



DECLARATION OF UNIT OWNERSHIP FOR THE ROSE

DONALD M. HANSER and KIM HANSER, do hereby make and submit for filing the following Declaration under the Unit Ownership Act of the State of Montana, Section 70-23-101, et seq. Montana Code Annotated.

1. DEFINITIONS.

In the interpretation of this Declaration and By-Laws of The Rose Owner's Association, the following definitions shall apply:

- (a) "Association" means The Rose Owners Association, being all the unit owners acting as a group in accordance with this Declaration and duly adopted By-Laws.
- (b) "Building" means a building comprising a part of the property.
- (c) "Capital Expenses" means the expense of capital improvements to common areas; "capital improvements" are improvements to the common areas not constructed by Developer, e.g., construction of a tennis court or pool on the common elements.
- (d) "Common Elements" means the general common elements and the limited common elements.
- (e) "Declaration" means this Declaration of Unit Ownership for The Rose.
- (f) "Developer" is DONALD M. HANSER and KIM HANSER or any person or entity to whom they transfer or assign their development rights hereunder. A grant of a deed to a single completed unit by Developer shall not be deemed a transfer of development rights, unless the deed specifically states that development rights are being transferred.
- (g) "Eligible Mortgage Holder" means the holder of a first mortgage or trust indenture on any unit who has requested that the Association notify it of any proposed action requiring the consent of a specified percentage of eligible mortgage holders.
- (h) "General Common Elements" means those items described in Section 7(a) below. Any portion of the project not identified as part of a unit



or as a limited common element shall be a general common element.

- (i) "Limited Common Elements" means those common elements designated in this Declaration or by agreement of the unit owners as reserved for the use of fewer than all of the unit owners.
- (j) "Unit" means a separate unit, as defined in Section 5 of this Declaration.
- (k) "Unit Owners or Owner" means the person, partnership or corporation owning a unit on which construction of the interior and exterior of the building or portion of a building which is part of the unit has been completed, and for which plans have been recorded, including a contract purchaser if a Notice of Purchaser's Interest is recorded with the Yellowstone County Clerk and Recorder, and including co-owners. Unit owner shall also include Developer, until completion and sale of all units. A lessee of a unit shall not be considered a unit owner.

2. SUBMISSION TO UNIT OWNERSHIP.

The purpose of this Declaration is to submit the real property herein described and the improvements constructed thereon to the form of ownership and use provided by Chapter 23, Title 70, Montana Code Annotated, hereinafter referred to as the "Montana Unit Ownership Act". The definition of terms in this Declaration and the Bylaws of the Association shall be those definitions used in the Montana Unit Ownership Act, except as otherwise provided above. The real property included within the project, which shall be named "THE ROSE", is located in Yellowstone County, Montana, is owned in fee simple by DONALD M. HANSER and KIM HANSER and is more particularly described as follows:

Lot 2, Block 28, of Harvest Subdivision, 3rd Filing, in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 1122584.

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

3. CONSTRUCTION OF PROJECT.

Developer hereby reserves the right to construct up to twenty-three (23) townhomes and common area improvements upon said property without the consent of any unit owner, mortgagee, or trustee or beneficiary of any trust indenture:

Developer may proceed with construction subject to the following conditions:

- (a) Developer, or its assigns, may construct the townhomes at any time prior to the tenth anniversary of the date this Declaration is recorded.



- Prior to conveyance of each townhome, Developer shall execute and record an amendment to this Declaration; the Amendment shall include floor plans for the newly constructed townhomes, and a site plan showing the location of said townhome, if different from the plans attached to this Declaration, and the date construction of the townhome was completed.
- (b) From and after the recording date of each such amendment, the following consequences shall ensue:
 - (i) The owners of each newly constructed townhome shall have nonexclusive rights to use general common areas to the same extent as the owners of all other completed townhomes.
 - (ii) The owners of each newly completed townhome shall be assessed in accordance with their ownership interest in the common elements. However, no new townhome shall be assessed for, nor shall it have any obligation for debts or deficits of the Association in existence at the effective date of the townhome's first occupancy.
 - (iii) Each townhome shall be treated as a part of the project developed as a whole from the beginning, except to the extent otherwise provided herein. From and after the date of the amendment, the new townhomes shall be treated as though they had been developed, held, occupied and used by the owners as part of a single, undivided project.
 - (c) The newly constructed townhomes shall be similar in materials, style and quality of construction to the existing buildings.
 - (d) All costs of construction of the townhomes shall be paid by Developer, including all costs of replacement or relocation of common area improvements and all costs of repair of common element improvements, or other units necessitated by or resulting from such construction.
 - (e) To facilitate construction of the project, Developer hereby:
 - (i) Reserves an easement over and upon common elements for the purpose of access for constructing additional townhomes and common elements.
 - (ii) Reserves solely to Developer the power pursuant to 70-15-301, MCA, to grant utility easements reasonably necessary to the ongoing development or termination of the project, without approval of any unit owner.
 - (iii) Reserves the right to use water and electricity provided to the above-described property or any townhome for construction purposes, provided that Developer shall reimburse the supplying unit owners for the reasonable cost of such water and electricity.
 - (iv) Reserves the power, pursuant to 70-15-301 MCA, to amend this



Declaration, without approval of any unit owner, to create additional general or limited common elements, to provide that the project has been terminated and no further townhomes will be constructed, to change the location on the lot of the buildings, to add a more complete description of newly constructed townhomes, to record additional plats and plans to supplement or modify those included herein, and to amend the percentage of interest in common elements attached to each townhome in accordance with the provisions of this Declaration. Each unit owner, and each holder of a mortgage or trust indenture on a townhome, by acceptance of a deed to the townhome or by recordation of a mortgage or trust indenture on the townhome, shall be deemed to consent to amendment of this Declaration and to grant unto DONALD M. HANSER or KIM HANSER, or either of them and any successor Developer, a limited irrevocable power of attorney to amend this Declaration in accordance with this plan of construction.

- (f) Any liens arising as a result of Developer's ownership of and construction of additional units shall not attach to the interests of existing Unit Owners or those of first mortgagors of existing units.

4. DESCRIPTION OF PROJECT.

Upon completion, the project will consist of up to seven (7) new buildings. Up to five (5) new buildings will each contain four (4) townhome units, and one new building will have three (3) townhome units. Initially, fifteen (15) townhomes, in three (3) four (4) unit buildings and the three (3) unit building, will be constructed.

There is an existing building on the property which was constructed in 1978 and is currently used as a child care center. The existing child care building will be a single unit in the project. However, Developer reserves the right and the power, pursuant to 70-15-301 MCA at any time during the ten (10) year period following sale of the first unit in the project, to tear down the child care building and replace it with a maximum of two (2) four unit townhome buildings, similar in size, style and materials to the other four unit townhome buildings in the project. If the two additional four unit buildings are constructed, they will be built in the location where the child care building is now located and replace the south parking area which is part of the child care unit.

The residential townhome buildings will be of wood frame construction with vinyl siding, concrete foundation, and asphalt shingle roof. Interior walls are of sheetrock. The floor plan for all townhome units is shown on attached Exhibit "B", and by this reference is included herein. Each townhome unit is two stories plus a finished basement and an attached single car garage. All townhomes will have a



similar amount of living space. Developer does reserve the right to modify or change the plans shown on Exhibits "A" and "B", and to change the location of individual buildings upon the real property described above, without consent of any other owner or any lender.

The child care center building is of wood frame construction with cedar shake siding, concrete foundation, and asphalt shingle roof. The interior walls are of sheetrock. The child care center is two (2) stories in height, plus a finished basement. The floor plan for the child care center is shown on attached Exhibit "C", and by this reference is included herein.

The project will also include two (2) fenced playgrounds and ten (10) outside parking spaces on the north side of the project (the north parking area) which may be used by owners and their tenants, family members and guests. There is also parking on the south side of the child care center (the south parking area) which belongs to the owner of the child care center.

The unit number and the dimensions of each unit together with the location of the buildings and the common elements upon the real property are shown on Exhibit "A". The address of each unit is its unit number.

5. DESCRIPTION OF UNIT.

(a) Residential Units. Each residential townhome unit consists of the area bounded by the exterior walls of the building, to the center of the common wall separating two townhomes, the soil under the concrete floor of the townhome and its garage, and the exterior of the roof which covers the living space, garage, and the roof covering the attached porch and patio, if any. The land beneath each unit and the driveway, porch, garage, and ground level patio serving a single unit shall be a part of the unit. Utility lines and pipes which serve only one unit shall be a part of a unit from the interior of the unit to the point where they join lines or pipes serving other units. The driveway, and the exterior air conditioning compressor, if any, which serve a unit shall be part of the unit, including the concrete pad on which the compressor is located.

(b) Child Care Center Unit. The child care center building is a non-residential single unit at present. The unit includes the entire building, and the south parking area, and includes all of the land within the unit boundary as shown on Exhibit "A". Utility lines and pipes which serve the child care center, are a part of the unit from the interior of the unit to the point where they are metered or where they join lines or pipes serving other units.



6. OWNERSHIP.

Each unit, an appurtenant undivided interest in the general common elements, and in the limited common elements, the use of limited common elements reserved for the use of that unit, and the assessment account for that unit shall be inseparable, and may be conveyed, devised or encumbered only as a whole. Any conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an individual unit owner's interest in the common elements shall be void unless the unit to which that interest is attached is also included in the transfer.

Each owner of a unit shall be the fee simple owner of such unit and have an undivided interest in the common elements. The undivided interest in the common elements appurtenant to each townhome unit in the initial project shall be 2/35 per unit. The undivided interest in the common elements appurtenant to the child care unit shall be 5/35. In the event the child care unit is torn down and replaced with additional townhomes, the appurtenant interest in the common elements for each townhome in the project shall be adjusted to equal one divided by the total number of townhomes in the project, so that each townhome includes an equal appurtenant interest in the common elements.

7. COMMON ELEMENTS.

(a) The general common elements include all utility lines and pipes which serve all units, the entrances, exits and the private roadway which provide access to the units, the north parking area, all land which is not part of a unit or a limited common element, and the perimeter fences, and fences enclosing the play areas. The play area located on the north side of the project, designated as play area 2 on the site map, and the community mail boxes are also general common elements.

(b) The limited common elements are as follows:

- i. All walkways, entry courts, and entrances to and exits from a building, which serve, abut and are used in connection with only one unit, are reserved for the exclusive use of the owner of that unit, subject to the right of the Association to maintain the limited common elements.
- ii. The yard adjoining each townhome unit, as shown on Exhibit "A", is reserved for the exclusive use of the owner of that unit, subject to the right of the Association to maintain the limited common elements.
- iii. All utility lines, cables and pipes which serve more than one unit, but fewer than all units are limited common elements reserved for the use of the units served by those lines, cables and pipes, subject to the right of the Association to maintain the limited common elements.
- iv. Fences separating adjoining rear yards of the townhomes are limited common elements reserved for the use of the owners of the



townhomes whose rear yards are separated by the fence, subject to the right of the Association to maintain the limited common elements.

Limited common elements are designated as LC on the attached site plan.

8. USE.

The primary use for which each townhome unit is intended is that of a residential dwelling. The child care center unit may be used for any purpose allowed by the zoning on the property, except that businesses which unreasonably interfere with the residential character of the townhome units shall not be allowed. No unit may be used for an adult bookstore or theater or massage parlor. Additional restrictions on use are set forth in the Bylaws of the Association.

9. COMMON EXPENSES.

All the following Association expenses shall be charged to the unit owners as a common expense, according to each unit owner's percentage of undivided interest in the common elements:

- i. Routine administrative expenses of the Association, including management, accounting and legal fees incurred by the Association;
- ii. The Association's costs of enforcing this Declaration and the By-Laws and rules and regulations of the Association, to the extent such costs are not paid by the violating member;
- iii. The cost of maintenance, repair and replacement of units and common elements for which the Association is responsible, including the cost of maintenance and repair of the exterior of the buildings, except glass and garage doors, the cost of maintenance and repair of the fences installed by Developer, the cost of snow removal from the private roadway, driveways, parking lot 2, and front sidewalks when there is an accumulation of two (2) inches or more of snow, the cost of mowing and fertilizing all lawns, the cost of maintenance of the landscaping on the general common areas, fenced play areas for children and the playground equipment, and the cost of upkeep, repair, and replacement of the storm drain system and private roadway;
- iv. Insurance premiums for all insurance purchased by the Association, as required or authorized in the By-laws of The Rose Owners Association;
- v. The amount of the insurance deductible payable by the Association, if any, as provided in the Bylaws of the Association;
- vi. Capital expenses for capital improvements approved by all unit owners, and the cost of maintenance and repairs to those improvements;
- vii. The cost of water and sewer and lighting, if any, provided to the common areas.



- viii. Income taxes, if any, payable by the Association and corporation fees payable to the Montana Secretary of State; and
- ix. Any other common expense described in this Declaration or the Bylaws of the Association, or agreed to as common by all unit owners.

Co-owners of a unit shall be jointly and severally liable for payment of common expenses for the unit owned.

Expenses for maintenance or repairs due to the misuse or neglect of a unit owner or the owner's family members, tenants and guests shall be charged to such unit owner. The expense of replacement of lost mail box keys shall be paid by the unit owner.

All expenses for maintenance or repairs due to the misuse or neglect of a unit owner or the owner's family members, tenants, and guests, shall be charged to such unit owner as a common expense payable only by that owner.

10. COVENANT TO PAY MAINTENANCE ASSESSMENTS.

Assessments shall be made by the Association for all common expenses described above, or described elsewhere in this Declaration, or the Bylaws of the Association. Assessments will begin at the time Developer closes the sale of the first unit in the project. Thereafter, the obligation to pay assessments for a unit shall start upon sale or occupancy of that unit, whichever occurs first. The Developer, for each completed unit owned by it, and each unit owner, by acceptance of a deed, whether or not it shall be expressed in said deed, is deemed to covenant and agree to pay to The Rose Owners Association all regular and special assessments made by the Association for common expenses and to waive any right said owner may have, under the laws of the United States or the State of Montana, to claim a homestead exemption for said assessments. Assessments shall not include costs attributable to units under construction, and units not yet built.

If a mortgagee or beneficiary of a first trust indenture, or other purchaser obtains title to a unit by purchasing at a foreclosure sale on a first mortgage or first trust indenture, such acquirer of title and its successors and assigns, shall not be liable for common expenses or assessments chargeable to such unit which became due prior to the foreclosure sale described above unless expressly assumed by them.

11. REMEDIES FOR NON-PAYMENT OF ASSESSMENTS.

All unpaid sums assessed by the Association for common expenses chargeable to any unit, together with interest, late payment fees, collection costs, costs of suit or arbitration and reasonable attorney fees, shall constitute a lien on such unit, and if



filed of record, may be foreclosed in the same manner as a construction lien. During any such foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the rent.

Each assessment, together with interest, late payment fees, collection costs and costs of suit or arbitration, and reasonable attorney fees, shall also be the personal obligation of the owner of the unit against which the assessment was made at the time the assessment fell due and a suit or arbitration proceeding to recover a money judgment for unpaid assessments shall be maintainable by the Association against said owner without foreclosing or waiving the lien securing the same.

All costs of collection of delinquent assessments, including but not limited to, court costs, costs of filing liens, and attorney fees, shall be the obligation of the non-paying unit owner and may be added to the next regular assessment for that unit. Such costs shall be a lien on the unit of the non-paying owner and, if unpaid, the lien may be foreclosed in the same manner as a lien for unpaid common expenses.

12. MEMBERSHIP IN THE ROSE OWNERS ASSOCIATION.

Each unit owner shall be a member of The Rose Owners Association, a Montana non-profit corporation. Membership shall be appurtenant to and may not be separated from ownership of a unit. When more than one person holds an interest in any unit, all such persons shall be members. The vote for such unit shall be exercised as the owners determine, but in no event shall more than one weighted vote be cast with respect to any unit.

13. PROCESS.

Service of process in the cases provided for in Section 70-23-901, Montana Code Annotated, shall be made upon DONALD M. HANSER of 1675 Picador Place, Billings, Montana 59105. This provision may be amended in the manner provided in Section 70-23-902, MCA.

14. RIGHTS AND OBLIGATIONS OF DEVELOPER.

For each completed unit owned by it, Developer shall have all of the rights and duties afforded to any owner under the terms of this Declaration, the Bylaws of the Association, and Montana law.

15. PAYMENTS BY DEVELOPER.

Until all units are built and sold, Developer shall pay the real property taxes for units not yet built, or built but not yet sold by it. Developer shall insure, to the extent it deems necessary, all units under construction and pay the cost of such



insurance. Developer shall pay insurance on any unit which is finished but not yet sold or occupied and for all water used by the contractors during construction.

16. GRANT OF EASEMENTS.

There shall exist for the benefit of each unit and as a burden on the other units the following easements:

- (a) 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; each unit owner shall have an unrestricted right of ingress and egress across the common elements to his or her unit.
- (b) Easements through the units and common elements for maintenance, repair and replacement of the units and common elements. Use of these easements for access to the interior of units shall be limited to reasonable hours, except that access may be had at any time in case of emergency.
- (c) Every portion of a unit which contributes to the structural support of a building shall be burdened with an easement of structural support for the benefit of the other units in that building.
- (d) Easements through the units and common elements for all facilities for the furnishing of utility services within a building, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring; provided that the easements for such facilities through a unit shall be only substantially in accordance with the plans of the building.
- (e) Easements for encroachments (and maintenance thereof) of any portion of the general 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, limited common elements, and upon the adjoining unit, so long as they stand.

Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements, the limited common elements, or on the units for purposes of marketability of title.

17. PARKING EASEMENT.

A non-exclusive easement for parking in the south parking area is hereby granted to all townhomes residents and their guests; parking is restricted to those hours when the business located in the child care unit is not open for business. Townhome residents may not park on the south parking area during the normal business hours of the business located in the child care unit, and the owner of the child care unit may have unauthorized vehicles towed from the south parking area, at the vehicle owner's expense.



As consideration for this easement, the Association agrees to reimburse the owner of the child care unit for 30% of the cost of maintaining the south parking area, including, but not limited to, snow removal, striping, and repair of pavement. Such reimbursement shall be paid by the Association within twenty (20) days after receipt of a bill for the maintenance and shall be a common expense payable by all owners. The owner of the child care unit shall have the right to terminate this easement by recordation of a written notice of termination, if the Association fails to reimburse the owner for its share of the cost of maintenance within thirty (30) days after a written demand for payment is given to the Board of Directors of the Association.

This easement shall terminate at the time the child care building is torn down, or destroyed, or when construction of one or more townhome units is begun in the south parking area.

18. UNITS SUBJECT TO DECLARATION, BY-LAWS, RULES AND REGULATIONS, AND RESTRICTIVE COVENANTS.

All present and future owners of units shall be subject to, and shall comply with the provisions of this Declaration, the By-Laws, and rules and regulations adopted by The Rose Owners Association, as these instruments may be amended from time to time. The execution of a purchase contract by a unit owner or the acceptance of a deed thereto shall constitute acceptance of the provisions of such instruments by such owner. All owners shall be responsible for insuring compliance by their tenants, family members, other occupants of their unit and their guests. The provisions of the Declaration and the By-Laws, restrictive covenants and rules and regulations adopted by The Rose Owners Association shall be covenants running with the land and shall bind any person having an interest in such unit as though the provisions were recited and fully stipulated in each deed or conveyance thereto. The invalidity of any provision of this Declaration shall not affect in any manner the validity or enforceability of the remainder of the Declaration. No provision in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

19. ARBITRATION AND RIGHTS OF ACTION.

The Association and any aggrieved unit owner shall have the right to binding arbitration, and the right to maintain an action for specific performance to compel arbitration or enforce a decision of an arbitrator, against any unit owner or the Association for failure to comply with the provisions of this Declaration or the Bylaws of the Association, or any rules and regulations adopted by the Association,



except for claims of non-payment of assessments by any owner and foreclosure of the lien for unpaid assessments or fines, which claims shall be enforced by a Court action.

The prevailing party in any such action and in binding arbitration shall be entitled to recover its costs and attorney fees actually incurred from the losing party. In addition, the Association shall be entitled to recover from any owner violating the provisions of this Declaration, the Bylaws of the Association, or Rules and Regulations duly adopted by the Association, including failure to pay assessments when due, all costs and attorney fees incurred in compelling compliance without filing for arbitration or bringing a court action. Owners shall be responsible for non-compliance by their tenants, unless the tenant has been designated as the owner pursuant to 70-23-102(16) MCA, and for non-compliance by members of the owner's family.

20. EMINENT DOMAIN.

- (a) If a portion of the common elements only is acquired by eminent domain and if a separate award is not made to each unit owner, the award shall be allocated to each unit owner in proportion to each unit owner's percentage of undivided interest in the common elements.
- (b) If a part of the project which includes one or more individual units is acquired by eminent domain, the award shall be allocated to unit owners as follows:
 - (1) The owner of each individual unit taken shall receive the fair market value of that owner's unit, including that owner's interest in the common elements, whether or not any common elements are actually taken. Thereafter, the unit owner shall be divested of his or her entire property interest in the project attributable to the unit taken and shall have no further property interest in the property, including the common elements. In addition, the owner of each individual unit taken, following compensation, shall have no further voting rights in the project as owner of the unit taken.
 - (2) The remainder of the award, if any, shall be divided among the remaining unit owners in proportion to each owner's percentage of undivided interest in the common elements.
- (c) The Directors of the Association shall represent the unit owners in any eminent domain negotiations, legal proceedings, settlements or agreements; each unit owner, by acceptance of a deed, irrevocably appoints the Association as that owner's attorney in fact for this purpose.



21. NOTICE TO HOLDERS, GUARANTORS AND INSURERS OF MORTGAGES ON UNITS.

Upon written request from a holder, insurer or guarantor of a first mortgage on any unit, the Directors of the Association shall provide said holder, insurer or guarantor with timely written notice of:

- (a) Any proposed action that requires the consent of a specified percentage of eligible mortgage holders;
- (b) Any condemnation loss or any casualty loss which affects a material portion of the project or which affects any unit on which there is a first mortgage held, insured or guaranteed by such holder, insurer or guarantor;
- (c) 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;
- (d) Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

22. AMENDMENT.

Prior to completion of construction by Developer, Developer reserves the right to amend this Declaration, and any subsequently recorded Declaration, as provided in Sections 3 and 4 above, or to comply with any FHA, VA, Freddy Mac, or FNMA requirements for guaranteeing or purchasing loans on the units. All unit owners and all mortgagees of a unit, by acceptance of a deed, mortgage or trust indenture to any unit, shall be deemed to consent to any such amendment by Developer and to grant unto DONALD M. HANSER and KIM HANSER, or either of them, an irrevocable limited power of attorney, to execute, acknowledge and record such amendments. **Recordation of amendments modifying the percentage of interest in common elements attached to each unit shall be deemed a conveyance, transferring title in the common elements in accordance with the amendment.**

Except as otherwise provided in this Declaration, the provisions of this Declaration shall be amended only by affirmative vote of the owners of an undivided 31/35 interest in the common areas; if a unit has more than one owner, only one owner of that unit need consent. No such amendment shall be effective prior to completion of construction of all units, unless approved by Developer. A change in any of the following must also be approved by all eligible mortgage holders on units subject to mortgages held by eligible mortgage holders:

- (a) Voting rights;



- (b) Responsibility for maintenance and repairs;
- (c) Reallocation of interests in general or limited common areas or rights to their use other than as set forth in this Declaration;
- (d) Redefinition of any unit boundaries for completed units after conveyance by Developer, other than as provided in this Declaration;
- (e) Conversion of units to common areas or vice versa, other than as provided in this Declaration;
- (f) Contraction of the project, or the addition or withdrawal of property to or from the project, other than as provided in this Declaration;
- (g) Additional restrictions on leasing of units;
- (h) Imposition of restrictions on an owner's right to sell that owner's unit; and
- (i) Restoration or repair of the project in a manner other than as provided in this Declaration.

All amendments to the Declaration shall be recorded in the office of the Yellowstone County Clerk and Recorder, Billings, Montana, and no amendment will be effective until it is recorded.

23. WARRANTY.

Developer gives no warranty, express or implied, on any of the units or common area improvements, but will transfer to the initial owners and the Association all manufacturers and dealers warranties received from the general contractor on appliances, materials, fixtures and equipment, and any warranty given by the general contractor or subcontractors who constructed the buildings and common area improvements.

The Warranty from the general contractor will not cover cracks in the concrete foundation or floor, or in the concrete driveway or sidewalks, normal maintenance items or conditions resulting from wear and tear or misuse or negligence, including failure to provide reasonable and necessary maintenance, or any defect resulting from damage for which any third person is responsible. Contractor shall not be responsible for any damage to the home, including water damage or damage to the foundation, resulting from changes to the finished grade of the land by the homeowner, landscaping contractors, or any other third party, by altered rain gutter extenders, leaking underground sprinklers, or any landscaping which disrupts drainage away from the building. Contractor warranties may also have additional exclusions.



DEVELOPER SPECIFICALLY DISCLAIMS ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGE TO ANY PERSON, THE UNITS AND COMMON ELEMENTS, OTHER COMPONENTS OR ANY OTHER REAL OR PERSONAL PROPERTY RESULTING FROM A DEFECT. ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS, AND HABITABILITY, ARE EXPRESSLY DISCLAIMED AND DO NOT APPLY.

DATED this 10th day of January, 2006.

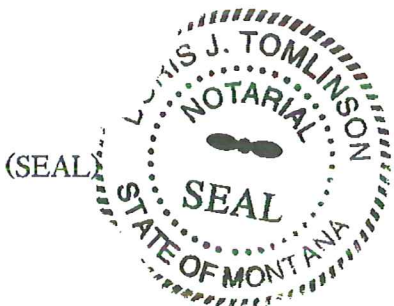
Donald M. Hanser
DONALD M. HANSER

Kim Hanser
KIM HANSER

STATE OF MONTANA)
 : ss.
County of Yellowstone)

This instrument was acknowledged before me on January 10, 2006, by DONALD M. HANSER and KIM HANSER.

Doris J. Tomlinson
Doris J. Tomlinson
(print or type name of notary)
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires July 30, 2008





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CONSENT OF LENDER

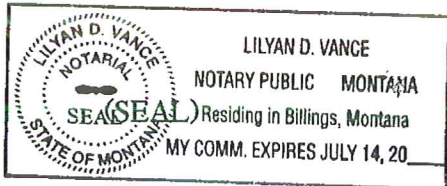
The undersigned Beneficiary of a Trust Indenture on the above-described real property hereby consents to conversion of said property and the improvements therein to townhomes and to the recordation of this Declaration of Unit Ownership.

STOCKMAN BANK

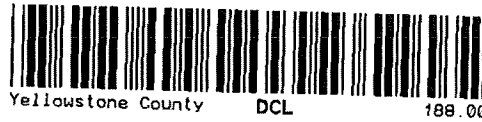
BY: Butch Bratsky
ITS: President

STATE OF MONTANA)
County of Yellowstone) : ss.

This instrument was acknowledged before me on January 11, 2006, by Butch Bratsky as President, of STOCKMAN BANK.



Lilyan D. Vance
(print or type name of notary)
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires 07/14, 2007



CERTIFICATE

The undersigned, being the duly authorized agent of the Department of Revenue of the State of Montana, within the County of Yellowstone, herewith executes the following certificate relating to THE ROSE situated on the following described real property:

Lot 2, Block 28, of Harvest Subdivision, 3rd Filing, in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 1122584.

The undersigned herewith certifies that:

1. The name "THE ROSE" is in compliance with 70-23-303, MCA, and
2. All taxes and assessments due and payable for the said real property have been paid to date.

DATED this 5 day of January, 2006.

MONTANA DEPARTMENT OF REVENUE

By: Whitney Jankowski



CERTIFICATE

The undersigned, being the duly authorized agent of the Planning and Community Services Department for the City of Billings, Yellowstone County, Montana, herewith executes the following Certificate relating to The Rose situated on the following real property:

Lot 2, Block 28, of Harvest Subdivision, 3rd Filing, in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 1122584.

The undersigned herewith certifies that:

1. The condominium constructed on the land above written is exempt from the provisions of MCA Sections 76-3-101, et seq., pursuant to MCA Section 76-3-203(2).

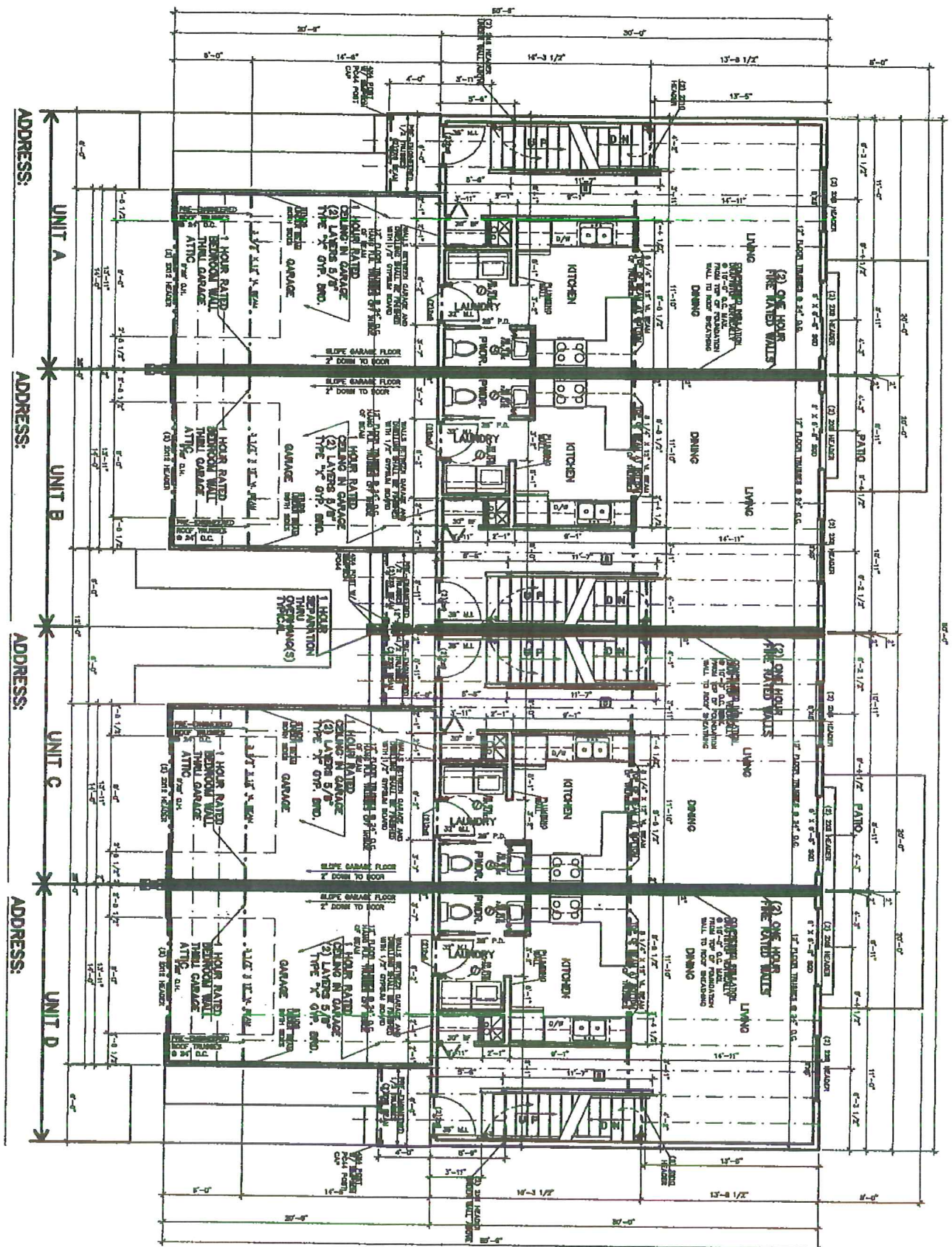
Specifically:

The proposal for The Rose is in conformance with applicable local zoning regulations where local zoning regulations are in effect.

DATED this 11th day of January, 2006

By: Karen Miller
Planning and Community Services
Department, City of Billings,
Yellowstone County, Montana

FLOOR PLAN
 MAIN FLOOR GROSS SQUARE FOOTAGE (EACH UNIT): 800 SF



ADDRESS:

ADDRESS:

ADDRESS:

ADDRESS:



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EXHIBIT B, p. 1

SECOND FLOOR PLAN

SECOND FLOOR GROSS SQUARE FOOTAGE (EACH UNIT): 803 SF

ADDRESS:

UNIT A

ADDRESS:

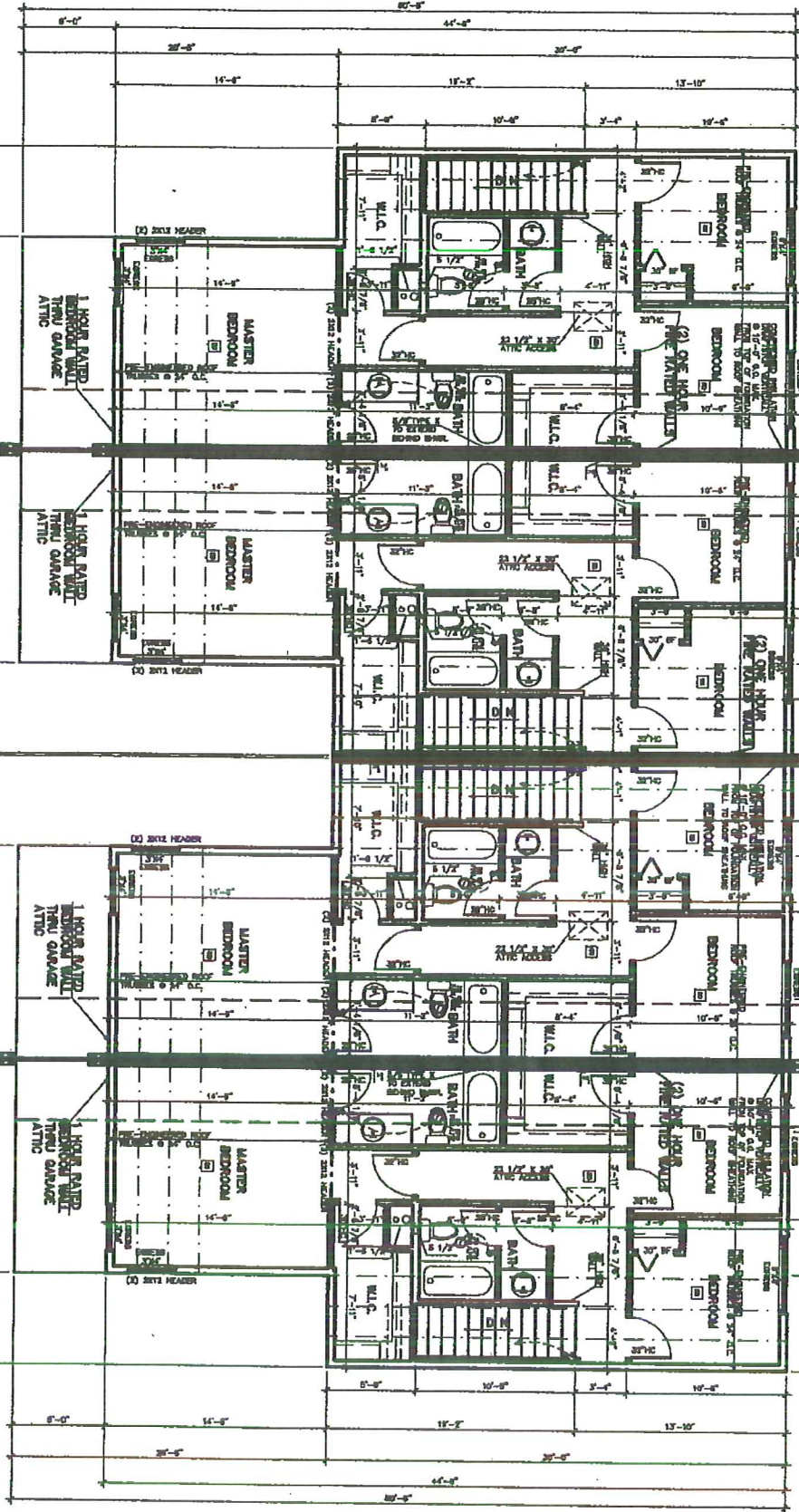
UNIT B

ADDRESS:

UNIT C

ADDRESS:

UNIT D



NO ROOF PENETRATIONS IN THE ZONE 4-0 OF EACH SIDE OF PARTIALLY (TYPICAL)

NO ROOF PENETRATIONS IN THE ZONE 4-0 OF EACH SIDE OF PARTIALLY (TYPICAL)

NO ROOF PENETRATIONS IN THE ZONE 4-0 OF EACH SIDE OF PARTIALLY (TYPICAL)

EXHIBIT B, p.2



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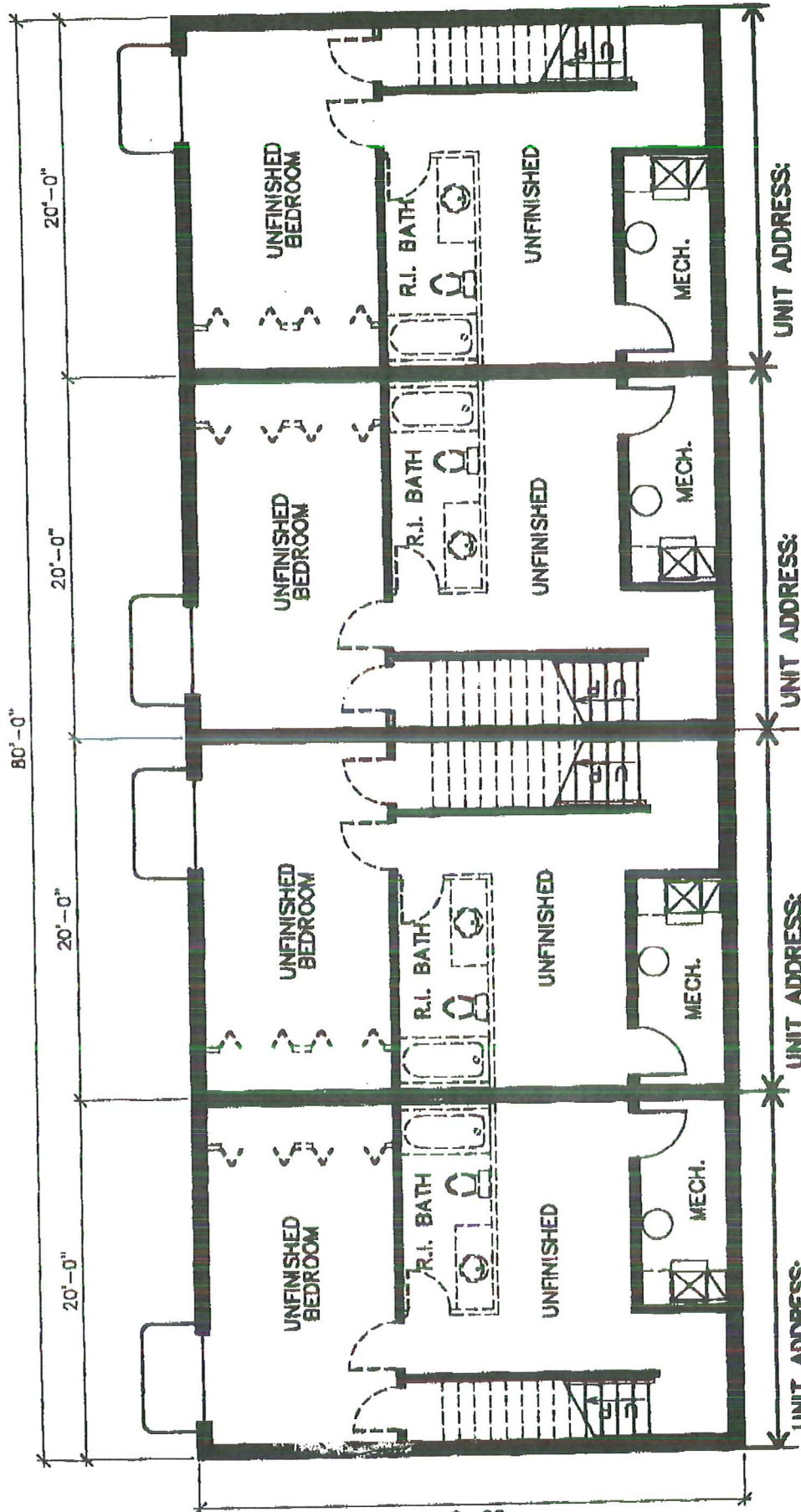
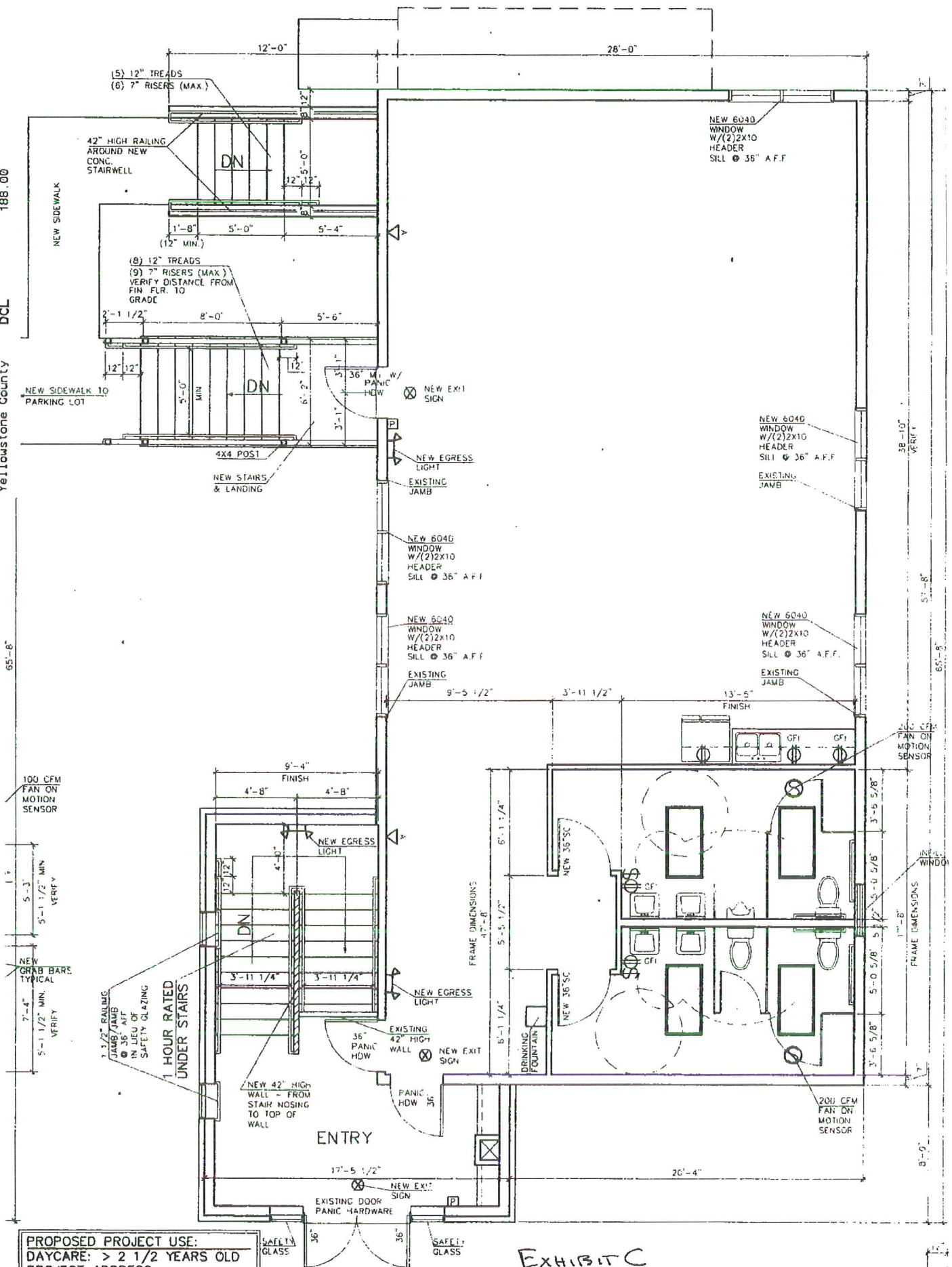


Exhibit "B", Page 3

FOUNDATION / BASEMENT PLAN

BASEMENT GROSS SQUARE FOOTAGE (EACH UNIT): 600 SF

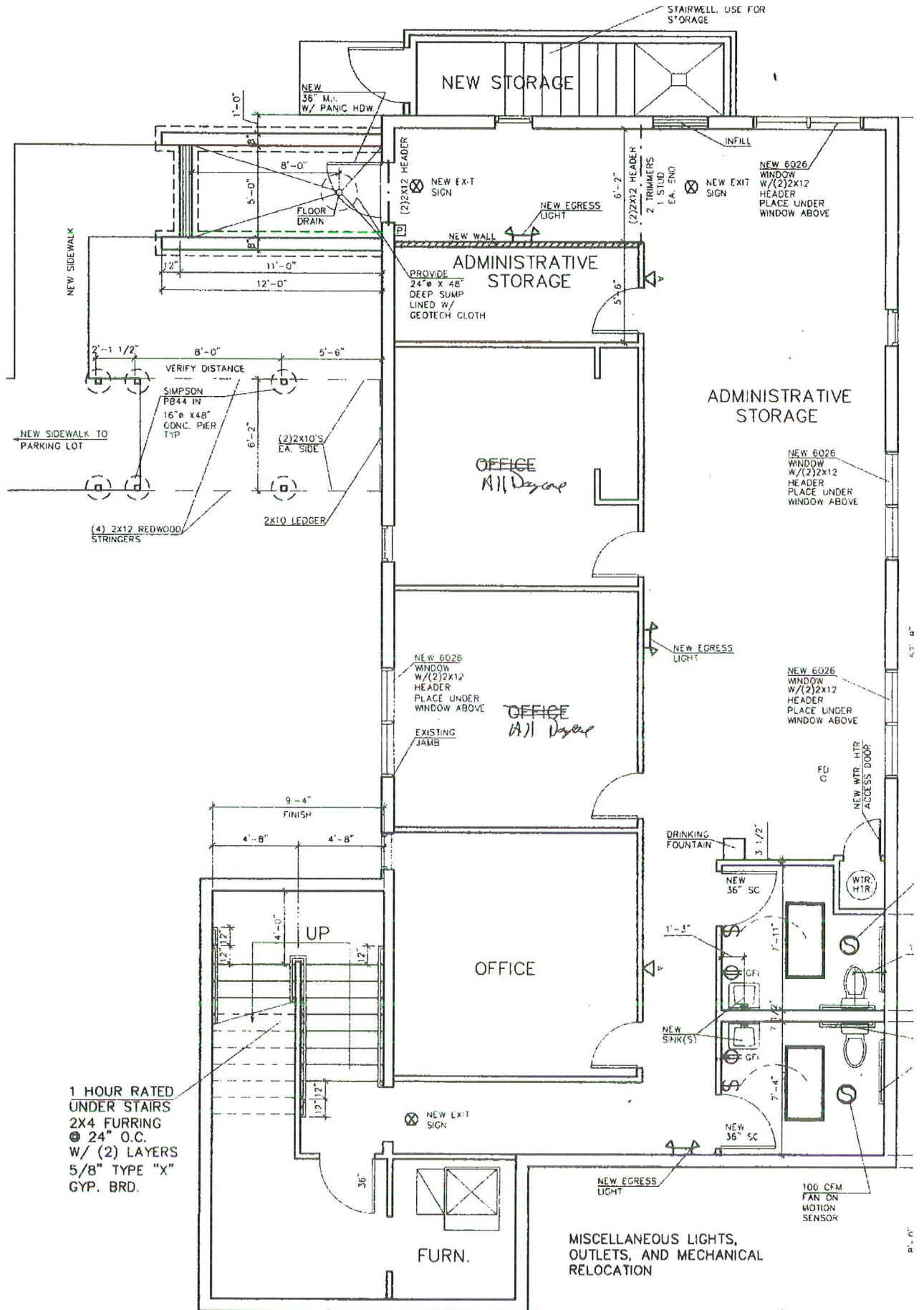


PROPOSED PROJECT USE:
 DAYCARE: > 2 1/2 YEARS OLD
 PROJECT ADDRESS:
 3225 ROSEBUD DR., BILLINGS, MT
 OCCUPANCY GROUP: E
 TYPE OF CONSTRUCTION: V-B
 CROSS-FLOOR AREA: 1000-SF

EXHIBIT C
 NEW MAIN FLOOR PLAN

SCALE 1/4" = 1' - 0"





1 HOUR RATED
 UNDER STAIRS
 2X4 FURRING
 @ 24" O.C.
 W/ (2) LAYERS
 5/8" TYPE "X"
 GYP. BRD.

EXHIBIT C, P.2
 NEW BASEMENT PLAN

SCALE 1/4" = 1' - 0"

