

DONATION AGREEMENT

Donegan Well Lot

THIS DONATION AGREEMENT (this "**Agreement**") is made and entered into this ____ day of _____, 2024 ("**Effective Date**"), by and between EAGLE1 LLC, an Idaho limited liability company ("**Donor**") and CITY OF MERIDIAN, an Idaho municipal corporation ("**City**"). Donor or City may each individually be referred to as a "**Party**" or collectively as the "**Parties**."

RECITALS

- A. Donor owns the +/- 11.986-acre parcel of real property located at 2410 E. Columbia Road, Meridian, Idaho 83642 and commonly known as Ada County Parcel No. S1405438700 (the "**Parent Parcel**"); and,
- B. Donor intends to seek annexation of the Parent Parcel into the City of Meridian to allow for the development thereof as a residential subdivision; and,
- C. City operates a public municipal water supply system and desires to acquire a portion of the Parent Parcel to install a water production well, water treatment facility (if needed, as determined by the City), booster station (if needed, as determined by the City), and related facilities (the "**Well System**") to expand the service area of the public municipal water supply system; and,
- D. Donor desires to offer to donate fee simple title to a portion of the Parent Parcel that is legally described on Exhibit A and graphically depicted on Exhibit B (the "**Well Lot**") and an appurtenant easement over a portion of the "future flushing pond" area that is graphically depicted on Exhibit B (the "**Flushing Pond Area**") (collectively, the "**Property**") to City to allow for the expansion of the service area of the public municipal water supply system; and,
- E. City desires to have a reasonable period to engage in customary due diligence into the suitability and utility of the Property for the operation of the Well System prior to accepting the donation thereof; and,
- F. City and Donor desire to enter into this Agreement to memorialize their mutual understanding and agreement with respect to (1) Donor's offer to donate the Property to City; (2) City's right to investigate the suitability and utility of the Property prior to acceptance of the donation; and (3) City's option to accept the donation of the Property and commence with the development of the Well System.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, and the benefits, covenants and agreements hereinafter mentioned on the part and behalf of the Parties, the Parties agree as follows:

1. **OFFER TO DONATE:** For a period commencing on Effective Date and expiring at the earlier of (a) one year after Donor delivers a Completion Notice (defined below) to City or (b) ten (10) years after the Effective Date (the "**Option Period**"), Donor hereby irrevocably offers to donate the Property to City in accordance with this

Agreement, which donation is subject to, and will only be effective upon, acceptance thereof by City as set forth in this Agreement.

2. **OPTION TO ACCEPT DONATION.** If the City intends to develop the Well System on the Property, then City may accept Donor's offer at any time prior to the expiration of the Option Period by written notice thereof to Donor (the "**Acceptance Notice**"). City covenants that it will not deliver an Acceptance Notice unless the City then intends to thereafter develop the Well System on the Property. If at any time City, in its discretion, finds the Property to be unsuitable for the Well System for any reason or City elects for any reason not to accept Donor's offer to donate the Property, then City may terminate this Agreement by written notice thereof to Donor (a "**Termination Notice**"). If City fails to deliver an Acceptance Notice to Donor prior to the expiration of the Option Period for any reason, then the City will be deemed to have delivered a Termination Notice to Donor at the expiration of the Option Period.

3. **DUE DILIGENCE REVIEW**

3.1 During the Option Period, Donor will provide City with reasonable access to the Property so City may conduct such inspections, due diligence and other activities on the Property as the City deems prudent or convenient for the City to determine the suitability of the Property for the Well System. The access must be in a location reasonably acceptable to City, which location must be via Columbia Road and must be suitable for well drilling equipment, construction equipment and other vehicles; provided, however, City is responsible for installing any improvements in the access way desired by City. Donor may reasonably relocate the access at Donor's expense and after reasonable notice to City.

3.2 City's due diligence activities may include, but are not limited to, land surveys, environmental surveys, drilling of test wells, applications for water rights or water right transfers and any other inspections, inquiries, testing and other investigations regarding any aspect of the Property or the suitability of the Property for City's purposes that the City deems desirable. Donor will reasonably cooperate with City's efforts and will promptly sign any applications, consents, affidavits, surveys or other documents reasonably requested by City in connection therewith, provided that Donor does not incur an unusual material expense that City does not agree to reimburse. All inspections will be conducted at City's sole cost and expense and in accordance with applicable law.

3.3 City will not engage in destructive inspections without Donor's prior written consent, which consent will not be unreasonably withheld. City will, at its sole cost and expense, promptly restore any physical damage or alteration of the physical condition of the Property that results from any inspections conducted by or on behalf of City. City will keep the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of City with respect to any inspection or testing of the Property during the Option Period. If any lien is filed, City will cause the lien to be discharged of record in accordance with applicable law. To the fullest extent permitted by law, City agrees to indemnify, defend and save Donor harmless from any claims, damages, liability and expenses (including reasonable attorneys' fees) arising out of City's entry onto the Property during the Option Period.

3.4 If City delivers (or is deemed to have delivered) a Termination Notice, then City shall, to the extent practicable and with reasonable promptness, remove any improvements on the Property by City (including the decommissioning and capping of any test wells) and restore the surface of the Property to its pre-Agreement level and condition, unless otherwise agreed by Donor and City by separate written agreement.

3.5 City agrees that Donor is donating, and City will accept, the Property in its "as-is" condition, as of the Effective Date, subject to modification thereof by Donor that may be approved by City (such as any subdivision improvements approved by City), which approval will not be unreasonably withheld. City agrees that Donor shall not be obligated to perform any work or furnish any other materials in, to, or about the Property in order to prepare the Property for use or occupancy by City under this Agreement.

4. **ANNEXATION; SUBDIVISION; COMPLETION NOTICE**

4.1 City acknowledges that Donor intends to annex the Parent Parcel into the City and subdivide the Parent Parcel into a residential community, and Donor acknowledges that City's review of Donor's application for annexation and subdivision of the Parent Parcel will be considered by City on its own merits, independent of this Agreement.

4.2 Donor covenants that any preliminary plat and any final plat for the Parent Parcel will designate the Well Lot and the Flushing Pond Area as separate lots in accordance with this Agreement and otherwise reasonably acceptable to City. City acknowledges that the Well Lot will otherwise be an ordinary lot in the subdivision that will be eligible for development of a single-family home thereon in accordance with the applicable entitlement approvals, in the event that the City elects to terminate this Agreement prior to delivery of an Acceptance Notice (and also so the Well Lot may be sold as an ordinary single-family home lot in the event that City elects to dispose of the Well Lot after obsolescence of the Well System).

4.3 Upon the recordation of any final plat that includes the Property, Donor agrees to promptly deliver a notice thereof to City (a "**Completion Notice**"), and provide the City with a copy of the recorded plat. Further, if the City has then issued an Acceptance Notice prior to delivery of the Completion Notice, then Donor will also provide City with the documents identified in Section 5.2 concurrently with the Completion Notice.

5. **DONATION:** If City delivers an Acceptance Notice to Donor prior to expiration of the Option Period, then:

5.1 If Donor has not then delivered a Completion Notice, then the Temporary Lease set forth in Section 6 will apply until the Property is donated to the City in accordance with Section 5.2.

5.2 If Donor has then delivered a Completion Notice to City, Donor will promptly execute and deliver to City a Gift Deed in the form substantially similar to that attached hereto as Exhibit C (the "**Gift Deed**"). Upon receipt of the Gift Deed, then City agrees to promptly accept the Gift Deed by executing and recording the same. City will have the right to purchase any title insurance for the donation desired by City, at City's expense, and Donor agrees to execute any certificate or affidavit reasonably requested by City or City's title insurer in connection therewith (provided that the same is consistent with this Agreement). If City elects to use the services of an escrow agent selected by City for the closing of the Gift Deed, at City's expense, then Donor will reasonably cooperate with City and such escrow agent.

5.3 If City accepts the donation of the Property, City understands that Donor may be entitled to claim a charitable contribution deduction under Internal Revenue Code § 170 for the fair market value of the Property. It is further agreed and understood that City has not provided, and will not be required to provide, any goods, services or other thing of value to Donor in connection with this transaction. This Agreement and the related documents will be deemed a contemporaneous written acknowledgment for purposes of the substantiation requirements of Internal Revenue Code § 170 and Treas. Reg. § 1.170A-13(f). City agrees to provide further information or documentation as Donor may reasonably

request from time to time in order to claim a charitable deduction under Internal Revenue Code § 170, and to acknowledge receipt of the Property as required by IRS Form 8283, Noncash Charitable Contributions Form.

6. **TEMPORARY LEASE:** If the City delivers the Acceptance Notice to Donor prior to Donor delivering a Completion Notice to City, then City's delivery of the Acceptance Notice will automatically constitute Donor's lease of the Property to City in accordance with this Agreement and as follows (the "**Temporary Lease**"):
 - 6.1. The term of the Temporary Lease will commence on the date of the Acceptance Notice and continue in effect until recordation of the Gift Deed pursuant to Section 5.2, at which time the Temporary Lease will terminate.
 - 6.2. There shall be no rent due to Donor under the Temporary Lease, as Donor and City agree that the mutual benefits provided by the Temporary Lease provide adequate consideration for the Temporary Lease (i.e., with the City having the benefit of being able to commence work on the Well System on the Property in advance of annexation and platting of the Property, and Donor having the benefit of having a better public water service system available to serve the Parent Parcel).
 - 6.3. City will use the Property only for the construction, operation, maintenance and repair of the Well System (and adjacent flushing pond) in accordance with this Temporary Lease, and no other purpose without the prior written consent of Donor. City covenants to Donor that City will not construct any pole, tower or other structure on the Property greater than thirty-five (35) feet in height. City must maintain the Flushing Pond Area until Donor delivers a Completion Notice to City, and all City improvements on the Property must be compliant with applicable law and otherwise be maintained in a neat and orderly condition.
 - 6.4. City shall have the right to construct, operate, maintain and repair a Well System (and adjacent flushing pond) on the Property, all of which must be done in accordance with applicable law and otherwise in a neat and orderly condition.
 - 6.5. City agrees to comply with all applicable laws governing its use of the Property and to do all things necessary to stay in compliance with the same.
 - 6.6. Donor will provide City with a temporary access easement to the Property during the term of the Temporary Lease in a location reasonably acceptable to City, which location must be via Columbia Road and must be suitable for well drilling equipment, construction equipment and other vehicles to construct, operate, and maintain the Well System; provided, however, City is responsible for installing any improvements in the access way desired by City. Donor may reasonably relocate the access easement at Donor's expense and after reasonable notice to City.
 - 6.7. If requested by the City, Donor will provide City with a temporary utility easement for electricity service to the Property during the term of the Temporary Lease in a location reasonably acceptable to City. City shall promptly pay for any utilities utilized by City. Nothing herein will require City to extend utility infrastructure to the Property.
 - 6.8. City shall, at its cost, maintain a comprehensive liability insurance policy covering the Property at all times during the term of the Temporary Lease in the names and for the benefit of City and Donor as co-insureds in the sum of \$500,000.00 single-limit coverage.

- 6.9. Provided that City performs all of its obligations under this Agreement, City's quiet enjoyment and possession of the Property will not be disturbed by Donor except as otherwise provided in this Agreement.
7. **NO TOWER.** City covenants to Donor that City will not construct any pole, tower or other structure on the Property greater than thirty-five (35) feet in height earlier than ten (10) years after recordation of the Gift Deed.
8. **FUTURE MAINTENANCE OF PROPERTY.** City shall be responsible for landscaping and maintaining the Well Lot. Donor or any homeowners' association serving a subdivision of the Parent Parcel shall be responsible for landscaping and maintaining the Flushing Pond Area, which may be utilized for stormwater management and other purposes, so long as such use does not unreasonably interfere with City's use of the Flushing Pond Area. If requested by Donor or any homeowners' association serving a subdivision of the Parent Parcel, City agrees to work cooperatively to allow, to the extent practical or desirable, the homeowners' association to landscape and maintain the perimeter of the Well Lot in the same manner as common area located on the Parent Parcel.
9. **TAXES AND ASSESSMENTS:** Donor shall pay all real estate taxes and other assessments of any kind levied against the Property during the term of this Agreement as the same become due.
10. **ASSIGNMENT OR SUBLEASING:** City shall not assign this Agreement nor sublet any interest in the Property, or any portion thereof, without Donor's prior written consent; provided, however, such consent shall not be unreasonably withheld by Donor. Donor will have the right to convey the Property so long as the transferee agrees in writing to be bound by the terms of this Agreement.
11. **LABOR CONTRACTS AND EMPLOYEES:** The Parties expressly covenant and agree that all labor contracts and employment agreements with employees or contractors providing services or materials to or construction upon the Property shall be made directly with City and that all such employees and contractors shall be deemed solely the employees or contractors of City and in no way employees or contractors of Donor. City covenants and agrees to keep the Property free and clear of any claims, including but not limited to, mechanics or materialmen's liens.
12. **WASTE PROHIBITED:** City shall not commit any waste or damage to the Property nor permit any waste or damage to be done thereto.
13. **LIABILITY:** Donor shall not be liable for any injury or damage which may be sustained by any person or property resulting from the City's use of the Property.
14. **CONDEMNATION:** If the entire Property, or a substantial part thereof, are condemned or taken by purchase in lieu thereof by any party other than City, then this Agreement shall terminate as of the time possession is taken.
15. **TIME IS OF THE ESSENCE:** Time and the strict and faithful performance of each and every one of the conditions of this Agreement are expressly made the essence of this Agreement.
16. **DONOR DEFAULT.** If Donor defaults in the keeping, performing or observing of any of the covenants and agreements herein contained and such default shall remain uncured for a period of ninety (90) days after written notice shall have been sent by certified mail to Donor as hereinafter provided, then in such event the City may, at City's election, pursue any remedy available in law or equity.
17. **CITY DEFAULT.** If City defaults in the keeping, performing or observing of any of the covenants and agreements herein contained prior to City's acceptance and recordation of the Gift Deed, and such default

remains uncured for a period of ninety (90) days after written notice shall have been sent by certified mail to City as hereinafter provided, then in such event the Donor may, at Donor's election, either in law or equity, seek specific performance of this Agreement or may declare this Agreement forfeited and terminated and may re-enter the Property to repossess and enjoy the same as in their first estate, and the effect of such default shall in itself, at the election of Donor, without further notice or demand constitute a forfeiture and termination of this Agreement, and if thereafter the City shall fail to surrender possession of the Property to Donor, the City shall be deemed guilty of an unlawful and forcible detention of the Property. If this Agreement is terminated for default of any of the covenants and agreements herein contained, City hereby agrees to pay all reasonable expenses incurred by Donor in obtaining possession of the Property from City and in removing the improvements thereon, including reasonable legal expenses and attorneys' fees, and to pay such other expenses as the Donor may incur in putting the Property in good order and condition as herein provided. In the event of notification of default by Donor to City and City does in fact cure such default, then and in that event City shall pay, in addition to all arrearages as existing under the notice of default, the reasonable attorneys' fees incurred by Donor in determination of the default and the notification to the defaulting City.

18. **ATTORNEYS' FEES:** In the event an action is brought to enforce any of the terms or provisions of this Agreement, or enforce forfeiture thereof for default thereof by either of the Parties hereto, the prevailing Party in such action or collection shall be entitled to recover from the other Party its reasonable attorneys' fee and litigation costs, together with such other costs as may be authorized by law.
19. **ENVIRONMENTAL:** During the term of this Agreement, City will not deposit, store, dispose of, or place upon, about, or under the Property any hazardous substances in violation of Idaho or federal law.
20. **NOTICES:** All notices required to be given to each of the Parties hereto under the terms of this Agreement shall be given in writing by depositing a copy of such notice in the United States mail, postage prepaid, certified, return receipt requested, to the respective Parties hereto at the following address, or to such other address as may be designated by writing delivered to the other Party. All notices given by certified mail shall be deemed completed as of the first date of delivery or refusal of delivery.

Donor: Eagle1 LLC
c/o Conger Management Group
4824 W. Fairview Avenue
Boise, Idaho 83706

City: City of Meridian
Attn: City Engineer
33 E. Broadway Avenue
Meridian, Idaho 83642

21. **REPRESENTATIONS:** It is understood and agreed by and between the Parties hereto that there are no verbal promises, implied promises, agreements, stipulations, representations, or warranties of any character excepting those set forth in this Agreement.
22. **BINDING EFFECT:** The provisions and stipulations hereof shall inure to the benefit of and bind the heirs, executors, administrators, assigns, and successors in interest of the respective Parties hereto.
23. **RECORDING:** Donor or City may record this Agreement, or a memorandum of this Agreement, in the real property records of Ada County, Idaho. In such event, if this Agreement terminates for any reason, then Donor and City agree to promptly execute and record an instrument memorializing the termination of this Agreement.

24. **GOVERNING LAW.** The laws of the State of Idaho will govern the validity, performance and enforcement of this Agreement, and venue for any action arising out of the Agreement will be in Ada County, Idaho.
25. **HEADINGS:** The bolded paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in interpreting or construing this Agreement.
26. **RECITALS; EXHIBITS:** The recitals and exhibits to this Agreement are an integral part of this Agreement, and are fully incorporated herein.
27. **SEVERABILITY:** If any portion or portions of this Agreement shall be, for any reason, invalid or unenforceable, the remaining portion or portions shall nevertheless be valid, enforceable and carried into effect, unless to do so would clearly violate the present legal and valid intentions of the Parties hereto.

[end of text; counterpart signature pages follow]

COUNTERPART SIGNATURE PAGE

IN WITNESS WHEREOF, Donor and City do execute this Agreement effective the day and year first above written.

"Donor"

EAGLE1 LLC, an Idaho limited liability company

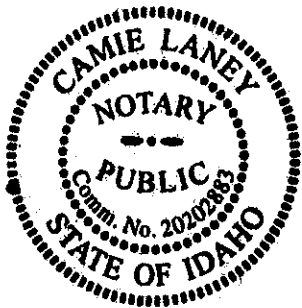
By: [Signature]
Name: Chris Nolan
Title: Manager

STATE OF IDAHO)

) ss.

County of Ada)

This record was acknowledged before me on April 2 2024, by Chris Nolan as Manager of Eagle1 LLC.



[Signature]
Signature of Notary Public

My Commission Expires: 8-3-2026

COUNTERPART SIGNATURE PAGE

IN WITNESS WHEREOF, Donor and City do execute this Agreement effective the day and year first above written.

"City"

CITY OF MERIDIAN, an Idaho municipal corporation

By: _____
Robert E. Simison, Mayor

Attest: _____
Chris Johnson, City Clerk

STATE OF IDAHO)
) ss.
County of Ada)

This record was acknowledged before me on _____ by Robert E. Simison and Chris Johnson, as Mayor and City Clerk, respectively, of City of Meridian.

Signature of Notary Public

My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE WELL LOT



Sawtooth Land Surveying, LLC

P: (208) 398-8104 F: (208) 398-8105
2030 S. Washington Ave., Emmett, ID 83617

Donegan Well Site Description

BASIS OF BEARINGS is N. 89°41'03" E. between an illegible aluminum cap marking the S1/4 corner of Section 5 and an illegible aluminum cap marking the SE corner of Section 5, T. 2 N., R. 1 E., B.M., Ada County, Idaho.

A parcel of land located in the SE1/4 of Section 5, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

COMMENCING at an aluminum cap marking the S1/4 corner of said Section 5;

Thence N. 0°57'18" W., coincident with the west line of said SE1/4, a distance of 773.49 feet;

Thence leaving said west line, N. 89°02'42" E., 55.00 feet to the **POINT OF BEGINNING**;

Thence N. 0°57'18" W., parallel with said west line, 144.28 feet;

Thence S. 83°27'43" E., 103.00 feet;

Thence S. 82°20'18" E., 57.77 feet;

Thence S. 6°47'14" W., 123.32 feet;

Thence S. 89°02'42" W., 142.62 feet to the **POINT OF BEGINNING**.

Said parcel contains 0.465 acres more or less.

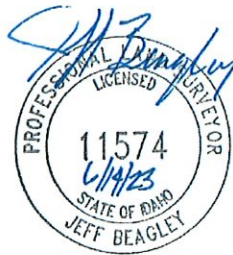


EXHIBIT B

GRAPHIC DEPICTION OF THE WELL LOT AND FLUSHING POND AREA

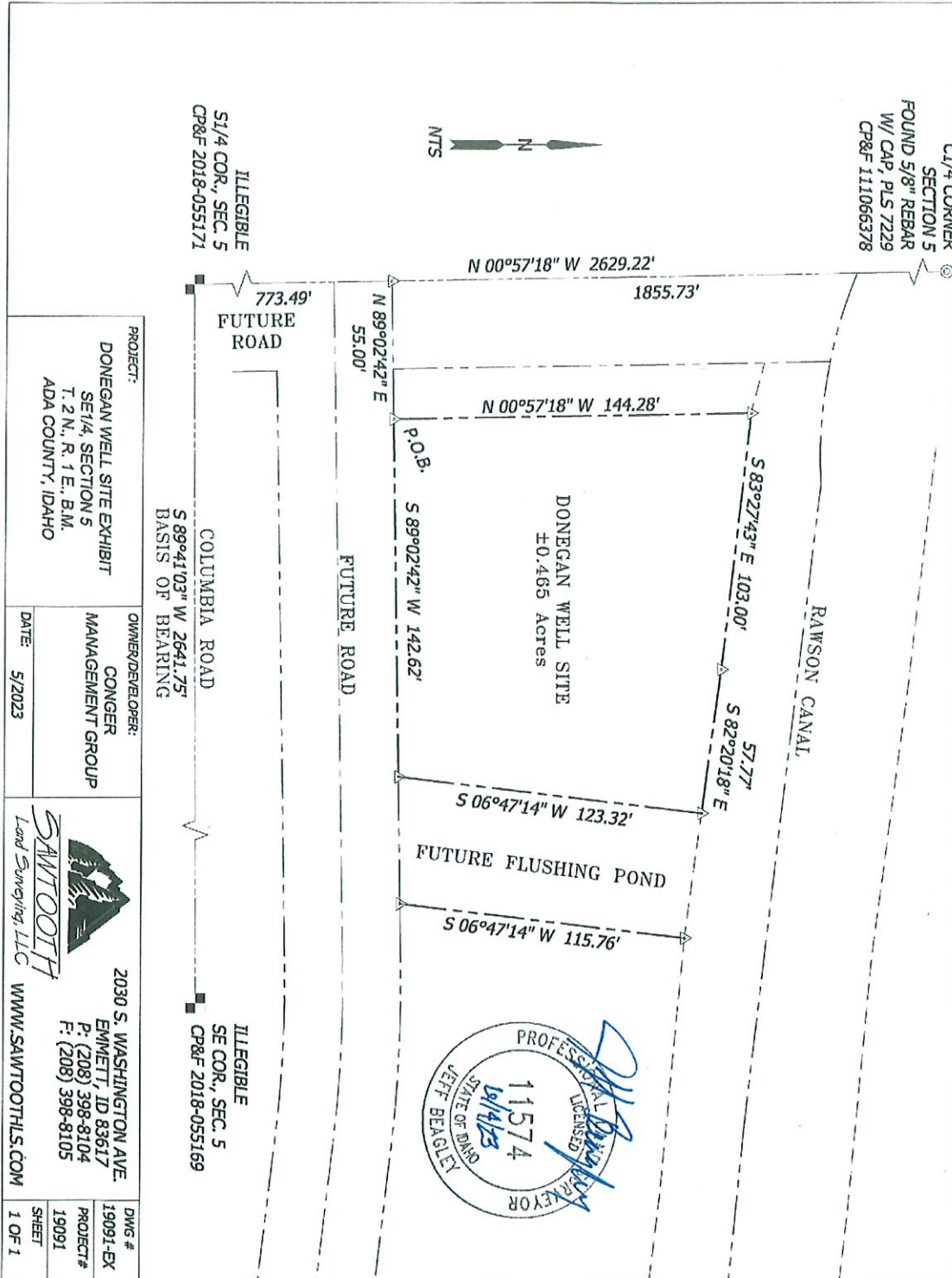


EXHIBIT C

GIFT DEED

Recording requested by, and return to:

City of Meridian
33 E. Broadway Avenue
Meridian, Idaho 83642

GIFT DEED

EAGLE1 LLC, an Idaho limited liability company ("**Grantor**"), hereby grants and conveys as a gift unto CITY OF MERIDIAN, an Idaho municipal corporation ("**Grantee**"), whose current mailing address is 33 E. Broadway Avenue, Meridian, Idaho 83642, all of Grantor's right, title and interest in that certain real property located in Ada County, Idaho, legally described as ("**Property**"):

See Exhibit A-1, attached hereto and incorporated herein

SUBJECT TO the lien of real property taxes for the then current calendar year not yet due and payable, all matters of record or appearing from a careful inspection of the land, and anything made, done or suffered by Grantee or Grantee's agents.

TO HAVE AND TO HOLD the Property, with its easements, water and water rights, and all other rights and appurtenances unto Grantee, and Grantee's successors and assigns forever.

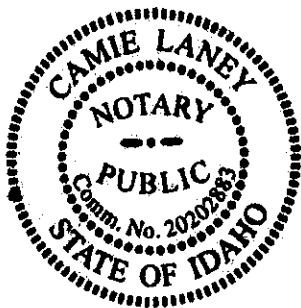
GRANTOR:

EAGLE1 LLC, an Idaho limited liability company

By: [Signature]
Name: Chris Nolan
Title: Manager

STATE OF IDAHO)
) ss.
County of Ada)

This record was acknowledged before me on April 2, 2024, by Chris Nolan as Manager of Eagle1 LLC.



[Signature]
Signature of Notary Public

My commission expires: 8-3-2026

EXHIBIT A-1

LEGAL DESCRIPTION

[Lot ___ in Block ___ of _____ Subdivision, in accordance with the official plat thereof recorded in the real property records of Ada County, Idaho as Instrument No. _____] or [appropriate metes and bounds legal description]

Together with a perpetual easement over the real property that is legally described as follows (the "Easement Area"):

[add lot and block or metes and bounds legal description]

for the purpose of the construction, operation, maintenance and repair of a flushing pond and related drainage facilities for overflow water from Grantee's water well supply system on the dominate estate.

Grantor shall be responsible for general maintenance of the Easement Area, but Grantee shall be responsible for constructing, maintaining, repairing, and replacing any specific improvements that Grantee installs in the Easement Area as desired by Grantee. Grantor may not place any improvements on, over or under the Easement Area without prior approval of Grantee; provided, however, Grantor may (1) install improvements to utilize the Easement Area for stormwater management, irrigation, recreational and aesthetic purposes and (2) landscape the Easement Area (and install irrigation systems for such landscaping), so long as the same does not interfere with Grantee's use of the Easement Area as authorized herein.

The Easement is not exclusive, and Grantor may use the Easement Area for any purpose that does not interfere with the use of the Easement Area by Grantee as permitted herein. The Easement Area is not dedicated to the public and no use of the Easement Area by the general public is authorized herein.

This Easement may not be amended except by a written instrument executed by Grantor and Grantee, which instrument will be effective upon recordation in the real property records of Ada County, Idaho.

If Grantee elects to abandon the Easement (which will be presumed if Grantee ceases to use the dominate estate for a water well system for a period of five (5) years or longer, or if Grantee conveys the dominate estate to any party other than a public or private water utility provider), then Grantee agrees to terminate this Easement of record.