

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. The Property is legally described and generally depicted in Exhibit A. 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 permitted on the Subject Property shall include all uses expressly permitted within the R-2 Low Density Residential Zone as of the date of the establishment of such use. All uses designated as conditional permitted within the R-2 Low Density Residential Zone shall likewise be considered conditionally permitted under this Agreement as of the establishment of such use.

In addition to the standard R-2 Low Density Residential Zone permitted uses, the use of Multi-family Dwelling, at a density not to exceed 35 dwelling units per acre, is hereby established as a permitted use. This specific entitlement shall remain valid and shall supersede the use limitations of the R-2 Low Density Residential Zone, regardless of subsequent code amendments, until such time as the Multi-family Dwelling use is vacated. For the purposes of this Agreement, "vacated" shall mean the intentional and permanent cessation of the multi-family residential use. Upon the vacation of the Multi-family Dwelling use, the Subject Property shall immediately and exclusively be governed by the regulations and use standards of the R-2 Low Density Residential Zone.

3. Form Standards Permitted by this Agreement. The Subject Property shall be governed by the standard regulations of the R-2 Low Density Residential Zone, with the following express exceptions regarding development form and density. Notwithstanding any conflicting standards in the R-2 district or subsequent code amendments, the following form standards are hereby established and vested for the Subject Property:

- a) **Front Yard Setback:** Five feet (5').
- b) **Side Yard Setback:** Five feet (5').
- c) **Rear Yard Setback:** Fifteen feet (15').
- d) **Building Height:** The height shall be limited to not more than three stories.

These specific form standard entitlements shall remain valid and supersede the standard limitations of the R-2 Zone until such time as the current residential improvements are vacated. For the purposes of this Agreement, "vacated" shall mean the intentional and permanent removal of the structures as they exist at the time of this Agreement. Upon the vacation of the form standards, any new development or substantial redevelopment of the Property shall immediately and exclusively be governed by the standard dimensional, height regulations of the R-2 Low Density Residential Zone then in effect.

4. Default. In the event the Owner, 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 Owner 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. Compliance Period. This Agreement must be fully executed and recorded within ten (10) days after the date of the adoption of **Ordinance No. 10XX-26** (the “**Rezoning Ordinance**”) or it and the Ordinance is null and void and of no further force or effect pursuant to G.C.C. § 8-6B-4.D.4.

6. Non-Waiver. A waiver by the City of any default by the Owner 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.

7. 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 the Rezoning Ordinance by the Garden City Council formally zoning the Property in conformance with the approvals granted in the Application.

8. Consent to Rezone. The Owner, 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 R-2 Zone, as provided in I.C. § 67-6511A and G.C.C. § 8-6B-4.D.

9. 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
6015 North Glenwood Street
Garden City, Idaho 83714

ii. To the Owner:

KW RIVER POINTE PREMIERE LLC
Attn: C T COPORATION SYSTEM
Thomas J Nestor
28 Liberty St. FL 43
New York, NY 1005

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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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]

EXHIBIT A

Address

6265 N. Strawberry Glenn Road, Garden City Idaho, 83714

Legal Description

PAR #5455 OF LOT 21 STRAWBERRY GLENN SUB #5420 5350 C

Legal Depiction

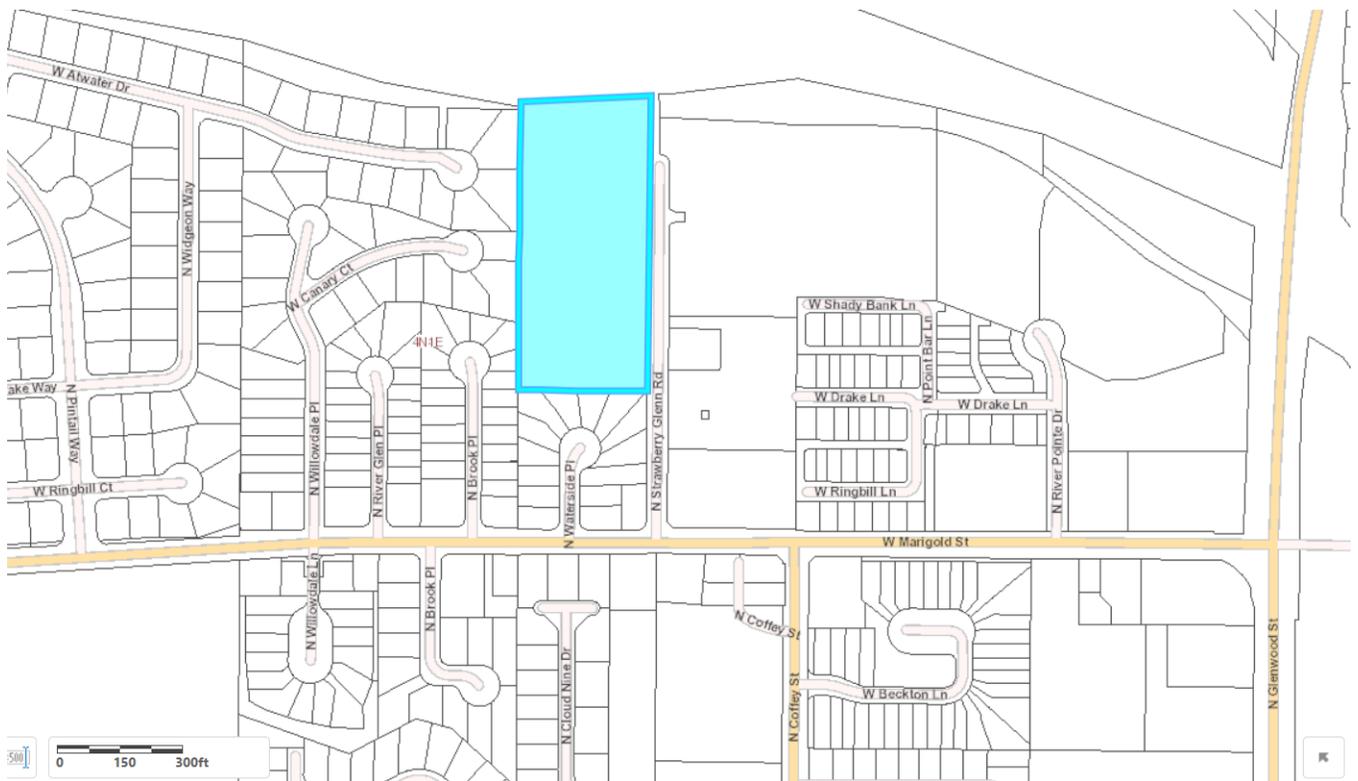


EXHIBIT B
Findings of Fact, Conclusions of Law and Decision
Rezone Application: ZONFY2026-0001
Garden City, Idaho