

## Kena Champion

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**From:** Charles Wadams  
**Sent:** Wednesday, March 1, 2023 11:06 AM  
**To:** JoAnn Butler  
**Cc:** planning; Jenah Thornborrow; Kena Champion; Joanna Ortega  
**Subject:** RE: SARFY2023-0001

I am going through my emails and forwarding public records regarding the River Club Specific Area Plan SAPFY2023-0001 to the Development Services Department for inclusion in the public record file. The application indicates it was submitted on December 19, 2022 so I am forwarding emails since that time for inclusion in the public file.

Unless a legal question, all written submittals regarding the River Club Specific Area Plan SAPFY2023-0001 should be sent to: [planning@gardencityidaho.org](mailto:planning@gardencityidaho.org).

For complete transparency, even public legal correspondence will be included in the public record for SAPFY2023-0001.

Thank you for your submittal.

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**From:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>  
**Sent:** Tuesday, February 28, 2023 9:01 PM  
**To:** JoAnn Butler <[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)>  
**Subject:** Re: SARFY2023-0001

Thank you.

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**From:** JoAnn Butler <[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)>  
**Sent:** Tuesday, February 28, 2023 7:23:00 PM  
**To:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>  
**Subject:** RE: SARFY2023-0001

Thank you, Charlie. I appreciate the position between the legislative and judicial processes. My oversight for just referencing the legislative hearing regarding statements by John Livingston.

However, the quasi-judicial record has similar information already in the record. David Leroy states in a letter in the city's quasi-judicial file as follows:



COMMENTS TO THE GARDEN CITY PLANNING AND ZONING COMMISSION  
ON THE RIVER CLUB SAP APPLICATION

Work Session - February 15, 2023

I.

INTRODUCTION

This office has been retained to represent a group of interested and affected River Club - Plantation Subdivision area residents numbering approximately 100 people, organized under the name "Preserve Plantation 23". (hereinafter "Objectors") The group website is [preserveplantatation23@gmail.com](mailto:preserveplantatation23@gmail.com) and its contact leaders are Dr. John and Lynn Livingston of 6273 North Fair Oaks Place, Bob and Reci Schmellick of 6253 North Fair Oaks and Dave and Jeanne Patterson of 6326 North Charleston Place, Garden City, Idaho, 83703

Hence, as the Applicant prepares for the upcoming public hearings, I need to repeat:

Both the Applicant and the City have the fundamental right to understand who opposes the application, and where they live, so that the Applicant we can properly rebut testimony in public hearings. The City (and the Applicant) also have the fundamental right to have a complete and correct record of those in opposition should legal standing become an issue in connection a judicial review.

We are asking the City Council to have those who state they are in opposition make a complete record of the names and addresses of those they say they represent. We are asking the City to obtain this information from those who have already publicly testified to such so the Applicant and City are prepared for future public hearings.

Thank you.



JoAnn C. Butler  
Butler Spink, LLP  
967 E. Parkcenter Blvd. #313  
Boise, ID 83706  
[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)

[www.butlerspink.com](http://www.butlerspink.com)

Direct (Cell): 208-867-1082

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**From:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>

**Sent:** Tuesday, February 28, 2023 6:48 PM

**To:** JoAnn Butler <[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)>

**Subject:** RE: SARFY2023-0001

Happy to talk about this when appropriate.

As you know, the parking code amendment is a legislative matter, and the River Club application is a quasi-judicial matter.

In legislative matters, due process protections do not apply. However, in quasi-judicial matters, due process does apply.

I am cognizant that if we are not careful, the quasi-judicial matter could get commingled with the legislative matter, which would be problematic. That is why I did a "point of order" on January 13, 2023 and was on standby to do another "point of order" last night. I didn't think anybody crossed the line last night because it was legislative, but nobody will not get away with unverified statements during the quasi-judicial proceeding.

During the quasi-judicial matter, the mayor and I will ensure that due process is followed, allowed, and protected. We will make a complete record of the names and addresses of anybody that says they represent other people, so the Applicant and City are prepared.

Thank you.

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---

**From:** JoAnn Butler <[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)>

**Sent:** Tuesday, February 28, 2023 3:30 PM

**To:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>

**Subject:** RE: SARFY2023-0001

Thanks, Charlie.



JoAnn C. Butler  
Butler Spink, LLP  
967 E. Parkcenter Blvd. #313  
Boise, ID 83706  
[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)

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**From:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>

**Sent:** Tuesday, February 28, 2023 2:14 PM

**To:** JoAnn Butler <[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)>

**Subject:** RE: SARFY2023-0001

Understood. Let me look into it.

Thanks.

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**From:** JoAnn Butler <[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)>

**Sent:** Tuesday, February 28, 2023 12:18 PM

**To:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>

**Subject:** SARFY2023-0001

Charlie, the Applicant has a very large concern. We believe this is a concern the City must share and that the City can address.

At recent public hearings (both the City Council hearing on February 13<sup>th</sup> and again last night), individuals from the Plantation neighborhood opposed to the proposed Residences at River Club told the City Council that they represent many people in opposition. In February, John Livingston told the Council that he represented over 100 people and, when asked by a Council member, stated that all of those he represented endorsed everything he had to say. Last night, in an exchange between Council members, James Page indicated to Theresa Jorgenson that his understanding was that 100 individuals were represented by Dr. Livingston.

To begin, there is no evidence the Applicant or The River Club has that indicates such opposition to the application.

Both the Applicant and the City have the fundamental right to understand who opposes the application, and where they live, so that the Applicant we can properly rebut testimony in public hearings. The City (and the Applicant) also have the fundamental right to have a complete and correct record of those in opposition should legal standing become an issue in connection a judicial review.

We are asking the City Council to have those who state they are in opposition make a complete record of the names and addresses of those they say they represent. We are asking the City to obtain this information from those who have already publicly testified to such so the Applicant and City are prepared for future public hearings.

Please give me a call at your convenience to talk further.



JoAnn C. Butler  
Butler Spink, LLP  
967 E. Parkcenter Blvd. #313  
Boise, ID 83706  
[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)

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## Kena Champion

---

**From:** Charles Wadams  
**Sent:** Wednesday, March 1, 2023 11:04 AM  
**To:** JoAnn Butler  
**Cc:** planning; Jenah Thornborrow; Kena Champion; Joanna Ortega  
**Subject:** RE: SAPFY2023-0001/Residences at River Club

I am going through my emails and forwarding public records regarding the River Club Specific Area Plan SAPFY2023-0001 to the Development Services Department for inclusion in the public record file. The application indicates it was submitted on December 19, 2022 so I am forwarding emails since that time for inclusion in the public file.

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**From:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>  
**Sent:** Monday, February 27, 2023 8:37 AM  
**To:** JoAnn Butler <[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)>  
**Cc:** Jenah Thornborrow <[jthorn@GARDENCITYIDAHO.ORG](mailto:jthorn@GARDENCITYIDAHO.ORG)>  
**Subject:** Re: SAPFY2023-0001/Residences at River Club

Yes. Jenah is probably the best person to answer your questions. I can check my calendar when I'm in the office this afternoon if needed. Thank you.

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**From:** JoAnn Butler <[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)>  
**Sent:** Monday, February 27, 2023 8:07:56 AM  
**To:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>  
**Subject:** RE: SAPFY2023-0001/Residences at River Club

Charlie, thank you. I had this email drafted ready to hit send when I received your message. Please confirm that I should contact Jenah directly.

The Applicant has several questions about the email message received below and hope that you can help us understand how best to work with the City in processing the Application referenced above.

Would you please call me at your earliest convenience? Let me know if you would like me to schedule a Zoom meeting.

To help our conversation:

- There is a meeting scheduled with the Design Review Consultants for 3-6-23. The DR Consultants have provided recommendations that are very helpful. The Applicant is planning to provide a response to the DR recommendations on 3-6 prior to the Planning Official providing its recommendation and prior to the PZC hearing. We believe the Applicant's response will better inform the PZC (and the public) prior to the PZC hearing.
  - It is not clear to the Applicant that the meeting is still scheduled. Can you please advise?
- The email below indicates the work session on 3-15 at the PZC is cancelled leaving only the public hearing on 3-15. The Applicant was looking forward to a work session to provide the factual information in connection with a complicated project. We will abide with the City's decision.
  - However, the Applicant will request a deferral of the PZC hearing to give the Applicant the time to prepare its response to the Design Review recommendations and the many public comments that have been received by the City.
    - The next PZC hearing date is April 19<sup>th</sup>. Unfortunately, I will be out of the Country. Might it be possible to have the hearing the following week in April?
    - Also, it strikes the Applicant that, between the Master Plan and the SAP District Code, holding two PZC hearings will better assist the PZC and public. There is a lot of information to digest.
      - At the first meeting, an overview of the Master Plan and DR recommendations (and the Applicants response the DR recommendations).
      - At the second meeting, an overview of the SAP District Code, which is written to support the Master Plan.
        - Remembering back to when the SAP Section of Garden City Code was amended, it took at least two hearings to review the Code with the PZC. Hence, the suggestion that we review the Master Plan in one hearing and the SAP Code in a second hearing.
          - As a side note, with the designers presenting the Master Plan at the PZC's 4-19 hearing, I (along with the designers) would then be available to review the SAP Code with the PZC at its May 17<sup>th</sup> meeting.
  - Finally, if not during our conversation today, can we please confirm over the next several days that all notice provisions are being (or will be) met?



JoAnn C. Butler  
Butler Spink, LLP  
967 E. Parkcenter Blvd. #313  
Boise, ID 83706  
[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)

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**From:** planning <[planning@GARDENCITYIDAHO.ORG](mailto:planning@GARDENCITYIDAHO.ORG)>

**Sent:** Friday, February 24, 2023 12:26 PM

**Subject:** SAPFY2023-0001 Application Update

You are receiving this email because you are noted as an interested party for the application SAPFY2023-0001.

During the February 15, 2023, Planning and Zoning Commission meeting, the Planning and Zoning Commission requested to notice a special meeting for a work session. The intent of the work session was to be an open meeting to be included within the SAPFY2023-0001 record that would provide a better understand of the process and the components of the application proposal. The special meeting was to be noticed for March 15, 2023, to coincide with the March 15, 2023, SAPFY2023-0001 hearing. At the February 15, 2023, meeting it was decided that the public hearing would remain as scheduled, but would likely be continued at the March 15, 2023, hearing to a date certain of April 19, 2023.

The requested work session will not occur. The hearing will commence at the March 15, 2023, meeting as noticed.

Thank you,



Development Services Department, **City of Garden City**

p: 208-472-2921

a: 6015 Glenwood Street, Garden City, ID 83714

w: <https://gardencityidaho.org/>



---

**From:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>

**Sent:** Monday, February 27, 2023 7:42 AM

**To:** JoAnn Butler <[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)>

**Subject:** RE: SAPFY2023-0001/Residences at River Club

JoAnn:

I was out of town Friday but now I'm back.

Please contact Jenah and she will explain.

The information that would have been conveyed in the second work session will simply be moved into the regular meeting as precursor to the opening of the hearing process. Jenah can walk you through the procedural information.

Thanks, Charlie.

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## Kena Champion

---

**From:** Jenah Thornborrow  
**Sent:** Monday, April 10, 2023 5:22 PM  
**To:** planning  
**Subject:** FW: CONCERN ABOUT "EX PARTE" CONTACT WITH STAFF TO ALLEGEDLY, WITHOUT NOTICE, CHANGING PUBLICLY ADOPTED P&ZC WORK SESSION SCHEDULE

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**From:** Charles Wadams <cwadams@GARDENCITYIDAHO.ORG>  
**Sent:** Thursday, February 23, 2023 2:35 PM  
**To:** Dave Leroy <dave@dleroy.com>  
**Cc:** Jenah Thornborrow <jthorn@GARDENCITYIDAHO.ORG>  
**Subject:** RE: CONCERN ABOUT "EX PARTE" CONTACT WITH STAFF TO ALLEGEDLY, WITHOUT NOTICE, CHANGING PUBLICLY ADOPTED P&ZC WORK SESSION SCHEDULE

Dave:

The below dates I provided you may be incorrect.

Jenah will let both of us know.

Thanks.

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---

**From:** Charles Wadams  
**Sent:** Thursday, February 23, 2023 1:32 PM  
**To:** Dave Leroy <[dave@dleroy.com](mailto:dave@dleroy.com)>  
**Subject:** RE: CONCERN ABOUT "EX PARTE" CONTACT WITH STAFF TO ALLEGEDLY, WITHOUT NOTICE, CHANGING PUBLICLY ADOPTED P&ZC WORK SESSION SCHEDULE

Dave:

I'm still looking into this *ex parte* business. However, I don't think the public hearings have been moved. I think since December, the website has said this:

### SAPFY2023-0001 River Club Specific Area Plan- Pending

Trevor Nicoll requesting a Specific Area Plan for 22.68 acres located at 6515 W. State Street; Ada County Parcel #S0630223350 and S0630212910.

Work session in front of the Planning and Zoning Commission: March 15, 2023.

City Council work session: March 13, 2023

Planning and Zoning Commission hearing: April 19th.

City Council hearing: May 8th.

<https://gardencityidaho.org/index.asp?SEC=CD798263-D49B-46F8-A21F-462D23D61DA8>

So the public hearings have been scheduled for April 19 and May 8, 2023 for several months. I'm assuming those dates were properly noticed, and could verify if needed. All your written materials will be in the record for the public hearings on April 19 and May 8, and everybody will be able to testify and present at those times. If there are a lot of people who want to testify, the public hearings may also be started and continued to future dates.

Because of the confusion, one or both of the upcoming work sessions may be vacated. While the intent to explain this new process is good, the work sessions may be more trouble than they're worth. Perhaps explaining the new process should occur at the opening of the public hearings and then have the presentations by everyone else.

I'm out of the office until Monday and will follow up at that time.

Thanks, Charlie.

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**From:** Dave Leroy <[dave@dleroy.com](mailto:dave@dleroy.com)>

**Sent:** Wednesday, February 22, 2023 6:05 PM

**To:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>

**Subject:** Re: CONCERN ABOUT "EX PARTE" CONTACT WITH STAFF TO ALLEGEDLY, WITHOUT NOTICE, CHANGING PUBLICLY ADOPTED P&ZC WORK SESSION SCHEDULE

.....APPRECIATED.....DAVE

---

**From:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>

**Sent:** Wednesday, February 22, 2023 6:01 PM

**To:** Dave Leroy <[dave@dleroy.com](mailto:dave@dleroy.com)>

**Subject:** Re: CONCERN ABOUT "EX PARTE" CONTACT WITH STAFF TO ALLEGEDLY, WITHOUT NOTICE, CHANGING PUBLICLY ADOPTED P&ZC WORK SESSION SCHEDULE

I will look into it. Thanks for bringing it to my attention.

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**From:** Dave Leroy <[dave@dleroy.com](mailto:dave@dleroy.com)>  
**Sent:** Wednesday, February 22, 2023 5:54:54 PM  
**To:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>  
**Subject:** CONCERN ABOUT "EX PARTE" CONTACT WITH STAFF TO ALLEGEDLY, WITHOUT NOTICE, CHANGING PUBLICLY ADOPTED P&ZC WORK SESSION SCHEDULE

DEAR CHARLIE: I HEARD A DISTRESSING RUMOR TODAY, WHICH I HOPE WAS NOT TRUE. WE WERE ALL PRESENT AT THE P & Z COMMISSION WORK SESSION ON FEBRUARY 15 AT WHICH, IN OPEN PUBLIC SESSION, THE COMMISSION BY SEVERAL OF ITS MEMBERS, ANNOUNCED THEIR OWN NEED FOR AN ADDITIONAL DETAILED WORK SESSION BRIEFING. THEN THEY OPENLY AND I BELIEVE UNANIMOUSLY SET THAT SESSION FOR THEIR NEXT REGULARLY SCHEDULED MARCH MEETING, THEREBY MOVING THE PUBLIC HEARING ON ADOPTION BACK TO APRIL. OUR GROUP SAW, HEARD, DISSEMINATED AND IS NOW RELYING ON THAT SCHEDULE. HOWEVER, THAT NIGHT AS THE GAVEL DROPPED, I ALSO PERSONALLY OBSERVED ALL OF THE DEVELOPER-APPLICANT PRINCIPAL-CONSULTANTS PRESENT THAT EVENING RUSH OVER TO THE SIDE OF THE CHAMBER AND BEGIN EARNESTLY AND EMPHATICALLY TO CONFER WITH YOUR CITY PLANNERS PRESENT. THAT CONVERSATION SEEMED INTENSE AND LASTED AT LEAST TEN MINUTES. NOW TODAY, I HEAR FROM A CITY BACK-CHANNEL SOURCE THAT LINCOLN HAS PREVAILED ON YOUR STAFF TO PREVAIL ON THE COMMISSION TO HOLD THIS NEXT WORK SESSION IN THE MINUTES IMMEDIATELY PRECEDING THE FINAL VOTE WHICH WILL NOT BE MOVED TIL APRIL. IF SO, WE HAVE MIS-NOTICED OUR PEOPLE. IF SO, THE COMMISSION WILL HAVE NO TIME TO CONSIDER OUR WRITTEN SUBMISSIONS AFTER BEING THUSLY FULLY INFORMED. IF SO, WE INTERESTED PARTIES WILL HAVE NO TIME TO CONSIDER WHAT WE HEAR AT THE NEXT WORK SESSION AND DULY PREPARE AND REACT TO SUCH A BRIEFING, EITHER IN WRITING OR ORALLY. I HOPE THAT MY INFORMATION IS MISINFORMATION. IF IT IS NOT, THEN IS THIS NOT EXACTLY THE MISCHIEF AND PROCEDURAL FLAW WHICH SHOULD BE AVOIDED AT ALL COSTS IN A MATTER THIS SENSITIVE, INVASIVE AND IMPORTANT? MANY THANKS. I HOPE THAT YOU CAN RESEARCH THIS AND ALLAY MY CONCERNS.....REGARDS, DAVE

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**To:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>  
**Subject:** SAPFY2023-0001/Residences at River Club

Charlie, will you please give me a call tomorrow to discuss the cancellation of the work sessions due to an ex parte consideration?

The work sessions offered a way to ensure the facts of a complex project was conveyed to the decision-making bodies.

In any event, thank you in advance for giving me a call; appreciated.



JoAnn C. Butler  
Butler Spink, LLP  
967 E. Parkcenter Blvd. #313  
Boise, ID 83706  
[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)

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## Kena Champion

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**Sent:** Wednesday, March 1, 2023 11:00 AM  
**To:** Dave Leroy  
**Cc:** planning; Jenah Thornborrow; Kena Champion; Joanna Ortega  
**Subject:** RE: CONCERN ABOUT "EX PARTE" CONTACT WITH STAFF TO ALLEGEDLY, WITHOUT NOTICE, CHANGING PUBLICLY ADOPTED P&ZC WORK SESSION SCHEDULE

I am going through my emails and forwarding public records regarding the River Club Specific Area Plan SAPFY2023-0001 to the Development Services Department for inclusion in the public record file. The application indicates it was submitted on December 19, 2022 so I am forwarding emails since that time for inclusion in the public file.

Unless a legal question, all written submittals regarding the River Club Specific Area Plan SAPFY2023-0001 should be sent to: [planning@gardencityidaho.org](mailto:planning@gardencityidaho.org).

For complete transparency, even public legal correspondence will be included in the public record for SAPFY2023-0001.

Thank you for your submittal.

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---

**From:** Charles Wadams  
**Sent:** Monday, February 27, 2023 2:57 PM  
**To:** Dave Leroy <[dave@dleroy.com](mailto:dave@dleroy.com)>  
**Subject:** RE: CONCERN ABOUT "EX PARTE" CONTACT WITH STAFF TO ALLEGEDLY, WITHOUT NOTICE, CHANGING PUBLICLY ADOPTED P&ZC WORK SESSION SCHEDULE

Wanted to verify you received the below email notice. Thanks.

**From:** planning <[planning@GARDENCITYIDAHO.ORG](mailto:planning@GARDENCITYIDAHO.ORG)>  
**Sent:** Friday, February 24, 2023 12:26 PM  
**Subject:** SAPFY2023-0001 Application Update

You are receiving this email because you are noted as an interested party for the application SAPFY2023-0001.

During the February 15, 2023, Planning and Zoning Commission meeting, the Planning and Zoning Commission requested to notice a special meeting for a work session. The intent of the work session was to be an open meeting to be included within the SAPFY2023-0001 record that would provide a better understand of the process and the components of the application proposal. The special meeting was to be noticed for March 15, 2023, to coincide with the March 15, 2023, SAPFY2023-0001 hearing. At the February 15, 2023, meeting it was decided that the public hearing would remain as scheduled, but would likely be continued at the March 15, 2023, hearing to a date certain of April 19, 2023.

The requested work session will not occur. The hearing will commence at the March 15, 2023, meeting as noticed.

Thank you,



Development Services Department, **City of Garden City**

p: 208-472-2921  
a: 6015 Glenwood Street, Garden City, ID 83714  
w: <https://gardencityidaho.org/>



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---

**From:** Dave Leroy <[dave@dleroy.com](mailto:dave@dleroy.com)>

**Sent:** Thursday, February 23, 2023 2:23 PM

**To:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>

**Subject:** Re: CONCERN ABOUT "EX PARTE" CONTACT WITH STAFF TO ALLEGEDLY, WITHOUT NOTICE, CHANGING PUBLICLY ADOPTED P&ZC WORK SESSION SCHEDULE

Thanks, Charlie..... I am hoping the City Hal wag was merely stirring up mischief..... Appreciate the report and any updates which you learn..... Dave in Salt Lake City

Sent from my iPhone

On Feb 23, 2023, at 1:31 PM, Charles Wadams <[cwadams@gardencityidaho.org](mailto:cwadams@gardencityidaho.org)> wrote:

Dave:

I'm still looking into this *ex parte* business. However, I don't think the public hearings have been moved. I think since December, the website has said this:

### SAPFY2023-0001 River Club Specific Area Plan- Pending

Trevor Nicoll requesting a Specific Area Plan for 22.68 acres located at 6515 W. State Street; Ada County Parcel #S0630223350 and S0630212910.

Work session in front of the Planning and Zoning Commission: March 15, 2023.

City Council work session: March 13, 2023

Planning and Zoning Commission hearing: April 19th.

City Council hearing: May 8th.

<https://gardencityidaho.org/index.asp?SEC=CD798263-D49B-46F8-A21F-462D23D61DA8>.

So the public hearings have been scheduled for April 19 and May 8, 2023 for several months. I'm assuming those dates were properly noticed, and could verify if needed. All your written materials will be in the record for the public hearings on April 19 and May 8, and everybody will be able to testify and present at those times. If there are a lot of people who want to testify, the public hearings may also be started and continued to future dates.

Because of the confusion, one or both of the upcoming work sessions may be vacated. While the intent to explain this new process is good, the work sessions may be more trouble than they're worth. Perhaps explaining the new process should occur at the opening of the public hearings and then have the presentations by everyone else.

I'm out of the office until Monday and will follow up at that time.

Thanks, Charlie.

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**From:** Dave Leroy <[dave@dleroy.com](mailto:dave@dleroy.com)>

**Sent:** Wednesday, February 22, 2023 6:05 PM

**To:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>

**Subject:** Re: CONCERN ABOUT "EX PARTE" CONTACT WITH STAFF TO ALLEGEDLY, WITHOUT NOTICE, CHANGING PUBLICLY ADOPTED P&ZC WORK SESSION SCHEDULE

.....APPRECIATED.....DAVE

---

**From:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>

**Sent:** Wednesday, February 22, 2023 6:01 PM

**To:** Dave Leroy <[dave@dleroy.com](mailto:dave@dleroy.com)>

**Subject:** Re: CONCERN ABOUT "EX PARTE" CONTACT WITH STAFF TO ALLEGEDLY, WITHOUT NOTICE, CHANGING PUBLICLY ADOPTED P&ZC WORK SESSION SCHEDULE

I will look into it. Thanks for bringing it to my attention.

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**From:** Dave Leroy <[dave@dleroy.com](mailto:dave@dleroy.com)>  
**Sent:** Wednesday, February 22, 2023 5:54:54 PM  
**To:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>  
**Subject:** CONCERN ABOUT "EX PARTE" CONTACT WITH STAFF TO ALLEGEDLY, WITHOUT NOTICE, CHANGING PUBLICLY ADOPTED P&ZC WORK SESSION SCHEDULE

DEAR CHARLIE: I HEARD A DISTRESSING RUMOR TODAY, WHICH I HOPE WAS NOT TRUE. WE WERE ALL PRESENT AT THE P & Z COMMISSION WORK SESSION ON FEBRUARY 15 AT WHICH, IN OPEN PUBLIC SESSION, THE COMMISSION BY SEVERAL OF ITS MEMBERS, ANNOUNCED THEIR OWN NEED FOR AN ADDITIONAL DETAILED WORK SESSION BRIEFING. THEN THEY OPENLY AND I BELIEVE UNANIMOUSLY SET THAT SESSION FOR THEIR NEXT REGULARLY SCHEDULED MARCH MEETING, THEREBY MOVING THE PUBLIC HEARING ON ADOPTION BACK TO APRIL. OUR GROUP SAW, HEARD, DISSEMINATED AND IS NOW RELYING ON THAT SCHEDULE. HOWEVER, THAT NIGHT AS THE GAVEL DROPPED, I ALSO PERSONALLY OBSERVED ALL OF THE DEVELOPER-APPLICANT PRINCIPAL-CONSULTANTS PRESENT THAT EVENING RUSH OVER TO THE SIDE OF THE CHAMBER AND BEGIN EARNESTLY AND EMPHATICALLY TO CONFER WITH YOUR CITY PLANNERS PRESENT. THAT CONVERSATION SEEMED INTENSE AND LASTED AT LEAST TEN MINUTES. NOW TODAY, I HEAR FROM A CITY BACK-CHANNEL SOURCE THAT LINCOLN HAS PREVAILED ON YOUR STAFF TO PREVAIL ON THE COMMISSION TO HOLD THIS NEXT WORK SESSION IN THE MINUTES IMMEDIATELY PRECEDING THE FINAL VOTE WHICH WILL NOT BE MOVED TIL APRIL. IF SO, WE HAVE MIS-NOTICED OUR PEOPLE. IF SO, THE COMMISSION WILL HAVE NO TIME TO CONSIDER OUR WRITTEN SUBMISSIONS AFTER BEING THUSLY FULLY INFORMED. IF SO, WE INTERESTED PARTIES WILL HAVE NO TIME TO CONSIDER WHAT WE HEAR AT THE NEXT WORK SESSION AND DULY PREPARE AND REACT TO SUCH A BRIEFING, EITHER IN WRITING OR ORALLY. I HOPE THAT MY INFORMATION IS MISINFORMATION. IF IT IS NOT, THEN IS THIS NOT EXACTLY THE MISCHIEF AND PROCEDURAL FLAW WHICH SHOULD BE AVOIDED AT ALL COSTS IN A MATTER THIS SENSITIVE, INVASIVE AND IMPORTANT? MANY THANKS. I HOPE THAT YOU CAN RESEARCH THIS AND ALLAY MY CONCERNS.....REGARDS, DAVE

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## Kena Champion

---

**From:** Charles Wadams  
**Sent:** Wednesday, March 1, 2023 11:03 AM  
**To:** JoAnn Butler  
**Cc:** planning; Jenah Thornborrow; Kena Champion; Joanna Ortega  
**Subject:** RE: Residences at Riverclub application Public comment opportunity

I am going through my emails and forwarding public records regarding the River Club Specific Area Plan SAPFY2023-0001 to the Development Services Department for inclusion in the public record file. The application indicates it was submitted on December 19, 2022 so I am forwarding emails since that time for inclusion in the public file.

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For complete transparency, even public legal correspondence will be included in the public record for SAPFY2023-0001.

Thank you for your submittal.

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---

**From:** Charles Wadams  
**Sent:** Wednesday, February 22, 2023 5:17 PM  
**To:** JoAnn Butler <jbutler@butlerspink.com>  
**Subject:** RE: Residences at Riverclub application Public comment opportunity

Thanks.

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---

**From:** JoAnn Butler <jbutler@butlerspink.com>  
**Sent:** Wednesday, February 22, 2023 5:16 PM  
**To:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>  
**Subject:** RE: Residences at Riverclub application Public comment opportunity

Charlie, it may be that a title company did not find a separate easement document in connection with Lot 99, but the owners association would have taken title (on 10-11-94, the date of the quitclaim deed) subject to documents recorded prior including the plat that created Lot 99 (attached), which was recorded on 9-25-91 and calls out Lot 99 as "a public bike path easement."

Please call if you have any questions.



JoAnn C. Butler  
Butler Spink, LLP  
967 E. Parkcenter Blvd. #313  
Boise, ID 83706  
[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)

[www.butlerspink.com](http://www.butlerspink.com)

Direct (Cell): 208-867-1082

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**From:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>  
**Sent:** Wednesday, February 22, 2023 4:38 PM  
**To:** JoAnn Butler <[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)>  
**Subject:** FW: Residences at Riverclub application Public comment opportunity

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**From:** Bruce Moore <[bwmoore237@gmail.com](mailto:bwmoore237@gmail.com)>  
**Sent:** Wednesday, February 22, 2023 11:11 AM  
**To:** Ron Wilper <[rjwilper@gmail.com](mailto:rjwilper@gmail.com)>  
**Cc:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>; planning <[planning@GARDENCITYIDAHO.ORG](mailto:planning@GARDENCITYIDAHO.ORG)>; Jenah Thornborrow <[jthorn@GARDENCITYIDAHO.ORG](mailto:jthorn@GARDENCITYIDAHO.ORG)>; Legal Intern 2 <[legalintern2@GARDENCITYIDAHO.ORG](mailto:legalintern2@GARDENCITYIDAHO.ORG)>  
**Subject:** Re: Residences at Riverclub application Public comment opportunity

Ron:

In response to yours of this date, I am enclosing a copy of the deed to our path.  
The title company found no easements of record against the property.

Bruce

---

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## Kena Champion

---

**From:** Charles Wadams  
**Sent:** Wednesday, February 22, 2023 4:35 PM  
**To:** Bruce Moore; Ron Wilper  
**Cc:** planning; Jenah Thornborrow; Legal Intern 2  
**Subject:** RE: Residences at Riverclub application Public comment opportunity

Thank you.

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---

**From:** Bruce Moore <bwmoore237@gmail.com>  
**Sent:** Wednesday, February 22, 2023 11:11 AM  
**To:** Ron Wilper <rjwilper@gmail.com>  
**Cc:** Charles Wadams <cwadams@GARDENCITYIDAHO.ORG>; planning <planning@GARDENCITYIDAHO.ORG>; Jenah Thornborrow <jthorn@GARDENCITYIDAHO.ORG>; Legal Intern 2 <legalintern2@GARDENCITYIDAHO.ORG>  
**Subject:** Re: Residences at Riverclub application Public comment opportunity

Ron:

In response to yours of this date, I am enclosing a copy of the deed to our path.  
The title company found no easements of record against the property.

Bruce

---

Total Control Panel

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To: <a href="mailto:cwadams@gardencityidaho.org">cwadams@gardencityidaho.org</a>	Message Score: 1	High (60): <span style="color: green;">Pass</span>
From: <a href="mailto:bwmoore237@gmail.com">bwmoore237@gmail.com</a>	My Spam Blocking Level: Custom	Medium (75): <span style="color: green;">Pass</span>
	<a href="#">Block</a> this sender	Low (90): <span style="color: green;">Pass</span>
	<a href="#">Block</a> gmail.com	Custom (39): <span style="color: green;">Pass</span>

*This message was delivered because the content filter score did not exceed your filter level.*

On Feb 22, 2023, at 8:10 AM, Ron Wilper <[rjwilper@gmail.com](mailto:rjwilper@gmail.com)> wrote:

Bruce:  
Please see this email from the Garden City attorney. I told him I would ask you if you have given the City a copy of our deed.  
Thanks.  
Ron

Sent from my iPad

Begin forwarded message:

**From:** Charles Wadams <[cwadams@gardencityidaho.org](mailto:cwadams@gardencityidaho.org)>  
**Date:** February 21, 2023 at 2:46:57 PM MST  
**To:** Ron Wilper <[rjwilper@gmail.com](mailto:rjwilper@gmail.com)>  
**Cc:** planning <[planning@gardencityidaho.org](mailto:planning@gardencityidaho.org)>, Jenah Thornborrow <[jthorn@gardencityidaho.org](mailto:jthorn@gardencityidaho.org)>, Legal Intern 2 <[legalintern2@gardencityidaho.org](mailto:legalintern2@gardencityidaho.org)>  
**Subject:** RE: Residences at Riverclub application Public comment opportunity

Mr. Wilper:

As you know, these emails are public records so they will be included in the council packet for this application. So perhaps you would prefer a meeting or telephone call in the future?

That being said, my legal intern, Spencer Guier, is looking into your concerns (CCd). He may reach out to you if he has questions.

Do you know if Bruce Moore has sent the city a copy of your recorded deed? I don't think I have seen it.

Thank you.

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**From:** Ron Wilper <[rjwilper@gmail.com](mailto:rjwilper@gmail.com)>  
**Sent:** Thursday, January 19, 2023 11:13 AM  
**To:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>  
**Cc:** planning <[planning@GARDENCITYIDAHO.ORG](mailto:planning@GARDENCITYIDAHO.ORG)>; Jenah Thornborrow <[jthorn@GARDENCITYIDAHO.ORG](mailto:jthorn@GARDENCITYIDAHO.ORG)>  
**Subject:** Re: Residences at Riverclub application Public comment opportunity

Thank you. I have been cc'ing Bob and Bruce on our correspondence. I think Bruce Moore is going to send you a copy of our recorded deed.

RW

Sent from my iPad

On Jan 19, 2023, at 11:07 AM, Charles Wadams <[cwadams@gardencityidaho.org](mailto:cwadams@gardencityidaho.org)> wrote:

Thank you, sir.

Let me see what I can find out.

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**From:** Ron Wilper <[riwilper@gmail.com](mailto:riwilper@gmail.com)>  
**Sent:** Wednesday, January 18, 2023 9:23 PM  
**To:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>  
**Cc:** planning <[planning@GARDENCITYIDAHO.ORG](mailto:planning@GARDENCITYIDAHO.ORG)>; Jenah Thornborrow <[jthorn@GARDENCITYIDAHO.ORG](mailto:jthorn@GARDENCITYIDAHO.ORG)>  
**Subject:** Re: Residences at Riverclub application Public comment opportunity

Thanks Charles, but I was not referring to the walkway on my lot. The application references a ten foot wide “public easement” from North Plantation River Drive to the Greenbelt “between two lots”. That ten foot wide LOT is deeded to our HOA and is not a public easement, unless a note on a plat map can create an easement.

I've asked our HOA president, Bruce Moore, and HOA member Bob Hamlin to provide you a copy of our deed.

This response may be duplicative of my first attempt to reply. If so, I apologize for any confusion. I was trying to send my reply and your email to Bruce and Bob and I fear both disappeared.

Thanks for your continued attention to this issue. It is of great interest to our association members.

Please feel free to call me if you have any questions.

Sincerely,  
Ron Wilper  
(830-2320)

Sent from my iPhone

On Jan 18, 2023, at 1:56 PM, Charles Wadams <[cwadams@gardencityidaho.org](mailto:cwadams@gardencityidaho.org)> wrote:

I have shared your concerns with JoAnn Butler.

According to Bob Taunton, the public access to the greenbelt is lot 99 on the recorded Plat (see Plat note #5). Reportedly, they are not describing the 10' HOA easement on your lot, and that is a different easement. It is represented that the attached map indicates that they are not proposing any access across your lot. I'm sure that JoAnn would be happy to discuss further with you.

Thank you.

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**From:** Charles Wadams  
**Sent:** Tuesday, January 10, 2023 4:47 PM  
**To:** Ronald Wilper <[rjwilper@gmail.com](mailto:rjwilper@gmail.com)>  
**Cc:** planning <[planning@GARDENCITYIDAHO.ORG](mailto:planning@GARDENCITYIDAHO.ORG)>;  
Jenah Thornborrow <[jthorn@GARDENCITYIDAHO.ORG](mailto:jthorn@GARDENCITYIDAHO.ORG)>  
**Subject:** FW: Residences at Riverclub application Public comment opportunity

Mr. Wilper:

I am forwarding your comments to the Development Services Director for inclusion in the River Club file. Thank you for your submittal.

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**From:** [rjwilper@gmail.com](mailto:rjwilper@gmail.com) <[rjwilper@gmail.com](mailto:rjwilper@gmail.com)>  
**Sent:** Monday, January 9, 2023 3:23 PM  
**To:** LegalStaff <[legalstaff@GARDENCITYIDAHO.ORG](mailto:legalstaff@GARDENCITYIDAHO.ORG)>  
**Cc:** [robertcarolhamlin@gmail.com](mailto:robertcarolhamlin@gmail.com); [bwmoore237@gmail.com](mailto:bwmoore237@gmail.com); [riverphilip@gmail.com](mailto:riverphilip@gmail.com)  
**Subject:** Residences at Riverclub application Public comment opportunity

Dear City Attorney-Garden City:

I am a homeowner in the Plantation subdivision and a member of the Investors Plantation on the River HOA. I live at 3411 N. Plantation River Drive.

I have briefly reviewed the River Club SAP Application-12212022.

Under Tab 3 Required Findings Page 10, wherein the applicant makes representations relevant to Trail System Through the Residences at River Club, I noticed a substantial error. The applicant claims there is a "10 foot public easement between 2 lots" on Plantation River Drive. There is no such public easement.

The applicant points to a 10 foot wide lot owned in fee simple by the Investors Plantation on the River HOA.

The Ada County Highway District had recently come to believe our lot was a public easement and placed signs on the public road directing the public to access the River through our lot.

When HOA officials presented them with our deed to the lot, ACHD agreed it is not a public easement.

Would you please let me know how I can call this misrepresentation to the attention of P and Z or the City Council?

Thanks.

My phone number is (208)830-2320.

Ron Wilper

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Message Score: 1  
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Medium (75): Pass  
Low (90): Pass  
Custom (39): Pass

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1792001472

## QUIT CLAIM DEED

For Value Received

PLANTATION PARTNERS ONE, an Idaho Limited Partnership

do hereby convey, release, remise and forever quit claim unto  
 HOMEOWNER'S  
 INVESTORS PLANTATION ON THE RIVER ASSOCIATION, INC.  
 6477 FAIRVIEW AVE., BOISE, ID 83704

the following described premises, to-wit:

Lots 99 and 102 in Block 1 of INVESTORS PLANTATION ON THE RIVER, according  
 to the official plat thereof, filed in Book 59 of Plats at Pages 5702 and  
 5703, Official Records of Ada County, Idaho.

94090894

FIRST AMERICAN TITLE CO.

ADA CO. RECORDER  
 J. DAVID NAVARRO  
 BOISE ID

'94 OCT 11 PM 3 52

FEE 300 C. J. Deaper  
 RECORDED AT THE REQUEST OF

together with their appurtenances.

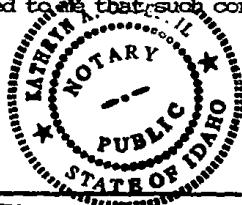
Dated: October 10<sup>th</sup>, 1994

JOHN A. ARANT, President

Winnie Morton  
WINNIE MORTON, Secretary

STATE OF IDAHO )  
 : ss  
 COUNTY OF ADA )

On this 10<sup>th</sup> day of October, 1994, before me, a notary public in and for said State, personally appeared JOHN A. ARANT and WINNIE MORTON, known to me to be the president and secretary of FRAMEWORK, INC., an Idaho corporation, said corporation being known to me to be the general partner in the partnership of PLANTATION PARTNERS ONE, an Idaho limited partnership, that executed the within instrument, and acknowledged to me that such corporation executed the same in said partnership name.



Kathryn A. Clappie  
 Notary Public of Idaho  
 Residing at Boise, Idaho  
 Commission Expires: 5-27-98

First American Title Company of Idaho

Ron Bush  
3695 N. Gramacy Lane  
Garden City, ID 83703  
February 14, 2023

HAND-DELIVERED

Lisa M. Leiby  
Garden City Clerk  
6015 Glenwood St.  
Garden City, ID 83714

Re: Citizen comment in opposition to SAP Application of Lincoln Property Company  
SAPFY2023-0001

Dear Ms. Leiby:

This letter is submitted with a written comment in opposition to the SAP Application of Lincoln Property Company, referenced above. There is an accompanying appendix, also submitted. Please place these documents into the decision record for this Application, including on the City's website.

There is a work session scheduled for Wednesday evening, February 15th. Your assistance in distributing these materials today to the Planning department staff who are working on the application, and to the members of the Planning and Zoning Commission would be very much appreciated.

Thank you.

Most sincerely,



Ronald E. Bush

Encl. (as stated)

## **Garden City citizen comment in opposition to Specific Area Plan Application (Garden City file No. SAPFY2023-0001 -- Lincoln Property Company)**

Comment submitted by: Ronald E. Bush  
Date: February 14, 2023

This is a summary of documents related to the ownership of the golf course property that is the subject of Specific Area Plan Application SAPFY 2023-0001 (the "SAP" or "Application"). It is submitted in conjunction with and to supplement and support other written testimony I will be submitting in opposition to that proposal. Also provided are appendices, consisting of various public records obtained from the Ada County Recorder pertaining to such ownership, along with other supporting material.

Sometime shortly after the 2018 sale of what was then known as Plantation Golf Course sale, an out-of-state developer named Will Gustafson told people that he was the new owner of Plantation Golf Course (now called River Golf Club). Earlier in time, he had purchased other golf courses for development purposes, through limited liability companies, including doing so in Sparks, Nevada (the "D'Andrea" course) which was followed with delinquent taxes, municipal code violations, and a shuttered golf course with fairways left to grow weeds and create fire hazards. Another course, in Chula Vista (the "Salt Creek" course) closed and went into bankruptcy.<sup>1</sup>

Hence, Mr. Gustafson's appearance in Garden City has raised concern from many about his intentions for the golf course and what the future may hold. The information which follows is relevant to his involvement with the golf course and directly relevant to Garden City's consideration of the Specific Area Application. The information is drawn from public records pertaining to the property and other documents referenced in the summary.

1. Glass Creek, LLC sold the golf course to Bay Point Advisors, an Atlanta, Georgia real estate hedge fund, *not* to Lincoln Property Company. Bay Point Advisors later sold the golf course to Lincoln Property Company.

The SAP Applicant is not Mr. Gustafson or any entity to which he is connected. Rather, it is Lincoln Property Company ("LPC"), based in Dallas, Texas. LPC is an enormous, multi-family housing, development and

<sup>1</sup> See Appendix 1, containing newspaper articles regarding the D'Andrea Country Club in Sparks, Nevada, and the Salt Creek course in Chula Vista, California.

management company, the owner of 54,118 apartment units in the United States.<sup>2</sup> Here in Garden City, it is acting as "*LB River Club Owner LLC*," one of a bushel basket of limited liability companies connected to the golf course property.

Even though Lincoln Property Company is based in Texas, "*LB River Club Owner LLC*" is a Delaware limited liability company. Delaware limited liability companies are not required to disclose information about the members of the company to the State of Delaware, nor the managers, so the exact ownership of the current owner cannot be learned from Delaware. However, *LB River Club Owner LLC* did file a "Foreign Registration Statement" with the Idaho Secretary of State, which required that it identify the address of its principal office (in Dallas, Texas) and the address of its domestic principal office (in Wilmington, Delaware). In Idaho, the foreign registration statement also requires identification of "at least one governor [of the entity]." Here, "*LB River Club Owner LLC*" listed as its governor a different, albeit similarly named, entity: "*LB River Club JV LLC*" with the same Dallas address.

The Idaho "Foreign Registration Statement" was signed by "Leigh Ann Everett." Ms. Everett identified herself as the "Assistant Manager of *Non-Member Manager, Inc.*, [the] Manager of "*LO River Club LLC*" [the] "Operating Member of LB River Club JV, the Member Manager."<sup>3</sup> She is not the person who signed the SAP Application for LB River Club Owner LLC or any of the other recorded real property related documents for LB River Club Owner LLC.

From the beginning, Mr. Gustafson has held himself out as an (or the) owner of the golf course. Even as recently as early December of 2022, Mr. Gustafson allowed himself to be described (in a letter sent to River Club members) as having purchased the golf course in 2018, which stated "[r]umors have been circulating around the ownership of The River Club. *As you are aware, Will Gustafson the owner of River Club Boise, LLC who purchased the Club 4 years ago this month* [December 2022], selected Lincoln Property Company as his development partner...."<sup>4</sup> (Emphasis supplied.)

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<sup>2</sup> A 2022 press release from LPC trumpeted the fact that it had been named "the second largest multifamily [housing] manager" in the country, the "20th Largest Apartment Owner" in the country, and -- as of the time of the press release, owned 54,118 units in the continental U.S. See: <https://www.globenewswire.com/en/news-release/2022/04/19/2424591/0/en/Lincoln-Property-Company-Ranked-Second-Largest-Multifamily-Manager-By-2022-NMHC-50.html>

<sup>3</sup> Appendix 2.

<sup>4</sup> Appendix 3.

But Gustafson (even assuming he is a member of River Club Boise, LLC) was not -- based on any available public information -- an owner of Glass Creek, LLC. Moreover, River Club Boise, LLC did not purchase the golf course in December 2018. (River Club Boise, LLC did not exist in 2018.)

Ada County Recorder's office real property records show that in 2018 "AGC Realty LLC" owned the golf course before it was sold in late 2018, after which Mr. Gustafson was introducing himself as the owner.<sup>5</sup> In 2019, the Ada County Assessor's records identified Glass Creek LLC as the owner. What Glass Creek, LLC paid for the golf course is not publicly known.

Glass Creek LLC is a California limited liability company. Public records in California and Idaho (where Glass Creek LLC filed a Foreign Registration Statement) identify its member/managers as Michael Hair, Sr. and Michael Hair, Jr. The Hairs, who are father and son, are developers with offices in Bakersfield, California. They did not involve themselves in any public way regarding the golf course until after it was pointed out to Garden City officials that Mr. Gustafson was representing himself as having authority to act on behalf of Glass Creek LLC, despite not offering any evidence of such authority and despite not being identified in any Idaho or California public record as being a member or manager of Glass Creek LLC.<sup>6</sup>

## 2. The Sale by Glass Creek LLC to BPCP River Club LLC.

At some point in 2021 Mr. Gustafson and the Hairs had a parting of the ways. On November 3, 2021, a grant deed was recorded in Ada County transferring ownership of the golf course from Glass Creek LLC to *BPCP River Club LLC*, a Georgia limited liability company connected to Bay Point Advisors, an Atlanta based real estate hedge fund. The deed was signed by

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<sup>5</sup> Ada County Recorder's records show a Special Warranty Deed recorded on December 24, 2018, transferring ownership of the golf course from AGC Realty LLC, a Delaware limited liability company, to Glass Creek, LLC, a California limited liability company. It carries Recording No. 2018-120827.

<sup>6</sup> See Appendix 4. Glass Creek LLC has previously sought to subdivide a different portion of the golf course into three lots adjacent to the Boise River, named the "Glass Island Subdivision." (Garden City SUBFY2020-06.) A letter sent to the Planning and Zoning Commission about that application highlighted open questions of legal significance over who the owner of the property was and who had proper authority to sign documents of significant importance in the development process. The letter also highlights critically important issues about the location of the floodplain, which Glass Creek LLC later acknowledged had been incorrectly described in the application but admitted the flaws only after neighbors had gone to great expense and effort to demonstrate the serious floodplain misstatements in the application. The application has been sitting without any final approvals for nearly three years. In the meantime, it has been marketed -- as is, without final approvals and without site work -- for \$2,000,000.00.

both father and son Michael Hair as managing members of Glass Creek LLC, but not by Mr. Gustafson. The new owner was "BPCP River Club LLC, c/o Bay Point Advisors, a Delaware limited liability company" as its manager. It was signed by Greg Jacobs, identified as "its Manager." This transfer appears to include the entire golf course property, including the Clubhouse and other structures. (This also includes the area which was the subject of a still pending application for a subdivision on the southern edge of the golf course abutting the Boise River, referred to as the Glass Island Subdivision. See footnote 6, *supra*, for additional details on this subdivision.)

The price paid by Bay Point Advisors for the golf course also is not publicly known, but it is of interest because Mr. Gustafson frequently says that he has spent large amounts of money on the golf course. In doing so, he makes no distinction as to whether the expenditures are for improving the golf course (such as improvements he has made to the clubhouse), or whether they include money spent on preparing to develop some or all the golf course property. (For instance, Mr. Gustafson hired a golf course architect who has drawn various plans for reconfiguring the golf course so as reduce the size of the golf course to make more land available for development. Such expenses are not "improvements" to the golf course, nor are expenses for surveys used for development purposes, or legal and consultant fees connected to the development activities.) He also made no known public mention that the golf course had been sold by Glass Creek LLC, in November of 2021 and that the sale was to Bay Point Advisors, not Lincoln Property Company. Likely, until they read this information, those who are closely following Mr. Gustafson's intentions for the golf course had no idea that as of November 3, 2021, Ada County public records show that neither Mr. Gustafson nor Glass Creek LLC had any ownership in the golf course.

The 2021 purchaser -- Bay Point Advisors -- appears to be a private, real estate hedge fund for high wealth ("accredited") investors and institutional investors. According to its website, its "approach to value investing" is to "search for mispricing" using "creative structuring [to] provide ... significant one-way optionality, enabling us to maintain exposure to most or all of the upside of an investment with far less exposure to the downside. Our nimble investment process lets us act rapidly; we can swiftly close transactions of virtually any type or size. We can take control of a business or hold a minority stake."<sup>7</sup>

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<sup>7</sup> See Appendix 5, consisting of information taken from the websites of "Private Fund Data" and of Bay Point Advisors.

Bay Point Advisors did just that -- purchasing and then rapidly selling the golf course just seven months later. In a **grant deed recorded on June 22, 2022, ownership of the golf course was transferred from BPCP River Club, LLC to LB River Club Owner LLC, a Delaware limited liability company.** Here again, the price paid for the golf course is not known, but "LB River Club Owner LLC," controlled by Lincoln Property Company, is the same entity which filed the SAP application for the immense multi-family development that is the great bulk of the SAP application. The application cover page to identifies the property owner and applicant as Lincoln Property Company and offers up two names -- one of a Trever Nicoll, at a Boise address, and then a Jenny Pham, at a Wilshire Boulevard address in Los Angeles. The cover page of the planning submittal form, however, lists Trever Nicoll as the applicant, but with different person -- Patrick Gilligan -- as the "authorized signatory" for the "Property Owner" LB River Club Owner LLC, both at a Portland, Oregon address.

Mr. Gilligan is also identified as the "authorized signatory for LB River Club Owner LLC" in the "Affidavit of Legal Interest" which is required as part of the Garden City application materials. Although LB River Club Owner LLC is identified as the owner of the golf course in the Ada County Assessor's website records, Mr. Gilligan is demonstrably not the "primary owner, registered agent, or otherwise have legal authority to sign on behalf of the primary owner." That person, as described earlier, is "Leigh Ann Everett," who signed the Idaho Foreign Registration. Ms. Everett identified herself as the "Assistant Manager of *Non-Member Manager, Inc.*, [the] Manager of "*LO River Club LLC*" [the] "Operating Member of LB River Club JV, the Member Manager." (See Appendix 2.)

In the lattice work of limited liability companies which Lincoln Property Company brought to Idaho, and which it has presented as its operative legal structure for purposes of doing business in Idaho, Mr. Gilligan is *not* authorized to sign the Affidavit of Legal Interest. This is a material shortcoming, because the document is both an affidavit and an indemnity/hold harmless promise, intended to protect the City of Garden City and its employees "from any claim or liability resulting from any dispute as to the statements contained [in the SAP application] or as to the ownership of the property which is the subject of the application." Because of this fatal flaw alone, the application does not meet Garden City requirements and should be rejected.

**3. Lincoln Property Company brings in yet another company -- Brasa Real Estate LLC, and a \$18.5 Million Dollar Loan to LB River Club Owner LLC from Northwest Bank.**

The Grant Deed from Bay Point Advisors' entity ("BPCP River Club, LLC") to the Lincoln Property Company entity ("LB River Club Owner LLC") contains this information at the top of the cover page, which directs the Ada County Recorder's office to send the recorded deed not to Lincoln Property Company, but instead to this company:

RECORDING REQUESTED BY AND WHEN RECORDED  
RETURN TO:

LB River Club Owner LLC  
c/o Brasa Real Estate LLC  
2029 Century Park East, Suite 2070  
Los Angeles, CA 90067  
Attention: Matt Milich

Despite this direct connection to the real property, Brasa Real Estate LLC is not mentioned in the Application's "Tab 2 -- Contact Information: Applicant and Consultants." Brasa is a California limited liability company formed in 2021 and connected to Brasa Capital Management. Brasa Capital Management describes itself as "an opportunistic real estate manager based in Los Angeles, CA" with "flexibility to invest across the capital stack of middle market commercial real estate assets" while "focused on the repositioning, re-development, and development of diversified product types in the middle market." Brasa "manages both discretionary commingled funds and separate accounts on behalf of institutional and high-net worth investors." The person identified on the recorded deed -- Matt Milich -- is the "Director of Acquisitions and Capital Markets." Brasa seeks higher investment returns, involving greater risk, privately managed for "accredited investors" (who are generally individuals of high net-worth) and institutional investors such as pension funds.<sup>8</sup>

Brasa Capital Management has some connection to the proposed development, obviously, but it is not entirely clear. It may be an ownership interest, or some right of development, and perhaps it already exists or will attach if the development is approved. Why else would Lincoln Property

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<sup>8</sup> Information found at [www.brasacap.com](http://www.brasacap.com)

Company have its recorded deed of title ownership to the golf course property sent to Brasa Capital Management to its Century Park Los Angeles address?

The answer to this question may be in a Deed of Trust document found in the Ada County property records, directly tied to a \$18.5 million dollar loan made to LB River Club LLC by Northwest Bank and secured by the golf course. That Deed of Trust is discussed below. Based on the information described here and further set out below, the involvement of Brasa Capital Management has important implications for any decision made upon the pending SAP application, *especially because Mr. Gustafson has been engaged in a public relations campaign trying to garner support for the SAP application in which (a) he claims an ownership interest in the golf course, and (b) he has expressly and publicly told adjacent homeowners and the members of the golf course that if the pending SAP development application is not approved, he will "have no choice" but to sell the entire golf course to a developer.* The purpose of such statements is clear -- he wants those people and others who might be unhappy about the proposed development to support it instead, or to back off because it might, he implies, be worse for them if they don't.

Paradoxically, Mr. Gustafson, of course, *is* a developer. But he may want to sell other pieces of the golf course, or perhaps at some later date the remainder of the golf course. He may not want to develop it himself. Why else would he threaten to sell it to a developer, when he could simply threaten to develop it himself?<sup>9</sup> Or he might have in mind the use of the SAP to greatly increase the potential development value of the course (much greater than the existing R-2 zoning because of the prospect of building yet more multi-family housing under SAP zoning) and then claim a conservation reserve easement based on the greater value, as a tax shelter.<sup>10</sup>

To the extent that Gustafson has any ownership in the golf course property (whether certain or contingent in any way) and to the extent that Brasa Capital Management has any ownership interest (whether certain or contingent in any way), that information must be requested and obtained from the Applicant by the Planning and Zoning Commission and the City

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<sup>9</sup> As described earlier, he has attempted to sell the Glass Island Subdivision project as a development project, for someone else to complete.

<sup>10</sup> This has been pursued multiple times as to golf courses across the country, for remarkably large tax benefits. Consider this recent USA Today article:

<https://golfweek.usatoday.com/2022/11/15/golf-course-champions-retreat-tax-deduction-southern-fox-squirrel/> and this Brookings Institution report:

<https://www.irs.gov/pub/irs-soi/17resconlooney.pdf>

Council before further consideration is given to a decision made upon the pending development. Moreover, if some other person or entity has any ownership interest (whether certain or contingent in any way), then Garden City also should insist upon having that information from the Applicant before consideration of the pending SAP application goes any further.

In the meantime, this much is known. Mr. Gustafson has set out to develop the only golf course in Garden City, along with one of the largest multi-housing development and management companies in the United States, based in Dallas, Texas (Lincoln Property Company); and a private money "opportunistic real estate manager based in Los Angeles" which "manages both discretionary commingled funds and separate accounts on behalf of institutional and high-net worth investors" (Brasa Capital Management). If approved, there will be an enormous amount of development money to be made (over 800 residential rental units to begin), with far-flung, out-of-state, developers and institutional and high-worth investors to be enriched. Then there will remain more property for more development on the shrinking golf course, with yet more money to be made. Or perhaps, alternatively, a lucrative monetizing of potential development value by dedicating a conservation easement across the property not developed.

**4. Northwest Bank's \$18.5 Million Dollar Loan to LB River Club Owner LLC, and its related Deed of Trust, UCC Financing Statement and the Assignment of Leases and Rents.**

These documents are further illustration of the byzantine nature of the ownership (past, present, and future) of the golf course property and the questions it raises about the pending application and the intentions of Mr. Gustafson for the golf course.

**(a) An \$18.5 Million Promissory Note and the Deed of Trust.**

On November 9, 2022, "LB River Club Owner LLC," granted a Deed of Trust to Northwest Bank to secure a promissory note, also dated November 9, 2022, in the amount of \$18,500,000.00, due on November 5, 2025. The Deed of Trust was recorded in the Recorder's office on November 14, 2022.<sup>11</sup>The Deed of Trust is 41 pages long, including a legal description.<sup>12</sup>

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<sup>11</sup> A copy of the Deed of Trust, obtained from the Ada County Recorder, is contained at Appendix 6.

<sup>12</sup> The legal description for the first time in the series of documents relating to the various transfers of the golf course property, appears to exclude the real property that is the subject of the "Glass Island Subdivision," previously described. See footnote 7.

Everything that possibly could be conceived of as a property interest in or relating to the golf course property is included and conveyed by LB River Club Owner LLC, as grantor, to First American Title Company, as Trustee, for the benefit of the lender Northwest Bank, the Beneficiary. Included in that long laundry list are the following provisions (found at pages 1-2 of the document), which describe various types of tangible and intangible assets which secure, for the benefit of Northwest Bank, the debt created by the \$18.5 million loan. Individually, and collectively, they raise yet more questions about "who owns what" when it comes to the SAP development application and the golf course:<sup>13</sup>

Some of those questions are raised by references in the Deed of Trust to a lease identified as the "River Club Lease" and the other identified as the "Brasa Lease." In turn, each of those references refer to definitions of the "Development Project" found in each such lease. (See sections 1.18.2 and 1.23.9-2, set out below.) It is entirely possible that the parties who have been identified in this summary have plans to develop more of the golf course property than is contained in the SAP application. Certainly, if the SAP application were to be approved, they might argue that the SAP designation applies to the entirety of the golf course property, or that even if that is not clear (it is ambiguous in the SAP application as to whether that is their intention), they would argue that any decision made on the pending application should apply in the same manner as to any other parcel of the golf course proposed for development. The relevance of those questions to the current application could not be starker. Therefore, the City must require the Applicant to produce those leases and the Development Agreement and make those part of the public record so that those who are supporting or opposing (or considering what their position might be) have that information available for their use in deciding what position to take.

[from pages 1-2]

*[A]ll rents, issues, profits, royalties, income and other benefits derived from the Property, subject to the right, power and authority hereinafter given to the Grantor to collect and apply such rents;*

*[A]ll leasehold estate, right, title and interest of Grantor in and to all leases or subleases covering the Property or any portion thereof,*

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<sup>13</sup> The italicized emphases in these provisions, which are pulled from the Deed of Trust, has been placed to highlight provisions of particular significance for the City's consideration of the pending SAP application.

now or hereafter existing or entered into, *including but not limited to, that certain Lease dated June 22, 2022, in which Grantor is the landlord and River Club Boise, LLC, a Delaware limited liability company (the "River Club Tenant") is the tenant, and all amendments and extensions of the same (the "River Club Lease")* and all right, title and interest of Grantor thereunder, including without limitation all rents, revenue, income, issues, profits, proceeds, cash or security deposits, advance rentals and deposits or payments of a similar nature;

*[A]ll right, title and interest of Grantor in and to all options to purchase or lease the property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired by Grantor;*

\* \* \*

*[A]ny right or interest that Grantor now has or may hereafter acquire in all general intangibles relating to the development or use of the Property, including but not limited to all governmental permits, approvals or authorizations relating to construction on the Property, or relating to the formation or approval of the improvements on the Property, all names under or by which the Property or any present or future improvements on the Property may at any time be operated or known, and all rights to carry on business under such names or any variant thereof, and all trademarks, service marks, franchise rights and goodwill in any way relating to the Property;*

[A]ll the right, title and interest of Grantor in and to all sales contracts of any nature whatsoever now or hereafter executed covering any portion of the Property, together with any and all modifications thereof and also together with all deposits or payments or payments made in connection therewith;

\* \* \*

[From page 7]

1.08.6      *Beneficiary consents to Grantor having all real property and personal property taxes paid by the River Club Tenant pursuant to the River Club Lease....*

[From page 10]

1.18 Waste, Zoning, Subdivision.

*1.18.2 Except for in connection with the Development Project (as defined in the River Club Lease), without the prior written consent of Beneficiary, Grant will not seek, make or consent to any change in the zoning or conditions of use of the Trust Estate that would materially impair the ability of Grantor to construct Improvements on the Trust Estate. Grantor will comply with and make all payments required under the provisions of any covenants, conditions or restrictions that have been or will be recorded affecting the Trust Estate, including but not limited to those contained in any declaration and constituent documents of any condominium, cooperative or planned development project on the Trust Estate. Grantor will comply with all existing and future requirements of all governmental authorities having jurisdiction over the Trust Estate. Grant hereby represents, warrants and covenants that the Trust Estate is in compliance with all applicable laws, ordinances, codes and regulations.*

[From pages 14-15]

of 1.23.8 Grantor represents and warrants that, to Grantor's current, actual knowledge, any and all Leases covering all or a portion the Trust Property are in full force and effect and Grantor and the lessees thereof are in all material respects in good standing thereunder and that neither Grantor nor such lessees are in default with respect to any provisions thereof.

\* \* \*

1.23.9-2 *Except for in connection with the Development Project (as defined in the Brasa Lease), Grantor will not consent to, cause or allow any material modification or alteration of any of the terms (including, without limitation, the amount of rent), conditions or covenants of the long term Leases or any long term Lease hereafter effected, or the termination of any such Lease, without the prior written consent of Beneficiary, which will not be unreasonably withheld, conditioned or delayed provided, however, that Grantor may,*

without Beneficiary's consent, modify or alter any of the terms, conditions and covenants of any of such Leases so long as such modification or alteration does not result in a (i) surrender or termination of such Lease or (ii) materially decrease in the amount of any payments due under such Lease or (iii) materially change in the size of the leased premises or (iv) materially decrease in the term of such Lease.

\* \* \*

[From page 25]

4.04 Notices.<sup>14</sup> Whenever Beneficiary, Grantor or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by registered or certified mail, postage prepaid, return receipt requested....

4.04.1 *Grantor requests any notice of default or notice of sale required by law be mailed to it at its address set forth above, with a copy to BREF2 River Club LLC, c/o Brasa Capital Management, 2029 Century Park East, Suite 2070, Los Angeles, California 90071, Attn: Matt Milich.*

\* \* \*

(b) **The UCC-Financing Statement.**

A UCC-Financing Statement is a means of memorializing a creditor's security interest in property owned by a debtor. Among other things, it describes the nature of the property (which can be real property, personal property or intangible assets) and the details of the security interest held by the creditor. It serves to put the world on notice of the security interest and

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<sup>14</sup> Here again, as with the recording and delivery instructions contained on the Grant Deed to LB River Club Owner LLC, the address used is not an address obviously connected to Lincoln Property Company, but rather the address of Brasa Capital Management in Los Angeles, yet more evidence of the direct involvement of Brasa in the proposed development and perhaps more. Moreover, the entity identified -- BREF2 River Club LLC -- is yet another, previously unidentified, limited liability company directly connected to the SAP application because of this reference in the "Notice" provision of the Deed of Trust

to place a "time filed" priority for the creditor against other creditors of the same debtor.

Northwest Bank, which made the \$18.5 million loan to LB River Club Owner LLC and took a Deed of Trust from LB River Club Owner LLC as security, also filed a UCC-Financing Statement in Idaho (as the "Secured Party") to protect its interests, specifically with the Ada County Recorder's office, on November 14, 2022. (No. 2022-092952.) It identified the collateral and the real estate subject to the UCC-Financing Statement, which included every conceivable personal and intangible asset of the River Club golf course, *i.e.*, "all of Debtor's [LB River Club Owner LLC] right, title and interest in the intangible personal property appurtenant to the ownership, operation and use of the Golf Course leased to River Club Boise, LLC ("Golf Course")" and all of "Debtor's right, title and interest...to the extent transferable and appurtenant to the ownership, operation and use of the Golf Course and the personal property," followed by a long list and multiple paragraphs of description of the types of such rights subject to the UCC-Financing Statement. Included are all the assets of the golf course, and the golf course "as a going concern."

**(c) The "Assignment of Leases and Rents."**

Also on November 14, 2022, a document titled "Assignment of Leases and Rents" was recorded with the Ada County Recorder's office. Signature dated November 9, 2022 (the same date as the promissory note and the Deed of Trust), this document also was entered into by LB River Club Owner LLC (as the Assignor, or the entity making the assignment) and Northwest Bank (as the Assignee, or the entity receiving the assignment).<sup>15</sup>

On pages 1-2 of the agreement, there is specific reference to LB River Club Owner LLC as the Assignor, acting as the "owner in fee simple" of the golf course real property (excepting the Glass Island proposed subdivision lots) and the buildings and other improvements located on the golf course. Further, LB River Club Owner LLC assigns and transfers to Northwest Bank all right, title and interest LB River Club Owner LLC to "all Leases and Rents" relating to the golf course, including that "certain Lease dated June 22, 2022, between Assignor, as landlord, and River Club Boise, LLC (the "Tenant") as tenant pertaining to the Property *and that certain Put and Option Agreement and Joint Escrow Instructions between Assignor and*

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<sup>15</sup> A copy of this agreement, from the Ada County Recorder's records, is found at Appendix 7.

*Tenant pertaining to the a [sic] portion of the Property dated June 22, 2022, and all amendments and substitutions thereof." (Emphasis supplied.)*

Without a copy of the actual lease agreement between LB River Club Owner LLC (Lincoln Property Company) and River Club Boise, LLC (purportedly, Mr. Gustafson), it is impossible to know the exact details of the lease or of its place in the tangle of visible and (until now) previously invisible persons and entities awaiting Garden City's decision upon the application. That lack of genuine transparency raises good reason many times over to deny the application completely at the outset, or at the very least to put a hold on any action on the application until the full details regarding ownership is provided to the city planning and zoning department, city officials, and the public. This document's specific reference to "that certain Put and Option Agreement and Joint Escrow Instructions between Assignor and Tenant," raises even more red flags.

A "put and option" agreement in real estate is a device by which a developer leaves itself the ability to cut and run from a potential development deal, thus greatly reducing any risk it might have if things do not go forward in the manner the developer might be seeking, or for some other reason. It is the best of both worlds for the developer -- if the proposed project needs governmental approvals the developer can commit to the deal through an option which would be exercised if approvals are received but would not be exercised if the development is not given a green light. It can also be used by in the opposite manner by an option in favor of seller.

The "Assignment of Leases and Rents" document does not specify what options are contained in the referenced "Put and Option Agreement" nor any evidence as to the subject of the agreement, or, also, the options. Moreover, there is no information about what rights or benefits might attach to Lincoln Property Company/LB River Club Owner LLC, or what rights or benefits might attach to River Club Boise, LLC. (Remember that Mr. Gustafson has represented that he sold the golf course to LB River Club Owner LLC (he did not, it was Bay Point Advisors), and that he will get the golf course back, so to speak, if the SAP application is approved. However, without having the Lease Agreement, the "Put and Option Agreement" and any other agreements relating to the rights and duties of Mr. Gustafson, River Club Boise, LLC, and LB. River Club Owner LLC *vis a vis* each other in the future, those details cannot be determined. Perhaps Mr. Gustafson has a right to purchase the golf course property that is not the subject of the pending development, but perhaps that is a right he is not required to exercise. Or it

may be that LB River Club Owner LLC has a right to require Mr. Gustafson to perform an act (that is, to buy the remainder of the golf course on the option terms), but at the same time leaving LB River Club Owner LLC the option *not* to require Mr. Gustafson to act, because it may decide it would be more profitable to keep the property for itself.

The variations have many angles and many implications for the issues raised by the SAP application. Because those details also are directly relevant to the decision to be made by the Planning and Zoning Commission the City must insist that such information be provided before any further consideration of the SAP application by the Planning department staff, or the Commission, or the City Council, and such documents must be provided and made part of the record, with additional opportunity for public review and comment.

END

Appendices supporting a written citizen comment made in opposition to the Specific Area Plan Application filed by Lincoln Property Company.

Garden City file no. SAPFY2023-0001.

Submitted by Ronald E. Bush  
February 14, 2023

## Appendix No. 1

Newspaper articles concerning the closures of D'Andrea Golf Course in Sparks, Nevada, and Salt Creek Golf Course in Chula Vista, California.

# reno gazette journal

## NEWS

# D'Andrea Golf Course won't be auctioned; back taxes paid

**Chanelle Bessette** cbessette@rgj.com

Published 12:21 p.m. PT April 16, 2015 | Updated 6:22 a.m. PT April 17, 2015

As of this morning, the D'Andrea Golf Course is no longer up for auction.

The auction of the golf course, which was set to happen the morning of April 22 at the Washoe County Commissioner's Chambers, was a result of unpaid back taxes in the amount of around \$462,000. Washoe County Treasurer Tammi Davis has confirmed, however, that the full amount was paid this morning.

The owner of the golf course, IPC D'Andrea, LLC, was given until three days before the auction to pay back taxes before it was turned over to public bidding. This morning, the company reclaimed all six parcels that comprise the golf course.

Since its shutdown in 2012, the golf course has been an emotional issue for many D'Andrea community residents. Some feel that their property values have decreased because of the course's dilapidation, and residents have spoken of a long-term contentious relationship with the course owner, IPC D'Andrea's Will Gustafson, leading to the course's disrepair.

The six D'Andrea parcels are set aside to only be used as a golf course, according to the D'Andrea Handbook, which is a written agreement between D'Andrea residents, the owner and the City of Sparks. To change any part of the Handbook, 51 percent of the D'Andrea community must approve the change.

## Featured Weekly Ad

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## Overgrown weeds a concern for D'Andrea homeowners

July 20, 2016 By Kayla Anderson – 2 Comments

Four years after the D'Andrea golf course closed, residents of the development say overgrown weeds and a pond that may be a breeding ground for mosquitoes are hurting property values and making homeowners nervous about the area's future.

City officials say they sympathize with residents, but have gotten no response from owner Will Gustafson of IPC D'Andrea, LLC when asking him to take better care of the land.

"The city struggles to get Will to do anything; we've asked him to address these issues but he never returns our calls," Councilman Ron Smith said.

Smith said the reaction has been the same when the city tries to get cleanup done on the clubhouse, which burned down last fall.

"The fire department has to issue a release and then the city can give Gustafson 90 days to clean up the mess. It's still laying in a heap," Smith says of the clubhouse's remains. "I wish I had the answers; I used to live on the course. We have to follow the [city's] process, but it's just not fast enough for these homeowners."

Gustafson, however, told the Sparks Tribune that he is reachable and has discussed the issues with proper authorities.

"I get so many emails and phone calls...the city just emailed me and wants me to donate the maintenance building," he said.

Gustafson also said he has taken care of the property that once was an 18-hole golf course.

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John Byrnes photos/Tribune

**D'Andrea resident Steven Swinburn stands in his backyard and gestures to what used to be the 15th fairway of the now defunct golf course. He's asking the city to take action against weeds that he says have reached over two-feet tall.**

[View original image](#)

Tweets by @SparksTribune

"We've owned D'Andrea since 2003 or 2004; it's my pride and joy," he said. "We've spent thousands and thousands of dollars on cutting and mowing the weeds and will continue to do so every time we get notice."

D'Andrea opened in the summer of 2000 with its peak golf play in 2005-2006. The course closed in 2012 after the members of the D'Andrea Homeowners Association rejected a proposal for a \$28 per month fee increase per household to help maintain the course.

According to D'Andrea covenants with the city of Sparks, homeowners and the course owner, if the land used as a golf course is not maintained it reverts back to nature as open space. That hasn't satisfied homeowners, who say the city of Sparks is not enforcing its own codes.

"Why is the City of Sparks not capable of enforcing the city's code on the owner of the defunct D'Andrea golf course?" D'Andrea homeowner Steven Swinburn asks in a letter to city officials dated June 10, 2016. "The course closed in 2012. It is 2016. The weeds are above two feet in height and when this gets ignited for whatever reason the entire D'Andrea development will be at risk! I believe the city code is maximum eight inches. Also note the lake on the 15th hole is a breeding ground for West Nile and Zika. What do I need to do for the city to take action?"

After the golf course shut down in 2012, residents have worried about their property values, overgrown weeds, and the general deteriorating state of the land. A few homeowners have expressed their anger at Gustafson allowing this decline and are anxious for some sort of resolution.

"The attached photos are what the 'golf course' behind my home looks like today. As you can see, the weeds and brush are extremely dry and overgrown. We've already had one fire by arsonists who burned down the clubhouse. Luckily nobody was hurt. We may not be so lucky next time," D'Andrea resident Sue Arzillo said in a letter to Smith this week.

"If weeds on my front lawn were this high, I'm sure the city would make me cut them down or fine me heavily. As homeowners, our question is, 'Why is the owner of the D'Andrea Golf Course not being held responsible for this negligence?'"

"If a fire happens below us, all of the houses will go down," Swinburn added. "All of us are very disappointed with code enforcement."

Serving on Sparks City Council since November 2006 and former member of the D'Andrea Home Owners Association, Smith would love to see a resolution, too.

"I don't care if it's a golf course or a slip n' slide, I'm on the homeowners' side," Smith says about future plans for the now defunct course.

Smith says that since last fall, Mayor Geno Martini and he have met with over 200 residents to help address their concerns. A homeowners meeting is set for July 27, and, Smith asks the residents to be receptive of any proposals for redevelopment.

"Even if it were to be a 9-hole golf course again, that wouldn't be a bad deal," Smith says. "I was up in the neighborhood last weekend and met with folks; they are pretty reasonable. All I'm asking is for [homeowners] to have an open mind going into the July 27 meeting," Smith added.

Sparks Fire Department Fire Marshal Robert King says that the clubhouse fire is still under investigation and even though a Sun Valley man has been charged, the case has not gone to trial yet.

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Photo: NevadaCentral

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You are here: Home / News / Frustrations Continue for D'Andrea Residents



## Frustrations Continue for D'Andrea Residents

September 12, 2017 By Kayla Anderson — 6 Comments

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The troubles at D'Andrea continue. And no one seems to have a solution.

In summer 2017, the City of Sparks filed a civil action against IPC D'Andrea LLC over the issue of cleaning up weeds and clubhouse debris at the abandoned golf course. As of September 11, no action has been taken on the property, leaving homeowners wondering if anything will ever be done to restore their property value again.

[Tweets by @SparksTribune](#)

"(Will Gustafson and his company IPC D'Andrea LLC) flat out refuses to clean it up," says City of Sparks Community Relations Manager Julie Duewel. The city provided a fence around the clubhouse to keep the property secure, but it has been removed because IPC D'Andrea refuses to pay for it.

"We are using all of the tools available to us to get this taken care of," says Duewel. "Will has been avoiding being served, but we have been in contact with his lawyer and are expecting to hear back this week," she said in late August.

However, as of September 11, the city had still not been in contact with IPC D'Andrea and a continuum was issued which can take up to a month before any further action.

"The (legal) process can take a significant amount of time...we're hoping to hear from him but we have to take it a step at a time and go through the proper channels. We're hoping he'll clean it up as soon as possible; that would be the best solution for everyone," she says.

Since the city doesn't own the property it feels like there's nothing they can really do but go through the proper legal motions in hopes that IPC D'Andrea will take care of the issues before the lawsuit goes any further.

Meanwhile, the managers of D'Andrea Rising- Randi Thompson and Steve Trollope- recently announced that it will not be purchasing the property from IPC D'Andrea LLC without a clear title.

The D'Andrea Rising website stated that it was unsuccessful in renegotiating an extension of the purchase agreement (including the clubhouse and former golf course) even though IPC D'Andrea promised that it would grant an extension if the D'Andrea Community Association (DCA) agreed to D'Andrea Rising's proposed plan.

The deal was that IPC D'Andrea would clean up the fire debris of the former clubhouse before D'Andrea Rising went through on the escrow. However, by early September IPC D'Andrea failed to take any action- dodging both D'Andrea Rising and the City of Sparks. IPC D'Andrea also substantially increased the price of the D'Andrea property and proposed certain contract terms that D'Andrea Rising felt would put them at financial risk if they accepted the original agreement.

Throughout the summer, D'Andrea Rising worked with IPC D'Andrea to come to an agreement, eventually conceding to the property rate increase and agreeing to some of IPC D'Andrea's new contract terms (and IPC D'Andrea altered some of their original terms). While it seemed like progress was being made on D'Andrea changing hands in ownership, it wasn't enough to get a revised contract in place because D'Andrea Rising still required a free and clear title prior to closing on the property.

"Obviously we are frustrated and disappointed that we've been unable to reach an agreement with IPC D'Andrea, but we are keeping the door open with them in the hopes that we may be able to reach some agreement in the near future. Unfortunately, we do not have any insight into, nor can we say what other plans IPC D'Andrea may be pursuing with regards to the sale of the property at this point," states the D'Andrea Rising website.

"The residents are still furious about it- we still want our weeds pulled and we still want a golf course," says D'Andrea homeowner Joe Canale.

"We are trying to go after every possible avenue to get them to clean up the property, but they have dodged us a few times in trying to serve them (papers for the lawsuit). Unfortunately, these things just take time," says Duewel.

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By: [D'Andrea Residents](#)

You are here: Home / News / City Council Highlights



# City Council Highlights

February 27, 2019 By Sparks Tribune — Leave a Comment

The following are highlights from Monday's Sparks City Council Meeting:

## Proclamation

The National Organization for Rare Disorders organized a nationwide observance of Rare Disease Day. Sparks City Council proclaimed February 28 as Rare Disease Day to draw attention to the one in 10 Americans that have rare diseases.

[View Details](#)

Tweets by @SparksTribune

## General Business

- The Sparks City Council directed the City Attorney to actively prosecute the case currently pending as City of Sparks v. IPC D'Andrea LLC, Case Number CV17-01066. On March 27, 2017, the City Council authorized the City Attorney to seek declaratory and injunctive relief to abate the nuisance conditions on the property at 2900 South D'Andrea Parkway, the home of the former D'Andrea Golf Club. Based on that authorization, the City filed a complaint in State court in June 2017, seeking a court order declaring the property a nuisance and ordering the property owner to demolish the ruins of the clubhouse and otherwise abate the dangerous nuisance conditions on the property. Upon agreement between the parties, the litigation was stayed several times between November 2017 and October 2018 while the property owner was trying to sell the property. While the litigation was stayed, the property owner or its agents took steps toward cleaning up the property. The vast majority of the debris from the clubhouse, which burned in 2015, was removed from the site and weeds have been removed from the perimeter of the property to create defensible space between the property and adjacent homes. However, weeds still cover much of the former golf course, the clubhouse and other structures remain abandoned, and complaints to the City's Code Enforcement team are ongoing. Although the property owner had secured the clubhouse, some of the boards securing the building have been removed. Other evidence of recent vandalism, such as graffiti, is also present. In addition, fifty-five-gallon drums were observed at the maintenance building on the property.

- Council directed the City Manager and City Attorney's office to institute proceedings to revoke NNV Operations I Inc. dba Silver State Trading's cultivation and production business licenses due to late quarterly licensing payments to the city of Sparks. These quarterly license fees are due no later than 30 days after the end of each calendar quarter.

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Local developer, developer, architect, former Plantation Country Club president, and a local attorney are among the people

LATEST NEWS

# Neighbors, club members fear Plantation Country Club could be overrun by houses, stores

**BY JOHN SOWELL**

UPDATED OCTOBER 19, 2018 5:57 PM



The rumors began spreading nearly as soon as members of the oldest golf course in southern Idaho were told in August that the 18-hole course in Garden City was being sold.

Members heard the Plantation Country Club, which opened July 18, 1917, was in imminent danger of being closed. Or that the 118-acre course would get whittled down to nine holes, with 500 homes built where the fairways for the other nine holes are located. There's also been talk that commercial businesses could get built on the side that faces State Street.

"It would bring a big-city population to a very small area," said Pierce Roan, a retired U.S. Army brigadier general whose house is next to the one of the fairways. "The quality of life would go totally in the toilet."

Country club members and neighbors were told that a Santa Barbara, California, developer, Will Gustafson, was behind the purchase of the course, at 6515 W. State St.

Gustafson, managing partner for Synergy Golf Partners, has not spoken publicly about the sale. A message left for him was returned by Bob Taunton, a Treasure Valley land-use consultant hired by the developer.

A confidentiality agreement with the current owner, American Golf Corp., prohibits Gustafson from speaking about the sale until the deal closes, Taunton said. The closing is expected before the end of the year.

In August, American Golf acknowledged that it was selling the course but declined to identify the buyer. Jayson Petersen, Plantation's general manager, told the Idaho Statesman at the time that American Golf would continue to manage the club after the sale.

"The team will engage with club members, homeowners and neighbors to gather input as an important first step in assessing future opportunities for the property," Petersen said.

Michael Thiry, a Boise chiropractor who lives along the Boise River and less than 100 yards from one of the course's fairways, said he doesn't put much stock in the rumors swirling around the neighborhood, where he has lived since the early 1980s.

"I don't want to say something that some people will think is true but in reality may not be," Thiry said.

Still, he's concerned what impact there would be on the tight-knit neighborhood if the golf course is developed.

"It's just an absolutely wonderful place to reside," Thiry said. "Everybody knows everybody, and people help each other."

Kate Taylor, who also lives in the Plantation neighborhood, said she's upset by the lack of transparency over the purchase and future plans.

"The shroud of secrecy has created extreme speculation," Taylor said. "We need facts: Is the developer truly planning on building homes and retail space on the existing golf course, or are they planning on improving the existing clubhouse and maintaining the golf course?"

Any development would require a zone change and public hearings. Current R-2 zoning allows only single-family homes or duplexes per acre.

“If anything to do with it comes up, we’re going to have a standing-room-only crowd,” said Garden City Mayor John Evans. He said he has received many calls from people upset by potential development.

The golf industry has declined for years. The number of golfers fell from 30.6 million in 2003 to 23.8 million in 2016, according to the National Golf Foundation.

More than 200 courses in the United States closed last year, Forbes reported, and closings have outpaced new course construction since 2006. The 456 million rounds of golf reported last year were 2.7 percent fewer than the year before.

Roan and other club members and neighbors have formed the Save Plantation Coalition to preserve the country club, the largest open space in Garden City. The group will hold a strategy and fundraising meeting at 6 p.m. Thursday, Oct. 25, at the Plantation Club House, 6515 W. State St.

“The bottom line is that people love living here and we don’t want that to change,” Roan said.

Gustafson’s companies caused hard feelings in two other cities where they operated golf courses: Sparks, Nevada, and Chula Vista, California. Both courses closed amid financial troubles. In Sparks, the anger was compounded by Gustafson’s attempt to add a subdivision to the course.

D’Andrea Golf Course in Sparks, which is outside Reno, closed in 2012 after years of financial losses and amid accusations of mismanagement, the Reno Gazette Journal reported.

Gustafson raised the ire of neighbors when he proposed a 72-unit subdivision there. They said the problems with the golf course should have been addressed before contemplating new development.

The course, which Gustufson operated for eight years, closed after residents voted down an assessment of nearly \$600,000 that would have kept the club afloat. Critics complained that Gustafson was using homeowners as “his personal piggy bank,” the paper reported.

In a statement Friday, Gustafson said the assessment would have cost homeowners a “minimal \$29 per month” to support course maintenance. It came after his plan to sell the 72 home lots fell apart, he said, because of the “severe downturn” in the housing market.

“We had worked to partner with the homeowners to benefit them and the community asset, but they ultimately decided against that option,” Gustafson wrote. “It was never our intent to close the course, but market changes forced our hand.”

The course, now overgrown with weeds, is in escrow through another buyer, Sparks city spokeswoman Julie Duewel said. Gustafson said he’s working with the potential buyers to build a new community center and reopen nine of the course’s holes.

Last year, the city sued Gustafson’s company over cleaning up weeds and clubhouse debris. At one point, the city also erected a fence around the course to keep it secure but later removed it after the company refused to pay for it. The lawsuit has been placed on hold, Duewel said, because of the pending sale. The city will have to decide whether to pursue it further, she said.

In Chula Vista, outside San Diego, Synergy Golf Partners bought a foreclosed golf course, The Auld, in 2006. With a name change to Salt Creek Golf Course, it operated until 2011, when the 293-acre course filed for bankruptcy.

The bankruptcy trustee obtained a default judgment of \$29,656 against Gustafson and Synergy Golf Partners, according to federal court records. The trustee alleged the golf course improperly made payments to Synergy after it became insolvent.

“During our ownership, we invested money in an attempt to turn around the operations,” Gustafson wrote, saying he was unable to renegotiate the lease with a water district that owned the property. “After operating the course for several years

at a loss, we sold it to a new owner who eventually ceased operations and permanently closed the golf course.”

*John Sowell: 208-377-6423, @JohnWSowell*

This story was originally published October 19, 2018, 5:44 PM.

## Conversation

Your voice matters. Discussions are moderated for civility. Read our guidelines [here](#).

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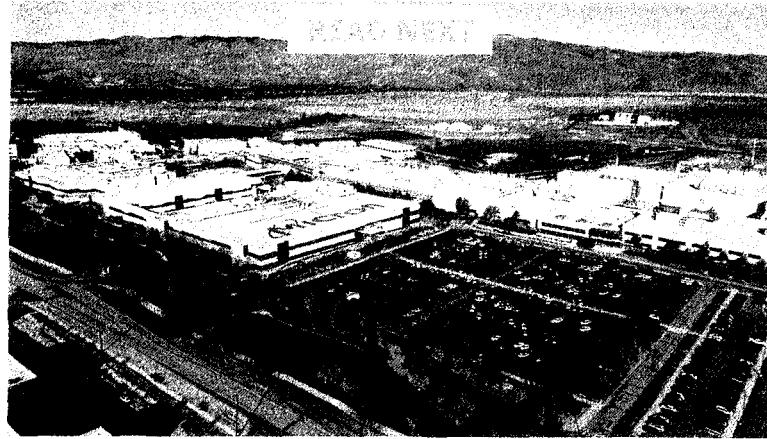
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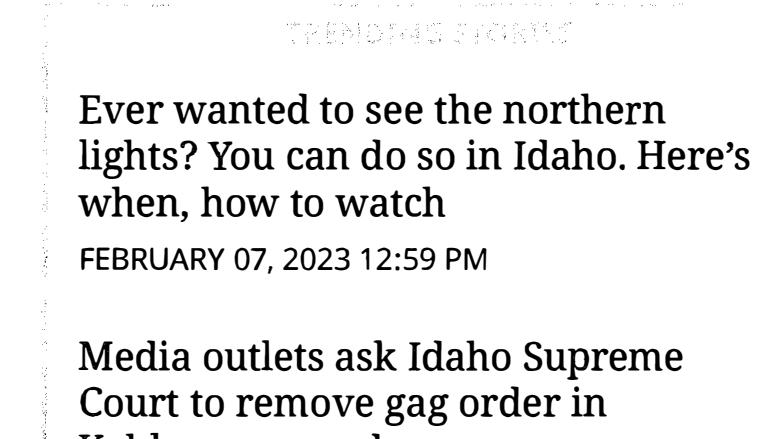
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## BUSINESS

# Micron, facing 'severe downturn,' lays off



Ever wanted to see the northern lights? You can do so in Idaho. Here's when, how to watch

FEBRUARY 07, 2023 12:59 PM

## Media outlets ask Idaho Supreme Court to remove gag order in Kohberger murder case

UPDATED FEBRUARY 07, 2023 12:58 PM

# He was a head coach at 30. Now this Boise State assistant is taking on a new role

## Appendix No. 2

**Idaho Secretary of State "Foreign  
Registration Statement" of "LB River  
Club Owner LLC," a Delaware limited  
liability company.**

**Signed by Leigh Ann Everett.**



## FOREIGN REGISTRATION STATEMENT

## Title 30, Chapter 21, Idaho Code

Base Filing fee: \$100.00 + \$20.00 for manual processing (form must be typed). Date Filed: 6/29/2022 1:07:00 PM

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Secretary of State use only

Typed Name: LeighAnn Everett

Signature: Suzie Ann Everett

Assistant Secretary of Non-Member Manager, Inc., Manager of LO River Club LLC  
Operating Member of LB River Club JV, the Member Manager

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "LB RIVER CLUB OWNER LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE EIGHTH DAY OF JUNE, A.D. 2022.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN ASSESSED TO DATE.



Jeffrey W. Bullock, Secretary of State

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## Appendix No. 3

December 2022 letter from The River Club to club members, regarding Will Gustafson.



River Club Members,

Rumors have been circulating around the ownership of The River Club. As you are aware, Will Gustafson the owner of River Club Boise, LLC who purchased the Club 4 years ago this month, selected Lincoln Property Company as his development partner. At the time of the transaction (June 2022), the Golf Course had not yet been divided into separate parcels. Lincoln purchased the entire 120 acres with the contractual obligation to transfer the Golf Course back to Will (less the 22+- acres that Lincoln will develop) upon their development approval from Garden City. At that point, ownership of the Clubhouse and Golf Course property will belong solely to Will's entity, and we will begin the process of re-developing the Golf Course (in conjunction with Lincoln's construction schedule) as planned.

One of the concerns that was brought up is that if Lincoln currently owns the entire property, what would keep them from developing all of the property? We wanted to assure you by explaining the legal obligations that this cannot and will not happen. Below is an explanation of the transaction from Will's legal counsel.

I hope this message provides clarity of the transaction, and hopefully puts the rumors to rest. If you have any questions please feel free to reach out to me directly.

Thank you,  
Jayson Petersen  
General Manager

# THE LAW OFFICE OF SCOTT S. THOMPSON

2945 Townsgate Road, Suite 200  
Westlake Village, California  
91361 Tel 818.427.3313

November 30, 2022

Jayson Petersen  
General Manager  
The River Club  
6515 West State Street Boise, ID 83714

Re: The River Club

Jayson:

It is my understanding that some of the Club Members at The River Club have expressed concern with regard to the current short-term legal arrangements between Lincoln Property Company's partnership ("LPC") and Will Gustafson/The River Club.

First, I have continually represented Will as far back as 2008 when he first entertained purchasing the Plantation Country Club. Prior to entering into private practice where I still handle golf related real estate transactions, I was General Counsel for National Golf/American Golf for over 12 years and was responsible for over 200 golf course related transactions.

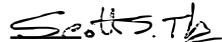
The transaction and the legal obligations of LPC and Will/The River Club are straight forward: The sale to LPC in June, 2022 was for the entire 120 acres of Club Property. The reason for this is there was not a separate legal parcel for the 22+/- acres that LPC will develop, so the entire property was transferred to LPC. At that time, LPC and Will/The River Club entered into a Lease with a Put Option Agreement.

The Lease and the Put Option Agreement between LPC and Will/The River Club require that upon approval of LPC's development of the 22+/- acre parcel, LPC is required to transfer the remaining 100+/- acres back to Will/The River Club for a very nominal fee and the Lease terminates.

This legal arrangement is mutually beneficial. It allows LPC to control the real estate during the entitlement process. The Lease guarantees the continued and uninterrupted operations of the golf course and the ongoing capital improvements under your leadership and Will's control while LPC obtains their approvals. The Put Option Agreement assures Will's/The River Club's ownership of the 100+/- acres for the future redevelopment of the golf course.

Of course, please let me know of any comments or questions.

Very truly yours,



Scott S. Thompson, Esq.

cc: Will Gustafson

## The River Club

6515 W State Street | Boise | ID | 83714

**(208) 853-4793**

**The River Club Golf Shop**

**(208) 853-4440**

## Appendix No. 4

July 8, 2020 letter to the Planning and Zoning Commission of the City of Garden City, regarding Glass Island View Subdivision, SUBFY2020-06.

Ronald E. Bush  
3695 N. Gramarcy Lane  
Garden City, ID 83703  
July 8, 2020

City of Garden City  
Planning and Zoning Commission  
6050 Glenwood Street  
Garden City, ID 83714

Sent by email to [jthorn@gardencityidaho.org](mailto:jthorn@gardencityidaho.org) and to [cwadams@gardencityidaho.org](mailto:cwadams@gardencityidaho.org)

Re: *SUBFY2020-06 Glass Island View Subdivision*

Dear Commissioners:

Please consider this letter as additional written testimony regarding the above-referenced subdivision proposal. Thank you for your decision to continue the matter to this month's hearing to allow for additional time for the proposal to be considered by affected parties. Here are my comments. I have been pressed for time to finish this task, so if I have gremlins of typos or grammar, please forgive me.

- I. Signature by owner and Affidavit of Legal Interest. I previously highlighted the legitimate concern raised by the fact that the owner (Glass Creek) had not signed the subdivision application, nor the Affidavit of Legal Interest. Therefore, no owner has *certified that the information in the application and the accompanying materials is correct* and no owner has sworn under oath in the Affidavit of Legal Interest, that he/she/it is the owner of the property, and agrees to *hold harmless and indemnify* the City from any claims resulting from any dispute over the statements in the application or as to the ownership of the property. In response to that, Mr. Taunton filed a copy of a document purporting to appoint him as an attorney in fact (as distinguished from an attorney at law), with authority to act on behalf of Glass Creek. There is an obvious question as to whether an attorney-in-fact can properly sign an *affidavit* on behalf of someone else,<sup>1</sup> but Mr. Taunton said in the application that the "Affidavit of Legal Interest" is "not applicable" because he has

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<sup>1</sup> The Affidavit of Legal Interest requires the owner to swear under oath to the following (emphasis mine):

1. That *I am the record owner of the property* described on the attached, and I grant my permission to [name/address] to submit the accompanying application pertaining to that property.
2. *I agree to indemnify, defend and hold the City of Garden City and its employees harmless from any claim or liability resulting from any dispute as to the statements contained herein or as to the ownership of the property which is the subject of the application.*
3. I hereby grant permission to City of Garden City staff to enter the subject property for the purpose of site inspections related to processing said applications.

full authority to sign the application. Importantly, the Affidavit of Legal Interest is required so that the City *knows, under oath* who owns the property - here, who are the owners of Glass Creek, LLC? This is not a subject of idle curiosity; rather, it is a requirement of the subdivision approval process and a critically important part of the protections to which the City is entitled to ask for and should insist upon having, in regard to the indemnification and hold harmless requirements. In that setting, the Affidavit of Legal Interest absolutely is "applicable," and I would request your Commission to inquire of the planning department and the city attorney as to (1) what authority exists for that requirement to be waived, if any; and (2) what good reason is there for allowing a waiver, even if one could be granted.

2. An open question as to whether this real property can be subdivided at all. As set out in paragraph six of Ms. Thornborrow's draft of preliminary findings for your Commission, the subdivision application describes the property in this manner: **a parcel of land being a re-subdivision of a portion of Lot 70, Block 1 of "The Amended Plat of a Portion of Lot 1, and all of Lots 2, 3, 4, 5 and 6, Block 1 of The Plantation No. 2" (Subdivision), located in Government Lot 2 in the Southwest Quarter of Section 30, Township 4 North, Range 2 East, Boise Meridian, Garden City, Ada County, Idaho.** The Plantation No. 2 Subdivision is one of the multiple subdivisions that were developed around the Plantation Golf Course. The neighborhoods, as you know, are among the nicest and oldest planned developments in Garden City, and were developed over several decades starting in the early 1980's. (You may be aware that one of the homes immediately adjacent to the proposed subdivision was built and lived in for many years by late Ted Ellis, a prominent Idaho banker. After his retirement from banking he was elected mayor of Garden City, as described in his obituary: "...he proudly served as the mayor of the City of Garden City from 1994 to 2006. During his time as mayor, he is credited for changing the image of the city and building infrastructure that is still in place today."

I have reviewed the Master Declaration of the Plantation subdivisions (which are, in essence, the "CC & Rs" of the subdivisions), and its various amendments. I have reviewed the plats, including the Amended Plat referenced above. I have tried to locate any applicable documents that are recorded with the Ada County Recorder concerning the parcel of land sought to be developed. I have found nothing that expressly exempts this parcel of property from a critically important provision of the Master Declaration, specifically Section 5.16(B) of the "General Standards" provision of the Master Declaration<sup>2</sup>, which is headed "No Further Subdividing and which reads in pertinent part: "*No Lot, Common Area, or Condominium may be further subdivided....*"

I have looked carefully for something that would make this provision inapplicable but have found nothing. Perhaps there is some express language elsewhere that makes clear that this particular parcel of property *can* be further subdivided, but I have not found it. It is not surprising that the prohibition against further subdivision *would*

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<sup>2</sup> This is found at p. 45, LL 1976 (and following) of the Master Declaration.

apply, as when the Plantation subdivisions were developed no one would have considered for a moment the scenario which has unfolded today – *i.e.*, the golf course being used for residential development. It was the golf course, after all, which was the most significant element of the entire planned development, the primary selling card for the developer, and – no doubt – one of the primary amenities for the families who purchased lots and built homes in the subdivisions, many of whom – community leaders, businesspeople, doctors, lawyers and other professionals, retired generals and other military officers – continue to live in those same homes today. It is fair to say that no one at the time would have considered (or been agreeable to if it were made known to them), the prospect of the golf course, rather than the property along the golf course, being developed into something other than a golf course.

Perhaps there is some provision of the Master Declarations which expressly allows what Glass Creek seeks to do in this application. But given what I describe above, it may be prudent for your Commission to delay any action on this application until Glass Creek can do so, if they can do so. And, I raise the subject here so that if Glass Creek's response to this issue is not satisfactory to the City or to existing homeowners, then the issue is preserved for future review.

3. Soil report and floodplain issues: I admire my neighbors who have spent enormous time and effort in scrutinizing the details of the application dealing with the floodplain and the soil engineering, which is a corollary issue with the floodplain issues. Suffice it to say that the information supplied to the City about the application (which, remember, has not had the owner's certification to the correctness of the information in the application and the materials submitted in support of the application, nor any statement under oath by the owner accepting the responsibility to indemnify and hold harmless the City from any claims resulting from any dispute over the information in the application or over ownership) contains significant issues about the location of the high water line of the Boise River, the integrity of the subsurface soils (or lack thereof) of the building lots, and the proper location of any floodplain setbacks. These issues are problematic for the integrity of any residential structure that might be placed on the lots, problematic for the upstream and downstream residents in a flood event, problematic for Garden City in connection with its responsibilities to FEMA, and problematic for not just anyone who might buy such a lot, but also other property owners throughout the City as to whether the availability of federal flood insurance can be maintained.

In reviewing those questions, I was reminded that it is my understanding that Glass Creek used “proxy” soil samples for the City to base any approval upon. In other words, Glass Creek provided information about soil samples taken elsewhere on the golf course, each of which is a considerable distance away from this proposed subdivision property, as information for city staff to rely upon in considering the suitability of the site for residential development. It seems quite apparent that using such proxy sampling is inappropriate and not reliable here, and raises question about why they were used at all. I urge the development staff to recommend to the Commission and for the Commission to require that a Soils Engineering Report be

prepared and submitted which is tied directly to the actual site and, in particular, to the portions of that site which have been called into question.

The other floodplain issues are well-documented and described in comments from other persons and I will not attempt to recount them here. I do raise the question, however, of whether this application justifies the otherwise frequent approach of a contingent approval from this Commission – in other words that you would approve the application subject to contingencies that must be satisfied. Sometimes it is the sounder course to deny the application until it is resubmitted by the applicant, if and when the serious questions can satisfactorily be answered. There is good reason to do so here.

Thank you for your thoughtful consideration of these matters, on this important subject.

Yours sincerely,

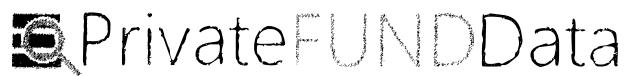


Ronald E. Bush

REB/r

## Appendix No. 5

Documents obtained from the website of PrivateFUNDData and the website of Bay Point Advisors.



# Bay Point Advisors – Fund and Executive Details

Fund Companies

8757370

8757370

## Bay Point Advisors LLC

Bay Point Advisors is a hedge fund company based in Atlanta, United States. They have less than \$150 million in assets under management and operate 1 private fund. You can view more information on Bay Point Advisors including private fund info, contact info, top management and executives, website, email addresses, and more below:

### Contact Details for Bay Point Advisors

Bay Point Advisors, LLC

3050 Peachtree Road

Suite 2

Atlanta, GA 30305

This website uses cookies to improve your experience. We'll assume you're ok with this, but you can opt-out if you wish. [Accept](#) [Read More](#)

## Overview of Bay Point Advisors

Org. Type:

Registration Country:

0

SEC#: 802-110248

Org#: 286050

Legal Issues: No legal issues reported

Company Type: Hedge Fund

Private Funds Managed(1): Bay Point Capital Partners Lp

## Ownership/Leadership of Bay Point Advisors

James B Kaufmann

Managing Member

Charles George Andros

Member

This website uses cookies to improve your experience. We'll assume you're ok with this, but you can opt-out if you wish. [Learn more](#) [Read More](#)

# BAY POINT ADVISORS

Strategy | Bay Point  
[baypointadvisors.com/strategy/](http://baypointadvisors.com/strategy/)

We have always taken an idiosyncratic approach to investing, and finding opportunity well off the beaten path is a primary driver of capital deployment. We seek to benefit from our size and scope, sourcing and sifting through a great many prospective opportunities to find the ones with the best risk-adjusted returns. We are decidedly not trying to buy the hottest high-flyers hoping they will continue to soar. Rather, we are always anchored to valuation and focused on business fundamentals, attempting to make investments that will earn good returns across a wide spectrum of future market and economic scenarios. We strive to safely grow client capital over the next three to five years, not next week or next quarter. Our experience is that opportunity regularly migrates across markets, industries, and geographies, as capital flows inflate the prices of some investments while leaving others orphaned. To navigate the natural evolution of markets, we employ an investment approach that is fixed in its general principles yet flexible in its implementation. Our portfolio is painted with a wide palette. Sometimes, this means originating an urgently needed, well-covered financing at a compelling yield. Other times, we come across a mispriced stock (sometimes catalyzed, sometimes not), an attractive private equity.

## RECENT TRANSACTIONS

Our approach to value investing is to search for mispricing. Mispricing can exist for many reasons, including situational complexity, institutional constraints, investor error or irrationality, short-term disappointments, disparate time horizons, the urgent unwinding of leverage, turmoil driven by financial distress, and investor indifference or neglect.

Both the public and private markets have generally become more competitive over the years. And yet, both hold the prospect of significant mispricing that investors can uncover if they are patient, disciplined, relentlessly curious, and agile. Many investors, by charter or regulation, can invest only within narrow silos and thus are unable to view opportunity from a sufficiently wide lens.

Finding value in today's market, as is often the case, involves a combination of factors: knowing where to look, moving quickly, operating with a flexible investment mandate, having the ability to take the long view, and possessing the legal and

negotiating skills to structure investments to meet the particular requirements of a counter-party. Creative structuring may provide us with significant one-way optionality, enabling us to maintain exposure to most or all of the upside of an investment with far less exposure to the downside. Our nimble investment process lets us act rapidly; we can swiftly close transactions of virtually any type or size. We can provide debt or equity capital, or both. We can take control of a business or hold a minority stake.

## WE ARE THE LEADERS IN PRIVATE CREDIT

• DEDICATED

• INDEPENDENT

• EXPERTS

• COMMITMENT

# PRIVATE CREDIT

Bay Point is primarily a Private Debt issuer. Private Debt (Private Credit) is an asset class that commonly involves non-bank institutions making loans to private

## Appendix No. 6

Deed of Trust dated November 9, 2022,  
recorded November 14, 2022.

Grantor: LB River Club Owner LLC, a  
Delaware limited liability company.

Trustee: First American Title Company  
Beneficiary: Northwest Bank

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

4000611 - TDJmc

ADA COUNTY RECORDER Phil McGrane  
BOISE IDAHO Pgs=42 ANGIE STEELE  
FIRST AMERICAN TITLE AND ESCROW COMPANY

**2022-092950**

11/14/2022 03:21 PM

\$81.00

## DEED OF TRUST

### GRANTOR:

LB RIVER CLUB OWNER LLC,  
a Delaware limited liability company

### TRUSTEE:

FIRST AMERICAN TITLE INSURANCE COMPANY

### BENEFICIARY:

NORTHWEST BANK

This Deed of Trust is to be filed and indexed  
in the appropriate real property records  
and also indexed as a fixture filing.

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Dated as of November 9, 2022

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## **DEED OF TRUST**

This Deed of Trust (this "Deed of Trust") made this 9<sup>th</sup> day of November, 2022, among LB RIVER CLUB OWNER LLC, a Delaware limited liability company (hereinafter referred to as the "Grantor"), whose address is c/o Lincoln Property Commercial Company, Inc., 2000 McKinney Ave., Suite 1000, Dallas, Texas 75201; FIRST AMERICAN TITLE INSURANCE COMPANY (hereinafter referred to as the "Trustee"), whose address is 2150 S. Bonito Way, Suite 100, Meridian, Idaho 83642; and NORTHWEST BANK (hereinafter referred to as the "Beneficiary"), whose address is 1750 West Front Street, Ste. 150, Boise, Idaho 83702.

### **W I T N E S S E T H:**

That Grantor, in consideration of the Indebtedness (defined below) herein recited, does hereby GRANT, BARGAIN, SELL AND CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, all of Grantor's right, title and interest in and to that certain real property in the City of Boise, Ada County, Idaho, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference as if set forth in full; either located within an incorporated city at the date hereof, or is real property not exceeding eighty (80) acres and is not principally used for the agricultural production of crops, livestock, dairy or aquatic goods, or is real property not exceeding forty (40) acres regardless of its use (hereinafter, the "Property");

TOGETHER WITH all rents, issues, profits, royalties, income and other benefits derived from the Property, subject to the right, power and authority hereinafter given to the Grantor to collect and apply such rents;

TOGETHER WITH all leasehold estate, right, title and interest of Grantor in and to all leases or subleases covering the Property or any portion thereof, now or hereafter existing or entered into, including but not limited to, that certain Lease dated June 22, 2022, in which Grantor is the landlord and River Club Boise, LLC, a Delaware limited liability company (the "River Club Tenant"), is the tenant, and all amendments and extensions of the same (the "River Club Lease"), and all right, title and interest of Grantor thereunder, including without limitation all rents, revenue, income, issues, profits, proceeds, cash or security deposits, advance rentals and deposits or payments of a similar nature;

TOGETHER WITH all right, title and interest of Grantor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired by Grantor;

TOGETHER WITH all interests, estate or other claims, both in law and in equity, that Grantor now has or may hereafter acquire in the Property;

TOGETHER WITH all easements, rights-of-way and rights used in connection with the Property or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same;

TOGETHER WITH all right, title and interest of Grantor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property;

TOGETHER WITH any and all buildings and improvements now or hereafter erected on the Property, including but not limited to the fixtures, attachments, appliances and other articles attached to or affixed to the buildings (hereinafter, the "Improvements");

TOGETHER WITH all the estate, interest, right and title that Grantor now has or may hereafter acquire in the Property, including any and all claims or demands with respect to the proceeds of insurance and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, and any and all awards resulting from a change of grade of streets and awards for severance damages;

TOGETHER WITH all minerals, oil, gas and other hydrocarbon substances on the Property, as well as all development rights, air rights and solar rights that Grantor now has or may hereafter acquire in the Property;

TOGETHER WITH any right or interest that Grantor now has or may hereafter acquire in all general intangibles relating to the development or use of the Property, including but not limited to all governmental permits, approvals or authorizations relating to construction on the Property, or relating to the formation or approval of the improvements on the Property, all names under or by which the Property or any present or future improvements on the Property may at any time be operated or known, and all rights to carry on business under such names or any variant thereof, and all trademarks, service marks, franchise rights and goodwill in any way relating to the Property;

TOGETHER WITH all the right, title and interest of Grantor in and to all sales contracts of any nature whatsoever now or hereafter executed covering any portion of the Property, together with any and all modifications thereof and also together with all deposits or payments made in connection therewith;

The entire estate, property and interest hereby conveyed to Trustee may herein be referred to as the "Trust Estate".

**THE TRUST ESTATE IS CONVEYED TO TRUSTEE FOR THE PURPOSE OF SECURING THE FOLLOWING:**

- a. Payment of the Indebtedness evidenced by a Promissory Note of even date herewith (hereinafter referred to as the "Deed of Trust Note" or "Note") made, executed and delivered by Grantor to the order of Beneficiary in the original principal amount of Eighteen Million Five Hundred Thousand Dollars and 00/100 (\$18,500,000.00), due, if not sooner due, on November 5, 2025, unless the due date is extended;
- b. Payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the interest rate specified in the Note;

- c. Performance of all obligations of Grantor contained in this Deed of Trust and any and all instructions and documents given to evidence or further secure the payment and performance of any obligation secured thereby; and
- d. Payment of all other sums, with interest thereon according to the tenor of any document or instrument evidencing the same, which may hereafter be loaned or advanced by Beneficiary to Grantor.

This Deed of Trust, the Deed of Trust Note, that certain Loan Agreement dated as of the date hereof between Grantor, as Borrower, and Beneficiary, as Lender (the "Loan Agreement"), if any, and any other documents or instruments given to evidence or further secure the payment and performance of any obligation secured hereby may hereinafter be referred to as the "Loan Documents".

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, GRANTOR  
HEREBY COVENANTS AND AGREES AS FOLLOWS:**

**ARTICLE I  
COVENANTS AND AGREEMENTS OF GRANTOR**

- 1.01 **Payment of Secured Obligations.** Grantor shall pay when due the Deed of Trust Note and any other indebtedness evidenced by the Loan Documents, together with all interest thereon, charges, fees and other sums provided in the Loan Documents and any future advances secured by this Deed of Trust (hereinafter referred to as the "Indebtedness").
- 1.02 **Maintenance, Repair and Alterations.** The Grantor shall keep the Trust Estate in good condition and repair, shall not remove, demolish or materially alter (except such alterations as may be required by laws, ordinances or regulations) any Improvements without the prior written consent of Beneficiary, which shall not be unreasonably withheld, conditioned or delayed, and shall properly restore any Improvement that may be damaged or destroyed. Also, the Grantor shall pay when due all claims for labor performed and materials furnished, and comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Trust Estate or any part thereof or requiring any alterations or improvements. The Grantor shall not commit or permit any waste or deterioration of the Trust Estate, and shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, ordinary wear and tear excepted, and shall comply as lessor with all provisions of any lease covering all or any part of the Property.
- 1.03 **Insurance.** Grantor shall maintain or shall cause the River Club Tenant to maintain, at Grantor's or the River Club Tenant's expense, the following insurance issued by a company selected by Grantor or the River Club Tenant and acceptable to the Beneficiary, having a rating of A+ or A in the A.M. Best Insurance Guide:
  - 1.03.1 Hazard insurance in an amount equal to the amount of the Deed of Trust Note to include fire, earthquake and extended coverage with the Lender's Loss Payable Endorsement 438BFU, in long form, naming the Beneficiary as loss payee.

- 1.03.2 Evidence satisfactory to the Beneficiary that the Property is, or will be, within a Zone AE, or variant, flood hazard area designated by the Federal Flood Insurance Administration of the Department of Housing and Urban Development under the Flood Disaster Protection Act of 1973 (Public Law 93-234; Grantor will provide and maintain flood insurance coverage in an amount equal to the maximum coverage available from time to time under the National Flood Insurance Program and as provided in the parties' Agreement to Provide Insurance.
- 1.03.3 A Comprehensive Public Liability Insurance Policy in the amount of \$1,000,000.00 per occurrence, containing a mortgagee's clause in favor of the Beneficiary and providing for thirty (30) days written notice to mortgagee of any cancellation.
- 1.03.4 Business Interruption and Rent Loss Insurance coverage in an amount sufficient to cover scheduled payments under the Note for a period of one year, after giving effect to deductible, coinsurance or other provisions that may reduce amounts available to the Beneficiary.

1.04 Certificates of Insurance and Payment of Premiums. Grantor shall comply with all provisions of the Loan Agreement regarding certificates of insurance and payment of premiums. At least thirty (30) days prior to the expiration of each required insurance policy, Grantor shall furnish Beneficiary with evidence satisfactory to Beneficiary of the payment of premiums and the reissuance of a policy or policies continuing insurance in force as required by this Deed of Trust and the Loan Documents. In the event Grantor fails to provide, maintain or deliver to Beneficiary any such policies of insurance, or certificates thereof, Beneficiary may (but shall have no obligation to) procure such insurance as required above covering Beneficiary's interest, and Grantor agrees to pay all premiums thereon promptly on demand by Beneficiary. Such payment by Beneficiary shall be considered an advance to protect the Trust Estate and until such payment is made by Grantor, the amount of all such premiums together with interest thereon at the same rate as the Deed of Trust Note.

1.05 Insurance Proceeds. Upon the occurrence of any casualty to the Trust Estate or any part thereof, Grantor shall give prompt written notice thereof to Beneficiary.

- 1.05.1 In the event of any casualty loss to the Trust Estate, insurance proceeds shall be paid directly to the Beneficiary, or released to Grantor if Beneficiary so directs in the exercise of its reasonable business judgment.
- 1.05.2 In the event of any loss of or damage to the Trust Estate or any part thereof, Grantor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Beneficiary to the extent of outstanding obligations hereby secured. Beneficiary and Grantor may jointly settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance, but neither one acting alone shall have the power to do so.
- 1.05.3 Except to the extent that insurance proceeds are received by Beneficiary and applied to the Indebtedness secured hereby, nothing herein contained shall be

deemed to excuse Grantor from repairing or maintaining the Trust Estate as provided in Section 1.02 hereof or restoring all damage or destruction to the Trust Estate, regardless of whether there are insurance proceeds available or whether such proceeds are sufficient in amount. The application or release by Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

- 1.06 **Assignment of Policies upon Foreclosure.** In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the Indebtedness secured hereby, all right, title and interest of Grantor in and to all policies of insurance required by this Deed of Trust shall inure to the benefit of and pass to the successor in interest of Grantor or the purchaser or grantee of the Trust Estate.
- 1.07 **Indemnification; Subrogation; Waive of Offset.**
  - 1.07.1 If Beneficiary is made a party defendant to any litigation concerning this Deed of Trust or the Trust Estate or any part thereof or interest therein, or the occupancy thereof by Grantor or any lessee of Grantor, then Grantor shall jointly and severally indemnify, defend and hold Beneficiary harmless from all liability by reason of said litigation, including reasonable, documented attorneys' fees and expenses incurred by Beneficiary in any such litigation, whether or not any such litigation is prosecuted to judgment, and if it is, then all such costs and expenses on appeal, if any, as well. If Beneficiary commences an action against Grantor to enforce any of the terms hereof, or for the recovery of any sum secured hereby, Grantor shall pay to the Beneficiary reasonable, documented attorneys' fees and expenses, and the right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. If Grantor breaches any term of this Deed of Trust beyond all applicable notice and cure periods, Beneficiary may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Grantor, Grantor shall pay Beneficiary reasonable, documented attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Grantor by reason of breach.
  - 1.07.2 Grantor waives any and all right to claim or recover against Beneficiary, its officers, shareholder, directors, employees, agents and representatives, by way of subrogation or otherwise, for any loss sustained by Grantor, or any loss or damage to the Property, Grantor's property or the property of others under Grantor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.
  - 1.07.3 Except as otherwise set forth in the Loan Documents, all sums payable by Grantor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferral, diminution or reduction, and the obligations and liabilities of Grantor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of

the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Trust Estate or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim that Grantor has or might have against Beneficiary; or (vi) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Grantor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, or as may be prohibited by law, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Grantor.

1.08 Taxes and Impositions.

- 1.08.1 Grantor agrees to pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation levies or charges resulting from covenants, conditions and restrictions affecting the Trust Estate, that are assessed or imposed upon the Trust Estate or become due and payable and which create, may create or appear to create a lien upon the Trust Estate, or any part thereof (all of which taxes, assessments and other charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if by law any such Imposition is payable, or may at the option of the taxpayer be paid in installments, Grantor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.
- 1.08.2 If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Property in lieu of or in addition to the Impositions payable by Grantor pursuant to subparagraph 1.08.1 hereof, or (ii) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph 1.08.1 hereof, and Grantor shall pay and discharge the same as herein provided with respect to the payment of Impositions or, if not so paid, at the option of Beneficiary, all obligations secured hereby together with all accrued interest thereon shall immediately become due and payable. Anything to the contrary herein notwithstanding, Grantor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Beneficiary or on the obligations secured hereby.
- 1.08.3 Subject to the provisions of subparagraph 1.08.4, Grantor covenants to furnish Beneficiary upon Beneficiary's written request, within thirty (30) days after the

date upon which any such Imposition is due and payable by Grantor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof.

- 1.08.4 Grantor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Grantor's covenant to pay any such Imposition at the time and in the manner provided in this Section 1.08, unless Grantor has given prior written notice to Beneficiary of Grantor's intent so to contest or object to an Imposition, and unless (i) Grantor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Property, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (ii) Grantor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Beneficiary; or (iii) Grantor shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.
- 1.08.5 Grantor covenants and agrees not to suffer, permit or initiate the joint assessment of real and personal property or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Trust Estate as a single lien.
- 1.08.6 Beneficiary consents to Grantor having all real property and personal property taxes paid by the River Club Tenant pursuant to the River Club Lease. Following the occurrence of an Event of Default, Beneficiary reserves the right to require Grantor to pay estimated taxes as follows: (a) Grantor shall at the option and following written demand by the Beneficiary, pay each month 1/12 of the estimated annual taxes, assessments, insurance premiums, maintenance, and other charges upon the property nevertheless in trust for Grantor's use and benefit and for the payment by Beneficiary of any such items when due; (b) Grantor's failure to pay such sum to Beneficiary shall constitute a default under this Deed of Trust; (c) as Beneficiary pays funds from this foregoing reserve account, Grantor agrees to increase any of its required payments to Beneficiary by an amount determined by Beneficiary to be reasonably necessary to determine adequate funds for the reserve account; and (d) if such taxes are paid into a reserve account, Lender shall remit those tax payments to the appropriate taxing authorities in a manner in order to avoid any late payment penalties being assessed.
- 1.09 **Utilities.** Grantor shall pay, when due, all utility charges that are incurred for the benefit of the Trust Estate or that may become a charge or lien against the Trust Estate for gas, electricity, water or sewer services furnished to the Trust Estate and all other assessments or charges of a similar nature, whether public or private, affecting the Trust Estate or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.
- 1.10 **Defense of Trust Estate.** Grantor will, at Grantor's own expense, appear in and defend any action or proceeding that might affect Beneficiary's security or the rights or powers of

Beneficiary or Trustee or that purports to affect any of the Trust Estate. If Grantor fails to perform any of its covenants or agreements contained in this Deed of Trust, or if any action or proceeding of any kind (including but not limited to any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced that might affect Beneficiary's or Trustee's interest in the Property or Beneficiary's right to enforce its security, the Beneficiary and/or Trustee may, at its option, make any appearances, disburse any sum and take any actions as may be reasonably necessary to protect or enforce the security of this Deed of Trust or to remedy the failure of Grantor to perform its covenants (without, however, waiving any default of Grantor). Grantor agrees to pay all out-of-pocket expenses of Beneficiary and Trustee thus incurred (including but not limited to fees and disbursements of counsel). Any sums disbursed or advanced by Beneficiary or Trustee will be an additional Indebtedness of Grantor secured by this Deed of Trust and will be payable by Grantor upon demand. Any such sums to be disbursed or advanced by Beneficiary will bear interest at the rate set forth in the Deed of Trust Note payable after maturity thereof. The Grantor's obligations under this Section 1.10 will be offset or reduced to the extent of any amount actually paid to and received by the Beneficiary under any policy of title insurance. This Section will not be construed to require Beneficiary or Trustee to incur any expenses, make any appearances or take any actions.

- 1.11 Actions by Trustee and/or Beneficiary. Should Grantor fail to make any payment and not cure any resulting default after receipt of notice from Lender as provided in the Loan Documents or fail to perform any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do and without any further notice to or demand upon Grantor and without releasing Grantor from any obligation, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Beneficiary or Trustee shall have and are hereby given the right, but not the obligation, (i) to enter upon and take possession of the Trust Estate; (ii) to make additions, alterations, repairs and improvements to the Trust Estate that they or either of them may consider necessary or proper to keep the Trust Estate in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or that may affect the security hereof or the rights or powers of Beneficiary or Trustee; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt that in the judgment of either may affect or appears to affect the security of this Deed of Trust or to be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Grantor shall, immediately upon demand therefor by Beneficiary, pay all costs and expenses incurred by Beneficiary or Trustee in connection with the exercise by Beneficiary or Trustee of the foregoing rights, including without limitation the cost of evidence of title, court costs, appraisals, surveys and attorneys' fees.
- 1.12 Eminent Domain. Should the Trust Estate, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceedings, or in any

other manner, or should Grantor receive any notice or other information regarding such proceeding, Grantor shall give prompt written notice thereof to Beneficiary.

- 1.12.1 Subject to Section 1.12.2 below, Beneficiary shall be entitled to all compensation, awards and other payments or relief therefor to the extent of Indebtedness hereby secured, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceeding. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damages; provided, however, so long as the Grantor is fully in compliance with the terms hereof and the Loan Documents, the Beneficiary shall not enter into any such compromise or settlement without first obtaining the Grantor's consent thereto, which shall not be unreasonably withheld or delayed. All such compensation, awards, damages, rights of action and proceeds awarded to Grantor are hereby assigned to Beneficiary, and Grantor agrees to execute such further assignments of the proceeds as Beneficiary or Trustee may require.
- 1.12.2 In the event any portion of the Trust Estate is so taken or damaged, Beneficiary may apply all such proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including reasonable, documented attorneys' fees incurred by it in connection with therewith, upon any Indebtedness secured hereby and in such order as Beneficiary may determine, provided that the Grantor shall be entitled to the amount of such condemnation proceeds received by the Beneficiary that exceeds the sum of (i) such costs and expenses, (ii) accrued interest and other charges then due and payable, and (iii) the principal amount outstanding. Application of any such proceeds to the Indebtedness will not give rise to any prepayment premium.
- 1.13 Appointment of Successor Trustee. In the event of dissolution or resignation of the Trustee, Beneficiary may substitute a trustee or trustees to execute the trust hereby created, and when such substitution has been filed for record in the office of the Recorder of the County in which the Trust Estate is located and notice given to Grantor, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the trustee or trustees named herein.
- 1.14 Inspections. Beneficiary, or its agents, representatives or workers are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents. In so doing, the Beneficiary will make reasonable efforts not to disrupt the business of Grantor or any tenant.
- 1.15 Liens. Grantor shall pay and promptly discharge, at Grantor's cost and expense, all liens, encumbrances and charges upon the Trust Estate, or any part thereof or interest therein. Grantor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Grantor shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amount as Beneficiary shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim, and provided further that Grantor shall thereafter diligently proceed to cause such lien,

encumbrance or charge to be removed and discharged. If Grantor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond or the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

- 1.16 **Trustee's Powers.** At any time, or from time to time, without liability therefor, upon written request of Beneficiary, and without affecting the personal liability of any person for payment of the Indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Trust Estate, Trustee may (i) reconvey any part of said Trust Estate, or (ii) join in any extension agreement or any agreement subordinating the lien or charge hereof.
- 1.17 **Beneficiary's Powers.** Without affecting the liability of any other person liable for the payment of any obligation herein mentioned and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the full amount of all unpaid obligations, Beneficiary may, from time to time (i) release any person so liable; (ii) extend the maturity or alter any of the terms of any such obligation; (iii) grant other indulgences; (iv) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel, portion or all of the Property; (v) take or release any other or additional security for any obligation herein mentioned; or (vi) make compositions or other arrangements with debtors in relation thereto. By accepting payment of any obligation herein mentioned after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other obligations herein mentioned or to declare default for failure so to pay.
- 1.18 **Waste, Zoning, Subdivision.**
  - 1.18.1 Grantor will not take any actions that might invalidate any insurance carried on the Trust Estate. No personal property in which Beneficiary has a security interest may be removed from the Trust Estate unless it is immediately replaced by similar property of at least equivalent value on which Beneficiary will immediately have a valid first perfected lien and security interest.
  - 1.18.2 Except for in connection with the Development Project (as defined in the River Club Lease), without the prior written consent of Beneficiary, Grantor will not seek, make or consent to any change in the zoning or conditions of use of the Trust Estate that would materially impair the ability of Grantor to construct Improvements on the Trust Estate. Grantor will comply with and make all payments required under the provisions of any covenants, conditions or restrictions that have been or will be recorded affecting the Trust Estate, including but not limited to those contained in any declaration and constituent documents of any condominium, cooperative or planned development project on the Trust Estate. Grantor will comply with all existing and future requirements of all governmental authorities having jurisdiction over the Trust Estate. Grantor hereby represents, warrants and covenants that the

Trust Estate is in compliance with all applicable laws, ordinances, codes and regulations.

1.19 Accounting; Changes in Condition.

- 1.19.1 Grantor will keep accurate books and records for the operation of the Trust Estate and its own financial affairs consistent with generally accepted accounting principles (GAAP). Beneficiary will have the right to examine, copy and review Grantor's books and records at all reasonable times upon reasonable written request. The Grantor's books and records that disclose the Grantor's customers' names or price and other terms of agreements between the Grantor and Grantor's customers may be redacted by the Grantor, provided the Grantor's financial condition will nonetheless be disclosed and not materially distorted by such redaction. However, if such redaction is not practical or produces material distortion (in the Beneficiary's sole judgment), the Grantor's books and records containing such information shall be reviewed by the Collateral Agent (as defined and identified by the Loan Agreement who shall be entitled to copy, summarize or otherwise convey to the Beneficiary the substance of such books and records except for Grantor's customers' names and price and other terms of agreements between the Grantor and the Grantor's customers.
- 1.19.2 Grantor shall promptly notify Beneficiary of any material adverse change in Grantor's financial condition or of any material adverse change in the Trust Estate.

1.20 Financial Information and Reporting Requirements. In addition to the requirements of Section 1.19 above, until such time as this Deed of Trust is reconveyed and the Indebtedness secured hereby is fully and finally paid, Grantor shall provide to the Beneficiary all financial information and financial statements required by the Loan Agreement. Grantor shall also immediately give notice to Beneficiary of any and all changes in accounting methods, and any changes in independent accountants or accounting firms engaged by the Grantor.

1.21 Drainage and Soil. Grantor hereby warrants and represents to Beneficiary that, to Grantor's current, actual knowledge, the existing and any proposed drainage for the Property is and will be adequate for existing and any proposed Improvements on the Property, and further that the existing and any proposed drainage have been approved by the necessary public agencies. Grantor also hereby represents and warrants that, to Grantor's current, actual knowledge, the existing foundations for the Improvements are adequate to support them given the present soil conditions of the Property, and that any building or structure to be constructed on the Property in the future shall include a foundation designed and constructed to provide adequate support given the soil conditions then existing on the Property.

1.22 Assignment of Contract Rights. The Grantor hereby assigns to the Beneficiary all the Grantor's right, title and interest in and to the Grantor's rights, remedies and benefits under contracts and arrangements pertaining to the Trust Estate or any portion thereof, including without limitation, all agreements, escrow accounts, earnest money agreements, sales

agreements, conditional sales, maintenance agreements, supply agreements, deposit receipts, government permits, planning and zoning approvals, building permits, utility agreements, causes of action, warranty rights, franchise rights and any and all other claims involving or incidental to the Trust Estate (the "Contract Rights"). If the Grantor defaults in performance of any of its obligations hereby secured beyond all applicable notice and cure periods, then the Beneficiary shall have the right, but not the obligation, at any time and without notice to the Grantor, to receive directly all payments made or to be made, or benefits to be received on account of the Contract Rights, and the Grantor hereby consents to the payment directly to the Beneficiary of any and all amounts due or becoming due under or pursuant to the Contract Rights. No action taken by the Beneficiary to collect any deposits, down payments or other payments arising under or pursuant to the Contract Rights will make the Beneficiary a "mortgagee-in-possession" of the Trust Estate unless the Beneficiary personally or by its agent enters into actual possession of the Trust Estate. Possession by a court-appointed receiver will not be considered possession by the Beneficiary.

1.23 Assignment of Leases.

1.23.1 Grantor hereby grants, transfers and assigns to Beneficiary all the right, title and interest of Grantor in and to all existing and future lease agreements, occupancy agreements and use agreements (hereinafter referred to as the "Leases"), whether written or oral and whether for a definite term, day to day or month to month, relating to the Trust Property, or any part thereof, and all rents, issues and profits (including without limitation room sales) thereunder. This assignment shall extend to and cover any and all extensions and renewals of existing and future leases and to any and all present and future rights against guarantors of any such obligations and to any and all rents, issues and profits (including without limitation room sales) collected under the Leases or other rentals. This assignment is given to facilitate payment and performance of the Note, this Deed of Trust and any other security agreements at any time securing the Note. Grantor will advise Beneficiary promptly of the execution hereafter of any lease of any part of the Trust Property and, upon Beneficiary's request, will submit any such lease to the Beneficiary for examination and approval, except for those room leases entered into in the ordinary course of business of Grantor. Upon the request of Beneficiary, Grantor will provide annual reports to Beneficiary advising Beneficiary of the status of any and all leases relating to the property as previously described. If Grantor defaults in the performance of the terms of this Deed of Trust beyond all applicable notice and cure periods, then Grantor will advise Beneficiary promptly of the execution hereafter of any lease of any part of the Trust Property and upon Beneficiary's request will submit any such lease to Beneficiary for examination and approval, except for those individual room leases entered into in the ordinary course of business by Grantor. In pursuance of this assignment, and not in lieu hereof, Grantor shall, at the request of Beneficiary give Beneficiary separate specific Assignments of Rents and Lease covering some or all of the Leases, the terms of such assignments being incorporated herein by reference. This assignment is an absolute assignment and not for security purposes. Grantor shall not enter into any

new leases without the prior written consent of Beneficiary, not to be unreasonably withheld, conditioned, or delayed.

- 1.23.2 Grantor hereby authorizes and directs the lessees and tenants of the Trust Property that upon written notice from Beneficiary, all payments required under the Leases, or in any way respecting same, shall be made directly to the Beneficiary as they become due. Grantor hereby relieves such lessees and tenants from any liability to Grantor by reason of such payments being made to Beneficiary. Nevertheless, until Beneficiary notifies in writing such lessees and tenants to make such payments to Beneficiary, Grantor shall be entitled to collect all such rents and payments. Beneficiary is hereby authorized to give such notification during the continuance of any Event of Default (as defined in the Loan Agreement) by Grantor hereunder upon the expiration of any applicable notice and cure periods, and such notification may be given thereafter at any time during which such Event of Default remains uncured.
- 1.23.3 During the continuance of an Event of Default, all rents collected by Grantor shall be applied in the following manner:
  - 1.23.3-1 First, to the payment of real property taxes levied against the Trust Property, where provision for paying such taxes is not otherwise made;
  - 1.23.3-2 Second, to the payment of any amounts due and owing to Beneficiary under the terms of any obligation secured hereby;
  - 1.23.3-3 Third, to the payment of current operating costs and expenses (including repairs, maintenance and necessary acquisitions of property and expenditures for capital improvements) arising in connection with the Trust Property;
- 1.23.4 All rents collected by Beneficiary may be applied to the items in Paragraph 1.23.3 above listed in any manner that Beneficiary deems advisable and without regard to the foregoing priorities. Receipt by Beneficiary of such rents, issues, and profits shall not constitute a waiver of any right that Beneficiary may enjoy under this Deed of Trust or under the law of Idaho, nor shall the receipt and application thereof cure any Event of Default hereunder nor affect any foreclosure proceeding or any sale authorized by this Deed of Trust and the laws of Idaho.
- 1.23.5 Beneficiary shall be required to account for only such rentals and payments as are actually collected by it. Beneficiary shall have no liability for failure to rent the Trust Property or any part thereof, or for failure to make collections of rentals, or for failure to do any of the things which are authorized herein. This provision is a grant of rights and privileges to Beneficiary and shall not be held to create any duties or liabilities except as herein expressly set forth. For the purpose of accounting, the books and records of Beneficiary shall be deemed *prima facie* correct.

- 1.23.6 Beneficiary shall not be liable for the act or omission of any agent, if Beneficiary shall have used reasonable care in the selection of such agent.
- 1.23.7 Beneficiary shall, in the exercise of its control and management of the Trust Property, be deemed the agent of Grantor and shall not be liable for any damage to any person or property, where such damage arises out of the operation of, or in connection with, such Trust Property.
- 1.23.8 Grantor represents and warrants that, to Grantor's current, actual knowledge, any and all Leases covering all or a portion of the Trust Property are in full force and effect and Grantor and the lessees thereof are in all material respects in good standing thereunder and that neither Grantor nor such lessees are in default with respect to any provisions thereof.
- 1.23.9 Grantor will in all respects promptly and faithfully keep, perform and comply with all of the terms, provisions, covenants, conditions and agreements in such Leases to be kept, performed and/or complied with by the lessor therein, and will require, demand and strictly enforce, by all available means, the prompt and faithful performance of and compliance with all the terms, provisions, covenants, conditions and agreements in such Leases to be performed and/or complied with by the lessees therein. Grantor will not do or permit anything to be done, the doing of which, or omit or refrain from doing anything, the omission of which, will or could be a breach of or default in the terms of any of such Leases or a ground for declaring a forfeiture or termination thereof; any violation on Grantor's part of any covenant or agreement in any such Lease or in the assignment of such Lease that is to be kept or performed by lessor or any violation on assignor's part of any agreement by assignor set out in any such assignment of such lease shall constitute a default under this Deed of Trust.
  - 1.23.9-1 Any violation on Grantor's part of any covenant or agreement in any such lease or in the assignment of such lease that is to be kept or performed by lessor or any violation on assignor's part of any agreement by assignor set out in any such assignment of any such lease shall constitute a breach of this Deed of Trust and thereupon Beneficiary may, at its option, without notice, declare the entire indebtedness secured hereby immediately due and payable.
  - 1.23.9-2 1.23.9-1 Except for in connection with the Development Project (as defined in the Brasa Lease), Grantor will not consent to, cause or allow any material modification or alteration of any of the terms (including, without limitation, the amount of rent), conditions or covenants of the long term Leases or any long term Lease hereafter effected, or the termination of any such Lease, without the prior written approval of Beneficiary, which will not be unreasonably withheld, conditioned or delayed provided, however, that Grantor may, without Beneficiary's consent, modify or alter any of the terms, conditions and covenants of any of such Leases so long as such modification or alteration does not

result in a (i) surrender or termination of such Lease or (ii) materially decrease in the amount of any payments due under such Lease or (iii) materially change in the size of the leased premises or (iv) materially decrease in the term of such Lease.

1.23.9-3 Grantor agrees that for the purpose of curing any default under any Lease during the continuance of an Event of Default Beneficiary may, but shall not be obligated to, do any act, pay any sum or execute any document in the name of the Grantor or as its attorney-in-fact, as well as in Beneficiary's own name, as Beneficiary in its discretion may determine, and Grantor hereby irrevocably appoints Beneficiary its true and lawful attorney-in-fact, in its name or otherwise, to do any and all acts, pay any sum and/or to execute any and all documents that may in the opinion of the Beneficiary be necessary or desirable to cure any such default or preserve any right of the Grantor under any of such Leases, or to preserve any rights of the Grantor whatsoever, or to protect Beneficiary's security interest. If Beneficiary, acting under its authority herein granted, should pay, suffer or incur any expense, costs, charge, fee, obligation, damage or liability of any nature, or be a party to any action or proceeding, whether any of the same be for the purpose of curing any such Default or protecting Beneficiary's security or the rights of the Grantor under any of such tenant leases, or otherwise, all of the same and all sums paid by Beneficiary for prosecution or defense of such actions or proceedings, including in any case reasonable attorneys' fees, shall be payable by Grantor to Beneficiary immediately, upon demand, together with interest thereon at the default interest rate contained in the Note until paid, and the same to be secured by these presents and be a lien upon Trust Property.

1.23.9-4 Grantor covenants and agrees that in the event Grantor shall receive from any of the lessees of such Leases notice of any default by Grantor under the terms or provisions of any of such Leases, or receive from any of such lessees or from any other party any notice of communication in any way respecting a default or alleged default or failure of performance which could become a default under lapse of time, or otherwise under such Leases, or relating to Grantor's good standing with respect thereto, Grantor shall immediately, and not later than five (5) business days after receipt of such notice or communication, mail (special delivery in the case of a notice of default), postage prepaid, or deliver in person to Beneficiary a true, exact and full copy of such notice or communication.

1.23.9-5 Grantor shall use commercially reasonable efforts to procure and deliver to Beneficiary at any time within thirty (30) days after notice and demand estoppels from each lessee, in form satisfactory to Beneficiary.

1.24 Security Agreement. The following applies regarding security agreements and financing statements:

- 1.24.1 Some of the items of property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Deed of Trust shall be effective as a security agreement and financing statement filed as a fixture filing from the date of its filing for record in the appropriate offices as provided by the laws of Idaho, including being filed for record in the real estate records of the county in which the such property is located. The name of the record owner of such real property is the Grantor herein. Information concerning the security interest created by this instrument may be obtained from the Beneficiary, as Secured Party at the address set forth in the preamble portion of this Deed of Trust.
- 1.24.2 Grantor hereby grants to Beneficiary a security interest in all equipment and fixtures and in the personal property located on or at the real property encumbered hereby and more fully described in the granting clauses of this Deed of Trust, including without limitation any and all property of similar type or kind hereafter located on or at the real property encumbered hereby, and together with any and all sums at any time on deposit for the benefit of Beneficiary or held by Beneficiary (whether deposited by or on behalf of Grantor or anyone else) pursuant to any of the provisions of this Deed of Trust, for the purpose of securing all obligations of the Grantor herein contained.
- 1.24.3 Grantor hereby warrants, represents and covenants as follows:
  - 1.24.3-1 Except for the security interest granted hereby, Grantor is, and as to portions of the personal property to be acquired after the date hereof will be, the sole owner of the personal property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever except as otherwise noted. Grantor will notify Beneficiary of, and will defend the personal property against, all claims and demands of all persons at any time claiming the same or any interest therein.
  - 1.24.3-2 Grantor will not lease, sell, convey or in any manner transfer any material personal property without the prior written consent of Beneficiary other than in the ordinary course of business.
  - 1.24.3-3 The personal property is not used or bought for personal, family or household purposes.
  - 1.24.3-4 The personal property will be kept on or at such real property and Grantor will not remove the personal property from such real property without the prior written consent of Beneficiary, except such portions or items of personal property which are consumed or worn out in

ordinary usage, all of which shall be promptly replaced by Grantor other than in the ordinary course of business.

- 1.24.3-5 Grantor maintains a place of business in the state of Texas and Grantor will immediately notify Beneficiary in writing of any change in its places of business.
- 1.24.3-6 At the request of Beneficiary, Grantor will join Beneficiary in executing one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of Idaho in form satisfactory to Beneficiary, and will pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable.
- 1.24.3-7 All covenants and obligations of Grantor contained in this Deed of Trust shall be deemed to apply to the personal property whether or not expressly referred to herein in this paragraph.
- 1.24.3-8 This Deed of Trust constitutes a Security Agreement as that term is used in the Uniform Commercial Code of Idaho.
- 1.24.3-9 To the extent permitted by applicable law, the security interest created hereby (and/or by the financing statements being filed simultaneously herewith) is specifically intended to cover and include all leases of the property (hereinafter together with all amendments and supplements thereto made as provided therein referred to as the "Leases"), between Grantor, as lessor, and various tenants of the such real property, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of such Leases, together with all the right, title and interest of Grantor, as lessor thereunder, including, without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for any and all of the rents, income, revenues, issues and profits and moneys payable as damages or in lieu of the rent and moneys payable as the purchase price of the Trust Property or any part thereof or of trust awards or claims for money or other sums of money payable or receivable thereunder howsoever payable, and to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which Grantor or any lessor is or may become entitled to do under the Leases, provided, that the assignments made by this provision shall not impair or diminish any obligation of Grantor under the Leases, nor shall any such obligation be imposed upon the Beneficiary.
- 1.24.3-10 The security interest herein granted shall also extend to and cover all sale agreements, proceeds thereof and deposits paid by purchasers pertaining to the lots subject to this Deed of Trust whether or not such

sale agreements are known as earnest money agreements, real estate contracts, reservation agreements, deposit contracts or by other names.

1.24.3-11 The security interest herein shall also extend to all engineer plans, architectural plans and drawings, building permits, conditional use permits, PUD permits, construction contracts and all contracts relating thereto.

## ARTICLE II

### GRANTOR'S HAZARDOUS SUBSTANCE COVENANTS, WARRANTIES, REPRESENTATIONS AND HOLD HARMLESS AGREEMENT.

2.01 Grantor's Covenants, Representations and Warranties. Grantor for itself and its successors and assigns, covenants, warrants and represents that:

2.01.1 Except as previously disclosed in writing to the Beneficiary or disclosed in any environmental site assessment or due diligence report received by Beneficiary, no pollutants or other toxic or hazardous substances, including without limitation any solid, liquid, gaseous, or thermal irritant or contaminant, such as smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed) (collectively referred to as "substances") have been or shall be discharged, dispersed, released, stored, treated, generated, disposed of, or allowed to escape (collectively referred to as an "incident") on the Property.

2.01.2 Except as previously disclosed in writing to the Beneficiary, no asbestos or asbestos-containing materials have been or will be installed, used, incorporated into, or disposed of on the Property.

2.01.3 No polychlorinated biphenyls ("PCBs") are or will be located on or in the Property, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form.

2.01.4 Except as previously disclosed in writing to the Beneficiary, no underground storage tanks are or will be located on the Property or were located on the Property and subsequently removed or filled.

2.01.5 No investigation, administrative order, consent order and agreement, litigation, or settlement (collectively referred to as an "action") with respect to substances is proposed, threatened, anticipated or in existence with respect to the Property.

2.01.6 The Property and Grantor's operations (and those of any tenant or occupant) at the Property are in compliance with all applicable federal, state and local statutes, laws, ordinances, regulations or codes. No notice has been served on Grantor, by any entity, governmental body, person or individual claiming any violation of any law, statute, regulation, ordinance or code, or requiring compliance with any law, regulation, ordinance or code, or demanding payment or contribution for environmental damage or injury to natural resources.

2.02 **Failure to Comply.** Failure to materially comply with any covenant or warranty or if any material representation made or given in this Article is or becomes false, the same shall be deemed to be an Event of Default under this Deed of Trust subject to all applicable notice and cure periods.

2.03 **Grantor's Indemnity, Defense and Hold Harmless Covenants.** Grantor, for itself and its successors, assigns and guarantors (collectively referred to in this paragraph as "Grantor"), agrees to defend, indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, contractors, subcontractors, licensees, invitees, successors and assigns (collectively referred to in this paragraph as "Beneficiary"), from and against any and all loss, claims, demands, judgments, damages, actions, causes of actions, injuries, administrative orders, consent agreements and orders, liabilities, penalties, costs and expenses of any kind whatsoever, including without limitation claims arising out of loss of life, injury to persons, property, or business or damage to natural resources in connection with the acts or omissions of Grantor, its predecessors in interest, third parties who have trespassed on the Property, or parties in a contractual relationship with Grantor, or any of them, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Beneficiary, which:

- a. Arises out of the actual, alleged or threatened discharge, dispersal, release, storage, treatment, generation, disposal or escape of pollutants or other toxic or hazardous substances, including any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste (including materials to be recycled, reconditioned or reclaimed) on the Trust Estate; or
- b. Actually or allegedly arises out of the use, specification, or inclusion of any product, material or process containing chemicals, the failure to detect the existence or proportion of chemicals in the soil, air, surface water or ground water, or the performance or failure to perform the abatement of any pollution source or the replacement or removal of any soil, water, surface water, or groundwater containing chemicals on the Trust Estate by Grantor.

Grantor shall bear, pay and discharge when and as the same become due and payable, any and all such judgments or claims for damages, penalties or otherwise levied or made against Beneficiary described in this Article II, shall hold Beneficiary harmless for those judgments or claims, and shall assume the burden and expense of defending all suits, administrative proceedings, and negotiations of any description with any and all persons, political subdivisions or government agencies arising out of any of the occurrences set forth in this Article II.

### **ARTICLE III REMEDIES UPON DEFAULT**

3.01 **Events of Default.** Failure to comply strictly with any term or condition of any Loan Document or any covenant or condition contained or referred to herein, or if any representation made to the Beneficiary by Grantor (or any Guarantor) was false when made or

subsequently becomes false, the same shall be deemed an event of default, including but not limited to the following:

- 3.01.1 Failure to pay when due any installment of principal or interest or any other sum secured hereby following five (5) day notice and opportunity to cure, provided such failure continues, or failure to timely perform any obligation the performance of which is secured by the Trust Estate or any portion thereof after giving effect to any applicable curative provisions contained herein, if any, and, if no curative provisions are applicable, then if such failure continues for ten (10) days after written notice from Lender, provided however, if such default cannot be cured within such period, and is a non-monetary default such period shall be extended as long as reasonably necessary to cure such default so long as Grantor has commenced the cure of such default and is diligently prosecuting the same to completion, but in no event later than sixty (60) days after the giving of the notice of default; or
- 3.01.2 Grantor's or any Guarantor's filing of a voluntary petition in bankruptcy or being adjudicated a bankrupt or insolvent, or the filing of any petition or answer seeking or acquiescing in any arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or Grantor's or any Guarantor's seeking consent to or acquiescence in the appointment of any trustee, receiver or liquidator of all or any part of the Trust Estate, or any or all of the royalties, revenues, rents, issues or profits thereof, or Grantor or any Guarantor making of any general assignment for the benefit of creditors, or admission in writing its inability to pay its debts generally as they become due; or
- 3.01.3 A court's entry of an order, judgment or decree approving a petition filed against Grantor or any Guarantor seeking any relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of ninety (90) days (whether or not consecutive) from the first date of entry thereof; or the appointment of any trustee, receiver or liquidator of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, without the consent or acquiescence of Grantor or any Guarantor and such appointment shall remain unvacated and unstayed for an aggregate of ninety (90) days (whether or not consecutive); or
- 3.01.4 Issuance of a writ of execution, mechanic's lien or attachment or any similar process or levy against all or any part of or interest in the Trust Estate, or entry of any judgment for monetary damages against Grantor or any Guarantor that shall become a lien on the Trust Estate or any portion thereof or interest therein and (a) such execution, mechanic's lien, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after the earlier of the issuance or levy of any writ or similar process or

within sixty (60) days after entry of any money judgment against Grantor or any Guarantor or (b) such execution, mechanic's lien, attachment or similar process or judgment could materially adversely affect the performance of the Grantor's obligations under the Loan Documents; or

- 3.01.5 There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Loan Documents or any part thereof, not referred to in this Section 3.01 after giving effect to any applicable curative provisions contained therein, if any, and, if no curative provisions are applicable, then if such breach continues for ten (10) days after written notice from Lender, provided however, if such default cannot be cured within such period, and is a non-monetary default such period shall be extended as long as reasonably necessary to cure such default so long as Grantor has commenced the cure of such default and is diligently prosecuting the same to completion, but in no event later than sixty (60) days after the giving of the notice of default; or
- 3.01.6 Any representation or disclosure made to Beneficiary by Grantor or by any guarantor of any Indebtedness or obligation secured by this Deed of Trust proves to be materially false or misleading on the date as of which made, or subsequently becomes materially false or misleading, whether or not that representation or disclosure appears in this Deed of Trust, and such continues for ten (10) days after written notice from Lender, provided however, if such default cannot be cured within such period, such period shall be extended as long as reasonably necessary to cure such default so long as Borrower has commenced the cure of such default and is diligently prosecuting the same to completion, but in no event later than sixty (60) days after the giving of the notice of default.
- 3.01.7 The occurrence of any other event that under any of the Loan Documents or any other document referenced in or related to this Deed of Trust constitutes a default by Grantor and gives Beneficiary the right to accelerate the maturity of any part of the Indebtedness secured by this Deed of Trust; or
- 3.01.8 The commencement of or existence of any litigation relating to the Trust Estate that could be material to the performance of the Grantor's performance of the Loan Documents, including but not limited to the development or completion of any project to be built on the Property or any transaction described in the Loan Documents.

3.02 Acceleration Upon Default; Additional Remedies. Upon the occurrence of any Event of Default beyond all applicable notice and cure periods, Beneficiary may declare the Deed of Trust Note and any other Indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any

kind (other than notice as provided by in the Note or Loan Agreement). Thereafter Beneficiary may do any one or more of the following:

- a. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or part thereof or interest therein, increase the income therefrom or protect the security thereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any Indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such rents, issues and profits and the collection thereof shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Trust Estate or the collection, receipt and application of rents, issues or profits, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any event of default, including the right to exercise the power of sale.
- b. Appoint a receiver, commence an action to foreclose this Deed of Trust as a mortgage, or specifically enforce any of the covenants hereof.

3.03 Foreclosure by Power of Sale. Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with the Trustee this Deed of Trust, the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require. Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded and given all notices required by law. Trustee shall, without demand on Grantor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in the Notice of Sale, either as a whole, or in separate lots or parcels as Beneficiary shall deem expedient, unless the Beneficiary specifies certain terms and conditions that are permitted by applicable law, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. The Trustee may postpone any sale by public announcement at the time and place noticed for the sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including without limitation, Grantor, Trustee or Beneficiary, may purchase at such sale.

3.04 Appointment of Receiver. If any event of default described in Section 3.01 of this Deed of Trust shall have occurred and be continuing, Beneficiary, as a matter of right, after the

expiration of the applicable grace period or notice period, if any, and without regard to the then value of the Trust Estate or the interest of Grantor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Grantor hereby irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of Beneficiary in case of entry as provided in Section 3.02 and shall continue as such and exercise all such powers until the date of sale of the Property unless such receivership is sooner terminated.

3.05 Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any Indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under the Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the Indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary or to which either of them may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary, and either of them may pursue inconsistent remedies.

3.06 Notice of Other Action. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party unless brought by Trustee.

3.07 Restrictions on Transfer of the Property or Interest in Grantor. Except for Permitted Transfers or as otherwise provided herein or any Lender Consent Agreement, any sale, assignment, transfer, lease with option to purchase, option to sell, conveyance, other disposition, mortgage, pledge, encumbrance, or subjection to any lien, voluntarily or involuntarily, whether by operation of law or otherwise, of the Trust Estate or any part thereof of any interest therein, or a "Change of Control of the Grantor" (which shall be defined for the purposes of this paragraph to mean the transfer or assignment in any manner or way of any membership interest, capital stock or partnership interest in Grantor by any single transfer or in the aggregate, whether directly or indirectly, by voting trust, hypothecation or other means) without, in each instance, the prior written consent of Beneficiary, which consent may be given or withheld at in Beneficiary's reasonable discretion, shall constitute an Event of Default hereunder and the entire unpaid principal balance of the Indebtedness together with accrued interest shall become due and payable forthwith at the option of Beneficiary. Notwithstanding the foregoing restrictions, the following

liens and transfers shall not constitute Event of Default or give rise to a right to accelerate the Indebtedness:

- i. Permitted Transfers
- ii. Liens for taxes not yet due and payable.
- iii. Liens being contested by Grantor in accordance with this Deed of Trust.
- iv. Minor mechanic's or other liens that could not materially impair the Grantor's ability to perform its obligations under the Loan Documents.

The following statement is incorporated herein in order to give notice of the above:

NOTICE--THE DEBT SECURED HEREBY IS SUBJECT TO ACCELERATION OR CALL IN FULL IN THE EVENT OF A SALE, CONVEYANCE OR ENCUMBRANCE OF THE PROPERTY (OR PART THEREOF) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN.

#### ARTICLE IV MISCELLANEOUS

4.01 Governing Law. This Deed of Trust shall be governed by the laws of the state of Idaho. In the event that any provision or clause of any of the Loan Documents conflicts with applicable laws, such conflicts shall not affect other provisions or such Loan Documents that can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents are declared to be severable. No provision hereof can be effectively waived, changed, discharged or terminated orally but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

4.02 Limitation of Interest. It is the intent of Grantor and Beneficiary in the execution and acceptance, respectively, of this Deed of Trust to contract in strict compliance with the usury laws of the state of Idaho governing the loan evidenced by the Loan Documents. In furtherance thereof, Beneficiary and Grantor stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the state of Idaho governing the loan evidenced by the Loan Documents. Grantor or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest under the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws of the state of Idaho, and the provisions of this Section 4.02 shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. If a court of competent jurisdiction shall make a final determination that the

performance of any provision of the Loan Documents shall result in a payment of an amount for such use, forbearance or detention in excess of such rate, then (i) such provision shall be deemed to be appropriately modified to the extent necessary to reduce such amount to an amount not in excess of such rate, and (ii) any such excess amounts theretofore received by the holder of the Note shall be deemed to have been applied to the redemption at par of a like principal amount under the Note, and all necessary reallocations of subsequent payments with respect to such Note shall be made and appropriately annotated on such Note.

- 4.03 **Reconveyance by Trustee.** Upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender of this Deed of Trust to Trustee for cancellation and retention and upon payment by Grantor of Trustee's fees, Trustee shall reconvey to Grantor, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.
- 4.04 **Notices.** Whenever Beneficiary, Grantor or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by registered or certified mail, postage prepaid, return receipt requested. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.
  - 4.04.1 Grantor requests that any notice of default or notice of sale required by law be mailed to it at its address set forth above, with a copy to BREF2 River Club LLC, c/o Brasa Capital Management, 2029 Century Park East, Suite 2070, Los Angeles, California 90071, Attn: Matt Milich.
  - 4.04.2 Beneficiary requests that any notice to it be mailed to it at the address set forth above.
- 4.05 **Acceptance by Trustee.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.
- 4.06 **Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.
- 4.07 **Invalidity of Certain Provisions.** If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any party of the Trust Estate, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt that is not secured or fully secured by the lien of this Deed of Trust.

4.08 **Subrogation.** To the extent that proceeds of the Deed of Trust Note are used to pay any outstanding lien, charge or prior encumbrance against the Property, such proceeds may be advanced by Beneficiary who after payment of such funds shall be subrogated to any and all rights and liens owed by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

4.09 **No Merger.** If both the landlord's and tenant's estates under any lease or portion thereof that constitute a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and created by Grantor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

4.10 **Recording of Deed of Trust.** This Deed of Trust is to be recorded in the real estate records of the county or counties where the Property is located. Grantor will pay for all recording costs whenever this Deed of Trust is recorded.

4.11 **Status Report.** Grantor agrees to pay Beneficiary a reasonable charge, not to exceed any maximum allowed by law, for giving any statement, at the request of or authorized by the Grantor, of the status of the obligations secured by this Deed of Trust.

4.12 **Release, Modification, Additional Security, Consent.** Without affecting Grantor's liability for the payment of any of the Indebtedness secured by this Deed of Trust, Beneficiary may from time to time and without notice to Grantor (i) release any person liable for the payment of that Indebtedness; (ii) extend or modify the terms of payment of that Indebtedness; (iii) accept additional real or personal property of any kind as security, or alter, substitute or release any property securing that Indebtedness; or (iv) cause Trustee to consent to the making of any map or plat of the Trust Estate, or to reconvey any part of the Trust Estate, or to join in granting any easement or creating any restriction on the Trust Estate, or to join in any subordination or other agreement affecting this Deed of Trust.

4.13 **Waiver of Rights.** Grantor waives all present and future statutes of limitations as a defense to any action to enforce the provisions of this Deed of Trust or to collect any Indebtedness secured by this Deed of Trust to the fullest extent permitted by law.

4.14 **Definition of Terms.** The term "Grantor" includes both the original Grantor and any subsequent owner or owners of any of the Trust Estate, and the term "Beneficiary" includes the original Beneficiary and also any future owner or holder, including pledgees and participants, of the Note or any interest therein. Whenever the context requires, the singular includes the plural and vice versa and each gender includes each other gender. The

headings of the articles of this Deed of Trust are for convenience only and do not limit its provisions.

- 4.15 **Hold Harmless.** Grantor shall indemnify and hold harmless the Beneficiary against any and all claims and liabilities for claims arising from the conduct or management of or from any work or thing whatsoever done in or about the Trust Estate during the term of this Deed of Trust, or arising from any act or negligence of Grantor, or any of Grantor's agents or employees or tenants, arising from any accident, injury or damage whatsoever, however caused to any person or persons, or to the property of any person, persons, corporation or corporations occurring during the existence of this Deed of Trust on, in or about the Property and from and against all costs, counsel fees, expenses and liabilities incurred in or about any such claim or any action or proceedings brought thereon; and in case any action or proceedings be brought against the Beneficiary by reason of any such claim, Grantor, on notice from Beneficiary shall resist or defend such action or proceedings, by counsel satisfactory to Beneficiary.
- 4.16 **Beneficiary's Determination that Trust Estate is "Substantially Valueless".** Notwithstanding any of the foregoing provisions hereof or in any of the Loan Documents to the contrary, the Grantor specifically understands and agrees that the Beneficiary reserves the right, upon the Grantor's default, to foreclose upon and sell less than the entire Trust Estate or not to foreclose upon any of it if the Beneficiary in its sole discretion determines all or some portion thereof is "substantially valueless" within the meaning of Idaho Code Section 45-1503. In such event, the Grantor (for itself and any person claiming under or through it) agrees not to contest such determination, specifically understanding that the effect of such agreement is to permit the Beneficiary to pursue the Grantor and/or any other collateral securing the Indebtedness and/or any guarantors thereof in such order as the Beneficiary may in its discretion determine, without first foreclosing against the Trust Estate or any portion thereof.
- 4.17 **Binding Effect.** The terms of this Deed of Trust will bind and benefit the heirs, legal representatives, successors and assigns of Grantor and Beneficiary and the successors in trust of Trustee. If Grantor consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of Grantor.
- 4.18 **Further Assurances.** The Grantor agrees to take such actions and to execute and record (all at the Grantor's cost) such further instruments and agreements as the Trustee or the Beneficiary may reasonably request in order to perfect and continue the security hereof or to consummate the transaction contemplated by the Loan Documents.

*[Signature Page Follows.]*

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the day and year first above written.

**GRANTOR:**

**LB RIVER CLUB OWNER LLC,**  
a Delaware limited liability company

By: William Clayborne Duvall, Jr.  
Name: William Clayborne Duvall, Jr.  
Its: Authorized Officer

STATE OF TEXAS  
COUNTY OF DALLAS

This record was acknowledged before me on this 11 day of November, 2022, by William Clayborne Duvall, Jr., known or identified to me to be the Authorized Officer of LB River Club Owner LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company.

[SEAL]



Notary Public, State of TX

(Printed Name of Notary Public)

**DEED OF TRUST –  
Signature Page  
Loan No. 700129697**

DM-#8306827.6

**EXHIBIT "A"**

**Legal Description**

The Land referred to herein below is situated in the County of Ada, State of ID, and is described as follows: Parcel A:

A parcel of land located in Sections 19 and 30 of Township 4 North, Range 2 East, Boise Meridian, and Sections 24 and 25 of Township 4 North, Range 1 East, Boise Meridian, Garden City, Ada County, Idaho, being more particularly described as follows:

Commencing at the One Quarter Section Corner common to Sections 19 and 30 of said Township 4 North, Range 2 East, (from which point the Section Corner common to Sections 19, 20, 29 and 30 of said Township 4 North, Range 2 East bears South 89°11'32" East, 2652.17 feet distant);

Thence from said One Quarter Section Corner, South 87°19'38" West, a distance of 1889.62 feet (formerly described as South 87°19'41" West, 1889.58 feet) to the Southeasterly corner of Lot 16, Block 1 of Plantation Acres Subdivision, recorded in Book 14 of Plats at Page 941 of Ada County Records, said point being on the Southerly Right-of-Way line of West State Street and being the POINT OF BEGINNING;

Thence South 45° 50' 38" West, a distance of 452.33 feet (formerly described as South 45° 44' 14" West, 449.59 feet) on the southerly line of said Plantation Acres Subdivision to the southwesterly lot corner of Lot 1, Block 1 of Elmore Lake Townhomes Subdivision, recorded in Book 75 of Plats at Page 7722 of Ada County Records;

Thence North 48° 49' 22" West, a distance of 169.40 feet (formerly described as North 48° 55' 46" West, .169.72 feet) on the westerly line of said Elmore Lake Townhomes Subdivision and said line extended; Thence North 21° 10' 21" West, a distance of 350.24 feet (formerly described as North 21° 15' 46" West, 351.16') on the westerly line of those Deeds recorded as Instrument Numbers 100079629, 2016-125750, 112109226 and 2021-053038 of Ada County Records;

Thence North 14° 45' 22" West, a distance of 175.12 feet (formerly described as North 14° 51' 46" West, 172.06 feet) on the westerly line of that Deed recorded as Instrument Number 9014579 of Ada County Records;

Thence North 12° 00' 17" West, a distance of 49.57 feet to a point on the westerly line of that parcel of land shown on Record of Survey Number 10780 of Ada County Records;

Thence North 56° 51' 51" West, a distance of 753.13 feet (formerly described as North 56° 57' 18" West) on the westerly line said Record of Survey Number 10780 parcel;

Thence North 50° 20' 53" West, a distance of 273.01 feet (formerly described as North 49° 49' 19" West, 273.53 feet) on the westerly line of said Record of Survey Number 10780 parcel to the northeast corner of Lot 5, Block 1 of Lake Plantation Subdivision, recorded in Book 56 of Plats at Page 5210 of Ada County Records;

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Thence on the northerly and easterly boundary line of said Lake Plantation Subdivision for the following courses and distances:

Thence South 42° 56' 16" West, a distance of 201.60 feet;

Thence South 61° 24' 07" East, a distance of 225.34 feet;

Thence South 83° 24' 28" East, a distance of 188.28 feet;

Thence South 62° 24' 09" East, a distance of 244.87 feet;

Thence South 41° 23' 21" East, a distance of 469.65 feet;

Thence South 14° 52' 30" East, a distance of 195.00 feet to the northeast corner of Lot 12, Block 1 of The Townhouse at Plantation No. 1 (Subdivision);

Thence leaving the easterly boundary line of said Lake Plantation Subdivision and on the exterior boundary line of said The Townhouse at Plantation No. 1 (Subdivision) for the following courses and distances:

Thence South 14° 52' 30" East, a distance of 200.00 feet (formerly described as 200.01 feet);

Thence South 25° 26' 10" East, a distance of 200.00 feet;

Thence South 61° 37' 31" West, a distance of 265.00 feet;

Thence North 24° 24' 40" West, a distance of 393.00 feet to the southwest corner of Lot 26, Block 1 of said Lake Plantation Subdivision;

Thence leaving the exterior boundary line of said The Townhouse at Plantation No. 1 (Subdivision) and on the exterior boundary line of said Lake Plantation Subdivision for the following courses and distances:

Thence North 24° 22' 31" West, a distance of 406.94 feet;

Thence North 28° 58' 08" West, a distance of 288.31 feet to a point of curve;

Thence 137.53 feet on the arc of a curve to the left, said curve having a radius of 74.71 feet, a central angle of 105° 28' 35", a chord bearing of North 81° 42' 14" West, and a chord length of 118.92 feet; Thence South 45° 33' 41" West, a distance of 197.78 feet to a point of curve on the northerly right of way line of West Riverside Drive;

Thence 271.85 feet on the arc of a curve to the left, said curve having a radius of 335.00 feet, a central angle of 46° 29' 41", a chord bearing of North 71° 01' 20" West, and a chord length of 264.45 feet to a point of compound curve, said point being the southwest corner of Lot 1, Block 1 of said Lake Plantation Subdivision;

Thence leaving the exterior boundary line of said Lake Plantation Subdivision and on the northerly right of way line of West Riverside Drive for the following course and distances:

Thence 59.13 feet on the arc of a curve to the left, said curve having a radius of 335.00 feet, a central angle of  $10^\circ 06' 48''$ , a chord bearing of South  $80^\circ 29' 17''$  West, and a chord length of 59.05 feet; Thence South  $75^\circ 36' 16''$  West, a distance of 97.42 feet to a point of curve;

Thence 45.81 feet on the arc of a curve to the right, said curve having a radius of 175.00 feet, a central angle of  $14^\circ 59' 55''$ , a chord bearing of South  $83^\circ 06' 16''$  West, and a chord length of 45.68 feet;

Thence North  $89^\circ 22' 40''$  West, a distance of 339.36 feet (formerly described as North  $89^\circ 23' 44''$  West, a distance of 338.95 feet) to a point of curve;

Thence 31.34 feet on the arc of a curve to the right, said curve having a radius of 20.00 feet, a central angle of  $89^\circ 46' 49''$ , a chord bearing of North  $44^\circ 30' 56''$  West, and a chord length of 28.23 feet (formerly described as arc length of 31.28 feet, a central angle of  $89^\circ 37' 07''$  and a chord length of 28.19 feet) to a point on the easterly right of way line of North Glenwood Street;

Thence leaving the northerly right of way line of West Riverside Drive, South  $00^\circ 00' 47''$  East, a distance of 90.11 feet (formerly described as 90.00 feet) on the easterly right of way line of North Glenwood Street to a point of curve; Thence 31.63 feet on the arc of a curve to the right, said curve having a radius of 20.00 feet, a central angle of  $90^\circ 37' 58''$ , a chord bearing of North  $45^\circ 23' 29''$  East, and a chord length of 28.44 feet (formerly described as arc length of 31.54 feet, a central angle of  $90^\circ 20' 52''$  and a chord length of 28.37 feet) on the southerly right of way line of West Riverside Drive;

Thence South  $89^\circ 22' 40''$  East, a distance of 338.36 feet (formerly described as 338.38 feet) to a point of curve on the northerly boundary line of Daron Subdivision No. 1, recorded in Book 86 of Plats at Page 9709 of Ada County Records; Thence on the exterior boundary line of said Daron Subdivision No. 1 for the following courses and distances:

Thence 58.90 feet on the arc of a curve to the left, said curve having a radius of 225.00 feet, a central angle of  $14^\circ 59' 55''$ , a chord bearing of North  $83^\circ 06' 15''$  East, and a chord length of 58.73 feet (formerly described as arc length of 58.91 feet, a central angle of  $15^\circ 00' 03''$  and a chord length of 58.74 feet);

Thence North  $75^\circ 53' 11''$  East, a distance of 72.22 feet (formerly described as 72.42 feet);

Thence South  $21^\circ 34' 52''$  West, a distance of 399.97 feet (formerly described as 400.00 feet);

Thence South  $17^\circ 05' 34''$  West, a distance of 264.29 feet (formerly described as South  $17^\circ 06' 38''$  West, 264.53 feet) to a point of curve;

Thence leaving the exterior boundary line of said Daron Subdivision No. 1, 156.01 feet on the arc of a curve to the left, said curve having a radius of 117.00 feet, a central angle of  $76^\circ 23' 49''$ , a chord bearing of South  $21^\circ 00' 10''$  East, and a chord length of 144.70 feet (formerly described as

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arc length of 155.83 feet, a central angle of  $76^{\circ} 18' 49''$ , a chord bearing of South  $21^{\circ} 05' 10''$  East and a chord distance of 144.57 feet);

Thence South  $59^{\circ} 24' 46''$  East, a distance of 30.22 feet (formerly described as South  $59^{\circ} 20' 16''$  East, 30.10 feet) to a point of curve;

Thence 127.59 feet on the arc of a curve to the right, said curve having a radius of 153.00 feet, a central angle of  $47^{\circ} 46' 45''$ , a chord bearing of South  $35^{\circ} 24' 47''$  East, and a chord length of 123.92 feet (formerly described as an arc length of 127.58 feet, a central angle of  $47^{\circ} 46' 41''$ , a chord bearing of South  $35^{\circ} 26' 54''$  East, and a chord distance of 123.92 feet);

Thence South  $11^{\circ} 24' 39''$  East, a distance of 38.15 feet (formerly described as South  $11^{\circ} 33' 32''$  East, 38.45 feet) to a point on the toe of slope of the Corps of Engineers Dike - Northside of the Boise River;

Thence South  $63^{\circ} 24' 25''$  East, a distance of 169.57 feet (formerly described as South  $63^{\circ} 23' 44''$  East, 169.37 feet);

Thence South  $50^{\circ} 09' 19''$  East, a distance of 398.28 feet (formerly described as South  $50^{\circ} 09' 09''$  East, 398.13 feet);

Thence South  $59^{\circ} 28' 14''$  East, a distance of 160.51 feet;

Thence South  $66^{\circ} 28' 01''$  East, a distance of 310.74 feet;

Thence South  $76^{\circ} 23' 44''$  East, a distance of 337.01 feet;

Thence South  $57^{\circ} 03' 44''$  East, a distance of 81.56 feet;

Thence leaving the toe of slope of the Corps of Engineers Dike - Northside of the Boise River, and on the Northerly Bank of the Boise River for the following courses and distances:

Thence South  $32^{\circ} 56' 16''$  West, a distance of 39.00 feet;

Thence South  $22^{\circ} 05' 38''$  East, a distance of 137.41 feet;

Thence South  $43^{\circ} 08' 44''$  East, a distance of 37.11 feet;

Thence South  $13^{\circ} 07' 42''$  East, a distance of 61.01 feet (formerly described as South  $13^{\circ} 08' 44''$  East, 60.68 feet) to a point on the westerly boundary line of Wanner's Plantation Estates Subdivision, recorded in Book 59 of Plats at Page 5680 of Ada County Records;

Thence leaving the Northerly Bank of the Boise River and on the exterior boundary line of said Wanner's Plantation Estates Subdivision for the following courses and distances:

Thence North  $06^{\circ} 50' 28''$  West, a distance of 141.06 feet (formerly described as 140.53 feet);

Thence North  $88^{\circ} 24' 32''$  East, a distance of 226.06 feet;

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Thence North  $66^{\circ} 38' 09''$  East, a distance of 14.80 feet (formerly described as 15.00 feet);

Thence North  $04^{\circ} 04' 54''$  West, a distance of 106.77 feet;

Thence North  $89^{\circ} 54' 16''$  East, a distance of 49.61 feet;

Thence South  $51^{\circ} 49' 18''$  East, a distance of 161.90 feet (formerly described as 161.80 feet);

Thence South  $39^{\circ} 30' 44''$  East, a distance of 413.96 feet (formerly described as 413.97 feet);

Thence South  $31^{\circ} 55' 28''$  East, a distance of 73.32 feet;

Thence South  $10^{\circ} 40' 13''$  East, a distance of 131.12 feet (formerly described as South  $10^{\circ} 40' 28''$  East, 131.28 feet) to the southeast corner of Lot 1, Block 1 of said Wanner's Plantation Estates Subdivision; Thence leaving said Wanner's Plantation Estates Subdivision, South  $08^{\circ} 51' 11''$  East, a distance of 46.30 feet (formerly described as South  $08^{\circ} 50' 40''$  East, 46.13 feet) to the northerly lot corner common to Lots 12 and 13, Block 6 of The Plantation No. 3 (Subdivision), recorded in Book 51 of Plats at Page 4249 of Ada County Records;

Thence on the exterior boundary line of said The Plantation No. 3 (Subdivision) for the following courses and distances: Thence South  $84^{\circ} 22' 18''$  East, a distance of 176.62 feet (formerly described as 174.93 feet and 176.62 feet);

Thence South  $47^{\circ} 22' 18''$  East, a distance of 129.60 feet;

Thence South  $21^{\circ} 22' 18''$  East, a distance of 420.00 feet to the northeast corner of Lot 6, Block 5 of The Plantation No. 1 (Subdivision), recorded in Book 44 of Plats at Page 3529 of Ada County Records; Thence leaving the exterior boundary line of said The Plantation No. 3 (Subdivision) and on the exterior boundary line of said The Plantation No. 1 (Subdivision) for the following courses and distances: Thence South  $21^{\circ} 22' 18''$  East, a distance of 372.26 feet (formerly described as 372.25 feet) to the northwest corner of Lot 2, Block 5 of said The Plantation No. 1 (Subdivision);

Thence South  $10^{\circ} 37' 42''$  West, a distance of 115.94 feet to a point on a curve on the northerly right of way line of West Plantation Drive;

Thence 122.17 feet on the arc of a curve to the left, said curve having a radius of 175.00 feet, a central angle of  $39^{\circ} 59' 55''$ , a chord bearing of North  $80^{\circ} 37' 39''$  East, and a chord length of 119.70 feet (formerly described as an arc length of 122.18 feet, a central angle of  $40^{\circ} 00' 04''$  and a long chord of 119.71 feet);

Thence North  $60^{\circ} 37' 38''$  East, a distance of 41.36 feet on said northerly right of way line to southeast corner of Lot 2, Block 5 of said The Plantation No. 1 (Subdivision);

Thence North  $04^{\circ} 19' 15''$  West, a distance of 139.50 feet (formerly described as 139.20 feet) to the lot corner common to said Lot 2, Block 5 of said The Plantation No. 1 (Subdivision) and Lot 21, Block 4 of The Plantation No. 4 (Subdivision), recorded in Book 58 of Plats at Page 5480 of Ada County Records; Thence on the exterior boundary line of said The Plantation No. 4 (Subdivision) for the following courses and distances:

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Thence North  $10^{\circ} 22' 20''$  West, a distance of 655.71 feet (formerly described as 655.72 feet);

Thence North  $59^{\circ} 42' 23''$  East, a distance of 181.76 feet, (formerly described as North  $59^{\circ} 40' 15''$  East);

Thence South  $63^{\circ} 40' 13''$  East, a distance of 180.00 feet (formerly described as South  $63^{\circ} 42' 24''$  East);

Thence South  $04^{\circ} 23' 44''$  East, a distance of 611.10 feet (formerly South  $04^{\circ} 23' 41''$  East, a distance of 611.30 feet) to the lot corner common to Lot 4, Block 4 of said The Plantation No. 4 (Subdivision), and Lot 2, Block 4 of said The Plantation No. 1 (Subdivision) the exterior boundary line of said The Plantation No. 4 (Subdivision); Thence leaving the exterior boundary line of said The Plantation No. 4 (Subdivision), South  $04^{\circ} 16' 03''$  East, a distance of 89.80 feet (formerly described as 89.83 feet) to the southwest corner of Lot 2, Block 4 of said The Plantation No. 1 (Subdivision), being a point of curve on the northerly right of way line of West Plantation Drive;

Thence 99.04 feet on the arc of a curve to the right, said curve having a radius of 525.00 feet, a central angle of  $10^{\circ} 48' 30''$ , a chord bearing of North  $87^{\circ} 19' 37''$  East, and a chord length of 98.89 feet (formerly described as an arc length of 97.13 feet, a central angle of  $10^{\circ} 36' 00''$  and a chord length of 96.99 feet);

Thence South  $87^{\circ} 16' 03''$  East, a distance of 81.64 feet on said northerly right of way line of West Plantation Drive to the southerly lot corner common to Lots 1 and 2, Block 4 of said The Plantation No. 1 (Subdivision);

Thence North  $02^{\circ} 43' 57''$  East, a distance of 100.00 feet to the northerly lot corner common to Lots 1 and 2, Block 4 of said The Plantation No. 1 (Subdivision), said corner being common to the southwest corner of Lot 1, Block 2 of Wedgewood Greens Subdivision, recorded in Book 60 of Plats at Page 6042 of Ada County Records;

Thence on the exterior boundary line of said Wedgewood Greens Subdivision for the following courses and distances: Thence North  $08^{\circ} 26' 53''$  West, a distance of 326.70 feet (formerly described as 326.92 feet);

Thence North  $00^{\circ} 07' 06''$  West, a distance of 188.46 feet (formerly described as 188.09 feet);

Thence South  $88^{\circ} 30' 12''$  East, a distance of 132.56 feet (formerly described as 132.47 feet);

Thence South  $33^{\circ} 37' 54''$  East, a distance of 164.84 feet (formerly described as 164.92 feet) to a point of curve; Thence 35.48 feet on the arc of a curve to the right, said curve having a radius of 50.00 feet, a central angle of  $40^{\circ} 39'26''$ , a chord bearing of South  $13^{\circ} 18' 11''$  East, and a chord length of 34.74 feet (formerly described as a central angle of  $40^{\circ} 39' 24''$ );

Thence South  $89^{\circ} 56' 27''$  East, a distance of 114.18 feet (formerly described as North  $89^{\circ} 54' 24''$  East);

Thence South  $00^{\circ} 07' 01''$  East, a distance of 8.48 feet (formerly described as South  $00^{\circ} 33' 04''$  West, 8.42 feet); Thence leaving the exterior boundary line of said Wedgewood Greens Subdivision, South  $89^{\circ} 24' 43''$  East, a distance of 117.62 feet (formerly described as South  $89^{\circ} 23' 00''$  East, 117.90 feet);

Thence North  $00^{\circ} 26' 19''$  East, a distance of 66.37 feet (formerly described as North  $00^{\circ} 37' 00''$  East, 66.04 feet) to the westerly lot corner common to Lots 2 and 3, Block 1 of Kessinger Subdivision, recorded in Book 73 of Plats at Page 7586 of Ada County Records;

Thence North  $04^{\circ} 05' 27''$  West, a distance of 59.75 feet (formerly described as North  $04^{\circ} 14' 01''$  West, 60.22 feet) on the westerly boundary line of said Kessinger Subdivision;

Thence North  $13^{\circ} 37' 08''$  West, a distance of 124.77 feet (formerly described as North  $13^{\circ} 30' 03''$  West, 124.75 feet) on the westerly line of Kessinger Subdivision;

Thence North  $27^{\circ} 49' 52''$  West, a distance of 198.57 feet (formerly described as North  $27^{\circ} 54' 15''$  West, 198.01 feet) on the westerly line of Kessinger Subdivision and the westerly boundary line of Savannah Greens Subdivision No. 4, recorded in Book 79 of Plats at Page 8455 of Ada County Records;

Thence North  $38^{\circ} 53' 07''$  West, a distance of 165.00 feet (formerly described as North  $38^{\circ} 51' 33''$  West) on the westerly boundary line of Savannah Greens Subdivision No. 4 to the westerly most boundary angle point of said Savannah Greens Subdivision No. 4;

Thence North  $36^{\circ} 22' 28''$  West, a distance of 203.82 feet (formerly described as North  $36^{\circ} 48' 46''$  West, 204.60 feet);

Thence North  $43^{\circ} 58' 14''$  West, a distance of 256.08 feet (formerly described as North  $44^{\circ} 07' 46''$  West);

Thence North  $39^{\circ} 39' 46''$  East, a distance of 268.62 feet (formerly described as North  $39^{\circ} 30' 14''$  East, 270.74 feet) to a point on the westerly right of way line of West State Street;

Thence North  $50^{\circ} 47' 44''$  West, a distance of 122.55 feet (formerly described as North  $50^{\circ} 48' 30''$  West, 121.13 feet) on the westerly right of way line of West State Street;

Thence North  $50^{\circ} 51' 55''$  West, a distance of 1449.31 feet (formerly described as 1449.43 feet) to a point of curve; Thence 217.41 feet on the arc of a curve to the right, said curve having a radius of 17229.00 feet, a central angle of  $00^{\circ} 43' 23''$ , a chord bearing of North  $51^{\circ} 38' 58''$  West, and a chord length of 217.41 feet (formerly described as an arc length of 217.09 feet, a central angle of  $00^{\circ} 43' 19''$  and a long chord of 217.09 feet) on the westerly right of way line of West State Street to the POINT OF BEGINNING.

#### **PARCEL B:**

A parcel of land located in Section 30 of Township 4 North, Range 2 East, Boise Meridian, Garden City, Ada County, Idaho, being more particularly described as follows:

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Commencing at the One Quarter Section Corner common to Sections 19 and 30 of said Township 4 North, Range 2 East, (from which point the Section Corner common to Sections 19, 20, 29 and 30 of said Township 4 North, Range 2 East bears South 89°11'32" East, 2652.17 feet distant);

Thence from said One Quarter Section Corner, South 14°48'27" West, a distance of 2896.07 feet (formerly described as South 14°48'24" West, a distance of 2896.39 feet) to the Northeast corner of Lot 2, Block 1 of Orlovich's Plantation Subdivision, recorded in Book 58 of Plats at Pages 5633 to 5634 of Ada County Records, said point being on the Southerly Right of Way line of West Plantation Drive/Lane, and being the POINT OF BEGINNING;

Thence South 00° 07' 18" West, a distance of 139.89 feet (formerly described as 139.55 feet) to the northeast corner of Lot 3, Block 1 of Orlovich's Plantation Subdivision;

Thence South 88° 37' 32" West, a distance of 79.96 feet (formerly described as 80.26 feet) on said Lot Line; Thence South 63° 36' 22" West, a distance of 74.51 feet (formerly described as 74.19 feet) on said Lot Line; Thence South 76° 39' 22" West, a distance of 20.62 feet (formerly described as 20.71 feet) on said Lot Line;

Thence South 00° 38' 11" West, a distance of 256.01 feet (formerly described as 255.54 feet) on the westerly boundary line of said Orlovich's Plantation Subdivision and the westerly boundary of The Amended Plat of a Portion of Lot 1, and All of Lots 2, 3, 4, 5 and 6, Block 1, The Plantation No. 2 (hereinafter referred to as Amended Plat of Plantation No. 2), to a point on the westerly boundary of Lot 70, Block 1 of said Amended Plat of Plantation No. 2;

Thence on the exterior boundary line of Lot 70, Block 1, of said Amended Plat of Plantation No. 2 for the following courses and distances:

Thence South 58° 15' 54" West, a distance of 26.20 feet to a point of curve on the right-of-way line of Gramarcy Lane; Thence 60.97 feet on the arc of a curve to the right, said curve having a radius of 45.00 feet, a central angle of 77° 37' 59", a chord bearing of South 06° 49' 19" West, and a chord length of 56.41 feet (formerly described as an arc length of 60.79, a central angle of 77° 23' 49" and a long chord of 56.27 feet) on the right-of-way line of Gramarcy Lane;

Thence South 44° 29' 21" East, a distance of 54.17 feet;

Thence South 00° 31' 36" West, a distance of 145.00 feet;

Thence North 89° 20' 48" West, a distance of 105.07 feet (formerly described as North 89° 28' 24" West, 105.00 feet);

Thence South 57° 39' 12" West, a distance of 77.34 feet (formerly described as South 57° 42' 27" West);

Thence South 52° 26' 01" East, a distance of 212.51 feet (formerly described as South 52° 27' 52" East, 212.38 feet);

Thence South 59° 58' 54" East, a distance of 120.71 feet;

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Thence North  $18^{\circ} 33' 37''$  East, a distance of 135.10 feet;

Thence North  $80^{\circ} 43' 53''$  East, a distance of 360.80 feet (formerly described as 361.13 feet);

Thence South  $89^{\circ} 36' 39''$  East, a distance of 153.41 feet (formerly described as North  $89^{\circ} 43' 36''$  East, 153.71 feet);

Thence South  $79^{\circ} 23' 03''$  East, a distance of 205.39 feet (formerly described as South  $78^{\circ} 52' 56''$  East, 205.43 feet);

Thence South  $68^{\circ} 54' 25''$  East, a distance of 158.24 feet;

Thence South  $62^{\circ} 36' 21''$  East, a distance of 360.62 feet;

Thence South  $89^{\circ} 25' 48''$  East, a distance of 279.32 feet (formerly described as South  $89^{\circ} 34' 53''$  East, 280.00 feet);

Thence North  $59^{\circ} 52' 21''$  East, a distance of 68.97 feet (formerly described as North  $60^{\circ} 06' 58''$  East, 68.01 feet); Thence North  $19^{\circ} 35' 18''$  East, a distance of 56.94 feet (formerly described as 56.66 feet) to the most easterly corner of Lot 47, Block 1 of said The Plantation No. 1 Subdivision, said point being on the southerly right-of-way line of West Sterling Lane/Drive, said point also being an angle point in the boundary line of Lot 70, Block 1 of said Amended Plat of Plantation No. 2;

Thence North  $88^{\circ} 28' 30''$  West, a distance of 15.47 feet to a point of curve;

Thence 62.74 feet on the arc of a curve to the right, said curve having a radius of 275.00 feet, a central angle of  $13^{\circ} 04' 16''$ , a chord bearing of North  $83^{\circ} 19' 08''$  West, and a chord length of 62.60 feet (formerly described as an arc length of 62.40 feet, a central angle of  $13^{\circ} 00' 01''$  and a long chord of 62.26 feet) on the southerly right-of-way line of said West Sterling Lane/Drive;

Thence on the boundary line of said Amended Plat of Plantation No. 2 for the following courses and distances: Thence South  $58^{\circ} 41' 52''$  West, a distance of 123.83 feet (formerly described as 123.88 feet);

Thence North  $59^{\circ} 19' 54''$  West, a distance of 80.07 feet (formerly described as 80.21 feet);

Thence North  $44^{\circ} 22' 16''$  West, a distance of 196.82 feet (formerly described as 196.43 feet);

Thence North  $54^{\circ} 27' 50''$  West, a distance of 179.53 feet (formerly described as 179.92 feet);

Thence North  $59^{\circ} 25' 23''$  West, a distance of 181.03 feet (formerly described as 180.82 feet);

Thence North  $76^{\circ} 24' 16''$  West, a distance of 231.42 feet (formerly described as 231.85 feet);

Thence North  $89^{\circ} 22' 37''$  West, a distance of 265.41 feet (formerly described as 265.10 feet);

Thence South  $74^{\circ} 34' 55''$  West, a distance of 95.32 feet (formerly described as 95.31 feet);

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Thence South  $85^{\circ} 30' 36''$  West, a distance of 149.14 feet (formerly described as 148.81 feet);

Thence North  $24^{\circ} 29' 27''$  West, a distance of 151.47 feet (formerly described as 151.24 feet);

Thence North  $05^{\circ} 42' 09''$  East, a distance of 151.49 feet (formerly described as 151.37 feet);

Thence North  $75^{\circ} 36' 56''$  East, a distance of 151.26 feet (formerly described as 151.37 feet);

Thence South  $84^{\circ} 23' 36''$  East, a distance of 654.89 feet (formerly described as South  $84^{\circ} 25' 07''$  East, 655.27 feet);

Thence South  $59^{\circ} 25' 30''$  East, a distance of 415.10 feet (formerly described as South  $59^{\circ} 21' 59''$  East, 414.88 feet);

Thence South  $49^{\circ} 18' 07''$  East, a distance of 104.70 feet (formerly described as 104.63 feet);

Thence South  $44^{\circ} 26' 48''$  East, a distance of 191.30 feet (formerly described as 191.70 feet);

Thence South  $59^{\circ} 11' 39''$  East, a distance of 64.86 feet (formerly described as 64.69 feet);

Thence South  $15^{\circ} 50' 08''$  West, a distance of 100.25 feet (formerly described as 99.71 feet) to the southeast lot corner of Lot 15, Block 1 of said The Plantation No. 1 Subdivision, as same is Amended by said Amended Plat of Plantation No. 2, said point being a point of curve on the northerly right-of-way line of West Sterling Lane/Drive;

Thence leaving the boundary line of said Amended Plat of Plantation No. 2, 50.51 feet on the arc of a curve to the left, said curve having a radius of 225.00 feet, a central angle of  $12^{\circ} 51' 43''$  and a chord bearing of South  $81^{\circ} 22' 44''$  East, and a chord length of 50.40 feet (formerly described as an arc length of 50.45 feet, a central angle of  $12^{\circ} 50' 45''$  and a long chord of 50.34 feet) on the northerly right-of-way of said Sterling Lane/Drive;

Thence North  $15^{\circ} 50' 08''$  East, a distance of 110.26 feet (formerly described as 110.05 feet) to the northwest lot corner of Lot 71, Block 1 of said Amended Plat of Plantation No. 2;

Thence on the boundary line of said Amended Plat of Plantation No. 2 for the following courses and distances: Thence South  $88^{\circ} 37' 00''$  East, a distance of 163.48 feet (formerly described as South  $88^{\circ} 41' 16''$  East, 163.53 feet);

Thence North  $28^{\circ} 24' 20''$  East, a distance of 152.00 feet;

Thence North  $00^{\circ} 56' 14''$  East, a distance of 34.99 feet (formerly described as North  $00^{\circ} 29' 31''$  East 35.06 feet);

Thence North  $72^{\circ} 28' 14''$  West, a distance of 213.04 feet (formerly described as North  $72^{\circ} 28' 03''$  West, 212.76 feet);

Thence North  $59^{\circ} 52' 28''$  West, a distance of 475.45 feet;

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Thence North  $11^{\circ} 25' 57''$  East, a distance of 99.67 feet;

Thence North  $78^{\circ} 51' 40''$  West, a distance of 441.00 feet (formerly described as 440.31 feet) to a point of curve; Thence 95.60 feet on the arc of a curve to the right, said curve having a radius of 225.00 feet, a central angle of  $24^{\circ} 20' 43''$ , a chord bearing of North  $66^{\circ} 41' 46''$  West, and a chord length of 94.89 feet (formerly described as an arc length of 96.21 feet, a central angle of  $24^{\circ} 30' 00''$  and a long chord of 95.48 feet); Thence South  $35^{\circ} 36' 40''$  West, a distance of 66.12 feet;

Thence North  $87^{\circ} 23' 30''$  West, a distance of 580.22 feet (formerly described as 580.27 feet);

Thence North  $00^{\circ} 18' 26''$  East, a distance of 95.85 feet (formerly described as 95.82 feet) to a point of curve on the southerly right of way line of West Plantation Drive/Lane;

Thence 31.76 feet on the arc of a curve to the left, said curve having a radius of 475.00 feet, a central angle of  $03^{\circ} 49' 53''$ , a chord bearing of South  $83^{\circ} 09' 34''$  West, and a chord length of 31.76 feet (formerly described as an arc length of 31.77 feet and a central angle of  $03^{\circ} 49' 54''$ ) on the southerly right of way line of West Plantation Drive/Lane to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

#### Legal Description of Riverfront Lots

A parcel of land being a re-subdivision of a portion of Lot 70, Block 1 of "The Amended Plat of a Portion of Lot 1, and all of lots 2, 3, 4, 5 and 6, Block 1 of The Plantation No. 2" (Subdivision), recorded in Book 58 of Plats at Pages 5559 and 5560, located in Government Lot 2 in the Southwest Quarter of Section 30, Township 4 North, Range 2 East, Boise Meridian, Garden City, Ada County, Idaho, being more particularly described as follows:

Commencing at the North One Quarter Corner common to Sections 19 and 30 of said Township 4 North, Range 2 East, (from which point the Northeast corner of said Section 30 bears South  $89^{\circ} 11' 32''$  East, 2652.17 feet distant);

Thence from said North One Quarter Corner, South  $15^{\circ} 42' 33''$  West, a distance of 3361.11 feet to the southeast corner of Lot 52, Block 1 of the Plantation No. 1 (Subdivision), as same is shown on the Plat thereof recorded in Book 44 of Plats at Pages 3529 to 3531 of Ada County Records;

Thence South  $58^{\circ} 15' 54''$  West, a distance of 26.20 feet (formerly described as 26.26 feet) on the southerly lot line of said Lot 52 to a point of curve on the easterly right-of-way line of West Gramarcy Lane;

Thence 17.28 feet on the arc of a curve to the right, said curve having a radius of 45.00 feet, a central angle of  $22^{\circ} 00' 05''$ , a chord bearing of South  $20^{\circ} 59' 39''$  East, and a chord length of 17.17 feet on the easterly right-of-way line of West Gramarcy Lane to a point of curve, said point being the POINT OF BEGINNING;

Thence 33.20 feet on the arc of a curve to the right, said curve having a radius of 53.00 feet, a central angle of  $35^{\circ} 53' 14''$ , a chord bearing of South  $62^{\circ} 21' 10''$  East, and a chord length of 32.66 feet;

Thence South  $44^{\circ} 24' 33''$  East, a distance of 83.48 feet;

Thence South  $00^{\circ} 36' 24''$  West, a distance of 110.93 feet;

Thence South  $52^{\circ} 51' 15''$  East, a distance of 47.56 feet;

Thence North  $37^{\circ} 29' 49''$  East, a distance of 21.00 feet;

Thence South  $52^{\circ} 30' 11''$  East, a distance of 32.00 feet;

Thence South  $37^{\circ} 29' 49''$  West, a distance of 18.41 feet to a point of curve;

Thence 16.90 feet on the arc of a curve to the left, said curve having a radius of 23.00 feet, a central angle of  $42^{\circ} 06' 10''$ , a chord bearing of South  $16^{\circ} 26' 44''$  West, and a chord length of 16.52 feet to a point of compound curve; Thence 52.96 feet on the arc of a curve to the left, said curve having a radius of 43.00 feet, a central angle of  $70^{\circ} 34' 04''$ , a chord bearing of South  $39^{\circ} 53' 22''$  East, and a chord length of 49.68 feet;

Thence South  $12^{\circ} 34' 33''$  West, a distance of 40.84 feet to the northwest corner of Lot 91, Block 1 of Investors Plantation on the River (Subdivision), as shown on the Plat thereof, recorded in Book 59 of Plats at Page 5702 to 5703 of Ada County Records;

Thence South  $18^{\circ} 33' 37''$  West, a distance of 135.10 feet on the westerly lot line of said Lot 91, Block 1 to an angle point in the southerly boundary line of Lot 70, Block 1 of said "The Amended Plat of a portion of Lot 1, and all of Lots 2, 3, 4, 5 and 6, Block 1 of the Plantation No. 2" (Subdivision), said point being on the North Bank of the Boise River;

Thence North  $59^{\circ} 58' 54''$  West, a distance of 120.71 feet on the southerly boundary line of said Lot 70, Block 1, and the North Bank of the Boise River;

Thence North  $52^{\circ} 26' 01''$  West, a distance of 212.51 feet on the southerly boundary line of said Lot 70, Block 1 to the southeast corner of Lot 53, Block 1 of the Amended Plat Lot 53 thru Lot 62, Block 1 of The Plantation Subdivision No. 1, as shown on the Plat thereof, recorded in Book 45 of Plats at Page 3689 to 3690 of Ada County Records;

Thence on the westerly lot line of said Lot 70, Block 1, and the easterly lot line of said Amended Plat Lot 53 thru Lot 62, Block 1 of The Plantation Subdivision No. 1 for the following bearings and distances:

Thence North  $57^{\circ} 39' 12''$  East, a distance of 77.34 feet;

Thence South  $89^{\circ} 20' 48''$  East, a distance of 105.07 feet;

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Thence North 00° 31' 36" East, a distance of 145.00 feet;

Thence North 44° 29' 21" West, a distance of 54.17 feet to a point on a curve on the easterly right-of-way line of West Gramarcy Lane;

Thence leaving said Lot 70 and Lot 53 lot line, 43.69 feet on the arc of a curve to the left, said curve having a radius of 45.00 feet, a central angle of 55° 37' 54", a chord bearing of North 17° 49' 21" East, and a chord length of 42.00 feet on the easterly right-of-way line of West Gramarcy Lane to the POINT OF BEGINNING.

PARCEL C:

Non-Exclusive Easements rights as set forth in that certain Master Declaration of The Plantation dated February 21, 1978 and recorded February 24, 1978 as Instrument No. 7809725, as modified or amended by instrument nos. 7865989, 8004454, 8006448, 94040475, 102063849, 105052685, and 108057403 Records of Ada County, Idaho.

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## Appendix No. 7

Assignment of Leases and Rents  
between

LB River Club Owner LLC, a Delaware  
limited liability company, as Assignor  
and

Northwest Bank, as Assignee.

Dated November 9, 2022.

Recorded November 14, 2022.

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

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**ASSIGNMENT OF LEASES AND RENTS**

between

**LB RIVER CLUB OWNER LLC,**  
a Delaware limited liability company  
as Assignor

and

**NORTHWEST BANK**  
as Assignee

Dated and effective as of November 9, 2022

## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "*Assignment*") dated and effective as of the 9th day of November, 2022 made by LB River Club Owner LLC, an Idaho limited liability company, having an address at c/o Lincoln Property Commercial Company, Inc., 2000 McKinney Ave., Suite 1000, Dallas, Texas 75201 (collectively "*Assignor*"), to Northwest Bank (together with its successors and assigns, hereinafter referred to as "*Assignee*") having an address of 1750 West Front Street, Ste. 150, Boise, Idaho 83702.

### WITNESSETH:

WHEREAS, Assignor is the owner of a fee simple title to that certain parcel of real property (the "*Premises*") described in Exhibit A attached hereto, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and other improvements now or hereafter located thereon (collectively, the "*Property*");

WHEREAS, Assignor and Assignee have entered into a certain Term Loan Agreement dated as of the date hereof (as amended, modified, restated, consolidated or supplemented from time to time, the "*Loan Agreement*") pursuant to which Assignee has agreed to make a secured loan to Assignor in the maximum principal amount of Eighteen Million Five Hundred Thousand and 00/100 Dollars (\$18,500,000.00) (the "*Loan*").

WHEREAS, Assignor has executed a Promissory Note, dated as of the date hereof, in such principal amount (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, the "*Note*"), which is secured by, *inter alia*, that certain Deed of Trust, dated as of the date hereof made by the Assignor, to First American Title Insurance Company, as Trustee, for the benefit of Assignee (as the same may be amended, modified, consolidated, split, supplemented, replaced or otherwise modified from time to time, the "*Mortgage*") on the Property.

WHEREAS, it is a condition to the obligation of Assignee to make the Loan to Assignor pursuant to the Loan Agreement that Assignor execute and deliver this Assignment;

WHEREAS, this Assignment is being given as additional security for the Loan; and

WHEREAS, capitalized terms used in this Assignment without definition have the respective meanings assigned to such terms in the Mortgage or the Loan Agreement, as the case may be, the terms of each of which are specifically incorporated by reference herein. The terms "Leases" and "Rents" shall also include, but not be limited to, all agreements regardless of how styled or named constituting compensation for the rental of the Property and all rents derived therefrom which shall relate to the present and future rights, title and interest in and to and under any and all present and future leases including without limitation all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advanced rentals, profits and proceeds from the Property and other payments and benefits derived or to be derived from such leases of every kind and nature, whether now due or later, including without limitation, the rights of Assignor to enforce such leases and to receive and collect payment and proceeds thereunder.

NOW, THEREFORE, for good and valuable consideration, receipt of which by the parties hereto is hereby acknowledged, and for the purpose of additionally securing the Indebtedness, Assignor hereby assigns, transfers, conveys and sets over unto Assignee, all right, title and interest of Assignor in and to all Leases and all Rents relating to the Property, including but not limited to, that certain Lease dated June 22, 2022, between Assignor, as landlord, and River Club Boise, LLC (the "Tenant") as tenant pertaining to the Property and that certain Put and Option Agreement and Joint Escrow Instructions between Assignor and Tenant pertaining to the a portion of the Property dated June 22, 2022, and all amendments and substitutions thereof;

TO HAVE AND TO HOLD the same unto Assignee, and its successors and assigns forever, upon the terms and conditions and for the uses hereinafter set forth.

And Assignor hereby further agrees as follows:

1. Certain Representations, Warranties and Covenants. Assignor represents, warrants and covenants to Assignee that:

(a) The payment of the Rents to accrue under any Lease will not be waived, released, reduced, discounted or otherwise discharged or compromised by Assignor except as permitted by the Loan Agreement;

(b) Assignor has not performed, and will not perform, any acts, and has not executed, and will not execute, any instrument that would prevent Assignee from exercising its rights under this Assignment; and

(c) Assignor hereby authorizes and directs any tenant under any of the Leases and any successor to all or any part of the interests of any such tenant to pay directly to the Assignee, in accordance with the terms of the Loan Agreement, the Rents due and to become due under such tenant's Lease, and such authorization and direction shall be sufficient warrant to the tenant to make future payments of Rents directly to the Assignee without the necessity for further consent by Assignor.

2. Assignment; Deferred Exercise of Rights.

(a) As part of the consideration for the Loan, Assignor does hereby absolutely and unconditionally assign to Assignee all right, title and interest of Assignor in and to all present and future Leases and Rents, and this Assignment constitutes a present and absolute assignment and is intended to be unconditional and not as an assignment for additional security only, including but not limited to, all leases of any duration. It is further intended that it not be necessary for Assignee to institute legal proceedings, absent any requirements of law or regulation to the contrary, to enforce the provisions hereof. Assignor hereby authorizes Assignee or its agents to collect the Rents; provided, however, that unless an Event of Default has occurred and is continuing beyond all applicable notice and cure periods, Assignor shall have a revocable license, but limited as provided in this Assignment and in any of the other Loan Documents, to otherwise deal with, and enjoy the rights of the lessor under, the Leases.

(b) Upon the occurrence and during the continuance of an Event of Default beyond all applicable notice and cure period, and without the necessity of Assignee entering upon

and taking and maintaining full control of the Property in person, by agent or by court-appointed receiver, the license referred to in paragraph (a) above shall immediately be revoked and Assignee shall have the right at its option, to exercise all rights and remedies contained in the Loan Documents, or otherwise available at law or in equity.

3. Rents Held in Trust by Assignor. Rents held or received by Assignor shall be held or received by Assignor as trustee for the benefit of Assignee only.

4. Effect on Rights Under Other Documents. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under any of the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms of the other Loan Documents. The rights of Assignee under the other Loan Documents may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents or grant of a security interest contained in any of the other Loan Documents.

5. Event of Default. Upon or at any time after the occurrence and during the continuance of an Event of Default, then in addition to and without limiting any of Assignee's rights and remedies hereunder and under the other Loan Documents and as otherwise available at law or in equity:

(a) Assignee may, at its option, without waiving such Event of Default and without regard to the adequacy of the security for the Indebtedness, either in person or by agent, without bringing any action or proceeding, or by a receiver appointed by a court, without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents, including those past-due and unpaid, for application to the payment of the Indebtedness in accordance with the terms of the Loan Documents, and Assignee may enter into, and to the extent that Assignor would have the right to do so, cancel, enforce or modify any Lease. The exercise by Assignee of the option granted it in this Section and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any Event of Default.

(b) Assignor hereby acknowledges and agrees that payment of any item of Rent by a Person to Assignee as hereinabove provided shall constitute payment in full of such item of Rent by such Person, as fully and with the same effect as if it had been paid to Assignor.

(c) Assignee in respect of the Leases and Rents shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as in effect in the State in which such rights and remedies are asserted as described in Section 12(b) of this Assignment to the extent of such rights thereunder and additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted.

6. Application of Rents and Proceeds. After the occurrence and during the continuance of an Event of Default beyond all applicable notice and cure periods, Rents received

or held by Assignor or Assignee shall be applied in accordance with the terms of the Loan Documents.

7. Attorney-in-Fact. Upon the occurrence and during the continuance of any Event of Default, Assignor hereby appoints Assignee the attorney-in-fact of Assignor to take any action and execute any instruments that Assignor is obligated or has covenanted and agreed under the Loan Agreement or the other Loan Documents to take or execute, which appointment as attorney-in-fact is irrevocable and coupled with an interest. Without limiting the generality of the foregoing provisions of this Section 7, upon the occurrence and during the continuance of an Event of Default, Assignor does hereby irrevocably appoint Assignee as its attorney-in-fact with full power, in the name and stead of Assignor to demand, collect, receive and give complete acquittance for any and all of the Rents now due or that may hereafter become due, and at Assignee's discretion, to file any claim, to take any other action, to institute any proceeding or to make any settlement of any claim, either in its own name or in the name of Assignor or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of Rents.

8. Termination. Assignee, by the acceptance of this Assignment, agrees that when all of the Indebtedness shall have been paid in full, this Assignment shall terminate, and Assignee shall execute and deliver to Assignor, upon such termination such instruments of termination or re-assignment and Uniform Commercial Code termination statements, all without recourse and without any representation or warranty whatsoever, as shall be reasonably requested by Assignor.

9. Expenses. Assignor agrees to pay to Assignee all reasonable, documented out-of-pocket expenses (including expenses for attorneys' fees and costs of every kind) of, or incident to, the enforcement of any of the provisions of this Assignment or performance by Assignee of any obligation of Assignor hereunder which Assignor has failed or refused to perform.

10. Further Assurances. Assignor agrees that, from time to time upon the written request of Assignee, it will give, execute, deliver, file and/or record any financing statements, notice, instrument, document, agreement or other papers and do such other acts and things that may be necessary and desirable to create, preserve, perfect or validate this Assignment, to enable Assignee to exercise and enforce its rights hereunder with respect to this Assignment or to otherwise carry out the purposes and intent of this Assignment.

11. No Obligation by Assignee. By virtue of this Assignment, Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any of the Leases. This Assignment shall not operate to constitute Assignee as a lender in possession of the Property or to place responsibility for the control, care, management or repair of the Property upon Assignee, nor shall it operate to make Assignee responsible or liable for any waste committed on the Property by any tenant or other party in possession or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control thereof.

12. Miscellaneous.

(a) No failure on the part of Assignee or any of its agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder

shall operate as a waiver thereof; nor shall any single or partial exercise by Assignee or any of its agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

(b) WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THIS ASSIGNMENT, THIS ASSIGNMENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF IDAHO WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES SHALL GOVERN ALL MATTERS RELATING TO THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF IDAHO WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT.

(c) All rights and remedies set forth in this Assignment are cumulative, and Assignee may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby; and no such right or remedy set forth in this Assignment shall be deemed exclusive of any of the remedies or rights granted to Assignee in any of the Loan Documents. Nothing contained in this Assignment shall be deemed to limit or restrict the rights and remedies of Assignee under the Loan Agreement or any of the other Loan Documents.

(d) Until the Indebtedness and all other obligations secured by the Loan Documents is paid in full, Assignor will, upon request, deliver from time to time to Assignee executed originals to the extent available, otherwise photocopies certified by Assignor as true, correct and complete, of executed originals, of any and all existing Leases to which Assignor is a party, and executed originals, or photocopies of executed originals, so certified by Assignor, if an executed original is not available, of all other and future Leases to which Assignor is a party, and upon request of Assignee, will specifically transfer and assign to Assignee such other and future Leases upon the same terms and conditions as herein contained.

(e) Assignor represents that it: (i) has been advised that Assignee engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Assignor or its affiliates; (ii) is represented by competent counsel and has consulted counsel before executing this Assignment; and (iii) has relied solely on its own judgment and on its counsel and advisors in entering into the transaction(s) contemplated hereby without relying in any manner on any statements, representations or recommendations of Assignee or any parent, subsidiary or affiliate of Assignee.

13. No Oral Change. This Assignment may not be amended except by an instrument in writing signed by Assignor and Assignee.

14. Successors and Assigns. Assignor may not assign its rights under this Assignment except as permitted under the Loan Agreement. Subject to the foregoing, this Assignment shall be binding upon, and shall inure to the benefit of, Assignor and Assignee and their respective successors and assigns.

15. Notices. All notices, requests and other communications provided for herein shall be given or made in writing in the manner specified in the Loan Agreement.

*[Signature Page Follows.]*

IN WITNESS WHEREOF, this Assignment has been duly executed by Assignor as of the day and year first above written.

**ASSIGNOR:**

**LB RIVER CLUB OWNER LLC,  
a Delaware limited liability company**

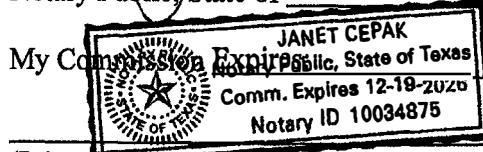
By: William Clayborne Duvall, Jr.  
Name: William Clayborne Duvall, Jr.  
Its: Senior Vice President

STATE OF TEXAS  
COUNTY OF DALLAS

This record was acknowledged before me on this 1 d day of November, 2022, by William Clayborne Duvall, Jr., known or identified to me to be the Authorized Officer of LB River Club Owner LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company.

[SEAL]

Notary Public, State of



(Printed Name of Notary Public)

**ASSIGNMENT OF LEASES AND RENTS —**  
**Signature Page**  
**Loan No. 700129697**

EXHIBIT "A"

ASSIGNMENT OF LEASES AND RENTS

Loan No. 700129697

A-1

## EXHIBIT A

**LEGAL DESCRIPTION:** Real property in the County of Ada, State of Idaho, described as follows:

Parcel A:

A parcel of land located in Sections 19 and 30 of Township 4 North, Range 2 East, Boise Meridian, and Sections 24 and 25 of Township 4 North, Range 1 East, Boise Meridian, Garden City, Ada County, Idaho, being more particularly described as follows:

Commencing at the One Quarter Section Corner common to Sections 19 and 30 of said Township 4 North, Range 2 East, (from which point the Section Corner common to Sections 19, 20, 29 and 30 of said Township 4 North, Range 2 East bears South 89°11'32" East, 2652.17 feet distant); Thence from said One Quarter Section Corner, South 87°19'38" West, a distance of 1889.62 feet (formerly described as South 87°19'41" West, 1889.58 feet) to the Southeasterly corner of Lot 16, Block 1 of Plantation Acres Subdivision, recorded in Book 14 of Plats at Page 941 of Ada County Records, said point being on the Southerly Right-of-Way line of West State Street and being the POINT OF BEGINNING;

Thence South 45° 50' 38" West, a distance of 452.33 feet (formerly described as South 45° 44' 14" West, 449.59 feet) on the southerly line of said Plantation Acres Subdivision to the southwesterly lot corner of Lot 1, Block 1 of Elmore Lake Townhomes Subdivision, recorded in Book 75 of Plats at Page 7722 of Ada County Records;

Thence North 48° 49' 22" West, a distance of 169.40 feet (formerly described as North 48° 55' 46" West, 169.72 feet) on the westerly line of said Elmore Lake Townhomes Subdivision and said line extended; Thence North 21° 10' 21" West, a distance of 350.24 feet (formerly described as North 21° 15' 46" West, 351.16') on the westerly line of those Deeds recorded as Instrument Numbers 100079629, 2016-125750, 112109226 and 2021-053038 of Ada County Records;

Thence North 14° 45' 22" West, a distance of 175.12 feet (formerly described as North 14° 51' 46" West, 172.06 feet) on the westerly line of that Deed recorded as Instrument Number 9014579 of Ada County Records;

Thence North 12° 00' 17" West, a distance of 49.57 feet to a point on the westerly line of that parcel of land shown on Record of Survey Number 10780 of Ada County Records;

Thence North 56° 51' 51" West, a distance of 753.13 feet (formerly described as North 56° 57' 18" West) on the westerly line said Record of Survey Number 10780 parcel;

Thence North 50° 20' 53" West, a distance of 273.01 feet (formerly described as North 49° 49' 19" West, 273.53 feet) on the westerly line of said Record of Survey Number 10780 parcel to the northeast corner of Lot 5, Block 1 of Lake Plantation Subdivision, recorded in Book 56 of Plats at Page 5210 of Ada County Records;

Thence on the northerly and easterly boundary line of said Lake Plantation Subdivision for the following courses and distances:

Thence South 42° 56' 16" West, a distance of 201.60 feet;

Thence South 61° 24' 07" East, a distance of 225.34 feet;

Thence South 83° 24' 28" East, a distance of 188.28 feet;

Thence South 62° 24' 09" East, a distance of 244.87 feet;

Thence South 41° 23' 21" East, a distance of 469.65 feet;

Thence South 14° 52' 30" East, a distance of 195.00 feet to the northeast corner of Lot 12, Block 1 of The Townhouse at Plantation No. 1 (Subdivision);

Thence leaving the easterly boundary line of said Lake Plantation Subdivision and on the exterior boundary line of said The Townhouse at Plantation No. 1 (Subdivision) for the following courses

and distances:

Thence South  $14^{\circ} 52' 30''$  East, a distance of 200.00 feet (formerly described as 200.01 feet);  
Thence South  $25^{\circ} 26' 10''$  East, a distance of 200.00 feet;  
Thence South  $61^{\circ} 37' 31''$  West, a distance of 265.00 feet;  
Thence North  $24^{\circ} 24' 40''$  West, a distance of 393.00 feet to the southwest corner of Lot 26, Block 1 of said Lake Plantation Subdivision;  
Thence leaving the exterior boundary line of said The Townhouse at Plantation No. 1 (Subdivision) and on the exterior boundary line of said Lake Plantation Subdivision for the following courses and distances:  
Thence North  $24^{\circ} 22' 31''$  West, a distance of 406.94 feet;  
Thence North  $28^{\circ} 58' 08''$  West, a distance of 288.31 feet to a point of curve;  
Thence 137.53 feet on the arc of a curve to the left, said curve having a radius of 74.71 feet, a central angle of  $105^{\circ} 28' 35''$ , a chord bearing of North  $81^{\circ} 42' 14''$  West, and a chord length of 118.92 feet; Thence South  $45^{\circ} 33' 41''$  West, a distance of 197.78 feet to a point of curve on the northerly right of way line of West Riverside Drive;  
Thence 271.85 feet on the arc of a curve to the left, said curve having a radius of 335.00 feet, a central angle of  $46^{\circ} 29' 41''$ , a chord bearing of North  $71^{\circ} 01' 20''$  West, and a chord length of 264.45 feet to a point of compound curve, said point being the southwest corner of Lot 1, Block 1 of said Lake Plantation Subdivision;  
Thence leaving the exterior boundary line of said Lake Plantation Subdivision and on the northerly right of way line of West Riverside Drive for the following course and distances:  
Thence 59.13 feet on the arc of a curve to the left, said curve having a radius of 335.00 feet, a central angle of  $10^{\circ} 06' 48''$ , a chord bearing of South  $80^{\circ} 29' 17''$  West, and a chord length of 59.05 feet; Thence South  $75^{\circ} 36' 16''$  West, a distance of 97.42 feet to a point of curve;  
Thence 45.81 feet on the arc of a curve to the right, said curve having a radius of 175.00 feet, a central angle of  $14^{\circ} 59' 55''$ , a chord bearing of South  $83^{\circ} 06' 16''$  West, and a chord length of 45.68 feet;  
Thence North  $89^{\circ} 22' 40''$  West, a distance of 339.36 feet (formerly described as North  $89^{\circ} 23' 44''$  West, a distance of 338.95 feet) to a point of curve;  
Thence 31.34 feet on the arc of a curve to the right, said curve having a radius of 20.00 feet, a central angle of  $89^{\circ} 46' 49''$ , a chord bearing of North  $44^{\circ} 30' 56''$  West, and a chord length of 28.23 feet (formerly described as arc length of 31.28 feet, a central angle of  $89^{\circ} 37' 07''$  and a chord length of 28.19 feet) to a point on the easterly right of way line of North Glenwood Street;  
Thence leaving the northerly right of way line of West Riverside Drive, South  $00^{\circ} 00' 47''$  East, a distance of 90.11 feet (formerly described as 90.00 feet) on the easterly right of way line of North Glenwood Street to a point of curve;  
Thence 31.63 feet on the arc of a curve to the right, said curve having a radius of 20.00 feet, a central angle of  $90^{\circ} 37' 58''$ , a chord bearing of North  $45^{\circ} 23' 29''$  East, and a chord length of 28.44 feet (formerly described as arc length of 31.54 feet, a central angle of  $90^{\circ} 20' 52''$  and a chord length of 28.37 feet) on the southerly right of way line of West Riverside Drive;  
Thence South  $89^{\circ} 22' 40''$  East, a distance of 338.36 feet (formerly described as 338.38 feet) to a point of curve on the northerly boundary line of Daron Subdivision No. 1, recorded in Book 86 of Plats at Page 9709 of Ada County Records;  
Thence on the exterior boundary line of said Daron Subdivision No. 1 for the following courses and distances:  
Thence 58.90 feet on the arc of a curve to the left, said curve having a radius of 225.00 feet, a central angle of  $14^{\circ} 59' 55''$ , a chord bearing of North  $83^{\circ} 06' 15''$  East, and a chord length of 58.73 feet (formerly described as arc length of 58.91 feet, a central angle of  $15^{\circ} 00' 03''$  and a chord length of 58.74 feet);  
Thence North  $75^{\circ} 53' 11''$  East, a distance of 72.22 feet (formerly described as 72.42 feet);  
Thence South  $21^{\circ} 34' 52''$  West, a distance of 399.97 feet (formerly described as 400.00 feet);  
Thence South  $17^{\circ} 05' 34''$  West, a distance of 264.29 feet (formerly described as South  $17^{\circ} 06' 38''$

West,

264.53 feet) to a point of curve;

Thence leaving the exterior boundary line of said Daron Subdivision No. 1, 156.01 feet on the arc of a curve to the left, said curve having a radius of 117.00 feet, a central angle of  $76^{\circ} 23' 49''$ , a chord bearing of South  $21^{\circ} 00' 10''$  East, and a chord length of 144.70 feet (formerly described as arc length of 155.83 feet, a central angle of  $76^{\circ} 18' 49''$ , a chord bearing of South  $21^{\circ} 05' 10''$  East and a chord distance of 144.57 feet);

Thence South  $59^{\circ} 24' 46''$  East, a distance of 30.22 feet (formerly described as South  $59^{\circ} 20' 16''$  East, 30.10 feet) to a point of curve;

Thence 127.59 feet on the arc of a curve to the right, said curve having a radius of 153.00 feet, a central angle of  $47^{\circ} 46' 45''$ , a chord bearing of South  $35^{\circ} 24' 47''$  East, and a chord length of 123.92 feet (formerly described as an arc length of 127.58 feet, a central angle of  $47^{\circ} 46' 41''$ , a chord bearing of South  $35^{\circ} 26' 54''$  East, and a chord distance of 123.92 feet);

Thence South  $11^{\circ} 24' 39''$  East, a distance of 38.15 feet (formerly described as South  $11^{\circ} 33' 32''$  East, 38.45 feet) to a point on the toe of slope of the Corps of Engineers Dike – Northside of the Boise River;

Thence South  $63^{\circ} 24' 25''$  East, a distance of 169.57 feet (formerly described as South  $63^{\circ} 23' 44''$  East, 169.37 feet);

Thence South  $50^{\circ} 09' 19''$  East, a distance of 398.28 feet (formerly described as South  $50^{\circ} 09' 09''$  East, 398.13 feet);

Thence South  $59^{\circ} 28' 14''$  East, a distance of 160.51 feet;

Thence South  $66^{\circ} 28' 01''$  East, a distance of 310.74 feet;

Thence South  $76^{\circ} 23' 44''$  East, a distance of 337.01 feet;

Thence South  $57^{\circ} 03' 44''$  East, a distance of 81.56 feet;

Thence leaving the toe of slope of the Corps of Engineers Dike – Northside of the Boise River, and on the Northerly Bank of the Boise River for the following courses and distances:

Thence South  $32^{\circ} 56' 16''$  West, a distance of 39.00 feet;

Thence South  $22^{\circ} 05' 38''$  East, a distance of 137.41 feet;

Thence South  $43^{\circ} 08' 44''$  East, a distance of 37.11 feet;

Thence South  $13^{\circ} 07' 42''$  East, a distance of 61.01 feet (formerly described as South  $13^{\circ} 08' 44''$  East, 60.68 feet) to a point on the westerly boundary line of Wanner's Plantation Estates Subdivision,

recorded in Book 59 of Plats at Page 5680 of Ada County Records;

Thence leaving the Northerly Bank of the Boise River and on the exterior boundary line of said Wanner's Plantation Estates Subdivision for the following courses and distances:

Thence North  $06^{\circ} 50' 28''$  West, a distance of 141.06 feet (formerly described as 140.53 feet);

Thence North  $88^{\circ} 24' 32''$  East, a distance of 226.06 feet;

Thence North  $66^{\circ} 38' 09''$  East, a distance of 14.80 feet (formerly described as 15.00 feet);

Thence North  $04^{\circ} 04' 54''$  West, a distance of 106.77 feet;

Thence North  $89^{\circ} 54' 16''$  East, a distance of 49.61 feet;

Thence South  $51^{\circ} 49' 18''$  East, a distance of 161.90 feet (formerly described as 161.80 feet);

Thence South  $39^{\circ} 30' 44''$  East, a distance of 413.96 feet (formerly described as 413.97 feet);

Thence South  $31^{\circ} 55' 28''$  East, a distance of 73.32 feet;

Thence South  $10^{\circ} 40' 13''$  East, a distance of 131.12 feet (formerly described as South  $10^{\circ} 40' 28''$  East, 131.28 feet) to the southeast corner of Lot 1, Block 1 of said Wanner's Plantation Estates Subdivision; Thence leaving said Wanner's Plantation Estates Subdivision,

South  $08^{\circ} 51' 11''$  East, a distance of 46.30 feet (formerly described as South  $08^{\circ} 50' 40''$  East, 46.13 feet) to the northerly lot corner common to Lots 12 and 13, Block 6 of The Plantation No. 3 (Subdivision), recorded in Book 51 of Plats at Page 4249 of Ada County Records;

Thence on the exterior boundary line of said The Plantation No. 3 (Subdivision) for the following courses and distances:

Thence South  $84^{\circ} 22' 18''$  East, a distance of 176.62 feet (formerly described as 174.93 feet and

176.62 feet);

Thence South 47° 22' 18" East, a distance of 129.60 feet;

Thence South 21° 22' 18" East, a distance of 420.00 feet to the northeast corner of Lot 6, Block 5 of The Plantation No. 1 (Subdivision), recorded in Book 44 of Plats at Page 3529 of Ada County Records; Thence leaving the exterior boundary line of said The Plantation No. 3 (Subdivision) and on the exterior boundary line of said The Plantation No. 1 (Subdivision) for the following courses and distances: Thence South 21° 22' 18" East, a distance of 372.26 feet (formerly described as 372.25 feet) to the northwest corner of Lot 2, Block 5 of said The Plantation No. 1 (Subdivision); Thence South 10° 37' 42" West, a distance of 115.94 feet to a point on a curve on the northerly right of way line of West Plantation Drive;

Thence 122.17 feet on the arc of a curve to the left, said curve having a radius of 175.00 feet, a central angle of 39° 59' 55", a chord bearing of North 80° 37' 39" East, and a chord length of 119.70 feet (formerly described as an arc length of 122.18 feet, a central angle of 40° 00' 04" and a long chord of 119.71 feet);

Thence North 60° 37' 38" East, a distance of 41.36 feet on said northerly right of way line to southeast corner of Lot 2, Block 5 of said The Plantation No. 1 (Subdivision);

Thence North 04° 19' 15" West, a distance of 139.50 feet (formerly described as 139.20 feet) to the lot corner common to said Lot 2, Block 5 of said The Plantation No. 1 (Subdivision) and Lot 21, Block 4 of The Plantation No. 4 (Subdivision), recorded in Book 58 of Plats at Page 5480 of Ada County Records; Thence on the exterior boundary line of said The Plantation No. 4 (Subdivision) for the following courses and distances:

Thence North 10° 22' 20" West, a distance of 655.71 feet (formerly described as 655.72 feet);

Thence North 59° 42' 23" East, a distance of 181.76 feet, (formerly described as North 59° 40' 15" East);

Thence South 63° 40' 13" East, a distance of 180.00 feet (formerly described as South 63° 42' 24" East);

Thence South 04° 23' 44" East, a distance of 611.10 feet (formerly South 04° 23' 41" East, a distance of 611.30 feet) to the lot corner common to Lot 4, Block 4 of said The Plantation No. 4 (Subdivision), and Lot 2, Block 4 of said The Plantation No. 1 (Subdivision) the exterior boundary line of said The Plantation No. 4 (Subdivision); Thence leaving the exterior boundary line of said The Plantation No. 4 (Subdivision), South 04° 16' 03" East, a distance of 89.80 feet (formerly described as 89.83 feet) to the southwest corner of Lot 2, Block 4 of said The Plantation No. 1 (Subdivision), being a point of curve on the northerly right of way line of West Plantation Drive; Thence 99.04 feet on the arc of a curve to the right, said curve having a radius of 525.00 feet, a central angle of 10° 48' 30", a chord bearing of North 87° 19' 37" East, and a chord length of 98.89 feet (formerly described as an arc length of 97.13 feet, a central angle of 10° 36' 00" and a chord length of 96.99 feet);

Thence South 87° 16' 03" East, a distance of 81.64 feet on said northerly right of way line of West Plantation Drive to the southerly lot corner common to Lots 1 and 2, Block 4 of said The Plantation No. 1 (Subdivision);

Thence North 02° 43' 57" East, a distance of 100.00 feet to the northerly lot corner common to Lots 1 and 2, Block 4 of said The Plantation No. 1 (Subdivision), said corner being common to the southwest corner of Lot 1, Block 2 of Wedgewood Greens Subdivision, recorded in Book 60 of Plats at Page 6042 of Ada County Records;

Thence on the exterior boundary line of said Wedgewood Greens Subdivision for the following courses and distances:

Thence North 08° 26' 53" West, a distance of 326.70 feet (formerly described as 326.92 feet);

Thence North 00° 07' 06" West, a distance of 188.46 feet (formerly described as 188.09 feet);

Thence South 88° 30' 12" East, a distance of 132.56 feet (formerly described as 132.47 feet);

Thence South 33° 37' 54" East, a distance of 164.84 feet (formerly described as 164.92 feet) to a point of curve;

Thence 35.48 feet on the arc of a curve to the right, said curve having a radius of 50.00 feet, a

central angle of  $40^\circ 39' 26''$ , a chord bearing of South  $13^\circ 18' 11''$  East, and a chord length of 34.74 feet (formerly described as a central angle of  $40^\circ 39' 24''$ );  
Thence South  $89^\circ 56' 27''$  East, a distance of 114.18 feet (formerly described as North  $89^\circ 54' 24''$  East);  
Thence South  $00^\circ 07' 01''$  East, a distance of 8.48 feet (formerly described as South  $00^\circ 33' 04''$  West, 8.42 feet);  
Thence leaving the exterior boundary line of said Wedgewood Greens Subdivision, South  $89^\circ 24' 43''$  East, a distance of 117.62 feet (formerly described as South  $89^\circ 23' 00''$  East, 117.90 feet);  
Thence North  $00^\circ 26' 19''$  East, a distance of 66.37 feet (formerly described as North  $00^\circ 37' 00''$  East, 66.04 feet) to the westerly lot corner common to Lots 2 and 3, Block 1 of Kessinger Subdivision, recorded in Book 73 of Plats at Page 7586 of Ada County Records;  
Thence North  $04^\circ 05' 27''$  West, a distance of 59.75 feet (formerly described as North  $04^\circ 14' 01''$  West, 60.22 feet) on the westerly boundary line of said Kessinger Subdivision;  
Thence North  $13^\circ 37' 08''$  West, a distance of 124.77 feet (formerly described as North  $13^\circ 30' 03''$  West, 124.75 feet) on the westerly line of Kessinger Subdivision;  
Thence North  $27^\circ 49' 52''$  West, a distance of 198.57 feet (formerly described as North  $27^\circ 54' 15''$  West, 198.01 feet) on the westerly line of Kessinger Subdivision and the westerly boundary line of Savannah Greens Subdivision No. 4, recorded in Book 79 of Plats at Page 8455 of Ada County Records;  
Thence North  $38^\circ 53' 07''$  West, a distance of 165.00 feet (formerly described as North  $38^\circ 51' 33''$  West) on the westerly boundary line of Savannah Greens Subdivision No. 4 to the westerly most boundary angle point of said Savannah Greens Subdivision No. 4;  
Thence North  $36^\circ 22' 28''$  West, a distance of 203.82 feet (formerly described as North  $36^\circ 48' 46''$  West, 204.60 feet);  
Thence North  $43^\circ 58' 14''$  West, a distance of 256.08 feet (formerly described as North  $44^\circ 07' 46''$  West);  
Thence North  $39^\circ 39' 46''$  East, a distance of 268.62 feet (formerly described as North  $39^\circ 30' 14''$  East, 270.74 feet) to a point on the westerly right of way line of West State Street;  
Thence North  $50^\circ 47' 44''$  West, a distance of 122.55 feet (formerly described as North  $50^\circ 48' 30''$  West, 121.13 feet) on the westerly right of way line of West State Street;  
Thence North  $50^\circ 51' 55''$  West, a distance of 1449.31 feet (formerly described as 1449.43 feet) to a point of curve;  
Thence 217.41 feet on the arc of a curve to the right, said curve having a radius of 17229.00 feet, a central angle of  $00^\circ 43' 23''$ , a chord bearing of North  $51^\circ 38' 58''$  West, and a chord length of 217.41 feet (formerly described as an arc length of 217.09 feet, a central angle of  $00^\circ 43' 19''$  and a long chord of 217.09 feet) on the westerly right of way line of West State Street to the POINT OF BEGINNING.

PARCEL B:

A parcel of land located in Section 30 of Township 4 North, Range 2 East, Boise Meridian, Garden City, Ada County, Idaho, being more particularly described as follows:

Commencing at the One Quarter Section Corner common to Sections 19 and 30 of said Township 4 North, Range 2 East, (from which point the Section Corner common to Sections 19, 20, 29 and 30 of said Township 4 North, Range 2 East bears South  $89^\circ 11' 32''$  East, 2652.17 feet distant);  
Thence from said One Quarter Section Corner, South  $14^\circ 48' 27''$  West, a distance of 2896.07 feet (formerly described as South  $14^\circ 48' 24''$  West, a distance of 2896.39 feet) to the Northeast corner of Lot 2, Block 1 of Orlovich's Plantation Subdivision, recorded in Book 58 of Plats at Pages 5633 to 5634 of Ada County Records, said point being on the Southerly Right of Way line of West Plantation Drive/Lane, and being the POINT OF BEGINNING;

Thence South  $00^{\circ} 07' 18''$  West, a distance of 139.89 feet (formerly described as 139.55 feet) to the northeast corner of Lot 3, Block 1 of Orlovich's Plantation Subdivision;

Thence South  $88^{\circ} 37' 32''$  West, a distance of 79.96 feet (formerly described as 80.26 feet) on said Lot Line;

Thence South  $63^{\circ} 36' 22''$  West, a distance of 74.51 feet (formerly described as 74.19 feet) on said Lot Line;

Thence South  $76^{\circ} 39' 22''$  West, a distance of 20.62 feet (formerly described as 20.71 feet) on said Lot Line;

Thence South  $00^{\circ} 38' 11''$  West, a distance of 256.01 feet (formerly described as 255.54 feet) on the westerly boundary line of said Orlovich's Plantation Subdivision and the westerly boundary of The Amended Plat of a Portion of Lot 1, and All of Lots 2, 3, 4, 5 and 6, Block 1, The Plantation No. 2 (hereinafter referred to as Amended Plat of Plantation No. 2), to a point on the westerly boundary of Lot 70, Block 1 of said Amended Plat of Plantation No. 2;

Thence on the exterior boundary line of Lot 70, Block 1, of said Amended Plat of Plantation No. 2 for the following courses and distances:

Thence South  $58^{\circ} 15' 54''$  West, a distance of 26.20 feet to a point of curve on the right-of-way line of Gramarcy Lane;

Thence 60.97 feet on the arc of a curve to the right, said curve having a radius of 45.00 feet, a central angle of  $77^{\circ} 37' 59''$ , a chord bearing of South  $06^{\circ} 49' 19''$  West, and a chord length of 56.41 feet (formerly described as an arc length of 60.79, a central angle of  $77^{\circ} 23' 49''$  and a long chord of 56.27 feet) on the right-of-way line of Gramarcy Lane;

Thence South  $44^{\circ} 29' 21''$  East, a distance of 54.17 feet;

Thence South  $00^{\circ} 31' 36''$  West, a distance of 145.00 feet;

Thence North  $89^{\circ} 20' 48''$  West, a distance of 105.07 feet (formerly described as North  $89^{\circ} 28' 24''$  West, 105.00 feet);

Thence South  $57^{\circ} 39' 12''$  West, a distance of 77.34 feet (formerly described as South  $57^{\circ} 42' 27''$  West);

Thence South  $52^{\circ} 26' 01''$  East, a distance of 212.51 feet (formerly described as South  $52^{\circ} 27' 52''$  East, 212.38 feet);

Thence South  $59^{\circ} 58' 54''$  East, a distance of 120.71 feet;

Thence North  $18^{\circ} 33' 37''$  East, a distance of 135.10 feet;

Thence North  $80^{\circ} 43' 53''$  East, a distance of 360.80 feet (formerly described as 361.13 feet);

Thence South  $89^{\circ} 36' 39''$  East, a distance of 153.41 feet (formerly described as North  $89^{\circ} 43' 36''$  East, 153.71 feet);

Thence South  $79^{\circ} 23' 03''$  East, a distance of 205.39 feet (formerly described as South  $78^{\circ} 52' 56''$  East, 205.43 feet);

Thence South  $68^{\circ} 54' 25''$  East, a distance of 158.24 feet;

Thence South  $62^{\circ} 36' 21''$  East, a distance of 360.62 feet;

Thence South  $89^{\circ} 25' 48''$  East, a distance of 279.32 feet (formerly described as South  $89^{\circ} 34' 53''$  East, 280.00 feet);

Thence North  $59^{\circ} 52' 21''$  East, a distance of 68.97 feet (formerly described as North  $60^{\circ} 06' 58''$  East, 68.01 feet);

Thence North  $19^{\circ} 35' 18''$  East, a distance of 56.94 feet (formerly described as 56.66 feet) to the most easterly corner of Lot 47, Block 1 of said The Plantation No. 1 Subdivision, said point being on the southerly right-of-way line of West Sterling Lane/Drive, said point also being an angle point in the boundary line of Lot 70, Block 1 of said Amended Plat of Plantation No. 2;

Thence North  $88^{\circ} 28' 30''$  West, a distance of 15.47 feet to a point of curve;

Thence 62.74 feet on the arc of a curve to the right, said curve having a radius of 275.00 feet, a central angle of  $13^{\circ} 04' 16''$ , a chord bearing of North  $83^{\circ} 19' 05''$  West, and a chord length of 62.60 feet (formerly described as an arc length of 62.40 feet, a central angle of  $13^{\circ} 00' 01''$  and a long chord of 62.26 feet) on the southerly right-of-way line of said West Sterling Lane/Drive;

Thence on the boundary line of said Amended Plat of Plantation No. 2 for the following courses and distances:

Thence South  $58^{\circ} 41' 52''$  West, a distance of 123.83 feet (formerly described as 123.88 feet);  
Thence North  $59^{\circ} 19' 54''$  West, a distance of 80.07 feet (formerly described as 80.21 feet);  
Thence North  $44^{\circ} 22' 16''$  West, a distance of 196.82 feet (formerly described as 196.43 feet);  
Thence North  $54^{\circ} 27' 50''$  West, a distance of 179.53 feet (formerly described as 179.92 feet);  
Thence North  $59^{\circ} 25' 23''$  West, a distance of 181.03 feet (formerly described as 180.82 feet);  
Thence North  $76^{\circ} 24' 16''$  West, a distance of 231.42 feet (formerly described as 231.85 feet);  
Thence North  $89^{\circ} 22' 37''$  West, a distance of 265.41 feet (formerly described as 265.10 feet);  
Thence South  $74^{\circ} 34' 55''$  West, a distance of 95.32 feet (formerly described as 95.31 feet);  
Thence South  $85^{\circ} 30' 36''$  West, a distance of 149.14 feet (formerly described as 148.81 feet);  
Thence North  $24^{\circ} 29' 27''$  West, a distance of 151.47 feet (formerly described as 151.24 feet);  
Thence North  $05^{\circ} 42' 09''$  East, a distance of 151.49 feet (formerly described as 151.37 feet);  
Thence North  $75^{\circ} 36' 56''$  East, a distance of 151.26 feet (formerly described as 151.37 feet);  
Thence South  $84^{\circ} 23' 36''$  East, a distance of 654.89 feet (formerly described as South  $84^{\circ} 25' 07''$  East, 655.27 feet);  
Thence South  $59^{\circ} 25' 30''$  East, a distance of 415.10 feet (formerly described as South  $59^{\circ} 21' 59''$  East, 414.88 feet);  
Thence South  $49^{\circ} 18' 07''$  East, a distance of 104.70 feet (formerly described as 104.63 feet);  
Thence South  $44^{\circ} 26' 48''$  East, a distance of 191.30 feet (formerly described as 191.70 feet);  
Thence South  $59^{\circ} 11' 39''$  East, a distance of 64.86 feet (formerly described as 64.69 feet);  
Thence South  $15^{\circ} 50' 08''$  West, a distance of 100.25 feet (formerly described as 99.71 feet) to the southeast lot corner of Lot 15, Block 1 of said The Plantation No. 1 Subdivision, as same is Amended by said Amended Plat of Plantation No. 2, said point being a point of curve on the northerly right-of-way line of West Sterling Lane/Drive;  
Thence leaving the boundary line of said Amended Plat of Plantation No. 2, 50.51 feet on the arc of a curve to the left, said curve having a radius of 225.00 feet, a central angle of  $12^{\circ} 51' 43''$  and a chord bearing of South  $81^{\circ} 22' 44''$  East, and a chord length of 50.40 feet (formerly described as an arc length of 50.45 feet, a central angle of  $12^{\circ} 50' 45''$  and a long chord of 50.34 feet) on the northerly right-of-way of said Sterling Lane/Drive;  
Thence North  $15^{\circ} 50' 08''$  East, a distance of 110.26 feet (formerly described as 110.05 feet) to the northwest lot corner of Lot 71, Block 1 of said Amended Plat of Plantation No. 2;  
Thence on the boundary line of said Amended Plat of Plantation No. 2 for the following courses and distances:  
Thence South  $88^{\circ} 37' 00''$  East, a distance of 163.48 feet (formerly described as South  $88^{\circ} 41' 16''$  East, 163.53 feet);  
Thence North  $28^{\circ} 24' 20''$  East, a distance of 152.00 feet;  
Thence North  $00^{\circ} 56' 14''$  East, a distance of 34.99 feet (formerly described as North  $00^{\circ} 29' 31''$  East 35.06 feet);  
Thence North  $72^{\circ} 28' 14''$  West, a distance of 213.04 feet (formerly described as North  $72^{\circ} 28' 03''$  West, 212.76 feet);  
Thence North  $59^{\circ} 52' 28''$  West, a distance of 475.45 feet;  
Thence North  $11^{\circ} 25' 57''$  East, a distance of 99.67 feet;  
Thence North  $78^{\circ} 51' 40''$  West, a distance of 441.00 feet (formerly described as 440.31 feet) to a point of curve;  
Thence 95.60 feet on the arc of a curve to the right, said curve having a radius of 225.00 feet, a central angle of  $24^{\circ} 20' 43''$ , a chord bearing of North  $66^{\circ} 41' 46''$  West, and a chord length of 94.89 feet (formerly described as an arc length of 96.21 feet, a central angle of  $24^{\circ} 30' 00''$  and a long chord of 95.48 feet);  
Thence South  $35^{\circ} 36' 40''$  West, a distance of 66.12 feet;  
Thence North  $87^{\circ} 23' 30''$  West, a distance of 580.22 feet (formerly described as 580.27 feet);  
Thence North  $00^{\circ} 18' 26''$  East, a distance of 95.85 feet (formerly described as 95.82 feet) to a

point of curve on the southerly right of way line of West Plantation Drive/Lane; Thence 31.76 feet on the arc of a curve to the left, said curve having a radius of 475.00 feet, a central angle of  $03^{\circ} 49' 53''$ , a chord bearing of South  $83^{\circ} 09' 34''$  West, and a chord length of 31.76 feet (formerly described as an arc length of 31.77 feet and a central angle of  $03^{\circ} 49' 54''$ ) on the southerly right of way line of West Plantation Drive/Lane to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

Legal Description of Riverfront Lots

A parcel of land being a re-subdivision of a portion of Lot 70, Block 1 of "The Amended Plat of a Portion of Lot 1, and all of lots 2, 3, 4, 5 and 6, Block 1 of The Plantation No. 2" (Subdivision), recorded in Book 58 of Plats at Pages 5559 and 5560, located in Government Lot 2 in the Southwest Quarter of Section 30, Township 4 North, Range 2 East, Boise Meridian, Garden City, Ada County, Idaho, being more particularly described as follows:

Commencing at the North One Quarter Corner common to Sections 19 and 30 of said Township 4 North, Range 2 East, (from which point the Northeast corner of said Section 30 bears South  $89^{\circ} 11' 32''$  East, 2652.17 feet distant);

Thence from said North One Quarter Corner, South  $15^{\circ} 42' 33''$  West, a distance of 3361.11 feet to the southeast corner of Lot 52, Block 1 of the Plantation No. 1 (Subdivision), as same is shown on the Plat thereof recorded in Book 44 of Plats at Pages 3529 to 3531 of Ada County Records; Thence South  $58^{\circ} 15' 54''$  West, a distance of 26.20 feet (formerly described as 26.26 feet) on the southerly lot line of said Lot 52 to a point of curve on the easterly right-of-way line of West Gramarcy Lane;

Thence 17.28 feet on the arc of a curve to the right, said curve having a radius of 45.00 feet, a central angle of  $22^{\circ} 00' 05''$ , a chord bearing of South  $20^{\circ} 59' 39''$  East, and a chord length of 17.17 feet on the easterly right-of-way line of West Gramarcy Lane to a point of curve, said point being the POINT OF BEGINNING;

Thence 33.20 feet on the arc of a curve to the right, said curve having a radius of 53.00 feet, a central angle of  $35^{\circ} 53' 14''$ , a chord bearing of South  $62^{\circ} 21' 10''$  East, and a chord length of 32.66 feet;

Thence South  $44^{\circ} 24' 33''$  East, a distance of 83.48 feet;

Thence South  $00^{\circ} 36' 24''$  West, a distance of 110.93 feet;

Thence South  $52^{\circ} 51' 15''$  East, a distance of 47.56 feet;

Thence North  $37^{\circ} 29' 49''$  East, a distance of 21.00 feet;

Thence South  $52^{\circ} 30' 11''$  East, a distance of 32.00 feet;

Thence South  $37^{\circ} 29' 49''$  West, a distance of 18.41 feet to a point of curve;

Thence 16.90 feet on the arc of a curve to the left, said curve having a radius of 23.00 feet, a central angle of  $42^{\circ} 06' 10''$ , a chord bearing of South  $16^{\circ} 26' 44''$  West, and a chord length of 16.52 feet to a point of compound curve;

Thence 52.96 feet on the arc of a curve to the left, said curve having a radius of 43.00 feet, a central angle of  $70^{\circ} 34' 04''$ , a chord bearing of South  $39^{\circ} 53' 22''$  East, and a chord length of 49.68 feet;

Thence South  $12^{\circ} 34' 33''$  West, a distance of 40.84 feet to the northwest corner of Lot 91, Block 1 of Investors Plantation on the River (Subdivision), as shown on the Plat thereof, recorded in Book 59 of Plats at Page 5702 to 5703 of Ada County Records;

Thence South  $18^{\circ} 33' 37''$  West, a distance of 135.10 feet on the westerly lot line of said Lot 91, Block 1 to an angle point in the southerly boundary line of Lot 70, Block 1 of said "The Amended Plat of a portion of Lot 1, and all of Lots 2, 3, 4, 5 and 6, Block 1 of the Plantation No. 2" (Subdivision), said point being on the North Bank of the Boise River;

Thence North  $59^{\circ} 58' 54''$  West, a distance of 120.71 feet on the southerly boundary line of said

Lot 70, Block 1, and the North Bank of the Boise River;  
Thence North  $52^{\circ} 26' 01''$  West, a distance of 212.51 feet on the southerly boundary line of said  
Lot 70, Block 1 to the southeast corner of Lot 53, Block 1 of the Amended Plat Lot 53 thru Lot 62,  
Block 1 of The Plantation Subdivision No. 1, as shown on the Plat thereof, recorded in Book 45 of  
Plats at Page 3689 to 3690 of Ada County Records;  
Thence on the westerly lot line of said Lot 70, Block 1, and the easterly lot line of said Amended  
Plat Lot 53 thru Lot 62, Block 1 of The Plantation Subdivision No. 1 for the following bearings and  
distances:  
Thence North  $57^{\circ} 39' 12''$  East, a distance of 77.34 feet;  
Thence South  $89^{\circ} 20' 48''$  East, a distance of 105.07 feet;  
Thence North  $00^{\circ} 31' 36''$  East, a distance of 145.00 feet;  
Thence North  $44^{\circ} 29' 21''$  West, a distance of 54.17 feet to a point on a curve on the  
easterly right-of-way line of West Gramarcy Lane;  
Thence leaving said Lot 70 and Lot 53 lot line, 43.69 feet on the arc of a curve to the left, said  
curve having a radius of 45.00 feet, a central angle of  $55^{\circ} 37' 54''$ , a chord bearing of North  $17^{\circ} 49' 21''$  East, and a chord length of 42.00 feet on the easterly right-of-way line of West Gramarcy  
Lane to the POINT OF BEGINNING.

PARCEL C:

Non-Exclusive Easements rights as set forth in that certain Master Declaration of The Plantation  
dated February 21, 1978 and recorded February 24, 1978 as Instrument No. 7809725, as modified  
or amended by Instrument nos. 7865989, 8004454, 8006448, 94040475, 102063849, 105052685  
and 108057403 Records of Ada County, Idaho.

# Preserve Plantation Neighborhood

Please join your neighbors in a coordinated fight to save our open space, the golf course, and our quality of life. The City of Garden City has received a Specific Area Plan (SAP) application that would allow for a massive development on 22.68 acres of the River Club Golf Course. David Leroy, a lawyer representing concerned neighbors, submitted his response to the SAP application on February 8, 2023. We need to pack Garden City Hall with a “standing room only” crowd of concerned homeowners in the Plantation neighborhoods at each of the following meetings:

**Wednesday, February 15, 6:30 pm—Planning & Zoning Work Session**

**Monday, March 13, 2023, 6:00 pm—City Council Work Session**

**Wednesday, March 15, 2023, 6:30 pm—Planning & Zoning Commission Hearing.** There will be opportunities for public testimony at this meeting.

**Monday, March 27, 2023, 6:00 pm—City Council Hearing.** There will be opportunities for public testimony at this meeting.

Please make every effort to attend and offer rides to your neighbors who may not like to drive in the evening. We may look into securing a bus to take us all together to the March 15 and March 27 meetings if there is interest in doing this.

Please continue to write letters to City Council members, the Mayor, and Planning & Zoning. They will accept letters so long as they are received more than seven days prior to the hearing. It is definitely not too late to send letters for the March meetings. Letters should be emailed to the following:

[jevans@gardencityidaho.org](mailto:jevans@gardencityidaho.org) [tjorgensen@gardencityidaho.org](mailto:tjorgensen@gardencityidaho.org) [rheller@gardencityidaho.org](mailto:rheller@gardencityidaho.org)

[bjacobs@gardencityidaho.org](mailto:bjacobs@gardencityidaho.org) [jpage@gardencityidaho.org](mailto:jpage@gardencityidaho.org) [planning@gardencityidaho.org](mailto:planning@gardencityidaho.org)

Please visit [www.preserveplantation.com](http://www.preserveplantation.com) for updates about your neighborhood.

**There is strength in numbers. Please join in.**

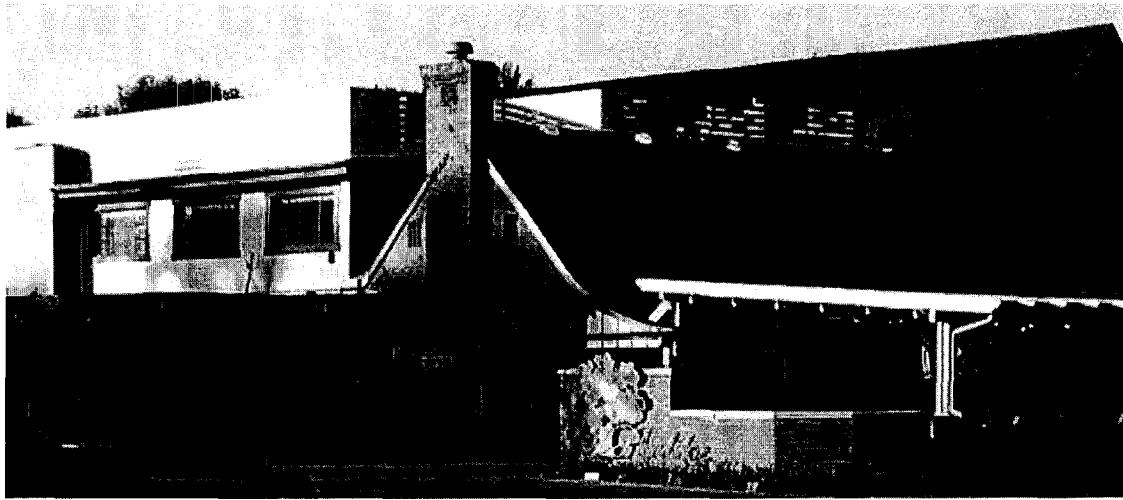
## Comments to Planning & Zoning Commission

From: Save Plantation Coalition (contact@saveplantation.com)

To: pierceroan@aol.com

Date: Monday, February 13, 2023 at 09:55 AM MST

[View this email in your browser](#)



**Friends,**

**Some of the residents of the Plantation development have retained a local, well-known attorney, David Leroy, to represent them in their desire to limit the development being proposed by Lincoln Property Company. On behalf of Preserve Plantation 23, Mr. Leroy has filed a legal document with Garden City Planning and Zoning Commission presenting comments, concerns, and complaints as constructive and corrective suggestions to the Specific Area Plan application currently filed with the city.**

**In the document there are five conclusions listed that is felt the Planning and Zoning Commission should follow.**

- 1. Require the Applicant to Withdraw and Revise the SAP Application to comply with applicable Garden City Codes and the Comprehensive Plan and supply appropriately sufficient and compliant therein.**

2. Suggest to the Applicant that it eliminate Phase 3 from any subsequent Application, confining its apartment, commercial and condo ambitions with lesser impact to State Street adjacent parcels and thereby eliminating or mitigating the potential damage to the adjacent established neighborhood.
3. Work with the Objectors to clarify and the Applicant to compel compliance with all applicable CC&Rs and utilize appropriate and existing homeowner amendment procedures to obtain neighborhood approved Supplement Declarations to define, explain, and conform the planned development through the existing property owners.
4. Recommend to the City Council for developments of this magnitude adjacent to existing residential neighborhoods, that elected and appointed officials should retain full involvement and continuing authority, rather than delegating the same to staff-level agents and consultants via an SAP approach.
5. Ask the SAP Applicant to designate and protect the remaining golf course as an “open site area in perpetuity”, utilizing a deed restriction per Garden City Development Code 8.6B.6.A

The entire document can be viewed on <http://saveplantation.com/>

The Planning and Zoning Commission meeting February 15<sup>th</sup> at 6:30 pm is scheduled for a work session to discuss the SAP application. A work session is not a public hearing, the public can attend the work session but no input from the floor will be allowed. Planning and Zoning will take up the application in a public hearing format on March 15<sup>th</sup>.

Thanks for your support,  
Save Plantation Coalition



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You are receiving this email because you are either a member of Plantation, a Plantation HOA member, or have indicated an interest in saving Plantation Golf Course from development.

**Our mailing address is:**

Save Plantation  
PO Box 140124  
Garden City, ID 83714-0124

[Add us to your address book](#)

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You can [update your preferences](#) or [unsubscribe from this list](#).



## Kena Champion

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**From:** Boise Pomeranians <boisepomeranians@gmail.com>  
**Sent:** Thursday, February 9, 2023 6:18 PM  
**To:** John Evans; James Page; Teresa Jorgensen; Russ Heller; Bill Jacobs; planning  
**Subject:** Please Approve Plantation ReZone and Parking Reform

To Mayor and City Council,

We support our friends' desire to get the new Plantation apartments development built. They have aging parents and would like to have a place for them to live. It sounds like a wonderful solution for them.

We do not wish to get into the fray of the political discourse. But we believe it is the right thing to do. As a result, we are writing to you rather than testifying.

Regarding the proposed rezone, parking has been an issue that was raised by at least one person who wrote to you. We do not believe parking will be a problem in the new development. As has been noted by various residents, national experts claim that issuing parking permits in neighborhoods to residents (and their guests) once parking gets congested (if it ever gets that bad) solves the problem right away. That sure makes sense to us. So it seems that parking reform should be more about regulating what's on the street than about what's on private property.

Please pass the proposed rezone as well as this parking reform so that people like our friends can afford to bring their parents close to them in the waning days of their lives.

Also please do not worry about congestion because State street is a big road that can handle plenty of extra traffic.

Thank you for your service to our community.

Janice and Bob Wilcox  
385 E 42<sup>nd</sup> St  
Garden City

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Total Control Panel

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## COMMENTS TO THE GARDEN CITY PLANNING AND ZONING COMMISSION ON THE RIVER CLUB SAP APPLICATION

Work Session - February 15, 2023

### I.

#### INTRODUCTION

This office has been retained to represent a group of interested and affected River Club - Plantation Subdivision area residents numbering approximately 100 people, organized under the name "Preserve Plantation 23". (hereinafter "Objectors") The group website is [preserveplantatation23@gmail.com](mailto:preserveplantatation23@gmail.com) and its contact leaders are Dr. John and Lynn Livingston of 6273 North Fair Oaks Place, Bob and Reci Schmellick of 6253 North Fair Oaks and Dave and Jeanne Patterson of 6326 North Charleston Place, Garden City, Idaho, 83703

These comments, concerns and complaints are offered as constructive and corrective suggestions in opposition to the Specific Area Plan Application of the Lincoln Property Company (hereinafter "Applicant"), SAPFY2023-0001, as revised January 9, 2023. This proposal seeks the privilege of increasing density from the current R2 Zone of approximately 6 residential units per acre, to an excessive proposal of 744 housing and apartment spaces allocated between at least seventeen buildings, each of between 3 and 5 stories in height. As described below, these Objectors suggest that an SAP is not appropriate for adoption at this location upon the various details, both included and omitted, within this Application.

### II.

#### THE OWNERSHIP OF THE PROPERTY REMAINS UNCLEAR

The Applicant lists the purported Property Owner and Applicant as "LB River Club Owner LLC" c/o Lincoln Property Company at an address in downtown Boise, with the name of "Trevor Nicoll, Sr. Vice President," and a "Jenny Pham, Vice President" at Lincoln Property Company with a Wilshire Boulevard address in Los Angeles.

There is nothing in the application or its supporting materials that directly evidences the

ownership of the Property. Ada County Assessor's records identify the "Primary Owner" (starting in 2022) as "LB RIVER CLUB OWNER LLC." In 2021, the owner is shown as "BRCP RIVER CLUB LLC," which the Idaho Secretary of State shows as a Georgia limited liability company doing business in Idaho under that name. Its Manager, according to the Idaho records, is Bay Point Advisors, LLC. The LLC and the Manager LLC share an address in Atlanta, GA. A Charles Andros signed the Idaho foreign registration as the manager of Bay Point Advisors, LLC which, in turn, is the manager of BRCP Advisors as the "Founding Partner, President and Chief Investment Officer." That firm's "investment philosophy" appears to be focused on distressed credit situations. However, the documents refer to an unrecorded June 22, 2022 "Put and Option" Agreement which also appears to pertain to undescribed rights in the same property.

### III.

#### THE USE OF AN SAP AT THIS SITE CONSTITUTES IMPROPER "SPOT ZONING" UNDER IDAHO LAW

On November 4, 2020 when the proposed Specific Area Plan ordinance was under consideration, Garden City Attorney Charles Wadams authored a memo to the Mayor and Council which warned them to be "mindful of the spot zoning issue." At page 2 Wadams stated:

"Spot zoning can more easily be measured by the benefit provided to a particular property owner or set of owners to the detriment of comprehensive plan or public goals. If a rezoning provides special benefits to a property owner while creating negative impacts to surrounding property, spot zoning likely occurred. Spot zoning is zoning adopted in the absence of proper planning."

The Garden City Future Land Use Map currently in effect designates by color coding and site specific layout the entire River Club-Plantation Subdivision area as "Green Boulevard Corridor" and "Future Parks/Open Space." A small overlay semi-circle on State Street indicates the potential specific location of a "Neighborhood/Destination." However, a star at that same site promises planning for "Future Parks/Open Space." The Idaho Supreme Court has held that the creation of small, localized zoning areas inconsistent with comprehensive plan concepts can constitute illegal "Type-Two" spot zoning. See Evans v. Teton County, 139 Idaho 71, 73 P 3d 84 (2008), Exhibit "A" attached hereto. By Garden City Code Section 8-6B-6-E, the City authorities must specifically find that "The SAP application, as conditioned, is consistent with the city comprehensive plan, as amended, including the future land use map . . ." The Applicant contends that the Council has previously approved "this area of the intersection of State Street and Pierce Park Lane as a Neighborhood/Designation activity Node." However, this SAP application covering twenty two acres goes far beyond the intersection area and has little to do with a multi-modal transportation site on State Street. Any included small scale retail or office locations are merely an afterthought in a huge, intrusive, neighborhood-disrupting and green space-eliminating, high-density housing venture. A little used Boise City bus stop already exists at that area. As such, the Application is an adventure

in spot zoning.

Paragraphs such as the following, found in the Application at Tab 3, Page 4 are illustrative, conclusory and false:

“The Residences at River Club supports and is harmonious with the goals and objectives of Garden City’s Comprehensive Plan. The following table lists the several planning goals adopted by Garden City, which, along with the objectives and action steps supported by the Residences at River Club, will assist Garden City continue its evolution as a city committed to: (1) maintain, preserve and enhance its assets; (2) improve the community’s appearance, especially the appearance of streets and highways; and (3) build on community amenities and development potential.”

In fact, the existing open-space greenery of the golf course and the integrated and adjacent high end, low density, large lot, residential homes will be overwhelmed and conflicted with this “evolution.”

The features of this SAP at this location squarely forecast that Garden City authorities can not make the Required Findings under Garden City Development Code Section 8-6B-6-E-1 that “The SAP application, as conditioned, is consistent with the city comprehensive plan . . .” Without that finding, an SAP can not and should not be approved!

As the Code itself says:

“If an application does not meet one or more of the criteria above, the application shall be denied, and the reason the application does not meet the finding or findings shall be writing.”

#### IV.

### THE ELIMINATION OF GOLF COURSE HOLES 10, 11, 7 AND 8 APPEARS TO VIOLATE SEVERAL MASTER DECLARATION CONTRACT PROVISIONS FOR PLANTATION SUBDIVISION RESIDENTS

At issue is about 18% of the entire golf course open area green space.

Some 17 different subdivisions have been created in the area of and surrounding the former Plantation Golf Club since adjacent land first began to be developed for residences in the 1970's. However, the same “Master Declaration of Covenants, Conditions and Restrictions,” dated February 21, 1978 has been used consistently for each such subdivision to constitute the contractual bond among purchasing homeowners and the developer-golf course owners and their successors. The Lincoln Property Company or the current actual property owner is thusly also now bound, subject

to all the conditions contained therein. The Master Declaration is made applicable to all “Open Space Areas.” As far as is known to these Objectors, no “Supplemental Declaration” or amendment to the CC&Rs has been issued to authorize the planned intrusive development. Section 5.16.B provides that “No Lot, Common Area . . . may be further subdivided . . . by the Owner thereof, but excluding the Grantor.” Lincoln is not the “Grantor.” See attached documents Exhibit “B” The golf course area, including the four threatened holes, is both “open space” and designated as “Lot 1” in the CC&Rs and associated maps.

Section 5.17 of the Master Declaration promises residents that:

“All improvements on the Plantation shall be of such quality and nature and located so as to create a harmonious relationship between all improvements, including but not limited to structures, landscaping, lines of sight, open areas, common facilities, means of ingress and egress, etc.”

Among the contractual guarantees which follow are “exclusivity and quality,” “common aesthetics” “maximum enjoyment of home and neighborhood” and particularly those of Subparagraph 5. D:

“Privacy and Enjoyment. All improvements on The Plantation shall be designed and constructed in such a manner so as to promote and protect the privacy and enjoyment of the residence of each owner without detracting from the aesthetics and environment of each individual residence of the aesthetics and environment of the Development as a whole.”

Section 5.18 D contains a specific restriction on:

“Business or Commercial Activity. Unless specifically permitted in a Supplemental Declaration, no Property shall be used at any time for business or commercial activity, provided, however, that the Grantor or its nominee may use any Property for model homes or real estate sales offices.”

The only known Supplemental Declaration as to such activity was adopted June 5, 2002 and simply authorized home office business conduct by the occupant owners of a residence. The limitation was further codified by Architectural and Environmental Control Committee Regulations as Business Enterprise Restrictions, in paragraph 3Y, dated April 27, 2005

While not binding upon the City directly, contractual disputes and CC&R obligations between the city’s taxpaying residential owners and neighborhood developers should be noted and such rights respected in planning and zoning decisions, to the maximum extent possible. Further, if Lincoln as an “owner” is legally restricted from proposing the subdivision and uses which it intends to drive into a spot zone SAP herein, it arguably is not a lawful “Applicant” under the Zoning

Ordinance.

V.

THE SCOPE OF THIS DEVELOPMENT IS TOO MASSIVE TO DO WITHOUT  
CONTINUING PUBLIC SCRUTINY

At full build out, this project could increase the 12,288 population of Garden City by up to ten percent. Yet, the effect of the approval of an SAP for this area is to largely eliminate future City Council and Planning and Zoning Commission direct oversight of the implementation and all post-initial approval changes, revisions and amendments of the proposal and to place all such decisions behind closed doors with staff-only determinations made with developer-only input.

Based on recently approved changes to Garden City's Design Review process, it appears that such issues may also go to an unnamed "design review consultant."

This specific development will increase density in this neighborhood of large lot, upscale residences by up to 94% per acre. The public's involvement in continued scrutiny over evolving details and plan changes directly and through its elected and appointed officials, arguably will be entirely eliminated, as the SAP ordinance is currently constituted. Design review committee involvement is replaced by staff level-only or consultant review. Neighbors will have neither prior notice of changes nor subsequent avenue for input, as impacts are experienced or enhanced. Even if appeals are permitted, unnoticed alterations will slip past until impacts are experienced. Putting such an SAP on a major arterial roadway with existing traffic challenges and overlaying it over and projecting it into and against an existing upscale residential neighborhood will predictably cause continuing conflicts and raise all manner of issues. These should not be resolved in the backroom of City Hall at the staff level. Instead, the traditional notice, opportunity of comment, scrutiny and electoral accountability of the everyday planning and zoning process should be available to all parties as to this development. An SAP eliminates that. A more traditional rezone request, subject to the existing Garden City ordinances and process, focused solely on the State Street adjacent portion of the plans, will protect the nearby neighborhood, require the Applicant to specifically detail and then stick to what it proposes to do, and give the City continuing and regular oversight.

VI.

THE TRAFFIC IMPACTS HAVE NOT BEEN FULLY, ADEQUATELY STUDIED

More than 1000 resident vehicles may be brought to this area, some making two or more trips a day, driven by the occupants of the 722 units. As of now, the intersection redesign of State Street and Pierce Park is not fully completed. Even so, the ACHD traffic study of these impacts upon State Street indicates:

- A. The development will generate 4945 daily vehicle trips onto and out of the

project, by estimate.

- B. “Mitigation” will be needed for vehicle access on State Street by the year 2026, to possibly include additional turn or traffic lanes.
- C. With 95% probability, even with the mitigation, cars desiring to turn in the area of the development are projected to back up into and impede traffic lanes at six different locations.
- D. Any development greater than 83% of the current proposal is unacceptable from a traffic perspective, even with all available mitigation options.

An elaborate bus stop, even if called a “future TOD transit station,” does not eliminate the readily predictable automobile traffic generation which a dense cluster of housing will produce. Nor does it eliminate, even with an upgraded intersection at Pierce Park, the back up of ingress and egress-seeking vehicles. It appears that this insufficient vehicle “stacking space” will overwhelm such access during rush hours at the River Club primary access point. As discussed below, it is also foreseeable that ACHD and the applicable Fire Department authority will demand another access point, especially if Phase 3 is approved, through the existing neighborhoods to the South, most likely via North Fair Oaks Place. Furthermore, the internal traffic pattern and as-planned extremely inadequate parking within the development seems destined to inbuild other automobile related difficulties.

## VII.

### THE SAP IN FACT HAS NO ADEQUATE PUBLIC ACCESS TO THE GREENBELT THROUGH THE NEIGHBORHOOD

The only available route to the Greenbelt for River Club denizens is through the existing neighborhood. The Applicant promises that the residents of all 722 units will have Greenbelt and Boise River access as quality of life benefits and identifies a narrow, 137 foot long pedestrian public pathway located between two existing residences at the end of Plantation River Drive as the route for walkers and bikers. (See Exhibit “C” hereto) However, that accessibility is not a well-developed or easily located public path. It is situated all the way at the other side of the existing neighborhood with no direct connection to any phase of the SAP area. Perhaps incorrectly, the accessway is also currently posted with signage as “Private” and non-public. See Exhibit “D” hereto. Attached as Exhibit “E” is an area map which shows how ill-located and indirectly accessible said pathway would be for the many hundreds of new residents when offered to them as a promise of ready river access and greenbelt amenities. Obviously, the location and design of the path were never anticipated to handle either the non-existent on street vehicle parking or hundreds of people.

## VIII.

### THE IMPACTS ON THE EXISTING ADJACENT NEIGHBORHOOD HAVE NEITHER BEEN FULLY ANALYZED NOR APPROPRIATELY MITIGATED

The proposed Phase 3 is particularly intrusive and offensive to the Objectors and the Applicant's promises and projections as to impacts and protections are not sufficiently developed to comply with the City Code. This entire Phase 3 area has no state Street adjacency, is a profit-seeking afterthought, and is guaranteed to cause significant impact upon and conflict within the adjacent residences. In an attempt to mollify the existing residents to the adjacent South, the Applicants have promised that no rear entrance connection to existing roads will be sought via North Fair Oaks Place. This is an amendment to the earlier proposals which sought exactly that. In fact, agents and employees of ACHD have already been detected while conducting onsite inspections of this prospective interconnection. It is eminently predictable that the Highway District will necessarily and by code demand just such a second exit point at the Eastern terminus of Phase 3 as a condition of its development. The Garden City authorities should not inbuild such a conflict for its citizens nor should it blithely assume that ACHD and the Boise City Fire Department will not require a mandatory, typical, development and service second access as necessary.

Likewise, it is easy to anticipate that the under-designed number of parking spaces for this SAP will force overflow parking onto the adjacent residential streets of the existing neighborhoods. The conceptual design layout illustrates 1246 parking spaces. Up to 1070 may be capable of approval as designed. Some 176 spaces would apparently require vehicles to back in to primary fire or emergency access drives, and are thus suspect. This is even more concerning as the Council is just now considering and acting to downgrade its developer parking requirement to allow fewer spaces for multiple unit buildings. When confronted with the high likelihood that the insufficient number of on-site planned parking spaces will push resident, shopper and transit rider vehicles into parking on the adjacent residential streets, as agent for the development merely offers "Garden City will police that." Just as right-sized, correctly designed improvements along State Street may be proper, the Phase 3 plan is correspondingly improper and troublesome.

## IX.

### WITHOUT PROPERLY DEVELOPED WATER OR SEWER PLANS, THIS PROPOSED HIGH DENSITY SAP LOCATION IS PREMATURE

Upon information and belief, as far as the Objectors can discern from the existing record, the issues of water access and sewer planning, which typically precede development, remain unaddressed for this proposal. In their conditional will serve letter, Garden City has recommended that the Applicant contact Boise City about possible sewer and water access. If this is so, particularly where the significant density construction is within or adjacent to the Boise River Flood Plain, those elements should be a clearly demonstrated feasibility before any such SAP site is planned at River Club. A formal confirmation of sewer and water "ability to serve" has not been issued. The

Objectors look forward to receiving and reviewing this data before, not after, either a zone is sited or further progress is initiated.

X.

## CONCLUSION

For each and all of the above stated reasons, the Garden City Planning and Zoning Commission should:

1. Require the Applicant to Withdraw and Revise the SAP Application to comply with applicable Garden City Codes and the Comprehensive Plan and supply appropriately sufficient and compliant detail therein.
2. Suggest to the Applicant that it eliminate Phase 3 from any subsequent Application, confining its apartment, commercial and condo ambitions with lesser impact to State Street adjacent parcels and thereby eliminating or mitigating the potential damage to the adjacent established neighborhood.
3. Work with the Objectors to clarify and the Applicant to compel compliance with all applicable CC&Rs and utilize appropriate and existing homeowner amendment procedures to obtain neighborhood approved Supplement Declarations to define, explain and conform the planned development through the existing property owners.
4. Recommend to the City Council for developments of this magnitude adjacent to existing residential neighborhoods, that elected and appointed officials should retain full involvement and continuing authority, rather than delegating the same to staff-level agents and consultants via an SAP approach.
5. Ask the SAP Applicant to designate and protect the remaining golf course as an “open site area in perpetuity,” utilizing a deed restriction per Garden City Development Code 8.6B.6.A-6.

DATED This 7th day of February, 2023.

Respectfully Submitted:

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David H. Leroy, Attorney for Preserve Plantation 23

KeyCite Yellow Flag - Negative Treatment  
Declined to Extend by Sunnyside Indus. and Professional Park, LLC v.  
Eastern Idaho Public Health Dist., Idaho App., April 28, 2009

139 Idaho 71

Supreme Court of Idaho,  
Boise, March 2003 Term.

Richard EVANS and Matthew Finnegan,  
Plaintiffs-Appellants,

v.

TETON COUNTY, Idaho Board Of  
Commissioners, Teton Springs, L.L.C.,  
Max H. Rammell and Denice K. Rammell,  
husband and wife, Merrill R. Rammell  
and Roberta L. Rammell, husband and  
wife, Miles E. and Jessie M. Hastings  
Family Trust, Kearsley Family L.L.C., and  
John H. Winger, Defendants-  
Respondents.  
No. 27854.  
June 3, 2003.  
Rehearing Denied July 28, 2003.

#### Synopsis

Property owners petitioned for judicial review of a decision by county board of commissioners approving a planned unit development (PUD) and zoning change. The Supreme Court, Kidwell, J., held that: (1) board of commissioners did not violate comprehensive plan; (2) board did not violate subdivision ordinance; and (3) property owners could not challenge area-of-impact agreement.

Affirmed.

West Headnotes (28)

[1] **Zoning and Planning**—Review in general

For purposes of judicial review of Local Land Use Planning Act (LLUPA) decisions, a local agency making a land use decision, such as a board of commissioners, is treated as a government agency under Idaho Administrative Procedural Act (IDAPA). I.C. §§ 67-6501 et seq., 67-6521(1)(d).

9 Cases that cite this headnote

[2] **Administrative Law and Procedure**—Trial or review de novo

The Supreme Court reviews decisions under the Idaho Administrative Procedural Act (IDAPA) independently of any intermediate appellate court. I.C. § 67-6521(1)(d).

1 Case that cites this headnote

[3] **Zoning and Planning**—Decisions of boards or officers in general

There is a strong presumption that the actions of a county board of commissioners, where it has interpreted and applied its own zoning ordinances, are valid.

3 Cases that cite this headnote

[4] **Zoning and Planning**—Decisions of boards or officers in general

Whether a county board of commissioners violated a statutory provision in a zoning and planning decision is a matter of law over which the Supreme Court exercises free review.

1 Case that cites this headnote

[5] **Zoning and Planning**—Substantial evidence in general

The Supreme Court defers to a county board of commissioners' findings of fact in a zoning and planning case, unless the findings of fact are clearly erroneous; findings are not "clearly erroneous" so long as they are supported by substantial, competent, although conflicting, evidence.

**EXHIBIT 'A'**

[6] **Zoning and Planning**—Right of Review; Standing

Landowners were "affected persons" with standing to challenge zoning decision of county board of commissioners, where they lived near proposed development site, and their property would be adversely affected by development. I.C. § 67-6521(d).

[7] **Zoning and Planning**—Comprehensive or general plan

A comprehensive plan is not a legally controlling zoning law, but serves as a guide to local government agencies charged with making zoning decisions.

1 Case that cites this headnote

[8] **Zoning and Planning**—Conformity of regulations to comprehensive or general plan  
**Zoning and Planning**—Conformity of change to plan

The statutory requirement that a zoning ordinance be “in accordance with” comprehensive plan does not require zoning decisions to strictly conform to the land-use designations of the comprehensive plan; however, a board of commissioners cannot ignore its comprehensive plan when adopting or amending zoning ordinances. I.C. § 67-6511.

1 Case that cites this headnote

[9] **Zoning and Planning**—Modification or amendment; rezoning

Whether approval of a zone change is “in accordance with” the comprehensive plan is a question of fact, which can only be overturned when the factual findings supporting the zone change are clearly erroneous. I.C. § 67-6511.

[10] **Zoning and Planning**—Conformity of regulations to comprehensive or general plan  
**Zoning and Planning**—Conformity of change to plan

The governing body charged with making zoning decisions “in accordance with” a comprehensive plan must make a factual inquiry into whether requested zoning ordinance or amendment reflects the goals of, and takes into account factors in, the comprehensive plan in light of the present factual circumstances surrounding the request. I.C. § 67-6511.

[11] **Zoning and Planning**—Spot zoning

A claim of “spot zoning” is essentially an argument that a change in zoning is not in accord with the comprehensive plan.

3 Cases that cite this headnote

[12] **Zoning and Planning**—Spot zoning

Type-one spot zoning may simply refer to a rezoning of property for a use prohibited by the original zoning classification; the test for whether such a zone reclassification is valid is whether the zone change is in accord with the comprehensive plan.

2 Cases that cite this headnote

[13] **Zoning and Planning**—Spot zoning

Type-two spot zoning refers to a zone change that singles out a parcel of land for use inconsistent with the permitted use in the rest of the zoning district for the benefit of an individual property owner; this type of spot zoning is invalid.

3 Cases that cite this headnote

[14] **Zoning and Planning**—Conformity of change to plan

County board of commissioners did not violate county comprehensive plan by granting developers a zoning change; commissioners took into consideration impact on water quality, wildlife habitat, riparian systems, traffic, public utilities, schools, health-care providers, wastewater management, and many other issues related to comprehensive plan. I.C. § 67-6511.

[15] **Zoning and Planning**—Substantial evidence in general

The Supreme Court must affirm the findings of a county board of commissioners in a zoning and

planning decision if they are supported by substantial, competent, although conflicting, evidence.

All sections of a statute must be construed together to determine the legislative body's intent.

[16] **Municipal Corporations**—Applicability of statutory construction rules

The Supreme Court construes a local ordinance as it construes a statute.

[17] **Municipal Corporations**—Applicability of statutory construction rules

**Statutes**—Literal, precise, or strict meaning; letter of the law

Statutory construction always begins with the literal language of the statute or ordinance.

[18] **Municipal Corporations**—Plain, ordinary, or common meaning

If an ordinance is unambiguous, a court need not consider rules of statutory construction, and the ordinance will be given its plain meaning.

1 Case that cites this headnote

[19] **Statutes**—In general; factors considered

Where the language of a statute is ambiguous, a court applies rules of construction for guidance.

[20] **Statutes**—Unintended or unreasonable results; absurdity

Courts disfavor statutory constructions that lead to absurd or unreasonably harsh results.

[21] **Statutes**—Statute as a Whole; Relation of Parts to Whole and to One Another

[22] **Municipal Corporations**—Ordinance as a whole

**Statutes**—Superfluously

Statutes and ordinances must be construed so as to give effect to all their provisions, and not to render any part superfluous or insignificant.

[23] **Zoning and Planning**—Decisions of boards or officers in general

There is a presumption that a local zoning board's actions are valid when interpreting and applying its own zoning ordinances.

4 Cases that cite this headnote

[24] **Zoning and Planning**—Maps, plats, and plans; subdivision regulations

Subdivision ordinance's two percent limit on using developed acreage for incidental uses did not apply to Planned Use Development (PUD), where PUD was for residential, commercial, and industrial (RCI) use.

[25] **Zoning and Planning**—Architectural and structural designs; area and lot considerations

Planned Use Development (PUD) did not violate county's comprehensive plan by allowing small lots, where board approved PUD application, and PUD did not compromise health, safety, or general welfare of the county.

1 Case that cites this headnote

[26] **Zoning and Planning**—Right of Review; Standing

Property owners could not challenge area-of-

impact agreement between county and city, where they were not parties to agreement.

[27] **Zoning and Planning**—Filing, publication, and posting; minutes and findings

**Zoning and Planning**—Findings, reasons, conclusions, minutes or records

County board of commissioners was not required to make its own findings in support of approval of Planned Use Development (PUD) and zoning change; it could adopt findings of zoning commission. I.C. § 67-6535.

[28] **Zoning and Planning**—Costs; attorney fees

Property owners were not entitled to attorney fees for appeal of decision of county board of commissioners approving Planned Use Development (PUD) and zoning change, where they were not the prevailing party.

1 Case that cites this headnote

#### Attorneys and Law Firms

\*\*86 \*73 Phyllis Lamken, Victor, argued for appellants.

Teton County Attorney, Driggs, for respondent Teton County. Laura Lowery argued.

Holden, Kidwell, Hahn & Crapo, Idaho Falls, for respondent Teton Springs, L.L.C. Dale Storer argued.

Roy Moulton, Driggs, for respondents Rammell, et al.

#### Opinion

KIDWELL, Justice.

Richard Evans and Matthew Finnegan (appellants) appeal the Teton County Board of County Commissioners' (Board of Commissioners) decision to approve Teton Springs, L.L.C.'s (Teton Springs) final plat of phase 1 of the Teton Springs subdivision, request for a zone change from A-2.5 to R-1, and application for a Planned Unit Development (PUD). The Board of Commissioners' decision is affirmed.

#### I.

#### FACTS AND PROCEDURE

Teton Springs, a Wyoming limited liability company authorized to do business in the state of Idaho, proposed to convert 780 acres of mostly undeveloped farmland and wetland in southern Teton County into a PUD consisting of a golf course and residential resort. The PUD is adjacent to the Targhee National Forest in southern Teton County, south of Victor, Idaho. Upon completion, the proposed development will include an 18-hole golf course, clubhouse, pro shop, maintenance buildings, fishing ponds, equestrian facility, 100-room hotel, 50 overnight units, health club and tennis facility, swimming pool, restaurant, conference rooms, nordic ski facility, storage facilities, helicopter pad, parking lots, 18 two to three acre ranch estates, 100 three-quarters to one acre golf estates, 170 one-third to one-half acre golf homes, 180 five thousand square foot residential lots, and 100 overnight cabin lots from one thousand to twenty-five hundred square feet.

Of the 780 acres upon which the PUD will be built, the respondents Rammel own 460 acres, the Hastings own 160 acres, the Kearsleys own 80 acres, and the Wingers own 80 acres. Approximately 140 of the 780 acres are located within the "Area of City Impact," an unincorporated area of Teton County neighboring the city of Victor. In addition to the national forest to the south, the acreage surrounding the PUD supports a mix of agricultural, residential, and commercial uses. There are some pre-existing subdivisions to the north of the PUD. The appellants live on two-and-one-half acre residential lots near the PUD.

On August 2, 1999, Teton Springs filed an application for approval of the PUD. Teton Springs also requested a zone change from A-2.5 to R-1. On September 1, 1999, the Teton County Planning and Zoning Commission (Zoning Commission) held a public hearing to consider the application. Following the hearing, the Zoning Commission recommended approval of the concept plan for the PUD and zone change. On October 25, 1999, \*\*87 \*74 the Board of Commissioners conducted a public hearing to consider the Teton Springs PUD and proposed zone change. At the conclusion of the hearing, the Board of Commissioners approved the concept plan of the PUD conditionally upon resolution of issues regarding natural stream flows, the development's impact on the city of Victor, traffic flow, impact on county services, sewer system capacity, and density. The Board of Commissioners decided to wait to consider the zoning change when it considered Teton Springs' final plat.

After the October hearing, the Zoning Commission obtained comments regarding the PUD application from the Idaho Department of Water Resources, the U.S. Environmental Protection Agency, the Idaho Department

of Environmental Quality, the U.S. Fish and Wildlife Service, the Idaho Fish and Game Department, the District 7 Health Department, and various other county and local agencies. On May 3, 2000, the Zoning Commission held another public hearing to consider the Teton Springs PUD application and the proposed zone change. At the hearing's conclusion, the Zoning Commission recommended accepting the PUD application and granting the zone change. On May 9, 2000, the Zoning Commission issued Findings of Fact and Conclusions in support of its decision.

On June 12, 2000, the Board of Commissioners and the city of Victor held a joint public hearing to consider the Teton Springs PUD and request for a zone change. At the conclusion of this hearing, the Board of Commissioners and the city of Victor approved the PUD and granted the zone change. The Board of Commissioners also adopted the Findings of Fact and Conclusions issued by the Zoning Commission.

On July 7, 2000, the appellants filed a Petition for Judicial Review of Teton Springs' application for approval of a PUD and zone change. The appellants alleged the Board of Commissioners violated Teton County Zoning Ordinance (Zoning Ordinance), Teton County Subdivision Ordinance (Subdivision Ordinance), and the Teton County Comprehensive Plan (Comprehensive Plan) by approving the PUD and granting a zone change. As a result, the appellants alleged they would suffer substantial injury. On September 25, 2001, the district court issued a decision affirming the Board of Commissioners' approval of Teton Springs' application for a PUD and zone change. The appellants timely filed this appeal.

## II.

### STANDARD OF REVIEW

<sup>[1]</sup> <sup>[2]</sup> The Local Land Use Planning Act (LLUPA) allows an affected person to seek judicial review of an approval or denial of a land use application, as provided for in the Idaho Administrative Procedural Act (IDAPA). Idaho Code § 67-6521(1)(d) (2002); *Evans v. Bd. Of Comm'r's of Cassia County*, 137 Idaho 428, 430, 50 P.3d 443, 445 (2002). The district court conducts judicial review of the actions of local government agencies. I.R.C.P. 84(a)(1) (2002). For purposes of judicial review of LLUPA decisions, a local agency making a land use decision, such as the Board of Commissioners, is treated as a government agency under IDAPA. *Urrutia v. Blaine County*, 134 Idaho 353, 357, 2 P.3d 738, 742 (2000). The

district court bases its judicial review on the record created before the local government agency. I.R.C.P. 84(e)(1). This Court reviews decisions under the IDAPA independently of any intermediate appellate court. *Evans*, 137 Idaho at 431, 50 P.3d at 446.

<sup>[3]</sup> This Court must affirm the Board of Commissioners unless it determines the Board of Commissioners' findings, inferences, conclusions, or decisions: (1) violated the constitution or statutory provisions; (2) exceeded its statutory authority; (3) were made upon unlawful procedure; (4) were not supported by substantial evidence on the record; or (5) were arbitrary, capricious, or an abuse of discretion. *Id.*; I.C. § 67-5279(3). There is a strong presumption that the actions of the Board of Commissioners, where it has interpreted and applied its own zoning ordinances, are valid. *Evans*, 137 Idaho at 431, 50 P.3d at 446. The party appealing the Board of Commissioners' decision must first show the Board of Commissioners erred in a manner specified under I.C. § 67-5279(3), **\*\*88 \*75** and second, that a substantial right has been prejudiced. I.C. § 67-5279(4); *Price v. Payette County Bd. Of Comm'r's*, 131 Idaho 426, 429, 958 P.2d 583, 586 (1998).

<sup>[4]</sup> Whether the Board of Commissioners violated a statutory provision is a matter of law over which this Court exercises free review. *Friends of Farm to Market v. Valley County*, 137 Idaho 192, 196, 46 P.3d 9, 13 (2002); *Polk v. Larabee*, 135 Idaho 303, 308, 17 P.3d 247, 252 (2000).

<sup>[5]</sup> This Court defers to the Board of Commissioners' findings of fact unless the findings of fact are clearly erroneous. *Evans*, 137 Idaho at 431, 50 P.3d at 446; *Friends of Farm to Market*, 137 Idaho at 196, 46 P.3d at 13. The Board of Commissioners' factual findings are not clearly erroneous so long as they are supported by substantial, competent, although conflicting, evidence. *Friends of Farm to Market*, 137 Idaho at 196, 46 P.3d at 13.

## III.

### ANALYSIS

#### A. Appellants Have Standing To Challenge The Board of Commissioners' Decision to Approve Teton Springs' Application And Request For A Zone Change.

<sup>[6]</sup> Teton Springs argues the appellants lack standing because they are not "affected persons" under I.C. § 67-

6521(d). For this proposition, Teton Springs cites *Rural Kootenai Organization, Inc. v. Board of Commissioners*, 133 Idaho 833, 993 P.2d 596 (1999), where this Court ruled members of RKO lacked standing to raise a due process claim without demonstration of a distinct, palpable injury and a causal connection between the injury and lack of notice. Teton Springs also relies on I.C. § 67-6535(c), which requires “actual harm or a violation of fundamental rights” to obtain a remedy under LLUPA. The appellants counter that they have standing to appeal the Board of Commissioners’ decision to approve the PUD and zone change because they own land within 300 feet of the PUD and will be adversely affected by its construction.

LLUPA confers standing to seek judicial review of a local land use decision to an “affected person” aggrieved by the decision. I.C. § 67-6521(d). This Court notes that while it recognizes the underlying policy of I.C. § 67-6521(d) conferring standing to affected persons, the legislature cannot, by statute, relieve a party from meeting the fundamental constitutional requirements for standing. *See Noh v. Cenarrusa*, 137 Idaho 798, 53 P.3d 1217 (2002). An affected person is “one having an interest in real property which may be *adversely affected* by the issuance or denial of a permit authorizing the development.” I.C. § 67-6521(a) (emphasis added).

The appellants emphasize they own land within 300 feet of the PUD. The record shows the appellants received notice of a hearing, presumably pursuant to the Subdivision Ordinance and Idaho Code, which require notice to all landowners within 300 feet of a proposed variance or amendment to a zoning district. However, the notice sent to the appellants stated they received it because they owned land *either* within 300 feet of the PUD or in the Pole Canyon Ranches Subdivision, a development adjacent to the proposed PUD. The Subdivision Ordinance and Idaho Code arbitrarily designate 300 feet. The appellants standing status depends on whether they own property that may be adversely affected by the PUD’s construction, not because they can claim they own property within a specified distance. Proximity is a very important factor. A property owner in Teton, Driggs, or even Victor may be less likely to qualify for standing to challenge the PUD because it is less likely they can show their property will be adversely affected. However, this Court will not look to a predetermined distance in deciding whether a property owner has, or does not have, standing to seek judicial review of a LLUPA decision.

Clearly, the appellants’ properties may be adversely affected by a development proposing an 18-hole golf course and pro shop, nearly five hundred homes, a helicopter pad, a 100-room inn, and 50 overnight cabins

all on property adjacent to their rural homes. The appellants have standing to seek judicial review of the Board of Commissioners’ decision \*\*89 \*76 to approve Teton Spring’s PUD application and request for a zone change because they may be adversely affected by the decision.

Teton Springs’ reliance on *Rural Kootenai Organization* for the proposition the appellants lack standing is misplaced. The standing analysis in that case was relevant only to the narrow issue of whether RKO had standing to raise a due process claim relating to notice of two specific public hearings. The standing analysis did not extend to any other issue raised by RKO.

Teton Springs’ reliance on the language of I.C. § 67-6535 to argue the appellants lack standing is equally misplaced. I.C. § 67-6535(a) requires that approval or denial of any application provided for in LLUPA be based on criteria set forth in the local zoning ordinances and comprehensive plan. I.C. § 67-6535(c) directs the review of a LLUPA decision. The language in I.C. § 67-6535(c) instructing courts that “[o]nly those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision” cannot be construed as a standing requirement. The existence of real or potential harm is sufficient to challenge a land use decision. I.C. § 67-6535(c) requires a demonstration of actual harm or violation of a fundamental right in order to be entitled to a remedy in cases disputing a LLUPA decision.

#### B. The Board of Commissioners Did Not Violate The Teton County Comprehensive Plan When It Granted A Zone Change From A-2.5 to R-1.

The appellants argue the change in zoning from A-2.5 to R-1 is inconsistent with the permitted use in the rest of the zoning district and violates the Comprehensive Plan. As a result, the appellants argue the zone change is spot zoning, which is impermissible.

[7] [8] [9] [10] A county board of commissioners must establish one or more zones or zoning districts within the county. I.C. § 67-6511. The zoning districts shall be “in accordance with” the policies of the County’s comprehensive plan. *Id.* Rezoning property requires an amendment to the zoning ordinance. After considering the comprehensive plan, the planning and zoning commission may recommend, and the board of commissioners may accept or deny, an amendment to the zoning ordinance. I.C. § 67-6511(b); *Bone v. City of Lewiston*, 107 Idaho 844, 849, 693 P.2d 1046, 1052 (1984). A comprehensive plan is not a legally controlling zoning law, it serves as a guide to local government agencies charged with making

zoning decisions. *Bone* at 850, 693 P.2d at 1052; *Friends of Farm to Market*, 137 Idaho at 200, 46 P.3d at 17; *Urrutia*, 134 Idaho at 357–58, 2 P.3d at 742–43. The “in accordance with” language of I.C. § 67–6511 does not require zoning decisions to strictly conform to the land use designations of the comprehensive plan. *Bone* at 850, 693 P.2d at 1052; *Sprenger, Grubb, & Assoc., Inc. v. City of Hailey*, 127 Idaho 576, 585, 903 P.2d 741, 750 (1995); *See Also* I.C. § 67–6508. However, a board of commissioners cannot ignore their comprehensive plan when adopting or amending zoning ordinances. *Bone* at 850, 693 P.2d at 1052. Whether approval of a zone change is “in accordance with” the comprehensive plan is a question of fact, which can only be overturned when the factual findings supporting the zone change are clearly erroneous. *Id.*; *Friends of Farm to Market*, 137 Idaho at 200, 46 P.3d at 17; *Sprenger, Grubb, & Assoc., Inc.*, 127 Idaho at 585, 903 P.2d at 750; *Ferguson v. Bd. Of County Comm’rs for Ada County*, 110 Idaho 785, 787, 718 P.2d 1223, 1225 (1986). The governing body charged with making zoning decisions “in accordance with” the comprehensive plan must “make a factual inquiry into whether requested zoning ordinance or amendment reflects the goals of, and takes into account those factors in, the comprehensive plan in light of the present factual circumstances surrounding the request.” *Bone* at 850, 693 P.2d at 1052.

<sup>[11]</sup> <sup>[12]</sup> <sup>[13]</sup> A claim of “spot zoning” is essentially an argument the change in zoning is not in accord with the comprehensive plan. *See Price*, 131 Idaho at 432, 958 P.2d at 589. There are two types of “spot zoning.” *Dawson Enter., Inc. v. Blaine County*, 98 Idaho 506, 514, 567 P.2d 1257, 1265 (1977). Type \*\*90 \*77 one spot zoning may simply refer to a rezoning of property for a use prohibited by the original zoning classification. *Id.* The test for whether such a zone reclassification is valid is whether the zone change is in accord with the comprehensive plan. *Id.* Type two spot zoning refers to a zone change that singles out a parcel of land for use inconsistent with the permitted use in the rest of the zoning district for the benefit of an individual property owner. *Id.* at 515, 567 P.2d at 1266. This latter type of spot zoning is invalid. *Id.*

<sup>[14]</sup> The record reflects that the Board of Commissioners approved the PUD application and zone change conditionally upon the input it requested, and received, from several local, state, and federal agencies regarding the PUD’s impact on water quality, wildlife habitat, riparian systems, traffic, public utilities, schools, health care providers, wastewater management, and many other topics. This input addressed many of the policies of the Comprehensive Plan, including public services and utilities, open spaces, and use and preservation of natural resources. Teton Springs also provided reports based on

studies conducted by its own engineers and planners answering the concerns raised by the agencies and the public in general. The record also contains a fiscal impact report provided by a consulting firm hired by Teton Springs. The report concludes that the PUD will be advantageous for county revenues, another policy of the Comprehensive Plan. The record indicates throughout this process Teton Springs adjusted its application in order to meet the requirements demanded by the Zoning Commission.

<sup>[15]</sup> The record also contains numerous objections to the PUD. One in particular, from a professional Hydrologist, outlines valid questions regarding the impact of the PUD on ground and surface water systems. However, many of the other objections were based on personal opinion and emotion rather than on the Comprehensive Plan and violations of its many policies. This Court must affirm the findings of the Board of Commissioners where, as here, if they are supported by substantial, competent, although conflicting, evidence. *Friends of Farm to Market*, 137 Idaho at 196, 46 P.3d at 13. Since the Board of Commissioners’ finding that the zone change is in accord with the comprehensive plan is supported by substantial, competent evidence. The appellants’ claim of spot zoning need not be addressed because the type one “spot zoning” in this case is valid.

### C. The Board of Commissioners Did Not Violate The Teton County Zoning And Subdivision Ordinance Or Comprehensive Plan When It Approved Teton Spring’s Application For A PUD.

#### 1. The Subdivision Ordinance’s two percent limitation on developed acreage that can be used for incidental purposes does not apply to the Teton Springs PUD.

<sup>[16]</sup> <sup>[17]</sup> <sup>[18]</sup> This Court construes a local ordinance as it construes a statute. *Friends of Farm to Market*, 137 Idaho at 196, 46 P.3d at 13. Statutory construction always begins with the literal language of the statute or ordinance. *Id.* at 197, 46 P.3d at 14. If an ordinance is unambiguous, this Court need not consider rules of statutory construction and the statute will be given its plain meaning. *Hamilton ex rel. Hamilton v. Reeder Flying Serv.*, 135 Idaho 568, 572, 21 P.3d 890, 894 (2001); *Canal/Norcrest/Columbus Action Comm. v. City of Boise*, 136 Idaho 666, 670, 39 P.3d 606, 610 (2001).

<sup>[19]</sup> <sup>[20]</sup> <sup>[21]</sup> <sup>[22]</sup> <sup>[23]</sup> Where the language of a statute is ambiguous, this Court applies rules of construction for guidance. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14. This Court disfavors constructions that lead to absurd or unreasonably harsh results. *Id.* All sections of

the applicable statute must be construed together to determine the legislative body's intent. *Id.* (citing *Lockhart v. Dept. of Fish and Game*, 121 Idaho 894, 897, 828 P.2d 1299, 1302 (1992)). Statutes and ordinances must be construed so as to give effect to all their provisions and not to render any part superfluous or insignificant. *Id.* (citing *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 117, 898 P.2d 43, 48 (1995)). There is a presumption that a local zoning board's actions are valid when interpreting **\*\*91 \*78** and applying its own zoning ordinances. *iD.*; *eVans*, 137 IDaho at 431, 50 p.3D at 446.

<sup>124</sup> The Subdivision Ordinance allows all PUDs to contain "incidental components" inconsistent with the underlying land use zones as long as: (1) the uses are incidental and necessary to the primary purpose of the PUD; and (2) no more than two percent of the developed acreage within the PUD is devoted to incidental use. Teton County, Idaho, Subdivision Ordinance § 1-7-5 (1999). The appellants argue the PUD violates the Subdivision Ordinance's two percent limitation on land developed for uses incompatible with the underlying zoning because the PUD's proposed commercial uses are incidental, not primary uses. As a result, the appellants claim many of the uses proposed by Teton Springs are prohibited in a residential zone.

The Subdivision Ordinance permits three types of PUDs, including RCI PUDs. T.C.S.O. § 1-7-1. The Subdivision Ordinance defines an RCI PUD as one where "[p]roperty located in *residential*, *commercial*, and *industrial* zones may be developed pursuant to an approved" residential, commercial, or industrial (RCI) PUD. T.C.S.O. Art. II (emphasis added). In terms of the permitted uses in an R-1 zone, the Subdivision Ordinance states, "[p]roperty located within an R-1 ... zone may be developed pursuant to an approved 'Residential, Commercial or Industrial PUD' (referred to as an 'RCI PUD')."*Id.* Under the Subdivision Ordinance, all PUD's may be used for primarily residential developments, but only an RCI PUD may be used for primarily commercial or industrial developments. T.C.S.O. § 1-7-4. Under the Zoning Restrictions and Land Use Table found in the Zoning Ordinance, an RCI PUD is a permitted use in R-1 zones as long as the use is permitted as outlined in the PUD Process of the Zoning Ordinance. Teton County, Idaho, Zoning Ordinance § 1-4-1 (1999).

The Teton Springs PUD is an RCI PUD. The Zoning Ordinance unambiguously permits use of an RCI PUD in an R-1 Zone as long as the use is permitted as outlined in the PUD process. The Subdivision Ordinance unambiguously allows development of property located within an R-1 zone pursuant to an approved RCI PUD. The Subdivision Ordinance also unambiguously allows commercial or industrial development in an approved RCI

PUD. Based on the plain meaning of the Zoning and Subdivision Ordinance, the two percent incidental use limitation of § 1-7-5 of the Subdivision Ordinance does not apply to an approved RCI PUD built in an R-1 zone as long as the use is permitted as outlined in the PUD process.

## 2. The density of the Teton Springs PUD is not impermissible.

<sup>125</sup> The appellants claim the PUD violates the Comprehensive Plan because the density of development is too high and many of the lots are smaller than allowed. Under the Subdivision Ordinance, "A PUD application may depart from applicable height, setback and lot size restrictions when ... approved by the Board." T.C.S.O. § 1-7-3. "Any departures from the height, setback, and lot size ... [required by] the Zoning Ordinance must be recorded and justified as not compromising the health, safety and general welfare of the county." *Id.*

The Subdivision Ordinance also states that "[t]he protection of open space is a central feature of all PUD's." T.C.S.O. § 1-7-7. "In the case of an RCI PUD, a minimum of fifty percent (50%) of the land within the gross acreage of the PUD shall be dedicated to open space." *Id.* "Open spaces may take a variety of forms, including ... a golf course." *Id.*

The Subdivision Ordinance also expects that in a well-planned PUD, the housing units will be clustered in higher density groups allowing for open space. T.C.S.O. § 1-7-10. However, the Subdivision Ordinance does not provide a formula for clustering because a prescribed method for clustering would be counterproductive given the uniqueness of each development. *Id.* Rather, the Board of Commissioners is instructed to decide on projects based on how intelligently the project uses the existing land within the PUD. *Id.* The Subdivision Ordinance limits the base density of an RCI PUD, on that portion of the property that is not open **\*\*92 \*79** space, to a maximum of one unit per one-half acre. T.C.S.O. § 1-7-12A. Nonetheless, the Subdivision Ordinance allows the Board of Commissioners to approve a greater or lesser density, provided it determines the public health, safety, and welfare service of the county will not be negatively impacted. *Id.*

Based on the provisions of the Subdivision Ordinance and the Board of Commissioners' unique position in interpreting and applying its own zoning laws, the Teton Springs PUD does not violate the density requirements of Teton County's zoning laws. The PUD departs from the allowed lot size restrictions, but under the Subdivision Ordinance the Board of Commissioners has flexibility to approve such departures as long as it finds the departure

does not compromise the health, safety and general welfare of the county. The Board of Commissioners specifically found no such compromise, as discussed above.

**3. Approval of the Teton Springs PUD application is not dependent upon compliance with the policies of the Teton County Comprehensive Plan.**

The appellants assert that the Teton Springs PUD violates several important policies of the Comprehensive Plan. The respondents counter that the Comprehensive Plan is not a zoning ordinance that regulates project compliance.

The discussion in Part III.B above applies to this claim. While the Board of Commissioners may not disregard the Comprehensive Plan, it is not a zoning ordinance by which a development project's compliance is measured. Rather, the Comprehensive Plan provides guidance to the local agency charged with making zoning decisions. The appellants may or may not be correct in their concern that the Teton Springs PUD will adversely affect the present lifestyle and alter the character of the area in violation of the policies of the Comprehensive Plan, that point was heavily debated during the approval process. Similarly, the fear of the "Jacksonization" of the Teton Valley, as the billionaires force the millionaires over Teton Pass into Driggs and Victor, may be well founded. However, regardless of the wisdom, or lack thereof, in approving Teton Springs' PUD application, the Comprehensive Plan does not provide a legal basis for this Court to reverse the Board of Commissioners' decision to approve the application.

**D. The Teton Springs PUD does not violate the area of impact agreement between Teton County and the City of Victor.**

<sup>[26]</sup> The appellants argue the PUD violates the Area of Impact Agreement (Agreement) between Teton County and the City of Victor. The agreement requires lots located in the Area of City Impact to be 2.5 acres, except developments located within 1500 feet of city limits may be divided into lots of one acre or larger. The appellants argue because the lot sizes in this PUD are much smaller than one acre, the county is in violation of an ordinance.

The Agreement is between Teton County and the city of Victor. On the issue of enforcement of the Agreement, it specifically states:

A. Teton County shall be responsible for the administration and enforcement of the Area of Impact within the unincorporated area in Teton County, Idaho. This shall not prevent the City from bringing

enforcement proceedings in its own behalf if the County refuses to enforce these provisions after being requested to do so by the City.

B.... [R]equests for preliminary and final plats or the vacation thereof, and requests for zone changes involving property located in the Area of City Impact within the unincorporated area of Teton County relating to any non-agricultural development shall be reviewed and approved by both governing bodies upon recommendation from their respective Planning and Zoning Commission in accordance with Title 67 and Title 50, Idaho Code.

Ordinance # 94-1206, Area of Impact Agreement Between Teton County and the City of Victor, § 6A. The appellants are not entitled to seek enforcement of the Agreement because they are not a party to the Agreement ~~\*\*93 \*80~~ and not subject to it. the agreement provides for enforcement only by Teton County or the city of Victor. Both the Board of Commissioners and the City Council of Victor approved the PUD application and zone change as required by the Agreement. Furthermore, the zoning district description of the Area of City Impact between Teton County and Victor allows for smaller lot sizes if part of an approved PUD. T.C.Z.O. § 1-3-5.

**E. The Findings Of Fact And Conclusions Issued By The Zoning Commission Are Adequate.**

<sup>[27]</sup> The appellants argue the record does not contain any written findings of fact and conclusions from the Board of Commissioners and, thus, violates I.C. § 67-6535. The appellants acknowledge the Board of Commissioners adopted the Zoning Commission's findings of fact and conclusions, but contend these findings of fact and conclusions are inadequate as a matter of law because they fail to acknowledge whether the zone change or PUD comply with the Zoning Ordinance, Subdivision Ordinance, or Comprehensive Plan.

The respondents counter that the Board of Commissioners' adoption of the findings of fact and conclusions as issued by the Zoning Commission is appropriate under I.C. § 67-6535. Additionally, the respondents argue the Board of Commissioners made findings of fact and conclusions to the relevant criteria for approving a zone change and the PUD application, as required by I.C. § 67-6535.

I.C. § 67-6535 governs the issuance of findings of fact or conclusions of law relevant to a local land use agency's approval or denial of a land use application. Approval or denial of a land use application must be in writing explaining the relevant criteria and standards, the relevant contested facts, and the rationale for the decision based on the applicable provisions of the comprehensive plan and relevant ordinances. I.C. § 67-6535(b). There is no

requirement that both the Commission and Board make written findings and conclusions, only that they are made. The Board of Commissioners did not err by adopting the written findings of fact and conclusions issued by the Zoning Commission.

I.C. § 67-6535(c) clearly states the legislature's intent that decisions made pursuant to LLUPA are to be based on reason and the practical application of recognized principles of law. Courts reviewing LLUPA decisions are to consider the proceedings as a whole and evaluate the adequacy of the procedures and resulting decisions in light of practical considerations. I.C. § 67-6535(c). The Zoning Ordinance requires that any zone change conform to the goals of the Comprehensive Plan, preserve compatibility with surrounding zoning districts, and secure public health, safety, and general public welfare. T.C.Z.O. § 1-3-6. The Subdivision Ordinance requires that, before accepting the concept plan of a PUD, the Commission consider the objectives of the Subdivision Ordinance; conformance to the Comprehensive Plan; availability of public services and the financial capability of the public to support the services; continuity with capital improvements, and other health, safety, or environmental problems. T.C.S.O. Art. III § B1. The Subdivision Ordinance also requires the Zoning Commission and/or Board of Commissioners to issue written findings, but does not require written findings where the public documents or records of the public meeting are already contained in the record. T.C.S.O. § 1-7-13(J).

Based on the totality of the record, the findings of fact and conclusions adopted by the Board of Commissioners satisfy the requirements of I.C. § 67-6535(b). The Findings of Fact and Conclusions address the applicable provisions of the Comprehensive Plan and Zoning Ordinance and how the zone change and PUD will comply with them. The Board of Commissioners concluded that the PUD conformed to the applicable ordinances based on the materials submitted by the developer, engineer, and Staff Reports on file. These materials included input by several public agencies on the impact of the development and matters Teton Springs needed to consider in order to comply with local, state and federal law. The record reflects that Teton Springs altered its PUD application according to this input in order to ~~\*\*94 \*81~~ satisfy the Zoning Commission and Board of Commissioners. The Board of Commissioners concluded the zone change satisfied the Comprehensive Plan based on the material submitted by the developer, engineer, and Staff Reports. The Board of Commissioners also concluded the zone change will preserve

compatibility with the surrounding zoning districts and secure public health, safety, and general welfare based on the approval process as a whole.

While the Board of Commissioners would be better served by more specifically and extensively articulating its findings of fact and conclusions, the required information can be found in the record produced during the application process. This is in accord with I.C. § 67-6535(c), which requires a reviewing court to consider the whole process, and T.C.S.O. § 1-7-13(J), which does not require written findings where the public documents or records of the public meetings are already contained in the record. Therefore, we conclude the record, when viewed in its entirety, contains sufficient findings of fact to support the Board of Commissioners' decision.

#### **F. The Appellants Are Not Entitled To Attorney Fees On Appeal.**

<sup>[28]</sup> The appellants are not entitled to an award of attorney fees on appeal because they are not the prevailing party and have not shown the Board of Commissioners and Zoning Commission acted without a reasonable basis in fact or law.

#### **IV.**

#### **CONCLUSION**

The appellants have standing to challenge the Board of Commissioners' decision to approve the Teton Springs PUD. The Board of Commissioners' decision to grant the requested zone change and approval of the PUD does not violate the Teton County Subdivision and Zoning Ordinance or the Teton County Comprehensive Plan. The appellants are not entitled to seek enforcement of the Area of Impact Agreement between Teton County and the city of Victor. The Board of Commissioners' Findings of Fact and Conclusions, as adopted from the Zoning Commission, satisfy the requirements of I.C. § 67-6535. No attorney fees are awarded on appeal. Costs to the respondents.

Chief Justice TROUT, and Justices SCHROEDER, EISMANN, and Justice Pro Tem McLAUGHLIN concur.  
**All Citations**

139 Idaho 71, 73 P.3d 84

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MASTER DECLARATION  
OF  
THE PLANTATION #1

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EXHIBIT "B"

257        Class A Members: All owner-purchasers of lots or units  
258        who are members of the Master Association and are entitled  
259        to one (1) vote per unit or lot.

260        Class B Members: The Grantor who shall be a member of  
261        the Master Association and with respect to each individual  
262        tract shall have three (3) votes for each lot or unit, sub-  
263        ject to the provisions of Section 3.28.

264        Commercial Area: Those tracts or parcels of real prop-  
265        erty on the Plantation designated as Commercial Areas by  
266        Grantor in a Supplemental Declaration and which are excluded  
267        from certain provisions of this Master Declaration as set  
268        forth in Section 2.09.

269        Common Area: All real property in which the Master  
270        Association or a Sub-Association owns an interest which is  
271        held for the common use and enjoyment of all of its members.

272        Completion: Fifteen years from the date of the execu-  
273        tion of this Master Declaration or upon notice of completion  
274        by Grantor, whichever occurs first.

275        Condominium: A Condominium as defined in Section 55-  
276        101B of the Idaho Code, i.e. an estate consisting of (i) an  
277        undivided interest in common real estate, in an interest or  
278        interests in real property, or in any combination thereof,  
279        together with (ii) a separate interest in real property, in  
280        an interest or interests in real property, or in any com-  
281        bination thereof.

282        Condominium Project: A project as defined in Section  
283        55-1503 (b) of the Condominium Act of the State of Idaho,  
284        i.e. the entirety of an area divided or to be divided into  
285        condominiums.

286        Deed of Trust: A mortgage or a deed of trust, as the  
287        case may be.

288        Development: The project to be carried out by Grantor  
289        (or that process) resulting in the improvement of the  
290        Plantation, including landscaping, construction of roadways,  
291        utility services and other improvements.

292        Fiscal year. That twelve-month period (or portion  
293        thereof if the initial period of existence is less) ending  
294        on September 30 of each year which shall be the accounting  
295        period for the Master Association and all Sub-Associations.

296        Grantor: Plantation Development, Inc., an Idaho  
297        corporation.

1963      advisable in the course of development of The Plantation so  
1964      long as any Lot or Condominium in The Plantation remains  
1965      unsold, or to use any structure in The Plantation as a model  
1966      home or real estate sales or leasing office. The rights of  
1967      Grantor hereunder and elsewhere in these Restrictions may be  
1968      assigned by Grantor. During the course of actual construc-  
1969      tion of any permitted structures or improvements, the re-  
1970      strictions contained in this Declaration or in any Supple-  
1971      mental Declaration shall be deemed waived to the extent  
1972      necessary to permit such construction. Provided that,  
1973      during the course of such construction, Grantor's activities  
1974      will not create a situation which will result in a violation  
1975      of this Master Declaration upon completion of construction.

1976      **B. No Further Subdividing.** No Lot, Common Area, or  
1977      Condominium may be further subdivided, nor may any easement  
1978      or other interest therein less than the whole be conveyed by  
1979      the Owner thereof (including any Sub-Association but exclud-  
1980      ing Grantor) without the prior written approval of the AECC;  
1981      provided, however, that nothing herein shall be deemed to  
1982      prevent or require the approval of the AECC for (1) the  
1983      sale of Condominiums in any Condominium Project in compliance  
1984      with the Condominium Property Act of Idaho, or (2) transfer  
1985      or sale of any Lot or Condominium to more than one person to  
1986      be held by them as tenants in common, joint tenants, tenants  
1987      by the entirety or as community property.

1988      Notwithstanding the foregoing, with written approval of  
1989      the AECC authorizing a variance, adjoining property owners  
1990      may sell or purchase adjoining property to accomplish reloca-  
1991      tion of the boundary line between such properties if such  
1992      sale and purchase will not cause or result in a violation of  
1993      any setback, building or other restriction herein contained.  
1994      In such cases, the new property line thus established shall  
1995      be deemed the new boundary line between the respective prop-  
1996      erties but no setback lines, easements or land classifications  
1997      established for such properties shall be shifted by reason  
1998      of the change of boundary lines.

1999      **C. Combining Parcels.** Two or more adjoining Lots,  
2000      Units or other parcels of Property of the same land classi-  
2001      fication which are under the same ownership may be combined  
2002      and developed as one parcel. Setback lines along the common  
2003      boundary line of the combined parcels may be removed with  
2004      the written consent of the AECC if the AECC finds and deter-  
2005      mines that any improvements to be constructed within these  
2006      setback lines will not cause unreasonable diminution of the  
2007      view from other property and that such removal will result  
2008      in an improvement consistent with the provisions of this  
2009      Master Declaration. If setback lines are removed or easements  
2010      changed along the common boundary line of combined parcels,  
2011      the combined parcels shall be deemed one parcel and may not  
2012      thereafter be split and developed as two parcels.

2013      SECTION 5.17. General Design Standards. The AECC shall, in  
2014      reviewing applications for the construction, alteration,  
2015      modification, removal or destruction of improvements on The  
2016      Plantation, and in monitoring, inspecting and enforcing such  
2017      processes and the maintenance of all improvements on The  
2018      Plantation, consider in making its decisions, determinations,  
2019      promulgations and directives, the following general design  
2020      standards:

2021      A. Harmonious Relationship. All improvements on The  
2022      Plantation shall be of such quality and nature and located  
2023      so as to create a harmonious relationship between all improve-  
2024      ments, including but not limited to structures, landscaping,  
2025      lines of sight, open areas, common facilities, means of  
2026      ingress and egress, etc.

2027      In order to achieve this result, the AECC may, in its  
2028      sole discretion, require that:

2029      (1) The Improvements be of certain design and/or  
2030      style;

2031      (2) The Improvements include certain exterior finishes  
2032      and landscaping materials of certain colors,  
2033      textures and type;

2034      (3) The placement of structures and other improvements  
2035      shall be within certain perimeters on any lot or  
2036      tract.

2037      B. Exclusivity and Quality.

2038      (1) General. All improvements on The Plantation  
2039      shall be in keeping with the objectives of  
2040      exclusivity and quality.

2041      (2) Aesthetics. All improvements on The Plantation  
2042      should promote a high quality level of common  
2043      aesthetics.

2044      (3) Quality of Construction. All improvements on  
2045      The Plantation should be of high quality de-  
2046      sign, materials and construction.

2047      C. Ease of Movement. The design and construction of  
2048      any improvements on The Plantation shall be of such a nature  
2049      and contain such features so as to promote (or not interfere  
2050      with) the ease and fluidity of movement throughout the  
2051      development consistent with the primary objective of providing  
2052      maximum enjoyment of home and neighborhood without detracting  
2053      from the privacy of the owners and their residences located  
2054      thereon.

2055        D. Privacy and Enjoyment. All improvements on The  
2056        Plantation shall be designed and constructed in such a  
2057        manner so as to promote and protect the privacy and enjoy-  
2058        ment of the residence of each owner without detracting from  
2059        the aesthetics and environment of each individual residence  
2060        or the aesthetics and environment of the Development as a  
2061        whole.

2062        E. Safety and Protection. All improvements on The  
2063        Plantation shall be designed and constructed so as to promote  
2064        the health and safety of all residents and to provide pro-  
2065        tection for the improvements of the owners and Associations.

2066        F. Recreational Activities. The design, placement and  
2067        approval of common recreational facilities of the Master  
2068        Association and the Sub-Associations shall be strongly  
2069        influenced by the objective of providing the residents of  
2070        The Plantation with convenient, aesthetically designed and  
2071        placed recreational facilities.

2072        G. Interrelationship. No one of the above listed  
2073        General Design Standards shall be controlling over another,  
2074        but shall be considered by the AECC in performing its func-  
2075        tions together with the other objectives and standards ex-  
2076        pressed within this Master Declaration so as to obtain the  
2077        best overall result for the Development.

2078        SECTION 5.18 Specific Restrictions.

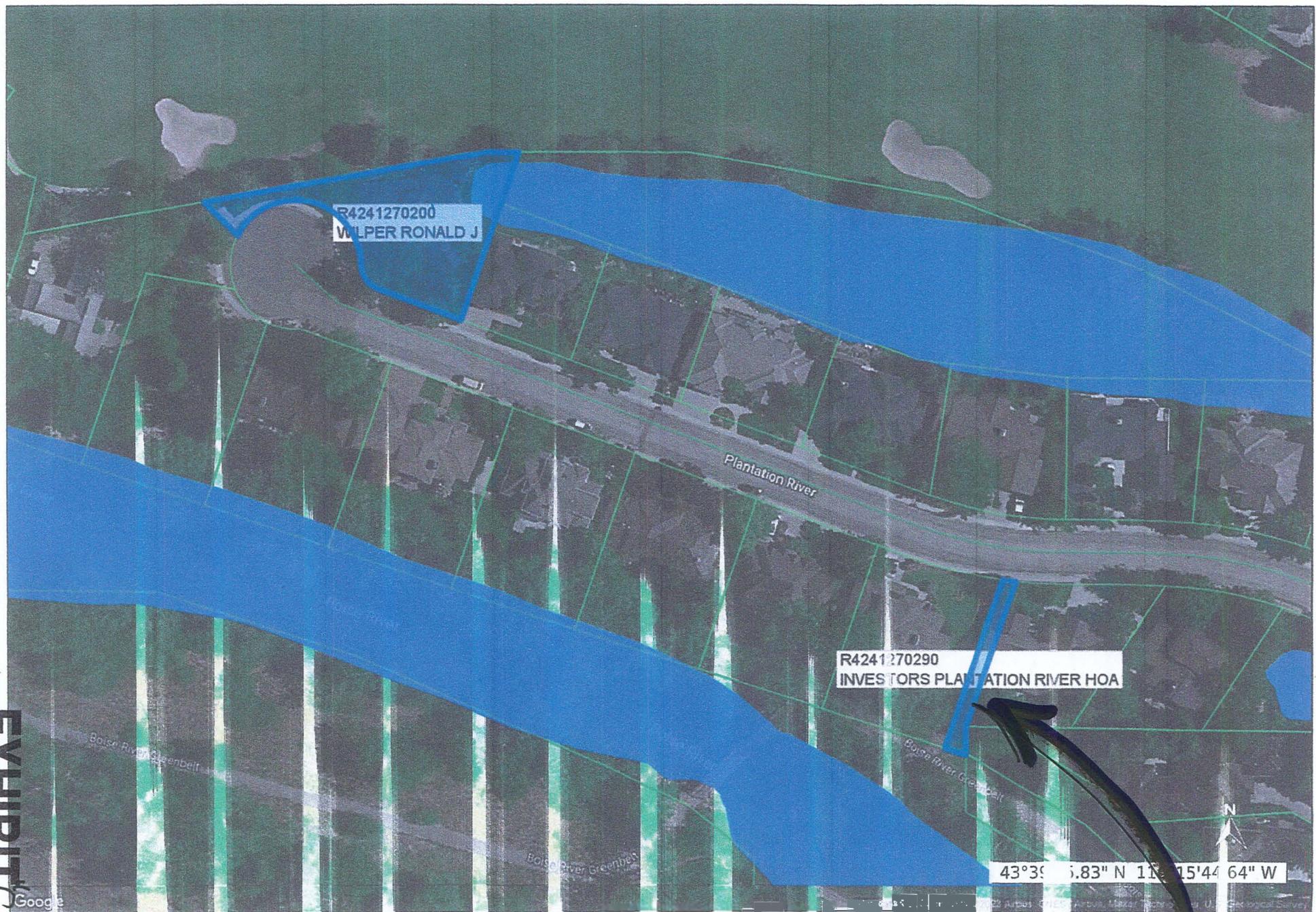
2079        A. Animals. No animals, birds, insects or livestock  
2080        shall be kept nor shall their presence be allowed, on any  
2081        Property except domesticated dogs, cats or other household  
2082        pets which so not unreasonably bother or constitute a  
2083        nuisance to others.

2084        B. Annoying Lights. No light shall be emitted from  
2085        any Property which is unreasonably bright or causes unreason-  
2086        able glare.

2087        C. Antennas. Antennas may only be erected after  
2088        receipt of approval in writing from the AECC.

2089        D. Business or Commercial Activity. Unless specifically  
2090        permitted in a Supplemental Declaration, no Property shall  
2091        be used at any time for business or commercial activity,  
2092        provided, however, that The Grantor or its nominee may use any  
2093        Property for model homes or real estate sales offices.

2094        E. Cesspools or Septic Tanks: No cesspools or septic  
2095        tanks shall be permitted on any Property.





**EXHIBIT "D"**

# Ada County Assessor

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION OR LEGAL PURPOSES.

112



## Legend

- ++ Railroad
- Roads (4,000 - 8,000 s)
  - <all other values>
  - Interstate
  - Ramp
  - Principal Arterial
  - Collector
  - Minor Arterial
  - Local
  - Parks
  - Alley
  - Driveway
- Parks
- Townships
- Sections
- Condos
- Parcels

1/31/2023

## Kena Champion

---

**From:** Charles Wadams  
**Sent:** Wednesday, March 1, 2023 11:15 AM  
**To:** dave@dleroy.com  
**Cc:** planning; Jenah Thornborrow; Kena Champion; Joanna Ortega  
**Subject:** FW: PLANTATION GROUP COMMENTS FOR CONSIDERATION AT THE FEBRUARY 15TH P & Z COMMISSION WORK SESSION  
**Attachments:** Plantation Comments.pdf

I am going through my emails and forwarding public records regarding the River Club Specific Area Plan SAPFY2023-0001 to the Development Services Department for inclusion in the public record file. The application indicates it was submitted on December 19, 2022 so I am forwarding emails since that time for inclusion in the public file.

Unless a legal question, all written submittals regarding the River Club Specific Area Plan SAPFY2023-0001 should be sent to: [planning@gardencityidaho.org](mailto:planning@gardencityidaho.org).

For complete transparency, even public legal correspondence will be included in the public record for SAPFY2023-0001.

Thank you for your submittal.

This e-mail transmission is attorney privileged or attorney work product and is, in any event, confidential information belonging to the sender and intended only for the use of the individual or entity addressee named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone at (208) 472-2915 to arrange for disposition of this e-mail.

---

**From:** Dave Leroy <[dave@dleroy.com](mailto:dave@dleroy.com)>  
**Sent:** Tuesday, February 7, 2023 5:44 PM  
**To:** Charles Wadams <[cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG)>  
**Cc:** Dave Leroy <[dave@dleroy.com](mailto:dave@dleroy.com)>; johnliving13@gmail.com  
**Subject:** Fw: PLANTATION GROUP COMMENTS FOR CONSIDERATION AT THE FEBRUARY 15TH P & Z COMMISSION WORK SESSION

CHARLIE: ATTACHED PLEASE FIND FOR DISTRIBUTION, AS REQUESTED ABOVE, THE COMMENTS WITH EXHIBITS OF MY CLIENTS REGARDING THE RIVER CLUB PENDING SAP APPLICATION. WE WILL DELIVER A COLOR COPY ORIGINAL TO THE CLERKS OFFICE TOMORROW. YOUR ASSISTANCE IN TIMELY GETTING THIS MATERIAL BEFORE THE COMMISSION IS EARNESTLY SOLICITED.....PROFESSIONAL REGARDS, DAVE

---

**From:** Davalee Davis <[davalee@dleroy.com](mailto:davalee@dleroy.com)>  
**Sent:** Tuesday, February 7, 2023 4:32 PM  
**To:** Dave Leroy <[dave@dleroy.com](mailto:dave@dleroy.com)>  
**Subject:** Plantation comments

To: [cwadams@gardencityidaho.org](mailto:cwadams@gardencityidaho.org) [Remove](#) this sender from my allow list

From: [dave@dleroy.com](mailto:dave@dleroy.com)

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## Kena Champion

---

**From:** Mary Ann Cronk <1951macronk@gmail.com>  
**Sent:** Tuesday, February 7, 2023 7:14 PM  
**To:** John Evans; Teresa Jorgensen; Russ Heller; bjacoobs@gardencityidaho.org; jpage@gardencityidaho.gov; planning  
**Subject:** River Club Development

Dear Mayor Evans and City Council Members,

As a homeowner in Plantation Subdivision for 35 years I have become extremely upset with the possibility of lots of changes.

Why would you allow so many apartments with not enough parking spaces? Where will all these folks park their cars?

I don't understand why Gustafson needs for zoning are even considered. He bought the land the way it was zoned and we bought our homes BECAUSE of the way it was zoned. Why should he be allowed to change the zoning? Has he been paying taxes to Garden City since the 80's, because we have.

The River Club Golf Course is definitely an asset for Garden City. Please preserve our golf course for future generations.

I'm sure it's very obvious that I'm not a lawyer writing this. I'm just a hard working homeowner that does not want her property to decline in value and destroy what I have worked very very hard for.

Thank you for your time and consideration,

Mary Ann Cronk  
6510 W Plantation Ln

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From: 1951macronk@gmail.com

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Garden City Planning & Zoning Stan Shepard,  
Feb. 6, 2023

After much thoughtful consideration, we are against the proposed SAPFY2023-0001 and the zoning change from the current R-2 Residential Low Density.

As a retired architect, it is obvious to me that the design proposed along State Street on what is currently the River Club Golf Course is an example of a developer asking the designer to see how much can be squeezed into a parcel while only maintaining the minimum required setbacks and no on-site amenities. The housing units which were originally identified to be 3 to 4 floors are now proposed to be 4 to 5 floors, is this the end or will more floors be added? Can State Street absorb this additional volume of traffic?

The eastern portion of the proposed design virtually ignores qualities of the existing golf course neighborhood by cramming multiplex units close to the end of Fair Oaks. Is there a reason, other than money, why there can't be a significant green space maintained at the end of Fair Oaks? Is it that prohibitive to reduce the height of the Multi-Family Units to 3 floors and eliminate the townhomes by Fair Oaks? This would be more in line with the Garden City Comprehensive Plan of providing developments compatible with the existing surrounding neighborhoods, the Edgewater Apartments at Lake Harbor are an example of this.

This out of state developer obviously doesn't care what the impacts of this project have to the existing neighborhoods or the community in general, does Garden City?

Parker and Gretchen Massman  
6460 W Plantation Ln.

## Kena Champion

---

**From:** Parker Massman <bparkermassman@gmail.com>  
**Sent:** Monday, February 6, 2023 2:04 PM  
**To:** John Evans  
**Cc:** James Page; Teresa Jorgensen; Russ Heller; bjacobs@gardencity.org; planning  
**Subject:** SAPFY2023-0001  
**Attachments:** ATT00001.htm

SAPFY2023-0001 – Specific Area Plan

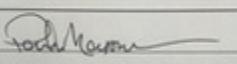
Your Name: Parker Massman Date: 2/6/23

Your Physical Address: 6460 W Plantation Ln.

(Please select) I wish to be kept informed of any additional future meeting dates:  
 Yes  No Email: bparkermassman@gmail.com

(Please select) Regarding this application:  
 Support the Application  Am Neutral  Oppose the Request

Comments: SEE ATTACHMENT

Signature: 

**SAPFY2023-0001**

We are against the proposed SAPFY2023-0001 and the zoning change from the current R-2 Residential Low Density.

As a retired architect, it is obvious to me that the design proposed along State Street on what is currently the River Club Golf Course is an example of a developer asking the designer to see how much can be squeezed into a parcel while only maintaining the minimum required setbacks and no on-site amenities. The housing units which were originally identified to be 3 to 4 floors are now proposed to be 4 to 5 floors, is this the end or will more floors be added? Can State Street absorb this additional volume of traffic?

The eastern portion of the proposed design virtually ignores qualities of the existing golf course neighborhood by cramming multiplex units close to the end of Fair Oaks. Is there a reason, other than money, why there can't be a significant green space maintained at the end of Fair Oaks? Is it that prohibitive to reduce the height of the Multi-Family Units to 3 floors and eliminate the townhomes by Fair Oaks? This would be more in line with the Garden City Comprehensive Plan of providing developments compatible with the existing surrounding neighborhoods, the Edgewater Apartments at Lake Harbor are an example of this.

This out of state developer obviously doesn't care what the impacts of this project have to the existing neighborhoods or the community in general, does Garden City?

Parker and Gretchen Massman 6460 W Plantation Ln.

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My Spam Blocking Level: High

High (60): Pass  
Medium (75): Pass  
Low (90): Pass

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February 3, 2023

Dear Mayor Evans, Garden City Council Members, and Garden City Planning and Zoning:

This is my third letter to you regarding the application submitted by Lincoln Property Company (LPC) requesting a rezone of a large portion of the River Club Golf Course. I have spent hours reading through the *Garden City Comprehensive Plan, the Garden City Parking Ordinance Amendments, and the ACHD Study of the State Street Corridor*; as well as revisiting LPC's rezone application. This has been a long and arduous task for me because it is not my area of expertise. It is my goal to expand my knowledge with the hope that you will find my thoughts constructive and meaningful.

Expanding on my previous letters:

**Density**—in my mind means “**overcrowding**”. People don’t thrive when they live on top of each other. High density development appears to be the “order of the day” in the Treasure Valley. There are thousands of high density apartments that have been built or are under construction. Dozens of them are on the State Street corridor between Eagle and Boise. Most of them are 2-3 stories high. **Very few are four stories high, and none of them are five stories high.** If the current building cycle ends the way previous building cycles have ended, we will, at some point, have reached a point of saturation (A quite plausible case can be made that this has already occurred). The low interest rates of the past few years that have made many projects successful will not pencil out so well with today’s significantly higher interest rates. Suffice it to say, LPC has already mentioned that they cannot economically provide adequate parking given the current inflationary environment.

Many once beautiful cities—Seattle, Portland, San Francisco, Los Angeles, San Diego, New York City—have high density living at their cores. Now, these cities are no longer beautiful. They have high crime rates, large homeless populations, litter scattered everywhere, shops boarded up, and vast drug problems. **People do not thrive when they are overcrowded and living on top of each other.**

**Parking**—if the proposed Garden City Parking Code Amendments are passed, the consequences to the Plantation neighborhoods, as well as the neighborhoods and businesses on the north side of State Street will be disastrous. Even under the current Parking Code, LPC has not provided enough parking for such a high density project. **The Plantation neighborhood** will quite realistically become an overflow parking lot for residents of the River Club Apartments.

**Transportation**—if there is no place to park, will people use mass transit? Our mass transit options are not close to being ready for “prime time.” There are not enough routes or on-time schedules to accommodate large numbers of riders. Valley Regional Transit is not profitable and is not projected to be profitable any time soon *if at all*. It exists primarily because of Federal funding and funding from Treasure Valley cities. I am not against mass transit, but there is much more work to be done on this before it is feasible on a wide-scale basis. **People will not be forced to use mass transit.**

**As hypothetical examples:**

- A couple of people with two children are renting a River Club Apartment. One person works at St. Luke’s Hospital in Meridian, one works at Micron, and the two children attend Pierce Park Elementary. How do the parents get to and from work, within one day, using our current mass

transit options? How do their children cross a widened intersection at State Street and Pierce Park to get exactly  $\frac{1}{2}$  mile to and from their school?

- I have a passion for hard working, low income people. They work hard, typically have no benefits, and their work takes a toll on their bodies. LPC's application states that they will offer a diversity of housing choices to match consumer incomes, so I assume it means there will be apartments for this group of people. These are the people in our community who work in restaurants—bussers, waitresses, cooks; or construction—carpenters, roofers, painters. They are custodians, landscape maintenance people, and appliance repair people, to name a few. If a carpenter and a landscape maintenance person share an apartment, and both drive big trucks to haul their equipment in, which one straps their tools on their back and takes mass transit or rides their bike to the job site?

**Protect wildlife habitat associated with the river**—Section 5.6 Objective in the *Garden City Comprehensive Plan*. The Plantation neighborhood and River Club Golf Course are home to amazing wildlife. There are many deer that live on the island of the Boise River. They wander through our neighborhood, and each time I see one and it stops to look at me, I realize how fortunate I am to live in an open space in the middle of a growing city. We also have Great Blue Herons, eagles, hawks, ospreys, many song birds and hummingbirds, to say nothing of the hundreds of geese and squirrels that share our neighborhood. Or maybe we share their neighborhood; they were here first, but: **High density development will push the wildlife out of our neighborhood.**

**Existing Parks and Proposed Green Space and/or Parks**—also from the *Garden City Comprehensive Plan* states: “Areas that are devoted to green spaces including golf courses, open spaces and park uses, or are proposed for green spaces are shown on the Land Use Map. Green spaces contribute to the health and well-being of the community.” Open space boosts the immune system, helps to lower blood pressure and reduce stress. Exposure to nature helps combat chronic illness. **Please preserve the River Club Golf Course** as open space for future generations.

**Property values in our neighborhood are certain to decline if LPC's application is approved as submitted.** A realtor called me two days ago to tell me she was listing a house in our neighborhood. She wanted to know if I knew anyone that would be interested in buying a home in The Plantation. My immediate thought was, “why would anyone purchase a home here when there is so much uncertainty, and why would anyone purchase a home here only to find out they were about to have 1500 new neighbors.” She was surprised by my reaction, as was I, because I love living here. I have lived half of my life in my home on Plantation Lane. The first time I set foot in my home, which was under construction, and I looked out the windows, I knew I was home. I was overwhelmed by the beauty of my surroundings. There are beautiful, well-maintained homes here, surrounded by open space. It is rare to see a car parked on our streets. This will all change with high density development on the River Club Golf Course and inadequate parking to serve approximately 750 units.

**Garden City Services**—does Garden City already have sewer and water to meet the needs of the proposed project? Does Garden City have the public safety infrastructure in place to serve this project?

Mr. Gustafson has promised to sell the golf course to a home builder if LPC's application isn't approved as submitted. This is meant to intimidate homeowners in our neighborhood. It is highly unprofessional, threatening, and not helpful to the process of finding a reasonable solution.

Mr. Gustafson's initial vision, which was widely talked about among The Plantation homeowners, was to build some two-story townhomes along State Street for age 55+ people, who could live on the golf course and belong to the River Club. Most of us thought that was reasonable. We now realize that Mr. Gustafson was trying to calm everyone while he worked on a *much* more expansive and invasive plan.

LPC and Will Gustafson have a vision now that is irresponsible. If they are allowed to proceed as submitted, they will both make millions of dollars. I don't have a problem with people making money when they take risk and work hard, but what will Mr. Gustafson do next? Will he sell what is left of the golf course to another developer anyway? Will he submit another rezone request himself? It is impossible to know.

In closing, please consider the negative impact LPC's proposed rezoning request will have on all surrounding neighborhoods. I believe it is okay for the Garden City Council to:

- Decline the application in its entirety or require LPC to submit an application that is much more reasonable—less density and more parking.
- Decline the East phase of LPC's application all together. This is far too intrusive to our neighborhood.
- Require appropriate parking for the size of the project, whether as submitted or a scaled down version. This may mean voting against the proposed Parking Code Amendments.
- Protect existing neighborhoods. We have long-time residents in The Plantation—we are tax payers and citizens of Garden City.
- Preserve the River Club Golf Course as open space for future generations.

Once again, I thank you for your hard work. I have an even greater respect for what you do after trying to decipher all of the documents I read. What really hits home with me, about your roles, is that the decisions you make impact the lives of all of the people in our community—our quality of life, the value of our properties, and the safety of our neighborhoods, to name a few. You have an enormous responsibility.

Respectfully submitted,

Deb Riedel

6570 W. Plantation Lane

Jenah E. Thornborrow

*Director*

Development Services Department, **City of Garden City**

p: 208-472-2921

a: 6015 Glenwood Street, Garden City, ID 83714

w: <https://gardencityidaho.org/>

Mon, Jan 30, 7:42 PM

Mr. & Mrs. Hollar,

I cannot discuss a pending application. However, if you are interested, I would like to share with you about the proposed change to the parking code that will impact your neighborhood.

208-401-6086

Regards,

Teresa



image001.jpg  
20.4kB



image002.png  
323B



image003.png  
428B



image004.png  
472B



image005.png  
429B



01232023 CC Work Session.pptx  
7.3MB

## Fwd: Concern Re: Proposed Change to Garden City Parking Ordinance

From: Andrea Fogleman (eafog@msn.com)  
To: pierceroan@aol.com; acmeatomic@msn.com; dana52gordon@gmail.com; craigfenwick5918@gmail.com; markstinson19@gmail.com; dmptaszek@gmail.com; seeboydub@gmail.com  
Date: Thursday, February 2, 2023 at 08:32 AM MST

Board members,

Two neighbors have asked me to pass along the attached presentation to the Board regarding the proposed changes to the Garden City development parking ordinance. I am not sending a copy to Kent due to conflict of interest.

Andrea. Sent from my iPad

Begin forwarded message:

**From:** Dan & Betty Hollar <omzi6254@gmail.com>  
**Date:** February 2, 2023 at 8:08:36 AM MST  
**To:** Lynn Livingston <preserveplantation23@gmail.com>, "to: Kelly Holz" <kellyholz@gmail.com>, Steven Sterns <ssterns@gmail.com>, Marilee Pospahala <mpospahala@live.com>, Silvia and Dante Frassa <silviafrassa@gmail.com>, David and Maryann Stachofsky <david.stachofsky@safeway.com>, Lynn Livingston <lynnlivingston13@gmail.com>, Alex Mouser <ajmouser@gmail.com>, Tom Lingbloom <TomLingbloom@soundbeverage.com>, David and Carol Rae <davidrae6607@gmail.com>, Winnie Morton <winnie@boisehome.com>, Ben and Peggy Campbell <blackben488@gmail.com>, Harriet Crist <hcrist54@gmail.com>, Park and Gretchen Massman <bparkermassman@gmail.com>, Jim and Claudia Foltz <cfoltz923@gmail.com>, Dan and Betty Hollar <omzi6254@gmail.com>, Chuck and Barbara Keenan <keenan9505@yahoo.com>, Chuck Bosen <Chuck.bosen@edgewoodhealthcare.com>, Johnney and Sue Miller <homehole13@msn.com>, Linda Aymon <LindaAymon@gmail.com>, Kent Freitag <kent@pioneerlandscape.net>, MJ Byrne <mjbyrne1@msn.com>, Mary Ann Arnold <makdarnold@aol.com>, Jeff <branjeff@gmail.com>, Greg Contos <greg@slangston.com>, Chris Tillman <Beachbod888@yahoo.com>, Debra Riedel <Debra.Riedel@raymondjames.com>, Eric and Andrea Fogleman <EAFOG@msn.com>, Lois Stallman <loisstallman@yahoo.com>, Debbie Williams <mrs.debraannwilliams@gmail.com>, Lou and Marilyn Stoddard <loumarstodd644@hotmail.com>, Brad and Catherine Wilfong <fanger908@gmail.com>, Nick and Marceil Zenovich <NICKZENOVICH@msn.com>, Maryann Murdock <maryann.murdock@edgewoodvista.com>, Dave and Jeanne Patterson <dpatterson65@msn.com>, Bob and Reci Schmellick <bobschmellick@gmail.com>, Larry and Carmen Westberg <lwstbrg1@msn.com>, Mike and Margaret Henbest <mhenbest@gmail.com>  
**Subject: Concern Re: Proposed Change to Garden City Parking Ordinance**

Good morning,

I want to make you all aware of a proposed change to Garden City's Parking Ordinance that has the potential of impacting our neighborhood. I was made aware of this issue this week by Garden City Council Member Teresa Jorgensen (see her emails below). I spoke with her late yesterday afternoon and she referenced the attached Garden City Council Work Session presentation, specifically on page 7, which contains a proposal to reduce parking space requirements for developments (such as the proposed development of the River Club) and reduced vehicle size requirements for such parking spaces. Such a parking ordinance change could impact neighborhoods such as ours by causing non-residents to park in adjacent neighborhoods (our neighborhood) because there is not adequate parking in their immediate area (the River Club development). Additionally, it raises issues such as safety of our community and neighborhoods such as ours which could be negatively impacted by this proposed ordinance change.

Council Member Jorgensen said the proposed change to Garden City's Parking Ordinance will go before Garden City Council on February 13 at 6 p.m. at Garden City Hall and urged any concerned citizens to

attend and testify, should they wish to do so. She also offered to meet with any members on this email list to discuss this important matter further. We do believe this is information that Attorney David Leroy should be made aware of so he can consider including this in our opposition to the proposed development of the River Club.

Thank you for your attention to this important issue and for our collective efforts to protect our neighborhood and community.

Sincerely,

Dan & Betty Hollar  
6254 N. Fair Oaks Pl.

----- Forwarded message -----

**From:** [Teresa Jorgensen <tjorgensen@gardencityidaho.org>](mailto:tjorgensen@gardencityidaho.org)  
**Date:** Tue, Jan 31, 2023 at 8:12 PM  
**Subject:** FW: Parking Power Point  
**To:** Dan & Betty Hollar <[omzi6254@gmail.com](mailto:omzi6254@gmail.com)>

Dan,

I received your message. I apologize for not calling back today. I will call you tomorrow.

I am attaching the presentation that was given to the City Council regarding the proposed new parking code.

As I said, I will give you a call tomorrow to discuss.

Thanks for your interest and concern regarding the development of Garden City.

- Teresa

Sent from [Mail](#) for Windows

**From:** [Jenah Thornborrow](#)  
**Sent:** Thursday, January 26, 2023 9:58 AM  
**To:** [City Council](#)  
**Subject:** Parking Power Point

Mayor and Council,

Please find the attached Power Point that was presented on Monday night.

Thank you,

## Kena Champion

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**From:** Charles Wadams  
**Sent:** Wednesday, March 1, 2023 11:02 AM  
**To:** JoAnn Butler  
**Cc:** planning; Jenah Thornborrow; Kena Champion; Joanna Ortega  
**Subject:** RE: Residences at Riverclub application Public comment opportunity

I am going through my emails and forwarding public records regarding the River Club Specific Area Plan SAPFY2023-0001 to the Development Services Department for inclusion in the public record file. The application indicates it was submitted on December 19, 2022 so I am forwarding emails since that time for inclusion in the public file.

Unless a legal question, all written submittals regarding the River Club Specific Area Plan SAPFY2023-0001 should be sent to: [planning@gardencityidaho.org](mailto:planning@gardencityidaho.org).

For complete transparency, even public legal correspondence will be included in the public record for SAPFY2023-0001.

Thank you for your submittal.

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**From:** Charles Wadams  
**Sent:** Wednesday, January 18, 2023 1:48 PM  
**To:** JoAnn Butler <jbutler@butlerspink.com>  
**Subject:** FW: Residences at Riverclub application Public comment opportunity

JoAnn:

Would you like me to forward your below comments to Development Services for inclusion in the River Club file?

Thanks.

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**From:** JoAnn Butler <jbutler@butlerspink.com>  
**Sent:** Wednesday, January 11, 2023 2:43 PM  
**To:** Jenah Thornborrow <jthorn@GARDENCITYIDAHO.ORG>; Hanna Veal <hveal@GARDENCITYIDAHO.ORG>  
**Cc:** Charles Wadams <cwadams@GARDENCITYIDAHO.ORG>; Bob Taunton <bobtaunton@tauntongroup.com>  
**Subject:** FW: Residences at Riverclub application Public comment opportunity

Jenah, Hanna and Charlie, I spoke to Bob Taunton about the issue raised by Judge Wilper below. Bob believes he knows where Judge Wilper's confusion comes from. The public access to the greenbelt is lot 99 on the recorded Plat (see Plat note #5). Judge Wilper may think we were describing the 10' HOA easement on his lot, but that is a different easement. Bob asked me to send this map to you so you could assure Judge Wilper that we are not proposing any access across his lot.

Bob tells me that some years ago Judge Wilper worked with the golf course's superintendent to fence the access from Plantation River across Judge Wilper's lot to the golf course because of a concern that people traversing his lot to the golf course would be hit by a golf ball.

Please call with any questions.



JoAnn C. Butler  
Butler Spink, LLP  
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Boise, ID 83706  
[jbutler@butlerspink.com](mailto:jbutler@butlerspink.com)

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Direct (Cell): 208-867-1082

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