

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

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

FLOOD HAZARD PROTECTION EASEMENT

THIS FLOOD HAZARD PROTECTION EASEMENT (this “Agreement” or the “Easement”), made and entered into this ____ day of _____, 20____, (the “Effective Date”), is hereby made by and between _____ (hereinafter, the “Grantor” or the “Grantors”) and THE CITY OF GARDEN CITY, an Idaho municipal corporation, (hereinafter, the “Grantee”).

RECITALS

WHEREAS, Grantor owns certain real property whose street address is _____, Garden City, Ada County, Idaho, 837____ more particularly described on **Exhibit A**, attached hereto and made a part hereof (“**Flood Hazard Protection Easement Parcel**” or “**Easement Parcel**”), which Flood Hazard Protection Easement (the “**Easement Area**”) is depicted on **Exhibit B**, attached hereto and made a part hereof, and which Easement Area is legally described on **Exhibit C**, attached hereto and made part hereof.

WHEREAS, Grantee seeks a permanent easement across, under and through the Easement Parcel, for the purpose of: preserving and protecting existing floodplain by restricting the use of the Easement Area; and the right of construction of flood hazard mitigation structures or features, ingress and egress on, over, across, under and through such Flood Hazard Protection Easement Parcel, for the purpose of inspection of the Flood Hazard Protection Easement.

In consideration of the mutual promises and obligations contained herein, Grantor and Grantee hereby covenant and agree as follows:

1. Grant of Easement.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, Grantors hereby grants unto Grantee, its successors and assigns, a perpetual, non-exclusive, permanent easement across, under and through the Flood Hazard Protection Easement Parcel for the purpose of: providing flood hazard mitigation structures or features, preserving and

protecting existing floodplain by restricting the use of the Easement; and the right of ingress and egress on, over, across, under and through such Easement Parcel, for the purpose of inspection of the Easement Area.

- a. The Easement granted by the Grantor to the Grantee consists of a perpetual easement, with the right, privilege, and authority to:
 - (1) Construct, reconstruct, relocate, extend, repair, replace, maintain, operate, inspect, patrol, and, at its pleasure, abandon or remove (aboveground/underground) flood protection infrastructure (collectively, the “**Facilities**”), which the Grantee shall require now and from time to time, for flood protection, by any means, whether now existing or hereafter devised, for public or private use, in, upon, over, under, across and below the Easement Area, and to renew, replace, add to, and otherwise change the Facilities and each and every part thereof and the location thereof within the Easement Area, and utilize the Facilities within the Easement Area for the purpose of providing flood protection.
 - (2) From time to time, without further payment therefor, the Grantee may clear and keep cleared, by physical, chemical, or other means, the Easement Area of any and all trees, vegetation, roots, aboveground or belowground structures, improvements, or other obstructions and trim and/or remove other trees, roots and vegetation adjacent to the Easement Area that, in the opinion of Grantee, may interfere with the construction, operation, and maintenance of the Facilities. The first clearing may be for less than the full width and may be widened from time to time to the full width.
 - (3) Excavate or change the grade of the Grantor's Land as is reasonable, necessary, and proper for any and all purposes described in this Section 1.
 - (4) Pass and repass along the Easement Area to and from the adjoining lands and pass and repass over, across, and upon the Grantor's Land to and from the Easement Area, and construct, reconstruct, relocate, use, and maintain such facilities, if any, thereon, as is reasonable and necessary in order to exercise to the fullest extent the Easement.

2. Grant Reservation.

Grantors hereby expressly reserves and shall have the right to use and enjoy

the Easement Parcel for itself, its successors, assigns, and permittees for any purpose, and to go on, over, across, under and through and to use the Easement Parcel in a manner consistent with the existing nature of the Easement Parcel so long as such use by Grantors does not interfere with or obstruct the use of the Easement Parcel by Grantee as provided herein. By way of example, and not limitation, Grantors shall have the right to use the Easement Parcel subject to the following terms and conditions:

- a. The purpose of this Easement is to restrict, in perpetuity, the use of the Easement Area as described below to preserve its function as a floodplain. It is the intent of the parties that this Easement shall constitute a servitude upon the land and shall run with the land in perpetuity, and shall bind the Grantor, its personal representatives, heirs, successors, assigns, lessees, and any other person claiming under them.
- b. The Grantor shall be allowed to maintain conditions in the Floodplain Easement Area as such existed prior to the execution of this Easement and Agreement subject to the conditions of this Easement. The Grantors and Grantee acknowledge that attached hereto as **Exhibit D**, and incorporated herein, is the City of Garden City approved landscaping plan, which accurately reflects the conditions in the Easement Area.
- c. Thereafter, unless the City expressly grants written authorization, the following activities are prohibited:
 - (1) Soil disturbance by filling, grading, stripping of topsoil, plowing, cultivating, or other practices, except in connection with stream restoration, maintenance or management under an approved plan; step pool conveyance stormwater management systems under an approved plan; or non-structural stormwater management practices under an approved plan;
 - (2) Altering of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, cutting, or otherwise destroying the vegetative cover (including trees), except in connection with stream restoration, maintenance or management under an approved plan; step pool conveyance stormwater management systems under an approved plan; or non-structural stormwater management practices under an approved plan;
 - (3) Storing or dumping of any material, including but not limited to yard waste, appliances, automobiles, garbage, trash, chemicals,

pesticides, and construction debris;

- (4) Tampering with stormwater management devices, hindering or diverting the flow of water, or in any other way impeding the use or effectiveness of the above-described area as a floodplain; and
- (5) Building or placing buildings or structures, including fences, on, under, or over the Floodplain Easement Area.

3. Restoration.

Grantee shall not be responsible for repairing, replacing or restoring anything placed within the Easement Area.

4. Indemnity.

The Grantor hereby covenants to warrant specially the Easement herein granted and to indemnify and hold the Grantee harmless from any loss suffered as a result of any sale of the subject property (judicial or otherwise) that affects the validity or enforceability of this Easement. Grantor further covenants to provide such further assurances and to execute, acknowledge and deliver to or for the City such further instruments and take such further actions as may be reasonably required to carry out and effectuate the intent and purpose of this Easement, or to confirm or perfect any rights created hereunder. This indemnity shall continue so long as this Agreement is in effect.

5. Duration.

The Easement herein agreed to, created, and granted shall be perpetual, and may not be terminated without the express consent of Grantors and Grantee.

6. Notice.

Each Party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**") in writing and addressed to the other Party at its address set out below (or to any other address that the receiving Party may designate from time to time). Except as otherwise provided in this Agreement, a Notice is effective only: (a) upon receipt by the receiving party and (b) if the party giving the Notice has complied with the requirements of this Section.

To Grantor:

To Grantee:

City of Garden City
Attn: Development Services
Department
6015 Glenwood Street
Garden City, ID 83714-1347
208-472-2900
planning@gardencityidaho.org

7. Amendment.

This Agreement may not be modified, amended, or terminated except in a writing signed by each party hereto.

8. Severability.

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.

9. Applicable Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho.

10. Successors.

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.

11. Recitals.

The recitals set forth above are hereby incorporated by this reference.

12. Enforcement.

In the event of a breach of any term, covenant, restriction or condition of this Agreement by a party, the other party shall have, in addition to the right to collect damages, the right to enjoin such breach or threatened breach in a court of

competent jurisdiction.

13. Attorney Fees.

In the event of any action between Grantors or Grantee for a breach of or to enforce any provision or right herein, the nonprevailing 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.

14. Headings.

The headings in this Agreement are intended for convenience only and shall not be used to vary or interpret the intent of the text.

15. Legal Counsel.

This is a legally binding Agreement, and the parties each represent that they have had the opportunity to consult legal counsel regarding the terms and conditions of this Agreement.

16. Term of Agreement.

The term of this Agreement shall be perpetual from the date the Agreement is approved by the Garden City Council and Mayor. The parties acknowledge that this Agreement shall not take effect until approved by Garden City Council.

17. Recording.

Grantee shall, at Grantee's expense, record this Agreement in the records of Ada County, Idaho, and shall provide Grantors with a conformed copy of the recorded instrument. Such recording shall take place within five (5) business days of the approval of this Agreement by the Garden City Council and Mayor, and Grantee shall retain the executed original of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

[signatures follow on next page]

GRANTOR:

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 20____, before me, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the individual who executed the within instrument and acknowledged to me that he executed the same.

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

Notary Public for Idaho
Residing at _____
My commission expires: _____

GRANTEE:

John G. Evans, Mayor

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 20____, before me, a Notary Public in and for said State, personally appeared **John Evans**, known or identified to me to be the individual who executed the within instrument and acknowledged to me that he executed the same.

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

Notary Public for Idaho
Residing at _____
My commission expires: _____