

## SEWER SERVICE AND MAIN EXTENSION AGREEMENT

THE CITY OF BEND, an Oregon municipal corporation, hereinafter called "CITY" and SMGA PARTNERSHIP, an Oregon partnership, hereinafter called "USER," agree as follows:

1. USER has received, read and understands CITY's sewer policy, a copy of which is on file with CITY's Development Services Department and a copy of which has been provided to USER with this agreement.
2. The sewer service sought by USER will benefit the real property described on Exhibit "A," a copy of which is attached hereto and incorporated by reference herein and which is hereinafter referred to as "USER's property."
3. USER agrees to pay for and to do whatever is necessary, as required by CITY, to extend CITY's sewer system from its current location near Mount Bachelor Village in the City of Bend to and through USER's property. As a part of this extension, USER will be required to construct a sewer main line that runs in or closely parallels Century Drive starting at Mount Bachelor Village and extending to the property line between USER's property and the Inn of the Seventh Mountain and all needed sewage pump stations. USER further agrees to pay for and to do whatever is necessary, as required by CITY, to design and construct a sewage collection and pumping system on USER's property which will serve all dwellings and businesses constructed on USER's property and which has the pumping and design capacity to transport and pump sewage generated by the adjoining Inn of the Seventh Mountain property. All improvements constructed by USER pursuant to the requirements of this agreement are hereinafter referred to as "7th Mountain sewer facilities." A copy of the City approved plans for the 7th Mountain sewer facilities are on file at the City of Bend Public Works office at 1375 NE Forbes Road, Bend, OR 97701 and are incorporated herein by this reference. USER agrees to construct the 7th Mountain sewer facilities according to said plans, CITY construction standards and CITY sewer policy.
4. CITY agrees to permit USER to connect 7th Mountain sewer facilities to CITY'S sewer system and to furnish USER City sewer services on the following terms and conditions:
  - 4.1 With the exception of that portion of the 7th Mountain sewer facilities that will be located on and across US Forest Service property, the following shall apply to all 7th Mountain sewer facilities:
    - (a) All 7th Mountain sewer facilities shall be installed within public ways or on City property or easements; and
    - (b) USER shall bear the cost and responsibility for obtaining all easements and property necessary to install all 7th Mountain sewer facilities and to provide for

4.4 USER agrees to furnish CITY with a copy of all required highway cut permits prior to commencing construction of 7th Mountain sewer facilities.

4.5 USER shall be solely responsible for any and all liability relating to 7th Mountain sewer facilities, prior to acceptance of said facilities, in writing, by CITY. USER shall obtain and maintain, until CITY accepts 7th Mountain sewer facilities from USER, Construction Public Liability Insurance which covers personal injury liability and property damage, with a combined single limit of coverage in the minimum amount of 1,000,000 dollars and which shall apply to all construction work undertaken to construct the 7th Mountain sewer facilities. CITY shall be named as an additional named insured on said insurance contract and USER shall provide CITY with proof of said insurance coverage prior to commencing construction of the 7th Mountain sewer facilities.

4.6 CITY shall not be responsible for maintaining the 7th Mountain sewer facilities until CITY accepts said facilities.

4.7 No service shall be provided to USER and USER shall not connect to the 7th Mountain sewer facilities, or allow others to connect, until CITY accepts the 7th Mountain sewer facilities.

4.8 Upon acceptance of the 7th Mountain sewer facilities by CITY, this agreement shall constitute a bill of sale which shall transfer all 7th Mountain sewer facilities, with the exception of sewer service connection lines, to CITY with a warranty that the facilities are free and clear of all liens and encumbrances. USER agrees to provide CITY with a separate bill of sale, which specifically describes all 7th Mountain sewer facilities that are transferred to CITY by the terms of this agreement, immediately prior to acceptance of the 7th Mountain sewer facilities by CITY.

4.9 Upon acceptance of 7th Mountain sewer facilities, USER agrees to warrant that 7th Mountain sewer facilities are free of defects in materials and workmanship for a period of one year from the date of acceptance of said facilities by CITY. USER shall post cash or a bond in the amount of 12 percent of the total cost of constructing 7th Mountain sewer facilities and sign a standard CITY warranty agreement.

4.10 USER shall promptly pay all applicable charges in connection with CITY sewer services as they become due. Charges shall be prescribed by an appropriate schedule and charges may be changed from time to time.

4.11 No use of 7th Mountain sewer facilities, except as specifically provided in this agreement, shall be permitted without the express consent of CITY.

4.12 USER shall comply with all applicable governmental laws, rules, and regulations, including but not limited to CITY ordinances, resolutions and the provisions of CITY sewer policies as they now exist and as they may be changed from time to time.

4.13 USER agrees not permit any connection to the 7th Mountain sewer facilities, until supplemental sewer service agreements have been entered into between CITY and USER or the owners of the property that is being connected to the sewer system and until such time as all CITY connection and all other established CITY fees and charges, including but not limited to general benefit fees or systems development charges, have been paid to CITY for the property that is to be connected to the 7th Mountain sewer facilities. The terms of the additional agreements will supplement the terms of this agreement. CITY may elect to waive the requirement of an additional agreement, where appropriate. CITY, in its sole discretion, is responsible for deciding who will connect to the 7th Mountain sewer facilities, and upon what terms, including the amount of recovery fees (see Section 8) that will be charged future users.

4.14 USER shall pay all CITY fees and charges relating to this project, including inspection and plan review fees, prior to acceptance of the 7th Mountain sewer facilities by CITY and connection of the 7th Mountain sewer facilities to CITY's sewer system.

4.15 USER shall deliver "as built," reproducible drawings of the completed 7th Mountain sewer facilities, signed by an Oregon Professional Engineer, to CITY, prior to acceptance of said facilities and prior to connection of 7th Mountain sewer facilities to CITY's sewer system.

4.16 User shall provide CITY with documentation of USER's sewer facility construction and installation costs, including actual invoices for the facilities, within 90 days of acceptance of the facilities by CITY, for use by CITY for accounting purposes. If USER fails to provide complete and timely documentation of costs, CITY will not pay the recovery fees described in Section 8, below, to USER.

5. USER's sewer service may be terminated by CITY for any failure to comply with the terms and conditions of this agreement, the CITY's sewer policy and any other agreements with the CITY affecting USER's property.

6. USER hereby consents to annex USER's property to CITY when CITY elects to do so and when USER's property is located within the Bend urban growth boundary. USER expressly waives the one year period specified in ORS 222.173. The duration of this consent to annexation is perpetual. USER has executed a separate consent to annexation form and agrees to execute such documents as may be needed to effectuate annexation of USER's property to CITY when CITY elects to annex USER's property to CITY.

USER acknowledges that CITY's sewer service to USER's property is expressly conditioned upon the annexation of USER's property to the City of Bend, upon request of CITY, once USER's property is located within the Bend Urban Growth Boundary. If USER or USER's successors or assigns, or any other person, firm or corporation using City sewer services or USER's property, refuses to do whatever is necessary to accomplish the annexation of USER's property to CITY, including consenting to the annexation of USER's property to CITY, when requested to do so by CITY, CITY may terminate or withhold sewer service, after providing 90 days written notice.

7. The parties agree that this agreement, with the exception of Section 8, below, shall constitute a covenant running with the land and shall be fully enforceable by the CITY with respect to the property described herein, whether that property is owned by USER or USER'S successors or assigns or others.

8. CITY agrees to reimburse USER, from recovery fees collected from persons who benefit from the 7th Mountain sewer facilities, a portion of the cost of extending the CITY's sewer main from Mount Bachelor Village to USER's property, according to the following provisions:

8.1 Recovery fees will be collected from future users of the 7th Mountain sewer facilities and paid to USER, in accordance with CITY's sewer policy, as it may be amended from time to time, and according to the following formula: Those who will pay cost recovery fees to CITY, hereinafter referred to as "fee payers," will be all future users of the 7th Mountain sewer facilities whose served property adjoins the 7th Mountain sewer facilities and who obtain sewer service by connecting a sewer line to the 7th Mountain sewer facilities at some point between the beginning of the 7th Mountain pressure line at Mount Bachelor Village and the point at which said line enters onto USER's property near the intersection of Century Drive and Meadow Camp Road. Fee payers shall pay recovery fees based upon the amount of front footage of the served property which adjoins the 7th Mountain sewer facilities, at the rate of \$5.50 per lineal foot. For purposes of determining whether property adjoins the 7th Mountain sewer facilities, road rights-of-way shall be disregarded. A map illustrating how said fees would be

collected if all potential fee payer connected to the 7th Mountain sewer facilities is on file at City Hall, Development Services Dept., 710 NW Wall St., Bend, OR 97701.

Additionally, if a future user, who is not a fee payer hereinafter referred to as "future user," connects to the 7th Mountain sewer facilities by running a sewer line through any property which adjoins the 7th Mountain sewer facilities, and if no recovery fee has been collected for the adjoining property, a recovery fee will be collected from the future user as if the adjoining property were being connected to the 7th Mountain sewer facilities, except for instances where said recovery fee would exceed the benefit derived by the future user from connection to the sewer facilities. In such a case, CITY will use the length of the side of the property to be served that most closely parallels, and which is the nearest to, the 7th Mountain sewer facilities to calculate the recovery fee. In the event that the potential fee payer subsequently obtains CITY sewer service by connecting to either the 7th Mountain sewer facilities or to the future user's line, the fee payer shall pay the fee due according to the formula listed in the preceding paragraph. The fee payer may, however, request and receive a credit against such fee in the amount of the fee paid by the future user if the fee payer has provided the future user with a sewer easement across the fee payer's property at no charge to the future user.

8.2 Recovery fees will not be collected when CITY connects CITY sewer lines to the 7th Mountain sewer facilities installed by USER. Recovery fees will also not be collected if such fees are determined to be a tax, as such term is defined in the property tax limitation section of Article XI of the Oregon Constitution.

8.3 Recovery fees will only be charged to the extent of the benefit that a new user obtains from connecting to the sewer line constructed by USER and not in excess thereof.

8.4 In no event shall USER be allowed to recover more than \$11 per foot of sewer line installed between Mount Bachelor Village and Meadow Camp Road. USER's other costs, including any costs connected with USER's construction of a pump station and on-site main costs, shall not be recovered and reimbursed to USER. No recovery fees will be paid to USER after 10 years have elapsed from the date this agreement is signed by both USER and CITY.

8.5 No interest will accrue on the costs expended by USER nor upon recovery fees collected by CITY.

8.6 Reimbursement is conditioned upon CITY's collection of recovery fees and nothing contained in this agreement

guarantees that any fees will ever be collected from property located within the cost recovery area.

8.7 Payment of cost recovery fees is conditioned upon full compliance by USER with all of the terms and conditions of CITY's cost recovery policy and of this agreement.

8.8 Recovery fees will be paid only to USER and to no other persons, including future owners of USER's property.

8.9 No recovery fees will be collected for connection to the 7th Mountain sewer facilities constructed by USER from the Association of Unit Owners of the Inn of the Seventh Mountain, hereinafter "ASSOCIATION," or for any of the businesses located at the Inn of the Seventh Mountain. USER has entered into a private cost sharing arrangement with the ASSOCIATION which provides that the ASSOCIATION will be entitled to receive a one-half share of the recovery fees collected by CITY once USER has collected \$125,000 of recovery fees. In the event that the ASSOCIATION makes a claim against future recovery fees due USER, alleging that USER has failed to pay recovery fees due to ASSOCIATION, CITY may elect to withhold payment of said fees to USER until such time as such dispute is resolved between USER and ASSOCIATION.

9. The total amount due and payable to CITY from USER, upon signing this agreement, for engineering and plan submittal fees, is \$18,880. This agreement shall not be effective until such time as said fees are paid to CITY.

10. CITY shall be the sole provider of sewer services to USER'S property.

DATED this 30th day of May, 1991.

CITY:

CITY OF BEND

  
Lawrence Patterson  
City Manager

244 - 0268

DATED this 30th day of May, 1991.

USER: SMGA PARTNERSHIP

By: W. E. Klug  
General Partner

USER's Billing Address:

P.O. Box 1207 - Bend, OR 97709

STATE OF OREGON )  
 ) ss.  
County of Deschutes )

Personally appeared the above-named Lawrence Patterson on behalf of the CITY OF BEND, and acknowledged the foregoing instrument to be his voluntary act, before me this 30th day of May, 1991.



Betty A. Huff  
Notary Public for Oregon  
My comm. expires: Nov. 20, 1994

STATE OF OREGON )  
 ) ss.  
County of Deschutes )

Personally appeared the above-named Warren E. Klug on behalf of SMGA PARTNERSHIP, and acknowledged the foregoing instrument to be his voluntary act, before me this 30th day of May, 1991.



Betty A. Huff  
Notary Public for Oregon  
My comm. expires: Nov. 20, 1994

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June 3, 1986

TL 2000

7th Mountain Golf Village

(85-92-50)

Legal Description

Beginning at a 5/8 inch iron rod which is 1393.44 feet North 0° 06' 32" East, and 355.82 feet North 69° 22' 49" West from the corner of sections 14, 15, 22, 23, Township 18 South, Range 11 East, Willamette Meridian, Deschutes County, Oregon; running thence South 69° 22' 49" East 355.82 feet to a 2 1/2 inch iron post; thence South 39° 02' 49" East 256.01 feet to a 2 1/2 inch iron post; thence South 34° 17' 18" East 545.42 feet to a 2 1/2 inch iron post; thence South 21° 02' 43" East 800.13 feet to a 2 1/2 inch iron post; thence South 20° 03' 37" East 161.70 feet to a 2 1/2 inch iron post; thence South 30° 26' 37" East 355.04 feet to a 2 1/2 inch iron post; thence South 19° 23' 50" East 334.79 feet to a 2 1/2 inch iron post; thence South 00° 36' 53" East 252.30 feet to a 2 1/2 inch iron post; thence South 02° 30' 37" East 263.13 feet to a 2 1/2 inch iron post; thence South 05° 51' 44" East 362.84 feet to a 2 1/2 inch iron post; thence South 35° 02' 11" West 358.34 feet to a 2 1/2 inch iron post; thence South 10° 30' 21" East 311.41 feet to a 2 1/2 inch iron post; thence South 52° 27' 07" West 272.53 feet to a 2 1/2 inch iron post; thence South 35° 24' 31" West 263.82 feet to a 2 1/2 inch iron post; thence South 19° 05' 25" West 309.90 feet to a 2 1/2 inch iron post; thence South 34° 09' 40" West 279.17 feet to a 2 1/2 inch iron post; thence North 72° 38' 10" West 104.59 feet to a 2 1/2 inch iron post; thence North 23° 49' 44" West 246.39 feet to a 2 1/2 inch iron post; thence North 62° 18' 35" West 204.00 feet to a 2 1/2 inch iron post; thence South 25° 13' 40" West 340.32 feet to a 2 1/2 inch iron post; thence South 40° 42' 07" West 626.97 feet to a 2 1/2 inch iron



post; thence South 16' 24' 15" West 210.73 feet to a 2 1/2 inch iron post; thence South 04' 09' 47" West 439.14 feet to a 2 1/2 inch iron post; thence South 22' 08' 34" West 193.90 feet to a 2 1/2 inch iron post; thence South 05' 58' 52" East 162.00 feet to a 2 1/2 inch iron post; thence South 72' 24' 12" West 364.35 feet to a 2 1/2 inch iron post; thence South 74' 48' 46" West 312.92 feet to a 2 1/2 inch iron post; thence North 00' 21' 51" East 831.12 feet to a 2 1/2 inch iron post; thence South 89' 53' 27" West 1344.26 feet to a 2 1/2 inch iron post; thence North 00' 36' 45" East 302.84 feet to a 5/8 inch iron rod on the Southerly right-of-way line of Century Drive; thence along said right-of-way line North 74' 43' 24" East 265.27 feet to a 5/8 inch iron rod; thence North 15' 16' 36" West 10.00 feet to a 5/8 inch iron rod; thence through a spiral curve concentric to the centerline curve 422.58 feet in length (spiral angle 12' 59' 43", long tangent 285.31 feet, short tangent 138.66 feet, radius 931.57 feet, chord 421.57 feet) to a 5/8 inch iron rod; thence through a circular curve to the left 260.54 feet in length (delta 16' 01' 33", radius 931.47 feet, tangent 131.12 feet) to a 5/8 inch iron rod; thence South 44' 17' 52" East 30.00 feet to a 5/8 inch iron rod; thence through a circular curve to the left 279.82 feet in length (delta 16' 40' 31", radius 961.47 feet, tangent 140.91 feet) to a 5/8 inch iron rod; thence through a spiral curve 436.33 feet in length (spiral angle 13' 00' 00", long tangent 294.68 feet, short tangent 143.08 feet, radius 961.55 feet, chord 435.28 feet) to a 5/8 inch iron rod; thence North 16' 01' 37" East 1175.29 feet to a 5/8 inch iron rod; thence North 73' 58' 23" West 10.00 feet to a 5/8 inch iron rod; thence North 16' 01' 37" East 1300.00 feet to a 5/8 inch iron rod; thence North 73' 58' 23" West 10.00 feet to a 5/8 inch iron rod; thence North 16' 01' 37" East 1883.85 feet to the Point of Beginning. The above described parcel of land contains 228.35 acres, more or less.

EXCEPTING THEREFROM the following described real property Lots 1, 38, 40, 47, 87, 88 and 105, Block I, Seventh Mountain Golf Village Subdivision.

244 - 0271

STATE OF OREGON )  
COUNTY OF DESCHUTES ) ss.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND  
RECORDER OF CONVEYANCES, IN AND FOR SAID  
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN  
INSTRUMENT WAS RECORDED THIS DAY:

91 SEP -3 PH 4:13

MARY SUE PENHOLLOW  
COUNTY CLERK

BY: *Phut* DEPUTY

NO. 91-25523 FEE 55

DESCHUTES COUNTY OFFICIAL RECORDS