

AFTER RECORDING RETURN TO:

City of Newberg
Planning and Building Department
PO Box 970 - 414 E. First Street
Newberg, OR 97132

DEVELOPMENT AGREEMENT

**between Walter C. Gaibler, Trustee of Walter C. Gaibler Living Trust
and the City of Newberg, Oregon**

This Development Agreement (“Agreement”) is made and entered into by and between Walter C. Gaibler, Trustee of Walter C. Gaibler Living Trust (“Owner”) and the City of Newberg, Oregon (“City”) (together, “Parties”) pursuant to ORS 94.504 to 94.528 and Newberg Development Code (“NDC”) §§ 151.255 to 151.259.

RECITALS

A. This Agreement relates to a portion of certain real property owned by Owner legally described in Exhibit A and diagrammatically shown in Exhibit B, hereinafter known as the “Property.”

B. The Property is currently located outside the City’s limits, outside the Newberg Urban Growth Boundary (“UGB”) and Urban Reserve Area (“URA”), and is zoned Yamhill County EF-40.

C. On February 7th, 2007, Yamhill County issued Board Order 07-159, approving Owner’ local Measure 37 claim on the Property, and on February 22, 2007 the State of Oregon through the Department of Administrative Services and the Department of Land Conservation and Development (“State”), issued Final Order Claim No. M129954 approving Owner’ State

Measure 37 claim. Under these orders, Owner is authorized to divide and develop the Property into one-acre lots, with a dwelling on each newly-created lot, subject to the standards in effect on August 5th, 1949 for a portion of Lot 3228-900, March 10, 1964 for a portion of Lot 3228-900, and April 9th, 1968 for Lot 3228-100.

D. Owner seeks to develop the Property pursuant to the approved Measure 37 claims.

E. The City Council appointed a citizen committee, the Ad Hoc Committee on Newberg's Future, to consider the future direction for the development of Newberg. Among other things, the committee found a definite need for a suitable, cohesive industrial area with good access to transportation and utilities, level land, and little surrounding residential land. The Committee found that the only suitable area for industrial expansion is the area along Highway 219 south of Wyooski Street. The Owner's property lies within this area.

F. Pursuant to the recommendations of the Ad Hoc Committee on Newberg's Future, the City is in the process of considering including within its Urban Reserve Area (URA) and Urban Growth Boundary (UGB), and in designated the area for industrial uses.

G. Owner's allowed residential use of the property would be in conflict with the City's proposed industrial uses in the area.

H. Owner and City desire to pursue including the property in the URA, UGB, and City to help accomplish the community's industrial development objectives, and to allow Owner industrial use of the property, under the conditions outlined in this agreement. These conditions would allow a portion of the property to be developed for rural residential use, and allow that property to connect to municipal water services prior to or without annexation of the property to the City.

I. Newberg City Ordinance § 52.11 and § 51.63 limit extending City utilities outside

the City's limits. Pursuant to City Ordinance 2007-2667, the City has authority to allow connection to municipal water service to the Property after execution of this Agreement.

J. Extending municipal water service to the Property is consistent with Statewide Planning Goal 11 because the Proposed Development is not dependent on the extension of City municipal water service. The development density is dependent on the Yamhill County and State Measure 37 approvals whereby Owner is authorized to divide and develop the Property into approximately one-acre residential lots. The extension of municipal water service therefore does not increase the base density in a residential zone due to the availability of water, allow a higher density for residential development than would otherwise be authorized without such service, or allow an increase the allowable density of residential development due to the extension of the municipal water service. The Property could be developed regardless of the availability of the City's municipal water service.

K. Given the Yamhill County and State Measure 37 approvals for the Property, the length of time needed to consider URA and UGB amendments, the length of time needed to consider and annex the Property, and City's and Owner' goals for the Property's development, City and Owner enter into this Agreement to allow the extension of municipal water service to the Property prior to annexation, to establish certain standards for the Property's development prior to and upon annexation, and to establish processes for considering and including the Property in the URA, UGB, and the City limits.

L. The Newberg City Council authorizes the City Manager to enter into this Agreement through Ordinance 2007-2673, adopted on August 5, 2007.

AGREEMENT

1. Urban Reserve Area and Urban Growth Boundary Amendments. City shall carry

forward a proposal for including the Property in the URA and the UGB. City anticipates considering the URA proposal in 2007 and the UGB proposal in 2008. City will diligently pursue, and Owner will support, the process for including the Property in the URA and UGB. City shall be responsible for providing all work associated with the said inclusions including but not limited to the applications and the related documentation supporting the applications. City shall pay for all costs of the proposed inclusion of the said Property into the URA and UGB (with those costs including but not limited to filing fees, staff time, etc). Owner and City understand that these proposals are subject to legislative approval through City, Yamhill County, and State processes, including appeals processes, and that the inclusion of the Property in the URA and UGB ultimately may not be approved and may exceed the timeframes noted above.

2. Annexation. After the property is included in the UGB, upon request of the City, but no sooner than such date that the Property becomes contiguous to the City, Owner shall submit an application for annexation using the City's standard forms. City shall pay for all filing fees and costs associated with the said application. City staff shall diligently recommend approval of the annexation application to the applicable governing bodies. City shall consider the application, and if the City Council elects, the City shall submit the question of annexation to the City electorate at a special, primary, or general election. City shall pay all costs associated with the said election. If an annexation vote is not approved, City may resubmit the annexation question at subsequent elections. Owner agrees to annexation when the Property becomes contiguous to the City.

3. City Utility Services. Upon the effective date of this Agreement, development on the Property shall be allowed to use City municipal water service in the same manner as other properties within the City. Owner shall pay fees for said service at the rate established for out-of-

City customers. If, prior to annexation into the City, some or all of the Property has been approved for, developed, or served by septic tanks or other private septic systems, such systems shall be allowed to remain on such private septic systems for a period of fifteen (15) years following construction of said systems, subject to sewer being available. City and Owner agree that upon approval of the proposed development by Yamhill County, such private septic tanks or other private septic systems shall be approved for purposes of this paragraph and Agreement. City and Owner also agree that the fifteen (15) year period referenced in this paragraph shall survive the term of this Agreement. Thereafter, if City requires connection to the public sanitary sewer system, Owner or their assigns shall pay for and install all required infrastructure and pay all associated fees, except as may be installed by City capital improvement programs or other entities, subject to System Development Charge (“SDC”) credits where applicable. Owner reserve the option to prebuild sanitary sewer infrastructure on the Property to be made operable at such time as City sewer service is extended to the Property. City agrees to allow construction of such utilities to the City standards at the time of construction, subject to City’s review and approval under existing standards. If City standards are amended subsequent to City’s approval and prior to the Property’s annexation, City will not require alteration of the system to the new City standards. Owner will assure to City that the system functions as designed and is not in need of repair at the time the City annexes the Property.

4. City and County Development Review. Parties understand that prior to annexing the Property to the City, Yamhill County has land use jurisdiction over the development, and any development prior to annexation must be approved by Yamhill County. **Upon receiving approval from Yamhill County, Owner may proceed with the Subdivision Development, except that any development of public water systems on the Property that occurs prior to annexation to the City**

shall be submitted to the City for engineering review and approval in accordance with City standards prior to construction of such systems. After annexation and subject to the provision of Section 3 above, any subsequent development not previously approved by Yamhill County shall be subject to approval from the City in accordance with the NDC and any other applicable City ordinance.

5. City Development Standards and Requirements.

(a) Development of Property. The westerly approximate 50 acres of the property (“Industrial Tract”) is to be developed with industrial uses after annexation to the City. The remaining easterly portion of the property (“Subdivision Tract”) may be developed with a rural residential development in accordance with Yamhill County standards prior to annexation to the City. Development shall include a substantial buffer between the residential and industrial uses.

(b) Comprehensive Plan Designations. Upon the Property’s inclusion in the UGB, the following City Comprehensive Plan designations shall apply to the Property. The easterly subdivision portion shall be designated LDR-1/A (Low Density Residential – 1 dwelling unit per acre). The industrial portion shall be designated IND (Industrial).

(c) Zoning Districts. Upon the Property’s annexation to the City, the following City Zoning Districts shall apply to the Property. The Subdivision Tract shall be zoned Low Density Residential-1/A District. The Industrial Tract shall be designated with an industrial zoning that allows large-lot industrial uses.

(d) Development Density, Uses, and Height. Prior to the Property’s annexation, development of the Subdivision Tract shall be subject to the densities and uses allowed by Yamhill County ordinances and the Yamhill County and State Measure 37 claim

approvals. Development shall be subject to the height limits of the Yamhill County EF-40 zone. Prior to development of the Industrial Tract, development shall be subject to the standards of the Yamhill County EF-40 zone. After annexation, development of the Industrial property shall be subject to the standards of the City's industrial zoning applied to the property.

(e) Stream Corridor Designation. Upon inclusion in the Urban Growth Boundary, the stream corridor along the eastern portion of the property shall be designated as a Stream Corridor per the Newberg Comprehensive Plan. Upon annexation, the stream corridor will be subject to the City's stream corridor overlay provisions.

(f) Public Roads. Roads within the Property shall be dedicated as public roads.

(g) Water Lines. When developing the Property, water lines shall be situated so as to allow extension to other properties included in the UGB or URA. Water lines on the Property shall include fire hydrants to satisfy City fire standards in effect when the water lines are constructed.

6. Dedication of Land. Consistent with Section 5(f), roads within the Subdivision Parcel shall be dedicated as public roads and all rights-of-way dedicated as public roads shall become City streets upon annexation.

7. Extension of water line. Owner will extend an 18 inch municipal water line to City standards, under Highway 219 to the property line. Owner shall submit engineered construction drawings for City review and approval. City will promptly reimburse Owner the costs incurred by Owner for this line. This reimbursement shall not exceed \$160,000 unless a greater amount is approved by City. Owner shall be responsible for all costs of constructing water infrastructure from Highway 219 onto the property, including plan review and inspection

fees.

8. Fees and Charges. Owner shall not be required to pay application fees associated with the annexation application required herein. If the City Council chooses to submit the annexation to the City electors, the City will bear the cost of the initial annexation election for the property, at a date chosen by the Council. Owner may request different or additional annexation elections which, if the Council chooses to submit the annexation to the electors, would be at his expense. Owner shall pay all sewer and water connection and SDCs in accordance with the City's established fee schedules at the time of construction. Owner shall pay all City inspection fees for plan review and inspection of any public facilities to be maintained by City. If any City water connection occurs prior to annexation, Owner or users shall pay utility rates established for out-of-City customers. After annexation, Owner or users shall pay sewer and water utility rates as well as any other fee or charge per established rates for in-City customers. At the time of annexation, Owner shall pay all SDCs then in effect, except sewer and water connection fees, which are paid at the time of connection.

9. Continuing Effect of Agreement. In the case of any change in City regulation, regional policy, State law, federal law, or other change in circumstance which renders compliance with the Agreement impossible or unlawful, Parties will attempt to give effect to the remainder of the Agreement, but only if such effect does not prejudice the substantial rights of either party under this Agreement. If the substantial rights of either party are prejudiced by giving effect to the remainder of the Agreement, then Parties shall negotiate in good faith to revise the Agreement to give effect to its original intent. If Parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either party may request that an arbitrator give an equitable effect to the remainder of the Agreement, and the

Agreement shall thereafter be amended pursuant to the order of the arbitrator. If, because of change in policy, law or circumstance, the Agreement fails essential purpose, then the parties shall be placed into their original positions to the extent practical.

10. Binding Effect and Assignability of Agreement. This Agreement is binding upon the heirs, successors, and assigns of the Property.

11. Future Discretionary Approvals. Future discretionary approvals under this Agreement include, but are not limited to: annexation review, UGB amendment, and URA amendment. Other discretionary approvals may be required for further development of the Property, and may include subdivision review, site design review, variance or adjustment review, and conditional use permit review. All reviews following annexation shall be governed by the NDC and any other applicable City ordinance.

12. Waiver of Claims against the City. Owner(s) shall be stopped from asserting any rights and remedies, actions, causes of action, suits, claims, liabilities, demands, and rights to waivers arising under or granted by any statutory or constitutional regulatory compensation or waiver provisions, including but not limited to Ballot Measure 37 (2004) or otherwise enacted after the date of this proceeding which would create a right of claim for compensation or waiver from City land use regulations that exist upon the effective date of the proceeding and which, by carrying out this agreement, are then applicable to the property.

13. Default and Remedies.

(a) Default. The following shall constitute default on the part of a party: A breach of a material provision of this Agreement, whether by action or inaction of a party which continues and is not remedied within sixty (60) days after the other party has given notice

specifying the breach; provided that if the non-breaching party determines that such breach cannot with due diligence be cured within a period of sixty (60) days, the non-breaching party may allow the breaching party a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the breaching party diligently proceeds to affect a cure and the cure is accomplished within the longer period of time granted by the non-breaching party; or any assignment by a party for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over a party.

(b) Remedies. Each party shall have all available remedies at law or in equity to recover damages and compel the performance of the other party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to the cumulative with any and all rights otherwise available at law or in equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other parties, including, without limitation, the right to compel specific performance.

13. Amendment or Termination of Agreement. This Agreement may be amended or terminated by the Parties' mutual written consent of the Parties. **Any amendment of this Agreement which relates to the term, permitted uses, density or intensity of use, height or size of buildings, or provisions for the reservation or dedication of land shall require a public hearing before the City Council.**

14. Budgetary Obligations. All City obligations to expend monies under this Agreement are contingent upon future appropriation as part of the local budget process. Nothing in this Agreement requires City to appropriate any such monies.

15. Notice. A notice or communication under this Agreement by either party shall be in writing and shall be dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by either personal delivery or nationally-recognized overnight courier (such as UPS or Federal Express) or be facsimile transmission, and

For Owner, notice or communication shall be sent to the following address:

Walter C. Gaibler
1301 Fulton Street, Apt. 130
Newberg, OR 97132

With copy to: Jessica S. Cain
700 Deborah Rd., Suite 250
Newberg, OR 97132

For City, notice or communication shall be sent to the following address:

City of Newberg City Manager
414 E. First Street
Newberg, OR 97132

With copy to: City of Newberg Planning Director
P.O. Box 970
Newberg, OR 97132

or addressed in such other way that City or Owner may request, provided that such request be in writing and given in accordance with this section.

16. Effective Date. This Agreement shall be effective upon signing by both Owner and City (“Effective Date”).

17. Duration. This Agreement shall expire upon completion of the terms herein, or 10 years after the Effective Date, whichever comes first.

October 2017

ACCEPTED BY:

Walter C. Gaibler
Trustee of Walter C. Gaibler Living Trust

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on this _____ day of _____, 200____, by
Walter C. Gaibler as Trustee for Walter C. Gaibler Living Trust.

Notary Public for Oregon
My Commission expires: _____

CITY OF NEWBERG
ACCEPTED:

Terrence D. Mahr
Terrence D. Mahr, Manager Pro Tem

Dated: 10/24/07

APPROVED AS TO FORM

Terrence D. Mahr
Terrence D. Mahr, City Attorney

Dated: 10/24/07

- Exhibits:
Exhibit A: Legal Description
Exhibit B: Property Map
Exhibit C: Concept Plan

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EXHIBIT A to GAIBLER DEVELOPMENT AGREEMENT LEGAL DESCRIPTION

Real property in the County of Yamhill, State of Oregon, described as follows:

PARCEL 1:

TRACT A - Part of the South half of the Luke McKern Donation Land Claim No. 56 in Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon, said part being described as follows:

Beginning at a point on the South line of said Luke McKern Donation Land Claim, 18.00 chains West of the Southeast corner of said Donation Land Claim, said place of beginning being the Southwest corner of a certain tract of land conveyed by Ernest Schick, et al, by deed recorded June 11, 1956 in Book 181, Page 61, Deed Records, said tract being identified as Parcel One in said deed; thence North along the West line of said Schick tract and the Northerly extension thereof, 29.30 chains to the Southeast corner of a certain tract of land conveyed to Clifford W. Jones, et ux, by deed recorded April 14, 1950 in Book 156, Page 573, Deed Records; thence West along the South line of said Jones tract, 14.90 chains to the Southwest corner of said Jones tract, said point being situated on the East line of a certain tract of land conveyed to Muret H. Sullivan, et ux, by deed recorded November 4, 1953 in Book 171, Page 477, Deed Records; thence South along the East line of said Sullivan tract and the Southerly extension thereof, 29.30 chains to the South line of said McKern Donation Land Claim, said point being the Southeast corner of a certain tract of land conveyed to Harvey Burnett by deed recorded April 19, 1937 in Book 112, Page 426, Deed Records, said point also being 31.65 chains East of an oak stake set on the South line of said Donation Land Claim in the center of a 30 foot roadway, said stake being 12.55 chains East of the Southwest corner of said Donation Land Claim; thence East along the South line of said Donation Land Claim 15.10 chains to the place of beginning.

ALSO part of the South half of the Luke McKern Donation Land Claim No. 56 in Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon, said part being described as follows:

A 16 foot strip of land more particularly described as follows: Beginning at the Northwest corner of a certain tract of land conveyed to Harvey Burnett et ux, by deed recorded April 28, 1947 in Book 142, Page 277, Deed Records, said place of beginning being 16 feet South of a rock situated in the center of a 30 foot roadway, said rock being 12.55 chains East and 33.41 chains South of the Northwest corner of the South half of said McKern Donation Land Claim, said place of beginning also being 16 feet South of the Southwest corner of a certain tract of land conveyed to Joseph N. Powell, by deed recorded September 7, 1909 in Book 57, Page 218, Deed Records; thence North 89°05' East along the North line of said Burnett tract, 31.65 chains to a point on the West line of a certain tract of land conveyed to Muret H. Sullivan et ux, by deed recorded February 20, 1947 in Book 141, Page 55, Deed Records, said tract being Parcel One of said deed; thence North along the West line of said Sullivan tract, 16 feet to the Southeast corner of said Powell tract; thence South 89°05' West along the South line of said Powell tract, 31.65 chains; thence South 16 feet to the place of beginning.

ALSO part of the South half of the Luke McKern Donation Land Claim No. 56 in Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon, said part being described as follows:

A strip of land 10 feet in width along the South side of the following described property: Beginning at a rock in the center of a 30 foot roadway, 12.55 chains East and 20.53 chains South of the Northwest corner of the South half of said Donation Land Claim; thence North 89°05' East 31.65 chains to stake; thence South 12.64 chains to a stake from which a 1/4" 14 inches in diameter bears North 17° East, 16 links; thence South 89°05' West, 31.65 chains to stake in center of a 30 foot roadway; thence North along the center of said roadway, 12.64 chains to the place of beginning.

TRACT B - A part of the Donation Land Claim of Luke McKern and wife, Notification No. 1480, Claim No. 56 in Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon, said part being more particularly described as follows:

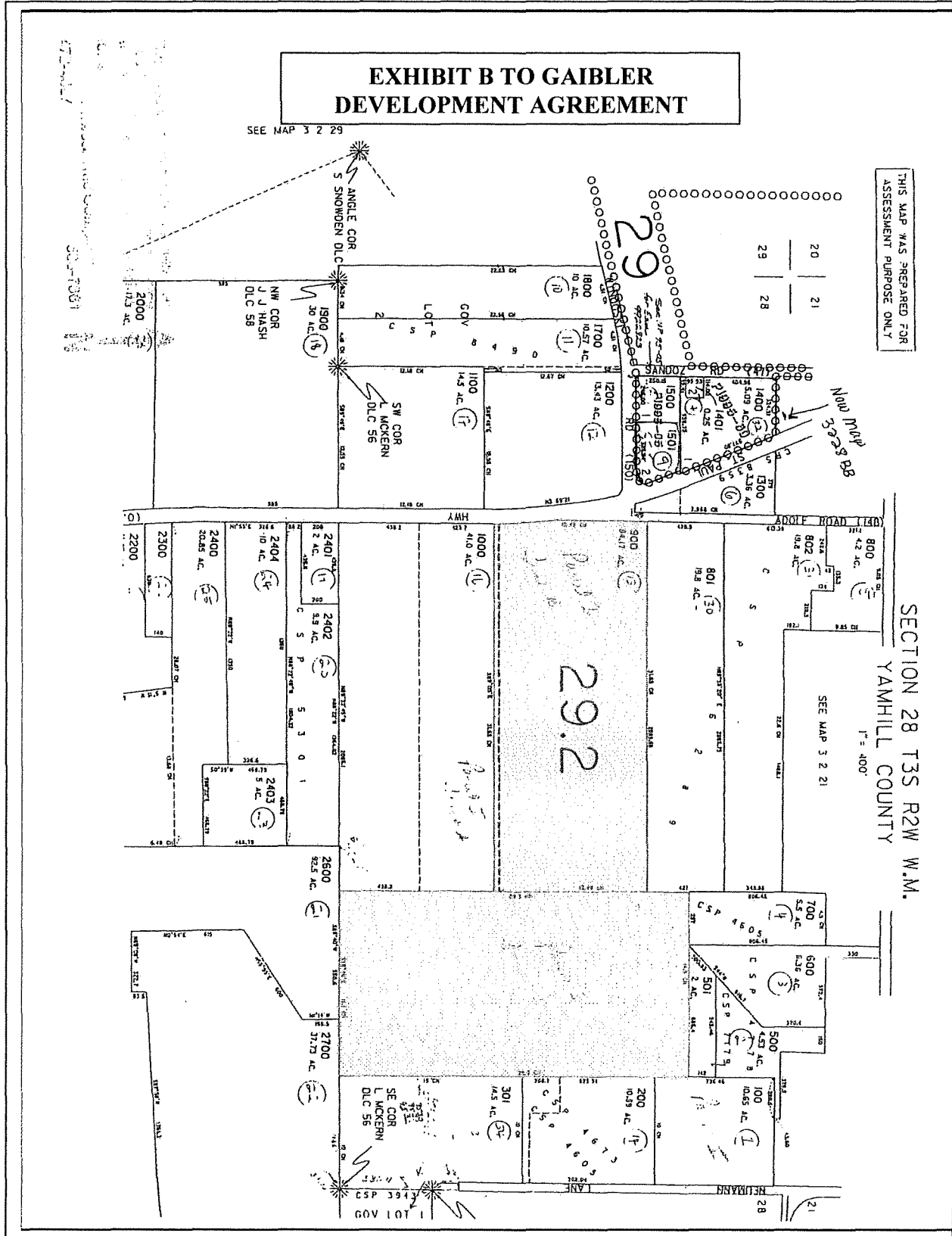
Beginning at a rock in the center of a 30 foot roadway, 12.55 chains East and 20.53 chains South of the Northwest corner of the South half of said Donation Land Claim; thence North 89°05' East 31.65 chains to stake; thence South 12.64 chains to stake from which a 1/4" 14 inches in diameter bears North 17° East 16 links; thence South 89°05' West 31.65 chains to stake in center of a 30 foot roadway; and thence North along center of said roadway 12.64 chains to the place of beginning.

EXCEPTING THEREFROM a strip of land 10 feet in width along the South side of said property herebefore sold to John G. Keller.

EXHIBIT B TO GAIBLER DEVELOPMENT AGREEMENT

SEE MAP 3 2 29

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY



8 7 6 5 4 3 2

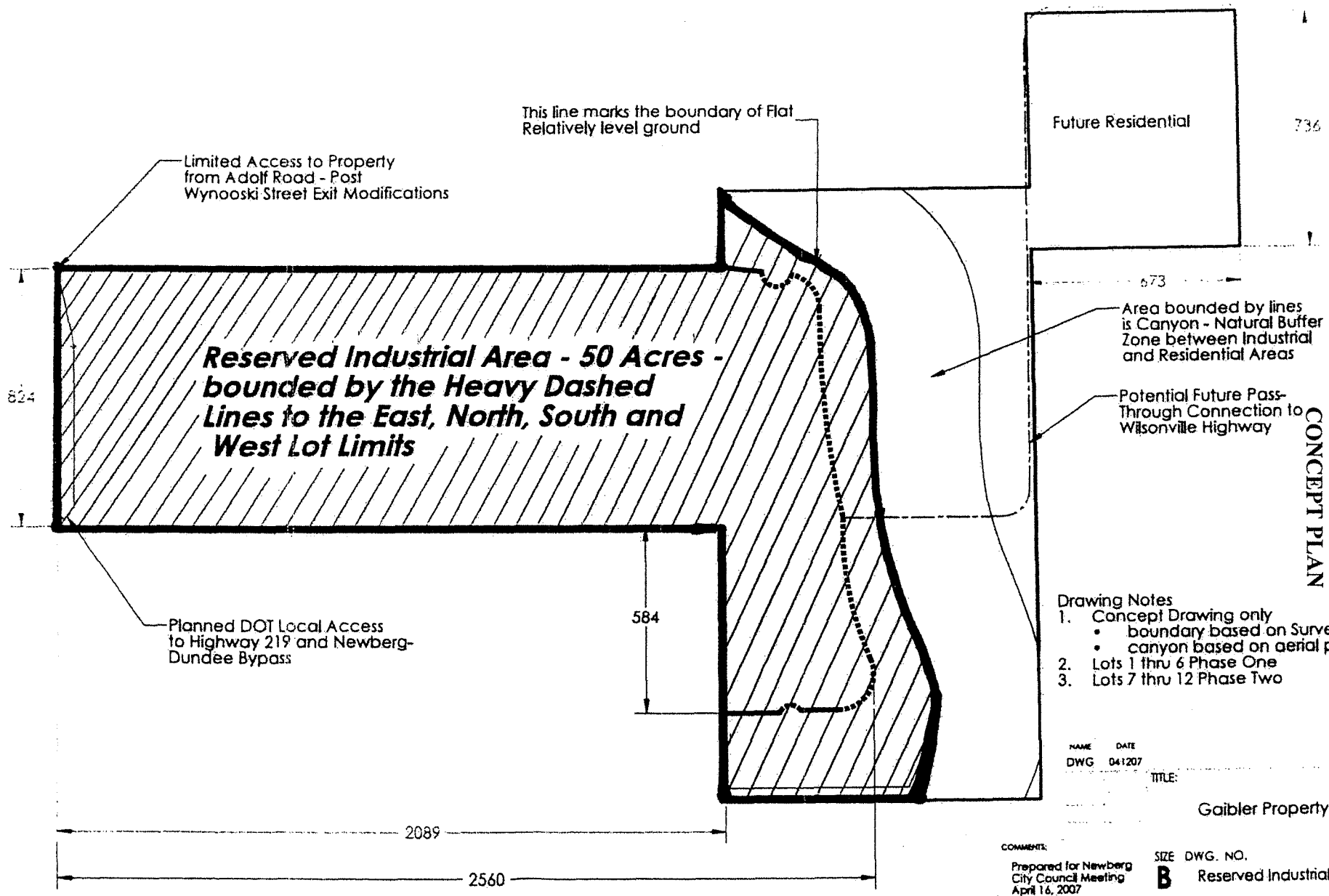


EXHIBIT C to GAIBLER DEVELOPMENT AGREEMENT
CONCEPT PLAN

Future Residential

736

673

Area bounded by lines is Canyon - Natural Buffer Zone between Industrial and Residential Areas

Potential Future Pass-Through Connection to Wilsonville Highway

Drawing Notes

1. Concept Drawing only
 - boundary based on Survey
 - canyon based on aerial photo
2. Lots 1 thru 6 Phase One
3. Lots 7 thru 12 Phase Two

NAME DATE
DWG 041207

TITLE:

Gaibler Property

COMMENTS:
Prepared for Newberg
City Council Meeting
April 16, 2007

SIZE DWG. NO. REV
B Reserved Industrial

Do Not Scale WEIGHT: SHEET 1 OF 1



APPROXIMATE BOUNDARY OF TERRITORY TO BE ANNEXED

8 7 6 5 4 3 2

