

DEVELOPMENT AGREEMENT

- PARTIES:**
1. **City of Meridian**
 2. **East River Valley Street, LLC, Owner/Developer**

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”), is made and entered into this__day of _____, 2022, by and between **City of Meridian**, a municipal corporation of the State of Idaho, hereafter called “**CITY**”, whose address is 33 E. Broadway Avenue, Meridian, Idaho 83642 and **East River Valley Street, LLC**, an Idaho limited liability company, whose address is 2832 State Street, Carlsbad, CA 92008, hereinafter called “**OWNER/DEVELOPER**.”

1. **RECITALS:**

- 1.1 **WHEREAS**, Owner/Developer is the sole owner, in law and/or equity, of a certain tract of land in the County of Ada, State of Idaho, commonly known as 2590 N. Eagle Road, Meridian, Idaho, 83646, and described in **Exhibit “A,”** which is attached hereto and by this reference incorporated herein as if set forth in full, hereinafter referred to as the “**Property;**” and
- 1.2 **WHEREAS**, Idaho Code § 67-6511A provides that cities may, by ordinance, establish provisions governing the creation, form, recording, modification, enforcement and termination of development agreements required or permitted as a condition of zoning that the Owner/Developer make a written commitment concerning the use or development of the Property; and
- 1.3 **WHEREAS**, City has exercised its statutory authority by the enactment of Section 11-5B-3 of the Unified Development Code (“**UDC**”), which authorizes development agreements and the modification of development agreements; and
- 1.4 **WHEREAS**, Owner/Developer has submitted an application for development agreement modification to remove the property listed in **Exhibit “A”** from an existing Development Agreement recorded in Ada County as Instrument #104129529, and for the inclusion of the Property into this new Agreement, which generally describes how the Property will be developed and what improvements will be made; and
- 1.5 **WHEREAS**, Owner/Developer made representations at the duly noticed public hearings before the Meridian City Council, as to how the Property will be developed and what improvements will be made; and

- 1.6 **WHEREAS**, the record of the proceedings for requested development agreement modification held before the City Council includes responses of government subdivisions providing services within the City of Meridian planning jurisdiction, and includes further testimony and comment; and
- 1.7 **WHEREAS**, on the 26th day of April, 2022, the Meridian City Council approved certain Findings of Fact and Conclusions of Law and Decision and Order (“**Findings**”), which have been incorporated into this Agreement and attached as **Exhibit “B”**; and
- 1.8 **WHEREAS**, Owner/Developer deems it to be in its best interest to be able to enter into this Agreement and acknowledges that this Agreement was entered into voluntarily and at its urging and request; and
- 1.9 **WHEREAS**, the property listed in **Exhibit “A”** shall no longer be subject to the terms of the existing Development Agreements (Instrument #104129529) and shall be bound by the terms contained herein in this new agreement.
- 1.10 **WHEREAS**, City requires the Owner/Developer to enter into a development agreement modification for the purpose of ensuring that the Property is developed and the subsequent use of the Property is in accordance with the terms and conditions of this Agreement, herein being established as a result of evidence received by the City in the proceedings from government subdivisions providing services within the planning jurisdiction and from affected property owners and to ensure the existing C-G (General Retail and Service Commercial) zoning designation is in accordance with the amended Comprehensive Plan of the City of Meridian on December 17, 2019, Resolution No. 19-2179, and the UDC, Title 11.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the parties agree as follows:

2. **INCORPORATION OF RECITALS:** That the above recitals are contractual and binding and are incorporated herein as if set forth in full.

3. **DEFINITIONS:** For all purposes of this Agreement the following words, terms, and phrases herein contained in this section shall be defined and interpreted as herein provided for, unless the clear context of the presentation of the same requires otherwise:

3.1 **CITY:** means and refers to the **City of Meridian**, a party to this Agreement, which is a municipal Corporation and government subdivision of the state of Idaho, organized and existing by virtue of law of the State of Idaho, whose address is 33 East Broadway Avenue, Meridian, Idaho 83642.

3.2 **OWNER/DEVELOPER:** means and refers to **East River Valley Street,**
DEVELOPMENT AGREEMENT - COPPER CANARY H-2022-0009 Page 2 of 12

LLC, whose address is 2832 State Street, Carlsbad, CA 92008, the party that owns said Property and shall include any subsequent owner(s) of the Property.

- 3.3 **PROPERTY:** means and refers to that certain parcel of Property located in the County of Ada, City of Meridian as described in **Exhibit “A”** describing a parcel to be removed from existing Development Agreement recorded in Ada County as Instrument # 104129529, with such parcel being bound by this new Agreement, which **Exhibit “A”** is attached hereto and by this reference incorporated herein as if set forth at length.

4. **USES PERMITTED BY THIS AGREEMENT:** This Agreement shall vest the right to develop the Property in accordance with the terms and conditions of this Agreement.

- 4.1 The uses allowed pursuant to this Agreement are only those uses allowed as permitted, conditional and/or accessory uses under the UDC.

- 4.2 No change in the uses specified in this Agreement shall be allowed without modification of this Agreement.

5. **CONDITIONS GOVERNING DEVELOPMENT OF SUBJECT PROPERTY:**

- 5.1. Owner/Developer shall develop the Property in accordance with the following special conditions:
- a. Development of the Property shall no longer be subject to the terms of the Development Agreement recorded as Instrument No. 104129529.
 - b. Development of the Property shall be generally consistent with the conceptual development plan depicted on **Exhibit “C”**, attached hereto, and the provisions contained herein.
 - c. Owner/Developer shall make application for administrative Design Review. Future development shall comply with the structure and site design standards listed in the Architectural Standards Manual. Strict design review of all four sides of the remodeled existing building is required.
 - d. The existing direct access to the Property via N. Eagle Rd./SH-55 shall continue until vehicular access to the north across the South Slough and to N. Eagle Rd./SH-55 or to the south to E. River Valley St. is provided. At such time, the temporary access to Eagle Rd./SH-55 shall be removed and the street buffer landscaping adjacent to Eagle Road shall be completed consistent with the UDC standards.
 - e. The drive aisle on the east side of the Property shall terminate at the south boundary of the Property as an emergency vehicle access. Access will be restricted by a gate that will allow for emergency vehicle access. The Owner/Developer shall coordinate the design of the gate with the Meridian

Fire Department. However, if the adjacent property to the south develops with a commercial use, emergency access shall terminate and a through access shall be provided. Cross-access easements shall be granted to the properties to the north and to the south and recorded copies of the easements shall be submitted to the Planning Division with the Certificate of Zoning Compliance application.

- f. A Certificate of Zoning Compliance and administrative Design Review applications shall be submitted to and approved by the Planning Division prior to submittal of a building permit application(s).

6. **COMPLIANCE PERIOD** This Agreement must be fully executed within six (6) months after the date of the Findings or it is null and void.

7. **DEFAULT/CONSENT TO DE-ANNEXATION AND REVERSAL OF ZONING DESIGNATION:**

- 7.1 **Acts of Default.** Either party's failure to faithfully comply with all of the terms and conditions included in this Agreement shall constitute default under this Agreement.
- 7.2 **Notice and Cure Period.** In the event of Owner/Developer's default of this Agreement, Owner/Developer shall have thirty (30) days from receipt of written notice from City to initiate commencement of action to correct the breach and cure the default, which action must be prosecuted with diligence and completed within one hundred eighty (180) days; provided, however, that in the case of any such default that cannot with diligence be cured within such one hundred eighty (180) day period, then the time allowed to cure such failure may be extended for such period as may be necessary to complete the curing of the same with diligence and continuity.
- 7.3 **Remedies.** In the event of default by Owner/Developer that is not cured after notice as described in Section 7.2, Owner/Developer shall be deemed to have consented to modification of this Agreement and de-annexation and reversal of the zoning designation described herein, and upon City's compliance with all applicable laws, ordinances and rules, including any applicable provisions of Idaho Code §§ 67-6509 and 67-6511. Owner/Developer reserve all rights to contest whether a default has occurred. This Agreement shall be enforceable in the Fourth Judicial District Court in Ada County by either City or Owner/Developer, or by any successor or successors in title or by the assigns of the parties hereto. Enforcement may be sought by an appropriate action at law or in equity to secure the specific performance of the covenants, agreements, conditions, and obligations contained herein.
- 7.4 **Delay.** In the event the performance of any covenant to be performed hereunder by either Owner/Developer or City is delayed for causes that 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.

- 7.5 **Waiver.** A waiver by City of any default by Owner/Developer of any one or more of the covenants or conditions hereof shall apply solely to the default and defaults waived and shall neither bar any other rights or remedies of City nor apply to any subsequent default of any such or other covenants and conditions.

8. **INSPECTION:** Owner/Developer shall, immediately upon completion of any portion or the entirety of said development of the Property as required by this Agreement or by City ordinance or policy, notify the City Engineer and request the City Engineer's inspections and written approval of such completed improvements or portion thereof in accordance with the terms and conditions of this Agreement and all other ordinances of the City that apply to said Property.

9. **REQUIREMENT FOR RECORDATION:** City shall record this Agreement, including all of the Exhibits, and submit proof of such recording to Owner/Developer.

10. **SURETY OF PERFORMANCE:** The City may also require surety bonds, irrevocable letters of credit, cash deposits, certified check or negotiable bonds, as allowed under the UDC, to insure the installation of required improvements, which the Owner/Developer agrees to provide, if required by the City.

11. **CERTIFICATE OF OCCUPANCY:** No Certificates of Occupancy shall be issued if the improvements have not been installed, completed, and accepted by the City, or sufficient surety of performance is provided by Owner/Developer to the City in accordance with Paragraph 11 above.

12. **ABIDE BY ALL CITY ORDINANCES:** That Owner/Developer agrees to abide by all ordinances of the City of Meridian unless otherwise provided by this Agreement.

13. **NOTICES:** Any notice desired by the parties and/or required by this Agreement shall be deemed delivered if and when personally delivered or three (3) days after deposit in the United States Mail, registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

CITY:
City Clerk
City of Meridian
33 E. Broadway Ave.
Meridian, Idaho 83642

with copy to:
City Attorney
City of Meridian
33 E. Broadway Avenue
Meridian, Idaho 83642

OWNER/DEVELOPER:
East River Valley Street, LLC
2832 State Street

13.1 A party shall have the right to change its address by delivering to the other party a written notification thereof in accordance with the requirements of this section.

14. **ATTORNEY FEES:** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney's 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.

15. **TIME IS OF THE ESSENCE:** The parties hereto 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 other party so failing to perform.

16. **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 City's corporate authorities and their successors in office. This Agreement shall be binding on the Owner/Developer, each subsequent owner and any 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 benefited and bound by the conditions and restrictions herein expressed. City agrees, upon written request of Owner/Developer, to execute appropriate and recordable evidence of termination of this Agreement if City, in its sole and reasonable discretion, has determined that Owner/Developer has fully performed its obligations under this Agreement.

17. **INVALID PROVISION:** If any provision of this Agreement is held not valid by a court of competent jurisdiction, such provision shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any of the other provisions contained herein.

18. **DUTY TO ACT REASONABLY:** Unless otherwise expressly provided, each party shall act reasonably in giving any consent, approval, or taking any other action under this Agreement.

19. **COOPERATION OF THE PARTIES:** In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision in this Agreement, the parties agree to cooperate in defending such action or proceeding.

20. **FINAL AGREEMENT:** This Agreement sets forth all promises, inducements, agreements, condition and understandings between Owner/Developer and City relative to the subject matter hereof, and there are no promises, agreements, conditions or understanding, either oral or written, express or implied, between Owner/Developer and 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 hereto 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 City.

- 20.1 No condition governing the uses and/or conditions governing the Property herein provided for can be modified or amended without the approval of the City Council after the City has conducted public hearing(s) in accordance with the notice provisions provided for a zoning designation and/or amendment in force at the time of the proposed amendment.

21. **EFFECTIVE DATE OF AGREEMENT:** This Agreement shall be effective on the date the Meridian City Council shall adopt the Findings and execution of the Agreement by the Mayor and City Clerk.

[end of text; signatures, acknowledgements, and Exhibits A, B and C follow]

IN WITNESS WHEREOF, the parties have herein executed this Development Agreement and made it effective as hereinabove provided.

OWNER/DEVELOPER:

East River Valley Street, LLC, an Idaho
limited liability company

By: 
Perry Coles, Member

CITY OF MERIDIAN

ATTEST:

By: _____
Mayor Robert E. Simison

By: _____
Chris Johnson, City Clerk

STATE OF IDAHO)
 : ss:
County of Ada)

On this ____ day of _____, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ known or identified to me to be the _____ of East River Valley Street, LLC and the person who signed above and acknowledged to me that he executed the same on behalf of said corporation.

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

See attached Pocon
Notary Public for _____
Residing at: _____
My Commission Expires: _____

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of SAN DIEGO

On MAY 11 2022 before me, ELENA NAVEDO ALVAREZ
Date Here Insert Name and Title of the Officer

personally appeared PERRY COLES
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal and/or Stamp Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: DEVELOPMENT AGREEMENT

Document Date: MAY 11 2022 Number of Pages: 12

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Corporate Officer – Title(s): _____
☐ Partner – ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

- ☐ Corporate Officer – Title(s): _____
☐ Partner – ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

STATE OF IDAHO)
 : ss
County of Ada)

On this _____ day of _____, 2022, before me, a Notary Public, personally appeared **Robert E. Simison** and **Chris Johnson**, known or identified to me to be the Mayor and Clerk, respectively, of the **City of Meridian**, who executed the instrument or the person that executed the instrument of behalf of said City, and acknowledged to me that such City 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: _____
Commission expires: _____

EXHIBIT "A"
Legal Description of the Property

A portion of the Southwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 1 East, Boise Meridian, more particularly described as follows:

Commencing at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 1 East, Boise Meridian, Ada County, Idaho; thence South along the West line of said Section 4, a distance of 433.62 feet to the Real Point of Beginning; thence South 53° 40' East 231.00 feet to a point; thence North 83° 50' East 114.57 feet to a point; thence South 218.05 feet to a point; thence West 300.00 feet to a point on the West line of said Section 4; thence North 342.64 feet to the Point of Beginning.

Excepting a 25 foot strip on the West side for highway right-of-way.

Also Excepting a parcel of land being on the Easterly side of the centerline of State Highway No. 55 (Eagle Road), Project No. NH-F-3271(037) Highway Survey, as shown on the plans thereof now on file in the office of the Idaho Transportation Department, and being a portion of the Southwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 1 East, Boise Meridian, described as follows to-wit:

Commencing at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 1 East, Boise Meridian that bears North 89° 23'47" West 0.34 feet from Station 155+31.73 of said State Highway No. 55 (Eagle Road), Project NH-F-3271(037) Highway Survey; thence South 0°36'13" West (shown of record to be South) along the West line of said Southwest quarter of the Northwest quarter a distance of 765.43 feet (shown of record to be 776.26 feet) to the Southwest corner of the tract of land as described in that certain Warranty Deed dated January 24, 1975, recorded January 24, 1975, as Instrument No. 912958, records of Ada County, Idaho, said corner being a point in the centerline of said State Highway No. 55, that is coincident with Station 147+66.31 of said Highway Survey and being the Real Place of Beginning; thence South 89°23'47" East (shown of record to be East) along the South line of said tract of land 70.0 feet to a point in a line parallel with and 70.0 feet Easterly from the centerline and bears South 89°23'47" East from Station 147+66.31 of said Highway Survey; thence North 0°36'13" East along said parallel line a distance of 291.05 feet to a point in the Northerly line of said tract of land and being opposite Station 150+57.35 of said Highway Survey; thence North 53°03'47" West (shown of record to be North 53°40' West) along said Northerly line 86.89 feet to the Northwest corner of said tract of land, said corner being a point in the West line of said Southwest quarter of the Northwest quarter, said West line being coincident with the centerline of said State Highway No. 55, and said point being coincident with Station 151+08.84 of said Highway Survey; thence South 0°36'13" West along said West line being coincident with said centerline 342.53 feet to the Real Place of Beginning.

EXHIBIT "A"

COPPER CANARY
LEGAL DESCRIPTION EXHIBIT

PORTION OF THE SW 1/4 OF THE NW 1/4 OF SECTION
4, T.3N., R.1E., BOISE MERIDIAN, CITY OF MERIDIAN,
ADA COUNTY, IDAHO.

FEBRUARY 2022 SCALE: 1" = 35' SHEET 1 OF 1

Scale 1" = 50'
0 25' 50'

BEARINGS AND DISTANCES MAY VARY FROM
PREVIOUS PLATS DUE TO DIFFERENT METHODS
OF MEASUREMENTS.

EAGLE ROAD

S00° 36' 00"W - 291.11'

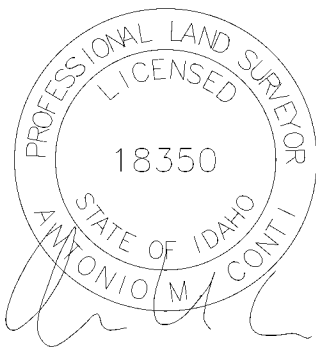
S53° 04' 00"E - 144.06'

N84° 26' 08"E - 114.63'

I.N. 2021-155773

S00° 36' 08"W - 218.08'

N89° 23' 52"W - 230.01'



**ACKERMAN
ESTVOLD**

7661 West Riverside Drive, Ste. 102 · Garden City, ID 83714
208.853.6470 · www.ackerman-estvold.com

West ID · East ID · West ID · East ID

EXHIBIT "B"

CITY OF MERIDIAN FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION & ORDER



In the Matter of the Request for Modification to the Existing Development Agreement (Inst. #104129529) to Remove the Subject Property from the Agreement and Prepare a New Development Agreement with an Updated Conceptual Development Plan; and Removal of the Requirement for Conditional Use Approval of any Future Uses on the Site; Requirement for Access to be Taken from the North via the Future Backage Road with Emergency Only Access from the South, by ALC Architecture.

Case No(s). H-2022-0009

For the City Council Hearing Dates of: March 22 and April 12, 2022 (Findings on April 26, 2022)

A. Findings of Fact

1. Hearing Facts (see attached Staff Report for the hearing date of April 12, 2022, incorporated by reference)
2. Process Facts (see attached Staff Report for the hearing date of April 12, 2022, incorporated by reference)
3. Application and Property Facts (see attached Staff Report for the hearing date of April 12, 2022, incorporated by reference)
4. Required Findings per the Unified Development Code (see attached Staff Report for the hearing date of April 12, 2022, incorporated by reference)

B. Conclusions of Law

1. The City of Meridian shall exercise the powers conferred upon it by the "Local Land Use Planning Act of 1975," codified at Chapter 65, Title 67, Idaho Code (I.C. §67-6503).
2. The Meridian City Council takes judicial notice of its Unified Development Code codified as Title 11 Meridian City Code, and all current zoning maps thereof. The City of Meridian has, by ordinance, established the Impact Area and the Comprehensive Plan of the City of Meridian, which was adopted December 17, 2019, Resolution No. 19-2179 and Maps.
3. The conditions shall be reviewable by the City Council pursuant to Meridian City Code § 11-5A.
4. Due consideration has been given to the comment(s) received from the governmental subdivisions providing services in the City of Meridian planning jurisdiction.
5. It is found public facilities and services required by the proposed development will not impose expense upon the public if the attached conditions of approval are imposed.
6. That the City has granted an order of approval in accordance with this Decision, which shall be signed by the Mayor and City Clerk and then a copy served by the Clerk upon the applicant, the Community Development Department, the Public Works Department and any affected party requesting notice.

7. That this approval is subject to the provisions in the attached Staff Report for the hearing date of April 12, 2022, incorporated by reference. The conditions are concluded to be reasonable and the applicant shall meet such requirements as a condition of approval of the application.

C. Decision and Order

Pursuant to the City Council's authority as provided in Meridian City Code § 11-5A and based upon the above and foregoing Findings of Fact which are herein adopted, it is hereby ordered that:

1. The applicant's request for a modification to the existing Development Agreement is hereby approved with changes made by the Commission as noted in the Staff Report for the hearing date of April 12, 2022, attached as Exhibit A.

D. Notice of Applicable Time Limits

Notice of Development Agreement Duration

The city and/or an applicant may request a development agreement or a modification to a development agreement consistent with Idaho Code section 67-6511A. The development agreement may be initiated by the city or applicant as part of a request for annexation and/or rezone at any time prior to the adoption of findings for such request.

A development agreement may be modified by the city or an affected party of the development agreement. Decision on the development agreement modification is made by the city council in accord with this chapter. When approved, said development agreement shall be signed by the property owner(s) and returned to the city within six (6) months of the city council granting the modification.

A modification to the development agreement may be initiated prior to signature of the agreement by all parties and/or may be requested to extend the time allowed for the agreement to be signed and returned to the city if filed prior to the end of the six (6) month approval period.

E. Judicial Review

Pursuant to Idaho Code § 67-6521(1)(d), if this final decision concerns a matter enumerated in Idaho Code § 67-6521(1)(a), an affected person aggrieved by this final decision may, within twenty-eight (28) days after all remedies have been exhausted, including requesting reconsideration of this final decision as provided by Meridian City Code § 1-7-10, seek judicial review of this final decision as provided by chapter 52, title 67, Idaho Code. This notice is provided as a courtesy; the City of Meridian does not admit by this notice that this decision is subject to judicial review under LLUPA.

F. Notice of Right to Regulatory Takings Analysis

Pursuant to Idaho Code §§ 67-6521(1)(d) and 67-8003, an owner of private property that is the subject of a final decision may submit a written request with the Meridian City Clerk for a regulatory takings analysis.

G. Attached: Staff Report for the hearing date of April 12, 2022

By action of the City Council at its regular meeting held on the 26th day of April, 2022.

COUNCIL PRESIDENT BRAD HOAGLUN VOTED AYE

COUNCIL VICE PRESIDENT JOE BORTON VOTED _____

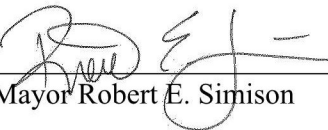
COUNCIL MEMBER JESSICA PERREAULT VOTED AYE

COUNCIL MEMBER LUKE CAVENER VOTED AYE

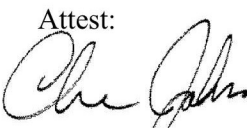
COUNCIL MEMBER TREG BERNT VOTED _____

COUNCIL MEMBER LIZ STRADER VOTED AYE

MAYOR ROBERT SIMISON VOTED _____
(TIE BREAKER)



Mayor Robert E. Simison 4-26-2022

Attest:


Chris Johnson 4-26-2022
City Clerk



Copy served upon Applicant, Community Development Department, Public Works Department and City Attorney.

By:  Dated: 4-26-2022
City Clerk's Office

EXHIBIT "B"**STAFF REPORT****COMMUNITY DEVELOPMENT DEPARTMENT**

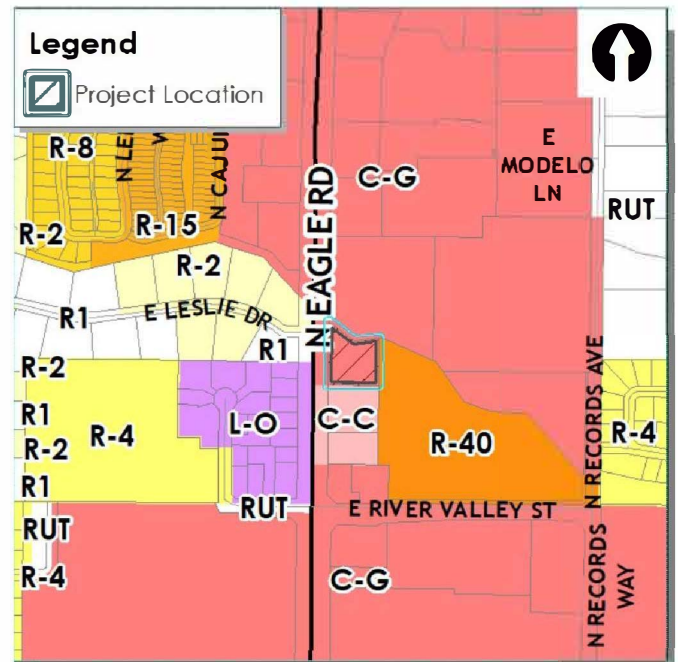
HEARING DATE: April 12, 2022
Continued from: March 22, 2022

TO: Mayor & City Council

FROAM: Sonya Allen, Associate Planner
 208-884-5533

SUBJECT: H-2022-0009
 Copper Canary

LOCATION: 2590 N. Eagle Rd., in the NW 1/4 of
 Section 4, T.3N., R.1E.

**I. PROJECT DESCRIPTION**

Modification to the existing development agreement (Inst. #104129529) to remove the subject property from the agreement and prepare a new development agreement with an updated conceptual development plan; removal of the requirement for conditional use approval of any future uses on the site; requirement for access to be taken from the north via the future backage road with emergency only access from the south.

II. SUMMARY OF REPORT**A. Applicant:**

Jeff Likes, ALC Architecture – 1119 E. State St., Ste. 120, Eagle, ID 83616

B. Owner:

East River Valley Street, LLC – 2832 State St., Carlsbad, CA 92008

C. Representative:

Same as Applicant

III. NOTICING

	City Council Posting Date
Notification published in newspaper	3/6/2022

EXHIBIT "B"

Notification mailed to property owners within 300 feet	3/7/2022
Applicant posted public hearing notice on site	3/30/2022
Nextdoor posting	3/8/2022

IV. STAFF ANALYSIS

The existing Development Agreement (DA) (Inst. #[104129529](#) – Red Feather AZ-03-021) originally encompassed a larger 114.52-acre area that includes Redfeather Estates, a residential development to the east and adjacent commercial properties. The DA requires any future uses of the property to only be approved through the Conditional Use Permit (CUP) process and requires either a public or private backage street generally parallel with Eagle Rd./SH-55 to be incorporated into the design of future site plans. A conceptual master plan demonstrating interconnectivity, transitional uses, access points and other key land planning issues is required prior to any detailed CUP applications being submitted. *See Section VI.A for more information.*

A variance (VAR-08-004) was approved in 2008 for a temporary access via N. Eagle Rd./SH-55 until such time as access can be provided to the site from either the south via a frontage road from the extension of E. River Valley St. or from the north across the South Slough. At such time, the temporary access to Eagle Rd. is required to be removed and the street buffer landscaping adjacent to Eagle Road is required to be completed. *Currently, there is no access to the site from either the north or the south.*

The Applicant requests a modification to the existing DA to remove the subject property from the agreement and prepare a new DA with an updated conceptual development plan; removal of the requirement for conditional use approval of any future uses on the site; and requirement for access to be taken from the north via the future backage road with emergency only access from the south.

A conceptual development plan was submitted as shown in Section VI.C that depicts a reconfigured parking area, extension of the street buffer and pedestrian pathway across the existing driveway from N. Eagle Rd./SH-55, a drive aisle along the east boundary of the site connecting to the north for future access via Eagle Rd./SH-55 and to the south for emergency access only. *Note: A driveway from Eagle Rd./SH-55 is depicted on the concept plan partially on this site and partially on the property to the north that has not been approved; an approved access via Eagle/SH-55 exists approximately 500' to the north of the subject property. The UDC (11-3H-4B.2) does not allow new approaches directly accessing a state highway. The City Council may consider and approve a modification to this standard upon specific recommendation of the Idaho Transportation Department per UDC 11-3H-3. Staff anticipates a request for this access will be part of a future development application on the adjacent property to the north.*

The Applicant proposes new DA provisions, which are included in Section VI.D below. Staff is amenable to the request to remove the requirement for a conceptual master plan to be submitted for the overall area as much of this area has already been developed and/or has entitlements. Staff is also supportive of the removal of the requirement for any future uses to be approved through the CUP process as the UDC ([Table 11-2B-2](#)) governs the allowed uses in the C-G zoning district and a CUP is not required for all uses. **Staff is *not* in favor of removal of the requirement for a public or private backage street generally parallel with Eagle Rd./SH-55 to be provided as UDC [11-3H-4B.3](#) requires such to provide future connectivity and access to all properties fronting the state highway that lie between the Applicant's property and the nearest section line road and/or half mile collector road. Although a drive aisle/backage road is depicted on the conceptual site plan,**

EXHIBIT "B"

it's proposed to dead-end at the southern boundary with an emergency only access to the south. Because access is limited in this area, Staff believes it's important for this backage road to provide through unrestricted public access to the north and the south. The Fire Dept. does not support the backage road being blocked for emergency access only and states the road needs to run through unobstructed for fast access to businesses in this area.

Based on the aforementioned recommendation, Staff recommends the conceptual site plan is revised to depict a backage road along the east boundary of the site with unrestricted access to the south. DA provision #5.1d should be revised to include vehicular access to the south. DA provision #5.1e should be replaced with a requirement for cross-access easements to be granted to the properties to the south and to the north; a recorded copy of the easements should be submitted to the Planning Division with the Certificate of Zoning Compliance application.

V. DECISION

A. Staff:

Staff recommends approval of the modification to the DA with the changes noted in Section V.D as discussed above in Section IV.

B. The Meridian City Council heard this item on March 22 and April 12, 2022. At the public hearing on April 12, 2022, the Council moved to approve the subject MDA request.

1. Summary of the City Council public hearing:

- a. In favor: JoAnn Butler, Butler Spink, LLP; Jeff Likes, ALC Architecture; Brian Carlisle, Bach Homes; and Jeff Bower, Givens Pursley, representing GFI-Meridian Investments, LLC.
- b. In opposition: None
- c. Commenting: None
- d. Written testimony: Jeff Bower, Givens Pursley, representing GFI-Meridian Investments, LLC
- e. Staff presenting application: Bill Parsons
- f. Other Staff commenting on application: Kris Blume, Fire Chief

2. Key issue(s) of public testimony:

- a. The property owner to the south, Bach Homes, supports the emergency only access to the south as they plan to develop the property with a multi-family residential use which will connect to the existing Regency at River Valley apartment development to the east;
- b. The property owner to the north, GFI-Meridian Investments, LLC, is generally supportive of the proposed DA modifications requested by the Applicant and does not object to the proposed emergency only access to the south.
- c. In response to a question from the Council, the Fire Chief clarified that it may have been the Fire Marshall that had communicated with Staff and responded to the Council: "As long as an emergency access is preserved and not blocked, that's all we care about. Certainly, the applicant's concern about protecting the community as well as the people trafficking the area, we certainly agree with that, we just want to make sure the Fire Department has adequate access, and Code-compliant emergency access only would meet the needs of the Fire Department without any blockages."

3. Key issue(s) of discussion by City Council:

- a. The backage road along Eagle Rd. and whether or not access should be restricted to emergency only at the southern boundary of the site.

4. City Council change(s) to Staff's recommendation:

- a. Council approved the Applicant's request for emergency only access to be provided at the southern boundary of the property provided the adjacent property to the south

EXHIBIT "B"

develops with residential uses; however, if the adjacent property to the south develops with commercial uses, a through access shall be provided and shall not be limited to emergency access only (modify DA provision #5.1e accordingly).

VI. EXHIBITS

A. Existing Development Agreement Provisions (Inst. [#104129529](#))

4. **USES PERMITTED BY THIS AGREEMENT:**

- 4.1 The uses allowed pursuant to this Agreement are only those uses allowed under "City's" Zoning Ordinance codified at Meridian City Code Section 11-7-2 (K) which are herein specified as follows:

Any future uses of the property shall be approved only through the conditional use permit process. Additionally, either a public or private backage street generally parallel with Eagle Road/SH 55 shall be incorporated into the design of the future site plans. A conceptual master plan demonstrating interconnectivity, transitional uses, access points and other key land planning issues is required prior to any detailed CUP applications being submitted on either the Bryson or Schrammeck properties for the C-G zone.

- 4.2 No change in the uses specified in this Agreement shall be allowed without modification of this Agreement.

EXHIBIT "B"

5. CONDITIONS GOVERNING DEVELOPMENT OF SUBJECT PROPERTY:

5.A "Owner" shall develop the "Property" in accordance with the following special conditions:

1. Removal of any existing domestic wells and/or septic systems within this project from their domestic service must be accomplished at such time as the "Owners" change the current use of "Property" or otherwise develop the "Property" in accordance with the terms hereof.

2. Any future uses of the property shall be approved only through the conditional use permit process. In addition, there is a requirement that either a public or private backage street generally parallel with Eagle Road/SH 55 shall be incorporated into the design of future site plans. A conceptual master plan demonstrating interconnectivity, transitional uses, access points and other key land planning issues is required prior to any detailed CUP applications being submitted on either the Bryson or Schrammeck properties.

The following Comprehensive Plan policies (from Chapter VI and VII) shall be applicable to these properties:

Transportation Policies Applicable to the Bryson/Schrammeck Annexation:

- "Large development proposals that are likely to generate significant traffic should be assessed for their impact on the transportation system and surrounding land uses. They should be examined for ways to encourage all forms of transportation such as transit, walking, and cycling.
- New development should not rely on cul-de-sacs since they provide poor fire access, walkability, and neighborhood social life. New development and streets should be designed to encourage walking and bicycling.
- In addition to providing for enhanced automobile traffic, Meridian should seek ways to encourage alternative modes of transport. Improvement in and encouraged use of public transit systems is an important first step. Public transit includes bus systems and ridesharing. By fostering such means of high vehicle occupancies, congestion on roadways can be decreased.

EXHIBIT "B"

- Pathways that encourage use by bicyclists and pedestrians can decrease road congestion and add to the community's quality of life. The proposed off-street and multiple-use pathway systems are depicted in Figures VI-3 and VI-4. New and existing developments should ensure that the guidelines laid out in this plan are adopted.
- Eagle Road is the major north-south arterial in Ada County. The capacity of this arterial should be protected by minimizing the number and location of private driveway access connections to this important roadway. The City should recognize, adopt, and help implement the Eagle Road Access Control Study, prepared by ACHD in 1997."

Mixed Use Development Policies Applicable to the Bryson/Schrammeck Annexation:

- "Where feasible, multi-family residential uses will be encouraged, especially for projects with the potential to serve as employment destination centers and when the project is adjacent to State Highways 20-26, 55 or 69;
- In developments where multiple commercial and/or office buildings are proposed (not residential), the buildings should be arranged to create some form of common, usable area, such as a plaza or green space;
- Where the project is developed adjacent to low or medium density residential uses, a transitional use is encouraged."

3. All irrigation ditches, laterals or canals, exclusive of natural waterways, intersecting, crossing or lying adjacent and contiguous to the parcel shall be tiled per City Ordinance 12-4-13. Plans will need to be approved by the appropriate irrigation/drainage district, or lateral users association, with written confirmation of said approval submitted to the Public Works Department.

EXHIBIT "B"**B. Legal Description & Exhibit Map for Property Subject to New Development Agreement****EXHIBIT "A"****Legal Description of the Property**

A portion of the Southwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 1 East, Boise Meridian, more particularly described as follows:

Commencing at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 1 East, Boise Meridian, Ada County, Idaho; thence South along the West line of said Section 4, a distance of 433.62 feet to the Real Point of Beginning; thence South 53° 40' East 231.00 feet to a point; thence North 83° 50' East 114.57 feet to a point; thence South 218.05 feet to a point; thence West 300.00 feet to a point on the West line of said Section 4; thence North 342.64 feet to the Point of Beginning.

Excepting a 25 foot strip on the West side for highway right-of-way.

Also Excepting a parcel of land being on the Easterly side of the centerline of State Highway No. 55 (Eagle Road), Project No. NH-F-3271(037) Highway Survey, as shown on the plans thereof now on file in the office of the Idaho Transportation Department, and being a portion of the Southwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 1 East, Boise Meridian, described as follows to-wit:

Commencing at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 4, Township 3 North, Range 1 East, Boise Meridian that bears North 89° 23' 47" West 0.34 feet from Station 155+31.73 of said State Highway No. 55 (Eagle Road), Project NH-F-3271(037) Highway Survey; thence South 0° 36' 13" West (shown of record to be South) along the West line of said Southwest quarter of the Northwest quarter a distance of 765.43 feet (shown of record to be 776.26 feet) to the Southwest corner of the tract of land as described in that certain Warranty Deed dated January 24, 1975, recorded January 24, 1975, as Instrument No. 912958, records of Ada County, Idaho, said corner being a point in the centerline of said State Highway No. 55, that is coincident with Station 147+66.31 of said Highway Survey and being the Real Place of Beginning; thence South 89° 23' 47" East (shown of record to be East) along the South line of said tract of land 70.0 feet to a point in a line parallel with and 70.0 feet Easterly from the centerline and bears South 89° 23' 47" East from Station 147+66.31 of said Highway Survey; thence North 0° 36' 13" East along said parallel line a distance of 291.05 feet to a point in the Northerly line of said tract of land and being opposite Station 150+57.35 of said Highway Survey; thence North 53° 03' 47" West (shown of record to be North 53° 40' West) along said Northerly line 86.89 feet to the Northwest corner of said tract of land, said corner being a point in the West line of said Southwest quarter of the Northwest quarter, said West line being coincident with the centerline of said State Highway No. 55, and said point being coincident with Station 151+08.84 of said Highway Survey; thence South 0° 36' 13" West along said West line being coincident with said centerline 342.53 feet to the Real Place of Beginning.

EXHIBIT "B"

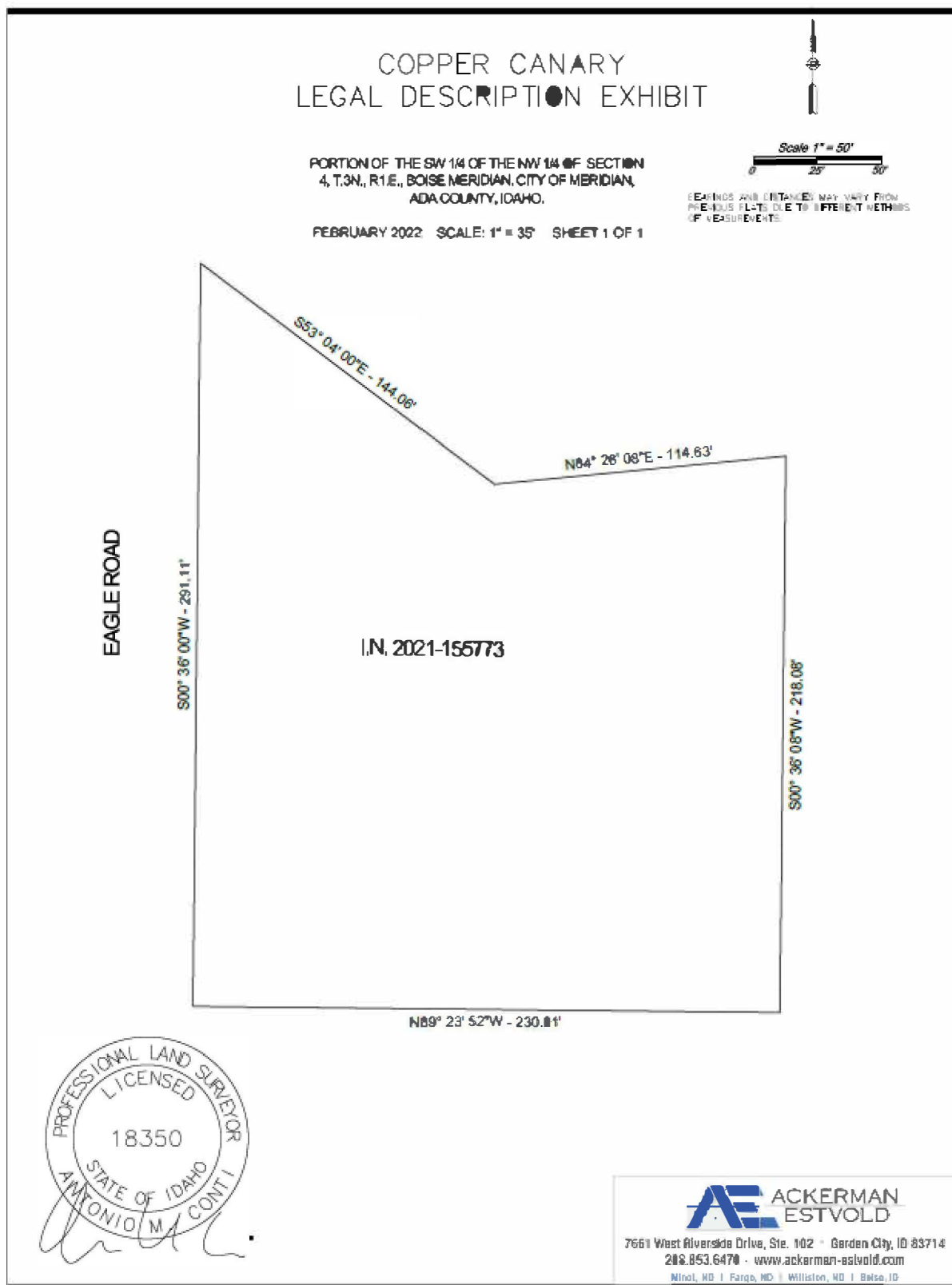


EXHIBIT "B"

C. Proposed Conceptual Development Plan

1. The information contained herein is for informational purposes only and does not constitute an offer of any financial product or service. It is not intended to be used as a basis for any investment decision. The information is not intended to be used as a basis for any investment decision.



CONCEPTUAL SITE PLAN

SCALE: 1/32" = 1'-0"

1

COPPER CANARY SITE WORK
7700 N. JENSEN RD
CONCEPTUAL SITE PLAN
12-1-2011
DC-21111

EXHIBIT "B"

D. Proposed Development Agreement Provisions

Staff's recommended changes to the proposed provisions are shown in strike-out/underline format.

1. USES PERMITTED BY THIS AGREEMENT: This Agreement shall vest the right to develop the Property in accordance with the terms and conditions of this Agreement.

1.1 The uses allowed pursuant to this Agreement are only those uses allowed as permitted, conditional and/or accessory uses under the UDC.

1.2 No change in the uses specified in this Agreement shall be allowed without modification of this Agreement.

2. CONDITIONS GOVERNING DEVELOPMENT OF SUBJECT PROPERTY:

5.1. Owner/Developer shall develop the Property in accordance with the following special conditions:

a. Development of the Property shall no longer be subject to the terms of the Development Agreement recorded as Instrument No. 104129529.

b. Development of the Property shall be generally consistent with the conceptual development plan depicted on Exhibit "C", attached hereto, and the provisions contained herein.

c. Owner/Developer shall make application for administrative Design Review. Future development shall comply with the structure and site design standards listed in the Architectural Standards Manual. Strict design review of all four sides of the remodeled existing building is required.

d. The existing direct access to the Property via N. Eagle Rd./SH-55 shall continue until vehicular access to the north across the South Slough and to N. Eagle Rd./SH-55 or to the south to E. River Valley St. is provided. At such time, the temporary access to Eagle Rd./SH-55 shall be removed and the street buffer landscaping adjacent to Eagle Road shall be completed consistent with the UDC standards. *Note: The access via N. Eagle Rd./SH-55 depicted on the conceptual development plan along the northern boundary of this site is not approved with this application.*

e. The drive aisle on the east side of the Property shall terminate at the south boundary of the Property as an emergency vehicle access if the adjacent property to the south develops with a residential use. Access will be restricted by a gate that will allow for emergency vehicle. The Owner/Developer shall coordinate the design of the gate with the Meridian Fire Department. However, if the adjacent property to the south develops with a commercial use, access shall not terminate and a through access shall be provided. Cross-access easements shall be granted to the properties to the north and to the south and recorded copies of the easements shall be submitted to the Planning Division with the Certificate of Zoning Compliance application.

EXHIBIT "B"

f. A Certificate of Zoning Compliance and administrative Design Review applications shall be submitted to and approved by the Planning Division prior to submittal of a building permit application(s).

EXHIBIT "C"

Concept Site Plan



CONCEPTUAL SITE PLAN

SCALE: 1/32" = 1'-0"

COPPER CANARY SITE WORK
2500 N. EAGLE RD.
CONCEPTUAL SITE PLAN
12.13.21
BC - 21111

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