

93-42116

AGREEMENT AND COVENANT TO SHARE COSTS 320 - 0764

THIS AGREEMENT AND COVENANT TO SHARE COSTS is made as of 29th day of October, 1992, between BROKEN TOP LIMITED PARTNERSHIP, an Oregon limited partnership ("Declarant") and BROKEN TOP COMMUNITY ASSOCIATION, INC., an Oregon nonprofit mutual benefit corporation (the "Association").

BACKGROUND STATEMENT

The Association is a mandatory membership owners association established pursuant to the Declaration of Covenants, Conditions and Restrictions for Broken Top Community recorded in Book 280, Page 1492-1545, et seq., of the Office of the County Clerk of Deschutes County, Oregon (such Declaration, as it may be amended from time to time, is referred to herein as the "Residential Declaration", and the property subject thereto, as it may be supplemented in accordance with the terms thereof, is referred to as the "Residential Property").

Declarant or affiliates of Declarant are the owners of all that property described on Exhibit "A-1" attached hereto ("Club Property"), all that property described on Exhibit "A-2" attached hereto ("Sales Center Property") and all that property described on Exhibit "A-3" attached hereto (the "Future Development Property"). The Club Property, the Sales Center Property, and the Future Development Property are collectively referred to as the "Adjacent Tracts".

Declarant intends to convey to the Association certain property, including private roads, which also serves and benefits the Adjacent Tracts. Declarant and the Association desire to provide for the performance of certain maintenance for the mutual benefit of the present and future owner(s) of the Residential Property and the present and future owner(s) of the Adjacent Tracts, and to provide for an equitable allocation of certain costs relating to such shared property.

STATEMENT OF AGREEMENT

In consideration of the mutual benefits and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant and the Association hereby agree as follows:

1. Shared Property. The Shared Property, as such term is used in this Agreement, shall, as to each portion of the Adjacent Tracts, consist of those portions of roadways owned by the Association and extending from Mt. Washington Drive to the entry drive providing access to such portion of the Adjacent Tracts ("Shared Roadway"), as well as any right of way between such points (excluding right of way which is located between

Return to: Jeri ALDEN
BTCA
61999 BROKEN TOP Dr
BEND OR 97702

paved roadway and any platted lot) and all improvements on such right of way, including, but not limited to, any entry monuments, lighting, gatehouses, medians, access control devices, pavement, curbing, gutters, storm drains, landscaping and signs.

2. Obligation to Maintain. The Association shall maintain the Shared Property in a manner consistent with the Association's rights and obligations under the Residential Declaration.

3. Obligation to Share Costs.

(a) Responsibility for Assessments. The Declarant, on behalf of itself and each successor-in-title to any portion of the Adjacent Tracts, covenants and agrees to pay assessments to the Association to cover a portion of the costs incurred by the Association in maintaining, repairing, replacing, and operating the Shared Property. The obligation of each owner of any portion of the Adjacent Tracts (hereafter the "Adjacent Owners") to pay this assessment shall be a separate and independent covenant on the part of such Adjacent Owner, and no diminution or abatement of the assessment or setoff shall be claimed or allowed by reason of any alleged failure of the Association to adequately perform its maintenance responsibilities, the sole remedy for failure of the Association to perform being suit at law or in equity.

(b) Computation of Assessments. On an annual basis and as of the beginning of each fiscal year of the Association, the Association shall determine an estimated budget for performing its obligations hereunder during the upcoming year, including a reasonable and appropriate amount to be placed in a reserve fund for capital repairs and replacements. Such budget shall reflect any excess or deficiency in the budget assessed for the immediately preceding year, relative to actual expenses for that period.

Each Adjacent Tract shall be obligated to pay to the Association such tract's pro rata share of such budgeted expenses determined as provided herein. The Sales Center Property shall be deemed to have a total of 29 parking spaces; the Club Property shall be deemed to have a total of 133 parking spaces; the Future Development Property shall be deemed to have the minimum number of parking spaces required by Deschutes County zoning ordinances for the use or uses actually built on such property (regardless of the actual number of parking spaces on each tract); and each lot or Unit (as that term is defined in the Declaration) within the Residential Property will be deemed to have a total of two parking spaces. The budgeted expenses for a particular segment of the Shared Roadway ("Segment Expenses") shall be allocated among the Association and the Adjacent Owners sharing use of that segment of the Shared Roadway by multiplying the Segment Expenses by a fraction, the numerator of which is the number of parking spaces on such Adjacent Tract or portion thereof as of the calculation date, and the denominator of which is the total number of parking spaces within the Residential Property and all Adjacent Tracts as of the calculation date.

(c) Payment of Assessments. The Board of Directors shall determine, and notify each Adjacent Owner of, the amount to be paid to the Association by the owner of each Adjacent Tract pursuant to subparagraph (b) above and the due date of each assessment or installment thereof, which shall be not less than 30 days after receipt of written notice of the annual assessment. In collecting each assessment, the Association shall have all of the rights and remedies, including the right to collect costs, attorneys fees, late charges and interest, to which the Association is entitled in collecting assessments against Units within the Residential Property under Article X of the Residential Declaration. Any assessment delinquent for a period of more than 30 days shall constitute a lien against the Adjacent Property on which the assessment is levied, which lien shall be enforceable in the same manner as the Association's lien against Units under Article X of the Residential Declaration, the provisions of which are specifically incorporated by this reference.

4. General.

(a) Notice. Any notice provided for in this Agreement shall be served personally or shall be mailed by registered or certified mail to the president or secretary of the Association or to the Adjacent Owner, as applicable, at the address of such property or such other address as is registered with the Association by written notice from the Adjacent Owner. All such notices shall, for all purposes, be deemed delivered (i) upon personal delivery to the party or address specified above; or (ii) on the third day after mailing when mailed by registered or certified mail, postage prepaid, and properly addressed.

(b) Recordkeeping. The Association shall maintain or cause to be maintained full and accurate books of accounts with respect to the maintenance and operation of the Shared Property and shall make the same available for inspection and copying upon request, during normal business hours or under other reasonable circumstances. Copying charges shall be paid by the requesting party. If any Adjacent Owner desires to have the records audited, it may do so at its expense, and the Association shall cooperate by making such records, including all supporting materials (e.g., check copies, invoices, etc.), for the year then ended available to the party performing the audit. If the amount of actual expenses for the preceding year is disputed after audit, a second audit shall be performed by a mutually acceptable auditor and the decision of the second auditor shall be binding. If the amount as determined by the second auditor varies from the amount asserted by the Association by more than five percent of the amount asserted, then the Association shall pay the entire cost of the second auditor. If such amount varies by five percent or less, then the requesting Adjacent Owner shall pay such cost. Variances shall be taken into account in the following year's budget as provided in Paragraph 3 hereof.

(c) Amendment. This Agreement may be amended with the written consent of the Association acting through its Board of Directors, and the owners of Adjacent Tracts having a majority of the number of parking spaces within all Adjacent Tracts and, so long as the Declarant has an option unilaterally to subject additional property to the Residential Declaration as provided in that instrument, the consent of the Declarant.

Notwithstanding the foregoing sentence, the Association agrees that Declarant shall have the right to amend this Agreement for the purpose of subjecting additional property

to the terms hereof, and/or to reflect minor changes in the boundaries of any of the Adjacent Tracts, and the Association agrees to give its written consent to any such amendment upon request. As long as covenants applicable to the real property previously subjected to this Agreement are not changed and as long as rights of the then owners are not adversely affected, any such amendment may also reflect the different character of any real property annexed by Declarant. Amendments to this Agreement shall become effective upon recordation, unless a later effective date is specified therein.

Any procedural challenge to an amendment must be made within six months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Agreement.

(d) Covenant Running With Title. Declarant hereby agrees that from and after the recording of this Agreement in the Office of the County Clerk of Deschutes County, Oregon, the Adjacent Tracts shall be held, sold, and conveyed subject to the terms of this Agreement, which shall run with the title to the Adjacent Tracts and shall bind all parties having any right, title, or interest in the Adjacent Tracts or any part thereof, their heirs, successors, successors-in-title, and assigns and shall inure to the benefit of the Broken Top Community Association, Inc., its successors, assigns, and members, and the present and future owner(s) of any part of the Residential Property and the Adjacent Tracts for a period of 30 years, after which time it shall automatically be extended for successive periods of 10 years, unless an instrument agreeing to terminate this Agreement is signed by the Association and owners of a majority of the total acreage within the Adjacent Tracts and, if the Declarant owns any portion of the Residential Property or the Adjacent Tracts, the consent of Declarant. Every purchaser or grantee of any interest in any portion of the Adjacent Tracts, by acceptance of a deed or other conveyance therefor, agrees that the provisions of this Agreement may be extended and renewed as provided in this Section.

(e) Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Agreement shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(f) Interpretation. This Agreement shall be governed by and construed under the laws of the State of Oregon.

(g) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Agreement to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Agreement are declared to be severable.

IN WITNESS WHEREOF, the undersigned have executed this Agreement and Covenant to Share Costs as of the date first above written.

DECLARANT: BROKEN TOP LIMITED PARTNERSHIP,
an Oregon limited partnership

BY: Broken Top, Inc., an Oregon
corporation, General Partner

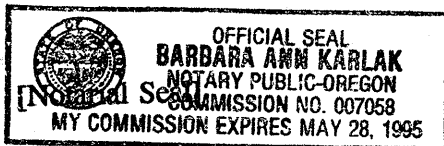
By: William T. Criswell
Name: William T. Criswell
Title: President

Attest:

BROKEN TOP, Inc.
Name: Charles Bobashy
Title: Assistant Secretary

STATE OF OREGON
COUNTY OF DESCHUTES

The foregoing instrument was acknowledged before me this 29th day of October, 1992, by William T. Criswell, President of Broken Top, Inc., the general partner of Broken Top Limited Partnership, an Oregon limited partnership, on behalf of the limited partnership.



By: Barbara Ann Karlak
Name: Barbara Ann Karlak
Notary Public
My commission expires: May 28, 1995

BROKEN TOP COMMUNITY
ASSOCIATION, INC. an Oregon corporation

By: Sharon L. Criswell
Name: Sharon L. Criswell
Title: Vice President

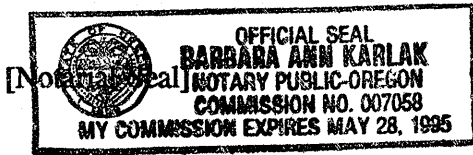
320 - 0769

Attest:

Broken Top Community Association
Name: Jeri L. Alden
Title: Assistant Secretary

STATE OF OREGON
COUNTY OF DESCHUTES

The foregoing instrument was acknowledged before me this 29th day of October, 1992, by Shirley L. Russell, Vice President of Broken Top Community Association, Inc., an Oregon nonprofit mutual benefit corporation, on behalf of the same.



By: Barbara Ann Karlak
Name: Barbara Ann Karlak
Notary Public
My commission expires: May 28, 1995

Exhibit "A-1"

Club Property

BROKEN TOP
GOLF CLUBHOUSE SITE

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 44°59'14" WEST 678.69 FEET TO THE WESTERLY RIGHT-OF-WAY OF BROKEN TOP DRIVE AND THE POINT OF BEGINNING; THENCE LEAVING SAID WESTERLY RIGHT-OF-WAY SOUTH 50°13'45" WEST 41.87 FEET; THENCE 156.23 FEET ALONG THE ARC OF A 245.00 FOOT RADIUS CURVE LEFT (THE LONG CHORD OF WHICH BEARS SOUTH 31°57'47" WEST 153.60 FEET); THENCE NORTH 69°43'59" WEST 294.29 FEET; THENCE NORTH 78°19'55" WEST 266.61 FEET; THENCE NORTH 375.00 FEET; THENCE EAST 308.39 FEET TO SAID WESTERLY RIGHT-OF-WAY OF BROKEN TOP DRIVE; THENCE SOUTH 59°38'11" EAST 18.12 FEET TO A 5/8" IRON ROD; THENCE 111.51 FEET ALONG THE ARC OF A 127.00 FOOT RADIUS CURVE RIGHT (THE LONG CHORD OF WHICH BEARS SOUTH 34°28'57" EAST 107.96 FEET) TO A 5/8" IRON ROD; THENCE 229.07 FEET ALONG THE ARC OF A 200.00 FOOT RADIUS CURVE LEFT (THE LONG CHORD OF WHICH BEARS SOUTH 42°08'23" EAST 216.75 FEET) TO A 5/8" IRON ROD; THENCE 76.49 FEET ALONG THE ARC OF A 135.00 FOOT RADIUS CURVE RIGHT (THE LONG CHORD OF WHICH BEARS SOUTH 58°43'06" EAST 75.43 FEET) TO A 5/8" IRON ROD; THENCE 52.46 FEET ALONG THE ARC OF A 278.50 FOOT RADIUS CURVE RIGHT (THE LONG CHORD OF WHICH BEARS SOUTH 37°05'21" EAST 52.38 FEET) TO A 5/8" IRON ROD; THENCE 41.57 FEET ALONG THE ARC OF A 331.50 FOOT RADIUS CURVE LEFT (THE LONG CHORD OF WHICH BEARS SOUTH 35°17'07" EAST 41.54 FEET) TO THE POINT OF BEGINNING. CONTAINS 4.98 ACRES.

320 - 0771

Exhibit "A-2"

Sales Center Property

Tract H on the plat for Broken Top filed in Cabinet C page 703 of the Plat
Records of Deschutes County, Oregon.

Exhibit "A-3"

Future Development Property

TRACT A

A parcel in Section 1 and Section 2; the east half of the east half of Section 11; the west half of the northeast quarter, the northwest quarter, and the westerly 165 feet of the southwest quarter of Section 12; and a portion of the northwest quarter of the northwest quarter of Section 13 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:

Beginning at the northwest corner of said Section 1; thence South 89°38'58" East 2200.06 feet along the north line of said Section 1; thence leaving said north line South 03°06'41" West 438.31 feet; thence 248.27 feet along the arc of a 455.00 foot radius curve right (the long chord of which bears South 58°58'26" West 245.20 feet); thence South 74°36'20" West 128.81 feet; thence 619.24 feet along the arc of a 551.00 foot radius curve left (the long chord of which bears South 42°24'35" West 587.16 feet); thence South 76°33'34" West 704.07 feet; thence South 56°10'22" West 1104.96 feet; thence South 14°18'05" West 290.00 feet; thence 997.41 feet along the arc of a 2680.00 foot radius curve right (the long chord of which bears South 30°15'49" East 991.66 feet); thence 1167.43 feet along the arc of a 2326.00 foot radius curve left (the long chord of which bears South 33°58'50" East 1155.21 feet); thence South 48°21'33" East 61.52 feet; thence South 38°17'25" West 20.03 feet; thence South 48°21'33" East 394.54 feet; thence 1019.41 feet along the arc of a 1305.00 foot radius curve right (the long chord of which bears South 25°58'51" East 993.69 feet); thence South 70°41'26" East 1197.32 feet; thence North 73°53'36" East 848.36 feet; thence North 14°24'17" West 164.90 feet; thence North 80°34'09" East 324.54 feet; thence North 79°56'20" East 589.34 feet; thence North 58°58'58" East 662.58 feet; thence North 06°06'26" West 333.46 feet; thence North 16°49'21" West 389.51 feet; thence North 666.43 feet; thence 209.60 feet along the arc of a 340.00 foot radius curve left (the long chord of which bears South 85°58'48" East 206.30 feet); thence 304.48 feet along the arc of a 1170.00 foot radius curve left (the long chord of which bears South 26°08'16" East 303.62 feet) to the east line of said Section 1; thence South 00°30'37" West 1762.67 feet to a brass cap at the southeast corner of said Section 1; thence North 89°52'23" West 1322.16 feet to a brass cap at the east one sixteenth corner between said Sections 1 and 12; thence South 00°39'59" West 2650.05 feet to a brass cap at the center east one sixteenth corner of said Section 12; thence along the north line of the south half of said Section 12 North 89°48'15" West 3806.54 feet to a 5/8" iron rod on a line parallel to and 165.00 feet east of the west line of said Section 12 when measured at right angles; thence along said parallel line South 00°43'27" West 2643.85 feet to a 5/8" iron rod on the south line of said Section 12; thence along said south line South 89°44'18" East 234 feet to the northerly right-of-way of Century Drive; thence South 71°55' West 423 feet to the west line said Section 13; thence leaving said northerly right-of-way North 01°28' East 133 feet to a brass cap at the northwest corner of said Section 13; thence South 89°44'17" West 1326.64 feet to a brass cap at the east one sixteenth corner between said Section 11 and Section 14; thence North 00°40'19" East 2644.70 feet to the center east one sixteenth corner of said Section 11; thence 00°40'19" East 2625.66 feet to the east one sixteenth corner between said Sections 2 and 11; thence South 88°54'12" West 1330.14 feet to a brass cap at the quarter corner between said Sections 2 and 11; thence North 89°18'10" West 2644.92 feet to the southwest corner of said Section 2; thence North 00°40'47" East 2647.33 feet to a brass cap at the quarter corner between said Section 2 and Section 3; thence North 02°03'56" East 2710.99 feet to a brass cap at the northwest corner of said Section 2; thence South 89°03'55" East 2580.18 feet to a 5/8" iron rod at the quarter corner between said Section 2 and Section 35; thence North 89°53'01" East 2659.77 feet to the point of beginning. Contains 1197 acres.

TRACT B

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°38'58" East 2200.06 feet along the north line of said Section 1 to the point of beginning; thence South 89°38'58" East 443.91 feet to a brass cap at the quarter corner between Section 36 and said Section 1; thence South 89°46'53" East 2646.64 feet to a brass cap at the northeast corner of said Section 1; thence South 00°49'56" West 1324.95 feet to an aluminum cap at the north sixteen corner between said Section 1 and Section 6; thence South 00°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°30'37" West 874.95 feet; thence leaving the east line of said Section 1, 304.48 feet along the arc of a 1170.00 foot radius curve right (the long chord of which bears North 26°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°58'48" West 206.30 feet); thence South 666.43 feet; thence South 16°49'21" East 389.51 feet; thence South 06°06'26" East 333.46 feet; thence South 58°58'58" West 662.58 feet; thence South 79°56'20" West 589.34 feet; thence South 80°34'09" West 324.54 feet; thence South 14°24'17" East 164.90 feet; thence South 73°53'36" West 848.36 feet; thence North 70°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°58'51" West 993.69 feet); thence North 48°21'33" West 394.54 feet; thence North 38°17'25" East 20.03 feet; thence North 48°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°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°15'49" West 991.66 feet); thence North 14°18'05" East 290.00 feet; thence North 56°10'22" East 1104.96 feet; thence North 76°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°24'35" East 587.16 feet); thence North 74°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°58'26" East 245.20 feet); thence North 03°06'41" East 438.31 feet to the point of beginning. Contains 506.51 acres.

TRACT C

320 - 0773

That portion of the Northwest Quarter of the Southwest Quarter (NW1/4 SW1/4) of Section Thirty-One (31), Township 17 South, Range 12, East of the Willamette Meridian, Deschutes County, Oregon, lying Southerly of Skyliners Road.

EXCEPT beginning at a point, 580 feet North of the SE corner of the NW1/4 SW1/4 of said Section 31; running thence South, 580 feet to the SE corner of said NW1/4 SW1/4 of said Section 31; thence West, 510 feet to a point; thence North, 540 feet to a point; thence in an Easterly direction to the point of beginning.

TOGETHER WITH all of the land South of Skyliners Road in Section 35 and 36, Township 17 South, Range 11, East of the Willamette Meridian, Deschutes County, Oregon.

TRACT D

The East Half of the Northeast Quarter (E1/2 NE1/4) of Section Twelve (12), Township 18 South, Range 11, East of the Willamette Meridian, Deschutes County, Oregon.


EXCEPT that portion lying southerly from a line running from the SW corner of said E1/2 NE1/4 to a point on the East boundary, located a distance of 330 feet North from the SE corner of said E1/4 NE1/4.

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 NOV 23 PM 3:09

MARY SUE PENHOLLOW
COUNTY CLERK

BY  DEPUTY
NO. 93-42116 FEE 50-

DESCHUTES COUNTY OFFICIAL RECORDS