

PROTECTIVE COVENANTS FOR
**SOUTHSIDE BUSINESS PARK
SUBDIVISION**

LOCATED IN
CITY OF DILLON, MONTANA
BEAVERHEAD COUNTY



Adopted by the Dillon City Council

On

_____, 2008

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**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS OR
RESTRICTIONS
FOR SOUTHSIDE BUSINESS PARK SUBDIVISION**

WHEREAS, Southside Business Park is a d.b.a. owned by Southside Development Park, LLC, a Wyoming Limited Liability Company, John and Phyllis Erb as Managing Members, is the Declarant and the owner, assignee or transferee of the property described in the following legal description.

WHEREAS, Declarant desires to create thereon a commercial development to afford each landowner and tenant a compatible structural and landscape theme for a respective common interest.

WHEREAS, Declarant desires to insure the values and amenities in the development, prevent any future impairment thereof, and subject all the real property to the covenants, restrictions, conditions, easements, charges, and liens hereinafter set forth, each of which is for the benefit of each property and each owner or tenant thereof.

NOW, THEREFORE, Declarant states that all the property described below (may at times herein referred to as lands, lots, parcels, tracts, subdivision, or property) shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved, subject to the following limitations, restrictions and covenants, all of which are declared and agreed to be in furtherance of the plan for the mixed use development, improvement, and sale of the lands and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the lands and every part thereof. All of the limitations, restrictions and covenants shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the described lands or any part thereof, and their heirs and assigns.

I. Purpose and Intent

The declared purpose and intent of these conditions, covenants and restrictions is to ensure the proper use and development of each Lot in the Southside Business Park Subdivision (hereinafter referred to as the "Park") for the mutual benefit and protection of all present and future owners of property within the Park and to carry out the intent of the Declarant. (hereinafter referred to as SSBP) to develop an upscale business environment for the benefit of business and taxpayers of Beaverhead County and the City of Dillon. It is

the intent of SSBP, that environmental and aesthetic values are paramount considerations in the development of the Park so that property in the Park will be protected against depreciation in value and to insure that the Park will provide attractive and desirable sites for business and industrial development, which will reflect positively on Beaverhead County, the City of Dillon, SSBP and the owners and investors of property within the Park.

II. Subject Property

These conditions, protective covenants and restrictions shall apply to and restrict the use of lands comprising the Park, which consists of the following described real property, situated in Beaverhead County, State of Montana, to wit:

Description: 15.08 Acre Industrial Site

Tract of Land 1:

Tracts 2 and 3B as shown on Certificate of Survey No. 1445BA, filed for record in the Clerk and Recorder's Office on the 21st day of February, 2007, at 4:45 o'clock p.m., under Recorder's Reception No. 262837, and being a tract of land located in Section 24 and Section 25, Township 7 South, Range 9 West, Beaverhead County, Montana.

Tract of Land 2:

Tracts E, I, G, J, K, M, N and 2, 7, 8 as shown on Certificate of Survey No. 1441 BR-HR, filed for record in the Clerk and Recorder's Office on the 22nd day of January, 2007, at 9:00 o'clock a.m., under Recorder's Reception No. 262586, and being a tract of land located in Section 24 and Section 25, Township 7 South, Range 9 West, Beaverhead County, Montana.

Tract of Land 3:

A parcel of land located in the SE1/4 of Section 24, Township 7 South, Range 9 West, PMM more particularly described as Amended Lot 4 of Erb Minor Subdivision, filed for record on the 1st day of March, 1991, at 2:25 o'clock p.m., records of Beaverhead County, Montana.

III. Municipal Rights of Approval

All pertinent requirements of local, state and federal governmental agencies shall be applicable to the development of the Park and all construction in the Park must be approved by the City of Dillon according to the applicable municipal ordinances and the Highway Business Zone, as restricted under the provisions of these covenants.

IV. Lot Use

A. Permitted Uses:

The City of Dillon has designated this as a Highway Business District -H Zone, under the Dillon ordinances, which defines certain permitted uses. Notwithstanding these designated permitted uses, the Declarant restricts the types of permitted uses to the following commercial and retail activities:

1. Auditoriums and meeting halls
2. Automobile dealerships, with new car sales being the primary focus of the dealership. Used car sales located on or contiguous to the location of the new car dealership and owned or operated by the same entity that operates the new car dealership is permitted. Service, rental, repair and body shops shall only be allowed as an incidental part of the operation of new and used car sales dealership
3. Building equipment and materials supply necessary for wholesale and retails sales, including enclosed or fenced storage yards for such enterprises
4. Clubs and lodges
5. Cleaning and dying establishment
6. Dealerships selling agricultural implements, heavy machinery, mobile homes, travel trailers, and other such equipment and merchandise, with new sales being the primary focus of the dealership. The sale of used agriculture implements, heavy machinery, mobile homes, travel trailers and such other equipment and merchandise that is sold on or contiguous to the location of the dealership and owned and operated by the same entity is permitted. Service, rental, repair storage shall only be allowed as an incidental part of the operation of a sales dealership
7. Full-service restaurants and drive ins, including certain activities which are an incidental part of the operation of this type of facility

such as electronic gambling, on-premises consumption of alcoholic beverages, and amusement arcades.

8. Funeral parlors
9. Gymnasium, health and aerobic spa or athletic center
10. Hospital and clinic facilities
11. Medical and dental offices, clinics and laboratories
12. Laboratories, including analytical experimental, testing, research and development
13. Motels and Hotels
14. Police and fire stations
15. Professional offices
16. Repair shops for small items, such as small kitchen appliances, clocks, jewelry, shoes, and other items of this nature, that do not require outdoor storage
17. Services including, but not limited to, barber shops, self-service laundromat, rental shops and custom fabrication
18. Utilities, public or private, **except** cell towers, electrical substations, gas relocater stations, satellite receivers and microwave reflectors
19. Indoor Theaters

B. Prohibited Uses:

The Declarant recognizes that each owner or owner's tenant needs adequate parking facilities in close proximity to their premises and the importance of protecting such parking facilities against unreasonable or undue encroachment which is likely to result from long term parking by patrons and employees of certain types of business establishments. In addition Declarant understands that certain types of business activity may not be conducive to this commercial endeavor and may result in unsightly, unhealthy or unsanitary conditions or could be injurious to health, indecent, or offensive to the senses so as to interfere with the free use of property within the Park. In order to avoid the potential for incompatible commercial and retail activities, the following uses, even though permitted in an H Zone, shall not be permitted within the Park:

1. No part of Park shall be devoted to the use or operation of the following uses or any use substantially similar: an amusement center, drive-in theaters, bowling alley, skating rink, electronic or mechanical games arcade, pool or billiard hall, betting parlor, bingo parlor, shooting ranges, motor vehicle raced tracks, animal race tracks of any kind, adult entertainment or pornographic shops,

adult book store, nightclub, dance hall, tavern, cocktail lounge, any facility for the on-premises consumption of alcoholic beverages except as an incidental part of the operation of a full service restaurant.

2. Auto body and body shops, except in conjunction with a dealership as identified in items 2 and 6 above.
3. Car Washes
4. Nursing homes
5. Off-site advertising signs for other businesses not located on the Lot where the sign would be located
6. Outdoor advertising businesses
7. Repair shops and garages for vehicles, equipment, large household appliances and other items of this nature that would require outdoor storage other than as specified in Paragraph IV.
8. Service stations
9. Single or multi-family residential housing, including condominiums
10. Stadiums, armories, and fairgrounds
11. Storage yards for bulk materials not inventory for a commercial or retail enterprises located on the Lot

C. Temporary Uses:

Temporary uses which may occur from time to time on one or more lots within the Park, such as temporary structures on construction sites, or temporary signs, etc., shall be limited in duration, generally to a period of time not to exceed five (5) days beyond the date of project completion. In the case of temporary structures, mobile homes, and storage areas on construction sites the temporary use shall not extend beyond the date of project completion by more than five (5) days.

D. Other Operations and Uses:

Uses and operations which are neither specifically permitted nor specifically prohibited by this Declaration may be permitted in a specific case if operational plans and specifications are submitted to and approved in writing by 60% of the lot owners. Approval or disapproval of such operational plans and specifications shall be based upon the effect of such operations or uses on other property subject to this Declaration or upon the Occupants thereof. Any such approval shall be subject to the review and approval of the proper local and state governmental authorities.

V. Commercial Area Covenants

A. Land Use

No lot shall be used except for commercial purposes. All buildings erected, altered, placed or permitted to remain on any lot shall be maintained in its appearance so as not to detract from the visual attractiveness of the development. No building shall be used for any purpose that creates an unsafe or unsightly nuisance to the neighboring buildings within the development.

All lots can be modified in size subject to obtaining the necessary City and State permits, however no additional lots can be created. There can never be more than 17 lots in the Park.

Lot number 17 may not be modified in size, or divided without written permission of Declarant. This limitation on Lot number 17 shall cease and become void on January 1, 2020.

B. Construction and Maintenance of Buildings

Building Size: All building structures shall be sized in balance with the City of Dillon Zoning and Building requirements. Buildings must be sized according to their allotted parking requirements as determined by the City of Dillon Zoning Requirements and this document.

Quality and Structure Material: All structures on any lot shall be built of substantially new materials. No used structures shall be relocated or placed on any lot. Front elevations of each building must contain not less than 30% brick or stone. Doors and windows are excluded from the percentage calculations. No building or structure of a temporary nature: trailer, garage, container, or other out-building shall be erected or maintained on any lot at any time except for during construction. Furthermore, no permanent building shall be permitted on any lot unless erected on a solid foundation of concrete or rock. Parking lots and driveways shall be constructed of concrete, brick, stone or blacktop. Each lot owner or assigned tenant shall be responsible for the construction and maintenance of prescribed private sidewalks and accompanying lighting within that owner's lot.

Setbacks from Property Lines:

1. **Front Yard (Street Yard) Setbacks:** The front yard setbacks shall comply with the City of Dillon Zoning Ordinance requirements for an H Zone.

2. Side Yard Setbacks: The side yard setbacks shall comply with the City of Dillon Zoning Ordinance requirements for an H Zone.
3. Rear Yard Setbacks: The rear yard setbacks shall comply with the City of Dillon Zoning Ordinance requirements for an H Zone.
4. Building and Lot Surface Area Ratios: There shall be no building and Lot surface area ratio, except that ratio necessary to comply with the City of Dillon Zoning Ordinance, for Off-Street parking regulations for location, dimension and number of spaces.

Continuity of Construction: All structures must be completed insofar as the exterior finish is concerned within twenty-four (24) months from the date of the issuance of the building permit. All improvements commenced on the lot shall be prosecuted diligently to completion and shall be completed within twelve (12) months of commencement.

Mechanical Equipment: All mechanical equipment, utility meters, storage tanks, satellite dishes, air conditioning and similar items shall be screened with landscaping or attractive architectural features integrated into the structure itself.

Repair of Buildings: No building or structure upon any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

Condition of Property: The owner and occupant of any Lot shall at all times keep it and the buildings, improvements and appurtenances thereon in a safe, clean and wholesome condition and comply, at its own expense, in all respects with all applicable governmental, health, fire and safety ordinances, regulations, requirements and directives and the owner or occupant shall at regular and frequent intervals remove at its own expense any rubbish of any character whatsoever that may accumulate upon such Lot.

C. Construction, Landscape and Maintenance of Grounds

Based upon the approved plans and specifications for the Park and these covenants, conditions and restrictions, various berms, boulevards, and landscape areas will be constructed within the Park. The purpose of these areas

is to beautify the Park and buffer selected areas within the Park from adjacent areas.

Construction: Each Lot owner shall be responsible for the construction of all berms, boulevards, and landscape areas, in conformance with the overall plan of the Park.

Landscape: Each Lot owner shall be responsible for the landscaping of all berms, boulevards and landscape areas at the owner's expense. All berms, boulevards and landscape areas shall be planted in grass. Trees and shrubs may be allowed in conformance with the City of Dillon zoning ordinances. No landscaping shall be permitted which violates the zoning requirements for the City of Dillon or causes a visual obstruction for traffic entering or exiting the Park or any individual lot.

Maintenance: Each Lot owner shall be responsible for routine landscape maintenance, such as trimming and fertilization of the ground cover, grass, shrubbery, and trees, and suppression of weeds or nuisance growth on such portions of the berms, boulevards and landscape areas that may be constructed on or may abut each Lot.

Refuse: All outdoor refuse collection areas shall be visually screened so as not to be visible from the neighboring property or streets. No refuse collection area shall be permitted between a street and the front of a building. All refuse shall be removed in a commercially reasonable manner on a regular basis, but in no instance shall refuse be allowed to accumulate in excess of ten (10) days.

D. Parking and Loading

Street Parking - Street parking is allowed within the Park. On-street parking locations shall be identified through proper markings and signage and shall comply with all governmental regulations.

Unlicensed and/or Inoperable Vehicles - No unlicensed or inoperable vehicles shall remain on an owner's Lot for more than twenty-four (24) hours, except for vehicles as are consistent with a car dealership with an attached service shop.

Amount and Location of Parking - Each Lot owner shall provide a sufficient number of off-street parking spaces on the owner's Lot to accommodate the maximum number of vehicles provided for in the City of Dillon Zoning Ordinance.

Loading Areas - All material and supply loading or unloading must be conducted only upon the owner's Lot and shall not be permitted upon any designated street within the Park. Side and rear yard loading areas are encouraged.

Maintenance - Each owner or occupant shall be responsible for the maintenance and repair of all parking areas, driveways and walkways on and abutting the Lot. Such maintenance and repair shall include, without limitation:

- a) Maintaining all areas in a clean and safe condition, including the paving and repairing or resurfacing of such areas when necessary.
- b) Removing debris and waste material, washing and sweeping of paved areas as required.
- c) Painting and repainting of striping markers and directional signals as required.
- d) Snow removal in a timely manner so as to avoid accumulation on parking surfaces, walkways and driveways.

E. Lighting

Street lighting shall be installed by SSBP as part of the initial construction of the Park. Each Lot owner shall become part of the City of Dillon Lighting District and waives any right of protest. Each Lot owner shall be responsible for construction, maintenance and repair of on-site lighting. All parking lots, walkways, access drives and loading docks shall be appropriately lighted. All lights shall be a hooded or cut off type fixture or luminary directing light downward, only, rather than toward adjoining Lots the street or in an upward direction.

F. Fencing

Fences are not allowed within the Park, except as necessary for storage areas behind buildings or as used for shielding refuse and mechanical equipment necessary for the operation of the enterprise.

G. Signage

Ground-Mounted Signs: On-Site ground mounted signs shall be permitted. Ground mounted signs shall be placed on wall panels with a solid

base constructed of materials used on the visible elevation of the building. The size of the base shall not exceed five (5) feet in height and fourteen (14) feet in length. The ground sign wall panel may include two (2) sign faces, with no single sign face exceeding fifty (50) square feet in area. The overall height of the sign structure (base and sign face wall panel) shall not exceed ten (10) feet. Ground-mounted signs shall include a landscaped setting of ornamental shrubs, flowers, ground cover or a combination of the three, in an area a minimum of two times the area of the sign (based on the size of the base and panel, not sign face). The landscape setting may be elevated no greater than 2 feet above the surface of the lot.

Wall Mounted Signs: One corporate identity sign may be placed on a building facade facing a street of interstate. Such sign shall not be larger than 10% of the building facade area. All the combined graphics shall be no longer than 25% of the wall length. Building mounted signs may be attached only to the ground floor of a building, unless approval is granted by the SSBP to mount them higher on multistory buildings. Signs may be professionally attached to certain buildings only upon the consent of the building's owner and in compliance with the City of Dillon Zoning Regulations. Signage attached to a building must not be removed without restorative repair to the wall from where the sign was taken.

Sign Lighting: If desired, sign lighting must be ground-mounted and hidden from view from the street. Individual letters may be internally illuminated.

Other signs: No signs, other than product or company identification signs and directional signs, shall be permitted on Lots or buildings within the Park. Roof mounted billboards or signs shall not be permitted. No off-site advertising signs shall be permitted on any Lot.

Location, construction and permitting: Signs shall be regulated in accordance with the City of Dillon Zoning Ordinance. All signage shall be professionally constructed so as not to distract from the general attractiveness of the development. No sign shall be placed in a position that unreasonably or negatively impacts the adjacent property owners.

Temporary signs: Signs of a temporary nature, except signs advertising property for sale, may not remain on site for more than 30 days.

H. Easements

Easements for installation and maintenance of utilities, streets, public landscape or parking, signage, and drainage facilities are reserved as noted on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of easement purposes mentioned here. All easements shall be maintained by the owner of the lot through which the easement passes; except for those improvements, if any, for which a public authority or utility company is responsible. Streets as approved by City of Dillon will be dedicated.

Infrastructure Easements: All permanent easements for water, sewer, drainage ways and detention ponds, which have been designated and constructed to serve as infrastructure for the Park will be delineated on the approval of final plans and specifications for the Park and will be shown on the plat creating the various Lots within the Park. Each Lot owner accepts the property subject to these easements.

Utility Easements: Title to all Lots shall be transferred subject to utility easements as shown on the final plat. Each lot owner accepts the property subject to these easements

These easements are for the benefit of the entire Park, first and foremost; however, such easements may be used by Lot owners for the installation of underground utility services such as electric power, natural gas, cable television, and telecommunications services to benefit the owner's Lot.

Maintenance of Easements: Each Lot owner shall be responsible for routine, ordinary and customary landscape maintenance of easements located on their property, such as, but not limited to, trimming and fertilization of ground cover, grass, shrubbery and trees, and the suppression of weeds and/or nuisance growth on the easements. Damage to such easement areas caused by a third party shall be repaired by the Lot owner.

I. Storm Water

Proper Drainage Required: Storm water run off shall be addressed in all construction projects on any Lot. No Lot shall be developed and no use of a lot shall be permitted that results or is likely to result in the flooding, erosion or sedimentation of adjacent properties, street right-of-ways or the drainage system of the Park, including the storm water detention ponds. All runoff from site development shall be retained on site and shall discharge to

settling ponds or drainage areas where it will percolate through at least six inches (6") of topsoil with vegetation established. All retention systems shall be designed to accommodate a 25-year storm event. Use of drywells or other subsurface drains for storm water drainage is prohibited. Each Lot owner shall be responsible for construction, management and routine, ordinary and customary maintenance of on-site storm water drainage areas as shown on the plat.

Approval of Drainage Plans: Any proposed drainage plan for individual lots must be submitted for approval to all governmental bodies having jurisdiction over the drainage system.

J. Nuisance

No portion of the Park shall be used by any owner or any occupant for (i) the conduct of illegal, offensive, noisy, or dangerous trade, business, activity or occupation, (ii) any activity which physically interferes with the business of any other owner or occupant. (iii) No portion of the park can be used to board or take care of pets. No owner or occupant or customer may allow pets to roam freely on the park and shall be on leash at all times.

VI. General Provisions

A. Remedies for Enforcement

Suit against Owner and Occupant for Violation: The owner of each lot shall be primarily liable, and the occupant, if any, secondarily liable for the violation or breach of any covenant, condition, or restriction herein contained, or of any violation of any City or County ordinance, rule or regulation, or any State law or rule and regulations. In the event of a violation or breach of any covenant, condition or restriction contained herein or of any City or County ordinance, rule or regulation, or State law or regulation, any other Lot owner in the Park may enforce these covenants.

If enforcement action is commenced by another Lot owner, the action will be initiated by sending a Notice, certified mail, return receipt requested to the defaulting Lot owner, at the defaulting Lot owner's address located in the Park. The Notice shall specify the default. If the default is not cured within (45) days from the date the Notice is postmarked, the property owner may pursue legal action against the defaulting party which includes but is not limited to requesting the Court to order removal of any improvement, structure, or thing or condition that may exist upon another lot contrary to the intent and meaning

of these provisions, seek an injunction to prevent Lot owner from violating these covenants or a City, County or State rule, regulation or law and any other remedy available in law or equity. In addition to all the remedies available at law or equity to enforce these covenants the Court may award an enforcement penalty to the Lot owner or owners who bring the action of up to fifty dollars per day for the violation beginning on the day that the suit was filed. If more than one Lot owner brings suit, only one fifty dollar penalty may be awarded, which shall be split by the Lot owners bringing suit.

The cost of any abatement, injunction, remedy, or penalty hereunder shall be a binding personal obligation of any Lot owner or occupant and will become a lien enforceable in the same manner as a mortgage subject to foreclosure upon the Lot in question. This lien shall not be valid against a bonafide purchaser or mortgagees for value of the Lot in question, unless suit to enforce said lien is filed in a Court of record in Beaverhead County, Montana prior to the recording of the deed or the mortgage conveying or encumbering the Lot in question and a lis pendens shall have been filed prior to recording the deed or mortgage. In addition to the right to enforce these covenants by other Lot owners, the Dillon City Council may also enforce these covenants.

Attorney's Fees: In any legal or equitable proceeding for the enforcement of this Declaration or any provision hereof, whether it be an action for damages, declaratory relief or injunctive relief, or any other action, the losing party or parties shall pay the attorney's fees of the prevailing party or parties, in such reasonable amount as shall be fixed by the court.

C. Modification and Repeal

Procedure: These Declarations or any provision hereof, or any covenant, condition or restriction contained herein, may be terminated, extended, modified or otherwise amended, as to the whole of the subject property or any portion thereof, with the written consent of the majority of Lot owners. No such termination, extension, modification or other amendment shall be effective without the written approval of the City of Dillon. No such termination, extension, modification or other amendment shall be effective until a proper instrument in writing has been executed, acknowledged and recorded with the Clerk and Recorder's Office of Beaverhead County, Montana.

D. Constructive Notice and Acceptance

Every person or entity who now or hereafter owns, occupies or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant,

condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Property.

E. Waiver

Neither Declarant nor their successors or assigns shall be liable to any owner or occupant of the Lots by reason of any mistake in judgment, negligence, nonfeasance, action or inaction of for the enforcement or failure to enforce any provision of this Declaration. Every owner or occupant of any said property by acquiring its interest therein agrees that it will not bring any action or suit against Declarant to recover any such damages or to seek equitable relief because of same.

F. Covenants to Run With The Land

All covenants, conditions, restriction and agreements herein contained are made for the direct, mutual and reciprocal benefit of each and every Lot of the Property; shall create equitable servitude upon each Lot in favor of every other Lot; shall create reciprocal rights and obligations between respective owners and occupants of all Lots and privity of contract and estate between all grantees of said Lots, their heirs, successors and assigns; and shall, as to the owner and occupant of each Lot, his heirs, successors and assigns, operate as covenants running with the land, for the benefit of all other Lots, except as provided otherwise herein.

G. Captions

The captions of sections and subsections herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular article or section to which they refer.

H. Severability

If any part, term or provision of these covenants is held to be illegal or unenforceable, the validity of the remaining portions shall not be affected.

I. Voting


If any paragraph of these covenants requires a vote by the Lot owners, the total number of votes is calculated based on one vote for each Lot as described in the final plat or a total of 17 votes. If a Lot is owned by more than

one person, or entity, the owners of that Lot must designate in writing the person entitled to vote if a vote should be required.

DECLARANT:

**SOUTHSIDE DEVELOPMENT
PARK, LLC.**

John Erb
As Managing Member

By 

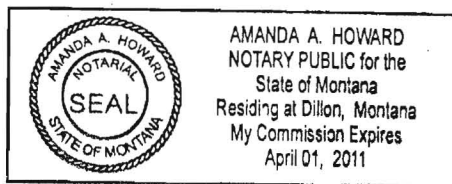
Phyllis Erb
As Managing Member

By 

STATE OF MONTANA)
 :
County of Beaverhead)

On this 1st day of July, 2008, before me the undersigned, a notary public in and for the State of Montana, personally appeared JOHN ERB and PHYLLIS ERB, known to me to be the Managing Members of Southside Development Park, LLC., that they executed this instrument on behalf of said LLC, and acknowledged to me that such LLC executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.



Amanda A. Howard
Notary Public for the State of Montana
Residing at: Dillon, MT
My Commission Expires: 4/1/2011