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99-6104-1

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

130918-JH  
RECORDED BY  
WESTERN TITLE & ESCROW CO.

**AGREEMENT REGARDING RESTRICTIVE COVENANT**

DATED: 2/4, 1999

BETWEEN: BROKEN TOP DEVELOPMENT, LLC  
an Oregon limited liability company ("BTD")

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

Recitals:

A. BTD and others are conveying to Costa Pacific certain real property in Deschutes County, Oregon described in Exhibit A hereto (the "Encumbered Property"). BTD also owns property adjacent to the Encumbered Property (the "Adjacent Property"). The Encumbered Property and Adjacent Property are part of the property covered by the Master Plan for Broken Top.

B. In consideration for such conveyance, Costa Pacific has agreed to impose density and other limitations upon the Encumbered Property, as provided in this Agreement Regarding Restrictive Covenant (this "Agreement").

NOW, THEREFORE, in consideration of the covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Restrictive Covenant. No more than 105, and not less than 87, lots or residential units collectively shall be developed upon the entirety of the Encumbered Property. No portion of the Encumbered Property shall be developed or used other than for residential purposes. Such restrictions shall be permanent and shall run with the land as to all property benefited and burdened by such restriction, including any partition or division of such property.

2. Enforcement. This restriction may be enforced by BTD and BTD's successors and assigns. BTD 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 Encumbered Property and Adjacent Property shall act to modify or extinguish the provisions of this Agreement.

6. 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.

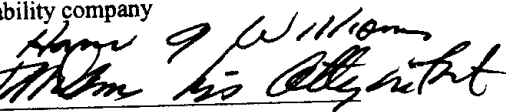
7. Attorneys' Fees. The prevailing party in any action or proceeding brought by any party against the other party under this Agreement shall be entitled to recover such court costs, costs and fees of the attorneys, paralegals, experts and consultants in such action or proceeding (whether at the administrative,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

8. 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 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.

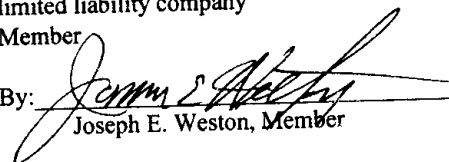
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

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  
Its Manager

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

By:   
Joseph E. Weston, Member

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Costa Pacific:

COSTA PACIFIC HOMES LLC, an Oregon limited liability company

By:  
Its:

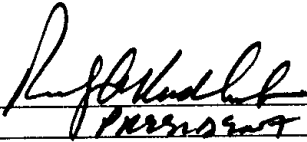
  
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Exhibit A      Encumbered Property

99.610413

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me this 4 day of Feb., 1999 by <sup>T.B. came for</sup> 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

99.6104-5

**Exhibit "A"**

**PARCEL I:**

Parcel 1 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.

**PARCEL III:**

Lots 389, 390, 391 and 392, BROKEN TOP, Deschutes County, Oregon.

99.610A-6

Order No. 130918-JH

**PARCEL IV:**

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  $00^{\circ} 37' 36''$  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  $89^{\circ} 22' 24''$  East, 192.04 feet along the Southerly boundary of said Parcel 1; thence South  $44^{\circ} 47' 19''$  East, 208.92 feet to the Northwesterly boundary of the plat of West Ridge; thence leaving said Southerly boundary South  $59^{\circ} 09' 23''$  West, 399.61 feet to said West line; thence North  $00^{\circ} 37' 36''$  East, 355.27 feet to the POINT OF BEGINNING.