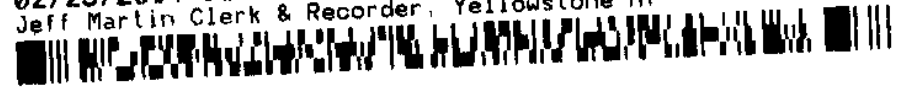


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Jeff Martin Clerk & Recorder, Yellowstone MT



**SUBDIVISION IMPROVEMENTS AGREEMENT
SKYVIEW RIDGE SUBDIVISION, FIRST FILING
CITY OF BILLINGS
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Return to:
Sanderson Stewart.
1300 North Transtech Way
Billings, MT 59102

SUBDIVISION IMPROVEMENTS AGREEMENT

SKYVIEW RIDGE SUBDIVISION, FIRST FILING

THIS AGREEMENT is made and entered into this 10th day of February, 2014, by and between the STATE OF MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, whose address for the purpose of this agreement is 1625 Eleventh Avenue, Helena, Montana 59601, hereinafter referred to as "Subdivider," and the CITY OF BILLINGS, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, at a regular meeting conducted on 24th day of July, 2007, the Board of Planning recommended conditional approval of a preliminary plat of Skyview Ridge Subdivision, First Filing; and

WHEREAS, at a regular meeting conducted on 13th day of August, 2007, the City Council conditionally approved a preliminary plat of Skyview Ridge Subdivision, First Filing; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to Skyview Ridge Subdivision, First Filing, upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.



THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

- A. Subdivider has requested, and the City hereby grants, the following variances by the City Council from the strict interpretation of the City's Subdivision Regulations (Section 23.1101, BMCC):

None

II. CONDITIONS THAT RUN WITH THE LAND

- A. Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development.
- B. Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.
- C. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction.
- D. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts, which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.
- E. There is a petroleum gas pipeline located through the subject property located within a dedicated park. Future lot owners should be aware that it

may be necessary for the pipeline company to inspect, test, maintain, and possibly replace the pipeline at times.

- F. There are two (2) electrical line easements across the subject property within dedicated parks. Future lot owners should be aware that it may be necessary for the electric company to inspect, test, maintain, and possibly replace these lines at times.
- G. Individual lot owners are responsible for maintenance of the boulevards adjacent to the trails within public right-of-way on the south side of Swift Current Drive, on the northeast side of Keno Street, on the southeast side of Targhee Avenue, and on the south side of Gibbons Avenue within the subdivision.
- H. Portions of the trail system within the subdivision lie within trail corridors located within rights-of-way. In order to mitigate potential issues with vehicles parked across the trail at these locations, the building setback requirements for lots at those locations shall be 23 feet minimum. Those areas with increased setbacks include portions of the south side of Swift Current Drive, the northeast side of Keno Street, the southeast side of Targhee Avenue, and the south side of Gibbons Avenue within the subdivision.

III. TRANSPORTATION

A. Streets

1. All internal roads and site improvements within the subdivision will be in accordance with the City of Billings Site Development Ordinance, City Zoning Ordinance, Uniform Building Code, the *Stormwater Management Manual* (SWMM), and other applicable City codes, rules, and regulations.
2. Targhee Avenue, Fantan Street, Keno Street, Swift Current Drive, Rogers Drive, and Gibbons Avenue within the subdivision shall be built to grade with a satisfactory sub-base, base course, curb and gutter, and asphalt surface. The design cross-sections of said streets shall be submitted to, and approved by, the City of Billings Public Works and Fire Departments.
3. West Wicks Lane, adjacent to the subdivision, is a designated arterial street. Wicks Lane will be constructed with an "urban" section. The design cross-section of West Wicks Lane shall be



submitted to, and approved by, the City of Billings Public Works and Fire Departments.

4. A traffic accessibility study has been completed for the subdivision. All required improvements and permits identified therein shall be completed by the developer at the developer's expense. These are more specifically identified as follows:
 - a. A stop sign and dedicated right-turn lane should be installed on the new northbound approach to the intersection of Wicks Lane and Fantan Street.
 - b. As an interim improvement at the intersection of Governors Boulevard and the access to Skyview Ridge/Castle Rock Middle School, it is recommended that the intersection operate under two-way stop control with a stop sign installed on the new eastbound approach to the intersection. A new school crossing should be installed across Governors Boulevard on the south side of the intersection and shall include high-visibility striping and school crossing signs. The new crossing should be located on the south side of the access where it would line up with the proposed trail, and where it would be further away from the existing school bus loading zone on the north side of the intersection. Because it would be an arterial crossing, consideration should be given to the use of flashing beacons and/or a school crossing guard at this location. As previously discussed, this intersection should be re-evaluated for signalized control, as Skyview Ridge Subdivision builds out and through volumes increase on Governors Boulevard.
 - c. As discussed in the original study, some form of traffic calming measure should be provided along Constitution Avenue and High Sierra Boulevard. Detailed descriptions of some possible traffic calming measures were provided in the original study.
 - d. Appropriate signing and striping should be provided at all locations where the trail system intersects interior roadways.
 - e. Intersections of internal local streets shall be uncontrolled.



- f. Portions of the street frontages along Gibbons Avenue, Targhee Avenue, Keno Street, and Swift Current Drive, within the subdivision, have linear trail corridors within the right-of-way which will accommodate a bike and pedestrian trail. Those portions of the trail system will be constructed as part of the private contract to construct the adjacent street improvements and shall be constructed at the time of street construction. All traffic control improvements shall be designed and constructed in accordance with the City of Billings standards, MDY standards and the *Manual on Uniform Traffic Control Devices* (MUTCD).

B. Sidewalks

The developer shall install handicap access ramps where necessary as part of improvements. Interior sidewalks shall be 5-foot boulevard walk and shall be installed by the lot owner at the time of lot development. The sidewalks along the streets fronting the parks shall be constructed as part of the park improvements, as defined in the park masterplan to be submitted prior to filing of the plat.

Portions of the street frontages along Gibbons Avenue, Targhee Avenue, Keno Street, and Swift Current Drive, within the subdivision, have linear trail corridors within the right-of-way which will accommodate a bike and pedestrian trail. Sidewalk will not be required in these areas. The trail will be constructed as outlined within the approved park master plan, and as outlined herein:

C. Street Lighting

Street lighting will not be installed at this time, but is included in the Waiver.

D. Access

A 1-foot vehicular no access strip shall be shown on the plat along West Wicks Lane, with exceptions as noted.

E. Billings Area Bikeway & Trail Master Plan

1. Constitution Avenue is designated as a proposed bicycle boulevard within the Billings Area Bikeway & Trail Master Plan.



Constitution Avenue shall be designed to accommodate a bikeway as outlined within the Billings Area Bikeway & Trail Master Plan. This requirement does not affect this filing, but shall be for future development of the masterplan.

2. West Wicks Lane is designated as a proposed short range bike lane within the Billings Area Bikeway & Trail Master Plan. Roadway design shall accommodate a bikeway as outlined within the Billings Area Bikeway & Trail Master Plan.
3. The approved park masterplan includes a trails system within the subdivision, both within the rights-of-ways and within the dedicated park areas. Construction of the trail system within the subdivision shall be by SID, as outlined within the park masterplan.
4. Portions of the trail system within the subdivision lie within trail corridors located within rights-of-way. In order to mitigate potential issues with vehicles parked across the trail at these locations, the building setback requirement in those areas shall be 23 feet minimum.

F. Public Transit

This subdivision does not require improvements to ensure public transit service.

IV. EMERGENCY SERVICE

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) in place to allow for fire suppression requirements. Prior to issuance of a building permit for construction using combustible materials (i.e. lumber, plywood, wood trusses, etc.), fire apparatus access roads, and water supply requirements shall be provided in accordance with the International Fire Code as adopted by the City of Billings.

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150-feet of the furthest portion of a building under construction as measured along an approved route.



- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of 20-feet-wide.
- An operational fire hydrant shall be located within 600-feet of the furthest portion of a residence under construction or within 400-feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and Chapter 28, BMCC, a stormwater management plan shall be submitted to and approved by the engineering division prior to approval of the final plat.

VI. UTILITIES

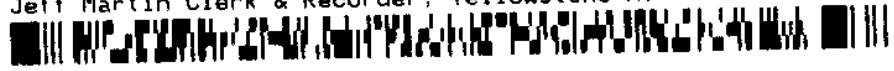
The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the City of Billings Engineering Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications.

The developer/owner acknowledges that the subdivision shall be subject to the applicable system development fees and franchise fees in effect at the time a new building permit is issued.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc.) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, Fire Department, and the Montana Department of Environmental Quality.

A. **Power, Telephone, Gas, and Cable Television**

Private utility facilities currently exist to serve the subdivision. Easements shall be included on the plat as requested by the utility companies.

**B. Water**

The subdivision masterplan area lies within two pressure zones of the City's distribution system. The existing water distribution system shall be evaluated to determine the pressure zone boundaries and the necessary system improvements required to adequately serve the subdivision.

C. Sanitary Sewer

To minimize impacts to local services, additional information regarding sanitary sewer capacities shall be submitted for review and approval during the design phase of utility construction.

VII. PARKS/OPEN SPACE

Section 76-3-621 of the Montana Subdivision and Platting Act requires a park dedication of 11-percent of the land proposed to be subdivided into parcels of one-half acre or smaller. This requirement shall be met by dedication of park areas as indicated on the plat. A Park Maintenance District will be set up for maintenance of said park areas at the time of the initial park development.

A park and open space master plan has been provided by the subdivider, reviewed by the Parks Department, with recommendation for approval and approved by City Council on September 14, 2009. All parks and open space shall be constructed to Parks Department guidelines and standards, and the developer shall assure standards are met and provide for City construction supervision. Except as otherwise provided, Subdivider shall install and construct required park improvements with cash or utilizing the mechanics of a special improvement district or private contracts secured by letters of credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said special improvement district or private contract, and the improvements shall be installed as approved by the Parks Department. Timing of the park and open space improvements shall be as outlined within the approved park and open space master plan.

The required park dedication is 0.67 acres; the proposed park dedication is 9.05 acres.

The park dedication for the subdivision is in excess of the required dedication. The Skyview Ridge Subdivision Masterplan has been reviewed and approved in conjunction with the review of the subdivision. The masterplan park area is in excess of the required park dedication for the Skyview Ridge Subdivision



Masterplan area. It is anticipated that the masterplan will be subdivided in several future filings. Each filing may not meet the required park dedication, while others will be in excess. The overall park dedication upon completion of all filings shall be as shown on the masterplan (exhibit C), and as depicted on the approved park masterplan referenced herein.

VIII. IRRIGATION

No irrigation ditches, field laterals, or irrigation easements exist on the subdivision.

IX. SOILS/GEOTECHNICAL STUDY

A soils/geotechnical study for the subdivision has been provided to the City of Billings by the Subdivider as required by the City of Billings subdivision regulations.

X. TIMING OF IMPROVEMENTS

The Subdivider does not desire to commence development of lots within the subdivision, but does desire to file the approved final plat of Skyview Ridge Subdivision, First Filing, and to sell and convey lots in said subdivision at some future date. In accordance with the foregoing, the Subdivider and the City agree as follows.

A. First Filing Improvements

First Filing improvements shall be constructed utilizing private contracts. There will be multiple phases of development. Each phase shall construct those street and utility improvements adjacent to that particular phase, or any off-site improvements identified within the traffic impact study that are determined to be necessary to support the development of a particular phase.

The Subdivider agrees not to sell or convey any lots in the subdivision to be served by the First Filing improvements, and the Subdivider further acknowledges that no building permits for any First Filing lot shall be issued until a private contract has been executed for the construction and installation of the public improvements to serve a particular phase, and to provide necessary access and traffic circulation for the traffic generated by those lots.

Pursuant to the foregoing agreement, the Subdivider shall execute and

record a Declaration of Restriction on Transfers and Conveyances for said First Filing (attached hereto) to be recorded concurrently with the recording of this agreement. Said Declaration notifies all third parties that said lots and blocks may not be legally sold, conveyed, or transferred until a release executed by the City of Billings and substantially in the form of Exhibit A attached hereto has been recorded in the office of the Clerk and Recorder of Yellowstone County, Montana. No lots shall be released until a certificate substantially in the form of Exhibit B attached hereto has been executed by the Department of Public Works stating that the above conditions have been met, which certificate must accompany any request for a release. By the acceptance and recording of the agreement, the City does hereby authorize the Department of Public Works, Mayor, and City Clerk of the City to review any request for release and to execute such certificates and releases as may be necessary to evidence a release from the restriction against sale, conveyance, and transfer of lots in the subdivision.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or private contracts secured by letters of credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the city engineer and utility department manager.

XII. LEGAL PROVISIONS

- A.** Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings.
- B.** The owners of the properties involved in this proposed subdivision, by signature subscribed herein below, agree, consent, and shall be bound by the provisions of this agreement.
- C.** The covenants, agreements, and all statements in this agreement apply to and shall be binding on the heirs, personal representatives, successors, and assigns of the respective parties.
- D.** In the event it becomes necessary for either party to this agreement to retain an attorney to enforce any of the terms or conditions of this agreement or to give any notice required herein, then the prevailing party



or the party giving notice shall be entitled to reasonable attorney fees and costs.

- E.** Any amendments or modifications of this agreement, or any provisions herein, shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this agreement.
- F.** Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.



IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

“SUBDIVIDER”

STATE OF MONTANA DEPARTMENT OF
NATURAL RESOURCES AND
CONSERVATION

By: [Signature]

Its: Director

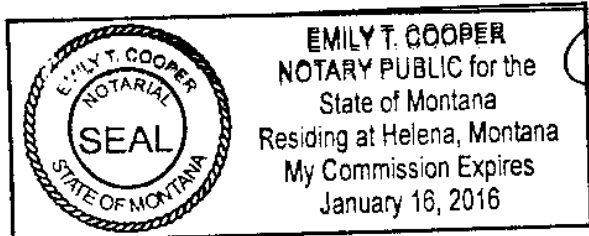
Attest: [Signature]

Title: Administrator

STATE OF MONTANA)
 Lewis + Clark : SS
County of Yellowstone)

On this 27th day of January, 2014, before me, a Notary Public in and for the State of Montana, personally appeared John E. Tubbs, known to me to be the Director and Shawn Thomas as Trust Lands Administrator of the STATE OF MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.



[Signature]
Notary Public in and for the State of Montana
Printed name: Emily T. Cooper
Residing at: Helena
My commission expires: 01-16-2016



WAIVER OF RIGHT TO PROTEST

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, does hereby waive the right to protest the formation of one or more special improvement districts for street light construction, sidewalks, parks, curbs and gutters, street light maintenance, and energy, driveway approaches, traffic lights, and traffic control devices, streets, water lines, sanitary sewer, storm drain (to provide drainage for runoff water within or from outside of the subdivision), park maintenance, and other improvements incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

SKYVIEW RIDGE SUBDIVISION, FIRST FILING

STATE OF MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

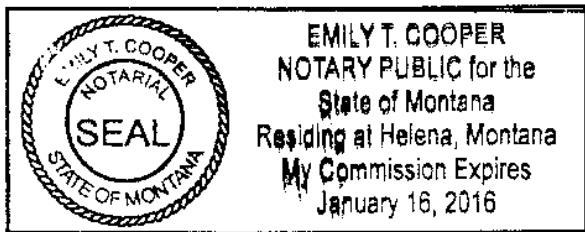
By: [Signature]
Its: Director

Attest: [Signature]
Title: Administrator

STATE OF MONTANA)
 Lewis + Clark : ss
County of ~~Yellowstone~~)

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[Signature]
Notary Public in and for the State of Montana
Printed name: Emily T. Cooper
Residing at: Helena
My commission expires: 01-16-2016

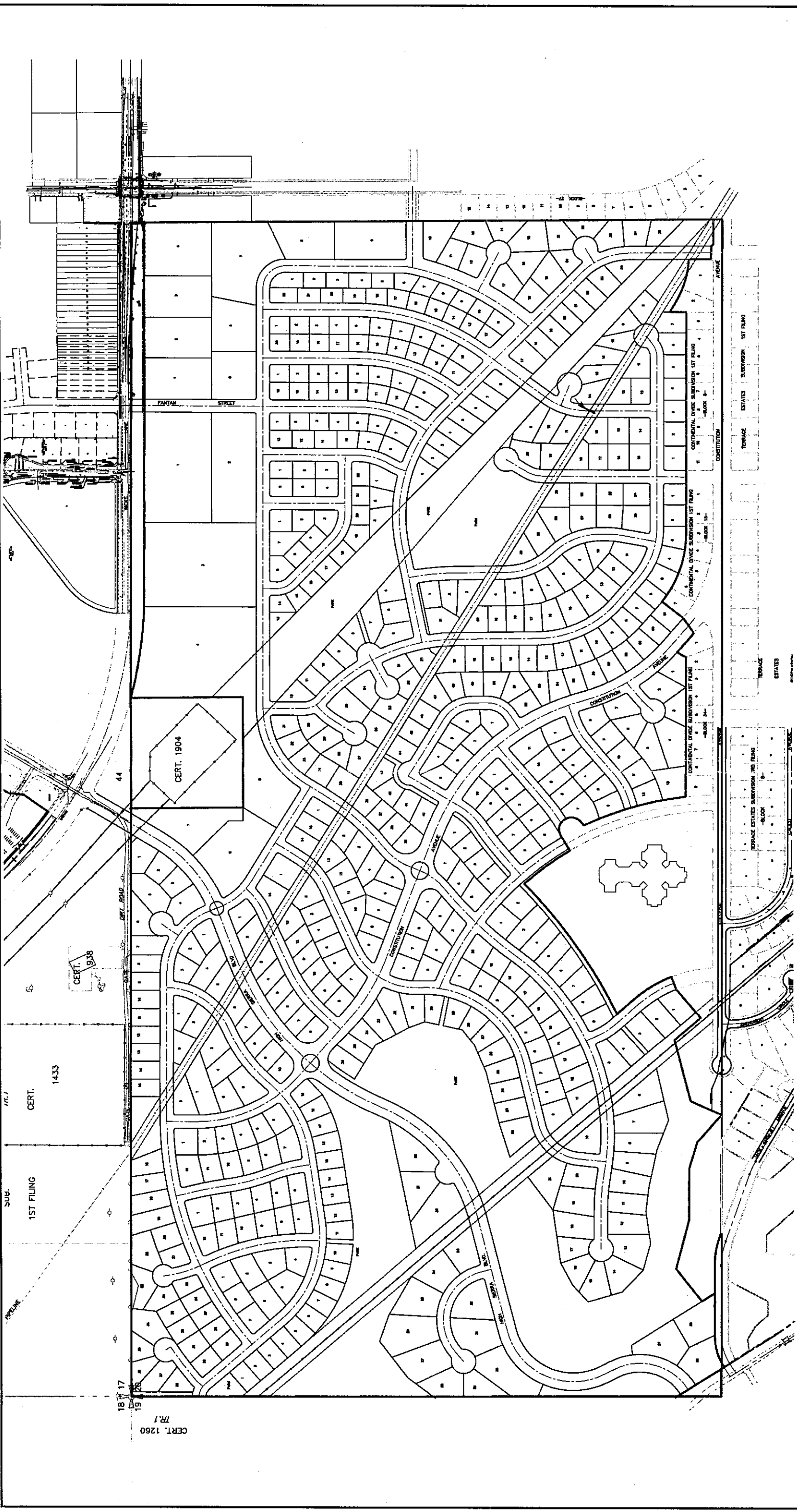
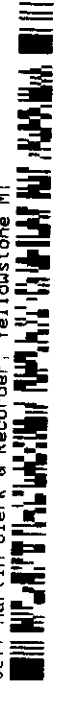


EXHIBIT C
SKYVIEW RIDGE SUBDIVISION
MASTER PLAN

SIA 3698532

02/25/2014 08:42 AM Pages: 16 of 16 Fees: 5.00
 Jeff Martin Clerk & Recorder - Yellowstone MT



PREPARED FOR:



PREPARED BY:



www.sandersonstewart.com