

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

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

**AGREEMENT FOR PROVISION OF WATER SERVICE OUTSIDE MERIDIAN CITY
LIMITS: PARCEL NUMBER R4622730010, S. MERIDIAN ROAD**

This AGREEMENT FOR PROVISION OF WATER SERVICE OUTSIDE MERIDIAN CITY LIMITS ("Agreement") is made this ____ day of _____, 2021, by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho, whose address is 33 East Broadway Avenue, Meridian, Idaho (hereinafter "City"), and Jessica Condominiums, Inc., whose address is 320 11th Ave S, Suite 207, Nampa, Idaho (hereinafter "User") (collectively, "Parties").

WHEREAS, User is the owner of parcel number R4622730010, township/range/section 3N1W25, located at S. Meridian Road, Meridian, Ada County, Idaho ("Property/Common Area"), which real property is located outside of Meridian City limits;

WHEREAS, Jessica Condominiums, Inc. is a nonprofit organization established for the purpose of, *inter alia*, carrying out and discharging all duties and responsibilities of the condominium owners' association, including overseeing the common area as defined and provided in the Condominium Property Act, set forth at Idaho Code §§ 55-1501 *et seq.* (the "Act");

WHEREAS, pursuant to Idaho Code section 55-1509(a), the utilities and water pipes serving the condominium units are part of the common area, and User is therefore responsible for, entering into this Agreement with City for the establishment of water services serving the building, and User is duly authorized to enter into this Agreement;

WHEREAS, pursuant to Idaho Code section 55-1514, the six (6) condominium units within the building located at Property/Common Area each have their own address and parcel number:

Unit 1, R4622730020, 4455 S. Meridian Road, Meridian, Idaho,
Unit 2, R4622730030, 4463 S. Meridian Road, Meridian, Idaho,
Unit 3, R4622730040, 4471 S. Meridian Road, Meridian, Idaho,
Unit 4, R4622730050, 4479 S. Meridian Road, Meridian, Idaho,
Unit 5, R4622730060, 4487 S. Meridian Road, Meridian, Idaho, and
Unit 6, R4622730070, 4495 S. Meridian Road, Meridian, Idaho, (each, "Unit," and collectively, "Units");

WHEREAS, the respective owners of the Units shall enter into separate agreements with City consenting to annexation when such Units are eligible for same, and the contemporaneous execution of such agreements shall be a condition of City's consent to the terms of this Agreement;

WHEREAS, the City is authorized by Idaho Code section 50-323 to develop, operate, and maintain a domestic water supply, and to protect the same from contamination, and the City does exercise such authority, including by the adoption and enforcement of Title 9, Chapters 1 and 4, Meridian City Code;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the mutual promises and covenants herein contained, and in consideration of the recitals above, which are incorporated herein, the Parties agree as follows:

I. COMMITMENTS BY CITY.

- A. Provision of Services.** At all times relevant hereunder, City shall provide water service to the Property/Common Area, at a single point of delivery, subject to the terms and conditions of this Agreement and any and all applicable laws and City ordinances.
- B. Billing.** City shall bill User monthly for water usage according to the metering, accounting, and billing system in place under Meridian City Code and the policies and practices of the City of Meridian. The failure of one or more owners of the Units to pay for their share of the amount due for water usage shall not excuse or delay User's payment to City.
- C. Recordation.** City shall record this Agreement, and shall submit proof of such recording to User.
- D. Annexation Notice.** City shall send written notice to User when Property/Common Area is eligible for annexation.

II. COMMITMENTS BY USER.

- A. Payment for City services.** User shall be responsible for fulfilling User's obligation to pay City any and all applicable costs, including, but not limited to assessment and meter installation fees. Upon connection to the City's water system, User shall pay to City all applicable fees and costs for water services provided, including, but not limited to use fees, as such are calculated and billed by City as set forth herein and established by law or City ordinance. The exclusive remedy for disputes, objections, or appeals regarding such fees and charges shall be appealed to the Board of Adjustment under the procedures set forth in Meridian City Code. Notwithstanding any other provision of this Agreement, this provision shall be binding upon User and upon any and all successors in interest of User and/or to the Property/Common Area.
- B. No cross-connection.** User shall abide by and comply with any and all applicable provisions of law, which shall specifically include, but shall not be limited to, compliance with Chapter 3, Title 9, Meridian City Code and/or any and all similar ordinances subsequently adopted, which prohibit the installation and/or maintenance of a cross-

connection to the City's water system. The existing well at Property/Common Area must be abandoned, unless it is used for irrigation, in which case it must remain completely separated from the City water system and an approved backflow prevention device must be installed just downstream of the City water meter, pursuant to the direction of the City of Meridian Public Works Department.

- C. Consent to annexation.** User specifically agrees that, as specific consideration for City's willingness to enter into this Agreement, User shall, and hereby does, provide perpetual consent to annexation of the Property/Common Area into the City of Meridian. This provision shall comprise evidence of User's consent to annexation and shall be binding upon all subsequent purchasers, heirs, or assigns of the Property/Common Area. Notwithstanding any other provision of this Agreement, this provision shall be binding upon User and upon any and all successors in interest of User and/or to the Property/Common Area.
- D. Annexation application.** Within sixty (60) days of receiving written notice from City that Property/Common Area is eligible for annexation, User shall, at User's sole expense, submit an Annexation Application for the Property/Common Area into the City of Meridian. User's Annexation Application shall be a complete submittal of all City-required documents, exhibits, and fees for requesting annexation into the corporate boundary that are in effect at the time of application. Such Annexation Application shall propose zoning designations consistent with the Future Land Use Map designation of the City's Comprehensive Plan. It is acknowledged by the Parties that, upon annexation, all of the benefits and responsibilities of annexation into Meridian city limits shall apply to the Property/Common Area, including, but not limited to, the requirement that all real property and uses thereof conform to the provisions of Meridian City Code and policy, including, but not limited to, Title 11, the Meridian Unified Development Code ("UDC"); Title 4, Chapter 1, the City of Meridian Solid Waste Ordinance; and Title 9, the City of Meridian Water and Sewer Ordinance.
- E. Unit owners' consent to annexation.** User shall facilitate and cause the execution of written consent to annexation by each Unit owner, to be executed contemporaneously with this Agreement, and recorded by City against each Unit parcel, respectively. If additional condominium unit(s) or other improvements are added to the building or property at Property/Common Area, User shall facilitate and cause the execution of written consent to annexation by the owner(s) of such additional unit parcels. Such written consent shall be in the form prepared by the City of Meridian City Attorney's Office and User shall deliver same to the Meridian City Attorney's Office within thirty (30) days of the issuance of certificate of occupancy for such additional unit(s) or improvements.
- F. Consent to entry.** User shall, and hereby does, provide perpetual consent and access to the City to enter the Property/Common Area for the purpose of inspecting any and all water pipes, connections, and related infrastructure. Except as to routine meter readings or in the event of an imminent or realized threat to the public health, safety, or welfare, City shall

attempt to provide User at least twenty-four (24) hours prior notice of such entry; such notice may be verbal or written and may be posted at the Property/Common Area.

G. Use of private septic system. Until the occurrence of any Triggering Event as set forth below, User may continue to maintain and use the existing private septic system at the Property/Common Area without penalty therefor, so long as all such maintenance and use is undertaken in full compliance with all applicable laws. Upon the occurrence of any Triggering Event, User shall connect any and all occupiable buildings then located on the Property/Common Area to the City sewer system. Upon connection and provision of City sewer service to the Property/Common Area, User shall disconnect and discontinue the use of any and all private septic or sewer systems on the Property/Common Area other than the City sewer system. "Triggering Event," as such term is used herein, shall mean any of the following:

1. Annexation of the Property/Common Area or any Unit into the City of Meridian.
2. Sale of the Property/Common Area or any portion thereof or appurtenance thereupon to any person or entity.
3. Redevelopment or subdivision of the Property/Common Area by any person or entity.
4. Failure, abandonment, replacement and/or removal of the private septic system on Property/Common Area, or any portion thereof, excepting maintenance and repairs.
5. Any verifiable, substantial increase in demand upon City water services to or upon the Property/Common Area.

The Parties acknowledge that User intends to construct an addition to the existing building at Property/Common Area, that User has been advised by the Meridian Fire Department to add sprinklers and hydrant to serve both the existing and new construction. The addition and/or implementation of fire suppression shall not constitute Triggering Events for the purposes of this section.

III. GENERAL PROVISIONS.

A. Default. Any failure to perform the terms and conditions of this Agreement, or any portion thereof, shall be a default hereunder. In the event of a default, the non-defaulting party may serve a written notice of default upon the defaulting party by the method set forth herein. Except in case of an imminent or realized threat to the public health, safety, or welfare, the defaulting party shall have thirty (30) days following delivery of such notice to cure or correct the default before the non-defaulting party may seek any remedy as provided herein. In the Event of User's default, City may suspend or terminate water service to Property/Common Area. Notwithstanding any other provision of this Agreement, this provision shall be binding upon the Parties and upon any and all successors in interest thereof.

B. Enforcement. This Agreement shall be enforceable in any court of competent jurisdiction by either City or User, or any respective successor(s) in interest thereof. An action at law or in equity, as appropriate, shall lie to secure specific performance of any covenant, agreement, condition, commitment, and/or obligation set forth herein. In addition, remedies available to City shall include, but shall not be limited to, termination of water

service to User, to any successor(s) in interest, and/or to any water user located on the Property/Common Area.

- C. Notices.** Any notice desired by the Parties or required by this Agreement shall be deemed delivered after deposit in the United States Mail, postage prepaid, addressed as follows:

City: City of Meridian
Attn: Public Works Department Director
33 E. Broadway Ave.
Meridian, Idaho 83642
User: Jessica Condominiums, Inc.
Mike Mussell, President
320 11th Avenue S, Suite 207
Nampa ID 83651

Either Party may change its address for the purpose of this section by delivering to the other Party written notification of such change, establishing a new address for noticing purposes, in accordance with the requirements of this section.

- D. Time is of the essence.** The Parties acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach and default hereunder by the Party so failing to perform.

- E. Binding upon successors.** Except as otherwise specifically provided herein, this Agreement shall be binding upon any and all owners of the Property/Common Area, any and all subsequent owners thereof, and each and every other person acquiring an interest in the Property/Common Area. Nothing herein shall, or shall be construed to, in any way prevent the sale or alienation of the Property/Common Area, or any portion thereof, except that any sale or alienation shall occur subject to the provisions of this Agreement, and any successive owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed.

- F. Severability.** If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any other provision or provisions contained herein.

- G. Attorney fees.** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney fees as determined by such court. This provision shall be deemed to be a separate contract between the Parties and shall survive, *inter alia*, any default, termination, or forfeiture of this Agreement.

- H. Final Agreement.** This Agreement sets forth all promises, inducements, agreements, conditions, and understandings between City and User relative to the subject matter hereof, and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between City and User, other than as are stated herein. 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.

- I. 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.
- J. 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.
- K. 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.
- L. Approval Required:** This Agreement shall not become effective or binding until approved by the City Council of the City of Meridian.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date first written above.

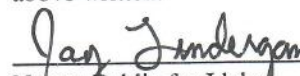
USER:


Mike Mussell, President
Jessica Condominiums, Inc.



STATE OF IDAHO)
) ss:
County of Canyon)

I HEREBY CERTIFY that on this 30 day of June, 2021, Before the undersigned, a Notary Public in the State of Idaho, personally appeared MIKE MUSSELL, proven to me to be the person who executed the said instrument, and 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.


Notary Public for Idaho
Residing at Nampa, Idaho

My Commission Expires: 8-3-2024

CITY OF MERIDIAN:

BY: _____
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: _____