

RECORDED BY 131770  
WESTERN TITLE & ESCROW CO.

Recording Requested by and  
When Recorded Return to:  
Broken Top Development L.L.C.  
1325 NW Flanders St.  
Portland, OR 97209  
Attn: Gary Finicle

DESCHUTES COUNTY OFFICIAL RECORDS  
MARY SUE PENHOLLOW, COUNTY CLERK

2002-00259



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## AGREEMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS AGREEMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Agreement") is entered into as of this 28 day of December, 2001 by and between MOUNTAIN CREST HOMES, LLC ("Buyer") and BROKEN TOP DEVELOPMENT L.L.C., an Oregon limited liability company ("Seller").

### Recitals:

Whereas, concurrently herewith, Seller is selling and Buyer is buying that certain real property described on attached Exhibit A (the "Property").

Whereas, in connection with such sale and as a material part of the consideration to induce Seller to sell the Property to Buyer, Buyer has consented to the covenants, conditions and restrictions contained herein.

### Agreement:

In consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals above are hereby incorporated in their entirety as if set forth fully herein.
2. SDC Rights. Buyer shall assign to Broken Top Limited Partnership ("BTLP"), an affiliate of Seller, any and all rights of Buyer to receive transportation systems development charges ("SDCs") reimbursements and/or credits from the City of Bend, regardless of whether such SDCs relate to the Development Agreement by and between the City of Bend and Broken Top Limited Partnership, dated November 6, 2000, or not. Such assignment shall be in a form reasonably acceptable to BTLP.
3. Construction Obligations. Buyer shall be obligated to commence construction on no fewer than twenty (20) units on the Property per calendar year, commencing in 2003 and continuing through 2013; provided, however, such obligation shall cease at such time as Buyer shall have commenced construction on the maximum number of units approved for the Property pursuant to the Broken Top Planned Unit Development Master Plan approved by the City of Bend. For each unit by which Buyer fails to meet this minimum construction schedule, Buyer shall pay BTLP the amount of \$3,250. On the first day of each year,

commencing on January 1, 2004, Buyer shall pay such amount to BTLTP for the construction shortfall in the previous calendar year. As used in this paragraph 2, "commence construction" on any unit means that Buyer shall have pulled a building permit and paid to the City of Bend a transportation SDC for such unit. It is the parties' intent that the minimum construction obligation be cumulative so that if Buyer commences construction on more than 20 units in one year, such excess may count toward fulfilling the minimum in the next calendar year.

4. Crane Prairie Road. Buyer shall initiate and process with the City of Bend and/or Deschutes County, as applicable, such applications as are necessary to remove Crane Prairie Road from the Broken Top Master Plan. Seller will, at no cost to itself, sign such applications and provide such other assistance as is reasonably necessary to permit Buyer to file and prosecute such applications. In the event that the City of Bend or any other governmental entity requires Buyer to construct Crane Prairie Road in connection with its development of the Property, Buyer shall be solely responsible for such construction costs. In the event that any governmental entity requires construction of Crane Prairie Road in connection with the development by Cascade Highlands Limited Partnership ("CHLP") of any land, Buyer shall have no obligation for such construction costs.

5. Possible SDC Reduction. The parties acknowledge that the City of Bend could reduce the amount of its transportation SDC at any time. If such amount is reduced at any time before January 1, 2014, the following provisions shall apply:

a. For each unit on which Buyer pays a reduced transportation SDC, Buyer shall pay to BTLTP the difference between \$3,250 and the reduced transportation SDC rate.

b. The amount of \$3,250 per unit required by paragraph 2 above for construction schedule shortfalls shall not be reduced.

6. Assumption of Option Agreement. To induce Seller to sell the Property to Buyer and as a part of the consideration for such purchase and sale, Buyer hereby assumes the obligations of Optionee pursuant to and agrees to be bound by the terms of that certain Option Agreement dated February 4, 1999 by and between Broken Top Development, L.L.C., as Owner, and Costa Pacific Homes LLC, as Optionee, relating to the Property (the "Option Agreement"), as if Seller had purchased the Property pursuant to the Option Agreement. The parties agree that, as used in the Option Agreement, the term "Closing Date" shall mean the date hereof.

7. Runs with the Land. This Agreement shall run with the land (the Property) and shall be binding upon and inure to the benefit of the parties and their successors and assigns, but shall be released upon satisfaction of each and every one of the covenants and obligations of Buyer contained in this Agreement.

8. Notices. Any notice given under this Note shall be in writing and shall be deemed given when delivered by personal service or three business days after placement in the U.S. Mails, certified, return receipt requested, postage prepaid, addressed as follows: (i) if to Buyer, 2622 SW Glacier Place, Suite 110, Redmond, Oregon 97756, or such other address as Buyer may designate by written notice to Seller; or (ii) if to Seller, 1325 N.W. Flanders Street,

Portland, Oregon 97209, or such other address as Seller may designate by written notice to Buyer.

9. Modifications. Any modification to this Agreement must be set forth in a writing which must be executed by both parties.

10. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable as written, then the parties intend and desire that: (i) such provision shall be enforceable to the fullest extent permitted by law, and (ii) the invalidity or unenforceability of such provision shall not affect the validity and enforceability of the remainder of this Agreement.

11. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Oregon.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same document.

13. Headings. The captions and headings of this Agreement are for convenience only and shall not be used to interpret or define the provisions hereof. All exhibits referred to in and attached to this Agreement are incorporated herein by reference.

14. Attorneys' Fees. In the event suit or action is instituted to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover from the other party its expenses incurred in connection therewith, including, without limitation, such amount as the court may adjudge reasonable as attorneys' or paralegals' fees at trial or on any appeal or review.

"BUYER":

MOUNTAIN CREST HOMES, LLC,  
an Oregon limited liability company

By HAYDEN ENTERPRISES, INC.,  
an Washington corporation  
Member

By:   
Hayden Watson, CEO

By COSTA PACIFIC HOMES, LLC  
an Oregon limited liability company  
Member

By:   
Franklin D. Piacentini, Member

"SELLER"

BROKEN TOP DEVELOPMENT, L.L.C.,  
an Oregon limited liability company

By: BROKEN TOP ASSOCIATES L.L.C.,  
an Oregon limited liability company  
Member

By: WESTON HOLDING CO., L.L.C.,  
an Oregon limited liability company  
Member

By: Joseph E. Weston  
Joseph E. Weston, Member

STATE OF OREGON

County of Deschutes

)  
)ss.  
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The foregoing instrument was acknowledged before me on this 28 day of Dec, 2001, by Hayden Watson, as CEO of Hayden Enterprises, Inc., as member of Mountain Crest Homes LLC, an Oregon limited liability company, on behalf of the company.



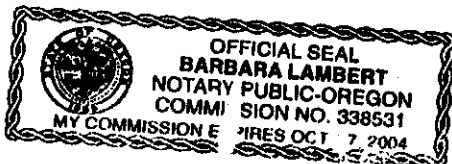
Judy K. Harris  
Notary Public for Oregon  
My Commission Expires: 2-13-05

STATE OF OREGON

County of Deschutes

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)ss.  
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The foregoing instrument was acknowledged before me on this 28 day of December, 2001, by Franklin D. Piacentini, as Member of Costa Pacific Homes, LLC, as member of Mountain Crest Homes LLC, an Oregon limited liability company, on behalf of the company.



Barbara Lambert  
Notary Public for Oregon  
My Commission Expires: 10-27-01

STATE OF OREGON

County of Deschutes

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) ss.  
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The foregoing instrument was acknowledged before me on this 28<sup>TH</sup> day of December, 2001, by Joseph E. Weston, as member of Weston Holdings Co., L.L.C., as member of Broken Top Associates L.L.C., as member of Broken Top Development, L.L.C., on behalf of Broken Top Development, L.L.C.



Barbara Lambert  
Notary Public for Oregon  
My Commission Expires: 10-27-04

**Exhibit "A"**

Parcel 2 of Partition Plat 1999-4, Deschutes County, Oregon, more particularly described as:

A parcel located in the Northeast Quarter (NE1/4) of Section Twelve (12), Township Eighteen (18) South, Range Eleven (11) East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Commencing at a brass cap at the Northeast corner of said Section 12; thence South 00° 37' 36" West, 1175.51 feet along the East line of said Section 12 to the POINT OF BEGINNING; thence South 00° 37' 36" West, 1146.11 feet to a 1/2 inch iron rod; thence leaving said East line, South 76° 13' 33" West, 1366.90 feet to a brass cap at the Center East 1/16 corner; thence North 00° 39' 59" East, 1423.31 feet along the West line of the E1/2 NE1/4 of said Section 12; thence leaving said West line, 128.45 feet along the arc of a 412.00 foot radius curve left (the long chord of which bears South 46° 11' 40" East, 127.93 feet); thence North 55° 39' 25" East, 143.86 feet; thence North 68° 17' 54" East, 236.51 feet; thence North 84° 30' 00" East, 221.98 feet; thence North 79° 14' 26" East, 223.66 feet; thence North 80° 20' 35" East, 153.62 feet; thence South 76° 24' 49" East, 155.78 feet; thence South 60° 37' 16" East, 171.18 feet to the point of beginning.