

**From:** Christy Little <Clittle@achdidaho.org>  
**Sent:** Friday, November 8, 2019 12:56 PM  
**To:** Jenah Thornborrow <jthorn@GARDENCITYIDAHO.ORG>  
**Cc:** Mindy Wallace <Mwallace@achdidaho.org>  
**Subject:** RE: NEIGHBORHOOD MEETING- COMMUNITY WORKSHOP

Hi Jenah,

Just a quick glance, in the plan and page 41 – ACHD does not allow 4-foot wide sidewalk; it's minimum 5-feet on all local streets; can be 5-feet on collectors and arterials if detached, and 7-feet if attached.

B. All sidewalks shall be a minimum of five feet (5'), except if detached sidewalks are provided on local streets in residential subdivisions, the minimum sidewalk width may be reduced to four feet (4').

Thanks,

Christy



## GRANT OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT ("Easement") dated December 4, 2006, is by and between Waterfront District, LLC, an Idaho Limited Liability Company with an address of 6951 Duncan Lane, Boise, ID 83714 ("Owner"), and The City of Garden City, with an address of 6015 Glenwood, Garden City, ID 83714 ("City").

Owner and City desire to provide for the protection of the Property as a natural area, riparian buffer along the Boise River, and for public scenic enjoyment and recreation as set forth in this Conservation Easement.

### ARTICLE I. BACKGROUND; CONSERVATION VALUES

Initially capitalized terms that are not defined in this Article I are defined in Article V of this Easement.

§1.1 Property. By deed dated April 8, 2005, and recorded in the Ada County, Idaho, Instrument No. 105042606, Owner is the owner of certain real property containing approximately 17.5 acres, identified as Tax Parcel No. S1005141630, which is located on 36th Street and the Boise River, in Garden City, Idaho. A part of said parcel lies in a band along the Boise River, approximately from the existing Greenbelt path to the Boise River (the "Property"). The legal description of the Property is attached as Exhibit "A" to this Easement.

§1.2. A plan of the Property is attached to this Easement as Exhibit "B" ("Conservation Plan"). The Conservation Plan shows the location of the Property in relation to the Greenbelt path, Veterans Memorial Park, and land recently acquired immediately across the Boise River for the proposed Esther Simplot Park. The Greenbelt Path is part of a system of public paths which reaches from Garden City and adjacent municipalities through public parks and private property along the river for over twenty miles. Veterans Memorial Park and Esther Simplot Park are part of a string of parks along the river from Garden City into downtown Boise.

§ 1.3 Qualifications of City. City is an Idaho municipality and Qualified Organization and desires to accept this Easement in furtherance of Conservation Purposes as defined in the Code.

§ 1.4 Compliance with the Conservation and Preservation Easements Act. The State of Idaho, in enacting the Uniform Conservation Easements Act, 55 Section 2100 et seq., has recognized the significant public and economic benefit of conservation easements in its ongoing efforts to protect, conserve or manage the use of the natural, open space and scenic resources of the State. This Easement is intended to comply with the requirements for conservation easements set forth in the said Act.

§ 1.5. Conservation Values. The Property possesses significant natural, scenic, open space, education and recreation values ("Conservation Values") of great importance to Owner, City, and the people of Idaho. The Conservation Values are summarized below and are more fully explained and established in the Baseline Documentation:

Protection of the Property will:

- (a) Preserve land as a relatively natural habitat of fish, wildlife, or plants or similar ecosystem, including the preservation of riparian habitat on the Boise River, the central river corridor through the largest metropolitan area in Idaho;
- (b) Preserve land as open space which provides scenic enjoyment to the general public and yields a significant public benefit, including the preservation of the viewshed along the Greenbelt, which is used for walking, jogging, bicycling and other recreation by people from throughout the metropolitan area;
- (c) Preserve land as open space which, if preserved, will advance a clearly delineated Federal, State or local governmental conservation policy and will yield a significant public benefit;
- (d) Protect land at risk for development and block expansion of development into critical areas;
- (e) Create permanently protected green space adjacent to a system of parks in the City of Garden City and City of Boise;
- (f) Enhance the scenic enjoyment of the general public by preserving the public view of the river corridor, both from the public right-of-way of the Greenbelt and from kayakers and other boaters in the public river channel;
- (g) Protect open space in accordance with the goals of the Garden City Comprehensive Plan.

§ 1.6. Grant. Owner freely grants and conveys to City and its permitted successors and assigns a perpetual easement in gross over the Property for the purpose of administering and enforcing the restrictions set forth in Article II in furtherance of the Conservation Values for the Property. City agrees to enforce, in perpetuity, the restrictions imposed by Owner upon the Property. This instrument shall be recorded in timely fashion in the official records of Ada County, Idaho.

## ARTICLE II. RESTRICTIONS

§2.1 Subdivision. There shall be no Subdivision of the Property into building lots or otherwise involving development or any prohibited use. Provided, subdivision for conveyance to any parks department or similar governmental entity shall be permitted, and such conveyance shall not impair this Easement, and shall be under and subject to this Easement.

§2.2 Use. The Property shall not be used for surface or subsurface mining, gravel pit or other quarrying, agricultural, residential or industrial use, or, except as described below, any commercial use, including any commercial recreational use that is more than de minimus. Permitted uses of the Property are limited natural area use. The Property shall be maintained as a relatively natural area for wildlife and as a scenic buffer to the Greenbelt running through the Property, and public parks across the Boise River. Natural area use restrictions shall be within the limitations of its prior disturbance and its location in a metropolitan area, and shall not require restoration or controls that are impossible or impracticable. Native cottonwoods, willows and other vegetation shall be maintained and protected. Non-native plants, especially invasive plants, shall be discouraged or controlled. Non-native shade trees shall be permitted. Riparian areas shall be protected in the downstream half of the Property, where some riffle habitat and an alluvial island exists below the drop of the remnants of the Farmers Union Canal diversion dam. In the upstream half of the Property, where the riverbank is comprised of a constructed levee of native river stone and imported rubble re-vegetated with cottonwoods and other growth, bank improvements may be made for recreation in the river channel as Additional Improvements. Lawn areas and irrigation may be planted and maintained along the Greenbelt, following Best Management practices to minimize any fertilizer, pesticide or herbicide pollution. Trees may be limbed, planted, and cut down to maintain channels of view into the river, at the discretion of the Owner, provided some mature cottonwoods and willows are preserved and an understory of native plants is encouraged.

§2.3 Construction. No Construction shall occur within the Property except as follows:

(a) Existing Improvements. The following structures ("Existing Improvements") are located on the Property as of the date of this Easement, as shown on the Conservation Plan and as further documented in the Baseline Documentation:

(i) Existing Improvements Located Within the Recreational Improvement Areas: stone fire pit and paths at picnic area at downstream Recreational Improvement Area; concrete headwall, berms of fill dirt and concrete debris at mid-Property Recreational Improvement Area (marked "Homeowners Association Courtyard Garden, Beach and River Access" on Conservation Plan); earthen ramp and retaining wall for river access at upstream Recreational Improvement Area.

(ii) Existing Improvements Located Outside of the Recreational Improvement Areas: The Greenbelt path, 12 feet wide, running approximately 2100 feet along the Boise River through the Property as shown on the Conservation Plan. All uses

permissible under that certain Greenbelt Easement between Waterfront District LLC and Garden City of approximately even date herewith and filed of record, Instrument No. \_\_\_\_\_, shall be permitted under this Conservation Easement, anything to the contrary contained herein notwithstanding.

(b) Construction Affecting Existing Improvements Existing Improvements may be maintained, repaired, demolished or reconstructed, or if in a Recreational Improvement Area, may be relocated therein, without the prior review of City.

(c) Additional Improvements. Construction of Additional Improvements is limited to those Improvements described below, located as shown on the Conservation Plan. Construction of currently permitted Additional Improvements within the Recreational Improvement Areas does not require the prior review or approval of City. Construction of different Additional Improvements or future reconstruction of Additional Improvements, if any, is subject to the prior review and approval of City under Article III for consistency with Conservation Values.

- (i) A picnic area with tables, benches, fire pit, gate and fence, roof shelter, and kayak-canoe storage racks is permitted within the downstream Recreational Improvement Area.
- (ii) Riverside garden, courtyard, roof shelter, lawn area, beach and river access, kayak-canoe ramp and storage racks are permitted within the mid-Property Recreational Improvement Area.
- (iii) A pier or similar elevated structure is permitted within the pier Recreational Improvement Area. The purpose and use of the pier shall be to allow walkers, bicycle riders and others on the Greenbelt Easement to reach near the water, with or without access to the water as Garden City may desire and the pier from time to time be constructed and regulated, and to allow fishermen to reach the water, but all without any boat of any kind.
- (iv) A bridge abutment and bridge shall be permitted at the bridge abutment Recreation Improvement Area. The purpose and use of the bridge abutment and bridge shall be to construct, maintain, repair, reconstruct and use a foot and bicycle bridge connecting across the Boise River to the Pleasanton path and Greenbelt in the City of Boise. This right includes the right to do all things reasonably necessary and proper to obtain funds and complete construction in an anticipated joint application and undertaking between the City of Garden City and the City of Boise to accomplish the foregoing.
- (v) Garden City shall have the right to construct, improve, maintain, repair, reconstruct and use a ramp access at the existing earthen ramp near the upstream

end of the Property in the river ramp access Recreation Improvement Area. The purpose and use of the ramp Recreation Area shall be to allow walkers, bicycle riders and others on the Greenbelt Easement to reach the water and to view and enjoy the river and activities in the river, to allow fishermen to reach the water for wading and casting, and to allow canoeists and kayakers and other non-motorized boaters to beach, and similar activities.\*

- (vi) Utility Facilities are permitted anywhere within the Property but must be installed underground.
- (vii) Miscellaneous Improvements are permitted subject to the following limitations:
  - (A) Fences shall be permitted to control access to the Property by Owner, but shall not substantially impair view of the natural area along the river and not materially affect Conservation Values.
  - (B) Signs shall be permitted to identify the Property's ownership, "no trespassing" or other access controls, and permitted or prohibited uses, but shall not be for any commercial purpose. Signs shall be installed only in locations which do not materially and adversely affect Conservation Values, and not exceed a height of five (5) feet.

§2.4 Height. Construction of any Additional Improvements is subject to a height limitation of twelve (12) feet within any Recreational Improvement Area except the bridge abutment Recreational Improvement Area, and a height limitation of five (5) feet for any Improvement outside of a Recreational Improvement Area.

§2.5 Impervious Coverage. No Impervious Coverage shall be permitted outside the Recreational Improvement Areas except the Improvements permitted in the Greenbelt Easement referred to above, and except de minimus amounts of Impervious Coverage related to permitted Miscellaneous Improvements, such as fences. Impervious Coverage is not limited in the Recreational Improvement Areas.

§2.6 Resource Protection.

- (a) Planting of invasive plants is not permitted. Removal of invasive plants is encouraged.
- (b) Native trees and vegetation may be cut only pursuant to Best Management Practices and may be removed only if diseased or naturally destroyed, or in order to create and maintain channels of view to the river. Provided, channels of view shall occupy not more than one half of the river frontage not

affected or occupied by permitted Improvements, no one channel shall be more than one hundred (100) feet wide, and in the balance of the frontage, cottonwoods and other trees will be allowed to grow to mature heights.

- (c) Riparian stewardship activities outside the Recreational Improvement Area(s) must be conducted in accordance with Best Management Practices.
- (d) Removal of trees and vegetation is permitted to accommodate Construction of permitted Additional or Existing Improvements if conducted in a manner that includes steps to prevent soil erosion and restore vegetative cover.
- (e) Fertilizers, herbicides, pesticides, and mulch for the purpose of maintaining or improving the growth of vegetation may be applied provided such application conforms to Applicable Laws and Best Management Practices.

§ 2.7 Dumping. No depositing, dumping, abandoning or release of any litter, trash or solid waste or debris or any liquid wastes or chemical substances shall occur or be permitted on the Property.

§2.8 Subsequent Transfers. Any subsequent conveyance including, without limitation, the transfer, lease or mortgage of the Property or any lot permitted herein, shall be subject to this Easement, and any deed or other instrument evidencing such conveyance shall contain language substantially as follows: "This conveyance is subject to a Conservation Easement which runs with the land and which was granted to Garden City, dated [MONTH/DATE/YEAR], and recorded [MONTH/DATE/YEAR], in the office of the Recorder of Deeds of Ada County, Instrument No. [INSERT HERE]." Owner further agrees to give written notice to City of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Failure of Owner to perform any act required by this section shall not impair the validity of this Easement or limit its enforceability in any way.

### ARTICLE III. RIGHTS OF CITY AND OWNER

§3.1 This grant of Easement permits the City, among other things, to:

- (a) Entry. Enter and inspect the Property, upon reasonable notice, in a reasonable manner and at reasonable times, for any of the following purposes: (i) to monitor compliance with this Easement, evaluate the condition of the Property and identify any changes from conditions reported in the Baseline Documentation; (ii) to make such investigations as may be desired by the City to respond to a request by Owners for review and approval of proposed changes to the Property; and (iii) to take such protective actions upon the Property as may be necessary or desirable

to further Conservation Values.

- (b) Prior Review and/or Approval. Review and approve proposed changes to the Property if, as and when required under Article II of this Easement.
- (c) Enforcement. Enforce the terms of this Easement and to exercise any right or remedy provided to City under this Easement or otherwise available under applicable law including, without limitation, the right to enter upon the Property to investigate an alleged or potential violation.

§3.2 Exclusions. This Easement does not grant any right of entry onto the Property to the general public.

§3.3 Reservations. Except as prohibited, limited or otherwise restricted under this Easement, Owner reserves and retains all rights of ownership, use and occupancy of the Property.

§3.4 Approval Procedure. At least thirty (30) days before Owner begins, or allows, any Construction or other activity that is subject to the prior review and approval of the City, Owner must notify the City in writing of the proposed activity or change to the Property, including with the notice the following information:

- (a) Construction. In the case of proposed Construction:
  - (i) Drawings and maps showing the proposed location, height, dimensions, exterior elevations, exterior materials, exterior colors and site plans of any proposed Additional Improvements and the relationship of all proposed Construction to the Recreational Improvement Area, Boise River and Greenbelt;
  - (ii) Plans and details for all proposed Utility Facilities;
  - (iii) Erosion control measures;
  - (iv) Existing elevation contours and any proposed changes in grade;
  - (v) Calculation of Impervious Coverage;
  - (vi) Any proposed landscaping or restoration; and
  - (vii) Such other information, plans, and drawings as are reasonably required by City.
- (b) Within thirty (30) days after receipt of Owner's notice in accordance with this Section, City must notify Owners of the City's determination to (i) accept Owner's proposal in whole or in part; (ii) object to Owner's proposal in whole or in part; or (iii) accept Owner's proposal conditioned upon Owner's compliance with modifications imposed by the City for the purpose of protecting Conservation Values, which could include, by way of example, landscaping or screening measures.

- (c) If the City fails to notify Owner within the thirty (30) day period set forth in this section, Owner's proposal as set forth in Owner's notice shall be deemed approved, so long as the activity in question is not contrary to any express restriction in the Easement. If the City gives conditional acceptance under clause (iii), then commencement of the proposed activity shall be considered acceptance by Owner of all conditions set forth in the City's conditional acceptance.

§3.5 Violation. If the City determines at any time that this Easement is or has been violated or that a violation is threatened:

- (a) Notice: Cure Period. The City shall notify Owner of the violation. The notice may include the City's recommendations as to corrective actions to be performed by Owner to cure the violation. The cure period shall be thirty (30) days, subject to extension for such reasonable period of time as may be necessary to cure so long as (i) Owners cease the activity constituting a violation immediately upon receiving City's notice; (ii) Owner and City agree, within the initial 30-day period, upon the steps Owner will take to cure the violation; (iii) Owner has commenced to cure within the initial 30-day period; and (iv) Owner continues thereafter to use best efforts to effect a cure. No notice or cure period is required if, in the opinion of City, circumstances require immediate action to prevent or mitigate significant damage to the Property's Conservation Values.
- (b) Remedies. Upon the expiration of any cure period as is provided in the preceding subsection, City may do any one or more of the following:
  - (i) Seek injunctive or other relief to specifically enforce the terms and conditions of this Easement; to restrain present or future acts in violation of the Easement; and to compel the performance of such acts as may be required to protect and restore the Property in conformity with the Conservation Values. Owner agrees that City's remedies at law for any violation of the terms of this Easement are inadequate and that City shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which City may be entitled, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies;
  - (ii) Undertake corrective action to prevent or mitigate damage to the Property caused by the violation; and
  - (iii) Recover all costs and expenses reasonably incurred by City in connection with a violation of this Easement including the investigation of circumstances underlying the violation, meeting or otherwise communicating with Owners pertaining to the violation, evaluating

proposed measures to cure, and otherwise exercising any right, remedy, or corrective action undertaken by City under this section or otherwise available under Applicable Law, including allocated portions of costs of in-house personnel, attorneys' fees, court costs, and the fees of consultants and other professionals engaged by City in connection with the violation (including, without limitation, survey, title, and resource management report costs). This reimbursement obligation applies whether or not litigation is commenced but only if a violation is found to have occurred.

- (c) Cumulative. City's remedies described in this section shall be cumulative and concurrent and shall be in addition to all remedies now or hereafter existing at law or in equity.

§3.6 Acts Beyond Owner's Control. Nothing contained in this Easement shall be construed to entitle City to bring any action against Owner for any injury to or change in the Property resulting from causes beyond Owner's control, including, without limitation, fire, flood, storm, or earthquake.

§3.7 Persons Bound. The term "Owner" and any pronouns used in place of that term, means the persons who signed this Easement and all persons after them who hold any interest in all or any part of the Property. Each Owner is, and remains, liable for violations of this Easement arising or existing during the period that Owner holds an interest in all or any part of the property but is not liable for a violation arising after the Owner no longer has any interest in the part of the Property in violation.

§3.8 Maintenance and Costs. City shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Property. Any action by City such as maintenance of the Easement or any other act by City to protect the Property shall be deemed merely a gratuitous act which shall create no obligation on the part of City. Nothing in this Easement shall be construed as giving rise to any right or ability of City to exercise physical or managerial control over day-to-day operations of the Property, or any of the Owner's activities on the Property, or otherwise to become an operator with respect to the Conservation Area within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

§3.9 Estoppel Certificate. Upon request by Owner, City shall within thirty (30) days execute and deliver to Owner an estoppel certificate which certifies Owner's compliance, or lack thereof, with any obligation of Owner contained in this Easement. Such statement of compliance shall be limited to the condition of the Property as of City's most recent inspection. If Owner requests more current documentation, City shall conduct an inspection, at City's expense, within thirty (30) days of receipt of Owner's written request therefor.

#### ARTICLE IV. GENERAL PROVISIONS

§4.1 No Waiver. The failure of City to exercise any right or remedy under this Easement on any occasion shall not be deemed a waiver of any right or remedy. City retains the right in perpetuity to require full compliance by Owner of each and every term, covenant, provision and restriction contained in this Easement.

§4.2 Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement in whole or in part, Owner and City shall act jointly to recover the full value of this interest in the Property subject to the taking or in lieu purchase, and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Owner and City in connection with the taking or in lieu purchase shall be paid out of the amount recovered. City's share of the balance of the amount recovered shall be equal to the proportionate value of this Easement on this date compared to the value of the unrestricted Property as a whole on this date. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to §170(h) of the Code. For the purpose of this paragraph, the ratio of the value of the Easement to the value of the unrestricted Property shall remain constant. City shall use the proceeds for Conservation Purposes.

§4.3 Extinguishment. If this Easement ever becomes invalid or unenforceable or materially modified, whether in its entirety or as to any material provision, City shall be entitled to collect, from the party seeking invalidation, unenforceability, or modification, compensatory damages in an amount equal to the value of this Easement determined in accordance with the procedure for condemnation set forth in the preceding section. In addition, City is entitled to recover against the party seeking invalidation, unenforceability, or modification all of City's costs and expenses incurred in defense of, or otherwise in connection with, the action as if a violation of the Easement had occurred under §3.5(b). City shall use the net amount recovered for Conservation Purposes.

§4.4 Owner's Representations and Warranties. Owner represents and warrants to City that:

- (a) Owner is the sole owner of the Property in fee simple and has the right and legal authority to grant and convey this Easement. The Property is not encumbered by any mortgage or other lien or, if it is, Owner has obtained the subordination of each mortgage or other lien by joinder in this Easement.
- (b) Owner shall pay before delinquency all taxes, assessments, fees and charges assessed upon the Property which may at any time become a lien, charge or encumbrance superior in priority to this Easement;

- (c) Owner has sole possession of the Property, and shall inform any prospective purchaser of the Property of the contents of this Easement;
- (d) No person or entity possesses the right to remove any vegetation, mineral or other material from the Property, or carry out any other activity that is inconsistent with the purposes and terms of this Easement;
- (e) The Property complies with all federal, state and local laws, regulations and requirements applicable to the Property and its use;
- (f) There is no litigation or other judicial or quasi-judicial proceeding pending or, to the best of its knowledge, threatened that in any way affects or relates to the Property, nor are there any judgments or other legal obligations that may be enforced against the Property;
- (g) To the best of Owner's knowledge, no Hazardous Material is present, or has been generated, treated, stored, disposed of or transported in, on or across the Property, and there are no underground storage tanks on the Property; and
- (h) To the best of Owner's knowledge, no civil or criminal proceedings or investigations have been instigated, and no notices, claims, demands or orders have been received, arising out of any violation or alleged violation of any federal, state or local law, regulation or requirement applicable to the Property or its use.

§4.5 Successor to City. If at any time City is unwilling or unable to carry out the terms of the Easement, or if City ceases to be a Qualified Organization, City may assign its rights and duties under this Easement only to another Qualified Organization. If City fails to make such an assignment within a reasonable period of time after occurrence of any of these events, then the rights and duties under this Easement shall become vested in and fall upon a willing successive holder that is a Qualified Organization, under the doctrine of *cy pres* by a court of competent jurisdiction. If no such willing successive holder can be identified, then the rights and duties under this Easement shall become vested in and fall upon the local municipality in which the Property is located, or other entity, pursuant to the Idaho Conservation Easement Act.

§4.6 Notice Delivery. All notices, demands and requests hereunder shall be in writing, and shall be deemed to have been sufficiently given if personally delivered, sent overnight by nationally recognized overnight courier, or sent by U.S. Certified Mail, return receipt requested, addressed to each party at the respective addresses set forth above or to such addresses as the parties may supply in writing.

§4.7 Incorporation by Reference. The following items are incorporated into this Easement by means of this reference:

- (a) The Baseline Documentation referred to in Article I;
- (b) The description of the Property attached as Exhibit "A"; and
- (c) The Conservation Plan attached as Exhibit "B."

§4.8 Separate Counsel. Owner represents to City that it has been represented by legal counsel and financial advisors of Owner's selection, or has had the opportunity to be so represented, and fully understands that Owner is permanently relinquishing certain rights which Owner would otherwise have to the full use and development of the Property. City makes no representation regarding the availability, amount, or effect of any deduction or other benefit to Owner or any other person under United States or any state, local, or other tax law to be derived from the donation of this Easement. This donation is not conditioned upon the availability or amount of any such deduction or other benefit. In the event of any audit or other inquiry of a governmental authority into the effect of this donation upon the taxation or financial affairs involving Owner or Owner's heirs (if applicable), successors or assigns or other similar matter then City shall be reimbursed and indemnified for any cost or expense of any kind whatsoever incurred by City in responding or replying thereto.

§4.9 Accuracy of Baseline Documentation. Owner has reviewed the Baseline Documentation and attests that it is a true, correct and complete representation of the Property and its conservation values as of the date of this Easement.

§4.10 Interpretation. The interpretation and performance of this Easement shall be governed by the laws of the State of Idaho. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant contained herein so as to preserve, protect and further the Conservation Values to the fullest extent and to effect the policy and purpose of the Idaho Conservation Easement Act. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Conservation Values that would render the provision valid and enforceable shall be favored over any interpretation that would render it invalid or unenforceable.

§4.11 Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remaining provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

§4.12 Doctrine of Changed Circumstances Not to Apply. The fact that any use of the Property that is expressly prohibited by this Easement, or any other use determined to be inconsistent with the purpose of this Easement, may become much more economically valuable than the permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted by this Easement, has been considered by Owner in granting this

Easement. It is the Owner's belief that any such changes will increase the benefit to the public of the continuation of this Easement and it is the Owner's intent that any such changes should not be deemed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

§4.13 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement, all of which are merged herein.

§4.14 Amendment. The parties recognize that circumstances could arise which would justify the modification of certain of the restrictions contained in this Easement. To this end, City and the legal owner or owners of the Property at the time of amendment shall mutually have the right, in their sole discretion, to agree to amendments to this Easement which are consistent with and in furtherance of the Conservation Values; provided, however, that City shall have no right or power to agree to any amendments hereto that would result in this Easement failing to qualify as a valid conservation agreement under the Idaho Conservation Easement Act, as the same may be hereafter amended, or as a qualified conservation contribution under Section 170(h) of the Internal Revenue Code and applicable regulations.

§4.15 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

§4.16 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

#### ARTICLE V. OTHER DEFINITIONS

§5.1 Additional Improvements. Collectively, the Homeowner Association Improvements, Recreation Area Improvements; Utility Facilities and miscellaneous improvements, the Construction of which is permitted under Article II of this Easement.

§5.2 Applicable Laws. Any federal, state and local laws, statutes, codes, ordinances, standards and regulations applicable to the Property as of the applicable date of reference.

§5.3 Baseline Documentation. The report documenting relevant features of the Property as of the date of this Easement, kept on file at the offices of City, which consists of inventories, maps, photographs and other documentation that the parties agree provide,

Waterfront District LLC  
Conservation Easement, p. 14

collectively, an accurate representation of the Property at the time of this grant of Easement and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement.

§5.4 Best Management Practices. The scientifically-based land management practices recommended as of the applicable date of reference by the appropriate resource management agency as follows:

- (a) In the case of residential landscaping, the listing of non-recommended exotic or invasive plants published by any Idaho state natural resources department, The Nature Conservancy, or alternative standards recommended by the City.
- (b) In the case of natural area or riparian area management, the standards of the county Conservation District, the Idaho state natural resources department, or alternative standards recommended by the City;
- (c) In the case of resource management activities affecting streams or wildlife resources, the standards of the United States Fish and Wildlife Services, The Nature Conservancy or the standards recommended by the City.

§5.5 Code. The Internal Revenue Code of 1986, as amended, including applicable regulations promulgated thereunder.

§5.6 Conservation Purposes. The purposes described in §170(h)(4) of the Code.

§5.7 Construction. Any demolition, construction, reconstruction, expansion, exterior alteration, installation or erection of temporary or permanent structures or facilities of any kind or excavation, dredging, mining, filling or removal of gravel, soil, rock, sand, coal, petroleum or other materials.

§5.8 Existing Improvements. Any structures and facilities located on, above or under the Property as of the date of this Easement.

§5.9 Hazardous Material. Any substance now or hereafter defined, listed or otherwise classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water or soils.

§5.10 Impervious Coverage. The aggregate area of all artificial surfaces not comprised of natural earth capable of supporting vegetation (such as asphalt, pavement, roofs and decks) within the applicable area of reference.

§5.11 Improvements. Collectively, the Existing Improvements and Additional Improvements.

§5.12 Miscellaneous Improvements. Fences, signs, drainage swales, and related minor improvements related to permitted uses under this Easement.

§5.13 Qualified Organization. A (a) governmental unit; or (b) non-profit entity which (i) has a perpetual existence, (ii) is established as a public-charity for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and other charitable, scientific and educational purposes, (iii) meets the criteria of a "qualified organization" under §170 of the Code (or any successor provision then applicable); (iv) is duly authorized to acquire and hold Easements under applicable laws of the State of Idaho; and (v) is registered under any applicable law with the Idaho Department of State.

§5.14 Recreational Improvement Area(s). The areas, two for Homeowner Association Improvements and three for Recreation Area Improvements, shown on the Conservation Plan attached as Exhibit "B," where Additional Improvements may be constructed, maintained, used and reconstructed, subject to all Applicable Laws.

§5.15 Subdivision. Creation of an additional lot or lots in association with obtaining land use regulatory approvals for Construction or any use of the Property inconsistent with Conservation Values.

§5.16 Utility Facilities. Conduits and facilities for the reception, storage, or transmission of sewage, water, electricity, gas, oil, and telecommunications. Utility Facilities do not include the following, which are not permitted on the Property: (a) telecommunication or cell towers or commercial satellite dish antennae; and (b) storage tanks for petroleum or other hazardous or toxic substances.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Owner and City have executed this Grant of Conservation Easement as of the day and year first above written.

THE CITY OF GARDEN CITY

By: \_\_\_\_\_

Attest: \_\_\_\_\_

WATERFRONT DISTRICT, LLC

By: \_\_\_\_\_

JAMES M. NEILL, Member

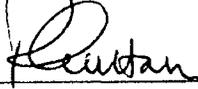


Waterfront District LLC  
Conservation Easement, p. 16

EAGLE SPRINGS INVESTMENTS, LLC,  
Member



By: David Elcox, Member



By: Peter Harris, Member

TWO INVESTMENTS, LLC, Member



By: J.D. Simplot, Its Managing Member





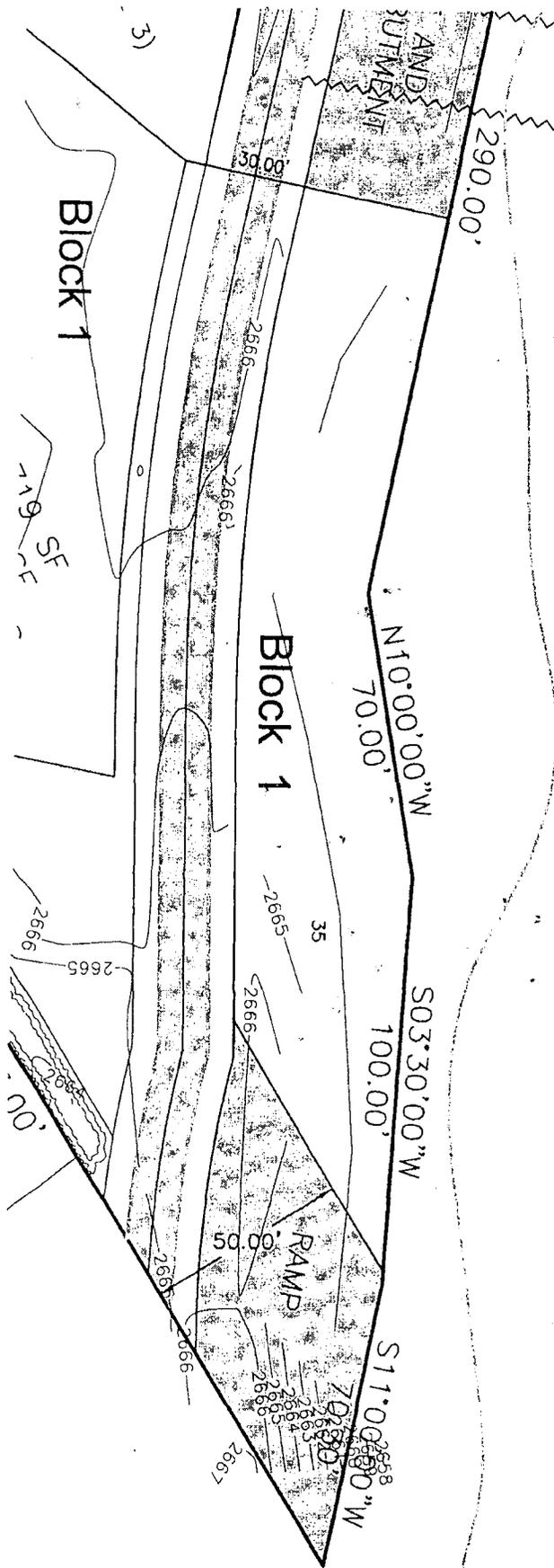
**CONSERVATION EASEMENT**  
**Waterfront District LLC to Garden City**  
**EXHIBIT A**

An easement over a parcel of land located in the Northeast quarter of Section 5, Township 3 North, Range 2 East, Boise Meridian, Garden City, Ada County, Idaho, being more particularly described as follows:

Commencing at the most southerly corner of Lot 35, Block 1 of Waterfront District Subdivision, as recorded in Book 96 of Plats, pages 12061 through 12068, in the office of the Recorder of Deeds, Ada County, Idaho, the **POINT OF BEGINNING**, thence along the property line of said Lot 35, North 32°00'00" West 61.08 feet to a point, a corner;  
thence along a 272.50-foot radius curve to the right, through a central angle of 15° 23' 20", an arc distance of 73.18 feet, subtended by a chord of North 06° 26' 15" East, 72.97 feet;  
thence North 00°28'24" West 85.72 feet;  
thence along a 487.50-foot radius curve to the right, through a central angle of 12° 35' 00", an arc distance of 107.07 feet; subtended by a chord of North 05° 49' 06" East, 106.85 feet;  
thence North 12°06'37" East 157.23 feet;  
thence along a 1257.49-foot radius curve to the left, through a central angle of 11° 11' 50", an arc distance of 245.75 feet, subtended by a chord of North 06° 30' 42" East, 245.36 feet;  
thence North 00°54'47" East 28.80 feet;  
thence North 84°48'50" West 25.07 feet;  
thence North 00°54'47" East 129.34 feet;  
thence along a 167.50-foot radius curve to the left, through a central angle of 25° 57' 26", an arc distance of 75.88 feet, subtended by a chord of North 12° 03' 56" East, 75.24 feet;  
thence North 25°02'39" West 264.53 feet;  
thence along a 1147.50-foot radius curve to the left, through a central angle of 19° 34' 56", an arc distance of 392.18 feet, subtended by a chord of North 34° 50' 06" West, 390.28 feet;  
thence North 44°37'34" West 10.11 feet;  
thence along a 357.50-foot radius curve to the left, through a central angle of 11° 29' 15", an arc distance of 156.13 feet, subtended by a chord of North 57° 08' 16" East, 154.90 feet;  
thence North 69°38'58" West 79.33 feet;  
thence along a 117.50-foot radius curve to the right, through a central angle of 41° 49' 07", an arc distance of 85.76 feet, subtended by a chord of North 48° 44' 24" West, 83.87 feet;  
thence North 27°49'55" West 20.72 feet, to a point, the northerly most corner of Lot 34, Block 1;  
thence across Lot 35, along the southwesterly side of a certain Greenbelt Easement shown on the said Plat and recorded in the Ada County Recorder of Deeds, Instrument No. 97015427 to a point on the northwesterly property line of Lot 35, thence along said northwesterly property line, North 44°41'38" East 54.17 feet;

Thence still along the property line of Lot 35 and along the Southwesterly bank of the Boise River on the following courses and distances: South 55° 30' 00" East, 401.00 feet; South 42° 30' 00" East, 152.00 feet; South 37° 00' 00" East, 125.00 feet; South 27° 30' 00" East, 400.00 feet; South 05° 00' 00" East, 200.00 feet; South 04° 30' 00" West, 300.00 feet; South 11° 30' 00" West, 290.00 feet; South 10° 00' 00" East, 70.00 feet; South 03° 30' 00" West, 100.00 feet; South 10° 59' 57" 00" West 70.30 feet; to the **POINT OF BEGINNING**.

PROPOSED PLEASANTON BIKE  
FOOTBRIDGE LOCATION  
(SEE NOTE 7)



HORIZ. SCALE: 1" = 40'



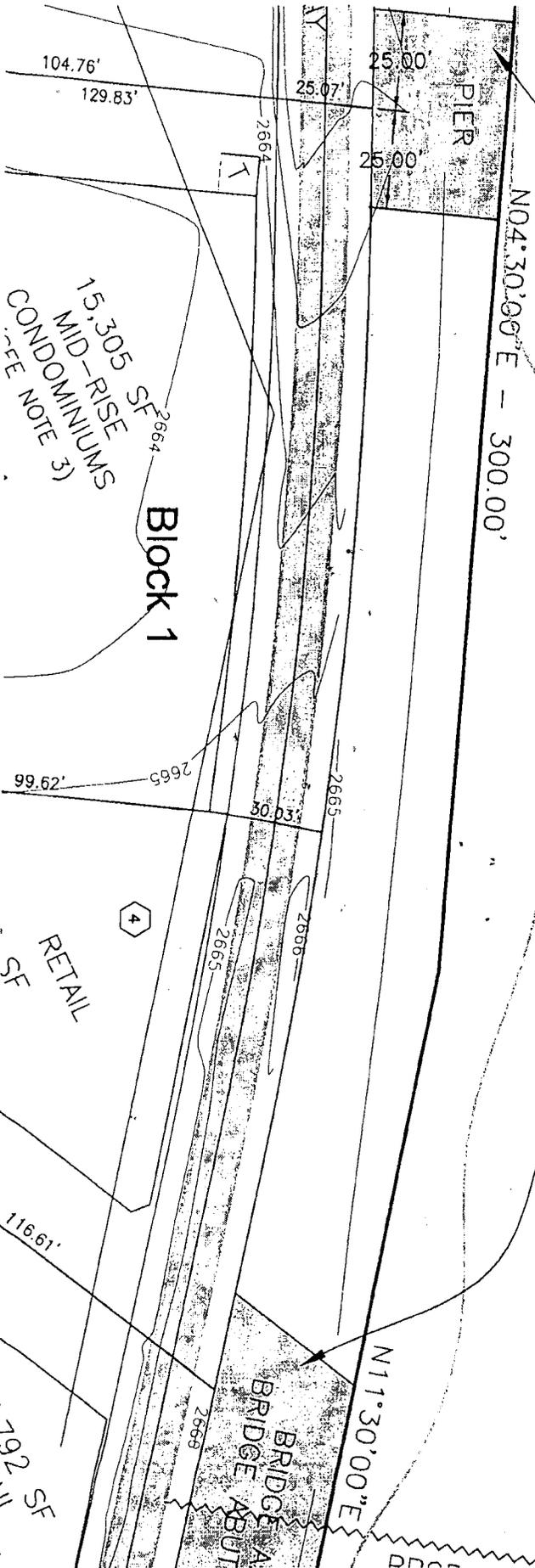
CONSERVATION PLAN - EXHIBIT B



← BOISE RIVER

EASEMENT FOR GARDEN CITY RECREATION AREA  
(IMPROVEMENT PERMITTED UNDER CONSERVATION EASEMENT)

2

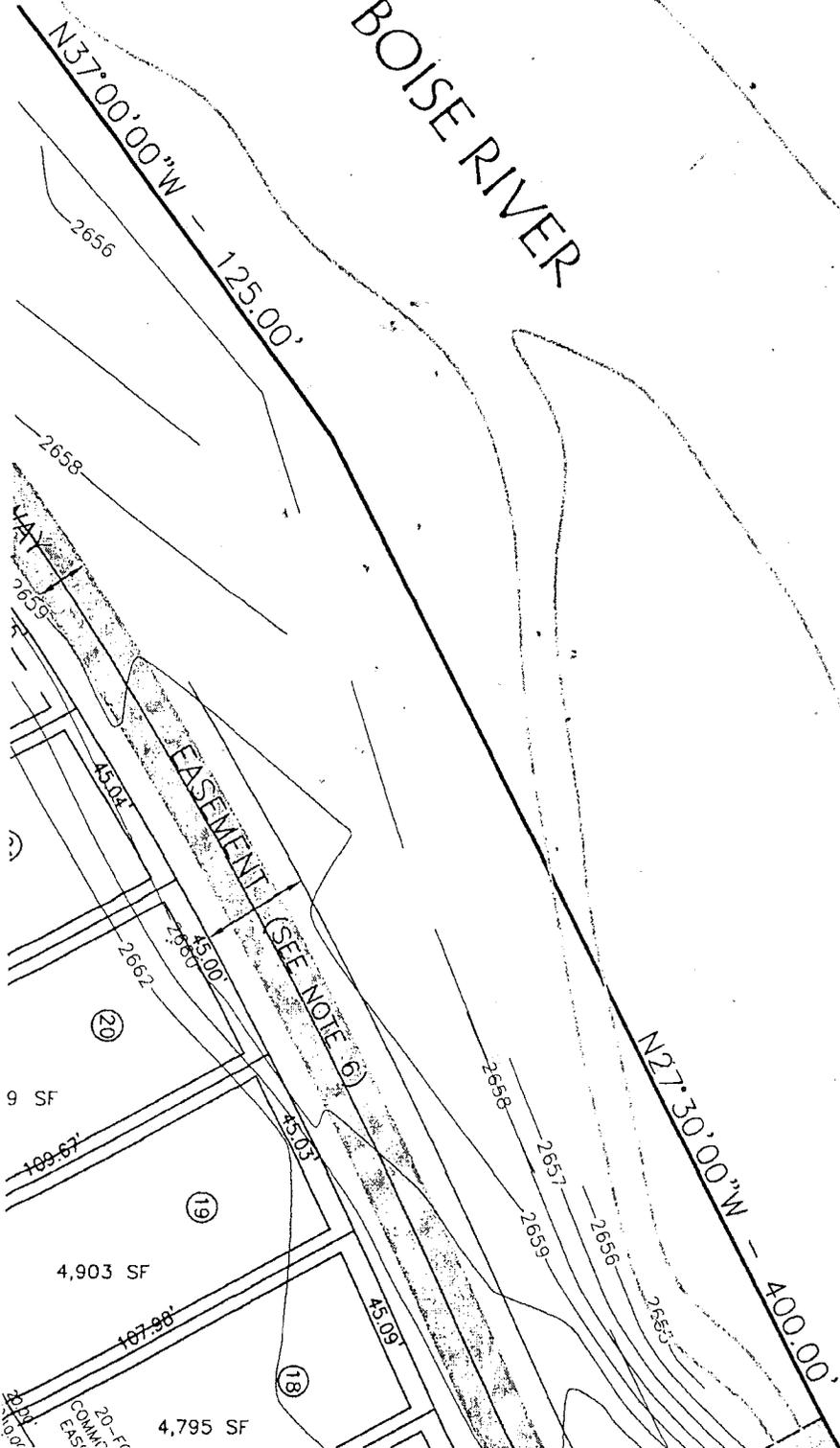




4

BOISE RIVER

PROPOSED CITY OF BOISE  
ESTHER SIMPLOT PARK

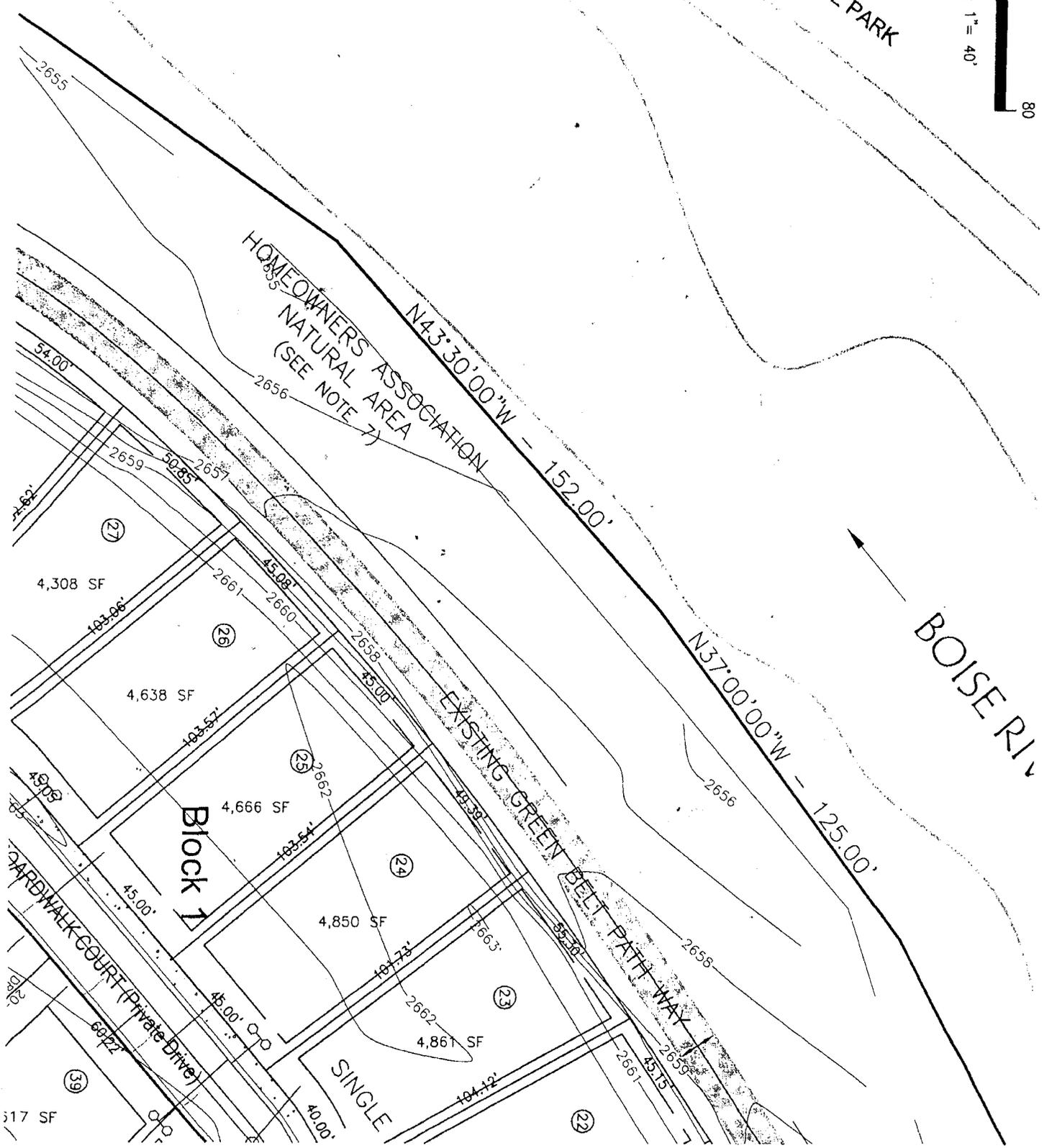


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VETERANS MEMORIAL PARK



HORIZ. SCALE: 1" = 40'



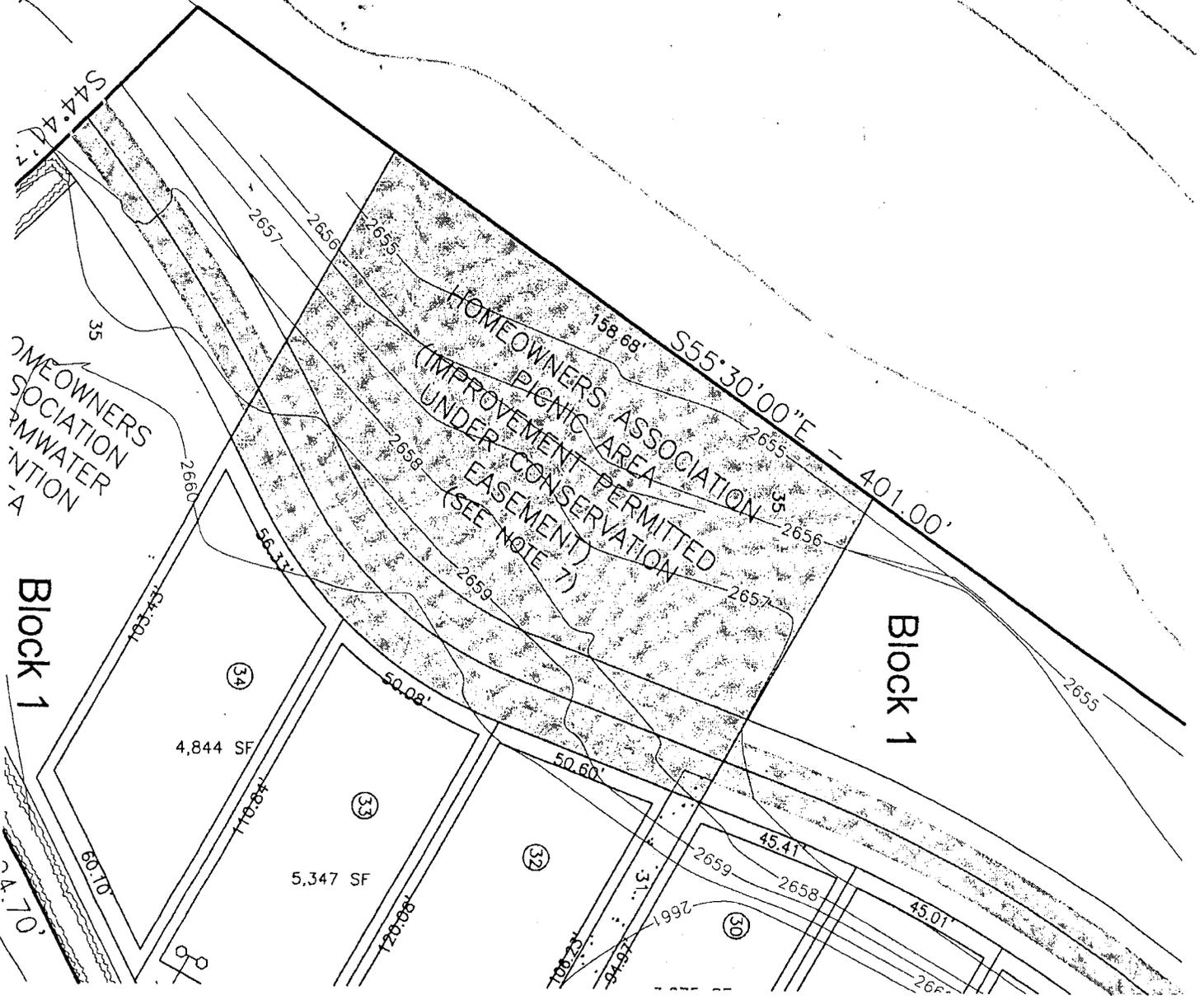
BOISE RIVER

Block 7

SINGLE

WARDWALK COURT (Private Drive)

6



HOMEOWNERS ASSOCIATION CONSERVATION EASEMENT

Block 1

Block 1

4,844 SF

5,347 SF

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S44°44'47\"/>

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**GREENBELT EASEMENT**

This Greenbelt Easement is made this 4<sup>th</sup> day of Dec., 2006, by and between Waterfront District, LLC, (hereinafter "Owner") an Idaho Limited Liability Company maintaining offices at 6951 Duncan Lane, Boise, ID 83714 and the City of Garden City (hereinafter "Garden City"), maintaining offices at Garden City Hall, Glenwood Avenue, Garden City, Idaho.

**I. Background**

1. Waterfront District, LLC is the owner of certain property comprising approximately 17.5 acres, located at 36<sup>th</sup> Street and the Boise River, Garden City, Idaho, known as Parcel No. 1630 of E2 Sec. 5 3N 2E, No. 970444101, 400 E. 36<sup>th</sup> Street (hereinafter the "Property").
2. Garden City acquired a certain Greenbelt Easement over the Property by agreement dated February 27, 1997, filed of record with Ada County, Instrument No. 97015427. The said existing Greenbelt Easement does not include specific terms for its use.
3. Garden City has approved "Waterfront District" PUD and subdivision plat for a Mixed Use development on the Property of townhouses, single family homes, and condominiums, together with office and other commercial uses. Final PUD and final plat approval was granted by Garden City on November 14, 2005, and the final plat recorded with Ada County Recorder of Deeds, Plat Book 96, page 12061, and the same is hereby incorporated herein by reference.
4. New and proposed public uses have been or will be made to surrounding properties, since the acquisition of the existing Greenbelt Easement in 1997, some of which relate to or involve direct connections and extensions of the path system of which the Greenbelt Easement is a part, including without limitation the creation of a proposed Esther Simplot Park in the City of Boise across the Boise River from the Property, a proposed whitewater park in the adjacent Boise River channel, and the construction of a pedestrian and bicycle bridge to connect an extension of Adams Street through the Property to this Greenbelt Easement and to the Esther Simplot Park.
4. Waterfront District, LLC, and Garden City have provided for uses adjacent to this Greenbelt Easement in a Recreation Easement, and have provided for protection of the strip of private property between the Greenbelt and the Boise River in a Conservation Easement, both of approximately even date herewith, the same to be filed of record. Waterfront District, LLC, and Garden City, desire to amend the existing Greenbelt Easement, defining the uses thereof, and the same is hereby set forth in writing.

**II. Grant of Greenbelt Easement**

**1. Uses and Purposes**

Owner does hereby grant and convey to Garden City, an easement according to the terms of this Greenbelt Easement Agreement, in the location as shown on the attached Legal Description, Exhibit A hereto, for the purposes of a recreational right-of-way. The uses granted

## Greenbelt Easement

Waterfront District LLC to Garden City, p. 2

and permitted to Garden City and persons claiming by or through Garden City shall consist of, and shall be limited to, the following:

- a. Garden City shall have the right to construct, maintain, repair, reconstruct and use a twelve (12) foot wide asphalt paved or other hard surface path centered in the easement area (hereinafter "Pathway"). The balance of the easement area, six and one-half (6.5) feet on each side, shall be maintained for the purposes of stormwater infiltration from the Pathway and as a setback buffer to reduce the impact of use of the Pathway on the property of Owner not encumbered by this Easement.
- b. As the principal purpose and use, Garden City shall have the right to travel through the Property, along the Greenbelt Pathway generally parallel to the Boise River, by foot, on bicycle or other similar non-motorized conveyance propelled by persons (such as bike trailers, baby strollers, wheelchairs, scooters, or rollerskates) for recreation and travel.
- b. As an incidental use to such travel and recreation, Garden City may use the Pathway for light motorized vehicle use (Cushman and golf cart size vehicles) for volunteer neighborhood crime watch, litter control, or similar activities.
- c. As necessary for periodic maintenance or reconstruction, Garden City shall have the right to operate such vehicles and equipment as necessary to accomplish the maintenance, re-paving or other reconstruction involved.
- d. Garden City may use the Pathway for police, fire and other emergency services.

### 2. Delegation of Rights

The rights granted herein to Garden City may be delegated to and exercised by the general public, municipal officials and employees, agents and contractors, and police, fire and other emergency services personnel, as related respectively to the above permitted uses. Such delegation or authorization by Garden City may be subject to such rules and regulations or conditions as Garden City may from time to time deem appropriate.

### 3. Rights of Use Restricted to Paved Path

The above rights of recreational and other travel shall be restricted to the paved path maintained through the Greenbelt Easement by Garden City, presently approximately twelve (12) feet wide, centered in the easement area. The balance of the easement area, approximately six and one half (6.5) feet on each side, shall be used for grass or other vegetation, storm water run-off, and connecting paths and other access to and from the Greenbelt path, and such other uses as set forth herein.

### 4. Rights of Use Restricted to Travel

The above rights of recreational and other travel shall be for the purposes of passing through the Property of Owner, along the river from one end of the Pathway to the other. Additionally, the rights granted shall include the right to enter and exit the Pathway and gain access to the Boise River, proposed foot/bike bridge to Esther Simplot Park, Adams Street and such other points as set forth in the Recreational Easement granted by Waterfront District to

Greenbelt Easement  
Waterfront District LLC to Garden City, p. 3

Garden City by separate instrument of approximately even date herewith. The rights granted shall not include any right to stop or loiter or assemble for any purpose in the Pathway or any part of the Easement, nor any right to make commercial or non-recreational use of any part of the Easement, nor any right, implied or otherwise, to trespass or enter upon any other part of the Property, or to gain access to or from the Greenbelt Easement and the Boise River except as specifically set forth in the aforesaid Recreational Easement.

5. Maintenance
  - a. Pathway maintained by Garden City. Garden City shall have the sole obligation to maintain the Pathway, notwithstanding the reserved rights of Owner to use the Pathway in common with Garden City. Provided, if Owner, its agents or contractors, shall damage the Pathway or shall open the Pathway for the installation of any utility or otherwise, the Pathway shall be re-paved and otherwise returned to its pre-existing condition.
  - b. Buffer strips maintained by Owner. The Owner shall have the right to maintain the 6.5-foot buffer strips along the sides of the Pathway. The Owner shall have the right to integrate this said strip into the landscaping of lots, including lots owned by the homeowners association, fronting on or subject to this Greenbelt Easement. Such landscaping may be lawn, ground cover, or shrubs or other plants under three (3) feet high, and shade trees in groups not more than three (3), at intervals not less than twenty-five (25) feet, provided any tree or shrub greater than one (1) inch caliper dbh shall be set back a minimum five (5) feet from the edge of the Pathway at time of planting.
  - c. Additional rights for retail and condominium lots. The Owner of the two retail lots and two condominiums lots of the final plat subject to this Greenbelt Easement (Block 1, Lots 2-5) shall have the further right to pave the buffer strips with asphalt, concrete or other hard surface for use as emergency access or fire lanes, or for sidewalks, patios, or other spaces associated with use of buildings or other improvements on said Lots.
  - d. Maintenance by Garden City. If Owner shall fail or refuse to maintain said buffer strips, Garden City shall have the right to periodically mow them to control weeds and prevent growth of vegetation into the Pathway.
  - e. Costs. All costs of maintenance shall be borne by the party by which the costs are incurred.

**III. Reserved Rights**

1. Use in Common.

Owner shall have the right to make use of the Greenbelt Path easement in common with Garden City, and Garden City's right of use shall not be exclusive. Owner shall have such use for itself and for its succeeding owners of the respective lots of the Waterfront District Subdivision. By way of example and not of limitation, succeeding owners of lots, condominium owners, and their respective guests and invitees, shall have the right to travel along and across the Greenbelt Easement to reach their respective lot, condominium, or land owned by the homeowners association, even though Garden City may have limited the time and manner of access by members of the general public.

Greenbelt Easement

Waterfront District LLC to Garden City, p. 4

2. Connecting paths.

Connecting paths or walkways may be constructed, maintained, used and repaired for access to and from the Pathway and the adjacent single family lots, townhouses, mid-rise condominiums and homeowners association ("HOA") recreational area, homeowners association path from cul-de-sac and homeowners association stormwater area. Those lots are shown on the final plat respectively as: single family, Block 1, Lots 15-34; townhouse, Block 1, Lots 6, 7-10; HOA, Block 1, Lots 14, 31, 35. Provided, the paths shall be built substantially at grade and shall not be over eight (8) feet wide.

3. Additional uses for retail and condominium lots. Where the Greenbelt Easement crosses the two retail lots and two condominium lots, connecting paths may also be constructed, maintained, used and repaired as above set forth. Additionally, the pathway may be widened with concrete, asphalt, or other hard surface as an emergency access lane. Further, Owner reserves the right to make any commercial use permitted under applicable zoning or land use regulation including without limitation those uses approved in connection with the PUD and/or related to the final plat, such as the right to construct, maintain, use and repair signs, placards, kiosks, booths, carts, tables and chairs, or to cross and re-cross the Greenbelt Easement to reach such uses. These lots are shown on the final plat as Block 1, Lots 2-5.

4. Stormwater. Stormwater run-off from any lot adjacent to or under and subject to this Greenbelt Easement shall be permitted to flow into the swale or buffer strip at the edge of the Pathway, in common with run-off from the Pathway.

5. Lighting. Lighting from any lots adjacent to or under and subject to this Greenbelt Easement may illuminate the Greenbelt Easement.

6. All Other Rights Reserved.

All rights not inconsistent with the grant of easement set forth in this Greenbelt Easement Agreement are reserved to Owner, its successors and assigns.

**IV. Restrictions Applicable to Both Parties**

1. No Obstruction

No obstruction or impediment to travel shall be permitted by any means including, without limitation, any storage or placement of material, parking of vehicles, fencing, or walls, excepting recreational traffic control such as bollards, signs, speed bumps, or temporary barricades for special events, or otherwise as specifically set forth herein.

2. No Motorized Vehicles

No motorized vehicles or equipment shall be permitted, except wheelchairs or similar vehicles used by handicapped persons, emergency vehicles, and construction vehicles and equipment for permitted construction, reconstruction and maintenance of the land under and

Greenbelt Easement  
Waterfront District LLC to Garden City, p. 5

towards the Boise River from this Greenbelt Easement, the Greenbelt Easement itself, public utilities or other entities having easements under or adjacent to the Greenbelt Easement.

3. No Nuisance, Annoyance or Hazard

Neither Owner nor Garden City shall cause or suffer the Greenbelt Easement to be used in any manner constituting a nuisance or inconsistent with its use as a recreational path. By way of example and without limitation, the following are prohibited: radios or other amplified music; loud, foul or abusive language; unnecessary noise; discharge or use of firearms or fireworks; smoking or any use involving discharge of noxious or annoying vapors or gases; open flame; hazardous, combustible or explosive materials. This section shall not be deemed to limit commercial uses by Owner authorized elsewhere herein.

V. Miscellaneous Provisions

1. Indemnification In consideration of the grant of this Greenbelt Easement, and in further consideration of the sum of Ten Dollars (\$10.00), the receipt of which is hereby acknowledged by Garden City, Garden City agrees to and does hereby indemnify Owner, its successor and assigns, from and of any suit, claim or cause of action (including reasonable attorneys fees) arising out of or associated with the rights hereby granted. By way of example and not of limitation, Owner shall have no liability for injury or damage, including personal injury and death, suffered by the general public or any person or entity using the Greenbelt Easement.
2. Agreement to run with land This Greenbelt Easement shall run with the land and shall inure to and be binding upon the parties and their respective heirs, successors and assigns, and specifically to the successors in title of Owner to any part of the Property subject to this Greenbelt Easement.
3. Applicable law This Greenbelt Easement agreement shall be interpreted under and governed by the law of the State of Idaho.
4. Ratification The existing Greenbelt Easement is amended as above set forth. Except as specifically set forth, the existing Greenbelt Easement is ratified and confirmed.

Greenbelt Easement  
Waterfront District LLC to Garden City, p. 6

In witness whereof, the parties hereto have set their hands and seals the day and year first above written.

**THE CITY OF GARDEN CITY**

By: *John D. Davis*

Attest: *Pamela J. Thomason*



**WATERFRONT DISTRICT, LLC**

By: *James M. Neill*

JAMES M. NEILL, Member

EAGLE SPRINGS INVESTMENTS, LLC,

Member

*David Elcox*

By: David Elcox, Member

*Peter Harris*

By: Peter Harris, Member

TWO INVESTMENTS, LLC, Member

*J.D. Simplot*

By: J.D. Simplot, Its Managing Member

State of Idaho :  
County of Ada : ss.

On this 4<sup>th</sup> day of December, 2006, before me, Soeun Park, the undersigned officer, personally appeared James M. Neill, known or identified to me to be a member of Waterfront District LLC, that executed the instrument, and acknowledged to me that such limited liability company executed the same.



[Signature]

RESIDING AT BOISE, ID  
COMMISSION EXPIRES 3/10/09

State of Idaho :  
County of Ada : ss.

On this 7<sup>th</sup> day of December, 2006, before me, Sandra L. Gubhard the undersigned officer, personally appeared Peter Harris and David Elcox, known or identified to me to be managing members of Eagle Springs Investments, LLC, which limited liability company has been known or identified to me as a member of Waterfront District LLC, that executed the instrument and acknowledged to me that such limited liability company executed the same.

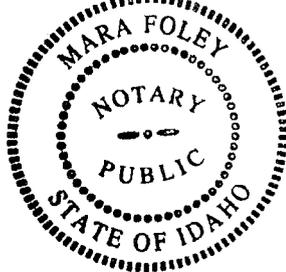


[Signature]

RESIDING AT BOISE, ID  
COMMISSION EXPIRES  
7/21/2010

State of Idaho :  
County of Ada : ss.

On this 5<sup>th</sup> day of December, 2006, before me, Mara Foley, the undersigned officer, personally appeared J.D. Simplot, known or identified to me to be the managing member of Two Investments, L.L.C., which limited liability company has been known or identified to me as a member of Waterfront District LLC, that executed the instrument, and acknowledged to me that such limited liability company executed the same.



[Signature]

RESIDING AT ADA COUNTY  
COMMISSION EXPIRES 8/19/2011

**Waterfront District Subdivision  
Greenbelt Easement – Exhibit A**

A permanent easement for construction and pedestrian-bicycle path use as said path is shown on the plans for "Phase I - CMAQ - Garden City Pathways", Idaho Transportation Department Project Nos. CM-0003(102) and CM-0100(105), being a 25-foot wide strip of land, lying 12.5 feet on each side of the following described centerline in the northeast quarter of Section 5, Township 3 North, Range 2 East, Boise Meridian, Ada County, Idaho, and more particularly described as follows:

Commencing at an iron pin marking the centerline intersection of East 38<sup>th</sup> Street and Adams Street (formerly Tom Davis Street) as shown on the Fairview Acres Subdivision No. 3, according to the official plat thereof, as filed in Book 11 of Plats at page 617, records of Ada County, Idaho, and as shown on "Property Survey and Correlation Map for Davis Packing Co." Dwg. No. CWB-701001-B, recorded in the Office of the Ada County Recorder, Miscellaneous Records, Instrument No. 7508403;

Thence North 89° 15' 25" East 35.36 feet to an iron pin on the easterly corner of the intersection of East 38<sup>th</sup> Street and Adams Street;

Thence along the easterly boundary of Reed Street on the following courses and distances:

North 27° 03' 25" East 29.57 feet; thence North 09° 51' 25" East 336.10 feet; thence North 03° 33' 25" East, 195.75 feet; thence North 50° 58' 25" East, 224.05 feet along the southeasterly boundary of Fairview Acres Subdivision No. 7, according to the official plat thereof, as filed in Book 12 of Plats on Page 686, Records of Ada County, Idaho; thence South 42° 36' 35" East, 149.72 feet; thence South 34° 00' 35" East, 90.39 feet; thence South 52° 36' 35" East, 77.84 feet; thence South 52° 36' 35" East, 250.00 feet to the most northerly corner of said Property Survey; thence along the northwesterly line of said Property, South 44° 41' 06" West, 41.60 feet to the POINT OF BEGINNING, said point being at Station 43+89.33 of the Project centerline;

thence along said centerline, along a 445-foot radius curve to the right, through a central angle of 11° 29' 17", an arc distance of 89.22 feet, subtended by a chord of South 33° 36' 13" East, 89.07 feet;

thence South 27° 51' 35" East, 25.46 feet;

thence along a 105-foot radius curve to the left, through a central angle of 41° 49' 02", an arc distance of 76.63 feet, subtended by a chord of South 48° 46' 06" East, 74.94 feet; thence South 69° 40' 37" East, 79.33 feet; thence along a 370-foot radius curve to the right, through a central angle of 25° 01' 24", an arc distance of 161.59 feet, subtended by a chord of South 57° 09' 55" East, 160.31 feet;

thence South 44° 39' 13" East, 10.11 feet;

thence along a 1,160-foot radius curve to the right, through a central angle of 19° 34' 55", an arc

distance of 396.45 feet, subtended by a chord of South 34° 51' 45" East, 394.53 feet;  
thence South 25° 04' 18" East, 264.53 feet;  
thence along a 180-foot radius curve to the right, through a central angle of 25° 57' 26", an arc distance of 81.55 feet, subtended by a chord of South 12° 05' 35" East, 80.85 feet;  
thence South 00° 53' 08" West, 160.01 feet;  
thence along a 1,245-foot radius curve to the right, through a central angle of 11° 11' 50", an arc distance of 243.31 feet, subtended by a chord of South 06° 29' 03" West, 242.92 feet;  
thence South 12° 04' 58" West, 157.24 feet;  
thence along a 500-foot radius curve to the left, through a central angle of 12° 35' 02", an arc distance of 109.81 feet, subtended by a chord of South 05° 47' 27" West, 109.59 feet;  
thence South 0° 30' 04" East, 84.14 feet;  
thence along a 285-foot radius curve to the left, through a central angle of 13° 16' 38", an arc distance of 66.04 feet, subtended by a chord of South 07° 08' 23" West, 65.90 feet;  
thence South 06° 00' 02" East, 52.17 feet;  
thence along a 285-foot radius curve to the right, through a central angle of 17° 58' 55", an arc distance of 89.45 feet, subtended by a chord of South 02° 59' 25" West, 89.08 feet;  
thence South 13° 46' 41" East, 9.14 feet;  
thence along a 95-foot radius curve to the right, through a central angle of 8° 39' 12", an arc distance of 14.34 feet, subtended by a chord of South 03° 46' 33" West, 14.33 feet to the southwesterly line of said Property Survey, the point of termination, said point being at Station 64+18.25 of the Project centerline;  
from whence the most southerly corner of said Property bears South 32° 00' 35" East, 44.31 feet.

The side lines of the above described easement shall be lengthened or shortened to terminate on the northwesterly and southwesterly lines of said Property Survey.

Containing 50,723 square feet or 1.164 acre, more or less.

The bearing shown in the above land description are based on coordinates provided by the City of Boise Public Works and used in project "C.S.P. 591 - South Boise Interceptor".

Originally prepared by CH2M HILL, June 1996  
PLS 5625



THE WATERFRONT DISTRICT

**WATERFRONT DISTRICT  
RIVERFRONT MANAGEMENT PLAN**

**JULY 2013**

## **WATERFRONT DISTRICT RIVERFRONT MANAGEMENT PLAN**

### **BACKGROUND**

In 2006 the Waterfront District, LLC granted a Conservation Easement to the City of Garden City to protect the band of common property bordering the Boise River and greenbelt path that runs the length of the Waterfront District development (Property). See Attachment A, Conservation Easement. The Waterfront District Homeowners Association (WDHA) is the successor to the Waterfront District, LLC and owner of the Property, subject to the terms of the Conservation Easement and any applicable laws. The shared values of the Conservation Easement include protection of the Property as a semi-natural area, preservation of open space, protection of critical areas from development, protection of green space adjacent to the greenbelt path and nearby parks, limited development of the area for use by WDHA members and the enhancement of scenic enjoyment by promoting and preserving the public and homeowner views of the river corridor. Additional values and interests to be promoted within the Property include safety of greenbelt users, community fire safety, wildlife habitat and protection of the river from nutrient, chemical and temperature pollution.

### **PURPOSE**

This Plan describes the future desired condition of the Property located between the greenbelt and the river which is owned by the WDHA and phased actions to develop and maintain such desired condition. The Property shall be developed and maintained in a manner that achieves the future desired condition.

### **DESCRIPTION OF DESIRED CONDITION**

The Property shall be developed and maintained in a manner that promotes and maintains functional and aesthetic consistency along the entire length of the Property and protects the values and interests of the Conservation Easement and the WDHA. The desired condition or appearance of the Property is defined by reference to type, density and location of grasses, understory shrubbery, trees and any developed recreational improvements as described below:

#### **Area 1 – Near Greenbelt**

The width of this area varies from approximately 5' to 15' or more and includes, generally, the area nearest, and of similar elevation, to the greenbelt. This area may potentially be irrigated through an installed sprinkler system and planted with draught tolerant grasses. See Attachment B, Sprinkler System Bids. The sprinkler system shall be designed and operated to provide the minimum amount of water necessary to establish and support grasses. Irrigation shall not extend beyond the grass area near the greenbelt except as specifically provided by this Plan for recreational improvement areas. The grasses shall not be fertilized, treated with chemicals or mowed except as necessary to establish and maintain coverage. The grass area shall be generally free of shrubs, trees and deadfall except for

currently existing live native or desirable vegetation which may be retained. Vegetative litter such as fallen trees, branches, twigs and leaves may be removed for fire safety or aesthetic purposes. Currently existing live vegetation may be trimmed, pruned or removed for safety or view shed purposes subject to approval or consultation, as appropriate, of the WDHA Riverfront Committee. See Attachment C, Review and Approval Form. Trimming/removal of currently existing trees (dead or live) that pose a hazard to greenbelt or WDHA users is a priority. See Attachment D, Tree Service Bid.

## **Area 2 – Intermediate**

The width of this area varies greatly depending on location within the Property but generally includes the area between the grassy area nearest the greenbelt and the ordinary high water mark of the Boise River or the boundary of the WDHA property as applicable. The Idaho Department of Lands maintains that the ordinary high water mark occurs at a river flow of 6,500 cubic feet per second. This area shall not be irrigated or otherwise developed except as specifically provided by this Plan consistent with the Conservation Easement. Vegetation in this area shall consist of light to medium density native or desirable shrubs and trees. Shrubs and trees may be trimmed, pruned, removed or planted for safety or filtered view shed purposes subject to approval or consultation, as appropriate, of the Riverfront Committee. Deadfall and vegetative litter such as fallen trees, branches, twigs and leaves may be removed for fire safety or aesthetic purposes but shall generally be left in place in this area as wildlife habitat and for the purpose of stabilizing and protecting soils which may be inundated by the Boise River during periods of extraordinary high flows. Trimming/removal of currently existing trees (dead or live) that pose a hazard to greenbelt or WDHA users is a priority.

## **Area 3 – Near River**

The width of this area also varies depending on location within or near the Property and includes the area very near or below the ordinary high water mark of the Boise River which is generally inundated by the Boise River on an annual springtime basis. WDHA ownership and control within this area may be limited and subject to laws or requirements not addressed by this Plan. This area shall not be irrigated or otherwise developed except as may be specifically provided by the Plan, consistent with the Conservation Easement, applicable laws and required permits. Vegetation in this area shall consist of existing native or desirable trees and shrubs which shall not be trimmed, pruned, removed or planted except upon approval of the Riverfront Committee and any applicable local or state requirements. Deadfall and vegetative litter shall be left in place. The Riverfront Committee will coordinate with local or state agencies as appropriate to address safety issues (boater, walkers, flood, or fire) that may be related to standing or downed trees or flood debris.

## **Area 4 – Special Development Sites**

The Conservation Easement provides for the development of specific view sheds and recreational improvement areas.

Channels of View - The creation and maintenance of “channels of view to the river” are allowed provided no one channel exceeds 100 feet in length, the cumulative view channels do not occupy more than one-half of the river frontage and native and desirable trees are allowed to grow to mature height in the remaining areas.

Recreational Improvement Areas - In addition to the now existing foot bridge and waterpark ramp on the eastern portion of the Property, the Conservation Easement contemplates developed recreational amenities from east to west as follows: a) pier or other elevated structure in the area adjacent to the eastern edge of the Villas for greenbelt user access to the river; b) riverside garden, courtyard, roof shelter, lawn area and beach and river access area for WDHA use, similarly developed and adjacent to the existing WDHA recreational area south of the greenbelt (future community center site), and; c) picnic and recreational area for WDHA use adjacent to the last three single family lots at the far west, downstream portion of the Property.

### **DESIRABLE VEGETATION**

The riparian habitat along the river corridor through Boise is commonly described as a black cottonwood galley forest. Dominant tree types include; cottonwood, willow, maple, locust, and alder. Common understory vegetation includes; dogwood, ninebark, elderberry, currant and wood rose. The Boise area is within the semi-arid climate zone which averages 12 inches of precipitation a year. This annual average precipitation means that the areas adjacent and upland from the river riparian area support more draught tolerant vegetation unless supplemental irrigation is provided. The overall desired condition for the WDHA property band along the green belt is to be managed as semi-natural. The exceptions to this are the Special Development Areas that have been specifically identified in the Conservation Easement and this Plan. Achieving and maintaining a semi-natural condition requires promoting desirable vegetation and controlling undesirable vegetation. Attachment E, Identification and Use of Common Riparian Woody Plants and Attachment F, Idaho’s Noxious Weeds, are key references that will be used for determining desirable vegetation and controlling undesirable vegetation.

### **APPROVAL OR CONSULTATION FOR TREE OR SHRUB TRIMMING, PRUNING, REMOVAL OR PLANTING**

Removal or planting of trees or shrubs, or trimming and pruning of trees or shrubs, more than 2” in diameter, shall require approval by the Riverfront Committee through submission and approval of a Riverfront Management Review and Approval Request Form (Attachment C). Trimming and pruning of trees and shrubs less than 2” in diameter by a homeowner directly across the greenbelt from their property or by a Riverfront Committee work group, in Area 1 (Near Greenbelt) or Area 2 (Intermediate) shall require consultation with the Riverfront Committee and any affected adjacent homeowner(s). In the event of a dispute between the homeowner and affected neighbor(s), the Riverfront Committee will make the final determination.

## **SCHEDULE OF ACTIVITIES**

### **Phase I - 2013**

Area 1 - Near Greenbelt - Removal of deadfall and other vegetative or manmade debris; trimming/removal of trees posing a hazard to greenbelt or WDHA users; trimming or pruning and possible removal of existing trees and shrubs, subject to approval or consultation of the Riverfront Committee; possible installation of an irrigation system; removal of noxious weeds; planting of draught tolerant grasses. Specific plans and design for the irrigation system shall require the approval of the WDHA Board of Directors.

Area 2 - Intermediate - Trimming or pruning and possible removal or planting of shrubs and trees subject to approval or consultation of the Riverfront Committee. Trimming/removal of trees posing a hazard to greenbelt or WDHA users.

### **Phase II - 2014-2015**

Maintenance of activities undertaken in Phase I. Identification, design and approval of specific channels of views and any related tree or shrub removal, subject to approval of the Riverfront Committee. Planning, design and light or temporary development of Recreational Improvement Areas, subject to approval of the WDHA Board of Directors.

### **Phase III - 2016+**

Maintenance of activities undertaken in Phases I and II. Planning, design and development of permanent, constructed Recreational Improvement Areas, subject to approval of the WDHA Board of Directors.

## **DEVELOPMENT, REVIEW, APPROVAL AND AMENDMENT OF PLAN**

The initial draft of this Plan was developed by a subgroup of the Riverfront Committee, provided to the full committee for review and revision, provided to the full WDHA membership for general review and revision via posted notices and the website. Following final revision and review by the Riverfront Committee, the Plan was subject to review and final approval by the WDHA Board of Directors. Any amendments of the Plan shall be made through the same process.

## ATTACHMENTS

Attachment A – Grant of Conservation Easement (See AMI Website)

[www.amihome.net/waterfrontdistrict/HomeownerResources.aspx](http://www.amihome.net/waterfrontdistrict/HomeownerResources.aspx)

Attachment B – Sprinkler System Bids

Attachment C – Riverfront Management Review and Approval Request Form (See AMI Website)

[www.amihome.net/waterfrontdistrict/HomeownerResources.aspx](http://www.amihome.net/waterfrontdistrict/HomeownerResources.aspx)

Attachment D – Tree Service Bid

Attachment E – Field Guide for the Identification and Use of Common Riparian Woody Plants (Kerry, Scott and Gwen have copies)

Attachment F – Idaho's Noxious Weeds (Kerry, Scott and Gwen have copies)

**From:** ~~XXXXXXXXXX~~ requested redaction by commentor  
**To:** [Jenah Thornborrow](#)  
**Cc:** [Roger Rosentreter](#); [Wendycarverherbert@gmail.com](mailto:Wendycarverherbert@gmail.com); ~~XXXXXXXXXX~~  
**Subject:** River Corridor Proposal - Concerns and Recommendations  
**Date:** Tuesday, November 12, 2019 4:55:19 PM

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Hi, Jenah

I wanted to voice my concerns regarding a couple of areas and suggest possible alternatives

1. 25' River Zone

Is this specifically for new greenbelt or property redevelopment? Allow exceptions for existing properties (grandfather rights). The 25' would cross ½ of my patio, 1-2 feet from deck and 10-12 feet from 8' windows that run the length of my living areas. There are many buildings on river and greenbelt/pathways that do not have 25' zone between river mean high water mark .

2. Landscaping

- a. My property has extensive additional landscaping rather than the asphalt or cement path. Two rows of trees set on the front property line near the high water mark and inside about 12-18' feet: Silver Maples, Ornamental Pear, Red Maple, Ash, Hawthorne and Linden . They provide more than a 50% canopy. Allow these to remain until they are deteriorating and replace at that time. These also provide shade to mitigate the impact of grass vs other proposed ground covers.

3. Standards & Setbacks

- a. Grandfather existing properties (residences and storage sheds) which sit inside setbacks and within the River Zone.
- b. Allow owners to be rebuild on existing footprints when damaged or destroyed due to catastrophic events such as but not limited to fire, flood, high winds, etc.
- c. Eliminate the need for these properties to meet the following in order to be 'permitted': "must find that the structure is required by public necessity , public recreation or wildlife habitat use."

4. Maintenance Provisions

- a. Spell out process and definitions for 'unsafe' or 'nuisances' so that a property owner has recourse to either arbitrate, defend and/or improve any specific issue.

Regards,

~~XXXXXXXXXX~~ requested redaction by commentor

---

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GEOFFREY M. WARDLE  
208.388.3321  
GWARDLE@CLARKWARDLE.COM

December 5, 2019

Via Email ([jthorn@GARDENCITYIDAHO.ORG](mailto:jthorn@GARDENCITYIDAHO.ORG)) and  
U. S. First Class Mail

Jenah Thornborrow  
Director  
Garden City Development Services  
6015 N. Glenwood Street,  
Garden City, ID 83714

Re: Garden City's Proposed Boise River Natural Resource Overlay District  
CW File No. 23780.1

Dear Ms. Thornborrow,

We represent Shawn D. McFadden, the owner of certain real property located at 606 and 608 E. 52<sup>nd</sup> Street, in Garden City, Idaho. Ms. McFadden's property consists of certain parcels that have a lengthy legal history that we would be more than willing to share with the City.

We will appear on behalf of our client and participate in the upcoming hearings and meetings before Garden City's Design Review Committee, its Planning and Zoning Commission, and its City Council. In reviewing the City's Boise River Natural Resource Overlay District ordinance, we note several provisions that cause us concern. Among various issues that we have identified with the draft amendments are the following:

**A. Inconsistent Provisions Regarding Non-Conforming Uses.** There are inconsistencies in several provisions regarding nonconforming structures. Specifically, the existing provisions of Section 8-1B-2C prohibit the reconstruction of a nonconforming structure destroyed or damaged by casualty; the proposed language that would amend Section 8-3E-3B(c) appears to prohibit "substantially improving" existing legal structures; and the proposed language that would amend Section 8-2B-3F9 establishes exceptions to the proposed setback from the Ordinary High Water Mark relating to replacement and restoration of existing single-family dwellings.

It is impossible to reconcile the proposed language of these three sections or to determine the extent to which existing structures can be improved in a manner that does not expand or enlarge their nonconformance or the extent to which they can be improved or restored in the future. Before the City undertakes a broad amendment to its City Code, these proposed amendments must be harmonized and revised.

**B. Designation of River Zone.** The proposed regulations for the proposed 25' River Zone, specifically, the prohibition on "nonpublic structures, including fencing" as proposed in Section 8-3E-4, implicate issues of private property ownership and the right and ability to exclude the public from private property, and contravene recognized constitutional limits on such regulations. This provision cannot be reconciled with the proposed language in Section 8-2B-3F12, which acknowledges the ability of a property owner to fence its property at a "0' setback from the property line, unless another provision supersedes this allowance.

The mere fact that a portion of private property may be within the River Zone does not permit interference with a property owner's right with respect to its property to "use it as he pleases and to exclude everyone else" from it. La Veine v. Stack-Gibbs Lumber Co., 17 Idaho 51, 104 P. 666, 667 (1909). In light of Idaho's recent amendments to its statutory trespassing requirements, the prohibition on fencing of private property and the other limitations on private improvements within the proposed River Zone effectively prevent property owners within the proposed River Zone from asserting and protecting their rights vis-à-vis trespassers.

This is of particular concern to our client in this matter, due to the fact that the City and certain other jurisdictions entered into a settlement agreement in 1997 that resolved various disputes and resulted in every party thereto surrendering certain rights and claims in order to satisfy and settle their competing claims. Pursuant to that 1997 settlement agreement, certain rights and interests were granted to Ms. McFadden as just compensation for the taking of her property by those governmental entities, including the City. We would hope that the adoption of the proposed overlay district and the imposition of these additional standards is not an attempt to circumvent the 1997 settlement agreement, and to take our client's remaining property in contravention of the constitutions of the United States and the State of Idaho.

**C. Wetland Setback Requirements.** Additionally, we are troubled by the additional 50' setback to wetland areas proposed in proposed language in Section 8-2B-3F13. Obviously, clear regulations already exist regarding the impact that development activities may have on existing wetlands. However, this provision goes beyond that by imposing an additional setback requirement that applies unless a property owner can fulfill the vague requirement associated with satisfying "recommendations" of the specified agencies. Recommendations are not enforceable regulations and there is no specified process by which an affected property owner may invoke this exception.

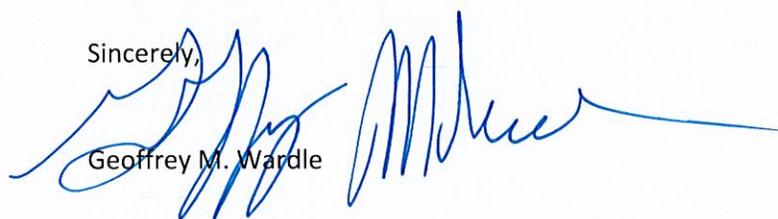
The importance of preserving our client's rights associated with the historic use and configuration of her property cannot be understated. It has been long recognized in Idaho that "The owner of a lawful nonconforming use has a right to continue that use despite the conflicting provisions of the subsequently enacted zoning ordinance." Glengary-Gamlin Protective Association Inc. v. Bird, 106 Idaho 84, 89 (Ct.App. 1984). That is because ordinances which prohibit the continuation of an existing lawful use are "unconstitutional as taking property without due process of law and being an unreasonable exercise of the police power." O'Connor v. City of Moscow, 69 Idaho 37, 41 (1949).

Jenah Thornborrow  
Director  
Garden City Development Services  
December 5, 2019  
Page 3

We respectfully request that we receive notice of all committee, board, commission and council meetings regarding this proposed ordinance. We also would request as a courtesy, a copy of the current draft of the proposed ordinance, as well as prior drafts, so we can review and provide proposed revisions to address the issues we identify above.

We are prepared to represent our client zealously in this matter as we believe that the law, legislative history, and facts are all in our client's favor. However, we would propose meeting with staff to discuss these matters prior to the City's upcoming hearings and would also invite the City to slow down, fully evaluate the impact of these decisions upon our client, and fully evaluate the consequences that this course of action may produce.

Sincerely,



Geoffrey M. Wardle

GMW:lc

cc: Charles Wadams, Garden City Attorney (Email: [cwadams@GARDENCITYIDAHO.ORG](mailto:cwadams@GARDENCITYIDAHO.ORG))  
Shawn McFadden

**Chapter 6-20**

**NOISE**

**Sections:**

- 6-20-01 PURPOSE**
- 6-20-02 DEFINITIONS**
- 6-20-03 NOISE PROHIBITIONS**
- 6-20-04 ENFORCEMENT**
- 6-20-05 ORDINANCE ADDITIONAL TO OTHER LAW**
- 6-20-06 EXEMPTIONS**
- 6-20-07 PENALTY**
- 6-20-08 SEVERABILITY**

**Section 6-20-01 PURPOSE**

The purpose of this Ordinance is the protection of the health, safety, and welfare of the citizens of Boise. It is determined that sound can and does constitute a hazard to the health, safety, welfare, and quality of life of residents of the city. The Mayor and Council, by way of Idaho Code Section 50-308 are empowered to impose reasonable limitations and regulations upon the production of sound to reduce the harmful effects thereof. Now, therefore, it is hereafter the policy of this city to prevent and regulate sound generated by loud amplification devices wherever it is deemed to be harmful to the health, safety, welfare, or quality of life of the citizens of the city, and this Ordinance shall be liberally construed to effectuate that purpose.

(5788, Added, 03/18/1997)

**Section 6-20-02 DEFINITIONS**

For the purposes of this Ordinance, the following definitions shall apply:

**CITY:**

Boise City, Idaho, or the area within the city limits of Boise City, Idaho.

**COMMON AREA(S):**

The area(s) of a facility, complex, apartment unit, hotel, motel or the like that are open either to the general public or persons with the permission of the owner or agent of the owner of the area. This definition would include but not be limited to the following: swimming pools, restaurants, patios, hot tubs, saunas, laundry rooms, meeting rooms, lobbies, lounges, bars and other areas within the facility that are either constructed or designed for use in this manner.

**EMERGENCY:**

Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

**EMERGENCY VEHICLE:**

A motor vehicle belonging to a fire department, fire-fighting association, or fire district, an ambulance, or a motor vehicle belonging to a federal, state, county, or municipal law enforcement agency.

**LOUD AMPLIFICATION DEVICE:**

Any equipment designed or used for sound production, reproduction, or amplification, including,

## Boise Municipal Code

but not limited to any radio, television, phonograph, musical instrument, stereo, tape player, compact disc player, loud speaker, public address (P.A.) system, sound amplifier, or comparable sound broadcasting device.

### PERSON:

Any individual, association, organization, or entity having a legally recognized existence, whether public or private.

### PLACE OF RESIDENCE:

Any building or portion thereof adapted or used and intended for the overnight accommodation of persons. In the event the building is used for multiple individual units (i.e. apartment, condominium, hotel, motel, duplex, triplex, etc.) each individual unit shall be considered a separate residence for the purposes of this ordinance.

### PLAINLY AUDIBLE:

Sound for which the information content is clearly communicated to the listener, including, but not limited to understandable spoken speech, comprehension of whether a voice is raised or normal, comprehensible musical rhythms, melody, or instrumentation, and the source of which is identifiable to the listener.

(5788, Added, 03/18/1997)

### Section 6-20-03 NOISE PROHIBITIONS

It shall be unlawful for any person to operate or permit the operation of any loud amplification device in such a manner that the sound therefrom:

A. is plainly audible within any place of residence not the source of the sound, or,

B. is plainly audible upon a public right-of-way or street at a distance of one hundred (100) feet or more from the source of such sound.

(5788, Added, 03/18/1997)

### Section 6-20-04 ENFORCEMENT

A. Peace officer citation. Any Boise City peace officer or person empowered to enforce this provision of the Boise City Code is authorized to issue a uniform citation upon his own observation of a violation without the necessity of a citizen complainant's signature on said citation. By signing the citation officer or person is certifying that he has reasonable grounds to believe that the person cited committed the offense contrary to law.

B. Citizen citation. A uniform citation may also be signed by any citizen or person in whose presence an alleged violation of this Ordinance occurred and be witnessed by a Boise City peace officer or person empowered to enforce this provision of the Boise City Code whose name shall be endorsed on the citation.

(5788, Added, 03/18/1997)

### Section 6-20-05 ORDINANCE ADDITIONAL TO OTHER LAW

The provisions of this Ordinance shall be cumulative and nonexclusive and shall not affect any other claim, cause of action, or remedy; nor, unless specifically provided, shall it be deemed to repeal,

## Boise Municipal Code

amend, or modify any law, ordinance, or regulation relating to noise or sound, but shall be deemed additional to existing legislation and common law on such subject.  
(5788, Added, 03/18/1997)

### **Section 6-20-06 EXEMPTIONS**

The following sounds are exempted from the provisions of this Ordinance:

- A. Sounds caused by any emergency vehicle or personnel when responding to an emergency call or acting in time of emergency.
- B. Sounds caused by activities upon any outdoor municipal, school, religious, or publicly owned property or facility, provided that such activities has been authorized by the owner of such property or facility or its agent.
- C. Sounds caused by parades, fireworks displays, or any other event for which a permit for that type of activity is required and has been obtained from the authorized governmental entity within such hours as may be imposed as a condition for the issuance of said permit.
- D. Sounds caused by locomotives or other railroad equipment.
- E. Sounds caused by burglar alarms that are not in violation of Boise City Code.
- F. Sounds caused by safety warning devices required by law.
- G. Sounds caused by devices approved for use within the confines of the particular zoning designation that the device is located or pursuant to a conditional use permit (i.e. drive-thru window speakers, car lot p.a. systems).
- H. Sounds emanating from devices used within the common areas of a multi-unit facility whose use has been approved by the owners or management of the facility. Said use must be in compliance with any regulations imposed by the owners or management of the facility to be exempt under this ordinance. This exemption only applies in relation to other units within the same facility.

(5788, Added, 03/18/1997)

### **Section 6-20-07 PENALTY**

Any person who shall violate any of the terms or provisions of this Ordinance shall be guilty of an infraction and shall be punishable by a fine of One Hundred Dollars (\$100.00) excluding court costs and fees. There is no right to a trial by jury of a citation or complaint for an infraction and such trials shall be held before the court without a jury.

(5788, Added, 03/18/1997)

### **Section 6-20-08 SEVERABILITY**

If any provision or section of this Ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this Ordinance, which shall remain in full force and effect.

(5788, Added, 03/18/1997)

Boise Municipal Code