

94-49043

IMPROVEMENT AGREEMENT NO. 7
(Phases III-E and III-F)

361 - 0163

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 may, 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 good 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 mentioned, 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 III-E and III-F Subdivision, and repair all existing and damaged facilities, within and without the Subdivision, damaged during such installation, on or before June 30, 1995.

After Recording Return To:

Baron L. Criswell
Broken Top, Inc.
999 Broken Top Drive
Bend, OR 97702

TITLE CO.
COUNTY
323
97702

STATE OF OREGON)
COUNTY OF DESCHUTES) SS.

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:

94 DEC 16 AM 11:31

MARY SUE PENHOLLOW
COUNTY CLERK

 DEPUTY

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 \$1,114,200, which is 120% of the estimated cost of the required improvements. Such Irrevocable Letter of Credit shall be in the form of Attachment C."

\$ 520,320.00

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 10 days after Developer's receipt of such notice or 15 days after County has mailed such notice by certified mail, return receipt requested to Developer at 61999 Highway 101 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 County for the difference. Developer shall also be liable for any court costs and attorney's fees necessary to collect said amounts.

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

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

Developer shall pay to County the actual out-of-pocket costs reasonably incurred in connection with the completion of the completed improvements.

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

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) a determination reasonably satisfactory to County that no construction lien has been filed against those improvements, County agrees to authorize Bank to amend the Letter of Credit to reduce its amount by ninety percent (90%) of the cost of such completed improvements, as certified by the

10. County shall return the Letter of Credit to Developer and agree to termination of loan request by Developer within 10 days after the completion, inspection and approval 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 requesting release of the Letter of Credit. In connection therewith, County shall, by deed or other appropriate instrument remove, satisfy, or extinguish the obligations of the improvement from the public records.

11. The existence of this Agreement shall be noted upon the final plat by reference to 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 County 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 project 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, losses and expenses in any manner resulting from, arising out of, or connected with any injury, except to the extent caused by the negligence or willful misconduct of County or its officers or employees.

16. In the event an action or suit or proceeding, including appeal therefrom, is brought to enforce or 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

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

DATED this 14 day of ^{October}~~September~~, 1994.

COUNTY: DESCHUTES COUNTY, OREGON

Larry Riser

Director of Public Works, on behalf of the County

DEVELOPER: CASCADE HIGHLANDS LIMITED PARTNERSHIP
an Oregon limited partnership

SKYLINER SUMMIT LIMITED PARTNERSHIP
an Oregon limited partnership

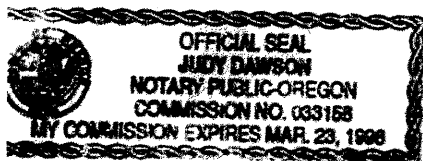
By their general partner:
BROKEN TOP, INC., an Oregon corporation

By: *William T. Cissell*
Its: President

OF OREGON)
) ss
of Deschutes)

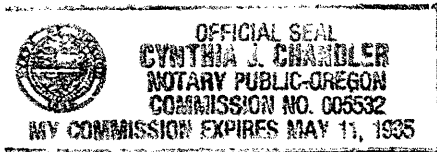
SUBSCRIBED AND SWORN to before me this 14 day of ^{October}~~September~~, 1994,
Larry Riser, who is the Director of Public Works of Deschutes
Oregon, on behalf of the County.

Judy Dawson
Notary Public for Oregon
My Commission Expires: 3/23/98



E OF OREGON)
) ss
 ty of Deschutes)

SUBSCRIBED AND SWORN to before me this 18th day of September,
 by William T. Criswell, who is the President of Broken Top, Inc., an
 on corporation, the general partner of Cascade Highlands Limited Partnership and Skyliner
 nit Limited Partnership, on behalf of the partnerships.



Cynthia J. Chandler
 Notary Public for Oregon
 My Commission Expires: 5/11/95

BROKEN TOP**PHASE III-E**

A parcel in the southeast quarter of Section 1 and the northeast quarter of Section 12 of Township 18 South and Range 11 East of the Willamette Meridian, and a portion of Government Lot 6 of Section 6 of Township 18 South and Range 12 East of the Willamette Meridian, Deschutes County, Oregon, as shown on the attached exhibit and fully described as follows:

Commencing at a 3" brass cap at the east one-quarter corner of said Section 1; thence South 00°30'37" West 832.30 feet along the east line of said Section 1 to a 5/8" iron rod on the southwesterly right-of-way of Mt. Washington Drive; thence leaving said east line 116.00 feet along the arc of a 1104.41 foot radius curve left (the long chord of which bears South 34°50'57" East 115.95 feet) to a 5/8" iron rod and the point of beginning; thence 252.38 feet along the arc of an 1104.41 foot radius curve left (the long chord of which bears South 44°24'17" East 251.83 feet) to a 5/8" iron rod on the south boundary of the tract described in Volume 342, Page 219 of the Deschutes County Deed Records; thence leaving said southwesterly right-of-way South 77°03'55" West 251.81 feet to a 5/8" iron rod on the line between said Sections 1 and 6; thence leaving said south boundary South 00°30'37" West 992.13 feet to a 5/8" iron rod; thence leaving said section line West 151.67 feet to a 5/8" iron rod; thence 73.58 feet along the arc of a 752.00 foot radius curve right (the long chord of which bears South 31°44'25" West 73.55 feet) to a 5/8" iron rod; thence 463.42 feet along the arc of a 940.00 foot radius curve right (the long chord of which bears South 48°40'00" West 458.74 feet) to a 5/8" iron rod; thence South 62°47'25" West 39.10 feet to a 5/8" iron rod; thence 412.01 feet along the arc of a 752.00 foot radius curve right (the long chord of which bears South 78°29'10" West 406.88 feet) to a 5/8" iron rod; thence North 85°49'05" West 115.53 feet to a 5/8" iron rod; thence 478.50 feet along the arc of a 680.00 foot radius curve left (the long chord of which bears South 74°01'23" West 468.68 feet) to a 5/8" iron rod; thence North 36°08'08" West 80.00 feet to a 5/8" iron rod; thence 329.00 feet along the arc of a 760.00 foot radius curve right (the long chord of which bears North 66°15'57" East 326.43 feet) to a 5/8" iron rod; thence North 00°23'49" West 164.75 feet to the BROKEN TOP boundary per CS 07919 by David Bateman; thence leaving said boundary North 00°23'49" West 60.86 feet to a 5/8" iron rod; thence North 79°56'20" East 110.00 feet to a 5/8" iron rod; thence South 86°19'27" East 110.63 feet to a 5/8" iron rod; thence South 80°46'31" East 102.12 feet to a 5/8" iron rod on said boundary; thence North 79°56'20" East 265.27 feet to a 5/8" iron rod; thence North 58°58'58" East 644.58 feet to a 5/8" iron rod; thence leaving said boundary 36.88 feet along the arc of a 650.00 foot radius curve left (the long chord of which bears North 20°10'03" East 36.87 feet) to a 5/8" iron rod on said boundary; thence North 06°06'26" West

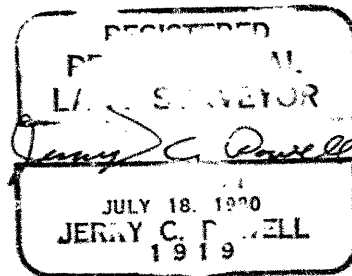
August 5, 1994

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 97701-2744
503/389-7611 FAX (503) 389-7623

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EXHIBIT "A"

feet to a 5/8" iron rod; thence North 16°49'21" West 132.83 feet to a 5/8"
 l; thence leaving said boundary South 44°47'27" East 164.76 feet to a 5/8"
 l; thence North 167.17 feet to a 5/8" iron rod; thence 579.90 feet along the
 740.00 foot radius curve right (the long chord of which bears North
 9" East 565.17 feet) to the point of beginning. Contains 13.77 acres.



August 5, 1994

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KANS AND ASSOCIATES, INC.
 SURVEYORS, PLANNERS, LANDSCAPE ARCHITECTS

EXHIBIT "A"

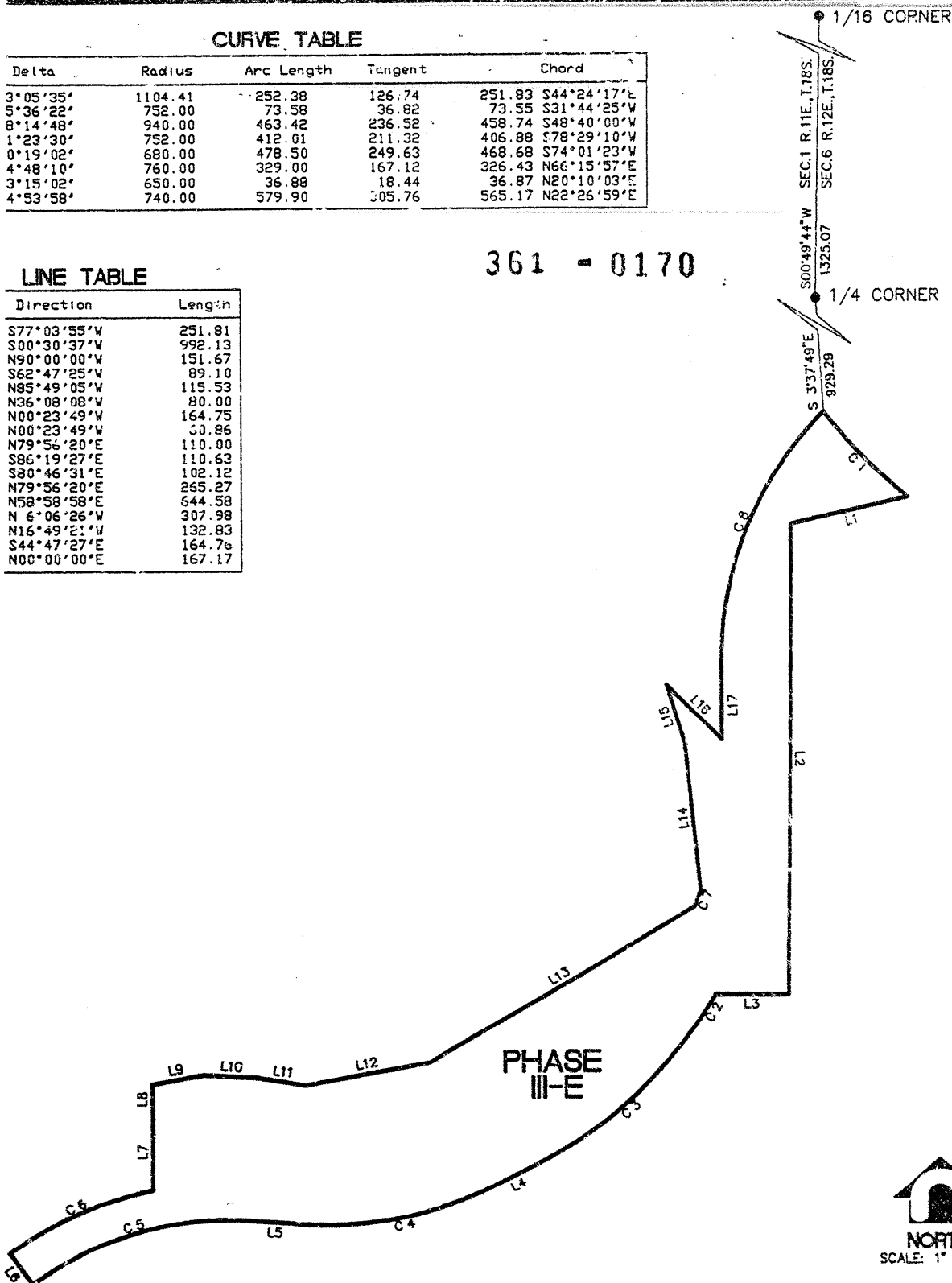
CURVE TABLE

Delta	Radius	Arc Length	Tangent	Chord
3°05'35"	1104.41	252.38	126.74	251.83 S44°24'17"E
5°36'22"	752.00	73.58	36.82	73.55 S31°44'25"W
8°14'48"	940.00	463.42	236.52	458.74 S48°40'00"W
1°23'30"	752.00	412.01	211.32	406.88 S78°29'10"W
0°19'02"	680.00	478.50	249.63	468.68 S74°01'23"W
4°48'10"	760.00	329.00	167.12	326.43 N66°15'57"E
3°15'02"	650.00	36.88	18.44	36.87 N20°10'03"E
4°53'58"	740.00	579.90	305.76	565.17 N22°26'59"E

LINE TABLE

Direction	Length
S77°03'55"W	251.81
S00°30'37"W	992.13
N90°00'00"W	151.67
S62°47'25"W	89.10
N85°49'05"W	115.53
N36°08'08"W	80.00
N00°23'49"W	164.75
N00°23'49"W	30.86
N79°56'20"E	110.00
S86°19'27"E	110.63
S80°46'31"E	102.12
N79°56'20"E	265.27
N58°58'58"E	644.58
N 6°06'26"W	307.98
N16°49'21"W	132.83
S44°47'27"E	164.76
N00°00'00"E	167.17

361 - 0170



=300' design
 5/94 drawn JHL
 IDX0019 - CHDIII-E.DWG (720)

DEA
 DAVID EVANS AND ASSOCIATES, INC
 709 NW WALL STREET, SUITE 102
 BEND, OREGON 97701 (503)389-7814

**BROKEN TOP
 PHASE III-E
 TRACT EXHIBIT**

BROKEN TOP

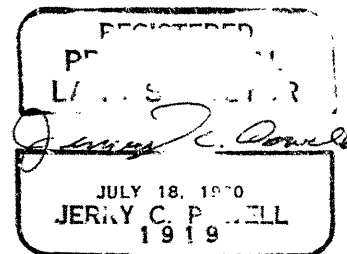
361 - 0171

PHASE III-F

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



Commencing at a 3" brass cap at the southeast corner of said Section 1; thence North 89°52'23" West 672.75 feet along the south line of said Section 1; thence leaving said south line North 45.17 feet to a 5/8" iron rod and the point of beginning; thence South 157.76 feet to a 5/8" iron rod; thence South 02°21'02" East 60.96 feet to a 5/8" iron rod; thence South 51.25 feet to a 5/8" iron rod; thence South 02°51'45" West 100.12 feet to a 5/8" iron rod; thence West 60.00 feet to a 5/8" iron rod; thence North 02°51'45" West 16.03 feet to a 5/8" iron rod; thence West 165.20 feet to a 5/8" iron rod; thence South 11°19'15" West 134.99 feet to a 5/8" iron rod; thence South 132.84 feet to a 5/8" iron rod; thence South 45°51'22" West 115.70 feet to a 5/8" iron rod; thence West 154.33 feet to a 5/8" iron rod; thence South 35.00 feet to a 5/8" iron rod; thence West 165.10 feet to a 5/8" iron rod on the west line of the northeast quarter of said northeast quarter; thence North 00°39'59" East 676.01 feet to a 5/8" iron rod; thence leaving said west line 199.91 feet along the arc of a 680.00 foot radius curve right (the long chord of which bears North 85°45'35" East 199.19 feet) to a 5/8" iron rod; thence South 85°49'05" East 115.53 feet to a 5/8" iron rod; thence 342.74 feet along the arc of a 752.00 foot radius curve left (the long chord of which bears North 81°07'29" East 339.78 feet) to the point of beginning. Contains 7.95 acres.



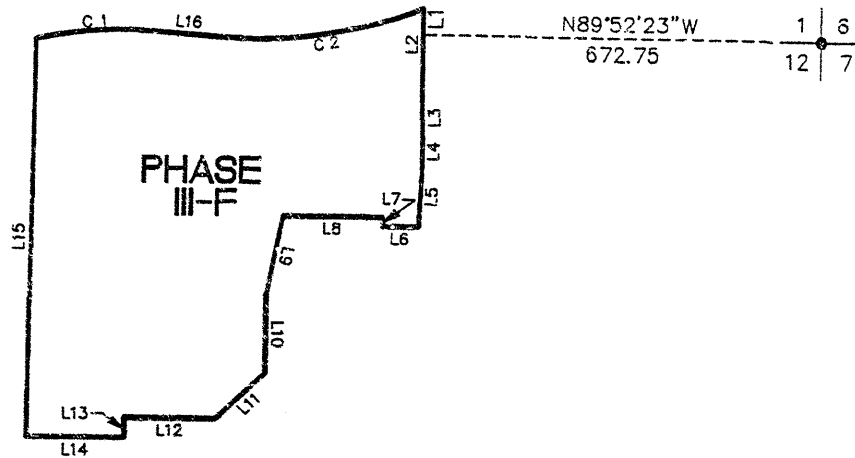
DAVID EVANS AND ASSOCIATES, INC.
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(503) 389-7614 FAX (503) 389-7623

August 5, 1994

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EXHIBIT "A"

361 - 0172



LINE TABLE

Direction	Length
10°00'00\"W	45.17
10°00'00\"E	157.76
2°21'02\"E	60.96
10°00'00\"E	51.25
2°51'45\"W	100.12
10°00'00\"W	60.00
2°51'45\"W	16.03
10°00'00\"W	165.20
1°19'15\"W	134.99
10°00'00\"E	132.84
5°51'22\"W	115.70
0°00'00\"W	154.33
0°00'00\"E	35.00
0°00'00\"W	165.10
0°39'59\"E	676.01
5°49'05\"E	115.53



CURVE TABLE

No.	Delta	Radius	Arc Length	Tangent	Chord
1	16°50'39\"	680.00	199.91	100.68	199.13 N85°45'35\"E
2	26°06'50\"	752.00	342.74	174.40	339.78 N81°07'29\"E

10' design
94 drawn JHL
0019 - CHDIII-F.DWG (720)



DAVID EVANS AND ASSOCIATES, INC.
709 NW WALL STREET, SUITE 102
BEND, OREGON 97701 (503)389-7614

BROKEN TOP
PHASE III-F
TRACT EXHIBIT

Memorandum to Tom Blust and Deborah McMahon
 October 5, 1994
 Page 2

361 - 0173

ROADWAYS

<u>Construction Element</u>	<u>Est. Cost</u>	<u>% Complete</u>	<u>Cost to Complete</u>
Mt. Washington Drive curb and sidewalk between Century Drive and Mountaineer Way (415 feet of curb, sidewalk and pavement patching)	\$ 10,000	100	\$ 0
Widening of Mountaineer Way (622 feet of road widening, 6 feet on both sides, with curb, sidewalk, and drainage)	50,000	100	0
Widening of Mt. Washington Drive for Metolius Drive intersection (Variable width widening over a length of 1,003 feet, with culvert lengthening)	33,000	90	3,300
Mt. Washington Drive curb and sidewalk from Metolius Drive to Broken Top Drive (425 feet of curb and sidewalk)	8,000	50	4,000
Metolius Drive clearing and subgrade from Mt. Washington Drive to end of project (2,770 feet, including drainage)	261,000	90	26,100
Metolius Drive pavement from Mt. Washington Drive to end of project (2,770 feet)	69,000	0	69,000
Phase III-E clearing and subgrade (921 feet of private driveway, including drainage)	24,000	90	2,400
Phase III-E pavement (921 feet of private driveway)	15,000	0	15,000
Phase III-F clearing and subgrade (1,717 feet of roadway, including drainage)	45,000	90	4,500
Phase III-F pavement (1,717 feet of roadway)	35,000	0	35,000
TOTAL	\$ 550,000		\$ 159,300

WATER FACILITIES

<u>Construction Element</u>	<u>Est. Cost</u>	<u>% Complete</u>	<u>Cost to Complete</u>
Connection from Phase II-C waterline to Metolius Drive and into Phase III-E (18 feet of 16-inch line and 191 feet of 12-inch line, with appurtenances)	\$ 10,000	90	\$ 1,000
Metolius Drive waterline serving Phase III-E and extending to Phase III-G (2,431 feet of 12-inch line and 80 feet of 6-inch line, with appurtenances)	105,000	90	10,500
Phase III-E services (10 services)	8,000	90	800
Phase III-F facilities (234 feet of 12-inch line, 1,010 feet of 10-inch line, 366 feet of 8-inch line, and 78 feet of 6-inch line, with appurtenances)	79,000	90	7,900
Phase III-F services (24 services)	16,000	95	800
TOTAL	\$ 218,000		21,000

DAVID EVANS AND ASSOCIATES, INC.
 A PROFESSIONAL SERVICES CONSULTING FIRM

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EXHIBIT "B"

October 5, 1994

GSLP04/11.3

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

From: Dave Alden *DA*

361 - 0174

Subject: Broken Top Phases III-E and III-F, Proposed Revised
Amount for Letter-of-Credit, Revision #2

On behalf of the Cascade Highlands and Skyliner Summit Limited Partnerships, I submitted a memorandum dated September 7, 1994 proposing an amount for a letter-of-credit to Deschutes County Public Works. The letter-of-credit would be for the uncompleted construction within Broken Top Phases III-E and III-F. (The September 7 memorandum was an update to an earlier memorandum of August 10, 1994.) The letter-of-credit would allow the platting of the two phases prior to the completion of construction. Both Deschutes County and the City of Bend approved the amount proposed in the September 7 memorandum.

Negotiations between the Partnerships and the expected purchaser of the lots in Phase III-F have continued longer than expected. Therefore, the Improvement Agreement to which the letter-of-credit will be an attachment has not been consummated. The letter-of-credit has also not yet been established. The current schedule calls for consummation of the Improvement Agreement, together with establishment of the letter-of-credit, plat recording and lot sales, to be executed through an escrow closing. The escrow is scheduled to close on or about October 20.

Between the dates of the previous proposals for an letter-of-credit amount and September 25, Jack Robinson and Sons, Inc. has completed substantial additional construction. Most of the roadway improvements on Mt. Washington Drive and Mountaineer Way have been completed, as have the water and sewer improvements within Phases III-E and III-F. Utility trenching and roadway completion within Phases III-E and III-F were both underway before September 25. Robinson has submitted invoices to the Partnerships for construction completed through September 25. The Partnerships intend to pay these invoices prior to October 15. Therefore, for your review and approval, I've prepared the estimated cost to complete the construction as of September 25. I propose that the amount of the letter-of-credit will be based on these reduced estimated costs. Robinson will verify payment for Phases III-E and III-F construction through September 25 to Deschutes County and to First American Title before the escrow closing. The estimated cost to complete construction as of September 25 is as follows:

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 97701-2744
(503) 389-7614 FAX (503) 389-7625

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EXHIBIT "B"

Memorandum to Tom Blust and Deborah McMahon
 October 5, 1994
 Page 3

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SEWER FACILITIES

<u>Construction Element</u>	<u>Est. Cost</u>	<u>% Complete</u>	<u>Cost to Complete</u>
Segment of 18-inch sewer from Mt. Washington Drive to Suttle Lake Court connection (1,383 feet of 18-inch sewer with 5 manholes and 1 service)	\$ 69,000	100	\$ 0
Segment of 18-inch sewer from Suttle Lake Court connection to Devils Lake Road (1,036 feet of 18-inch sewer with 7 manholes and 17 service tees)	123,000	50	61,500
Segment of 18-inch sewer through Phase III-F (448 feet of 18-inch sewer with 2 manholes and 7 services)	68,000	100	0
Segment of 18-inch sewer from Phase III-F to end of project (447 feet of 18-inch sewer with 2 manholes and 5 services)	38,000	100	0
Phase III-E sewer (767 feet of 8-inch sewer, with 3 manholes and 9 services)	40,000	100	0
Remaining Phase III-F sewer (1,035 feet of 8-inch sewer, with 5 manholes and 11 services)	56,000	100	0
TOTAL	\$ 394,000		61,500

OTHER FACILITIES

<u>Construction Element</u>	<u>Est. Cost</u>	<u>% Complete</u>	<u>Cost to Complete</u>
Bicycle/pedestrian path from Metolius Drive to Cascade Middle School (796 feet of 10-foot path, with fill)	\$ 24,000	30	16,800
Unpaved bicycle/pedestrian path from Skyline Ballfields to Broken Top Expansion park (1,400 feet)	4,000	0	4,000
Metolius Drive bicycle/pedestrian path from Mt. Washington Drive to end-of-project (2,770 feet of 10-foot path)	61,000	0	61,000
Phase III-F bicycle/pedestrian path (1,548 of 10-foot path)	34,000	0	34,000
Metolius Drive utility trench (2,770 feet)	36,000	0	36,000
Phase III-E utility trench (980 feet)	13,000	0	13,000
Phase III-F utility trench (2,050 feet)	27,000	0	27,000
TOTAL	\$ 199,000		\$ 191,800
PROJECT TOTAL	1,361,000		433,600

The remaining cost to complete construction is \$433,600. Adding 20 percent to this cost results in letter-of-credit amount of \$520,320. Please review and approve this amount.

Please call if you have any questions.

Enclosures as noted

copies: Sheri Criswell, Broken Top Limited Partnership
 Paul Eisenberg, Broken Top Limited Partnership
 Karen Massingill, Broken Top Limited Partnership
 Ron Colarchik, Broken Top Limited Partnership
 Ron Robinson, Jr., Jack Robinson and Sons, Inc.
 Sharon Kunkel, First American Title

DAVID EVANS AND ASSOCIATES, INC.
 A PROFESSIONAL SERVICES CONSULTING FIRM

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EXHIBIT "B"