

93-11807

295 - 2376

IMPROVEMENT AGREEMENT NO. 3
(Phase II-C)

THIS AGREEMENT, relating to the installation of required improvements to be constructed in the Broken Top Subdivision, hereinafter referred to as "Subdivision", made and entered into by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon, hereinafter referred to as "County", and Broken Top Limited Partnership, hereinafter referred to as "Developer", witnesseth:

WHEREAS, Developer is the subdivider of Subdivision; and

WHEREAS, certain public improvements required in connection with the Subdivision have not been completed; and

WHEREAS, Developer intends to file a final plat of Subdivision prior to the completion of the required improvements; and

WHEREAS, Deschutes County Code Section 17.24.120 provides that Developer in lieu of completing required improvements prior to the filing of the final plat, enter into an agreement with the County for the completion of the required improvements and provide a bond and sufficient bond or cash deposit to provide security for the completion of the required improvements; now, therefore,

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above named, for and in consideration of the mutual promises hereinafter stated, as follows:

1. The real property subject to this Agreement is described in Exhibit "A", attached hereto and by this reference incorporated herein.

2. Developer shall install and complete the improvements described in the attached Exhibit "B" within and adjacent to Phases II-C of Subdivision, and repair all existing and damaged facilities, within and without the Subdivision, damaged during such installation, on or before October 31, 1993.

3. As security for Developer's timely completion of the required improvements, Developer shall deliver to County an Irrevocable Standby Letter of Credit (the "Letter of Credit") issued by First Interstate Bank of Oregon, N.A. (the "Bank") or other financial institution acceptable to County in the amount of \$275,760, which is 120% of the estimated cost of the required improvements. Such Irrevocable Letter of Credit shall be in the form of Exhibit C.

4. If the improvements required in accordance with Section 2 above are not completed by the date for completion shown in Section 2 above, County may, upon written notice to Developer and the passage of ten (10) days after Developer's receipt of such notice or

WITNESSED & RETURN TO:

JOHN ALDEN

JOHN EVANS & ASSOC. INC.

9 NW WALL ST. No. 102 BEND, OR. 97701

15 days after County has mailed such notice by certified mail, return receipt requested Developer at 61999 Broken Top Drive, Bend, Oregon 97702, contract to have the required improvements installed and completed, and call upon the Letter of Credit to recover the full cost and expense of completing said required improvements. If the amount drawn under such Letter of Credit is less than the cost and expense of completing the required improvements, Developer shall be liable to the County for the difference. Developer shall also be liable for any costs and attorney's fees necessary to collect said amounts.

5. Developer shall restore any monument erected or used for the purpose of designating a survey marker or boundary of any town, tract, plat or parcel of land which monument is broken, damaged, removed or destroyed, during the course of work provided for or anticipated by this Agreement, whether intentional or otherwise, by the Developer or Developer's agents, employees or independent contractors.

6. County may extend the date by which required improvements are to be completed provided that the term of the Letter of Credit is extended for the same period.

7. Developer shall pay to County the actual out-of-pocket costs reasonably incurred in the inspection of the completed improvements.

8. This Agreement is contingent upon the recording of the final plat.

9. Upon receipt from time to time of (i) an engineer's certification that a designated portion of the required improvements has been completed, inspected and accepted and (ii) evidence reasonably satisfactory to County that no construction lien has been filed against the improvements, County agrees to authorize Bank to amend the Letter of Credit to reduce the amount by ninety percent (90%) of the cost of such completed improvements, as certified by the engineer.

10. County shall return the Letter of Credit to Developer and agree to termination of the same upon request by Developer within ten (10) days after the completion, inspection and approval by County of the improvements required to be constructed by Developer in the Subdivision. Developer shall provide proof that no construction lien has been filed against the improvements prior to requesting release of the Letter of Credit. In connection therewith, County shall by quitclaim deed or other appropriate instrument remove, satisfy, or extinguish the obligations of this Agreement from the public records.

11. The existence of this Agreement shall be noted upon the final plat by reference to the recording book and page numbers.

12. The original of this Agreement shall be recorded with the Deschutes County Clerk and shall be binding upon the heirs, executors, administrators, successors and assigns of the parties, and is a condition and covenant running with the land and binding upon the above described real property until removed in accordance with Section 10 above.

13. 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.

14. County is not, by virtue of this Agreement, a partner or joint venturer with Developer in connection with Developer's Subdivision, and shall have no obligation with respect to Developer's debts or any other liabilities of each and every nature.

15. 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.

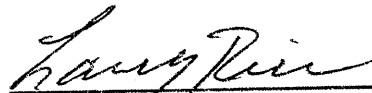
16. In the event an action or suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall be responsible for the payment of its own attorney's fees, costs, and disbursements in any action, suit, proceeding, or appeal.

17. Waiver of the strict performance of any provision of this Agreement shall not constitute the waiver of any other provision of the Agreement.

DATED this 6th day of April, 1993.

County:

DESCHUTES COUNTY, OREGON



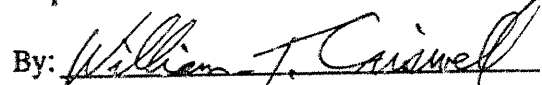
Director of Public Works, on behalf of the County

Developer:

BROKEN TOP LIMITED PARTNERSHIP
an Oregon limited partnership

By its general partner:

BROKEN TOP, INC., an Oregon corporation

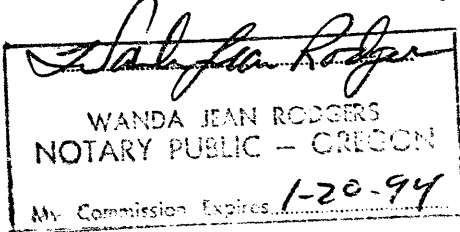
By: 

Its: PRESIDENT

STATE OF OREGON)
)s
County of Deschutes)

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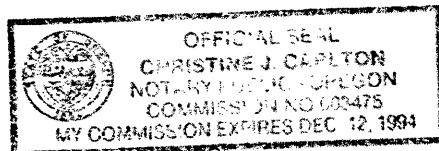
SUBSCRIBED AND SWORN to before me this 6th day of April, 1993 by LARRY RICE, who is the Director of Public Works of Deschutes County, Oregon, on behalf of the County.



Wanda Jean Rodgers
Notary Public for Oregon
My Commission Expires: 1-20-94

STATE OF OREGON)
)s
County of Deschutes)

SUBSCRIBED AND SWORN to before me this 6th day of April, 1993 by William T. Criswell, who is the President of Broken Top, Inc., an Oregon corporation, the general partner of Broken Top Limited Partnership, an Oregon limited partnership, on behalf of the partnership.

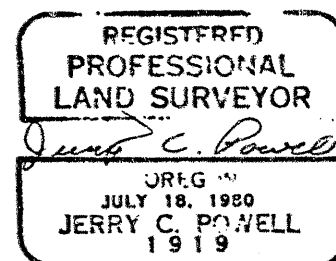


Christine J. Caplton
Notary Public for Oregon
My Commission Expires: Dec 12, 1994

BROKEN TOP
PHASE II-C

A PARCEL IN SECTION 1 OF TOWNSHIP 18 SOUTH AND RANGE 11 EAST OF THE WILLAMETTE MERIDIAN IN DESCHUTES COUNTY, OREGON FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 2" ALUMINUM CAP AT THE NORTH 1/16 CORNER ON THE EAST LINE OF SAID SECTION 1; THENCE SOUTH 00°49'44" WEST 1325.07 FEET TO A 3" BRASS CAP ON A 2" GALVANIZED IRON PIPE AT THE EAST 1/4 CORNER OF SAID SECTION 1; THENCE SOUTH 74°28'31" WEST 2522.90 FEET TO A 5/8" IRON ROD AT THE SOUTHEAST CORNER OF LOT 56 OF BROKEN TOP AND THE POINT OF BEGINNING, THENCE SOUTH 21°25'17" EAST 190.32 FEET TO A 5/8" IRON ROD; THENCE SOUTH 48°32'28" EAST 95.54 FEET TO A 5/8" IRON ROD; THENCE SOUTH 01°46'45" EAST 127.07 FEET TO A 5/8" IRON ROD; THENCE SOUTH 05°59'38" EAST 272.13 FEET TO A 5/8" IRON ROD; THENCE SOUTH 54°19'53" EAST 98.98 FEET TO A 5/8" IRON ROD; THENCE NORTH 87°51'48" EAST 61.60 FEET TO A 5/8" IRON ROD; THENCE NORTH 82°30'23" EAST 59.51 FEET TO A 5/8" IRON ROD; THENCE SOUTH 28°11'17" EAST 70.75 FEET TO A 5/8" IRON ROD; THENCE SOUTH 37°54'10" EAST 94.95 FEET TO A 5/8" IRON ROD; THENCE 20.46 FEET ALONG THE ARC OF A 499.00 FOOT RADIUS CURVE LEFT (THE LONG CHORD OF WHICH BEARS NORTH 59°44'59" EAST 20.46 FEET) TO A 5/8" IRON ROD; THENCE NORTH 38°26'50" WEST 92.79 FEET TO A 5/8" IRON ROD; THENCE NORTH 11°37'31" WEST 68.22 FEET TO A 5/8" IRON ROD; THENCE NORTH 43°13'15" EAST 41.16 FEET TO A 5/8" IRON ROD; THENCE SOUTH 60°18'43" EAST 170.12 FEET TO A 5/8" IRON ROD; THENCE SOUTH 46°57'31" EAST 60.00 FEET TO A 5/8" IRON ROD; THENCE 390.05 FEET ALONG THE ARC OF A 559.00 FOOT RADIUS CURVE RIGHT (THE LONG CHORD OF WHICH BEARS SOUTH 63°01'50" WEST 382.18 FEET) TO A 5/8" IRON ROD; THENCE SOUTH 02°17'03" EAST 98.45 FEET TO A 5/8" IRON ROD; THENCE SOUTH 82°48'14" WEST 557.90 FEET TO A 5/8" IRON ROD; THENCE NORTH 06°59'01" WEST 674.80 FEET TO A 5/8" IRON ROD; THENCE NORTH 09°44'05" WEST 561.21 FEET TO A 5/8" IRON ROD; THENCE NORTH 66°09'13" EAST 171.92 FEET TO A 5/8" IRON ROD ON THE WESTERLY RIGHT-OF-WAY OF TAM McARTHUR LOOP; THENCE 193.87 FEET ALONG THE ARC OF A 1990.60 FOOT RADIUS CURVE RIGHT (THE LONG CHORD OF WHICH BEARS SOUTH 18°25'16" EAST 193.79 FEET) TO A 5/8" IRON ROD; THENCE LEAVING SAID WESTERLY RIGHT-OF-WAY NORTH 74°22'11" EAST 70.00 FEET TO A 5/8" IRON ROD ON THE EASTERLY RIGHT-OF-WAY OF TAM McARTHUR LOOP; THENCE SOUTH 83°20'16" EAST 150.00 FEET TO THE POINT OF BEGINNING. CONTAINS 14.81 ACRES.



March 4, 1993

2WPF2CHD1CHD18CJCP

DAVID EVANS AND ASSOCIATES, INC.
A PROFESSIONAL SERVICES CONSULTING FIRM
OFFICES IN OREGON, WASHINGTON, CALIFORNIA AND ARIZONA
709 N.W. WALL STREET, SUITE 102
BEND, OREGON 97001-2744
(503) 389-7614 FAX (503) 389-7623

April 7, 1993

CHDX18/1

To: Tom Blust, Deschutes County Public Works
Deborah McMahon, City of Bend Development Services

From: Dave Alden *DA*

Subject: Letters-of-Credit for Broken Top Phases II-C, II-E, and
II-F as of March 25, 1993

Letters-of-credit were previously established for Broken Top Phases II-C, II-E, and II-F. In accordance with the terms of the letters-of-credit, I've estimated the cost to complete the construction of the three phases as of March 25, 1993. March 25 was the monthly cut-off date for construction invoices from Jack Robinson and Sons, Inc., to be paid by Broken Top on or about April 15.

The letters-of-credit were established for all construction not completed as of February 24, 1993. This memorandum is the first update to the amounts of the letters-of-credit.

Due to wet conditions, the only work performed between the February 24 and March 25 was partial completion of the water facilities in Phase II-C and partial completion of the sewer facilities in Phase II-F. No work was completed in Phase II-E.

The estimated cost to complete, presented in the same format as the cost estimate used to establish the letter-of-credit, is as follows:

DAVID EVANS AND ASSOCIATES, INC.

ENGINEERS, SURVEYORS, PLANNERS, LANDSCAPE ARCHITECTS, SCIENTISTS

OFFICES IN OREGON, WASHINGTON AND CALIFORNIA

709 N.W. WALL STREET, SUITE 102

BEND, OREGON 97701-2712

(503) 260-7611 FAX (503) 260-7632

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Memorandum to Tom Blust and Deborah McMahon
 April 7, 1993
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Broken Top Phase II-C

Project Area	Domestic Water	Sanitary Sewer	Utilities	Roads	Total
(Estimated Cost / Percent Complete Through February 24, 1993 / Estimated Cost to Complete)					
Tam McArthur Loop	\$83,800	\$60,400	\$22,000	\$60,400	\$226,600
	75%	95%	0%	5%	54
	\$21,000	\$3,000	\$22,000	\$57,400	\$103,400
Bicycle/Pedestrian Paths	-	-	-	\$28,500	\$28,500
	-	-	-	0%	0
	-	-	-	\$28,500	\$28,500
Pacific Power Contract	-	-	\$29,700	-	\$29,700
	-	-	0%	-	0
	-	-	\$29,700	-	\$29,700
U.S. West Contract	-	-	\$5,400	-	\$5,400
	-	-	0%	-	0
	-	-	\$5,400	-	\$5,400
PROJECT TOTALS:	\$83,800	\$60,400	\$57,100	\$88,900	\$290,200
	75%	95%	0%	3%	42
	\$21,000	\$3,000	\$57,100	\$85,900	\$167,000

The incremental value of the work completed between February 24 and March is \$62,800. I request that you confirm my estimated cost to complete construction. After your confirmation, and verification from Jack Robinson and Sons of payment for all services through March 25, please release \$62,800 less ten percent retainage, or \$56,520, from the letter-of-credit. The letter-of-credit, which has a current amount of \$275,760, should be reissued in the amount of \$219,240.

En

Memorandum to Tom Blust and Deborah McMahon
 April 7, 1993
 Page 3

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Broken Top Phase II-E

Project Area	Domestic Water	Sanitary Sewer	Utilities	Roads	Tot
(Estimated Cost / Percent Complete Through February 24, 1993 / Estimated Cost to Complete)					
Soda Springs Drive	\$85,800	\$65,700	\$23,400	\$61,700	\$236,600
	75%	95%	0%	5%	55
	\$21,400	\$3,300	\$23,400	\$58,600	\$106,700
Bicycle/Pedestrian Paths	-	-	-	\$31,800	\$31,800
	-	-	-	0%	0
	-	-	-	\$31,800	\$31,800
Pacific Power Contract	-	-	\$25,300	-	\$25,300
	-	-	0%	-	0
	-	-	\$25,300	-	\$25,300
U.S. West Contract	-	-	\$4,600	-	\$4,600
	-	-	0%	-	0
	-	-	\$4,600	-	\$4,600
PROJECT	\$85,800	\$65,700	\$53,300	\$93,500	\$298,300
TOTALS:	75%	95%	0%	3%	44
	\$21,400	\$3,300	\$53,300	\$90,400	\$168,400

As there was no incremental work completed between February 24 and March the current letter-of-credit amount of \$202,080 should remain unchanged.

Memorandum to Tom Blust and Deborah McMahon
 April 7, 1993
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Broken Top Phase II-F

Project Area	Domestic Water	Sanitary Sewer	Utilities	Roads	
(Estimated Cost / Percent Complete Through February 24, 1993 / Estimated Cost to Complete)					
Broken Top Drive	\$26,800	\$1,800	\$6,600	\$19,600	\$5
	0%	0%	0%	5%	
	\$26,800	\$1,800	\$6,600	\$18,600	\$5
Tam McArthur Loop	\$27,200	\$9,800	\$6,600	\$14,600	\$5
	0%	95%	0%	5%	
	\$27,200	\$500	\$6,600	\$13,900	\$4
Bicycle/Pedestrian Paths	-	-	-	\$17,700	\$1
	-	-	-	0%	
	-	-	-	\$17,700	\$1
Outback Well	\$195,000	-	-	-	\$15
	0%	-	-	-	
	\$195,000	-	-	-	\$15
Pacific Power Contract	-	-	\$13,200	-	\$
	-	-	0%	-	
	-	-	\$13,200	-	\$
U.S. West Contract	-	-	\$2,400	-	\$
	-	-	0%	-	
	-	-	\$2,400	-	\$
PROJECT	\$249,000	\$11,600	\$28,800	\$51,900	\$3
TOTALS:	0%	80%	0%	3%	
	\$249,000	\$2,300	\$28,800	\$50,200	\$3

The incremental value of the work completed between February 24 and March 25 is \$9,290. I request that you confirm my estimated cost to complete construction. After your confirmation, and verification from Jack Robinson and Sons of payment for all services through March 25, please release \$9,290 less ten per cent retainage, or \$8,361, from the letter-of-credit. The letter-of-credit, which has a current amount of \$407,508, should be reissued in the amount of \$399,147.

Please review these costs and comment as soon as possible. The intention is for Jack Robinson and Sons to submit payment verification no later than April 15, after which you could authorize the reductions in the letters-of-credit.

The most recent letters-of-credit, for Phases I-E, II-C, II-E, and II-F, have been issued by First Interstate Bank in Bend. Your authorization to reduce the amounts of those letters-of-credit should be sent to:

Memorandum to Tom Blust and Deborah McMahon
April 7, 1993
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Mr. Richard Candland
First Interstate Bank
P.O. Box 1191
Bend, OR 97709

Authorizations to reduce the amounts of the previous letters-of-credit, one for Phases I-A and I-B and another for Phases I-C and I-D, should continue to be sent to the address provided previously.



Please call if you have any questions.

copies: Paul Eisenberg, Broken Top Limited Partnership
Jeri Alden, Broken Top Limited Partnership
Ron Colarchik, Broken Top Limited Partnership
Richard Candland, First Interstate Bank
Ron Robinson, Jr., Jack Robinson and Sons, Inc.

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:

93 APR 15 PM 2:09

MARY SUE PENHOLLOW
COUNTY CLERK


BY. 

DEPUTY

NO.

93-11807

FEE



DESCHUTES COUNTY OFFICIAL RECORDS

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