

VOL: 1999 PAGE: 6103
RECORDED DOCUMENT

STATE OF OREGON
COUNTY OF DESCHUTES

I hereby certify that the attached instrument was received and duly recorded in Deschutes County records:

DATE AND TIME: Feb. 5, 1999; 3:28 p.m.

RECEIPT NO: 1824

DOCUMENT TYPE: Covenants,
Conditions & Restrictions

FEE PAID: \$35.00

NUMBER OF PAGES: 6

Mary Sue Penhollow

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK



99.6103-1

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130918-JH

After Recording Return To:
Ball Janik LLP
101 SW Main Street, Suite 1100
Portland, OR 97204
Attn: Christopher M. Walters

RECORDED BY
WESTERN TITLE & ESCROW CO.

AGREEMENT REGARDING ANNEXATION TO CCRS

DATED: FEB 4, 1999

BETWEEN: BROKEN TOP DEVELOPMENT, L.L.C.
an Oregon limited liability company ("BTD")

AND: COSTA PACIFIC HOMES LLC
an Oregon limited liability company ("Costa Pacific")

Recitals:

A. BTD owns real property in Deschutes County, Oregon ("BTD Property").

B. Costa Pacific is purchasing a portion of the BTD Property, together with certain property owned by Cascade Highlands Limited Partnership and Skyliner Summit Limited Partnership, as described in Exhibit A. All such property, together with any other property acquired in the future by Costa Pacific from any of such entities or their successors, is referred to as the "Costa Pacific Property."

C. The Parties desire to set forth a procedure for the Costa Pacific Property to be annexed to the Declaration of Covenants, Conditions and Restrictions for Broken Top Community (the "CCRs"). The parties desire that such annexation to the CCRs be deferred as provided herein. Unless otherwise defined herein, capitalized terms shall have the meanings given in the CCRs.

D. The parties desire to implement the foregoing, on the terms and conditions of this Agreement Regarding Annexation to CCRs (this "Agreement").

Agreements:

NOW, THEREFORE, BTD and Costa Pacific agree as follows:

1. Annexation. Costa Pacific agrees that, by no later than the Annexation Deadline for any portion of the Costa Pacific Property that has been platted or otherwise has achieved land use approval for sales (each, a "Platted Parcel"), such Platted Parcel (including any and all common areas and open spaces therein) shall be annexed to and subjected to the CCRs, pursuant to Article 9 of the CCRs ("Annexation"). The "Annexation Deadline" means the earlier of the following: (i) the date the City of Bend has accepted the utilities constructed within the Platted Parcel or (ii) the sale of the first lot or unit within the Platted Parcel. Each party shall cooperate

to prepare and execute such documents as may be necessary to accomplish such annexation. Without limitation, Costa Pacific agrees to cooperate with the Board of Directors of the Association to identify all Common Areas within the Platted Property, so that the Supplemental Declaration implementing the annexation shall identify such Common Areas.

2. Enforcement. This restriction may be enforced by BTM and BTM's successors and assigns. BTM may at any time assign its rights under this Agreement to the Broken Top Community Association, Inc. or its successors and assigns.

3. Remedies. In the event Costa Pacific or its successors or assigns fails to comply with the restrictive covenants contained in this Agreement, the party entitled to enforce the restrictive covenant pursuant to Section 2 may pursue any remedy at law or in equity, including, without limitation, the remedies of injunction and specific performance, which remedies shall be available with necessity of showing inadequacy of remedies at law and without necessity of posting a bond.

4. Amendment. This Agreement may be amended only by written agreement of the parties recorded in the Official Records of Deschutes County, Oregon.

5. No Merger. No merger of title of the BTM Property shall act to modify or extinguish the provisions of this Agreement.

6. Effect of Annexation. This Agreement automatically shall be of no further force or effect as to a Platted Parcel upon recordation of a Supplemental Declaration annexing such parcel into the CCRs.

7. Further Assurances. The parties shall take such actions, and execute and deliver such additional documentation, as may be reasonably requested to further implement the provisions of this Agreement.

8. Assignments. This Agreement shall extend to and be binding upon the successors and permitted assigns of the parties hereto for the uses and purposes above provided.

9. Invalidity. If any provision of this Agreement shall be invalid or unenforceable the remaining provisions shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10. Attorneys' Fees. The prevailing party in any action or proceeding brought by any party against the other party under this Agreement shall be entitled to recover such court costs, costs and fees of the attorneys, paralegals, experts and consultants in such action or proceeding (whether at the administrative, trial or appellate levels) in such amount as the court may adjudge reasonable.

11. Entire Agreement. The terms of this Agreement are intended by the parties as a final expression of their agreement regarding the matters addressed herein and may not be

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contradicted by evidence of any prior or contemporaneous agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

IN WITNESS WHEREOF, BTD and Costa Pacific have executed this Agreement as of the date first set forth above.

BTD: BROKEN TOP DEVELOPMENT, L.L.C., an Oregon limited liability company

By: BROKEN TOP ASSOCIATES, L.L.C., an Oregon limited liability company Member

By: Homer G. Williams by
William his attorney in fact
Homer G. Williams
Its Manager

By: WESTON HOLDING CO., L.L.C., an Oregon limited liability company Member

By: Joseph E. Weston
Joseph E. Weston, Member

Costa Pacific:

COSTA PACIFIC HOMES LLC, an Oregon limited liability company

By: Ray A. Coulter
Its: PRESIDENT

Exhibit A Legal Description

STATE OF OREGON)
) ss.
County of Multnomah)

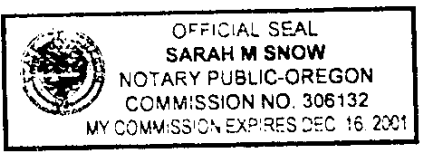
The foregoing instrument was acknowledged before me this 4 day of Feb., 1999 by T. B. Game for Homer G. Williams, manager of Broken Top Associates, LLC, member of Broken Top Development, LLC, an Oregon limited liability company, on behalf of the limited liability company.



Sarah M. Snow
Notary Public for Oregon
My Commission Expires: 12/16/2001

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this 4 day of Feb., 1999 by Joseph E. Weston, member of Weston Holding Co., LLC, manager of Broken Top Associates, LLC, member of Broken Top Development, LLC, an Oregon limited liability company, on behalf of the limited liability company.



Sarah M. Snow
Notary Public for Oregon
My Commission Expires: 12/16/2001

STATE OF OREGON)
) ss.
County of WASHINGTON)

The foregoing instrument was acknowledged before me this 4 day of FEBRUARY, 1999 by RUDY A. KADLUB, the PRESIDENT of Costa Pacific Homes L.L.C., an Oregon limited liability company, on behalf of the limited liability company.



Patricia D'Amico
Notary Public for Oregon
My Commission Expires: Jan 28, 2002

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Order No. 130918-JH

Exhibit "A"

PARCEL I:

Parcel I of Partition Plat No. 1999-4, being a portion of the Southeast Quarter of Section One (1) and the Northeast Quarter (NE1/4) of Section Twelve (12), Township Eighteen (18) South, Range Eleven (11) East of the Willamette Meridian, Deschutes County, Oregon.

PARCEL II:

A parcel located in the Southeast Quarter (SE1/4) of Section One (1) and the Northeast Quarter (NE1/4) of Section Twelve (12), Township Eighteen (18) South, Range Eleven (11) East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Commencing at a three inch brass cap at the East Quarter corner of said Section 1; thence South 00° 30' 37" West, 2637.62 feet to a three inch brass cap at the Southeast corner of said Section 1 and the point of beginning; thence North 81° 47' 50" West, 157.03 feet; thence 24.52 feet along the arc of a 222.00 foot radius curve right (the long chord of which bears South 25° 56' 10" West, 24.50 feet) to the South line of said Section 12; thence North 89° 52' 23" West 52.37 feet; thence leaving said South line, 23.05 feet along the arc of a 178.00 foot radius curve right (the long chord of which bears South 41° 00' 10" West, 23.03 feet); thence South 44° 42' 42" West, 55.87 feet; thence 210.26 feet along the arc of a 181.00 foot radius curve left (the long chord of which bears North 80° 27' 16" West 198.64 feet); thence South 66° 15' 59" West 32.96 feet; thence South 63° 24' 14" West 89.75 feet; thence North 16° 11' 35" West, 124.56 feet; thence South 66° 15' 59" West, 64.21 feet to the Easterly right-of-way of Devils Lake Drive; thence North 29.99 feet to a 5/8 inch iron rod on the Southerly right-of-way of Metolius Drive; thence leaving said Easterly right-of-way and following said Southerly right-of-way, 69.27 feet along the arc of a 752.00 foot radius curve left (the long chord of which bears North 65° 25' 44" East, 69.24 feet) to a 5/8 inch iron rod; thence North 62° 47' 25" East, 89.10 feet to a 5/8 inch iron rod; thence 463.42 feet along the arc of a 940.00 foot radius curve left (the long chord of which bears North 48° 40' 00" East, 458.74 feet) to a 5/8 inch iron rod; thence 73.58 feet along the arc of a 752.00 foot radius curve left (the long chord of which bears North 31° 44' 25" East 73.55 feet) to a 5/8 inch iron rod; thence leaving said Southerly right-of-way, East 151.67 feet to a 5/8 inch iron rod on the East line of said Section 12; thence South 00° 30' 37" West, 481.74 feet to the point of beginning.

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Order No. 130918-JH

IV
PARCEL 2:

A portion of Parcel 2 of Partition Plat No. 1992-17 in Government Lot 1 of Section 7, Township 18 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Commencing at a 3 inch brass cap at the Northwest corner of said Section 7; thence South 00° 37' 36" West, 579.37 feet along the West line of said Section 7 to the Southwest corner of Parcel 1 of said Partition Plat and the POINT OF BEGINNING; thence South 89° 22' 24" East, 192.04 feet along the Southerly boundary of said Parcel 1; thence South 44° 47' 19" East, 208.92 feet to the Northwesterly boundary of the plat of West Ridge; thence leaving said Southerly boundary South 59° 09' 23" West, 399.61 feet to said West line; thence North 00° 37' 36" East, 355.27 feet to the POINT OF BEGINNING.