

CITY OF GARDEN CITY
6015 GLENWOOD STREET
GARDEN CITY, IDAHO 83714

RESTRICTED BUILD AGREEMENT

THE CITY OF GARDEN CITY (hereinafter the “**City**”), and jointly _____ (hereinafter the “**Developer**”) and _____ (hereinafter the “**Landowner**”), who may each individually be referred to herein as a “**Party**” and collectively as the “**Parties**,” as appropriate under the circumstances, enter into this Agreement effective the ___ day of _____ 2018, respecting the development of _____ (hereinafter the “**Project**”), affecting systems, equipment, and/or property within the City of Garden City. This Restricted Build Agreement (hereinafter the “**Agreement**”) provides for construction of subdivision improvements to support the development in accordance with the Development Code of the City of Garden City.

I, _____, execute this Agreement as the Developer with responsibility for the proper development of the Project in accordance with provisions of the law and the specific terms and conditions made applicable to the Project in the course of project review by the City of Garden City, as applicable. It is understood that the person(s) who execute this Agreement on behalf of the Developer does so in the capacity of Developer, and that they represent that they have full legal authority to do so. The parties to this Agreement shall accept notices at the below respective addresses and telephone numbers:

I, _____, execute this Agreement as the Landowner with responsibility for the proper development of the Project in accordance with provisions of the law and the specific terms and conditions made applicable to the Project in the course of project review by the City of Garden City, as applicable. It is understood that the person(s) who execute this Agreement on behalf of the Landowner does so in the capacity of Landowner, and that they represent that they have full legal authority to do so. The parties to this Agreement shall accept notices at the following respective addresses and telephone numbers:

DEVELOPER

CITY

Jenah Thornborrow,
Development Services Director
City of Garden City
6015 Glenwood
Garden City, Idaho 83714
(208) 472-2921

LANDOWNER

WHEREAS, the City Council for the City reviewed the Restricted Build Agreement process at a Council Meeting on May 29, 2018; and

WHEREAS, if a Developer and/or Landowner desire to record a new project plat while the subdivision is being constructed in the City without bonding, no building construction of the Project shall be allowed until this Agreement has been signed; and

WHEREAS, the Project is described in **Exhibit A** attached hereto and incorporated herein; and

WHEREAS, the real property which is the subject of this Agreement (hereinafter the "**Property**") is located in the City of Garden City and is described in **Exhibit B** attached hereto and incorporated herein (legal description of external boundaries of lands subject to this agreement); and

WHEREAS, the Landowner agrees not to transfer title to the real property which is described in Exhibit B until after the agreement has been recorded; and

WHEREAS, this Agreement encumbers the real property which is described in Exhibit B and creates a restrictive covenant thereon, which runs with the land and binds any successors; and

WHEREAS, Title 8, Subdivisions, of the City of Garden City Code requires certain common improvements and public infrastructure to be provided by the Developer and/or Landowner prior to issuance of a building permit within a development project or acceptance of improvements for maintenance; and

WHEREAS, subdivisions and their inclusive lots must be provided with survey monuments, street surfacing, curbs and gutters, drainage systems, sidewalks, street name signs, street lighting, public water supply, fire hydrants and sanitary sewer system, among others; and

WHEREAS, no building permits will be issued until the plat has been recorded and all improvements necessary for public health and safety are constructed and substantially complete. Said requirement shall not prohibit construction provided that the Project is not intended for occupancy before all subdivision improvements are substantially complete and adequate life safety measures are addressed; and

WHEREAS, an approved Restricted Build Agreement has the following three general steps: (1) signing of the Agreement by the Parties, and recording of the Agreement; (2) signing and recording of the final plat; and (3) releasing the Agreement wholly or in part when appropriate by recording a release(s) when all improvements required have been constructed; and

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

The Developer and/or Landowner seeks the City's permission to enter into an Agreement to construct and install the improvements listed in the approved Project in accordance with all terms, covenants and conditions of this Agreement and the Developer and/or Landowner's approved construction plans and specifications, which are incorporated herein by reference. Evidence of any required surety, as allowed by Garden City Code, at the time of execution of this Agreement, shall be attached hereto and be labeled **Exhibit C**.

ARTICLE I

IMPROVEMENT CONSTRUCTION STANDARDS AND PROCEDURES

1.01 OBLIGATIONS REGARDING FINAL PLAT

City, in exchange for Developer and/or Landowner's agreement not to build structures within the above-named Project until requirements are met, will sign the final plat of the above-mentioned subdivision on the basis that the subdivision criteria have been met, provided:

- A. The final plat has been approved by Garden City Council;
- B. Construction plans for the subdivision have been reviewed and approved by the City;
- C. Easement agreements have been reviewed and accepted by the City;
- D. All other applicable agreements have been submitted, and if applicable, recorded;
- E. The Developer and/or Landowner recorded the Agreement, and provided a recorded copy of the Agreement to City;
- F. A note is placed on the face of the final plat referencing the Agreement by name and Instrument Number.

1.02 DEVELOPER AND/OR LANDOWNER OBLIGATIONS REGARDING PERMITS

Developer and/or Landowner agrees that no building permits will be applied for and the City will not issue any such permits in the Project until such time as the above-mentioned conditions have been met.

1.03 DEVELOPER AND/OR LANDOWNER OBLIGATIONS REGARDING RESTRICTIONS

Developer and/or Landowner agree to the following restrictions on building permits:

- A. The Agreement will be recorded in Ada County and will remain as a building restriction on all the land described in **Exhibit B** until this agreement is released by a subsequent recording authorized and executed by the City. Said recording may name all lots or any combination of lots or lot;
- B. No building permits will be issued until the Project infrastructure construction completion certifications, applicable testing results and field survey verification of sanitary sewer manhole invert elevations are received and approved by the City;
- C. Building permit(s) will not be issued until certain improvements are completed and accepted by the City as noted herein in Section 1.04;
- D. Only non-combustible work (utilities, footings, and foundations) will be allowed until after fire approved roads and hydrants have been installed and accepted by the City, or otherwise approved by the North Ada County Fire & Rescue District;
- E. No Certificates of Occupancy will be issued until the Project is complete in its entirety; or a surety is in place for common area landscape, drainage, other common area improvements, and all other components of the Project is complete.

1.04 PARTIES AGREE THAT THE AGREEMENT HAS TIERS

The Parties agree on the following tiers that are to be sequentially completed and procedure to be followed:

- A. The Parties are entering into the following "Tiered" Agreement:
 - 1. Tier 1: Infrastructure Construction Only (no other construction allowed)

Tier 1 construction will not be allowed to begin until all associated fees are paid.

Tier 1 shall be considered complete when the following occurs:

- (a) Water and sewer for the subdivision has been inspected and approved by the City;
 - (b) All necessary water and sewer system quality control tests, reports and field survey verification of sanitary sewer manhole invert elevations are provided to and approved by the City;
 - (c) Drainage (or temporary drainage) is installed, inspected, and approved by the City;
 - (d) Developer and/or Landowner submit a copy of recorded plat (with instrument number); and
 - (e) Ada County approved addresses are submitted to City.
2. Tier 2: Limited Construction Building Permits (permits may be issued by the City for only non-combustible work - footings and foundations)

Tier 2 construction will not be allowed to begin until all associated building permit fees are paid.

Tier 2 shall be considered complete when the following occurs:

- (a) All fire access roads, fire hydrants, and joint trench utilities are installed and approved by the City;
 - (b) All necessary road and fire hydrant quality control tests and reports are provided to and approved by the City and the North Ada County Fire & Rescue District; and
 - (c) Record construction plans for infrastructure are provided to and have been approved by the City.
3. Tier 3: Full Building Permits (building permits may be submitted by Developer and/or Landowner to City for the entire structure and lot)

Tier 3 construction will not be allowed to begin until all associated building permit fees are paid. Building permits may be issued for any individual lot or all lots within the Project.

Tier 3 shall be considered complete when the following occurs:

- (a) All construction authorized by the building permit has been completed and approved by the City;
- (b) All required landscaping of individual lots and any common areas has been completed and approved by the City;
- (c) Certificates of Occupancy are issued by the City (certificates will not occur until the work authorized by the building permit is complete in its entirety); and
- (d) Any sureties covering items within the Project are released.

B. Release of the Agreement and Notification of Subdivision Completion issued:

- 1. When all requirements of Tiers 1 and 2 are completed, and any final access roads and drainage improvements are completed and accepted for the entire project, the City shall fully release the Agreement and a Notification of Project Completion shall be issued. Said Project Completion notice will not cover or include the completion of building permits or any required landscaping. Should landscaping not be completed, an additional surety will be required.

1.05 RECORDING OF FINAL PLAT

Developer and/or Landowner shall be solely responsible for all platting of the property.

1.06 TERMS

The term of this Agreement shall commence as of the date hereof, and shall continue in perpetuity until it is released.

1.07 TERMINATION

This Agreement may be terminated upon mutual agreement of the parties upon ninety ("90") days written notice. The City has the right to terminate this Agreement upon written notice if the Developer and/or Landowner are in Default under Section 2.12 of this Agreement.

1.08 GUARANTEE

The Developer and/or Landowner shall guarantee, for the sole benefit of the

City that the Developer and/or Landowner will perform all of its obligations not yet completed under this Agreement.

1.09 PREREQUISITES TO CONSTRUCTION

The Developer and/or Landowner shall not obtain permits for the construction of improvements or commence the construction of improvements until approval by all other agencies as required to construct the required improvements have been obtained and this Agreement has been completed and signed by the Developer, the Landowner, and the City, and all Engineering Inspection Fees have been paid as required by City ordinance or resolution.

1.10 ENGINEER

- A. The Developer and/or Landowner shall retain an Engineer of Record, licensed as a professional engineer under the laws of the State of Idaho, to design and administer the construction of the improvements, including preparing plans and specifications, inspecting and controlling the quality of work and preparing the record construction data. The Engineer shall perform the work described herein in accordance with the City's required procedures for the Engineer of Record.
- B. The Developer and/or Landowner shall inform the City of the name and mailing address of the Engineer of Record it has retained to perform the duties described in Subsection A of this section. Developer and/or Landowner agrees that notice to the Developer and/or Landowner and engineer at the addresses so specified regarding the performance of such duties shall constitute notice to the Developer and/or Landowner. The Developer and/or Landowner shall promptly inform the City of any change in the information required under this subsection.

1.11 PLANS AND SPECIFICATIONS

- A. The Developer and/or Landowner shall submit to the City, in such form as the City may specify, all plans and specifications pertaining to the construction of the improvements.
- B. If the City requires soil tests, traffic studies, or other tests and studies pertaining to the design of improvements, the Developer and/or Landowner shall submit reports of the test results with the plans and specifications.
- C. The City may approve the plans and specifications as submitted, or indicate to the Developer and/or Landowner deficiencies to be corrected to secure approval, within a reasonable time from the submission of all plans and specifications for the improvements. The City's approval of the plans and specifications is for general conformance with City

Standards. The City will endeavor to provide a complete and thorough review of all plans and specifications; however, ultimate design and function remains the responsibility of the Developer and/or Landowner. It shall be the responsibility of the Developer and/or Landowner to correct errors and omissions found prior to Final Acceptance as provided in Section 3.01 of this Agreement.

1.12 GENERAL STANDARDS OF WORKMANSHIP

- A. The Developer and/or Landowner shall construct all improvements in accordance with plans and specifications approved by the City, and with the terms, covenants, and conditions of this Agreement, including installation of landscaping. The Developer and/or Landowner shall not incorporate any material or equipment into an improvement unless the City has approved its use. Unless the City specifically agrees otherwise in writing, all materials, supplies, and equipment incorporated into an improvement shall be new.
- B. If, in the course of construction, conditions appear, which, in the exercise of reasonable engineering judgment, require a modification of, or substitution for, approved materials, equipment, plans, specifications or contracts to meet an acceptable standard of performance, the Developer and/or Landowner shall make the modification or substitution. The City must approve all such substitutions prior to their installation if acceptable to the City.
- C. The Developer and/or Landowner shall construct all facilities in the subdivision not otherwise subject to this Agreement in accordance with applicable statutes, ordinances, and specifications.

1.13 WORK IN RIGHTS-OF-WAY

The Developer and/or Landowner shall comply with all ordinances and secure all necessary permits and authorizations pertaining to work in public rights-of-way. The Developer and/or Landowner shall coordinate and supervise the installation and construction of all utility improvements, including those not otherwise covered by this Agreement, in a manner that will prevent delays in City construction or other damage to the City and that will permit the City to properly schedule work that it will perform. The Contractor's offsite work schedule and efforts shall be to expedite the work, to minimize the inconvenience towards the public.

1.14 SURVEYOR

A person licensed as a professional land surveyor under the laws of the State of Idaho shall make all land surveys required for the completion of

improvements under this Agreement.

1.15 PROGRESS PAYMENTS

The Developer and/or Landowner shall hold the City harmless against any claims made by Developer or Landowner's contractors for nonpayment.

1.16 STOP WORK ORDERS

- A. If the Developer and/or Landowner fail to comply with this Agreement, the City may stop all further construction of improvements by issuing a stop work order regarding the nonconforming construction and notifying the Developer and/or Landowner and its Engineer of the order.
- B. A stop work order shall remain in effect until the City approves:
 - 1. Arrangements made by the Developer and/or Landowner to remedy the nonconformity; and
 - 2. Assurances by the Developer and/or Landowner that future nonconformities will not occur.
- C. The issuance of a stop work order under this section is solely for the benefit of the City. The City does not undertake to supervise the work for the benefit of the Developer and/or Landowner or any other person. No suspension of work under this section shall be grounds for any action or claim against the City or for an extension of time to perform the work.
- D. The Developer and/or Landowner shall include in all contracts for work to be performed, or materials to be used under this Agreement, the following provision:

The City of Garden City, pursuant to a Restricted Build Agreement on file with the City Clerk and incorporated by reference herein, has the authority to inspect all work or materials under this contract and to stop work in the event that the work performed under this Agreement fails to comply with any provision of the Restricted Build Agreement. In the event that the City issues a stop work order, the contractor shall immediately cease all work and await further instructions from the Developer and/or Landowner and City. Site safety is the Developer and/or Landowner's responsibility.

1.17 ACCESS

The City shall have access to all parts of the Project necessary or convenient for monitoring the Developer and/or Landowner's performance, inspecting, surveying, testing, or performing any other work.

1.18 MAINTENANCE

- A. The Developer and/or Landowner shall repair or pay the cost of repairing damage to any improvement that occurs prior to completion of the terms of this Agreement, except for damage caused solely by the City, its agents, employees, or contractors. The Developer and/or Landowner shall give reasonable notice to the City before undertaking the repair of any damaged improvement.

1.19 OPERATION OF IMPROVEMENTS PRIOR TO FINAL ACCEPTANCE

- A. Before completion of the terms of this Agreement, the City may enter upon, inspect, control, and operate any improvement if the City determines that such action is necessary to protect the public's health, safety, and welfare.
- B. The action described in subsection A of this section shall not affect in any way the Developer and/or Landowner's guarantee under this Agreement.
- C. The Developer and/or Landowner or his agents may not connect to or operate any City utilities without written consent from the City. No structure shall be occupied, nor shall any land use be established which requires a building or construction permit, until the improvements required by this Agreement or by applicable provisions of law have been accepted by the City or other responsible public agency or have been completed as required by this Agreement.

ARTICLE II

GENERAL PROVISIONS

2.01 APPLICATION OF ARTICLE

Unless this Agreement expressly provides otherwise, all provisions of this Article applies to every part of this Agreement.

2.02 PERMITS, LAWS, AND FEES

The Developer and/or Landowner shall acquire and maintain in good standing all permits, licenses, platting approvals, and other requirements necessary to its performance under this Agreement. All actions taken by the Developer and/or Landowner under this Agreement shall comply with all applicable statutes, ordinances, rules, and regulations. The Developer and/or Landowner shall pay all fees pertaining to its performance under this Agreement in accordance with this Agreement or with laws applicable to actions contemplated. Applicable fees shall be required by Garden City Municipal Code and/or resolutions adopted by the City Council implementing Code requirements.

2.03 RELATIONSHIP OF PARTIES

Neither by entering into this Agreement, nor by doing any act hereunder, may the Developer or Landowner, or any contractor or subcontractor of the Developer or Landowner, be deemed an agent, employee, or partner of the City, nor otherwise associated with the City other than, in the case of Developer or Landowner, as an independent contractor. The Developer and Landowner, and its contractors and subcontractors shall not represent themselves to be agents, employees or partners of the City, or otherwise associated with the City other than, in the case of the Developer or Landowner, as an independent contractor. The Developer and/or Landowner shall notify all its contractors and subcontractors of the provision of this section.

2.04 ENGINEER'S AND LAND SURVEYOR'S RELATION TO THE CITY

Notwithstanding any other agreement, an engineer and/or land surveyor retained by the Developer or Landowner to perform work under this Agreement shall not be deemed an agent, employee, partner, or contractor of the City, or otherwise associated with the City. The parties agree that the engineer and/or land surveyor retained by the Developer or Landowner to supervise the construction and inspection of the Project is doing so for the benefit of the Developer, Landowner, and City. Engineer's duties include responsible and in-charge, fair, honest, and competent inspection of the work undertaken pursuant to this Agreement in accordance with standards of practice in the engineering profession.

2.05 DEVELOPER AND/OR LANDOWNER'S RESPONSIBILITY

The Developer and/or Landowner shall be ultimately responsible for the faithful performance of all terms, covenants, and conditions of this Agreement, notwithstanding the Developer and Landowner's delegation to another of the actual performance of any terms, covenants or conditions hereof. The Developer and/or Landowner shall notify all contractors, subcontractors, or agents providing professional services of conditions and requirements of this Agreement.

2.06 DISCLAIMER OF WARRANTY

Notwithstanding this Agreement or any action taken by any person hereunder, neither the City nor any City officer, agent or employee warrants or represents the fitness, suitability or merchantability of a property, plan, design, material, workmanship or structure for any purpose.

2.07 NON-DISCRIMINATION

- A. In performing its obligations under this Agreement, the Developer and/or Landowner shall not discriminate against any person on the basis of disability, race, creed, color, national origin, sex, marital status, or age.
- B. In selling property or improvements in the subdivision, the Developer and/or Landowner shall not discriminate against any person on the basis of disability, race, creed, color, national origin, sex, marital status, or age.

2.08 COST OF DOCUMENTS

All plans, reports, drawings, or other documents that this Agreement requires to be provided to the City by the Developer and/or Landowner shall be furnished at the Developer and/or Landowner's expense.

2.09 CITY AND PUBLIC UTILITIES

- A. Any city and public utility service contemplated by this Agreement shall be provided only to areas where the service is allowed by applicable law. All utility service shall conform to the rules, regulations, and tariffs of the State of Idaho to the extent they may apply.
- B. If the State of Idaho or other agency having authority disallows any utility service to be provided by the City or any utility following execution of this Agreement, requirements of this Agreement relating to the disallowed service shall be deleted from the requirements of the Developer and/or

Landowner under this Agreement. The disallowance shall not be grounds for any claim, action, or demand against the City.

- C. The Developer and/or Landowner shall bear all costs associated with the installation of all utilities. These installation costs shall not be passed on to the City unless provided for otherwise within an appendix to this agreement.

2.10 TIME IS OF THE ESSENCE

Unless otherwise expressly provided herein, time is of the essence of each and every term, covenant, and condition of this Agreement.

2.11 ASSIGNMENTS

- A. Except insofar as Subsection B of this section specifically permits assignments, any assignment by the Developer and/or Landowner of its interest in any part of this Agreement or any delegation of duties under this Agreement shall be void and any attempt by the Developer and/or Landowner to assign any part of its interest or delegate any duty under this Agreement shall constitute a default entitling the City to invoke any remedy available to it under Section 2.12.
- B. This Agreement encumbers the real property which is described in Exhibit B and creates a restrictive covenant thereon, which runs with the land and binds any successors.
- C. The Developer and/or Landowner may assign its interest or delegate its duties under this Agreement:
 - 1. To the extent that applicable codes require that assignments of contract rights be allowed;
 - 2. To contractors and subcontractors, or to partnerships, limited liability companies or corporations in which the Developer and/or Landowner may have a substantial interest, subject to Section 1.09, provided that guaranties can be provided or maintained;
 - 3. As expressly permitted in writing by the City. The City will not unreasonably deny assignment if security of performance is provided.

2.12 DEFAULT – CITY’S REMEDIES

- A. The City may declare the Developer and/or Landowner to be in default:

1. If the Developer and/or Landowner is adjudged bankrupt, makes a general assignment for the benefit of creditors, suffers a receiver to be appointed on account of insolvency, takes advantage of any law for the benefit of insolvent debtors; or
 2. Except as provided in subsections 3 and 4 below, if the Developer and/or Landowner has failed in any measurable way to perform its obligations under this Agreement, except if delayed by an act or omission of the City, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials, sabotage or freight embargoes, provided the City gives the Developer and/or Landowner notice of the failure to perform and the Developer and/or Landowner fails to correct the failure within twenty-eight (28) days of receiving the notice; or if the failure requires more than twenty-eight (28) days to cure, the Developer and/or Landowner fails within twenty-eight (28) days of receiving the notice to commence and proceed with diligence to prosecute the cure. All such notices to the Developer and/or Landowner shall be in writing by certified mail, return receipt requested.
 3. If the Developer and/or Landowner fails to continue with sustained effort, and the City provides twenty-four (24) hours' notice of this default and the Developer and/or Landowner fails to correct the failure within that time period.
 4. If the actions of the Developer and/or Landowner have created a public hazard or conditions deemed an emergency by the City, the City may declare the Developer and/or Landowner in default without providing prior notice and opportunity to cure.
- B. Upon a declaration of default, and failure to cure under Section 2.12, the City may do any one or more of the following:
1. Perform any act required of the Developer and/or Landowner under this Agreement, including drawing surety and construction of all or any part of the improvements after giving formal notice in writing to the Developer and/or Landowner. The Developer and/or Landowner shall be liable to the City for any costs thus incurred. The City may deduct any costs incurred from the surety, if any, or any payments then or thereafter due the Developer and/or Landowner from the City whether under this Agreement or otherwise. No advance

notice shall be required by the City to the Developer and/or Landowner to corrective actions to remedy any items that fall under Section 2.12.A.4.

2. Exercise its rights under any provision of this Agreement.
3. Pursue any appropriate judicial remedy including, but not limited to, an action for specific performance, injunction, and civil penalties. City shall be entitled to its attorney's fees in any enforcement action necessary to enforce the terms of this Agreement.

2.13 NON-WAIVER

The failure of the City at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of the City thereafter to enforce each and every provision hereof.

2.14 INTERPRETATION

- A. Each document incorporated by reference herein is an essential part of this Agreement, and any requirement, duty or obligation stated in one document is as binding as if stated in all. All documents shall be construed to operate in a complementary manner and to provide for a complete project. Unless stated otherwise in express terms, the duties to complete the Project in compliance with the approved plans is the sole responsibility of the Developer and/or Landowner.
- B. If the terms of any of the documents and amendments thereto comprising this Agreement conflict, the conflict shall be resolved by giving the conflicting documents and amendments thereto the following order of preference:
 1. Documents, appendixes, or sections titled "SPECIAL PROVISIONS".
 2. Article I of this Agreement, titled "IMPROVEMENT CONSTRUCTION STANDARDS AND PROCEDURES" and Article III of this Agreement titled "FINAL ACCEPTANCE OF IMPROVEMENTS".
 3. Article II of this Agreement titled "GENERAL PROVISIONS".
 4. Any other documents incorporated by reference herein.

2.15 AMENDMENT

The parties may amend this Agreement only by written agreement, which shall be attached as an appendix hereto and recorded.

2.16 JURISDICTION – CHOICE OF LAW

Any civil action arising from this Agreement shall be brought in the District Court of the Fourth Judicial District; venue shall be in Ada County. The law of the State of Idaho shall govern the rights and duties of the parties under this Agreement.

2.17 SEVERABILITY

Any provision of this Agreement that may be declared invalid or otherwise unenforceable by a Court of competent jurisdiction shall not affect the validity or enforceability of any other part of this Agreement, so long as the remainder of the Agreement is reasonably capable of completion.

2.18 INTEGRATION

This instrument, including Exhibits and Appendixes and any writings 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.

2.19 DEFINITIONS

Unless this Agreement expressly provides otherwise, the following definitions shall apply herein:

- A. **“Improvements”** mean all work, which the Developer and/or Landowner are required to perform by this Agreement.
- B. **“City”**, for the purpose of administering this Agreement, means the City of Garden City, or its chief executive or his/her administrative designee.
- C. **“Final Acceptance”** by the City means that the City is satisfied that all improvements required by this Agreement and Titles 7 and 8 of the Garden City Municipal Code, or as a result of the procedures required thereby, have been constructed in a satisfactory manner to comply with the specifications.

2.20 APPROVALS AND CONSENTS

Wherever in the Agreement consents or approvals of either party are required,

they shall not be unreasonably withheld. Nothing in this provision shall compromise the general police power authority in the City in matters governmental in nature.

2.21 ATTORNEY FEES – MEET AND CONFER

Should either party need to resort to Court proceedings to interpret or enforce provisions of this Agreement, the prevailing party in any such action shall be entitled to recovery of its reasonable attorney fees. No legal action shall begin, nor shall any attorney fees be recoverable, unless the parties have first met and conferred regarding the contested issues. Any party, which refuses to meet and confer in good faith, shall not be entitled to recovery of its attorney fees.

ARTICLE III

FINAL ACCEPTANCE OF IMPROVEMENTS

3.01 PREREQUISITES TO ACCEPTANCE

The City shall not accept the improvements until all the requirements of Section 3.02 through 3.03 have been met.

3.02 CERTIFICATE OF COMPLIANCE

The Developer and/or Landowner shall furnish the City with a Certificate of Compliance for the work performed under this Agreement. Developer and/or Landowner shall also certify that all utility installation has been completed according to plan.

3.03 INSPECTION

- A. Upon receiving notice that the Developer and/or Landowner have completed the improvements, the City shall schedule inspections of the improvements. The City may inspect all improvements and any other work in dedicated easements or rights-of-way.
- B. The City may inspect any phase of work on an improvement of which it is to assume control.
- C. The City shall inform the Developer and/or Landowner in writing of any deficiencies in the work found in the course of the inspection.
- D. The Developer and/or Landowner shall, at its own expense, correct all deficiencies found by inspections under Subsection A or B of this section. Upon receiving notice that the deficiencies have been corrected, the City, or appropriate privately owned utility shall re-inspect the improvements.
- E. The City or appropriate privately owned utility may continue to re-inspect an improvement until the Developer and/or Landowner has corrected all deficiencies in the improvement.
- F. After final inspection has revealed that all improvements and other work in dedicated easements and rights-of-way meet City standards and the Developer and/or Landowner has furnished the record construction drawings and project certification required by Section 3.02, and upon written request by the Developer and/or Landowner, the City Engineer shall submit to the City a recommendation for Final Acceptance of the improvements.

IN WITNESS WHEREOF, _____ has executed this Agreement effective as of the Effective Date.

DEVELOPER

STATE OF _____)
County of _____) ss.

On this ___ day of _____, 20___, before me a Notary Public, personally appeared _____, known or identified to me (or proved to me on the oath of _____).

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 _____
Residing at _____
My Commission Expires _____

IN WITNESS WHEREOF, _____ has executed this Agreement effective as of the Effective Date.

LANDOWNER

STATE OF _____)
County of _____) ss.

On this ___ day of _____, 20___, before me a Notary Public, personally appeared _____, known or identified to me (or proved to me on the oath of _____).

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 _____
Residing at _____
My Commission Expires _____

EXHIBIT A

Description of the Project

EXHIBIT B

Legal Description of External Boundaries of Lands

EXHIBIT C

Any Required Surety