

After recording return to:

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Debbie Pierson, Flathead County MT by VS

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**AMENDED AND RESTATED**

**DECLARATION OF RESTRICTIVE COVENANTS HIGHLAND PARK  
PROFESSIONAL SUBDIVISION**

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration") is made as of this 14th day of February, 2023 by **LOGAN HEALTH**, a Montana non-profit corporation, previously known as Kalispell Regional Healthcare System, previously known as Northwest Healthcare Corporation ("Logan Health"), with a mailing address of 310 Sunnyview Lane, Kalispell, Montana 59901, **KALISPELL REGIONAL MEDICAL CENTER, INC.**, A Montana non-profit corporation, previously known as Flathead Health Center, Inc. ("Kalispell Regional"), with a mailing address of 310 Sunnyview Lane, Kalispell, Montana 59901, **BRAIDWATER PROPERTIES LLP** ("Braidwater Properties"), with a mailing address of 264 El Rancho Road, Kalispell, Montana 59901, **HOPE PREGNANCY MINISTRIES OF KALISPELL, MONTANA, INC.**, previously known as Hope Pregnancy Center of Kalispell, Montana, Inc. ("Hope Pregnancy"), with a mailing address of 1281 Burns Way, Kalispell, Montana 59901, **MONTANA SKY NETWORKS INCORPORATED**, previously known as Mooseweb Corp, previously known as The Music Room, Inc., previously known as Weber Unlimited Incorporated ("Montana Sky Networks"), with a mailing address of 1286 Burns Way, Kalispell, Montana 59901. Logan Health, Kalispell Regional, Braidwater Properties, Hope Pregnancy, and Montana Sky Networks shall collectively be referred to as "Declarants".

**RECITALS:**

A. Declarants are the owners of certain Lots and Condominium Units (hereinafter defined), that constitute more than a 65% interest in Highland Park Professional Subdivision, a subdivision consisting of certain real property located in the City of Kalispell, County of Flathead, State of Montana and described more particularly on Exhibit A ("Highland Park Professional Subdivision"), and which is shown and illustrated on the site plan attached hereto as Exhibit B hereof (the "Site Plan").

B. The Declaration of Restrictive Covenants of Highland Park Professional Subdivision dated March 1, 1976, and recorded March 16, 1976 in the office of the Clerk and



Recorder of Flathead County, Montana in Book 594, page 325 ("Original Declaration"), provides that the Original Declaration will expire unless extended by a majority of the then owners of Lots within the Highland Park Professional Subdivision. The Original Declaration further provides that its terms may amended by the Owners of at least 65% of the Lots within Highland Park Professional Subdivision.

C. The undersigned Declarants constitute a sufficient percentage of the Owners (hereinafter defined) to both extend and amend the Original Declaration, and desire that this Declaration extend, amend, supersede and replace the Original Declaration in its entirety.

D. By recording this Declaration, Declarants desire to (i) reaffirm and restate the expired Original Declaration, (ii) provide for non-exclusive easements over the Highland Park Professional Subdivision for the purpose of parking, access by foot and automobile, and for public utilities and site utilities as more particularly described herein and (iii) provide protective provisions, covenants, and restrictions upon and subject to which the Highland Park Professional Subdivision shall be improved, held, used, occupied, leased, sold or conveyed.

E. Declarants desire that the Highland Park Professional Subdivision and all improvements erected thereon shall be hereinafter held, conveyed, mortgaged, encumbered, leased, sub-leased, used, occupied, sold, assigned and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Highland Park Professional Subdivision and all improvements thereon, and every part thereof. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be perpetually binding upon Declarants, all Owners, all future tenants of the Highland Park Professional Subdivision, and each of the foregoing's respective successors-in-interest and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Highland Park Professional Subdivision.

In consideration that the following encumbrances shall be binding upon Declarants and all Owners and shall attach to and run with the Lots, and shall be for the benefit of and shall be limitations upon all future Owners of each of the Lots and that all easements herein set forth shall be appurtenant to the dominant estates, and in consideration of the promises, covenants, conditions, restrictions, easements and encumbrances contained herein, Declarants incorporate the Recitals into the Declaration and further declare as follows:

## **ARTICLE 1** **DEFINITIONS**

Unless otherwise defined herein, the following words when used in this Declaration shall have the following meanings:

1.1 Association. "Association" as used herein shall mean the Highland Park Professional Subdivision Lot Owners Association, Inc. as registered with the offices of the Secretary of State of Montana.



1.2 Board. "Board" as used herein shall mean the Board of Directors as voted on by the members of the Association and governed by the Governing Documents as defined herein.

1.3 Building. "Building" as used herein shall mean any structure currently existing, constructed, or moved onto the Highland Park Professional Subdivision.

1.4 Bylaws. "Bylaws" as used herein shall mean the Restated Bylaws of Highland Park Professional Subdivision Lot Owners Association, Inc. as filed with the offices of the Secretary of State of Montana.

1.5 Common Area. "Common Area" as used herein shall mean those areas which are to be improved, repaired and maintained by the Association for the benefit of all Owners as defined and set forth in the Declaration and as shown on Exhibit B included therein, including (i) the private roadway known as Burns Way; (ii) the three parking lots located within the Highland Park Professional Subdivision; (iii) together with all driveways, curbs, gutters, sidewalks, improvements, landscaping, and irrigation systems serving Burns Way and the parking lots, and all fixtures and appurtenances used therewith or attached thereto, and all tangible and intangible personal property at any time owned or controlled by the Association for the maintenance, common use and benefit of the Owners.

1.6 Condominium Unit: "Condominium Unit" as used herein shall mean a Unit (as defined in Mont. Code Ann. § 70-23-102(19)) within a Building for which a Declaration (as defined in Mont. Code Ann. § 70-23-102(9)) has been recorded with the office of the Clerk and Recorder for Flathead County, Montana, submitting the Lot or Lots upon which the Building sits to the Unit Ownership Act, Mont. Code Ann. § 70-23-101, et. seq..

1.7 County. "County" as used herein shall mean the Flathead County, Montana.

1.8 Declarants. "Declarants" as used herein shall mean and refer to Logan Health, Kalispell Regional, Braidwater Properties, Hope Pregnancy, and Montana Sky Networks.

1.9 Governing Documents. "Governing Documents" shall mean the Articles of Incorporation of the Association, the Bylaws, this Declaration, and any rules and regulations adopted by the Board from time to time, and any amendments to or restatements of the foregoing documents.

1.10 Lot. "Lot" as used herein shall mean and refer to any one of the lots on the Site Plan and any legal parcel of land into which the same may hereafter be subdivided, together with all improvements existing from time to time thereon, as said lots within the Highland Park Professional Subdivision are shown on the Site Plan or on any subsequent subdivision plat covering the Highland Park Professional Subdivision or any portion thereof recorded in the official records of the County.

1.11 Occupant. "Occupant" as used herein shall mean any Owner or other Person from time to time entitled to use and occupy exclusively any portion of a of the Highland Park Professional Subdivision under an ownership right or any lease, sublease, license, concession or other similar agreement with the Owner thereof.



1.12 Owner. "Owner" as used herein shall mean and refer to each Person, including Declarants, who now or hereafter owns fee title to a Lot or Condominium Unit. Owner shall not mean or refer to any such Person who holds an interest in such Lot or Condominium Unit merely as security for the repayment of any obligation including, but not limited to, a beneficiary under the terms of a trust deed or mortgage.

1.13 Percentage of Interest: "Percentage of Interest" means each Owner's undivided interest in the Common Area and such Owner's pro rata liability to the Association. The Percentage of Interest of each Owner is specified on Exhibit C attached hereto, and consists of the pro rata share of the square feet of each Owner's improvements as compared to the total square feet of improvements in the Subdivision. The square feet improvements shall be based on records provided by the Montana Department of Revenue. The Board may update and amend each Owner's Percentage of Interest as needed without recording an amended Exhibit C.

1.14 Permittees. "Permittees" as used herein shall mean and refer to the Owners, their tenants and their respective heirs, successors, assigns, grantees, mortgagees, tenants, subtenants, licensees and concessionaires of any and all portions of the improvements within the Highland Park Professional Subdivision, as well as the officers, directors, agents, employees, customers, visitors, patrons, licensees and invitees of any such parties.

1.15 Person. "Person" as used herein shall include corporations, limited liability companies, partnerships, associates, other legal entities, individuals, trustees, heirs, executors, administrators, and other personal representatives.

1.16 Highland Park Professional Subdivision. "Highland Park Professional Subdivision" is defined in the Recitals.

1.17 Site Plan. "Site Plan" as used herein shall mean and refer to the Site Plan attached hereto as Exhibit B showing the Highland Park Professional Subdivision, the Lots, the Condominium Units, the location of the Common Area, and other matters described herein.

1.18 State. "State" as used herein shall mean the State of Montana.

1.19 Utilities. "Utilities" as used herein shall mean any lines, conduits and facilities for the supply, service or transmission of such things as water (fire protection and domestic), electricity, natural gas, storm water, sanitary sewer discharge, telephone, cable TV and communication data.

## **ARTICLE 2** **USE IN GENERAL**

2.1 Medical/Professional: Permitted uses for any Lot or Condominium Unit within Highland Park Professional Subdivision shall be limited to those allowed in an H-1 PUD zoning, as regulated by the City of Kalispell Zoning Ordinances.



2.2 Use Exceptions. All Owners must unanimously consent to any modification of this Declaration which amends section 2.1 or otherwise allows a previously impermissible use of the Highland Park Professional Subdivision.

### **ARTICLE 3** **ACCESS AND PARKING**

3.1 Common Use of Parking Areas. Subject to the terms of this Declaration, each Owner, their employees, and customers shall have the right to use parking areas within the Highland Park Professional Subdivision as roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, for driveway purposes, for the comfort and convenience of tenants, customers, invitees and employees of all businesses and Occupants of the Buildings within the Highland Park Professional Subdivision. Each Owner, their employees, and customers, shall be considerate of the other Owners, employees, and customers in the manner of their use allowed herein.

3.2 Parking Standards: No Exclusive Rights. No Owner or Occupant shall have any exclusive right to use, for itself or its Permittees, any portion of the parking areas within the Highland Park Professional Subdivision.

### **ARTICLE 4** **ASSOCIATION**

4.1 Organization of Association. The Association was formed on January 9, 2012 by the filing of the Articles of Incorporation in the office of the Secretary of State of Montana. The Association has been incorporated for the purposes of exercising the powers as described in the Governing Documents and those otherwise reasonable or necessary to carry out the functions of a commercial owners' association, including but not limited to the responsibility for maintaining, administering and enforcing the covenants, easements, conditions, and restrictions set forth in this Declaration. Unless a vote, consent, or approval of the Owners, or some subset thereof, is specifically required by Governing Documents, or a non-waivable provision of applicable law, all decisions to be made by the Association shall be made by the Board. The Board shall be appointed according to the Bylaws of the Association. Membership, voting rights, membership communications, rules and regulations and all other functions of the Board shall be governed by the Bylaws of the Association.

4.2 Obligations and Authority of the Association. The Association shall carry out the obligations established, and may exercise such authority as granted, by the Governing Documents, including but not limited to the obligations and authority described below. The Association's entry onto any Lot to carry out its obligations or exercise its rights under this Declaration shall not be deemed a trespass, provided the Association may not enter into the interior of a Condominium Unit or Building except as necessary for the performance of the Association's duties and without first giving its Owner twenty-four hours' prior notice of such entry, except in the case of an emergency, in which case prior notice shall not be required.

(a) Association Obligations. The Association shall be responsible for and have authority over:



- i. Cleaning, repairs, reconstruction, snow removal, and maintenance for the Common Area and to keep such areas in a reasonably safe and slightly condition and in compliance with applicable legal requirements.
  - ii. Maintenance, repair, and replacement of the sidewalks located on/adjacent to each Lot to the extent caused by normal use, wear and tear. Such sidewalk maintenance, repair and replacement shall include snow removal, cleaning, and sealing (as reasonably necessary), so as to present an attractive, well-kept appearance of the sidewalks.
- (b) Association Insurance. The Association may purchase such insurance as the Board considers necessary or advisable from time to time.
- (c) Limitations on Association's Obligation. In addition to the other limitations in this Declaration on the Association's maintenance, repair, and replacement obligations, the following limitations and clarifications apply.
- i. Ordinary Care. The Association, in carrying out its obligations as set out in this Article IV, shall utilize ordinary care so as to keep the areas of the Highland Park Professional Subdivision that the Association is responsible for in a reasonably safe and slightly condition and in compliance with applicable legal requirements.
  - ii. Personal Property. The responsibility for maintenance, repair and replacement of any Owner's personal property located upon a Lot is that of the Owner of the Lot upon which the same is located and not the Association's responsibility.
  - iii. Maintenance Occasioned through the Fault of an Owner. In the event any maintenance, repairs, replacements or reconstruction are required as result of any intentional or negligent act or omission of any Owner, or their Permittees, such Owner shall be individually responsible for the maintenance, repair, replacement, or reconstruction required as a result of such intentional or negligent act or omission and shall promptly, and at such Owner's sole expense, complete the same. If an Owner has not completed any such maintenance, repair, replacement, or reconstruction, or has not completed it in such a manner so as to return the damaged or destroyed item to a reasonably safe and attractive condition consistent with the remainder of the Highland Park Professional Subdivision, within a reasonable time following notice from the Board, then the Association (at the election of the Board) may, but will have no obligation to, complete the required maintenance, repair or replacement and assess the cost of the same against the Lot or Condominium Unit of the applicable Owner as a specific assessment.
- (d) No Liability. In no event shall the Association be liable to any Owner, Permittee or any person using any of the common areas for any injury (including death) or damage arising out of the construction, maintenance, or state of repair of any common areas.

## **ARTICLE 5**

### **OWNER OBLIGATIONS**



5.1 General Maintenance Obligation. Except for specific maintenance, repair and replacement obligations which the Association has affirmatively assumed pursuant to this Declaration, each Owner shall be responsible, at such Owner's sole cost and expense, for all maintenance, repair, replacement and reconstruction of such Owner's Lot, Buildings, Condominium Unit, and all other improvements on such Lot. Each Owner shall keep its Lot, Condominium Unit, and all other improvements on such Lot in good repair and in a safe, sightly, clean and sanitary condition, and such activities shall be conducted by Owners in a manner so as to maintain a uniform appearance, both aesthetically and architecturally, of the Highland Park Professional Subdivision and in all respects in accordance with this Declaration.

5.3 Cost of Construction. Except as otherwise set forth in this Declaration, each Owner shall be responsible for the cost and expense of all improvements constructed or to be constructed on its Lot.

5.4 Payment of Tax and Assessments by Owner. As to any portion of the Highland Park Professional Subdivision, it is intended and agreed that all real estate taxes and assessments which may be levied, assessed, or charged by any public authority against a Lot or Condominium Unit or any part thereof, shall be paid prior to delinquency by the respective Owner of said Lot or Condominium Unit.

5.5 Compliance with Law. Each Owner must comply with all laws, ordinances, codes, and regulations of the City, State, and Country as may be applicable.

## **ARTICLE 6** **EASEMENTS**

6.1 Ingress and Egress. Declarants hereby establish for the benefit of each Owner for its use and for the use of its Permittees, in common with others entitled to use the same, a non-exclusive perpetual easement for the passage and parking of vehicles over and across the parking and driveway areas of the Highland Park Professional Subdivision, and for the passage and accommodation of pedestrians over and across the parking, driveways, and sidewalk areas of the Highland Park Professional Subdivision. Except in the event of emergency repairs, there shall be unimpeded access between the parking and driveway areas of the Highland Park Professional Subdivision and the Buildings in the Highland Park Professional Subdivision.

6.2 Non-Exclusive Nature. All of the foregoing easements shall be non-exclusive. The Owner of a Lot shall be entitled to grant, modify, and terminate similar non-exclusive easements to others, whether or not they are Owners, Permittees, or otherwise have an interest in the Highland Park Professional Subdivision.

### 6.3 Utilities.

(a) Utilities Generally. Declarants hereby establish for the benefit of each Owner (and public utility companies designated by an Owner) non-exclusive perpetual easements in, to, over, under, along, and across those portions of the Highland Park Professional Subdivision reasonably necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, replacement, relocation, and removal of Utilities serving the Highland Park Professional Subdivision, including but not limited to, sanitary sewers, storm



drains, water (fire and domestic), gas, electrical, telephone, and communication lines, vaults, meters, transformers, pipelines, hydrants, sprinkler controls and conduits.

(b) Location of Utilities. Whenever feasible, Utilities shall be located below the surface of any above-ground Common Area or improvements located thereon; provided, however, that in any event, (i) all Utilities which are located above the surface of an area of common use shall be placed so as not to interfere with, restrict, or impede other uses of said area; and (ii) no Utility which must be located above the surface of an area of common use shall be installed upon any Lot without prior written consent of the Owner(s) of that Lot, which consent shall not be unreasonably withheld.

(c) Installing Utilities. An Owner shall be entitled to request from another Owner the right to install a Utility across such other Owner's Lot. Prior to exercising the right granted herein, the requesting Owner shall first provide the other Owner with a written statement describing the need for such easement, shall identify the location of existing and proposed Utilities, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage as required by this Declaration. In connection with any changes to Common Area or Lot Improvements, the changing Owner shall be responsible for relocating any existing Utilities. The consent of the other Owner(s) shall not be unreasonably withheld.

(d) Expenses and Timeliness. Any Owner installing any new Utilities pursuant to the provisions of this subparagraph shall pay all costs and expenses with respect thereto (including all maintenance and repair costs and expenses in connection therewith) and shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible (and in any event within a commercially reasonable time) and in a manner so as to minimize interference with the use of a commonly used area.

6.4 Drainage. Declarants hereby establish for the benefit of each Owner (and public utility companies designated by an Owner), a perpetual, non-exclusive right and easement over and across all portions of the Common Area for purposes of providing for the reasonable collection and drainage of surface water throughout the Highland Park Professional Subdivision.

6.5 Snow Clearance. Declarants hereby establish for the benefit of each Owner and the Permittees of any Owner, a perpetual, non-exclusive right and easement over and across all portions of the Common Area for the storage and deposit of snow; *provided*, that the person so storing or depositing the snow will use reasonable efforts to avoid unreasonable interference with any Owner's ability to access their Building or Condominium Unit. Owners shall not clear or remove snow from their Lot onto the Lot of other Owners. Owners may, however, clear snow from their sidewalks and create berms so long as the berms are placed in locations and in such a manner that will not cause a safety hazard to any Owner or others or impede the person so storing or depositing snow from clearing snow onto other portions of the Property.

## **ARTICLE 7** **INSURANCE**



7.1 Owner's Insurance. At all times during the term of this Declaration, each Owner shall, at its sole expense, continuously maintain or cause to be continuously maintained the following insurance:

(a) Standard fire and casualty insurance on the Building and all improvements on its Lot.

(b) Commercial general liability insurance with coverage limits of not less than \$2,000,000.00 combined single limit bodily injury, personal injury, death and property damage liability per occurrence, insuring against liability of the insured with respect to the Building within the Owner's Lot or arising out of the maintenance, use or occupancy of the Building within such Lot. All such liability insurance shall specifically insure the performance by each Owner of the indemnity agreement as to liability for injury to or death of persons and injury or damage to property in Section 7.3 below. Further, all liability insurance shall include, but not be limited to, bodily injury, blanket contractual, cross liability and severability of interest clauses, products/completed operations, broad form property damage, independent contractors, owned, non-owned and hired vehicles (which may be under separate policy).

(c) All policies of insurance provided for herein shall be issued by insurance companies with general policy holder's rating of not less than A and a financial rating of not less than Class X rated in the most current available "Best's Key Rating Guide" and which are qualified to do business in the State, and shall otherwise be in a reasonably appropriate form and containing such terms as are appropriate taking into account then-current industry standards. Executed copies of the policies of insurance or certificates thereof shall be delivered to the Association upon request. Thereafter, executed copies of renewal policies or certificates thereof shall be delivered to a requesting Owner within 30 days prior to the expiration of the term of each policy.

7.2 Waiver of Subrogation. Each Owner hereby waives any and every claim which arises, or may arise, in its favor and against any other Owner during the term of this Declaration for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of the Highland Park Professional Subdivision, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under said insurance policies. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or damage to, the said property of any Owner. Inasmuch as the said mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation), each Owner shall give to each insurance company which has issued to it policies of fire and extended coverage insurance, written notice of the terms of said mutual waivers, and shall have said insurance policies properly endorsed, if necessary to prevent invalidation of said insurance coverages by reason of said waivers.

7.3 Indemnity. To the fullest extent permitted by law, each Owner ("Indemnitor") covenants with the other Owners ("Indemnitees") that the Indemnitees shall not be liable for any damage or liability of any kind or for any injury to or death of persons, or damage to property of Indemnitor or any other person, from any cause whatsoever, related to the use, occupancy or enjoyment of the Lot by the Indemnitor or any person thereon or holding under the Indemnitor,



including, but not limited to, damages resulting from any labor dispute, and the Indemnitor shall defend, indemnify and save the Indemnitees harmless from all liability whatsoever on account of any real or alleged damage or injury and from liens, claims and demands related to the use of the Indemnitor's Lot and its facilities, or repairs, alterations or improvements (including original improvements and fixtures) which the Indemnitor may make or cause to be made upon the Lot; but the Indemnitor shall not be liable for damage or injury ultimately determined to be occasioned by the negligence of an Indemnitee or its designated agents, servants or employees. This obligation to indemnify shall include reasonable attorneys' fees and investigation costs and all other reasonable costs, expenses and liabilities incurred by an Indemnitee or its counsel from the first notice that any claim is to be made or may be made.

7.4 Restoration of Improvements. If an Owner's Improvement or portion of an Improvement, is damaged or destroyed, such Owner may, but shall not be obligated to, restore its Improvement. In the event any Owner does not rebuild and restore its damaged Improvement(s), or other improvements under the provisions of this Article, such Owner shall promptly clear its Parcel of debris and hazardous conditions, pave or landscape same in a first-class condition such that it is harmoniously incorporated into the Highland Park Professional Subdivision.

## **ARTICLE 8** **ASSESSMENTS**

8.1 Creation of Assessment. Each Owner shall be obligated to pay assessments to the Association, all such assessments to be fixed, established, and collected from time to time as hereinafter provided. Unless otherwise specified, any reference to assessments shall refer to all nature of assessments as provided for by this Declaration. All assessments, together with interest, fines and costs of collection as herein provided, shall be a charge on the land and shall constitute a lien upon the Lot or Condominium Unit against which such assessment is made. Such lien shall be deemed perfected upon filing with the County Clerk and Recorder of Flathead County an account of the assessments due together with a correct description of the Lot or Condominium Unit to be charged with such lien. Such filing may be made at any time when any assessment or other amount owed by an Owner to the Association has become delinquent as set forth in this Declaration. The lien shall continue in effect until all unpaid assessments, interest, fines and costs of collection shall have been fully paid. The priority of such lien shall be determined as of the time of filing with the Clerk and Recorder, and it shall be deemed subordinate to all previously recorded or filed liens but shall be superior to all other liens other than governmental tax liens. Such lien shall be in addition to all other remedies that may be available to the Association to enforce this Declaration. Such lien may be foreclosed upon in accordance with applicable law. Each such assessment, together with interest, applicable fines, and costs of collection as herein provided, shall also be the personal obligation of the Owner of such Lot or Condominium Unit at the same time when such assessment became due, and if there are multiple Owners of a Lot or Condominium Unit such Owners shall be jointly and severally liable for all such amounts. Delinquent personal obligations shall not pass to successors in title unless expressly assumed by them, but this shall in no way limit the effect of any lien created herein, which shall run with the land and may secure unpaid and delinquent amounts owed by a prior Owner of the Lot or Condominium Unit. The Board may establish rules and regulations concerning collection of assessments and other obligations and perfecting of liens.

8.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of funding the rights, duties and obligations of the Association, as described in this Declaration, along with the expense incurred in the administration and



enforcement of the Governing Documents of the Association. For the avoidance of doubt, and without limiting the generality of the foregoing and the other provisions of this Declaration, assessments may be levied and used for establishing reserves, retaining third party professionals and service providers, and otherwise satisfying the debts and obligations of the Association.

8.3 Uniform Rate of Assessment. All assessments, other than assessments levied against a specific Lot or Condominium Unit, as provided in Section 4, must be fixed at a uniform rate for all Lots and Condominium Units as determined by each Owner's Percentage of Interest as defined in this Declaration, except as approved by the Board as a Lot Specific Assessment.

8.4 Types of Assessments. The assessments levied by the Association shall be utilized to provide funds consistent with the purposes of the Association. The assessments may include, but shall not be limited to, the following:

(a) Operating Assessments. The Association shall levy a regular assessment for administration of the Association and the Association's duties, including, but not limited to maintenance costs, operating costs, equipment, supplies, liability insurance, other insurance, reserves, taxes, other normal expenses, and to provide funds for such other purposes as the Association may find necessary and consistent with its purposes, rights, duties, and obligations.

(b) Capital Assessments. The Association shall levy assessments for capital improvements, which include special maintenance, reconstruction or replacement areas within the Common Area, including the creation of a reserve account to accumulate funds for capital improvements at a subsequent time, or for such other capital improvements as are determined necessary or desirable, to the extent the Association is responsible for such items pursuant to this Declaration or the Association has otherwise agreed or become be responsible for such items.

(c) Emergency Assessments. The Board is authorized to levy emergency assessments, which shall not exceed three times the amount of the annual, regular assessment. Emergency assessments shall be levied only to meet costs and expenses precipitated by an emergency causing damage or a change of condition for which the Association has or has assumed responsibility that must be remedied promptly to insure a safe and adequate continuation of facilities or services.

(d) Legal Reserve and Compliance Assessments. In addition to the other assessments herein provided, the Board may from time to time levy an assessment for the purpose of establishing a legal reserve fund for legal fees and costs to enforce this Declaration. Nothing herein shall be interpreted to preclude the Board from utilizing other funds for compliance and enforcement purposes.

(e) Lot Specific Assessment. In addition to the other assessments herein provided, the Association may levy assessments (including charges, fines, costs of collection and as otherwise set forth in this Agreement) attributable to one or more specific Lots. Such assessments shall be treated as assessments in all other regards, other than being specifically assessed against one or more specific Lots and becoming due in full upon notice to the Owner of the Lot against which assessed. Lot specific assessments may be made as and when equitably required to pay for costs or expenses resulting from or relating to a specific Lot or Owner, as reasonably determined by the Board.

8.5 Determination and Payment of Assessments. Except as otherwise specifically set forth in this Declaration, the Board shall determine the types and fix the amounts of the assessment against each Lot for each assessment period at least thirty days in advance of the due date for such



assessment and shall at that time prepare a roster of the properties and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessments shall thereupon be sent to every Owner subject thereto at the address or e-mail address on file with the Association. The regular assessments provided for herein shall be computed on an annual basis, commencing on the 1<sup>st</sup> day of January of each year and terminating on the 31<sup>st</sup> day of December of the same year, unless otherwise determined by the Board. The assessments for any such year shall become due and payable in advance on a monthly basis on the first of the month.

8.6 Effect of Non-Payment of Assessment. If any assessment or other amount owed to the Association under this Declaration is not paid by midnight on the 3<sup>rd</sup> day after the due date, then such assessment or other amount shall become delinquent. If the assessment or other amount owed to the Association remains unpaid for thirty days after such due date, the assessment shall bear interest at such other rate as may be determined by the Board from time to time, currently 10% per annum (not to exceed the maximum rate permitted by law) until such assessment or other amount is paid in full. The obligation of the then Owner to pay any assessment, fine, interest or other amount shall not be affected by any conveyance or transfer of title to said Lot or Condominium Unit. The Association, acting through the Board, may bring an action at law against the Owner obligated to pay the same and/or to foreclose the assessment lien against their Lot or Condominium Unit, and shall be entitled to take any other enforcement and collection actions deemed necessary or reasonable by the Board, and there shall be added to the amount of such assessment the Association's cost of collecting the same, foreclosing the lien thereof or taking such other actions determined necessary or reasonable by the Board, including reasonable attorneys' fees. For the avoidance of doubt, and without limiting the discretion of the Board to enforce the terms of this Declaration, the Board may determine rules and regulations and modify from time to time, upon notice to the Owners, including a schedule of fines and other charges which may be assessed against the Owners for failure to timely pay assessments and other amounts owed to the Association under this Declaration or for other violations of the Governing Documents.

8.7 Certificate of Payment. The Association shall, reasonably promptly following a written demand to the Board, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot or Condominium Unit have been paid. A reasonable charge may be made by the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. In addition, the Board shall cause to be maintained a roster of the Lots and the assessments due thereon.

## ARTICLE 9 EFFECT, TERM AND TERMINATION

9.1 Run With the Land/Term/Renewals. The covenants, conditions, and restrictions contained in this Declaration shall be recorded and run with the land and be binding upon each and all of the Owners (and upon all Persons claiming under them) for a period of 60 years from the recording date hereof (unless terminated as provided in Section 8.2 below) and shall be deemed automatically extended in ten year increments thereafter unless 75% of the Owners agree in writing to terminate the Declaration on or before the expiration of such 60 year term or the expiration of any ten year extension period; provided, however, that the easements contained in Article 5 shall be perpetual.



9.2 Amendment. Except as otherwise stated herein, this Declaration may only be amended by the written agreement of the Owners holding at least 75% of the Percentage of Interest, duly acknowledged by each such Owner and recorded in the Office of the County Recorder of the County.

## **ARTICLE 10**

### **MISCELLANEOUS PROVISIONS**

10.1 Binding Effect. The foregoing covenants, conditions and restrictions:

(a) Shall apply to and bind each and all of the Owners and each and all of their respective heirs, successors, assigns, grantees, mortgages, tenants and subtenants to the extent specifically provided herein;

(b) Are hereby imposed pursuant to a general plan for the improvement and use of the Highland Park Professional Subdivision and are designed for the mutual benefit of the Owners and the tenants, subtenants and Occupants of any and all portions thereof; and

(c) Shall obligate, inure to and pass with each and every portion of the Highland Park Professional Subdivision and shall remain in full force and effect as provided herein.

10.2 Liens. Breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith, but all of the foregoing provisions, restrictions and covenants shall be binding and effective against any Owner of any portion of the Highland Park Professional Subdivision, or any part thereof, whose title is acquired by foreclosure or trustee's sale or by deed in lieu of foreclosure or trustee's sale; provided, however, any such Owner whose title is acquired by foreclosure or trustee's sale shall take title free of any liens created or provided for hereunder, but any such Owner shall otherwise be subject to the provisions hereof, and shall be liable for any liens arising after the date such Owner acquires title.

10.3 Mortgagees. The term "mortgagee" wherever used herein, shall be construed to include beneficiaries and trustees under deeds of trust. Notwithstanding any other provisions in this Declaration for notices of default, the mortgagee of any party in default hereunder shall be entitled to notice of said default, in the same manner that other notices are required to be given under this Declaration, provided, however, that said mortgagee shall have, prior to the time of the default, notified all Owners of the mortgagee's mailing address.

10.4 Remedies. It shall be lawful for any Owners to prosecute any proceedings at law or in equity against any Owners violating, or attempting to violate, any of the covenants, conditions or restrictions herein, and either to prevent it, him or them from so doing or to recover damages from or on account of such violation. Such proceedings may include, but shall not be limited to, actions against the defaulting Owner for specific performance.

10.5 Partial Invalidity. Invalidation of any one of the covenants, conditions, restrictions or other provisions herein contained by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions or provisions hereof, and the same shall remain in full force and effect.



10.6 Privity. This Declaration shall create privity of contract and estate with and among all Owners of all or any part of the Highland Park Professional Subdivision and their respective heirs, executors, administrators, successors and assigns.

10.7 Attorneys' Fees. In the event that any action or proceeding is brought for the enforcement of this Declaration or as the result of any alleged breach, the prevailing party or parties shall be entitled to be paid court costs, including reasonable attorneys' fees, by the losing party or parties as well as all fees, costs and expenses incurred in connection with such action or proceeding, including without limitation, any post-judgment fees, costs or expenses incurred on any appeal or in collection of any judgment and any judgment or decree rendered shall include the same in the award.

10.8 Captions. The captions heading the various Articles of this Declaration are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

10.09 Third Party Beneficiaries. No rights, privileges or immunities conferred upon Owners by this Declaration shall inure to the benefit of any tenant, customer, employee or invitee of the Highland Park Professional Subdivision or any portion thereof or any other third party; nor shall any tenant, customer, employee or invitee of the Highland Park Professional Subdivision or any other third party be deemed to be a third party beneficiary of any of the provisions contained herein. Notwithstanding the foregoing, however, any Owner may assign any or all of such Owner's rights to any tenant (but shall not be released from its obligations) hereunder during the duration of such tenancy.

10.10 Governing Law. This Declaration, and the rights and obligations provided for herein, shall be governed by and interpreted in accordance with the laws of the State of Montana.

10.11 Estoppel Certificates. Upon 20 days' written notice, any Owner shall have the right to request an estoppel certificate from each Owner of a Lot comprising the Highland Park Professional Subdivision that (to the extent true): (i) the Declaration is in full force and effect, without modification (or, if there have been modifications, that the same is in full force and effect as modified, and stating the modifications); (ii) that to the knowledge of the certifying party there are no uncured defaults in a party's performance under the Declaration; and (iii) any other matters reasonably requested by such Owner.

10.12 Coordination of Vendors. The Owners, or Occupants shall provide reasonable advance notice other Owners when vendors working on an at the Highland Park Professional Subdivision when reasonable to coordinate common vendors to help ensure efficient service of systems and utilities serving Highland Park Professional Subdivision.

10.13 Communication. All Occupants shall notify the other Occupants in advance of special events at the Highland Park Professional Subdivision which may require special use of a commonly used area or a volume of traffic at the Highland Park Professional Subdivision in excess of typical usage.



10.14 Waiver of Breach or Violation not Deemed Continuing. The waiver by any party of a breach or violation of any provision of this Declaration shall not operate as or be construed to be a waiver of any subsequent breach or violation thereof.

10.15 Dispute Resolution. Any dispute, controversy, claim or difference concerning or arising out of this Declaration or the rights or performance of any party under this Declaration (each, a "Dispute") shall be resolved by the following procedure:

(a) The parties agree to attempt to promptly resolve Disputes first by communication with each other.

(b) If the parties are unable to resolve the Dispute within 30 days of the first such communication, prior to any arbitration, the parties shall engage in at least eight hours of mediation before a mutually-acceptable mediator.

(c) In the event the meeting(s) and/or mediation described above is not successful in resolving the dispute, either party, may submit the dispute to final, binding and confidential arbitration. In the event that the parties cannot within 15 calendar days of an arbitration request agree upon a single arbitrator, each party shall designate one and the two shall designate a third, all three of whom collectively shall settle, pursuant to the provisions of Montana's Uniform Arbitration Act, Mont. Code Ann. § 27-5-111 (2021), et seq., all disputes between the parties requested for arbitration by either party. The award entered by the arbitrator or arbitrators shall be conclusive and binding upon both parties and shall be enforceable in any court having jurisdiction over the parties. Arbitrator expenses shall be split between the parties. Nothing in this Section shall prevent the parties from settling any dispute by mutual written agreement at any time.

(d) The venue for any mediation or arbitration under this Agreement will be in Flathead County, Montana.

(e) A judgment upon an award rendered in arbitration may be entered in any court of competent jurisdiction.

IN WITNESS WHEREOF, this Declaration is executed as of the day and year first above written.

*[signature pages follows]*











**EXHIBIT A**

LEGAL DESCRIPTIONS

**Owned by Logan Health**

Units 1 and 3 of Flathead Medical Plaza, being located on a tract of land:

Lot 1 of Highland Park Professional Subdivision, according to the map or plat thereof on file and of record in the office of the clerk and recorder of Flathead County, Montana.

AND

Lot 5 of Highland Park Professional Subdivision, according to the plat or map thereof on file and record in the office of the Clerk and Recorder of Flathead County, Montana.

AND

Lot 6 of Highland Park Professional Subdivision, according to the plat or map thereof on file and record in the office of the Clerk and Recorder of Flathead County, Montana.

**Owned by Kalispell Regional**

Lot 2 of Highland Park Professional Subdivision, according to the plat or map thereof on file and record in the office of the Clerk and Recorder of Flathead County, Montana.

AND

Lot 3 of Highland Park Professional Subdivision, according to the plat or map thereof on file and record in the office of the Clerk and Recorder of Flathead County, Montana.

AND

Lot 9 of Highland Park Professional Subdivision, according to the plat or map thereof on file and record in the office of the Clerk and Recorder of Flathead County, Montana.

AND

Lot 10 of Highland Park Professional Subdivision, according to the plat or map thereof on file and record in the office of the Clerk and Recorder of Flathead County, Montana.

AND

Lot 11 of Highland Park Professional Subdivision, according to the plat or map thereof on file and record in the office of the Clerk and Recorder of Flathead County, Montana.



AND

Lot 12 of Highland Park Professional Subdivision, according to the plat or map thereof on file and record in the office of the Clerk and Recorder of Flathead County, Montana.

**Owned by Perjessy Building**

Units 2, 3 and 4 of Highland Park Professional Condominium, being located on a tract of land:

Lots 7 and 8 of Highland Park Professional Subdivision, according to the map or plat thereof on file and of record in the office of the clerk and recorder of Flathead County, Montana.

**Owned by Braidwater Properties**

Unit 2 of Flathead Medical Plaza, being located on a tract of land:

Lot 1 of Highland Park Professional Subdivision, according to the map or plat thereof on file and of record in the office of the clerk and recorder of Flathead County, Montana.

**Owned by Jonas Properties**

Unit 4 of Flathead Medical Plaza, being located on a tract of land:

Lot 1 of Highland Park Professional Subdivision, according to the map or plat thereof on file and of record in the office of the clerk and recorder of Flathead County, Montana.

**Owned by Hope Pregnancy**

Lot 4 of Highland Park Professional Subdivision, according to the map or plat thereof on file and of record in the Flathead County Clerk and Recorder's Office.

**Owned by Winkel Family Trust**

Unit 1 of Highland Park Professional Condominium, being located on a tract of land:

Lots 7 and 8 of Highland Park Professional Subdivision, according to the map or plat thereof on file and of record in the office of the clerk and recorder of Flathead County, Montana.

**Owned by Montana Sky Networks**

Lot 13 of Highland Park Professional Subdivision, according to the map or plat thereof on file and of record in the Flathead County Clerk and Recorder's Office.

**Owned by Gerald Stahlberg**

Lot 14 of Highland Park Professional Subdivision, according to the map or plat thereof on file and of record in the Flathead County Clerk and Recorder's Office.



EXHIBIT B  
SITE PLAN





202300002775  
Page: 24 of 26  
Fees: \$200.00  
2/24/2023 10:01 AM

EXHIBIT C  
PERCENTAGE OF INTEREST

HIGHLAND PARK PROFESSIONAL COA



202300002775  
 Page: 25 of 26  
 Fees: \$200.00  
 2/24/2023 10:01 AM

LOT NUMBER	HIGHLAND PARK PROFESSIONAL SUB. ADDRESSES	OWNERS/TAX RECORDS	SQUARE FEET EACH UNIT	SQUARE FOOTAGE OWNER	PERCENTAGE OF OWNERSHIP EACH UNIT	PERCENTAGE OF INTEREST PER UNIT
1	1297 Burns Way, Unit 1, Upper	Logan Health	2615	4864	26%	7%
	1297 Burns Way, Unit 2, Upper	BRAIDWATER PROPERTIES LLP/Dr. Gina Nelson (465)	1695	2695	26%	4%
	1297 Burns Way, Unit 3, Lower	Logan Health	2249		24%	
	1297 Burns Way, Unit 4, Lower	Jonas Properties LLC (425)	2250	2250	24%	3%
	Common Area	Total Common Area (17987) included in unit		9809		
2	1291 Burns Way, Main	KALISPELL REGIONAL MEDICAL CENTER INC	3369		64%	8%
	1291 Burns Way, Lower	KALISPELL REGIONAL MEDICAL CENTER INC	1829	5198	36%	
3	1287 Burns Way, Main (Family Health Care)	KALISPELL REGIONAL MEDICAL CENTER INC	3674		46%	12%
	1287 Burns Way, Lower (Family Health Care)	KALISPELL REGIONAL MEDICAL CENTER INC	2948		38%	
	1287 Burns Way, Second (Family Health Care)	KALISPELL REGIONAL MEDICAL CENTER INC	1740	7812	16%	
4	1281 Burns Way	Hope Pregnancy Ministries of Kalispell MT INC	2560	2560	100%	4%
5	1279 Burns Way, Main Level (Kid Care)	Logan Health	2014	2014	50%	6%
	1279 Burns Way, Unfinished Basement	Logan Health	2014	4028	50%	
6	1273 Burns Way, Main Level	Logan Health	4608		78%	8%
	1273 Burns Way, Basement	Logan Health	435	5043	22%	
7, 8	1250 Burns Way, Unit 1	Winkel Family Trust (1984) (295)	2589	2589	34%	4%
	1250 Burns Way, Unit 2	Dr. G.R. Perjesy & Terry Perjesy (304)	2670		35%	8%
	1250 Burns Way, Unit 3	Dr. G.R. Perjesy & Terry Perjesy (69)	629		8%	
	1250 Burns Way, Unit 4	Dr. G.R. Perjesy & Terry Perjesy (200)	1716	5015	23%	
9	1250 Burns Way	Total Common Area (868) included in unit		7604		
	1262 Burns Way	FLATHEAD HEALTH CENTER INC	0		vacant lot	
10	1268 Burns Way	FLATHEAD HEALTH CENTER INC	0		vacant lot	
11	1274 Burns Way, Main Level	KALISPELL REGIONAL MEDICAL CENTER INC	3984		52%	12%
	1274 Burns Way, Basement	KALISPELL REGIONAL MEDICAL CENTER INC	3736	7720	48%	
12	1280 Burns Way, Main (KMO)	KALISPELL REGIONAL MEDICAL CENTER INC	3984		52%	12%
	1280 Burns Way, Basement (Assist)	KALISPELL REGIONAL MEDICAL CENTER INC	3712	7696	48%	
13	1286 Burns Way, Main	MONTANA SKY NETWORKS	2240		50%	7%
	1286 Burns Way, Basement	MONTANA SKY NETWORKS	2240	4480	50%	
14	1292 Burns Way, Main	STAHLBERG THOMAS G, MIRACLE-EAR HEARING AID CTR	1800		50%	6%
	1292 Burns Way, Basement	STAHLBERG THOMAS G, MIRACLE-EAR HEARING AID CTR	1827	3627	50%	
		Total Square Feet Highland Park Professional COA	65577	65577		100%



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DECLARATION OF RESTRICTIVE COVENANTS  
HIGHLAND PARK PROFESSIONAL SUBDIVISION

This declaration, made this 1st day of March, 1976,  
by FLATHEAD HEALTH CENTER, INC., a Montana nonprofit corporation, herein  
after referred to as "Declarant",

WHEREAS, the Declarant is the developer and owner of the tract  
of land encompassed by the plat entitled "Highland Park Professional  
Subdivision", the same being a plat of portions of Government Lots 7  
and 14, Section 6, Township 28 North, Range 21 West, P.M.M.; and

WHEREAS, certain restrictive covenants are deemed necessary in  
order to achieve the objective of Declarant to establish a location for  
medical and dental offices that effects optimum utilization of the land  
area which will be and continue to be aesthetically attractive and  
harmonious with the buildings in the vicinity;

NOW THEREFORE, IT IS DECLARED:

I.

GENERAL PROVISIONS

A. Establishment of Restrictions. Declarant hereby declares  
that the property encompassed by the aforesaid plat is now held and  
shall hereafter be held, transferred, sold, conveyed and occupied subject  
to the Restrictive Covenants herein set forth, each and all of which is  
and are for the benefit of each and every building site within said  
property and such covenants shall run with the land and apply to and bind  
the heirs, assignees and successors in interest of any owner thereof.

B. Purpose of Restrictions. The purpose of these restrictions  
is to insure proper development and use of each building site within said  
property to protect the owner or occupant, present or future, of each such  
site against improper development and use of other sites that will depre-  
ciate the value of his site, to prevent the erection on said property of  
structures of unsuitable design or built of improper materials to

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prevent haphazard and inharmonious improvements, to secure and maintain sufficient open spaces between structures and in general, to provide for a high quality of improvement of said property in accordance with a general plan.

II.

GENERAL RESTRICTIVE COVENANTS

A. Architectural Control. No structure or improvement shall be erected, placed, altered, maintained or permitted to remain on any land subject to these covenants unless drawings and specifications signed by the proposed occupant of the site or his authorized representative have been submitted to and approved by the Architectural Control Committee hereafter established. Drawings shall include a plot plan so the proposed land contouring of grades, buildings, parking areas and plans for all floors, cross-sections and elevation specifications shall describe types of construction and materials to be used. Approval shall be based, among other things, on conformity and harmony of external design with neighboring structures, the effect of location and use of improvements on neighboring sites, relation of finished ground elevations of the site being improved to that of neighboring sites and conformity of the plans and specifications to the purpose and general plan and intent of these covenants. The Architectural Control Committee shall consist of three persons appointed by Flathead Health Center, Inc., or any successor in ownership of the hospital it operates. At such time as seven lots in the proposed subdivision have been sold, the owners of the lots shall be entitled to appoint one member to said Committee and Flathead Health Center, Inc., shall appoint the other two. At such time as all lots in the subdivision shall have been sold, the owners of the lots shall be entitled to appoint two members of such Committee and Flathead Health Center, Inc., shall appoint one. The power to appoint shall include the power to designate the term of office and

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and appoint replacements. If the Committee fails either to approve or disapprove the plans and specifications within sixty (60) days after the same have been delivered to the Administrator at Flathead Health Center, Inc., said plans and specifications shall be deemed approved.

B. Further Subdivision. The lots as established by the plat shall not be further subdivided in any way. Only one building shall be erected upon each lot.

C. Off-Street Parking. The design of the subdivision provides adequate off-street parking for a building on each lot provided such building does not exceed 1500 square feet. No building larger than 1500 square feet shall be erected without adequate provision being made by the owner thereof for such additional parking as is necessary to meet the standard established by the City of Kalispell at the time such building is erected. Remodeling or adding on to an existing building shall be deemed to be erection of a building for purposes of this restriction.

D. Owners' Association. Declarant has created as a nonprofit corporation, Highland Park Professional Owners' Association, Inc., and the owner of each lot in the subdivision shall be entitled to one membership in said corporation. Each owner agrees to cooperate with the owners' association in the maintenance and upkeep of the common areas within the subdivision, including the green areas, the parking areas and the private roadway. Assessments made by the Association shall be prorated amongst the owners on the basis of the relationship that each building bears in square footage to the square footage total for all buildings on the fourteen lots.

E. Sidewalks. Sidewalks located as indicated on the plat of the subdivision shall be constructed on each lot (at the expense of the lot owner) at the time a building is erected thereon. Maintenance

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shall be at the expense of the lot owner.

III.

RESTRICTIONS AS TO USAGE

A. Medical-Dental Staff Use Only. This subdivision is created by Flathead Health Center, Inc., adjacent to its Kalispell Regional Hospital for the purpose of providing building sites for members of its medical and dental staffs. Each lot and the improvements constructed thereon shall be limited in use to medical and dental office space and activities directly incidental to professional practice such as the furnishing of dentures, eyeglasses and other medical or dental devices or services, to patients of the professional practitioners. Every professional occupant of such office space, whether as owner, tenant, or otherwise, shall maintain membership in the active or probationary medical or dental staff of Kalispell Regional Hospital. In addition to any other remedies provided by law for the enforcement of these covenants, Flathead Health Center, Inc., or its successor in interest, shall have the option to purchase any lot and improvements wherein a professional practice is being conducted by a professional who is not a member of such staff, which option may be exercised as follows: Flathead Health Center, Inc., shall give notice of its intent to exercise this option if such violation is not corrected within 30 days. If such correction does not occur, Flathead Health Center, Inc., shall obtain an appraisal of the lot and improvements by a qualified appraiser and shall offer the appraised value to the owner. Unless the owner shall accept said offer within 10 days, owner shall obtain an appraisal from a qualified appraiser and offer to sell to Flathead Health Center, Inc., for the appraised amount. Unless Flathead Health Center, Inc.,

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accepts such offer within 10 days, the two appraisers shall jointly select a third appraiser and the amount shall be determined by arbitration procedures. Purchases shall be for cash.

B. Non-Duplication of Services. No installation of equipment shall be permitted for the purpose of offering services which will duplicate services offered at Kalispell Regional Hospital in the areas of physical therapy; respiratory therapy; laboratory, except CBCs and urinalysis; and radiology, except x-rays of extremities and chests.

IV.

DURATION, AMENDMENT AND ENFORCEMENT

A. These covenants shall remain in full force and effect for a period of twenty (20) years from the date hereof. At the time of expiration, the then owners of lots within the said subdivision may cause the covenants to remain in force and effect for additional periods of ten (10) years each, by filing with the Clerk and Recorder of Flathead County, Montana, a petition to that effect, signed by the owners of a majority of the lots located within the subdivision.

B. These covenants may be amended at any time by the recordation with the Clerk and Recorder of Flathead County, Montana, of a Declaration of Amendment setting forth the specific amendment or amendments to be made, signed by the record owners of 65 per cent or more of the lots located in the subdivision, and by Flathead Health Center, Inc.

C. These covenants may be enforced by injunction, action for damages, or any other remedy provided by law. Any person or corporation having a record interest in any lot shall have standing to prosecute such an action. Any Court finding a violation of any covenants shall have, in addition to the foregoing remedies, the right to require abatement of the violation, including removal of any structures or improvements.

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D. Invalidation of any one of these covenants by judgment or Court decree shall in no wise affect any of the other provisions which shall remain in full force and effect. This Declaration of Restrictive Covenants applies only to the real property encompassed by Highland Park Professional Subdivision, and shall not, by implication or otherwise, be deemed to apply to or affect any other land owned by the Flathead Health Center, Inc.

V.

PARK DEDICATION

This subdivision has been approved as a commercial subdivision without park dedication. No amendment permitting residential use of any lot or lots shall be effective unless the sum of \$100.00 shall be first paid to the Park Fund of the City of Kalispell for each lot to be used for residential purposes.

IN WITNESS WHEREOF, Flathead Health Center, Inc., has caused this instrument to be executed by its officers thereunto duly authorized this 1st day of March, 1976.



FLATHEAD HEALTH-CENTER, INC.

By M. Dean Jellison  
M. Dean Jellison, President

ATTEST:

George Clark  
George Clark, Secretary

STATE OF MONTANA )  
                          ) ss.  
County of Flathead)

On this 1st day of March, 1976, before me, a Notary Public for the State of Montana, personally appeared M. DEAN JELLISON and GEORGE CLARK, known to me to be the President and Secretary of the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

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



Aldera F. A. M. S. M.  
Notary Public for the State of Montana  
Residing at Kalispell, Montana  
My commission expires 4/22/11

STATE OF MONTANA, } ss  
 County of Flathead

Filed for record at the request of George Bendler  
 this 16th day of March 1976 at 3:00 o'clock PM and recorded in VOL. 574  
 PAGE 325 Records of Flathead County, State of Montana.

INDEXED	<u>7</u>
COPIED	<u>7</u>
COMPARED	

Fee \$ 14.00

RECEPTION NO. 2501

RETURN TO First Montana Bank

Ethyl L. Smith  
Flathead County Clerk and Recorder

R. Dean Johnson  
Deputy

85276 15280

STATEMENT OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
BYLAWS OF ASSOCIATION OF UNIT OWNERS OF  
FLATHEAD MEDICAL PLAZA

WHEREAS, SCHIMPF-BROWN PROPERTIES, a Montana general Partnership, with its principal place of business located at Kalispell, Montana, hereinafter referred to as "Developer," is the owner of the land described as Lot One (1) of Highland Park Professional Subdivision, according to the plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana, has heretofore developed and constructed a professional office building on said property; and

WHEREAS, Developer has submitted the aforesaid property to the condominium form of ownership, and stated in the Declaration of Condominium of Flathead Medical Plaza under the Montana Unit Ownership Act, to which Declaration this is attached and made a part of; and

WHEREAS, Developer desires and intends to impose upon said land and improvements included in the Project mutually beneficial restrictions under a general plan for the benefit of said property contained in the Project as a unit ownership project, including all of the Units and Common Elements, and for the benefit of all of the future Owners of said Units and said Common Elements, together with Bylaws as required by said Act;

NOW, THEREFORE, Developer hereby declares that all of the property hereinabove described (Project) is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following limitations, restrictions, covenants, conditions and bylaws, all of which are declared and agreed to be in furtherance of a plan to constitute said property as a Unit Ownership Project under the aforesaid Act, as amended from time to time, and are hereby established and agreed upon for said purposes and for the purposes of enhancing and perfecting value, desirability and attractiveness of said property. Said limitations, covenants, restrictions, conditions and bylaws shall run with the aforesaid land and Units and shall be binding upon all parties having or acquiring any right, title

EXHIBIT A TO DECLARATION OF CONDOMINIUM OF FLATHEAD MEDICAL PLAZA

or interest therein, or occupying the same, and shall be for the benefit of each owner of any interest therein and shall inure to the benefit and be binding upon each successor in interest of the owner, guest, renter, invitee, lessee, occupant or anyone occupying said premises, throughout the term of this Project. These Covenants, Conditions, Restrictions and Bylaws have been approved by all persons eligible for membership in the Association and shall be effective upon recording the aforesaid Declaration as required by the act, and this Exhibit A.

#### ARTICLE I.

##### Name and Location

These are the Covenants, Restrictions, Conditions and Bylaws of the Association of Unit Owners of FLATHEAD MEDICAL PLAZA, hereinafter called "Project." The principal office of the Project is located at 1297 Burns Way, Kalispell, 59901.

#### ARTICLE II.

##### Purposes

This Unit Ownership is formed under the provisions of the Montana Unit Ownership Act to serve as the means through which the Unit Owners may express their opinions, wishes, and take action with regard to the administration, management and operation of the Project described in the Declaration and to impose certain conditions, covenants, and restrictions relative to the operation of the Project.

#### ARTICLE III.

##### Definitions

The property conveyed by Warranty Deed to the buyer of a Unit in the Project is called herein a "Unit Ownership." The individual Units are called "Units" or "Suites," and the land, including the improvements thereon, exclusive of all Units, is called the "Common Elements." The Unit Owners and the Developer, to the extent they own any Unit Ownership, are herein called an Owner or Owners, which term includes successors in interest. The record owner(s) of any Unit shall, by that ownership, be a member of the Association, which membership shall terminate, upon conveyance of said owner(s)' interest.

## ARTICLE IV.

Unit Owners

Section 1. Place of Meetings - The Unit Owners of the Project shall hold meetings at the principal office of the Project or at such place within the County of Flathead, State of Montana, as the Association shall authorize.

Section 2. First Organizational Meeting - The first meeting of the Unit Owners to organize the Association shall be held within a reasonable time after the Developer, as designated in the Declaration, has conveyed title to all of the aggregate unit space, at which time, the officers designated by the Developer shall resign and all the Unit Owners shall elect new officers. If the Developer so elects, it may relinquish control and accelerate the date of the first organizational meeting. Developer hereby designates ROBERT D. SCHIMPF and ROGER G. BROWN as President and Secretary of the Association, respectively, until that time.

Section 3. Annual Meetings - Thereafter, there shall be an annual meeting of the Unit Owners of the Project to be held on the \_\_\_\_\_ of each year at 7:30 P.M., or at such other reasonable time as may be designated by written notice of the President delivered to the Unit Owners not less than ten (10) days prior to the date fixed for said meeting. At such annual meetings the Unit Owners shall elect officers of the Association and may transact such other Association business as may properly come before the meeting.

Section 4. Special Meetings - After the organizational meeting, special meetings of the Unit Owners may be called by the President, Vice-President, Secretary, and must be called by such officers, or any of them, upon receipt of a written request from owners representing fifty percent (50%) or more of the votes in the Association. Such written request shall state the purpose or purposes of the proposed meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

Section 5. Record Date - For the purpose of determining the Unit Owners entitled to notice of any meeting of the Association, or any

adjournment thereof, or for the purpose of any other action, the Secretary shall fix in advance, a date as the record date for such determination. Such date shall not be more than Thirty (30) nor less than ten (10) days before the date of the meeting.

Section 6. Notice of Meeting - Notice of meetings of the Unit Owners of the Association shall be in writing. Notice of the meetings other than the annual meetings shall indicate and state that it is being issued by or at the direction of the person or persons calling the meeting. Such notice shall be mailed or delivered not less than two (2) nor more than ten (10) days prior to the date of the meeting. Notice of all meetings at which disposition is to be made of assets, or any part thereof, granting of rights or easements in the Association property must also be given to the holders of the first mortgage on any Unit.

Section 7. Waiver of Notice - Notice of meetings need not be given to any Unit Owner who signs a Waiver of Notice either in person or by proxy whether before or after the meeting. The attendance of any Unit Owner at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of proper notice of such meeting shall constitute a Waiver of Notice of the meeting by him.

Section 8. Quorum of Unit Owners - The presence of Unit Owners having a majority of the total votes in the Association, at any meeting shall constitute a quorum. The subsequent joinder of a Unit Owner in the action taken at a meeting by signing and concurring in the minutes thereof shall constitute the presence of such person for the purpose of determining a quorum. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a Unit Owner or Owners. The Unit Owners present may adjourn the meeting despite the absence of a quorum.

Section 9. Voting Owners - There shall be one "voting Owner" of each Unit Ownership. The voting Owner shall be designated by the record Owner or Owners of each Unit Ownership by written notice to the Association, signed by all of the Owners of the Unit Ownership. Such

powers of designation and revocation may be exercised by the guardian in an Owner's estate, or in the case of a minor having no guardian, by the parent entitled to his custody, or during the administration of any Owner's estate, by his personal representative where the latter's interest in said property is subject to administration in his estate. Designation of the person or officer authorized to cast the votes of a corporation or partnership shall be made, in writing, to the Association. The most recent designation shall control for any given ballot. Where no designation is made or where a designation has been made but has been revoked and no new designation has been made, the voting owner of each Unit Ownership shall be the group composed of all of its Owners, (or in the case of a corporation or partnership, all of its stockholders or partners) but it shall be necessary for those present of said group to act unanimously in order to cast the votes to which they are entitled. Any dispute or disagreement unreasonably delaying any ballot may result in the Association's declaration of such votes to be abstentions, by its presiding officer. The total number of votes for all voting owners shall be one-hundred (100) at all times, and each Unit Ownership shall have one vote for each percentage point which it has in the ownership of the Common Elements of the Project. All votes pertaining to one Unit must be cast as a bloc by the person entitled or designated, and may not be split on any ballot or issue. If a person owns more than one Unit Ownership, he shall have votes for each Unit Ownership which he owns. In the event the record Owner or Owners have pledged their vote regarding special matters to a mortgagee under a duly recorded mortgage (which term in all cases used shall include the trustee or beneficiary under a duly recorded Trust Indenture), only the vote of the mortgagee or beneficiary under the Trust Indenture will be recognized in regard to the special matters upon which the vote is so pledged. A Unit which has been acquired by the Association in its own name or in the name of its agents, designee, or nominee on behalf of all of the Unit Owners shall not be entitled to vote so long as it continues to be so held.

Section 10. Proxies - A vote may be cast in person or by proxy.

To be valid, proxies must be duly signed and acknowledged by the Unit Owner and must be filed with the Secretary before the appointed time of the meeting. A proxy is valid only for the particular meeting designated therein. A proxy may be revoked by the Unit Owner by appearance in person at the meeting and then and there filing with the Secretary at that time notice of the revocation.

Section 11. Written Consent of Unit Owners - Any action that may be taken by a vote may be taken without a meeting on written consent duly acknowledged setting forth the action so taken or to be taken of all of the voting Unit Owners.

Section 12. Annual Reports - At the annual meeting the officers shall present a written statement of the maintenance fund, which itemizes receipts and disbursements of the preceding fiscal year and the allocation thereof to each Owner. Within ten (10) days after the annual meeting said statement shall be delivered to the voting owners not present at said meeting.

#### ARTICLE V.

##### Management

Section 1. Agent - The Project shall be managed by the Association, as a whole, but which may delegate any or all management functions to one or more of its members, as agent, by due resolution.

Section 2. Delegation; Term of Service - Any agent shall be constituted at any duly called meeting, by resolution stating the extent of duties delegated. The agent shall serve without compensation, but may be reimbursed for expenses. At any time an agent resigns, is terminated by Association action, or ceases to be a Unit Owner or ceases to have an interest in a Unit, his authority shall thereupon terminate. Term of service shall be for one year. Any agent may be reelected to serve for an additional term or terms, with lesser or additional duties delegated. Any agent may be removed and the delegated duties revert to the Association, or a successor elected for the unexpired portion of the term by a majority of the voting owners present at a special meeting called for such purpose. No agent shall have the authority, without ratification by the

Association, for an expenditure for any purpose, which would exceed \$1,000.00.

Section 3. Officers - The Association, at the organizational meeting, and each annual meeting, shall elect a president from among its members who shall preside over the meetings of the voting owners. The Association shall also so elect a secretary and a treasurer, and may elect a vice-president. The officers shall execute the rights, duties and obligations of the Association, in the absence of delegation to a specific agent, and in such case shall be the agents of the Association, as referred to herein.

Section 4. Powers and Duties of the Association - The Association shall have the power and may exercise all of the powers granted to it under the Project documents, or the Act. It shall exercise its powers and duties in accordance with the provisions of the Declaration, the Montana Unit Ownership Act and these Bylaws, and it shall have the power:

- a. To make, levy, and assess common charges against the unit Owners for the purposes set forth in the Declaration, the Statutes of the State of Montana, and the provisions of these Bylaws, and to use the same in the exercise of its powers and duties.
- b. To procure and pay for water, sewer, garbage, electrical, gas, and other necessary utility service for the Common Elements and (if not separately metered or charged) for the Unit Ownership and maintenance for the Common Elements, including snow removal and other necessities.
- c. To procure and pay for a policy or policies of fire insurance with extended coverage endorsement, as the Association shall from time to time determine gives the protection deemed necessary and desirable, which policies shall insure the Owners, and their mortgagees, as their interests may appear, which said policy or policies shall provide for separate protection for each Unit, and a separate loss payable endorsement in favor of the mortgagee or mortgagees of each Unit, if any.
- d. To procure and pay for a policy or policies insuring the Association, the Board and the Owners, so long as an undivided

interest remains in them, against any liability to the public or to the Owners (of Unit Ownerships and of the Common Elements, and their invitees, or tenants), incident to the ownership and/or use of the Common Elements and Unit Ownerships, the liability under which insurance shall be not less than limits determined by the Association to provide adequate protection (such limits to be reviewed at least annually by the Association and increased in its discretion).

e. To procure and pay for legal and accounting services necessary Bylaws, as well as any fiduciary bonds deemed desirable.

f. To procure and pay for painting, maintenance, repair and all landscaping of the Common Elements and areas and such furnishings and equipment for the Common Elements and areas as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to arrange for such painting, maintenance, repair and landscaping and to acquire such furnishings and equipment for the Common Elements; provided, however, that the interior surfaces of each Unit shall be painted, maintained and repaired by the Owners thereof at their sole cost and expense of each particular Owner, including light bulb replacement, janitorial service, etc.

g. To procure and pay for any other materials, supplies, furniture, labor services, maintenance, repairs, structural alterations, capital additions, capital improvements, insurance, taxes or assessments which the Association is required to secure or pay pursuant to the terms of these Covenants or Bylaws, or by law, or which in its opinion shall be necessary or proper for the operation of the Common Elements, or for the enforcement of these Restrictions.

h. The Association shall also pay any amount necessary to discharge any lien or encumbrance levied against the entire Project or any part thereof which may, in the opinion of the Association, constitute a lien against the Common Elements, rather than merely against the interests therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Association by reason of said lien or liens shall be

specially assessed to said Owners.

i. To procure and pay for the maintenance and repair of any Unit, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Elements or preserve the appearance and value of the Project, and the Owner or Owners of said Unit have failed to undertake said maintenance or repair within such time as determined by the Association after written notice of the necessity of said maintenance or repair is delivered by the Association to said Owner or Owners. The Association shall levy a special assessment against such Unit Owners for the cost of said maintenance or repair, since such maintenance and repair is the primary responsibility of the Owners.

j. To make or amend rules and regulations respecting the use and operation of the property but not inconsistent with the Declaration or these Covenants and Bylaws.

k. To enforce the provisions of the Project documents by legal action, if necessary, and to employ, in addition to legal and accounting personnel, maintenance or other personnel, by reasonable compensation, to perform the service required for the proper administration of the Project.

l. To purchase either at foreclosure sale or from a defaulting Unit Owner in lieu thereof and to hold, mortgage or lease any Unit.

m. To hire and discharge persons employed for the operation of the property on such terms and conditions as the Association in its sole discretion may deem advisable.

n. To do any and all things which prudent operation of the Project would require.

#### ARTICLE VI.

##### Fiscal Management

Section 1. The Association shall adopt a budget for each year which shall contain estimates of the cost of performing the various functions of the Project and shall include among its items:

1. Common Expense Budget:

a. Maintenance of operation of Common Elements,

- landscaping, walkway and parking spaces;
- b. Utility services;
- c. Casualty insurance;
- d. Liability insurance;
- e. Administration;
- f. Reserves;
- g. Any other item which the Association finds necessary to include therein.

2. The proposed assessment against each Unit Owner.

Section 2. Copies of the proposed budget and proposed assessment shall be transmitted to each member at least fifteen (15) days before each annual meeting. If said sum estimated proves inadequate for any reason, including nonpayment of any Owner's assessment, the Association may at any time levy a further assessment, which shall be assessed to the Owners in like proportions unless otherwise provided herein. Each Owner shall be obligated to pay assessments made pursuant to this paragraph to the Association in annual installments on or before the first day of the month following the month of assessment as provided above, or in such other manner as the Association may designate, and any unpaid assessments shall bear interest at the highest legal rate from due date until paid.

Section 3. In allocating expenses among the Unit Owners the Association shall do so as provided in the Declaration, but may, in its discretion, allocate a certain item of expense on a different basis, with the agreement of all Owners, in the interest of equity.

Section 4. The depository of the Project shall be such bank or banks as shall be designated from time to time by the Association. All assessments and other monies of the Project shall be deposited therein. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Association.

Section 5. The officers appointed by the Developer, or elected at the organizational meeting, shall determine the estimated Common Expenses, as hereinabove defined, for the period or periods commencing with the recording of the Declaration and ending on the day preceding

the first annual meeting of voting owners. Assessments for such estimated Common Expenses may be levied against the Owners and if levied, shall be payable within fifteen (15) days thereafter.

Section 6. An audit of the accounts of the Project shall be made annually by a Certified Public Accountant and a copy of the reports shall be furnished to each Unit Owner not later than ninety (90) days after the end of the year for which the report is made. This audit requirement may be waived only by a unanimous vote of all Unit Owners.

Section 7. All funds collected hereunder shall be expended for the purposes designated herein.

Section 8. The omission by the Association, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this statement, or a release of the Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding years shall continue until a new assessment is fixed. Amendments to this paragraph shall be effective only upon the unanimous written consent of the Owners and their mortgagees. No Owner may exempt himself from liability or escape liability for the assessments provided for herein by waiver or abandonment of the use or enjoyment of any of the Common Areas or Common Elements or by abandonment of his or her Unit Ownership.

Section 9. The Treasurer of the Association shall keep detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Areas and Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Areas and Common Elements and any other expenses incurred.

#### ARTICLE VII.

##### Default and Payment of Assessments

Each assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed. In the event of a default or defaults in payment of any such assessment or assessments and in addition to any

other remedies herein or by law provided, the Association may enforce each such obligation as follows:

a. By suit or suits at law to enforce each such assessment obligation. Each such action must be authorized by a majority vote of the Association at a regular or special meeting thereof and any such suit may be instituted by any one or more members of the Association. Each such action shall be brought in the name of the Association. Any judgment rendered in any such action shall include, where permissible under any law, costs of suit and interest thereon at the highest statutory rate then prevailing for interest chargeable on judgments, and a sum for reasonable attorneys' fees in such amount as the Court may adjudge against such defaulting Owner. Upon full satisfaction of any judgment, it shall be the duty of the Association to authorize its officers, acting in the name of the Association, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

b. At any time within ninety (90) days after the occurrence of any such default, the Association (acting upon the authorization of the majority thereof at any regular or special meeting) may give a notice to the defaulting Owner, which said notice shall state the date of delinquency, the amount of the delinquency, and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Association may elect to file a claim of lien against the Unit Ownership of such delinquent Owner. Such claim of lien shall state (1) the name of the delinquent Owner or reputed Owner, (2) a description of the Unit Ownership against which claim of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Association pursuant to the terms of the Act, and (5) that a lien is claimed against said described Unit Ownership in an amount equal to the amount of the stated delinquency, plus interest. Any such claim of lien shall be signed and acknowledged by any two officers of the Association. Upon recordation of a duly executed original or copy of such claim or lien in the office of the Clerk and Recorder, Flathead County, Kalispell, Montana, the lien claimed therein shall

immediately attach and become effective, subject only to the limitations hereinafter set forth. Each default shall constitute a separate basis for a claim of lien or a lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law. In the event of foreclosure of the lien, reasonable attorneys' fees and expenses shall be allowed to the extent permitted by law. In the event any claims of liens have been recorded as herein provided, and thereafter the Association shall receive payment in full of the amount claimed to be due and owing, then upon demand of the Owner or his successor, and reimbursement to the Association of its costs, the Association, acting by any two (2) members, shall execute and acknowledge a good and sufficient release of lien, such release of lien to be delivered to the Owner or his successor upon payment of the expenses and costs.

#### ARTICLE VIII.

##### Mortgage Protection

Notwithstanding all other provisions hereof:

a. The enforcement lien which may be created hereunder upon the interests of any Unit Ownership shall be subject and subordinate to, and shall not affect the rights of the holder of tax and assessment liens and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage or trust indenture (meaning a mortgage or trust indenture with first priority over other mortgages or trust indentures) upon such interest made in good faith and for value, provided that after the foreclosure of any mortgage, there may be a lien created pursuant to Article VII hereof on the interest of the purchaser at such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

b. No amendment to this paragraph shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

c. By subordination agreement executed by Association members, holding a majority of votes, the benefits of a and b above may be

extended to mortgages and trust indentures not otherwise entitled thereto.

ARTICLE IX.

Exclusive Ownership and Possession by Owner

Each Owner shall be entitled to exclusive ownership and possession of his Unit. Each Owner shall be entitled to an undivided interest in the Common Elements and Common Areas as set forth and defined in the Declaration of Condominium recorded in accordance with the terms of the Act. The percentage of the undivided interest of each Owner in the Common Elements and Areas as expressed in the Declaration shall have a permanent character (other than as pertains to Developer's reservation as to Suite 3) and shall not be altered without the consent of all Owners expressed in an amended Declaration duly recorded. The percentage of the undivided interest in the Common Areas shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed, encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may use the Common Areas in accordance with the purpose for which it is intended without hindering or encroaching upon the lawful rights of the other Owners.

ARTICLE X.

Taxes

Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association and required by law to obtain the separate tax assessment of each Unit Ownership. If any taxes and/or assessments may, in the opinion of the Association, nevertheless, be a lien on the entire Project or any part of the Common Elements, they shall be paid by the Association and shall be assessed by the Association to the Owners. Each Owner shall be obligated to pay an assessment by the Association for his pro rata share of any taxes or assessments assessed against the entire property or the Association, such payment to be made to the Association at least fifteen (15) days prior to delinquency of such tax or assessment. All such taxes and assessments are secured by the lien

DECLARATION OF CONDOMINIUM OF FLATHEAD MEDICAL PLAZA  
UNDER THE MONTANA UNIT OWNERSHIP ACT

0 255318

SCHIMPF-BROWN PROPERTIES, a Montana general partnership and fee owner of the subject real property and Developer of the project, and Declarant hereunder, does hereby make and submit for approval by the Flathead County Assessor, the agent for the Department of Revenue in Flathead County, Montana, and to the County Clerk and Recorder of Flathead County, Montana, for recording, the following Declaration, pursuant to the Montana Unit Ownership Act, Section 70-23-101, et seq. specifically Section 70-23-301, Montana Code Annotated, hereinafter referred to as the Act.

1. Submission to Condominium Ownership.

A. The purpose of this Declaration is to submit the real property herein described and the improvements currently constructed thereon to the condominium form of ownership and use in the manner provided by Chapter 23, Title 70, MCA, and further to a restrictive covenant in the form of the Covenants, Conditions, Restrictions and Bylaws as set forth in Exhibit A hereto, which exhibit is incorporated herein. The real property submitted is located in Flathead County, Montana, is owned in fee simple by SCHIMPF-BROWN PROPERTIES, the Declarant, and is more particularly described as follows: Lot One (1) of Highland Park Professional Subdivision, according to the plat thereof on file and of record in the office of the Clerk and Recorder, Flathead County, Montana, together with any and all appurtenances thereto, and subject to easements, covenants, reservations and restrictions of record.

B. Declarant specifically reserves the right to singularly amend this Declaration with respect to Suite 3 of the project, as described hereinafter, by possible division of Suite 3 (but only prior to its conveyance thereof) into two (2) condominium units, as opposed to one, so long as the rights and obligations appertaining to the remaining units are not altered;

with the exception of voting in the Association.

C. The name by which the Project is identified is FLATHEAD MEDICAL PLAZA, and its address is 1297 Burns Way, Kalispell, Montana 59901.

2. Definitions. The terms used herein and in Exhibits hereto, shall have the meaning stated in the Act and as follows:

A. A "Unit" means a part of the project, including one or more rooms, occupying a part or parts of the building located on the described land, intended for the use herein set out, and with a direct exit to a common area leading to a public roadway.

B. "Unit Owner" means the person or entity owning a Unit in fee simple absolute individually or as a co-owner in any real estate tenancy relationship recognized under the laws of the State of Montana.

C. "Association" means the Flathead Medical Plaza Owner's Association, being all Unit Owners acting in a group in accordance with the Statutes of the State of Montana, with this Declaration and with the Bylaws of the Association set forth in Exhibit A.

D. "Common Elements" shall be the following:

(1) The land on which the building is located; and all portions of the land hereinbefore described, including lawn, landscape, sidewalk and parking areas;

(2) The foundation and footings, columns, beams, supports, exterior walls, walls dividing units, and roof of the building, including all materials and equipment used in the construction of the entire project or servicing it, including all electrical, mechanical or plumbing systems and equipment (including water heaters), except the decorative facings on the interior walls, floors and ceilings of a Unit, and movable, non-supporting walls and partitions wholly within a Unit, or items attached to the interior surfaces thereof;

(3) All areas designated as common areas in the plans and description of the project attached as Exhibit B to this Declaration.

(4) All items or areas designated as such under Montana law.

E. "Project" means land, all buildings, improvements and structures thereon and all easements, rights and appurtenances belonging thereto which are submitted to the unit form of ownership hereby, or by any amendment hereto.

F. "Unit Designation" means the suite number designating a Unit in the Project, and as shown on the plans and description of the project attached as Exhibit B hereto.

G. "Common Expenses" means:

(1) The expenses of administration, maintenance, repair or replacement of the common elements;

(2) Expenses agreed upon as common by the Unit Owners, either pursuant to the Bylaws of the Association, or by Agreement;

(3) Expenses declared to be common by the Montana Unit Ownership Act, as amended, or by the Bylaws of the Association.

H. "Building" means the multi-unit professional office building erected and existing on the lands described in Paragraph 1.

I. "Person" means a natural person, a corporation, partnership, trustee or other legal entity.

3. Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines and Other Common Elements Located Inside of Units. Each Unit Owner shall have an easement in common with the owners of all other Units to use all pipes, ducts, wires, cables, conduits, public utility lines and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the owners of the other Units in common, to use the pipes, ducts, wires, cables, conduits, public utility lines and other Common

Elements located in that Unit, and serving other Units. Each Unit shall be subject to an easement for access to any Common Elements located within that Unit, where no access is otherwise provided, for the purpose of reasonable inspection, maintenance, repair or legitimate usage thereof by the Association.

4. Description of Project and Units, Designations.

A. The Project consists of one existing medical office building on the subject property, as located, described and depicted upon Exhibit B attached hereto, and incorporated herein, and the other improvements currently upon, or to be added to the property. The building consists of two levels, a lower level, and an upper level, separated and elevated as set forth upon Exhibit B. Two Units are located in the upper level, designated as Suite 1, and Suite 2, with Suite 1 encompassing approximately 2,150 square feet of floor area and being the most Easterly Unit, and Suite 2, encompassing approximately 2,230 square feet of floor area and being the most Westerly Unit, with a common wall separating them from each other, and from Common Elements, all as described and located in Exhibit B, within the heavy lines. (Designations thereon of current configurations or room usages within a Unit are non-binding and not a part of the description of the Unit). One Unit is located in the lower level, designated as Suite 3, encompassing approximately 4,161.7 square feet of floor area, with the common floor/ceiling separating it from the other Units. (Developer/Declarant has reserved the right, prior to conveyance of Suite 3, to divide Suite 3 into two separate Units, by proper amendment to this Declaration, as set forth in Paragraph 1). All Units are in existence, having been constructed in 1982 and will be owned, sold, transferred or conveyed hereafter by reference to the Unit (Suite) designation of each, as part of the Flathead Medical Plaza, a Condominium, and by reference to this recorded Declaration, as it may be amended, together with its Exhibits, as an integral part hereof.

B. Attached hereto as Exhibit B, and incorporated herein, are a description of the construction and materials, Unit designations, layout, dimensions, locations, elevations, plat, lot plan (including utility locations) and floor plans for the building and Units, as certified by the registered engineer who prepared them, pursuant to §70-23-306, MCA. Each Unit consists of the space confined within and bounded by the interior surfaces of the outer walls, ceiling, floor, walls or floors separating Units and/or common areas, windows and exterior doors, as designated upon Exhibit B. Any and all other portions or items of the property or Project are Common Elements as defined in Paragraph 2. Percentage ownership of the Common Elements, and of the surplus and other Association property, for each Unit, and as an appurtenance thereto, is based upon approximate pro rata square footage, and is as follows:

Suite 1 - 26%

Suite 2 - 26%

Suite 3 - 48% (Subject to division and defeasance if Suite 3 is divided).

The foregoing are also percentages for the sharing of Common Expenses.

C. The interest each Unit Owner has in Common Elements (except for the reservation as to Suite 3) is declared to be permanent in character and cannot be altered without the consent of all Unit Owners affected, and the first mortgagees of record (the term "Mortgagees" includes Trust Indenture beneficiaries) of such Units as expressed in an Amended Declaration. Such interest in the Common Elements cannot be separated from the Unit to which it appertains.

D. Each Unit Owner may use the Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other Unit Owners.

E. The Association, on behalf of the other Unit Owners,

shall have the irrevocable right, to be exercised pursuant to Association resolution, or duly adopted Rules and Regulations, to have access to each Unit for the purpose of inspecting and making repairs, replacements or improvements to the Common Elements and to the Unit itself where the responsibility therefor is upon the Association, or to prevent damage to the Common Elements or other Units, or to abate any violation of law, orders, rules or regulations of any Governmental authority having jurisdiction thereof, or to correct any condition which violates the provisions of any mortgage covering another unit.

F. The maintenance, repair, replacement, management, operation and use of the Common Elements shall be the responsibility of the Association, but nothing herein contained shall be construed so as to preclude the Association from delegating those duties to a manager or agent or to other persons, firms or other corporations, by due resolution.

G. The expenses incurred or to be incurred for the maintenance, repair, replacement, management, and operation of the Common Elements and use of the Common Elements shall be assessed to and collected from the Unit Owners in such proportion as such Unit Owners own the Common Elements, or modified for fairness as shall be determined from time to time by the Association; and in such assessments and collections, the Association shall assess and collect such expenses in the proportion which the square footage in each Unit bears to the total square footage of all the Units combined.

H. The Association shall have the right to make, or cause to be made such alterations and improvements to the Common Elements as in its opinion may be beneficial and necessary, or which is requested in writing by a Unit Owner or Owners and the holders of first mortgages thereon. The Board may require the consent in writing before undertaking such work of such Unit Owners and the holders of first mortgages thereon, whose

rights, in the sole opinion of the Association, may be prejudiced by such alteration or improvement. When in the sole opinion of the Association, the alteration or improvement is of general character, the cost thereon shall be assessed as Common Expenses. When in the sole opinion of the Association as evidenced by a majority vote thereof, the alteration or improvement is exclusively or substantially exclusively, for the benefit of one or more Unit Owners that requested it, the cost shall be assessed against such owner or owners in such proportion as the Board shall determine is fair and equitable. Nothing herein contained shall prevent the Unit Owners affected by such alteration or improvement from agreeing in writing, either before or after the assessment, to be assessed in different proportions.

I. No Unit Owner shall do any work which would affect or alter any of the Common Elements or impair any easement or hereditament therein.

J. While the property remains subject to this Declaration and the Act, no liens of any nature shall arise or be created against the Common Elements except by the unanimous consent in writing of all the Unit Owners and the holders of first liens thereon, except such liens as may arise or be created against the several Units and their respective common interests under the Act. Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and the Act, and the right to file a Mechanic's Lien by reason of labor performed or materials furnished is waived.

K. Every Unit Owner shall comply strictly with the bylaws, any Association rules and regulations adopted pursuant thereto in relation to the Units or the Common Elements. Failure to comply with any of the same shall be ground for an action to recover sums due for damages, or injunctive relief or any or

all of them. Such action may be maintained by the Association on its own behalf or on behalf of the Unit Owners aggrieved. In case of any flagrant or repeated violation by a Unit Owner, he may be required by the Association to give sufficient surety or sureties for his future compliance with the bylaws, rules and regulations. Nothing herein contained shall prevent in a proper case an independent action by an aggrieved Unit Owner for such relief.

5. Service. The name of the person to receive service of process in cases provided by MCA § 70-23-901, under the Act, is JAMES W. JOHNSON, 221 First Avenue East, Kalispell, Montana 59901.

6. Character in Use. The use of the property shall be in accordance with the following provisions:

A. The property in the Units shall be used as a multi-unit professional office building, and shall be used and occupied only by Unit Owners, their agents, servants, patients, clients, guests, invitees, employees and lessees; and the lessees' agents, servants, clients, patients, guests and invitees and employees. Existing restrictive covenants upon the land shall be complied with.

B. No Unit may be sold or otherwise transferred, or leased, without first complying with the provisions of this Declaration, and the provisions of the Bylaws of the Association.

7. Transfer or Lease of Units.

A. The Unit Owner has the right to sell, contract to sell, or lease his Unit or interest therein, provided he gives thirty (30) days written notice of the terms of the bona fide sale or lease to the Association and obtains its written approval for the sale or lease. The failure of the Association to act within the thirty (30) day period from receipt of such notice shall be deemed to constitute approval. If the Association disapproves of the transaction it shall so notify the Unit Owner in writing, and within fifteen (15) days

after receipt by the Unit Owner of such notice, produce a purchaser or lessee approved by it who shall accept the transaction upon terms as favorable to the seller or landlord as the terms stated in the Notice to the Association. If the Association does not produce such a purchaser or lessee as the case may be, within the aforesaid fifteen (15) days, the Unit Owner shall have the right to effectuate such sale or lease under the terms as originally submitted.

The Association or its designee may elect to purchase or lease such Unit on behalf of all the other Unit Owners in the same manner as set forth hereinabove.

B. All notices referred to in this Article shall be given by certified mail or delivered in person to the Secretary of the Association, or to the Unit Owner as the case may be. The Notice shall be deemed made and Notice shall be deemed given by such mailing and by such delivery and shall not be dependent upon acceptance by the addressee.

C. The Unit Owner intending to make a transfer, sale or lease of the Unit or any part thereof or interest therein shall, at the time he gives notice to the Association of such intention, he shall also furnish at that time for the information of the Association, the name and address of the intended Grantee contract purchaser, or lessee. He shall furnish a statement of all the terms of the transaction. He shall furnish a statement of financial reference of the transferee or lessee and such other information as the Association may reasonably require. Notice when given shall constitute a representation, warranty and an offer to sell or lease to any purchaser or lessee produced by the Association.

D. In any event, if the Association fails to act within 30 days and the Unit Owner fails to close such proposed transaction within an additional 30 days, written consent of the Association shall again be required for transfer or lease. A Unit Owner may, at any time, withdraw the offer to transfer or

lease, and all rights and obligations hereunder shall revert to as they were prior to notice of such offer.

E. The action by the Association consenting to a sale or lease shall be in recordable form signed by any officer of the Association and attested to by the Secretary thereof. The failure of the Association to act on a Notice given to it within thirty (30) days shall be deemed to constitute approval of the sale or lease. The Unit Owner, the purchaser or lessee may demand and shall be entitled to receive from the Association consent to the sale or lease in recordable form, or may prepare a recordable affidavit setting forth due notice and inaction by the Association, which shall clear title.

8. Units Subject to Covenants and Bylaws. All present and future owners, tenants and lessees, and all occupants of the Units shall be subject to and comply with the provisions of:

A. This Declaration;

B. The Covenants and Bylaws of the Association of Unit Owners of FLATHEAD MEDICAL PLAZA as they may be amended from time to time, a copy of which is attached hereto as Exhibit "A" and by this reference specifically incorporated herein.

C. Rules and Regulations as promulgated from time to time under the provisions of the Covenants and Bylaws of the Association of Unit Owners of FLATHEAD MEDICAL PLAZA

D. The acceptance of a deed or conveyance, or the execution of a Contract for Deed or Lease, or the entering into occupancy of any unit constitutes an agreement that the provisions of this Declaration, Covenants and Bylaws of the Association of Unit Owners and all other Exhibits to this Declaration, and the rules and regulations as defined in said Declaration and Bylaws and as promulgated by the Association are accepted and ratified by such owner, tenant, lessee, or occupant, and all of such provisions shall be deemed and taken to be covenants "running with the land" and the Units and each of them, and shall bind any person having at any time any

interest or estate, tenancy, leasehold, or occupancy in such unit, as though such provisions were recited and stipulated at length in each and every deed and conveyance, lease or instrument of tenancy. The failure of the Association or any Unit Owner to enforce any covenant or restriction, rule or regulation or any provision of the Unit Ownership Act, this Declaration, the Covenants and Bylaws of the Association, or the rules and regulations adopted from time to time, shall not constitute a waiver of the right to do so thereafter.

9. Severability. If any provision of this Declaration or any section, sentence, clause, phrase or word, or the application thereof in any circumstances be judicially held in conflict with the laws of the State of Montana, then the said laws shall be deemed controlling and the validity of the remainder of this Declaration and the application of any such provisions, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.

10. Captions. Captions used in the documents issued in connection with or related to this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Declaration.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed the day and year first above written.

SCHIMPF-BROWN PROPERTIES

By Robert D. Schimpff  
ROBERT D. SCHIMPF, Partner

Roger G. Brown  
ROGER G. BROWN, Partner

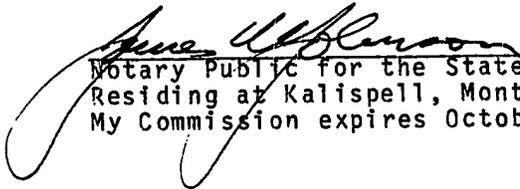
Margaret L. Brown  
MARGARET L. BROWN, Partner

STATE OF MONTANA )  
County of Flathead ) ss.

On this 3rd day of October, 1985, before me, the undersigned, a

Notary Public for the State aforesaid, personally appeared ROBERT D. SCHIMPF, ROGER G. BROWN and MARGARET L. BROWN, known to me to be the partners of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

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

  
Notary Public for the State of Montana  
Residing at Kalispell, Montana  
My Commission expires October 5, 1987

APPROVAL

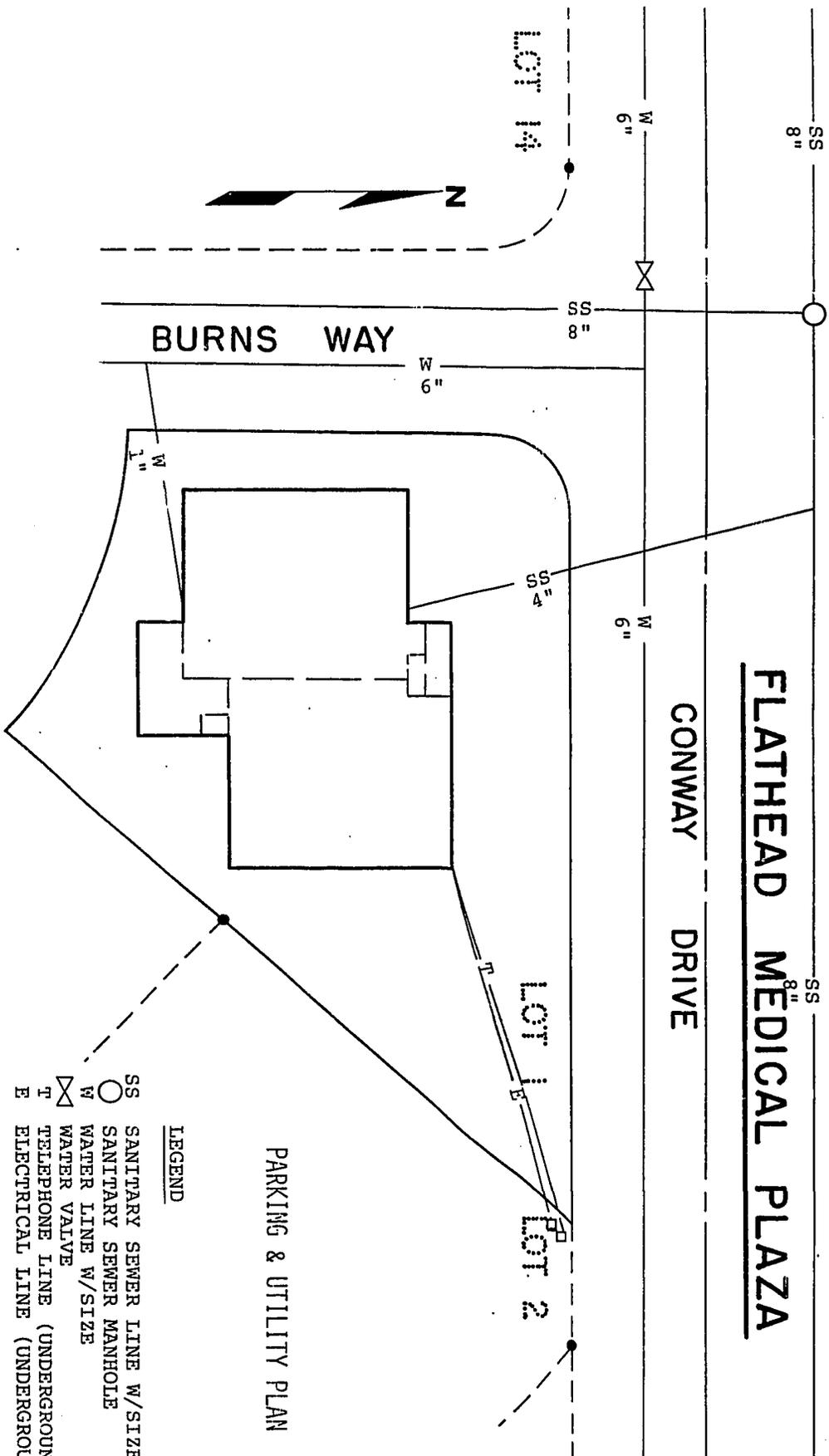
The within and foregoing Declaration of Condominium of Flathead Medical Plaza is hereby approved this 31<sup>st</sup> day of October, 1985 pursuant to Section 70-23-304, MCA, in that the name "Flathead Medical Plaza" is proper so as to comply with Section 70-23-303, MCA, and all taxes and assessments due and payable have been paid upon the property submitted.

  
~~MONTY LONG~~, Flathead County Assessor  
and Agent of Montana Department of  
Revenue  


85276 15280

# FLATHEAD MEDICAL PLAZA

CONWAY DRIVE



PARKING & UTILITY PLAN

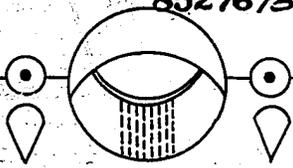
### LEGEND

- SS SANTIARY SEWER LINE W/SIZE
- SANTIARY SEWER MANHOLE
- W WATER LINE W/SIZE
- ⊗ WATER VALVE
- T TELEPHONE LINE (UNDERGROUND)
- E ELECTRICAL LINE (UNDERGROUND)

PREPARED FOR: DR. BROWN & DR. SCHIMPEFF  
 PREPARED BY: THOMAS, DEAN & HOSKINS, INC.  
 DATE: JULY 1985  
 SCALE: 1" = 30'  
 DRAWN: BK APPROVED: MWF

PARKING LOT

85276/5280



FLATHEAD CITY-COUNTY HEALTH DEPARTMENT  
723 5th Ave. E.  
Kalispell, Montana 59901  
Sanitation Ext. 350 Phone 755-5300 Health Services Ext. 343

MEMORANDUM

TO: Flathead County Clerk and Recorder

DATE: August 9, 1985

FROM: Flathead County Sanitarian

SUBJECT: Flathead Medical Plaza - Three (3) Professional Business Oriented Condominium Units - Lot 1, Highland Park Professional Subdivision, Flathead County

Our opinion has been requested concerning the conversion of an existing professional building at the above described property into three (3) condominium units, to be used for professional business oriented purposes. The existing building is presently served by public water and sewer systems under the ownership, operation and maintenance of the City of Kalispell. We have been provided a letter from Andrew Hyde, Water and Sewer Superintendent for the City of Kalispell, indicating the City will continue to provide said services to this professional building.

Such conversions are not categorically exempt from review under the Sanitation in Subdivisions Act, however, in this case enough information has been provided to show that a complete review by our office and the State Department of Health and Environmental Sciences is not necessary. This letter is being written for the sole purpose of providing an official statement by which the Declarations of Unit Ownership, and other pertinent documents, can be filed.

Sincerely,

*Glen Gray*  
Glen Gray, R.S.  
Flathead County Sanitarian

cc: State Department of Health

SEP 9 1985

STATE OF MONTANA,  
County of Flathead

ss

Recorded at the request of Warden et al  
this 3 day of Oct 1985 at 3:28 o'clock PM and recorded in  
the records of Flathead County, State of Montana.

Fee \$ 210.00 Pd.

*Susan A. Haverfield*  
Flathead County Clerk and Recorder

RECEPTION NO. 85276 15280

*Rebekah Klein*  
Deputy

RETURN TO Warden et al  
Box 859 Kalispell Mt 59901

created by Article VII.

ARTICLE XI.

Owners' Obligation to Repair

Except for those portions which the Association is required to maintain or repair hereunder (if any), each Owner shall, at the Owner's expense, keep the interior of his Unit and its equipment and appurtenances in good order, condition, and repair and in a clean and sanitary condition and shall do all redecorating, painting and other refinishing which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition to decorating and keeping the interior of the Unit in good repair, the Owner shall be responsible for the maintenance, repair or replacement of any cabinetry, plumbing fixtures, lighting fixtures, or other fixtures and equipment that are not Common Elements which are located within his Unit.

The Owner shall promptly discharge any lien which may hereafter be filed against his Unit and shall otherwise abide by the provisions of the Act, the Declaration, and this Statement of Covenants, Conditions, Restrictions and Bylaws.

ARTICLE XII.

Structural Changes by Owner

The Owner shall not, without first obtaining written consent of the Association, make or permit to be made any structural alterations, improvement or addition in or to his Unit or in or to the exterior of the building or any Common Area. The Owner shall do no act nor work that will impair the structural soundness or integrity of the building or safety of the Project property or impair any easement or hereditament without the written consent of the Association. The Owner shall not paint or decorate any portion of the exterior of the building or other Common Area without first obtaining written consent of the Association.

ARTICLE XIII.

Use of Units and Common Elements

The Unit Ownerships and Common Elements shall be occupied and used

as follows:

a. Each Unit Ownership shall be occupied or used only for professional purposes satisfactory to the Association.

b. There shall be no obstruction of the Common Areas; nothing shall be stored in the Common Areas without prior written consent of the Association.

c. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the building, 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 which would be in violation of any law. No waste will be committed in or upon the Common Elements.

d. No sign of any kind shall be displayed to the public view on or from any Unit or the Common Areas without the prior consent of the Association, which may develop a sign policy governing type, size, color and aesthetics of signs.

e. No noxious or offensive activity shall be carried on in any Unit Ownership or in the Common Elements, nor shall anything be done in any Unit therein which may be or become an annoyance or nuisance to the occupants of the other Units.

f. Nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Association.

g. There shall be no violation of the rules and regulations established from time to time by the Association furnished in writing to the Owners.

h. At no time shall any pets or other animals be allowed in the Units or Common Areas.

#### ARTICLE XIV.

##### Entry for Repairs

The Association or its agents may enter any Units when necessary in connection with any inspection, maintenance, repair or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the occupants as practicable, and any

damage caused thereby shall be repaired by the Association, at the expense of the Maintenance Fund.

ARTICLE XV.

Waivers

The failure of the Association to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the Owner hereunder, or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Association of any sum paid by the Owner hereunder, with or without the knowledge by the Association of the existence of a default or breach, is not in full satisfaction thereof unless it is full payment hereunder, and no waiver express or implied by the Association of any provision hereof, shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the Association.

ARTICLE XVI.

Limitation of Association's Liability

The Association shall not be liable for any failure of water supply or other service to be obtained and paid for by the Association hereunder or for injury or damage to person or property caused by the elements or by another Owner or person in the Project, or resulting from electricity, water, gas, rain, dust or sand which may leak or flow from outside or from any part of the building or from any of its pipes, drains, conduits, appliances or equipment or from any other place unless caused by the gross negligence of the Association. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Elements, from conducting other duties with which the Association is charged, or from any action taken to comply with a law, ordinance, or orders of any governmental

authority.

ARTICLE XVII.

Indemnification of Association Members and Agent

Each member of the Association and any agent, as defined herein, shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a member of the Association, or acting as agent, or any settlement thereof, whether or not he is a member of the Association at the time such expenses are incurred, except in such cases wherein the member of the Association is adjudged guilty of willful misfeasance or malfeasance in the performance of his duty; provided, that in the event of a settlement, the indemnification shall apply only when the Association shall approve such settlement and reimbursement as being for the best interests of the Association.

ARTICLE XVIII.

Damage and Destruction

If the Project is damaged by fire or other casualty which is insured against and said damage is not in excess of fifty percent (50%) of replacement or restoration costs of the Project, the insurance proceeds shall be used to rebuild or repair such damaged portion in accordance with the original plans and specifications. If such damage exceeds fifty percent (50%) of replacement costs of the Project, then the matter of repair or restoration shall be determined by the voting members of the Association at a meeting called for that purpose, which meeting must be held not more than forty-five (45) days after the occurrence of the damage referred to and the determination of the cost of restoration. If it is determined to repair or restore, any insurance proceeds available shall be used for that purpose. If the insurance proceeds are insufficient to pay all of the costs of repairing and/or restoring the Project, the Association shall levy a special assessment on all Unit Ownerships as a Common Expense, and said special assessment shall be secured by the lien created under

Article VII hereof.

ARTICLE XIX.

Rules and Regulations

The Association may from time to time establish and amend such rules and regulations as is deemed necessary for the management and control of Units and the Common Elements, as not otherwise provided herein and the Owners agree that the Owners' rights under this instrument shall be in all respects subject to such rules and regulations, which rules and regulations as promulgated and amended from time to time shall be considered as a part of this Statement of Conditions, Covenants and Declarations and Bylaws; and the Owner agrees to obey all such rules and regulations as the same are or may from time to time be amended and see that the same are faithfully observed by the invitees, employees, tenants or any one occupying said Unit under his right and interest. Such rules and regulations shall uniformly apply to and be binding upon all occupants of Units.

ARTICLE XX.

Interpretation

Provisions of this Statement and Bylaws shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a Unit Ownership professional building.

ARTICLE XXI.

Amendment

The provisions of these Bylaws, other than this paragraph, may be amended by an instrument in writing and signed and acknowledged by Owners of at least a seventy-five percent (75%) voting interest of the voting Owners, which amendment shall be effective upon recordation in the office of the Clerk and Recorder, Flathead County, Kalispell, Montana, of a copy of the amendment certified by the President and the Secretary of the Association.

ARTICLE XXII.

Remedies Not Exclusive

All remedies provided for herein for the various parties shall not be exclusive of any other remedies which these parties may have as

provided for by law.

ARTICLE XXIII.

Severability

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

ARTICLE XXIV.

Effective Date

This Statement of Conditions, Covenants, Restrictions and Bylaws shall take effect upon recording.

IN WITNESS WHEREOF, The developer and the appointed interim officers of the Association have caused this instrument to be duly executed and sealed this 3<sup>rd</sup> day of October, 1985.

SCHIMPF-BROWN PROPERTIES

By Robert D. Schimpff  
ROBERT D. SCHIMPF, Partner

Roger G. Brown  
ROGER G. BROWN, Partner

Margaret L. Brown  
MARGARET L. BROWN, Partner

ASSOCIATION OF UNIT OWNERS OF  
FLATHEAD MEDICAL PLAZA

By Robert D. Schimpff  
ROBERT D. SCHIMPF, President

ATTEST:

Roger G. Brown  
ROGER G. BROWN, Secretary

STATE OF MONTANA )  
County of Flathead ) ss.

On this 3<sup>rd</sup> day of October, 1985, before me, the undersigned, a Notary Public for the State aforesaid, personally appeared ROBERT D. SCHIMPF, ROGER G. BROWN and MARGARET L. BROWN, known to me to be the

partners of the Schimpff-Brown Properties that executed the within instrument, and acknowledged to me that such partnership executed the same.

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



*James W. Benson*  
Notary Public for the State of Montana  
Residing at Kalispell, Montana  
My Commission expires October 5, 1987

STATE OF MONTANA )  
County of Flathead ) ss.

On this 3rd day of October, 1985, before me, the undersigned, a Notary Public for the State aforesaid, personally appeared ROBERT D. SCHIMPF and ROGER G. BROWN, known to me to be the President and Secretary respectively of the Association of Unit Owners of Flathead Medical Plaza that executed the within instrument, and acknowledged to me that such Association executed the same.

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



*James W. Benson*  
Notary Public for the State of Montana  
Residing at Kalispell, Montana  
My Commission expires October 5, 1987

C E R T I F I C A T I O N

I, MICHAEL W. FRASER, being the registered professional engineer who prepared the floor plans for Flathead Medical Plaza, the building described in the foregoing Declaration, do hereby certify;

(1) That the floor plans to which this Certificate is attached fully and accurately depict the layout of Suites 1, 2 and 3 of Flathead Medical Plaza; and

(2) That the construction of Flathead Medical Plaza was completed in 1982.

*Michael W. Fraser*

MICHAEL W. FRASER, P.E.  
Registration No. 3826 E

STATE OF MONTANA )  
                          ) ss.  
COUNTY OF FLATHEAD)

MICHAEL W. FRASER, being first duly sworn upon oath, deposes and says:

That he is the registered professional engineer named in the foregoing Certificate; that he has read said Certificate; that he knows the contents thereof; and that the same is true to his own knowledge.

*Michael W. Fraser*

MICHAEL W. FRASER

Subscribed and sworn to before me this 14<sup>th</sup> day of

August, 1985.



*Arla K. Heine*

Notary Public for the State of Montana

Residing at Ballines, Montana  
My commission expires 12-6-85.

FLATHEAD MEDICAL PLAZACONSTRUCTION MATERIALS

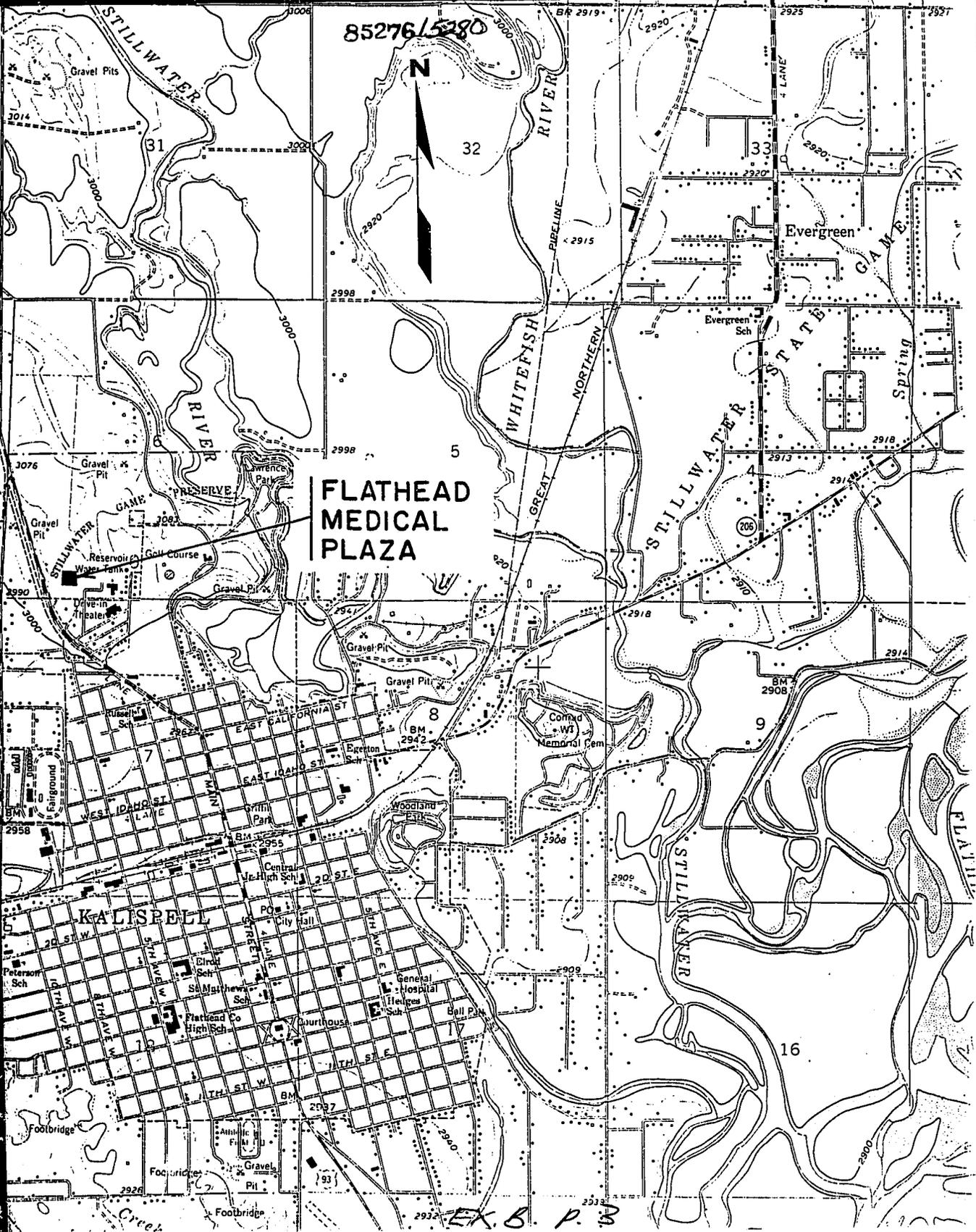
1. Foundation - concrete footing and crawl space height  
concrete walls
2. Frame Structure - wood
3. Exterior Walls - cedar siding and rock veneer
4. Interior Walls - sheet rock and wood siding
5. Heat - forced air/heat pumps

SANITARY SEWER

Suites are serviced by a single 4" PVC sewer line from an existing 8" sewer main. The interior piping from unit to unit is PVC, SDR 35 minimum. Grades of all interior piping exceed the minimum requirements of the Uniform Plumbing Code.

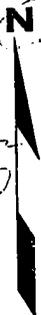
WATER

Suites are serviced by a 1" water line from an existing 6" water main. The interior piping meets or exceeds the minimum requirements of the Uniform Plumbing Code.



**FLATHEAD  
MEDICAL  
PLAZA**

85276/5280



32

BR 2919

Evergreen

Evergreen Sch

Spring

**FLATHEAD  
MEDICAL  
PLAZA**

8

Commod  
W. J.  
Egerton  
Memorial Cem

Woodland  
Cem

Central  
High Sch

City Hall

Flathead Co  
High Sch

General  
Hospital

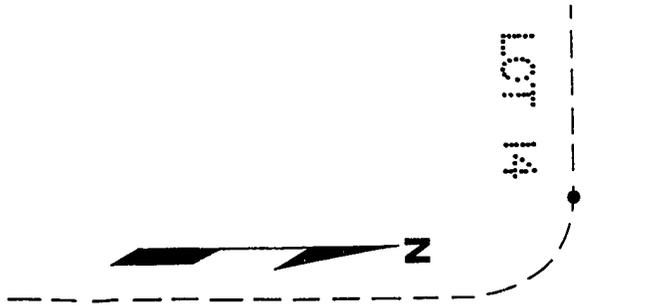
16

EX. B. P. 3

# FLATHEAD MEDICAL PLAZA

CONWAY DRIVE

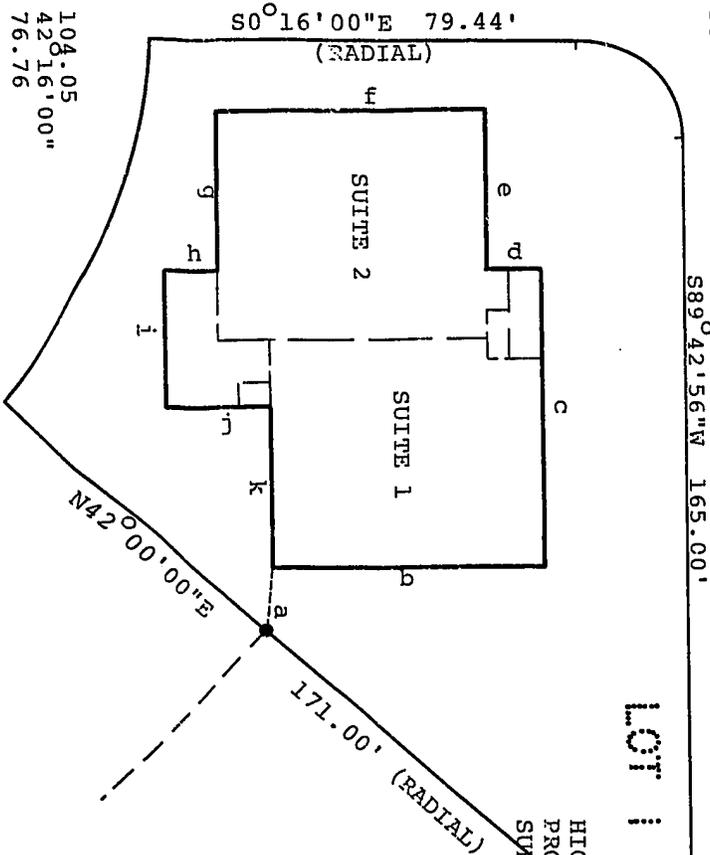
85276/5280



R = 20.00'  
= 89°58'56"  
L = 31.42'

R = 104.05'  
= 42°16'00"  
L = 76.76'

BURNS WAY



HIGHLAND PARK  
PROFESSIONAL  
SUBDIVISION

DATA LIST

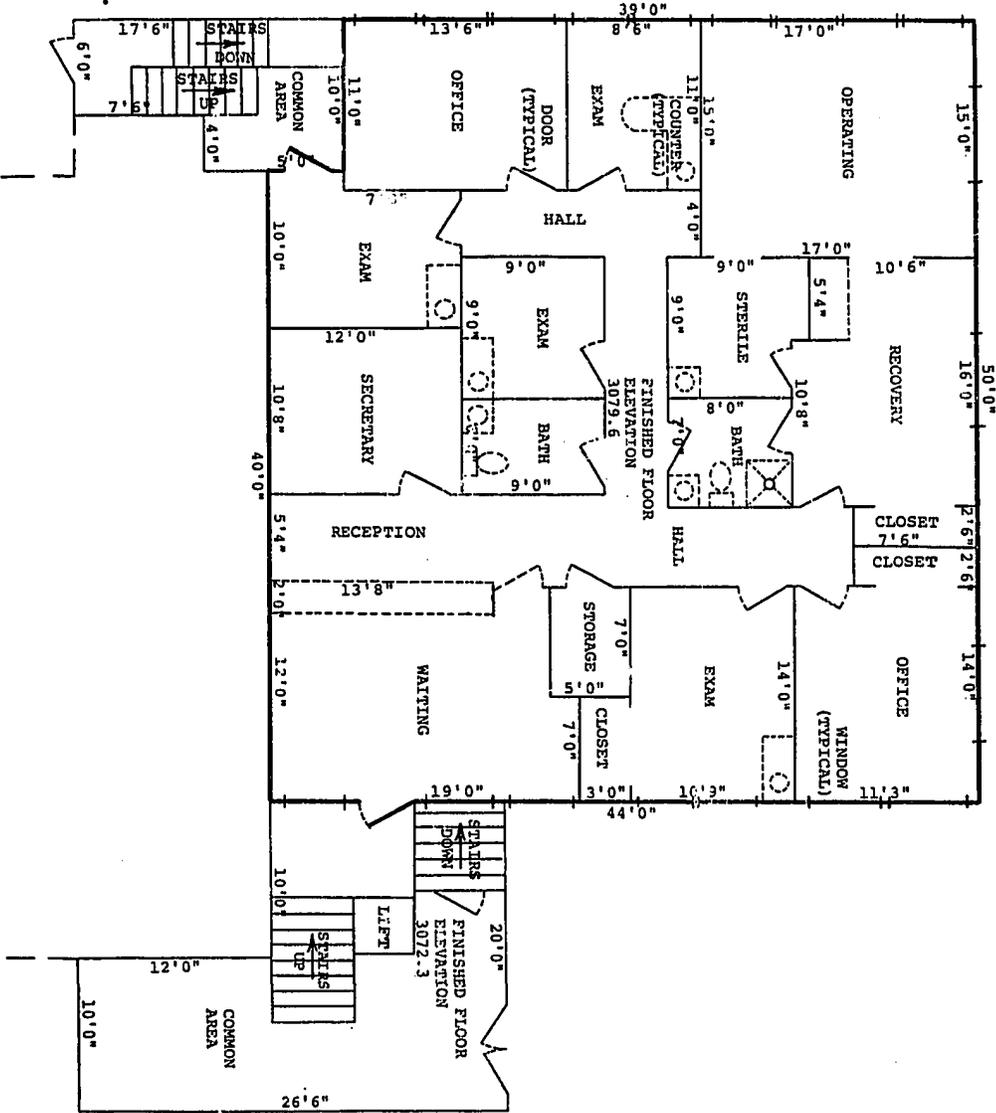
a	N84°00'53"W	11.72'
b	N0°17'04"W	50.30'
c	S89°42'56"W	56.60'
d	S0°17'04"E	10.00'
e	S89°42'56"W	31.40'
f	S0°17'04"E	50.20'
g	N89°42'56"E	31.00'
h	S0°17'04"E	10.10'
i	N39°42'56"E	26.60'
j	N0°17'04"W	20.00'
k	N89°42'56"E	30.40'

PREPARED FOR: DR. BROWN & DR. SCHIMPP  
 PREPARED BY: THOMAS, DEAN & HOSKINS, INC.  
 DATE: July 1985  
 SCALE: 1" = 30'  
 DRAWN: BK  
 APPROVED: MWF

85276/5280

PREPARED FOR: DR. BROWN &  
DR. SCHIMPF  
PREPARED BY: THOMAS, DEAN  
& HOSKINS, INC.  
DATE: JULY 1985  
SCALE: 1" = 10'  
DRAWN: BK  
APPROVED: MWF

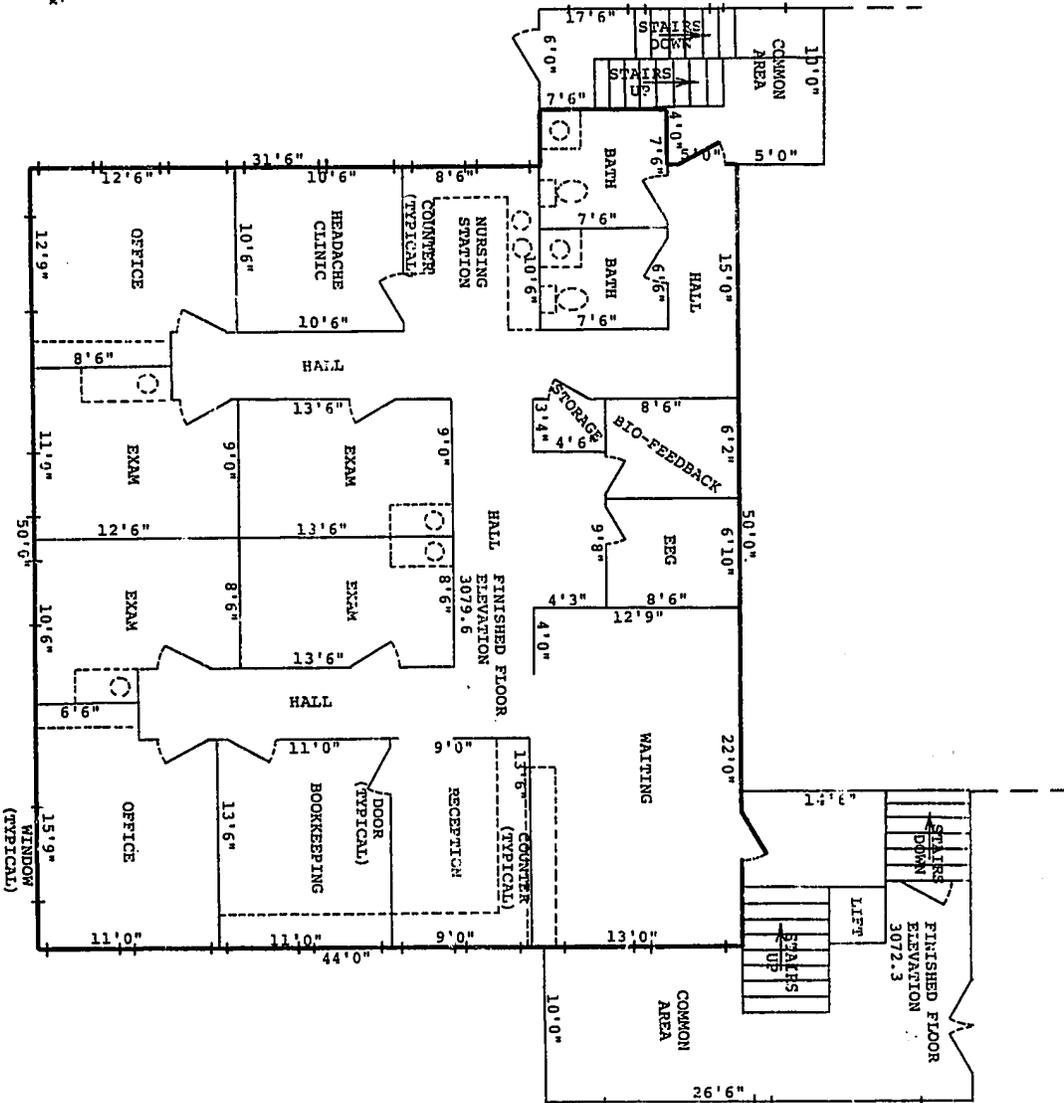
# FLATHEAD MEDICAL PLAZA



FLOOR PLAN  
SUITE 1  
UPPER FLOOR  
2150 SQ. FT.

85276/5280

# FLATHEAD MEDICAL PLAZA



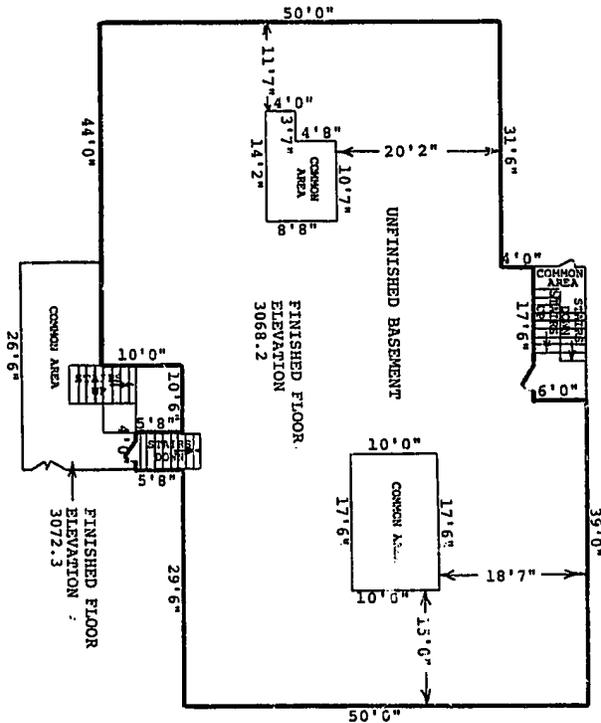
FLOOR PLAN  
 SUITE 2  
 UPPER FLOOR  
 2230 SQ. FT.

PREPARED FOR: DR. BROWN &  
 DR. SCHIMPF  
 THOMAS, DEAN &  
 HOSKINS, INC.  
 DATE: JULY 1985  
 SCALE: 1" = 10'  
 DRAWN: BK  
 APPROVED: MWF

85276/5280

# FLATHEAD MEDICAL PLAZA

PREPARED FOR: DR. BROWN &  
DR. SCHIMPF  
PREPARED BY: THOMAS, DEAN &  
HOSKINS, INC.  
DATE: JULY 1985  
SCALE: 1" = 20'  
DRAWN: BK APPROVED: MWF



FLOOR PLAN  
SUITE 3  
LOWER FLOOR  
4161.7 SQ. FT.

94087 15340

**AMENDED**

**DECLARATION OF CONDOMINIUM OF FLATHEAD MEDICAL PLAZA  
UNDER THE MONTANA UNIT OWNERSHIP ACT**

Pursuant to Paragraph 1.B. thereof, this amends the original Declaration of Condominium of Flathead Medical Plaza recorded on October 3, 1985, Reception No. 8527615280, and Exhibit B thereto. This is executed and recorded by all the owners of 100% of the units and all other interests in said condominium, being ROGER GLENN BROWN and MARGARET LOUISE BROWN (Unit 1), ROBERT D. SCHIMPF and F. MOISE SCHIMPF (Unit 2) and SCHIMPF-BROWN PARTNERSHIP, a Montana General Partnership (Unit 3), which is the Developer and Declarant under said original recorded Declaration, and remains so hereunder. Said original Declaration is entirely incorporated herein by this reference but is entirely amended and supplanted hereby, being valid hereafter only for reference purposes or to validate actions or activities undertaken thereunder or rights and interests created thereunder. Otherwise this Amended Declaration governs all actions, activities, rights or interests pertaining to the FLATHEAD MEDICAL PLAZA Condominium. The main purpose for this amendment is to convert Unit 3 of FLATHEAD MEDICAL PLAZA into Unit 3 and Unit 4 and to integrate changes in wording and concept to apply to four (4) units as opposed to three (3). There has been no new construction other than dividing former Unit 3. Exhibit A to said original Declaration is adopted by this reference as Exhibit A hereto, in its entirety, as if it were again attached hereto and recorded herewith. Exhibit B hereto supplants Exhibit B to the original Declaration as if it were originally attached to and recorded therewith.

The aforesaid fee owners, jointly and severally do hereby make and submit for approval by the Flathead County Assessor, the agent for the Department of Revenue in Flathead County, Montana, and to the County Clerk and Recorder of Flathead County, Montana, for recording, the following Amended Declaration, pursuant to the Montana Unit Ownership Act, Section 70-23-101, *et seq.* specifically Section 70-23-301, Montana Code Annotated, hereinafter referred to as the Act.

**1. Submission to and Continuance of Condominium Ownership.**

- A. The purpose of this Amended Declaration is to continue the submission of the real property herein described and the improvements currently constructed thereon to the condominium form of ownership and use in the manner provided by Chapter 23, Title 70, M.C.A., and further to a restrictive covenant in the form of the Covenants, Conditions, Restrictions and Bylaws as set forth in Exhibit A to the original Declaration, which covenants are continued, in their entirety. The real property submitted is located in Flathead County, Montana, is currently a common element of FLATHEAD MEDICAL PLAZA, and is more particularly described as follows: Lot One (1) of Highland Park Professional Subdivision, according to the plat thereof on file and of record in the office of the Clerk and Recorder, Flathead County, Montana, together with any and all appurtenances thereto, and subject to easements, covenants, reservations and restrictions of record.
- B. The name by which the Project is identified is FLATHEAD MEDICAL PLAZA, and its address is 1297 Burns Way, Kalispell, Montana 59901.
- C. This Amended Declaration is hereafter referred to throughout, and in Exhibit A, as simply the "Declaration."

0975040  
32594  
APPROVED

94087/5340

2. **Definitions.** The terms used herein and in Exhibits hereto, shall have the meaning stated in the Act and-as follows:

- A. A "Unit" means a part of the project, including one or more rooms, occupying a part or parts of the building located on the described land, intended for the use herein set out, and with a direct exit to a common area leading to a public roadway.
- B. "Unit Owner" means the person or entity owning a Unit in fee simple absolute individually or as a co-owner in any real estate tenancy relationship recognized under the law of the State of Montana.
- C. "Association" means the Flathead Medical Plaza Owners Association, being all Unit Owners acting in a group in accordance with the Statutes of the State of Montana, with this Amended Declaration and with the Bylaws of the Association set forth in Exhibit A.
- D. "Common Elements" shall be the following:
  - (1) The land on which the building is located; and all portions of the land hereinbefore described, including lawn, landscape, sidewalk and parking areas;
  - (2) The foundation and footings, columns, beams, supports, exterior walls, walls dividing units, and roof of the building, including all materials and equipment used in the construction of the entire project or servicing it, including all electrical, mechanical or plumbing systems and equipment (including water heaters), except the decorative facings on the interior walls, floors and ceilings of a Unit, and movable, non-supporting walls and partitions wholly within a Unit, or items attached to the interior surfaces thereof;
  - (3) All areas designated as common areas in the plans and description of the project attached as Exhibit B to this Declaration.
  - (4) All items or areas designated as such under Montana law.
- E. "Project" means land, all buildings, improvements and structures thereon and all easements, rights and appurtenances belonging thereto which are submitted to the unit form of ownership hereby, or by any amendment hereto.
- F. "Unit Designation" means the suite number designating a Unit in the Project, and as shown on the plans and description of the project attached as Exhibit B hereto.
- G. "Common Expenses" means:
  - (1) The expenses of administration, maintenance, repair or replacement of the common elements;
  - (2) Expenses agreed upon as common by the Unit Owners, either pursuant to the Bylaws of the Association, or by Agreement;

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- (3) Expenses declared to be common by the Montana Unit Ownership Act, as amended, or by the Bylaws of the Association.
- H. "Building" means the multi-unit professional office building erected and existing on the lands described in Paragraph 1.
- I. "Person" means a natural person, a corporation, partnership, trustee or other legal entity.
3. Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines and Other Common Elements Located Inside of Units. Each Unit Owner shall have an easement in common with the owners of all other Units to use all pipes, ducts, wires, cables, conduits, public utility lines and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the owners of the other Units in common to use the pipes, ducts, wires, cables, conduits, public utility lines and other Common Elements located in that Unit, and serving other Units. Each Unit shall be subject to an easement for access to any Common Elements located within that Unit, where no access is otherwise provided, for the purpose of reasonable inspection, maintenance, repair or legitimate usage thereof by the Association.
4. Description of Project and Units Designations.
- A. The Project consists of one existing medical office building on the subject property, as located, described and depicted upon Exhibit B attached hereto, and incorporated herein, and the other improvements currently upon, or to be added to the property. The building consists of two levels, a lower level, and an upper level, separated and elevated as set forth upon Exhibit B. Two Units are located in the upper level, designated as Suite 1, and Suite 2, with Suite 1 encompassing approximately 2,150 square feet of floor area and being the most Easterly Unit, and Suite 2, encompassing approximately 2,230 square feet of floor area and being the most Westerly Unit, with a common wall separating them from each other, and from Common Elements, all as described and located in Exhibit B, within the heavy lines. (Designations thereon of current configurations or room usages within a Unit are non-binding and not a part of the description of the Unit). Two Units are located in the lower level, designated as Suite 3, the more Easterly Unit encompassing approximately 1,821 square feet of floor area, and Suite 4, the Westerly Unit encompassing 1,821 square feet of floor area, with a common wall separating them from each other, and with the common floor/ceiling separating them from the upper Units. All Units are in existence, having been constructed in 1982 and will be owned, sold, transferred or conveyed hereafter by reference to the Unit (Suite) designation of each, as part of the Flathead Medical Plaza, a Condominium, and by reference to this recorded Declaration, as it may be amended, together with its Exhibits, as an integral part hereof.
- B. Attached hereto as Exhibit B, and incorporated herein, are a description of the construction and materials, Unit designations, layout, dimensions, locations, elevations, plat, lot plan (including utility locations) and floor plans for the building and Units, as certified by the registered engineer who prepared them, pursuant to §70-23-306, M.C.A. Each Unit consists of the space confined within and bounded by

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the interior surfaces of the outer walls, ceiling, floor, walls or floors separating Units and/or common areas, windows and exterior doors, as designated upon Exhibit B. Any and all other portions or items of the property or Project are Common Elements as defined in Paragraph 2. Percentage ownership of the Common Elements, and of the surplus and other Association property, for each Unit, and as an appurtenance thereto, is based upon approximate pro rata square footage, and is as follows:

Suite 1 - 26%  
Suite 2 - 26%  
Suite 3 - 24%  
Suite 4 - 24%

The foregoing are also percentages for the sharing of Common Expenses.

- C. The interest each Unit Owner has in Common Elements is declared to be permanent in character and cannot be altered without the consent of all Unit Owners affected, and the first mortgagees of record (the term "Mortgagees" includes Trust Indenture beneficiaries) of such Units as expressed in an Amended Declaration. Such interest in the Common Elements cannot be separated from the Unit to which it appertains.
- D. Each Unit Owner may use the Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other Unit Owners.
- E. The Association, on behalf of the other Unit Owners, shall have the irrevocable right, to be exercised pursuant to Association resolution, or duly adopted Rules and Regulations, to have access to each Unit for the purpose of inspecting and making repairs, replacements or improvements to the Common Elements and to the Unit itself where the responsibility therefor is upon the Association, or to prevent damage to the Common Elements or other Units, or to abate any violation of law, orders, rules or regulations of any governmental authority having jurisdiction thereof, or to correct any condition which violates the provisions of the Covenants or any mortgage covering another unit.
- F. The maintenance, repair, replacement, management, operation and use of the Common Elements shall be the responsibility of the Association, but nothing herein contained shall be construed so as to preclude the Association from delegating those duties to a manager or agent or to other persons, firms or other corporations, by due resolution.
- G. The expenses incurred or to be incurred for the maintenance, repair, replacement, management, and operation of the Common Elements and use of the Common Elements shall be assessed to and collected from the Unit Owners in such proportion as such Unit Owners own the Common Elements, or modified for fairness as shall be determined from time to time by the Association.
- H. The Association shall have the right to make, or cause to be made such alterations and improvements to the Common Elements as in its opinion may be beneficial and necessary, or which is requested in writing by a Unit Owner or Owners. The Board may require the consent in writing before undertaking such work of such

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Unit Owners whose rights, in the sole opinion of the Association, may be prejudiced by such alteration or improvement. When in the sole opinion of the Association, the alteration or improvement is of general character, the cost thereon shall be assessed as Common Expenses. When in the sole opinion of the Association, the alteration or improvement is exclusively or substantially exclusively, for the benefit of one or more Unit Owners that requested it, the cost shall be assessed against such owner or owners in such proportion as the Association shall determine is fair and equitable. Nothing herein contained shall prevent the Unit Owners affected by such alteration or improvement from agreeing in writing, either before or after the assessment, to be assessed in different proportions. The "opinion" of the Association is evidenced by a majority vote as defined in the Bylaws.

- I. No Unit Owner shall do any work which would affect or alter any of the Common Elements or impair any easement or hereditament therein.
  - J. While the property remains subject to this Declaration and the Act, no liens of any nature shall arise or be created against the Common Elements except by the unanimous consent in writing of all the Unit Owners and the holders of first liens thereon, except such liens as may arise or be created against the several Units and their respective common interests under the Act. Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and the Act, and the right to file a Mechanic's Lien by reason of labor performed or materials furnished is waived.
  - K. Every Unit Owner shall comply strictly with the Bylaws, any Association rules and regulations adopted pursuant thereto in relation to the Units or the Common Elements. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages, or injunctive relief or any or all of them. Such action may be maintained by the Association on its own behalf or on behalf of the Unit Owners aggrieved. In case of any flagrant or repeated violation by a Unit Owner, he may be required by the Association to give sufficient surety or sureties for his future compliance with the Bylaws, rules and regulations. Nothing herein contained shall prevent, in the event of inaction by the Association, an independent action by an aggrieved Unit Owner for such relief.
5. **Service.** The name of the person to receive service of process in cases provided by M.C.A. §70-23-901, under the Act, is JAMES W. JOHNSON, 221 First Avenue East, Kalispell, Montana 59901.
  6. **Character in Use.** The use of the property shall be in accordance with the following provisions:
    - A. The property and the Units shall be used as a multi-unit professional office building, and shall be used and occupied only by Unit Owners, their agents, servants, patients, clients, guests, invitees, employees and lessees; and the lessees' agents, servants, clients, patients, guests and invitees and employees. Existing restrictive covenants upon the land shall be complied with.

- B. No Unit may be sold or otherwise transferred, or leased, without first complying with the provisions of this Declaration, and the provisions of the Bylaws of the Association.

7. Transfer or Lease of Units.

- A. The Unit Owner has the right to sell, contract to sell, or lease his Unit or interest therein, provided he gives thirty (30) days written notice of the terms of the bona fide sale or lease to the Association and obtains its written approval for the sale or lease. The failure of the Association to act within the thirty (30) day period from receipt of such notice shall be deemed to constitute approval. If the Association disapproves of the transaction it shall so notify the Unit Owner in writing, and within fifteen (15) days after receipt by the Unit Owner of such notice, produce a purchaser or lessee approved by it who shall accept the transaction upon terms at least as favorable to the seller or landlord as the terms stated in the Notice to the Association. If the Association does not produce such a purchaser or lessee as the case may be, within the aforesaid fifteen (15) days, the Unit Owner shall have the right to effectuate such sale or lease under the terms as originally submitted.

The Association or its designee may elect to purchase or lease such Unit on behalf of all the other Unit Owners in the same manner as set forth hereinaabove.

- B. All notices referred to in this Article shall be given by certified mail or delivered in person to the Secretary of the Association, or to the Unit Owner as the case may be. The Notice shall be deemed made and Notice shall be deemed given two days after such mailing or at the time of such delivery and shall not be dependent upon acceptance by the addressee.
- C. The Unit Owner intending to make a transfer, sale or lease of the Unit or any part thereof or interest therein shall, at the time he gives notice to the Association of such intention, he shall also furnish at that time for the information of the Association, the name and address of the intended Grantee contract purchaser, or lessee. He shall furnish a statement of all the terms of the transaction. He shall furnish a statement of financial references of the transferee or lessee and such other information as the Association may reasonably require. Notice when given shall constitute a representation, warranty and an offer to sell or lease to any purchaser or lessee produced by the Association.
- D. In any event, if the Association fails to act within 30 days and the Unit Owner fails to close such proposed transaction within an additional 30 days, written consent of the Association shall again be required for transfer or lease. A Unit Owner may, at any time, withdraw the offer to transfer or lease, and all rights and obligations hereunder shall revert to as they were prior to notice of such offer.
- E. The action by the Association consenting to a sale or lease shall be in recordable form signed by any officer of the Association and attested to by the Secretary thereof. The failure of the Association to act on a Notice given to it within thirty (30) days shall be

deemed to constitute approval of the sale or lease. The Unit Owner, the purchaser or lessee may demand and shall be entitled to receive from the Association consent to the sale or lease in recordable form, or may prepare a recordable affidavit setting forth due notice and inaction by the Association, which shall clear title.

8. Units Subject to Covenants and Bylaws. All present and future owners, tenants and lessees, and all occupants of the Units shall be subject to and comply with the provisions of:
- A. This Declaration;
  - B. The Covenants and Bylaws of the Association of Unit Owners of FLATHEAD MEDICAL PLAZA as they may be amended from time to time, a copy of which is attached to the original Declaration as Exhibit A and which has been specifically incorporated herein.
  - C. Rules and Regulations as promulgated from time to time under the provisions of the Covenants and Bylaws of the Association of Unit Owners of FLATHEAD MEDICAL PLAZA.
  - D. The acceptance of a deed or conveyance, or the execution of a Contract for Deed or Lease, or the entering into occupancy of any unit constitutes an agreement that the provisions of this Declaration, the Covenants and Bylaws of the Association of Unit Owners and all other Exhibits to this Declaration, and the rules and regulations as defined in said Declaration and Bylaws and as promulgated by the Association are accepted and ratified by such owner, tenant, lessee, or occupant, and all of such provisions shall be deemed and taken to be covenants "running with the land" and the Units and each of them, and shall bind any person having at any time any interest or estate, tenancy, leasehold, or occupancy in such unit, as though such provisions were recited and stipulated at length in each and every deed and conveyance, lease or instrument of tenancy. The failure of the Association or any Unit Owner to enforce any covenant or restriction, rule or regulation or any provision of the Unit Ownership Act, this Declaration, the Covenants and Bylaws of the Association, or the rules and regulations adopted from time to time, shall not constitute a waiver of the right to do so thereafter.
9. Reverability. If any provision of this Declaration or any section, sentence, clause, phrase or word, or the application thereof in any circumstances be judicially held in conflict with the laws of the State of Montana, then the said laws shall be deemed controlling and the validity of the remainder of this Declaration and the application of any such provisions, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.
10. Captions. Captions used in the documents issued in connection with or related to this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Declaration.

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IN WITNESS WHEREOF, the Unit Owners have caused this Amended Declaration to be executed this 28<sup>th</sup> day of MARCH, 1994.

SCHIMPF-BROWN PROPERTIES

Robert D. Schimpff  
ROBERT D. SCHIMPF

By Robert D. Schimpff  
ROBERT D. SCHIMPF, Partner

Roger Glenn Brown  
ROGER GLENN BROWN

By Roger G. Brown  
ROGER G. BROWN, Partner

Margaret Louise Brown  
MARGARET LOUISE BROWN

By Margaret L. Brown  
MARGARET L. BROWN, Partner

Francoise Schimpff  
FRANCOISE SCHIMPF

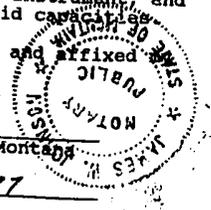
STATE OF MONTANA )  
County of Flathead ) ss.

On this 28<sup>th</sup> day of MARCH, 1994, before me, the undersigned, a Notary Public for the State aforesaid, personally appeared ROBERT D. SCHIMPF, FRANCOISE SCHIMPF, ROGER G. BROWN and MARGARET L. BROWN, known to me to be the persons who executed and the partners of the partnership that executed the within instrument, and acknowledged to me that they executed the same in said capacity.

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

Margaret Louise Brown

James W. Johnson  
Notary Public for the State of Montana  
Residing at Kalispell, Montana  
My Commission expires 10-5-97



APPROVAL

The within and foregoing Declaration of Condominium of FLATHEAD MEDICAL PLAZA is hereby approved this 28<sup>th</sup> day of March, 1994 pursuant to Section 70-23-304, M.C.A., in that the name "FLATHEAD MEDICAL PLAZA" continues to be proper so as to comply with Section 70-23-303, M.C.A., and all taxes and assessments due and payable have been paid upon the property submitted. Assessor # 0975040

Monty Long  
By Faunie Vogel

RETURN:

WARDEN, CHRISTIANSEN,  
JOHNSON & BERG  
BOX 3036  
KALISPELL, MONTANA 59903-3038

MONTY LONG, Flathead County Assessor  
and Agent of Montana Department of  
Revenue

**CERTIFICATION**

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I, DAVID MEREDITH, being the registered professional architect who examined and/or prepared the floor plans for Flathead Medical Plaza, the building described in the foregoing Amended Declaration, specifically Exhibit B thereto, do hereby certify:

1. That the floor plans to which this Certificate is attached fully and accurately depict the layout of Suites 1, 2, 3 and 4 of Flathead Medical Plaza, as built; and
2. That the construction of Flathead Medical Plaza was completed in 1982 except for the division between and creation of Units 3 and 4 which was completed in 1994.

David Meredith  
 David Meredith  
 Reg. No. 1102

STATE OF MONTANA )  
 ) SS.  
 County of Flathead )

DAVID MEREDITH, being first duly sworn, deposes and says:

That he is the registered professional architect named in the foregoing Certificate; that he has read said Certificate; that he knows the contents thereof; and that the same is true to his own knowledge.

David Meredith  
 David Meredith

Subscribed and sworn to before me this 24 day of March, 1994.



Sue Wilson  
 Notary Public for the State of Montana  
 Residing at Kalispell  
 My Commission expires 2-1-96

**AMENDED DECLARATION OF CONDOMINIUM  
 FLATHEAD MEDICAL PLAZA**

**EXHIBIT B**

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FLATHEAD MEDICAL PLAZA

CONSTRUCTION MATERIALS

1. Foundation - concrete footing and crawl space height  
concrete walls
2. Frame Structure - wood
3. Exterior Walls - cedar siding and rock veneer
4. Interior Walls - sheet rock and wood siding
5. Heat - forced air/heat pumps

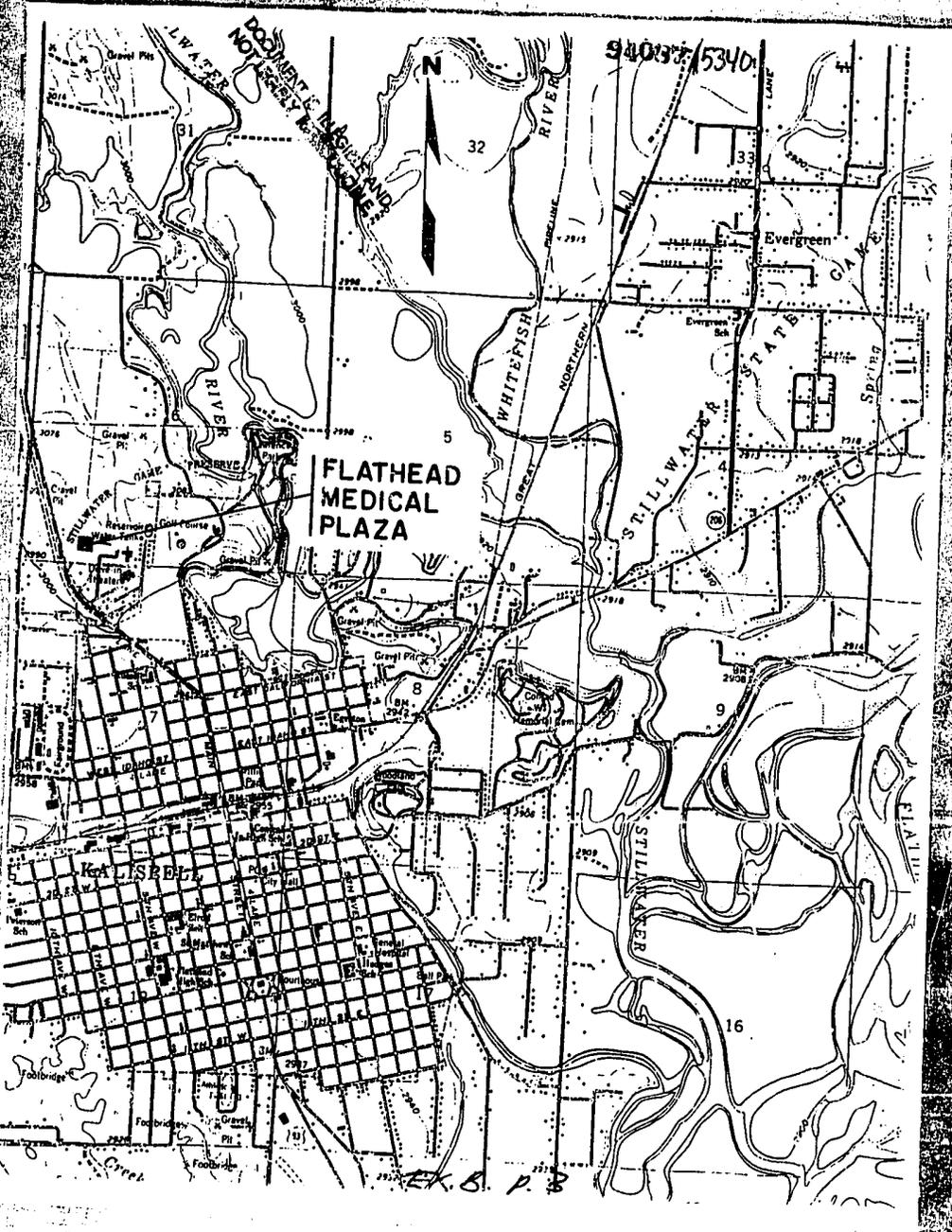
SANITARY SEWER

Suites are serviced by a single 4" PVC sewer line from an existing 8" sewer main. The interior piping from unit to unit is PVC, SDR 35 minimum. Grades of all interior piping exceed the minimum requirements of the Uniform Plumbing Code.

WATER

Suites are serviced by a 1" water line from an existing 6" water main. The interior piping meets or exceeds the minimum requirements of the Uniform Plumbing Code.

EX. B p. 2



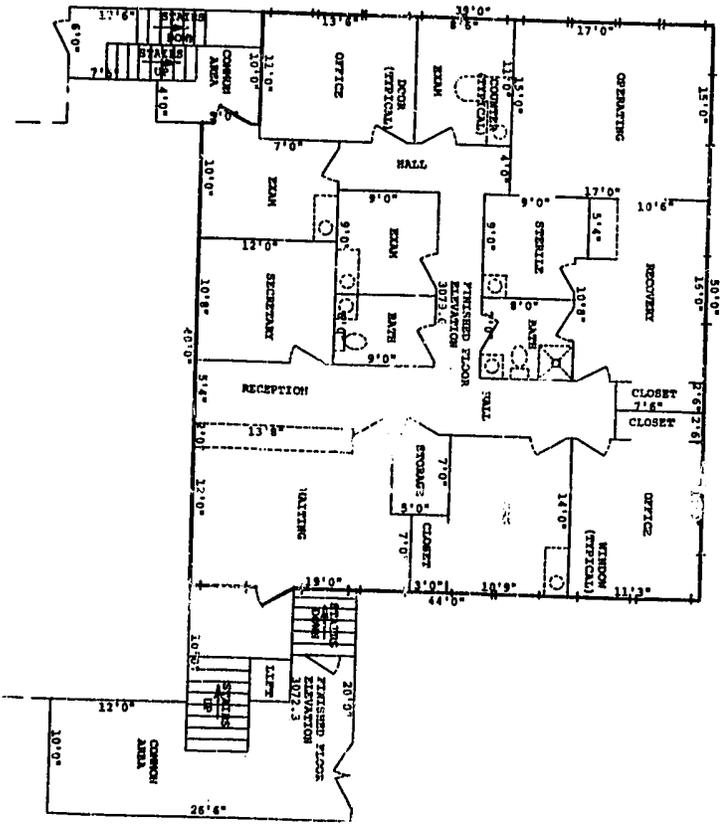


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DOCUMENT IS ILLEGIBLE AND NOT LEGIBLY REPRODUCIBLE.

PREPARED FOR: DR. BROWN &  
DR. SCHINDLER  
PREPARED BY: THOMAS, DEAN  
& HOSKINS, INC.  
DATE: JULY 1985  
SCALE: 1" = 10'  
DRAWN: BK  
APPROVED: HOF

# FLATHEAD MEDICAL PLAZA



FLOOR PLAN  
SUITE 1  
UPPER FLOOR  
2150 SQ. FT.

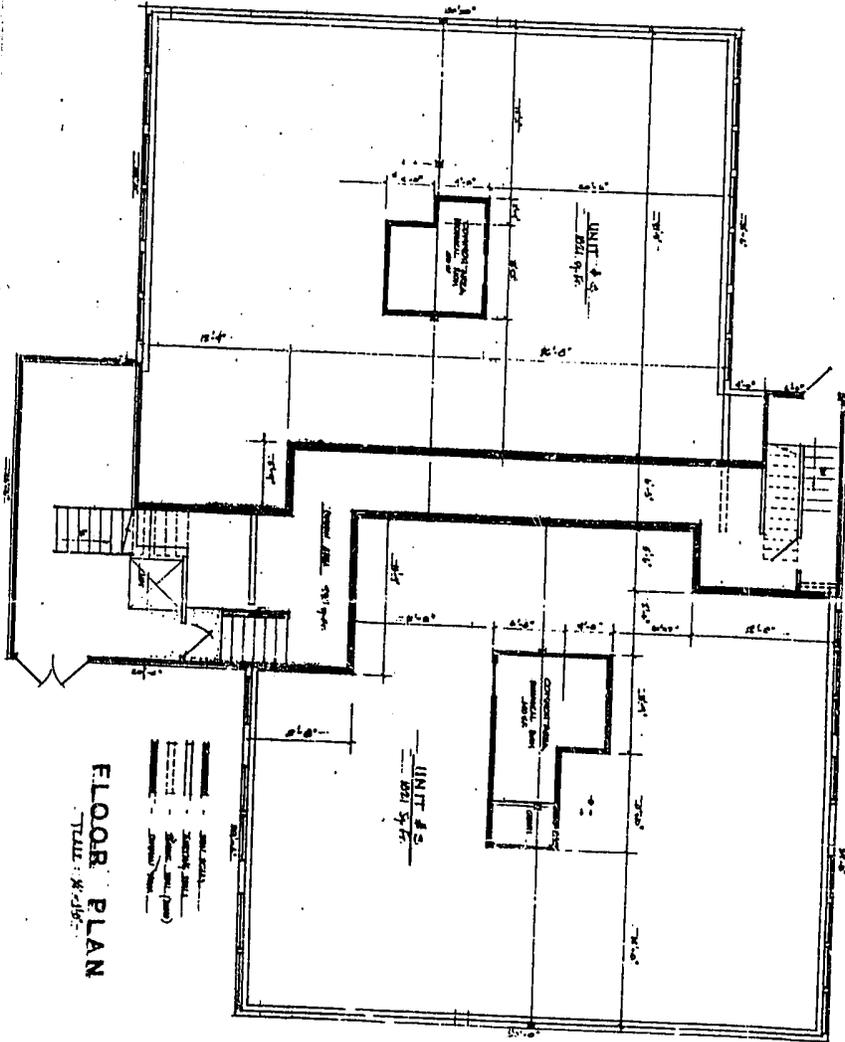
SHEET 2 OF 5

EX. B. P. 5



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DOCUMENT IS ILLEGIBLE AND  
NOT LEGIBLY REPRODUCIBLE.



FLOOR PLAN  
TITLE: 9-11-77

DATE: 5/1/78	NO. 04	<b>FLATHEAD MEDICAL PLAZA</b>	<b>M</b>	<b>CLARK &amp; HANSEN ARCHITECTS</b>
		1207 BURNS WAY	<b>MIRROTH CONSTRUCTION COMPANY</b>	
		KALISPELL MONTANA		
		EX. B, P. 7		

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PREPARED FOR: DR. BROWN & DR. SCHIMPF  
PREPARED BY: THOMAS, DEAN & HOSKINS, INC.  
DATE: JULY 1985  
SCALE: 1" = 30'  
DRAWN: BK  
APPROVED: MWF

PARKING LOT

BURNS WAY

FLATHEAD MEDICAL PLAZA  
CONWAY DRIVE

- SS SANITARY SEWER LINE W/SIZE
- W WATER LINE W/SIZE
- WATER VALVE
- T TELEPHONE LINE (UNDERGROUND)
- E ELECTRICAL LINE (UNDERGROUND)

PARKING & UTILITY PLAN

SHEET 5 OF 5

STATE OF MONTANA  
County of Flathead  
Recorded at the request of Warden et al 28 Mar 94 3:34  
on this 28th day of March 1985 and recorded in the records of Flathead County, State of Montana  
SECTION 9408715340  
RECORD NO. 9408715340  
Professional Engineer

Warden et al  
Box 2038 Kal, mt 59903-3038 - 8