

DECLARATION OF CONDOMINIUM OWNERSHIP FOR THE PONDEROSA TOWNHOMES

The undersigned, DESIGN BUILDERS, INC., the record title holder of the land and buildings hereinafter called "Grantor", in order to subdivide said property into separate units, pursuant to Chapter 23 of Title 70 of the Montana Code Annotated, hereby establishes and declares on behalf of itself, its successors and assigns, to its Grantees and their respective heirs, successors and assigns, that the property hereinafter described from and after the date of the recording of this Declaration in the Office of the Clerk and Recorder of Yellowstone County, Montana, shall be and continue subject to each and all of its terms hereof until this Declaration is terminated or abandoned as hereinafter provided.

1. **DEFINITIONS.** Unless the context expressly provides otherwise, the following definitions shall pertain throughout this Declaration and in the interpretation thereof:

- (a) *Association* means all of the Unit Owners acting as a group, and in accordance with duly adopted bylaws and this Declaration.
- (b) *Board or Board of Directors* means the Board of Directors of the Association as more particularly defined in the bylaws.
- (c) *Common Expenses* means expenses of administration, maintenance, repair or replacement of Common Elements, expenses agreed upon by the Association of all Unit Owners, and expenses declared common by §§ 70-23-610 and 70-23-612, MCA.
- (d) *Common Elements* means the land specifically described in paragraph 2, except those portions thereof included in the Units; installations of central services such as power, light, gas, hot and cold water and waste disposal; parking spaces and in general apparatus and installations existing for common use and all other elements of the project necessary or convenient to its existence, maintenance and safety, or normally in common use.
- (e) *Developer* is DESIGN BUILDERS, INC.
- (f) *Property* means all the land, buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto which are hereby submitted to the Montana Unit Ownership Act.
- (g) *Unit* means a separate town home as described in paragraph 4 of this Declaration.
- (h) *Owner* means the person, partnership or corporation (including the Grantor) owning a Unit in fee simple absolute or in any real estate tenancy recognized under the laws of Montana, including a contract purchaser if a notice of Purchaser's Interest is recorded with the Yellowstone County Clerk and Recorder.

2. **SUBMISSION TO UNIT OWNERSHIP.** The purpose of this Declaration is to submit the real property herein described and the improvements constructed thereon to the town home form of ownership and use provided by Chapter 23, Title 70, Montana Code Annotated, hereinafter referred to as the "Montana Unit Ownership Act". The definition of terms in this Declaration and the By-Laws of the Association shall be those definitions used in the Montana Unit Ownership Act, except as otherwise provided above. The real property included within the project, which shall be named THE PONDEROSA TOWNHOMES, is located in Yellowstone County, Montana, is owned in fee simple by DESIGN BUILDERS, INC., and is more particularly described as follows:

Lots 1 through 13, Block 17, Olympic Park Subdivision, located in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. _____.

The provisions of this Declaration and the By-Laws of The Ponderosa Townhomes shall be covenants running with the land and shall be binding on all owners, their tenants and guests, for so long as the real property described herein is subject to the provisions of the Montana Unit Ownership Act.

3. **DESCRIPTION OF PROPERTY.** THE PONDEROSA TOWNHOMES may include up to 14 buildings, containing up to 61 total Units. Each building shall be of wood frame construction with masonry siding, concrete foundation, and fiberglass shingle roof. Interior walls are of sheetrock. There will be several primary floor plans used. Those floor plans are shown on attached Exhibit "A", and by this reference are included herein. All Units may be up to two stories and may include basements. Units may also include either attached or detached single or double garages. The dimensions of each Unit and the approximate square footage of each Unit are indicated on Exhibit "A".

4. **DESCRIPTION OF UNIT.** Each Unit and the appurtenant undivided interest in the Common Elements shall together comprise one Unit, shall be inseparable, and may be conveyed, leased, devised or encumbered only as a Unit. Each Unit is equipped with and includes all fixtures which are located within or attached to the fixtures which are located within or attached to the interior walls of the Unit.

Horizontally each Unit consists of the areas bounded by the exterior surfaces of the building and the center of the Common Wall between the two Units. Vertically each Unit consists of the airspace above roof over it and fee simple ownership of the land underlying the concrete floor under it, all as shown on Exhibit "A".

Each Unit shall also include each of the following as an inseparable appurtenance thereto, whether or not separately described, conveyed or encumbered:

- (a) An undivided share of the Common Elements as set forth in paragraph 6 of this Declaration.
- (b) Association membership and an undivided interest in the funds and assets held by the Association for the benefit of the Unit Owners.
- (c) The following perpetual easements for the benefit of the Unit:
 - i) Easement through the Common Elements for ingress and egress for all persons making use of such Common Elements in accordance with the terms of this Declaration.
 - ii) Easement through the Units and Common Elements for maintenance, repair and replacement of the Units and Common Elements. Use of these easements, however, for access to the Units shall be limited to reasonable hours, except that access may be had at any time in emergency.
 - iii) Every portion of a Unit which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of the Common Elements.
 - iv) Easement through the Units and Common Elements for all facilities for the furnishing of utility services within the building, which facilities shall include but not be limited to conduits, ducts, plumbing, meters, and wiring provided that the easements for such facilities through a Unit shall be only substantially in accordance with the plans of the building.
 - v) Easement for encroachments (and maintenance thereof) of any portion of the Common Elements upon a Unit or Units so long as they stand; and easements for encroachments (and maintenance thereof) of any portion of a Unit upon the Common Elements, or upon an adjoining Unit or Units so long as they stand.

Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements, or on the Units for purposes of marketability of title.

5. **PLAN OF DEVELOPMENT.** The project shall be developed in phases. In no event shall the project have more than 61 Units when all phases are completed. Exhibit "B", attached hereto, is a site map showing all buildings and improvements which Developer, or its successors or assigns, may construct on the Property, subject to the right of Developer, in its sole discretion, to change the design and location of the Units to meet the requirements of the sales market and showing the boundaries of each phase. Developer may proceed with such construction, without consent of the Association or the Unit Owners, subject to the following conditions:

- (a) The buildings in each phase shall be annexed to and included as part of The Ponderosa Townhomes project at the time of first occupancy of such building.
- (b) Prior to conveyance of any Unit, Developer shall record an amendment to this Declaration with the Yellowstone County Clerk and Recorder. The amendment shall include a floor plan and elevation for the new Unit, and a site plan showing the location of the new Unit. Owners of each newly-completed Unit will not have authority to vote and will not be obligated to pay common expenses until such time each such newly-completed Unit first is occupied.
- (c) Upon completion of all Units, or termination of the project, Developer shall record an amendment to this Declaration, setting forth a reallocation of the percentage of undivided interest of each Unit in the Common Elements. The interest of each Unit shall be equal to the area of floor space of each Unit, as determined by the final recorded floor plan for that Unit, divided by the total area of floor space of all Units.
- (d) New Units shall be similar in materials, size and style to the existing Units. However, Developer reserves the right to modify the design and mixture of floor plans to meet market requirements.

From and after the recording date of each of the above-described amendments, the following consequences shall ensue:

- (e) The Owners of annexed Units shall have non-exclusive rights to use Common Areas to the same extent as the Owners of all other completed Units.

(f) The Owners of each annexed Unit shall be assessed and shall be entitled to vote in accordance with their ownership interest in the Common Elements. However, no new Unit shall be assessed for, nor shall it have any obligation for debts, deficits or obligations in existence at the effective date of the Unit's annexation.

(g) For purposes hereof, each Unit, after annexation, shall be treated as a part of the project, developed as a whole from the beginning, except to the extent expressly otherwise provided in this Declaration. It is the purpose hereof to provide that from and after the date of the amendment, the increments annexed shall be treated as though they had been developed, held, occupied and used by the Owners thereof as part of a single, undivided project.

To facilitate construction of all phases and completion of the project, Developer hereby:

(h) Reserves an easement over and upon Common Elements and land appurtenant to completed phases for the purpose of access for constructing additional phases.

(i) Reserves solely to Developer the right to grant utility easements reasonably necessary to the ongoing development of the project, without approval of any Unit Owner.

(j) Reserves the right to amend this Declaration, without approval of any Unit Owner, to create additional Limited Common Elements, to provide that additional phases have been terminated and will not be constructed, to change the location on the real property of one or more buildings to add a more complete description of Units to record additional plats and plans to supplement or modify those included herein, and to amend the percentage of interest in Common Elements attached to each Unit, in accordance with the provisions of this Declaration. Each Unit Owner, and each holder of a mortgage or trust indenture on the Unit, hereby grants unto Design Builders, Inc., its successors and assigns, a limited power of attorney to amend this Declaration in accordance with this plan of development. Recordation of amendments modifying the percentage of interest in Common Elements attached to each Unit shall be deemed a conveyance, transferring title in the Common Elements in accordance with the amendment.

(k) Reserves the right to use water and power provided to the above-described property or any Unit for construction purposes, provided that Developer shall reimburse the Association for the reasonable cost of such water and power.

Developer may terminate its right to build these Units and its obligation to pay taxes on such land at any time by recording a Notice of Termination with the Yellowstone County Clerk and Recorder. Such termination shall relieve Developer of its obligation to pay taxes on land on which Units could have been built. Such land shall become a General Common Element of the project.

Any liens arising as a result of Developer's ownership of and construction of Phases 1, 2 or 3 shall not attach to the interests of existing Unit Owners or those of first mortgagors of existing Units.

6. **GENERAL COMMON ELEMENTS.** The General Common Elements are the land specifically described in paragraph 2; all landscaping, plants and materials installed on the Property; the structural portions of the buildings containing Units and all other elements necessary for the safety, maintenance and existence of the Units.

7. **LIMITED COMMON ELEMENTS.** The Limited Common Elements are as follows:

(a) All walkways, utility lines and pipes, patios, entry courts, drive-ways and entrances to and exits from a building, which serve, abut and are used in connection with only one Unit, are reserved for the exclusive use of the Owner of that Unit.

(b) Any areas which shall be fenced or otherwise enclosed and landscaped and which serve, abut and are used in connection with only one Unit, shall thereafter be reserved for the exclusive use of the Owner of that Unit. Owners may, at their own expense, fence or landscape their patio, up to a maximum of three feet beyond the edge of the patio provided that the fence or landscaping is approved by the Association's Architectural Review Committee; and may plant any area surrounding the Unit which is designed by Developer, at the time of construction, as an optional planting area. Owners of Units adjoining the park area South of the Units may fence or landscape their patios as far South as the park boundary. Any area so fenced or landscaped shall thereafter be Limited Common Area and shall be maintained by the Owner in an attractive manner.

8. **USE.** The use for which each Unit is intended is that of a residential single family dwelling. However, Developer reserves the right to maintain a construction office and a sales office in one or more Units until such time as all Units have been sold. The Units and Common Elements shall be occupied and use in accordance with the following:

(a) No part of the Property shall be used for other than as a residential single family dwelling; except Developer reserves the right to maintain construction and sales offices in one or more Units until such time as all Units have been sold.

- (b) There shall be no obstruction of the General Common Elements nor shall anything be stored in or on the General Common Elements without prior consent of the Association. Each Owner shall be obligated to maintain and keep in good order and repair his own Unit.
- (c) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance of the buildings, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law. No waste will be permitted in the Common Elements.
- (d) In addition to at least one garage parking space, each Unit shall include one assigned uncovered parking space. No Owner shall permit any vehicle belonging to an occupant or visitor of the Owner's Unit to be parked in a parking space assigned to a Unit not belonging to that Owner.
- (e) No more than two pets, having combined weight of not more than sixty pounds, shall be maintained in any Unit. Pets shall not be allowed to run free in the common elements.
- (f) No nuisances shall be allowed upon the Property nor shall any use or practice be allowed which is a source of annoyance to Unit occupants or which interfere with the peaceful possession and proper use of the Property by its occupants. No immoral, improper, offensive or unlawful use shall be made of the Property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.
- (g) Nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Association.
- (h) Nothing shall be done in any Unit or in, on, or to the Common Elements which will impair the structural integrity of the buildings or which would structurally change the buildings except as is otherwise provided herein.
- (i) The Association shall be responsible for exterior maintenance and decoration of all General Common Elements. No exterior maintenance, decoration or landscaping shall be performed by Unit Owners except by previous authorization of the Board of the Association in writing specifically stating the scope of authority granted.
- (j) Any question arising under these restrictions as to the effect or scope of provisions contained herein may be referred to the Board of the Association. In addition, the Board may grant variances from the strict provisions and effect of these restrictions and covenants provided that any variance granted shall be granted only upon the unanimous written decision of the Board. All determinations as to the construction and interpretation of provisions included herein made by the Board shall require a written determination concurred in by a majority of the Board. Such determinations shall be final.

9. **SERVICE OF PROCESS.** The person designated to receive service of process in cases provided in § 70-23-901, MCA, is Jim Boyer, 1250 15th Street West, Billings, Montana 59106. This paragraph may be amended by a resolution approved by a majority of the Owners and filed with the Yellowstone County Clerk and Recorder in the manner provided by § 70-23-902, MCA.

10. **ADMINISTRATION.** The administration of The Ponderosa Townhomes, consisting as aforesaid of the land and buildings described in paragraphs 2 and 3 of this Declaration, shall be in accordance with the provisions of this Declaration and with the provisions of the bylaws. Grantor shall be required to transfer control of the Association to the Unit Owners, no later than the earlier of the following events:

- (a) 30 days after 75% of the Unit estates in the project have been conveyed to Unit estate purchasers; or
- (b) Five years following conveyance of the first Unit.

"Control" shall mean the right of the Grantor to control the Association, the Association Board, project, or the Unit Owners in any manner except through votes allocated to Units owned by the Grantor on the same basis as votes pertaining to the Unit sold, but does not include rights retained under other provisions of this declaration as more specifically provided in paragraph 8 of this Declaration.

The obligation of each Unit Owner, including the Grantor, to pay the percentage of Common Expenses assessed by the Association shall commence upon the conveyance of the first Unit.

11. **REVOCATION.** This Declaration, except paragraph 8, shall not be revoked nor any of the provisions herein amended, unless all of the Owners and their mortgagees and beneficiaries under trust indentures covering the Units unanimously agree to such revocation or amendment by duly recorded instruments.

12. ASSESSMENTS. The Association of Unit Owners provided by the bylaws shall levy assessments upon Unit Owners for the purposes and in the manner provided in the bylaws of the Association. No Owner of a Unit may exempt himself from liability for such assessments for payment of Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit. Assessments shall in all cases be due on the first day of each month. All sums assessed to any Unit by the Association but unpaid within 10 days of the due date shall be levied a late payment penalty of \$20.00, and shall bear interest at the maximum legal rate of interest. The amount assessed but unpaid and the accumulated interest shall constitute a lien on such Unit prior to all other liens except only:

- (a) Tax liens on the Unit in favor of any assessing Unit or special improvement district; and
- (b) All sums unpaid on the first mortgage or trust indenture of record.

Such lien may be foreclosed by suit by the manager or Board of Directors of the Association, acting on behalf of the Owners of the Units, in like manner as a mortgage of real property. In any such foreclosure the Unit Owner shall be required to pay a reasonable rental for the Unit during the pendency of the foreclosing action, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The manager or Board of Directors acting on behalf of the owners of the Units shall have the power to bid on the Unit at foreclosure sale, and to acquire and hold, lease, rent, mortgage and convey the same. Suit to recover a money judgment for unpaid Common Expenses shall also be maintainable without foreclosing or waiving the lien securing the same. In addition, when any assessment by the Association has not been paid within 30 days after the due date, the Association is authorized to disconnect or discontinue service to the Unit Owner of any utility, including water, which is on a common meter for the Association and for which the Association pays the charges from the annual assessments, provided, however, that before disconnecting any such service the Association shall first give three (3) days notice by certified mail addressed to such Owner at his last known address of its intention to take such action.

13. INSURANCE.

(a) Comprehensive general liability and property damage insurance shall be purchased by the Board of Directors as promptly as possible following its election. Prior to the organizational meeting, such insurance shall be procured by Grantor. Liability insurance coverage shall be for at least \$1,000,000 for bodily injury, including death and property damage arising out of a single occurrence. The premiums thereon to be paid out of a separate escrow account of the Association for the payment of insurance premiums as such premiums become due. The insurance shall be carried with reputable companies authorized to do business in the State of Montana in such amounts as the Board may determine. The policy or policies shall name as insured all the Owners and the Association of The Ponderosa Townhomes for the use and benefit of the Owners. The policy or policies shall insure against loss arising from perils in both the Common Elements and the Units and shall include contractual liability coverage to protect against such liabilities as may arise under the contractual exposures of the Association, and/or the Board.

(b) Fire and other hazard insurance shall be purchased by the Board of Directors as promptly as possible following its election and shall thereafter be maintained in force at all times, the premiums thereon to be paid as Common Expenses. Prior to the organizational meeting such insurance shall be procured by Grantor. Such property insurance shall cover all Common Elements and be in an amount equal to 100% of current replacement costs of the Condominium exclusive of land, foundation, excavation and other items normally excluded from coverage. Policies shall provide for the issuance of certificates of such endorsement evidencing the insurance as may be required by the respective mortgages. The policy or policies shall insure against loss from perils thereon covered to all of the improvements in the project, except such as may be separately insured. Such policy or policies shall contain extended coverage, vandalism, and malicious mischief endorsements. The improvements to be insured under this clause shall be continually insured to value, and the policy or policies shall contain replacement cost insurance. If reasonably available, the policy or policies shall contain a stipulated amount clause, or determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild. The policy or policies shall name as insured all of the Owners and the Association. The policy or policies shall also cover personal property owned in common, and shall further contain waiver of subrogation rights by the carrier as to negligent Owners. Any casualty insurance policy obtained by the Association shall contain a provision prohibiting a reduction in the amount payable under such policy as a result of any casualty insurance proceeds payable to an Owner under a separate policy procured by the Owner.

(c) An Owner may carry such personal insurance, in addition to that herein covered, as he may desire. All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to individual Owners.

(d) The Board may purchase and maintain in force, as a Common Expense, debris removal insurance, directors' liability insurance, fidelity bonds, and other insurance and/or bonds that it deems necessary. The Board shall purchase and maintain workmen's compensation insurance to the extent that the same shall be required by law respecting employees of the Association.

(e) The Board is hereby appointed the attorney in fact for all Owners to negotiate loss adjustments on the policy or policies carried under subparagraphs (a), (b) and (d) above.

(f) In the event of damage or destruction by fire or other casualty affecting a Unit or Units, and/or if any portion of the Common Elements is damaged or destroyed by fire or other casualty, all insurance proceeds of insurance policies purchased by the Association which are paid in satisfaction of claims for said loss or losses shall be segregated according to losses suffered by each Unit or Units and/or the Common Elements and shall be paid to the Association, as trustee for the Owner or Owners and for the encumbrancer or encumbrancers, as their interest may appear. Said insurance proceeds, whether or not subject to liens of mortgages and the proceeds of any special assessments for reconstruction or repair of the damaged or destroyed Units and Common Elements as hereinafter provided, shall be collected and disbursed by the Association through a separate trust account on the following terms and conditions:

- (1) Except in the case of substantial damage to a majority of the Units or the destruction of a majority of the Units subject to this Declaration, all damaged or destroyed Common Elements and Units shall be repaired or rebuilt, and the Board shall immediately contract to repair or rebuild the damaged portions of the Unit or Units and the Common Elements substantially in accordance with the original plans and specifications thereof.
- (2) In the event of substantial damage to a majority of the Units, or the destruction of a majority of the Units, if the cost of repair or rebuilding the damaged or destroyed portion of the Common Elements and Units exceeds the amount of available insurance proceeds for said loss by more than 10% of the replacement cost, the Owners of the individual Units, by vote of not less than a majority of those present and entitled to vote, in person or by proxy, at a duly constituted Owners' meeting held within 60 days from the date of such damage or destruction, shall determine whether the Board shall be authorized to proceed with the repair or reconstruction, or whether said Project shall be sold.
- In the event of a determination to rebuild or repair, the Board shall have prepared the necessary plans, specifications, and maps, and shall execute the necessary documents to effect such reconstruction or repair as promptly as practicable and in a lawful and workmanlike manner.
- In the event of a determination not to rebuild, the Project shall be considered removed from the Unit Ownership Act as provided in § 70-23-203, MCA, and the Board shall offer the Property for sale forthwith at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. The net proceeds of such sale, and the proceeds, if any, of insurance carried by the Association, and/or by the Owners as a whole on the project, including coverage on the Units and the Common Elements, shall be distributed to the Owners in the proportions set out in paragraph 5 of this Declaration. The balance then due on any individual encumbrance executed in good faith and for value shall be first paid before the distribution of any proceeds to the Owner whose Unit is so encumbered.
- (3) In the event that Common Elements or Unit or Units are repaired or reconstructed pursuant to the provisions of subparagraphs (1) or (2) of this subparagraph (f) and there is a deficiency between the insurance proceeds paid for the damage to the Common Elements or Unit or Units and the contract price for repairing or rebuilding the General Common Elements, Limited Common Elements, or Unit or Units, the Board shall levy a special assessment to make up such deficiency. Deficiencies for the repair and replacement of Common Elements or Unit or Units shall be levied against all Owners. All such assessments shall be in the proportion to the Owner's percentage of ownership of Common Elements as set forth in paragraph 5. If any Owner shall fail to pay said special assessments within 30 days after the levy thereof, the Board shall make up the deficiency by paying from the fund for Common Expenses and the remaining Owners shall be entitled to the same remedies as those provided in paragraph 12 of this Declaration, covering a default of any Owner in the payment of assessments for Common Expenses.
- (4) In the event the estimated cost of repair or reconstruction exceeds the total of the annual assessments for Common Expenses made during the year in which the casualty occurred, whether or not all or any part of said cost is covered by the insurance proceeds, or upon request of a mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction funds, the monies deposited in the special trust account hereinabove referred to shall be disbursed for the purpose of said repair or reconstruction on the following terms and conditions:
- i) The Board shall obtain the consent and agreement of any one of the then institutional encumbrances, of record to supervise the progress of repair or reconstruction work and the disbursement of funds in connection therewith, jointly with the manager, agent or Board.
 - ii) The trust funds shall be deposited in an account mutually agreed upon by the Board and said institutional encumbrances.
 - iii) No disbursement for said work shall be made without the prior approval of said institutional encumbrances.
 - iv) It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds and if there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund was established, such balance shall be distributed jointly to the Unit Owners and their mortgagees who are the beneficial owners of the fund.
- (5) In the event of a dispute among the Owners and/or mortgagees respecting the provision of this subparagraph (f), any such party may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, the party requesting the arbitration will give immediate notice thereof to the Board, which shall notify all other Owners and mortgagees as promptly as possible after the reference to arbitration is made, giving all such parties an opportunity to appear at such

arbitration proceedings. The decision of the arbitrator in this matter shall be final and conclusive upon all of the parties. The arbitrator may include in his determination an award for costs and/or attorney fees against any one or more parties to the arbitration.

(g) The Board is authorized to provide coverage for payment of maintenance charges which are stated hereunder in behalf of an Owner whose Unit is rendered uninhabitable by a peril insured against. Maximum period of abatement may not exceed four months.

(h) Insurance coverage will be analyzed by the Board, or its representatives, at least every five years from the date hereof and the insurance program revised accordingly.

14. **CONDEMNATION.** The Association shall represent the Unit Owners in the condemnation proceedings or in negotiations, settlement and agreements with the condemning authority for acquisition of the Common Elements, or part thereof, by the condemning authority. Each Unit Owner appoints the Owners Association as attorney-in-fact for such purpose.

In the event of a taking or acquisition of part or all of the Common Elements by a condemning authority, the award or proceeds of settlement shall be payable to the Owners Association, or any trustee, to be held in trust for Unit Owners and their mortgage holders as their interests may appear.

15. **RESTORATION/REPAIR.** Any restoration or repair of The Ponderosa Townhomes after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by such eligible holders are allocated, is obtained.

16. **DEFAULT.** Each Unit Owner, his successors and assigns, shall be governed by and shall comply with the terms of this Declaration as adopted under Chapter 23 of Title 70 of the Montana Code Annotated and bylaws and regulations adopted pursuant thereto, and such amendments to the Declaration, bylaws and regulations as may be lawfully adopted from time to time. A default shall entitle the Association or other Unit Owners to the following relief:

(a) Failure to comply with any of the terms of the Declaration, bylaws or regulations adopted pursuant thereto, shall be ground for relief which may include, without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association or if appropriate, by an aggrieved Unit Owner.

(b) All Unit Owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association; provided that nothing herein contained shall be construed to modify any waiver by insurance companies of rights of subrogation.

(c) In any proceeding arising because of an alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney fees as may be determined by the Court.

17. **NOTICE.** A holder, insurer or guarantor of a first mortgage, upon written request to the Association, (such request to state the name and address of such holder, insurer or guarantor and the Unit number), will be entitled to timely written notice of:

- (1) Any proposed amendment of the Condominium instruments effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interests in the Common Elements appertaining to any Unit or the liability for Common Expenses appertaining thereto, (iii) the number of votes in the Owners Association appertaining to any Unit or (iv) the purposes to which any Unit or the Common Elements are restricted;
- (2) Any proposed termination of the Condominium regime;
- (3) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or which affects any Unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;
- (4) Any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days;
- (5) Any lapse, cancellation or material modification of any insurance policy maintained by the Owners Association pursuant to paragraph 14;
- (6) Any proposed amendment which would require the consent of mortgage holders.

18. **WAIVER.** The failure of the Association or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Declaration or bylaws shall not constitute a waiver of the right of the Association or Unit Owner to enforce such right, provisions, covenant or condition in the future.

19. **ELECTION OF REMEDIES.** All rights, remedies and privileges granted to the Association or a Unit Owner pursuant to any terms, provisions, covenants or conditions of the Declaration or bylaws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party from exercising the same from exercising such other and special rights, remedies or privileges as may be granted to such party by the Declaration, bylaws or law or in equity.

20. **OPEN RECORDS.** The Association shall make available to all Unit Owners, lenders and the holders and insurers of the first mortgage on any Unit, current copies of the Declaration, bylaws and other rules governing the Condominium, and other books, records, and financial statements of the Owners Association. The Association shall also make available to prospective purchasers current copies of the Declaration, bylaws and other rules governing the Condominium, and the most recent audited financial statement of the Association, if such is prepared. "Available" shall mean available for inspection upon request, during normal business hours or under other reasonable circumstances.

Upon written request from any holder, insurer, or guarantor of a first mortgage, or 51% of the Owners which have an interest or prospective interest in the Condominium, the Association shall be required to prepare and furnish within a reasonable time an audited financial statement of the Owners Association for the immediately preceding fiscal year.

21. **PERSONS BOUND.** All provision of this Declaration and of the bylaws validly adopted pursuant hereto, shall be construed to be covenants running with the land and with every part thereof and interest therein including, but not limited to, every Condominium Unit and every Unit Owner and claimant of the Property or any part thereof or interest therein, and his heirs, executors, administrators, successors and assigns shall be bound by all the provisions of this Declaration and bylaws.

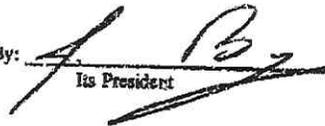
22. **TERMINATION.** This Declaration of Condominium ownership shall be terminated, if at all, in the manner provided in §§ 70-23-801, et seq., Montana Code Annotated.

23. **WARRANTIES/REPRESENTATIONS.** Grantor specifically disclaims any intent to have made any warranty or representation in connection with the Property, the Declaration or the bylaws except as specifically set forth therein and no person shall rely upon any warranty or representation not so specifically made therein. Estimates of Common Expenses are deemed accurate, but no warranty or guaranty is made nor intended, nor may one be relief upon.

24. **ENFORCEABILITY.** If any term, covenant, provision, phrase or other element of this Declaration is held to be invalid or unenforceable for any reason whatsoever, such holding shall not be deemed to affect, alter, modify or impair in any manner whatsoever any other term, provision, covenant or element in this Declaration.

IN WITNESS WHEREOF, the Grantor has executed this Declaration this 28 day of December, 1993.

DESIGN BUILDERS, INC.

By: 
Its President

STATE OF MONTANA)

County of Yellowstone)

On this 28 day of December, 1993, before me, the undersigned, a Notary Public for the State of Montana, personally appeared JAMES WILLIAM BOYER, known to me to be the President of DESIGN BUILDERS, INC., the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

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



[Signature]
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission expires 10/15/97

ASSESSOR'S APPROVAL

The undersigned, the duly elected and acting Assessor of Yellowstone County, Montana, hereby approves the Declaration of THE PONDEROSA TOWNHOMES, after having found that the taxes and assessments due and payable for the said THE PONDEROSA TOWNHOMES have been paid.

DATED this 28 day of December, 1993.

YELLOWSTONE COUNTY ASSESSOR

By: [Signature]
Deputy

ASSESSOR'S APPROVAL

The undersigned, the duly elected and acting Assessor of Yellowstone County, Montana, hereby approves the name of THE PONDEROSA TOWNHOMES, after having found that the name, THE PONDEROSA TOWNHOMES, is not the same as, similar to or pronounced the same as a word in the name of any other property or subdivision in Yellowstone County, Montana, and therefore complies with § 70-23-303, MCA.

DATED this 28 day of December, 1993.

YELLOWSTONE COUNTY ASSESSOR

By: [Signature]
Deputy

CERTIFICATE

STATE OF MONTANA)
) ss.
County of Yellowstone)

JOHN S. STEWART, being first duly sworn, certifies and verifies that he is a professional engineer; that he reviewed the attached floor and plat plans for Units 1-12, 14 & 16, of PONDEROSA TOWNHOMES, a condominium located on the following described real property:

Lots 1 through 13, inclusive, Block 17, Olympic Park Subdivision, Yellowstone County, Montana, according to the official plat thereof on file in the office of the Clerk and Recorder of said County; Document No. 1596146.

Construction of Units 1-12, 14 & 16 of PONDEROSA TOWNHOMES was completed on December 15, 1993, and said plans fully and accurately depict the layout of Units 1-12, 14 & 16 of PONDEROSA TOWNHOMES.

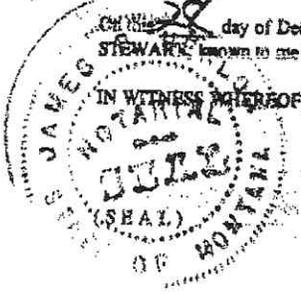
DATED this 28th day of December, 1993.

[Signature]
JOHN S. STEWART, P.E.
Montana Registration No. 4730E

STATE OF MONTANA)
) ss.
County of Yellowstone)

On this 28th day of December, 1993, before me, the undersigned, a Notary Public for the State of Montana, personally appeared JOHN S. STEWART, known to me to be the person who executed the within instrument, and acknowledged to me that he executed the same.

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



[Signature]
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission expires 10/15/97

CERTIFICATE

STATE OF MONTANA)
) ss.
County of Yellowstone)

The undersigned, being first duly sworn, certifies:

- 1. I am a registered professional engineer.
- 2. I have reviewed the attached floor plans; they are an accurate copy of the plans approved by the City of Billings and Yellowstone County offices having jurisdiction to issue building permits for the PONDEROSA TOWNHOMES.

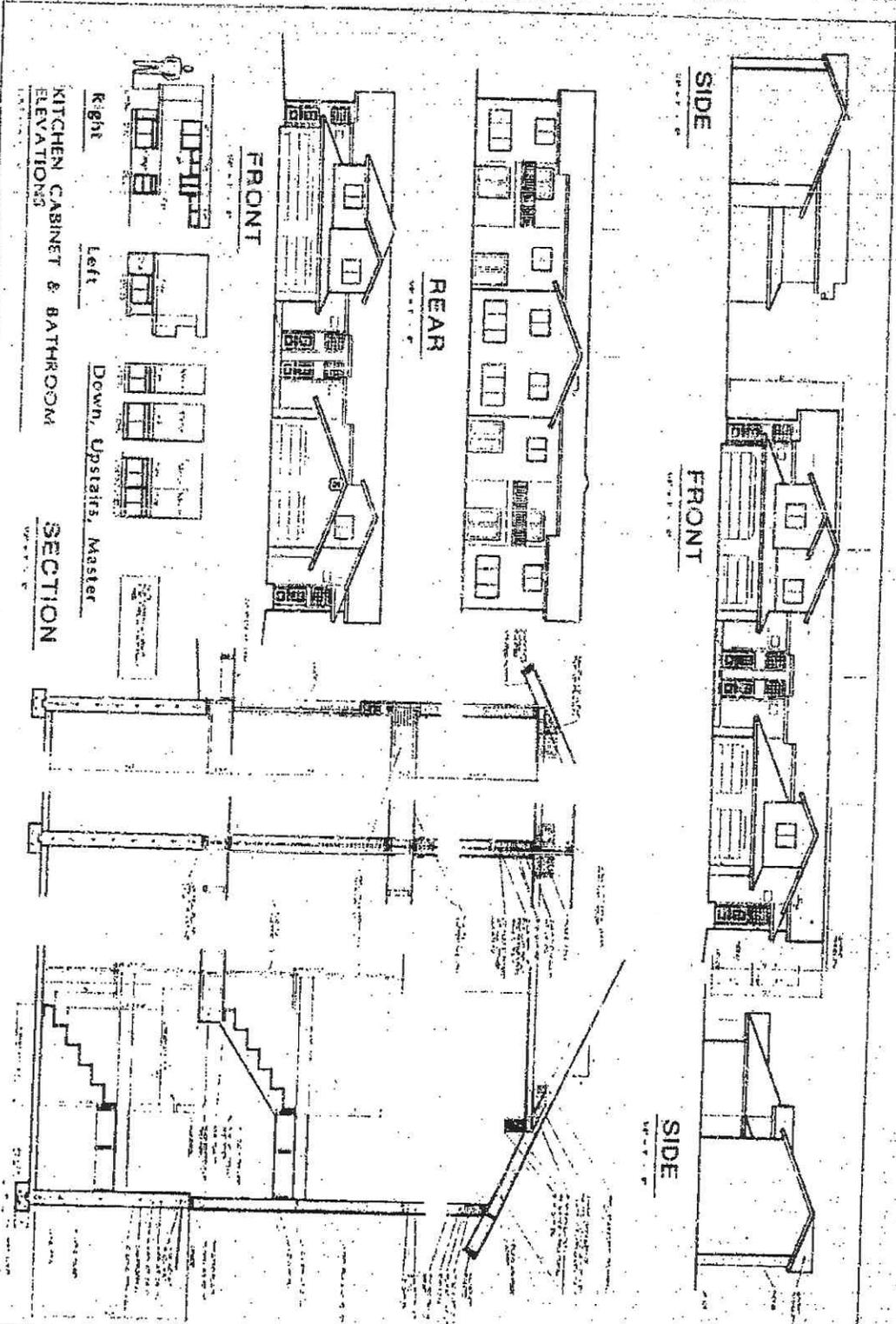
Dated this 28th day of December, 1993.

[Signature]
JOHN S. STEWART, P.E.
Montana Registration No. 4730E

SUBSCRIBED and SWORN to before me, a Notary Public in and for the State of Montana, this 28th day of December, 1993.



[Signature]
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission expires 10/15/97



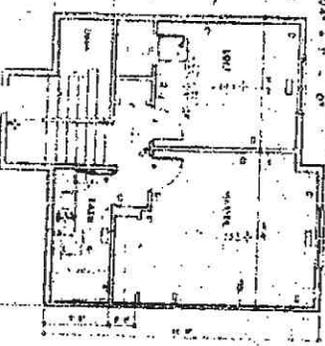
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DESIGN BUILDERS, INC.
HOUSING PROJECT
Billings, Montana

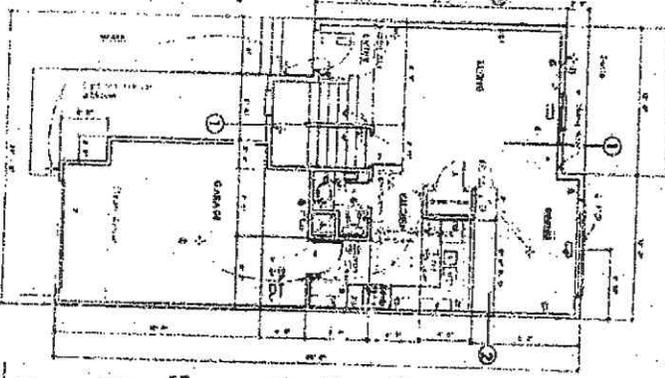
NO.	DESCRIPTION	QTY.	UNIT	AMOUNT	TOTAL
1	FOUNDATION	1	SQ. FT.	100	100
2	FLOORING	1	SQ. FT.	200	200
3	CEILING	1	SQ. FT.	200	200
4	WALLS	1	SQ. FT.	300	300
5	ROOFING	1	SQ. FT.	100	100
6	MECHANICAL	1	HR.	50	50
7	ELECTRICAL	1	HR.	50	50
8	PLUMBING	1	HR.	50	50
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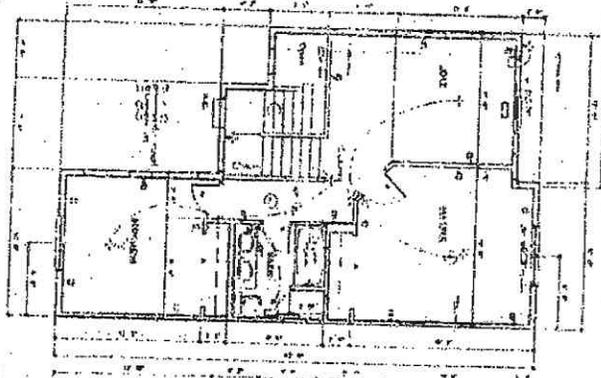
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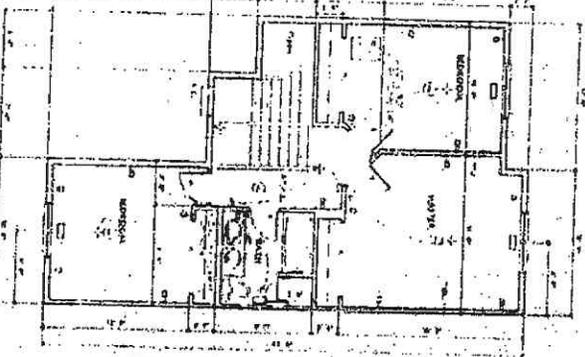
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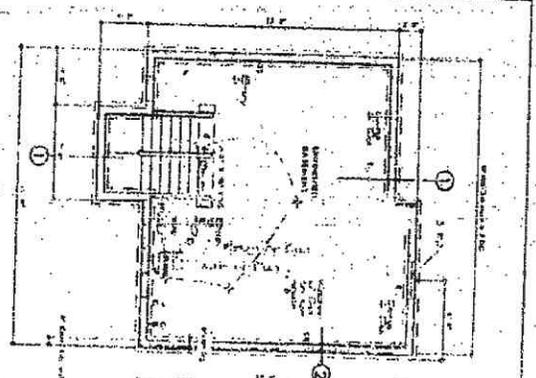
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EASEMENT



MYHRE
 ARCHITECTS
 1000 N. 10TH ST.
 BILLINGS, MONTANA 59101

DESIGN BUILDERS, INC.
 HOUSING PROJECT
 Billings, Montana

**BY-LAWS
OF
THE PONDEROSA TOWNHOMES**

ARTICLE I

Section 1. The provisions of these bylaws are applicable to a condominium located on Lot 1, known as THE PONDEROSA TOWNHOMES, pursuant to the Declaration of Town Homes Ownership dated December 22, 1993, to which a copy of these bylaws is attached, in accordance with the provisions of the Montana Unit Ownership Act, (Title 76, Chapter 23, MCA.)

Section 2. All present or future Owners, tenants, future tenants or their employees, or any other person who might use the facilities of the Town Homes in any manner, are subject to the regulations set forth in these bylaws. The mere acquisition or rental of any of the Units of the project or the mere act of occupancy of any of said Units will signify that these bylaws are accepted, ratified and will be complied with.

ARTICLE II

Section 1. The "Owner" of a Town Home Unit means the persons owning an undivided interest in both the land, the Unit, and the appurtenant undivided interest in the Common Elements constituting the Town Homes, including the contract purchaser if a notice of purchaser's interest is recorded with the Yellowstone County Clerk and Recorder. Each such Owner, by virtue of such ownership, shall be a member of THE PONDEROSA TOWNHOMES Association, hereinafter called the "Association". However, if such ownership of any Unit is vested in more than one person, while each such Owner shall be a member, the co-owners or joint owners shall be deemed to be one Owner for the purpose of voting and shall be entitled to vote only in accordance with the provisions of these bylaws on voting.

Section 2. Each Owner shall be entitled to a voting interest equal to his percentage interest in the Common Elements as set forth in the Declaration. The vote for any Unit owned by more than one person shall be exercised as such co-owners may among themselves determine, but in no event shall the vote with respect to any one Unit exceed the total herein provided.

Section 3. As used in these bylaws, the term "majority of owners" shall mean the Owners holding 51% of the votes assigned as herein provided. Ownership shall be determined according to the records of the Clerk and Recorder of Yellowstone County, Montana; except that a personal representative, guardian, or trustee may vote in person or by proxy with respect to Unit owned or held by him in such capacity, whether or not the same shall have been transferred to his name by a duly recorded conveyance.

Section 4. Except as otherwise provided in these bylaws, the presence in person or by proxy of a "majority of owners" shall constitute a quorum. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum as aforesaid shall be present or represented.

Section 5. At all meetings of Owners, each Owner may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Owner of his Unit. While every proxy shall be revocable, the authority contained therein, unless otherwise limited by its terms, shall be deemed to continue in effect until revoked in writing or until the recording of a conveyance by the Owner of the Unit or the filing of a lease which gives such voting right to the lessee by the lessor of a Unit. Whenever a Unit is owned by two or more persons, the vote therefor may be exercised by any one of such Owners present in the absence of protest by the other or others. If the vote of an Owner or Owners has been pledged by mortgage, trust indenture or agreement of sale of any Unit, and notice of such pledge has been furnished to the Association, only the vote of the pledgee will be recognized upon those matters upon which the Owner's or Owners' vote is so pledged.

ARTICLE III

Section 1. The Association will have the responsibility of administering the operation of THE PONDEROSA TOWNHOMES, approving the annual budget, establishing and collecting annual assessments, payable monthly, and arranging for the management of the project pursuant to an agreement containing provisions relating to the duties, obligations removal and compensation of the management agent. Except as otherwise provided, decisions and resolutions of the Association shall require approval by a majority of Owners.

Section 2. The organizational meeting of the Association shall be held not later than the earlier of the following events:

- (a) 120 days after 75% of the Units in the project have been conveyed to Unit purchasers; or
- (b) Five years following the conveyance of the first Unit.

The term "control" means the right of the Developer to control the Association, the Association Board, the project or the Unit Owners in any manner except through votes allocated to Units it owns on the same basis as votes pertaining to Units which have been sold, but does not include rights retained under other sections of these bylaws and the Declaration.