

RESOLUTION NO. 814

A RESOLUTION RATIFYING AGREEMENT WITH THE ASH ORGANIZATION

WHEREAS, the city staff has prepared a report on the above captioned subject which is attached hereto as Exhibit "A"; and

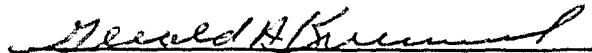
WHEREAS, the City Council has duly considered the subject and the recommendation(s) contained in the staff report; and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. That the Wilsonville City Council does hereby adopt and ratify the March 4, 1991 agreement attached hereto as Exhibit "A".
2. That the City Council hereby directs staff to implement the terms of the agreement including but not limited to removing the assessment liens against the Mentor Property.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 1st day of April, 1991, and filed with the Wilsonville City Recorder this date.



GERALD A. KRUMMEL, Mayor

ATTEST:



VERA A. ROJAS, CMC. City Recorder

SUMMARY of Votes:

Mayor Krummel	<u>AYE</u>
Councilor Chandler	<u>AYE</u>
Councilor Carter	<u>AYE</u>
Councilor Van Eck	<u>AYE</u>

EXHIBIT "A"

DUNN, CARNEY, ALLEN, HIGGINS & TONGUE

ROBERT L. ALLEN
BRADLEY O. BAKER
JONATHAN A. BENNETT*
ROBERT F. BLACKMORE
WILLIAM H. CAFFEE
JOHN C. CAHALAN
ROBERT R. CARNEY
GEORGE J. COOPER
ANDREW S. CRAIG
I. KENNETH DAVIS
JOHN C. DEVOE
MICHAEL J. FRANCIS
BRYAN W. GRUETTER**
JACK D. HOFFMAN
CHRISTIAN K. HOOLEY
WILLIAM L. KOVACS†
MARSHA MURRAY-LUSBY

ATTORNEYS AT LAW

851 S. W. SIXTH AVENUE, SUITE 1500
PACIFIC FIRST FEDERAL BUILDING
PORTLAND, OREGON 97204-1357
FACSIMILE (503) 224-7324
TELEPHONE (503) 224-6440

CENTRAL OREGON OFFICE
709 N.W. WALL STREET, SUITE 103
BEND, OREGON 97701
FACSIMILE (503) 389-6907
TELEPHONE (503) 382-9241

WASHINGTON, D.C. OFFICE
1900 L. STREET, N.W.
SUITE 500
WASHINGTON, D.C. 20036
TELEPHONE (202) 862-4972

ROBERT L. NASH**
GREGORY C. NEWTON**
JEFFREY F. NUDELMAN*
JOAN O'NEILL P.C.*
GILBERT E. PARKER
HELLE RODE
CHARLES D. RUTTAN
JOSEPH P. SHANNON*
G. KENNETH SHIROISHI***
SHANNON I. SKOPIL*
JAMES G. SMITH+
DONALD E. TEMPLETON*
THOMAS H. TONGUE
DANIEL F. VIDAS
ROBERT K. WINGER

* ADMITTED IN OREGON
AND WASHINGTON
** ADMITTED IN OREGON
AND CALIFORNIA
† ADMITTED IN PENNSYLVANIA,
WASHINGTON, D.C., NOT
ADMITTED IN OREGON
** RESIDENT, BEND OFFICE

March 15, 1991

Mr. Michael E. Kohlhoff
City Attorney
City of Wilsonville
P.O. Box 220
Wilsonville, OR 97070

RE: Ash Organization/LID No. 5

Dear Mike:

Enclosed please find a fully executed original Agreement together with exhibits, as well as the fully executed Escrow Instructions for Interest Bearing Account. I took the liberty of inserting the Tax ID number for the City on the document, since it was not get entered on all documents conveyed. Please note that the escrow instructions were signed by Cleve Abbe on this date.

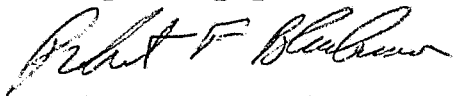
Stan has left instructions which should be sufficient to convey into the escrow account the full amount of the sums to be deposited by Monday, March 18. Cleve Abbe will be contacting you for the purpose of confirming release of the City's lien for LID No. 5. Upon that being accomplished, I look forward to completing the transaction and disbursal of the monies to the City.

I am holding the original Stipulated Order and Stipulated Judgment of Dismissal, but conveying to you a copy of the same showing my signature. Upon the lien being released and confirmation that the \$107,085.40 has been conveyed to the City, I will convey the Stipulated Order and Judgment to Judges Gilroy and Bagley, respectively.

Mr. Michael E. Kohlhoff
March 15, 1991
Page 2

Please feel free to call if you have any questions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Robert F. Blackmore". The signature is written in a cursive style with a large initial "R".

Robert F. Blackmore

RFB1115/jjb

Enclosures

cc: Stanley E. Ash

AGREEMENT

Dated: March 4, 1991

Parties: The Ash Organization, a California corporation "Ash"
abn Ash & Associates, Inc.

City of Wilsonville, a municipal corporation "City"

RECITALS:

A. Ash has filed suits against City in Clackamas County Circuit Court contesting the validity of Local Improvement District No. 5 ("LID No. 5") and partition of LID No. 5 assessments. The suits have been assigned case numbers 89-2-190 and 90-11-93, respectively. Matters are pending in both cases.

B. Ash has sold real property affected by LID No. 5 to Mentor Graphics, an Oregon corporation, ("Mentor") and the property continues to be encumbered by the LID No. 5 lien. Mentor has pending before the City applications and petitions with regards to the real property.

C. Ash and City desire to remove the LID No. 5 lien from Mentor's property and to resolve other matters. The terms and conditions of this Agreement are not intended to act as a waiver or settlement of all claims, but are limited to the specific agreements set forth hereinafter.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Escrow Deposit. Upon approval of Ash's reapportionment application as set forth hereafter in paragraph 3, Ash agrees to deposit into escrow an amount of funds equal to the present and

future assessments on Mentor's property, less the full interest credit given on LID No. 5 in the Judgment and Memorandum Opinion ("Judgment") of the Honorable Patrick D. Gilroy in case number 89-2-190, in the Circuit Court of Clackamas County. An accounting of sums owed is set forth in Exhibit A attached hereto and included herein by this reference. The escrow shall be pursuant to and subject to the terms and conditions of the escrow established in the Judgment.

2. Escrow Instructions. Ash and City shall execute escrow instructions as set forth in the attached Exhibit B and in conformance with the terms and conditions set forth in the Judgment. Escrow shall be established at Oregon Title Insurance Company, Portland, Oregon and, pursuant to the Judgment, City shall pay any escrow charges.

3. Reapportionment. City agrees to process a reapportionment request from Ash to apportion LID No. 5 assessments between Mentor's property and the Ash property.

4. Release of Lien/Process of Applications. Upon City's approval of the reapportionment application and establishment of the escrow and deposit of funds into escrow, City shall immediately release its claim of lien for LID No. 5 from all properties owned by Mentor. This Agreement shall constitute a payment plan in order for Mentor Graphics to apply for permit approvals. All petitions, applications or other submissions by Mentor shall be processed in the ordinary and usual course by the City notwithstanding LID No. 5 assessments or liens. No conditions on approval or denial of approval shall be based upon

LID No. 5 assessments, liens or conditions. Mentor Graphics has by separate agreement and as a condition to the release set forth in this paragraph agreed to dismiss its current appeal involving the City before the City's Planning Commission and with LUBA.

5. Current Assessments. The remaining assessment sums claimed owed for LID No. 5 by the City, which are not part of the escrowed funds, shall remain secured in accordance with the LID assessment by the remaining Ash properties unless changed by the aforesaid apportionment. That sum, together with the sums which City claims are currently due and payable on Ash property not conveyed to Mentor, shall not be deemed in arrears, but shall be due under terms substantially identical to the Bancroft bond payment schedule and provisions from the date of this Agreement, as modified by the Judgment or as may be modified on appeal. It is the intent of the parties to preserve Ash's right to payment terms under the Bancroft provisions without requiring current payment, except as otherwise provided herein. The payment schedule shall be prepared and effected by the parties as soon as possible, time being of the essence, and incorporated as a part of this Agreement.

Upon resolution of the appeal, Ash shall have thirty (30) days in which to pay any sums then due and in arrears. If paid, future payments shall be pursuant to the schedule.

6. Case Dismissals. Immediately upon executing this Agreement, City shall prepare and file with the Court of Appeals a motion to dismiss its cross-appeal in Ash v. City, Clackamas

County Circuit Court Case No. 89-2-190, appellate court case number A66112. Ash shall stipulate to said motion.

The parties shall execute and file a stipulated Judgment of Dismissal, a copy of which is attached hereto as Exhibit C, in case number 90-11-93, Clackamas County Circuit Court. As a condition precedent to filing the stipulated motion and judgment, Ash shall pay to City the sum of \$226.57. The City understands and agrees that, by said dismissal, City's claim for attorney's fees and other costs in the mandamus case shall be dismissed.

7. Status of Case No. 89-2-190. City presently has pending before the Court an exception to plaintiff's undertaking. The parties agree that the exception shall be dismissed pursuant to the attached Stipulated Order, Exhibit D. City agrees that, by escrow of funds and payment pursuant To Exhibit A to this Agreement, City shall not take further actions in collection of the amounts claimed owed on LID No. 5, except as provided for herein.

8. Interest. By deposit of funds into escrow as set forth on Exhibit A, interest shall not continue to run on the \$108,000 principal set forth in the Judgment; provided, however, said funds shall be placed in an acceptable interest bearing account. Interest which has accrued to date on the \$108,000, which amount has been deposited into escrow, shall be considered part of the escrowed funds pursuant to the Judgment. The parties agree that deposit of the sums in escrow shall stop the running of interest pursuant to the Bancroft bond, with interest earned on the escrowed funds being fully substituted therefore;

provided, said funds are placed in an acceptable interest bearing account. Accordingly, the parties understand it is in their best interest, and the parties agree, to cooperate so that the escrowed funds can obtain the highest possible rate of interest within reasonable and conservative investment objectives. In particular, the parties agree that, if City is able to obtain a higher rate of interest in a municipal pooled fund, then the parties shall cooperate to invest the monies in that fund if possible.

9. Release of Escrowed Funds. The parties agree that, in the event the parties contest whether or not completion of LID No. 5 has been achieved, all escrowed funds shall be released upon Clackamas County Circuit Judge Gilroy, or in the case of his unavailability or incapacity, a Clackamas County trial judge, determining that completion, as determined by the court in its Judgment, has or has not occurred. If the trial judge determines that completion has occurred, then the funds, together with interest, shall be released to the City. If the trial judge determines that completion has not occurred, then the funds, together with interest, save and except \$40,462.80^{-NEK/LL} plus interest on this sum while in escrow, shall be released to Ash. The above sum for interest on the \$108,000, i.e. \$40,462.80^{-NEK/LL}, shall be released to the City. Notwithstanding release of the funds, neither party waives their appeal rights on the issue of "completion," it being the sole intention to release the funds from escrow without impairing, waiving or releasing either party's appeal rights.

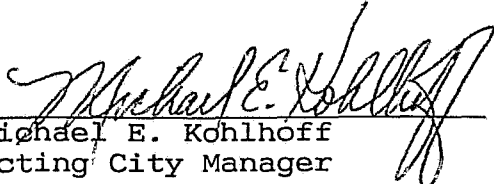
10. Acceleration of Past Due Amounts. Except as provided for herein, City agrees not to accelerate sums owed by Ash on LID No. 5 for past due amounts. If City completes LID No. 5, Ash shall have thirty (30) days after completion or after determination by the trial court within which to bring all payments on the outstanding assessments current. If Ash does not bring payments current, or thereafter defaults on payments, City reserves its right, if any, to accelerate all amounts owed.

11. Nonwaiver of Rights. The terms of this Agreement or release of escrow funds shall not be deemed a release or waiver by Ash of claims on appeal or right to recover any sums paid, with interest, if the courts on appeal determine such sums are not owed to City. Calculations of interest, principal and all other sums are for purposes of this Agreement only; neither party releases, waives or admits by these calculations any amount so determined. The parties expressly reserve the right to request clarification of "bonded rate" in the Judgment.

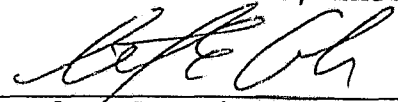
12. Municipal Authority. The undersigned signators on behalf of the City of Wilsonville and Ash Organization, Inc. hereby represent and warrant that they have been properly authorized by the City and Ash Organization, Inc. to enter into this Agreement and understand that each shall rely upon their signatures to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement
the date and year first above written.

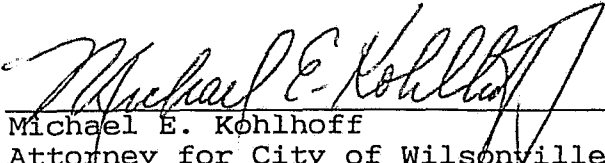
CITY OF WILSONVILLE,
a municipal corporation


By: 
Michael E. Kohlhoff
Acting City Manager

THE ASH ORGANIZATION, INC.
a California corporation
abn Ash & Associates, Inc.

By: 
Stanley E. Ash,
Vice President and Member
of the Board

Approved as to form:


Michael E. Kohlhoff
Attorney for City of Wilsonville


Robert F. Blackmore
Attorney for The Ash
Organization, Inc.

I. Summary

A. Sum to be Escrowed.

Total LID Assessment on Mentor Property	\$313,590.37
Total LID Interest (through 3-4-91)	<u>126,297.10</u>
Total Principal and Interest	\$439,887.47

Less:

Interest Credit	114,111.31	
Payment	2,904.85	
Interest on Payment	36.32	(117,052.48)

Add:

Costs per Agreement	226.57	<u>226.57</u>
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TOTAL SUM TO BE ESCROWED \$323,061.56
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B. 1. Funds To be Released from Escrow Upon Effecting Agreement and Release of Mentor Property from Lien

Principal	108,000.00
Costs	226.57
Agreement	1,800.00
Payment	(2,904.85)
Interest	<u>(36.32)</u>

TOTAL TO BE RELEASED \$107,085.40

2. Funds To Be Released From Escrow on Nov. 1, 1991 if LID No. 5 not completed.

Principal	108,000.00
Interest (20.45/diem for 1979 days to 3/4/91)	40,462.85
Principal & Interest	<u>148,462.85</u>
Per Agreement	1,800.00
Costs	226.57
Payment	(2,904.85)
Interest	<u>(36.32)</u>

TOTAL ESCROWED PER 108,000 AND AGREEMENT \$147,548.25 *MEK LEG*

Total Escrowed	\$147,548.20
Partial Payment	<u>-107,085.40</u>
TOTAL TO BE RELEASED NOV. 1, 1991	\$40,462.80* <i>MEK LEG</i>

*Plus interest

C.

<u>Tax Lot No.</u>	<u>Adjusted Assessment</u>	<u>Arrears and Interest to be capitalized**</u>
100	155,776.50	TO BE DETERMINED
200	100,432.00	TO BE DETERMINED
2583	34,184.00*	TO BE DETERMINED
2600	NA - Lot Extinguished	NA
2700	12,427.42	NA
2601	NONE - Sums in Escrow	NONE

* Does not show payments

** Principal and interest in arrears to be capitalized

[RFB1043]

ESCROW INSTRUCTIONS FOR INTEREST BEARING ACCOUNT

Oregon Title Insurance Company
1515 S.W. Fifth Avenue
Portland, Oregon 97201

"Escrow Agent"

City of Wilsonville, Tax ID No. _____
30000 Town Center Loop East
Wilsonville, Oregon 97070

"City"

The Ash Organization
1693 S.W. 65th
Lake Oswego, Oregon 97035

"Ash"

RE: Escrow to be Established

Date: February 19, 1991

City and Ash agree with and instruct Escrow Agent as follows:

1. The account shall be in the name of Escrow Agent as Trustee for Ash and City.

2. Escrow Agent shall have no responsibility for the safe keeping of the funds, other than to invest them pursuant to the directions of the City and Ash, it being understood that the funds on deposit shall only have the protection of insurance usual to federally insured accounts.

3. The sum of \$323,061.56 shall be deposited with the Escrow Agent. From that amount, Escrow Agent is authorized to disburse \$107,085.40 to City upon; 1) obtaining certification of release of City's lien for LID No. 5 on the property owned by Mentor Graphics in the City of Wilsonville and further described in the attached Exhibit A, 2) notice from Ash of compliance with all applicable terms of the Agreement between the parties, copy of which is attached hereto as Exhibit B.

4. The remaining sums in escrow, \$215,976.16, shall be deposited into a federally insured interest bearing account, or as the parties may otherwise mutually agree. The account shall be in the name of Escrow Agent as Trustee for City/Ash and interest on the account shall accrue to the benefit of City during this escrow; provided, however, that this provision shall not modify distribution of the funds pursuant to the terms set forth herein or as set forth in the Agreement, Exhibit B.

5. The funds held, plus accrued interest, shall be disbursed as follows:

A. Attached hereto is a copy of the judgment in The Ash Organization, Inc. v. City of Wilsonville, Clackamas County Circuit Court Case No. 89-2-190. Pursuant to the memorandum opinion incorporated in the judgment, City shall, within five days of completion of LID No. 5, provide Ash written notice of the same. The remaining sums in escrow shall be disbursed on the 31st day after completion of LID No. 5 if Ash has not filed an action with the court alleging that completion of LID No. 5 has not been achieved.

B. In the event that Ash has contested completion of LID No. 5, the remaining sums shall be released upon a trial judge determining that completion has or has not occurred. If a trial judge determines that completion has occurred, then the funds shall be released to City. If the trial judge determines that completion has not occurred, then the funds shall be released to Ash.

C. In the event that City has not provided Ash with written notice of completion by November 1, 1991, then all funds deposited, save and except \$40,462.85^{MEK}, plus interest on this sum while in escrow, which shall be disbursed to City, shall be immediately disbursed to Ash.

6. The costs of escrow shall be paid by City.

DATED this 4th day of March, 1991.

CITY OF WILSONVILLE

By: Michael E. Kolchhoff

THE ASH ORGANIZATION, INC.

By: _____

Accepted by Escrow Agent this ____ day of _____, 1991.

OREGON TITLE INSURANCE COMPANY

By: _____

Title: _____

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

STATE EX REL., THE ASH)
ORGANIZATION, INC.,)
a California corporation,)
Plaintiff-Relator,)
v.)
CITY OF WILSONVILLE,)
a municipal corporation,)
Defendant.)

No. 90-11-93
STIPULATED JUDGMENT OF
DISMISSAL

Based upon the written stipulation of the parties hereto that
the within matter has been fully compromised, adjusted and
settled,

IT IS HEREBY ADJUDGED the above entitled action shall be and
the same is hereby dismissed without costs, disbursements or
attorney's fees to either party and with prejudice.

DATED this ___ day of _____, 1990.

Raymond R. Bagley
Circuit Court Judge

IT IS SO STIPULATED

Michael E. Kohlhoff (copy)

Michael E. Kohlhoff
Of Attorneys for Defendant,
City of Wilsonville

Robert F. Blackmore
Of Attorneys for Plaintiff-Relator,
The Ash Organization

ESCROW INSTRUCTIONS FOR INTEREST BEARING ACCOUNT

Oregon Title Insurance Company
1515 S.W. Fifth Avenue
Portland, Oregon 97201

"Escrow Agent"

City of Wilsonville, Tax ID No. 93-0580494
30000 Town Center Loop East
Wilsonville, Oregon 97070

"City"

The Ash Organization
1693 S.W. 65th
Lake Oswego, Oregon 97035

"Ash"

RE: Escrow to be Established

Date: February 19, 1991

City and Ash agree with and instruct Escrow Agent as follows:

1. The account shall be in the name of Escrow Agent as Trustee for Ash and City.

2. Escrow Agent shall have no responsibility for the safe keeping of the funds, other than to invest them pursuant to the directions of the City and Ash, it being understood that the funds on deposit shall only have the protection of insurance usual to federally insured accounts.

3. The sum of \$323,061.56 shall be deposited with the Escrow Agent. From that amount, Escrow Agent is authorized to disburse \$107,085.40 to City upon; 1) obtaining certification of release of City's lien for LID No. 5 on the property owned by Mentor Graphics in the City of Wilsonville and further described in the attached Exhibit A, 2) notice from Ash of compliance with all applicable terms of the Agreement between the parties, copy of which is attached hereto as Exhibit B.

4. The remaining sums in escrow, \$215,976.16, shall be deposited into a federally insured interest bearing account, or as the parties may otherwise mutually agree. The account shall be in the name of Escrow Agent as Trustee for City/Ash and interest on the account shall accrue to the benefit of City during this escrow; provided, however, that this provision shall not modify distribution of the funds pursuant to the terms set forth herein or as set forth in the Agreement, Exhibit B.

5. The funds held, plus accrued interest, shall be disbursed as follows:

A. Attached hereto is a copy of the judgment in The Ash Organization, Inc. v. City of Wilsonville, Clackamas County Circuit Court Case No. 89-2-190. Pursuant to the memorandum opinion incorporated in the judgment, City shall, within five days of completion of LID No. 5, provide Ash written notice of the same. The remaining sums in escrow shall be disbursed on the 31st day after completion of LID No. 5 if Ash has not filed an action with the court alleging that completion of LID No. 5 has not been achieved.

B. In the event that Ash has contested completion of LID No. 5, the remaining sums shall be released upon a trial judge determining that completion has or has not occurred. If a trial judge determines that completion has occurred, then the funds shall be released to City. If the trial judge determines that completion has not occurred, then the funds shall be released to Ash.

C. In the event that City has not provided Ash with written notice of completion by November 1, 1991, then all funds deposited, save and except \$40,462.80, ^{per K&L} plus interest on this sum while in escrow, which shall be disbursed to City, shall be immediately disbursed to Ash.

6. The costs of escrow shall be paid by City.

DATED this 4th day of March, 1991.

CITY OF WILSONVILLE

By: Michael E. Kollhoff

THE ASH ORGANIZATION, INC.

By: [Signature]

Accepted by Escrow Agent this 15th day of March, 1991.

OREGON TITLE INSURANCE COMPANY


By: C. Cleveland Abbe

Title: Sr V. P. & Counsel

LEGAL DESCRIPTION

THE ASH ORGANIZATION, INC.

Parcel 1 9.626 Acres

 A tract of land situated in the northwest one-quarter of Section 13 in Township 3 South and Range 1 West of the Willamette Meridian in the City of Wilsonville, County of Clackamas, and State of Oregon, being more particularly described as follows:

Beginning at a point North $89^{\circ}30'49''$ East a distance of 330.00 feet from the southwest corner of the northwest one-quarter of said Section 13; and running thence North $89^{\circ}30'49''$ East 672.41 feet to a $5/8''$ iron rod on the northerly right-of-way line of Vlahos Drive; thence tracing said northerly right-of-way line along a 430.00 foot radius curve to the right, whose radial center bears South $22^{\circ}00'55''$ East, through a central angle of $03^{\circ}11'33''$, an arc distance of 23.96 feet (the long chord of which bears North $69^{\circ}34'51''$ East 23.96 feet) to a $5/8''$ iron rod at a point of reverse curvature the radial center of which bears North $18^{\circ}49'22''$ West; thence along a 25.00 foot radius curve to the left, through a central angle of $03^{\circ}03'10''$, an arc distance of 1.33 feet (the long chord of which bears North $69^{\circ}39'03''$ East 1.33 feet) to a $5/8''$ iron rod at a point of compound curvature; thence along a 20.00 foot radius curve to the left, the radial center of which bears North $22^{\circ}14'14''$ West, through a central angle of $80^{\circ}54'33''$, an arc distance of 28.24 feet (the long chord of which bears North $27^{\circ}18'29''$ East 25.95 feet) to a $5/8''$ iron rod at a point of tangency; thence North $13^{\circ}08'47''$ West 121.73 feet to a $5/8''$ iron rod at a point of curvature; thence along a 794.00 foot radius curve to the left, through a central angle of $39^{\circ}51'13''$, an arc distance of 552.29 feet (the long chord of which bears North $33^{\circ}04'24''$ West 541.22 feet) to a $5/8''$ iron rod at a point of tangency; thence North $53^{\circ}00'00''$ West 12.99 feet to $5/8''$ iron rod at the most southerly point on ASH MEADOWS, a duly recorded plat in said Clackamas County in Plat Book 84, page 5; thence tracing said plat boundary North $53^{\circ}00'00''$ West 411.00 feet to a $5/8''$ iron rod; thence South $81^{\circ}14'15''$ West 44.81 feet to the northeast corner of OAK VIEW CONDOMINIUMS Plat No. 2437, a duly recorded plat in said Clackamas County; thence tracing the east line of said OAK VIEW CONDOMINIUMS South $00^{\circ}08'14''$ West 330.00 feet to the southeast corner thereof; thence continuing South $00^{\circ}08'14''$ West 528.00 feet to the point of beginning.

DAVID EVANS AND ASSOCIATES INC.

ENGINEERS SURVEYORS PLANNERS ARCHITECTS

OFFICE IN OREGON: 1000 SHINGLER STREET, SEASIDE, OREGON

2626 SW CORNHILL, PORTLAND, OREGON

503 254-1100

Exhibit A

Said tract containing 9.626 Acres, more or less.

Based on PS 21995 as it is recorded in the Clackamas County
Surveyor's Office.

Kenneth M. Wightman 9/25/88
Kenneth M. Wightman, P.L.S. 942

DEn

LEGAL DESCRIPTION

THE ASH ORGANIZATION, INC.

Parcel 2 10.860 Acres



A tract of land situated in the northwest one-quarter of Section 13 in Township 3 South and Range 1 West of the Willamette Meridian in the City of Wilsonville, County of Clackamas, and State of Oregon, being more particularly described as follows:

Beginning at a 2" iron pipe, which is North 89°30'49" East 1322.705 feet and North 00°08'37" East a distance of 30.00 feet from the southwest corner of the northwest one-quarter corner of Section 13, said point also being on the northerly right-of-way line of Vlahos Drive; and running thence South 89°30'49" West along the said northerly right-of-way line 162.83 feet to a 5/8" iron rod at a point of curvature; thence along the arc of a 430.00 foot curve to the left, through a central angle of 06°59'05" an arc distance of 52.42 feet (the long chord of which bears South 86°01'17" West 52.39 feet) to a 5/8" iron rod at a point of reverse curvature the radial center of which bears North 07°28'16" West; thence along the arc of a 25.00 foot radius curve to the right, through a central angle of 84°19'27", an arc distance of 36.79 feet (the long chord of which bears North 55°18'33" West 33.56 feet) to a 5/8" iron rod at a point of tangency; thence South 76°51'11" West 40.00 feet to a 5/8" iron rod; thence southwesterly along the arc of a 20.00 foot radius curve to the right, through a central angle of 81°16'17", an arc distance of 35.46 feet (the long chord of which bears South 27°29'19" West 32.56 feet) to a 5/8" iron rod at a point of compound curvature; thence along the arc of a 20.00 foot radius curve to the left, through a central angle of 80°54'33", an arc distance of 28.24 feet (the long chord of which bears North 27°18'29" East 25.95 feet) to a 5/8" iron rod at a point of tangency; thence North 13°08'47" West 121.73 feet to a 5/8" iron rod at a point of curvature; thence along the arc of a 794.00 foot radius curve to the left, through a central angle of 39°51'13", an arc length of 552.29 feet (the long chord of which bears North 33°04'24" West 541.22 feet) to a point of tangency; thence North 53°00'00" West 12.99 feet to a 5/8" iron rod at the most southerly point on Ash Meadows Road right-of-way, as platted in ASH MEADOWS, a duly recorded plat in said Clackamas County in Plat Book 84, page 5; thence tracing the southeasterly boundary

of said ASH MEADOWS North 37°00'00" East 40.00 feet to a 5/8" iron rod at a point of curvature; thence along the arc of an 18.00 foot radius curve to the right, through a central angle of 90°00'00", an arc distance of 28.27 feet (the long chord of which bears North 08°00'00" West 25.46 feet) to a 5/8" iron rod at a point of tangency; thence North 37°00'00" East along the southeasterly right-of-way line of Roger Road 510.00 feet to a 5/8" iron rod at the most easterly point of the boundary of said ASH MEADOWS; thence leaving said southeasterly plat boundary on the northeasterly extension thereof North 37°00'00" East 57.00 feet to a 5/8" iron rod at a point of curvature; thence along the arc of a 400.00 foot radius curve to the left, through a central angle of 08°46'26", an arc length of 61.25 feet (the long chord of which bears North 32°36'47" East 61.19 feet) to a 5/8" iron rod at a point of non-tangent curvature, the radial center of which bears North 61°46'26" West; thence South 89°51'23" East 226.29 feet to 5/8" iron rod on the east line of the west half of the northwest one-quarter of said Section 13; thence South 00°08'37" West along said east line 1140.00 feet to the point of beginning.

Said tract containing 10.860 Acres, more or less.

Based on PS 21995 as it is recorded in the Clackamas County Surveyor's Office.

 9/28/88

Kenneth M. Wightman P.L.S. 942

LEGAL DESCRIPTION

THE ASH ORGANIZATION, INC.

Revised Parcel 3 44.816

DEA

A tract of land situated in the northwest one-quarter of Section 13 and the northeast one-quarter of Section 14 in Township 3 South and Range 1 West of the Willamette Meridian in the City of Wilsonville, County of Clackamas, and State of Oregon, being more particularly described as follows:

Beginning at a 2" iron pipe at the initial point of ASH MEADOWS, a duly recorded plat in said Clackamas County in Plat Book 84, page 5; said pipe also being South 00°08'14" West 1311.28 feet and South 89°50'44" East a distance of 258.22 feet from the northwest corner of said Section 13; and running thence along the northerly boundary of said ASH MEADOWS plat South 00°09'16" West a distance of 23.50 feet to a 5/8" iron rod; thence North 89°50'44" West 228.24 feet to a 5/8" iron rod on the easterly right-of-way line of Boones Ferry Road at a point of non-tangent curvature, the radial center of which bears South 89°08'31" West; thence northeasterly along said easterly right-of-way line along the arc of a 746.20 foot radius curve to the left, through a central angle of 16°22'15", an arc distance of 213.21 feet (the long chord of which bears North 09°02'37" West 212.48 feet) to a 5/8" iron rod at a point of tangency; thence North 17°13'44" West 748.85 feet to a 5/8" iron rod at a point of curvature; thence northwesterly along the arc of a 1939.86 foot radius curve to the left, through a central angle of 08°56'00", an arc distance of 302.46 feet (the long chord of which bears North 21°41'44" West 302.15 feet) to a 5/8" iron rod at a point of tangency; thence North 26°09'44" West 107.28 feet to a 5/8" iron rod at the intersection of the easterly right-of-way line of said Boones Ferry Road and the southerly right-of-way line of Boeckman Road; thence tracing said southerly line of Boeckman Road North 89°35'44" East 387.35 feet to a 5/8" iron rod on the east line of said Section 14; thence North 89°29'30" East along said southerly right-of-way line 1322.94 feet to the east line of the west one-half of the northwest one-quarter of said Section 13; thence South 00°08'37" West along said east line 1443.50 feet to a 5/8" iron rod; thence North 89°51'23" West 226.29 feet to a 5/8" iron

rod at a point of curvature; thence southwesterly along the arc of a 400.00 foot radius curve to the right, through a central angle of $08^{\circ}46'26''$, an arc distance of 61.25 feet (the long chord bears South $32^{\circ}36'47''$ West 61.19 feet) to a $5/8''$ iron rod at a point of tangency; thence South $37^{\circ}00'00''$ West 57.00 feet to $5/8''$ iron rod at the most easterly corner of Roger Road in said plat of ASH MEADOWS; thence tracing the northerly boundary of said road North $53^{\circ}00'00''$ West 40.00 feet to a $5/8''$ iron rod at the most northerly corner thereof; thence North $37^{\circ}00'00''$ East 57.00 feet to a $5/8''$ iron rod at a point of curvature; thence northeasterly along the arc of a 360.00 foot radius curve to the left, through a central angle of $36^{\circ}51'23''$, an arc distance of 231.58 feet (the long chord of which bears North $18^{\circ}34'18''$ East 227.60 feet) to a $5/8''$ iron rod at a point of non-tangent curvature, the radial center of which bears North $89^{\circ}51'23''$ West; thence South $86^{\circ}46'52''$ West 440.00 feet to a $5/8''$ iron rod; thence South $03^{\circ}01'47''$ East 167.43 feet to a $5/8''$ iron rod on the northerly line of said ASH MEADOWS plat; thence North $53^{\circ}00'00''$ West along the northerly line of said plat 89.06 feet to a $5/8''$ iron rod at a point of curvature; thence along a 372.00 foot radius curve to the left, through a central angle of $36^{\circ}50'44''$, an arc distance of 239.22 feet (the long chord of which bears North $71^{\circ}25'22''$ West 235.12 feet) to a $5/8''$ iron rod at a point of tangency; thence North $89^{\circ}50'44''$ West 73.00 feet to a $5/8''$ iron rod at a point of curvature; thence along the arc of a 24.00 foot radius curve to the right, through a central angle of $90^{\circ}00'00''$, an arc distance of 37.70 feet (the long chord of which bears North $44^{\circ}50'44''$ West 33.94 feet) to a $5/8''$ iron rod; thence North $89^{\circ}50'44''$ West 24.00 feet to the point of beginning.

Said tract containing 44.816 Acres, more or less.

Based on PS 21995 as it is recorded in the Clackamas County Surveyor's Office.

Kenneth M. Wightman 9/28/88
Kenneth M. Wightman, P.L.S. 942

AGREEMENT

Dated: March 4, 1991

Parties: The Ash Organization, a California corporation "Ash"
abn Ash & Associates, Inc.

City of Wilsonville, a municipal corporation "City"

RECITALS:

A. Ash has filed suits against City in Clackamas County Circuit Court contesting the validity of Local Improvement District No. 5 ("LID No. 5") and partition of LID No. 5 assessments. The suits have been assigned case numbers 89-2-190 and 90-11-93, respectively. Matters are pending in both cases.

B. Ash has sold real property affected by LID No. 5 to Mentor Graphics, an Oregon corporation, ("Mentor") and the property continues to be encumbered by the LID No. 5 lien. Mentor has pending before the City applications and petitions with regards to the real property.

C. Ash and City desire to remove the LID No. 5 lien from Mentor's property and to resolve other matters. The terms and conditions of this Agreement are not intended to act as a waiver or settlement of all claims, but are limited to the specific agreements set forth hereinafter.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Escrow Deposit. Upon approval of Ash's reapportionment application as set forth hereafter in paragraph 3, Ash agrees to deposit into escrow an amount of funds equal to the present and

future assessments on Mentor's property, less the full interest credit given on LID No. 5 in the Judgment and Memorandum Opinion ("Judgment") of the Honorable Patrick D. Gilroy in case number 89-2-190, in the Circuit Court of Clackamas County. An accounting of sums owed is set forth in Exhibit A attached hereto and included herein by this reference. The escrow shall be pursuant to and subject to the terms and conditions of the escrow established in the Judgment.

2. Escrow Instructions. Ash and City shall execute escrow instructions as set forth in the attached Exhibit B and in conformance with the terms and conditions set forth in the Judgment. Escrow shall be established at Oregon Title Insurance Company, Portland, Oregon and, pursuant to the Judgment, City shall pay any escrow charges.

3. Reapportionment. City agrees to process a reapportionment request from Ash to apportion LID No. 5 assessments between Mentor's property and the Ash property.

4. Release of Lien/Process of Applications. Upon City's approval of the reapportionment application and establishment of the escrow and deposit of funds into escrow, City shall immediately release its claim of lien for LID No. 5 from all properties owned by Mentor. This Agreement shall constitute a payment plan in order for Mentor Graphics to apply for permit approvals. All petitions, applications or other submissions by Mentor shall be processed in the ordinary and usual course by the City notwithstanding LID No. 5 assessments or liens. No conditions on approval or denial of approval shall be based upon

LID No. 5 assessments, liens or conditions. Mentor Graphics has by separate agreement and as a condition to the release set forth in this paragraph agreed to dismiss its current appeal involving the City before the City's Planning Commission and with LUBA.

5. Current Assessments. The remaining assessment sums claimed owed for LID No. 5 by the City, which are not part of the escrowed funds, shall remain secured in accordance with the LID assessment by the remaining Ash properties unless changed by the aforesaid apportionment. That sum, together with the sums which City claims are currently due and payable on Ash property not conveyed to Mentor, shall not be deemed in arrears, but shall be due under terms substantially identical to the Bancroft bond payment schedule and provisions from the date of this Agreement, as modified by the Judgment or as may be modified on appeal. It is the intent of the parties to preserve Ash's right to payment terms under the Bancroft provisions without requiring current payment, except as otherwise provided herein. The payment schedule shall be prepared and effected by the parties as soon as possible, time being of the essence, and incorporated as a part of this Agreement.

Upon resolution of the appeal, Ash shall have thirty (30) days in which to pay any sums then due and in arrears. If paid, future payments shall be pursuant to the schedule.

6. Case Dismissals. Immediately upon executing this Agreement, City shall prepare and file with the Court of Appeals a motion to dismiss its cross-appeal in Ash v. City, Clackamas

County Circuit Court Case No. 89-2-190, appellate court case number A66112. Ash shall stipulate to said motion.

The parties shall execute and file a stipulated Judgment of Dismissal, a copy of which is attached hereto as Exhibit C, in case number 90-11-93, Clackamas County Circuit Court. As a condition precedent to filing the stipulated motion and judgment, Ash shall pay to City the sum of \$226.57. The City understands and agrees that, by said dismissal, City's claim for attorney's fees and other costs in the mandamus case shall be dismissed.

7. Status of Case No. 89-2-190. City presently has pending before the Court an exception to plaintiff's undertaking. The parties agree that the exception shall be dismissed pursuant to the attached Stipulated Order, Exhibit D. City agrees that, by escrow of funds and payment pursuant To Exhibit A to this Agreement, City shall not take further actions in collection of the amounts claimed owed on LID No. 5, except as provided for herein.

8. Interest. By deposit of funds into escrow as set forth on Exhibit A, interest shall not continue to run on the \$108,000 principal set forth in the Judgment; provided, however, said funds shall be placed in an acceptable interest bearing account. Interest which has accrued to date on the \$108,000, which amount has been deposited into escrow, shall be considered part of the escrowed funds pursuant to the Judgment. The parties agree that deposit of the sums in escrow shall stop the running of interest pursuant to the Bancroft bond, with interest earned on the escrowed funds being fully substituted therefore;

provided, said funds are placed in an acceptable interest bearing account. Accordingly, the parties understand it is in their best interest, and the parties agree, to cooperate so that the escrowed funds can obtain the highest possible rate of interest within reasonable and conservative investment objectives. In particular, the parties agree that, if City is able to obtain a higher rate of interest in a municipal pooled fund, then the parties shall cooperate to invest the monies in that fund if possible.

9. Release of Escrowed Funds. The parties agree that, in the event the parties contest whether or not completion of LID No. 5 has been achieved, all escrowed funds shall be released upon Clackamas County Circuit Judge Gilroy, or in the case of his unavailability or incapacity, a Clackamas County trial judge, determining that completion, as determined by the court in its Judgment, has or has not occurred. If the trial judge determines that completion has occurred, then the funds, together with interest, shall be released to the City. If the trial judge determines that completion has not occurred, then the funds, together with interest, save and except \$40,462.80 plus interest on this sum while in escrow, shall be released to Ash. The above sum for interest on the \$108,000, i.e. \$40,462.80, shall be released to the City. Notwithstanding release of the funds, neither party waives their appeal rights on the issue of "completion," it being the sole intention to release the funds from escrow without impairing, waiving or releasing either party's appeal rights.

10. Acceleration of Past Due Amounts. Except as provided for herein, City agrees not to accelerate sums owed by Ash on LID No. 5 for past due amounts. If City completes LID No. 5, Ash shall have thirty (30) days after completion or after determination by the trial court within which to bring all payments on the outstanding assessments current. If Ash does not bring payments current, or thereafter defaults on payments, City reserves its right, if any, to accelerate all amounts owed.

11. Nonwaiver of Rights. The terms of this Agreement or release of escrow funds shall not be deemed a release or waiver by Ash of claims on appeal or right to recover any sums paid, with interest, if the courts on appeal determine such sums are not owed to City. Calculations of interest, principal and all other sums are for purposes of this Agreement only; neither party releases, waives or admits by these calculations any amount so determined. The parties expressly reserve the right to request clarification of "bonded rate" in the Judgment.

12. Municipal Authority. The undersigned signators on behalf of the City of Wilsonville and Ash Organization, Inc. hereby represent and warrant that they have been properly authorized by the City and Ash Organization, Inc. to enter into this Agreement and understand that each shall rely upon their signatures to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement
the date and year first above written.

CITY OF WILSONVILLE,
a municipal corporation

THE ASH ORGANIZATION, INC.
a California corporation
abn Ash & Associates, Inc.

By: _____
Michael E. Kohlhoff
Acting City Manager

By: _____
Stanley E. Ash,
Vice President and Member
of the Board

Approved as to form:

Michael E. Kohlhoff
Attorney for City of Wilsonville

Robert F. Blackmore
Attorney for The Ash
Organization, Inc.

I. Summary

A. Sum to be Escrowed.

Total LID Assessment on Mentor Property	\$313,590.37
Total LID Interest (through 3-4-91)	<u>126,297.10</u>
Total Principal and Interest	\$439,887.47

Less:

Interest Credit	114,111.31	
Payment	2,904.85	
Interest on Payment	36.32	(117,052.48)

Add:

Costs per Agreement	226.57	<u>226.57</u>
TOTAL SUM TO BE ESCROWED		\$323,061.56 =====

B. 1. Funds To be Released from Escrow Upon Effecting Agreement and Release of Mentor Property from Lien

Principal	108,000.00
Costs	226.57
Agreement	1,800.00
Payment	(2,904.85)
Interest	<u>(36.32)</u>

TOTAL TO BE RELEASED \$107,085.40

2. Funds To Be Released From Escrow on Nov. 1, 1991 if LID No. 5 not completed.

Principal	108,000.00
Interest (20.45/diem for 1979 days to 3/4/91)	<u>40,462.85</u>
Principal & Interest	148,462.80
Per Agreement	1,800.00
Costs	226.57
Payment	(2,904.85)
Interest	<u>(36.32)</u>

TOTAL ESCROWED PER 108,000 AND AGREEMENT \$147,548.20

Total Escrowed	\$147,548.20
Partial Payment	<u>-107,085.40</u>
TOTAL TO BE RELEASED NOV. 1, 1991	\$40,462.80*

*Plus interest

C.

<u>Tax Lot No.</u>	<u>Adjusted Assessment</u>	<u>Arrears and Interest to be capitalized**</u>
100	155,776.50	TO BE DETERMINED
200	100,432.00	TO BE DETERMINED
2583	34,184.00*	TO BE DETERMINED
2600	NA - Lot Extinguished	NA
2700	12,427.42	NA
2601	NONE - Sums in Escrow	NONE

* Does not show payments

** Principal and interest in arrears to be capitalized

[RFB1043]

ESCROW INSTRUCTIONS FOR INTEREST BEARING ACCOUNT

Oregon Title Insurance Company
1515 S.W. Fifth Avenue
Portland, Oregon 97201

"Escrow Agent"

City of Wilsonville, Tax ID No. _____
30000 Town Center Loop East
Wilsonville, Oregon 97070

"City"

The Ash Organization
1693 S.W. 65th
Lake Oswego, Oregon 97035

"Ash"

RE: Escrow to be Established

Date: February 19, 1991

City and Ash agree with and instruct Escrow Agent as follows:

1. The account shall be in the name of Escrow Agent as Trustee for Ash and City.

2. Escrow Agent shall have no responsibility for the safe keeping of the funds, other than to invest them pursuant to the directions of the City and Ash, it being understood that the funds on deposit shall only have the protection of insurance usual to federally insured accounts.

3. The sum of \$323,061.56 shall be deposited with the Escrow Agent. From that amount, Escrow Agent is authorized to disburse \$107,085.40 to City upon; 1) obtaining certification of release of City's lien for LID No. 5 on the property owned by Mentor Graphics in the City of Wilsonville and further described in the attached Exhibit A, 2) notice from Ash of compliance with all applicable terms of the Agreement between the parties, copy of which is attached hereto as Exhibit B.

4. The remaining sums in escrow, \$215,976.16, shall be deposited into a federally insured interest bearing account, or as the parties may otherwise mutually agree. The account shall be in the name of Escrow Agent as Trustee for City/Ash and interest on the account shall accrue to the benefit of City during this escrow; provided, however, that this provision shall not modify distribution of the funds pursuant to the terms set forth herein or as set forth in the Agreement, Exhibit B.

5. The funds held, plus accrued interest, shall be disbursed as follows:

A. Attached hereto is a copy of the judgment in The Ash Organization, Inc. v. City of Wilsonville, Clackamas County Circuit Court Case No. 89-2-190. Pursuant to the memorandum opinion incorporated in the judgment, City shall, within five days of completion of LID No. 5, provide Ash written notice of the same. The remaining sums in escrow shall be disbursed on the 31st day after completion of LID No. 5 if Ash has not filed an action with the court alleging that completion of LID No. 5 has not been achieved.

B. In the event that Ash has contested completion of LID No. 5, the remaining sums shall be released upon a trial judge determining that completion has or has not occurred. If a trial judge determines that completion has occurred, then the funds shall be released to City. If the trial judge determines that completion has not occurred, then the funds shall be released to Ash.

C. In the event that City has not provided Ash with written notice of completion by November 1, 1991, then all funds deposited, save and except \$40,462.80, plus interest on this sum while in escrow, which shall be disbursed to City, shall be immediately disbursed to Ash.

6. The costs of escrow shall be paid by City.

DATED this 4th day of March, 1991.

CITY OF WILSONVILLE

By: Michael E. Kohler

THE ASH ORGANIZATION, INC.

By: _____

Accepted by Escrow Agent this _____ day of _____, 1991.

OREGON TITLE INSURANCE COMPANY

By: _____

Title: _____

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF CLACKAMAS

3 STATE EX REL., THE ASH)
4 ORGANIZATION, INC.,)
5 a California corporation,) No. 90-11-93
6 Plaintiff-Relator,) STIPULATED JUDGMENT OF
7 v.) DISMISSAL
8 CITY OF WILSONVILLE,)
9 a municipal corporation,)
10 Defendant.)

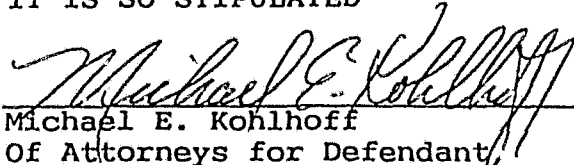
11 Based upon the written stipulation of the parties hereto that
12 the within matter has been fully compromised, adjusted and
13 settled,

14 IT IS HEREBY ADJUDGED the above entitled action shall be and
15 the same is hereby dismissed without costs, disbursements or
16 attorney's fees to either party and with prejudice.

17 DATED this ___ day of _____, 1990.

18 _____
19 Raymond R. Bagley
Circuit Court Judge

20 IT IS SO STIPULATED

21 
22 Michael E. Kohlhoff
23 Of Attorneys for Defendant
City of Wilsonville

24 _____
25 Robert F. Blackmore
26 Of Attorneys for Plaintiff-Relator,
The Ash Organization

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF CLACKAMAS

3 THE ASH ORGANIZATION, INC.)
4 a California corporation,) No. 89-2-190
5 abn ASH & ASSOCIATES, INC.)
6)
7 Plaintiff,) STIPULATED ORDER
8)
9 v.)
10)
11 CITY OF WILSONVILLE,)
12 a municipal corporation,)
13)
14 Defendant.)

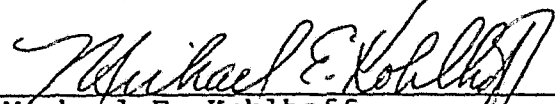
15 Based upon the written stipulation of the parties hereto
16 that the matter presently pending before the court upon
17 defendant's exception to undertaking has been fully compromised,
18 adjusted and settled and that an order may be entered herein,

19 IT IS HEREBY ORDERED that defendant's exception to
20 undertaking shall be dismissed without costs or disbursements to
21 either party and with prejudice.

22 DATED this ____ day of _____, 1991.

23 _____
24 Patrick D. Gilroy
25 Circuit Court Judge

26 IT IS SO STIPULATED:

27 
28 _____
29 Michael E. Kohlhoff
30 Of Attorneys for Defendant,
31 City of Wilsonville

32 _____
33 Robert F. Blackmore
34 Of Attorneys for Plaintiff,
35 The Ash Organization, Inc.

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF CLACKAMAS

3	STATE EX REL., THE ASH)	
	ORGANIZATION, INC.,)	
4	a California corporation,)	No. 90-11-93
)	
5	Plaintiff-Relator,)	STIPULATED JUDGMENT OF
)	DISMISSAL
6	v.)	
)	
7	CITY OF WILSONVILLE,)	
	a municipal corporation,)	
8)	
	Defendant.)	

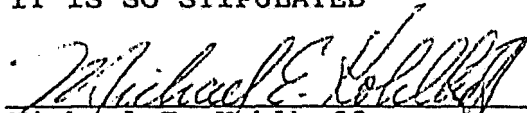
9
10 Based upon the written stipulation of the parties hereto that
11 the within matter has been fully compromised, adjusted and
12 settled,

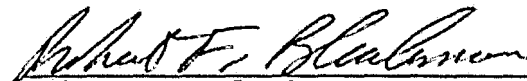
13 IT IS HEREBY ADJUDGED the above entitled action shall be and
14 the same is hereby dismissed without costs, disbursements or
15 attorney's fees to either party and with prejudice.

16 DATED this ___ day of _____, 1990.

17
18 _____
19 Raymond R. Bagley
Circuit Court Judge

20 IT IS SO STIPULATED

21 
22 _____
23 Michael E. Kohlhoff
Of Attorneys for Defendant,
City of Wilsonville

24 
25 _____
26 Robert F. Blackmore
Of Attorneys for Plaintiff-Relator,
The Ash Organization

