

JUNIPER CREEK AGREEMENT

88-08454
The CITY OF BEND, OREGON, a municipal corporation, hereinafter referred to as "City"; and GARY E. BELL, Inc., an Oregon Corporation, hereinafter referred to as "Developer" agree as follows:

SECTION 1. Developer agrees to pay City the sum of \$9,690.00 prior to February 1, 1988. Payment of this sum will represent full payment of the sewer oversizing costs incurred by City for the following platted lots within Juniper Creek and Juniper Creek First Addition Subdivisions: Lots 1 through 20 and 22 through 24, Block 1, and Lots 5 through 8, 10 through 12 and 14 through 22, Block 2, Juniper Creek Subdivision and Lots 1 through 7, Block 8 and Lot 1, Block 9, Juniper Creek First Addition Subdivision. In the event that Developer fails to pay the sum of \$9,690.00 prior to February 1, 1988, interest shall accrue on the unpaid balance at the rate of 10 percent per annum from February 1, 1988. No City building permits will be issued for any of the property described in Sections 1 and 2 of this agreement until this sewer oversizing charge has been paid in full.

SECTION 2. Developer also owns unplatted real property which is contiguous to the Juniper Creek Subdivision which is currently known as Deschutes County Tax Lots 181203-CB-1000 and 181203-CC-5302. A copy of the tax lot map showing the above-described tax lots is marked Exhibit "A," attached hereto and incorporated by reference herein. Developer agrees to pay the sum of \$170 per equivalent dwelling unit, plus interest on \$170 at the rate of 10 percent per annum from January 1, 1988, to City as its share of sewer oversizing costs incurred by City to benefit Developer's property prior to approval of a subdivision or partition of either tax lot.

SECTION 3. Developer shall construct a sewer line connecting the interim sewage disposal system currently serving the Juniper Creek Subdivision with the City sewer system at Wildcat Drive, in approximately the location shown on Exhibit "B" as sewer line A (hereinafter referred to as "sewer line A"), a copy of which is attached hereto and incorporated by reference herein, and shall abandon the existing interim sewage system by January 1, 1992, at the latest. The location of sewer line A may be changed from the location shown on Exhibit "B" if Developer obtains City approval of the change of location prior to installation. Developer further agrees to commence construction of sewer line A immediately and to complete construction with deliberate speed if any of the following occur:

(a) A total of 30 dwelling units are added, by anyone, to the existing interim sewage disposal system which serves the Juniper Creek and Juniper Creek First Addition Subdivisions.

(b) If any action taken by Developer is determined by D.E.Q. to be in violation of the Clean Drinking Water Act.

(c) If D.E.Q. revokes the existing interim sewage system permits for the Juniper Creek or Juniper Creek First Addition subdivisions, for any reason whatsoever.

(d) If future events make it financially infeasible for City to maintain the Juniper Creek interim sewage disposal system. Financially infeasibility shall be determined by measuring City costs incurred to maintain the interim system against the revenue received by City from Juniper Creek interim system user fees.

SECTION 4. Developer agrees to be bound by the terms of the interim sewer system agreement entered into between the City and N.H. Jepson, Inc. signed by N.H. Jepson on September 18, 1979, a copy of which is marked Exhibit "C," attached hereto and incorporated by reference herein, with the exception of Condition 6.1 (e) which provides that City will return the balance of the \$5,000 fee to N.H. Jepson.

SECTION 5. Developer shall post a certificate of deposit, in the name of the City of Bend, with City in the amount of \$46,000.00. The certificate of deposit may be used by City to install sewer line A if Developer fails to meet its obligation to construct sewer line "A" according to the provisions of Section 3, above.

SECTION 6. City shall allow Developer to connect sewer line A to the City's sewer system upon execution of a standard City sewer service agreement binding all lots then owned by Developer within the Juniper Creek Subdivision.

SECTION 7. City shall allow the construction of homes on Lots 1 through 20 and 22 through 24, Block 1; Lots 5 through 8, 10 through 12 and 14 through 22, Block 2, Juniper Creek Subdivision; Lots 1 through 7, Block 8, Juniper Creek First Addition; and Lot 1, Block 9, Juniper Creek First Addition to permit homes to connect to and use the existing interim sewage disposal system and to obtain building permits after signing a standard City sewer agreement and after meeting City's development requirements. City will also allow homes constructed on Lots 25 through 31, Block 1 and Lots 4, 3 and 1, Block 2, Juniper Creek Subdivision to connect to and use the existing interim system provided, Developer first constructs sewer line C, shown on Exhibit "B," and provided that each purchaser signs a standard City sewer agreement and an agreement to maintain the interim system. These provisions are expressly conditioned upon Developer obtaining the approval of the Oregon Department of Environmental Quality for such use of the existing interim system. City's obligation under this provision shall be extinguished if the Department revokes or limits the permit for the interim system so that the City would not be legally allowed to permit homes constructed on the above-mentioned lots to hookup to the interim system. City's obligation under this provision shall be suspended in the event that Developer fails to comply with any of the conditions of this agreement.

SECTION 8. City agrees to establish a cost recovery district for recovery of a portion of Developer's sewer construction costs for sewer line A as follows:

a) For each sewer permit issued, require a minimum of \$100.00 per sewer connection per equivalent dwelling unit from each future sewer use, as a cost recovery fee, within the area described as follows:

All of the Northwest 1/4, Southwest 1/4 and Southeast 1/4 of the Southwest 1/4, of Section 3, T. 18 S., R. 12 E., W.M. except that portion known as the Juniper Creek and Juniper Creek First Addition subdivisions.

In the event that City requires prepayment of the cost recovery fee by a developer, City will require a lump sum payment of not less than \$100.00 per equivalent dwelling unit.

b) City agrees to pay cost recovery fees collected by City pursuant to Section 8 (a) to Developer provided:

i) No recovery fees will be paid until after developer has completed sewer line A, to City standards.

ii) No recovery fee will be paid after developer has been reimbursed seventy-five percent of the cost of construction of sewer line A, or after ten years from the date of this agreement, which ever occurs first.

SECTION 10. Developer agrees that all improvements made pursuant to this agreement shall comply with City standards for construction of public improvements and that sewer line A shall become the property of the City of Bend after approval and acceptance of said line by the City. Developer also agrees to develop the Juniper Creek subdivision in accordance with City standards and specifications for development, to make all necessary repairs to the subdivision required by the City's Engineering Department and to pay all City charges for services rendered by City in connection with subdivision development.

SECTION 11. Developer agrees to hold City harmless from any and all damage or pollution resulting from the use, operation and maintenance of the Juniper Creek interim sewage system.

SECTION 12. This agreement shall constitute a covenant running with the land for all property described in Sections 1 and 2, above. This agreement shall bind the heirs, successors and assigns of the parties to this agreement.

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DATED this 19th day of January, 1988.

Larry Patterson
Larry Patterson, City Manager

State of Oregon) ss
County of Deschutes)

This instrument was acknowledged before me on January 19th, 1988 by Larry Patterson as City Manager of the City of Bend.

Barbara M. Frauser
NOTARY PUBLIC

My commission expires: 3/27/89

DATED this 19th day of January, 1988.

Gary E. Bell
Gary E. Bell, President
Gary E. Bell, Incorporated

State of Oregon) ss
County of Deschutes)

This instrument was acknowledged before me on January 19, 1988 by Gary E. Bell as President of Gary E. Bell, Incorporated.

Barbara M. Frauser
NOTARY PUBLIC

My commission expires: 6/1/88

DATED AND APPROVED by the Oregon Department of Environmental Quality this _____ day of _____, 1988.

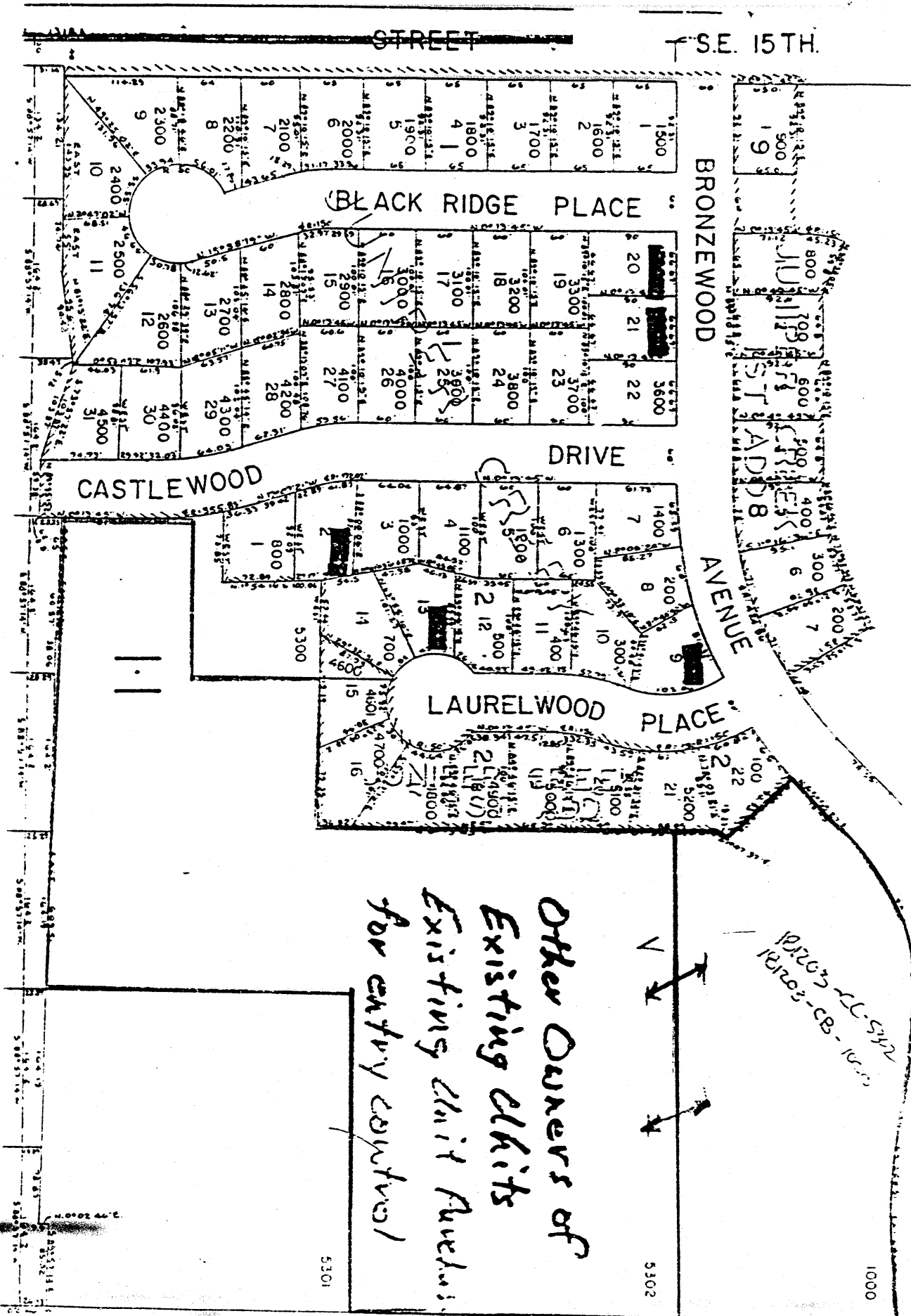
BY: _____

State of Oregon) ss
County of Deschutes)

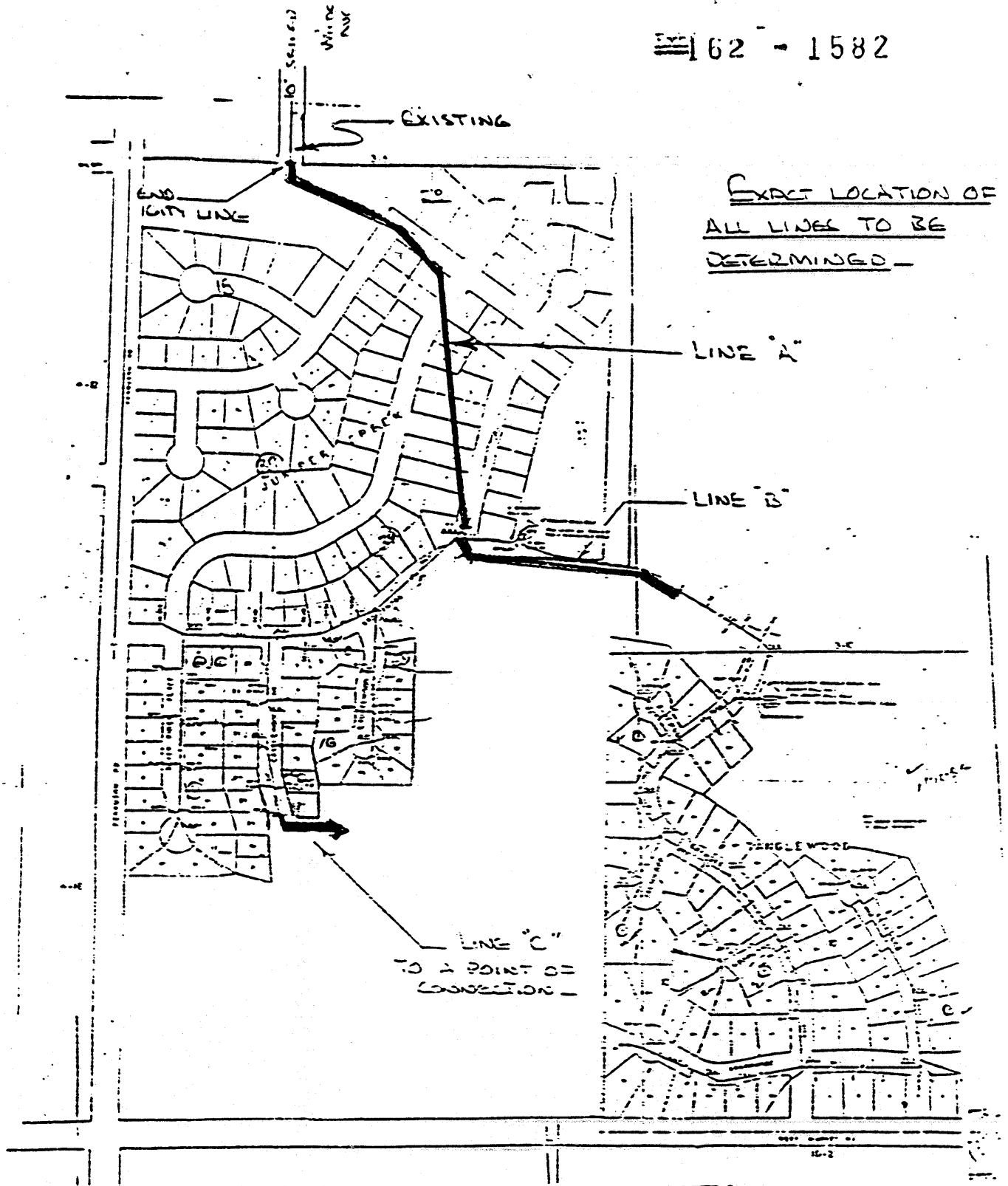
This instrument was acknowledged before me on _____, 1988 by _____, as _____ of the Oregon Department of Environmental Quality.

NOTARY PUBLIC

My commission expires: _____



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SEWER SERVICE AGREEMENT

THE CITY OF AEG, an Oregon municipal corporation, hereinafter called "CITY" and A. S. Jones Incorporated hereinafter called "USER", agree as follows:

1. USER has received, read and understands CITY's sewer policy which is attached to and made a part of this Sewer Service Agreement. Terms used in this agreement have the meanings assigned to them by CITY's sewer policy unless specifically provided otherwise.
2. USER shall perform the following work and install the described sewer facilities at USER's sole cost and expense pursuant to CITY's sewer policy: as shown on City drawing No. 1-773 entitled, "Junior Creek Sanitation Sewage".
3. The sewer service sought by USER will benefit the following described property in Deschutes County, Oregon: Junior Creek Sanitation, Phase I.
4. CITY agrees to permit USER to hook up to the sewer facilities described above to CITY's sewer system and to furnish USER CITY sewer services on the following terms and conditions:

4.1 Service shall be supplied only through sewer facilities constructed and installed to CITY's standards and specifications. All sewer facilities except service connection lines shall be the property of CITY and shall be installed within public ways or city easements. USER shall not hook up to CITY's sewer

facilities until CITY accepts sewer facilities installed by USER in writing.

4.2 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.

4.3 No other use of CITY sewer service or CITY sewer facilities except as provided in this agreement shall be permitted without express consent of CITY.

4.4 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 and water policies as they now exist and as they may be changed from time to time.

4.5 USER shall reimburse CITY for actual cost of inspection services, plus overhead performed by CITY prior to acceptance of the work by CITY. Overhead shall be charged at the rate of 6% of the actual inspection costs.

4.6 When required by CITY, USER agrees to deliver to CITY "As Built" reproducible drawings of the completed work, signed by an Oregon Professional Engineer prior to acceptance of the work by the CITY.

5. This 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 or any other agreements with the CITY affecting this property.

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(a) The facility shall be constructed and installed at USER's expense and shall consist of treatment plant as shown on drawings No. 1-773.

(b) This facility shall be constructed and installed according to CITY's requirements and specifications.

(c) After CITY accepts the construction and installation of this facility in writing CITY shall operate and maintain the facility according to all the terms and conditions of this agreement.

(d) The property benefitted by this facility shall be subject to whatever expenses and charges are reasonably necessary to operate and maintain (including but not limited to necessary repairs, replacements and improvements) the facility in compliance with all applicable rules and regulations for facilities of this type. To provide an operation and maintenance fund for payment of these charges USER shall deposit with CITY \$2,000 upon the execution of this agreement. Another \$2,000 shall be deposited to this fund as building permits are taken out for construction on the property benefitted. This fund shall not be refundable.

(e) In addition to the operation and maintenance fund USER shall deposit with CITY \$3,000.00 to

be used as a fund from which CITY shall be reimbursed all amounts which CITY may have expended in improvement, extraordinary reconstruction, or termination of the facility. When use of this facility is terminated and the source are connected to the CITY's sewer system the full balance of this account shall be returned to USER.

(f) This facility is contemplated to be an interim facility to serve the property benefitted only until such time as the sewer collection system in the property benefitted is hooked up to the CITY's sewerage system.

(g) The obligations of this agreement (other than the obligation to construct and install the sewer facilities described in this agreement) are terminated by the parties to be covenants running with the land benefitted by this agreement and shall be binding upon USER, USER's successors and assigns.

6.2 As an alternative to a community facility USER may construct, operate and maintain individual interim treatment facilities approved by the appropriate governmental authority until the collection system is hooked up to CITY's sewer system. If USER installs individual interim treatment facilities, CITY shall not maintain the treatment facilities. CITY will accept the collection system upon its construction and installation according to the terms of this agreement.

6. The foregoing agreement shall apply to USER's sewer service.

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6.1 USER shall construct and install an interim sewage treatment and disposal facility to serve the property benefitted by the sewer facilities and sewer services described earlier in this agreement on the following terms and conditions:

6. USER acknowledges that the number of services that can be accommodated at the present sewage treatment plant is unknown because of uncertainties concerning the plant drill hole capacity, plant capacity and irregular line flow limitations; and this situation will continue until such time as CITY's treatment plant is expanded and the sewer project completed. Therefore the CITY's ability to provide sewer service is conditioned upon the limitations imposed by these factors.

Arthur R. King *Arthur R. King*
City of AEG, Oregon 17, 1978
Arthur R. King 4-18-77
City of AEG, Oregon

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:

88 APR 22 PM 2:20

MARY SUE PENHOLLOW
COUNTY CLERK

BY: *P. Heck* DEPUTY
NO. 88-08454
FEE 35-
DESCHUTES COUNTY OFFICIAL RECORDS