ADA COUNTY RECORDER J. DAVID NAVARRO BOISE IDAHO 03/04/05 11:22 AM **AMOUNT 21.00** 

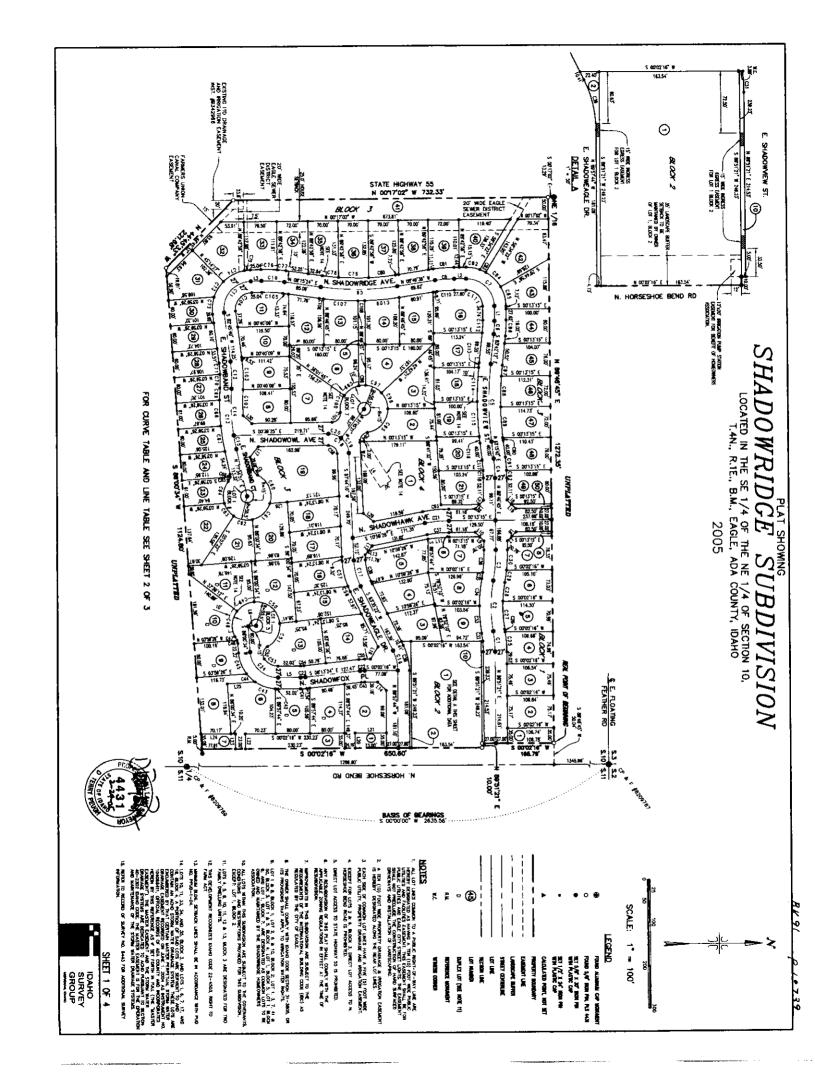
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BOISE IDAHO 03/04/05 11:22 A
DEPUTY Gail Garrett
RECORDED - REQUEST OF
D Terry Peugh



## PLAT RECORDING SHEET

| INSTRUMENT NO. 105026511             |
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| BOOK                                 |
| PAGE 10739                           |
| thru 10742                           |
| SURVEYOR D. TERRY PEUGH              |
| SUBDIVISION NAME SHADOWRIDGE SUB     |
| OWNERS HILLDIEW DEVELOPMENT          |
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| AT THE REQUEST OF D. TERRY PEUGH     |
| COMMENTS SE'14 NE 1/4 SEC 10 TUN RIE |



# SHADOWRIDGE SUBDIVISION

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| -                    | H 85'12'19  | 71.50  | 1514'57"  | 300,00   | 11.00   | 013           |
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| •                    | H 48'37'17  | 71.25  | 951101  | 8  | ē   | 2             |
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| EVANC CHORD DISTANCE | 000   | COM  | W.TBO   | 805  | Ř   |               |

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# SHADOWRIDGE SUBDIVISION

CERTIFICATE OF OWNERS

KNOW ALL MEN BY THESE PRESENTS. THAT HILLNEW DEVELOPMENT CORP., AND JERRY R. MOLENAR, A MARRED MAN AS HIS SOLE AND SEPARATE PROPERTY, ARE THE OWNERS OF THE REAL PROPERTY DESCRIBED AS FOLLOWS.

A PARCEL OF LAND LOCATED IN THE SE % OF THE NE % OF SECTION 10, 1. 4N., R. 1E., B.M., ADA COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS. COMMERCING AT THE CORNER COMMON TO SECTIONS 2, 3, 11 AND THE SAME SECTION 10, AS SAME IS DESCRIBED IN OF &F HARTSTRUMENT NO BORDYST, ADA COUNTY PECOPORS, TROM WHICH THE % SECTION 10 AS SECTIONS 10 AND 11 BEARS SOUTH ADDROGY WEST, 2635-56 FEET; THENCE SOUTH ADDROGY OF WEST, 2635-66 FEET; THENCE SOUTH ADDROGY OF WEST, 2635-66 FEET; THENCE SOUTH ADDROGY OF WEST, 2635-66 FEET; THENCE WAY OF SOUTH SECTION OF THE NATIONAL ADDROGY OF WEST, 2635-66 FEET; THENCE WAY OF SOUTH ADDROGY WEST, 2635-76 FEET; THENCE WAS OF THE NATIONAL ADDROGY WEST, 2635-76 FEET; THENCE WAS OF THE NATIONAL ADDROGY WEST, 2635-76 FEET; THENCE WAS OFTEN THE WAS OFTEN THENCE WAS OFTEN THE WAS OFTEN THE WAS OFTEN THE WAS OFTEN THENCE WAS OFTEN THE WAS OFTEN THE WAS OFTEN THENCE WAS OFTEN THE WAS OFTE

IT IS THE INTENTION OF THE UNDERSIGNED TO HEREBY INCLUDE SAID LAND IN THIS PLAT, AND TO DEDICATE TO THE PUBLIC, THE PUBLIC STREETS AS SHOWN ON THIS PLAT ARE NOT DEDICATED PUBLIC. THE PUBLIC STREETS AS SHOWN ON THIS PLAT ARE NOT DEDICATED TO THE RIGHT TO USE SAID EASEBLY'S IS HEREBY PERRETULLIT. RESERVED FOR PUBLIC TO THE UNITED HERE SAID EASEBLY'S IS HEREBY PERRETULLIT. RESERVED FOR PUBLIC UNITES AND SUCH OTHER USES AS DESENATED HEREON, AND NO PERMAMENN STRUCTURES ARE TO BE EXECUTED WITHIN THE LIVES OF SAID EASEBLYIS, ALL LOTS WITHIN THIS PUAT WILL BE EUROBLE TO RECEIVE WITHER SERVICE FROM AN EXISTING EAGLE RANCH WATER COMPANY WATER LINE UN HOMSESHOE BEND ROAD, AND THE EAGLE RANCH WATER RESERVED HAVER COMPANY WATER LINE UN HOMSESHOE BEND ROAD, AND THE EAGLE RANCH WATER DESENDER OF THE SUBDIVISION.

HILLYIEW DEVELOPMENT CORP

WERKLE, PRESIDENT

ACKNOWLEDGEMENT

STATE OF IDAHO

IN MITNESS MHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE MRITTEN.



CERTIFICATE OF SURVEYOR

I, D. TERRY PEUCH, DO HERBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR LICENSED BY THE STATE OF IDAMO, AND THAT THIS PLAT ALS DESCRIBED IN THE "CERTIFICATE OF OWNERS" WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE ORDINO UNDER MY DIRECT SUPERVISORY AND ACCOUNTILY REPRESENTS THE POINTS PLATED THEREON, AND IS IN CONFORMITY WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.



<u>ACKNOWLEDGEMENT</u>

STATE OF IDAHO )

COUNTY OF ADA )

ON THIS  $H^{h}$  DAY OF MOMENTA & 20.04 BEFORE ME. THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED JERRY R. MOLENAR, KNOWN OR IDENTIFIED TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED WITHIN AND WHO ACKNOWLEDGED TO ME THAT HE 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.

7-22-04

NOTARY PUBLIC FOR IDAHO



I, THE UNDERSIGNED, CITY ENGINEER IN AND FOR THE CITY OF EAGLE, ADA COUNTY, IDAHO, HEREBY APPROVE THIS PLAT.

APPROVAL OF CITY ENGINEER

# SHADOWRIDGE SUBDIVISION

THE FORECOING PLAT WAS ACCEPTED AND APPROVED BY THE BOARD OF ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS ON THE 1 TO DAY OF DECEMBER. 2004. APPROVAL OF ADA COUNTY HIGHWAY DISTRICT





SANTARY RESTRICTIONS AS REQUIRED BY IDAHO CODE, TITLE 50, CHAPER 13 HAVE BEEN SATISFED BASED ON THE STATE OF IDAHO, DEPARTMENT OF ENVIRONMENTAL QUALITY (ICE) APPROVAL OF THE DESIGN PLANS AND SECONICATIONS STATE OF IDAHONS IMPOSED ON THE DEVELOPER FOR CONTINUED SATISFACTION OF THE SANTIARY RESTRICTIONS. AND THE CONTINUED SATISFACTION OF THE SANTIARY RESTRICTIONS WERE CONSTRUCTED. BUTCH IS CADITORED THAT AT THE TIME OF THIS APPROVAL, NO DRINKING PERUITS IS PRINKING WATER OR SEWER FACILITES HAVE BUILDING CONSTRUCTION CAN BE ALLOWED WITH APPROPRIATE BUILDING DEPAILS IS PRINKING WATER OR SEWER FACILITES HAVE BEEN CONSTRUCTED OF ID SUFLICION SALVED OF THE DIFFER ON THE DEVELOPER FAILS TO CONSTRUCT FACILITIES OF MEET THE OTHER CONDITIONS OF DEC. THEN SANTIARY RESTRICTIONS MAY BE GENEROSED ONSTRUCTION OF ANY BUILDING OR SHELTER REQUIRENG DRINKING WATER OR SEWER/SEPTIC FACILITIES SHALL BE ALLOWED. APPROVAL OF CENTRAL DISTRICT HEALTH DEPARTMENT



MALL MENT ASIS

CERTIFICATE OF THE COUNTY TREASURER IN AND FOR THE COUNTY OF ADA, STATE OF IDAHO, PER THE REQUIREMENTS OF I.G. 50-1308 DO HEREBY CERTIFY THAT ANY AND ALL CUBRENT AND/OR DELINOUENT COUNTY PROPERTY TAXES FOR THE REPOPERTY INCLUDED IN THIS SUBDIVISION HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT THIRTY (30) DAYS ONLY.











APPROVAL OF CITY COUNCIL



CERTIFICATE OF COUNTY SURVEYOR I, THE UNDERSIONED, COUNTY SURVEYOR, IN AND FOR ADA COUNTY, IDAMO, DO HEREBY CERTIFY THAT I HAVE CHECKED THIS PLAT AND THAT IT COMPLIES MITH THE STATE OF IDAMO CODE RELATING TO PLATS AND SURVEYS.



COUNTY RECORDER'S CERTIFICATE

STATE OF IDAHO ) S.S.

COUNTY OF ADA

Nas 31.00

BOISE IDAHO 03/16/05 11:2 DEPUTY Patti Thompson RECORDED – REQUEST OF Shadow Ridge Subdivision



# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

### SHADOW RIDGE SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for Shadow Ridge Subdivision (Shadowridge on the official plat) is made by Hillview Development Corporation, an Idaho corporation, (hereinafter "Grantor" or "Declarant") whose address is 150 E. Aikens, Suite A, Eagle, Idaho 83616.

### **ARTICLE 1: RECITALS**

- 1.1 <u>Property Covered</u>. The property subject to this Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as "Declaration" or "CC&R's") for Shadow Ridge Subdivision is that property in the City of Eagle, 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. The "Common Area" Lots and other "Common Areas" for this Subdivision are generally set out in Article 6 below.
- 1.2 <u>Purpose of Declaration</u>. Shadow Ridge 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: GENERAL DECLARATIONS**

- 2.1 <u>Grantor Declaration</u>. Grantor declares that all the Property described on Exhibit A shall be held, sold, transferred, encumbered, leased, used, occupied and improved subject to these CC&R's. Each Owner by accepting a deed to any of the property, and each occupant or tenant, by occupying or renting any part of the premises specifically agrees: A) That these CC&R's are for the protection, maintenance, improvement and enhancement of all of the Property and all Owners, occupants and tenants, and B) To be bound by these CC&R's and the covenants and restrictions contained herein.
- **2.2** Runs With The Land. These CC&R's shall run with the land described on Exhibit A 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 Lot Owner or by the Association.
- 2.4 <u>Grantor's Rights; Model Homes and Sales Office</u>. 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 marketing offices or trailers or similar facilities on any portion of the Property, including the Common Area or any public right-ofway. Grantor may also post signs incidental to construction, sales or leasing.
- 2.5 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, including annexation rights, may be assigned by Grantor to any successor in interest by a written assignment recorded in the Office of the County Recorder.

- **2.6** Prior Plan and Landscaping Approval; Architectural Control Guidelines. No improvement of any kind, or any landscaping shall be placed or permitted to remain upon any part of a Lot unless a written request for approval has been approved by the Board of Directors of the Shadow Ridge Neighborhood Association (the Architectural Control Committee), or a person designated by the Board to approve same. The approval of the Board will not be unreasonably withheld if the plans and specifications comply with: a) these CC&R's; b) the Architectural Control Guidelines published by, and on file with, the Board; c) all government ordinances; and d) are in harmony with the existing structures, landscaping and improvements located in this Subdivision.
- **2.6.1 No Liability.** Neither Grantor, the Association or the Board (or their agents, officers, members, directors or shareholders) shall have any liability of any kind for any approvals or for any lack of approvals of any Improvements in this Subdivision.
- 2.7 <u>Architectural Control Guidelines</u>. The Architectural Control Guidelines provide additional covenants, conditions and restrictions for all buildings, improvements, colors, landscaping, and other matters of interest for this Subdivision. These Architectural Control Guidelines are incorporated herein as if set out in full. Such Guidelines may be modified from time to time as the Declarant determines is in the interests of the general harmony and aesthetics for the entire Subdivision; Providing, however, that any modifications of the Guidelines shall not be applied retroactively to force an existing Improvement to conform to a newly adopted Guideline.

These Architectural Control Guidelines shall be kept on file with the Board of Directors of the Shadow Ridge Neighborhood Association and any interested party may obtain copies thereof upon request.

After the Declarant has sold the last Lot to a party other than Declarant, thereafter the Architectural Guidelines may only be modified by a vote of at least 75% of the members of the Association present for a vote on that matter after notice has been given to all members setting out the changes to be made.

2.8 Application for Approval. To request Board approval for the

construction, alteration, modification, removal or demolition of any Improvements within the Property, the Owner shall submit a written application, signed by the Owner, on a form required by the Board. It must be accompanied by the following material (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards:

- 2.8.1 <u>Site Plan</u>. A site plan showing the location of the Building(s) and all other structures, setbacks, landscaping, drainage, and all improvements including fences, walls, curb cuts, driveways, parking areas and other pertinent information relating to the improvements.
- 2.8.2 <u>Building Plan</u>. A building plan (which shall consist of preliminary or final blueprints, and elevation drawings) showing the north, south, east and west sides, and detailed exterior specifications which shall indicate, by sample, if required by the Board, all exterior colors, materials and finishes, including roof, to be used.
- 2.8.3 <u>Landscape Plan</u>. A landscape plan showing the five foot (5') landscape strip (described below) and all other landscaped portions of the Lot. It shall show the location, type and size of trees, plants, ground cover, shrubs, berms and mounding, grading, drainage, sprinkler systems, fences, freestanding exterior lights, driveways, parking areas and walkways.
- 2.8.4 Additional Data. The Board may, in its discretion, require the Owner to furnish additional data, specifications, drawings, material samples or such other information as the Board, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the Board in reviewing and processing the application.

### **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 "Shadow Ridge 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 Shadow Ridge 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 Shadow Ridge 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 Area Lots are set out in Article 6 below and these Common Area Lots shall be owned, managed and maintained by the Shadow Ridge Neighborhood Association and 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.
- 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, common facilities and all common Improvements, and the other costs and expenses of the Association.
- 3.19 "<u>Start-up Assessment</u>" 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 "<u>Transfer Special Assessment</u>" 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: SPECIFIC RESTRICTIONS**

### 4.1 Exclusions of Lot 1, Block 2 from CC&R's; Exclusion of Certain

<u>Existing Improvements from CC&R's</u>. Lot 1, Block 2 is excluded entirely from these CC&R's and the Owner of this Lot shall have no votes in the Association.

Lots 4, 7 and 19, Block 4 contain existing residential structures and Improvements. The existing structures, fencing and other Improvements are hereby excluded from these CC&R's and these CC&R's shall not be construed to require any of these to be upgraded or improved in any way to comply with these CC&R's. In the event that any of these structures or Improvements are repainted or resurfaced, such shall be reasonably harmonious in color and tone with the adjoining Lots. In the event that any of these previously existing Improvements are structurally upgraded, or remodeled in a significant manner by the Owners, the remodel or upgrade shall conform to these CC&R's to the extent reasonably practical and the Owners of the upgrade or remodel agree that such remodel or upgrade shall be reasonably harmonious with the surrounding area.

- 4.2 Government Rules and Ordinances. 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. 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.
- 4.3 Use and Size of Dwellings. Lots 4, 5, 9, 10, 11, 12, and 13, Block 3 may be used for the construction of a duplex or a single-family residential structure. Each duplex shall be at least 1,800 square feet. All other Building Lots in Shadow Ridge Subdivision shall be used exclusively for single-family homes. All single-family structures shall be one or two story, and shall be at least 1,500 square feet in size. A two story structure shall have at least 1,000 square feet on the ground floor. In computing the building sizes, the eaves, steps, open porches, garages and patios shall not be included in the computation of square footage. No unit higher than a two (2) story shall be permitted.
- 4.4 <u>Basements</u>. While basements are allowed, they are discouraged. In order to construct a basement, each builder or Owner must first secure a certification from a licensed engineer that the water table and soil conditions are proper for a basement. Declarant and its agents, officers and shareholders

shall have no liability of any kind for any basements which are constructed. Each builder and Owner builds and owns their basement at their own risk. (Basements may be prohibited in future properties annexed into these CC&R's.)

- 4.5 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.
- **4.6** <u>Setbacks</u>. All required setbacks are set out on Exhibit C attached hereto.
- 4.7 <u>Garages</u>. All residential homes (and <u>each</u> unit of any duplex) shall have an attached enclosed garage which holds no less than two cars. All garages 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.
- 4.8 <u>Exterior; Appearance.</u> Encouraged are covered front porches, bay windows, broken roof lines, gables and hip roofs. No vinyl or metal siding or loud colors shall be allowed. Each home and in this subdivision is required to have either;
  - A) Full wainscoting of brick, stone or stucco across the entire front of the structure, (or substantial wainscoting may be approved by the Board if aesthetic and attractive; or
  - B) Brick, stone or stucco full column heights on both sides of the garage.
- 4.9 <u>Driveways</u>. All Building Lots shall have a concrete driveway and a minimum of two concrete car parking spaces within the boundaries of each Lot for each home and each unit of any duplex. No driveway or parking area shall

be of dirt, gravel or asphalt.

- **4.10** Roofs and Roof Colors. Roofs must be of at least 5 in 12 pitch. No gravel roofs are allowed. Roofing materials shall be 25 year architectural PABCO composition shingles and shall be of a color approved by the Board.
- **4.11** Exterior Building Colors. Approval of exterior colors must be obtained from the Board, and any future changes to colors or exterior must first be approved by the Board. Colors must be submitted at least two weeks prior to the time of painting.
- 4.12 Landscaping. Automatic underground sprinkler systems in the front yards is required. Berms and sculptured planting areas are strongly encouraged. Landscaping of the front yard shall be completed within thirty (30) days after substantial completion 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 Lot to the side street (i.e., the side yard next to the side street). Additional landscaping requirements are as follows:
  - A) Sod shall be installed in the front yard;
  - B) The back yard shall be planted, hydro-seeded or sodded within 90 days of occupancy;
  - C) At least one tree of 2.0 inch caliper shall be planted in the front yard (caliper = diameter of the tree trunk six inches above the root ball);
  - D) Corner Lots shall have at least one additional tree at least 2.0 inch caliper in the front or side yard;
  - E) At least ten (10) one gallon bushes and/or shrubs shall be planted in the front yards.
  - F) All Lots, including the sidewalks and street frontage, shall be kept clean, and free of weeds and debris prior to and during construction. (In the event that the Owner fails to keep these areas clean and weed and debris free, then the Declarant, or the Association, after 10 business days notice to the Owner, may hire a contractor to remove the weeds or

debris and the Owner shall pay all the costs of that removal plus a management fee equal to 10% of the costs, and these costs may also be assessed as a Limited Assessment as provided herein.)

4.12.1 <u>Landscaping</u>; <u>Five Foot (5') Landscape Strip</u>. Landscaping shall comply with the Architectural Guidelines. Each Lot shall also have a special five (5) foot landscape strip between the street curb and the sidewalks which shall be landscaped and maintained by each adjacent Lot Owner pursuant to these CC&R's and the Architectural Guidelines.

Landscaping shall include grass sod, shade trees and a pressurized irrigation system. The landscaping shall be uniform and/or compatible with all other five foot strip areas in this Subdivision. Each Lot Owner shall be required to landscape, irrigate, continuously maintain, mow and fertilize all of those portions of the five (5) foot landscape strip which is adjacent to the Owner's Lot.

The sod, trees and pressurized irrigation system in this five foot (5') strip must be installed, operational and have passed an inspection by the City of Eagle <u>prior to issuance of an occupancy permit</u>. (This time limit may be waived for a reasonable amount of time if weather prohibits the completion of the installation.)

- 4.12.2 Five Foot (5') Strip; Special Landscape Design Standards: The following landscape design standards shall apply to the five-foot (5') landscape strip.
  - (A) Grass Turf Only. The landscaping strip must be sodded with grass turf only. No flower beds, rock gardens or shrubbery shall be installed within this five-foot (5') strip.
  - (B) <u>Trees</u>. In the event that Declarant has planted any trees in this five (5) foot landscape strip, then no other trees in this five (5) foot strip are permitted without Board approval. Otherwise, each Owner's landscape strip must contain at least one tree. The trees shall be spaced as approved by the City of Eagle. (Some Lots may have more than one tree per Lot due to tree placement and Lot width.) All trees shall be 3" minimum caliper and shall be of the variety set out in

the City approved landscape plan for the Subdivision. is on file with the City of Eagle. If a tree in the landscape strip dies, it must be replaced by the Lot Owner within 60 days, or as soon thereafter as weather permits.

- 4.13 Fences. Grantor may construct a perimeter fence around portions of the exterior of this subdivision property. Unless provided otherwise below, 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.
- 4.13.1 <u>Association Maintained Fences</u>. The Association shall maintain all fences constructed adjacent to and contiguous with all Common Area Lots. The Association may, in it's sole discretion, also maintain other fencing as a Common Area expense. The height of the Common Area fences on both sides of the Micro-Path Lots shall comply with Eagle City Landscape Ordinances.

Fence in Ditch Easement Area. The Common area fence along Lot 41, Block 3 adjacent to the south west line of Lots 31 and 32, Block 3 shall be owned, maintained and/or replaced as necessary by the Association. In the event that this fence, or any portion thereof, is damaged or destroyed by the ditch easement maintenance performed by the Farmers Union Canal Company, then any repairs or maintenance shall be the responsibility of the Association and not by Farmers Union. This Association maintenance responsibility is in consideration of Farmers Union's permission allowing a fence to be constructed in the ditch easement area.

- 4.13.2 Restriction on Fences Adjacent to Common Area Lots. No Lot Owner who has a Lot adjacent to a Common Area Lot shall be allowed to place or maintain any fence adjacent to and contiguous with the Common Area fence.
- 4.13.3 Other Owner Fences; "Picture Frame" 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 constructed only of good quality cedar wood (either 4" or 2" boards), wrought iron or vinyl and

shall be properly finished and maintained and comply with all governmental ordinances. Fences may be capped with cedar lattice, if desired.

Fences facing the front of any Lot shall be constructed at least 20 feet back from the front Lot line or at a distance in line with the front face of the home, whichever distance is greater.

All fences that face any street (whether front street or side street) shall be constructed in the manner commonly referred to as "picture frame" construction. No dog eared fencing is allowed in any fences facing any street. Dog eared cedar fencing is allowed on any fencing not facing a street.

For corner Lots, the fence on the side Lot line shall be constructed at least ten (10) feet away from the side Lot line or any greater distance if required by City ordinances.

- **4.14** <u>Construction</u>. 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.
- **4.15** Antennae. No TV or radio antennae extending above the roof line of the house shall be permitted unless first approved by the Board. Any other antennae or satellite dishes, while permitted, shall be reasonably screened from view of the other Lot Owners and where practical shall be located at the rear of the home.
- **4.16** <u>Further Subdivision</u>. No Lot designated herein for single-family structures may be split or subdivided without the prior written approval of the Board. Any Lot designated herein for a duplex may be subdivided if approved by the City of Eagle.
- **4.17** <u>Nuisances</u>. 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.
- 4.18 Exterior Maintenance; Owner's Obligations. All Improvements, especially the exterior appearance of the home, paint, roof, 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.

- 4.19 <u>Unsightly Articles</u>. 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.
- **4.20** <u>No Temporary Structures</u>. 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.
- 4.21 No Unscreened Boats, Campers and Other Vehicles; No parking of Commercial Vehicles. No boats, trailers, water craft, 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 in a garage or a side yard behind the front line of the front of the house, by a concealing structure approved by the Board. Notwithstanding anything contained herein, a boat, camper, trailer or motor home not used for commercial purposes 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 commercial vehicles be allowed to be parked overnight on any of the streets of this subdivision or in any of the driveways unless directly involved in the construction of a home or construction of a part of the subdivision.
- **4.21.1** 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)

- **4.22** 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.
- 4.23 <u>Signs</u>. 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.
- 4.24 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 and in accordance with all local building code requirements. In the event a French Drain, or seepage trench is necessary to prevent water from flowing onto an adjoining property, then the Owner shall be responsible for the installation and maintenance of such facilities.
- **4.25** <u>Business Activity</u>. No residential dwelling in Shadow Ridge Subdivision may be used for any commercial business purposes, manufacturing operations or as a retail business. A "home office" business shall be allowed if permitted under the applicable City ordinances. Any home offices, however, shall be subject to the following restrictions:

- A) No signs of any kind shall be allowed on the premises advertising the business,
- B) No commercial vehicles shall be parked in the street,
- C) No more than two "customers" or "clients" visit the Home Office business at any one time and they park in the driveway and not in the street,
- D) No unsafe or unsightly conditions shall be allowed to exist on the premises.
- **4.26** Renting/Leasing. No home (or any other part of the property) owned by a Lot Owner in this subdivision shall be rented or leased to third parties except where:
  - A) The Tenant has acknowledged, in writing, receipt of a copy of these CC&R's;
  - B) The Tenant has executed a written lease or rental agreement wherein the Tenant has affirmatively agreed to be bound by the terms and conditions of these CC&R's, specifically including but not limited to the Lot landscaping and maintenance requirements; and,
  - C) The Lot Owner has provided in the lease or rental agreement that the Lot landscaping will be maintained in accordance with the CC&R's.

During any rental or lease term, the Lot Owner shall remain primarily responsible for the condition of the property, as well as for all assessments and all other obligations under these CC&R's. In addition, the Lot Owner shall be responsible for any damages caused by the Lot Owner's Tenants or their guests to any Common Areas or other common facilities owned or maintained by the Association.

In the event that the Lot Owner and the Tenant fail to maintain the landscaping and the exterior appearance of the property then the Declarant or the Association, after 30 days notice to the Lot Owner (with a copy to the Tenant, if known), shall have the right to perform that maintenance as a corrective action and the Lot Owner shall be responsible for all of the costs thereof as a Limited Assessment as provided in these CC&R's.

**ARTICLE 5: WATER** 

- **5.1** <u>Water</u>. 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 this Subdivision is **NOT** in an Irrigation District and there is **no** Irrigation District water or other irrigation water that is available for the watering of the landscaping on the Building Lots.
  - B) That there are some ground water rights that are appurtenant to the Subdivision property but that these ground water rights shall only be utilized for the irrigation of the Common Areas of the Subdivision, regardless of where the water rights are actually appurtenant.
  - C) That each Owner of any Lot is subject to all water assessments levied by the Association for the irrigation expenses relating to the ground water and the irrigation of the Common Areas.
  - D) Each Owner or occupant of any Lot in Shadow Ridge Subdivision specifically releases and waives any and all claims of any kind against Declarant, its agents, employees, officers and directors relating to irrigation water or the quantity of irrigation water.
- Grantor will construct the pumping station and pressurized irrigation system for the Subdivision Common Areas and any subsequent properties which are annexed into these CC&R's. 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. A perpetual easement as necessary for access to repair and maintain the common pressurized irrigation system and common irrigation lines is reserved on each Lot in the Subdivision. Grantor warrants to all Lot Owners 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 in that portion of the system where construction was completed during the prior year, 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.

- 5.5 <u>Water Costs</u>: All irrigation water costs, whether from ground water or potable water, shall be paid by the Lot Owners as part of the Association Assessments.
- 5.6 <u>Ground Water Not Drinkable</u>. Notice is hereby given to each Owner in this Subdivision that the water in the pressurized irrigation system for the Common areas 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 COMMON AREA 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 in the Common Areas 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.

5.7 <u>No Liability for Quality of Water</u>. Neither the Association nor the Declarant (or any members, employees, agents, officers, shareholders or directors thereof) shall have any liability <u>OF ANY KIND</u> 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.

### **ARTICLE 6: COMMON AREAS**

6.1 <u>Common Area Lots and ACHD Roadside Swales</u>: All Common Area Lots shall be owned, operated maintained and managed by the Association . This maintenance shall be in an attractive and competent manner. Any street lights shall be owned and maintained by the Association until such time as the City of Eagle may take over such maintenance. The Common Area Lots are:

| Lot 1  | Block 1 | Landscape Buffer                 |
|--------|---------|----------------------------------|
| Lot 8  | Block 1 | Landscape Buffer                 |
| Lot 2  | Block 2 | Landscape Buffer                 |
| Lot 6  | Block 2 | Landscape Buffer                 |
| Lot 10 | Block 2 | Landscape Buffer                 |
| Lot 1  | Block 3 | Landscape Buffer                 |
| Lot 3  | Block 3 | Landscape Buffer                 |
| Lot 7  | Block 3 | Landscape Buffer                 |
| Lot 41 | Block 3 | Landscape Buffer; Sewer Easement |
| Lot 50 | Block 3 | Landscape Buffer                 |
| Lot 1  | Block 4 | Landscape Area; Open Space Area  |
| Lot 1  | Block 5 | Landscape Island                 |
| Lot 1  | Block 6 | Landscape Island                 |
| Lot 1  | Block 7 | Landscape Island                 |
| Lot 5  | Block 4 | Micro-Path Lot                   |
|        |         |                                  |

**6.2** ACHD Roadside Swales; Parking Prohibited. The ACHD roadside swales developed in the right-of-way of Horshoe Bend Road adjacent to this Subdivision shall be protected and maintained in good condition and repair by the Association. Parking is prohibited in these roadside swales. These roadside

swales were developed pursuant to that Roadside Swale Development Agreement with ACHD. A copy of this agreement is attached hereto as Exhibit D and the terms thereof are incorporated herein as if set out in full.

In the event that ACHD determines, in its sole discretion, that the Association is not adequately performing its maintenance responsibilities of the roadside swales as set out in the agreement 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 said Common Areas to perform such inspection and maintenance.

Should ACHD engage in maintenance of the defined area 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.

6.3 Micro-Path Lot: Lot 5, Block 4 contains a Micro-Path and landscaping area. This Lot shall be landscaped as approved by the City of Eagle and shall contain a paved Micro-Path the entire length of the Lot as approved by the City. This Lots shall be owned and maintained by the Association and such maintenance shall comply with all Eagle City requirements and regulations for Micro-Paths. This maintenance responsibility shall not be dissolved without the express written permission of the City. Any fences adjacent to the Micro-Path area shall conform to all Eagle City Ordinances and all fences adjacent to Micro-Path Lots shall be maintained by the Association as a Common Area expense. No other fences may be built adjacent to and contiguous with a Micro-Path

fence.

- 6.4 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.
- 6.5 <u>Use of Common Area</u>. 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.
- 6.6 <u>Damages</u>. 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.
- 6.7 <u>Maintenance of Ditch Easement</u>. The ditch easement area on Lot 41, Block 3 is not landscaped. However, the Association shall keep the area weed free.

# ARTICLE 7: SHADOW RIDGE NEIGHBORHOOD ASSOCIATION, INC.

- 7.1 Organization of Shadow Ridge Neighborhood Association, Inc. Shadow Ridge 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.
- 7.2 <u>Membership</u>. Each Owner of a Lot subject to assessment, 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.
- 7.3 <u>Voting</u>. Voting in the Association shall be carried out by Members (including Declarant) who shall cast the votes attributable to the planned Building Lots which they own, whether platted or unplatted, in all phases of Shadow Ridge Subdivision (or nearby phases called by a different name) which property is depicted in Exhibit E hereto. The number of votes any Member may cast on any issue is determined by the number of Building Lots owned, whether platted or unplatted. 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:
- 7.3.1 <u>Class A Members</u>. 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 (including duplex Lots), one vote.
- 7.3.2 <u>Class B Member</u>. The Grantor shall be the Class B Member, and shall be entitled to five (5) votes for each Building Lot (platted or unplatted) owned by Grantor depicted on Exhibit E attached hereto. The Class B Member shall cease to be a Class B voting Member in the Association at the time the Grantor deeds away the last Building Lot depicted on Exhibit E to an

Owner other than Grantor, or on December 31, 2010, whichever date is sooner. Thereafter Grantor shall have the votes of a Class A Owner for each Building Lot owned.

- 7.3.3 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.
- **7.4** 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 By-laws. The Board shall be elected in accordance with the By-laws.
- 7.5 Powers 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, By-laws, 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:
- 7.5.1 <u>Assessments</u>. The power to levy Assessments on any Class A Owner as set out herein and to force payment as provided in this Declaration.
- **7.5.2** 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 By-laws; and to file and maintain any action to enforce the terms thereof.
  - **7.5.3** 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.

- 7.5.4 <u>Licenses, Easements and Rights-of-Way; Cooperative</u> Agreements. The Association shall have the power to enter into any cooperative agreements, license, easement, access and related agreements regarding water, irrigation, drainage, utilities, roadways, rights-of-way, access ways and the like. The Association shall have the power to grant and convey to any third parties, including Grantor, such licenses, easements, access ways, and rights-of-way in, on or under the Common Area or in any easement areas of any Lots as may be requested by Grantor or as the Association may desire for the installation, maintenance, operation and replacement of any systems or services relating to water, irrigation, sewer, drainage, utilities, roadways, rightsof-way, access ways and the like, or as such may be necessary for the preservation of the health, safety, convenience and welfare of the Owners or adjacent properties. 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.
- 7.6 <u>Duties of the Association</u>. In addition to duties necessary and proper to carry out the powers delegated to the Association by this Declaration, the Articles and By-laws, the Association shall have the authority to perform, without limitation, each of the following duties:
- 7.6.1 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.
- 7.6.2 <u>Taxes and Assessments</u>. 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.

- **7.6.3** 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.
- **7.6.4** 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.
- **7.6.5** 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 By-laws.
- 7.7 <u>No Liability</u>. 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.

- 7.8 <u>Budgets; Operating Statement; Balance Sheet; Inspection.</u> Within sixty (60) days after the close of each calender 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 calender year; (2) an annual operating statement reflecting the income and expenditures of the Association for its last calender 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.
- 7.9 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 8: ASSESSMENTS**

8.1 <u>Covenant to Pay Assessments</u>. By acceptance of a deed to any property in Shadow Ridge 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 <u>Assessment Personal Obligation</u>. 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 \$250.00 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, insurance and professional fees; (2) the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Areas, irrigation facilities, sewer lift stations, special easement areas, and common facilities described in these CC&R's; (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 <u>Computation of Regular Assessments</u>. 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 calender 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 <u>Transfer Special Assessment</u>. 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 <u>Start-up Development Assessment</u>. 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 in the amount of \$250.00 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 <u>Special Short Fall Assessments</u>. 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 <u>Limited Assessments</u>. 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.
- 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 <u>Late Fees; Interest on Past Due Assessments</u>: 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 <u>Notice of Corrective Action</u>: 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 <u>Assessment Liens</u>. 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 <u>Action at Law</u>. 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 pursuant to Idaho Code 45-507 then the Association shall serve the copy of the recorded lien on the Owner within the time limits set out in I.C. 45-507 et seq. and in the manner required therein. 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 the required service. 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 <u>Subordination to Certain Trust Deeds</u>. 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 <u>lien</u> 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: ADDITIONAL EASEMENTS & ACHD EASEMENTS AND ACHD SPECIAL PROVISIONS

10.1 <u>Easements of Access</u>. Grantor expressly reserves for the benefit of all the Property, the Association 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 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 <u>Utility Easements</u>. 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. Grantor reserves, for 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.
- 10.3 <u>Improvement of Drainage and Utility Easement Areas</u>. 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 and do not the terms of any easement agreement affecting the property.
- 10.4 Additional Easements; Right to Grant 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 irrigation and drainage facilities. Grantor further reserves the right at any time in the future to grant any and all easements, access and rights of way to any utility or governmental entity over under and across any Common Area Lot or Common Area of this subdivision for the purposes of installing, maintaining, operating, or replacing any water, sewer, irrigation, drainage, utility, or governmentally required services or the like.
- 10.5 <u>Additional Easements to Eagle Sewer District.</u> Lot 41, Block 3 is subject to easements to Eagle sewer District as dimensioned on the plat.
- 10.6 <u>ACHD Special Easements</u>. ACHD has been granted special easements over under and across certain areas in this Subdivision as identified on the plat and these are subject to that Master Perpetual Storm Water Drainage Easement which was recorded in Ada County as Instrument No. 104068411, a copy of which is attached hereto as Exhibit F. The terms of that easement agreement are incorporated herein by reference. Prior to placing any Improvements, trees, fences or the like in these easement areas, the Owner

shall first obtain approval of ACHD.

No changes in this ACHD document shall be allowed unless agreed to in writing by ACHD. These easements are for access and inspection, 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. The primary purpose of these storm drainage easements are for the storage and drainage of storm water.

- 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.
- 10.6.2 <u>"Light" Maintenance</u>. The Association shall provide all "light" maintenance of the drainage/retention and easement areas as set out in the Operation and Maintenance Manual for this Subdivision. This Manual is on file with ACHD and the Association. The relevant portions of that Manual provide generally as follows:

# STORMWATER RETENTION O & M MANUAL

This manual outlines the duties to be performed by the Association, Inc. (hereinafter the "Association") for the light maintenance of the storm water retention areas.

<u>Purpose of Stormwater Facility</u>. The purpose of the stormwater facilities is to convey stormwater from the streets and are intended to retain stormwater and percolate that water into the ground at rates acceptable to ACHD.

Additions to Facility; Removal; No Liability to ACHD. Additions to the facility (if any), such as park

benches, additional landscaping or other amenities 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.

<u>Light Maintenance</u>. The Association shall have the duty to perform the light maintenance of the pond as follows:

Monthly Inspection. Monthly visual inspections of the facilities shall be performed by the Association to check for bank stability, water spots, 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.

Monthly Inspection of Underground Storm Drain Facilities. Monthly visual inspections of the underground storm water drain facilities 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.

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 lawns shall be maintained in a healthy condition.

<u>Trash Cleanup</u>. Any trash found during the periodic inspections shall be collected and removed.

Annual Operating Costs of Storm Water Facilities. The annual operating costs for these storm water facilities to the Association (and assessed to the Owners) are estimated to be approximately \$1,000 per year. (Additional operating costs will be incurred in the operation and maintenance of future drainage facilities in later phases of this subdivision.)

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.

10.7 ACHD Temporary License Agreement. Each Lot in this

Subdivision is subject to that ACHD License Agreement attached hereto as Exhibit G.

#### **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, 2029, unless amended as provided. After December 31, 2029, 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, and the maintenance responsibilities of the Association, shall not be dissolved without the prior written approval of the City having jurisdiction of this Subdivision.
- 11.2 <u>Amendment By Grantor</u>. 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 voting power in the Association and the assent of the Declarant if Declarant still owns any property in the Subdivision. Any amendment shall be effective upon recording with the County Recorder of such amendment.
- 11.4 <u>Effect of Amendment</u>. 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 <u>Annexation of Additional Area</u>. Declarant shall have the right to annex and include additional and similar areas, including but not limited to Shadow Ridge Subdivision, owned by Declarant into these Declarations and to make these additional areas and/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 <u>Mortgage Protection</u>. 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 <u>Notices</u>. 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 the Declarant at 150 E. Aikens, Suite A, Eagle, Idaho 83616; and to Lot 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. Any addresses may be changed from time to time by notice in writing to the Association.
- 11.8 <u>Enforcement and Non-Waiver</u>. 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 Shadow Ridge Neighborhood Association to enforce any of these CC&R's. Neither Declarant, Board nor Shadow Ridge 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 <u>Successors and Assigns</u>. All references herein to Declarant, Owners, the Association or person shall be construed to include all heirs,



1450 East Watertower St. Suite 150 Meridian, Idaho 83642

Phone (208) 846-8570 Fax (208) 884-5399

Project No. 04-215

October 22, 2004

#### **Shadow Ridge Subdivision** Except Lot 1, Block 2

A parcel of land located in the SE 1/4 of the NE 1/4 of section 10, T. 4N., R. 1E., B.M., Ada County, Idaho, more particularly described as follows: Commencing at the corner common to sections 2, 3, 11 and the said section 10, as same is described in CP & F Instrument No. 8209767, Ada County records, from which the '4 corner common to said sections 10 and 11 bears South 00°00'00" West, 2635.56 feet; Thence South 00°00'00" West, 1345.96 feet; Thence South 89°46'45" West, 50.04 feet to a point on the West right-of-way of Horseshoe Bend Road and the REAL POINT OF BEGINNING.

Thence along the said right-of-way South 00°02'16" West, 165.79 feet;

Thence departing said right-of-way South 89°51'21" West, 239.23 feet;

Thence South 00°02'16" West, 163.54 feet;

Thence North 89°51'21" East, 249.23 feet to a point on the West right-of-way of Horseshoe Bend Road;

Thence along said right-of-way South 00°02'16" West, 487.06 feet;

Thence departing said West right-of-way along a line described in Boundary Line Agreement Instrument No. 757747, South 86°00'34" West, 1124.80 feet;

Thence North 44°45'33" West, 221.68 feet to a point on the West line of the Southeast ¼ of the Northeast ¼, common to the East right-of-way of State Highway 55;

Thence along said West line and East right-of-way North 00°17'02" West, 732.33 feet to a point which bears South 00°17'02" East, 13.29 feet from the NE 1/16 corner of said section 10;

Professional Land Surveyors EXHIGIT A

Thence along the South line of Quiet Title action described in Instrument No. 104015080, records of Ada County, Idaho, North 89°46'45" East, 1272.35 feet to the Point of Beginning. Containing 23.95 acres, more of less.

Prepared By: Idaho Survey Group, P.C.

D. Terry Peugh, PLS

EXHIGIT A

## BY-LAWS

#### OF

### SHADOW RIDGE NEIGHBORHOOD ASSOCIATION, INC.

(SHADOW RIDGE SUBDIVISION)

#### ARTICLE 1. GENERAL PLAN OF OWNERSHIP

- 1.1 <u>Name</u>. The name of the corporation is set out in the heading above and is hereinafter referred to as the corporation or as the "Association".
- 1.2 <u>By-laws Applicability</u>. The provisions of these By-laws are applicable to the corporation and subdivision named above, together with such subsequent phases, additions or annexations thereto as may hereinafter be brought within the jurisdiction of the Association.
- 1.3 <u>Personal Application</u>. 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, QUORUM, PROXIES

- 2.1 <u>Voting</u>. Voting shall be as set out in the Covenants Conditions and Restrictions for this Subdivision (hereinafter referred to as "CC&R's" or "Declaration"). Except for the Class B Membership provided for in the CC&R's, and except as may be otherwise provided in the CC&R's, each Class A 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 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 ten percent (10%) of the total Class A 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.
  - 2.3 Proxies. Votes may be cast in person or by proxy. Proxies must be

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in writing and filed at the meeting and are good for 11 months or until canceled by the member giving the proxy.

#### ARTICLE 3 ADMINISTRATION

- 3.1 <u>Duties</u>. The Association shall have the duties set out in the CC&R's" for the subdivision set out above.
- 3.2 <u>Meetings</u>. Meetings of the Association shall be held on the Property or close to the Property, and shall be conducted in accordance with <u>Robert's Rules of Order</u>.
- 3.3 <u>Annual Meetings</u>. Annual meetings of the members shall be held on May 30 of each year, unless a different date between April 15 and September 15 is selected by the Board. (If a weekend or holiday then the next business day.)
- 3.4 <u>Special Meetings</u>. 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 <u>Notice of Meetings</u>. Notice of meetings 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. The notice shall include all matters or issues to be voted on at the meeting
- 3.6 Order of Business. The order of business at 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, including the reports of the President or financial officers, or their designated representatives, as to the activities and financial condition of the corporation; (e) reports of committees; (f) election of Directors, if Directors are to be elected; (g) unfinished business; and (h) new business. Meetings shall be conducted by the officers of the Association or by their representative, in order of their priority.
  - 3.7 Adjourned Meetings. If any meeting of the Corporation cannot be

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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 <u>Minutes, Presumption of Notice</u>. 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 <u>Consent of Absentees</u>. 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 if either before or after the meeting each of the Members not present in person or by proxy signed a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made party of the minutes of the meeting.

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

- 4.1 <u>Number and Qualification</u>. 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 <u>Powers and Duties</u>. 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.

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- 4.3 <u>Special Powers and Duties</u>. In addition to the general powers and duties as set forth in the CC&R's, the Board is vested with, and responsible for 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 meetings.
- (d) To borrow money and to incur indebtedness 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.
- (f) To enforce the provisions of the CC&R's or other agreements of the Association.
- (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 the pressurized irrigation system, all Common Area, if any, and to contract for and pay the expenses relating thereto.
  - (I) To grant easements or licenses as provided in the CC&R's.
- 4.4 <u>Management and Other Agents</u>. The Board may contract or employ for the Association a management agent ("Manager") or other Agents at a

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

- Term of Office; Election. The initial Board of Directors shall be selected and designated by the Declarant identified in the CC&R's. This Board shall serve so long as Declarant owns or has any interest in any of the property depicted in Exhibit C to the CC&R's, or until their resignation. Vacancies on this Board shall be designated by Declarant. After the resignation of the Declarant designated Board of Directors the terms of the Directors shall be for one (1) year. At the first meeting where new Directors are to be elected after the resignation of the Declarant designated Board of Directors, and thereafter at each annual meeting, Directors shall be elected by secret written ballot by a Majority of the voting power present at such meeting. Cumulative voting is not permitted. 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, and there shall be no limitation on the number of terms during which a Director may serve. Nomination for election to the Board may be made by a nomination committee and/or made from the floor at the annual meeting by any Director, Officer or Member.
- 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 <u>Vacancies</u>. Vacancies in the Declarant designated Board shall be filled by Declarant, and if not filled by Declarant shall be filled by a 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 designated or 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 the voting power (total Class A and Class B votes as set out in the CC&R's) present at the meeting and a successor may

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then and there be designated by the Declarant (in the event that the Declarant is to so designate). Or, if the removed Director was an elected Board member, then a new Director may then 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.

- 4.9 <u>Board Meetings</u>. The regular annual meeting of the Board shall follow the regular annual meeting of the Members unless determined otherwise by the Board. 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 <u>Special Meetings</u>. 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 <u>Waiver of Notice</u>. 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 <u>Quorum</u>. 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 <u>Action Without Meeting</u>. 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.
- 4.15 <u>Committees</u>. The Board may designate such committees as the Board shall desire, and establish the purposes and powers of each such committee created.

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#### **ARTICLE 5. OFFICERS**

- 5.1 <u>Designation</u>. 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 and serve at the will of the Board. One person may hold two or more offices, except those offices of President and Secretary.
- 5.2 <u>Election of Officers</u>. The officers of the Association shall be elected by the Board for such term as determined by the Board.
- 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 <u>Compensation</u>. Any reasonable compensation of the officers, agents, and employees of the corporation shall be paid but only after authorization from 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 who is an affiliate of Grantor may receive any compensation.)
- 5.5. <u>Special Appointment</u>. 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. <u>President</u>. 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. <u>Vice President</u>. 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. <u>Secretary</u>. The Secretary shall record the votes and keep the minutes of all meetings of the Board and the minutes of all meetings of the

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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 and shall authenticate all corporation documents. 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. <u>Treasurer</u>. 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. 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 <u>Assessments</u>. All Class A Owners are obligated to comply with all of the terms and conditions contained in the CC&R's and pay all Assessments set out in the CC&R's. All delinquent Assessments shall be enforced, collected or foreclosed in the manner provided in the CC&R's.
- 6.2 <u>Maintenance and Repair</u>. 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 owned or controlled by the Association which are damaged through the fault of the Owner as set out in the CC&R's.

#### **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 the Class B Member (if one) and a 2/3 vote of the Class A Members present.

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#### **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 <u>Certain Definitions</u>. 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, or was a director, officer, employee or agent of a corporation which was a predecessor corporation of the Association; "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 <u>Indemnification</u>. 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 persons 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

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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 <u>Determination of Standard of Conduct</u>. 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 Members entitled to vote represented at a duly held meeting at which a quorum is present or by the written consent of a Majority thereof; 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 <u>Advancing Expenses</u>. Expenses incurred in defending any proceeding may be advanced by the Association prior to the final disposition of

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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 <u>Liability Insurance</u>. 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 <u>Checks, Drafts and Documents</u>. 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.

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- 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 <u>Inspection of By-laws, Books and Records</u>. 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 <u>Fiscal Year</u>. The fiscal year of the Association shall be a calender year.
- 11.5 <u>Membership Book</u>. 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.

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#### SETBACKS FOR SHADOWRIDGE SUBDIVISION

Setbacks for the homes (Lot 1 Block 2, Lot 2, 6, 19 Block3) existing on the site (as of April 21, 2004) shall be a minimum of:

Front and street side 10 feet from the back of the sidewalk except that a minimum of 20 feet shall be required between any garage door and back of sidewalk.

Rear 15 feet

Interior Side 5 feet

Setbacks for Lot 2-7 Block 1, Lot 3-5, 7-9 Block 2, Lot 43-49 Block 3, Lot 2-4, 6, 7,12, 13, 14-21 Block 4 shall be a minimum of:

Front and street side 20 feet
Rear 25 feet
Interior Side 7.5 feet for first story, 12.5 feet for the second story

Setbacks for Lot 4,5 8-18, 20-40, 42 Block 3, Lot 8-11 Block 4 shall be a minimum of:

Front and street side 20 feet
Rear 25 feet
Interior Side 5 feet for the first story, 7.5 feet for the second story

#### ROADSIDE SWALE DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (hereinafter the "Agreement") is made and entered into this \_\_\_\_\_\_\_\_, 2004, by and between ADA COUNTY HIGHWAY DISTRICT (hereinafter referred to as "ACHD"), and Hillview Development, Corp., (hereinafter referred to as "Developer");

#### WITNESSETH:

#### FOR GOOD AND SUFFICIENT CONSIDERATION, IT IS AGREED:

<u>SECTION 1</u>. <u>Definitions</u>. As used in this Agreement, the following terms shall have the following meanings:

- (a) The term "ACHD" refers to Ada County Highway District, a body politic and corporate of the State of Idaho whose address is 3775 Adams Street, Garden City, Idaho 83714-6499; the contact person at ACHD, and the person with authority to execute the ACHD approvals required hereunder is Gary Inselman, whose telephone number is (208) 387-6180, and whose fax telephone number is (208) 387-6393.
- (b) The term "ACHD Conditions of Approval" shall mean those Site Specific Conditions of Approval related to the planned street improvements for the Shadow Ridge Subdivision, and consists of Site Specific Conditions of Approval, and the Standard Conditions of Approval as set forth in the ACHD Staff Report, as those ACHD Conditions of Approval are supplemented and modified by this Agreement.
- (c) The term "ACHD Staff Report" refers to the Staff Report of the ACHD Planning Review Division of the ACHD Right-of-Way and Development Services Department, prepared in response to Developer's application for preliminary plat approval for a residential subdivision. A copy of the Staff Report is attached hereto as Exhibit "A".
  - (d) The term "Agreement" refers to this Development Agreement.
- (e) The term "Infiltration Swale Criteria and Design Details" refers to the detailed criteria and plan details attached hereto as Exhibit "B".
- (f) The term "Developer" refers to Hillview Development, an Idaho Corporation, whose address is 150 E. Aikens Street, Suite A, Eagle, Idaho 83616, the contact person for Developer is Jim Merkle, whose telephone number is (208) 939-2730, and whose fax telephone number is (208) 939-2737.
- (g) The term "Development" shall refer to the Developer's development of Shadow Ridge Subdivision as described in the ACHD Staff Report.

Shadow Ridge Subdivision Development Agreement, page 1

#### SECTION 2. Recitals.

- 2.1 With the exception of state and federal highways, ACHD owns and has exclusive jurisdiction over the public rights-of-way and highways in Ada County, Idaho.
- 2.2. ACHD Planning Review Division of the Right-of-Way and Development Services Department has reviewed Developer's application for preliminary plat approval for the Development and has developed Site Specific Conditions of Approval, which are set forth in the ACHD Staff Report.
- 2.3 This Agreement is entered into by the parties for the purposes of complying with, supplementing and, to the extent of any conflict, modifying and amending the ACHD Conditions of Approval.

# SECTION 3. Design and Construction of Swales and Other Improvements, Protection and Maintenance of Swales

- 3.1 <u>Design and Construction of Swales and Other Improvements</u>. The Developer shall comply with ACHD Conditions of Approval as set forth in the ACHD Staff Report and shall construct the public streets within the Development in compliance with the detailed plan set forth in the Infiltration Swale Criteria and Design Details.
- 3.2 The design of the Development, the preparation of the Development plans and specifications and the construction and/or installation by the Developer of improvements, including, without limitation, buildings, fixtures and landscaping shall be accomplished in accordance with designs, plans and specifications approved in advance and in writing by ACHD as required to satisfy applicable laws, its policies and good engineering practices. In approving such plans and specifications, ACHD assumes no responsibility for any deficiencies or inadequacies in the design or construction of the improvements.
- 3.3 Developer shall ensure that its contractor is bonded and shall obtain all applicable permits to work in the Right-of-Way and pay all applicable fees for such permits prior to start of work under the construction contract.

#### 3.4. Protection and Maintenance.

3.4.1 At its sole cost and expense, the Developer shall protect and maintain the swales in good condition and repair until such time as the Home Owners' Association becomes fully operational and assumes such duties. No assignment of the aforementioned duties shall occur without the prior written consent of ACHD, which consent may be withheld in the sole discretion of ACHD. Such written consent shall be set forth in a separate written instrument.

3.4.2 Developer agrees to draft Covenants, Conditions and Restrictions for the Development, which shall contain provisions that the Homeowners' Association shall protect and maintain the swales in good condition and repair. Such Covenants, Conditions and Restrictions shall also prohibit parking in the swales. The Covenants, Conditions and Restrictions shall provide that in the event the Homeowners' Association fails to maintain and protect the swales that ACHD shall be entitled to correct such deficiency(ies) and recover its costs to correct such deficiency(ies) from the Homeowners' Association.

### **SECTION 4. Security Deposit**

- 4.1 <u>Security Deposit.</u> The Developer shall deposit with ACHD the sum of Five-Hundred Dollar (\$500.00) per lot or a total of Two Thousand Dollars (\$2,000) for 4 lots abutting the swales within the Development to ensure that the Developer, the Developer's employees, contractors and agents, the lot owners and their contractors, agents, heirs, personal representatives and assigns do not destroy or impair the proper operation of the swales during any construction of improvements in the Development (said sum shall hereinafter be referred to as "security deposit"). Said Lots areas indicated on the plat reduction attached hereto on Exhibit "C"
- 4.2 The Developer shall deposit the Security Deposit with ACHD prior to either:
  1) ACHD signing the final plat, or 2) ACHD releasing the financial guarantee that ensures that the Developer will properly install the improvements in the Development as required by ACHD.
- 4.3 <u>Default.</u> In the event the Developer fails to protect and maintain the swales in good condition and repair during construction of the Development, ACHD shall provide written notice of such failure to the Developer. If the Developer fails or neglects to commence such correction and cure within twenty-four (24) hours of the notification thereof, ACHD shall have the right to correct such deficiency, in which event ACHD shall be entitled to collect its costs and expenses thereof from the Developer. ACHD shall be entitled to deduct its costs and expenses to correct such deficiency from the Security Deposit.
- 4.4 ACHD in its sole discretion may release such portions of the Security Deposit as ACHD deems is appropriate after ACHD's quarterly inspection of the Development. Prior to the quarterly inspection, the Developer shall notify ACHD of the completion of construction of improvements made to each lot in the Development. ACHD will release any remaining amount of the Security Deposit only after the Developer has completed construction of improvements on the last unimproved lots in the Development and after ACHD's final inspection of the same.

#### **SECTION 5 Inspections**

- 5.1 Developer shall be responsible for scheduling all ACHD inspections and ACHD testing of the improvements, or otherwise such inspection and testing as agreed in writing by ACHD and Developer. Developer shall be solely responsible to pay all costs associated with any inspection and testing of improvements. All inspections and testing shall be in accordance with the Idaho Specifications for Public Work Construction, ACHD policies, and to satisfy any and all applicable laws, regulations and ordinances.
- 5.2 With respect to construction of the swale, the Developer shall give ACHD written notice for ACHD to inspect the sand trench. Such notice shall be given at least 72 hours prior to the installation of the filter sand and sandy topsoil. The Developer shall not install the filter sand and sandy topsoil without written authorization from ACHD following the inspection of the trench. The Developer shall maintain a 3-foot separation of groundwater from the flow line of swale.
- 5.3 ACHD and its contractors shall have full access to the Right-of-Way for inspecting and testing.
- <u>SECTION 6.</u> The Developer hereby agrees to perform such other acts, and to execute and acknowledge, and or deliver such other instruments, licenses, agreements and materials as may be reasonably necessary to carryout the terms of this Agreement.
- <u>SECTION 7. Attorneys' Fees.</u> Should either party find it necessary to employ an attorney for representation in any action seeking enforcement of any of the provisions of this Agreement, or to protect its interest in any matter arising under this Agreement, or to recover damages for the breach of this Agreement, or to resolve any disagreement in the interpretation of this Agreement, the unsuccessful party in any final judgment or award entered therein agrees to reimburse the prevailing party for all reasonable costs, charges and expenses, including attorneys' fees, expended or incurred by the prevailing party in connection therewith and in connection with any appeal, and the same may be included in such judgment or award.
- SECTION 8. Notices. Any and all notices given by either of the parties hereto shall be in writing and deemed delivered when either: (i) delivered personally, or (ii) sent by fax by a program that will confirm fax delivery and, simultaneously, by the deposit of a copy in the United States Mail, first class postage prepaid, addressed to the other party, or (iii) deposited in the United States Mail, certified, return receipt requested, postage prepaid; and, in any case, addressed to the other party at the address set forth in Section 1 and faxed to the other party at the fax telephone number set forth in Section 1, or at such other mailing address or fax telephone number as may be provided by written notice of such change given to the other in the same manner as above provided.

If to ACHD:

Ada County Highway District

3775 Adams Street

Garden City, Idaho 83714

Attn: Development Review Supervisor

If to Developer:

Hillview Development, Corp 150 E. Aikens Street, Suite A

Eagle, Idaho 83616

Attn:

<u>SECTION 9. Applicable Law.</u> This Agreement shall be governed by, and construed in accordance with, the laws of the State of Idaho.

<u>SECTION 10. Incorporation of Exhibits.</u> It is agreed that all exhibits to this Agreement are incorporated by reference and made a part of the terms, provisions and covenants of this Agreement.

<u>SECTION 11.</u> Conflicts. In the event of any conflict between the terms of this Agreement and ACHD Conditions of Approval, the terms of this Agreement shall control.

<u>Section 12. Amendment.</u> This Agreement may not be amended in whole or in part, except by written instrument executed by both parties.

<u>SECTION 13.</u> Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

**DEVELOPER** 

ADA COUNTY HIGHWAY DISTRICT

By GM HILLIEN DE CORP Title: Presiden.

By Standard Title: Asst. Mgr.

Shadow Ridge Subdivision Development Agreement, page 5

| State of Idaho ) ss.  County of Ada )  On this 11th day of Nevember, in the year 2004 before me,  Shaw L. Nickel, a Notary Public in and for the State of Idaho, personally appeared James Merkle, known or identified to me to be  |
|---|
| the <u>President</u> of Hillview Development, Corp., 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 and year in this certificate first above-written.  Notary Public for the State of Idaho Residing at Fage IP, Idaho My Commission expires 7-22-08   |
| My Commission expires 7-22-08  My Commission expires 7-22-08  |
| State of Idaho ) : ss. County of Ada )  |
| On this 30 day of 10 member, in the year 20_, before me, a Notary Public in and for the State of Idaho, personally appeared before metary which me, known or identified to me to be the Supervisor of Development Review 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 dayland year in this certificate first above-written.  |
| Notary Public for the State of Idaho Residing at  |

### **EXHIBITS:**

Exhibit "A" – ACHD Staff Report Exhibit "B" – Infiltration Swale Detail Exhibit "C" – Plat Reduction



# **Ada County Highway District**

John S. Franden, President
Dave E. Wynkoop 1st Vice President
Susan S. Eastlake, 2nd Vice President
Sherry R. Huber, Commissioner
Dave Bivens, Commissioner

3775 N. Adams Street Garden City ID 83714-6499 Phone (208) 387-6100 FAX (208) 387-6391 E-mail: tellus@ACHD.ada.id.us

June 10, 2004

To:

Hillview Development Corporation

150 East Aikens Stree Suite A

Eagle, Idaho 83616

Subject:

EPP-03-04/EPPUD/ECU-03-04/EA-03-04

**Shadow Ridge Subdivision** 

West side of Horseshoe Bend Road, between Hill Road and Floating Feather Road

On June 9, 2004, the Ada County Highway District acted on your application for the above referenced project. The attached report lists site-specific requirements, conditions of approval and street improvements, which are required.

If you have any questions, please feel free to contact me at 208-387-6174.

Sincerely,

Lori Den Hartog′ Senior Development Analyst

Right-of-way & Development Services, Planning Division

CC:

Construction Services, Drainage, Utilities

City of Eagle

Tomlinson Consulting 205 N. 10th Street Boise, Idaho 83616 Land Consultants 52 N. 2nd Street Eagle, Idaho 83616



# **Ada County Highway District**

Right-of-Way & Development Department
Planning Review Division

This application requires Commission action due to the size of the development. This item is also scheduled on the regular addenda due to the fact that the applicant is requesting that a number of driveways remain on Horseshoe Bend Road that do not meet District policy. This item is scheduled to be on the consent agenda on Wednesday June 9, 2004 at 6:30 pm. Tech Review for this item was held with the applicant on Friday April 23, 2004. Please refer to the attachment for request for reconsideration guidelines. Staff contact: Andrea N. Tuning, 208-387-6177-phone, 208-387-6393-fax, atuning@achd.ada.id.us

**File Numbers:** 

Shadow Ridge Subdivision/EPP-03-04/EPPUD-10-04/ECU-03-04/EA-03-04

Site address:

West side of Horseshoe Bend Road between Hill Road and Floating Feather Road

Owner:

Hillview Development Corporation 150 East Aikens Street Suite A

Eagle, Idaho 83616

**Applicant:** 

Tomlinson Consulting 205 North 10<sup>th</sup> Street Boise, Idaho 83616

Representative:

Land Consultants 52 North 2<sup>nd</sup> Street Eagle, Idaho 83616

#### **Application Information:**

The applicant has submitted an application to the City of Eagle requesting rezone, conditional use, planned unit development and preliminary plat approval to construct a 179-lot single-family residential subdivision on 39.46-acres. The site is proposed to contain a total of 159-single-family lots and 20-common lots. The site is currently zoned RUT and is proposed to be zoned R-4-P. The site is located on the west side of Horseshoe Bend Road between Hill Road and Floating Feather Road

Acreage:

39.46-acres

Current Zoning:

RUT

**Proposed Zoning:** 

R-4-P

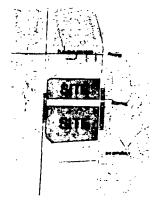
Buildable Lots:

159-lots

Common Lots:

20-lots

Vicinity Map



## A. Findings of Fact

- 1. **Trip Generation:** This development is estimated to generate 1,521 additional vehicle trips per day (70 existing) based on the submitted traffic impact study.
- 2. **Impact Fees:** There will be an impact fee that is assessed and due prior to issuance of a building permit. The assessed impact fee will be based on the impact fee ordinance that is in effect at that time.
- 3. **Traffic Impact Study:** A traffic impact study was required with this application. The study was completed by Washington Infrastructure Services, Inc.

The proposed development will provide approximately 159 (e.g. 152 new plus 7 existing) residential units. There are also 20 common lots that will not generate traffic. The study is based upon the construction of the development completed by 2014. The development proposes three new public street intersections with Horseshoe Bend Road. Seven existing, single-family homes plan to retain their existing driveways onto Horseshoe Bend Road. Horseshoe Bend Road is a three-lane collector roadway abutting the project site.

#### Traffic Analysis

The proposed development will include a total of 159 residential units. The five-acre out parcel has the potential for an additional 18 residential units. The total site, <u>excluding the out parcel</u>, is projected to generate an average daily traffic (ADT) of 1,521 vehicles per day (vpd), of which the peak hour traffic (PHT) is projected to be only 161 vehicles per hour (vph).

From the project site, the COMPASS Regional Model indicates that 66% of the traffic will travel to and from the south and that 34% of the traffic will travel to and from the north. The background traffic volumes were taken from ACHD's data inventory and based upon Year 2003 conditions. The observed volumes were factored 2.5% per year to replicate build out conditions for Year 2009.

Capacity analysis was performed for the three site approaches using the latest edition of Highway Capacity Software (HCS 4.1d) based on the 2000 edition of Highway Capacity Manual. Site traffic will be controlled with a stop sign for the intersections with Horseshoe Bend Road. Based on this TWSC condition, the intersections will operation as follows:

| Peak Hour Level of Service           |                         |                        |                         |                        |  |
|--------------------------------------|-------------------------|------------------------|-------------------------|------------------------|--|
| Intersection                         | Northbound<br>Left-turn | Eastbound<br>Left-turn | Eastbound<br>Right-turn | East Approach<br>Total |  |
| Northern Parcel                      | Α                       | В                      | Α                       | В                      |  |
| Southern Parcel -<br>Northern Access | Α                       | В                      | Α                       | В                      |  |
| Southern Parcel -<br>Southern Access | A                       | В                      | Α                       | В                      |  |

As shown, all of the movements are expected to experience an excellent level of service. None of the movements has a level of service (LOS) lower that "B". The Regional Transportation Plan notes

that a LOS D is acceptable for collector roads without predominant front-on housing. The operating conditions for the site's access points will all exceed the minimum planning standards.

#### Internal Street Traffic Volumes

The three site entrances will all share a portion of the internal site traffic volumes. The highest volume internal street is the southern site access on the southern parcel. That roadway is anticipated to accommodate less than 1,000 vehicles per day. All other internal site streets are anticipated to accommodate less than 1,000 vehicles per day.

#### Stub Street Traffic Volumes

The proposed development will include a total of 159 residential units. The five-acre out parcel has the potential for an additional 18 residential units. The total site, including the out parcel, is projected to generate an average daily traffic (ADT) of 1,693 vehicles per day (vpd), of which the peak hour traffic (PHT) is projected to be only 179 vehicles per hour (vph).

The two new stub streets (e.g. one from the north parcel to the out parcel, and one from the south parcel to the out parcel) will each carry less than 100 vehicle trips per day. These volumes are based upon the following assumptions:

- The three proposed public street intersections will be allowed as proposed.
- The out parcel will have its own public street intersection to Horseshoe Bend Road and aligned with Bucktail Drive.
- The out parcel will develop with single-family residences at a density less than four units per acre.
- 4. **Site Information:** The site currently has 7-existing single-family residential homes.

#### 5. **Description of Adjacent Surrounding Area:**

a. North: 5.0-acres zoned RUT and 1.5-acres zoned A-R

b. South: 11.69-acre mobile home park

c. East: Horseshoe Bend Road and Brenson Subdivision

d. West: Highway 55 and Echohawk Estates

#### 6. **Impacted Roadways**

#### Horseshoe Bend Road:

Frontage: 1,308-feet Functional Street Classification: Collector

Traffic count: North of Hill Road was 4,961 on 2-26-03 Level of Service: Better than C

Speed limit: 35 MPH

#### State Highway 55:

Frontage: 1,308-feet **Functional Street Classification:** Principal Arterial

Traffic count: North of Hill Road was 9.954 on 12-10-02

Level of Service: Better than C Speed limit: **55 MPH** 

#### 7. Roadway Improvements Adjacent To and Near the Site

Horseshoe Bend Road is currently improved with 3-traffic lanes with no curb, gutter or sidewalk abutting the site.

State Highway 55 is currently improved with 4-traffic lanes with no curb, gutter or sidewalk abutting the site.

#### 8. Existing Right-of-Way

Horseshoe Bend Road currently has a total of 120-feet of right-of-way (40-feet from centerline). State Highway 55 currently has a total of 120 to 130-feet of right-of-way (60-feet from centerline).

#### 9. Existing Access to the Site

The site currently has 11-driveways that take access to Horseshoe Bend Road.

Driveway #1 is 16-feet in width and intersects Horseshoe Bend Road approximately 135-feet south of the north property line.

Driveway #2 is 12-feet in width and intersects Horseshoe Bend Road approximately 180-feet south of the north property line.

Driveway #3 is 12-feet in width and intersects Horseshoe Bend Road approximately 245-feet south of the north property line.

Driveway #4 is 14-feet in width and intersects Horseshoe Bend Road approximately 340-feet south of the north property line.

Driveway #5 is 12-feet in width and intersects Horseshoe Bend Road approximately 450-feet south of the north property line.

Driveway #6 is 15-feet in width and intersects Horseshoe Bend Road approximately 710-feet south of the north property line.

Driveway #7 is 20-feet in width and intersects Horseshoe Bend Road approximately 595-feet north of the south property line.

Driveway #8 is 20-feet in width and intersects Horseshoe Bend Road approximately 490-feet north of the south property line.

Driveway #9 is 20-feet in width and intersects Horseshoe Bend Road approximately 335-feet north of the south property line.

Driveway #10 is 20-feet in width and intersects Horseshoe Bend Road approximately 300-feet north of the south property line.

Driveway #11 is 24-feet in width and intersects Horseshoe Bend Road approximately 80-feet north of the south property line.

#### 10. Site History

The District has not previously reviewed a development application on this site.

#### 11. Capital Improvements Plan/Five Year Work Program

The Hill Road/Horseshoe Bend Road intersection was reconstructed in 1999. The intersection is now a flashing yellow. The Intersection is programmed in the District's Five Year Work Program and anticipated to be signalized in the year 2007.

## **B.** Findings for Consideration

#### 1. Right-of-Way

District policy requires 70-feet of right-of-way on collector roadways (Figure 72-F1B). This right-of-way width allows for the construction of a 3-lane roadway with curb, gutter, 5-foot wide detached sidewalks and bike lanes.

Horseshoe Bend Road currently has a total of 120-feet of right-of-way (40 to 50-feet from the centerline of the road). The existing right-of-way is sufficient to accommodate all of the roadway improvements that are required on collector roadways. Due to the fact that there is sufficient right-of-

way on Horseshoe Bend Road, the applicant will not be required to dedicate any additional right-ofway abutting the site.

#### 2. Street Sections

#### Horseshoe Bend Road

District policy 72-F1B requires collector roadways to be constructed as a 46-foot street section with vertical curb, gutter and 5-foot detached (or 7-foot attached) concrete sidewalk within 70-feet of right-of-way with parking prohibited on both sides.

The applicant should construct Horseshoe Bend Road as one half of a 46-foot street section with vertical curb, gutter and a 5-foot detached (or 7-foot attached) concrete sidewalk within the existing right-of-way.

#### Internal Streets

District policy 72-F1A, allows local residential public roads with a 33-foot street section with parking on both sides of the roadway, if the amount of vehicle trips per day on the street does not exceed 1,000 and the appropriate fire department reviews and approves the street section. The proposed density of development that will utilize the internal local residential streets is anticipated to generate less than 1,000 vehicle trips per day.

The applicant is proposing to construct the internal streets as 33-foot street sections with rolled curb, gutter and a detached 5-foot concrete sidewalk that is detached with a 5-foot planter strip within 54-feet of right-of-way. This street section is an acceptable street section and should be approved with this application. The applicant should submit a letter from the appropriate fire department stating that the fire department has reviewed and approved this street section and will allow parking on both sides of the roadway.

#### 3. Access Points

District policy 7204.6.14 states that direct access to arterials and collector is normally restricted. The developer shall try to use combined access points. If the developer can show that the use of a combined access point to a collector or arterial street is infeasible the District may consider direct access points based on the following guidelines:

Less than 150-feet of continuous frontage
 150-feet to 600-feet of continuous frontage
 2-access points

Greater than 600-feet of continuous frontage 3-access points

Once the access points have been approved, they are to be identified as such on the construction drawings. The remaining frontage along arterial and collector streets shall be identified as having no access.

The applicant is proposing to have three (3) public roadways and seven (7) driveways intersect Horseshoe Bend Road. District policy allows a maximum of three (3) access points to intersect Horseshoe Bend Road. Staff is recommending a modification to this policy to allow the applicant to have three (3) public roadways and three (4) driveways intersect Horseshoe Bend Road. This allows the applicant to have reasonable access to the public transportation system and grants the applicant three (4) additional access points to what is allowed by District policy.

\*\*\*\*See Findings for Consideration # 4 and # 5 for approved roadway and driveway locations.

#### 4. Roadway Offsets

District policy 7204.11.6, requires local roadways to align or offset a minimum of 150-feet from a collector roadway (measured centerline to centerline).

#### Horseshoe Bend Road

The applicant is proposing to construct three roadways to intersect Horseshoe Bend Road.

The applicant is proposing to construct Shadoweagle Drive to intersect Horseshoe Bend Road approximately 430-feet north of the south property line. This roadway location meets District policy and should be approved with this application.

The applicant is proposing to construct Shadowview Street to intersect Horseshoe Bend Road approximately 665-feet north of the south property line. This roadway location meets District policy and should be approved with this application.

The applicant is proposing to construct Shadowcrest Drive to intersect Horseshoe Bend Road at the sites north property line. This roadway location meets District policy and should be approved with this application.

#### Internal Roadways

District policy 7204.11.6, requires local roadways to align or offset a minimum of 125-feet from another local roadway (measured centerline to centerline).

All of the internal roadways meet the minimum offsets that are required by District policy.

#### 5. Driveways

District policy 72-F5, requires driveways located on collector or arterial roadways with a speed limit of 35 to align or offset a minimum of 150-feet from any existing or proposed driveway.

Graveled driveways abutting public streets create maintenance problems due to gravel being tracked onto the roadway. In accordance with District policy, 7207.9.1, the applicant should be required to pave the driveway its full width and at least 30-feet into the site beyond the edge of pavement of the roadway and install pavement tapers with 15-foot radii abutting the existing roadway edge.

Applicant's Proposal to Close Driveways

The applicant is proposing to close four (4) driveways that intersect Horseshoe Bend Road.

The applicant is proposing to close a 12-foot wide driveway that intersects Horseshoe Bend Road approximately 245-feet south of the north property line (identified as Driveway #3).

The applicant is proposing to close a 14-foot wide driveway that intersects Horseshoe Bend Road approximately 340-feet south of the north property line (identified as Driveway #4).

The applicant is proposing to close a 15-foot wide driveway that intersects Horseshoe Bend Road approximately 710-feet south of the north property line (identified as Driveway #6).

The applicant is proposing to close a 20-foot wide driveway that intersects Horseshoe Bend Road approximately 300-feet north of the south property line (identified as Driveway #10).

Staff is supportive of the applicant's proposal to close the preceding driveways. The applicant should close driveways # 3, #4, #6, and #10, as proposed. The applicant should close these driveways with standard vertical curb, gutter and sidewalk when the improvements to Horseshoe Bend Road are constructed.

Applicant's Proposal to Retain Driveways

The applicant is proposing to retain seven (7) driveways that intersect Horseshoe Bend Road.

The applicant is proposing to utilize an existing 16-foot wide driveway that intersects Horseshoe Bend Road approximately 135-feet south of the north property line (identified as Driveway #1). This driveway is proposed to be located approximately 80-feet south of Shadowcrest Drive and 30-feet north of another existing driveway. This driveway location does not meet District policy and is <u>not</u> approved with this application. The applicant should close driveway #1 and driveway #2 with standard vertical curb, gutter and sidewalk and construct one shared driveway that will replace driveway #1 and Driveway #2. The shared driveway should be located on the property line of Lot 5 and Lot 7 of Block 6 (approximately 110-feet south of Shadowcrest Drive).

The applicant is proposing to utilize an existing 12-foot wide driveway that intersects Horseshoe Bend Road approximately 180-feet south of the north property line (identified as Driveway #2). This driveway is proposed to be located approximately 30-feet south of Driveway #1. This driveway location does not meet District policy and is <u>not</u> approved with this application. The applicant should close driveway #1 and driveway #2 with standard vertical curb, gutter and sidewalk and construct one shared driveway that will replace driveway #1 and Driveway #2. The shared driveway should be located on the property line of Lot 5 and Lot 7 of Block 6 (approximately 110-feet south of Shadowcrest Drive).

The applicant is proposing to utilize an existing 12-foot wide driveway that intersects Horseshoe Bend Road approximately 450-feet south of the north property line (identified as Driveway #5). This driveway is located approximately 15-feet north of Bucktail Drive. This driveway location does not meet District policy and is <u>not</u> approved with this application. The applicant should close the proposed driveway with standard vertical curb, gutter and sidewalk when the improvements to Horseshoe Bend Road are constructed and construct a new driveway at the south property line of Lot 10 of Block 6 (to align with Bucktail Drive).

The applicant is proposing to utilize an existing 20-foot wide driveway that intersects Horseshoe Bend Road approximately 595-feet north of the south property line (identified as Driveway #7). This driveway is located approximately 42-feet south of Shadow View Street. The proposed driveway location does not meet District policy and is <u>not</u> approved with this application. The applicant should close the proposed driveway with standard vertical curb, gutter and sidewalk when the improvements to Horseshoe Bend Road are constructed and construct a new driveway Lot 1 of Block 2 that intersects Shadowview Street.

The applicant is proposing to utilize an existing 20-foot wide driveway that intersects Horseshoe Bend Road approximately 490-feet north of the south property line (identified as Driveway #8). This driveway is proposed to be located 10-feet north of Shadoweagle Drive. This driveway location does not meet District policy and is <u>not</u> approved with this application. The applicant should close the proposed driveway with standard vertical curb, gutter and sidewalk when the improvements to Horseshoe Bend Road are constructed and construct a new driveway for Lot 1 Block 2 that intersects Shadoweagle Drive.

The applicant is proposing to close a 20-foot wide driveway that intersects Horseshoe Bend Road approximately 335-feet north of the south property line (identified as Driveway #9) and construct a new 20-foot wide driveway located a approximately 320-feet north of the south property line. This driveway is located approximately 115-feet south of Shadoweagle Drive. This driveway location does not meet District policy, but is spaced it's maximum distance from Shadoweagle Drive that will continue to allow lot 4 Block 3 to access the existing attached garage. By approving this location, the District is granting a 23% modification to the dimensional standards that have been established by District policy. Staff recommends that this driveway be granted a modification of policy due to the fact that the existing garage location would make access to Shadwoeagle Drive nearly impossible. The applicant should construct a new 20-foot wide driveway located a approximately 320-feet north of the south property line.

The applicant is proposing to utilize an existing 24-foot wide driveway that intersects Horseshoe Bend Road approximately 80-feet north of the south property line (identified as Driveway #11). This driveway location meets District policy and should be approved with this application.

### 6. Stub Streets

District policy 7203.5.1 states that the street design in a proposed development shall cause no undue hardship to adjoining property. An adequate and convenient access to adjoining property for use in future development may be required. If a street ends at the development boundary, it shall meet the requirements of sub section 7205, "non-continuous streets."

District policy 7205.5 states that stub streets will be required to provide intra-neighborhood circulation or to provide access to adjoining properties. Stub streets will conform with the requirements described in Section 7204.5, 7204.6 and 7204.7, except a temporary cul-de-sac will not be required if the stub street has a length no greater than 150-feet. A sign shall be installed at the terminus of the stub street stating that, "THIS ROAD WILL BE EXTENDED IN THE FUTURE". In addition, a stub street must meet the following conditions:

- 1. A stub street shall be designed to slope towards the street intersection and drain surface water toward that intersection; unless a satisfactory storm drain system is installed.
- 2. The District may require appropriate covenants guaranteeing that the stub street will remain free of obstructions.

The applicant is proposing to construct a stub street to the south property line of the five acre out parcel. The proposed stub street is located approximately 380-feet west of Horseshoe Bend Road. Staff is supportive of the location of the proposed stub street. Due to the fact that the stub street is proposed to be less than 150-feet in depth, the applicant will not be required to construct a temporary turnaround at the terminus of the stub street. The applicant will be required to install a sign at the terminus of the stub street stating that, "THIS ROAD WILL BE EXTENDED IN THE FUTURE".

The applicant is proposing to construct a stub street to the north property line of the five acre out parcel. The proposed stub street is located approximately 160-feet east of Highway 55. Staff is supportive of the location of the proposed stub street. Due to the fact that the stub street is proposed to be less than 150-feet in depth, the applicant will not be required to construct a temporary turnaround at the terminus of the stub street. The applicant will be required to install a sign at the terminus of the stub street stating that, "THIS ROAD WILL BE EXTENDED IN THE FUTURE".

The applicant is proposing to construct a stub street to the north property line approximately 160-feet east of Highway 55. This stub street will provide access to the 5.0-acres site that is located directly to the north of this site. Staff is supportive of the location of the proposed stub street. Due to the fact that the stub street is proposed to be less than 150-feet in depth, the applicant will not be required to

construct a temporary turnaround at the terminus of the stub street. The applicant will be required to install a sign at the terminus of the stub street stating that, "THIS ROAD WILL BE EXTENDED IN THE FUTURE".

### 7. Knuckles

The applicant is proposing to construct one knuckle without a center island within the subdivision. Staff is supportive of the location of the proposed knuckle. The design of the knuckle should be reviewed and approved by ACHD's Development staff.

### 8. Turnarounds

District policy 7205.2.1 requires turnarounds to be constructed to provide a minimum turning radius of 45-feet. The applicant should also be required to provide a minimum of a 29-foot street section on either side of any proposed center islands within the turnarounds. The medians should be constructed a minimum of 4-feet wide to total a minimum of a 100-square foot area.

District policy 7202.7 and 7207.5 requires any proposed landscape islands/medians within the public right-of-way dedicated by this plat should be owned and maintained by a homeowners association. Notes of this should be required on the final plat.

The applicant is proposing to construct three cul-de sac turnarounds with center islands within the subdivision. The applicant should provide a minimum turning radius of 45-feet for the turnaround and provide a minimum of a 29-foot street section on either side of any proposed center islands within the turnarounds. The islands should be constructed a minimum of 4-feet wide to total a minimum of a 100-square foot area. The islands should be owned and maintained by a homeowners association. Notes of this should be required on the final plat.

### 9. Other Access

Horseshoe Bend is classified as a collector roadway. Other than the access points that have specifically been approved with this application, direct lot access to Horseshoe Bend Road is prohibited. The applicant should place a note of the access restrictions on the final plat.

### C. Site Specific Conditions of Approval

- 1. Construct Horseshoe Bend Road as one half of a 46-foot street section with vertical curb, gutter and a 5-foot detached (or 7-foot attached) concrete sidewalk within the existing right-of-way.
- 2. Construct the internal streets as 33-foot street sections with rolled curb, gutter and a detached 5-foot concrete sidewalk that is detached with a 5-foot planter strip within 54-feet of right-of-way, as proposed. Submit a letter from the appropriate fire department stating that the fire department has reviewed and approved this street section and will allow parking on both sides of the roadway.
- 3. Construct Shadoweagle Drive to intersect Horseshoe Bend Road approximately 430-feet north of the south property line, as proposed.
- 4. Construct Shadowview Street to intersect Horseshoe Bend Road approximately 665-feet north of the south property line, as proposed.
- 5. Construct Shadowcrest Drive to intersect Horseshoe Bend Road at the sites north property line, as proposed.

- 6. Close driveways # 3, #4, #6, and #10, as proposed. Close these driveways with standard vertical curb, gutter and sidewalk when the improvements to Horseshoe Bend Road are constructed.
- 7. Close driveway #1 and driveway #2 with standard vertical curb, gutter and sidewalk and construct one shared driveway that will replace driveway #1 and Driveway #2. Locate the shared driveway on the property line of Lot 5 and Lot 7 of Block 6 (approximately 110-feet south of Shadowcrest Drive).
- 8. Close the existing driveway (identified as driveway #5) with standard vertical curb, gutter and sidewalk when the improvements to Horseshoe Bend Road are constructed and construct a new driveway at the south property line of Lot 10 of Block 6 (to align with Bucktail Drive).
- 9. Close the existing driveway (identified as driveway #7) with standard vertical curb, gutter and sidewalk when the improvements to Horseshoe Bend Road are constructed and construct a new driveway Lot 1 of Block 2 that intersects Shadowview Street.
- 10. Close the existing driveway (identified as driveway #8) with standard vertical curb, gutter and sidewalk when the improvements to Horseshoe Bend Road are constructed and construct a new driveway for Lot 1 Block 2 that intersects Shadoweagle Drive.
- 11. Close the existing 20-foot wide driveway that is located approximately 335-feet north of the south property line and construct a new 20-foot wide driveway located a approximately 320-feet north of the south property line.
- 12. Utilize an existing 24-foot wide driveway that intersects Horseshoe Bend Road approximately 80-feet north of the south property line (identified as Driveway #11), as proposed.
- 13. Pave the driveways their full width and at least 30-feet into the site beyond the edge of pavement of the roadway and install pavement tapers with 15-foot radii abutting the existing roadway edge.
- 14. Construct a stub street to the south property line of the five acre out parcel, as proposed. Install a sign at the terminus of the stub street stating that, "THIS ROAD WILL BE EXTENDED IN THE FUTURE".
- 15. Construct a stub street to the north property line of the five acre out parcel, as proposed. Install a sign at the terminus of the stub street stating that, "THIS ROAD WILL BE EXTENDED IN THE FUTURE".
- 16. Construct a stub street to the north property line approximately 160-feet east of Highway 55, as proposed. Install a sign at the terminus of the stub street stating that, "THIS ROAD WILL BE EXTENDED IN THE FUTURE".
- 17. Construct one knuckle without a center island within the subdivision, as proposed.
- 18. Construct three cul-de sac turnarounds with center islands within the subdivision, as proposed. Provide a minimum turning radius of 45-feet for the turnaround and provide a minimum of a 29-foot street section on either side of any proposed center islands within the turnarounds. Construct the islands to be a minimum of 4-feet wide to total a minimum of a 100-square foot area. The islands are required to be owned and maintained by a homeowners association. Notes of this will be required on the final plat.

- 19. Other than the access points that have specifically been approved with this application, direct lot access to Horseshoe Bend Road is prohibited. The applicant shall place a note of the access restrictions on the final plat.
- 20. Comply with all Standard Conditions of Approval.

### D. Standard Conditions of Approval

- 1. Any existing irrigation facilities shall be relocated outside of the right-of-way.
- 2. All utility relocation costs associated with improving street frontages abutting the site shall be borne by the developer.
- 3. Replace any existing damaged curb, gutter and sidewalk and any that may be damaged during the construction of the proposed development. Contact Construction Services at 387-6280 (with file number) for details.
- 4. Utility street cuts in pavement less than five years old are not allowed unless approved in writing by the District. Contact the District's Utility Coordinator at 387-6258 (with file numbers) for details.
- 5. All design and construction shall be in accordance with the Ada County Highway District Policy Manual, ISPWC Standards and approved supplements, Construction Services procedures and all applicable ACHD Ordinances unless specifically waived herein. An engineer registered in the State of Idaho shall prepare and certify all improvement plans.
- 6. The applicant shall submit revised plans for staff approval, prior to issuance of building permit (or other required permits), which incorporates any required design changes.
- 7. Construction, use and property development shall be in conformance with all applicable requirements of the Ada County Highway District prior to District approval for occupancy.
- 8. Payment of applicable road impact fees are required prior to building construction in accordance with Ordinance #198, also known as Ada County Highway District Road Impact Fee Ordinance.
- 9. It is the responsibility of the applicant to verify all existing utilities within the right-of-way. The applicant at no cost to ACHD shall repair existing utilities damaged by the applicant. The applicant shall be required to call DIGLINE (1-800-342-1585) at least two full business days prior to breaking ground within ACHD right-of-way. The applicant shall contact ACHD Traffic Operations 387-6190 in the event any ACHD conduits (spare or filled) are compromised during any phase of construction.
- 10. No change in the terms and conditions of this approval shall be valid unless they are in writing and signed by the applicant or the applicant's authorized representative and an authorized representative of the Ada County Highway District. The burden shall be upon the applicant to obtain written confirmation of any change from the Ada County Highway District.
- 11. Any change by the applicant in the planned use of the property which is the subject of this application, shall require the applicant to comply with all rules, regulations, ordinances, plans, or other regulatory and legal restrictions in force at the time the applicant or its successors in interest advises the Highway District of its intent to change the planned use of the subject property unless a

waiver/variance of said requirements or other legal relief is granted pursuant to the law in effect at the time the change in use is sought.

### E. Conclusions of Law

- 1. The proposed site plan is approved, if all of the Site Specific and Standard Conditions of Approval are satisfied.
- 2. ACHD requirements are intended to assure that the proposed use/development will not place an undue burden on the existing vehicular and pedestrian transportation system within the vicinity impacted by the proposed development.

### **Attachments**

- 1. Vicinity Map
- 2. Site Plan
- 3. Request for Reconsideration Guidelines



### **Request for Reconsideration of Commission Action**

- 1. Request for Reconsideration of Commission Action: A Commissioner, a member of ACHD staff or any other person objecting to any final action taken by the Commission may request reconsideration of that action, provided the request is not for a reconsideration of an action previously requested to be reconsidered, an action whose provisions have been partly and materially carried out, or an action that has created a contractual relationship with third parties.
  - a. Only a Commission member who voted with the prevailing side can move for reconsideration, but the motion may be seconded by any Commissioner and is voted on by all Commissioners present.

If a motion to reconsider is made and seconded it is subject to a motion to postpone to a certain time.

- b. The request must be in writing and delivered to the Secretary of the Highway District no later than 3:00 p.m. on the day prior to the Commission's next scheduled regular meeting following the meeting at which the action to be reconsidered was taken. Upon receipt of the request, the Secretary shall cause the same to be placed on the agenda for that next scheduled regular Commission meeting.
- c. The request for reconsideration must be supported by written documentation setting forth new facts and information not presented at the earlier meeting, or a changed situation that has developed since the taking of the earlier vote, or information establishing an error of fact or law in the earlier action. The request may also be supported by oral testimony at the meeting.
- d. If a motion to reconsider passes, the effect is the original matter is in the exact position it occupied the moment before it was voted on originally. It will normally be returned to ACHD staff for further review. The Commission may set the date of the meeting at which the matter is to be returned. The Commission shall only take action on the original matter at a meeting where the agenda notice so provides.
- e. At the meeting where the original matter is again on the agenda for Commission action, interested persons and ACHD staff may present such written and oral testimony as the President of the Commission determines to be appropriate, and the Commission may take any action the majority of the Commission deems advisable.
- f. If a motion to reconsider passes, the applicant may be charged a reasonable fee, to cover administrative costs, as established by the Commission.

### **EXHIBIT "B"**

# ACHD ROADSIDE INFILTRATION SWALE CRITERIA AND DESIGN DETAILS Adopted by Commission Action February 25, 2004

Roadside Infiltration Swales shall be considered under the following conditions:

- Developments outside a city's area of impact; or,
- Infill developments within city limits in areas without existing urban street improvements; or,
- Developments meeting both of the following conditions:
  - High groundwater or shallow bedrock
    - conventional piped system to a retention or detention facility not feasible due to separation requirements; and
  - o No available outlet
    - no discharge to existing waterway, drain or irrigation facility available.

### **DESIGN**

- Road section shall consist of a minimum 32-feet of pavement, 2-foot ribbon curb 8-inches thick on each side, a minimum 8-foot wide swale a minimum of 1-foot deep on each side, and a 4-foot wide 5-inches thick concrete sidewalk on each side.
  - O Sidewalk required in developments with lot sizes less than 1-acre.
  - o If no sidewalk is required, a 1-foot wide 8-inches thick ribbon curb is required at the top back of swale.
  - o Minimum road cross slope 2%.
  - o Maximum swale profile grade 1%.
- Swale shall be located within the public right-of-way, sidewalk may be placed in an easement.

  Minimum right-of-way width of 52-feet required for a 36-foot street section as measured from back-of-curb to back-of-curb.
- Swale shall be constructed with maximum 4:1 slopes, a minimum of 8-feet in width and a minimum of 1-foot in depth as measured from the top of slope.
  - o Minimum 3-foot separation to groundwater or bedrock required from flow line of swale.
  - O A continuous sand trench a minimum of 2-feet in depth and 2-feet in width required below swale.
    - Trench shall be excavated to free draining sands and gravels.
    - In areas of shallow bedrock design must demonstrate acceptable percolation rate and that adjoining properties will not be negatively impacted by storm water infiltration.
    - Trench shall be filled with filter sand meeting ISPWC Section 801 specifications.
  - o 12 inches of sandy topsoil required full width of swale. Sandy topsoil shall meet the following specifications:
    - 50% coarse sand by volume,
    - 20% sandy loam,
    - 30% compost,
    - Less than 10% fines passing #200 sieve,
    - No clay.
  - o A 2" reveal required from top finish grade of swale to top of concrete at ribbon curb and sidewalk.
- Vertical curb required at main entryways beyond radius a minimum of 50-feet or past entryway island taper, whichever is greater.
- Maximum 20' driveway width (across swale area) for lots 80' wide or less
- Maximum driveway width of 30% of lot frontage for lots > 80' wide.

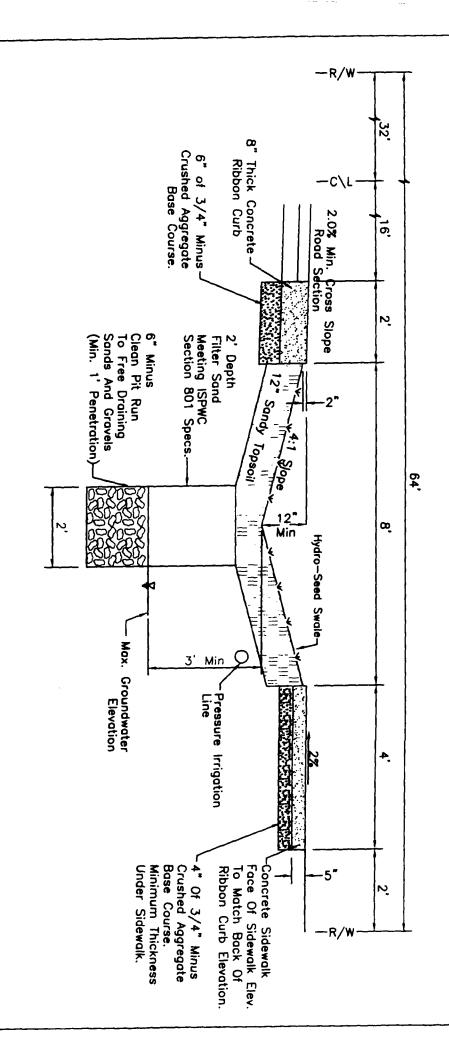
- Knuckles and cul-de-sacs with very narrow lot frontages will be considered on a case by case basis.
- Signing and/or striping may be required to designate no parking in swale.
- Landscaping in swale shall be limited to a tree at property line and hydro seeding of swale.
  - o Tree must be class and species approved in writing by ACHD.
  - o Additional landscaping will be considered on a case by case basis with a landscape plan.
  - o Swale shall include a dedicated irrigation line operated by the Homeowner's Association.
  - o All landscaping in swale will require a license agreement.
- Swales shall be maintained in common by the Homeowner's Association, if individual homeowners do not keep maintained.
  - O Design engineer shall provide Maintenance and Operation Manual outlining required periodic maintenance.

### **INSPECTION**

- Inspection of trench required before placing filter sand and sandy topsoil.
  - O Developer responsible to provide 48-hours notice to ACHD prior to placing filter sand and sandy topsoil.
- Percolation test of swale required after construction to verify performance.
  - O Percolation test to be performed after house is constructed, the front yard is landscaped and the grass in the swale is established. Test requires 10 gallons of water per lineal feet of swale. Water to infiltrate within 1 hour. Percolation tests shall be performed during quarterly inspections described below.
  - O Developer responsible for all costs associated with percolation tests.

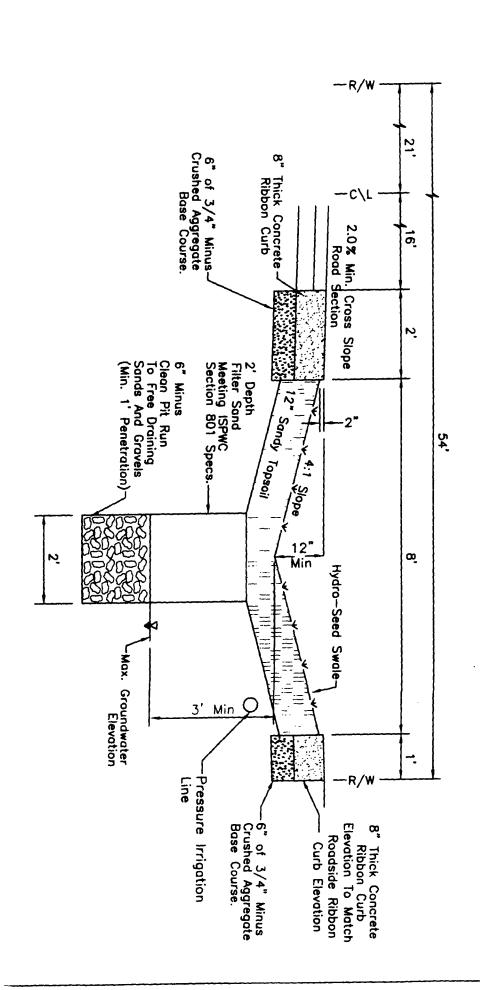
### **ASSURANCES**

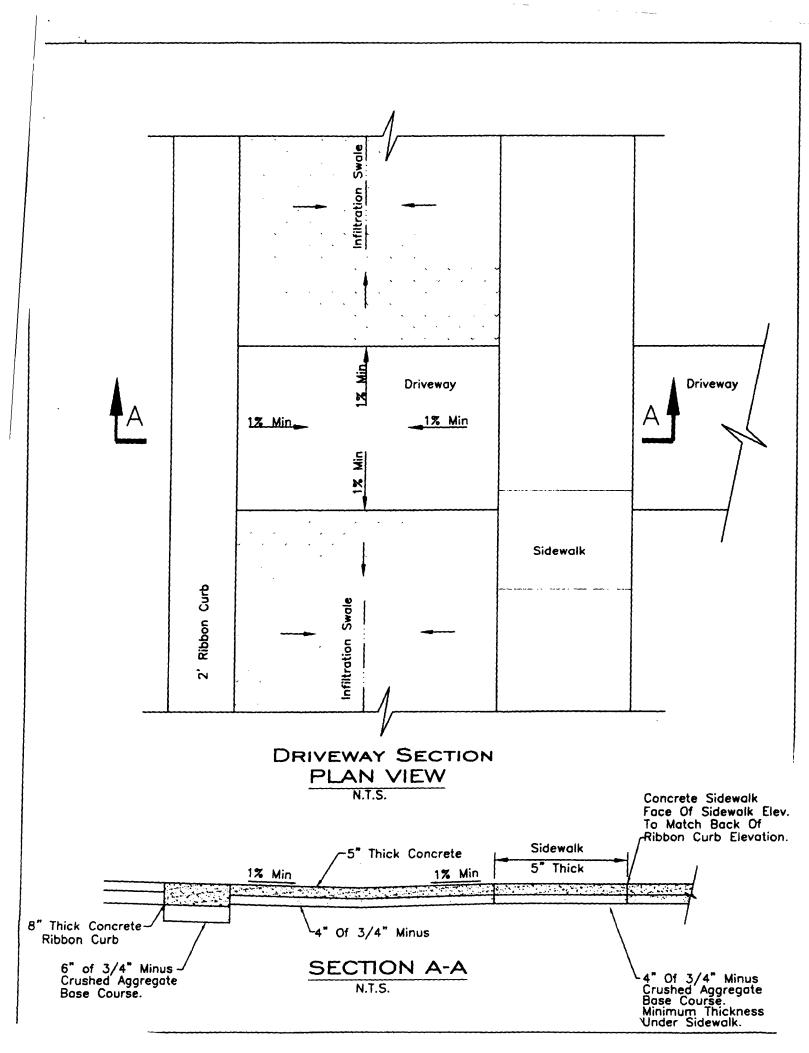
- The developer shall enter into a development agreement with the District to assure compliance with the design, inspection and assurance requirements for the use of this street section.
- Developer responsible to ensure sand trench and sandy topsoil are not contaminated or over compacted by house construction and landscaping activities.
  - o Proposed method to protect sand trench and topsoil is required with street improvement plans submittal for review and approval by ACHD.
- \$500 security deposit per lot for repair or replacement of swale and sand trench to be paid by developer prior to scheduling final plat for signature by ACHD Commission.
- Developer may request the release of the security deposit for a particular lot after the house is constructed, the front yard is landscaped and the grass in the swale is established.
  - O Developer shall provide ACHD with a list of lots built out and ready for inspection on a quarterly basis.
  - o Deposit for lots with approved swales will be released after percolation test and ACHD inspection.
- License Agreement and provisions in CC&R's for Homeowners' Association to be ultimately responsible to maintain swale in common.
  - o CC&R's to include provision that CC&R sections pertaining to ACHD right-of-way, easement areas or swales may not be altered without written authorization from ACHD.

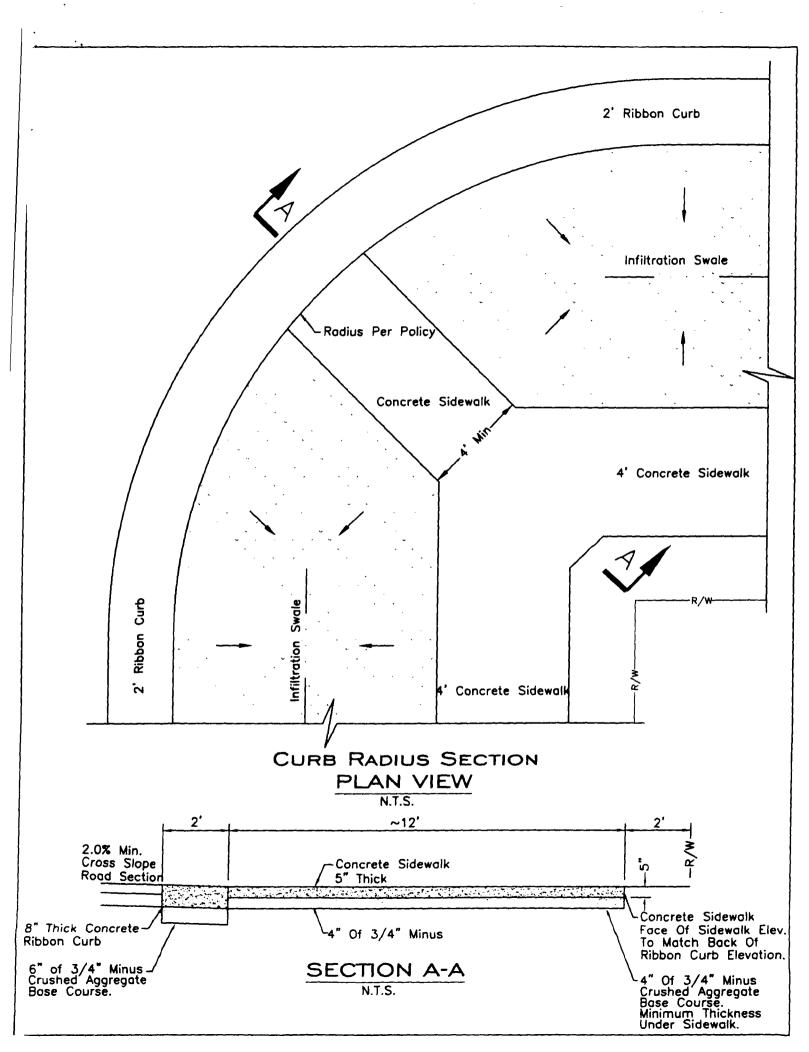


ROADSIDE INFILTRATION SWALE CROSS SECTION SIDEWALK REQUIRED

# ROADSIDE INFILTRATION SWALE CROSS SECTION NO SIDEWALK REQUIRED

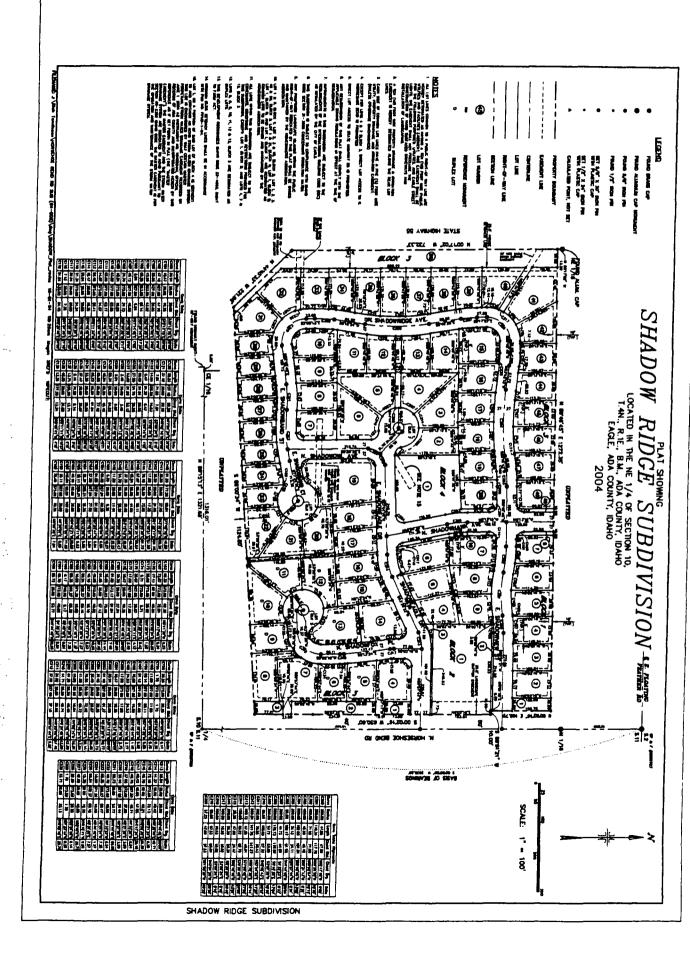






ENTRY STREET SECTION PLAN VIEW Island Optional \* N.T.S. Standard 6" Vertical Curb Min 50' With No Island At Entry 6" Standard Curb 5' Transition Sidewalk Sidewalk Infiltration Swale Ribbon Curb Infiltration Swale Ribbon Curb 72'X2' Concrete Section Ribbon Curb -Bottom Of Swale

# SECTION A-A



 $J_{\parallel}^{*} = 600$ ,  $\Lambda CINITY MAP$ 





ADA COUNTY RECORDER J. DAVID NAVARRO
BOISE IDAHO 06/01/04 03:24 PM
DEPUTY Bonnie Oberbillig
RECORDED – REQUEST OF Ada County Highway Dist

AMOUNT

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This sheet has been added to document to accommodate recording information.

RE-RECORD INSTRUMENT # TO CORRECT SECTION 1.4

Ada County Highway Dist AMOUNT .00



### MASTER PERPETUAL STORM WATER DRAINAGE EASEMENT

This Master Perpetual Storm Water Drainage Easement ("Master Easement") shall be appurtenant to and run with certain subdivisions of land in Ada County, Idaho. When this Master Easement is incorporated by reference to its recorded Instrument Number in a recorded subdivision plat or other instrument affecting land, the owner(s) of the subdivision or land and their successors and assigns in interest shall be bound by all of the provisions set forth in this Master Easement.

This Master Easement is made, entered into and effective as of the date of the recording of the final plat by and between the owner(s) of the subdivision (hereinafter "Grantor") and Ada County Highway District, a body politic and corporate of the State of Idaho (hereinafter "ACHD").

### WITNESSETH:

### Section 1. Recitals.

- 1.1 ACHD is organized as a single county-wide highway district pursuant to Title 40, Chapters 13 and 14, Idaho Code; and owns the public rights-of-way in Ada County, pursuant to Section 40-2302 Idaho Code, except those public rights-of-way under the jurisdiction of the State of Idaho;
- 1.2 ACHD has exclusive general supervisory authority over all public highways, public streets, and public rights-of-way in Ada County, except State highways, with full power to establish use standards and to control access to said public highways, public streets, and public rights-of-way pursuant to Section 40-1310 Idaho Code, and has jurisdiction over ditches, culverts, and any flooding in or over the public rights-of-way pursuant to Sections 40-2321, 40-2322, 40-2323 Idaho Code;
- 1.3 Grantor owns a parcel of real property located in Ada County, Idaho, a portion of which is more particularly described and depicted on the final plat of the subdivision (the "Servient Estate") that references this Master Easement;
- 1.4 Grantor is developing a subdivision, and in order to safely remove storm water from the local and/or collector streets dedicated to ACHD upon recording of the plat of said subdivision (such local and/or collector streets are hereinafter referred to as the "Dominant Estate") Grantor has agreed to construct and install a storm water drainage facility on the Servient Estate along with associated underground storm water drain lines from the Dominant Estate into the storm water drainage facility (the facility and lines are hereinafter referred to as the "Storm Water Drainage System");
- 1.5 It is the intent of ACHD and Grantor to simplify the process of negotiating separate agreements for each Storm Water Drainage System and to confirm the understanding between the parties with respect to ACHD's and Grantor's respective requirements for such Storm Water Drainage Systems, all consistent with the parties' respective rights and obligations under Idaho law; and

1.6. After construction and installation of the Storm Water Drainage System it shall become a dedicated part of ACHD's highway system pursuant to Section 40-2302 Idaho Code. ACHD's acceptance of the final subdivision plat shall be deemed its acceptance and confirmation of the dedication pursuant to Section 40-2302 Idaho Code. To formalize such transfer and dedication ACHD desires to obtain this Master Easement from Grantor, and on the terms and conditions hereinafter set forth the Grantor is willing to grant such Master Easement to ACHD.

### 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 free and clear of encumbrances 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"). Enhancement means any construction, modifications or improvements to the Storm Water Drainage System, including, but not limited to, work on the storm water drainage facility, drain lines, catch basins, drop inlets, street gutters, and conduit systems constructed to manage storm water flows, surface and groundwater quality and to provide erosion and sedimentation control so as to comply with the requirements of federal, state and local laws and ordinances.
- 2.2 The Easement herein granted is exclusive to ACHD and only ACHD or its authorized representative is permitted to conduct an Authorized Use on or under the Servient Estate. Furthermore, the exclusivity of the easement precludes the granting of any additional easements for the Servient Estate. No structures, fences or other improvements are to be constructed, or landscaping planted (other than grass), nor any other use or encroachment shall be permitted 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. Hazardous Material is defined as any substance or material defined or designated as hazardous or toxic waste, material or substance, or other similar term, by any applicable federal, state or local law.

## Section 3. <u>Construction</u>; <u>Acceptance</u>; <u>Repair and Maintenance</u>; <u>Grantor Indemnification</u>; <u>Contractor Warranties</u>.

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 Grantor's construction and installation of the Storm Water Drainage System. In addition, if ACHD consents to improvements and/or landscaping and/or Grantor's proposed use 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 activities, including the use of the same, the construction, installation, maintenance and repair of improvements and/or landscaping and/or Grantor's failure to comply with applicable federal, state and local laws.
- 4.2 Grantor shall indemnify and hold harmless ACHD from and against any and all claims for liens or liens arising out of Grantor's 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 the 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.
- <u>Section 5. Term.</u> The term of this Master Easement is perpetual.
- <u>Section 6.</u> Relinquishment. ACHD may relinquish its rights under this Master Agreement at its sole discretion and only in writing.
- Section 7. Covenants Run with the Land. Throughout the term of this Master 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.
- <u>Section 8. Attorneys Fees and Costs.</u> In any suit, action or appeal therefrom to enforce or interpret this Master Easement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees.
- Section 9. Successors and Assigns. This Master 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 Master 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.

Section 11. Confirmation Agreement. Grantor shall execute a Confirmation Agreement with ACHD acknowledging and affirming that Grantor is bound by the terms and provisions of this Master Easement and that this Master Easement is appurtenant to and runs with the land in benefit of the Storm Water Drainage System identified and depicted on the Grantor's recorded final plat of the subdivision.

Section 12. Recordation. This Master Easement shall be recorded in the Real Property Records of Ada County, Idaho.

Grantor covenants to ACHD that it shall enjoy the quiet and peaceful possession of the Easement on the Servient Estate; and (b) Grantor warrants to the ACHD that Grantor has the right and authority to grant this Master Easement to ACHD/

Jøhn S. Franden

President Board of Commissioners Ada County Highway District

STATE OF IDAHO ) ss. County of Ada)

On this 19th day of May, 2004, before me, Susan K. Slaughter, a Notary Public in and for the State of Idaho, personally appeared John S. Franden, known or identified to me to be the President of the Board of Commissioners 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 direct above written.

Notary Public for Idaho

Residing at:

My commission expires:

# CONFIRMATION AGREEMENT REGARDING MASTER PERPETUAL STORM WATER DRAINAGE EASEMENT

| This Confirmation Agreement Regarding Master Perpetual Storm Water Drainage  |
|--|
| Easement (the "Agreement") is entered into this day of, 200 by and between the Ada County Highway District ("ACHD"), a body politic and corporate of the   |
| State of Idaho, and ("Developer"), an Idaho  |
| :  |
| ,  |
| WHEREAS, Developer is the owner and developer of a subdivision upon certain real property located in Ada County and more particularly described as follows:  |
| SUBDIVISION NO according to the  |
| SUBDIVISION NO, according to the official plat thereof, recorded, 200, in Book of Plats at Pages through as Instrument No, records   |
| Plats at Pages through as Instrument No, records   |
| of Ada County, State of Idaho (the "Subdivision");   |
| WHEREAS, Developer has developed the Subdivision, and in order to safely remove storm water from the local streets dedicated to ACHD within the Subdivision, Developer has constructed, installed and dedicated to ACHD a Storm Water Drainage System; |
| WHEREAS, the Storm Water Drainage System is benefited by that certain Master   |
| Perpetual Storm Water Drainage Easement recorded on June 1, 2004, as Instrument No.  |
| 104068411, Official Records of Ada County, and as depicted, dedicated and incorporated   |
| by reference in the final plat of the Subdivision (the "Master Easement");   |
| NOW THEREFORE, for and in consideration of the mutual covenants and agreements of the parties, Developer and ACHD hereby agree as follows:   |
| 1 Developer for itself its suggestate in interest and assigns hareby   |
| 1. Developer for itself, its successors in interest and assigns, hereby acknowledges, confirms and agrees that it shall be bound by each of the terms and  |
| provisions of the Master Easement. Developer hereby further ratifies that the Storm  |
| Water Drainage System and the Master Easement have been dedicated to ACHD  |
| pursuant to the final plat of the Subdivision, and that the Master Easement shall be   |
| appurtenant to and run with the land as identified and depicted on the final plat of the   |
| Subdivision.   |
| ACHD DEVELOPER   |
| By: Jim merkin Uer Copp  |
| If the Housen ou are   |
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Property Management No. <u>1041 - 1490 - 1104</u> Street: Shadow Ridge Subdivision on Horseshoe Bend Rd T.4N., R.1E., Sec. 10

### **TEMPORARY LICENSE AGREEMENT**

THIS TEMPORARY LICENSE AGREEMENT (the "Agreement") is made and entered into this 22 day of November, 2004, by and between the ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the State of Idaho, hereinafter referred to as "ACHD" and SHADOW RIDGE NEIGHBORHOOD ASSOCIATION, hereinafter referred to as "Licensee":

### WITNESSETH:

FOR GOOD AND SUFFICIENT CONSIDERATION IT IS AGREED:

### SECTION 1. RECITALS.

- 1.1 ACHD owns and has exclusive jurisdiction over the public right-of-way located in Ada County, Idaho, more particularly described and/or depicted on Exhibit "A" attached hereto (the "Right-of-Way").
- 1.2 Licensee desires a license to use the Right-of-Way for the limited purposes hereinafter set forth, and, for the consideration and on the terms and conditions hereinafter set forth, ACHD is willing to extend such license to Licensee.

### SECTION 2. LICENSE; LICENSE NOT EXCLUSIVE.

2.1 On the terms and conditions hereinafter set forth, ACHD hereby extends to Licensee a license on, over, across and under the Right-of-Way for the following uses and purposes ("Authorized Use") and no others:

Licensee to construct, install and maintain landscaping consisting of lawn, trees and sprinkler system between the back of curb and the property line located within the public right of way along Horseshoe Bend Rd for Shadow Ridge Subdivision.

Licensee to install landscaping and sprinklers in a manner to eliminate irrigation flows and/or ponding of irrigation water within the ACHD Right of Way. Any perennial trees or plants that will extend roots deeper than 18 inches shall be prohibited over ACHD underground seepage beds, infiltration facilities or piping systems. Infiltration areas shall not be covered with sod or non-free draining materials/soil, unless other wise approved by ACHD. Grass can be hydro seeded or planted in these areas with approved soils mix. Access to inlets and outlets of ACHD Drainage Areas shall not be planted with trees, shrubs or any landscaping that would impede heavy equipment vehicle access. Licensee to observe the 40'

EXHIBIT "5"

LICENSE AGREEMENT - Page 1 (5/16/02 A:\Shadow Ridge license agr.doc sight triangle within the subdivision and will not plant any shrubs or trees within the area or over any utility lines. All trees in the public Right of Way to be maintained by Licensee for clearance of 14' over all roadways measured at gutter plate and 8' over all sidewalks. Licensee to contact Digline Inc., prior to start of construction. Licensee to contact Construction Services at 387-6280 to verify if a construction permit is required.

Right-of-Way to the exclusion of ACHD for any use within its jurisdiction, authority and discretion or of others to the extent authorized by law to use public right-of-way. If the Right-of-Way has been opened as a public Highway (as used in the Agreement the term "Highway" is as defined in *Idaho Code* § 40-109(5)) Licensee's Authorized Use is subject to the rights of the public to use the Right-of-Way for Highway purposes. Licensee's Authorized Use is also subject to the rights of holders of easements of record or obvious on inspection of the Right-of-Way and statutory rights of utilities to use the public right-of-way. This Agreement it is not intended to, and shall not, preclude or impede the ability of ACHD to enter into other similar agreements in the future allowing third parties to also use its public rights-of-way, or the ability of ACHD to redesign, reconstruct, relocate, maintain and improve its public rights-of-way and Highways as authorized by law and as it determines, in its sole discretion, is appropriate.

SECTION 3. CONSTRUCTION, INSTALLATION OF IMPROVEMENTS. Any construction and/or installation by Licensee of improvements, including, without limitation, buildings, fixtures and landscaping (the "Improvements"), on, over, across and under the Right-of-Way shall be accomplished in accordance with designs, plans and specifications approved in advance and in writing by ACHD as required to satisfy applicable laws, its policies and good engineering practices. In approving such plans and specifications, ACHD assumes no responsibility for any deficiencies or inadequacies in the design or construction of the Improvements, and the responsibility therefor shall be and remain in Licensee.

### SECTION 4. TERM.

- 4.1 The term of this Agreement will commence on the 22 day of November, 2004, and will continue until terminated by either party, with or without cause, which termination shall be effective following THIRTY (30) DAYS advance written notice of termination given the other party.
- 4.2 If Licensee defaults in the performance of any obligations incumbent upon it to perform hereunder ACHD may terminate this Agreement and the rights extended to Licensee hereunder at any time, effective at the end of thirty (30) days following the date ACHD shall provide written notice of termination to Licensee, which notice shall specify such default(s). Licensee shall have such thirty (30) day period to correct and cure the specified defaults, and if so corrected and cured, to the satisfaction of ACHD, this Agreement shall not be terminated but shall continue in full force and effect.

<u>SECTION 5.</u> <u>FEE</u>. There is no fee for the Licensee's Authorized Use of the Right-of-Way under this Agreement.

### SECTION 6. MAINTENANCE; FAILURE TO MAINTAIN; RELOCATION OF UTILITIES.

- 6.1 At its sole cost and expense, Licensee shall maintain the Improvements in good condition and repair and as required to satisfy applicable laws, the policies of ACHD and sound engineering practices. Licensee shall have access over, across and under the Right-of-Way for the purposes of accomplishing such repair and maintenance.
- 6.2 If the Highway on and/or adjacent to the Right-of-Way is damaged as a result of:
  - (i) the performance by Licensee of the maintenance required by section 6.1, or the failure or neglect to perform such maintenance; and/or
  - (ii) Licensee's design, installation or use of the Improvements, regardless of cause;

at its sole cost and expense Licensee shall forthwith correct such deficiency and restore the Highway and the surface of the Right-of-Way to the same condition it was in prior thereto, and if Licensee shall fail or neglect to commence such correction and restoration within twenty-four (24) hours of notification thereof, ACHD may proceed to do so, in which event Licensee agrees to reimburse ACHD for the costs and expenses thereof, including, without limitation, reasonable compensation for the use of staff and equipment of ACHD.

- 6.3 Notwithstanding the provisions of section 6.2, should an emergency exist related to the Licensee's use of this license which threatens the stability or function of the Highway on or adjacent to the Right-of-Way or the safety of the public use thereof, ACHD shall have the right to immediately perform, on behalf of, and at the cost of Licensee necessary emergency repairs.
- 6.4 Licensee will be responsible for the relocation of any existing utilities located on the Right-of-Way as may be required in connection with any construction or installation of Improvements by Licensee in the Right-of-Way.
- SECTION 7. RELOCATION OF IMPROVEMENTS. If during the term of this Agreement ACHD requires, in its sole discretion, at any time, and from time to time, that the Highway on and/or adjacent to the Right-of-Way be widened and/or realigned, redesigned, improved and/or reconstructed, Licensee hereby accepts responsibility for all costs for relocating, modifying or otherwise adapting the Improvements to such realignment and/or relocation and/or reconstruction if required by ACHD, which shall be accomplished by Licensee according to designs, plans and specifications approved in

advance by ACHD in writing; provided Licensee may elect to terminate this Agreement in lieu of complying with this responsibility, and further provided ACHD gives Licensee adequate written notice as necessary to allow Licensee to redesign, relocate, modify or adapt the Improvements to the realignment and/or relocation and/or reconstruction of the Highway and also licenses Licensee such additional area of its right-of-way, if any, as may be necessary for the proper operation of the Improvements.

<u>SECTION 8.</u> <u>PERMIT.</u> If the proposed construction and installation of the Improvements, or any reconstruction, relocation or maintenance thereof requires Licensee to obtain a permit under ACHD policies, Licensee shall first obtain such permit from ACHD (Construction Services Division) before commencing such work, and pay the required fees and otherwise comply with the conditions set forth therein.

<u>SECTION 9.</u> <u>NO TITLE IN LICENSEE</u>. Licensee shall have no right, title or interest in or to the Right-of-Way other than the right to temporarily use the same pursuant to the terms of this Agreement.

<u>SECTION 10.</u> <u>NO COSTS TO ACHD</u>. Any and all costs and expenses associated with Licensee's Authorized Use of the Right-of-Way, or any construction or installation of Improvements thereon, or the repair and maintenance thereof, or the relocation of Improvements or utilities thereon, or the restoration thereof at the termination of this Agreement, shall be at the sole cost and expense of Licensee.

<u>SECTION 11.</u> <u>TAXES AND ASSESSMENTS</u>. Licensee agrees to pay all special assessments and personal property taxes that may be levied and assessed on the Improvements during the term of this Agreement.

RESTORATION ON TERMINATION. Upon termination of this Agreement, Licensee will promptly remove all Improvements and restore the Right-of-Way to at least its present condition. Should Licensee fail or neglect to promptly remove the Improvements and restore the Right-of-Way, ACHD may do so, and assess Licensee for the costs thereof. Provided, ACHD and Licensee may agree in writing that some or all of such Improvements are to remain on the Right-of-Way following termination, and by entering into such an agreement Licensee thereby disclaims all right, title and interest in and to the same, and hereby grants such Improvements to ACHD, at no cost. Further provided, if the Authorized Use of the Right-of-Way under this Agreement is for landscaping in ACHD right-of-way and the irrigation and maintenance thereof, and the general purpose government with jurisdiction has adopted ordinances, rules and regulations governing the landscaping and maintenance of such right-of-way by owners of the adjacent property, to the extent such owners are obligated to maintain and irrigate the landscaping Licensee need not remove the same from the Right-of-Way.

<u>SECTION 13.</u> <u>INDEMNIFICATION</u>. Licensee hereby indemnifies and holds ACHD harmless from and against any and all claims or actions for loss, injury, death, damages, mechanics and other liens, arising out of the failure or neglect of Licensee,

Licensee's employees, contractors and agents, to properly and reasonably make Authorized Use of the Right-of-Way or properly construct, install, plant, repair or maintain the Improvements thereon, or that otherwise result from the use and occupation of the Right-of-Way by Licensee, and including any attorney fees and costs that may be incurred by ACHD in defense of such claims or actions indemnified against by Licensee hereunder. For claims or actions arising out of failures or neglects occurring during the term of this Agreement Licensee's obligations pursuant to this section shall survive the termination of this Agreement.

SECTION 14. COMPLIANCE WITH LAW; WASTE AND NUISANCES PROHIBITED. In connection with Licensee's use of the Right-of-Way, throughout the term of this Agreement Licensee covenants and agrees to: (i) comply and observe in all respects any and all, federal, state and local statutes, ordinances, policies, rules and regulations, including, without limitation, those relating to traffic and pedestrian safety, the Clean Water Act and/or to the presence, use, generation, release, discharge, storage or disposal in, on or under the Right-of-way 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); (ii) obtain any and all permits and approvals required by ACHD or any other unit of government; and (iii) commit no waste or allow any nuisance on the Right-of-Way. Licensee covenants and agrees to indemnify and hold ACHD harmless from and against any and all claims, demands, damages, liens, liabilities and expenses (including without limitation, reasonable attorneys' fees), arising directly or indirectly from or in any way connected with the breach of the foregoing covenant. These covenants shall survive the termination of this Agreement.

<u>SECTION 15.</u> <u>ASSIGNMENT.</u> Licensee cannot sell, assign or otherwise transfer this Agreement, the license herein extended, or any of its rights hereunder except with the prior written consent of ACHD, which consent will not be granted unless the assignee assumes all obligations, warranties, covenants and agreements of Licensee herein contained.

<u>SECTION 16. ATTORNEYS' FEES.</u> In any suit, action or appeal therefrom to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees.

SECTION 17. NOTICE. Any notice under this Agreement shall be in writing and be delivered in person, or by United States Mails, postage prepaid, or by public or private 24-hour overnight courier service (so long as such service provides written confirmation of delivery), or by facsimile verified by electronic confirmation. All notices shall be addressed to the party at the address set forth below or at such other addresses as the parties may from time to time direct in writing by notice given the other. Any notice shall be deemed to have been given on (a) actual delivery or refusal, (b) three (3) days following the day of deposit in the United States Mails, (c) the day of delivery to the overnight courier, or (d) the day facsimile delivery is electronically confirmed.

If to ACHD:

Ada County Highway District

3775 N Adams Street Garden City, Idaho 83714 Attn: Right of Way Division

If to Licensee:

Shadow Ridge Neighborhood Association

Mr. Jim Merkle

150 E Aikens St Suite A Eagle, Idaho 83616

<u>SECTION 18.</u> <u>SUCCESSORS AND ASSIGNS</u>. This Agreement, the license herein extended, and the covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their successors and, if consented to by ACHD under section 15, Licensee's assigns.

<u>SECTION 19.</u> EXHIBITS. All exhibits attached hereto and the recitals contained herein are incorporated herein as if set forth in full herein.

<u>SECTION 20.</u> NO RECORDATION. This Agreement shall not be recorded in the Official Real Property Records of Ada County, Idaho.

### SECTION 21. Warranty of Authority to Execute.

- 21.1 The person(s) executing this Agreement on behalf of ACHD represent(s) and warrant(s) due authorization to do so on behalf of ACHD, and that upon execution of this Agreement on behalf of ACHD, the same is binding upon, and shall inure to the benefit of, ACHD.
- 21.2 If Licensee is not a natural person, the person(s) executing the Agreement on behalf of Licensee represent(s) and warrant(s) due authorization to do so on behalf of Licensee, and that upon execution of this Agreement on behalf of Licensee, the same is binding upon, and shall inure to the benefit, of Licensee.

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

ADA COUNTY HIGHWAY DISTRICT

Randý Lape, Right of Way Supervisor

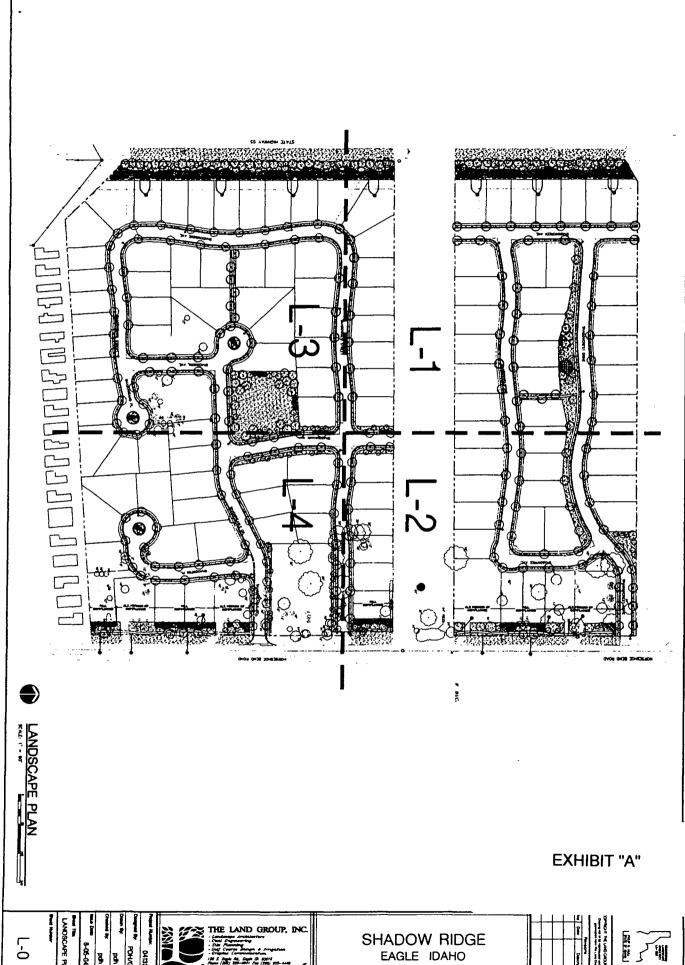
SHADOW RIDGE NEIGHBORHOOD

### **ASSOCIATION**

Jim Merkle

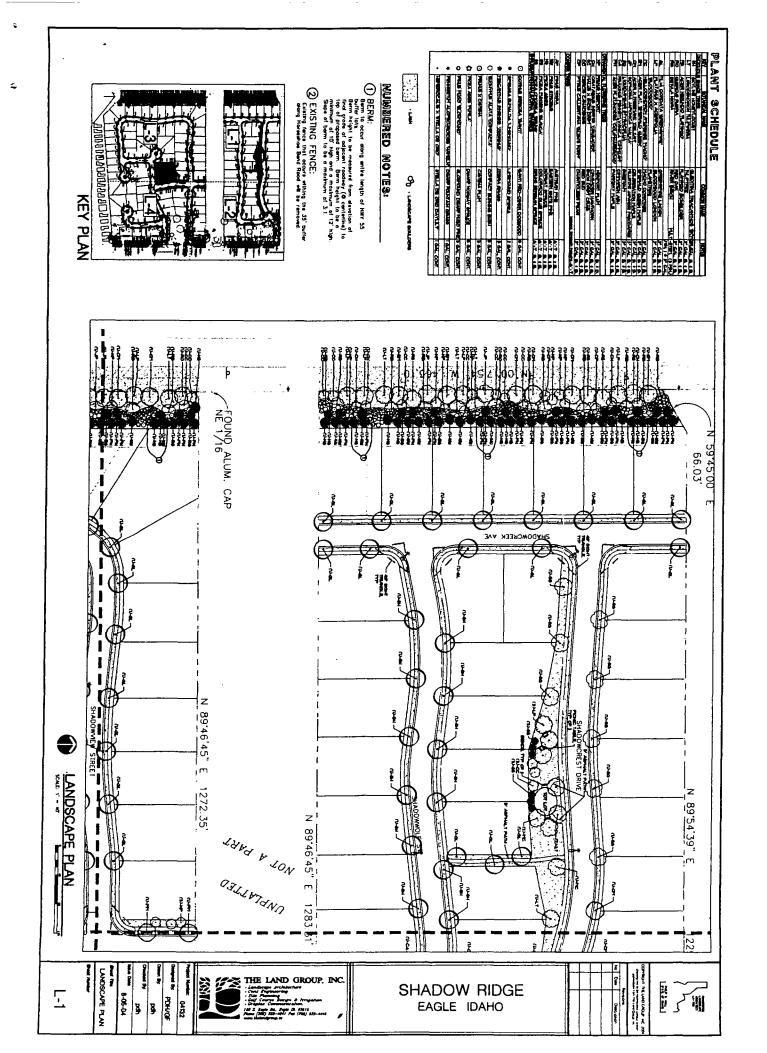
**EXHIBITS**:

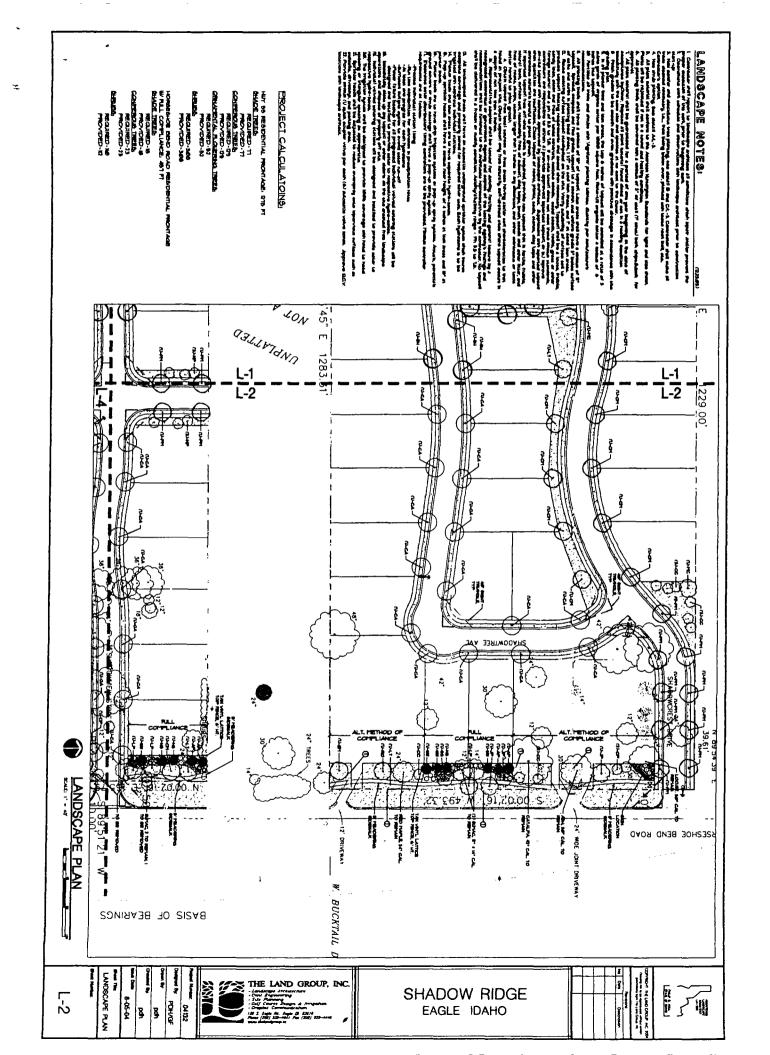
Exhibit "A"-Description and depiction of Right-of-Way

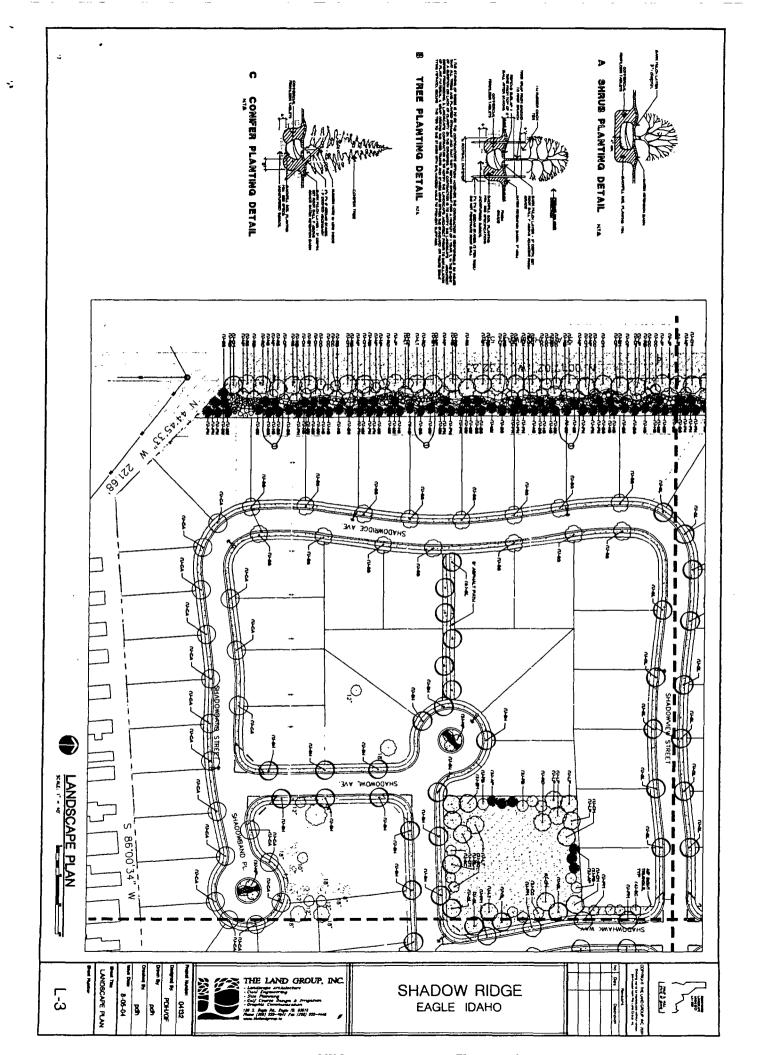


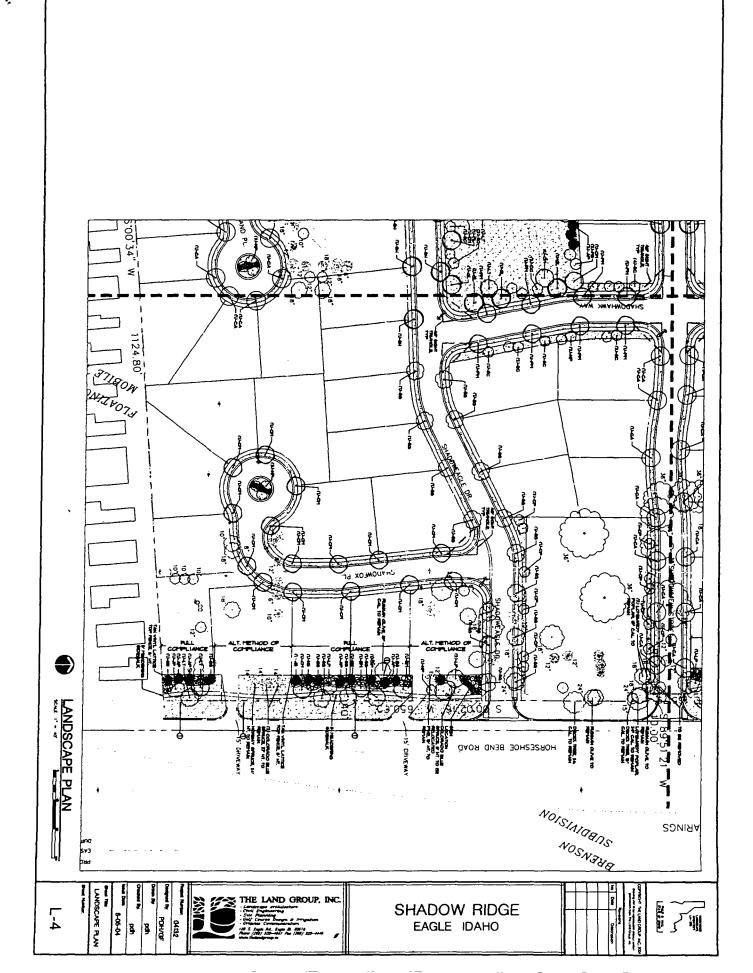












ADA COUNTY RECORDER J. DAVID NAVARRO
BOISE IDAHO 03/21/05 11:04 AM
DEPUTY Patti Thompson
RECORDED – REQUEST OF

Pioneer



### First Amendment to that:

### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SHADOW RIDGE SUBDIVISION

This First Amendment to that Declaration of Covenants, Conditions and Restrictions for Shadow Ridge Subvision is made this 16<sup>th</sup> day of March 16, 2005, by Hillview Development Corporation, and Idaho corporation, (hereinafter "Grantor" or "Declarant") whose address is 150 E. Aikens, Suite A, Eagle, Idaho 83616.

<u>Original Recording.</u> The Original Declaration of Covenants, Conditions and Restrictions was recorded the 16<sup>th</sup> day of March 16, 2005, in Ada County, as Instrument No. 105031613.

<u>Amendment.</u> Declarant above named, consents to and amends the original Declaration as follows:

- 1. Paragraph 4.1 is amended to read as follows:
- 4.1 Exclusions of Lot 1, Block 2 from CC&R's; Exclusion of Certain Existing Improvements from CC&R's. Lot 1, Block 2 is excluded entirely from these CC&R's and the Owner of this Lot shall have no votes in the Association.

Lots 2, 6 and 19 Block 3 contain existing residential structures and improvements. The existing structures, fencing and other improvements are hereby excluded from these CC&R's. In the event that any of these structures or improvements are repainted or resurfaced, such shall be reasonably harmonious in color and tone with the adjoining Lots. In the event that any of these previously existing improvements are structurally upgraded, or remodeled in a significant manner by the Owners, the remodel or upgrade shall conform to these CC&R's to the extent reasonably practical and the Owners of the upgrade or remodel agree that such remodel or upgrade shall be reasonably harmonious with the surrounding area.

| Dated this 16 <sup>th</sup> day of March 2005. |
|--|
| Hillview Development Corporation               |
| By CM  |
| James C/ Merkle                                |
| President                                      |
| STATE OF IDAHO, )                              |
| ( ss.  |
| COUNTY OF ADA                                  |

On this \( \lambda \forall \) day of \( \forall \) are C. 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.



Notary Public for Idaho
Residing in Boise Idaho
My Commission Expires: 6/30/10