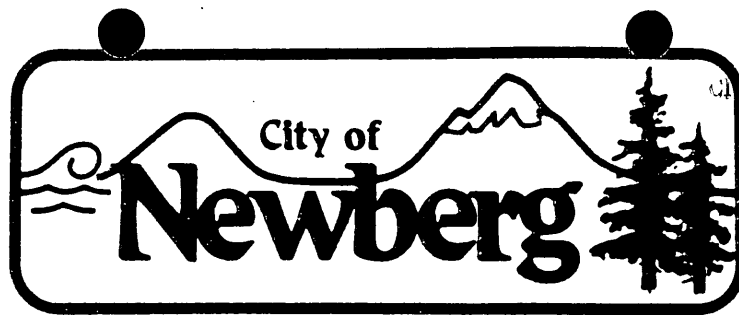




CITY OF NEWBERG
CITY RECORDER INDEX NO. 1547

City Manager
(503) 538-9421

City Attorney
(503) 537-1208

March 5, 1997

414 E. First St.
Newberg, Oregon 97132

City FAX
(503) 538-5393

Northwest Title Company
601 E. Hancock Street
Newberg, Oregon 97132

Re: Mason Sewer Connection
Covenant and Restriction/Consent to Annex and Dedication
Our File No. 30008-01715

Dear Sir/Madam:

Enclosed herein please find for recording an original Covenant and Restriction/Consent to Annex and Dedication of Road Right-of-Way which has been signed by all parties. Please record the Covenant and Restriction and return the original recorded document to this office. Pursuant to the City's agreement with Mr. Allyn Brown, attorney for Allen and Sandra Mason, please forward the recording billing statement to Mr. Brown for payment. The corresponding documents (Agreement to Annex and Deed of Dedication) will be held in escrow **by the City of Newberg** until such time the property is to be annexed.

Should you have any further questions, please do not hesitate to contact me or Peggy Hall. Thank you.

Very truly yours,

Terrence D. Mahr
City Attorney

TDM:prh

Enclosure

F:\LEGAL\WP5FILES\COMMDEV\MASON.NWT

pc: Mr. Allyn Brown
Duane R. Cole, City Manager
Mike Soderquist, Community Development Director

Building: 537-1240 • Community Development: 537-1210 • Finance: 537-1201 • Fire: 537-1230
Library: 538-7323 • Municipal Court: 537-1203 • Police: 538-8321 • Public Works: 537-1214 • Utilities: 537-1205
Municipal Court Fax: 537-1277 • Community Development Fax: 537-1272 • Library Fax: 538-9720

"Working Together For A Better Community-Serious About Service"

NUMERIC LISTING OF DOCUMENT FILE IN RECORDER'S VAULT

[illegible]

RESOLUTION INDEX

[illegible]

RESOLUTION NO. 97-2034

RESOLUTION OF THE NEWBERG CITY COUNCIL AUTHORIZING CONNECTION OF A DWELLING OUTSIDE THE CITY LIMITS TO THE CITY SEWER SYSTEM PURSUANT TO SECTION 204 OF ORDINANCE NO. 2150 WHICH GOVERNS THE SEWER SYSTEM OF THE CITY; APPROVING AN AGREEMENT BETWEEN THE OWNERS AND THE CITY; AND ADOPTING FINDINGS OF FACT.

OWNERS: ALLEN W. MASON AND SANDRA K. MASON (Husband and Wife)
PROPERTY: 816 S. Springbrook Road, Newberg, Oregon
SIZE: .24 ACRES
TAX LOT NO.: 3221-3300, 3400

RECITALS:

1. Ordinance No. 2150 of the City of Newberg governs the sewer system of the City of Newberg.
2. Section 204 of Ordinance No. 2150 prohibits connection to the Municipal sewer system of dwellings outside the corporate limits of the City except when it has been determined that the existing services of said dwelling cannot be repaired and shall be discontinued.
3. This matter came before the Council by request of the property owners (Mason) for connection to their present dwelling which is located immediately adjacent to the City limits of the City of Newberg, but outside the City limits.
4. Testimony was presented by Allyn Brown, attorney for the Masons and Mart Storm's representative from NSP Development.
5. After all testimony was heard and consideration of the facts, the Council requested the City Attorney's office to prepare necessary documents to put before the Council with appropriate Findings of Fact based upon testimony for approval of connection.

NOW, THEREFORE, it is resolved by the Newberg City Council as follows:

- Section 1. The dwelling located on the property owned by the Masons shall be allowed to connect to the Newberg sewer system. Such service shall be for the one dwelling and the Owners shall be responsible for payment of sewer usage charges for that property as established by the City Ordinance and all other costs for sewage uses as well any costs incurred for connection to the sewer. The City Manager is authorized to enter into agreements, take necessary actions and execute necessary documents to facilitate this connection.
- Section 2. The Owners hereby agree to annex to the City when requested by the City; to file all necessary applications and pay all necessary fees; to submit the question of annexation to the voters of the City, and pay all necessary costs in connection with the election, and to do so as many times as requested by the City; and to do all other necessary acts normally included in an annexation procedure which includes dedication of right-of-way along Springbrook County Road No. 5. The obligation to annex and dedicate shall be recorded as a covenant and restriction on the Yamhill

County Deed Records. The Owners shall pay the cost for such recording. The Agreement to annex and the Covenants and Restrictions are attached as Exhibit "A" and by this reference incorporated.

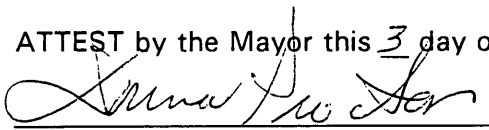
Section 3. The City Council hereby adopts the Findings of Fact which is required pursuant to Section 204 of Ordinance No. 2150. The Findings of Fact are attached hereto as Exhibit "B" and by this reference incorporated.

Section 4. A map of the subject property is attached as Exhibit "C" and by this reference incorporated.

ADOPTED by the Newberg City Council this 3rd day of March, 1997.


Duane R. Cole, City Recorder

ATTEST by the Mayor this 3 day of March, 1997.


Donna Proctor, Mayor

Agreement

(Exhibit "A")

AGREEMENT TO ANNEX TO THE CITY OF NEWBERG

THIS AGREEMENT, entered into this 5th day of March, 1997, between the following parties:

I. PARTIES.

CITY OF NEWBERG,
an Oregon Municipal Corporation
414 E. First Street
Newberg, Oregon 97132

ALLEN W. MASON and SANDRA K. MASON
816 South Springbrook Road
Newberg, Oregon 97132

"City"

"Owners"

II. PROPERTY.

The real property which is the subject of this Agreement, is located in Yamhill County, Oregon, and more particularly described as follows:

Beginning at a 5/8 inch iron rod located North 01°41'01" East 1021.13 feet from the Southeast corner of the Richard Everest Donation Land Claim No. 52, said 5/8 inch iron rod also being located on the Easterly right-of-way of Springbrook County Road; thence North 90° 00'00" East 128.50 feet to 5/8 inch iron rod; thence North 00°00'00" East 83 feet to a 5/8 inch iron rod; thence North 90° 00'00" West 128.50 feet to an iron rod located on said Easterly right-of-way boundary; thence South 00°00'00" East 83.00 feet to the point of beginning. Said tract of land is also located in the Southwest 1/4 of Section 21, Township 3 South, Range 2 West of the Willamette Meridian, also being located in the Luke McKern Donation Land Claim No. 56, Yamhill County, Oregon.

The above described tract of land contains 0.24 acres, more or less.

[This property is as described in the Stipulated Decree of Quiet Title, Yamhill County Circuit Court Case No. CV95-304, Allen W. Mason and Sandra K. Mason v. John F. Hickert and Margaret Hickert).

III. RECITALS.

The parties shall agree as follows:

1. The Owners own the real property located at 816 S. Springbrook Road, Newberg, Oregon. The property is their residence.
2. The property is located adjacent to the Newberg City limits, but is not inside the Newberg City limits.
3. The City of Newberg Ordinances prohibit connection to City of Newberg water/sewer services for dwellings outside the City limits except for specific circumstances.
4. By authority of Resolution No. 97-2034, the City Council of the City of Newberg has determined that the dwelling meets the necessary criteria of Section 204 of Ordinance No. 2150, and has further determined that the dwelling can be connected to the City of Newberg sewage system.

NOW, THEREFORE, based upon the promises, considerations and mutual covenants, the parties agree as follows:

1. Owners shall be allowed to connect their dwelling located at 816 S. Springbrook Road, Newberg, which is outside the City limits and depicted on the map attached hereto as Exhibit "1" and by this reference incorporated.
2. This connection shall only be used to supply sewage use to the existing structure and will not be allowed to be used for any new development.
3. Owners consent to annex their property to the City of Newberg in consideration of the extraterritorial provision of services which is the City's consent to attach to the City's sewer system. Further, Owners agree to file all necessary applications, pay all necessary fees, present all necessary evidence in any land use application for annexation promptly upon request by the City that the Owners apply for annexation to the City.
4. Owners understand that annexation to the City must be approved by the voters of the City. Owners agree to pay their proportionate share, if any, of any and all election costs that are required in placing the question of annexation before the voters of the City of Newberg. Owners may be required to place monies in escrow to cover such costs of election(s). The City may only place the matter before the voters of the City at a biennial General Election (held in November of each even numbered year), unless agreed upon by both parties. At this time, the City does not have to pay any election costs to place a matter on the ballot before the voters at the biennial General Election. Therefore, the Masons would not have any proportional costs of such an election; however, the State of Oregon, which conducts the election, has the authority and may change the rules to require the City to pay some costs. In which case, the Masons will be required to pay their proportionate share of such costs. Owners agree to pay the costs and submit all necessary applications for as many elections as required by City.
5. Owners agree to make all necessary filings and pay all necessary fees in a timely and appropriate manner.
6. The consent to annex and dedication shall be a covenant and restriction placed on the Yamhill County Deed Records. Such Covenant and Restriction is hereby attached as Exhibit "2".
7. The subject property borders on Springbrook County Road No. 5. Owners agree to dedicate the necessary right-of-way to bring the Springbrook County Road No. 5 to standard City right-of-way upon annexation to the City. Owners shall sign and execute the attached Dedication Deed. The Deed shall then be held in escrow by the City with authority by Owners to file said Deed upon annexation of the subject property. The Dedication Deed is hereby attached as Exhibit "3".
8. Owners agree to pay all systems development charges, connection costs and any other appropriate charge for connection to the City of Newberg sewage system. Further, Owners agree to pay promptly all charges for sewer use. Owners agree that failure to pay any costs associated with the sewer connection, shall be result in immediate disconnection of sewer services.

9. This is the entire agreement between the parties. The parties are represented by legal counsel and understand the legality and constitutionality of all consents, agreements and obligations they have obligated themselves to perform. Any constitutional objection is hereby waived.

IN WITNESS WHEREOF, we have executed this Agreement this 5th day of March, 1997.

CITY OF NEWBERG
an Oregon Municipal Corporation

Duane R. Cole

Duane R. Cole, City Manager

By Authority of Resolution No. 97-2034

Adopted March 3, 1997

OWNERS

Allen W. Mason

Allen W. Mason

Sandra K. Mason

Sandra K. Mason

APPROVED AS TO FORM/CONTENT:

Terrence D. Mahr

Terrence D. Mahr, City Attorney

APPROVED:

Allyn Brown

Allyn Brown

Attorney for Allen W. and Sandra K. Mason

STATE OF OREGON)

:ss

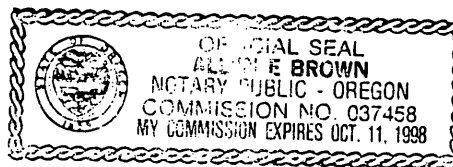
County of Yamhill)

This instrument was acknowledged before me on this 3 day of March, 1997, by Allen W. Mason and Sandra K. Mason.

Allyn Brown

Notary Public for Oregon

My Commission Expires: 10-11-98



**COVENANT AND RESTRICTION
CONSENT TO ANNEX AND DEDICATION OF ROAD RIGHT-OF-WAY**

This Agreement is made and entered into this 5th day of March, 1997, by and between the **City of Newberg**, an Oregon Municipal Corporation, in the County of Yamhill, State of Oregon, hereinafter referred to as "City", and **Allen W. Mason and Sandra K. Mason**, owners of the property hereinafter described, referred to as "Owners". This Covenant and Restriction is applicable to the real property described hereafter, located in Yamhill County, Oregon.

RECITALS:

1. Owners have requested that the City extend City sewer service to their dwelling located on real property described as follows:

Beginning at a 5/8 inch iron rod located North 01°41'01" East 1021.13 feet from the Southeast corner of the Richard Everest Donation Land Claim No. 52, said 5/8 inch iron rod also being located on the Easterly right-of-way of Springbrook County Road; thence North 90° 00'00" East 128.50 feet to 5/8 inch iron rod; thence North 00°00'00" East 83 feet to a 5/8 inch iron rod; thence North 90° 00'00" West 128.50 feet to an iron rod located on said Easterly right-of-way boundary; thence South 00°00'00" East 83.00 feet to the point of beginning. Said tract of land is also located in the Southwest 1/4 of Section 21, Township 3 South, Range 2 West of the Willamette Meridian, also being located in the Luke McKern Donation Land Claim No. 56, Yamhill County, Oregon.

The above described tract of land contains 0.24 acres, more or less.

[This property is as described in the Stipulated Decree of Quiet Title, Yamhill County Circuit Court Case No. CV95-304, Allen W. Mason and Sandra K. Mason v. John F. Hickert and Margaret Hickert).

2. City has consented to extend sewer service to the Owners' property which is located outside the City limits of the City.
3. Owners have consented to eventual annexation of the property in return for the City providing extra-territorial provisions of service (sewer service).
4. The public road located adjacent to the above described property is below City right-of-way standards.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Owners consent to the annexation of the above described property. This consent for annexation is provided based upon the City granting extraterritorial provision of services to the dwelling located on the subject property. The City is granting such service by authority of its ordinances and the authority of Oregon Revised Statutes (ORS) 222.151. This consent shall be binding upon all successors in interest in said property.

AFTER RECORDING, RETURN TO:
City of Newberg - Legal Department
414 E. First Street
Newberg, Oregon 97132
File No. 30008-01715

EXHIBIT "2"
Attachment to Agreement
Page 1 of 2

2. Owners have executed a Dedication Deed which has been placed in escrow with the City of Newberg. The Dedication Deed dedicates to the City of Newberg, the westerly most five (5) feet of the property for roadway purposes. With this dedication, the adjacent street (Springbrook County Road No. 5), will have the right-of-way in conformity with City standards and the adjacent right-of-way. Owners give their irrevocable consent to dedicate and record this deed upon annexation of Owners property to the City of Newberg. This consent and authority to record shall be binding upon all successors in interest in the property.

3. This covenant and restriction shall be filed on the Yamhill County Deed Records. Owners shall pay for any and all costs of recording.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned.

Allen W. Mason
Allen W. Mason

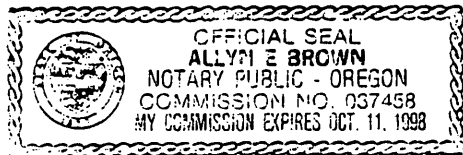
Sandra K. Mason
Sandra K. Mason

APPROVED:

Allyn Brown
Allyn Brown
Attorney for Allen W. and Sandra K. Mason

State of Oregon)
County of Yamhill)
:ss

This instrument was acknowledged before me on this 3 day of March, 1997, by Allen W. Mason and Sandra K. Mason.



Allyn E. Brown
Notary Public for Oregon
My Commission Expires: 10-11-98

CITY OF NEWBERG,
an Oregon Municipal Corporation

APPROVED AS TO FORM/CONTENT:

Duane R. Cole 3/5/97
Duane R. Cole, City Manager Date

Terrence D. Mahr 3/5/97
Terrence D. Mahr, City Attorney Date

DEED OF DEDICATION

KNOW ALL MEN BY THESE PRESENTS, That Allen W. Mason and Sandra K Mason, husband and wife, Grantor, does hereby dedicate, grant and convey to the City of Newberg, a Municipal Corporation of the State of Oregon, hereinafter called the Grantee, for dedication of a public right-of-way, the following described real property located in Yamhill County, State of Oregon, to-wit:

5.00 foot public right-of-way dedication for Springbrook Road TL 3221-3300, Yamhill County, Oregon:

A five foot strip of land, the west line of which is the current east margin of Springbrook Road (30.00 feet from centerline), situated in the Luke McKern and wife Donation Land Claim No. 56, in Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon, and more particularly described as follows:

Beginning at a 5/8 inch iron rod located North 01°41'01" East 1021.13 feet from the Southeast corner of the Richard Everest Donation Land Claim No. 52, said 5/8 inch iron rod also being located on the Easterly right-of-way of Springbrook County Road; thence North 90° 00'00" East 128.50 feet to 5/8 inch iron rod; thence North 00°00'00" East 83 feet to a 5/8 inch iron rod; thence North 90° 00'00" West 128.50 feet to an iron rod located on said Easterly right-of-way boundary; thence South 00°00'00" East 83.00 feet to the point of beginning. Said tract of land is also located in the Southwest 1/4 of Section 21, Township 3 South, Range 2 West of the Willamette Meridian, also being located in the Luke McKern Donation Land Claim No. 56, Yamhill County, Oregon.

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[This property is as described in the Stipulated Decree of Quiet Title, Yamhill County Circuit Court Case No. CV95-304, Allen W. Mason and Sandra K. Mason v. John F. Hickert and Margaret Hickert).

TO HAVE AND TO HOLD the above described, dedicated, granted and conveyed premises unto said Grantee, its successors and assigns forever.

The true consideration for this conveyance is \$0.00 and other valuable consideration.

This instrument will not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses.

WITNESS our hand and seals this 3rd day of March, 1997.

Allen W. Mason
Allen W. Mason

Sandra K. Mason
Sandra K. Mason

STATE OF OREGON)
)ss.
County of Yamhill)

On the 3 day of March, 1997, personally appeared the above-named Allen W. Mason and Sandra K. Mason and acknowledged the foregoing instrument to be their voluntary act and deed.

OFFICIAL SEAL
ALLYN E BROWN
NOTARY PUBLIC - OREGON
COMMISSION NO. 03748
MY COMMISSION EXPIRES OCT. 11, 1998
Allyn E Brown
Notary Public for Oregon
Commission Expires: 10-11-98

ACCEPTED AS TO FORM AND CONTENT.

Terrence D. Mahr
Terrence D. Mahr, City Attorney

3/5/97
Date

Duane R. Cole
Duane R. Cole, City Manager

March 6, 1997
Date

AFTER RECORDING, RETURN TO GRANTEE:

Grantee: City of Newberg
414 E. First Street
Newberg OR 97132

EXHIBIT "3"
Attachment to Agreement
Page 1 of 1

Findings of Facts

(Exhibit "B")

FINDINGS OF FACT

1. Allen W. Mason and Sandra K. Mason (Mason) have resided for many years at 816 South Springbrook Road, Newberg, Oregon.

2. The Mason residence is a single family wood frame structure situated upon a .24 acre parcel of ground that is not presently within the Newberg City Limits but is within the Newberg Urban Growth Boundary.

3. The property is surrounded on all three sides by property owned by NSP Development, Inc. (NSP), P.O. Box 6059, Portland, Oregon 97228.

4. The property owned by NSP is within the City Limits of the City of Newberg and in Land Use File No. DR-46-95, the City of Newberg authorized NSP to develop NSP's property into a manufactured home park.

5. The Mason residence is service by a private water well on the Mason property and a subsurface septic tank sewer system. The drainfield for the Mason's septic tank lies upon the property of NSP.

6. On April 30, 1985, the Masons and NSP's predecessors in title, namely John F. Hickert and Margaret Hickert, entered into an easement agreement wherein the Hickerts granted the Masons an easement upon their property for the Masons to maintain and repair their septic tank drainfield. This easement was duly recorded in the Deed and Mortgage Records of Yamhill County, Oregon on May 20, 1985 in Film Volume 194, Page 1084.

7. The easement agreement in part provides:

RESOLUTION NO. 97-2034
EXHIBIT "B"

"Grantees--Mason agree that at such time as public sewer facilities are brought to the boundaries of (the Mason property), they shall connect their residence located on (the Mason property) to the public sewer system within six months and disconnect the on site sewer disposal system that is subject to the easement....Upon disconnection and discontinuance of the on site sewage disposal system, this easement more particularly referred to above shall become void and of no further effect..."

8. On November 25, 1996, the Hickerts' successor in title, NSP, brought the City's sewer lateral to the Mason's property line.

9. NSP has informed the Masons that on May 25, 1997, the date being six months from the time that NSP brought the City of Newberg sewer lateral to the Mason's property, NSP will remove the Mason's drainfield from their property.

10. Without a drainfield to dissipate the Mason's sewage, a health hazard will be created for all surrounding property owners.

11. If such situation would arise, Hollis Gunter, the Yamhill County Sanitarian, has stated that he would have no choice but to condemn the Masons' property.

12. Hollis Gunter has further advised that the Mason's septic system in all likelihood cannot be repaired due to the small size of the lot and the requirement that the septic system be a certain minimum distance from the Mason's domestic well.

13. Hollis Gunter has further advised that he is unaware of any legal basis authorizing his Department to intervene in this matter on the Mason's behalf.

14. An emergency exists and in compliance with Ordinance 21.50, Section 204, it is reasonable for the Masons to connect to the municipal sewer system of the City of Newberg so long as the Masons enter into an agreement with the City to annex to the City

RESOLUTION NO. 97-2034
EXHBIIT "B"

as soon as possible and agree to pay all necessary annexation fees, sewer hookup fees, and all other appropriate City service fee.

RESOLUTION NO. 97-2034
EXHIBIT "B"

Map

(Exhibit "C")

Located in the SW1/4 of Section 21, Township 3 South, Range 2 West
of the Willamette Meridian, also being a part of the Luke McKern DLC #56,
Yamhill County, Oregon

Prepared For
NSP Development, Inc.
P.O. Box 6059
Portland, OR 97228

- Found Monument as noted
- Set Monument - 5/8" x 30" Iron Rod with Plastic Cap marked "PLS 2655", unless otherwise noted
- () Record Information

SCALE 1" = 100 Feet

CSJP-4234, Jones, July 1967
CSJP-7165, Mursell, March 19, 1979
CSJP-8820, Cooley, September 15, 1986
CSJ9200, Pappa, December 19, 1988
CSJ10351, Dunkel, March 20, 1995

NSP Development, Inc.
7.25 Acres

Hickert
Volume 93, Page 549

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JUL 12, 1964
ANTHONY C. BENTON
2633
EXPIRES 12/31/95

The purpose of this survey was to monument a property line adjustment between Mason and Hickert and to monument the boundary of that 600.00' by 546.83' parcel that is being purchased by MSP Development from the Hickert under contract, as shown. I located the brass cap marking the southeast corner of D/C #52 and the witness brass cap for D/C #56 and used them to establish the CL of Springbrook County Road. I located the north line of the Hickert tract per the deed, as shown. There was some question as to the location of the south line of the Hickert tract. The deed located the south line referring to the northwest corner of D/C #56. The deed to the south of the Hickert tract, Parcel # 1511, refers to the southeast corner of D/C #52. When compared, there is a ~7 foot gap. Based on recent improvements to the parcel to the south, and the recent survey by Burton Engineering (yet to be filed), I accepted the boundary per Vol. 137, Page 1511, which gives the Hickert tract the area located in the "gap". I accepted the 3/4" iron pipe located at the original corner of the Hickert tract. Equipment used in the survey was a Uteq S102C total station theodolite. Assisting in the survey were Chris Breyer and Scott Field.

Stuntzner Engineering
& Forestry

ENGINEERING • LAND SURVEYING • FORESTRY
PLANNING • WATER RIGHTS

6055 S.W. Citizens Dr. Suite 208
Post Office Box 1075
Wilsonville, Oregon 97070

Given At: Long Beach Date: November 25, 1995

Checked By: Scott Field Drawing No.: 85-56

Control by	Product
------------	---------

NSP Development Survey

NW Corner
DLC #56

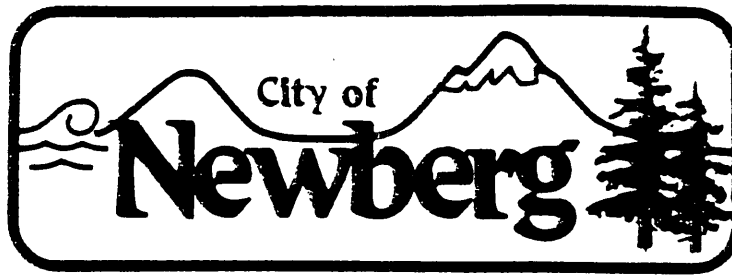
30'

Found Yamhill County Brass Cap
on the North line of the Luke
McKern DLC #56, 30.00' East
of the NW corner of said DLC #56

Basis of Bearings
 N00°00'00"E 3100.49'
 (N00°00'00"E 3100.48' per CSP)

Found Yamhill County Brass Cap
SE Corner Richard Everest DLC #52

EXHIBIT "C"
Resolution No. 97-2034



CITY OF NEWBERG
CITY RECORDER INDEX NO. 1547

COPY

City Manager
(503) 538-9421

City Attorney
(503) 537-1208

March 5, 1997

414 E. First St.
Newberg, Oregon 97132

City FAX
(503) 538-5393

Northwest Title Company
601 E. Hancock Street
Newberg, Oregon 97132

Re: Mason Sewer Connection
Covenant and Restriction/Consent to Annex and Dedication
Our File No. 30008-01715

Dear Sir/Madam:

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Should you have any further questions, please do not hesitate to contact me or Peggy Hall. Thank you.

Very truly yours,

Terrence D. Mahr
City Attorney

TDM:prh

Enclosure

F:\LEGAL\WPSFILES\COMMDEV\MASON.NWT

pc: Mr. Allyn Brown
Duane R. Cole, City Manager
Mike Soderquist, Community Development Director

Building: 537-1240 • Community Development: 537-1210 • Finance: 537-1201 • Fire: 537-1230
Library: 538-7323 • Municipal Court: 537-1203 • Police: 538-8321 • Public Works: 537-1214 • Utilities: 537-1205
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"Working Together For A Better Community-Serious About Service"

NUMERIC LISTING OF DOCUMENT FILE IN RECORDER'S VAULT[illegible]

RESOLUTION INDEX

[illegible]

RESOLUTION NO. 97-2034

RESOLUTION OF THE NEWBERG CITY COUNCIL AUTHORIZING CONNECTION OF A DWELLING OUTSIDE THE CITY LIMITS TO THE CITY SEWER SYSTEM PURSUANT TO SECTION 204 OF ORDINANCE NO. 2150 WHICH GOVERNS THE SEWER SYSTEM OF THE CITY; APPROVING AN AGREEMENT BETWEEN THE OWNERS AND THE CITY; AND ADOPTING FINDINGS OF FACT.

OWNERS: ALLEN W. MASON AND SANDRA K. MASON (Husband and Wife)
PROPERTY: 816 S. Springbrook Road, Newberg, Oregon
SIZE: .24 ACRES
TAX LOT NO.: 3221-3300, 3400

RECITALS:

1. Ordinance No. 2150 of the City of Newberg governs the sewer system of the City of Newberg.
2. Section 204 of Ordinance No. 2150 prohibits connection to the Municipal sewer system of dwellings outside the corporate limits of the City except when it has been determined that the existing services of said dwelling cannot be repaired and shall be discontinued.
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4. Testimony was presented by Allyn Brown, attorney for the Masons and Mart Storm's representative from NSP Development.
5. After all testimony was heard and consideration of the facts, the Council requested the City Attorney's office to prepare necessary documents to put before the Council with appropriate Findings of Fact based upon testimony for approval of connection.

NOW, THEREFORE, it is resolved by the Newberg City Council as follows:

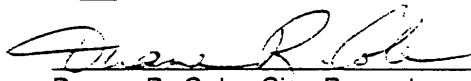
- Section 1. The dwelling located on the property owned by the Masons shall be allowed to connect to the Newberg sewer system. Such service shall be for the one dwelling and the Owners shall be responsible for payment of sewer usage charges for that property as established by the City Ordinance and all other costs for sewage uses as well any costs incurred for connection to the sewer. The City Manager is authorized to enter into agreements, take necessary actions and execute necessary documents to facilitate this connection.
- Section 2. The Owners hereby agree to annex to the City when requested by the City; to file all necessary applications and pay all necessary fees; to submit the question of annexation to the voters of the City, and pay all necessary costs in connection with the election, and to do so as many times as requested by the City; and to do all other necessary acts normally included in an annexation procedure which includes dedication of right-of-way along Springbrook County Road No. 5. The obligation to annex and dedicate shall be recorded as a covenant and restriction on the Yamhill

County Deed Records. The Owners shall pay the cost for such recording. The Agreement to annex and the Covenants and Restrictions are attached as Exhibit "A" and by this reference incorporated.

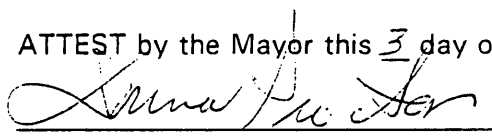
Section 3. The City Council hereby adopts the Findings of Fact which is required pursuant to Section 204 of Ordinance No. 2150. The Findings of Fact are attached hereto as Exhibit "B" and by this reference incorporated.

Section 4. A map of the subject property is attached as Exhibit "C" and by this reference incorporated.

ADOPTED by the Newberg City Council this 3rd day of March, 1997.


Duane R. Cole, City Recorder

ATTEST by the Mayor this 3 day of March, 1997.


Donna Proctor, Mayor

Agreement

(Exhibit "A")

AGREEMENT TO ANNEX TO THE CITY OF NEWBERG

THIS AGREEMENT, entered into this 5th day of March, 1997, between the following parties:

I. PARTIES.

CITY OF NEWBERG,
an Oregon Municipal Corporation
414 E. First Street
Newberg, Oregon 97132

ALLEN W. MASON and SANDRA K. MASON
816 South Springbrook Road
Newberg, Oregon 97132

"City"

"Owners"

II. PROPERTY.

The real property which is the subject of this Agreement, is located in Yamhill County, Oregon, and more particularly described as follows:

Beginning at a 5/8 inch iron rod located North 01°41'01" East 1021.13 feet from the Southeast corner of the Richard Everest Donation Land Claim No. 52, said 5/8 inch iron rod also being located on the Easterly right-of-way of Springbrook County Road; thence North 90° 00'00" East 128.50 feet to 5/8 inch iron rod; thence North 00°00'00" East 83 feet to a 5/8 inch iron rod; thence North 90° 00'00" West 128.50 feet to an iron rod located on said Easterly right-of-way boundary; thence South 00°00'00" East 83.00 feet to the point of beginning. Said tract of land is also located in the Southwest 1/4 of Section 21, Township 3 South, Range 2 West of the Willamette Meridian, also being located in the Luke McKern Donation Land Claim No. 56, Yamhill County, Oregon.

The above described tract of land contains 0.24 acres, more or less.

[This property is as described in the Stipulated Decree of Quiet Title, Yamhill County Circuit Court Case No. CV95-304, Allen W. Mason and Sandra K. Mason v. John F. Hickert and Margaret Hickert).

III. RECITALS.

The parties shall agree as follows:

1. The Owners own the real property located at 816 S. Springbrook Road, Newberg, Oregon. The property is their residence.
2. The property is located adjacent to the Newberg City limits, but is not inside the Newberg City limits.
3. The City of Newberg Ordinances prohibit connection to City of Newberg water/sewer services for dwellings outside the City limits except for specific circumstances.
4. By authority of Resolution No. 97-2034, the City Council of the City of Newberg has determined that the dwelling meets the necessary criteria of Section 204 of Ordinance No. 2150, and has further determined that the dwelling can be connected to the City of Newberg sewage system.

NOW, THEREFORE, based upon the promises, considerations and mutual covenants, the parties agree as follows:

1. Owners shall be allowed to connect their dwelling located at 816 S. Springbrook Road, Newberg, which is outside the City limits and depicted on the map attached hereto as Exhibit "1" and by this reference incorporated.
2. This connection shall only be used to supply sewage use to the existing structure and will not be allowed to be used for any new development.
3. Owners consent to annex their property to the City of Newberg in consideration of the extraterritorial provision of services which is the City's consent to attach to the City's sewer system. Further, Owners agree to file all necessary applications, pay all necessary fees, present all necessary evidence in any land use application for annexation promptly upon request by the City that the Owners apply for annexation to the City.
4. Owners understand that annexation to the City must be approved by the voters of the City. Owners agree to pay their proportionate share, if any, of any and all election costs that are required in placing the question of annexation before the voters of the City of Newberg. Owners may be required to place monies in escrow to cover such costs of election(s). The City may only place the matter before the voters of the City at a biennial General Election (held in November of each even numbered year), unless agreed upon by both parties. At this time, the City does not have to pay any election costs to place a matter on the ballot before the voters at the biennial General Election. Therefore, the Masons would not have any proportional costs of such an election; however, the State of Oregon, which conducts the election, has the authority and may change the rules to require the City to pay some costs. In which case, the Masons will be required to pay their proportionate share of such costs. Owners agree to pay the costs and submit all necessary applications for as many elections as required by City.
5. Owners agree to make all necessary filings and pay all necessary fees in a timely and appropriate manner.
6. The consent to annex and dedication shall be a covenant and restriction placed on the Yamhill County Deed Records. Such Covenant and Restriction is hereby attached as Exhibit "2".
7. The subject property borders on Springbrook County Road No. 5. Owners agree to dedicate the necessary right-of-way to bring the Springbrook County Road No. 5 to standard City right-of-way upon annexation to the City. Owners shall sign and execute the attached Dedication Deed. The Deed shall then be held in escrow by the City with authority by Owners to file said Deed upon annexation of the subject property. The Dedication Deed is hereby attached as Exhibit "3".
8. Owners agree to pay all systems development charges, connection costs and any other appropriate charge for connection to the City of Newberg sewage system. Further, Owners agree to pay promptly all charges for sewer use. Owners agree that failure to pay any costs associated with the sewer connection, shall be result in immediate disconnection of sewer services.

9. This is the entire agreement between the parties. The parties are represented by legal counsel and understand the legality and constitutionality of all consents, agreements and obligations they have obligated themselves to perform. Any constitutional objection is hereby waived.

IN WITNESS WHEREOF, we have executed this Agreement this 5th day of March, 1997.

CITY OF NEWBERG
an Oregon Municipal Corporation

Duane R. Cole

Duane R. Cole, City Manager

By Authority of Resolution No. 97-2034
Adopted March 3, 1997

OWNERS

Allen W. Mason

Allen W. Mason

Sandra K. Mason

Sandra K. Mason

APPROVED AS TO FORM/CONTENT:

Terrence D. Mahr

Terrence D. Mahr, City Attorney

APPROVED:

Allyn Brown

Allyn Brown

Attorney for Allen W. and Sandra K. Mason

STATE OF OREGON)

:ss

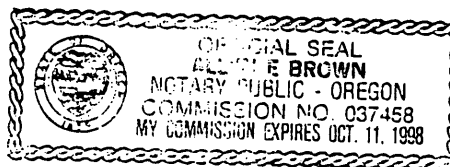
County of Yamhill)

This instrument was acknowledged before me on this 3 day of March, 1997, by Allen W. Mason and Sandra K. Mason.

Allyn Brown

Notary Public for Oregon

My Commission Expires: 10-11-98



Located in the SW1/4 of Section 21, Township 3 South, Range 2 West
of the Willamette Meridian, also being a part of the Lutsu M. Kern DIC #56,
Yamhill County, Oregon.

Refutation Letters
 CS# 1234 Jones July 1957
 CS# 7165, Martin March 19, 1970
 CS#-6523 Couley, September 15 1986
 CS#3233 Pappa December 18, 1983
 CS#10131, Garwood March 20, 1955

SCALE 1" = 100 Feet

Hickert
Volume 63, Page 262

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
AUG 11 1964
ANTHONY E BENTLEY
163
EXPIRES 12/31/88

Stuntzner Engineering
& Forestry

ENGINEERING • LAND SURVEYING • FORESTRY
PLANNING • WATER RIGHTS

Post Office Box 1475 Phone: (408) 642-0061
 Astoria, Oregon 97103 Fax: (408) 642-1118

... 2 ...	... 2 ...
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1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.	1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.
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[illegible]

1-1-11 ASP Development Survey 1-1-11

Prepared For
NSP Development, Inc.
P.O. Box 6059
Portland, OR 97228

Legend.

- Found Monument as noted
- Set Monument - $3/8" \times 30"$ Iron Rod with Plastic Cap marked "PLS 2633", unless otherwise noted
- () Record Information

NSP Development, Inc.
7.25 Acres

Volume 137, Page 1511

Narrative

[illegible]

Corner falls in concrete
at fence corner. Set
Brass Screw.

Found Yamhill County Brass Cap
SE Corner Richard Everest D.C. #52

Basis of Bearings
 (N00°00'00" E 3100.42' per CSF
 N00°00'00" E 3100.49'

EXHIBIT "1" - MASON AGREEMENT

COVENANT AND RESTRICTION CONSENT TO ANNEX AND DEDICATION OF ROAD RIGHT-OF-WAY

This Agreement is made and entered into this 5 day of March, 1997, by and between the **City of Newberg**, an Oregon Municipal Corporation, in the County of Yamhill, State of Oregon, hereinafter referred to as "City", and **Allen W. Mason and Sandra K. Mason**, owners of the property hereinafter described, referred to as "Owners". This Covenant and Restriction is applicable to the real property described hereafter, located in Yamhill County, Oregon.

RECITALS:

1. Owners have requested that the City extend City sewer service to their dwelling located on real property described as follows:

Beginning at a 5/8 inch iron rod located North 01°41'01" East 1021.13 feet from the Southeast corner of the Richard Everest Donation Land Claim No. 52, said 5/8 inch iron rod also being located on the Easterly right-of-way of Springbrook County Road; thence North 90° 00'00" East 128.50 feet to 5/8 inch iron rod; thence North 00°00'00" East 83 feet to a 5/8 inch iron rod; thence North 90° 00'00" West 128.50 feet to an iron rod located on said Easterly right-of-way boundary; thence South 00°00'00" East 83.00 feet to the point of beginning. Said tract of land is also located in the Southwest 1/4 of Section 21, Township 3 South, Range 2 West of the Willamette Meridian, also being located in the Luke McKern Donation Land Claim No. 56, Yamhill County, Oregon.

The above described tract of land contains 0.24 acres, more or less.

[This property is as described in the Stipulated Decree of Quiet Title, Yamhill County Circuit Court Case No. CV95-304, Allen W. Mason and Sandra K. Mason v. John F. Hickert and Margaret Hickert).

2. City has consented to extend sewer service to the Owners' property which is located outside the City limits of the City.
3. Owners have consented to eventual annexation of the property in return for the City providing extra-territorial provisions of service (sewer service).
4. The public road located adjacent to the above described property is below City right-of-way standards.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Owners consent to the annexation of the above described property. This consent for annexation is provided based upon the City granting extraterritorial provision of services to the dwelling located on the subject property. The City is granting such service by authority of its ordinances and the authority of Oregon Revised Statutes (ORS) 222.151. This consent shall be binding upon all successors in interest in said property.

AFTER RECORDING, RETURN TO:
City of Newberg - Legal Department
414 E. First Street
Newberg, Oregon 97132
File No. 30008-01715

EXHIBIT "2"
Attachment to Agreement
Page 1 of 2

2. Owners have executed a Dedication Deed which has been placed in escrow with the City of Newberg. The Dedication Deed dedicates to the City of Newberg, the westerly most five (5) feet of the property for roadway purposes. With this dedication, the adjacent street (Springbrook County Road No. 5), will have the right-of-way in conformity with City standards and the adjacent right-of-way. Owners give their irrevocable consent to dedicate and record this deed upon annexation of Owners property to the City of Newberg. This consent and authority to record shall be binding upon all successors in interest in the property.

3. This covenant and restriction shall be filed on the Yamhill County Deed Records. Owners shall pay for any and all costs of recording.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned.

Allen W. Mason
Allen W. Mason

Sandra K. Mason
Sandra K. Mason

APPROVED:

Allyn Brown
Allyn Brown
Attorney for Allen W. and Sandra K. Mason

State of Oregon)
County of Yamhill)
:ss

This instrument was acknowledged before me on this 3 day of March, 1997, by Allen W. Mason and Sandra K. Mason.



Allyn E. Brown
Notary Public for Oregon
My Commission Expires: 10-11-98

CITY OF NEWBERG,
an Oregon Municipal Corporation

Duane R. Cole 3/5/97
Duane R. Cole, City Manager Date

APPROVED AS TO FORM/CONTENT:
Terrence D. Mahr 3/5/97
Terrence D. Mahr, City Attorney Date

DEED OF DEDICATION

KNOW ALL MEN BY THESE PRESENTS, That Allen W. Mason and Sandra K Mason, husband and wife, Grantor, does hereby dedicate, grant and convey to the City of Newberg, a Municipal Corporation of the State of Oregon, hereinafter called the Grantee, for dedication of a public right-of-way, the following described real property located in Yamhill County, State of Oregon, to-wit:

5.00 foot public right-of-way dedication for Springbrook Road TL 3221-3300, Yamhill County, Oregon:

A five foot strip of land, the west line of which is the current east margin of Springbrook Road (30.00 feet from centerline), situated in the Luke McKern and wife Donation Land Claim No. 56, in Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon, and more particularly described as follows:

Beginning at a 5/8 inch iron rod located North 01°41'01" East 1021.13 feet from the Southeast corner of the Richard Everest Donation Land Claim No. 52, said 5/8 inch iron rod also being located on the Easterly right-of-way of Springbrook County Road; thence North 90° 00'00" East 128.50 feet to 5/8 inch iron rod; thence North 00°00'00" East 83 feet to a 5/8 inch iron rod; thence North 90° 00'00" West 128.50 feet to an iron rod located on said Easterly right-of-way boundary; thence South 00°00'00" East 83.00 feet to the point of beginning. Said tract of land is also located in the Southwest 1/4 of Section 21, Township 3 South, Range 2 West of the Willamette Meridian, also being located in the Luke McKern Donation Land Claim No. 56, Yamhill County, Oregon.

The above described tract of land contains 0.24 acres, more or less.

[This property is as described in the Stipulated Decree of Quiet Title, Yamhill County Circuit Court Case No. CV95-304, Allen W. Mason and Sandra K. Mason v. John F. Hickert and Margaret Hickert).

TO HAVE AND TO HOLD the above described, dedicated, granted and conveyed premises unto said Grantee, its successors and assigns forever.

The true consideration for this conveyance is \$0.00 and other valuable consideration.

This instrument will not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses.

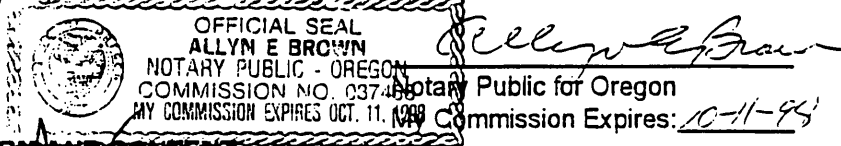
WITNESS our hand and seals this 3rd day of March, 1997.

Allen W. Mason
Allen W. Mason

Sandra K. Mason
Sandra K. Mason

STATE OF OREGON)
)ss.
County of Yamhill)

On the 3 day of March, 1997, personally appeared the above-named Allen W. Mason and Sandra K. Mason and acknowledged the foregoing instrument to be their voluntary act and deed.



ACCEPTED AS TO FORM AND CONTENT.

Terrence D. Mahr
Terrence D. Mahr, City Attorney

3/5/97
Date

Duane R. Cole
Duane R. Cole, City Manager

March 6, 1997
Date

AFTER RECORDING, RETURN TO GRANTEE:

Grantee: City of Newberg
414 E. First Street
Newberg OR 97132

EXHIBIT "3"
Attachment to Agreement
Page 1 of 1

Findings of Facts

(Exhibit "B")

FINDINGS OF FACT

1. Allen W. Mason and Sandra K. Mason (Mason) have resided for many years at 816 South Springbrook Road, Newberg, Oregon.

2. The Mason residence is a single family wood frame structure situated upon a .24 acre parcel of ground that is not presently within the Newberg City Limits but is within the Newberg Urban Growth Boundary.

3. The property is surrounded on all three sides by property owned by NSP Development, Inc. (NSP), P.O. Box 6059, Portland, Oregon 97228.

4. The property owned by NSP is within the City Limits of the City of Newberg and in Land Use File No. DR-46-95, the City of Newberg authorized NSP to develop NSP's property into a manufactured home park.

5. The Mason residence is service by a private water well on the Mason property and a subsurface septic tank sewer system. The drainfield for the Mason's septic tank lies upon the property of NSP.

6. On April 30, 1985, the Masons and NSP's predecessors in title, namely John F. Hickert and Margaret Hickert, entered into an easement agreement wherein the Hickerts granted the Masons an easement upon their property for the Masons to maintain and repair their septic tank drainfield. This easement was duly recorded in the Deed and Mortgage Records of Yamhill County, Oregon on May 20, 1985 in Film Volume 194, Page 1084.

7. The easement agreement in part provides:

RESOLUTION NO. 97-2034
EXHIBIT "B"

"Grantees--Mason agree that at such time as public sewer facilities are brought to the boundaries of (the Mason property), they shall connect their residence located on (the Mason property) to the public sewer system within six months and disconnect the on site sewer disposal system that is subject to the easement....Upon disconnection and discontinuance of the on site sewage disposal system, this easement more particularly referred to above shall become void and of no further effect..."

8. On November 25, 1996, the Hickerts' successor in title, NSP, brought the City's sewer lateral to the Mason's property line.

9. NSP has informed the Masons that on May 25, 1997, the date being six months from the time that NSP brought the City of Newberg sewer lateral to the Mason's property, NSP will remove the Mason's drainfield from their property.

10. Without a drainfield to dissipate the Mason's sewage, a health hazard will be created for all surrounding property owners.

11. If such situation would arise, Hollis Gunter, the Yamhill County Sanitarian, has stated that he would have no choice but to condemn the Masons' property.

12. Hollis Gunter has further advised that the Mason's septic system in all likelihood cannot be repaired due to the small size of the lot and the requirement that the septic system be a certain minimum distance from the Mason's domestic well.

13. Hollis Gunter has further advised that he is unaware of any legal basis authorizing his Department to intervene in this matter on the Mason's behalf.

14. An emergency exists and in compliance with Ordinance 21.50, Section 204, it is reasonable for the Masons to connect to the municipal sewer system of the City of Newberg so long as the Masons enter into an agreement with the City to annex to the City

RESOLUTION NO. 97-2034
EXHBIIT "B"

as soon as possible and agree to pay all necessary annexation fees, sewer hookup fees, and all other appropriate City service fee.

RESOLUTION NO. 97-2034
EXHIBIT "B"

Map

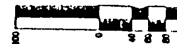
(Exhibit "C")

Located in the SW1/4 of Section 21, Township 3 South, Range 2 West
of the Willamette Meridian, also being a part of the Luke McKern DLC #56,
Yamhill County, Oregon

NSP Development, Inc.
P.O. Box 6059
Portland, OR 97228

- Found Monument as noted
- Set Monument - 5/8" x 30" Iron Rod with Plastic Cap marked "PLS 2655", unless otherwise noted
- () Record Information

SCALE 1" = 100 Feet



CS/P-4234, Jones, July 1967
CS/P-7165, Murrell, March 19, 1979
CS/P-8920, Cooley, September 15, 1986
CS/9200, Puppe, December 19, 1988
CS/10351, Dunchak, March 20, 1995

Hickert
Volume 65, Page 542

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JUL 10, 1994
ANTHONY C. BENTHAM
2635
EXPIRES 12/31/95

ENGINEERING • LAND SURVEYING • FORESTRY
PLANNING • WATER RIGHTS

6633 S.W. Citizens Dr. Suite 208
Post Office Box 1875
Bilmarville, Oregon 97070

Phone: (503) 682-6931
Fax: (503) 682-1448

Date: November 25, 1985
 To: Long Benito

DATE: NOVEMBER 22, 1962

Prepared by: <u>Scott Field</u>	Drawn by: <u>None</u>	DS-56
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Lead word Dye	Derivative
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Alt. Name:	NSP Development Survey	Page 1 of 1
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EXHIBIT "C"
Resolution No. 97-2034

**COVENANT AND RESTRICTION
CONSENT TO ANNEX AND DEDICATION OF ROAD RIGHT-OF-WAY**

This Agreement is made and entered into this 5th day of March, 1997, by and between the **City of Newberg**, an Oregon Municipal Corporation, in the County of Yamhill, State of Oregon, hereinafter referred to as "City", and **Allen W. Mason and Sandra K. Mason**, owners of the property hereinafter described, referred to as "Owners". This Covenant and Restriction is applicable to the real property described hereafter, located in Yamhill County, Oregon.

RECITALS:

1. Owners have requested that the City extend City sewer service to their dwelling located on real property described as follows:

Beginning at a 5/8 inch iron rod located North 01°41'01" East 1021.13 feet from the Southeast corner of the Richard Everest Donation Land Claim No. 52, said 5/8 inch iron rod also being located on the Easterly right-of-way of Springbrook County Road; thence North 90° 00'00" East 128.50 feet to 5/8 inch iron rod; thence North 00°00'00" East 83 feet to a 5/8 inch iron rod; thence North 90° 00'00" West 128.50 feet to an iron rod located on said Easterly right-of-way boundary; thence South 00°00'00" East 83.00 feet to the point of beginning. Said tract of land is also located in the Southwest 1/4 of Section 21, Township 3 South, Range 2 West of the Willamette Meridian, also being located in the Luke McKern Donation Land Claim No. 56, Yamhill County, Oregon.

The above described tract of land contains 0.24 acres, more or less.

[This property is as described in the Stipulated Decree of Quiet Title, Yamhill County Circuit Court Case No. CV95-304, Allen W. Mason and Sandra K. Mason v. John F. Hickert and Margaret Hickert).

2. City has consented to extend sewer service to the Owners' property which is located outside the City limits of the City.
3. Owners have consented to eventual annexation of the property in return for the City providing extra-territorial provisions of service (sewer service).
4. The public road located adjacent to the above described property is below City right-of-way standards.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Owners consent to the annexation of the above described property. This consent for annexation is provided based upon the City granting extraterritorial provision of services to the dwelling located on the subject property. The City is granting such service by authority of its ordinances and the authority of Oregon Revised Statutes (ORS) 222.151. This consent shall be binding upon all successors in interest in said property.

AFTER RECORDING, RETURN TO:
City of Newberg - Legal Department
414 E. First Street
Newberg, Oregon 97132
File No. 30008-01715

Recorded in Official Yamhill County Records
CHARLES STERN, COUNTY CLERK



20.00

199703612 09:47am 03/07/97

001 044124 10 04 000200
1 0 D02 2 10.00 10.00 0.00 0.00 0.00 0.00

2. Owners have executed a Dedication Deed which has been placed in escrow with the City of Newberg. The Dedication Deed dedicates to the City of Newberg, the westerly most five (5) feet of the property for roadway purposes. With this dedication, the adjacent street (Springbrook County Road No. 5), will have the right-of-way in conformity with City standards and the adjacent right-of-way. Owners give their irrevocable consent to dedicate and record this deed upon annexation of Owners property to the City of Newberg. This consent and authority to record shall be binding upon all successors in interest in the property.

3. This covenant and restriction shall be filed on the Yamhill County Deed Records. Owners shall pay for any and all costs of recording.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned.

Allen W. Mason
Allen W. Mason

Sandra K. Mason
Sandra K. Mason

APPROVED:

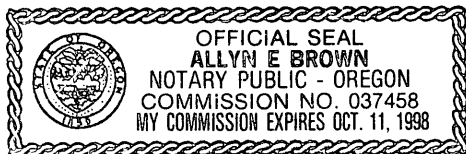
Allyn Brown
Allyn Brown
Attorney for Allen W. and Sandra K. Mason

State of Oregon)

:ss

County of Yamhill)

This instrument was acknowledged before me on this 3 day of March, 1997, by Allen W. Mason and Sandra K. Mason.



Allyn Brown
Notary Public for Oregon
My Commission Expires: 10-11-98

CITY OF NEWBERG,
an Oregon Municipal Corporation

APPROVED AS TO FORM/CONTENT:

Duane R. Cole 3/5/97
Duane R. Cole, City Manager Date

Terrence D. Mahr 3/5/97
Terrence D. Mahr, City Attorney Date

Hold in
Escrow
Pending
Annexation

Deed of Dedication
Agreement

DEED OF DEDICATION

KNOW ALL MEN BY THESE PRESENTS, That Allen W. Mason and Sandra K Mason, husband and wife, Grantor, does hereby dedicate, grant and convey to the City of Newberg, a Municipal Corporation of the State of Oregon, hereinafter called the Grantee, for dedication of a public right-of-way, the following described real property located in Yamhill County, State of Oregon, to-wit:

5.00 foot public right-of-way dedication for Springbrook Road TL 3221-3300, Yamhill County, Oregon:

A five foot strip of land, the west line of which is the current east margin of Springbrook Road (30.00 feet from centerline), situated in the Luke McKern and wife Donation Land Claim No. 56, in Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon, and more particularly described as follows:

Beginning at a 5/8 inch iron rod located North 01°41'01" East 1021.13 feet from the Southeast corner of the Richard Everest Donation Land Claim No. 52, said 5/8 inch iron rod also being located on the Easterly right-of-way of Springbrook County Road; thence North 90° 00'00" East 128.50 feet to 5/8 inch iron rod; thence North 00°00'00" East 83 feet to a 5/8 inch iron rod; thence North 90° 00'00" West 128.50 feet to an iron rod located on said Easterly right-of-way boundary; thence South 00°00'00" East 83.00 feet to the point of beginning. Said tract of land is also located in the Southwest 1/4 of Section 21, Township 3 South, Range 2 West of the Willamette Meridian, also being located in the Luke McKern Donation Land Claim No. 56, Yamhill County, Oregon.

The above described tract of land contains 0.24 acres, more or less.

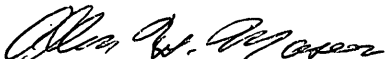
[This property is as described in the Stipulated Decree of Quiet Title, Yamhill County Circuit Court Case No. CV95-304, Allen W. Mason and Sandra K. Mason v. John F. Hickert and Margaret Hickert).

TO HAVE AND TO HOLD the above described, dedicated, granted and conveyed premises unto said Grantee, its successors and assigns forever.

The true consideration for this conveyance is \$0.00 and other valuable consideration.

This instrument will not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses.

WITNESS our hand and seals this 3rd day of March, 1997.


Allen W. Mason


Sandra K. Mason

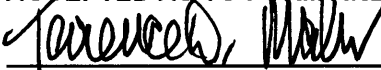
STATE OF OREGON)
)ss.
County of Yamhill)

On the 3 day of March, 1997, personally appeared the above-named Allen W. Mason and Sandra K. Mason and acknowledged the foregoing instrument to be their voluntary act and deed.



OFFICIAL SEAL
ALLYN E BROWN
NOTARY PUBLIC - OREGON
COMMISSION NO. 037466
MY COMMISSION EXPIRES OCT. 11, 1999
Notary Public for Oregon
Commission Expires: 10-11-98

ACCEPTED AS TO FORM AND CONTENT.


Terrence D. Mahr, City Attorney

3/5/97
Date


Duane R. Cole, City Manager

March 6, 1997
Date

AFTER RECORDING, RETURN TO GRANTEE:

Grantee: City of Newberg
414 E. First Street
Newberg OR 97132

AGREEMENT TO ANNEX TO THE CITY OF NEWBERG

THIS AGREEMENT, entered into this 5th day of March, 1997, between the following parties:

I. PARTIES.

CITY OF NEWBERG,
an Oregon Municipal Corporation
414 E. First Street
Newberg, Oregon 97132

"City"

ALLEN W. MASON and SANDRA K. MASON
816 South Springbrook Road
Newberg, Oregon 97132

"Owners"

II. PROPERTY.

The real property which is the subject of this Agreement, is located in Yamhill County, Oregon, and more particularly described as follows:

Beginning at a 5/8 inch iron rod located North 01°41'01" East 1021.13 feet from the Southeast corner of the Richard Everest Donation Land Claim No. 52, said 5/8 inch iron rod also being located on the Easterly right-of-way of Springbrook County Road; thence North 90° 00'00" East 128.50 feet to 5/8 inch iron rod; thence North 00°00'00" East 83 feet to a 5/8 inch iron rod; thence North 90° 00'00" West 128.50 feet to an iron rod located on said Easterly right-of-way boundary; thence South 00°00'00" East 83.00 feet to the point of beginning. Said tract of land is also located in the Southwest 1/4 of Section 21, Township 3 South, Range 2 West of the Willamette Meridian, also being located in the Luke McKern Donation Land Claim No. 56, Yamhill County, Oregon.

The above described tract of land contains 0.24 acres, more or less.

[This property is as described in the Stipulated Decree of Quiet Title, Yamhill County Circuit Court Case No. CV95-304, Allen W. Mason and Sandra K. Mason v. John F. Hickert and Margaret Hickert).

III. RECITALS.

The parties shall agree as follows:

1. The Owners own the real property located at 816 S. Springbrook Road, Newberg, Oregon. The property is their residence.
2. The property is located adjacent to the Newberg City limits, but is not inside the Newberg City limits.
3. The City of Newberg Ordinances prohibit connection to City of Newberg water/sewer services for dwellings outside the City limits except for specific circumstances.
4. By authority of Resolution No. 97-2034, the City Council of the City of Newberg has determined that the dwelling meets the necessary criteria of Section 204 of Ordinance No. 2150, and has further determined that the dwelling can be connected to the City of Newberg sewage system.

NOW, THEREFORE, based upon the promises, considerations and mutual covenants, the parties agree as follows:

1. Owners shall be allowed to connect their dwelling located at 816 S. Springbrook Road, Newberg, which is outside the City limits and depicted on the map attached hereto as Exhibit "1" and by this reference incorporated.
2. This connection shall only be used to supply sewage use to the existing structure and will not be allowed to be used for any new development.
3. Owners consent to annex their property to the City of Newberg in consideration of the extraterritorial provision of services which is the City's consent to attach to the City's sewer system. Further, Owners agree to file all necessary applications, pay all necessary fees, present all necessary evidence in any land use application for annexation promptly upon request by the City that the Owners apply for annexation to the City.
4. Owners understand that annexation to the City must be approved by the voters of the City. Owners agree to pay their proportionate share, if any, of any and all election costs that are required in placing the question of annexation before the voters of the City of Newberg. Owners may be required to place monies in escrow to cover such costs of election(s). The City may only place the matter before the voters of the City at a biennial General Election (held in November of each even numbered year), unless agreed upon by both parties. At this time, the City does not have to pay any election costs to place a matter on the ballot before the voters at the biennial General Election. Therefore, the Masons would not have any proportional costs of such an election; however, the State of Oregon, which conducts the election, has the authority and may change the rules to require the City to pay some costs. In which case, the Masons will be required to pay their proportionate share of such costs. Owners agree to pay the costs and submit all necessary applications for as many elections as required by City.
5. Owners agree to make all necessary filings and pay all necessary fees in a timely and appropriate manner.
6. The consent to annex and dedication shall be a covenant and restriction placed on the Yamhill County Deed Records. Such Covenant and Restriction is hereby attached as Exhibit "2".
7. The subject property borders on Springbrook County Road No. 5. Owners agree to dedicate the necessary right-of-way to bring the Springbrook County Road No. 5 to standard City right-of-way upon annexation to the City. Owners shall sign and execute the attached Dedication Deed. The Deed shall then be held in escrow by the City with authority by Owners to file said Deed upon annexation of the subject property. The Dedication Deed is hereby attached as Exhibit "3".
8. Owners agree to pay all systems development charges, connection costs and any other appropriate charge for connection to the City of Newberg sewage system. Further, Owners agree to pay promptly all charges for sewer use. Owners agree that failure to pay any costs associated with the sewer connection, shall be result in immediate disconnection of sewer services.

9. This is the entire agreement between the parties. The parties are represented by legal counsel and understand the legality and constitutionality of all consents, agreements and obligations they have obligated themselves to perform. Any constitutional objection is hereby waived.

IN WITNESS WHEREOF, we have executed this Agreement this 5th day of March, 1997.

CITY OF NEWBERG
an Oregon Municipal Corporation

Duane R. Cole
Duane R. Cole, City Manager

By Authority of Resolution No. 97-2034
Adopted March 3, 1997

OWNERS

Allen W. Mason
Allen W. Mason
Sandra K. Mason
Sandra K. Mason

APPROVED AS TO FORM/CONTENT:

Terrence D. Mahr
Terrence D. Mahr, City Attorney

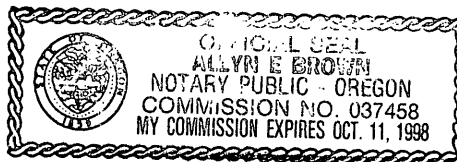
APPROVED:

Allyn E. Brown
Allyn Brown
Attorney for Allen W. and Sandra K. Mason

STATE OF OREGON)
 : ss
County of Yamhill)

This instrument was acknowledged before me on this 3 day of March, 1997, by Allen W. Mason and Sandra K. Mason.

Allyn E. Brown
Notary Public for Oregon
My Commission Expires: 10-11-98



Located in the SW1/4 of Section 21, Township 3 South, Range 2 West
of the Willamette Meridian, also being a part of the Luke McKern DIC #56.
Yamhill County, Oregon

Prepared For
NSP Development, Inc.
P.O. Box 6059
Portland, OR 97228

- Found Monument as noted
- Set Monument - 5/8" x 30" Iron Rod with Plastic Cap marked "PLS 2655", unless otherwise noted
- () Record Information

SCALE 1" = 100 Feet

CS/P-4234, Jones, July 1967
CS/P-7165, Mursell, March 19, 1979
CS/P-8520, Cooley, September 15, 1986
CS/9200, Puppe, December 19, 1988
CS/10351, Dunkel, March 20, 1995

Hickert
Volume 65, Page 549

NSP Development, Inc.
7.25 Acres

Basis of Bearings
 N05°00'00"E 3100.49'
 (N00°00'00"E 3100.48' per CSP)

Volume 137, Page 1511

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
AUG 12, 1984
ANTHONY C. BENTHAM
2635
EXPIRES 12/31/85

The purpose of the survey was to monument a properly line adjustment between Mason and Hickert and to monument the boundary of tract 653 63" by 546.83' parcel that is being purchased by MSP Development from Hickert under contract, as shown. I located the cross cap marking the southeast corner of D/C #52 and the witness brass cap for D/C #56 and used them to establish the CL of Springbrook County Road. I located the north line of the Hickert tract per the deed, as shown. There was some discrepancy as to the location of the south line of the Hickert tract. The Hickert tract located south of the north line was the corner of D/C #56. The deed to the south of the Hickert tract Vol. 137, Page 1511, refers to the southeast corner of D/C #52. When compared, there is a ~ 7 foot gap. Based on recent improvements to the parcel to the south, and the recent survey by Burton Engineering (yet to be filed), I accepted the boundary per Vol. 137, Page 1511, when gives the Hickert tract the area located in the "gap". I accepted the 3/4" iron pipe located at the original southeast corner of the Hickert tract. Equipment used in the survey was a Leica S102C total station theodolite. Assisting in the survey were Chris Brewer and Scott Field.

Found Yamhill County Brass Cap
SE Corner Richard Everest DLC #52

**Stuntzner Engineering
& Forestry**

ENGINEERING • LAND SURVEYING • FORESTRY
PLANNING • WATER RIGHTS

6053 S.W. Citizens Dr. Suite 208
Post Office Box 1875
Wilsonville, Oregon 97070

Given at: Long Beach Date: November 25, 1933

DATE: NOVEMBER 23, 1993

Interviewed by: Scott Field	Drawing No.: 83-36
-----------------------------	--------------------

Checked/forward By:	Signature:
---------------------	------------

NAME	DATE	SCORE

EXHIBIT "1" - MASON AGREEMENT

**COVENANT AND RESTRICTION
CONSENT TO ANNEX AND DEDICATION OF ROAD RIGHT-OF-WAY**

This Agreement is made and entered into this 5th day of March, 1997, by and between the **City of Newberg**, an Oregon Municipal Corporation, in the County of Yamhill, State of Oregon, hereinafter referred to as "City", and **Allen W. Mason and Sandra K. Mason**, owners of the property hereinafter described, referred to as "Owners". This Covenant and Restriction is applicable to the real property described hereafter, located in Yamhill County, Oregon.

RECITALS:

1. Owners have requested that the City extend City sewer service to their dwelling located on real property described as follows:

Beginning at a 5/8 inch iron rod located North 01°41'01" East 1021.13 feet from the Southeast corner of the Richard Everest Donation Land Claim No. 52, said 5/8 inch iron rod also being located on the Easterly right-of-way of Springbrook County Road; thence North 90° 00'00" East 128.50 feet to 5/8 inch iron rod; thence North 00°00'00" East 83 feet to a 5/8 inch iron rod; thence North 90° 00'00" West 128.50 feet to an iron rod located on said Easterly right-of-way boundary; thence South 00°00'00" East 83.00 feet to the point of beginning. Said tract of land is also located in the Southwest 1/4 of Section 21, Township 3 South, Range 2 West of the Willamette Meridian, also being located in the Luke McKern Donation Land Claim No. 56, Yamhill County, Oregon.

The above described tract of land contains 0.24 acres, more or less.

[This property is as described in the Stipulated Decree of Quiet Title, Yamhill County Circuit Court Case No. CV95-304, Allen W. Mason and Sandra K. Mason v. John F. Hickert and Margaret Hickert).

2. City has consented to extend sewer service to the Owners' property which is located outside the City limits of the City.
3. Owners have consented to eventual annexation of the property in return for the City providing extra-territorial provisions of service (sewer service).
4. The public road located adjacent to the above described property is below City right-of-way standards.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Owners consent to the annexation of the above described property. This consent for annexation is provided based upon the City granting extraterritorial provision of services to the dwelling located on the subject property. The City is granting such service by authority of its ordinances and the authority of Oregon Revised Statutes (ORS) 222.151. This consent shall be binding upon all successors in interest in said property.

AFTER RECORDING, RETURN TO:
City of Newberg - Legal Department
414 E. First Street
Newberg, Oregon 97132
File No. 30008-01715

EXHIBIT "2"
Attachment to Agreement
Page 1 of 2

2. Owners have executed a Dedication Deed which has been placed in escrow with the City of Newberg. The Dedication Deed dedicates to the City of Newberg, the westerly most five (5) feet of the property for roadway purposes. With this dedication, the adjacent street (Springbrook County Road No. 5), will have the right-of-way in conformity with City standards and the adjacent right-of-way. Owners give their irrevocable consent to dedicate and record this deed upon annexation of Owners property to the City of Newberg. This consent and authority to record shall be binding upon all successors in interest in the property.

3. This covenant and restriction shall be filed on the Yamhill County Deed Records. Owners shall pay for any and all costs of recording.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned.

Allen W. Mason
Allen W. Mason

Sandra K. Mason
Sandra K. Mason

APPROVED:

Allyn Brown
Allyn Brown

Attorney for Allen W. and Sandra K. Mason

State of Oregon)

County of Yamhill)

:ss

This instrument was acknowledged before me on this 3 day of March, 1997, by Allen W. Mason and Sandra K. Mason.



Allyn Brown
Notary Public for Oregon

My Commission Expires: 10-11-98

CITY OF NEWBERG,
an Oregon Municipal Corporation

APPROVED AS TO FORM/CONTENT:

Duane R. Cole
Duane R. Cole, City Manager

3/5/97
Date

Terrence D. Mahr
Terrence D. Mahr, City Attorney

3/5/97
Date

DEED OF DEDICATION

KNOW ALL MEN BY THESE PRESENTS, That Allen W. Mason and Sandra K Mason, husband and wife, Grantor, does hereby dedicate, grant and convey to the City of Newberg, a Municipal Corporation of the State of Oregon, hereinafter called the Grantee, for dedication of a public right-of-way, the following described real property located in Yamhill County, State of Oregon, to-wit:

5.00 foot public right-of-way dedication for Springbrook Road TL 3221-3300, Yamhill County, Oregon:

A five foot strip of land, the west line of which is the current east margin of Springbrook Road (30.00 feet from centerline), situated in the Luke McKern and wife Donation Land Claim No. 56, in Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon, and more particularly described as follows:

Beginning at a 5/8 inch iron rod located North 01°41'01" East 1021.13 feet from the Southeast corner of the Richard Everest Donation Land Claim No. 52, said 5/8 inch iron rod also being located on the Easterly right-of-way of Springbrook County Road; thence North 90° 00'00" East 128.50 feet to 5/8 inch iron rod; thence North 00°00'00" East 83 feet to a 5/8 inch iron rod; thence North 90° 00'00" West 128.50 feet to an iron rod located on said Easterly right-of-way boundary; thence South 00°00'00" East 83.00 feet to the point of beginning. Said tract of land is also located in the Southwest 1/4 of Section 21, Township 3 South, Range 2 West of the Willamette Meridian, also being located in the Luke McKern Donation Land Claim No. 56, Yamhill County, Oregon.

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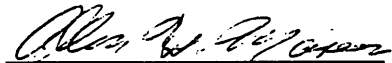
[This property is as described in the Stipulated Decree of Quiet Title, Yamhill County Circuit Court Case No. CV95-304, Allen W. Mason and Sandra K. Mason v. John F. Hickert and Margaret Hickert).

TO HAVE AND TO HOLD the above described, dedicated, granted and conveyed premises unto said Grantee, its successors and assigns forever.

The true consideration for this conveyance is \$0.00 and other valuable consideration.

This instrument will not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses.

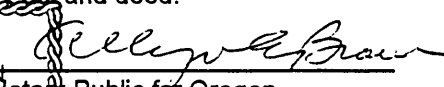
WITNESS our hand and seals this 3rd day of March, 1997.


Allen W. Mason


Sandra K. Mason

STATE OF OREGON)
)ss.
County of Yamhill)

On the 3 day of March, 1997, personally appeared the above-named Allen W. Mason and Sandra K. Mason and acknowledged the foregoing instrument to be their voluntary act and deed.

 OFFICIAL SEAL
ALLYN E. BROWN
NOTARY PUBLIC - OREGON
COMMISSION NO. 0374
MY COMMISSION EXPIRES OCT. 11, 1998

Notary Public for Oregon
Commission Expires: 10-11-98

ACCEPTED AS TO FORM AND CONTENT.


Terrence D. Mahr, City Attorney

3/5/97
Date


Duane R. Cole, City Manager

March 6, 1997
Date

AFTER RECORDING, RETURN TO GRANTEE:

Grantee: City of Newberg
414 E. First Street
Newberg OR 97132

EXHIBIT "3"
Attachment to Agreement
Page 1 of 1