

DECLARATION OF UNIT OWNERSHIP

FOR

OPTIMIST PARK TOWNHOMES

The undersigned, Arthur Schanz and Rachel Schanz, husband and wife, and Mickey P. McGee and Nadine McGee, husband and wife, who are the owners of the land and buildings hereinafter described, 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 establish and declare on behalf of themselves, their heirs, successors and assigns, to their 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 the 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 known as Optimist Park Homeowners Association and in accordance with duly adopted bylaws of Optimist Park Homeowners Association and this Declaration.
- (b) Board or Board of Directors shall mean the Board of Directors of the Association as more particularly defined in the bylaws.
- (c) Common Elements means both General Common Elements and Limited Common Elements.
- (d) 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 Sections 70-23-610 and 70-23-612 MCA.
- (e) Condominium Unit means the Unit, the appurtenant undivided interest in the Common Elements and the right to use the Limited Common Elements appurtenant to such Unit.
- (f) General Common Elements means the land specifically described in paragraph 2; the foundations, columns, girders, beams, supports, main walls, roofs, entrances and exits of the buildings; private roads; installations of central services such as power, light, gas, hot and cold water and waste disposal; parking spaces not designated for the use of a particular unit; 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.
- (g) Limited Common Elements means those common elements reserved for the use of the owners or occupant a certain unit to the exclusion of owners or occupants of the other unit of Optimist Park Townhomes.

- (h) Property means all the land, buildings, improvements and structures thereon in the Project, and all easements, rights and appurtenances belonging thereto which are hereby submitted to the Montana Unit Ownership Act.
- (i) Project means Optimist Park Townhomes, the entire development of a plan whereby Units located on the real property which is submitted to this Declaration are offered or proposed to be offered for sale.
- (j) Unit shall be the separate condominium units of Optimist Park Townhomes consisting of a part of the property occupying one or more floors with a total of one or more rooms plus garage marked with the same number as the unit intended for any type of independent use and a direct exit to a public street or highway or to a common area or areas leading to a public street or highway. The unit shall be designated by the number of their street address.
- (k) Unit Owner or Owner means the person, partnership or corporation (including the Grantor) owning a Condominium Unit in fee simple absolute or in any real estate tenancy recognized under the laws of Montana.

2. The Property herein subjected to this Declaration is the first increment consisting of the following real property in Yellowstone County, Montana:

Lot 6A, of Amended Subdivision Plat of the West 25 feet of Lot 5 and Lots 6, 7, 8, and 9, Block 2, Hayes Subdivision, according to the plat thereof on file and of record in the offices of the Yellowstone County Clerk and Recorder as Document No. 1250793.

3. The Property subject to this Declaration and to the Montana Unit Ownership Act shall be known as Optimist Park Townhomes. Optimist Park Townhomes shall initially consist of one building containing two units with one basic floor plan which has been built on the property. Schanz has reserved the right to construct a total of four duplex buildings in four additional phases which may be annexed to the project in accordance with the section in this Declaration regarding phased development. The principal construction materials in the building are concrete for the foundations, masonite siding, wood for the framing, structural and finish work, painted sheetrock for walls, and asphalt shingle roofs. Each Unit has its own exit to the yard surrounding the building, and is therefore capable of individual utilization and may be sold to one or more Unit Owners, each Unit Owner obtaining a particular and exclusive property right thereto, and also an undivided interest in the Common Elements hereinafter described. Each Unit is equipped with and includes gas forced air heating, hot water heater, electric range, together with any other fixtures or appliances which are located within or attached to the interior walls of the unit. Each Unit shall be bounded as to both horizontal and vertical boundaries as shown on the floor plans attached hereto, subject to such encroachments as are contained in the building whether the same exist now or are created by construction, settlement or movement of the building or by permissible repairs, reconstruction or alterations. The respective Units shall not be

deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load bearing walls, the floors and ceilings surrounding each Unit or any pipes, wires, conduits or other utility lines running through each Unit which are utilized for or serve more than one Unit, the same being deemed Common Elements as hereinafter provided. Each Unit shall be deemed to include all the walls and partitions which are not load bearing within its perimeter walls, the interior decorated or finished surfaces of all walls, floors, and ceilings, the built-in fixtures including all windows, glass doors and fixtures attached to the building and serving only the single Unit in which they are included. For identification and descriptive purposes the following exhibits are attached and by reference hereto incorporated into and made a part of the Declaration.

EXHIBIT "A" -

Basic Unit floor plans used throughout the Optimist Park Townhomes showing with particularity the area of each, the number of levels or floors for each Unit, and vertical elevations.

EXHIBIT "B" -

A site map of the real property showing the building and other improvements which are to be situated thereon, the Unit designations, and the location and number and types of Units contained in each.

EXHIBIT "C" -

A site map of all buildings and units which Schanz may at their sole option construct upon the real property which is described in paragraph 10.

4. Each Condominium Unit is comprised of the Unit, the appurtenant undivided interest in the Common Elements appurtenant to such Units which shall be inseparable, and may be conveyed, leased, devised or encumbered only as a Condominium Unit. Each Condominium 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 7 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. Each Owner of a Unit shall automatically become a member of the Optimist Park Homeowners Association hereinafter referred to as "Association" and shall remain a member of said Association until such time as his ownership ceases for any reason, at which time his membership shall automatically cease.

5. Each Condominium 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 7 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 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) Easements 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 case of 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) Easements 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) Easements for encroachments (and maintenance thereof) of any portion of the Common Elements or Limited 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 General Common Elements, or Limited 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 purpose of marketability of title.

6. No Owner shall bring any action for partition of the Common Elements, it being agreed that this restriction is necessary to preserve the rights of the Owners with respect to the management of the condominium.

7. Each Condominium Unit owner shall initially have a 50% undivided interest in the Common Elements of Optimist Park Townhomes. Such percentage shall represent his ownership interest in the Common Elements, his liability for Common Expenses, and the factor of his voting interest in all matters within the province of interest of the respective Owners. The percentage of ownership of the general common elements shall be reduced in the event that this Declaration is amended from time to time to provide for additional units in the manner specified in paragraph 10 by dividing the total number of square feet of all units in the Project (excepting the square footage of the garage and basement, if any) by the number of finished square feet in the unit (excepting the garage and basement, if any). Such percentage represents the owner's ownership interest in the General Common Elements, his liability for Common Expenses, and the factor of his voting interest in all matters within the province of interest of the respective owners.

8. The Limited Common Elements of Optimist Park Townhomes are those Common Elements reserved for the use of fewer than all of the residents of Optimist Park Townhomes and specifically, as to any

given unit owner or owners shall include the exclusive use of the concrete drive and walkway marked on the site map, Exhibit "B," with the same number as the owner's unit.

9. The Condominium Units shall be occupied and used as follows:

- (a) No part of the property shall be used for other than residential purposes. Each Unit shall be used as a residence and for no other purpose, except that an Owner may use a portion of his Unit for an office or studio provided that the activities therein shall not interfere with the quiet enjoyment of any other Owner or occupant and provided further that in no event shall any part of the property be used as a school or music studio.
- (b) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance of the building, or contents thereof applicable for residential use, 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.
- (c) No nuisances shall be allowed upon the Property. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.
- (d) No building, fence, wall or other structure or living hedge shall be commenced erected, or maintained upon the properties, nor shall any exterior addition, change or alteration therein be made, nor shall anything be altered or constructed or removed from the common elements except upon the written consent of the Association. Appeal from a denial by the Association of any proposed change or alteration as set out in this sub-part shall be resolved by a vote of all Association members and the majority shall prevail.
- (e) Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity of the building or which would structurally change the building except as is otherwise provided herein.

10. Schanz, their heirs and assigns, reserve the option to construct, at their sole expense, a total of 4 buildings, containing a total of 8 units, and additional common elements, on Lots 7A, 8A and 9A of Amended Subdivision Plat of the West 25 feet of Lot 5, Lots 6, 7, 8, and 9, Block 2, Hayes Subdivision, and Lot 10, Hayes Subdivision, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana.

- (a) Schanz, their heirs and assigns, may proceed with such construction, at its sole option, without the consent of the Association or the unit owners, subject to the following conditions:

- (1) The construction of such additional building or buildings shall be substantially completed and all amendments to this declaration completed no later than seven (7) years after the first lease or conveyance of any unit within the original project.
- (2) The building or buildings so constructed shall be added to and be included within the condominium property and the jurisdiction of the Association at the time of the first occupancy of each such building or buildings.
- (3) Prior to the first lease or conveyance of any unit within said building or buildings, Grantor shall add such units to this Project by recording an amendment to this Declaration with the Yellowstone County Clerk and Recorder. The amendment shall include: (i) basic unit floor plans for all units within the additional building or buildings showing with particularity the area of each, the number of levels or floors for each unit, and vertical elevation; (ii) a site map of the entire condominium project showing the buildings and other improvements situated thereon, the unit designations, and the location and number and types of units contained in each; and (iii) a reallocation of ownership of the undivided interest in the Common Elements described in paragraph 7 based upon a division of the total square footage of all units (less garage and basement) of all units then submitted to this Declaration, including amendments thereto, divided by the square footage of each unit (less garage and basement).
- (4) The building or buildings, and units therein, shall be constructed of similar quality of materials and compatible design to the other units and buildings of Optimist Park Townhomes, however, the Grantor reserves the right to change the design, size and mix of the units in order to meet the requirements of the market.
- (5) The additional units shall benefit by the easements described in paragraph 4.
- (6) Grantor covenants that upon commencement of construction of the additional units, it will complete the units and improvements in a timely manner.
- (7) All taxes, assessments, mechanic's liens, and other charges affecting such building or buildings shall be paid by Grantor prior to the first lease or conveyance of such additional units. Liens arising from the construction of improvements by Grantor must not adversely affect the rights of unit owners or the priority of first mortgages on the units in the existing project.
- (8) Prior to commencing construction, Grantor shall purchase at its own expense, a liability insurance policy in an amount determined by the Administrator of Veterans Affairs, if the Veterans Administration is an insurer, mortgagee, or holder of loan on any

existing units, to cover any liability to which owners of previously sold units might be exposed. The policy shall be endorsed "as owner's interest might appear."

- (9) If the Veterans Administration is an insurer, mortgagee or holder of a loan the written approval of the Veterans Administration shall be obtained prior to the recording of an amendment by which the condominium project is merged or expanded by adding units.
  - (10) Owners (including Grantor) of the units in the additional building or buildings will have the authority to vote and the responsibility for Common Expenses only upon annexation of said building or buildings by recording of an amendment to this Declaration with the Yellowstone County Clerk and Recorder.
- (b) From and after the effective date of the amendment providing for annexation in accordance with the provisions of this paragraph, the following consequences shall ensue:
- (1) The owners of units in the annexed increment shall have nonexclusive rights to use common areas in Optimist Park Townhomes to the same extent as the existing owners of units within the Project.
  - (2) The owners of the units in the annexed increment shall be assessed and shall be entitled to vote in accordance with their ownership interest pursuant to the Declaration on the basis of an estimated cash requirement treating all units as one entire project. Notwithstanding the foregoing, however, no unit owners shall be assessed nor shall they have any obligation with respect to another condominium owner's debts, deficits or obligations in existence at the effective date of the annexation.
  - (3) At the annual meeting of the owners next following the recordation of such amendment and at all subsequent meetings, the Board to be elected shall govern all of the property covered by this Declaration and the amendment providing for annexation. At a special meeting called for the purpose after annexation, the owners may remove the existing board and elect a Board to govern all of the increments until the next annual meeting.
  - (4) For purposes hereof, each of the increments after annexation, shall be treated as a part of a project, developed as a whole from the beginning, except to the extent expressly otherwise provided herein. 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, divided into units, held, occupied and used by the owners thereof as a single, undivided project.

(c) Grantor reserves an irrevocable power of attorney, coupled with an interest, for the purpose of reallocating the percentage interests and voting rights appurtenant to each of the Condominium Units in accordance with the provisions of this Declaration and to execute, acknowledge, and deliver said further instruments as may from time to time be required in order to accomplish the purposes of this paragraph. Each Owner and each mortgagee of a Condominium Unit shall be deemed to have acquiesced in the amendments to this Declaration and in amendments to the condominium plat for the purpose of adding additional Condominium Units and Common Elements to the condominium in the manner set forth in this section. Each Owner and each mortgagee of a Condominium Unit shall have granted unto Roger Schanz, Rachel Schanz, their successor, or any one of them, an irrevocable power of attorney coupled with an interest, to effectuate, execute, acknowledge, and deliver such amendments. Each such Unit Owner and mortgagee shall be deemed to have agreed and covenanted to execute such further instruments if any, as may be required by the Grantor, their successors, or assigns to properly accomplish such amendments.

11. The person designated to receive service of process in cases provided in Section 70-23-901 MCA is Arthur Schanz, 1832 Barrett Road, Billings, Montana 59101. Notwithstanding the provisions in paragraph 16, this paragraph may be amended by a resolution approved by a majority of the Owners and filed with the office of the County Clerk and Recorder of Yellowstone County in the manner provided by §70-23-902, MCA.

12. The administration of the condominium, consisting as aforesaid of the Property 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 which are made a part hereof and are attached hereto as Exhibit "D." Each Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, the By-laws, decisions and resolutions of the Association or its representatives as lawfully amended from time to time, and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

13. The Association, or its duly delegated representative, shall maintain, manage and otherwise be responsible for the Common Elements including, but not limited to the sidewalks, landscaping which is not on Limited Common Elements, utility services and all other real and personal property within the jurisdiction of or owned by the Association. In addition, the Association shall provide exterior maintenance as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements. Such exterior maintenance shall not extend to glass surface and exterior door and window fixtures and other hardware. The Association shall also have the right, but not the obligation, to undertake additional maintenance as the Board may from time to time determine to be in the best interest of the Association and the Owners, and shall also maintain and otherwise manage and be responsible for the rubbish removal in all areas within the properties. The Board shall use a reasonably high standard of care in providing such maintenance, management and repair, so that the Properties will reflect a high pride of ownership. Maintenance and repair of the individual townhouse units shall be the sole obligation and expense of the individual Owners, except to the extent that



exterior maintenance and repair is provided by the Association pursuant to this Article and is not delegated to the owners.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment for that townhouse unit.

14. Each unit owner shall be responsible for the upkeep and maintenance of the exterior and interior of his Unit and for the upkeep of all other areas, features or parts of his Unit and property not otherwise maintained by the Association. All fixtures and equipment within a Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a Unit, shall be maintained and kept in repair by the Owner thereof. The Owner shall also have the responsibility to maintain and repair any appliances, such as air conditioning units, located on the exterior of his unit and shall also be responsible for any modifications to the exterior surface of such unit. An Owner shall not permit any act or work to be performed that will impair the structural soundness or integrity of the Unit or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other units or their Owners.

15. This Declaration shall not be revoked nor any of the provisions herein amended, except as provided in paragraphs 10 and 11, unless all of the Owners and 66 2/3% of the eligible holders of first mortgages covering the Units agree to such revocation or amendment by duly recorded instruments.

16. 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 Condominium 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 Condominium Unit. All sums assessed by the Association but unpaid upon the share of Common Expenses chargeable to any Condominium Unit shall constitute a lien on such Condominium Unit prior to all other liens except only (a) tax liens on the Condominium Unit in favor of any assessing Governmental 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 Condominium Units, in like manner as a mortgage of real property. The manager or Board of Directors acting on behalf of the Owners of the Condominium Units shall have the power to bid on the Condominium 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.

Where the mortgagee of a first mortgage of record or other purchaser of a Condominium Unit obtains title to the Condominium Unit as a result of the foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of Common Expenses or assessments by the Association chargeable to such Condominium Unit which became due prior to the acquisition of title of such Condominium Unit by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be a Common Expense collectible from all of the Condominium Units including such acquirer, his successors or assigns.

In a voluntary conveyance of a Condominium Unit the Grantee of the Condominium Unit shall be jointly and severally liable with the Grantor for all unpaid assessments by the Association against the later for his share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the Grantee's right to recover from the Grantor the amounts paid by the Grantee thereof. However, any such Grantee shall be entitled to a statement from the Board of Directors of the Association, setting forth the amount of unpaid assessments against the Grantor due to the Association and such Grantee shall not be liable for, nor shall the Condominium Unit conveyed be subject to a lien for, any unpaid assessment by the Association against the Grantor in excess of the amount therein set forth.

17. The respective Condominium Units shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as:

- (a) rental for any period less than thirty days; or
- (b) any rental if the occupants of the Condominium Unit are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, or bellboy service.

Other than the foregoing obligations the owners of the respective Condominium Units shall have the absolute right to transfer the Condominium Unit provided that said transfer is made subject to the covenants and restrictions contained in this Declaration and further subject to the Bylaws attached hereto.

18. (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 deaths 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 Optimist Park 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 or such endorsement evidencing the insurance as may be required by the respective mortgagees. 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 waiver of subrogation rights by the carrier as to negligent 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 corporation.

(e) The Board is hereby appointed the attorney in fact for all owners to negotiate loss adjustment 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 or destruction of the building 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, or destruction of, the building subject to this Declaration, 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 \$20,000, 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 sixty 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 70-23 803, 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 7 of this Declaration, as amended from time to time. 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 proportion to the Owner's percentage of ownership of Common Elements as set forth in paragraph 7. If any Owner shall fail to pay said special assessments within thirty (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 13 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 fund, 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 encumbrancers, 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 encumbrancers.
  - (iii) No disbursement for said work shall be made without the prior approval of said institutional encumbrancer.
  - (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 provisions 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 attorneys 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 abated 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 representative, at least every five years from the date hereof and the insurance program revised accordingly.

19. The Association shall represent the unit owners in the condemnation proceedings or in negotiations, settlements 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 first mortgage holders as their interests may appear.

20. Any restoration or repair of the condominium 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 66 2/3% of the votes of units subject to mortgages held by such eligible holders are allocated, is obtained.

21. 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 bylaws and regulations as they may be amended 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's fees as may be determined by the court.

22. 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 general or limited 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 18.
- (6) Any proposed amendment which would require the consent of mortgage holders.

23. 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.

24. 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 thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by the declaration, bylaws or law or in equity.

25. The Grantor covenants that each Condominium Unit sold shall be free and clear of all liens.

26. 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, by-laws 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, by-laws 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.

27. Upon written request from any governmental agency, or 51% of the owners who 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.

28. All provisions 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 of the provisions of this Declaration and bylaws.

29. This Declaration of condominium ownership shall be terminated, if at all, in the manner provided in Sections 70-23-801 through 70-23-804, inclusive, Montana Code Annotated.

30. 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 relied upon.



32. Grantor covenants to take no actions which would adversely affect the rights of the Association with respect to the assurances against latent defects in the property or other rights assigned to the Association, the members of the Association and their successors in interest, as their interests may appear by reason of the establishment of the condominium.

33. 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 Grantors have executed this Declaration this 19<sup>th</sup> day of January, 1987.

Arthur Schanz  
ARTHUR SCHANZ

Rachel Schanz  
RACHEL SCHANZ

Mickey P. McGee  
MICKEY P. MCGEE

Nadine McGee  
NADINE MCGEE

STATE OF MONTANA )

County of Yellowstone ) ss.

On this 19<sup>th</sup> day of January, 1987, before me, a Notary Public for the State of Montana, personally appeared ARTHUR SCHANZ and RACHEL SCHANZ, husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same.

Wm. J. Muhl  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My commission expires Jan. 8, 1986

(SEAL)

STATE OF MONTANA )

County of Yellowstone ) ss.

On this 19<sup>th</sup> day of January, 1987, before me, a Notary Public for the State of Montana, personally appeared MICKEY P. MCGEE and NADINE MCGEE, husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same.

Wm. J. Muhl  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My commission expires Jan. 8, 1986

(SEAL)

ASSESSOR'S APPROVAL

The undersigned, the duly elected and acting Assessor of Yellowstone County, Montana, hereby approves the Declaration of OPTIMIST PARK TOWNHOUSES, after having found that the name, OPTIMIST PARK TOWNHOUSES, 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 Section 70-23-303, MCA.

DATED this 23 day of May, 1983.

Creath A. Tooley  
Yellowstone County Assessor

By Eva Freid  
Eva Freid, Deputy  
FREID

ASSESSOR'S APPROVAL

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

DATED this 30 day of April, <sup>1984</sup> 1983.

Creath A. Tooley  
Yellowstone County Assessor

By Melba J. Kellern  
Deputy

NORWEST BANK, N.A. and MAURICE COLBERG, Beneficiary and Trustee respectively of a trust indenture on Lot 6A, Block 2, Amended Subdivision Plat of the West 25 feet of Lots 5, 6, 7, 8, and 9, Block 2, of HAYES SUBDIVISION, Yellowstone County, Montana, hereby consent to the Declaration of Condominium Ownership for the Optimist Park Townhomes.

NORWEST BANK, N.A.

ATTEST:

"Beneficiary"

(CORPORATE SEAL)

STATE OF MONTANA                    )  
  : ss.  
County of Yellowstone                )

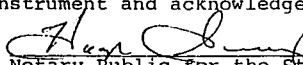
On this 4th day of January, 1984, before me,  
a Notary Public for the State of Montana, personally appeared  
WAYNE LOISELLE and LOUISE COOK, known  
to me to be the Vice President and Asst. Vice President of  
NORWEST BANK, N.A., the corporation that executed the foregoing  
instrument and acknowledged to me that said corporation executed  
the same.

Sandra L. Pearson  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My commission expires: October 20, 1986

(SEAL)

STATE OF MONTANA            )  
                                  : ss.  
County of Yellowstone        )

On this 4th day of January, 1984, before me,  
a Notary Public for the State of Montana, personally appeared  
MAURICE COLBERG, known to me to be the person whose name is  
subscribed to the foregoing instrument and acknowledged to me  
that he executed the same.

  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My commission expires: Nov-5-1986

(SEAL)

CONSENT

JAMES M. NORBY and BEVERLY J. NORBY, husband and wife,  
prospective purchasers pursuant to an agreement to buy-sell  
on Unit No. \_\_\_\_\_, Optimist Park Townhomes, Lot 6A, Amended  
Subdivision Plat of the West 25 feet of Lot 5 and Lots 6, 7,  
8, and 9, Block 2, Hayes Subdivision, hereby consent to the  
Declaration of Unit Ownership for Optimist Park Townhomes.

DATED this 6 day of January, 1987.

James M. Norby  
JAMES M. NORBY

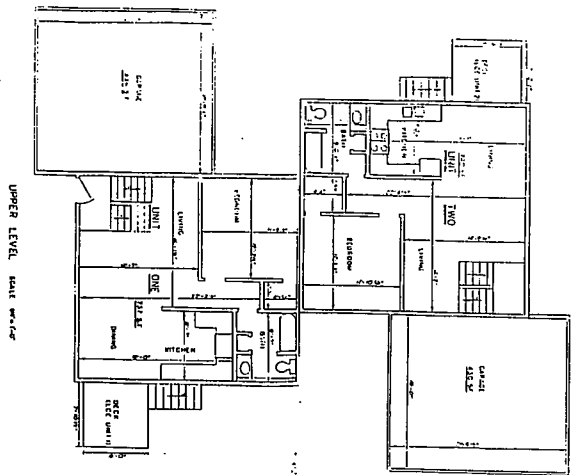
Beverly J. Norby  
BEVERLY J. NORBY

STATE OF MONTANA )  
County of Yellowstone ) ss.

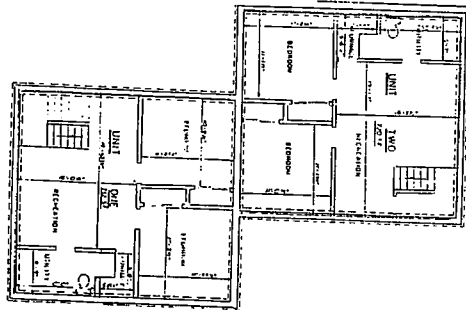
On this 6<sup>th</sup> day of January, 1987, before  
me, a Notary Public for the State of Montana, personally appeared  
JAMES M. NORBY and BEVERLY J. NORBY, husband and wife, known to  
me to be the person who executed the foregoing instrument and  
acknowledged to me that they executed the same.

Laura A. Huh  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My commission expires: Jan 6 1990

(SEAL)



UPPER LEVEL STATE PRISON



LOWER LEVEL STATE PRISON

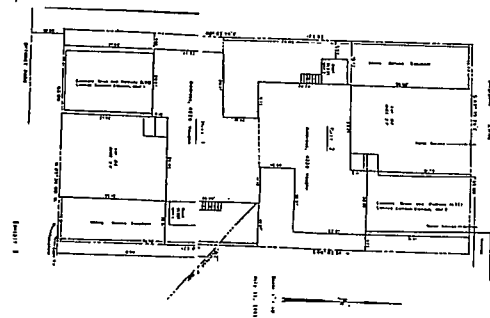


EXHIBIT A

SITE MAP  
 LOT 6A, AMENDED SUBDIVISION PLAT OF THE WEST 25 FEET, LOT 5, LOT 6, 7, 8 AND 9, BLOCK 2  
 HAYES SUBDIVISION  
 LOCATED IN THE NE¼ OF SECTION 9, T.1S., R.26E., P.M.M.  
 BILLINGS, YELLOWSTONE COUNTY, MONTANA

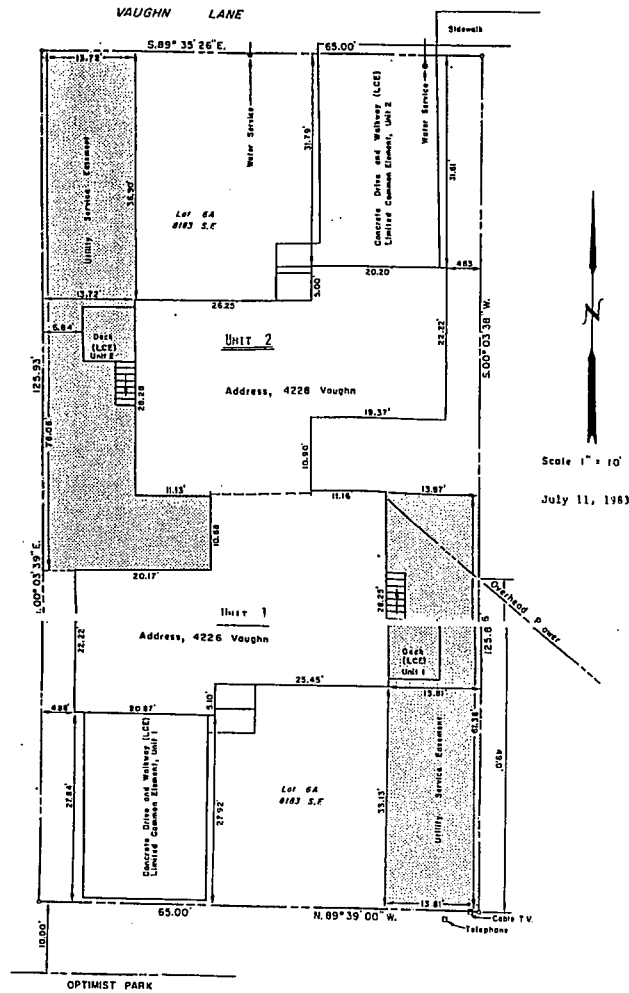


EXHIBIT B

**SURVEYORS CERTIFICATE**

James E. Logan, a Registered Surveyor, Registration No. 4235-C, being first duly sworn, deposes and says that, a retracement was made by him of Lot 6A, Amended Subdivision Plat of the West 25 feet of Lot 5, Lot 6, 7, 8, 9, Block 2, Hayes Subdivision, according to the official plat thereof on file and of record in the offices of the Yellowstone County Clerk and Recorder, as Document Number 1250793. The survey was actually made on the ground, and accurately depicts the layout, location, unit designation, and dimensions of each unit.

*James E. Logan*  
 James E. Logan 4235-C



STATE OF MONTANA )  
 COUNTY OF YELLOWSTONE ) ss

Subscribed and sworn to before me a Notary Public in and for the State of Montana this 11th day of September, 1983.

EXHIBIT **B**

EXHIBIT B

## EXHIBIT C-1

Subscribed and sworn to before me a Notary Public in and for the State of Montana  
this 1st day of September, 1988.



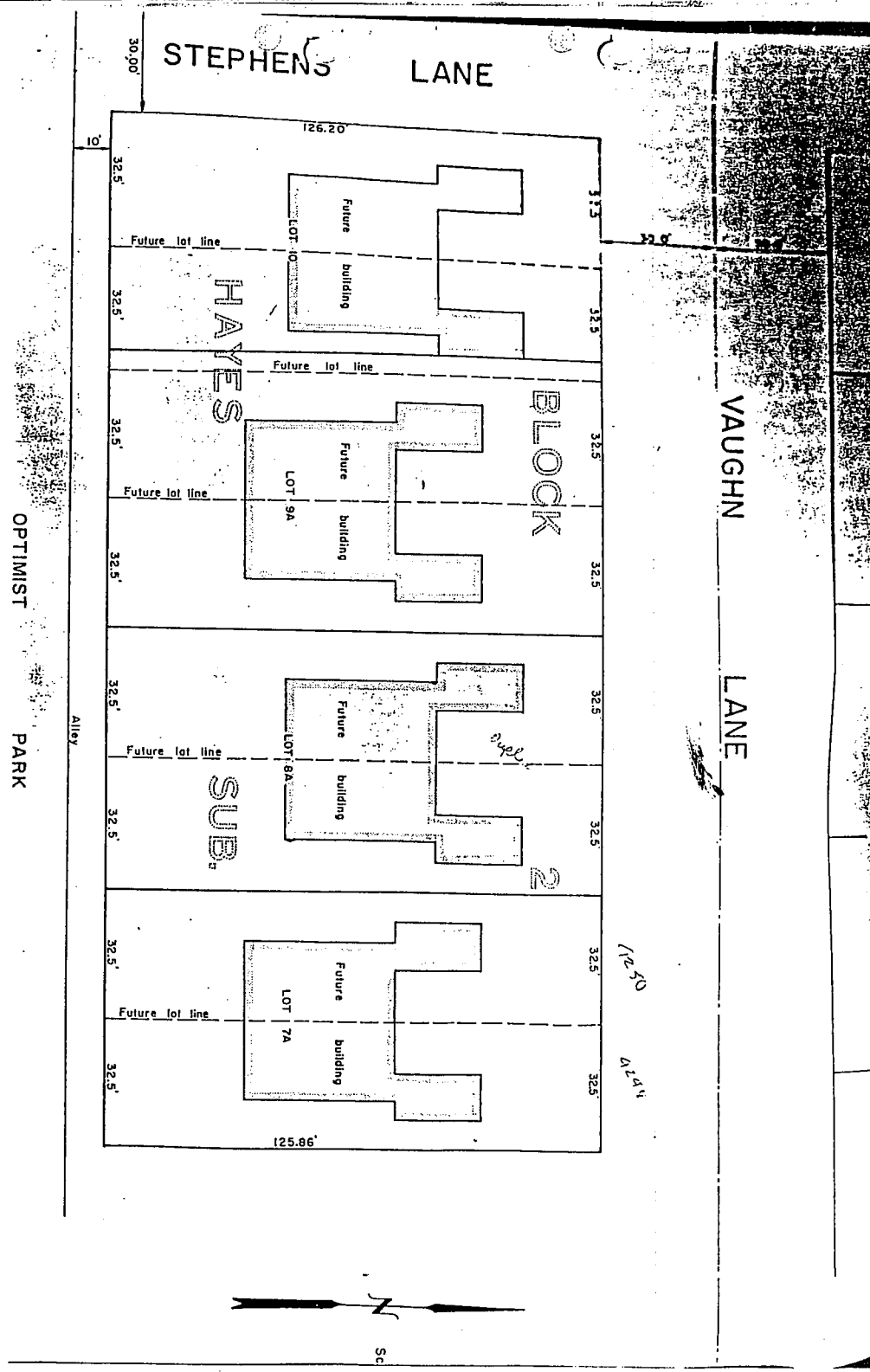

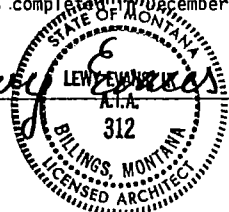


EXHIBIT C-2

CERTIFICATE OF PROFESSIONAL ARCHITECT

The undersigned is the professional Architect for the Optimist Park Townhomes, constructed on Lot 6A, of Amended Subdivision Plat of the West 25 feet of Lot 5 and Lots 6, 7, 8, and 9, Block 2, Hayes Subdivision, according to the plat thereof on file and of record in the offices of the Yellowstone County Clerk and Recorder as Document No. 1250793.

I hereby certify that the attached plans fully and accurately depict the layout, location, unit designation and dimensions of each unit as built. The construction of the building was completed on December 1982.

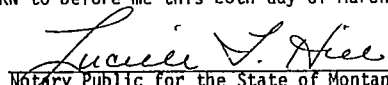
  
\_\_\_\_\_  


STATE OF MONTANA     )  
                              :  
County of Yellowstone )

LEWY EVANS, JR., being first duly sworn, deposes and says:

That he is the Architect named in the above Certificate of Professional Architect and knows the contents thereof, and that the matters and things therein stated are true of his own knowledge.

SUBSCRIBED AND SWORN to before me this 28th day of March, 1984.

  
\_\_\_\_\_  
Notary Public for the State of Montana  
Residing in Billings, Montana  
My commission expires 8/11/86

BYLAWS  
OF  
OPTIMIST PARK HOMEOWNERS ASSOCIATION

ARTICLE I.

Section 1. The provisions of these bylaws are applicable to a condominium located on Lot 6A of Amended Subdivision Plat of the West 25 feet of Lot 5 and Lots 6, 7, 8, and 9, Block 2, Hayes Subdivision, Yellowstone County, Montana, known as Optimist Park Townhomes, pursuant to the Declaration of Condominium Ownership dated Mar 19, <sup>1984</sup> ~~1983~~, to which a copy of these bylaws is attached, in accordance with the provisions of the Montana Unit Ownership Act, Chapter 120, Laws of Montana 1965 (Title 70, 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 Optimist Park Townhomes 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. "Owner" means the person, partnership or corporation (including the Grantor) owning a Condominium Unit in fee simple absolute or in any real estate tenancy recognized under the laws of Montana, including a contract buyer, if a Notice of Purchaser's

EXHIBIT "D"

interest is recorded with the Yellowstone County Clerk and Recorder. Each such Owner, by virtue of such ownership shall be a member of the Optimist Park Homeowners Association, hereinafter called the "Association." However, if such ownership of any Condominium 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 Condominium 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 an executor, administrator, guardian, or trustee may vote in person or by proxy with respect to Condominium 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 be 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. 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 Optimist Park Townhomes, approving the annual budget, establishing and collecting annual assessments, which shall be 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.

Section 2. The annual meeting of the Association shall be held on the first Saturday of the second calendar month following the close of the Association's fiscal year, at the time and place specified in the written notice provided to members of the Association.

Section 3. Special meetings must be called at any time by Resolution of the Board of Directors, by any three members, having been presented such a request to the Secretary of the Association, having presented such a written request to the Secretary of the Association. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of all of the owners present, either in person or by proxy.

Section 4. Written notice of any annual or special meeting of the Association shall be mailed to each owner at his last known address as reflected by the Association's records not less than ten days prior to the date of the meeting. Such notice shall specify the time, date, place and purpose of the meeting. Such notice shall be given to each member by leaving the same with him personally, or by mailing it, postage prepaid, addressed to such member at his address as it appears on the records of the Association. If notice is given pursuant to the provisions of this section, the failure of any member to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings thereat. Upon written request for notices mailed by registered mail addressed to the Secretary of the Association, the holder of any duly recorded mortgage or trust

indenture against any Unit may promptly obtain a copy of any and all notices permitted or required to be given to entitle the holder of any mortgage requesting such notice to receive all notices sent to the members from and after receipt of said request until the request is withdrawn and said mortgage or trust indenture discharged of record.

Section 5. At annual meetings, there shall be elected by ballot of the Owners a Board of Directors and such other business of the Association may be transacted as may properly come before them.

Section 6. First Mortgagees shall have the right to attend annual meetings through a representative. The designation of the representative shall be in writing and be delivered to the Board.

Section 7. If any meeting of Owners cannot be organized because a quorum has not attended, the members entitled to vote thereat shall have the power to adjourn the meeting without notice other than an announcement at the meeting, until a quorum is present or represented.

Section 8. The order of business at all meetings of the Association shall be as follows:

- (a) Proof of notice of meeting or waiver of notice
- (b) Determination of quorum
- (c) Reading of minutes of preceding meeting
- (d) Reports of officers
- (e) Report of committees
- (f) Election of directors
- (g) Unfinished business
- (h) New business

ARTICLE IV.

Board of Directors

Section 1. The affairs of the Association shall be governed by a Board of Directors composed of three persons, all of whom must be Owners of Condominium Units in the project, who shall be elected by the owners.

Section 2. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things as are not by law or by these bylaws directed to be exercised and done by the owners. The directors shall serve without compensation.

Section 3. In addition to duties imposed by these bylaws or by resolutions of the Association, the Board of Directors shall have the following powers and duties:

- (a) To enforce the provisions of the Declaration and bylaws by appropriate action.
- (b) To provide for management and maintenance of the Condominium Units and the Common Elements. Provided, however, that in the event that the Board shall be unable to agree as to any change in the color or materials of the Common Elements that such Common Elements shall be maintained in the same color and same materials as the building exists at the time of the sale of the first unit.
- (c) To levy and collect assessments as allowed by the Declaration.
- (d) To designate and dismiss personnel for the routine conduct of condominium business, subject, however, at all times to ultimate authority residing in the Board of Directors and further subject to the requirement that such personnel shall have no authority to make any expenditure in excess of \$250 without the prior approval of a majority of the directors.



- (e) To prepare an annual budget in order to determine the amount of the assessments payable by the Unit Owners to meet Common Expenses, and to allocate and assess common charges among unit owners according to their respective interests in the Common Elements; provided that the directors shall have no authority to make any expenditure in excess of \$500 without the prior approval of all of the members at a duly called membership meeting.
- (f) To levy and collect special assessments whenever necessary in order to meet increased operating or maintenance expenses or because of emergency.
- (g) To take appropriate legal action to collect delinquent assessments, and to levy penalties and charge interest in accordance with these bylaws.
- (h) To defend in the name of the Association any and all lawsuits wherein the condominium is a party defendant.
- (i) To enter into contracts and agreements necessary to carry out the duties herein set forth.
- (j) To establish a bank account for the condominium project and to keep records and accounts according to commonly accepted accounting procedures.
- (k) To cause a financial statement (including a balance sheet and income and expense statement) of the affairs of the Association to be made.
- (l) To establish rules and regulations for conduct, behavior and use of the General Common and Limited Common Elements.
- (m) To make repairs, alterations, additions and improvements to the General Common and Limited Common Elements consistent with managing the condominiums in the best interest of the Unit Owners.
- (n) To pay for city services, including water and sewer, provided to Optimist Park Townhomes, unless such services are billed directly to owners.
- (o) To employ for the Association a management agent, if desired, at a compensation established by the Board to perform such duties and

services as the Board shall authorize including, but not limited to, the duties listed in this section.

Section 4. Election and Term of Office. At the first annual meeting of the Association the term of office of three directors shall be fixed for one (1) year. The directors shall hold office until their successors have been elected and hold their first meeting.

Section 5. Any director may be removed with or without cause by a vote of a majority of the votes entitled to be cast at any regular or special meeting of the Association called for that purpose. Any director whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting. In the event of such removal, a successor may then and there be elected to fill the vacancy thus created.

Section 6. No remuneration shall be paid to a director for services performed by him for the Association in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board of Directors before the services are undertaken. A director may not be an employee of the Association.

Section 7. Vacancies in the Board of Directors caused by any reason other than the removal of a director by a vote of the Association, shall be filled by a vote of the majority of the remaining directors, even though they may constitute less than a quorum; and each person so selected shall serve until the next annual meeting of the Association, at which time the members shall elect a successor to fill out the balance of the unexpired term.

Section 8. The first meeting of a newly elected Board of Directors shall be held within ten (10) days following the annual meeting of the Association, and no notice shall be necessary to the newly elected directors in order to legally constitute such meeting, providing a majority of the whole Board shall be present.

Section 9. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors, but at least two such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.

Section 10. Special meetings of the Board of Directors may be called by the President on three days notice to each director, given personally or by mail, telephone or telegraph, which notice shall state the time, date, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two directors. All directors' meetings shall be held within Yellowstone County, Montana.

Section 11. Before or at any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12. A quorum of the Board for the transaction of business at any meeting shall be two of the directors. If, however, a quorum shall not be present or represented at any meeting, the director present shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum as aforesaid shall be present or be represented. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. The Board of Directors may require that officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds, premiums on such bonds to be paid by the Association.

#### ARTICLE V.

##### Officers

Section 1. The Board of Directors at its annual meeting shall elect a President, Vice President, Secretary, Treasurer and such assistants as the Board may deem necessary. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. The officers of the Association shall hold office at the pleasure of the Board, and in the event of a vacancy for any person, the Board shall elect a successor at any regular meeting or at any special meeting called for such purpose.

Section 3. Upon an affirmative vote of all of the members of the Board of Directors, any officer may be removed, either with or

without cause, and his successor elected at any regular meeting of the Board of Directors, or a special meeting called for that purpose.

Section 4. The President shall preside at all meetings of the Association and the Board of Directors. He shall have general supervision over the affairs of the Association and its officers and all of the powers and duties usually vested in the office of President or Chairman of an Association, including but not limited to the power to appoint committees from among the owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. The Vice President shall act for the President in the event of the absence or disability of the latter, and shall also perform such other duties as from time to time may be imposed upon him by the Board of Directors.

Section 6. The Secretary shall keep all books and records of the Association and the Board of Directors and record all minutes of meetings of both.

Section 7. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

ARTICLE VI.

Obligations of Owners

Section 1. Assessments against the unit owners shall be made or approved by the Directors of the Association and paid by the unit owners to the Association in accordance with the following provisions:

- (a) All owners are obligated to make monthly payments on the annual assessments imposed by the Association to meet all project Common Expenses, repair, replacement and general maintenance, management and administration of General Common Elements. The assessments shall be made pro rata according to each owner's percentage interest as provided in the Declaration. Such assessments shall include monthly payments to a General Operating Reserve and a Reserve Fund for Replacements.
- (b) The Secretary and Treasurer shall maintain records showing assessments made against Unit Owners which shall be available for inspection at all reasonable times by unit owners or their representatives. Such records shall show the amounts of all assessments paid and unpaid. The Treasurer may issue certificates as to the status of a unit owner's assessment account to such persons as the Unit Owner may request in writing, and such certificates shall limit the liability of any person to whom it is addressed other than the Unit Owner.
- (c) Unit Owners and their grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor. Unpaid portions of assessments which are due shall be secured by a lien upon the Unit as provided in the Declaration upon the filing of a claim in accordance with the provisions of Section 70-23-607, MCA.
- (d) Assessments and installments thereof paid more than fifteen days after the date when due, shall bear interest at the maximum legal rate per annum from the date when due until paid. All payments upon assessments shall be

applied first to interest and then to the earliest assessment due. Interest collected shall be credited to the Common Expense account.

Section 2. Maintenance and Repair.

- (a) Every Owner must perform promptly all maintenance and repair work within his own Unit, which if omitted would affect the project in its entirety or in a part belonging to other Owners, being expressly responsible for the damages and liabilities that his failure to do so may engender.
- (b) All the repairs of internal installations of the unit such as water, light, gas, power, sewage, telephone, air-conditioners, sanitary installations, doors, windows, lamps and all other accessories and appliances belonging to the unit area shall be at the owner's expense.
- (c) An owner shall reimburse the Association for any expenditures incurred in repairing or replacing any Common Element damaged through his fault.

Section 3. All Units shall be for residential purposes only, except that an Owner may use a portion of his Unit for an office or studio provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Owner or occupant and provided further that in no event shall any part of the property be used as a school or music studio. An owner shall not make any structural modifications or alterations in his unit of installations located therein except upon the written consent of the Association. The Board shall have the obligation to answer within thirty days after any written request for modifications or alterations is made to it through its President, and failure to do so within the stipulated time shall be deemed to be written consent to the proposed modification or alteration. However, nothing shall be done in any Unit which will

impair the structural integrity of the building or structurally change the building.

Section 4. The manager and any person authorized by the Board of Directors shall have the right to enter each Unit in case of any emergency originating in or threatening such unit whether or not the Owner or occupant is present at the time. Every Unit Owner and occupant, when so required, shall permit the Association or its representatives to enter his Unit at reasonable times for the purpose of performing authorized installations, alterations, or repairs to the Common Elements therein for central services provided that requests for entry are made in advance and that such entry is at a time convenient to the owner.

Section 5. Rules of Conduct.

- (a) Residents shall exercise extreme care before 7 a.m. and after 11 p.m. about making noises or the use of musical instruments, radios, television and amplifiers that may disturb other residents.
- (b) Hanging garments, rugs, etc. from the windows or from any other facades of the project is prohibited.
- (c) Dusting rugs, etc. from the windows, or cleaning rugs by beating on the exterior part of the project is prohibited.
- (d) No owner shall keep or maintain more than two pets. No pet shall weigh more than 35 pounds. No pets shall be kept or maintained on the common elements.
- (e) No owner, resident or lessee shall install wiring for electrical or telephone installation, television antenna, machines or air-conditioning units, etc. on the exterior of the project or that protrude through the walls of the roof of the project except as authorized by the Association.

Section 6. Additional Administrative Rules and Regulations



relating to the details of the operation of Optimist Park Townhomes and the use of the Common Elements may be adopted or amended by the Board of Directors at any regular meeting or at any special meeting called for that purpose.

Section 7. Any Owner who mortgages his Unit shall notify the Association through the Management Agent, if any, or the President of the Board of Directors in the event there is no Management Agent, of the name and address of his mortgagee. Any mortgagee or beneficiary of a trust indenture may file a copy of its mortgage or trust indenture with the Board of Directors through the manager, and the secretary shall record such information in the record of ownership of the Association. After the filing of the mortgage or trust indenture, the Board of Directors through its manager, shall be required to notify the mortgagee or beneficiary of any Unit Owner who is in default in the expenses for the administration of the condominium and the mortgagee or beneficiary at its option may pay the delinquent expenses. The Association shall maintain such information in a book entitled "Mortgagees of Units."

#### ARTICLE VII.

Section 1. No director or officer of the Association shall be liable for acts or defaults of any other officer or member or for any loss sustained by the Association or any member thereof, unless the same has resulted from his own willful misconduct or negligence.

Section 2. Indemnification. Every director and officer of the Association shall be indemnified by the Association against all reasonable costs, expenses, and liabilities (including counsel fees)

actually and necessarily incurred by or imposed upon him in connection with any claim, action, suit, proceeding, investigation, or inquiry of whatever nature in which he may be involved as a party or otherwise by reason of his having been an officer of the Association whether or not he continues to be such director or officer of the Association at the time of incurring or imposition of such cost, expenses, or liabilities, except in relation to matters as to which he shall be finally adjudged in such action, suit, proceeding, investigation or inquiry to be liable for willful misconduct or negligence in the performance of his duties, or in the absence of such final adjudication, any determination of such liability by the opinion of legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to and not in limitation of all rights to which such persons may be entitled as a matter of law and shall inure to the benefit of the legal representatives of such person.

ARTICLE VIII.

The fiscal year of the Association shall be such as may from time to time be established by the Association.

ARTICLE IX.

Amendments

Section 1. These bylaws may be amended by the Association in a duly constituted meeting for such purposes and no amendment shall take effect unless approved by the owners of at least 75% of the Units and until a copy of the bylaws, as amended, certified by the presiding officer and secretary of the Association is recorded in the office of

the Clerk and Recorder of Yellowstone County, Montana; provided, however, that the contents of these bylaws shall always contain those particulars which are required to be contained herein by the Montana Unit Ownership Act.

Section 2. In the event of any conflict between these bylaws and the provisions of the Montana Unit Ownership Act, (Title 70, Chapter 23, MCA) the latter shall govern and apply.

IN WITNESS WHEREOF, the undersigned, constituting the interim President and Secretary of Optimist Park Homeowners Association have executed this instrument as evidence of the adoption of the aforesaid bylaws of the Association, this 19<sup>th</sup> day of January, 1984.

Arthur Schenz  
Interim President

ATTEST:

Rachel Schenz  
Interim Secretary

STATE OF MONTANA )  
                              : ss.  
County of Yellowstone )

On this 19<sup>th</sup> day of January, 1984, before me, a Notary Public for the State of Montana, personally appeared Arthur Schenz and Rachel Schenz, known to me to be the Interim President and Interim Secretary respectively, of OPTIMIST PARK HOMEOWNERS ASSOCIATION, and acknowledged to me that they executed the same.

William J. Murphy  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My commission expires Jan 8, 1986

(SEAL)

CERTIFICATE

We, the undersigned, being the interim president and secretary of Optimist Park Homeowners Association, hereby certify that the foregoing is a true and correct copy of the bylaws of said Association.

IN WITNESS WHEREOF, we have set our hands this 19<sup>th</sup> day of January, 1987.

Arthur Davis

President

Rachel Schanz  
Secretary

2004813

Arthur Schang  
Jr

Declaration  
Re: Land Ownership

State of Iowa, } ss.  
County of Iowa, }

I hereby certify that the within instrument was filed in my office for record on this

day of APR 20 1984 9 19

at 1:25 o'clock P M., and is

duly recorded in Book 1360

on Page 311

Witness my hand and official seal  
MERRELL H. KLUNDT  
County Clerk & Recorder

By J. Sullivan Deputy

110<sup>00</sup>  
14<sup>00</sup>

11/14<sup>00</sup> Crowley Jan Fri  
Box 2529  
Attn. Laura Mitchell

AMENDMENT TO  
DECLARATION OF UNIT OWNERSHIP  
FOR  
OPTIMIST PARK TOWNHOMES

BOOK 1263 PAGE 5050

ARTHUR SCHANZ and RACHEL SCHANZ, declarants under that Declaration of Unit Ownership for Optimist Park Townhomes, dated January 19, 1984, recorded in Book 1260, Page 3317, as Document No. 1304843, pursuant to an option reserved to ARTHUR SCHANZ and RACHEL SCHANZ, in paragraph 10 of said Declaration, hereby amend said Declaration of Optimist Park Townhomes as follows:

1. Paragraph 2 is hereby amended to read as follows:

The property herein subjected to this Declaration is the first and second increment consisting of the following real property in Yellowstone County, Montana:

Lots 6A and 7A of Amended Subdivision Plat of the West 25 feet of Lot 5 and Lots 6, 7, 8, and 9, Block 2, Hayes Subdivision, according to the plat thereof on file and of record in the office of the Yellowstone County Clerk and Recorder as Document No. 125793.

2. Paragraph 3 is amended to show that Optimist Park Townhomes shall consist of two buildings containing two units with one basic floor plan which is built on the property.

3. The basic unit floor plans used throughout Optimist Park Townhomes are amended to include Exhibit A-1 which are the floor plans for the second phase of Optimist Park Townhomes.

4. A site map for the entire condominium project showing all buildings and units and other improvements which are situated thereon, the unit designations, the location number and types of units contained in each is attached hereto and incorporated herein as Exhibit B-1.

5. The percentage of ownership specified in Paragraph 7 is amended to be 25% undivided interest in the general common elements of the condominium. The percentage of ownership of the general common elements has been reduced as provided in said Declaration by dividing the total number of square feet of all units in the project, excepting the square footage of the garage and basement, if any, by the number of finished square feet in the unit, excepting the garage and basement, if any. Such percentage represents the owners' ownership interest in the general common elements, his liability for expenses, and the factor for his voting interest in all matters within the province of the interest of the association. Said percentage of unit ownership may be further divided as provided in Paragraph 10 of the Declaration if this Declaration is further amended to add additional units.

6. In all other particulars, said Declaration of Unit Ownership remains the same.

DATED this 10 day of July, 1984.

  
ARTHUR SCHANZ

  
RACHEL SCHANZ

STATE OF MONTANA )

: ss.

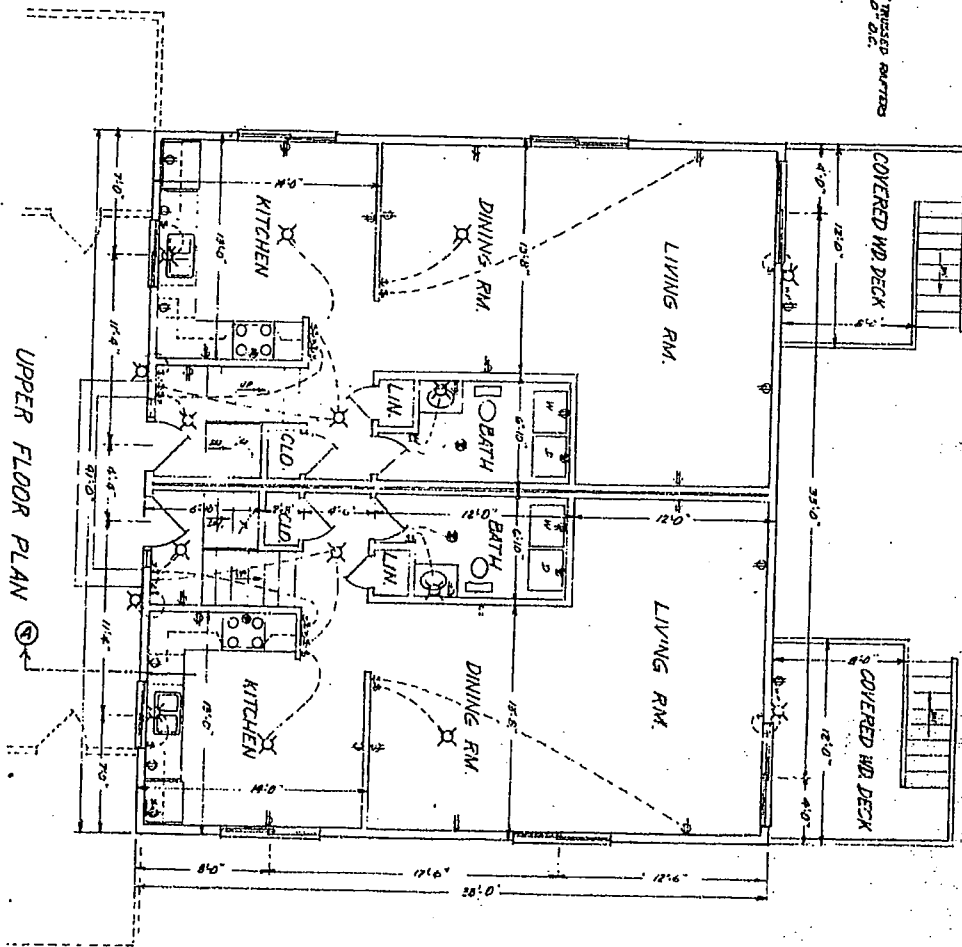
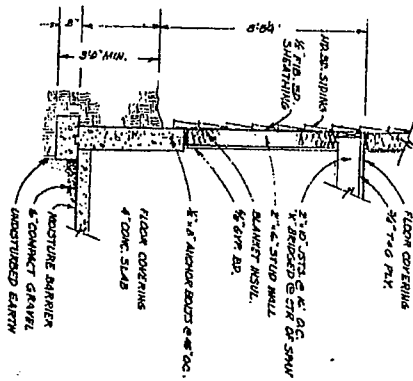
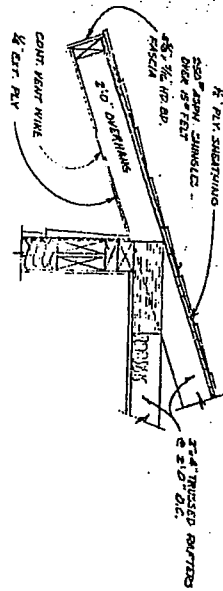
County of Yellowstone )

BOOK 1263 PAGE 5051

On this 10<sup>th</sup> day of July, 1984, before me,  
a Notary Public for the State of Montana, personally appeared  
ARTHUR SCHANZ and RACHEL SCHANZ, husband and wife, known to me  
to be the persons whose names are subscribed to the foregoing  
instrument and acknowledged to me that they executed the same.

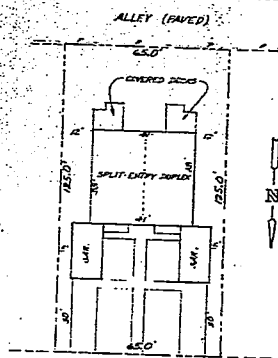
Miss A. Shultz  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My commission expires: Jan 8, 1986

(SEAL)



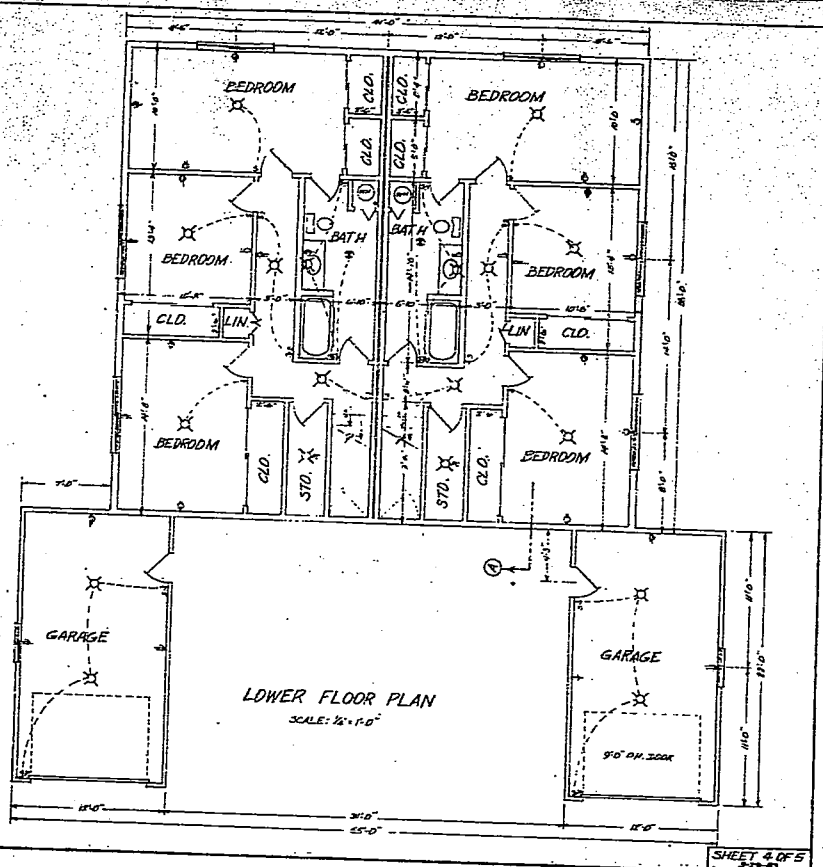


OPTIMIST PARK

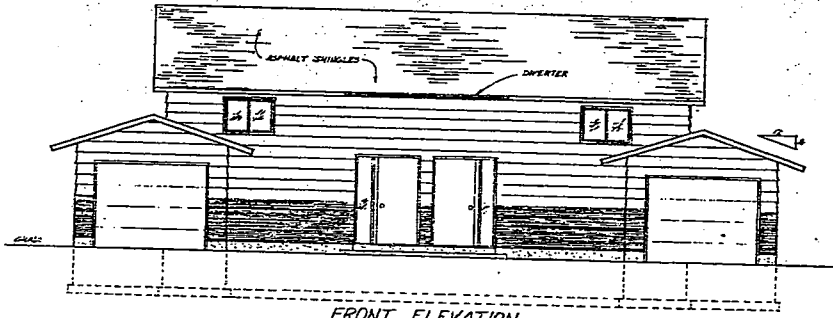


5" SAND/STONE GRAVEL  
5" WATER BARRIER  
VAUGHN LANE (GRAVEL)

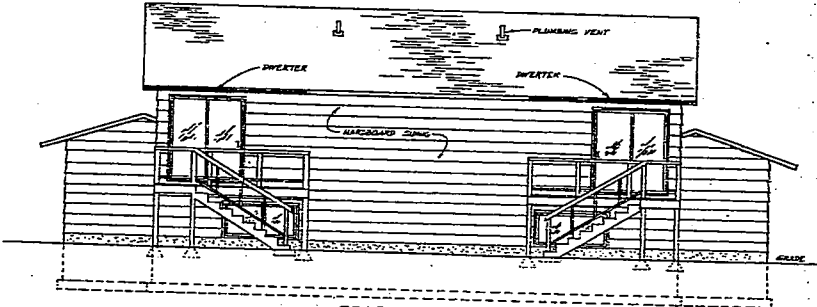
LOT PLAN  
SCALE: 1"=20'



SHEET 4 OF 5

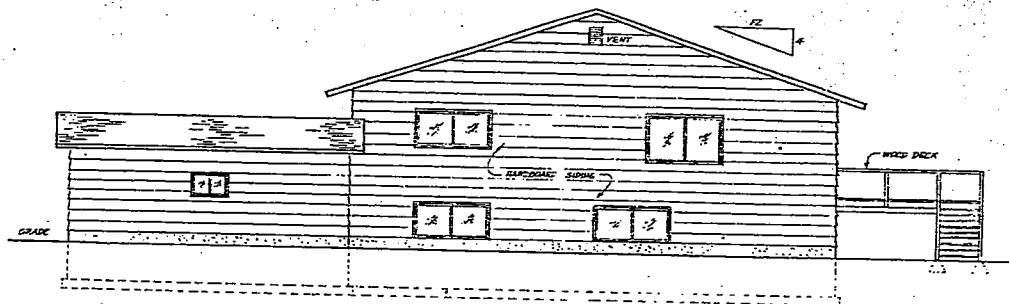


FRONT ELEVATION  
SCALE: 1/4" = 1'-0"

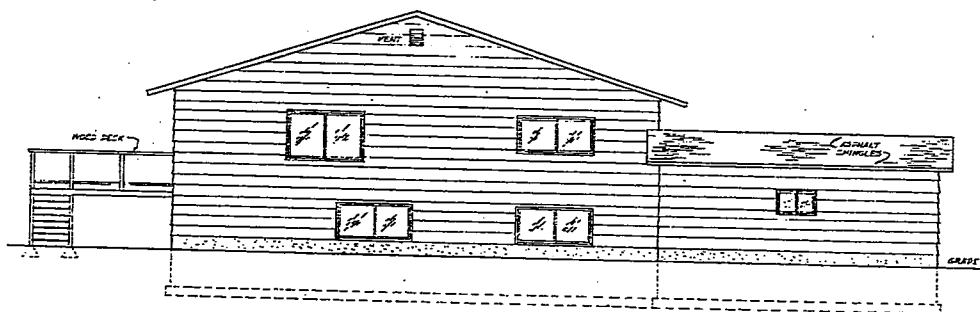


REAR ELEVATION  
SCALE: 1/4" = 1'-0"

NO. 1263 PMS 5055



RIGHT ELEVATION  
SCALE: 1/8"=1'-0"

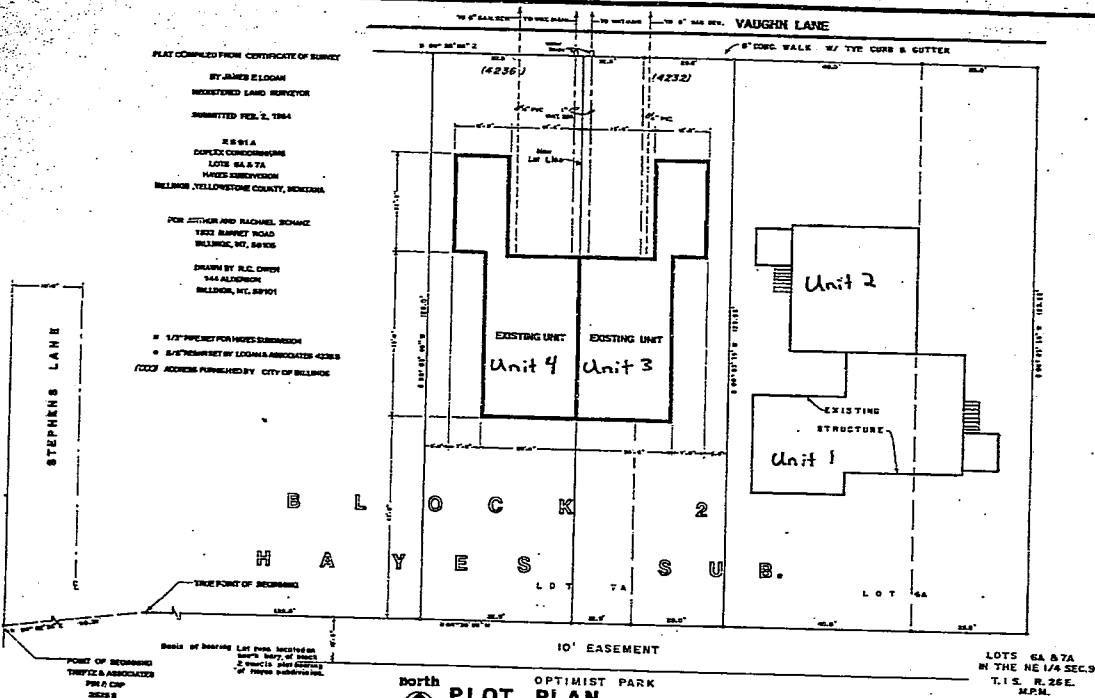


LEFT ELEVATION  
SCALE: 1/8"=1'-0"

SHEET 2 OF 5  
1-2-63



300-1263 PMS5057



North  
**PLOT PLAN**  
SCALE: 1" = 4'

**PLOT PLAN**  
SCALE: 1" = 4'  
**SCHANZ CONST.**  
BILLINGS, MONT.  
DATE: 7/5/84



CERTIFICATE OF PROFESSIONAL ENGINEER

BOOK 1263 PAGE 5058

The undersigned is the professional engineer for the Optimist Park Townhomes, constructed on Lots 6A and 7A of Amended Subdivision Plat of the West 25 feet of Lot 5 and Lots 6, 7, 8, and 9, Block 2, Hayes Subdivision, according to the plat thereof on file and of record in the office of the Yellowstone County Clerk and Recorder as Document No. 125793.

I hereby certify that the attached plans are an accurate copy of the plans filed with and approved by the City and County officers having jurisdiction to issue building permits. The attached plans fully and accurately depict the layout, location, unit designation and dimensions of each unit as built. The construction of the building was completed in March 1984.

STATE OF MONTANA

County of Yellowstone

)  
: ss.  
)

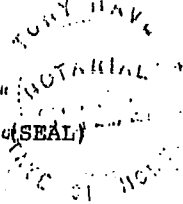
William R. Gibbs, Jr.  
PE No. 4903E

says:

That he is the engineer named in the above Certificate of Professional Engineer and knows the contents thereof, and that the matters and things therein stated are true of his own knowledge.

SUBSCRIBED AND SWORN to before me this 6<sup>th</sup> day of July, 1984.

William R. Gibbs, Jr.  
Tammy Hane  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My commission expires: 6-26-87



STATE OF MONTANA  
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
CERTIFICATE OF SUBDIVISION PLAT APPROVAL  
(SECTION 76-4-101 THROUGH 76-4-131, MCA)

TO: COUNTY CLERK AND RECORDER  
YELLOWSTONE COUNTY  
BILLINGS, MONTANA

NO. 56-84-S90-853  
Y.C.#1234

THIS IS TO CERTIFY THAT the plans and supplemental information relating to the subdivision known as LOTS 7A, 8A, 9A, AMENDED AND LOT 10, BLOCK 2 OF HAYES SUBDIVISION, YELLOWSTONE COUNTY, MONTANA, consisting of 4 DUPLEX CONDOMINIUM UNITS have been reviewed by personnel of the Water Quality Bureau, and,

THAT the documents and data required by Section 76-4-101 through 76-4-131, M.C.A. 1979 and the rules of the Department of Health and Environmental Sciences made and promulgated pursuant thereto have been submitted and found to be in compliance therewith, and,

THAT approval of the PLAT of said subdivision is made with the understanding that the following conditions shall be met:

THAT the lot sizes as indicated on the PLAT to be filed with the county clerk and recorder will not be further altered without approval, and,

THAT THE LOTS SHALL BE USED FOR 4 UNIT DUPLEX CONDOMINIUMS, AND,

THAT THE PUBLIC WATER SUPPLY SYSTEM AND PUBLIC SEWAGE DISPOSAL SYSTEM WILL BE PROVIDED BY THE CITY OF BILLINGS, AND,

THAT water supply and sewage treatment systems will be located as shown on the approved plans, and,

THAT the developer shall provide the purchaser of property with a copy of the PLAT, showing the approved location of water supply and sewage treatment system and a copy of this document, and,

THAT instruments of transfer for this property shall contain reference to these conditions, and,

THAT departure from any criteria set forth in the approved plans and specifications and Title 16, Chapter 16, Sub-Chapter 1, 3, and 6 ARM when erecting a structure and appurtenant facilities in said subdivision without Department approval, is grounds for injunction by the Department of Health and Environmental Sciences.

YOU are requested to record this certificate by attaching it to the PLAT of said subdivision filed in your office as required by law.

DATED this 14TH day of FEBRUARY, 1984.

JOHN J. DRYNAN, M.D.  
DIRECTOR

REVIEWED AND APPROVED: *R.*

*[Signature]*  
LOUIS LADAS, R.S.  
ENVIRONMENTAL HEALTH DIVISION  
YCCHD

*[Signature]*  
STEVEN L. PILCHER, CHIEF  
WATER QUALITY BUREAU  
ENVIRONMENTAL SCIENCES DIVISION

OWNERS NAME:

ARTHUR SCHANZ



1315215

Arthur Schanz  
et al.

Amendment to Declaration  
Ownership  
Optimum Park  
Townhomes

REC-12 PAGE 5061

STATE OF MONTANA }  
County of Yellowstone. } ss.

I hereby certify that the within in-  
strument was filed in my office for  
record on this JUL 10 1984  
day of 19  
at 2:17 o'clock P.M. and is  
duly recorded in book 1263  
on Page 5050

Witness my hand and official seal  
MERRIE H. KLUNDY  
County Clerk & Recorder

By Jack H. H. H. Deputy

27.50  
4.00 = c  
31.50

Crumley Jan  
attn: Laura  
Mitchell

SECOND AMENDMENT TO  
DECLARATION OF UNIT OWNERSHIP  
FOR  
OPTIMIST PARK TOWNHOMES

ARTHUR SCHANZ and RACHEL SCHANZ, declarants under that Declaration of Unit Ownership for Optimist Park Townhomes dated January 19, 1984, recorded in Book 1260, Page 3317, as Document No. 1304843, pursuant to an option reserved to ARTHUR SCHANZ and RACHEL SCHANZ in paragraph 10 of said Declaration which has previously been amended by the Amendment to Declaration of Unit Ownership for Optimist Park Townhomes dated July 10, 1984, recorded on July 10, 1984, in Book 1263, Page 5050, under Document No. 1315215, hereby fully amends said Declaration of Optimist Park Townhomes as follows:

1. Paragraph 2 is hereby amended to read as follows:

The property herein subjected to this Declaration is the first, second, and third increments consisting of the following real property in Yellowstone County, Montana:

Lots 6A, 7A, and 8A of Amended Subdivision Plat of the West 25 feet of Lot 5 and Lots 6, 7, 8, and 9, Block 2, Hayes Subdivision, according to the plat thereof on file and of record in the office of the Yellowstone County Clerk and Recorder as Document No. 125793.

2. Paragraph 3 is amended to show that Optimist Park Townhomes shall consist of three buildings each containing two units with one basic floor plan which is built on the property.

3. The basic unit floor plans used throughout Optimist Park Townhomes are the same as shown as Exhibit A-1 in the Amendment to Declaration of Unit Ownership for Optimist Park Townhomes which are the same floor plans for the third phase of Optimist Park Townhomes.

4. A site map for the entire condominium project showing all buildings and units and other improvements which are situated thereon, the unit designations, the location, number, and types of units contained in each is attached hereto and incorporated herein as Exhibit B-2.

5. The percentage of ownership specified in Paragraph 7 is amended to be 16-2/3% undivided interest in the General Common Elements of the condominium. The percentage of ownership of the General Common Elements has been reduced as provided in said Declaration by dividing the total number of square feet of all units in the project, excepting the square footage of the garage and basement, if any, by the number of finished square feet in the unit, excepting the garage and basement, if any. Such percentage represents the owners' ownership interest and fact for his voting interest in all matters within the province of the interest of the association. Said percentage of unit ownership may be further divided as provided in Paragraph 10 of the Declaration if this Declaration is further amended to add additional units.

6. In all other particulars, said Declaration of Unit Ownership remains the same.

DATED this 13<sup>th</sup> day of May, 1985.

Arthur Schanz  
ARTHUR SCHANZ

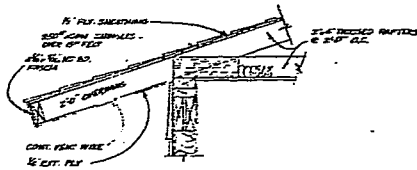
Rachel Schanz  
RACHEL SCHANZ

STATE OF MONTANA )  
: ss.  
County of Yellowstone )

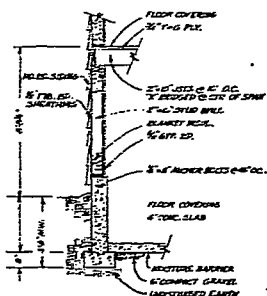
On this 13<sup>th</sup> day of May, 1985, before me, a Notary Public for the State of Montana, personally appeared ARTHUR SCHANZ and RACHEL SCHANZ, husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same.



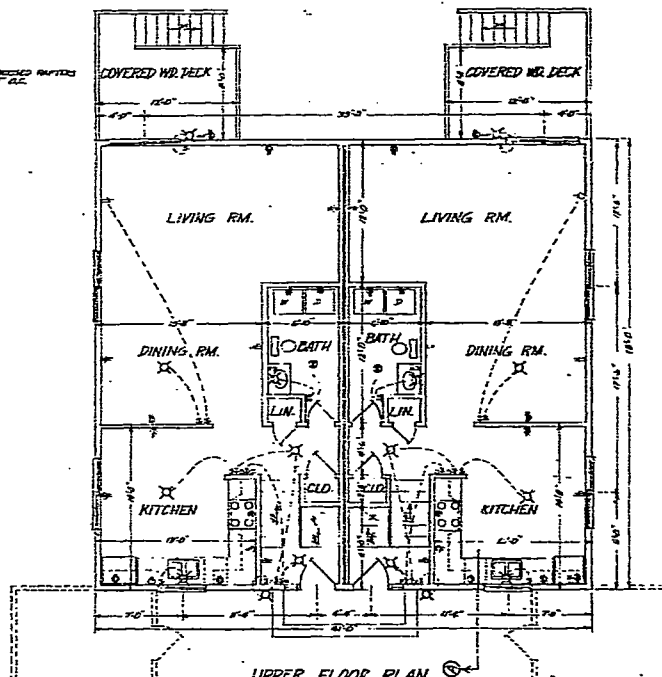
Max A. Mitchell  
Notary Public for State of Montana  
Residing at Billings, Montana  
My commission expires: Jan 8, 1986



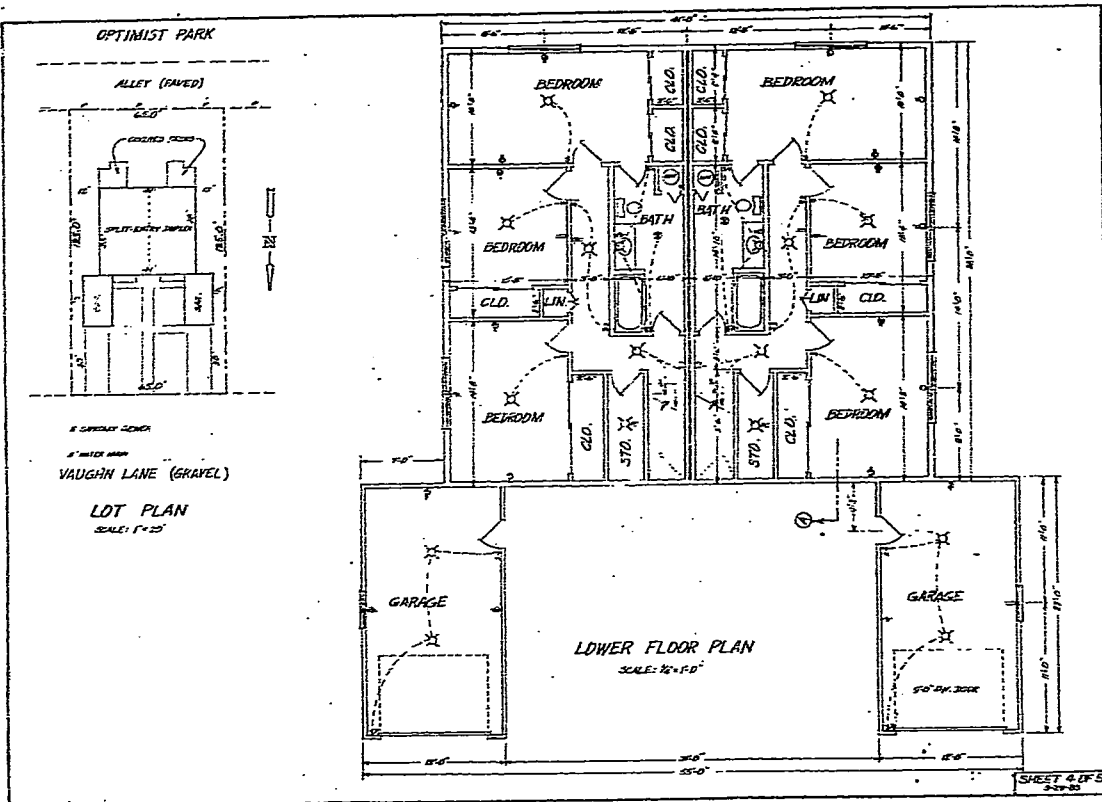
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SCALE: 1/4" = 1'-0"



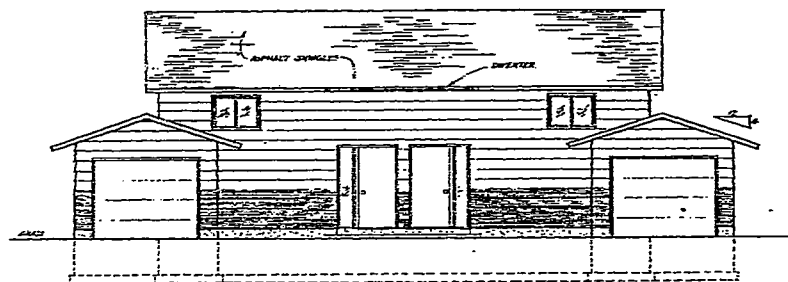
TYP. FDN. DETAIL  
SCALE: 1/4" = 1'-0"



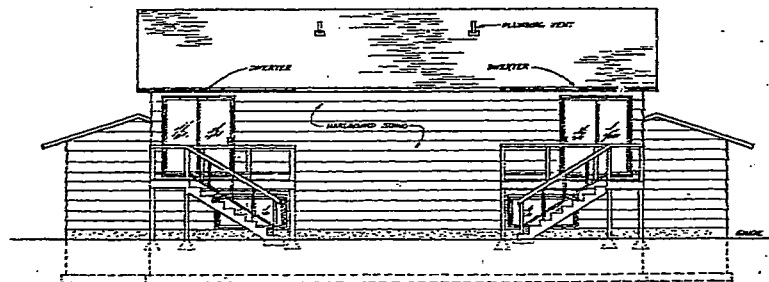
UPPER FLOOR PLAN  
SCALE: 1/4" = 1'-0"



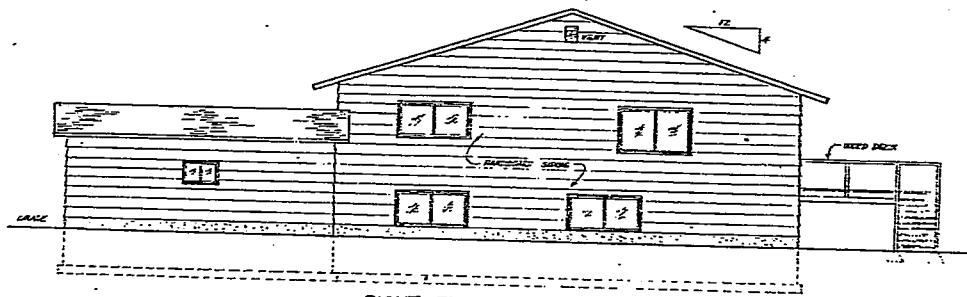
SHEET 4 OF 5  
3-27-85



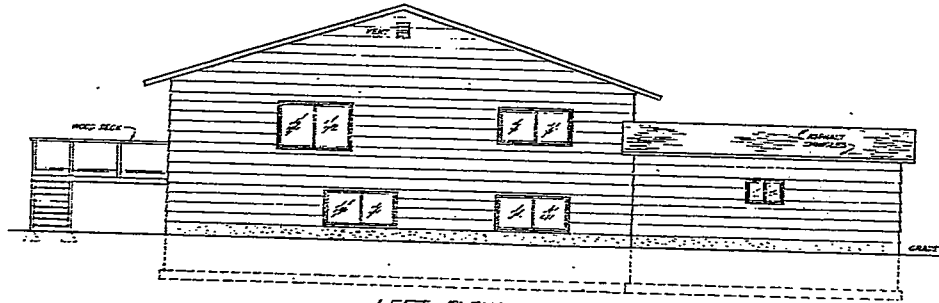
FRONT ELEVATION  
SCALE: 1/4" = 1'-0"



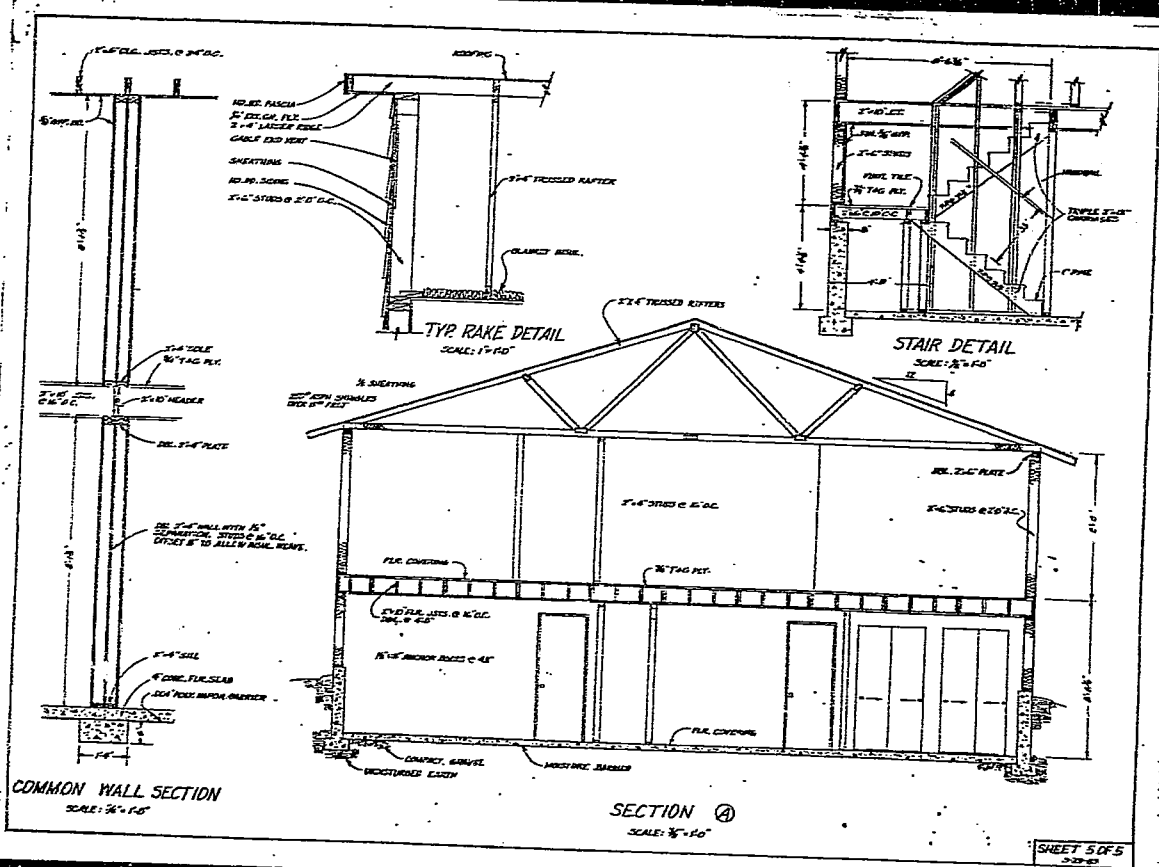
REAR ELEVATION  
SCALE: 1/4" = 1'-0"



RIGHT ELEVATION  
SCALE: 1/8"=1'-0"



LEFT ELEVATION  
SCALE: 1/8"=1'-0"







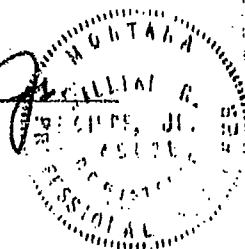


CERTIFICATE OF PROFESSIONAL ENGINEER

The undersigned is the professional engineer for the Optimist Park Townhomes, constructed on Lots 6A, 7A and 8A of Amended Subdivision Plat of the West 25 feet of Lot 5 and Lots 6, 7, 8 and 9, Block 2, Hayes Subdivision, according to the plat thereof on file and of record in the office of the Yellowstone County Clerk and Recorder as Document No. 125793.

I hereby certify that the attached plans are an accurate copy of the plans filed with and approved by the City and County officers having jurisdiction to issue building permits. The attached plans fully and accurately depict the layout, location, unit designation and dimensions of each unit as built. The construction of the building was completed in March 1985.

X William R. Gibbs, Jr.  
PE No. 4403E



STATE OF MONTANA )  
 ) ss.  
County of Yellowstone )

William R. Gibbs, Jr., being first duly sworn, deposes and says:

That he is the engineer named in the above Certificate of Professional Engineer and knows the contents thereof, and that the matters and things therein stated are true of his own knowledge.

X William R. Gibbs, Jr.

SUBSCRIBED AND SWORN to before me this 7<sup>th</sup> day of May, 1985.

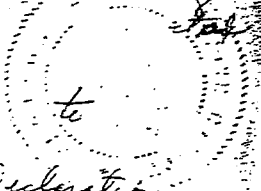
Katharine K. Bratton  
Notary Public for State of Montana  
Residing at Billings, Montana  
My commission expires: Feb. 10, 1988



1356617

1356617

Arthur Schenck



Declaration

I do solemnly swear

Optometrist Park Townhomes

STATE OF MONTANA ) ss  
County of Yellowstone )

I hereby certify that the within  
instrument was filed in my office

for record on this

day of JUL 12 1986

at 4:25 P.M. and is

fully recorded in Book 1277 of

on page 188

Witness my hand and official seal

MERRILL H. KLUNDT

County Clerk & Recorder

By [Signature] Deputy

50.00  
10.00 c/c  
60.00  
Sam Mitchell  
BY 2529