AN ORDINANCE relating to Local Improvement District No. 283; modifying, approving and confirming the assessments and assessment roll of that district, which has been created and established for the purpose of making street, water, sewer and other improvements to the area within that district as provided by Ordinance No. 2102, as amended, and levying and assessing a part of the cost and expense thereof against the several lots, tracts, parcels of land and other property shown on the roll; and ratifying the execution of certain agreements with property owners within that district; and authorizing and providing for the collection of money due from property now exempt from assessments and an agreement respecting the application and repayment of such money.

WHEREAS, subsequent to the creation of Local Improvement District No. 283 ("LID 283") in the City of Kent, Washington (the "City"), but prior to the commencement of construction, the State Legislature enacted RCW Sections 84.34.300 through 84.34.380 (the "Act"), which Act exempts certain farm and agricultural lands from special assessment at the option of the owners thereof as long as such use is maintained; and

WHEREAS, the effect of the Act (as interpreted by the Superior Court of King County) was to exempt from special assessment two parcels of property in LID 283 more fully described in Exhibit A attached hereto and incorporated herein by this reference (the "Barnier Properties"), at the option of the owners thereof, until such time as the exempt classification is withdrawn or removed from the Barnier Properties; and

WHEREAS, the water, sewer, street, storm drainage and lighting improvements in LID 283 were designed and constructed to benefit and serve the Barnier Properties along with the other property within LID 283; and

WHEREAS, the Act does not expressly provide who shall pay the special assessments that otherwise would be imposed on an exempt property while such property remains exempt; and
WHEREAS, subsequent to the formation of LID 283, the City represented to the owners of property in LID 283 that it was unwilling to assume the special assessments that otherwise would have been borne by the Barnier Properties; and

WHEREAS, the City further represented that it was unwilling to proceed with the construction of the improvements in LID 283 unless some portion or all of the remaining owners of property in LID 283 agreed to advance that portion of the total costs of the improvements in LID 283 represented by the special assessments on the Barnier Properties; and

WHEREAS, certain of the owners of property in LID 283 as more fully set forth in Exhibit B attached hereto and incorporated herein by this reference (the "Property Owners") represented to the City that in order to have construction of the improvements proceed, they were willing to make such advances to the City through the imposition as part of their special assessments of an additional amount consisting of a pro rata portion of the costs of the improvements represented by the special assessments on the Barnier Properties (the "Barnier Advances"); and

WHEREAS, the Property Owners further represented to the City that they were willing to make the Barnier Advances only on the condition that such advances be repaid to them out of the money recovered by the City pursuant to RCW 84.34.330 when and if the exempt classification is withdrawn or removed from the Barnier Properties; and

WHEREAS, RCW 84.34.350 provides that money collected by the City pursuant to RCW 84.34.330 shall first be applied to the payment of general or special indebtedness incurred by the City to finance the improvements related to the special benefit assessments; and
WHEREAS, the City and the Property Owners thus drafted and executed agreements (the "Barnier Agreements") which provided in substance as follows:

(1) The Property Owners would pay, as part of and in addition to the special benefit assessments against their properties, a pro rata portion of the special assessments which otherwise would have been imposed on the Barnier Properties; and

(ii) At such time as the exempt classification was removed from the Barnier Properties, the Property Owners would receive their pro rata portion of all money recovered by the City pursuant to RCW 84.34.330, as consideration for the Barnier Advances; and

WHEREAS, the City's obligations under the Barnier Agreements do not constitute general or special debt incurred to finance the improvements, but do constitute a conditional special obligation under RCW 84.34.350(1) to pay the Property Owners if the Barnier Properties are withdrawn or removed from the exempt classification and the City recovers money because of such withdrawal or removal; and

WHEREAS, the Barnier Agreements were duly recorded in the office of the King County Auditor upon the execution thereof; and

WHEREAS, the assessment roll levying the special assessments against properties located in LID 283 in the City has been filed with the City Clerk as provided by law; and

WHEREAS, notice of the time and place of hearing thereon and making objections and protests to the roll was duly published at and for the time and in the manner provided by law fixing the time and place of hearing thereon for June 4, 1984, at 7:00 p.m., local time, in the Council Chambers in the City Hall, Kent, Washington, and further notice thereof was duly mailed by the City Clerk to each property owner shown on the roll; and

WHEREAS, the execution of the Barnier Agreements by the Property Owners constitutes a waiver by such property owners and
their successors-in-interest of their right to otherwise object to the inclusion of the Barnier Advances as a part of their special assessments for LID 283 on the basis that these additional amounts are not in proportion to the assessments against other properties in LID 283, including the Barnier Properties; and

WHEREAS, at the time and place fixed and designated in the notice, the hearing was held and was duly continued from time to time, all written protests received were considered and all persons appearing at the hearing who wished to be heard were heard, and the City Council, sitting and acting as a Board of Equalization for the purpose of considering the roll and the special benefits to be received by each lot, parcel and tract of land shown upon such roll, including the increase and enhancement of the fair market value of each such parcel of land by reason of the improvement, determined to modify certain of the assessments appearing on such roll and overruled all other protests; and

WHEREAS, some of the modifications of the assessment roll consisted of increases of the assessments against some properties within LID 283, and, therefore, as directed by the City Council, new notices were published and mailed as required by law prior to a continued hearing on the assessment roll held at 7:00 p.m. local time, on July 2, 1984, and all additional written protests received were considered and all persons appearing at that continued hearing who wished to be heard were heard, and the City Council thereafter directed that this ordinance be prepared modifying, approving and confirming the assessment roll; NOW THEREFORE

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DO ORDAIN AS FOLLOWS:
Section 1. The City Council finds and determines that
(a) it is in the best interests of the City and its inhabitants to ratify, approve and confirm the execution by the Mayor of the Barnier Agreements, and to provide a mechanism for payment of the Barnier Advances at such time as the exempt classification on the Barnier Properties is withdrawn or removed and the City recovers money from the owner(s) of the Barnier Properties pursuant to RCW 84.34.330;
(b) the payment of the Barnier Advances out of the money recovered by the City if, when and because the exempt classification is withdrawn or removed from the Barnier Properties shall constitute the payment of a special obligation incurred by the City with respect to the construction of the improvements in LID 283; and
(c) the City enter into an agreement with Rainier National Bank, as trustee for the Property Owners, with respect to payment of the Barnier Advances.

Section 2. The execution of the original Barnier Agreements by the Mayor on behalf of the City is in all respects ratified, approved and confirmed.

Section 3. The appropriate officers and employees of the City are directed to pursue diligently the recovery of the amounts provided in RCW 84.34.330, as amended or supplemented (or any successor statute thereto), at such time as the City receives notice from the County Assessor pursuant to RCW 84.34.340, as amended or supplemented (or any successor statute thereto), that the exempt classification has been withdrawn or removed from the Barnier Properties.

Section 4. The Mayor is authorized and directed to execute, and the City Clerk to attest, the agreement with Rainier National Bank, as trustee for the Property Owners and their successors-in-interest, with respect to the application of any
money received by the City upon the withdrawal or removal of the exempt classification from the Barnier Properties. Such agreement shall be in substantially the form set forth in Exhibit C attached hereto and incorporated herein by this reference. Any and all money recovered by the City from or on account of the withdrawal or removal of the exempt classification from the Barnier Properties shall be applied as provided in that agreement.

Section 5. The assessments and assessment roll of LID 283 created by Ordinance No. 2102, as amended, as the same now stand after the modifications ordered by the City Council and now on file with the City Clerk and marked "Revised 6-14-84," as amended on July 16, 1984, are in all things and respects approved and confirmed in the total amount of $3,149,740.26.

Section 6. Each of the lots, tracts, parcels of land and/or properties shown upon the final assessment roll is determined and declared to be specially benefited by the improvements in at least the amount charged against the same, and each assessment is found and determined to be in proportion to the several assessments appearing upon such roll. With respect to those properties shown on the assessment roll which are being assessed for the Barnier Advances, these additional amounts are being imposed as part of their special assessments on the basis of the Barnier Agreements heretofore entered into between the City and the owners of such properties. By virtue of those Barnier Agreements, the owners of such properties have waived their right otherwise to object to the proportion such additional assessments bear to the assessments imposed on the other properties appearing on the roll. There is levied and assessed against each lot, tract, parcel of land and other property appearing upon the roll, the total amount finally charged against the same thereon.
Section 7. The assessment roll as modified, approved and confirmed shall be filed with the City Treasurer for collection and the Treasurer is authorized and directed to publish notice as required by law stating that the roll is in her hands for collection and that payment of any assessment thereon or any portion of such assessment can be made at any time within thirty days from the date of first publication of such notice without penalty, interest or cost, and that thereafter the sum remaining unpaid may be paid in ten equal annual installments. The estimated interest rate is stated to be 11\% per annum, with the exact interest rate to be fixed in the ordinance authorizing the issuance and sale of the local improvement bonds for LID 283. The first installment of assessments on the assessment roll shall become due and payable during the thirty-day period succeeding the date one year after the date of first publication by the City Treasurer of notice that the assessment roll is in her hands for collection and annually thereafter each succeeding installment shall become due and payable in like manner. If the whole or any portion of the assessment remains unpaid after the thirty-day period, interest upon the whole unpaid sum shall be charged at the rate as determined above, and each year thereafter one of the installments, together with interest due on the unpaid balance, shall be collected. Any installment not paid prior to the expiration of the thirty-day period during which such installment is due and payable shall thereupon become delinquent. All delinquent installments shall be subject to a charge for interest at the rate as determined above and for an additional penalty established in the City's general local improvement district ordinance as the same may be amended from time to time levied upon both principal and interest due upon such installment or installments. The collection of such
delinquent installments will be enforced in the manner provided by law.

PASSED by the City Council at a regular open public meeting thereof this 16th day of July, 1984.

CITY OF KENT, WASHINGTON

[Signature]
Mayor

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney

Approved: July 17, 1984
Published: July 22, 1984
Effective Date: July 27, 1984

1014k
I, MARIE JENSEN, City Clerk of the City of Kent, Washington, certify that the attached copy of Ordinance No. 84-1 is a true and correct copy of the original ordinance passed on the 16th day of July, 1984, as such ordinance appears on the Minute Book of the City.

DATED this _ day of _ , 1984.

MARIE JENSEN, City Clerk

1014k
(Tax Lot 18) 12-22-4 Barnier Property

North half of Northeast quarter of Southwest quarter lying West of Puget Sound Power and Light right-of-way less DD#1 and less any portion thereof lying within any public right-of-way.

Classified as Open Space Farm and Agricultural Pursuant to RCW 84.34.
(Tax Lot 19) 12-22-4  Barnier Property

South half of Northeast quarter of Southwest quarter
lying West of Puget Sound Power and Light right-of-way
less DD#1 and less any portion thereof lying within
any public right-of-way.

Classified as Open Space Farm and Agricultural Pursuant
to RCW 84.34.
THIS AGREEMENT entered into this ___ day of ________, 1984, by and among THE CITY OF KENT, a municipal corporation duly organized and validly existing under and by virtue of the laws of the State of Washington (the "City"), ______________ National Bank, a national banking association with its principal offices in ______________, Washington (the "Trustee"), and the persons listed in Exhibit A attached hereto and incorporated herein by this reference (the "Beneficiaries").

W I T N E S S E T H:

WHEREAS, subsequent to the creation by the City of Local Improvement District No. 283 ("LID 283"), but prior to the commencement of construction, the State Legislature enacted RCW Sections 84.34.300 through 84.34.300 (the "Act"), which Act exempts certain farm and agricultural lands from special assessment at the option of the owners thereof for as long as such uses are maintained; and

WHEREAS, the effect of the Act was to exempt from special assessment two parcels of property in LID 283 more fully described in Exhibit B attached hereto and incorporated herein by this reference (the "Barnier Properties"), at the option of the owners thereof, until such time as the exempt classification is withdrawn or removed from such properties; and
WHEREAS, the water, sewer, street, storm drainage and lighting improvements in LID 283 were designed and constructed to benefit and serve the Barnier Properties at such time as use of such improvements is made by the owner(s) of such properties; and

WHEREAS, the Act does not explicitly provide who shall pay the special assessments that otherwise would be imposed on an exempt property while such property remains exempt; and

WHEREAS, the City represented that it was unwilling to proceed with the construction of the improvements in LID 283 unless some portion or all of the remaining owners of property in LID 283 agreed to advance that portion of the total costs of the improvements in LID 283 represented by the special assessments on the Barnier Properties; and

WHEREAS, certain of the owners of property in LID 283 as more fully set forth in Exhibit C attached hereto and incorporated herein by this reference (the "Property Owners") represented to the City that in order to have construction of the improvements proceed, they were willing to make such advances to the City through the imposition as part of their special assessments of an additional amount consisting of a pro rata portion of the assessments on the Barnier Properties (the "Barnier Advances"); and

WHEREAS, the Property Owners further represented to the City that they were willing to make the Barnier Advances only on the condition that such advances be repaid out of the money recovered by the City pursuant to RCW 84.34.330 when and if the exempt
classification is withdrawn or removed from the Barnier Properties; and

WHEREAS, the City and the Property Owners thus drafted and executed agreements (the "Barnier Agreements") which provided in substance as follows:

   (i) The Property Owners would pay, as part of and in addition to the special benefit assessments against their properties, a pro rata portion of the special assessments which otherwise would have been imposed on the Barnier Properties; and

   (ii) At such time as the exempt classification was removed from the Barnier Properties, the Property Owners would receive their pro rata portion of all moneys recovered by the City pursuant to RCW 84.34.330, as consideration for the Barnier Advances;

and

WHEREAS, the City deems payment of the Barnier Advances pursuant to the Barnier Agreements to constitute the payment of a special indebtedness incurred by the City to finance the improvements in LID 283 within the meaning of RCW 84.34.350; and

WHEREAS, the Beneficiaries constitute all of the original Property Owners, or their successors or assigns, as the case may be, with respect to the Barnier Agreements; and

WHEREAS, the parties hereto desire to provide a mechanism for payment of the Barnier Advances at such time as the exempt classification on the Barnier Properties is withdrawn or removed and the City recovers moneys from the owner(s) of the Barnier Properties pursuant to RCW 84.34.330;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:
1. The City agrees that it will diligently pursue recovery, at its sole cost and expense, of the full amounts due under RCW 84.34.330, as amended or supplemented (or any successor statute thereto), including by foreclosure of the lien of the assessment, at such time or times as the City receives notice from the King County Assessor's Office pursuant to RCW 84.34.340, as amended or supplemented (or any successor statute thereto), that the exempt classification has been withdrawn or removed from any portion or all of the Barnier Properties; provided, that recovery of such amounts by the City shall be undertaken in accordance with the rules adopted by the Department of Revenue of the State of Washington or its successor agency pursuant to RCW 84.34.360, as amended or supplemented (or any successor statute thereto).

2. The City agrees to deposit with the Trustee immediately upon the receipt thereof any and all amounts collected pursuant to Section 1 of this Agreement. Said amounts shall not be deposited or otherwise commingled in any way with any other moneys, funds or accounts of the City, but shall be held separate and apart from all other moneys, funds and accounts of the City until deposited with the Trustee.

3. The Trustee agrees to deposit any and all amounts received from the City pursuant to Section 2 of this Agreement in a non-interest bearing account in trust for the Beneficiaries (the "Trust Account"). The Trustee shall distribute the net amounts deposited in the Trust Account, after deducting its costs and fees pursuant to Section 4 of this Agreement, to the Beneficiaries in
accordance with the schedule set forth in Exhibit D attached hereto and incorporated herein by this reference. Distributions shall be made by the Trustee with full acquittance by cashier's check mailed to the Beneficiaries by certified mail, postage prepaid and return receipt requested, at the addresses set forth in Exhibit A hereto.

4. The Beneficiaries agree to pay the Trustee its reasonable costs and fees not to exceed a total of $_________; provided, however, that any such costs and fees shall be payable only upon the deposit of amounts with the Trustee by the City pursuant to Section 2 of this Agreement; and provided further, that such costs and fees shall be payable solely out of the amounts, if any, so deposited. A Beneficiary shall provide written notice to the Trustee of any change in the name of the person in Exhibit A to whom payments should be made, or in the address to which payments should be mailed.

5. The Trustee agrees to keep and maintain adequate records pertaining to the Trust Account and all deposits therein and payments therefrom which shall be open to inspection by the Beneficiaries or their duly authorized agents during the normal business hours of the Trustee.

6. The Trustee shall not be liable for actions taken by it under this Agreement, absent its own negligence or willful misconduct.

7. This Agreement shall become effective upon the execution hereof by all of the parties hereto, and shall terminate upon the
payment to the Beneficiaries of the full amounts due pursuant to RCW 84.34.330 as amended or supplemented (or any successor statute thereto), following the removal or withdrawal of the exempt classification from all of the Barnier Properties, after deducting the costs and fees of the Trustee.

8. This Agreement, when effective, shall be filed of record with the King County Recorder as to each of the properties described in Exhibit E attached hereto and incorporated herein by this reference.

9. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

10. This Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, successors and assigns.

11. No amendment, modification, change or discharge of this Agreement shall be valid unless in writing and signed by the party or parties against whom such amendment, modification, change or discharge is to be enforced, or by their respective successors or assigns.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

THE CITY OF KENT, WASHINGTON

By ___________________________

DRAFT

Mayor

ATTEST:

__________________________

City Clerk

__________________________

NATIONAL BANK,

as Trustee

DRAFT

By ___________________________

Its ___________________________

DRAFT

By ___________________________

Its ___________________________

DRAFT

By ___________________________

of ___________________________

Its ___________________________

as Beneficiary

* * *