

After recording, return to:
City of Newberg
City Attorney's Office
PO Box 970
Newberg, OR 97132
(503) 537-1206

AGREEMENT

Contains:
**ANNEXATION CONTRACT
and ROAD ACCESS EASEMENT
and RIGHT OF FIRST OPPORTUNITY**

THIS AGREEMENT ("Agreement") is made as of the 19th day of February, 2001, by and between Baker Rock Crushing Company, Inc., dba Baker Rock Resources ("Baker Rock"), an Oregon corporation and the City of Newberg ("City"), an Oregon Municipal Corporation.

PROPERTY AFFECTED BY THIS AGREEMENT:

Tax Lot 3230-100 referred to as "Riverfront Property"

Tax Lot 3229-100 referred to as "Sandoz Property"

Tax Lots 3229-201 and 3229-102 referred to as "City Property"

Recitals:

A. Baker Rock holds fee title to Yamhill County Tax Lot 3230-100 (the "Riverfront Property"), as to which Baker Rock obtained from Yamhill County an Official Zone Map change from MR-2 (Mineral/Resource District) to HI (Heavy Industrial District), which entitles Baker Rock, among other things, to operate a permanent asphalt batch plant ("the plant") on the site, subject to obtaining site design approval from Yamhill County.

B. The City desires that Baker Rock agree to surrender its right to operate the plant on the Riverfront Property in exchange for the City's support for locating the plant and certain light industrial uses on another parcel of property, Yamhill County Tax Lot 3229-100 ("the Sandoz Property"). The City proposes to entertain an application to annex the Sandoz Property, and to agree to provide City services to the Property upon annexation. Prior to annexation, the City proposes to grant an easement to Baker Rock for access to the Sandoz Property for its plant traffic, and to support Baker Rock in obtaining land use permits from Yamhill County for the plant and the light industrial uses. The City also desires that if the land use permits for the Sandoz Property are timely issued to

Baker Rock, Baker Rock will convey to the City a Right of First Opportunity to Purchase the Riverfront Property.

C. Baker Rock is willing to accede to the City's desires expressed in Paragraph B above on the terms and conditions stated herein, and to withhold filing its application with Yamhill County for site design review approval on the Riverfront Property for a limited period of time, if and only if Baker Rock is able to obtain the necessary land use approvals for the plant and the light industrial uses on the Sandoz Property within a reasonably short time and without unnecessary expense, complication, or delay.

D. The City is granting Baker Rock an easement across City Property for access to the Sandoz Property for its plant traffic. Upon request by Baker Rock, the City will furnish inspection and planning services to ensure that uses on the Sandoz Property will comply with City's current Development Code as indicated in paragraph 2(a) of this Agreement, and furnish planning services to ensure that the uses planned along the east side of the Sandoz Property along Sandoz Road comply with the City's Light Industrial zone requirements as specified in paragraph 2(b). In exchange for these extra territorial services, Baker Rock will consent to eventual annexation of the property and recording of this annexation contract shall be binding on all successors with an interest in the Sandoz Property pursuant to ORS 222.115.

Agreement:

NOW THEREFORE, in consideration of the premises and of the mutual covenants contained herein, the parties agree:

1. **SANDOZ LAND USE PERMITS.** Baker Rock has filed applications with Yamhill County for a zone change and Limited Use Overlay and intends to file application for site design review for the Sandoz Property ("the Sandoz Land Use Permits"), consistent with the terms hereof, and with the following additional features, all as shown in the Conceptual Site Plan submitted with said applications to Yamhill County (Planning Docket No. Z-03-00):
 - a. To the extent possible while maintaining consistency with Yamhill County code requirements, all uses described in the Sandoz Land Use Permits shall comply with the City's then current Development Code standards for parking, landscaping, setbacks, building height, airport overlay, driveway access and other clear and objective standards; provided however, that, in the event the Sandoz Property is ever annexed to the City, nothing herein shall prohibit Baker Rock from applying to the City for variances from such standards, and provided further, that nothing herein is intended to suggest that any

- discretionary standards in the City's Development Code shall apply to Yamhill County's decisions regarding the Sandoz Land Use Permits.
- b. The east side of the Sandoz Property along Sandoz Road and the south side of the Sandoz Property shall be planned for uses that comply with the City's Light Industrial zone requirements.
 - c. All non-emergency access to and from the Sandoz Road Property for uses related to the plant shall be exclusively by way of the Access Easement.
 - d. Screening Light Industrial uses along Sandoz Road shall consist of a four foot high earthen berm planted with vegetation to achieve a height of at least six feet above grade within one year of commencement of site work
 - e. Storm drainage shall comply with applicable DEQ regulations.
2. **LAND USE DECISION AND PARTYS' OBLIGATIONS.** The City and Baker Rock understand that the decision whether to approve, approve with conditions, or deny the Sandoz Land Use Permits lies within the jurisdiction of Yamhill County, and that neither party can control the decision making authority of Yamhill County by contract or otherwise. Neither the City nor Baker Rock shall have any obligation to the other arising out of the land use procedure in Yamhill County concerning the Sandoz Land Use Permits except as stated in this Paragraph. Baker Rock, for its part, shall prosecute the Sandoz Land Use Permits with diligence, but shall be free to negotiate with Yamhill County regarding the Sandoz Land Use Permits as it sees fit in its sole and absolute discretion. Baker Rock may, but shall not be obliged to, file applications for, or otherwise appear in any appeal or remand hearings filed by other parties arising out of a land use decision involving the Sandoz Land Use Permits. The City, for its part, shall support the applications for the Sandoz Land Use Permits as and to the extent stated in the Resolution (Resolution No. 2000-2245) Attached as Exhibit A, but shall be otherwise free to comment on the Sandoz Land Use Permits.
3. **WYNOOSKI ROAD ACCESS EASEMENT.** The City has executed the Wynooski Road Access Easement Agreement, attached as Exhibit B and by this reference incorporated.
4. **CONSENT TO ANNEX.** Baker Rock, as the owner of the Sandoz Property, hereby consents to the annexation of that property into the City of Newberg. Baker Rock or its successors in interest shall file all necessary applications for annexation and shall use reasonable efforts to obtain approval of its annexation application. Said application(s) shall be filed upon request by the City Council and may be filed prior to such a request. This consent to annex is given in consideration for the extraterritorial services that Baker Rock is receiving through inspection

and planning services. Except for the occurrence of the contingency stated in paragraph 7, this consent shall not expire and Baker Rock specifically waives any time limits for consideration of said consent. This consent to annex shall be binding on all successors in interest in the property pursuant to ORS 222.115

5. **RIVERFRONT PROPERTY OVERLAY MODIFICATION.** Baker Rock shall file an application with Yamhill County to modify the limited use overlay on the Riverfront Property to limit the allowed uses on the property to Light Industrial uses as specified in the Yamhill County Zoning Code. The application shall request that development of the plant be specifically prohibited by the modified overlay. The application shall also request imposition of a condition stating that barging of rock or other aggregate materials to or from the site, or the storage, docking, or processing of aggregate or other materials shall take place on the site only in an emergency and only with the approval of the City Manager. Baker Rock shall use reasonable efforts to obtain approval of the application specified in this paragraph in an expeditious manner. Further, Baker Rock shall cooperate with the City's effort to master plan the area in and around the Riverfront Property ("the Riverfront Area") for park and recreational uses.
6. **RIGHT OF FIRST OPPORTUNITY.** Hard Rock Enterprises LLC does hereby give to the City of Newberg the Right of First Opportunity for the purchase of the Riverfront Property. Such right is specified as to form and content in Exhibit C which is attached and by this reference incorporated.
7. **CONTINGENCY CONDITION.** This Agreement, including the Wynooski Road Access Easement, Consent to Annexation, the Right of First Opportunity on the Riverfront Property, and all other obligations pursuant to this Agreement, except for those "best efforts" obligations specified in paragraph two (2) of this Agreement shall not be of full force and effect until the earlier of a) Baker Rock's receipt of a favorable decision on the Sandoz Land Use Permits and tender to escrow of the Declaration of Favorable Decision, or b) the expiration of two years from the date of this Agreement. Within the earlier of a) 10 days after the expiration of the appeal periods for the land use decisions on the Sandoz Land Use Permits, if no appeals have been filed, or b) if any appeal(s) have been filed, 10 days after the appeal(s) have been decided in favor of Baker Rock, and no further avenues of appeal remain available, Baker Rock shall execute the Declaration of Favorable Decision attached as Exhibit D and have this Agreement along with all exhibits recorded in the Yamhill County deed records. The determinations specified in a) and b) of this paragraph shall be made at the discretion of Baker Rock provided that such discretion must be exercised in a reasonable manner.

8. **RECORDING INSTRUCTIONS.** This Agreement along with all exhibits are tendered to Northwest Title Company (Newberg office) with instructions that documents are to be held for no longer than two years in escrow pending the final land use decision on the Sandoz Land Use Permits including the expiration of any appeals. Upon the execution of the Declaration of Favorable Decision by Baker Rock, the documents shall be recorded. Neither party shall have the right to revoke these instructions prior to finalization of the land use decision on the Sandoz Land Use Permits. If Baker Rock fails to execute the Declaration of Favorable Decision or receives an unfavorable ruling on the Sandoz Land Use Permits, this Agreement including the Wynooski Road Access Easement, consent to annex, the right of first opportunity on the Riverfront Property, and all other obligations pursuant to this Agreement shall be null and void, and the escrow shall be closed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

BAKER ROCK CRUSHING COMPANY, INC.,
an Oregon Corporation

CITY OF NEWBERG,
an Oregon Municipal Corporation
(Authorized by Resolution)

By Gary T. Baker 2-19-01
President Date

By Duane Cole Feb. 7, 2001
Date

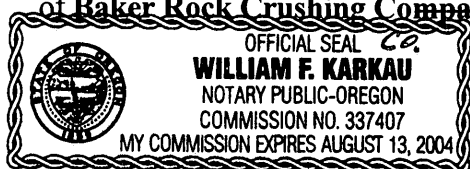
HARD ROCK ENTERPRISES LLC

By Janice C. Baker-Carlson
President

APPROVED AS TO FORM/CONTENT:
By Terrence D. Mahr
Terrence D. Mahr, City Attorney

State of OREGON)
) ss.
County of WASHINGTON)

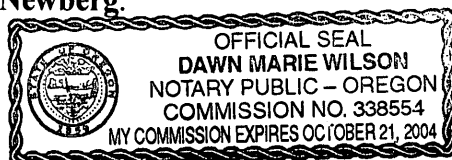
This instrument was acknowledged before me on FEBRUARY 19,
2001, by GARY T. BAKER as PRESIDENT
of Baker Rock Crushing Company, Inc.



William F. Karkau
Notary Public for
My commission expires: 8-13-2004

State of OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on February 7th,
2001, by Duane R. Cole as City manager
of the City of Newberg.



Dawn Marie Wilson
Notary Public for Oregon
My commission expires: 10/21/04

List of Exhibits:

Exhibit A	City Resolution
Exhibit B	Wynooski Road Access Easement
Exhibit C	Right of First Opportunity
Exhibit D	Declaration of Favorable Decision in the Sandoz Land Use Permits

Exhibit A
to Agreement
(page 1 of 2)



RESOLUTION NO. 2000-2245

**A RESOLUTION RECOMMENDING THAT THE YAMHILL
COUNTY COMMISSIONERS APPROVE WITH
CONDITIONS A ZONE CHANGE FOR PROPERTY ON
SANDOZ ROAD FOR BAKER ROCK RESOURCES.**

RECITALS:

1. Baker Rock Resources has received approval from Yamhill County for a zone change to Heavy Industrial along Newberg's waterfront with the intent of locating an asphalt plant at that location. The City Council opposes the location of the asphalt plant on the waterfront area.
2. To try to address the City's concerns, Baker Rock has proposed an alternative site near Wyooski Road and Sandoz Road for siting of the asphalt plant and a light industrial complex. Locating the proposed uses on this site would require a zone change.
3. The proposed site is located within the City's Industrial Comprehensive Plan District, and the proposed use, with the recommended conditions, would be consistent with the Newberg Comprehensive Plan.
4. The Council wishes to express support of the alternate location provided certain conditions are met.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City of Newberg recommends that Yamhill County approve a zone change of Tax Lot 3229-100 from AF-10 to Heavy Industrial and Light Industrial. The Light Industrial area would be that area within 160 feet of the east and south property lines.
2. The City of Newberg further recommends that the zone change be subject to the conditions listed in Exhibit "A."

Exhibit A
to Agreement
(page 2 of 2)

3. The City retains the right to comment on specific zone change, design review or other applications that are submitted at the site.

ADOPTED by the City Council of the City of Newberg, Oregon, this 5th day of June, 2000.

/s/ Duane R. Cole

Duane R. Cole, City Recorder

ATTEST by the Mayor this 5th day of June, 2000.

/s/ Charles Cox

Charles Cox, Mayor

Exhibit "A"
to Resolution No. 2000-2245
(page 1 of 3)

Recommended Conditions
Baker Rock Zone Change

Wynooski Road Site Recommended Conditions (Tax Lot 3229-100)

- Baker Rock will develop the site in accordance with City of Newberg Development Code standards for parking, landscaping, setbacks, building height, Airport overlay, driveway access, and similar standards. This does not preclude Baker Rock from applying for variances in accordance with applicable codes.
- The east side of the property (adjacent to Sandoz Road) and the south side along adjacent properties shall be used for "Light Industrial". This property (160 feet deep) and uses shall be consistent with the County Light Industrial zone.
- Prior to any construction on the site, Baker Rock shall enter into an annexation agreement with the City of Newberg. The agreement shall provide that:
 - Baker Rock shall consent to annex to the City of Newberg when annexation is determined to be timely by the City Council, and at such time that the annexation is approved by the City electorate. Baker Rock shall pay the City annexation fee and all costs associated with an annexation election. The City will attempt to schedule the election during the State paid election dates.
 - Upon development, Baker Rock shall install City standard utilities to the site, including sewer lines, water lines, and fire hydrant systems. Baker Rock will pay City fees for these installations.
 - The City will allow connection of these utilities to the municipal systems in accordance with City standards. These connections will not be allowed prior to actual annexation.
 - Baker Rock shall grant the City first right of opportunity and/or an option to purchase the necessary property for expansion of the Waste Water Treatment Facility which is adjacent to this property.
- Baker Rock shall improve streets along the city's treatment plant frontage on Wynooski to match the existing improvements on the city's property and along Sandoz Road to city standards. All accesses shall be improved to City standards.
- Sandoz Road access shall be restricted to be used for light industrial deliveries and service only. All truck activities associated with the heavy industrial operation shall use the Wynooski Road access.

Exhibit "A"
to Resolution No. 2000-2245
(page 2 of 3)

- Vegetation shall be used to shield the adjacent property owners from the use. Baker Rock shall construct a minimum 4 foot high earth berm with vegetation and/or additional earth to achieve a minimum 6 foot height along Sandoz Road to provide screening prior to construction of the light industrial buildings.
- The internal access road on city property shall be constructed to the standards set by the City Engineer.
- The city shall grant an easement access on city property to Baker Rock. Baker Rock shall reconstruct the Wastewater Treatment Plant fence in the area and provide a gated access at a location to be defined by the city. Baker Rock shall maintain the roadway in good condition.
- Baker Rock shall submit a storm drainage plan that handles site runoff and protects the public storm drain system and waterways from contamination.
- Baker Rock shall comply with applicable environmental standards for air quality, water quality, and similar standards as required by the County, State, and Federal Government.

River Road Recommended Conditions (Tax Lot 3230-100):

Provided the Zone Change is approved by Yamhill County, the following conditions shall apply to Yamhill County Tax Lot 3230-100.

- Baker Rock shall cooperate with the City in the development of a master plan for the Riverfront area.
- Baker Rock shall agree to limit use of the Riverfront area to light industrial activities, and at such time that a master plan is developed, Baker Rock will comply with the provisions identified in the master plan, subject to just compensation for those requirements that affect the use and value of the property.
- Baker Rock shall grant the city a first right of opportunity to purchase their property on the Riverfront.
- Barging of rock or material shall not be permitted without the approval of the Newberg City Manager.
- Baker Rock shall not store, dock, nor compile aggregate rock or other resource material at this site except in emergency situations with approval of the City Council.

Exhibit "A"
to Resolution No. 2000-2245
(page 3 of 3)

NOTE: Development is also subject to approval of Yamhill County and the Oregon Department of Transportation.

Agreement between Baker Rock and the City:

- The parties shall enter into an Agreement which shall have the purpose of making the recommended conditions "clear and objective," legally binding, and an obligation that runs with the land which is enforceable.
- The City Manager is authorized, delegated, and directed to do all necessary acts to enter into the Agreement which shall implement the recommended conditions contingent upon the granting of the zone change by the County.
- The Agreement shall be subject to approval as to form and content for compliance with this Resolution by the City Attorney.

After recording, return to:
City of Newberg
City Attorney's Office
PO Box 970
Newberg, OR 97132
(503) 537-1206

Exhibit B
to Agreement
(page 1 of 6)

**WYNOOSKI ROAD ACCESS
EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT (this "Agreement") is made as of the ____ day of _____, 2001, by and between the City of Newberg ("City") an Oregon Municipal Corporation, and Baker Rock Crushing, Inc., dba Baker Rock Resources ("Baker Rock"), an Oregon corporation.

Recitals:

A. City owns that certain real property in Yamhill County, Oregon, that is more particularly described on Exhibit A attached hereto (the "Burdened Property").

B. Baker Rock owns that certain real property in Yamhill County, Oregon that is more particularly described on Exhibit B attached hereto (the "Benefited Property").

C. Baker Rock has requested that City grant and convey to Baker Rock a driveway easement (the "Easement") over and across the Burdened Property as described in Exhibit C, and illustrated in the drawing contained in Exhibit C dated October 19, 2000. (the "Easement Area"), and City is willing to grant such Easement on the terms and subject to the conditions set forth herein.

Grant.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, City hereby conveys to Baker Rock, a permanent, non-exclusive Easement over, along, across, and upon the Easement Area.

Exhibit B

to Agreement

(page 2 of 6)

Agreement.

The foregoing grant is made on the following terms and subject to the following conditions:

1. Purpose. This Easement is granted for the purpose of pedestrian and vehicular movement and access across the Burdened Property to the Benefited Property by Baker Rock and its successors and assigns, tenants, customers, employees, licensees and other business invitees of Baker Rock.
2. Construction of Easement. Baker Rock shall be entitled to construct a driveway in the Easement Area, solely at Baker Rock's cost and expense, which construction shall conform to all requirements of applicable laws, regulations and ordinances, including building codes. Before commencing such construction, Baker Rock shall submit to City the final Driveway plans approved by Yamhill County along with Certificates evidencing that Baker Rock has procured the insurance required under Section 5. In its construction of the Driveway, Baker Rock shall coordinate the scheduling and staging of its work with City's Sewage Treatment Plant Superintendent so that such work does not delay or otherwise unreasonably interfere with work being performed on the Burdened Property. At such time as the City commences improvements to its sewage treatment plant frontage along Wynoski Street by installing curbs, gutters, and sidewalks, Baker Rock agrees to install like improvements, as coordinated by the City, from the existing driveway entrance on the south side of the Treatment Plant property to the east property boundary of the City's property.
3. Temporary Construction Easement. ("Construction Easement") In connection with any construction work to be performed in the Easement Area, City hereby grants to Baker Rock a temporary Construction Easement for incidental encroachments upon the Burdened Property that may occur as a result of such construction, provided that such encroachments are kept within the reasonable requirements of construction work, are expeditiously pursued, do not unreasonably interfere with the use and enjoyment of the Burdened Property and so long as insurance in the amounts and coverages described in Section 5 is maintained, and provided further that any disturbed area is restored after such construction to the reasonable satisfaction of City. The Construction Easement shall include the area north and west of, parallel to and extending 10 feet beyond the boundary of the Easement area.

Exhibit B

to Agreement

(page 3 of 6)

4. Indemnity. Baker Rock shall indemnify, defend and hold harmless City, its successors and assigns, from and against all liabilities, damages, obligations, losses, claims, actions, costs or expenses, including attorneys' fees, arising from any act, omission, or negligence of Baker Rock or its contractors, licensees, agents, servants, employees, guests, invitees, or visitors in or about the Easement Area, (or within the Construction Easement area during construction by Baker Rock), or arising from any injury or damage to any person or property occurring in or about the Easement Area, (or Construction Easement area during construction by Baker Rock), as a result of any act, omission, or negligence of Baker Rock or its contractors, licensees, agents, servants, employees, guests, invitees, or visitors.

5. Insurance. Baker Rock shall obtain or require its contractor(s) to obtain and thereafter maintain so long as any activity is occurring on the Easement Area pursuant to Section 2, or on the Construction Easement area pursuant to Section 3, at least the minimum insurance coverages set forth at clauses (a) through (c), below, and shall procure and maintain, for so long as the Easement granted hereby is in effect or as long as construction is occurring in the Construction Easement area, the Commercial General Liability coverage described at clause (c), below:
 - (a) Worker's Compensation - statutory limits
 - (b) Employers' liability - \$500,000
 - (c) Commercial General Liability and Business Auto Liability, with broad form property damage, personal injury and blanket contractual liability endorsements, as follows:
 - (i) Bodily Injury - \$3,000,000 per occurrence
 - (ii) Property Damage - \$1,000,000 per occurrence

Exhibit B

to Agreement

(page 4 of 6)

Baker Rock shall name City (or shall cause its contractor to name City) as an additional insured under the policy described at Clause (c), above, and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Section 5, without at least thirty (30) days prior written notice to the named insured and each additional insured. If such insurance is canceled or expires before Baker Rock has concluded its activity pursuant to Section 2 or Section 3, then Baker Rock shall immediately stop all work on or use of the Easement area or Construction Easement area until either the required insurance is reinstated or the replacement insurance obtained. All insurance required by this Section 5 shall be procured from companies authorized to do business in Oregon and acceptable to City. All insurance required pursuant to this Section 5 shall provide that an act or omission of one of the insureds or additional insureds that would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds.

6. Maintenance and Repair. Baker Rock shall at all times maintain the driveway in good condition and repair at its own cost and expense and, from time to time, shall effect at its own cost and expense such repairs, resurfacing and renovation thereof or thereto as may be necessary to keep the driveway in a good condition that is serviceable and safe for its contemplated use.
7. Covenants Run With the Land. The burdens and benefits of this agreement shall run with the land and shall extend to, bind, and inure to the benefit of the parties hereto and their respective successors and assigns in, as applicable, the Burdened Property and the Benefited Property.
8. Attorneys' Fees. In the event of any litigation regarding the rights and obligations under this agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs before and at trial, on appeal, and in connection with any petition for review or proceeding before a U.S. Bankruptcy Court.

Exhibit B

to Agreement

(page 5 of 6)

9. Termination. The easement and right of entry granted hereunder shall terminate if, within sixty (60) days following the date on which City gives Baker Rock written notice that Baker Rock has breached any of its obligations under this Agreement, and stating City's intent to terminate such easement and right of way pursuant to this Section 9 if such breach is not cured, Baker Rock has failed to cure such breach. A recorded instrument, signed by City and stating that the easement and right of entry granted hereunder has been terminated pursuant to this Section 9 shall be conclusive evidence of such termination as against third parties relying thereon; provided, such filing shall not prevent Baker Rock from challenging such termination and/or causing such easement and right of entry to be reinstated, or recovering damages for the wrongful filing of a notice of termination, by any means available under applicable law, if such filing has been made under circumstances other than those giving rise to a right of termination under this Section 9.
10. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by registered or certified mail, postage prepaid, return receipt requested, or by facsimile transmission followed by delivery of a "hard" copy, and shall be deemed received upon the date of receipt thereof, as follows:

If to Baker Rock: Baker Rock Resources
 21880 SW Farmington Road
 Beaverton, Oregon 97007

If to City: City of Newberg
 City Manager
 P.O. Box 970
 Newberg, Oregon 97132

Notice of change of address shall be given by written notice in the manner specified in this Section 10.

11. Entire Agreement. This agreement constitutes the entire agreement between the parties with respect to the subject matter provided for herein, and cannot be changed or modified other than by a written agreement executed by both parties.

Exhibit B

to Agreement

(page 6 of 6)

12. Applicable Law. This agreement shall be governed by and construed in accordance with the laws of the state of Oregon.
13. Severability. If any term or provision of this agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.
14. City Authority. City covenants that the official executing this document has the authority to do so and that the City will defend Baker Rock against any claim of illegality, ultra vires or unenforceability of its term.

IN WITNESS WHEREOF, the parties hereto have executed this.

BAKER ROCK CRUSHING COMPANY, INC.,
an Oregon Corporation

CITY OF NEWBERG,
an Oregon Municipal Corporation

By _____
Date

By _____
Date

APPROVED AS TO FORM/CONTENT:

By _____
Terrence D. Mahr, City Attorney

State of OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____,
2001, by _____ as _____
of the City of Newberg.

Notary Public for
My commission expires: _____

EXHIBIT A
to Wynooski Road Access Easement
(page 1 of 2)

Burdened Property

(One of two parcels that comprise the Burdened Property)

(As recorded in Volume 190, page 1749 in the Yamhill County Deed Records:)

A portion of that certain tract of land in the Samuel Snowden Donation Land Claim No. 68, in Section 29, Township 3 South, Range 2 West of the Willamette Meridian, Yamhill County, Oregon described in deed to Spaulding Pulp and Paper Co. recorded in Film Volume 90, Page 2427, Deed Records of Yamhill County, said portion being more particularly described as follows: Beginning at a point on the north line of said Spaulding tract being also the southeast corner of that certain tract described in deed to the City of Newberg in Film Volume 187, Page 502, Deed Records of Yamhill County, Oregon, said point bearing south 1435.73 feet and west 927.89 feet from the northeast corner of said Samuel Snowden Donation Land Claim and running thence south 00° 23' 45" east 321.77 feet; thence south 76° 45' 21" west 400.72 feet; thence along the arc of a 380.00 foot radius curve to the right (the radius point of which bears north 13° 14' 39" west) 530.27 feet to the southwest corner of the said City of Newberg tract; thence north 76° 45' 21" east 846.45 feet to the point of beginning.

EXCEPTING AND RESERVING TO GRANTOR a strip of land 25.00 feet wide lying 12.50 feet on each side of the following described center line: Beginning at a point on the north line of the aforesaid Spaulding Pulp and Paper Co. tract, said point bearing north 76° 45' 21" east 106.70 feet from the southwest corner of the aforesaid tract of land conveyed to the City of Newberg; thence south 15° 47' 55" east 212.93 feet to a point on the northerly right-of-way of County Road No. 47 and the terminus thereof, the sidelines of said strip of land to be extended or shortened to terminate at the above said northerly right-of way of County Road No. 47.

TOGETHER with a permanent, nonexclusive easement to cross and recross the aforescribed excepted strip of land for purposes and by means that do not interfere with Grantor's use of said strip for a water diversion tunnel.

EXHIBIT A
to Wynooski Road Access Easement
(page 2 of 2)

Burdened Property

(Second of two parcels that comprise the Burdened Property)

(As recorded in **Volume 187, page 504** in the Yamhill County Deed Records:)

(see non-electronic printout for Information)

Melcher portion

EXHIBIT A--Page Two of Two

Burdened Property
(Second of two parcels that
comprise Burdened Property)

VOL 187 PAGE 504

Being a portion of the Samuel Snowden Donation Land Claim No. 68, in Township 3 South, Range 2 West of the Willamette Meridian, Yamhill County, Oregon as described in Deed to Kenneth C. Melcher et al, recorded in Film Volume 151, Page 804, Deed Records of Yamhill County, Oregon, said portion being more particularly described as follows:

Beginning at a iron pipe set at the Northwest corner of said Melcher et al tract and running thence along the West line of said tract South $00^{\circ}24'$ West 974.13 feet to a point on the Easterly right-of-way of County Road No. 47; thence along said right-of-way South $42^{\circ}10'43''$ East 41.25 feet; thence South $09^{\circ}20'13''$ East 217.57 feet to a $5/8$ " iron rod; thence along the arc of a non-tangent curve to the left; (the radius point of which bears northeasterly), the long chord of which bears South $22^{\circ}12'28''$ East 11.40 feet to a $5/8$ inch iron rod; thence along the South line of said Melcher et al tract North $76^{\circ}45'21''$ East 846.45 feet; thence North $00^{\circ}23'45''$ West 1025.55 feet to a point on the North line of said Melcher et al tract; thence along said North line North $89^{\circ}18'39''$ West 877.26 feet to the point of beginning.

TOGETHER WITH a Sewer easement described as follows:

Being a portion of the Samuel Snowden Donation Land Claim No. 68, in Township 3 South, Range 2 West of the Willamette Meridian, Yamhill County, Oregon as described in Deed to Kenneth C. Melcher et al, recorded in Film Volume 151, Page 804, Deed Records of Yamhill County, Oregon, said portion being more particularly described as follows:

Beginning at the Northeast corner of said Melcher et al property, said point being in the center of County Road No. 47 and bears South $00^{\circ}06'05''$ West 422.04 feet from the Northeast corner of the Snowden Claim No. 68, running thence along the North line of the Melcher et al property North $89^{\circ}18'39''$ West 984.30 feet; thence South $00^{\circ}23'45''$ East 25.00 feet; thence South $89^{\circ}18'39''$ East 984.08 feet to a point on the East line of said Melcher et al property, said point being in the center of County Road No. 47; thence along said centerline North $00^{\circ}06'05''$ East 25.00 feet to the point of beginning.

EXHIBIT B
to Wynooski Road Access Easement
(page 1 of 1)

Benefited Property

Situate, lying and being in Yamhill County, Oregon, and being a part of the Donation Land Claim of Samuel D. Snowden, Claim No. 68, Notification No. 1476, in Township 3 South, Range 2 West of the Willamette Meridian, in said County and State, said part herein Benefited being more particularly described as follows:

Beginning at an iron pipe at the Northeast corner of said Donation Land Claim, and running thence south 7' West along County Road 6.39 chains and which is the Southeast corner of an 18 acre tract conveyed by Martin J. Conrad to Mary Jane Conrad on December 23, 1910, for a place of beginning of the tract herein Benefited; thence North 89°20' West 28.17 chains to an iron pipe and the Southwest corner of said Mary Jane Conrad tract of 18 acres; thence South 22' West 18.895 chains to an iron pipe; thence North 76°41' East 29.00 chains to center of County Road, said true corner being shown by an iron pipe 2 inches X 24 inches set 20 feet South 76°41' West from said corner; thence North 7' East along said County Road 11.875 chains to the place of beginning of the tract herein conveyed.

EXCEPTING THEREFROM that portion conveyed to Spaulding Pulp & Paper Co., by deed dated June 8, 1974 and recorded June 12, 1974 in Film Volume 100, Page 1211, Deed and Mortgage Records.

ALSO EXCEPTING THEREFROM that portion conveyed to the City of Newberg, a Municipal Corporation of the State of Oregon, by deeds recorded June 22, 1984 in film Volume 187, Pages 501 and 503, Deed and Mortgage Records.

EXHIBIT C
to Wynooski Road Access Easement
(page 1 of 2)

Description and Drawing of Easement Area

-- LEGAL DESCRIPTION --

(see non-electronic printout for Legal Description)

EXHIBIT C

Description and Drawing
of Easement Area

YAMHILL COUNTY, OREGON
SEC. 29, T3S, R2W, W. M.
JOB NO. 1591.00
OCTOBER 19, 2000
PAGE 1 OF 2

LEGAL DESCRIPTION:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, CITY OF NEWBERG, YAMHILL COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF THAT TRACT OF LAND DESCRIBED IN DEED TO THE CITY OF NEWBERG IN BOOK 190, PAGE 1749 DATED DECEMBER 6, 1984, YAMHILL COUNTY DEED RECORDS, YAMHILL COUNTY, OREGON; THENCE ALONG THE EAST LINE OF SAID TRACT SOUTH $00^{\circ}23'45''$ EAST 321.77 FEET TO A POINT IN THE NORTHERLY RIGHT-OF-WAY LINE OF N.E. WYNOOSKI RD. (C.R. NO. 47); THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH $76^{\circ}45'21''$ WEST 124.02 FEET TO A POINT; THENCE LEAVING SAID RIGHT-OF-WAY LINE NORTH $13^{\circ}14'39''$ WEST 5.00 TO A POINT OF NON-TANGENT CURVE; THENCE NORTHEASTERLY ALONG A 40.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF $66^{\circ}49'06''$ (THE LONG CHORD OF WHICH BEARS NORTH $43^{\circ}20'48''$ EAST 44.05 FEET) AN ARC DISTANCE OF 46.65 FEET TO A POINT OF TANGENCY; THENCE NORTH $09^{\circ}56'15''$ EAST 321.97 FEET TO A POINT OF TANGENT CURVE; THENCE NORTHEASTERLY ALONG A 202.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF $24^{\circ}56'30''$ (THE LONG CHORD OF WHICH BEARS NORTH $22^{\circ}24'30''$ EAST 87.24 FEET) AN ARC DISTANCE OF 87.93 FEET TO A POINT IN THE EAST LINE OF THAT TRACT OF LAND DESCRIBED IN DEED TO THE CITY OF NEWBERG IN BOOK 187, PAGE 501 DATED JUNE 22, 1984, YAMHILL COUNTY DEED RECORDS, YAMHILL COUNTY, OREGON; THENCE ALONG SAID EAST LINE SOUTH $00^{\circ}23'45''$ EAST 84.52 FEET TO THE POINT OF BEGINNING.

CONTAINS 0.542 ACRES, MORE OR LESS.

PAGE 1 OF 2

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
NOV. 16, 1998
MICHAEL D. FRANK
53854

RENEWAL DATE: 12/31/01

EXHIBIT C
to Wynooski Road Access Easement
(page 2 of 2)

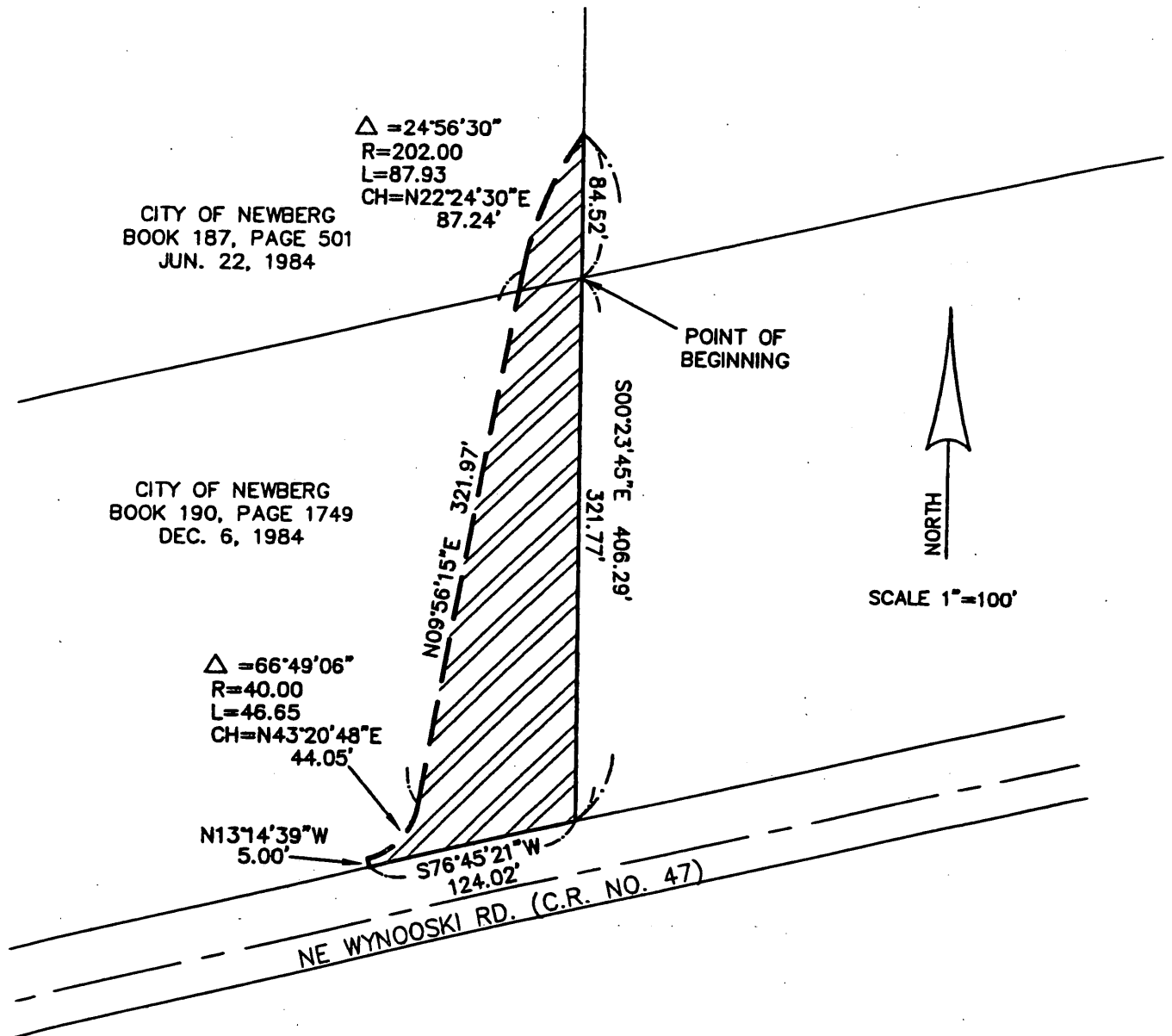
Description and Drawing of Easement Area

-- EXHIBIT MAP --
ACCESS EASEMENT

(see non-electronic printout for Map)

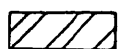
EXHIBIT MAP

ACCESS EASEMENT
LOCATED IN THE NE 1/4 OF SECTION 29,
IN T 3 S, R 2 W, WILLAMETTE MERIDIAN,
CITY OF NEWBERG,
YAMHILL COUNTY, OREGON
OCTOBER 19, 2000



PAGE 2 OF 2
JOB NO. 1591

LEGEND:



PROPOSED ACCESS
EASEMENT
23,620 SQUARE FEET
0.542 ACRES

W R G
D E S I G N I N C .

10450 SW NIMBUS AVE., PORTLAND, OREGON 97223

☎ (503) 603-9933

FAX: (503) 603-9944

PLANNERS ■ ENGINEERS ■ LANDSCAPE ARCHITECTS ■ SURVEYORS

Exhibit C
to Agreement
(page 1 of 1)

RIGHT OF FIRST OPPORTUNITY

Property Affected:

Tax Lot 3230-100 referred to as "Riverfront Property"

(see non-electronic printout for Right of First Opportunity)

Right of First Opportunity

(total of 3 pages)

THIS RIGHT OF FIRST OPPORTUNITY is granted as of the date specified below, by Hard Rock Enterprises, LLC ("Hard Rock"), an Oregon LLC, and the City of Newberg ("City"), an Oregon Municipal Corporation, as to property in Yamhill County, State of Oregon known as Tax Lot 3230-100, more particularly described in the attached Exhibit A, and referred to herein as the "Riverfront Property"

1. Right of First Opportunity. Except as otherwise stated herein, Hard Rock shall not sell or otherwise transfer all or any part of its interest in the Riverfront Property ("Hard Rock's Interest") to any third party unless Hard Rock has first complied with the provisions of this Right of First Opportunity. Hard Rock shall offer the City the opportunity to purchase Hard Rock's Interest by sending to City a written notice of the specific terms of an offer to sell, including purchase price (the "Offered Price") and the other principal terms of sale set forth in a standard Oregon Board of Realtors earnest money agreement (as set forth in such notice, the "Offered Terms"), prior to offering to sell Hard Rock's Interest to any other person or entity.

2. Exercise of Purchase Right. City shall have thirty (30) days after its receipt of Hard Rock's notice to notify Hard Rock in writing of City's election to buy Hard Rock's Interest for the Offered Price and in accordance with the Offered Terms. If City elects to purchase Hard Rock's Interest within such 30-day period, then the purchase and sale shall close within an additional sixty (60) days thereafter, on a date agreed by the parties, for the Offered Price and otherwise in accordance with the Offered Terms.

3. Hard Rock's Right to Sell on Offered Terms. If City does not timely elect to accept such offer within said 30-day period, then Hard Rock may offer to sell Hard Rock's Interest to a third party, on the same terms and conditions offered to City, and Hard Rock shall be entitled within 365 days following City's election not to purchase Hard Rock's Interest, without further obligation to City hereunder, to sell Hard Rock's Interest to a third party provided that the purchase price payable by such third party is equal to or greater than ninety-five percent (95%) of the Offered Price, and provided that such purchase and sale is not otherwise on terms materially more favorable to the buyer than those contained in the Offered Terms. If Hard Rock does not sell Hard Rock's Interest on the Offered Terms within 365 days following City's election not to purchase Hard Rock's Interest, then Hard Rock shall not sell or otherwise transfer Hard Rock's Interest to any third party unless Hard Rock has first complied with the provisions of this Right of First Opportunity by again affording City the opportunity to buy Hard Rock's Interest for a price and on terms set forth in a written offer of sale.

4. Refusal Notice. If Hard Rock receives and desires to accept a third party offer to buy Hard Rock's Interest for an amount less than ninety-five percent (95%) of the purchase price specified in the Offered Terms, or if such offer is on terms materially more favorable to the buyer than those terms on which sale of Hard Rock's Interest was initially offered to City, or under circumstances where Hard Rock has not offered to sell Hard Rock's Interest to City pursuant to this Right of First Opportunity within the preceding 365 days, then Hard Rock shall give City notice of such third party offer and the terms thereof (a "Refusal Notice") and City shall have five (5) business days after the receipt of said Refusal Notice to notify Hard Rock in writing of City's election to buy Hard Rock's Interest on the terms set forth in the Refusal Notice. If City timely elects to buy Hard Rock's Interest on the terms set forth in a Refusal Notice, then the purchase and sale shall close within

an additional sixty (60) days after the date of such election, on a date agreed by the Parties, and in accordance with the terms set forth in the Refusal Notice. If City fails to accept such offer within the five (5) business day period given, Hard Rock shall be free to sell Hard Rock's Interest to such third party, on the terms stated in the Refusal Notice. If Hard Rock does not sell Hard Rock's Interest on the terms stated in the Refusal Notice within one hundred eighty (180) days after City receives Hard Rock's Refusal Notice, City's option set forth herein shall remain in full force and effect, requiring Hard Rock to send a Refusal Notice under the circumstances described herein.

5. Excluded Transactions. Notwithstanding the prohibition set forth herein on Hard Rock's right to sell or transfer all or any portion of Hard Rock's interest in the Riverfront Property, Hard Rock shall be entitled to transfer its interest in the Riverfront Property:

- (a) To another person constituting Hard Rock;
- (b) To a trust for the benefit of the Hard Rock, or of either person constituting Hard Rock, to the extent allowed by local law;
- (c) To a corporation, partnership, limited liability company or other similar entity in which Hard Rock (or the persons constituting Hard Rock) shall at all times hold at least a majority of the outstanding stock or other ownership interests;
- (d) By gift or testamentary transfer, provided that no consideration is given therefor, to one or more of such member's immediate family, or to a trust established for the benefit of the member or one or more of such member's immediate family (as used herein "immediate family" shall include a member's spouse, siblings, parents, children, and grandchildren, as well as the spouse of any such person); or
- (e) To a mortgagee, or to a purchaser of the Riverfront Property upon a foreclosure of a Mortgage.

Any person or entity acquiring Hard Rock's Interest in the Riverfront Property under this paragraph shall hold such interest in the Riverfront Property subject to the provisions herein. Upon a sale of Hard Rock's Interest to any third party after Hard Rock has complied with the procedure outlined herein, the restrictions on Hard Rock's right of transfer shall terminate and be of no further force or effect.

6. Attorneys' Fees. In the event of any litigation regarding the rights and obligations under this Right of First Opportunity, the prevailing party shall be entitled to reasonable attorneys' fees and court costs before and at trial, on appeal, and in connection with any petition for review or proceeding before a U.S. Bankruptcy Court.

7. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by registered or certified mail, postage prepaid, return receipt requested, or by facsimile transmission followed by delivery of a "hard" copy, and shall be deemed received upon the date of receipt thereof, as follows:

If to Hard Rock:

Hard Rock Enterprises, LLC
21880 SW Farmington Road
Beaverton, Oregon 97007

If to City:

City of Newberg
City Manager
P.O. Box 970
Newberg, Oregon 97132

Notice of change of address shall be given by written notice in the manner specified in this Section 7.

8. Entire Agreement. This Right of First Opportunity constitutes the entire agreement between the parties with respect to the subject matter provided for herein, and cannot be changed or modified other than by a written agreement executed by both parties.

9. Applicable Law. This Right of First Opportunity shall be governed by and construed in accordance with the laws of the state of Oregon.

10. Severability. If any term or provision of this Right of First Opportunity shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

Executed this ____ day of _____, 2001.

HARD ROCK ENTERPRISES, LLC
an Oregon LLC

By _____

State of OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 2001, by
_____ as _____ of
Hard Rock Enterprises, LLC.

Notary Public for
My commission expires: _____

Exhibit D

to Agreement

(page 1 of 1)

DECLARATION OF FAVORABLE DECISION IN THE SANDOZ LAND USE PERMITS

Property Affected:

Tax Lot 3229-100 referred to as "Sandoz Property"
(Yamhill County File and Docket No. Z-03-00)

THIS DECLARATION is made on the ____ day of _____, 2001 by Baker Rock Crushing Company, Inc. dba Baker Rock Resources ("Baker Rock") which hereby declares the following:

1. *Baker Rock has received a Favorable Decision concerning its application for a zone change, limited use overlay, and site design review for the Sandoz Property (the "Sandoz Land Use Permits").*
2. *The decision has become final subject to no further appeal.*
3. *Baker Rock executes this Declaration evidencing that the favorable decision has been made.*
4. *Baker Rock is bound by all of the terms, obligations, and agreements set forth in the Agreement between Baker Rock and the City of which this Declaration is Exhibit D.*
5. *This Declaration along with sufficient funds are hereby tendered to Northwest Title Company with instructions to record the documents consisting of the Agreement and all attachments on the Yamhill County deed records forthwith.*

THIS DECLARATION is made on behalf of Baker Rock and in Witness Whereof Baker Rock has affixed its signature hereto.

BAKER ROCK CRUSHING COMPANY, INC.,
an Oregon Corporation

By _____ Date _____

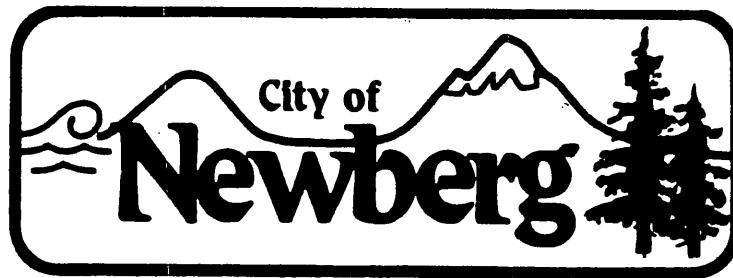
State of OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 2001, by
_____ as _____ of Baker Rock
Crushing Company, Inc.

Notary Public for
My commission expires: _____

City Attorney
(503) 537-1206

City Manager
(503) 538-9421



414 East First Street
PO Box 970
Newberg, Oregon 97132

February 7, 2001

Timothy S. Sadlo, Attorney at Law
1532 SE 36th Avenue
Portland, OR 97214
(503) 232-0404

Sadlo, Timothy S ("Todd")
81098 (503) 232-0404
Fax: (503) 232-7466
tsadlo@aol.com
1532 SE 36th Ave
Portland, OR 97214

Dear Todd:

RE: Agreement and Easement between Baker Rock and the City of Newberg

Enclosed are the following:

1. Three **original** Agreements with Exhibits.
2. One **original** Easement (Exhibit "B" to Agreement).
3. One **original** letter concerning Escrow Instructions.
4. One **original** Right of First Opportunity.
5. One copy of the Easement (Exhibit "B" to Agreement).
6. One copy of the letter concerning Escrow Instructions.
7. One copy of the Right of First Opportunity.

I appreciate your cooperation in the matter. Please let me know if there are any questions. I can be reached at (503) 537-1248 or (503) 537-1206.

Very truly yours,

Terrence D. Mahr
City Attorney

TDM:dmw

pc: enclosures

G:\Common\COMMDEV\Baker Rock\Sadlo-ltr.wpd

● CITY ATTORNEY'S OFFICE: e-mail: nlegal@ci.newberg.or.us Fax: 537-5013 ●

Building: 537-1240 ● Community Development: 537-1240 ● Finance: 537-1201 ● Fire: 537-1230

Library: 538-7323 ● Municipal Court: 537-1203 ● Police: 538-8321 ● Public Works: 537-1233 ● Utilities: 537-1205

Municipal Court Fax: 538-5393 ● Community Development Fax: 537-1272 ● Library Fax: 538-9720

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