

Alder Point Homeowner's Association, Inc.

Drainage Swale Requirements

July 12, 1996

BACKGROUND (SEE UPDATE BELOW)

As a condition of approval for development, a drainage swale was constructed along the entire western boundary of Alder Point Subdivision. The purpose of the swale is to retain all surface water within the neighborhood. The swale does this by acting as a catch basin from which surface water can seep into the underlying aquifer or into a 15 inch concrete drainage pipe located ten feet below the swale.

The swale is 25 feet wide and borders the back yards of all lots located along North Oliver Avenue. Sections of the swale that pass through an individual lot are owned by the individual homeowners, but must be maintained and kept accessible according to requirements in an agreement between Drainage District No. 2 of Ada County and Stubblefield Construction Co., the developer of Alder Point.

AGREEMENT

The agreement, dated January 4, 1994, includes several requirements which effect how the swale is to be maintained and used. Here are the most significant of these requirements:

- No permanent trees, bushes, fences, or structures of any kind can be located in the 25 foot swale right of way.
- Access to the swale is retained by Drainage District #2 as a public easement, meaning that the district can, at any time, go on to the swale for maintenance, cleaning, and inspection.
- Landscaping of the swale is permitted but subject to removal by the district at any time, without the obligation to repair or replace it.
- No modification or change in the structure, shape, or size of the swale is permitted.

UPDATE: The swale runs along the west boundary (Oliver) and south boundary (Kerry).

- As the "successor in interest," the Alder Point Homeowners Association has ultimate responsibility for proper maintenance of the swale in the event a homeowner fails to do so.

GUIDELINES

Even though there are several restrictions on the use and enjoyment of the swale, it is part of the back yard of all members living along the western boundary. Here are some guidelines and points that members with backyard swales should know:

- Planting sod is recommended. This will allow owners to use the area without restricting its functions.
- Using the swale as a garden area is permitted. Keep in mind that maintenance crews could destroy your garden if they need access for maintenance or inspection.
- Fences across the swale are permitted. A large removable panel should be placed in the center section in the event equipment such as a tractor requires access along the swale.
- Dams, diversions, rock gardens, perennial shrubs and plants, and trees of any kind are not allowed. The swale must be left fully in place *as is* without any modification of its structure.
- The Idaho Department of Environmental Quality has no special requirements or restrictions on the use of landscaping chemicals or fertilizers, but owners should avoid using the swale as a dumping or disposal area. Ada County Highway District and Drainage District #2 have strict prohibitions --and sanctions-- against any type of dumping or disposal.
- Section 4.5.2.2 of the Covenants for Alder Point provide for management and proper operation of the swales and incorporate the agreement with Drainage District #2 into the covenants.
- For more information, contact AMI, P. O. Box 5714, Boise, Idaho 83705 or call 385 9650.

J. C. Stubblefield
J. C. STUBBLEFIELD
BOISE, ID

1991 JAN 25 PM 3:15

AGREEMENT

FILE 3600 *J. Miller*
REGISTERED IN THE OFFICE OF

AGREEMENT made this 4th day of January, 1997, by and between DRAINAGE DISTRICT NO. 2 of the County of Ada of the State of Idaho, a quasi-municipal corporation, hereinafter referred to as DISTRICT, and STUBBLEFIELD CONSTRUCTION CO., a California partnership doing business in Idaho, at its office at 641 W. Franklin Road, in Meridian, Idaho, hereinafter referred to as STUBBLEFIELD.

WITNESSETH:

WHEREAS, DISTRICT was organized and created to drain, reclaim and protect lands within its boundaries for the socio-political advantage, health, welfare and convenience of the public;

WHEREAS, STUBBLEFIELD is now developing property known as ALDER POINT SUBDIVISION (hereinafter referred to as ALDER), more specifically described as a portion of the NW 1/4 of the NE 1/4 of Section 24, Township 4 North, Range 1 East of the Boise Meridian, Idaho, more particularly described as set forth in Exhibit A, attached hereto and incorporated fully herein by this reference; and in order to provide an underground drainage pipeline system for, and to efficiently develop, said subdivision, STUBBLEFIELD has requested the right and privilege to replace the DISTRICT'S open drainage ditch system with an underground drainage pipeline;

WHEREAS, the Board of Drainage Commissioners of said DISTRICT have approved by general meeting on May 3, 1993, the request of STUBBLEFIELD, subject to the execution of a written Agreement by the parties hereto containing all the terms, provisions and conditions agreed upon as hereinafter set forth.

NOW, THEREFORE, it is agreed:

1. DISTRICT hereby grants STUBBLEFIELD, at its sole expense and cost, the permission and license to use the DISTRICT's drainage system to provide an underground run-off and piped drainage system for ALDER, in accordance with (a) DISTRICT's Statement of Policy adopted September 4, 1979, and as amended on August 11, 1986, relative to accepting piped or underground drainage, incorporated herein by this reference and (b) the Preliminary Plat prepared by B & A Engineers (Exhibit B). All of the above grants and licenses are subject to the following conditions:

(a) STUBBLEFIELD hereby acknowledges and confirms and shall clearly designate the DISTRICT's exclusive Twenty-five foot (25') exclusive drainage easement upon the Plat of ALDER (Exhibit B) showing the DISTRICT's Twenty-five foot (25') exclusive drainage easement extending twenty-five feet (25') north from the centerline of the DISTRICT's underground drainage pipeline generally shown as the southern edge of ALDER, beginning at the manhole near the southeast corner of Lot 14 of Block 6 of ALDER, extending west along the south boundary of ALDER to the manhole at the southwest corner

of ALDER, then extending generally along the western boundary of ALDER to the R.P.B. Initial Point at the northwest corner of ALDER at the DISTRICT'S manhole, and as shown on Exhibit B, upon which no permanent trees, bushes, fences, or structures of any kind can be located.

(b) STUBBLEFIELD shall install and construct manholes along the DISTRICT'S drainage pipeline as shown on Exhibit B and specifically as follows: (1) near the southeast corner of Lot 14 of Block 6 of ALDER; (2) near the southwest corner of Lot 19 of Block 6 of ALDER; (3) at the southwest corner of Lots 25 and 26 of Block 6 of ALDER; (4) near the northwest corner of Lot 31 of Block 6 of ALDER; (5) just inside the west boundary on Lot 5 of Block 8 of ALDER; and (6) an existing manhole inside the northwest corner of Lot 18 of Block 7 of ALDER.

(c) STUBBLEFIELD shall install and construct a twelve inch (12") gasketless concrete pipe, on grade, with bell housing facing upstream as set forth in Exhibit B and Exhibit C, attached hereto and incorporated fully herein by this reference, and beginning at the manhole inside the west boundary of Lot 14 of Block 6 of ALDER; then extending west along the southern boundary of ALDER to the manhole at the southwest corner of Lots 25 and 26 of Block 6 of ALDER; then shall install and construct a fifteen inch (15") gasketless concrete pipe, on grade, with bell housing facing upstream extending north along the west boundary of ALDER to the

existing manhole in the northwest corner of Lot 18 of Block 7 of ALDER.

(d) STUBBLEFIELD shall be responsible for and shall pay the costs and expenses of the foregoing and shall hold DISTRICT harmless therefrom.

(e) Future owners of property adjacent to said open underground drainage pipeline are hereby notified that said pipeline and the DISTRICT's described easements are public property, that the function and purpose of said pipeline is to drain, reclaim and protect lands within the boundaries of the DISTRICT, any acts of adorning and landscaping to be permissive only, and the permissive right to adorn and landscape are subordinate to the prior and statutory right and duty imposed upon DISTRICT to maintain, repair and operate said ditch and pipeline.

(f) That STUBBLEFIELD pay all costs thereof and shall hold DISTRICT harmless therefrom.

All of the above grants, licenses and conditions shall be constructed and installed in accordance with the Plat and Plans as prepared by B & A Engineers and filed with the DISTRICT, attached hereto as Exhibits B and C and in accordance with the DISTRICT's aforesaid Statement of Policy.

2. STUBBLEFIELD, at its sole expense, shall comply with all laws, orders, and regulations of federal, state, and local authorities, and at its sole expense, shall obtain all licenses or

permits which may be required for the performance of this Agreement and/or for the work involved as herein provided.

Further, and in order to comply with all laws, rules, regulations and orders of federal, state and local authorities promulgated to provide and maintain maximum water quality for domestic, industrial, agricultural, manufacturing, municipal and ground water recharge purposes, to abate pollution of streams and lakes, to enhance and preserve the quality and value of water resources of the state of Idaho and to assist in the prevention, control and abatement of water pollution, STUBBLEFIELD will, at its own expense, install, construct and maintain any and all devices, contrivances, structures or works necessary to abate, control and prevent water pollution. STUBBLEFIELD, upon the execution of and in the performance of this Agreement, will save and hold DISTRICT harmless from and for any liability or responsibility for impairing water quality standards imposed by federal, state and local authorities.

3. DISTRICT (a) requires prior notice when STUBBLEFIELD intends to start the construction and installation of ALDER and its appurtenances and (b) at all times reserves the right to inspect the in-progress construction of the work described in paragraph 1 above to determine that said work is being constructed in accordance with the aforesaid conditions and Plat described hereinabove and in accordance with all the terms and conditions of this Agreement.

4. STUBBLEFIELD, and its successors and assigns, shall indemnify and save and hold harmless DISTRICT from and for any and

all damages, expenses, losses, claims, actions or judgments for damages or injuries to persons or property, and losses and expenses, caused or incurred by STUBBLEFIELD or its successors, assigns, employees, agents, business invitees, and independent contractors or each in performing this Agreement, or for the performance of any work involved as herein provided.

5. STUBBLEFIELD, and its successors and assigns, at its sole cost and expense, hereby covenant and agree to assume the continuous obligation:

(a) to repair, replace, improve and reconstruct the subject portion of said DISTRICT's underground drainage pipeline and manholes to be constructed and maintained as herein provided, at the depth, location and manner so as to provide and allow underground drainage in the manner and amount equivalent to that now provided by the DISTRICT's open ditches as set forth in Exhibits B and C without jeopardizing the DISTRICT's obligations and duties required and imposed by Chapter 29, Title 42, Idaho Code.

(b) To keep and maintain in a good state of condition and repair all non-permanent landscaping and adornment. If the DISTRICT is required, because of the failure of STUBBLEFIELD and its successors and assigns, to keep in a good state of repair and condition that part of the DISTRICT's easements so encroached and utilized for the benefit of the occupants of land within ALDER,

the costs thereof shall be billed to STUBBLEFIELD, its successors or assigns.

6. It is specifically understood and agreed that the obligations and duties described in this Agreement constitute an encumbrance running with the land. STUBBLEFIELD'S obligations and responsibilities imposed herein are specifically limited to that period of time in which title to the following real property situate within ALDER, in accordance with the official plat and plans thereof on file in the office of the Recorder of Ada County, Idaho, i.e., within the NW 1/4 of the NE 1/4 of Section 24 in Township 4 North of Range 1 East of Boise Meridian, Idaho, or any part thereof, is vested in STUBBLEFIELD and limited in amount by STUBBLEFIELD'S percentage of ownership thereof at the time any expense or obligation is incurred. Upon conveyance by STUBBLEFIELD of all of the hereinbefore described real property, STUBBLEFIELD shall be released from all liabilities imposed hereunder and all of said obligations and duties shall be assumed by STUBBLEFIELD'S assigns and successors in interest. This Agreement shall be binding on the successors and assigns of each party, including any homeowner's association formed by the owners of the subdivision lots of ALDER.

7. Should either party or its successors in interest or assigns be required to enforce any of the terms or conditions set forth in this Agreement because of the default of the other party, the prevailing party shall be entitled to all of their costs and attorney's fees.

IN WITNESS WHEREOF, the parties have caused their names to be subscribed to this Agreement and have caused execution thereof by their duly authorized officers the day and year first above written.

DRAINAGE DISTRICT NO. 2

Eugene O Muller
EUGENE O MULLER
Chairman

ATTEST:

James L. Payne
JAMES L. PAYNE
Secretary

STATE OF IDAHO)
) ss.
County of Ada)

On this 4th day of December, 1998, before me Timothy J. Gass, a Notary Public, personally appeared Commissioners and officers of Drainage District No. 2, Eugene O. Muller, Chairman, and James L. Payne, Secretary, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.



Timothy J. Gass
Notary Public of Idaho
Residing at: RAIS
My Commission Expires: 9/16/99

STUBBLEFIELD CONSTRUCTION CO.

by: AT Stubblefield
President

ATTEST

by: [Signature]
Secretary

EXHIBIT N 7. A

CERTIFICATE OF OWNERS

KNOW ALL MEN BY THESE PRESENTS: That Arnold Stubblefield, a single man, does hereby certify that he is the owner of a certain tract of land to be known as ALDER POINT NO. 1 SUBDIVISION, and intends to include the following described land in this plat:

A parcel of land situate in the Northwest Quarter of the Northeast Quarter of Section 24, Township 4 North, Range 1 East, Boise Meridian, Boise City, Ada County, Idaho, being more particularly described as follows:

Commencing at the northeast corner of said Section 24, which lies S00°03'13"E, 2,642.86 feet from the east quarter corner of said Section 24; thence S89°37'10"W, 1,313.99 feet to the northeast corner of the Northeast Quarter of the Northeast Quarter of said Section 24; thence S00°30'07"W, 103.34 feet along the easterly boundary of the Northeast Quarter of the Northeast Quarter of said Section 24; thence S88°29'11"W, 39.30 feet to the westerly right-of-way of Gary Lane and to the Real Point of Beginning:

- Thence S00°14'18"W, 779.00 feet along the westerly right-of-way of Gary Lane;
Thence N70°34'29"W, 132.96 feet;
Thence N89°28'33"W, 50.00 feet;
Thence N72°50'18"W, 100.75 feet;
Thence S06°04'13"W, 74.00 feet;
Thence N71°33'27"W, 139.00 feet;
Thence N89°28'33"W, 478.73 feet;
Thence 30.03 feet along a non-tangent curve deflecting to the left, with a radius of 305.00 feet, a central angle of 03°38'41", a long chord of 30.04 feet and a long chord bearing of N03°10'46"E;
Thence N89°28'33"W, 260.00 feet;
Thence S00°31'25"E, 20.00 feet;
Thence N89°28'33"W, 125.00 feet to the westerly boundary of the Northwest Quarter of the Northeast Quarter of said Section 24;
Thence S00°31'25"E, 713.94 feet along the westerly boundary of the Northeast Quarter of the Northeast Quarter of said Section 24 to a point that lies S00°31'25"W, 19.00 feet from the north quarter corner of said Section 24;
Thence S89°49'13"E, 165.01 feet along a line parallel to the northerly boundary of the Northwest Quarter of the Northeast Quarter of said Section 24;
Thence S00°30'07"E, 19.00 feet to the northerly boundary of the Northwest Quarter of the Northeast Quarter of said Section 24;
Thence N89°49'13"E, 943.27 feet along the northerly boundary of the Northeast Quarter of the Northeast Quarter of said Section 24;
Thence S01°18'34"E, 48.98 feet;
Thence S88°29'11"E, 159.35 feet to the Real Point of Beginning.

Comprising 22.2908 Acres, more or less.

The public roads shown on this plat are hereby dedicated to the public; the utility, drainage and irrigation easements shown on this plat are not dedicated to the public, but the right to use said easements are hereby reserved for the uses specifically depicted on this plat, and no permanent structures are to be erected within the lines of said easements. The lots within this subdivision are eligible to receive water service from Boise Water Corporation; and Boise Water Corporation has agreed in writing to serve all of the lots within this subdivision.

IN WITNESS WHEREOF: I have hereunto set my hand this ____ day of _____, 1993.

Arnold Stubblefield

ACKNOWLEDGMENT

State of Idaho)
) ss.
County of Ada)

On this ____ day of _____, 1993, before me, the undersigned, a Notary Public in and for the said State, personally appeared Arnold Stubblefield, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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

Notary Public for Idaho
Residing in Boise, Idaho
My Commission Expires _____

CERTIFICATE OF SURVEY

I, Carlisle V. Briggs, do hereby certify that I am a Land Surveyor, licensed by the State of Idaho, and that this plat of ALDER POINT NO. 1 SUBDIVISION, as described in the Certificate of Owners and as shown on the attached plat, was drawn from an actual survey made on the ground under my supervision, and accurately represents the points plotted thereon, and is in conformance with the State of Idaho Code relating to plats and surveys.

Carlisle V. Briggs PE/LS No. 644

B & A Engineers, Inc. 5505 W. Franklin Road

DETAIL - DITCH
DRAINS IN'S
MANHOLE - STATION 00+84.90 21+80
Scale 1"=10'



ALDER POINT SUBDIVISION (50% SUBD)
DRAIN DITCH PIPING
Ada County Drainage District No. 2
W. of Gary Lane, N. of State St.
Boise, Idaho
G.M. 8-25-92 Scale: 1/4"=200'
V.1"=2'
Job SA01 DWG. NO. QWB-930409-A

REV. A - QWB 4-30-94 - Change Subdivision Legend

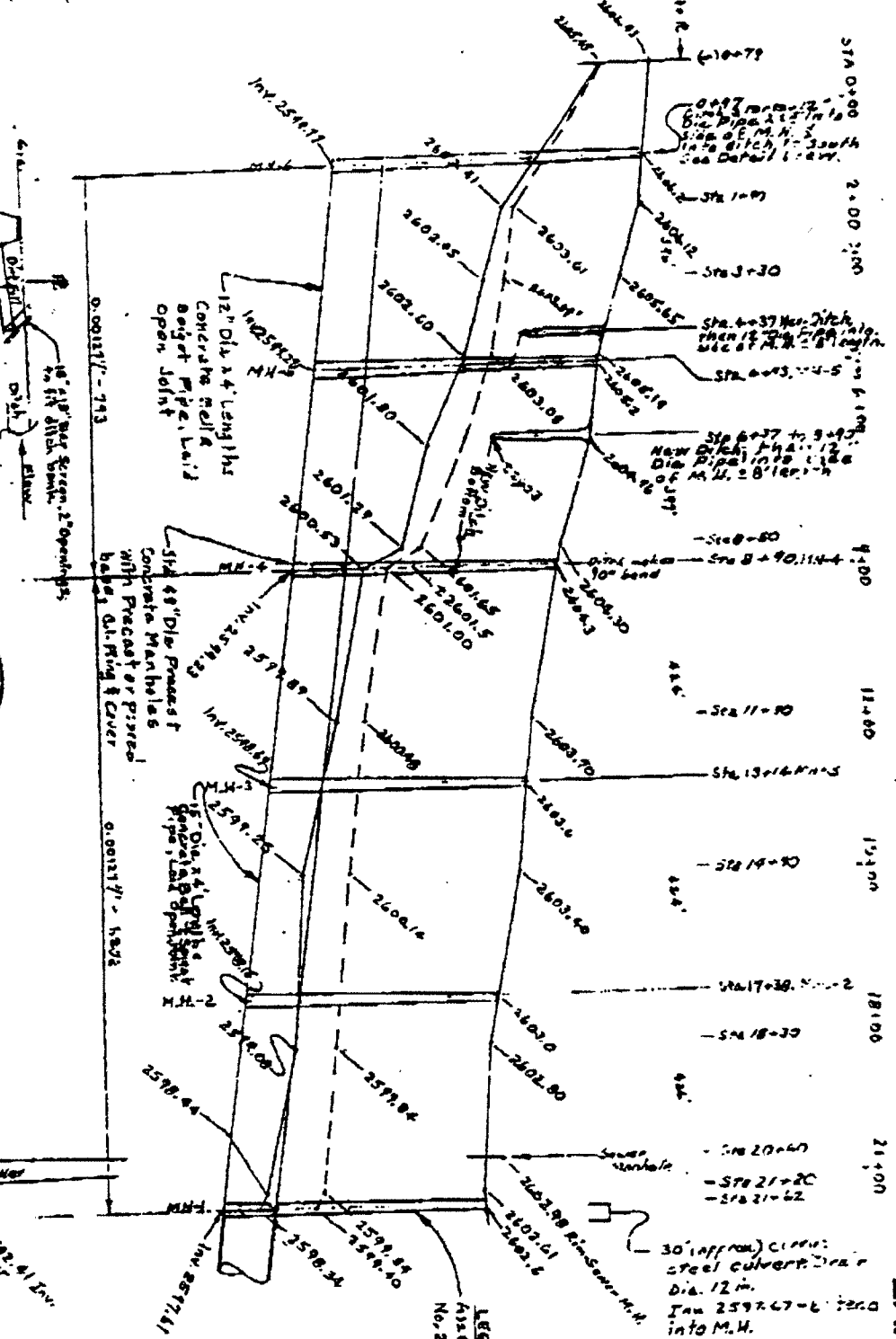


EXHIBIT NO. 2