

IMPROVEMENT AGREEMENT NO. 4
(Phase II-E)

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

WHEREAS, Developer is the subdivider of Subdivision; and

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

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

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

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above ned, 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 and by this reference incorporated herein.
2. Developer shall install and complete the improvements described in the attached t "B" within and adjacent to Phases II-E of Subdivision, and repair all existing and icted facilities, within and without the Subdivision, damaged during such installation, on re October 31, 1993.
3. As security for Developer's timely completion of the required improvements, per shall deliver to County an Irrevocable Standby Letter of Credit (the "Letter of ") issued by First Interstate Bank of Oregon, N.A. (the "Bank") or other financial ion acceptable to County in the amount of \$202,080, which is 120% of the estimated cost required improvements. Such Irrevocable Letter of Credit shall be in the form of Exhibit
4. If the improvements required in accordance with Section 2 above are not xted by the date for completion shown in Section 2 above, County may, upon written to Developer and the passage of ten (10) days after Developer's receipt of such notice or /s after County has mailed such notice by certified mail, return receipt requested to

ORD & RETURN TO

E ALDEN

ID EVANS & ASSOC. INC.

NW WASH ST. No 102 BEND, OR.

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 court 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 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 engineer.

10. County shall return the Letter of Credit to Developer and agree to termination of 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

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, 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 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, 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

Larry Rice
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: William T. Criswell

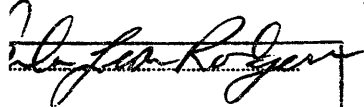
Its: PRESIDENT


E OF OREGON)

295 - 2389

y of Deschutes)

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

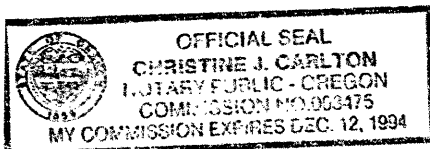

ANDRA JEAN RODGERS
NOTARY PUBLIC - OREGON
Commission Expires 1-20-94

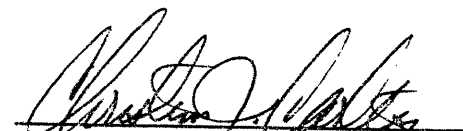

Notary Public for Oregon
My Commission Expires: 1-20-94

E OF OREGON)

y 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.




Notary Public for Oregon
My Commission Expires Dec 12, 1994

BROKEN TOP
PHASE II-E

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

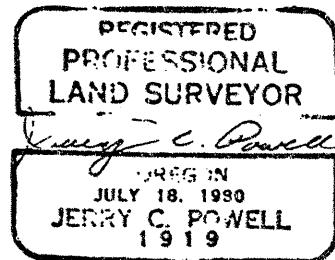
BEGINNING AT A 2" ALUMINUM CAP AT THE NORTH 1/16 CORNER ON THE EAST
SIDE OF SAID SECTION 1; THENCE SOUTH 00°49'44" WEST 1325.07 FEET TO A 3" BRASS
PIN ON A 2" GALVANIZED IRON PIPE AT THE EAST 1/4 CORNER OF SAID SECTION 1;
THENCE NORTH 83°40'12" WEST 2577.25 FEET TO A 5/8" IRON ROD AT THE SOUTHEAST
CORNER OF TRACT J OF BROKEN TOP AND THE POINT OF BEGINNING ON THE
NORTHERLY RIGHT-OF-WAY OF BROKEN TOP DRIVE; THENCE LEAVING SAID
NORTHERLY RIGHT-OF-WAY 61.08 FEET ALONG THE ARC OF A 180.00 FOOT RADIUS
CURVE RIGHT (THE LONG CHORD OF WHICH BEARS NORTH 20°49'19" WEST 60.78 FEET)
TO A 5/8" IRON ROD; THENCE 71.00 FEET ALONG THE ARC OF A 120.00 FOOT RADIUS
CURVE LEFT (THE LONG CHORD OF WHICH BEARS NORTH 28°03'15" WEST 69.97 FEET)
TO A 5/8" IRON ROD; THENCE 55.57 FEET ALONG THE ARC OF A 70.00 FOOT RADIUS
CURVE LEFT (THE LONG CHORD OF WHICH BEARS NORTH 67°44'47" WEST 54.12 FEET)
TO A 5/8" IRON ROD; THENCE 58.69 FEET ALONG THE ARC OF A 130.00 FOOT RADIUS
CURVE RIGHT (THE LONG CHORD OF WHICH BEARS NORTH 77°33'13" WEST 58.19 FEET)
TO A 5/8" IRON ROD; THENCE 49.98 FEET ALONG THE ARC OF A 278.83 FOOT RADIUS
CURVE RIGHT (THE LONG CHORD OF WHICH BEARS NORTH 59°29'05" WEST 49.92 FEET)
TO A 5/8" IRON ROD; THENCE NORTH 54°20'57" WEST 115.71 FEET TO A 5/8" IRON ROD;
THENCE 17.16 FEET ALONG THE ARC OF A 163.00 FOOT RADIUS CURVE RIGHT (THE
LONG CHORD OF WHICH BEARS NORTH 51°19'58" WEST 17.15 FEET) TO A 5/8" IRON
ROD; THENCE SOUTH 16°15'07" WEST 38.54 FEET TO A 5/8" IRON ROD; THENCE NORTH
44°53' WEST 602.50 FEET TO A 5/8" IRON ROD; THENCE NORTH 80°32'32" WEST 94.50
FEET TO A 5/8" IRON ROD; THENCE NORTH 87°05'18" WEST 479.00 FEET TO A 5/8" IRON
ROD; THENCE NORTH 01°47'15" WEST 127.00 FEET TO A 5/8" IRON ROD; THENCE NORTH
22°58' WEST 119.58 FEET TO A 5/8" IRON ROD; THENCE NORTH 72°24'19" EAST 78.45
FEET TO A 5/8" IRON ROD; THENCE 269.46 FEET ALONG THE ARC OF A 370.00 FOOT
RADIUS CURVE LEFT (THE LONG CHORD OF WHICH BEARS NORTH 51°32'31" EAST
154.54 FEET) TO A 5/8" IRON ROD; THENCE SOUTH 78°38'26" EAST 190.18 FEET TO A 5/8"
IRON ROD; THENCE NORTH 20°43'15" EAST 44.71 FEET TO A 5/8" IRON ROD; THENCE
SOUTH 71°58'06" EAST 726.91 FEET TO A 5/8" IRON ROD; THENCE 116.21 FEET ALONG
THE ARC OF A 204.75 FOOT RADIUS CURVE RIGHT (THE LONG CHORD OF WHICH BEARS
SOUTH 14°49'05" WEST 114.66 FEET) TO A 5/8" IRON ROD; THENCE SOUTH 31°04'40"
WEST 69.55 FEET TO A 5/8" IRON ROD; THENCE 140.98 FEET ALONG THE ARC OF A
180.00 FOOT RADIUS CURVE RIGHT (THE LONG CHORD OF WHICH BEARS SOUTH
01°14' EAST 135.64 FEET) TO A 5/8" IRON ROD; THENCE 80.54 FEET ALONG THE ARC
OF A 103.00 FOOT RADIUS CURVE LEFT (THE LONG CHORD OF WHICH BEARS SOUTH
56°51' EAST 78.51 FEET) TO A 5/8" IRON ROD; THENCE SOUTH 54°20'57" EAST 115.71
FEET TO A 5/8" IRON ROD; THENCE 39.23 FEET ALONG THE ARC OF A 218.83 FOOT
RADIUS CURVE LEFT (THE LONG CHORD OF WHICH BEARS SOUTH 59°29'05" EAST 39.18
FEET) TO A 5/8" IRON ROD; THENCE 31.60 FEET ALONG THE ARC OF A 70.00 FOOT
RADIUS CURVE LEFT (THE LONG CHORD OF WHICH BEARS SOUTH 77°33'12" EAST 31.33
FEET) TO A 5/8" IRON ROD; THENCE 103.19 FEET ALONG THE ARC OF A 130.00 FOOT
RADIUS CURVE RIGHT (THE LONG CHORD OF WHICH BEARS SOUTH 67°44'47" EAST
115.50 FEET) TO A 5/8" IRON ROD; THENCE 106.51 FEET ALONG THE ARC OF A 180.00
FOOT RADIUS CURVE RIGHT (THE LONG CHORD OF WHICH BEARS SOUTH 28°03'15"

March 4, 1993

JOHN EVANS AND ASSOCIATES, INC.
PROFESSIONAL SERVICES CONSULTING FIRM
OFFICES IN OREGON, WASHINGTON, CALIFORNIA AND ARIZONA
1201 WALL STREET, SUITE 102
PORTLAND, OREGON 97201-2744
389-7614 FAX (503) 389-7623

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EAST 104.96 FEET) TO A 5/8" IRON ROD; THENCE 39.40 FEET ALONG THE ARC OF A 120.00 FOOT RADIUS CURVE LEFT (THE LONG CHORD OF WHICH BEARS SOUTH 20°30'31" EAST 39.22 FEET) TO A 5/8" IRON ROD ON THE NORTHERLY RIGHT-OF-WAY OF BROKEN TOP DRIVE; THENCE 50.04 FEET ALONG THE ARC OF A 670.00 FOOT RADIUS CURVE RIGHT (THE LONG CHORD OF WHICH BEARS SOUTH 58°12'14" WEST 60.02 FEET) TO THE POINT OF BEGINNING. CONTAINS 11.40 ACRES.



March 4, 1993

ZWPFZCHDICHDI8EJC

April 7, 1993

CHDX18/11.

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

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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 97001-2712
(503) 389-7614 FAX (503) 389-7623

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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	-	-	-	\$23,500	\$23,500
	-	-	-	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 25 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 the current amount of \$275,760, should be reissued in the amount of \$219,240.

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

As there was no incremental work completed between February 24 and March 25, the current letter-of-credit amount of \$202,080 should remain unchanged.

Memorandum to Tom Blust and Deborah McMahon
 April 7, 1993
 Page 4

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Broken Top Phase II-F

Project Area	Domestic Water	Sanitary Sewer	Utilities	Roads	Total
(Estimated Cost / Percent Complete Through February 24, 1993 / Estimated Cost to Complete)					
Broken Top Drive	\$26,800	\$1,800	\$6,600	\$19,600	\$54,800
	0%	0%	0%	5%	2%
	\$26,800	\$1,800	\$6,600	\$18,600	\$53,800
Tam McArthur Loop	\$27,200	\$9,800	\$6,600	\$14,600	\$59,000
	0%	95%	0%	5%	18%
	\$27,200	\$500	\$6,600	\$13,900	\$48,200
Bicycle/Pedestrian Paths	-	-	-	\$17,700	\$17,700
	-	-	-	0%	0%
	-	-	-	\$17,700	\$17,700
Outback Well	\$195,000	-	-	-	\$195,000
	0%	-	-	-	0%
	\$195,000	-	-	-	\$195,000
Pacific Power Contract	-	-	\$13,200	-	\$13,200
	-	-	0%	-	0%
	-	-	\$13,200	-	\$13,200
U.S. West Contract	-	-	\$2,400	-	\$2,400
	-	-	0%	-	0%
	-	-	\$2,400	-	\$2,400
PROJECT TOTALS:	\$249,000	\$11,600	\$28,800	\$51,900	\$341,300
	0%	80%	0%	3%	3%
	\$249,000	\$2,300	\$28,800	\$50,200	\$330,300

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 percent retainage, or \$8,361, from the letter-of-credit. The letter-of-credit, which has the 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 20, 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
Page 5

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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.

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Please call if you have any questions.

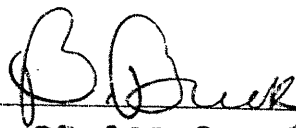
copies: Paul Eisenberg, Broken Top Limited Partnership
Jeri Alden, Broken Top Limited Partnership
Ron Colarchik, Broken Top Limited Partnership
Richard Candland, First Interstate Bank
Ron Robinson, Jr., Jack Robinson and Sons, Inc.

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 2:10

MARY SUE PENHOLLOW
COUNTY CLERK

BY.  DEPUTY
NO. 93-11808 FEE 55-
DESCHUTES COUNTY OFFICIAL RECORDS

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