

D-01



AVIGATION EASEMENT

WESMONT BUILDERS-DEVELOPERS, INC., a Montana corporation, as "Grantor", its successors in interest and assigns, the owner of Canyon Creek Village, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof (formerly described as Reserve "B" of the preliminary plat of Missoula Development Park located in the E1/2NE1/4 of Section 1, Township 13 North, Range 20 West, P.M.M., and being a portion of Tract 3 of Certificate of Survey No. 3858, records of Missoula County, Montana, the highest ground elevation of which is 3,211 feet mean sea level), (hereinafter "Grantor's Property"), which real property is within the adopted Airport Influence Area, hereby grants to the MISSOULA COUNTY AIRPORT AUTHORITY ("Authority"), 5225 Highway 10 West, Missoula, Montana 59808-9399:

1. An assignable easement and right-of-way for the use and benefit of the public, for the free and unobstructed passage of aircraft in, through, and across all of the airspace above Grantor's property lying and being above an elevation of 3,265 feet mean sea level. If federal and/or state laws or regulations place lower height restrictions on the property, then Grantor must comply with the more stringent federal or state requirements.
2. The permanent right of flight for the passage of aircraft for the use and benefit of the public in the airspace above Grantor's property, together with the continuing right to cause in said airspace such noise, vibration, dust, fumes, smoke, vapor, and other effects as may be inherent for navigation of or flight in air, using said airspace, or landing at, taking off from, or operating on Johnson Bell Field.
3. The full waiver and release by Grantor of any right or cause of action which it now has or may have in the future against the Authority, its successors and assigns, on account of or arising out of such noise, vibration, dust, fumes, smoke, vapor, and other effects heretofore and hereafter caused by the operation of aircraft in said airspace and/or by any operations at the airport.
4. The covenant and agreement that from and after the execution of the document, the Grantor shall not erect any structure or object or allow to grow any tree or other vegetation to a height above an elevation of 3,265 feet mean sea level or encroach upon or extend in any way into this easement and right-of-way. If federal and/or state laws or regulations place lower height restrictions on the property, then Grantor must comply with the more stringent federal or state requirements in structures to be built.
5. The continuing right of the Authority to clear and keep clear Grantor's property of any and all obstructions that encroach upon or extend in any way into this easement and right-of-way above an elevation of 3,265 feet mean sea level, and for such purpose to enter upon the surface of Grantor's property and cut and remove any tree or other vegetation, or to remove, raze, or destroy those portions of buildings or other structures that would infringe upon or extend into said elevation. Such right includes the right of ingress to and egress from, and passage over Grantor's property for the purpose of effecting and maintaining such clearances as aforesaid.
6. The covenant and agreement that from and after the execution of this document, Grantor shall not put its property to any of the following uses which would:
 - A. Create unreasonable interference with (1) radio communication for aircraft using



the airport and (2) electronic navigational aids or devices such as instrument landing systems, generators, motors, and artificial lighting devices which create excessive static are examples of equipment that can cause interference.

- B. Create a hazard to flying by materially reducing visibility, such as incinerators, rock crushers, smelters, chemical manufacturing, and similar uses.
- C. Make it difficult for fliers to distinguish between airport or other navigational lights or markers and other lights; or cause glare to fliers using the airport, such as any arrangement and use of lights which resemble a layout or color of a landing area, or search lights or flash-type advertising signs.
- D. Result in any business, structure, tree, occupation or use which is dangerous or hazardous to the safety of aircraft using Johnson Bell Field or to property or persons using Johnson Bell Field or flying in the vicinity thereof. Towers, poles, smokestacks, advertising balloons, above-ground bulk storage of petroleum products, and fireworks manufacturing are examples of potentially dangerous uses, structures, and activities.
- E. Result in a land use or activity that is not ordinarily considered to be compatible with aircraft operations because of aircraft noise. Such land uses and activities shall include but shall not be limited to all types of residential development, schools, hospitals, religious facilities, and others whereby the aircraft noise could be disturbing to the conduct of the intended activity or could interfere with speech or sleep; PROVIDED, HOWEVER, that the parties agree to and acknowledge the following:
 - (1) Subject to the restrictions and limitations set forth in this Avigation Easement, the Authority will not oppose or attempt to prevent residential development on Grantor's Property.
 - (2) Grantor acknowledges receipt of a copy of the most recent Missoula International Airport noise contour map dated 1995 ("DNL Noise Contours: 1995" from the Missoula International Airport, Airport Master Plan Update, September, 1996) showing the various aircraft noise overlay zones. Grantor further acknowledges that the Airport is currently in the process of updating its FAR Part 150 Noise Compatibility Program, including the noise contour maps.
 - (3) The Airport Authority makes no representations about the present or future impact of airport operations on present or future uses of Grantor's Property.
 - (4) Grantor shall comply with the restrictions on airport hazards as set forth in Montana Code Annotated, Title 67, Chapter 5 as well as any federal and/or state laws or regulations that place height and/or hazard restrictions on Grantor's Property.
 - (5) Grantor agrees that the declaration of covenants, conditions and restrictions to be placed on Grantor's Property shall include disclosure of the existence of the Airport Influence Area and this Avigation Easement in



the form set forth on Exhibit A hereto. Such disclosure shall not be revised without the written consent of the Authority. Grantor further agrees to place a reference to the Airport Influence Area and this Avigation Easement on the plat map for Grantor's Property in the form set forth on Exhibit A.

These covenants, conditions, and restrictions shall run with the land and shall be binding upon the successors and assigns of all the parties signing below.

WESMONT BUILDERS-DEVELOPERS, INC.

By: Perry B. Ashby
 Perry B. Ashby, President

STATE OF MONTANA)
) : ss
 County of Missoula)

This instrument was acknowledged before me this 28th day of February, 2002 by Perry B. Ashby, known to me to be the President of WESMONT BUILDERS-DEVELOPERS, INC.



Sheryl A. Kain
 Print Name: Sheryl A. Kain
 NOTARY PUBLIC FOR THE STATE OF MONTANA
 Residing at Missoula, Montana
 My Commission expires: Nov 30, 2004



ACCEPTED BY:

MISSOULA COUNTY AIRPORT AUTHORITY

By: John P. Seymour
 John P. Seymour, Director of Airports

STATE OF MONTANA)
) ss.
 County of Missoula)

This instrument was acknowledged before me this 27 day of February, 2002 by John P. Seymour known to me to be the Director of Airports of MISSOULA COUNTY AIRPORT



Catherine L. Tortorelli
 Print Name: CATHERINE L. TORTORELLI
 NOTARY PUBLIC FOR THE STATE OF MONTANA
 Residing at Missoula, Montana
 My Commission expires: 5-6-03

After recording, please return to Grantee Missoula County Airport Authority at the above address. Thank you.

WCM1609.doc



EXHIBIT A TO CANYON CREEK VILLAGE AVIGATION EASEMENT

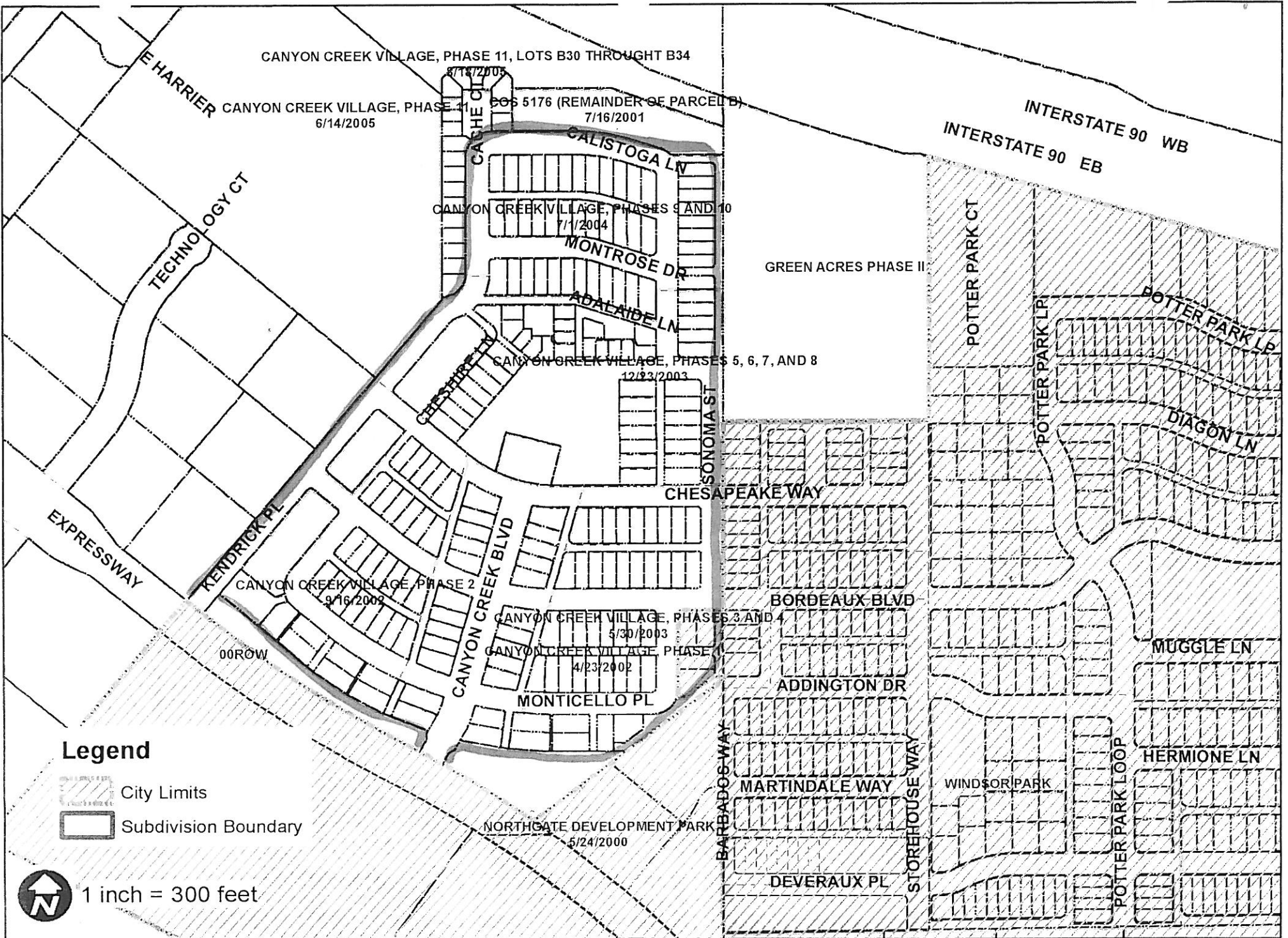
Airport Influence Area disclosure for declaration of covenants, restrictions and conditions for Canyon Creek Village subdivision:

Airport Influence Area. The Real Property is located within the Missoula County Airport Influence Area; is subject to the requirements of the Missoula County Airport Influence Area Resolution; and is further subject to an Avigation Easement entered between the Declarant and the Missoula County Airport Authority, dated the 23 day of APRIL, 2002 and recorded on the records of the Missoula County Clerk and Recorder in Book 680, Micro Records at Page 1357, all of which limit and restrict the rights of the Owners of Lots within CANYON CREEK VILLAGE, now and into the future. The limitations and restrictions set out in these documents should be reviewed carefully prior to purchase by all prospective purchasers of Lots. Prospective purchasers and Owners are advised that the operations at the airport may change and/or expand in the future, thereby changing and/or expanding the impacts felt on the Real Property. Prospective purchasers and Owners are advised and should consider before purchasing a Lot that noise, vibration, dust, fumes, smoke, vapor and other effects from aircraft may occur, which may cause inconvenience or annoyance that may vary from Lot to Lot and that may affect people in different ways or extent. Federal funding for soundproofing, other mitigation of these impacts, or for acquisition of these properties is not available at present, nor in the future. This paragraph may not be revised without the written consent of the Missoula County Airport Authority, which consent shall not be unreasonably withheld.

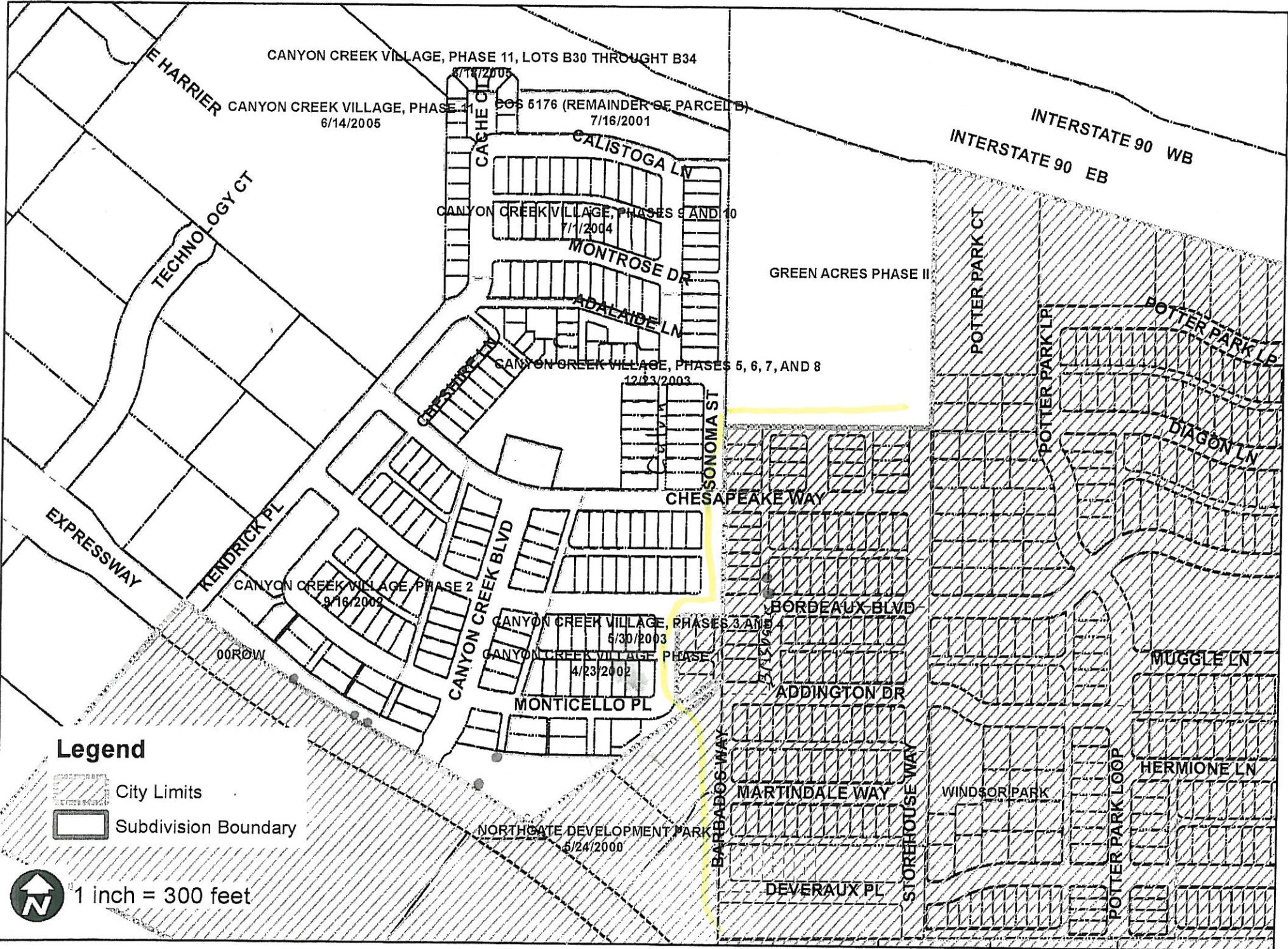
Disclosure language for Canyon Creek Village plat map:

Lots within this subdivision are located within the Missoula County Airport Influence Area, are subject to the provisions of the Missoula County resolutions that created the Influence Area, and are subject to the terms, conditions and restrictions of an Avigation Easement in favor of the Missoula County Airport Authority. Buyers of property within this subdivision should carefully review these documents prior to purchasing the property.



After recording, please return to Grantee Missoula County Airport Authority at the above address. Thank you.




ATTENTION: This is not a survey product. It is a reference publication. It is merely a transcription of public record data and some observed data without modification except for graphical purposes. It does not represent the authoritative location for boundaries, the location of fixed works, or topography or any other features contained within.



Legend

-  City Limits
-  Subdivision Boundary

 1 inch = 300 feet