicable to the Association named above and the lands and subdivisions under the Association's jurisdiction, together with such subsequent phases, additions or annexations thereto as may hereinafter be brought within the jurisdiction of the Association. All lands in the jurisdiction of the Association may be collectively referred to as the "Subdivision".

1.3 Personal Application. All present and future Members, Owners and their tenants, employees, and any other person that might use the facilities owned and/or managed by the Association are subject to these By-laws.

**ARTICLE 2 VOTING, MAJORITY, QUORUM, PROXIES**

2.1 Voting. Except for the Class B Membership provided for in the Covenants Conditions and Restrictions for this Subdivision (hereinafter referred to as "CC&R's" or "Declaration"), and except as may be otherwise provided in the CC&R's, each Member shall be entitled to one vote for each Building Lot owned by such Member. One Lot one vote for Class A Members

2.2 Majority. "Majority" of Members shall mean votes representing fifty-one percent (51%) of the voting power counting all Class A and Class B votes together.

2.3 Quorum. The presence in person or by proxy of the Class B Member (if one), and the presence in person or by proxy of the Class A Members holding at least 10% of the votes entitled to be cast shall constitute a quorum. The Members present at a meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

2.4 Proxies. Votes may be cast in person or by proxy. Proxies must be in writing and filed at the meeting and are good for 11 months or until canceled by the member giving the proxy, whichever is sooner.

### ARTICLE 3 ADMINISTRATION

3.1 Duties. The Association shall have the duties set out in the CC&R's.

3.2 Meetings. Meetings of the Association shall be held on the Property or close to the Property, and shall be conducted in accordance with Robert's Rules of Order.

3.3 Annual Meetings. Annual meetings of the members shall be held on April 30 of each year, unless a different date between April 15 and May 31 is selected by the Board. (If a weekend or holiday then the next business day.) At each annual meeting, Members shall elect a Board of Directors (the "Board") to act until the next annual meeting. The Members may also transact such other business as may properly come before them.

3.4 Special Meetings. It shall be the duty of the President to call a special meeting as directed by the Board, or upon a petition signed by Members who are entitled to vote one-fourth (1/4) of all the votes of the Class A Membership. The notice of all regular and special meetings shall be given as provided in Section 3.5 of these By-laws, and shall state the nature of the business to be undertaken.

3.5 Notice of Meetings. Notice shall be given to all Members at the address of the Lot in the subdivision or to such address as provided in writing to the Association.

3.6 Order of Business. The order of business at all meetings shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of Directors; (g) unfinished business; and (h) new business. Meetings shall be conducted by the officers of the Association in order of their priority.

3.7 Adjourned Meetings. If any meeting cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may adjourn the meeting to a time not less than ten (10) days nor

more than thirty (30) days from the time the original meeting was called, at which meeting the quorum requirement shall be the presence in person or by proxy of the Members holding at least ten percent (10%) of the total votes entitled to be cast at such meeting. Such adjourned meetings may be held without notice thereof as provided in this Article 3, except that notices shall be given by announcement at the meeting at which such adjournment is taken. If a meeting is adjourned for more than thirty (30) days, notice of the adjourned meeting shall be given as in the case of an original meeting.

3.8 Minutes, Presumption of Notice. Minutes or a similar record of the proceedings of meetings, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the minutes of any meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

3.9 Consent of Absentees. The transactions of any meeting of the Corporation, either annual or special, however called and noticed, shall be as valid as though transacted at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and all Members absent therefrom are deemed to have consented to the action taken. Any written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof shall be filed with the corporate records or made part of the minutes of the meeting.

#### **ARTICLE 4. BOARD OF DIRECTORS**

4.1 Number and Qualification. The affairs of the Association shall be governed and managed by the Board composed of at least three (3) persons, who need not be Members of the Association. Directors shall not receive any salary or other compensation for their services as Directors; provided, however, that nothing herein contained shall be construed to preclude any Director from serving the Association in some other capacity and receiving compensation therefor, or to receive reimbursement for out of pocket costs incurred in carrying out duties.

4.2 Powers and Duties. The Board has all powers and duties necessary for the administration of the affairs of the Association, and the powers set forth in the CC&R's.

4.3 Special Powers and Duties. In addition to the powers granted in the

CC&R's, the Board is vested with the following powers and duties:

(a) To select, appoint and remove all officers, agents, and employees of the Association and to prescribe such powers and duties for them; to fix their compensation; and, to require from them security for faithful service when deemed advisable by the Board.

(b) To conduct, manage and control the affairs and business of the Association, and to make and enforce rules and regulations as the Board may deem advisable.

(c) To change the principal office of the Association from one location to another within the county; to designate the place of any meetings.

(d) To borrow money and to incur indebtedness solely for the purposes of the Association, and to execute any necessary documents relating thereto.

(e) To fix, levy and determine the due dates of all Assessments as provided in the CC&R's. Should any Owner fail to pay such Assessments before delinquency, the Board in its discretion, is authorized to enforce the payment of such delinquent Assessments as provided in the CC&R's or by Idaho law.

(f) To enforce the provisions of the CC&R's or other agreements of the Association in any lawful manner deemed advisable.

(g) To contract for and pay for insurance, insuring the Owners, the Association, the Board and/or other interested parties, in accordance with the provisions of the CC&R's as deemed advisable by the Board.

(h) To operate, maintain and otherwise manage or provide for the operation, maintenance and management of any pressurized urban irrigation system and Common Areas owned by, or to be managed by, the Association; to contract for and pay the expenses relating thereto.

(i) To grant easements or licenses as provided in the CC&R's.

4.4 Management and Other Agents. The Board may contract or employ for the Association a management agent ("Manager") or other Agents at a

compensation established by the Board to perform such duties and services as the Board shall authorize.

4.5 Nomination, Election and Term of Office. Nomination for election to the Board may be made by a nomination committee and/or made from the floor at the annual meeting. The nomination committee shall consist of a chairman, who shall be a member of the Board, and two (2) or more Members of the Association. The nominating committee may be appointed by the Board prior to each annual meeting. The nomination committee shall make as many nominations for election to the Board as it shall in its discretion determine.

At the first annual meeting, and thereafter at each annual meeting, Directors shall be elected by secret written ballot by a Majority of all votes present at such meeting. Cumulative voting is not permitted. The term of the Directors shall be for one (1) year. In the event that an annual meeting is not held, or the Directors are not elected, the Directors shall hold office until a successor has been elected (at a special meeting if necessary) or until death, resignation, removal or judicial adjudication of mental incompetence. Any person serving as a Director may be re-elected.

4.6 Books, Financial Statements and Audit. The Board shall cause to be maintained a full set of books and records showing the financial condition and the affairs of the Association in a manner consistent with generally accepted accounting principles. An annual operating statement shall be made available to each Member as set out in the CC&R's, and to first mortgagees who have in writing so requested.

4.7 Vacancies. Vacancies in the Board caused by any reason other than the removal of a Director by a vote of the Members shall be filled by vote of the Majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall be a Director until a successor is elected at the next annual meeting, or at a special meeting called for that purpose.

4.8 Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the Directors may be removed with or without cause by a Majority of all cast votes and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. If any or all of the Directors are so removed, new Directors may be elected at the same meeting.

4.9 Board Meetings. The Board shall meet at such times and places as it shall reasonably determine provided a Majority is present. Notice of regular meetings of the Board shall be given to each Director, personally or by mail, telephone or fax at least three (3) days prior to the day named for such meetings.

4.10 Special Meetings. Special meetings of the Board may be called by the President, or, if the President is absent or refuses to act, by the Vice President, or by any two (2) Directors. Whenever any Director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall be conclusive.

4.12 Waiver of Notice. Before or at any meeting of the Board, any Director may in writing waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be waiver of notice by that Director. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

4.13 Quorum. A Majority of the Directors shall constitute a quorum and the acts of the Majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board.

4.14 Action Without Meeting. The Directors shall have the right to take any action in the absence of a meeting by obtaining written consent of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors after proper notice.

4.15 Committees. The Board may designate such committees as the Board shall desire, and establish the purposes and powers of each such committee created.

## **ARTICLE 5. OFFICERS**

5.1 Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by the Board. One person may hold two or more offices, except those offices of President and Secretary.

5.2 Election of Officers. The officers of the Association shall be elected

by the Board for one year terms.

5.3 Removal of Officers. Upon a vote of a Majority of the Board, any officer may be removed, either with or without cause, and a successor elected at any meeting of the Board. Any officer may resign by giving written notice to the Board or to the President or Secretary of the Association.

5.4 Compensation. Officers, agents, and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Board. Appointment of any officer, agent or employee shall not of itself create contractual rights of compensation for services performed by such an officer, agent or employee. No officer, employee or Director of Grantor or any affiliate of Grantor may receive any compensation.

5.5. Special Appointment. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

5.6. President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties which are usually vested in the office of the President of a nonprofit Association. The President shall, subject to the control of the Board, have general supervision, direction and control of the business of the Association.

5.7. Vice President. The Vice President shall take the place of the President and perform such duties whenever the President shall be absent, disabled or unable to act.

5.8. Secretary. The Secretary shall record the votes and keep the minutes of all meetings of the Board and the minutes of all meetings of the Association at the principal office of the Association or such other place as the Board may order. The Secretary shall in general, perform all the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notices of meetings. The Secretary shall maintain a book of record Owners, and any person in possession of a Building Lot that is not an Owner(if known), listing the names and addresses as furnished to the Association.

5.9. Treasurer. The Treasurer shall have responsibility for the

Association finances and shall be responsible for keeping, or causing to be kept, full and accurate accounts of the Association and the filing of all necessary tax returns. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board. The Treasurer shall disburse the funds of the Association as may be ordered by the Board, in accordance with the CC&R's, and shall render to the President and Directors upon request, an account of all transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these By-laws.

## **ARTICLE 6. OBLIGATIONS OF OWNERS**

6.1 Assessments. All Class A Owners are obligated to pay all Assessments set out in the CC&R's. Except as otherwise provided in the CC&R's (e.g. Limited Assessments against certain lots for violation of the CC&R's), the payment of Assessments shall be by Class A Owners. No assessments shall be charged to the Class B Owner or Declarant, unless Declarant becomes a Class A Owner by owning and building a building on a Lot. All delinquent Assessments shall be enforced, collected or foreclosed in the manner provided in the CC&R's or by law.

6.2 Maintenance and Repair. Every Owner must perform promptly, at the Owner's sole cost and expense, all maintenance and repair work on such Owner's Building Lot and improvements as required under the provisions of the CC&R's. Each Owner shall reimburse the Association for any expenditures incurred in repairing or replacing any portion of the Property damaged through the fault of the Owner.

## **ARTICLE 7. AMENDMENTS TO BY-LAWS**

These By-laws may be amended at an annual meeting or at a special meeting for such purpose by a vote of 2/3 of the total cast votes where a quorum was present.

## **ARTICLE 8. MEANING OF TERMS**

All terms in these By-laws have the same meanings as in the CC&R's.

## ARTICLE 9. CONFLICTING PROVISIONS

In case any of these By-laws conflict with any provisions of the laws of the State of Idaho, such conflicting By-laws shall be null and void upon final court determination to such effect, but all other By-laws shall remain in full force and effect. In case of any conflict between the Articles of Incorporation and these By-laws the Articles shall control; and in the case of any conflict between the CC&R's and these By-laws, the CC&R's shall control.

## ARTICLE 10. INDEMNIFICATION AND INSURANCE

**10.1 Certain Definitions.** For the purposes of this Article, "agent" means any person who is or was a director, officer, employee or other agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation. "Proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes without limitation attorneys' fees and costs and any expenses of establishing a right to indemnification under Section 10.3 or paragraph (c) of Section 10.4.

**10.2 Indemnification.** This Association shall indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of this Association to procure a judgment in its favor) by reasons of the fact that such person is or was an agent of this Association, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Association and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such persons was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the persons reasonably believed to be in or not opposed to the best interests of the Association or with respect to any criminal proceeding that the person had reasonable cause to believe that the person's conduct was unlawful. However, no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Association in the performance of such persons' duty to the Association, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in

view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall deem proper.

10.3 Expenses in Successful Defense. To the extent that an agent of the Association has been successful on the merits in defense of any proceeding referred to in Section 10.2 or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

10.4 Determination of Standard of Conduct. Except as provided in Section 10.3, any indemnification under this Article shall be made by the Association only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Section 10.2, as determined by:

(a) A Majority vote of a quorum consisting of directors who are not parties to such proceeding; or,

(b) Approval or ratification by the affirmative vote of a Majority of all Members votes cast at a duly held meeting at which a quorum is present or by the written consent of a Majority of all votes(A and B votes together); or,

(c) The court in which such proceeding is or was pending, upon application made by the Association or the agent or the attorney or other persons rendering services in connection with the defense, determines that the agent is entitled to indemnification; or

(d) Independent legal counsel, engaged at the direction of a quorum of disinterested directors, gives a written opinion that indemnification is justified.

10.5 Advancing Expenses. Expenses incurred in defending any proceeding may be advanced by the Association prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount, if it shall be determined ultimately that the agent is not entitled to be indemnified as authorized in this Article.

10.6 Extent and Limitations of Indemnifications. No indemnification or advance shall be made under this Article, except as provided in Section 10.3

or paragraph (c) of Section 10.4, in any circumstance where it appears:

(a) That it would be inconsistent with a provision of the Articles of Incorporation, these By-laws, a resolution of the Board or Members or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

This Article shall create a right of indemnification for each agent referred to in this Article, whether or not the proceeding to which the indemnification relates arose in whole or in part prior to adoption of this Article; and in the event of the death of such agent, whether before or after initiation of such proceeding, such right shall extend to such agent's legal representatives. In addition, to the maximum extent permitted by applicable law, the right of indemnification hereby given shall not be exclusive of or otherwise affect any other rights such agent may have to indemnification, whether by law or under any contract, insurance policy or otherwise.

**10.7 Liability Insurance.** The Association may purchase and maintain insurance on behalf of any agent of the Association against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Association would have the power to indemnify the agent against such liability under the provisions of this Article.

## **ARTICLE 11. MISCELLANEOUS**

**11.1 Checks, Drafts and Documents.** All checks, drafts or other orders for payment or other evidences of indebtedness issued in the name of or payable to the Association shall be signed or endorsed by such persons, and in such manner as approved by the Board.

**11.2 Execution of Documents.** The Board may authorize any officer(s) or agent(s), to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent or employee shall have the power or authority to bind the Association by any contract or engagement or to pledge the Association's credit or to render the

Association liable for any purpose or in any amount.

11.3 Inspection of By-laws, Books and Records. The Association shall keep a copy of the Articles, the CC&R's and By-laws, as amended, and the books, records and papers of the Association in the Association's office. These shall be subject to inspection by any member during reasonable business hours. Copies will be provided at a reasonable cost and with advance notice.

11.4 Fiscal Year. The fiscal year of the Association shall be a calendar year.

11.5 Membership Book. The Association shall keep and maintain in the Association's office for the transaction of business a book containing the name and address of each Member. Termination or transfer of ownership of any Building Lot by an Owner shall be recorded in the books together with the date on which such ownership was transferred upon payment of any Transfer Assessment.

ADA COUNTY RECORDER  
JANUARY 1990  
FEE \$1.00

2000 NOV 29 AM 10:41

RECORDED - REQUEST OF  
*Matlock Place Sub*  
FEE *1800* DEPUTY *J. Keiper*  
100096167

EXHIBIT "C"

**AGREEMENT REGARDING IRRIGATION WATER  
IN MATLOCK PLACE SUBDIVISION**

**WITNESSETH**

For good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is understood and agreed as follows:

**1. PARTIES:**

A. Stanley and Donna Matlock, husband and wife, (hereinafter "Matlock") the owners of certain shares of the water stock in Boise Valley Ditch Company.

B. Hillview Development Corporation, an Idaho Corporation, (hereinafter "Hillview") the owner and developer of that real property in Ada County known as Matlock Place Subdivision which is legally described in Exhibit A attached hereto.

C. Matlock Place Neighborhood Association, Inc., an Idaho Non-Profit Corporation, (hereinafter "Association") which is the homeowners association for Matlock Place Subdivision. This Association is responsible for maintaining and operating the Pressurized Urban Irrigation System (PUIS) for Matlock Place Subdivision and where practical to provide water through that system to all of the building lots and Common Area Lots in the subdivision. The Association is also responsible for maintaining, watering and operating the Common Areas of the subdivision.

**2. TRANSFER OF TEN (10) SHARES OF WATER STOCK FROM  
MATLOCK TO THE ASSOCIATION; ASSESSMENTS TO ASSOCIATION:** As soon as practical after the execution of this Agreement, Matlock agrees to transfer to the Association ten (10) shares of the water stock in Boise Valley. It is agreed that these ten shares of stock shall not be transferred by the

EXHIBIT "C"

Association to any third party, or the water rights transferred to any other lands, without the express written approval of Boise Valley. The Association shall hold these shares as agent for, and for the benefit of, all of the Owners of building lots, and Common Areas, in Matlock Place Subdivision. All assessments for the water represented by the ten shares of stock shall be paid for by the Association.

Matlock Place Subdivision shares of Boise Valley Irrigation Ditch Company, Inc. water stock shall remain assigned to Irrigation Lateral 34 of the Boise Valley Irrigation Ditch Company, Inc. and the time schedule of the rotation of water in Lateral 34 of these shares shall be included in the time schedule of the Matlock farm property to provide recharge of ground water for Matlock Place at no charge to the Matlock family, successors, heirs or assigns.

**2.1 PUIS SYSTEM:** Hillview is installing a PUIS for any irrigation water that may be available to the subdivision. After completion of this PUIS, Hillview shall transfer it to the Association. The Association shall manage, maintain and operate the PUIS as set out in the Covenants, Conditions and Restrictions ("CC&R'S") for the subdivision.

**2.2 BOISE VALLEY PROVIDES NO DELIVERY SYSTEM:** It is understood and agreed that even though the Association shall own 10 shares of stock in Boise Valley for water. Boise Valley has no method of delivering that water for sprinkler irrigation to the subdivision through its current ditch system. Boise Valley shall have no obligation to provide the delivery system or ditch system for the water represented by the stock certificates.

The Association agrees that it will make reasonable efforts to utilize other Boise Valley waste water, seepage and ground water recharge by pumping the ground water underneath the subdivision for use in the PUIS to the extent allowed by all relevant governmental agencies. The Association may make other arrangements for the provision of water for the PUIS as the Association deems appropriate. Hillview is under no obligation to provide any water of any to kind to the subdivision.

**2.3 NO LIABILITY OF BOISE VALLEY, MATLOCK OR HILLVIEW:** Notwithstanding that Hillview is building a PUIS for irrigation water, and that Matlock is transferring Boise Valley water stock to the Association, neither Matlock, Boise Valley nor Hillview guarantees the supply or the delivery of any water of any kind to the PUIS. Boise Valley, Matlock, and Hillview shall have no liability of any kind to any party or to any Lot Owners in Matlock Place Subdivision for the lack of water, the absence of water or the shortage of

water, and any and all claims of any kind relating thereto are hereby waived.


**3. LATERAL 36 PIPELINE THROUGH MATLOCK PLACE SUBDIVISION:**

Piped underground through Matlock Place Subdivision is Boise Valley's Lateral 36 which carries Boise Valley Water to other lands. It is agreed that no party in Matlock Subdivision has any right to any of the water in Lateral 36 and that no party in Matlock Subdivision shall have any right to interfere with or tap into that Lateral 36.

**4. SUCCESSORS; ASSIGNS; COVENANT RUNNING WITH THE LAND:**


Upon execution, this agreement shall be recorded in Ada County, Idaho, and shall be a covenant running with the lands described herein. This Agreement is for the benefit of, and shall be binding on, the successors, assigns, personal representatives, and heirs of the parties hereto and shall be a covenant running with each Lot in Matlock Place Subdivision.

Dated this 20 day of Nov., 2000.

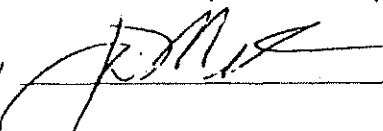
  
Stanley Matlock

  
Donna Matlock

Matlock Place Neighborhood Association, Inc.  
an Idaho Non-Profit Corporation

by , President

Hillview Development Corporation

by , President

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**3. LATERAL 36 PIPELINE THROUGH MATLOCK PLACE SUBDIVISION:**

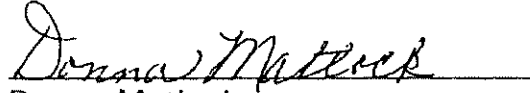
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Dated this 20 day of Nov., 2000.

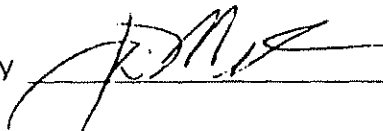
  
Stanley Matlock

  
Donna Matlock

Matlock Place Neighborhood Association, Inc.  
an Idaho Non-Profit Corporation

by , President

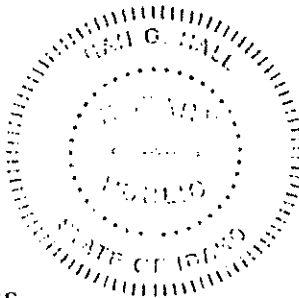
Hillview Development Corporation

by , President

STATE OF IDAHO )  
COUNTY OF ADA )ss

On this 20<sup>th</sup> day of November, 2000, before me, the undersigned a Notary Public in and for said State, personally appeared Stanley and Donna Matlock, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

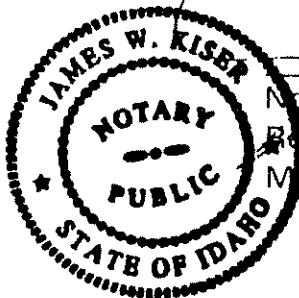


Ken G. Hall  
Notary Public  
Residing: Boise  
Commission Expires: 1-28-2006

STATE OF IDAHO, )  
COUNTY OF Ada ) ss.

On this 13 day of NOVEMBER, 2000, before me, a notary public in and for said State, personally appeared Jim Merkle, known or identified to me to be the President of Matlock Place Neighborhood Association, Inc., an Idaho Non-Profit Corporation, the corporation that executed the foregoing instrument, and the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



James W. Kiser  
Notary Public for Idaho  
Residing in Boise, Idaho  
My Commission Expires: 1-13-05

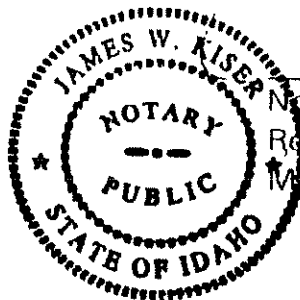
STATE OF IDAHO, )

) ss.

COUNTY OF Ada )

On this 14 day of NOVEMBER 2000, before me, a notary public in and for said State, personally appeared Jim Merkle, known or identified to me to be the President of Hillview Development Corporation, an Idaho Corporation, the corporation that executed the foregoing instrument, and the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Notary Public for Idaho  
Residing in Boise, Idaho

My Commission Expires: 1-13-05

# ***Engineering North West, LLC***

10221 West Emerald, Suite 140

Boise, Idaho 83704

(208) 376-5000 • Fax (208) 376-5556

Project No. 00-012-00

Date: July 14, 2000

## **MATLOCK PLACE SUBDIVISION**

Lots 19, 22 and 23 of Roberts and Hill Subdivision, as same is recorded in Book 4 of Plats at Page 159, including that portion shown as Lot 2 of the Dodgins Tract as same is recorded in Book 8 of Plats at Page 372, and Lots A through J of Lot 18 of Plat showing Division of Lots 15 and 18, Roberts and Hill subdivision, as same is recorded in Book 4 of Plats at Page 166, all records of Ada County, Idaho, all being located in the NW 1/4 of the SE 1/4 of Section 14, T.4N., R.1E., B.M., Ada County, Idaho, more particularly described as follows:

Commencing at the Section corner common to Sections 23, 24, 13 and the said Section 14;

thence North 88°46'02" West, 2631.68 feet to the 1/4 corner common to said Sections 14 and 23;

thence along the North-South mid-section line North 00°32'46" East, 1309.11 feet to the C-S 1/16 corner and the southwest corner of said Lot 23 of Roberts and Hill Subdivision, said point being the **REAL POINT OF BEGINNING**;

thence continuing and along the West boundary of said Roberts and Hill Subdivision, North 00°32'46" East, 1294.11 feet to the northwest corner of Lot 18 of said subdivision, from which the center of said Section 14 bears North 00°32'46" East, 15.00 feet;

thence South 88°50'39" East, 646.29 feet to the northeast corner of said Lot 18;

thence South 00°33'36" West, 1294.72 feet to the southeast corner of said Lot 23;

thence North 88°47'24" West, 645.98 feet to the Point of Beginning. Containing 19.20 acres, more or less.

**PREPARED BY:**  
**Engineering North West, LLC**



ADA COUNTY RECORDER  
J. DAVID NAVARRO  
2000 NO 29 M110: 41

RECORDED - REQUEST OF  
*Matlock Place Sub*  
FEE *1200* DEFUTY *Kasper*  
100096168

EXHIBIT "D"

**QUIT CLAIM DEED AND CONVEYANCE OF ADDITIONAL "COMMON AREA"**  
**FOR MATLOCK PLACE SUBDIVISION**

**AGREEMENT REGARDING THAT COMMON AREA**

**WITNESSETH**

For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is understood and agreed as follows:

1. **THE "COMMON AREA" PROPERTY:** The Common Area property referred to in this conveyance and agreement is that 30 foot wide strip of real property in Ada County which is legally described in Exhibit A attached hereto. This property was formerly a vacated public right-of-way lying adjacent to the northern boundary of Matlock Place Subdivision in Ada County and shall be additional Common Area for that subdivision.

2. **QUIT CLAIM DEED AND CONVEYANCE:** Stanley and Donna Matlock, Husband and Wife, hereby convey, release, remise and forever quitclaim unto Grantee that 30 foot strip of real property, together with appurtenances thereto, located in Ada County, State of Idaho, which is legally described on Exhibit A attached hereto. This property is subject to public and private utility easements, drainage easements, irrigation easements and all other easements of record or appearing on the property.

3. **GRANTEE:** Matlock Place Neighborhood Association, Inc., an Idaho Non-Profit Corporation (hereinafter "Association"), whose address is c/o Jim Merkle 2150 N. Canter Pl., Eagle, Idaho 83616. The Association is the homeowners association for Matlock Place Subdivision and is responsible for maintaining and operating the Common Areas of the subdivision, including the Common Area deeded herein and described in Exhibit A.

4. **AGREEMENTS REGARDING THIS COMMON AREA PARCEL:** Grantor

and Grantee mutually agree as follows:

**4.1 Drain Ditch.** The Common Area property conveyed herein has a maintenance and operation easement for a drain ditch which is owned and operated by Ada County Drainage District No. 2. Grantee acknowledges and recognizes that the operation and maintenance easement for this drainage ditch is fifty (50) foot on each side from the center line of the drain ditch. Grantee agrees not to build any structures in this Common Area that would interfere with this drain ditch or any of the other easements on the property.

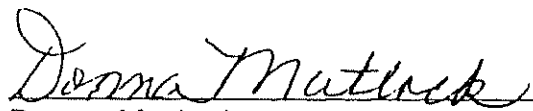
**4.2 Landscaping; Use by Matlock Place Subdivision.** Grantee agrees to maintain this Common Area, where practical, as a grassy landscaped area. Grantee agrees to keep this area mowed, watered and fertilized. Matlock Place Subdivision shall have the unfettered right to use this Common Area for any or all necessary subdivision purposes including retention ponds and drainage areas.

**4.3 Use by Other Subdivision Lot Owners.** It is understood and agreed that the owners of lots in future subdivisions to east and north of Matlock Place Subdivision may have reasonable access to this Common Area and the use of this Common Area for normal enjoyment of open space.


**5. SUCCESSORS; ASSIGNS; COVENANT RUNNING WITH THE LAND:**  
Upon execution, this agreement shall be recorded in Ada County, Idaho, and shall be a covenant running with the lands described herein. The agreements contained herein are for the benefit of and shall be binding on the successors, assigns, personal representatives, and heirs of the Grantor and Grantee herein.

Dated this 20 day of Nov, 2000.

  
Stanley Matlock

  
Donna Matlock

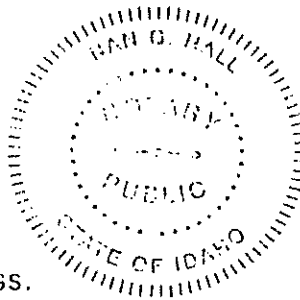
Matlock Place Neighborhood Association, Inc.  
an Idaho Non-Profit Corporation

by , President

STATE OF IDAHO       )  
COUNTY OF ADA       )ss

On this 20<sup>th</sup> day of November, 2000, before me, the undersigned a Notary Public in and for said State, personally appeared Stanley and Donna Matlock, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Sam G. Hall  
Notary Public  
Residing: Boise  
Commission Expires: 1-28-2006

STATE OF IDAHO, )  
                              ) ss.  
COUNTY OF Ada )

On this 18<sup>th</sup> day of November, 2000, before me, a notary public in and for said State, personally appeared Jim Merkle, known or identified to me to be the President of Matlock Place Neighborhood Association, Inc., an Idaho Non-Profit Corporation, the corporation that executed the foregoing instrument, and the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



James W. Kiser  
Notary Public for Idaho  
Residing in Boise, Idaho  
My Commission Expires: 1-5-2005

Exhibit A.

**VACATION OF PUBLIC RIGHT-OF-WAY  
ROBERTS AND HILL SUBDIVISION**

Unimproved public right-of-way lying between Lots 15 and 18 of Roberts and Hill Subdivision in the NW1/4 of the SE1/4 of Section 14, T.4N., R.1E., B.M., Ada County, Idaho, as same is recorded in Book 4 of Plats at Page 159, records of Ada County, Idaho, more particularly described as follows: **BEGINNING** at the northeast corner of said Lot 18;

thence along the North boundary of said Lot 18 North  $88^{\circ}50'39''$  West, 846.29 feet (record 847.02 feet) to the northwest corner of said Lot 18;

thence along the West boundary of said Roberts and Hill Subdivision North  $00^{\circ}32'46''$  East, 30.00 feet;

thence along the extended southerly boundary and the southerly boundary of said Lot 15 South  $88^{\circ}50'39''$  East, 646.30 feet to the southeast corner of said Lot 15;

thence South  $00^{\circ}33'38''$  West, 30.00 feet to the Point of Beginning. Containing 19,389 square feet, more or less.

**O & M MANUAL**  
**STORMWATER RETENTION POND**

**MATLOCK PLACE SUBDIVISION**

This manual outlines the duties to be performed by the Matlock Place Neighborhood Association, Inc. (hereinafter the "Association") for the light maintenance of the storm water retention pond. This retention pond is located in Common area owned by the Association immediately north of Matlock Place Subdivision and is within the Ada County Drainage District No. 2 easement area.

1. **PURPOSE OF STORMWATER FACILITY.** The purpose of the stormwater facilities is to convey stormwater from the streets through a system of buried pipelines to the stormwater retention pond ("pond"). This pond is intended to control the release of the stormwater at a pre-developed rate. Any water in excess of this rate will be temporarily stored within the pond. After the storm subsides, the pond will empty at this pre-developed rate of flow.

1.1 **ADDITIONS TO FACILITY; REMOVAL; NO LIABILITY OF ACHD.** Additions to the facility (if any), such as park benches or additional landscaping, shall be considered temporary and may be removed by ACHD when heavy maintenance of the facility is needed. In the event that any of these additional items are moved, ACHD shall have no liability relating to the removal and shall have no responsibility to repair or replace any items moved. The sole responsibility for the repair and/or replacement thereof shall be with the Association.

2. **POND LOCATION; ENGINEERING PLANS.** The stormwater retention pond is located in a Common Area immediately north of and adjacent to Matlock Place Subdivision. The maintenance area for the pond shall include the entire area in which the pond is located.

3. **LIGHT MAINTENANCE.** The Association shall have the duty to perform the light maintenance of the retention pond as follows:

3.1 **MONTHLY INSPECTION OF POND.** Monthly visual inspections of the pond shall be performed by the Association to check for the following: bank stability, water spots, water entering the pond from adjacent lots, rodent

holes and bank erosion. In the event that any of these items are found the Association shall have a licensed contractor make the necessary repairs.

**3.2 MONTHLY INSPECTION OF UNDERGROUND STORM DRAIN FACILITY**. Monthly visual inspections of the underground storm water drain facility shall be performed by the Association to check for: clogging or standing water in or on the piping, the manholes or other structures. In the event that any of these items are found the Association shall contact ACHD so that ACHD can perform their "heavy" maintenance responsibilities.

**3.3 MOWING AND MAINTENANCE OF LANDSCAPING**. The Association shall perform the normal surface routine maintenance such as mowing lawns, fertilization, weed control, and irrigation of any landscaping. Any lawn placed in the pond shall be maintained in a healthy condition.

**3.4 TRASH CLEANUP**. Any trash found during the periodic inspections shall be collected and removed from the pond and disposed of properly offsite.

**4. INITIAL "ESTIMATES" OF ANNUAL OPERATING COSTS OF STORM WATER FACILITIES**. The annual operating costs for these storm water facilities are initially "estimated" to be \$900 per year, broken down as follows:

Landscape Maintenance	500
Landscape Repairs	150
Insurance	50
Association Management	100
Miscellaneous	<u>100</u>
Total	900



**DECLARATION OF ANNEXATION  
OF MATLOCK PLACE SUBDIVISION NO. 2**

**TO THAT DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR**

**MATLOCK PLACE SUBDIVISION No. 1**

This Declaration of Annexation is made effective the 4<sup>th</sup> day of DECEMBER, 2002, by Hillview Development Corporation, (hereinafter "Grantor" or "Declarant") whose address is 150 East Aikens, Suite A, Eagle, Idaho 83616.

**ARTICLE 1**

**ANNEXATION OF MATLOCK PLACE SUBDIVISION NO. 2  
INTO MASTER CC&R'S FOR MATLOCK PLACE SUBDIVISION NO. 1**

**1.1. Property Annexed; Matlock Place Subdivision No. 2.** The property hereby annexed is that real property legally described in Exhibit A which is attached hereto. This property is owned by the Declarant. Each Owner, by accepting a deed to any Lot in Matlock Place Subdivision No. 2 (hereinafter "Subdivision") agrees that the Lot is subject to the Master CC&R's referred to herein and to this Declaration of Annexation. [The plat of Matlock Subdivision No. 2 also includes Common Area Lot 25, Block 1 which is already owned by the Matlock Neighborhood Association.]

**1.2 Existing Property and CC&R's to Which Property is Annexed.** This annexed property is hereby annexed into that Declaration of Covenants, Conditions and Restrictions for Matlock Place Subdivision No. 1 which Declaration was recorded the 29<sup>th</sup> day of November, 2000, in Ada County, as Instrument No. 100096169 (hereinafter referred to as the "Master CC&R's").

A copy of these Master CC&R's are attached hereto as Appendix 1 and are incorporated herein as if set forth in full.

**1.3 Master CC&R's and Declaration of Annexation Run With Annexed Land.** The Master CC&R's referred to above and the provisions of this Declaration of Annexation shall run with the annexed land. The Master CC&R's and this Declaration of Annexation shall be construed as one document, governing both subdivisions together as if they were one subdivision and if both had been done at the same time.

**1.4 Authority.** This Declaration of Annexation is made pursuant to Article 11, Section 11.5 of the Master CC&R's which provide for this annexation by Declarant, and for annexation of subsequent phases of Matlock Place Subdivision.

**1.5 Effect.** The effect of this Declaration of Annexation shall be that Matlock Place Subdivision No. 1 and Matlock Place Subdivision No. 2 shall be treated as one subdivision and shall be subject to the Master CC&R's and this Declaration as set out herein. Together they shall be governed by the Matlock Place Neighborhood Association, Inc., as set out in the Master CC&R's. All property and Lots in Matlock Place Subdivision No. 2 (and any future annexations of Matlock Place Subdivision(s)) shall be subject to all provisions of the Master CC&R's recorded for Matlock Place Subdivision No. 1; **Provided, however,** that the provisions in Article 2 of this Declaration of Annexation (set out below) which are specific to the land in Matlock Place Subdivision No. 2, shall apply to Matlock Place Subdivision No. 2. Other than the provisions specifically set out in Article 2 below which are specific to the Lots in Matlock Place Subdivision No. 2, the Master CC&R's govern all Lots in all Matlock Place Subdivisions. The Association shall manage all Common Area Lots and common landscape areas in all Matlock Place Subdivisions as if all were one subdivision.

## **ARTICLE 2**

### **SPECIFIC PROVISIONS APPLYING TO PROPERTY AND LOTS IN MATLOCK PLACE SUBDIVISION NO. 2**

**2.1 Architectural Control Committee (ACC).** No building, structure, fence, wall, hedge, landscaping, painting, obstruction, berm, driveway, or Improvement shall be placed on, under, over or across any part of this Subdivision unless a written request for approval thereof has been approved, in writing, by the ACC. The ACC for this subdivision shall be as follows: James

Merkle, Don Hutt and Chuck Rosco, c/o Coldwell Banker Realty, 6901 W. Emerald St., Suite 207, Boise, Idaho 83704.

After the full build out of the Lots in this Subdivision, the ACC thereafter shall be the Board of Directors for the Matlock Place Neighborhood Association as set out in the Master CC&R's.

**2.2 Use and Size of Dwellings; Basements.** All Building Lots shall be used exclusively for one or two-story single-family homes or townhouse duplexes as set out herein:

**2.2.1 Single Family Homes.** All single family homes not on duplex lots (set out below) shall be at least 1,300 square feet in size. Eaves, steps, open porches, garages and patios shall not be included in the computation of square footage. These single family dwellings may be one or two story. If two story, then the main floor must contain a minimum of 850 square feet.

**2.2.2 Townhouse Duplexes.** The following Building Lots in this subdivision are designated as Townhouse Duplex Lots. The following Lots which are listed together shall have one Townhouse Duplex built on the two of them with the common party wall on the lot line between the two listed Lots:

Lots 1 and 2	Block 9
Lots 3 and 4	Block 9
Lots 5 and 6	Block 9
Lots 7 and 8	Block 9
Lots 9 and 10	Block 9
Lots 11 and 12	Block 9

Lots 27 and 28	Block 1
Lots 29 and 30	Block 1

Each of the Townhouse units in a duplex shall be a single family "home". Each unit shall contain at least 900 square feet. (Eaves, steps, open porches, garages and patios shall not be included in the computation of square footage.)

**2.2.3 Townhouse Zero Lot Line Party Walls.** Each Owner on each side of a duplex shall be subject to the following:

**A) General Rules of Law Apply.** Each zero lot line party wall which is built as a part of the construction of any of the Townhouse Duplexes, and which is placed on the dividing line between the lots, shall

DECLARATION OF ANNEXATION

MATLOCK PLACE SUBDIVISION NO. 2 (12-3-2002)

Page 3 of 17

constitute a party wall, and to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or wilful acts or omissions shall apply thereto. Except for repairs after a casualty, no Owner shall be allowed to penetrate any party wall.

**B) Sharing of Repair and Maintenance.** The cost of reasonable structural repair and maintenance of a party wall shall be shared equally by the owners who make use of the wall. Each owner shall be solely responsible for maintenance and repairs to the interior surface of the wall in each Owner's own duplex, provided, however, that in the event an Owner's interior surface is damaged by the other Owner to the party wall or the other Owner's occupants, then the other Owner shall be liable for the repairs.

**C) Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or wilful acts or omissions.

**D) Weatherproofing.** Notwithstanding any other provisions of this Section, an Owner who by his negligent or wilful act causes the party wall to be exposed to the elements shall bear the whole cost of repair to such party wall and the furnishing of the necessary protection against such elements.

**E) Utilities.** Any utilities or utility services located within the party walls shall be maintained by each Owner using the utility.

**F) Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**2.3 Basements.** No basements shall be allowed on any Lot in this subdivision.

**2.4 Exterior Appearance; Roofs.** Each dwelling and Townhouse unit in this subdivision shall have either; A) Full wainscoting of brick, stone or stucco across the entire front of the structure, or; B) Brick, stone or stucco full column heights on both sides of the garage; or C) Wainscoting on the garage columns

providing they are wrapped a minimum of 24 inches around the side of the garage. Encouraged are covered front porches, bay windows, broken roof lines, gables and hip roofs. No vinyl or metal siding shall be allowed. Each Townhouse unit in one duplex must be identical in exterior appearance to the sister unit in the same duplex. (i.e...the entire duplex must have the same colors and exterior appearance for each unit. The different duplexes, however, may differ from each other in color and appearance.)

Roofs must be of at least 5 in 12 pitch. No gravel roofs are allowed. Roofing materials shall be 20 year composition shingles and shall be of "weathered wood", "antique black" or "pewter gray" color.

**2.5 Landscaping.** Berms and sculptured planting areas are strongly encouraged. Landscaping of the front yard shall be completed upon substantial completion of the building, (reasonable additional time allowed for extreme weather), and such landscaping shall be the responsibility of each respective Owner of the Lot. The "front yard" shall be defined as that portion of the Building Lot from one side Lot line to the opposite side Lot line lying in front of the front exposure of the structure. For Building Lots on corners, the "front yard" shall also include that portion of the Building Lot from the front of the structure to the rear of the structure to the side street (i.e., the side yard next to the side street).

Landscaping of the front yard, at a minimum, shall include the following:

- A) Sod and fully automatic sprinkler system;
- B) At least one (1) tree of 1.5" caliper; (Corner Lots shall have at least two (2) trees of 1.5" caliper.)
- C) At least ten (10) one (1) gallon bushes and/or shrubs.

Grass in the back yard shall be hydro-seeded or sodded within ninety (90) days of occupancy.

**2.6 Weeds.** Prior to construction each Owner shall keep each Lot free of all weeds and debris. After ten (10) days notice to the Owner, Declarant or the Association may cause the weeds or debris to be removed and Owner shall pay the cost thereof, together with a ten (10%) percent management fee.

**2.7 ACHD Perpetual Storm Water Drainage Easement.** ACHD is hereby granted a perpetual blanket storm water and drainage easement over Lot 38, Block 1, as set out in that "Perpetual Storm Water Drainage Easement", a copy of which is attached hereto as Exhibit B. The terms therein are incorporated

herein as if set out in full. This easement is for access, to retain water, and to construct, install, maintain and replace the storm water and drainage system and all facilities relating thereto. The storm drain system also includes the street gutters, drop inlets, storm drain pipes and all related facilities.

**2.7.1      "Heavy" Maintenance of Drainage and Retention Area.**

Heavy maintenance consists of periodically inspecting the retention and drainage facility to ensure it is functioning properly; cleaning out the facility piping and mucking out the facility when the sediment level exceeds the designed storage level. All other maintenance shall be referred to herein as "light" maintenance. ACHD has opted to perform this "heavy" maintenance and shall be allowed to perform this maintenance work. In the event the ACHD shall decide not to do such "heavy" maintenance, then the Association shall do so.

**2.7.2      "Light" Maintenance.** The Association shall provide all "light" maintenance of the drainage/retention and easement areas as set out in the Operation and Maintenance Manual for Matlock Place Subdivision(s). This Manual is on file with ACHD and is incorporated herein as if set forth in full. (A copy thereof is attached hereto as Exhibit C.)

**2.7.3      Association Failure to Maintain; ACHD Remedies**In the event that ACHD determines, in its sole discretion, that the Association is not adequately performing its maintenance responsibilities set out in the Manual above, then ACHD shall, before undertaking maintenance of said area, provide written notice of its intention to begin maintenance after a thirty (30) day period. Within that 30 days Association may undertake to initiate and conclude all maintenance defects as identified by ACHD. In the event that the Association shall fail to commence and conclude maintenance to the extent said items of specific maintenance are identified by ACHD within the prescribed thirty (30) days, then in that event, ACHD may begin to undertake such maintenance. ACHD is hereby granted an irrevocable license and easement to enter upon any portion of the common area to perform such inspection and maintenance of the Common Areas identified herein.

Should ACHD engage in maintenance of the defined common area or facility after having provided notice to the Association and having provided the Association an opportunity to undertake said maintenance, the Association shall pay all of the costs of the maintenance. ACHD shall first bill the Association and if such bill shall not be paid within sixty (60) days, then ACHD shall be entitled and empowered to file a taxable lien against all lots within this subdivision with power of sale as to each and every lot in order to secure

payment of any and all assessments levied against all lots pursuant to the CC&R's as if said maintenance had been performed by the Association, together with interest at the rate which accrues on judgments thereon and all costs of collection which may be paid or incurred by ACHD.

The Association shall not be dissolved or relieved of its responsibility to maintain the defined common area and facilities contained therein without the prior written approval from ACHD.

The Association, and all Lot Owners by accepting title to a Lot, agree that they are benefitted property owners of such maintenance.

**2.8 Special Easement to ACHD for Maintenance of Storm Drainage Facilities.** ACHD is hereby granted an easement over the north 15 feet of Lot 46, Block 1 and the south 5 feet of Lot 47, Block 1 as shown on the plat. This easement is for the maintenance of the storm drainage facilities by ACHD. These drainage facilities are to be maintained by ACHD. In the event that these drainage facilities are not maintained by ACHD, then they shall be maintained by the Association. No permanent structures, trees, fences or other Improvements shall be erected in any of these easement areas which would adversely affect the drainage or the ability of ACHD to operate and maintain these drainage facilities, without the permission of ACHD.

**2.9 Setbacks.** All setbacks shall comply with the pertinent local government ordinances; Provided, however, certain Lots have special easements (such as the storm drain easement to ACHD) along the Lot boundary lines which are larger than the government setbacks. These special easements are identified on the plat or described herein. For those Lots with these special easements, the foundation of the building shall not encroach on that easement area, and that easement area shall be the required setback.

**2.10 Water.**

**2.10.1 Water For Matlock Place Subdivision.** Each party accepting and recording a deed to any property in this Subdivision or occupying any property in this Subdivision acknowledges and understands and agrees to the following:

A) that such property is in the jurisdiction of the Boise Valley Irrigation Ditch Company, Inc. and certain shares of stock in this Irrigation Ditch Company represent water rights for this subdivision, and any shares of water stock shall be owned by the Association;

B) that each Owner of any Lot, through the Association, is subject to all assessments levied by the Irrigation Ditch Company;

C) each Owner or occupant of any Lot in Matlock Place Subdivision specifically releases and waives any and all claims of any kind against Declarant, its agents, employees, officers and directors relating to irrigation water in Matlock Place Subdivision;

**2.10.2     Drainage District Agreements.** The property and Lots in Matlock Place Subdivision shall be subject to any existing or future recorded agreements or license agreements with Ada County Drainage District No. 2 regarding this Subdivision, including but not limited to, the following existing agreement(s), easements or licenses and any addendums thereto:

A) That License Agreement recorded the 6th day of September, 2000, in Ada County as Instrument No. 100071557, together with that Addendum thereto recorded November 2, 2000 as Instrument No. 100088414, the terms of which are incorporated herein as if set forth in full.

B) That License Agreement recorded the 16<sup>th</sup> day of August, 2002 in Ada County as Instrument No. 102092838, the terms of which are incorporated herein as if set forth in full. (A copy of this License Agreement is attached hereto as Exhibit D.)

C) That Easement agreement recorded the 10<sup>th</sup> day of January, 2002 in Ada County as Instrument No. 102003652 the terms of which are incorporated herein as if set forth in full. (A copy of this Easement is attached hereto as Exhibit E.)

D) That Relinquishment of Easement recorded the 8th day of February, 2002 in Ada County as Instrument No. 102016464 the terms of which are incorporated herein as if set forth in full. (A copy of this Easement is attached hereto as Exhibit F.)

**2.10.3     Pressurized Irrigation System.** Irrigation water, when seasonally available, will be supplied via a pressurized urban irrigation system (PUIS). This system shall be owned, maintained and operated by the Association with all operation and maintenance costs to be paid by all Lot Owners. Each Lot Owner shall pay an equal share of the costs of maintenance and operation of the PUIS.

Each individual Lot will have a control valve on the pressurized irrigation system to allow irrigation water onto that individual Lot. Each Lot Owner shall be responsible for that Owner's own irrigation system on the Lot downstream from this control valve (e.g. filters, screens, sprinkler lines and sprinkler heads). Each Owner shall install a sufficient sand screen or similar filter set up to keep sand and other irrigation ditch debris out of the Owner's irrigation system. Each Owner shall clean and maintain their own screens and filter systems.

The Association shall not be responsible for the maintenance of any part of the PUIS, pipes, filters, or sprinkler systems downstream from the control valve on the Lot. Any Owner damaging the main PUIS system shall be responsible for all of the costs of that damage.

**2.10.4 PUIS Ownership; Easements; Warranty.** Grantor will construct the pumping station and pressurized urban irrigation system (PUIS) for the Subdivision. Following completion of each portion of the irrigation system, Grantor shall transfer title and ownership of that completed portion of the system to the Association which shall perform all routine maintenance of the PUIS. A perpetual easement as necessary for access to repair and maintain the common PUIS and common irrigation lines is reserved on each Lot in the Subdivision.

Grantor warrants to the Association that each portion of the system as it is completed will be free of defects, including workmanship, for one full year following the date that construction of each portion of the system is completed. In the event a defect is discovered within one year of completion of that portion of the PUIS, Grantor will, at Grantor's expense, repair or remedy that defect. One year after completion of the construction of any portion of the system there shall be no further warranties by Grantor as to that portion of the system. Any further necessary repairs thereafter shall be the responsibility solely of the Association and Grantor shall have no further liability relating thereto. After Grantor has transferred ownership of any portion of the common pressurized irrigation system to the Association, the routine maintenance and repair of the system shall be the responsibility of the Association as a Common Area expense.

**2.10.5 Water Costs.** All irrigation water costs shall be assessed by the Association to each Lot equally regardless of the amount of water used on that Lot. Each Lot Owner shall use all reasonable efforts to conserve and not waste irrigation water.

**2.10.6 Water Unreliable.** The area of the country where this subdivision is located is desert. While Declarant will construct a pressurized irrigation system, irrigation water for that pressurized system is not always reliable and is not unlimited. Irrigation water may not be available due to drought, harsh weather conditions, low ground water levels, government actions, system breakdowns, transmission failures, overuse by Lot Owners, lack of ground water recharge, or any other causes.

**2.10.7      Rotation.** No Lot shall have any right to, or assurance of, a continuous or unlimited supply of irrigation water from the PUIS. Nor is any Lot guaranteed enough water from the PUIS to irrigate all of the landscaping on the Lot. Each Lot shall be subject to, and each Lot Owner by accepting a deed to a Lot in this subdivisions agrees to be bound by and to comply with, any rules or regulations for the use and rotation of irrigation water between the Lots as set out by the Association. The Board of Directors of the Association may establish a water rotation schedule for all Lots and common areas in this Subdivision and Matlock Place Subdivision No. 1, and may promulgate general rules for the times and use of irrigation water. All Lot Owners and occupants shall follow said water rotation schedules and any rules set out relative to the use of irrigation water. Failure to adhere to the rotation schedule or rules may, following notice from the Board, result in suspension of the right to use irrigation water.

**2.10.8      No Liability.** Neither Boise Valley Irrigation Ditch Company, Inc., the Association, nor the Declarant (nor any of their members, agents, employees, officers, directors or shareholders) shall have any liability OF ANY KIND to any Lot Owner, Tenant, the Association, member of the Association or any others for any losses or damages relating in any respect to the irrigation system, or irrigation water, or the lack thereof, including but not limited to damages to, or loss of lawns, landscaping, trees, shrubs, gardens or the like caused by the lack of, or shortage of, or unavailability of, irrigation water. Each Owner accepts the risk of loss or damage due to the unavailability, shortage or lack of irrigation water. Each Lot Owner, by accepting a deed to the property, and each Tenant or occupant, by occupying the premises, specifically waives any and all claims of any kind against the Association, Boise Valley Irrigation Ditch Company, Inc. and Declarant, their agents, employees, officers directors, members, and shareholders for any loss or damage relating in any respect to the water, lack of water or the supply of water. Each Lot Owner and occupant agrees, during times of shortage or lack of water, to use their own domestic water supply for irrigation of their Lot.

**2.10.9 WARNING!      IRRIGATION WATER IS NOT DRINKABLE.**  
Notice is hereby given to each Owner in this subdivision that the water in the pressurized irrigation system is NOT fit for human consumption. It contains untreated ditch water, which may contain dirt, hazardous wastes, dangerous farm chemicals or disease-causing organisms. Drinking of the irrigation water may make a person sick, and while less likely, may result in death or permanent disability.

**NEVER DRINK WATER**  
**FROM THE PRESSURIZED IRRIGATION SYSTEM**

It is the duty of each Owner to:

- A) Educate all family members, guests, tenants and invitees that the water from the pressurized irrigation system is not drinkable;
- B) Ensure that ALL of the faucets and risers in the pressurized irrigation system are adequately marked, and if not marked to check with the local health department to determine what type of markings are required by that health department or agency;
- C) Not remove any existing tags or other warning markers from the pressure irrigation risers;
- D) Not install, or maintain the installation of, any cross connections between the pressurized irrigation system and the drinking water system unless the cross connection has been approved in writing by the Association AND the supplier of the irrigation water AND the supplier of the drinking water AND the cross connection back flow prevention device meets all relevant governmental and building code requirements.

**2.10.10 No Liability for Quality of Water.** Neither the Association, the District nor the Declarant (or any members, employees, agents, officers, shareholders or directors thereof) shall have any liability OF ANY KIND to any Lot Owner, tenant, Association, member of the Association or any others for any losses, damages, or personal injuries relating in any respect to the quality of the irrigation water, or the ingestion of, or contact with, the irrigation water. Each Owner, tenant and occupant accepts the risk of using the irrigation water and waives any and all claims relating thereto.

**2.11 Sewer Monthly Charges.** Each Owner shall connect to the Boise City public sewer system when a dwelling is constructed. A monthly sewer charge must be paid by each Owner after connecting to that Boise City public sewer system, according to the ordinances and laws of Boise City.

**2.12 Sewer Inspection.** Each Owner shall submit to inspection by either the Department of Public Works or the Department of Building whenever a Lot is to be connected to the Boise City public sewage system and a building sewer is constructed or installed on or within the Owner's property.

**2.13 Sewer Collections; City Power.** Boise City is hereby vested with the right and power to bring any and all actions against an Owner of a Lot or any part thereof for collection of any sewer charges or to enforce any of the sewer conditions contained herein. Each Lot in this subdivision shall be subject to these powers and these powers shall run with the land.

**2.14 Annexation to City of Boise.** The recording of the plat to this subdivision shall be deemed and construed as a request for, and the consent to, the annexation of the property in this subdivision to the corporate limits of Boise City. This request for, and consent to, annexation shall be continuing and each Owner of any Lot in this subdivision shall be bound by this request and consent to annexation.

**2.15 Street Lights.** Any street lights installed by Declarant shall be maintained and operated by the Association as a common area expense until such time as the City of Boise or other governmental agency takes over the maintenance and operation thereof. Maintenance and operation shall include all repairs and costs of power.

**2.16 Common Areas.** The Common Area Lots in this Subdivision to be owned and maintained by the Association are:

Lot 25	Block 1	(already owned by Association and is referred to in the Master CC&R's in Paragraph 4.35.5)
Lot 26	Block 1	Drainage District Lot referred to below.
Lot 31	Block 1	Landscape Buffer Lot
Lot 38	Block 1	Multi-Use Lot
Lot 50	Block 1	Landscape Buffer Lot
Lot 4	Block 7	Landscape Buffer Lot
Lot 1	Block 8	Landscape Island
Lot 13	Block 9	Landscape Buffer Lot
Lot 22	Block 9	Micro-Path Lot
Lot 24	Block 9	Landscape Buffer Lot
Lot 33	Block 9	Landscape Buffer Lot
Lot 1	Block 10	Landscape Island

**2.16.1 Ada County Drainage District #2 Area.** Lot 26, Block 1 is a Common Area Lot to be owned by the Association and is subject to the maintenance and operation easements of the Ada County Drainage District #2. This Lot does not provide access to any of the Lots in this subdivision. No

grass clippings, yard waste or any other material shall be placed on this Common Area Lot by any Owner. Any fence constructed on this Common Area Lot by Declarant shall be a Common Area fence to be owned and maintained by the Association. The Association shall perform any maintenance on this Lot, including keeping the weeds down, not performed by the Irrigation District.

**2.16.2 Micro-Path Lot and Easement Area.** The following Common Area Lot: Lot 22, Block 9 shall contain a Micro-Path and landscaping area. This Micro-Path Lot shall be landscaped as approved by the City of Boise and shall contain a paved Micro-Path the entire length of the easement area as approved by the City of Boise. This Lot shall be owned and maintained by the Association and such maintenance shall comply with all Boise City requirements and regulations for Micro-Path easement areas. This Micro-Path easement and the maintenance responsibilities relating thereto shall not be dissolved without the express written permission of the City of Boise. Any fences adjacent to the Micro-Path area shall conform to all Boise City Ordinances and all fences adjacent to Micro-Path Lots shall be maintained by the Association as a Common Area expense. The fence on this Micro-Path Lot shall be maintained by the Association.

**2.16.3 Association Multi-Use Area.** Common Area Lot 38, Block 1 is a Common Area Multi-Use Area to be owned and maintained by the Association and is for the use and benefit of all the Members of the Association in both Matlock Subdivisions.

**2.16.4 Special Common Driveway, Access, Sidewalk, Landscaping and Utility Easement Area.** Lots 1-12, Block 9 and Lots 27-30, Block 1 are all subject to a special permanent and perpetual easement which is reserved over, across and under the eastern 30 feet of all of these lots. This special easement shall run with the land and this special easement area is shown on the plat of this subdivision. The purpose of this easement area is as follows:

A) The installation and maintenance of any utilities.

B) The installation and maintenance of a sidewalk. For the maintenance of this sidewalk, Ada County Highway District is hereby granted a perpetual easement over and across the easement areas described herein for that maintenance. [This property is subject to that "Public Right-of-Way Easement (Sidewalk)" agreement with ACHD. A copy of that Easement is attached hereto as Exhibit G, and the terms therein are incorporated herein as if set forth in full.

C) The installation and maintenance of a common driveway and access area (as shown on the plat) for the ingress and egress of vehicle, bicycle, and pedestrian traffic.

D) The installation and maintenance of traffic dividing landscaping in this special easement area (which may also be constructed and maintained in the Ada County Highway District right-of-way along Duncan Lane).

This special easement area shall be for the use and benefit of the Association, all Owners of Lots in this subdivision, their tenants, families, guests and invitees, and any utilities with utility lines in the easement area.

While the Association will not own the fee title to this 30 foot wide special easement area, it shall be the responsibility of the Association to operate, manage and maintain all portions of this special easement area (except for any sidewalk area that is actually maintained by Ada County Highway District), together with the Common Access Points to this special easement area which are identified on the plat. The Association shall also have the responsibility to operate, manage and maintain the traffic dividing landscaping along Duncan Lane, part of which is in the special easement area.

NO PARKING SHALL BE ALLOWED AT ANY TIME IN THIS SPECIAL EASEMENT AREA. Nor shall any buildings, structures or other impediments be constructed or permitted on any portion of this special easement area or the Common Access Areas shown on the plat. No party shall be allowed to obstruct, block or otherwise hinder the use of this special easement area by any other parties or Owners of the Lots which are subject to this special easement area. The Declarant or the Board shall have the authority to immediately remove any obstructions in this special easement area without notice and the offending party shall reimburse the Association for all costs relating thereto plus a management fee equal to 10% of those costs.

Direct access to Duncan Lane is prohibited from the Lots on the eastern side of this subdivision, and from the common driveway in the special easement area except via the "Common Access Points" to Duncan Lane which are set out on the plat. (These "Common Access Points" connect Duncan Lane to the special driveway and easement area set out in this section.)

**2.16.6 Association Maintenance of Certain ACHD Right-of-Way Areas.** The association shall maintain those landscape areas along Duncan Lane in the ACHD Right-of-Way as set out in any license agreements with ACHD on file with ACHD.

**2.16.7 Common Areas No Liability.** Each Lot Owner by accepting a deed to a Lot in this Subdivision and each occupant by occupying a Lot, and each user of the Common Areas by using the Common Areas, specifically

agrees that the Declarant, its agents, officers, employees, members and shareholders shall have no liability of any kind whatsoever relating in any way to the use of the Common Areas including, but not limited to, any accidents or bodily injuries which result from the use of the Common Areas, and all claims relating thereto are specifically waived and released. Nor shall the Association, its officers, agents, or employees have any such liability. All Lot Owners, occupants and users of the Common Areas specifically assume the risk and waive any and all claims relating to the use of the Common Areas.

**2.17 Easement for Irrigation Pipeline.** Lots 1-13, Block 9; Lots 22 and 24, Block 9 and Lots 25-31, Block 1 are subject to an easement for the maintenance, replacement, repair and operation of any irrigation water pipelines installed thereunder.

**2.18 Fences.**

**2.18.1 Subdivision Perimeter Fences.** Grantor may construct a perimeter fence around portions of the exterior of this subdivision property (except for entrance or exit roadways or waterway crossings). After Grantor has transferred title to any Lot which contains a portion of this perimeter fence it shall be the responsibility thereafter of the Owner of that Lot to maintain, repair and/or replace as needed that portion of the perimeter fence on that Owner's Lot unless the Association is to maintain as set out herein. The maintenance, repairs and/or replacement shall be performed so as to keep the perimeter fencing uniform, attractive and harmonious.

**2.18.2 Association Fences.** The Association shall own and maintain the following fences:

- A) The wrought iron fence in Lot 26, Block 1, along the southern boundary of Lots 27, 32, 33, 34, 35, 36, 37, or 38, Block 1.
- B) The perimeter fence in Lot 50, Block 1, along the western edge of Lots 45-49, Block 1.
- C) The perimeter fence in Lot 33, Block 9, on the western edge of Lot 32, Block 9.
- D) Association fence along the southwesterly side of Lot 24, Block 9.
- E) The Association fences on both sides of the Micro-Path Lot 22, Block 9.

- F) The Association fences in Lot 31, Block 1; Lot 13, Block 9 and Lot 4, Block 7.
- G) The Association fences along the easterly and northerly boundaries of Lot 38, Block 1.

**2.18.3 Wrought Iron Fences; Special Lot Restrictions.** Grantor will construct a wrought iron fence in that Common Area Lot 26, Block 1 adjacent to the southern side of Lots 27, 32, 33, 34, 35, 36, 37, or 38, Block 1. These Lots are restricted from having any type of fence on the southern side of the Lot any closer to the southern boundary of the Lot than the foundation of the residence (except that a fence perpendicular to the wrought iron fence may be built up to the wrought iron fence) . The intent of this restriction is that no fence will be built along side an contiguous with the wrought iron fence. The Grantor and the Association shall have an easement over and across these Lots for the purpose of removing any fence that violates this paragraph.

**2.18.4 Other Owner Fences.** Other Owner fences are not required. If a fence is desired, plans for it shall be approved by the ACC prior to construction. Fences shall be of good quality and workmanship and shall be properly finished and maintained and comply with all governmental Ordinances. No fence shall be constructed on any Lot closer to the front Lot line than the front edge of the dwelling. For corner Lots, the fence shall be at least ten (10) feet from the side lot line adjacent to the street, or as allowed by City Ordinances then in effect, whichever is greater. Chain link fences are not allowed except along ditches or water retention areas.

No Owner of Lot 1, 21, or 23, Block 9 shall build or maintain any fence adjacent to and contiguous with the Common Area fence in Micro-Path Lot 22, Block 9.

**2.19 Association Assessments; Building Restrictions.** The amounts of all Assessments whether Regular Assessments, Start-Up Assessments, Transfer Assessments, or otherwise set out in the Master CC&R's shall be the same as set out in the Master CC&R's. All Improvements shall be constructed with the approvals as set out herein, and subject to the restrictions set out herein or in the Master CC&R's.

DATED THIS 4<sup>th</sup> day of December 2002.

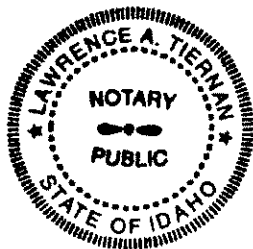
Hillview Development Corporation

By [Signature]  
Title: President

STATE OF IDAHO,       )  
                                  ( ss.  
COUNTY OF ADA,       )

On this 4<sup>th</sup> day of DECEMBER, 2002, before me, a notary public in and for said State, personally appeared James Merkle, known or identified to me to be the President of Hillview Development Corporation the Corporation that executed the foregoing instrument and acknowledged to me that such Corporation executed the same, and acknowledged to me that he executed the same on behalf of the Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



[Signature]  
Notary Public for Idaho  
Residing in BOISE, Idaho  
My Commission Expires: 10/13/06

***Engineering North West, LLC***

10221 West Emerald, Suite 140

Boise, Idaho 83704

(208) 376-5000 • Fax (208) 376-5556

Project No. 01-046-00

Date: July 26, 2002

**MATLOCK PLACE SUBDIVISION NO. 2  
FINAL PLAT DESCRIPTION**

A parcel of land being Lot 15 and the vacated street on the south and west side of Lot 15, and the vacated street on the north side of Lot 18 of the plat of Lots 15 and 18 of Roberts and Hill Subdivision, as same is shown on the plat thereof recorded in Book 4 of Plats at Page 166 of Ada County Records, and also a portion of Lot 11 and all of Lot 14, and the vacated street lying on the west side of Lots 11 and 14 of Roberts and Hill Subdivision, as same is shown on the plat thereof recorded in Book 4 of Plats at Page 159 of Ada County Records, all located in the SW 1/4 of the NE 1/4 and the NW 1/4 of the SE 1/4 of Section 14, T. 4 N., R. 1 E., B.M., Ada County, Idaho, more particularly described as follows:

Beginning at the Center 1/4 section corner of Section 14 of said T. 4 N., R. 1 E., said point being the **REAL POINT OF BEGINNING**, (from which point the 1/4 section corner common to Sections 13 and 14 of said T. 4 N., R. 1 E., bears South 88°50'39" East, 2635.24 feet distant);

Thence from said Center 1/4 corner, North 00°33'25" East, 991.70 feet on the north-south mid-section line of said Section 14 and the westerly boundary of said Roberts and Hill Subdivision, to the westerly lot corner common to lots 10 and 11 of said Roberts and Hill Subdivision;

Thence South 88°32'59" East, 540.93 feet on the lot line common to said lots 10 and 11, to a point on a curve on the southerly right-of-way line of the new Hill Road alignment, as same is shown on that Record-of-Survey Number 5269, Instrument Number 101007837, of Ada County Records;

Thence 144.75 feet along the arc of a curve to the left, said curve having a radius of 1193.92 feet, a central angle of 6°56'47" and a chord distance of 144.66 feet which bears South 45°20'44" East, to a point on the westerly right-of-way line of North Duncan Lane, said point also being on the easterly lot line of Lot 11 of said Roberts and Hill Subdivision;

Thence South 00°27'37" West, 889.36 feet on the westerly right-of-way line of North Duncan Lane and the Easterly lot line of Lots 11, 14 and 15 of said Roberts and Hill Subdivision and the extension of said line to a point on the east-west mid-section line of said section 14;

EX A

Thence South  $00^{\circ}33'36''$  West, 15.00 feet on the westerly right-of-way line of North Duncan Lane to the northeast corner of Matlock Place Subdivision, as same is shown on the plat thereof recorded in Book 81 of Plats at Page 8781 of Ada County Records;

Thence North  $88^{\circ}50'39''$  West, 646.29 feet on the northerly boundary line of said Matlock Place Subdivision to the northwest corner of said Subdivision;

Thence North  $0^{\circ}32'46''$  East, 15.00 feet on the north-south mid-section line of said Section 14 to the point of beginning. Said parcel containing 14.77 acres more or less.

**PREPARED BY:**  
Engineering NorthWest, LLC



**James R. Washburn, PLS**

Matlock Place #2  
T 4N, R 1E, Section 14

ADA COUNTY RECORDER  
DAVID HAYWARD

2002 AUG 29 PM 2:12

RECORDED - REQUEST OF

7pgs FEE. 0 DEPUTY. MC

102098274

Ada County Highway District  
(Reserved for Ada County Recorder)

## PERPETUAL STORM WATER DRAINAGE EASEMENT

This Perpetual Storm Water Drainage Easement ("Easement") is made as of the 23 day of August, 2002, by and between **Hillview Development Corporation, an Idaho Corporation** (hereinafter "Grantor") and Ada County Highway District, a body politic and corporate of the State of Idaho (hereinafter "ACHD");

### WITNESSETH:

For good and sufficient consideration it is agreed:

#### Section 1. Recitals.

1.1 Grantor owns a parcel of real property located in Ada County, Idaho, a portion of which is more particularly described and depicted on Exhibit "A" attached hereto (the "Servient Estate").

1.2 Grantor is developing a residential subdivision known as Matlock Place #2, and in order to safely remove storm water from the local streets which will be dedicated to ACHD on recording of the plat of such subdivision (such local streets are hereinafter referred to as the "Dominant Estate") Grantor has agreed to construct and install a storm water drainage swale on the Servient Estate along with associated underground storm water drain lines from the Dominant Estate into the storm water drainage swale (the swale and lines are hereinafter referred to as the "Storm Water Drainage System").

1.3 After construction and installation of the Storm Water Drainage System it will become a part of ACHD's highway system, and to formalize such transfer ACHD desires to obtain this Easement from Grantor, and on the terms and conditions hereinafter set forth the Grantor is willing to grant such Easement to ACHD.

Storm Water Drainage Easement, page 1

(4/26/02)

S:\ACHDRW\Deeds-Easements\Storm Drain Easement-Matlock Place #2.doc

EX "B"

## Section 2. Grant of Easement

2.1 For the period and on the terms and conditions hereinafter set forth, for the benefit of the Dominant Estate, Grantor hereby grants to ACHD an easement on and under the Servient Estate for the Storm Water Drainage System and for the passage and retention of storm water from the Dominant Estate to, into, on, under, over and across the Servient Estate in the Storm Water Drainage System, and for the repair and maintenance, reconstruction and enhancement of the same (hereafter "Authorized Use").

2.2 The easement herein granted is exclusive to ACHD, and no structures, fences or other improvements are to be constructed, or landscaping planted, or use authorized on the Servient Estate by Grantor or Grantor's successors or assigns to the underlying title thereto without the prior written consent of ACHD. Such consent will not be given if, in its sole discretion, ACHD determines the proposed improvement and/or landscaping and/or use may interfere with ACHD's Authorized Use of the Servient Estate. When such consent is given, (i) Grantor has the sole responsibility to maintain and repair such improvements, including irrigation of landscaping, and (ii) if any structures, fences, landscaping or other improvements constructed or planted on the Servient Estate must be removed in order for ACHD to perform its obligations to repair and maintain the Storm Water Drainage System, the costs of removal and replacement or restoration of the same shall be the sole obligation of Grantor, and (iii) in any use of the Storm Water Drainage System by Grantor, Grantor shall not allow the presence, use, generation, release, discharge, storage or disposal in, on or under the Servient Estate of any hazardous materials (defined as any substance or material defined or designated as hazardous or toxic waste, material or substance, or other similar term, by any federal, state or local environmental statute, regulation or occurrence presently in effect or that may be promulgated in the future).

## Section 3. Construction; Acceptance; Repair and Maintenance; Grantor Indemnification; Contractor Warranties.

3.1 At Grantor's sole cost and expense, Grantor shall construct and install the Storm Water Drainage System on the Servient Estate in accordance with designs, plans and specifications approved by ACHD in advance and in writing, and in compliance with all applicable statutes, ACHD policies and standards, and good engineering practices. During construction Grantor shall give ACHD reasonable notice and opportunity to inspect the same.

3.2 When, by written notice given Grantor, ACHD accepts the Storm Water Drainage System as constructed and installed by Grantor on the Servient Estate, ACHD shall maintain and repair the same thereafter, at its sole cost and expense.

3.3 Grantor shall enforce for the benefit of ACHD any warranties contained in the contract for the construction and installation of the Storm Water Drainage System.

**Section 4. Indemnification.**

4.1 Grantor shall indemnify and save and hold harmless ACHD, its Commissioners and employees, from and against all claims, actions, judgments and expenses (including, without limitation, reasonable attorneys' fees incurred by ACHD in defense thereof) for damages, injury or death caused by or arising out of the construction and installation of the Storm Water Drainage System. In addition, if ACHD consents to improvements and/or landscaping and/or Grantor use proposed by Grantor under Section 2.2, Grantor shall indemnify and save and hold harmless ACHD, its Commissioners and employees, from and against all claims, actions or judgments for damages, injury or death, caused by or arising out of Grantor's use of the same, the construction, installation, maintenance and repair of such improvements and/or landscaping, and to comply with applicable environmental laws and regulations, its use of the same, and/or Grantor's failure to comply with applicable environmental laws and regulations.

4.2 Grantor shall indemnify and hold harmless the Servient Estate from and against any and all claims for liens or liens arising out of the construction and installation of the Storm Water Drainage System on the Servient Estate.

4.3 Following its acceptance of the Storm Water Drainage System as constructed and installed by Grantor, subject to the provisions of, and limits of liability set forth in, Idaho Tort Claims Act, ACHD shall indemnify and hold harmless Grantor from and against all claims, actions or judgments for damages, injury or death caused by or arising out of its use of the same, or its failure or neglect to maintain and repair the Storm Water Drainage System.

**Section 5. Term.** The term of this Easement is perpetual.

**Section 6. Covenants Run with the Land.** Throughout the term of this Easement, it shall be a burden upon the Servient Estate and shall be appurtenant to and for the benefit of the Dominant Estate, and shall run with the land.

**Section 7. Attorneys Fees and Costs.** In any suit, action or appeal there- from to enforce or interpret this Easement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees.

**Section 8. Exhibits.** All exhibits attached hereto and the recitals contained herein are incorporated as if set forth in full herein.

**Section 9. Successors and Assigns** This Easement and the covenants and agreements made herein shall inure to the benefit of, and be binding upon, ACHD and Grantor, and Grantor's successors and assigns to the Servient Estate.

Section 10. Notices. All notices given pursuant to this Easement shall be in writing and shall be given by personal delivery, by United States Mail Certified, Return Receipt Requested, or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, addressed to the appropriate party at the address set forth below.

Grantor: Hillview Development Corporation  
150 E Aikens, Suite A  
Eagle, Idaho 83616

ACHD: Ada County Highway District  
318 East 37th Street  
Garden City, Idaho 83714-6499

Section 11. Recordation. This Easement shall be recorded in the Real Property Records of Ada County, Idaho.

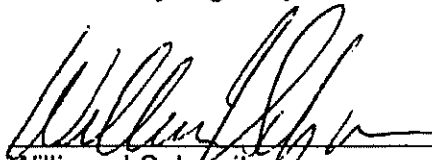
Grantor covenants to ACHD that ACHD shall enjoy the quiet and peaceful possession of the Servient Estate; and, (b) Grantor warrants to the ACHD that Grantor is lawfully seized and possessed of the Servient Estate and has the right and authority to grant this Easement to ACHD.

IN WITNESS WHEREOF, the undersigned have caused this Easement to be executed the day and year first set forth above.

Hillview Development Corporation

  
James Merkle, Manager

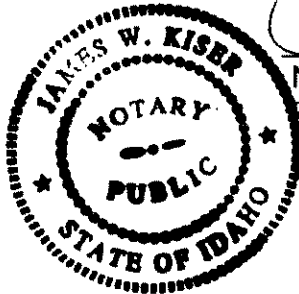
Ada County Highway District

  
William J Schweitzer

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 23 day of August, 2002, before me,  
James L. Merkle, a Notary Public in and for the State of Idaho, Boise  
personally appeared James L Merkle, known or identified to me to be the Manager, of  
the Corporation that executed this instrument or the person who executed this  
instrument on behalf of said Corporation, and acknowledged to me that such  
Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official  
seal the day month and year in this certificate first above written.



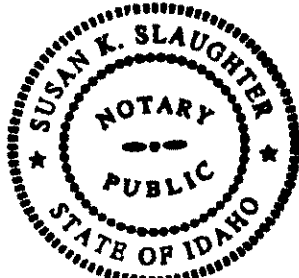
James W. Kiser  
Notary Public for Idaho

Residing at: Boise Idaho 83704  
My commission expires: 1-13-2005

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 27th day of August, 2002, before me,  
Susan K. Slaughter, a Notary Public in and for the State of Idaho,  
personally appeared William J. Schweitzer, known or identified to me to be the Director  
of the Ada County Highway District, the person who executed this instrument on behalf  
of said District, and acknowledged to me that the Ada County Highway District executed  
the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official  
seal the day and year first above written.



Susan K. Slaughter  
Notary Public for Idaho  
Residing at: Boise Idaho  
My commission expires: 4-8-2003

# **Engineering NorthWest, LLC**

423 N. Ancestor Place, Suite 180

Boise, Idaho 83704

(208) 376-5000 • Fax (208) 376-5556

Project No. 01-046-01

Date: August 15, 2002

## **ACHD DRAINAGE POND EASEMENT FOR PROPOSED MATLOCK PLACE SUBDIVISION NO. 2**

A parcel of land located in a portion of the SW 1/4 of the NE 1/4 of Section 14, T.4 N., R.1 E., B.M., Ada County, Idaho, being more particularly described as follows:

Commencing at an aluminum cap monument marking the center 1/4 corner of said Section 14 from which an aluminum cap monument marking the E 1/4 corner of said Section 14 bears South 88°50'39" East, 2635.24 feet;

Thence on the westerly boundary line of said SW 1/4 of the NE 1/4 of Section 14, North 00°33'25" East, 85.00 feet to a point, said point also being the REAL POINT OF BEGINNING;

Thence continuing on said westerly boundary line, North 00°33'25" East, 55.59 feet;

Thence leaving said westerly boundary line, South 88°32'59" East, 67.21 feet;

Thence North 45°14'01" East, 53.38 feet to a point on a non-tangent curve to the left;

Thence along said curve to the left 52.02 feet, said curve having a radius of 50.00 feet, a central angle of 59°36'25" and a long chord of 49.70 feet which bears South 81°30'44" East;

Thence South 00°27'37" West, 87.25 feet;

Thence North 88°50'39" West, 154.11 feet to the real point of beginning. Said parcel contains 10,753 square feet or 0.247 acres, more or less.

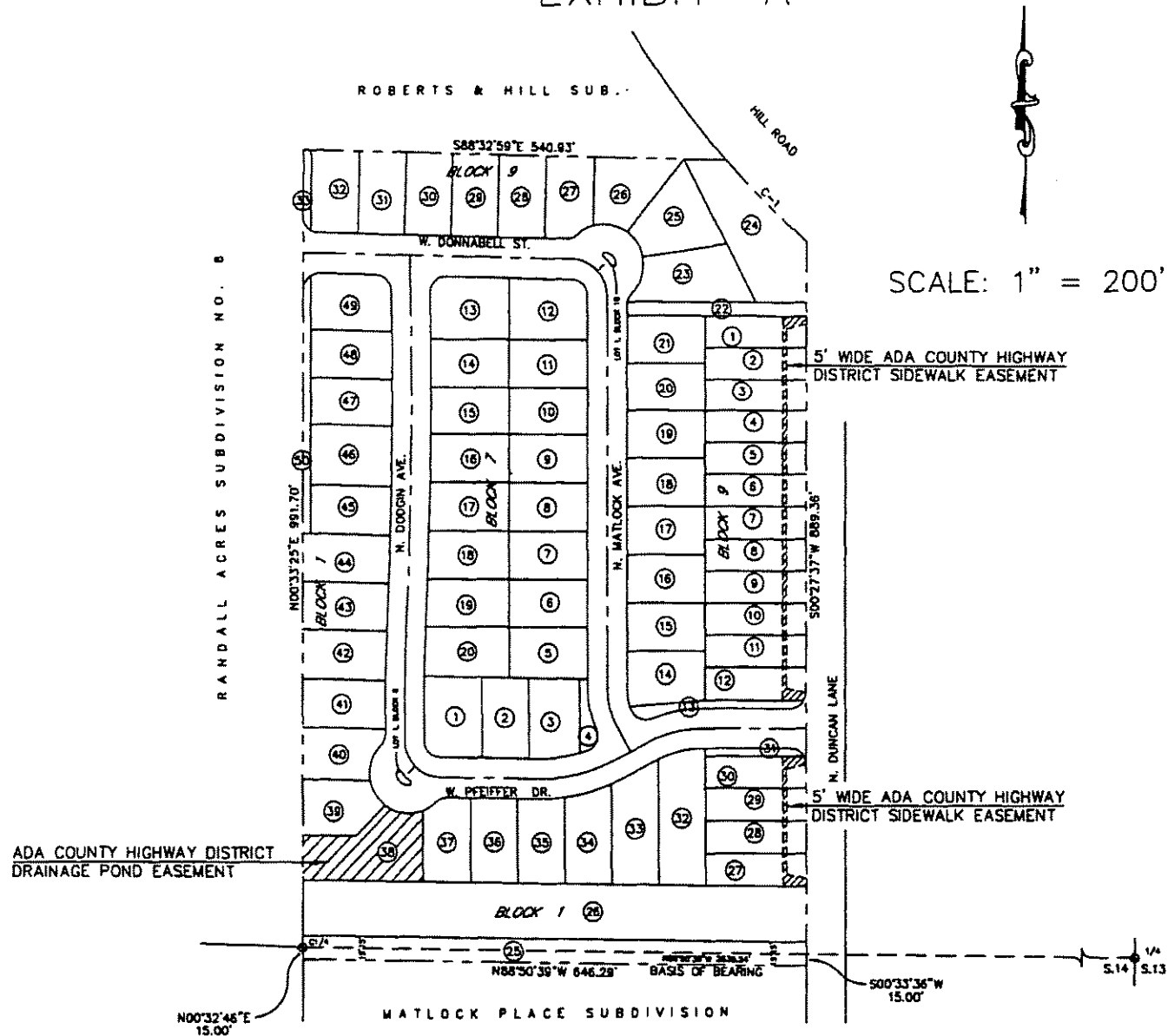
PREPARED BY:



EXHIBIT "A"

Engineering NorthWest, LLC  
James R. Washburn, PLS

# MATLOCK PLACE SUB. NO. 2 EXHIBIT "A"



**OPERATION AND MAINTENANCE MANUAL  
FOR LIGHT  
MAINTENANCE OF THE  
  
STORMWATER DETENTION POND**

**LOCATED WITHIN**

**MATLOCK PLACE SUBDIVISION &  
MATLOCK PLACE SUBDIVISION NO. 2**

**ADA COUNTY, IDAHO**

**August 13, 2002**

Ex C

**MATLOCK PLACE SUBDIVISION & MATLOCK PLACE**  
**SUBDIVISION NO. 2**  
**STORMWATER DETENTION POND O & M MANUAL**

This manual outlines the duties to be performed by the Matlock Place Homeowner's Association for the light maintenance of the stormwater detention pond located within the common lots of Matlock Place Subdivision & Matlock Place Subdivision No. 2.

**PURPOSE OF STORMWATER FACILITY:** The primary purpose of the stormwater facilities is to convey stormwater from the streets through a system of buried pipelines to the stormwater detention pond. The pond is intended to control the release of the stormwater at a pre-developed rate. Any water in excess of this rate will be temporarily stored within the stormwater detention pond. After the storm subsides, the detention pond will empty at the pre-developed rate of flow.

Any additions to the facility, such as park benches or additional landscaping, should be considered temporary and may be removed when heavy maintenance of the facility is needed. Replacement of these items shall be the responsibility of the Matlock Place Homeowners Association.

**POND LOCATION:** The stormwater detention pond is located north of Lots 18-20, Block 1 & Lot 38, Block 1, of the Matlock Place Subdivision & Matlock Place Subdivision No. 2 plats. A reduced copy of the subdivision plats and copies of the engineering plans for stormwater ponds are attached herewith. The maintenance area for the stormwater detention ponds shall include the entire area in which the pond is located.

For the various light maintenance items involved, periodic inspections are to be made of the pond in addition to any work required in each of the categories below. These inspections shall be performed a minimum of once every month.

**MOWING AND LANDSCAPE MAINTENANCE:** The homeowner's association shall perform the normal routine surface maintenance such as mowing lawns, weed control, and ensuring proper irrigation of landscaping and lawn areas. The grass within the pond is an important part of the treatment of the stormwater that discharges into said pond. As such, the grass shall be maintained in a good-healthy condition.

**TRASH CLEANUP:** During the periodic inspections, any trash found within the boundary of the stormwater detention pond shall be collected and disposed of offsite.

**BANK STABILITY:** During the periodic inspections, the banks of the stormwater pond shall be checked for any water spots, water entering the pond from adjacent lots, rodent holes, and bank erosion. If any of these problems are found, the homeowner's association shall contact a licensed contractor to make the necessary repairs to the pond.

**UNDERGROUND STORM DRAIN FACILITY:** During the periodic inspections, the underground storm drain facility shall be checked for clogging or standing water of piping, manholes, or structures. If such is found, the homeowner's association shall contact the Ada County Highway District (ACHD) so they can perform their "heavy" maintenance responsibilities.

**OPINION OF PROBABLE ANNUAL OPERATING COSTS:** The user of this information should note that the amounts listed below are only associated with the storm water detention pond described herein.

ITEM	Budget	
	Phase 1	Phase 2
Landscape Maintenance	\$ 500	\$ 605
Landscape Repairs	150	200
Insurance	50	50
Association Management	100	100
Miscellaneous	100	100
<b>TOTAL</b>	<b>\$ 900</b>	<b>\$ 1055</b>

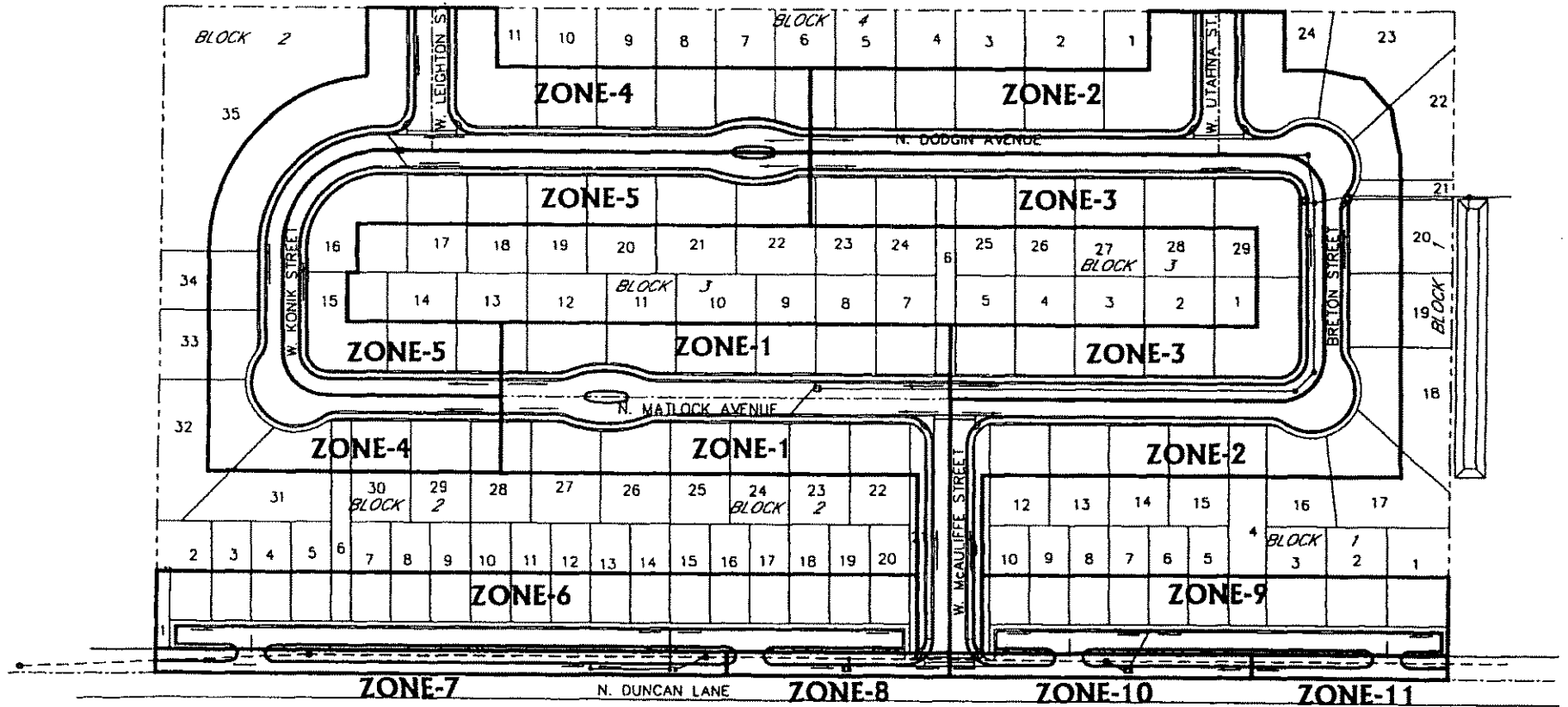


ZONE-1 73,512 SQ. FT. ROW 29,646 SQ. FT.  
 ZONE-2 115,307 SQ. FT. ROW 44,701 SQ. FT.  
 ZONE-3 72,698 SQ. FT. ROW 26,575 SQ. FT.  
 ZONE-4 92,895 SQ. FT. ROW 33,033 SQ. FT.  
 ZONE-5 60,601 SQ. FT. ROW 23,010 SQ. FT.

ZONE-6 61,100 SQ. FT. BC-S/V 19,303 SQ. FT.  
 ZONE-7 14,343 SQ. FT. CL-BC 7,459 SQ. FT.  
 ZONE-8 5,575 SQ. FT. CL-BC 3,252 SQ. FT.  
 ZONE-9 37,273 SQ. FT. BC-S/V 11,909 SQ. FT.  
 ZONE-10 7,582 SQ. FT. CL-BC 4,295 SQ. FT.  
 ZONE-11 4,867 SQ. FT. CL-BC 2,530 SQ. FT.



SCALE: 1" = 100'



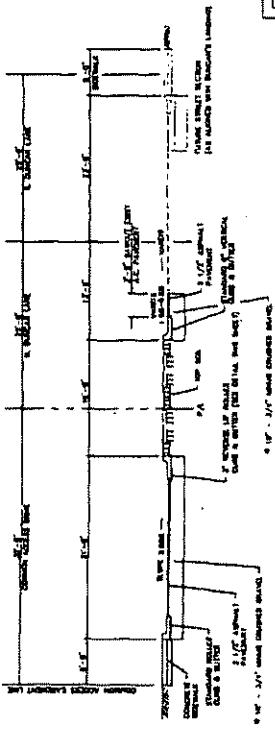
THESE DRAWINGS, OR ANY PORTION THEREOF, SHALL NOT BE USED ON ANY PROJECT OR EXTENSIONS OF THIS PROJECT EXCEPT BY AGREEMENT IN WRITING WITH ENGINEERING NORTHWEST, LLC.

**Engineering NorthWest, LLC**

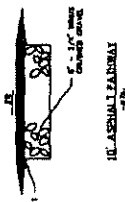
10221 WEST EMERALD  
SUITE 140  
BOISE, IDAHO 83704  
(208)376-5000

DRAINAGE MAP

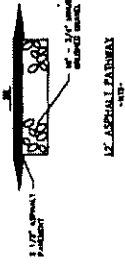
MATLOCK PLACE SUBDIVISION



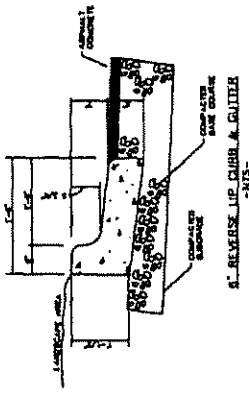
N. DUNCAN LANE & COMMON ACCESS DRIVE  
-NTS-  
A. ALUMINUM SECTION 1/2\"/>



12\"/>



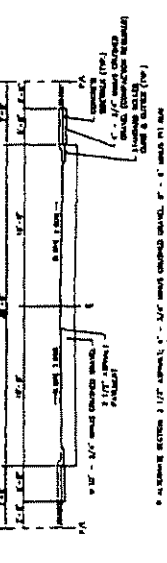
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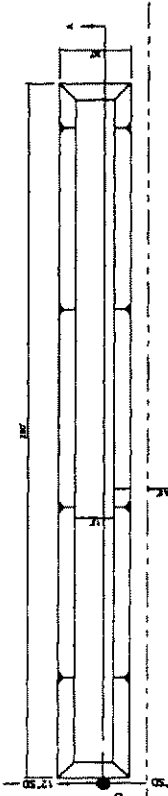
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GREASE/SAND TRAP TABLE

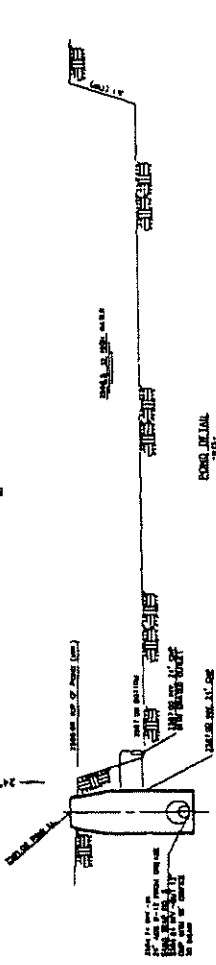
TRAFFIC VOLUME	10' W	12' W	14' W	16' W	18' W	20' W	22' W	24' W	26' W	28' W	30' W
1	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
2	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
3	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
4	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
5	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
6	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
7	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
8	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
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11	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
12	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
13	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
14	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
15	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
16	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
17	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
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28	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
29	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000
30	1000	1200	1400	1600	1800	2000	2200	2400	2600	2800	3000



TYPICAL GREASE/SAND TRAP



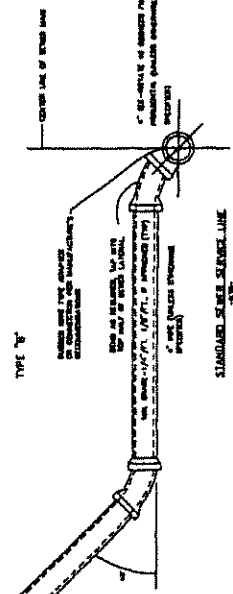
TYPICAL GREASE/SAND TRAP



STANDARD SEWER SERVICE LINE



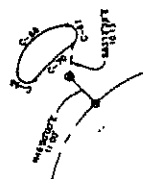
12\"/>



12\"/>

AND HILL SUBDIVISION, LOCATED IN THE SW1/4 OF THE NE1/4 OF SECTION 14, T.4N., R.1E., B.M., ADA COUNTY, IDAHO

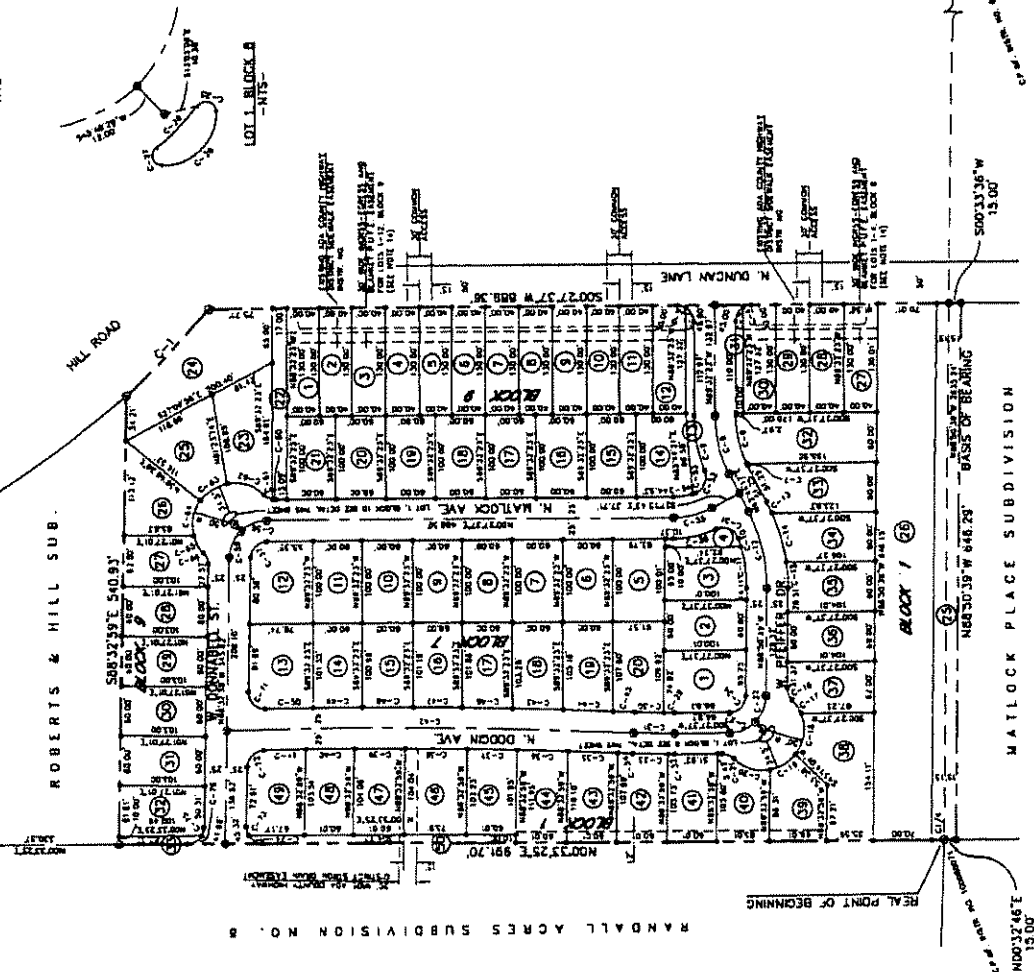
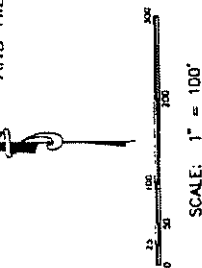
2002  
Engineering NorthWest, LLC  
BOISE, IDAHO



LOT 1, BLOCK 10  
-SUN-



LOT 1, BLOCK A  
-NYS-



MAYLOCK PLACE SUBDIVISION

15.00°

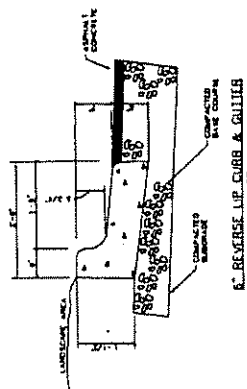
01-046-00  
PAGE 1 OF 2

01-046-00  
PAGE 1 OF 2

notes.

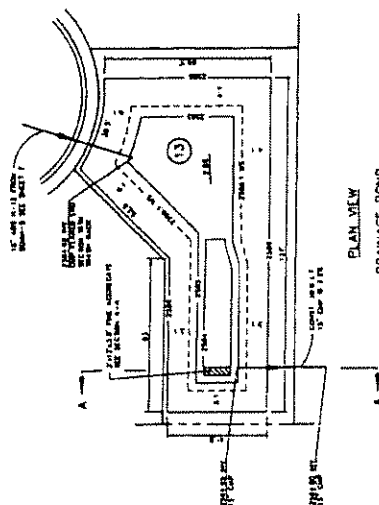
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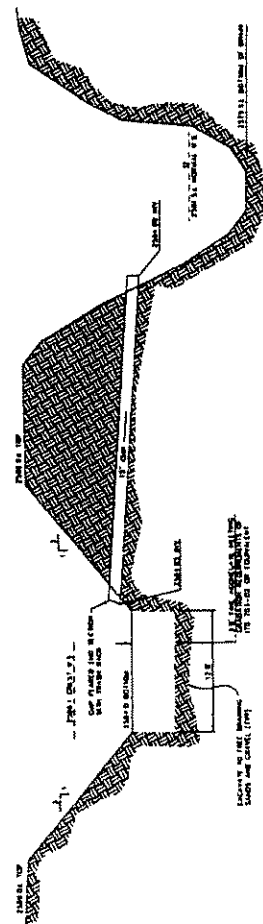


3. REVERSE UP CURB & GULLER  
-NIS-

5" REVERSE LP CURB & GUTS  
-M15-



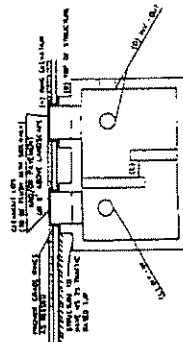
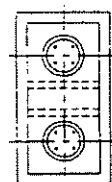
PLAN VIEW  
DRAINAGE POND  
-NTS-



SECTION A-A

WATER TEMP. (°F)	GREASE (lb)	SAND (lb)	DETERGENT (lb)
1	2552.70	2587.30	2587.30
2	2558.48	2597.52	2597.52
3	2564.26	2607.74	2607.74
4	2570.04	2617.96	2617.96
5	2575.82	2628.18	2628.18
6	2581.60	2638.40	2638.40
7	2587.38	2648.62	2648.62
8	2593.16	2658.84	2658.84
9	2598.94	2669.06	2669.06
10	2604.72	2679.28	2679.28
11	2610.50	2689.50	2689.50
12	2616.28	2699.72	2699.72
13	2622.06	2709.94	2709.94
14	2627.84	2720.16	2720.16
15	2633.62	2730.38	2730.38
16	2639.40	2740.60	2740.60
17	2645.18	2750.82	2750.82
18	2650.96	2761.04	2761.04
19	2656.74	2771.26	2771.26
20	2662.52	2781.48	2781.48
21	2668.30	2791.70	2791.70
22	2674.08	2801.92	2801.92
23	2679.86	2812.14	2812.14
24	2685.64	2822.36	2822.36
25	2691.42	2832.58	2832.58
26	2697.20	2842.80	2842.80
27	2702.98	2853.02	2853.02
28	2708.76	2863.24	2863.24
29	2714.54	2873.46	2873.46
30	2720.32	2883.68	2883.68
31	2726.10	2893.90	2893.90
32	2731.88	2904.12	2904.12
33	2737.66	2914.34	2914.34
34	2743.44	2924.56	2924.56
35	2749.22	2934.78	2934.78
36	2755.00	2945.00	2945.00
37	2760.78	2955.22	2955.22
38	2766.56	2965.44	2965.44
39	2772.34	2975.66	2975.66
40	2778.12	2985.88	2985.88
41	2783.90	2996.10	2996.10
42	2789.68	3006.32	3006.32
43	2795.46	3016.54	3016.54
44	2801.24	3026.76	3026.76
45	2807.02	3036.98	3036.98
46	2812.80	3047.20	3047.20
47	2818.58	3057.42	3057.42
48	2824.36	3067.64	3067.64
49	2830.14	3077.86	3077.86
50	2835.92	3088.08	3088.08
51	2841.70	3098.30	3098.30
52	2847.48	3108.52	3108.52
53	2853.26	3118.74	3118.74
54	2859.04	3128.96	3128.96
55	2864.82	3139.18	3139.18
56	2870.60	3149.40	3149.40
57	2876.38	3159.62	3159.62
58	2882.16	3169.84	3169.84
59	2887.94	3180.06	3180.06
60	2893.72	3190.28	3190.28
61	2899.50	3200.50	3200.50
62	2905.28	3210.72	3210.72
63	2911.06	3220.94	3220.94
64	2916.84	3231.16	3231.16
65	2922.62	3241.38	3241.38
66	2928.40	3251.60	3251.60
67	2934.18	3261.82	3261.82
68	2939.96	3272.04	3272.04
69	2945.74	3282.26	3282.26
70	2951.52	3292.48	3292.48
71	2957.30	3302.70	3302.70
72	2963.08	3312.92	3312.92
73	2968.86	3323.14	3323.14
74	2974.64	3333.36	3333.36
75	2980.42	3343.58	3343.58
76	2986.20	3353.80	3353.80
77	2991.98	3364.02	3364.02
78	2997.76	3374.24	3374.24
79	3003.54	3384.46	3384.46
80	3009.32	3394.68	3394.68
81	3015.10	3404.90	3404.90
82	3020.88	3415.12	3415.12
83	3026.66	3425.34	3425.34
84	3032.44	3435.56	3435.56
85	3038.22	3445.78	3445.78
86	3044.00	3456.00	3456.00
87	3049.78	3466.22	3466.22
88	3055.56	3476.44	3476.44
89	3061.34	3486.66	3486.66
90	3067.12	3496.88	3496.88
91	3072.90	3507.10	3507.10
92	3078.68	3517.32	3517.32
93	3084.46	3527.54	3527.54
94	3090.24	3537.76	3537.76
95	3096.02	3547.98	3547.98
96	3101.80	3558.20	3558.20
97	3107.58	3568.42	3568.42
98	3113.36	3578.64	3578.64
99	3119.14	3588.86	3588.86
100	3124.92	3599.08	3599.08

SEE STREET PLAN & PROFILES FOR LOCATIONS/SIZES OF  
HOLE'S COMING IN AND OUT OF GREASE/SAND TRAPS  
NOTE: FURCAT MIGHT VARY'S ACCORDING TO SPECIFIC  
LOCATION OF HOLE'S



PHYSICAL GREASE/SAND RAP (PCR 15PWC SD: 672)

TYPICAL CHEESE SAND REAP

-0-18-

123 R AMLISTON CT  
MAY 1960  
FORM. DATE 2/7/64

**Engineering NorthWest, LLC**

### STREET & DRAINAGE DETAILS

**MATLOCK PLACE  
SUBDIVISION NO. 2**

b  
 1330S  
 10-11-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040

JOA COUNTY RECORDER  
J. DAVID NAVARRO  
2002 AUG 16

RECORDED - REQUEST OF

3300  
FEE DEPUTY J. P. JONES

2002 AU 16 PM 3:37

102092838

LICENSE AGREEMENT

LICENSE AGREEMENT, made and entered into this 7<sup>th</sup> day of August, 2002, by and among DRAINAGE DISTRICT NO. 2, a drainage district organized and existing under and by virtue of the laws of the State of Idaho, party of the first part, hereinafter referred to as the "District", and

HILLVIEW DEVELOPMENT CORPORATION, an Idaho corporation,  
150 E. Aikens, Suite A, Eagle, Idaho 83616

party or parties of the second part, hereinafter referred to as the "Licensee",

WITNESSETH:

WHEREAS, the Licensee is the owner of the real property (burdened with the easement of the District hereinafter mentioned) particularly described in the "Legal Description" attached hereto as Exhibit A and by this reference made a part hereof; and,

WHEREAS, the District owns the drainage ditch known as DRAIN NO. 15 (hereinafter sometimes referred to as "drain"), an integral part of the District's drainage works and system, together with the easement therefor to drain water, operate, clean, maintain, and repair the drain, and access the drain for those purposes; and,

WHEREAS, said drain and easement crosses and intersects Licensee's real property as shown on Exhibit B attached hereto and by this reference made a part hereof; and,

WHEREAS, the Licensee desires a license to approve and authorize construction and activity affecting said drain or the District's easement in its course across the lands of the Licensee in the manner and under the terms and conditions hereinafter set forth; and,

WHEREAS, it is necessary that the District protect absolutely its right to control any modification or alteration of its watercourses and its right of way along its watercourses;

NOW, THEREFORE, for and in consideration of the premises and of the covenants, agreements and conditions hereinafter set forth, the parties agree as follows:

1. The District approves, authorizes and grants Licensee the right to maintain its prior and proposed modification of or encroachment upon the District's drain and easement in the manner generally described in the "Purpose of License" attached hereto as Exhibit C and by this reference made a part hereof. Any modification of said drain by the Licensee or encroachment upon the District's easement along said drain shall be performed and maintained in accordance with the "Special Conditions" stated in Exhibit D, attached

LICENSE AGREEMENT - 1

EX " D

hereto and by this reference made a part hereof.

2. This agreement pertains only to the Licensee's modification of said drain or encroachment to the District's easement for the purposes and in the manner described herein. The Licensee shall not change the location of the drain, bury the drain in pipe, or otherwise alter the drain in any manner not described in this agreement without first obtaining the written permission of the District.

3. Each facility ("facility" as used in this agreement means any object or thing of any nature installed in or on the District's easement by the Licensee or the Licensee's predecessor in interest) shall be constructed, installed, operated, maintained, and repaired at all times by the Licensee at the cost and expense of the Licensee.

4. Licensee agrees that its prior and proposed construction, installation, operation, maintenance and repair each facility and conduct its activities within or affecting the District's easement so as not to constitute or cause:

- a. a hazard to any person or property;
- b. an interruption or interference with the flow of water in the drain;
- c. an increase in the loss of water from the drain;
- d. the subsidence of soil within or adjacent to the easement;
- e. any other damage to the District's easement and drainage works.

5. The Licensee agrees to indemnify, hold harmless, and defend the District from all claims for damages arising out of any of the Licensee's construction or activity which constitutes or causes any of the circumstances enumerated in the preceding paragraph, 4.a. through 4.e., or any other damage to the easement and drainage works which may be caused by the construction, installation, operation, maintenance, repair, and any use or condition of any facility.

6. Licensee agrees that the work performed and the materials used in such construction shall at all times be subject to inspection by the District and the District's engineers, and that final acceptance of the proposed work shall not be made until all such work and materials shall have been expressly approved by the District. Such approval by the District shall not be unreasonably withheld.

7. The District reserves the right, at the District's option, to remove any facility installed by the Licensee and to repair any alteration by the Licensee of said drain and the easement therefor which does not comply with the terms of this agreement, and to remove any impediment to the flow of water in said drain and any unsafe condition or hazard caused by the Licensee, at any time, and the Licensee agrees to pay to the District, on demand, the costs which shall be reasonably expended by the District for such purposes. If the Licensee shall fail in any respect to properly maintain and repair such facility, then the District, at its option, and without impairing or in anyway affecting its other rights and remedies hereunder, shall have the right to perform the necessary maintenance and repairs and the Licensee agrees to pay to the District, on demand, the cost or expense which shall be reasonably expended or incurred by the District for such purposes. The District shall give reasonable notice to the Licensee prior to the District's performing such maintenance, repair or other work except that in cases of emergency the District shall attempt to give such notice as reasonable under the circumstances. Nothing in this paragraph shall create or support any claim of any kind by Licensee or any

third party against the District for failure to exercise the options stated in this paragraph, and Licensee shall indemnify, hold harmless and defend the District from any claims made against the District arising out of or relating to the terms of this paragraph except for claims arising solely out of the negligence of the District.

8. Neither the terms of this agreement, the permission granted by the District to the Licensee, the Licensee's activity which is the subject of this agreement, nor the parties exercise of any rights or performance of any obligations of this agreement, shall be construed or asserted to extend the application of any statute, rule, regulation, directive or other requirement, or the jurisdiction of any federal, state, or other agency or official to the District's ownership, operation, and maintenance of its drains, drainage works and facilities which did not apply to the District's operations and activities prior to and without execution of this agreement. In the event the District is required to comply with any such requirements or is subject to the jurisdiction of any such agency as a result of execution of this agreement or the Licensee's activity authorized hereunder, Licensee shall indemnify, hold harmless and defend the District from all costs and liabilities associated with the application of such laws or the assertion of such jurisdiction or, at the option of the District, this agreement shall be of no force and effect and the Licensee shall cease all activity and remove any facility authorized by this agreement.

9. In addition to all other indemnification provisions herein, Licensee further agrees to indemnify, hold harmless and defend the District from any injury, damages, claim, lien, cost and/or expense (including reasonable attorney's fees) incurred by, or asserted against, the District by reason of the negligent acts or omissions of Licensee or its agents, contractors or subcontractors in performing the construction and activities authorized by this agreement.

10. The Licensee agrees that the District shall not be liable for any damages which shall occur to any facility, structure, plant, or any other improvement of any kind or nature whatsoever which the Licensee shall install on the said easement area of the District in the reasonable exercise of the rights of the District in the course of performance of maintenance or repair of said drain. The Licensee further agrees to suspend its use of the said easement area when the use of the easement area is required by the District for maintenance or repair under this or any other paragraph of this agreement.

11. Licensee shall not excavate, nor place any structures, nor plant any trees, shrubs or landscaping of any kind within the District's easement area except as referred to in this agreement or exhibits hereto without the prior written consent of the District.

12. Should either party incur costs or attorney fees in connection with efforts to enforce the provisions of this agreement, whether by institution of suit or not, the party rightfully enforcing or rightfully resisting enforcement of the provisions of this agreement, or the prevailing party in case suit is instituted, shall be entitled to reimbursement for its costs and reasonable attorney fees from the other party.

13. The parties hereto understand and agree that the District has no right in any respect to impair the uses and purposes of the drainage works and system of the District by this agreement, nor to grant any rights in its drainage works and system incompatible with the uses to which such drainage works and system are devoted and dedicated and that this contract shall be at all times construed according to such principles.

14. Nothing herein contained shall be construed to impair the easement and right of way of the District in the said drain and all uses of said drain by the Licensee and the license herein provided therefor shall remain inferior and subservient to the rights of the District to the use of said drain for the drainage of water.

15. In the event of the failure, refusal or neglect of the Licensee to comply with all of the terms and conditions of this agreement, the license of the Licensee under the terms hereof may be terminated by the District, and any facility, structure, plant, or any other improvement in or over said drain, and the right of way therefor, which may impede or restrict the maintenance and operation of such drain by the District with its equipment for the maintenance of its said drain may be removed by the District.

16. The Licensee agrees to pay attorney fees or engineering fees charged by the attorney for the District or by the engineers for the District in connection with the preparation of this License Agreement or in connection with negotiations covering the terms and conditions of this License Agreement. Licensee also agrees to pay any fees incurred in connection with recording this Agreement.

17. Nothing in this agreement shall create or support a claim of estoppel, waiver, prescription or adverse possession by the Licensee or any third party against District.

18. This agreement is not intended for the benefit of any third party and is not enforceable by any third party.

19. If any provision of this agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, all remaining provisions of this agreement shall remain in full force and effect.

20. The word "Licensee", if used in the neuter in this agreement, includes the masculine and feminine genders, the singular number includes the plural, and the plural number includes the singular.

The covenants, conditions and agreements herein contained shall constitute covenants to run with, and running with, all of the lands of the Licensee described in said Exhibit A, and shall be binding on each of the parties hereto and on all parties and all persons claiming under them or either of them, and the advantages hereof shall inure to the benefit of each of the parties hereto and their respective successors and assigns.

DRAINAGE DISTRICT NO. 2

By Eugene O. Muller  
Its President

ATTEST:

B. J. [Signature]  
Its Secretary

HILLVIEW DEVELOPMENT CORPORATION,  
an Idaho corporation,

  
James C. Merkle, President

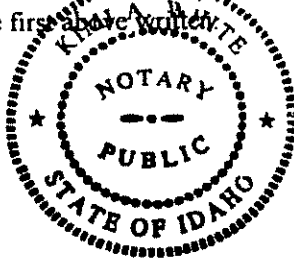
ATTEST:


STATE OF IDAHO )

County of Adair ) ss:

On this 7<sup>th</sup> day of August, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Eugene C. Muller and B. James Monczynski, known to me to be the President and Secretary, respectively, of DRAINAGE DISTRICT NO. 2, the drainage district that executed the foregoing instrument and acknowledged to me that such drainage district executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



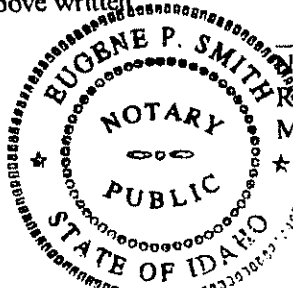
  
Notary Public for Idaho  
Residing at Bow, Idaho  
My Commission Expires: 11/01/04

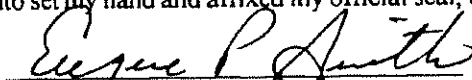
STATE OF IDAHO )

County of Adair ) ss.

On this 29<sup>th</sup> day of July, 2002, before me, the undersigned, a notary public in and for said state, personally appeared James C. Merkle and \_\_\_\_\_, known to me to be the President and \_\_\_\_\_, respectively, of HILLVIEW DEVELOPMENT CORPORATION, the entity that executed the foregoing instrument, and acknowledged to me that such entity executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



  
Notary Public for Idaho  
Residing at BOISE, Idaho  
My Commission Expires: 3/10/2006

**Engineering North West, LLC**

10221 West Emerald, Suite 140

Boise, Idaho 83704

(208) 376-5000 • Fax (208) 376-5556

Project No. 01-046-01

Date: Jan. 10, 2002

**MATLOCK PLACE NO. 2  
PRELIMINARY PLAT DESCRIPTION**

A parcel of land being Lot 15 of the plat of Lots 15 and 18 of Roberts and Hill Subdivision, as same is shown on the plat thereof recorded in Book 4 of Plats at Page 166 of Ada County Records, and also a portion of Lot 11 and all of Lot 14 and the vacated street lying on the west side of Lots 11, 14 and 15 of Roberts and Hill Subdivision as same is recorded in Book 4 of Plats at Page 159 of Ada County Records, all located in the SW 1/4 of the NE 1/4 of Section 14, T. 4 N., R. 1 E., B.M., Ada County, Idaho, more particularly described as follows:

Commencing at the center 1/4 corner of Section 14 of said T. 4 N., R. 1 E.;

Thence North 0°33'25" East, 15.00 feet on the north-south mid-section line of said Section 14 and the westerly boundary of said Roberts and Hill Subdivision to the southwest corner of Lot 15 of said Roberts and Hill subdivision, which point is the REAL POINT OF BEGINNING;

Thence continuing North 0°33'25" East, 976.70 feet on said north-south mid-section line and westerly boundary to the westerly lot corner common to lots 10 and 11 of said Roberts and Hill Subdivision;

Thence South 88°32'59" East, 540.93 feet on the lot line common to said lots 10 and 11, to a point on a curve on the southerly right-of-way line of the New Hill Road, as same is shown on that Record-of-Survey Number 5269, Instrument Number 101007837, of Ada County Records;

Thence 144.75 feet along the arc of a curve to the left, said curve having a radius of 1193.92 feet, a central angle of 6°56'47" and a chord distance of 144.66 feet which bears South 45°20'44" East, to a point on the westerly right-of-way line of North Duncan Lane, said point also being on the easterly lot line of Lot 11 of said Roberts and Hill Subdivision;

Thence South  $0^{\circ}27'37''$  West, 874.35 feet on the westerly right-of-way line of North Duncan Lane and the Easterly lot line of Lots 11, 14 and 15 of said Roberts and Hill Subdivision to the southeast corner of said Lot 15;

Thence North  $88^{\circ}50'39''$  West, 646.27 feet (formerly described as 647.02 feet) on the southerly lot line of said Lot 15, which line is parallel to and 15.00 feet northerly of the east-west mid-section line of said Section 14, to the real point of beginning. Containing 14.32 acres more or less.

PREPARED BY:  
Engineering NorthWest, LLC



James R. Washburn, PLS

POOR COPY

Drainage District No. 2 Drain No. 15  
in NE1/4, S.14, T.4N, R.1E, B.M.,  
Ada County, Idaho (August 1994)

Hill Road -->

<-Horseshoe Bend Rd.

Drain No. 15

<--Duncun Lane

State Street -->

Bogart Lane -->

Exhibit B

EXHIBIT C  
Purpose of License

The purpose of this License Agreement is to permit and authorize Licensee to:

1. discharge storm water into the District's drain;
2. discharge gravity irrigation overflow into the District's drain;
3. continue to drain irrigation water from a ditch on the west side of Licensee's property through an existing drop pipe; and
4. grass landscape, specifically excluding trees, within the District's easement,

all within Licensee's property, Matlock Place Subdivision No. 2, described in Exhibit A, located northwest of the intersection of Duncan Lane and State Street in Eagle, Ada County, Idaho.

EXHIBIT D  
Special Conditions

a. Construction shall be in accordance with certain plans consisting of nine sheets: sheet 1 entitled "Matlock Place Subdivision No. 2, Cover Sheet & Notes," bearing engineer's stamp dated June 17, 2002; sheet 3 entitled "Matlock Place Subdivision No. 2, Street Plan & Profile," bearing engineer's stamp dated June 17, 2002; sheet 4 entitled "Matlock Place Subdivision No. 2, N. Duncan Lane, Street Plan & Profile," bearing engineer's stamp dated June 17, 2002; sheet 5 entitled "Matlock Place Subdivision No. 2, Common Drives Street Plan & Profile," bearing engineer's stamp dated June 17, 2002; sheet 6 entitled "Matlock Place Subdivision No. 2, Ulmer Street & N. Dodgin Ave., Street Plan & Profile," bearing engineer's stamp dated June 17, 2002; sheet 7 entitled "Matlock Place Subdivision No. 2, XXX, Street Plan & Profile," bearing engineer's stamp dated June 17, 2002; sheet 8 entitled "Matlock Place Subdivision No. 2, W. Donnabell St. & N. Matlock Ave., Street Plan & Profile," bearing engineer's stamp dated June 17, 2002; sheet 9 entitled "Matlock Place Subdivision No. 2, Street & Drainage Details," bearing engineer's stamp dated June 17, 2002; and sheet 13 entitled "Matlock Place Subdivision No. 2, Irrigation Plan & Profile," bearing engineer's stamp dated June 17, 2002. These plans have been delivered to the District, are in its possession in its office, and are incorporated herein by this reference.

b. Licensee shall install a sand and grease trap as part of its facilities for discharge of storm water into the District's drain in accordance with the above-referenced plans.

c. The Licensee recognizes and acknowledges that the license granted in this agreement by the District pertains only to the rights of the District as owner of an easement. The District has no right or power to create rights in the Licensee affecting the holder of title to the property subject to the District's easement. Any such rights affecting fee title must be acquired by the Licensee from the holder of title to the property. Should Licensee fail to obtain such rights from the holder of title to the property or should the rights obtained prove legally ineffectual, Licensee shall hold harmless, indemnify and defend the District from any claim by any party arising out of or related to such failure of rights and at the option of the District this agreement shall be of no force and effect.

d. Licensee represents that Licensee has complied with all federal, state or other laws, rules, regulations, directives or other requirements in any form regarding environmental matters, and specifically those relating to pollution control and water quality, as may be applicable under the subject matter, terms or performance of this agreement broadly construed. Licensee recognizes its continuing duty to comply with all such requirements that now exist or that may be implemented or imposed in the future. By executing this agreement the District assumes no responsibility or liability for any impact upon or degradation of water quality or the environment resulting from the discharge or other activity by Licensee which is the subject of this agreement.

e. Licensee hereby indemnifies, holds harmless and shall defend the District from any and all penalties, sanctions, directives, claims or any action taken or requirement imposed by any party or entity, public or private, with respect to environmental matters relating to the subject matter, terms or performance of this agreement unless the District shall be solely responsible for the condition or activity which gives rise to any such penalty, sanction, directive, claim, action or requirement.

f. In the event the District is required by any governmental authority to acquire or comply with any permit or other operational requirements associated with Licensee's discharge and other activity which is the subject of this agreement, Licensee shall indemnify, hold harmless and defend the District from all costs and liabilities associated with such permit and other requirements, including but not limited to all costs associated with all permit acquisition, construction, monitoring, treatment, administrative, filing and other requirements.

g. The parties to this agreement recognize this license agreement is an accommodation to Licensee. The District by this agreement does not assume, create, or exercise legal or other authority, either express or implied, to regulate, control, or prohibit the discharge or contribution of pollutants or contaminants to the District's facilities or to any groundwater, waters of the State of Idaho or the United States, or any other destination. Such authority, to the extent that it exists, is possessed and exercised by governmental environmental agencies.

h. Licensee represents to District that the Ada County Highway District will assume maintenance and control of all of discharge described in Exhibit C to this agreement. The District may, at its option, release Licensee from the obligations imposed by this agreement with respect to said discharge, provided that the Ada County Highway District has notified the District in writing of its assumption of control and maintenance of said discharge and Licensee has submitted a written request to the District for such release. As a condition of such release, the District may, at its option, require the execution of an addendum to this license agreement in which the Ada County Highway District agrees to and does assume the obligations of the Licensee under this license agreement. Any such release of Licensee by District must be in writing and may be in the form of a letter to Licensee from District's superintendent or attorney. District has no objection to assumption of maintenance and control responsibilities by the Ada County Highway District but hereby surrenders no rights or control over its drain.

i. Should the Ada County Highway District assume control and maintenance of said discharge but Licensee not be released from the terms of this agreement as provided above, neither the fact of this agreement nor any terms of this agreement shall in any manner limit or restrict any claims, rights or remedies

of District against Ada County Highway District for damages or for indemnification, including defense of District by Ada County Highway District, arising out of or related to the acts of Ada County Highway District or its agents in connection with its control and maintenance of said discharge.

j. Licensee shall not excavate, place any structures nor plant any trees, shrubs, or landscaping, discharge or perform any construction or activity within the District's easement, without the prior written consent of the District. The District's easement for this section of its drain, as it is adjacent to Licensee's property, has been shifted to the south so that the District's easement is 100 feet, approximately 71.20-65 feet to the left and 28.80-35 feet to the right of the centerline looking downstream. Licensee shall designate on the Plat for Matlock Place Subdivision the location and width of the District's easement.

k. Construction shall be completed no later than one year from the date of this agreement. Time is of the essence.

2002 JA 10 PM 12: 08

RECORDED-REQUEST OF

FEE 21 DEPUTY Ad

102003652

## EASEMENT

THIS EASEMENT, granted this 9<sup>th</sup> day of January, 2002 by Matlock Place Neighborhood Association, Inc., an Idaho Non Profit Corporation, P.O. Box 44739, Boise, Idaho 83711, to Drainage District No. 2, a drainage district organized under the laws of the state of Idaho.

WITNESSETH

WHEREAS, the Matlock Place Neighborhood Association, Inc. is the owner of certain real property (burdened with the easement of the District hereinafter mentioned) which is described in Exhibit A, attached hereto and by this reference made a part hereof; and,

WHEREAS, the District owns the drainage ditch, DRAIN NO. 15, (hereinafter sometimes referred to as "drain"), an integral part of the District's drainage works and system, together with the easement therefor to drain water, operate, clean, maintain, and repair the drain, and access the drain for those purposes, and said easement is 100 feet, 50 feet to either side of the centerline; and,

WHEREAS, said drain and easement crosses and intersects Matlock Place Neighborhood Association, Inc.'s real property, and Matlock Place Neighborhood Association, Inc. desires modify amend the legal description of the District's easement to shift the easement to the south so that the Districts easement is 100 feet, approximately 71.20-65 feet to the left and 28.80-35 feet to the right of the centerline looking downstream, and also requests that the District relinquish the easement that portion of the easement that lies to the north of the drain; and

WHEREAS, Matlock Place Neighborhood Association, Inc. agrees to pay for attorney fees and recording fees charged by the attorney for the District in connection with the preparation of this Easement and the above-described relinquishment;

NOW THEREFORE, MATLOCK PLACE NEIGHBORHOOD ASSOCIATION, INC., hereby grants

EX E

an easement to DRAINAGE DISTRICT NO. 2 for right of way along said drain as described in Exhibit B attached hereto and by this reference made a part hereof,

This easement is granted for all proper drainage district purposes and is granted to Drainage District No. 2, its successors and assigns, as a perpetual easement and is and shall be appurtenant to and inseparable from the real property owned by Matlock Place Neighborhood Association, Inc., described in Exhibit A attached hereto and made a part hereof, and shall be in addition to the easement that Drainage District No. 2 already possesses across Matlock Place Neighborhood Association's property. Matlock Place Neighborhood Association, Inc. shall not excavate, discharge, place any structures, plant any trees, shrubs, or landscaping or perform any other construction or activity within or affecting the District's easement for this drain without the prior written consent of the District.

IN WITNESS WHEREOF, Matlock Place Neighborhood Association, Inc., has executed this easement this 9<sup>th</sup> day of January, 2002.

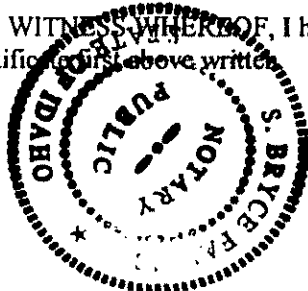
MATLOCK PLACE NEIGHBORHOOD ASSOCIATION, INC.,  
an Idaho Non Profit Corporation,

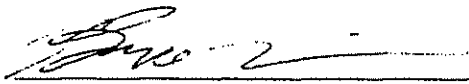


STATE OF IDAHO     )  
                                  )ss.  
County of Gda     )

On this 9<sup>th</sup> day of January, 2002, before me, the undersigned, a notary public in and for said state, personally appeared JAMES MERKLE, known to me to be the PRESIDENT of MATLOCK PLACE NEIGHBORHOOD ASSOCIATION, INC., the entity that executed the foregoing instrument, and acknowledged to me that such entity executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission Expires: 7/27/04

\* LIGHT  
SEAL

ADA COUNTY RECORDER  
J. DAVID NAVARRO  
BOISE, IDAHO

2000 NO 29 AM 10:41

RECORDED - REQUEST OF

*Matlock Place Sub*  
FEE *1200* DEPUTY *Kasper*

100096168

**QUIT CLAIM DEED AND CONVEYANCE OF ADDITIONAL "COMMON AREA"**  
**FOR MATLOCK PLACE SUBDIVISION**

**AGREEMENT REGARDING THAT COMMON AREA**

**WITNESSETH**

For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is understood and agreed as follows:

1. **THE "COMMON AREA" PROPERTY:** The Common Area property referred to in this conveyance and agreement is that 30 foot wide strip of real property in Ada County which is legally described in Exhibit A attached hereto. This property was formerly a vacated public right-of-way lying adjacent to the northern boundary of Matlock Place Subdivision in Ada County and shall be additional Common Area for that subdivision.

2. **QUIT CLAIM DEED AND CONVEYANCE:** Stanley and Donna Matlock, Husband and Wife, hereby convey, release, remise and forever quitclaim unto Grantee that 30 foot strip of real property, together with appurtenances thereto, located in Ada County, State of Idaho, which is legally described on Exhibit A attached hereto. This property is subject to public and private utility easements, drainage easements, irrigation easements and all other easements of record or appearing on the property.

3. **GRANTEE:** Matlock Place Neighborhood Association, Inc., an Idaho Non-Profit Corporation (hereinafter "Association"), whose address is c/o Jim Merkle 2150 N. Canter Pl., Eagle, Idaho 83616. The Association is the homeowners association for Matlock Place Subdivision and is responsible for maintaining and operating the Common Areas of the subdivision, including the Common Area deeded herein and described in Exhibit A.

4. **AGREEMENTS REGARDING THIS COMMON AREA PARCEL:** Grantor

and Grantee mutually agree as follows:

**4.1 Drain Ditch.** The Common Area property conveyed herein has a maintenance and operation easement for a drain ditch which is owned and operated by Ada County Drainage District No. 2. Grantee acknowledges and recognizes that the operation and maintenance easement for this drainage ditch is fifty (50) foot on each side from the center line of the drain ditch. Grantee agrees not to build any structures in this Common Area that would interfere with this drain ditch or any of the other easements on the property.

**4.2 Landscaping; Use by Matlock Place Subdivision.** Grantee agrees to maintain this Common Area, where practical, as a grassy landscaped area. Grantee agrees to keep this area mowed, watered and fertilized. Matlock Place Subdivision shall have the unfettered right to use this Common Area for any or all necessary subdivision purposes including retention ponds and drainage areas.

**4.3 Use by Other Subdivision Lot Owners.** It is understood and agreed that the owners of lots in future subdivisions to east and north of Matlock Place Subdivision may have reasonable access to this Common Area and the use of this Common Area for normal enjoyment of open space.


**5. SUCCESSORS; ASSIGNS; COVENANT RUNNING WITH THE LAND:**  
Upon execution, this agreement shall be recorded in Ada County, Idaho, and shall be a covenant running with the lands described herein. The agreements contained herein are for the benefit of and shall be binding on the successors, assigns, personal representatives, and heirs of the Grantor and Grantee herein.

Dated this 20 day of Nov, 2000.

  
Stanley Matlock

  
Donna Matlock

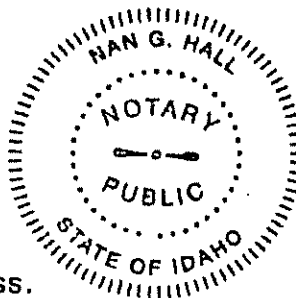
Matlock Place Neighborhood Association, Inc.  
an Idaho Non-Profit Corporation

by  , President

STATE OF IDAHO )  
COUNTY OF ADA )ss

On this 20<sup>th</sup> day of November, 2000, before me, the undersigned a Notary Public in and for said State, personally appeared Stanley and Donna Matlock, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Nan G. Hall  
Notary Public  
Residing: Boise  
Commission Expires: 1-28-2006

STATE OF IDAHO, )  
 ) ss.  
COUNTY OF Ada )

On this 18 day of November, 2000, before me, a notary public in and for said State, personally appeared Jim Merkle, known or identified to me to be the President of Matlock Place Neighborhood Association, Inc., an Idaho Non-Profit Corporation, the corporation that executed the foregoing instrument, and the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



James W. Kiser  
Notary Public for Idaho  
Residing in Boise, Idaho  
My Commission Expires: 1-5-2005

Exhibit A.

**VACATION OF PUBLIC RIGHT-OF-WAY  
ROBERTS AND HILL SUBDIVISION**

Unimproved public right-of-way lying between Lots 15 and 18 of Roberts and Hill Subdivision in the NW1/4 of the SE1/4 of Section 14, T.4N., R.1E., B.M., Ada County, Idaho, as same is recorded in Book 4 of Plats at Page 159, records of Ada County, Idaho, more particularly described as follows: **BEGINNING** at the northeast corner of said Lot 18;

thence along the North boundary of said Lot 18 North  $88^{\circ}50'39''$  West, 646.29 feet (record 647.02 feet) to the northwest corner of said Lot 18;

thence along the West boundary of said Roberts and Hill Subdivision North  $00^{\circ}32'48''$  East, 30.00 feet;

thence along the extended southerly boundary and the southerly boundary of said Lot 15 South  $88^{\circ}50'39''$  East, 646.30 feet to the southeast corner of said Lot 15;

thence South  $00^{\circ}33'38''$  West, 30.00 feet to the Point of Beginning. Containing 19,389 square feet, more or less.

Project No. 01-046-01

Date: Jan. 4, 2002

**MATLOCK #2  
DRAIN DITCH EASEMENT  
SOUTH SIDE-ADDITIONAL AREA**

An easement over a parcel of land located in the E 1/2 of Section 14, T. 4 N., R. 1 E., B.M., Ada County, Idaho, more particularly described as follows:

Commencing at the center 1/4 corner of Section 14 of said T. 4 N., R. 1 E.;

Thence North 0°33'25" East, 4.61 feet on the north-south mid-section line of said Section 14, to a point on the southerly line of the easement for Drain No. 15 of Drainage District No. 2, said point being the REAL POINT OF BEGINNING;

Thence on said southerly line, which line is parallel to and 50.00 feet southerly of the centerline of said Drain No. 15 for the following 3 courses and distances:

South 88°35'54" East, 323.63 feet;

Thence South 89°47'49" East, 172.60 feet;

Thence South 88°53'09" East, 150.06 feet to a point on the westerly right-of-way line of North Duncan Lane;

Thence leaving said southerly line of Drain No. 15, South 0°31'51" West, 21.20 feet on the westerly right-of-way line of North Duncan Lane, to the northeast corner of Matlock Place Subdivision, as same is shown on the plat thereof recorded in Book 81 of Plats at Page 8781 of Ada County Records;

Thence North 88°50'39" West, 646.29 feet to the northwest corner of said Matlock Place Subdivision;

Exhibit B, page 1

Thence North 0°32'46" East, 15.00 feet on the north-south mid-section line of said Section 14, to the real point of beginning.

**PREPARED BY:**  
Engineering North West, LLC

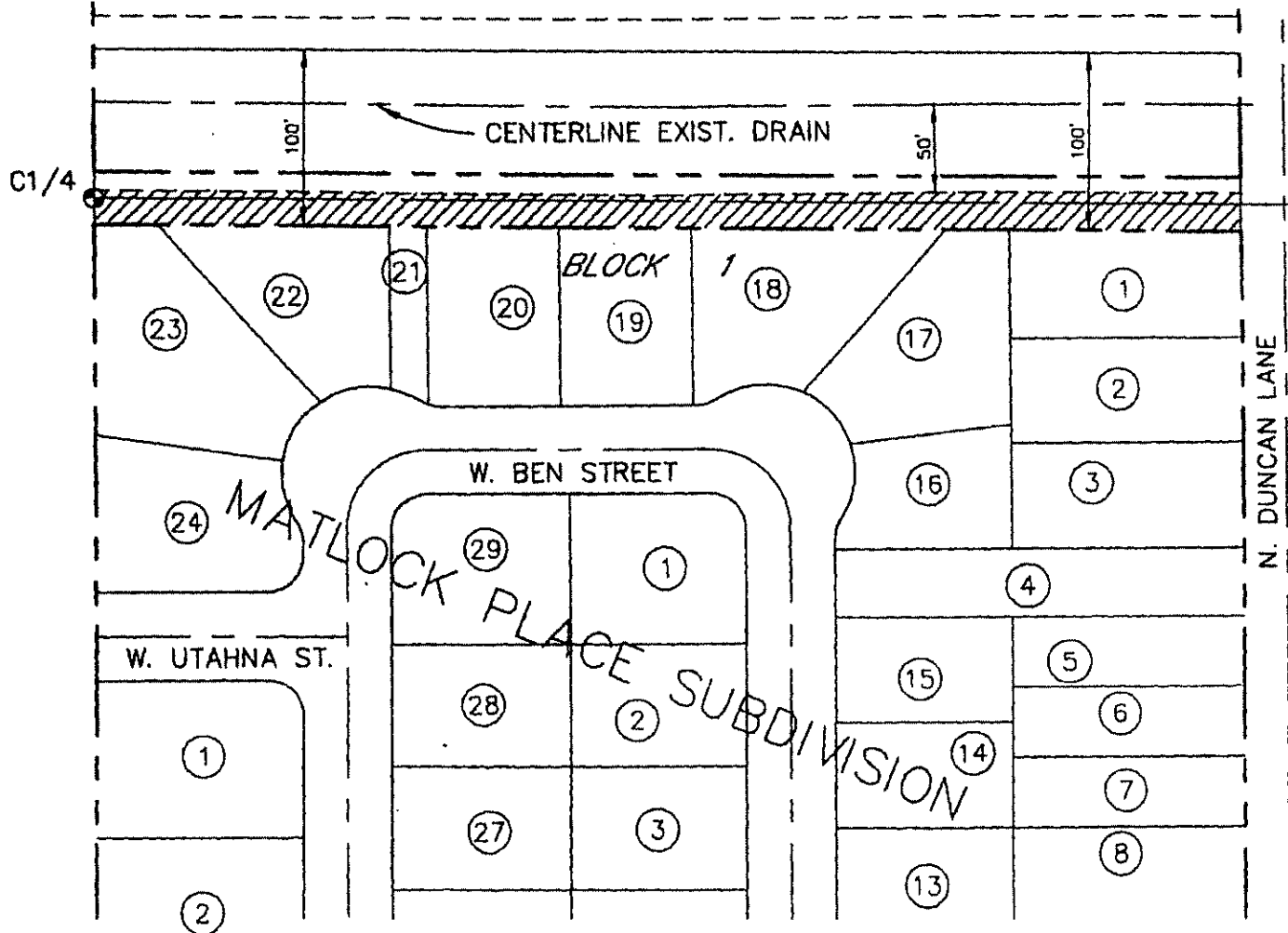


James R. Washburn, PLS

# EXHIBIT "A"



SCALE: 1" = 100'



ADA COUNTY RECORDER  
J. DAVID NAVARRO  
BOISE, IDAHO

Kingert Clark  
RECORDED - REQUEST OF

FEE 15.00 DEPUTY M. Turner

2002 FE -8 PM 4: 20

102016464

RELINQUISHMENT OF EASEMENT

THIS RELINQUISHMENT OF EASEMENT is given in connection with and pursuant to that certain Easement granted the 6<sup>th</sup> day of Feb., 2002, by Matlock Place Neighborhood Association, Inc. to Drainage District No. 2, a drainage district organized under the laws of the state of Idaho (District), and is granted in accordance with the terms and conditions of said Easement.

WHEREAS, the District held an easement across the property of Stan and Donna Matlock, husband and wife, for DRAIN NO. 15, a drainage ditch as part of its drainage system which was 100 feet, 50 feet to either side of the centerline, and

WHEREAS, Matlock Place Neighborhood Association, Inc. has conveyed to the District an easement for the additional easement of on Matlock Place Neighborhood Association, Inc. property by a certain Easement dated the 6<sup>th</sup> day of Feb., 2002. The District's easement after the granting of the additional portion by Matlock Place Neighborhood Association, Inc., and this relinquishment shall be 100 feet, approximately 71.20-65 feet to the left and 28.80-35 feet to the right of the centerline looking downstream.

NOW, THEREFORE, DRAINAGE DISTRICT NO. 2 hereby releases and forever quitclaims unto STAN AND DONNA MATLOCK, and to their heirs, successors and assigns all right, title, estate and interest in and to the easement for that section of Drain No. 15, the drain ditch described in Exhibit A attached hereto and made a part hereof.

PROVIDED, HOWEVER, this Relinquishment of Easement shall be of no force and effect if said Easement from Matlock Place Neighborhood Association, Inc., to the District shall fail to create a good and valid drainage easement in the manner stated in said Easement along the described right of way. In that event, the said

RELINQUISHMENT OF EASEMENT Page - 1

EX " F "

Easement as well as this Relinquishment of Easement shall be of no force and effect and the District shall have and retain all its easement rights along Drain No. 15 in the manner the District held them prior to execution of said Easement and Relinquishment of Easement.

IN WITNESS WHEREOF, the District has executed this Relinquishment of Easement this 6<sup>th</sup> day of Feb., 2002.

DRAINAGE DISTRICT NO. 2

By Eugene O. Muller  
Its President

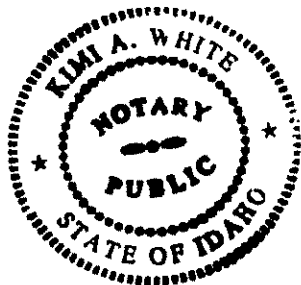
ATTEST:

B. James Monczynski  
Its Secretary

STATE OF IDAHO     )  
                                      ) ss:  
County of Ada     )

On this 6<sup>th</sup> day of February, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Eugene O. Muller and B. James Monczynski, known to me to be the President and Secretary, respectively, of DRAINAGE DISTRICT NO. 2, the drainage district that executed the foregoing instrument and acknowledged to me that such drainage district executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Kimi A. White  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission Expires: 04/01/04

Project No. 01-046-01

Date: Jan. 4, 2002

**MATLOCK #2  
DRAIN DITCH VACATION DESCRIPTION**

An easement over a parcel of land located in the E 1/2 of Section 14, T. 4 N., R. 1 E., B.M., Ada County, Idaho, more particularly described as follows:

Commencing at the center 1/4 corner of Section 14 of said T. 4 N., R. 1 E.;

Thence North 0°33'25" East, 104.62 feet on the north-south mid-section line of said Section 14, to a point on the northerly line of the easement for Drain No. 15 of Drainage District No. 2, said point being the REAL POINT OF BEGINNING;

Thence on said northerly line, which line is parallel to and 50.00 feet northerly of the centerline of said Drain No. 15, for the following 3 courses and distances:

South 88°35'54" East, 324.06 feet;

Thence South 89°47'49" East, 172.35 feet;

Thence South 88°53'09" East, 149.72 feet to a point on the westerly right-of-way line of North Duncan Lane;

Thence leaving said northerly line of Drain No. 15, South 0°27'37" West, 21.20 feet on the westerly right-of-way line of North Duncan Lane;

Thence North 88°50'39" West, 646.15 feet on a line which is parallel to and 100.00 feet northerly of the north boundary line of Matlock Place Subdivision, as same is shown on the plat thereof recorded in Book 81 of Plats at Page 8781 of Ada County Records, to a point on the north-south mid-section line of said Section 14;

Thence North 0°33'24" East, 19.61 feet on said north-south mid-section line to the real point of beginning.

PREPARED BY:  
Engineering North West, LLC

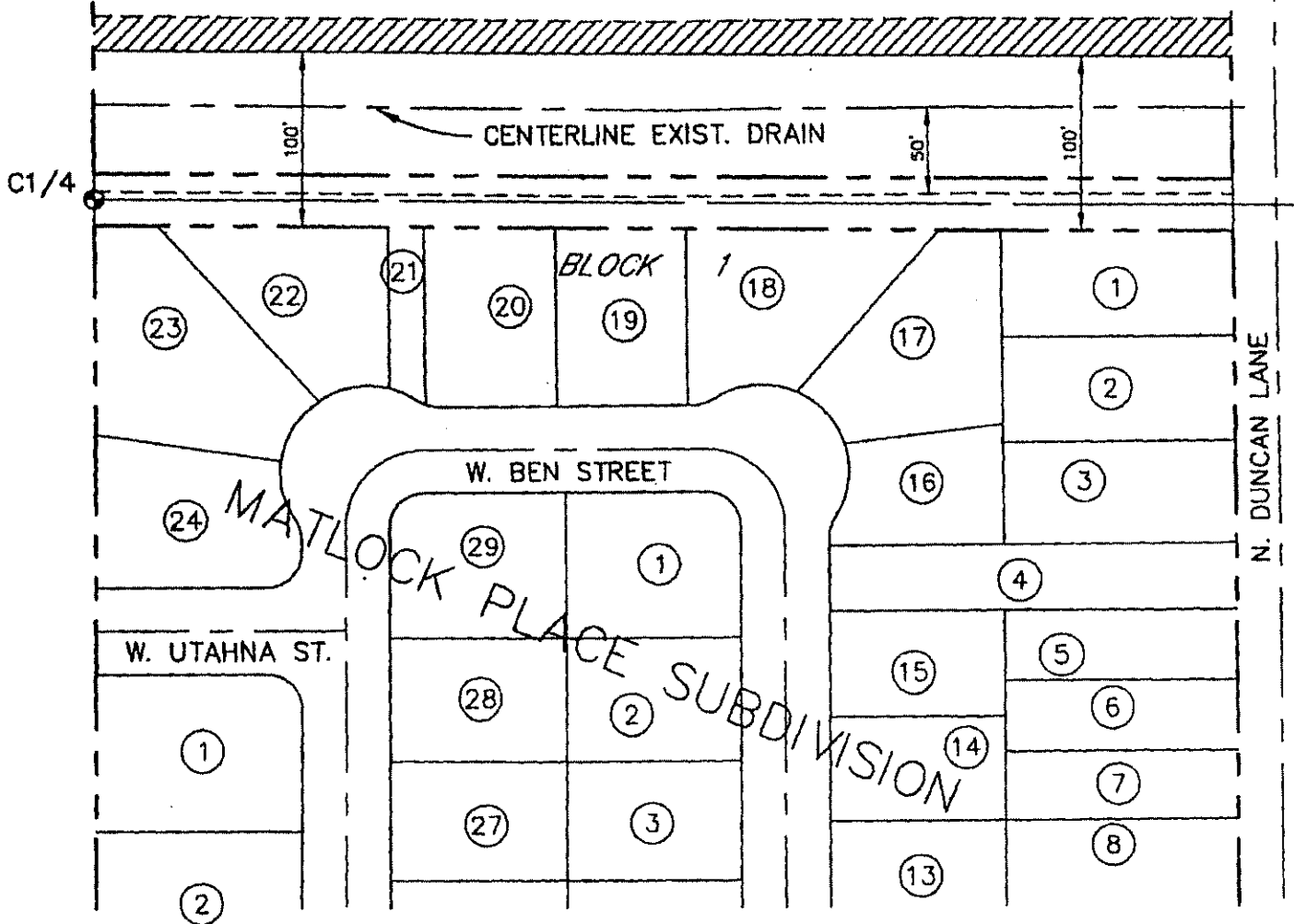


James R. Washburn, PLS

# EXHIBIT "A"



SCALE: 1" = 100'



Matlock Place #2  
T 4N, R 1E, Section 14

ADA COUNTY RECORDER  
J. DAVID NAVARRO

2002 AU 29 PM 2:12

RECORDED - REQUEST OF

60995 FEE 0 DEPUTY McL  
102098276

Ada County Highway District

(Reserved for Ada County Recorder)

**PUBLIC RIGHT-OF-WAY EASEMENT  
(SIDEWALK)**

THIS RIGHT-OF-WAY EASEMENT (SIDEWALK) (the "Easement"), is made and entered into this 23 day of August, 2002, by and between **HILLVIEW DEVELOPMENT CORPORATION**, an Idaho corporation, hereinafter referred to as "GRANTOR," and ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the State of Idaho, hereinafter referred to as "ACHD";

WITNESSETH:

FOR GOOD AND SUFFICIENT CONSIDERATION IT IS AGREED:

**SECTION 1. Recitals.**

1.1 GRANTOR owns the real property located in Ada County, Idaho more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein (hereinafter "Servient Estate") and is in the process of developing the property adjoining the Servient Estate, and on the terms and conditions hereinafter set forth, GRANTOR desires to grant this easement on, over and across the Servient Estate to ACHD for the public uses and purposes hereinafter described, reserving the right, however, to construct a concrete sidewalk (hereinafter the "Improvement") thereon.

1.2 On the terms and conditions hereinafter set forth ACHD desires to extend its system of public sidewalks to include that to be constructed by GRANTOR on the Servient Estate, and upon GRANTOR's completion of construction of the Improvement on, over and across the Servient Estate, and when ACHD has accepted the same, ACHD desires that the Improvement and the Servient Estate become a part of its system of Highways (hereinafter "Highways") as that term is defined in *Idaho Code*, section 40-109(5), for ACHD and the public use hereinafter described. ACHD's system of Highways is hereinafter referred to as the "Dominant Estate".

1.3 As provided in *Idaho Code*, section 40-1412, ACHD Ordinance Number 190 and the ACHD Policy Manual, the adjacent property owner has the responsibility to pay for the repair and maintenance of the Improvement.

Sidewalk Easement, page 1

(11-19-01)

S:\ACHDRW\Deeds-Easements\Sidewalk Easement-Matlock Place #2.doc

EX "G"

SECTION 2. Grant and Authorized Use.

GRANTOR hereby grants to ACHD a perpetual and exclusive easement for a public right-of-way on, over and across the Servient Estate for the Improvement, for use by those members of the public who are pedestrians (as defined in *Idaho Code*, section 49-117) and by bicyclists (if the Servient Estate is located in an area where bicycles are allowed to be ridden on sidewalks), and the statutory rights, if any, of utilities to use the public right-of-way, and for ACHD, its employees, agents and contractors access to inspect, repair and maintain the Improvement.

SECTION 3. Reservation of Access for Construction by GRANTOR; Covenant to Construct; Repair and Maintenance.

3.1 GRANTOR reserves access to and from the Servient Estate for GRANTOR and GRANTOR's employees, agents and contractors to construct the Improvements thereon.

3.2 GRANTOR covenants and agrees to construct the Improvements on the Servient Estate in accordance with designs approved in advance by ACHD, in writing, ACHD policies and good engineering practices, at no cost or expense to ACHD.

SECTION 4. GRANTOR's Indemnification. GRANTOR shall indemnify and save and hold harmless ACHD, its Commissioners and employees, from and against all claims, actions or judgments for damages, injury or death caused by or arising out of the construction of the Improvement, and including reimbursement for any costs of suit and fees of its attorneys which are incurred should ACHD be required to defend any such claims or actions.

SECTION 5. Term of Easement. The term of the Easement herein granted to ACHD is perpetual.

SECTION 6. Covenants Run with the Land.

This Easement is a burden upon the Servient Estate and appurtenant to and for the benefit of the Dominant Estate, and shall run with the land.

SECTION 7. Recordation.

This Easement shall be recorded in the Official Real Property Records of Ada County, Idaho.

TO HAVE AND TO HOLD this Easement unto the ACHD forever.

GRANTOR covenants to ACHD that ACHD shall enjoy the quiet and peaceful possession of the Servient Estate throughout the term hereof; and, (b) GRANTOR warrants to the ACHD that GRANTOR is lawfully seized and possessed of the Servient Estate and has the right and authority to grant this Easement to ACHD.

IN WITNESS WHEREOF, this Easement has been duly executed by and on behalf of the GRANTOR the day, month and year herein first above written.

Hillview Development Corporation

James Merkle, Manager

STATE OF IDAHO )  
County of Ada ) ss.  
\_\_\_\_\_ )

On this 23 day of August, 2002, before me, James W. Hiser, a Notary Public in and for the State of Idaho, Provided personally appeared James Merkle, known or identified to me to be the Manager, of the Corporation that executed this instrument or the person who executed this instrument on behalf of said Corporation, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day month and year in this certificate first above written.



Notary Public for Idaho  
Residing at: 1000 1/2 N. 1st St. ID 83709  
My commission expires: 1-13-2005

# Engineering NorthWest, LLC

423 N. Ancestor Place, Suite 180

Boise, Idaho 83704

(208) 376-5000 • Fax (208) 376-5556

Project No. 01-046-01

Date: August 15, 2002

## SOUTHERLY ACHD SIDEWALK EASEMENT FOR PROPOSED MATLOCK PLACE SUBDIVISION NO. 2

A parcel of land located in a portion of the SW 1/4 of the NE 1/4 of Section 14, T.4 N., R.1 E., B.M., Ada County, Idaho, being more particularly described as follows:

Commencing at an aluminum cap monument marking the center 1/4 corner of said Section 14 from which an aluminum cap monument marking the E 1/4 corner of said Section 14 bears South 88°50'39" East, 2635.24 feet;

Thence on the southerly boundary line of said SW 1/4 of the NE 1/4 of Section 14 South 88°50'39" East, 646.29 feet to a point on the westerly right-of-way line of North Duncan Lane;

Thence leaving said southerly boundary line and along said right-of-way line North 00°27'37" East, 85.01 feet to a point, said point also being the REAL POINT OF BEGINNING;

Thence leaving said right-of-way line, North 88°50'39" West, 30.00 feet;

Thence North 00°27'37" East, 161.21 feet;

Thence South 89°32'23" East, 27.32 feet to a point on a non-tangent curve to the right;

Thence on said curve to the right 10.47 feet, said curve having a radius of 20.00 feet, a central angle of 30°00'00", and a long chord of 10.35 feet which bears South 14°32'23" East to a point of tangency with said westerly right-of-way line.

Thence leaving said westerly right-of-way line, South 78°03'10" West, 25.60 feet;

Thence South 00°27'37" West, 130.21 feet;

Thence South 77°08'05" East, 25.60 feet to a point on said westerly right-of-way line;

Thence on said westerly right-of-way line South 00°27'37" West, 10.37 feet to the real point of beginning. Said parcel contains 1440 square feet or .033 acres, more or less.

PREPARED BY:  
Engineering NorthWest, LLC  
James R. Washburn, PLS

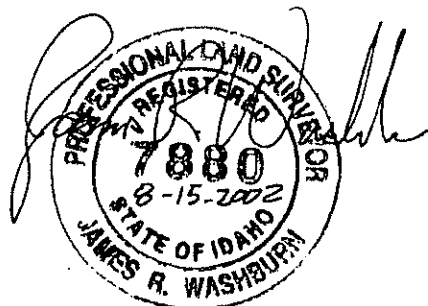


EXHIBIT "A"

# Engineering NorthWest, LLC

423 N. Ancestor Place, Suite 180

Boise, Idaho 83704

(208) 376-5000 • Fax (208) 376-5556

Project No. 01-046-01

Date: August 15, 2002

## NORTHERLY ACHD SIDEWALK EASEMENT FOR PROPOSED MATLOCK PLACE SUBDIVISION NO. 2

A parcel of land located in a portion of the SW 1/4 of the NE 1/4 of Section 14, T.4 N., R.1 E., B.M., Ada County, Idaho, being more particularly described as follows:

Commencing at an aluminum cap monument marking the center 1/4 corner of said Section 14 from which an aluminum cap monument marking the E 1/4 corner of said Section 14 bears South 88°50'39" East, 2635.24 feet;

Thence on the southerly boundary line of said SW 1/4 of the NE 1/4 of Section 14 South 88°50'39" East, 646.29 feet to a point on the westerly right-of-way line of North Duncan Lane;

Thence leaving said southerly boundary line and on said right-of-way line North 00°27'37" East, 326.58 feet to a point, said point also being the REAL POINT OF BEGINNING;

Thence leaving said right-of-way line, North 77°04'38" West, 25.60 feet;

Thence North 00°27'37" East, 448.97 feet;

Thence North 78°03'10" East, 25.60 feet to a point on said westerly right-of-way line;

Thence on said westerly right-of-way line, North 00°27'37" East, 10.00 feet;

Thence leaving said westerly right-of-way line, North 89°32'23" West, 30.00 feet;

Thence South 00°27'37" West, 480.00 feet;

Thence South 89°32'23" East, 27.32 feet to the beginning of a non-tangent curve to the left;

Thence on said curve 10.47 feet, said curve having a radius of 20.00 feet, a central angle of 30°00'00" and a long chord of 10.35 feet which bears North 15°27'37" East to the real point of beginning. Said parcel contains 3029 square feet or .070, acres more or less.

**PREPARED BY:**  
Engineering NorthWest, LLC  
James R. Washburn, PLS

Northerly ACHD sidewalk easement.doc

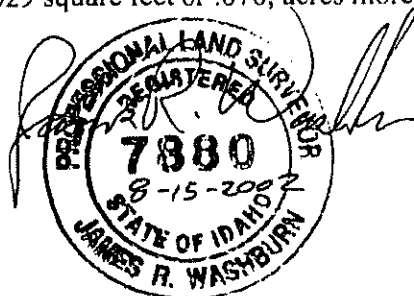


EXHIBIT "A"



HILL ROAD

5' WIDE ADA COUNTY HIGHWAY  
DISTRICT SIDEWALK EASEMENT

**5' WIDE ADA COUNTY HIGHWAY  
DISTRICT SIDEWALK EASEMENT**

ADA COUNTY HIGHWAY DISTRICT  
DRAINAGE POND EASEMENT

NOO32'45"E  
15.00'

MATLOCK PLACE SUBDIVISION

500°33'38"W  
15.00'

S.14 S.13