

RECORDING REQUESTED BY AND WHEN  
RECORDED RETURN TO:

Development Services Department  
City of Garden City  
6015 N. Glenwood St.  
Garden City, ID 83714

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(Space Above for Recorder's Use)

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into by and between the City of Garden City, a municipal corporation of the State of Idaho (the “**City**”), and 6 Point Teaser Investment LLC, an Idaho limited liability company, Crispy Investments DE LLC, an Idaho limited liability company, Parlay Investments LLC, an Idaho limited liability company, Smokestack Jack LLC, an Idaho limited liability company, Chop It Up Investments LLC, an Idaho limited liability company (the “**Developer**”). City and Developer may be individually referred to in this Agreement as a “**Party**” or collectively as the “**Parties**” as appropriate under the circumstances.

### RECITALS

A. Developer owns that certain real property that is approximately 10.141 acres located at 510 E. 41<sup>st</sup> St., 521 E. 41<sup>st</sup> St., 408 E. 40<sup>th</sup> St., 508 E. 40<sup>th</sup> St., 4044 E. Adams St., 411 E 43<sup>rd</sup> St. in Garden City, Idaho, legally described and generally depicted on Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F attached hereto and incorporated herein (the “**Property**”).

B. Developer has applied to the City for a rezone of the Property from the R-3 Zone (medium-density residential) and C-2 (general commercial) to C-2 Zone (general commercial) with a development agreement file number ZONFY2023-0002 herein (the “**Application**”).

C. On the **27<sup>th</sup> day of November 2023**, the City approved the rezone authorizing the Property to be rezoned and adopted Findings of Fact, Conclusions of Law, and Decision (the “**Decision**”), attached hereto, and incorporated herein as Exhibit G.

D. The City, pursuant to Garden City Code Sections 8-6B-4 and 8-6B-10 and Idaho Code Section 67-6511A, has the authority to conditionally rezone the Property and to enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for a specific purpose or use which is appropriate in the area.

E. The City’s Planning and Zoning Commission and City Council have held public hearings as prescribed by law with respect to the zoning and development of the Property and this Agreement.

F. It is the intent and desire of the Parties to rezone and develop the Property in conformance with the Decision and subject to the terms and conditions of this Agreement.

## AGREEMENT

NOW THEREFORE, in consideration of the above Recitals and the mutual consideration as reflected in the covenants, duties and obligations herein set forth, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Description and Location of Property; Size of Property; Present Zoning.** The City's C-2 Zoning District shall apply to the Property. The Property is legally described and generally depicted on Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F. This Agreement applies to and governs the Property only and has no force or effect on any other property whatsoever.

**2. Use Permitted by this Agreement.** The uses allowed pursuant to the conditional rezone of the Property, as reflected in this Agreement, are all uses permitted or conditionally permitted, provided an approved conditional use permit, in the C-2 General Commercial zoning district with the exception of equipment rental, sale and service; food products processing (not including food products, small scale processing); fuel sales; industry flex; laundry and dry cleaning, commercial plant; recreational vehicle park; service provider; vehicle rental, vehicle sales, vehicle service; vehicle washing facility; and warehouse.

Any use shall not be a dedicated food truck lot. No change in the uses specified in this Agreement shall be allowed without modification of this Agreement pursuant to the requirements of the Garden City Code.

**3. Noise:** From 11:00 pm to 8:00 am Sunday through Saturday, no amplification device shall be operated in such a manner that 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 within any off-premise building or portion thereof used for the overnight accommodation of persons, or, is plainly audible upon a public right-of-way.

**4. Entitlements:** The current entitlements, Garden City file numbers, DSRFY2020-0017, DSRFY2019-0025, and DSRFY2022-0019 are valid five years from the signing of this agreement regardless of the date of the file's expiration per the decision document or Garden City Code. The entitlements shall remain in effect so as long as there is an active building permit.

**5. Permit Fees:** The collection of building permit related fees in association with file numbers, DSRFY2020-0017, DSRFY2019-0025, and DSRFY2022-0019 may be deferred to be paid prior to Certificate of Occupancy of the corresponding structures unless there are associated outstanding costs to the city, such as, but not limited to contracted reviews. If the project is terminated, the Developer shall pay any outstanding costs to the City that are not eligible for nullification.

**6. Impact Fees:** The collection of impact related fees in association with file numbers, DSRFY2020-0017, DSRFY2019-0025, and DSRFY2022-0019 shall be paid at the time of, or prior to the impact of the structure on the system for which the impact fees are eligible. The fee schedules that will be utilized are those which are in effect at the time that the Developer applies for building permits. If the project is terminated, the Developer shall pay any impact fees that are not eligible for nullification.

**7. Construction of Use.** Development and site work on the Property shall be in accordance with all applicable laws and regulations not otherwise conditioned and shall be consistent with the development standards set forth herein as well as in the Decision.

**8. Default.** In the event the Developer, its heirs or assigns, or subsequent owners of the Property, or any other person acquiring an interest in the Property, changes or expands the use permitted by this Agreement without formal modification of this Agreement as allowed by Garden City Code, or fails to faithfully comply with all of the terms and conditions included in this Agreement, following written notice to Developer specifying such change, expansion, or failure, and a sufficient opportunity to cure, this Agreement may be modified or terminated by the Garden City Council upon compliance with the requirements of Garden City Code.

**9. Termination.** In the event the Garden City Council, after compliance with the requirements of Garden City Code, determines that this Agreement shall be terminated as a result of default, the zoning of the Property shall revert to the City's R-3 Zone. All uses of the Property which are not consistent with the R-3 Zone or otherwise approved by the City shall cease.

**10. Compliance Period.** This Agreement must be fully executed and recorded within ten (10) days after the date of the adoption of Ordinance No. 1041-23 (the "**Rezoning Ordinance**") or it and the Ordinance is null and void and of no further force or effect pursuant to G.C.C. § 8-6B-4.D.4.

**11. Non-Waiver.** A waiver by the City of any default by the Developer of any one or more of the covenants or conditions herein shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.

**12. Effective Date.** This Agreement shall be effective after it is recorded in the real property records of the Ada County Recorder and the City has adopted and published the Rezoning Ordinance by the Garden City Council formally zoning the Property in conformance with the approvals granted in the Application.

**13. Consent to Rezone.** The Developer, and its heirs, successors, assigns and personal representatives, by entering into this Agreement, do hereby agree that in the event there shall be an uncured default of this Agreement, after compliance with the requirements of Garden City Code, this Agreement shall serve as consent to a rezone of the Property to the C-2 Zone, as provided in I.C. § 67-6511A and G.C.C. § 8-6B-4.D.

**14. Notices.** Any and all notices required to be given by either of the Parties shall be in writing and be deemed delivered upon personal service, if hand-delivered, or when mailed in the United States mail, certified, return receipt requested, addressed as follows:

i. To the City:

City of Garden City  
6015 North Glenwood Street  
Garden City, Idaho 83714

ii. To the Developer:

6 Point Teaser Investment LLC  
Attn: Michael S Talbott  
750 W Bannock Street

Boise, Idaho, 83702

Crispy Investments DE, LLC  
Attn: Michael S Talbott  
750 W Bannock Street  
Boise, Idaho, 83702

Parlay Investments, LLC  
Attn: Michael S Talbott  
750 W Bannock Street  
Boise, Idaho, 83702

Smokestack Jack, LLC  
Attn: Michael S Talbott  
750 W Bannock Street  
Boise, Idaho, 83702

Chop It Up Investments, LLC  
Attn: Michael S Talbott  
750 W Bannock Street  
Boise, Idaho, 83702

Either Party shall give notice to the other Party of any change of its address for the purpose of this section by giving written notice of such change to the other in the manner herein provided. In the event any successor or assign fails to provide an address, the City's obligation of mailing shall be deemed accomplished by use of the address on file with the County Tax Assessor.

**15. 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.

**16. 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.

**17. Binding Upon Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties' respective 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 of the Property, and each other person acquiring an interest in the Property. This Agreement shall run with the land.

**18. Requirement for Recordation.** The City shall record this Agreement,  
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including all exhibits attached hereto and incorporated herein, prior to adopting and publishing the Rezoning Ordinance. If for any reason after such recordation the Garden City Council fails to adopt the Rezoning Ordinance, the City shall execute and record an appropriate instrument of release of this Agreement.

**19. 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.

[end of text – signatures on following pages]

DRAFT

**IN WITNESS WHEREOF**, the parties to this Agreement have caused it to be executed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CITY:**

CITY OF GARDEN CITY,  
an Idaho municipal corporation

By: \_\_\_\_\_  
John Evans, Mayor

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF IDAHO )  
                                  ) ss.  
County of Ada        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared John Evans, known or identified to me to be the Mayor of the City of Garden City, the Idaho municipal corporation that executed the within and foregoing instrument, or the person who executed the instrument on behalf of said Idaho municipal corporation, and acknowledged to me that such Idaho 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  
My commission expires: \_\_\_\_\_

**DEVELOPER:**

6 Point Teaser Investments, LLC,  
an Idaho limited liability company

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

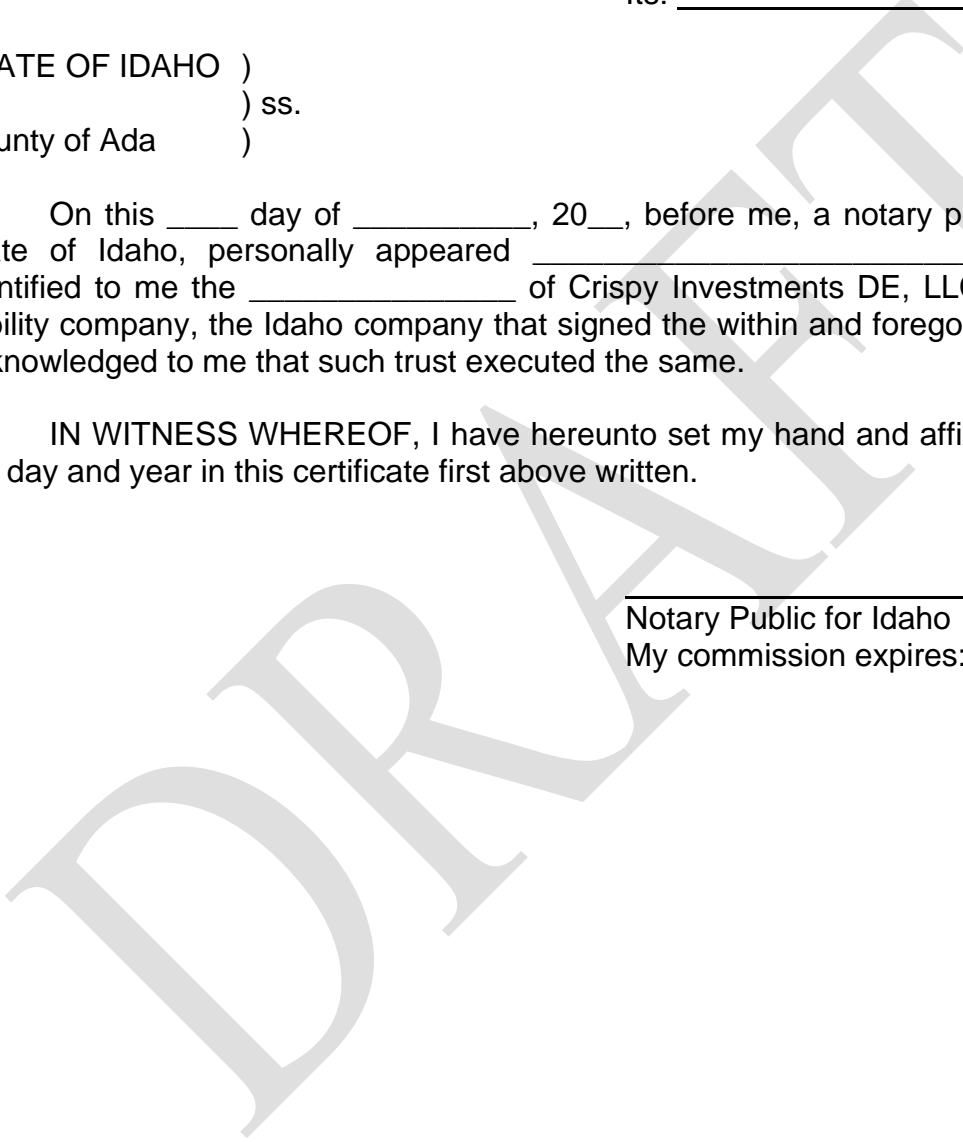
Its: \_\_\_\_\_

STATE OF IDAHO    )  
  ) ss.  
County of Ada        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a notary public in and for the State of Idaho, personally appeared \_\_\_\_\_, known or identified to me the \_\_\_\_\_ of Crispy Investments DE, LLC, an Idaho limited liability company, the Idaho company that signed the within and foregoing instrument, and acknowledged to me that such trust 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  
My commission expires: \_\_\_\_\_



**DEVELOPER:**

Crispy Investments DE, LLC,  
an Idaho limited liability company

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

Its: \_\_\_\_\_

STATE OF IDAHO )  
                                      ) ss.  
County of Ada         )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a notary public in and for the State of Idaho, personally appeared \_\_\_\_\_, known or identified to me the \_\_\_\_\_ of Crispy Investments DE, LLC, an Idaho limited liability company, the Idaho company that signed the within and foregoing instrument, and acknowledged to me that such trust 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  
My commission expires: \_\_\_\_\_



**DEVELOPER:**

Parlay Investments, LLC,  
an Idaho limited liability company

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

Its: \_\_\_\_\_

STATE OF IDAHO )  
                              ) ss.  
County of Ada     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a notary public in and for the State of Idaho, personally appeared \_\_\_\_\_, known or identified to me the \_\_\_\_\_ of Parlay Investments, LLC, an Idaho limited liability company, the Idaho company that signed the within and foregoing instrument, and acknowledged to me that such trust 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  
My commission expires: \_\_\_\_\_

**DEVELOPER:**

Smokestack Jack, LLC,  
an Idaho limited liability company

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

Its: \_\_\_\_\_

STATE OF IDAHO )  
                                  ) ss.  
County of Ada     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a notary public in and for the State of Idaho, personally appeared \_\_\_\_\_, known or identified to me the \_\_\_\_\_ of Smokestack Jack, LLC, an Idaho limited liability company, the Idaho company that signed the within and foregoing instrument, and acknowledged to me that such trust 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  
My commission expires: \_\_\_\_\_

**DEVELOPER:**

Chop It Up Investments, LLC,  
an Idaho limited liability company

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

Its: \_\_\_\_\_

STATE OF IDAHO )  
  ) ss.  
County of Ada     )

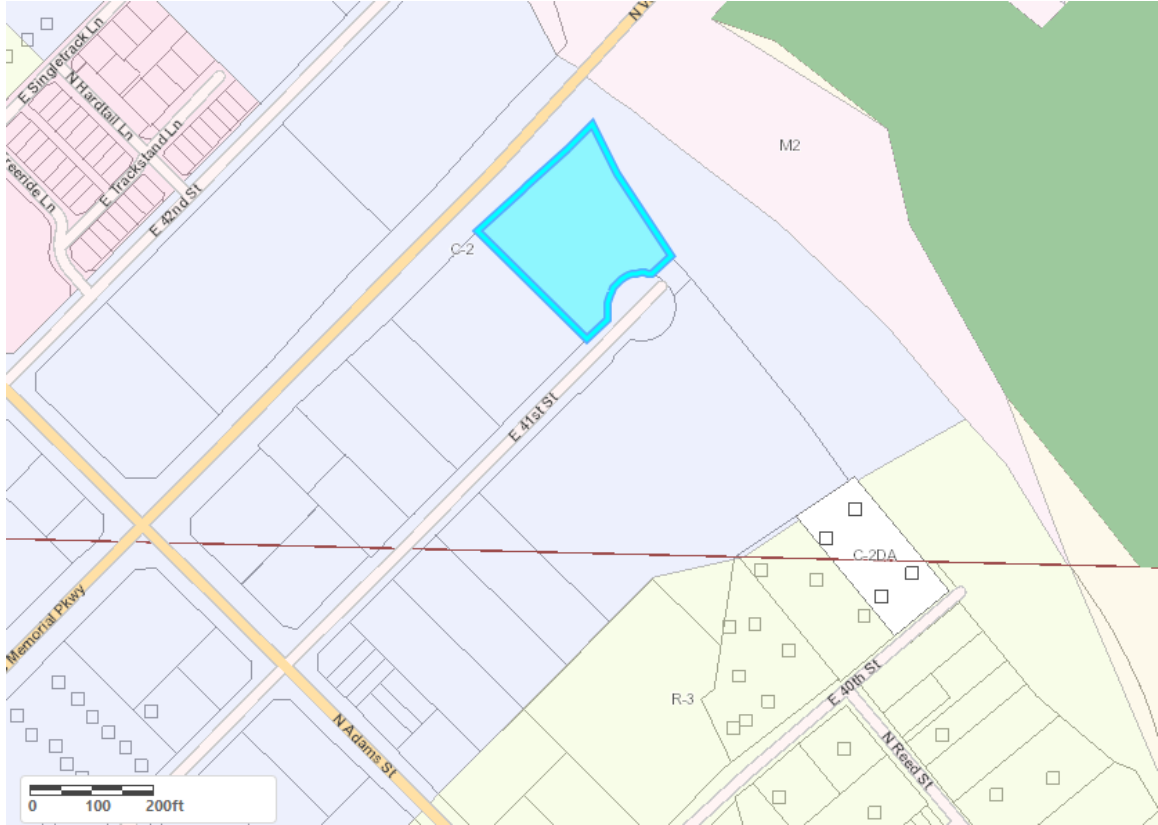
On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a notary public in and for the State of Idaho, personally appeared \_\_\_\_\_, known or identified to me the \_\_\_\_\_ of Crispy Investments DE, LLC, an Idaho limited liability company, the Idaho company that signed the within and foregoing instrument, and acknowledged to me that such trust 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  
My commission expires: \_\_\_\_\_

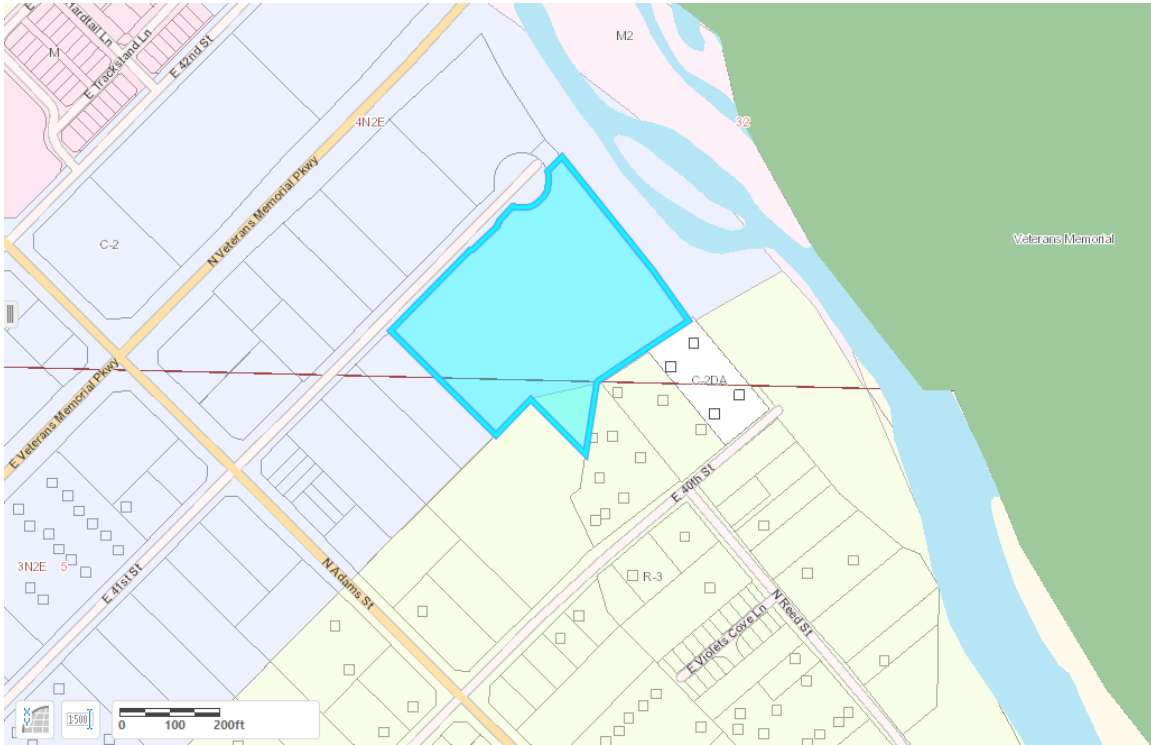
# EXHIBIT A

PAR #0934 of Section 32 4N 2E and of Lot 8 block 16 Fairview Acres Subdivision No. 03



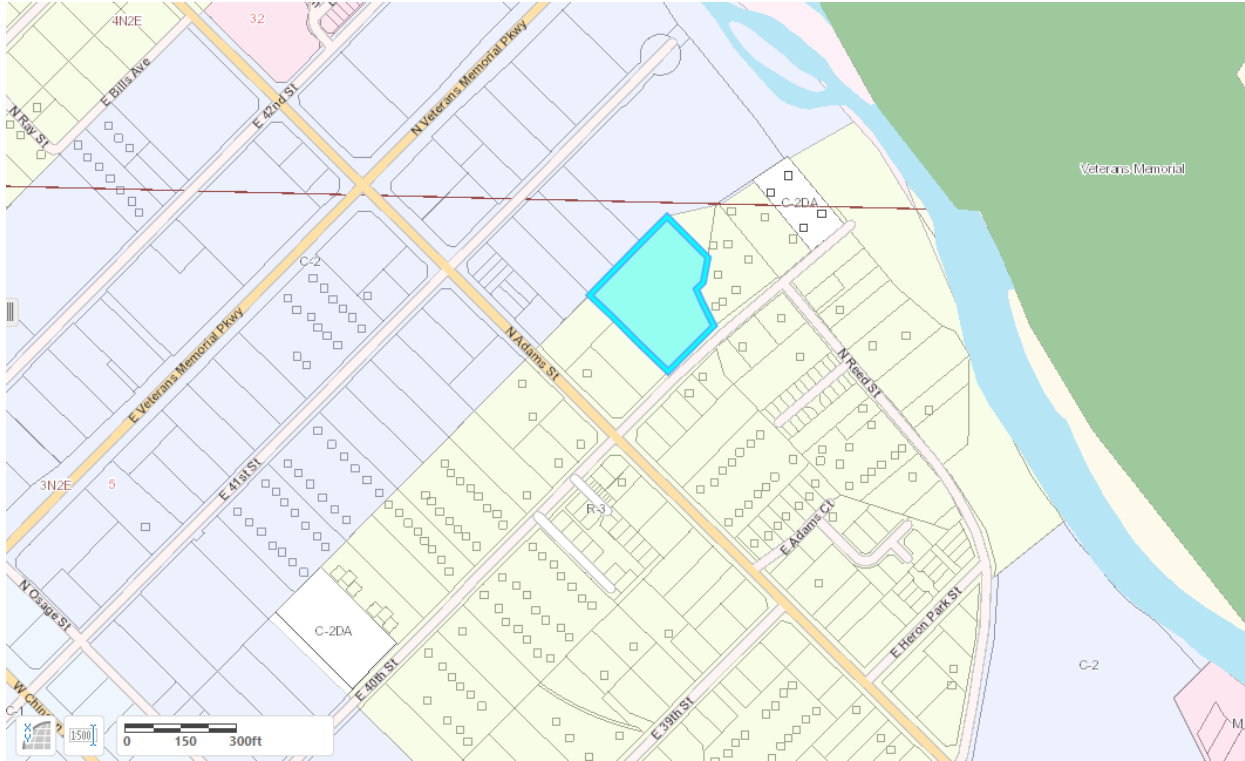
## EXHIBIT B

Lots 27, 28, 29, 30 Block 15 Fairview Acres Subdivision No. 03 and portion of SW4SE4 Section 32 4N 2E Parcel 2 Record of Survey 13033.



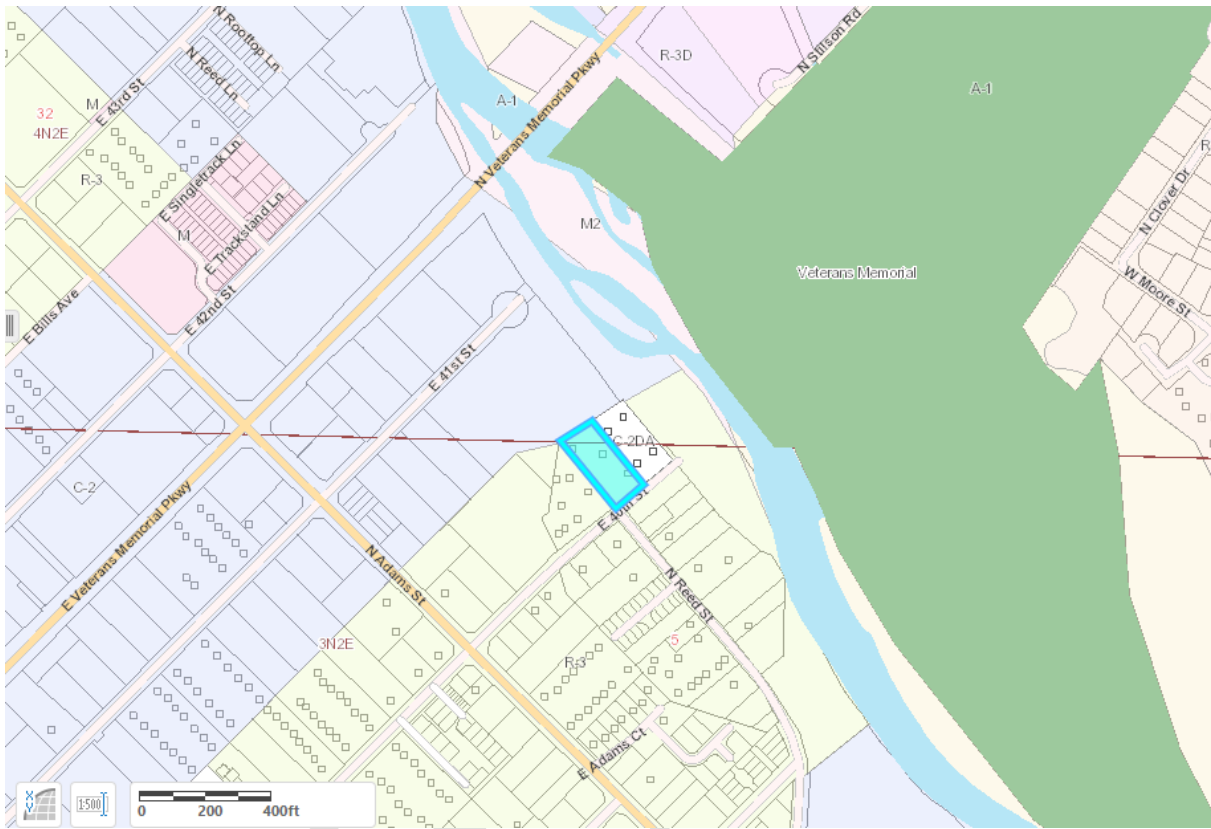
# EXHIBIT C

Lots 3 and 4 Block 15 Fairview Acres Subdivision No. 03 and portion of Lot 14 Block 2 Fairview Acres Sub No. 07 Parcel 2 Record of Survey 13033.



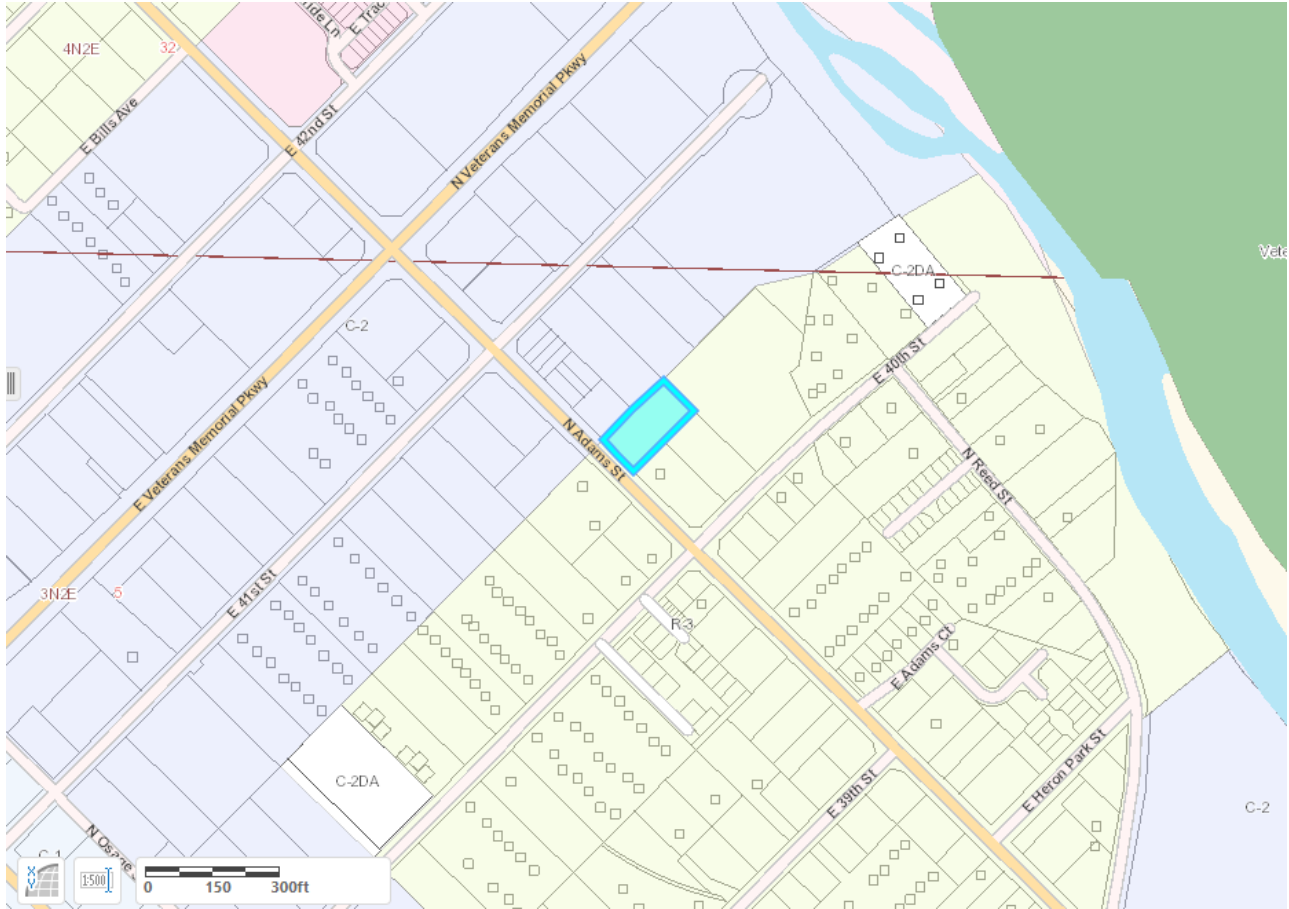
# EXHIBIT D

Lots 17 and 18 Block 2, Fairview Acres Subdivision No. 07.



# EXHIBIT E

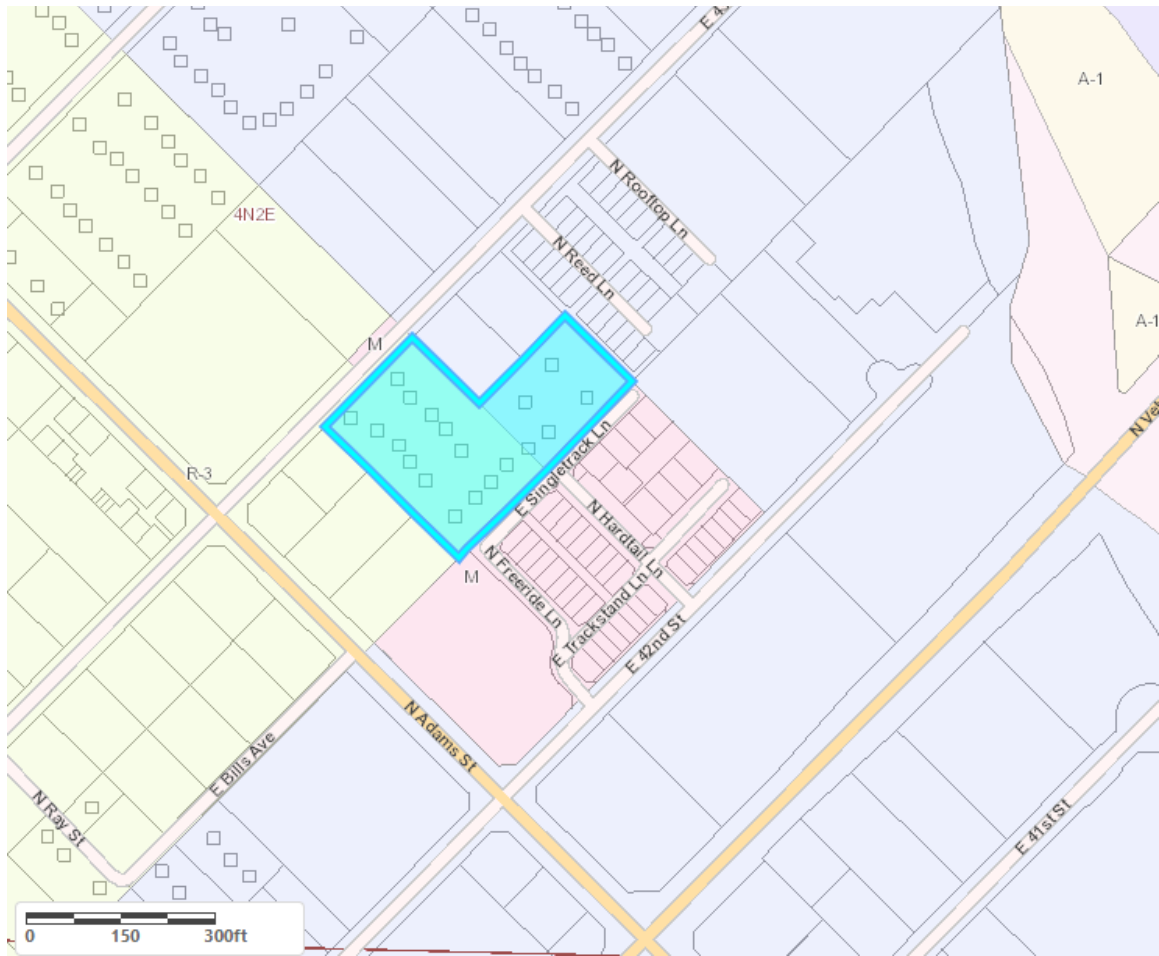
Northwesterly 100' of Lots ½ Block 15 excluding right-of-way Fairview Acres Subdivision No. 03 #0740-B #0740-B.





# EXHIBIT F

Southwesterly 2 of 29 Southwesterly 150' of lot 30, Lots 31-32 Block 17 Fairview Acres Subdivision No.3



**EXHIBIT G**

**Findings of Fact, Conclusions of Law and Decision, Garden City Idaho Rezone  
Application ZONFY2023-0002**

DRAFT