

NOV 13 2006

For Recording Purposes Do  
Not Write Above This Line

Recording Requested By and  
When Recorded Return to:

**DEVELOPMENT AGREEMENT**

City Clerk  
City of Middleton  
P.O. Box 487  
Middleton, Idaho 83644

BY *[Signature]*  
REQUEST City of Middleton  
TYPE B<sup>c</sup> A FEE       

This Development Agreement (this "**Agreement**") is made and entered into this 4 day of October, 2006 (the "**Effective Date**"), by and between the **CITY OF MIDDLETON**, a municipal corporation in the State of Idaho (the "**City**"); and **GARY T. and LISA D. BROWN**, (husband and wife) ("**Owners**").

**RECITALS:**

**WHEREAS**, the Owners have applied to the City for annexation and rezone of certain parcel of land adjacent and contiguous to the municipal boundary of the City of Middleton currently zoned A (Agriculture) more particularly described in **Exhibit A** attached hereto and incorporated herein (the "**Property**") to R-3, in which Owners holds enforceable contracts;

**WHEREAS**, the terms and conditions hereinafter set forth shall obligate the Owners and their successors and assigns ("**Developer**");

**WHEREAS**, the City, pursuant to 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, but for which all allowed uses for the requested zoning may not be appropriate pursuant to the Idaho Code and the Middleton City Code;

**WHEREAS**, it is in the best interest of the City and the Developer that the land described in **Exhibit A** be annexed into the City of Middleton and be developed in accordance with this Agreement and the applicable Land Use Applications;

**WHEREAS**, the City of Middleton has determined that annexation of the real property described in attached Exhibit A constitutes an orderly extension of its municipal boundaries and property within the City's area of impact; and, that such annexation and Conceptual Plan,

attached as Exhibit B, are (1) not in conflict with the Middleton Comprehensive Plan, (2) appropriately zoned as set forth in the Conceptual Plan, (3) comply with the requirements of all state statutes and City of Middleton ordinances and as set forth in this Agreement, and (4) it is in the best interests of the City to enter into this Agreement in order to provide for orderly annexation and development of the Project;

**WHEREAS**, the Developer has agreed to the use restrictions and other limitations set forth herein upon the use and development of the Property and zoning designations to be placed upon the real property described in **Exhibit A** set forth in this Agreement:

**WHEREAS**, the intent of this Agreement is to protect the rights of the Developer's use and enjoyment of the Property while at the same time limiting any adverse impacts of the development upon neighboring properties and the existing community and ensuring the Project is developed in a manner consistent with the City's Comprehensive Plan and ordinances; and,

**WHEREAS**, the City and Developer enter this Agreement for the purpose of establishing certain rights and obligations of the parties with regard to annexation of the real property described in attached Exhibit A, and the development of the Project including limitations as to the use, development, design, phasing, construction of necessary improvements (on-site and off-site) and mitigating the impacts directly attributable to the development.

#### **AGREEMENTS:**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and in consideration of the recitals above which are incorporated herein, and in consideration of the undertakings and agreements hereinafter contained, the parties agree as follows:

#### **ARTICLE I LEGAL AUTHORITY**

1.1 This Agreement is made pursuant to and in accordance with the provisions of Idaho Code Section 67-6511A and Middleton City Code, Title 5, Chapter 7.

#### **ARTICLE II ZONING ORDINANCE AMENDMENT**

2.1 The City shall adopt an ordinance annexing the Property and amending the Middleton Zoning Ordinance to rezone the Property to R-3 (the "**Ordinance**"). The Ordinance will become effective after its passage, approval, and publication and the execution and recordation of this Agreement.

#### **ARTICLE III CONDITIONS ON DEVELOPMENT**

3.1 Developer shall develop the Property subject to the conditions and limitations set forth in this Agreement, and to the standards that the City has in force at the time of the annexation application for the R-3 zoning classification except as otherwise provided in this Agreement (the "Project"). Developer shall further submit such applications regarding preliminary and final plat reviews and any other applicable applications as may be required by the City. Developer agrees that, unless otherwise agreed to by the Parties, the conceptual site development plan (the "Conceptual Plan") attached hereto as **Exhibit B** shall dictate the type of development to be constructed in the Project. Developer agrees that, unless otherwise agreed to by the Parties, the overall Conceptual Plan (the "Conceptual Plan"), attached as **Exhibit B** shall dictate the type of development to be constructed in each of the components of the Project. Residential densities within the Project shall not exceed three (3) dwelling units per gross acre.

3.2 Developer shall dedicate property as shown in **Exhibit B** for Chief Road as an east/west connector road through the Project. The alignment and location will be part of the plat process.

3.3 It is understood that Lansing Lane resides on a Deed of Right of Way, attached as **Exhibit "C"**. The Owner shall dedicate, as an extension to Exhibit "C", a Deed of Right of Way of fifteen (15) feet west of, and parallel to, the eastern Property line (see Exhibit "B") to the points of intersection of the northern Property boundary and south to the intersection of Exhibit "C", for the purpose of future expansion and/or maintenance of Lansing Lane.

3.4 The Project shall comply with the Middleton Comprehensive Plan and City Code, and all state and federal law as they exist in final form at the time the development application was submitted, except as otherwise provided in this Agreement. Developer shall submit a complete set of plans which shall include:

- 3.4.1 Site plan including street, curb and gutter, street signs, irrigation lines, sidewalk and site lighting;
- 3.4.2 Underground utility plan including water, sanitary sewer, storm drainage, irrigation, and fire protection;
- 3.4.3 Any other required improvements set forth as conditions of approval; Soils report, including bearing values, soils profile, ground water and other elements as requested by the City Engineer or Building Official;
- 3.4.4 Review and Approval by the City Engineer and Building Official of site, utility, and landscape plans before a building permit is issued.

3.5 **Conceptual Plan.** All development within the Project shall be substantially consistent with the Conceptual Plan, unless otherwise approved by the City and the Developer.

3.6 **Design Standards.**

- (a) Minimum front yard setback of twenty five (25) feet, except side-entry garages and covered front porches shall be permitted front yard setback of fifteen (15) feet and a minimum rear yard setback of twenty (20).

- (b) Minimum lot size of 8,500 square feet.
- (c) Maximum of three (3) flag lots shall have twenty (20) feet of frontage to a public access.
- (d) Minimum lot width of seventy-five (75) feet with flag lots measured beyond the flag.

### **3.7 Street Improvements and Access.**

- 3.7.1 Project accesses shall conform to the diagram contained in Exhibit B.
- 3.7.2 Review and Approval by the City Engineer and Building Official of any and all street improvements and access shall be required before building permits shall be issued.
- 3.7.3 Provided the Developer is in substantial compliance as determined by the City Engineer, building permits may be issued prior to the completion of secondary street improvements.

**3.8 Access to Lansing Lane.** There shall be no more than three (3) accesses allowed from the lots directly on to Lansing Lane, any of which may be shared accesses. Sufficient turnaround space shall be provided such that resident's vehicles are not required to back out onto Lansing Lane.

**3.9 Sidewalks.** Public roads within the subdivision shall have curb, gutter, and sidewalks that are consistent with the connecting development. No curb, gutter, or sidewalks shall be required along Lansing Lane or the private lanes connecting thereto.

**3.10 Utilities in Lansing Lane.** The Developer shall not be required to place, construct, or connect to any utilities in Lansing Lane.

### **3.11 Landscape Improvements.**

**3.11.1** Developer or its successors or assigns shall maintain all site landscape areas as required by law.

**3.10 Compliance with City Code.** Developer agrees that all development will comply with the Middleton City Code, except as otherwise provided in this Agreement.

**3.11 Conditions and Security for Completion.** All of the conditions set forth herein shall be complied with or the Developer shall provide the City with sufficient security for the completion of such conditions in the form of a letter of credit, or other sufficient security, before signature of the Final Plat or Certificate of Occupancy will be granted. Failure to complete or provide such security for completion of the conditions within the time frame established in the subdivision plat approval conditions, the Middleton City Code or the terms of this Agreement shall result in a default of this Agreement by Developer. The Developer shall provide security for completion of such conditions at one hundred fifty percent (150 %) of the estimated cost to complete the condition.

**3.12 Commencement of Construction.** Developer shall commence construction of site infrastructure (e.g. grading of streets or installation of utilities) within three (3) years of the date the Ordinance becomes effective pursuant to Section 2.1 above. In the event Developer fails to commence construction within this time period, Developer shall be in default of this Agreement. Developer acknowledges that preliminary plat approval is valid for twelve (12) months pursuant to Middleton City Code § 6-2-3(F)(3).

**3.13 City Council Adoption.** The Middleton City Council hereby adopts this Agreement pursuant to Middleton City Code § 5-7-4(B).

#### ARTICLE IV

##### AFFIDAVIT OF PROPERTY OWNERSHIP

**4.1** An affidavit of all owners of the Property agreeing to submit the Property to this Agreement and to the provisions set forth in Idaho Code Section 67-6511A and the Middleton City Code shall be provided and is incorporated herein by reference.

#### ARTICLE V

##### DEFAULT

**5.1** In the event Developer, its successors or assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, fail to faithfully comply with all of the terms and conditions included in this Agreement, this Agreement may be modified or terminated by the Middleton City Council upon compliance with the requirements of the Middleton City Code. In the event the City Council determines that this Agreement shall be modified, the terms of this Agreement shall be amended and Developer shall comply with the amended terms. Failure to comply with the amended terms shall result in default. In the event the City Council, after compliance with the requirements of the Middleton City Code, determines that this Agreement shall be terminated, the zoning of the Property shall revert to City R-3 zoning. All uses of the Property, which are not consistent with City R-3 zoning shall cease. Nothing herein shall prevent Developer from applying for any nature of use permit consistent with City R-3 zoning. A waiver by the City of any default by Developer of any one or more of the covenants or conditions hereof 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.

**5.2 Remedies.** Developer, by entering into this Agreement, does hereby agree that, in the event there shall be a default in the terms and conditions of this Agreement, this Agreement shall serve as consent to a reversion of the Property to City R-3 zoning.

**5.3 Remedies and Specific Performance.** In addition to the remedies provided by the Default provisions herein, any applicable Permits issued pursuant to this Agreement, and the proceedings Findings of Facts and Conclusions of Law issued herein may be revoked at any time for a material violation of the permit, or any material violation of any condition thereof, by motion

of the City Council after notice and Developer's failure to cure such failure within thirty (30) days, followed by a due process hearing upon at least ten (10) days written notice to Developer. The City Council, after finding that Developer has exercised due diligence in curing any such failure, may provide a reasonable extension of time for Developer to cure such failures. In the event a breach of this Agreement in addition to all other remedies at law or in equity, and as set forth in this Agreement.

**5.4 Financial Assurance.** In the event that certain improvements are not completed by Developer as required under this Agreement, Developer shall submit a mutually acceptable bond, cash deposit, certified check, or irrevocable bank letter of credit, or other security agreement to the City for one hundred fifty percent (150%) of the estimated costs associated with the completion thereof as estimated by the City Engineer and approved by the CITY prior to the issuance of an occupancy permit for any of the buildings within the Project for which said improvements are required to be constructed. In the event Developer fails to complete construction of the specified improvements within a period of time as required under this Agreement, the City may proceed to have such work completed. In order to accomplish this, the City may appropriate said security agreement, bond, cash, deposit, or letter of credit.

## **ARTICLE VI UNENFORCEABLE PROVISIONS**

**6.1** If any term, provision; commitment or restriction of this Agreement or the application thereof to any party or circumstances shall, to any extent be held invalid or unenforceable, the remainder of this instrument shall remain in full force and effect.

**6.2** This Development Agreement is intended to be supplemental to all other local, City, State and Federal Code requirements, rules and regulations, and is established to assure compatibility of the resulting land use with the surrounding area. Provided, however, that to the extent this Development Agreement conflicts with any provision of the Middleton City Code, this Development Agreement shall prevail to the extent permitted by law.

## **ARTICLE VII ASSIGNMENT**

**7.1** After its execution, this Agreement shall be recorded in the office of the Canyon County Recorder at the expense of Developer. Each commitment and restriction on the Project subject to this Agreement shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property, adjacent property and other residential property near the Property and shall run with the land. This Agreement shall be binding on the City and Developer, and their respective agents, legal representatives, successors and assigns; provided, however, that if all or any portion of the Property is divided, each owner of a legal lot shall only be responsible for duties and obligations associated with the owner's parcel and shall not be responsible for duties and obligations or defaults as to other parcels of lots within the Property. A new owner

of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect only to such owner's lot or parcel.

## ARTICLE VIII

### GENERAL

**8.1 Amendments.** Any alteration or change to this Agreement shall be made only after complying with the notice and hearing provisions of Idaho Code Section 67-6509, as required by Middleton City Code, Title 5, Chapter 7.

**8.2 Paragraph Headings.** This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

**8.3 Choice of Law.** This Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Agreement. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Canyon County, Idaho.

**8.4 Conveyance of Development Tracts Within the Property.** The City hereby agrees that Purchaser may convey to Developer, or vice versa, or to other participants in the Project, development tracts within the Property which have been surveyed and described by metes and bounds, prior to recordation of a final plat creating buildable lots within the Property, provided such conveyances are in compliance with and to the extent they are permitted by Idaho state law.

**8.5 Notices.** Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service or facsimile, to the party to whom the notice is directed at the address of such party set forth below:

**City:** City Clerk  
City of Middleton  
P.O. Box 487  
Middleton, Idaho 83644

**Owner:** Gary and Lisa Brown  
23593 Lansing Lane  
Middleton, Idaho 83644  
Phone 208-585-6405

Or such other addresses and to such other persons as the parties may hereafter designate in writing to the other parties. Any such notice shall be deemed given upon delivery if by personal delivery, upon deposit in the United States mail, if sent by mail pursuant to the foregoing.

**8.6 Attorneys' Fees and Costs.** In the event an action is brought to enforce any provision of this Agreement, or in the event an action is brought to recover damages for breach of this Agreement, the prevailing party in such action shall be entitled to recover from the other party all reasonable attorneys' fees and costs incurred, including attorneys' fees and cost incurred on appeal.




IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, on the day and year first above written.


Dated this 8 day of September, 2006.

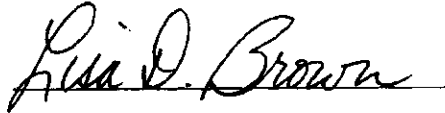
**CITY:**  
**CITY OF MIDDLETON,**  
an Idaho municipal corporation

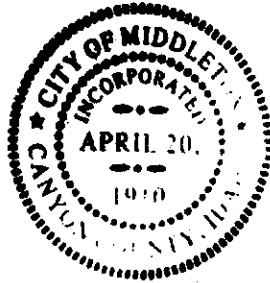
**OWNERS:**  
**GARY T. AND LISA D. BROWN,**

  
Frank McKeever, Mayor

  
Gary T. Brown

  
Attest: \_\_\_\_\_  
City Clerk

  
Lisa D. Brown

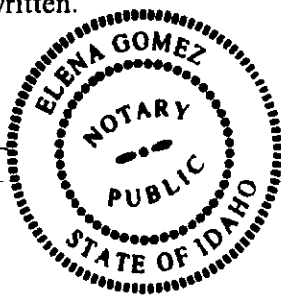


STATE OF IDAHO )  
 )ss.  
County of Canyon )

On this 12 day of October, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared **FRANK MCKEEVER**, known or identified to me to be the **MAYOR** of the **CITY OF MIDDLETON**, 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.

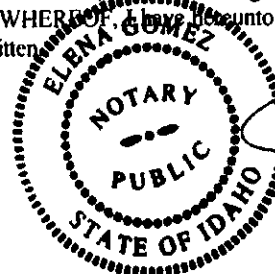
By: Elena Gomez  
Notary Public for the State of Idaho  
Residing at Middleton  
My commission expires on 3-14-11



STATE OF IDAHO )  
 )ss.  
County of Canyon )

On the 8 day of September, 2006, before me, a Notary Public, in and for said County and State, personally appeared **Gary Thomas Brown**, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

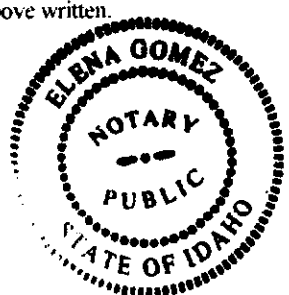


Elena Gomez  
NOTARY PUBLIC FOR IDAHO  
Residing at Middleton  
My commission expires 3-14-11

STATE OF IDAHO )  
 )ss.  
County of Canyon )

On the 8 day of September, 2006, before me, a Notary Public, in and for said County and State, personally appeared **Lisa Dawn Brown**, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she 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.



Elena Gomez  
NOTARY PUBLIC FOR IDAHO  
Residing at Middleton  
My commission expires 3-14-11

**EXHIBIT A**

**Legal Description of the Property**



CIVIL AND STRUCTURAL ENGINEERING AND LAND SURVEYING

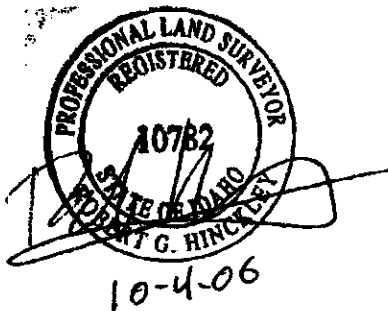
**EXHIBIT A**  
**Annexation Description**  
**Gary Brown Property**  
**Job No. 05160 October 4, 2006**

Land within the SE1/4NE1/4 of Section 4, and the NW1/4 of Section 3, T4N, R2W, B.M., Canyon County, Idaho, described as follows:

**COMMENCING** at the Northeast Corner of said Section 4;  
thence, along the East Line of said Section, South 00°06'03" West, 943.16 feet  
thence North 89°17'24" East, 25.00 feet;  
thence parallel with and 25.00 feet East of said East Section Line, South 00°06'03" West 376.17 feet;  
thence South 89°53'57" East 25.00 feet;  
thence parallel with and 50.00 feet East of said East Section Line South 00°06'03" West 415.83 feet, to the **POINT OF BEGINNING**;

thence continuing, South 00°06'03" West, 704.17 feet, to an angle point in the east right-of-way of Lansing Lane, as described in Instrument No. 75688, Canyon County Records;  
thence along said right-of-way, South 07°16'52" West, 199.57 feet, to a point from which the East 1/4 Corner of said Section 4 bears South 89°36'49" West, 25.05 feet;  
thence South 89°36'49" West, 25.05 feet, to said East 1/4 Corner;  
thence along the South Line of said SE1/4NE1/4, South 89°36'49" West, 227.30 feet;  
thence North 00°44'48" East, 905.64 feet;  
thence South 89°37'41" East, 267.08 feet, to the **POINT OF BEGINNING**.

Containing 5.59 Acres, more or less.



P:\Sargen\Servers\par\Drawings\Survey\Descriptions\Gary Brown Annexation Desc.doc

Treasure Valley Engineers, Inc.  
1204 6<sup>th</sup>. Street North  
Nampa, Idaho 83687

Office: (208) 463-0305  
Fax: (208) 463-4391  
www.TVEInc.com

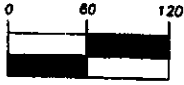
**EXHIBIT B**

**Conceptual Plan**

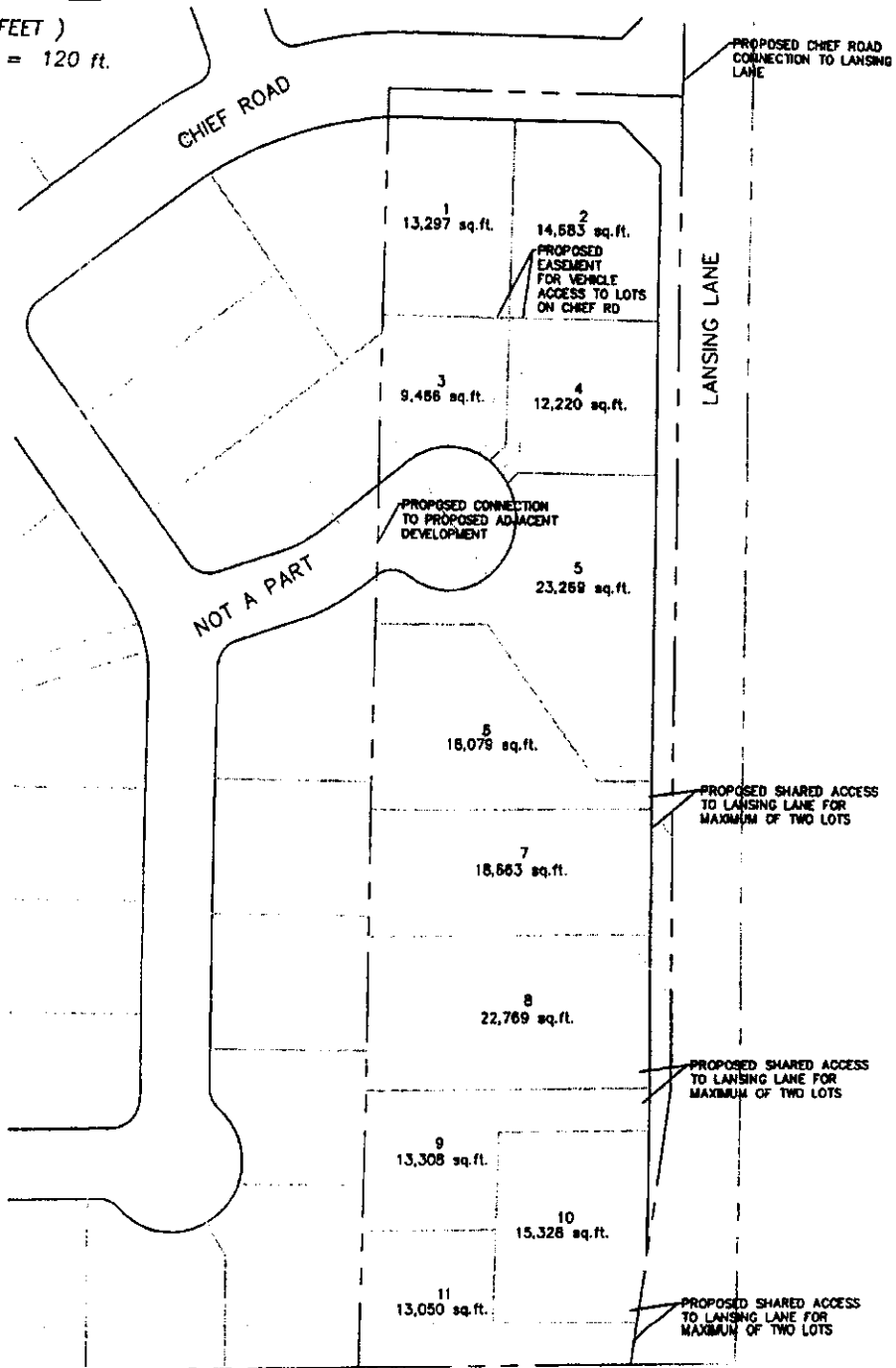
# CONCEPTUAL PLAN FOR GARY BROWN 05/08/2006



SCALE



( FEET )  
1 inch = 120 ft.



**EXHIBIT C**  
**Deed of Right of Way**

DEED OF RIGHT OF WAY

WHEREAS, Certain of the inhabitants of Road District No.14 of Canyon County, State of Idaho, taxable therein for road purposes, have petitioned in writing the Board of County Commissioners of said Canyon County, Idaho to lay out a new Road thereon, as set forth in their petition dated the 1st day of April 1916, which said road is proposed to be located as follows, to wit:

Beginning 25 feet west of the 1/2 corner between sections 3 and 4 in T 4 N. R. 2 W. S. N. and running northeasterly 200 feet to a point on the section line; thence north on section line 1820 feet, to the Foot Hill road; thence east 25 feet; thence south 700 feet; thence east 25 feet; thence south 1120 feet; thence southwesterly 200 feet to a point 25 feet east of the said 1/2 corner; thence west 50 feet to the point of beginning.

NOW THEREFORE In consideration of the location and establishment of said road, as above described, and of the benefits to accrue to us and each of us by such location, we the undersigned, owners, occupants, and claimants of land required for road purposes on the line of the foregoing designated route, hereby signify our approval of the location of said road, and do hereby consent thereto; and we do hereby grant and dedicate the lands belonging to us and each of us, so far as the same may be required for such road to said County of Canyon, in the State of Idaho, to that purpose and for the use of such road; and we hereby waive all claims for damage, and on account of the same.

IN WITNESS WHEREOF we have set our hands and seal the day and year first above written.

WITNESS: C. B. Parsons

Albert Harvey (SEAL)

Margaret Harvey (SEAL)

State of Idaho )  
                  ) SS  
County of Canyon )

I hereby certify that this instrument was filed for record at the request of County Commissioners at 59 minutes past 11 o'clock P.M. this 21 day of Sept 1916

L. C. Knowlton, Ex officio Recorder.

By Rose Edwards Deputy

*See...*