

**Recording Requested By and
When Recorded Return to:**

**City of Garden City
6015 N. Glenwood Street
Garden City, ID 83714**

RESTRICTED BUILD AGREEMENT

THE CITY OF GARDEN CITY (“**City**”) and Glass Creek, LLC, a California limited liability company (“**Developer/Landowner**”), who may each individually be referred to herein as a “**Party**” and collectively as the “**Parties**,” enter into this Restricted Build Agreement (this “**Agreement**”) effective as of the Effective Date, defined below, respecting the development of Glass Island View Subdivision (the “**Project**”).

RECITALS

A. The Project is described and depicted in **Exhibit A**, attached hereto and incorporated herein.

B. The real property that is the subject of this Agreement is located in the City of Garden City and is described in **Exhibit B**, attached hereto and incorporated herein (the “**Property**”).

C. On July 27, 2020, Developer/Landowner received preliminary plat approval from City for the Project, and on _____, 2021, Developer/Landowner received final plat approval from City for the Project.

D. On June 14, 2021, Developer/Landowner received from City a one-year time extension allowing the final plat for the Project to be recorded on or before July 27, 2022.

E. City approved such time extension, in part, because Developer/Landowner was required by the Federal Emergency Management Agency (“**FEMA**”) to submit and receive a Letter of Map Revision (“**LOMR**”) approval to alter the existing floodway boundary in the Project, which process is time consuming.

F. On April 12, 2021, Developer/Landowner submitted to FEMA a LOMR application and analysis detailing that the incorrect, existing mapped floodway boundary that encumbers Lots 1, 2 and 3, Block 1, of the Project should be corrected and redrawn such that all of the Project is located outside of the floodway.

G. Communications with FEMA indicate a final decision in connection with such LOMR application is anticipated in Fall, 2021.

H. On _____, 2021, Developer/Landowner received from City approval of the construction drawings for the Project, dated _____, 2021, and prepared by The Land Group (the “**Construction Drawings**”), which Construction Drawings are attached hereto as **Exhibit C** and incorporated herein.

I. The Construction Drawings depict certain common improvements and public infrastructure for the Project (the “**Project Improvements**”), and are located in that area of the Project identified as the “**Limits of Disturbance**”, as depicted on **Exhibit D**, attached hereto and incorporated herein. The portion of the Limits of Disturbance extending into the current floodway includes the installation of a 16-inch waterline that does not alter the grade of the floodway.

J. Developer/Landowner seeks City’s permission to enter into this Agreement to construct and install the Project Improvements within the Limits of Disturbance prior to LOMR approval by FEMA in accordance with this Agreement and the Construction Drawings.

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K. As provided further herein, City shall issue building permits for Project Improvements within the Limits of Disturbance prior to LOMR approval by FEMA; provided, however, no building permits will be issued by City for Project Improvement outside the Limits of Disturbance until FEMA has issued its LOMR approval.

L. The City Council for City reviewed and approved this Agreement at a Council Meeting on _____, 2021 (the "**Effective Date**").

AGREEMENT

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, and upon representations made in application documents and/or presentations before City's deliberative bodies, the Parties agree as follows:

1. No Construction Outside of the Limits of Disturbance. Developer/Landowner hereby agrees not to construct any Project Improvements outside the Limits of Disturbance until Developer/Landowner has received LOMR approval from FEMA and City has issued any required building permits for construction outside the Limits of Disturbance. Minor disturbance outside the Limits of Disturbance is permitted to accommodate installation of the Project Improvements. Developer/Landowner will protect the undisturbed portion of the site with temporary construction fencing.

2. Execution of Final Plat and Issuance of Construction Permits. City, in exchange for Developer/Landowner's agreement not to construct Project Improvements outside the Limits of Disturbance until the above-mentioned requirement is met, hereby agrees to issue any required permits for construction within the Limits of Disturbance. City also agrees to execute the approved final plat for the Project provided: (1) Developer/Landowner has recorded this Agreement, and provided a recorded copy of the Agreement to City; and (2) A note is placed on the face of the final plat for the Project referencing this Agreement by name and Instrument Number. City's agreement to issue permits for construction within the Limits of Disturbance will not affect City's right and/or obligation to issue any building permit that would have been legally obtainable by Developer/Landowner prior to the recordation of the final plat for the Project and/or prior to Developer/Landowner receiving LOMR approval from FEMA.

3. Indemnity. Developer/Landowner hereby agrees to indemnify, defend, save and hold harmless City from any and all liability, loss or damage City may suffer as a result of any and all actions, claims, damages, costs and expenses on account of, or in any way arising out of or from this Agreement; provided, however, that Developer/Landowner's duty to indemnify, defend and hold harmless shall not include any claims or liability arising from the sole negligence or sole intentional misconduct of City or its members, employees, representatives, or agents. This indemnity shall continue so long as this Agreement is in effect.

4. Relationship of Parties. Neither by entering into this Agreement, nor by doing any act hereunder, may Developer/Landowner, or any contractor or subcontractor of Developer/Landowner, be deemed an agent, employee, or partner of City, nor otherwise associated with City. Developer/Landowner, and its contractors and subcontractors, shall not represent themselves to be agents, employees or partners of City, or otherwise associated with City. Developer/Landowner shall notify all its contractors and subcontractors of the provision of this Section.

5. Recordation of Agreement. Developer/Landowner shall, at Developer/Landowner's expense, record this Agreement in the records of Ada County, Idaho, and shall provide City with a conformed copy of the recorded instrument. Such recording shall take place within five (5) business days of the Effective Date. This Agreement will remain as a building restriction on the Property until this Agreement is released by a subsequent recording authorized and executed by City. Such recording may name all lots or any combination of lots or lot in the Project.

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6. Notices. All notices, demands, requests, and other communications under this Agreement shall be in writing and shall be deemed properly served or delivered, if delivered by hand to the Party to whose attention it is directed, or when sent, three (3) days after deposit in the U.S. mail, postage prepaid, certified mail, return receipt requested, or one (1) day after deposit with a nationally recognized air carrier providing next day delivery, or if sent via email transmission, when received, addressed as follows:

DEVELOPER/LANDOWNER:

Michael Hair, Jr.
Glass Creek, LLC
6501 Fruitvale Avenue
Bakersfield, CA 93308
mhjr@yourvalleybuilder.com

CITY:

Jenah Thornborrow, Development Services
Director
City of Garden City
6015 N. Glenwood Street
Garden City, Idaho 83714
jthorn@gardencityidaho.org

5. Miscellaneous.

- a. If any term or provision of this Agreement, to any extent, shall be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.
- b. This Agreement, including Exhibits incorporated by reference herein, embody the entire Agreement of the Parties. This Agreement shall supersede all previous communications, representations or agreements, whether written or oral, between the Parties hereto. This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho.
- c. The recitals set forth above are hereby incorporated by this reference.
- d. In the event of a breach of any term, covenant, restriction or condition of this Agreement by a party, the other party shall have the right to enjoin such breach or threatened breach in a court of competent jurisdiction.
- e. In the event of any action between City or Developer/Landowner for a breach of or to enforce any provision or right herein, the non-prevailing party in such action shall pay to the prevailing party all costs and expenses, expressly including, without limitation, reasonable attorney fees and costs incurred by the successful party in connection with such action, including, without limitation, all fees and costs incurred on any appeal from such action or proceeding.
- f. The headings in this Agreement are intended for convenience only and shall not be used to vary or interpret the intent of the text.
- g. Wherever in the Agreement consents or approvals of any Party is required, such consents or approvals shall not be unreasonably withheld. Nothing in this provision shall compromise the general police power authority of City in matters governmental in nature.
- h. All provisions of this Agreement, including the benefits and burdens hereof, run with the land, and are binding upon and inure to the benefit of the parties and their respective heirs, assigns and successors and may not be terminated without the reasonable written consent of City.

[end of text; signatures on following pages]

IN WITNESS WHEREOF, the City of Garden City, being duly authorized, has executed this Restricted Build Agreement effective as of the Effective Date.

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CITY:

City of Garden City,
an Idaho municipal corporation

By: _____
Name: John Evans
Its: Mayor

State of Idaho
County of Ada

This record was acknowledged before me on _____, 2021 by John Evans as Mayor of the City of Garden City.

Signature of notary public
My commission expires: _____

IN WITNESS WHEREOF, Developer/Landowner, being duly authorized, has executed this Restricted Build Agreement effective as of the Effective Date.

DEVELOPER/LANDOWNER:

Glass Creek, LLC,
a California limited liability company

By: _____
Name: Michael Hair, Jr.
Its: Manager

State of _____
County of _____

This record was acknowledged before me on _____, 2021 by Michael Hair, Jr. as Manager of Glass Creek, LLC, a California limited liability company.

Signature of notary public
My commission expires: _____

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EXHIBIT A

Description and Depiction of the Project

EXHIBIT A

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EXHIBIT B

Legal Description of External Boundaries of the Property

EXHIBIT B

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EXHIBIT C

Construction Drawings

EXHIBIT C

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EXHIBIT D

Limits of Disturbance

EXHIBIT D

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