

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

570781 DECLARATION OF COVENANTS
BOOK 484 PAGE 0358
RECORDED 04/12/2007 AT 04:30 PM
AUDREY KOLTISKA, SHERIDAN COUNTY CLERK

Gibson, Dunn & Crutcher LLP
1801 California Street, Suite 4200
Denver, Colorado 80202
Attention: Brian Furgason

(Space above line for recorder's use only)

RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT (this "Covenant"), is entered into as of April 10, 2007, by and among William Joseph Sebens, Jr. and Daniel Sebens, as tenants in common (the "Fee Owners"), and Intermountain Construction & Materials, a Wyoming corporation ("ICM"), with reference to the following facts:

RECITALS

A. Concurrently with the recording of this Covenant, the Fee Owners together with their affiliates sold to ICM certain assets used in their business as conducted from the real property described in Exhibit A attached hereto (the "Big Sky Property").

B. As a material inducement to ICM to enter into the above described transactions with the Fee Owners, the Fee Owners agreed to enter into this Covenant.

NOW, THEREFORE, for the purposes above set forth, the Fee Owners, as the sole owners of the Big Sky Property, hereby covenant and agree that the Big Sky Property shall be held, sold and conveyed subject to the following restrictions and covenants, which shall run with the land and be binding on all parties having any right, title or interest in the Big Sky Property (other than ICM) or in any part thereof, their heirs, successors and assigns.

1. **Property Burdened.** The real property burdened by this Covenant is the Big Sky Property, the legal description of which is attached hereto as Exhibit A.
2. **Uses.** Subject to the restrictions set forth below and any land use regulations and restrictions imposed by any applicable governmental authority, the Big Sky Property may be used for any purposes other than any business of producing or supplying hot-mix asphalt or providing activities associated therewith on the Big Sky Property.
3. **No Waiver.** Failure by ICM to enforce any covenant, condition or restriction herein contained shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

4. Severability. Invalidation of any portion of this Covenant by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.
5. Construction. The provisions of this Covenant shall not be construed more strictly against one party than against the other merely by virtue of the fact that this Covenant may have been prepared by counsel for one of the parties, it being recognized that both ICM and the Fee Owners have contributed substantially and materially to the preparation of this Covenant.
6. Attorneys' Fees. In the event any action is instituted to enforce any of the provisions contained in this Covenant, the party prevailing in such action shall be entitled to recover from the other party thereto reasonable attorneys' fees and costs of such suit including, but not limited to, fees for expert witnesses as part of the judgment.
7. Enforcement. The Fee Owners and any future record owner of the Big Sky Property shall be obligated to enforce the provisions of this Covenant against lessees and occupants of the Big Sky Property if failure to enforce such provisions will cause a material violation of this Covenant. The parties acknowledge and agree that damages would be an inadequate remedy for any violation of this Covenant by the Fee Owners, and consequently ICM shall be entitled to pursue all remedies available at law or in equity, including specifically, but without limitation, injunctive relief.
8. Governing Law. This Covenant shall be governed by, and construed in accordance with, the laws of the State of Wyoming.
9. Covenants Running with the Land. All of the covenants, conditions and restrictions stated herein shall run with the land and shall be binding on the Fee Owners and all subsequent owners, lessees and occupants of the Big Sky Property (other than ICM), for the benefit of ICM and its successors, assigns, and administrators.
10. Counterparts. This Covenant may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

[Signature page to follow.]

IN WITNESS WHEREOF this Restrictive Covenant has been duly executed under seal by the parties hereto as of the date and year set forth above.

WITNESSES:

Isabel Wilson

William Joseph Sebens Jr
William Joseph Sebens, Jr.

Black Edge

Daniel Sebens
Daniel Sebens

STATE OF Montana)
COUNTY OF Gallatin)

ss.

The foregoing instrument was acknowledged before me by William Joseph Sebens, Jr. and Daniel Sebens, individually, this 10 day of April, 2007.

Witness my hand and official seal.

Bruce Gulash
Notary Public

My Commission Expires: 8-28-2007

Notary Public for the State of Montana
Residing at Bozeman, Montana
My Commission Expires: August 28, 2007



WITNESSES:

ICM

INTERMOUNTAIN CONSTRUCTION & MATERIALS

By:

M. Shane Evans

Name: M. Shane Evans

Title: Chief Operating Officer

STATE OF Wyoming)
COUNTY OF Teton)

ss.

The foregoing instrument was acknowledged before me by M. Shane Evans, Chief Operating Officer of Intermountain Construction & Materials, this 10th day of April, 2007.

Witness my hand and official seal.

Robin A. Wilde
Title of Officer

My Commission Expires: 4/19/2010

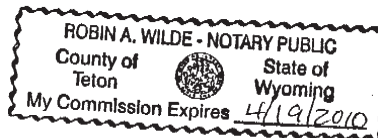


Exhibit A
Description of Property

Tract Two (2), Anderson Minor Subdivision, Sheridan County, Wyoming, located in the NW¼ of the SW¼ of Section 25, Township 56 North, Range 84 West of the 6th P.M., except the following portion:

Commencing at the Northeast corner of said Anderson Minor Subdivision, also accepted as being the West Center 1/16th of said Section 25, per L.S. 567; thence South 45 degrees 19 minutes 36 seconds West, a distance of 42.86 feet to a point on the South right-of-way of KROE Lane; thence along said South right-of-way and parallel to the North line of said subdivision South 89 degrees, 44 minutes 50 seconds West, a distance of 427.48 feet to the true point of beginning of this survey; thence parallel to the East line of said subdivision, South 0 degrees 54 minutes 22 seconds West, a distance of 407.60 feet to a point; thence South 89 degrees 44 minutes 50 seconds West, a distance of 60.01 feet to a point; thence South 0 degrees 54 minutes 22 seconds West, a distance of 361.52 feet to a point; thence South 89 degrees 44 minutes 51 seconds West, a distance of 801.99 feet to a point on the West boundary of said subdivision; thence along said West line, North 0 degrees 10 minutes 31 seconds West, a distance of 349.60 feet to a point; thence North 89 degrees 17 minutes 03 seconds East, a distance of 415.47 feet to a point; thence North 0 degrees 08 minutes 24 seconds West, a distance of 228.19 feet to a point; thence North 89 degrees 44 minutes 50 seconds East, a distance of 200.00 feet to a point; thence North 0 degrees 08 seconds 24 minutes West, a distance of 187.81 feet to a point on the South right-of-way of KROE Lane; thence along said South right-of-way and parallel to the North line of said subdivision, North 89 degrees 44 minutes 50 seconds East, a distance of 260.81 feet to the true point of beginning of this survey.

AND

A tract of land in Tract 1 of the Anderson Minor Subdivision, located in the Southwest Quarter (SW¼) of Section 25, Township 56 North, Range 84 West of the 6th Principal Meridian, Sheridan County, Wyoming, said tract being more particularly described as follows:

Beginning at the northwest corner of said Tract 1; thence along the northerly line of said Tract 1, N89°44'54"E, 427.05 feet to the northeast corner of said Tract 1; thence along the easterly line of said Tract 1, S00°54'22"W, 203.73 feet; thence leaving said easterly line S89°45'54"W, 457.18 feet to the westerly line of said Tract 1; thence along said westerly line, N00°56'32"E, 203.60 feet to the point of beginning.

EXCEPTING THEREFROM a tract of land in Tract 2 of Anderson Minor Subdivision, located the Southwest Quarter (SW¼) of Section 25, Township 56 North, Range 84 West of the 6th Principal Meridian, Sheridan County, Wyoming, said tract being more particularly described as follows:

Beginning at the northwest corner of Tract 1 of said Anderson Minor Subdivision; thence N00°56'32"E, 60.00 feet; thence S89°44'54"W, 60.01 feet; thence S00°56'32"W, 361.52 feet, thence S89°44'55"W, 802.13 feet to the westerly line of said Tract 2; thence along said westerly line, S00°09'53"E, 562.12 feet to the southwest corner of said Tract 2; thence along the southerly line of said Tract 2, said Southerly line also being the center line of the railroad track, through a curve to the left having a radius of 3,858.59 feet, a central angle of 12°41'08" and chord S85°40'57"E, 852.57 feet to the southwest corner of Tract 1 of said Anderson Minor Subdivision; thence along the westerly line of said Tract 1, N00°56'32"E, 981.76 feet to the point of beginning.

TOGETHER with the improvements thereon and appurtenances thereto.