



After Recording Return To:

Ball Janik LLP
15 SW Colorado, Suite K
Bend, OR 97702
Attn: Laura Craska Cooper

DECLARATION OF RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant (this "Declaration") is made as of this 25th day of September 2003 by CASCADE HIGHLANDS LIMITED PARTNERSHIP, an Oregon limited partnership ("Declarant"). Declarant owns those certain parcels of real property legally described as Lots 1, 2, 3, 9 and 10, The Highlands at Broken Top, County of Deschutes, State of Oregon (each, a "Lot" and collectively, the "Lots"). Pursuant to the Condition No. 14 to Deschutes County's approval of Declarant's subdivision of The Highlands at Broken Top, Declarant desires to subject the Lots to a restrictive covenant regarding setbacks to construction.

Declarations:

NOW, THEREFORE, Declarant hereby declares as follows:

1. Restrictive Covenant. Declarant hereby declares to and for the benefit of the owner of the Benefited Property (as described in Section 2) that the Lots shall be subject to a 250 foot setback from the southern property line of the Benefited Property. So long as this Declaration is effective, no residential units shall be constructed and no other noise or dust sensitive uses shall be located within such setback area.
2. Enforcement. The restrictive covenant contained herein shall be enforceable by Deschutes County and/or the owner of the property adjacent to The Highlands at Broken Top, commonly know as SM Site 302 and more particularly described in attached **Exhibit A** (the "Benefited Property").
3. Successors and Assigns. This Declaration shall run with the land and be binding upon Declarant and Declarant's successors and assigns and shall inure to the benefit of the owner of the Benefited Property and its successors and assigns; provided, however, in the event that the "Surface Mining" or "SM" designation shall ever be removed by Deschutes County from the Benefited Property, then this Declaration of Restrictive Covenant shall immediately terminate and be of no further force or effect.
4. Amendment. This Declaration, or any portion hereof, may be amended or waived by written agreement of the owner of the affected Lot(s), Deschutes County and the owner of the Benefited Property, which written agreement is recorded in the real property records of Deschutes County, Oregon.
5. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Oregon.

Recorded by Western Title as an
accommodation only. No liability
accepted for condition of title or
validity, sufficiency or affect of
document.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Restrictive Covenant as of the date first set forth above.

CASCADE HIGHLANDS LIMITED PARTNERSHIP,
an Oregon limited partnership

By Broken Top, Inc.,
Its General Partner

By: [Signature]
Name: _____
Title: _____

STATE OF OREGON)
) ss
County of Multnomah)

The foregoing instrument was acknowledged before me this 26th September day of July 2003 by T.B. Dame, who is the Owner's Representative of Broken Top, Inc., the general partner of Cascade Highlands Limited Partnership, an Oregon limited partnership, on behalf of the limited partnership.



[Signature]
Notary Public for Oregon
My Commission Expires: 2/23/04

Exhibit A

Legal Description of Benefited Property

That portion of the southeast one-quarter of Section 35, Township 17 South, Range 11 East, Willamette Meridian, in Deschutes County, Oregon, lying north of Skyliner Road