



FIRST AMENDED
MASTER PERPETUAL STORM WATER DRAINAGE EASEMENT:
NOVEMBER 10, 2015

This First Amended Master Perpetual Storm Water Drainage Easement: November 10, 2015 (“First Amended Master Easement”) shall be appurtenant to and run with certain subdivisions of land in Ada County, Idaho. When this First Amended 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 First Amended Master Easement.

This First Amended Master Easement is made as of the date of 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”);

W I T N E S S E T H:

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 First Amended 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 First Amended Master Easement from Grantor, and on the terms and conditions hereinafter set forth the Grantor is willing to grant such First Amended 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. Construction; Acceptance; Repair and Maintenance; Grantor Indemnification; Contractor Warranties.

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, the Home Owners Association ("HOA") shall be responsible for light maintenance and ACHD shall be responsible for heavy maintenance as defined in section 3.4 of this document.

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.

3.4 Light maintenance responsibilities of the HOA include, but are not limited to, the following:

- a) Maintain infiltration facilities to ensure positive percolation of storm water as defined by ACHD policies. This may include tilling and ranking any sand infiltration areas.
- b) Maintain healthy landscaping, previously approved by ACHD, for the benefit of homeowners. This includes vegetation maintenance, weed management, applying fertilizers, pesticide and insecticides according to Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) standards, and controlling irrigation flows to prevent flooding, overwatering and saturation of the storm drain system.
- c) Litter control and removing obstructions from the storm drain conveyance system to allow storm drain flows to remain free flowing.
- d) Performance of all other light maintenance duties, annual periodic inspections and reporting as required in accordance with the Maintenance & Operation Manual. The HOA shall maintain annual inspection records for storm water facilities that shall be made available to ACHD upon request.

Heavy Maintenance activities include: sediment removal and rehabilitation of the storm water facility upon failure, as determined by ACHD, after light maintenance duties have failed to correct the problem. A documented maintenance history is important to assess what action is needed to correct a failure.

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.

Section 5. Term. The term of this First Amended Master Easement is perpetual.

Section 6. Relinquishment. ACHD may relinquish its rights under the First Amended Master Agreement at its sole discretion and only in writing.

Section 7. Covenants Run with the Land. Throughout the term of this First Amended 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.

Section 8. Attorneys Fees and Costs. In any suit, action or appeal therefrom to enforce or interpret this First Amended Master Easement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees.

Section 9. Exhibits. All exhibits attached hereto and the recitals contained herein are incorporated as if set forth in full herein.

Section 10. Successors and Assigns. This First Amended 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.

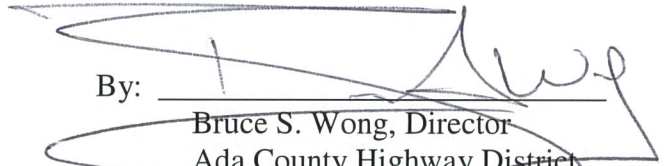
Section 11. Notices. All notices given pursuant to this First Amended Master Easement shall be in writing and shall be given by personal delivery, by United States Mail Certified, Return Receipt Requested, or other established express delivery service (such as Federal Express), postage or delivery charge prepaid.

Section 12. Confirmation Agreement. Grantor shall execute a Confirmation Agreement with ACHD acknowledging and affirming that Grantor is bound by the terms and provisions of this

First Amended Master Easement and that this First Amended 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.

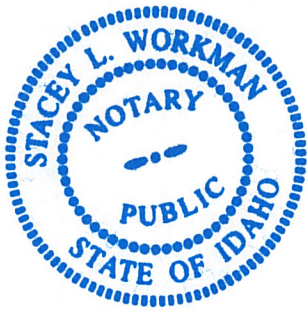
Section 13. Recordation. This First Amended Master Easement shall be recorded in the Real Property Records of Ada County, Idaho.

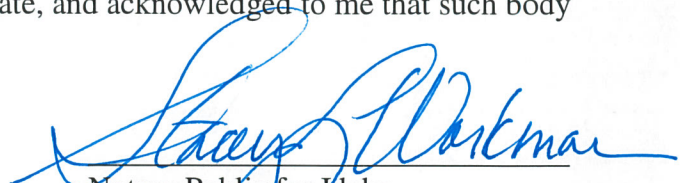
Grantor covenants to ACHD that ACHD shall enjoy the quiet and peaceful possession of the Easement on the Servient Estate; and, (b) Grantor warrants to the ACHD that Grantor has the right and authority to grant this First Amended Master Easement to ACHD.

By: 
Bruce S. Wong, Director
Ada County Highway District
Date: 5 Nov 15

State of Idaho)
) ss.
County of Ada)

On this 5th day of November, in the year of 2015, before me, Stacey L. Workman a Notary Public in and for the State of Idaho, personally appeared Bruce S. Wong, known or identified to me to be the Director of the Ada County Highway District, a body politic and corporate of the State of Idaho, and the person who executed the instrument on behalf of such body politic and corporate, and acknowledged to me that such body politic and corporate executed the same.




Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires August 13, 2019