

- (f) “Declaration” means this Declaration of Unit Ownership for The Point at Del Mar Professional Condominiums.
- (g) “Developer” is MONTANA LAND INVESTMENTS LLC, or any person or entity to whom it transfers or assigns its development rights hereunder. A grant of a deed to a single completed unit by Developer shall not be deemed a transfer of development rights.
- (h) “Eligible Mortgage Holder” means the holder of a first mortgage or trust indenture on any unit who has requested, in writing, that the Association notify it of any proposed action requiring the consent of a specified percentage of eligible mortgage holders.
- (i) “General Common Elements” are defined in Section 6(a) of this Declaration. Any exterior portion of the project not identified as part of a unit or as a limited common element shall be a general common element.
- (j) “Limited Common Elements” means those common elements designated in this Declaration or by agreement of the unit owners as reserved for the use of fewer than all of the unit owners.
- (k) “Unit” is defined in Section 5 of this Declaration.
- (l) “Unit Owners or Owner” means the person, partnership, LLC or corporation owning a unit, including a contract purchaser if a Notice of Purchaser’s Interest is recorded with the Park County Clerk and Recorder, and including co-owners. A lessee of a unit shall not be considered a unit owner, unless so designated by the owner of record, following the procedures set forth in 70-23-102(16) MCA.

2. **SUBMISSION TO UNIT OWNERSHIP.**

The purpose of this Declaration is to submit the real property herein described and the improvements constructed thereon to the condominium form of ownership and use provided by Chapter 23, Title 70, MCA, hereinafter referred to as the “Unit Ownership Act”. The real property included within the project, which shall be named The Point at Del Mar Professional Condominiums, is located in Park County, Montana, is owned by MONTANA LAND INVESTMENTS LLC, and is more particularly described as follows:

Lot 1, Lot 2, and the Condo Lot, being tracts of land located in the SE¼ of Section 14, Township 2 South, Range 9 East, P.M.M., Park County, Montana, being all of Block 38 of the Palace Addition to the City of Livingston, Park County, Montana, and the adjoining vacated alleys and streets on file and of record in the office of the County Clerk and Recorder of Park County, Montana, according to Subdivision Plat No. 545, on file in the office of the Clerk and Recorder of said County.

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

3. **DESCRIPTION OF PROJECT.**

The project will consist of seven buildings containing up to eighteen units, a sign identifying the project, parking areas adjoining each building, landscaped areas near the buildings, water lines connected to the Livingston City Water System, and septic lines connected to the Livingston City Septic System. The buildings constructed in Phase 1 will be of wood frame construction, concrete foundation and/or slab on grade, with siding made from CaneXel, Brick, Wood, and/or composite, and metal or asphalt shingle roofs. No metal siding shall be permitted. Buildings in subsequent Phases of development will be of steel or wood frame construction, concrete foundation and/or slab on grade, with metal or wood siding and metal roofs. As stated in Paragraph 4 hereof, Developers reserve the right to amend or alter the project as described above.

4. **PLAN OF DEVELOPMENT.**

The project will be developed in two Phases. Phase 1 will consist of five commercial buildings, consisting of one four-unit commercial building, and four one-unit commercial buildings.

At present, Developer intends to construct two buildings with up to five units per building in Phase 2. Developer may complete construction of Phases in any order. The Developer may, but is not obligated to, annex the land described as Lots 26-36, inclusive, Block 37 of the Palace Addition to the City of Livingston, and develop such property in an additional Phase or Phases.

The floor plans for the buildings in Phase 1 are shown on Exhibit "A", attached hereto. Exhibit "B", attached hereto, is a site map showing the location of the buildings and improvements which Developer, plans to construct on the property. Developer reserves the right to modify or change the plans shown on Exhibits "A" and "B", to change the size, design, number and location of the buildings and units to meet the requirements of the sale and leasing market, and to change the type of construction materials used in the buildings in Phase 2, and to amend this Declaration to reflect these changes, without consent of the Association, the unit owners, or any lender. Each owner and each lender, by acceptance of a deed or recordation of a mortgage, consents to such modification or change and grants to Developer the power to record such Amendment without further consent of the owner or lender, subject to the following conditions:

- (a) Each new building shall be included as part of the project upon completion of construction of the building.
- (b) Once construction of a new building has begun, such construction shall be completed within a reasonable time.
- (c) Upon substantial completion of any new building, Developer shall record an amendment to this Declaration with the Park County Clerk and Recorder. The amendment shall include floor plans for the new building, and a site plan showing the location of the new building.
- (d) The owners of units in the new building shall have nonexclusive rights to use general common areas to the same extent as the owners of all other units.

- (e) The owners of each unbuilt unit shall not be assessed for common expenses until construction of the unit is completed.

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

- (a) Reserves an easement over and upon common elements and land in each Phase for the purpose of access for constructing additional buildings and common elements improvements, and for storage of construction materials.
- (b) Reserves solely to Developer the right to grant utility easements across the common elements reasonably necessary to the ongoing development of the project, without approval of any unit owner or any lender.
- (c) Reserves the right to amend this Declaration, without approval of any unit owner or lender, to create additional general and limited common elements, to change the number of buildings and units and the location on the real property of one or more buildings, to add a more complete description of the buildings to be included in any Phase, to record additional plats and plans to supplement or modify those included herein, and to amend the percentage of interest in common elements attached to each unit, in accordance with the provisions of this Declaration. Each unit owner, and each holder of a mortgage or trust indenture on a unit, by acceptance of a deed to the unit or by recordation of a mortgage or trust indenture on the unit, hereby grants unto the then-acting Manager of Montana Land Investments, LLC, or its designated successor(s), as representative of Developer, a limited irrevocable power of attorney to amend this Declaration in accordance with this plan of development. Recordation of amendments modifying the percentage of interest in common elements attached to each unit shall be deemed a conveyance, transferring title in the common elements in accordance with the amendment.
- (d) Reserves the right to use water and power provided to the above-described property or any unit for construction purposes, provided that Developer shall reimburse the Association for the reasonable cost of such water and power.
- (e) Reserves the right to fence off adjoining common areas during construction, for safety reasons and to facilitate construction.
- (f) Any liens arising as a result of construction of any building shall not attach to the interests of other Unit Owners or those of first mortgagors of other units.

Developer may terminate its right to build additional buildings at any time prior to completion of all Phases by recording a notice of termination with the Park County Clerk and Recorder. Upon termination, Developer may, at its option, elect to include the land on which a

building has not been built as a general common element of the project, or alternatively, Developer may elect to remove the unbuilt land from the project (the “excluded land”), after subdividing the above-described real property (to the extent subdivision is required to legally convey any excluded land). The notice of termination shall state which of these options Developer has elected.

If Developer, upon termination, elects to designate the excluded land as general common elements of the project, upon recordation of the Notice of Termination, Developer’s obligation to pay taxes and assessments on the excluded land shall cease and terminate and Developer shall have no further obligation to make any improvements to any portion of the above-described real property. The notice of termination shall amend this Declaration to reallocate the undivided interest in the common elements in proportion to the undivided interest of completed units and shall include a conveyance of Developer’s interest in the common elements from Developer to all existing unit owners. All unit owners, their lenders, mortgages, successors and assigns, or anyone claiming by and through them, by accepting and recording a deed (or by recording a notice of purchasers interest in the event of a contract sale) to any unit or a mortgage or trust indenture upon a unit are hereby deemed to consent to inclusion of the excluded land as a general common element of the project and to the above-described conveyance of Developer’s interest in the common elements.

If, upon termination, Developer elects to subdivide and/or separately convey the excluded land, or any portion thereof, the subdivided parcels shall conform to local zoning requirements and restrictions. The real property and improvements included in the project shall include all completed units, the land beneath each unit and between units, and the utilities and common area improvements serving the completed units. Developer shall grant to all unit

owners easements across the excluded land for utilities and for ingress and egress. Developer shall have the right to grant easements on behalf of all unit owners, to benefit any excluded land removed from project, for use of new or existing utility lines and pipes by the owners of the excluded property and for use of the existing roads which provide access to the excluded property. Easements for new utility lines, if any, shall cross the common elements only. The notice of termination shall amend this Declaration to reallocate the undivided interests in the common elements in accordance with the formula set forth in Section 8 below.

Any land excluded from the project shall no longer be subject to the provisions of this Declaration, the Bylaws of the Association, or the Covenants, and may thereafter be used for any lawful purpose.

Unit owners, their lenders, mortgages, successors and assigns, or anyone claiming by or through them, by accepting and recording a deed (or by recording a notice of purchasers interest in the event of a contract sale) to any unit or a mortgage or trust indenture upon a unit are hereby deemed to consent to subdivision of the real property, to removal of any excluded land from The Point at Del Mar Professional Condominiums Owners Association, to the granting and reserving of the easements described above, and to all conveyances needed to vest ownership of the included land in the existing unit owners and to vest ownership of the excluded land in Developer's name. Any land removed from the project shall be owned by Developer free and clear of this Declaration, the Bylaws, and the Covenants.

All unit owners, their lenders, mortgagees, successors and assigns, or anyone claiming by or through them, by accepting and recording a deed (or notice of purchaser's interest in the event of a contract sale) to any unit or a mortgage or trust indenture upon a unit hereby grants unto the then-acting Manager of Montana Land Investments, LLC, or its designated

successor(s), as representative of Developer, a limited irrevocable power of attorney, to execute and record a notice of termination, subdivision plat, conveyances, easements, amendments to this Declaration and all other documents necessary to comply with the termination provisions of this Section 4.

5. **DESCRIPTION OF UNIT.**

Each unit consists of the area bounded by the exterior surfaces of any exterior walls of the building which constitutes a unit's outer wall; the center of any common walls separating two units; the bottom of any exterior floor; the center of any common floor/ceiling separating two units; and the exterior surface of the roof. Utility lines and pipes which serve only one unit shall be a part of a unit from the interior of the unit to the point where they join lines or pipes serving other units. The lights attached to the exterior walls of a unit are part of the unit. The land beneath each unit shall be a part of the unit. All fixtures and equipment serving a single unit shall be part of that unit. Each unit in Phase 1 will have a finished structural, plumbing, electrical, and other mechanical installations. Finish work within Phase 2 will be as prescribed in the Amendments to the Declaration filed in conjunction with such later Phases of development. Each owner shall be obligated to finish the unit to the extent desired by the owner. However, owners may not make structural modifications to any building without the prior written consent of the Association, acting by and through the Architectural Review Committee, as is specified in the Covenants. All interior modifications and additions must comply with the applicable building code and must not structurally modify the buildings, except as is expressly approved by the Association, acting by and through the Architectural Review Committee.

6. COMMON ELEMENTS.

- (a) General Common Elements. The general common elements include the land described in paragraph 2 above, except that which is part of a unit or a limited common element, including the handicapped parking spaces and all other parking spaces not designated as limited common elements, the roads serving the buildings, the storm drainage system located on the property, the sign identifying the project, any irrigation/watering system, any well/pump/pressure tank on the property, the fences and gates, any utility lines and pipes which serve two or more units, and any other improvement or fixture which is for the obvious common benefit of all units within the development. Any storage area shown on the site plan is a general common area but is reserved for the use of the Association and its employees or contractors.
- (b) Limited Common Elements. The limited common elements include elements so designated in accordance with Paragraph 1(j) hereof. Specifically, the septic line and any pump stations which serve the units in Phase 1 are limited common areas reserved for the exclusive use of the units served. Other improvements and fixtures which are for the obvious benefit of fewer than all units within the development shall be deemed limited common elements. Once an element is designated as a limited common element, such limited common element cannot be altered or amended by subsequent act of the Developer or the Association, unless the Developer/Association provides benefits reasonably equivalent to the common element which has been altered or amended at some other convenient location upon the property.
- (c) Transfer of Use of Limited Common Elements. Limited common parking and storage spaces shall be identified with the number of the unit for which their use is reserved on the attached site plan.

The use of limited common parking spaces and outside storage may be transferred from one unit to another by means of a recorded notice of change of assignment of limited common element setting forth the unit to which the parking or storage space has been assigned and the unit to which it will thereafter be assigned. The notice shall be signed by the owners of both units, recorded with the Park County Clerk and Recorder, and a copy of the notice shall be delivered to the President of the Association. Ownership and use of limited common parking and storage may not be transferred to third parties who do not own a unit within the Association.

7. **MEMBERSHIP IN THE POINT AT DEL MAR PROFESSIONAL CONDOMINIUMS OWNERS ASSOCIATION.**

Each unit shall be a member of The Point at Del Mar Professional Condominiums Owners Association. Membership shall be appurtenant to and may not be separated from ownership of a unit.

Unit owners shall be entitled to one vote in the Association for each unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as the owners determine, but in no event shall more than one vote be cast with respect to any Unit.

8. **OWNERSHIP.**

Each unit owner shall be a fee simple owner of such unit and of an undivided interest in the common elements. Each unit, an appurtenant undivided interest in the common elements, membership in The Point at Del Mar Professional Condominiums Owners Association, and the assessment account for that unit shall together comprise one unit, shall be inseparable, and may be conveyed, devised or encumbered only as a unit. Any conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an individual unit owner's interest in the common elements shall be void unless the unit to which that interest is attached is also included in the transfer. The undivided interest in the common elements appurtenant to each Phase 1 unit is as follows:

Phase 1:

Unit A-1	12.5%	Unit B	12.5%
Unit A-2	12.5%	Unit C	12.5%
Unit A-3	12.5%	Unit D	12.5%
Unit A-4	12.5%	Unit E	12.5%

In the event additional units are built in Phase 2 development, or any subsequent phases, the foregoing percentages shall be modified by Declarant (or its successors/assigns) recording an amendment to this Declaration setting forth amended interests in the common elements, which shall be calculated by dividing the total number of built units into one hundred, and then setting forth the resulting percentages.

The undivided interest in the limited common elements appurtenant to each unit served by a limited common element shall equal one hundred divided by the total number of completed units served by the limited common element, expressed as a percentage.

9. **USE OF UNITS.**

Units in Phases 1 and 2, may be used for business, professional or commercial purposes allowed by the Covenants and by the zoning ordinances affecting the project. Additional conditions regarding use of the units may be contained in the Association Bylaws or the Covenants.

10. **COMMON EXPENSES.**

Association expenses shall be charged to the unit owners as follows:

- (a) **General Common Expenses.** All the following Association expenses shall be charged to the owners of completed units as a general common expense, in proportion to each unit owner's undivided interest in the general common elements:

Administrative expenses of the Association; income taxes payable by the Association and corporation fees payable to the Montana Secretary of State;

The cost of maintenance, repair and replacement of all general common elements, as defined herein;

Any other expenses designated as general common expenses in this Declaration or the Bylaws of the Association or agreed upon as common by Association.

- (b) Limited Common Expenses. All costs of maintenance and repair of each limited common element, except those reserved for the use of a single unit, shall be charged to the owners of completed units served by that limited common element, in equal amounts. In addition, the cost of maintenance, repair, and replacement of exterior of each building, except doors and windows, shall be a limited common expense chargeable to all owners of the units in the building in equal amounts for each unit.
- (c) Expenses for Damage by a Unit Owner. Expenses for maintenance or repairs due to the misuse or neglect of a unit owner shall be charged to such unit owner and shall be payable solely by that owner.

11. **EXTERIOR LIGHTS.**

Each unit in Phase 1 will have exterior lighting attached to each building. Developer, in its discretion, may also install exterior lighting in Phase 2. Each owner shall be responsible for maintenance, repair and replacement of the lights attached to that owner's unit and for payment of electricity serving those lights. For security and safety reasons, all owners must keep their lighting system in good working order and must leave it on from sundown to sunrise. Alternatively, the lights may be attached to a working motion detector. The detector must be kept in good working order by the unit owner. Downlighting techniques shall be used to minimize light pollution, and no light shall be constructed that causes a direct or indirect glare into the window of a unit.

12. **WATER AND SEWER.**

There shall be public water and sewer service to all of the units. The cost of connecting each unit to public water and sewer, and the cost of connecting the outdoor watering system to public water shall be borne by the Developer. The ongoing costs of water and sewer service to the common areas shall be a general common expense. The ongoing costs of water and sewer service to each unit shall be separately billed to each unit by the public water provider. In the

event water and sewer expenses cannot be separately billed to a multiple unit building, the collective bill shall be divided amongst the unit owners within such building in proportion to the total number of bathrooms and kitchens/kitchenettes in each unit in such building.

There are no water rights appurtenant to the Association property, but the Association will receive all shares in the Livingston Ditch for water that has historically been used as an appurtenance to the property. The Livingston Ditch does cross the property. The Association and all unit owners covenant and agree to cause no damage or interference to the Livingston Ditch.

13. **COVENANT TO PAY MAINTENANCE ASSESSMENTS.**

Assessments shall be made by the Association for all common expenses set forth in Section 10 above, and otherwise provided for in this Declaration, the Covenants, or in the Bylaws. The obligation to pay assessments for all units in a Phase shall begin upon the initial sale and occupancy of the first unit in that Phase. Each unit owner, by acceptance of a deed, whether or not it shall be expressed in said deed, is deemed to covenant and agree to pay to the Association all periodic and special assessments made by the Association for common expenses.

14. **REMEDIES FOR NON-PAYMENT OF ASSESSMENTS.**

All sums assessed by the Association but unpaid for the share of common expenses chargeable to any unit, together with interest, late fees, collection costs, costs of suit or arbitration and reasonable attorney's fees, shall constitute a lien on such unit, and if filed of record, may be foreclosed in the same manner as a construction lien. Each assessment, together with interest, late fees, collection costs, costs of suit, and reasonable attorney's fees, shall also be the personal obligation of the owner of the unit against which the assessment was made at the

time the assessment fell due and a suit to recover a money judgment for unpaid assessments shall be maintainable by the Association against said owner without foreclosing or waiving the lien securing the same.

15. **PROCESS.**

Service of process in the cases provided for in Section 70-23-901, MCA, shall be made upon ROBERT A. CURRIE, 228 U.S. Highway 10 West, Livingston, Montana, 59047, or its designated successor(s). This provision may be amended in the manner provided in Section 70-23-902, MCA.

16. **EASEMENTS.**

- (a) There shall exist for the benefit of each unit and as a burden on the other units and the common elements the following easements:
- (1) Easement through the general common elements for ingress and egress for all persons making use of such common elements in accordance with the terms of this Declaration; Each unit owner shall have an unrestricted right of ingress and egress across the common elements to his or her unit.
 - (2) Easements through the units and common elements for maintenance, repair and replacement of the units and common elements. Use of these easements, however, for access to the interior of units shall be limited to reasonable hours, except that access may be had at any time in case of emergency.
 - (3) Every portion of a unit which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of the common elements and the other units.
 - (4) Easements through the units and common elements for all facilities for the furnishing of utility services within the building, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring where such facilities are now located.
 - (5) Easements for encroachments (and maintenance thereof) of any portion of the common elements upon a unit or units so long as they stand, and easements for encroachments (and maintenance thereof) of any portion

of a unit upon the common elements, and upon an adjoining unit or units, so long as they stand.

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

17. **GRANT OF UTILITY EASEMENTS.**

The undersigned hereby grants unto the City of Livingston, to Northwestern Energy, to Qwest, to Bresnan, to Bresnan Broadband, and to all other providers of utilities, cable television and internet access, an easement across the above-described real property for the purpose of providing underground utilities, pipelines, cables, television and internet service to each unit, together with the right of ingress and egress for the purpose of installing, maintaining, repairing and replacing all necessary underground pipes, lines, and cables. To the extent that they can conveniently do so, all grantees shall use the same trench for placement of pipes, lines and cables serving each of the units. All utility installations shall be designed and laid out in such a manner as to avoid interference with potential building sites. This easement may not be used for providing utilities, cable television and internet service to any real property not described in this Declaration.

18. **ACCESS TO UNITS.**

The Directors and the Association's manager, if any, shall have the right to enter any unit in case of an emergency originating in or threatening such unit whether or not the owner or occupant is present at the time.

19. **UNITS SUBJECT TO DECLARATION, BYLAWS, RULES AND REGULATIONS, AND COVENANTS.**

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

20. **RESTRICTIONS ON LEASING.**

Any lease or rental agreement shall be in writing and shall subject the tenant to the provisions of this Declaration, the Bylaws for the Association, all Rules and Regulations adopted by the Association, and all Covenants. Owners shall be responsible for any violation of the provisions of this Declaration, the Bylaws of the Association, any Rules and Regulations adopted by the Association, or the Covenants by their Tenants, unless the owner has designated the tenant as the unit owner pursuant to the procedure set forth in 70-23-102(16)MCA.

21. **CHANGES TO UNITS.**

- (a) No owner shall make any changes to a unit which will impair the structural integrity of a building or which do not comply with building codes in effect at the time the change is made.
- (b) If any owner installs air conditioning in that owner's unit, the compressor must be placed behind the building in an inconspicuous location. No air conditioning equipment may be placed on the roof of the building or on the common elements.
- (c) No unit owner may make changes to the exterior of a unit or the common areas without advance written consent of the Board of Directors of the Association.

22. **ARBITRATION AND RIGHTS OF ACTION.**

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

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

23. **EMINENT DOMAIN.**

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

24. INSURANCE.

Purchase and Coverages

All insurance policies upon The Point at Del Mar Professional Condominiums, the Association, the Board, the general common elements, the limited common elements, or any personal property shall be issued by an insurance company authorized to do business in Montana.

- (a) Association Coverage. The Association shall purchase insurance coverage as follows:
- (1) The named insured shall be the Association individually and as agent for the Unit Owners without naming them. Such policies shall provide that payments for losses thereunder by the insurer shall be paid to the insurance Trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the insurance Trustee.
 - (2) The Association shall only be required to obtain general liability insurance, and casualty insurance for any improvements whose ownership is retained or acquired by the Association.
 - (3) Errors or Omissions Insurance for the Directors, Officers and Managers, if the Association so desires, may be purchased in amounts to be determined by the Board.
 - (4) Other Insurance: Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable and as may be required by the Federal and State laws.
- (b) Unit Owners' Coverage. Unit Owners shall purchase insurance coverage, at their own expense, as follows:
- (1) Casualty: Each Unit Owner shall be responsible for insuring such Unit Owner's structure and improvements upon the land, and all personal property, in an amount equal to the full insurable replacement value, with all such insurance to be based on current replacement value, but subject to such deductible clauses as are required in order to obtain coverage at reasonable costs. Such coverage shall afford protection against:

- i. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and
 - ii. Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the building on the land, including, but not limited to, vandalism and malicious mischief.
- (2) **Public Liability:** In such amounts and with such coverage as shall be required by the Board of Directors of the Association. In the event insurance proceeds become payable to a Unit Owner for a casualty that causes damage to any general or limited common element, then such insurance proceeds shall be paid to the Insurance Trustee hereinafter named, rather than to the individual Unit Owner.
- (3) Unit Owners shall furnish copies of their insurance policy declaration pages (documenting that such Unit Owner's policy is in effect) to the Association upon each policy renewal.
- (c) Copies to Mortgagees: One copy of the Association insurance policy, and of all endorsements thereon, shall be furnished by the Association to each mortgagee of a Unit Owner on request.

Premiums

Premiums for insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances or of the common elements by a Unit Owner shall be assessed against the Owner. Not less than ten (10) days prior to the date when a premium is due, evidence of such payment shall be furnished by the Association to each mortgagee listed in the roster of mortgagees.

Insurance Trustee

All insurance policies purchased by the Association shall be for the benefit of the Association, the Unit Owners, and their mortgagees as their interests may appear. All insurance proceeds paid to the Association that do not inure to the benefit of any Unit Owner,

or the mortgagee of any Unit Owner, shall be retained and expended by the Association in accordance with its duties provided herein and in the Bylaws. In the event insurance proceeds are paid to the Association which inure to the benefit of a Unit Owner or Mortgagee, or in the event insurance proceeds are paid to a Unit Owner for a casualty that causes damage to more than one Unit in the Association, or which causes damage to any general or limited common element, then such proceeds shall be paid to such bank in Montana with trust powers as may be designated as insurance trustee by the Board of Directors of the Association, which trustee is herein referred to as the insurance trustee. Developer hereby designates First Interstate Bank, Livingston Office, as the initial insurance trustee for this project. The insurance trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated in this instrument and for the benefit of the Unit Owners, and their mortgagees.

Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the Unit Owners and their mortgagees in the following manner:

- (a) Miscellaneous - Expenses of administration, the insurance trustee, demolition/debris removal costs, and construction or remodeling supervision shall be considered as part of the cost of construction, replacement or repair.
- (b) Reconstruction or Repair - If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association or the affected Unit Owners, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, with remittances to Unit Owners and their mortgagees being payable jointly to them.
- (c) Failure to Reconstruct or Repair - If it is determined, as hereinafter provided, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners,

with remittances to Unit Owners and their mortgagees being payable jointly to them.

- (d) Certificate - In making distribution to Unit Owners and their mortgagees, the insurance trustee may rely upon a certificate from the Association made by its representative or Manager as to the names of the Unit Owners and their respective shares of distribution.

Association as Agent

The Association is irrevocably appointed agent for each Unit Owner and for each mortgage/lienholder to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

Benefit to Mortgagees

Certain provisions in this paragraph entitled "Insurance" are for the benefit of mortgagees or trust indenture beneficiaries of The Point at Del Mar Professional Condominiums parcels, and all such provisions are covenants for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee or beneficiary.

Reconstruction

- (a) Repair After Casualty. If any part of the condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:
 - (1) Lesser Damage - If a Unit or Units are found by the Board of Directors of the Association to be tenantable after the casualty, the damaged property shall be repaired.
 - (2) Greater Damage - If a Unit or Units are found by the Board of Directors to be not tenantable after the casualty, the damaged property shall be reconstructed or rebuilt if the insurance proceeds are sufficient to complete reconstruction. If it appears, in the Board's sole discretion, that the insurance proceeds are insufficient to complete reconstruction, then, after payment of Miscellaneous expenses as defined above, the remaining insurance proceeds shall be distributed to the beneficial owners, with remittances to Unit Owners and their mortgagees being payable jointly to them.

- (3) Certificate - The insurance trustee may rely upon a certificate of the Association made by its president and secretary to determine whether or not the damaged property is to be reconstructed or repaired.
- (b) Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans for specifications and the original improvements, or if not, then according to plans and specifications approved by the Board of Directors and by more than seventy-five percent (75%) of the Unit Owners, including seventy-five percent (75%) of the Owners of all Units the plans for which are to be altered. Any such reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to the Declaration, which amendment shall be prepared and filed of record in accordance with the provisions of such amended filing.
- (c) Responsibility. The responsibility for reconstruction or repair after casualty shall be the same as for maintenance and repair of the condominium property, and the Association shall work with the insurance trustee to carry out the provisions of this Article.
- (d) Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair for which the Association is responsible, or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds to the payment of such costs. Such assessments shall be in proportion to the Owner's percentage of interest in the general common elements.
- (e) Construction Funds. The funds for payment of costs of reconstruction or repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in the sound discretion of the trustee and according to the contract of reconstruction or repair, which contract must have the approval of the Board and a majority of the Unit Owners involved.
- (f) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from the insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be paid to the Association for the use and benefit of the Unit Owners.

25. **AMENDMENT.**

Except as specifically prohibited in this Declaration, by law or public regulation, this Declaration may be amended during the first ten (10) years after it is recorded with the Clerk and Recorder of Park County, Montana, as follows: (a) by the Declarant, until 80% of the Lots are sold; or (b) by at least seventy-five percent (75%) of the votes of the Lot and Unit Owners; and after ten (10) years by the vote of not less than sixty percent (60%) of the votes of all the Lot and Unit Owners. Any amendment by Declarant, or amendment by the required percentage of the Lot and Unit Owners, shall be recorded, along with an executed Certificate by Declarant or by the Chair/President and the Secretary of the Association certifying that the amendment was adopted in accordance with these Covenants, in the Office of the Clerk and Recorder of Park County, Montana. Any covenant which is included herein as a condition of the preliminary plat approval and required by the City of Livingston shall not be amended or revoked without the mutual consent of the Owners, in accordance with the amendment procedures in the Declaration, and the approval of the Livingston City Commission.

26. **CONFLICTS.**

In the event of any conflict between this Declaration and the provisions of the Bylaws of the Association, the provisions of this Declaration shall govern and apply.

27. **WARRANTY.**

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

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

DATED this 21 day of July, 2008.

MONTANA LAND INVESTMENTS, LLC

BY: W. Russell Currie
W. RUSSELL CURRIE,
Member/duly authorized Agent

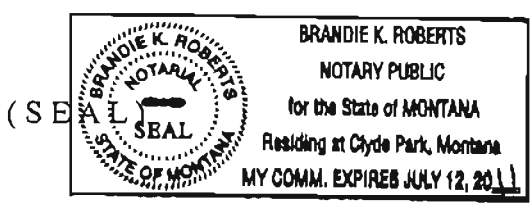
STATE OF MONTANA)
 : ss.
County of Park)

THIS INSTRUMENT was acknowledged before me, on this 21 day of July, 2008, by W. RUSSELL CURRIE, Member and duly authorized Agent of MONTANA LAND INVESTMENTS, LLC.

Brandie K. Roberts

(Printed Name) Brandie K. Roberts

NOTARY PUBLIC for the State of MT
Residing at Livingston, MT
My Commission expires: 7-12-2011



CERTIFICATE

The undersigned, being the duly authorized agent of the Department of Revenue of the State of Montana, within the County of Park, herewith executes the following certificate relating to The Point at Del Mar Professional Condominiums situated on the following described real property:

Lot 1, Lot 2, and the Condo Lot, being tracts of land located in the SE¼ of Section 14, Township 2 South, Range 9 East, P.M.M., Park County, Montana, being all of Block 38 of the Palace Addition to the City of Livingston, Park County, Montana, and the adjoining vacated alleys and streets on file and of record in the office of the County Clerk and Recorder of Park County, Montana, according to Subdivision Plat No. 545, on file in the office of the Clerk and Recorder of said County.

The undersigned herewith certifies that:

1. The name The Point at Del Mar Professional Condominiums is in compliance with 70-23-303, MCA, and
2. All taxes and assessments due and payable for the said real property have been paid to date.

DATED this 22 day of July, 2008.

MONTANA DEPARTMENT OF REVENUE

By: Brandy L. Butler

SIGNED BY BRANDY L. BUTLER BEFORE ME, JUNE LITTLE
NOTARY PUBLIC, THIS 22ND DAY OF JULY, 2008

June Little
my Commission Expires
1-21-2010
RESIDING IN LIVINGSTON, M.



After recording, return to:
Montana Land Investments, LLC
1106 West Park, Box 422
Livingston, MT 59047

REGISTERED PROFESSIONAL SURVEYOR'S CERTIFICATE

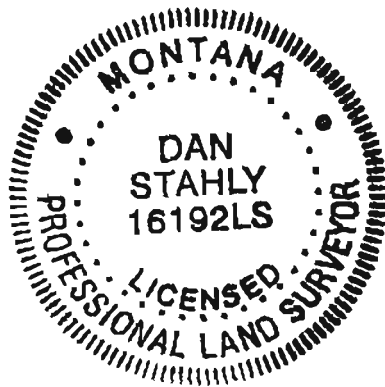
The undersigned, being a duly registered professional surveyor in the State of Montana, herewith certifies the following:


That pursuant to the provisions of MCA § 70-23-306(2), the site layout and floor plans for THE POINT AT DEL MAR PROFESSIONAL CONDOMINIUMS located on:

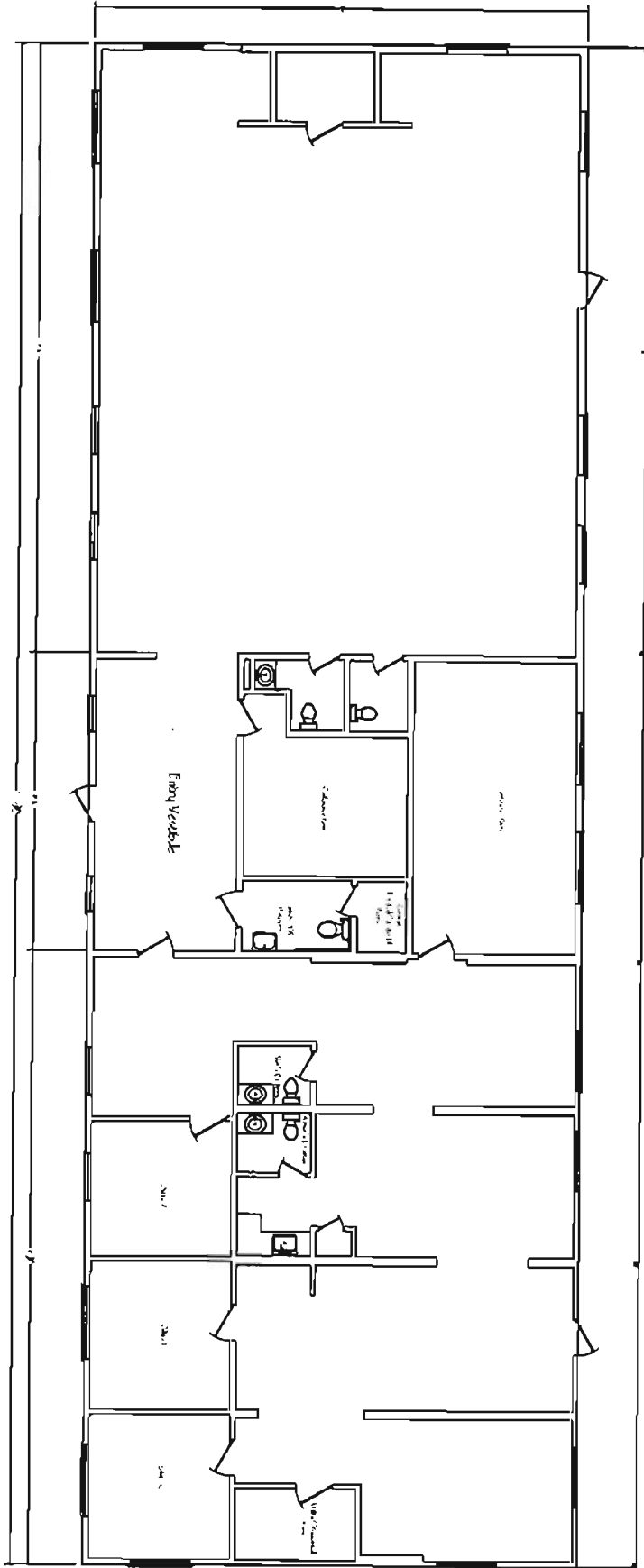
A tract of land located in the southeast ¼ of Section 14, Township 2 South, Range 9 East, P.M.M., Park County, Montana, being more particularly described as the Condo Lot on Plat S/D 545 on file and of record in the office of the Clerk and Recorder of Park County, Montana.

as duly filed with the Declaration thereof (and attached hereto as Exhibit "B"), depict the site layout of the units and floor plans of the buildings constructed as of this date, or to be constructed during the ongoing development of Phase I of the condominium project.

Dated: 7/15/08




[Print Name] Dan Stahly
Registered Professional Surveyor
Registration No. 16192 LS



Point at Del Mar
Building "A" Upper Floor
As-Built Floor Plan



Office 2

Office 1

As-Built Floor
Upper Floor

Scale: 1/8" = 1'-0"

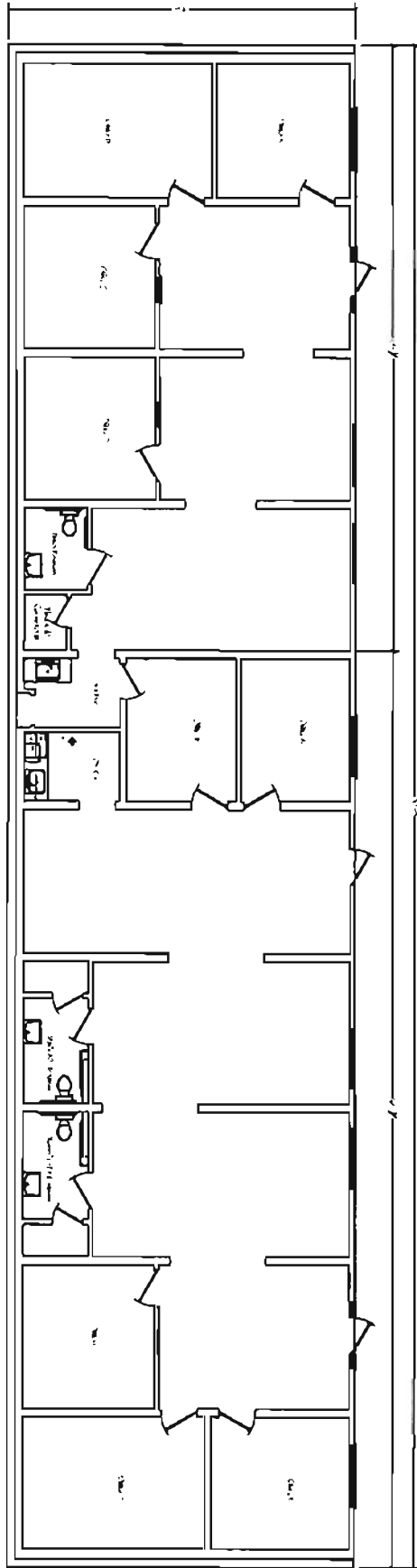
Genesis Design and Drafting, LLC
 1125 North Rock
 Suite 101
 Parkersburg, WV 26101
 Phone: 304.785.1111
 Fax: 304.785.1112
 Email: info@genesisdd.com

Montana Land Investments
 Point at Del Mar
 Building A, As-Built Plans

General Notes:
 1. These drawings were prepared by Genesis Design and Drafting, LLC under the supervision of the Professional Engineer of Record.
 2. All dimensions are in feet and inches, unless otherwise noted.
 3. All work shall conform to the applicable building codes and standards.
 4. The contractor shall be responsible for obtaining all necessary permits and approvals.
 5. The contractor shall be responsible for coordinating with all other trades and utilities.
 6. The contractor shall be responsible for maintaining safety and security of the site at all times.

Blank space for additional notes or signatures.

Building No. 5208
EXHIBIT
"B"



Point at Del Mar
Building A, Lower Floor
As-Built Floor Plan



Office 3

Office 4

As-Built Floor
Lower Floor
2

DATE: 11/11/2014
PROJECT: 14-001
DRAWN BY: JLD

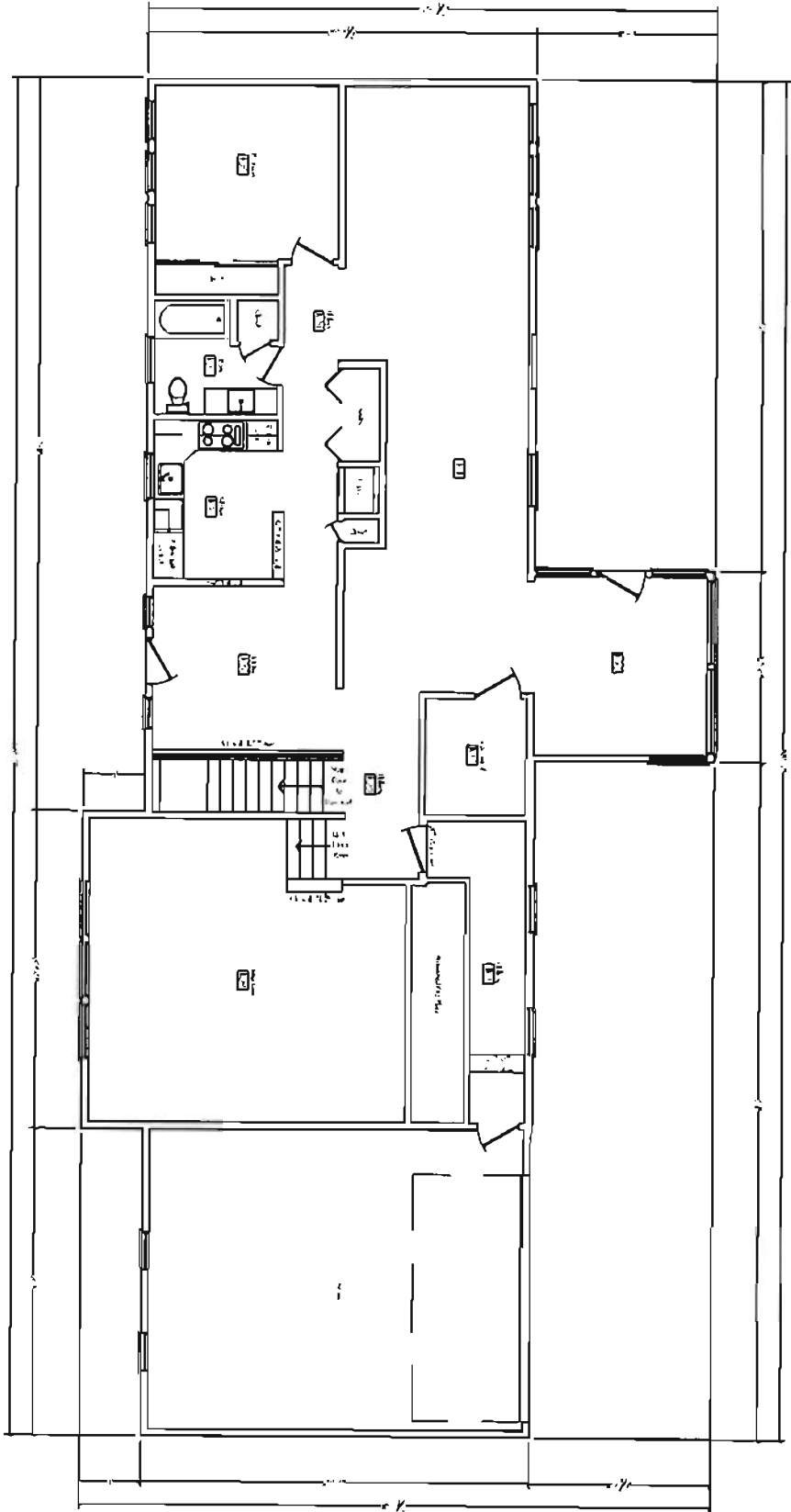
Genesis Design and Drafting, LLC

12314 Old Orchard
PO Box 10000
Boulder, CO 80501
303.440.1234
www.genesisdd.com

Montana Land Investments
Point at Del Mar
Building A, As-Built Plans

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11/11/2014



Point at Del Mar
Building "B"
As-Built Floor Plan




As-Built floor
PLAN 1107

11/11/11

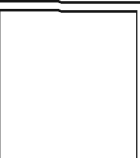
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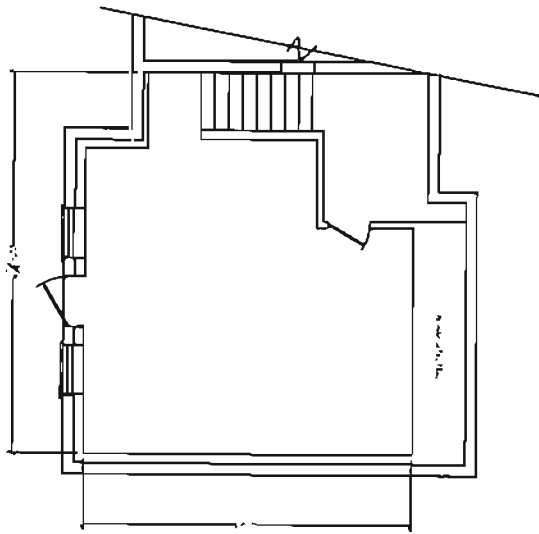
1200 W. 10th Street
Billings, MT 59102
Phone: 406.251.1111
Fax: 406.251.1112
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Montana Land Investments
Point at Del Mar
Building B - As-Built Plans

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Point at Del Mar
 Building 119911
 Partial Basement As-Built Floor Plan
 (Floor Dimensions)



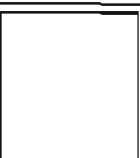
As-Built floor
 lower floor
 2

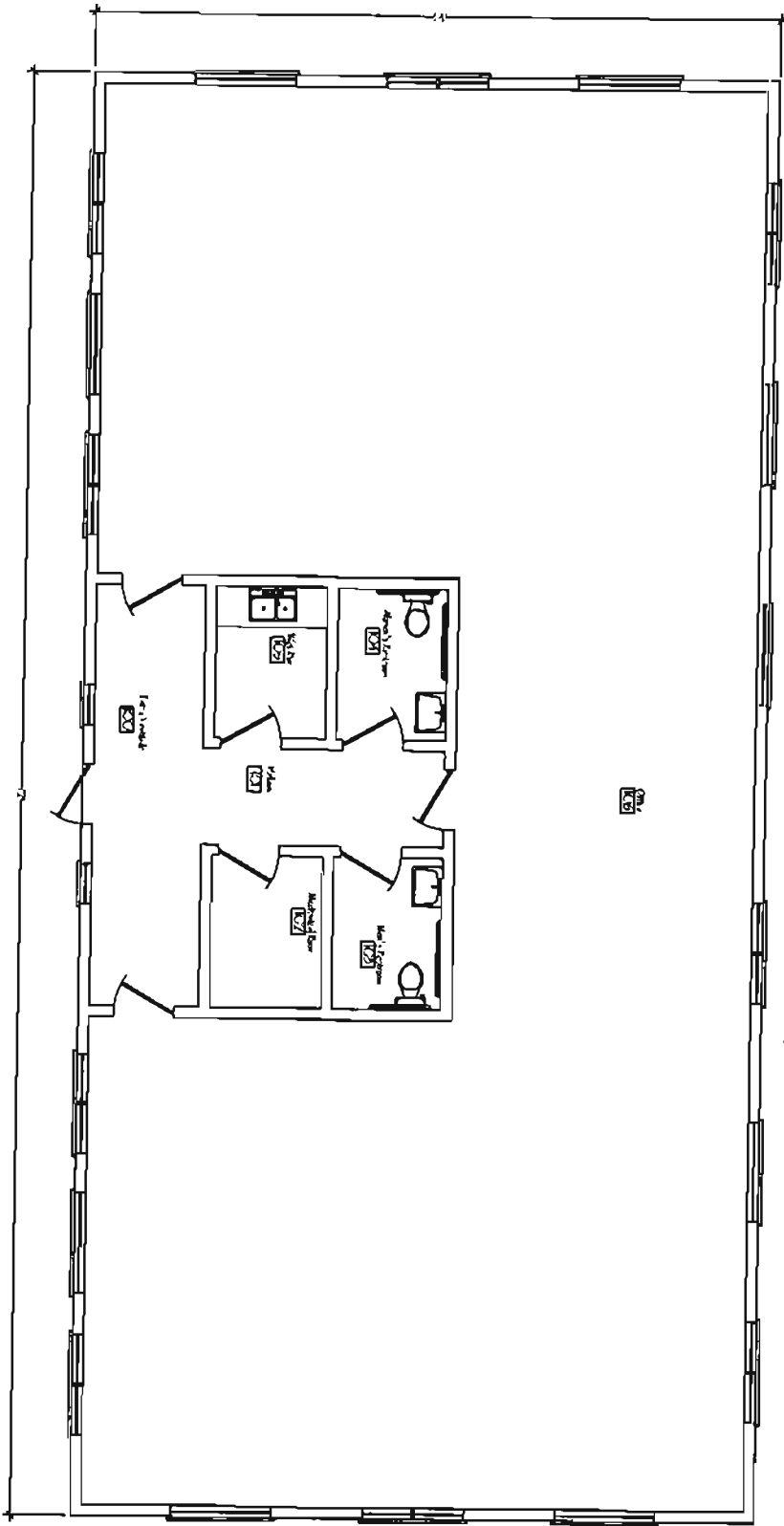
DATE: 10/20/2018
 TIME: 11:11 AM

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 Billings, Montana 59102
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Montana Land Investments
 Point at Del Mar
 Building B, As-Built Plans

10/20/2018
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Building C
As-built Floor Plan



As-built floor plan

6.11.14.12.22.2

Project
Date

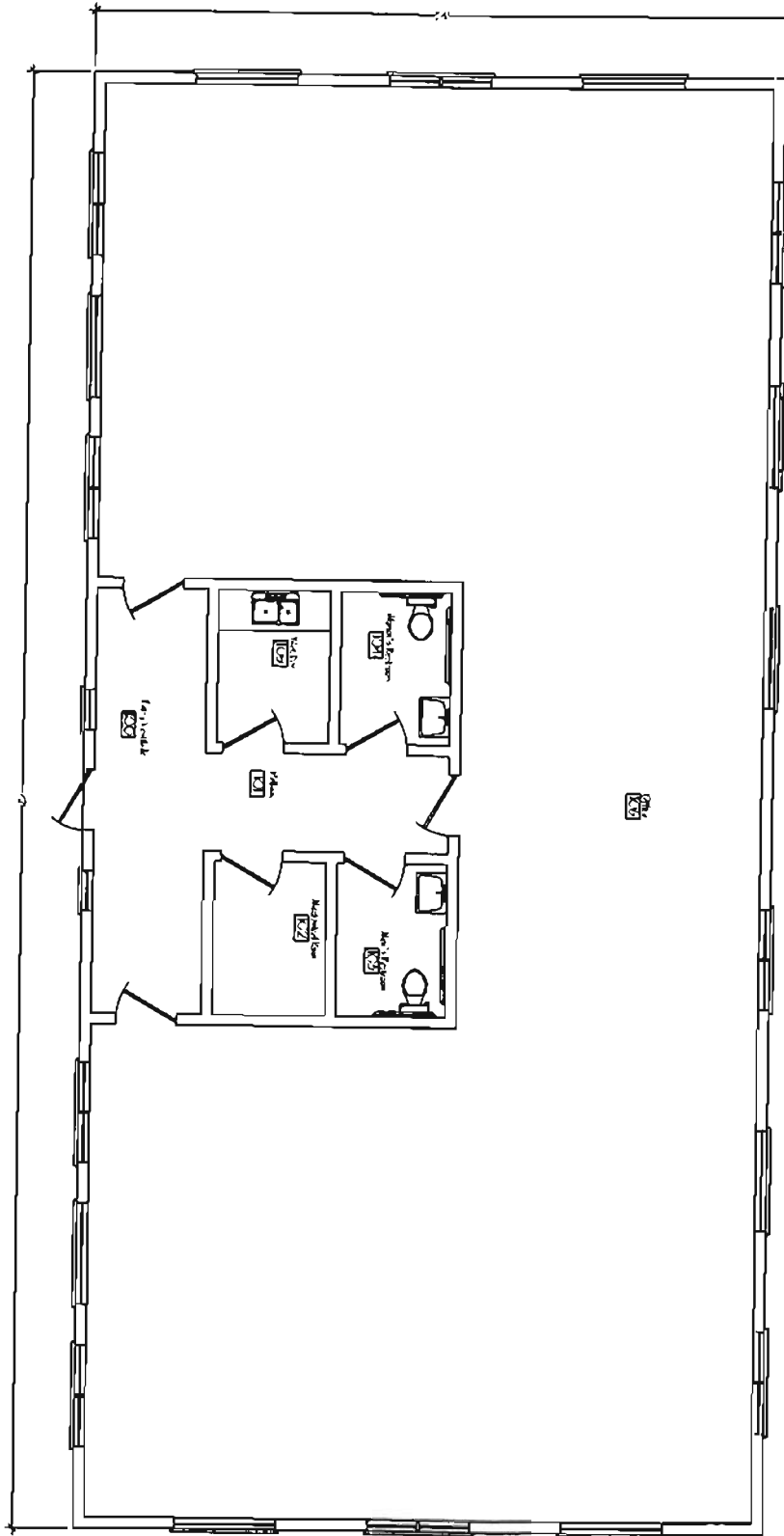
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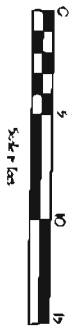
1000 West 10th Street
Billings, MT 59102
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www.genesisdesign.com

Montana Land Investments
Port of Del Mar
Building E, As Built Floor Plan

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Billings, MT 59102
Phone: (406) 251-1111
Fax: (406) 251-1112
www.genesisdesign.com



Building D
As-Built Floor Plan



As-Built floor plan

DATE: 11/11/2015
PROJECT: 15-001
DRAWING: 15-001-01

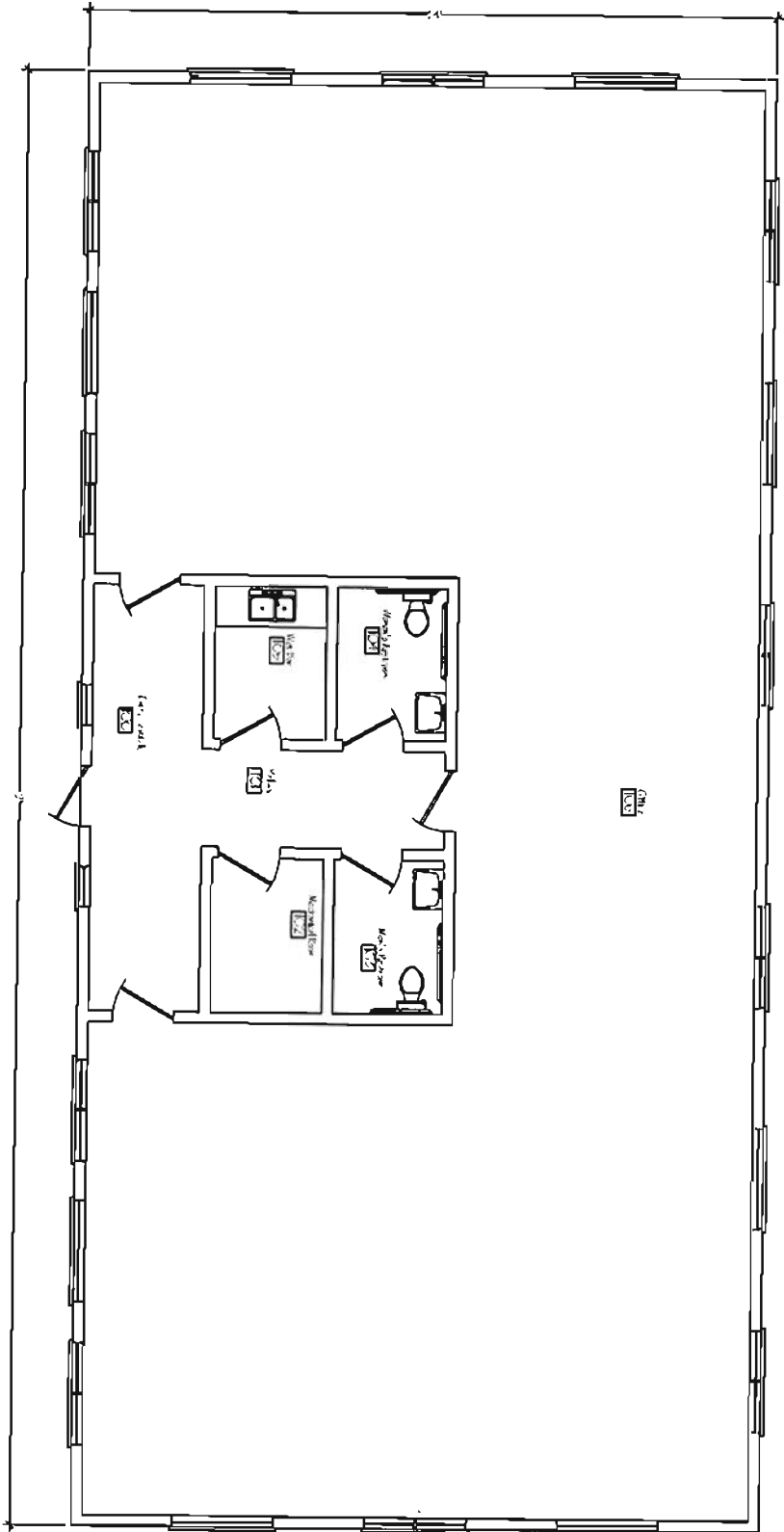
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Montana Land Investments
Point at De Mar
Building E, As Built Floor Plan

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Building E,
As-Built Floor Plan



As-Built Floor Plan

1:100

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Montana Land Investments
 Port at Del Mar
 Building E, As-Built Floor Plan

Notes:

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1