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DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

SONNENBLICK CONDOMINIUMS

The undersigned, who is the sole owner of the land and building hereafter described, hereinafter called "Grantor", in order to subdivide said property into separate units, pursuant to Chapter 23 of Title 67, Revised Codes of Montana 1947, as amended, hereby establishes and declares, on behalf of himself, his heirs and assigns, to their Grantees and their respective heirs, successors and assigns, that the property from and after the date of the recording of this declaration in the office of the Clerk and Recorder of Gallatin County, Montana, shall be and continue subject to each and all of the terms herein until this declaration is terminated or abandoned as hereinafter provided.

1. The land subject to this declaration is all of the following described property:

S $\frac{1}{2}$  of Lot 2 and all of Lot 3, Block 5, University Addition, according to the plat thereof on file and of record in the office of the Clerk and Recorder of Gallatin County, Montana, together with the completed multi-family dwelling constructed thereon.

2. The property subject to this declaration shall be known as SONNENBLICK CONDOMINIUMS. The building constructed on the property includes four (4) separate family units, each of which consists of a basement, ground floor, and one upper floor, together with a private garage adjacent to the building. The building is of frame construction with rough sawn cedar shingle siding and asphalt shingle roof.

Each family unit has its own exit to the yard surrounding the building, and is therefore capable of individual utilization as a family unit patio and deck area, each unit owner obtaining a particular and exclusive property right thereto, and also an undivided interest in the common elements hereafter described. Floor plans of the building constructed on said property, showing with particularity the layout of each unit, including the unit designation, location and dimensions of each unit, are filed concurrently with this declaration

as Document # 779.03, on \_\_\_\_\_, 1972, in the Office of the County Clerk and Recorder of Gallatin County, Montana. The family units have been numbered with sequential even numbers from #1108 through #1114 to correspond with the street addresses, commencing with Unit #1108 at the north end of the building and progressing through Units #1110 and #1112 to Unit #1114 at the south end of the building.

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3. Each family unit has floor space consisting of approximately 560 square feet on the ground floor, 560 square feet on the upper floor, and 560 square feet in the basement. Each unit is equipped with and includes its separate gas fired forced air furnace and separate central air conditioning unit, and 40-gallon quick recovery gas-fired hot water heater, together with any other fixtures or appliances which are located within or attached to the interior walls of the unit. Each family unit shall be bounded as to both horizontal and vertical boundaries as shown on the floor plans filed as Document # 779.03 on \_\_\_\_\_, 1972, in the office of the County Clerk and Recorder of Gallatin County, Montana, copies of which are attached hereto, subject to such encroachments as are contained in the building whether the same exist now or are created by settlement or movement of the building or by permissible repairs, reconstruction or alterations. Said boundaries are intended to be as follows:

(a) Horizontal boundaries:

- (i) The underside of the basement concrete floor below and abutting the family unit.
- (ii) The underside of the ceiling joist above and abutting the upper floor of the family unit.

(b) Vertical boundaries:

- (i) Between family units: the plane formed by the center line of the wall between apartments.
- (ii) Exterior boundaries: the plane formed by the center line of the outside walls of the building, except that such boundaries shall be extended so as to include within it all windows and glass doors within the family unit.

Each family unit shall include and the same shall pass with each family unit as an inseparable appurtenance thereto, whether or not separately described, conveyed or encumbered, all the rights, title and interest of a unit owner in the property, which shall include but not be limited to:

- (c) An undivided share of the common elements as set forth in ¶4 of this declaration;
- (d) Association membership in the Sonnenblick Condominiums Association, the association for the benefit of the family unit owners;
- (e) Easements for the benefit of the family unit;
  - (i) Easements 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 family units and common elements for maintenance, repair and replacements of the family units and common elements. Use of these easements, however, for access to the family 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 family 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 family 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 and wiring provided that the easements for such facilities through a family unit shall be only substantially in accordance with the plans and specifications of the building.

The family units, each of which is a three level unit (including basement), approximately 40 feet long and 14 feet wide, are specifically described as follows:

Family Unit No. 1108, located in the north 14 feet of the [unclear] of the contiguous [unclear] No. 1108. The 14 feet immediately

Family Unit No. 1112, located in the 14 feet immediately to the south of Unit No. 1110.

Family Unit No. 1114, located in the 14 feet immediately to the south of Unit No. 1112.

4. The general common elements are as follows:

- (a) The premises upon which the building is constructed and reduced by that part of the premises described as the family units and the limited common elements described in ¶5.
- (b) The plumbing network including all water and sewer lines extending into more than one family unit.

- (c) The sprinkler system and all landscaping, plants and materials installed on the property outside of and adjacent to the building and the limited common elements described in 45.
- (d) Necessary light, telephone and water public connections, including common electrical panel and common gas meter.
- (e) The foundations, exterior halves of main walls and roof of the building.

The owners of each family unit shall own an undivided one-fourth (25%) interest in the common elements as a tenant in common with all the other owners of the property, and except as otherwise limited in this declaration, shall have the right to use the common elements for all purposes incident to the use and occupancy of the respective family unit as a place of residence, and such other incidental uses permitted by this declaration, which rights shall be appurtenant to and run with the family unit. Such undivided interest may not be changed without unanimous approval of all owners. The common elements shall remain undivided, and no owner shall bring any action for partition or division of any part thereof.

5. The limited common elements (facilities restricted for the use of the respective family units) are as follows:

- (a) Each of the family units shall be entitled to the exclusive use of the concrete slab driveway and garage designated with the same number as the family unit.
- (b) Each of the family units shall be entitled to the exclusive use of the concrete slab patio immediately adjacent to the rear entrance of the respective family unit, and bounded by the extended line of the family unit side walls and the running edge of the patio slab.
- (c) Except for the garage, driveway and patio, there are no other limited common elements.

6. The units and common elements shall be occupied and used as follows:

- (a) No part of the property shall be used for other than residential purposes. Each family unit shall be used as a residence for a single family and for no other purpose, except that an owner may use a portion of this 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 for music and/or dance.
- (b) There shall be no obstruction of the common elements

nor shall anything be stored in or on the common elements without prior consent of the Association. Each owner shall be obligated to maintain and keep in good order and repair his own family unit.

- (c) Nothing shall be done or kept in any unit or in the common elements which will increase the rate of insurance of the 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.
- (d) Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of a building and no sign, awning, canopy, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior consent of the Association.
- (e) No rabbits, livestock, fowl, poultry or other animals of any kind shall be raised, bred or kept in any unit except that dogs, cats or other household pets may be kept in units, subject to rules and regulations adopted by the Association, provided that they are not kept, bred, or maintained for any commercial purpose.
- (f) No nuisances shall be allowed upon the property nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. No immoral, improper, offensive or unlawful use shall be made of the property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.
- (g) Nothing shall be done in any family 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.
- (h) No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, shall be conducted, maintained or permitted on any part of the property, nor shall any "for sale" or "for rent" signs or other window displays or advertising be maintained or permitted on any part of the property or in any unit therein; except that grantors and their agents reserve the right to place "for sale" or "for rent" signs on any unsold or unoccupied units, and the right is hereby given to any mortgagee or trust indenture beneficiary who may become the owner of any unit, to place such sign on any family unit owned by such mortgagee or beneficiary.
- (i) Nothing shall be altered or constructed in or removed from the common elements, except upon the written consent of the Association.

7. The person designated to receive service of process in cases provided in §67-2338, R.C.M. 1947, is Thomas A. Overturf, whose place of business is 521 West Cleveland, Bozeman, Montana.

8. The administration of Sonnenblick Condominiums, consisting as aforesaid of the land and building described in ¶1 and ¶2 of this declaration shall be in accordance with the provisions of this declaration, and with the provisions of the bylaws which are filed concurrently with this declaration as Document 1000091, on Dec 1, 1972, at \_\_\_\_\_ in the office of the County Clerk and Recorder of Gallatin County, Montana

9. This declaration shall not be revoked or any of the provisions herein amended unless all of the owners and the mortgagees of all of the mortgages covering the family units unanimously agree to such revocation or amendment by duly recorded instruments.

10. No owner of a family unit may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of the family unit. All sums assessed by the Association but unpaid for the share of common expenses chargeable to any family unit shall constitute a lien on such family unit prior to all other liens except only (a) tax liens on the family unit in favor of any assessing unit or special improvement district and (b) all sums unpaid on the first mortgage 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 family units, in like manner as a mortgage of real property. In any such foreclosure the family unit owners shall be required to pay a reasonable rental for the family unit, if so provided in the bylaws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The manager or Board of Directors of the Association, acting on behalf of the owners of the family units shall have power to bid in the unit at foreclosure sale, and to acquire and hold, lease, rent, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

11. Where the mortgagee or beneficiary of a trust indenture or other purchaser of a family unit obtains title to the unit as a result of foreclosure of a first mortgage or trust indenture, such acquirer of title, his successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to such family unit which became due prior to the acquisition of title to such family unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the family units including such acquirer, his successors and assigns.

12. The respective family 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 (30) days; or
- (b) any rental if the occupants of the family 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 family units shall have the absolute right to rent or lease the same provided that said lease or rental agreement is made subject to the covenants and restrictions contained in this declaration and further subject to the bylaws attached hereto.

13. Except as hereinafter allowed, the Board of Directors or the management agent shall purchase all insurance policies upon the property for the benefit of the family unit owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of Certificates of Insurance mortgage endorsements to the holders of first mortgages or trust indentures on the family units or any of them, and if insurance companies will agree, shall provide that the insurer waives its rights of subrogation as to any claims against family unit owners, the Association and their respective servants, agents and guests.

Each family unit owner may obtain insurance at his own expense, affording coverage upon his personal property and for his personal liability and as may be required by law, but all such in-

insurance shall contain the same waiver of subrogation referred to in the preceding paragraph, and must be obtained from an insurance company from which the Association obtains coverage against the same risk, liability or peril, if the Association has such coverage.

The following coverage shall be obtained by the Association:

- (a) Casualty. The building and all insurable improvements upon the land and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against loss or damage by fire or other hazards covered by the standard extended coverage endorsement, and such other risks as from time to time customarily shall be covered with respect to buildings, similar in construction, location and use as the building, including but not limited to vandalism, malicious mischief, wind storm and water damage.
- (b) Public liability and property damage in such amounts and in such form as shall be required by the Association, including, but not limited to, water damage, legal liability, hired automobile, nonowned automobile and off premises employee coverages.

All liability insurance shall contain cross liability endorsements to cover liability of the family unit owners as a group to a family unit owner.

Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as common expenses. All insurance policies purchased by the Association shall be for the benefit of the Association and the family unit owners and their mortgagees as their respective interests may appear and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association and any mortgagees named in endorsements to the policies. The Association shall hold the proceeds in trust for the benefit of the Association, the family unit owners and their respective mortgagees in the following shares:

- (c) Proceeds on account of damage to general and limited common elements - the undivided share for each family unit owner and his mortgagee, if any, set forth in §4 hereof.
- (d) Proceeds on account of family units shall be held in the following undivided shares:



- (i) partial destruction when the building is to be restored - for the owners of damaged family units in proportion to the cost of repairing the damage suffered by each damaged unit.
- (ii) Total destruction of the building or where the building is not to be restored for all family unit owners, the share of each being that share set forth in 14.
- (e) In the event a mortgagee endorsement has been issued as to a family unit, the share of the unit owner shall be held in trust for the mortgagee and the family unit owner as their interests may appear.

Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial owners in the following manner:

- (f) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as hereinafter provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, all remittances to family unit owners and their mortgagees being payable jointly to them.
- (g) If it is determined as hereinafter provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners, remittances to family unit owners and their mortgagees being payable jointly to them.

14. If any part of the common elements shall be damaged by casualty, the determination of whether or not to reconstruct or repair the same shall be made as follows:

- (a) In the event of damage or destruction which does not render two or more of the family units untenable, damage shall be reconstructed or repaired unless this declaration is terminated prior to commencement of reconstruction or repairs. For the purpose of this paragraph, damage or destruction shall not be regarded as rendering a family unit untenable if repairs of such damages or destruction can reasonably be completed within thirty days after it occurs.
- (b) In the event of destruction rendering two or more of the family units untenable, no reconstruction or repairs shall be commenced unless first authorized by a meeting of the family unit owners which shall be called within ninety days after the occurrence of the casualty, or within thirty days after the insurance loss has finally been adjusted, whichever date is later, and at which meeting family unit owners who in the aggregate own three of the units, have voted in favor of such reconstruction or repair.

- (c) Any such reconstruction or repair shall be substantially in accordance with the plans and specifications. Encroachments upon or in favor of family units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the family unit upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the building was originally constructed. Such encroachments shall be allowed to continue and exist so long as the building stands.

15. The responsibility for repairing damage to the property is as follows:

- (a) If the damage is only to those parts of a unit for which the responsibility and maintenance and repair is that of a family unit owner, then the unit owner shall be responsible for the reconstruction and repair after casualty; provided that such repairs must be completed by the unit owner within sixty days after it occurs. If such repairs are not completed within sixty days after the damage or destruction, then the Association shall have the option of performing such reconstruction and repairs as it shall deem necessary in the same manner and with the same rights hereinafter provided for all other reconstruction and repair for which the Association is responsible. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.
- (b) Immediately after a casualty causing damage to the property for which the Association has the responsibility of repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums of such bonds as the Board of Directors desires.
- (c) If at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the cost thereof are insufficient, assessments shall be made against the family unit owners who own the damaged property in sufficient amounts to provide funds for the payment of such costs.
- (d) The funds for payment of costs of reconstruction and repair after casualty, consisting of proceeds of insurance and funds collected by assessments, shall be disbursed in payment of such costs in the following manner:
- (i) If the responsibility for reconstruction and repair lies with the apartment owner, the proceeds shall be disbursed to the contractors, suppliers and personnel supplying the materials and services required for reconstruction and repair in such amounts and at such times as the family unit owner may direct, or if there is a mortgagee endorsement then to such payees as the family unit owner and first mortgagee jointly direct; provided that this paragraph shall

not be construed as limiting or modifying the responsibility of the family unit owner to make such reconstruction or repair.

(ii)

If the responsibility of reconstruction and repair lies with the Association, the construction fund shall first be disbursed by order of the Association in payment of the cost of reconstruction and repair; provided, however, that if the amount of the estimated costs of reconstruction and repair exceeds the total of the annual assessments for common expenses made during the year in which the casualty occurred, or upon request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, then the construction fund shall be disbursed by payment of such costs in the manner required by the Board of Directors and upon approval of a licensed architect qualified to practice in Montana and employed by the Association to supervise the work.

(iii)

It shall be presumed that the first moneys 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 is established, such balance shall be distributed jointly to the family unit owners and their mortgagees who are the beneficial owners of the fund.

(iv)

When the damage is to both common elements and family units, the insurance proceeds will be applied first to the costs of repairing the common elements and the balance to the family units in share above stated.

(v)

Each apartment owner shall be deemed to have delegated to the Board of Directors his right to adjust with insurance companies all losses under policies purchased by the Association except in any case where the damage is restricted to one family unit, subject to the rights of mortgagees of such units.

16. Each family unit owner shall be governed by and shall comply with the terms of this declaration 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 family 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 family unit owner.

- (b) All family 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 family unit owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the court.
- (d) 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 family unit owner to enforce such right, provision, covenant or condition in the future.
- (e) All rights, remedies and privileges granted to the Association or a family 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.

17. 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 family unit and the appurtenance thereto; and every family 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.

18. This declaration of condominium ownership shall be terminated, if at all, in the manner provided in Sections 67-2332 through 67-2335, inclusive, Revised Codes of Montana 1947, as amended.

19. So long as the grantor owns any of the family units the following provisions shall be deemed in full force and effect, neither of which shall be construed to relieve grantor from any obligations of a family unit owner to pay assessments with respect to each family unit owned by him in accordance with the bylaws:

- (a) So long as grantor owns two or more family units, a majority of the directors of the Association shall be selected by grantor and such members as may be selected by grantor need not be residents in the building.
- (b) 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.
- (c) At the time of the filing of this declaration the premises described in ¶1 and ¶2 are without curb, gutter and sidewalk, and South Black Avenue adjacent to the premises is unpaved. It is anticipated that subsequent to the filing of this declaration a special improvement district will be formed for the installation of curbs, gutter, sidewalk and paving. Participation in the special improvement district shall be by the Association on behalf of the family unit owners other than the grantor, and in no case shall the Grantor pay or become obligated for assessments arising because of the improvements described.

21. If any term, covenant, provision, phase 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 of this declaration.

IN WITNESS WHEREOF, the Grantor has executed this declaration this 15 day of October, 1972.

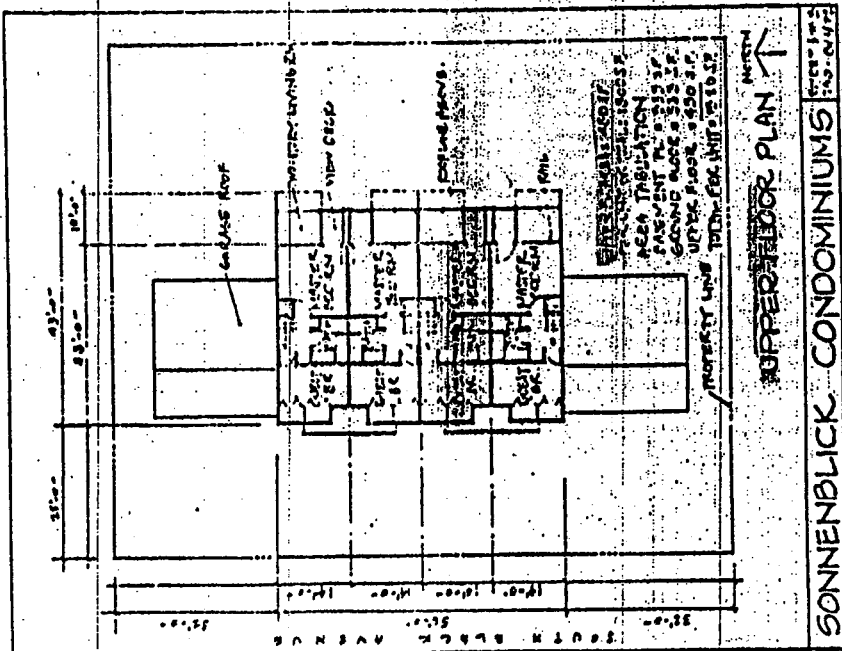
*THOMAS A. OVERTURE*  
 THOMAS A. OVERTURE

STATE OF MONTANA  
 County of Yellowstone } ss.

On this 15th day of October, 1972, before me, a Notary Public for the State of Montana, personally appeared THOMAS A. OVERTURE known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

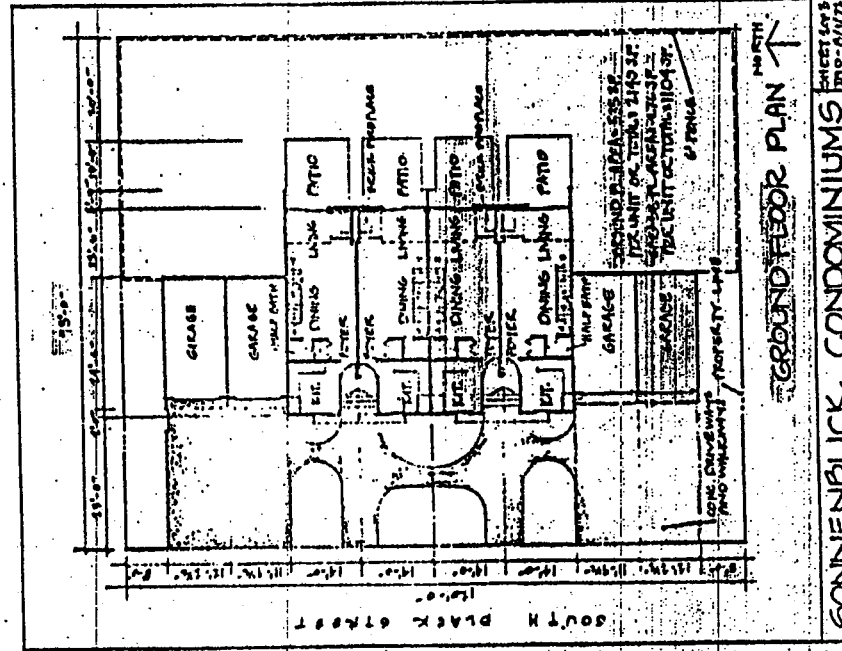
(NOTARIAL SEAL)

*Robert E. ...*  
 Notary Public for the State of Montana  
 Residing at Billings, Montana  
 My commission expires November 10, 1974



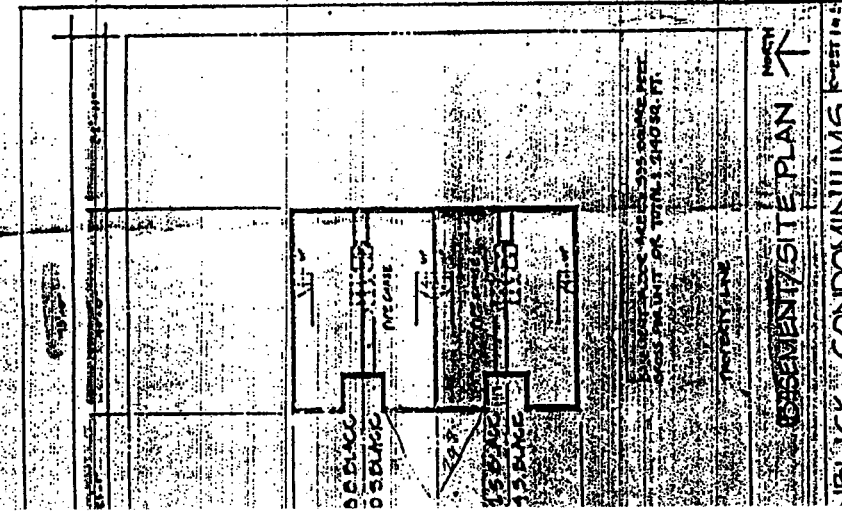
UPPER FLOOR PLAN

SONNENBLICK CONDOMINIUMS



GROUND FLOOR PLAN

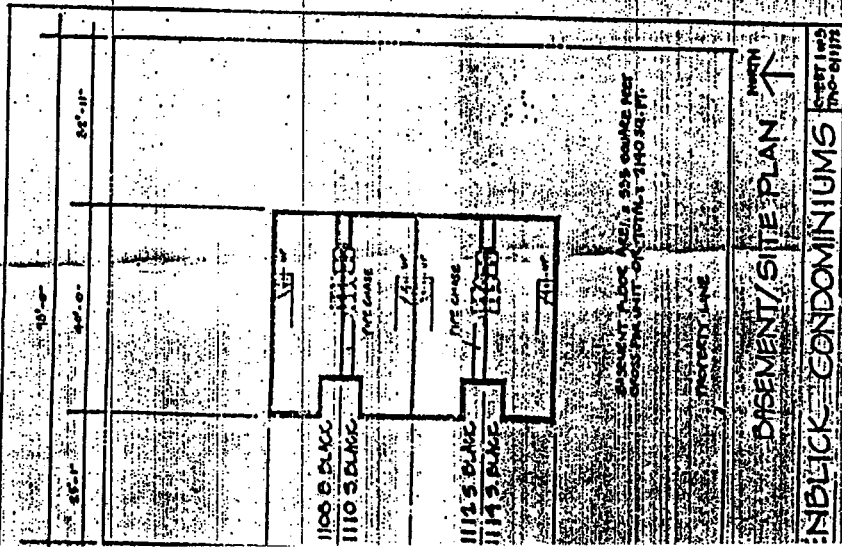
SONNENBLICK CONDOMINIUMS



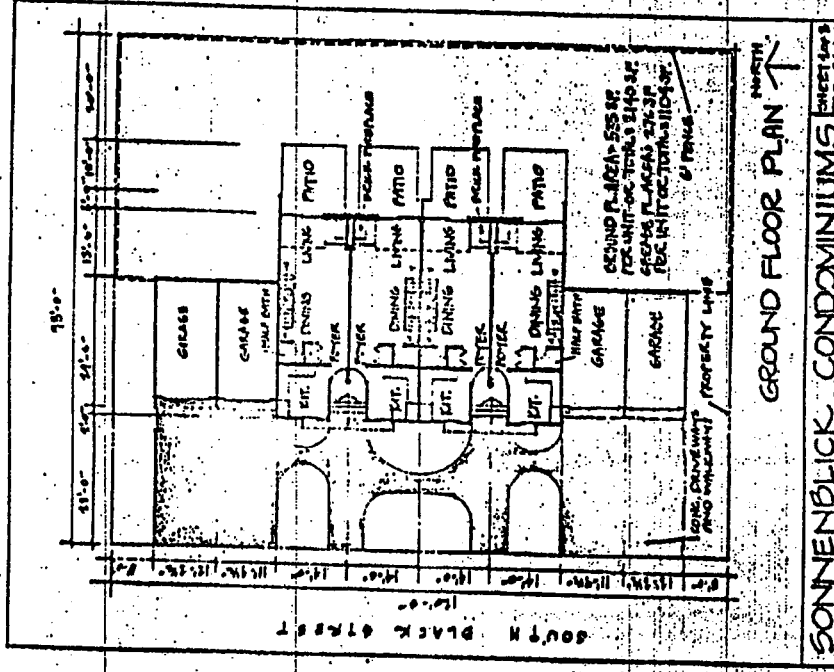
BASEMENT/SITE PLAN

SONNENBLICK CONDOMINIUMS

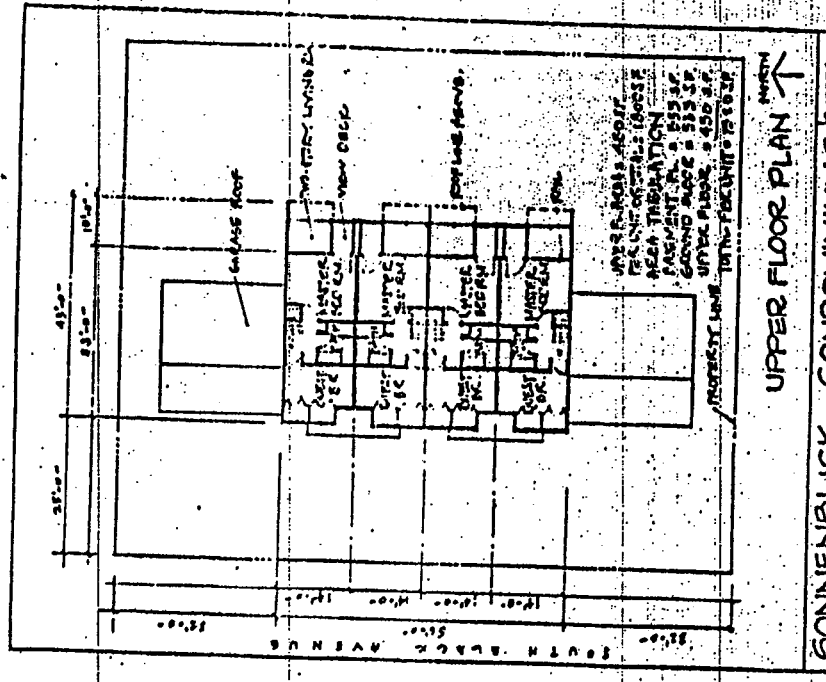
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**BASEMENT/SITE PLAN** NORTH  
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**GROUND FLOOR PLAN** NORTH  
**SONNENBLICK CONDOMINIUMS** SHEET 1103  
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**UPPER FLOOR PLAN** NORTH  
**SONNENBLICK CONDOMINIUMS** SHEET 1103  
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