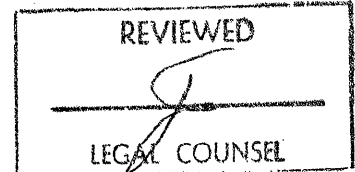


92-35025



AGREEMENT

279 - 2803

WHEREAS, Broken Top Limited Partnership, an Oregon limited partnership (Developer), has received approval of a planned unit development to create 675 housing units in phases on approximately 499 acres of land to be known as "Broken Top" located 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, described in Exhibit "A," attached hereto and by this reference incorporated herein, in accordance with Deschutes County Planning Department File Nos. CU-90-208, M-92-1 and CU-92-157; and

WHEREAS, Broken Top abuts Mt. Washington Drive which is under the jurisdiction of Deschutes County and the City of Bend and is served by Simpson Avenue which is under the jurisdiction of the City of Bend; and

WHEREAS, under Road Design Standard (B)(3) and (C) (Improvements) of Exhibit "A" of Findings and Decision No. V-92-9 (Decision) dated May 29, 1992, completion of Mt. Washington Drive and Simpson Avenue to the "Ultimate Standard" shall be completed by developer on or before 578 lots are sold by Developer in Broken Top; the sale of a lot allowing multi-family development shall be deemed to be the sale of lots equal to the maximum number of housing units allowed on the lot; and

WHEREAS, Deschutes County and Developer have reached an Agreement with the concurrence of the City of Bend which complies with the condition of the decision; now, therefore,

BROKEN TOP LIMITED PARTNERSHIP, an Oregon limited partnership (Developer) and DESCHUTES COUNTY, a political subdivision of the State of Oregon, (County), HEREBY AGREE as follows:

1. The real property subject to this Agreement is described in Exhibit "A" to this Agreement.
2. The recitals set forth above are hereby incorporated.
3. The estimated cost of future Improvements set forth above is \$122,600 in accordance with the estimate approved by County and the City of Bend.
4. Developer is responsible to make the Improvements to Mt. Washington Drive and Simpson Boulevard in accordance with the Decision.
5. In order to guarantee the obligation of Developer to make the Improvements, the parties hereby agree that an account shall be set up with Bend Title Company. Upon the sale of a lot within Broken Top, Developer, its successors and assigns,

agree to deposit in said account the sum of not less than \$212.11 per lot until a total principal of \$122,600 has been deposited in said account.

6. The parties hereby further agree that as a condition of the issuance of a building permit on any property, Bend Title Company must confirm that the sum of \$212.11 has been deposited in the account for each dwelling unit in accordance with the terms of this Agreement for each lot. For purposes of this paragraph, a lot shall be deemed to have been sold upon the transfer of title to the lot to a grantee, or upon the application for a permit to build a dwelling unit or units on the lot, whichever occurs first.
7. Bend Title Company is authorized to deposit all monies in an interest-bearing account for the benefit of Developer, it being understood and agreed that the interest accruing on the monies shall be held with the principal amount until the Improvements are completed and Deschutes County releases the funds to Developer.
8. The parties further agree that the terms and conditions of this Agreement shall not be construed to be in satisfaction of Developer's obligation to complete the Improvements.
9. This Agreement is binding upon Developer's successors and assigns, shall be recorded, and constitutes an obligation running with the land.
10. It is agreed by and between the parties that Developer is not carrying out a function on behalf of the County, and County does not have the right of direction or control of the manner in which Developer completes performance under this Agreement or exercise any control over the activities of the Developer.
11. County is not, by virtue of this Agreement, a partner or joint venturer with Developer in connection with Developer's Development, and shall have no obligation with respect to Developer's debts or any other liabilities of each and every nature.
12. Developer shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities by Developer in the performance of this Agreement; and further agrees to indemnify, save harmless and defend the County, its officers, agents and employees from and against all claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected with any such injury, except to the extent caused by the negligence or willful misconduct of County or its agents or employees.
13. In the event an action or suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms

of this Agreement, each party shall be responsible for the payment of its own attorney's fees, costs, and disbursements in any action, suit, proceeding, or appeal.

14. Waiver of the strict performance of any provision of this Agreement shall not constitute waiver of any other provision of the Agreement.
15. The parties agree to take such additional actions as are necessary to establish the collection account administered by Bend Title Company necessary to comply with the terms of this Agreement.

DATED this 21st day of October, 1992.

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

TOM THROOP  
TOM THROOP, Commissioner

NANCY POPE SCHLANGEN, Commissioner

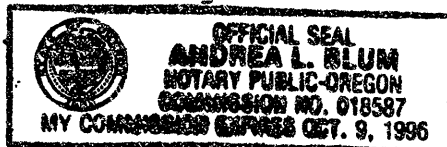
DICK MAUDLIN, Chairman

ATTEST:

Andrea R. Blum  
Recording Secretary

STATE OF OREGON, County of Deschutes ) ss.

SUBSCRIBED AND SWORN to before me by Tom Throop, Nancy Pope Schlangen and Dick Maudlin, this 21st day of October, 1992.



Andrea R. Blum  
Notary Public for Oregon

My Commission Expires: 10-9-96

DATED this \_\_\_\_\_ day of October, 1992.

Developer:

BROKEN TOP LIMITED PARTNERSHIP  
an Oregon limited partnership  
By its general partner:  
BROKEN TOP, INC., an Oregon  
corporation

By: Sharon L. Criswell

STATE OF OREGON, County of Deschutes ) ss.

SUBSCRIBED AND SWORN to before me by  
this 20th day of October, 1992.

Sharon L. Criswell  
Notary Public for Oregon

My Commission Expires: June 10, 1994

## 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.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JULY 18, 1900  
JERRY C. POWELL  
1919

DAVID EVANS AND ASSOCIATES, INC.  
ENGINEERS, SURVEYORS, PLANNERS, LANDSCAPE ARCHITECTS  
OFFICES IN OREGON, WASHINGTON AND CALIFORNIA  
709 N.W. WALL STREET, SUITE 102  
BEND, OREGON 97001-2712  
(503) 389-7614

December 4, 1991  
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279 - 2807

STATE OF OREGON )  
COUNTY OF DESCHUTES ) SS.

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:

1992 OCT 22 AM 8:40

MARY SUE PENHOLLOW  
COUNTY CLERK

BY. B. B. Buck DEPUTY

NO. 92-35025 FEE 25-

DESCHUTES COUNTY OFFICIAL RECORDS