

STATE OF OREGON ) SS.  
COUNTY OF DESCHUTES )

I, MARY SUE PENHOLLOW, COUNTY CLERK AND  
RECORDER OF CONVEYANCES, IN AND FOR SAID  
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN  
INSTRUMENT WAS RECORDED THIS DAY:

DEPUTY

BY: *[Signature]*

92-25527

NO

DESCHUTES COUNTY OFFICIAL RECORDS

92-25527

272 - 1858

### DEVELOPMENT AGREEMENT

THIS AGREEMENT, made and entered into by and between Deschutes County, a political subdivision of the State of Oregon, hereinafter referred to as "County", and **BROKEN TOP LIMITED PARTNERSHIP**, an Oregon Limited Partnership, Owner, of certain real property described below as evidenced by the Deed, dated December 19, 1991, as recorded in Volume 252, Page 2191, of Deschutes County Book of Records, hereinafter referred to as "Developer".

### W I T N E S S E T H :

WHEREAS Developer is the Owner of certain real property described in Exhibit "A", which is attached hereto, and by this reference incorporated herein.

(hereinafter the Real Property.)

WHEREAS County has granted approval of a land use permit SP-92-23 for the above-described real property (hereinafter the land use permit) upon the condition that Developer construct and maintain certain requirements as specified therein; now therefore,

IT IS HEREBY AGREED by and between the parties, for and in consideration of the mutual covenants and agreements herein as a condition precedent to the granting of final approval or occupancy, as follows:

Scope of Agreement. This Agreement shall cover those improvements required to be constructed as a condition of approval of the above-referenced land use permit. Nothing in this Agreement shall require Developer to construct any improvements under the land use permit, but if Developer undertakes the construction of buildings, structures, or the

division of real property under the land use permit, Developer shall be required to complete and maintain all improvements, as defined herein, in accordance with applicable County Ordinances and land use application approvals.

**Definition of Improvement.** As used herein, "improvement" means any private or public facility or service such as roadways, bike paths, accessways, pedestrian walkways, landscape areas, sewage collection and disposal systems, water systems, lighting systems, parking lots, cable utilities, circulation areas, outdoor storage areas, service and delivery areas, outdoor recreation areas, retaining walls, signs and graphics, cut-and-fill areas, buffering and screening measures, street furniture, drainage facilities, or other similar improvements as approved and required in the land use permit.

**Definition of Permanent Maintenance.** As used herein, "permanent maintenance" generally means maintenance of the structures, improvements, and landscaping that are the subject of this Agreement in a manner that will keep such structures, improvements, and landscaping in good repair or good condition and in a condition that is not a hazard to public safety. With respect to landscaping, Developer's obligations shall include, without limitation, continued irrigation of landscaping and, where applicable, pruning of landscaping to guarantee required sight distances and to otherwise protect against hazardous conditions. With respect to drainage facilities, Developer's obligations shall include, without limitation, periodic cleaning of drainage ponds, drywells, or other drainage facilities of obstructions or silt that would limit the performance or effectiveness of drainage facilities. With respect to improvements, such as pavement and sidewalks, Developer's obligations shall include, without limitation, maintenance of the impervious nature of impervious surfaces, maintenance of evenness of surfaces so that such surfaces are not hazardous to the operation of vehicles or use by pedestrians.

**Construction and Permanent Maintenance..** If Developer is required under the land use permit to construct improvements of any kind or to install landscaping or plantings and Developer elects to proceed with development under the permit, Developer agrees: (1) to undertake the construction and landscaping required under the land use permit, as more specifically set forth in the conditions set out herein and in the land use permit; and, (2) in the event that this Agreement and the land use permit do not expire as set forth herein, to the permanent maintenance of required landscaping and improvements.

**Enforcement.** This Agreement shall be enforceable against any person bound by this Agreement in possession of or having fee title to the property. If any party bound by this Agreement defaults on the obligations set forth herein, the County shall be entitled to enforce this Agreement in equity. The

prevailing party at trial or on appeal in any enforcement action shall be entitled to reasonable attorney fees and costs. This provision shall not limit County's rights to use other means provided by law, including but not limited to issuing a civil citation, to enforce the conditions of the land use permit.

**Authority of Signatories.** By their signatures, all signatories to this Agreement signing in a representative capacity certify that they are authorized to sign on behalf of and bind their respective principals.

**Expiration.** This Agreement and the above-referenced land use permit shall expire upon expiration of the land use permit or by the revocation of the land use permit or by the explicit release by the County from this Agreement granted as part of an approval for a change of use of the Real Property.

**No Partnership.** County is not, by virtue of this Agreement, a partner or joint venturer of Developer in connection with activities carried on under this Agreement, and shall have no obligation with respect to Developer's debts or any other liabilities of each and every nature, and is not a guarantor of the Developer, the project, or the work to be performed.

**Limitations.** Should this Agreement violate any constitutional or statutory provision, it shall be void.

**Persons Bound by Agreement.** The original of this Agreement shall be recorded with the Deschutes County Clerk and shall run with the land. It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties, their successors, heirs, executors, administrators, and assigns, or any other party deriving any right, title or interest or use in or to the Real Property, including any person who holds such interests as security for the payment on any obligation, including the Mortgagee or other secured party in actual possession of the Real Property by foreclosure or otherwise or any person taking title from such security holder.

**Conditions of Final Approval.** The following are the required conditions of final approval for SP-92-23:

1. The Site Plan approval shall be granted for one (1) year for the administration building, and two (2) years for the gatehouse.
2. The Developer shall meet all requirements of the City of Bend for connection to the City sewer and water systems for the administration building/sales office. No building permit will be issued for the structure until the Developer obtains written verification from the City that all sewer and water requirements have been met.

3. The Developer shall meet all requirements of the Deschutes County Building Safety Division.
4. The Developer shall meet all requirements of the Bend Fire Department for fire protection on the site, including fire hydrant locations and minimum fire flows.
5. The Developer shall submit a revised Site Plan showing a parking layout that preserves the trees and provides for ease of access and safety for persons using the parking lot. The revised Site Plan shall be required prior to issuance of a building permit for the administration building/sales office. A minimum of 18 parking spaces shall be provided.
6. All parking spaces shall have a paved surface drained for all weather use and striped in an appropriate color, prior to occupancy of the administration building. A minimum of 18 parking spaces shall be provided. The handicap spaces shall be marked for handicap use.
7. All trees not removed for building construction shall be preserved. The Developer shall leave as many trees as possible for aesthetic quality on-site.
8. The Developer shall submit written verification of the proposed exterior materials and colors to be used on the administration building prior to the issuance of a building permit. The color(s) of the buildings shall require approval from the Planning Director.
9. The Developer shall submit written verification of garbage service access and trash contained location and screening, and provision for a recycling area, prior to issuance of a building permit.
10. The lighting proposed for the administration building and the gatehouse shall not interfere with any sight distance for the vehicles using the roads, either public or private, that abut these buildings. Any lighting determined by the Planning Division causing visual interference with vehicles using these roads, shall be removed immediately.
11. The Developer shall install a bicycle rack that provides space for ten bicycles adjacent to the administration building.
12. No direct access to Mt. Washington Drive shall be allowed from the administration building.
13. The Developer shall submit a Landscape Plan for the administration building which provides for aesthetic enhancement for the building. The landscaping shall be kept alive and attractive, and irrigated through the use of an underground sprinkler. The Plan shall be

submitted prior to occupancy of the structure and all landscaping shall be installed within six months of the occupancy of the administration building. The Plan shall require approval from the Planning Division.

14. The Developer shall sign and enter into a Development Agreement with Deschutes County to ensure that all elements of the Site Plan shall be installed and maintained as approved. This Development Agreement shall be approved and recorded with the Deschutes County Clerk prior to the issuance of any building permit for any of the structures proposed in this Site Plan.

212 - 1863

DATED this 29th day of July, 1992.

BOARD OF COUNTY COMMISSIONERS OF  
DESCHUTES COUNTY, OREGON

Tom Throop  
TOM THROOP, Commissioner

Nancy Pope Schlagen  
NANCY POPE SCHLANGEN, Commissioner

ATTEST:

Chadwick Hume  
Recording Secretary

Dick Maudlin  
DICK MAUDLIN, Chairman

STATE OF OREGON, County of Deschutes: ss.

Before me, a Notary Public personally appeared TOM THROOP, NANCY POPE SCHLANGEN, and DICK MAUDLIN, the above named Board of County Commissioners of Deschutes County, Oregon, and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon, this 29th day of July, 1992.

Chadwick Hume  
Notary Public for Oregon

My Commission Expires: 10-9-94

DATED this 17<sup>th</sup> day of July, 1992.

BROKEN TOP LIMITED PARTNERSHIP  
By: Broken Top, Inc.

By: William T. Criswell  
WILLIAM T. CRISWELL,  
President

STATE of Oregon, County of Deschutes: ss:

On this 17<sup>th</sup> day of July, 1992, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named **WILLIAM T. CRISWELL**, President, Broken Top, Inc., Sole General Partner of Broken Top Limited Partnership, who is known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily on behalf of **BROKEN TOP LIMITED PARTNERSHIP**, an Oregon Limited Partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

[Signature]  
Notary Public for \_\_\_\_\_  
My Commission Expires: 1/5/94

CHDX/A2

272 - 1865

## BROKEN TOP BOUNDARY

A parcel in Section 1 and the southeast quarter of the northeast quarter of Section 2 and the northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter of Section 12 in Township 18 South and Range 11 East of the Willamette Meridian, Deschutes County, Oregon as shown on the attached Exhibit A and fully described as follows:

Commencing at the northwest corner of said Section 1; thence South  $89^{\circ}38'58''$  East 2200.06 feet along the north line of said Section 1 to the point of beginning; thence South  $89^{\circ}38'58''$  East 443.91 feet to a brass cap at the quarter corner between Section 36 and said Section 1; thence South  $89^{\circ}46'53''$  East 1403.40 feet; thence leaving said north line 1945.25 feet along the arc of a 1230.00 foot radius curve right (the long chord of which bears South  $44^{\circ}28'28''$  East 1748.77 feet) to the east line of said Section 1; thence South  $00^{\circ}49'56''$  West 81.71 feet along said east line to an aluminum cap at the north sixteenth corner between said Section 1 and Section 6; thence South  $00^{\circ}49'44''$  West 1325.07 feet to a brass cap at the quarter corner between said Section 1 and said Section 6; thence South  $00^{\circ}30'37''$  West 874.95 feet; thence leaving said east line 304.48 feet along the arc of a 1170.00 foot radius curve right (the long chord of which bears North  $26^{\circ}08'16''$  West 303.62 feet); thence 209.60 feet along the arc of a 340.00 foot radius curve right (the long chord of which bears North  $85^{\circ}58'48''$  West 206.30 feet); thence South 666.43 feet; thence South  $16^{\circ}49'21''$  East 389.51 feet; thence South  $06^{\circ}06'26''$  East 333.46 feet; thence South  $58^{\circ}58'58''$  West 662.58 feet; thence South  $79^{\circ}56'20''$  West 589.34 feet; thence South  $80^{\circ}34'09''$  West 324.54 feet; thence South  $14^{\circ}24'17''$  East 164.90 feet; thence South  $73^{\circ}53'36''$  West 848.36 feet; thence North  $70^{\circ}41'26''$  West 1197.32 feet; thence 1019.41 feet along the arc of a 1305.00 foot radius curve left (the long chord of which bears North  $25^{\circ}58'51''$  West 993.69 feet); thence North  $48^{\circ}21'33''$  West 394.54 feet; thence North  $38^{\circ}17'25''$  East 20.03 feet; thence North  $48^{\circ}21'33''$  West 61.52 feet; thence 1167.43 feet along the arc of a 2326.00 foot radius curve right (the long chord of which bears North  $33^{\circ}58'50''$  West 1155.21 feet); thence 997.41 feet along the arc of a 2680.00 foot radius curve left (the long chord of which bears North  $30^{\circ}15'49''$  West 991.66 feet); thence North  $14^{\circ}18'05''$  East 290.00 feet; thence North  $56^{\circ}10'22''$  East 1104.96 feet; thence North  $76^{\circ}33'34''$  East 704.07 feet; thence 619.24 feet along the arc of a 551.00 foot radius curve right (the long chord of which bears North  $42^{\circ}24'35''$  East 587.16 feet); thence North  $74^{\circ}36'20''$  East 128.81 feet; thence 248.27 feet along the arc of a 455.00 foot radius curve left (the long chord of which bears North  $58^{\circ}58'26''$  East 245.20 feet); thence North  $03^{\circ}06'41''$  East 438.31 feet to the point of beginning. Contains 498.87 acres.

DAVID EVANS AND ASSOCIATES, INC.  
ENGINEERS, SURVEYORS, PLANNERS, LANDSCAPE ARCHITECTS  
OFFICES IN OREGON, WASHINGTON AND CALIFORNIA  
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