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**DECLARATION OF PROTECTIVE COVENANTS**

***EAGLE'S POINT AT SALMON LAKE***

THIS DECLARATION, made this 18 day of January, 2002, by Allen and Eileen Scharf.

**WITNESSETH:**

WHEREAS, Allen and Eileen Scharf, hereinafter referred to as the "Declarant", own real property in Missoula County, Montana, more particularly described as follows:

A tract of land located in the East Half (E 1/2) of Section 8, Township 15 North, Range 14 West, Principal Meridian, Montana, Missoula County, Montana, containing 39.13 acres, previously recorded as Tract A, Certificate of Survey No. 4975.

WHEREAS, the Declarant has caused the above named real property to be subdivided into four (4) lots, platted and filed with the Missoula County Clerk and Recorder as "EAGLE'S POINT AT SALMON LAKE".

SUBJECT TO all easements existing, shown and/ or of record. Declarant retains rights of ingress and egress to upon and from premises for purposes of locating, installing, erecting, constructing, maintaining or using, draws, sewers, electrical lines, telephone lines, and other utilities.

Said property is hereinafter referred to as the "Protected Property."

THE UNDERSIGNED declare that all the property described above shall be held, sold, and conveyed subject to the following restrictions, covenants, conditions, and easements, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These restrictions, covenants, conditions, and easements shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the protected property and shall inure to the benefit of and be binding upon each successor in interest to the owner thereof.



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Restrictions indicating a preference limitation or discrimination based on race, color, religion, sex, handicap, marital status, or national origin are hereby deleted to the extent that such restrictions violate 42 USC 3604(c)

## ARTICLE I

### PROTECTIVE COVENANTS

The following protective covenants shall constitute a covenant running with the land:

1. **Land Use** – The only land uses permitted are single family residential and home occupational as defined and allowed by Missoula County zoning regulations. Any other type of commercial, manufacturing, or industrial use is prohibited. Activities that create noise or pollution beyond levels expected by said permitted uses are prohibited. The intent is to create a desirable subdivision that maintains and respects the quality of the existing rural atmosphere and natural resources of the property and surrounding area. No lot may be further divided.
2. **Building Construction, Location, Type, and Road Construction:**
  - A. All residences shall be of new and permanent construction, stained or painted with earth tone colors (greens, grays, browns). No more than one residence per lot may be constructed. The maximum footprint area for each residence shall not exceed 1500 square feet, and the maximum height above the surrounding average natural grade shall not exceed 25 feet. Residences shall be located only within the buildable areas as shown on the subdivision plat. No construction shall take place on any slope over 25 per cent.
  - B. All buildings for residential use shall conform to the latest editions of the "Uniform Building Code", "National Plumbing Code", and "National Electric Code."
  - C. No structure within the premises shall be used for occupancy without first having complied with the laws of the State of Montana and any rules or regulations prescribed by the County of Missoula now or hereafter in effect.
  - D. All plans for residences shall be designed and/ or approved by a licensed architect.
  - E. All residences shall be equipped with interior sprinkler systems for structural firefighting purposes per applicable construction codes.
  - F. Building and road construction shall take place after July 15<sup>th</sup> of each year, or earlier if young eagles from the currently existing tree nest in the northeast corner of Lot 1 have fledged, as verified by the Montana Department of Fish, Wildlife & Parks.
  - G. Boat docks are prohibited within 380 horizontal feet north of the base of the eagles' nest tree.



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3. **Water and Sewage** - All water systems and sewage disposal systems must be located and constructed in accordance with the requirements of appropriate governmental authorities.
4. **Utility Lines**- All new utility lines, wherever located, shall be installed underground if feasible or raptor proofed if not placed underground.
5. **Hunting, Firearms and Fireworks** - No firearms may be discharged on any lot except in emergencies, and no fireworks may be used on any lot. The purpose of this provision is protection against injury and damage. Hunting and trapping is prohibited.
6. **Fire and Casualty Damage**- Any building damaged by fire or other casualty must be completely repaired as to external appearances within twelve (12) months after the occurrence of such damage and, if not so repaired, it shall be removed.
7. **Nuisances**- No noxious or offensive activity shall be carried on or permitted on any lot, nor shall any lot be used in any way that may endanger the health or safety of or unreasonably disturb the neighborhood. No lot or portion thereof shall be used or maintained as dumping ground, nor shall any rubbish, trash or other waste be allowed to accumulate, except in sanitary bear-proof containers which shall be emptied and removed from the premises on at least a weekly basis. Storage of firewood shall not be considered in violation of this section, but only if neatly stacked. All garbage shall be stored in bear-proof containers of metal, plastic or other suitable material that has sufficiently tight fitting covers to prevent the escape of noxious odors and to prevent entrance or destruction by wild animals.
8. **Property Maintenance** - The owner of each lot shall provide proper exterior maintenance of all vegetation and landscaping, structures, fences, and the like so that the premises and improvements thereon will be in a safe, clean, neat and orderly condition.
9. **Shoreline Regulations**- Salmon Lake is under the jurisdiction of the Missoula County Shoreline Regulations. For more information, or to obtain a copy of the regulations, contact the Missoula Office of Planning and Grants, 435 Ryman, Missoula, MT 59802; phone (406) 523-4657.



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10. **Road Maintenance-** It is imperative that property owners understand and agree that roads may be impassable during the colder months of the year, and often times a 4-wheel drive vehicle is necessary. Snowplowing shall be the sole responsibility of the direct users of the roads during these months, if so desired. The access roadway through the subdivision shall be maintained by the lot owners of this subdivision in a manner safe for vehicular use. The costs for maintenance shall be shared by the owners of the lots within the subdivision. The timing for such payments, the method of collection, and the need for improvements shall be decided upon in a manner as the lots owners so choose. Easement agreements for the access road from Highway 200 to the south line of the subdivision are filed with the Missoula County Clerk & Recorder in Book 403, Page 2484, Book 403, Page 2492, and Book 535, Page 947. Regarding road maintenance, each of these (off-site) agreements state as follow:

**Maintenance.** The cost of road maintenance and resurfacing shall be allocated on the basis of respective uses of said roads. When any party uses said roads, or a portion thereof, that party shall perform or cause to be performed, or contribute or cause to be contributed, that share of the maintenance and resurfacing occasioned by such use as hereinafter provided. During periods when said road, or a portion thereof, is being used solely by one party, such party shall maintain that portion of said roads so used to the standards existing at the time use is commenced. During periods when more than one party is using said roads, or a portion thereof, each party's share of maintenance and resurfacing shall be pro rata in proportion to its use thereof. The parties hereto shall meet and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to:

- (a) The appointment of a maintainer, which may be one of the parties hereto or any third party, who will perform or cause to be performed, at a reasonable and agreed upon rate, the maintenance and resurfacing of the road or the portion thereof being used; and
- (b) A method of payment by which each party using said roads or a portion thereof shall pay its pro rata share of the cost incurred by said maintainer in maintaining or resurfacing said road or portion thereof.

For the purposes of this easement, maintenance is defined as work normally necessary to preserve and keep the roadway, road structure and road facilities as nearly as possible in their present condition or as hereafter improved.



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11. **Wildlife** - Owners must accept the responsibility of living with wildlife. There are potential problems associated with the occasional presence of bears, mountain lions, deer, etc. The "Living With Wildlife" brochure, available from the Missoula Office of Planning and Grants, is reprinted as an appendix to these covenants. The following measures shall be followed to reduce the potential for human-wildlife conflicts:
- a. Permanent barbecue pits are not permitted. Clean portable barbecue grills regularly and store indoors when not in use.
  - b. Fence and protect flowers, ornamental shrubs, and other plants which may be susceptible to damage from wildlife. Plant native vegetation for landscaping and revegetation.
  - c. Gardens, where plant foods are grown that may attract wildlife, are not permitted. Bird feeders, fruit trees, apiaries, and compost piles attract bears and are not permitted.
  - d. Do not use or maintain any lot or part of a lot as a dumping ground. Do not allow any rubbish, trash, or other waste to accumulate, except in sanitary containers. Empty and remove waste in such containers from the premises at least on a weekly basis. Store all garbage in bear-proof containers of metal, plastic, or other suitable material, which has sufficiently tight-fitting covers to prevent entrance or destruction by wild animals.
  - e. Do not allow salt blocks, feeding platforms, or other type of attractant for wildlife.
  - f. Store pet food indoors or in wildlife proof containers. Feed domestic pets indoors or in enclosed areas to prevent attraction of wildlife.
  - g. Do not allow domestic pets, such as dogs, cats, etc. to run freely and potentially harass wildlife. Besides loss of life and the maiming of wildlife, this harassment also causes unnecessary energy expenditures and can displace animals to less suitable habitats.
  - h. The keeping of rabbits, chickens, and the like, or hoes and livestock of any kind is prohibited. These animals have no defense against predators and can be an attractive food source to many wildlife species. Livestock and horses require fencing that may impede wildlife movement, and are destructive to slopes, the ground surface and riparian vegetation.
  - i. Appended to these covenants is a copy of "Living With Wildlife", a brochure available from Missoula Office of Planning and Grants, 435 Ryman, Missoula, MT 59801 (406) 523-4657. Also appended are copies of "Living With Mountain Lions", "Living With Grizzlies", and "Living With Bald Eagles". These brochures are also available from the Montana Department of Fish, Wildlife & Parks, 3201 Spurgin Road, Missoula, MT, 59801 (406) 542-5500.



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12. **Fire Standards -**

a. Purpose and Intent. The reduction of risk of fire damage by reducing and managing the buildup of fire fuels, building and maintaining adequate road systems, and providing adequate access to firefighters.

b. Driveways. Dead-end driveways in excess of 150 feet in length shall be provided with approved provisions for turning around of fire apparatus. A minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 15 feet for any driveway over 150 feet in length shall be provided. Driveways shall not exceed a grade of 10 %.

c. Fuel Management. The owner shall create a defensible space around structures on the lots for fire protection purposes and vegetation removed and reduced around each building, as approved by the appropriate fire jurisdiction. Suggested is to consult the Department of State Lands circular "Fire Protection Guidelines for Wildland Residential Interface Development", an excerpt of which is appended to these covenants. Vegetation shall be removed and reduced around each building according to the slope. Single ornamental trees or shrubs need not be removed as long as all vegetation near them is reduced according to the guidelines as established by the fire jurisdiction. Ornamental trees and shrubs should not touch any buildings. When planting, the owner should select trees, shrubs and vegetation that limit or retard the spread of fire as outlined:

Perennial: Choose hardy, perennial plants adapted to the local climate. These green, leafy, succulent plants are difficult to burn. Watering and regular weeding improves fire resistance.

Shrubs: Evergreen shrubs such as dwarf conifers or junipers may ignite easily and should be avoided unless well spaced.

Trees: Deciduous trees can be clumped, scattered, or planted in greenbelt or windbreak patterns. Evergreen trees tend to ignite easily and should be spaced in accordance with the fire protection guidelines.

d. Roofing materials. Use only class A fire-rated roofing materials for any construction.

e. At the driveway entrance to each home shall be a non-combustible (metal), reflective street and address sign with numbers no less than four inches in height.

f. Fire Suppression: The property is outside the jurisdiction of any rural fire district. (The nearest districts are the Greenough-Potomac and Seeley Lake Rural Fire Districts). Therefore, lot owners should not rely on fire fighting vehicles and equipment to respond and arrive to fight a fire in this subdivision. All residences shall be equipped with interior sprinkler systems for structural firefighting purposes per applicable construction codes. The lake may be used as a water source for fire suppression.



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- f. An appendix to these covenants is information regarding firewise plants and landscaping, provided by the Montana Department of Natural Resources (DNRC) and an excerpt of "Fire Protection Guidelines for Wildland Residential Interface Development", available from the Montana DNRC, 3201 Spurgin Road, Missoula, MT 59801.
13. **Weed Control and Revegetation of Disturbed Sites-** Lot owners shall revegetate all disturbed ground surface areas at the earliest opportunity. Lot owners shall maintain their property in compliance with the Montana County Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. For more information, contact the Missoula County Weed District Supervisor at 2147 Ernest Avenue, Missoula, MT 59802; phone (406) 829-0496.
14. **Fences-** Fencing is not permitted due to possible impediment to wildlife movement, and may not help to retain the rural character of the property as planned.
15. **Area of Riparian Resource Management Plan-**  
The property fronts to some 1800 feet of shoreline along Salmon Lake. The land slopes rather abruptly to the shoreline, and there are no wetland-type areas. For the most part, the vegetation along the shoreline consists of Ponderosa pine and Douglas fire trees, although a few riparian shrubs exist. While there is no clear demarcation, generally the designated Area of Riparian Resource could be described as a 25-foot wide zone along the property back from the high water mark. The shore area shall not be altered in any way and homes shall be at least 60 feet back from the shore, within buildable areas as shown on the subdivision plat.
- This portion of the property meets the criteria for designation as an area of riparian resource according to Chapter 3-13 of the Missoula County Subdivision Regulations. The intent of these regulations as listed in 3-13(1)(A-G) will be upheld with this proposal. To meet these purposes, the following items in accordance with 3-13(3)(A-E) are addressed.
- A) Proposed access to or through the area: Access will be allowed by pedestrians only. No motorized vehicles, horses, or other livestock are permitted.
- B) Proposed low-impact use of the area: Use of the area will be low impact because there will be no alteration of the land or landscape. Use of the land by people will mainly include only occasional pedestrian usage.



C) Planned restoration of the area with native species: The lakeshore vegetation will remain as is and will be allowed to naturally flourish.

D) Planned mitigation of impacts from all proposed uses: The proposed use of the area is pedestrian movement along the non-motorized trail. The area will be meticulously monitored and maintained.

E) Planned buffer to mitigate development adjacent to areas of riparian resources: Development, meaning construction of the roadway, homesites may only be as generally shown on the submitted plat. Therefore, the buffer between any development and the lakeshore will be in the form of vertical and horizontal distance, as well as trees.

16. **Bald Eagle Monitoring Plan** – The presence of Bald Eagles, who at the time of subdivision filing nest in a tree within the subdivision, requires that lot owners and visitors act in such a respectful manner that the eagles will remain in this, their habitat. Article (1)(2)(F) disallows construction on the property until the young eaglets have fledged or July 15<sup>th</sup>, whichever is first. Other common-sense measures of human (and pet) behavior that encourage the eagles to remain and do not encourage them to leave shall be adhered to. The nest should be monitored by the property owners so as to gain an awareness and familiarity with eagle behavior, nesting success and disturbance tolerance, while also accepting an appropriate measure of responsibility for their fate. The eagles are expected to then benefit from the voluntary responses of participating property owners, resulting from an increased understanding of eagle behavior in response to humans and disturbance. A *Bald Eagle Monitoring Plan*, written and approved by the Montana Fish, Wildlife, & Parks, Region 2, containing an excerpt from the *Montana Bald Eagle Management Plan*, is contained within the Appendix of these covenants.

## ARTICLE II

### GENERAL PROVISIONS

1. **Duration-** The covenants, conditions and restrictions of this Declaration shall run with the land in perpetuity and shall inure to the benefit of and be enforceable by the Declarant or by the owner of any lot, their respective legal representatives, heirs successors, or assigns.



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2. **Amendment-**

- A. These covenants may be modified or amended by an instrument in writing filed with the Missoula County Clerk and Recorders Office and signed by the owners of all the lots to which these covenants apply. No covenants or sections thereof relating to wildlife (including sections protecting the eagle's nest), fire standards, areas of riparian resource management, construction timing, residence height and size restrictions, boat docks, utility lines or land use may be changed without prior written consent of the governing body. The right to enforce the covenants does not obligate Missoula County to inspect the property and no claim of damages may be made against the County as the result of undetected lack of compliance with these requirements.
- B. Covenants which restrict the use of the land for the purposes of protecting wildlife are enforceable by each of the lot owners in this subdivision, Missoula County and by the Montana Department of Fish, Wildlife & Parks. Specifically, the terms of these covenants grant an easement and right of access by the property owners to Missoula County, its agents and assignees, to Montana Fish, Wildlife & Parks, its agents and assignees, the U.S. Fish & Wildlife Service, its agents and assignees, and to any law enforcement agency for the purpose of investigating whether the landowner is engaging in any activity that threatens bald eagles or their nest. The right to inspect does not obligate Missoula County, Montana Fish, Wildlife & Parks, or the U.S. Fish & Wildlife Service to inspect the property and no claim of damages may be made against the County as the result of undetected wildlife attractants to the subdivision.

3. **Enforcement, Receiving and Processing Complaints**

- A. The Declarant, any owner shall have the option and right to process and enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, and charges now or thereafter imposed by the provisions of this Declaration upon receipt of complaints by any lot owner. The method of enforcement may include proceedings to enjoin the violation, to recover damages, or both. Failure by any owner or by the Declarant to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.



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B. Should any lawsuit or other legal proceeding be instituted against an owner who is alleged to have violated one or more of the provisions of this Declaration, and should the plaintiffs be wholly or partially successful in such proceeding, the offending owner shall be obligated to pay the costs of such proceeding, including a reasonable attorney's fee.

4. **Liability of Declarant-** The Declarant shall have no liability for any of its actions or failures to act, or for any actions or failures to act of the Association or any Owners of property within the Protected Property. The relationship between the Declarant, the Association, and the Property Owners shall be deemed to be that of independent contractors, and not that of principal and agent, partnership or joint venture. In addition, the Declarant shall have no liability or obligation under this Declaration to any person or entity except such as which the Declarant has expressly assumed herein.

IN WITNESS WHEREOF, the undersigned have caused this Declaration of Protective Covenants to be executed this 18<sup>th</sup> day of January, 2002.

[Signature]  
Allen Scharf

[Signature]  
Eileen Scharf

State of Texas County of Rockwall

On this 18<sup>th</sup> day of JANUARY, 2002, before me personally appeared Allen and Eileen Scharf, known to me to be the persons who executed the within instrument, and acknowledged to me that they executed the same.

[Signature]  
ss

Notary Public for the state of Texas; Residing at Rockwall, Texas.

My commission expires 09/05/05 10



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**AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS  
FOR EAGLE'S POINT AT SALMON LAKE**

This instrument has been executed by Mark M. Carpenter, Diana S. Carpenter, Jeffrey A. Eyres, Tracy M. Smith, Mark S. Nicholls, Mary E. Nicholls, Donald M. Hall, and Nancy B. Hall (referred to in this amendment as the "Owners"), and has been consented to by the Board of County Commissioners of Missoula County, Montana (referred to in this amendment as the "Board"), in order to amend the Declaration of Protective Covenants for Eagle's Point at Salmon Lake which was recorded on February 14, 2003, in Book 699 of Micro Records, Page 591, in the records of Missoula County, Montana (referred to in this amendment as the "Declaration").

WHEREAS, the Declaration relates to the land in Missoula County, Montana, described as follows (collectively referred to in this amendment as the "Subdivision"):

Lots 1, 2, 3, and 4 of Eagles Point at Salmon Lake, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof.

WHEREAS, the third sentence of Article 1, Section 2(A) of the Declaration provides that "The maximum footprint area for each residence shall not exceed 1500 square feet, and the maximum height above the surrounding average natural grade shall not exceed 25 feet."

WHEREAS, Article II, Section 2(B) of the Declaration provides as follows:

These covenants may be modified or amended by an instrument in writing filed with the Missoula County Clerk and Recorder's Office and signed by the owners of all the lots to which these covenants apply. No covenants or sections thereof relating to wildlife (including sections protecting the eagle's nest), fire standards, areas of riparian resource management, construction timing, residence height and size restrictions, boat docks, utility lines or land use may be changed without prior written consent of the governing body. The right to enforce the covenants does not obligate Missoula County to inspect the property and no claim of damages may be made against the county as the result of undetected lack of compliance with these requirements. [Emphasis added]

WHEREAS, the owners of the lots in the Subdivision are as follows:

Lot 1:	Mark M. Carpenter and Diana S. Carpenter.
Lot 2:	Jeffrey A. Eyres and Tracy M. Smith.
Lot 3:	Mark S. Nicholls and Mary E. Nicholls.
Lot 4:	Donald M. Hall and Nancy B. Hall.

WHEREAS, the Owners wish to increase the height of some of the residences in the Subdivision, and the Board is willing to consent to this amendment.

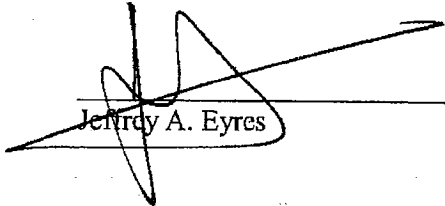
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NOW, THEREFORE, the Owners and the Board agree to replace the third sentence of Article I, Section 2(A) of the Declaration with the following sentences:

The maximum footprint area for each residence shall not exceed 1,500 square feet.  
The maximum height above the surrounding average natural grade shall not exceed 25 feet on Lots 1 and 2, and 30 feet on Lots 3 and 4.

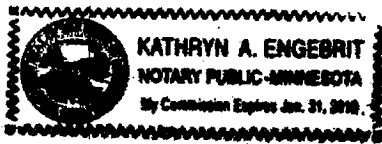
Dated October 23, 2006.

  
Jeffrey A. Eyres

  
Tracy M. Smith

STATE OF Minnesota )  
:SS  
COUNTY OF Hennepin )

This instrument was acknowledged before me on 23 Oct., 2006, by Jeffrey A. Eyres.



Notary's signature: Kathryn A. Engbrit  
Notary's name: Kathryn A. Engbrit  
Notary public for the state of Minnesota  
Residing at Plymouth, MN  
My commission expires Jan. 31, 2010

STATE OF Minnesota )  
:SS  
COUNTY OF Dakota )

This instrument was acknowledged before me on 31st October 2006, by Tracy M. Smith.



Notary's signature: Linda Johnson  
Notary's name: Linda Johnson  
Notary public for the state of Minnesota  
Residing at Prescott, WI  
My commission expires January 31, 2010



Mark S. Nicholls  
Mark S. Nicholls

Mary E. Nicholls  
Mary E. Nicholls

STATE OF MONTANA    )  
                                  :SS  
COUNTY OF MISSOULA )

This instrument was acknowledged before me on Oct. 31, 2006, by Mark S. Nicholls and Mary E. Nicholls.



Notary's signature: Jenny Taub-Smith  
Notary's name: Jenny Taub-Smith  
Notary public for the state of Montana  
Residing at Great Falls  
My commission expires 01/28, 2010

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Donald M. Hall  
Donald M. Hall

Nancy B. Hall  
Nancy B. Hall

STATE OF Montana )  
  ) :SS  
COUNTY OF Hamilton )

This instrument was acknowledged before me on November 15, 2006, by Donald M. Hall and Nancy B. Hall



COREEN G. KEITH  
NOTARY PUBLIC-MONTANA  
Residing at Hamilton, Montana  
My Comm. Expires August 13, 2008

Notary's signature: Coreen G. Keith  
Notary's name: Coreen G. Keith  
Notary public for the state of Montana  
Residing at Hamilton  
My commission expires August 13, 2008

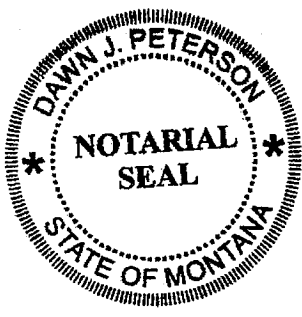
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Mark M. Carpenter  
Mark M. Carpenter

Diana S. Carpenter  
Diana S. Carpenter

STATE OF MONTANA )  
                                  :SS  
COUNTY OF MISSOULA )

This instrument was acknowledged before me on November 9, 2006, by Mark M. Carpenter and Diana S. Carpenter.



Notary's signature: Dawn J. Peterson  
Notary's name: Dawn J. Peterson  
Notary public for the state of Montana  
Residing at Frenchtown  
My commission expires 4-7, 2007

Dawn J. Peterson  
NOTARY PUBLIC of the State of Montana  
Residing at Frenchtown, Montana  
My commission Expires April 7, 2007

  
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BOARD OF COUNTY COMMISSIONERS  
COUNTY OF MISSOULA

By: **NOT AVAILABLE FOR SIGNATURE**  
Jean Curtiss, Chair

By: Barbara Evans  
Barbara Evans, Commissioner

By: Bill Carey  
Bill Carey, Commissioner

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ATTEST:

By: Michael W. Shustett  
Deputy County Attorney

Approved as to form and content:

Vickie M Zeier  
Clerk and Recorder

