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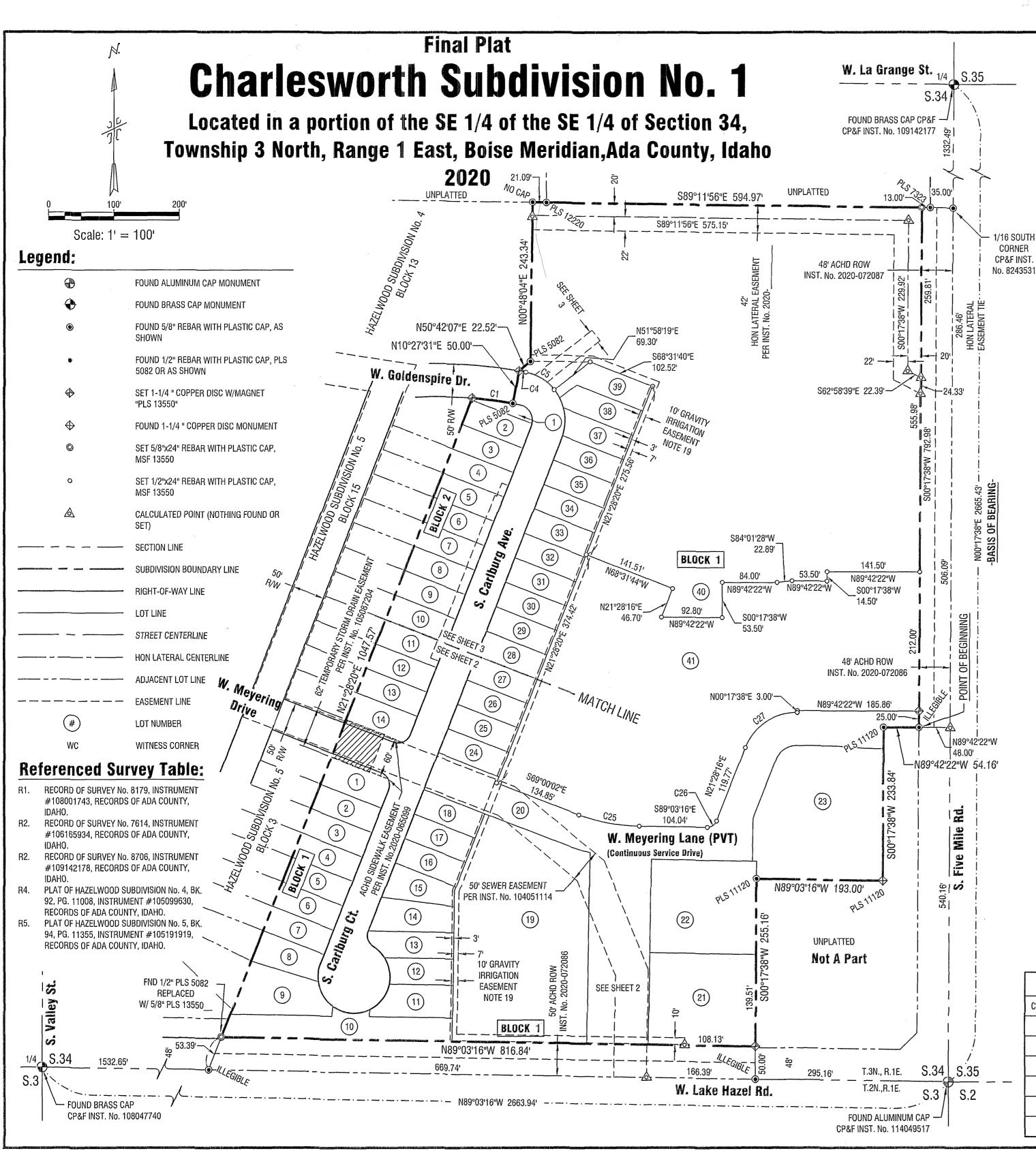


#### **PLAT RECORDING SHEET**

#### Digital Plat Image Available in Separate System

BOOK 119		
PAGE 1848	37	
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SURVEYOR	R MICHAEL S FEMENIA	
SUBDIVISIO	ON NAME CHARLESWORTH SUBDIVISION NO 1	]
OWNERS	CHARLESWORTH PROPERTIES, LLC LIONWOOD PROPERTIES, LLC	
AT THE RE	QUEST OF THE LAND GROUP, INC	
COMMENT	SE ¼ SE ¼ SEC 34 T3N R1E	

BK 119 PA 18487



#### Notes:

- 1. ALL LOT LINES COMMON TO A PUBLIC RIGHT-OF-WAY LINE HAVE A TEN (10) FOOT WIDE PERMANENT PUBLIC UTILITIES, PROPERTY DRAINAGE AND PRESSURE IRRIGATION EASEMENT, UNLESS DIMENSIONED OTHERWISE. SAID DRAINAGE AND IRRIGATION EASEMENTS ARE RESERVED FOR THE CHARLESWORTH COMMERCIAL OWNERS' ASSOCIATION, INC. AND THE CHARLESWORTH HOMEOWNERS' ASSOCIATION, INC.
- REAR LOT LINES AND THE EXTERIOR SUBDIVISION BOUNDARY HAVE A TWELVE (12) FOOT WIDE PERMANENT PUBLIC UTILITIES, PROPERTY DRAINAGE AND PRESSURE IRRIGATION EASEMENT, UNLESS DIMENSIONED OTHERWISE. SAID DRAINAGE AND IRRIGATION EASEMENTS ARE RESERVED FOR THE CHARLESWORTH COMMERCIAL OWNERS' ASSOCIATION INC. AND THE CHARLESWORTH HOMEOWNERS' ASSOCIATION. INC.
- B. LOT 10, BLOCK 1 AND LOT 1, BLOCK 2, ARE DESIGNATED AS COMMON LOTS TO BE OWNED AND MAINTAINED BY THE CHARLESWORTH HOMEOWNERS' ASSOCIATION, INC. THESE LOTS SHALL HAVE A BLANKET PUBLIC UTILITIES, DRAINAGE AND PRESSURE IRRIGATION EASEMENT OVER THE ENTIRETY OF THESE LOTS.
- 4. A PORTION OF LOTS 4, 5, 6, 7, 8, 9, 10 & 11, BLOCK 2; ARE SERVIENT TO AND CONTAIN THE ACHD STORM WATER DRAINAGE SYSTEM. THESE LOTS ARE ENCUMBERED BY THAT CERTAIN FIRST AMENDED MASTER PERPETUAL STORM WATER DRAINAGE EASEMENT RECORDED ON NOVEMBER 10, 2015 AS INSTRUMENT №.2015-103256, OFFICIAL RECORDS OF ADA COUNTY AND INCORPORATED HEREIN BY THIS REFERENCE AS IF SET FORTH IN FULL (THE "MASTER EASEMENT") THE MASTER EASEMENT AND THE STORM WATER DRAINAGE SYSTEM ARE DEDICATED TO ACHD PURSUANT TO SECTION 40-2302 IDAHO CODE. THE MASTER EASEMENT IS FOR THE OPERATION AND MAINTENANCE OF THE STORM WATER DRAINAGE SYSTEM
- LOT 20, BLOCK 1, IS DESIGNATED AS A COMMON LOT TO BE OWNED AND MAINTAINED BY THE CHARLESWORTH COMMERCIAL OWNERS' ASSOCIATION, INC. THIS LOT HAS A BLANKET PUBLIC UTILITIES, DRAINAGE, PRESSURE IRRIGATION, BOISE CITY SANITARY SEWER, AND CROSS ACCESS EASEMENT IN FAVOR OF ALL LOTS WITHIN THE OVERALL CHARLESWORTH SUBDIVISION.
- . ANY RESUBDIVISION OF THIS PLAT SHALL CONFORM TO THE APPLICABLE REGULATIONS IN EFFECT AT THE TIME OF RESUBDIVISION
- 7. MINIMUM BUILDING SETBACK LINES SHALL BE IN ACCORDANCE WITH THE APPLICABLE ZONING AND SUBDIVISION REQULATIONS AT THE TIME OF ISSUANCE OF THE BUILDING PERMIT, OR AS SPECIFICALLY APPROVED AND/OR REQUIRED
- 8. IN COMPLIANCE WITH IDAHO CODE SECTION 31-3805 (1)(b), THE OWNER OF THIS SUBDIVISION HAS PROVIDED AN UNDERGROUND IRRIGATION SYSTEM WHICH WILL BE OWNED AND OPERATED BY THE CHARLESWORTH COMMERCIAL OWNERS' ASSOCIATION, INC. AND THE CHARLESWORTH HOMEOWNERS' ASSOCIATION, INC. ALL LOTS AND/OR COMMON LOTS WILL BE PROVIDED WITH PRESSURIZED IRRIGATION SERVICE AND WILL BE OBLIGATED TO PAY FOR ASSESSMENTS FROM THE BOISE-KUNA IRRIGATION DISTRICT FOR SAID IRRIGATION WATER
- 9. THIS DEVELOPMENT RECOGNIZES SECTION 22-4503 OF THE IDAHO CODE, RIGHT TO FARM ACT, WHICH STATES: "NO AGRICULTURAL OPERATION, AGRICULTURAL FACILITY OR EXPANSION THEREOF SHALL BE OR BECOME A NUISANCE, PRIVATE OR PUBLIC, BY ANY CHANGED CONDITIONS IN OR ABOUT THE SURROUNDING NONAGRICULTURAL ACTIVITIES AFTER IT HAS BEEN IN OPERATION FOR MORE THAN ONE (1) YEAR, WHEN THE OPERATION, FACILITY OR EXPANSION WAS NOT A NUISANCE AT THE TIME IT BEGAN OR WAS CONSTRUCTED. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY WHEN A NUISANCE RESULTS FROM THE IMPROPER OR NEGLIGENT OPERATION OF ANY AGRICULTURAL OPERATION, AGRICULTURAL FACILITY OR EXPANSION THEREOF."
- 10. THE RESIDENTIAL PORTION OF THIS SUBDIVISION IS SUBJECT TO COVENANTS, CONDITIONS, AND RESTRICTIONS, INSTRUMENT No. \_\_\_\_\_, AS AMENDED. THE CHARLESWORTH HOMEOWNER' ASSOCIATION, INC. CANNOT BE DISSOLVED WITH OUT THE EXPRESS CONSENT OF THE CITY OF BOISE OR ADA COUNTY.
- 11. THE COMMERCIAL PORTION OF THIS SUBDIVISION IS SUBJECT TO COVENANTS, CONDITIONS, AND RESTRICTIONS, INSTRUMENT NO. \_\_\_\_\_\_, AS AMENDED. THE CHARLESWORTH COMMERCIAL OWNER'S ASSOCIATION INC. CANNOT BE DISSOLVED WITH OUT THE EXPRESS CONSENT OF THE CITY OF BOISE OR ADA COUNTY."
- 12. THIS SUBDIVISION IS SUBJECT TO A LICENSE AGREEMENT WITH THE ADA COUNTY HIGHWAY DISTRICT (ACHD) AS RECORDED IN INSTRUMENT No.2020-065112, RECORDS OF ADA COUNTY, IDAHO.
- 13. THIS SUBDIVISION IS SUBJECT TO AN EXISTING SEWER EASEMENT AS RECORDED IN INSTRUMENT No. 104051114, RECORDS OF ADA COUNTY, IDAHO.
- 14. THIS SUBDIVISION IS SUBJECT TO AN EXISTING RIGHT-OF-WAY FOR HON LATERAL AND THE RIGHTS OF ACCESS THERETO FOR MAINTENANCE OF SAID LATERAL
- 15. THIS SUBDIVISION IS SUBJECT TO A DEVELOPMENT AGREEMENT BETWEEN THE COUNTY OF ADA AND TJTW, LLC, AND ALL SUBSEQUENT MODIFICATIONS AS RECORDED IN INSTRUMENT No. 2019-066737, RECORDS OF ADA COUNTY, IDAHO.
- 16. FOR ADDITIONAL BOUNDARY INFORMATION, SEE RECORD OF SURVEY No's. INCLUDED IN REFERENCED SURVEY TABLE
- 17. DIRECT LOT ACCESS TO S. FIVE MILE RD. AND W. LAKE HAZEL RD. IS PROHIBITED EXCEPT AS APPROVED BY ACHD, AND THE CITY OF BOISE OR ADA COUNTY.
- 18. THIS SUBDIVISION IS SUBJECT TO AN EXISTING CROSS ACCESS EASEMENT AGREEMENT, RECORDED IN INSTRUMENT No. 2019-009692
- 19. GRAVITY IRRIGATION IS SUBJECT TO AN EASEMENT TO THE BOISE PROJECT BOARD OF CONTROLS AS SHOWN FOR MAINTENANCE OF AN IRRIGATION CANAL.
- 20. PROPERTY CORNERS ALONG THE COMMON BOUNDARY LINE BETWEEN CHARLESWORTH SUBDIVISION No.1 AND HAZELWOOD SUBDIVISION No.5, HAVE EITHER BEEN FOUND, AS SHOWN OR RE-SET PER THIS PLAT.
- 21. ALL FOUND 5/8" MONUMENTS WITHOUT CAPS OR ARE ILLEGIBLE, SHALL HAVE A "MSF 13550" CAP PLACED UPON SAID MONUMENT.

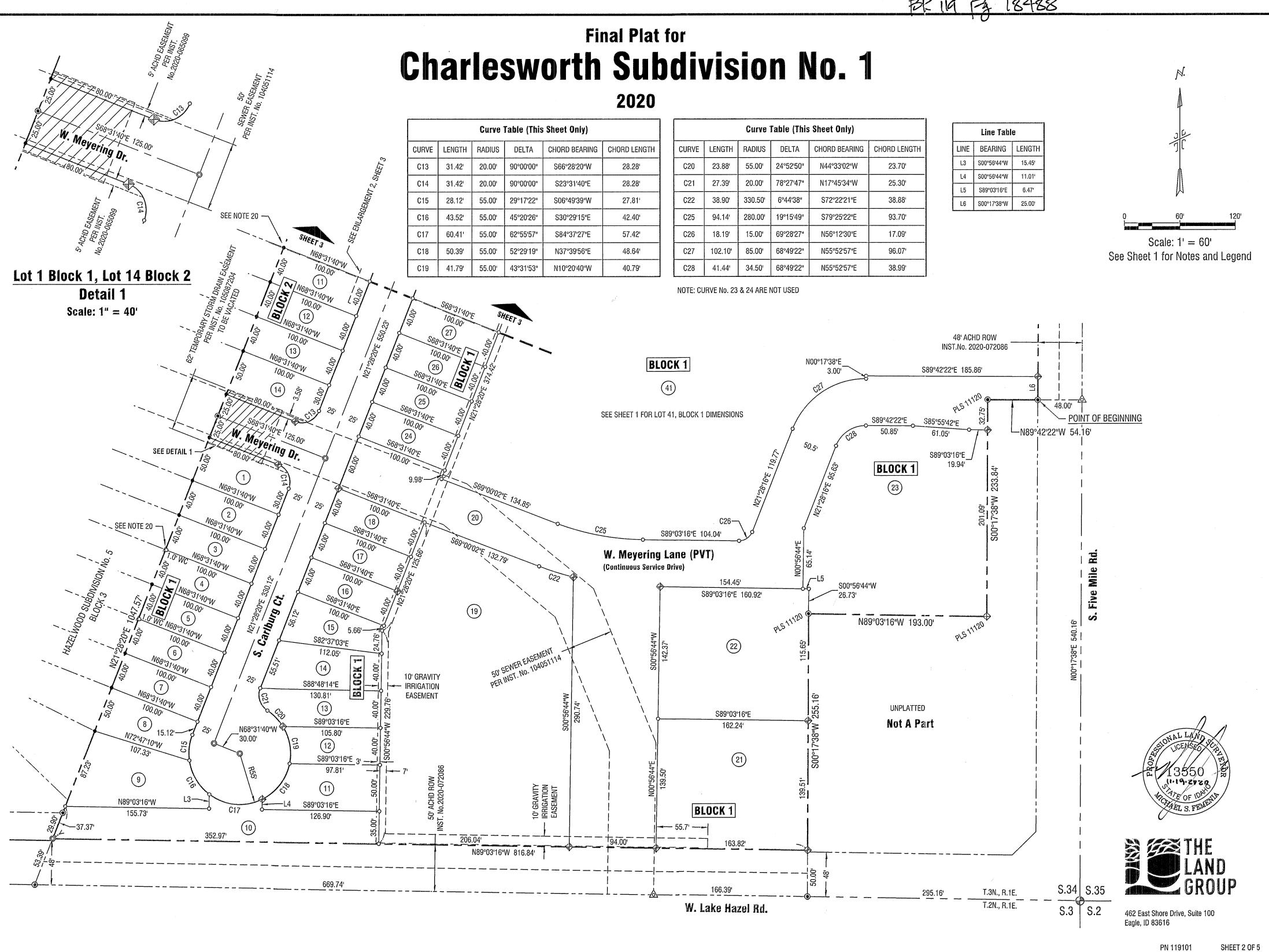
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CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	62.74'	625.00'	5°45'04"	S82°25'01"E	62.71'
C4	10.70	675.00'	0°54'29"	N79°05'15"W	10.70'
C5	52.27'	75.00'	39°56'03"	N58°39'59"W	51.22
C25	94.14	280.00'	19°15'49"	S79°25'22"E	93.70'
C26	18.19'	15.00'	69°28'27"	N56°12'30"E	17.09'
C27	102.10'	85.00'	68°49'22"	\$55°52'57"W	96.07'



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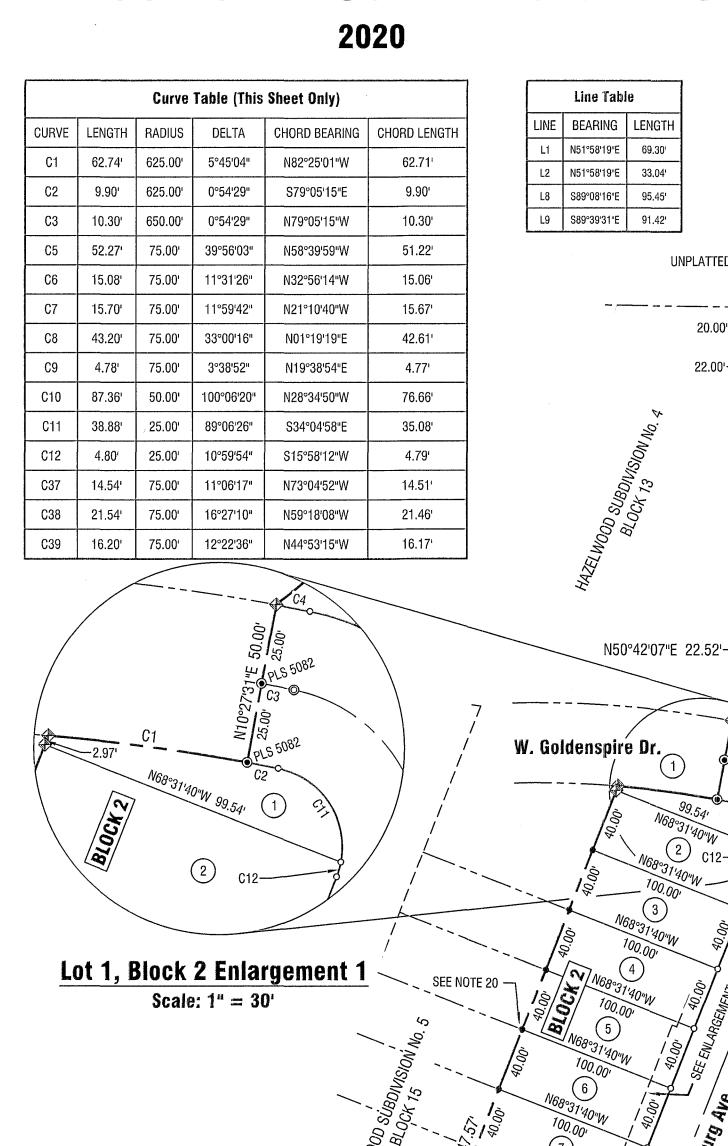
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SHEET 1 OF 5



BK 119 pg 18489

#### Charlesworth Subdivision No. 1



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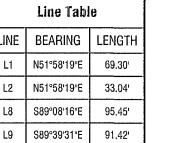
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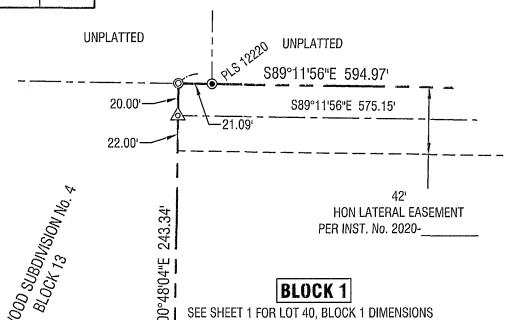
Lots 4-11, Block 2 Enlargement 2

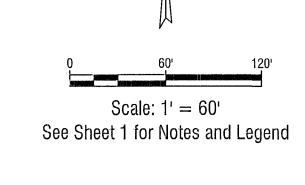
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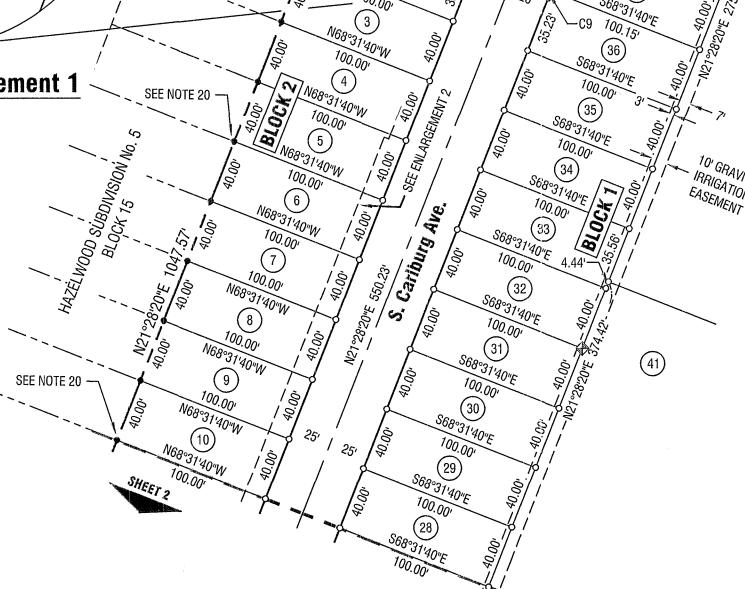
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462 East Shore Drive, Suite 100 Eagle, ID 83616

SHEET 3 OF 5

#### Charlesworth Subdivision No. 1 2020

#### **Certificate of Owners**

KNOW ALL MEN BY THESE PRESENTS: THAT THE UNDERSIGNED, DOES HEREBY CERTIFY THAT THEY ARE THE OWNERS OF THE REAL PROPERTY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND SITUATE IN THE SOUTHEAST ONE QUARTER OF THE SOUTHEAST ONE QUARTER OF SECTION 34, TOWNSHIP 3 NORTH RANGE 1 EAST, BOISE MERIDIAN, ADA COUNTY, IDAHO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 34, MARKED BY AN ALUMINUM CAP MONUMENT; THENCE ON THE EAST SECTION LINE OF SAID SECTION 34, NORTH 00° 17' 38" EAST, 540.16 FEET; THENCE LEAVING SAID EAST SECTION LINE, NORTH 89° 42' 22" WEST, 48.00 FEET, TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SOUTH FIVE MILE ROAD AND THE POINT OF BEGINNING;

THENCE NORTH 89° 42' 22" WEST, 54.16 FEET;

THENCE SOUTH 00° 17' 38" WEST, 233.84 FEET:

THENCE NORTH 89° 03' 16" WEST, 193,00 FEET;

THENCE SOUTH 00° 17' 38" WEST. 255.16 FEET. TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF WEST LAKE HAZEL ROAD: THENCE ON SAID NORTH RIGHT-OF-WAY LINE, NORTH 89° 03' 16" WEST, 816.84 FEET, TO A POINT ON THE SOUTHEASTERLY BOUNDARY LINE OF HAZELWOOD SUBDIVISION NO. 5, AS SAME IS SHOWN ON THE OFFICIAL PLAT THEREOF, RECORDED IN BOOK 94 OF PLATS, AT PAGE 11355, ADA COUNTY RECORDS;

THENCE ON SIDE EASTERLY BOUNDARY LINE OF SAID HAZELWOOD SUBDIVISION NO. 5, NORTH 21° 28' 20" EAST, 1047.57 FEET, TO A POINT OF CURVATURE;

THENCE 62.74 FEET ON THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 625.00 FEET, A CENTRAL ANGLE OF 05° 45' 04", AND WHOSE LONG CHORD BEARS SOUTH 82° 25' 01" EAST, 62.71 FEET;

THENCE NORTH 10° 27' 31" EAST, 50.00 FEET, TO THE NORTHEASTERLY CORNER OF SAID HAZELWOOD SUBDIVISION NO. 5, POINT COMMON WITH THE SOUTHEASTERLY CORNER OF HAZELWOOD SUBDIVISION NO. 4. AS SAME IS SHOWN ON THE OFFICIAL PLAT THEREOF, RECORDED IN BOOK 92 OF PLATS, AT PAGE 11008, ADA COUNTY RECORDS;

THENCE ON THE EASTERLY BOUNDARY LINE OF SAID OF HAZELWOOD SUBDIVISION NO. 4, NORTH 50° 42' 07" EAST, 22.52 FEET; THENCE NORTH 00° 48' 04" EAST, 243.34 FEET, TO A POINT ON THE NORTH LINE OF THE SOUTHEAST ONE QUARTER OF THE SOUTHEAST ONE QUARTER OF SAID SECTION 34:

THENCE ON SAID NORTH LINE, SOUTH 89° 11' 56" EAST, 594.97 FEET, TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SOUTH FIVE

THENCE ON SAID WEST RIGHT-OF-WAY LINE, SOUTH 00° 17' 38" WEST, 792.98 FEET TO THE POINT OF BEGINNING

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 22.098 ACRES MORE OR LESS.

IT IS THE INTENTION OF THE UNDERSIGNED TO HEREBY INCLUDE THE ABOVE DESCRIBED PROPERTY IN THIS PLAT AND TO DEDICATE TO THE PUBLIC THE PUBLIC STREETS AS SHOWN ON THIS PLAT. THE EASEMENTS AND PRIVATE ROADS AS SHOWN ON THIS PLAT ARE NOT DEDICATED TO THE PUBLIC. HOWEVER, THE RIGHT TO USE SAID EASEMENTS IS HEREBY PERPETUALLY RESERVED FOR PUBLIC UTILITIES AND SUCH OTHER USES AS DESIGNATED WITHIN THIS PLAT AND NO PERMANENT STRUCTURES ARE TO BE ERECTED WITHIN THE LINES OF SAID EASEMENTS. ALL LOTS WITHIN THIS PLAT WILL BE ELIGIBLE TO RECEIVE WATER SERVICE FROM THE SUEZ WATER IDAHO, INC. WHICH HAS AGREED IN WRITING TO SERVE ALL OF THE LOTS WITHIN THIS SUBDIVISION.

CHARLESWORTH PROPERTIES, LLC., AN IDAHO CORPORATION

BY: MITCHELL S. ARMUTH, AUTHORIZED AGENT

LIONWOOD PROPERTIES, LLC., AN IDAHO CORPORATION

BY: JAMES W. SMITH, MANAGER "OWNER OF LOT 40, BLOCK 1 UPON RECORDING"

#### Acknowledgment

STATE OF IDAHO

PROPERTIES, LLC, A LIMITED LIABILITY COMPANY, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE WITHIN INSTRUMENT ON BEHALF OF SAID LIMITED LIABILITY COMPANY, AND ACKNOWLEDGED TO ME THAT SUCH LIMITED LIABILITY COMPANY 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

#### **Certificate of Surveyor**

I, MICHAEL S. FEMENIA, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR LICENSED BY THE STATE OF IDAHO, AND THAT THIS PLAT AS DESCRIBED IN THE "CERTIFICATE OF OWNERS" WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION AND ACCURATELY REPRESENTS THE POINTS PLATTED THEREON, AND IS IN CONFORMITY WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.



#### **Survey Narrative:**

THIS PLAT WAS PREPARED FOR THE DEVELOPMENT OF THE CHARLESWORTH SUBDIVISION NO. 1. THE PROPERTY BEING PLATTED IS ADJACENT TO THE EAST BOUNDARY LINES OF HAZELWOOD SUBDIVISION NO. 4 AND 5 AND THE CORNER MONUMENTS FOR THESE PHASES WERE HELD FOR THOSE BOUNDARY LINES. THE SOUTHEAST CORNER OF SECTION 34 AND THE EAST 1/4 CORNER OF SAID SECTION WERE HELD FOR THE BASIS OF BEARINGS.

PROPERTY CORNERS ALONG THE COMMON BOUNDARY LINE BETWEEN CHARLESWORTH SUBDIVISION No.1 AND HAZELWOOD SUBDIVISION No.5, HAVE EITHER BEEN FOUND, AS SHOWN OR RE-SET PER THIS PLAT.

#### Acknowledgment

STATE OF IDAHO

**COUNTY OF ADA** 

ON THIS 4th DAY OF NOVELLA DEV. 2000, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED JAMES W. SMITH, KNOWN OR IDENTIFIED TO ME TO BE THE MANAGER OF LIONWOOD PROPERTIES, LLC, A LIMITED LIABILITY COMPANY, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE WITHIN INSTRUMENT ON BEHALF OF SAID LIMITED LIABILITY COMPANY, AND ACKNOWLEDGED TO ME THAT SUCH LIMITED LIABILITY COMPANY EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRS'



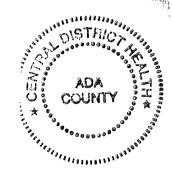
462 East Shore Drive, Suite 100 Eagle, ID 83616

#### Charlesworth Subdivision No. 1

2020

#### **Approval of Central District Health**

SANITARY RESTRICTIONS AS REQUIRED BY IDAHO CODE, TITLE 50, CHAPTER 13 HAVE BEEN SATISFIED ACCORDING TO THE LETTER TO BE READ ON FILE WITH THE COUNTY RECORDER OR HIS AGENT LISTING THE CONDITIONS OF APPROVAL SANITARY RESTRICTIONS MAY BE RE-IMPOSED, IN ACCORDANCE WITH SECTION 50-1326, IDAHO CODE, BY THE ISSUANCE OF A CERTIFICATE OF DISAPPROVAL.



#### **Approval of Ada County Highway District**

THE FOREGOING PLAT WAS ACCEPTED AND APPROVED BY THE ADA COUNTY HIGHWAY DISTRICT BOARD OF COMMISSIONERS

ON THE 19 DAY OF TOW 2020



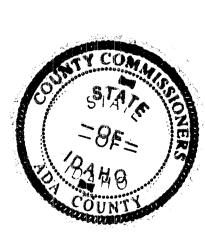
Signed by Bruce S. Wary, Director for Fresident

#### **Approval of the City Engineer**

I, THE UNDERSIGNED CITY ENGINEER IN AND FOR THE CITY OF BOISE, ADA COUNTY, IDAHO, HEREBY STATE THAT THE RECOMMENDED CONDITIONS HAVE BEEN SATISFIED FOR "CHARLESWORTH SUBDIVISION No. 1".

#### **Approval of Ada County Commissioners**

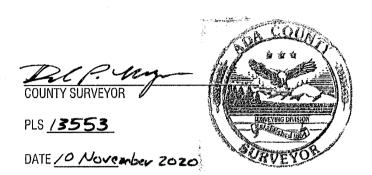
ACCEPTED AND APPROVED THIS 18 HDAY OF NOVEMBER, 2020 BY COMMISSIONERS OF ADA COUNTY, IDAHO, IN A REGULAR MEETING.



ADA COUNTY COMMISSIONER-

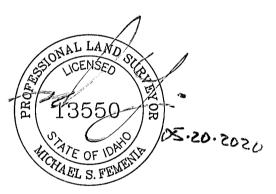
#### **Certificate of County Surveyor**

I, THE UNDERSIGNED, PROFESSIONAL LAND SURVEYOR FOR ADA COUNTY, IDAHO, DO HEREBY CERTIFY THAT I HAVE CHECKED THIS PLAT AND THAT IT COMPLIES WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.



#### **Certificate of Surveyor**

I, MICHAEL S. FEMENIA, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR LICENSED BY THE STATE OF IDAHO, AND THAT THIS PLAT AS DESCRIBED IN THE "CERTIFICATE OF OWNERS" WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION AND ACCURATELY REPRESENTS THE POINTS PLATTED THEREON. AND IS IN CONFORMITY WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.



#### **Certificate of the County Treasurer**

I, THE UNDERSIGNED, COUNTY TREASURER IN AND FOR THE COUNTY OF ADA, STATE OF IDAHO, PER THE REQUIREMENTS OF I.C. 50-1308 DO HEREBY CERTIFY THAT ANY AND ALL CURRENT AND/OR DELINQUENT COUNTY PROPERTY TAXES FOR THE PROPERTY INCLUDED IN THIS SUBDIVISION HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT THIRTY (30) DAYS ONLY.



#### **County Recorder's Certificate**

STATE OF IDAHO)

COUNTY OF ADA)

AT 12 MINUTES PAST 2 O'CLOCK .M., ON THIS DAY OF NOV

BOOK 19 OF PLATS AT PAGES 1868/THROUGH 1891 INSTRUMENT NO. 2020 - 15990







462 East Shore Drive, Suite 100 Eagle, ID 83616

REMOVE THE COUNTY STAMPED PAGE AS IT IS NOW INCORPORATE PART OF THE URIGINAL DOCUMEN

ADA COUNTY RECORDER Phil McGrane
BOISE IDAHO Pgs=26 DAN RYALLS
PIONEER TITLE COMPANY OF ADA COUNTY

2021-017336 02/02/2021 08:10 AM \$85.00

AGCOMMODATION

### COMMERCIAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHARLESWORTH SUBDIVISION

PANDLE 37, 2021

#### **NOTICE**

THE FOLLOWING IS A <u>VERY</u> IMPORTANT DOCUMENT WHICH EACH AND EVERY OWNER AND POTENTIAL OWNER OF PROPERTY WITHIN THE COMMERCIAL PORTION OF THE CHARLESWORTH SUBDIVISION SHOULD READ AND UNDERSTAND. THIS DOCUMENT DETAILS THE OBLIGATIONS AND PROHIBITIONS IMPOSED UPON ALL OWNERS AND OCCUPANTS WITHIN THE COMMERCIAL PORTION OF THE SUBDIVISION.

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#### COMMERCIAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHARLESWORTH SUBDIVISION

This Commercial Declaration of Covenants, Conditions and Restrictions for Charlesworth Subdivision (this "Declaration") is made effective this day of , 2021, by Charlesworth Properties, LLC, an Idaho limited liability company ("Declarant").

#### ARTICLE I: PROPERTY AND PURPOSE

Section 1. Property Covered/Benefit of Declaration. The property subject to this Declaration is legally described on the attached Exhibit A, which is made a part hereof ("Property"). The Property is shown on the Plat, as that term is hereinafter defined, and is a portion of the overall Charlesworth Subdivision as shown on the Plat ("Charlesworth Subdivision").

This Declaration is for the benefit of the Declarant, Association and all other Owners of any portion of the Property.

Section 2. Purpose of Declaration. The purposes of this Declaration are to set forth the basic terms and Restrictions, as that term is hereinafter defined, that will apply to the Property, and use of any and all portions thereof. The terms and Restrictions contained herein are designed to protect, enhance and preserve the value, amenities, desirability, and attractiveness of the Property in a cost effective and administratively efficient manner.

#### ARTICLE II: DECLARATION

Declarant hereby declares that the Property, and each Lot or other portion thereof, is and/or shall be owned, held, sold, conveyed, leased, encumbered, used, occupied and improved subject to the following terms and Restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness thereof.

#### ARTICLE III: ADDITIONAL DEFINITIONS

- Section 1. "Architectural Committee" shall mean the architectural committee established pursuant to Article X herein.
- Section 2. "Assessments" shall mean Regular Assessments, Special Assessments and Limited Assessments.
- Section 3. "Association" shall mean the Charlesworth Commercial Owners' Association, Inc., its successors and/or assigns.
  - Section 4. "Board" shall mean the Board of Directors of the Association.
- Section 5. "Common Area" shall collectively mean W. Meyering Lane, Monument Signs, Storm Drain Facilities and utilities common to all Lots. Common Area does not include utilities serving only a specific Lot, the maintenance, repair and/or replacement of which shall be the sole and absolute

#### COMMERCIAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS - 1

responsibility of the Lot Owner whose Lot and building receives such service.

- Section 6. "Common Drive Aisles and Parking Areas" shall mean <u>all</u> paved and/or asphalt drive aisles and parking areas located throughout Lots 21, 22 and 23, Block 1 of the Property, including, without limitation, all roadway and other Improvements thereto.
- Section 7. "Common Landscaping" shall mean <u>all</u> landscaping located throughout Lots 21, 22 and 23, Block 1 of the Property.
- Section 8. "Declarant" shall mean Charlesworth Properties, LLC, an Idaho limited liability company, or its designated successors and/or assigns.
- Section 9. "Improvement" shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed, placed upon, under or over any portion of the Property, including, without limitation, buildings, landscaping, roadways, drive aisles, driveways, parking areas, sidewalks, pedestrian paths, curbs, walls, rocks, signs, lights, mail boxes, electrical lines, pipes, pumps, ditches, waterways, grading and utility improvements. Improvement(s) include both original improvements existing on the Property on the date hereof and/or all later additions and/or alterations.
- Section 10. "Limited Assessment" shall mean a charge against a particular Owner and such Owner's Lot, directly attributable to the Owner, or such Owner's invitees, licensees, tenants or customers, equal to the costs and expenses incurred by the Association, including, without limitation, for specific maintenance to the Common Drive Aisles and Parking Areas and Common Landscaping as detailed in this Declaration, as well as legal fees and costs, whether or not suit has been filed, for any corrective action taken by the Association or fines levied by the Association pursuant to this Declaration or otherwise as necessitated by any intentional or negligent act or omission by any such Owner, or such Owner's invitees, licensees, tenants or customers, or any other agent, contractor or employee thereof. Such costs, expenses and fines shall include, without limitation, damage to the Common Area, Common Drive Aisles and Parking Areas, Common Landscaping and/or failure of an Owner to keep his or her Lot or building in proper repair.
  - Section 11. "Lot" shall mean any of Lots 19, 21, 22 and 23, Block 1, as shown on the Plat.
- Section 12. "Member" shall mean each Person holding a membership in the Association, including Declarant.
- Section 13. "Monument Signs"shall mean any and all monument signs located on the Property.
- Section 14. "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any portion of the Property or interest therein as security for the payment of a debt or obligation.
- Section 15. "Owner" shall mean the record owner, other than Declarant, whether one or more Persons, of a fee simple title to any Lot, including contract sellers and builders, but excluding those having such interest merely as security for the performance of an obligation.

- Section 16. "Person(s)" shall mean any individual, partnership, corporation or other legal entity, including Declarant.
- Section 17. "Plat" shall mean the Charlesworth Subdivision No. I final plat filed in Book 119 of Plats at Pages 18487 through 18491, Records of Ada County, Idaho, a copy of which is attached hereto as Exhibit B, which is made a part hereof.
- Section 18. "Pressurized Irrigation System" shall mean that certain non-potable water irrigation delivery system further described in <u>Article IV</u>, <u>Section 6</u>.
- Section 19. "Property" shall mean that certain real property legally described on the attached Exhibit A, and such other annexations or other additions thereto as may hereafter be brought within the jurisdiction of this Declaration.
- Section 20. "Regular Assessments" shall mean the cost of maintaining, improving, repairing, managing and operating the Common Area, including all Improvements thereon or thereto, and all other costs and expenses incurred to conduct the business and affairs of the Association which is levied against the Lot of each Owner by the Association, pursuant to the terms of this Declaration or any supplemental declaration. Regular Assessments shall also include reasonable operating and capital improvement reserves held by the Association for its future use in conducting all its duties and obligations contained in this Declaration.
- Section 21. "Restrictions" shall mean the restrictions, covenants, limitations, conditions and easements that will apply to the Property and use of any and all portions thereof as specified in this Declaration.
- Section 22. "Special Assessments" shall mean that portion of the costs of capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments which is levied against the Lot of each Owner by the Association.
- Section 23. "Storm Drain Facilities" shall mean any storm drainage system and/or facilities located on and/or serving the Property which is not the responsibility of the Ada County Highway District ("ACHD") to maintain.
  - Section 24. "W. Meyering Lane" shall mean Lot 20, Block 1, as shown on the Plat.

#### ARTICLE IV: OPERATION AND MAINTENANCE RESPONSIBILITIES

Section 1. Common Area. The Association shall be responsible for the operation, maintenance, repair and/or replacement of all Common Area, including, without limitation, any and all Improvements located thereon (other than the Owners' buildings which shall be each Owner's sole and absolute responsibility). The Association shall operate, maintain, repair and/or replace this Common Area in a competent and attractive manner. Nothing shall be altered or constructed in or removed from this Common Area except upon written consent of the Association and in accordance with procedures required by law.

The Association shall levy against the Lots of all Owners Regular, Special and/or Limited

Assessments associated with its operation, maintenance, repair and/or replacement of the Common Area, as well as the proper operation of the Association, and each Owner agrees to timely pay the same.

- Section 2. W. Meyering Lane. W. Meyering Lane is a portion of the Common Area to be owned and maintained by the Association. W. Meyering Lane is also subject to that certain Reservation of Access and Utility Easement (recorded in the records of Ada County, Idaho) whereby utilities can be constructed, operated and maintained through this Lane and the owners of the remainder of the Charlesworth Subdivision, as well as their family members, invitees, licensees and tenants, can use W. Meyering Lane for purposes of accessing their lots.
- Section 3. Common Drive Aisles and Parking Areas and Common Landscaping. The Association shall be responsible for the operation, maintenance, repair and/or replacement of all Common Drive Aisles and Parking Areas and Common Landscaping, including, without limitation, any and all Improvements located thereon. The Association shall operate, maintain, repair and/or replace these Common Drive Aisles and Parking Areas and Common Landscaping in a competent and attractive manner, including, without limitation, the watering, mowing, fertilizing and weeding of the Common Landscaping, snow removal, and parking lot striping and cleaning for the Common Drive Aisles and Parking Areas. Nothing shall be altered or constructed in or removed from these Common Drive Aisles and Parking Areas and Common Landscaping except upon written consent of the Association and in accordance with procedures required by law.

The Association shall levy against Lots 21, 22 and 23, Block 1, and the Owners thereof, Special and/or Limited Assessments associated with its operation, maintenance, repair and/or replacement of the Common Drive Aisles and Parking Areas and Common Landscaping, and each Owner of such Lots agrees to timely pay the same.

- Section 4. Common Drive Aisles and Parking Area Easements. Declarant hereby reserves unto itself, and grants and conveys to the Association and all Owners of Lots 21, 22 and 23, Block 1, as well as its and their respective invitees, licensees, customers, tenants, successors and assigns, a perpetual, non-exclusive access and parking easement on, over, across and through the Common Drive Aisles and Parking Areas, the purposes of which are for 1) vehicular and pedestrian ingress to, and egress from, each of such Owners' Lots and building(s), and 2) parking in designated parking areas and spaces. No Owner shall interfere with, or allow the interference with, Declarant's, the Association's or any other Owner's access or parking rights through the Common Drive Aisles and Parking Areas as detailed herein. No parking is permitted in the Common Drive Aisles. All parking spaces located within the Common Drive Aisles and Parking Areas are common parking spaces for all Owners of Lots 21, 22 and 23, Block 1, and their respective invitees, licensees, customers and tenants.
- Section 5. Drainage. All Lots shall be graded such that all storm water and other water drainage shall run across a curb or to a drainage easement and no drainage shall cross from a Lot onto another Lot except within an applicable drainage easement.
- Section 6. Pressurized Irrigation System. Non-potable (non-drinkable) irrigation water will be supplied to the Property by the Boise-Kuna Irrigation District ("District") and the Charlesworth Townhome Owners' Association, Inc. ("Townhome HOA") utilizing a pressurized irrigation system owned, operated and maintained by the Townhome HOA ("Pressurized Irrigation System"). **The**

Pressurized Irrigation System will be used for all irrigation of the Charlesworth Subdivision. By accepting a deed to any portion of the Property, each Owner hereby agrees to pay its proportionate share of District assessments, Townhome HOA assessments and Association Assessments associated with the operation and maintenance of the Pressurized Irrigation System. In addition, each Owner covenants and agrees to hold the Association, Townhome HOA and Declarant harmless from any and all liability for damages or injuries to themselves and their respective invitees, licensees, customers and tenants, caused by, or in any way associated with, the Pressurized Irrigation System.

The Townhome HOA has been granted an easement on, over, across and through the entire Property for purposes of operating and maintaining the Pressurized Irrigation System.

Section 7. Lot 19, Block 1. The Owner of Lot 19, Block 1, at his/her/its sole cost and expense, shall be responsible for the operation, maintenance, repair and/or replacement of all portions of said Lot, including, without limitation, common drive aisles, parking areas and landscaping. The operation, maintenance, repair and/or replacement responsibilities contained in this Section are subject to the Association's oversight detailed in <a href="Article V. Section 4">Article V. Section 4</a> below.

#### ARTICLE V: PROPERTY RESTRICTIONS

Section 1. Commercial Use. Each Lot shall be used for office, retail and/or any other commercial use in compliance with any and all currently applicable Boise City Zoning Ordinances, and for the common social, recreational or other reasonable uses normally incident to such uses. Lots may be used for the purposes of operating the Association and for the management of the Association if required. The provisions of this Section shall not preclude Declarant from conducting any sales, construction, development and related activities from Lots owned by Declarant.

By accepting a deed to any portion of the Property, each Owner hereby covenants to abide by all terms and Restrictions contained in this Declaration, the Plat, any other document recorded against the Property and any rules or regulations adopted by the Board. In addition, each Owner agrees to make all of his/her/its tenants aware of, and abide by, all of the terms, Restrictions, rules and regulations detailed herein and/or adopted by the Board, including, without limitation, a covenant in each Owner lease whereby his/her/its tenants agree and acknowledge that they have received copies of this Declaration and any rules or regulations adopted by the Board, and that they will abide by all terms and Restrictions contained therein.

Section 2. Compliance With Laws. No Owner shall permit anything to be done or kept in his/her/its Lot or any part of the Common Area which would be in violation of any law, rule, regulation or ordinance.

Section 3. Nuisance. No noxious or offensive activity shall be carried on in any Lot or any Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, and no odor shall be permitted to arise from any portion of the Property so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to the Property or to its Owners or tenants, or to any other property in the vicinity thereof. No noise, obstructions to the Common Drive Aisles and Parking Areas, unsightliness, or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its

Owners or tenants or to other property in the vicinity thereof, or in violation of any federal, state or local law, rule, regulation or ordinance. Without limiting the generality of any of the foregoing, no whistles, bells or other sound devices (other than drive through lane speakers used during normal business hours and security devices used exclusively for security purposes), flashing lights or search lights, shall be located, used or placed on the Property. No unsightly articles shall be permitted to remain on any Lot so as to be visible from any other portion of the Property. In addition, no activities may be conducted on the Property, and no Improvements shall be constructed on any Property, which are or might be unsafe or hazardous to any Person or property.

Section 4. Exterior Appearance and Emergency Maintenance. Subject to Article X below, each Lot Owner shall maintain the exterior of any building or any other Improvement located on his/her/its respective Lot (which is not otherwise the responsibility of the Association) in a repaired, attractive, clean and habitable condition as determined by the Board in its reasonable judgement. In the event any Owner does not satisfy this standard, the Board and its agents or employees, may, after thirty (30) days' prior written notice to such Owner: 1) levy a fine, in an amount as determined by the Board, against said Owner for as long as the violation persists, and/or 2) enter such Lot to make such repairs or perform such maintenance as to bring such Lot into compliance with this Section. Any such fines and any cost incurred by the Association for repairs and maintenance shall be treated as Limited Assessments to such Owner.

In the event an emergency which in the judgment of the Declarant or the Board presents an immediate threat to the health and safety of the Owners, their invitees, licensees, customers or tenants, or an immediate risk of harm or damage to any part of the Property, the Declarant, Association and/or an agent of either may enter any Lot to make repairs or perform maintenance. Any such repairs and/or maintenance shall be paid by all Owners in equal shares (unless the emergency was caused by an Owner, his/her/its invitees, licensees, customers or tenants, in which case the cost shall be the sole responsibility of such Owner).

- Signs Provided by Declarant, shall be displayed on any Lot or building other than signs reviewed and approved in advance by the Architectural Committee.
- Section 6. Antennae/Dishes. All antennae and/or satellite or other dishes must be preapproved in writing by the Architectural Committee and mounted in such a way as to minimize the visual impact to all other portions of the Property.
- Section 7. Construction Commencement, Completion and Other Activities. Each Owner of a Lot originally purchased from Declarant must commence construction of his or her building and all other Lot Improvements within one year from the closing date thereof, unless otherwise agreed by Declarant. Once such construction has commenced, such Owner shall have two years from the commencement date in which to complete construction of the building and all other Lot Improvements. In the event any Owner violates either (or both) of the construction time requirements contained herein, the Board may levy a fine against said Owner. Any such fine shall be in an amount determined by the Board, in its sole and absolute discretion, and such fine shall be treated as a Limited Assessment levied against such Owner and such Owner's Lot. This fine is applicable to both the construction commencement and construction completion requirements. Any fine levied by the Association shall be due and payable to the Association within thirty (30) days of receiving an invoice therefore.

- Section 8. Construction Equipment. No construction machinery, building equipment, or material shall be stored upon any Lot until the Owner is ready and able to immediately commence construction. Such machinery, equipment and materials must be kept within the boundaries of the Lot.
- Section 9. Damage to Improvements. It shall be the responsibility of an Owner to leave the streets, roadways, street curbs, sidewalks, fences, utility facilities, tiled irrigation lines, if any, and any other existing Improvements free of damage and in good and sound condition during, and at all times after, any construction period.
- Section 10. No Further Subdivision. No Lot may be further subdivided; provided, however, that this Section is not applicable to Declarant who may further subdivide any Lot owned by it.
- Section 11. Owner Insurance. Nothing shall be done or kept in any building, Lot or Common Area which will increase the rate of insurance on the Common Area or any other building or Lot. Each Owner must maintain an insurance policy (or policies) insuring the Owner against general liability and from loss by fire, theft, and all other loss or damage.
- Section 12. Single Family Lots. Lots 1 through 18 and 24 through 39, Block 1, and Lots 1 through 14, Block 2, as shown on the Plat, are residential and/or common lots not subject to this Declaration.
- Section 13. Townhome Lots. It is currently anticipated that Lots 40 and 41, Block 1, as shown on the Plat, will be further subdivided into townhome lots. Accordingly, Lots 40 and 41, Block 1 are not subject to this Declaration and each Owner covenants and agrees that these Lots may be further subdivided and that he/she/they shall not contest any such further subdivision.
- Section 14. Sewer Connection. If and when any Lot or portion of the Common Area is connected to the Boise City public sewer system, the following sewer connection provisions shall apply:
- (a) A monthly sewer charge must be paid after connecting to Boise City public sewer system, according to the ordinances and laws of Boise City.
- (b) Declarant, Owners and the Association shall submit to inspections by either the Public Works Department or the Building Department whenever a Lot or portion of the Common Area is to be connected to Boise City's public sewer system and an Improvement is constructed or installed on or within such Lot or Common Area.
- (c) Declarant, the Association and each Owner shall and hereby does vest in Boise City the right and power to bring all actions against the Declarant, the Association and any Owner for the collection of any charges herein required and to enforce the conditions herein stated. This covenant shall run with the land.

#### ARTICLE VI: MEMBERSHIP AND VOTING RIGHTS

- Section 1. Membership. Declarant and every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.
  - Section 2. Voting Classes. The Association shall have two (2) classes of voting memberships:

<u>Class A.</u> Class A Members shall be all Lot Owners (other than Declarant) and shall be entitled to one vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

<u>Class B.</u> The Class B Member shall be the Declarant and shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease when, and if, Declarant has sold all Lots within the Property.

#### ARTICLE VII: INSURANCE

- Section 1. Insurance. The Association may obtain insurance from insurance companies authorized to do business in the State of Idaho, with an AM Best Rating of A or better, and maintain in effect any insurance policy the Association deems necessary or advisable, which may include, without limitation, the following policies to the extent it is possible for the Association to obtain the same:
- (a) Property insurance for the Improvements, equipment and other property owned by the Association and located within the Common Area with special form coverage, a replacement cost valuation provision and blanket coverage. The Association may also insure for flood or earthquake if determined by the Board.
- (b) Commercial General Liability (CGL) insurance insuring the Association, as well as its agents, employees, invitees and licensees, against any liability incident to the ownership, management, maintenance and/or use of the Common Area, Common Landscaping, Common Drive Aisles and Parking Areas and/or any other portion of the Property.
- (c) Directors and Officers Liability (D&O) insurance insuring the Association and/or its board members and/or officers.
- (d) Such other insurance or bonds to the extent necessary to comply with all applicable laws and such indemnity, faithful performance, fidelity and other bonds as the Association shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or other property.
- Section 2. <u>Premiums Included in Assessments</u>. Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

#### ARTICLE VIII: ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefore is deemed to covenant and agree to pay to the Association all Assessments levied thereby. In addition, each Owner upon the purchase of a Lot shall pay reasonable start-up and/or transfer fee assessments for use by the Association. These start-up and transfer fee assessments shall only be used by the Association for the operation of the Association and/or the performance of its duties and obligations contained herein. All Assessments, together with interest, costs, late fees and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such Assessment is

made. Each such Assessment, together with interest, costs, late fees and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his or her successors in title unless expressly assumed by them. **Declarant has no obligation to pay Assessments**.

Notwithstanding any of the foregoing, the imposition, perfection and/or foreclosure of any Association lien must also comply with any and all requirements contained in the Idaho Code.

- Section 2. <u>Purposes of Assessments</u>. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners, their invitees, licensees, tenants and customers, and for the operation, maintenance and repair of the Common Area, Common Landscaping, Common Drive Aisles and Parking Areas, as well as for the proper operation of the Association.
- Section 3. <u>Uniform Rate of Assessment</u>. Regular and Special Assessments must be fixed at a uniform and equal rate for all Lots.
- Section 4. Date of Commencement of Annual Assessments; Due Dates. Assessments provided for herein shall commence as to all Lots on the closing date of the sale of a Lot from Declarant to an Owner. The first Assessments for any Owner shall be pro-rated according to the number of days remaining in the calendar year corresponding to the Assessments. The Board shall fix the amount of the Assessments against each Lot at least thirty (30) days in advance of each annual Assessment period. Written notice of the Assessments shall be sent to every Owner subject thereto at least thirty (30) days in advance of each annual Assessment period. The due dates shall be established by the Board, which may be annually, quarterly or monthly as the Board, in its sole discretion, shall determine. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specific Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.
- Section 5. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall bear interest from the date of delinquency at a rate equal to the lesser of twelve percent (12%) or the highest rate allowed by applicable law. The date of delinquency is the date which is thirty (30) days after the due date of any Assessment. Additionally, a late fee equal to ten percent (10%) of the overdue amount shall be added to and charged on each Assessment which is not paid by the date of delinquency. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein.
- Section 6. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to Mortgage foreclosure shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

#### ARTICLE IX: AUTHORITY OF BOARD OF DIRECTORS

Section 1. Authority of Board. The Board, for the benefit of the Declarant, Association and the Owners, shall enforce the provisions of this Declaration and the Association's articles of incorporation and

bylaws, shall have all powers and authority permitted to the Board under the Association's articles of incorporation and bylaws and this Declaration, and shall acquire and shall pay for all goods and services requisite for the proper functioning of the Association.

The Board shall have the absolute right to adopt any rules and regulations it deems to be in the best interest of the Property, Lots and Owners. By accepting a deed to any portion of the Property, all Lot Owners hereby covenant that they will adhere to any such rules or regulations. In addition, the Board shall have the absolute right to hire or otherwise contract with independent third parties (including, without limitation, Declarant and/or any of its affiliates) to operate, maintain and manage the Common Area, Common Landscaping, Common Drive Aisles and Parking Areas, and to perform any other right, duty or obligation of the Board or Association.

Section 2. Easement. The Association and Board, and their agents and employees, shall have, and are hereby granted, a permanent easement of ingress and egress to enter upon every portion of the Property for the purposes of operating the Common Area, Common Landscaping, Common Drive Aisles and Parking Areas, and/or performing repairs, maintenance and care of the Property as provided herein and for otherwise discharging the responsibilities and duties of the Association and Board as provided in this Declaration.

Section 3. Non-Waiver. The failure of the Board in any one or more instances to insist upon the strict performance of any of the terms or Restrictions of this Declaration, or of the Association's articles of incorporation or bylaws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, or Restriction, but such term or Restriction shall remain in full force and effect. Failure by the Board to immediately enforce any such term or Restriction shall not be deemed a waiver of the right to do so thereafter, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed for the Board.

Section 4. <u>Limitation of Liability</u>. The Board shall not be liable for any failure of any utility or other service to be obtained and paid for by the Board, or for injury or damage to a Person or property caused by the elements, or by another Owner or Person; or resulting from electricity, gas, water, rain, dust or sand which may lead or flow from pipes, drains, conduits, appliances, or equipment, or from articles used or stored by Owners on the Property. No diminution or abatement of Assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or Improvements to the Property or from any action taken to comply with any law, ordinance, or order of a governmental authority. This Section shall not be interpreted to impose any form of liability by implication.

Section 5. Indemnification of Board Members. Each member of the Board shall be indemnified by the Association and the Owners against all expenses (including attorneys' fees and costs), judgments, liabilities, fines and amounts paid in settlement, or actually and reasonably incurred, in connection with any action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by or against the Association or against the Board member and incurred by reason of the fact that he or she is or was a Board member, if such Board member acted in good faith and in a manner such Board member believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such Board member's conduct was unlawful. This Section shall extend to and apply also to the indemnification of the Declarant.

#### ARTICLE X: ARCHITECTURAL COMMITTEE

Section 1. Charter of Architectural Committee. Until such time as Declarant owns no Lots within the Property, including, without limitation, any other real property properly annexed into the Property by Declarant, Declarant is authorized to appoint the Architectural Committee. Thereafter, the Board is authorized to appoint the Architectural Committee.

The charter of the Architectural Committee is to represent the collective interests of all Owners, and to help Owners wishing to make exterior Improvements. Each Owner is deemed to covenant and agree to be bound by the terms and conditions of this Declaration, including the standards and process of architectural review and approval. This Article does not apply to the Declarant.

Section 2. Architectural Control. No exterior Improvement, including, without limitation, building, deck, patio, fence, landscaping, permanent exterior affixed decoration, exterior signs, lighting or heating, cooling and other utility systems shall be altered, erected, or placed on the Property unless and until the building, plot or other plan has been reviewed in advance by the Architectural Committee and same has been approved in writing, and an appropriate building permit has been acquired, if required by law. The review and approval may include, without limitation, topography, finish, ground elevations, landscaping, lighting, drainage, color, material, design, conformity to other buildings, and architectural symmetry. Approval of the architectural design shall apply only to the exterior appearance of said Improvements. It shall not be the intent of these restrictions to control the interior layout or design of said buildings. The Architectural Committee shall have the right to charge fees and/or collect deposits associated with plan review, inspections, re-inspections and any other facet of its duties and responsibilities as detailed in this Article.

Review of Proposed Improvements. The Architectural Committee shall consider and Section 3. act upon any and all proposals or plans and specifications submitted for its approval pursuant to this Declaration, and perform such other duties from time to time as may be assigned to it by the Board and/or Declarant, including the inspection of construction in progress. The Architectural Committee may condition its approval of proposals upon the agreement of the Owner to pay additional Assessments associated with its landscaping and/or other exterior Improvements which may become the responsibility of the Association to maintain. The Architectural Committee may require submission of additional plans or review by a professional architect. The Architectural Committee may issue architectural guidelines and/or guidelines setting forth procedures for the submission of plans for approval. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevations, drawings and description of samples of exterior material and colors. Until receipt by the Architectural Committee of all required plans, specifications, fees and/or deposits the Architectural Committee may postpone its review. Decisions of the Architectural Committee and the reasons therefor shall be transmitted by the Architectural Committee, in writing, to the applicant at the address set forth in the application for approval within thirty (30) days after its receipt of all materials, fees and/or deposits required by the Architectural Committee. If the Architectural Committee has not accepted (either conditionally or otherwise) or rejected an Owner's application within this thirty (30) day period, such application shall be deemed approved.

Section 4. <u>Inspection of Approved Improvements</u>. Inspection of work and correction of defects therein shall proceed as follows:

- (a) Upon completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the Architectural Committee.
- (b) Within sixty (60) days thereafter, the Architectural Committee, or its duly authorized representative, may inspect such Improvement. If the Architectural Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner and the Board in writing of such noncompliance within such sixty (60) day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.
- (c) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the Board may, at its option, exercise its right to enforce the provisions of this Declaration by proceeding at law or in equity on behalf of the Association and/or correcting such noncompliance itself, and may take such other actions as are appropriate, including the levy of a Limited Assessment against such Owner for reimbursement associated with correcting or removing the same pursuant to this Declaration.
- Section 5. Review of Unauthorized Improvements. The Architectural Committee may identify for review, Improvements which were not submitted to the approval process as follows:
- (a) The Architectural Committee or its duly authorized representative may inspect such unauthorized Improvement.
- (b) If the Architectural Committee finds that the work is in noncompliance with this Declaration and/or its standards or guidelines, it shall notify the Owner and the Board in writing of such noncompliance and its request to remedy such noncompliance.
- (c) If the Owner has not remedied such noncompliance within a period of not more than forty-five (45) days from his or her receipt of the noncompliance notice, then the Board may, at its option, exercise its right to enforce the provisions of this Declaration by a proceeding at law or in equity on behalf of the Association and/or correcting such noncompliance itself, and may take such other actions as are appropriate, including the levy of a Limited Assessment against such Owner for reimbursement of the costs associated with correcting or removing the same pursuant to this Declaration.

#### ARTICLE XI: GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, Association and/or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all terms and Restrictions now or hereafter imposed by the provisions of this Declaration. In addition, the Board, in its reasonable discretion, shall have the right to impose fines, in amounts as reasonably determined by the Board, upon any Owner, and such Owner's Lot, associated with any and all violations of this Declaration, any supplemental declaration and/or any Association rules by such Owner or such Owner's invitees, licensees, customers and/or tenants.

Notwithstanding any of the foregoing, the imposition, perfection, collection and/or enforcement of any fines must also comply with any and all requirements contained in the Idaho Code.

Section 2. Severability. Invalidation of any one of these terms or Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Term and Amendments. The terms and Restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by Declarant (assuming Declarant owns one or more Lots) and the consent of two-thirds (2/3) of the Class A Members. Amendments shall be in the form of supplemental declarations, and must be recorded in the records of Ada County, Idaho.

Notwithstanding the foregoing, unless the express written and recorded consent of Boise City has been obtained, this Declaration may not be amended, deleted, added to or terminated, with respect to the following: (i) any provision of this Declaration which has been required by Boise City in its approval of this Property, or which affects, recognizes, conveys and/or confers upon Boise City any easement, right or power, or requirement; (ii) any material provisions on easements, access, and/or the operation, repair, maintenance, repair and replacement of Common Area, infrastructure and/or public works systems; and/or (iii) any dissolution or termination of the Association.

- Section 4. Annexation. Additional property may be annexed into the Property by Declarant or with the consent of two-thirds (2/3) of the Class A Members. Annexations shall be accomplished by supplemental declarations to this Declaration recorded in the records of Ada County, Idaho.
- Section 5. Duration and Applicability to Successors. The terms and Restrictions set forth in this Declaration shall run with the land and shall inure to the benefit of and be binding upon the Declarant, the Association, the Owners and their successors in interest. Declarant shall have the absolute right, at its sole and absolute discretion, to assign any and all of Declarant's rights, duties and/or obligations under this Declaration to any third party. Any such assignment shall be in writing signed by both the assignor and assignee.
- Section 6. Attorneys Fees. In the event it shall become necessary for the Declarant, the Association or any Owner to retain legal counsel to enforce any term or Restriction contained within this Declaration, the prevailing party to any court proceeding shall be entitled to recover his/her/its reasonable attorneys' fees and costs of suit, including any bankruptcy, appeal or arbitration proceeding.

  Notwithstanding any other provision contained in this Declaration, the award of attorneys' fees and costs to the Association must comply with any and all requirements contained in the Idaho Code.
- Section 7. Governing Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Idaho.
- Section 8. Assumption of Risk: Waiver of Claims. All Owners and the Association, for themselves and their respective invitees, licensees, customers and tenants, shall store their property in and shall occupy and use their Lots, Common Area and all other portions of the Property solely at their own risk. All Owners and the Association, for themselves and their respective invitees, licensees, customers and tenants, hereby waive any and all rights to recover claims against Declarant, and its respective members, managers, employees and agents, of every kind, including loss of life, personal or bodily injury, damage to equipment, fixtures or other property, arising, directly or indirectly, out of or from or on account of the occupancy and/or use of any portion of the Property by such indemnifying Persons, or resulting from any present or future conditions or state of repair thereof, except to the extent such claims are directly caused by the gross negligence or willful misconduct of Declarant (or its respective members, managers, employees or agents) and are not covered by insurance required to be carried by such Persons pursuant to this Declaration.

Declarant, and its respective members, manages, employees and agents, shall not be responsible or liable for damages to any Owners and/or the Association, or their respective invitees, licensees, customers and tenants, for any loss of life, bodily or personal injury, or damage to property that may be occasioned by or through the acts, omissions or negligence of any other Person.

Section 9. Notices. Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by regular mail. If delivery is made personally, the notice shall be deemed properly delivered immediately upon delivery. If delivery is made by regular mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid. All notices shall be addressed to the Owner at the last known address on the Association's records or to the address of the Owner's Lot if no other address for notices has been given in writing by such Owner to the Association. Such address may be changed from time to time by notice in writing to the Association given in compliance with the foregoing.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hands as of the date first above written.

Declarant:

Charlesworth Properties, LLC, an Idaho limited liability company

By:

Mitchell S. Armuth, Authorized Agent

STATE OF IDAHO ) ss.
County of Ada )

This record was acknowledged before me on <u>January 29</u>, 2021, by Mitchell S. Armuth as an Authorized Agent of Charlesworth Properties, LLC.

Signature of Notary Public

My commission expires: 2-16-2025

PENNY SMITH
COMMISSION #23655
NOTARY PUBLIC
STATE OF IDAHO
MY COMMISSION EXPIRES 02/16/2025

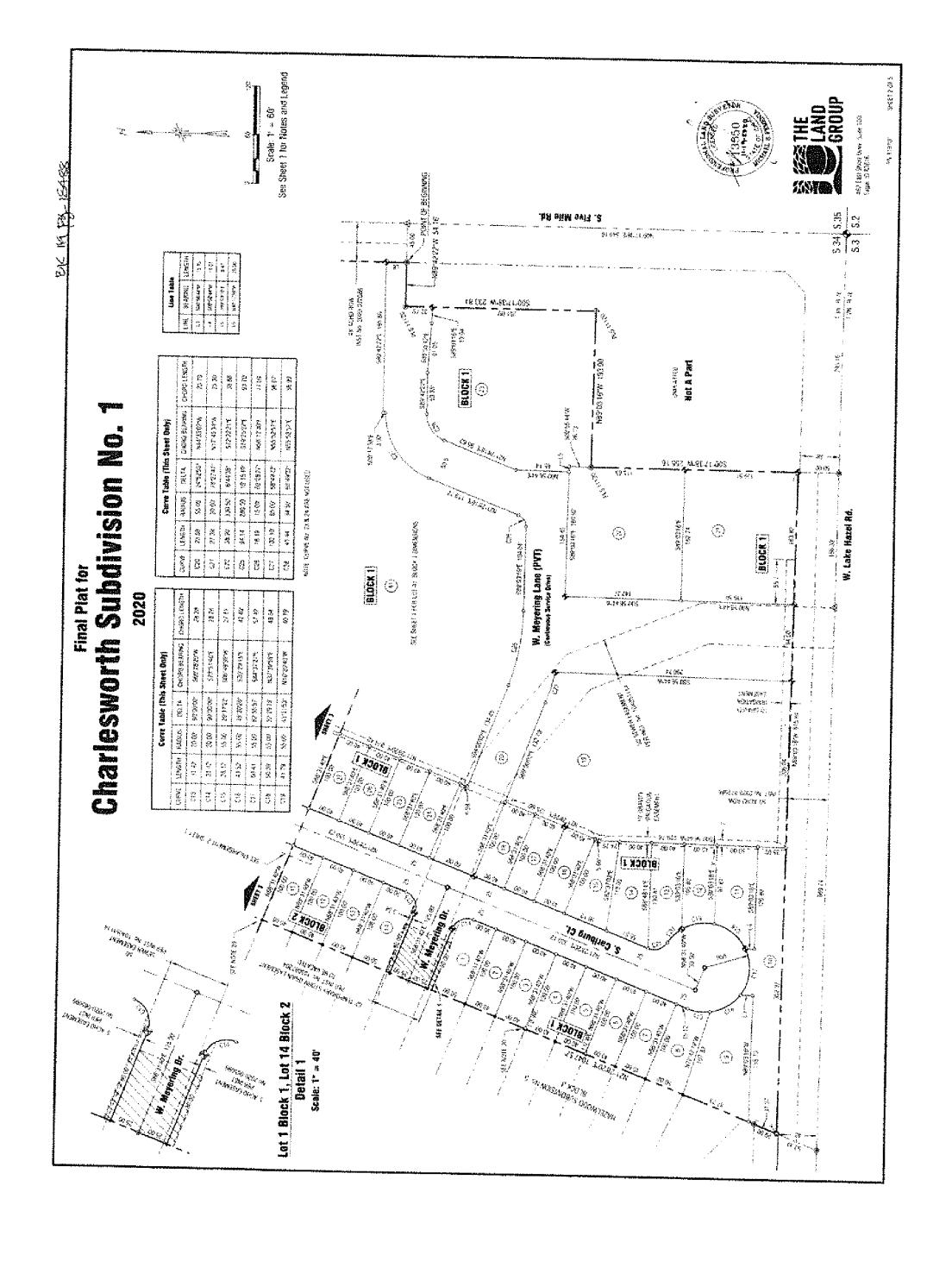
#### **EXHIBIT A**LEGAL DESCRIPTION OF THE PROPERTY

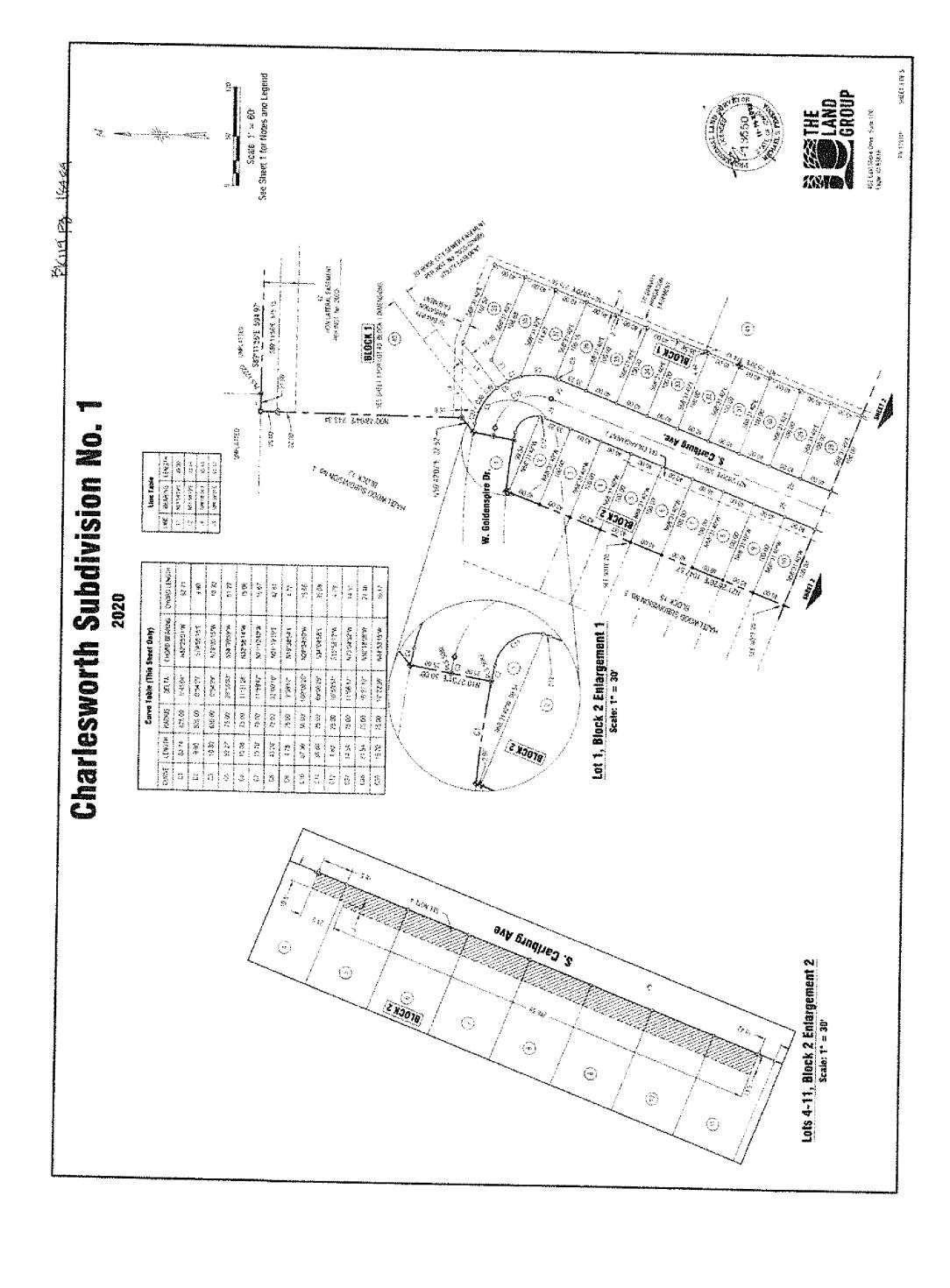
Lots 19 through 23, Block 1, Charlesworth Subdivision No. 1, according to the official Plat thereof, filed in Book 119 of Plats at Pages 18487 through 18491, Records of Ada County, Idaho.

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#### **EXHIBIT B**CHARLESWORTH SUBDIVISION NO. 1 FINAL PLAT

See attached.	





# Charlesworth Subdivision No.

## Certificate of Owners

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## Certificate of Surveyor

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# Charlesworth Subdivision No.

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# Approval of Central District Health



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Approval of Ada County Highway District
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## Approval of the City Engineer

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# Certificate of County Surveyor

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Certificate of Surveyor



# Certificate of the County Treasurer

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Signed by Deputy; Offerwandra Usyath

# County Recorder's Certificate

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ADA COUNTY RECORDER Phil McGrane
BOISE IDAHO Pgs=29 DAN RYALLS
PIONEER TITLE COMPANY OF ADA COUNTY

2021-017335 02/02/2021 08:10 AM \$94.00

ACCOMMODATION

#### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHARLESWORTH SUBDIVISION

(SINGLE-FAMILY DETACHED RESIDENCES)

JMOURY == , 2021

#### **NOTICE**

THE FOLLOWING IS A <u>VERY</u> IMPORTANT DOCUMENT WHICH EACH AND EVERY POTENTIAL OWNER OF PROPERTY WITHIN THE CHARLESWORTH SUBDIVISION SHOULD READ AND UNDERSTAND. THIS DOCUMENT DETAILS THE OBLIGATIONS AND PROHIBITIONS IMPOSED UPON ALL OWNERS AND OCCUPANTS.

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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHARLESWORTH SUBDIVISION

## (Single-Family Detached Residences)

This Declaration of Covenants, Conditions and Restrictions for Charlesworth Subdivision (this "Declaration") is made effective this (day of ), 2021, by Charlesworth Properties, LLC, an Idaho limited liability company ("Declarant").

#### ARTICLE I: PROPERTY AND PURPOSES

Section 1. Property Covered/Benefit of Declaration. The property subject to this Declaration is legally described on the attached Exhibit A, which is made a part hereof ("Property"). The Property is shown on the Plat, as that term is hereinafter defined, and is a portion of the overall Charlesworth Subdivision as shown on the Plat ("Charlesworth Subdivision").

This Declaration is for the benefit of the Declarant, the Association and all Owners of any portion of the Property.

Section 2. Purposes of Declaration. The purposes of this Declaration are to set forth the basic Restrictions, as that term is hereinafter defined, and uses that will apply to the Property. The Restrictions contained herein are designed to protect, enhance and preserve the value, amenities, desirability, and attractiveness of the Property in a cost effective and administratively efficient manner.

#### ARTICLE II: DECLARATION

Declarant hereby declares that the Property, including each Lot, Dwelling Unit, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, used, occupied and improved subject to the following terms and Restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness thereof.

## ARTICLE III: ADDITIONAL DEFINITIONS

- Section 1. "Architectural Committee" shall mean the architectural committee of the Association established pursuant to Article X herein.
- Section 2. "Assessments" shall mean Regular Assessments, Special Assessments and Limited Assessments.
- <u>Section 3</u>. "Association" shall mean the Charlesworth Homeowners' Association, Inc., its successors and/or assigns.
  - Section 4. "Board" shall mean the Board of Directors of the Association.
- Section 5. "Common Lots" shall mean all real property (including the Improvements thereto) owned by the Association for the common benefit and enjoyment of the Owners. The Common

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS - 1

Lots are legally described on the attached Exhibit B, which is made a part hereof.

- Section 6. "Declarant" shall mean Charlesworth Properties, LLC, or its designated successors and/or assigns.
- Section 7. "Dwelling Unit" shall mean each single-family, detached residential home to be constructed on each Lot.
- Section 8. "Improvement" shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed, placed upon, under or over any portion of the Property, including, without limitation, Dwelling Units, fences, landscaping, streets, roads, drives, driveways, parking areas, sidewalks, bicycle paths, curbs, walls, rocks, signs, lights, mail boxes, electrical lines, pipes, pumps, ditches, waterways, recreational facilities, grading, utility improvements, dog runs and/or kennels, play equipment, and any other exterior construction or exterior improvement which may not be included in the foregoing. Improvement(s) includes both original improvements existing on the Property on the date hereof and/or all later additions and/or alterations.
- Section 9. "Limited Assessment" shall mean a charge against a particular Owner and such Owner's Lot, directly attributable to the Owner, or such Owner's family members, invitees or licensees, equal to the costs and expenses incurred by the Association, including, without limitation, legal fees and costs, whether or not suit has been filed, for any corrective action taken by the Association or fines levied by the Association pursuant to this Declaration or otherwise as necessitated by any intentional or negligent act or omission by any such Owner, or such Owner's family members, invitees or licensees, or any other agent, contractor or employee thereof. Such costs, expenses and fines shall include, without limitation, damage to the Common Lots and/or the failure of an Owner to keep his or her Lot or Dwelling Unit in proper repair.
- Section 10. "Lot" shall mean any of Lots 1 through 9, 11 through 18 and 24 through 39, Block 1, and Lots 2 through 14, Block 2, as shown on the Plat.
- Section 11. "Member" shall mean each Person holding a membership in the Association, including Declarant.
- Section 12. "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any portion of the Property or interest therein as security for the payment of a debt or obligation.
- Section 13. "Owner" shall mean the record owner, other than Declarant, whether one or more Persons, of a fee simple title to any Lot which is a part of the Property, including contract sellers and builders, but excluding those having such interest merely as security for the performance of an obligation.
- Section 14. "Person(s)" shall mean any individual, partnership, corporation or other legal entity, including Declarant.
- Section 15. "Plat" shall mean the Charlesworth Subdivision No. 1 final plat filed in Book 119 of Plats at Pages 18487 through 18491, Records of Ada County, Idaho, a copy of which is attached hereto as Exhibit C, which is made a part hereof.

- Section 16. "Pressurized Irrigation System" shall mean that certain non-potable water irrigation delivery system further described in <u>Article V</u>.
- Section 17. "Property" shall mean that certain real property legally described on the attached Exhibit A, and such other annexations or other additions thereto as may hereafter be brought within the jurisdiction of this Declaration.
- Section 18. "Regular Assessments" shall mean the cost of maintaining, improving, repairing, managing and operating the Common Lots, including all Improvements thereon or thereto, and all other costs and expenses incurred to conduct the business and affairs of the Association which is levied against the Lot of each Owner by the Association, pursuant to the terms of this Declaration or any supplemental declaration. Regular Assessments shall also include reasonable operating and capital improvement reserves held by the Association for its future use in conducting all its duties and obligations contained in this Declaration.
- Section 19. "Restrictions" shall mean the restrictions, covenants, limitations, conditions and easements that will apply to the Property and use of any and all portions thereof as specified in this Declaration.
- Section 20. "Special Assessments" shall mean that portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments levied against the Lot of each Owner by the Association.
  - Section 21. "W. Meyering Lane" shall mean Lot 20, Block 1, as shown on the Plat.

#### ARTICLE IV: GENERAL USES AND REGULATION OF USES

Section 1. Single-Family Lots. Each Lot within the Property shall be used for single-family, detached Dwelling Units only, and for the common social, recreational or other reasonable uses normally incident to such use, and also for such additional uses or purposes as are from time to time determined appropriate by the Board. Lots may be used for the purposes of operating the Association and for the management of the Association if required. The provisions of this Section shall not preclude Declarant from conducting sales, construction, development and related activities from Lots owned by Declarant.

No shack, tent, trailer house, basement only, split entry, manufactured, mobile or pre-built homes shall be allowed.

By accepting a deed to any portion of the Property, each Owner hereby covenants to abide by all terms and Restrictions contained in this Declaration, any supplemental declaration, the Plat, and any rules or regulations adopted by the Board.

Section 2. Common Lots. The Association shall own and be responsible for the maintenance, repair and replacement of the Common Lots including any and all Improvements located thereon. The Association shall maintain and operate these Common Lots in a competent and attractive manner, including snow removal, if appropriate, and the watering, mowing, fertilizing and caring for any and all lawns, shrubs and trees thereon. Nothing shall be altered or constructed in or removed from the Common Lots except upon written consent of the Board and in accordance with procedures required

herein and by law. Every Owner shall have a right and easement of enjoyment in and to the Common Lots which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions (and subject to all other terms contained in this Declaration):

- (a) the right of the Association to charge reasonable admission and other fees or Assessments for the use of any recreational facility situated upon a Common Lot;
- (b) the right of the Association to adopt rules and regulations governing the use of any recreational facility situated upon a Common Lot; and
- (c) the right of the Association to suspend the voting rights and use of any recreational facility by an Owner for any period during which any Assessment remains unpaid and/or for any infraction of its rules and regulations.

The Common Lots cannot be mortgaged, conveyed or encumbered without the approval of at least two-thirds (2/3) of the Class A Members. If ingress or egress to any Lot is through any portion of the Common Lots, any such conveyance or encumbrance shall be subject to an easement of the Owners for the purpose of ingress and egress.

Section 3. Home Occupations. Assuming all governmental laws, rules, regulations, and ordinances are complied with, home occupations may be conducted from the interior of Dwelling Units provided such home occupations 1) do not increase the burdens on the public streets or W. Meyering Lane (including increased traffic) and/or 2) do not unreasonably interfere with any other Owner's use and enjoyment of his or her Lot. If the Board determines, in its sole and absolute discretion, that a home occupation is increasing the burden on the public streets or W. Meyering Lane, and/or unreasonably interfering with any other Owner's use and enjoyment of his or her Lot, the Board shall have the right to terminate any Owner's ability to conduct a home occupation from his or her Dwelling Unit. Notwithstanding the foregoing, Declarant may conduct any business operation it sees fit from any portion of the Property owned by it, regardless of the impact on the public streets or W. Meyering Lane, or the use and enjoyment of an Owner's Lot.

Section 4. Vehicle and Other Storage. Unenclosed areas, which include driveways and all other unenclosed paved areas within the Property, are restricted to use for temporary parking of operative motor vehicles of Owners and their family members, invitees and licensees, provided that such vehicles are parked so as to not interfere with any other Owner's right of ingress and egress to his or her Lot. Notwithstanding the foregoing, the parking of equipment (lawn or otherwise), inoperative vehicles, motor homes, campers, trailers, boats, any other recreational vehicles and other items on the Property is strictly prohibited unless parked within an Owner's garage (and said garage door is closed) or other enclosed area approved by the Architectural Committee. For purposes of this Section, temporary parking shall be as determined by the Board.

The Board may remove any inoperative vehicle, or any unsightly vehicle, and any other vehicle, motor home, camper, trailer, boat, equipment or item improperly parked or stored after three (3) days' written notice to the known owner thereof or, in the event such owner is unknown, posted on such item, at the risk and expense of the owner thereof.

Notwithstanding anything in this Section to the contrary, all Owners, as well as their family members, invitees and licensees, must abide by all parking and other signs posted within the

## Property by the Declarant and/or the Association, if any.

Section 5. Compliance With Laws, Rules and Ordinances. Neither the Association nor any Owner, or their respective family members, invitees or licensees, shall permit anything to be done or kept in his or her Lot or Dwelling Unit or any part of the Common Lots which would be in violation of any laws, rules, regulations or ordinances.

Section 6. Signs. No sign of any kind shall be displayed on any Lot or Dwelling Unit without the prior written consent of the Board; provided however, one sign of not more than five (5) square feet advertising the Lot for sale may be installed on any Lot, but the sign shall be removed within five (5) days following sale. Notwithstanding the foregoing, Declarant may display any sign it sees fit on any portion of the Property owned by Declarant.

Section 7. Pets. No animals (which term includes livestock, domestic animals, poultry, reptiles and any other living creature of any kind) shall be raised, bred or kept in any Dwelling Unit, Lot or in the Common Lots, whether as pets or otherwise; provided however, that this provision shall not prohibit Owners from having two (2) or less dogs and/or cats (i.e., an Owner may have a maximum of two (2) dogs, two (2) cats or one (1) dog and one (1) cat). The Board may at any time require the removal of any animal, including domestic dogs and cats, which it finds is creating unreasonable noise or otherwise disturbing the Owners unreasonably, in the Board's determination, and may exercise this authority for specific animals even though other animals are permitted to remain. All dogs shall be walked on a leash only and shall not be allowed to roam or run loose, whether or not accompanied by an Owner or other person. All Owners shall be responsible for picking up and properly disposing of all organic waste of their domestic dogs and cats.

Nuisance. No noxious or offensive activity shall be carried on in any Dwelling Section 8. Unit, Common Lot or Lot, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, including the Common Lots, and no odor shall be permitted to arise from any portion of the Property so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to the Property or to its occupants or residents, or to any other property in the vicinity thereof. No noise, obstructions to pedestrian walkways, unsightliness, or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or residents or to other property in the vicinity thereof, as determined by the Board, in its reasonable judgment, or in violation of any federal, state or local law, rule, regulation or ordinance. Without limiting the generality of any of the foregoing, no whistles, bells or other sound devices (other than security devices used exclusively for security purposes which have been approved by the Architectural Committee), flashing lights or search lights, shall be located, used or placed on the Property. No unsightly articles shall be permitted to remain on any Lot so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage, garbage cans, trash, trash cans, dog houses, equipment, gas canisters, propane gas tanks, barbecue equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, metals, bulk material, and scrap shall be screened from view at all times. No clothing or fabric shall be hung, dried or aired in such a way as to be visible to any other portion of the Property. In addition, no activities shall be conducted on the Property, and no Improvements shall be constructed on any Property which are or might be unsafe or hazardous to any Person or property.

Section 9. Exterior Improvements, Appearance and Emergency Maintenance. No Owner

shall install or place any item or construct any Improvement on any Lot or the exterior of his or her Dwelling Unit without the prior written consent of the Architectural Committee. In addition, all Owners shall keep and maintain their Lots and Dwelling Unit exteriors in a repaired, attractive, clean and habitable condition as determined by the Board in its reasonable judgement. In the event any Owner does not satisfy this standard, the Board and its agents or employees, may, after thirty (30) days' prior written notice to such Owner: 1) levy a fine, in an amount as determined by the Board, against said Owner for as long as the violation persists, and/or 2) enter such Lot to make such repairs or perform such maintenance as to bring such Lot and/or Dwelling Unit exterior into compliance with this Section. Any such fines and any cost incurred by the Association for repairs and maintenance shall be treated as Limited Assessments to such Owner.

In the event an emergency which in the judgment of the Board presents an immediate threat to the health and safety of the Owners, their family members, invitees or licensees, or an immediate risk of harm or damage to any Lot, Dwelling Unit or any other part of the Property, the Board and its agents or employees, may enter any Lot to make repairs or perform maintenance. Such entry shall be repaired by the Board out of Regular or Special Assessments (unless the emergency was caused by an Owner, his family members, invitees or licensees, in which case the cost shall be treated as a Limited Assessment and charged only to that Owner). In addition, if the repairs or maintenance were requested by an Owner, the costs thereof shall be treated as a Limited Assessment to such Owner.

Section 10. Outbuildings. All outbuildings shall be pre-approved in writing by the Architectural Committee and be constructed of quality building material, completely finished and painted on the outside and shall be of quality and character that will be in harmony with the other buildings on the Property.

Section 11. Fences. Fences are not required. If a fence is desired, plans for such fence shall be pre-approved in writing by the Architectural Committee. Fences shall be of good quality and workmanship and shall be properly finished and maintained. Chain link fences are prohibited. No fence shall be higher than six feet (6') in height. Fences shall not be built closer to the front of a Lot than the corner of the Dwelling Unit on either side. The location of fences shall be so situated as to not unreasonably interfere with the enjoyment and use of any other portion of the Property and shall not be allowed to constitute an undesirable nuisance or noxious use.

Section 12. <u>Antennae/Dishes.</u> The location, type, style and color of any and all antennae and/or satellite or other dishes shall be pre-approved in writing by the Architectural Committee and shall be placed and/or mounted in such a way to minimize the visual impact to all other portions of the Property.

Section 13. Insurance. Nothing shall be done or kept in any Dwelling Unit, Lot or Common Lot which will increase the rate of insurance on the Common Lots or any other Dwelling Unit or Lot. Each Owner must maintain a homeowner's insurance policy on such Owner's Lot and Dwelling Unit insuring the homeowner from loss by fire, theft, and all other loss or damage.

Section 14. Storm Water Drainage. Portions of Lots 4 through 11, Block 2, as shown on the Plat, are servient to and contain the Ada County Highway District ("ACHD") storm water drainage system. These Lots are encumbered by that certain First Amended Master Perpetual Storm Water Drainage Easement recorded on November 10, 2015, as Instrument No. 2015-103256, official records of Ada County, and are incorporated herein by this reference as if set forth in full ("Master Easement").

The Master Easement and the storm water drainage system are dedicated to ACHD pursuant to Section 40-2302 of the Idaho Code. The Master Easement is for the operation and maintenance of the storm water drainage system and such system shall be maintained by ACHD. Said easement shall remain free of all encroachments and obstructions (including fences and trees) which may adversely affect the operation and maintenance of the storm drainage facilities.

There shall be no interference with the established drainage pattern over any portion of these Lots unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee and ACHD. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of these Lots are completed by the Declarant, or that drainage which is shown on any plans approved by the Architectural Committee and/or ACHD.

All Owners, at his/her/their sole cost and expense, shall be responsible for the maintenance, repair and/or replacement of any storm water drainage system located on, and serving only, his/her/their individual Lot. Such maintenance, repair and/or replacement shall be done in accordance with all applicable laws, rules, regulations and/or ordinances.

Notwithstanding the forgoing, all Lots and Common Lots shall be graded such that all storm water and other water drainage shall run across a curb or to a drainage easement and no drainage shall cross from a Lot or Common Lot onto another Lot or Common Lot except within an applicable drainage easement.

Section 15. Garages. Garages shall be well constructed of good quality material and workmanship. All Dwelling Units shall have attached, enclosed garages which hold no less than two vehicles. To the extent possible, garage doors must remain closed at all times.

Section 16. Construction Commencement, Completion and Other Activities. Each Owner of a Lot originally purchased from Declarant must commence construction of his or her Dwelling Unit and all other Lot Improvements within one year from the closing date thereof, unless otherwise agreed by Declarant. Once such construction has commenced, such Owner shall have one year from the commencement date in which to complete construction of the Dwelling Unit and all other Lot Improvements. In the event any Owner violates either (or both) of the construction time requirements contained herein, said Owner shall pay to the Association a fine of \$100/day for as long as the violation persists. This fine is applicable to both the construction commencement and construction completion requirements. Any fine, or fines, shall be due and payable within thirty (30) days of receiving an invoice therefore.

Section 17. Construction Equipment. No construction machinery, building equipment, or material shall be stored upon any Lot until the Owner is ready and able to immediately commence construction. Such machinery, equipment and materials must be kept within the boundaries of the Lot.

Section 18. Damage to Improvements. It shall be the responsibility of an Owner to leave street curbs, sidewalks, fences, utility facilities, tiled irrigation lines, if any, and any other existing Improvements free of damage and in good and sound condition during any construction period. It shall be conclusively presumed that all such Improvements are in good condition at the time building has begun on each Lot unless the contrary is shown in writing at the date of conveyance or by date of possession, whichever date shall first occur, which notice is addressed to a member of the Architectural Committee.

- <u>Section 19.</u> <u>Garbage Pick-Up.</u> Garbage and recycle containers shall be placed on the appropriate sidewalks or driveways only on garbage and recycle collection days, and such containers must be removed no later than 8:00pm that evening.
- Section 20. No Further Subdivision. No Lot may be further subdivided; provided, however, that this Section is not applicable to Declarant who may further subdivide any Lot owned by it.
- Section 21. Commercial Lots/W. Meyering Lane. Lots 19 and 21 through 23, Block 1, as shown on the Plat, are commercial lots not subject to this Declaration. In addition, W. Meyering Lane (Lot 20, Block 1) shall be owned and maintained by the Charlesworth Commercial Owners' Association, Inc. However, pursuant to that certain Reservation of Access and Utility Easement (recorded in the records of Ada County, Idaho), the Association and Owners, as well as their family members, invitees, licensees, successors and assigns, have been granted, among other things, a perpetual, non-exclusive vehicular and pedestrian access easement on, over, across and through W. Meyering Lane.
- Section 22. Townhome Lots. It is currently anticipated that Lots 40 and 41, Block 1, as shown on the Plat, will be further subdivided into townhome lots. Accordingly, Lots 40 and 41, Block 1 are not subject to this Declaration and each Owner covenants and agrees that these Lots may be further subdivided and that he/she/they shall not contest any such further subdivision.
- <u>Section 23.</u> <u>Exterior Lighting.</u> Exterior lights are prohibited from remaining on all night. Exterior lights programmed for on and off times, as well as motion sensor lights, are allowed.
- Section 24. Sewer Connection. If and when any Lot or Common Lot is connected to the Boise City public sewer system, the following sewer connection provisions shall apply:
- (a) A monthly sewer charge must be paid after connecting to Boise City public sewer system, according to the ordinances and laws of Boise City.
- (b) Declarant, Owners and the Association shall submit to inspections by either the Public Works Department or the Building Department whenever a Lot or Common Lot is to be connected to Boise City's public sewer system and an Improvement is constructed or installed on or within such Lot or Common Lot.
- (c) Declarant, the Association and each Owner shall and hereby does vest in Boise City the right and power to bring all actions against the Declarant, the Association and any Owner for the collection of any charges herein required and to enforce the conditions herein stated. This covenant shall run with the land.

#### ARTICLE V: PRESSURIZED IRRIGATION SYSTEM

Non-potable (non-drinkable) irrigation water will be supplied to the Charlesworth Subdivision by the Boise-Kuna Irrigation District ("District") and the Charlesworth Townhome Owners' Association, Inc. ("Townhome HOA") utilizing a pressurized irrigation system owned, operated and maintained by the Townhome HOA ("Pressurized Irrigation System"). The Pressurized Irrigation System will be used for all irrigation of the Charlesworth Subdivision. By accepting a deed to any portion of the Property, each Owner hereby agrees to pay its proportionate share of District assessments,

Townhome HOA assessments and Association Assessments associated with the operation and maintenance of the Pressurized Irrigation System. In addition, each Owner covenants and agrees to hold the Association, Townhome HOA and Declarant harmless from any and all liability for damages or injuries to themselves and/or their respective family members, invitees and licensees, caused by, or in any way associated with, the Pressurized Irrigation System.

The Townhome HOA has been granted an easement on, over, across and through the entire Property for purposes of operating and maintaining the Pressurized Irrigation System.

#### ARTICLE VI: INSURANCE

- <u>Section 1</u>. <u>Insurance</u>. The Association may obtain insurance from insurance companies authorized to do business in the State of Idaho, with an AM Best Rating of A or better, and maintain in effect any insurance policy the Association deems necessary or advisable, which may include, without limitation, the following policies to the extent it is possible for the Association to obtain the same:
- (a) Property insurance for the Improvements, equipment and other property located within the Common Lots with special form coverage, a replacement cost valuation provision and blanket coverage. The Association may also insure for flood or earthquake if determined by the Board.
- (b) Commercial General Liability (CGL) insurance insuring the Association, as well as its agents, employees, invitees and licensees, against any liability incident to the ownership, management, maintenance and/or use of the Common Lots and/or any other portion of the Property.
- (c) Directors and Officers Liability (D&O) insurance insuring the Association and/or its board members and/or officers.
- (d) Such other insurance to the extent necessary to comply with all applicable laws and such indemnity, faithful performance, fidelity and other bonds as the Association shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or other property.
- <u>Section 2</u>. <u>Premiums Included in Assessments</u>. Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

#### ARTICLE VII: MEMBERSHIP AND VOTING RIGHTS

- <u>Section 1.</u> <u>Membership</u>. Declarant and every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.
  - Section 2. Voting Classes. The Association shall have two (2) classes of voting memberships:

<u>Class A.</u> Class A Members shall be all Owners and shall be entitled to one vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be Members. The

vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

<u>Class B.</u> The Class B Member shall be the Declarant and shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease when, and if, Declarant has sold all Lots within the Property.

#### ARTICLE VIII: ASSESSMENTS

Lot by acceptance of a deed therefore is deemed to covenant and agree to pay to the Association all Assessments levied thereby. In addition, each Owner upon the purchase of a Lot shall pay reasonable start-up and/or transfer fee assessments for use by the Association. These start-up and transfer fee assessments shall only be used by the Association for the operation of the Association and/or the performance of its duties and obligations contained herein. All Assessments, together with interest, costs, late fees and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, late fees and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his or her successors in title unless expressly assumed by them. Declarant has no obligation to pay Assessments.

Notwithstanding any of the foregoing, the imposition, perfection and/or foreclosure of any Association lien must also comply with any and all requirements contained in the Idaho Code.

- <u>Section 2</u>. <u>Purposes of Assessments</u>. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Property and for any construction, maintenance and operation of the Common Lots, as well as for the proper operation of the Association.
- Section 3. <u>Uniform Rate of Assessment</u>. Regular and Special Assessments must be fixed at a uniform rate for all Lots.
- Section 4. Date of Commencement of Annual Assessments; Due Dates. The Regular Assessments provided for herein shall commence as to all Lots on the first day of the month following the closing of the sale of a Lot from Declarant to an Owner. The first annual assessment shall be pro-rated according to the number of months remaining in the calendar year. Subsequently, the Board shall fix and notify all Owners in writing of the amount of the Regular Assessments against each Lot at least thirty (30) days in advance of each annual Regular Assessment period. The due dates shall be established by the Board, which may be annually, quarterly or monthly as the Board, in its sole discretion, shall determine. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specific Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.
- Section 5. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall bear interest from that date at a rate equal to the lesser of twelve percent (12%) or the highest rate allowed by applicable law. Additionally, a late fee of \$50.00 shall be added to and charged on each Assessment which is not paid within this payment period.

The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Lots or abandonment of his or her Lot.

Section 6. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

#### ARTICLE IX: AUTHORITY OF BOARD/ASSUMPTION OF RISK

- Section 1. Authority of Board. The Board, for the benefit of Declarant, the Association and the Owners, shall enforce the provisions of this Declaration and the Association's articles and bylaws, shall have all powers and authority permitted to the Board under the Association's articles and bylaws and this Declaration, and shall acquire and shall pay all goods and services requisite for the proper functioning of the Association and the Property, including, but not limited to, the following:
- (a) Operation, maintenance and management of the Common Lots, including repair and replacement of property damaged or destroyed by casualty loss.
- (b) Water, sewer, garbage collection, electrical, and any other utility service as required for the Common Lots. The Board may arrange for special metering of utilities as appropriate.
- (c) Policies of insurance providing coverage for fire and other hazard, public liability and property damage, and fidelity bonding as the same are more fully described in the bylaws or this Declaration. Each Owner shall be responsible for the insurance for his or her Lot, Dwelling Unit and personal property.
- (d) The services of Persons as required to properly manage the affairs of the Association to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine are necessary or proper for the operation of the Property.
- (e) Legal and accounting services necessary or proper in the operation of the Association's affairs, administration of the Property, or the enforcement of this Declaration.
- (f) Any other materials, supplies, labor services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to secure by law or which in its opinion shall be necessary or proper for the operation of the Property or for the enforcement of this Declaration.
- (g) The Board shall not incur any non-budgeted expenditure in excess of \$3,000.00 without the approval thereof by two-thirds (2/3) of each class of Members voting thereon at a meeting called for such purpose, except for an emergency threatening the security of any Improvement on the Property.

The Board shall have the absolute right to adopt any rules and regulations it deems to be in the best interest of the Property and the Owners. By accepting a deed to any portion of the Property, all Owners hereby covenant that they will adhere to any such rules or regulations. In addition, the Board shall have the absolute right to hire or otherwise contract with independent third parties (including, without limitation, Declarant and/or any of its affiliates) to operate, maintain and manage the Common Lots, and to perform any other right, duty or obligation of the Board or Association.

Section 2. Easement. The Association and Board, and their agents and employees, shall have, and are hereby granted, a permanent easement of ingress and egress to enter upon each Lot for the purposes of performing repairs, maintenance and care of the Property as provided herein and for otherwise discharging the responsibilities and duties of the Association and Board as provided in this Declaration.

Section 3. Non-Waiver. The failure of the Board in any one or more instances to insist upon the strict performance of any of the terms or Restrictions of this Declaration, or of the Association's articles or bylaws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term or Restriction, but such term or Restriction shall remain in full force and effect. Failure by the Board to immediately enforce any such term or Restriction shall not be deemed a waiver of the right to do so thereafter, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed for the Board. This Section also extends to the Declarant exercising the powers of the Board during the initial period of operation of the Association.

Section 4. <u>Limitation of Liability</u>. The Board shall not be liable for any failure of any utility or other service to be obtained and paid for by the Board, or for injury or damage to a Person or property caused by the elements, or by another Owner or Person; or resulting from electricity, gas, water, rain, dust or sand which may lead or flow from pipes, drains, conduits, appliances, or equipment, or from articles used or stored by Owners on the Property or in Dwelling Units. No diminution or abatement of Assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or Improvements to the Property or from any action taken to comply with any law, ordinance, or order of a governmental authority. This Section shall not be interpreted to impose any form of liability by implication, and shall extend to and apply also for the protection of the Declarant exercising the powers of the Board during the initial period of operation of the Association and the Property.

Section 5. Indemnification of Board Members. Each member of the Board shall be indemnified by the Association and the Owners against all expenses (including attorneys' fees and costs), judgments, liabilities, fines and amounts paid in settlement, or actually and reasonably incurred, in connection with any action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by or against the Association or against the Board member and incurred by reason of the fact that he or she is or was a Board member, if such Board member acted in good faith and in a manner such Board member believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such Board member's conduct was unlawful. This Section shall extend to and apply also to the indemnification of the Declarant.

Section 6. Assumption of Risk; Waiver of Claims. All Owners and the Association, for themselves and their family members, invitees and licensees, shall store their property in and shall occupy and use their Lots, Dwelling Units, Common Lots and all other portions of the Property solely at their own risk. All Owners and the Association, for themselves and their family members, invitees and licensees, hereby waive any and all rights to recover claims against Declarant, and its respective members, managers, employees and agents, of every kind, including loss of life, personal or bodily injury, damage to equipment, fixtures or other property, arising, directly or indirectly, out of or from or on account of the occupancy and/or use of any portion of the Property by such indemnifying

Persons, or resulting from any present or future conditions or state of repair thereof, except to the extent such claims are directly caused by the gross negligence or willful misconduct of Declarant (or its respective members, managers, employees or agents) and are not covered by insurance required to be carried by such Persons pursuant to this Declaration. Declarant, and its respective members, manages, employees and agents, shall not be responsible or liable for damages to any Owners and/or the Association, or their respective family members, invitees and licensees, for any loss of life, bodily or personal injury, or damage to property that may be occasioned by or through the acts, omissions or negligence of any other Person.

## ARTICLE X: ARCHITECTURAL COMMITTEE

Section 1. Charter of Architectural Committee. The Association or Declarant is authorized to appoint an Architectural Committee. The charter of the Architectural Committee is to represent the collective interests of all Owners, and to help Owners wishing to make exterior Improvements. Each Owner is deemed to covenant and agree to be bound by the terms and conditions of this Declaration, including the standards and process of architectural review and approval. This Article does not apply to the Declarant.

Section 2. Architectural Control. No exterior Improvement, including, without limitation, Dwelling Unit, building, deck, patio, fence, landscaping, permanent exterior affixed decoration, exterior lighting or heating, cooling and other utility systems shall be altered, erected, or placed on the Property unless and until the building, plot or other plan has been reviewed in advance by the Architectural Committee and same has been approved in writing, and an appropriate building permit has been acquired, if required by law. The review and approval may include, without limitation, topography, finish, ground elevations, landscaping, lighting, drainage, color, material, design, conformity to other residences in the area, and architectural symmetry. Approval of the architectural design shall apply only to the exterior appearance of said Improvements. It shall not be the intent of these restrictions to control the interior layout or design of said structures. The Architectural Committee shall have the right to charge fees and/or collect deposits associated with plan review, inspections, re-inspections and any other facet of its duties and responsibilities as detailed in this Article.

Section 3. Review of Proposed Improvements. The Architectural Committee shall consider and act upon any and all proposals or plans and specifications submitted for its approval pursuant to this Declaration, and perform such other duties from time to time as may be assigned to it by the Board and/or Declarant, including the inspection of construction in progress. The Architectural Committee may condition its approval of proposals upon the agreement of the Owner to an additional Assessment associated with any exterior Improvement. The Architectural Committee may require submission of additional plans or review by a professional architect. The Architectural Committee may issue architectural guidelines and/or guidelines setting forth procedures for the submission of plans for approval. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevations, drawings and description of samples of exterior material and colors. Until receipt by the Architectural Committee of all required plans, specifications, fees and/or deposits the Architectural Committee may postpone its review. Decisions of the Architectural Committee and the reasons therefor shall be transmitted by the Architectural Committee, in writing, to the applicant at the address set forth in the application for approval within thirty (30) days after its receipt of all materials, fees and/or deposits required by the Architectural Committee. If the Architectural Committee has not accepted (either conditionally or otherwise) or rejected an Owner's application within this thirty (30) day period, such application shall be deemed approved.

- <u>Section 4</u>. <u>Inspection of Approved Improvements</u>. Inspection of work and correction of defects therein shall proceed as follows:
- (a) Upon completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the Architectural Committee.
- (b) Within sixty (60) days thereafter, the Architectural Committee, or its duly authorized representative, may inspect such Improvement. If the Architectural Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner and the Board in writing of such noncompliance within such sixty (60) day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.
- (c) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the Board may, at its option, exercise its right to enforce the provisions of this Declaration by proceeding at law or in equity on behalf of the Association and/or correcting such noncompliance itself, and may take such other actions as are appropriate, including the levy of a Limited Assessment against such Owner for reimbursement associated with correcting or removing the same pursuant to this Declaration.
- Section 5. Review of Unauthorized Improvements. The Architectural Committee may identify for review, Improvements which were not submitted to the approval process as follows:
- (a) The Architectural Committee or its duly authorized representative may inspect such unauthorized Improvement.
- (b) If the Architectural Committee finds that the work is in noncompliance with this Declaration and/or its standards or guidelines, it shall notify the Owner and the Board in writing of such noncompliance and its request to remedy such noncompliance.
- (c) If the Owner has not remedied such noncompliance within a period of not more than forty-five (45) days from his or her receipt of the noncompliance notice, then the Board may, at its option, exercise its right to enforce the provisions of this Declaration by a proceeding at law or in equity on behalf of the Association and/or correcting such noncompliance itself, and may take such other actions as are appropriate, including the levy of a Limited Assessment against such Owner for reimbursement of the costs associated with correcting or removing the same pursuant to this Declaration.

#### ARTICLE XI: GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, Association and/or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all terms and Restrictions now or hereafter imposed by the provisions of this Declaration. In addition, the Board, in its reasonable discretion, shall have the right to impose fines, in amounts as reasonably determined by the Board, upon any Owner, and such Owner's Lot, associated with any and all violations of this Declaration, any supplemental declaration, the Plat and/or any Association rules or regulations by such Owner or such Owner's family members, invitees or licensees. Notwithstanding any of the foregoing, the imposition, perfection, collection and/or enforcement of any fines must also comply with any and all requirements contained in the Idaho Code.

- Section 2. Severability. Invalidation of any one of these terms or Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.
- Section 3. Term and Amendment. The terms and Restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument approved in writing by Declarant (assuming Declarant owns one or more Lots) and the written consent of two-thirds (2/3) of the Class A Members. Amendments shall be in the form of supplemental declarations, and must be recorded in the records of Ada County, Idaho.

Notwithstanding the foregoing, unless the express written and recorded consent of Boise City has been obtained, this Declaration may not be amended, deleted, added to or terminated, with respect to the following: (i) any provision of this Declaration which has been required by Boise City in its approval of this Property, or which affects, recognizes, conveys and/or confers upon Boise City any easement, right or power, or requirement; (ii) any material provisions on easements, access, and/or the operation, repair, maintenance, repair and replacement of Common Lots, infrastructure and/or public works systems; and/or (iii) any dissolution or termination of the Association.

- Section 4. Annexation. Additional residential property may be annexed into the Property by Declarant or with the consent of two-thirds (2/3) of the Class A Members. Annexations shall be accomplished by supplemental declarations to this Declaration recorded in the records of Ada County, Idaho.
- Section 5. <u>Duration and Applicability to Successors</u>. The terms and Restrictions set forth in this Declaration shall run with the land and shall inure to the benefit of and be binding upon the Declarant, the Association and all Lot Owners and their successors in interest. **Declarant shall have the absolute** right, at its sole and absolute discretion, to assign any and all of Declarant's rights, duties and/or obligations under this Declaration to any third party. Any such assignment shall be in writing signed by both the assignor and assignee.
- Section 6. Attorneys Fees. In the event it shall become necessary for the Declarant, the Association or any Owner to retain legal counsel to enforce any term or Restriction contained within this Declaration, the prevailing party to any court proceeding shall be entitled to recover his/her/its reasonable attorneys' fees and costs of suit, including any bankruptcy, appeal or arbitration proceeding. Notwithstanding any other provision contained in this Declaration, the award of attorneys' fees and costs to the Association must comply with any and all requirements contained in the Idaho Code.
- Section 7. Governing Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Idaho.
- Section 8. Notices. Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by regular mail. If delivery is made personally, the notice shall be deemed properly delivered immediately upon delivery. If delivery is made by regular mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid. All notices shall be addressed to the Owner at the last known address on the Association's records or to the address of the Owner's Lot if no other address for notices has been given in writing by such Owner to the Association. Such address may be changed from time to time by notice in writing to the Association given in compliance with the foregoing.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hands as of the date first above written. Declarant: Charlesworth Properties, LLC, an Idaho limited liability company By: Mitchell S. Armuth, Authorized Agent STATE OF IDAHO ) ss. County of Ada This record was acknowledged before me on <u>January</u>, 2021, by Mitchell S. Armuth as an Authorized Agent of Charlesworth Properties, LLC. Signature of Notary Public My commission expires: 2-11,-202 **PENNY SMITH** 

COMMISSION #23655 NOTARY PUBLIC STATE OF IDAHO MY COMMISSION EXPIRES 02/16/2025

# **EXHIBIT A**LEGAL DESCRIPTION OF THE PROPERTY

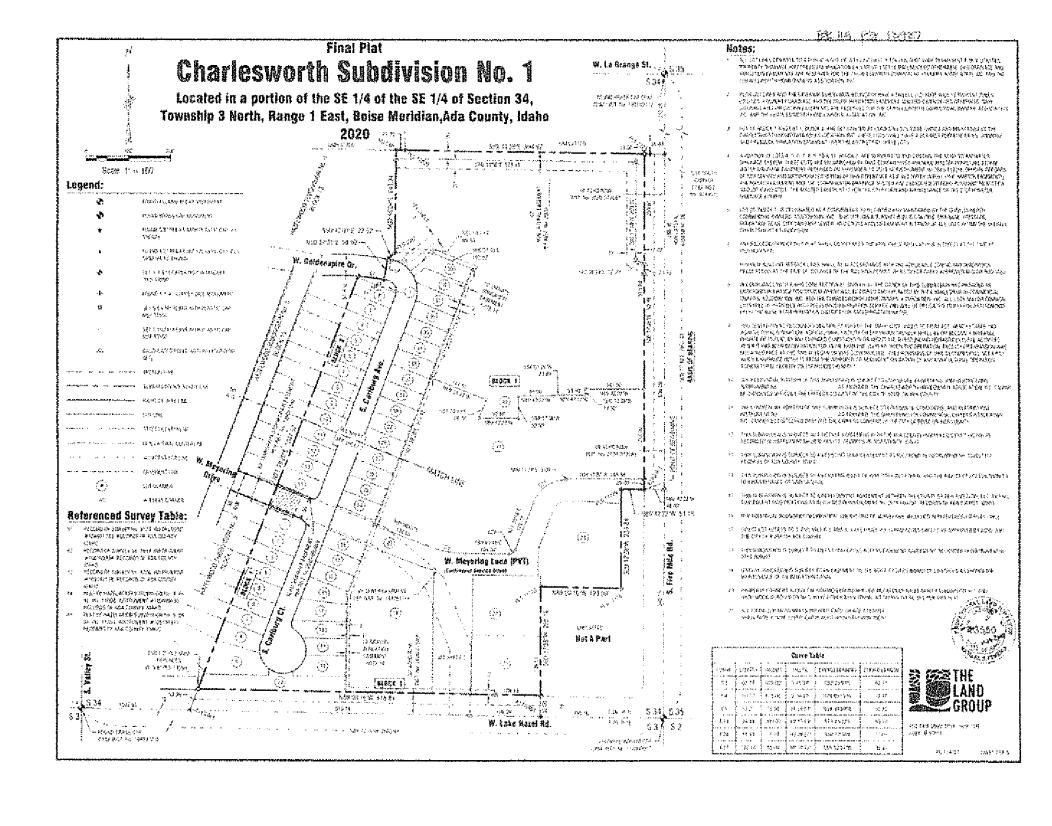
Lots 1 through 18 and 24 through 39, Block 1, and Lots 1 through 14, Block 2, Charlesworth Subdivision No. 1, according to the official plat thereof, filed in Book 119 of Plats at Pages 18487 through 18491, Records of Ada County, Idaho.

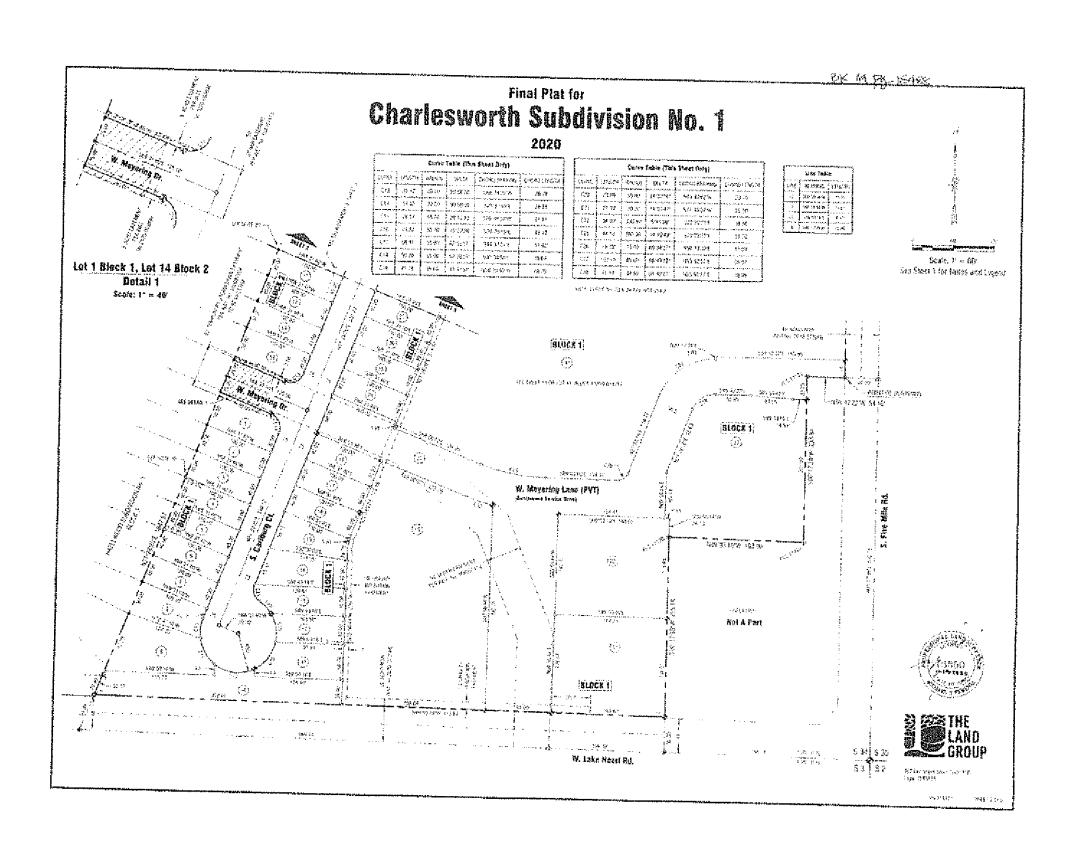
# **EXHIBIT B**LEGAL DESCRIPTION OF COMMON LOTS

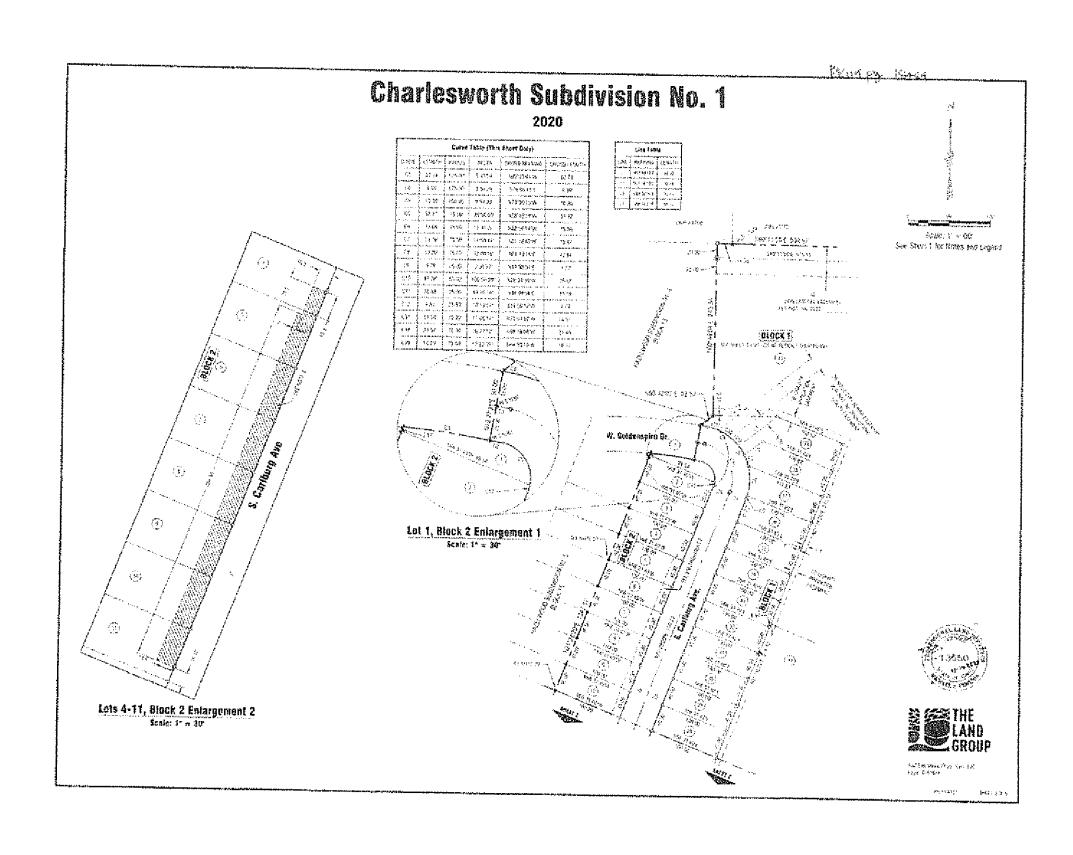
Lot 10, Block 1, and Lot 1, Block 2, Charlesworth Subdivision No. 1, according to the official plat thereof, filed in Book 119 of Plats at Pages 18487 through 18491, Records of Ada County, Idaho.

# **EXHIBIT C**CHARLESWORTH SUBDIVISION NO. 1 FINAL PLAT

See attached.







# Charlesworth Subdivision No. 1 2020

#### Cartificate of Owners

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#### Acknowledgment

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#### Certificate of Surveyor

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#### Acknowledgment

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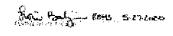


# Charlesworth Subdivision No. 1

#### Approval of Central District Health

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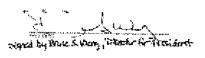




# Approval of Ada County Highway District

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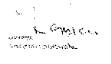


#### Approval of the City Engineer



Approval of Ada County Commissioners Committee of specific solvers on





#### Certificate of County Surveyor

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#### Certificate of Surveyor

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#### Certificate of the County Treasurer

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Elisabeth Matin Signed by Depudy: Illusandruillyall

#### **County Recorders Certificate**

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ELECTRONICALLY RECORDED DO NOT REMOVE THE COUNTY STAMPED FIRST PAGE AS IT IS NOW INCORPORATED AS PART OF THE ORIGINAL DOCUMENT.

ADA COUNTY RECORDER Phil McGrane
BOISE IDAHO Pgs=4 CHE FOWLER
PIONEER TITLE COMPANY OF ADA COUNTY

2021-142897 09/30/2021 02:09 PM \$19.00

**ACCOMMODATION** 

# FIRST AMENDMENT AND SUPPLEMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHARLESWORTH SUBDIVISION

(TOWNHOME RESIDENCES)

ADA COUNTY, IDAHO INSTRUMENT NUMBER 2021-017334

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# FIRST AMENDMENT AND SUPPLEMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHARLESWORTH SUBDIVISION

#### (Townhome Residences)

This First Amendment and Supplement to the Declaration Of Covenants, Conditions And Restrictions For Charlesworth Subdivision (this "First Amendment") is made this 20th day of Supplement ("Declarant").

#### ARTICLE I: AMENDMENT AND AUTHORITY

Section 1. Amendment To Declaration. This First Amendment is an amendment to that certain Declaration of Covenants, Conditions and Restrictions for Charlesworth Subdivision (Townhome Residences), recorded on February 2, 2021, as Ada County, Idaho Instrument Number 2021-017334 ("Declaration").

Section 2. Proper Authority to Amend. Pursuant to Article XI, Section 3 of the Declaration, the Declaration may be amended "by an instrument signed by Declarant (assuming Declarant owns one or more Lots) and the consent of two-thirds (2/3) of the Class A Members." Declarant is the original "Declarant" under the Declaration and, at the time of recording this First Amendment, owns all the Lots within the Charlesworth Subdivision. There are no Class A Members. Accordingly, Declarant has the proper authority to amend the Declaration as provided herein.

Section 3. <u>Definitions</u>. All capitalized terms not otherwise defined herein shall have the same meanings as are ascribed to such terms in the Declaration.

Section 4. Declaration In Full Force and Effect. As amended hereby, all terms and Restrictions of the Declaration shall remain in full force and effect.

## ARTICLE II: SPECIFIC AMENDMENT

Section I. <u>Dwelling Unit Leasing Activities</u>. Article IV, Section 6 of the Declaration is hereby amended and restated in its entirety to read as follows:

In order to develop and maintain leasing activity oversight through-out the Property, <u>all</u> Owners are required to supply the Association (and/or any property management company hired by the Association) all leasing activity information requested by either Party, including, without limitation, the names and contact information for all leasing Occupants and the terms of all leases.

All Owners leasing their Dwelling Units shall be responsible for making all Occupants aware of, and abide by, all of the terms and Restrictions contained herein, including, without limitation, a covenant in each lease whereby the leasing Occupants agree and acknowledge that they have received copies of the Declaration, any supplements thereto, and any rules or regulations adopted by the Board, and that they will abide by all terms and Restrictions contained therein.

Each Owner, by accepting a deed to any portion of the Property, agrees to abide by this Section and to execute, acknowledge and deliver to the Association (and/or any property management company hired by the Association) such other documents and instruments, and take such other actions, as either shall reasonably request, or as may be reasonably necessary, to consummate the intent of this Section.

# ARTICLE III: GENERAL PROVISIONS

Section 1. Term. The terms and Restrictions of this First Amendment shall run with and bind the land for as long as the Declaration runs with and binds the Property.

Section 2. <u>Duration and Applicability to Successors</u>. The terms and Restrictions set forth in this First Amendment shall run with the land and shall inure to the benefit of and be binding upon the Declarant, Association and all Owners, and their successors in interest.

Section 3. Governing Law. This First Amendment shall be construed and interpreted in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, the undersigned has duly executed this First Amendment as of the date first above written.

Declarant:

Charlesworth Properties, LLC, an Idaho limited liability company

By:

Mitchell S. Armuth, Authorized Agent

STATE OF IDAHO	)
	) ss.
County of Ada	)

This record was acknowledged before me on <u>Juphanber 30</u>, 2021, by Mitchell S. Armuth as an Authorized Agent of Charlesworth Properties IIIC

Signature of Notary Public

My commission expires: 8-16-2025

PENNY SMITH
COMMISSION #23855
NOTARY PUBLIC
STATE OF IDAHO
MY COMMISSION EXPIRES 02/16/2025

**FIRST AMENDMENT - 2**