

After Recording  
Return to:

T. Hethe Clark  
Spink Butler, LLP  
251 E. Front Street, Suite 200  
Boise, Idaho 83701

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**DEVELOPMENT AGREEMENT**  
**[CAR16-00037;SUB16-00067]**

This Development Agreement (this “**Agreement**”) is entered into effective this \_\_\_\_ day of \_\_\_\_\_ 2018, by and among the City of Boise City (“**City**”) and **[INSERT]** (the “**Developer**”). The City and the Developer are sometimes collectively referred to herein as the “**Parties**” and individually as a “**Party**.”

WITNESSETH:

WHEREAS, the Developer is the owner of record of that certain real property legally described on **Exhibit A**, attached hereto and made a part hereof (the “**Property**”);

WHEREAS, the Developer is seeking approval of applications CAR16-00037 and SUB16-00067;

WHEREAS, the Property is currently zoned RUT (Ada County designation);

WHEREAS, the Developer proposed that the Property be developed pursuant to and in accordance with the City’s Comprehensive Plan and Zoning Ordinance in effect on the date of application, and in accordance with the terms and conditions of this Agreement and any amendments hereto;

WHEREAS, the City determined pursuant to Section 11-3-4 of the Boise City Code that the proposed annexation and rezone is appropriate under the conditions and restrictions imposed by this Agreement;

WHEREAS, the City has the authority pursuant to Section 11-3-4 of the Boise City Code and Section 67-6511A of Idaho Code to conditionally rezone the Property and to enter into this Agreement for the purpose of allowing, by agreement, the proposed development to proceed;

WHEREAS, the City’s Planning & Zoning Commission and City Council held public hearings as prescribed by law with respect to the development of the Property and this Agreement, including on June 5, 2017 and February 12, 2018 (before the Planning & Zoning Commission) and July 18, September 12, and December 5, 12, and 19, 2017 and **[INSERT]**;

WHEREAS, all public hearings pursuant to notice as required by law or other action required to be held or taken prior to the adoption and execution of this Agreement have been held and/or taken;

WHEREAS, the Developer desires to be assured that it may proceed with development of the Property in accordance with this Agreement;

WHEREAS, it is the intent and desire of the Parties that development of the Property proceed as provided herein, subject to the terms and conditions of this Agreement; and

WHEREAS, the Parties do enter into this Agreement with mutual consideration as reflected in the covenants, duties, and obligations herein set forth.

AGREEMENT:

**NOW THEREFORE**, in consideration of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Development Permitted by this Agreement. This Agreement shall vest the right to develop the Property, as described on Exhibit A, with respect to the following approved applications: CAR16-00037 and SUB16-00067 (the “**Approvals**”), as restricted by those certain conditions of approval identified on **Exhibit B** attached hereto and made a part hereof (the “**Conditions**”).

2. Rezoning. The City shall, following recordation of this Agreement, enact a valid and binding ordinance annexing and zoning the Property to R-1C/DA and R-1M/DA, as further shown on the Zoning Map attached hereto as **Exhibit C** and made a part hereof. Development shall proceed in accordance with that certain Phasing Map attached hereto as **Exhibit D** and made a part hereof, and as further described in the Conditions.

3. Recordation. The Developer shall record this Agreement, including all of the exhibits attached hereto, and submit proof of such recording to the City prior to the third reading of the zoning ordinance and formal adoption of CAR16-00037 by the City Council. Failure to comply with this section shall be deemed a default of this Agreement by the Developer. If for any reason after such recordation the City Council fails to adopt the Approvals by appropriate ordinance, the City shall execute and record an appropriate instrument of release of this Agreement.

4. Effective Date. In accordance with Idaho Code Section 67-6511A, this Agreement will be effective upon publication of the ordinance approving the rezone for the Property.

5. Development to be Consistent with the Approvals and this Agreement. Development of a portion of the Property substantially inconsistent with this Agreement, as determined by the City Planning Director, without formal modification of the Approvals or the Concept Plan pursuant to the requirements of the Boise City Code, and/or amendment of this Agreement, shall result in a default of this Agreement by the Developer in connection with such specific portion of the Property.

6. Default. In the event the Developer, its heirs, successors, assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, fails to faithfully comply with all of the terms and conditions included in this Agreement in connection with a portion of the Property, this Agreement may be modified or terminated by the Boise City Council upon compliance with the requirements of Boise City Code.

7. Remedies. This Agreement shall be enforceable in any court of competent jurisdiction by either the City or the Developer, or by any successor or successors in title or interest or by the assigns of the Parties. Enforcement may be sought by an appropriate action at law or in equity to secure the performance of the covenants, agreements, conditions, and obligations contained herein.

a. In the event of a material breach of this Agreement, the Parties agree that the City and the Developer shall have thirty (30) days after delivery of notice of said breach to correct the same prior to the non-breaching party’s seeking of any remedy provided for herein; provided, however, that in the case of any such default that cannot with diligence be cured within such thirty (30) day period, if the defaulting Party shall commence to cure the same within such thirty (30) day period and thereafter shall prosecute the curing of same with diligence and continuity, then the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity.

b. In the event the performance of any covenant to be performed hereunder by either the City or the Developer is delayed for causes which are beyond the reasonable control of the Party responsible for such performance, which shall include, without limitation, acts of civil disobedience, strikes or similar causes, the time for such performance shall be extended by the amount of time of such delay.

8. Notices: Any and all notices, demands, requests, and other communications required to be given hereunder by either of the Parties shall be in writing and be deemed properly served or delivered, if delivered by hand to the Party to whose attention it is directed, or when sent, two (2) days after deposit in the U.S. mail, postage prepaid, addressed as follows:

**To City:**

Boise City  
c/o Director, Planning & Development Department  
P.O. Box 500  
Boise, Idaho 83701-0500

**To the Developer:**

**[INSERT]**

or at such other address, or facsimile number, or to such other Party which any Party entitled to receive notice hereunder designates to the other in writing as provided above.

9. Attorneys' Fees. Should any litigation be commenced between the Parties concerning this Agreement, the prevailing Party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

10. Time is of the Essence. The Parties acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the Party so failing to perform.

11. Binding upon Successors. This Agreement shall be binding upon and inure to the benefit of the Parties' respective heirs, successors, assigns, and personal representatives, including the City's corporate authorities and their successors in office. This Agreement shall be binding on the owner of the Property, each subsequent owner and each other person acquiring an interest in the Property. Nothing herein shall in any way prevent sale or alienation of the Property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefitted and bound by the conditions and restrictions herein expressed.

12. Final Agreement; Modification. This Agreement sets forth all promises, inducements, agreements, conditions, and understandings between the Developer and the City relative to the subject matter hereof, and there are no promises, agreements, conditions, or understanding, either oral or written, express or implied, between the Developer and the City, other than as are stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by them or their successors in interest or their assigns, and pursuant, with respect to City, to a duly adopted ordinance or resolution of the City.

a. This Agreement shall not preclude the application of any law that is specifically mandated and required by changes in state or federal laws or regulations. In the event such law prevents or precludes compliance with one or more provisions of this Agreement, the City and the Developer shall meet and confer to determine how provisions of this Agreement would need to be modified or suspended in order to comply with the law and shall prepare and process the necessary amendment or amendments to this Agreement.

13. Invalid Provisions. If any provision of this Agreement is held not valid, such provision shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained herein, except that if any provision of this Agreement is held not valid which the Developer deems essential to its development of the Property, the Developer may, at its sole discretion, declare this entire Agreement null and void of no force and effect and thereby relieve all Parties from any obligations hereunder.

14. No Agency, Joint Venture or Partnership. The City and the Developer hereby agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and the Developer joint venturers or partners.

15. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

16. Choice of Law. This Agreement and its performance shall be construed in accordance with and governed by the laws of the State of Idaho, with venue for any action brought pursuant to this Agreement to be in the Fourth Judicial District, Ada County, State of Idaho.

[end of text]

IN WITNESS WHEREOF, the Parties, having been duly authorized, have hereunto caused this Agreement to be executed, on the day and year first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

**THE CITY:**

CITY OF BOISE CITY,  
an Idaho municipal corporation

ATTEST:

By: \_\_\_\_\_  
David H. Bieter, Mayor

By: \_\_\_\_\_  
\_\_\_\_\_, Ex-Officio City Clerk

**THE DEVELOPER:**

[INSERT]

By: \_\_\_\_\_  
[INSERT]

**EXHIBITS:**

- Exhibit A: Legal Description of the Property
- Exhibit B: Conditions of Approval
- Exhibit C: Zoning Map
- Exhibit D: Phasing Map

[notary signatures on following page]

STATE OF IDAHO        )  
                                  ) ss.  
County of Ada         )

On this \_\_\_\_ day of \_\_\_\_\_ 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared DAVID H. BIETER and \_\_\_\_\_, known or identified to me to be the MAYOR and EX-OFFICIO CITY CLERK of the CITY OF BOISE CITY, the municipal corporation that executed the instrument or the person who executed the instrument on behalf of said municipal corporation, and acknowledged to me that such municipal corporation 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: \_\_\_\_\_

STATE OF IDAHO        )  
                                  ) ss.  
County of Ada         )

On this \_\_\_\_ day of \_\_\_\_\_ 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared [INSERT], known or identified to me to be the PRESIDENT of [INSERT], the person who executed the instrument on behalf of said corporation, and acknowledged to me that corporation 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: \_\_\_\_\_

**EXHIBIT A**

Legal Description of the Property



**Sawtooth Land Surveying, LLC**

P: (208) 398-8104 F: (208) 398-8105  
2030 S. Washington Ave., Emmett, ID 83617

October 6, 2016

**EXHIBIT A**

Annexation Legal for E. Columbia Road

**BASIS OF BEARINGS** for this legal description is North 89°47'32" West, between the aluminum cap marking the E1/4 corner of Section 9, and the aluminum cap marking the W1/4 corner of Section 9, both in T. 2 N., R. 3 E., B.M., Ada County, Idaho.

A parcel of land being the SW1/4 of the NE1/4, and the SE1/4 of the NW1/4, and a portion of the SW1/4 of the NW1/4, of Section 9, T. 2 N., R. 3 E., B.M., Ada County, Idaho, more particularly described as follows;

**BEGINNING** at an aluminum cap marking the W1/4 corner of said Section 9;

Thence North 0°13'02" East, coincident with the westerly boundary of said SW1/4 of the NW1/4 of Section 9, a distance of 990.01 feet to a 5/8" rebar PLS 4998;

Thence South 89°46'36" East, 1320.41 feet to a 5/8" rebar PLS 4998 on the easterly boundary of said SW1/4 of the NW1/4 of Section 9;

Thence North 0°15'02" East, coincident with said easterly boundary of the SW1/4 of the NW1/4 of Section 9, a distance of 329.88 feet to a 5/8" rebar PLS 4998 marking the northwest corner of said SE1/4 of the NW1/4 of Section 9, (NW1/16 corner);

Thence South 89°46'17" East, coincident with the northerly boundary of said SE1/4 of the NW1/4 of Section 9, a distance of 1320.61 feet to a 5/8" rebar PLS 7316 marking the northeast corner of said SE1/4 of the NW1/4 of Section 9, (CN 1/16 corner);

Thence South 89°43'33" East, coincident with the northerly boundary of said SW1/4 of the NE1/4 of Section 9, a distance of 1317.75 feet to a 5/8" rebar PLS 4998 marking the northeast corner of said SW1/4 of the NE1/4 of Section 9, (NE1/16 corner);

Thence South 0°12'15" West, coincident with the easterly boundary of said SW1/4 of the NE1/4 of Section 9, a distance of 1317.52 feet to the southeast corner of said SW1/4 of the NE1/4 of Section 9, (CE1/16 corner);

Thence North 89°47'32" West, coincident with the southerly boundary of said SW1/4 of the NE1/4, and the SE1/4 of the NW1/4, and the SW1/4 of the NW1/4 of Section 9, a distance of 3959.25 feet to the **POINT OF BEGINNING**.

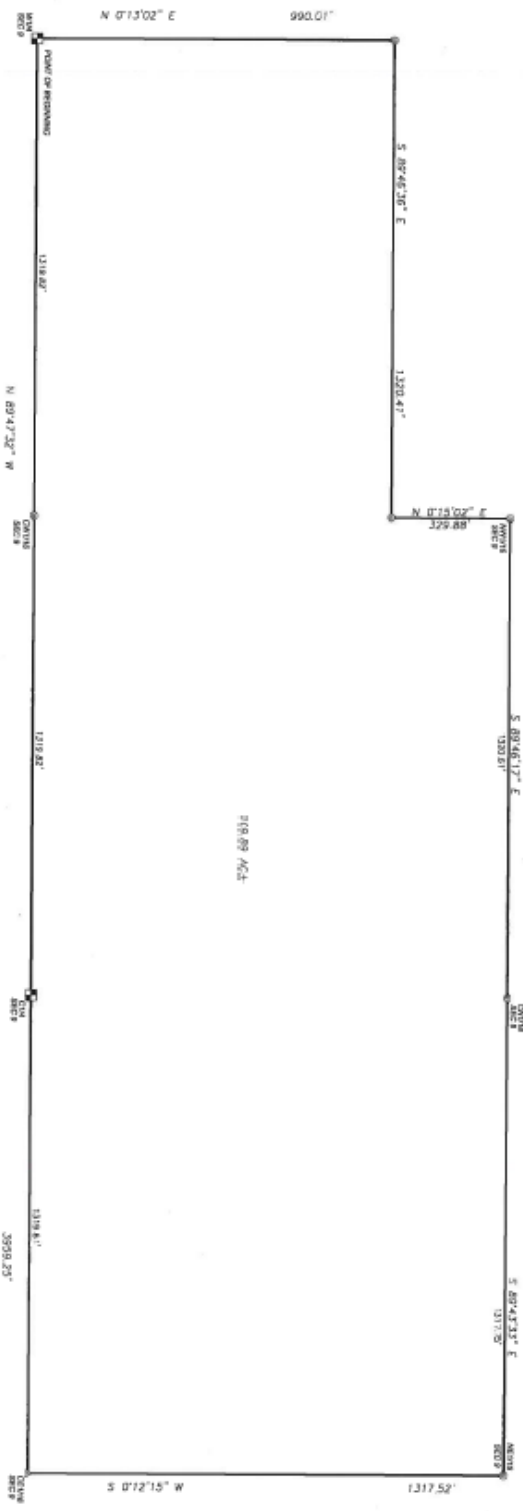
The above described parcel contains 109.89 acres more or less.

Carl Porter, PLS

End Description



EXHIBIT B  
ANNEXATION EXHIBIT  
T. 2 N., R. 3 E., B.M.,  
ADA COUNTY, IDAHO



PROJECT: <b>E. COLUMBIA ROAD</b>		OWNER/DEVELOPER: <b>CMG BOISE, IDAHO</b>		DATE: <b>10/5/2016</b>	
2030 S. WASHINGTON AVE. EMMETT, ID 83617 P: (208) 398-8104 F: (208) 398-8105				WWW.SAWTOOTHLS.COM	
DWG #	15134-EX	PROJECT#	15134	SHEET	1 OF X





## EXHIBIT B

### Conditions of Zoning Approval

#### Site Specific

1. Compliance with plans and specifications submitted to and on file in the Planning and Development Services Department dated received **November 29, 2017**, and revised preliminary plat on **September 12, 2017**, and the phasing plan submitted on **September 21, 2017**, except as expressly modified the following conditions:

#### Subdivision

2. No Final Plats will be processed by the City of Boise unless the following is satisfied:
  - a. No more than thirty (30) lots shall receive final plat approval until such time as a secondary roadway connection is provided from the project onto Columbia Road via S. Oregon Ridge Avenue (as depicted on Exhibit D to this Agreement). All construction traffic must use S. Oregon Ridge Avenue from the time such roadway is constructed.
  - b. No more than seventy (70) lots (as depicted on Exhibit D to this Agreement) shall receive final plat approval until such time as an additional fire apparatus access road is provided creating a secondary access road from Columbia Road.
  - c. The Applicant shall pay the cost of constructing a twenty foot (20') wide fire apparatus access road with  $\frac{3}{4}$ " road mix gravel, sufficient to support a 70,000-pound gross vehicle weight, and of a length similar to the illustration provided in the Applicant's November 27, 2017 letter.
  - d. The secondary access road identified in this Condition No. 2 shall be constructed no later than two (2) years after City approval of the final plat containing the seventieth (70<sup>th</sup>) lot; in the event of a failure to provide the secondary access road in accordance with the foregoing timeframe, the default and cure provisions of Sections 6 and 7 of this Agreement shall apply.
3. The final plat shall show a minimum 20-foot wide landscape buffer on all front loaded single-family lots that abut a collector roadway as required by Section 11- 09-03.7.A of the Development Code.
4. All streets within the subdivision shall be improved with a minimum 5-foot wide detached sidewalk separated from the curb with a minimum eight-foot wide landscape strip as proposed.
5. A minimum of three different housing types shall be provided within the subdivision as required by the East Columbia Interim Development Policies.
6. Indigo Ridge Avenue shall be extended south from Rush Valley Street to the southern boundary of the subdivision.
7. The intersection of Rush Valley Street and Oregon Ridge Avenue shall be improved with bulb outs.
8. Lot 1, Block 6 shall not be developed for a minimum of four years after the City Council approval date of the preliminary plat.
9. The front setback for lots where the sidewalk is located on the parcel shall be measured from the back of sidewalk and not the property line.
10. This subdivision is within the Wildland Urban Interface Zone B and compliance with Boise City Code 7-01-69 is required. The required fire safety plan shall be provided in accordance with

Section 4921. A note shall be placed on the plat stating: "This subdivision is located in Area "B" of the Wildland Urban Interface Code and the property development and construction of structure shall comply with the requirements of Boise City Code Section 7-01-69."

11. The Final Plat shall include delineations that describe the boundaries of the perpetual ingress/egress common driveway easements for all lots taking access from a common driveway.
  - a. Street address numbering shall be in accordance with B.C.C. 9-06-06.D. Evidence shall be provided showing the address numbers posted on the structures on all lots using a common driveway will be visible from the street.
  - b. A note on the face of the Final Plat shall state: "Vehicular access to (list all lots utilizing a common driveway by Lot and Block) shall be provided from a common driveway and not from the street".
  - c. A plat note shall set forth the legal description of the driveway(s) and conveys to those lot owners taking access from the driveway(s) and easement(s), the perpetual right of ingress and egress over the described driveway(s), and provides that such perpetual easement(s) shall run with the land.
  - d. A restrictive covenant or other similar deed restriction(s) acceptable to the Boise City Attorney shall be recorded at the time of recording the plat which provides for the perpetual requirement for the maintenance of the driveway(s) and cross easement, and that said restrictions shall run with the land, and that said easement and restriction(s) shall be reviewed and approved by the Boise City Attorney.
12. Buildings constructed within the subdivision shall comply with the setbacks of the zone at the time the building permit is issued. A note shall be placed on the face of the Final Plat stating, "*The development of this property shall be in compliance with the Boise City Development Code.*"
13. A note on the face of the Final Plat shall designate that any common lots shall be owned and maintained by the Rush Valley Subdivision Homeowner's Association. These lots cannot be developed for residential purposes in the future. The common lots shall be designated by lot and block.
14. Prior to submitting the Mylar of the Final Plat for the City Engineer's signature, all the conditions of approval must be satisfied. Approvals must be provided on agency letterhead.
15. After approval of the Final Plat by the Boise City Council and prior to submittal of the Mylar of the Final Plat, covenants, homeowners' association by-laws or other similar deed restrictions which provide for the use, control and maintenance of all common areas, private streets, shared access and shared parking, and which shall be consistent with the Fair Housing Act of 1968, as amended from time to time, shall be reviewed and approved by the Boise City Attorney. After recordation of the final plat and CC&R's, no building permit shall be accepted until a copy of the recorded CC&R's have been submitted to the Boise City Attorney.
16. Prior to the City Engineer's Certification of the Final Plat and prior to earth disturbing activities, an erosion and sediment control (ESC) permit must be obtained. An ESC plan conforming to the requirements B.C.C. Title 8-17, is to be submitted to the Director of Planning and Development Services for review and approval. No grading or earth disturbing activities may start until an approved ESC permit has been issued.
17. An individual who has attended the Boise City Responsible Person (RP) certification class, or has obtained Interim Certification for the RP shall be identified for this project. A permit will not issue until such time as the name and certification number of the RP has been provided to Boise City.

18. No Building Permit for the construction of any new structure shall be accepted until the Final Plat has been recorded pursuant to the requirements of the B.C.C. Section 11-09-04.1.
19. The developer shall make arrangements to comply with all requirements of the Boise City Fire Department and verify in one of the following ways:
  - a. A letter from the Boise City Fire Department stating that all conditions for water, access, and/or other requirements have been satisfied,
  - OR
  - b. A non-build agreement has been executed and recorded with a note on the face of the Final Plat identifying the instrument number.
20. Developer shall provide utility easements as required by the public utility providing service (B.C.C. 11-09-03.6).
21. A letter of acceptance for water service from the utility providing same is required.
22. The name, Rush Valley Subdivision, is reserved and shall not be changed unless there is a change in ownership, at which time, the new owner(s) shall submit their new name to the Ada County Engineer for review and reservation. Should a change in name occur, applicant shall submit, in writing, from the Ada County Engineer, the new name to the Department of Planning and Development Services and reapproval by the Council of the "revised" Final Plat shall be required. Developer and/or owner shall submit all items including fees, as required by the Planning and Development Services Department, prior to scheduling the "revised" Final Plat for hearing.
23. Correct street names as approved by the Ada County Street Name Committee shall be placed on the plat.
24. A letter from the appropriate school district is required stating, "The Developer has made arrangements to comply with all requirements of the School District."
25. Developer shall provide a letter from the United States Postal Service stating, "The Developer and/or Owner has received approval for location of mailboxes by the United States Postal Service."

Contact: Postmaster  
770 S. 13th Street  
Boise, ID 83708  
Phone # 433-4301
26. Prior to submitting the Final Plat for recording, the following endorsements or certifications must be executed: Signatures of owners or dedicators, Certificate of the Surveyor, Certificate of the Ada County Surveyor, Certificate of the Central District Health Department, Certificate of the Boise City Engineer, Certificate of the Boise City Clerk, signatures of the Commissioners of the Ada County Highway District and the Ada County Treasurer.
27. Developer shall comply with B.C.C. 11-03-04.4 which specifies the limitation on time for filing and obtaining certification. Certification by the Boise City Engineer shall be made within two years from date of approval of the Final Plat by the Boise City Council.
  - a. The developer may submit a request for a time extension, including the appropriate fee, to the Boise City Planning and Development Services Department for processing. Boise City Council may grant time extensions for a period not to exceed one year provided the request is filed, in writing, at least twenty working days prior to the expiration of the first two-year period, or expiration date established thereafter.

- b. If a time extension is granted, the Boise City Council reserves the right to modify and/or add condition(s) to the original preliminary or Final Plat to conform with adopted policies and/or ordinance changes.
- c. The Final Plat shall be recorded with the Ada County Recorder within one year from the date of the Boise City Engineer's signature. If the Final Plat is not recorded within the one-year time frame it shall be deemed null and void.

**Agency Comments**

- 28. The applicant shall comply with the requirements of ACHD as per their staff report dated **March 1, 2017**.
- 29. The applicant shall comply with the requirements of the Boise City Public Works Department (BCPW) in the memos from:
  - a. Sewer..... **December 1, 2016**
  - b. Pressure Irrigation..... **December 1, 2016**
  - c. Street Lights..... **December 1, 2016**
  - d. Grading & Drainage..... **December 1, 2016**

Contact BCPW at 208-608-7150 for specific comments or questions.

- 30. The applicant shall comply with all conditions of the Boise Fire Department from the memo dated **February 14, 2017**. Deviation from the conditions may be permitted with Fire Department approval.
- 31. The applicant shall comply with all conditions of the PDS Building Division from the memo dated **December 3, 2016**.
- 32. The applicant shall comply with any conditions of the Boise School District from the letter dated **December 14, 2016**.
- 33. The applicant shall comply with the requirements of the Central District Health Department memo dated **December 12, 2016**.

EXHIBIT C  
Zoning Map

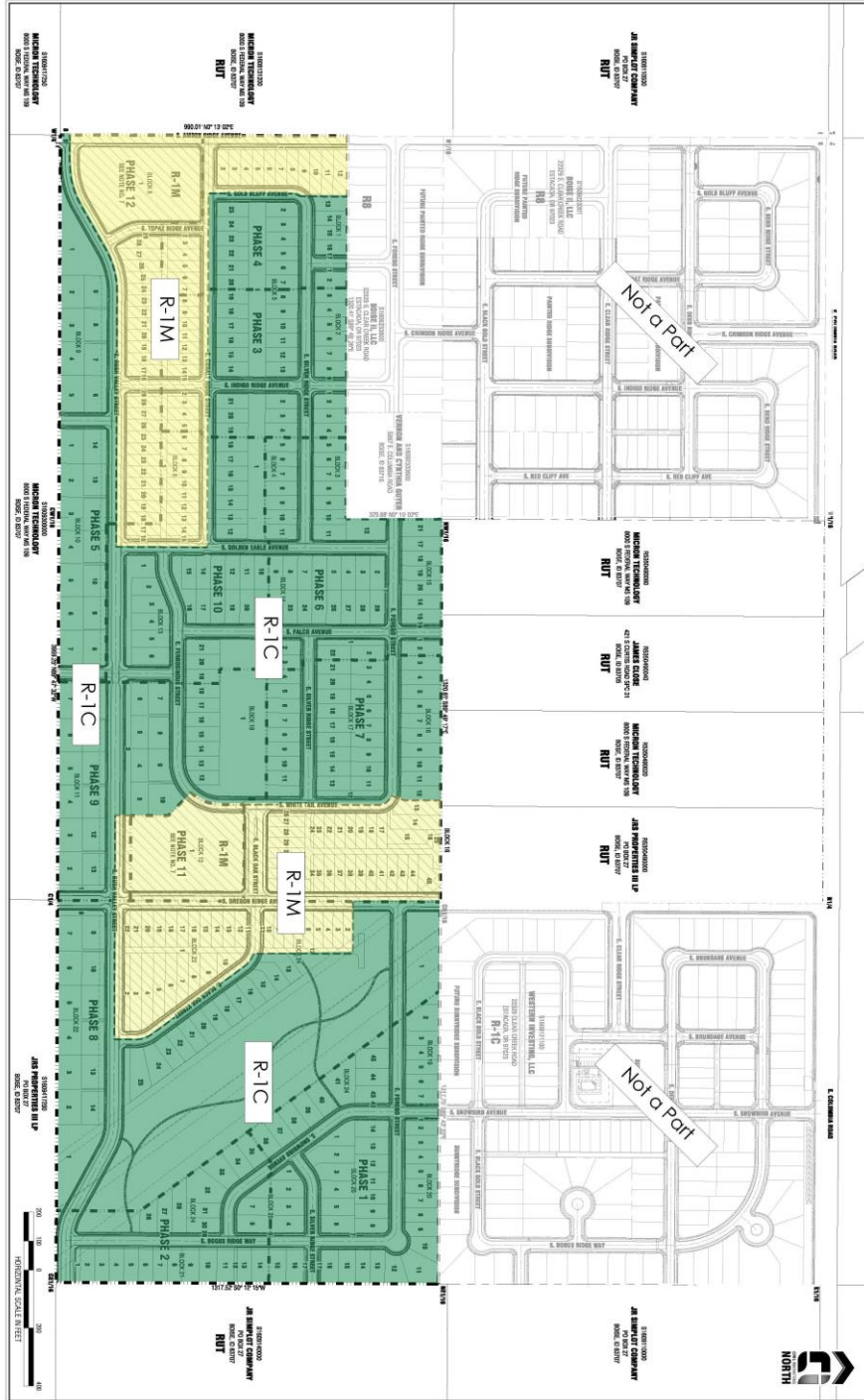
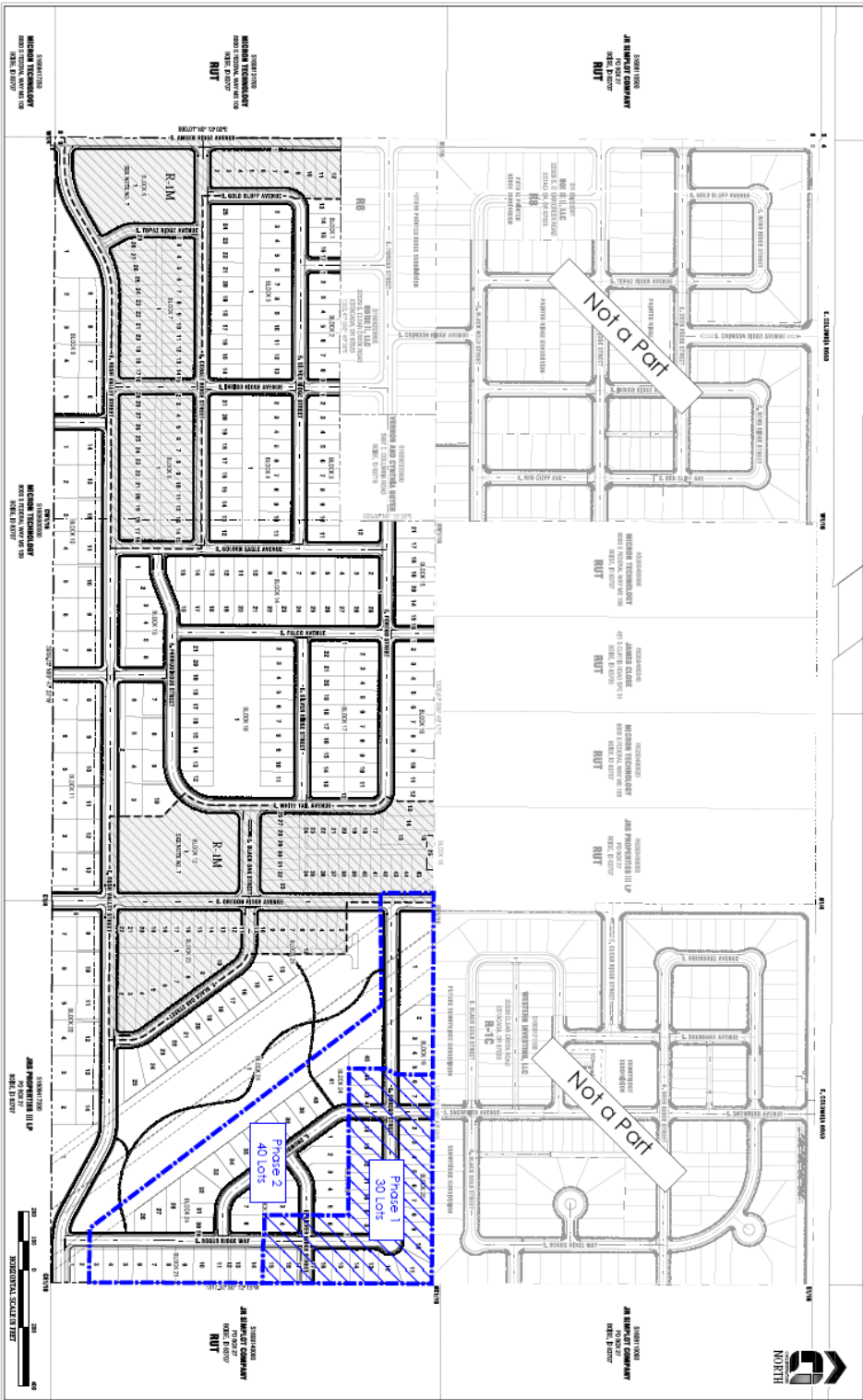


EXHIBIT D

Phasing Map



RUSH VALLEY SUBDIVISION

PRELIMINARY PLAT - BOISE, IDAHO - 2017

LOCATED IN THE SW 1/4 OF THE NE 1/4 AND THE SE 1/4 OF THE SW 1/4 AND A PORTION OF 200' IN CENTER SW 1/4 OF SECTION 8, T2N, R2E, S10E, BOISE, AND COUNTY, IDAHO