

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City Clerk
City of Meridian
33 E. Broadway Avenue
Meridian, ID 83642

NO BUILD EASEMENT AND AGREEMENT

This NO BUILD EASEMENT AND AGREEMENT ("Agreement") is made this ____ day of _____, 2021 ("Effective Date"), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho ("City"), and the Joseph B. & Carolyn R. Chandler Trust 3/20/20, a trust organized under the laws of the State of Idaho ("Owner") (collectively, "Parties").

WHEREAS, Owner is constructing a building on 650 W. Franklin Road, in Meridian Idaho, Ada County parcel no. S1212438485, legally described as PAR #8485 OF SW4SE4 SEC 12 3N 1W ("Benefited Property"), which real property is owned by Owner;

WHEREAS, Owner also owns the adjacent real property, to the north of the Benefited Property, at 658 W. Franklin Road, in Meridian Idaho, Ada County parcel no. S1212438486, legally described as PAR #8486 OF SW4SE4 SEC 12 3N 1W ("Burdened Property");

WHEREAS, the north wall of the building under construction on Benefited Property ("Building") is 2.15 feet from the northern boundary of the Benefited Property, and such wall is an exterior wall designed and constructed with combustible projections and openings;

WHEREAS, by ordinance codified at Meridian City Code section 10-1-1(A), City has adopted the 2018 International Building Code ("IBC"), as amended;

WHEREAS, IBC section 705, requires, *inter alia*, that an exterior wall designed and constructed with combustible projections and openings must either meet the fire resistance rating, area, protection, and vertical separation specifications of IBC section 705, or be at least 20 feet from the northern boundary of the Benefited Property;

WHEREAS, for the purpose of facilitating the continued and complete construction of the Building in compliance with the IBC, and rather than requiring Owner to bring the north wall of the Building into compliance with the fire resistance rating, area, protection, and vertical separation specifications of IBC section 705, City is willing to allow Owner to burden the Burdened Property with a no build easement, 20 feet wide, on the south boundary of the Burdened Property, which easement will be recorded against the Burdened Property;

NOW THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- I. **Easement conveyed.** Owner, on behalf of itself, and its successors and assigns, hereby grants to City a perpetual no build easement on the Burdened Property, to be comprised

of the south twenty feet (20') of the Burdened Property, along the entire south property line, as described particularly in the legal description attached hereto as *Exhibit A* (the "No Build Easement").

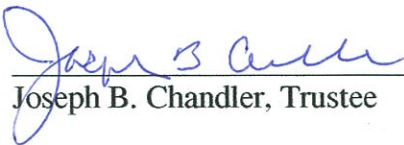
- II. **No building in easement.** Neither Owner nor Owner's heirs, successors or assigns shall construct or place, or allow to be constructed or placed, or allow to exist any structure, shed, garage sign, or building, or any eaves or other projections thereon, or any portion thereof, in the south twenty feet (20') of the Burdened Property, along the entire south property line, as described particularly in the legal description attached hereto as *Exhibit A*.
- III. **Purpose of easement.** The purpose of the No Build Easement is to allow Owner to complete construction of the Building on the Benefited Property, which Building, due to its proximity to the property line between the Benefited Property and the Burdened Property, would not comply with the fire resistance rating, area, protection, and vertical separation specifications of IBC section 705, but for the fire separation distance afforded by the No Build Easement. In exchange for the promises under this Agreement, Owner acknowledges that this Agreement is executed as an alternate method of complying with IBC section 705 with regard to the north exterior wall of the Building.
- IV. **Use of easement area.** Nothing contained in this No Build Easement shall be interpreted or construed:
 - A. To prevent Owner and Owner's successors and assigns from using, operating, or maintaining the No Build Easement for the purpose of driving motor vehicles thereupon;
 - B. To require either party to maintain or repair the No Build Easement; or
 - C. To allow the City to enter or access the Burdened property at any time or for any purpose.
- V. **Building on Benefited Property.** City agrees to allow Owner to build the Building on the Benefited Property with a north exterior wall that would not comply with the fire resistance rating, area, protection, and vertical separation specifications of IBC section 705 but for the fire separation distance afforded by the No Build Easement, so long as this No Build Easement remains in place and so long as no structure, shed, garage, sign, building, eave, or projection, or any portion thereof (each, "Encroachment"), is ever placed on or in the No Build Easement. Owner agrees that if this No Build Easement is terminated; or if the No Build Easement area is encroached upon by any Encroachment; City will require Owner to bring the Building on the Benefited Property into compliance with IBC section 705, and/or with any and all applicable building codes. Owner agrees that if the building code in effect at the time of such termination or encroachment so requires, Owner will make any changes necessary to correct any and all conditions that are in violation of any applicable building code or restriction.
- VI. **Term.** This No Build Easement and Agreement shall be effective as of the Effective Date written above, and shall continue in perpetuity. All terms and provisions herein are intended to and shall be covenants running with the land and/or equitable servitudes for

the benefit of the City as an alternate method of complying with IBC section 705, and to burden the Burdened Property, and shall be binding on the Owner and the Owner's respective heirs, executors, administrators, successors, and assigns and all current and future owners of the Benefited Property, the Burdened Property, and all persons claiming title, possession, or ownership of or to such properties. The Parties shall terminate this Agreement and extinguish the No Build Easement only if the Building is demolished or the north exterior wall of Building is altered to comply with the IBC, including, without limitation, IBC section 705 or like section then in effect.

- VII. **No modification without City approval.** Owner, and any subsequent owners and assigns, may not modify, withdraw from, terminate, or dissolve this Agreement without the written approval of City.
- VIII. **Indemnification.** Owner, and Owner's respective successors and assigns, shall indemnify, defend, and hold harmless City, and City's officers, agents, officials, and employees, against any and all claims, demands, actions, and suits, including attorneys' fees and costs, arising out of or resulting from the terms of this Agreement.
- IX. **Binding upon successors.** This Agreement shall be binding upon any and all owners of Benefited Property, any and all subsequent owners thereof, any and all owners of Burdened Property, any and all subsequent owners thereof, and each and every other person acquiring an interest in Benefited Property or Burdened Property. Nothing herein shall, or shall be construed to, in any way prevent the sale or alienation of Benefited Property or Burdened Property, or any portion thereof, except that any sale or alienation shall occur subject to the No Build Easement and the provisions of this Agreement, and any successive owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed.
- X. **Severability.** Each provision of this Agreement shall be independent and severable. The invalidity or partial invalidity of any provision thereof shall not affect any of the remaining portions of that or any other provision of this Agreement.
- XI. **Subsequent amendment.** Except as otherwise specifically provided herein, no subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the Parties unless set forth in writing and duly executed by both Parties or their successors in interest.
- XII. **Non-waiver.** Failure of either Party to promptly enforce the strict performance of any term of this Agreement shall not constitute a waiver or relinquishment of any Party's right to thereafter enforce such term, and any right or remedy hereunder may be asserted at any time after either party becomes entitled to the benefit thereof, notwithstanding delay in enforcement. All rights and remedies herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

- XIII. Compliance with laws.** Throughout the course of this Agreement, the Parties shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho, and the ordinances of the City of Meridian. The City's ordinances appertaining to the regulation, control, and use of its sewer and water systems, and any prospective amendments to and/or recodifications thereof, are specifically and without limitation incorporated into this Agreement as if set forth fully herein.
- XIV. Warranty of authority.** The undersigned expressly warrants that, to the extent set forth herein, he is duly authorized to act as the representative and agent of the Joseph B. & Carolyn R. Chandler Trust 3/20/20 and each and every trustee and beneficiary thereof. The undersigned further warrants that he is authorized to bind the Joseph B. & Carolyn R. Chandler Trust 3/20/20 and its members to the obligations set forth herein, and to accept the liabilities as established herein on behalf of the Joseph B. & Carolyn R. Chandler Trust 3/20/20 and its trustees and beneficiaries.
- XV. Advice of attorney.** Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorney or the opportunity to seek such advice.
- XVI. City Council approval required.** The validity of this Agreement shall be expressly conditioned upon City Council action approving this Agreement. Execution of this Agreement by the persons referenced below prior to such ratification or approval shall not be construed as proof of validity in the absence of Meridian City Council approval.

JOSEPH B. & CAROLYN R. CHANDLER TRUST 3/20/20:

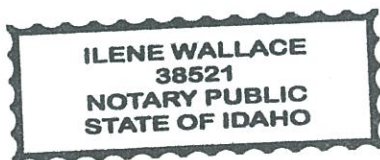

Joseph B. Chandler, Trustee

STATE OF IDAHO)
) ss:
County of ADA)

This record was acknowledged before me on this 12 day
of August, 2021, by JOSEPH B. CHANDLER, as
Trustee of the Joseph B. & Carolyn R. Chandler Trust 3/20/20.


Notary Public for Idaho
Residing at Caldwell, Idaho

My Commission Expires: 8/5/2024



CITY OF MERIDIAN:

Robert E. Simison, Mayor

Attest: _____
Chris Johnson, City Clerk

STATE OF IDAHO)
) ss:
County of Ada)

I HEREBY CERTIFY that on this _____ day of _____, 2021 before the undersigned, personally appeared ROBERT E. SIMISON and CHRIS JOHNSON, known or identified to me to be the Mayor and City Clerk, respectively, of the City of Meridian, who executed the instrument on behalf of the City of Meridian, and acknowledged to me that the City of Meridian executed the same.

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

Notary Public for Idaho
Residing at _____, Idaho

My Commission Expires: _____



Exhibit A

Job No. 2021-169

J.B.F.

7-29-21

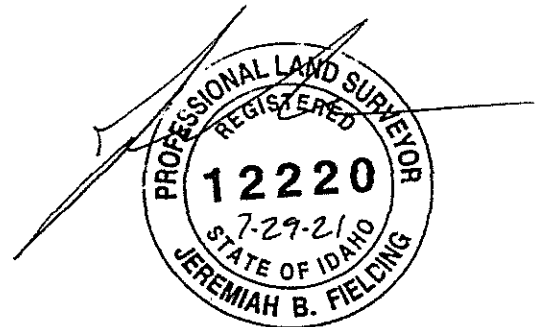
BOUNDARY DESCRIPTION FOR JOSEPH CHANDLER

20' Non-Buildable Easement

Part of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 12, Township 3 North, Range 1 West of the Boise Meridian, City of Meridian, Ada County, Idaho described as follows:

Commencing at the Southwest corner of the Southeast $\frac{1}{4}$ of Section 12, Township 3 North, Range 1 West of the Boise Meridian, City of Meridian, Ada County, Idaho and running thence N90°00'00"E 407.20 feet along the South line of the Southeast $\frac{1}{4}$ of the said Section; thence N00°06'00"E 181.70 feet to a found 5/8" rebar marking the Point of Beginning; thence N00°06'00"E 20.00 feet; thence N90°00'00"E 145.00 feet; thence S00°00'00"E 20.00 feet; thence S90°00'00"W 145.03 feet to the Point of Beginning.

Easement area contains 2,900 square feet or 0.07 acres, more or less.





Force of Mv. 5721245366

Phone No. 57218458493

LEGEND

- Found 1/2" rubber
Found Aluminum C
Found 5/8" rubber
Essential
Sucker 1
Parrot 14



EASTMAN EXHIBIT

EAGLE LAND SURVEYING, L.
1017 N. 4TH ST., SUITE 200, MINNEAPOLIS, MN 55412
612-338-8888

JUSTICE CHANDLER

SEC. 18, T. 4 N., R. 1 W.

[illegible]

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