

Return To:
City of Miles City
Box 728
Miles City MT 59301

RESOLUTION NO. 3879

**A RESOLUTION ADOPTING FINDINGS OF FACT AND APPROVING THE
AMENDED PLAT FOR THE PURPOSE OF BOUNDARY LINE RELOCATION OF
TRACTS C & D OF THE LOTHSPETCH MINOR SUBDIVISION WITHIN THE
CITY OF MILES CITY**

WHEREAS, Vision Enterprises, LLC has requested that the City of Miles City approve a boundary line relocation involving Tracts C & D of the Lothspeich Minor Subdivision within the City of Miles City, Custer County, Montana;

AND WHEREAS, the City of Miles City is authorized to approve the relocation of common boundary lines for five or fewer lots within a platted subdivision pursuant to Section 76-3-207(1)(d), MCA.

NOW THEREFORE BE IT RESOLVED by the City Council of Miles City, Montana, as follows:

It does hereby adopt the Staff Report to City Council, File #BLA 2015-06, attached hereto as Exhibit "A" as findings of fact, and based on such findings of fact, approves the "AMENDED PLAT Lothspeich Minor Subdivision Tract C, & D, Env. 501A, Doc # 153677 SE1/4NE1/4, Section 34, Township 8 North, Range 47 East, P.M.M. City of Miles City, Custer County, Montana," said amended plat being attached hereto as Exhibit "B."

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY
CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES
CITY, MONTANA, AT A DULY CALLED MEETING THIS 26TH DAY OF
JANUARY, 2016.**



John Hollowell, Mayor

ATTEST:



Lorrie Pearce, City Clerk

AMENDED PLAT



1. Mayor of the City of Lake City, do hereby certify that the use of the exemption outlined on the accompanying Amended Plat has been duly reviewed, and has been found to conform to the requirements of the Montana Subdivision and Platting Act, Section 76-3-101 et. seq. MCA.

DATED this _____ day of _____, 2016.

Wager, C. J. et al. White C. J., *senior*

N^o 24th Rebar w/ Yellow Plastic Cap Stamped
 DOW 9334LS Set this Survey
 N^o 18th Rebar w/ Yellow Plastic Cap Stamped
 HX4 7155LS Found

I hereby certify that all real property, taxes and special assessments assessed and levied on the land being subdivided have been paid.

Clatter County Clerk and Recorder
by _____

Alum. Cap Set by Dane Foss
MDT R/W Monument Found

A tract of land being sold as Tract C and a portion of Tract D (Montezuma Mines 2 northern Part, Esmeralda Co., Nev.) situated on the above described land.

[illegible]

A trace of lead was a portion of Tlead (J. Subbington Micro-Collections, Inc., Enigma, No. 50). The lead was 155.5% of the standard quantity of the northern quartz, Section 34, Township 4 North, Range 47 East of the P.M.M., Minnesota more particularly described as follows:

Comminuting the standard quantity of lead Section 34; thence South 46 degrees 23 minutes 44 seconds West; a distance of 57.24 feet to the southern corner of said Tlead D; thence S 45° 45' E, a distance of 150.00 feet to the P.M.M. of BECONING; thence S 49° 49' E, a distance of 73.54 feet to the N.O.O.T. 32; a distance of 16.85 feet thence E 89° 45' E, a distance of 27.54 feet thence E 101° 05' N, a distance of 166.52 feet to the P.O.N.T. of BECONING.

[illegible]

Roger Lothapcich
Vision Enterprises, LLC

I hereby certify that the survey shown here has been examined and determined to be in compliance with the National Sanitation in Subdivisions Act, and applicable A.R.U.

Dated this _____ day of January, 2015

Longitude: 105°51'38.93181" W
 It takes 66.677 20000.000 11
 factor of 1.00011277
 distance in International feet

713 Pleasant Street
Mass City, Montana 59203
408-234-5555

<p>Vision Enterprises, LLC 2323 S. Hoynes Ave. Miles City MT 59401</p>	1
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Exhibit B

**Report for City Council
File #BLA-2015-06
Lothspeich Minor Subdivision Boundary Line Adjustment
January 26, 2016**

The subject property is the Lothspeich Minor Subdivision, Tracts C and D on S. Haynes Ave in Miles City, MT. Tracts B and E of the original subdivision are not affected by the proposed boundary line adjustment. The applicant, Roger Lothspeich of Vision Enterprises, 2323 S. Haynes Ave, Miles City, MT, proposes a boundary line adjustment to facilitate the immediate sale of the resulting amended Tract D. The applicant intends to follow this boundary line adjustment with an application for a Subsequent Minor Subdivision, which will address all subdivision design and approval requirements serving the lots of the subdivision.

The proposed Amended Plat of the Lothspeich Minor Subdivision reconfigures Tracts C and D. This amended plat is exempt from Subdivision Review per MCA section 76-3-207(1)(d) but is subject to the survey requirements in MCA 76-3-401.

76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations – exceptions – fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;

The Amended Plat of the Lothspeich Minor Subdivision does not create new tracts of record. Tract C is reconfigured to acquire a portion of Tract D at the west side, increasing the acreage of Tract C from 2.01 acres to 2.838 acres. Tract D is reconfigured from 2.00 acres to 1.171 acres.

All tracts are appropriately zoned General Commercial. Tract C is adjacent to a Residential A (RA) zone to the north and Residential B (RB) to the west. Tract D is surrounded by General Commercial (GC) zones. No change in land use is proposed. Requirements of Sec 24-59 of the Miles City Code of Ordinances (MCCO) will apply to development on all tracts within this subdivision.

Easements #3 and #4 as shown on the previous plat (Env #503B) have been amended and shown as #5 and 'B' on this amended plat. Easement B is a private road and public utility easement and includes the previously granted Easement #6 as defined in Doc # 163091. Easement #5, created on 9/8/2014, was an easement for a private road and utilities, described in Doc #161560. Easement A, located on the western property line of Tract C, is intended as an easement for a public water main service line and access from Tract C to Tract B as described on the face of the plat.

No development is proposed on any tracts at this time. When the City receives a development application, the site plan will be re-evaluated on the criteria below and the review criteria in MCCO 24-96 Site Plan Review Procedure. Therefore, this boundary line adjustment will not:

- create additional lots or tracks of land
- impact the ability of the government to provide local services
- endanger public health and safety
- create or expand a non-conforming use
- create an expansion or cost of services
- increase the amount of roads currently being maintained by the City
- increase emergency response times, traffic load, fire protection levels, schools and school routes, or landfill requirements
- create any special or rural improvement districts that would obligate the local government either administratively or financially.

Per MCA 76-3-207, the proposed amended plat is not a subdivision, is not subject to subdivision review and does not appear to be an attempt to evade subdivision review. This plat will be reviewed by Custer County's Examining Land Surveyor for compliance with surveying requirements of 76-3-401. Therefore, staff recommends approval of the amended plat as proposed.



File No. _____
(for official use only)

SUBDIVISION EXEMPTION CLAIM APPLICATION

Miles City Community Services & Planning
17 South 8th Street, PO Box 910
Miles City, MT 59301

Date Received: _____
(for official use only)

Attach a check payable to the City of Miles City for \$200.00 and submit the application materials (Original, plus 2 copies) to the City of Miles City Community Services and Planning Department, 17 S. 8th Street, Miles City, MT, 59301.

1. Property owner(s): (If more than 2, please attach additional sheets)

a. Name: Vision Enterprises, LLC Occupation: _____
Address: 2323 S Haynes Ave. Phone: (406) 951-1254
City, State, Zip: Miles City, MT 59301 Email: rlrmcc@hotmail.com

b. Name: First Interstate Bank Occupation: Banking
Address: 401 N 31st ST Phone: _____
City, State, Zip: Miles City, MT 59301 Email: _____

2. Surveyor/Representative:

Name: Quinn Wright Firm: DOWL
Address: 713 Pleasants St Phone: 406-234-6666
City, State, Zip: Miles City, MT 59301 Email: qwright@dowl.com

3. Parcel Description(s) of Existing Tract(s): (If more than 2, please attach additional sheets)

a. Address: S Haynes AVE
Tax ID Number: 000RFC0077 Geocode: 14-1740-34-1-06-01-0000
Section: 34 Township: 8 N Range: 47E
Other legal description: Tracts C, Lothspeich Minor Subdivision
Zoning District: commercial Minimum Lot Size: 2.0 ac.
How and when the parcel was created (example: Subdivision: X Addition, 10/3/92):
Lothspeich Minor Subdivision ENV. 501, Doc. 153677 3/15/2012

b. Address: S Haynes AVE

Tax ID Number: 000RFC2183 Geocode: 14-1740-34-1-06-03-0000

Section: 34 Township: 8 N Range: 47E

Other legal description: Tracts D, Lothspeich Minor Subdivision

Zoning District: commercial Minimum Lot Size: 2.0 ac.

How and when the parcel was created (example: Subdivision: X Addition, 10/3/92):

Lothspeich Minor Subdivision ENV. 501, Doc. 153677 3/15/2012

c. Address: S Haynes AVE

Tax ID Number: 000RFC2184 Geocode: 14-1740-34-1-06-04-0000

Section: 34 Township: 8N Range: 47E

Other legal description: Tracts D, Lothspeich Minor Subdivision

Zoning District: commercial Minimum Lot Size: 2.0 ac

How and when the existing parcel was created (example: Subdivision: X Addition, 10/3/92):

Lothspeich Minor Subdivision ENV. 501, Doc. 153677 3/15/2012

4. Proposed Exemption(s):

This application is used for proposals to relocate common boundaries between adjoining properties, and/or the aggregation of lots, or miscellaneous exemptions (MCA 76-3-. Please indicate which exemptions apply to this proposal by checking the appropriate box(es):

- ☐ A division made outside of platted subdivisions for the purpose of relocating common boundary line(s) between adjoining properties. [76-3-207(1)(a), MCA]
- X For five or fewer lots within a platted subdivision, the relocation of common boundaries. [76-3-207(1)(d), MCA]
- ☐ A division made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas. [76-3-207(1)(e), MCA]
- ☐ Aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas. [76-3-207(1)(f), MCA]
- ☐ A division of land that is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter [76-3-201(1)(h), MCA]
- ☐ Other (please describe) _____

a. Reasons/justification for use of the exemption:

_____ to create a smaller parcel (tract D Amended) for sale so the buyer can start the designing phase for the new dental office _____

b. Intentions for uses of the property (List or discuss the property owners' intentions for the use of each resulting parcel. For example, will the parcel(s) be used for agriculture, commercial, residences, etc.):

_____ All property will be used as commercial sites _____

c. Intentions for disposition (For example, is the intent to correct a building or fence encroachment, to bring the property into compliance with zoning requirements, to prepare tracts for sale, etc.):

_____ to prepare tract D Amended for sale and prepare Tract C Amended for a major subdivision _____

5. Required attachments:

Submit the original, signed application, along with two additional copies of the completed application and the information listed below.

- a. Copies of recorded deeds documenting present ownership of affected parcels.
- b. Copies of all deeds, contracts, restrictions, and covenants related to this property recorded or entered into within the past year.
- c. Site plan (or draft certificate of survey or subdivision/amended plat) showing the approximate gross and net lot sizes (in acreage or square feet), proposed property lines, and all existing and proposed structures. The site plan should also identify property line setbacks, parking spaces, and any other information necessary to demonstrate compliance with the zoning code.
- d. Documentation of approved variances from zoning requirements related to the affected parcels.
- e. Copies of existing and proposed deed restrictions or covenants, if any.
- f. All documentation in support of the sanitation exemption(s), if applicable.
- g. Copies of any existing permits for the development on the property (building permits, floodplain permits, etc.), as applicable.

6. Acknowledgments:

I/We, the undersigned landowner(s) and exemption claimant(s) understand that the State of Montana provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the transactions are an attempt to evade the Montana Subdivision and Platting Act or local subdivision regulations.

I/We affirm that this exemption claim is not an attempt to evade the Montana Subdivision and Platting Act or the Miles City Subdivision Regulations.

I/We recognize that I/We may be subject to penalties if my actions are deemed to be an effort to evade subdivision review, as set forth in Montana law:

- 76-3-301(3), MCA: If transfers not in accordance with the Montana Subdivision and Platting Act are made, the City Attorney shall commence action to enjoin further sales or transfers and complete compliance with all provision of the Montana Subdivision and Platting Act. The cost of such action shall be imposed against the party not prevailing.
- Violations: Any person who violates any provision of the Montana Subdivision and Platting Act or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.
- I/We also recognize that making false statements on this form could subject me to criminal prosecution for False Swearing (per MCA 45-7-202) and Perjury (per MCA 45-7-201).
- I/We also recognize that per 45-7-203(1), MCA (Unsworn falsification to authorities), A person commits an offense under 45-7-203 if, with the purpose to mislead a public servant in performing an official function, the person:
 - (a) makes any written false statement that the person does not believe to be true;
 - (b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements from being misleading;
 - (c) submits or invites reliance on any writing that the person knows to be forged, altered, or otherwise lacking in authenticity; or
 - (d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object that the person knows to be false.

7. Signatures:

I/We, as Claimant(s), has/have read the foregoing Exemption Claim Application, and affirm that my/our statements and information are true and correct to the best of my/our knowledge.

Property owner's/Claimant's signature

Stockman Bank of Montana

Date: 12-22-15

by _____
Property owner's/Claimant's signature

Date: 12-22-15

Return to:

Lucas & Tonn, P.C.
P. O. Box 728
Miles City, Montana 59301

161560 Fee: \$59.00

Custer County Recorded 9/8/2014 At 2:28 PM
Linda Corbett, Clk & Rcdr By *Linda Corbett*
Return to: Lucas & Tonn, P.C. P.O. Box 728
Miles City MT 59301

AMENDMENT TO EASEMENT AGREEMENT

THIS ~~AMENDMENT~~ ^{Amendment} TO EASEMENT AGREEMENT is made this 27 day of August 2014, by and between VISION ENTERPRISES, LLC, a Montana limited liability company of 2323 S. Haynes, Miles City, Montana 59301, hereinafter referred to as "Vision", MILES COMMUNITY COLLEGE, of 2715 Dickinson Street, Miles City, Montana 59301, hereinafter referred to as "MCC", and LANDMARK LAND COMPANY, LLC, a North Dakota limited liability company registered to do business in Montana of P.O. Box 1881, Dickinson, North Dakota 58602, hereinafter referred to as "Landmark".

RECITALS:

A. This Amendment to Easement Agreement adds additional easement area (Easement 3 and Easement 5) to the previous Easement Agreement between VISION ENTERPRISES, LLC and LANDMARK LAND COMPANY, LLC dated June 12, 2012 and recorded on June 12, 2012 in the office of the County Clerk and Recorder in and for Custer County, Montana as Document 154305 (hereinafter the "Easement Agreement").

B. Vision is the owner of record of certain real property situated in Custer County, Montana, more particularly described as follows (the "Vision Property"):

TOWNSHIP 8 NORTH, RANGE 47 EAST, M.P.M.

Section 34: Tracts C, D, and E of the Lothspeich Minor Subdivision, being a tract of land located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34, Township 8 North, Range 47 East, M.P.M., according to Certificate of Survey, filed for record on March 15, 2012, as Document No. 153677, in Envelope No. 501A of the Plat Cabinet in the office of the County Clerk and Recorder in and for Custer County, Montana.

C. Miles Community College is the owner of record of certain real property situated in Custer County, Montana, more particularly described as follows (the "MCC Property"):

TOWNSHIP 8 NORTH, RANGE 47 EAST, M.P.M.

Section 34: Tract F of the Lothspeich Minor Subdivision, being tracts of land located in the SE¼NE¼ of said Section 34, Township 8 North, Range 47 East, M.P.M., according to Certificate of Survey, filed for record on March 15, 2012, as Document No. 153677, in Envelope No. 501A of the Plat Cabinet in the office of the County Clerk and Recorder in and for Custer County, Montana.

D. Landmark is the owner of record of that certain real property adjacent to the Vision and MCC Property situated in Custer County, Montana, more particularly described as follows (the "Landmark Property"):

TOWNSHIP 8 NORTH, RANGE 47 EAST, M.P.M.

Section 34: Tract B of the Lothspeich Minor Subdivision, being a tract of land located in the SE¼NE¼ of said Section 34, Township 8 North, Range 47 East, M.P.M., according to Certificate of Survey, filed for record on March 15, 2012, as Document No. 153677, in Envelope No. 501A of the Plat Cabinet in the office of the County Clerk and Recorder in and for Custer County, Montana.

E. All parties are subject to the Easement Agreement, which created Easement 1 Easement 2 and Easement 4, and are agreeable to granting additional easement area in order to ensure access to Haynes Avenue for all parties.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and by this reference are incorporated into the terms and conditions of the Easement Agreement.

2. **Grant of Private Road and Utility Easement.** Subject to the terms and conditions of the Easement Agreement, Vision hereby grants unto Landmark and MCC, two additional non-exclusive private road and utility easements over, under and across the Vision Property, hereinafter referred to as "Easement No. 3" and "Easement No. 5".

Easement No. 3 shall be an additional 60' x 186.52' area across Tract D that abuts the northern portion of Easement No. 5 and the west side of Haynes Avenue as depicted by "Easement No. 3" in Exhibits A and B. The purpose of this additional easement area is to allow Landmark access to Haynes Avenue through a cut-out that is located in Easement No. 3. Landmark agrees that in the event said cut-out is moved to Easement No. 1, Easement No. 4, or Easement No. 5, or an additional cut-out is constructed on Haynes Avenue in Easement No.

161560 Fee: \$59.00

Custer County Recorded 9/8/2014 At 1:28 PM

1, Easement No. 4, or Easement No. 5, Landmark will vacate use of Easement No. 3 and Easement No. 3 shall be extinguished.

Easement No. 5 shall be an additional 70' x 185.16' area across Tract E that abuts the northeastern portion of Easement No. 1 and the west side of Haynes Avenue as depicted by "Easement No. 5" in Exhibit B. The purpose of this additional easement area is to allow Landmark access to Haynes Avenue through a cut-out that is located in Easement No. 5. Landmark agrees that in the event said cut-out is moved to Easement No. 1, or Easement No. 4, or an additional cut-out is constructed on Haynes Avenue in Easement No. 1 or Easement No. 4, Landmark will vacate use of Easement No. 5 and Easement No. 5 shall be extinguished.

Exhibit A depicts Easement 1, Easement 2, and Easement 4, which were the original easement areas granted in the Easement Agreement. Exhibit B depicts a close up view of Easement 3 and Easement 5, which are the additional easement areas being granted in this Amendment to Easement Agreement. Both Exhibits are hereby incorporated into the terms and conditions of the Easement Agreement.

3. **Appurtenant Nature of Easement.** Subject to the provisions of the Easement Agreement, the additional Easements shall run with the land and therefore be deemed to pass with any conveyances or transfers of the Vision Property, whether or not such conveyances or transfers specifically describe or include the same.

4. **Amendment.** Except as amended by this Amendment, all of the original terms and provisions of the Easement Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement as of the day and year first above written.

VISION ENTERPRISES LLC

By: [Signature]

Its: Managing Member

"Vision"

LANDMARK LAND COMPANY LLC

By: [Signature]

Its: Manager

"Landmark"

MILES COMMUNITY COLLEGE

By: [Signature]

Its: Vp of Administrative Services & Finance

"MCC"

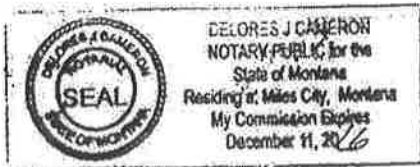
161560 Fee: \$59.00

Custer County Recorded 9/8/2014 At 1:28 PM

STATE OF MONTANA)
) ss
COUNTY OF CUSTER)

On this 27 day of August, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Roger L. Lothspeich, known to me to be the Managing member of VISION ENTERPRISES LLC, a Montana limited liability company, that executed the within instrument and acknowledged to me that they executed the same on behalf of VISION ENTERPRISES LLC.

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

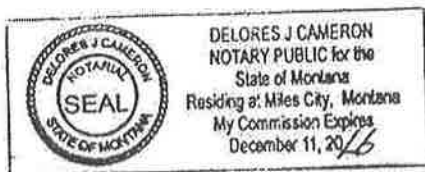


Delores J. Cameron
Signature of Notary

STATE OF MONTANA)
) ss
COUNTY OF CUSTER)

On this 27th day of August, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Sheryl J. Cathey, known to me to be the Manager of LANDMARK LAND COMPANY LLC, a Montana limited liability company, that executed the within instrument and acknowledged to me that they executed the same on behalf of LANDMARK LAND COMPANY LLC.

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



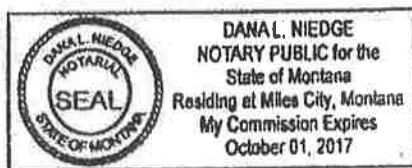
Delores J. Cameron
Signature of Notary

161560 Fee: \$59.00
Custer County Recorded 9/8/2014 At 1:28 PM

STATE OF MONTANA)
) ss
COUNTY OF CUSTER)

On this 27 day of August, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Lisa Watson, known to me to be the VP of AS-F of the MILES COMMUNITY COLLEGE, that executed the within instrument and acknowledged to me that they executed the same on behalf of MILES COMMUNITY COLLEGE.

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

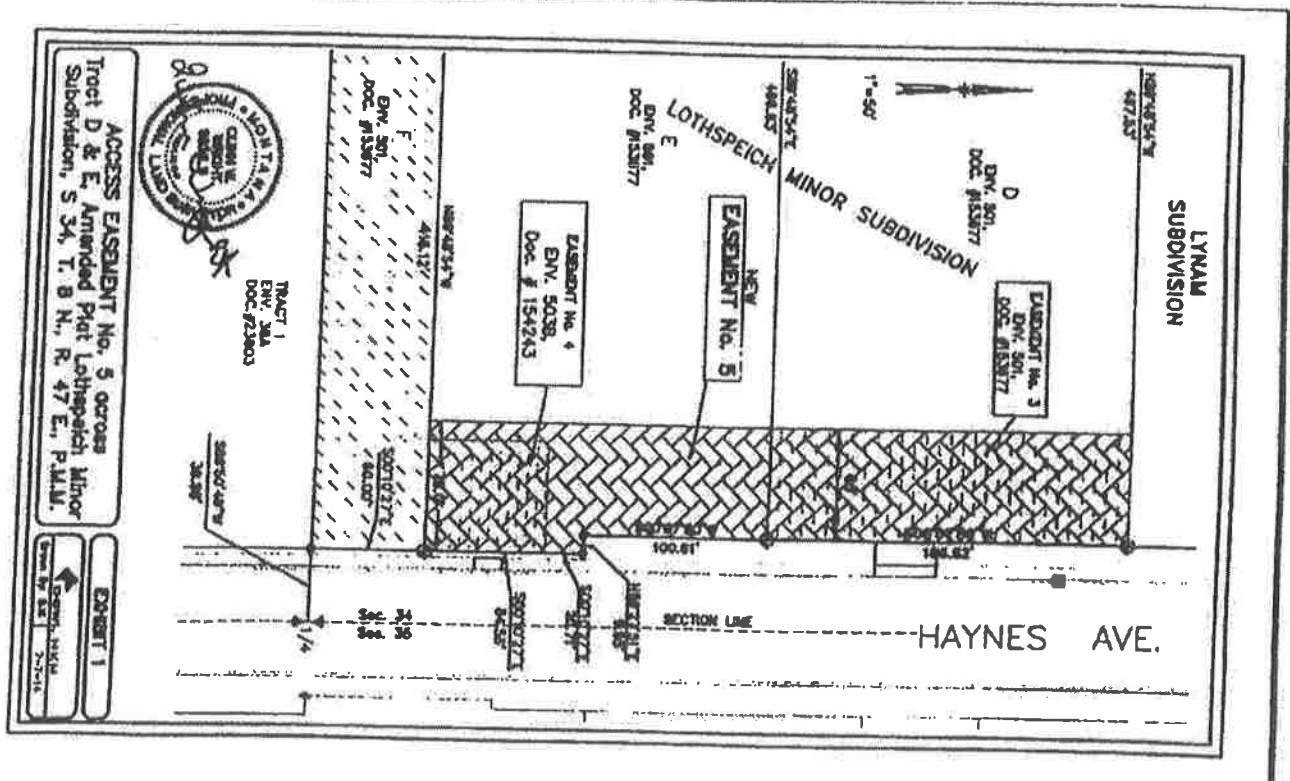


Dana L. Niedege
Signature of Notary

161560 Fee: \$59.00
Custer County Recorded 9/8/2014 At 1:28 PM

[illegible]

EXHIBIT "B"



161560 Fee: \$59.00
Custer County Recorded 9/8/2014 At 1:28 PM

 First American Title™	Guarantee Face Page	
Guarantee	ISSUED BY First American Title Insurance Company	
	GUARANTEE NUMBER 5010500- 801195	Security Abstract File # 26026



First American Title Insurance Company



Dennis J. Gilmore
President



Security Abstract & Title Company

P.O. Box 1588
510 Main Street
Miles City, MT 59301
(406) 234-3415
Fax: (406) 234-3447

A Policy-Issuing Agent of First American Title Insurance Company



Jeffery S. Robinson
Secretary



Authorized Signatory

GUARANTEE

Fee \$ 150.00

File No. 26026

Policy No. 801195

Subdivision or
Proposed Subdivision:

Tracts C and D of the Lothspeich Minor Subdivision located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, in Township 8 North, Range 47 East, M.P.M., in Custer County, Montana.

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY, AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE, FIRST AMERICAN TITLE INSURANCE COMPANY, A CORPORATION HEREIN CALLED THE COMPANY, GUARANTEES:

VISION ENTERPRISES, LLC and/or DOWL Engineering

for the purposes of aiding its compliance with Custer County Subdivision Regulations,
in a sum not exceeding \$1,000.00,

THAT according to those public records which, under the recording laws of the State of Montana, impart constructive notice of matters affecting the title to the land(s) described as follows:

**Township 8 North, Range 47 East, M.P.M., in Custer County, Montana
Section 34: TRACT C and TRACT D of the Lothspeich Minor Subdivision, being parcels of land located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34, as created and described by the Plat/Survey filed for record on March 15, 2012, as Document No. 153677 in Envelope No. 501A of the plat cabinet in the office of the County Clerk and Recorder in and for Custer County, Montana.**

1) Parties having a record title interest in said lands whose signatures are necessary under the requirements of Custer County Subdivision Regulations on the certificates consenting to the recordation of Plats and offering for dedication any streets, roads, avenues, and other easements offered for dedication by said Plat are:

Vision Enterprises, LLC, a Montana limited liability company.

- 2) Parties holding liens or encumbrances on the title to said land(s) are:

STOCKMAN BANK OF MONTANA, by

Mortgage, dated December 30, 2011, filed for record on January 4, 2012, at 2:42 P.M., as Document No. 153065, in the real estate records of Custer County, Montana, made by VISION ENTERPRISES LLC, whose address is 2323 S. Haynes Ave., Miles City, MT 59301-5806, as GRANTOR, in favor of STOCKMAN BANK OF MONTANA, whose address is 700 Main Street, P.O. Box 250, Miles City, MT 59301, as LENDER, given to secure a promissory note in the original principal amount of \$991,035.00, and any other amounts and/or obligations secured thereby, payable and due under the terms thereof.

- 3) Easements, claims of easements and restriction agreements of record are:

- a. All terms, conditions and provisions of Highway Right Of Way Easement, dated January 6, 1936, filed for record on January 17, 1936, as Document No. 122955, in Deed Book 55, at Page 220, in the real estate records of Custer County, Montana, in favor of the STATE OF MONTANA, its successor or successors in interest.
- b. All terms, conditions and provisions of Bargain And Sale Deed, dated April 25, 1983, filed for record on May 25, 1983, as Document No. 66148, in Deed Book M-21, at Page 1063, in the real estate records of Custer County, Montana.
- c. All terms, conditions and provisions of Right-Of-Way Easement, dated August 10, 1992, filed for record on August 21, 1992, as Document No. 90593, in Miscellaneous Book M-63, at Page 563, in the real estate records of Custer County, Montana, in favor of MID-RIVERS TELEPHONE COOPERATIVE, INC., its successors or assigns.
- d. All terms, conditions and provisions of Right-Of-Way Easement, dated August 15, 2001, filed for record on August 30, 2001, as Document No. 118621, in the real estate records of Custer County, Montana, in favor of MID-RIVERS TELEPHONE COOPERATIVE, INC., and its affiliates, which may be assigned without consent to any parent, subsidiary or successor controlling entity.
- e. All terms, conditions and provisions of Amended Resolution, Designation Of Limited Access Highway, dated June 4, 1996, filed for record on July 23, 1996, as Document No. 102876, in Miscellaneous Book M-84, at Page 815, in the real estate records of Custer County, Montana, executed by the DEPARTMENT OF TRANSPORTATION OF THE STATE OF MONTANA and the TRANSPORTATION COMMISSION OF THE STATE OF MONTANA.
- f. All terms, conditions and provisions of Amended Resolution, Designation Of Controlled Access Highway And Facility, dated July 13, 2006, filed for record on July 17, 2006, as Document No. 135524, in the real estate records of Custer County, Montana, executed by the DEPARTMENT OF TRANSPORTATION OF THE STATE OF MONTANA and the TRANSPORTATION COMMISSION OF THE STATE OF MONTANA.
- g. All loss, costs, claims and attorney fees resulting from discrepancies existing between the legal description contained in Warranty Deed, filed for record in Deed Book M-1, at Page 752, and the legal descriptions contained in the following plats/surveys: Document No. 143311, Envelope No. 477B; Document No. 153677, Envelope No. 501A; and Document No. 154243, Envelope No. 503B.
- h. All terms, conditions and provisions of unrecorded State of Montana, Montana Department of Transportation, Driveway Approach Application and Permit:

F.A. Route No.: P-23/MT Hwy 59
Milepost: 1.39
Project: F-23-1(6)1
Approach Station: 29+86 RT
District: Glendive
County: Custer
Maint Section No.: 4301

i. All terms, conditions and provisions of:

- i1. Easement Agreement, dated June 12, 2012, filed for record on June 12, 2012, as Document No. 154305, in the real estate records of Custer County, Montana, executed by and between VISION ENTERPRISES LLC and LANDMARK LAND COMPANY LLC.
- i2. Amendment To Easement Agreement, dated August 27, 2014, filed for record on September 8, 2014, as Document No. 161560, in the real estate records of Custer County, Montana, executed by and between VISION ENTERPRISES LLC, LANDMARK LAND COMPANY LLC and MILES COMMUNITY COLLEGE.
- j. All terms, conditions and provisions of Easement, dated April 29, 2015, filed for record on April 29, 2015, as Document No. 163091, in the real estate records of Custer County, Montana, in favor of the owner's of Tracts B, C, D and E of the Lothspeich Minor Subdivision, their successors and assigns.
- k. Resolution No. 3586, passed and adopted by the City of Miles City on April 23, 2013, filed for record on April 30, 2013, as Document No. 157220, in the real estate records of Custer County, Montana, wherein the Lothspeich Minor Subdivision and Tract 1 of the Stoltz Tracts in Section 34, Township 8 North, Range 47 East, MPM, were annexed into the City of Miles City, Montana.
- l. All matters, covenants, conditions, restrictions (including attached restrictions, if any, made by the Montana Department of Health and Environmental Sciences, or any other governing body or agency), easements/rights-of-way and any rights, interests or claims which may exist by reason thereof, disclosed by the following plats/surveys filed in the office of the County Clerk and Recorder in and for Custer County, Montana: Plat/Survey - Document No. 143311, Envelope No. 477B; Plat/Survey - Document No. 153677, Envelope No. 501A; and Plat/Survey - Document No. 154243, Envelope No. 503B, but deleting any covenants, conditions or restrictions indicating a preference limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604.
- m. Assessments, rules and regulations of the Tongue and Yellowstone River Irrigation District, and all matters concerning easements, ditches, canals, laterals and roads pertaining thereto.
- n. Current or future annual assessments for street lighting, street maintenance and solid waste disposal, which assessments are, or will be, included in the general tax statement for Custer County, Montana.

NOTE:

Tax Status:

2015 Tax Parcel ID# RFC0077 [covers Tract C]
1st Half - \$2,300.19 - DELINQUENT
2nd Half - \$2,300.19 - Not Paid
TOTAL - \$4,600.38 - Plus PENALTY & INTEREST

2015 Tax Parcel ID# RFC2183 [covers Tract D]
1st Half - \$2,284.28 -
2nd Half - \$2,284.27 -
TOTAL - \$4,568.55 - Paid in Full

Guarantee date: December 2, 2015 at 7:00 A.M.

FIRST AMERICAN TITLE INSURANCE COMPANY, through Security Abstract & Title Company, Agent.



Authorized Signatory

determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

- (d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such Assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY.

In case of a claim under this Guarantee, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

- (b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4.

7. DETERMINATION AND EXTENT OF LIABILITY.

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee.

GUARANTEE CONDITIONS AND STIPULATIONS (Continued)

The liability of the Company under this Guarantee to the Assured shall not exceed the least of:

- (a) the amount of liability stated in Schedule A or in Part 2;
- (b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or
- (c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance assured against by this Guarantee.

8. LIMITATION OF LIABILITY.

- (a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
- (b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.
- (c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

9. REDUCTION OF LIABILITY OR TERMINATION OF LIABILITY.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

10. PAYMENT OF LOSS.

- (a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.
- (b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

11. SUBROGATION UPON PAYMENT OR SETTLEMENT.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant. The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against

any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

12. ARBITRATION.

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

13. LIABILITY LIMITED TO THIS GUARANTEE; GUARANTEE ENTIRE CONTRACT.

- (a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.
- (b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.
- (c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

14. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at **First American Title Insurance Company, Attn: Claims National Intake Center, 1 First American Way, Santa Ana, California 92707. Phone: 888-632-1642.**