

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Planning and Development Services Department  
City of Garden City  
6015 N. Glenwood St.  
Garden City, ID 83714

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(Space Above for Recorder's Use)

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Garden City, a municipal corporation of the State of Idaho (the "City"), and [REDACTED] (the "Developer"). City and Developer may be individually referred to in this Agreement as a "Party" or collectively as the "Parties" as appropriate under the circumstances.

### RECITALS

A. Developer owns that certain real property legally described on Exhibit A-1, attached hereto and incorporated herein, and generally depicted on Exhibit A-2, attached hereto and incorporated herein (the "Property").

B. Developer has applied to the City for a rezone of the Property from the [REDACTED] Zone ([REDACTED]) to the [REDACTED] Zone ([REDACTED]) file number ZONFY20 [REDACTED] [REDACTED].

C. On the [REDACTED] day of [REDACTED], 2021, the City approved ZONFY20 [REDACTED] [REDACTED] authorizing the Property to be rezoned to the City's [REDACTED] Zone ([REDACTED]) and adopted Findings of Fact, Conclusions of Law and Decision (the "Decision"), attached hereto and incorporated herein as Exhibit B.

D. The City, pursuant to Garden City Code Sections 8-6B-4 and 8-6-B-10 and Idaho Code Section 67-6511A, has the authority to conditionally rezone the Property and to enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for a specific purpose or use which is appropriate in the area.

E. The City's Planning and Zoning Commission and City Council have held public hearings as prescribed by law with respect to the zoning and development of the Property and this Agreement.

F. It is the intent and desire of the Parties to rezone and develop the Property in conformance with the Decision and subject to the terms and conditions of this Agreement.

### AGREEMENT

NOW THEREFORE, in consideration of the above Recitals and the mutual

consideration as reflected in the covenants, duties and obligations herein set forth, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Description and Location of Property; Size of Property; Present Zoning.** The City's [REDACTED] Zone (\_\_\_\_\_) shall apply to the Property. The Property is legally described on Exhibit A-1 and generally depicted on Exhibit A-2. The Property is approximately [REDACTED] acres located [REDACTED] in Garden City, Idaho. The Property was formerly zoned as [REDACTED] Zone (\_\_\_\_\_) by the City. This Agreement applies to and governs the Property only and has no force or effect on any other property whatsoever.

**2. Use Permitted by this Agreement.** The uses allowed pursuant to the conditional rezone of the Property, as reflected in this Agreement, are residential uses and all customary residential accessory uses allowed or conditionally allowed in [REDACTED] Zone (\_\_\_\_\_) subject to the terms and conditions of this Agreement.

**3. Construction of Use.** Development and site work on the Property shall be in accordance with all applicable laws and regulations and shall be consistent with the development standards set forth herein as well as in the Decision. No change in the uses specified in this Agreement shall be allowed without modification of this Agreement pursuant to the requirements of the Garden City Code.

**i. Development Type and Density.** The Property shall be developed with residential and residential accessory uses only. Changes to the Property must be approved through modification of this Agreement and by City Council. The gross density—total number of residential dwelling units on the total acreage of the Property—of the residential use on the Property shall not exceed sixteen (16) dwelling units per acre and no structure on the property shall exceed a height of thirty-five (35) feet. Per Garden City Code Section 8-7A-2. “height” means “the vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point thereof for flat roofs, to the deck line of mansard roofs, and the top of building walls for gable, hip and gambrel roofs.”

**4. Default.** In the event the Developer, its heirs or assigns, or subsequent owners of the Property, or any other person acquiring an interest in the Property, changes or expands the use permitted by this Agreement without formal modification of this Agreement as allowed by Garden City Code, or fails to faithfully comply with all of the terms and conditions included in this Agreement, following written notice to Developer specifying such change, expansion, or failure, and a sufficient opportunity to cure, this Agreement may be modified or terminated by the Garden City Council upon compliance with the requirements of Garden City Code.

**5. Termination.** In the event the Garden City Council, after compliance with

the requirements of Garden City Code, determines that this Agreement shall be terminated as a result of default, the zoning of the Property **shall revert** to the City's [REDACTED] Zone ([REDACTED]). All uses of the Property which are not consistent with the [REDACTED] Zone ([REDACTED]) or otherwise approved by the City shall cease.

**6. Compliance Period.** This Agreement must be fully executed and recorded within one (1) year after the date of the adoption of the Decision or it is null and void and of no further force or effect.

**7. Right to Delay.** In the event that vital services provided to Garden City citizens will be diminished due to construction of the Property, Garden City reserves the right to delay construction to the subsequent year in order to preserve vital services to the citizens of Garden City. Vital services include, but are not limited to, police assistance, public school education, and fire protection.

**8. Non-Waiver.** A waiver by the City of any default by the Developer of any one or more of the covenants or conditions herein shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.

**9. Effective Date.** This Agreement shall be effective after it is recorded in the real property records of the Ada County Recorder and the City has adopted and published an ordinance by the Garden City Council formally zoning the Property in conformance with the approvals granted in **ZONFY20\_\_\_\_-00\_\_\_\_** (the "**Rezoning Ordinance**").

**10. Consent to Rezone.** The Developer, and its heirs, successors, assigns and personal representatives, by entering into this Agreement, do hereby agree that in the event there shall be an uncured default of this Agreement, after compliance with the requirements of Garden City Code, this Agreement shall serve as consent to a rezone of the Property to the [REDACTED] Zone ([REDACTED]), as provided in Idaho Code Section 67-6511A and Garden City Code Section 8-6B-4(D).

**11. Notices.** Any and all notices required to be given by either of the Parties shall be in writing and be deemed delivered upon personal service, if hand-delivered, or when mailed in the United States mail, certified, return receipt requested, addressed as follows:

i. To the City:

City of Garden City  
Attn: Development Services  
6015 N. Glenwood St.  
Garden City, ID 83714

ii. To the Developer:

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Either Party shall give notice to the other Party of any change of its address for the purpose of this section by giving written notice of such change to the other in the manner herein provided. In the event any successor or assign fails to provide an address, the City's obligation of mailing shall be deemed accomplished by use of the address on file with the County Tax Assessor.

**12. Attorneys' Fees.** Should any litigation be commenced between the Parties concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

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

**14. Binding Upon Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties' respective successors, assigns, and personal representatives, including the City's corporate authorities and their successors in office. This Agreement shall be binding on the owner of the Property, each subsequent owner of the Property, and each other person acquiring an interest in the Property. This Agreement shall run with the land.

**15. Requirement for Recordation.** The City shall record this Agreement, including all exhibits attached hereto and incorporated herein, prior to adopting and publishing the Rezoning Ordinance. If for any reason after such recordation the Garden City Council fails to adopt the Rezoning Ordinance, the City shall execute and record an appropriate instrument of release of this Agreement.

**16. Invalid Provisions.** If any provision of this Agreement is held not valid, such provision shall be deemed to be excised therefrom, and the invalidity thereof shall not affect any of the other provisions contained herein.

[end of text – signatures on following pages]

**IN WITNESS WHEREOF**, the parties to this Agreement have caused it to be executed.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY:**

CITY OF GARDEN CITY,  
an Idaho municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

ATTEST:

\_\_\_\_\_, City Clerk

STATE OF IDAHO )  
                  ) ss.  
County of Ada   )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known or identified to me to be the Mayor of the City of Garden City, the Idaho municipal corporation that executed the within and foregoing instrument, or the person who executed the instrument on behalf of said Idaho municipal corporation, and acknowledged to me that such Idaho municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Idaho  
My commission expires: \_\_\_\_\_

**DEVELOPER:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By:

Its:

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, a notary public in  
and for the State of Idaho, personally appeared \_\_\_\_\_,  
known \_\_\_\_\_ or \_\_\_\_\_ identified \_\_\_\_\_ to \_\_\_\_\_ me \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_, signed the within and foregoing  
instrument, and acknowledged to me that such trust executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

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## Notary Public for Idaho

**EXHIBIT A-1**  
**Property Legal Description**

**EXHIBIT A-2**  
**General Depiction of the Property**

**EXHIBIT B**  
**Findings of Fact, Conclusions of Law and Decision in ZONFY20-\_\_\_\_\_**