ORDINANCE NO. NS-1757

AN ORDINANCE APPROVING DEVELOPMENT AGREEMENTS

WHEREAS, The City of Bend is authorized by ORS 94.504 to enter into Development Agreements with persons having legal or equitable interests in real property; and

WHEREAS, Each of the attached Development Agreements contains Recitals which describe the objectives of the Development Agreements and describe the ways and means for accomplishing the objectives, which Recitals are incorporated herein; and

WHEREAS, Each of the attached Development Agreements includes documents that are assembled as part of a common set of exhibits which support the Development Agreements, the Intersection LID Petition and the Southern Bridge LID Petition; and

WHEREAS, The City of Bend has conducted public hearings and has considered the testimony and written public comment relating to the Development Agreements; and

WHEREAS, In accordance with findings adopted contemporaneously with this ordinance, the Bend City Council finds that each of the attached Development Agreements, listed in Sections 1 through 9 of this ordinance, complies with all applicable land use goals, laws, rules and regulations,

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

SECTION 1. That the attached "Development Agreement Between City of Bend and Brooks Resources Corporation" is hereby approved.

SECTION 2. That the attached "Development Agreement Between City of Bend and West Bend Property Company LLC" is hereby approved.

SECTION 3. That the attached "Development Agreement Between City of Bend and Broken Top Limited Partnership" is hereby approved.

SECTION 4. That the attached "Development Agreement Between City of Bend and Skyliner Summit Limited Partnership" is hereby approved.

SECTION 5. That the attached "Development Agreement Between City of Bend and Century Park LLC" is hereby approved.

SECTION 6. That the attached "Development Agreement Between City of Bend and Shevlin Heights LP" is hereby approved.

SECTION 7. That the attached "Development Agreement Between City of Bend and West Side Meadows, LLC" is hereby approved.

SECTION 8. That the attached "Development Agreement Between City of Bend and River Bend Limited Partnership" is hereby approved.

SECTION 9. That the attached "Development Agreement Between City of Bend and Cascade Highlands Limited Partnership" is hereby approved.

SECTION 10. That the City Manager is authorized to execute each of the attached Development Agreements, referred to in Sections 1-9 of this Ordinance, when such Development Agreements, together with the Bridge LID Petition and this Intersection LID Petition (collectively referred to as the "Consortium Agreements") are all fully executed and provided to the City of Bend by all of the Property Owners identified as parties.

Read for the first time the 4th day of October, 2000.

Read for the second time the 18th day of October, 2000.

Placed upon its passage the 18th day of October, 2000.

YES: 6 NO: 1 ABSTAIN: 0

Authenticated by the Mayor the 18th day of October, 2000.

Jim Young, Mayor

ATTEST:

Patricia Stell, City Recorder

Findings and Decision - Bend City Council

for Ordinance No. NS-1757

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I. INTRODUCTION

This document supports the City's Ordinance No. NS-1757 which adopts nine separate development agreements pursuant to ORS 94.504 through 94.528. Ordinance No. NS1757 is attached as Exhibit A. By this reference, the development agreements are incorporated herein and are collectively or individually referred to as "Development Agreements" or "Consortium Development Agreements." The Development Agreements are attached as part of Exhibit A. As noted in each Development Agreement, two associated Local Improvement District ("LID") petitions have been filed with the City requesting the formation of a LID to fund certain construction improvements. These findings describe the terms and provisions of the Development Agreements and outline their scope and limitations. These findings also describe the underlying premises of the Development Agreements and set forth their consistency with or satisfaction of the referenced applicable standards and criteria.

II. BACKGROUND INFORMATION

Until 1999, the transportation system on the west side of Bend operated at a level that permitted the review and approval of new development applications by requiring each new development to provide mitigation of its projected transportation impacts as the new development came online. As required by City policy, each developer provided a traffic impact analysis with each development application, and traffic impact mitigation was required on a case by case or "piecemeal" basis. With regard to transportation impacts, land use decisions were made with a focus on the impact that each specific development would have on the specific part(s) of the transportation system it impacted. This approach worked because the overall function of the system could be maintained by specific "fixes" (such as the installation of stop signs, traffic signals and other improvements) that would handle the impacts of the new development as growth was occurring at that time.

By mid-1999, the situation had changed. It became clear that many intersections on the west side of Bend were not operating at an acceptable level or were projected to fail in the near term. The lack of capacity for the west-side transportation system was a result of existing traffic and the traffic to be generated by additional west-side development that was on the immediate planning horizon within the west side of Bend. The amount of transportation system mitigation that would be required to keep the system as a whole functioning was more than could be exacted from any single development. The review of the development applications could no longer proceed on a piecemeal basis.

The City Hearings Officer's decision in the *Clabaugh* case (PZ 99-118), in October, 1999, incorporated hereby by this reference emphasized that some of the west-side transportation system was already failing, and would require mitigation before supporting new development. This decision reflected the new situation and relied on the concurrency principles in the Bend Area General Plan that before new development can occur, facilities adequate to support the new development must be provided. If a developer wishes to proceed with a new development where facilities are not adequate to support it, the developer must either provide the facilities or wait for the City to provide them. In *Clabaugh*, the developer did not propose to mitigate all of the impacts the new development would put on the already failing transportation system, and the City did not have immediate plans to supply the needed facilities at City expense. The application was therefore denied.

The *Clabaugh* decision made it clear that the large number of new development applications would require major improvements to maintain the overall functioning of the west-side transportation system and provision for these improvements had to be made before the new developments could be approved. Existing or projected failures were identified at the following intersections: Shevlin Park Road/Mount Washington Drive, 14th Street/Newport Avenue, College Way/Newport Avenue, 9th Street/Newport Avenue, 14th Street/Galveston Avenue, 14th Street/Simpson Avenue and Mount Washington Drive/Century Drive. The need to install a roundabout or traffic signal at these intersections was identified in a number of traffic studies prepared for individual development applications. However, no one developer could fund the costs of mitigating all of the intersections. In addition, the absence of pedestrian and bicycle facilities, linking future development with existing schools, recreational, retail and residential uses, were also noted.

The *Clabaugh* decision also pointed out that the prospect of collecting future system development charges (SDCs) from development would not constitute adequate mitigation of the impact that the traffic generated by a new development would have on a system that is already failing. The financial resources necessary to build the traffic improvements as they became necessary had to be identified before new development happened.

The subject of west-side transportation was addressed at several meetings of the Bend City Council, beginning in the latter part of 1999. On August 18, 1999, September 1, 1999, October 10, 1999 and October 20, 1999, the Council received briefings and discussed at length how to best address the west-side transportation system problems.

At its meeting on November 17, 1999, the City Council conducted an extensive public hearing on whether to give notice of intent to declare a moratorium on new west-side development because of deficiencies in the west-side transportation system. During this public hearing, representatives of west-side developers, who had formed the West Bend Transportation Consortium (the "Consortium") proposed to work with City Staff to identify a solution to the west-side transportation system problems. Following the public hearing, the Council adopted a four-part motion that provided that the City Council: "(1) . . . acknowledge the possibility of a moratorium; (2) . . . return the moratorium idea to the City for further study and encourage them to complete the traffic analysis that they've described; while (3) encouraging the City to continue to work with developers to develop an LID or other such area-wide methods that contribute to the problem resolution; and (4) . . . report this progress back to the Council at its work sessions with the idea of moving us toward a multifaceted solution to the problem." This motion reflected the Council's awareness, based on the advice of the City Attorney, that the City has a legal obligation to manage growth as mandated by State law.

An area-wide approach to transportation impact mitigation was required because, where the system is generally inadequate to support new development, as the west-side system is now, the required remedy is beyond that which can be reasonably required of a single developer as a condition of approval under ORS 197.522. Without a system-wide correction of the transportation system deficiencies that currently exist, there is no "reasonable condition" that could make the proposed development applications consistent with the City's land use regulations. A condition of approval is not "reasonable" or lawful unless: (1) it realistically addresses the impacts on the traffic system making the proposed activity consistent with the comprehensive plan and applicable regulations; and (2) its cost is roughly proportional to the impact of the proposed development.

In these circumstances, where the transportation system is generally inadequate to support new development there must be a practical solution to the problem. Requiring a single developer to remedy the system-wide deficiency would require the developer to pay more than the developer's proportional impact. This will not work. But allowing new development to go forward where the development would cause the system to fail, or to fail more drastically than it is already failing, will not work either. Further, a piecemeal approach to a system-wide issue will not provide a broad global solution to the situation.

At the City Council meeting on January 19, 2000, the West Bend Transportation Consortium presented a proposal for dealing with the area-wide problem. The Consortium proposal identified 11 distinct west side transportation system improvements to be financed and constructed by the Consortium pursuant to the terms of Development Agreements proposed in accordance with ORS 94 and the accompanying LID petitions. The proposal was premised on a transportation impact analysis prepared by Kittelson and Associates in accordance with City regulations and policies (the "Kittelson Report"). The Kittelson Report is attached as Exhibit B.

The purpose of the Consortium proposal was to address the present inadequacies of the transportation infrastructure servicing the west side of the City and to systematically provide through the Development Agreements for the timely construction of adequate traffic infrastructure to support all existing development and proposed new development contemplated by Consortium members.

The City Council directed the City to pursue the Consortium's proposal. Over the next several months, the City met extensively with the Consortium. On April 18, 2000 and again on May 17, 2000, Consortium representatives provided the Council with additional information

relating to the specific financial details of the Consortium's proposal. The City briefings were also provided to the Council at each meeting.

Discussions between the City and the Consortium have resulted in the proposed development agreements that are before the City Council. The proposed west side transportation solution now before the Council provides certainty that all of the needed system improvements will be supplied at the time they are needed. The approach combines the use of Development Agreements under ORS 94 with local improvement districts to finance the costs of system-enhancing improvements.

III. CONSORTIUM

Each of the parties to a Development Agreement with the City is with a member of the Westside Transportation Consortium (the "Consortium"). The Consortium is a group of property owners, including public entities, private landowners, and development interests that own property within the area of Bend generally west of the Deschutes River, more particularly described on Exhibit C. The entities that comprise the Consortium include:

1. Brooks Resources Corporation ("Brooks Resources")
2. Broken Top Limited Partnership ("Broken Top")
3. Skyliners Summit Limited Partnership ("Skyliners Summit")
4. Cascade Highlands Limited Partnership ("Cascade Highlands")
5. West Bend Property Company LLC ("West Bend")
6. Bend-LaPine School District (the "School District")
7. Shevlin Heights Limited Partnership ("Shevlin Heights")
8. Central Oregon Community College ("COCC")
9. Western Communications, Inc., dba The Bulletin (the "Bulletin")
10. River Bend Limited Partnership ("River Bend")
11. Century Park L.L.C. ("Century Park")
12. Westside Meadows LLP ("Westside Meadows")
13. Broken Top Development, LLC ("Broken Top Development")

Exhibit C depicts the ownerships of the Consortium members. As described in detail below, only some of the Consortium members have Development Agreements with the City of Bend. Consistent with ORS 94.504(1), the referenced Consortium members have legal or equitable interest in the real property that is subject to the Development Agreements. While some of the Consortium members own other lands within the City, only the lands that are referenced in the Development Agreements are subject to the terms of the Development Agreements.

Four of the Consortium members are not proposed parties for a Development Agreement with the City. The School District and COCC previously obtained land use approvals for their property referenced on Exhibit C, and as a condition of approval were required to participate in a local improvement district ("LID") or other funding mechanism to provide mitigation of the impact that the new developments would have on the west-side transportation system. (See: City Land Use Decisions PZ99-268 (COCC), PZ99-268 (School District), incorporated herein by reference.) The Bulletin also recently received land use approvals for its property referenced in Exhibit C, and was not conditioned to participate in a solution to the west side issues, but has separately agreed to participate as a petitioner in an LID as described in the Development Agreements. The School District and the Bulletin are petitioners in the Bridge LID Petition, and COCC is a petitioner in the Intersection LID Petition. Broken Top Development is not proposing any new development on its referenced property, so it

is not a party to a Development Agreement. All other Consortium members are parties to a Development Agreement under ORS 94.504, et seq.

One Consortium member, Cascade Highlands Limited Partnership ("Cascade Highlands"), proposes to develop property located in the urban reserve area along Bend's western boundary outside of the City limits. Accordingly, the Development Agreement with Cascade Highlands will be executed by Deschutes County in accordance with the Joint Management Agreement between Deschutes County and the City that regulates the urban reserve area.

IV. BACKGROUND ON DEVELOPMENT AGREEMENTS

ORS 94.504 authorizes cities to enter into development agreements with property owners to establish each of the parties' rights and obligations in connection with certain aspects of the proposed developments. In this case, the purpose of the Development Agreements is to address transportation infrastructure needs and to definitively establish the parties' obligations related to off-site traffic impact mitigation.

The Development Agreements establish a maximum density and type of use for the proposed development on each of the referenced properties. The Development Agreements authorize development to proceed at a level and in a manner consistent with the assumptions of the traffic impact analysis in exchange for the Consortium members' provision of adequate off-site transportation mitigation to fully accommodate the increased traffic impact from the proposed development.

The scope of the Development Agreements is limited to the resolution of off-site transportation mitigation. The specific proposed development of the referenced properties under the Development Agreement is subject to future discretionary approvals by the City so there is no land use approval of any land use request such as a subdivision approval, zone change or plan amendment. As a result, these Development Agreements merely vest the standards and criteria applicable to the referenced proposed development and establish the maximum density of the proposed development subject to future approval through a discretionary land use application process. The Development Agreements also discharge the obligation of each Consortium member for its off-site transportation impacts up to the proposed development's maximum density. In other words, these Development Agreements do not approve the proposed development on the referenced properties. The Development Agreements do, however, discharge a Consortium member's obligation to mitigate off-site transportation impacts when its proposed development is consistent with the level of use allowed by the Development Agreement.

The Development Agreements provide for a realistic mechanism for constructing 11 distinct transportation system improvements. These improvements make a significant contribution toward relieving existing traffic problems in the west side transportation system. Ten of these improvements are identified in the Intersection LID; the other is described in the Bridge LID. In addition, the Development Agreements themselves describe other improvements (defined as "Other Improvements") that are more specific to each contemplated project that will be constructed pursuant to the terms of the Development Agreements. A schedule for commencement of construction for each distinct system fix is provided for in the Development Agreements. As a result, each Consortium member assigned the responsibility for a specific improvement must commence construction under the timeline. In the event that construction is not commenced, the Intersection LID gives the City the option to construct that project and assess the property for the cost of the construction as permitted by law.

The Development Agreements also provide that during the term of the agreements, the City shall collect system development charges ("SDC") from a sole recovery area identified for each property from which the Consortium member will be reimbursed for the cost of constructing the street and intersection projects. The Bridge LID has a city-wide or shared SDC recovery area. The Consortium member's contributions toward the cost of constructing the improvements is to be reimbursed consistent with the City's policy. It is recognized that Cascade Highlands will not be reimbursed under the City's SDC reimbursement policy, because its property is located outside of the City limits.

As discussed in detail below, the Kittelson Report and the City's independent traffic review of the Development Agreements show that the traffic system improvements

identified in the Development Agreements and the accompanying LID petitions will be adequate under the City's regulations and policies and state law and regulations to mitigate the off-site transportation impacts that the proposed developments contemplated by the Development Agreements will have on the City's transportation system. Further, the record demonstrates that the development contemplated under the Development Agreements generates SDC revenues in excess of the costs of these improvements thereby providing to the City adequate funds from SDC collections or exactions from other developers, or various other sources to complete upgrades or enhancements to the west side transportation system.

V. BACKGROUND ON LID PETITIONS

In order to assure that the infrastructure improvements are constructed according to schedule and that their construction is assured, the approach recommended by the City included two separate LID petitions known as the Intersection LID and the Southern Bridge LID. The referenced LID petitions are attached as Exhibit D and E.

Nine of the Consortium members signed the Intersection LID Petition. The petitioners are Brooks Resources, West Bend, Broken Top, Skyliners Summit, Century Park, Shevlin Heights, River Bend, Westside Meadows, and COCC.

The Intersection LID Petition allocates among the petitioners the responsibility for constructing 11 of the transportation infrastructure improvements. It also provides a schedule for the completion of the improvements by the petitioners and provides that a failure of a petitioner to timely commence and complete its assigned improvements gives the City the option to construct the improvement, assess the property for the cost of construction and impose liens against the property as permitted by law.

The Bridge LID Petition was signed by five Consortium members. These petitioners are Brooks Resources, West Bend, Skyliner Summit, the Bulletin, and the School District. The Bridge LID Petition requests the formation of an LID as a funding mechanism for the construction costs for the Southern Bridge, the bridge to be constructed over the Deschutes River where the proposed extension of Reed Market Road will cross the river as provided in the City's General Plan. Exhibit C shows the bridge location. The Bridge LID Petition allocates responsibility for the cost of constructing the Southern Bridge. The petitioners in the Bridge LID have agreed upon a schedule for the completion of the Southern Bridge and the amount to be contributed by each petitioner.

VI. BACKGROUND ON SYSTEM DEVELOPMENT CHARGE REIMBURSEMENTS

As detailed in Section V of these Findings, the City Staff recommended that the Consortium members form two separate Local Improvement Districts to assure that the infrastructure improvements described in Section VII are constructed according to schedule. The Intersection LID Petition allocates the responsibility for constructing the transportation infrastructure improvements. Each Consortium member is assigned specific improvements, and the LID provides a schedule for completion of each improvement. The Bridge LID Petition allocates responsibility for the cost of constructing the Southern Bridge to Brooks Resources, West Bend, Skyliner Summit, the Bulletin, and the School District. The petitioners in the Bridge LID have agreed upon a schedule for completion of the Southern Bridge and the amount to be contributed by each petitioner.

If each Consortium member constructs the specified improvements within the time periods set forth in the LID Petitions, the City will reimburse the petitioners for their contributions to the west side transportation infrastructure pursuant to the City's SDC Reimbursement Policy in Section 4 of Street Policy 5. The Development Agreements provide that during the term of the Agreements, the City shall collect system development charges ("SDC's") from a sole recovery area identified for each of the Consortium member's properties. The Bridge LID has a city-wide or shared SDC recovery area. The City will utilize the revenue collected from each recovery area to reimburse the applicable Consortium members for the cost of constructing the street and intersection projects. Cascade Highlands will not be reimbursed under the City's SDC Reimbursement Policy because its property is outside the City limits. The amount of annual reimbursement will be confined to the amount of SDCs actually collected from the recovery areas. The record demonstrates that the development contemplated under the

Development Agreements will generate SDC revenues in excess of the costs of the improvements financed by the petitioners, thereby providing to the City adequate funds from SDC collections or exactions from other developers or various other sources to complete upgrades or enhancements to the west side transportation system. This SDC reimbursement plan is consistent with local and state law for the following reasons.

According to the Development Agreements and the LID Petitions, the City will reimburse each Consortium member for principal payments actually made based on the City approved cost of construction of the street and intersection projects according to the SDC Reimbursement Policy in Section 4 of Street Policy 5, which states, in full:

> In addition to the SDC credit a developer may be eligible for SDC reimbursement. SDC reimbursement shall be determined as follows:
>
> The maximum SDC reimbursement shall be limited to the collector and/or arterial street improvement costs expended by the developer, as determined by the City Engineer, times the percentage of the maximum allowable SDC in place at the time of executing an agreement with the City, less any SDC credit related to the improvements. There shall be no SDC reimbursement if the SDC credit exceeds the maximum SDC reimbursement. Qualified costs of collector and/or arterial street improvements shall include actual construction costs, exclusive right-of-way and preliminary engineering costs.

The Consortium's SDC reimbursement plan is consistent with local law because it complies with the above-quoted provisions of Street Policy 5. The SDC Reimbursement Policy is and separate from and in addition to the SDC Credit Policy in Section 3 of Street Policy 5. The City will not be issuing SDC credits to the Consortium members. Rather, the City will be reimbursing the Consortium members for their actual contributions to the infrastructure improvements described in Section VII of these Findings. Therefore, the provisions of the SDC Credit Policy, Section 3 of Street Policy 5, do not apply to the Development Applications or the LID Petitions. This distinction is noteworthy because the Council received comments suggesting that the SDC reimbursement plan violated the local and state laws pertaining to SDC credits. However, because the City has chosen to issue reimbursements rather than credits, the comments submitted to the Council are without merit, as described below.

The City's Reimbursement Policy is consistent with ORS 223, which sets forth a uniform framework for the imposition of system development charges by governmental units. According to ORS 223.304(3), a local ordinance or resolution that establishes a system development charge program shall also provide a credit against such fee for the construction of a "Qualified Public Improvement." As required by ORS 223.304(3), the City of Bend created a system development charge program that provides for SDC credits, and those credits are only available for "Qualified Public Improvements" (i.e., improvements listed in the Capital Improvement Program and identified in the Comprehensive Plan). However, the City also created a separate SDC reimbursement provision as is permitted by ORS 223.304(4)(b), which states, in part:

> This subsection shall not prohibit a unit of government from providing a greater credit, or from establishing a system providing for the transferability of credits, or from providing a credit for a capital improvement not identified in the plan adopted pursuant to ORS 223.309, or from providing a share of the cost of such improvement by other means, if the unit of government so chooses.

Pursuant to ORS 223.304(4)(b), the City has the discretion to create a local SDC policy that goes beyond the state law required credit. ORS 223.304(4)(b) permits these types of additional funding mechanisms if the local government chooses to finance improvements through such methods. The City created Sections 3 and 4 of Street Policy 5 to provide two distinct methods to compensate developers for constructing needed public improvements. The SDC reimbursement plan in the Development Agreements is consistent with the reimbursement method in Section 4 and with ORS 223.

The Council received comments suggesting that the Development Agreements violate ORS 223.304(4)(a), which provides that "credit for qualified public improvements [that are located on or contiguous to property that is the subject of development approval and are required to be built larger or with greater capacity than is necessary for the particular development project to which the SDC is related] may be granted only for the cost of that portion of such improvement that exceeds the government unit's minimum standard facility size or capacity needed to serve the particular development project or property." The Development Agreements do not violate this provision because the Agreements contemplate SDC reimbursements under the unique City Reimbursement Policy, and ORS 223.304(4)(a) only applies to SDC credits issued pursuant to ORS 223.304(3).

The Council also received comments suggesting that the Development Agreements violated ORS 223 because some of the infrastructure improvements do not qualify as "Qualified Public Improvements" because they are not on the City's Capital Improvement Program list. ORS 223.304(3) states that an SDC credit may be granted for a "Qualified Public Improvement," and a Qualified Public Improvement is defined by ORS 223.304(3) as a capital improvement that is required as a condition of development approval and identified in the plan adopted pursuant to ORS 223.309. Because the Development Agreements contemplate a SDC reimbursement pursuant to Section 4 of Street Policy 5 rather than a SDC credit pursuant to Section 3, the requirement that the improvements be "Qualified Public Improvements" is not applicable. According to Section 4 of Street Policy 5, the City may reimburse the Consortium members for the actual costs of collector and/or arterial street improvements regardless of whether the improvements are included on the Capital Improvement Program list. It is noted below in Section XVII, all of the infrastructure improvements are included in the City's Transportation System Plan ("TSP") and are consistent with the City's TSP. In summary, as detailed above, the reimbursement plan in the Development Agreements complies with the Reimbursement Policy in Section 4 of Street Policy 5, which is consistent with ORS 223.

VII. SUMMARY OF INFRASTRUCTURE IMPROVEMENTS

The transportation infrastructure improvements that are referenced in the Development Agreements are depicted on Exhibit ___. The improvements include eight roundabouts at intersections in the west-side transportation system, street improvements and extensions, and the construction of the Southern Bridge. In addition, each of the Development Agreements specifies additional off-site improvements to be accomplished by each Consortium member under the terms of the Development Agreements. In the Development Agreements, these are referred to as the "Other Improvements." These Other Improvements, often adjacent to or near the contemplated development, consist of off-site street improvements or upgrades, and off-site pedestrian, bicycle, transit or trail improvements that will be completed pursuant to the terms of the Development Agreements. The Kittelson Report and the City's review demonstrate that the overall proposal as documented in the Development Agreements is adequate to support the new development proposed by the Consortium members and to remedy the transportation infrastructure inadequacies of the west site of Bend.

The Development Agreements and the associated LID petitions are premised on a comprehensive traffic analysis of the west-side transportation system. The traffic analysis considers existing uses and projected growth, assesses the full buildout of the proposed development contemplated by the Development Agreements and confirms that the identified planned transportation infrastructure improvements are adequate to address the current deficiencies and supply the necessary long-term traffic system fix to allow the proposed developments to occur.

By virtue of the series of Development Agreements and the associated LID petitions, the Development Agreements collectively ensure that the west-side transportation system will function at acceptable levels of service (LOS) during all phases of the development contemplated under the Development Agreements. Responsibility is assigned to one or more members of the Consortium for construction of specific improvements on a system-wide basis according to a specified schedule to ensure that the proposed developments contemplated by the Development Agreements and the transportation infrastructure improvements proceed in an orderly manner.

The traffic studies and other data show that the Consortium proposal provides a realistic mechanism for making long term improvements to the west side transportation system,

sufficient to support the Consortium's new development over the 20 year planning horizon. The data further show that financing available through future SDC collections, along with exactions that will be required of future developers or other options available to the City, will be adequate to make system upgrades as they are needed from time to time to address background growth as well as the full impact of the new proposed developments at build-out. This will keep the west side transportation system functioning at all times during the 20-year planning period. The background of the Consortium agreements and a summary of how the agreements work is set forth in the "Recitals" sections of the Development Agreements, the Bridge LID Petition and the Intersection LID Petition. Those recitals are incorporated into these legislative findings. By utilization of Development Agreements and LIDs, the Consortium proposal provides assurance that the west side transportation system will function satisfactorily during all phases of the development contemplated under the Development Agreements.

VIII. PROCESS

The Development Agreements were adopted by City ordinance consistent with the procedures set forth in the Bend Code, Sections 10-16.10, 10-16.11(2), and 10-16.12(3). The City utilized the notice and hearing requirements for Type III legislative actions in Section 10-16 because the ordinance adopting the Development Agreements is legislative. Section 10-16.1(6) defines a legislative action as "any code, ordinance, or plan text amendments or plan map and zoning amendments that involve broad public policy decisions that apply to more than a few properties." Conversely, Section 10-16.1(8) defines a quasi-judicial action as "a land use decision, zone change, plan amendment, or a development permit hearing affecting only one or a few properties." The subject ordinance is legislative rather than quasi-judicial because (1) the Development Agreements involve broad public policy decisions that will ultimately establish the systemwide transportation impact mitigation approach for the entire west side of Bend, and (2) the Development Agreements apply to many properties within the City.

As detailed in Section II of these Findings, many intersections on the west side of Bend are not operating at an acceptable level and are projected to fail in the near term. The amount of transportation system mitigation necessary to keep the system functioning is more than could be exacted from any single development under ORS 197.522, and the review of development applications and the imposition of traffic impact mitigation conditions can no longer proceed on a piecemeal basis. Consequently, it is necessary to formulate an area-wide solution to transportation impact mitigation for the west side of Bend.

The West Bend Transportation Consortium has responded to the transportation system failure by working with City Staff to identify an area-wide solution to the problem. The Consortium's plan identifies 11 distinct west side transportation system improvements to be financed and constructed by the Consortium pursuant to the terms of the Development Agreements and the accompanying LID petitions. The Consortium proposal addresses the current inadequacies of the west-side transportation infrastructure and systematically provides for the timely construction of adequate traffic infrastructure to support all existing development and proposed new development contemplated by Consortium members. However, the Development Agreements do not approve the proposed developments on the referenced properties. Each development proposal is subject to future discretionary approvals by the City according to the quasi-judicial procedures of Section 10. Therefore, the Consortium's global transportation impact mitigation program qualifies as a legislative action under Section 10-16.1(6) of the Bend Code. Accordingly, the City processed the ordinance adopting the Development Agreements pursuant to the applicable notice and hearing requirements for Type III legislative actions in Sections 10-16.10, 10-16.11(2), and 10-16.12(3).

Consistent with Section 10-16.10, the first hearing on the Development Agreements was held on June 21, 2000. Pursuant to Section 10-16.11(2) and 10-16.12(3), notice of the hearing was published in the Bend Bulletin 11 days prior to the hearing. In addition, the City exercised the discretion afforded to it by the City of Bend Procedures Ordinance by providing additional notice of the first hearing. Pursuant to Section 10-16.12(3)(a), additional notice to 1067 property owners was given for the first hearing. Staff did not prepare a staff report prior to the hearing because, unlike Section 10-16.9, which governs quasi-judicial hearings, Section 10-16.10 does not require staff reports for hearings on legislative actions. Instead, in accordance with Section 10-16.10(1), Planning Staff described the proposed general terms of the Development Agreements and explained how the Agreements were consistent with local land use regulations. As permitted by Section 10-16.10(2), the hearing was

continued until July 5, 2000, and additional public testimony was received at the continued hearing.

Thereafter, following completion of the drafting and the City review of the Development Agreements, the City conducted a second public hearing on September 20, 2000. Notice was published 10 days prior to the hearing in accordance Sections 10-16.11(2) and pursuant to 10-16.12(3), additional notice was mailed to all persons who had participated in the legislative process. The notice advised the public that all documents (including copies of all development agreements and the LID petitions) were available for public review prior to the hearing. Public testimony was received at the hearing, the hearing was continued until October 4, 2000 and written testimony was allowed throughout the continuation period in order to give the public ample time to review and comment on the documents. At the continued hearing, additional public comment was received. Following the continued public comment at the October 4, 2000 hearing, the City briefed the Council on the issues raised and the Council closed the public testimony. Further written testimony was accepted until October 11, 2000. A first reading of Ordinance No. _____ was completed on October 4, 2000. The City Council's processes for hearing and approving the Development Agreements was consistent with its procedural ordinances. As is contemplated by Policies 15 and 16 of Chapter 1 of the Bend Area General Plan, the City provided varied opportunities for public participation and involvement.

The City's process for reviewing and approving the Development Agreements was consistent with local law, as described above. In addition, the process was also consistent with state law, specifically ORS 94 and ORS 197, for the following reasons. Pursuant to ORS 94.513(1), a city may establish local procedures and requirements for the consideration of development agreements. The City of Bend's existing land use procedures are adequate to provide a process to review development agreements under ORS 94.513(1) and the adoption of special procedures are unnecessary. Therefore, under ORS 94.513(2), approval of the Development Agreements requires compliance with <u>existing</u> applicable local regulations, including the provisions of the Bend Code discussed above. As required by ORS 94.513(2), the City adopted the Development Agreements after notice and hearing pursuant to the process set forth in Section 10 of the Bend Code.

Although comments were submitted to the Council suggesting that ORS 94.513(1) <u>requires</u> the City to adopt new procedures and requirements for the consideration of development agreements, ORS 94.513(1) is clearly permissive rather than mandatory. Therefore, while the City has the discretion to adopt new regulations to govern the processing of development agreements, the City may choose to forgo this option and utilize existing provisions of the City Code. The City's decision to do so in this case is consistent with ORS 94.

The statutory provisions related to development agreements, including its procedural adoption requirements, is a separate and distinct procedure designed specifically and only for the review of development agreements that comply with the requirements of ORS 94. ORS 94.513 requires that approval of a development agreement be completed in compliance with local regulations after "notice and hearing". It does not reference that the public hearing be one as provided for in ORS 197, which relates to different forms and types of land use processes and approvals. Chapter 94 authorized the City to conduct a public hearing, in accordance with its local land use processes and procedures. In this instance, pursuant to ORS 94 and its local ordinances related to notice and hearing, the City adopted the Development Agreements. Its process satisfied local regulations and ORS 94.

As a final matter, contrary to comments submitted to the Council, the City was not required to follow the post-acknowledgement procedures set forth in ORS 197.610 through 197.625 because the ordinance adopting the Development Agreements is not a "land use regulation" under ORS 197.015(11). A "land use regulation" is a "local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan." ORS 197.015(11). The Development Agreements do not fit within this description. The Agreements vest <u>existing</u> land use regulations with respect to a number of specific properties, but they do not establish new standards for implementing a comprehensive plan. The standards subject to vesting under the Agreements have already been adopted as "land use regulations" by the City pursuant to the applicable provisions of ORS 197. Therefore, the post-acknowledgement procedures of ORS 197.610 through 197.625 do not apply to this ordinance.

IX. DESCRIPTION OF LAND USE ASSUMPTIONS IN DEVELOPMENT AGREEMENTS

Exhibit F is a table from the Kittelson Report that summarizes the proposed developments on the referenced properties for each Development Agreement. This section of the findings briefly summarizes the land use assumptions related to the proposed developments on the referenced properties and then outlines the specific off-site transportation mitigation incorporated into the Development Agreements that serves to adequately supply the necessary infrastructure improvements. As noted below, the specific uses, their intensity or density and their scheduled build-out was incorporated into the Development Agreements and served as the basis for the Kittelson analysis.

A. Broken Top

Broken Top proposes to develop two projects under the terms of its Development Agreement. The location of each of these projects is more specifically described in Exhibit B. The first project entitled "Broken Top" would provide 240 single-family dwellings by the year 2007. The second project entitled "Costa Pacific" would involve the construction of 64 single-family dwellings by the year 2007. These numbers represent 100 percent buildout of each of these projects. Therefore, the 2020 growth projection for both Broken Top and Costa Pacific are the same as the 2007 projection. The trip distribution and net new trips generated by the Broken Top and Costa Pacific developments are provided at F-1 and F-10, respectively, of the Kittelson Report. The estimated trip generation for 2007 is 235 p.m. peak-hour trips for Broken Top and 70 p.m. peak-hour trips for Costa Pacific.

B. Skyliners Summit

Skyliners Summit proposes to develop one project under the terms of its Development Agreement. The location of the project is more specifically described in Exhibit B. This project is entitled "Skyliners Summit" and includes 293 single-family dwellings. These single-family dwellings are projected for full buildout by the year 2007. The 2007 and 2020 growth projections for the Skyliners Summit therefore remain constant. The trip distribution and net new trips for Skyliners Summit are provided at Figure F-2 of the Kittelson Report. The estimated trip generation at full buildout is a total of 280 p.m. peak-hour trips.

C. Cascade Highlands

Cascade Highlands proposes to develop one project under the terms of its Development Agreement. The location of the project is more specifically described in Exhibit B. The project entitled "Cascade Highlands" is projected to include the following development in the year 2007: (1) 294 single-family dwellings; (2) 198 multi-family dwellings; (3) 96 condominiums; (4) 15,000 square feet of retail space; (5) an 18-hole golf course; (6) a 280-room resort hotel; and (7) a 200-room conference hotel. The trip distribution and net new trips for Cascade Highlands are provided at Figure F-3 of the Kittelson Report. Based on the 2007 growth projection, the Kittelson Report projects 765 net new p.m. peak-hour trips in the year 2007. The second phase of Cascade Highlands will occur by the year 2020 and after the expiration of the Development Agreement. The 2020 growth projection for Cascade Highlands includes: (1) an additional 73 single-family dwellings; (2) an additional 45 multi-family dwellings; (3) 32 additional condominiums; (4) an additional 70 rooms within the resort hotel; (5) 50 additional rooms in the conference hotel; and (6) an additional 25,000 square feet of retail. The projected p.m. peak-hour trips in 2020 will be an additional 210 net new trips.

D. West Bend

West Bend proposes to develop one project under its Development Agreement entitled "Northwest Crossing." The location of the project is more specifically described in Exhibit B. The Northwest Crossing project will include a partial buildout in 2007 with full buildout by 2020. The year 2007 project buildout for Northwest Crossing includes: (1) 897 single-family dwellings; (2) 239 apartments/condominiums; (3) 240,000 square feet of retail space; (4) 128,000 square feet of office space; and (5) 316,000 square feet of industrial park building space. The trip distribution and net new trips for Northwest Crossing are provided at Figure F-4 of the Kittelson Report. Based on the Kittelson Report, the year 2007 estimated trip generation for the p.m. peak hour is 2,330 net new trips. The second phase of Northwest

Crossings is projected to be complete by the year 2020 and after the expiration of the Development Agreement. In 2020, Northwest Crossing projects an additional 225 single-family dwellings, 59 additional apartments or condominiums, 60,000 additional square feet of retail, 32,000 additional square feet of office space and 79,000 additional square feet of industrial park. Accordingly, the Kittelson Report identifies an additional 435 net new p.m. peak-hour trips in 2020. The proposed development of Northwest Crossing incorporated the additional potential traffic that may be generated by its proposed project. Presently, it has a pending application which, if approved, would result in this greater trip generation than would be permitted under the existing residential zoning designation. For the analysis of its Development Agreement, the higher trip generation associated with the rezone to mixed-use development was analyzed even though its approval is not vested through this process and is subject to future approval processes.

E. Brooks Resources

Brooks Resources proposes to develop one project under the terms of its Development Agreement. The location of the project is more specifically described in Exhibit B. It is entitled "Mount Bachelor Village" and is proposed for full buildout in the year 2007. The trip distribution and net new trips for Mt. Bachelor Village are provided at Figure F-5 of the Kittelson Report. Mount Bachelor Village will include 307 units of congregate care, 23 units of residential condominiums, 70 units of recreational housing and 110,000 square feet of retail or office space. The total p.m. projected peak-hour trips for 2007 and 2020 is 380 net new trips.

F. Century Park

Century Park proposes to develop one project under the terms of its Development Agreement. The location of the project is more specifically described in Exhibit B and the trip distribution and net new trips for Century Park are provided at Figure F-6 of the Kittelson Report. The project is proposed for buildout by the year 2007. As a result, the trip generation estimate for the Century Park development remains constant between 2007 and 2020. The Century Park project includes 161,184 square feet of various retail uses. The total p.m. peak-hour trips for both 2007 and 2020 is projected at 980 net new trips.

G. Shevlin Heights

Shevlin Heights proposes to develop one project under the terms of its Development Agreement. The project is entitled "Shevlin Heights." The location of the project is more specifically described in Exhibits B and the trip distribution and net new trips are provided at Figure F-7 of the Kittelson Report. The development is projected for full buildout at 2007 and therefore, the traffic projections remain the same between 2007 and 2020. Shevlin Heights will include 185 single-family dwellings and is projected to generate 185 p.m. peak-hour trips.

H. Westside Meadows

Westside Meadows intends to develop one project under the terms of its Development Agreement. It is entitled "Westside Meadows." The location of the project is more specifically described in Exhibit B and the trip distribution and net new trips are provided at Figure F-8 of the Kittelson Report. The project is projected for full buildout at 2007 and, therefore, the traffic projections remain the same between 2007 and 2020. Westside Meadows includes a projected 125 single-family dwellings and will generate 125 p.m. peak-hour trips in 2007 and 2020.

I. River Bend

River Bend includes one project under the terms of its Development Agreement, entitled "Old Mill District." The location of the project is more specifically described in Exhibit F-9 and the trip distribution for the projects is provided at Figure F-9 of the Kittelson Report. The project will include 185,000 square feet of retail space, 70,000 square feet of office space and 56 condominiums. Land use approvals have already been separately obtained for 100,000 square feet of retail. The project is proposed for full buildout by 2007 and therefore, the trip generation analysis will remain constant through 2020. According to the Kittelson Report, the p.m. peak-hour trip generation for the Old Mill District in the year 2007 is 1,125 trips of which only 10-18 percent impacts west side intersections. As a condition to its approval for the

referenced project, River Bend was required to construct improvements to one of the intersections addressed by the Consortium proposal.

J. Central Oregon Community College

COCC filed an application in 1999 (File No. 99-268). The application was approved with conditions requiring improvements to the College Way/Newport Avenue intersection and COCC's participation in a LID to fund such improvements. COCC is a petitioner in the Intersection LID, and is responsible for the construction of a single-lane roundabout at the intersection of Newport and College Way and which will therefore satisfy the conditions in File No. 99-268.

X. DISCUSSION OF KITTELSON REPORT

The Kittelson Report was prepared to evaluate and assess the transportation system on Bend's west side in a very comprehensive and broad fashion in order to identify near-term and long-term transportation capacity and connectivity improvement needs including the requirements from the developments contemplated by the Development Agreements. As discussed in more detail below, in this portion of the findings and decision, the City outlines the detailed assumptions, methodologies and findings of the Kittelson Report. The Report includes an analysis of traffic operations in a broad area of the west side of Bend. The area of review or study (the "Study Area") was established by the City engineering and transportation staff in accordance with the City guidelines for such purposes. The parameters of the Study Area are defined in detail below.

In addition to an analysis of traffic operations in the Study Area, the Kittelson Report also includes an analysis of the adequacy of the existing and proposed pedestrian and bicycle system in the Study Area. Based on this analysis, the Consortium proposal and the referenced Development Agreements incorporate several transportation system improvements that enhance connectivity, accommodate the proposed developments contemplated by the Development Agreements, serve to address existing operational inadequacies and bring the transportation systems in the Study Area into compliance with the City's operational/capacity criteria and the provisions of the Transportation Planning Rule.

A. Discussion of the Study Area

The City's Street Policy No. 6, entitled "Traffic Impact Analysis - Development Requirements Policy," incorporated herein by reference, establishes guidelines for the scope of the transportation impact analysis ("TIA") for development subject to the City's land use approval process. It provides a general guide to the City and to the public for the scope of the necessary transportation impact analysis for new development and expansion of existing development. The guidelines authorize the City Engineer to apply the guidelines at his discretion to determine the scope of the Study Area.

In this case, in accordance with these referenced guidelines, the City Engineer established a broad Study Area encompassing much of the area of the west side of Bend. The City Engineer directed Kittelson and Associates to address 10 separate arterial/collector intersections as follows:

1. 14th Street/Galveston Avenue
2. 14th Street/Newport Avenue
3. 9th Street/Newport Avenue
4. Newport Avenue/College Way
5. Shevlin Park Road/Mount Washington Drive
6. Skyliners Road/Mount Washington Drive
7. Mount Washington Drive/Simpson Avenue
8. 14th Street/Simpson Avenue
9. Century Drive/Colorado Avenue
10. Century Drive/Mount Washington Drive

In addition, the City Engineer required that the TIA address Year 2000 existing conditions and Year 2007 conditions. Specifically, the City Engineer requested the following analyses from the Kittelson Report:

1. Year 2000 existing land use and transportation system conditions within the study area;
2. Planned developments and transportation improvements in the study area;
3. Year 2007 background traffic conditions during the weekday p.m. peak period;
4. Year 2007 trip generation and distribution estimates for the proposed developments;
5. Estimated Year 2007 total traffic conditions with build-out of the proposed developments during the weekday p.m. peak period;
6. Needed connectivity improvements for pedestrians and cyclists; and
7. Required intersection improvement measures.

The Study Area established by the City Engineer in this case was premised in part on the nature of the Development Agreements. By state law, a Development Agreement has a term of 7 years. In accordance with the term of the Development Agreements, the Kittelson Report evaluates Year 2000 and Year 2007 conditions. The City Engineer has the discretion to set the TIA time frames (Section 4.1.3). The Report also includes an evaluation of Year 2020 conditions which was performed at the request of the City Engineer in order to identify for the City the ultimate improvement needs at the Study Area intersections. This longer term analysis was not completed to establish mitigation measures or requirements for the Development Agreements which only have a 7 year term, but to forecast long-term broader system study needs.

The City's Traffic Engineer outlined the basis for that office's determination of the scope of the Study Area by memorandum of September 29, 2000. The memorandum to the City's Planning Director was in response to inquiries to the City Council about the scope of the TIA Study Area. In that memorandum, the City Engineer explained the rationale for the scope of the Study Area and summarized the basis for the application of the City's guidelines (to be applied at the City Engineer's sole discretion pursuant to Section 1 of the TIA Policy). The referenced memorandum is incorporated herein by this reference.

The City Council finds that the City Engineer's determination of the scope of the Study Area is consistent with the referenced Policy and, further that the basis for the Study Area was reasonable given the nature and term of the Development Agreements. As noted in the September 29, 2000 memorandum, the City Engineer relied on numerous existing technical reports and studies that had already evaluated many areas of the City as well as the City's transportation modeling analysis (EMME/2) that projects traffic volumes and growth throughout the City. By considering all available data and existing TIA reports, consulting with the Oregon Department of Transportation (ODOT), and analyzing the city-wide model, the City Engineer had a reasonable basis on which to exercise the discretion afforded to the City Engineer under the referenced Street Policy. The City Council finds that the scope of the TIA is consistent with Street Policy 6 (Traffic Impact Analysis – Development Requirements Policy).

B. Discussion of Methodology

The Kittelson Report analyzed the Consortium proposal consistent with the City Staff's determination of the appropriate Study Area. The Kittelson report documents its methodologies, assumptions and findings of its traffic analysis evaluating the transportation system to identify near-term and long-term transportation capacity and connectivity improvement needs. It includes an analysis of traffic operations at ten intersections on the west side of Bend, a qualitative analysis of the adequacy of the existing and proposed pedestrian and bicycle system in the Study Area, and recommendations for transportation system improvements. The primary findings are summarized below:

- Under existing conditions, two of the study area intersections require mitigation measures to meet the City's criteria for acceptable operating standards. These are 14th Street/Galveston Avenue and 14th/Newport Avenue. A roundabout has recently been constructed at the Shevlin Park/Mt. Washington Drive intersection in response to a projected failure at this intersection.

- Under year 2007 background conditions (i.e., with no development on the subject properties), the intersections of 14th Street/Simpson Avenue and Century Drive/Mt. Washington Drive will also require mitigation.

- With build-out of the consortium and growth in background traffic, all of the Study Area intersections except 14th Street-Century Drive/Colorado Avenue and Shevlin Park/Mt. Washington Drive (where roundabouts have already been constructed) will require mitigation. In response to this projected failure, the Consortium is proposing to construct roundabouts at eight of the Study Area intersections. The installation of a traffic signal or roundabout at these intersections would also allow the intersections to function acceptably in the future.

- Per the development agreements, the Consortium will fund single-lane roundabouts at seven of the Study Area intersections and a double-lane roundabout at the Century Drive/Mt. Washington Drive intersection. (The Century Drive/Mt. Washington Drive intersection will be originally constructed as a single-lane roundabout, with accommodations to expand to a double-lane when needed.) Four additional intersections may need to be upgraded to a double-lane roundabout within seven years if growth occurs as forecasted. Per the development agreements, the City will upgrade these intersections to double-lane roundabouts at the time that additional intersection improvement is needed. In addition, the City will construct a single-lane roundabout at the Mt. Washington/Simpson Avenue intersection when the improvement is warranted.

- With the roadway and intersection improvements identified in the Kittelson report, no additional off-site vehicular improvements will be necessary to accommodate the seven year build-out of the Consortium and to meet the City's operational criteria. Adequate public facilities will be available for vehicular travel. These facilities will be consistent with the long-range transportation plan for the City, as outlined in the Bend Urban Area Transportation System Plan adopted by the City Council on October 11, 2000.

- Several transportation system improvements are proposed by the consortium that will serve connectivity needs on the west side for cyclists, pedestrians, and vehicles. These include more than 15 miles of sidewalks and bicycle lanes along roadways and more than 14 miles of trails. These improvements, in combination with improvements made by the City in existing developed areas, will provide pedestrians and cyclists with a comprehensive network on the west side of Bend.

- It is estimated that a traffic signal or roundabout will need to be installed at each of the Study Area intersections within the next three years. Given the aggressive build-out scenarios included in the Consortium Proposal, the improvement schedule identified in Kittelson Report is likely an accelerated one exceeding what is likely to occur. For this reason, it is recommended that the City begin right-of-way acquisition and preliminary design and engineering during the year identified in the report. The City should also establish a comprehensive monitoring program of intersection operations to determine when a particular improvement is needed. This program should be based on the operational performance of the intersections.

C. Existing Conditions

The Kittelson Report's existing conditions analysis details that the Study Area intersections presently comprise the following types of facilities:

(1) all-way stop-controlled intersection
(6) two-way stop-controlled intersections
(2) roundabouts

In evaluating the overall intersection operations of these facilities, the Kittelson Report utilized applicable state and City standards. The City finds that the Kittelson Report correctly employed trip generation estimates, trip distribution, volume-to-capacity ratios and levels of service analysis under both state highway standards and the City's operational criteria. The City accepts the analysis of the City transportation engineer outlined in its September 29, 2000 memorandum that describes why the assumptions and methodologies of the Kittelson Report are reasonable.

On the basis of weekday p.m. peak hour traffic volumes, the volume to capacity ratio (VC) and levels of service (LOS) were calculated at the Study Area intersections. Under existing conditions, without any new traffic from the proposed development contemplated in the Development Agreements, two of the Study Area intersections (14th/Galveston and 14th/Newport) do not presently meet the City's standards and require mitigation. The construction of a traffic signal or roundabout would serve to bring those intersections to acceptable levels.

D. Year 2007 Background and Total Traffic Conditions

The Kittelson Report examined the Year 2007 background traffic conditions to identify how the Study Area intersections will operate without build-out of the proposed development contemplated by the Development Agreements. In setting the Year 2007 background traffic, the Report considered planned developments (other than Consortium projects) and transportation improvements in the Study Area. These are identified at page 21 of the Kittelson Report. In addition, in order to ensure that Year 2007 traffic volumes included planned developments plus in-process traffic as well as anticipated regional growth in the Study Area, Kittelson quantified the Year 2007 traffic volumes using the City's EMME/2 planning model.

On the basis of the background traffic (as calculated above), existing traffic counts and the trips generated by the proposed development contemplated by the Consortium, the Kittelson Report established Year 2007 total traffic volumes. An LOS analysis was performed predicated on the estimated build-out volumes. On the basis of background conditions only in Year 2007, four of the Study Area intersections were projected to operate unacceptably. The installation of a single-lane roundabout or traffic signal would be necessary to obtain acceptable operating levels at the intersections.

With the addition of the trips projected by the proposed development contemplated by the Development Agreements, a roundabout or traffic signal would be needed at all of the Study Area intersections by Year 2007 in order to meet the City's operational criteria with the exception of Century Drive/Colorado and Shevlin Park/Mount Washington (where roundabouts have been built). Approximately one-half of the Study Area intersections will require upgrading from a single-lane roundabout to a double-lane roundabout, if growth occurs as forecasted. Once the roundabouts identified in Year 2007 are in place, all of the intersections will function in accordance with acceptable standards. Minor widening may be required at some of the intersections to accommodate 2020 conditions.

E. Review of Assumptions and Analysis

The Kittelson Report provides an extensive review of the transportation impacts from the developments contemplated under the Development Agreements. As of part of the Kittelson Report, the report referenced detailed assumptions, methodologies, and findings related to the traffic analysis for the Consortium Development Agreements. The Council recognizes that testimony has been received related to the Kittelson Report, including testimony related to its scope and some of its methodologies. The Council has received a memorandum from the City's transportation engineer that has responded to such testimony and finds that memorandum to be persuasive and reasonable. Further, the Council believes that it clarifies the issues that have been raised related to the testimony about the traffic study.

F. Off-Site Traffic Mitigation Requirements

The Development Agreements set forth the off-site transportation mitigation improvements necessary to ensure that the Study Area system operates in an acceptable manner under the City's guidelines. Consistent with the Kittelson Report, the Development Agreements

and the associated LID petitions provide for the construction of all necessary improvements within the Study Area.

The required mitigation is provided for through the Consortium's construction of all roundabouts needed at the Study Area intersections by 2007 with the exception of the Mount Washington Drive/Simpson Avenue intersection that is the responsibility of the City. In addition, the Consortium is required under the Development Agreements to improve certain existing roadways to City standards and/or to construct new roadways consistent with the City's General Plan. Further, certain street improvements will be required along property frontages as the proposed Consortium projects develop. Finally, the City has responsibility for certain infrastructure improvements, including acquisition of right-of-way and certain transportation improvements, not specifically assigned to the Consortium members.

After evaluating the requirements of the Development Agreements, the Kittelson Report concludes that with the street and intersection improvements identified in the Development Agreements, no additional off-site vehicular improvements will be necessary for the Consortium proposal to meet the City's operational criteria.

Consistent with the Kittelson Report, the Development Agreements include a schedule for commencement and construction of the referenced transportation improvements that will ensure that the Study Area system functions acceptably during all phases of development contemplated in the Development Agreements. The Development Agreements and the referenced LID petitions assign responsibility for construction of specific improvements to one or more Consortium members and the City in order to ensure that the entire Study Area system is functioning at acceptable levels.

To fully mitigate the off-site traffic impacts associated with the proposed development under the Development Agreements in a manner consistent with the Kittelson Report, the following intersection improvements have been required in the Development Agreements and associated LID petitions.

1. A single lane roundabout at the intersection of Mt. Washington Drive and Shevlin Park Road. Responsible Property Owner: West Bend Property Co. This improvement has been constructed;

2. A single lane roundabout at the intersection of Mt. Washington Drive and Skyliners Road. Responsible Property Owners: West Bend Property Co. (50%); Broken Top-Related Entities (50%). Construction Commencement Deadline: 12/31/02;

3. A single lane roundabout at the intersection of Mt. Washington Drive and Century Drive. Responsible Property Owners: Brooks Resources Corporation (43.3%); River Bend Limited Partnership (43.3%); Broken Top-Related Entities (13.3%). Construction Commencement Deadline: 12/31/01;

4. A single lane roundabout at the intersection of Newport Avenue and College Way. Responsible Property Owner: COCC. Construction Commencement Deadline: 12/31/01;

5. A single lane roundabout at the intersection of Newport Avenue and 14th Street. Responsible Property Owner: Shevlin Heights Limited Partnership (50%); Westside Meadows (50%). Construction Commencement Deadline: 12/31/00;

6. A single lane roundabout at the intersection of 9th and Newport. Responsible Property Owner: West Bend Property Co. Construction Commencement Deadline: 12/31/02;

7. A single lane roundabout at the intersection of 14th and Galveston. Responsible Property Owners: West Bend Property Co. (50%); Broken Top-Related Entities (50%). Construction Commencement Deadline: 12/31/00;

8. A single lane roundabout at the intersection of 14th and Simpson. Responsible Property Owner: Century Park LLC. Construction Commencement Deadline: 12/31/00;

9. Completion of Mt. Washington Drive from Skyliners Road to the Troon Avenue intersection. Responsible Property Owner: Broken Top-Related Entities. Construction Commencement Deadline: 12/31/01;

10. Completion of Mt. Washington Drive from Century Drive to the Southern Bridge Crossing. Responsible Property Owner: Brooks Resources Corporation. Construction Commencement Deadline: 12/31/01 (Brooks Resources to dedicate right-of-way necessary for this project); and

11. Completion of Skyliners Road from Lindsay Court to Mt. Washington Drive. Responsible Property Owner: Skyliners Summit. Construction Commencement Deadline: 12/31/04.

In addition, the Development Agreements incorporate as Exhibit C, the other off-site improvements (the "Other Improvements") that will be required for each proposed development under the Consortium proposal. On the basis of the intersection improvements, the roadway improvements or extensions, and the Other Improvements, the Kittelson Report concludes that no additional off-site vehicular improvements will be necessary to accommodate the 7 year build-out under the Development Agreements and to fully satisfy the City's operational criteria.

The City finds that the Kittelson Report, as fully analyzed by City staff and engineers, confirms that the Development Agreements and referenced LID petitions assuring the schedule and financing for the construction of the referenced improvements satisfies all City guidelines and demonstrates that the requirements of the Development Agreements result in all necessary improvements to the City's transportation system.

G. Sidewalk, Bicycle and Trail Improvements

The Kittelson Report also evaluated the pedestrian and bicycle facilities in the Study Area. The Development Agreements require that certain off-site sidewalk, bicycle and trail system improvements occur. In accordance with the Transportation Planning Rule (660-012-0045(3)) all off-site road improvements (including intersection and roadway improvements) will include facilities accommodating safe and convenient pedestrian and bicycle travel. The City finds that the proposed sidewalk, bicycle and trail facilities also satisfy City standards. This is detailed below in these findings.

XI. APPLICABLE STANDARDS AND CRITERIA

The applicable approval criteria for the Development Agreements are set forth in ORS 94.508. It requires that the Development Agreements be consistent with the local regulations then in place for the City. Approval of a Development Agreement is a land use decision. ORS 94.508(2).

The local regulations include the applicable provisions of the following:

1. Bend Area General Plan

2. City of Bend Subdivision Ordinance (No. NS-1349)

3. City of Bend Street Policies

In addition, these findings demonstrate that the Development Agreements comply with the applicable state laws and regulations as follows:

1. Transportation Planning Rule (OAR 660-012-0045(3), 4(a-f) and 5(d))

2. Statutory Provisions for Development Agreements in ORS 94.504 to 94.528

Further, these findings discuss the recently adopted Transportation System Plan ("TSP") and the City's zoning ordinance, and consider their applicability to the land use decision.

XII. COMPLIANCE WITH ORS 94.504 TO 94.528

ORS 94.504 authorizes a City to enter into a development agreement "with any person having a legal or equitable interest in real property for the development of that property." Each of the parties to a Development Agreement are owners of the property that is subject to each individual Development Agreement, collectively recognized as the Consortium Development Agreements. The ownership of each property subject to the Agreements is listed on the attached Exhibit A which provides a specific description of the property location and ownership in compliance with this requirement.

ORS 94.504(2) requires that a Development Agreement specify certain terms and provisions. Each required specification is set forth below in bold with a reference to its provision in the subject Development Agreements.

A. ORS 94.504(2)(a) provides:

> **(a) The duration of the agreement, which may not exceed four years for a development of fewer than seven lots or seven years for a development of seven or more lots;**

Each Development Agreement specifies that its duration is four or seven years. One Development Agreement relates to a property of less than seven lots, so its term is four years. All other Development Agreements are seven years. The Development Agreements recognize that it is the intent of the parties to provide a seven year vesting of land use standards and that this intent and purpose may not be obtained during the initial term of the Development Agreement due to delays caused by appeals, etc. The Development Agreements provide that the parties will negotiate an extension of the term of the Development Agreement in such circumstances, but that in no circumstances can the term exceed seven years. Contrary to the assertions of some testimony received by the Council, this provision does not provide for a Development Agreement term that exceeds the statutory limit of seven years. Rather, it outlines that the parties will agree to negotiate an extension (in good faith) if the intent and purpose of the Development Agreement is frustrated by appeals, etc. Such renegotiation would necessarily need to comply with the applicable statutory process and standards. The Development Agreements clearly and specifically provide that at no time shall the term exceed seven years. Further, this is consistent with ORS 94.522 that provides that a Development Agreement may be amended by mutual consent by the parties.

B. ORS 94.504(2)(b) provides:

> **(b) The permitted uses of the property;**

Each Development Agreement specifies the permitted uses on the property subject to the Development Agreement. In most instances, an application for land use development has been filed and is pending City review. In other cases, an application has not yet been filed. For all Development Agreements, the permitted uses proposed for the property have been identified by reference to the specific proposed uses or to the permitted uses allowed under the zoning district applicable to the proposed development. The City finds that the Development Agreements specify the permitted uses.

C. ORS 94.504(2)(c) provides:

> **(c) The density or intensity of use;**

The City finds that the density or intensity of the identified uses is also specified in the Development Agreements. The density or intensity of use consists of a description of the number of uses, the square footage of uses or similar maximum limitation to describe the maximum density or intensity of use on the subject properties.

D. ORS 94.504(2)(d) provides:

> **(d) The maximum height and size of proposed structures;**

In all instances, the City finds that the Development Agreements specify the maximum height and size of the proposed structures. As referenced in the Development Agreement, the maximum height and size of uses is established by the provisions of the Bend Zoning Ordinance and the Development Agreements incorporate as maximums for such purposes the limitations on maximum height and size of the proposed uses. In the case of Cascade Highlands the proposed development is subject in part to Deschutes County's destination resort overlay zone that does not include a maximum height provision. In that case, the Development Agreement establishes a specific maximum height of proposed structures that will be included in a subsequent application thereby making provision for a maximum height in accordance with this statutory requirement. Therefore, in all of the Development Agreements, a maximum height and size is provided for all proposed structures.

E. ORS 94.504(2)(e) provides:

> **(e) Provisions for reservation or dedication of land for public purposes;**

The Development Agreements specify the provisions for reservation or dedication of land for public purposes. Each Development Agreement, while generally similar to each other, details provisions for dedications or reservations of land for public purposes. Because the Development Agreements do not vest any land use approvals and all development on the subject properties will be subject to a future land use decision-making process, the Development Agreements outline the specifics of the off-site reservations or dedications of land for public purposes and requires that all on-site dedications and/or reservations for public purposes be subject to the standards and ordinances in effect as of the effective date of this Development Agreement.

The City finds that the Development Agreements include a provision for the reservation or dedication of land for public purposes consistent with this statutory requirement. The statute does not specify or dictate what the provision must provide for with regard to the dedication or reservation of land for public purposes, but it does require that a provision be made. In this case, the specific provisions relate to off-site dedications or reservations, given the limited scope of the Development Agreements and also require by provision that all reservations or dedications provided by City ordinances or standards in effect as of the effective date of the Development Agreement are required.

F. ORS 94.504(2)(f) provides:

> **(f) A schedule of fees and charges;**

A schedule of fees and charges is provided for in each Development Agreement.

G. ORS 94.504(2)(g) provides:

> **(g) A schedule and procedure for compliance review;**

Each Development Agreement specifies a schedule and procedure for compliance review commencing on the first anniversary of the effective date. Annual reports are required. The City finds that this requirement is met.

H. ORS 94.504(2)(h) provides:

> **(h) Responsibility for providing infrastructure and services;**

The essential element of each Development Agreement is the responsibility for providing infrastructure and services. Each Development Agreement outlines the responsibility for providing infrastructure and services and describes the off-site transportation improvement

required under each Development Agreement, including off-site pedestrian, transit and bicycle facilities, as well as the responsibility of, funding and construction of off-site transportation improvements. For example, the Brooks Resources' Development Agreement provides an allocated share of responsibility for constructing a roundabout at the intersection of Century Drive and Mt. Washington Drive and the construction of an extension of Mt. Washington Drive from Century Drive to the Southern Bridge. The Agreement also provides for Brooks Resources' participation in the Bridge LID and the Intersection LID to construct the improvements on a specified timeline. Further, certain other off-site improvements are specified.

Likewise, all other Development Agreements specify the responsibility for providing infrastructure and services. In addition to outlining the Consortium member's specific responsibilities to infrastructure improvements, including transportation improvements, pedestrian, bicycle or transit, the Development Agreements also recognize that the City has identified responsibilities for the provision of infrastructure. Specifically, the Development Agreements provide that as referenced in the Kittelson Report, the City has specific obligations. The Kittelson Report, as incorporated in these findings and as referenced in the Development Agreements, together with the requirements of Section 12.8 (identifying that the City will complete specific infrastructure improvements not otherwise assigned to Consortium members) adequately and completely describe the City's responsibilities for infrastructure improvements. The City finds that the Development Agreements satisfy this requirement.

I. ORS 94.504(2)(i) provides:

> **(i) The effect on the agreement when changes in regional policy or federal or state law or rules render compliance with the agreement impossible, unlawful or inconsistent with such laws, rules or policy;**

The Development Agreements specify the effect on the Development Agreement when changes in regional policy or federal or state law or rules render compliance with the Development Agreement impossible, unlawful or inconsistent with such laws. They provide that if such a circumstance occurs, the parties will attempt to give effect to the remainder of the Development Agreements, if this does not prejudice the substantial rights of the parties to the Development Agreements. It further provides for good faith negotiation to restore and maintain the original intent of the Development Agreements.

J. ORS 94.504(2)(j) provides:

> **(j) Remedies available to the parties upon a breach of the agreement;**

The City finds that remedies available to the parties for a breach of the Development Agreement are set forth in detail consistent with this requirement.

K. ORS 94.504(2)(k) provides:

> **(k) The extent to which the agreement is assignable;**

The Development Agreements provide that they are fully assignable by either party and binding on successors and assigns. The City finds that this requirement is met.

L. ORS 94.504(2)(l) provides:

> **(L) The effect on the applicability or implementation of the agreement when a city annexes all or part of the property subject to a development agreement.**

The Development Agreements address the effect of annexation. It is recognized that all but one of the referenced properties under the Development Agreements are already within the city limits. As a result, this requirement affects only Cascade Highlands which is located outside the city limits in the area of urban reserve under the jurisdiction of Deschutes County. The Cascade Highland's Development Agreement outlines the effect on the applicability of the Development Agreement upon annexation.

M. ORS 94.504(3) requires that all future discretionary approvals be specified. It provides:

> **(3) A development agreement shall set forth all future discretionary approvals required for the development specified in the agreement and shall specify the conditions, terms, restrictions and requirements for those discretionary approvals.**

Consistent with this requirement, the City finds that all future discretionary land use approvals required for the proposed developments contemplated by the Development Agreements and the relevant conditions, terms, restrictions and requirements are provided for in each Development Agreement.

N. ORS 94.504(4) provides:

> **(4) A development agreement shall also provide that construction shall be commenced within a specified period of time and that the entire project or any phase of the project be completed by a specified time.**

Each Development Agreement requires that construction be commenced within a specified period of time and that the entire project or any phase of the project be completed by a specified time. The City finds that this requirement is met.

O. ORS 94.504(5) provides:

> **(5) A development agreement shall contain a provision that makes all city or county obligations to expend moneys under the development agreement contingent upon future appropriations as part of the local budget process. The development agreement shall further provide that nothing in the agreement requires a city or county to appropriate any such moneys.**

The City finds that the Development Agreements satisfy this requirement. It is clearly stated that any of the City's obligations that require the City to expend funds are contingent on future appropriations and nothing requires the City to appropriate such funds. Thus, while the City has certain obligations, the Development Agreements recognize that these obligations are contingent on future appropriations.

P. ORS 94.504(6) provides:

> **(6) A development agreement must state the assumptions underlying the agreement that relate to the ability of the city or county to serve the development. The development agreement must also specify the procedures to be followed when there is a change in circumstances that affects compliance with the agreement.**

The Development Agreements provide that the parties operate under the assumption that construction of the referenced transportation infrastructure will provide adequate off-site transportation system improvements to support the anticipated development.

ORS 94.504(6) also requires that the Development Agreement specify the procedures to be followed when there is a change in circumstances that affects compliance with the Development Agreement. Each Development Agreement outlines the specific procedures to be followed when there is a change in circumstances.

Based on these findings and the incorporation by reference of each of the Development Agreements, the City finds that the Development Agreements comply with all of the applicable statutory requirements of ORS Chapter 94.

XIII. CONSISTENCY WITH BEND AREA GENERAL PLAN

The scope of the Development Agreements is limited to the resolution of the off-site transportation mitigation of the proposed development on the referenced properties. The specific proposed developments themselves are subject to future discretionary approvals by the City. There is no vesting of the specific approvals. Rather, the main focus of each Development Agreement is: (1) to establish a projected buildout of the subject property consistent with the local regulations at its effective date; and (2) to identify the traffic impacts of the proposed development through the 7 year term of the Development Agreements. Based on the Kittelson Report, the Development Agreements require identified transportation improvements that will adequately mitigate for the projected developments at full buildout within the 7-year period and maintain acceptable LOS and volume-to-capacity ratios throughout the Study Area during the planning period.

Accordingly, by adoption of the Development Agreements, each property will be permitted to develop (following approval through a future discretionary application process) the projected development provided for in the Development Agreement without any further off-site transportation mitigation or exactions other than those identified in the Development Agreements. Because the Development Agreements pertain only to off-site transportation impacts, the land use regulations of the Bend Area General Plan applicable to the Development Agreements are found at Chapter 7, Transportation Systems.

As discussed in Section XVIII, below, the City and the County adopted amendments to the Bend Area General Plan in 1998, and a portion of those amendments were appealed to LUBA and ultimately to the Court of Appeals. In *Volny v. City of Bend*, __ Or. LUBA __ (LUBA No. 98-210, January 14, 2000) and *Volny v. City of Bend*, 168 Or. App. 516 (2000), LUBA and the Court of Appeals sustained four of Volny's claims and remanded them for further review by the City. The City will conduct this review in the immediate future.

The resolution adopting the amendments to the General Plan, Resolution No. 2247, specifically emphasized that, "[e]xcept as revised, the existing Bend Area General Plan and related maps shall continue to remain in full force and effect." Thus, the Southern River Crossing element of the Transportation Plan, and all other portions of the BAGP that were not amended in 1998, remained in effect and acknowledged during the appeal process. In addition, the amendments that were not challenged in *Volny* as well as the amendments that were challenged but found to be consistent with the Statewide Planning Goals are now acknowledged under ORS 197.625(2). Because the portions of the amendments that were remanded by LUBA and the Court of Appeals are not relevant to the Development Agreements, the City finds that the Development Agreements are consistent with the acknowledged portions of the 1998 amendments. In addition, the City also finds that the Agreements are consistent with the Plan as it existed prior to the 1998 amendments.

Chapter 7 contains eight separate categories of Objectives and Policies in the Transportation Systems Chapter of the Bend Area General Plan. The eight categories are:

A. Transportation System Management
B. Transportation Demand Management
C. Pedestrian and Bicycle Systems
D. Public Transportation System
E. Street System
F. Rail System
G. Funding
H. Benchmarks

Each Objective and its relevant Policies are addressed below.

Before addressing the specific Objectives and Policies of the Transportation Systems Chapter, the City also will look to the provisions of Chapter 7 related to streets and intersections to demonstrate the consistency between the Development Agreements and the relevant provisions of Chapter 7.

A. Roundabouts

The Transportation Chapter of the Bend Area General Plan specifically recognizes roundabouts as an appropriate intersection element or treatment that serves to reduce intersection improvement costs, improve intersection capacities and reduce the need for road widening. It also recognizes that roundabouts have proven to be a suitable alternative to the installation of traffic signals. The BAGP recognizes that roundabouts, like traffic signals, are mostly appropriate where arterial streets intersect other arterials, or in some cases where arterials intersect major collector streets.

To date, roundabouts have been installed at the Century Drive/Colorado Ave. and Shevlin Park Road/Mt. Washington Dr. intersections. Both intersections include only minor arterial roadways. The Development Agreements provide for the installation of seven additional roundabouts. In each instance, the roundabouts will provide intersection control at intersections of minor arterials and/or major collectors. This is consistent with Chapter 7. Further, the proposed roundabouts will be designed consistent with the requirements of modern roundabouts provided for in Chapter 7 and will include approach crosswalks and pedestrian islands that minimize conflicts with the automobile. In each instance, the roundabouts serve to provide intersection controls so that the street intersections meet City standards for intersection level of service.

B. Transportation System Management (TSM)

Objective

Provide cost effective transportation improvements and implement strategies that will improve the efficiency and function of existing roadways.

The General Plan recognizes that TSM improvements are intended to optimize the carrying capacity of roadways (Plan at 7-11). TSM improvements or measures can alleviate congestion and reduce accidents. They include intersection improvements, controlling accesses, use of raised medians, etc. The General Plan recognizes that by focusing improvements on congested intersections or areas that otherwise disrupt the flow of traffic, TSM improvements can provide a lower cost alternative to widening roadways (between intersections) and protect the function of roadways.

The Development Agreements and associated LIDs provide cost effective transportation improvements and implement strategies that will improve the efficiency and function of existing roadways within the City. Under present conditions, two of the Study Area intersections require immediate mitigation measures to meet the City's criteria for acceptable operating standards even without the development projected in the Development Agreements. Those intersections are 14th Street/Galveston Avenue and 14th Street/Newport Avenue. Under the year 2007 background conditions (excluding development on the referenced properties under the Development Agreements), the intersections of 14th Street/Simpson Avenue and Century Drive/Mt. Washington Drive will also require mitigation. With full buildout under the Development Agreements and growth in background traffic, the other Study Area intersections with the exception of 14th Street/Century Drive/Colorado Avenue and Shevlin Road/Mt. Washington will require mitigation to operate at an acceptable LOS D or better or an acceptable volume-to-capacity ratio of 0.85 or better. These findings are further documented in the Kittelson Report.

To track the impact of each proposed development on the Study Area intersections, the Kittelson Report provides a trip generation and distribution analysis per project. This trip distribution analysis is then factored into the system-wide impact analysis of all Study Area intersections to determine when a Study Area intersection must be mitigated to meet the City's operational standards for system capacity. Unlike other project-specific traffic analyses, the Kittelson Report benefits from the ability to consider an entire system and allocate improvements and a schedule for improvements to ensure timely and orderly improvements.

The Development Agreements and associated LIDs identify a schedule of improvements to ensure that the off-site transportation mitigation occurs commensurate with the proposed development under the Development Agreements. Full buildout of all of the proposed

developments under the Development Agreements is not projected to occur until 2007. This growth projection is itself very aggressive since it assumes an average annual growth rate in traffic volumes of approximately 15 to 60% per year at the Study Area intersections. In actuality, traffic volumes typically increase between 2 and 5% per year. As an example, according to ODOT traffic volume tables, Colorado Ave. has experienced a 3.8 percent annual growth rate over the last seven years. However, because of existing and background conditions, many of the Study Area intersections will fail with or without the proposed development contemplated in the Development Agreements.

As required under the Development Agreements and in accordance with the transportation improvement schedule in the Development Agreements, a minimum of a single-lane roundabout will be constructed at all of the Study Area intersections. This will raise the LOS at each Study Area intersection to LOS D or better, satisfying the City's criteria for acceptable LOS. Further, to ensure future capacity to accommodate 2020 conditions, expansions of these roundabouts may be required at five of the Study Area intersections including 14th Street/Galveston Avenue, 14th Street/Newport Avenue, 9th Street/Newport Avenue, 14th Street/Simpson Avenue and Century Drive/Mt. Washington Drive. In many cases, a single-lane roundabout with a slip lane will meet City operational criteria in 2007, but a full double-lane roundabout may be required by 2020. The initial construction and subsequent improvements to accommodate Bend's growth are accommodated in the Development Agreement. These system-wide improvements will unequivocally improve the efficiency and function of the existing roadways and raise the volume-to-capacity ratio and LOS above that which currently exists or that would otherwise exist without these mitigation measures.

The Consortium has proposed to construct roundabouts at the Study Area intersections. As stated in the Kittelson report, it is likely that the roadways in between the intersections can remain two- or three-lane cross-sections with widening only occurring at intersections. If traffic signals were installed at these intersections, it is likely that the 14th Street, Newport Avenue and Century Drive corridors would need to be widened to five lanes between the intersections in the next seven to twenty years. For this reason, the installation of roundabouts in lieu of traffic signals helps the City to meet its TSM objectives by minimizing the amount of roadway widening that is necessary.

Consistent with this Plan Objective, the Development Agreements represent an unprecedented public-private partnership and a cost-effective transportation strategy that will improve the transportation system function. According to the Development Agreements and associated LIDs, the identified transportation improvements will be funded in whole [or in significant part] by the Consortium members to the Development Agreements whether or not the intersection is failing based on the proposed development. As mentioned above, many of the intersections proposed for development are failing with or without the proposed developments, yet all of these intersections will be mitigated through the Development Agreements. The City also significantly contributes to these intersection improvements through right-of-way acquisition, its commitment to certain TSM improvements, and the expansion of certain of the improvements as necessary to accommodate growth past 2007.

The Development Agreements provide a mechanism for remedying existing failures while also providing long-range capacity improvements that will ensure efficient functioning of the existing and improved roadways.

The City therefore finds that the Development Agreements provide cost effective transportation improvements and implement strategies that will improve the efficiency and function of existing roadways consistent with this General Plan Objective.

Policies (TSM)

1) The City shall adopt land use regulations to limit the location and number of driveways and access points, and other access management strategies on all major collector and arterial streets.

To the extent that this Policy requires the City to evaluate particular driveways, access points and other access management strategies for individual developments on major collectors and arterial streets, the City will apply such land use regulations and standards through

the City's zoning and subdivision ordinances at the time it reviews the proposed developments. Access points and management strategies are not invoked or implicated by the Development Agreements since the Development Agreements do not approve any particular access points or driveways for the proposed developments. Further, this Policy is directed to the adoption of land use regulations outside of the review process of this land use decision. For these reasons, the City finds that this Policy does not apply at this time.

2) The City shall ensure that land use actions support the access management policies of the Oregon Department of Transportation along the state highways located in the urban area.

The Development Agreements are land use decisions. Therefore, to the extent applicable under this Policy, the Development Agreements must support the access management policies of the Oregon Department of Transportation (ODOT) along the state highways located within the urban area. The only state highway relevant to the Development Agreements is Century Drive. Because the Development Agreements do not address or approve any particular access points for any proposed development contemplated under the Development Agreements, this Policy does not apply to the adoption of the Development Agreements.

In any event, only two intersections in the Study Area are located on Century Drive: the Colorado Avenue/Century Drive intersection and Mt. Washington/Century Drive intersection. The Colorado Avenue/Century Drive intersection was improved with a single-lane roundabout in 1999. Based on the Kittelson Report and the City's engineering analysis, that roundabout is currently operating at LOS C or better and will continue to operate under capacity with the projected developments under the Development Agreements.

Similarly, both the City's engineering analysis and the Kittelson Report demonstrate that a single-lane roundabout will be required at the Century Drive/Mt. Washington intersection. ODOT has been and will be involved in this roundabout improvement and ODOT's role is recognized in the Development Agreement. Further, at this juncture, ODOT staff is recommending approval of the Century Drive/Mt. Washington roundabout. ODOT's access management policies will be applied to future land use actions for any proposed developments contemplated by the Development Agreements that are located along Century Drive. To the extent any of the proposed developments seek access off of Century Drive, ODOT access policies will then be applied. As a result, the Development Agreements are consistent with this Policy.

3) The city, county, and state shall implement transportation system management measures to increase safety, reduce traffic congestion to improve the function of arterial and collector streets, and protect the function of all travel modes.

This Policy requires the City to implement transportation system management measures to increase safety, reduce traffic congestion and improve the function of arterials and collectors. Seven of the nine roadways within the Study Area are classified as minor arterials, while the remaining two are classified as major collectors. As evidenced by the Kittelson Report, the Development Agreements ensure that the City is implementing a transportation system management program that will unequivocally reduce traffic congestion on these arterials and collectors and improve existing operations on these streets for all travel modes. As discussed above, under existing conditions, two of the Study Area intersections already require mitigation measures to meet the City's criteria for acceptable operating standards. In other words, these intersections are currently failing even without the proposed developments contemplated by the Development Agreements. Under background traffic conditions, an additional two intersections will fail within the Study Area even without the proposed development. In total, four of the nine intersections will fail under existing or background conditions with or without the proposed developments.

Under this Policy, the City is directed to implement transportation system management measures to improve the function of these arterial and collector streets, to reduce congestion, and protect the function of all travel modes. The City finds that the adoption of the Development Agreements and associated LIDs will affirmatively meet this obligation. With the

roundabouts proposed for each of the Study Area intersections at 2007 and 2020, the volume to capacity ratio for each of the Study Area intersections will be 0.85 or below and will increase the level of service to LOS D or better at each failing intersection. This will reduce congestion at the intersections on these minor arterial and collector streets. Because the intersections are currently failing or will fail with the growth of background traffic alone, the mitigation measures will reduce traffic congestion and improve and restore the function of the intersections to acceptable LOS.

The Development Agreements also include the protection of all travel modes consistent with this Policy. The existing sidewalk, bicycle and trail system generally provides connections between the Study Area and downtown Bend. Within the Study Area, however, additional improvements are needed to provide multi-modal mobility for future developments. There are gaps in the existing sidewalk system; there are also gaps in the existing bicycle system. Some of these gaps will be filled when roadways identified in the City's TSP are constructed or are upgraded to a higher roadway classification. Other gaps have been addressed through the Development Agreements. In every instance that the Development Agreements provide for a street or intersection improvements, there is also provision for pedestrian and bicycle improvements. For example, as part of the improvements to Skyliners Road, Skyliners Summit and Northwest Crossing will construct pedestrian and bicycle facilities on both sides of the road along each of their frontages. These are referenced in the Kittelson Report and discussed in detail in these findings in Section XIV and XV and incorporated herein by reference.

With the sidewalk, bicycle and trail improvements committed to under the Development Agreements, the function of all travel modes is protected by the adoption of the Development Agreements.

C. Transportation Demand Management (TDM)

Objectives
To reduce peak hour traffic loading on the roadway system;
To reduce single occupant vehicle travel.

TDM strategies focus on altering driver behavior and mode choice to lower the demand on the street especially during peak travel times. (Plan at 7-11.) As noted above, the Development Agreements do not specifically approve any of the proposed development plans contemplated by the Development Agreements. The proposed developments contemplated by the Development Agreements will be the subject of future land use processes. However, the Development Agreements specifically require the construction of new multi-modal transportation facilities that will have a positive effect consistent with these Objectives. First, the Development Agreements include the construction of an extensive array of sidewalk, bicycle and trail improvements. These sidewalk, bicycle and trail improvements will serve to enhance the availability of alternate modes of transportation and thereby serve to reduce peak-hour traffic loading on the roadway system and reduce single occupant vehicle travel.

For example, under the Development Agreements, new bicycle lanes, sidewalks or trails will be constructed along the site frontages and with new street constructions. These improvements will support pedestrian and bicycle connectivity between the existing and new neighborhoods, schools and area destinations where none currently exist. These improvements can reduce the need for vehicle trips between these same destinations and thereby reduce traffic congestion. The total complement of multi-modal facilities provided in the Development Agreements both within and between properties will connect existing residential, commercial and industrial areas and provide multi-modal transportation choices for travel to and between these properties. In this manner, the significant improvements in the sidewalk, bicycle and trail improvement systems under the Development Agreements will reduce peak-hour traffic loading on the roadway system and encourage the reduction of single-occupancy vehicle travel.

Further, the Kittelson Report at Table 4 details the projected land use assumptions for the Development Agreements. Almost half of the contemplated developments under the Development Agreements are a type of mixed-use development. For example, the Northwest Crossing development will include single-family dwellings, significant retail and office space, as well as some industrial park space. Similarly, the Brooks Resources' project includes dwelling units, congregate care units and a mix of retail and office development. The River Bend project at the Old Mill District is also a mixed-use project. Because a significant proportion of these

proposed developments contemplated under the Development Agreements are mixed-use projects, their development will encourage pedestrian and/or bicycle travel within the developments themselves to serve the needs of residents and visitors. This mixed-use aspect of the proposed developments will have the intended effect of reducing peak-hour traffic loading on the roadway system and reducing single-occupant vehicle travel consistent with these Objectives.

There are 7 TDM Plan Policies. The TDM Policies generally focus on various means of successfully implementing TDM measures. The first requires the City to encourage business to participate in TDM programs. The second requires the City to work with various key community groups to implement TDM measures. The third Policy relates to parking. Policies 4, 5, 6 and 7 relate to park and ride facilities, telecommunication opportunities, education and programs for governmental agencies. The City finds that these Policies are not applicable to these Development Agreements.

D. Pedestrian and Bicycle Systems

Objectives
To support and encourage increased levels of bicycling and walking;
To provide safe, accessible and convenient bicycling and walking facilities

At the direction of the City, the Kittelson Report conducted an analysis of existing bicycle and pedestrian deficiencies within the Study Area relevant to the proposed developments contemplated under the Development Agreements. (Kittelson Report at 36-37). The Kittelson Report identifies and recommends methods of mitigating the deficiencies in the sidewalk, bicycle and trail system consistent with the intersection and street improvements required under the Development Agreements.

The City finds that the Development Agreements will result in the construction of new bike lanes on all new and reconstructed arterials to be built or improved pursuant to the Development Agreements. Specific effort has been directed to fill the gaps in the on-street bikeway system based on the location of the planned developments under the Development Agreements. New bike lanes also will be constructed with the identified roundabouts. For example, proposed bike lanes will provide a link between the Westside Church area and the neighborhoods to the west and between existing west-side neighborhoods and the new elementary and high schools along Mt. Washington Drive. The Kittelson Report further illustrates and describes the extensive bicycle improvements required under the Development Agreements in compliance with these Objectives, and its specific findings and recommendations are incorporated herein.

Like the bicycle improvements, sidewalk improvements are also to be constructed under the Development Agreements. Sidewalks or pedestrian facilities will be included on all new streets and added, as appropriate to each proposed development, to existing arterial and collector streets in the Study Area to fill the gaps in the existing system. The new sidewalks will be developed to City standards and maintained by the adjacent property owners. Again, the extent of the sidewalk improvements is described in the Development Agreements and in the Kittelson Report, incorporated herein.

To ensure compliance with these Objectives, the City has required that the construction of each roundabout and street improvement be in accordance with the construction plans and designs attached to the Development Agreements. Further, the preliminary plans for the roundabouts have been approved by the City according to City standards and incorporate bicycle and pedestrian crossings for each major collector and arterial street that will be improved under the Development Agreements. They also include pedestrian refuges or islands to reduce crossing distances as much as practicable. Under the construction plans, bike lanes are extended to meet intersection crosswalks and are included on all new and reconstructed arterials and major collectors covered by the Development Agreements. All sidewalks and bicycle facilities that are required to be developed under each Development Agreement will be to the standards provided by the City and will be maintained by adjacent property owners.

Further, while the Development Agreements pertain to off-site transportation impact mitigation, each proposed development will go through a later land use review in which

the City will have additional opportunity to ensure that the on-site improvements associated with the proposed development have been constructed to City standards relevant to bicycle, pedestrian and sidewalk facilities. With these measures, the City finds that the Development Agreements are consistent with the Pedestrian and Bicycle Systems Objectives.

The Pedestrian and Bicycle Systems Policies are provided below and, where appropriate, findings of consistency are included.

4) The City shall develop safe and convenient bicycle and pedestrian circulation to major activity centers including the downtown, schools, shopping areas and parks. Particularly in terms of east-west access to the downtown.

The Kittelson Report included a detailed analysis of the existing gaps in the pedestrian and bicycle system between existing and proposed residential areas and major activity centers on the west side, including Cascade Middle School, Rosie Bareis Community Center, the Kingston and Kenwood Elementary Schools, High Lakes Elementary School, Summit High School, the Westside Church, Central Oregon Community College, Hillside Park, Harmon Play Field, Drake Park, Columbia Park and Skyline Park. Improvements needed to fill the existing gaps in the bicycle and pedestrian system on the west side were identified. Many of those improvements were incorporated into the Development Agreements; the remaining projects will be fulfilled by the City as part of its infill sidewalk and bicycle lane program.

5) It is the policy of the City to facilitate easy and safe bicycle and pedestrian crossings of major collector and arterial streets, specifically large intersections shall be designed to include pedestrian refuges or islands to reduce crossing distances as much as practical. Also, bike lanes shall be extended to meet intersection crosswalks.

All of the Study Area intersections will be designed to meet modern roundabout standards and guidelines. These roundabouts incorporate specific features to ease pedestrian crossings, to minimize the crossing distances, and accommodate bicycle traffic.

6) Bike lanes shall be included on all new and reconstructed arterials and major collectors. Bike lanes shall be added to existing arterial and major collector streets on a prioritized schedule. Specific effort shall be made to fill the gaps in the on-street bikeway system. An appropriate means of pedestrian and bicyclist signal actuation should be provided at all new or upgraded traffic signal installations.

Bike lanes and/or appropriate off-street mixed use trails will be provided on all new or reconstructed streets included in the Consortium Development Agreements.

7) Sidewalks or pedestrian facilities shall be included on all new streets. Sidewalks shall be added to all existing arterial and collector streets to fill the gaps in the existing system. Sidewalks connecting activity centers with residential areas shall be developed on a prioritized schedule.

Sidewalks and/or appropriate off-street mixed use trails will be provided on all new or reconstructed streets included in the Consortium Development Agreements. As discussed above, a detailed analysis of existing pedestrian system gaps between major west side activity centers was identified in the Kittelson Report. The mitigation of the majority of these gaps was incorporated into the Development Agreement; the remaining gaps will be addressed through the City's infill sidewalk program. Currently, the infill program specifically prioritizes the construction of infill sidewalks on 14th Street, Galveston Avenue, Newport Avenue, and College Way.

8) New sidewalks shall be developed to City standards and maintained by the adjacent property owners. Tree planted landscape strips shall separate all new curbs and sidewalks

where practical. The City shall pursue similar ends for reconstructed roads and sidewalks.

All sidewalks included in the Development Agreements will be constructed to comply with City standards and will be maintained by the adjacent property owners.

9) Bikeways and pedestrian facilities shall be designed and constructed to minimize conflicts between transportation modes.

All sidewalk, trail, and bike lane improvements included in the Development Agreements will be constructed in a manner consistent with City standards. In addition, each of the roundabouts will be designed and constructed consistent with modern roundabout design guidelines and principles. These guidelines incorporate specific provisions to provide for safe and efficient bicycle and pedestrian travel within the roundabout.

Policies 1, 2 and 3 relate to coordination with the Park District. Policy 10 relates to the maintenance of bicycle and pedestrian facilities and is not relevant here. Policy 11 relates to bicycle parking facilities at new development projects. It may be applicable in the future review of any of the proposed developments contemplated by the Development Agreements. It is not now relevant. Policy 12 relates to road vacations; Policies 13, 14, and 15 relate to inventory, standards and park district review of pending development proposals. These policies are not now applicable.

Based on the above-referenced findings related to the Pedestrian and Bicycle Systems Objectives and Policies, the City finds that the Development Agreements are consistent with and will provide safe, accessible and convenient bicycling and walking facilities and will support and encourage increased levels of bicycling and walking.

E. Public Transportation System

Objectives

Develop public transportation facilities and services throughout the urban area to increase mobility and accessibility;
Develop public transportation services for the transportation disadvantaged.

The City currently operates a Dial-A-Ride service for senior and disabled citizens. The City of Bend is currently investigating the feasibility of providing access to all systems through the Dial-A-Ride service. The City in its upcoming November election is seeking voter approval of a transportation levy that would include funding for the expanded Dial-A-Ride system. In its TSP, the City of Bend has committed to continuing to investigate the feasibility of implementing a fixed-route transit system over the next twenty years.

As part of the future land use approvals for Consortium members, the City may require on-site improvements, such as street furniture and other accoutrements that accommodate and/or enhance the public transportation system. As a part of each Development Agreement, the Consortium members have agreed to make provision for off-site accommodations in support of transit for bus stops, shelters or other similar transit facility.

F. Street Systems

Objectives

To provide a practical and convenient means of moving people and goods within the urban area;
To provide a safe and efficient means to access all parts of the community;
To provide an attractive, tree-lined, pedestrian friendly streetscape sensitive to protecting the livability of the community.

All street improvements and new street construction provided for by the Development Agreements will be constructed to meet their planned function to the construction standards established by City and will provide space for adequate planting strips, sidewalks, motor vehicle travel and bike lanes.

Specifically, the City finds that the Development Agreements are designed to improve and enhance the east-west circulation patterns in Bend for all modes of travel throughout the community. Further, by completion of Mt. Washington Drive more efficient travel will be available north-south for the whole urban area. The transportation improvements required under the Development Agreements and referenced LID petitions improve currently failing LOS at Study Area intersections through 2007. The LOS and VC ratio will operate at LOS D or better and 0.85 or better throughout and beyond the 7-year period. The City finds that these significant improvements to a failing system will directly enhance the urban area circulation patterns resulting in a more practical and convenient means of moving people and goods in the urban area. The City also finds that the Development Agreements will provide for attractive, vegetated, pedestrian friendly streetscapes through the use of pedestrian and bike-friendly roundabouts in compliance with these Objectives.

Policies (Street System)

1) Streets shall be located, designed and constructed to meet their planned function and provide space for adequate planting strips, sidewalks, motor vehicle travel and bike lanes (where appropriate). Specific effort should be made to improve and enhance east-west circulation patterns for all modes of travel throughout the community.

All street improvements will be designed in accordance with City standards. The Development Agreements provide for the extension of Mount Washington Drive from Troon Avenue to Shevlin Park Road, the construction of the Southern River Crossing, and the Reed Market Road extension. These improvements will provide a continuous facility that will be one of only four facilities that provide a continuous east-west route for travel in Bend between Mount Washington Drive on the west and 27th Street on the east. Consistent with City standards, each of these improvements will include appropriate facilities for pedestrians, cyclists, and motorists.

4) The city shall manage the development process to obtain adequate street right-of-way and improvements commensurate with the level and impact of development. New development shall provide traffic impact analysis to assess these impacts and to help determine transportation system needs.

The Kittelson Report identifies seven-year and twenty-year improvement needs on the west side. The Development Agreements provide for near-term (i.e., seven year) mitigation measures commensurate with the proposed land uses. The twenty-year analyses included in the Kittelson Report will enable the City to appropriately plan for longer-term right-of-way and improvement needs on the west side.

5) Access control shall be part of the design standards for major collectors, arterials, principal arterials and expressways to ensure that adequate public safety and future traffic carrying capacity is maintained on the transportation system. The language of the City of Bend *Arterial Access Policy* and the *Access Management Policy for Principal Arterial Facilities* is adopted by reference as part of the Bend Area General Plan. Where commercial or industrial land uses abut residential areas, access shall not be directed to residential neighborhood streets.

To the extent that this Policy requires the City to evaluate particular driveways, access points and other access management strategies for individual developments on major collectors and arterial streets, the City will apply such land use regulations and standards through the City's zoning and subdivision ordinances at the time it reviews the proposed developments.

Access points and management strategies are not invoked or implicated by the Development Agreements since the Development Agreements do not approve any particular access points or driveways for the proposed developments.

6) City and state transportation system improvements shall comply with the Americans with Disabilities Act requirements.

All of the street and intersection improvements will be designed and constructed to meet City Standards. These standards incorporate the appropriate provisions to meet ADA requirements.

7) Traffic signals or roundabouts shall be permitted at the intersection of public street intersections in accordance with the design, spacing and standards adopted by the city and state.

Consistent with the recommendations from the Kittelson Report, the Development Agreements include the installation of roundabouts at eight west side intersections. These roundabouts will be designed and constructed to meet City, state and federal standards and guidelines.

Arterial Streets:

15) Due to the sensitive nature of the Deschutes River corridor, the extension of Reed Market Road, between Blakely Road and Century Drive, shall be limited to a two travel lane roadway.

The Bridge LID includes the construction of a two-lane bridge in the Southern River Crossing alignment. This bridge will also include pedestrian and bicycle facilities.

16) Quality facilities for bike, pedestrian and transit use shall be included in any road widening project to ensure that non-motorized mode needs are addressed in the street design.

Consistent with City standards and recommendations from the Kittelson Report, all new roadways, upgrades to existing roadways, and roundabouts will be constructed with sidewalk, bikelane, and/or trails to accommodate pedestrian and bicycle traffic. The roadway and roundabout improvements will also accommodate school buses, Dial-A-Ride vehicles, and future buses.

G. Rail System

Policy

This Policy related to abandoned or vacated railroad right-of-way is not applicable.

H. Funding

5) The City should consider taking steps to utilize transportation system development charges for the full range of road capacity improvements, including: transportation demand management, trails, transit, sidewalks, and bike lanes.

As detailed in Section VI of these Findings, the City will utilize SDC's to reimburse the Consortium members for their contributions to the west side transportation infrastructure pursuant to the City's SDC Reimbursement Policy in Section 4 of Street Policy 5. The record demonstrates that the development contemplated under the Development Agreements will generate SDC revenues in excess of the costs of the improvements financed by the Consortium members, thereby providing to the City adequate funds from SDC collections or exactions from other developers or various other sources to further upgrade and enhance all elements of the west side transportation system, including trails, transit, sidewalk, and bike lanes.

Policy 1 encourages the local jurisdictions to work together to develop new sources of transportation funding and is not applicable here. Policy 2 describes the process for selecting transportation improvements within the yearly CIP Plan and is not applicable here. Policy 3 requires the City to annually prepare a CIP; Policy 4 requires the City to explore ways to inform citizens of transportation system budgets; and Policy 6 relates to the potential of a County Transportation SDC policy. These policies are not relevant here.

XIV. CONSISTENCY WITH CITY OF BEND SUBDIVISION ORDINANCE

The Development Agreements do not have the effect of reviewing or approving any individual proposed developments. Rather, each Development Agreement identifies the future discretionary approvals that will be required for the proposed developments identified in that particular Development Agreement. Depending on the nature of the proposed development, the future discretionary approvals may require application of the City of Bend Subdivision Ordinance or, as noted below, Bend's zoning ordinance. However, the Development Agreements further provide that the future discretionary approvals will be subject to the standards and procedures of the City's land use regulations as vested within the Development Agreements at the time of development review and that no additional off-site transportation mitigation will be exacted for a proposed development contemplated in the Development Agreements.

Because the Development Agreements determine the extent of the off-site traffic impacts and required mitigation measures applicable to each proposed development listed within the Development Agreements and thereby resolve the application of the standard for subdivision approval (or zone change in the City's zoning ordinance) as it relates to off-site traffic mitigation to the future discretionary processes, the City finds that the provisions setting forth the approval criteria for subdivisions in Section 10-13.3.060 are applicable to the Development Agreements to the extent that the Development Agreements establish off-site transportation mitigation measures and limit any future off-site transportation exactions. The City finds that the subdivision approval criteria related to orderly development and demand on the street system (as a component of the referenced public facilities and services) are relevant to the adoption of the Development Agreements. The findings outlined above for the Transportation Element of the General Plan are incorporated herein by reference. The applicable provisions of Sections 3.060 of the City's Subdivision Ordinance are addressed below.

Section 3.060 requires the following findings for subdivision approval:

1) The subdivision contributes to orderly development and land use patterns in the area, and provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, and other natural resources.

2) The subdivision will not create excessive demand on public facilities and services required to serve the development.

3) The subdivision contributes to the orderly development of the Bend area transportation network of roads, bikeways, and pedestrian facilities.

4) The tentative plan for the proposed subdivision meets the requirements of ORS 92.090.

The City finds that the extent and magnitude of the off-site transportation mitigation measures required under the Development Agreements will contribute to the orderly development and land use patterns in the area and the orderly development of the Bend area transportation network of roads, bikeways, and pedestrian facilities. As articulated above, several transportation impact studies have recently identified the need to address transportation system deficiencies along the 14th Street, Newport Avenue and Century Drive corridors. While these studies have evaluated the impacts of individual developments on intersection and roadway needs near individual sites, none of the studies provided a transportation system analysis that comprehensively reviewed the near-term and long-term transportation capacity and connectivity improvement needs for the West Side. As a result, based on this prior piecemeal development review approach, it was difficult for the City to find that the long term transportation system would be accommodated in an orderly fashion.

The Development Agreements and associated LIDs directly respond to this planning difficulty and present an opportunity to provide orderly system-wide mitigation that would otherwise not be available on a project-by-project basis. Consistent with City regulations and policies, the Development Agreements project the maximum density and type of development that will be permitted on each of the referenced properties. Based on that maximum density cap within the Development Agreements, the City and the Kittelson Report have identified the trip generation and distribution patterns for each proposed development and identified the associated impact mitigation measures that must be completed in order to maintain and enhance acceptable LOS or V/C at all intersections within the Study Area. In order to ensure the orderliness of the development, the City has required specific timelines for improvement of the identified intersections within the Study Area and required the Kittelson Report to address LOS and V/C ratio for all of the proposed developments contemplated by the Development Agreements through the year 2007.

The maximum density permitted on each property subject to the Development Agreements is the maximum density allowed on that property under the standards in effect at the time the Development Agreements are adopted. These maximum density figures were then used as the basis for the Kittelson Report to assess trip generation and distribution for each property based on the allowed uses of the property. As a result, the maximum development potential of each of the properties within the Development Agreements has been accommodated in the Kittelson Report.

The Kittelson Report and the City's independent engineering analysis of the Study Area demonstrate that with full buildout in 2007 (based on maximum density) all of the Study Area intersections, except the 14th Street-Century Drive/Colorado Avenue intersection and Mt. Washington Dr./Shevlin Park Road, will require mitigation measures to ensure that they maintain acceptable LOS and V/C. To reiterate, under existing conditions, two of the Study Area intersections will require mitigation measures without the proposed development contemplated by the Development Agreements. These intersections are 14th Street/Galveston Avenue and 14th Street/Newport Avenue. Similarly, under year 2007 background conditions with no development on the subject properties, the intersections of 14th Street/Simpson Avenue and Century Drive/Mt. Washington Drive will also require mitigation to maintain an acceptable level of service.

As required mitigation, the Kittelson Report demonstrates that the installation of a traffic signal or a roundabout at the impacted intersections would be sufficient to maintain and enhance the LOS or V/C ratio to meet City standards at all the Study Area intersections. The Consortium has agreed to pursue roundabouts at each of the Study Area intersections in lieu of signalization. The Kittelson Report documents that each of the Study Area intersections operate acceptably under this planned mitigation. The City finds that these mitigation measures will maintain acceptable LOS on the Study Area intersections throughout the planning period in compliance with the orderly development of the Bend area transportation network.

To ensure orderliness, the Development Agreements provide a timeline for these improvements that would ensure that the improvements will be constructed commensurate with the additional vehicle trips that will be impacting the transportation system. The schedule for commencement and completion of the improvements is incorporated in the Development Agreements. Further, the associated LID petitions assure that the improvements will be commenced and constructed in an orderly timeline consistent with the need and on area-wide basis as recommended by the Kittelson Report. In the event that construction is not commenced within the required timeline, the City has the option to ensure that the improvement is made and assess the responsible LID petitioner accordingly. Reference to the Development Agreements and the LID petitions, incorporated herein, supports the finding and decision of the City that the proposed developments contemplated by the Development Agreements and the legal mechanisms established in the Development Agreements assure timely construction commensurate with the buildout of the proposed developments.

It should also be noted that the City required the Consortium to include an aggressive buildout scenario for each proposed development under the Development Agreements. As shown in Figure 5 of the Kittelson Analysis, (2000 Existing Traffic Conditions Weekday P.M. Peak Hour) and Figure 9, (2007 Total Traffic Conditions Weekday P.M. Peak Hour), the buildout assumptions under the Development Agreements and Intersection LID results in an average annual growth rate in traffic volumes of approximately 15 to 60% per year

at the Study Area intersections. In actuality, traffic volumes typically increase between 2 and 5% per year. Therefore, while the quantitative analysis suggests that a future improvement is needed prior to the year 2007, in reality, a particular upgrade may not be needed for another 10-20 years. For this reason, the City intends to develop a monitoring program consistent with the recommendation of the Kittelson Report to evaluate the operational performance of the intersection, including queuing and vehicular delay, in order to assess the future requirements.

Although based on the conservative growth analysis, the City finds that most of the intersections within the Study Area will need to be upgraded by the year 2007 if the growth occurs as forecasted in the Kittelson Report. The City therefore required an analysis to be performed to determine the approximate year in which the upgrade would be required. The eight intersections that will be mitigated under the Development Agreements were each evaluated individually based on trip generation and distribution to determine the estimated year the intersection improvement would be needed. Of the eight intersections, three of the intersections required mitigation measures by the year 2000. This is the year when right-of-way acquisition and preliminary design and engineering should begin to ensure that the improvement is in place commensurate with the traffic impact associated with the Development Agreements. These year 2000 intersections include 14th Street/Galveston Avenue, 14th Street/Newport Avenue and 14th Street/Simpson Avenue. All of these intersections require mitigation in 2007 even without the proposed development contemplated by the Development Agreements.

An additional three intersections will be required to begin right-of-way acquisition and preliminary design in the year 2001. These intersections include Newport Avenue/College Way, Simpson Avenue/Mt. Washington Drive and Century Drive/Mt. Washington Drive. The last two intersections, Skyliners Road/Mt. Washington Drive and 9th Street/Newport Avenue, will need to begin preliminary design and right-of-way acquisition in 2002 to ensure that the mitigation measures are in place commensurate with the resulting impact created by the growth of proposed development contemplated by the Development Agreements.

With this schedule, all of the Study Area intersections will be mitigated commensurate with the traffic impacts from the proposed development under the Development Agreements. Because the City has requested a conservative growth projection, the City will institute a monitoring program of the intersections to ensure that acceptable operations and safety are maintained.

To the extent the Kittelson Report identifies planned improvements that will affect the off-site impact analysis for the West Side, the City finds that the Kittelson Report correctly identifies the relevant improvements and makes the correct assumptions based on those improvements. Year 2007 traffic volumes were calculated to account for the in-process traffic as well as anticipated regional growth within the Study Area. The existing traffic volumes were adjusted to account for the effects of the Mt. Washington extension and the Old Mill District Bridge and construction of the Southern Bridge. The effect was specifically quantified by using the City's EMME/2 planning model.

All of the planned improvements by the Consortium are funded improvements under the LIDs and are either under construction or will be commenced and completed pursuant to the schedule provided for in the Development Agreements and the associated LIDs. The Old Mill District Bridge has been recently opened and provides a new link across the Deschutes River for local traffic. The Southern River Crossing, a planned improvement in the City's General Plan, is funded by the Bridge LID Petition. The Southern Bridge is scheduled for completion by 2004. The development contemplated under the Development Agreements is not projected for full buildout until 2007 so all of the planned and fully funded improvements will be in place at full buildout to adequately mitigate off-site traffic impacts.

Under Criterion 3 of Section 3.060, the findings must also demonstrate that there is orderly development of bikeways and pedestrian facilities associated with the network of roads impacted by the development. At numerous locations throughout these findings, the City has provided a list of the bicycle and pedestrian improvements that will occur under the Development Agreements. Figure 4 of the Kittelson Report illustrates the existing sidewalk, bicycle, and trail facilities. Figure 11 provides the future bicycle, sidewalk and trail facilities provided under the Development Agreements. With the several transportation system improvements required under the Development Agreements there will be commensurate improvements for cyclists and pedestrians. In total the improvements include more than 15

miles of sidewalks and bicycle lanes that will be constructed along roadways, as well as pedestrian trails. This includes both on-site and off-site improvements. Development Agreements require all of the off-site improvements; the on-site improvements will be part of the future discretionary land use approvals.

The City finds that these improvements in combination with improvements to be made by the City in existing developed areas will provide pedestrians and cyclists with a comprehensive network of facilities on the west side of Bend in an orderly fashion. Because all of these improvements will be made consistent with their need and timed to coincide with the proposed development contemplated by the Development Agreements, the City finds that the development of these facilities constitutes orderly development of the bikeways and pedestrian facilities under the Development Agreements.

XV. COMPLIANCE WITH THE TRANSPORTATION PLANNING RULE

The Transportation Planning Rule ("TPR") provides that certain of its provisions are directly applicable to land use decisions if the local jurisdiction does not have an acknowledged transportation system plan ("TSP"). As discussed below, the City has adopted a TSP, but it is not yet acknowledged. For this reason, the City has directly applied the necessary sections of the TPR to its decision. This requirement is found at OAR 660-012-0055(3). It makes directly applicable to land use decisions three different provisions of the TPR. They are: OAR 660-012-0045(3), 4(a-f), and 5(d).

By state law (ORS ch. 94), these Development Agreements are land use decisions. As a result, the City has applied the above-listed sections of OAR 660-012-0045 to its approval of the Development Agreements. Each TPR provision is referenced below with subsequent appropriate findings demonstrating that the Development Agreements meet all applicable requirements of the TPR.

A. OAR 660-012-0045(3)

This portion of the TPR sets forth certain requirements related to pedestrian and bicycle travel areas. It provides:

> **(3) Local governments shall adopt land use or subdivision regulations for urban areas and rural communities as set forth below. The purposes of this section are to provide for safe and convenient pedestrian, bicycle and vehicular circulation consistent with access management standards and the function of affected streets, to ensure that new development provides on-site streets and accessways that provide reasonably direct routes for pedestrian and bicycle travel in areas where pedestrian and bicycle travel is likely if connections are provided, and which avoids wherever possible levels of automobile traffic which might interfere with or discourage pedestrian or bicycle travel.**
>
> **(a) Bicycle parking facilities as part of new multi-family residential developments of four units or more, new retail, office and institutional developments, and all transit transfer stations and park-and ride lots;**
>
> **(b) On-site facilities shall be provided which accommodate safe and convenient pedestrian and bicycle access from within new subdivisions, multi-family developments, planned developments, shopping centers, and commercial districts to adjacent residential areas and transit stops, and to neighborhood activity centers within one-half mile of the development. Single-family residential developments shall generally include streets and accessways. Pedestrian circulation through parking lots should generally be provided in the form of accessways.**

(A) "Neighborhood activity centers" includes, but is not limited to, existing or planned schools, parks, shopping areas, transit stops or employment centers;

(B) Bikeways shall be required along arterials and major collectors. Sidewalks shall be required along arterials, collectors and most local streets in urban areas, except that sidewalks are not required along controlled access roadways, such as freeways;

(C) Cul-de-sacs and other dead-end streets may be used as part of a development plan, consistent with the purposes set forth in this section;

(D) Local governments shall establish their own standards or criteria for providing streets and accessways consistent with the purposes of this section. Such measures may include but are not limited to: standards for spacing of streets or accessways; and standards for excessive out-of-direction travel;

(E) Streets and accessways need not be required where one or more of the following conditions exist:

(i) Physical or topographic conditions make a street or accessway connection impracticable. Such conditions include but are not limited to freeways, railroads, steep slopes, wetlands or other bodies of water where a connection could not reasonably be provided;

(ii) Buildings or other existing development on adjacent lands physically preclude a connection now or in the future considering the potential for redevelopment; or

(iii) Where streets or accessways would violate provisions of leases, easements, covenants, restrictions or other agreements existing as of May 1, 1995, which preclude a required street or accessway connection.

(c) Where off-site road improvements are otherwise required as a condition of development approval, they shall include facilities accommodating convenient pedestrian and bicycle travel, including bicycle ways along arterials and major collectors;

(d) For purposes of subsection (b) "safe and convenient" means bicycle and pedestrian routes, facilities and improvements which:

(A) Are reasonably free from hazards, particularly types or levels of automobile traffic which would interfere with or discourage pedestrian or cycle travel for short trips;

(B) Provide a reasonably direct route of travel between destinations such as between a transit stop and a store; and

(C) Meet travel needs of cyclists and pedestrians considering destination and length of trip; and considering that the optimum trip length of pedestrians is generally 1/4 to 1/2 mile.

(e) Internal pedestrian circulation within new office parks and commercial developments shall be provided through

clustering of buildings, construction of accessways, walkways and similar techniques.

It is clear that a large portion of this part of the TPR relates to on-site transportation impacts and mitigation measures. The introductory paragraph of Section 3 states that the purpose of the section is to ensure that new development provides on-site streets and accessways that serve as pedestrian and bicycle connections in appropriate locations. Obviously, the section relates first to "development," and then to "on-site" infrastructure. In this instance, the local land use decision relates only to off-site transportation mitigation. It neither addresses nor approves the future discretionary land use approvals that will be necessary for the development of each property. This is outlined in significant detail in Sections I-IV of these findings. As noted, the scope of the Development Agreements is limited solely to the resolution of off-site transportation mitigation. The Development Agreements merely vest the standards and criteria applicable to the referenced proposed developments and establish the maximum density of the proposed developments that will themselves be subject to future approval through a discretionary land use application process. It does not approve any on-site development or any on-site bicycle, pedestrian or transportation facilities.

Given the limited scope of these Development Agreements, only certain portions of the above-referenced TPR provision is applicable to this land use decision. Those portions of the TPR provision that relate to on-site development, on-site pedestrian or bicycle facilities or other on-site transportation facilities are not presently applicable to this decision. If the City's TSP is not acknowledged at the time that the subsequent discretionary land use processes contemplated by the Development Agreement are undertaken, this portions of the above-referenced TPR section relating to on-site matters will then be directly applicable to those local land use decisions. Only OAR 660-012-0045(3)(c) is applicable to this land use decision.

Pursuant to OAR 660-012-0045(3)(c), where off-site improvements are otherwise required as a condition of development approval, those improvements must include facilities accommodating pedestrian and bicycle travel, including bicycle ways along arterials and major collectors. The Development Agreements include certain off-site transportation improvements, including improvements to or construction of planned or existing street facilities. In each case, as detailed below, both pedestrian and bicycle facilities accommodating those modes of travel have been provided for, including along arterials and major collectors.

Under the Development Agreements, the following off-site road transportation facilities are being improved or constructed:

1. Skyliners Road, a minor arterial road;
2. Shevlin Park Road, a minor arterial road;
3. Mt. Washington Drive (2 links), a minor arterial road; and
4. 8 separate roundabouts at intersections within the City.

For each of these referenced off-site road improvements, bicycle and pedestrian facilities are also being provided on each of the new or reconstructed minor arterials improved or constructed by the Development Agreements. For example, pursuant to the terms of the Skyliners Summit Development Agreement, a new link of Mt. Washington Drive is being constructed from Skyliners Road to Troon Ave. This connects existing portions of this arterial. As a part of this construction of the off-site improvement, both bicycle lanes and pedestrian facilities will be constructed to City standards. Likewise, where the Development Agreements require improvements to Skyliner Road and Shevlin Park Road, those off-site road improvements include bicycle and pedestrian facilities in each instance that road improvements are made. Consistent with City policy, Consortium members are responsible for such improvements along their frontages (road, bicycle and pedestrian) and to the extent that other portions of these roadway improvements are not the responsibility of Consortium members, the City, pursuant to the terms of the Development Agreement, is responsible for certain segments of these road improvements, all including bicycle and pedestrian facilities in accordance with the TPR provisions. All planned road improvements include pedestrian and bicycle facilities.

Finally, with regard to the off-site roundabouts, those facilities are designed to make specific provision for bicycle and pedestrian travel. The roundabouts have been designed (and the designs incorporated into the Development Agreements) to meet City and state standards. For each transportation facility, including the roundabouts, all improvements must be

in accordance with the construction plans and designs incorporated into the Development Agreement. This will ensure that all the facilities will be safe and convenient as required by this TPR provision.

The construction plans and designs have been approved by the City according to City standards, incorporated herein by reference. The construction plans and designs approved by the City provide bicycle and pedestrian crossings for the major collector and arterial streets and include pedestrian refuges or islands in the roundabouts to reduce crossing distances as much as practicable. Under the construction plans, bike lanes are extended to meet intersection crosswalks and are included on all new and reconstructed arterials and major collectors. All sidewalks and bike lanes provided along existing or new street extensions will be constructed to City standards and will provide for safe and convenient routes, facilities and improvements.

Under the referenced TPR provision, "safe and convenient" is defined for bicycle and pedestrian routes, facilities and improvements as facilities that are reasonably free from hazards, particularly automobile traffic, that provide a reasonably direct route of travel and meet the travel needs of cyclists and pedestrians considering the destination and length of trip. In every circumstance in which road improvements are made, safe and convenient bicycle and pedestrian routes, facilities, and improvements are also made. These bicycle and pedestrian facilities are all to City standards satisfying all requirements related to location and design.

The City finds that the identified mitigation measures, will result in the construction of new bike lanes and sidewalks on all new and reconstructed arterials under the Development Agreements. The sidewalks or pedestrian facilities will be included on all new streets and roundabouts along existing arterial and collector streets that will be improved in the Study Area. The new sidewalks and bike lanes will be developed to City standards and maintained by the adjacent property owners. This meets the standards of OAR 660-012-0045(3) for such facilities. It is clear that for each off-site street improvement, there is a corresponding facility for safe and convenient pedestrian and bicycle travel.

As noted above, these Development Agreements address only off-site transportation measures. Each proposed development contemplated by the Development Agreements will have on-site trails, pedestrian facilities and bicycle improvements unique to its project. In come cases, the array of proposed facilities are extensive. In all cases, the Consortium members will necessarily comply with all applicable City standards for bicycle and pedestrian facilities, at the time that each proposed development is considered for review through the future land use processes. At that time, certain other requirements of OAR 660-012-0045(3) may also be applicable if the City's TSP is unacknowledged. For example, the requirements for internal pedestrian circulation within projects, pedestrian connections to adjoining properties and overall walkway design will then be addressed. On the basis of the foregoing, the City finds that the Development Agreements are consistent with OAR 660-012-0045(3).

B. OAR 660-012-0045(4)(a-f)

OAR 660-012-0045(4)(a)-(f) outlines the TPR requirements for transit. It provides as follows:

> **To support transit in urban areas containing a population greater than 25,000, where the area is already served by a public transit system or where a determination has been made that a public transit system is feasible local governments shall adopt land use and subdivision regulations as provided in (a)-(f) below.**

Subsections (a) through (f) provide in general that transit routes and transit facilities be designed to support transit use through various means and that new uses at or near major transit stops provide convenient pedestrian access to transit and on-site pedestrian connections, that parking be provided for car pools, and road systems for new development be provided that can be adequately served by transit. Paragraphs 4(a-f) apply to urban areas with a population over 25,000 that is served by transit or where a determination has been made that a transit system is feasible.

In this case, the feasibility of transit within the Bend urban area has been the subject of two different studies. In 1994, the City studied demographic, employment, travel and transportation system characteristics in relation to transit use. (Bend Urban Area Transit Feasibility Study, August 1994). The City further evaluated the feasibility of transit in the 1996 Bend Urban Area Transit Feasibility Study. The 1996 study supplemented the 1994 study by analyzing the transit facilities of similar-sized cities, developing evaluation criteria and evaluating capital needs and financing strategies. Recently, based on these studies, the City determined that a fixed route transit is needed at buildout of the City. This was reaffirmed in the recent TSP process, discussed below.

Until buildout, the City has not found that a public transit system is feasible, however, the City has recognized the ultimate need for a public transit system to serve all segments of the City's population. The TSP outlines the possible expansion of the existing public transportation system, Dial-A-Ride, to provide alternative transportation options until a public transit system can be developed. Funding has been proposed for this interim expansion. Because public transit has not presently been deemed feasible, the requirements in subsections (a) through (f) do not apply to the City's land use decisions at this time. However, the City recognizes that the Consortium members have agreed to make provision for the off-site requirements for transit as a part of the Development Agreements. In each Development Agreement, the Consortium member has made provision as a part of the "Other Improvements," for adequate right-of-way to support off-site transit needs, such as areas for bus stops, shelters, or other similar facility as deemed appropriate by the City.

All new retail, office and institutional buildings in the developments contemplated by the Development Agreements at or near future major transit stops will provide, where feasible, a convenient pedestrian access to transit. This will be the subject of review at the time of approval of the specific referenced projects. Likewise, the referenced projects will need to comply with locational requirements once transit facilities are located. Pedestrian connections to adjoining properties are already required and will be provided under the Development Agreements consistent with (a)-(f) at the time of review of future land use applications.

C. OAR 660-012-0045(5)(d)

This provision does not apply to the City of Bend.

XVI. DISCUSSION OF CITY OF BEND ZONING ORDINANCE

The City's zoning ordinance implements the Bend Area General Plan by classifying and regulating the location and use of buildings, structures and land for various appropriate types of land uses. It is generally applicable when a specific use or request is proposed for a parcel of land. Since these Development Agreements serve only to vest the zoning ordinance criteria and do not apply them to any specific land use development request, the zoning ordinance does not directly apply to this land use decision. At the time of review of the identified future discretionary land use requests, the zoning ordinance provisions may directly apply in the City's review of a specific land use development request and as with the subdivision ordinance, the zoning ordinance requires for approval of a zone change, a demonstration that the zone change will result in the orderly and efficient extension or provision of public services, such as transportation. This provision, like the similar provision in the subdivision ordinance, has been satisfied by these Development Agreements as it relates to the imposition of off-site transportation exactions. The City incorporates herein its discussion above related to the City's subdivision ordinance.

The City finds that as a result of the improvements to the transportation infrastructure provided for pursuant to the Development Agreements, each Consortium member has satisfied its obligations to provide off-site transportation mitigation in connection with the contemplated development covered by the Development Agreements. Therefore, the Council specifically concludes and directs that this finding and conclusion as it relates to off-site transportation mitigation be applied to all future discretionary land use processes related to the contemplated developments, specifically including but not limited to these referenced findings related to the City's subdivision and zoning ordinances.

XVII. DISCUSSION OF BEND'S TRANSPORTATION SYSTEM PLAN (TSP)

The City has recently adopted a TSP. The effective date is 30 days from October 11, 2000, and the TSP will be considered acknowledged upon the expiration of the 21-day appeal period set forth in ORS 197.830(9). If the TSP is appealed and affirmed on appeal, it will be considered acknowledged upon the date that the appellate decision becomes final. ORS 197.625(2). The City finds that the Development Agreements are consistent with the TSP, as described below. However, because the TSP's effective date is subsequent to the date of the passage of the ordinance adopting the Development Agreements, the City also analyzed the relevant provisions of the Transportation Planning Rule (TPR) that are applicable to land use decisions when a local jurisdiction does not have an acknowledged TSP. OAR 660-012-0055(3). The TPR provisions, OAR 660-012-0045(3), (4)(a-f), and (5)(d), are addressed above in Section XV.

The Development Agreements comply with the TPR because they are consistent with the provisions of the TPR that are applicable to land use decisions in the absence of an acknowledged TSP *and* with the recently adopted TSP. Although the TPR provisions addressed in Section XV of these Findings govern the adoption of the Development Agreements because the TSP is not yet acknowledged, the Development Agreements have been crafted to ensure consistency with the TSP. However, if the TSP is appealed and remanded to the City, the remand will not affect the Development Agreements because they are consistent with the applicable provisions of the TPR.

The TSP establishes a coordinated network of transportation facilities adequate to serve state, regional, and local transportation needs. Chapter 6 of the TSP describes the strategies, approaches, and standards designed to meet community transportation system needs of the next twenty years, and for each respective component, pertinent objectives and policies are identified at the end of the Chapter. Chapter 6 largely mimics the provisions of Chapter 7 of the Bend Area General Plan. The categories of Objectives and Policies in Section 6.9 are similar to the BAGP Objectives and Policies addressed in XIII of these Findings:

A. Transportation and Land Use
B. Transportation System Management
C. Transportation Demand Management
D. Pedestrian and Bicycle Systems
E. Public Transportation System
F. Street System
G. Rail System

In addition, Sections 7.2, 7.3, and 7.5 of the TSP identify existing and potential transportation funding sources and prioritize future projects. The relevant policies of Section 7.5 are addressed below.

Before addressing the specific Objectives and Policies of the relevant TSP Chapters, the City will address the general provisions of the TSP chapters related to streets and intersections to demonstrate the consistency between the roundabouts proposed in the Development Agreements and the relevant provisions of the TSP. In addition, the City finds that all of the intersection improvements contemplated by the Development Agreements are identified in Appendix A of the TSP, and that Section 7.2.2, which details possible funding sources, specifically uses the Consortium proposal as an example of the use of LID's to finance projects. The *Public/Private Partnership* portion of Section 7.2.2 also references the Consortium proposal as "model for future similar such agreements when the costs and timing of various needed improvements exceed the financial ability of any one entity including the City." Finally, the City also addresses the relationship between the Capital Improvement Program (CIP) and the TSP.

A. Roundabouts

Sections 6.1 (Transportation System Management) and Section 6.5 (Street System) specifically recognize the importance of roundabouts as appropriate intersection elements that optimize the carrying capacity of roadways. Section 6.1 specifically encourages the use of TSM improvements, such as roundabouts, to alleviate congestion and reduce accidents. Similarly, Section 6.5, which describes the street network that forms the basis of the

Bend Urban Area transportation system and provides descriptions of some of the existing and planned streets, including the Southern River Crossing, also encourages the construction of roundabouts. Section 6.5.2.1 specifically states that "roundabouts have shown promising results in other communities, including reduced intersection improvement costs, improved capacities, reductions in roadway widening needs, and have proven to be a suitable alternative to some traffic signal installations."

To date, the City has installed new roundabouts at the 14th Street Century Drive/Colorado Avenue and Shevlin Park Road/Mt. Washington Drive intersections. Both intersections include only minor arterial roadways. The Development Agreements provide for the installation of seven additional roundabouts, all of which are listed in TSP Appendix A.3 as intersection improvement priorities (see Subsection B, below). In each instance, the proposed roundabouts will provide intersection control at intersections of minor arterials and/or major collectors. This is consistent with Chapter 6 of the TSP. Further, the proposed roundabouts will be designed consistent with the modern urban roundabout detailed in Section 6.5.2.1, which provides approach crosswalks and pedestrian islands that minimize conflicts with the automobile. In each instance, the roundabouts will provide intersection controls to ensure that the street intersections meet City standards for intersection level of service.

B. Improvements Prioritized in TSP

The City finds that all projects contemplated by the Development Agreements are listed as prioritized improvements in the TSP. Appendix A.3 lists each of the intersection improvements contemplated by the Development Agreements as intersection improvement priorities. Appendix A.3 also specifically identifies the improvements as part of the West Side Transportation Consortium Project. In addition, Appendix A.4, the Bend Urban Area Street Inventory, lists the corridor improvements contemplated by the Development Agreements. Appendix A.4 also specifies that the priorities listed for each improvement will remain as specified "unless otherwise changed by development activity or City Council action." By approving the Development Agreements, the City Council is exercising its discretion to alter the priorities in Appendix A.4 to reflect the realities of the current development environment. Finally, Appendix A.6 also lists the following Consortium projects as BTAC Recommendations for the Transportation CIP: "right of way acquisitions," "intersection/ signalization/ roundabouts," "Reed Market-Division to Century Drive" (the Southern River Crossing), and "Century Drive & Mr. Washington Intersection." Appendix A.6 also lists the following projects as projects that are prioritized but are not in the 5-year schedule: "14th Street, Newport to Galveston," "College Way/Newport Intersection Improvements," "Newport Avenue & 9th Street Intersection Improvements," "Mt. Washington Drive/Shevlin Park Intersection Improvements," "Simpson/14th Signal & Intersection Improvements," and "Newport Avenue, 9th to Wall" (includes intersection improvement).

C. Relationship Between CIP and TSP

Section 7.1 of the TSP describes the role of the CIP in transportation planning. The City of Bend plans for its transportation system needs through a Capital Improvement Program (CIP) process. The CIP represents a five-year planning forecast of prioritized transportation system improvements. This document is updated yearly. Projects that are beyond the five-year program are prioritized but forecasts are not given for a specific year of construction. The CIP is included as a part of the regular annual budget planning process. The CIP addresses transportation elements that include roadway construction, modernization and maintenance needs, sidewalk, bike lanes and trail improvements. The Transportation System Modernization CIP for Fiscal Years 2001-2005 is illustrated in Appendix A.6 of the TSP. As discussed in Subsection B above, the infrastructure improvements contemplated by the Development Agreements are listed as prioritized projects in Appendix A.6.

Based on an assessment of transportation system priorities, transportation coordination needs, other funding opportunities (e.g., grant awards) and maintenance needs, staff prepares a list of potential transportation improvement projects and compiles these into a draft CIP. Citizen and community input are important in the process to help City Council make refinements to the CIP document. Council can direct staff to refine the document further at any time by adding, deleting or reprioritizing projects in the CIP. The most current year of the final CIP is incorporated into the City's annual budget document. The budget process includes

another round of public hearings. The City Budget is adopted by City Council by the end of June of each year.

The CIP is a mechanism for outlining how the City plans to finance public transportation projects in the future. The City utilizes the CIP to set goals and priorities for improving the transportation infrastucture, with the recognition that the projections are subject to change based on actual development needs within the City. The CIP is constructed within the broader scheme of the TSP, which provides a comprehensive analysis of all of the transportation needs for the City of Bend. The funding proposal contemplated by the Development Agreements is unique from the traditional public financing scheme set forth in the CIP. The proposal is consistent with the TSP, which calls for creative public/private partnerships "when the costs and timing of various needed improvements exceed the financial ability of any one entity including the City." (Section 7.2.2.)

D. Transportation and Land Use (6.9.1)

Objective: To promote land use patterns that support fewer vehicle trips and shorter trip lengths, to ensure that future development, including re-development will not interfere with the completion of Bend's transportation system.

The policies for Section 6.9.1 are slated to be implemented during the review and processing of individual development applications. Thus, the policies, which promote the consideration of long range transportation system needs during review of subdivisions, partitions and individual site applications, will be addressed during the subsequent quasi-judicial land use process for each development contemplated by the Development Agreements.

E. Transportation System Management (6.9.2)

Objective: Provide cost effective transportation improvements and implement strategies that will improve the efficiency and function of existing roadways.

The TSP recognizes that TSM improvements are intended to optimize the carrying capacity of roadways (Section 6.1). TSM improvements or measures can alleviate congestion and reduce accidents. They include intersection improvements, controlling accesses, use of raised medians, etc. The TSP recognizes that by focusing improvements on congested intersections or areas that otherwise disrupt the flow of traffic, TSM improvements can provide a lower cost alternative to widening roadways (between intersections) and protect the function of roadways.

As detailed in Section XIII, Subsection B, the Development Agreements provide cost effective transportation improvements and implement strategies that will improve the efficiency and function of existing roadways within the City. Please refer to Section XIII, Subsection B for a detailed discussion of how the Development Agreements are consistent with this Objective.

Policies (TSM):

The TSM policies in Section 6.9.2 of the TSP are identical to the TSM policies in the Bend Area General Plan. Please refer to Section XIII, Subsection B, for a detailed discussion of how the Development Agreements fulfill the relevant TSM policies in the TSP.

F. Transportation Demand Management (TDM) (6.9.3)

Objectives: To reduce peak hour traffic loading on the roadway system; To reduce single occupant vehicle travel; Implementation of a TDM Plan (Central Oregon Commute Options Program) for the City of Bend.

The TDM objectives in Section 6.9.3 of the TSP mimic the TDM objectives in the Bend Area General Plan with one exception: the TSP includes an additional Objective that encourages the implementation of the Central Oregon Commute Options Program. As detailed in Section XIII, Subsection C, although the Development Agreements do not approve any of the

proposed development plans set forth by the Consortium members, the Agreements do require the construction of new multi-modal transportation facilities for each approved development. These facilities will have a positive effect on transportation choices on the west side of Bend, consistent with these Objectives. Please refer to Section XIII, Subsection C, for further details and examples of how the Development Agreements further the Objectives of Section 6.9.3.

There are 7 TDM Plan Policies. The TDM Policies generally focus on various means of successfully implementing TDM measures. The first requires the City develop and implement a TDM plan for its employees. The second requires the City to encourage business to participate in TDM programs. The third requires the City to work with various key community groups to implement TDM measures. The fourth Policy relates to parking. Policies 5, 6 and 7 relate to park and ride facilities, telecommunication opportunities, and the implementation of the Central Oregon Commute Options Program. The City finds that these Policies are not applicable to these Development Agreements.

G. Pedestrian and Bicycle Systems (6.9.4)

Objectives: To support and encourage increased levels of bicycling and walking as an alternative to the automobile; To provide safe, accessible and convenient bicycling and walking facilities.

The Pedestrian and Bicycle Systems Objectives of the TSP mimics the objectives in the same section of the Bend Area General Plan. Section XIII, Subsection D, elaborates on the bicycle and pedestrian improvements that are required by the Development Agreements consistent with these Objectives.

The Pedestrian and Bicycle Systems Policies that are relevant to the Development Agreements are Policies 4, 5, 6, 7, and 10. These Policies essentially mimic Policies 4, 5, 6, 7, and 9 of the Pedestrian and Bicycle Systems section of the Bend Area General Plan. Therefore, please refer to Section XIII, Subsection D, for a thorough analysis of how the Development Agreements are consistent with the above-cited policies.

Policies 1, 2 and 3 relate to coordination with the Park District. Policy 8 relates to the maintenance and repair of all sidewalks, and is not relevant here. Policy 9 relates to the City's top priorities for pedestrian improvements. The Development Agreements provide for roundabouts that accommodate one of the City's top priorities, the construction of pedestrian-oriented improvements other than sidewalks, such as curb extensions. Policy 11 relates to the maintenance of bicycle and pedestrian facilities and is not relevant here. Policy 12 relates to the City's duty to maintain bike lanes in a timely manner and is not relevant here. Policy 13 relates to bicycle parking facilities at new development projects. It may be applicable in the future review of any of the proposed developments contemplated by the Development Agreements, but it is not now relevant. Policy 14 relates to road vacations; Policies 15, 16, and 17 relate to inventory, standards, park district review of pending development proposals, and bicycle and pedestrian education programs. These policies are not now applicable.

H. Public Transportation System (6.9.5)

Objectives: Continue to develop public transportation services for the transportation disadvantaged; Reduce reliance on automobiles and develop public transportation facilities; Increase mobility and accessibility throughout the urban area; Continue to provide infrastructure and land use planning to support transit.

The objectives of Section 6.9.5 of the TSP mimic the substance of the Objectives in the Public Transportation System section of the Bend Area General Plan. Please refer to Section XIII, Subsection E, for a discussion of how the Development Agreements further the Public Transportation System Objectives of Section 6.9.5. The City finds that the specific Policies of Section 6.9.5 are not applicable to the approval of the Development Agreements.

I. Street Systems (6.9.6)

Objectives: To provide a practical and convenient means of moving people and goods within the urban area that accommodates various transportation modes; To provide a safe and efficient means to access all parts of the community; To provide an attractive, tree-lined, pedestrian friendly streetscape sensitive to protecting the livability of the community.

The Objectives of Section 6.9.6 of the TSP mimic the Street System Objectives of the Bend Area General Plan. As detailed in Section XIII, Subsection F, all street improvements and new street construction provided for by the Development Agreements will be constructed to meet their planned function to the construction standards established by City and will provide space for adequate planting strips, sidewalks, motor vehicle travel and bike lanes. Please refer to Section XIII, Subsection F, for a description of how the Development Agreements further the Street System Objectives of Section 6.9.6.

Policies (Street System):

The Policies of Section 6.9.6 mimic the Street System Policies in the Bend Area General Plan, with the exception of Policy 10, which is addressed below. Please refer to Section XIII, Subsection F for a discussion of how the Development Agreements comply with the relevant Policies of Section 6.9.6. The relevant Policies are 1, 5, 6, 7, 8, and 10. Policies 1, 5, 6, 7, and 8 are identical in substance to Policies 1, 4, 5, 6, and 7 of the Bend Area General Plan. Policy 10 is unique to the TSP and is discussed below.

(10) The City shall consider the impact of improvements to or completion of existing facilities when considering the need for constructing new facilities.

As detailed in Section X of these Findings, the Kittelson Study evaluates the transportation system on Bend's west side in a very comprehensive and broad fashion in order to identify near-term and long-term transportation capacity and connectivity improvement needs. Please refer to Section X for further detail that supports the City's finding that the Development Agreements comply with this Street System Policy.

In addition, Arterial Street Policies 19 and 20 are also applicable to the Development Agreements. These Policies are identical in substance to Arterial Street Policies 15 and 16 in the Bend Area General Plan. Please refer to Section XIII, Subsection F, for a description of how the Development Agreements comply with the relevant Arterial Street Policies of Section 6.9.6.

J. Rail System

Policy:

This Policy related to abandoned or vacated railroad right-of-way and communication with Burlington Northern Santa Fe Railway is not applicable.

K. Transportation Funding and Prioritization Policies (Section 7.5)

Funding Policies:

The Transportation Funding Policies in Section 7.5 mimic the Funding Policies of the Bend Area General Plan. As discussed in Section XIII, Subsection H, Policies 1 through 4 and Policy 6 are not applicable. The Development Agreements are consistent with Policy 5 as detailed in Section XIII, Subsection H.

XVIII. DISCUSSION OF THE SOUTHERN BRIDGE

The Southern Bridge is recognized as an element of the Bend Area General Plan in the Kittelson Report and the Development Agreements. It is part of the City's acknowledged

General Plan and is identified on Bend's Transportation System Plan Map. One of the LID petitions, the Bridge LID, provides for the funding of the Southern Bridge.

The South River Crossing was the subject of much debate during the years of public proceedings on the Bend Area General Plan and related maps. Attached and incorporated herein by reference is Resolution No. 2247 of the City of Bend outlining the procedural history of the Bend Area General Plan relative to the South River Crossing decision. (Exhibit G). Ultimately, the Bend City Council voted unanimously to adopt the South River Crossing as part of the Transportation System Plan Map of the Bend Area General Plan. This decision was based on thirty (30) public meetings of a Citizens Advisory Committee and twenty-two (22) public meetings of a Transportation Advisory Committee to discuss and draft revisions to the General Plan. Between December 1995 and February 1998, twelve (12) different public meetings were held and discussed questions raised about the South River Crossing. These discussions included an effort to remove the South River Crossing from the General Plan. The South River Crossing had first been illustrated as the location for a river crossing on a Future Land Use Map in September of 1957, and on subsequent Plan Maps thereafter. The South River Crossing was also described in Bend's first General Plan which was adopted in the 1970's and has been included in Bend's General Plan ever since. As a result, the South River Crossing is and has been identified in Bend's current and acknowledged Comprehensive Plan as the appropriate extension of Reed Market Road west across the Deschutes River. Bend and Deschutes County adopted the BAGP in 1976, and LCDC formally acknowledged it in 1981. The Southern River Crossing was shown on the Transportation System Plan Map of the BAGP at the time of acknowledgement.

From 1987 to 1989, the BAGP underwent its first periodic review. Subsequently, from 1995 to 1998, the City conducted its first major update and review of the acknowledged BAGP. During this time, the proposed amendments to the BAGP were debated at a series of public meetings. On February 18, 1998, the City Council voted unanimously to adopt amendments to the BAGP and to keep the Southern River Crossing in the Transportation Plan. The County Board of Commissioners followed suit on November 25, 1998. Therefore, the Southern River Crossing remains an acknowledged element of the Transportation System Plan in the BAGP.

The City Council recognizes that testimony was received from Parsons Brinckerhoff that suggested alternatives to the Southern Bridge. The alternatives presented were not consistent with the Bend Area General Plan. Further, the City Council accepts as reasonable and responsive the review by the City's transportation engineer that responded to the Parsons Brinckerhoff testimony on the Southern Bride.

Although the Bend City Council's and the Deschutes County Board of Commissioners' adoption of the 1998 amendments to the BAGP was appealed to LUBA and ultimately to the Court of Appeals, the designation of the Southern River Crossing as an element of the Transportation System Plan was not affected by the appeal and remains acknowledged under ORS 197. In *Volny v. City of Bend*, __ Or. LUBA __ (LUBA No. 98-210, January 14, 2000) and *Volny v. City of Bend*, 168 Or. App. 516 (2000), the petitioners appealed portions of the City's and County's 1998 amendments to the BAGP. LUBA and the Court of Appeals sustained two of Petitioner's assignments of error in part and remanded the portions of the amendments found to be in violation of the Statewide Planning Goals to the local governments. The decision by the Court of Appeals was not appealed to the Oregon Supreme Court. The remand has no effect on the status of the designation of the Reed Market Road extension as the preferred Southern Bridge Crossing because the Crossing was an existing element of the BAGP that was not amended in 1998. The Southern River Crossing element of the Transportation Plan, and all other portions of the BAGP that were not amended in 1998, remained in effect and acknowledged during the appeal process. As stated in Resolution No. 2247, "[e]xcept as revised, the existing Bend Area General Plan and related maps shall continue to remain in full force and effect."

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STATE OF OREGON
COUNTY OF DESCHUTES

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DO NOT REMOVE THIS CERTIFICATE

(This certificate constitutes a part of the original instrument in accordance with ORS 205.180(2). Removal of this certificate may invalidate this certificate and affect the admissibility of the original instrument into evidence in any legal proceeding.)

I hereby certify that the attached instrument was received and duly recorded in Deschutes County records:

DATE AND TIME: Nov. 15, 2000; 10:09 a.m.

RECEIPT NO: 28560

DOCUMENT TYPE: Development Agreement

FEE PAID: $241.00

NUMBER OF PAGES: 39

Mary Sue Penhollow

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

Brooks 9 Bt Bvill.

DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND

AND BROOKS RESOURCES CORPORATION

This Development Agreement ("Agreement") is dated as of the 6 day of December, 2000, by and between BROOKS RESOURCES CORPORATION, an Oregon corporation ("BRC") and MOUNT BACHELOR VILLAGE CORPORATION, an Oregon corporation and a wholly-owned subsidiary of BRC ("MBV") (collectively, BRC and MBV are hereinafter referred to as BRC), and THE CITY OF BEND, an Oregon municipal corporation (the "City"). Each of BRC and the City is hereinafter referred to as a "Party" and collectively as the "Parties."

1. Definitions:

1.1 "BRC Property" means the property on which the Proposed Development is to be constructed by BRC, which BRC Property is more particularly described on attached **Exhibit B**.

1.2 "Bridge LID Petition" means that certain LID Petition of even date herewith signed by petitioners BRC, Skyliner Summit Limited Partnership, West Bend Property Company, LLC, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Southern Bridge.

1.3 "Development Agreement" means each of the development agreements between a Property Owner and the City pursuant to ORS 94.504 (collectively, the "Development Agreements"). Three of the Property Owners, Western Communications, Inc., dba The Bulletin (the "Bulletin"), the Bend-LaPine Administrative School District No. 1 (the "School District") and Central Oregon Community College ("COCC") are not parties to a Development Agreement.

1.4 "Final Approval" shall mean the issuance of a development permit that reasonably allows the development described in Section 4 of the Development Agreement to proceed and the expiration of the period of appeal, or if an appeal is filed, the resolution of that appeal in a manner that reasonably allows the development described in Section 4 of the Development Agreement to proceed.

1.5 "Intersection LID Petition" means that certain LID Petition of even date herewith signed by nine of the Property Owners as petitioners, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Projects.

1.6 "Off-Site Transportation Impact Mitigation" means mitigation of the increased burden that each Proposed Development will put on the transportation facilities of the City of Bend outside the property lines of the Proposed Development. The term "Off-Site Transportation Impact Mitigation" includes the "Other Improvements" identified in **Exhibit C** of each Development Agreement.

1.7 "Other Improvements" means those certain off-site transportation-related improvements to be completed by the Property Owners which are a part of their Off-Site Transportation Impact Mitigation but which are not to be completed pursuant to a local improvement district. The Other Improvements to be completed by a particular Property Owner are identified in **Exhibit C** to that Property Owner's Development Agreement.

1.8 "Project" means a traffic facility improvement described in Section 4 of the Intersection LID Petition and the Southern Bridge.

1.9 "Property Owners" are the twelve public and private entities, including BRC, identified on **Exhibit A** who own property on the West Side of the City and who have formed a consortium to resolve the current and projected shortage of transportation facilities on the West Side.

1.10 "Proposed Development" means the development described in Section 4 of this Agreement.

1.11 "Responsible Property" means that portion of the property of each of the Property Owners identified in the Intersection LID Petition or the Bridge LID Petition subject to assessment for the cost of one or more Projects. "Responsible Property" shall not include portions of the property that are dedicated as public right-of-way, or dedicated for any other public purpose.

1.12 "Responsible Property Owner" means the Property Owner identified as being responsible for construction of the specific Project(s) listed for that Property Owner in the Bridge LID Petition or the Intersection LID Petition.

1.13 "Southern Bridge" means the bridge to be constructed over the Deschutes River where the proposed extension of Reed Market Road from the Parkway will cross the Deschutes River as provided in the City's General Plan.

1.14 "West Side" shall mean that portion of the City of Bend directly served by the transportation facilities described in Section 4 of the Intersection LID Petition, and the Southern Bridge.

2. Recitals:

2.1 Under the City of Bend General Plan and land use regulations, new development must be supported by adequate public facilities. The City's General Plan provides that if the public facilities are not adequate, new development must either wait for the installation of the required facilities by the City or pay the cost if it occurs ahead of the City's capital improvement plan. Existing public transportation facilities serving the West Side of the City (the "West Side Transportation System") are not adequate to support all existing development and the new development contemplated in the immediately foreseeable future for the West Side of the City. The City is proceeding on the basis that its land use regulations require a system-wide fix to remedy the system-wide deficiency in the West Side Transportation System in order to support the contemplated new development.

2.2 The City does not have funds available to complete the projects necessary to create the additional capacity for the West Side Transportation System to support the new development within the timeframe in which the Property Owners wish to develop and to complete its other capital improvements.

2.3 The cost of supplying a system-wide remedy that will support the existing needs and the additional transportation burden that the new development will add to the West Side Transportation System is more than the amount that could be exacted from any single Proposed Development. Therefore, the Property Owners have concluded that collectively they can provide the necessary improvements to the West Side Transportation System to support the Proposed Developments. To this end, they have organized themselves as a consortium to accomplish these improvements.

2.4 It is the intention of the Parties that the legal mechanism for accomplishing these improvements will be expressed in Development Agreements, the Bridge LID Petition and the Intersection LID Petition (referred to as the "Consortium Agreements").

2.5 Together, the Consortium Agreements will provide a realistic mechanism for constructing the 11 distinct traffic system improvements required to support the contemplated new development. These improvements will also make a significant contribution toward relieving existing traffic problems in the West Side Transportation System. Ten of these improvements are identified in Section 4 of the Intersection LID Petition, and the other is described in the Bridge LID Petition. The Consortium Agreements also describe Other Improvements which will be constructed by the Property Owners in connection with the Property Owners' Proposed Developments.

2.6 Traffic impact analyses show that the 10 distinct traffic system improvements identified in the Intersection LID Petition, the Bridge LID Petition, and the Other Improvements will be adequate to mitigate the off-site traffic impacts that the Property Owners' Proposed Developments will have on the West Side Transportation System and make reasonable provision for the West Side Transportation System on a long-term basis.

2.7 ORS 94.504 authorizes cities to enter into development agreements with private parties who own or otherwise have a legal interest in property in connection with the development of that property. Such development agreements may have a duration up to seven years and may establish each of the parties' rights and obligations in connection with certain aspects of the proposed developments. Each Property Owner wishes to definitively establish and discharge all of its obligations to mitigate the increased burden that each Proposed Development will put on the West Side transportation facilities of the City of Bend outside the property lines of the Proposed Development ("Off-Site Transportation Impact Mitigation") to the West Side Transportation System through a development agreement with the City.

2.8 Nine of the Property Owners (Brooks Resources Corporation; West Bend Property Company, LLC; Broken Top Limited Partnership; Skyliner Summit Limited Partnership; Century Park LLC; Shevlin Heights LP; West Side Meadows, LLC; Central Oregon Community College; and River Bend Limited Partnership) have signed a Petition to Form West Side Intersection Local Improvement District (the "Intersection LID Petition"), which, among other things, allocates responsibility for constructing 10 of the Projects among the Property Owners signing the Intersection LID Petition.

2.9 Five of the Property Owners (Brooks Resources Corporation, West Bend Property Company, LLC, Skyliner Summit Limited Partnership, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1) have signed a Petition to Form Southern Bridge Local Improvement District (the "Bridge LID Petition"), which, among other things, allocates responsibility for the cost of constructing the Southern Bridge. The Property Owners have agreed upon a schedule for the completion of the Southern Bridge, and the amount to be contributed by each Property Owner, as provided in the Bridge LID Petition.

2.10 The Intersection LID Petition provides a schedule for commencement of construction of the Projects by the applicable Property Owner(s) and provides that a failure of a Property Owner to timely commence and complete its assigned Project(s) shall give the City the option to construct that Project under the Intersection LID Petition, assess that Property Owner's property for the cost of construction and impose liens against that Property Owner's property as permitted by law.

2.11 Execution of the Development Agreements, the Intersection LID Petition and the Bridge LID Petition by the City and all of the Property Owners, and the commitments created by these Consortium Agreements, will supply the realistic provision for transportation facilities necessary to support new development to be served by the West Side Transportation System. In return, the Property Owners shall be relieved from any further Off-Site Transportation Impact Mitigation in connection with that Property Owner's Proposed Development(s).

2.12 Each Property Owner participating in one or both LID Petitions acknowledges that its property will be specially benefited by the Projects listed in the Intersection LID Petition and the Bridge LID Petition that include its property. Each Property Owner who is participating in one or both LID Petition also acknowledges that all of the properties in the Intersection LID and all of the properties in the Bridge LID will be specially benefited by all of the Projects. Each Property Owner participating in the LID Petitions therefore consents to the formation of the LIDs that include the Property Owner's property, subject to the conditions set forth herein.

2.13 It is the intention of the Parties that the Consortium Agreements are each integral parts of a collective effort with the City, intended to accomplish the objectives set out in these recitals. Therefore, the Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be construed accordingly, and in the event of any conflict between the terms and conditions of the Development Agreements and the LID Petitions, the LID Petitions shall prevail.

2.14 It is recognized that the Proposed Development of Cascade Highlands, L.P. is located outside the city limits of the City. Consistent with the Joint Management Agreement between the City and Deschutes County, a three-party development agreement will be executed by the City, Deschutes County and Cascade Highlands, L.P. Cascade Highlands, L.P. will contribute $500,000 to the City for the construction of the Southern Bridge. The Parties recognize that Cascade Highlands, L.P. has substantially the same ownership as Broken Top Limited Partnership and Skyliner Summit Limited Partnership and that its contribution, considered as a part of the entire Consortium Agreements, addresses the impacts its Proposed Development will have on the West Side Transportation System.

2.15 None of the Property Owners shall be responsible for the performance of obligations of any other Property Owners unless expressly stated in the Consortium Agreements.

2.16 The Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be recorded and binding upon the Parties, their

successors and assigns, and shall be enforceable as covenants running with the land; and may be enforced by any remedy provided by law.

2.17 The Parties agree that their execution of these Consortium Agreements represents their acceptance of the purpose expressed in these recitals, and the ways and means of accomplishing this purpose. Towards this end, the Parties expressly agree:

2.17.1 The Parties shall cooperate in good faith to the extent reasonably practicable to accomplish the purpose of the Consortium Agreements. This shall include, but not be limited to, cooperation in the defense of these agreements and their performance.

2.17.2 Other non-consortium development served by the West Side Transportation System shall be expected to make realistic provision for the mitigation of its impacts on transportation facilities as required by law, and in addition to that made by the Property Owners.

2.17.3 The terms and conditions of these Consortium Agreements are intended as an implementation of, and are consistent with, the City's land use laws, rules and regulations, together with all applicable state and federal laws, rules, and regulations. This includes, but is not limited to, a recognition that the performance required of the Parties by these Consortium Agreements is roughly proportional to the impacts the Proposed Developments will have on the West Side Transportation System; and that the public and private responsibilities involved in remedying the deficiencies in the West Side Transportation System in order to support the Proposed Developments are fairly and properly allocated.

2.17.4 The Parties further express their commitment to the objectives of these Consortium Agreements by waiving all claims of any kind or nature resulting from the Parties' agreement to accomplish the purpose contemplated by the Consortium Agreements, or the ways and means provided for accomplishing that purpose in the Consortium Agreements. This includes, but is not limited to any constitutional or statutory claims (for the taking of property or otherwise), and any claims against the other Party, its elected officials, officers, employees, or agents. This waiver does not include claims based upon a failure to perform these Consortium Agreements as expressly required by their terms and conditions. This waiver shall not prevent land use appeals of approvals or denials of the Proposed Developments.

2.17(a) The Parties acknowledge that the lawsuit filed by the Central Oregon Builders Association (COBA) and served upon the City October 10, 2000

may affect the amount of System Development Charges (SDCs) available for reimbursement as provided in the Consortium Agreements. This lawsuit (COBA v. City of Bend, Circuit Court No. 00CV0454AB) seeks to reduce the Street SDC. If COBA succeeds, the $3,250 SDC anticipated by the Consortium Agreements may be reduced and SDC collections available for reimbursement may also be reduced. Because of this possibility, the Parties agree that the provisions of the Consortium Agreements relating to reimbursement (including but not limited to Sec. 12.5 and Exhibit D of the Development Agreements, Sec. 8 of the Southern Bridge LID, and Sec. 8 of the Intersection LID) are modified to provide that the SDC imposed by the City shall be the amount provided in the Consortium Agreements, or the highest amount permitted by law, if the highest amount permitted by law is less than the amount provided in the Consortium Agreements. It is the intent of the Parties that this Section has been added only to accommodate the possibility of a reduction created by the COBA lawsuit, and not for any other purpose. In the event that SDC collections are reduced as a result of the COBA lawsuit, the Consortium Agreements shall continue in full force and effect except as modified by this Section, and the Parties shall in good faith continue to cooperate in the achievement of the purpose of the Consortium Agreements, specifically including the reimbursement to consortium members from SDCs as provided in City of Bend Street Policy No. 5, Sec. 6 (which applies when the potential SDC collections from sole recovery areas will not be adequate to fund full reimbursement, and shared area recovery area collections are available to pay reimbursement not otherwise collectible from sole recovery areas).

2.18 These recitals are part of each of the Consortium Agreements.

3. Effective Date; Term of Agreement

3.1 This Agreement shall be effective upon adoption of the City ordinance approving this Agreement pursuant to ORS 94.508 (the "Effective Date"). The term (the "Term") of this Agreement shall commence on the Effective Date and shall continue for a period of seven years unless terminated sooner in accordance with the provisions contained herein.

3.2 The Parties agree that the intent of the Parties and the essential purpose of this Agreement is to provide the City with a system-wide fix on the West Side in exchange for providing BRC and the other Property Owners (a) the right to build their Proposed Development at the Maximum Density provided in Section 4.2 for a seven-year period without additional Off-Site Transportation Impact Mitigation, subject to BRC and the other Property Owners obtaining Final Approval through the normal City applications process, and (b) a seven-year vesting of the land use standards which will be applicable to such applications. The right to the Proposed Development at the Maximum Density without additional Off-Site

Transportation Impact Mitigation and the vested standards during a full seven-year period is critical to BRC's willingness to enter into this Agreement. The Parties understand that BRC may not receive the benefit of such intent and purpose during the initial Term of this Development Agreement if there are delays (a) caused by third-party appeals of this Development Agreement and/or the related LID Petitions; (b) caused by third-party appeals of BRC's land use applications in connection with the Proposed Development; and (c) in the land use applications process. If as a result of such delays BRC does not receive Final Approval within one year of the Effective Date, the Parties agree that they will negotiate in good faith an extension of the Term of this Development Agreement to assure that BRC has a 7 year period following Final Approval to proceed with its Proposed Development under the terms and conditions of this Development Agreement. At no time shall the Term exceed seven years.

4. Proposed Development

4.1 BRC has an approved Planned Unit Development for the BRC Property that has been developed in phases in conformance with an approved Master Plan. BRC's Master Plan allows a density of 500 units. BRC has filed land use applications to allow for continued phased development of the BRC Property. The pending applications include the following: (1) a modification to the Planned Unit Development Master Plan to increase the overall density from 500 to 612 residential units. The increase in density proposed in the BRC application is required to include a 307-unit continuing care retirement community with various housing types; (2) a subdivision application to create 22 lots within the BRC Master Plan; (3) site plan approval for the 307 continuing care retirement community units including a conditional use permit to allow construction of a building more than 30 feet in height in the RS zone. BRC intends to seek future approvals under the Master Plan for 93 residential units, 15,400 square feet of retail and 94,600 square feet of office space. Collectively, the pending applications and the future applications referenced in this Section 4 are hereinafter referred to as the "Proposed Development."

4.2 For the purpose of determining the amount and kind of Off-Site Transportation Impact Mitigation required of BRC's Proposed Development and the rights of BRC vested herein, BRC agrees that the density of its Proposed Development shall not exceed 307 continuing care retirement community units, 93 residential units, 15,400 square feet of retail, and 94,600 square feet of office space (collectively, the "Maximum Density"). The Maximum Density has been used by the Parties in a supporting traffic study to determine the estimated number of vehicle trips to be generated by the Proposed Development. To the extent that BRC changes its mix of development to respond to market conditions but does not increase the number or distribution of estimated vehicle trips, BRC shall not be deemed to have exceeded its Maximum Density.

5. Conditions to Parties' Obligations

5.1 BRC's obligation to pay for Projects other than the Southern Bridge and the "Other Improvements" listed in **Exhibit C** under this Agreement is also subject to the terms and conditions provided in the Intersection LID Petition.

5.2 BRC's obligation to pay its share of the construction costs of the Southern Bridge is also subject to the terms and conditions provided in the Bridge LID Petition.

5.3 The City's obligations hereunder are subject to BRC signing the Intersection LID Petition and the Bridge LID Petition.

5.4 Both Parties' obligations are subject to Deschutes County entering into a Development Agreement with Cascade Highlands, L.P. consistent with the recitals herein.

6. Permitted Uses. A portion of the BRC Property is within the RS Zone, Urban Standard Residential, pursuant to the Bend Zoning Code. The remainder is within the CL Zone, Commercial Limited. Notwithstanding the content of any later-adopted zoning or development ordinance, the land use standards and criteria that apply to approval of the Proposed Development during the period of this Agreement shall be subject to the BZO as the same exist as of the Effective Date.

7. Density or Intensity of Use. Land use approval of the Proposed Development during the period of this Development Agreement shall be subject to the following standards, which exist as of the Effective Date, notwithstanding the content of any subsequently adopted zoning or development ordinance:

7.1 The applicable maximum density provisions of the BZ0 and the Bend Subdivision Ordinance ("BSO") as the same exist as of the Effective Date.

7.2 Any minimum lot area, minimum average lot width, minimum average lot depth, yard requirements, coverage or setback requirements in the RS zoned portion of the BRC Property shall be based upon BZO Section 10.10.10(5) as the same exists as of the Effective Date. While that section sets forth such lot requirements, it also provides that "the approval authority may allow smaller lots of different housing types in a new subdivision or Planned Unit Development (PUD) approved pursuant to this ordinance and consistent with the Comprehensive Plan designations for preservation of areas of significant interest when these lots or housing types are internal to the subdivision or PUD." Any minimum lot area, minimum lot width, minimum lot depth, yard requirements, coverage or setback requirements in the CL zoned portion of the BRC Property shall be based upon BZO Section 10.10.15(5) as the same exists as of the Effective Date.

8. Maximum Height and Size of Proposed Structures. Section 10.10.10 of the BZO, as the same exists as of the Effective Date, governs the maximum height and size of proposed structures in the RS zoned portion of the BRC Property. Section 10.10.10(4) provides that any building over 30 feet in height shall require a conditional use permit. Section 10.10.15 of the BZO, as the same exists as of the Effective Date, governs the maximum height and size of proposed structures in the RS zoned portion of the Property. Section 10.10.15(4) provides that any building over 30 feet in height shall require a conditional use permit. The Parties recognize that for the Proposed Development, BRC has filed applications for conditional uses for structures in excess of 30 feet in height. BRC agrees that the height of the structures proposed under the pending applications (the greatest height being 55 feet) shall be the maximum height of the structures in the Proposed Development. Subject to the lot coverage and setback requirements discussed in Section 5 above, there are no other size limitations on construction in the RS and CL zones.

9. Provisions for Reservation or Dedication of Land for Public Purposes. BRC shall dedicate right-of-way at no cost to the City for an extension of Mt. Washington Drive from Century Drive through to the Southern Bridge. BRC shall, upon receipt of approval for the adjacent site plan, dedicate right-of-way, up to 50 feet from the centerline of Century Drive, along the frontage of the Proposed Development with Century Drive. Except as provided above, BRC shall have no other obligations to make off-site reservations or dedication of land for public purposes (including easements and/or licenses) in connection with BRC's Proposed Development. The necessity and/or specifics of any future on-site reservations or dedications of land for public purposes (including easements and/or licenses) in connection with BRC's Proposed Development will be determined by the City in reviewing BRC's applications and applying City standards and ordinances in effect as of the Effective Date.

10. Fees and Charges

    10.1 When land within the Proposed Development is developed, the City shall collect System Development Charges ("SDC") within the sole recovery area established for the Proposed Development in accordance with the terms of Section 12.5.

    10.2 BRC and its successors and assigns shall pay all applicable fees and charges then in effect for a particular application, except where the purpose or effect of such fees or charges is Off-Site Transportation Impact Mitigation. In no event shall this Section 10 be construed so as to relieve BRC or any purchaser of any portion of the BRC Property from any obligation it may have to pay street SDCs.

11. Schedule and Procedure for Compliance Review. Commencing on the first anniversary of the Effective Date, BRC shall prepare annual written reports of its compliance with the terms of this Agreement to the City. Such reports shall

include an update as to compliance with all schedules set forth herein. After receipt of such reports, the City may request such additional or backup information as it deems reasonably necessary.

12. Responsibility for Providing Infrastructure and Services

12.1 Consistent with the Maximum Density rights vested in Section 4 and the development standards vested in Sections 6, 7, 8 and 10, BRC agrees to make certain off-site street and transportation-related improvements. Subject to the terms provided herein, BRC agrees that it shall construct and/or provide funding toward the construction of the following off-site Projects:

12.1.1 Subject to Section 12.3, contribute forty-three and two tenths percent (43.2%) of the cost of constructing a single-lane roundabout at the intersection of Century Drive and Mt. Washington Drive . The Construction Commencement Deadline shall be December 31, 2001. Such roundabout shall be constructed in general conformance with the engineering drawings attached to the Intersection LID Petition;

12.1.2 Dedicate right-of-way at no cost to City for and construct an extension of Mt. Washington Drive from Century Drive through to the Southern Bridge. The Construction Commencement Deadline shall be December 31, 2001. Such extension shall be constructed in general conformance with the engineering drawings attached to the Intersection LID Petition;

12.1.3 Participate in the Bridge LID Petition to fund the costs of constructing the Southern Bridge; and

12.1.4 Subject to the terms provided herein, BRC agrees that it shall construct those Other Improvements identified on attached **Exhibit C**.

As used herein, "Construction Commencement Deadline" shall mean the date by which the Responsible Property Owner(s) shall have commenced preliminary design and engineering work

12.2 The City acknowledges that (a) construction of the Southern Bridge is subject to objections raised by third parties which could interfere with that Project; (b) construction of any of the Projects could be delayed as a result of the City's failure to timely acquire necessary rights-of-way, (c) construction of any of the Projects could be delayed as a result of objections raised by third parties; and (d) construction of any Projects could be delayed by difficulties in obtaining approvals from the Oregon Department of Transportation ("ODOT") and any other federal, state or local regulatory body. The City agrees that none of (a), (b), (c) or (d) shall

be a basis for denying or delaying the approval of any of BRC's land use applications in connection with the Proposed Development, grounds for declaring BRC to be in default, or a basis for exacting additional Off-Site Transportation Impact Mitigation from BRC. Subject to the terms of the applicable LID Petition(s), the City shall, however, have the right to construct Projects and assess the Responsible Property therefore according to the schedules in the LID Petitions, irrespective of whether BRC has received Final Approval. In the event of (b), the schedule for construction of the applicable Project as set forth in the applicable LID Petition shall be delayed by the same period of time by which the right-of-way acquisition is delayed.

12.3 The Intersection LID Petition includes plans and drawings for the Projects identified therein. Estimates have been prepared of the cost of constructing them. BRC shall bear the risk that such costs may increase between the date of this Development Agreement and the date that construction commences; provided, however, the City shall bear any additional costs, which result from any change in design required by the City or ODOT.

12.4 The City agrees that the Projects and Other Improvements to be provided pursuant to this Development Agreement, the Bridge LID Petition and the Intersection LID Petition shall be deemed to satisfy BRC's obligation to provide Off-Site Transportation Impact Mitigation in connection with the Maximum Density of the Proposed Development set forth in Section 4 so that, with respect to off-site transportation obligations, the Proposed Development is vested. The City shall require no other off-site transportation-related exactions nor require any further traffic studies relating to Off-Site Transportation Impact Mitigation in connection with or as a condition to the approval of BRC's Proposed Development. This shall include, but not be limited to, construction of off-site streets or intersections, improvement of off-site intersections or other existing off-site transportation facilities, construction of off-site bicycle paths or pedestrian trails and dedication of off-site rights-of-way for any of the above-identified purposes. Notwithstanding the foregoing, BRC's rights which are vested herein are dependent upon the Maximum Density of the Proposed Development set forth in Section 4 which is tied to the estimated number of vehicle trips to be generated by such Maximum Density. The Parties hereto understand that the mix of uses that make up the Maximum Density could change based on market forces. However, to the extent that BRC submits land use applications that would increase the number of vehicle trips to be generated by the Proposed Development, the Proposed Development may be subject to additional off-site transportation exactions based upon projected transportation impacts on City transportation facilities from the increased density, consistent with City policies and regulations. The Parties agree that this Development Agreement does not, however, resolve any issue relating to on-site transportation requirements and that on-site transportation issues are reserved for future discretionary

land use approval, and that the City may require further studies and reviews relating to on-site traffic.

12.5 The City and BRC agree that upon execution of this Agreement that the property identified in **Exhibit B** shall be established as the sole recovery area for the collection of transportation system development charges ("SDC"). During the Term of this Agreement, the City shall collect SDCs at the greater of the rates determined in accordance with the SDC rates attached as **Exhibit D**, or any future rates adopted by the City. The City is currently evaluating SDC rates for commercial and industrial development. If such rates are changed prior to December 31, 2000, such change shall replace **Exhibit D** to this Agreement. Otherwise, until the earlier of the expiration of this Agreement or the date at which the Property Owner has received full reimbursement from SDCs, the SDC rate for those SDCs collected from the sole recovery area will not decrease, but shall increase if and when City-wide SDC rates increase.

12.6 The City shall use the SDC revenue collected from the sole recovery area to reimburse BRC for the cost of constructing the projects (other than the Southern Bridge) identified in Section 12.1 above at a rate of 100% of all qualified improvements pursuant to Street Policy 5 (**Exhibit E**) as amended.

12.7 The amount of BRC's contribution toward the cost of constructing the Southern Bridge shall be reimbursed through City-wide generated SDCs in accordance with the Bridge LID Petition.

12.8 The Parties agree that there are certain actions or improvements that must be made in conjunction with the Projects and Other Improvements to be completed by the Property Owners to provide adequate facilities to support development which will impact the City's West Side Transportation System. These actions or improvements are not a part of the Property Owners' obligations and the City agrees to assure that such actions are taken and such improvements are made. As referenced in the supporting traffic studies, such actions and improvements include, but are not limited to, acquiring rights-of-way for those Projects for which the Property Owners do not already own the necessary rights-of-way, obtaining permits necessary for construction of the Projects, expanding some of the Projects as necessary from single-lane roundabouts to double-lane roundabouts and completing bicycle lanes where gaps exist along Shevlin Park Road. In no event shall the City be obligated to expend funds to take such actions or complete such improvements; the City may assure their completion by any appropriate means, including, without limitation, making them conditions to other future development, paying for them with systems development charges, paying for them with grants and/or including them in future capital improvement plans.

13. Assumptions Relating to City's Ability to Serve Development; Continuing Effect of Agreement

13.1 ORS Section 94.504(6) requires that a Development Agreement "state the assumptions underlying the agreement that relate to the ability of the city...to serve the development."

13.2 The facts set forth in the Recitals are included in the assumptions underlying this Agreement.

13.3 The Parties operate under the assumption that construction of the Projects (including the Southern Bridge) will provide adequate off-site transportation infrastructure and facilities to support BRC's Proposed Development. The adequacy of transportation facilities are determined with reference to the standards in effect as of the Effective Date.

13.4 In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with the Agreement impossible or unlawful, the Parties will attempt to give effect to the remainder of the Agreement, but only if the purposes set out in the recitals can be accomplished and such effect does not prejudice the substantial rights of either Party under the Agreement.

13.4.1 If the substantial rights of either Party are prejudiced by giving effect to the remainder of the Agreement, then the Parties shall negotiate in good faith to revise the Agreement to give effect to its original intent.

13.4.2 If the Parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either Party may request that an arbitration panel determine an equitable effect for the remainder of the Agreement. The arbitration panel shall consist of 3 arbitrators, one of which shall be selected by BRC, one of which shall be selected by the City, and the third of which shall be selected by agreement of the arbitrators selected by BRC and the City. If the 2 arbitrators are unable to agree upon the selection of a third arbitrator, then the third arbitrator shall be selected by the Presiding Judge of the Circuit Court, 11th Judicial District, Deschutes County, Oregon.

13.4.3 If, because of a change in policy, law or circumstances, the Agreement fails of its essential purposes (construction of all of the traffic system improvements called for in the Intersection LID Petition, the Bridge LID Petition and this Development Agreement; vesting of allowed uses and limitations on development conditions; vesting of maximum off-site transportation exactions; and vesting of maximum permissible

densities in connection therewith), then the Parties shall be placed into their original position to the extent practical.

13.4.4 As used herein, however, "change in circumstance" does not include changes in local government land development or land division regulations.

13.5 To the extent any local rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis that is not, in the reasonable discretion of BRC, inconsistent with the substance, purpose, or conditions of this Development Agreement, then the local rule, ordinance, regulation or policy shall be applicable.

14. Assignability of Agreement. This Agreement shall be fully assignable, in whole or in part, by either Party and shall bind and inure to the benefit of the Parties and their respective successors and assigns. If any portion (other than lot sales to individuals or builders) of the BRC Property is sold, the duties, rights and interests of BRC under this Agreement shall become the duties, rights and responsibilities of the purchaser and BRC. Notwithstanding the foregoing, no purchaser of an individual lot(s) shall have any rights hereunder.

15. Future Discretionary Approvals.

15.1 The City agrees to cooperate with BRC in securing all future necessary land use permits and approvals for the Proposed Development needed from entities other than the City.

15.2 The following future discretionary approvals are the currently anticipated approvals that will be required for the Proposed Development:

15.2.1 Approval of a modification to the BRC Master Plan to increase the overall density from 500 to 612. The increase in density is to include a 307 unit continuing care retirement community with various housing types;

15.2.2 Approval of a subdivision to create 22 lots within the BRC Master Plan;

15.2.3 Approval of a site plan for the 307 continuing care retirement community units including a conditional use permit to allow construction of a building more than 30 feet in height in the RS zone;

15.2.4 Approval of subdivision applications for no more than 93 residential units;

15.2.5 Approval of subdivisions and site plans for 15,400 square feet of retail and 94,600 square feet of office space.

15.3 The Parties acknowledge that the provisions of BRC's land use application, other than the provisions relating to Off-Site Transportation Impact Mitigation, shall be the subject of future discretionary approvals by the City. The question of whether the City may approve the applications referred to in this Agreement, including the provisions of the land use applications referred to in Sections 4 (Proposed Development), 6 (Permitted Uses), 7 (Density or Intensity of Use), and 8 (Maximum Height and Size of Proposed Uses), or any other part of BRC's land use application are reserved for future discretionary approvals, and are not resolved by the terms of this Agreement, the Intersection LID Petition or the Bridge LID Petition. Nothing in this Agreement resolves, adjudicates or dispenses with the responsibilities of BRC or its Proposed Development for impacts or conditions of approval other than Off-Site Transportation Impact Mitigation, and nothing herein operates as an approval (or preliminary approval) by City of BRC's land use applications except as to Off-Site Transportation Impact Mitigation.

15.4 In the event of a conflict between the terms of this Development Agreement, and the terms of either the Intersection LID Petition or the Bridge LID Petition, then the terms of the Intersection LID Petition or the Bridge LID Petition shall control.

15.5 The discretionary approvals shall be reviewed by the City in the same manner and subject to the same procedures and hearings requirements as all other similar land use applications filed at the time of the Effective Date.

16. Schedule. BRC shall commence construction of the Projects assigned to BRC as of the date set forth in the relevant LID Petition(s) and shall complete construction of each Project no later than the date established in the relevant LID Petition(s). Subject to obtaining timely approvals of its Proposed Development, BRC shall commence construction of its Proposed Development by 2001 and that its Proposed Development shall be completed by the expiration of the Development Agreement.

17. Defaults

17.1 A breach of a material provision of any of the Consortium Agreements, whether by action or inaction of a Party which continues and is not remedied within thirty (30) days after the other Party has given notice specifying the breach shall constitute a default by a Party. If the breach is of such a nature that it cannot reasonably be cured within such thirty-day period, the cure period shall be extended to such amount of time as is reasonable but only if the breaching Party promptly commences, and thereafter diligently prosecutes, such cure.

17.2 The exercise by either Party of any one or more of such remedies available to it shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

17.3 Notwithstanding the foregoing, in the event that BRC fails to construct (or fund its share of the costs of construction in the case of the Southern Bridge) the Projects identified in Section 12.1 above, by the applicable deadlines set forth in the Intersection LID Petition or the Bridge LID Petition, as applicable, then BRC shall not be deemed in default hereunder, but the City shall have the rights set forth in the Intersection LID Petition or the Bridge LID Petition to construct the traffic improvement facilities and to assess the Responsible Property as set forth in those petitions.

18. Release of Development Agreement. The City shall release developed lots from this Development Agreement upon the request of BRC provided that the terms and conditions of this Development Agreement have been performed as they relate to the lot to be released.

19. Force Majeure

19.1 In the event that any Party (the "Delayed Party") is delayed or prevented from performing any of its obligations under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities, laws or other governmental requirements, riots, war, or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

19.2 The City's right under the Intersection LID Petition or the Bridge LID Petition to construct traffic system improvements shall not be affected by the provisions of Subsection 19.1.

20. Notices. Any notice, demand, request, approval, consent, or other communication (collectively referred to as a "Notice") concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other Party at the address set forth below. Any Notice shall be given by either: (i) personal delivery in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Any Party may change any address for the delivery of Notice to such Party, by giving Notice in accordance with the provisions of this Section. The attorneys for the Parties may give any Notice.

Notices Addresses:

If to BRC: Brooks Resources Corporation
296 SW Columbia Street, Suite A
Bend, OR 97702
Attn: Kirk Schueler

With a copy to: Ball Janik LLP
15 SW Colorado, Suite K
Bend, Oregon 97702
Attn: Laura Craska Cooper

If to City: City of Bend
Development Services
710 N.W. Wall
Bend, OR 97701
Attn: Development Services Director

21. Miscellaneous

21.1 City Funding. The Parties agree that any provision herein which requires the City to expend funds is contingent upon future appropriations as part of the City budget process as provided in ORS 94.504(5). Nothing herein requires the City to appropriate such funds.

21.2 Waivers. No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

21.3 Entire Agreement/Modifications. This Agreement, together with the Intersection LID Petition and the Bridge LID Petition (along with all exhibits incorporated therein) (collectively referred to as the "Consortium Agreements") constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto. This Development Agreement, the Intersection LID Petition and the Bridge LID Petition are parts of a whole transaction between the Parties and shall be construed as a whole transaction.

21.4 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

21.5 Captions. The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the Parties.

21.6 Gender/Singular/Plural. Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all the Parties and all circumstances, except where the context of this Agreement clearly dictates otherwise.

21.7 Severability. Subject to Section 13.4, the unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

21.8 Time of Essence. Time is of the essence of this Agreement.

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

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

"BRC" BROOKS RESOURCES CORPORATION,
an Oregon corporation

By: _____
Name: _____
Title: Chairman

"MBV" MOUNT BACHELOR VILLAGE CORPORATION,
an Oregon corporation

By: _____
Name: _____
Title: President

"CITY"

CITY OF BEND, an Oregon Municipal Corporation,

By: _____
Name: Kristy Johnson
Title: City Mgr.

STATE OF OREGON)
)ss.
COUNTY OF Deschutes)

This instrument was acknowledged before me on November 1, 2000, by Michael P. Hollern as Chairman of Brooks Resources Corporation.

OFFICIAL SEAL
CYNTHIA M SMITH
NOTARY PUBLIC-OREGON
COMMISSION NO. 335405
MY COMMISSION EXPIRES JUNE 8, 2004

Cynthia M. Smith
Signature of Notarial Officer
My Commission Expires: 6/8/04

STATE OF OREGON)
)ss.
COUNTY OF Deschutes)

This instrument was acknowledged before me on November 1, 2000, by Michael P. Hollern as President of Mount Bachelor Village Corporation.

Cynthia M. Smith
Signature of Notarial Officer
My Commission Expires: 6/8/04

OFFICIAL SEAL
CYNTHIA M SMITH
NOTARY PUBLIC-OREGON
COMMISSION NO. 335405
MY COMMISSION EXPIRES JUNE 8, 2004

STATE OF OREGON)
)ss.
COUNTY OF Deschutes)

This instrument was acknowledged before me on November 6, 2000 by Larry Patterson as City Manager of the City of Bend.

OFFICIAL SEAL
PATRICIA ANNE SMILEY STELL
NOTARY PUBLIC-OREGON
COMMISSION NO. 305227
MY COMMISSION EXPIRES NOV. 22, 2001

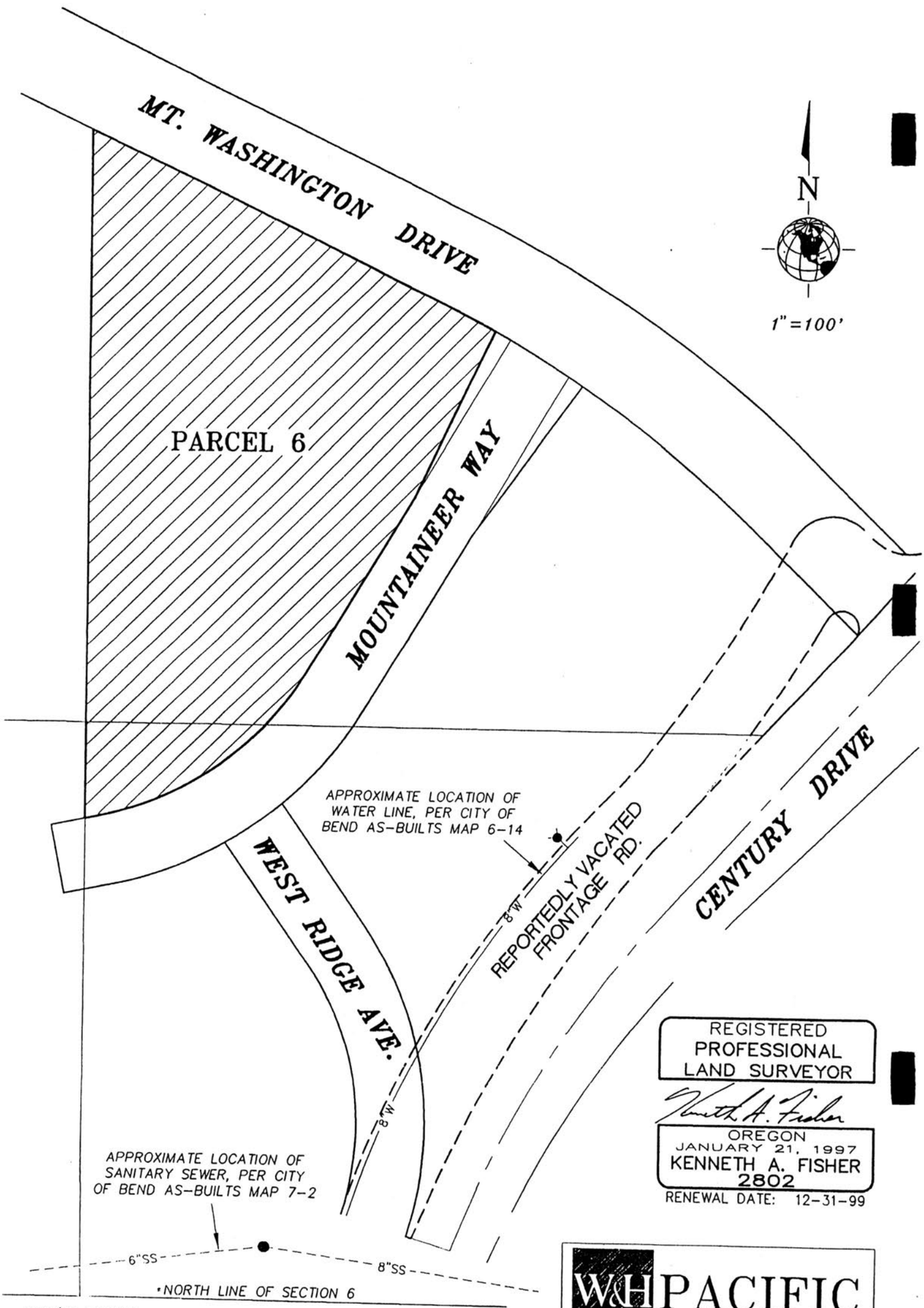
Patricia Anne Smiley Stell
Signature of Notarial Officer
My Commission Expires: Nov. 22, 2001

Exhibit A
Property Owners

1. Brooks Resources Corporation;
2. West Bend Property Company, LLC;
3. Broken Top Limited Partnership and Broken Top Development, LLC;
4. Skyliner Summit Limited Partnership and Broken Top Development, LLC;
5. Century Park LLC;
6. Shevlin Heights Limited Partnership;
7. River Bend Limited Partnership;
8. Central Oregon Community College;
9. Bend LaPine Administrative School District No. 1;
10. West Side Meadows, LLC;
11. Western Communications Inc., dba The Bulletin; and
12. Cascade Highlands Limited Partnership

EXHIBIT B

LOCATED IN THE SW 1/4 OF SEC. 6, T.18S., R.12E., W.M.
BEND DESCHUTES COUNTY OREGON



REGISTERED
PROFESSIONAL
LAND SURVEYOR

Kenneth A. Fisher

OREGON
JANUARY 21, 1997
KENNETH A. FISHER
2802

RENEWAL DATE: 12-31-99

W&H PACIFIC
920 S.W. EMKAY DRIVE, SUITE C-100
Bend, OR 97702
Phone: (541) 388-4255 Fax: (541) 388-4229
Planning • Engineering • Surveying
Landscape Architecture • Environmental Services

1326-050 PARCEL6.DWG
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W&H PACIFIC
920 S.W. Emkay Dr., Suite C-100
Bend, Oregon 97702

Exhibit B
LEGAL DESCRIPTION
Brooks Resources Corporation
MRS Tract

All that property being a portion of the northwest quarter of Section 7, Township 18 South, Range 12 East, Willamette Meridian, in the City of Bend, Deschutes County, Oregon, described as follows:

That parcel described by deed recorded in Book 325 at Page 978 of Deschutes County Official Records to wit:

That portion of said northwest quarter of Section 7 lying westerly of the westerly right-of-way of Century Drive and southerly and southeasterly of the boundary of West Ridge Subdivision.

Excepting therefrom that portion lying within Campbell Road as described in Book 9 at Page 326 of the Commissioner's Journal for Deschutes County, Oregon.

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Keith Dagostino
OREGON
JUNE 1, 1998
KEITH S. DAGOSTINO
2885
RENEWAL DATE: 12-31-01

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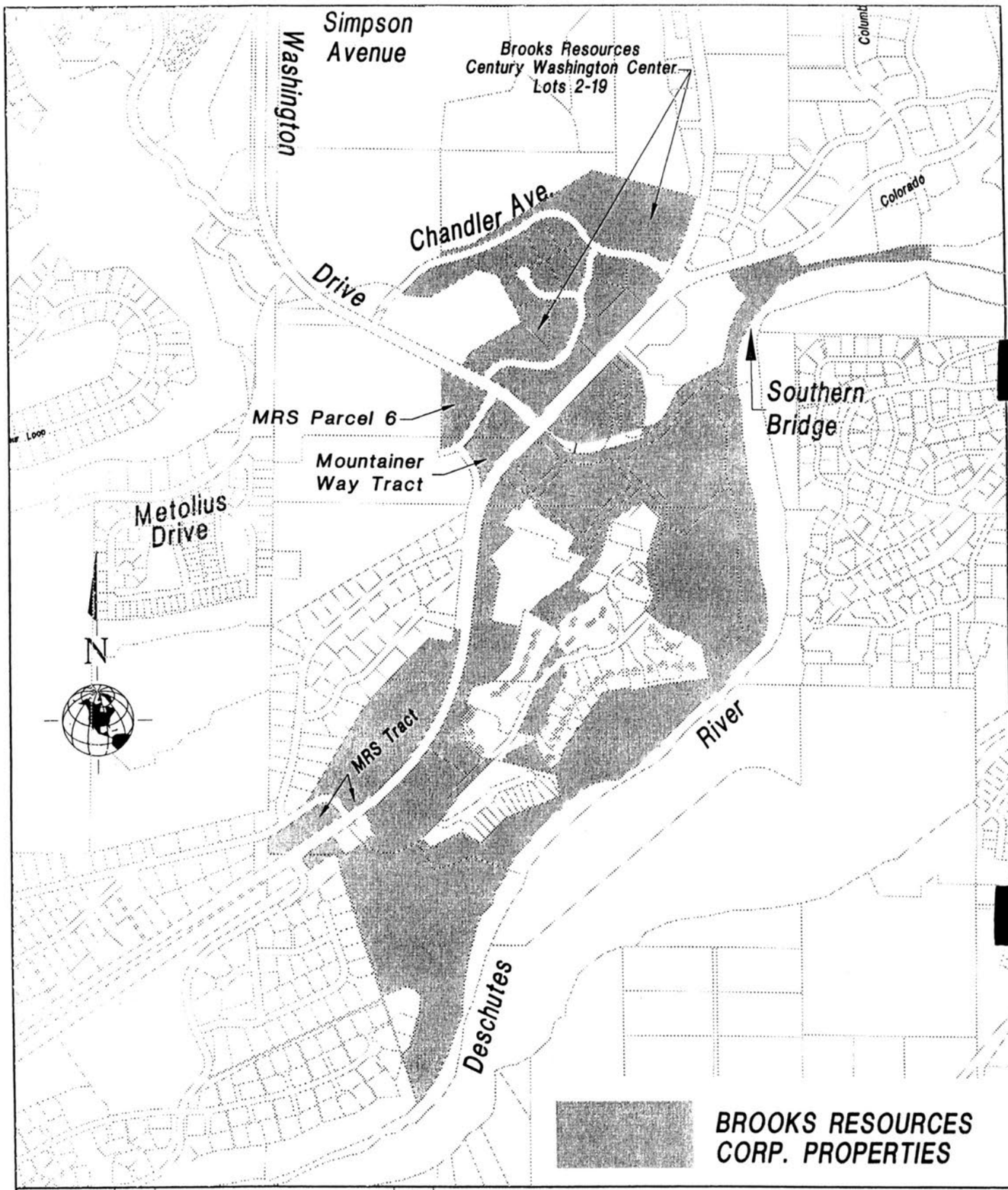

DATE	BY	REVISION	CHK

DRAWN BY: JAM
DESIGNED BY: JAM
CHECKED BY: KSD
APPROVED BY: KSD

W&H PACIFIC
920 Emkay, Suite C-100
Bend, Oregon 97702-1041
(541)388-4255
(541)388-4259 Fax
whpacific.com
A Member of The H Group
Planners • Engineers • Surveyors • Landscape Architects

West Side Transportation Consortium
Brooks Resources Corp.

Property Exhibit Map

EXHIBIT B

BEND/DESCHUTES OREGON

SCALE:	PROJECT NO.	FILE NAME:	
1"=1000'	02.2452.0001	WSTCPROP.DWG	1/1

PLOT DATE: 10/26/2000
LAST EDIT:

Exhibit B

MOUNT BACHELOR VILLAGE

PROPERTY DESCRIPTION

A parcel of land, located in a portion of the South One-Half of Section 6 and a portion of Section 7, Township 18 South, Range 12 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being more particularly described as follows:

Parcel 1, of a Tract of land deeded to Mount Bachelor Village Corporation May 17, 1988, in Book 163, Page 2714, Deschutes County Records.

EXCEPTING THEREFROM the following 22 described parcels of land:

1) Parcel 1 and Parcel 2, Partition Plat 1999-24, recorded in Cabinet I, Page 767, Office of Deschutes Clerk.
2) Plat of River Ridge Townhomes of Mt. Bachelor Village, recorded in Cabinet D, Page 89, Office of Deschutes Clerk.
3) Plat of River Ridge One Condominiums of Mt. Bachelor Village, Stage A.
4) Plat of River Ridge One Condominiums of Mt. Bachelor Village, Stage B.
5) Plat of River Ridge One Condominiums of Mt. Bachelor Village, Stage C.
6) Plat of River Ridge One Condominiums of Mt. Bachelor Village, Stage D.
7) Plat of River Ridge One Condominiums of Mt. Bachelor Village, Stage E.
8) Plat of River Ridge One Condominiums of Mt. Bachelor Village, Stage F.
9) Plat of River Ridge One Condominiums of Mt. Bachelor Village, Stage G.
10) Plat of River Ridge One Condominiums of Mt. Bachelor Village, Stage H.
11) Plat of River Ridge One Condominiums of Mt. Bachelor Village, Stage I.
12) Plat of River Ridge Two Condominiums of Mt. Bachelor Village, Stage A.
13) Replat of the Boundary of the River Ridge Two Condominiums of Mt. Bachelor Village, Stage B.
14) Plat of River Ridge Two Condominiums of Mt. Bachelor Village, Stage C.
15) Plat of River Ridge Two Condominiums of Mt. Bachelor Village, Stage D.
16) Parcel B and Parcel C of Partition Plat 1991-60.
17) That portion deeded to the Athletic Club of Bend October 29, 1992, in Book 280, Page 2739, Deschutes County Records.
18) That portion leased to the Athletic Club of Bend November 4, 1992, in Book 281, Page 1412, Deschutes County Records.
19) The 1.248 acre Right-of-Way Dedicated to the City of Bend per Minor Partition MP-4-86.

S:\Dave\Land Projects\mbv\docs\MOUNT BACHELOR VILLAGE.doc
10/26/00

805 SW Industrial Way, Suite 10 • Bend, Oregon 97702-1093 • (541) 389-9351 • Fax (541) 388-5416

20) A 50.00 foot wide strip of land for Mt. Bachelor Village Drive per Volume 354, Page 211, recorded February 25, 1982.
21) A 50.00 foot wide strip of land for Mt. Bachelor Village Drive per Volume 357, Page 823, recorded June 3, 1982.
22) A Parcel of Land for Mt. Bachelor Village Drive per Volume 250, Page 0211, recorded November 18, 1991.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 19, 1994
DAVID R. WILLIAMS
2686

10/26/00

EXPIRES: JUNE 30, 2002

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10/26/00

805 SW Industrial Way, Suite 10 • Bend, Oregon 97702-1093 • (541) 389-9351 • Fax (541) 388-5416

W&H PACIFIC
920 S.W. Emkay Dr., Suite C-100
Bend, Oregon 97702

Exhibit B

LEGAL DESCRIPTION
LOTS 2-19, CENTURY WASHINGTON CENTER

Eighteen parcels of land located in the southwest one-quarter and the west one-half of the southeast one-quarter of Section 6, Township 18 South, Range 12 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being further described as follows:

Lots 2 through 19, Century Washington Center, Phase I, II, III, & IV, as recorded in the Deschutes County survey records as CS 13816.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Keith Dagostino

OREGON
JUNE 1, 1998
KEITH S. DAGOSTINO
2885

RENEWAL DATE: 12-31-01

2452.0001/Sh102400.doc

W&H PACIFIC
920 S.W. Emkay Dr., Suite C-100
Bend, Oregon 97702

Exhibit B

Legal Description
Brooks Resources Corporation
MRS Parcel 6

All that property being a portion of the southeast quarter of the southwest quarter of Section 6, Township 18 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, described as follows:

Beginning at the intersection of the southwesterly right-of-way of Mt. Washington Drive and the northwesterly right-of-way of Mountaineer Way as shown on that exhibit that accompanies that deed on file with the Deschutes County Recorder in Volume 347 at Page 2113; thence along said northwesterly right-of-way, South 25°48'08" West, 159.75 feet; thence South 31°11'11" West, 182.66 feet to the beginning of a tangent 270.00 foot radius curve to the right; thence along said curve through a central angle of 47°25'38", an arc length of 223.50 feet (the chord of which bears South 54°54'01" West, 217.17 feet); thence South 78°36'50" West, 10.01 feet to the west line of said southeast quarter of the southwest quarter; thence leaving said right-of-way and along said west line, North 00°04'05" West, 599.69 feet to said southwesterly right-of-way of Mt. Washington Drive, thence along said right-of-way, South 64°04'07" East, 340.19 feet to the beginning of a tangent 1060.00 foot radius curve to the right; thence along said curve through a central angle of 02°49'22", an arc length of 52.22 feet (the chord of which bears South 62°39'26" East, 52.22 feet) to the Point of Beginning.

Contains 2.95 acres, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Keith Dagostino
OREGON
JUNE 1, 1988
KEITH S. DAGOSTINO
2885
RENEWAL DATE: 12-31-01

mrs6.leg
10/29/98

W&H PACIFIC
920 S.W. Emkay Dr., Suite C-100
Bend, Oregon 97702

Exhibit B

LEGAL DESCRIPTION
Brooks Resources Corporation
Mountaineer Way Tract

All that property being a portion of the southeast quarter of the southwest quarter (SE¼SW¼) of Section 6, Township 18 South, Range 12 East, Willamette Meridian, in the City of Bend, Deschutes County, Oregon, described as follows:

Beginning at the intersection of the northeasterly right-of-way of West Ridge Avenue and the southeasterly right-of-way of Mountaineer Way, as shown on that record of survey by David Evans & Associates on file with the Deschutes County Surveyor as CS 11553; thence along said southeasterly right-of-way of Mountaineer Way along the arc of a 330.00 foot radius curve to the left through a central angle of 18°30'02", an arc length of 106.56 feet (the chord of which bears North 40°26'10" East, 106.09 feet); thence North 31°11'12" East, 182.66 feet; thence North 36°34'18" East, 159.74 feet to the southwesterly right-of-way of Mt. Washington Drive and a point on a non-tangent 1060.00 foot radius curve to the right; thence along said curve through a central angle of 10°22'50", an arc length of 192.05 feet (the chord of which bears South 51°11'25" East, 191.78 feet); thence South 46°00'00" East, 129.67 feet to the northwesterly right-of-way of Century Drive; thence along said northwesterly right-of-way of Century Drive, South 42°18'42" West, 20.01 feet; thence South 42°43'27" West, 183.53 feet to the beginning of a non-tangent 540.00 foot radius curve to the right; thence along said curve through a central angle of 05°51'30", an arc length of 55.21 feet (the chord of which bears South 43°14'20" West, 55.19 feet) to the beginning of a non-tangent reverse 1261.42 foot radius curve to the left; thence along said curve through a central angle of 18°11'48", an arc length of 400.62 feet (the chord of which bears South 31°21'17" West, 398.94 feet); thence leaving said northwesterly right-of-way of Century Drive, North 68°55'09" West, 5.13 feet to said northeasterly right-of-way of West Ridge Avenue and the beginning of a non-tangent 305.00 foot radius curve to the left; thence along said northeasterly right-of-way of West Ridge Avenue and along said curve through a central angle of 53°11'40", an arc length of 283.17 feet (the chord of which bears North 08°30'06" West, 273.11 feet); thence North 35°05'56" West, 126.53 feet to the Point of Beginning.

Contains 3.40 acres, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Keith Dagostino

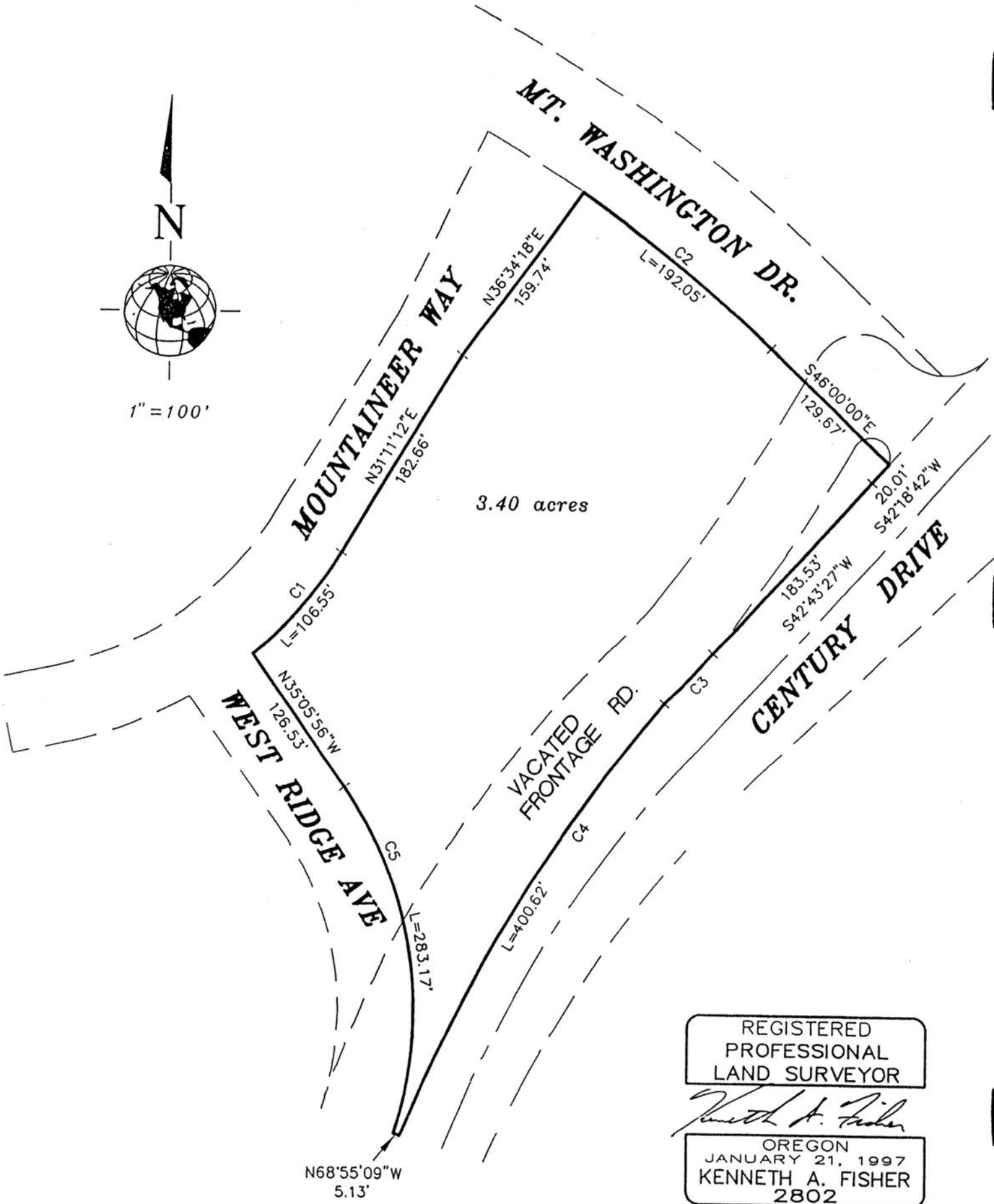
OREGON
JUNE 1, 1998
KEITH S. DAGOSTINO
2885

RENEWAL DATE: 12-31-01

13260503\tl108.leg
11/20/98

LEGAL DESCRIPTION EXHIBIT B

LOCATED IN THE SE 1/4 OF THE SW 1/4 OF SEC. 6, TOWNSHIP 18 SOUTH, RANGE 12 EAST, W.M. BEND DESCHUTES COUNTY OREGON



CURVE TABLE

CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	330.00'	106.55'	106.09'	N40°26'10"E	18°30'01"
C2	1060.00'	192.05'	191.78'	S51°11'25"E	10°22'50"
C3	540.00'	55.21'	55.19'	S43°14'20"W	05°51'30"
C4	1261.42'	400.62'	398.94'	S31°21'17"W	18°11'48"
C5	305.00'	283.17'	273.11'	N08°30'06"W	53°11'40"

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JANUARY 21, 1997
KENNETH A. FISHER
2802

RENEWAL DATE: 12-31-99

W&H PACIFIC
920 S.W. EMKAY DRIVE, SUITE C-100
Bend, OR 97702
Phone: (541) 388-4266 Fax: (541) 388-4229
Planning • Engineering • Surveying
Landscape Architecture • Environmental Services

1326-0503/: XH.DWG

Exhibit C
Other Improvements

1. Dedicate right-of-way, up to 50 feet from the centerline of Century Drive, along the frontage of the Proposed Development with Century Drive.

2. Construct Century Drive frontage improvements that adjoin the Proposed Development including curbs and sidewalks built to City standards, a planting strip, and bicycle lane improvements to City standards.

3. Provision of adequate right-of-way and site development accommodations to support transit, such as, areas for bus stops, shelters or other similar facility as deemed appropriate by the City.

Exhibit D

STREET SDCS

SDC – Trip Ends X Trip Length / 2 / 7200 X $889,160 (lane mile cost)

Category	Daily Trip ends per unit	Units	Chargeable % reduction	Conversion: Daily trip ends per unit	Aver. RT trip length (miles)	100% SDC per unit
Industrial						
Industrial - general	6.97	T.G.S.F.	0.00%	6.97	6.2	$2,668
Industrial - batch plant	100.00	unit	0.00%	100.00	6.2	$38,283
Manufacturing - bulky items	1.02	employees	0.00%	1.02	6.2	$390
Manufacturing - high tech-research & d	2.09	employees	0.00%	2.09	5.0	$645
Service and repair	5.60	T.G.S.F.	0.00%	5.60	6.0	$2,075
Residential						
Single Family	9.57	Dwelling Unit	0.00%	9.57	5.5	$3,250
Apartments	6.63	Dwelling Unit	0.00%	6.63	5.5	$2,252
Condominium	5.86	Dwelling Unit	0.00%	5.86	5.5	$1,990
Manufactured Home	4.81	Dwelling Unit	0.00%	4.81	5.5	$1,634
Senior Care	2.15	Dwelling Unit	0.00%	2.15	5.5	$730
PUD - residential	7.44	Dwelling Unit	0.00%	7.44	5.5	$2,527
Lodging						
Motel	9.11	Room	0.00%	9.11	5.9	$3,319
Hotel	6.95	Room	0.00%	6.95	5.9	$2,532
Recreational						
Golf Course	5.04	Acre	0.00%	5.04	7.5	$2,334
Bowling Alley	33.33	T.G.S.F.	0.00%	33.33	7.5	$15,435
Theater w/Matinee	0.29	Seat	0.00%	0.29	7.5	$134
Arena	33.33	Acre	0.00%	33.33	7.5	$15,435
Community Center	22.88	T.G.S.F.	0.00%	22.88	7.5	$10,596
Athletic Facility	2.30	T.G.S.F.	50.00%	1.15	5.0	$355
Spa	18.00	per station	36.00%	11.52	3.0	$2,134
Institutional						
Elementary School	1.02	Student	0.00%	1.02	3.8	$239
High School	1.79	Student	0.00%	1.79	3.8	$420
Community College	2.38	Student	0.00%	2.38	3.8	$558
Community College Library	45.50	T.G.S.F.	80.00%	9.10	3.8	$2,135
Community Library	45.50	T.G.S.F.	60.00%	18.20	3.8	$4,270
Church	9.11	T.G.S.F.	0.00%	9.11	3.8	$2,138
Daycare	4.52	Student	60.00%	1.81	3.8	$424
Medical						
Hospital	16.78	T.G.S.F.	0.00%	16.78	5.0	$5,181
Medical/Dental Clinic	36.13	T.G.S.F.	0.00%	36.13	5.0	$11,155
Specialty Medical	23.79	T.G.S.F.	20.00%	19.03	5.0	$5,876
General Office Bldg.						
Size < 50,000	15.39	T.G.S.F.	0.00%	15.29	6.2	$5,854
50,000<= Size < 175,000	10.08	T.G.S.F.	0.00%	10.08	6.2	$3,859
175,000<= Size	7.78	T.G.S.F.	0.00%	7.78	6.2	$2,978
Government						
Gov't Office Bldg.	68.93	T.G.S.F.	0.00%	68.93	6.2	$26,389
Retail						
General Retail	35.15	T.G.S.F.	47.00%	18.63	4.0	$4,601
Gasoline/Service Station	168.56	Pump Positn	50.00%	84.28	4.0	$20,816
Convenience Market	737.99	T.G.S.F.	61.00%	287.82	4.0	$71,087
Shopping Center:						
Size < 50,000	87.31	T.G.L.S.F.	34.00%	57.62	4.0	$14,233

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PLEASE SEE OTHER SIDE OF PAGE

Exhibit D

50,000<= Size < 175,000	43.23	T.G.L.S.F.	34.00%	28.53	4.0	$7,047
175,000<= Size	28.96	T.G.L.S.F.	34.00%	19.13	4.0	$4,724
Restaurant - High turnover/Drive throug	238.80	T.G.S.F.	46.00%	128.95	4.0	$31,850
Restaurant - Specialty Food Item Servic	36.81	T.G.S.F.	50.00%	18.41	4.0	$4,546
Restaurant - Dinner only	10.00	T.G.S.F.	5.00%	9.50	4.0	$2,346
Restaurant - Lunch/Dinner	25.00	T.G.S.F.	15.00%	21.25	4.0	$5,249
Restaurant - Breakfast/Lunch/Dinner	158.00	T.G.S.F.	40.00%	94.80	4.0	$23,415
Supermarket w/Strip mall	111.51	T.G.S.F.	36.00%	71.37	4.0	$17,627
Specialty / Neighborhood Grocery	24.36	T.G.S.F.	20.00%	19.49	3.0	$3,610
Drinking Establishment	12.00	T.G.S.F.	20.00%	9.60	3.0	$1,778
Banks - w/Drive through	265.21	T.G.S.F.	47.00%	140.56	4.0	$34,717

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Exhibit E
Street Policy No. 5

City of Bend
Street Policy 5
Street System Development Charge Credit and Reimbursement

Section 1. **Purpose**:
It shall be the policy of the City of Bend that expansions to the City's street system shall only be accomplished as directed and approved by the City. The timing and financing of system expansions shall be as provided in this policy.

Expansions to the street system that involve the construction of collector and/or arterial streets shall be accomplished pursuant to the City's Comprehensive Plan. It is anticipated that these improvements will be financed by funds generated from systems development charges (SDC's), other resources or by developers as provided below. The timing of improvements to be constructed by the City will be subject to the availability of City funds to finance them.

Section 2. **Procedure**:

Developers who wish to expand the street system by dedicating land and/or constructing streets may do so according to the following procedure:

2.1 Prior City approval will be required.

2.2 An executed agreement between the developer and the City shall be required and shall set forth the development requirements as well as an SDC credit and/or SDC reimbursement, if available.

2.3 All improvements must be constructed according to applicable City Standards, rules and regulations, including the Comprehensive Plan, as determined by the City Engineer.

2.4 All of the cost of such improvements shall be paid by the developer.

2.5 The developer's costs associated with the construction of these qualified public improvements may be eligible for SDC credit and/or SDC reimbursement as provided in this policy.

Section 3. **SDC credit**:

The SDC credit shall be determined first and shall:

3.1 Only be available for qualified public improvements as defined in Oregon Revised Statutes (ORS) 223.304(3) (i.e., improvements that are identified in the City's Comprehensive Plan).

3.2 Be a credit against only the improvement fee portion of the SDC. The improvement fee portion against which the credit may be applied shall be calculated by using the methodology as it is employed in the City's SDC Ordinance and Resolution. If less than the maximum allowable SDC is charged in the Resolution, the percentage of the maximum allowable SDC used shall also be used to determine that portion of the improvement fee against which the SDC credit can be applied.

3.3. The amount of the credit shall not exceed the improvement fee as calculated above. e.g., if a developer incurs $100,000 for collector and/or arterial street improvement costs of which $70,000 is related to qualified improvements, and, if the development has 20 lots and the SDC improvement fee is 70% of the maximum allowable SDC improvement fee of $1,149, or $804, the SDC credit would be $16,080 (20 x $804). If the development included 100 lots the SDC credit would be limited to $49,000 as the SDC improvement fee times the number of lots (100 x 804 = $80,400) exceeds the qualified costs subject to the SDC credit times the percentage of the maximum allowable SDC improvement fee. ($70,000 x .70% = $49,000)

Section 4. **SDC Reimbursement**:

In addition to the SDC credit a developer may be eligible for SDC reimbursement. SDC reimbursement shall be determined as follows:
The maximum SDC reimbursement shall be limited to the collector and/or arterial street improvement costs expended by the developer, as determined by the City Engineer, times the percentage of the maximum allowable SDC in place at the time of executing an agreement with the City, less any SDC credit related to the improvements. There shall be no SDC reimbursement if the SDC credit exceeds the maximum SDC reimbursement. Qualified costs of collector and/or arterial street improvements shall include actual construction costs, exclusive of right-of-way and preliminary engineering costs.

Section 5. **SDC Credit and Reimbursement-Collection and Payment Procedures:**

SDC credit and SDC reimbursement will be collected and paid as follows:

5.1 The current SDC, as established by the Bend City Council, shall be collected by the City on all building permits issued by the City or with other agreements as applicable. The SDC may have two components; an improvement fee for future

system improvements and a reimbursement fee for existing or in-progress improvements.

5.2 SDC improvement fees collected by the City shall be paid to developers and retained by the City in accordance with this policy.

5.3 SDC reimbursement fees collected by the City shall be retained by the City to reimburse the City for previous system expenditures, related debt service or future improvements.

Section 6. **Shared/Sole Recovery Areas:**

6.1 The area served or to be served by the City's street system within the City limits will be categorized as either shared recovery area or as sole recovery area. Sole recovery areas shall be determined by the City Engineer and shall include only the developer's property that is to be served by the approved facilities constructed by the developer. Shared recovery area shall include all area served or to be served by the City's street system that is not otherwise designated as sole recovery area within the City limits.

6.2 SDC improvement fees collected from each sole recovery area shall be applied as follows:

6.2.1 SDC credit due the developer of the sole recovery property, until paid.

6.2.2 SDC reimbursement due the developer of the sole recovery property, until paid or until the 10 year recovery period expires.

6.2.3. Once items 1 and 2 are met the sole recovery property shall become shared recovery area.

6.3 SDC improvement fees collected from the shared recovery area shall be applied as follows:
To developers with outstanding SDC credit and SDC reimbursement balances, including the City, in proportion to the outstanding SDC credit and SDC reimbursement balances, at the end of the repayment period, of all developers, including the city participating in the shared recovery area.

6.4 SDC improvement fees collected and paid to developers from the shared recovery area shall be limited to the amount of SDC credit and/or SDC reimbursement that would not otherwise be collectible from SDC improvement fees within a developer's sole recovery area.

6.5 There shall be no payment made, for either the SDC credit or SDC reimbursement, to the developer from any SDC improvement fee collected within the sole recovery area or shared recovery area until the improvements are accepted by the City.

6.6 There shall be no SDC credit or SDC reimbursement paid after 10 years from the date the qualified improvements are accepted by the City.

6.7 A sole recovery area shall become shared recovery area when the developer has been paid the SDC credit and/or SDC reimbursement in full, or the SDC credit is paid in full and the 10 year SDC reimbursement period expires.

Section 7. Payment Schedule:

7.1 Payment of SDC credit and SDC reimbursement amounts shall be payable annually by the City for SDC improvement fees collected by the City from January 1 through December 31 of each year by January 31 of the year following collection by City.

7.2 No interest shall accrue on SDC credit or SDC reimbursement payable to developers.

7.3 There shall be no adjustments made to the amount of any SDC credit or SDC reimbursement amount as a result of inflation.

Section 8. Assignment of Claims:

8.1 Claims from SDC credit and SDC reimbursement are personal and may not be assigned without the written consent of City.

Section 9. Future Changes to Maximum Allowable SDC:

9.1 Future changes by the City of the maximum allowable SDC or the percentage of the maximum allowable SDC imposed shall neither increase or decrease the SDC credit or SDC reimbursement determined above, however, if the percentage of the maximum allowable SDC is changed, all active public improvement agreements will be reviewed, and if necessary, SDC credit and/or SDC reimbursement amounts to be collected and reimbursed developers from sole and shared recovery areas will be recalculated in accordance with this policy.

Section 10. City's Obligation to Pay:

10.1 The City's obligation to pay or apply SDC credit or SDC reimbursement shall be limited to SDC improvement fees actually collected by the City as provided in this policy. City's obligation to pay or apply SDC credit or SDC reimbursement from SDC improvement fees collected shall be further limited to the total of the SDC credit and SDC reimbursement calculated as provided in this policy. Payment of SDC credit and SDC reimbursement shall be subject to prior reimbursement claims which are payable from SDC collections. Persons who receive, or are entitled to claim, SDC credit or SDC reimbursement shall indemnify and hold the City harmless in the event the City is subject to claims by others for SDC credit or

SDC reimbursement for the same improvements. City shall have the right to set off the amount of any competing claims for SDC credit or SDC reimbursement against prior claims for the same SDC credit or SDC reimbursement if in the City's judgment it becomes necessary to do so.

Section 11. Applicability:

11.1 This policy shall apply to all eligible improvements installed and accepted after City Resolution #2146 which established street SDCs effective June 15, 1995.

VOL: 2000 PAGE: 46319
RECORDED DOCUMENT

STATE OF OREGON
COUNTY OF DESCHUTES

*2000-46319 * Vol-Page Printed: 11/15/2000 10:12:36

DO NOT REMOVE THIS CERTIFICATE

(This certificate constitutes a part of the original instrument in accordance with ORS 205.180(2). Removal of this certificate may invalidate this certificate and affect the admissibility of the original instrument into evidence in any legal proceeding.)

I hereby certify that the attached instrument was received and duly recorded in Deschutes County records:

DATE AND TIME: Nov. 15, 2000; 10:09 a.m.

RECEIPT NO: 28560

DOCUMENT TYPE: Development Agreement

FEE PAID: $206.00

NUMBER OF PAGES: 32

Mary Sue Penhollow

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND

AND WEST BEND PROPERTY COMPANY, LLC

This Development Agreement ("Agreement") is dated as of the 6 day of November 2000, by and between WEST BEND PROPERTY COMPANY, LLC, an Oregon limited liability company ("WBPC") and THE CITY OF BEND, an Oregon municipal corporation (the "City"). Each of WBPC and the City is hereinafter referred to as a "Party" and collectively as the "Parties."

1. Definitions:

1.1 "Bridge LID Petition" means that certain LID Petition of even date herewith signed by petitioners WBPC, Skyliner Summit Limited Partnership, Brooks Resources Corporation, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Southern Bridge.

1.2 "Development Agreement" means each of the development agreements between a Property Owner and the City pursuant to ORS 94.504 (collectively, the "Development Agreements"). Three of the Property Owners, Western Communications, Inc., dba The Bulletin (the "Bulletin"), the Bend-LaPine Administrative School District No. 1 (the "School District") and Central Oregon Community College ("COCC") are not parties to a Development Agreement.

1.3 "Final Approval" shall mean the issuance of a development permit that reasonably allows the development described in Section 4 of the Development Agreement to proceed and the expiration of the period of appeal, or if an appeal is filed, the resolution of that appeal in a manner that reasonably allows the development described in Section 4 of the Development Agreement to proceed.

1.4 "Intersection LID Petition" means that certain LID Petition of even date herewith signed by nine of the Property Owners as petitioners, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Projects.

1.5 "Off-Site Transportation Impact Mitigation" means mitigation of the increased burden that each Proposed Development will put on the transportation facilities of the City of Bend outside the property lines of the Proposed Development. The term "Off-Site Transportation Impact Mitigation" includes the "Other Improvements" identified in **Exhibit C** of each Development Agreement.

1.6 "Other Improvements" means those certain off-site transportation-related improvements to be completed by the Property Owners which are a part of their Off-Site Transportation Impact Mitigation but which are not to be completed pursuant to a local improvement district. The Other Improvements to be completed by a particular Property Owner are identified in **Exhibit C** to that Property Owner's Development Agreement.

1.7 "Project" means a traffic facility improvement described in Section 4 of the Intersection LID Petition and the Southern Bridge.

1.8 "Property Owners" are the twelve public and private entities, including WBPC, identified on **Exhibit A** who own property on the West Side of the City and who have formed a consortium to resolve the current and projected shortage of transportation facilities on the West Side.

1.9 "Proposed Development" means the development described in Section 4 of this Agreement.

1.10 "Responsible Property" means that portion of the property of each of the Property Owners identified in the Intersection LID Petition or the Bridge LID Petition subject to assessment for the cost of one or more Projects. "Responsible Property" shall not include portions of the property that are dedicated as public right-of-way, or dedicated for any other public purpose.

1.11 "Responsible Property Owner" means the Property Owner identified as being responsible for construction of the specific Project(s) listed for that Property Owner in the Bridge LID Petition or the Intersection LID Petition.

1.12 "Southern Bridge" means the bridge to be constructed over the Deschutes River where the proposed extension of Reed Market Road from the Parkway will cross the Deschutes River as provided in the City's General Plan.

1.13 "WBPC Property" means the property on which the Proposed Development is to be constructed by WBPC, which WBPC Property is more particularly described on attached **Exhibit B**.

1.14 "West Side" shall mean that portion of the City of Bend directly served by the transportation facilities described in Section 4 of the Intersection LID Petition, and the Southern Bridge.

2. Recitals:

2.1 Under the City of Bend General Plan and land use regulations, new development must be supported by adequate public facilities. The City's General Plan provides that if the public facilities are not adequate, new

development must either wait for the installation of the required facilities by the City or pay the cost if it occurs ahead of the City's capital improvement plan. Existing public transportation facilities serving the West Side of the City (the "West Side Transportation System") are not adequate to support all existing development and the new development contemplated in the immediately foreseeable future for the West Side of the City. The City is proceeding on the basis that its land use regulations require a system-wide fix to remedy the system-wide deficiency in the West Side Transportation System in order to support the contemplated new development.

2.2 The City does not have funds available to complete the projects necessary to create the additional capacity for the West Side Transportation System to support the new development within the timeframe in which the Property Owners wish to develop and to complete its other capital improvements.

2.3 The cost of supplying a system-wide remedy that will support the existing needs and the additional transportation burden that the new development will add to the West Side Transportation System is more than the amount that could be exacted from any single Proposed Development. Therefore, the Property Owners have concluded that collectively they can provide the necessary improvements to the West Side Transportation System to support the Proposed Developments. To this end, they have organized themselves as a consortium to accomplish these improvements.

2.4 It is the intention of the Parties that the legal mechanism for accomplishing these improvements will be expressed in Development Agreements, the Bridge LID Petition and the Intersection LID Petition (referred to as the "Consortium Agreements").

2.5 Together, the Consortium Agreements will provide a realistic mechanism for constructing the 11 distinct traffic system improvements required to support the contemplated new development. These improvements will also make a significant contribution toward relieving existing traffic problems in the West Side Transportation System. Ten of these improvements are identified in Section 4 of the Intersection LID Petition, and the other is described in the Bridge LID Petition. The Consortium Agreements also describe Other Improvements which will be constructed by the Property Owners in connection with the Property Owners' Proposed Developments.

2.6 Traffic impact analyses show that the 10 distinct traffic system improvements identified in the Intersection LID Petition, the Bridge LID Petition, and the Other Improvements will be adequate to mitigate the off-site traffic impacts that the Property Owners' Proposed Developments will

have on the West Side Transportation System and make reasonable provision for the West Side Transportation System on a long-term basis.

2.7 ORS 94.504 authorizes cities to enter into development agreements with private Parties who own or otherwise have a legal interest in property in connection with the development of that property. Such development agreements may have a duration up to seven years and may establish each of the Parties' rights and obligations in connection with certain aspects of the proposed developments. Each Property Owner wishes to definitively establish and discharge all of its obligations to mitigate the increased burden that each Proposed Development will put on the West Side transportation facilities of the City of Bend outside the property lines of the Proposed Development ("Off-Site Transportation Impact Mitigation") to the West Side Transportation System through a development agreement with the City.

2.8 Nine of the Property Owners (Brooks Resources Corporation; WBPC; Broken Top Limited Partnership; Skyliner Summit Limited Partnership; Century Park LLC; Shevlin Heights LP; West Side Meadows, LLC; Central Oregon Community College; and River Bend Limited Partnership) have signed a Petition to Form West Side Intersection Local Improvement District (the "Intersection LID Petition"), which, among other things, allocates responsibility for constructing 10 of the Projects among the Property Owners signing the Intersection LID Petition.

2.9 Five of the Property Owners (Brooks Resources Corporation, WBPC, Skyliner Summit Limited Partnership, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1) have signed a Petition to Form Southern Bridge Local Improvement District (the "Bridge LID Petition"), which, among other things, allocates responsibility for the cost of constructing the Southern Bridge. The Property Owners have agreed upon a schedule for the completion of the Southern Bridge, and the amount to be contributed by each Property Owner, as provided in the Bridge LID Petition.

2.10 The Intersection LID Petition provides a schedule for commencement of construction of the Projects by the applicable Property Owner(s) and provides that a failure of a Property Owner to timely commence and complete its assigned Project(s) shall give the City the option to construct that Project under the Intersection LID Petition, assess that Property Owner's property for the cost of construction and impose liens against that Property Owner's property as permitted by law.

2.11 Execution of the Development Agreements, the Intersection LID Petition and the Bridge LID Petition by the City and all of the Property Owners, and the commitments created by these Consortium Agreements, will supply the realistic provision for transportation facilities necessary to

support new development to be served by the West Side Transportation System. In return, the Property Owners shall be relieved from any further Off-Site Transportation Impact Mitigation in connection with that Property Owner's Proposed Development(s).

2.12 Each Property Owner participating in one or both LID Petitions acknowledges that its property will be specially benefited by the Projects listed in the Intersection LID Petition and the Bridge LID Petition that include its property. Each Property Owner who is participating in one or both LID Petition also acknowledges that all of the properties in the Intersection LID and all of the properties in the Bridge LID will be specially benefited by all of the Projects. Each Property Owner participating in the LID Petitions therefore consents to the formation of the LIDs that include the Property Owner's property, subject to the conditions set forth herein.

2.13 It is the intention of the Parties that the Consortium Agreements are each integral parts of a collective effort with the City, intended to accomplish the objectives set out in these recitals. Therefore, the Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be construed accordingly, and in the event of any conflict between the terms and conditions of the Development Agreements and the LID Petitions, the LID Petitions shall prevail.

2.14 It is recognized that the Proposed Development of Cascade Highlands, L.P. is located outside the city limits of the City. Consistent with the Joint Management Agreement between the City and Deschutes County, a three-party development agreement will be executed by the City, Deschutes County and Cascade Highlands, L.P. Cascade Highlands, L.P. will contribute $500,000 to the City for the construction of the Southern Bridge. The Parties recognize that Cascade Highlands, L.P. has substantially the same ownership as Broken Top Limited Partnership and Skyliner Summit Limited Partnership and that its contribution, considered as a part of the entire Consortium Agreements, addresses the impacts its Proposed Development will have on the West Side Transportation System.

2.15 None of the Property Owners shall be responsible for the performance of obligations of any other Property Owners unless expressly stated in the Consortium Agreements.

2.16 The development agreements, the Intersection LID Petition and the Bridge LID Petition shall be recorded and binding upon the Parties, their successors and assigns, and shall be enforceable as covenants running with the land; and may be enforced by any remedy provided by law.

2.17 The Parties agree that their execution of these Consortium Agreements represents their acceptance of the purpose expressed in these recitals, and

the ways and means of accomplishing this purpose. Towards this end, the Parties expressly agree:

2.17.1 The Parties shall cooperate in good faith to the extent reasonably practicable to accomplish the purpose of the Consortium Agreements. This shall include, but not be limited to, cooperation in the defense of these agreements and their performance.

2.17.2 Other non-consortium development served by the West Side Transportation System shall be expected to make realistic provision for the mitigation of its impacts on transportation facilities as required by law, and in addition to that made by the Property Owners.

2.17.3 The terms and conditions of these Consortium Agreements are intended as an implementation of, and are consistent with, the City's land use laws, rules and regulations, together with all applicable state and federal laws, rules, and regulations. This includes, but is not limited to, a recognition that the performance required of the Parties by these Consortium Agreements is roughly proportional to the impacts the Proposed Developments will have on the West Side Transportation System; and that the public and private responsibilities involved in remedying the deficiencies in the West Side Transportation System in order to support the Proposed Developments are fairly and properly allocated.

2.17.4 The Parties further express their commitment to the objectives of these Consortium Agreements by waiving all claims of any kind or nature resulting from the Parties' agreement to accomplish the purpose contemplated by the Consortium Agreements, or the ways and means provided for accomplishing that purpose in the Consortium Agreements. This includes, but is not limited to any constitutional or statutory claims (for the taking of property or otherwise), and any claims against the other Party, its elected officials, officers, employees, or agents. This waiver does not include claims based upon a failure to perform these Consortium Agreements as expressly required by their terms and conditions. This waiver shall not prevent land use appeals of approvals or denials of the Proposed Developments.

2.17(a) The Parties acknowledge that the lawsuit filed by the Central Oregon Builders Association (COBA) and served upon the City October 10, 2000 may affect the amount of System Development Charges (SDCs) available for reimbursement as provided in the Consortium Agreements. This lawsuit (COBA v. City of Bend, Circuit Court No. 00CV0454AB) seeks to reduce the Street SDC. If COBA succeeds, the $3,250 SDC anticipated by the Consortium Agreements may be reduced and SDC collections

available for reimbursement may also be reduced. Because of this possibility, the Parties agree that the provisions of the Consortium Agreements relating to reimbursement (including but not limited to Sec. 12.5 and Exhibit D of the Development Agreements, Sec. 8 of the Southern Bridge LID, and Sec. 8 of the Intersection LID) are modified to provide that the SDC imposed by the City shall be the amount provided in the Consortium Agreements, or the highest amount permitted by law, if the highest amount permitted by law is less than the amount provided in the Consortium Agreements. It is the intent of the Parties that this Section has been added only to accommodate the possibility of a reduction created by the COBA lawsuit, and not for any other purpose. In the event that SDC collections are reduced as a result of the COBA lawsuit, the Consortium Agreements shall continue in full force and effect except as modified by this Section, and the Parties shall in good faith continue to cooperate in the achievement of the purpose of the Consortium Agreements, specifically including the reimbursement to consortium members from SDCs as provided in City of Bend Street Policy No. 5, Sec. 6 (which applies when the potential SDC collections from sole recovery areas will not be adequate to fund full reimbursement, and shared area recovery area collections are available to pay reimbursement not otherwise collectible from sole recovery areas).

2.18 These recitals are part of each of the Consortium Agreements.

3. Effective Date; Term of Agreement

3.1 This Agreement shall be effective upon adoption of the City ordinance approving this Agreement pursuant to ORS 94.508 (the "Effective Date"). The term (the "Term") of this Agreement shall commence on the Effective Date and shall continue for a period of seven years unless terminated sooner in accordance with the provisions contained herein.

3.2 The Parties agree that the intent of the Parties and the essential purpose of this Agreement is to provide the City with a system-wide fix on the West Side in exchange for providing WBPC and the other Property Owners (a) the right to build their Proposed Development at the Maximum Density provided in Section 4.2 for a seven-year period without additional Off-Site Transportation Impact Mitigation, subject to WBPC and the other Property Owners obtaining Final Approval through the normal City applications process, and (b) a seven-year vesting of the land use standards which will be applicable to such applications. The right to the Proposed Development at the Maximum Density without additional Off-Site Transportation Impact Mitigation and the vested standards during a full seven-year period is critical to WBPC's willingness to enter into this Agreement. The Parties understand that WBPC may not receive the benefit of such intent and purpose during the initial Term of this Development Agreement if there are delays (a) caused by third-party

appeals of this Development Agreement and/or the related LID Petitions; (b) caused by third-party appeals of WBPC's land use applications in connection with the Proposed Development; and (c) in the land use applications process. If as a result of such delays WBPC does not receive Final Approval within one year of the Effective Date, the Parties agree that they will negotiate in good faith an extension of the Term of this Development Agreement to assure that WBPC has a 7 year period following Final Approval to proceed with its Proposed Development under the terms and conditions of this Development Agreement. At no time shall the Term exceed seven years.

4. Proposed Development

4.1 Through its land use applications, WBPC will seek (1) approval of a Bend General Plan text and policy amendments; (2) approval of a Bend General Plan map and zone map amendments to define the boundaries for IP, CL and RS zones in the WBPC Property and to zone a portion of the WBPC Property ME and another portion PF; (3) approval of one of the following setting forth master development plans and standards for the WBPC Property: (a) a Master Development Plan or (b) a refinement plan or (c) a text amendment to the City of Bend Zoning Code (the "BZO") creating overlay zones or (d) a subsequent development agreement between the City and WBPC; and (4) approval of various discretionary approvals subsequent to the approval of 3(a), 3(b), 3(c) or 3(d) above related to subdivisions, lot line adjustments, conditional use, site plan, or other variances as necessary to implement the approvals obtained in 3(a), 3(b), 3(c) or 3(d) above. Collectively 1, 2, 3 and 4 are hereinafter referred to as the "Proposed Development".

4.2 For the purpose of determining the amount and kind of Off-Site Transportation Impact Mitigation required of WBPC's Proposed Development and the rights of WBPC vested herein, WBPC agrees that the density of its Proposed Development shall not exceed 897 residential units, 239 apartment/condominiums, 240,000 square feet of non-residential retail, 128,000 square feet of office and 316,000 square feet of IP space (collectively, the "Maximum Density"). The Maximum Density has been used by the Parties in a supporting traffic study to determine the estimated number of vehicle trips to be generated by the Proposed Development. To the extent that WBPC changes its mix of development to respond to market conditions but does not increase the number or distribution of estimated vehicle trips, WBPC shall not be deemed to have exceeded its Maximum Density.

5. Conditions to Parties' Obligations

5.1 WBPC's obligation to pay for Projects other than the Southern Bridge and the "Other Improvements" listed in **Exhibit C** under this Agreement is

also subject to the terms and conditions provided in the Intersection LID Petition.

5.2 WBPC's obligation to pay its share of the construction costs of the Southern Bridge is also subject to the terms and conditions provided in the Bridge LID Petition.

5.3 The City's obligations hereunder are subject to WBPC signing the Intersection LID Petition and the Bridge LID Petition.

5.4 Both Parties' obligations are subject to Deschutes County entering into a Development Agreement with Cascade Highlands, L.P. consistent with the recitals herein.

6. Permitted Uses. The WBPC Property is currently zoned RS, Urban Standard Residential, pursuant to the BZO. In its land use applications, WBPC intends to seek rezoning for portions of the WBPC Property to include IP, Industrial Park, CL, Commercial Limited and ME, Mixed Employment. Development of the WBPC Property within the CL zone during the period of this Agreement shall be subject to Section 10.10.15 of the BZO as the same exists as of the Effective Date or as approved through one of the following setting forth master development plans and standards for the WBPC Property: (a) a Master Development Plan or (b) a refinement plan or (c) a text amendment to the BZO creating overlay zones or (d) a subsequent development agreement between the City and WBPC. Development of the WBPC Property within the IP zone during the period of this Agreement shall be subject to Section 10.10.19 of the BZO as the same exists as of the Effective Date or as approved through one of the following setting forth master development plans and standards for the WBPC Property: (a) a Master Development Plan or (b) a refinement plan or (c) a text amendment to the BZO creating overlay zones or (d) a subsequent development agreement between the City and WBPC. Development of the WBPC Property within the RS zone during the period of this Agreement shall be subject to Section 10.10.19 of the BZO as the same exists as of the Effective Date or as approved through one of the following setting forth master development plans and standards for the WBPC Property: (a) a Master Development Plan or (b) a refinement plan or (c) a text amendment to the BZO creating overlay zones or (d) a subsequent development agreement between the City and WBPC. Development of the WBPC Property within the ME zone during the period of this Agreement shall be subject to the BZO as the same exists as of the Effective Date or as approved through one of the following setting forth master development plans and standards for the WBPC Property: (a) a Master Development Plan or (b) a refinement plan or (c) a text amendment to the BZO creating overlay zones or (d) a subsequent development agreement between the City and WBPC. Notwithstanding the foregoing, the WBPC Property may be used for purposes other than those which exist as of the Effective Date, provided, however, such additional uses are approved through any future land use applications.

7. Density or Intensity of Use. Development of the Proposed Development during the period of this Agreement shall be subject to the following standards, which exist as of the Effective Date (or such standards as are approved through one of the following setting forth master development plans and standards for the WBPC Property: (a) a Master Development Plan or (b) a refinement plan or (c) a text amendment to the BZO creating overlay zones or (d) a subsequent development agreement between the City and WBPC) notwithstanding the content of any subsequently adopted zoning or development ordinance:

7.1 The applicable maximum density provisions of the BZ0 and the Bend Subdivision Ordinance ("BSO") as the same exist as of the Effective Date or as such standard may be approved through one of the following setting forth master development plans and standards for the WBPC Property: (a) a Master Development Plan or (b) a refinement plan or (c) a text amendment to the BZO creating overlay zones or (d) a subsequent development agreement between the City and WBPC.

7.2 Any minimum lot area, minimum average lot width, minimum average lot depth, yard requirements, coverage or setback requirements shall be based upon the applicable BZO and BSO provisions as the same exist as of the Effective Date or as such standards may be approved through one of the following setting forth master development plans and standards for the WBPC Property: (a) a Master Development Plan or (b) a refinement plan or (c) a text amendment to the BZO creating overlay zones or (d) a subsequent development agreement between the City and WBPC.

8. Maximum Height and Size of Proposed Structures. The maximum height and size of proposed structures within the Applications shall be governed by the applicable sections of the BZO and BSO as the same exist as of the Effective Date, or as may be approved through one of the following setting forth master development plans and standards for the WBPC Property: (a) a Master Development Plan or (b) a refinement plan or (c) a text amendment to the BZO creating overlay zones or (d) a subsequent development agreement between the City and WBPC.

9. Provisions for Reservation or Dedication of Land for Public Purposes. WBPC shall have no obligation to make off-site reservations or dedication of land for public purposes (including easements and/or licenses) in connection with WBPC's Proposed Development. The necessity and/or specifics of any future on-site reservations or dedications of land for public purposes (including easements and/or licenses) in connection with WBPC's Proposed Development will be determined by the City in reviewing WBPC's applications and applying City standards and ordinances in effect as of the Effective Date.

10. Fees and Charges

10.1 When land within the Proposed Development is developed, the City shall collect System Development Charges ("SDC") within the sole recovery area established for the Proposed Development in accordance with the terms of Section 12.5.

10.2 WBPC and its successors and assigns shall pay all applicable fees and charges then in effect for a particular application, except where the purpose or effect of such fees or charges is Off-Site Transportation Impact Mitigation. In no event shall this Section 10 be construed so as to relieve WBPC or any purchaser of any portion of the WBPC Property from any obligation it may have to pay street SDCs.

11. Schedule and Procedure for Compliance Review. Commencing on the first anniversary of the Effective Date, WBPC shall prepare annual written reports of its compliance with the terms of this Agreement to the City. Such reports shall include an update as to compliance with all schedules set forth herein. After receipt of such reports, the City may request such additional or backup information as it deems reasonably necessary.

12. Responsibility for Providing Infrastructure and Services

12.1 Consistent with the Maximum Density rights vested in Section 4 and the development standards vested in Sections 6, 7, 8 and 10, WBPC agrees to make certain off-site street and transportation-related improvements. Subject to the terms provided herein, WBPC agrees that it shall construct and/or provide funding toward the construction of the following off-site Projects:

12.1.1 Subject to Section 12.3, construct a single lane roundabout at the intersection of Mt. Washington Drive and Shevlin Park Road. The Construction Commencement Deadline is December 31, 2000. Such roundabout shall be constructed in general conformance with the engineering drawings attached to the Intersection LID Petition;

12.1.2 Subject to Section 12.3, contribute fifty percent (50%) of the cost of constructing a single lane roundabout at the intersection of Mt. Washington Drive and Skyliners Road. The Construction Commencement Deadline is December 31, 2002. Such roundabout shall be constructed in general conformance with the engineering drawings attached to the Intersection LID Petition;

12.1.3 Subject to Section 12.3, construct a single lane roundabout at the intersection of 9th and Newport. The Construction Commencement Deadline is December 31, 2002. Such roundabout shall be constructed in general conformance with the engineering drawings attached to the Intersection LID Petition;

12.1.4 Subject to Section 12.3, contribute fifty percent (50%) of the cost of constructing a single lane roundabout at the intersection of 14th and Galveston. The Construction Commencement Deadline is December 31, 2000. Such roundabout shall be constructed in general conformance with the engineering drawings attached to the Intersection LID Petition;

12.1.5 Participate in the Bridge LID Petition to fund the costs of constructing the Southern Bridge; and

12.1.6 Subject to the terms provided herein, WBPC agrees that it shall construct those Other Improvements identified on attached **Exhibit C**.

As used herein, "Construction Commencement Deadline" shall mean the date by which the Responsible Property Owner(s) shall have commenced preliminary design and engineering work

12.2 The City acknowledges that (a) construction of the Southern Bridge is subject to objections raised by third parties which could interfere with that Project; (b) construction of any of the Projects could be delayed as a result of the City's failure to timely acquire necessary rights-of-way, (c) construction of any of the Projects could be delayed as a result of objections raised by third parties; and (d) construction of any Projects could be delayed by difficulties in obtaining approvals from the Oregon Department of Transportation ("ODOT") and any other federal, state or local regulatory body. The City agrees that none of (a), (b), (c) or (d) shall be a basis for denying or delaying the approval of any of WBPC's land use applications in connection with the Proposed Development, grounds for declaring WBPC to be in default, or a basis for exacting additional Off-Site Transportation Impact Mitigation from WBPC. Subject to the terms of the applicable LID Petition(s), the City shall, however, have the right to construct Projects and assess the Responsible Property therefore according to the schedules in the LID Petitions, irrespective of whether WBPC has received Final Approval. In the event of (b), the schedule for construction of the applicable Project as set forth in the applicable LID Petition shall be delayed by the same period of time by which the right-of-way acquisition is delayed.

12.3 The Intersection LID Petition includes plans and drawings for the Projects identified therein. Estimates have been prepared of the cost of constructing them. WBPC shall bear the risk that such costs may increase between the date of this Development Agreement and the date that construction commences; provided, however, the City shall bear any additional costs, which result from any change in design required by the City or ODOT.

12.4 The City agrees that the Projects and Other Improvements to be provided pursuant to this Development Agreement, the Bridge LID Petition and the Intersection LID Petition shall be deemed to satisfy WBPC's obligation to provide Off-Site Transportation Impact Mitigation in connection with the Maximum Density of the Proposed Development set forth in Section 4 so that, with respect to off-site transportation obligations, the Proposed Development is vested. The City shall require no other off-site transportation-related exactions nor require any further traffic studies relating to Off-Site Transportation Impact Mitigation in connection with or as a condition to the approval of WBPC's Proposed Development. This shall include, but not be limited to, construction of off-site streets or intersections, improvement of off-site intersections or other existing off-site transportation facilities, construction of off-site bicycle paths or pedestrian trails and dedication of off-site rights-of-way for any of the above-identified purposes. Notwithstanding the foregoing, WBPC's rights which are vested herein are dependent upon the Maximum Density of the Proposed Development set forth in Section 4 which is tied to the estimated number of vehicle trips to be generated by such Maximum Density. The Parties hereto understand that the mix of uses that make up the Maximum Density could change based on market forces. However, to the extent that WBPC submits land use applications that would increase the number of vehicle trips to be generated by the Proposed Development, the Proposed Development may be subject to additional off-site transportation exactions based upon projected transportation impacts on City transportation facilities from the increased density, consistent with City policies and regulations. The Parties agree that this Development Agreement does not, however, resolve any issue relating to on-site transportation requirements and that on-site transportation issues are reserved for future discretionary land use approval, and that the City may require further studies and reviews relating to on-site traffic.

12.5 The City and WBPC agree that upon execution of this Agreement that the property identified in **Exhibit B** shall be established as the sole recovery area for the collection of transportation system development charges ("SDC"). During the Term of this Agreement, the City shall collect SDCs at the greater of the rates determined in accordance with the SDC rates attached as **Exhibit D**, or any future rates adopted by the City. The City is currently evaluating SDC rates for commercial and industrial development. If such rates are changed prior to December 31, 2000, such change shall replace **Exhibit D** to this Agreement. Otherwise, until the earlier of the expiration of this Agreement or the date at which the Property Owner has received full reimbursement from SDCs, the SDC rate for those SDCs collected from the sole recovery area will not decrease, but shall increase if and when City-wide SDC rates increase.

12.6 The City shall use the SDC revenue collected from the sole recovery area to reimburse WBPC for the cost of constructing the projects (other than

the Southern Bridge) identified in Section 12.1 above at a rate of 100% of all qualified improvements pursuant to Street Policy 5 (**Exhibit E**) as amended.

12.7 The amount of WBPC's contribution toward the cost of constructing the Southern Bridge shall be reimbursed through City-wide generated SDCs in accordance with the Bridge LID Petition.

12.8 The Parties agree that there are certain actions or improvements that must be made in conjunction with the Projects and Other Improvements to be completed by the Property Owners to provide adequate facilities to support development which will impact the City's West Side Transportation System. These actions or improvements are not a part of the Property Owners' obligations and the City agrees to assure that such actions are taken and such improvements are made. As referenced in the supporting traffic studies, such actions and improvements include, but are not limited to, acquiring rights-of-way for those Projects for which the Property Owners do not already own the necessary rights-of-way, obtaining permits necessary for construction of the Projects, expanding some of the Projects as necessary from single-lane roundabouts to double-lane roundabouts and completing bicycle lanes where gaps exist along Shevlin Park Road. In no event shall the City be obligated to expend funds to take such actions or complete such improvements; the City may assure their completion by any appropriate means, including, without limitation, making them conditions to other future development, paying for them with systems development charges, paying for them with grants and/or including them in future capital improvement plans.

13. Assumptions Relating to City's Ability to Serve Development; Continuing Effect of Agreement

13.1 ORS Section 94.504(6) requires that a Development Agreement "state the assumptions underlying the agreement that relate to the ability of the city…to serve the development."

13.2 The facts set forth in the Recitals are included in the assumptions underlying this Agreement.

13.3 The Parties operate under the assumption that construction of the Projects (including the Southern Bridge) will provide adequate off-site transportation infrastructure and facilities to support WBPC's Proposed Development. The adequacy of transportation facilities are determined with reference to the standards in effect as of the Effective Date.

13.4 In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with the Agreement impossible or unlawful, the Parties will attempt to give effect to the

remainder of the Agreement, but only if the purposes set out in the recitals can be accomplished and such effect does not prejudice the substantial rights of either Party under the Agreement.

13.4.1 If the substantial rights of either Party are prejudiced by giving effect to the remainder of the Agreement, then the Parties shall negotiate in good faith to revise the Agreement to give effect to its original intent.

13.4.2 If the Parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either Party may request that an arbitration panel determine an equitable effect for the remainder of the Agreement. The arbitration panel shall consist of 3 arbitrators, one of which shall be selected by WBPC, one of which shall be selected by the City, and the third of which shall be selected by agreement of the arbitrators selected by WBPC and the City. If the 2 arbitrators are unable to agree upon the selection of a third arbitrator, then the third arbitrator shall be selected by the Presiding Judge of the Circuit Court, 11th Judicial District, Deschutes County, Oregon.

13.4.3 If, because of a change in policy, law or circumstances, the Agreement fails of its essential purposes (construction of all of the traffic system improvements called for in the Intersection LID Petition, the Bridge LID Petition and this Development Agreement; vesting of allowed uses and limitations on development conditions; vesting of maximum off-site transportation exactions; and vesting of maximum permissible densities in connection therewith), then the Parties shall be placed into their original position to the extent practical.

13.4.4 As used herein, however, "change in circumstance" does not include changes in local government land development or land division regulations.

13.5 To the extent any local rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis that is not, in the reasonable discretion of WBPC, inconsistent with the substance, purpose, or conditions of this Development Agreement, then the local rule, ordinance, regulation or policy shall be applicable.

14. Assignability of Agreement. This Agreement shall be fully assignable, in whole or in part, by either Party and shall bind and inure to the benefit of the Parties and their respective successors and assigns. If any portion (other than lot sales to individuals or builders) of the WBPC Property is sold, the duties, rights and interests of WBPC under this Agreement shall become the duties, rights and

responsibilities of the purchaser and WBPC. Notwithstanding the foregoing, no purchaser of an individual lot(s) shall have any rights hereunder.

15. Future Discretionary Approvals.

15.1 The City agrees to cooperate with WBPC in securing all future necessary land use permits and approvals for the Proposed Development needed from entities other than the City.

15.2 The following future discretionary approvals are the currently anticipated approvals that will be required for the Proposed Development:

15.2.1 Approval of Bend General Plan text and policy amendments;

15.2.2 Approval of a Bend General Plan map and zone amendments to define the boundaries for IP, CL and RS zones in the WBPC Property and to zone a portion of the WBPC Property ME and another portion PF;

15.2.3 Approval of one of the following: (1) a Master Development Plan; or (2) a refinement plan; or (3) a text amendment to the BZO creating overlay zones or (d) a subsequent development agreement between the City and WBPC; and

15.2.4 Approval of various discretionary approvals subsequent to the approval of the items identified in Sections 15.2.1, 15.2.2, and 15.2.3 above related to subdivisions, lot line adjustments, conditional use, site plan or other variances as necessary to implement the approvals obtained pursuant to the applications to be filed pursuant to Sections 15.2.1, 15.2.2 and 15.2.3 above.

15.3 The Parties acknowledge that the provisions of WBPC's land use application, other than the provisions relating to Off-Site Transportation Impact Mitigation, shall be the subject of future discretionary approvals by the City. The question of whether the City may approve the applications referred to in this Agreement, including the provisions of the land use applications referred to in Sections 4 (Proposed Development), 6 (Permitted Uses), 7 (Density or Intensity of Use), and 8 (Maximum Height and Size of Proposed Uses), or any other part of WBPC's land use application are reserved for future discretionary approvals, and are not resolved by the terms of this Agreement, the Intersection LID Petition or the Bridge LID Petition. Nothing in this Agreement resolves, adjudicates or dispenses with the responsibilities of WBPC or its Proposed Development for impacts or conditions of approval other than Off-Site Transportation Impact Mitigation, and nothing herein operates as an approval (or preliminary approval) by City of WBPC's land use applications except as to Off-Site Transportation Impact Mitigation.

15.4 In the event of a conflict between the terms of this Development Agreement, and the terms of either the Intersection LID Petition or the Bridge LID Petition, then the terms of the Intersection LID Petition or the Bridge LID Petition shall control.

15.5 The discretionary approvals shall be reviewed by the City in the same manner and subject to the same procedures and hearings requirements as all other similar land use applications filed at the time of the Effective Date.

16. Schedule. WBPC shall commence construction of the Projects assigned to WBPC as of the date set forth in the relevant LID Petition(s) and shall complete construction of each Project no later than the date established in the relevant LID Petition(s). Subject to obtaining timely approvals of its Proposed Development, WBPC shall commence construction of its Proposed Development by 2001 and that its Proposed Development shall be completed by the expiration of the Development Agreement.

17. Defaults

17.1 A breach of a material provision of any of the Consortium Agreements, whether by action or inaction of a Party which continues and is not remedied within thirty (30) days after the other Party has given notice specifying the breach shall constitute a default by a Party. If the breach is of such a nature that it cannot reasonably be cured within such thirty-day period, the cure period shall be extended to such amount of time as is reasonable but only if the breaching Party promptly commences, and thereafter diligently prosecutes, such cure.

17.2 The exercise by either Party of any one or more of such remedies available to it shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

17.3 Notwithstanding the foregoing, in the event that WBPC fails to construct (or fund its share of the costs of construction in the case of the Southern Bridge) the Projects identified in Section 12.1 above, by the applicable deadlines set forth in the Intersection LID Petition or the Bridge LID Petition, as applicable, then WBPC shall not be deemed in default hereunder, but the City shall have the rights set forth in the Intersection LID Petition or the Bridge LID Petition to construct the traffic improvement facilities and to assess the Responsible Property as set forth in those petitions.

18. Release of Development Agreement. The City shall release developed lots from this Development Agreement upon the request of WBPC provided that the terms

and conditions of this Development Agreement have been performed as they relate to the lot to be released.

19. Force Majeure

19.1 In the event that any Party (the "Delayed Party") is delayed or prevented from performing any of its obligations under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities, laws or other governmental requirements, riots, war, or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

19.2 The City's right under the Intersection LID Petition or the Bridge LID Petition to construct traffic system improvements shall not be affected by the provisions of Sub-section 19.1.

20. Notices. Any notice, demand, request, approval, consent, or other communication (collectively referred to as a "Notice") concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other Party at the address set forth below. Any Notice shall be given by either: (i) personal delivery in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Any Party may change any address for the delivery of Notice to such Party, by giving Notice in accordance with the provisions of this Section. The attorneys for the Parties may give any Notice.

Notices Addresses:

If to WBPC: West Bend Property Company, LLC
296 SW Columbia Street, Suite A
Bend, Oregon 97702
Attn: Kirk Schueler

With a copy to: Ball Janik LLP
15 SW Colorado, Suite K
Bend, Oregon 97702
Attn: Laura Craska Cooper

If to City: City of Bend
Development Services
710 N.W. Wall
Bend, OR 97701
Attn: Development Services Director

21. Miscellaneous

21.1 City Funding. The Parties agree that any provision herein which requires the City to expend funds is contingent upon future appropriations as part of the City budget process as provided in ORS 94.504(5). Nothing herein requires the City to appropriate such funds.

21.2 Waivers. No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

21.3 Entire Agreement/Modifications. This Agreement, together with the Intersection LID Petition and the Bridge LID Petition (along with all exhibits incorporated therein) (collectively referred to as the "Consortium Agreements") constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto. This Development Agreement, the Intersection LID Petition and the Bridge LID Petition are parts of a whole transaction between the Parties and shall be construed as a whole transaction.

21.4 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

21.5 Captions. The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the Parties.

21.6 Gender/Singular/Plural. Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all the Parties and all circumstances, except where the context of this Agreement clearly dictates otherwise.

21.7 Severability. Subject to Section 13.4, the unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

21.8 Time of Essence. Time is of the essence of this Agreement.

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

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

"WBPC" WEST BEND PROPERTY COMPANY, LLC, an Oregon limited liability company

By: Michael P. Hollern, Chairman Brooks Resources Corp.
Name:
Title: Member

"CITY" CITY OF BEND, an Oregon Municipal Corporation,

By:
Name:
Title: City Mgr.

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on this 1st day of November, 2000, by Michael P. Hollern as Chairman BRC, Member of WBPC of West Bend Property Company, LLC.

Cynthia M. Smith
Notary Public for Oregon
My Commission Expires: 6/2/04

OFFICIAL SEAL
CYNTHIA M SMITH
NOTARY PUBLIC-OREGON
COMMISSION NO. 335405
MY COMMISSION EXPIRES JUNE 8, 2004

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on this 6th day of November, 2000, by Larry Patterson as City Manager of the City of Bend.

OFFICIAL SEAL
PATRICIA ANNE SMILEY STELL
NOTARY PUBLIC-OREGON
COMMISSION NO. 305227
MY COMMISSION EXPIRES NOV. 22, 2001

Patri Anne Smiley Stell
Notary Public for Oregon
My Commission Expires: Nov. 22, 2001

Exhibit A
Property Owners

1. Brooks Resources Corporation;
2. West Bend Property Company, LLC;
3. Broken Top Limited Partnership and Broken Top Development, LLC;
4. Skyliner Summit Limited Partnership and Broken Top Development, LLC;
5. Century Park LLC;
6. Shevlin Heights Limited Partnership;
7. River Bend Limited Partnership;
8. Central Oregon Community College;
9. Bend LaPine Administrative School District No. 1;
10. West Side Meadows, LLC;
11. Western Communications Inc., dba The Bulletin; and
12. Cascade Highlands Limited Partnership

W&H PACIFIC
920 S.W. Emkay Dr., Suite C-100
Bend, Oregon 97702

Exhibit B

LEGAL DESCRIPTION
West Bend Property Company

All of Section 36, Township 17 South, Range 11 East, TOGETHER WITH: a portion of the northwest one-quarter of the southwest one-quarter (NW1/4, SW1/4) of Section 31, Township 17 South, Range 12 East, of the Willamette Meridian, in the City of Bend, Deschutes County, Oregon,
described as Parcel 3, in warranty deed to William E. Miller, recorded March 19, 1999, in Volume 1999, Page 13784, Deschutes County Official Records.

EXCEPTING: the northeast 22.5 acres as described in Partition Plat 1997-47, as recorded in the Deschutes County survey records as CS13140.

ALSO EXCEPTING: that portion lying southerly of Skyliners Road.

ALSO EXCEPTING: that parcel of land described in warranty deed to Bend-la Pine Administrative School District No. 1, recorded July 7, 1999, in Volume 1999, Page 33428 of the Deschutes County Official Records.

ALSO EXCEPTING: that parcel of land described in warranty deed to Bend-la Pine Administrative School District No. 1, recorded December 7, 1999, in Volume 1999, Page 57995 of the Deschutes County Official Records.

ALSO EXCEPTING: that parcel of land described in warranty deed to Bend-la Pine Administrative School District No. 1, recorded March 1, 2000, in Volume 2000, Page 8027 of the Deschutes County Official Records.

ALSO EXCEPTING: the right-of-ways of Mt. Washington Drive and "Local Street" as described in document recorded August 17, 1999 in Volume 1999, Page 39979 of Deschutes County Official Records.

ALSO EXCEPTING: All that property being a portion of the west one-half of Section 36, Township 17 South, Range 11 East, Willamette Meridian, in the City of Bend, Deschutes County Oregon, lying within a sixty foot (60') wide strip of land, thirty feet (30') on each side of the following described centerline:

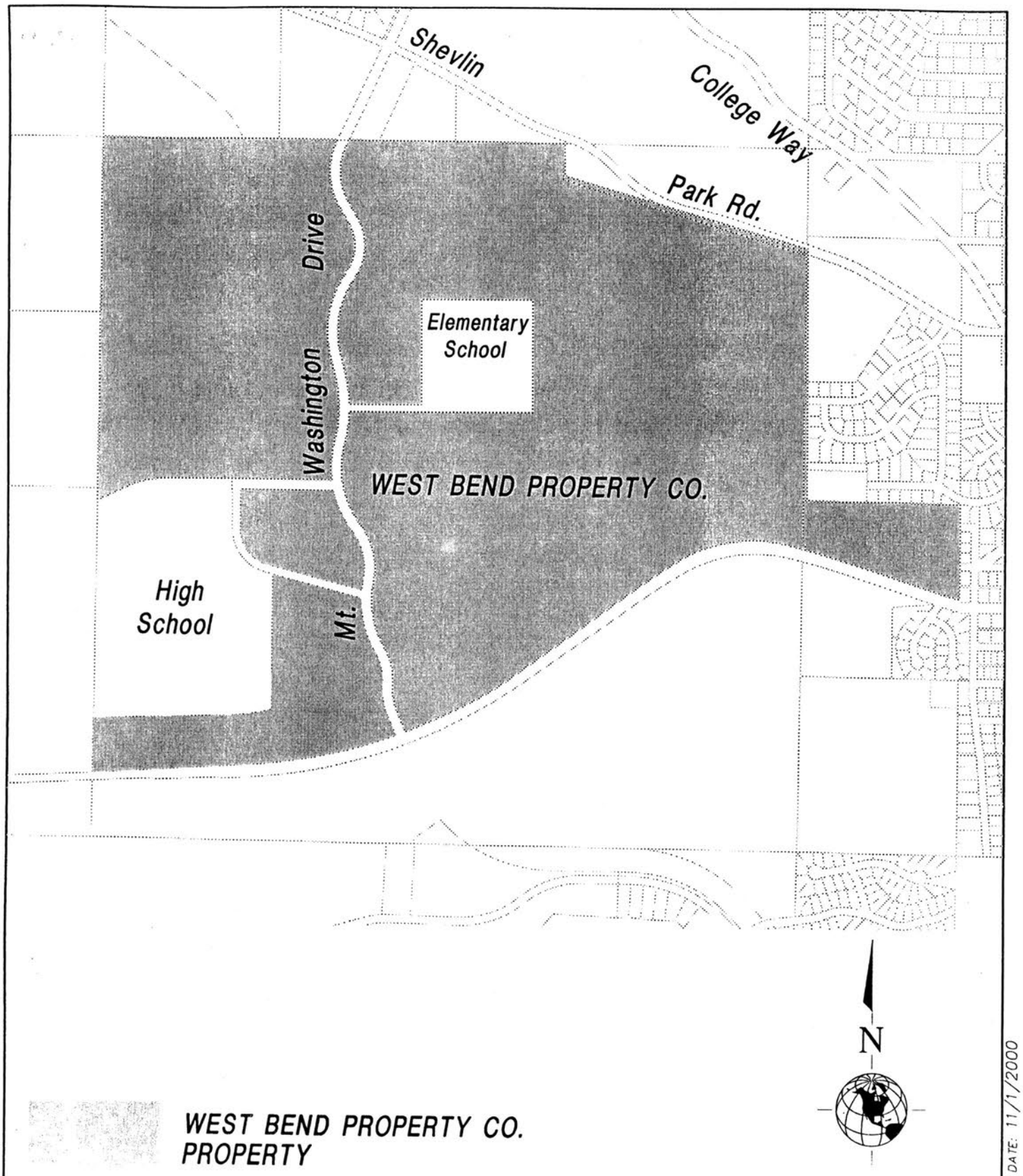
Commencing at a 2" iron pipe monumenting the west one-quarter corner of said Section 36, the initial point; thence South 89°46'19" East along the east-west centerline of said Section 36, 1025.26 feet to the True Point of Beginning; thence South 00°00'00" West, 300.53 feet; thence along the arc of a 300.00 foot radius curve to the left, through a central angle of 75°00'00", an arc length of 392.70 feet, (the chord of which bears South 37°30'00" East, 365.26 feet); thence South 75°00'00" East, 730.25 feet to the westerly right-of-way of Mt. Washington Drive and the terminus of this centerline, from which the initial point bears North 68°08'35" West, 2104.23 feet. The sidelines of which are to be lengthened or shortened to terminate at said east-west centerline, and the westerly right-of-way of said Mt. Washington Drive.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Keith Dagostino

OREGON
JUNE 1, 1993
KEITH S. DAGOSTINO

2452 0001 word wstewbpc doc 11 2 2000



WEST BEND PROPERTY CO. PROPERTY

DATE	BY	REVISION	CHK

DRAWN BY: JAM
DESIGNED BY: JAM
CHECKED BY: KSD
APPROVED BY: KSD

W&H PACIFIC
920 Emkay, Suite C-100
Bend, Oregon 97702-1041
(541)388-4255
(541)388-4229 Fax
whpacific.com
A Member of The IT Group
Planners • Engineers • Surveyors • Landscape Architects

West Side Transportation Consortium
West Bend Property Company

Property Exhibit Map

EXHIBIT B

BEND/DESCHUTES OREGON

SCALE:	PROJECT NO.	FILE NAME:	
1"=1000'	02.2452.0002	WSTCPROP.DWG	1/1

PLOT DATE: 11/1/2000
LAST EDIT:

Exhibit C
Other Improvements

1. Widen the North half of Skyliners Road and install a bicycle lane, all along the boundary of the WBPC Property to City Standards.

2. Widen the South half of Shevlin Road and install a bicycle lane, all along the boundary of the WBPC Property to City Standards.

3. Construct a pedestrian trail along the North side of Skyliners Road along the boundary of the WBPC Property to City Standards.

4. Provision of adequate right-of-way and site development accommodations to support transit, such as, areas for bus stops, shelters or other similar facility as deemed appropriate by the City.

Exhibit D

STREET SDCS

SDC = Trip Ends X Trip Length / 2 / 7200 X $889,160 (lane mile cost)

Category	Daily Trip ends per unit	Units	Chargeable % reduction	Conversion: Daily trip ends per unit	Aver. RT trip length (miles)	100% SDC per unit
Industrial						
Industrial - general	6.97	T.G.S.F.	0.00%	6.97	6.2	$2,668
Industrial - batch plant	100.00	pdt	0.00%	100.00	6.2	$38,283
Manufacturing - bulky items	1.02	employees	0.00%	1.02	6.2	$390
Manufacturing - high tech-research & d	2.09	employees	0.00%	2.09	5.0	$645
Service and repair	5.60	T.G.S.F.	0.00%	5.60	6.0	$2,075
Residential						
Single Family	9.57	Dwelling Unit	0.00%	9.57	5.5	$3,250
Apartments	6.63	Dwelling Unit	0.00%	6.63	5.5	$2,252
Condominium	5.86	Dwelling Unit	0.00%	5.86	5.5	$1,990
Manufactured Home	4.81	Dwelling Unit	0.00%	4.81	5.5	$1,634
Senior Care	2.15	Dwelling Unit	0.00%	2.15	5.5	$730
PUD - residential	7.44	Dwelling Unit	0.00%	7.44	5.5	$2,527
Lodging						
Motel	9.11	Room	0.00%	9.11	5.9	$3,319
Hotel	6.95	Room	0.00%	6.95	5.9	$2,532
Recreational						
Golf Course	5.04	Acre	0.00%	5.04	7.5	$2,334
Bowling Alley	33.33	T.G.S.F.	0.00%	33.33	7.5	$15,435
Theater w/Matinee	0.29	Seat	0.00%	0.29	7.5	$134
Arena	33.33	Acre	0.00%	33.33	7.5	$15,435
Community Center	22.88	T.G.S.F.	0.00%	22.88	7.5	$10,596
Athletic Facility	2.30	T.G.S.F.	50.00%	1.15	5.0	$355
Spa	18.00	per station	36.00%	11.52	3.0	$2,134
Institutional						
Elementary School	1.02	Student	0.00%	1.02	3.8	$239
High School	1.79	Student	0.00%	1.79	3.8	$420
Community College	2.38	Student	0.00%	2.38	3.8	$558
Community College Library	45.50	T.G.S.F.	80.00%	9.10	3.8	$2,135
Community Library	45.50	T.G.S.F.	60.00%	18.20	3.8	$4,270
Church	9.11	T.G.S.F.	0.00%	9.11	3.8	$2,138
Daycare	4.52	Student	60.00%	1.81	3.8	$424
Medical						
Hospital	16.78	T.G.S.F.	0.00%	16.78	5.0	$5,181
Medical/Dental Clinic	36.13	T.G.S.F.	0.00%	36.13	5.0	$11,155
Specialty Medical	23.79	T.G.S.F.	20.00%	19.03	5.0	$5,876
General Office Bldg.						
Size < 50,000	15.39	T.G.S.F.	0.00%	15.29	6.2	$5,854
50,000<= Size < 175,000	10.08	T.G.S.F.	0.00%	10.08	6.2	$3,859
175,000<= Size	7.78	T.G.S.F.	0.00%	7.78	6.2	$2,978
Government						
Gov't Office Bldg.	68.93	T.G.S.F.	0.00%	68.93	6.2	$26,389
Retail						
General Retail	35.15	T.G.S.F.	47.00%	18.63	4.0	$4,601
Gasoline/Service Station	168.56	Pump Pairs	50.00%	84.28	4.0	$20,816
Convenience Market	737.99	T.G.S.F.	61.00%	287.82	4.0	$71,087
Shopping Center:						
Size < 50,000	87.31	T.G.L.S.F.	34.00%	57.62	4.0	$14,233

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PLEASE SEE OTHER SIDE OF PAGE

Exhibit D

50,000<= Size < 175,000	43.23	T.G.L.S.F.	34.00%	28.53	4.0	$7,047
175,000<= Size	28.98	T.G.L.S.F.	34.00%	19.13	4.0	$4,724
Restaurant - High turnover/Drive throug	238.80	T.G.S.F.	46.00%	128.95	4.0	$31,850
Restaurant - Specialty Food Item Servic	36.81	T.G.S.F.	50.00%	18.41	4.0	$4,546
Restaurant - Dinner only	10.00	T.G.S.F.	5.00%	9.50	4.0	$2,346
Restaurant - Lunch/Dinner	25.00	T.G.S.F.	15.00%	21.25	4.0	$5,249
Restaurant - Breakfast/Lunch/Dinner	158.00	T.G.S.F.	40.00%	94.80	4.0	$23,415
Supermarket w/Strip mall	111.51	T.G.S.F.	56.00%	71.37	4.0	$17,627
Specialty / Neighborhood Grocery	24.36	T.G.S.F.	20.00%	19.49	3.0	$3,610
Drinking Establishment	12.00	T.G.S.F.	20.00%	9.60	3.0	$1,778
Banks - w/Drive through	265.21	T.G.S.F.	47.00%	140.56	4.0	$34,717

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Exhibit E
Street Policy No. 5

City of Bend
Street Policy 5
Street System Development Charge Credit and Reimbursement

Section 1. Purpose:

It shall be the policy of the City of Bend that expansions to the City's street system shall only be accomplished as directed and approved by the City. The timing and financing of system expansions shall be as provided in this policy.

Expansions to the street system that involve the construction of collector and/or arterial streets shall be accomplished pursuant to the City's Comprehensive Plan. It is anticipated that these improvements will be financed by funds generated from systems development charges (SDC's), other resources or by developers as provided below. The timing of improvements to be constructed by the City will be subject to the availability of City funds to finance them.

Section 2. Procedure:

Developers who wish to expand the street system by dedicating land and/or constructing streets may do so according to the following procedure:

2.1 Prior City approval will be required.

2.2 An executed agreement between the developer and the City shall be required and shall set forth the development requirements as well as an SDC credit and/or SDC reimbursement, if available.

2.3 All improvements must be constructed according to applicable City Standards, rules and regulations, including the Comprehensive Plan, as determined by the City Engineer.

2.4 All of the cost of such improvements shall be paid by the developer.

2.5 The developer's costs associated with the construction of these qualified public improvements may be eligible for SDC credit and/or SDC reimbursement as provided in this policy.

Section 3. **SDC credit**:

The SDC credit shall be determined first and shall:

3.1 Only be available for qualified public improvements as defined in Oregon Revised Statutes (ORS) 223.304(3) (i.e., improvements that are identified in the City's Comprehensive Plan).

3.2 Be a credit against only the improvement fee portion of the SDC. The improvement fee portion against which the credit may be applied shall be calculated by using the methodology as it is employed in the City's SDC Ordinance and Resolution. If less than the maximum allowable SDC is charged in the Resolution, the percentage of the maximum allowable SDC used shall also be used to determine that portion of the improvement fee against which the SDC credit can be applied.

3.3. The amount of the credit shall not exceed the improvement fee as calculated above. e.g., if a developer incurs $100,000 for collector and/or arterial street improvement costs of which $70,000 is related to qualified improvements, and, if the development has 20 lots and the SDC improvement fee is 70% of the maximum allowable SDC improvement fee of $1,149, or $804, the SDC credit would be $16,080 (20 x $804). If the development included 100 lots the SDC credit would be limited to $49,000 as the SDC improvement fee times the number of lots (100 x 804 = $80,400) exceeds the qualified costs subject to the SDC credit times the percentage of the maximum allowable SDC improvement fee. ($70,000 x .70% = $49,000)

Section 4. **SDC Reimbursement**:

In addition to the SDC credit a developer may be eligible for SDC reimbursement. SDC reimbursement shall be determined as follows:
The maximum SDC reimbursement shall be limited to the collector and/or arterial street improvement costs expended by the developer, as determined by the City Engineer, times the percentage of the maximum allowable SDC in place at the time of executing an agreement with the City, less any SDC credit related to the improvements. There shall be no SDC reimbursement if the SDC credit exceeds the maximum SDC reimbursement. Qualified costs of collector and/or arterial street improvements shall include actual construction costs, exclusive of right-of-way and preliminary engineering costs.

Section 5. **SDC Credit and Reimbursement-Collection and Payment Procedures**:

SDC credit and SDC reimbursement will be collected and paid as follows:

5.1 The current SDC, as established by the Bend City Council, shall be collected by the City on all building permits issued by the City or with other agreements as applicable. The SDC may have two components; an improvement fee for future

system improvements and a reimbursement fee for existing or in-progress improvements.

5.2 SDC improvement fees collected by the City shall be paid to developers and retained by the City in accordance with this policy.

5.3 SDC reimbursement fees collected by the City shall be retained by the City to reimburse the City for previous system expenditures, related debt service or future improvements.

Section 6. **Shared/Sole Recovery Areas:**

6.1 The area served or to be served by the City's street system within the City limits will be categorized as either shared recovery area or as sole recovery area. Sole recovery areas shall be determined by the City Engineer and shall include only the developer's property that is to be served by the approved facilities constructed by the developer. Shared recovery area shall include all area served or to be served by the City's street system that is not otherwise designated as sole recovery area within the City limits.

6.2 SDC improvement fees collected from each sole recovery area shall be applied as follows:

6.2.1 SDC credit due the developer of the sole recovery property, until paid.

6.2.2 SDC reimbursement due the developer of the sole recovery property, until paid or until the 10 year recovery period expires.

6.2.3. Once items 1 and 2 are met the sole recovery property shall become shared recovery area.

6.3 SDC improvement fees collected from the shared recovery area shall be applied as follows:
To developers with outstanding SDC credit and SDC reimbursement balances, including the City, in proportion to the outstanding SDC credit and SDC reimbursement balances, at the end of the repayment period, of all developers, including the city participating in the shared recovery area.

6.4 SDC improvement fees collected and paid to developers from the shared recovery area shall be limited to the amount of SDC credit and/or SDC reimbursement that would not otherwise be collectible from SDC improvement fees within a developer's sole recovery area.

6.5 There shall be no payment made, for either the SDC credit or SDC reimbursement, to the developer from any SDC improvement fee collected within the sole recovery area or shared recovery area until the improvements are accepted by the City.

6.6 There shall be no SDC credit or SDC reimbursement paid after 10 years from the date the qualified improvements are accepted by the City.

6.7 A sole recovery area shall become shared recovery area when the developer has been paid the SDC credit and/or SDC reimbursement in full, or the SDC credit is paid in full and the 10 year SDC reimbursement period expires.

Section 7. Payment Schedule:

7.1 Payment of SDC credit and SDC reimbursement amounts shall be payable annually by the City for SDC improvement fees collected by the City from January 1 through December 31 of each year by January 31 of the year following collection by City.

7.2 No interest shall accrue on SDC credit or SDC reimbursement payable to developers.

7.3 There shall be no adjustments made to the amount of any SDC credit or SDC reimbursement amount as a result of inflation.

Section 8. Assignment of Claims:

8.1 Claims from SDC credit and SDC reimbursement are personal and may not be assigned without the written consent of City.

Section 9. Future Changes to Maximum Allowable SDC:

9.1 Future changes by the City of the maximum allowable SDC or the percentage of the maximum allowable SDC imposed shall neither increase or decrease the SDC credit or SDC reimbursement determined above, however, if the percentage of the maximum allowable SDC is changed, all active public improvement agreements will be reviewed, and if necessary, SDC credit and/or SDC reimbursement amounts to be collected and reimbursed developers from sole and shared recovery areas will be recalculated in accordance with this policy.

Section 10. City's Obligation to Pay:

10.1 The City's obligation to pay or apply SDC credit or SDC reimbursement shall be limited to SDC improvement fees actually collected by the City as provided in this policy. City's obligation to pay or apply SDC credit or SDC reimbursement from SDC improvement fees collected shall be further limited to the total of the SDC credit and SDC reimbursement calculated as provided in this policy. Payment of SDC credit and SDC reimbursement shall be subject to prior reimbursement claims which are payable from SDC collections. Persons who receive, or are entitled to claim, SDC credit or SDC reimbursement shall indemnify and hold the City harmless in the event the City is subject to claims by others for SDC credit or

SDC reimbursement for the same improvements. City shall have the right to set off the amount of any competing claims for SDC credit or SDC reimbursement against prior claims for the same SDC credit or SDC reimbursement if in the City's judgment it becomes necessary to do so.

Section 11. Applicability:

11.1 This policy shall apply to all eligible improvements installed and accepted after City Resolution #2146 which established street SDCs effective June 15, 1995.

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RECORDED DOCUMENT

STATE OF OREGON
COUNTY OF DESCHUTES

*2000-46323 * Vol-Page Printed: 11/15/2000 10:16:01

DO NOT REMOVE THIS CERTIFICATE

(This certificate constitutes a part of the original instrument in accordance with ORS 205.180(2). Removal of this certificate may invalidate this certificate and affect the admissibility of the original instrument into evidence in any legal proceeding.)

I hereby certify that the attached instrument was received and duly recorded in Deschutes County records:

DATE AND TIME: Nov. 15, 2000; 10:09 a.m.

RECEIPT NO: 28560

DOCUMENT TYPE: Development Agreement

FEE PAID: $231.00

NUMBER OF PAGES: 37

Mary Sue Penhollow

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND

AND BROKEN TOP LIMITED PARTNERSHIP

This Development Agreement ("Agreement") is dated as of the 6 day of November, 2000, by and between BROKEN TOP LIMITED PARTNERSHIP, an Oregon limited partnership ("BTLP") and BROKEN TOP DEVELOPMENT, LLC, an Oregon limited liability company and an affiliate of BTLP ("BTD") (collectively, BTLP and BTD are hereinafter referred to as "BTLP"), and THE CITY OF BEND, an Oregon municipal corporation (the "City"). Each of BTLP and the City is hereinafter referred to as a "Party" and collectively as the "Parties."

1. Definitions:

1.1 "Bridge LID Petition" means that certain LID Petition of even date herewith signed by petitioners Brooks Resources Corporation, Skyliner Summit Limited Partnership, West Bend Property Company, LLC, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Southern Bridge.

1.2 "BTLP Property" means the property on which the Proposed Development is to be constructed by BTLP, which BTLP Property is more particularly described on attached **Exhibit B**.

1.3 "Development Agreement" means each of the development agreements between a Property Owner and the City pursuant to ORS 94.504 (collectively, the "Development Agreements"). Three of the Property Owners, Western Communications, Inc., dba The Bulletin (the "Bulletin"), the Bend-LaPine Administrative School District No. 1 (the "School District") and Central Oregon Community College ("COCC") are not parties to a Development Agreement.

1.4 "Final Approval" shall mean the issuance of a development permit that reasonably allows the development described in Section 4 of the Development Agreement to proceed and the expiration of the period of appeal, or if an appeal is filed, the resolution of that appeal in a manner that reasonably allows the development described in Section 4 of the Development Agreement to proceed.

1.5 "Intersection LID Petition" means that certain LID Petition of even date herewith signed by nine of the Property Owners as petitioners, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Projects.

1.6 "Off-Site Transportation Impact Mitigation" means mitigation of the increased burden that each Proposed Development will put on the transportation facilities of the City of Bend outside the property lines of the Proposed Development. The term "Off-Site Transportation Impact Mitigation" includes the "Other Improvements" identified in **Exhibit C** of each Development Agreement.

1.7 "Other Improvements" means those certain off-site transportation-related improvements to be completed by the Property Owners which are a part of their Off-Site Transportation Impact Mitigation but which are not to be completed pursuant to a local improvement district. The Other Improvements to be completed by a particular Property Owner are identified in **Exhibit C** to that Property Owner's Development Agreement.

1.8 "Project" means a traffic facility improvement described in Section 4 of the Intersection LID Petition and the Southern Bridge.

1.9 "Property Owners" are the twelve public and private entities, including BTLP, identified on **Exhibit A** who own property on the West Side of the City and who have formed a consortium to resolve the current and projected shortage of transportation facilities on the West Side.

1.10 "Proposed Development" means the development described in Section 4 of this Agreement.

1.11 "Responsible Property" means that portion of the property of each of the Property Owners identified in the Intersection LID Petition or the Bridge LID Petition subject to assessment for the cost of one or more Projects. "Responsible Property" shall not include portions of the property that are dedicated as public right-of-way, or dedicated for any other public purpose.

1.12 "Responsible Property Owner" means the Property Owner identified as being responsible for construction of the specific Project(s) listed for that Property Owner in the Bridge LID Petition or the Intersection LID Petition.

1.13 "Southern Bridge" means the bridge to be constructed over the Deschutes River where the proposed extension of Reed Market Road from the Parkway will cross the Deschutes River as provided in the City's General Plan.

1.14 "West Side" shall mean that portion of the City of Bend directly served by the transportation facilities described in Section 4 of the Intersection LID Petition, and the Southern Bridge.

2. Recitals:

2.1 Under the City of Bend General Plan and land use regulations, new development must be supported by adequate public facilities. The City's General Plan provides that if the public facilities are not adequate, new development must either wait for the installation of the required facilities by the City or pay the cost if it occurs ahead of the City's capital improvement plan. Existing public transportation facilities serving the West Side of the City (the "West Side Transportation System") are not adequate to support all existing development and new development contemplated in the immediately foreseeable future for the West Side of the City. The City is proceeding on the basis that its land use regulations require a system-wide fix to remedy the system-wide deficiency in the West Side Transportation System in order to support the contemplated new development.

2.2 The City does not have funds available to complete the projects necessary to create the additional capacity for the West Side Transportation System to support the new development within the timeframe in which the Property Owners wish to develop and to complete its other capital improvements.

2.3 The cost of supplying a system-wide remedy that will support the existing needs and the additional transportation burden that the new development will add to the West Side Transportation System is more than the amount that could be exacted from any single Proposed Development. Therefore, the Property Owners have concluded that collectively they can provide the necessary improvements to the West Side Transportation System to support the Proposed Developments. To this end, they have organized themselves as a consortium to accomplish these improvements.

2.4 It is the intention of the Parties that the legal mechanism for accomplishing these improvements will be expressed in Development Agreements, the Bridge LID Petition and the Intersection LID Petition (referred to as the "Consortium Agreements").

2.5 Together, the Consortium Agreements will provide a realistic mechanism for constructing the 11 distinct traffic system improvements required to support the contemplated new development. These improvements will also make a significant contribution toward relieving existing traffic problems in the West Side Transportation System. Ten of these improvements are identified in Section 4 of the Intersection LID Petition, and the other is described in the Bridge LID Petition. The Consortium Agreements also describe Other Improvements which will be constructed by the Property Owners in connection with the Property Owners' Proposed Developments.

2.6 Traffic impact analyses show that the 10 distinct traffic system improvements identified in the Intersection LID Petition, the Bridge LID

Petition, and the Other Improvements will be adequate to mitigate the off-site traffic impacts that the Property Owners' Proposed Developments will have on the West Side Transportation System and make reasonable provision for the West Side Transportation System on a long-term basis.

2.7 ORS 94.504 authorizes cities to enter into development agreements with private parties who own or otherwise have a legal interest in property in connection with the development of that property. Such development agreements may have a duration up to seven years and may establish each of the parties' rights and obligations in connection with certain aspects of the proposed developments. Each Property Owner wishes to definitively establish and discharge all of its obligations to mitigate the increased burden that each Proposed Development will put on the West Side transportation facilities of the City of Bend outside the property lines of the Proposed Development ("Off-Site Transportation Impact Mitigation") to the West Side Transportation System through a development agreement with the City.

2.8 Nine of the Property Owners (Brooks Resources Corporation; West Bend Property Company, LLC; Broken Top Limited Partnership; Skyliner Summit Limited Partnership; Century Park LLC; Shevlin Heights LP; West Side Meadows, LLC; Central Oregon Community College; and River Bend Limited Partnership) have signed a Petition to Form West Side Intersection Local Improvement District (the "Intersection LID Petition"), which, among other things, allocates responsibility for constructing 10 of the Projects among the Property Owners signing the Intersection LID Petition.

2.9 Five of the Property Owners (Brooks Resources Corporation, West Bend Property Company, LLC, Skyliner Summit Limited Partnership, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1) have signed a Petition to Form Southern Bridge Local Improvement District (the "Bridge LID Petition"), which, among other things, allocates responsibility for the cost of constructing the Southern Bridge. The Property Owners have agreed upon a schedule for the completion of the Southern Bridge, and the amount to be contributed by each Property Owner, as provided in the Bridge LID Petition.

2.10 The Intersection LID Petition provides a schedule for commencement of construction of the Projects by the applicable Property Owner(s) and provides that a failure of a Property Owner to timely commence and complete its assigned Project(s) shall give the City the option to construct that Project under the Intersection LID Petition, assess that Property Owner's property for the cost of construction and impose liens against that Property Owner's property as permitted by law.

2.11 Execution of the Development Agreements, the Intersection LID Petition and the Bridge LID Petition by the City and all of the Property Owners, and

the commitments created by these Consortium Agreements, will supply the realistic provision for transportation facilities necessary to support new development to be served by the West Side Transportation System. In return, the Property Owners shall be relieved from any further Off-Site Transportation Impact Mitigation in connection with that Property Owner's Proposed Development(s).

2.12 Each Property Owner participating in one or both LID Petitions acknowledges that its property will be specially benefited by the Projects listed in the Intersection LID Petition and the Bridge LID Petition that include its property. Each Property Owner who is participating in one or both LID Petitions also acknowledges that all of the properties in the Intersection LID and all of the properties in the Bridge LID will be specially benefited by all of the Projects. Each Property Owner participating in the LID Petitions therefore consents to the formation of the LIDs that include the Property Owner's property, subject to the conditions set forth herein.

2.13 It is the intention of the Parties that the Consortium Agreements are each integral parts of a collective effort with the City, intended to accomplish the objectives set out in these recitals. Therefore, the Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be construed accordingly, and in the event of any conflict between the terms and conditions of the Development Agreements and the LID Petitions, the LID Petitions shall prevail.

2.14 It is recognized that the Proposed Development of Cascade Highlands, L.P. is located outside the city limits of the City. Consistent with the Joint Management Agreement between the City and Deschutes County, a three-party development agreement will be executed by the City, Deschutes County and Cascade Highlands, L.P. Cascade Highlands, L.P. will contribute $500,000 to the City for the construction of the Southern Bridge. The Parties recognize that Cascade Highlands, L.P. has substantially the same ownership as Broken Top Limited Partnership and Skyliner Summit Limited Partnership and that its contribution, considered as a part of the entire Consortium Agreements, addresses the impacts its Proposed Development will have on the West Side Transportation System.

2.15 None of the Property Owners shall be responsible for the performance of obligations of any other Property Owners unless expressly stated in the Consortium Agreements.

2.16 The Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be recorded and binding upon the Parties, their successors and assigns, and shall be enforceable as covenants running with the land; and may be enforced by any remedy provided by law.

2.17 The Parties agree that their execution of these Consortium Agreements represents their acceptance of the purpose expressed in these recitals, and the ways and means of accomplishing this purpose. Towards this end, the Parties expressly agree:

2.17.1 The Parties shall cooperate in good faith to the extent reasonably practicable to accomplish the purpose of the Consortium Agreements. This shall include, but not be limited to, cooperation in the defense of these agreements and their performance.

2.17.2 Other non-consortium development served by the West Side Transportation System shall be expected to make realistic provision for the mitigation of its impacts on transportation facilities as required by law, and in addition to that made by the Property Owners.

2.17.3 The terms and conditions of these Consortium Agreements are intended as an implementation of, and are consistent with, the City's land use laws, rules and regulations, together with all applicable state and federal laws, rules, and regulations. This includes, but is not limited to, a recognition that the performance required of the Parties by these Consortium Agreements is roughly proportional to the impacts the Proposed Developments will have on the West Side Transportation System; and that the public and private responsibilities involved in remedying the deficiencies in the West Side Transportation System in order to support the Proposed Developments are fairly and properly allocated.

2.17.4 The Parties further express their commitment to the objectives of these Consortium Agreements by waiving all claims of any kind or nature resulting from the Parties' Agreement to accomplish the purpose contemplated by the Consortium Agreements, or the ways and means provided for accomplishing that purpose in the Consortium Agreements. This includes, but is not limited to any constitutional or statutory claims (for the taking of property or otherwise), and any claims against the other Party, its elected officials, officers, employees, or agents. This waiver does not include claims based upon a failure to perform these Consortium Agreements as expressly required by their terms and conditions. This waiver shall not prevent land use appeals from approvals or denials of the Proposed Developments.

2.17(a) The Parties acknowledge that the lawsuit filed by the Central Oregon Builders Association (COBA) and served upon the City October 10, 2000 may affect the amount of System Development Charges (SDCs) available for reimbursement as provided in the Consortium Agreements. This lawsuit (COBA v. City of Bend, Circuit Court No. 00CV0454AB) seeks to

reduce the Street SDC. If COBA succeeds, the $3,250 SDC anticipated by the Consortium Agreements may be reduced and SDC collections available for reimbursement may also be reduced. Because of this possibility, the Parties agree that the provisions of the Consortium Agreements relating to reimbursement (including but not limited to Sec. 12.5 and Exhibit D of the Development Agreements, Sec. 8 of the Southern Bridge LID, and Sec. 8 of the Intersection LID) are modified to provide that the SDC imposed by the City shall be the amount provided in the Consortium Agreements, or the highest amount permitted by law, if the highest amount permitted by law is less than the amount provided in the Consortium Agreements. It is the intent of the Parties that this Section has been added only to accommodate the possibility of a reduction created by the COBA lawsuit, and not for any other purpose. In the event that SDC collections are reduced as a result of the COBA lawsuit, the Consortium Agreements shall continue in full force and effect except as modified by this Section, and the Parties shall in good faith continue to cooperate in the achievement of the purpose of the Consortium Agreements, specifically including the reimbursement to consortium members from SDCs as provided in City of Bend Street Policy No. 5, Sec. 6 (which applies when the potential SDC collections from sole recovery areas will not be adequate to fund full reimbursement, and shared area recovery area collections are available to pay reimbursement not otherwise collectible from sole recovery areas).

2.18 These recitals are part of each of the Consortium Agreements.

3. Effective Date; Term of Agreement

3.1 This Agreement shall be effective upon adoption of the City ordinance approving this Agreement pursuant to ORS 94.508 (the "Effective Date"). The term (the "Term") of this Agreement shall commence on the Effective Date and shall continue for a period of seven years unless terminated sooner in accordance with the provisions contained herein.

3.2 The Parties agree that the intent of the Parties and the essential purpose of this Agreement is to provide the City with a system-wide fix on the West Side in exchange for providing BTLP and the other Property Owners (a) the right to build their Proposed Development at the Maximum Density provided in Section 4.2 for a seven-year period without additional Off-Site Transportation Impact Mitigation, subject to BTLP and the other Property Owners obtaining Final Approval through the normal City applications process, and (b) a seven-year vesting of the land use standards which will be applicable to such applications. The right to the Proposed Development at the Maximum Density without additional Off-Site Transportation Impact Mitigation and the vested standards during a full seven-year period is critical to BTLP's willingness to enter into this Agreement. The Parties understand that BTLP may not receive the benefit of such intent and

purpose during the initial Term of this Development Agreement if there are delays (a) caused by third-Party appeals of this Development Agreement and/or the related LID Petitions; (b) caused by third-party appeals of BTLP's land use applications in connection with the Proposed Development; and (c) in the land use applications process. If as a result of such delays BTLP does not receive Final Approval within one year of the Effective Date, the Parties agree that they will negotiate in good faith an extension of the Term of this Development Agreement to assure that BTLP has a 7 year period following Final Approval to proceed with its Proposed Development under the terms and conditions of this Development Agreement. At no time shall the Term exceed seven years.

4. Proposed Development

4.1 BTLP has an approved Planned Unit Development for the BTLP Property that has been developed in phases in conformance with an approved Master Plan. BTLP's Master Plan allows a density of 866 units. One of the approvals in connection with the BTLP Master Plan included a condition that BTLP deposit funds toward the cost of improvements at Mt. Washington Drive and Century Drive (the "Deposit Condition"). BTLP intends to file land use applications to allow for continued phased development of the Property. These Applications will seek: (1) approval of subdivisions for Phases VI-A, VI-B, V-A, V-C, V-E, V-F, IV-E, IV-F, II-K, II-L; (2) approval of a subdivision re-plat for a portion of Phase III-B; (3) approval of a Master Plan Modification, partition and Conditional Use Permit to permit the sales office to be used as a single-family residence; (4) approval of a Master Plan Modification and Conditional Use Permit to construct a sales office on Tract EE; (5) approval of a Master Plan Modification and subdivision to develop Tract I and Tract P as 20-30 attached single family units; (6) approval of variances to permit development of Phases V-E and V-F in a manner similar to Phases IV-D and IV-E; and (7) approval of a Master Plan Modification to permit development of a community pool and play area in tract AA. Pursuant to this Section 4.1, 304 new units will be accommodated. Collectively 1-7 are hereinafter referred to as the "Proposed Development"). Because the Consortium Agreements provide for the construction of improvements at the intersection of Mt. Washington Drive and Century Drive sufficient to accommodate the Proposed Development, the City and BTLP agree that this Development Agreement and the Intersection LID Petition together satisfy the Deposit Condition, also referred to as Condition No. 17, contained in Findings and Decision File Nos. CU-93-107 and TP-93-818.

4.2 For the purpose of determining the amount and kind of Off-Site Transportation Impact Mitigation required of BTLP's Proposed Development and the rights of BTLP vested herein, BTLP agrees that the density of its Proposed Development shall not exceed 866 residential units (the "Maximum Density"). There are 304 units remaining from the

Proposed Development's Maximum Density of 866 residential units. The Maximum Density has been used by the Parties in a supporting traffic study to determine the estimated number of vehicle trips to be generated by the Proposed Development. To the extent that BTLP changes its mix of development to respond to market conditions but does not increase the number or distribution of estimated vehicle trips, BTLP shall not be deemed to have exceeded its Maximum Density.

5. Conditions to Parties' Obligations

5.1 BTLP's obligation to pay for Projects other than the Southern Bridge and the "Other Improvements" listed in **Exhibit C** under this Agreement is also subject to the terms and conditions provided in the Intersection LID Petition.

5.2 The City's obligations hereunder are subject to BTLP signing the Intersection LID Petition.

5.3 Both Parties' obligations are subject to Deschutes County entering into a Development Agreement with Cascade Highlands, L.P. consistent with the recitals herein.

6. Permitted Uses. The Property is within the RS Zone, Urban Standard Residential, pursuant to the Bend Zoning Ordinance (the "BZO"). Notwithstanding the content of any later-adopted zoning or development ordinance, the land use standards and criteria that apply to approval of the Proposed Development during the period of this Agreement shall be subject to the BZO as the same exists as of the Effective Date.

7. Density or Intensity of Use. Land use approval of the Proposed Development during the period of this Development Agreement shall be subject to the density and intensity use provisions of the BZO and the Bend Subdivision Ordinance ("BSO") as the same exist as of the Standards Vesting Date, notwithstanding the content of any subsequently adopted zoning or development ordinance.

8. Maximum Height and Size of Proposed Structures. The BZO and any applicable provisions of the BSO, as the same exist as of the Effective Date, shall govern the maximum height and size of proposed structures. Section 10.10.10(4) of the BZO currently provides that any building over 30 feet in height shall require a conditional use permit.

9. Provisions for Reservation or Dedication of Land for Public Purposes. BTLP shall have no obligation to make off-site reservations or dedication of land for public purposes (including easements and/or licenses) in connection with BTLP's Proposed Development. The necessity and/or specifics of any future on-site reservations or dedications of land for public purposes (including easements and/or licenses) in connection with BTLP's Proposed Development will be

determined by the City in reviewing BTLP's applications and applying City standards and ordinances in effect as of the Effective Date.

10. Fees and Charges

10.1 When land within the Proposed Development is developed, the City shall collect System Development Charges ("SDC") within the sole recovery area established for the Proposed Development in accordance with the terms of Section 12.5.

10.2 BTLP and its successors and assigns shall pay all applicable fees and charges then in effect for a particular application, except where the purpose or effect of such fees or charges is Off-Site Transportation Impact Mitigation. In no event shall this Section 10 be construed so as to relieve BTLP or any purchaser of any portion of the BTLP Property from any obligation it may have to pay street SDCs.

11. Schedule and Procedure for Compliance Review. Commencing on the first anniversary of the Effective Date, BTLP shall prepare annual written reports of its compliance with the terms of this Agreement to the City. Such reports shall include an update as to compliance with all schedules set forth herein. After receipt of such reports, the City may request such additional or backup information as it deems reasonably necessary.

12. Responsibility for Providing Infrastructure and Services

12.1 Consistent with the Maximum Density rights vested in Section 4 and the development standards vested in Sections 6, 7, 8 and 10, BTLP agrees to make certain off-site street and transportation-related improvements. Subject to the terms provided herein, BTLP agrees that it shall construct and/or provide funding toward the construction of the following off-site Projects:

12.1.1 Subject to Section 12.3, contribute fifty percent (50%) of the cost of constructing a single lane roundabout at the intersection of Mt. Washington Drive and Skyliners Road. The Construction Commencement Deadline is December 31, 2002. Such roundabout shall be constructed in general conformance with the engineering drawings attached to the Intersection LID Petition;

12.1.2 Subject to Section 12.3, contribute thirteen and six-tenths percent (13.6%) of the cost of constructing a single lane roundabout at the intersection of Mt. Washington Drive and Century Drive. The Construction Commencement Deadline is December 31, 2001. Such roundabout shall be constructed in general conformance with the engineering drawings attached to the Intersection LID Petition.

12.1.3 Subject to Section 12.3, contribute fifty percent (50%) of the cost of constructing a single lane roundabout at the intersection of 14th and Galveston. The Construction Commencement Deadline is December 31, 2000. Such roundabout shall be constructed in general conformance with the engineering drawings attached to the Intersection LID Petition; and

12.1.4 Subject to the terms provided herein, BTLP agrees that it shall construct those Other Improvements identified on attached **Exhibit C**.

As used herein, "Construction Commencement Deadline" shall mean the date by which the Responsible Property Owner(s) shall have commenced preliminary design and engineering work

12.2 The City acknowledges that (a) construction of the Southern Bridge is subject to objections raised by third Parties which could interfere with that Project; (b) construction of any of the Projects could be delayed as a result of the City's failure to timely acquire necessary rights-of-way, (c) construction of any of the Projects could be delayed as a result of objections raised by third Parties; and (d) construction of any Projects could be delayed by difficulties in obtaining approvals from the Oregon Department of Transportation ("ODOT") and any other federal, state or local regulatory body. The City agrees that none of (a), (b), (c) or (d) shall be a basis for denying or delaying the approval of any of BTLP's land use applications in connection with the Proposed Development, grounds for declaring BTLP to be in default, or a basis for exacting additional Off-Site Transportation Impact Mitigation from BTLP. Subject to the terms of the applicable LID Petition(s), the City shall, however, have the right to construct Projects and assess the Responsible Property therefore according to the schedules in the LID Petitions, irrespective of whether BTLP has received Final Approval. In the event of (b), the schedule for construction of the applicable Project as set forth in the applicable LID Petition shall be delayed by the same period of time by which the right-of-way acquisition is delayed.

12.3 The Intersection LID Petition includes plans and drawings for the Projects identified therein. Estimates have been prepared of the cost of constructing them. BTLP shall bear the risk that such costs may increase between the date of this Development Agreement and the date that construction commences; provided, however, the City shall bear any additional costs, which result from any change in design required by the City or ODOT.

12.4 The City agrees that the Projects and Other Improvements to be provided pursuant to this Development Agreement and the Intersection LID Petition shall be deemed to satisfy BTLP's obligation to provide Off-Site Transportation Impact Mitigation in connection with the Maximum Density

of the Proposed Development set forth in Section 4 so that, with respect to off-site transportation obligations, the Proposed Development is vested. The City shall require no other off-site transportation-related exactions nor require any further traffic studies relating to Off-Site Transportation Impact Mitigation in connection with or as a condition to the approval of BTLP's Proposed Development. This shall include, but not be limited to, construction of off-site streets or intersections, improvement of off-site intersections or other existing off-site transportation facilities, construction of off-site bicycle paths or pedestrian trails and dedication of off-site rights-of-way for any of the above-identified purposes. Notwithstanding the foregoing, BTLP's rights which are vested herein are dependent upon the Maximum Density of the Proposed Development set forth in Section 4 which is tied to the estimated number of vehicle trips to be generated by such Maximum Density. The Parties hereto understand that the mix of uses that make up the Maximum Density could change based on market forces. However, to the extent that BTLP submits land use applications that would increase the number of vehicle trips to be generated by the Proposed Development, the Proposed Development may be subject to additional off-site transportation exactions based upon projected transportation impacts on City transportation facilities from the increased density, consistent with City policies and regulations. The Parties agree that this Development Agreement does not, however, resolve any issue relating to on-site transportation requirements and that on-site transportation issues are reserved for future discretionary land use approval, and that the City may require further studies and reviews relating to on-site traffic.

12.5 The City and Broken Top Limited Partnership agree that upon execution of this Agreement that the property identified in **Exhibit B** shall be established as the sole recovery area for the collection of transportation system development charges ("SDC"). During the Term of this Agreement, the City shall collect SDCs, at the greater of the rates determined in accordance with the SDC rates attached as **Exhibit D**, or any future rates adopted by the City. The City is currently evaluating SDC rates for commercial and industrial development. If such rates are changed prior to December 31, 2000 such change shall replace **Exhibit D** to this Agreement. Otherwise until the earlier of the expiration of this Agreement or the date at which the Property Owner has received full reimbursement from SDCs, the SDC rate for those SDCs collected from the sole recovery area will not decrease, but shall increase if and when City-wide SDC rates increase. Because BTLP and BTD are affiliates and their properties are both benefited by the Consortium Agreements, the Parties agree that the sole recovery area shall include property owned by BTLP and property owned by BTD. Notwithstanding anything to the contrary contained in the Consortium Agreements, the Parties agree that BTD's obligations pursuant to the Consortium Agreements shall be limited to its assessment obligations pursuant to the Intersection LID Petition.

12.6 The City shall use the SDC revenue collected from the sole recovery area to reimburse Broken Top Limited Partnership for the cost of constructing the Projects identified in Section 12.1 above at a rate of 100% of all qualified improvements pursuant to Street Policy 5 (**Exhibit E**), as amended.

12.7 The Parties agree that there are certain actions or improvements that must be made in conjunction with the Projects and Other Improvements to be completed by the Property Owners to provide adequate facilities to support development which will impact the City's West Side Transportation System. These actions or improvements are not a part of the Property Owners' obligations and the City agrees to assure that such actions are taken and such improvements are made. As referenced in the supporting traffic studies, such actions and improvements include, but are not limited to, acquiring rights-of-way for those Projects for which the Property Owners do not already own the necessary rights-of-way, obtaining permits necessary for construction of the Projects, expanding some of the Projects as necessary from single-lane roundabouts to double-lane roundabouts and completing bicycle lanes where gaps exist along Shevlin Park Road. In no event shall the City be obligated to expend funds to take such actions or complete such improvements; the City may assure their completion by any appropriate means, including, without limitation, making them conditions to other future development, paying for them with systems development charges, paying for them with grants and/or including them in future capital improvement plans.

13. Assumptions Relating to City's Ability to Serve Development; Continuing Effect of Agreement

13.1 ORS Section 94.504(6) requires that a Development Agreement "state the assumptions underlying the agreement that relate to the ability of the city...to serve the development."

13.2 The facts set forth in the Recitals are included in the assumptions underlying this Agreement.

13.3 The Parties operate under the assumption that construction of the Projects (including the Southern Bridge) will provide adequate off-site transportation infrastructure and facilities to support BTLP's Proposed Development. The adequacy of transportation facilities are determined with reference to the standards in effect as of the Effective Date.

13.4 In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with the Agreement impossible or unlawful, the Parties will attempt to give effect to the remainder of the Agreement, but only if the purposes set out in the recitals

can be accomplished and such effect does not prejudice the substantial rights of either Party under the Agreement.

13.4.1 If the substantial rights of either Party are prejudiced by giving effect to the remainder of the Agreement, then the Parties shall negotiate in good faith to revise the Agreement to give effect to its original intent.

13.4.2 If the Parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either Party may request that an arbitration panel determine an equitable effect for the remainder of the Agreement. The arbitration panel shall consist of 3 arbitrators, one of which shall be selected by BTLP, one of which shall be selected by the City, and the third of which shall be selected by agreement of the arbitrators selected by BTLP and the City. If the 2 arbitrators are unable to agree upon the selection of a third arbitrator, then the third arbitrator shall be selected by the Presiding Judge of the Circuit Court, 11th Judicial District, Deschutes County, Oregon.

13.4.3 If, because of a change in policy, law or circumstances, the Agreement fails of its essential purposes (construction of all of the traffic system improvements called for in the Intersection LID Petition, the Bridge LID Petition and this Development Agreement; vesting of allowed uses and limitations on development conditions; vesting of maximum off-site transportation exactions; and vesting of maximum permissible densities in connection therewith), then the Parties shall be placed into their original position to the extent practical.

13.4.4 As used herein, however, "change in circumstance" does not include changes in local government land development or land division regulations.

13.5 To the extent any local rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis that is not, in the reasonable discretion of BTLP, inconsistent with the substance, purpose, or conditions of this Development Agreement, then the local rule, ordinance, regulation or policy shall be applicable.

14. Assignability of Agreement. This Agreement shall be fully assignable, in whole or in part, by either Party and shall bind and inure to the benefit of the Parties and their respective successors and assigns. If any portion (other than lot sales to individuals or builders) of the BTLP Property is sold, the duties, rights and interests of BTLP under this Agreement shall become the duties, rights and responsibilities of the purchaser and BTLP. Notwithstanding the foregoing, no purchaser of an individual lot(s) shall have any rights hereunder.

15. Future Discretionary Approvals

15.1 The City agrees to cooperate with BTLP in securing all future necessary land use permits and approvals for the Proposed Development needed from entities other than the City.

15.2 The following future discretionary approvals are the currently anticipated approvals that will be required for the Proposed Development:

15.2.1 Approval of subdivisions for Phases VI-A, VI-B, V-A, V-C, V-E, V-F, IV-E, IV-F, II-K, II-L;

15.2.2 Approval of a subdivision re-plat for a portion of Phase III-B;

15.2.3 Approval of a Master Plan Modification, partition and Conditional Use Permit to permit the sales office to be used as a single-family residence;

15.2.4 Approval of a Master Plan Modification and Conditional Use Permit to construct a sales office on Tract EE;

15.2.5 Approval of a Master Plan Modification and subdivision to develop Tract I and Tract P as 20-30 attached single family units;

15.2.6 Approval of variances to permit development of Phases V-E and V-F in a manner similar to Phases IV-D and IV-E; and

15.2.7 Approval of a Master Plan Modification to permit development of a community pool and play area in tract AA.

15.3 The Parties acknowledge that the provisions of BTLP's land use application, other than the provisions relating to Off-Site Transportation Impact Mitigation, shall be the subject of future discretionary approvals by the City. The question of whether the City may approve the applications referred to in this Agreement, including the provisions of the land use applications referred to in Sections 4 (Proposed Development), 6 (Permitted Uses), 7 (Density or Intensity of Use), and 8 (Maximum Height and Size of Proposed Uses), or any other part of BTLP's land use application are reserved for future discretionary approvals, and are not resolved by the terms of this Agreement, the Intersection LID Petition or the Bridge LID Petition. Nothing in this Agreement resolves, adjudicates or dispenses with the responsibilities of BTLP or its Proposed Development for impacts or conditions of approval other than Off-Site Transportation Impact Mitigation, and nothing herein operates as an approval (or preliminary approval) by City of BTLP's land use applications except as to Off-Site Transportation Impact Mitigation.

15.4 In the event of a conflict between the terms of this Development Agreement, and the terms of the Intersection LID Petition, then the terms of the Intersection LID Petition shall control.

15.5 The discretionary approvals shall be reviewed by the City in the same manner and subject to the same procedures and hearings requirements as all other similar land use applications filed at the time of the Effective Date.

16. Schedule. BTLP shall commence construction of the Projects assigned to BTLP as of the date set forth in the relevant LID Petition(s) and shall complete construction of each Project no later than the date established in the relevant LID Petition(s). Subject to obtaining timely approvals of its Proposed Development, BTLP shall commence construction of its Proposed Development by 2001 and that its Proposed Development shall be completed by the expiration of the Development Agreement.

17. Defaults

17.1 A breach of a material provision of any of the Consortium Agreements, whether by action or inaction of a Party which continues and is not remedied within thirty (30) days after the other Party has given notice specifying the breach shall constitute a default by a Party. If the breach is of such a nature that it cannot reasonably be cured within such thirty-day period, the cure period shall be extended to such amount of time as is reasonable but only if the breaching Party promptly commences, and thereafter diligently prosecutes, such cure.

17.2 The exercise by either Party of any one or more of such remedies available to it shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

17.3 Notwithstanding the foregoing, in the event that BTLP fails to construct the Projects identified in Section 12.1 above, by the applicable deadlines set forth in the Intersection LID Petition, then BTLP shall not be deemed in default hereunder, but the City shall have the rights set forth in the Intersection LID Petition to construct the traffic improvement facilities and to assess the Responsible Property as set forth in that petition.

18. Release of Development Agreement. The City shall release developed lots from this Development Agreement upon the request of BTLP provided that the terms and conditions of this Development Agreement have been performed as they relate to the lot to be released.

19. Force Majeure

19.1 In the event that any Party (the "Delayed Party") is delayed or prevented from performing any of its obligations under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities, laws or other governmental requirements, riots, war, or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

19.2 The City's right under the Intersection LID Petition or the Bridge LID Petition to construct traffic system improvements shall not be affected by the provisions of Sub-section 19.1.

20. Notices. Any notice, demand, request, approval, consent, or other communication (collectively referred to as a "Notice") concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other Party at the address set forth below. Any Notice shall be given by either: (i) personal delivery in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Any Party may change any address for the delivery of Notice to such Party, by giving Notice in accordance with the provisions of this Section. The attorneys for the Parties may give any Notice.

Notices Addresses:

If to BTLP:
Broken Top Limited Partnership
c/o H. Williams Advisors, Inc.
1325 NW Flanders
Portland, Oregon 97209
Attn: Dike Dame

With a copy to:
Ball Janik LLP
15 SW Colorado, Suite K
Bend, Oregon 97702
Attn: Laura Craska Cooper

If to BTD: Broken Top Development, LLC
c/o H. Williams Advisors, Inc.
1325 NW Flanders
Portland, Oregon 97209
Attn: Dike Dame

With a copy to: Ball Janik LLP
15 SW Colorado, Suite K
Bend, Oregon 97702
Attn: Laura Craska Cooper

If to City: City of Bend
Development Services
710 N.W. Wall
Bend, OR 97701
Attn: Development Services Director

21. Miscellaneous

21.1 City Funding. The Parties agree that any provision herein which requires the City to expend funds is contingent upon future appropriations as part of the City budget process as provided in ORS 94.504(5). Nothing herein requires the City to appropriate such funds.

21.2 Waivers. No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

21.3 Entire Agreement/Modifications. This Agreement, together with the Intersection LID Petition (along with all exhibits incorporated therein) (with the Bridge LID Petition, collectively referred to as the "Consortium Agreements") constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto. This Development Agreement and the Intersection LID Petition are parts of a whole transaction between the Parties and shall be construed as a whole transaction.

21.4 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

21.5 Captions. The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the Parties.

21.6 Gender/Singular/Plural. Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all the Parties and all circumstances, except where the context of this Agreement clearly dictates otherwise.

21.7 Severability. Subject to Section 13.4, the unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

21.8 Time of Essence. Time is of the essence of this Agreement.

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

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

"BTLP" BROKEN TOP LIMITED PARTNERSHIP, an Oregon limited partnership

By: Broken Top, Inc.,
Its: General Partner

By: _____
Name: Joseph E Weston
Title: President

"BTD" BROKEN TOP DEVELOPMENT, LLC, an Oregon limited liability company

By: Broken Top Associates, L.L.C., Member

By: _____
Name: Joseph E Weston
Title: Member

"CITY" CITY OF BEND, an Oregon Municipal Corporation,

By: _____
Name: _____
Title: _____

STATE OF OREGON)
)ss.
COUNTY OF Multnomah)

This instrument was acknowledged before me on October 25, 2000 by Joseph E. Weston as General Partner of Broken Top Limited Partnership.

OFFICIAL SEAL
TRACIE A MASSEY
NOTARY PUBLIC-OREGON
COMMISSION NO. 330377
MY COMMISSION EXPIRES MAR. 17, 2004

Tracie A Massey
Signature of Notarial Officer
My Commission Expires: 3/17/04

STATE OF OREGON)
)ss.
COUNTY OF Deschutes)

This instrument was acknowledged before me on November 6, 2000 by Larry Patterson as City Manager of the City of Bend.

OFFICIAL SEAL
PATRICIA ANNE SMILEY STELL
NOTARY PUBLIC-OREGON
COMMISSION NO. 305227
MY COMMISSION EXPIRES NOV 22, 2001

Patri Anne Smiley Stell
Signature of Notarial Officer
My Commission Expires: Nov. 22, 2001

STATE OF OREGON)
)ss.
COUNTY OF Multnomah)

This instrument was acknowledged before me on October 25, 2000 by Joseph E Weston as Member of Broken Top Development, LLC.

OFFICIAL SEAL
TRACIE A MASSEY
NOTARY PUBLIC-OREGON
COMMISSION NO. 330377
MY COMMISSION EXPIRES MAR. 17, 2004

Tracie A Massey
EXPIRES: 3/17/04

Exhibit A

Property Owners

1. Brooks Resources Corporation;
2. West Bend Property Company, LLC;
3. Broken Top Limited Partnership and Broken Top Development, LLC;
4. Skyliner Summit Limited Partnership and Broken Top Development, LLC;
5. Century Park LLC;
6. Shevlin Heights Limited Partnership;
7. River Bend Limited Partnership;
8. Central Oregon Community College;
9. Bend LaPine Administrative School District No. 1;
10. West Side Meadows, LLC;
11. Western Communications Inc., dba The Bulletin; and
12. Cascade Highlands Limited Partnership

W&H PACIFIC
920 S.W. Emkay Dr., Suite C-100
Bend, Oregon 97702

Exhibit B

West Side Transportation Consortium
Broken Top Properties
Legal Description

Parcel 1:
Parcel 2, Partition Plat No. PP 1999-4, as recorded in the Deschutes County survey records as CS 13515.

Parcel 2:
Lots 385 and 388, "Plat No. 818, Broken Top", as recorded in the Deschutes County survey records as CS 12044.

Parcel 3:
Lot 453, "Plat No. 98-302, Broken Top", as recorded in the Deschutes County survey records as CS 13728.

Parcel 4:
Lots 197, 198, 199 and 200, "Plat No. 792, Broken Top", as recorded in the Deschutes County survey records as CS 11567.

Parcel 5:
Lot 167, "Plat No. 792, Broken Top", as recorded in the Deschutes County survey records as CS 11434.

Parcel 6:
Lots 208, 209 and 214, "Plat No. 792, Broken Top", as recorded in the Deschutes County survey records as CS 11568.

Parcel 7:
Lots 32, 44, 100 and 101, "Plat No. 764, Broken Top", as recorded in the Deschutes County survey records as CS 11282.

Parcel 8:
Lots 27 and 28, "Plat No. 764, Broken Top", as recorded in the Deschutes County survey records as CS 11283.

Parcel 9:
Lots 361 and 364, "Plat No. 806, Broken Top", as recorded in the Deschutes County survey records as CS 11955.

Parcel 10:
Lots 47A, 48A and 49A, "Plat No. 98-301, Broken Top", as recorded in the Deschutes County survey records as CS 13693.

Parcel 11:
Lot 132, "Plat No. 789, Broken Top", as recorded in the Deschutes County survey records as CS 11433.

Parcel 12:
Lots 250, 252, 258, 262 and 266, "Plat No. 801, Broken Top", as recorded in the Deschutes County survey records as CS 11644.

Parcel 13:
Lots 114, 115 and 116, "Plat No. 783, Broken Top", as recorded in the Deschutes County survey records as CS 11691.

Parcel 14:
Lot 294, "Plat No. 803, Broken Top", as recorded in the Deschutes County survey records as CS 11639.

Parcel 15:
Lots 302, 303, 304, 310, 311, 312, 313 and 314, "Plat No. 803, Broken Top", as recorded in the Deschutes County survey records as CS 12375. Except: that portion of said Lot 314, described in deed to Schweitzer, recorded October 23, 1996 in Volume 426, Page 2774, Deschutes County Official Records.

Parcel 16:
Lot 315, "Plat No. 806, Broken Top", as recorded in the Deschutes County survey records as CS 12402.

Parcel 17:
Lot 331, "Plat No. 806, Broken Top", as recorded in the Deschutes County survey records as CS 11919.

Parcel 18:
Lots 409, 416, 419, 420, 421, 422, 424, 430, 432, 434, 438 and 439, "Plat No. 97-884, Broken Top", as recorded in the Deschutes County survey records as CS 13453.

Parcel 19:
Tracts P, UU and VV, "Plat No. 858, Golf Tracts at Broken Top", as recorded in the Deschutes County survey records as CS 12905.

Parcel 20:
A parcel of land located in the west one-half of said Section 1, Township 18 South, Range 11 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, known as Phase II-L, of the Broken Top Master Development Plan, more particularly described as follows:

Beginning at the northerly most corner of Lot 28, "Plat No. 792, Broken Top", as recorded in the Deschutes County survey records as CS 12234; thence along the northerly boundary of said "Plat No. 792, Broken Top" the following three (3) courses: South 61°33'05" West, 118.00 feet; thence South 51°49'18" West, 44.63 feet; thence South 61°21'20" West, 118.00 feet; thence leaving said boundary and along the arc of a non-tangent, 2326.00 foot radius curve to the right, through a central angle of 09°02'32", an arc length of 367.08 feet, (the chord of which bears North 24°07'24" West, 366.70 feet); thence along the arc of a 2680.00 foot radius curve to the left, through a central angle of 02°02'03", an arc length of 95.15 feet, (the chord of which bears North 20°37'09" West, 95.14 feet) to a point of non-tangency; thence North 68°21'49" East, 118.00 feet; thence along the arc of a non-tangent, 2798.00 foot radius curve to the left, through a central angle of 00°33'17", an arc

length of 27.09 feet, (the chord of which bears North 21°54'55" West, 27.09 feet) to a point of non-tangency; thence North 67°48'32" East, 162.00 feet; thence North 37°20'42" East, 95.26 feet to the westerly most corner of Lot 88, "Plat No. 783, Broken Top"; thence along the boundary of said "Plat No. 783, Broken Top" the following eight (8) courses: South 12°28'34" East 325.00 feet; thence North 77°31'26" East, 113.74 feet; thence South 88°03'03" East, 83.74 feet; thence South 85°14'59" East, 77.76 feet; thence North 84°25'29" East, 77.56 feet; thence North 83°24'55" East, 57.03 feet; thence South 66°16'17" East, 52.01 feet; thence South 02°19'53" East, 56.13 feet to the boundary of "Plat No. 792, Broken Top", as recorded in the Deschutes County surveyor records as CS 11566; thence along the boundary of said "Plat No. 792, Broken Top" (CS 11566) the following eleven (11) courses: North 44°23'27" West, 2.00 feet; thence along the arc of a non-tangent, 1522.00 foot radius curve to the left, through a central angle of 02°14'59", an arc length of 59.76 feet, (the chord of which bears South 44°29'03" West, 59.76 feet) to a point of non-tangency; thence North 46°27'02" West, 118.00 feet; thence South 42°14'16" West, 65.00 feet; thence South 40°00'56" West, 62.21 feet; thence South 47°08'54" West, 62.08 feet; thence South 55°21'50" West, 62.86 feet; thence South 54°14'14" West, 65.09 feet; thence South 32°47'41" East, 120.01 feet; thence along the arc of a non-tangent, 222.00 foot radius curve to the left, through a central angle of 08°02'30", an arc length of 31.16 feet, (the chord of which bears South 40°09'43" West, 31.13 feet); thence along the arc of a 78.00 foot radius curve to the right, through a central angle of 53°10'39", an arc length of 72.39 feet, (the chord of which bears South 62°43'47" West, 69.82 feet) to the boundary of said "Plat No. 792, Broken Top" (CS 12234); thence along the boundary of said "Plat No. 792, Broken Top" (CS 12234) the following four (4) courses: along the arc of a 78.00 foot radius curve to the right, through a central angle of 55°15'01", an arc length of 75.22 feet, (the chord of which bears North 63°03'22" West, 72.33 feet) to a point of non-tangency; thence North 58°00'46" East, 117.85 feet; thence North 31°06'10" West, 63.18 feet; thence North 29°20'00" West, 63.18 feet to the point of beginning.

Parcel 21:
A parcel of land located in the southwest quarter of the northwest quarter (SW1/4, NW1/4) and the northwest quarter of the southwest quarter (NW1/4, SW1/4) of Section 1, and in the southeast quarter of the northeast quarter (SE1/4, NE1/4) of Section 2, Township 18 South, Range 11 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, known as Phase V-C, of the Broken Top Master Development Plan, more particularly described as follows:

Beginning at the southwest corner of Tract PP, "Plat No. 858, Golf Tracts At Broken Top", as recorded in the Deschutes County survey records as CS 12905; thence South 77°25'42" East along the boundary of said Tract PP, 789.64 feet to the boundary of "Plat No. 792, Broken Top", as recorded in the Deschutes County survey records as CS 11567; thence along the boundary of said "Plat No. 792, Broken Top", along the arc of a non-tangent, 555.50 foot radius curve to the left, through a central angle of 03°20'02", an arc length of 32.32 feet, (the chord of which bears South 05°25'32" East, 32.32 feet; thence along the arc of a 300.00 foot radius curve to the left, through a central angle of 44°21'30", an arc length of 232.26 feet, (the chord of which bears South 29°16'18" East, 226.50 feet) to the boundary of Tract K, "Plat No. 783, Broken Top", as recorded in the Deschutes County survey records as CS 11432; thence South 43°53'50" West, along said Tract K boundary, 191.81 feet to the westerly most corner of Lot 88, "Plat No. 783, Broken Top"; thence leaving said boundary, South 37°20'42" West, 95.26 feet; thence South 67°48'32" West, 162.00 feet; thence along the arc of a non-tangent 2798.00 foot radius curve to the right, through a central angle of 00°33'17", an arc length of 27.09 feet, (the chord of which bears South 21°54'55" East, 27.09 feet)to a point of non-tangency; thence South 68°21'49" West, 118.00 feet to the west boundary of the Broken Top Tract as shown on an ALTA/ACSM Land Title Survey as recorded in the Deschutes County survey records as CS 07919; thence along the west boundary of said Broken Top Tract, along the arc of a non-tangent 2680.00 foot radius curve to the left, through a central

angle of 18°53'24", an arc length of 883.57 feet, (the chord of which bears North 31°04'50" West, 879.58 feet) to the point of beginning.

Parcel 22:
That parcel of land located in the southeast quarter of the southwest quarter (SE1/4, SW1/4) of Section 1, Township 18 South, Range 11 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, described in deed to Broken Top Limited Partnership, recorded March 16, 2000, in Volume 2000, Page 10241, Deschutes County Official Records, and further shown as Lot 413A, "Record of Survey, Lot Line Adjustment No. 00-35" as recorded in the Deschutes County survey records as CS 14010.

Parcel 23:
That parcel of land located in the southeast quarter of the southwest quarter (SE1/4, SW1/4) of Section 1, Township 18 South, Range 11 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, described in deed to Broken Top Limited Partnership, recorded September 16, 1999, in Volume 1999, Page 44968, Deschutes County Official Records, and further shown as Lot 448A, "Lot Line Adjustment No. 99-157", as recorded in the Deschutes County survey records as CS 13674.

Together with: That parcel of land described in deed to Broken Top Limited Partnership recorded September 16, 1999, in Volume 1999, Page 44970, Deschutes County Official Records, further shown as Lot 449A, "Lot Line Adjustment No. 99-157", as recorded in the Deschutes County survey records as CS 13674.

Parcel 24:
That parcel of land located in the southwest quarter (SW1/4) of Section 1, Township 18 South, Range 11 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, described in deed to Broken Top Limited Partnership, recorded July 31, 2000, in Volume 2000, Page 30412, Deschutes County Official Records.

Further being shown as Lot 154 Adjusted "Lot Line Adjust", as recorded in the Deschutes County survey records as CS 13639, and Lot 153, "Plat No. 789, Broken Top", as recorded in the Deschutes County survey records as CS 11435.

Parcel 25:
That parcel of land located in the southwest quarter (SW1/4) of Section 1, Township 18 South, Range 11 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, described as follows:

Beginning at the southerly most corner of Lot 155, "Plat No 789, Broken Top" as recorded in the Deschutes County survey records as CS 11435; thence North 51°42'35" East along the southerly boundary of said Lot 155, 134.87 feet; thence leaving said boundary, North 38°59'21" West, 92.80 feet to the northerly boundary of said Lot 155; thence South 60°09'45" East, along said northerly boundary, 117.06 feet to the easterly most corner of said Lot 155; thence along the easterly boundary of said Lot 155, along the arc of a non-tangent, 410.00 foot radius curve to the right, through a central angle of 15°37'26", an arc length of 111.80 feet, (the chord of which bears South 29°01'24" West, 111.45 feet) to the point of beginning.

Further being shown as Lot 155 Adjusted "Lot Line Adjust", as recorded in the Deschutes County survey records as CS 13639.

Parcel 26:

A parcel of land located in the north one-half (N1/2) of Section 1, Township 18 South, Range 11 East, and in the south one-half (S1/2) of Section 36, Township 17 South, Range 11 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being more particularly described as follows:

Beginning at the northwest corner of "Plat No. 806, Broken Top" as recorded in the Deschutes County survey records as CS 11955; thence South 02°16'37" West along the boundary of said "Plat No. 806, Broken Top", 345.23 feet to the southwest corner of Lot 371, of said "Plat No. 806, Broken Top" and the boundary of Tract QQ, "Plat No. 858, Golf Tracts at Broken Top" as recorded in the Deschutes County survey records as CS 12905; thence along the boundary of said Tract QQ the following twelve (12) courses: North 87°43'23" West, 480.12 feet; thence South 38°57'44" West, 157.75 feet; thence South 15°41'15" West, 353.95 feet; thence North 63°17'15" West, 321.49 feet; thence North 82°09'19" West, 721.67 feet; thence South 83°07'48" West, 151.49 feet; thence South 69°23'39" West, 80.14 feet; thence South 60°22'03" West, 427.13 feet; thence South 14°01'59" West, 138.24 feet; thence South 60°22'03" West, 160.00 feet; thence along the arc of a non-tangent, 100.00 foot radius curve to the left, through a central angle of 05°50'30", an arc length of 10.20 feet, (the chord of which bears South 16°59'11" East, 10.19 feet); thence along the arc of a 370.00 foot radius curve to the right, through a central angle of 18°56'05", an arc length of 122.28 feet, (the chord of which bears South 10°26'23" East, 121.72 feet to the boundary of "Plat No. 98-302, Broken Top", as recorded in the Deschutes County survey records as CS 13728; and a point of non-tangency; thence South 89°01'40" West along the boundary of said "Plat No. 98-302, Broken Top", 60.00 feet to the boundary of Tract PP, of said "Plat No. 858, Golf Tracts at Broken Top" thence along the boundary of said Tract PP the following three (3) courses: along the arc of a non-tangent, 310.00 foot radius curve to the left, through a central angle of 18°56'05", an arc length of 102.45 feet, (the chord of which bears North 10°26'23" East, 101.98 feet); thence along the arc of a 160.00 foot radius curve to the right, through a central angle of 13°53'16", an arc length of 38.78 feet, (the chord of which bears North 12°57'48" West, 38.69 feet); thence along the arc of a 551.00 foot radius curve to the right, through a central angle of 16°13'59", an arc length of 156.11 feet, (the chord of which bears North 02°05'50" East, 155.59 feet) to the boundary of the Broken Top Tract as shown on an ALTA/ACSM Land Title Survey as recorded in the Deschutes County survey records as CS 07919; thence along the boundary of said Broken Top Tract, the following two (2) courses: along the arc of a 551.00 foot radius curve to the right, through a central angle of 64°23'31", an arc length of 619.24 feet, (the chord of which bears North 42°24'35" East, 587.16 feet); thence North 74°36'20" East, 128.81 feet; thence leaving said boundary, North 78°35'54" East, 224.08 feet to the boundary of that parcel of land described in deed to Skyliner Summit Limited Partnership, recorded February 8, 2000, in Volume 2000, Page 7513, Deschutes County Official Records; thence along the boundary of said Skyliner Summit Limited Partnership, the following eight (8) courses: along the arc of a non-tangent, 2,996.95 foot radius curve to the right, through a central angle of 02°24'40", an arc length of 126.12 feet, (the chord of which bears South 88°43'49" East, 126.11 feet); thence North 87°51'09" West, 89.61 feet; thence North 03°31'07" East, 448.51 feet; thence along the arc of a 530.00 foot radius curve to the left, through a central angle of 14°49'32", an arc length of 137.14 feet, (the chord of which bears North 03°21'33" West, 136.76 feet); thence along the arc of a non-tangent 280.00 foot radius curve to the left, through a central angle of 14°29'52", an arc length of 70.85 feet, (the chord of which bears North 61°20'21" East, 70.66 feet); thence North 54°05'25" East, 172.44 feet; thence along arc of a non-tangent, 1135.00 foot radius curve to the left, through a central angle of 47°34'06", an arc length of 942.31 feet, (the chord of which bears South 65°59'50" East, 915.48 feet); thence South 89°46'53" East, 503.71 feet to the point of beginning.

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REGISTERED
PROFESSIONAL
LAND SURVEYOR

Keith Dagostino

OREGON
JUNE 1, 1998
KEITH S. DAGOSTINO
2885

920 Emkay, Suite C-100
Bend, Oregon 97702-1041
(541)388-4255
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A Member of The IT Group
Planners • Engineers • Surveyors • Landscape Architects

West Side Transportation Consortium
Broken Top LP

PROPERTY EXHIBIT MAP

BEND/DESCHUTES OREGON

SCALE: 1"=800'

PROJECT NO.

DRAWING FILE NAME:

Exhibit C

Other Improvements

1. Construct a curb-tight sidewalk, curb, gutter and bicycle lane along the West side of Mt. Washington Drive between Simpson and Broken Top Drive.

2. Construct a ten-foot wide, multi-purpose, asphalt path along the South side of Simpson between Mt. Washington Drive and the landfill entry.

3. Provision of adequate right-of-way and site development accommodations to support transit, such as, areas for bus stops, shelters or other similar facility as deemed appropriate by the City.

Exhibit D

STREET SDCS

SDC = Trip Ends X Trip Length / 2 / 7200 X $889,160 (lane mile cost)

Category	Daily Trip ends per unit	Units	Chargeable % reduction	Conversion: Daily trip ends per unit	Aver. RT trip length (miles)	100% SDC per unit
Industrial						
Industrial - general	6.97	T.G.S.F.	0.00%	6.97	6.2	$2,668
Industrial - batch plant	100.00	pstn	0.00%	100.00	6.2	$38,283
Manufacturing - bulky items	1.02	employees	0.00%	1.02	6.2	$390
Manufacturing - high tech-research & d	2.09	employees	0.00%	2.09	5.0	$645
Service and repair	5.60	T.G.S.F.	0.00%	5.60	6.0	$2,075
Residential						
Single Family	9.57	Dwelling Unit	0.00%	9.57	5.5	$3,250
Apartments	6.63	Dwelling Unit	0.00%	6.63	5.5	$2,252
Condominium	5.86	Dwelling Unit	0.00%	5.86	5.5	$1,990
Manufactured Home	4.81	Dwelling Unit	0.00%	4.81	5.5	$1,634
Senior Care	2.15	Dwelling Unit	0.00%	2.15	5.5	$730
PUD - residential	7.44	Dwelling Unit	0.00%	7.44	5.5	$2,527
Lodging						
Motel	9.11	Room	0.00%	9.11	5.9	$3,319
Hotel	6.95	Room	0.00%	6.95	5.9	$2,532
Recreational						
Golf Course	5.04	Acre	0.00%	5.04	7.5	$2,334
Bowling Alley	33.33	T.G.S.F.	0.00%	33.33	7.5	$15,435
Theater w/Matinee	0.29	Seat	0.00%	0.29	7.5	$134
Arena	33.33	Acre	0.00%	33.33	7.5	$15,435
Community Center	22.88	T.G.S.F.	0.00%	22.88	7.5	$10,596
Athletic Facility	2.30	T.G.S.F.	50.00%	1.15	5.0	$355
Spa	18.00	per station	36.00%	11.52	3.0	$2,134
Institutional						
Elementary School	1.02	Student	0.00%	1.02	3.8	$239
High School	1.79	Student	0.00%	1.79	3.8	$420
Community College	2.38	Student	0.00%	2.38	3.8	$558
Community College Library	45.50	T.G.S.F.	80.00%	9.10	3.8	$2,135
Community Library	45.50	T.G.S.F.	60.00%	18.20	3.8	$4,270
Church	9.11	T.G.S.F.	0.00%	9.11	3.8	$2,138
Daycare	4.52	Student	60.00%	1.81	3.8	$424
Medical						
Hospital	16.78	T.G.S.F.	0.00%	16.78	5.0	$5,181
Medical/Dental Clinic	36.13	T.G.S.F.	0.00%	36.13	5.0	$11,155
Specialty Medical	23.79	T.G.S.F.	20.00%	19.03	5.0	$5,876
General Office Bldg.						
Size < 50,000	15.39	T.G.S.F.	0.00%	15.39	6.2	$5,854
50,000<= Size < 175,000	10.08	T.G.S.F.	0.00%	10.08	6.2	$3,859
175,000<= Size	7.78	T.G.S.F.	0.00%	7.78	6.2	$2,978
Government						
Gov't Office Bldg.	68.93	T.G.S.F.	0.00%	68.93	6.2	$26,389
Retail						
General Retail	35.15	T.G.S.F.	47.00%	18.63	4.0	$4,601
Gasoline/Service Station	168.56	Pump Positn	50.00%	84.28	4.0	$20,816
Convenience Market	737.99	T.G.S.F.	61.00%	287.82	4.0	$71,087
Shopping Center:						
Size < 50,000	87.31	T.G.L.S.F.	34.00%	57.62	4.0	$14,233

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PLEASE SEE OTHER SIDE OF PAGE

Exhibit D

50,000<= Size < 175,000	43.23	T.G.L.S.F.	34.00%	28.53	4.0	$7,047
175,000<= Size	28.98	T.G.L.S.F.	34.00%	19.13	4.0	$4,724
Restaurant - High turnover/Drive throug	238.80	T.G.S.F.	46.00%	128.95	4.0	$31,850
Restaurant - Specialty Food Item Servic	36.81	T.G.S.F.	50.00%	18.41	4.0	$4,546
Restaurant - Dinner only	10.00	T.G.S.F.	5.00%	9.50	4.0	$2,346
Restaurant - Lunch/Dinner	25.00	T.G.S.F.	15.00%	21.25	4.0	$5,249
Restaurant - Breakfast/Lunch/Dinner	158.00	T.G.S.F.	40.00%	94.80	4.0	$23,415
Supermarket w/Strip mall	111.51	T.G.S.F.	36.00%	71.37	4.0	$17,627
Specialty / Neighborhood Grocery	24.36	T.G.S.F.	20.00%	19.49	3.0	$3,610
Drinking Establishment	12.00	T.G.S.F.	20.00%	9.60	3.0	$1,778
Banks - w/Drive through	265.21	T.G.S.F.	47.00%	140.56	4.0	$34,717

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Exhibit E

Street Policy No. 5

City of Bend
Street Policy 5
Street System Development Charge Credit and Reimbursement

Section 1. **Purpose**:

It shall be the policy of the City of Bend that expansions to the City's street system shall only be accomplished as directed and approved by the City. The timing and financing of system expansions shall be as provided in this policy.

Expansions to the street system that involve the construction of collector and/or arterial streets shall be accomplished pursuant to the City's Comprehensive Plan. It is anticipated that these improvements will be financed by funds generated from systems development charges (SDC's), other resources or by developers as provided below. The timing of improvements to be constructed by the City will be subject to the availability of City funds to finance them.

Section 2. **Procedure**:

Developers who wish to expand the street system by dedicating land and/or constructing streets may do so according to the following procedure:

2.1 Prior City approval will be required.

2.2 An executed agreement between the developer and the City shall be required and shall set forth the development requirements as well as an SDC credit and/or SDC reimbursement, if available.

2.3 All improvements must be constructed according to applicable City Standards, rules and regulations, including the Comprehensive Plan, as determined by the City Engineer.

2.4 All of the cost of such improvements shall be paid by the developer.

2.5 The developer's costs associated with the construction of these qualified public improvements may be eligible for SDC credit and/or SDC reimbursement as provided in this policy.

Section 3. **SDC credit**:

The SDC credit shall be determined first and shall:

3.1 Only be available for qualified public improvements as defined in Oregon Revised Statutes (ORS) 223.304(3) (i.e., improvements that are identified in the City's Comprehensive Plan).

3.2 Be a credit against only the improvement fee portion of the SDC. The improvement fee portion against which the credit may be applied shall be calculated by using the methodology as it is employed in the City's SDC Ordinance and Resolution. If less than the maximum allowable SDC is charged in the Resolution, the percentage of the maximum allowable SDC used shall also be used to determine that portion of the improvement fee against which the SDC credit can be applied.

3.3. The amount of the credit shall not exceed the improvement fee as calculated above. e.g., if a developer incurs $100,000 for collector and/or arterial street improvement costs of which $70,000 is related to qualified improvements, and, if the development has 20 lots and the SDC improvement fee is 70% of the maximum allowable SDC improvement fee of $1,149, or $804, the SDC credit would be $16,080 (20 x $804). If the development included 100 lots the SDC credit would be limited to $49,000 as the SDC improvement fee times the number of lots (100 x 804 = $80,400) exceeds the qualified costs subject to the SDC credit times the percentage of the maximum allowable SDC improvement fee. ($70,000 x .70% = $49,000)

Section 4. **SDC Reimbursement**:

In addition to the SDC credit a developer may be eligible for SDC reimbursement. SDC reimbursement shall be determined as follows:
The maximum SDC reimbursement shall be limited to the collector and/or arterial street improvement costs expended by the developer, as determined by the City Engineer, times the percentage of the maximum allowable SDC in place at the time of executing an agreement with the City, less any SDC credit related to the improvements. There shall be no SDC reimbursement if the SDC credit exceeds the maximum SDC reimbursement. Qualified costs of collector and/or arterial street improvements shall include actual construction costs, exclusive of right-of-way and preliminary engineering costs.

Section 5. **SDC Credit and Reimbursement-Collection and Payment Procedures:**

SDC credit and SDC reimbursement will be collected and paid as follows:

5.1 The current SDC, as established by the Bend City Council, shall be collected by the City on all building permits issued by the City or with other agreements as applicable. The SDC may have two components; an improvement fee for future system improvements and a reimbursement fee for existing or in-progress improvements.

5.2 SDC improvement fees collected by the City shall be paid to developers and retained by the City in accordance with this policy.

5.3 SDC reimbursement fees collected by the City shall be retained by the City to reimburse the City for previous system expenditures, related debt service or future improvements.

Section 6. **Shared/Sole Recovery Areas:**

6.1 The area served or to be served by the City's street system within the City limits will be categorized as either shared recovery area or as sole recovery area. Sole recovery areas shall be determined by the City Engineer and shall include only the developer's property that is to be served by the approved facilities constructed by the developer. Shared recovery area shall include all area served or to be served by the City's street system that is not otherwise designated as sole recovery area within the City limits.

6.2 SDC improvement fees collected from each sole recovery area shall be applied as follows:

6.2.1 SDC credit due the developer of the sole recovery property, until paid.

6.2.2 SDC reimbursement due the developer of the sole recovery property, until paid or until the 10 year recovery period expires.

6.2.3. Once items 1 and 2 are met the sole recovery property shall become shared recovery area.

6.3 SDC improvement fees collected from the shared recovery area shall be applied as follows:
To developers with outstanding SDC credit and SDC reimbursement balances, including the City, in proportion to the outstanding SDC credit and SDC reimbursement balances, at the end of the repayment period, of all developers, including the city participating in the shared recovery area.

6.4 SDC improvement fees collected and paid to developers from the shared recovery area shall be limited to the amount of SDC credit and/or SDC reimbursement that would not otherwise be collectible from SDC improvement fees within a developer's sole recovery area.

6.5 There shall be no payment made, for either the SDC credit or SDC reimbursement, to the developer from any SDC improvement fee collected withirf the sole recovery area or shared recovery area until the improvements are accepted by the City.

6.6 There shall be no SDC credit or SDC reimbursement paid after 10 years from the date the qualified improvements are accepted by the City.

6.7 A sole recovery area shall become shared recovery area when the developer has been paid the SDC credit and/or SDC reimbursement in full, or the SDC credit is paid in full and the 10 year SDC reimbursement period expires.

Section 7. Payment Schedule:

7.1 Payment of SDC credit and SDC reimbursement amounts shall be payable annually by the City for SDC improvement fees collected by the City from January 1 through December 31 of each year by January 31 of the year following collection by City.

7.2 No interest shall accrue on SDC credit or SDC reimbursement payable to developers.

7.3 There shall be no adjustments made to the amount of any SDC credit or SDC reimbursement amount as a result of inflation.

Section 8. Assignment of Claims:

8.1 Claims from SDC credit and SDC reimbursement are personal and may not be assigned without the written consent of City.

Section 9. Future Changes to Maximum Allowable SDC:

9.1 Future changes by the City of the maximum allowable SDC or the percentage of the maximum allowable SDC imposed shall neither increase or decrease the SDC credit or SDC reimbursement determined above, however, if the percentage of the maximum allowable SDC is changed, all active public improvement agreements will be reviewed, and if necessary, SDC credit and/or SDC reimbursement amounts to be collected and reimbursed developers from sole and shared recovery areas will be recalculated in accordance with this policy.

Section 10. City's Obligation to Pay:

10.1 The City's obligation to pay or apply SDC credit or SDC reimbursement shall be limited to SDC improvement fees actually collected by the City as provided in this policy. City's obligation to pay or apply SDC credit or SDC reimbursement from SDC improvement fees collected shall be further limited to the total of the SDC credit and SDC reimbursement calculated as provided in this policy. Payment of SDC credit and SDC reimbursement shall be subject to prior reimbursement claims which are payable from SDC collections. Persons who receive, or are entitled to claim, SDC credit or SDC reimbursement shall indemnify and hold the City harmless in the event the City is subject to claims by others for SDC credit or SDC reimbursement for the same improvements. City shall have the right to set off the amount of any competing claims for SDC credit or SDC reimbursement against prior claims for the same SDC credit or SDC reimbursement if in the City's judgment it becomes necessary to do so.

Section 11. Applicability:

11.1 This policy shall apply to all eligible improvements installed and accepted after City Resolution #2146 which established street SDCs effective June 15, 1995.

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RECORDED DOCUMENT

STATE OF OREGON
COUNTY OF DESCHUTES

*2000-46324 * Vol-Page Printed: 11/15/2000 10:17:22

DO NOT REMOVE THIS CERTIFICATE

(This certificate constitutes a part of the original instrument in accordance with ORS 205.180(2). Removal of this certificate may invalidate this certificate and affect the admissibility of the original instrument into evidence in any legal proceeding.)

I hereby certify that the attached instrument was received and duly recorded in Deschutes County records:

DATE AND TIME: Nov. 15, 2000; 10:09 a.m.

RECEIPT NO: 28560

DOCUMENT TYPE: Development Agreement

FEE PAID: $216.00

NUMBER OF PAGES: 34

Mary Sue Penhollow

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND

AND SKYLINER SUMMIT LIMITED PARTNERSHIP

This Development Agreement ("Agreement") is dated as of the 6 day of November, 2000, by and between SKYLINER SUMMIT LIMITED PARTNERSHIP, an Oregon limited partnership ("SSLP") and BROKEN TOP DEVELOPMENT, LLC, an Oregon limited liability company and an affiliate of SSLP ("BTD") (collectively, SSLP and BTD are hereinafter referred to as SSLP) and THE CITY OF BEND, an Oregon municipal corporation (the "City"). Each of SSLP and the City is hereinafter referred to as a "Party" and collectively as the "Parties."

1. Definitions:

1.1 "Bridge LID Petition" means that certain LID Petition of even date herewith signed by petitioners Skyliner Summit Limited Partnership, Brooks Resources Corporation, West Bend Property Company, LLC, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Southern Bridge.

1.2 "Development Agreement" means each of the development agreements between a Property Owner and the City pursuant to ORS 94.504 (collectively, the "Development Agreements"). Three of the Property Owners, Western Communications, Inc., dba The Bulletin (the "Bulletin"), the Bend-LaPine Administrative School District No. 1 (the "School District") and Central Oregon Community College ("COCC") are not parties to a Development Agreement.

1.3 "Final Approval" shall mean: the issuance or a development permit that reasonably allows the development described in Section 4 of the Development Agreement to proceed and the expiration of the period of appeal, or if an appeal is filed, the resolution of that appeal in a manner that reasonably allows the development described in Section 4 of the Development Agreement to proceed.

1.4 "Intersection LID Petition" means that certain LID Petition of even date herewith signed by nine of the Property Owners as petitioners, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Projects.

1.5 "Off-Site Transportation Impact Mitigation" means mitigation of the increased burden that each Proposed Development will put on the transportation facilities of the City of Bend outside the property lines of the Proposed Development. The term "Off-Site Transportation Impact

1.6 Mitigation" includes the "Other Improvements" identified in **Exhibit C** of each Development Agreement.

1.7 "Other Improvements" means those certain off-site transportation-related improvements to be completed by the Property Owners which are a part of their Off-Site Transportation Impact Mitigation but which are not to be completed pursuant to a local improvement district. The Other Improvements to be completed by a particular Property Owner are identified in **Exhibit C** to that Property Owner's Development Agreement.

1.8 "Project" means a traffic facility improvement described in Section 4 of the Intersection LID Petition and the Southern Bridge.

1.9 "Property Owners" are the twelve public and private entities, including SSLP, identified on **Exhibit A** who own property on the West Side of the City and who have formed a consortium to resolve the current and projected shortage of transportation facilities on the West Side.

1.10 "Proposed Development" means the development described in Section 4 of this Agreement.

1.11 "Responsible Property" means that portion of the property of each of the Property Owners identified in the Intersection LID Petition or the Bridge LID Petition subject to assessment for the cost of one or more Projects. "Responsible Property" shall not include portions of the property that are dedicated as public right-of-way, or dedicated for any other public purpose.

1.12 "Responsible Property Owner" means the Property Owner identified as being responsible for construction of the specific Project(s) listed for that Property Owner in the Bridge LID Petition or the Intersection LID Petition.

1.13 "Southern Bridge" means the bridge to be constructed over the Deschutes River where the proposed extension of Reed Market Road from the Parkway will cross the Deschutes River as provided in the City's General Plan.

1.14 "SSLP Property" means the property on which the Proposed Development is to be constructed by SSLP, which SSLP Property is more particularly described on attached **Exhibit B**.

1.15 "West Side" shall mean that portion of the City of Bend directly served by the transportation facilities described in Section 4 of the Intersection LID Petition, and the Southern Bridge.

2. Recitals:

2.1 Under the City of Bend General Plan and land use regulations, new development must be supported by adequate public facilities. The City's General Plan provides that if the public facilities are not adequate, new development must either wait for the installation of the required facilities by the City or pay the costs if it occurs ahead of the City's capital improvement plan. Existing public transportation facilities serving the West Side of the City (the "West Side Transportation System") are not adequate to support all existing development and the new development contemplated in the immediately foreseeable future for the West Side of the City. The City is proceeding on the basis that its land use regulations require a system-wide fix to remedy the system-wide deficiency in the West Side Transportation System in order to support the contemplated new development.

2.2 The City does not have funds available to complete the projects necessary to create the additional capacity for the West Side Transportation System to support the new development within the timeframe in which the Property Owners wish to develop and to complete its other capital improvements.

2.3 The cost of supplying a system-wide remedy that will support the existing needs and the additional transportation burden that the new development will add to the West Side Transportation System is more than the amount that could be exacted from any single Proposed Development. Therefore, the Property Owners have concluded that collectively they can provide the necessary improvements to the West Side Transportation System to support the Proposed Developments. To this end, they have organized themselves as a consortium to accomplish these improvements.

2.4 It is the intention of the Parties that the legal mechanism for accomplishing these improvements will be expressed in Development Agreements, the Bridge LID Petition and the Intersection LID Petition (referred to as the "Consortium Agreements").

2.5 Together, the Consortium Agreements will provide a realistic mechanism for constructing the 11 distinct traffic system improvements required to support the contemplated new development. These improvements will also make a significant contribution toward relieving existing traffic problems in the West Side Transportation System. Ten of these improvements are identified in Section 4 of the Intersection LID Petition, and the other is described in the Bridge LID Petition. The Consortium Agreements also describe Other Improvements which will be constructed by the Property Owners in connection with the Property Owners' Proposed Developments.

2.6 Traffic impact analyses show that the 10 distinct traffic system improvements identified in the Intersection LID Petition, the Bridge LID Petition, and the Other Improvements will be adequate to mitigate the off-site transportation impacts that the Property Owners' Proposed Developments will have on the West Side Transportation System and make reasonable provision for the West Side Transportation System on a long-term basis.

2.7 ORS 94.504 authorizes cities to enter into development agreements with private parties who own or otherwise have a legal interest in property in connection with the development of that property. Such development agreements may have a duration up to seven years and may establish each of the parties' rights and obligations in connection with certain aspects of the proposed developments. Each Property Owner wishes to definitively establish and discharge all of its obligations to mitigate the increased burden that each Proposed Development will put on the West Side transportation facilities of the City of Bend outside the property lines of the Proposed Development ("Off-Site Transportation Impact Mitigation") to the West Side Transportation System through a development agreement with the City.

2.8 Nine of the Property Owners (Brooks Resources Corporation; West Bend Property Company, LLC; Broken Top Limited Partnership; Skyliner Summit Limited Partnership; Century Park LLC; Shevlin Heights LP; West Side Meadows, LLC; Central Oregon Community College; and River Bend Limited Partnership) have signed a Petition to Form West Side Intersection Local Improvement District (the "Intersection LID Petition"), which, among other things, allocates responsibility for constructing 10 of the Projects among the Property Owners signing the Intersection LID Petition.

2.9 Five of the Property Owners (Brooks Resources Corporation, West Bend Property Company, LLC, Skyliner Summit Limited Partnership, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1) have signed a Petition to Form Southern Bridge Local Improvement District (the "Bridge LID Petition"), which, among other things, allocates responsibility for the cost of constructing the Southern Bridge. The Property Owners have agreed upon a schedule for the completion of the Southern Bridge, and the amount to be contributed by each Property Owner, as provided in the Bridge LID Petition.

2.10 The Intersection LID Petition provides a schedule for commencement of construction of the Projects by the applicable Property Owner(s) and provides that a failure of a Property Owner to timely commence and complete its assigned Project(s) shall give the City the option to construct that Project under the Intersection LID Petition, assess that Property

Owner's property for the cost of construction and impose liens against that Property Owner's property as permitted by law.

2.11 Execution of the Development Agreements, the Intersection LID Petition and the Bridge LID Petition by the City and all of the Property Owners, and the commitments created by these Consortium Agreements, will supply the realistic provision for transportation facilities necessary to support new development to be served by the West Side Transportation System. In return, the Property Owners shall be relieved from any further Off-Site Transportation Impact Mitigation in connection with that Property Owner's Proposed Development(s).

2.12 Each Property Owner participating in one or both LID Petitions acknowledges that its property will be specially benefited by the Projects listed in the Intersection LID Petition and the Bridge LID Petition that include its property. Each Property Owner who is participating in one or both LID Petition(s) also acknowledges that all of the properties in the Intersection LID and all of the properties in the Bridge LID will be specially benefited by all of the Projects. Each Property Owner participating in the LID Petitions therefore consents to the formation of the LIDs that include the Property Owner's property, subject to the conditions set forth herein.

2.13 It is the intention of the Parties that the Consortium Agreements are each integral parts of a collective effort with the City, intended to accomplish the objectives set out in these recitals. Therefore, the Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be construed accordingly, and in the event of any conflict between the terms and conditions of the Development Agreements and the LID Petitions, the LID Petitions shall prevail.

2.14 It is recognized that the Proposed Development of Cascade Highlands, L.P. is located outside the city limits of the City. Consistent with the Joint Management Agreement between the City and Deschutes County, a three-party development agreement will be executed by the City, Deschutes County and Cascade Highlands, L.P. Cascade Highlands, L.P. will contribute $500,000 to the City for the construction of the Southern Bridge. The Parties recognize that Cascade Highlands, L.P. has substantially the same ownership as Broken Top Limited Partnership and SSLP and that its contribution, considered as a part of the entire Consortium Agreements, addresses the impacts its Proposed Development will have on the West Side Transportation System.

2.15 None of the Property Owners shall be responsible for the performance of obligations of any other Property Owners unless expressly stated in the Consortium Agreements.

2.16 The Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be recorded and binding upon the Parties, their successors and assigns, and shall be enforceable as covenants running with the land; and may be enforced by any remedy provided by law.

2.17 The Parties agree that their execution of these Consortium Agreements represents their acceptance of the purpose expressed in these recitals, and the ways and means of accomplishing this purpose. Towards this end, the Parties expressly agree:

2.17.1 The Parties shall cooperate in good faith to the extent reasonably practicable to accomplish the purpose of the Consortium Agreements. This shall include, but not be limited to, cooperation in the defense of these agreements and their performance.

2.17.2 Other non-consortium development served by the West Side Transportation System shall be expected to make realistic provision for the mitigation of its impacts on transportation facilities as required by law, and in addition to that made by the Property Owners.

2.17.3 The terms and conditions of these Consortium Agreements are intended as an implementation of, and are consistent with, the City's land use laws, rules and regulations, together with all applicable state and federal laws, rules, and regulations. This includes, but is not limited to, a recognition that the performance required of the Parties by these Consortium Agreements is roughly proportional to the impacts the Proposed Developments will have on the West Side Transportation System; and that the public and private responsibilities involved in remedying the deficiencies in the West Side Transportation System in order to support the Proposed Developments are fairly and properly allocated.

2.17.4 The Parties further express their commitment to the objectives of these Consortium Agreements by waiving all claims of any kind or nature resulting from the Parties' agreement to accomplish the purpose contemplated by the Consortium Agreements, or the ways and means provided for accomplishing that purpose in the Consortium Agreements. This includes, but is not limited to any constitutional or statutory claims (for the taking of property or otherwise), and any claims against the other Party, its elected officials, officers, employees, or agents. This waiver does not include claims based upon a failure to perform these Consortium Agreements as expressly required by their terms and conditions. This waiver shall not prevent land use appeals of approvals or denials of the Proposed Developments.

2.17(a) The Parties acknowledge that the lawsuit filed by the Central Oregon Builders Association (COBA) and served upon the City October 10, 2000 may affect the amount of System Development Charges (SDCs) available for reimbursement as provided in the Consortium Agreements. This lawsuit (COBA v. City of Bend, Circuit Court No. 00CV0454AB) seeks to reduce the Street SDC. If COBA succeeds, the $3,250 SDC anticipated by the Consortium Agreements may be reduced and SDC collections available for reimbursement may also be reduced. Because of this possibility, the Parties agree that the provisions of the Consortium Agreements relating to reimbursement (including but not limited to Sec. 12.5 and Exhibit D of the Development Agreements, Sec. 8 of the Southern Bridge LID, and Sec. 8 of the Intersection LID) are modified to provide that the SDC imposed by the City shall be the amount provided in the Consortium Agreements, or the highest amount permitted by law, if the highest amount permitted by law is less than the amount provided in the Consortium Agreements. It is the intent of the Parties that this Section has been added only to accommodate the possibility of a reduction created by the COBA lawsuit, and not for any other purpose. In the event that SDC collections are reduced as a result of the COBA lawsuit, the Consortium Agreements shall continue in full force and effect except as modified by this Section, and the Parties shall in good faith continue to cooperate in the achievement of the purpose of the Consortium Agreements, specifically including the reimbursement to consortium members from SDCs as provided in City of Bend Street Policy No. 5, Sec. 6 (which applies when the potential SDC collections from sole recovery areas will not be adequate to fund full reimbursement, and shared area recovery area collections are available to pay reimbursement not otherwise collectible from sole recovery areas).

2.18 These recitals are part of each of the Consortium Agreements.

3. Effective Date; Term of Agreement

3.1 This Agreement shall be effective upon adoption of the City ordinance approving this Agreement pursuant to ORS 94.508 (the "Effective Date"). The term (the "Term") of this Agreement shall commence on the Effective Date and shall continue for a period of seven years unless terminated sooner in accordance with the provisions contained herein.

3.2 The Parties agree that the intent of the Parties and the essential purpose of this Agreement is to provide the City with a system-wide fix on the West Side in exchange for providing SSLP and the other Property Owners (a) the right to build their Proposed Development at the Maximum Density provided in Section 4.2 for a seven-year period without additional Off-Site Transportation Impact Mitigation, subject to SSLP and the other Property Owners obtaining Final Approval through the normal City applications process, and (b) a seven-year vesting of the land use standards which will

be applicable to such applications. The right to the Proposed Development at the Maximum Density without additional Off-Site Transportation Impact Mitigation and the vested standards during a full seven-year period is critical to SSLP's willingness to enter into this Agreement. The Parties understand that SSLP may not receive the benefit of such intent and purpose during the initial Term of this Development Agreement if there are delays (a) caused by third-party appeals of this Development Agreement and/or the related LID Petitions; (b) caused by third-party appeals of SSLP's land use applications in connection with the Proposed Development; and (c) in the land use applications process. If as a result of such delays SSLP does not receive Final Approval within one year of the Effective Date, the Parties agree that they will negotiate in good faith an extension of the Term of this Development Agreement to assure that SSLP has a 7 year period following Final Approval to proceed with its Proposed Development under the terms and conditions of this Development Agreement. At no time shall the Term exceed seven years.

4. Proposed Development

4.1 Skyliner Summit Limited Partnership intends to file land use applications seeking (1) approval of a Master Plan and Conditional Use Permit for a Planned Unit Development on 163 acres zoned RS, Urban Standard Density Residential, which includes 11 phases totaling 293 lots; (2) approval of a Tentative Subdivision Plan for the initial four phases of development which includes 110 single-family lots, two neighborhood parks, and additional open space areas; (3) a Variance to Appendix A of the Subdivision Ordinance to allow minor residential streets to be constructed at a grade up to 12% instead of the 10% grade allowed without a variance; (4) a Variance of Section 6.015 of the Subdivision Ordinance to allow cul-de-sacs greater than 600 feet in length, and with a right-of-way width of 50 feet; and (5) variances to typical standards as allowed within a PUD to provide (a) minimum front-yard setback of 18 feet to a garage rather than 20 feet, in conjunction with a minimum of 10 feet front-yard setback to a house; and (b) individual lot coverage maximum of 53% instead of the 35% in the RS zone (collectively 1, 2, 3, 4, 5(a) and 5(b) are hereinafter referred to as the "Proposed Development").

4.2 For the purpose of determining the amount and kind of Off-Site Transportation Impact Mitigation required of SSLP's Proposed Development and the rights of SSLP vested herein, SSLP agrees that the density of its Proposed Development shall not exceed 293 residential units (the "Maximum Density"). The Maximum Density has been used by the Parties in a supporting traffic study to determine the estimated number of vehicle trips to be generated by the Proposed Development. To the extent that SSLP changes its mix of development to respond to market conditions

but does not increase the number or distribution of estimated vehicle trips, SSLP shall not be deemed to have exceeded its Maximum Density.

5. Conditions to Parties' Obligations

5.1 SSLP's obligation to pay for Projects other than the Southern Bridge and the "Other Improvements" listed in **Exhibit C** under this Agreement is also subject to the terms and conditions provided in the Intersection LID Petition.

5.2 SSLP's obligation to pay its share of the construction costs of the Southern Bridge is also subject to the terms and conditions provided in the Bridge LID Petition.

5.3 The City's obligations hereunder are subject to SSLP signing the Intersection LID Petition and the Bridge LID Petition.

5.4 Both Parties' obligations are subject to Deschutes County entering into a Development Agreement with Cascade Highlands, L.P. consistent with the recitals herein.

6. Permitted Uses. The Property is within the RS Zone, Urban Standard Residential, pursuant to the current City of Bend Zoning Code (the "BZO"). Notwithstanding the content of any later-adopted zoning or development ordinance, the land use standards and criteria that apply to approval of the Proposed Development during the period of this Agreement shall be subject to the BZO as the same exist as of the Effective Date.

7. Density or Intensity of Use. Land use approval of the Proposed Development during the Term of this Agreement shall be subject to the density or intensity of use portions of the BZO and BSO which exist as of the Effective Date, notwithstanding the content of any subsequently adopted zoning or development ordinance.

8. Maximum Height and Size of Proposed Structures. The maximum height and size of proposed structures within the Proposed Development shall be governed by the applicable sections of the BZO and BSO as the same exist as of the Effective Date.

9. Provisions for Reservation or Dedication of Land for Public Purposes. SSLP shall have no obligation to make off-site reservations or dedication of land for public purposes (including easements and/or licenses) in connection with SSLP's Proposed Development. The necessity and/or specifics of any future on-site reservations or dedications of land for public purposes (including easements and/or licenses) in connection with SSLP's Proposed Development will be determined by the City in reviewing SSLP's applications and applying City standards and ordinances in effect as of the Effective Date.

10. Fees and Charges

10.1 When land within the Proposed Development is developed, the City shall collect System Development Charges ("SDC") within the sole recovery area established for the Proposed Development in accordance with the terms of Section 12.5.

10.2 SSLP and its successors and assigns shall pay all applicable fees and charges then in effect for a particular application, except where the purpose or effect of such fees or charges is Off-Site Transportation Impact Mitigation. In no event shall this Section 10 be construed so as to relieve SSLP or any purchaser of any portion of the SSLP Property from any obligation it may have to pay street SDCs.

11. Schedule and Procedure for Compliance Review. Commencing on the first anniversary of the Effective Date, SSLP shall prepare annual written reports of its compliance with the terms of this Agreement to the City. Such reports shall include an update as to compliance with all schedules set forth herein. After receipt of such reports, the City may request such additional or backup information as it deems reasonably necessary.

12. Responsibility for Providing Infrastructure and Services

12.1 Consistent with the Maximum Density rights vested in Section 4 and the development standards vested in Sections 6, 7, 8 and 10, SSLP agrees to make certain off-site street and transportation-related improvements. Subject to the terms provided herein, SSLP agrees that it shall construct and/or provide funding toward the construction of the following off-site Projects:

12.1.1 Participate in the Bridge LID Petition to fund the costs of constructing the Southern Bridge;

12.1.2 Subject to Section 12.3, construct half street improvements to Skyliners Road from Lindsay Court to Mt. Washington Drive. The Construction Commencement Deadline is December 31, 2004. Such improvements shall be constructed in general conformance with the engineering drawings attached to the Intersection LID Petition; and

12.1.3 Subject to the terms provided herein, SSLP agrees that it shall construct those Other Improvements identified on attached **Exhibit C**.

As used herein, "Construction Commencement Deadline" shall mean the date by which the Responsible Property Owner(s) shall have commenced preliminary design and engineering work

12.2 The City acknowledges that (a) construction of the Southern Bridge is subject to objections raised by third parties which could interfere with that Project; (b) construction of any of the Projects could be delayed as a result of the City's failure to timely acquire necessary rights-of-way, (c) construction of any of the Projects could be delayed as a result of objections raised by third parties; and (d) construction of any Projects could be delayed by difficulties in obtaining approvals from the Oregon Department of Transportation ("ODOT") and any other federal, state or local regulatory body. The City agrees that none of (a), (b), (c) or (d) shall be a basis for denying or delaying the approval of any of SSLP's land use applications in connection with the Proposed Development, grounds for declaring SSLP to be in default, or a basis for exacting additional Off-Site Transportation Impact Mitigation from SSLP. Subject to the terms of the applicable LID Petition(s), the City shall, however, have the right to construct Projects and assess the Responsible Property therefore according to the schedules in the LID Petitions, irrespective of whether SSLP has received Final Approval. In the event of (b), the schedule for construction of the applicable Project as set forth in the applicable LID Petition shall be delayed by the same period of time by which the right-of-way acquisition is delayed.

12.3 The Intersection LID Petition includes plans and drawings for the Projects identified therein. Estimates have been prepared of the cost of constructing them. SSLP shall bear the risk that such costs may increase between the date of this Development Agreement and the date that construction commences; provided, however, the City shall bear any additional costs, which result from any change in design required by the City or ODOT.

12.4 The City agrees that the Projects and Other Improvements to be provided pursuant to this Development Agreement, the Bridge LID Petition and the Intersection LID Petition shall be deemed to satisfy SSLP's obligation to provide Off-Site Transportation Impact Mitigation in connection with the Maximum Density of the Proposed Development set forth in Section 4 so that, with respect to off-site transportation obligations, the Proposed Development is vested. The City shall require no other off-site transportation-related exactions nor require any further traffic studies relating to Off-Site Transportation Impact Mitigation in connection with or as a condition to the approval of SSLP's Proposed Development. This shall include, but not be limited to, construction of off-site streets or intersections, improvement of off-site intersections or other existing off-site transportation facilities, construction of off-site bicycle paths or pedestrian trails and dedication of off-site rights-of-way for any of the above-identified purposes. Notwithstanding the foregoing, SSLP's rights which are vested herein are dependent upon the Maximum Density of the Proposed Development set forth in Section 4 which is tied to the estimated number of vehicle trips to be generated by such Maximum Density. The

Parties hereto understand that the mix of uses that make up the Maximum Density could change based on market forces. However, to the extent that SSLP submits land use applications that would increase the number of vehicle trips to be generated by the Proposed Development, the Proposed Development may be subject to additional off-site transportation exactions based upon projected transportation impacts on City transportation facilities from the increased density, consistent with City policies and regulations. The Parties agree that this Development Agreement does not, however, resolve any issue relating to on-site transportation requirements and that on-site transportation issues are reserved for future discretionary land use approval, and that the City may require further studies and reviews relating to on-site traffic.

12.5 The City and Skyliner Summit Limited Partnership agree that upon execution of this Agreement that the property identified in **Exhibit B** shall be established as the sole recovery area for the collection of transportation system development charges ("SDC"). During the Term of this Agreement, the City shall collect SDCs, at the greater of the rates determined in accordance with the SDC rates attached as **Exhibit D**, or any future rates adopted by the City. The City is currently evaluating SDC rates for commercial and industrial development. If such rates are changed prior to December 31, 2000 such change shall replace **Exhibit D** to this Agreement. Otherwise until the earlier of the expiration of this Agreement or the date at which the Property Owner has received full reimbursement from SDCs, the SDC rate for those SDCs collected from the sole recovery area will not decrease, but shall increase if and when City-wide SDC rates increase. Notwithstanding anything to the contrary contained in the Consortium Agreements, the Parties agree that BTD's obligations pursuant to the Consortium Agreements shall be limited to its assessment obligations pursuant to the Intersection LID Petition.

12.6 The City shall use the SDC revenue collected from the sole recovery area to reimburse Skyliner Summit Limited Partnership for the cost of constructing the projects (other than the Southern Bridge) identified in Section 12.1 above at a rate of 100% of all qualified improvements pursuant to Street Policy 5 (**Exhibit E**) as amended.

12.7 The full amount of SSLP's contribution toward the cost of constructing the Southern Bridge shall be reimbursed through City-wide generated SDCs in accordance with the Bridge LID Petition.

12.8 The Parties agree that there are certain actions or improvements that must be made in conjunction with the Projects and Other Improvements to be completed by the Property Owners to provide adequate facilities to support development which will impact the City's West Side Transportation System. These actions or improvements are not a part of the Property Owners' obligations and the City agrees to assure that such

actions are taken and such improvements are made. As referenced in the supporting traffic studies, such actions and improvements include, but are not limited to, acquiring rights-of-way for those Projects for which the Property Owners do not already own the necessary rights-of-way, obtaining permits necessary for construction of the Projects, expanding some of the Projects as necessary from single-lane roundabouts to double-lane roundabouts and completing bicycle lanes where gaps exist along Shevlin Park Road. In no event shall the City be obligated to expend funds to take such actions or complete such improvements; the City may assure their completion by any appropriate means, including, without limitation, making them conditions to other future development, paying for them with systems development charges, paying for them with grants and/or including them in future capital improvement plans.

13. Assumptions Relating to City's Ability to Serve Development; Continuing Effect of Agreement

13.1 ORS Section 94.504(6) requires that a Development Agreement "state the assumptions underlying the agreement that relate to the ability of the city...to serve the development."

13.2 The facts set forth in the Recitals are included in the assumptions underlying this Agreement.

13.3 The Parties operate under the assumption that construction of the Projects (including the Southern Bridge) will provide adequate off-site transportation infrastructure and facilities to support SSLP's Proposed Development. The adequacy of transportation facilities are determined with reference to the standards in effect as of the Effective Date.

13.4 In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with the Agreement impossible or unlawful, the Parties will attempt to give effect to the remainder of the Agreement, but only if the purposes set out in the recitals can be accomplished and such effect does not prejudice the substantial rights of either Party under the Agreement.

13.4.1 If the substantial rights of either Party are prejudiced by giving effect to the remainder of the Agreement, then the Parties shall negotiate in good faith to revise the Agreement to give effect to its original intent.

13.4.2 If the Parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either Party may request that an arbitration panel determine an equitable effect for the remainder of the Agreement. The arbitration panel shall consist of 3 arbitrators, one of which shall be selected by SSLP,

one of which shall be selected by the City, and the third of which shall be selected by agreement of the arbitrators selected by SSLP and the City. If the 2 arbitrators are unable to agree upon the selection of a third arbitrator, then the third arbitrator shall be selected by the Presiding Judge of the Circuit Court, 11th Judicial District, Deschutes County, Oregon.

13.4.3 If, because of a change in policy, law or circumstances, the Agreement fails of its essential purposes (construction of all of the traffic system improvements called for in the Intersection LID Petition, the Bridge LID Petition and this Development Agreement; vesting of allowed uses and limitations on development conditions; vesting of maximum off-site transportation exactions; and vesting of maximum permissible densities in connection therewith), then the Parties shall be placed into their original position to the extent practical.

13.4.4 As used herein, however, "change in circumstance" does not include changes in local government land development or land division regulations.

13.5 To the extent any local rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis that is not, in the reasonable discretion of SSLP, inconsistent with the substance, purpose, or conditions of this Development Agreement, then the local rule, ordinance, regulation or policy shall be applicable.

14. Assignability of Agreement. This Agreement shall be fully assignable, in whole or in part, by either Party and shall bind and inure to the benefit of the Parties and their respective successors and assigns. If any portion (other than lot sales to individuals or builders) of the SSLP Property is sold, the duties, rights and interests of SSLP under this Agreement shall become the duties, rights and responsibilities of the purchaser and SSLP. Notwithstanding the foregoing, no purchaser of an individual lot(s) shall have any rights hereunder.

15. Future Discretionary Approvals

15.1 The City agrees to cooperate with SSLP in securing all future necessary land use permits and approvals for the Proposed Development needed from entities other than the City.

15.2 The following future discretionary approvals are the currently anticipated approvals that will be required for the Proposed Development:

15.2.1 Approval of the Master Plan for a Planned Unit Development pursuant to BZO Section 10.10.10, which includes review under BZO Section 10.10.29 Conditional Use Permits and BZO Section

10.10.30 Planned Unit Development, and BSO Sections 3.030, 3.035 and 3.040;

15.2.2 Approval of a Tentative Subdivision Plat for all of the phases of the PUD pursuant to BSO Article VI Design Standards and Improvements (including Appendix A);

15.2.3 Approval of a Zero Lot Line Subdivision with respect to 47 lots pursuant to BSO Section 3.050 Zero Lot Line Subdivision;

15.2.4 Approval of the Final Subdivision Plat for all phases of the PUD pursuant to BSO Sections 4.010, 4.015, 4.020, 4.030, 4.035, 4.050, 4.055 and 4.065;

15.2.5 Approval of variances pursuant to BSO Section 9.040 to (i) allow minor residential streets to be constructed at a grade up to 12% instead of the 10% grade allowed by Appendix A of the BSO without a variance; and (ii) allow one cul-de-sac to exceed 600 feet in length between the center of the cul-de-sac bulb and the centerline of a through street and with a right-of-way width of 50 feet as opposed to the cul-de-sac requirements otherwise set forth in BSO Section 6.015; and

15.2.6 Approval of variances pursuant to BZO Section 10.10.31 to (i) allow minimum front-yard setback of 18 feet to a garage rather than 20 as required by BZO Section 10.10.10(5)(c), in conjunction with a minimum of 10 feet front-yard setback to a house; and (ii) allow individual lot coverage to be a maximum of 53% instead of the 35% prescribed in the RS Zone by BZO 10.10.10(5)(f).

15.3 The Parties acknowledge that the provisions of SSLP's land use application, other than the provisions relating to Off-Site Transportation Impact Mitigation, shall be the subject of future discretionary approvals by the City. The question of whether the City may approve the applications referred to in this Agreement, including the provisions of the land use applications referred to in Sections 4 (Proposed Development), 6 (Permitted Uses), 7 (Density or Intensity of Use), and 8 (Maximum Height and Size of Proposed Uses), or any other part of SSLP's land use applications are reserved for future discretionary approvals, and are not resolved by the terms of this Agreement, the Intersection LID Petition or the Bridge LID Petition. Nothing in this Agreement resolves, adjudicates or dispenses with the responsibilities of SSLP or its Proposed Development for impacts or conditions of approval other than Off-Site Transportation Impact Mitigation, and nothing herein operates as an approval (or preliminary approval) by City of SSLP's land use applications except as to Off-Site Transportation Impact Mitigation.

15.4 In the event of a conflict between the terms of this Development Agreement, and the terms of either the Intersection LID Petition or the Bridge LID Petition, then the terms of the Intersection LID Petition or the Bridge LID Petition shall control.

15.5 The discretionary approvals shall be reviewed by the City in the same manner and subject to the same procedures and hearings requirements as all other similar land use applications filed at the time of the Effective Date.

16. Schedule. SSLP shall commence construction of the Projects assigned to SSLP as of the date set forth in the relevant LID Petition(s) and shall complete construction of each Project no later than the date established in the relevant LID Petition(s). Subject to obtaining timely approvals of its Proposed Development, SSLP shall commence construction of its Proposed Development by 2001 and that its Proposed Development shall be completed by the expiration of the Development Agreement.

17. Defaults

17.1 A breach of a material provision of any of the Consortium Agreements, whether by action or inaction of a Party which continues and is not remedied within thirty (30) days after the other Party has given notice specifying the breach shall constitute a default by a Party. If the breach is of such a nature that it cannot reasonably be cured within such thirty-day period, the cure period shall be extended to such amount of time as is reasonable but only if the breaching Party promptly commences, and thereafter diligently prosecutes, such cure.

17.2 The exercise by either Party of any one or more of such remedies available to it shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

17.3 Notwithstanding the foregoing, in the event that SSLP fails to construct (or fund its share of the costs of construction in the case of the Southern Bridge) the Projects identified in Section 12.1 above, by the applicable deadlines set forth in the Intersection LID Petition or the Bridge LID Petition, as applicable, then SSLP shall not be deemed in default hereunder, but the City shall have the rights set forth in the Intersection LID Petition or the Bridge LID Petition to construct the traffic improvement facilities and to assess the Responsible Property as set forth in those petitions.

18. Release of Development Agreement. The City shall release developed lots from this Development Agreement upon the request of SSLP provided that the terms and conditions of this Development Agreement have been performed as they relate to the lot to be released.

19. Force Majeure

19.1 In the event that any Party (the "Delayed Party") is delayed or prevented from performing any of its obligations under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities, laws or other governmental requirements, riots, war, or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

19.2 The City's right under the Intersection LID Petition or the Bridge LID Petition to construct traffic system improvements shall not be affected by the provisions of Sub-section 19.1.

20. Notices. Any notice, demand, request, approval, consent, or other communication (collectively referred to as a "Notice") concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other Party at the address set forth below. Any Notice shall be given by either: (i) personal delivery in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Any Party may change any address for the delivery of Notice to such Party, by giving Notice in accordance with the provisions of this Section. The attorneys for the Parties may give any Notice.

Notices Addresses:

If to SSLP: Skyliner Summit Limited Partnership
c/o H. Williams Advisors, Inc.
1325 NW Flanders
Portland, Oregon 97209
Attn: Dike Dame

With a copy to: Ball Janik LLP
15 SW Colorado, Suite K
Bend, Oregon 97702
Attn: Laura Craska Cooper

If to BTD: Broken Top Development, LLC
c/o H. Williams Advisors, Inc.
1325 NW Flanders
Portland, Oregon 97209
Attn: Dike Dame

With a copy to: Ball Janik LLP
15 SW Colorado, Suite K
Bend, Oregon 97702
Attn: Laura Craska Cooper

If to City: City of Bend
Development Services
710 N.W. Wall
Bend, OR 97701
Attn: Development Services Director

21. Miscellaneous

21.1 City Funding. The Parties agree that any provision herein which requires the City to expend funds is contingent upon future appropriations as part of the City budget process as provided in ORS 94.504(5). Nothing herein requires the City to appropriate such funds.

21.2 Waivers. No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

21.3 Entire Agreement/Modifications. This Agreement, together with the Intersection LID Petition and the Bridge LID Petition (along with all exhibits incorporated therein) (collectively referred to as the "Consortium Agreements") constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto. This Development Agreement, the Intersection LID Petition and the Bridge LID Petition are parts of a whole transaction between the Parties and shall be construed as a whole transaction.

21.4 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

21.5 Captions. The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the Parties.

21.6 Gender/Singular/Plural. Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all the Parties and all circumstances, except where the context of this Agreement clearly dictates otherwise.

21.7 Severability. Subject to Section 13.4, the unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

21.8 Time of Essence. Time is of the essence of this Agreement.

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

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

"SSLP" SKYLINER SUMMIT LIMITED PARTNERSHIP, an Oregon limited partnership

By: Broken Top, Inc.,
Its: General Partner

By: Joseph E Weston
Name: Joseph E Weston
Title: President

"BTD"

BROKEN TOP DEVELOPMENT, LLC,
an Oregon limited liability company

By: Broken Top Associates, L.L.C.,
Member

By: _____
Name: Joseph E Weston
Title: Member

"CITY"

CITY OF BEND, an Oregon Municipal
Corporation,

By: _____
Name: _____
Title: _____

STATE OF OREGON)
)ss.
COUNTY OF Multnomah)

This instrument was acknowledged before me on October 25, 2000 by Joseph E Weston as General Partner of Skyliner Summit Limited Partnership.

OFFICIAL SEAL
TRACIE A MASSEY
NOTARY PUBLIC-OREGON
COMMISSION NO. 330377
MY COMMISSION EXPIRES MAR. 17, 2004

Tracie A Massey
Signature of Notarial Officer
My Commission Expires: 3/17/04

STATE OF OREGON)
)ss.
COUNTY OF Multnomah)

This instrument was acknowledged before me on October 25, 2000 by Joseph E Weston as Member of Broken Top Development.

OFFICIAL SEAL
TRACIE A MASSEY
NOTARY PUBLIC-OREGON
COMMISSION NO. 330377
MY COMMISSION EXPIRES MAR. 17, 2004

Tracie A Massey
Signature of Notarial Officer
My Commission Expires: 3/17/04

STATE OF OREGON)
)ss.
COUNTY OF Deschutes)

This instrument was acknowledged before me on November 6, 2000 by Larry Patterson as City Manager of the City of Bend.

OFFICIAL SEAL
PATRICIA ANNE SMILEY STELL
NOTARY PUBLIC-OREGON
COMMISSION NO. 305227
MY COMMISSION EXPIRES NOV. 22, 2001

Patricia Anne Smiley Stell
Signature of Notarial Officer
My Commission Expires: Nov. 22, 2001

Exhibit A
Property Owners

1. Brooks Resources Corporation;
2. West Bend Property Company, LLC;
3. Broken Top Limited Partnership and Broken Top Development, LLC;
4. Skyliner Summit Limited Partnership and Broken Top Development, LLC;
5. Century Park LLC;
6. Shevlin Heights Limited Partnership;
7. River Bend Limited Partnership;
8. Central Oregon Community College;
9. Bend LaPine Administrative School District No. 1;
10. West Side Meadows, LLC;
11. Western Communications Inc., dba The Bulletin; and
12. Cascade Highlands Limited Partnership

W&H PACIFIC
920 S.W. Emkay Dr., Suite C-100
Bend, Oregon 97702

Exhibit B

LEGAL DESCRIPTION
SKYLINER'S SUMMIT

A parcel of land located in the north half of Section 1, Township 18 South, Range 11 East, and in the south half of Section 36, Township 17 South, Range 11 East, Willamette Meridian, Deschutes County, Oregon, and in the northwest one quarter of the southwest one quarter of Section 31, Township 17 South, Range 12 East, Willamette Meridian, City of Bend, Deschutes County Oregon, more particularly described as follows:

Beginning at the northeast corner of said Section 1; thence South 00°49'56" West along the east boundary of said Section 1, the west boundary of Section 6, Township 18 South, Range 12 East, Willamette Meridian, and the west boundaries of "Golden Butte Phase 2", as recorded in Deschutes County survey records as CS 12132, and "Golden Butte Phase 1", as recorded in Deschutes County survey records as CS 11877, 483.75 feet to the north right-of-way line of Troon Avenue as platted by said "Golden Butte Phase 1";

thence South 83°11'37" West along said north right-of way, 157.72 feet to a point of curvature;

thence continuing along said north right-of-way, along the arc of a 380.00 foot radius curve to the left, through a central angle of 25°41'17", an arc length of 170.37 feet, (the chord of which bears South 70°20'59" West, 168.95 feet) to the easterly right-of-way of Mt. Washington Drive;

thence leaving said north right-of-way South 54°14'58" West, 80.00 feet to a point of non-tangent curvature on the southwesterly right-of-way of Mt. Washington Drive and the northeasterly boundary of Plat No. 806, "Broken Top" as recorded in Deschutes County survey records as CS 11955;

thence along said southwesterly right-of-way and said northeasterly boundary, along the arc of a 1060.00 foot radius non-tangent curve to the left, through a central angle of 54°01'53", an arc length of 999.61 feet, (the chord of which bears North 62°45'56" West, 962.98 feet) to a point of tangency;

thence continuing along said boundaries North 89°46'53" West, 84.59 feet;

thence leaving said boundaries and continuing North 89°46'53" West, 503.71 feet to a point of curvature;

thence along arc of a 1135.00 foot radius curve right, through a central angle of 47°34'06", an arc length of 942.31 feet, (the chord of which bears North 65°59'50" West, 915.48 feet);

thence South 54°05'25" West, 172.44 feet to a point of curvature;

thence along the arc of a 280.00 foot radius curve to the right, through a central angle of 14°29'52", an arc length of 70.85 feet, (the chord of which bears South 61°20'21" West, 70.66 feet) to a point of non-tangent curvature;

thence along the arc of a 530.00 foot radius non-tangent curve to the right, through a central angle of 14°49'32", an arc length of 137.14 feet, (the chord of which bears South 03°21'33" East, 136.76 feet) to a point of tangency;

thence South 03°31'07" West, 448.51 feet;

thence North 87°51'09" West, 89.61 feet to a point of curvature;

thence along the arc of a 2,996.95 foot radius curve to the left, through a central angle of 02°24'40", an arc length of 126.12 feet, (the chord of which bears North 88°43'49" West, 126.11 feet);

thence North 03°09'30" East, 483.86 feet;

thence North 48°11'01" West, 56.92 feet to the north boundary of said Section 1;

thence North 89°38'58" West along said north boundary, 230.17 feet; to the point of beginning of a parcel of land described in volume 414, page 2086, Deschutes County records, from which the north one quarter corner of said Section 1 bears South 89°38'58" East, 707.64 feet;

thence leaving said north boundary South 55°59'14" West, 380.77 feet;

thence South 59°25'25" West 835.35 feet;

thence North 34°57'11" West, 534.47 feet;

thence North 55°02'49" East, 151.95 feet;

thence along the arc of a 2020.00 foot radius curve to the right, through a central angle of 02°03'43", an arc length of 72.70 feet, (the chord of which bears North 56°04'41" East, 72.70 feet);

thence North 57°06'33" East, 144.67 feet to said north boundary of Section 1;

thence continuing North 57°06'33" East, 24.93 feet to a point of curvature;

thence along the arc of a 1020.00 foot radius curve to the right, through a central angle of 06°05'09", an arc length of 108.34 feet, (the chord of which bears North 60°09'07" East, 108.29 feet) to a point of tangency;

thence North 63°11'41" East, 49.19 feet;

thence North 26°48'19" West, 113.00 feet;

thence North 60°39'42" East, 255.00 feet;

thence North 55°52'05" East, 430 feet more or less to the south right-of-way of Skyliners Road;

thence along said south right-of-way in a northeasterly and easterly direction 5,265 feet more or less to the north boundary of "Shadow Ridge" as recorded in the Deschutes County survey records as CS 11118;

thence leaving said right-of-way and South 85°57'34" West, 321.90 feet to the northwest corner of said "Shadow Ridge";

thence South along the west boundary of said "Shadow Ridge", 540.00 feet to the southwest corner of said "Shadow Ridge" and the north boundary of the southwest one quarter of the southwest one quarter (SW1/4 SW1/4) of said Section 31;

thence North 89°32'28" West along said north boundary, 684.95 feet to the northwest corner of said SW1/4 SW1/4;

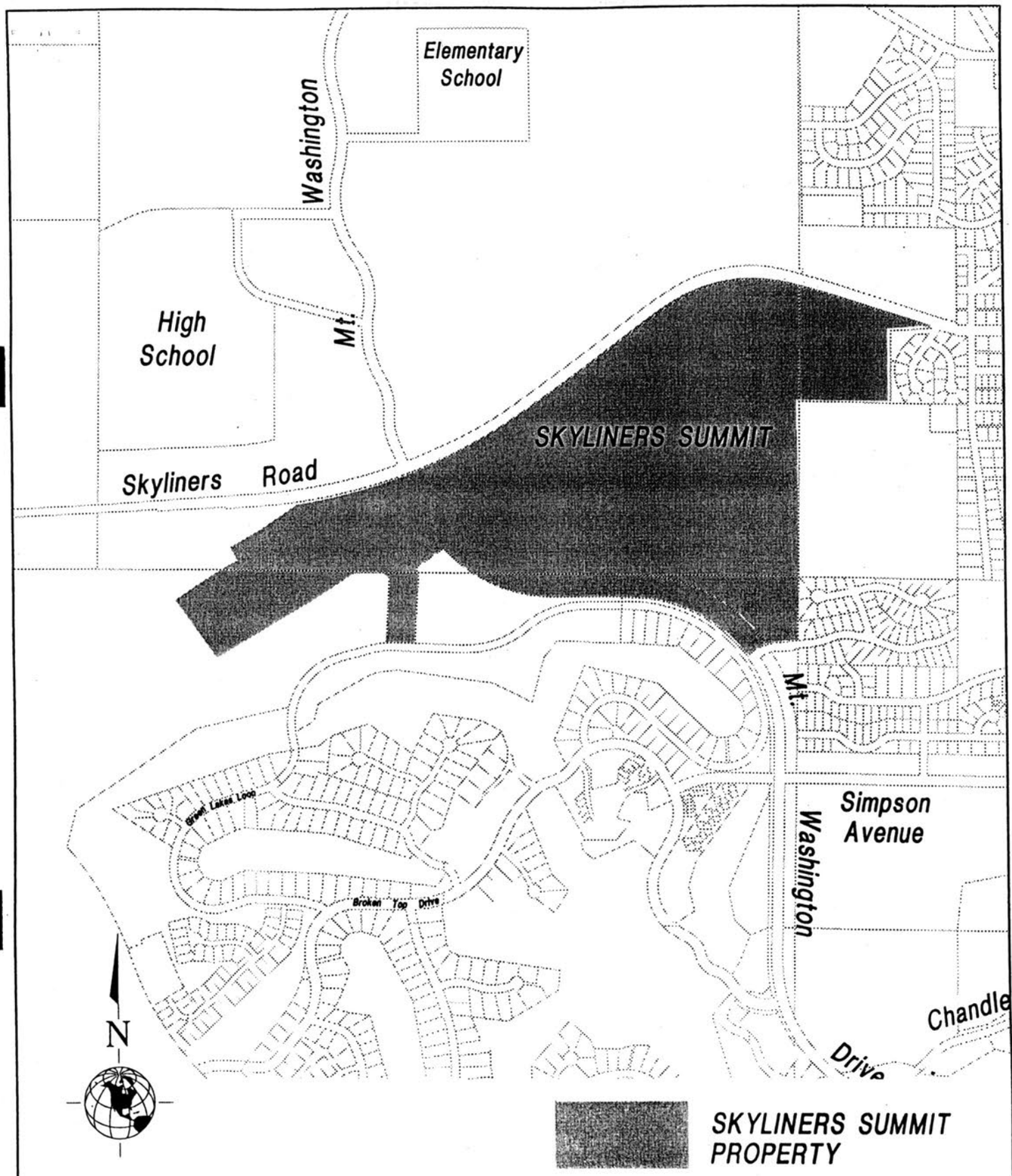
thence South 00°13'51" East along the west boundary of said SW1/4 SW1/4, 1317.41 feet to the point of beginning.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Keith Dagostino

OREGON
JUNE 1, 1998
KEITH S. DAGOSTINO
2685

RENEWAL DATE: 12-31-01



DATE	BY	REVISION	CHK

DRAWN BY: JAM
DESIGNED BY: JAM
CHECKED BY: KSD
APPROVED BY: KSD

W&H PACIFIC
920 Emkay, Suite C-100
Bend, Oregon 97702-1041
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(541)388-4259 Fax
whpacific.com
A Member of The H Group
Planners • Engineers • Surveyors • Landscape Architects

West Side Transportation Consortium
Skyliners Summit LP

Property Exhibit Map

BEND/DESCHUTES **EXHIBIT B** OREGON

SCALE:	PROJECT NO.	FILE NAME:	
1"=1000'	02.2452.0001	WSTCPROP.DWG	1/1

PLOT DATE: 10/16/2000
LAST EDIT:

Exhibit C
Other Improvements

1. Complete Mt. Washington Drive, including bike lanes and sidewalks, from Skyliners Road to the Troon Avenue intersection.

2. Provision of adequate right-of-way and site development accommodations to support transit, such as, areas for bus stops, shelters or other similar facility as deemed appropriate by the City.

Exhibit D

STREET SDCS

SDC = Trip Ends X Trip Length / 2 / 7200 X $889,160 (lane mile cost)

Category	Daily Trip ends per unit	Units	Chargeable % reduction	Conversion: Daily trip ends per unit	Aver. RT trip length (miles)	100% SDC per unit
Industrial						
Industrial - general	6.97	T.G.S.F.	0.00%	6.97	6.2	$2,668
Industrial - batch plant	100.00	pair	0.00%	100.00	6.2	$38,283
Manufacturing - bulky items	1.02	employees	0.00%	1.02	6.2	$390
Manufacturing - high tech-research & d	2.09	employees	0.00%	2.09	5.0	$645
Service and repair	5.60	T.G.S.F.	0.00%	5.60	6.0	$2,075
Residential						
Single Family	9.57	Dwelling Unit	0.00%	9.57	5.5	$3,250
Apartments	6.63	Dwelling Unit	0.00%	6.63	5.5	$2,252
Condominium	5.86	Dwelling Unit	0.00%	5.86	5.5	$1,990
Manufactured Home	4.81	Dwelling Unit	0.00%	4.81	5.5	$1,634
Senior Care	2.15	Dwelling Unit	0.00%	2.15	5.5	$730
PUD - residential	7.44	Dwelling Unit	0.00%	7.44	5.5	$2,527
Lodging						
Motel	9.11	Room	0.00%	9.11	5.9	$3,319
Hotel	6.95	Room	0.00%	6.95	5.9	$2,532
Recreational						
Golf Course	5.04	Acre	0.00%	5.04	7.5	$2,334
Bowling Alley	33.33	T.G.S.F.	0.00%	33.33	7.5	$15,435
Theater w/Matinee	0.29	Seat	0.00%	0.29	7.5	$134
Arena	33.33	Acre	0.00%	33.33	7.5	$15,435
Community Center	22.88	T.G.S.F.	0.00%	22.88	7.5	$10,596
Athletic Facility	2.30	T.G.S.F.	50.00%	1.15	5.0	$355
Spa	18.00	per station	36.00%	11.52	3.0	$2,134
Institutional						
Elementary School	1.02	Student	0.00%	1.02	3.8	$239
High School	1.79	Student	0.00%	1.79	3.8	$420
Community College	2.38	Student	0.00%	2.38	3.8	$558
Community College Library	45.50	T.G.S.F.	80.00%	9.10	3.8	$2,135
Community Library	45.50	T.G.S.F.	60.00%	18.20	3.8	$4,270
Church	9.11	T.G.S.F.	0.00%	9.11	3.8	$2,138
Daycare	4.52	Student	60.00%	1.81	3.8	$424
Medical						
Hospital	16.78	T.G.S.F.	0.00%	16.78	5.0	$5,181
Medical/Dental Clinic	36.13	T.G.S.F.	0.00%	36.13	5.0	$11,155
Specialty Medical	23.79	T.G.S.F.	20.00%	19.03	5.0	$5,876
General Office Bldg.						
Size < 50,000	15.29	T.G.S.F.	0.00%	15.29	6.2	$5,854
50,000<= Size < 175,000	10.08	T.G.S.F.	0.00%	10.08	6.2	$3,859
175,000<= Size	7.78	T.G.S.F.	0.00%	7.78	6.2	$2,978
Government						
Gov't Office Bldg.	68.93	T.G.S.F.	0.00%	68.93	6.2	$26,389
Retail						
General Retail	35.15	T.G.S.F.	47.00%	18.63	4.0	$4,601
Gasoline/Service Station	168.56	Pump Pairs	50.00%	84.28	4.0	$20,816
Convenience Market	737.99	T.G.S.F.	61.00%	287.82	4.0	$71,087
Shopping Center:						
Size < 50,000	87.31	T.G.L.S.F.	34.00%	57.62	4.0	$14,233

PLEASE SEE OTHER SIDE OF PAGE

Exhibit D

50,000<= Size < 175,000	43.23	T.G.L.S.F.	34.00%	28.53	4.0	$7,047
175,000<= Size	28.98	T.G.L.S.F.	34.00%	19.13	4.0	$4,724
Restaurant - High turnover/Drive throug	238.80	T.G.S.F.	46.00%	128.95	4.0	$31,850
Restaurant - Specialty Food Item Servic	36.81	T.G.S.F.	50.00%	18.41	4.0	$4,546
Restaurant - Dinner only	10.00	T.G.S.F.	5.00%	9.50	4.0	$2,346
Restaurant - Lunch/Dinner	25.00	T.G.S.F.	15.00%	21.25	4.0	$5,249
Restaurant - Breakfast/Lunch/Dinner	158.00	T.G.S.F.	40.00%	94.80	4.0	$23,415
Supermarket w/Strip mall	111.51	T.G.S.F.	36.00%	71.37	4.0	$17,627
Specialty / Neighborhood Grocery	24.36	T.G.S.F.	20.00%	19.49	3.0	$3,610
Drinking Establishment	12.00	T.G.S.F.	20.00%	9.60	3.0	$1,778
Banks - w/Drive through	265.21	T.G.S.F.	47.00%	140.56	4.0	$34,717

q\deb\excelfiles\streetsdc2000...

Exhibit E
Street Policy No. 5

City of Bend
Street Policy 5
Street System Development Charge Credit and Reimbursement

Section 1. **Purpose**:
It shall be the policy of the City of Bend that expansions to the City's street system shall only be accomplished as directed and approved by the City. The timing and financing of system expansions shall be as provided in this policy.

Expansions to the street system that involve the construction of collector and/or arterial streets shall be accomplished pursuant to the City's Comprehensive Plan. It is anticipated that these improvements will be financed by funds generated from systems development charges (SDC's), other resources or by developers as provided below. The timing of improvements to be constructed by the City will be subject to the availability of City funds to finance them.

Section 2. **Procedure**:

Developers who wish to expand the street system by dedicating land and/or constructing streets may do so according to the following procedure:

2.1 Prior City approval will be required.

2.2 An executed agreement between the developer and the City shall be required and shall set forth the development requirements as well as an SDC credit and/or SDC reimbursement, if available.

2.3 All improvements must be constructed according to applicable City Standards, rules and regulations, including the Comprehensive Plan, as determined by the City Engineer.

2.4 All of the cost of such improvements shall be paid by the developer.

2.5 The developer's costs associated with the construction of these qualified public improvements may be eligible for SDC credit and/or SDC reimbursement as provided in this policy.

Section 3. **SDC credit**:

The SDC credit shall be determined first and shall:

3.1 Only be available for qualified public improvements as defined in Oregon Revised Statutes (ORS) 223.304(3) (i.e., improvements that are identified in the City's Comprehensive Plan).

3.2 Be a credit against only the improvement fee portion of the SDC. The improvement fee portion against which the credit may be applied shall be calculated by using the methodology as it is employed in the City's SDC Ordinance and Resolution. If less than the maximum allowable SDC is charged in the Resolution, the percentage of the maximum allowable SDC used shall also be used to determine that portion of the improvement fee against which the SDC credit can be applied.

3.3. The amount of the credit shall not exceed the improvement fee as calculated above. e.g., if a developer incurs $100,000 for collector and/or arterial street improvement costs of which $70,000 is related to qualified improvements, and, if the development has 20 lots and the SDC improvement fee is 70% of the maximum allowable SDC improvement fee of $1,149, or $804, the SDC credit would be $16,080 (20 x $804). If the development included 100 lots the SDC credit would be limited to $49,000 as the SDC improvement fee times the number of lots (100 x 804 = $80,400) exceeds the qualified costs subject to the SDC credit times the percentage of the maximum allowable SDC improvement fee. ($70,000 x .70% = $49,000)

Section 4. **SDC Reimbursement**:

In addition to the SDC credit a developer may be eligible for SDC reimbursement. SDC reimbursement shall be determined as follows:
The maximum SDC reimbursement shall be limited to the collector and/or arterial street improvement costs expended by the developer, as determined by the City Engineer, times the percentage of the maximum allowable SDC in place at the time of executing an agreement with the City, less any SDC credit related to the improvements. There shall be no SDC reimbursement if the SDC credit exceeds the maximum SDC reimbursement. Qualified costs of collector and/or arterial street improvements shall include actual construction costs, exclusive of right-of-way and preliminary engineering costs.

Section 5. **SDC Credit and Reimbursement-Collection and Payment Procedures:**

SDC credit and SDC reimbursement will be collected and paid as follows:

5.1 The current SDC, as established by the Bend City Council, shall be collected by the City on all building permits issued by the City or with other agreements as applicable. The SDC may have two components; an improvement fee for future system improvements and a reimbursement fee for existing or in-progress improvements.

5.2 SDC improvement fees collected by the City shall be paid to developers and retained by the City in accordance with this policy.

5.3 SDC reimbursement fees collected by the City shall be retained by the City to reimburse the City for previous system expenditures, related debt service or future improvements.

Section 6. **Shared/Sole Recovery Areas:**

6.1 The area served or to be served by the City's street system within the City limits will be categorized as either shared recovery area or as sole recovery area. Sole recovery areas shall be determined by the City Engineer and shall include only the developer's property that is to be served by the approved facilities constructed by the developer. Shared recovery area shall include all area served or to be served by the City's street system that is not otherwise designated as sole recovery area within the City limits.

6.2 SDC improvement fees collected from each sole recovery area shall be applied as follows:

6.2.1 SDC credit due the developer of the sole recovery property, until paid.

6.2.2 SDC reimbursement due the developer of the sole recovery property, until paid or until the 10 year recovery period expires.

6.2.3. Once items 1 and 2 are met the sole recovery property shall become shared recovery area.

6.3 SDC improvement fees collected from the shared recovery area shall be applied as follows:
To developers with outstanding SDC credit and SDC reimbursement balances, including the City, in proportion to the outstanding SDC credit and SDC reimbursement balances, at the end of the repayment period, of all developers, including the city participating in the shared recovery area.

6.4 SDC improvement fees collected and paid to developers from the shared recovery area shall be limited to the amount of SDC credit and/or SDC reimbursement that would not otherwise be collectible from SDC improvement fees within a developer's sole recovery area.

6.5 There shall be no payment made, for either the SDC credit or SDC reimbursement, to the developer from any SDC improvement fee collected within the sole recovery area or shared recovery area until the improvements are accepted by the City.

6.6 There shall be no SDC credit or SDC reimbursement paid after 10 years from the date the qualified improvements are accepted by the City.

6.7 A sole recovery area shall become shared recovery area when the developer has been paid the SDC credit and/or SDC reimbursement in full, or the SDC credit is paid in full and the 10 year SDC reimbursement period expires.

Section 7. Payment Schedule:

7.1 Payment of SDC credit and SDC reimbursement amounts shall be payable annually by the City for SDC improvement fees collected by the City from January 1 through December 31 of each year by January 31 of the year following collection by City.

7.2 No interest shall accrue on SDC credit or SDC reimbursement payable to developers.

7.3 There shall be no adjustments made to the amount of any SDC credit or SDC reimbursement amount as a result of inflation.

Section 8. Assignment of Claims:

8.1 Claims from SDC credit and SDC reimbursement are personal and may not be assigned without the written consent of City.

Section 9. Future Changes to Maximum Allowable SDC:

9.1 Future changes by the City of the maximum allowable SDC or the percentage of the maximum allowable SDC imposed shall neither increase or decrease the SDC credit or SDC reimbursement determined above, however, if the percentage of the maximum allowable SDC is changed, all active public improvement agreements will be reviewed, and if necessary, SDC credit and/or SDC reimbursement amounts to be collected and reimbursed developers from sole and shared recovery areas will be recalculated in accordance with this policy.

Section 10. City's Obligation to Pay:

10.1 The City's obligation to pay or apply SDC credit or SDC reimbursement shall be limited to SDC improvement fees actually collected by the City as provided in this policy. City's obligation to pay or apply SDC credit or SDC reimbursement from SDC improvement fees collected shall be further limited to the total of the SDC credit and SDC reimbursement calculated as provided in this policy. Payment of SDC credit and SDC reimbursement shall be subject to prior reimbursement claims which are payable from SDC collections. Persons who receive, or are entitled to claim, SDC credit or SDC reimbursement shall indemnify and hold the City harmless in the event the City is subject to claims by others for SDC credit or SDC reimbursement for the same improvements. City shall have the right to set off the amount of any competing claims for SDC credit or SDC reimbursement

against prior claims for the same SDC credit or SDC reimbursement if in the City's judgment it becomes necessary to do so.

Section 11. Applicability:

11.1 This policy shall apply to all eligible improvements installed and accepted after City Resolution #2146 which established street SDCs effective June 15, 1995.

VOL: 2000 PAGE: 46320
RECORDED DOCUMENT

STATE OF OREGON
COUNTY OF DESCHUTES

*2000-46320 * Vol-Page Printed: 11/15/2000 10:13:28

DO NOT REMOVE THIS CERTIFICATE

(This certificate constitutes a part of the original instrument in accordance with ORS 205.180(2). Removal of this certificate may invalidate this certificate and affect the admissibility of the original instrument into evidence in any legal proceeding.)

I hereby certify that the attached instrument was received and duly recorded in Deschutes County records:

DATE AND TIME: Nov. 15, 2000; 10:09 a.m.

RECEIPT NO: 28560

DOCUMENT TYPE: Development Agreement

FEE PAID: $196.00

NUMBER OF PAGES: 30

Mary Sue Penhollow

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND

AND CENTURY PARK LLC

This Development Agreement ("Agreement") is dated as of the 6 day of December, 2000, by and between CENTURY PARK, LLC , an Oregon Limited Liability Corporation, hereinafter referred to as CENTURY PARK, and THE CITY OF BEND, an Oregon municipal corporation (the "City"). Each of CENTURY PARK and the City is hereinafter referred to as a "Party" and collectively as the "Parties."

1. Definitions:

1.1 "Bridge LID Petition" means that certain LID Petition of even date herewith signed by petitioners BRC, Skyliner Summit Limited Partnership, West Bend Property Company, LLC, Western Communications, Inc., dba The Bulletin, and Bend-LaPine Administrative School District No. 1, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Southern Bridge.

1.2 "CENTURY PARK Property" means the property on which the Proposed Development is to be constructed by CENTURY PARK, which CENTURY PARK Property is more particularly described on attached **Exhibit B**.

1.3 "Development Agreement" means each of the development agreements between a Property Owner and the City pursuant to ORS 94.504 (collectively, the "Development Agreements"). Three of the Property Owners, Western Communications, Inc., dba The Bulletin (the "Bulletin"), the Bend-LaPine Administrative School District No. 1 (the "School District") and Central Oregon Community College ("COCC") are not parties to a Development Agreement.

1.4 "Final Approval" shall mean the issuance of a development permit that reasonably allows the development described in Section 4 of the Development Agreement to proceed and the expiration of the period of appeal, or if an appeal is filed, the resolution of that appeal in a manner that reasonably allows the development described in Section 4 of the Development Agreement to proceed.

1.5 "Intersection LID Petition" means that certain LID Petition of even date herewith signed by nine of the Property Owners as petitioners, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Projects.

1.6 "Off-Site Transportation Impact Mitigation" means mitigation of the increased burden that each Proposed Development will put on the transportation facilities of the City of Bend outside the property lines of the Proposed Development. The term "Off-Site Transportation Impact Mitigation" includes the "Other Improvements" identified in **Exhibit C** of each Development Agreement.

1.7 "Other Improvements" means those certain off-site transportation-related improvements to be completed by the Property Owners which are a part of their Off-Site Transportation Impact Mitigation but which are not to be completed pursuant to a local improvement district. The Other Improvements to be completed by a particular Property Owner are identified in Exhibit C to that Property Owner's Development Agreement.

1.8 "Project" means a traffic facility improvement described in Section 4 of the Intersection LID Petition and the Southern Bridge.

1.9 "Property Owners" are the twelve public and private entities, including CENTURY PARK, identified on **Exhibit A** who own property on the West Side of the City and who have formed a consortium to resolve the current and projected shortage of transportation facilities on the West Side.

1.10 "Proposed Development" means the development described in Section 4 of this Agreement.

1.11 "Responsible Property" means that portion of the property of each of the Property Owners identified in the Intersection LID Petition or the Bridge LID Petition subject to assessment for the cost of one or more Projects. "Responsible Property" shall not include portions of the property that are dedicated as public right-of-way, or dedicated for any other public purpose.

1.12 "Responsible Property Owner" means the Property Owner identified as being responsible for construction of the specific Project(s) listed for that Property Owner in the Bridge LID Petition or the Intersection LID Petition.

1.13 "Southern Bridge" means the bridge to be constructed over the Deschutes River where the proposed extension of Reed Market Road from the Parkway will cross the Deschutes River as provided in the City's General Plan.

1.14 "West Side" shall mean that portion of the City of Bend directly served by the transportation facilities described in Section 4 of the Intersection LID Petition, and the Southern Bridge.

2. Recitals:

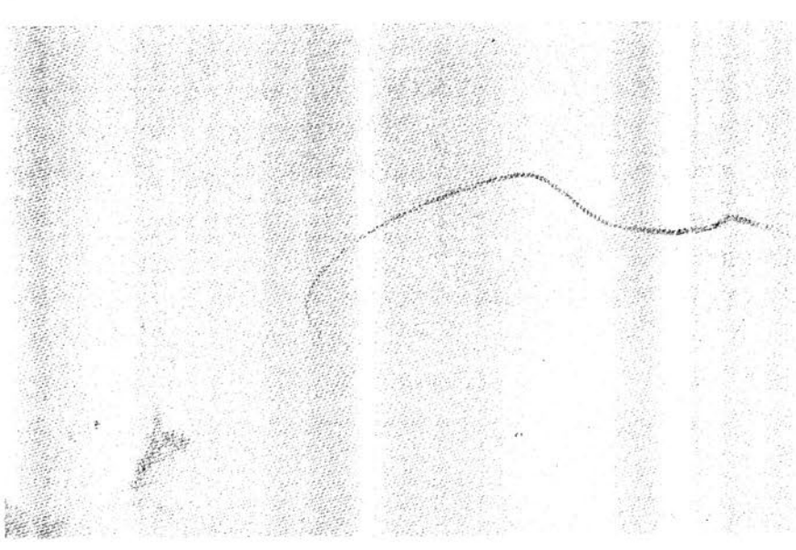
2.1 Under the City of Bend General Plan and land use regulations, new development must be supported by adequate public facilities. The City's General Plan provides that if the public facilities are not adequate, new development must either wait for the installation of the required facilities by the City or pay the cost if it occurs ahead of the City's capital improvement plan. Existing public transportation facilities serving the West Side of the City (the "West Side Transportation System") are not adequate to support all existing development and the new development contemplated in the immediately foreseeable future for the West Side of the City. The City is proceeding on the basis that its land use regulations require a system-wide fix to remedy the system-wide deficiency in the West Side Transportation System in order to support the contemplated new development.

2.2 The City does not have funds available to complete the projects necessary to create the additional capacity for the West Side Transportation System to support the new development within the timeframe in which the Property Owners wish to develop and to complete its other capital improvements.

2.3 The cost of supplying a system-wide remedy that will support the existing needs and the additional transportation burden that the new development will add to the West Side Transportation System is more than the amount that could be exacted from any single Proposed Development. Therefore, the Property Owners have concluded that collectively they can provide the necessary improvements to the West Side Transportation System to support the Proposed Developments. To this end, they have organized themselves as a consortium to accomplish these improvements.

2.4 It is the intention of the Parties that the legal mechanism for accomplishing these improvements will be expressed in Development Agreements, the Bridge LID Petition and the Intersection LID Petition (referred to as the "Consortium Agreements").

2.5 Together, the Consortium Agreements will provide a realistic mechanism for constructing the 11 distinct traffic system improvements required to support the contemplated new development. These improvements will also make a significant contribution toward relieving existing traffic problems in the West Side Transportation System. Ten of these improvements are identified in Section 4 of the Intersection LID Petition, and the other is described in the Bridge LID Petition. The Consortium Agreements also describe Other Improvements which will be constructed by the Property Owners in connection with the Property Owners' Proposed Developments.



2.6 Traffic impact analyses show that the 10 distinct traffic system improvements identified in the Intersection LID Petition, the Bridge LID Petition, and the Other Improvements will be adequate to mitigate the off-site traffic impacts that the Property Owners' Proposed Developments will have on the West Side Transportation System and make reasonable provision for the West Side Transportation System on a long-term basis.

2.7 ORS 94.504 authorizes cities to enter into development agreements with private parties who own or otherwise have a legal interest in property in connection with the development of that property. Such development agreements may have a duration up to seven years and may establish each of the parties' rights and obligations in connection with certain aspects of the proposed developments. Each Property Owner wishes to definitively establish and discharge all of its obligations to mitigate the increased burden that each Proposed Development will put on the West Side transportation facilities of the City of Bend outside the property lines of the Proposed Development ("Off-Site Transportation Impact Mitigation") to the West Side Transportation System through a development agreement with the City.

2.8 Nine of the Property Owners (Brooks Resources Corporation; West Bend Property Company, LLC; Broken Top Limited Partnership; Skyliner Summit Limited Partnership; Century Park LLC; Shevlin Heights LP; West Side Meadows, LLC; Central Oregon Community College; and River Bend Limited Partnership) have signed a Petition to Form West Side Intersection Local Improvement District (the "Intersection LID Petition"), which, among other things, allocates responsibility for constructing 10 of the Projects among the Property Owners signing the Intersection LID Petition.

2.9 Five of the Property Owners (Brooks Resources Corporation, West Bend Property Company, LLC, Skyliner Summit Limited Partnership, Western Communications, Inc., dba The Bulletin, and Bend-LaPine Administrative School District No. 1) have signed a Petition to Form Southern Bridge Local Improvement District (the "Bridge LID Petition"), which, among other things, allocates responsibility for the cost of constructing the Southern Bridge. The Property Owners have agreed upon a schedule for the completion of the Southern Bridge, and the amount to be contributed by each Property Owner, as provided in the Bridge LID Petition.

2.10 The Intersection LID Petition provides a schedule for commencement of construction of the Projects by the applicable Property Owner(s) and provides that a failure of a Property Owner to timely commence and complete its assigned Project(s) shall give the City the option to construct that Project under the Intersection LID Petition, assess that Property Owner's property for the cost of construction and impose liens against that Property Owner's property as permitted by law.

2.11 Execution of the Development Agreements, the Intersection LID Petition and the Bridge LID Petition by the City and all of the Property Owners, and the commitments created by these Consortium Agreements, will supply the realistic provision for transportation facilities necessary to support new development to be served by the West Side Transportation System. In return, the Property Owners shall be relieved from any further Off-Site Transportation Impact Mitigation in connection with that Property Owner's Proposed Development(s).

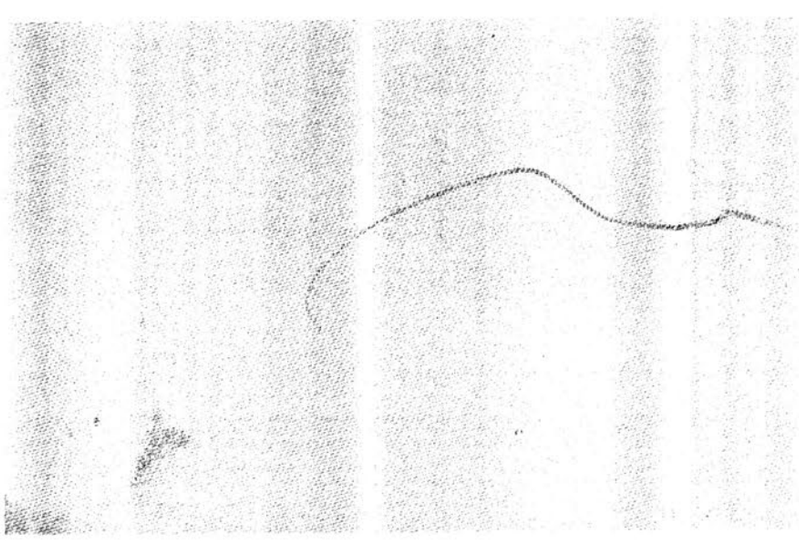
2.12 Each Property Owner participating in one or both LID Petitions acknowledges that its property will be specially benefited by the Projects listed in the Intersection LID Petition and the Bridge LID Petition that include its property. Each Property Owner who is participating in one or both LID Petition also acknowledges that all of the properties in the Intersection LID and all of the properties in the Bridge LID will be specially benefited by all of the Projects. Each Property Owner participating in the LID Petitions therefore consents to the formation of the LIDs that include the Property Owner's property, subject to the conditions set forth herein.

2.13 It is the intention of the Parties that the Consortium Agreements are each integral parts of a collective effort with the City, intended to accomplish the objectives set out in these recitals. Therefore, the Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be construed accordingly, and in the event of any conflict between the terms and conditions of the Development Agreements and the LID Petitions, the LID Petitions shall prevail.

2.14 It is recognized that the Proposed Development of Cascade Highlands, L.P. is located outside the city limits of the City. Consistent with the Joint Management Agreement between the City and Deschutes County, a three-party development agreement will be executed by the City, Deschutes County and Cascade Highlands, L.P. Cascade Highlands, L.P. will contribute $500,000 to the City for the construction of the Southern Bridge. The Parties recognize that Cascade Highlands, L.P. has substantially the same ownership as Broken Top Limited Partnership and Skyliner Summit Limited Partnership and that its contribution, considered as a part of the entire Consortium Agreements, addresses the impacts its Proposed Development will have on the West Side Transportation System.

2.15 None of the Property Owners shall be responsible for the performance of obligations of any other Property Owners unless expressly stated in the Consortium Agreements.

2.16 The Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be recorded and binding upon the Parties, their



successors and assigns, and shall be enforceable as covenants running with the land; and may be enforced by any remedy provided by law.

2.17 The Parties agree that their execution of these Consortium Agreements represents their acceptance of the purpose expressed in these recitals, and the ways and means of accomplishing this purpose. Towards this end, the Parties expressly agree:

2.17.1 The Parties shall cooperate in good faith to the extent reasonably practicable to accomplish the purpose of the Consortium Agreements. This shall include, but not be limited to, cooperation in the defense of these agreements and their performance.

2.17.2 Other non-consortium development served by the West Side Transportation System shall be expected to make realistic provision for the mitigation of its impacts on transportation facilities as required by law, and in addition to that made by the Property Owners.

2.17.3 The terms and conditions of these Consortium Agreements are intended as an implementation of, and are consistent with, the City's land use laws, rules and regulations, together with all applicable state and federal laws, rules, and regulations. This includes, but is not limited to, a recognition that the performance required of the Parties by these Consortium Agreements is roughly proportional to the impacts the Proposed Developments will have on the West Side Transportation System; and that the public and private responsibilities involved in remedying the deficiencies in the West Side Transportation System in order to support the Proposed Developments are fairly and properly allocated.

2.17.4 The Parties further express their commitment to the objectives of these Consortium Agreements by waiving all claims of any kind or nature resulting from the Parties' agreement to accomplish the purpose contemplated by the Consortium Agreements, or the ways and means provided for accomplishing that purpose in the Consortium Agreements. This includes, but is not limited to any constitutional or statutory claims (for the taking of property or otherwise), and any claims against the other Party, its elected officials, officers, employees, or agents. This waiver does not include claims based upon a failure to perform these Consortium Agreements as expressly required by their terms and conditions. This waiver shall not prevent land use appeals of approvals or denials of the Proposed Developments.

2.17(a) The Parties acknowledge that the lawsuit filed by the Central Oregon Builders Association (COBA) and served upon the City October 10, 2000

may affect the amount of System Development Charges (SDCs) available for reimbursement as provided in the Consortium Agreements. This lawsuit (COBA v. City of Bend, Circuit Court No. 00CV0454AB) seeks to reduce the Street SDC. If COBA succeeds, the $3,250 SDC anticipated by the Consortium Agreements may be reduced and SDC collections available for reimbursement may also be reduced. Because of this possibility, the Parties agree that the provisions of the Consortium Agreements relating to reimbursement (including but not limited to Sec. 12.5 and Exhibit D of the Development Agreements, Sec. 8 of the Southern Bridge LID, and Sec. 8 of the Intersection LID) are modified to provide that the SDC imposed by the City shall be the amount provided in the Consortium Agreements, or the highest amount permitted by law, if the highest amount permitted by law is less than the amount provided in the Consortium Agreements. It is the intent of the Parties that this Section has been added only to accommodate the possibility of a reduction created by the COBA lawsuit, and not for any other purpose. In the event that SDC collections are reduced as a result of the COBA lawsuit, the Consortium Agreements shall continue in full force and effect except as modified by this Section, and the Parties shall in good faith continue to cooperate in the achievement of the purpose of the Consortium Agreements, specifically including the reimbursement to consortium members from SDCs as provided in City of Bend Street Policy No. 5, Sec. 6 (which applies when the potential SDC collections from sole recovery areas will not be adequate to fund full reimbursement, and shared area recovery area collections are available to pay reimbursement not otherwise collectible from sole recovery areas).

2.18 These recitals are part of each of the Consortium Agreements.

3. Effective Date; Term of Agreement

3.1 This Agreement shall be effective upon adoption of the City ordinance approving this Agreement pursuant to ORS 94.508 (the "Effective Date"). The term (the "Term") of this Agreement shall commence on the Effective Date and shall continue for a period of four years unless terminated sooner in accordance with the provisions contained herein.

3.2 The Parties agree that the intent of the Parties and the essential purpose of this Agreement is to provide the City with a system-wide fix on the West Side in exchange for providing CENTURY PARK and the other Property Owners (a) the right to build their Proposed Development at the Maximum Density provided in Section 4.2 for a four-year period without additional Off-Site Transportation Impact Mitigation, subject to CENTURY PARK and the other Property Owners obtaining Final Approval through the normal City applications process, and (b) a four-year vesting of the land use standards which will be applicable to such applications. The right to the Proposed Development at the Maximum Density without additional

Off-Site Transportation Impact Mitigation and the vested standards during a full four-year period is critical to CENTURY PARK's willingness to enter into this Agreement. The Parties understand that CENTURY PARK may not receive the benefit of such intent and purpose during the initial Term of this Development Agreement if there are delays (a) caused by third-party appeals of this Development Agreement and/or the related LID Petitions; (b) caused by third-party appeals of CENTURY PARK's land use applications in connection with the Proposed Development; and (c) in the land use applications process. If as a result of such delays CENTURY PARK does not receive Final Approval within 6 months of the Effective Date, the Parties agree that they will negotiate in good faith an extension of the Term of this Development Agreement to assure that CENTURY PARK has a 4 year period following Final Approval to proceed with its Proposed Development under the terms and conditions of this Development Agreement. At no time shall the Term exceed four years.

4. Proposed Development

4.1 CENTURY PARK has filed land use application PZ 00-031 for a Type II site plan and design review approval of a master site plan for the development the Century Park Commercial Shopping Center. The site plan is proposed for development in phases. The master site plan will establish the layout and locations of buildings, parking areas, access location and circulation, landscaped areas and other site improvements. CENTURY PARK also intends to file land use and limited land use applications to establish the design and appearance of the shopping center buildings and signs. The proposed land use and limited land use applications do not involve the review of matters addressed by the master site plan. CENTURY PARK may also file land use applications to modify the master site plan, as needed, to meet tenant needs. The CENTURY PARK site plan seeks approval of a master site plan including a 161,184 square foot commercial retail shopping center that may consist of retail tenants, fast food restaurants, grocery stores, drive-in banks, video stores and office buildings. The project also includes a 752-space parking lot for the exclusive use of CENTURY PARK customers, tenants and employees and a ten-space parking area for the shared use of City of Bend park and ride program participants and CENTURY PARK customers. Collectively, the pending applications and the proposed applications referenced in this Section 4.1 are hereinafter referred to as the "Proposed Development."

4.2 For the purpose of determining the amount and kind of Off-Site Transportation Impact Mitigation required of CENTURY PARK's Proposed Development and the rights of CENTURY PARK vested herein, CENTURY PARK agrees that the density of its Proposed Development shall not exceed development that generates vehicle trips in excess of the 980 vehicle trips in the PM peak hour (weekday) calculated in the Kittelson traffic study for 161,184 square feet of projected commercial

retail uses (the "Maximum Density"). The Maximum Density has been used by the Parties in the Kittelson traffic study to determine the number of vehicle trips to be generated by the Proposed Development. To the extent that CENTURY PARK changes its mix of development to respond to market conditions but does not increase the number or distribution of estimated vehicle trips, CENTURY PARK shall not be deemed to have exceeded its Maximum Density.

5. Conditions to Parties' Obligations

5.1 CENTURY PARK's obligation to pay for Projects other than the Southern Bridge and the "Other Improvements" listed in **Exhibit C** under this Agreement is also subject to the terms and conditions provided in the Intersection LID Petition.

5.2 The City's obligations hereunder are subject to CENTURY PARK signing the Intersection LID Petition.

5.3 Both Parties' obligations are subject to Deschutes County entering into a Development Agreement with Cascade Highlands, L.P. consistent with the recitals herein.

6. Permitted Uses. The CENTURY PARK Property is within the CH Zone, Highway Commercial, pursuant to the Bend Zoning Code. Notwithstanding the content of any later-adopted zoning or development ordinance, the land use standards and criteria that apply to approval of the Proposed Development during the period of this Agreement shall be subject to the BZO as the same exist as of the Effective Date.

7. Density or Intensity of Use. Land use approval of the Proposed Development during the period of this Development Agreement shall be subject to the following standards, which exist as of the Effective Date, notwithstanding the content of any subsequently adopted zoning or development ordinance:

7.1 The applicable maximum density provisions of the BZ0 and the Bend Subdivision Ordinance ("BSO") as the same exist as of the Effective Date.

7.2 Any minimum lot area, minimum lot width, minimum lot depth, yard requirements, coverage or setback requirements in the CH zoned portion of the CENTURY PARK Property shall be based upon BZO Section 10.10.16(5) as the same exists as of the Effective Date.

8. Maximum Height and Size of Proposed Structures. Section 10.10.16 of the BZO, as the same exists as of the Effective Date, governs the maximum height and size of proposed structures on the CENTURY PARK Property. Section 10.10.16(4) provides that any building over 30 feet in height shall require a conditional use permit. Subject to the lot coverage and setback requirements discussed in Section 10.10.16(5), there are no other size limitations on construction in the CH zone.

9. Provisions for Reservation or Dedication of Land for Public Purposes. CENTURY PARK shall, upon receipt of approval for its master site plan, dedicate approximately 9810 square feet of right-of-way from the CENTURY PARK Property, no cost to the City, for the construction of the 14th and Simpson Avenue intersection improvement Project in the approximate location shown on the Century Park master site plan filed in City of Bend Planning Department File #PZ00-031. Except as provided above, CENTURY PARK shall have no other obligations to make off-site reservations or dedication of land for public purposes (including easements and/or licenses) in connection with CENTURY PARK's Proposed Development. The necessity and/or specifics of any future on-site reservations or dedications of land for public purposes (including easements or licenses) in connection with CENTURY PARK's Proposed Development will be determined by the City in reviewing CENTURY PARK's applications and applying City standards and ordinances in effect as of the Effective Date.

10. Fees and Charges

10.1 When land within the Proposed Development is developed, the City shall collect System Development Charges ("SDC") within the sole recovery area established for the Proposed Development in accordance with the terms of Section 12.5.

10.2 CENTURY PARK and its successors and assigns shall pay all applicable fees and charges then in effect for a particular application, except where the purpose or effect of such fees or charges is Off-Site Transportation Impact Mitigation. In no event shall this Section 10 be construed so as to relieve CENTURY PARK or any purchaser of any portion of the CENTURY PARK Property from any obligation it may have to pay street SDCs.

11. Schedule and Procedure for Compliance Review. Commencing on the first anniversary of the Effective Date, CENTURY PARK shall prepare annual written reports of its compliance with the terms of this Agreement to the City. Such reports shall include an update as to compliance with all schedules set forth herein. After receipt of such reports, the City may request such additional or backup information as it deems reasonably necessary.

12. Responsibility for Providing Infrastructure and Services

12.1 Consistent with the Maximum Density rights vested in Section 4 and the development standards vested in Sections 6, 7, 8 and 10, CENTURY PARK agrees to make certain off-site street and transportation-related improvements. Subject to the terms provided herein, CENTURY PARK agrees that it shall construct and/or provide funding toward the construction of the following off-site Projects:

12.1.1 Subject to Section 12.3, construct a roundabout at the intersection of 14th and Simpson Avenue. The Construction Commencement Deadline is December 31, 2000. Such roundabout shall be constructed in general conformance with the engineering drawings attached to the Intersection LID Petition;

12.1.2 Dedicate right-of-way, at no cost to City, from the CENTURY PARK Property for the construction of the roundabout described in Section 12.1.1, above, in the amount and in the location shown on the master site plan application in File PZ 00-031.

12.1.3 Subject to the terms provided herein, CENTURY PARK agrees that it shall construct those Other Improvements identified on the attached **Exhibit C**.

As used herein, "Construction Commencement Deadline" shall mean the date by which the Responsible Property Owner(s) shall have commenced preliminary design and engineering work.

12.2 The City acknowledges that (a) construction of the Southern Bridge is subject to objections raised by third parties which could interfere with that Project; (b) construction of any of the Projects could be delayed as a result of the City's failure to timely acquire necessary rights-of-way, (c) construction of any of the Projects could be delayed as a result of objections raised by third parties; and (d) construction of any Projects could be delayed by difficulties in obtaining approvals from the Oregon Department of Transportation ("ODOT") and any other federal, state or local regulatory body. The City agrees that none of (a), (b), (c) or (d) shall be a basis for denying or delaying the approval of any of CENTURY PARK's land use applications in connection with the Proposed Development, grounds for declaring CENTURY PARK to be in default, or a basis for exacting additional Off-Site Transportation Impact Mitigation from CENTURY PARK. Subject to the terms of the applicable LID Petition(s), the City shall, however, have the right to construct Projects and assess the Responsible Property therefore according to the schedules in the LID Petitions, irrespective of whether CENTURY PARK has received Final Approval. In the event of (b), the schedule for construction of the applicable Project as set forth in the applicable LID Petition shall be delayed by the same period of time by which the right-of-way acquisition is delayed.

12.3 The Intersection LID Petition includes plans and drawings for the Projects identified therein. Estimates have been prepared of the cost of constructing them. CENTURY PARK shall bear the risk that such costs may increase between the date of this Development Agreement and the date that construction commences; provided, however, the City shall bear

any additional costs, which result from any change in design required by the City or ODOT.

12.4 The City agrees that the Projects and Other Improvements to be provided pursuant to this Development Agreement, the Bridge LID Petition and the Intersection LID Petition shall be deemed to satisfy CENTURY PARK's obligation to provide Off-Site Transportation Impact Mitigation in connection with the Maximum Density of the Proposed Development set forth in Section 4 so that, with respect to off-site transportation obligations, the Proposed Development is vested. The City shall require no other off-site transportation-related exactions nor require any further traffic studies relating to Off-Site Transportation Impact Mitigation in connection with or as a condition to the approval of CENTURY PARK's Proposed Development. This shall include, but not be limited to, construction of off-site streets or intersections, improvement of off-site intersections or other existing off-site transportation facilities, construction of off-site bicycle paths or pedestrian trails and dedication of off-site rights-of-way for any of the above-identified purposes. Notwithstanding the foregoing, CENTURY PARK's rights which are vested herein are dependent upon the Maximum Density of the Proposed Development set forth in Section 4 which is tied to the estimated number of vehicle trips to be generated by such Maximum Density. The Parties hereto understand that the mix of uses that make up the Maximum Density could change based on market forces. However, to the extent that CENTURY PARK submits land use applications that would increase the number of vehicle trips to be generated by the Proposed Development, the Proposed Development may be subject to additional off-site transportation exactions based upon projected transportation impacts on City transportation facilities from the increased density, consistent with City policies and regulations. The Parties agree that this Development Agreement does not, however, resolve any issue relating to on-site transportation requirements and that on-site transportation issues are reserved for future discretionary land use approval, and that the City may require further studies and reviews relating to on-site traffic.

12.5 The City and CENTURY PARK agree that upon execution of this Agreement that the property identified in **Exhibit B** shall be established as the sole recovery area for the collection of transportation system development charges ("SDC"). During the Term of this Agreement, the City shall collect SDCs at the greater of the rates determined in accordance with the SDC rates attached as **Exhibit D**, or any future rates adopted by the City. The City is currently evaluating SDC rates for commercial and industrial development. If such rates are changed prior to December 31, 2000, such change shall replace **Exhibit D** to this Agreement. Otherwise, until the earlier of the expiration of this Agreement or the date at which the Property Owner has received full reimbursement from SDCs, the SDC rate for those SDCs collected from

the sole recovery area will not decrease, but shall increase if and when City-wide SDC rates increase.

12.6 The City shall use the SDC revenue collected from the sole recovery area to reimburse CENTURY PARK for the cost of constructing the projects (other than the Southern Bridge) identified in Section 12.1 above at a rate of 100% of all qualified improvements pursuant to Street Policy 5 (**Exhibit E**) as amended.

12.7 The Parties agree that there are certain actions or improvements that must be made in conjunction with the Projects and Other Improvements to be completed by the Property Owners to provide adequate facilities to support development which will impact the City's West Side Transportation System. These actions or improvements are not a part of the Property Owners' obligations and the City agrees to assure that such actions are taken and such improvements are made. As referenced in the supporting traffic studies, such actions and improvements include, but are not limited to, acquiring rights-of-way for those Projects for which the Property Owners do not already own the necessary rights-of-way, obtaining permits necessary for construction of the Projects, expanding some of the Projects as necessary from single-lane roundabouts to double-lane roundabouts and completing bicycle lanes where gaps exist along Shevlin Park Road. In no event shall the City be obligated to expend funds to take such actions or complete such improvements; the City may assure their completion by any appropriate means, including, without limitation, making them conditions to other future development, paying for them with systems development charges, paying for them with grants and/or including them in future capital improvement plans.

13. Assumptions Relating to City's Ability to Serve Development; Continuing Effect of Agreement

13.1 ORS Section 94.504(6) requires that a Development Agreement "state the assumptions underlying the agreement that relate to the ability of the city…to serve the development."

13.2 The facts set forth in the Recitals are included in the assumptions underlying this Agreement.

13.3 The Parties operate under the assumption that construction of the Projects (including the Southern Bridge) will provide adequate off-site transportation infrastructure and facilities to support CENTURY PARK's Proposed Development. The adequacy of transportation facilities are determined with reference to the standards in effect as of the Effective Date.

13.4 In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with the Agreement impossible or unlawful, the Parties will attempt to give effect to the remainder of the Agreement, but only if the purposes set out in the recitals can be accomplished and such effect does not prejudice the substantial rights of either Party under the Agreement.

13.4.1 If the substantial rights of either Party are prejudiced by giving effect to the remainder of the Agreement, then the Parties shall negotiate in good faith to revise the Agreement to give effect to its original intent.

13.4.2 If the Parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either Party may request that an arbitration panel determine an equitable effect for the remainder of the Agreement. The arbitration panel shall consist of 3 arbitrators, one of which shall be selected by CENTURY PARK, one of which shall be selected by the City, and the third of which shall be selected by agreement of the arbitrators selected by CENTURY PARK and the City. If the 2 arbitrators are unable to agree upon the selection of a third arbitrator, then the third arbitrator shall be selected by the Presiding Judge of the Circuit Court, 11th Judicial District, Deschutes County, Oregon.

13.4.3 If, because of a change in policy, law or circumstances, the Agreement fails of its essential purposes (construction of all of the transportation system improvements called for in the Intersection LID Petition, the Bridge LID Petition and this Development Agreement; vesting of allowed uses and limitations on development conditions; vesting of maximum off-site transportation exactions; and vesting of maximum permissible densities in connection therewith), then the Parties shall be placed into their original position to the extent practical.

13.4.4 As used herein, however, "change in circumstance" does not include changes in local government land development or land division regulations.

13.5 To the extent any local rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis that is not, in the reasonable discretion of CENTURY PARK, inconsistent with the substance, purpose, or conditions of this Development Agreement, then the local rule, ordinance, regulation or policy shall be applicable.

14. Assignability of Agreement. This Agreement shall be fully assignable, in whole or in part, by either Party and shall bind and inure to the benefit of the Parties and their respective successors and assigns. If any portion (other than lot sales to

individuals or builders) of the CENTURY PARK Property is sold, the duties, rights and interests of CENTURY PARK under this Agreement shall become the duties, rights and responsibilities of the purchaser and CENTURY PARK. Notwithstanding the foregoing, no purchaser of an individual lot(s) shall have any rights hereunder.

15. Future Discretionary Approvals.

15.1 The City agrees to cooperate with CENTURY PARK in securing all future necessary land use permits and approvals for the Proposed Development needed from entities other than the City.

15.2 The following future discretionary approvals are the currently anticipated approvals that will be required for the Proposed Development:

15.2.1 Approval of the master site plan and design review application for the Century Park Commercial Center layout currently pending approval by City; and

15.2.2 Approval of site plan and design review applications for buildings, community amenities and signs in the Century Park Commercial Center.

15.3 The Parties acknowledge that the provisions of CENTURY PARK's land use application, other than the provisions relating to Off-Site Transportation Impact Mitigation, shall be the subject of future discretionary approvals by the City. The question of whether the City may approve the applications referred to in this Agreement, including the provisions of the land use applications referred to in Sections 4 (Proposed Development), 6 (Permitted Uses), 7 (Density or Intensity of Use), and 8 (Maximum Height and Size of Proposed Uses), or any other part of CENTURY PARK's land use application are reserved for future discretionary approvals, and are not resolved by the terms of this Agreement, the Intersection LID Petition or the Bridge LID Petition. Nothing in this Agreement resolves, adjudicates or dispenses with the responsibilities of CENTURY PARK or its Proposed Development for impacts or conditions of approval other than Off-Site Transportation Impact Mitigation, and nothing herein operates as an approval (or preliminary approval) by City of CENTURY PARK's land use applications except as to Off-Site Transportation Impact Mitigation.

15.4 In the event of a conflict between the terms of this Development Agreement, and the terms of either the Intersection LID Petition or the Bridge LID Petition, then the terms of the Intersection LID Petition or the Bridge LID Petition shall control.

15.5 The discretionary approvals shall be reviewed by the City in the same manner and subject to the same procedures and hearings requirements as

all other similar land use applications filed at the time of the Effective Date.

16. Schedule. CENTURY PARK shall commence construction of the Projects assigned to CENTURY PARK as of the date set forth in the relevant LID Petition(s) and shall complete construction of each Project no later than the date established in the relevant LID Petition(s). Subject to obtaining timely approvals of its Proposed Development, Century Park shall commence construction of its Proposed Development immediately following site plan approval and that its Proposed Development shall be completed within four (4) years.

17. Defaults

17.1 A breach of a material provision of any of the Consortium Agreements, whether by action or inaction of a Party which continues and is not remedied within thirty (30) days after the other Party has given notice specifying the breach shall constitute a default by a Party. If the breach is of such a nature that it cannot reasonably be cured within such thirty-day period, the cure period shall be extended to such amount of time as is reasonable but only if the breaching Party promptly commences, and thereafter diligently prosecutes, such cure.

17.2 The exercise by either Party of any one or more of such remedies available to it shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

17.3 Notwithstanding the foregoing, in the event that CENTURY PARK fails to construct (or fund its share of the costs of construction in the case of the Southern Bridge) the Projects identified in Section 12.1 above, by the applicable deadlines set forth in the Intersection LID Petition or the Bridge LID Petition, as applicable, then CENTURY PARK shall not be deemed in default hereunder, but the City shall have the rights set forth in the Intersection LID Petition or the Bridge LID Petition to construct the traffic improvement facilities and to assess the Responsible Property as set forth in those petitions.

18. Release of Development Agreement. The City shall release developed lots from this Development Agreement upon the request of CENTURY PARK provided that the terms and conditions of this Development Agreement have been performed as they relate to the lot to be released.

19. Force Majeure

19.1 In the event that any Party (the "Delayed Party") is delayed or prevented from performing any of its obligations under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials,

contractors, professionals, inability to obtain utilities or failure of utilities, laws or other governmental requirements, riots, war, or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

19.2 The City's right under the Intersection LID Petition or the Bridge LID Petition to construct traffic system improvements shall not be affected by the provisions of Subsection 19.1.

20. Notices. Any notice, demand, request, approval, consent, or other communication (collectively referred to as a "Notice") concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other Party at the address set forth below. Any Notice shall be given by either: (i) personal delivery in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Any Party may change any address for the delivery of Notice to such Party, by giving Notice in accordance with the provisions of this Section. The attorneys for the Parties may give any Notice.

Notices Addresses:

If to CENTURY PARK:
Century Park LLC
2718 NW Nightfall Circle
Bend, OR 97701
Attn: Bob Dietz

With a copy to:
Liz Fancher, Attorney
644 NW Broadway Street
Bend, OR 97701

If to City:
City of Bend
Development Services
710 N.W. Wall
Bend, OR 97701
Attn: Development Services Director

21. Miscellaneous

21.1 City Funding. The Parties agree that any provision herein which requires the City to expend funds is contingent upon future appropriations as part of the City budget process as provided in ORS 94.504(5). Nothing herein requires the City to appropriate such funds.

21.2 Waivers. No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing

signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

21.3 Entire Agreement/Modifications. This Agreement, together with the Intersection LID Petition and the Bridge LID Petition (along with all exhibits incorporated therein) (collectively referred to as the "Consortium Agreements") constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto. This Development Agreement, the Intersection LID Petition and the Bridge LID Petition are parts of a whole transaction between the Parties and shall be construed as a whole transaction.

21.4 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

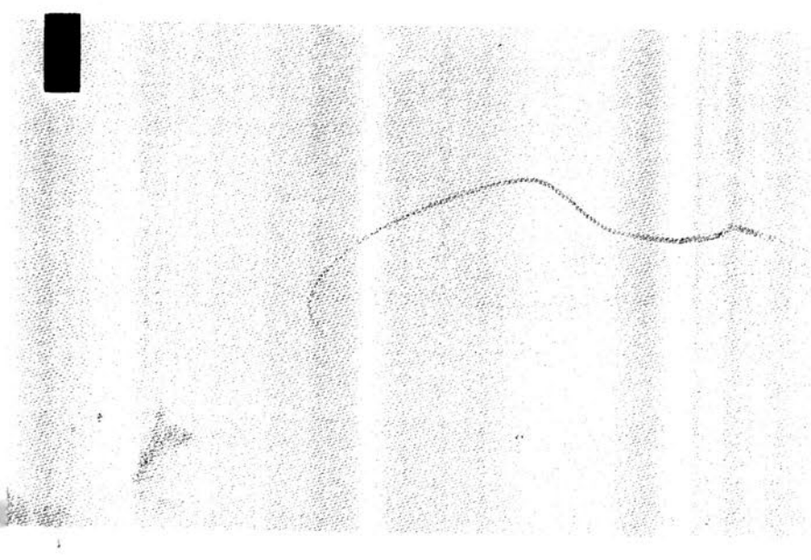
21.5 Captions. The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the Parties.

21.6 Gender/Singular/Plural. Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all the Parties and all circumstances, except where the context of this Agreement clearly dictates otherwise.

21.7 Severability. Subject to Section 13.4, the unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

21.8 Time of Essence. Time is of the essence of this Agreement.

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



IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

"CENTURY PARK" Century Park LLC,
an Oregon Limited Liability Company

By: _____
Name: Bob Deetz
Title: Manager

"CITY" CITY OF BEND, an Oregon Municipal Corporation,

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before on November 2, 2000 by Bob Deetz as Manager of Century Park, LLC.

OFFICIAL SEAL
CYNTHIA M SMITH
NOTARY PUBLIC-OREGON
COMMISSION NO. 335405
MY COMMISSION EXPIRES JUNE 8, 2004

Cynthia M. Smith
Signature of Notarial Officer
My Commission Expires: 6/8/04

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before on November 6th, 2000 by Larry Patterson as City Manager of the City of Bend.

OFFICIAL SEAL
PATRICIA ANNE SMILEY STELL
NOTARY PUBLIC-OREGON
COMMISSION NO. 305227
MY COMMISSION EXPIRES NOV. 22, 2001

Patricia Anne Smiley Stell
Signature of Notarial Officer
My Commission Expires: Nov. 22, 2001

Exhibit A
Property Owners

1. Brooks Resources Corporation;
2. West Bend Property Company, LLC;
3. Broken Top Limited Partnership and Broken Top Development, LLC;
4. Skyliner Summit Limited Partnership and Broken Top Development, LLC;
5. Century Park LLC;
6. Shevlin Heights Limited Partnership;
7. River Bend Limited Partnership;
8. Central Oregon Community College;
10. Bend LaPine Administrative School District No. 1;
12. Westside Meadows, LLC;
13. Western Communications Inc., dba The Bulletin; and
14. Cascade Highlands Limited Partnership;

Exhibit B

LEGAL DESCRIPTION (CENTURY PARK)

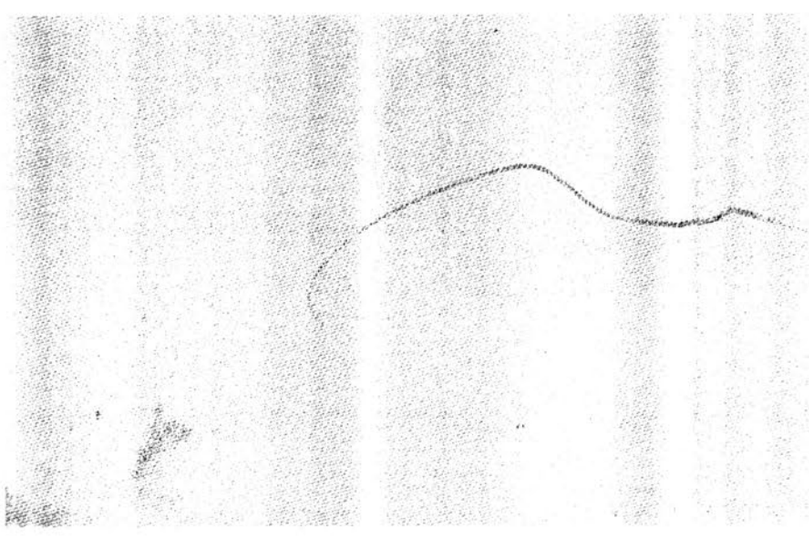
PARCEL 1: A tract of land located in the East Half of the West Half of the Northeast Quarter (E½ W½ NE¼) of Section Six (6), TOWNSHIP EIGHTEEN (18) SOUTH, RANGE TWELVE (12), EAST OF THE WILLAMETTE MERIDIAN, Deschutes County, Oregon, more particularly described as follows:

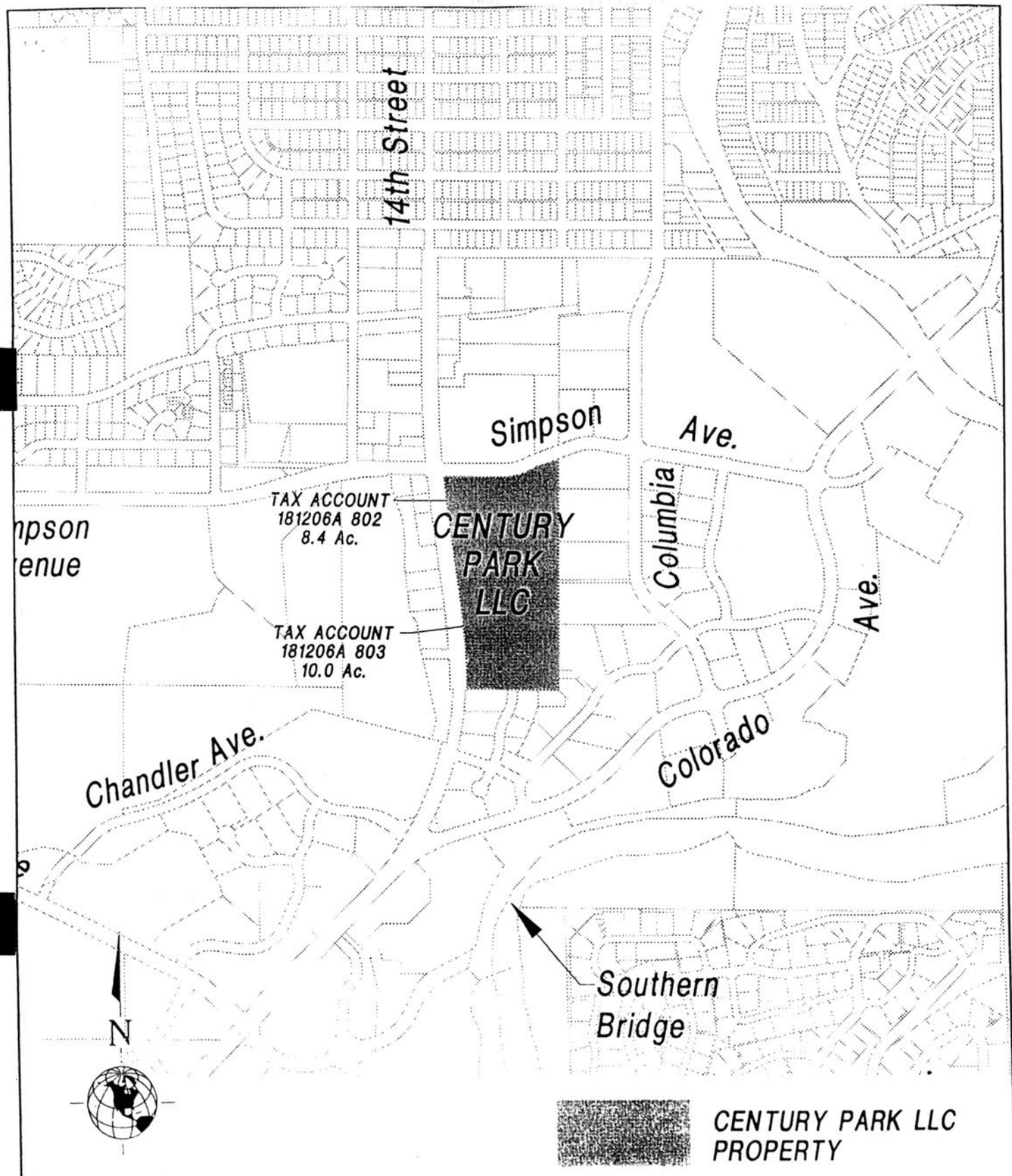
Commencing at the Northeast corner of said Section 6; thence South 47° 54' 49" West, 1772.86 feet to the point of beginning; thence South 00° 07' 52" East, 676.61 feet; thence West, 616.22 feet; thence along the East right of way of the Cascade Lakes Highway, North 07° 51' 44" West, 242.12 feet; thence commence a partial spiral curve right offset 50.00 feet from a 2.00°, 400.00 foot standard highway spiral whose offset length is 300.21 feet (chord bears North 07° 29' 04" West, 300.20 feet); thence departing from the East right of way of the Cascade Lakes Highway, East 352.28 feet; thence along a 382.00 foot radius curve left, 218.68 feet (chord bears North 73° 36' 02" East, 215.70 feet); thence North 57° 12' 04" East, 100.62 feet; thence along a 354.98 foot radius curve right 49.25 feet (chord bears North 61° 10' 32" East, 49.21 feet to the point of beginning).

EXCEPTING THERERFROM that portion conveyed to the City of Bend for street purposes by Dedication Warranty Deed recorded August 4, 1981 in Book 347 Page 49 in Deschutes County Records.

PARCEL II: A tract of land located in the East Half of the West Half of the Northeast Quarter (E ½ W ½ NE ¼) of Section Six (6), TOWNSHIP EIGHTEEN (18) SOUTH, RANGE TWELVE (12), EAST OF THE WILLAMETTE MERIDIAN, Deschutes County, Oregon, more particularly described as follows:

Commencing at the Northeast corner of said Section 6; thence South 35° 10' 19" West, 2281.39 feet to the point of beginning; thence South 00° 07' 59" East, 753.42 feet; thence North 89° 37' 46" West, 551.24 feet to the East right of way of the Cascade Lakes Highway; thence along a 1959.86 foot radius curve left, 26.87 feet (chord bears North 01° 39' 53" East, 26.87 feet); thence commence a spiral curve left offset 50.00 feet from a 9.00°, 600.00 foot standard highway spiral whose offset length is 608.44 feet (chord bears North 4° 50' 34" East, 607.77 feet); thence North 07° 51' 44" West, 118.51 feet; thence departing from the East right of way of the Cascade Lakes Highway, East 616.22 feet to the point of beginning.





DATE	BY	REVISION	CHK

DRAWN BY	JAM
DESIGNED BY	JAM
CHECKED BY	KSD
APPROVED BY	KSD

W&H PACIFIC
920 Emkay, Suite C-100
Bend, Oregon 97702-1041
(541)388-4250
(541)388-4259 Fax
Planners · Engineers · Surveyors · Landscape Architects

West Side Transportation Consortium

Century Park LLC

Property Exhibit Map

EXHIBIT B

BEND/DESCHUTES OREGON

SCALE:	PROJECT NO	FILE NAME:	
1"=800'	02 2452 0001	WSTCPROP.DWG	1/1

PLOT DATE: 10/16/2000

LAST EDIT:

Exhibit C
Other Improvements

The following are the "Other Improvements" referenced in the Development Agreement between Century Park LLC and the City of Bend that are provided to offset off-site traffic impacts of the Century Park development:

1. Dedicate right-of-way along the frontage of the subject property along Century Drive and Simpson Avenue to City standards.

2. Construct the Century Drive frontage improvements that adjoin the Property and that are proposed in the pending Century Park site plan application (File PZ00-031) subject to being built to City standards and subject to final engineering plans. These frontage improvements are:

   A. Sidewalks along property frontage.
   B. Curbs along property frontage.
   C. Stormwater drainage, catch basins and gutters, as shown on the site plan.
   D. Planting strip, as shown on the site plan.
   E. Access driveway improvements and pedestrian crossings at driveways.
   F. Pedestrian walkways within the public right-of-way, in addition to standard City sidewalks, that link to the proposed system of on-site pedestrian walkways.
   G. Bicycle lane improvements.
   H. Reserve an area along the Century Drive right-of-way for a future City of Bend transit system stop, in the location shown on the site plan.

3. Construct the Simpson Avenue frontage improvements that adjoin the Property and that are proposed in the pending Century Park site plan application (File PZ00-031) subject to being built to City standards and subject to final engineering plans. These frontage improvements are:

   A. Sidewalks along frontage.
   B. Curbs along frontage.
   C. Stormwater drainage.
   D. Planting strip.
   E. Access driveway improvements and pedestrian crossings at driveways.
   F. Pedestrian walkways within the public right-of-way, in addition to standard City sidewalks, that link to the proposed system of on-site pedestrian walkways.
   G. Bicycle lane improvements, as proposed in the site plan application.

4. Provision of adequate right-of-way and right-of-way development accommodations to support transit, such as, areas for bus stops, shelters or other similar facility as deemed appropriate by the City during site plan review.

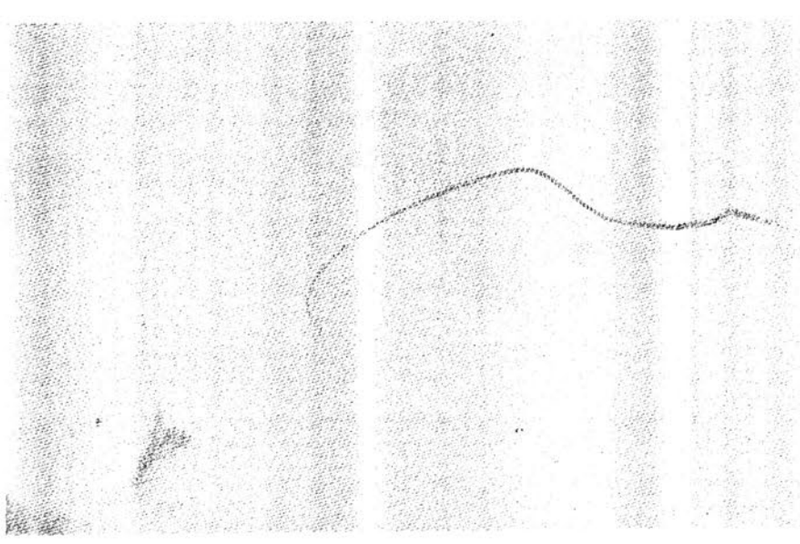


Exhibit D

STREET SDCS

SDC – Trip Ends X Trip Length / 2 / 7200 X $889,160 (lane mile cost)

Category	Daily Trip ends per unit	Units	Chargeable % reduction	Conversion: Daily trip ends per unit	Aver. RT trip length (miles)	100% SDC per unit
Industrial						
Industrial - general	6.97	T.G.S.F.	0.00%	6.97	6.2	$2,668
Industrial - batch plant	100.00	unit	0.00%	100.00	6.2	$38,283
Manufacturing - bulky items	1.02	employees	0.00%	1.02	6.2	$390
Manufacturing - high tech-research & d	2.09	employees	0.00%	2.09	5.0	$645
Service and repair	5.60	T.G.S.F.	0.00%	5.60	6.0	$2,075
Residential						
Single Family	9.57	Dwelling Unit	0.00%	9.57	5.5	$3,250
Apartments	6.63	Dwelling Unit	0.00%	6.63	5.5	$2,252
Condominium	5.86	Dwelling Unit	0.00%	5.86	5.5	$1,990
Manufactured Home	4.81	Dwelling Unit	0.00%	4.81	5.5	$1,634
Senior Care	2.15	Dwelling Unit	0.00%	2.15	5.5	$730
PUD - residential	7.44	Dwelling Unit	0.00%	7.44	5.5	$2,527
Lodging						
Motel	9.11	Room	0.00%	9.11	5.9	$3,319
Hotel	6.95	Room	0.00%	6.95	5.9	$2,532
Recreational						
Golf Course	5.04	Acre	0.00%	5.04	7.5	$2,334
Bowling Alley	33.33	T.G.S.F.	0.00%	33.33	7.5	$15,435
Theater w/Matinee	0.29	Seat	0.00%	0.29	7.5	$134
Arena	33.33	Acre	0.00%	33.33	7.5	$15,435
Community Center	22.88	T.G.S.F.	0.00%	22.88	7.5	$10,596
Athletic Facility	2.30	T.G.S.F.	50.00%	1.15	5.0	$355
Spa	18.00	per station	36.00%	11.52	3.0	$2,134
Institutional						
Elementary School	1.02	Student	0.00%	1.02	3.8	$239
High School	1.79	Student	0.00%	1.79	3.8	$420
Community College	2.38	Student	0.00%	2.38	3.8	$558
Community College Library	45.50	T.G.S.F.	80.00%	9.10	3.8	$2,135
Community Library	45.50	T.G.S.F.	60.00%	18.20	3.8	$4,270
Church	9.11	T.G.S.F.	0.00%	9.11	3.8	$2,138
Daycare	4.52	Student	60.00%	1.81	3.8	$424
Medical						
Hospital	16.78	T.G.S.F.	0.00%	16.78	5.0	$5,181
Medical/Dental Clinic	36.13	T.G.S.F.	0.00%	36.13	5.0	$11,155
Specialty Medical	23.79	T.G.S.F.	20.00%	19.03	5.0	$5,876
General Office Bldg.						
Size < 50,000	15.29	T.G.S.F.	0.00%	15.29	6.2	$5,854
50,000<= Size < 175,000	10.08	T.G.S.F.	0.00%	10.08	6.2	$3,859
175,000<= Size	7.78	T.G.S.F.	0.00%	7.78	6.2	$2,978
Government						
Gov't Office Bldg.	68.93	T.G.S.F.	0.00%	68.93	6.2	$26,389
Retail						
General Retail	35.15	T.G.S.F.	47.00%	18.63	4.0	$4,601
Gasoline/Service Station	168.56	Pump Fcns	50.00%	84.28	4.0	$20,816
Convenience Market	737.99	T.G.S.F.	61.00%	287.82	4.0	$71,087
Shopping Center:						
Size < 50,000	87.31	T.G.L.S.F.	34.00%	57.62	4.0	$14,233

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Exhibit D

50,000<= Size < 175,000	43.23	T.G.L.S.F.	34.00%	28.53	4.0	$7,047
175,000<= Size	28.98	T.G.L.S.F.	34.00%	19.13	4.0	$4,724
Restaurant - High turnover/Drive throug	238.80	T.G.S.F.	46.00%	128.95	4.0	$31,850
Restaurant - Specialty Food Item Servic	36.81	T.G.S.F.	50.00%	18.41	4.0	$4,546
Restaurant - Dinner only	10.00	T.G.S.F.	5.00%	9.50	4.0	$2,346
Restaurant - Lunch/Dinner	25.00	T.G.S.F.	15.00%	21.25	4.0	$5,249
Restaurant - Breakfast/Lunch/Dinner	158.00	T.G.S.F.	40.00%	94.80	4.0	$23,415
Supermarket w/Strip mall	111.51	T.G.S.F.	36.00%	71.37	4.0	$17,627
Specialty / Neighborhood Grocery	24.36	T.G.S.F.	20.00%	19.49	3.0	$3,610
Drinking Establishment	12.00	T.G.S.F.	20.00%	9.60	3.0	$1,778
Banks - w/Drive through	265.21	T.G.S.F.	47.00%	140.56	4.0	$34,717

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Exhibit E
Street Policy No. 5

City of Bend
Street Policy 5
Street System Development Charge Credit and Reimbursement

Section 1. **Purpose**:
It shall be the policy of the City of Bend that expansions to the City's street system shall only be accomplished as directed and approved by the City. The timing and financing of system expansions shall be as provided in this policy.

Expansions to the street system that involve the construction of collector and/or arterial streets shall be accomplished pursuant to the City's Comprehensive Plan. It is anticipated that these improvements will be financed by funds generated from systems development charges (SDC's), other resources or by developers as provided below. The timing of improvements to be constructed by the City will be subject to the availability of City funds to finance them.

Section 2. **Procedure**:

Developers who wish to expand the street system by dedicating land and/or constructing streets may do so according to the following procedure:

2.1 Prior City approval will be required.

2.2 An executed agreement between the developer and the City shall be required and shall set forth the development requirements as well as an SDC credit and/or SDC reimbursement, if available.

2.3 All improvements must be constructed according to applicable City Standards, rules and regulations, including the Comprehensive Plan, as determined by the City Engineer.

2.4 All of the cost of such improvements shall be paid by the developer.

2.5 The developer's costs associated with the construction of these qualified public improvements may be eligible for SDC credit and/or SDC reimbursement as provided in this policy.

Section 3. **SDC credit**:

The SDC credit shall be determined first and shall:

3.1 Only be available for qualified public improvements as defined in Oregon Revised Statutes (ORS) 223.304(3) (i.e., improvements that are identified in the City's Comprehensive Plan).

3.2 Be a credit against only the improvement fee portion of the SDC. The improvement fee portion against which the credit may be applied shall be calculated by using the methodology as it is employed in the City's SDC Ordinance and Resolution. If less than the maximum allowable SDC is charged in the Resolution, the percentage of the maximum allowable SDC used shall also be used to determine that portion of the improvement fee against which the SDC credit can be applied.

3.3. The amount of the credit shall not exceed the improvement fee as calculated above. e.g., if a developer incurs $100,000 for collector and/or arterial street improvement costs of which $70,000 is related to qualified improvements, and, if the development has 20 lots and the SDC improvement fee is 70% of the maximum allowable SDC improvement fee of $1,149, or $804, the SDC credit would be $16,080 (20 x $804). If the development included 100 lots the SDC credit would be limited to $49,000 as the SDC improvement fee times the number of lots (100 x 804 = $80,400) exceeds the qualified costs subject to the SDC credit times the percentage of the maximum allowable SDC improvement fee. ($70,000 x .70% = $49,000)

Section 4. **SDC Reimbursement**:

In addition to the SDC credit a developer may be eligible for SDC reimbursement. SDC reimbursement shall be determined as follows:
The maximum SDC reimbursement shall be limited to the collector and/or arterial street improvement costs expended by the developer, as determined by the City Engineer, times the percentage of the maximum allowable SDC in place at the time of executing an agreement with the City, less any SDC credit related to the improvements. There shall be no SDC reimbursement if the SDC credit exceeds the maximum SDC reimbursement. Qualified costs of collector and/or arterial street improvements shall include actual construction costs, exclusive of right-of-way and preliminary engineering costs.

Section 5. **SDC Credit and Reimbursement-Collection and Payment Procedures:**

SDC credit and SDC reimbursement will be collected and paid as follows:

5.1 The current SDC, as established by the Bend City Council, shall be collected by the City on all building permits issued by the City or with other agreements as applicable. The SDC may have two components; an improvement fee for future

system improvements and a reimbursement fee for existing or in-progress improvements.

5.2 SDC improvement fees collected by the City shall be paid to developers and retained by the City in accordance with this policy.

5.3 SDC reimbursement fees collected by the City shall be retained by the City to reimburse the City for previous system expenditures, related debt service or future improvements.

Section 6. **Shared/Sole Recovery Areas:**

6.1 The area served or to be served by the City's street system within the City limits will be categorized as either shared recovery area or as sole recovery area. Sole recovery areas shall be determined by the City Engineer and shall include only the developer's property that is to be served by the approved facilities constructed by the developer. Shared recovery area shall include all area served or to be served by the City's street system that is not otherwise designated as sole recovery area within the City limits.

6.2 SDC improvement fees collected from each sole recovery area shall be applied as follows:

6.2.1 SDC credit due the developer of the sole recovery property, until paid.

6.2.2 SDC reimbursement due the developer of the sole recovery property, until paid or until the 10 year recovery period expires.

6.2.3. Once items 1 and 2 are met the sole recovery property shall become shared recovery area.

6.3 SDC improvement fees collected from the shared recovery area shall be applied as follows:
To developers with outstanding SDC credit and SDC reimbursement balances, including the City, in proportion to the outstanding SDC credit and SDC reimbursement balances, at the end of the repayment period, of all developers, including the city participating in the shared recovery area.

6.4 SDC improvement fees collected and paid to developers from the shared recovery area shall be limited to the amount of SDC credit and/or SDC reimbursement that would not otherwise be collectible from SDC improvement fees within a developer's sole recovery area.

6.5 There shall be no payment made, for either the SDC credit or SDC reimbursement, to the developer from any SDC improvement fee collected within the sole recovery area or shared recovery area until the improvements are accepted by the City.

6.6 There shall be no SDC credit or SDC reimbursement paid after 10 years from the date the qualified improvements are accepted by the City.

6.7 A sole recovery area shall become shared recovery area when the developer has been paid the SDC credit and/or SDC reimbursement in full, or the SDC credit is paid in full and the 10 year SDC reimbursement period expires.

Section 7. Payment Schedule:

7.1 Payment of SDC credit and SDC reimbursement amounts shall be payable annually by the City for SDC improvement fees collected by the City from January 1 through December 31 of each year by January 31 of the year following collection by City.

7.2 No interest shall accrue on SDC credit or SDC reimbursement payable to developers.

7.3 There shall be no adjustments made to the amount of any SDC credit or SDC reimbursement amount as a result of inflation.

Section 8. Assignment of Claims:

8.1 Claims from SDC credit and SDC reimbursement are personal and may not be assigned without the written consent of City.

Section 9. Future Changes to Maximum Allowable SDC:

9.1 Future changes by the City of the maximum allowable SDC or the percentage of the maximum allowable SDC imposed shall neither increase or decrease the SDC credit or SDC reimbursement determined above, however, if the percentage of the maximum allowable SDC is changed, all active public improvement agreements will be reviewed, and if necessary, SDC credit and/or SDC reimbursement amounts to be collected and reimbursed developers from sole and shared recovery areas will be recalculated in accordance with this policy.

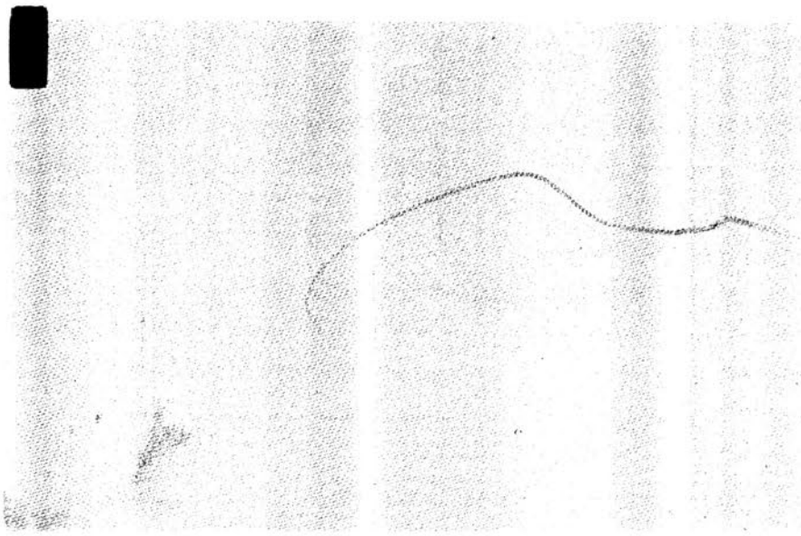
Section 10. City's Obligation to Pay:

10.1 The City's obligation to pay or apply SDC credit or SDC reimbursement shall be limited to SDC improvement fees actually collected by the City as provided in this policy. City's obligation to pay or apply SDC credit or SDC reimbursement from SDC improvement fees collected shall be further limited to the total of the SDC credit and SDC reimbursement calculated as provided in this policy. Payment of SDC credit and SDC reimbursement shall be subject to prior reimbursement claims which are payable from SDC collections. Persons who receive, or are entitled to claim, SDC credit or SDC reimbursement shall indemnify and hold the City harmless in the event the City is subject to claims by others for SDC credit or

SDC reimbursement for the same improvements. City shall have the right to set off the amount of any competing claims for SDC credit or SDC reimbursement against prior claims for the same SDC credit or SDC reimbursement if in the City's judgment it becomes necessary to do so.

Section 11. Applicability:

11.1 This policy shall apply to all eligible improvements installed and accepted after City Resolution #2146 which established street SDCs effective June 15, 1995.



VOL: 2000 PAGE: 46321
RECORDED DOCUMENT

STATE OF OREGON
COUNTY OF DESCHUTES

*2000-46321 * Vol-Page Printed: 11/15/2000 10:14:14

DO NOT REMOVE THIS CERTIFICATE

(This certificate constitutes a part of the original instrument in accordance with ORS 205.180(2). Removal of this certificate may invalidate this certificate and affect the admissibility of the original instrument into evidence in any legal proceeding.)

I hereby certify that the attached instrument was received and duly recorded in Deschutes County records:

DATE AND TIME: Nov. 15, 2000; 10:09 a.m.

RECEIPT NO: 28560

DOCUMENT TYPE: Development Agreement

FEE PAID: $201.00

NUMBER OF PAGES: 31

Mary Sue Penhollow

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

After recording return to:
City of Bend
City Recorder
PO Box 431
Bend, OR 97709

2000 – 4632' 1

10/18/00

DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND

AND SHEVLIN HEIGHTS LP & SHEVLIN HEIGHTS ACQUISITION, LLC

This Development Agreement ("Agreement") is dated as of the 6 day of Nov, 2000, by and between SHEVLIN HEIGHTS L.P., an Oregon Limited Partnership and SHEVLIN HEIGHTS ACQUISITION, L.L.C., an Oregon Limited Liability Company, collectively referred to herein as "SHEVLIN HEIGHTS," and THE CITY OF BEND, an Oregon municipal corporation (the "City"). Each of SHEVLIN HEIGHTS and the City is hereinafter referred to as a "Party" and collectively as the "Parties."

1. Definitions:

1.1 "Bridge LID Petition" means that certain LID Petition of even date herewith signed by petitioners BRC, Skyliner Summit Limited Partnership, West Bend Property Company, LLC, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Southern Bridge.

1.2 "Development Agreement" means each of the development agreements between a Property Owner and the City pursuant to ORS 94.504 (collectively, the "Development Agreements"). Three of the Property Owners, Western Communications, Inc., dba The Bulletin (the "Bulletin"), the Bend-LaPine Administrative School District No. 1 (the "School District") and Central Oregon Community College ("COCC") are not parties to a Development Agreement.

1.3 "Final Approval" shall mean the issuance of a development permit that reasonably allows the development described in Section 4 of the Development Agreement to proceed and the expiration of the period of appeal, or if an appeal is filed, the resolution of that appeal in a manner that reasonably allows the development described in Section 4 of the Development Agreement to proceed.

1.4 "Intersection LID Petition" means that certain LID Petition of even date herewith signed by nine of the Property Owners as petitioners, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Projects.

1.5 "Off-Site Transportation Impact Mitigation" means mitigation of the increased burden that each Proposed Development will put on the transportation facilities of the City of Bend outside the property lines of the Proposed Development. The term "Off-Site Transportation Impact

Mitigation" includes the "Other Improvements" identified in **Exhibit C** of each Development Agreement.

1.6 "Other Improvements" means those certain off-site transportation-related improvements to be completed by the Property Owners which are a part of their Off-Site Transportation Impact Mitigation but which are not to be completed pursuant to a local improvement district. The Other Improvements to be completed by a particular Property Owner are identified in Exhibit C to that Property Owner's Development Agreement.

1.7 "Project" means a traffic facility improvement described in Section 4 of the Intersection LID Petition and the Southern Bridge.

1.8 "Property Owners" are the twelve public and private entities, including SHEVLIN HEIGHTS, identified on **Exhibit A** who own property on the West Side of the City and who have formed a consortium to resolve the current and projected shortage of transportation facilities on the West Side.

1.9 "Proposed Development" means the development described in Section 4 of this Agreement.

1.10 "Responsible Property" means that portion of the property of each of the Property Owners identified in the Intersection LID Petition or the Bridge LID Petition subject to assessment for the cost of one or more Projects. "Responsible Property" shall not include portions of the property that are dedicated as public right-of-way, or dedicated for any other public purpose.

1.11 "Responsible Property Owner" means the Property Owner identified as being responsible for construction of the specific Project(s) listed for that Property Owner in the Bridge LID Petition or the Intersection LID Petition.

1.12 "SHEVLIN HEIGHTS Property" means the property on which the Proposed Development is to be constructed by SHEVLIN HEIGHTS, which SHEVLIN HEIGHTS Property is more particularly described on attached **Exhibit B**.

1.13 "Southern Bridge" means the bridge to be constructed over the Deschutes River where the proposed extension of Reed Market Road from the Parkway will cross the Deschutes River as provided in the City's General Plan.

1.14 "West Side" shall mean that portion of the City of Bend directly served by the transportation facilities described in Section 4 of the Intersection LID Petition, and the Southern Bridge.

2. Recitals:

2.1 Under the City of Bend General Plan and land use regulations, new development must be supported by adequate public facilities. The City's General Plan provides that if the public facilities are not adequate, new development must either wait for the installation of the required facilities by the City or pay the cost if it occurs ahead of the City's capital improvement plan. Existing public transportation facilities serving the West Side of the City (the "West Side Transportation System") are not adequate to support all existing development and the new development contemplated in the immediately foreseeable future for the West Side of the City. The City is proceeding on the basis that its land use regulations require a system-wide fix to remedy the system-wide deficiency in the West Side Transportation System in order to support the contemplated new development.

2.2 The City does not have funds available to complete the projects necessary to create the additional capacity for the West Side Transportation System to support the new development within the timeframe in which the Property Owners wish to develop and to complete its other capital improvements.

2.3 The cost of supplying a system-wide remedy that will support the existing needs and the additional transportation burden that the new development will add to the West Side Transportation System is more than the amount that could be exacted from any single Proposed Development. Therefore, the Property Owners have concluded that collectively they can provide the necessary improvements to the West Side Transportation System to support the Proposed Developments. To this end, they have organized themselves as a consortium to accomplish these improvements.

2.4 It is the intention of the Parties that the legal mechanism for accomplishing these improvements will be expressed in Development Agreements, the Bridge LID Petition and the Intersection LID Petition (referred to as the "Consortium Agreements").

2.5 Together, the Consortium Agreements will provide a realistic mechanism for constructing the 11 distinct traffic system improvements required to support the contemplated new development. These improvements will also make a significant contribution toward relieving existing traffic problems in the West Side Transportation System. Ten of these improvements are identified in Section 4 of the Intersection LID Petition, and the other is described in the Bridge LID Petition. The Consortium Agreements also describe Other Improvements which will be constructed by the Property Owners in connection with the Property Owners' Proposed Developments.

2.6 Traffic impact analyses show that the 10 distinct traffic system improvements identified in the Intersection LID Petition, the Bridge LID Petition, and the Other Improvements will be adequate to mitigate the off-site traffic impacts that the Property Owners' Proposed Developments will have on the West Side Transportation System and make reasonable provision for the West Side Transportation System on a long-term basis.

2.7 ORS 94.504 authorizes cities to enter into development agreements with private parties who own or otherwise have a legal interest in property in connection with the development of that property. Such development agreements may have a duration up to seven years and may establish each of the parties' rights and obligations in connection with certain aspects of the proposed developments. Each Property Owner wishes to definitively establish and discharge all of its obligations to mitigate the increased burden that each Proposed Development will put on the West Side transportation facilities of the City of Bend outside the property lines of the Proposed Development ("Off-Site Transportation Impact Mitigation") to the West Side Transportation System through a development agreement with the City.

2.8 Nine of the Property Owners (Brooks Resources Corporation; West Bend Property Company, LLC; Broken Top Limited Partnership; Skyliner Summit Limited Partnership; Century Park LLC; Shevlin Heights LP; West Side Meadows, LLC; Central Oregon Community College; and River Bend Limited Partnership) have signed a Petition to Form West Side Intersection Local Improvement District (the "Intersection LID Petition"), which, among other things, allocates responsibility for constructing 10 of the Projects among the Property Owners signing the Intersection LID Petition.

2.9 Five of the Property Owners (Brooks Resources Corporation, West Bend Property Company, LLC, Skyliner Summit Limited Partnership, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1) have signed a Petition to Form Southern Bridge Local Improvement District (the "Bridge LID Petition"), which, among other things, allocates responsibility for the cost of constructing the Southern Bridge. The Property Owners have agreed upon a schedule for the completion of the Southern Bridge, and the amount to be contributed by each Property Owner, as provided in the Bridge LID Petition.

2.10 The Intersection LID Petition provides a schedule for commencement of construction of the Projects by the applicable Property Owner(s) and provides that a failure of a Property Owner to timely commence and complete its assigned Project(s) shall give the City the option to construct that Project under the Intersection LID Petition, assess that Property Owner's property for the cost of construction and impose liens against that Property Owner's property as permitted by law.

2.11 Execution of the Development Agreements, the Intersection LID Petition and the Bridge LID Petition by the City and all of the Property Owners, and the commitments created by these Consortium Agreements, will supply the realistic provision for transportation facilities necessary to support new development to be served by the West Side Transportation System. In return, the Property Owners shall be relieved from any further Off-Site Transportation Impact Mitigation in connection with that Property Owner's Proposed Development(s).

2.12 Each Property Owner participating in one or both LID Petitions acknowledges that its property will be specially benefited by the Projects listed in the Intersection LID Petition and the Bridge LID Petition that include its property. Each Property Owner who is participating in one or both LID Petition also acknowledges that all of the properties in the Intersection LID and all of the properties in the Bridge LID will be specially benefited by all of the Projects. Each Property Owner participating in the LID Petitions therefore consents to the formation of the LIDs that include the Property Owner's property, subject to the conditions set forth herein.

2.13 It is the intention of the Parties that the Consortium Agreements are each integral parts of a collective effort with the City, intended to accomplish the objectives set out in these recitals. Therefore, the Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be construed accordingly, and in the event of any conflict between the terms and conditions of the Development Agreements and the LID Petitions, the LID Petitions shall prevail.

2.14 It is recognized that the Proposed Development of Cascade Highlands, L.P. is located outside the city limits of the City. Consistent with the Joint Management Agreement between the City and Deschutes County, a three-party development agreement will be executed by the City, Deschutes County and Cascade Highlands, L.P. Cascade Highlands, L.P. will contribute $500,000 to the City for the construction of the Southern Bridge. The Parties recognize that Cascade Highlands, L.P. has substantially the same ownership as Broken Top Limited Partnership and Skyliner Summit Limited Partnership and that its contribution, considered as a part of the entire Consortium Agreements, addresses the impacts its Proposed Development will have on the West Side Transportation System.

2.15 None of the Property Owners shall be responsible for the performance of obligations of any other Property Owners unless expressly stated in the Consortium Agreements.

2.16 The Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be recorded and binding upon the Parties, their

successors and assigns, and shall be enforceable as covenants running with the land; and may be enforced by any remedy provided by law.

2.17 The Parties agree that their execution of these Consortium Agreements represents their acceptance of the purpose expressed in these recitals, and the ways and means of accomplishing this purpose. Towards this end, the Parties expressly agree:

2.17.1 The Parties shall cooperate in good faith to the extent reasonably practicable to accomplish the purpose of the Consortium Agreements. This shall include, but not be limited to, cooperation in the defense of these agreements and their performance.

2.17.2 Other non-consortium development served by the West Side Transportation System shall be expected to make realistic provision for the mitigation of its impacts on transportation facilities as required by law, and in addition to that made by the Property Owners.

2.17.3 The terms and conditions of these Consortium Agreements are intended as an implementation of, and are consistent with, the City's land use laws, rules and regulations, together with all applicable state and federal laws, rules, and regulations. This includes, but is not limited to, a recognition that the performance required of the Parties by these Consortium Agreements is roughly proportional to the impacts the Proposed Developments will have on the West Side Transportation System; and that the public and private responsibilities involved in remedying the deficiencies in the West Side Transportation System in order to support the Proposed Developments are fairly and properly allocated.

2.17.4 The Parties further express their commitment to the objectives of these Consortium Agreements by waiving all claims of any kind or nature resulting from the Parties' agreement to accomplish the purpose contemplated by the Consortium Agreements, or the ways and means provided for accomplishing that purpose in the Consortium Agreements. This includes, but is not limited to any constitutional or statutory claims (for the taking of property or otherwise), and any claims against the other Party, its elected officials, officers, employees, or agents. This waiver does not include claims based upon a failure to perform these Consortium Agreements as expressly required by their terms and conditions. This waiver shall not prevent land use appeals of approvals or denials of the Proposed Developments.

2.17(a) The Parties acknowledge that the lawsuit filed by the Central Oregon Builders Association (COBA) and served upon the City October 10, 2000

may affect the amount of System Development Charges (SDCs) available for reimbursement as provided in the Consortium Agreements. This lawsuit (COBA v. City of Bend, Circuit Court No. 00CV0454AB) seeks to reduce the Street SDC. If COBA succeeds, the $3,250 SDC anticipated by the Consortium Agreements may be reduced and SDC collections available for reimbursement may also be reduced. Because of this possibility, the Parties agree that the provisions of the Consortium Agreements relating to reimbursement (including but not limited to Sec. 12.5 and Exhibit D of the Development Agreements, Sec. 8 of the Southern Bridge LID, and Sec. 8 of the Intersection LID) are modified to provide that the SDC imposed by the City shall be the amount provided in the Consortium Agreements, or the highest amount permitted by law, if the highest amount permitted by law is less than the amount provided in the Consortium Agreements. It is the intent of the Parties that this Section has been added only to accommodate the possibility of a reduction created by the COBA lawsuit, and not for any other purpose. In the event that SDC collections are reduced as a result of the COBA lawsuit, the Consortium Agreements shall continue in full force and effect except as modified by this Section, and the Parties shall in good faith continue to cooperate in the achievement of the purpose of the Consortium Agreements, specifically including the reimbursement to consortium members from SDCs as provided in City of Bend Street Policy No. 5, Sec. 6 (which applies when the potential SDC collections from sole recovery areas will not be adequate to fund full reimbursement, and shared area recovery area collections are available to pay reimbursement not otherwise collectible from sole recovery areas).

2.18 These recitals are part of each of the Consortium Agreements.

3. Effective Date; Term of Agreement

3.1 This Agreement shall be effective upon adoption of the City ordinance approving this Agreement pursuant to ORS 94.508 (the "Effective Date"). The term (the "Term") of this Agreement shall commence on the Effective Date and shall continue for a period of seven years unless terminated sooner in accordance with the provisions contained herein.

3.2 The Parties agree that the intent of the Parties and the essential purpose of this Agreement is to provide the City with a system-wide fix on the West Side in exchange for providing SHEVLIN HEIGHTS and the other Property Owners (a) the right to build their Proposed Development at the Maximum Density provided in Section 4.2 for a seven-year period without additional Off-Site Transportation Impact Mitigation, subject to SHEVLIN HEIGHTS and the other Property Owners obtaining Final Approval through the normal City applications process, and (b) a seven-year vesting of the land use standards which will be applicable to such applications. The right to the Proposed Development at the Maximum

Density without additional Off-Site Transportation Impact Mitigation and the vested standards during a full seven-year period is critical to SHEVLIN HEIGHTS' willingness to enter into this Agreement. The Parties understand that SHEVLIN HEIGHTS may not receive the benefit of such intent and purpose during the initial Term of this Development Agreement if there are delays (a) caused by third-party appeals of this Development Agreement and/or the related LID Petitions; (b) caused by third-party appeals of SHEVLIN HEIGHTS' land use applications in connection with the Proposed Development; and (c) in the land use applications process. If as a result of such delays SHEVLIN HEIGHTS does not receive Final Approval within one year of the Effective Date, the Parties agree that they will negotiate in good faith an extension of the Term of this Development Agreement to assure that SHEVLIN HEIGHTS has a 7 year period following Final Approval to proceed with its Proposed Development under the terms and conditions of this Development Agreement. At no time shall the Term exceed seven years.

4. Proposed Development

4.1 SHEVLIN HEIGHTS has filed land use applications to allow for the residential development of a portion of the SHEVLIN HEIGHTS Property into 94 lots. The pending applications include the following: (1) the subdivision application and tentative plan as a master plan for approval of 94 lots. The pending applications are currently on appeal to the City of Bend Hearings Officer with a stipulated stay of the appeal between the Parties. The tentative plan proposes phased development of the subdivision. SHEVLIN HEIGHTS intends to seek future approvals to subdivide the remainder of the SHEVLIN HEIGHTS Property for residential use or uses allowed in the RS zone for an additional 91 residential units. Collectively, the pending applications and the future applications referenced in this Section 4 are hereinafter referred to as the "Proposed Development."

4.2 For the purpose of determining the amount and kind of Off-Site Transportation Impact Mitigation required of SHEVLIN HEIGHTS' Proposed Development and the rights of SHEVLIN HEIGHTS vested herein, SHEVLIN HEIGHTS agrees that the density of its Proposed Development of the SHEVLIN HEIGHTS Property shall not exceed 185 single-family residential dwelling units (the "Maximum Density"). The Maximum Density has been used by the Parties in a supporting traffic study to determine the estimated number of vehicle trips to be generated by the Proposed Development. To the extent that SHEVLIN HEIGHTS changes its mix of development to respond to market conditions but does not increase the number or distribution of estimated vehicle trips, SHEVLIN HEIGHTS shall not be deemed to have exceeded its Maximum Density.

5. Conditions to Parties' Obligations

5.1 SHEVLIN HEIGHTS' obligation to pay for Projects other than the Southern Bridge and the "Other Improvements" listed in **Exhibit C** under this Agreement is also subject to the terms and conditions provided in the Intersection LID Petition.

5.2 The City's obligations hereunder are subject to SHEVLIN HEIGHTS signing the Intersection LID Petition.

5.3 Both Parties' obligations are subject to Deschutes County entering into a Development Agreement with Cascade Highlands, L.P. consistent with the recitals herein.

6. Permitted Uses. The SHEVLIN HEIGHTS Property is within the RS Zone, Urban Standard Density Residential, pursuant to the Bend Zoning Code. Notwithstanding the content of any later-adopted zoning or development ordinance, the land use standards and criteria that apply to approval of the Proposed Development during the period of this Agreement shall be subject to the BZO as the same exist as of the Effective Date.

7. Density or Intensity of Use. Land use approval of the Proposed Development during the period of this Development Agreement shall be subject to the following standards, which exist as of the Effective Date, notwithstanding the content of any subsequently adopted zoning or development ordinance:

7.1 The applicable maximum density provisions of the BZ0 and the Bend Subdivision Ordinance ("BSO") as the same exist as of the Effective Date.

7.2 Any minimum lot area, minimum average lot width, minimum average lot depth, yard requirements, coverage or setback requirements for the SHEVLIN HEIGHTS Property shall be based upon BZO Section 10.10.10(5) as the same exists as of the Effective Date. While that section sets forth such lot requirements, it also provides that "the approval authority may allow smaller lots of different housing types in a new subdivision or Planned Unit Development (PUD) approved pursuant to this ordinance and consistent with the Comprehensive Plan designations for preservation of areas of significant interest when these lots or housing types are internal to the subdivision or PUD."

8. Maximum Height and Size of Proposed Structures. Section 10.10.10 of the BZO, as the same exists as of the Effective Date, governs the maximum height and size of proposed structures on the SHEVLIN HEIGHTS Property. Section 10.10.10(4) provides that any building over 30 feet in height shall require a conditional use permit. Subject to the lot coverage and setback requirements discussed in Section 10.10.10(5), there are no other size limitations on construction in the RS zone.

9. Provisions for Reservation or Dedication of Land for Public Purposes. SHEVLIN HEIGHTS shall dedicate right-of-way, 10' wide, at no cost to the City for the widening of Shevlin Park Road. Except as provided above, SHEVLIN HEIGHTS shall have no other obligations to make off-site reservations or dedication of land for public purposes (including easements and/or licenses) in connection with SHEVLIN HEIGHTS' Proposed Development. The necessity and/or specifics of any future on-site reservations or dedications of land for public purposes (including easements and/or licenses) in connection with SHEVLIN HEIGHTS' Proposed Development will be determined by the City in reviewing SHEVLIN HEIGHTS' applications and applying City standards and ordinances in effect as of the Effective Date.

10. Fees and Charges

10.1 When land within the Proposed Development is developed, the City shall collect System Development Charges ("SDC") within the sole recovery area established for the Proposed Development in accordance with the terms of Section 12.5.

10.2 SHEVLIN HEIGHTS and its successors and assigns shall pay all applicable fees and charges then in effect for a particular application, except where the purpose or effect of such fees or charges is Off-Site Transportation Impact Mitigation. In no event shall this Section 10 be construed so as to relieve SHEVLIN HEIGHTS or any purchaser of any portion of the SHEVLIN HEIGHTS Property from any obligation it may have to pay street SDCs.

11. Schedule and Procedure for Compliance Review. Commencing on the first anniversary of the Effective Date, SHEVLIN HEIGHTS shall prepare annual written reports of its compliance with the terms of this Agreement to the City. Such reports shall include an update as to compliance with all schedules set forth herein. After receipt of such reports, the City may request such additional or backup information as it deems reasonably necessary.

12. Responsibility for Providing Infrastructure and Services

12.1 Consistent with the Maximum Density rights vested in Section 4 and the development standards vested in Sections 6, 7, 8 and 10, SHEVLIN HEIGHTS agrees to make certain off-site street and transportation-related improvements. Subject to the terms provided herein, SHEVLIN HEIGHTS agrees that it shall construct and/or provide funding toward the construction of the following off-site Projects:

12.1.1 Subject to Section 12.3, contribute seventy percent (70%) of the cost of constructing a single-lane roundabout at the intersection of Newport Avenue and 14th Street to permit construction to commence by December 31, 2000. Such roundabout shall be

constructed in general conformance with the engineering drawings attached to the Intersection LID Petition;

12.1.2 Subject to the terms provided herein, SHEVLIN HEIGHTS agrees that it shall construct those Other Improvements identified on attached **Exhibit C**.

As used herein, "Construction Commencement Deadline" shall mean the date by which the Responsible Property Owner(s) shall have commenced preliminary design and engineering work.

12.2 The City acknowledges that (a) construction of the Southern Bridge is subject to objections raised by third parties which could interfere with that Project; (b) construction of any of the Projects could be delayed as a result of the City's failure to timely acquire necessary rights-of-way, (c) construction of any of the Projects could be delayed as a result of objections raised by third parties; and (d) construction of any Projects could be delayed by difficulties in obtaining approvals from the Oregon Department of Transportation ("ODOT") and any other federal, state or local regulatory body. The City agrees that none of (a), (b), (c) or (d) shall be a basis for denying or delaying the approval of any of SHEVLIN HEIGHTS' land use applications in connection with the Proposed Development, grounds for declaring SHEVLIN HEIGHTS to be in default, or a basis for exacting additional Off-Site Transportation Impact Mitigation from SHEVLIN HEIGHTS. Subject to the terms of the applicable LID Petition(s), the City shall, however, have the right to construct Projects and assess the Responsible Property therefore according to the schedules in the LID Petitions, irrespective of whether SHEVLIN HEIGHTS has received Final Approval. In the event of (b), the schedule for construction of the applicable Project as set forth in the applicable LID Petition shall be delayed by the same period of time by which the right-of-way acquisition is delayed.

12.3 The Intersection LID Petition includes plans and drawings for the Projects identified therein. Estimates have been prepared of the cost of constructing them. SHEVLIN HEIGHTS shall bear the risk that such costs may increase between the date of this Development Agreement and the date that construction commences; provided, however, the City shall bear any additional costs, which result from any change in design required by the City or ODOT.

12.4 The City agrees that the Projects and Other Improvements to be provided pursuant to this Development Agreement, the Bridge LID Petition and the Intersection LID Petition shall be deemed to satisfy SHEVLIN HEIGHTS' obligation to provide Off-Site Transportation Impact Mitigation in connection with the Maximum Density of the Proposed Development set forth in Section 4 so that, with respect to off-site transportation

obligations, the Proposed Development is vested. The City shall require no other off-site transportation-related exactions nor require any further traffic studies relating to Off-Site Transportation Impact Mitigation in connection with or as a condition to the approval of SHEVLIN HEIGHTS' Proposed Development. This shall include, but not be limited to, construction of off-site streets or intersections, improvement of off-site intersections or other existing off-site transportation facilities, construction of off-site bicycle paths or pedestrian trails and dedication of off-site rights-of-way for any of the above-identified purposes. Notwithstanding the foregoing, SHEVLIN HEIGHTS' rights which are vested herein are dependent upon the Maximum Density of the Proposed Development set forth in Section 4 which is tied to the estimated number of vehicle trips to be generated by such Maximum Density. The Parties hereto understand that the mix of uses that make up the Maximum Density could change based on market forces. However, to the extent that SHEVLIN HEIGHTS submits land use applications that would increase the number of vehicle trips to be generated by the Proposed Development, the Proposed Development may be subject to additional off-site transportation exactions based upon projected transportation impacts on City transportation facilities from the increased density, consistent with City policies and regulations. The Parties agree that this Development Agreement does not, however, resolve any issue relating to on-site transportation requirements and that on-site transportation issues are reserved for future discretionary land use approval, and that the City may require further studies and reviews relating to on-site traffic.

12.5 The City and SHEVLIN HEIGHTS agree that upon execution of this Agreement that the property identified in **Exhibit B** shall be established as the sole recovery area for the collection of transportation system development charges ("SDC"). During the Term of this Agreement, the City shall collect SDCs at the greater of the rates determined in accordance with the SDC rates attached as **Exhibit D**, or any future rates adopted by the City. The City is currently evaluating SDC rates for commercial and industrial development. If such rates are changed prior to December 31, 2000, such change shall replace **Exhibit D** to this Agreement. Otherwise, until the earlier of the expiration of this Agreement or the date at which the Property Owner has received full reimbursement from SDCs, the SDC rate for those SDCs collected from the sole recovery area will not decrease, but shall increase if and when City-wide SDC rates increase.

12.6 The City shall use the SDC revenue collected from the sole recovery area to reimburse SHEVLIN HEIGHTS for the cost of constructing the projects (other than the Southern Bridge) identified in Section 12.1 above at a rate of 100% of all qualified improvements pursuant to Street Policy 5 (**Exhibit E**) as amended.

12.7 The Parties agree that there are certain actions or improvements that must be made in conjunction with the Projects and Other Improvements to be completed by the Property Owners to provide adequate facilities to support development which will impact the City's West Side Transportation System. These actions or improvements are not a part of the Property Owners' obligations and the City agrees to assure that such actions are taken and such improvements are made. As referenced in the supporting traffic studies, such actions and improvements include, but are not limited to, acquiring rights-of-way for those Projects for which the Property Owners do not already own the necessary rights-of-way, obtaining permits necessary for construction of the Projects, expanding some of the Projects as necessary from single-lane roundabouts to double-lane roundabouts and completing bicycle lanes where gaps exist along Shevlin Park Road. In no event shall the City be obligated to expend funds to take such actions or complete such improvements; the City may assure their completion by any appropriate means, including, without limitation, making them conditions to other future development, paying for them with systems development charges, paying for them with grants and/or including them in future capital improvement plans.

13. Assumptions Relating to City's Ability to Serve Development; Continuing Effect of Agreement

13.1 ORS Section 94.504(6) requires that a Development Agreement "state the assumptions underlying the agreement that relate to the ability of the city…to serve the development."

13.2 The facts set forth in the Recitals are included in the assumptions underlying this Agreement.

13.3 The Parties operate under the assumption that construction of the Projects (including the Southern Bridge) will provide adequate off-site transportation infrastructure and facilities to support SHEVLIN HEIGHTS' Proposed Development. The adequacy of transportation facilities are determined with reference to the standards in effect as of the Effective Date.

13.4 In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with the Agreement impossible or unlawful, the Parties will attempt to give effect to the remainder of the Agreement, but only if the purposes set out in the recitals can be accomplished and such effect does not prejudice the substantial rights of either Party under the Agreement.

13.4.1 If the substantial rights of either Party are prejudiced by giving effect to the remainder of the Agreement, then the Parties shall

negotiate in good faith to revise the Agreement to give effect to its original intent.

13.4.2 If the Parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either Party may request that an arbitration panel determine an equitable effect for the remainder of the Agreement. The arbitration panel shall consist of 3 arbitrators, one of which shall be selected by SHEVLIN HEIGHTS, one of which shall be selected by the City, and the third of which shall be selected by agreement of the arbitrators selected by SHEVLIN HEIGHTS and the City. If the 2 arbitrators are unable to agree upon the selection of a third arbitrator, then the third arbitrator shall be selected by the Presiding Judge of the Circuit Court, 11th Judicial District, Deschutes County, Oregon.

13.4.3 If, because of a change in policy, law or circumstances, the Agreement fails of its essential purposes (construction of all of the system improvements called for in the Intersection LID Petition, the Bridge LID Petition and this Development Agreement; vesting of allowed uses and limitations on development conditions; vesting of maximum off-site transportation exactions; and vesting of maximum permissible densities in connection therewith), then the Parties shall be placed into their original position to the extent practical.

13.4.4 As used herein, however, "change in circumstance" does not include changes in local government land development or land division regulations.

13.5 To the extent any local rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis that is not, in the reasonable discretion of SHEVLIN HEIGHTS, inconsistent with the substance, purpose, or conditions of this Development Agreement, then the local rule, ordinance, regulation or policy shall be applicable.

14. Assignability of Agreement. This Agreement shall be fully assignable, in whole or in part, by either Party and shall bind and inure to the benefit of the Parties and their respective successors and assigns. If any portion (other than lot sales to individuals or builders) of the SHEVLIN HEIGHTS Property is sold, the duties, rights and interests of SHEVLIN HEIGHTS under this Agreement shall become the duties, rights and responsibilities of the purchaser and SHEVLIN HEIGHTS. Notwithstanding the foregoing, no purchaser of an individual lot(s) shall have any rights hereunder.

15. Future Discretionary Approvals.

15.1 The City agrees to cooperate with SHEVLIN HEIGHTS in securing all future necessary land use permits and approvals for the Proposed Development needed from entities other than the City.

15.2 The following future discretionary approvals are the currently anticipated approvals that will be required for the Proposed Development:

15.2.1 Approval of the pending Shevlin Meadows subdivision application, a tentative plan as a master plan for approval of 94 lots; and

15.2.2 Approval of a subdivision application; a tentative plan as a master plan for approval of 91 lots.

15.3 The Parties acknowledge that the provisions of SHEVLIN HEIGHTS' land use application, other than the provisions relating to Off-Site Transportation Impact Mitigation, shall be the subject of future discretionary approvals by the City. The question of whether the City may approve the applications referred to in this Agreement, including the provisions of the land use applications referred to in Sections 4 (Proposed Development), 6 (Permitted Uses), 7 (Density or Intensity of Use), and 8 (Maximum Height and Size of Proposed Uses), or any other part of SHEVLIN HEIGHTS' land use application are reserved for future discretionary approvals, and are not resolved by the terms of this Agreement, the Intersection LID Petition or the Bridge LID Petition. Nothing in this Agreement resolves, adjudicates or dispenses with the responsibilities of SHEVLIN HEIGHTS or its Proposed Development for impacts or conditions of approval other than Off-Site Transportation Impact Mitigation, and nothing herein operates as an approval (or preliminary approval) by City of SHEVLIN HEIGHTS' land use applications except as to Off-Site Transportation Impact Mitigation.

15.4 In the event of a conflict between the terms of this Development Agreement, and the terms of either the Intersection LID Petition or the Bridge LID Petition, then the terms of the Intersection LID Petition or the Bridge LID Petition shall control.

15.5 The discretionary approvals shall be reviewed by the City in the same manner and subject to the same procedures and hearings requirements as all other similar land use applications filed at the time of the Effective Date.

16. Schedule. SHEVLIN HEIGHTS shall commence construction of the Projects assigned to SHEVLIN HEIGHTS as of the date set forth in the relevant LID Petition(s) and shall complete construction of each Project no later than the date established in the relevant LID Petition(s). Subject to obtaining timely approvals

of its Proposed Development, Shevlin Heights shall commence construction of its Proposed Development by 2001 and that its Proposed Development shall be completed by the expiration of the Development Agreement.

17. Defaults

17.1 A breach of a material provision of any of the Consortium Agreements, whether by action or inaction of a Party which continues and is not remedied within thirty (30) days after the other Party has given notice specifying the breach shall constitute a default by a Party. If the breach is of such a nature that it cannot reasonably be cured within such thirty-day period, the cure period shall be extended to such amount of time as is reasonable but only if the breaching Party promptly commences, and thereafter diligently prosecutes, such cure.

17.2 The exercise by either Party of any one or more of such remedies available to it shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

17.3 Notwithstanding the foregoing, in the event that SHEVLIN HEIGHTS fails to construct (or fund its share of the costs of construction in the case of the Southern Bridge) the Projects identified in Section 12.1 above, by the applicable deadlines set forth in the Intersection LID Petition or the Bridge LID Petition, as applicable, then SHEVLIN HEIGHTS shall not be deemed in default hereunder, but the City shall have the rights set forth in the Intersection LID Petition or the Bridge LID Petition to construct the traffic improvement facilities and to assess the Responsible Property as set forth in those petitions.

18. Release of Development Agreement. The City shall release developed lots from this Development Agreement upon the request of SHEVLIN HEIGHTS provided that the terms and conditions of this Development Agreement have been performed as they relate to the lot to be released.

19. Force Majeure

19.1 In the event that any Party (the "Delayed Party") is delayed or prevented from performing any of its obligations under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities, laws or other governmental requirements, riots, war, or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

19.2 The City's right under the Intersection LID Petition or the Bridge LID Petition to construct traffic system improvements shall not be affected by the provisions of Subsection 19.1.

20. Notices. Any notice, demand, request, approval, consent, or other communication (collectively referred to as a "Notice") concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other Party at the address set forth below. Any Notice shall be given by either: (i) personal delivery in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Any Party may change any address for the delivery of Notice to such Party, by giving Notice in accordance with the provisions of this Section. The attorneys for the Parties may give any Notice.

Notices Addresses:

If to SHEVLIN HEIGHTS: Shevlin Heights, LP & Shevlin Heights Acquisition, LLC
547 SW 13th, Suite A
Bend, OR 97702
Attn: David Swisher

With a copy to: Liz Fancher, Attorney
644 NW Broadway Street
Bend, OR 97701

If to City: City of Bend
Development Services
710 N.W. Wall
Bend, OR 97701
Attn: Development Services Director

21. Miscellaneous

21.1 City Funding. The Parties agree that any provision herein which requires the City to expend funds is contingent upon future appropriations as part of the City budget process as provided in ORS 94.504(5). Nothing herein requires the City to appropriate such funds.

21.2 Waivers. No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

21.3 Entire Agreement/Modifications. This Agreement, together with the Intersection LID Petition and the Bridge LID Petition (along with all exhibits incorporated therein) (collectively referred to as the "Consortium Agreements") constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto. This Development Agreement, the Intersection LID Petition and the Bridge LID Petition are parts of a whole transaction between the Parties and shall be construed as a whole transaction.

21.4 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

21.5 Captions. The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the Parties.

21.6 Gender/Singular/Plural. Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all the Parties and all circumstances, except where the context of this Agreement clearly dictates otherwise.

21.7 Severability. Subject to Section 13.4, the unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

21.8 Time of Essence. Time is of the essence of this Agreement.

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

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

"SHEVLIN HEIGHTS" SHEVLIN HEIGHTS, L.P.
an Oregon Limited Partnership

By: D.K. Swisher
Name: DAVE SWISHER MEMBER SHEVLIN
Title: HEIGHTS MANAGEMENT LLC THE GENERAL PARTNER FOR SHEVLIN HEIG[redacted] LP.

SHEVLIN HEIGHTS ACQUISITION, L.L.C.
an Oregon Limited Liability Company

By: D.K. Swisher
Name: DAVE SWISHER
Title: MEMBER

"CITY" CITY OF BEND, an Oregon Municipal Corporation,

By:
Name:
Title:

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before on November 1, 2000 by Dave Swisher as Member, Shev LLC; General Partner of Shevlin Heights, L.P.

OFFICIAL SEAL
CYNTHIA M SMITH
NOTARY PUBLIC-OREGON
COMMISSION NO. 335405
MY COMMISSION EXPIRES JUNE 8, 2004

Cynthia M. Smith
Signature of Notarial Officer
My Commission Expires: 6/8/04

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before on November 1, 2000 by Dave Swisher as Member of Shevlin Heights Acquisition, L.L.C.

OFFICIAL SEAL
CYNTHIA M SMITH
NOTARY PUBLIC-OREGON
COMMISSION NO. 335405
MY COMMISSION EXPIRES JUNE 8, 2004

Cynthia M. Smith
Signature of Notarial Officer
My Commission Expires: 6/8/04

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before on November 6, 2000 by Lamy Patterson as City Manager of the City of Bend.

OFFICIAL SEAL
PATRICIA ANNE SMILEY STELL
NOTARY PUBLIC-OREGON
COMMISSION NO. 305227
MY COMMISSION EXPIRES NOV. 22, 2001

Patricia Anne Smiley Stell
Signature of Notarial Officer
My Commission Expires: Nov. 22, 2001

Exhibit A
Property Owners

1. Brooks Resources Corporation;
2. West Bend Property Company, LLC;
3. Broken Top Limited Partnership and Broken Top Development, LLC;
4. Skyliner Summit Limited Partnership and Broken Top Development, LLC;
5. Century Park LLC;
6. Shevlin Heights Limited Partnership/Shevlin Heights Acquisition, LLC;
7. River Bend Limited Partnership;
8. Central Oregon Community College;
9. Bend LaPine Administrative School District No. 1;
10. West Side Meadows, LLC;
11. Western Communications Inc., dba The Bulletin; and
12. Cascade Highlands Limited Partnership.

Exhibit B
SHEVLIN HEIGHTS Property

That portion of the West Half of the Southwest Quarter of Section Twenty-five (25), Township Seventeen (17) South, Range Eleven (11) East of the Willamette Meridian, Deschutes County, Oregon lying Westerly of Shevlin Park Road,

EXCLUDING a parcel of land containing 14.96 acres, more or less, located in a portion of the West One-Half of the Southwest One-Quarter (W1/2 SW1/4) of Section 25, Township 17 South Range 11 East, Willamette Meridian, Deschutes County, Oregon being more particularly described as follows:

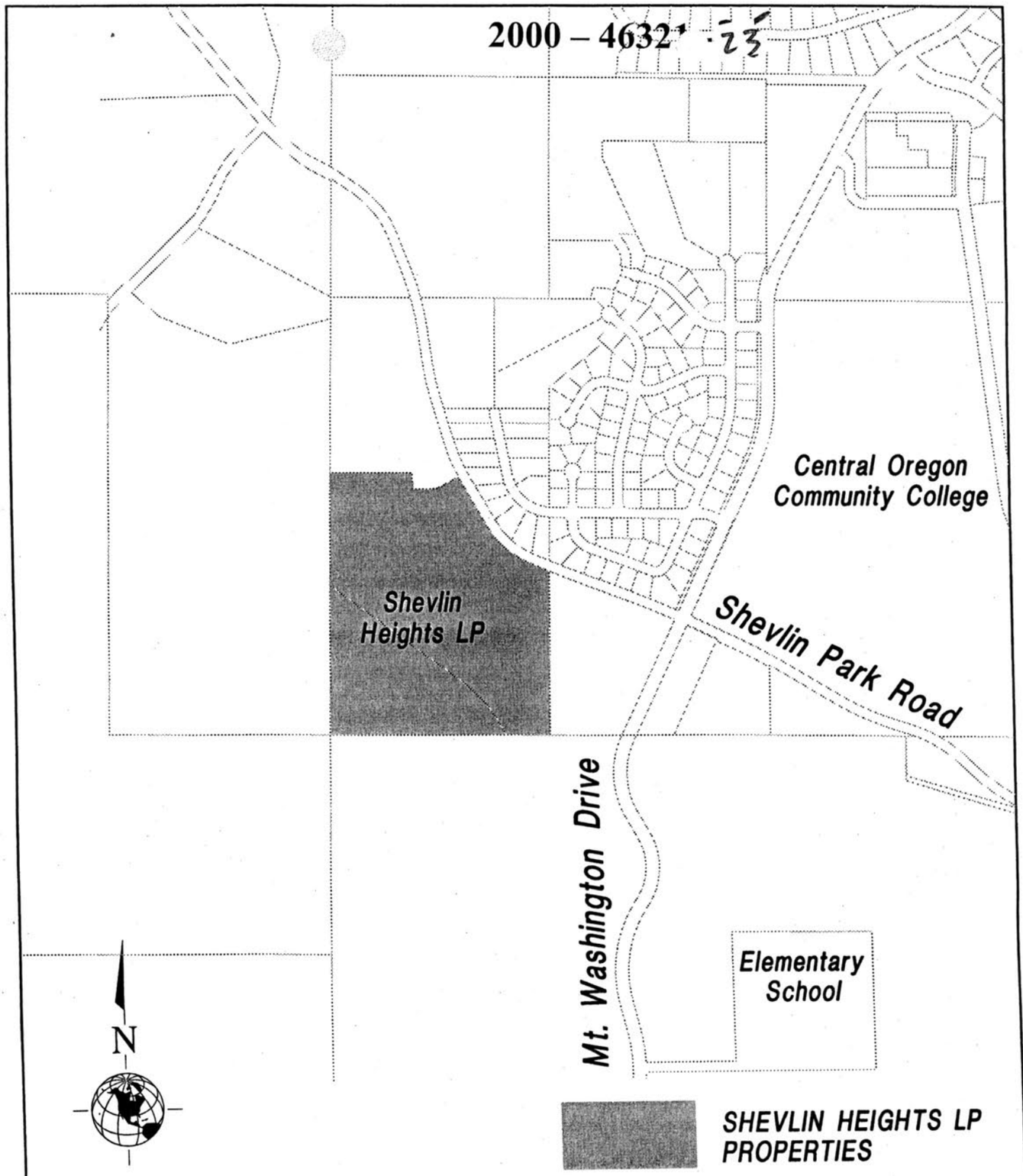
Beginning at the West One-Quarter Corner of said Section 25; thence along the east-west centerline of said Section 25 North 89° 56' 02" East a distance of 481.56 feet to a point on the westerly 30 foot right-of-way line of Shevlin Park Road; thence along said westerly 30 foot right-of-way line the following three curves and two courses:

Around a 1402.39 foot radius non-tangent curve right 184.59 feet (chord bears South 12° 37' 48" East, 184.46 feet);
South 08° 51' 33" East a distance of 223.15 feet;
Around a 1462.39 foot radius curve left 207.63 feet (chord bears South 12° 55' 36" East, 207.46 feet);
South 16° 59' 39" East a distance of 269.33 feet;
Around a 1175.92 foot radius curve left 230.04 feet (chord bears South 22° 35'55" East 229.68 feet);

thence leaving said 30 foot westerly right-of-way line South 60° 05' 10" West a distance of 107.99 feet; thence around a 170.00 foot radius curve right 89.91 feet (chord bears South 75° 14' 14" West, 88.86 feet; thence South 89° 36' 42" East a distance of 97.41 feet; thence North 00° 23' 18" East a distance of 50.00 feet; thence North 89° 36' 42" West a distance of 5.47 feet; thence North 00° 23' 18" East a distance of 50.00 feet; thence North 89° 36' 42" West a distance of 495.00 feet to a point on the west line of said Section 25; thence along said west line North 00° 23' 18" East a distance of 1044.21 feet to the "Point of Beginning," the terminus of this description.

SUBJECT TO: All easements, restrictions and rights-of-way of record and those common and apparent on the land.

2000 – 4632 - 23



DATE	BY	REVISION	CHK

DRAWN BY: JAM
DESIGNED BY: JAM
CHECKED BY: KSD
APPROVED BY: KSD

W&H PACIFIC
920 Emkay, Suite C-100
Bend, Oregon 97702-1041
(541)388-4255
(541)388-4229 Fax
whpacific.com
A Member of The IT Group
Planners • Engineers • Surveyors • Landscape Architects

West Side Transportation Consortium
Shevlin Heights LP

Property Exhibit Map

EXHIBIT B

BEND/DESCHUTES OREGON

SCALE:	PROJECT NO.	FILE NAME:	
1"=800'	02.2452.0001	WSTCPROP.DWG	1/1

PLOT DATE: 10/16/2000
LAST EDIT:

Exhibit C
Other Improvements

The following are the "Other Improvements" referenced in the Development Agreement between Shevlin Heights LP and the City of Bend that are provided to offset off-site traffic impacts of the Shevlin Meadows subdivision:

1. Dedicate 10' wide right-of-way along the Shevlin Park Road frontage of the SHEVLIN HEIGHTS Property.

2. Make and dedicate the following improvements in the right-of-way of Shevlin Park Road, described in Item 1, above:

   A. Build a 4' wide sidewalk to City standards; and
   B. Widen Shevlin Park Road to a width of 24 feet, as measured to the south side of the curb from the center line on the south side of the road.
   C. Install a curb along the widened roadway; and
   D. Stripe the widened roadway to provide a bicycle lane.

3. Provision of adequate right-of-way and right-of-way development accommodations to support transit, such as, areas for bus stops, shelters or other similar facility as deemed appropriate by the City during tentative plan review.

STREET SDCS

SDC = Trip Ends X Trip Length / 2 / 7200 X $889,160 (lane mile cost)

Category	Daily Trip ends per unit	Units	Chargeable % reduction	Conversion: Daily trip ends per unit	Aver. RT trip length (miles)	100% SDC per unit
Industrial						
Industrial - general	6.97	T.G.S.F.	0.00%	6.97	6.2	$2,668
Industrial - batch plant	100.00	unit	0.00%	100.00	6.2	$38,283
Manufacturing - bulky items	1.02	employees	0.00%	1.02	6.2	$390
Manufacturing - high tech-research & d	2.09	employees	0.00%	2.09	5.0	$645
Service and repair	5.60	T.G.S.F.	0.00%	5.60	6.0	$2,075
Residential						
Single Family	9.57	Dwelling Unit	0.00%	9.57	5.5	$3,250
Apartments	6.63	Dwelling Unit	0.00%	6.63	5.5	$2,252
Condominium	5.86	Dwelling Unit	0.00%	5.86	5.5	$1,990
Manufactured Home	4.81	Dwelling Unit	0.00%	4.81	5.5	$1,634
Senior Care	2.15	Dwelling Unit	0.00%	2.15	5.5	$730
PUD - residential	7.44	Dwelling Unit	0.00%	7.44	5.5	$2,527
Lodging						
Motel	9.11	Room	0.00%	9.11	5.9	$3,319
Hotel	6.95	Room	0.00%	6.95	5.9	$2,532
Recreational						
Golf Course	5.04	Acre	0.00%	5.04	7.5	$2,334
Bowling Alley	33.33	T.G.S.F.	0.00%	33.33	7.5	$15,435
Theater w/Matinee	0.29	Seat	0.00%	0.29	7.5	$134
Arena	33.33	Acre	0.00%	33.33	7.5	$15,435
Community Center	22.88	T.G.S.F.	0.00%	22.88	7.5	$10,596
Athletic Facility	2.30	T.G.S.F.	50.00%	1.15	5.0	$355
Spa	18.00	per station	36.00%	11.52	3.0	$2,134
Institutional						
Elementary School	1.02	Student	0.00%	1.02	3.8	$239
High School	1.79	Student	0.00%	1.79	3.8	$420
Community College	2.38	Student	0.00%	2.38	3.8	$558
Community College Library	45.50	T.G.S.F.	80.00%	9.10	3.8	$2,135
Community Library	45.50	T.G.S.F.	60.00%	18.20	3.8	$4,270
Church	9.11	T.G.S.F.	0.00%	9.11	3.8	$2,138
Daycare	4.52	Student	60.00%	1.81	3.8	$424
Medical						
Hospital	16.78	T.G.S.F.	0.00%	16.78	5.0	$5,181
Medical/Dental Clinic	36.13	T.G.S.F.	0.00%	36.13	5.0	$11,155
Specialty Medical	23.79	T.G.S.F.	20.00%	19.03	5.0	$5,876
General Office Bldg.						
Size < 50,000	15.29	T.G.S.F.	0.00%	15.29	6.2	$5,854
50,000<= Size < 175,000	10.08	T.G.S.F.	0.00%	10.08	6.2	$3,859
175,000<= Size	7.78	T.G.S.F.	0.00%	7.78	6.2	$2,978
Government						
Gov't Office Bldg.	68.93	T.G.S.F.	0.00%	68.93	6.2	$26,389
Retail						
General Retail	35.15	T.G.S.F.	47.00%	18.63	4.0	$4,601
Gasoline/Service Station	168.56	Pump Pairs	50.00%	84.28	4.0	$20,816
Convenience Market	737.99	T.G.S.F.	61.00%	287.82	4.0	$71,087
Shopping Center:						
Size < 50,000	87.31	T.G.L.S.F.	34.00%	57.62	4.0	$14,233

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50,000<= Size < 175,000	43.23	T.G.L.S.F.	34.00%	28.53	4.0	$7,047
175,000<= Size	28.96	T.G.L.S.F.	34.00%	19.13	4.0	$4,724
Restaurant - High turnover/Drive throug	238.80	T.G.S.F.	46.00%	128.95	4.0	$31,850
Restaurant - Specialty Food Item Servic	36.81	T.G.S.F.	50.00%	18.41	4.0	$4,546
Restaurant - Dinner only	10.00	T.G.S.F.	5.00%	9.50	4.0	$2,346
Restaurant - Lunch/Dinner	25.00	T.G.S.F.	15.00%	21.25	4.0	$5,249
Restaurant - Breakfast/Lunch/Dinner	158.00	T.G.S.F.	40.00%	94.80	4.0	$23,415
Supermarket w/Strip mall	111.51	T.G.S.F.	36.00%	71.37	4.0	$17,627
Specialty / Neighborhood Grocery	24.36	T.G.S.F.	20.00%	19.49	3.0	$3,610
Drinking Establishment	12.00	T.G.S.F.	20.00%	9.60	3.0	$1,778
Banks - w/Drive through	265.21	T.G.S.F.	47.00%	140.56	4.0	$34,717

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Exhibit E
Street Policy No. 5

City of Bend
Street Policy 5
Street System Development Charge Credit and Reimbursement

Section 1. **Purpose**:
It shall be the policy of the City of Bend that expansions to the City's street system shall only be accomplished as directed and approved by the City. The timing and financing of system expansions shall be as provided in this policy.

Expansions to the street system that involve the construction of collector and/or arterial streets shall be accomplished pursuant to the City's Comprehensive Plan. It is anticipated that these improvements will be financed by funds generated from systems development charges (SDC's), other resources or by developers as provided below. The timing of improvements to be constructed by the City will be subject to the availability of City funds to finance them.

Section 2. **Procedure**:

Developers who wish to expand the street system by dedicating land and/or constructing streets may do so according to the following procedure:

2.1 Prior City approval will be required.

2.2 An executed agreement between the developer and the City shall be required and shall set forth the development requirements as well as an SDC credit and/or SDC reimbursement, if available.

2.3 All improvements must be constructed according to applicable City Standards, rules and regulations, including the Comprehensive Plan, as determined by the City Engineer.

2.4 All of the cost of such improvements shall be paid by the developer.

2.5 The developer's costs associated with the construction of these qualified public improvements may be eligible for SDC credit and/or SDC reimbursement as provided in this policy.

Section 3. **SDC credit**:

The SDC credit shall be determined first and shall:

3.1 Only be available for qualified public improvements as defined in Oregon Revised Statutes (ORS) 223.304(3) (i.e., improvements that are identified in the City's Comprehensive Plan).

3.2 Be a credit against only the improvement fee portion of the SDC. The improvement fee portion against which the credit may be applied shall be calculated by using the methodology as it is employed in the City's SDC Ordinance and Resolution. If less than the maximum allowable SDC is charged in the Resolution, the percentage of the maximum allowable SDC used shall also be used to determine that portion of the improvement fee against which the SDC credit can be applied.

3.3. The amount of the credit shall not exceed the improvement fee as calculated above. e.g., if a developer incurs $100,000 for collector and/or arterial street improvement costs of which $70,000 is related to qualified improvements, and, if the development has 20 lots and the SDC improvement fee is 70% of the maximum allowable SDC improvement fee of $1,149, or $804, the SDC credit would be $16,080 (20 x $804). If the development included 100 lots the SDC credit would be limited to $49,000 as the SDC improvement fee times the number of lots (100 x 804 = $80,400) exceeds the qualified costs subject to the SDC credit times the percentage of the maximum allowable SDC improvement fee. ($70,000 x .70% = $49,000)

Section 4. **SDC Reimbursement**:

In addition to the SDC credit a developer may be eligible for SDC reimbursement. SDC reimbursement shall be determined as follows:
The maximum SDC reimbursement shall be limited to the collector and/or arterial street improvement costs expended by the developer, as determined by the City Engineer, times the percentage of the maximum allowable SDC in place at the time of executing an agreement with the City, less any SDC credit related to the improvements. There shall be no SDC reimbursement if the SDC credit exceeds the maximum SDC reimbursement. Qualified costs of collector and/or arterial street improvements shall include actual construction costs, exclusive of right-of-way and preliminary engineering costs.

Section 5. **SDC Credit and Reimbursement-Collection and Payment Procedures:**

SDC credit and SDC reimbursement will be collected and paid as follows:

5.1 The current SDC, as established by the Bend City Council, shall be collected by the City on all building permits issued by the City or with other agreements as applicable. The SDC may have two components; an improvement fee for future

system improvements and a reimbursement fee for existing or in-progress improvements.

5.2 SDC improvement fees collected by the City shall be paid to developers and retained by the City in accordance with this policy.

5.3 SDC reimbursement fees collected by the City shall be retained by the City to reimburse the City for previous system expenditures, related debt service or future improvements.

Section 6. **Shared/Sole Recovery Areas:**

6.1 The area served or to be served by the City's street system within the City limits will be categorized as either shared recovery area or as sole recovery area. Sole recovery areas shall be determined by the City Engineer and shall include only the developer's property that is to be served by the approved facilities constructed by the developer. Shared recovery area shall include all area served or to be served by the City's street system that is not otherwise designated as sole recovery area within the City limits.

6.2 SDC improvement fees collected from each sole recovery area shall be applied as follows:

6.2.1 SDC credit due the developer of the sole recovery property, until paid.

6.2.2 SDC reimbursement due the developer of the sole recovery property, until paid or until the 10 year recovery period expires.

6.2.3. Once items 1 and 2 are met the sole recovery property shall become shared recovery area.

6.3 SDC improvement fees collected from the shared recovery area shall be applied as follows:
To developers with outstanding SDC credit and SDC reimbursement balances, including the City, in proportion to the outstanding SDC credit and SDC reimbursement balances, at the end of the repayment period, of all developers, including the city participating in the shared recovery area.

6.4 SDC improvement fees collected and paid to developers from the shared recovery area shall be limited to the amount of SDC credit and/or SDC reimbursement that would not otherwise be collectible from SDC improvement fees within a developer's sole recovery area.

6.5 There shall be no payment made, for either the SDC credit or SDC reimbursement, to the developer from any SDC improvement fee collected within the sole recovery area or shared recovery area until the improvements are accepted by the City.

VOL: 2000 PAGE: 46325
RECORDED DOCUMENT

STATE OF OREGON
COUNTY OF DESCHUTES

*2000-46325 * Vol-Page Printed: 11/15/2000 10:17:54

DO NOT REMOVE THIS CERTIFICATE

(This certificate constitutes a part of the original instrument in accordance with ORS 205.180(2). Removal of this certificate may invalidate this certificate and affect the admissibility of the original instrument into evidence in any legal proceeding.)

I hereby certify that the attached instrument was received and duly recorded in Deschutes County records:

DATE AND TIME: Nov. 15, 2000; 10:09 a.m.

RECEIPT NO: 28560

DOCUMENT TYPE: Development Agreement

FEE PAID: $201.00

NUMBER OF PAGES: 31

Mary Sue Penhollow

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND

AND WESTSIDE MEADOWS, LLC

This Development Agreement ("Agreement") is dated as of the 6 day of November 2000, by and between WESTSIDE MEADOWS, L.L.C., an Oregon Limited Liability Company, hereinafter referred to as "WESTSIDE MEADOWS," and THE CITY OF BEND, an Oregon municipal corporation (the "City"). Each of WESTSIDE MEADOWS and the City is hereinafter referred to as a "Party" and collectively as the "Parties."

1. Definitions:

1.1 "Bridge LID Petition" means that certain LID Petition of even date herewith signed by petitioners BRC, Skyliner Summit Limited Partnership, West Bend Property Company, LLC, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Southern Bridge.

1.2 "Development Agreement" means each of the development agreements between a Property Owner and the City pursuant to ORS 94.504 (collectively, the "Development Agreements"). Three of the Property Owners, Western Communications, Inc., dba The Bulletin (the "Bulletin"), the Bend-LaPine Administrative School District No. 1 (the "School District") and Central Oregon Community College ("COCC") are not parties to a Development Agreement.

1.3 "Final Approval" shall mean the issuance of a development permit that reasonably allows the development described in Section 4 of the Development Agreement to proceed and the expiration of the period of appeal, or if an appeal is filed, the resolution of that appeal in a manner that reasonably allows the development described in Section 4 of the Development Agreement to proceed.

1.4 "Intersection LID Petition" means that certain LID Petition of even date herewith signed by nine of the Property Owners as petitioners, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Projects.

1.5 "Off-Site Transportation Impact Mitigation" means mitigation of the increased burden that each Proposed Development will put on the transportation facilities of the City of Bend outside the property lines of the Proposed Development. The term "Off-Site Transportation Impact Mitigation" includes the "Other Improvements" identified in Exhibit C of each Development Agreement.

1.6 "Other Improvements" means those certain off-site transportation-related improvements to be completed by the Property Owners which are a part of their Off-Site Transportation Impact Mitigation but which are not to be completed pursuant to a local improvement district. The Other Improvements to be completed by a particular Property Owner are identified in Exhibit C to that Property Owner's Development Agreement.

1.7 "Project" means a traffic facility improvement described in Section 4 of the Intersection LID Petition and the Southern Bridge.

1.8 "Property Owners" are the twelve public and private entities, including WESTSIDE MEADOWS, identified on **Exhibit A** who own property on the West Side of the City and who have formed a consortium to resolve the current and projected shortage of transportation facilities on the West Side.

1.9 "Proposed Development" means the development described in Section 4 of this Agreement.

1.10 "Responsible Property" means that portion of the property of each of the Property Owners identified in the Intersection LID Petition or the Bridge LID Petition subject to assessment for the cost of one or more Projects. "Responsible Property" shall not include portions of the property that are dedicated as public right-of-way, or dedicated for any other public purpose.

1.11 "Responsible Property Owner" means the Property Owner identified as being responsible for construction of the specific Project(s) listed for that Property Owner in the Bridge LID Petition or the Intersection LID Petition.

1.12 "Southern Bridge" means the bridge to be constructed over the Deschutes River where the proposed extension of Reed Market Road from the Parkway will cross the Deschutes River as provided in the City's General Plan.

1.13 "West Side" shall mean that portion of the City of Bend directly served by the transportation facilities described in Section 4 of the Intersection LID Petition, and the Southern Bridge.

1.14 "Westside Meadows Property" means the property on which the Proposed Development is to be constructed by Westside Meadows, which Westside Meadow Property is more particularly described on attached **Exhibit B**.

2. Recitals:

2.1 Under the City of Bend General Plan and land use regulations, new development must be supported by adequate public facilities. The City's

General Plan provides that if the public facilities are not adequate, new development must either wait for the installation of the required facilities by the City or pay the cost if it occurs ahead of the City's capital improvement plan. Existing public transportation facilities serving the West Side of the City (the "West Side Transportation System") are not adequate to support all existing development and the new development contemplated in the immediately foreseeable future for the West Side of the City. The City is proceeding on the basis that its land use regulations require a system-wide fix to remedy the system-wide deficiency in the West Side Transportation System in order to support the contemplated new development.

2.2 The City does not have funds available to complete the projects necessary to create the additional capacity for the West Side Transportation System to support the new development within the timeframe in which the Property Owners wish to develop and to complete its other capital improvements.

2.3 The cost of supplying a system-wide remedy that will support the existing needs and the additional transportation burden that the new development will add to the West Side Transportation System is more than the amount that could be exacted from any single Proposed Development. Therefore, the Property Owners have concluded that collectively they can provide the necessary improvements to the West Side Transportation System to support the Proposed Developments. To this end, they have organized themselves as a consortium to accomplish these improvements.

2.4 It is the intention of the Parties that the legal mechanism for accomplishing these improvements will be expressed in Development Agreements, the Bridge LID Petition and the Intersection LID Petition (referred to as the "Consortium Agreements").

2.5 Together, the Consortium Agreements will provide a realistic mechanism for constructing the 11 distinct traffic system improvements required to support the contemplated new development. These improvements will also make a significant contribution toward relieving existing traffic problems in the West Side Transportation System. Ten of these improvements are identified in Section 4 of the Intersection LID Petition, and the other is described in the Bridge LID Petition. The Consortium Agreements also describe Other Improvements which will be constructed by the Property Owners in connection with the Property Owners' Proposed Developments.

2.6 Traffic impact analyses show that the 10 distinct traffic system improvements identified in the Intersection LID Petition, the Bridge LID Petition, and the Other Improvements will be adequate to mitigate the off-site traffic impacts that the Property Owners' Proposed Developments will

have on the West Side Transportation System and ensure the adequacy of the West Side Transportation System on a long-term basis and make reasonable provision for the West Side Transportation System on a long-term basis.

2.7 ORS 94.504 authorizes cities to enter into development agreements with private parties who own or otherwise have a legal interest in property in connection with the development of that property. Such development agreements may have a duration up to seven years and may establish each of the parties' rights and obligations in connection with certain aspects of the proposed developments. Each Property Owner wishes to definitively establish and discharge all of its obligations to mitigate the increased burden that each Proposed Development will put on the West Side transportation facilities of the City of Bend outside the property lines of the Proposed Development ("Off-Site Transportation Impact Mitigation") to the West Side Transportation System through a development agreement with the City.

2.8 Nine of the Property Owners (Brooks Resources Corporation; West Bend Property Company, LLC; Broken Top Limited Partnership; Skyliner Summit Limited Partnership; Century Park LLC; Shevlin Heights LP; West Side Meadows, LLC; Central Oregon Community College; and River Bend Limited Partnership) have signed a Petition to Form West Side Intersection Local Improvement District (the "Intersection LID Petition"), which, among other things, allocates responsibility for constructing 10 of the Projects among the Property Owners signing the Intersection LID Petition.

2.9 Five of the Property Owners (Brooks Resources Corporation, West Bend Property Company, LLC, Skyliner Summit Limited Partnership, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1) have signed a Petition to Form Southern Bridge Local Improvement District (the "Bridge LID Petition"), which, among other things, allocates responsibility for the cost of constructing the Southern Bridge. The Property Owners have agreed upon a schedule for the completion of the Southern Bridge, and the amount to be contributed by each Property Owner, as provided in the Bridge LID Petition.

2.10 The Intersection LID Petition provides a schedule for commencement of construction of the Projects by the applicable Property Owner(s) and provides that a failure of a Property Owner to timely commence and complete its assigned Project(s) shall give the City the option to construct that Project under the Intersection LID Petition, assess that Property Owner's property for the cost of construction and impose liens against that Property Owner's property as permitted by law.

2.11 Execution of the Development Agreements, the Intersection LID Petition and the Bridge LID Petition by the City and all of the Property Owners, and the commitments created by these Consortium Agreements, will supply the realistic provision for transportation facilities necessary to support new development to be served by the West Side Transportation System. In return, the Property Owners shall be relieved from any further Off-Site Transportation Impact Mitigation in connection with that Property Owner's Proposed Development(s).

2.12 Each Property Owner participating in one or both LID Petitions acknowledges that its property will be specially benefited by the Projects listed in the Intersection LID Petition and the Bridge LID Petition that include its property. Each Property Owner who is participating in one or both LID Petition also acknowledges that all of the properties in the Intersection LID and all of the properties in the Bridge LID will be specially benefited by all of the Projects. Each Property Owner participating in the LID Petitions therefore consents to the formation of the LIDs that include the Property Owner's property, subject to the conditions set forth herein.

2.13 It is the intention of the Parties that the Consortium Agreements are each integral parts of a collective effort with the City, intended to accomplish the objectives set out in these recitals. Therefore, the Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be construed accordingly, and in the event of any conflict between the terms and conditions of the Development Agreements and the LID Petitions, the LID Petitions shall prevail.

2.14 It is recognized that the Proposed Development of Cascade Highlands, L.P. is located outside the city limits of the City. Consistent with the Joint Management Agreement between the City and Deschutes County, a three-party development agreement will be executed by the City, Deschutes County and Cascade Highlands, L.P. Cascade Highlands, L.P. will contribute $500,000 to the City for the construction of the Southern Bridge. The Parties recognize that Cascade Highlands, L.P. has substantially the same ownership as Broken Top Limited Partnership and Skyliner Summit Limited Partnership and that its contribution, considered as a part of the entire Consortium Agreements, addresses the impacts its Proposed Development will have on the West Side Transportation System.

2.15 None of the Property Owners shall be responsible for the performance of obligations of any other Property Owners unless expressly stated in the Consortium Agreements.

2.16 The Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be recorded and binding upon the Parties, their

successors and assigns, and shall be enforceable as covenants running with the land; and may be enforced by any remedy provided by law.

2.17 The Parties agree that their execution of these Consortium Agreements represents their acceptance of the purpose expressed in these recitals, and the ways and means of accomplishing this purpose. Towards this end, the Parties expressly agree:

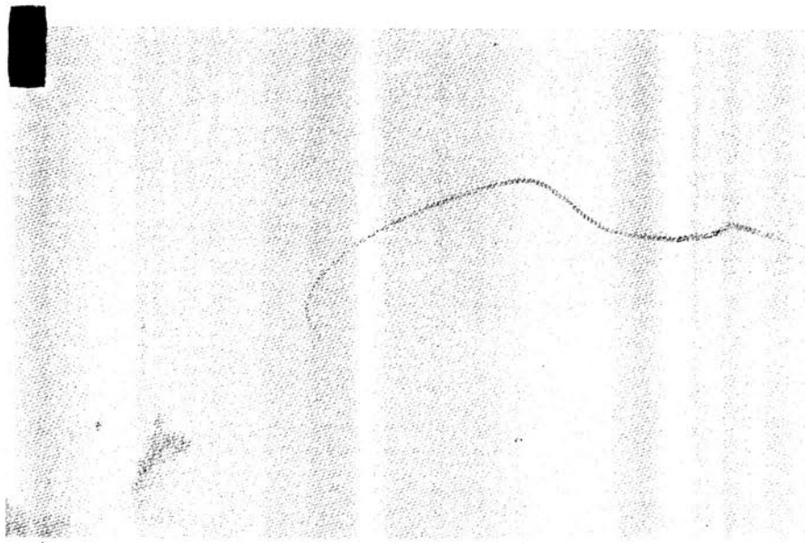
2.17.1 The Parties shall cooperate in good faith to the extent reasonably practicable to accomplish the purpose of the Consortium Agreements. This shall include, but not be limited to, cooperation in the defense of these agreements and their performance.

2.17.2 Other non-consortium development served by the West Side Transportation System shall be expected to make realistic provision for the mitigation of its impacts on transportation facilities as required by law, and in addition to that made by the Property Owners.

2.17.3 The terms and conditions of these Consortium Agreements are intended as an implementation of, and are consistent with, the City's land use laws, rules and regulations, together with all applicable state and federal laws, rules, and regulations. This includes, but is not limited to, a recognition that the performance required of the Parties by these Consortium Agreements is roughly proportional to the impacts the Proposed Developments will have on the West Side Transportation System; and that the public and private responsibilities involved in remedying the deficiencies in the West Side Transportation System in order to support the Proposed Developments are fairly and properly allocated.

2.17.4 The Parties further express their commitment to the objectives of these Consortium Agreements by waiving all claims of any kind or nature resulting from the Parties' agreement to accomplish the purpose contemplated by the Consortium Agreements, or the ways and means provided for accomplishing that purpose in the Consortium Agreements. This includes, but is not limited to any constitutional or statutory claims (for the taking of property or otherwise), and any claims against the other Party, its elected officials, officers, employees, or agents. This waiver does not include claims based upon a failure to perform these Consortium Agreements as expressly required by their terms and conditions. This waiver shall not prevent land use appeals of approvals or denials of the Proposed Developments.

2.17(a) The Parties acknowledge that the lawsuit filed by the Central Oregon Builders Association (COBA) and served upon the City October 10, 2000



may affect the amount of System Development Charges (SDCs) available for reimbursement as provided in the Consortium Agreements. This lawsuit (COBA v. City of Bend, Circuit Court No. 00CV0454AB) seeks to reduce the Street SDC. If COBA succeeds, the $3,250 SDC anticipated by the Consortium Agreements may be reduced and SDC collections available for reimbursement may also be reduced. Because of this possibility, the Parties agree that the provisions of the Consortium Agreements relating to reimbursement (including but not limited to Sec. 12.5 and Exhibit D of the Development Agreements, Sec. 8 of the Southern Bridge LID, and Sec. 8 of the Intersection LID) are modified to provide that the SDC imposed by the City shall be the amount provided in the Consortium Agreements, or the highest amount permitted by law, if the highest amount permitted by law is less than the amount provided in the Consortium Agreements. It is the intent of the Parties that this Section has been added only to accommodate the possibility of a reduction created by the COBA lawsuit, and not for any other purpose. In the event that SDC collections are reduced as a result of the COBA lawsuit, the Consortium Agreements shall continue in full force and effect except as modified by this Section, and the Parties shall in good faith continue to cooperate in the achievement of the purpose of the Consortium Agreements, specifically including the reimbursement to consortium members from SDCs as provided in City of Bend Street Policy No. 5, Sec. 6 (which applies when the potential SDC collections from sole recovery areas will not be adequate to fund full reimbursement, and shared area recovery area collections are available to pay reimbursement not otherwise collectible from sole recovery areas).

2.18 These recitals are part of each of the Consortium Agreements.

3. Effective Date; Term of Agreement

3.1 This Agreement shall be effective upon adoption of the City ordinance approving this Agreement pursuant to ORS 94.508 (the "Effective Date"). The term (the "Term") of this Agreement shall commence on the Effective Date and shall continue for a period of seven years unless terminated sooner in accordance with the provisions contained herein.

3.2 The Parties agree that the intent of the Parties and the essential purpose of this Agreement is to provide the City with a system-wide fix on the West Side in exchange for providing WESTSIDE MEADOWS and the other Property Owners (a) the right to build their Proposed Development at the Maximum Density provided in Section 4.2 for a seven-year period without additional Off-Site Transportation Impact Mitigation, subject to WESTSIDE MEADOWS and the other Property Owners obtaining Final Approval through the normal City applications process, and (b) a seven-year vesting of the land use standards which will be applicable to such applications. The right to the Proposed Development at the Maximum

Density without additional Off-Site Transportation Impact Mitigation and the vested standards during a full seven-year period is critical to WESTSIDE MEADOWS' willingness to enter into this Agreement. The Parties understand that WESTSIDE MEADOWS may not receive the benefit of such intent and purpose during the initial Term of this Development Agreement if there are delays (a) caused by third-party appeals of this Development Agreement and/or the related LID Petitions; (b) caused by third-party appeals of WESTSIDE MEADOWS' land use applications in connection with the Proposed Development; and (c) in the land use applications process. If as a result of such delays WESTSIDE MEADOWS does not receive Final Approval within one year of the Effective Date, the Parties agree that they will negotiate in good faith an extension of the Term of this Development Agreement to assure that WESTSIDE MEADOWS has a 7 year period following Final Approval to proceed with its Proposed Development under the terms and conditions of this Development Agreement. At no time shall the Term exceed seven years.

4. Proposed Development

4.1 WESTSIDE MEADOWS has filed land use applications to allow for the residential development of its WESTSIDE MEADOWS Property into 60 lots. The pending applications include the following: (1) subdivision approval of tentative plan as a master plan. The pending application is currently on appeal to the City of Bend Hearings Officer with a stipulated stay of the appeal between the Parties. The tentative plan proposes phased development of the subdivision. The pending applications referenced in this Section 4 is hereinafter referred to as the "Proposed Development."

4.2 For the purpose of determining the amount and kind of Off-Site Transportation Impact Mitigation required of WESTSIDE MEADOWS' Proposed Development and the rights of WESTSIDE MEADOWS vested herein, WESTSIDE MEADOWS agrees that the density of its Proposed Development of the WESTSIDE MEADOWS Property shall not exceed 109 single-family residential dwelling units (the "Maximum Density"). The Maximum Density has been used by the Parties in a supporting traffic study to determine the estimated number of vehicle trips to be generated by the Proposed Development. To the extent that WESTSIDE MEADOWS changes its mix of development to respond to market conditions but does not increase the number or distribution of estimated vehicle trips, WESTSIDE MEADOWS shall not be deemed to have exceeded its Maximum Density.

5. Conditions to Parties' Obligations

5.1 WESTSIDE MEADOWS' obligation to pay for Projects other than the Southern Bridge and the "Other Improvements" listed in **Exhibit C** under

this Agreement is also subject to the terms and conditions provided in the Intersection LID Petition.

5.2 The City's obligations hereunder are subject to WESTSIDE MEADOWS signing the Intersection LID Petition.

5.3 Both Parties' obligations are subject to Deschutes County entering into a Development Agreement with Cascade Highlands, L.P. consistent with the recitals herein.

6. Permitted Uses. The WESTSIDE MEADOWS Property is within the RS Zone, Urban Standard Density Residential, pursuant to the Bend Zoning Code. Notwithstanding the content of any later-adopted zoning or development ordinance, the land use standards and criteria that apply to approval of the Proposed Development during the period of this Agreement shall be subject to the BZO as the same exist as of the Effective Date.

7. Density or Intensity of Use. Land use approval of the Proposed Development during the period of this Development Agreement shall be subject to the following standards, which exist as of the Effective Date, notwithstanding the content of any subsequently adopted zoning or development ordinance:

7.1 The applicable maximum density provisions of the BZ0 and the Bend Subdivision Ordinance ("BSO") as the same exist as of the Effective Date.

7.2 Any minimum lot area, minimum average lot width, minimum average lot depth, yard requirements, coverage or setback requirements for the WESTSIDE MEADOWS Property shall be based upon BZO Section 10.10.10(5) as the same exists as of the Effective Date. While that section sets forth such lot requirements, it also provides that "the approval authority may allow smaller lots of different housing types in a new subdivision or Planned Unit Development (PUD) approved pursuant to this ordinance and consistent with the Comprehensive Plan designations for preservation of areas of significant interest when these lots or housing types are internal to the subdivision or PUD."

8. Maximum Height and Size of Proposed Structures. Section 10.10.10 of the BZO, as the same exists as of the Effective Date, governs the maximum height and size of proposed structures on the WESTSIDE MEADOWS Property. Section 10.10.10(4) provides that any building over 30 feet in height shall require a conditional use permit. Subject to the lot coverage and setback requirements discussed in Section 10.10.10(5), there are no other size limitations on construction in the RS zone.

9. Provisions for Reservation or Dedication of Land for Public Purposes. WESTSIDE MEADOWS shall dedicate right-of-way, 10' wide, at no cost to the City for the widening of Shevlin Park Road. Except as provided above, WESTSIDE MEADOWS shall have no other obligations to make off-site

reservations or dedication of land for public purposes (including easements and/or licenses) in connection with WESTSIDE MEADOWS' Proposed Development. The necessity and/or specifics of any future on-site reservations or dedications of land for public purposes (including easements and/or licenses) in connection with WESTSIDE MEADOWS' Proposed Development will be determined by the City in reviewing WESTSIDE MEADOWS' applications and applying City standards and ordinances in effect as of the Effective Date.

10. Fees and Charges

10.1 When land within the Proposed Development is developed, the City shall collect System Development Charges ("SDC") within the sole recovery area established for the Proposed Development in accordance with the terms of Section 12.5.

10.2 WESTSIDE MEADOWS and its successors and assigns shall pay all applicable fees and charges then in effect for a particular application, except where the purpose or effect of such fees or charges is Off-Site Transportation Impact Mitigation. In no event shall this Section 10 be construed so as to relieve WESTSIDE MEADOWS or any purchaser of any portion of the WESTSIDE MEADOWS Property from any obligation it may have to pay street SDCs.

11. Schedule and Procedure for Compliance Review. Commencing on the first anniversary of the Effective Date, WESTSIDE MEADOWS shall prepare annual written reports of its compliance with the terms of this Agreement to the City. Such reports shall include an update as to compliance with all schedules set forth herein. After receipt of such reports, the City may request such additional or backup information as it deems reasonably necessary.

12. Responsibility for Providing Infrastructure and Services

12.1 Consistent with the Maximum Density rights vested in Section 4 and the development standards vested in Sections 6, 7, 8 and 10, WESTSIDE MEADOWS agrees to make certain off-site street and transportation-related improvements. Subject to the terms provided herein, WESTSIDE MEADOWS agrees that it shall construct and/or provide funding toward the construction of the following off-site Projects:

12.1.1 Subject to Section 12.3, contribute thirty percent (30%) of the cost of constructing a single-lane roundabout at the intersection of Newport Avenue and 14th Street to permit construction to commence by December 31, 2000. Such roundabout shall be constructed in general conformance with the engineering drawings attached to the Intersection LID Petition;

12.1.2 Subject to the terms provided herein, WESTSIDE MEADOWS agrees that it shall construct those Other Improvements identified on attached **Exhibit C**.

As used herein, "Construction Commencement Deadline" shall mean the date by which the Responsible Property Owner(s) shall have commenced preliminary design and engineering work.

12.2 The City acknowledges that (a) construction of the Southern Bridge is subject to objections raised by third parties which could interfere with that Project; (b) construction of any of the Projects could be delayed as a result of the City's failure to timely acquire necessary rights-of-way, (c) construction of any of the Projects could be delayed as a result of objections raised by third parties; and (d) construction of any Projects could be delayed by difficulties in obtaining approvals from the Oregon Department of Transportation ("ODOT") and any other federal, state or local regulatory body. The City agrees that none of (a), (b), (c) or (d) shall be a basis for denying or delaying the approval of any of WESTSIDE MEADOWS' land use applications in connection with the Proposed Development, grounds for declaring WESTSIDE MEADOWS to be in default, or a basis for exacting additional Off-Site Transportation Impact Mitigation from WESTSIDE MEADOWS. Subject to the terms of the applicable LID Petition(s), the City shall, however, have the right to construct Projects and assess the Responsible Property therefore according to the schedules in the LID Petitions, irrespective of whether WESTSIDE MEADOWS has received Final Approval. In the event of (b), the schedule for construction of the applicable Project as set forth in the applicable LID Petition shall be delayed by the same period of time by which the right-of-way acquisition is delayed.

12.3 The Intersection LID Petition includes plans and drawings for the Projects identified therein. Estimates have been prepared of the cost of constructing them. WESTSIDE MEADOWS shall bear the risk that such costs may increase between the date of this Development Agreement and the date that construction commences; provided, however, the City shall bear any additional costs, which result from any change in design required by the City or ODOT.

12.4 The City agrees that the Projects and Other Improvements to be provided pursuant to this Development Agreement, the Bridge LID Petition and the Intersection LID Petition shall be deemed to satisfy WESTSIDE MEADOWS' obligation to provide Off-Site Transportation Impact Mitigation in connection with the Maximum Density of the Proposed Development set forth in Section 4 so that, with respect to off-site transportation obligations, the Proposed Development is vested. The City shall require no other off-site transportation-related exactions nor require any further traffic studies relating to Off-Site Transportation Impact

Mitigation in connection with or as a condition to the approval of WESTSIDE MEADOWS' Proposed Development. This shall include, but not be limited to, construction of off-site streets or intersections, improvement of off-site intersections or other existing off-site transportation facilities, construction of off-site bicycle paths or pedestrian trails and dedication of off-site rights-of-way for any of the above-identified purposes. Notwithstanding the foregoing, WESTSIDE MEADOWS' rights which are vested herein are dependent upon the Maximum Density of the Proposed Development set forth in Section 4 which is tied to the estimated number of vehicle trips to be generated by such Maximum Density. The Parties hereto understand that the mix of uses that make up the Maximum Density could change based on market forces. However, to the extent that WESTSIDE MEADOWS submits land use applications that would increase the number of vehicle trips to be generated by the Proposed Development, the Proposed Development may be subject to additional off-site transportation exactions based upon projected transportation impacts on City transportation facilities from the increased density, consistent with City policies and regulations. The Parties agree that this Development Agreement does not, however, resolve any issue relating to on-site transportation requirements and that on-site transportation issues are reserved for future discretionary land use approval, and that the City may require further studies and reviews relating to on-site traffic.

12.5 The City and WESTSIDE MEADOWS agree that upon execution of this Agreement that the property identified in **Exhibit B** shall be established as the sole recovery area for the collection of transportation system development charges ("SDC"). During the Term of this Agreement, the City shall collect SDCs at the greater of the rates determined in accordance with the SDC rates attached as **Exhibit D**, or any future rates adopted by the City. The City is currently evaluating SDC rates for commercial and industrial development. If such rates are changed prior to December 31, 2000, such change shall replace **Exhibit D** to this Agreement. Otherwise, until the earlier of the expiration of this Agreement or the date at which the Property Owner has received full reimbursement from SDCs, the SDC rate for those SDCs collected from the sole recovery area will not decrease, but shall increase if and when City-wide SDC rates increase.

12.6 The City shall use the SDC revenue collected from the sole recovery area to reimburse WESTSIDE MEADOWS for the cost of constructing the projects (other than the Southern Bridge) identified in Section 12.1 above at a rate of 100% of all qualified improvements pursuant to Street Policy 5 **(Exhibit E)** as amended.

12.7 The Parties agree that there are certain actions or improvements that must be made in conjunction with the Projects and Other Improvements to be

completed by the Property Owners to provide adequate facilities to support development which will impact the City's the West Side Transportation System. These actions or improvements are not a part of the Property Owners' obligations and the City agrees to assure that such actions are taken and such improvements are made. As referenced in the supporting traffic studies, such actions and improvements include, but are not limited to, acquiring rights-of-way for those Projects for which the Property Owners do not already own the necessary rights-of-way, obtaining permits necessary for construction of the Projects, expanding some of the Projects as necessary from single-lane roundabouts to double-lane roundabouts and completing bicycle lanes where gaps exist along Shevlin Park Road. In no event shall the City be obligated to expend funds to take such actions or complete such improvements; the City may assure their completion by any appropriate means, including, without limitation, making them conditions to other future development, paying for them with systems development charges, paying for them with grants and/or including them in future capital improvement plans.

13. Assumptions Relating to City's Ability to Serve Development; Continuing Effect of Agreement

13.1 ORS Section 94.504(6) requires that a Development Agreement "state the assumptions underlying the agreement that relate to the ability of the city…to serve the development."

13.2 The facts set forth in the Recitals are included in the assumptions underlying this Agreement.

13.3 The Parties operate under the assumption that construction of the Projects (including the Southern Bridge) will provide adequate off-site transportation infrastructure and facilities to support WESTSIDE MEADOWS' Proposed Development. The adequacy of transportation facilities are determined with reference to the standards in effect as of the Effective Date.

13.4 In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with the Agreement impossible or unlawful, the Parties will attempt to give effect to the remainder of the Agreement, but only if the purposes set out in the recitals can be accomplished and such effect does not prejudice the substantial rights of either Party under the Agreement.

13.4.1 If the substantial rights of either Party are prejudiced by giving effect to the remainder of the Agreement, then the Parties shall negotiate in good faith to revise the Agreement to give effect to its original intent.

13.4.2 If the Parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either Party may request that an arbitration panel determine an equitable effect for the remainder of the Agreement. The arbitration panel shall consist of 3 arbitrators, one of which shall be selected by WESTSIDE MEADOWS, one of which shall be selected by the City, and the third of which shall be selected by agreement of the arbitrators selected by WESTSIDE MEADOWS and the City. If the 2 arbitrators are unable to agree upon the selection of a third arbitrator, then the third arbitrator shall be selected by the Presiding Judge of the Circuit Court, 11th Judicial District, Deschutes County, Oregon.

13.4.3 If, because of a change in policy, law or circumstances, the Agreement fails of its essential purposes (construction of all of the system improvements called for in the Intersection LID Petition, the Bridge LID Petition and this Development Agreement; vesting of allowed uses and limitations on development conditions; vesting of maximum off-site transportation exactions; and vesting of maximum permissible densities in connection therewith), then the Parties shall be placed into their original position to the extent practical.

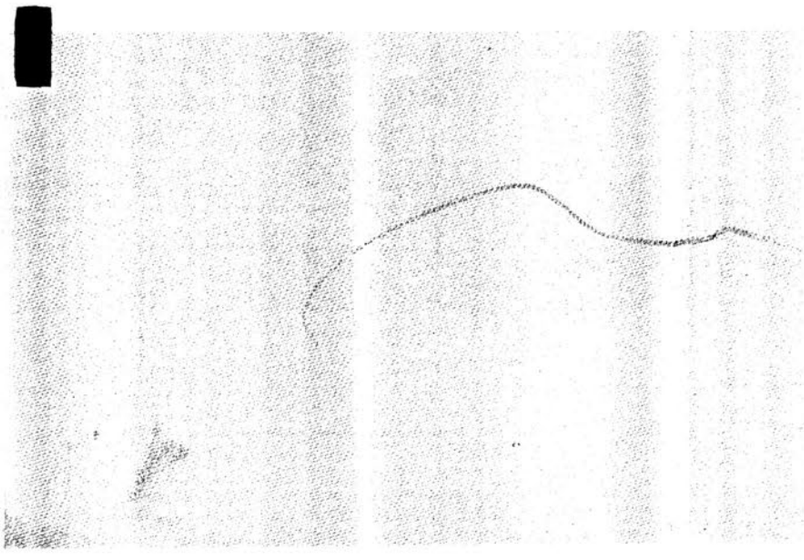
13.4.4 As used herein, however, "change in circumstance" does not include changes in local government land development or land division regulations.

13.5 To the extent any local rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis that is not, in the reasonable discretion of WESTSIDE MEADOWS, inconsistent with the substance, purpose, or conditions of this Development Agreement, then the local rule, ordinance, regulation or policy shall be applicable.

14. Assignability of Agreement. This Agreement shall be fully assignable, in whole or in part, by either Party and shall bind and inure to the benefit of the Parties and their respective successors and assigns. If any portion (other than lot sales to individuals or builders) of the WESTSIDE MEADOWS Property is sold, the duties, rights and interests of WESTSIDE MEADOWS under this Agreement shall become the duties, rights and responsibilities of the purchaser and WESTSIDE MEADOWS. Notwithstanding the foregoing, no purchaser of an individual lot(s) shall have any rights hereunder.

15. Future Discretionary Approvals.

15.1 The City agrees to cooperate with WESTSIDE MEADOWS in securing all future necessary land use permits and approvals for the Proposed Development needed from entities other than the City.



15.2 The following future discretionary approvals are the currently anticipated approvals that will be required for the Proposed Development of the WESTSIDE MEADOWS Property:

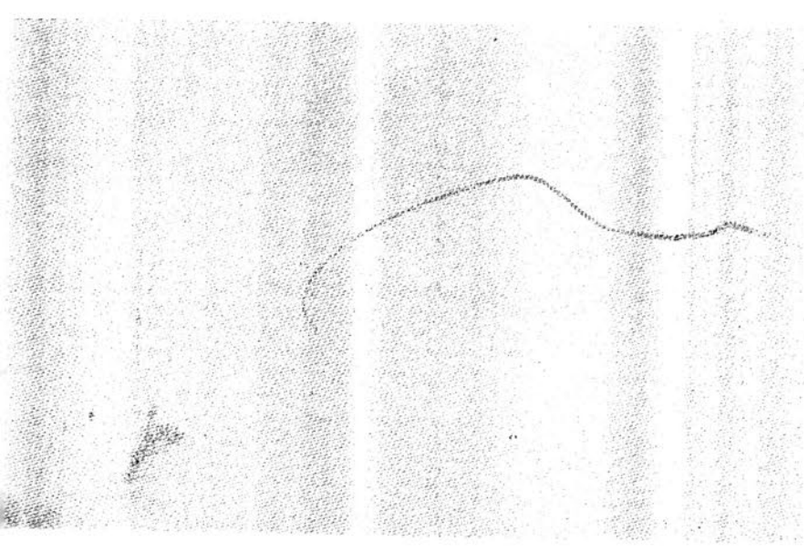
15.2.1 Approval of the pending Westside Meadows subdivision application, a tentative plan as a master plan for approval of 60 lots.

15.3 The Parties acknowledge that the provisions of WESTSIDE MEADOWS' land use application, other than the provisions relating to Off-Site Transportation Impact Mitigation, shall be the subject of future discretionary approvals by the City. The question of whether the City may approve the applications referred to in this Agreement, including the provisions of the land use applications referred to in Sections 4 (Proposed Development), 6 (Permitted Uses), 7 (Density or Intensity of Use), and 8 (Maximum Height and Size of Proposed Uses), or any other part of WESTSIDE MEADOWS' land use application are reserved for future discretionary approvals, and are not resolved by the terms of this Agreement, the Intersection LID Petition or the Bridge LID Petition. Nothing in this Agreement resolves, adjudicates or dispenses with the responsibilities of WESTSIDE MEADOWS or its Proposed Development for impacts or conditions of approval other than Off-Site Transportation Impact Mitigation, and nothing herein operates as an approval (or preliminary approval) by City of WESTSIDE MEADOWS' land use applications except as to Off-Site Transportation Impact Mitigation.

15.4 In the event of a conflict between the terms of this Development Agreement, and the terms of either the Intersection LID Petition or the Bridge LID Petition, then the terms of the Intersection LID Petition or the Bridge LID Petition shall control.

15.5 The discretionary approvals shall be reviewed by the City in the same manner and subject to the same procedures and hearings requirements as all other similar land use applications filed at the time of the Effective Date.

16. Schedule. WESTSIDE MEADOWS shall commence construction of the Projects assigned to WESTSIDE MEADOWS as of the date set forth in the relevant LID Petition(s) and shall complete construction of each Project no later than the date established in the relevant LID Petition(s). Subject to obtaining timely approvals of its Proposed Development, Westside Meadows shall commence construction of its Proposed Development by 2001 and that its Proposed Development shall be completed by the expiration of the Development Agreement.



17. Defaults

17.1 A breach of a material provision of any of the Consortium Agreements, whether by action or inaction of a Party which continues and is not remedied within thirty (30) days after the other Party has given notice specifying the breach shall constitute a default by a Party. If the breach is of such a nature that it cannot reasonably be cured within such thirty-day period, the cure period shall be extended to such amount of time as is reasonable but only if the breaching Party promptly commences, and thereafter diligently prosecutes, such cure.

17.2 The exercise by either Party of any one or more of such remedies available to it shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

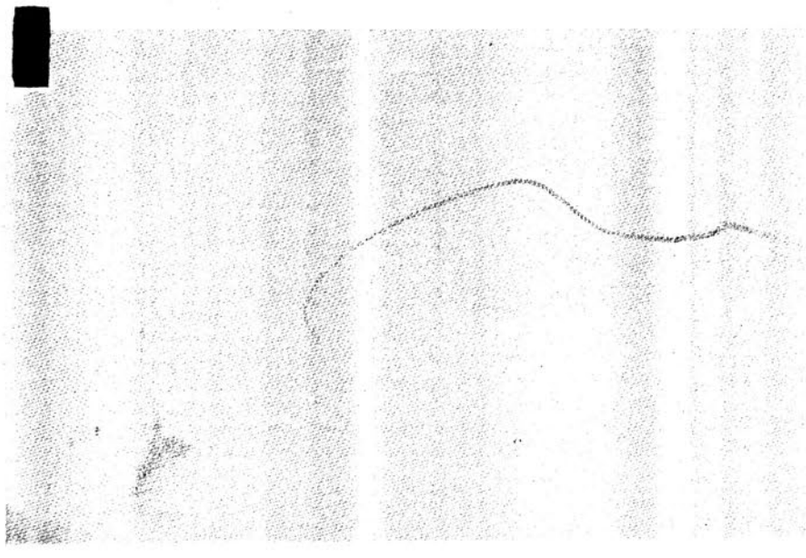
17.3 Notwithstanding the foregoing, in the event that WESTSIDE MEADOWS fails to construct (or fund its share of the costs of construction in the case of the Southern Bridge) the Projects identified in Section 12.1 above, by the applicable deadlines set forth in the Intersection LID Petition or the Bridge LID Petition, as applicable, then WESTSIDE MEADOWS shall not be deemed in default hereunder, but the City shall have the rights set forth in the Intersection LID Petition or the Bridge LID Petition to construct the traffic improvement facilities and to assess the Responsible Property as set forth in those petitions.

18. Release of Development Agreement. The City shall release developed lots from this Development Agreement upon the request of WESTSIDE MEADOWS provided that the terms and conditions of this Development Agreement have been performed as they relate to the lot to be released.

19. Force Majeure

19.1 In the event that any Party (the "Delayed Party") is delayed or prevented from performing any of its obligations under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities, laws or other governmental requirements, riots, war, or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

19.2 The City's right under the Intersection LID Petition or the Bridge LID Petition to construct traffic system improvements shall not be affected by the provisions of Subsection 19.1.



20. Notices. Any notice, demand, request, approval, consent, or other communication (collectively referred to as a "Notice") concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other Party at the address set forth below. Any Notice shall be given by either: (i) personal delivery in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Any Party may change any address for the delivery of Notice to such Party, by giving Notice in accordance with the provisions of this Section. The attorneys for the Parties may give any Notice.

Notices Addresses:

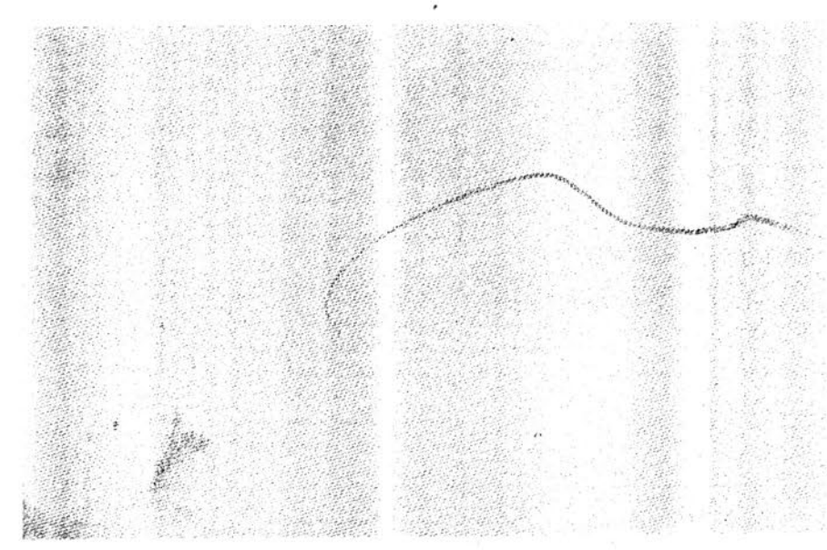
If to WESTSIDE MEADOWS:	Westside Meadows LLC 501 NE Greenwood Avenue, Suite 700 Bend, OR 97701 Attn: Larry Kine
With a copy to:	Liz Fancher, Attorney 644 NW Broadway Street Bend, Oregon 97701
If to City:	City of Bend Development Services 710 N.W. Wall Bend, OR 97701 Attn: Development Services Director

21. Miscellaneous

21.1 City Funding. The Parties agree that any provision herein which requires the City to expend funds is contingent upon future appropriations as part of the City budget process as provided in ORS 94.504(5). Nothing herein requires the City to appropriate such funds.

21.2 Waivers. No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

21.3 Entire Agreement/Modifications. This Agreement, together with the Intersection LID Petition and the Bridge LID Petition (along with all exhibits incorporated therein) (collectively referred to as the "Consortium Agreements") constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties



with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto. This Development Agreement, the Intersection LID Petition and the Bridge LID Petition are parts of a whole transaction between the Parties and shall be construed as a whole transaction.

21.4 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

21.5 Captions. The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the Parties.

21.6 Gender/Singular/Plural. Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all the Parties and all circumstances, except where the context of this Agreement clearly dictates otherwise.

21.7 Severability. Subject to Section 13.4, the unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

21.8 Time of Essence. Time is of the essence of this Agreement.

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

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

"WESTSIDE MEADOWS" WESTSIDE MEADOWS, L.L.C.
an Oregon limited liability company

By: _____
Name: LARRY D. KIRT
Title: OPERATING MANAGER

"WESTSIDE MEADOWS" WESTSIDE MEADOWS, L.L.C.
an Oregon limited liability company

By: _____
Name: Klint O'Neal
Title: Operating Manager

"CITY" CITY OF BEND, an Oregon Municipal Corporation,

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before on November 1, 2000 by Larry Kine as Managing Member of Westside Meadows, LLC.

OFFICIAL SEAL
CYNTHIA M SMITH
NOTARY PUBLIC-OREGON
COMMISSION NO. 335405
MY COMMISSION EXPIRES JUNE 8, 2004

Cynthia M. Smith
Signature of Notarial Officer
My Commission Expires: 6/8/04

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before on November 1, 2000 by Klint O'Neal as Operating Manager of Westside Meadows, LLC.

OFFICIAL SEAL
CYNTHIA M SMITH
NOTARY PUBLIC-OREGON
COMMISSION NO. 335405
MY COMMISSION EXPIRES JUNE 8, 2004

Cynthia M. Smith
Signature of Notarial Officer
My Commission Expires: 6/8/04

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before on November 6th, 2000 by Dr Larry Patterson as City Manager of the City of Bend.

OFFICIAL SEAL
PATRICIA ANNE SMILEY STELL
NOTARY PUBLIC-OREGON
COMMISSION NO. 305227
MY COMMISSION EXPIRES NOV. 22, 2001

Patricia Anne Smiley Stell
Signature of Notarial Officer
My Commission Expires: Nov. 22, 2001

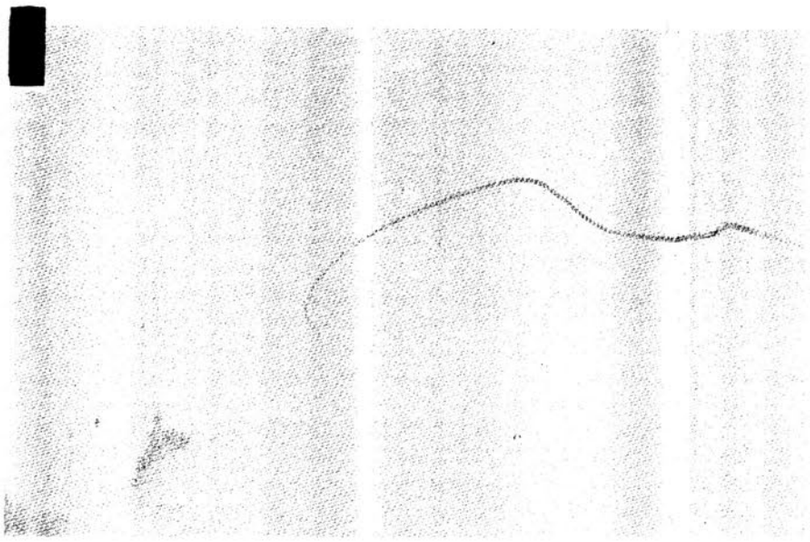


Exhibit A
Property Owners

1. Brooks Resources Corporation;
2. West Bend Property Company, LLC;
3. Broken Top Limited Partnership and Broken Top Development, LLC;
4. Skyliner Summit Limited Partnership and Broken Top Development, LLC;
5. Century Park LLC;
6. Shevlin Heights Limited Partnership/Shevlin Heights Acquisition, LLC;
7. River Bend Limited Partnership;
8. Central Oregon Community College;
9. Bend LaPine Administrative School District No. 1;
10. West Side Meadows, LLC;
11. Western Communications Inc., dba The Bulletin; and
12. Cascade Highlands Limited Partnership.

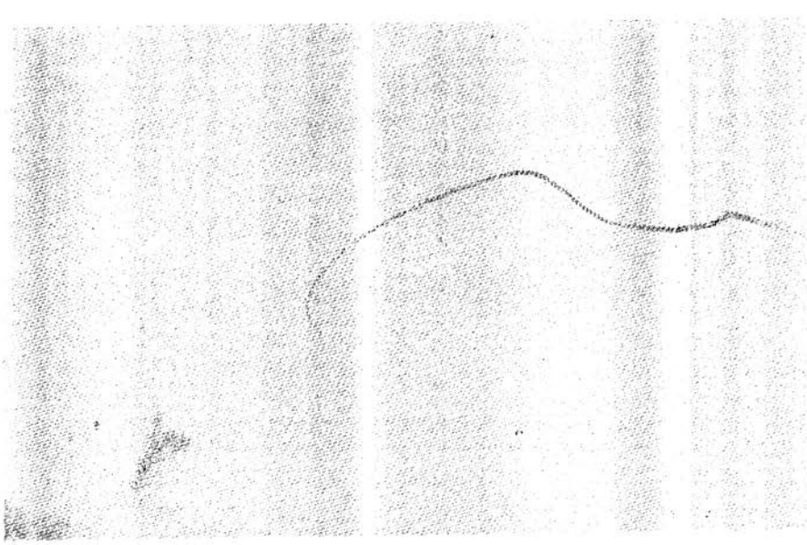


Exhibit B
WESTSIDE MEADOWS Property

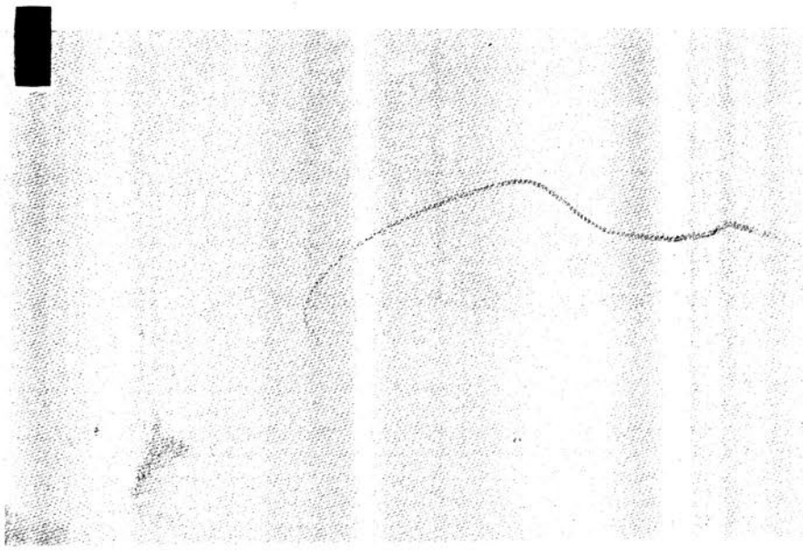
A parcel of land containing 14.96 acres, more or less, located in a portion of the West One-Half of the Southwest One-Quarter (W1/2 SW1/4) of Section 25, Township 17 South Range 11 East, Willamette Meridian, Deschutes County, Oregon being more particularly described as follows:

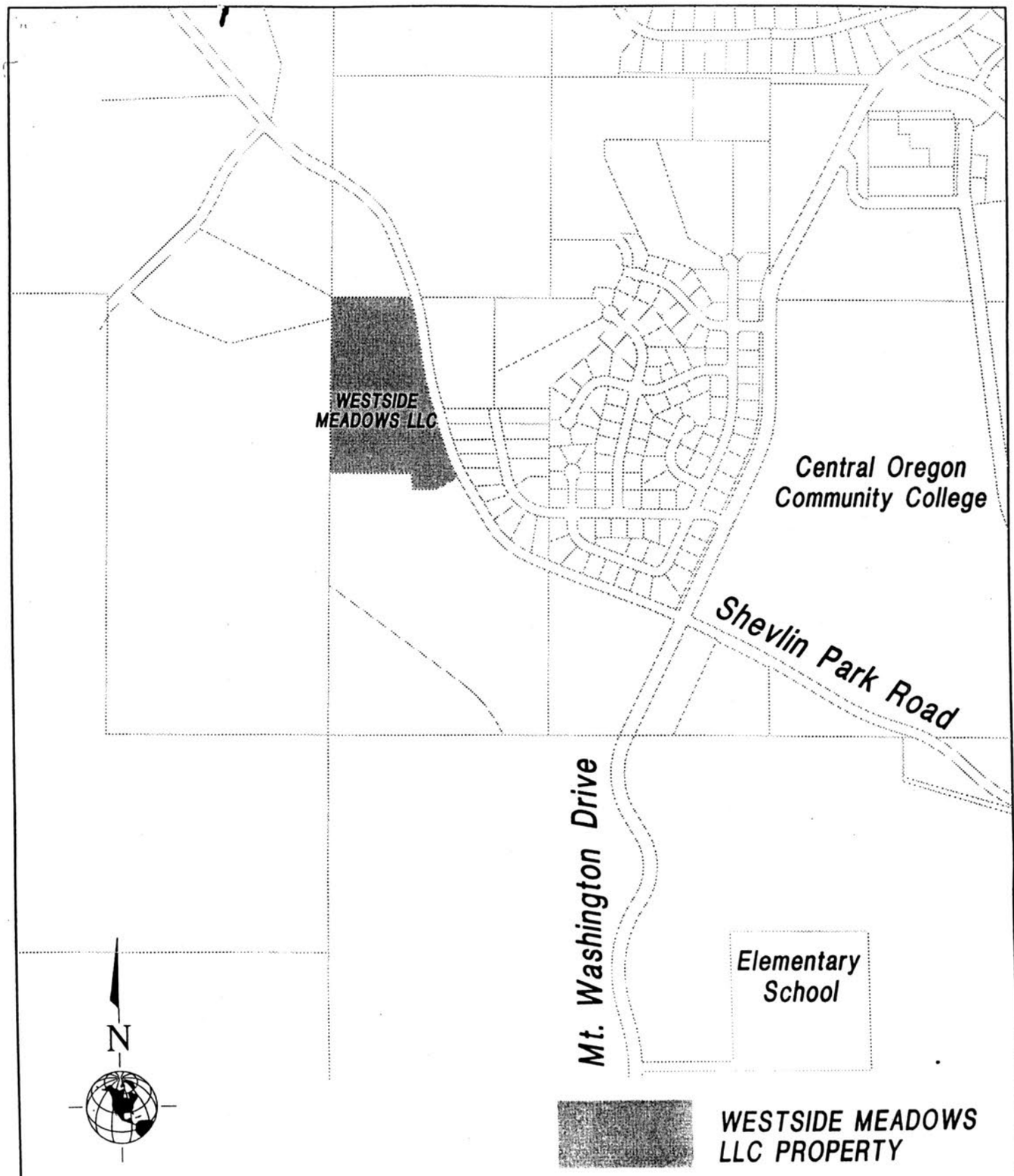
Beginning at the West One-Quarter Corner of said Section 25; thence along the east-west centerline of said Section 25 North 89° 56' 02" East a distance of 481.56 feet to a point on the westerly 30 foot right-of-way line of Shevlin Park Road; thence along said westerly 30 foot right-of-way line the following three curves and two courses:

Around a 1402.39 foot radius non-tangent curve right 184.59 feet (chord bears South 12° 37' 48" East, 184.46 feet);
South 08° 51' 33" East a distance of 223.15 feet;
Around a 1462.39 foot radius curve left 207.63 feet (chord bears South 12° 55' 36" East, 207.46 feet);
South 16° 59' 39" East a distance of 269.33 feet;
Around a 1175.92 foot radius curve left 230.04 feet (chord bears South 22° 35'55" East 229.68 feet);

thence leaving said 30 foot westerly right-of-way line South 60° 05' 10" West a distance of 107.99 feet; thence around a 170.00 foot radius curve right 89.91 feet (chord bears South 75° 14' 14" West, 88.86 feet; thence South 89° 36' 42" East a distance of 97.41 feet; thence North 00° 23' 18" East a distance of 50.00 feet; thence North 89° 36' 42" West a distance of 5.47 feet; thence North 00° 23' 18" East a distance of 50.00 feet; thence North 89° 36' 42" West a distance of 495.00 feet to a point on the west line of said Section 25; thence along said west line North 00° 23' 18" East a distance of 1044.21 feet to the "Point of Beginning," the terminus of this description.

SUBJECT TO: All easements, restrictions and rights-of-way of record and those common and apparent on the land.





DATE	BY	REVISION	CHK

DRAWN BY: JAM
DESIGNED BY: JAM
CHECKED BY: KSD
APPROVED BY: KSD

W&H PACIFIC
920 Emkay, Suite C-100
Bend, Oregon 97702-1041
(541)388-4855
(541)388-4859 Fax
whpacific.com
A Member of The W Group
Planners • Engineers • Surveyors • Landscape Architects

West Side Transportation Consortium
Westside Meadows LLC

Property Exhibit Map

EXHIBIT B

BEND/DESCHUTES OREGON

SCALE:	PROJECT NO.	FILE NAME:	
1"=800'	02.2452.0001	WSTCPROP.DWG	1/1

PLOT DATE: 10/16/2000

LAST EDIT:

Exhibit C
Other Improvements

The following are the "Other Improvements" referenced in the Development Agreement between Westside Meadows LLC and the City of Bend that are provided to offset off-site traffic impacts of the Westside Meadows subdivision:

1. Dedicate 10' wide right-of-way along the Shevlin Park Road frontage of the WESTSIDE MEADOWS Property.

2. Make and dedicate the following improvements in the right-of-way of Shevlin Park Road to City standards described in Item 1, above:

   A. Build a 4' wide sidewalk to City standards; and
   B. Widen Shevlin Park Road to a width of 24 feet, as measured to the south side of the curb from the center line on the south side of the road.
   C. Install a curb along the widened roadway; and
   D. Stripe the widened roadway to provide a bicycle lane.

3. Provision of adequate right-of-way and right-of-way development accommodations to support transit, such as, areas for bus stops, shelters or other similar facility as deemed appropriate by the City during tentative plan review.

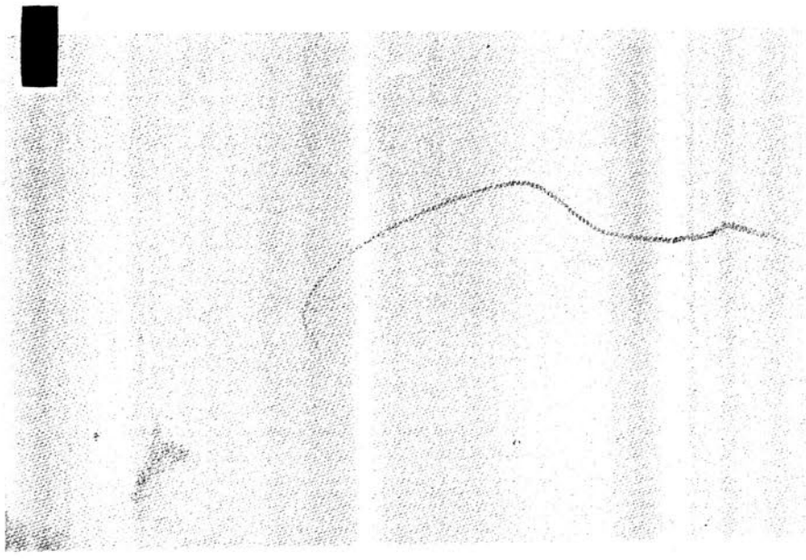


Exhibit D

STREET SDCS

SDC = Trip Ends X Trip Length / 2 / 7200 X $889,160 (lane mile cost)

Category	Daily Trip ends per unit	Units	Chargeable % reduction	Conversion: Daily trip ends per unit	Aver. RT trip length (miles)	100% SDC per unit
Industrial						
Industrial - general	6.97	T.G.S.F.	0.00%	6.97	6.2	$2,668
Industrial - batch plant	100.00	unit	0.00%	100.00	6.2	$38,283
Manufacturing - bulky items	1.02	employees	0.00%	1.02	6.2	$390
Manufacturing - high tech-research & d	2.09	employees	0.00%	2.09	5.0	$645
Service and repair	5.60	T.G.S.F.	0.00%	5.60	6.0	$2,075
Residential						
Single Family	9.57	Dwelling Unit	0.00%	9.57	5.5	$3,250
Apartments	6.63	Dwelling Unit	0.00%	6.63	5.5	$2,252
Condominium	5.86	Dwelling Unit	0.00%	5.86	5.5	$1,990
Manufactured Home	4.81	Dwelling Unit	0.00%	4.81	5.5	$1,634
Senior Care	2.15	Dwelling Unit	0.00%	2.15	5.5	$730
PUD - residential	7.44	Dwelling Unit	0.00%	7.44	5.5	$2,527
Lodging						
Motel	9.11	Room	0.00%	9.11	5.9	$3,319
Hotel	6.95	Room	0.00%	6.95	5.9	$2,532
Recreational						
Golf Course	5.04	Acre	0.00%	5.04	7.5	$2,334
Bowling Alley	33.33	T.G.S.F.	0.00%	33.33	7.5	$15,435
Theater w/Matinee	0.29	Seat	0.00%	0.29	7.5	$134
Arena	33.33	Acre	0.00%	33.33	7.5	$15,435
Community Center	22.88	T.G.S.F.	0.00%	22.88	7.5	$10,596
Athletic Facility	2.30	T.G.S.F.	50.00%	1.15	5.0	$355
Spa	18.00	per station	36.00%	11.52	3.0	$2,134
Institutional						
Elementary School	1.02	Student	0.00%	1.02	3.8	$239
High School	1.79	Student	0.00%	1.79	3.8	$420
Community College	2.38	Student	0.00%	2.38	3.8	$558
Community College Library	45.50	T.G.S.F.	80.00%	9.10	3.8	$2,135
Community Library	45.50	T.G.S.F.	60.00%	18.20	3.8	$4,270
Church	9.11	T.G.S.F.	0.00%	9.11	3.8	$2,138
Daycare	4.52	Student	60.00%	1.81	3.8	$424
Medical						
Hospital	16.78	T.G.S.F.	0.00%	16.78	5.0	$5,181
Medical/Dental Clinic	36.13	T.G.S.F.	0.00%	36.13	5.0	$11,155
Specialty Medical	23.79	T.G.S.F.	20.00%	19.03	5.0	$5,876
General Office Bldg.						
Size < 50,000	15.39	T.G.S.F.	0.00%	15.39	6.2	$5,854
50,000<= Size < 175,000	10.08	T.G.S.F.	0.00%	10.08	6.2	$3,859
175,000<= Size	7.78	T.G.S.F.	0.00%	7.78	6.2	$2,978
Government						
Gov't Office Bldg.	68.93	T.G.S.F.	0.00%	68.93	6.2	$26,389
Retail						
General Retail	35.15	T.G.S.F.	47.00%	18.63	4.0	$4,601
Gasoline/Service Station	168.56	Pump Positn	50.00%	84.28	4.0	$20,816
Convenience Market	737.99	T.G.S.F.	61.00%	287.82	4.0	$71,087
Shopping Center:						
Size < 50,000	87.31	T.G.L.S.F.	34.00%	57.62	4.0	$14,233

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PLEASE SEE OTHER SIDE OF PAGE

Exhibit D

50,000<= Size< 175,000	43.23	T.G.L.S.F.	34.00%	28.53	4.0	$7,047
175,000<= Size	28.98	T.G.L.S.F.	34.00%	19.13	4.0	$4,724
Restaurant - High turnover/Drive throug	238.80	T.G.S.F.	46.00%	128.95	4.0	$31,850
Restaurant - Specialty Food Item Servic	36.81	T.G.S.F.	50.00%	18.41	4.0	$4,546
Restaurant - Dinner only	10.00	T.G.S.F.	5.00%	9.50	4.0	$2,346
Restaurant - Lunch/Dinner	25.00	T.G.S.F.	15.00%	21.25	4.0	$5,249
Restaurant - Breakfast/Lunch/Dinner	158.00	T.G.S.F.	40.00%	94.80	4.0	$23,415
Supermarket w/Strip mall	111.51	T.G.S.F.	36.00%	71.37	4.0	$17,627
Specialty / Neighborhood Grocery	24.36	T.G.S.F.	20.00%	19.49	3.0	$3,610
Drinking Establishment	12.00	T.G.S.F.	20.00%	9.60	3.0	$1,778
Banks - w/Drive through	265.21	T.G.S.F.	47.00%	140.56	4.0	$34,717

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Exhibit E
Street Policy No. 5

City of Bend
Street Policy 5
Street System Development Charge Credit and Reimbursement

Section 1. **Purpose**:
It shall be the policy of the City of Bend that expansions to the City's street system shall only be accomplished as directed and approved by the City. The timing and financing of system expansions shall be as provided in this policy.

Expansions to the street system that involve the construction of collector and/or arterial streets shall be accomplished pursuant to the City's Comprehensive Plan. It is anticipated that these improvements will be financed by funds generated from systems development charges (SDC's), other resources or by developers as provided below. The timing of improvements to be constructed by the City will be subject to the availability of City funds to finance them.

Section 2. **Procedure**:

Developers who wish to expand the street system by dedicating land and/or constructing streets may do so according to the following procedure:

2.1 Prior City approval will be required.

2.2 An executed agreement between the developer and the City shall be required and shall set forth the development requirements as well as an SDC credit and/or SDC reimbursement, if available.

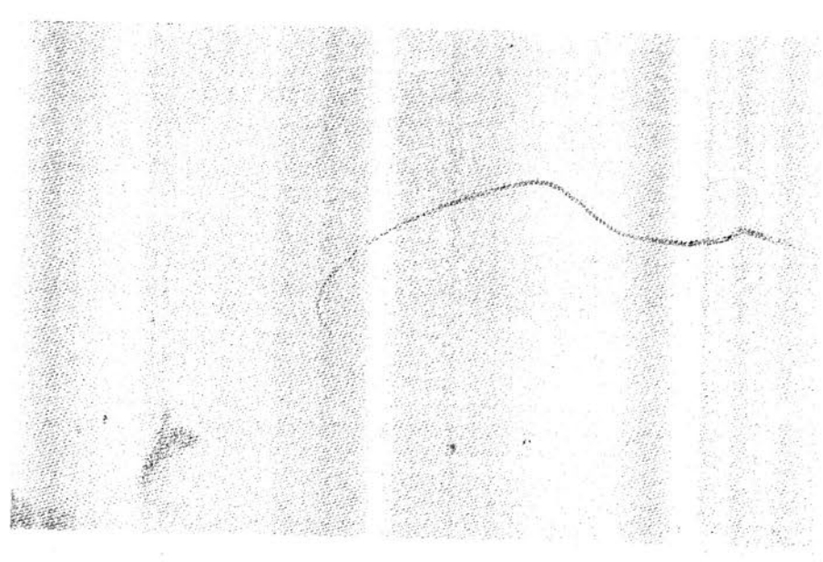
2.3 All improvements must be constructed according to applicable City Standards, rules and regulations, including the Comprehensive Plan, as determined by the City Engineer.

2.4 All of the cost of such improvements shall be paid by the developer.

2.5 The developer's costs associated with the construction of these qualified public improvements may be eligible for SDC credit and/or SDC reimbursement as provided in this policy.

Adopted: 09/06/95
Revised:

Print Date: September 12, 1995



Section 3. **SDC credit**:

The SDC credit shall be determined first and shall:

3.1 Only be available for qualified public improvements as defined in Oregon Revised Statutes (ORS) 223.304(3) (i.e., improvements that are identified in the City's Comprehensive Plan).

3.2 Be a credit against only the improvement fee portion of the SDC. The improvement fee portion against which the credit may be applied shall be calculated by using the methodology as it is employed in the City's SDC Ordinance and Resolution. If less than the maximum allowable SDC is charged in the Resolution, the percentage of the maximum allowable SDC used shall also be used to determine that portion of the improvement fee against which the SDC credit can be applied.

3.3. The amount of the credit shall not exceed the improvement fee as calculated above. e.g., if a developer incurs $100,000 for collector and/or arterial street improvement costs of which $70,000 is related to qualified improvements, and, if the development has 20 lots and the SDC improvement fee is 70% of the maximum allowable SDC improvement fee of $1,149, or $804, the SDC credit would be $16,080 (20 x $804). If the development included 100 lots the SDC credit would be limited to $49,000 as the SDC improvement fee times the number of lots (100 x 804 = $80,400) exceeds the qualified costs subject to the SDC credit times the percentage of the maximum allowable SDC improvement fee. ($70,000 x .70% = $49,000)

Section 4. **SDC Reimbursement**:

In addition to the SDC credit a developer may be eligible for SDC reimbursement. SDC reimbursement shall be determined as follows:
The maximum SDC reimbursement shall be limited to the collector and/or arterial street improvement costs expended by the developer, as determined by the City Engineer, times the percentage of the maximum allowable SDC in place at the time of executing an agreement with the City, less any SDC credit related to the improvements. There shall be no SDC reimbursement if the SDC credit exceeds the maximum SDC reimbursement. Qualified costs of collector and/or arterial street improvements shall include actual construction costs, exclusive of right-of-way and preliminary engineering costs.

Section 5. **SDC Credit and Reimbursement-Collection and Payment Procedures**:

SDC credit and SDC reimbursement will be collected and paid as follows:

5.1 The current SDC, as established by the Bend City Council, shall be collected by the City on all building permits issued by the City or with other agreements as applicable. The SDC may have two components; an improvement fee for future

system improvements and a reimbursement fee for existing or in-progress improvements.

5.2 SDC improvement fees collected by the City shall be paid to developers and retained by the City in accordance with this policy.

5.3 SDC reimbursement fees collected by the City shall be retained by the City to reimburse the City for previous system expenditures, related debt service or future improvements.

Section 6. **Shared/Sole Recovery Areas:**

6.1 The area served or to be served by the City's street system within the City limits will be categorized as either shared recovery area or as sole recovery area. Sole recovery areas shall be determined by the City Engineer and shall include only the developer's property that is to be served by the approved facilities constructed by the developer. Shared recovery area shall include all area served or to be served by the City's street system that is not otherwise designated as sole recovery area within the City limits.

6.2 SDC improvement fees collected from each sole recovery area shall be applied as follows:

6.2.1 SDC credit due the developer of the sole recovery property, until paid.

6.2.2 SDC reimbursement due the developer of the sole recovery property, until paid or until the 10 year recovery period expires.

6.2.3. Once items 1 and 2 are met the sole recovery property shall become shared recovery area.

6.3 SDC improvement fees collected from the shared recovery area shall be applied as follows:
To developers with outstanding SDC credit and SDC reimbursement balances, including the City, in proportion to the outstanding SDC credit and SDC reimbursement balances, at the end of the repayment period, of all developers, including the city participating in the shared recovery area.

6.4 SDC improvement fees collected and paid to developers from the shared recovery area shall be limited to the amount of SDC credit and/or SDC reimbursement that would not otherwise be collectible from SDC improvement fees within a developer's sole recovery area.

6.5 There shall be no payment made, for either the SDC credit or SDC reimbursement, to the developer from any SDC improvement fee collected within the sole recovery area or shared recovery area until the improvements are accepted by the City.

6.6 There shall be no SDC credit or SDC reimbursement paid after 10 years from the date the qualified improvements are accepted by the City.

6.7 A sole recovery area shall become shared recovery area when the developer has been paid the SDC credit and/or SDC reimbursement in full, or the SDC credit is paid in full and the 10 year SDC reimbursement period expires.

Section 7. Payment Schedule:

7.1 Payment of SDC credit and SDC reimbursement amounts shall be payable annually by the City for SDC improvement fees collected by the City from January 1 through December 31 of each year by January 31 of the year following collection by City.

7.2 No interest shall accrue on SDC credit or SDC reimbursement payable to developers.

7.3 There shall be no adjustments made to the amount of any SDC credit or SDC reimbursement amount as a result of inflation.

Section 8. Assignment of Claims:

8.1 Claims from SDC credit and SDC reimbursement are personal and may not be assigned without the written consent of City.

Section 9. Future Changes to Maximum Allowable SDC:

9.1 Future changes by the City of the maximum allowable SDC or the percentage of the maximum allowable SDC imposed shall neither increase or decrease the SDC credit or SDC reimbursement determined above, however, if the percentage of the maximum allowable SDC is changed, all active public improvement agreements will be reviewed, and if necessary, SDC credit and/or SDC reimbursement amounts to be collected and reimbursed developers from sole and shared recovery areas will be recalculated in accordance with this policy.

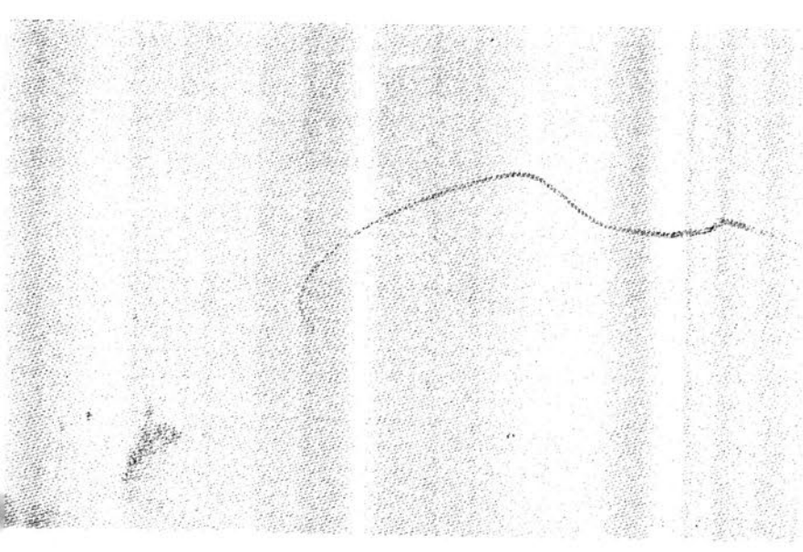
Section 10. City's Obligation to Pay:

10.1 The City's obligation to pay or apply SDC credit or SDC reimbursement shall be limited to SDC improvement fees actually collected by the City as provided in this policy. City's obligation to pay or apply SDC credit or SDC reimbursement from SDC improvement fees collected shall be further limited to the total of the SDC credit and SDC reimbursement calculated as provided in this policy. Payment of SDC credit and SDC reimbursement shall be subject to prior reimbursement claims which are payable from SDC collections. Persons who receive, or are entitled to claim, SDC credit or SDC reimbursement shall indemnify and hold the City harmless in the event the City is subject to claims by others for SDC credit or

SDC reimbursement for the same improvements. City shall have the right to set off the amount of any competing claims for SDC credit or SDC reimbursement against prior claims for the same SDC credit or SDC reimbursement if in the City's judgment it becomes necessary to do so.

Section 11. Applicability:

11.1 This policy shall apply to all eligible improvements installed and accepted after City Resolution #2146 which established street SDCs effective June 15, 1995.



VOL: 2000 PAGE: 46322
RECORDED DOCUMENT

STATE OF OREGON
COUNTY OF DESCHUTES

*2000-46322 * Vol-Page Printed: 11/15/2000 10:14:51

DO NOT REMOVE THIS CERTIFICATE

(This certificate constitutes a part of the original instrument in accordance with ORS 205.180(2). Removal of this certificate may invalidate this certificate and affect the admissibility of the original instrument into evidence in any legal proceeding.)

I hereby certify that the attached instrument was received and duly recorded in Deschutes County records:

DATE AND TIME: Nov. 15, 2000; 10:09 a.m.

RECEIPT NO: 28560

DOCUMENT TYPE: Development Agreement

FEE PAID: $211.00

NUMBER OF PAGES: 33

Mary Sue Penhollow

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND

AND RIVER BEND LIMITED PARTNERSHIP

This Development Agreement ("Agreement") is dated as of the 6 day of November, 2000, by and between RIVER BEND LIMITED PARTNERSHIP, an Oregon limited liability company ("RBLP") and THE CITY OF BEND, an Oregon municipal corporation (the "City"). Each of RBLP and the City is hereinafter referred to as a "Party" and collectively as the "Parties."

1. Definitions:

1.1 "Bridge LID Petition" means that certain LID Petition of even date herewith signed by petitioners Brooks Resources Corporation, Skyliner Summit Limited Partnership, West Bend Property Company, LLC, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Southern Bridge.

1.2 "Development Agreement" means each of the development agreements between a Property Owner and the City pursuant to ORS 94.504 (collectively, the "Development Agreements"). Three of the Property Owners, Western Communications, Inc., dba The Bulletin (the "Bulletin"), the Bend-LaPine Administrative School District No. 1 (the "School District") and Central Oregon Community College ("COCC") are not parties to a Development Agreement.

1.3 "Final Approval" shall mean the issuance of a development permit that reasonably allows the development described in Section 4 of the Development Agreement to proceed and the expiration of the period of appeal, or if an appeal is filed, the resolution of that appeal in a manner that reasonably allows the development described in Section 4 of the Development Agreement to proceed.

1.4 "Intersection LID Petition" means that certain LID Petition of even date herewith signed by nine of the Property Owners as petitioners, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Projects.

1.5 "Off-Site Transportation Impact Mitigation" means mitigation of the increased burden that each Proposed Development will put on the transportation facilities of the City of Bend outside the property lines of the Proposed Development. The term "Off-Site Transportation Impact Mitigation" includes the "Other Improvements" identified in **Exhibit C** of each Development Agreement.

1.6 "Other Improvements" means those certain off-site transportation-related improvements to be completed by the Property Owners which are a part of their Off-Site Transportation Impact Mitigation but which are not to be completed pursuant to a local improvement district. The Other Improvements to be completed by a particular Property Owner are identified in **Exhibit C** to that Property Owner's Development Agreement.

1.7 "Project" means a traffic facility improvement described in Section 4 of the Intersection LID Petition and the Southern Bridge.

1.8 "Property Owners" are the twelve public and private entities, including RBLP, identified on **Exhibit A** who own property on the West Side of the City and who have formed a consortium to resolve the current and projected shortage of transportation facilities on the West Side.

1.9 "Proposed Development" means the development described in Section 4 of this Agreement.

1.10 "RBLP Property" means the property on which the Proposed Development is to be constructed by RBLP, which RBLP Property is more particularly described on attached **Exhibit B**.

1.11 "Responsible Property" means that portion of the property of each of the Property Owners identified in the Intersection LID Petition or the Bridge LID Petition subject to assessment for the cost of one or more Projects. "Responsible Property" shall not include portions of the property that are dedicated as public right-of-way, or dedicated for any other public purpose.

1.12 "Responsible Property Owner" means the Property Owner identified as being responsible for construction of the specific Project(s) listed for that Property Owner in the Bridge LID Petition or the Intersection LID Petition.

1.13 "Southern Bridge" means the bridge to be constructed over the Deschutes River where the proposed extension of Reed Market Road from the Parkway will cross the Deschutes River as provided in the City's General Plan.

1.14 "West Side" shall mean that portion of the City of Bend directly served by the transportation facilities described in Section 4 of the Intersection LID Petition, and the Southern Bridge.

2. Recitals:

2.1 Under the City of Bend General Plan and land use regulations, new development must be supported by adequate public facilities. The City's General Plan provides that if the public facilities are not adequate, new

development must either wait for the installation of the required facilities by the City or pay the cost if it occurs ahead of the City's capital improvement plan. Existing public transportation facilities serving the West Side of the City (the "West Side Transportation System") are not adequate to support all existing development and the new development contemplated in the immediately foreseeable future for the West Side of the City. The City is proceeding on the basis that its land use regulations require a system-wide fix to remedy the system-wide deficiency in the West Side Transportation System in order to support the contemplated new development.

2.2 The City does not have funds available to complete the projects necessary to create the additional capacity for the West Side Transportation System to support the new development within the timeframe in which the Property Owners wish to develop and to complete its other capital improvements.

2.3 The cost of supplying a system-wide remedy that will support the existing needs and the additional transportation burden that the new development will add to the West Side Transportation System is more than the amount that could be exacted from any single Proposed Development. Therefore, the Property Owners have concluded that collectively they can provide the necessary improvements to the West Side Transportation System to support the Proposed Developments. To this end, they have organized themselves as a consortium to accomplish these improvements.

2.4 It is the intention of the Parties that the legal mechanism for accomplishing these improvements will be expressed in Development Agreements, the Bridge LID Petition and the Intersection LID Petition (referred to as the "Consortium Agreements").

2.5 Together, the Consortium Agreements will provide a realistic mechanism for constructing the 11 distinct traffic system improvements required to support the contemplated new development. These improvements will also make a significant contribution toward relieving existing traffic problems in the West Side Transportation System. Ten of these improvements are identified in Section 4 of the Intersection LID Petition, and the other is described in the Bridge LID Petition. The Consortium Agreements also describe Other Improvements which will be constructed by the Property Owners in connection with the Property Owners Proposed Developments.

2.6 Traffic impact analyses show that the 10 distinct traffic system improvements identified in the Intersection LID Petition, the Bridge LID Petition, and the Other Improvements will be adequate to mitigate the off-site traffic impacts that the Property Owners' Proposed Developments will

have on the West Side Transportation System and make reasonable provision for the West Side Transportation System on a long-term basis.

2.7 ORS 94.504 authorizes cities to enter into development agreements with private parties who own or otherwise have a legal interest in property in connection with the development of that property. Such development agreements may have a duration up to seven years and may establish each of the parties' rights and obligations in connection with certain aspects of the proposed developments. Each Property Owner wishes to definitively establish and discharge all of its obligations to mitigate the increased burden that each Proposed Development will put on the West Side transportation facilities of the City of Bend outside the property lines of the Proposed Development ("Off-Site Transportation Impact Mitigation") to the West Side Transportation System through a development agreement with the City.

2.8 Nine of the Property Owners (Brooks Resources Corporation; West Bend Property Company, LLC; Broken Top Limited Partnership; Skyliner Summit Limited Partnership; Century Park LLC; Shevlin Heights LP; West Side Meadows, LLC; Central Oregon Community College; and River Bend Limited Partnership) have signed a Petition to Form West Side Intersection Local Improvement District (the "Intersection LID Petition"), which, among other things, allocates responsibility for constructing 10 of the Projects among the Property Owners signing the Intersection LID Petition.

2.9 Five of the Property Owners (Brooks Resources Corporation, West Bend Property Company, LLC, Skyliner Summit Limited Partnership, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1) have signed a Petition to Form Southern Bridge Local Improvement District (the "Bridge LID Petition"), which, among other things, allocates responsibility for the cost of constructing the Southern Bridge. The Property Owners have agreed upon a schedule for the completion of the Southern Bridge, and the amount to be contributed by each Property Owner, as provided in the Bridge LID Petition.

2.10 The Intersection LID Petition provides a schedule for commencement of construction of the Projects by the applicable Property Owner(s) and provides that a failure of a Property Owner to timely commence and complete its assigned Project(s) shall give the City the option to construct that Project under the Intersection LID Petition, assess that Property Owner's property for the cost of construction and impose liens against that Property Owner's property as permitted by law.

2.11 Execution of the Development Agreements, the Intersection LID Petition and the Bridge LID Petition by the City and all of the Property Owners, and the commitments created by these Consortium Agreements, will

supply the realistic provision for transportation facilities necessary to support new development to be served by the West Side Transportation System. In return, the Property Owners shall be relieved from any further Off-Site Transportation Impact Mitigation in connection with that Property Owner's Proposed Development(s).

2.12 Each Property Owner participating in one or both LID Petitions acknowledges that its property will be specially benefited by the Projects listed in the Intersection LID Petition and the Bridge LID Petition that include its property. Each Property Owner who is participating in one or both LID Petition also acknowledges that all of the properties in the Intersection LID and all of the properties in the Bridge LID will be specially benefited by all of the Projects. Each Property Owner participating in the LID Petitions therefore consents to the formation of the LIDs that include the Property Owner's property, subject to the conditions set forth herein.

2.13 It is the intention of the Parties that the Consortium Agreements are each integral parts of a collective effort with the City, intended to accomplish the objectives set out in these recitals. Therefore, the Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be construed accordingly, and in the event of any conflict between the terms and conditions of the Development Agreements and the LID Petitions, the LID Petitions shall prevail.

2.14 It is recognized that the Proposed Development of Cascade Highlands, L.P. is located outside the city limits of the City. Consistent with the Joint Management Agreement between the City and Deschutes County, a three-party development agreement will be executed by the City, Deschutes County and Cascade Highlands, L.P. Cascade Highlands, L.P. will contribute $500,000 to the City for the construction of the Southern Bridge. The Parties recognize that Cascade Highlands, L.P. has substantially the same ownership as Broken Top Limited Partnership and Skyliner Summit Limited Partnership and that its contribution, considered as a part of the entire Consortium Agreements, addresses the impacts its Proposed Developments will have on the West Side Transportation System.

2.15 None of the Property Owners shall be responsible for the performance of obligations of any other Property Owners unless expressly stated in the Consortium Agreements.

2.16 The Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be recorded and binding upon the Parties, their successors and assigns, and shall be enforceable as covenants running with the land; and may be enforced by any remedy provided by law.

2.17 The Parties agree that their execution of these Consortium Agreements represents their acceptance of the purpose expressed in these recitals, and the ways and means of accomplishing this purpose. Towards this end, the Parties expressly agree:

2.17.1 The Parties shall cooperate in good faith to the extent reasonably practicable to accomplish the purpose of the Consortium Agreements. This shall include, but not be limited to, cooperation in the defense of these agreements and their performance.

2.17.2 Other non-consortium development served by the West Side Transportation System shall be expected to make realistic provision for the mitigation of its impacts on transportation facilities as required by law, and in addition to that made by the Property Owners.

2.17.3 The terms and conditions of these Consortium Agreements are intended as an implementation of, and are consistent with, the City's land use laws, rules and regulations, together with all applicable state and federal laws, rules, and regulations. This includes, but is not limited to, a recognition that the performance required of the Parties by these Consortium Agreements is roughly proportional to the impacts the Proposed Developments will have on the West Side Transportation System; and that the public and private responsibilities involved in remedying the deficiencies in the West Side Transportation System in order to support the Proposed Developments are fairly and properly allocated.

2.17.4 The Parties further express their commitment to the objectives of these Consortium Agreements by waiving all claims of any kind or nature resulting from the Parties' agreement to accomplish the purpose contemplated by the Consortium Agreements, or the ways and means provided for accomplishing that purpose in the Consortium Agreements. This includes, but is not limited to any constitutional or statutory claims (for the taking of property or otherwise), and any claims against the other Party, its elected officials, officers, employees, or agents. This waiver does not include claims based upon a failure to perform these Consortium Agreements as expressly required by their terms and conditions. This waiver shall not prevent land use appeals of approvals or denials of the Proposed Developments.

2.17(a) The Parties acknowledge that the lawsuit filed by the Central Oregon Builders Association (COBA) and served upon the City October 10, 2000 may affect the amount of System Development Charges (SDCs) available for reimbursement as provided in the Consortium Agreements. This lawsuit (COBA v. City of Bend, Circuit Court No. 00CV0454AB) seeks to

reduce the Street SDC. If COBA succeeds, the $3,250 SDC anticipated by the Consortium Agreements may be reduced and SDC collections available for reimbursement may also be reduced. Because of this possibility, the Parties agree that the provisions of the Consortium Agreements relating to reimbursement (including but not limited to Sec. 12.5 and Exhibit D of the Development Agreements, Sec. 8 of the Southern Bridge LID, and Sec. 8 of the Intersection LID) are modified to provide that the SDC imposed by the City shall be the amount provided in the Consortium Agreements, or the highest amount permitted by law, if the highest amount permitted by law is less than the amount provided in the Consortium Agreements. It is the intent of the Parties that this Section has been added only to accommodate the possibility of a reduction created by the COBA lawsuit, and not for any other purpose. In the event that SDC collections are reduced as a result of the COBA lawsuit, the Consortium Agreements shall continue in full force and effect except as modified by this Section, and the Parties shall in good faith continue to cooperate in the achievement of the purpose of the Consortium Agreements, specifically including the reimbursement to consortium members from SDCs as provided in City of Bend Street Policy No. 5, Sec. 6 (which applies when the potential SDC collections from sole recovery areas will not be adequate to fund full reimbursement, and shared area recovery area collections are available to pay reimbursement not otherwise collectible from sole recovery areas).

2.18 These recitals are part of each of the Consortium Agreements.

3. Effective Date; Term of Agreement

3.1 This Agreement shall be effective upon adoption of the City ordinance approving this Agreement pursuant to ORS 94.508 (the "Effective Date"). The term (the "Term") of this Agreement shall commence on the Effective Date and shall continue for a period of seven years unless terminated sooner in accordance with the provisions contained herein.

3.2 The Parties agree that the intent of the Parties and the essential purpose of this Agreement is to provide the City with a system-wide fix on the West Side in exchange for providing RBLP and the other Property Owners (a) the right to build their Proposed Development at the Maximum Density provided in Section 4.2 for a seven-year period without additional Off-Site Transportation Impact Mitigation (only on the West Side, in the case of RBLP), subject to RBLP and the other Property Owners obtaining Final Approval through the normal City applications process, and (b) a seven-year vesting of the land use standards which will be applicable to such applications. The right to the Proposed Development at the Maximum Density without additional Off-Site Transportation Impact Mitigation (on the West Side and the vested standards during a full seven-year period is critical to RBLP's willingness to enter into this Agreement. The Parties

understand that RBLP may not receive the benefit of such intent and purpose during the initial Term of this Development Agreement if there are delays (a) caused by third-party appeals of this Development Agreement and/or the related LID Petitions; (b) caused by third-party appeals of RBLP's land use applications in connection with the Proposed Development; and (c) in the land use applications process. If as a result of such delays RBLP does not receive Final Approval within one year of the Effective Date, the Parties agree that they will negotiate in good faith an extension of the Term of this Development Agreement to assure that RBLP has a 7 year period following Final Approval to proceed with its Proposed Development under the terms and conditions of this Development Agreement. At no time shall the Term exceed seven years.

4. Proposed Development

4.1 RBLP has filed an application for retail development on that portion of the RBLP Property identified as Retail I on **Exhibit F**. This application sought (1) modifications to the River Bend Phase 1 Master Plan to alter road alignments and building envelopes; (2) site plan review and Deschutes River Design review to construct 8 commercial buildings; and (3) a conditional use permit to allow two buildings to exceed the maximum allowable height of 35 feet by 3 feet. The City approved (1) and (2), subject to conditions, but denied (3) because "the applicant did not adequately address the approval criterion." The conditions to the approval included a condition (the "West Side Condition") that "the development of office and residential uses...shall be restricted until such time [as] a realistic solution is identified for the mitigation of the West side traffic situation," and a condition (the "Intersection Condition") that "[t]he applicant shall construct mitigation of traffic impacts that are acceptable to the City and ODOT at the intersection of Century Drive and Mt. Washington Drive. The City agrees that River Bend's execution of the Intersection LID Petition and this Development Agreement satisfy the West Side Condition and the Intersection Condition.

4.2 On another portion of the RBLP Property as shown on Exhibit F, RBLP intends to seek approvals for a residential and commercial development and in connection therewith will seek (1) approval of a Master Plan; and (2) approval of a site plan, in one or more phases.

4.3 On another portion of the RBLP Property as shown on Exhibit F, RBLP intends to seek approvals for a second retail development ("Retail II") and in connection therewith will seek (1) approval of a Master Plan; and (2) approval of a site plan, in one or more phases.

4.4 Collectively, the development to occur pursuant to the applications described in Section 4.1, 4.2 and 4.3 is hereinafter referred to as the "Proposed Development").

4.5 For the purpose of determining the amount and kind of Off-Site Transportation Impact Mitigation on the West Side required of RBLP's Proposed Development and the rights of RBLP vested herein, RBLP agrees that the density of its Proposed Development shall not exceed 56 residential units, 70,000 square feet of office and 185,000 square feet of retail space (collectively, the "Maximum Density"). The Maximum Density has been used by the Parties in a supporting traffic study to determine the estimated number of vehicle trips to be generated by the Proposed Development. To the extent that RBLP changes its mix of development to respond to market conditions but does not increase the number or distribution of estimated vehicle trips as shown in the traffic study, RBLP shall not be deemed to have exceeded its Maximum Density.

5. Conditions to Parties' Obligations

5.1 RBLP's obligation to pay for Projects other than the Southern Bridge and the "Other Improvements" listed in **Exhibit C** under this Agreement is also subject to the terms and conditions provided in the Intersection LID Petition.

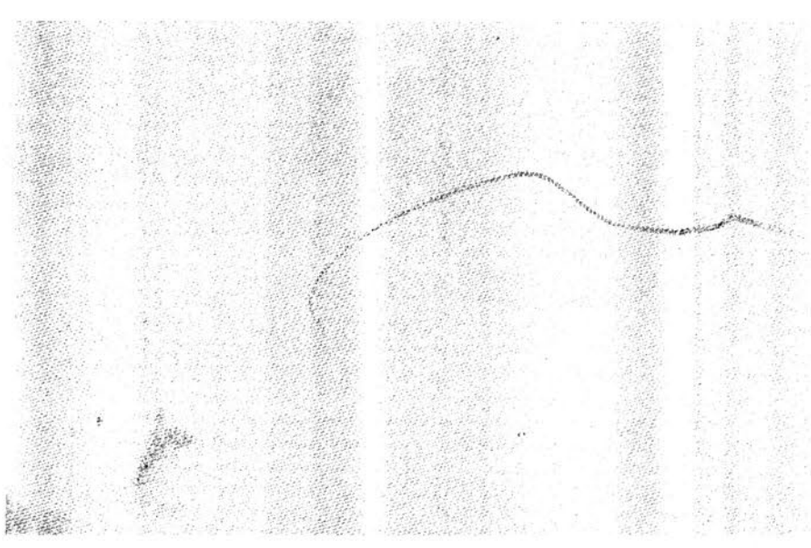
5.2 The City's obligations hereunder are subject to RBLP signing the Intersection LID Petition.

5.3 Both Parties' obligations are subject to Deschutes County entering into a Development Agreement with Cascade Highlands, L.P. consistent with the recitals herein.

6. Permitted Uses. The RBLP Property is within the MR Zone, Mixed Use Riverfront, pursuant to the City of Bend Zoning Code (the "BZO"). Notwithstanding the content of any later-adopted zoning or development ordinance, development of the Proposed Development during the period of this Agreement shall be subject to Section 10.10.21A of the BZO as the same exists as of the Effective Date. That section provides that the permitted uses for the Property include numerous industrial, commercial, residential and miscellaneous uses as provided in Section 10.10.21A(5).

7. Density or Intensity of Use. Land use approval of the Proposed Development during the period of this Development Agreement shall be subject to the density or intensity of use standards set forth in BZO Section 10.10.21A, which exists as of the Effective Date, notwithstanding the content of any subsequently adopted zoning or development ordinance. Further, the density or intensity of use is provided for in Section 4.

8. Maximum Height and Size of Proposed Structures. Land use approval of the Proposed Development during the period of this Development Agreement shall be subject to the maximum height and size limitations on proposed structures contained in Section 10.10.21A of the BZO, as the same exists as of the Effective



Date. Section 10.10.21A(6) currently provides that any building over 35 feet in height shall require a conditional use permit.

9. Provisions for Reservation or Dedication of Land for Public Purposes. RBLP shall be required to make no off-site reservations or dedication of land for public purposes (including easements and/or licenses) in connection with RBLP's Proposed Development. The necessity and/or specifics of any future on-site reservations or dedications of land for public purposes (including easements and/or licenses) in connection with RBLP's Proposed Development will be determined by the City in reviewing RBLP's applications and applying City standards and ordinances in effect as of the Effective Date.

10. Fees and Charges

10.1 When land within the Proposed Development is developed, the City shall collect System Development Charges ("SDC") within the sole recovery area established for the Proposed Development in accordance with the terms of Section 12.5.

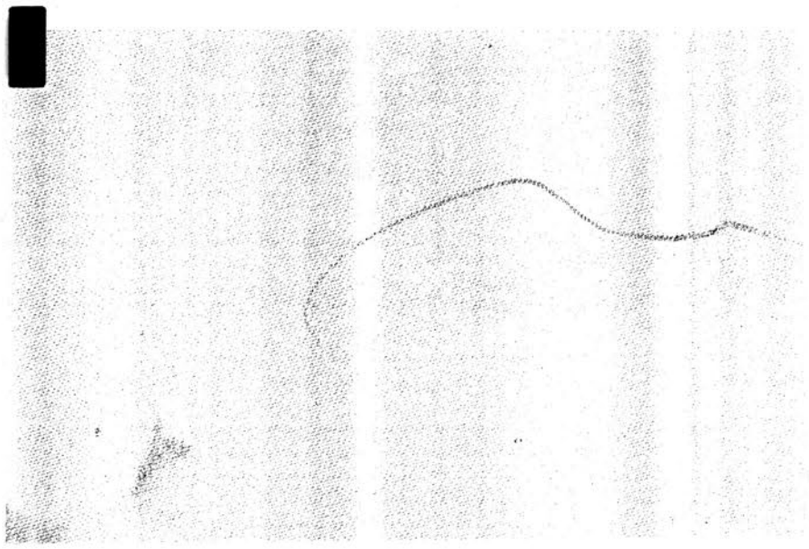
10.2 RBLP and its successors and assigns shall pay all applicable fees and charges then in effect for a particular application, except where the purpose or effect of such fees or charges is Off-Site Transportation Impact Mitigation on the West Side. In no event shall this Section 10 be construed so as to relieve RBLP or any purchaser of any portion of the RBLP Property from any obligation it may have to pay street SDCs.

11. Schedule and Procedure for Compliance Review. Commencing on the first anniversary of the Effective Date, RBLP shall prepare annual written reports of its compliance with the terms of this Agreement to the City. Such reports shall include an update as to compliance with all schedules set forth herein. After receipt of such reports, the City may request such additional or backup information as it deems reasonably necessary.

12. Responsibility for Providing Infrastructure and Services

12.1 Consistent with the Maximum Density rights vested in Section 4 and the development standards vested in Sections 6, 7, 8 and 10, RBLP agrees to make certain off-site street and transportation-related improvements. Subject to the terms provided herein, RBLP agrees that it shall construct and/or provide funding toward the construction of the following off-site Projects:

12.1.1 Subject to Section 12.3, contribute forty-three and two tenths percent (43.2%) of the cost of constructing a single-lane roundabout at the intersection of Century Drive and Mt. Washington Drive. The Construction Commencement Deadline is December 31, 2001. Such roundabout shall be constructed in



general conformance with the engineering drawings attached to the Intersection LID Petition; and

12.1.2 Subject to the terms provided herein, RBLP agrees that it shall construct those Other Improvements identified on attached **Exhibit C**.

As used herein, "Construction Commencement Deadline" shall mean the date by which the Responsible Property Owner(s) shall have commenced preliminary design and engineering work

12.2 The City acknowledges that (a) construction of the Southern Bridge is subject to objections raised by third parties which could interfere with that Project; (b) construction of any of the Projects could be delayed as a result of the City's failure to timely acquire necessary rights-of-way, (c) construction of any of the Projects could be delayed as a result of objections raised by third parties; and (d) construction of any Projects could be delayed by difficulties in obtaining approvals from the Oregon Department of Transportation ("ODOT") and any other federal, state or local regulatory body. The City agrees that none of (a), (b), (c) or (d) shall be a basis for denying or delaying the approval of any of RBLP's land use applications in connection with the Proposed Development, grounds for declaring RBLP to be in default, or a basis for exacting additional Off-Site Transportation Impact Mitigation on the West Side from RBLP. Subject to the terms of the applicable LID Petition(s), the City shall, however, have the right to construct Projects and assess the Responsible Property therefore according to the schedules in the LID Petitions, irrespective of whether RBLP has received Final Approval. In the event of (b), the schedule for construction of the applicable Project as set forth in the applicable LID Petition shall be delayed by the same period of time by which the right-of-way acquisition is delayed.

12.3 The Intersection LID Petition includes plans and drawings for the Projects identified therein. Estimates have been prepared of the cost of constructing them. RBLP shall bear the risk that such costs may increase between the date of this Development Agreement and the date that construction commences; provided, however, the City shall bear any additional costs which result from any change in design required by the City or ODOT.

12.4 The City agrees that the Projects and Other Improvements to be provided pursuant to this Development Agreement and the Intersection LID Petition shall be deemed to satisfy RBLP's obligation to provide Off-Site Transportation Impact Mitigation on the West Side in connection with the Maximum Density of the Proposed Development set forth in Section 4 so that, with respect to off-site transportation obligations on the West Side, the Proposed Development is vested. The City shall require no other off-

site transportation-related exactions on the West Side nor require any further traffic studies relating to Off-Site Transportation Impact Mitigation on the West Side in connection with or as a condition to the approval of RBLP's Proposed Development. This shall include, but not be limited to, construction of off-site streets or intersections on the West Side, improvement of off-site intersections or other existing off-site transportation facilities on the West Side, construction of off-site bicycle paths or pedestrian trails on the West Side and dedication of off-site rights-of-way on the West Side for any of the above-identified purposes. Notwithstanding the foregoing, RBLP's rights which are vested herein are dependent upon the Maximum Density of the Proposed Development set forth in Section 4 which is tied to the estimated number of vehicle trips to be generated by such Maximum Density. The Parties hereto understand that the mix of uses that make up the Maximum Density could change based on market forces. However, to the extent that RBLP submits land use applications that would increase the number of vehicle trips to be generated by the Proposed Development, the Proposed Development may be subject to additional off-site transportation exactions on the West Side based upon projected transportation impacts on West Side City transportation facilities from the increased density, consistent with City policies and regulations. The Parties agree that this Development Agreement does not, however, resolve any issue relating to on-site transportation requirements and that on-site transportation issues are reserved for future discretionary land use approval, and that the City may require further studies and reviews relating to on-site traffic. The Parties agree that neither this Agreement nor the LID Petitions shall be deemed to satisfy RBLP's obligations to provide Off-Site Transportation Impact Mitigation pursuant to applicable City ordinances in any location other than the West Side of the City.

12.5 The City and RBLP agree that upon execution of this Agreement that the property identified in **Exhibit B** shall be established as the sole recovery area for the collection of transportation system development charges ("SDC"). During the Term of this Agreement, the City shall collect SDCs at the greater of the rates determined in accordance with the SDC rates attached as **Exhibit D**, or any future rates adopted by the City. The City is currently evaluating SDC rates for commercial and industrial development. If such rates are changed prior to December 31, 2000, such change shall replace **Exhibit D** to this Agreement. Otherwise, until the earlier of the expiration of this Agreement or the date at which the Property Owner has received full reimbursement from SDCs, the SDC rate for those SDCs collected from the sole recovery area will not decrease, but shall increase if and when City-wide SDC rates increase.

12.6 The City shall use the SDC revenue collected from the sole recovery area to reimburse RBLP for the cost of constructing the Projects identified in

Section 12.1 above at a rate of 100% of all qualified improvements pursuant to Street Policy 5 (**Exhibit E**) as amended.

12.7 The Parties agree that there are certain actions or improvements that must be made in conjunction with the Projects and Other Improvements to be completed by the Property Owners to provide adequate facilities to support development which will impact the City's West Side Transportation System. These actions or improvements are not a part of the Property Owners' obligations and the City agrees to assure that such actions are taken and such improvements are made. As referenced in the supporting traffic studies, such actions and improvements include, but are not limited to, acquiring rights-of-way for those Projects for which the Property Owners do not already own the necessary rights-of-way, obtaining permits necessary for construction of the Projects, expanding some of the Projects as necessary from single-lane roundabouts to double-lane roundabouts and completing bicycle lanes where gaps exist along Shevlin Park Road. In no event shall the City be obligated to expend funds to take such actions or complete such improvements; the City may assure their completion by any appropriate means, including, without limitation, making them conditions to other future development, paying for them with systems development charges, paying for them with grants and/or including them in future capital improvement plans.

13. Assumptions Relating to City's Ability to Serve Development; Continuing Effect of Agreement

13.1 ORS Section 94.504(6) requires that a Development Agreement "state the assumptions underlying the agreement that relate to the ability of the city…to serve the development."

13.2 The facts set forth in the Recitals are included in the assumptions underlying this Agreement.

13.3 The Parties operate under the assumption that construction of the Projects will provide adequate off-site transportation infrastructure and facilities on the West Side to support RBLP's Proposed Development. The adequacy of transportation facilities are determined with reference to the standards in effect as of the Effective Date.

13.4 In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with the Agreement impossible or unlawful, the Parties will attempt to give effect to the remainder of the Agreement, but only if the purposes set out in the recitals can be accomplished and such effect does not prejudice the substantial rights of either Party under the Agreement.

13.4.1 If the substantial rights of either Party are prejudiced by giving effect to the remainder of the Agreement, then the Parties shall negotiate in good faith to revise the Agreement to give effect to its original intent.

13.4.2 If the Parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either Party may request that an arbitration panel determine an equitable effect for the remainder of the Agreement. The arbitration panel shall consist of 3 arbitrators, one of which shall be selected by RBLP, one of which shall be selected by the City, and the third of which shall be selected by agreement of the arbitrators selected by RBLP and the City. If the 2 arbitrators are unable to agree upon the selection of a third arbitrator, then the third arbitrator shall be selected by the Presiding Judge of the Circuit Court, 11th Judicial District, Deschutes County, Oregon.

13.4.3 If, because of a change in policy, law or circumstances, the Agreement fails of its essential purposes (construction of all of the traffic system improvements called for in the Intersection LID Petition, the Bridge LID Petition and this Development Agreement; vesting of allowed uses and limitations on development conditions; vesting of maximum off-site transportation exactions on the West Side; and vesting of maximum permissible densities in connection therewith), then the Parties shall be placed into their original position to the extent practical.

13.4.4 As used herein, however, "change in circumstance" does not include changes in local government land development or land division regulations.

13.5 To the extent any local rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis that is not, in the reasonable discretion of RBLP, inconsistent with the substance, purpose, or conditions of this Development Agreement, then the local rule, ordinance, regulation or policy shall be applicable.

14. Assignability of Agreement. This Agreement shall be fully assignable, in whole or in part, by either Party and shall bind and inure to the benefit of the Parties and their respective successors and assigns. If any portion (other than lot sales to individuals or builders) of the RBLP Property is sold, the duties, rights and interests of RBLP under this Agreement shall become the duties, rights and responsibilities of the purchaser and RBLP. Notwithstanding the foregoing, no purchaser of an individual lot(s) shall have any rights hereunder.

15. Future Discretionary Approvals.

15.1 The City agrees to cooperate with RBLP in securing all future necessary land use permits and approvals for the Proposed Development needed from entities other than the City.

15.2 The following future discretionary approvals are the currently anticipated approvals that will be required for the Proposed Development:

15.2.1 Approval of the Master Development Plan for the residential and commercial portion of the RBLP Property pursuant to BZO Section 10.10.21A(2) and 10.10.21A(4);

15.2.2 Approval of a Building and Site Development Plan for the residential and commercial portion of the RBLP Property pursuant to BZO Section 10.10.21A(6), which shall include approval pursuant to BZO Section 10.10.22A Deschutes River Corridor Design Review;

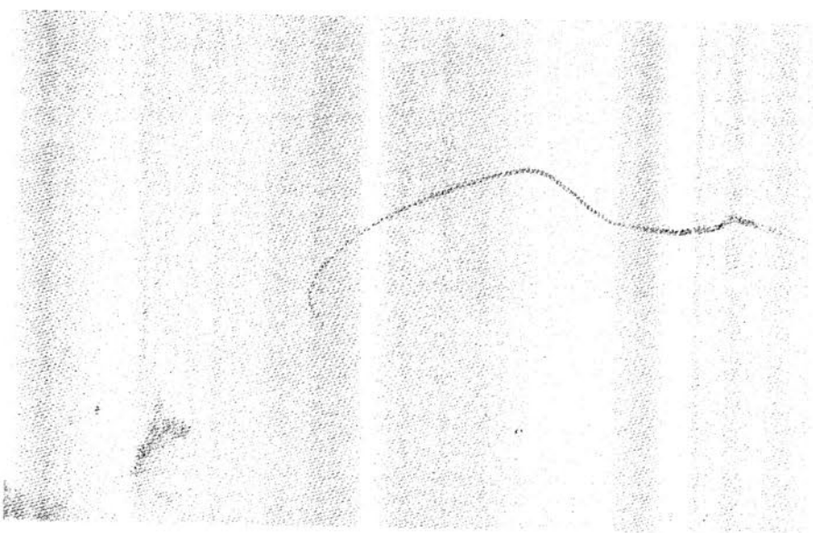
15.2.3 Approval of a Building and Site Development Plan for the Retail II portion of the RBLP Property pursuant to BZO Section 10.10.21A(6), which shall include approval pursuant to BZO Section 10.10.22A Deschutes River Corridor Design Review;

15.2.4 Approval of a subdivision pursuant to Bend Subdivision Ordinance No. NS-1349 ("BSO");

15.2.5 Approval of a Tentative Subdivision Plat for the residential and commercial portion of the RBLP Property pursuant to BSO Sections 3.055, 3.060 and Article VI Design Standards and Improvements (including Appendix A); and

15.2.6 Approval of the Final Subdivision Plat for the residential and commercial portion of the RBLP Property pursuant to BSO Sections 4.005, 4.015, 4.020, 4.030, 4.035, 4.050, 4.055, 4.060 and 4.065;

15.3 The Parties acknowledge that the provisions of RBLP's land use applications in connection with the Proposed Development, other than the provisions relating to Off-Site Transportation Impact Mitigation on the West Side, shall be the subject of future discretionary approvals by the City. The question of whether the City may approve the applications referred to in this Agreement, including the provisions of the land use applications referred to in Sections 4 (Proposed Development), 6 (Permitted Uses), 7 (Density or Intensity of Use), and 8 (Maximum Height and Size of Proposed Uses), or any other part of RBLP's land use application are reserved for future discretionary approvals, and are not resolved by the terms of this Agreement, the Intersection LID Petition or



the Bridge LID Petition. Nothing in this Agreement resolves, adjudicates or dispenses with the responsibilities of RBLP or its Proposed Development for impacts or conditions of approval other than Off-Site Transportation Impact Mitigation on the West Side, and nothing herein operates as an approval (or preliminary approval) by the City of RBLP's land use applications except as to Off-Site Transportation Impact Mitigation on the West Side.

15.4 In the event of a conflict between the terms of this Development Agreement, and the terms of the Intersection LID Petition, then the terms of the Intersection LID Petition shall control.

15.5 The discretionary approvals shall be reviewed by the City in the same manner and subject to the same procedures and hearings requirements as all other similar land use applications filed at the time of the Effective Date.

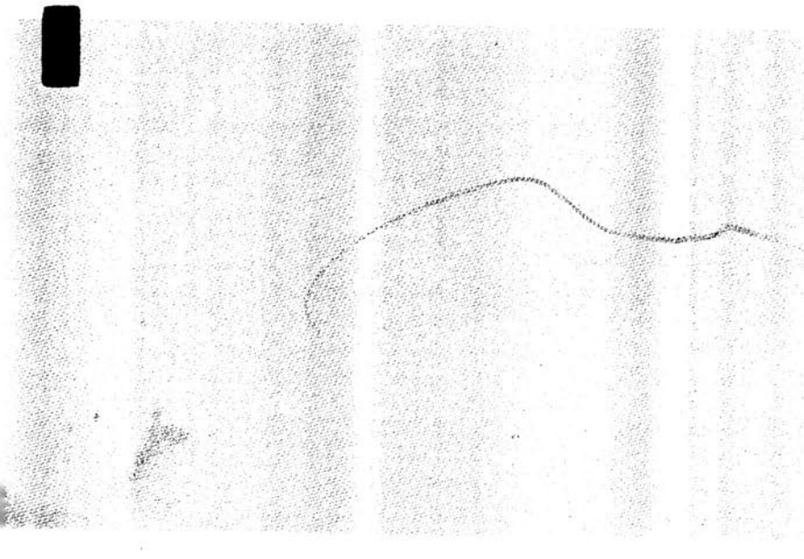
16. Schedule. RBLP shall commence construction of the Projects assigned to RBLP as of the date set forth in the Intersection LID Petition and shall complete construction of each Project no later than the date established in the Intersection LID Petition. Subject to obtaining timely approvals of its Proposed Development, RBLP shall commence construction of its Proposed Development by 2000 and that its Proposed Development shall be completed by the expiration of the Development Agreement.

17. Defaults

17.1 A breach of a material provision of any of the Consortium Agreements, whether by action or inaction of a Party which continues and is not remedied within thirty (30) days after the other Party has given notice specifying the breach shall constitute a default by a Party. If the breach is of such a nature that it cannot reasonably be cured within such thirty-day period, the cure period shall be extended to such amount of time as is reasonable but only if the breaching Party promptly commences, and thereafter diligently prosecutes, such cure.

17.2 The exercise by either Party of any one or more of such remedies available to it shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

17.3 Notwithstanding the foregoing, in the event that RBLP fails to construct the Projects identified in Section 12.1 above, by the applicable deadlines set forth in the Intersection LID Petition, then RBLP shall not be deemed in default hereunder, but the City shall have the rights set forth in the



Intersection LID Petition to construct the traffic improvement facilities and to assess the Responsible Property as set forth in the petition.

18. Release of Development Agreement. The City shall release developed lots from this Development Agreement upon the request of RBLP provided that the terms and conditions of this Development Agreement have been performed as they relate to the lot to be released.

19. Force Majeure

19.1 In the event that any Party (the "Delayed Party") is delayed or prevented from performing any of its obligations under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities, laws or other governmental requirements, riots, war, or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

19.2 The City's right under the Intersection LID Petition or the Bridge LID Petition to construct traffic system improvements shall not be affected by the provisions of Sub-section 19.1.

20. Notices. Any notice, demand, request, approval, consent, or other communication (collectively referred to as a "Notice") concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other Party at the address set forth below. Any Notice shall be given by either: (i) personal delivery in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Any Party may change any address for the delivery of Notice to such Party, by giving Notice in accordance with the provisions of this Section. The attorneys for the Parties may give any Notice.

Notices Addresses:

If to RBLP: River Bend Limited Partnership
15 SW Colorado, Suite A
Bend, OR 97702
Attn: Mary Campbell

With a copy to: Ball Janik LLP
15 SW Colorado, Suite K
Bend, Oregon 97702
Attn: Laura Craska Cooper

If to City: City of Bend
Development Services
710 N.W. Wall
Bend, OR 97701
Attn: Development Services Director

21. Miscellaneous

21.1 City Funding. The Parties agree that any provision herein which requires the City to expend funds is contingent upon future appropriations as part of the City budget process as provided in ORS 94.504(5). Nothing herein requires the City to appropriate such funds.

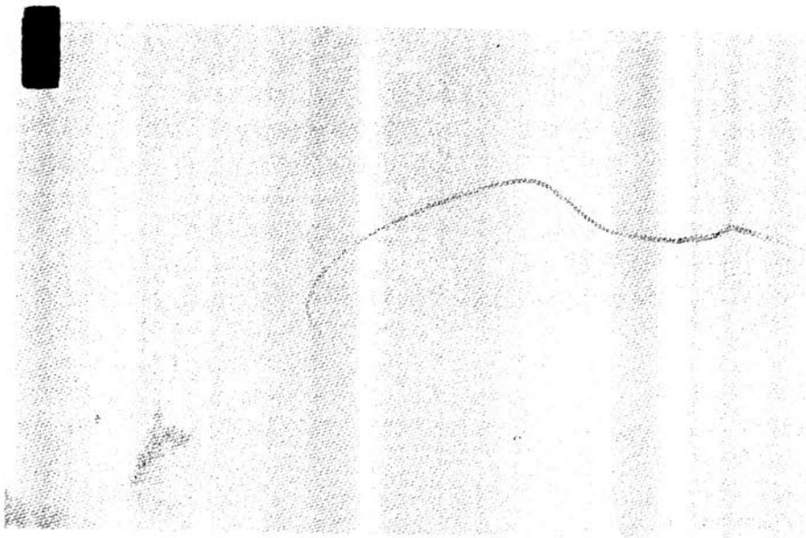
21.2 Waivers. No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

21.3 Entire Agreement/Modifications. This Agreement, together with the Intersection LID Petition and the Bridge LID Petition (along with all exhibits incorporated therein) (collectively referred to as the "Consortium Agreements") constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto. This Development Agreement, the Intersection LID Petition and the Bridge LID Petition are parts of a whole transaction between the Parties and shall be construed as a whole transaction.

21.4 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

21.5 Captions. The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the Parties.

21.6 Gender/Singular/Plural. Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all the Parties and all circumstances, except where the context of this Agreement clearly dictates otherwise.



21.7 Severability. Subject to Section 13.4, the unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

21.8 Time of Essence. Time is of the essence of this Agreement.

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

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

"RBLP" RIVER BEND LIMITED PARTNERSHIP, an Oregon limited partnership

By The Bend Company, Its General Partner

By: _____
William L. Smith
President

"CITY" CITY OF BEND, an Oregon Municipal Corporation,

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on this 2nd day of November, 2000, by William L. Smith, president of The Bend Company, the general partner of River Bend Limited Partnership.

OFFICIAL SEAL
CYNTHIA M SMITH
NOTARY PUBLIC-OREGON
COMMISSION NO. 335405
MY COMMISSION EXPIRES JUNE 8, 2004

_____
Notary Public for Oregon
My Commission Expires: 6/8/04

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on this 6th day of November, 2000, by Larry Patterson as City Manager of the City of Bend.

OFFICIAL SEAL
PATRICIA ANNE SMILEY STELL
NOTARY PUBLIC-OREGON
COMMISSION NO. 305227
MY COMMISSION EXPIRES NOV. 22, 2001

Patricia Anne Smiley Stell
Notary Public for Oregon
My Commission Expires: Nov. 22, 2001

Exhibit A
Property Owners

1. Brooks Resources Corporation;
2. West Bend Property Company, LLC;
3. Broken Top Limited Partnership and Broken Top Development, LLC;
4. Skyliner Summit Limited Partnership and Broken Top Development, LLC;
5. Century Park LLC;
6. Shevlin Heights Limited Partnership;
7. River Bend Limited Partnership;
8. Central Oregon Community College;
9. Bend LaPine Administrative School District No. 1;
10. West Side Meadows, LLC;
11. Western Communications Inc., dba The Bulletin; and
12. Cascade Highlands Limited Partnership

Exhibit B

That certain real property located in Deschutes County and more particularly described as:

The following assessor's parcel numbers:

18120500 Tax Lot 126

18120500 Tax Lot 128

18120500 Tax Lot 123

18120500 Tax Lot 124

181205A0 Tax Lot 4000

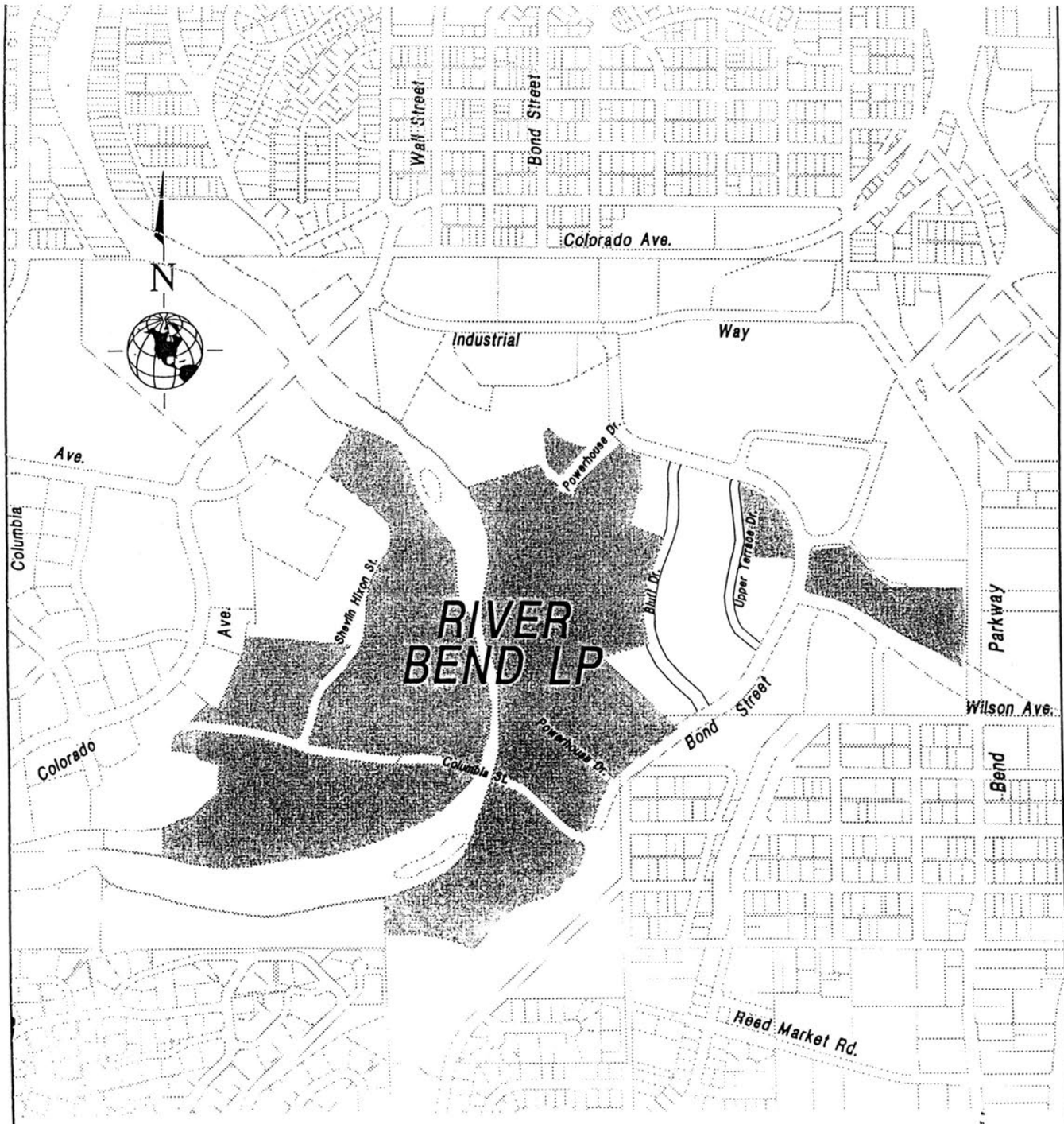
18120500 Tax Lot 102

18120500 Tax Lot 116

181205BA Tax Lot 1300

181205CO Tax Lot 100 and

Lots 8, 9, 10, 15, 16 and 37, Upper Terrace Phase II



DATE	BY	REVISION	CHK

DRAWN BY	JAM
DESIGNED BY	JAM
CHECKED BY	KSD
APPROVED BY	KSD

W&H PACIFIC
820 Emkay, Suite C-100
Bend, Oregon 97702-1041
(541)389-4853
(541)388-4899 Fax
wh@whpacific.com
A Member of The W Group
Planners • Engineers • Surveyors • Landscape Architects

West Side Transportation Consortium
River Bend LP

Property Exhibit Map

EXHIBIT B

BEND/DESCHUTES OREGON

SCALE:	PROJECT NO	FILE NAME:	
1"=800'	02.2452.0001	WSTCPROP.DWG	1/1

PLOT DATE: 10/16/2000

LAST EDIT:

Exhibit C
Other Improvements

1. Provision of adequate right-of-way and site development accommodations to support transit, such as, areas for bus stops, shelters or other similar facility as deemed appropriate by the City.

Exhibit D

STREET SDCS

SDC = Trip Ends X Trip Length / 2 / 7200 X $889,160 (lane mile cost)

Category	Daily Trip ends per unit	Units	Chargeable % reduction	Conversion: Daily trip ends per unit	Aver. RT trip length (miles)	100% SDC per unit
Industrial						
Industrial - general	6.97	T.G.S.F.	0.00%	6.97	6.2	$2,668
Industrial - batch plant	100.00	pmlt	0.00%	100.00	6.2	$38,283
Manufacturing - bulky items	1.02	employees	0.00%	1.02	6.2	$390
Manufacturing - high tech-research & d	2.09	employees	0.00%	2.09	5.0	$645
Service and repair	5.60	T.G.S.F.	0.00%	5.60	6.0	$2,075
Residential						
Single Family	9.57	Dwelling Unit	0.00%	9.57	5.5	$3,250
Apartments	6.63	Dwelling Unit	0.00%	6.63	5.5	$2,252
Condominium	5.86	Dwelling Unit	0.00%	5.86	5.5	$1,990
Manufactured Home	4.81	Dwelling Unit	0.00%	4.81	5.5	$1,634
Senior Care	2.15	Dwelling Unit	0.00%	2.15	5.5	$730
PUD - residential	7.44	Dwelling Unit	0.00%	7.44	5.5	$2,527
Lodging						
Motel	9.11	Room	0.00%	9.11	5.9	$3,319
Hotel	6.95	Room	0.00%	6.95	5.9	$2,532
Recreational						
Golf Course	5.04	Acre	0.00%	5.04	7.5	$2,334
Bowling Alley	33.33	T.G.S.F.	0.00%	33.33	7.5	$15,435
Theater w/Matinee	0.29	Seat	0.00%	0.29	7.5	$134
Arena	33.33	Acre	0.00%	33.33	7.5	$15,435
Community Center	22.88	T.G.S.F.	0.00%	22.88	7.5	$10,596
Athletic Facility	2.30	T.G.S.F.	50.00%	1.15	5.0	$355
Spa	18.00	per station	36.00%	11.52	3.0	$2,134
Institutional						
Elementary School	1.02	Student	0.00%	1.02	3.8	$239
High School	1.79	Student	0.00%	1.79	3.8	$420
Community College	2.38	Student	0.00%	2.38	3.8	$558
Community College Library	45.50	T.G.S.F.	80.00%	9.10	3.8	$2,135
Community Library	45.50	T.G.S.F.	60.00%	18.20	3.8	$4,270
Church	9.11	T.G.S.F.	0.00%	9.11	3.8	$2,138
Daycare	4.52	Student	60.00%	1.81	3.8	$424
Medical						
Hospital	16.78	T.G.S.F.	0.00%	16.78	5.0	$5,181
Medical/Dental Clinic	36.13	T.G.S.F.	0.00%	36.13	5.0	$11,155
Specialty Medical	23.79	T.G.S.F.	20.00%	19.03	5.0	$5,876
General Office Bldg.						
Size < 50,000	15.29	T.G.S.F.	0.00%	15.29	6.2	$5,854
50,000<= Size < 175,000	10.08	T.G.S.F.	0.00%	10.08	6.2	$3,859
175,000<= Size	7.78	T.G.S.F.	0.00%	7.78	6.2	$2,978
Government						
Gov't Office Bldg.	68.93	T.G.S.F.	0.00%	68.93	6.2	$26,389
Retail						
General Retail	35.15	T.G.S.F.	47.00%	18.63	4.0	$4,601
Gasoline/Service Station	168.56	Pump Fuelers	50.00%	84.28	4.0	$20,816
Convenience Market	737.99	T.G.S.F.	61.00%	287.82	4.0	$71,087
Shopping Center:						
Size < 50,000	87.31	T.G.L.S.F.	34.00%	57.62	4.0	$14,233

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PLEASE SEE OTHER SIDE OF PAGE

Exhibit D

50,000<= Size < 175,000	43.23	T.G.L.S.F.	34.00%	28.53	4.0	$7,047
175,000<= Size	28.96	T.G.L.S.F.	34.00%	19.13	4.0	$4,724
Restaurant - High turnover/Drive throug	238.80	T.G.S.F.	46.00%	128.95	4.0	$31,850
Restaurant - Specialty Food Item Servic	36.81	T.G.S.F.	50.00%	18.41	4.0	$4,546
Restaurant - Dinner only	10.00	T.G.S.F.	5.00%	9.50	4.0	$2,346
Restaurant - Lunch/Dinner	25.00	T.G.S.F.	15.00%	21.25	4.0	$5,249
Restaurant - Breakfast/Lunch/Dinner	158.00	T.G.S.F.	40.00%	94.80	4.0	$23,415
Supermarket w/Strip mall	111.51	T.G.S.F.	36.00%	71.37	4.0	$17,627
Specialty / Neighborhood Grocery	24.36	T.G.S.F.	20.00%	19.49	3.0	$3,610
Drinking Establishment	12.00	T.G.S.F.	20.00%	9.60	3.0	$1,778
Banks - w/Drive through	265.21	T.G.S.F.	47.00%	140.56	4.0	$34,717

qldeblexcelfiles\streetsdc2000...

Exhibit E
Street Policies No. 5

City of Bend
Street Policy 5
Street System Development Charge Credit and Reimbursement

Section 1. **Purpose**:
It shall be the policy of the City of Bend that expansions to the City's street system shall only be accomplished as directed and approved by the City. The timing and financing of system expansions shall be as provided in this policy.

Expansions to the street system that involve the construction of collector and/or arterial streets shall be accomplished pursuant to the City's Comprehensive Plan. It is anticipated that these improvements will be financed by funds generated from systems development charges (SDC's), other resources or by developers as provided below. The timing of improvements to be constructed by the City will be subject to the availability of City funds to finance them.

Section 2. **Procedure**:

Developers who wish to expand the street system by dedicating land and/or constructing streets may do so according to the following procedure:

2.1 Prior City approval will be required.

2.2 An executed agreement between the developer and the City shall be required and shall set forth the development requirements as well as an SDC credit and/or SDC reimbursement, if available.

2.3 All improvements must be constructed according to applicable City Standards, rules and regulations, including the Comprehensive Plan, as determined by the City Engineer.

2.4 All of the cost of such improvements shall be paid by the developer.

2.5 The developer's costs associated with the construction of these qualified public improvements may be eligible for SDC credit and/or SDC reimbursement as provided in this policy.

Adopted: 09/06/95
Revised:

Print Date: September 12, 1995

Section 3. **SDC credit**:

The SDC credit shall be determined first and shall:

3.1 Only be available for qualified public improvements as defined in Oregon Revised Statutes (ORS) 223.304(3) (i.e., improvements that are identified in the City's Comprehensive Plan).

3.2 Be a credit against only the improvement fee portion of the SDC. The improvement fee portion against which the credit may be applied shall be calculated by using the methodology as it is employed in the City's SDC Ordinance and Resolution. If less than the maximum allowable SDC is charged in the Resolution, the percentage of the maximum allowable SDC used shall also be used to determine that portion of the improvement fee against which the SDC credit can be applied.

3.3. The amount of the credit shall not exceed the improvement fee as calculated above. e.g., if a developer incurs $100,000 for collector and/or arterial street improvement costs of which $70,000 is related to qualified improvements, and, if the development has 20 lots and the SDC improvement fee is 70% of the maximum allowable SDC improvement fee of $1,149, or $804, the SDC credit would be $16,080 (20 x $804). If the development included 100 lots the SDC credit would be limited to $49,000 as the SDC improvement fee times the number of lots (100 x 804 = $80,400) exceeds the qualified costs subject to the SDC credit times the percentage of the maximum allowable SDC improvement fee. ($70,000 x .70% = $49,000)

Section 4. **SDC Reimbursement**:

In addition to the SDC credit a developer may be eligible for SDC reimbursement. SDC reimbursement shall be determined as follows:
The maximum SDC reimbursement shall be limited to the collector and/or arterial street improvement costs expended by the developer, as determined by the City Engineer, times the percentage of the maximum allowable SDC in place at the time of executing an agreement with the City, less any SDC credit related to the improvements. There shall be no SDC reimbursement if the SDC credit exceeds the maximum SDC reimbursement. Qualified costs of collector and/or arterial street improvements shall include actual construction costs, exclusive of right-of-way and preliminary engineering costs.

Section 5. **SDC Credit and Reimbursement-Collection and Payment Procedures:**

SDC credit and SDC reimbursement will be collected and paid as follows:

5.1 The current SDC, as established by the Bend City Council, shall be collected by the City on all building permits issued by the City or with other agreements as applicable. The SDC may have two components; an improvement fee for future

system improvements and a reimbursement fee for existing or in-progress improvements.

5.2 SDC improvement fees collected by the City shall be paid to developers and retained by the City in accordance with this policy.

5.3 SDC reimbursement fees collected by the City shall be retained by the City to reimburse the City for previous system expenditures, related debt service or future improvements.

Section 6. **Shared/Sole Recovery Areas:**

6.1 The area served or to be served by the City's street system within the City limits will be categorized as either shared recovery area or as sole recovery area. Sole recovery areas shall be determined by the City Engineer and shall include only the developer's property that is to be served by the approved facilities constructed by the developer. Shared recovery area shall include all area served or to be served by the City's street system that is not otherwise designated as sole recovery area within the City limits.

6.2 SDC improvement fees collected from each sole recovery area shall be applied as follows:

6.2.1 SDC credit due the developer of the sole recovery property, until paid.

6.2.2 SDC reimbursement due the developer of the sole recovery property, until paid or until the 10 year recovery period expires.

6.2.3. Once items 1 and 2 are met the sole recovery property shall become shared recovery area.

6.3 SDC improvement fees collected from the shared recovery area shall be applied as follows:
To developers with outstanding SDC credit and SDC reimbursement balances, including the City, in proportion to the outstanding SDC credit and SDC reimbursement balances, at the end of the repayment period, of all developers, including the city participating in the shared recovery area.

6.4 SDC improvement fees collected and paid to developers from the shared recovery area shall be limited to the amount of SDC credit and/or SDC reimbursement that would not otherwise be collectible from SDC improvement fees within a developer's sole recovery area.

6.5 There shall be no payment made, for either the SDC credit or SDC reimbursement, to the developer from any SDC improvement fee collected within the sole recovery area or shared recovery area until the improvements are accepted by the City.

6.6 There shall be no SDC credit or SDC reimbursement paid after 10 years from the date the qualified improvements are accepted by the City.

6.7 A sole recovery area shall become shared recovery area when the developer has been paid the SDC credit and/or SDC reimbursement in full, or the SDC credit is paid in full and the 10 year SDC reimbursement period expires.

Section 7. Payment Schedule:

7.1 Payment of SDC credit and SDC reimbursement amounts shall be payable annually by the City for SDC improvement fees collected by the City from January 1 through December 31 of each year by January 31 of the year following collection by City.

7.2 No interest shall accrue on SDC credit or SDC reimbursement payable to developers.

7.3 There shall be no adjustments made to the amount of any SDC credit or SDC reimbursement amount as a result of inflation.

Section 8. Assignment of Claims:

8.1 Claims from SDC credit and SDC reimbursement are personal and may not be assigned without the written consent of City.

Section 9. Future Changes to Maximum Allowable SDC:

9.1 Future changes by the City of the maximum allowable SDC or the percentage of the maximum allowable SDC imposed shall neither increase or decrease the SDC credit or SDC reimbursement determined above, however, if the percentage of the maximum allowable SDC is changed, all active public improvement agreements will be reviewed, and if necessary, SDC credit and/or SDC reimbursement amounts to be collected and reimbursed developers from sole and shared recovery areas will be recalculated in accordance with this policy.

Section 10. City's Obligation to Pay:

10.1 The City's obligation to pay or apply SDC credit or SDC reimbursement shall be limited to SDC improvement fees actually collected by the City as provided in this policy. City's obligation to pay or apply SDC credit or SDC reimbursement from SDC improvement fees collected shall be further limited to the total of the SDC credit and SDC reimbursement calculated as provided in this policy. Payment of SDC credit and SDC reimbursement shall be subject to prior reimbursement claims which are payable from SDC collections. Persons who receive, or are entitled to claim, SDC credit or SDC reimbursement shall indemnify and hold the City harmless in the event the City is subject to claims by others for SDC credit or

SDC reimbursement for the same improvements. City shall have the right to set off the amount of any competing claims for SDC credit or SDC reimbursement against prior claims for the same SDC credit or SDC reimbursement if in the City's judgment it becomes necessary to do so.

Section 11. Applicability:

11.1 This policy shall apply to all eligible improvements installed and accepted after City Resolution #2146 which established street SDCs effective June 15, 1995.

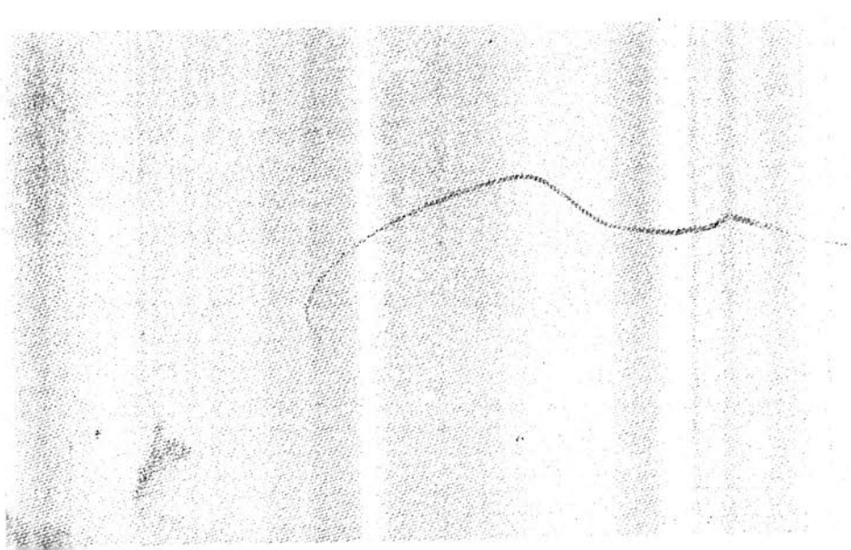


Exhibit F

That certain real property located in Deschutes County and more particularly described as the following assessor's parcel numbers:

18120500 Tax Lot 126

18120500 Tax Lot 128

18120500 Tax Lot 123

18120500 Tax Lot 124

181205A0 Tax Lot 4000

18120500 Tax Lot 102

18120500 Tax Lot 116

181205BA Tax Lot 1300

181205CO Tax Lot 100

PROPOSED DEVELOPMENT PROPERTIES - RETAIL I

PROPOSED DEVELOPMENT PROPERTIES - OTHER

DATE	BY	REVISION	CHK

DRAWN BY: JAM
DESIGNED BY: JAM
CHECKED BY: KSD
APPROVED BY: KSD

W&H PACIFIC
920 Emkay, Suite C-100
Bend, Oregon 97702-1041
(541)388-4883
(541)388-4229 Fax
Planners • Engineers • Surveyors • Landscape Architects

West Side Transportation Consortium
River Bend LP
Intersection L.I.D.
Proposed Development Properties Map

BEND/DESCHUTES EXHIBIT F OREGON

SCALE	PROJECT NO	FILE NAME	
1"=800'	02.2452.0001	WSTCPROP.DWG	1/1

PLOT DATE 10/16/2000

LAST EDIT

DEVELOPMENT AGREEMENT BY AND AMONG CITY OF BEND,

DESCHUTES COUNTY AND CASCADE HIGHLANDS LIMITED PARTNERSHIP

This Development Agreement ("Agreement") is dated as of the __ day of _____, 2000, by and between CASCADE HIGHLANDS LIMITED PARTNERSHIP, an Oregon limited partnership ("CHLP"), THE CITY OF BEND, an Oregon municipal corporation (the "City") and DESCHUTES COUNTY, an Oregon municipal corporation (the "County"). Each of CHLP, the City and the County is hereinafter referred to as a "Party" and collectively as the "Parties."

1. Definitions:

1.1 "Bridge LID Petition" means that certain LID Petition of even date herewith signed by petitioners Brooks Resources Corporation, Skyliner Summit Limited Partnership, West Bend Property Company, LLC, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Southern Bridge.

1.2 "CHLP Property" means the property on which the Proposed Development is to be constructed by CHLP, which CHLP Property is more particularly described on attached **Exhibit B**.

1.3 "Development Agreement" means each of the development agreements between a Property Owner and the City pursuant to ORS 94.504 (collectively, the "Development Agreements"). Three of the Property Owners, Western Communications, Inc., dba The Bulletin (the "Bulletin"), the Bend-LaPine Administrative School District No. 1 (the "School District") and Central Oregon Community College ("COCC") are not parties to a Development Agreement.

1.4 "Final Approval" shall mean the issuance of a development permit that reasonably allows the development described in Section 4 of the Development Agreement to proceed and the expiration of the period of appeal, or if an appeal is filed, the resolution of that appeal in a manner that reasonably allows the development described in Section 4 of the Development Agreement to proceed.

1.5 "Intersection LID Petition" means that certain LID Petition of even date herewith signed by nine of the Property Owners as petitioners, pursuant to which the petitioners request the formation of a local improvement district as a funding mechanism for the construction costs associated with the Projects.

1.6 "Off-Site Transportation Impact Mitigation" means mitigation of the increased burden that each Proposed Development will put on the

1.7 transportation facilities of the City of Bend outside the property lines of the Proposed Development. The term "Off-Site Transportation Impact Mitigation" includes the "Other Improvements" identified in **Exhibit C** of each Development Agreement.

1.7 "Other Improvements" means those certain off-site transportation-related improvements to be completed by the Property Owners which are a part of their Off-Site Transportation Impact Mitigation but which are not to be completed pursuant to a local improvement district. The Other Improvements to be completed by a particular Property Owner are identified in **Exhibit C** to that Property Owner's Development Agreement.

1.8 "Project" means a traffic facility improvement described in Section 4 of the Intersection LID Petition and the Southern Bridge.

1.9 "Property Owners" are the twelve public and private entities, including CHLP, identified on **Exhibit A** who own property on the West Side of the City and who have formed a consortium to resolve the current and projected shortage of transportation facilities on the West Side.

1.10 "Proposed Development" means the development described in Section 4 of this Agreement.

1.11 "Responsible Property" means that portion of the property of each of the Property Owners identified in the Intersection LID Petition or the Bridge LID Petition subject to assessment for the cost of one or more Projects. "Responsible Property" shall not include portions of the property that are dedicated as public right-of-way, or dedicated for any other public purpose.

1.12 "Responsible Property Owner" means the Property Owner identified as being responsible for construction of the specific Project(s) listed for that Property Owner in the Bridge LID Petition or the Intersection LID Petition.

1.13 "Southern Bridge" means the bridge to be constructed over the Deschutes River where the proposed extension of Reed Market Road from the Parkway will cross the Deschutes River as provided in the City's General Plan.

1.14 "West Side" shall mean that portion of the City of Bend directly served by the transportation facilities described in Section 4 of the Intersection LID Petition, and the Southern Bridge.

2. Recitals:

2.1 Under the City of Bend General Plan and land use regulations, new development must be supported by adequate public facilities. The City's

General Plan provides that if the public facilities are not adequate, new development must either wait for the installation of the required facilities by the City or pay the cost if it occurs ahead of the City's capital improvement plan. Existing public transportation facilities serving the West Side of the City (the "West Side Transportation System") are not adequate to support all existing development and the new development contemplated in the immediately foreseeable future for the West Side of the City. The City is proceeding on the basis that its land use regulations require a system-wide fix to remedy the system-wide deficiency in the West Side Transportation System in order to support the contemplated new development.

2.2 The City does not have funds available to complete the projects necessary to create the additional capacity for the West Side Transportation System to support the new development within the timeframe in which the Property Owners wish to develop and to complete its other capital improvements.

2.3 The cost of supplying a system-wide remedy that will support the existing needs and the additional transportation burden that the new development will add to the West Side Transportation System is more than the amount that could be exacted from any single Proposed Development. Therefore, the Property Owners have concluded that collectively they can provide the necessary improvements to the West Side Transportation System to support the Proposed Developments. To this end, they have organized themselves as a consortium to accomplish these improvements.

2.4 It is the intention of the Parties that the legal mechanism for accomplishing these improvements will be expressed in Development Agreements, the Bridge LID Petition and the Intersection LID Petition (referred to as the "Consortium Agreements").

2.5 Together, the Consortium Agreements will provide a realistic mechanism for constructing the 11 distinct traffic system improvements required to support the contemplated new development. These improvements will also make a significant contribution toward relieving existing traffic problems in the West Side Transportation System. Ten of these improvements are identified in Section 4 of the Intersection LID Petition, and the other is described in the Bridge LID Petition. The Consortium Agreements also describe Other Improvements which will be constructed by the Property Owners in connection with the Property Owners' Proposed Developments.

2.6 Traffic impact analyses show that the 10 distinct traffic system improvements identified in the Intersection LID Petition, the Bridge LID Petition, and the Other Improvements will be adequate to mitigate the off-site traffic impacts that the Property Owners' Proposed Developments will

have on the West Side Transportation System and make reasonable provision for the West Side Transportation System on a long-term basis.

2.7 ORS 94.504 authorizes cities and counties to enter into development agreements with private parties who own or otherwise have a legal interest in property in connection with the development of that property. Such development agreements may have a duration up to seven years and may establish each of the parties' rights and obligations in connection with certain aspects of the proposed developments. Each Property Owner wishes to definitively establish and discharge all of its obligations to mitigate the increased burden that each Proposed Development will put on the West Side transportation facilities of the City of Bend outside the property lines of the Proposed Development ("Off-Site Transportation Impact Mitigation") to the West Side Transportation System through a development agreement with the City.

2.8 Nine of the Property Owners (Brooks Resources Corporation; West Bend Property Company, LLC; Broken Top Limited Partnership; Skyliner Summit Limited Partnership; Century Park LLC; Shevlin Heights LP; West Side Meadows, LLC; Central Oregon Community College; and River Bend Limited Partnership) have signed a Petition to Form West Side Intersection Local Improvement District (the "Intersection LID Petition"), which, among other things, allocates responsibility for constructing 10 of the Projects among the Property Owners signing the Intersection LID Petition.

2.9 Five of the Property Owners (Brooks Resources Corporation, West Bend Property Company, LLC, Skyliner Summit Limited Partnership, Western Communications, Inc., dba The Bulletin and Bend-LaPine Administrative School District No. 1) have signed a Petition to Form Southern Bridge Local Improvement District (the "Bridge LID Petition"), which, among other things, allocates responsibility for the cost of constructing the Southern Bridge. The Property Owners have agreed upon a schedule for the completion of the Southern Bridge, and the amount to be contributed by each Property Owner, as provided in the Bridge LID Petition.

2.10 The Intersection LID Petition provides a schedule for commencement of construction of the Projects by the applicable Property Owner(s) and provides that a failure of a Property Owner to timely commence and complete its assigned Project(s) shall give the City the option to construct that Project under the Intersection LID Petition, assess that Property Owner's property for the cost of construction and impose liens against that Property Owner's property as permitted by law.

2.11 Execution of the Development Agreements, the Intersection LID Petition and the Bridge LID Petition by the City and all of the Property Owners, and the commitments created by these Consortium Agreements, will

supply the realistic provision for transportation facilities necessary to support new development to be served by the West Side Transportation System. In return, the Property Owners shall be relieved from any further Off-Site Transportation Impact Mitigation in connection with that Property Owner's Proposed Development(s).

2.12 Each Property Owner participating in one or both LID Petitions acknowledges that its property will be specially benefited by the Projects listed in the Intersection LID Petition and the Bridge LID Petition that include its property. Each Property Owner who is participating in one or both LID Petition also acknowledges that all of the properties in the Intersection LID and all of the properties in the Bridge LID will be specially benefited by all of the Projects. Each Property Owner participating in the LID Petitions therefore consents to the formation of the LIDs that include the Property Owner's property, subject to the conditions set forth herein.

2.13 It is the intention of the Parties that the Consortium Agreements are each integral parts of a collective effort with the City, intended to accomplish the objectives set out in these recitals. Therefore, the Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be construed accordingly, and in the event of any conflict between the terms and conditions of the Development Agreements and the LID Petitions, the LID Petitions shall prevail.

2.14 It is recognized that the Proposed Development of CHLP is located outside the city limits of the City. Consistent with the Joint Management Agreement between the City and Deschutes County, a three-party development agreement will be executed by the City, Deschutes County and CHLP. CHLP will contribute $500,000 to the City for the construction of the Southern Bridge. The Parties recognize that CHLP has substantially the same ownership as Broken Top Limited Partnership and Skyliner Summit Limited Partnership and that its contribution, considered as a part of the entire Consortium Agreements, addresses the impacts its Proposed Development will have on the West Side Transportation System.

2.15 Pursuant to the Joint Management Agreement, the County has land use permitting authority over the CHLP Property, but is required to consider the City's recommendations.

2.16 The CHLP Proposed Development (as defined in Section 4) includes a Destination Resort. Pursuant to Deschutes County Code Section 19.106, the City road systems would be affected by the CHLP Proposed Development. Accordingly, the impact of CHLP's Proposed Development on the City has been included in the traffic study (the "Traffic Study") prepared by Kittelson & Associates, the traffic consultant

retained by the Property Owners. Both the City and the County have reviewed the study.

2.17 None of the Property Owners shall be responsible for the performance of obligations of any other Property Owners unless expressly stated in the Consortium Agreements.

2.17(a) The Parties acknowledge that the lawsuit filed by the Central Oregon Builders Association (COBA) and served upon the City October 10, 2000 may affect the amount of System Development Charges (SDCs) available for reimbursement as provided in the Consortium Agreements. This lawsuit (COBA v. City of Bend, Circuit Court No. 00CV0454AB) seeks to reduce the Street SDC. If COBA succeeds, the $3,250 SDC anticipated by the Consortium Agreements may be reduced and SDC collections available for reimbursement may also be reduced. Because of this possibility, the Parties agree that the provisions of the Consortium Agreements relating to reimbursement (including but not limited to Sec. 12.5 and Exhibit D of the Development Agreements, Sec. 8 of the Southern Bridge LID, and Sec. 8 of the Intersection LID) are modified to provide that the SDC imposed by the City shall be the amount provided in the Consortium Agreements, or the highest amount permitted by law, if the highest amount permitted by law is less than the amount provided in the Consortium Agreements. It is the intent of the Parties that this Section has been added only to accommodate the possibility of a reduction created by the COBA lawsuit, and not for any other purpose. In the event that SDC collections are reduced as a result of the COBA lawsuit, the Consortium Agreements shall continue in full force and effect except as modified by this Section, and the Parties shall in good faith continue to cooperate in the achievement of the purpose of the Consortium Agreements, specifically including the reimbursement to consortium members from SDCs as provided in City of Bend Street Policy No. 5, Sec. 6 (which applies when the potential SDC collections from sole recovery areas will not be adequate to fund full reimbursement, and shared area recovery area collections are available to pay reimbursement not otherwise collectible from sole recovery areas).

2.18 The Development Agreements, the Intersection LID Petition and the Bridge LID Petition shall be recorded and binding upon the Parties, their successors and assigns, and shall be enforceable as covenants running with the land; and may be enforced by any remedy provided by law.

2.19 The Parties agree that their execution of these Consortium Agreements represents their acceptance of the purpose expressed in these recitals, and the ways and means of accomplishing this purpose. Towards this end, the Parties expressly agree:

2.19.1 The Parties shall cooperate in good faith to the extent reasonably practicable to accomplish the purpose of the Consortium Agreements. This shall include, but not be limited to, cooperation in the defense of these agreements and their performance.

2.19.2 Other non-consortium development served by the West Side Transportation System shall be expected to make realistic provision for the mitigation of its impacts on transportation facilities as required by law, and in addition to that made by the Property Owners.

2.19.3 The terms and conditions of these Consortium Agreements are intended as an implementation of, and are consistent with, the City's land use laws, rules and regulations, together with all applicable state and federal laws, rules, and regulations. This includes, but is not limited to, a recognition that the performance required of the Parties by these Consortium Agreements is roughly proportional to the impacts the Proposed Developments will have on the West Side Transportation System; and that the public and private responsibilities involved in remedying the deficiencies in the West Side Transportation System in order to support the Proposed Developments are fairly and properly allocated.

2.19.4 The Parties further express their commitment to the objectives of these Consortium Agreements by waiving all claims of any kind or nature resulting from the Parties' agreement to accomplish the purpose contemplated by the Consortium Agreements, or the ways and means provided for accomplishing that purpose in the Consortium Agreements. This includes, but is not limited to any constitutional or statutory claims (for the taking of property or otherwise), and any claims against the other Party, its elected officials, officers, employees, or agents. This waiver does not include claims based upon a failure to perform these Consortium Agreements as expressly required by their terms and conditions. This waiver shall not prevent land use appeals of approvals or denials of the Proposed Developments.

2.20 These recitals are part of each of the Consortium Agreements.

3. Effective Date; Term of Agreement

3.1 This Agreement shall be effective upon adoption of the City ordinance approving this Agreement pursuant to ORS 94.508 (the "Effective Date"). The term (the "Term") of this Agreement shall commence on the Effective Date and shall continue for a period of seven years unless terminated sooner in accordance with the provisions contained herein.

3.2 The Parties agree that the intent of the Parties and the essential purpose of this Agreement is to provide the City with a system-wide fix on the West Side in exchange for providing CHLP and the other Property Owners (a) the right to build their Proposed Development at the Maximum Density provided in Section 4.2 for a seven-year period without additional Off-Site Transportation Impact Mitigation, subject to CHLP and the other Property Owners obtaining Final Approval through the normal City (or County, in the case of CHLP) applications process, and (b) a seven-year vesting of the land use standards which will be applicable to such applications. The right to the Proposed Development at the Maximum Density without additional Off-Site Transportation Impact Mitigation and the vested standards during a full seven-year period is critical to CHLP's willingness to enter into this Agreement. The Parties understand that CHLP may not receive the benefit of such intent and purpose during the initial Term of this Development Agreement if there are delays (a) caused by third-party appeals of this Development Agreement and/or the related LID Petitions; (b) caused by third-party appeals of CHLP's land use applications in connection with the Proposed Development; and (c) in the land use applications process. If as a result of such delays CHLP does not receive Final Approval within one year of the Effective Date, the Parties agree that they will negotiate in good faith an extension of the Term of this Development Agreement to assure that CHLP has a 7 year period following Final Approval to proceed with its Proposed Development under the terms and conditions of this Development Agreement. At no time shall the Term exceed seven years.

4. Proposed Development

4.1 In future land use applications for the CHLP Property, CHLP expects to seek (1) approval of a conceptual master plan ("CMP") and final master plan ("FMP") for a destination resort (the "Destination Resort"). CHLP currently expects the Destination Resort will have the following components: a 200-room conference hotel, a 280-room resort hotel, an 18-hole golf course, 15,000 square feet of retail uses in conjunction with the resort, 96 condominiums and 198 multi-family dwellings and 294 single-family dwellings; (2) approval of various discretionary approvals subsequent to the approval of the CMP and FMP related to subdivisions, lot line adjustments, conditional use, site plan or variances as necessary to implement the approvals in (1) above; and (3) approval of subdivision and associated plats for fifty-three lots of single-family dwellings in the UAR-10 zoning, not as a part of the Destination Resort. Collectively, 1, 2, and 3 are hereinafter referred to as the "Proposed Development."

4.2 For the purpose of determining the amount and kind of Off-Site Transportation Impact Mitigation required of CHLP's Proposed Development and the rights of CHLP vested herein, CHLP agrees that the density of its Proposed Development shall not exceed 294 single-family

dwellings, 198 multi-family dwellings, 96 condominiums, 15,000 square feet of retail, 18-hole golf course, 280-room resort hotel and 200-room conference hotel, (collectively, the "Maximum Density"). The Maximum Density has been used by the Parties in the supporting Traffic Study to determine the estimated number of vehicle trips to be generated by the Proposed Development. To the extent that CHLP changes its mix of development to respond to market conditions but does not increase the number or distribution of estimated vehicle trips, CHLP shall not be deemed to have exceeded its Maximum Density.

5. Conditions to Parties' Obligations. The Parties' obligations are subject to each of the other Parties executing this Agreement.

6. Permitted Uses. The Property is within the UAR-10 Zone, Urban Area Reserve Zone, pursuant to Title 19 of the Deschutes County Code. Approximately 1200 acres (of the total of 1320) are zoned with a County Destination Resort overlay. The remaining acreage has been identified for consideration of a Destination Resort overlay as a part of the City's periodic review. Notwithstanding the content of any later-adopted zoning or development ordinance, development of the Proposed Development during the period of this Agreement shall be subject to the permitted uses contained in the relevant portions of the Deschutes County Code (the "DCC") as the same exist as of the Effective Date. Accordingly, the Destination Resort overlay applicable to the 1200 acre portion of the property shall be vested for the Proposed Development as of the Effective Date, and the City and the County agree that the same shall be unaffected during the Term of this Agreement even if the Property is annexed into the City during such time. This Section 6 shall not be read so as to limit any uses permitted under any future zoning changes approved by the applicable governmental body for any portion of the Property.

7. Density or Intensity of Use. Land use approval of the Proposed Development during the period of this Development Agreement shall be subject to the density and intensity of use provisions contained in the DCC which exist as of the Effective Date, notwithstanding the content of any subsequently adopted zoning or development ordinance.

8. Maximum Height and Size of Proposed Structures. Land use approval of the Proposed Development during the period of this Development Agreement shall be subject to the maximum structure height and size provisions contained in any applicable deed restrictions on the Property and any applicable portions of Title 19 of the DCC, whichever is more restrictive, notwithstanding the content of any subsequently adopted zoning or development ordinance. The Parties recognize that for the proposed application of a destination resort, Chapter 19.106 provides that building heights are established at the time of the review of the conceptual master plan and that the height provisions of the underlying zones do not apply. The height of structures is established by the Planning Director or Hearings Body at the time of the review of the conceptual master plan in accordance with the

standards and criteria of Chapter 19.106. CHLP agrees that it shall not, during the Term of this Agreement, make an application for a conceptual master plan seeking approval for any visitor-oriented buildings on the CHLP Property with a height in excess of 50 feet (except when the highest grade is more than10 feet above the lowest grade, then 50 feet plus 10 feet above lowest grade) nor an application for a residential use in the conceptual master plan exceeding a height of 35 feet.

9. Provisions for Reservation or Dedication of Land for Public Purposes. CHLP shall have no obligation to make off-site reservations or dedication of land within the City limits for public purposes (including easements and/or licenses) in connection with CHLP's Proposed Development. The necessity and/or specifics of any on-site reservations or dedications of land for public purposes (including easements and/or licenses) or any off-site reservations or dedications of land for public purposes (including easements and/or licenses) outside the City limits in connection with CHLP's Proposed Development will be determined by the County in reviewing CHLP's applications and applying County standards and ordinances in effect as of the Effective Date.

10. Fees and Charges. CHLP and its successors and assigns shall pay all applicable fees and charges then in effect for a particular application, except where the purpose or effect of such fees or charges is Off-Site Transportation Impact Mitigation within the City limits. In no event shall this Section 10 be construed so as to relieve CHLP or any purchaser of any portion of the CHLP Property from any obligation it may have to pay any applicable street SDCs.

11. Schedule and Procedure for Compliance Review. Commencing on the first anniversary of the Effective Date, CHLP shall prepare annual written reports of its compliance with the terms of this Agreement to the County and the City. Such reports shall include an update as to compliance with all schedules set forth herein. After receipt of such reports, the County or the City may request such additional or backup information as it deems reasonably necessary.

12. Responsibility for Providing Infrastructure and Services

    12.1 Consistent with the Maximum Density rights vested in Section 4 and the development standards vested in Sections 6, 7, 8 and 10, CHLP agrees (a) to make a non-refundable Five Hundred Thousand Dollar ($500,000) contribution (the "Contribution") to the City toward the cost of construction of the Southern Bridge and (b) to complete those Other Improvements identified on attached **Exhibit C**. While CHLP's Contribution shall be non-refundable, the balance of the cost of the Southern Bridge to be paid by the other Property Owners will be reimbursed through the creation of a Local Improvement District or LID. The details of such LID shall be set forth in the Bridge LID Petition. Although CHLP shall not be obligated to pay its Contribution until such time as the City executes a contract with a general contractor for the

construction of the Southern Bridge, CHLP shall immediately post a letter of credit as provided in Section 12.2. The Contribution shall be used solely toward the cost of constructing the Southern Bridge or such other traffic facilities improvement(s) which the City constructs to handle the traffic that was to be routed over the Southern Bridge.

12.2 The Parties agree that CHLP shall pay the Contribution directly to the City. Within ten (10) business days following resolution to the reasonable satisfaction of CHLP of all appeals, if any, of the Consortium Agreements, CHLP shall, at its sole expense, obtain an irrevocable standby letter of credit from a financial institution licensed in the State of Oregon reasonably satisfactory to the City, guaranteeing payment of the Contribution regardless of whether or not CHLP completes its Proposed Development. The City shall have the right to draw on the letter of credit in the event CHLP, through no fault of the City, fails to pay the Contribution when due pursuant to Section 12.1.

12.3 The City and County acknowledge that (a) construction of the Southern Bridge is subject to objections raised by third parties which could interfere with that Project; (b) construction of any of the Projects could be delayed as a result of the City's failure to timely acquire necessary rights-of-way, (c) construction of any of the Projects could be delayed as a result of objections raised by third parties; and (d) construction of any Projects could be delayed by difficulties in obtaining approvals from the Oregon Department of Transportation ("ODOT") and any other federal, state or local regulatory body. The City and County agree that none of (a), (b), (c) or (d) shall be a basis for denying or delaying the approval of any of CHLP's land use applications in connection with the Proposed Development, grounds for declaring CHLP to be in default, or a basis for exacting additional Off-Site Transportation Impact Mitigation within the City limits from CHLP.

12.4 The City has reviewed the Traffic Study and agrees, as an affected jurisdiction, that CHLP's Contribution to be provided pursuant to this Development Agreement and the Projects to be provided pursuant to the Bridge LID Petition and the Intersection LID Petition shall be deemed to mitigate CHLP's impact on City transportation systems and satisfy CHLP's obligation to provide Off-Site Transportation Impact Mitigation in connection with the Maximum Density of the Proposed Development set forth in Section 4 so that, with respect to City transportation obligations, the Proposed Development is vested. The County acknowledges and accepts this determination. The City shall neither require nor recommend any additional transportation-related exactions or any further traffic studies relating to Off-Site Transportation Impact Mitigation within the City limits in connection with or as a condition to the approval of CHLP's Proposed Development. This shall include, but not be limited to, construction of off-site streets or intersections, improvement of off-site

intersections or other existing off-site transportation facilities, construction of off-site bicycle paths or pedestrian trails and dedication of off-site rights-of-way for any of the above-identified purposes. Notwithstanding the foregoing, CHLP's rights which are vested herein are dependent upon the Maximum Density of the Proposed Development set forth in Section 4 which is tied to the estimated number of vehicle trips to be generated by such Maximum Density. The Parties hereto understand that the mix of uses that make up the Maximum Density could change based on market forces. However, to the extent that CHLP submits land use applications that would increase the number of vehicle trips to be generated by the Proposed Development, the Proposed Development may be subject to additional off-site transportation exactions within the City limits based upon projected transportation impacts on City transportation facilities from the increased density, consistent with City policies and regulations. The Parties agree that this Development Agreement does not, however, resolve any issue relating to (1) transportation requirements as a result of the Proposed Development's impact on County or State transportation facilities; or (2) on-site transportation requirements. These County and State transportation and on-site transportation issues are reserved for future discretionary land use approval, and the County may require further studies and reviews relating thereto.

12.5 The Parties agree that there are certain actions or improvements that must be made in conjunction with the Projects and Other Improvements to be completed by the Property Owners to provide adequate facilities to support development which will impact the City's West Side Transportation System. These actions or improvements are not a part of the Property Owners' obligations and the City agrees to assure that such actions are taken and such improvements are made. As referenced in the supporting traffic studies, such actions and improvements include, but are not limited to, acquiring rights-of-way for those Projects for which the Property Owners do not already own the necessary rights-of-way, obtaining permits necessary for construction of the Projects, expanding some of the Projects as necessary from single-lane roundabouts to double-lane roundabouts and completing bicycle lanes where gaps exist along Shevlin Park Road. In no event shall the City be obligated to expend funds to take such actions or complete such improvements; the City may assure their completion by any appropriate means, including, without limitation, making them conditions to other future development, paying for them with systems development charges, paying for them with grants and/or including them in future capital improvement plans.

13. Assumptions Relating to the City's and the County's Ability to Serve Development; Continuing Effect of Agreement

13.1 ORS Section 94.504(6) requires that a Development Agreement "state the assumptions underlying the agreement that relate to the ability of the city or the county to serve the development."

13.2 The facts set forth in the Recitals are included in the assumptions underlying this Agreement.

13.3 The Parties operate under the assumption that construction of the Projects (including the Southern Bridge) will provide adequate off-site transportation infrastructure and facilities to support CHLP's Proposed Development. The adequacy of transportation facilities are determined with reference to the standards in effect as of the Effective Date.

13.4 The Parties agree that this Agreement does not involve any County approval of CHLP's Proposed Development (though it does involve the vesting of certain development standards and the County's acknowledgment of the City's determination, as an affected jurisdiction, of the adequacy of CHLP's mitigation of the Proposed Development's impacts on City transportation facilities). Such approval will be pursuant to future applications consistent with applicable County standards and codes. Accordingly, this Agreement makes no assumptions regarding the County's ability to serve the Proposed Development.

13.5 In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with the Agreement impossible or unlawful, the Parties will attempt to give effect to the remainder of the Agreement, but only if the purposes set out in the recitals can be accomplished and such effect does not prejudice the substantial rights of either Party under the Agreement.

13.5.1 If the substantial rights of either Party are prejudiced by giving effect to the remainder of the Agreement, then the Parties shall negotiate in good faith to revise the Agreement to give effect to its original intent.

13.5.2 If the Parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either Party may request that an arbitration panel determine an equitable effect for the remainder of the Agreement. The arbitration panel shall consist of 3 arbitrators, one of which shall be selected by CHLP, one of which shall be selected by the City, and the third of which shall be selected by the County.

13.5.3 If, because of a change in policy, law or circumstances, the Agreement fails of its essential purposes (construction of all of the

traffic system improvements called for in the Intersection LID Petition, the Bridge LID Petition and this Development Agreement; vesting of allowed uses and limitations on development conditions; vesting of maximum off-site transportation exactions within the City limits; and vesting of maximum permissible densities in connection therewith), then the Parties shall be placed into their original position to the extent practical.

13.5.4 As used herein, however, "change in circumstance" does not include changes in local government land development or land division regulations.

13.6 To the extent any local rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis that is not, in the reasonable discretion of CHLP, inconsistent with the substance, purpose, or conditions of this Development Agreement, then the local rule, ordinance, regulation or policy shall be applicable.

14. Assignability of Agreement. This Agreement shall be fully assignable, in whole or in part, by either Party and shall bind and inure to the benefit of the Parties and their respective successors and assigns. If any portion (other than lot sales to individuals or builders) of the CHLP Property is sold, the duties, rights and interests of CHLP under this Agreement shall become the duties, rights and responsibilities of the purchaser and CHLP. Notwithstanding the foregoing, no purchaser of an individual lot(s) shall have any rights hereunder.

15. Future Discretionary Approvals.

15.1 The City agrees to cooperate with CHLP in securing all future necessary land use permits and approvals for the Proposed Development needed from entities other than the City.

15.2 The following future discretionary approvals are the currently anticipated approvals that will be required for the Proposed Development:

15.2.1 Conceptual master plan and final master plan approvals for the Destination Resort, together with associated subdivisions, lot line adjustments, conditional uses, site plan or variances as necessary to implement the conceptual master plan and final master plan; and

15.2.2 Subdivision approval for single-family dwellings, not as a part of the Destination Resort, together with associated plats.

15.3 The Parties acknowledge that the provisions of CHLP's land use application, other than the provisions relating to Off-Site Transportation Impact Mitigation within the City limits, shall be the subject of future discretionary approvals by the County. The question of whether the

County may approve the applications referred to in this Agreement, including the provisions of the land use applications referred to in Sections 4 (Proposed Development), 6 (Permitted Uses), 7 (Density or Intensity of Use), and 8 (Maximum Height and Size of Proposed Uses), or any other part of CHLP's land use application are reserved for future discretionary approvals, and are not resolved by the terms of this Agreement, the Intersection LID Petition or the Bridge LID Petition. Nothing in this Agreement resolves, adjudicates or dispenses with the responsibilities of CHLP or its Proposed Development for impacts or conditions of approval other than Off-Site Transportation Impact Mitigation within the City limits, and nothing herein operates as an approval (or preliminary approval) by County of CHLP's land use applications except as to Off-Site Transportation Impact Mitigation within the City limits.

15.4 The discretionary approvals shall be reviewed by the County in the same manner and subject to the same procedures and hearings requirements as all other similar land use applications filed at the time of the Effective Date.

16. Defaults

16.1 A breach of a material provision of this Agreement, whether by action or inaction of a Party which continues and is not remedied within thirty (30) days after another Party has given notice specifying the breach shall constitute a default by a Party. If the breach is of such a nature that it cannot reasonably be cured within such thirty-day period, the cure period shall be extended to such amount of time as is reasonable but only if the breaching Party promptly commences, and thereafter diligently prosecutes, such cure.

16.2 The exercise by any Party of any one or more of such remedies available to it shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by another Party, including, without limitation, the right to compel specific performance.

17. Release of Development Agreement. The City and the County shall release developed lots from this Development Agreement upon the request of CHLP provided that the terms and conditions of this Development Agreement have been performed as they relate to the lot to be released.

18. Force Majeure

18.1 In the event that any Party (the "Delayed Party") is delayed or prevented from performing any of its obligations under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities,

laws or other governmental requirements, riots, war, or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

18.2 The City's right under the Intersection LID Petition or the Bridge LID Petition to construct traffic system improvements shall not be affected by the provisions of Subsection 18.1.

19. Notices. Any notice, demand, request, approval, consent, or other communication (collectively referred to as a "Notice") concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other Parties at the address set forth below. Any Notice shall be given by either: (i) personal delivery in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Any Party may change any address for the delivery of Notice to such Party, by giving Notice in accordance with the provisions of this Section. The attorneys for the Parties may give any Notice.

Notices Addresses:

If to CHLP:
Cascade Highlands Limited Partnership
c/o H. Williams Advisors, Inc.
1325 NW Flanders
Portland, Oregon 97209
Attn: Dike Dame

With a copy to:
Ball Janik LLP
15 SW Colorado, Suite K
Bend, Oregon 97702
Attn: Laura Craska Cooper

If to the City:
City of Bend
Development Services
710 NW Wall
Bend, OR 97701
Attn: Development Services Director

If to the County:
Deschutes County
Office of Legal Counsel
1130 NW Harriman St.
Bend, OR 97701
Attn: Mr. Richard L. Isham

20. Miscellaneous

20.1 Schedule. Subject to obtaining timely approvals of its Proposed Development, CHLP shall commence construction of its Proposed Development by 2001 and that its Proposed Development shall be completed by the expiration of the Development Agreement.

20.2 City Funding. The Parties agree that any provision herein which requires the City to expend funds is contingent upon future appropriations as part of the City budget process as provided in ORS 94.504(5). Nothing herein requires the City to appropriate such funds.

20.3 County Funding. The Parties agree that any provision herein which requires the County to expend funds is contingent upon future appropriations as part of the County budget process as provided in ORS 94.504(5). Nothing herein requires the County to appropriate such funds.

20.4 Waivers. No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

20.5 Entire Agreement/Modifications. This Agreement, together with the Intersection LID Petition and the Bridge LID Petition (along with all exhibits incorporated therein) (collectively referred to as the "Consortium Agreements") constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto. This Development Agreement, the Intersection LID Petition and the Bridge LID Petition are parts of a whole transaction between the Parties and shall be construed as a whole transaction.

20.6 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

20.7 Captions. The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the Parties.

20.8 Gender/Singular/Plural. Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they

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

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

"CHLP"

CASCADE HIGHLANDS LIMITED PARTNERSHIP,
an Oregon limited partnership

By Broken Top, Inc.,
Its General Partner

By: _____
Name: Joseph E Weston
Title: President

"CITY"

CITY OF BEND, an Oregon Municipal Corporation,

By: _____
Name: _____
Title: _____

"COUNTY"

DESCHUTES COUNTY,
an Oregon Municipal Corporation,

By: _____
Name: _____
Title: _____

STATE OF OREGON)
)ss.
COUNTY OF Multnomah)

This instrument was acknowledged before me on October 25, 2000 by Joseph E Weston as General Partner of Cascade Highlands Limited Partnership.

OFFICIAL SEAL
TRACIE A MASSEY
NOTARY PUBLIC-OREGON
COMMISSION NO. 330377
MY COMMISSION EXPIRES MAR. 17, 2004

Tracie A. Massey
Signature of Notarial Officer
My Commission Expires: 3/17/04

STATE OF OREGON)
)ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____ by _____ as _____ of Deschutes County.

_____
Signature of Notarial Officer
My Commission Expires: _____

STATE OF OREGON)
)ss.
COUNTY OF Deschutes)

This instrument was acknowledged before me on November 6, 2000 by Larry Patterson as City Manager of the City of Bend.

OFFICIAL SEAL
PATRICIA ANNE SMILEY STELL
NOTARY PUBLIC-OREGON
COMMISSION NO. 305227
MY COMMISSION EXPIRES NOV. 22, 2001

Patricia Anne Smiley Stell
Signature of Notarial Officer
My Commission Expires: Nov. 22, 2001

Exhibit A
Property Owners

1. Brooks Resources Corporation;
2. West Bend Property Company, LLC;
3. Broken Top Limited Partnership and Broken Top Development, LLC;
4. Skyliner Summit Limited Partnership and Broken Top Development, LLC;
5. Century Park LLC;
6. Shevlin Heights Limited Partnership;
7. River Bend Limited Partnership;
8. Central Oregon Community College;
9. Bend LaPine Administrative School District No. 1;
10. West Side Meadows, LLC;
11. Western Communications Inc., dba The Bulletin; and
12. Cascade Highlands Limited Partnership

Exhibit B
CHLP Property

ADJUSTED 181100 TAX LOT 100 R1

A parcel of land, located in Section 1, Section 2, the east half of the east half (E1/2 E1/2) of Section 11, the southwest quarter (SW1/4), the west half of the northeast quarter (W1/2 NE1/4), and the northwest quarter (NW1/4) of Section 12, all in Township 18 South, Range 11 East, Willamette Meridian, Deschutes County, Oregon, more particularly described as follows:

That parcel of land described in deed to Cascade Highlands Limited Partnership, recorded in volume 252, page 2196, on December 19, 1991, in Deschutes County Records,

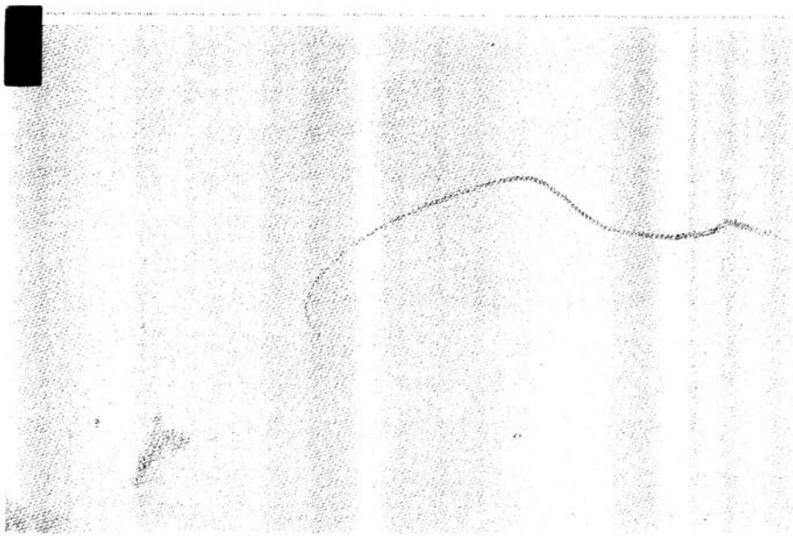
TOGETHER WITH: That portion of the southwest quarter (SW1/4) of Section 12, lying northerly of Cascade Lakes Highway, also known as Century Drive.

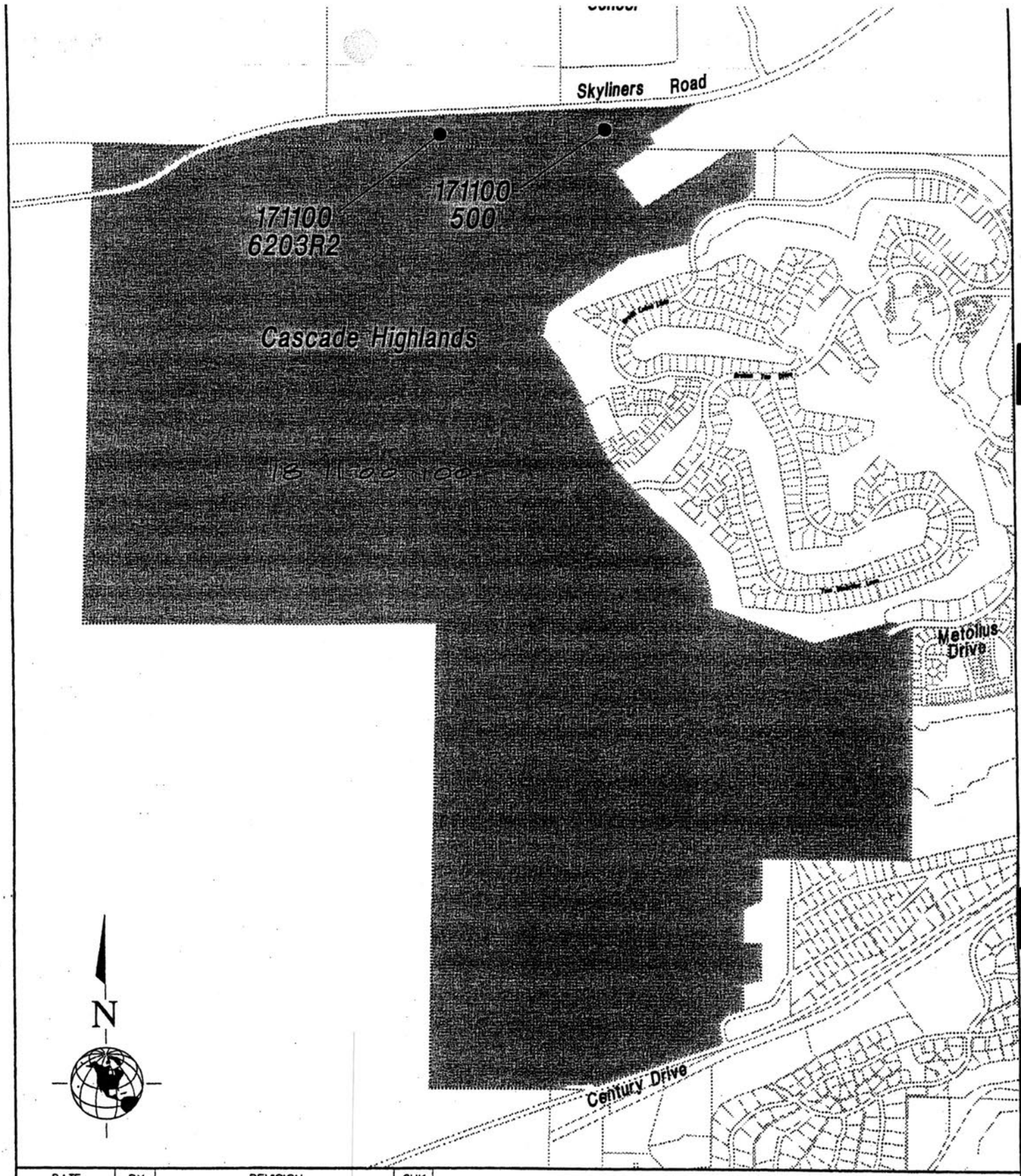
EXCEPTING THEREFROM: That portion of the northwest quarter (NW1/4) of section 1, conveyed to SKYLINERS SUMMIT LIMITED PARTNERSHIP, recorded June 28, 1996, in volume 414, page 2085, Deschutes County Records, and that portion of the northeast quarter of section 12, conveyed to SKYLINERS SUMMIT LIMITED PARTNERSHIP, recorded July 11, 1997, in volume 454, page 1916, Deschutes County Records, and that portion of Metolius Drive lying in the northeast quarter (NE1/4) of said section 12, and the SE1/4 of said Section 1,

ALSO EXCEPTING THEREFROM: That portion of the southwest quarter (SW1/4) of Section 12, within Campbell Road, Lundgren Road and Swarens Road,

ALSO EXCEPTING THEREFROM: A parcel of land, located in the southwest quarter (SW1/4) of Section 12, Township 18 South, Range 11 East, Willamette Meridian, Deschutes County, Oregon, more particularly described as follows:

Commencing at the center one-quarter corner of said section 12 (monumented by a 3" brass cap marked "David Evans and Associates", T18S, R11E, C1/4, S12, PLS 1068, 1990, the initial point and the **true point of beginning**; thence South 00°42'25" West along the east boundary of said SW1/4 of said section 12, as well as the west boundary of Lot 1, Block 7, "First On The Hill Sites", 450.34 feet; thence North 89°17'35" West, 30.00 feet; thence South 00°42'25" West, 30.00 feet west of and parallel with said east boundary, 833.21 feet to the northerly right-of-way (R/W) of West Campbell Road, dedicated February, 1965 in Volume 9, Page 325, Deschutes County Commissioners Journals; thence along the arc of a 113.20 foot radius curve to the right, along said R/W, through a central angle of 28°47'00", an arc length of 56.87 feet (the chord of which bears South 15°05'55" West, 56.27 feet); thence South 29°29'25" West, along said R/W, 279.54 feet; thence along the arc of a 113.20 foot radius curve to the right, along said R/W, through a central angle of 41°56'00", an arc length of 82.85 feet (the chord of which bears South 50°27'25" West, 81.01 feet); thence South 71°25'25" West along said R/W, 306.80 feet; thence leaving said R/W, North 00°42'25" East, 530.00 feet west of and parallel with said east boundary, 301.85 feet; thence north 76°30'00" East, 206.31 feet; thence North 00°42'25" East, 330.00 feet west of and parallel with said east boundary, 415.00 feet; thence North 89°17'35" West, 200.00 feet; thence North 00°42'25" East, 530.00 feet west of and parallel with said east boundary, 400.00 feet; thence North 65°00'00" East, 221.97 feet; thence North 00°42'25" East, 330.00 feet west of and parallel with said east boundary, 470.00 feet to the north boundary of said SW1/4; thence South 89°48'24" East along said north boundary, 330.01 feet to the true point of beginning.





DATE	BY	REVISION	CHK

DRAWN BY: JAM
DESIGNED BY: JAM
CHECKED BY: KSD
APPROVED BY: KSD

W&H PACIFIC
920 Emkay, Suite C-100
Bend, Oregon 97702-1041
(541)388-4255
(541)388-4259 Fax
whpacific.com
A Member of The H Group
Planners • Engineers • Surveyors • Landscape Architects

West Side Transportation Consortium

Cascade Highlands Property Exhibit Map

EXHIBIT B

BEND/DESCHUTES OREGON

SCALE:	PROJECT NO.	FILE NAME:	
1"=1500'	02.2452.0001	WSTCPROP.DWG	1/1

PLOT DATE: 10/16/2000

LAST EDIT:

Exhibit C
Other Improvements

There are no other off-site improvements to be completed by CHLP within the City limits. The Parties recognize that improvements under the County's jurisdiction and as related to ODOT facilities such as improvements to Skyliners Road and construction of intersections on Skyliners Road and Century Drive will be subject to future land use review processes.