



June 16, 2020

Mary McCrea
City of Missoula
Development Services
435 Ryman Street
Missoula MT 59802

Re: Conditional Use Application – Hellgate Village East Townhomes

Dear Mary:

The goal of Hellgate Village East Townhomes is to provide market rate housing that is affordable for Missoula residents. The actual price of the dwelling units will be a function of the cost of labor and materials at the time the dwelling units come on the market. Affordability is also a function of design. The design for Hellgate Village accommodates a diverse range of housing types in a walkable neighborhood with connectivity to the adjoining neighborhoods. The proposed density falls within the recommendation of the City Growth Policy 2035 (adopted November 23, 2015) and aligns with the concept of “Build Inward.”

The project received preliminary plat approval on October 7, 2019. Over the last eight months, we worked to meet the conditions of plat approval and are currently circulating the final plat for review. As such, topsoil has been removed from the site and infrastructure installation begin this week.

The conditional use complies with all applicable standards of the zoning ordinance B2-1 Community Business including the townhome development standards Ordinance 3609.

Sincerely,
WGM Group, Inc.

A handwritten signature in blue ink, appearing to read 'Nick Kaufman', is written over a light blue horizontal line.

Nick Kaufman
Principal Planner

Encl.



DEVELOPMENT SERVICES




435 RYMAN • MISSOULA, MT 59802 - 4297 • (406) 552-6630 • FAX: (406) 552-6053

CITY CONDITIONAL USE APPLICATION

A. GENERAL INFORMATION

1. One submittal packet is required for Completeness/Sufficiency Review.
2. Once the application is deemed complete by Development Services (DS), 2 submittal packets and the appropriate fee shall be submitted.
3. Name of Conditional Use Request: **Hellgate Village East Townhomes**
4. Name(s) of Applicant: **HEH LLC**
Mailing Address: **C/O Hoyt Homes PO Box 2727 Missoula MT 59806**
Telephone Number: **406-728-5642**
Email Address: **wade@hoythomes.com**
5. Name(s) of all Owners of Record: **HEH LLC**
Mailing Address(es): **C/O Hoyt Homes PO Box 2727 Missoula MT 59806**
Telephone Number(s): **406-728-5642**
Email Address(es): **wade@hoythomes.com**
6. Name and Company of Representative: **WGM Group, Inc. - Nick Kaufman**
Mailing Address: **1111 E Broadway Missoula MT 59802**
Telephone Number: **406-728-4611**
Email Address: **nkaufman@wgmggroup.com**
7. If the applicant is someone other than the property owner, the owner must also sign the application in the space provided below.

Certification: I hereby certify that the foregoing information contained or accompanied in this application is true and correct to the best of my knowledge.

	6/10/2020
Applicant's Signature	Date
	6/10/2020
Owner's Signature	Date
	6/10/2020
Representative's Signature	Date

B. SUBJECT PROPERTY INFORMATION

General location of subject property and address (if address has been assigned): **East of Flynn Lane, south of Pleasant View Homes #3 and west of Hellgate Meadows**

Legal Description - complete and unabbreviated: **Lots 1 and 2 of Hellgate Village Subdivision**

Township, Range, Section(s): **Section 18, Township 13 North, Range 19 West**

Subdivision, Lot(s), Block(s): **Lots 1 and 2 of Hellgate Village Subdivision**

Tract(s), COS#:

Bearings & Distances Descriptions (if boundaries of proposed Conditional Use are not exactly the same as the boundaries of the property legally described above): **Lots 1 and 2 Hellgate Village Subdivision, a recorded subdivision of the City of Missoula, Montana; located in the Northwest Quarter of Section 18, Township 13 North, Range 19 West, Principal Meridian, Montana.**

Geocode: **04-2200-18-2-02-02-0000**

C. ZONING AND GROWTH POLICY INFORMATION

1. Complete the following table (where applicable, indicate Unzoned):

	Zoning	Current Land Use
Adjacent (North)	RT10 - Residential 10 (two-unit townhouse)	Residential
Adjacent (South)	B2-1 - Community Business	Undeveloped
Adjacent (East)	SD/Hellgate Neighborhood General	Residential
Adjacent (West)	C-RR3 - Residential	Residential

2. What is the current zoning of the property? **B2-1 Community Business**

3. What is the applicable comprehensive plan and land use designation for the property? **This property is within the Neighborhood Mixed Use designation of Our Missoula Growth Policy 2035. This designation supports a mix of neighborhood-serving commercial uses and medium-high density. Within Our Missoula Growth Policy, residential medium-high describes a density in the range of 12 dwelling units per acre to 23 dwelling units per acre. Current relatable zoning districts to B2-1 (Community Business) are B1-1(Neighborhood Business), and M1R-2(Limited Industrial-Residential),**

4. What is the conditional use requested? **A conditional use is requested for Hellgate Village East Townhomes because there are ten or more total dwelling units. The property is currently zoned B2-1, Community Business. The City of Missoula Zoning Ordinance #3609, an amendment to the Municipal Zoning Code, Title 20, states that conditional use review and approval are required for Townhome Exemption Developments containing ten or more dwelling units in a 'B' District.**

D. RESPONSES TO TITLE 20 ZONING ORDINANCE CONDITIONAL USE REVIEW CRITERIA

1. **Review Criteria.** Describe how the proposal meets the following review criteria. (Not all review criteria will apply in every case. Only the applicable review criteria need to be met.)

a. Whether the conditional use complies with all applicable standards of the zoning ordinance.

The conditional use is proposed to comply with all applicable standards of the TED Standards in Ordinance 3609 and the Townhome Design Standards of Title 20, Section 20.40.140 applicable at the time of Ordinance 3609. The maximum number of dwelling units permitted within a B2-1 Community Business district is one dwelling unit per 1,000 square feet. A Development Agreement has been formalized with the City of Missoula which limits the residential development to a maximum of 14 dwelling units per acre with a maximum building height of 35 feet. There are 43 units proposed with Townhome Exemption Development #1.

These units will developed on Lots 1 and 2 of Hellgate Village Subdivision. Lots 1 and 2 total 4.74 acres, which per the Development Agreement, would allow for 66 units. Each townhome unit is proposed to comply with the parcel and building standards and the more restrictive building height per the Development Agreement. As part of the overall site design, the development is proposed to be compliant with the road, pedestrian connections, and parkland area established with the Development Agreement.

A conceptual design has been provided as an attachment.

- b. Whether the conditional use is in the interest of the public convenience and will not have a significant adverse impact on the general welfare of the neighborhood or community.

The proposed development promotes urban growth with a variety of housing types, including small lot single-family homes, carriage houses, and row houses, very similar to the neighboring developments. The Mullan Road area is one of the many active growth areas for housing and services in Missoula. The proposed density will be similar to that of the surrounding neighborhoods. With a "build inward" focus, this development intends on providing affordable housing, with the option for owner occupied units.

Hellgate Elementary School serves as the social, educational, and activity focal point of the neighborhood. Several commercial businesses are located on or near Mullan Road. Both the school and the commercial businesses can be accessed via, walking, biking, or driving. A bus route is also accessible with the closest stops on Connery Way, in the Hellgate Meadows Subdivision.

The proposed development will extend Mary Jane Boulevard and provide a connection to Dublin Street via Killarney Way. Both streets will be built to City standards. Mary Jane Boulevard has been planned as an Urban Collector roadway, appropriate to serve the dense compact development supported by the Neighborhood Mixed Use land use designation in the the Our Missoula City Growth Policy 2035 and the B2-1 Community Business zoning district. This development will have an minimal impact on the Flynn Lane, Mary Jane Boulevard, England Boulevard, O'Leary Street and American Way corridors. With the road system in a grid pattern traffic will be distributed onto multiple streets.

Sidewalks and common areas will also be provided within the development. The dwelling units will be oriented toward the street where applicable and when not fronting a street the units will be oriented toward the common area.

- c. Whether the conditional use is compatible with the character of the surrounding area in terms of site planning, building scale, and project design.

The proposed development will be compatible with the character of the surrounding area. Pleasant View, to the north, exhibits a traditional neighborhood design with grid system roads, small parks and a large central neighborhood park. Pleasant View has both front loaded and alley loaded lots and consists of single-family dwellings, 2-unit townhouse and 3+unit townhouse. Hellgate Meadows to the east is a traditional neighborhood with a range of uses, from single-family home to townhouses, and commercial uses. The Hellgate Elementary School Area is located west, across Flynn Lane. New developments are currently being built south of the school which allow for higher density single-family housing. The development pattern proposed with this TED will be similar to that of the existing neighborhood by including single-family and 2-unit townhouse, centralized common areas, on-street parking, boulevards with street trees, and sidewalks. Unit design will be similar to that found within Hellgate Meadows and Pleasant View. Homes along Killarney Way will face the street with alley access to those lots. Lots adjacent to the common area will face the common area to provide a community connection.

- d. Whether the conditional use has operating characteristics that are compatible with the surrounding area in terms of hours of operation, outdoor lighting, noise, and traffic generation.

The development proposed is residential. Surrounding developments are residential with commercial uses beyond those developments. All outdoor lighting will comply with the Missoula Outdoor Lighting Ordinance and be compatible with the Pleasant View and Hellgate Meadows developments.

Noise generated by the TED is expected to be within a normal residential character. With this TED being at the end of Mary Jane Boulevard and Killarney Way increased traffic is only expected to be from the residents or their invited guests. Residents in the surrounding neighborhoods may experience decreased traffic generated by this development once Mary Jane Boulevard connects to Mullan Road. The continuance and availability of the non-motorized system will also help alleviate traffic generated with this development.

- e. Whether the conditional use will not have a significant adverse impact on traffic safety or comfort, including all modes of transport (non-motorized and motorized).

The TED development is not expected to have adverse impacts on traffic safety. Mary Jane Boulevard, a collector street, and Killarney Way a local residential street, will be extended with alley access to individual units. Sidewalk extensions will be provided on both sides of Killarney Way and Mary Jane Boulevard with bike lanes included within Mary Jane Boulevard. Common areas have been provided within the development. Each common area is connected to a public right of way via a sidewalk. The motorized and non-motorized improvements will connect to the neighboring developments and provide access to Hellgate Elementary and shopping and services along North Reserve. There is also bus service within a quarter of a mile. As mentioned above, adjacent developments may experience decreased traffic generated from this subdivision once Mary Jane Boulevard connects to Mullan Road.

2. Factors to be Considered.

Section 20.85.070(I) includes factors that City Council may consider in determining whether all applicable review criteria have been satisfied. These are listed below for reference.

- a. That new buildings and structures are located to create a positive relationship with their environment, both urban and natural.
- b. That the site design properly addresses building orientation, open space, light, sun exposure, views, and protection of natural features.
- c. That buildings, structures, and uses are compatible with adjacent properties and uses in terms of physical design elements, such as volume and mass management, building materials, color, open space design, screening, and other design elements.
- d. That the overall project will be functional, attractive, and safe in terms of pedestrian, bicycle, and vehicular access, parking, loading, and servicing.

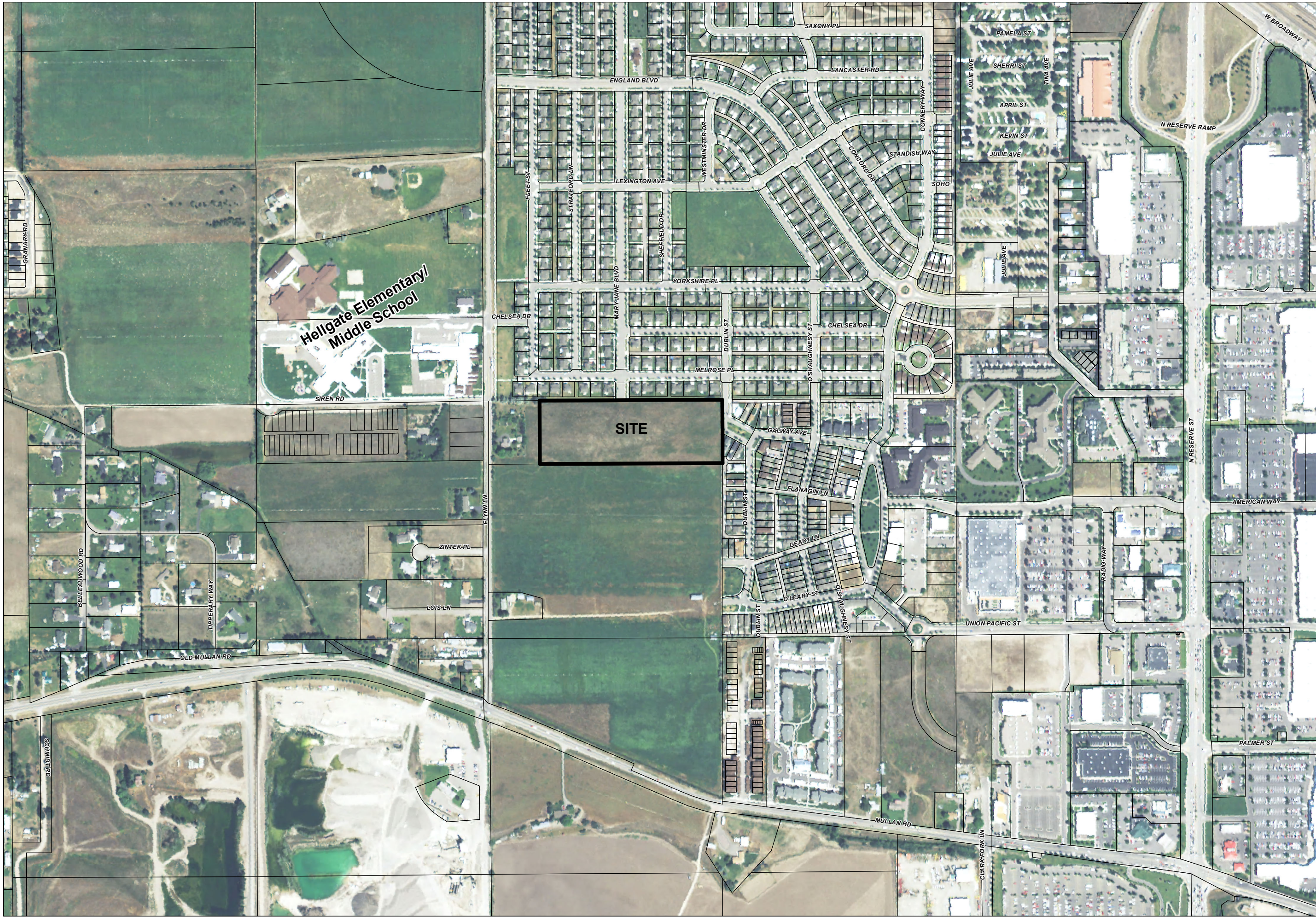
E. ATTACHMENTS

As separate attachments (8.5" x 11" or 11" x 17"), provide the following materials with the site clearly identified. Where appropriate, required information may be combined as long as the information is clearly presented. Please check the box if the material is included in the packet. If the material is not included in the submittal packet, please note "N/A".

- ☒ **A cover letter** describing the purpose of the proposed project, existing site conditions, and a brief description of the proposal.
- ☒ **A vicinity map** showing the subject property and the area within 300 feet of the subject property.
- ☒ **A Zoning map** of the subject property and vicinity (showing the existing zoning district), extending at least 300 feet from the property boundaries.
- ☒ **An aerial photo** of the subject property and vicinity extending at least 300 feet from the property

boundaries.

- ☒ **A Growth Policy/Comprehensive Plan map** of the subject property and vicinity extending at least 300 feet from the property boundaries for the applicable comprehensive plan, clearly showing the land use designation of the subject property and surrounding properties.
- ☒ **The current plat** of the subject property.
- ☒ **A site plan**, including existing and proposed landscaping, parking, streets/access, sidewalks, bike lanes, and any other improvements to the property.
- ☒ **Building elevation drawings** of all proposed structures and/or photos of existing structures.
- ☒ **Floor plans** of all existing and proposed buildings.



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0 250 500
1 inch = 500 feet

VICINITY MAP EXHIBIT HELLGATE VILLAGE TOWNHOME EXEMPTION DEVELOPMENT MISSOULA, MONTANA

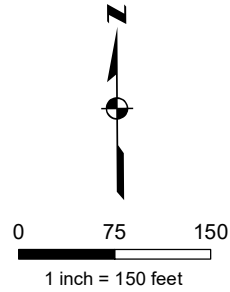
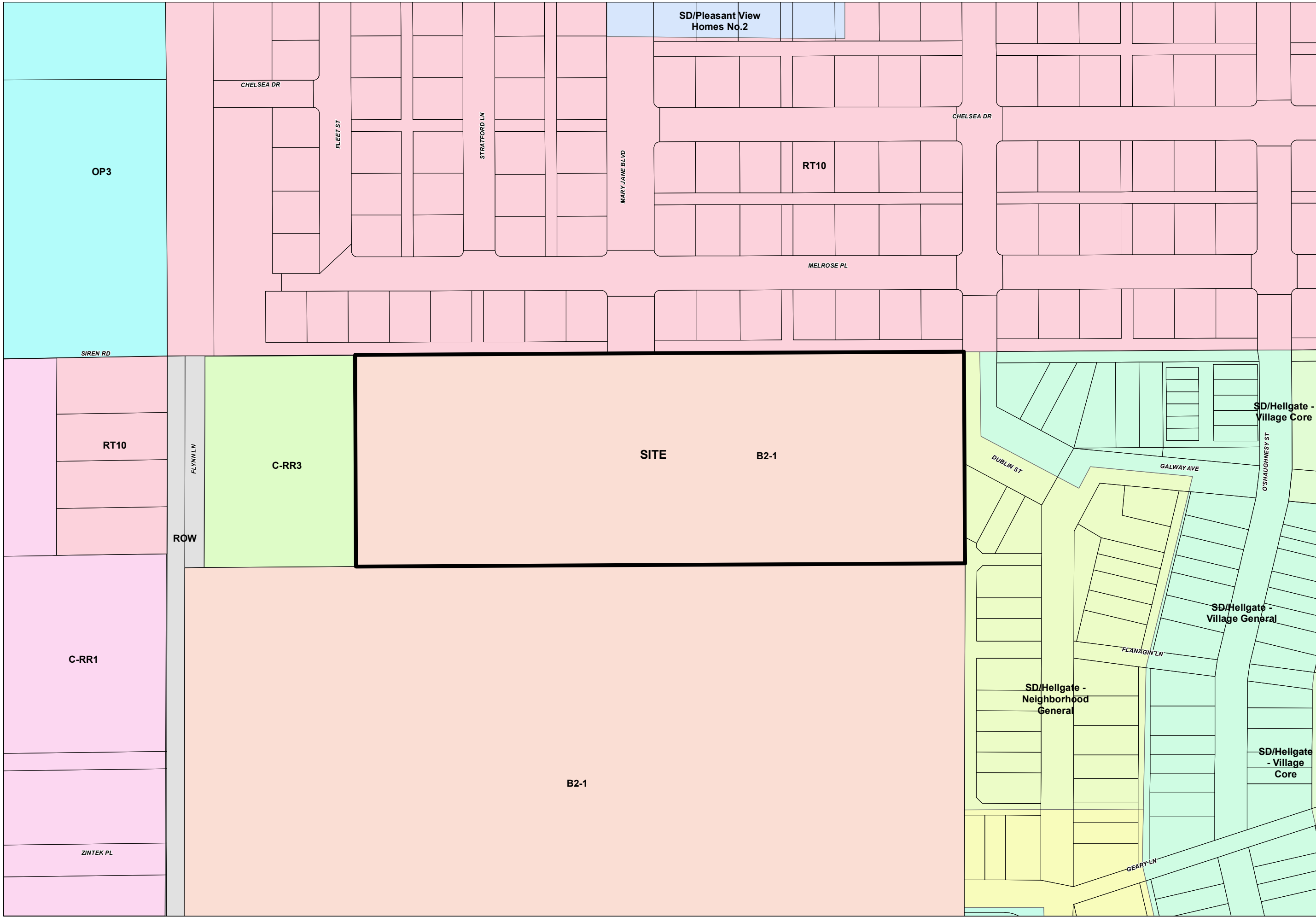
Disclaimer: This map is neither a legally recorded map nor a survey and is not intended to be used as such. WGM Group does not guarantee the accuracy, current status, or completeness of the material contained herein and is not responsible for any misuse or misrepresentation of this information or its derivatives. This map is a graphic representation and is to be used for general planning purposes only.

PROJECT: 18-05-15
FILE NO: 180515_vicinity.mxd
FILE PATH: W:\PROJECTS\180515\GIS\MXD
DRAFT: CEG
APPROVE: DH
DATE:

JANUARY 2020

SHEET

1 OF **1**



CURRENT ZONING EXHIBIT
HELLGATE VILLAGE TOWNHOME
EXEMPTION DEVELOPMENT
MISSOULA, MONTANA

Disclaimer: This map is neither a legally recorded map nor a survey and is not intended to be used as such. WGM Group does not guarantee the accuracy, current status, or completeness of the material contained herein and is not responsible for any misuse or misrepresentation of this information or its derivatives. This map is a graphic representation and is to be used for general planning purposes only.

PROJECT: 18-05-15
FILE NO: 180515_zoning-updated.mxd
W:\PROJECTS\180515\GIS\MXD
DRAFT: CEG
APPROVE: DH
DATE:

JANUARY 2020



AERIAL PHOTOGRAPH EXHIBIT

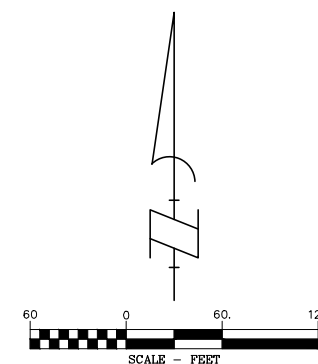
HELLGATE VILLAGE TOWNHOME EXEMPTION DEVELOPMENT

MISSOULA, MONTANA

PROJECT: 18-05-15
LAYOUT: Layout1
SURVEYED: ---
DESIGN: ---
DRAFT: CEG
APPROVE: DH
DATE:

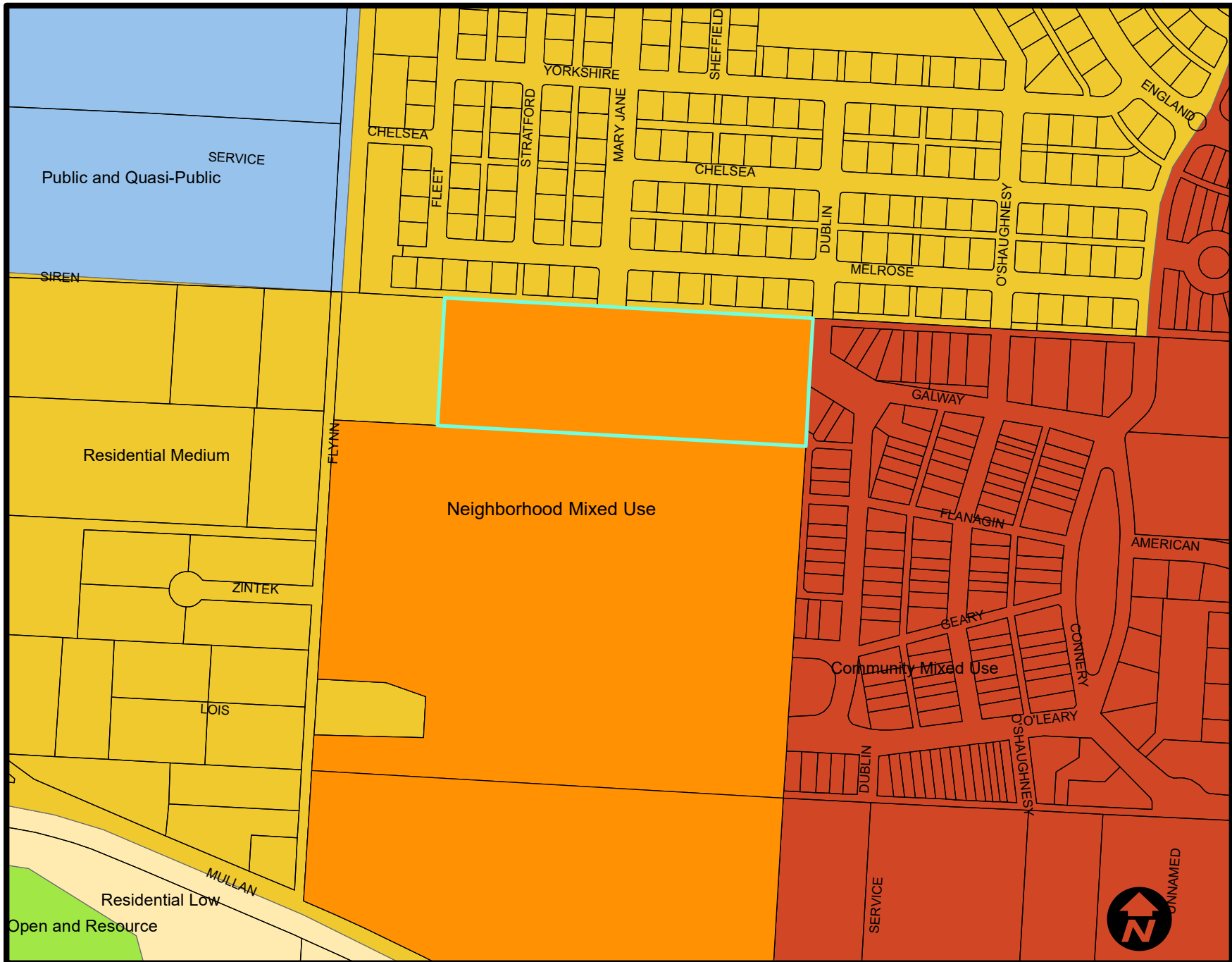
JUNE 2020

SHEET 1 OF 1



2035 City Growth Policy Land Use Map

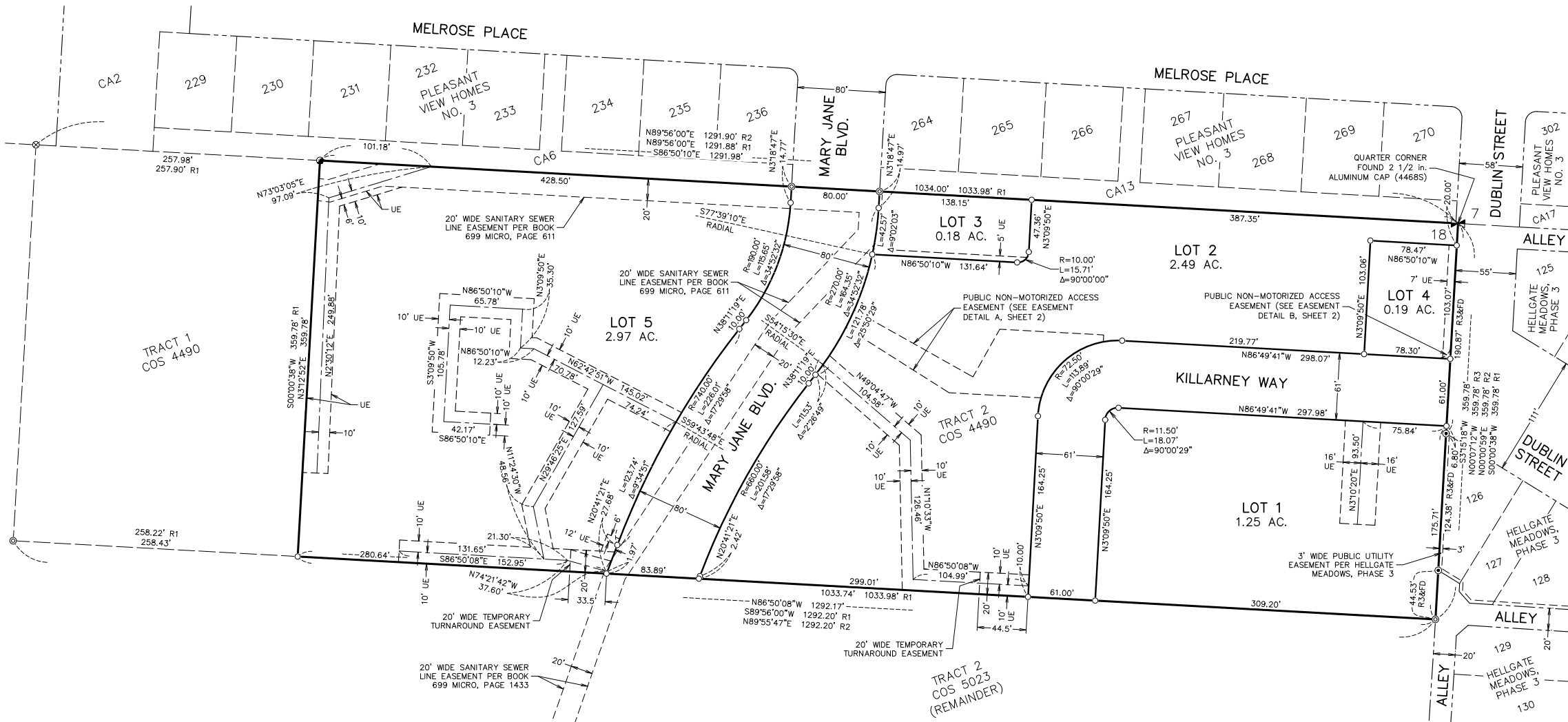
Hellgate Village



PLAT OF
HELLGATE VILLAGE SUBDIVISION

A SUBDIVISION OF THE CITY OF MISSOULA, COUNTY OF MISSOULA, MONTANA

LOCATED IN THE NW 1/4 OF SECTION 18,
T. 13 N., R. 19 W., PRINCIPAL MERIDIAN, MONTANA



LEGEND

- SET 5/8 in. X 24 in. REBAR WITH 1 1/4 in. YELLOW PLASTIC CAP (WGM GROUP JAD 19133LS)
- FOUND 1 1/4 in. YELLOW PLASTIC CAP (WGM GROUP LJS 14519LS)
- ⊙ FOUND 1 1/4 in. YELLOW PLASTIC CAP (ELI SMI 9328LS)
- FOUND 1 1/4 in. YELLOW PLASTIC CAP (ELI 3713LS)
- ⊗ FOUND 1 1/2 in. BRASS CAP (MED 2518S)
- UE UTILITY EASEMENT
- COS CERTIFICATE OF SURVEY
- R1 RECORD OR COMPUTED RECORD DATA PER CERTIFICATE OF SURVEY NO. 4490
- R2 RECORD OR COMPUTED RECORD DATA PER CERTIFICATE OF SURVEY NO. 5023
- R3 RECORD DATA PER HELLGATE MEADOWS, PHASE 3

NOTES:

- ALL BEARINGS, DISTANCES, AND CURVE DATA SHOWN ARE FOUND OR SET, UNLESS OTHERWISE NOTED.
- THIS SURVEY DOES NOT PURPORT TO SHOW ALL ENCUMBERING OR APPURTENANT EASEMENTS FOR THE REAL PROPERTY SHOWN HEREON.



BASIS OF BEARINGS

GRID NORTH OF MONTANA 2500 STATE PLANE
COORDINATE SYSTEM — NORTH AMERICAN
DATUM 1983 (2011) (EPOCH: 2010.0000)

AREAS

LOT AREA = 7.08 ACRES
STREET AREA = 1.46 ACRES
TOTAL AREA = 8.54 ACRES

SURVEY COMMISSIONED BY:
HEH, LLC

SHEET 1 OF 2
DATE: MAY 2020
DRAFT: CEG
PROJECT NO.: 18-05-15
FILE NO.: 180515_FPLAT.DWG
LAYOUT TAB: SHT1

1/4	SEC.	T.	R.
18	13N.	19W.	



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PRELIMINARY

PLOTTED: 5/19/20
SAVED: 5/19/20

CERTIFICATE OF DEDICATION:

THE UNDERSIGNED HEREBY CERTIFIES THAT IT HAS CAUSED TO BE SURVEYED, SUBDIVIDED AND PLATTED INTO LOTS AND STREET AS SHOWN ON THIS PLAT, THE FOLLOWING DESCRIBED TRACT OF LAND, TO-WIT:

LEGAL DESCRIPTION: PERIMETER

TRACT 2 OF CERTIFICATE OF SURVEY NO. 4490, ON FILE AND OF RECORD IN MISSOULA COUNTY, MONTANA; LOCATED IN THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; CONTAINING 8.54 ACRES, MORE OR LESS; BEING SURVEYED AND MONUMENTED ACCORDING TO THIS PLAT.

FURTHER THAT THE ABOVE PARCEL IS TO BE KNOWN AND DESIGNATED AS HELLGATE VILLAGE SUBDIVISION; AND THE LANDS INCLUDED IN ALL STREETS SHOWN ON SAID PLAT ARE HEREBY DEDICATED, GRANTED, AND DONATED TO THE PUBLIC FOREVER; AND THE USE OF THE LANDS INCLUDED IN ALL PUBLIC NON-MOTORIZED ACCESS EASEMENTS SHOWN ON SAID PLAT ARE HEREBY DEDICATED, GRANTED, AND DONATED TO THE USE OF THE PUBLIC FOREVER.

FURTHERMORE, THIS SURVEY IS EXEMPT FROM REVIEW BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 76-4-125(1)(d) M.C.A. TO-WIT: AS CERTIFIED PURSUANT TO 76-4-127; (i) NEW DIVISIONS SUBJECT TO REVIEW UNDER THE MONTANA SUBDIVISION AND PLATTING ACT; (ii) DIVISIONS OR PREVIOUSLY DIVIDED PARCELS RECORDED WITH SANITARY RESTRICTIONS; OR (iii) DIVISIONS OR PARCELS OF LAND THAT ARE EXEMPT FROM THE MONTANA SUBDIVISION AND PLATTING ACT REVIEW UNDER 76-3-203 OR 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), OR (1)(f).

FURTHERMORE, FEDERAL, STATE, AND LOCAL PLANS, POLICIES, REGULATIONS, AND/OR CONDITIONS OF SUBDIVISION APPROVAL, AS REQUIRED BY THE REVIEWING AGENCY, THAT MAY LIMIT THE USE OF THE PROPERTY, INCLUDING THE LOCATION, SIZE, AND USE ARE SHOWN ON THE CONDITIONS OF APPROVAL SHEET OR OTHERWISE STATED.

FURTHERMORE, BUYERS OF PROPERTY SHOULD ENSURE THAT THEY HAVE OBTAINED AND REVIEWED ALL SHEETS OF THE PLAT AND ALL DOCUMENTS RECORDED AND FILED IN CONJUNCTION WITH THE PLAT, AND THAT BUYERS OF PROPERTY ARE STRONGLY ENCOURAGED TO CONTACT THE LOCAL PLANNING DEPARTMENT AND BECOME INFORMED OF ANY LIMITATIONS ON THE USE OF THE PROPERTY PRIOR TO CLOSING.

FURTHERMORE, ALL OR PART OF THE REQUIRED PUBLIC IMPROVEMENTS HAVE BEEN INSTALLED AND/OR SECURITY REQUIREMENTS, PURSUANT TO 76-3-507, MCA, SECURE THE FUTURE CONSTRUCTION OF ANY REMAINING PUBLIC IMPROVEMENTS TO BE INSTALLED.

FURTHERMORE, THE UNDERSIGNED CERTIFIES THAT PARKLAND DEDICATION HAS BEEN MET BY PAYMENT OF CASH-IN-LIEU OF PARKLAND.

THE UNDERSIGNED HEREBY GRANTS TEMPORARY TURNAROUND EASEMENTS ON AND ACROSS PORTIONS OF THIS PLAT, FOR THE USE AND BENEFIT OF ANY EMERGENCY VEHICLE; SAID EASEMENTS ARE TO BE PERMANENTLY AND FOREVER TERMINATED AT THE TIME THE TURNAROUNDS ARE REMOVED AND THE STREET IMPROVEMENTS ARE CONTINUED.

THE UNDERSIGNED HEREBY GRANTS UNTO EACH AND EVERY PERSON, FIRM, OR CORPORATION, WHETHER PUBLIC OR PRIVATE, PROVIDING OR OFFERING TO PROVIDE TELEPHONE, TELEGRAPH, ELECTRIC POWER, GAS, CABLE TELEVISION, WATER, OR SEWER SERVICE TO THE PUBLIC, THE RIGHT TO THE JOINT USE OF AN EASEMENT FOR THE CONSTRUCTION, MAINTENANCE, REPAIR, AND REMOVAL OF THEIR LINES AND OTHER FACILITIES, IN, OVER, UNDER, AND ACROSS EACH AREA DESIGNATED ON THIS PLAT AS "UTILITY EASEMENT" TO HAVE AND TO HOLD FOREVER.

AUTHORIZED MEMBER
HEH, LLC

ACKNOWLEDGEMENT*****

STATE OF _____
COUNTY OF _____
THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS _____ DAY
OF _____, 20____, BY _____, ACTING
IN THE CAPACITY OF AUTHORIZED MEMBER ON BEHALF OF HEH, LLC.
SS. _____

EXAMINED & APPROVED*****

CERTIFICATE OF CITY PLANNER
DATED THIS _____ DAY OF _____, 20____, LAND USE PLANNER

CERTIFICATE OF MISSOULA CITY/COUNTY HEALTH DEPARTMENT
DATED THIS _____ DAY OF _____, 20____, MISSOULA CITY/COUNTY HEALTH DEPARTMENT

CERTIFICATE OF CITY ENGINEER
I, _____, CITY ENGINEER OF THE CITY OF MISSOULA, MISSOULA COUNTY, MONTANA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THIS PLAT AND I FIND THAT IT CONFORMS TO THE SURVEYING AND ROADWAY REQUIREMENTS OF STATE AND LOCAL REGULATIONS ENACTED PURSUANT THERETO.
DATED THIS _____ DAY OF _____, 20____, CITY ENGINEER

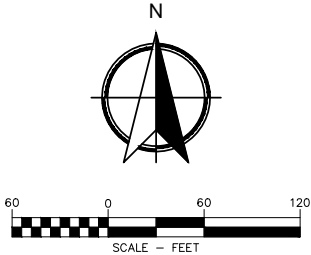
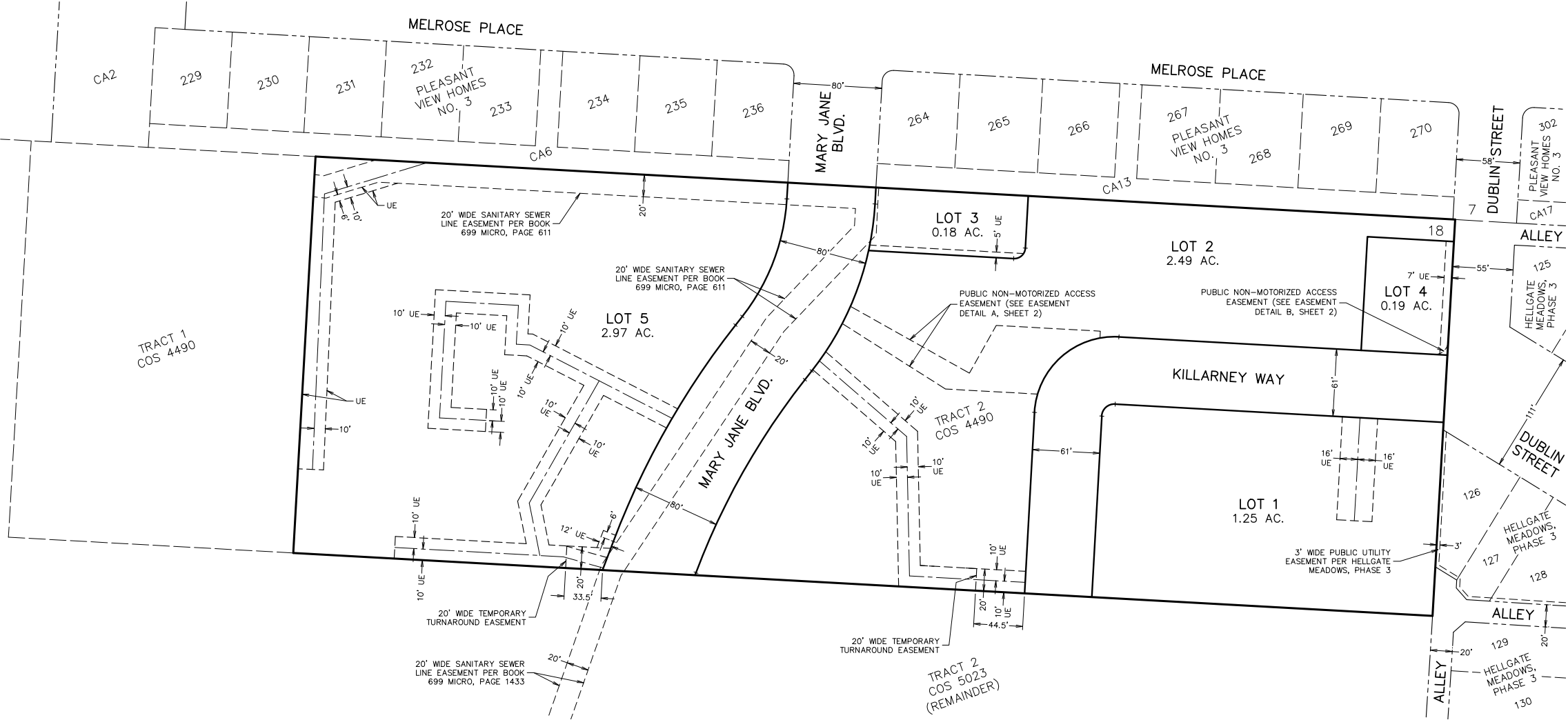
CERTIFICATE OF CITY ATTORNEY
I, _____, CITY ATTORNEY OF THE CITY OF MISSOULA, MISSOULA COUNTY, MONTANA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE CERTIFICATE OF TITLE OF THIS PLAT AND FIND THAT IT CONFORMS TO THE REQUIREMENTS OF SECTION 76-3-612, M.C.A., AND STATE AND LOCAL REGULATIONS ENACTED PURSUANT THERETO.
DATED THIS _____ DAY OF _____, 20____, CITY ATTORNEY

EXAMINED AND APPROVED THIS _____ DAY OF _____, 20____, AND IT HAVING BEEN MADE TO APPEAR THAT THIS PLAT, BEING THE PLATTED AREA HEREIN CONTAINED, AND IT SO APPEARING THAT IT IS IN THE PUBLIC INTEREST TO ACCEPT AND APPROVE FOR THE PUBLIC, ALL STREET RIGHTS-OF-WAY, PUBLIC NON-MOTORIZED ACCESS EASEMENTS, AND UTILITY EASEMENTS WITHIN SAID TRACT, THEREFORE, HAVING BEEN DULY APPROVED BY THE COUNCIL OF THE CITY OF MISSOULA, MONTANA ON THIS DATE, IT IS HEREBY CERTIFIED APPROVED BY THE UNDERSIGNED.

DATED THIS _____ DAY OF _____, 20____, MAYOR, CITY OF MISSOULA, MONTANA

CLERK, CITY OF MISSOULA, MONTANA

CONDITIONS OF APPROVAL OF
HELLGATE VILLAGE SUBDIVISION
A SUBDIVISION OF THE CITY OF MISSOULA, COUNTY OF MISSOULA, MONTANA
LOCATED IN THE NW 1/4 OF SECTION 18,
T. 13 N., R. 19 W., PRINCIPAL MERIDIAN, MONTANA



LEGEND

- UE UTILITY EASEMENT
COS CERTIFICATE OF SURVEY

CERTIFICATE OF LANDOWNER:

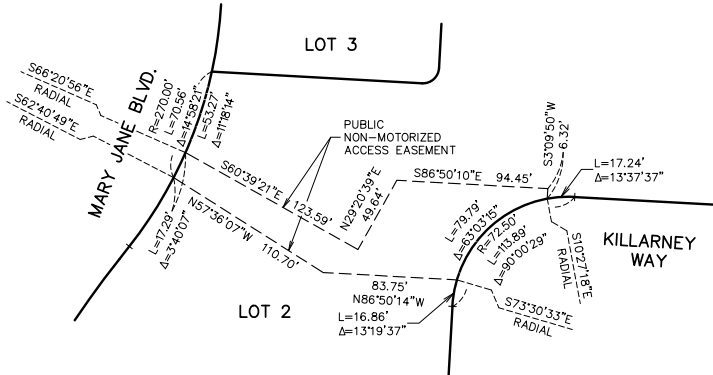
THE UNDERSIGNED HEREBY CERTIFIES THAT THE TEXT AND/OR GRAPHICS SHOWN ON THE CONDITIONS OF APPROVAL SHEET (SHEET 2 OF 2 OF THIS PLAT) REPRESENT REQUIREMENTS BY THE GOVERNING BODY FOR FINAL PLAT APPROVAL AND THAT ALL CONDITIONS OF SUBDIVISION APPLICATION FOR THIS SUBDIVISION HAVE BEEN SATISFIED; AND THE INFORMATION SHOWN IS CURRENT AS OF THE DATE OF THE CERTIFICATION REQUIRED IN ARM 24.183.1107(4)(b), AND THAT CHANGES TO ANY LAND USE RESTRICTIONS OR ENCUMBRANCES MAY BE MADE BY AMENDMENTS TO COVENANTS, ZONING REGULATIONS, EASEMENTS, OR OTHER DOCUMENTS AS ALLOWED BY LAW OR BY LOCAL REGULATIONS.

AUTHORIZED MEMBER
HEH, LLC

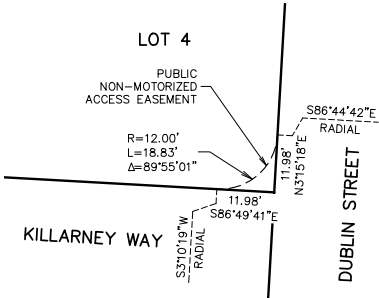
ACKNOWLEDGEMENT*****

STATE OF _____
COUNTY OF _____
THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS _____ DAY
OF _____, 20____ BY _____ ACTING
IN THE CAPACITY OF AUTHORIZED MEMBER ON BEHALF OF HEH, LLC.
SS _____

- THE FOLLOWING NOTE IS PLACED HEREON AS REQUIRED BY THE CITY/COUNTY OF MISSOULA:
- 1) ACCEPTANCE OF A DEED FOR A LOT WITHIN THIS SUBDIVISION SHALL CONSTITUTE THE ASSENT OF THE OWNERS TO ANY FUTURE SID, BASED ON BENEFIT, FOR FUTURE IMPROVEMENTS AND MAINTENANCE TO MARY JANE BOULEVARD AND KILLARNEY WAY, INCLUDING BUT NOT LIMITED TO PAVING, CURBS AND GUTTERS, NON-MOTORIZED FACILITIES, STREET WIDENING AND DRAINAGE FACILITIES, AND MAY BE USED IN LIEU OF THEIR SIGNATURES ON AN SID PETITION.
 - 2) THIS PROPERTY IS IN THE AIRPORT INFLUENCE AREA AND LOT OWNERS SHOULD BE AWARE OF THE POSSIBILITY OF INCREASED NOISE AND SAFETY RISK RESULTING FROM THE PROXIMITY TO APPROACHING AND DEPARTING AIRCRAFT. LOT OWNERS SHOULD CONSULT THE AIRPORT AUTHORITY AND ANY RELEVANT DOCUMENTS AT THE TIME OF PURCHASE.



EASEMENT DETAIL A



EASEMENT DETAIL B



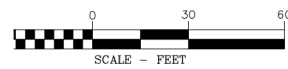
1/4	SEC.	T.	R.
<input checked="" type="checkbox"/>	18	13N.	19W.
<input type="checkbox"/>			
<input type="checkbox"/>			

SHEET 2 OF 2
DATE: MAY 2020
DRAFT: CEG
PROJECT NO.: 18-05-15
FILE NO.: 180515_FPLAT.DWG
LAYOUT TAB: SHT2



WGM GROUP
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PRELIMINARY
PLOTTED: 5/19/20
SAVED: 5/19/20



HELLGATE VILLAGE EAST TOWNHOMES

Illustrative Site Plan



After Recording Return To:
Chris Johnson
Worden Thane, P.C.
321 W. Broadway, Ste. 300
Missoula, MT 59802

**DECLARATION OF TOWNHOMES,
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
HELLGATE VILLAGE EAST TOWNHOMES**

THIS DECLARATION OF TOWNHOMES is made on the ____ day of _____, 2020, by HEH, LLC, a Montana limited liability company, of 2265 South 3rd West, Missoula, MT 59801, and provides as follows:

RECITALS

1. HEH, LLC ('Declarant') is the owner of real property located in Missoula County, Montana, which is described as follows:

Lots 1 through 5, inclusive, of Hellgate Village Subdivision, a subdivision plat in the City of Missoula, Missoula County, Montana, according to the official recorded plat thereof.

The property to which this Declaration applies is described as follows:

Lot 1 and Lot 2 of Hellgate Village Subdivision, a subdivision plat in the City of Missoula, Missoula County, Montana, according to the official recorded plat thereof (the Real Property).

2. To be located upon a portion of the above-referenced Real Property, and located within the boundaries of Lots 1 and 2 of Hellgate Village Subdivision, are 43 Townhome Units, with 24 Townhome Units having freestanding dwellings, and 19 Townhome Units sharing a common wall or walls. Said Townhome Units are herein declared, and shall hereinafter be

conveyed as Townhomes pursuant to the Montana Unit Ownership Act. As of the date of this Declaration, completion of construction for all Units is pending.

3. Additionally, Declarant wishes to place restrictions, covenants, conditions and easements upon the Real Property for the use and benefit of the Real Property, itself, and all future owners of all or any part of the Real Property, which restrictions, covenants, conditions and easements shall run with the Real Property and shall be binding upon all parties having or acquiring any right, title, or interest in any part of the Real Property and shall inure to the benefit of and bind each successor in interest to the owner thereof.
4. NOW, THEREFORE, the Declarant provides as follows:

DECLARATION

1. DEFINITIONS

- a. Architectural Control Committee. "Architectural Control Committee" shall mean and refer to a committee of the Association, as more specifically described in Section 7 of this Declaration.
- b. Association. "Association" shall mean and refer to the Hellgate Village East Townhomes Owners Association, Inc. to be incorporated by Declarant as a Montana non-profit corporation, as described in Section 8 of this Declaration.
- c. Buildings. "Buildings" means the habitable dwellings and garages built on the subject property, as described above, and as may be shown on any attached exhibits.
- d. Bylaws. "By-Laws" means the By-Laws of the Association.
- e. Common Elements. "Common Elements" shall mean such common features, common areas, improvements, fixtures, appurtenances, and shared utilities owned by the Declarant, the Association, or the Unit Owners for the common use and enjoyment of the Members of the Association, as described more particularly herein, and as may be shown on the site plan submitted with the Architect, Surveyor, or Engineer's Statement recorded with this Declaration. Common Elements also includes Limited Common Elements.
- f. Declarant. "Declarant" shall mean and refer to HEH, LLC, a Montana limited liability company, or any person or entity that may be assigned or transferred the development rights hereunder. A grant of a deed to a single Townhome shall not be deemed a transfer of any development rights retained herein.

DECLARATION OF TOWNHOMES, COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

HELLGATE VILLAGE EAST TOWNHOMES

PAGE 2 OF 40

- g. Declaration. "Declaration" shall refer to this Declaration of Townhomes, Covenants, Conditions and Restrictions for the Hellgate Village East Townhomes.
- h. Limited Common Elements. "Limited Common Elements" shall mean such common features, limited common areas, improvements, fixtures, utilities, and appurtenances owned by the Declarant, the Association, or the Unit Owners for the common use and enjoyment of the Members of the Association, but specifically reserved or designated for use by less than all of the Unit Owners, or for exclusive use by one designated Unit Owner, as described herein and as may be shown on the site plan submitted with the Architect, Surveyor, or Engineer's Statement recorded with this Declaration.
- i. Member. "Member" shall mean and refer to every person or entity who is a Member of the Association as described in Section 8 of this Declaration.
- j. Owner. "Owner" shall mean and refer to every person or entity who is a record Owner of a fee, or undivided fee interest in any Townhome that is subject to this Declaration.
- k. Real Property. "Real Property" shall mean and refer to that certain real estate as described or referred to in Section 1 of the Recitals, above, and the improvements thereon, as more fully shown, described, and depicted on the exhibit to the Architect, Surveyor, or Engineer's Statement recorded in conjunction with this Declaration.
- l. Townhome Unit. "Townhome Unit" or "Unit" shall mean and refer to the individual Townhome dwellings, the land on which they are situated, and the improvements thereon, as illustrated on the site plan recorded with this Declaration and as more specifically described in Section 3(b) of this Declaration.
- m. Transition Date. "Transition Date" shall be the date upon which the authority and responsibility to administer and manage the Association and the Townhomes, subject to this Declaration and By-Laws, passes to the Association. The Transition Date will be on or before 30 days following the sale of the 40th unit of the 43 total Townhomes contemplated herein. Should the number of Townhomes change, according to procedures established herein and under state law, the number shall be the sale of the townhome constituting the transfer of 90% or more total townhome units.

2. **DECLARATION**

- a. Declaration. Declarant hereby submits the Real Property and its improvements to the form of townhome ownership and use provided by Title 70, Chapter 23, of the

Montana Code Annotated, hereinafter referred to as the “Montana Unit Ownership Act,” and pursuant to Mont. Code Ann. §76-3-203, and further pursuant to municipal facilities review under Mont. Code Ann. §76-4-125(1)(d). Declarant further declares that all of the Real Property described herein and all present and future Owners of Townhome Units shall be subject to, and shall comply with the provisions of this Declaration, the By-Laws, and the rules and regulations adopted by the Association, as these instruments may be amended from time to time. The valid execution of a purchase contract by a buyer or the acceptance of a deed thereto shall constitute acceptance of the provisions of such instruments by such Owner. All Owners shall be responsible for insuring compliance by their tenants, family members, other occupants of their Townhome Unit and their guests.

- b. Conveyances Subject to Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration, along with the Bylaws of the Association and its Rules, shall be deemed to be covenants appurtenant, running with the Real Property, and shall at all times inure to the benefit of and be binding on any person having at any time any interest or estate in the Real Property, and such person or entities, respective heirs, successors, representatives, or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, or other evidence of obligation or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared herein as though fully and completely set forth in their entirety in any such document.
- c. Submission to Unit Ownership. One of the purposes of this Declaration is to submit the Real Property under the Montana Unit Ownership Act, and the definition of terms in this Declaration and the By-Laws of the Association shall be those definitions used in the Montana Unit Ownership Act, except as otherwise provided herein. The Real Property included within the project shall be named “Hellgate Village East Townhomes.”

3. **DESCRIPTION OF PROJECT**

- a. Description of Project. The project consists of 43 Townhomes and the real property and improvements that are a part of each Unit. Units designated as Units 1–7, Units 12–15, Units 23–27, Units 32–33, Units 36–38, and Units 41–43, are freestanding Units. Units 8 & 9, Units 10 & 11, Units 34 & 35, and Units 39 & 40 are 'duplex' style Units, sharing a common wall located on the Units' common boundary. Units 16, 17, & 18 are 'triplex' style Units, sharing common wall or walls located on the

Units' common boundary. Units 19, 20, 21, & 22 are 'fourplex' style Units, sharing common wall or walls located on the Units' common boundary. And Units 28 & 29 and Units 30 & 31 are 'duplex' style Units sharing a common wall located on the Units' common boundary, and which paired Units are not of equal size or dimensions.

Freestanding Units 1–3 are one story, with basements, and Units 4 & 5 are two story with basements, being the only Units with basements. All other Units are two stories, with the exception of the 'fourplex' Units 19, 20, 21, and 22, which are three stories.

All freestanding Units have detached garages located on the individual Units; with the exception of Units 1–7 which have detached garages located on adjacent Limited Common Areas A and B, with Limited Common Element designations as identified on the attached site plan; and with the exception of Units 26, 27, 32, and 33, which have attached garages. 'Duplex' Units, 8 & 9, 10 & 11, 34 & 35, and 39 & 40 have detached garages that share a common wall located on the Units' common boundary. 'Duplex' Units 28 & 29, and 30 & 31 have attached garages. The 'triplex' Units have garages located on adjacent Limited Common Area C, with Limited Common Element designations as identified on the attached site plan. And the 'fourplex' Units have attached garages, with additional parking as specified herein.

The location of the Units and their respective layouts are shown on the floor and site plans attached to the Architect, Surveyor, or Engineer's Statements, which statements are recorded in conjunction with this Declaration pursuant to Montana Code Annotated §70-23-306. The Buildings are of wood construction with cement composite siding, concrete foundation, and asphalt shingle roofing. Interior walls are of sheetrock. Declarant proposes to convey the Townhome Units by Warranty Deeds pursuant to which the grantees shall have the exclusive right to occupy the Townhome Unit and its affiliated improvements, and the non-exclusive right to use and enjoy any Common Elements as specified in the Declaration, subject to the limitations, covenants, conditions, restrictions and easements set forth herein. Declarant intends to establish a common scheme and plan for the use, enjoyment, repair, maintenance, restoration, remodeling and improvement of the Townhome Units and other expenses pertaining thereto, and hereby declares that the Townhome Units are and shall be held, conveyed, hypothecated, encumbered, occupied and improved subject to the limitations, covenants, conditions, restrictions and easements set out in this Declaration, all of which are declared to be in furtherance of a plan established for the purpose of enhancing the value, desirability and enjoyment of the Real Property and the Townhome Units therein to be conveyed. All such limitations, covenants, conditions, restrictions and easements are intended to run with the land,

to-wit, each Townhome Unit covered by the Declaration, and each Owner and each Owner's successors and assigns are and shall be bound by the Declaration.

- b. Townhome Unit. Each Townhome Unit consists of some or all of the elements and real property depicted in the plans and specifications for each as more particularly depicted and designated on any floor and site plans recorded concurrent with this Declaration and is described as the dwelling Building, bounded and contained within the Unit, attached or detached garages located on a Unit, and including the perimeter or exterior walls of each Building, and including the portion of each tract of land on which each Unit lies, and including common walls through and including the framing of such common walls (being double framed), roof and subflooring, and inclusive of attached or detached garages located on a Unit, the finished floors, ceiling, walls, windows and doors, patios and decks, which are attached to and/or incorporated in each particular Townhome Unit inclusive of fixtures and improvements, driveways, walkways, and other features as may lie within the designated Townhome Unit area. Each Townhome Unit includes the easement or easement right in any utility lines and pipes which serve only that Townhome Unit but which may cross or exist on a portion of another Townhome Unit or common area.
- c. Common Elements. For Units sharing a common wall, appurtenant to each such Unit, but not a part thereof is an undivided interest in the interior or structural portion of the common wall that divides each Unit, inclusive of garages that share common walls. Additional Common Areas, inclusive of alleys, and any portion of the street or boulevard that is not conveyed or dedicated to the city of Missoula, are shown on the floor and site plans attached to the Architect, Surveyor, or Engineer's Statements. For all other purposes, any portion of the Property that is not part of a designated Unit, or otherwise conveyed to the city of Missoula as street or right of way, shall be deemed Common Element (or Limited Common Element). Common Elements will be owned by the Owners according to their ownership percentages identified in Exhibit A, or may be owned by the Association, at the election of the Declarant.
- d. Appurtenances. The Townhome Units hereby established include or have appurtenant thereto an undivided interest in the Common Areas and Common Elements, and for Units with common walls, appurtenant thereto is an undivided interest shared with its adjacent Townhome or Townhomes, in any structural component of its neighboring common wall, together with such easements as are specified herein.
- e. Continued Construction. It is anticipated that the Townhome Units declared herein may be sold as completed buildings before all additional and further or future townhomes for which development is contemplated may be constructed. In general

Declarant intends informally to construct or have constructed Units over time. Declarant, at its sole discretion, reserves the right to build-out or have built out the Units contemplated herein in such order and at such time as Declarant chooses. Declarant may further amend or modify the said Declaration as provided for herein, and as to any Unit that has not yet been constructed.

- f. Liens. No liens arising in connection with the Declarant's ownership of and construction of further Units shall be permitted to adversely affect the right, title or interest of any then existing Owner or any existing Owner's lien holders.
- g. Phasing. Although this Declaration includes and describes all Units contemplated for the Property, it is anticipated that the Units will be constructed over time, and Declarant may construct or have constructed Buildings in any configuration or order Declarant may decide. Townhome Units may be sold as completed Buildings before all Units contemplated herein are erected. Such additional Buildings/Townhome Units shall be subject to this Declaration, without the consent of the Members or Owners or further action by the Declarant. Lot 5 is anticipated to be developed separately under the Montana Unit Ownership Act, and such development is reserved to the Declarant without right of approval of any existing Owner or Association. Declarant may, at Declarant's sole discretion, further add or bring in additional Units under this Declaration to be located on Lots 3 and 4 (subject to appropriate governmental approval). In such event, the inclusion of additional Units on Lots 3 and 4 shall be subject to the following.
 - i. *Improvements.* The additional Buildings and Townhome Units to be constructed shall be consistent with the then existing Townhome Units, in terms of quality of construction, and shall be subject to Architectural Control Review as provided for herein. It is anticipated that additional Units or improvements on Lots 3 and 4 will have access to and use of existing Common Area alleys so long as such Lots participate in the expense of maintenance of such features. Declarant reserves the right to modify the Exhibit A ownership percentages upon any amendment to the number of Units that are part of this project. Declarant further reserves the right to further change designations of common areas upon the completion of additional Units or phases. Declarant reserves the right to determine how many units, buildings, and dwelling spaces may be a part such future development of Lots 3 and 4, all subject to existing zoning. All such changes to the initial plans identified and described herein, including exhibits to the Architect, Surveyor, or Engineer's statement, shall be recorded as an amendment to this Declaration with the Missoula County Clerk and Recorder.

- ii. *Liens.* No liens arising in connection with the Declarant's ownership of and the construction of the additional units, buildings and dwelling spaces on Lots 3 and 4 shall be permitted to adversely affect the right, title or interest of any then existing Owner or any existing Owner's lien holders. No further development and construction shall adversely affect the statutory validity of this Declaration or validity of the title to Units previously conveyed. Real property taxes attributable to the real property and improvements still to be developed shall be paid by Declarant or any successor in interest.
- iii. *Loan Guarantors.* In the event that HUD, VA and/or FNMA holds, insures or guarantees any mortgage or other lien on a Unit, no additional property or Units not contemplated herein may be annexed without the prior written consent of each such entity that holds, insures, or guarantees any mortgage in such existing Unit, which consent may not be unreasonably withheld.
- iv. *Additional Filings.* Declarant shall cause to be recorded a supplemental or amendment to this Declaration, incorporating the information and any changes necessitated by subsequent additions to this townhome project, together with appropriate site plan and architect's drawings of the additional Building or Buildings, and together with a revised ownership percentage schedule (if necessary). Declarant reserves the right to promulgate and record additional covenants, conditions, and restrictions relative to the addition of Lots 3 and 4 hereunder, or in the absence of the addition of Lots 3 and 4 hereunder, Declarant may enter into easements and use and maintenance agreements relative to the alleyways that may serve or provide access to Lots 3 and 4. Up until Transition, Declarant reserves the right, upon appropriate governmental approval, to allow use of common area (but not limited common area) by the public, and the right to dedicate such common area to the city. After transition, such right shall belong to the Association.

4. **PROPERTY RIGHTS AND OBLIGATIONS**

- a. Easements. There shall exist for the benefit of each Townhome Unit, along with the Association, its agents and employees, and as a burden on the other Townhome Units the following easements, provided such easements shall not be considered or determined to be encumbrances on the Townhome Units for purposes of marketability of title.
 - i. *Common Wall and Encroachment Easement.* The Owner of each Townhome Unit that shares a common wall with another shall and does have a perpetual

easement, and the same is hereby declared, created and granted, for repair and replacement of the common walls shared with adjoining Townhome(s). In the event a Townhome Unit, or any part thereof, shall at this time or a subsequent time unintentionally encroach (whether due to construction, settling, shifting or otherwise) upon another Townhome Unit, the Owner of that encroaching Townhome shall and does have a perpetual easement for such encroachment and for maintenance of the same, upon the Townhome Unit upon which it encroaches.

- ii. *Maintenance Easement.* The Owner of each Townhome Unit shall and does have a perpetual easement, and the same is hereby declared, created and granted, for maintenance, repair and replacement of his Townhome Unit, and the utilities that serve such Townhome, over, under, across and upon the other Townhome Units, including within any adjacent Townhome(s) that share a common wall, as reasonably needed for such maintenance, repair and replacement. For the purposes of the maintenance, repair and replacement for which the Association may be responsible, the Association, its agents, employees and subcontractors, shall have full right to use such easements as necessary to carry out the Association's responsibility.
- iii. *Utilities and Drainage Facilities.* Easements for installation and maintenance of utilities, and drainage facilities are also reserved as shown on the Architect, Survey, or Engineer's Statement recorded in conjunction with this Declaration, including, but not limited to, easements for water lines, electricity lines, communication lines, natural gas lines, and sewer lines. Additionally, Declarant hereby declares, creates and grants a blanket easement across the Real Property for installation and maintenance of utilities, inclusive of phone and tv or internet cabling, and for solid waste collection and pick up, and for drainage facilities, to the Association and Owners subject to the Declarant's or Association's prior consent to location and configuration of such facilities. The Declarant, until transition, and the Association, each retain the right to grant such additional easements for installation and maintenance of utilities and drainage facilities as Declarant or Association deem necessary.
- iv. *Easements through the Townhome Units for maintenance, repair and replacement of the Common Elements.* Use of easements for installation, maintenance, repair and replacement of Common Elements shall include access over, under, and across Units, however, access to the interior of individual dwellings shall be limited to access necessary for the repair and maintenance of common walls or other shared or common features between

Units, with such access further limited to reasonable hours and upon notice to the Owner of the Townhome Unit, except that access may be had at any time in case of emergency.

- v. Every portion of a Townhome Unit which contributes to the structural or subjacent support of another Unit or common element shall be burdened with an easement of structural or subjacent support for the benefit of the other adjoining Townhome Units or common element.
- vi. Easements are created and granted through, over or under the Townhome Units for all facilities for the furnishing of utility and security services within the Buildings, which facilities shall include but not be limited to conduits, pipes, ducts, plumbing and wiring; provided that the easements for such facilities through a Townhome Unit shall be substantially in accordance with the plans of the buildings and as such facilities may exist as of the date of this Declaration or as may be originally built. A specific easement shall exist for for the purpose of maintenance, repair, and replacement of utilities that, while located on their respective Units, may require access to the adjacent Unit to perform such work. A general easement is created and granted to each Unit across its neighboring Unit(s) for such temporary use for maintenance and replacement as may be reasonably required to maintain, repair, and replace utilities for the benefitted Unit. If any work is performed pursuant to these easements to facilitate utility work, and that work results in physical encroachment or work encroaching on a neighboring Unit, then the Owner having such work done shall immediately thereafter restore the neighboring Unit to its original condition.
- vii. Declarant hereby declares, creates, and grants for the benefit of all Unit Owners, and their utility and service providers, easements for access, ingress and egress, and for utilities in, on, and under the Common Areas and Common Area alleyways and any portion of the streets and boulevards that are not conveyed or dedicated to the city of Missoula. Provided, while alleyways are generally designated as Common Area, the use of alleyways that do not have connectivity or are "dead end" alleyways for ingress and egress shall be limited to the Units whose garages or Units are accessed by such alleyway (specifically, the alleyway that accesses the garages for Units 16 and 17, and the alleyway that accesses the garages for Units 8 and 9, and the alleyway that accesses Units 26 and 27, which alleyways use shall be limited to those respective Units, provided Unit 18 shall have the right of pedestrian access to the 16 & 17 alleyway). Additionally, an easement is declared, created, and granted to the Owners and the Association in and to the

use of all walkways located on common or limited common areas, for pedestrian use only. An additional easement shall exist on Units with sidewalks fronting them as may be necessary to allow installation, maintenance, and replacement of sidewalks. Additionally, an easement is declared, created, and granted to the Owners for any portion of the planned mailbox cluster or any bike parking facility that may be situated by the Declarant on or adjacent to a particular Unit, or located on a common area.

viii. Temporary easements for the benefit of the plat of Hellgate Village Subdivision exist at the southern terminus of Killarney Way and Mary Jane Boulevard, which provide turn-around area for emergency and service vehicles. The individual Unit owners do not have right of use of such easements. These temporary easements shall terminate upon completion of the said roadways into the property to the South.

b. Delegation of Use. Any Owner may delegate his right of enjoyment to the Townhome Unit to his guests or tenants, who reside in such Owner's Townhome Unit. All such persons shall be subject to the rules concerning use as the Association may adopt. Each Owner shall be responsible to assure his guests and tenants abide by the terms of this Declaration, the Articles of Incorporation of the Association, its By-Laws and any rules which it might adopt.

5. LEASE OF A TOWNHOME

Any Owner shall have the right to lease his Townhome Unit upon such terms and conditions as the Owner may deem advisable subject to this Section. All leases shall be in writing, shall be for a minimum initial term of 30 days, and shall provide that the lease is subject to the terms of this Declaration, the Articles of Incorporation of the Association, its By-Laws and any rules which it might adopt. Nothing herein prevents an Owner from leasing his Unit and improvements located thereon with more restrictive provisions or terms. All such leases shall be of the whole of a Unit, and no portion of a building located on a Unit may be separately leased out (with such provision not precluding having roommates). All such leases shall provide that any failure of a lessee to comply with the terms of this Declaration, the Articles of Incorporation of the Association or its By-Laws or any rules adopted by the Association shall be a default under the lease or rental agreement. If any lease does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be a part of the lease and binding upon the Owner and the lessee by reason of their being stated in this Declaration. Townhome Unit owners should provide lessees copies of relevant documents as part of their lease agreement, and shall provide a copy of such lease to the Association immediately upon demand. If any lessee or occupant of a Townhome Unit violates or permits

the violation by his guests and invitees of any provisions hereof or of the Bylaws or the rules and regulations of the Association, and the Board determines that such violations have been repeated and that a prior written notice to cease has been given to the Owner, the Board may give notice direct to the lessee or occupant of the Unit and the Owner thereof to forthwith cease such violations. No action by the Association hereunder shall create any liability on the part of the Association to the tenant for Owner conduct that may violate relevant landlord-tenant or fair housing law. Any failure of a lessor or lessee to comply with the terms of this Declaration, the Articles of Incorporation of the Association or its By-Laws or rules adopted by the Association shall be a default enforceable by the Association against such lessee and the Owner of such Townhome Unit. In the alternative to action by the Association, an individual Owner may bring suit to enforce such provisions. Each Owner covenants and agrees that in the event he or she leases their Townhome Unit to a tenant or tenants, or allows individuals other than him or herself to reside therein that they shall continue to be responsible for all the acts and omissions of such persons.

6. **USE RESTRICTIONS**

- a. Property Use. The use for which each Townhome Unit is intended is that of a residential townhome. All uses are subject to all applicable zoning and other applicable restrictions imposed by the City of Missoula. No Unit may be further divided. No business use, except as provided for herein by Declarant, shall be maintained in any Unit, except for those type of home businesses or commercial activities that may be allowed in and on residential property under the City of Missoula zoning code, and then only so long as such use does not result in increased traffic, deliveries, or visits to a Unit. No signage is allowed for any such in-home business activity. Regardless of this provision, the use of each Unit shall remain primarily residential.
- b. Declarant's Use. Notwithstanding any provision herein contained to the contrary, during the period of sale it shall be expressly permissible for the Declarant to maintain upon the Real Property such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the sale of the Townhome Units, including but not limited to a business office, storage area, construction yard and structures, signs, model Townhome Units, sales offices and leases of any term. Declarant, its agents and prospective purchasers shall also have the right of ingress, egress and parking in and through and the right to use and enjoy portions of the real property reasonably necessary to effectuate the development and construction contemplated herein, without the permission of any Owner or the Association being required.
- c. General Prohibitions and Rules. All use and occupancy of the Townhome Units and

the Common Areas shall be subject to and governed by the rules as may be adopted by the Association, which rules shall not be inconsistent with the terms of this Declaration. Every Owner, his guests, employees, invitees, tenants and licensees shall adhere strictly to the rules as adopted by the Association pursuant to this Section or otherwise under this Declaration.

- d. Alteration. The Townhome Units were designed and constructed in a uniform and common theme, which is intended to stay uniform throughout all Units. Therefore, no Owner shall alter any Common Area or Limited Common Area or feature thereon, or the exterior of any structure located within his Townhome Unit, or any Limited Common element feature associated with a particular Unit, without the prior written consent of the Association's Architectural Control Committee or in the alternative by the Board of Directors. Nothing shall be done by any Owner within the Real Property which would impair the structural integrity of any improvement located upon the Real Property. No Owner shall make any change, modification, alteration or addition to the design or structure of any building's exterior without first obtaining the prior written consent of the Architectural Control Committee or in the alternative the Board of Directors. Owners of Units with shared common walls may only change exterior color scheme with the written consent of the adjacent, common wall Owner or Owners (and with Architectural Control approval). General landscaping and planting within a Townhome Unit that does not materially effect the existing structures and their views or appearance, or otherwise impair easements or other rights of other Owners established herein is left to the discretion of the individual Townhome Unit Owner. Yard areas shall generally have grass or lawn installed, provided, front and side yards that are close to sidewalks or travel ways (being a small area) may have instead flower beds or other decorative landscaping or groundcover (which does not include or allow vegetable or herb gardens in such front or side spaces). Freestanding flagpoles or other structures or improvements may not be installed on a Unit without consent of the Architectural Control Committee, or in the alternative the Board of Directors of the Association. No antenna shall be permitted on the exterior of a Unit except small satellite dishes or microwave internet dishes no larger than one meter in diameter, for which the installing Owners shall be responsible for maintenance. Upon sale of the Unit and/or the removal of the dish, the Owner shall be responsible for repairing or restoring the point of attachment to its original condition.
- e. Imperiling of Insurance. Nothing shall be done within the Real Property which might result in an increase in the premiums for or which might cause cancellation of insurance obtained for any portion of the Real Property, except with the prior written consent of the Association.

- f. Violations of Law. Nothing shall be done within the Real Property which would be in violation of any statute, rule, ordinance, regulation, permit or validly imposed requirement of any governmental body, specifically including but not limited to federal, state or local laws regarding the use and disposal of toxic and hazardous materials and wastes.
- g. Nuisances. No noxious or offensive activity shall be carried on upon the Real Property nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Owners, their families, tenants or agents. No activity shall be conducted on any part of the Real Property which is or might be unsafe or hazardous to any person or the Real Property, inclusive of the storage of hazardous or toxic materials.
- h. Signs. No advertising signs, billboards, or unsightly objects shall be erected, placed, or permitted to remain on any part of the Real Property, excepting signs not to exceed eight square feet may be used to advertise units for sale or for rent. Provided, that signs identifying the Real Property, inclusive of addressing, and such signs as might be required by law (e.g., signs indicating handicapped parking) or for the regulation of parking shall be permitted. Also permitted are signs pertaining to any political campaign or ballot issue, so long as the same are wholly on an Owner's Townhome Unit and comport with the above size limitation, but only for a period of 30 days prior to the election to which the sign pertains, and such signs shall be removed within 7 days of such election. For a period of five years from the date of this Declaration, the Declarant shall be permitted to place signs, without limitation of size or otherwise, upon the Real Property to promote the development of the project. These restrictions do not preclude the installation of entryway signs by the Declarant.
- i. Pets and Fencing. No more than two domestic animals or pets may be kept at each Unit, that being two dogs, or two cats, or one dog and one cat, and such permitted animals may not be bred commercially. The presence and use of service animals for the handicapped or disabled shall be permitted upon the Real Property and within the Townhome Units. All owners of permitted pets shall be responsible for keeping their pet contained and for clean up of all waste. Such pets shall not be allowed to be at large on the premises, other Units, or common areas, but may be permitted within fenced or enclosed portions of a particular Unit. Any kennel constructed or installed must have architectural review and approval as provided for herein, and may not be used to house an animal full time, i.e. overnight. Any animal kept outdoors shall not be allowed to become a nuisance or a frequent source of noise, and pets should not be allowed to remain outdoors overnight. All pet waste shall be regularly and timely cleaned up, so as not to become a nuisance to neighbors. Pet food shall be stored indoors.

Any fencing as exists on the project as of the date of completion of improvements shall be maintained in the same location and configuration. All other fencing shall be subject to review and approval of the Architectural Control Committee, or in the alternative by the Board of Directors. No fence may be installed or placed in the front of any Unit along the street or Common Area fronting the Unit, and may not be further forward than the front of a Building, and no fencing along Unit side boundaries is allowed from the front edge of the structure to the street or common area that fronts the Unit. All allowed fences shall be of wood, chain link, vinyl, or decorative wrought iron, and no higher than 4 feet; provided, privacy fencing up to 6 feet in height is allowed along the side boundaries of freestanding Units, from the front of the building to 20 feet past the back edge of the building. These fencing provisions do not apply to the screening of any porch or deck, so long as such screening is not along a Unit boundary.

- j. Unightly Uses. Refuse piles or other unsightly objects and materials shall not be placed or remain upon the Property. The Association shall have the right to enter upon any Townhome Unit, to remove such refuse piles or other unsightly objects and materials at the expense of the Owner causing such unsightly use, and upon due notice to the Owner. Such entry shall not be deemed a trespass and incurred expenses may be collected and foreclosed by the Association in the same manner as Assessments are collected and foreclosed as provided for herein.
- k. Parking/Vehicles. No vehicle of any type shall be parked except on and within that Unit's garage or as may be permitted in the street by the City of Missoula. No parking is allowed on any temporary turn-around on the southern boundary of the streets. No parking is allowed in front of any garage entrance, nor in the alleyways that access garages. Units 19, 20, 21, and 22 shall have the right to park in the Limited Common Area C uncovered parking stalls, as designated on the attached Site Plan, with the additional undesignated stalls available on a first come-first serve basis. Units 32 and 33 may use the parking stall located on Limited Common Area D, on a first come-first serve basis. No other parking is permitted on Limited Common Area D, nor on any other Common Area or Limited Common Area, excepting in garages. No vehicle may be permanently parked (defined as over 7 consecutive days) in such open or undesignated parking. No non-functioning or non-licensed vehicles shall be parked on the Property, unless parked in a garage. Boats, trailers, trailered vehicles or machines, recreational vehicles, off-road vehicles, atv's or snowmobiles, may be parked only in garages. There shall be no assembling, repairing or disassembling of vehicles anywhere other than inside a garage, or other maintenance of vehicles outside, other than in event of an emergency, and then not to exceed 48 hours. This provision is not intended to preclude the entry of

construction, maintenance, delivery, moving, or other such service vehicles while they are being utilized in connection with services to a Townhome Unit. Motorcycles shall be parked and treated as other vehicles herein. Bicycles may be parked at any provided parking and locking structure or in garages, and may not be locked to a common feature such as power or light poles, boundary fencing, support beams, utility lines, lighting fixtures, etc. The Association may adopt more specific parking rules or parking allocation comporting with this Declaration, which allocations may include locating specific handicap parking to accommodate a particular Owner so qualified.

- l. Construction Liens. No labor performed or materials furnished with the consent or at the request of an Owner, his agent, contractor or subcontractor shall create any right to file a construction lien against the Townhome Unit of any other Owner, who does not request or consent to the same, or against any interests in the Common Area. Each contracting or consenting Owner shall indemnify, defend and hold harmless the Association and each of the other Owners from and against liability arising from the claim of any lien or against the Townhome Units for labor performed or materials furnished at the request of the contracting or consenting Owner. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the contracting or consenting Owner the amount necessary to discharge any such lien and all costs incidental thereto including attorney's fees and expenses. Said expenses may be added to such Owners regular assessments.
- m. Garbage. The individual Unit Owners shall pay and contract for regular garbage removal services and provide proper garbage containers for collection of garbage, which may include recycling services and containers. Owners who lease their Units may not assign responsibility for contracting for garbage service to lessees. Should individual Unit owners fail in this obligation to contract for garbage services, the Association may pay and contract for such removal services, or provide collection containers, and assess the Owners accordingly. All individual garbage containers shall be kept in the Owner's garage or against the Owner's garage at the side of the door until the day of collection when they may be placed out at the alley edge for collection. Containers placed out for collection may not be out for more than 24 hours, and shall not otherwise obstruct or block the alley or access to a garage. In the event the garbage service provider will not drive or back into the dead end alleyways, those Owners may need to put garbage out for collection at the entrance to the dead end alleyway, and must still meet the requirements as contained in this provision.
- n. Violations. In the event of violation of any prohibitions or restrictions contained in the Declaration, by any Owner, his family, guests or tenants, such violation shall obligate said Owner to reimburse the Association, or an individual enforcing Owner,

for the cost and expense expended by it in order to cure the violation, enforce this Declaration and/or restore the property to its original state together with a displacement fee, in such amount as established by the Association or as may be determined by a court of law, in the event such violation results in a delayed access for another Owner. Such charges as incurred by the Association shall be treated as assessments pursuant to Section 9 against such Owner and his ownership interest.

7. **ARCHITECTURAL CONTROL**

- a. Appointment of Architectural Control Committee. The Association may establish, either permanently or on an ad-hoc basis, an Architectural Control Committee to serve the functions as described in this Article. Members of the Architectural Control Committee shall be appointed and serve as set forth in the By-Laws and rules of the Association, except that Architectural Control Committee functions shall be carried out by the Declarant until the Transition Date, or such time as the Declarant opts to hand over this responsibility to the Association. Any function herein assigned to the Architectural Control Committee may be carried out by the Directors in the absence of such Committee being established.
- b. Restrictions. No construction of improvements or alteration, as described in Section 6(d) and elsewhere herein, to a Townhome Unit exterior or common wall or Common Area, shall be permitted until the plans and specifications showing the nature, kind, shape, height, materials and location of such have been submitted and approved in writing as to conformity to the provisions of this Declaration and to the quality of workmanship and materials and conformity and harmony of design with the existing Buildings, topography, and finished ground elevation, by the Architectural Control Committee. Such review shall also include exterior colors used for Buildings, which shall generally comport with or be equivalent to the color palette selection identified as Suburban Modern by Sherwin Williams. Acceptable exterior material design shall generally be of clapboard or board and batten, with trim of LP or comparable trim material. Corner boards will be the same color as siding. The Architectural Control Committee may adopt such rules, regulations, and procedures as may facilitate and further define its review obligations, and may establish other details relating to exterior color palette and trim colors. Such adopted rules and regulations shall also govern the actions of the Directors acting in lieu of an Architectural Control Committee. Architectural review of all outbuildings or storage sheds shall also be required prior to being placed or built on any Unit.
- c. Review and Approval. The Owner seeking Architectural Control Committee approval must first submit all plans and specifications and/or proposed changes as described in Section 6(d) and otherwise requested by the Architectural Control

Committee, or in its absence, to the Board of Directors. If the Architectural Control Committee fails to approve or disapprove such design and location within 30 days after all of said plans and specifications have been submitted and received by it for consideration, such approval will be deemed given. All plans and specifications which must be submitted in writing for approval hereunder shall be submitted to the Architectural Control Committee in care of the Association at its general business address as shall be set forth herein or in the By-Laws of the Association. Members of the Architectural Control Committee shall not be entitled to any compensation for the services they perform. The Architectural Control Committee shall be under no obligation to review any such change to a Townhome Unit, without such signed written consents of each Owner of the respective Townhome Unit to be so modified. In the instance of Units with a common wall, the Owner or Owners of the Townhome Unit or Units adjacent to the Unit proposing the alteration, shall be notified of the request by the Architectural Control Committee, and given no less than 10 days notice and opportunity to comment before the request is considered or approved (making the approval period in such instance 40 days following submittal). This review process shall include and anticipate the possibility of an Owner making modification to an exterior feature wholly contained within that Owner's Townhome Unit. Cosmetic or other finish features and changes wholly within a Unit's structure (such as painting, cabinet changes, countertops, etc.) shall not require such review and approval.

8. THE ASSOCIATION

- a. General Duties and Responsibilities. Declarant has caused or shall cause the Association to be incorporated as a Montana non-profit corporation and designated the Association to carry out its responsibilities as specified herein. Any purchaser of a Townhome Unit by their acceptance of a deed thereto, shall be deemed to have ratified and approved such designation and management, and consented to membership. The Association shall perform the duties required of it hereunder. The Association shall have the following duties, rights and powers:
 - i. To collect monthly or periodic assessments, equitably prorated as provided by this Declaration, from the Owners and to collect delinquent assessments by suit or otherwise and to collect such other assessments as are herein authorized.
 - ii. From the funds collected, to provide and pay for the maintenance, management, insurance, taxes and other such expenses as are enumerated in this Declaration.

- iii. To lease, acquire and sell real or personal property in pursuit of the Association's obligations and duties.
- iv. To enter into and upon the Townhome Units when necessary with as little inconvenience as possible to the occupants concerned in connection with the duties outlined in these Declarations.
- v. To enjoin or seek damages from the Owners for violations of this Declaration, the Articles of Incorporation of the Association, the By-Laws or the rules adopted by the Association pursuant to this Declaration.
- vi. To employ or contract office staff, cleaning and maintenance staff, security, workmen and others; to contract for services to be performed, including those of the manager, if deemed desirable; to purchase supplies and equipment; to enter into contracts; and generally to have the powers of a property manager in connection with the matters herein set forth, except that the Association may not encumber or dispose of the fee title of any Owner except to satisfy a lien, award or judgment against such Owner for violation of this Declaration.
- vii. The Association shall not enter into any contract or management agreement for the furnishing of services (other than utility services), or for materials or supplies, the term of which contract exceeds one year; and further provided that any contract or management agreement entered into by the Association shall be terminable by the Association for cause upon 30 days written notice and without cause upon 90 days written notice (again excluding those for utilities).
- viii. To protect and defend the Real Property from loss or damage by suit or otherwise.
- ix. To employ counsel, attorneys, auditors or accountants in connection with the legal or accounting matters of the Association in connection with the audit of its books and records, and, upon proper request, have prepared an audited financial statement.
- x. To deposit the funds of the Association which are not necessary for immediate disbursement into an account of a national or state bank earning if possible a standard rate of interest and insured by the Federal Deposit Insurance Corporation.

- xii. To file legal protests, formal or informal, with authorities against granting by such authorities of any zoning ordinance or variance as to any property within a reasonable proximity of the Real Property which might affect the value of any Owner's interest in the Real Property.
 - xiii. To establish and maintain reasonable rules and regulations regarding the use of the Common Areas by the Owners, lessees, invitees or guests.
 - xiv. To pay all real and personal property taxes and assessments which the Association is required to pay, if any, pursuant to the terms and provisions of this Declaration, the Articles of Incorporation of the Association, and its Bylaws, unless separately assessed to the Owners.
 - xv. To obtain any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations, and insurance which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law.
 - xvi. To grant such licenses, easements, and rights-of-way for sewer lines, water lines, underground conduits, storm drains, and other public utility purposes as may be necessary and appropriate for the orderly maintenance, preservation, and enjoyment of common utilities or for the preservation of the health, safety, convenience, and welfare of the Owners. The right to grant such licenses, easements, and rights-of-way is hereby expressly reserved to the Declarant, until Transition, and then to the Association. The conveyance or dedication of any street, boulevard, alleyway, or right of way is exclusively reserved to the Declarant until Transition Date.
 - xvii. To do such other acts as reasonably necessary to carry out the functions of a townhome owners association.
- b. Board of Directors. The affairs of the Association shall be managed by its Board of Directors. Following the initial Board, the Board of Directors shall consist of 3 individuals, all of whom shall be an owner of a Townhome Unit or the designated representative of an owner, and said board shall be elected at each annual meeting by the Members of the Association as provided in the By-Laws. Board Member terms shall be 3 years, with each position staggered so that one Board Member is elected each year. Of the 3 positions, one shall initially be for 1 year, one initially for 2 years, and one initially for 3 years. Until the Transition Date, or sooner at Declarant's option, the Board shall consist of any number of persons appointed to that position by the Declarant, with such appointed persons to serve an individual term of not more than 1 year without being re-appointed.

- c. Membership. Every person or entity who is an Owner of any Townhome Unit, including buyers under a contract for deed, shall be a Member of the Association. The foregoing is intended to exclude those who hold an interest merely as security for performance of an obligation. Membership is appurtenant to and may not be separated from ownership of the Townhome Unit, except as may otherwise be provided for at law. Ownership of a Townhome Unit shall be the sole qualification for Membership. The Association if it acquires an interest in a Townhome Unit which would otherwise qualify it for Membership, shall not be considered a Member either for voting or assessment purposes.
- d. Voting Rights. Members of the Association shall be entitled to 1 vote for each Townhome Unit in which they hold an ownership interest which qualifies for Membership. Until the Transition Date, or until such time as it may opt out of this provision, the Declarant shall be entitled to 3 votes for each Townhome Unit in which it holds an interest which qualifies for Membership. When more than one person or entity owns an interest in any Townhome Unit which qualifies for Membership, the vote of such Townhome Unit shall be exercised as such persons or entities determine, but in no event may there be more than 1 vote per Townhome Unit, except as previously stated for Declarant. In the event multiple owners of a Unit cannot agree on the exercise of their vote, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority of such multiple Owners. If only one of the multiple Owners of a Unit is present at the meeting of the Association, that Owner is entitled to cast any and all votes allocated to that Unit. There is majority agreement if any one of the multiple Owners casts the vote allocated to that Unit without protest being made promptly to the person presiding by any of the other Owners of the Unit. In the case of a protest of the vote cast by one of the multiple Owners, and absent a majority agreement, the vote or votes cast shall be disregarded and the multiple Owners shall lose their right to vote on the matter in question.
- e. Consent to Membership. Acceptance of a deed, notice of purchaser's interest or other documentation evidencing an ownership interest in a Townhome Unit shall be deemed to act as consent to Membership in the Association by the acquiring Owner. The recording of a deed or other document evidencing an ownership interest shall be prima facie evidence of acceptance of that document by the receiver of the interest transferred.
- f. Indemnification. The manager, employees, directors and officers of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon them in connection with any

proceeding to which they may become a party or in which they may become involved by reason of having acted as such upon behalf of the Association, provided that this indemnification shall not apply if said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided further that in the event of a settlement, the indemnification herein shall apply only when the Association approves such settlement and reimbursement as being in the best interests of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled.

- g. Limitation Upon Liability. Notwithstanding the duty of the Association to maintain and repair parts of the Real Property, the Association shall not be liable for injury or damage other than the normal costs of the maintenance and repair caused by any latent condition of the Real Property, or by the conduct of the Owners or other persons, or by casualties for which insurance pursuant to these Declarations is not required, or for which insurance is not provided by the Association.

9. ASSESSMENTS

- a. Assessments. Each Owner, by acceptance of a deed, agrees to pay the Association general, specific and special assessments to be fixed, established and collected from time to time as herein provided. Such assessments, together with interest and the cost of collection in the event of delinquency as allowed in this Article, also shall be the personal obligation of the respective Owner at the time when the assessment was made.
- b. Purpose of Assessments. The assessments levied by the Association shall be based upon and used exclusively for cost and expense of the management, maintenance, repair, and replacement of common elements, and for the performance of all other duties and obligations incurred by the Association pursuant to this Declaration, and such expenses as the Association, in its opinion, shall determine to be necessary and desirable, including the establishment and maintenance of a cash reserve.
- c. General Assessments. The assessments levied against the Townhome Units shall be prorated and charged to each Townhome Unit in the percentages as set forth in Exhibit A, and may include snow removal for the alleyways and sidewalks.
- d. Specific Assessments. Throughout this Declaration certain costs and expenses incurred by the Association may be attributed to one or more, but not all Owners, and such specific assessments shall be specifically assessed against the Owner and Townhome Unit incurring such cost and expense. As example, if a roof only over a particular common-wall Unit needed repair or replacement it would be the

responsibility of that Unit owner to pay for such work through a specific assessment, even though such work may be contracted for by the Association as provided for herein; provided that routine maintenance should, whenever possible, be collectively carried out for all common wall Units to lower costs to members; e.g. per the example above, if all roofing for the common wall Units was at or close to its useful life end, all Units should have their roofing replaced.

- e. Special Assessments. In addition to the assessments authorized above, the Association may levy special assessments for the purpose of defraying the costs of any construction, unexpected structural repairs or maintenance, or replacement or capital improvements to any common element, including necessary utilities and fixtures related thereto. If any special assessment exceeds \$500.00 per Townhome Unit, per year, the same must have the consent of 3/4 of all Owners voting, as provided by the By-Laws in person or by proxy at a meeting duly called for such purpose or at the annual meeting. Written notice shall be sent as provided by the By-Laws.
- f. Obligation Created. The assessments levied by the Association shall be the personal obligation of the Owners and all sums assessed but unpaid shall constitute a lien against the Townhome Unit on which they are assessed, and any rental income it may earn and may be collected by the Association in the manner provided in the Declaration for the collection of Assessments.
- g. Initial Capital Contribution. The Association or the Declarant shall determine when to commence to levy and collect assessments from each Owner. Assessments shall be only of completed or constructed buildings on a Unit. If such assessments have not been initiated, then upon the sale of the 20th Unit (or Transition Date, if sooner), Declarant will establish a working capital fund equal to 1 month (estimated) regular assessment for all completed or constructed units, for the operation of the Association.
- h. Non-Payment of Assessments.
 - i. Assessments and fees shall be due and payable on such date and shall become delinquent unless paid on the dates as the Association may establish by rule. All unpaid assessments and fees shall be subject to a late charge for non-payment as may be determined from time to time by the Association. If such fees or assessments are not paid within thirty days after the due date, they shall bear interest from the date of the delinquency at the rate of ten percent per annum. Failure to make payment within thirty days of the due date thereof shall also cause the full amount of such Owner's estimated annual

assessment for the remainder of that year to become due and owing at once, at the option of the Association (presuming monthly assessments and not annual assessments). In the event it shall become necessary for the Association to collect any delinquent assessments or fees, whether by foreclosure of a lien hereinafter created or otherwise, the delinquent Owner shall pay in addition to the assessment and late charge and interest herein provided, all costs of collection, including actual attorney's fee and costs incurred by the Association in enforcing payment.

- ii. The Association is hereby granted a lien against the Owner's Townhome Unit for any payment or payments which the Owner fails to make as required by this Declaration; provided, however, that (a) such lien shall arise 30 days following the date a payment was due and shall be effective only upon recordation of a notice thereof in the office of the Clerk and Recorder of Missoula County, Montana, and each Owner, by accepting a deed to his Townhome Unit, designates any one of the officers of the Association or its duly appointed manager as agent with full irrevocable power and right to record a notice of said lien in favor of the Association; (b) a lien accruing hereunder shall be foreclosed in the same manner as provided by the laws of the State of Montana for foreclosure construction liens as contained in Montana Title 71, chapter 3, part 5, as now exists or may be hereinafter amended, provided the limitation date or time for such liens shall be that of mortgages; and (c) such lien shall be subject and subordinate to and shall not affect the right of a holder of any recorded first mortgage now or hereafter placed on the dwelling unit in good faith and for value. The lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Townhome Unit. In the event of a foreclosure, the Owner shall be required to pay reasonable rental to the Association for occupying the same during the period of the foreclosure, and if after the filing of a foreclosure action, the Owner's Townhome Unit is left vacant, the Association may take possession and rent said Unit or apply for appointment of a receiver for the Townhome without notice to the Owner. In addition to the lien herein granted, the Association shall have the right to bring an action at law against any Owner who fails to pay any amounts assessed against his Townhome Unit and obtain judgment for the amount of the assessments due plus costs and fees as herein provided. The Association shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage and encumber or convey the same.
- iii. In the event an Owner is in default on any obligation secured by an encumbrance on his Townhome Unit, or which if unpaid may result in a lien,

the Association at its option, may pay the amount on said obligation and file a lien against the Townhome Unit in the manner as provided for herein for unpaid assessments or fees.

- iv. Sale or transfer of any interest by an Owner shall not affect or release any lien granted the Association herein.
- v. In the case of the conveyance of a Townhome Unit pursuant to foreclosure proceedings by a first mortgage holder or by a deed in lieu of foreclosure to the same, such transfer of title shall extinguish the lien on the Townhome Unit for all unpaid assessments made by the Association becoming due before the date of transfer of title or date of first possession, whichever comes first. The amount remaining unpaid with respect to which the lien is extinguished shall be deemed to be a common expense collectible from all the Owners as such, (inclusive of any owner acquiring at foreclosure or deed in lieu) pursuant to Montana statute, without prejudice to the right of the Association to recover such amount personally from the transferor Owner.

10. MAINTENANCE

- a. By Owner. Every Owner of a Townhome Unit shall be responsible for the following:
 - i. All cleaning, maintenance, upkeep and repair to the interior of each dwelling and garage, and including cleaning and upkeep of any decks and patios associated with each Townhome Unit, and the maintenance and upkeep of any fencing around a Unit (which maintenance and upkeep may by necessity be a shared expense with an adjacent Townhome Unit sharing such fence), and the routine maintenance and cleaning of the exterior of that Owner's Unit;
 - ii. All damages to the Owner's Townhome Unit, other Townhome Units, and any common element or utility, resulting from such Owner's intentional or negligent acts or omissions;
 - iii. All taxes and assessments on his Townhome Unit exclusive of shared utilities, either public or private, and all utility fees or assessments such as electricity, gas, cable tv, and water associated with an individual Unit;
 - iv. The cost of repair and replacement of doors, windows and glass in the Townhome Units, so as to protect the buildings in general, whether needed as a result of breakage or otherwise;

- v. The cost of repair and periodic maintenance (including painting/staining) of limited common area features (such as garages), if any, associated with each unit;
- vi. To effect the regular cleaning, maintenance, repair, replacement, and painting/staining of the exteriors of the Townhomes. Such exterior cleaning, maintenance, repair and replacement shall include the maintenance of the siding, trim, windows, roof, and exterior lighting, so as to present an attractive, well kept appearance of the Townhome building exteriors, including but not necessarily limited to regular painting, staining, and replacement of broken glass or fixtures. Units with common walls shall all maintain the same exterior color scheme, except as provided for herein;
- vii. To effect regular maintenance, repair and replacement of the landscaping and lawns located in the yard areas of each Townhome. Such maintenance, repair and replacement shall include watering, fertilizing, weeding, mowing, trimming of the lawn and all trees, shrubs, and plants so as to present an attractive, well kept appearance of the yard areas. All such landscaping adjacent to the structures shall have and continue a positive grade directing surface water away from the structure. Any yard decorations and ornaments that exceeds five feet in height shall require the approval of the Architectural Control Committee as to the compatibility with the well kept appearance of the Real Property intended by the Declarant; and
- viii. To effect regular maintenance, repair and replacement of the sidewalks, and boulevards and landscaping located on or immediately in front of each Townhome Unit, even if within the public roadway or Common Area, and inclusive of maintenance of boulevard trees. Such sidewalk and boulevard maintenance, repair and replacement shall include cleaning and regular snow removal (unless the Association opts to provide such sidewalk snow removal), so as to present an attractive, well kept appearance of the sidewalks and alleyways. Each Owner is further responsible for the maintenance, repair and replacement of the structural components of the decks, patios, and garages associated with each Townhome, and keeping the same in a clean and tidy condition and for any snow removal associated with such decks, patios, and garages. Snow removal may not be performed in a manner that blocks or interferes with the use of the alleyways, or access to an adjacent garage.

- b. By Association. The Association shall be responsible for the following:

- i. Arrange to be furnished to the each of the Townhome Units, water, sewer, electric, gas, telephone and all other necessary utility services, PROVIDED that individually metered or billed services shall be the financial responsibility of individual Unit Owners;
- ii. Maintain and replace any fencing not otherwise required to be maintained by Owners as provided for above, and conduct such other maintenance as may be authorized herein. Maintain and repair and replace any stormwater facility or detention area established on the Property (provided, stormwater facilities located within public rights-of-way may be the responsibility of the municipality;
- iii. To effect regular maintenance, repair and replacement of the sidewalks, alleyways, landscaping, and entry statements located on any Common Area, inclusive of grass and trees established in Common Areas, and Common Area hardscapes. The Association, at its own option, may elect to provide repair, replacement, and maintenance of sidewalks and landscaping located in public rights-of-way. Such Common Area sidewalk, alleyway, and landscaping maintenance, repair, and replacement shall include cleaning and regular snow removal, so as to present an attractive, well kept appearance of the sidewalks and alleyways. The Association may also, at its option, elect to provide snow removal for all sidewalks, although such responsibility may be assigned to Owners pursuant to Section 10.a.vii.
- iv. Keep the Real Property safe, attractive and desirable;
- v. Make necessary or desirable alterations, improvements and upgrades to the common elements;
- vi. Repair, replace, and maintain the exterior elements of duplex, triplex, and fourplex Units, and garages located on Common Area, and the parking spaces for the benefit of Units 19, 20, 21, and 22. The Association shall specifically assess the Units that benefit from such maintenance activities, and have the right to use such features and limited common elements located on Common Areas; and
- vii. Notwithstanding the above, the Owners, particularly Owners sharing a common wall or fence with another Unit, shall make best efforts to cooperate with one another in the maintenance, repair, and replacement of common or shared elements and when possible effect such work without recourse to having the Association assess for and conduct such work. In avoiding

invoking the Association for such routine maintenance and repair, all such maintenance, repair and replacement shall be done upon the prior written consent of the adjacent Owner or Owners (or in the case of Common Area garages, the adjacent holder or holder of a limited common element right), which consent shall not be unreasonably withheld. If an Owner refuses to consent to such maintenance, repair and/or replacement, which is based upon the recommendation of a professional home inspector, who is a member of the American Society of Home Inspectors or such other nationally recognized accreditation body, and licensed in Montana, then such Owner's refusal shall be deemed unreasonably withheld. In the event such maintenance, repair or replacement is necessary to protect person or property from immediate danger, and an Owner is not immediately available to solicit such consent, such maintenance, repair or replacement may proceed without such Owner's consent or without recourse to Association involvement, but only to the extent needed to remedy the immediate danger presented. The Owners shall share the expense of such maintenance, repairs and replacement in proportion of the extent such maintenance, repairs and replacement affect their respective Units. The goal of this provision is to streamline maintenance and repairs as may be called for on the part of the Association, and avoid the necessity of the Association resorting to special or specific assessments.

- c. Non-Waiver. Nothing herein shall be construed as a waiver of any right by the Association to recover for any damage or expenses incurred as the result of the willful or negligent action or omission of an Owner or any person.
- d. Duty to Inspect and Notify of Defects. Each Owner shall have the duty to make reasonable inspections of his Townhome Unit from time to time, to determine if said Townhome Unit contains any obvious defects including improper drainage for which the Owner or Association may be liable to repair. In the event of discovery of such a defect, the Owner also shall have the duty to give written notice of the defect to the Association immediately, if such defect is the maintenance responsibility of the Association.
- e. Duty to Repair. In the event a defect may affect the Townhome Unit of any other Owner or any common element, the party responsible under this Declaration shall repair the same in a workmanlike fashion within a reasonable time following its discovery. Upon the failure of such Owner to so repair defects that are such Owner's responsibility, the Association shall have the duty to enter into and upon the Townhome Unit and effect such repair, the cost of which shall be chargeable to such Owner by assessment or otherwise.

- f. Willful or Negligent Acts. In the event that any maintenance, repair or other work is required because of the intentional or negligent action or lack of action of any Owner, his family, guests, tenants, invites, lessees or licensees and such maintenance, repair or other work is not covered or paid for by insurance for the benefit of that Owner or the Association, the Association may perform such work or cause the same to be performed at such Owner's cost and expense and may make an assessment to recover payment thereof against such Owner, provided, except in the event of emergency, such Owner shall be given ten days' prior notice within which to perform the required maintenance, repair or work. Should weather or other circumstances outside the control of the Owner preclude completion of work within the 10 day period, the Owner may instead give written notice to the Association of his intent to complete the work or repair, the reason for the delay, and an estimated time of completion.

11. **DAMAGE AND DESTRUCTION OF UNIT**

- a. Duty to Rebuild. If all or any portion of the improvements on any Townhome Unit or limited common element associated with a Unit is damaged or destroyed by fire or other casualty, it shall be the duty of that Owner, to rebuild, repair, or reconstruct such improvements on said Townhome Unit in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty, except as may be provided in Section 12; in any event a decision to restore or not shall be made within sixty days of the casualty.
- b. Time Limitation. The Owner shall be obligated to proceed with all due diligence hereunder and commence reconstruction within three months after the damage occurs and complete reconstruction within six months after damage occurs, unless prevented by causes beyond his reasonable control.

12. **DAMAGE OR CONDEMNATION OF COMMON ELEMENT OR UNIT**

- a. Damage to Common Element. Damage to or destruction of all or any portion of a common element or common utility shall be handled in the following manner:
- i. In the event of damage or destruction to a common element, and if the insurance proceeds of the Association are sufficient to effect total restoration, then the Association shall cause such common element to be repaired and reconstructed substantially as it previously existed.
- ii. If the insurance proceeds are within \$5,000.00 or less of being sufficient to effect total restoration to the common element, then the Association shall

cause such common element to be repaired and reconstructed substantially as it previously existed, and in the instance of limited common elements the difference between the insurance proceeds and the actual cost, if unpaid by the insurance for the affected Unit Owners, may be paid by the Association and levied as a special assessment against such affected Unit Owners.

- iii. If the insurance proceeds available to the Association or a Unit Owner in the case of a limited common element are insufficient by more than \$5,000.00 to effect total restoration to the common element or limited common element, then by written consent or vote of a majority of the Owners, they shall determine whether
 - (1) To rebuild and restore the common element to substantially the same condition as it existed prior to damage, and to raise the necessary funds over the insurance proceeds by levying a special assessment against each of the Owners (in the case of a limited common element) benefitting from such repair, on the basis of the ownership interest, as set forth in Section 9(e);
 - (2) To rebuild and restore the common element in a way which utilizes all available proceeds and an additional amount not to exceed Five Thousand Dollars (\$5,000.00) and which is less expensive than rebuilding and restoring the common element to substantially the same manner as it existed prior to being damaged; or
 - (3) To not rebuild and to distribute the available insurance proceeds equally to the Owners and mortgagees of the Townhome Units as their interests may appear.
- iv. A condemnation award affecting all or a part of the Townhomes which is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners shall be distributed among the affected Owners and their respective mortgagees according to the relative values of the Townhome Units, or interest therein, affected by the condemnation as determined by independent appraisal in accordance with a procedure set forth herein. In any condemnation proceeding, the Association shall represent the Unit Owners in all proceedings, negotiations, and settlements relative to the common elements. Any awards or payments for common elements shall be payable to the Association, in Trust, and distributed as identified herein.

- v. In the event of partial or total destruction of a Townhome, and an election by the Owner (and an adjacent/shared common wall Owner) not to rebuild, insurance proceeds received by the Association on account of the destruction of any common element shall be distributed by the Association among Owners and their respective mortgagees proportionately according to the respective fair market value of the Townhome Units at the time of the destruction as determined by an independent appraisal in accordance with a procedure set forth herein.
- vi. In the event of a condemnation award distribution, or a distribution of insurance proceeds as specified in Section 12(a) (iv) and (v), the Association shall obtain the services of a real estate appraiser holding an M.A.I. designation from the American Institute of Real Estate Appraisers who shall appraise and determine the value of each Townhome Unit affected. A determination by said appraiser shall be conclusive and the Association shall make all distributions based on such appraisal.

13. COVENANT AGAINST PARTITION

Covenant Against Partition. By acceptance of his deed, each Owner shall be deemed to covenant for himself and for his heirs, representatives, successors and assigns, that he will not institute legal proceedings to effect judicial partition of his interest in the Real Property from the remainder of the Development, the adjacent Unit or Units, or from Common Areas, unless the Real Property has subsequent to this Declaration been removed from under the Montana Unit Ownership Act. In such event of removal from the Act, and absent the institution of a partition action, all owners shall be tenants in common, owning their individual Townhome Units as defined herein, with ownership interests in common elements as identified in Exhibit A, and together with specific limited common elements if such elements are exclusive to a particular Unit. Nothing herein shall prevent co-owners of a particular Townhome Unit or Units from availing themselves of their rights under partition as between themselves, so long as said action does not result in the creation of an additional Unit, and does not result in the severance of a Townhome Unit from this Townhome project.

14. INSURANCE

- a. The individual owners will maintain individual insurance for their units, provided such insurance is of a townhome owner type policy for all Units that have a common wall, or other homeowners hazard insurance policy for all freestanding Units, that insures the entirety of the structure up to and including any common, shared walls and roof (inclusive of shared wall garages located on Common Area or Limited Common Area), and the policies of each Owner is of an amount sufficient

to provide for the full replacement cost of the Unit's improvements, inclusive of shared wall garages located on Common Area. Such insurance shall name the other adjoining/common wall Unit Owner(s) for Units having a common wall (or a common wall garage located on Common Area), and the Association as loss payees, to the extent that Owner and the Association have an interest in shared common elements, and that Owner and Association have a right to know of the existence of required insurance coverage. As such an additional loss payee, the other Owner and Association's interest shall be subordinate to any lender with a security interest in the property. Such insurance coverage should have a waiver of subrogation rights by the carrier as to any lender holding a first position lien on such Owner's Unit. This provision for insurance, and the type of insurance coverage called for, may not be changed following Transition without the consent of 75% of the Owners. Each Owner shall provide to the other Owner sharing a common wall, and the Association, proof of such insurance. Owners of freestanding Buildings or Units shall, upon request of the Association, immediately provide proof of insurance. Should any Owner fail to maintain the insurance as called for herein, it shall be the right of the Association, on its own initiative or upon demand of the adjacent common wall Owner, to secure such required insurance and have the assessments to the defaulting Owner adjusted to reflect such Association-procured insurance coverage. In the event a Unit that has a common wall garage on Common Area cannot procure coverage of the limited common area garage in conjunction with its regular policy, it shall be the obligation of the Association to insure the garages located on Common Area, and specifically assess the limited common element Owners accordingly, or include such assessment in the regular assessment, as provided for below.

- b. The Association may procure the following type of insurance or insurance coverage:
 - i. A policy or policies of liability insurance covering the Association, its board of directors, the Declarant, and all their agents and employees against any liability to the public or any Owner, his invitees and/or tenants arising from or incident to the ownership, occupation, use, maintenance and/or repair as called for herein. If obtainable a cross liability endorsement insuring each insured against liability to the other insured shall be acquired. Limits of liability on such policies shall be set by the Association on such limits and coverage shall be reviewed at least annually by the Association and increased or decreased in its discretion.
 - ii. Such hazard insurance as may be necessary to insure the full replacement value of any common element or limited common element, provided such insurance insures the entirety of the improvement or element. The expense for insuring limited common elements that are for the benefit of specific

Owners may be billed to such Owners as part of their regular assessment or specifically assessed. Insurance for limited common elements shall be maintained by the Association only if such element is not insured, or cannot be insured by the Owner benefitting from that limited common element.

- iii. To the extent necessary to comply with any applicable Workman's Compensation laws.
- iv. Such other insurance as the Association may deem desirable for the benefit of the Owners or in itself.
- v. The terms of this Article shall not be interpreted to compel the Association to acquire insurance for the Owner's personal property, nor create liability on the part of the Association should it not procure, pursuant to Section 14. (a), above, insurance on behalf of a defaulting Owner. Each Owner is responsible to acquire such insurance covering his or her own personal property and liability as such Owner deems appropriate.
- vi. There may be named by the Board of Directors, as an insured, on behalf of the Owners Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance, and to perform such other functions necessary to accomplish such purpose.
- vii. The Association, on behalf of the Treasurer or any other officer or Director who handles or is responsible for funds administered by or on behalf of the Association, shall, as may be required, provide a bond for the faithful discharge of his duties in such sum and with a surety or sureties as the Board of Directors shall determine is appropriate. The cost of any such bond shall be paid for by the Association.

15. **GENERAL PROVISIONS**

- a. Enforcement. The Association or the Owner of any Townhome Unit, including the Declarant, so long as Declarant retains ownership interest in at least 1 Unit, shall have the right to enforce by proceedings at law or in equity all of the covenants and provisions now or hereafter imposed by this Declaration and the Association's By-Laws and rules, respectively, including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated or are

attempting to violate any of said covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied, and/or to recover damages for said violation. The result of every act or omission whereby any of the covenants contained in this Declaration or the provisions of the Association's By-Laws and rules are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association, or by its successors in interest. The remedies hereby provided for breach of the covenants contained in this Declaration or the provisions of the Association's By-Laws and rules shall be deemed cumulative, and none of such remedies shall be deemed exclusive. The failure of the Association to enforce any of the covenants contained in this Declaration or the provisions of the By-Laws and rules shall not constitute a waiver of the right to enforce the same thereafter. A breach of the covenants contained in this Declaration or of the provisions of the By-Laws and rules shall not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value on any Townhome Unit or the improvements thereon; provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether or not such Owner's title was acquired by foreclosure, a trustee's sale, or otherwise. Following notice and hearing, the Association shall have the right and power to assess monetary penalties against a Member and/or suspend said Member's voting rights for the period during which any assessment against his Townhome Unit remains unpaid or for any violation of this Declaration, the Bylaws or for infraction of the rules and regulations enacted by the Association.

- b. Severability. 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 or duration of violations which may occur.
- c. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Real Property and for its maintenance. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. This Declaration is made in addition to the Covenants, Conditions and Restrictions for Hellgate Village Subdivision, and in the instance of any discrepancy between the subdivision covenants and this Declaration, the more restrictive provision will apply.
- d. Singular Includes the Plural. Whenever the context of this Declaration may so

require, the singular shall include the plural, and the masculine shall include the feminine and neuter, and vice versa.

- e. Amendments. This Declaration may be waived, abandoned, terminated, modified, altered, changed or amended only by written instrument executed by or with the consent of at least 66% of the voting rights, as expressed as percentages in the Exhibit A ownership percentages. Provided, however, Declarant reserves the right to waive, abandon, terminate, modify, alter, change or amend this Declaration up until the Transition Date, or until such earlier time as Declarant may opt out of this provision. All Owners and all mortgagees of a Townhome Unit, by acceptance of a deed, mortgage or trust indenture to any Townhome Unit, shall be deemed to consent to any such waiver, abandonment, termination, modification, alteration, change or amendment by Declarant. In addition to the necessary consent of the Owners to any modifications to this Declaration as is described above, a change in any of the following must also be approved by requesting eligible mortgage holders who represent at least one-half of the votes of Townhome Units subject to mortgages held by eligible mortgage holders (all such eligible mortgage holders in the case of abandonment of the Declaration); (a) Voting rights; (b) Redefinition of any boundaries for completed Townhome Units after conveyance by Declarant (for which only the consent of affected mortgage holders is required); (c) Expansion or contraction of the project, or the addition or withdrawal of property to or from the project, other than as set forth in this Declaration; (d) Restrictions on leasing of Townhome Units, other than as set forth in this Declaration; (e) Imposition of restrictions on an Owner's right to sell his or her Townhome Unit; (f) Restoration or repair of the project in a manner other than as provided in this Declaration. All amendments to the Declaration shall be recorded in the office of the Missoula County Clerk and Recorder, Missoula, Montana.
- f. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by registered or certified mail, it shall be deemed to have been delivered when deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Townhome Unit of such person if no address has been given to the Association. If such notice is so sent by regular mail, it shall be deemed to have been delivered when received. Such address may be changed from time to time by notice in writing to the Association.
- g. Attorney's Fees. If any Owner defaults in making a payment or assessments or in the performance or observance of any provision of this Declaration, and the Association has obtained the services of an attorney in connection therewith, the Owner

covenants and agrees to pay to the Association any costs or fees incurred, including reasonable attorney's fees, regardless of whether legal proceedings are instituted. The Owner shall also pay the cost of the suit, in addition to the aforesaid costs and fees. This provision for recovery of attorney's fees shall apply also to any proceedings in bankruptcy or other insolvency proceedings.

- h. Process. Service of process in the cases provided for in Section 70-23-901 of the Montana Code Annotated, shall be made upon Wade Hoyt, 2265 South 3rd West, Missoula, MT 59801, or following the Transition Date, upon the Registered Agent for the Association. This provision may be amended in the manner provided in Section 70-23-902 of the Montana Code Annotated.
- i. Rights and Obligations of Declarant. For each unsold or unfinished Townhome Unit owned by it, Declarant shall have all of the rights and duties afforded to any Owner under the terms of this Declaration, the By-Laws and the rules and regulations adopted by the Association, and Montana law.
- j. Notice to Holders, Guarantors, and Insurers of Mortgages or other Liens on Townhome Units. Upon written request from a holder, insurer or guarantor of a first mortgage on any Townhome Unit, the Directors of the Association shall provide said holder insurer or guarantor with timely written notice of:
 - i. Any proposed action that requires the consent of a specified percentage of eligible mortgage holders;
 - ii. Any condemnation loss or any casualty loss which affects a material portion of the project or which affects any Townhome Unit on which there is a first mortgage held, insured or guaranteed by such holder, insurer or guarantor;
 - iii. Any delinquency in the payment of assessments or charges owed by an Owner of a Townhome Unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days;
 - iv. Any lapse, cancellation or material modification of any insurance policy maintained by the Association.
 - v. Any requested books, records, and financial statements of the Association.

IN WITNESS WHEREOF, the undersigned, has set its hand and seal this ____ day of _____, 2020.

HEH, LLC

by: Wade D. Hoyt, President of Hoyt
Homes, Inc., the Manager of HEH, LLC

STATE OF MONTANA)
) ss
County of Missoula)

This instrument was acknowledged before me on the ____ day of _____, 2020,
by Wade D. Hoyt, as President of Hoyt Homes, Inc., the Manager of HEH, LLC.

(seal)

Notary Public for the State of Montana.
Residing at: _____
My commission expires: _____
Name Printed: _____

EXHIBIT A

Townhome Unit No.	Percent	Townhome Unit No.	Percent
Unit 1	2.33%	Unit 23	2.33%
Unit 2	2.33%	Unit 24	2.33%
Unit 3	2.33%	Unit 25	2.33%
Unit 4	2.33%	Unit 26	2.33%
Unit 5	2.33%	Unit 27	2.33%
Unit 6	2.33%	Unit 28	2.33%
Unit 7	2.33%	Unit 29	2.33%
Unit 8	2.33%	Unit 30	2.33%
Unit 9	2.33%	Unit 31	2.33%
Unit 10	2.33%	Unit 32	2.33%
Unit 11	2.33%	Unit 33	2.33%
Unit 12	2.33%	Unit 34	2.33%
Unit 13	2.33%	Unit 35	2.33%
Unit 14	2.33%	Unit 36	2.33%
Unit 15	2.33%	Unit 37	2.33%
Unit 16	2.33%	Unit 38	2.33%
Unit 17	2.33%	Unit 39	2.33%
Unit 18	2.33%	Unit 40	2.33%
Unit 19	2.33%	Unit 41	2.33%
Unit 20	2.33%	Unit 42	2.33%
Unit 21	2.33%	Unit 43	2.33%
Unit 22	2.33%	—	100% (rounded)

ARCHITECT/ENGINEER/ SURVEYOR'S STATEMENT

Pursuant to Montana Code Annotated §70-23-306, the undersigned states as follows:

1. I am a surveyor licensed and registered in the State of Montana.
2. I have reviewed the site plans to be recorded in conjunction with the Declaration of Townhomes for Hellgate Village East Townhomes attached as Exhibit B.
3. The site plans are an accurate copy of the plans filed with or to be filed with and approved by the Missoula City officers having jurisdiction to issue building permits and/or accurately represent the buildings as now exist on the property that is the subject of this declaration.
4. The site plans fully and accurately depict the layout, location, unit designation and dimensions of each unit. Upon completion of construction of a particular Unit unfinished at the time of this Statement and pursuant to Montana Code Annotated §70-23-306(2), a supplemental statement may be recorded.

By _____
Kirk Adkins
Professional Land Surveyor

(seal)

STATE OF MONTANA)
 :SS.
County of Missoula)

Acknowledged before me this ____ day of _____, 2020 by Kirk Adkins.

(seal)

Notary Public for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____, 20__

ARCHITECT/ENGINEER/ SURVEYOR'S STATEMENT

Pursuant to Montana Code Annotated §70-23-306, the undersigned states as follows:

1. I am an architect licensed and registered in the State of Montana.
2. I have reviewed the floor plans to be recorded in conjunction with the Declaration of Townhomes for Hellgate Village East Townhomes attached as Exhibit C.
3. The floor plans are an accurate copy of the plans filed with or to be filed with and approved by the Missoula City officers having jurisdiction to issue building permits and/or accurately represent the buildings as now exist on the property that is the subject of this declaration.
4. The floor plans fully and accurately depict the layout, location, unit designation and dimensions of each unit to be constructed on the real property. Upon completion of construction of a particular Unit unfinished at the time of this Statement and pursuant to Montana Code Annotated §70-23-306(2), a supplemental statement may be recorded.

By _____
Jenn Clary
Licensed Architect

(seal)

STATE OF MONTANA)
 :SS.
County of Missoula)

Acknowledged before me this ____ day of _____, 2020 by Jenn Clary.

(seal)

Notary Public for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____, 20__

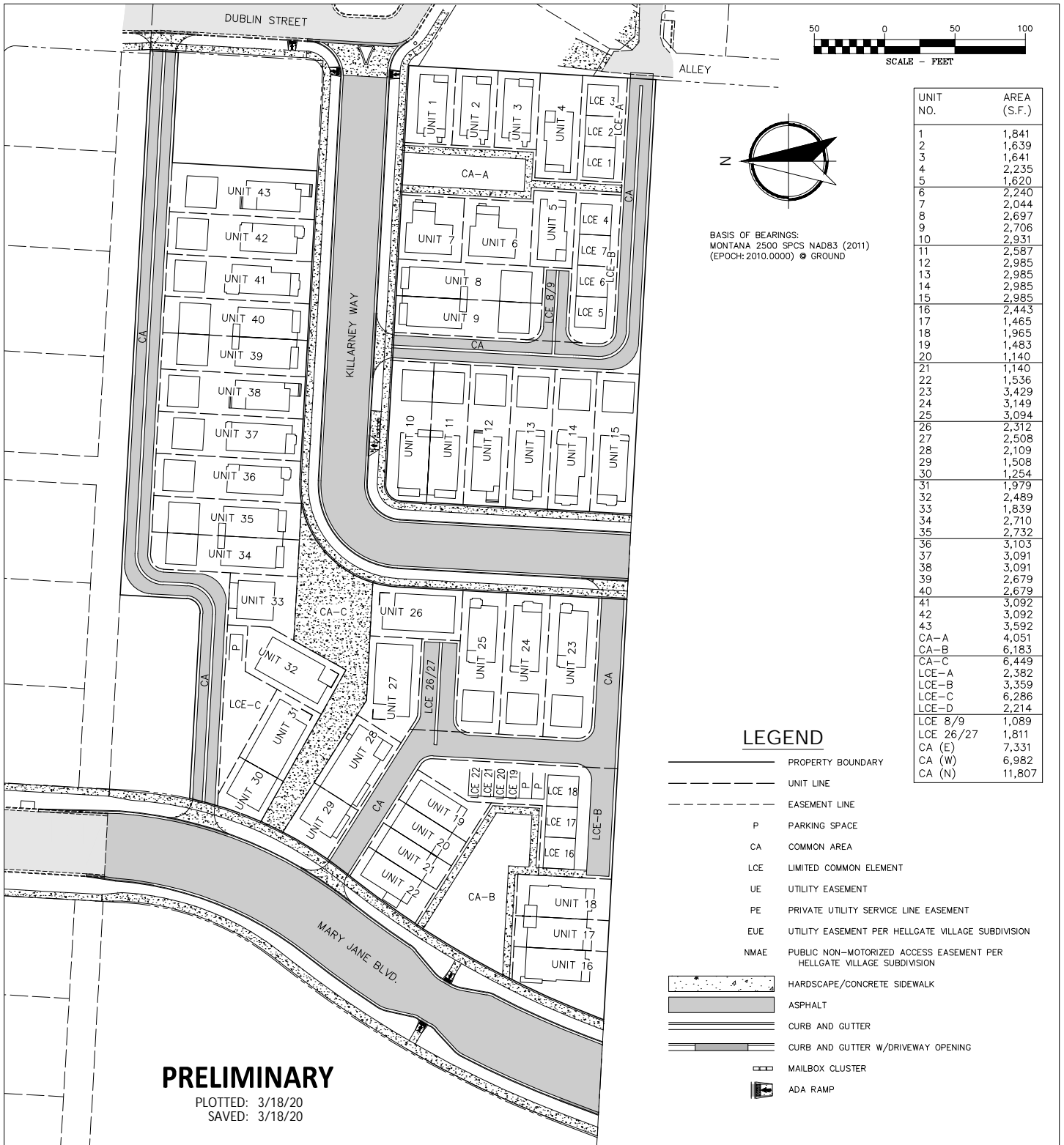


EXHIBIT "B" - OVERALL
 HELLGATE VILLAGE EAST TOWNHOMES
 (LOTS 1 AND 2, HELLGATE VILLAGE SUBDIVISION)
 LOCATED IN THE NW 1/4 OF SECTION 18,
 T. 13 N., R. 19 W., P.M., M.
 MISSOULA, MONTANA



WGM GROUP
 WWW.WGMGROUP.COM

PROJECT: 18-05-15
 FILE No: 180515_townhomes1.dwg
 FILE PATH:
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 LAYOUT: Sht1
 SURVEYED: ---
 DESIGN: ---
 DRAFT: CEG
 APPROVE: KFA
 DATE: MARCH 2020
 SHEET: 1 OF 6 SHEETS



SEE SHEET 3

PRELIMINARY

PLOTTED: 3/18/20
SAVED: 3/18/20

EXHIBIT "B" - WEST UNIT DETAIL
HELLGATE VILLAGE EAST TOWNHOMES
(LOTS 1 AND 2, HELLGATE VILLAGE SUBDIVISION)
LOCATED IN THE NW 1/4 OF SECTION 18,
T. 13 N., R. 19 W., P.M., M.
MISSOULA, MONTANA



WGM GROUP
WWW.WGMGROUP.COM

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DATE: MARCH 2020
SHEET 2 OF 6 SHEETS

SEE SHEET 2

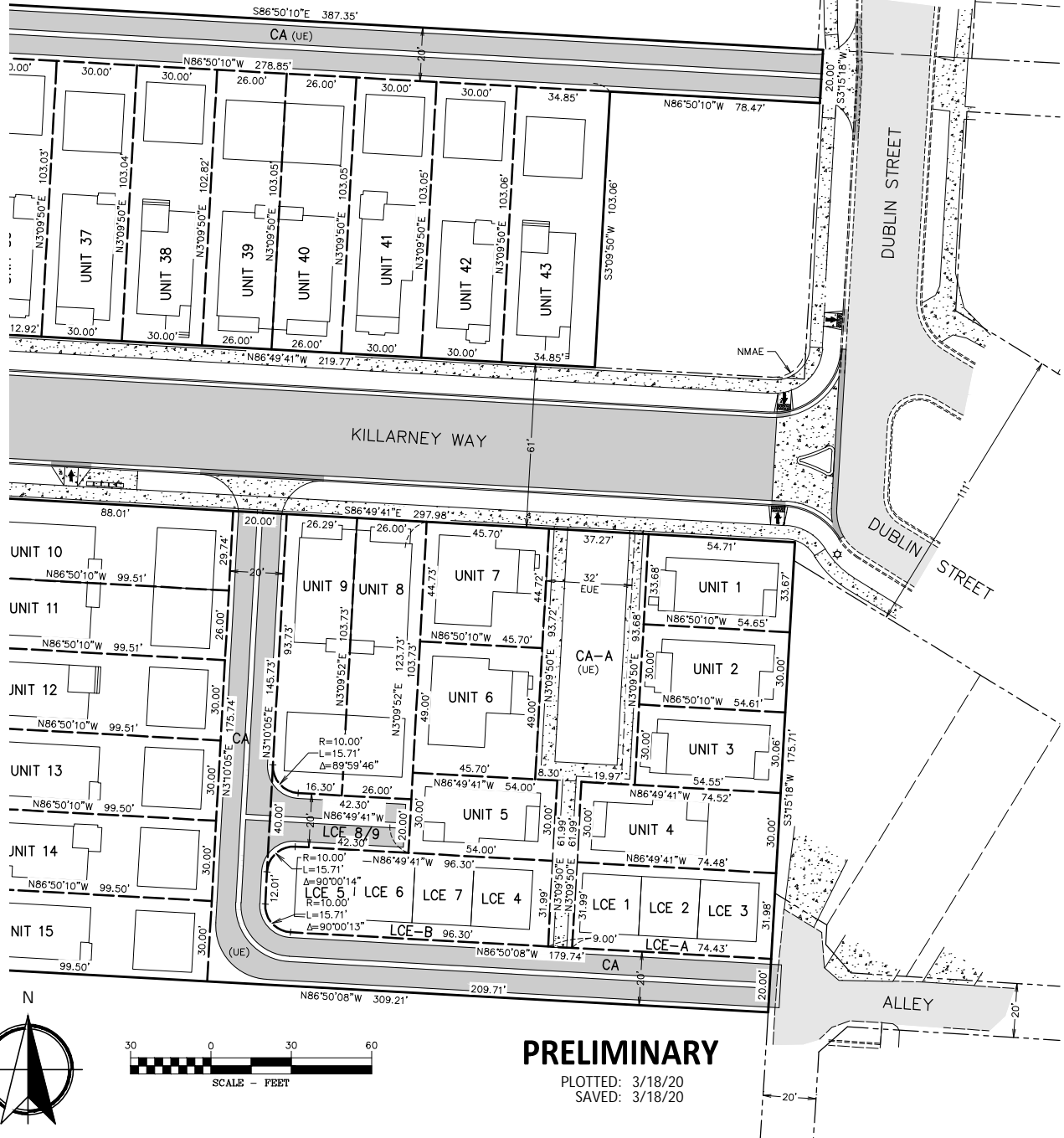
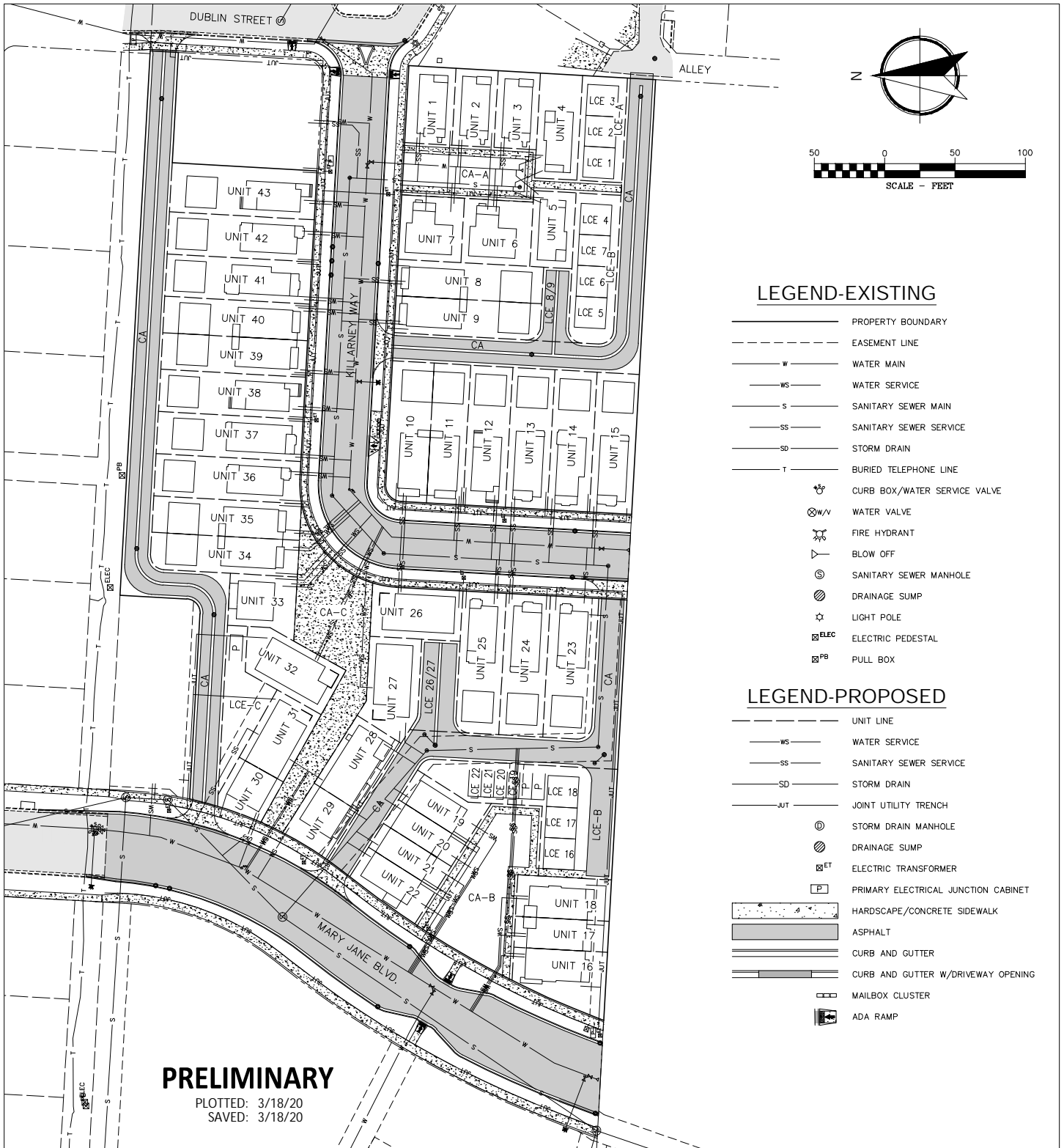


EXHIBIT "B" - EAST UNIT DETAIL
 HELLGATE VILLAGE EAST TOWNHOMES
 (LOTS 1 AND 2, HELLGATE VILLAGE SUBDIVISION)
 LOCATED IN THE NW 1/4 OF SECTION 18,
 T. 13 N., R. 19 W., P.M., M.
 MISSOULA, MONTANA



WGM GROUP
 WWW.WGMGROUP.COM

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 LAYOUT: Sh13
 SURVEYED: ---
 DESIGN: ---
 DRAFT: CEG
 APPROVE: KFA
 DATE: MARCH 2020
 SHEET: 3 OF 6 SHEETS



LEGEND-EXISTING

- PROPERTY BOUNDARY
- - - EASEMENT LINE
- W — WATER MAIN
- WS — WATER SERVICE
- S — SANITARY SEWER MAIN
- SS — SANITARY SEWER SERVICE
- SD — STORM DRAIN
- T — BURIED TELEPHONE LINE
- ⊗ Curb Box/Water Service Valve
- ⊗ W/V Water Valve
- ⊗ Fire Hydrant
- ⊗ Blow Off
- ⊗ Sanitary Sewer Manhole
- ⊗ Drainage Sump
- ⊗ Light Pole
- ⊗ ELEC Electric Pedestal
- ⊗ PB Pull Box

LEGEND-PROPOSED

- - - UNIT LINE
- WS — WATER SERVICE
- SS — SANITARY SEWER SERVICE
- SD — STORM DRAIN
- JUT — JOINT UTILITY TRENCH
- ⊗ Storm Drain Manhole
- ⊗ Drainage Sump
- ⊗ ET Electric Transformer
- ⊗ P Primary Electrical Junction Cabinet
- ▨ Hardscape/Concrete Sidewalk
- ▨ Asphalt
- ▨ Curb and Gutter
- ▨ Curb and Gutter w/Driveway Opening
- ⊗ Mailbox Cluster
- ⊗ ADA Ramp

EXHIBIT "B" – UTILITIES OVERALL
 HELLGATE VILLAGE EAST TOWNHOMES
 (LOTS 1 AND 2, HELLGATE VILLAGE SUBDIVISION)
 LOCATED IN THE NW 1/4 OF SECTION 18,
 T. 13 N., R. 19 W., P.M., M.
 MISSOULA, MONTANA



WGM GROUP
 WWW.WGMGROUP.COM

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 SURVEYED: ---
 DESIGN: ---
 DRAFT: CEG
 APPROVE: KFA
 DATE: MARCH 2020
 SHEET: 4 OF 6 SHEETS



SEE SHEET 6

PRELIMINARY

PLOTTED: 3/18/20
SAVED: 3/18/20

EXHIBIT "B" - WEST UTILITIES DETAIL
HELLGATE VILLAGE EAST TOWNHOMES
(LOTS 1 AND 2, HELLGATE VILLAGE SUBDIVISION)
LOCATED IN THE NW 1/4 OF SECTION 18,
T. 13 N., R. 19 W., P.M., M.
MISSOULA, MONTANA



WGM GROUP
WWW.WGMGROUP.COM

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APPROVE: KFA
DATE: MARCH 2020
SHEET 5 OF 6 SHEETS

SEE SHEET 5

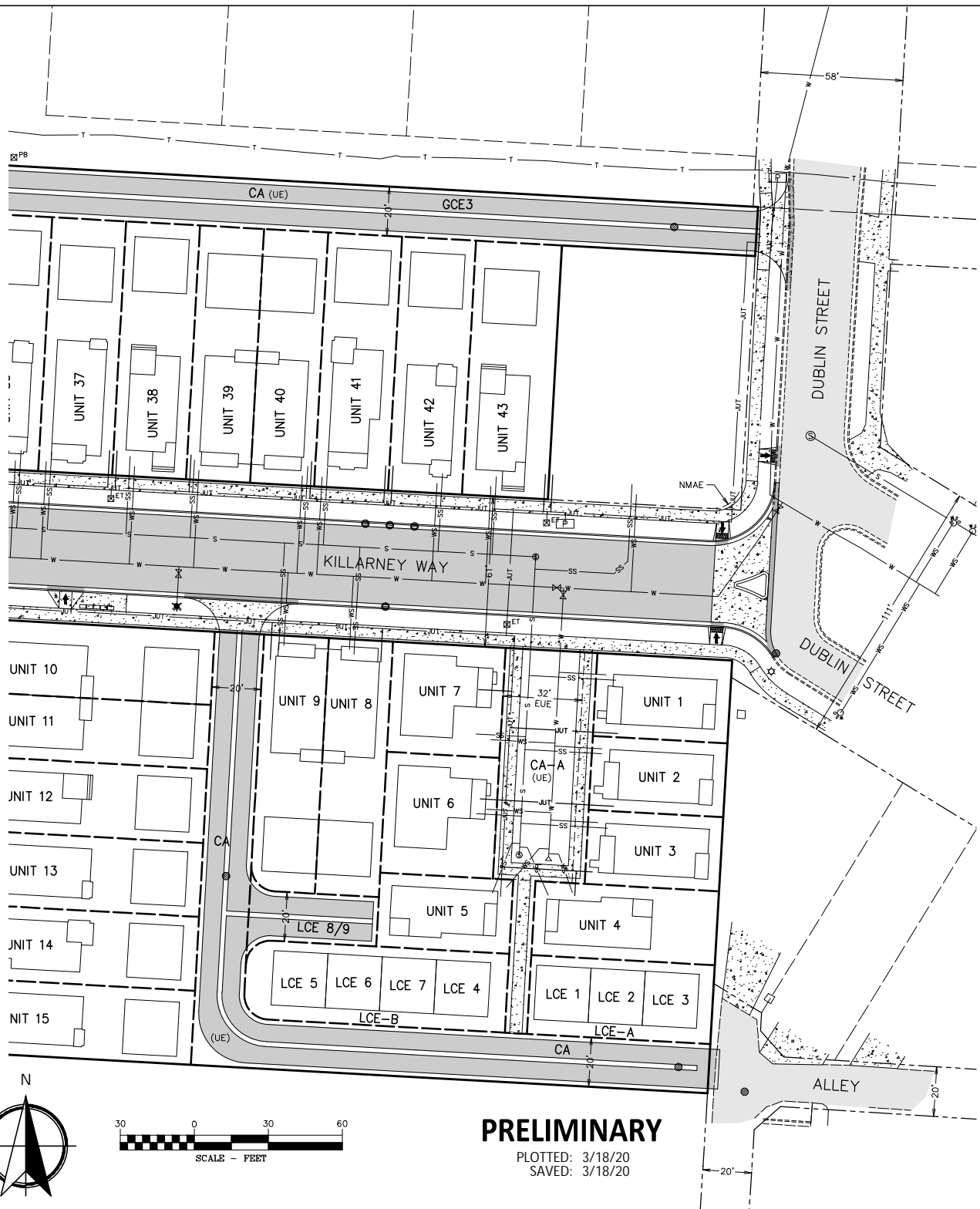


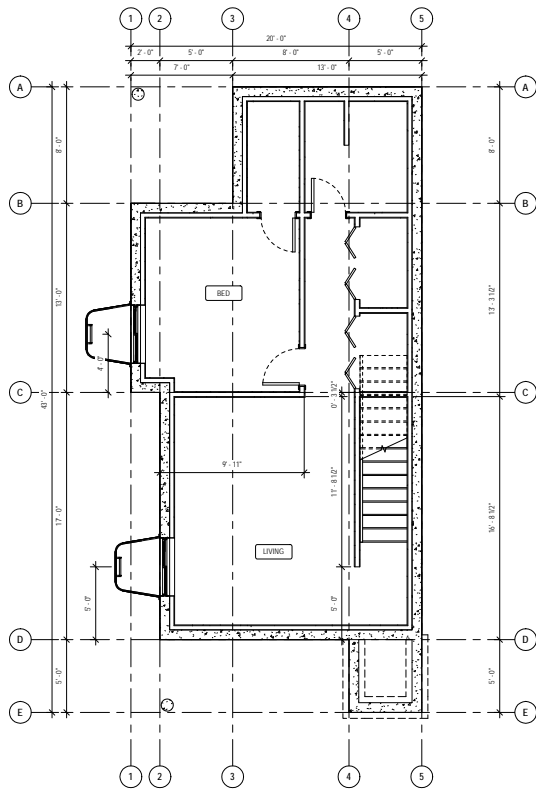
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T. 13 N., R. 19 W., P.M., M.
MISSOULA, MONTANA



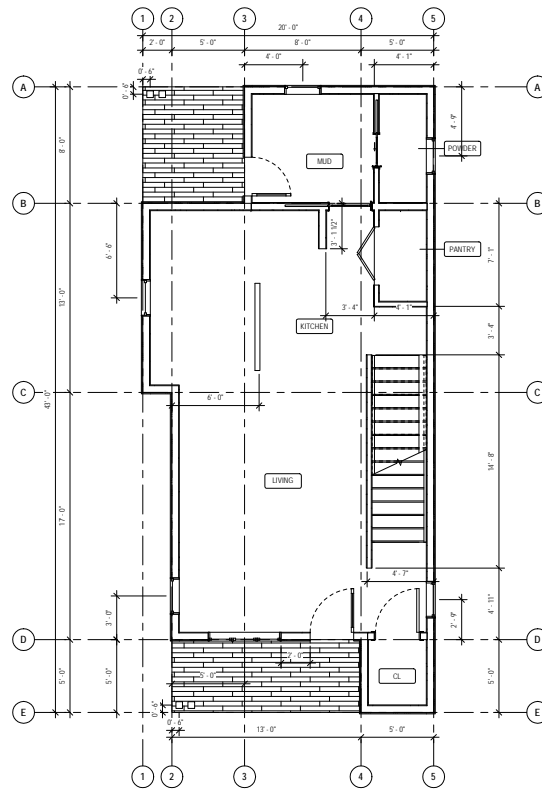
WGM GROUP
WWW.WGMGROUP.COM

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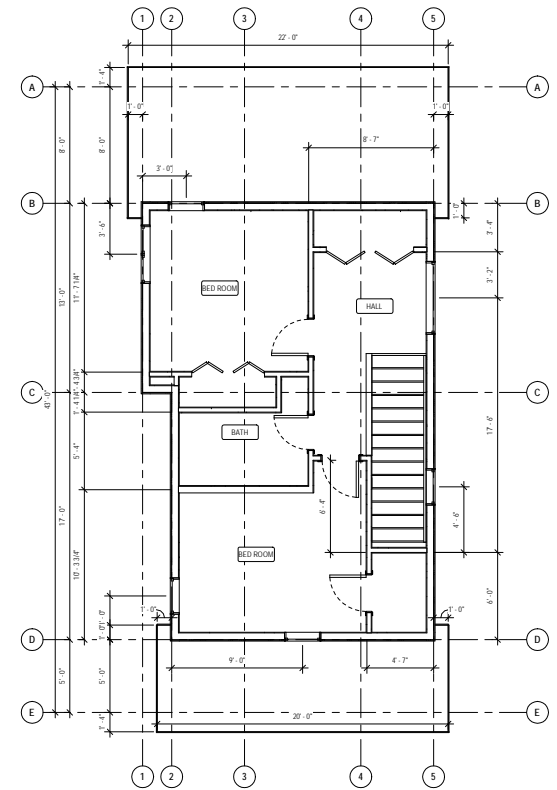
Exhibit C



① BASEMENT
A1 | NTS



② FIRST FLOOR
A1 | NTS



③ SECOND FLOOR
A1 | NTS

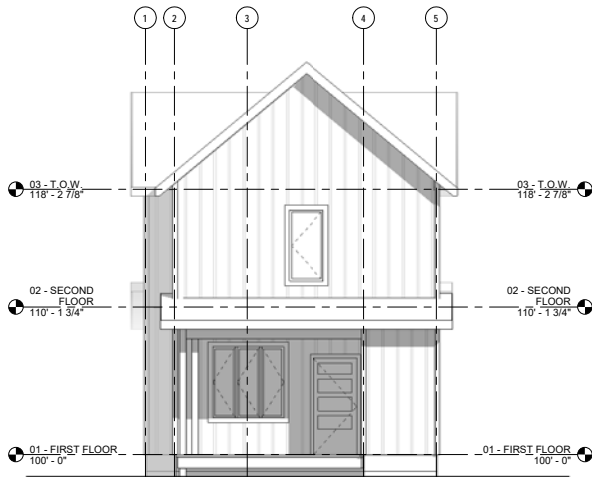


encompass

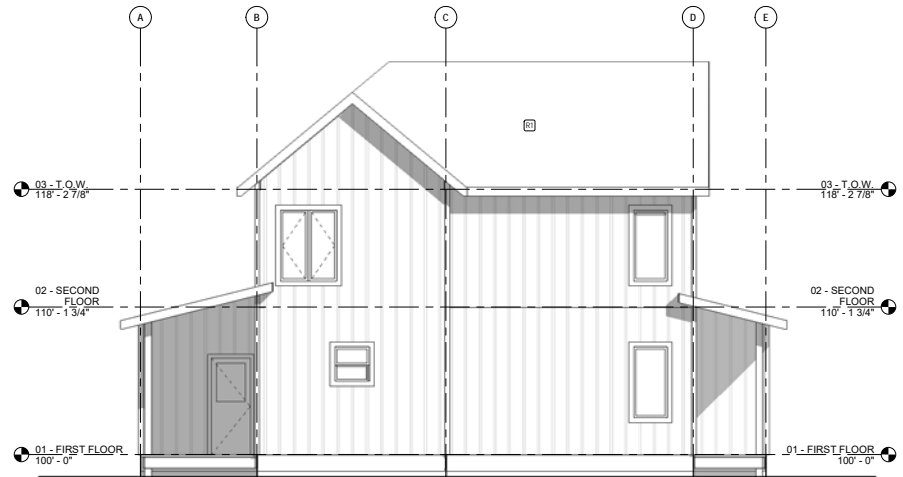
1535 Liberty Lane
Suite 110B
Missoula, Montana
59808
Phone: 406.540.4437

HELLGATE VILLAGE

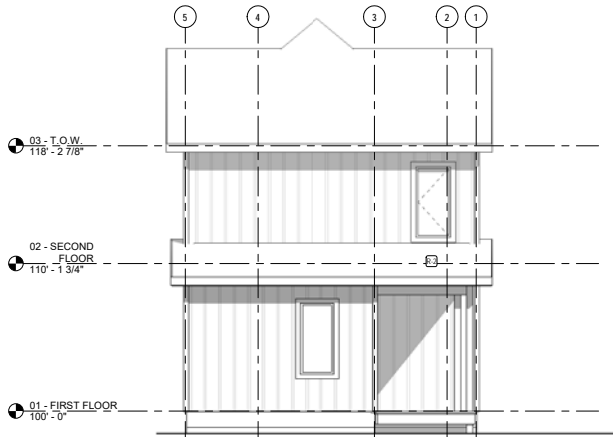
COTTAGE 1 (U4, U5)
MISSOULA MONTANA



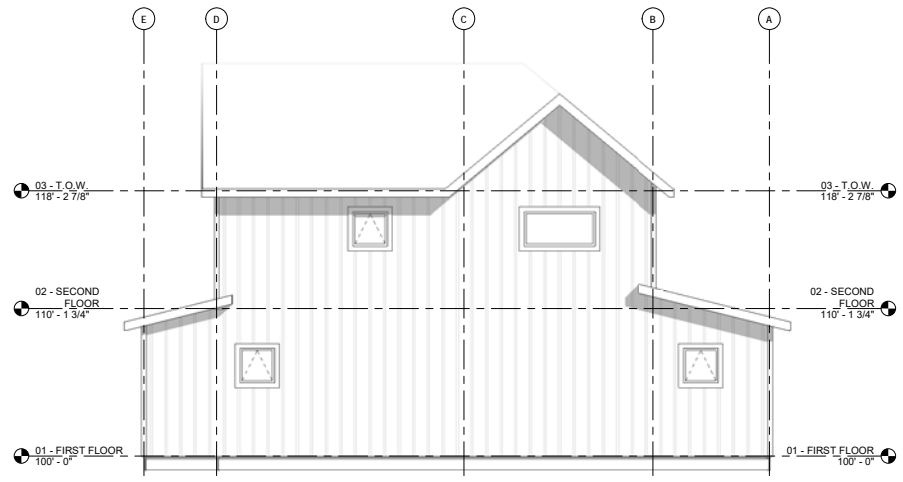
① | FRONT ELEVATION
A2 | NTS



③ | SIDE ELEVATION
A2 | NTS



② | REAR ELEVATION
A2 | NTS



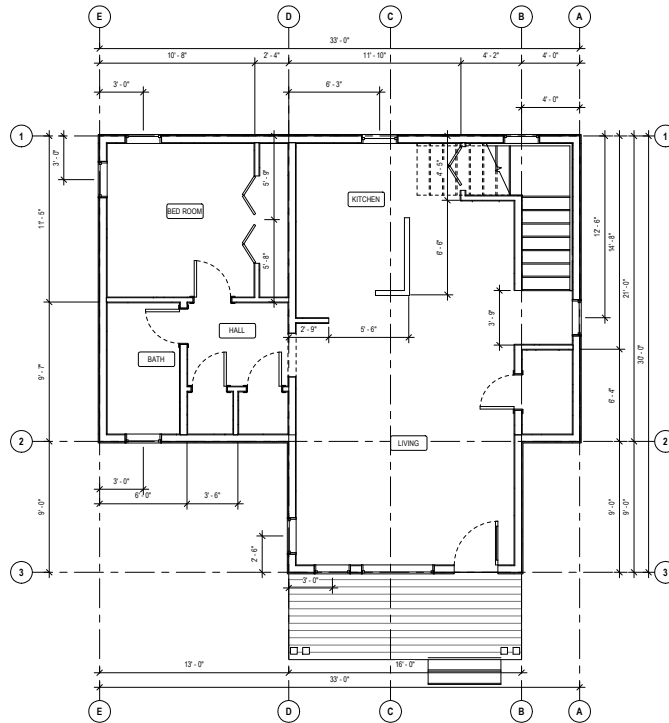
④ | SIDE ELEVATION
A2 | NTS



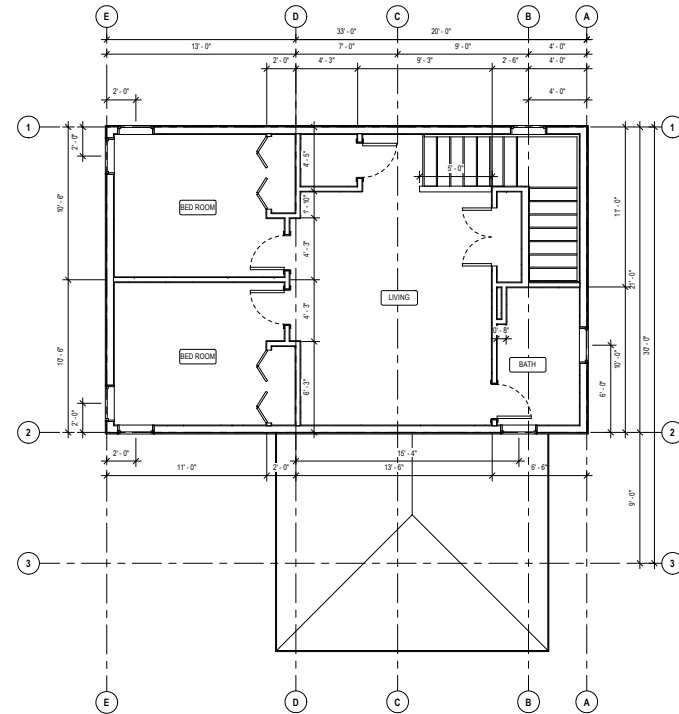
encompass
ARCHITECTURE
1535 Liberty Lane
suite 110b
Missoula, Montana
59808
Phone: 406.540.4437

HELLGATE VILLAGE

COTTAGE 1 (U4, U5)
MISSOULA MONTANA



1 | 01 - FIRST FLOOR
A1 | NTS



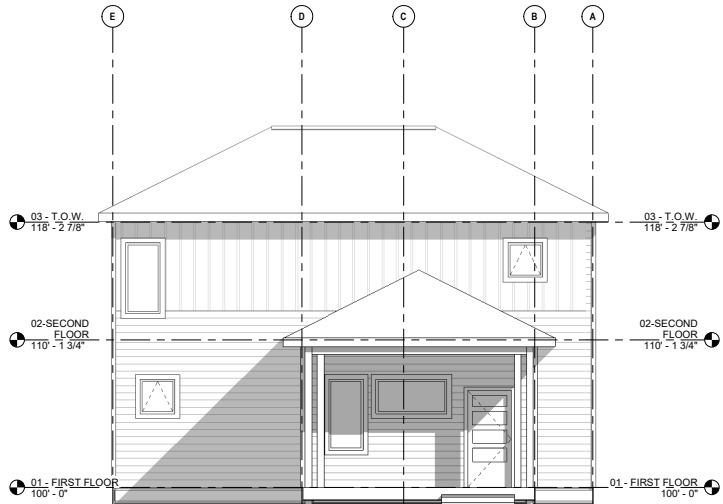
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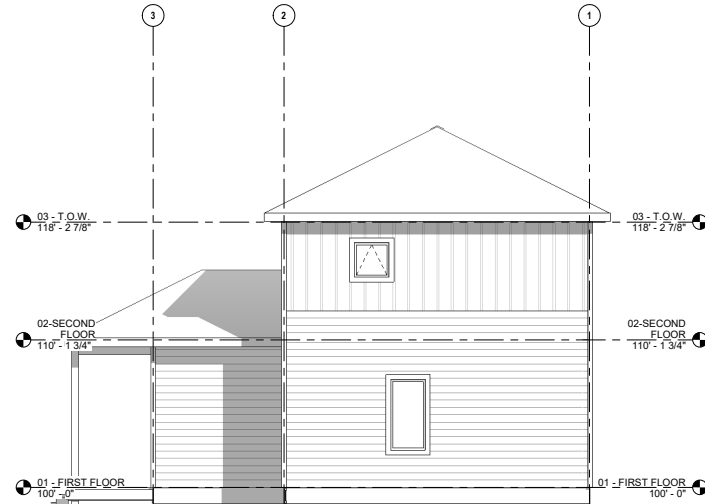
encompass
design
1535 liberty lane
suite 110b
missoula, montana
59808
Phone: 406.540.4437

HELLGATE VILLAGE

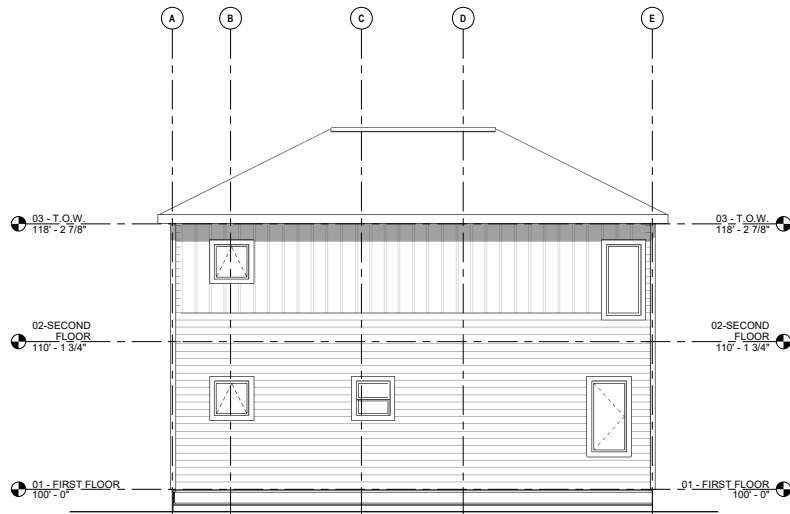
COTTAGE 2 (U6 & U7)
MISSOULA MONTANA



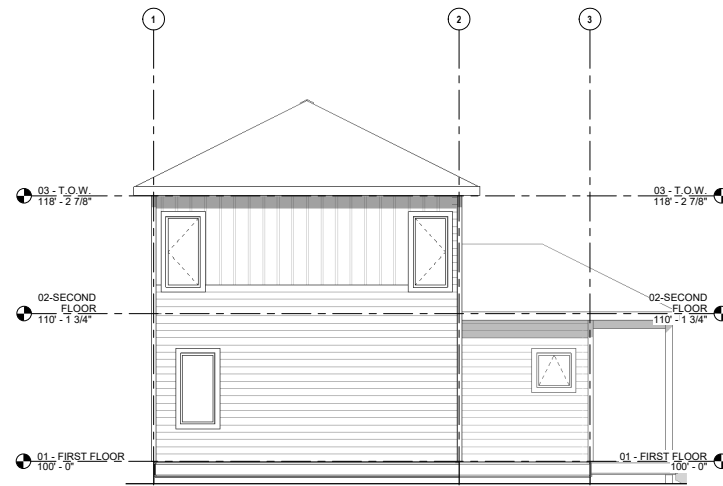
1 FRONT ELEVATION
A2 | NTS



3 SIDE ELEVATION
A2 | NTS



2 REAR ELEVATION
A2 | NTS



4 SIDE ELEVATION
A2 | NTS

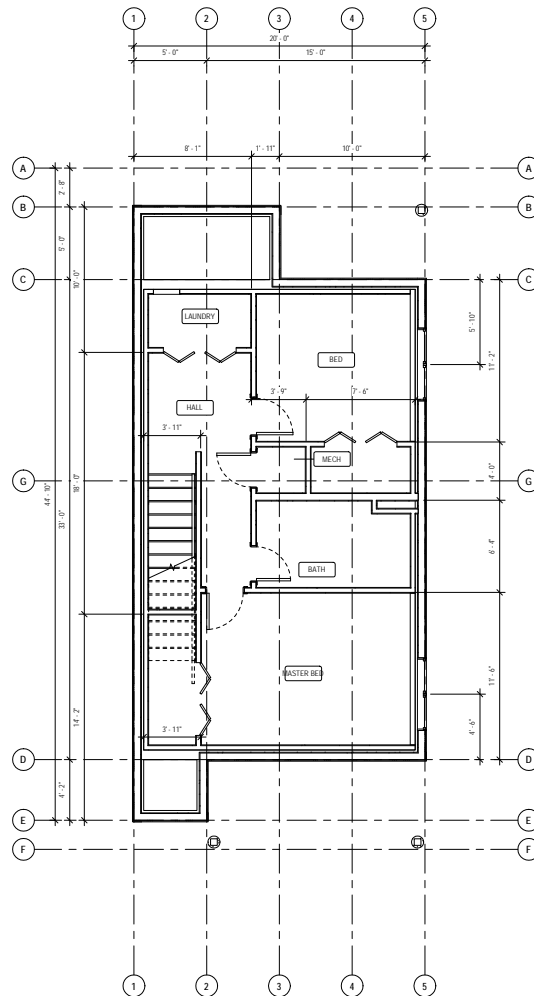


encompass
design

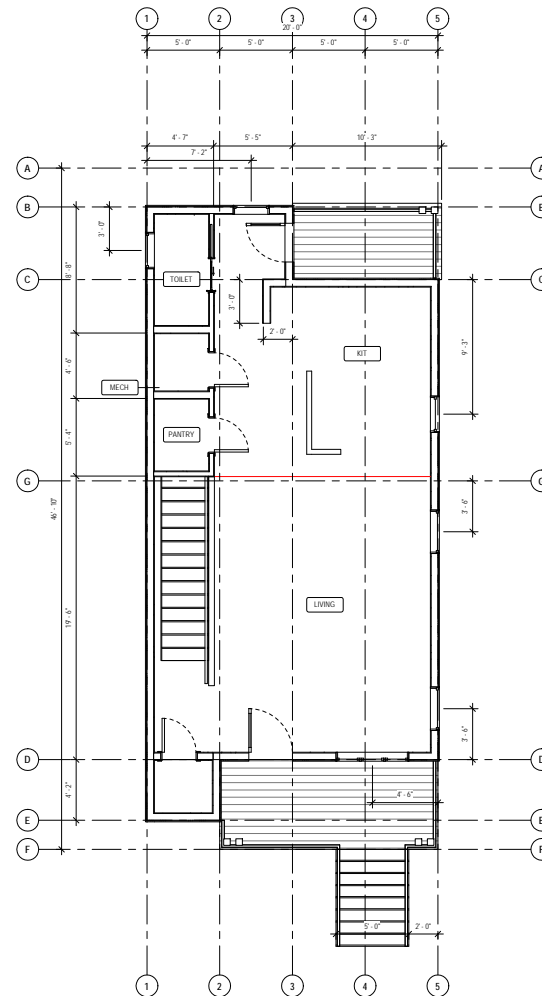
1535 liberty lane
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HELLGATE VILLAGE

COTTAGE 2 (U6 & U7)
MISSOULA MONTANA



① | BASEMENT
A1 | NTS



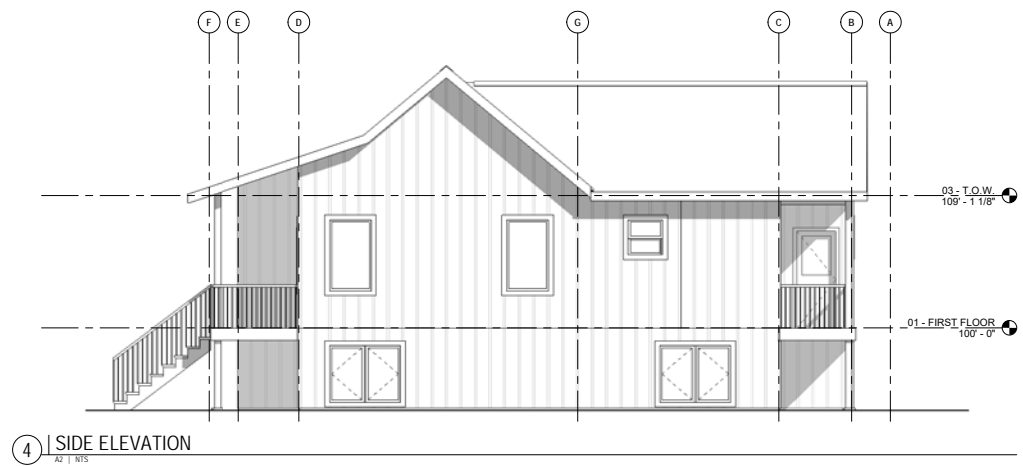
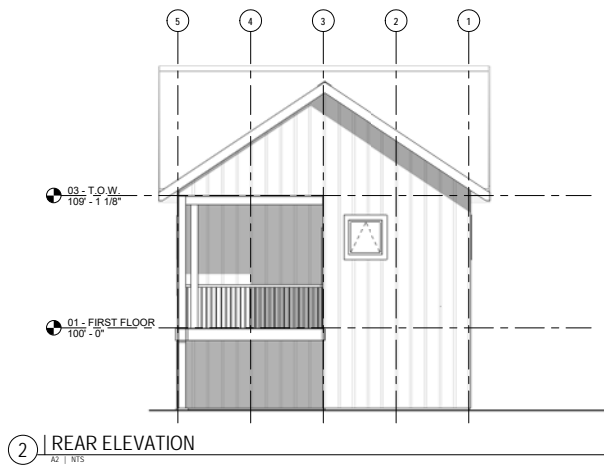
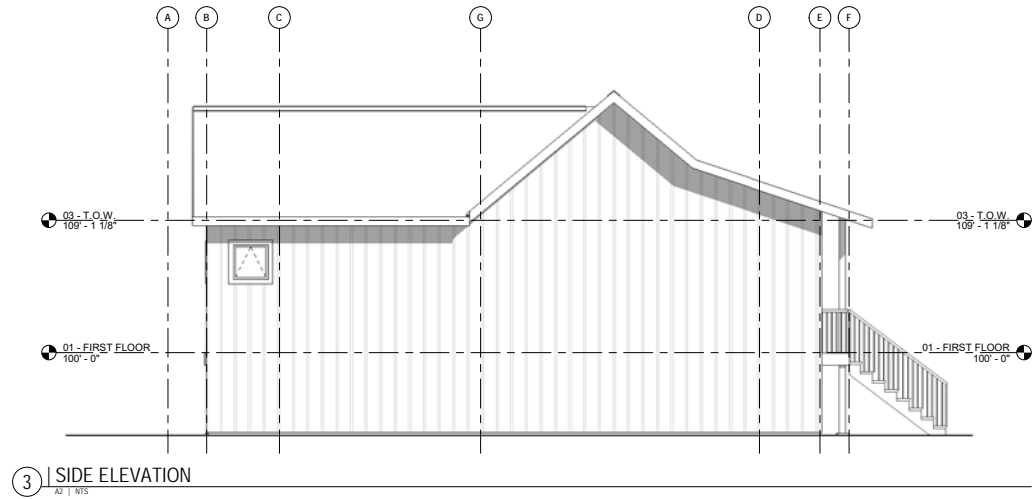
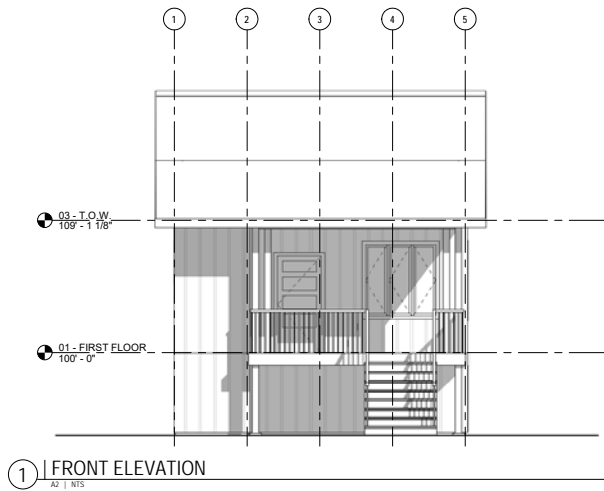
② | FIRST FLOOR
A1 | NTS



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HELLGATE VILLAGE

COTTAGE 3 (U1, U2, U3)
MISSOULA MONTANA

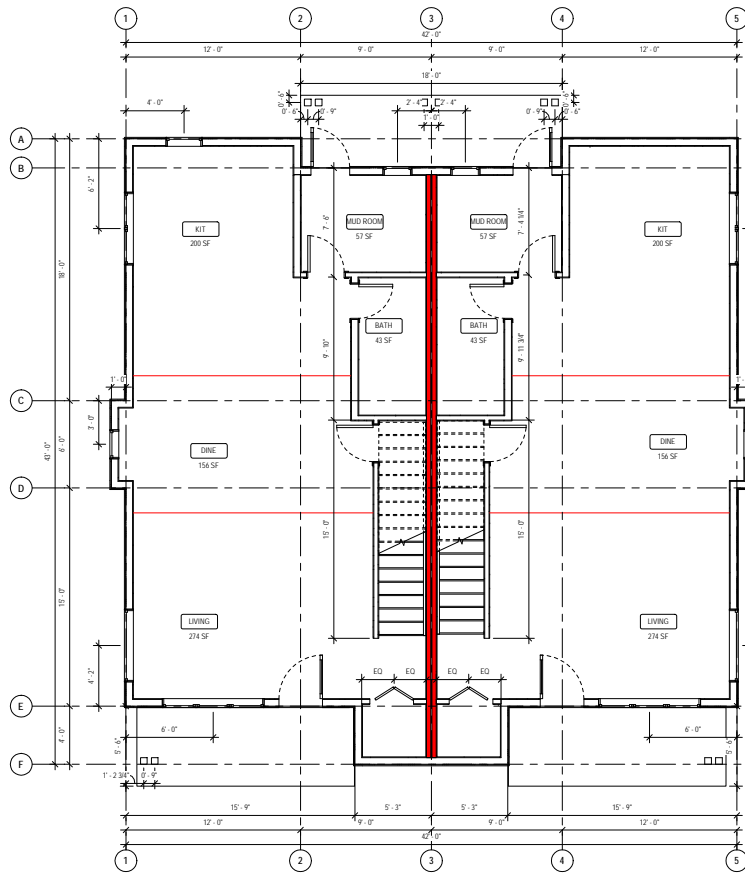


encompass
ARCHITECTURE

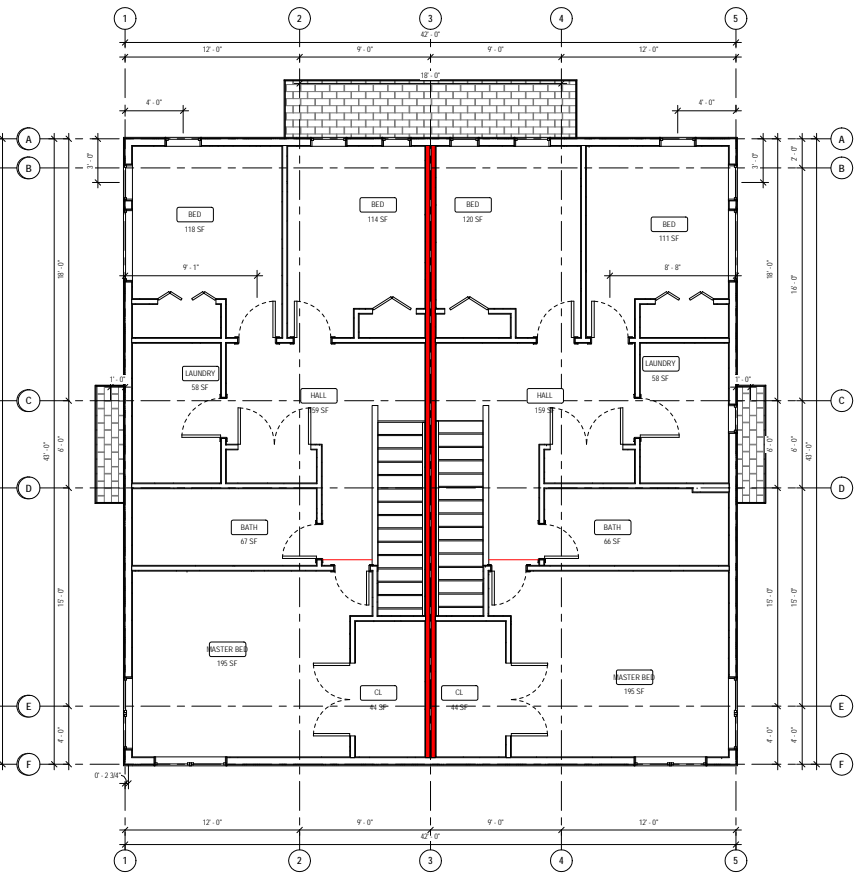
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HELLGATE VILLAGE

COTTAGE 3 (U1, U2, U3)
MISSOULA MONTANA



1 | FIRST FLOOR
A1 | NTS



2 | SECOND FLOOR
A1 | NTS



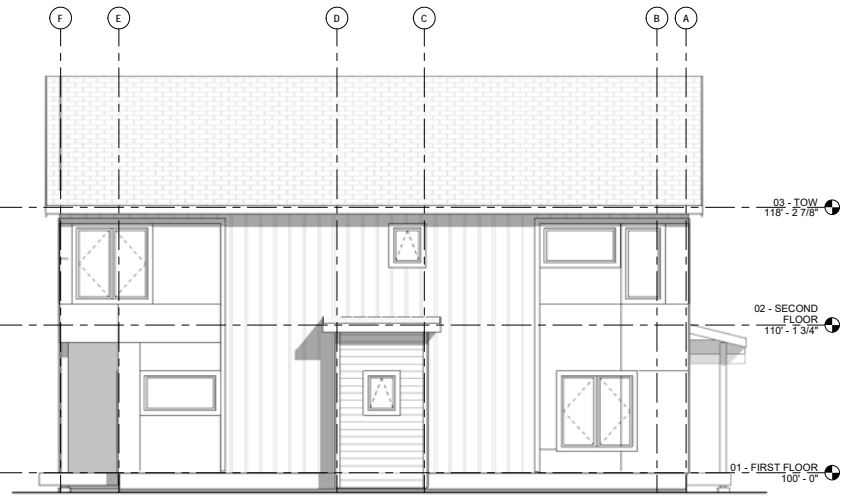
encompass
REAL ESTATE
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HELLGATE VILLAGE

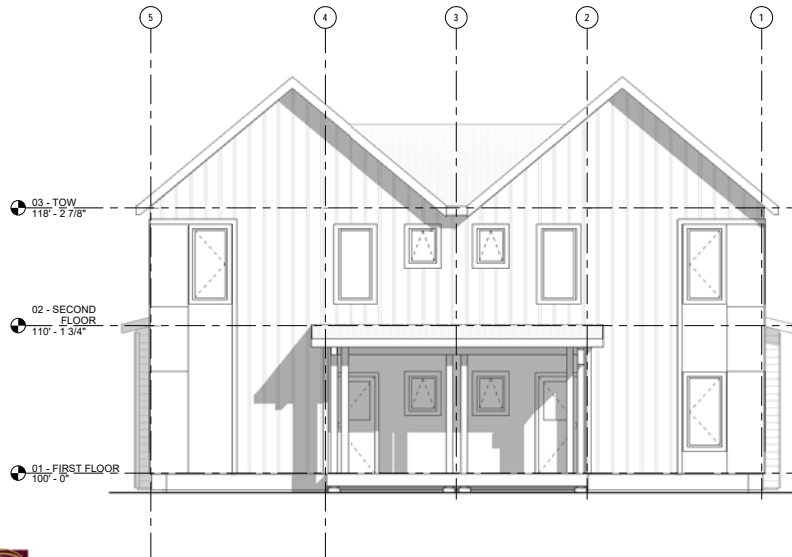
DUPLEX (U8, U9, U10, U11, U34, U35, U39, U40)



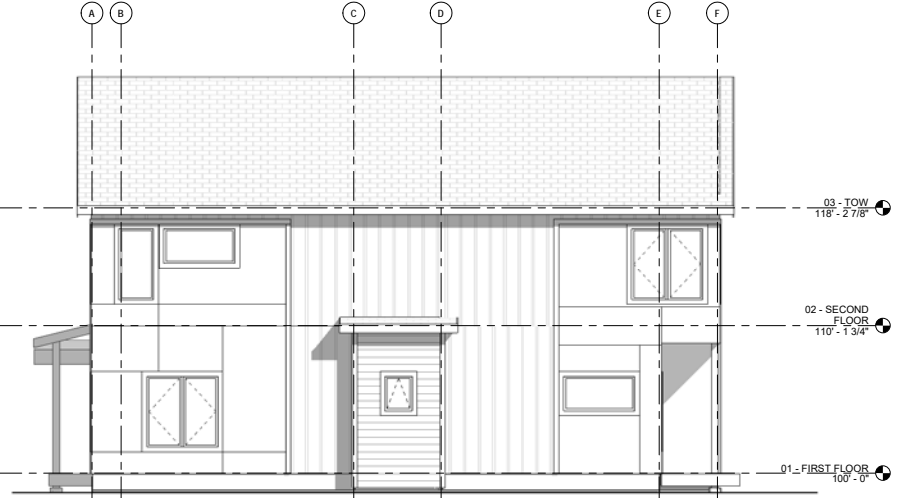
① | FRONT ELEVATION
A2 | NTS



③ | SIDE ELEVATION
A2 | NTS



② | REAR ELEVATION
A2 | NTS



④ | SIDE ELEVATION
A2 | NTS

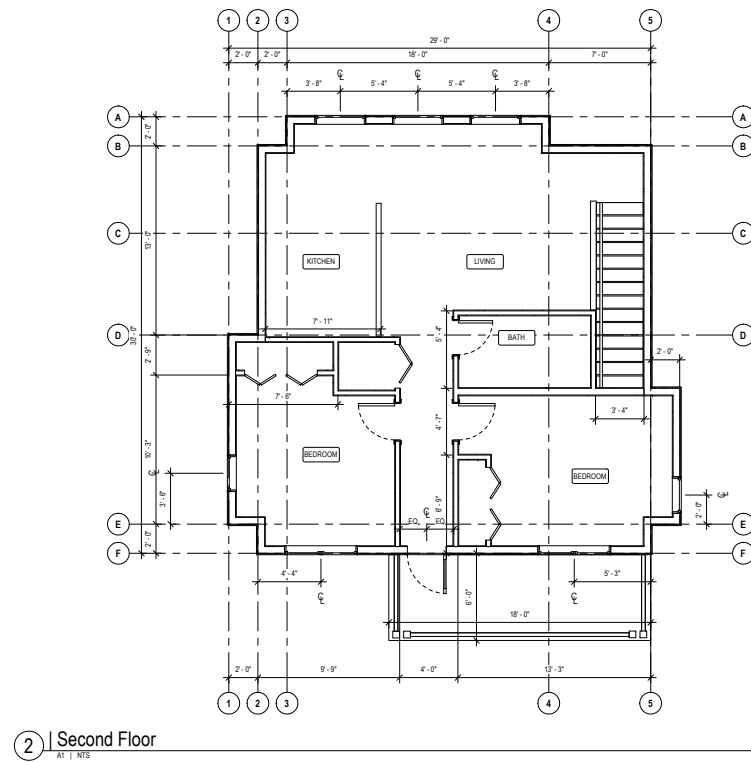
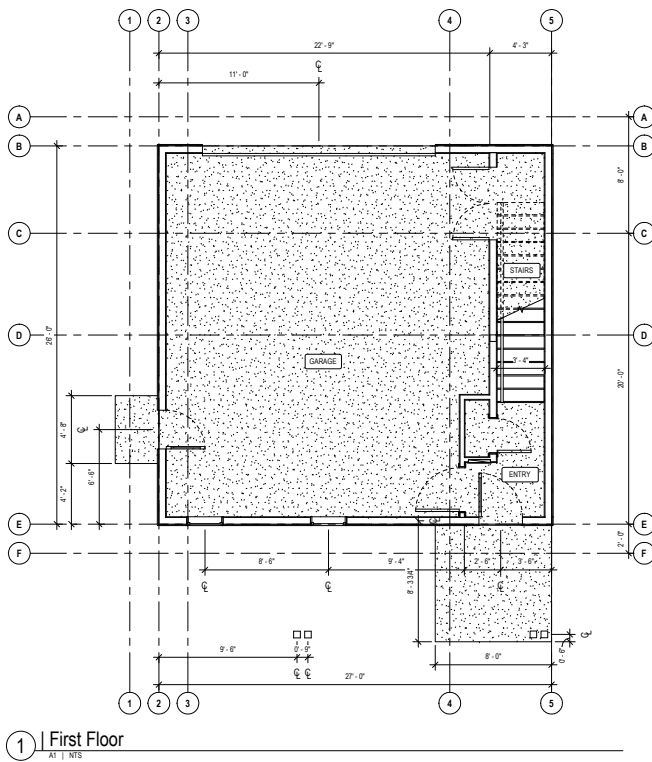


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architecture

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HELLGATE VILLAGE

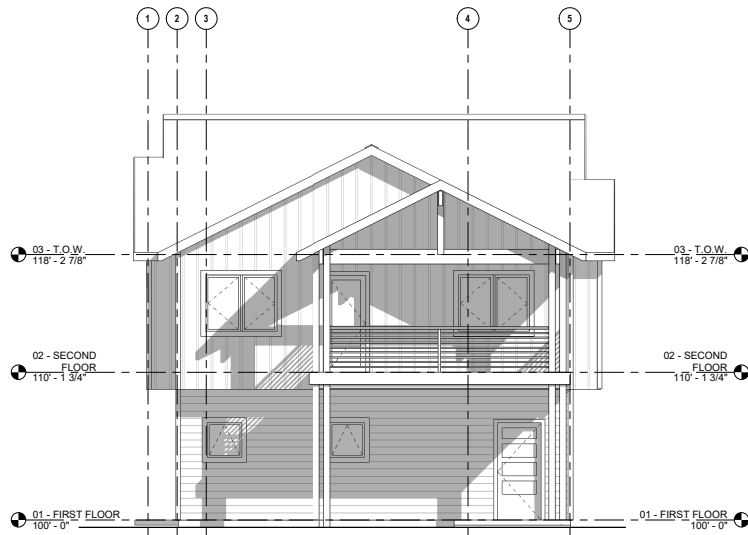
DUPLEX (U8, U9, U10, U11, U34, U35, U39, U40)



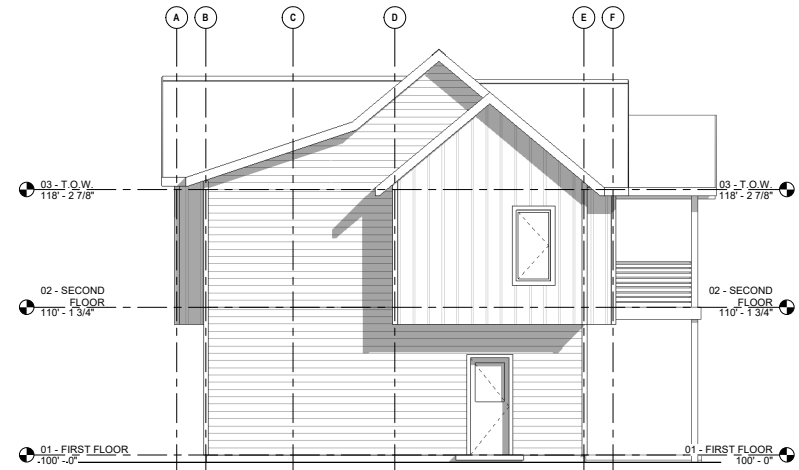
encompass
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HELLGATE VILLAGE

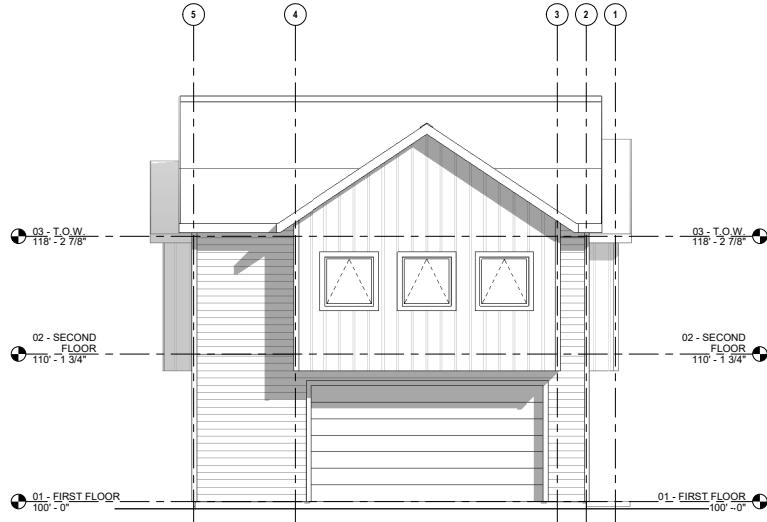
MEWS 1 (U33)
MISSOULA MONTANA



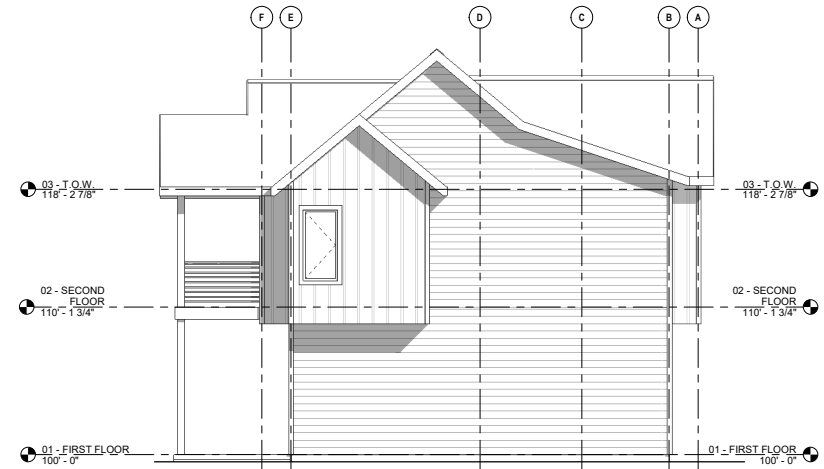
① FRONT ELEVATION
A2 | NTS



③ SIDE ELEVATION
A2 | NTS



② REAR ELEVATION
A2 | NTS



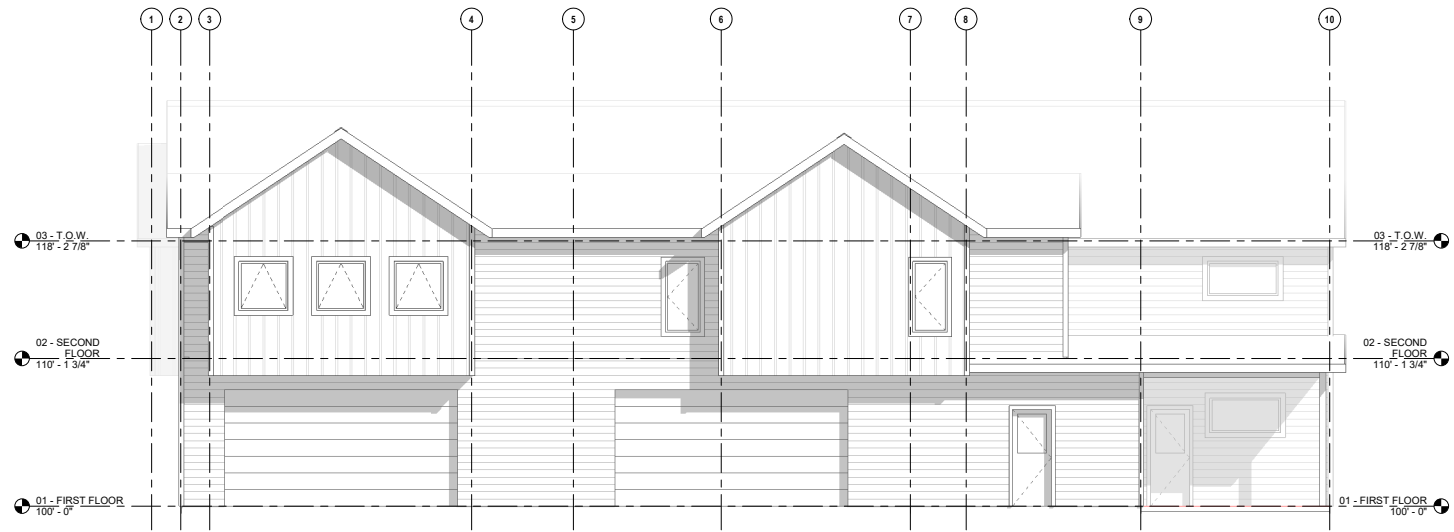
④ SIDE ELEVATION
A2 | NTS



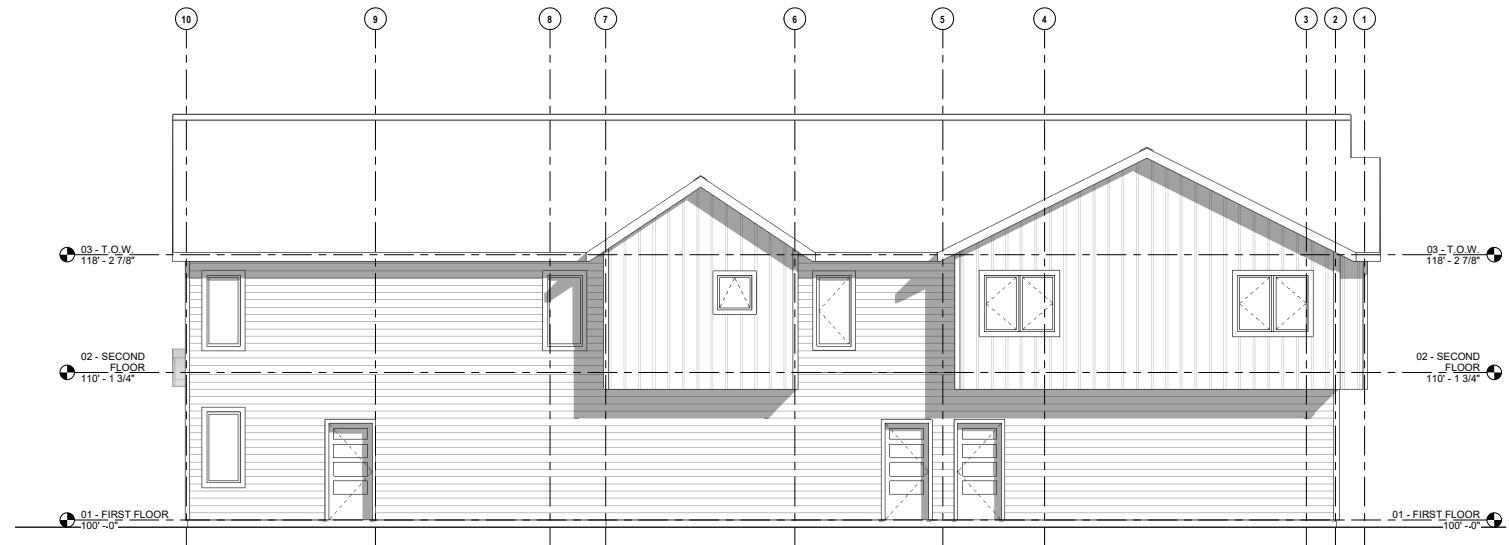
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HELLGATE VILLAGE

MEWS 1 (U33)
MISSOULA MONTANA



① FRONT ELEVATION
A2 | NTS



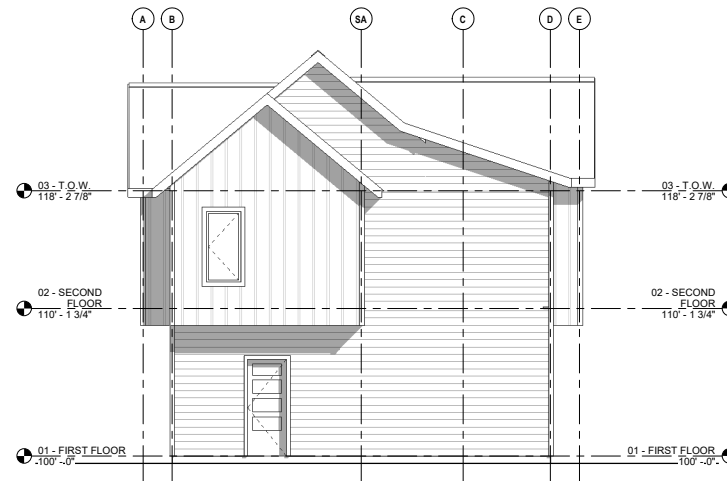
② REAR ELEVATION
A2 | NTS



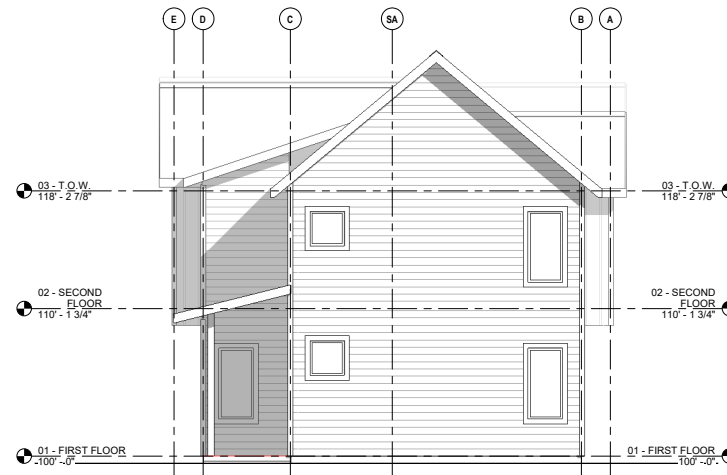
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HELLGATE VILLAGE

MEWS 2 (U28, U29)
MISSOULA MONTANA



1 | SIDE ELEVATION
A3 | NTS



2 | SIDE ELEVATION
A3 | NTS

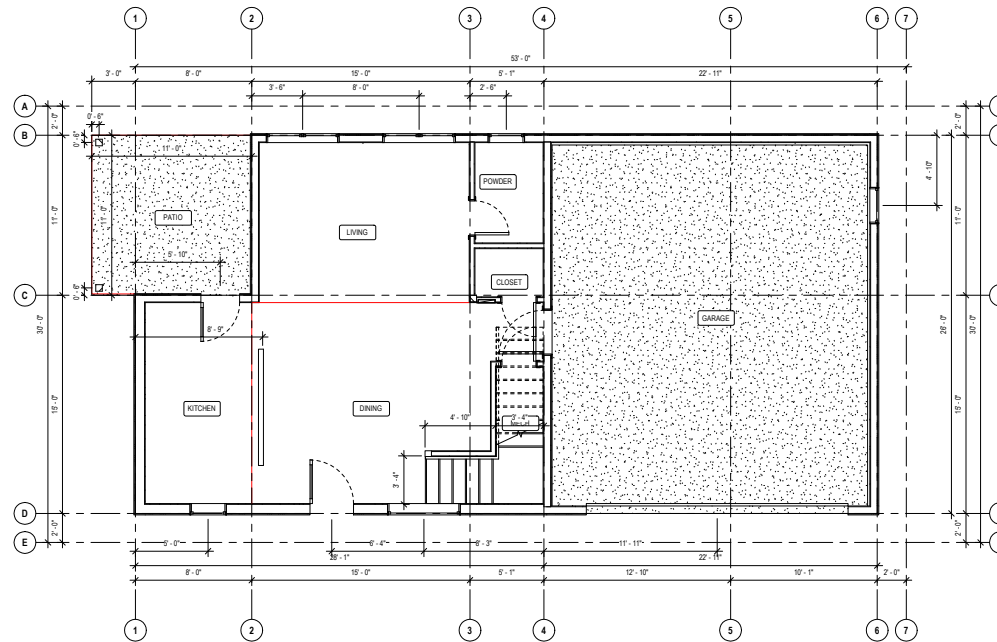


encompass
design

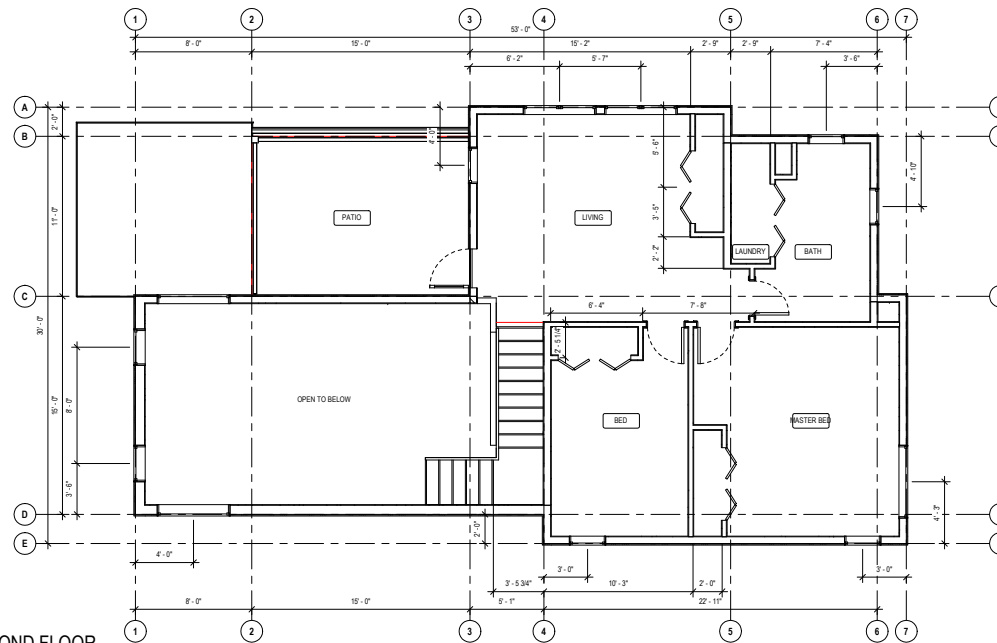
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HELLGATE VILLAGE

MEWS 2 (U28, U29)
MISSOULA MONTANA



① | FIRST FLOOR
A1 | NTS



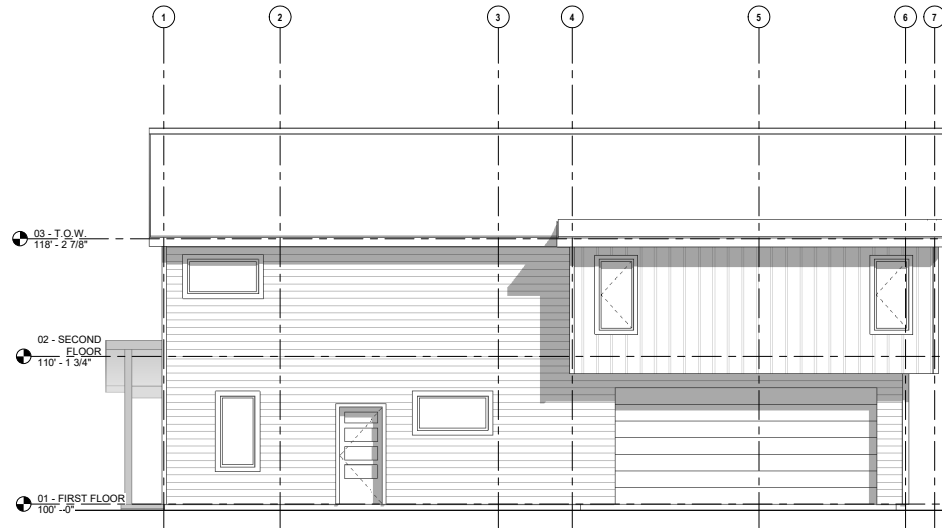
② | SECOND FLOOR
A1 | NTS



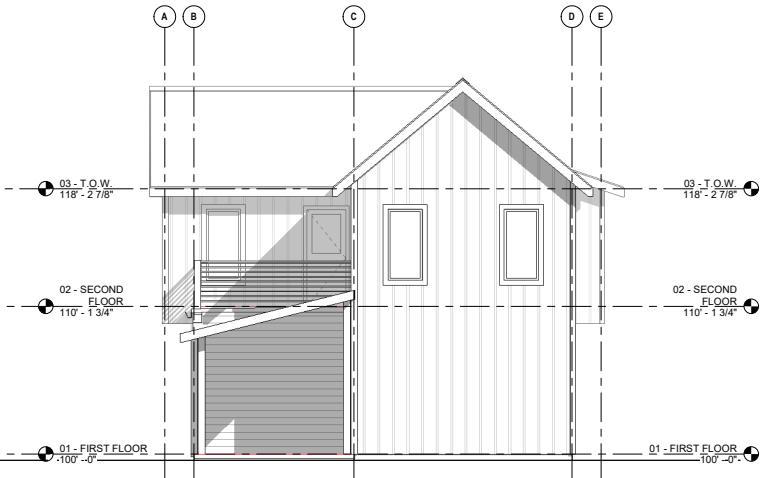
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HELLGATE VILLAGE

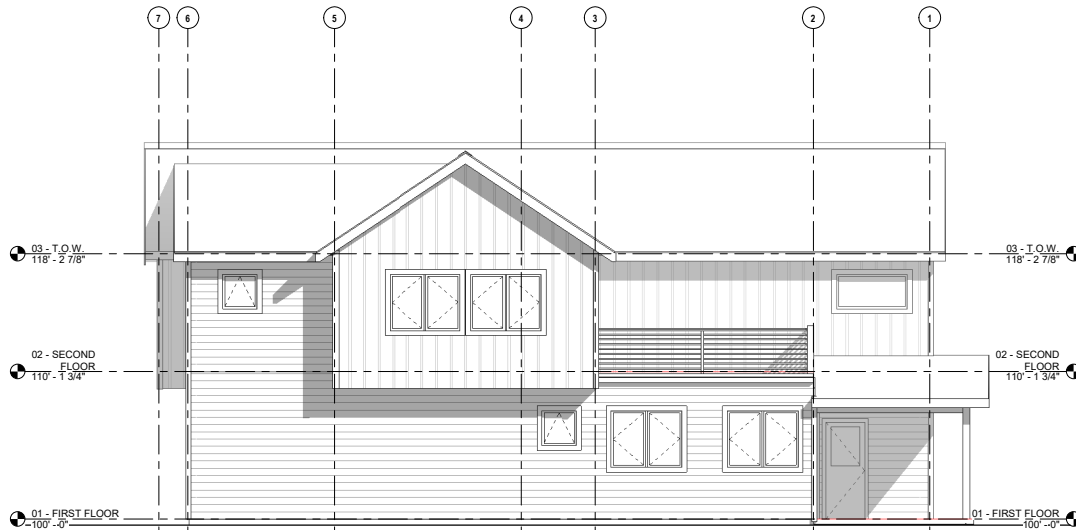
MEWS 3 (U26, U27)
MISSOULA MONTANA



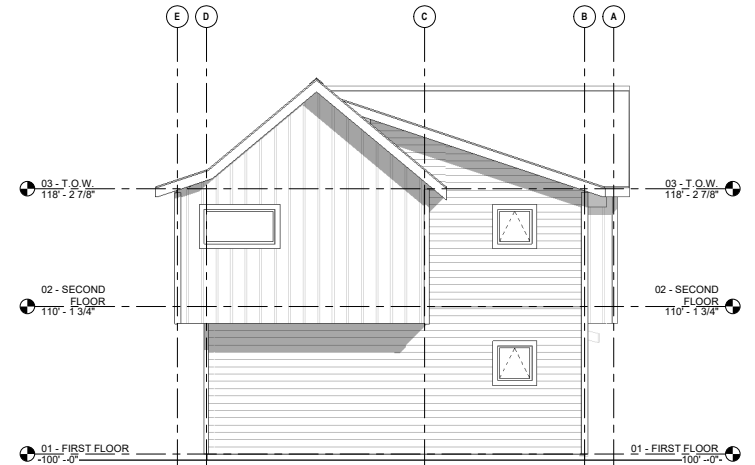
1 FRONT ELEVATION
A2 | NTS



3 SIDE ELEVATION
A2 | NTS



2 REAR ELEVATION
A2 | NTS



4 SIDE ELEVATION
A2 | NTS

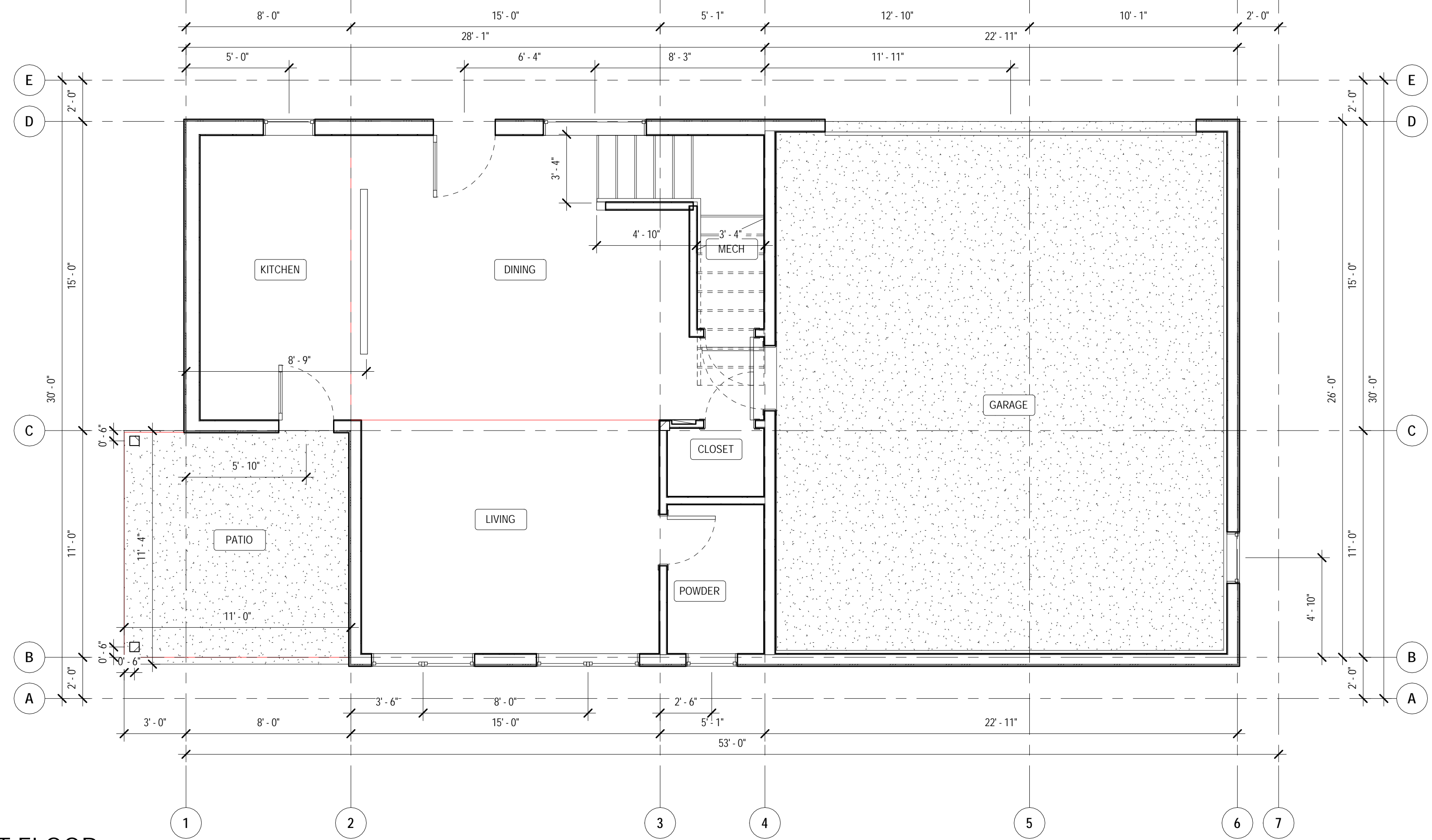


encompass
design

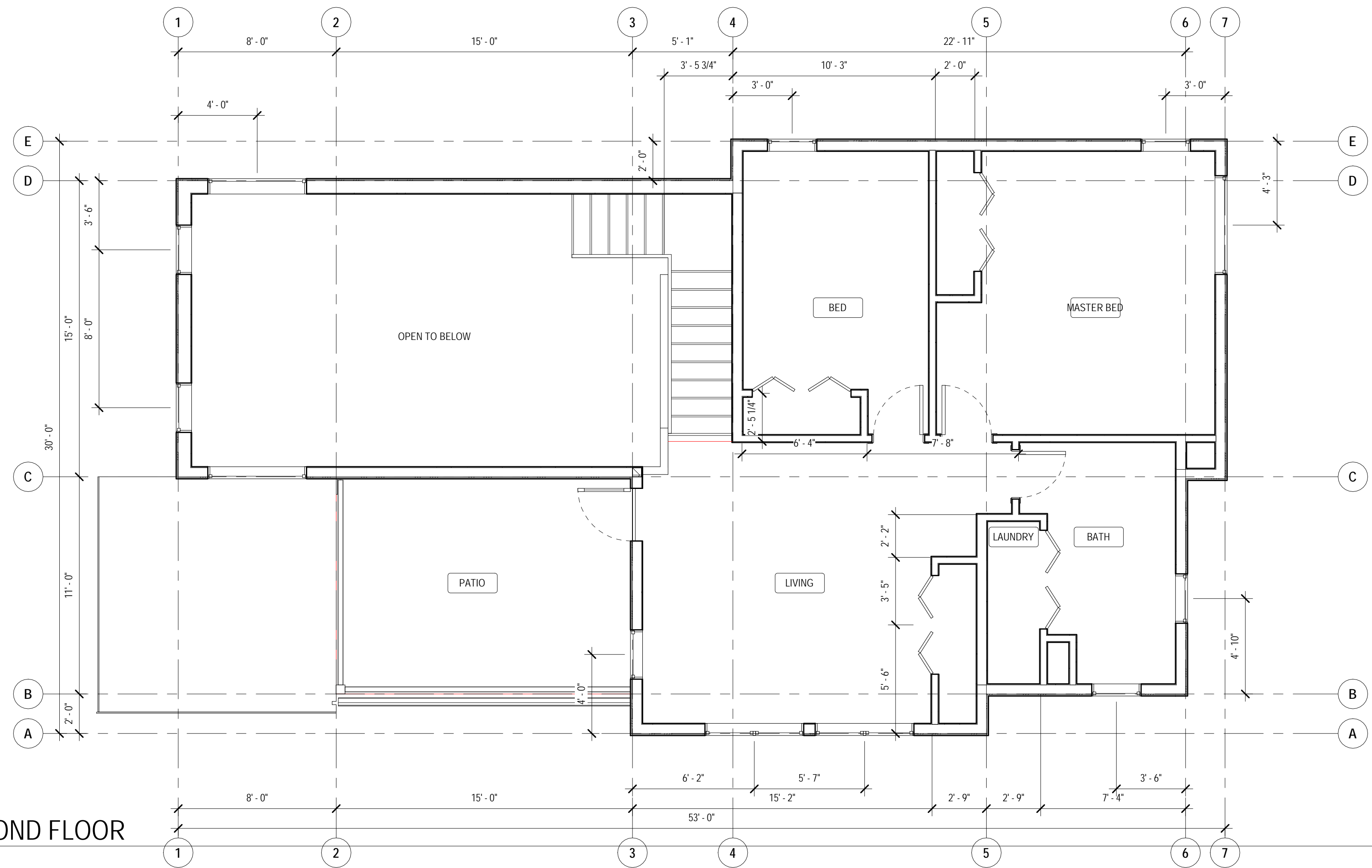
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HELLGATE VILLAGE

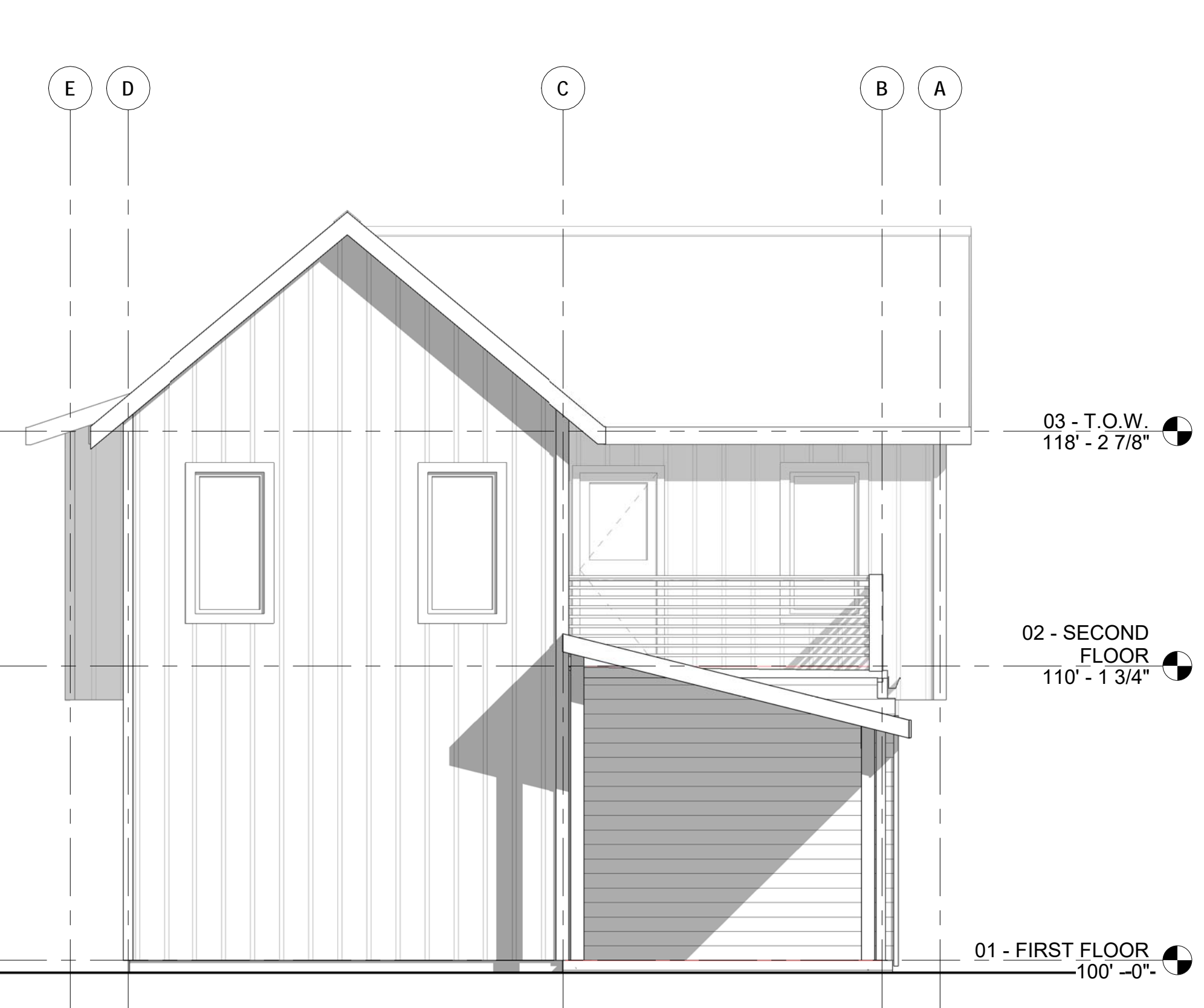
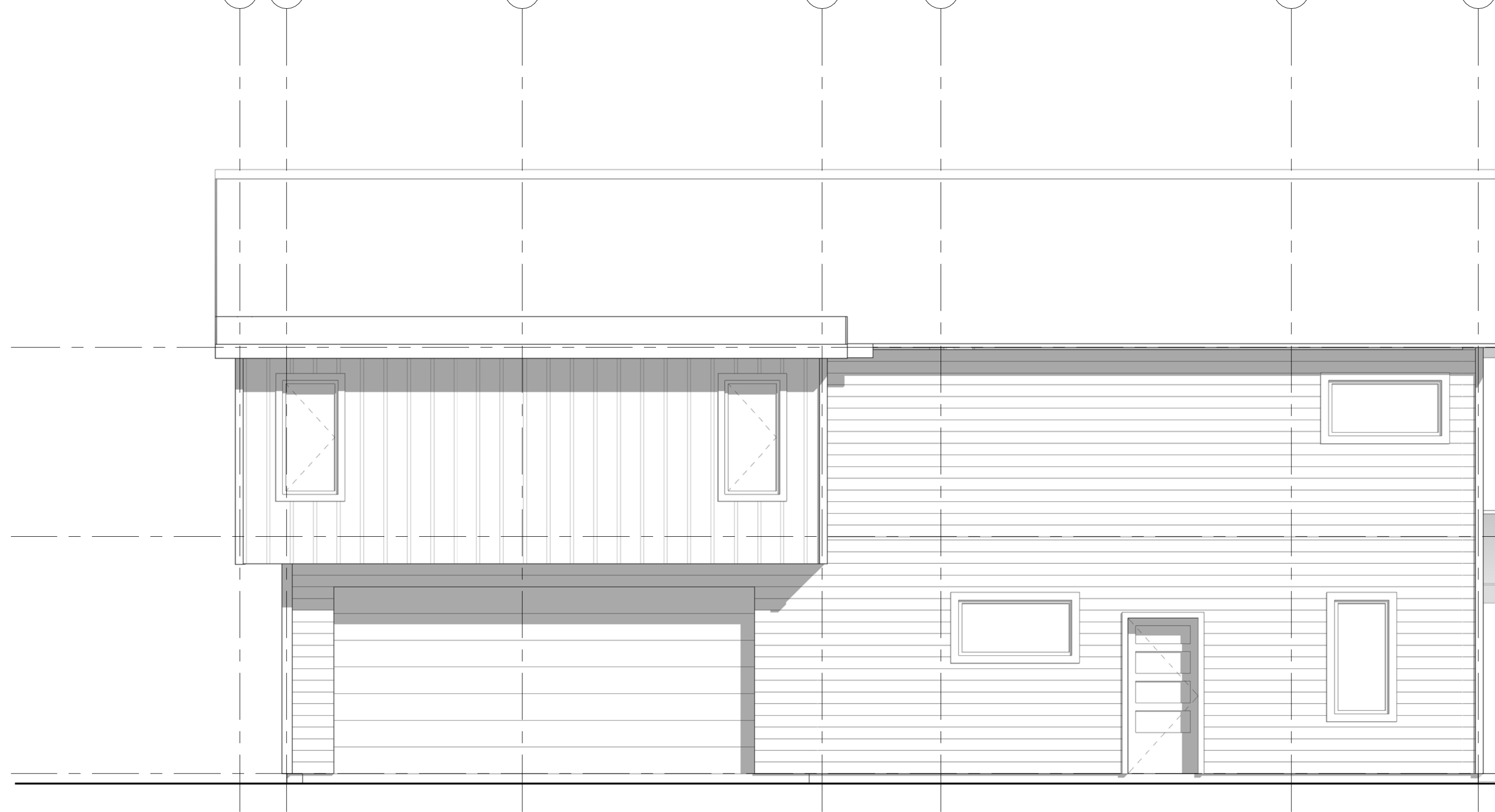
MEWS 3 (U26, U27)
MISSOULA MONTANA



1 | FIRST FLOOR
A1 | NTS

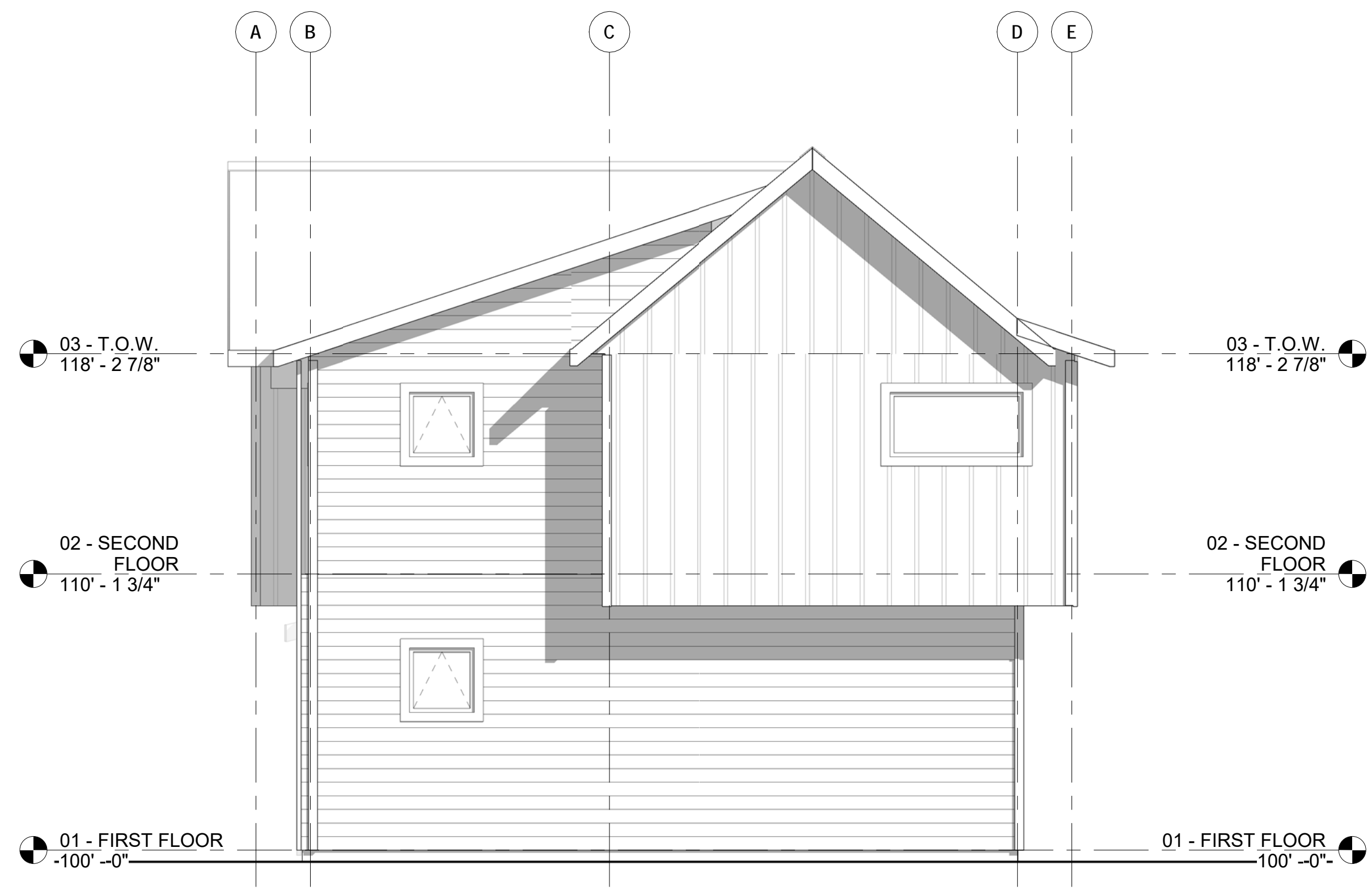


2 | SECOND FLOOR
A1 | NTS



1 | FRONT ELEVATION
A2 | NTS

3 | SIDE ELEVATION
A2 | NTS



2 | REAR ELEVATION
A2 | NTS

4 | SIDE ELEVATION
A2 | NTS

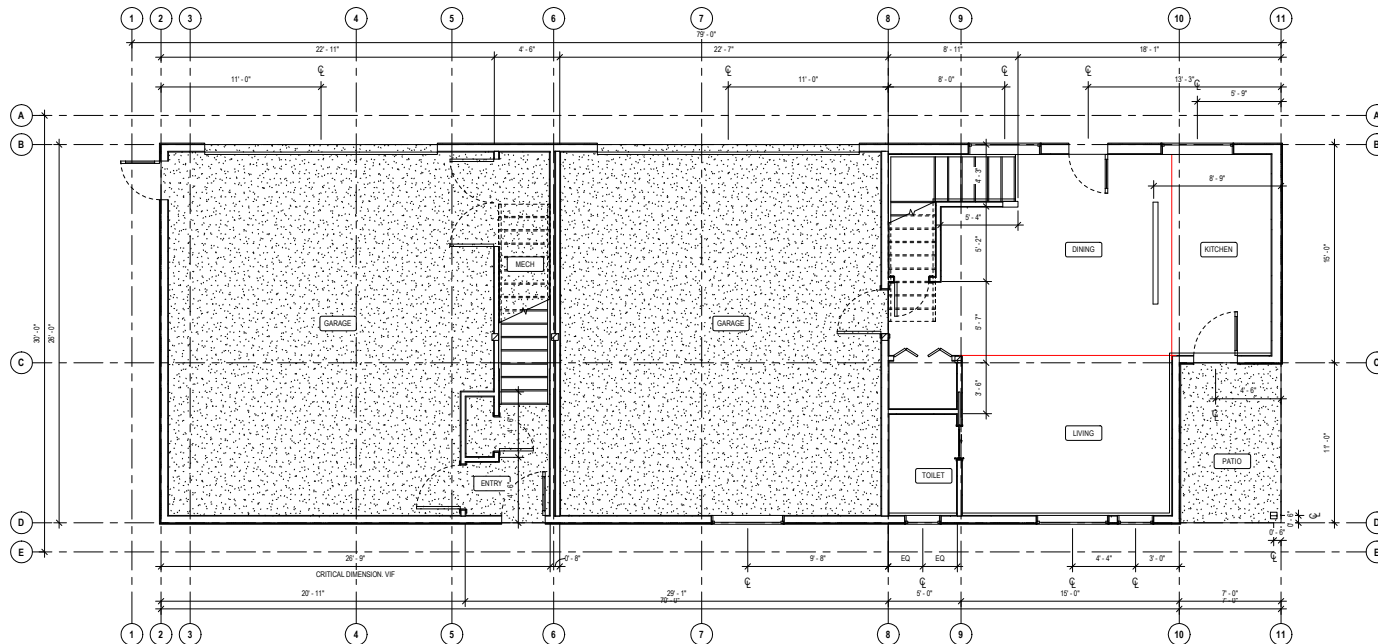


encompass
design

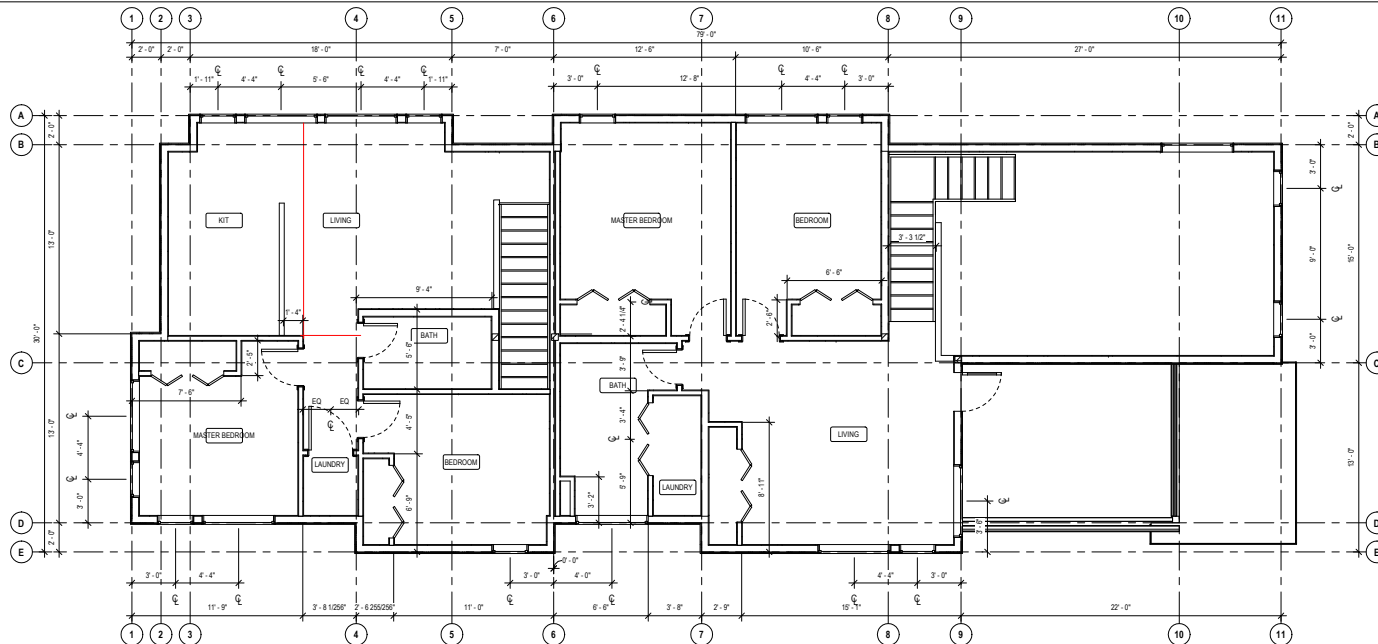
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MEWS 3 (U32)
MISSOULA MONTANA



1 | FIRST FLOOR
AT | NTS

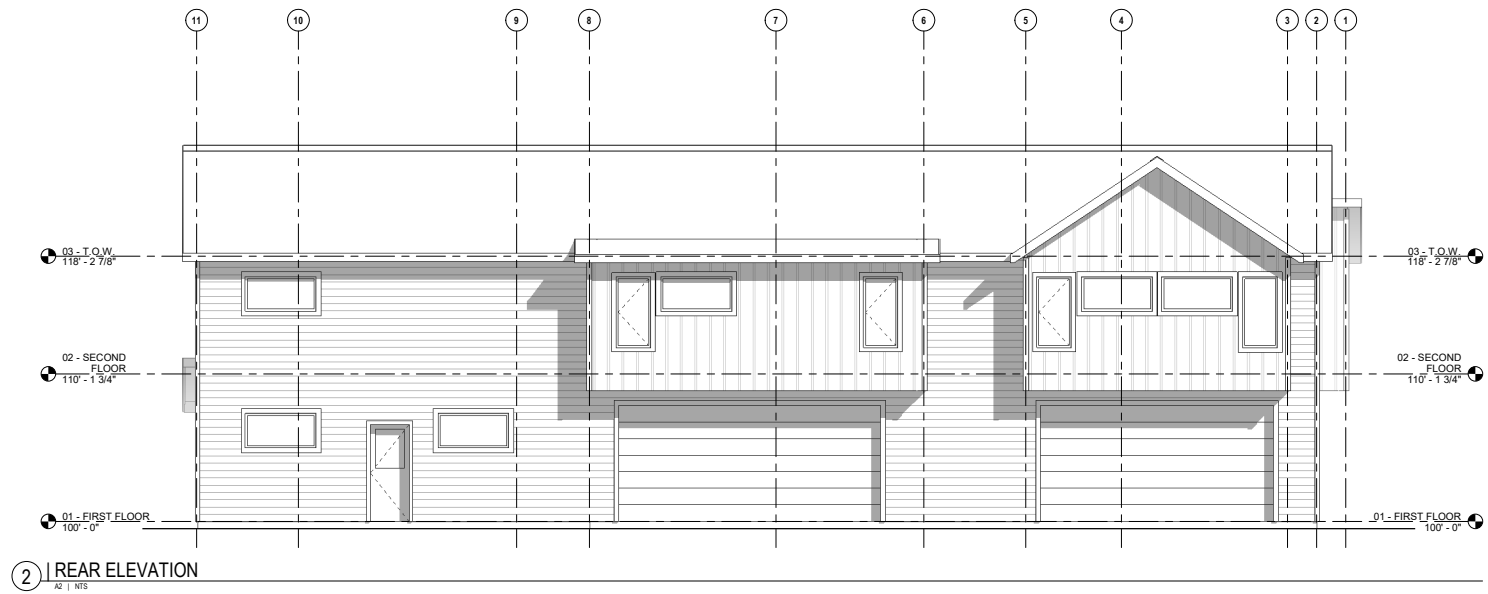


2 | SECOND FLOOR
AT | NTS



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HELGATE VILLAGE
MEWS 4 (U30, U31)

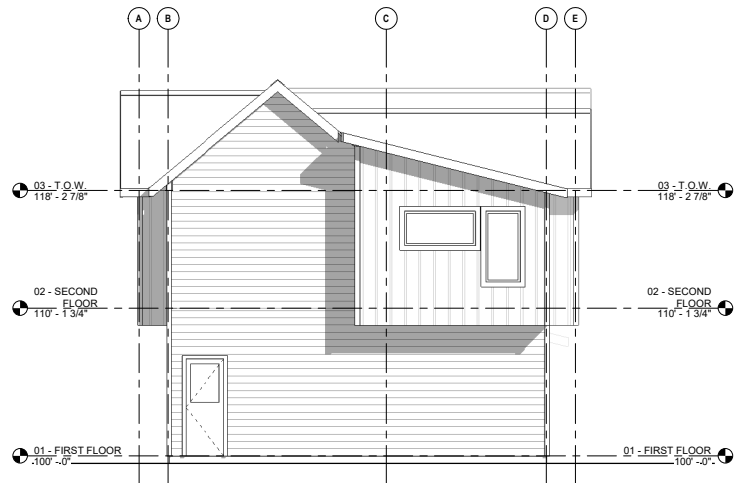


encompass
design

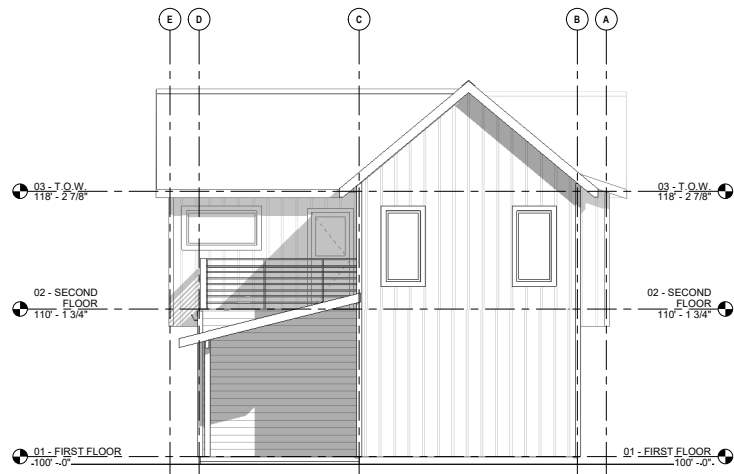
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HELGATE VILLAGE

MEWS 4 (U30, U31)



1 SIDE ELEVATION
A3 | NTS



2 SIDE ELEVATION
A3 | NTS

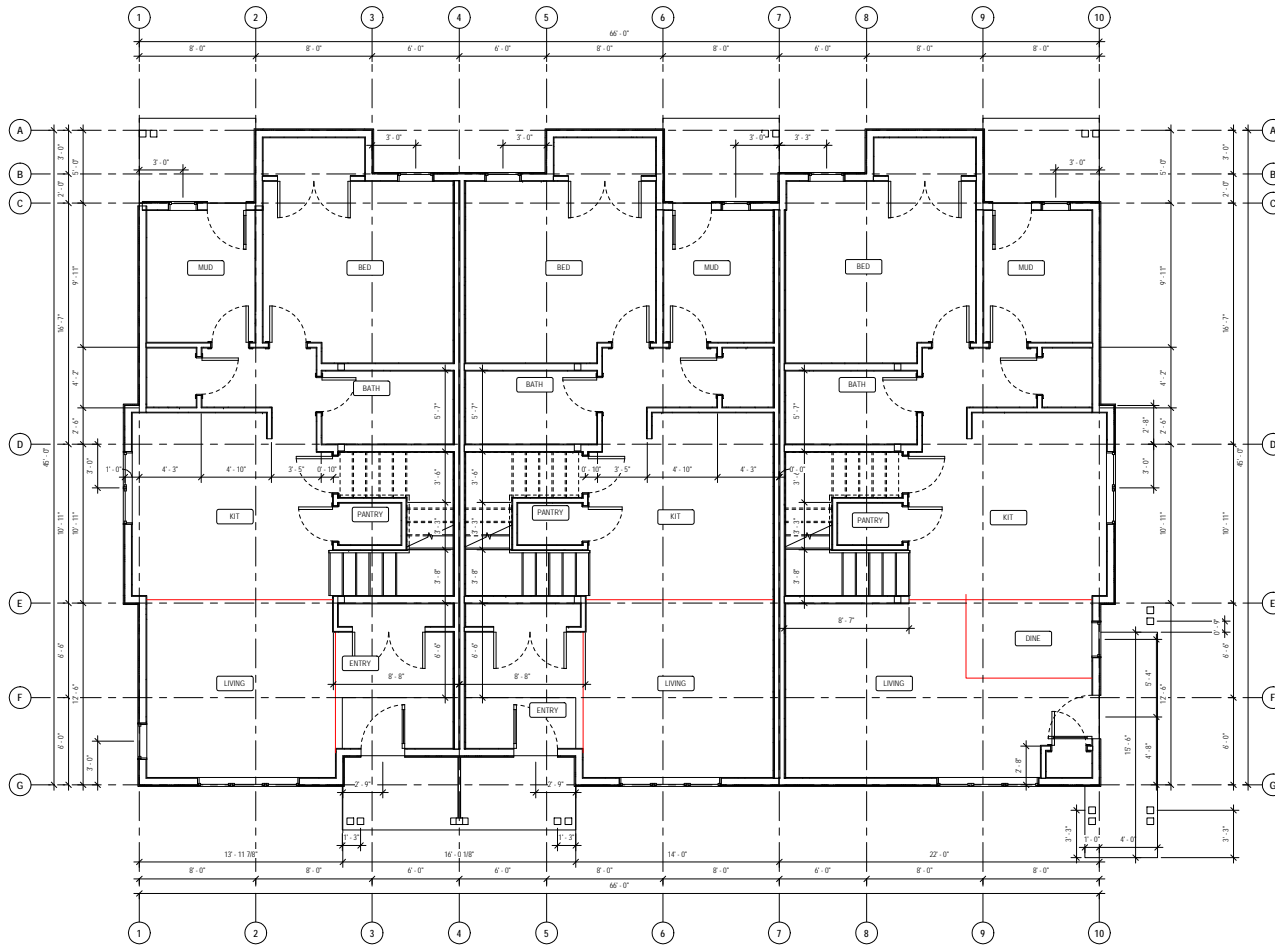


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HELGATE VILLAGE

MEWS 4 (U30, U31)



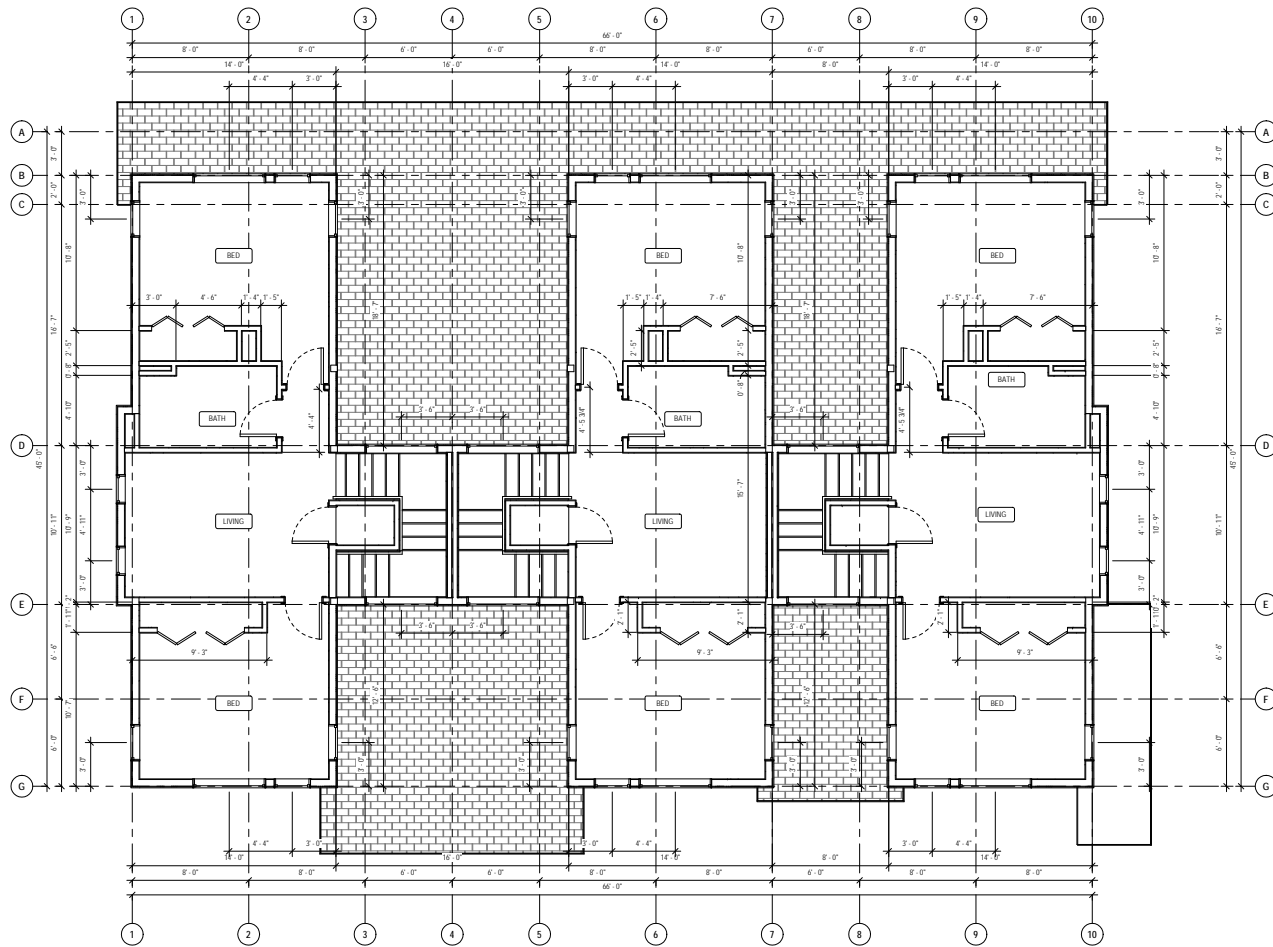
1 | FIRST FLOOR
A1 | NTS



encompass
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HELLGATE VILLAGE

TRIPLEX (U16, U17, U18)



1 SECOND FLOOR
AS NOTED



encompass
REALTY

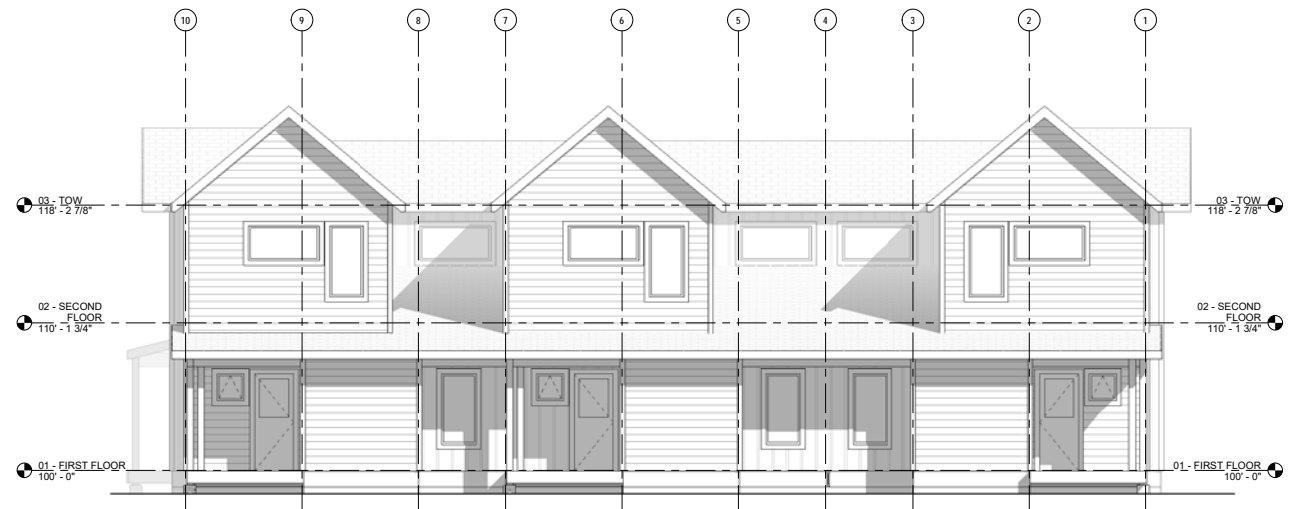
HELLGATE VILLAGE

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TRIPLEX (U16, U17, U18)



① FRONT ELEVATION
A3 | NTS



② REAR ELEVATION
A3 | NTS

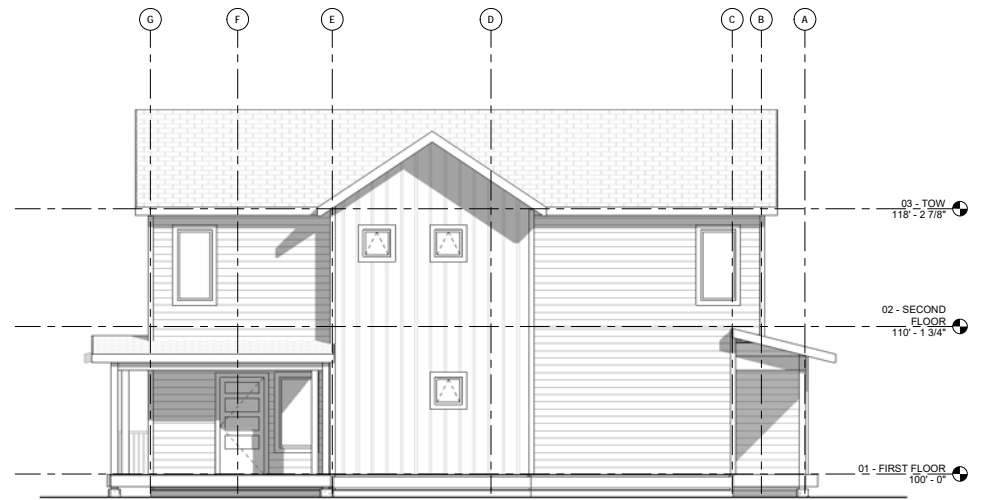


encompass
REAL ESTATE

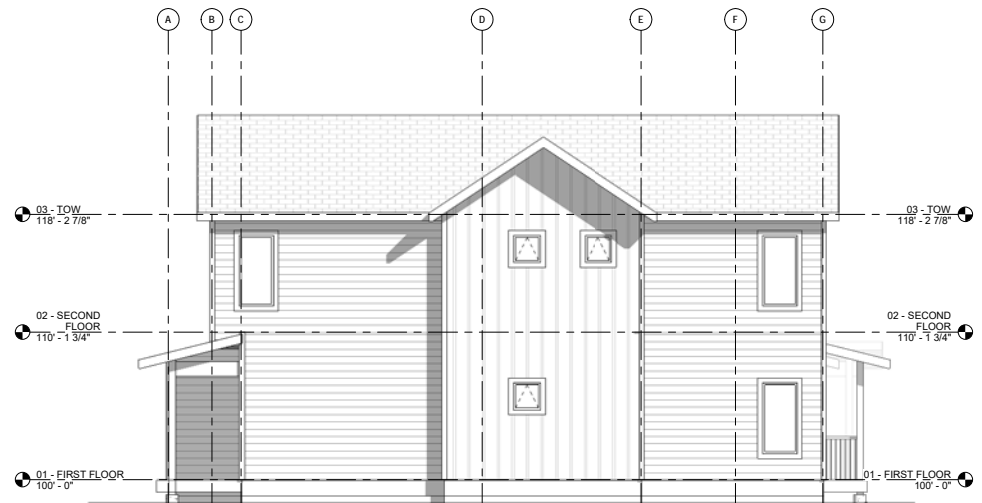
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59808
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HELLGATE VILLAGE

TRIPLEX (U16, U17, U18)



① | SIDE ELEVATION
A4 | N15



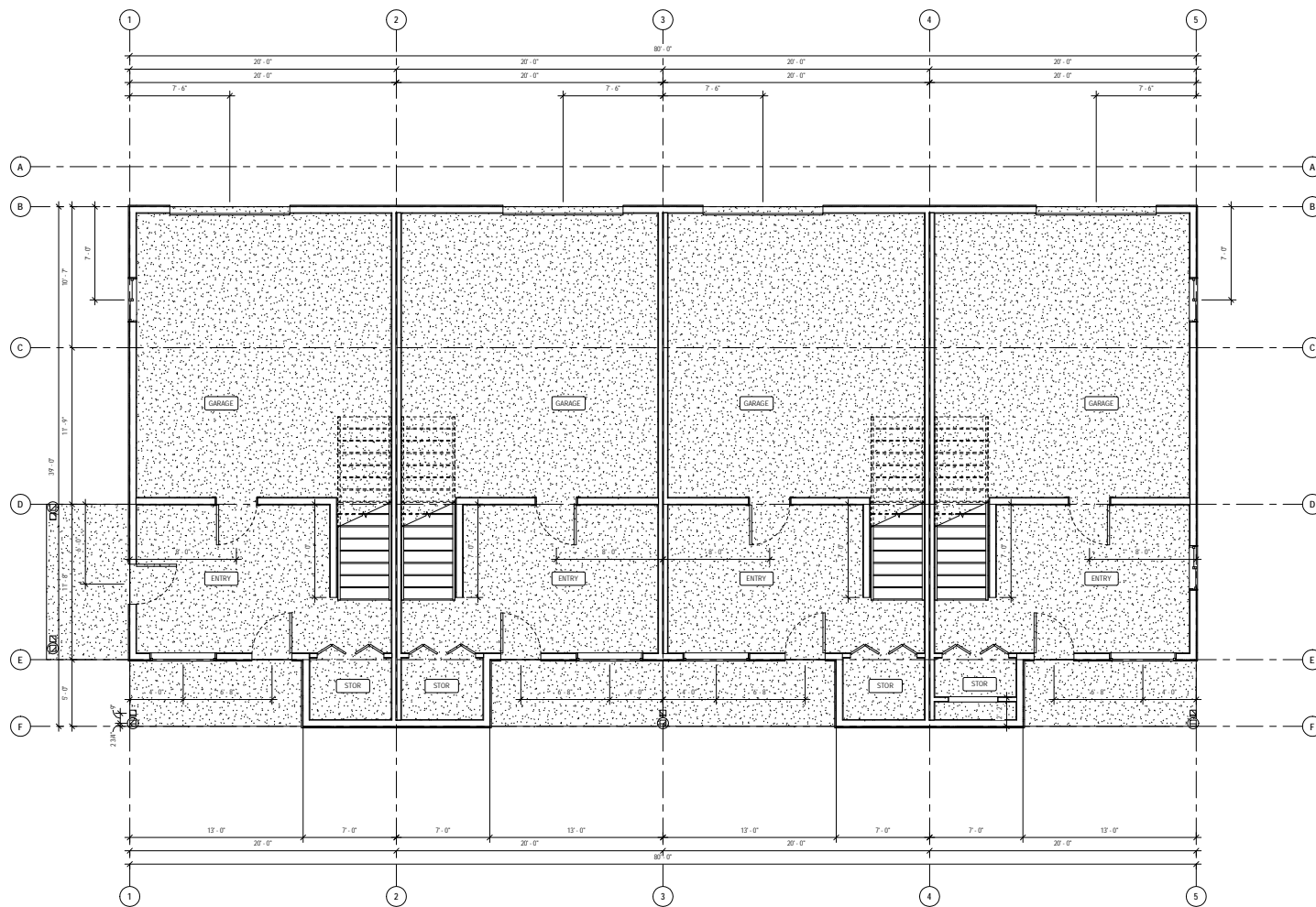
② | SIDE ELEVATION
A4 | N15



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HELLGATE VILLAGE

TRIPLEX (U16, U17, U18)



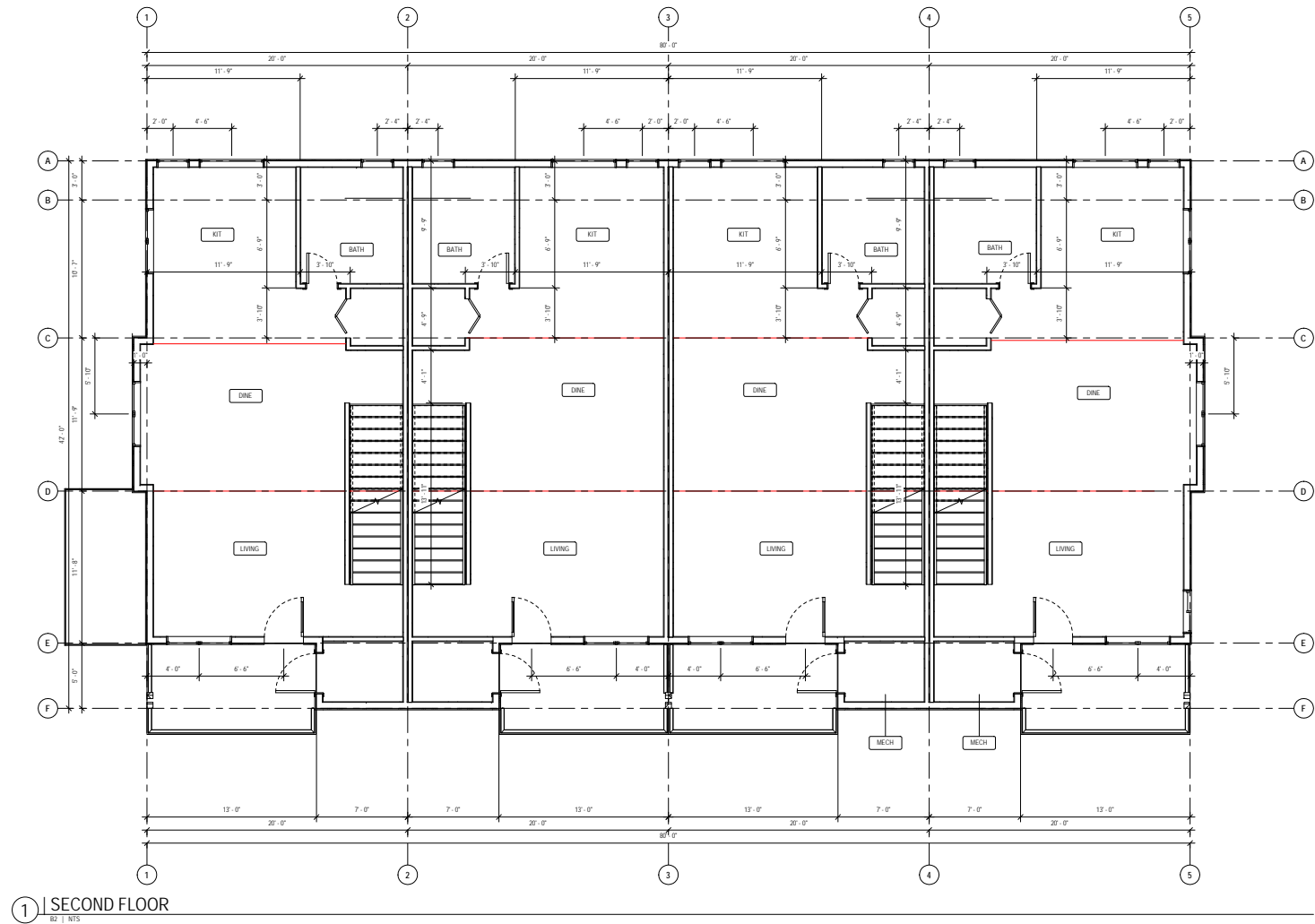
1 | FIRST FLOOR



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HELLGATE VILLAGE

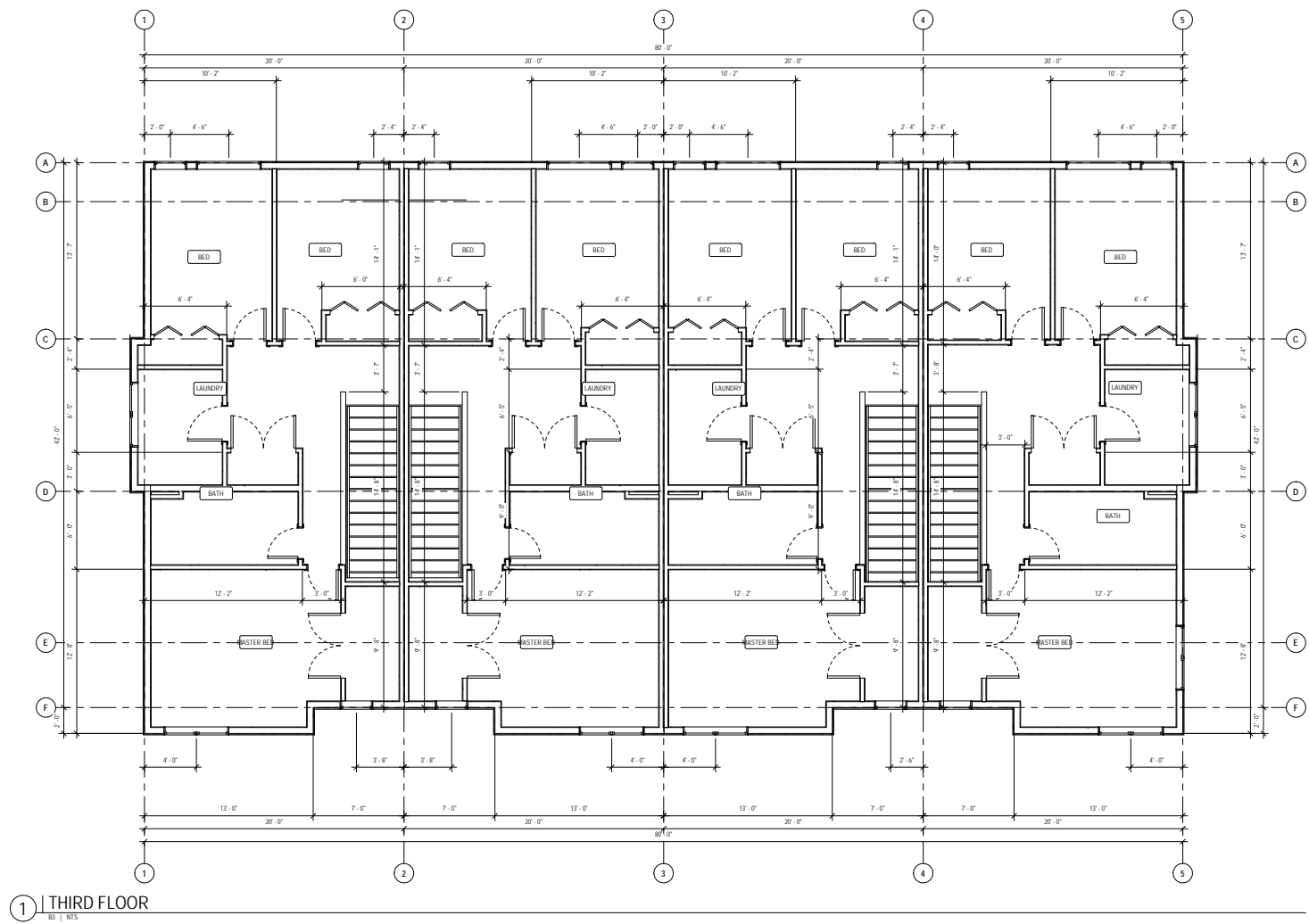
QUAD-PLEX (U19, U20, U21, U22)
MISSOULA MONTANA



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HELLGATE VILLAGE

QUAD-PLEX (U19, U20, U21, U22)
MISSOULA MONTANA



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HELLGATE VILLAGE

QUAD-PLEX (U19, U20, U21, U22)
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① | FRONT ELEVATION
B4 | N15



② | REAR ELEVATION
B4 | N15



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HELLGATE VILLAGE

QUAD-PLEX (U19, U20, U21, U22)
MISSOULA MONTANA



1 | SIDE ELEVATION
BS | SCALE: 1/4" = 1'-0"



2 | SIDE ELEVATION
BS | SCALE: 1/4" = 1'-0"

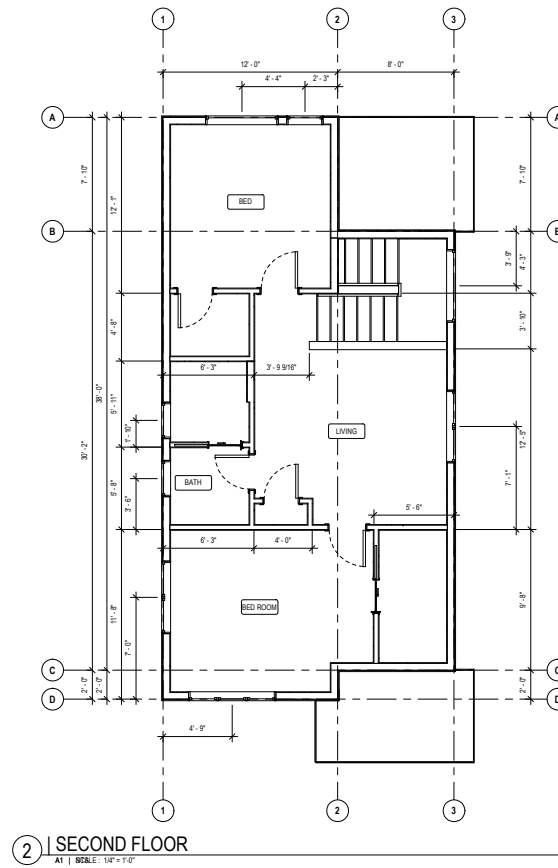
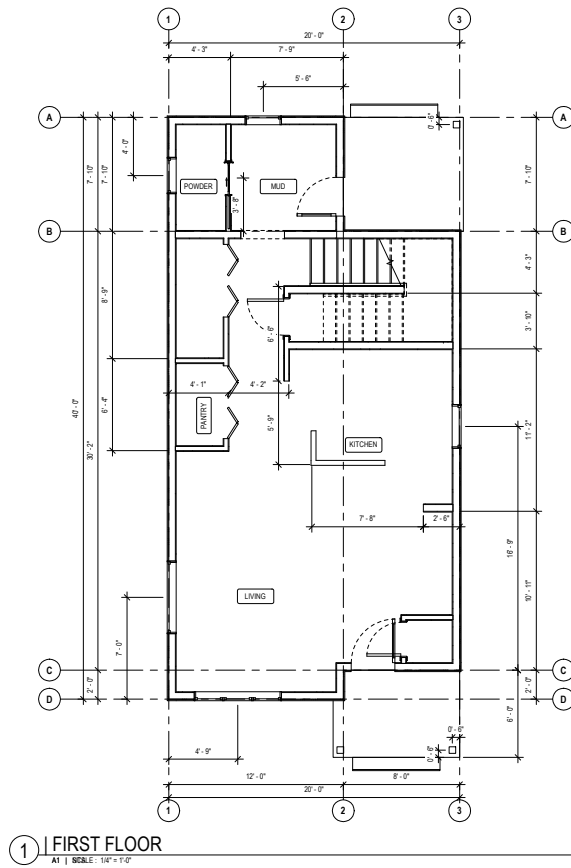


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HELLGATE VILLAGE

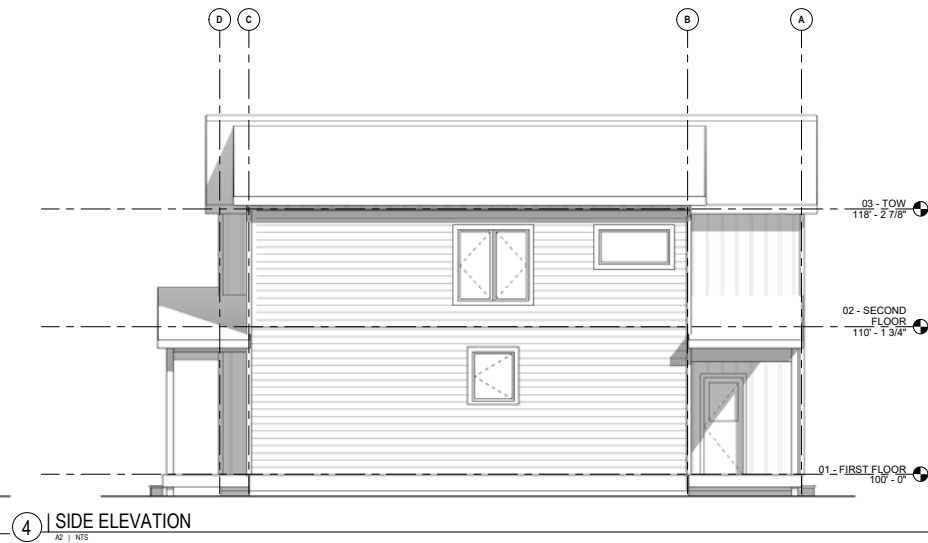
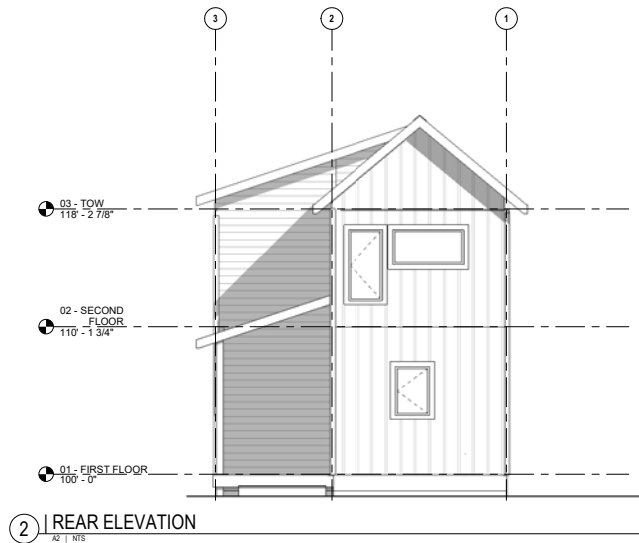
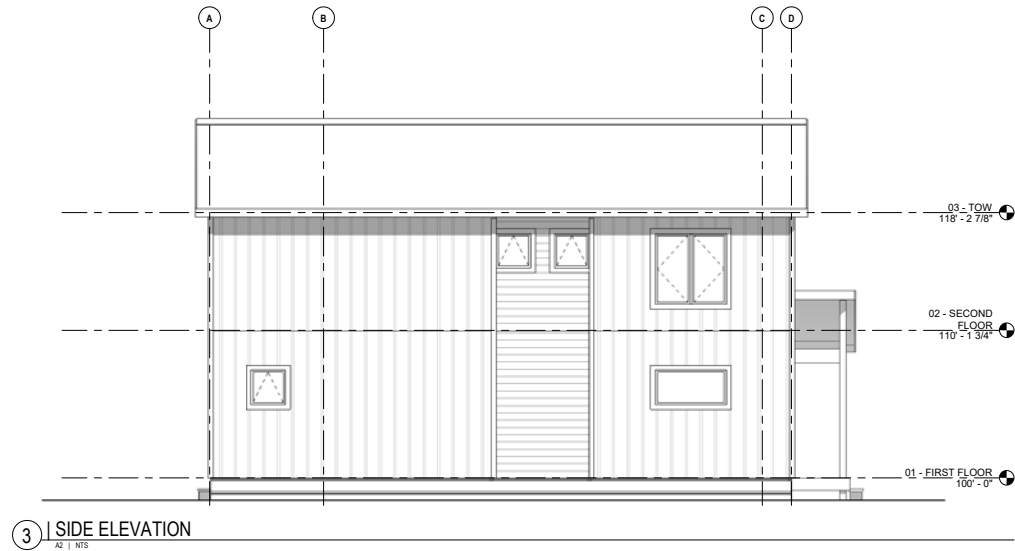
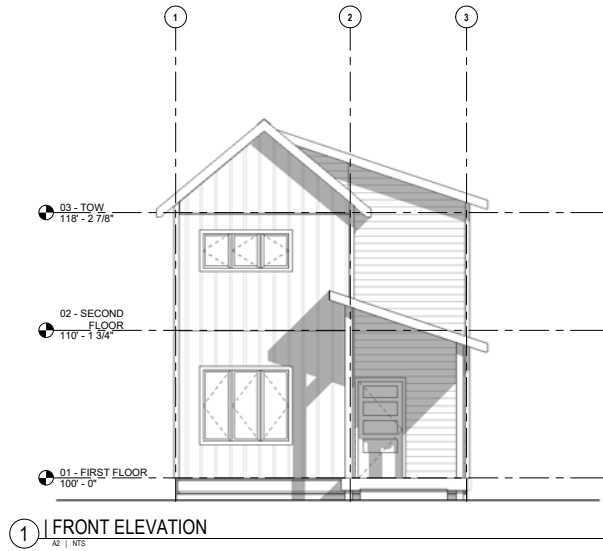
QUAD-PLEX (U19, U20, U21, U22)
MISSOULA MONTANA



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HELLGATE VILLAGE

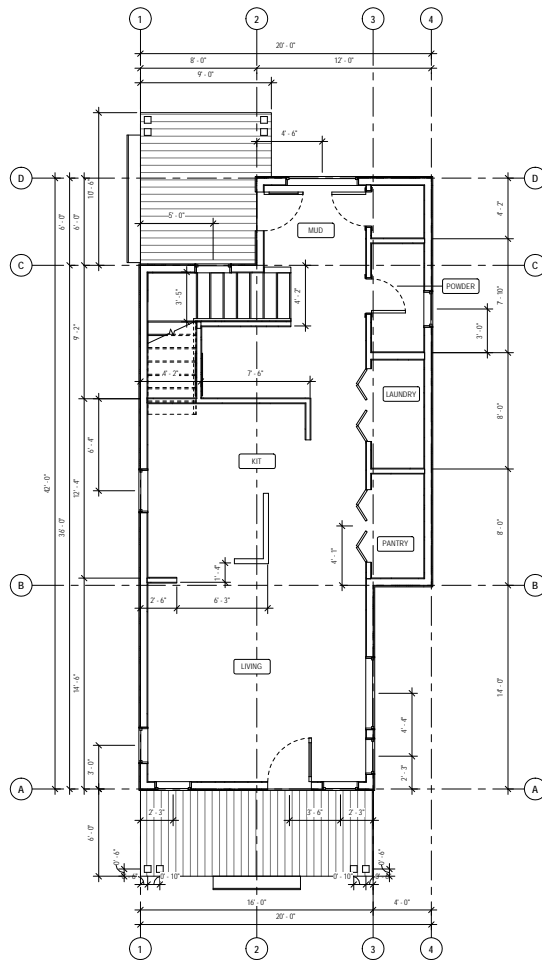
SINGLE FAMILY 2 (U13, U23, U25, U36, U42)
 MISSOULA MONTANA



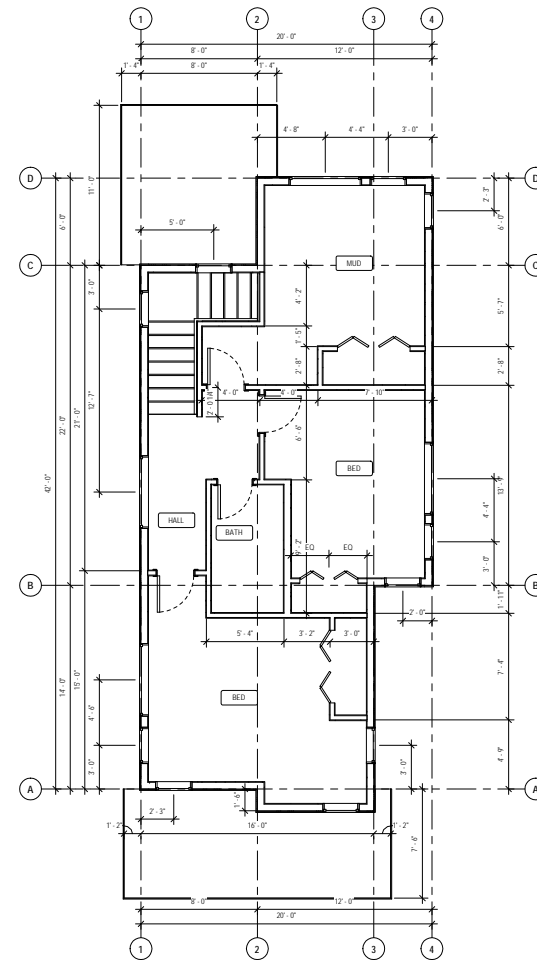
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HELLGATE VILLAGE

SINGLE FAMILY 2 (U13, U23, U25, U36, U42)
MISSOULA MONTANA



1 | FIRST FLOOR
A1 | NTS



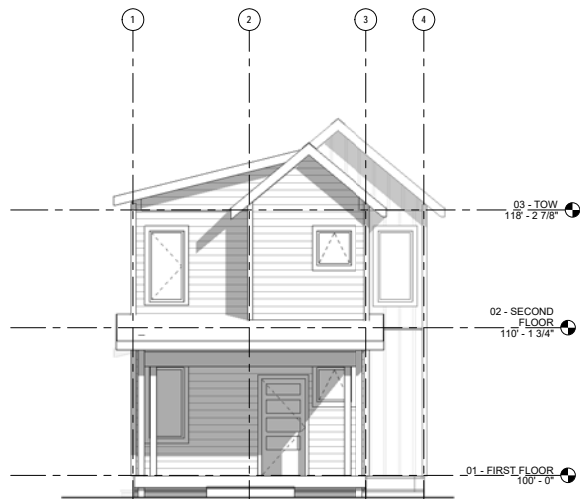
2 | SECOND FLOOR
A1 | NTS



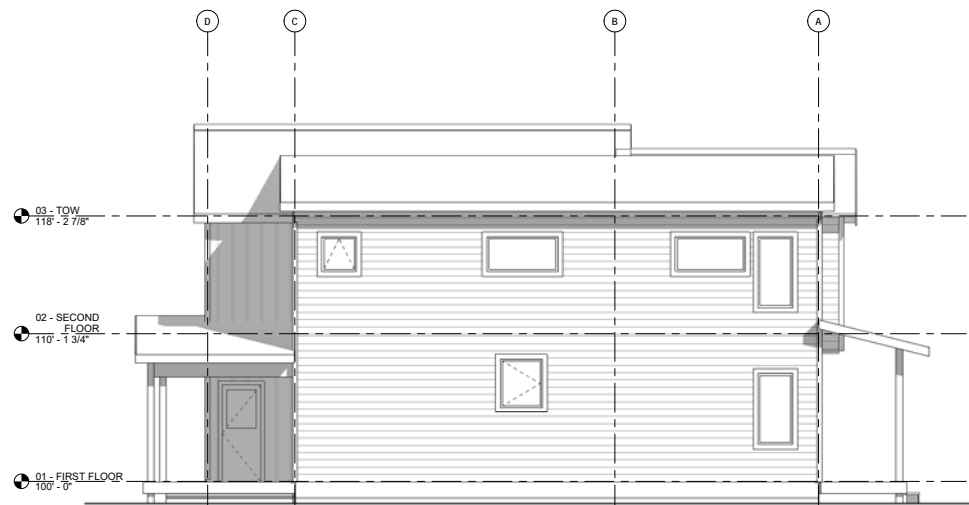
encompass
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HELLGATE VILLAGE

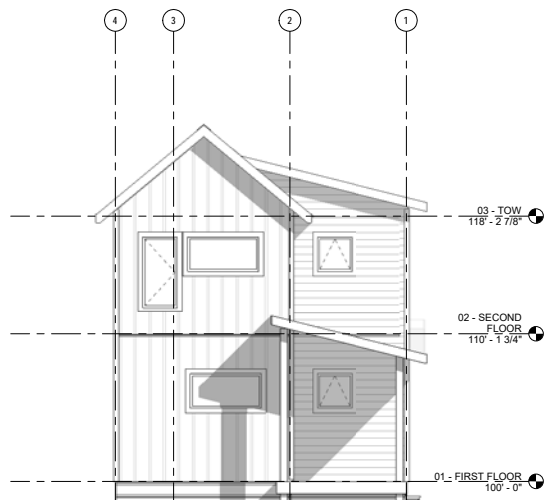
SINGLE FAMILY 3 (U14, U24, U37, U41)
MISSOULA MONTANA



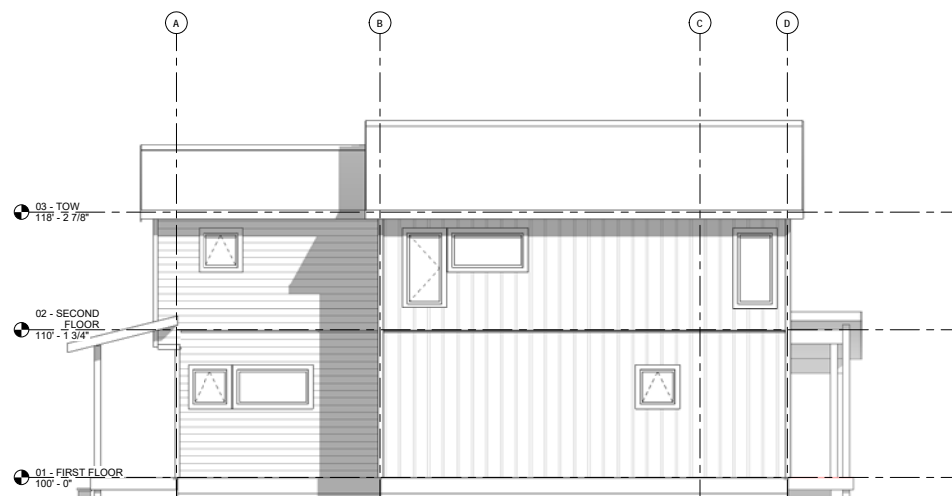
1 | FRONT ELEVATION
A2 | NTS



3 | SIDE ELEVATION
A2 | NTS



2 | REAR ELEVATION
A2 | NTS



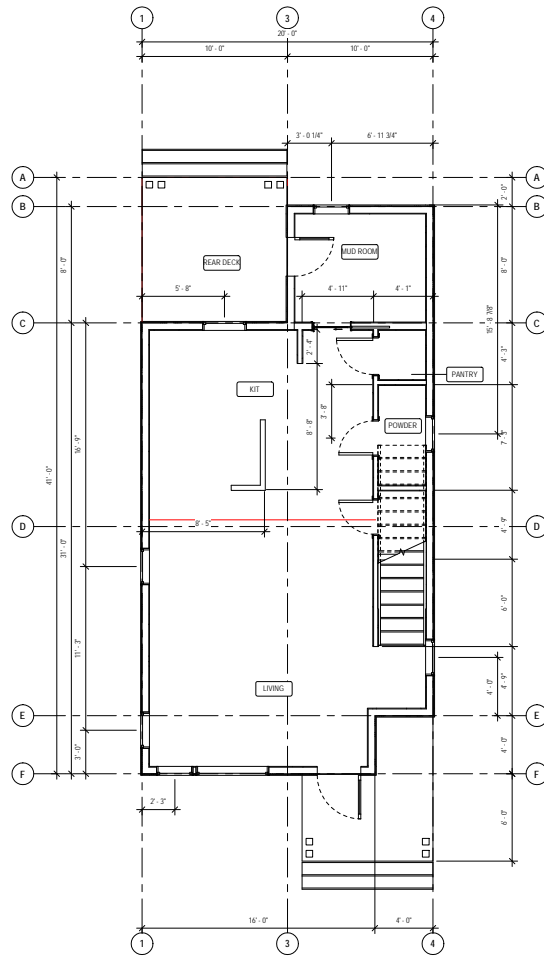
4 | SIDE ELEVATION
A2 | NTS



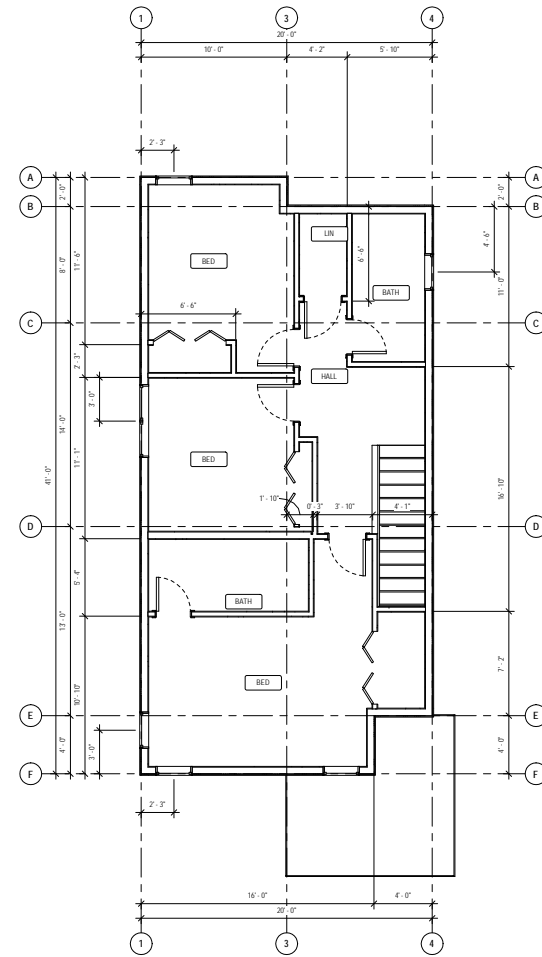
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HELLGATE VILLAGE

SINGLE FAMILY 3 (U14, U24, U37, U41)
MISSOULA MONTANA



① | FIRST FLOOR
A1 | NTS



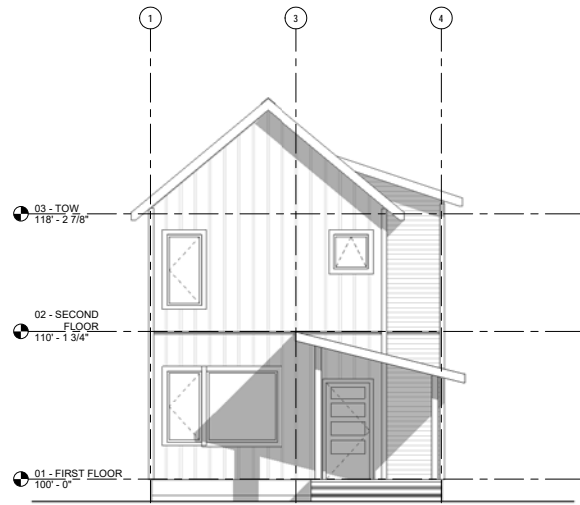
② | SECOND FLOOR
A1 | NTS



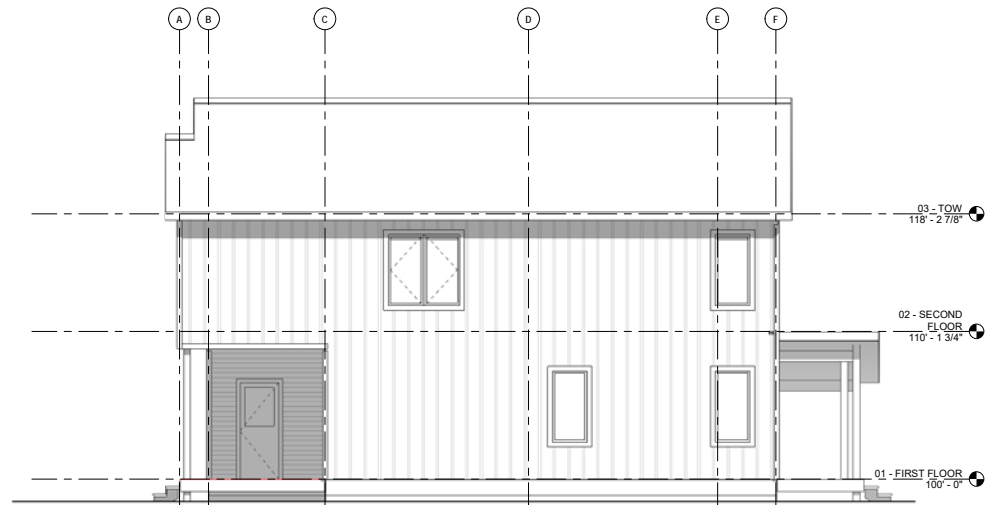
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HELLGATE VILLAGE

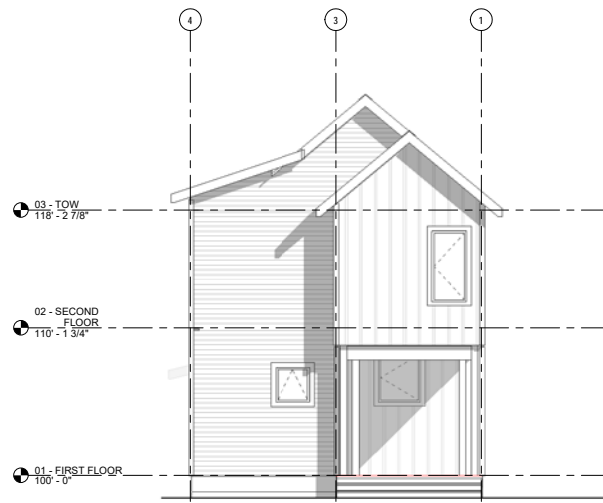
SINGLE FAMILY 4 (U12, U15, U38, U43)
MISSOULA MONTANA



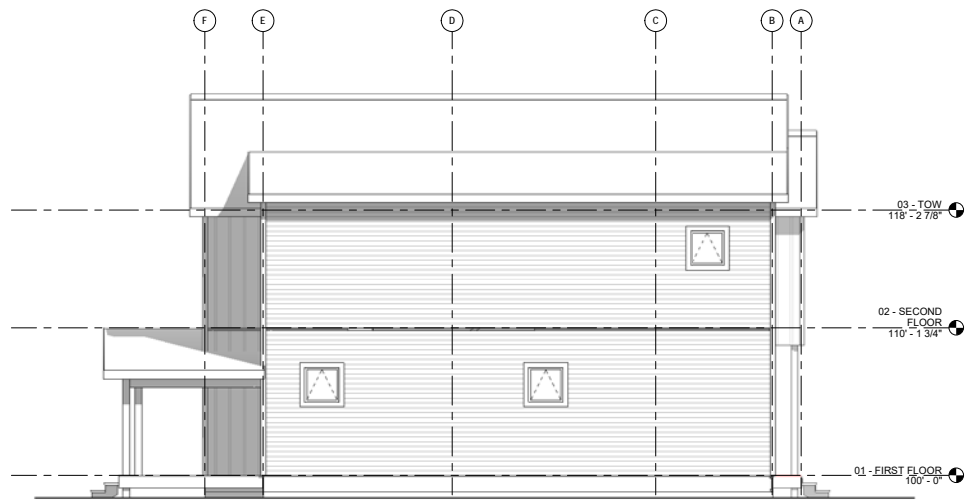
① FRONT ELEVATION
A2 | NTS



③ SIDE ELEVATION
A2 | NTS



② REAR ELEVATION
A2 | NTS



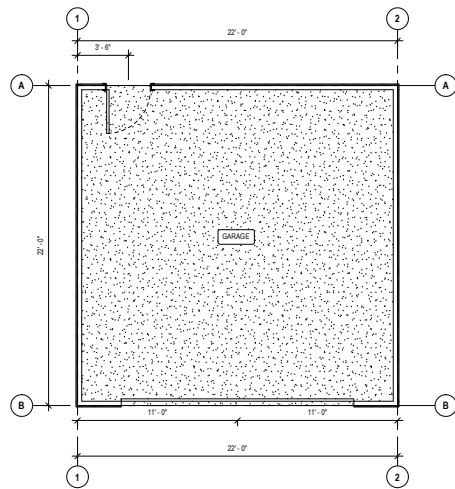
④ SIDE ELEVATION
A2 | NTS



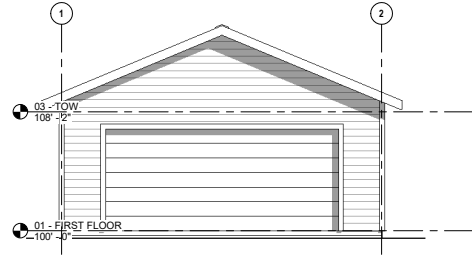
encompass
1535 liberty lane
suite 110b
missoula, montana
59808
Phone: 406.540.4437

HELLGATE VILLAGE

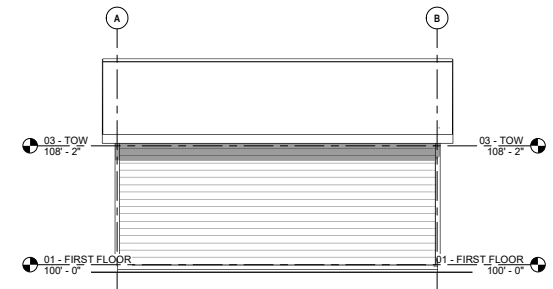
SINGLE FAMILY 4 (U12,U15,U38,U43)
MISSOULA MONTANA



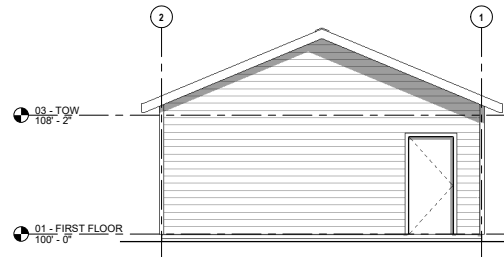
1 | FIRST FLOOR PLAN
AT | NTS



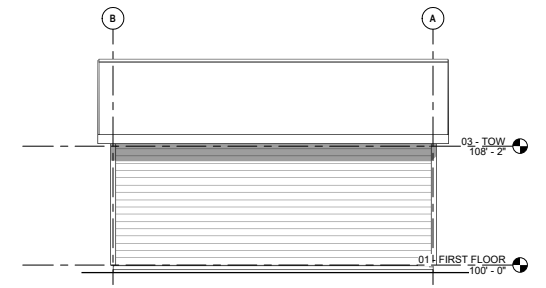
2 | FRONT ELEVATION
AT | NTS



4 | SIDE ELEVATION
AT | NTS



3 | REAR ELEVATION
AT | NTS



5 | SIDE ELEVATION
AT | NTS

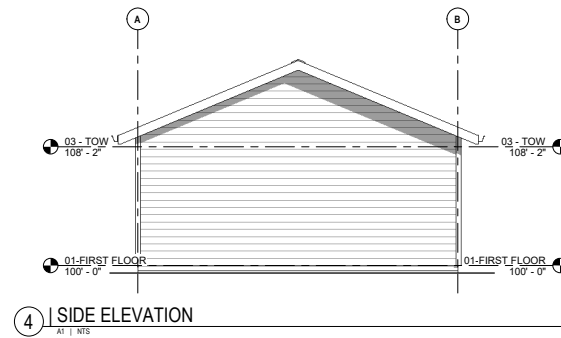
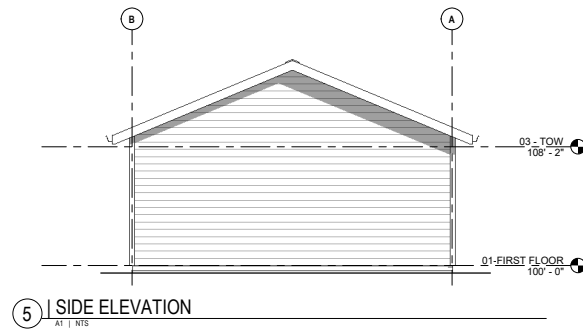
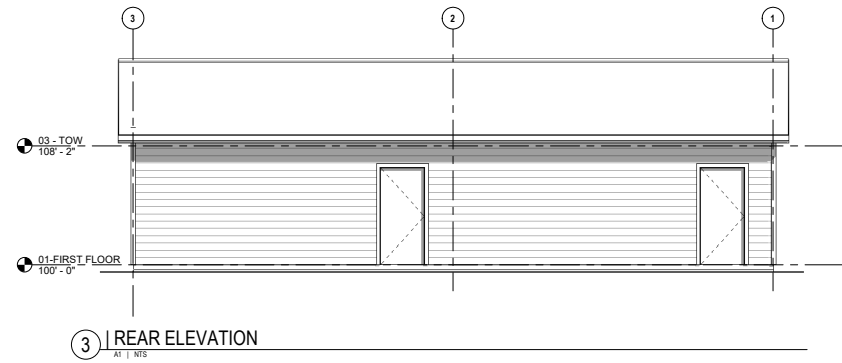
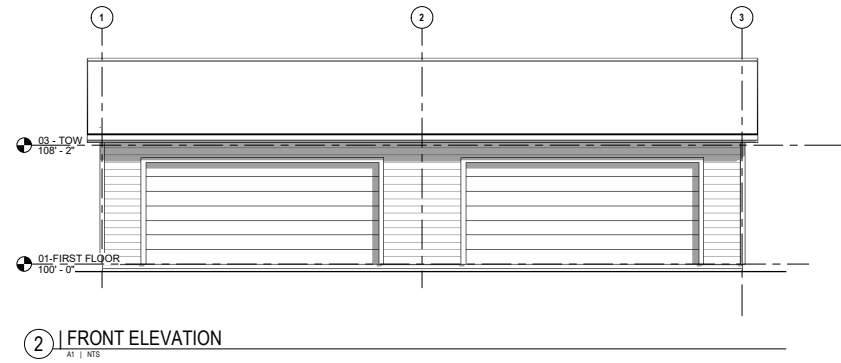
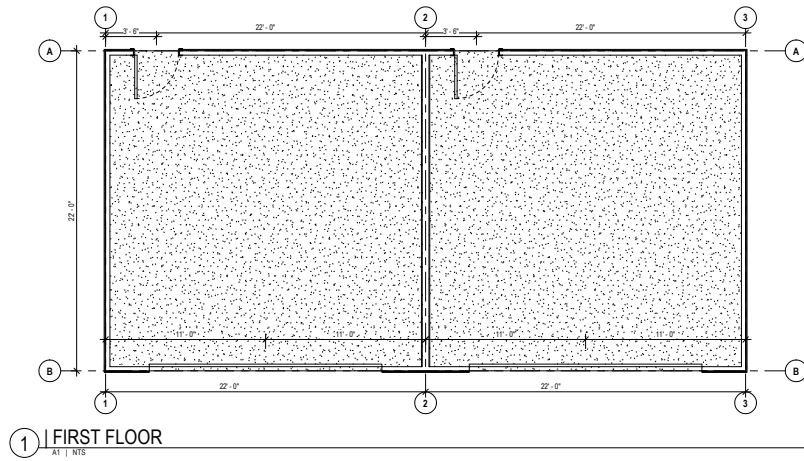


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59708
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HELLGATE VILLAGE

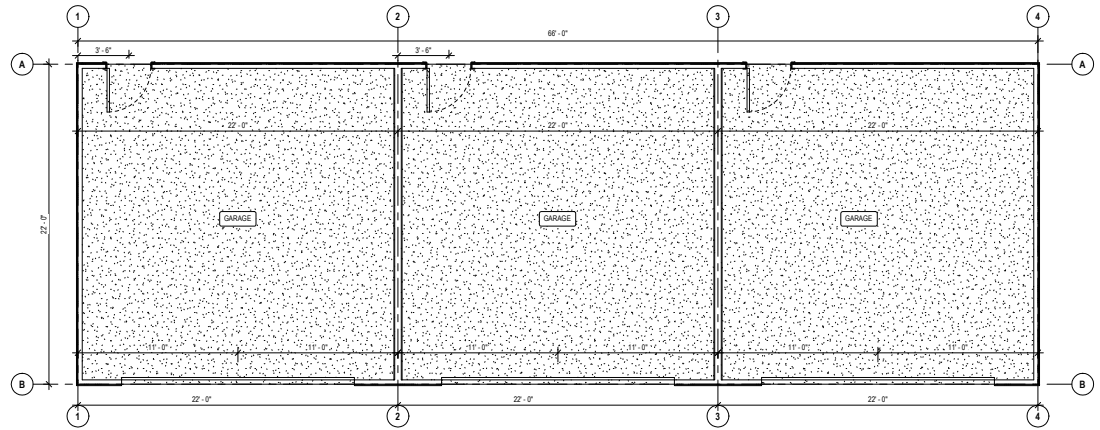
UNHEATED DETACHED GARAGE
MISSOULA MONTANA



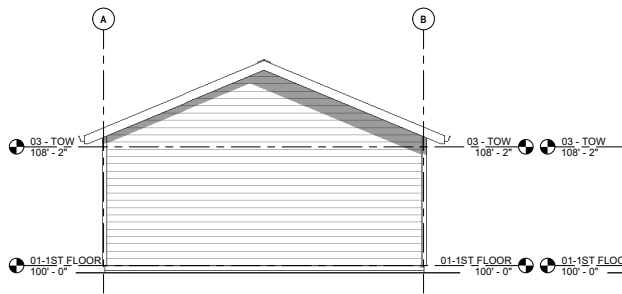
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59808
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HELLGATE VILLAGE

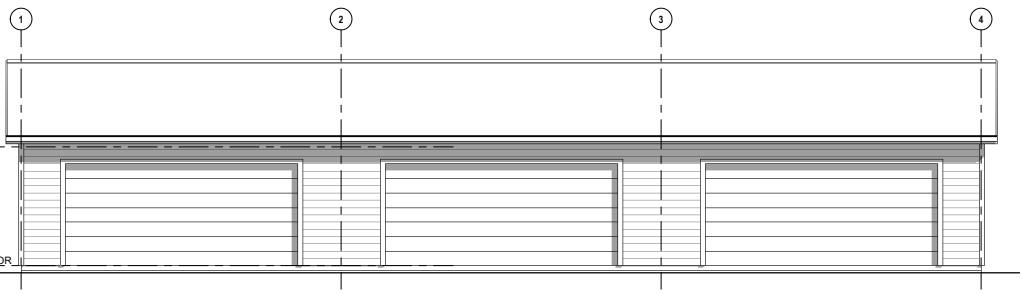
UNHEATED DETACHED 4-CAR GARAGE
MISSOULA MONTANA



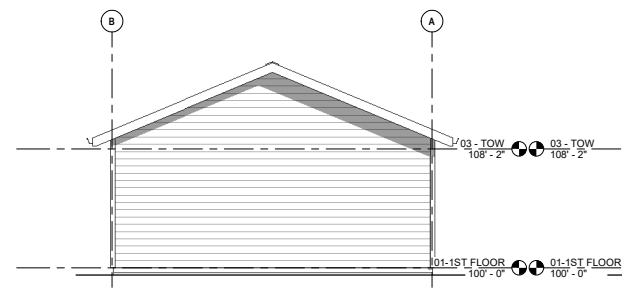
1 | FIRST FLOOR
A1 | NTS



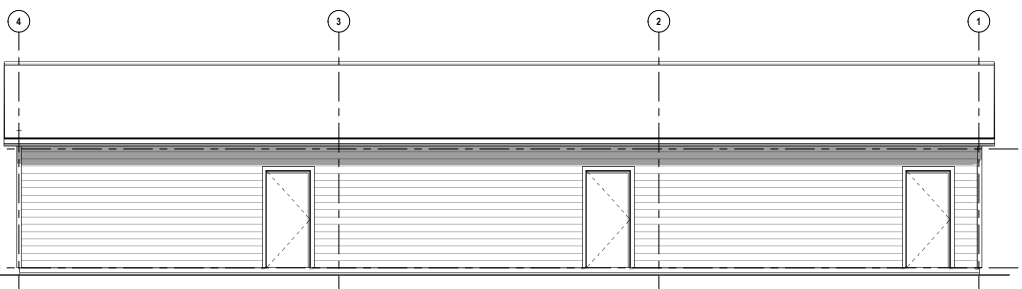
2 | SIDE ELEVATION
A1 | NTS



3 | FRONT ELEVATION
A1 | NTS



4 | SIDE ELEVATION
A1 | NTS



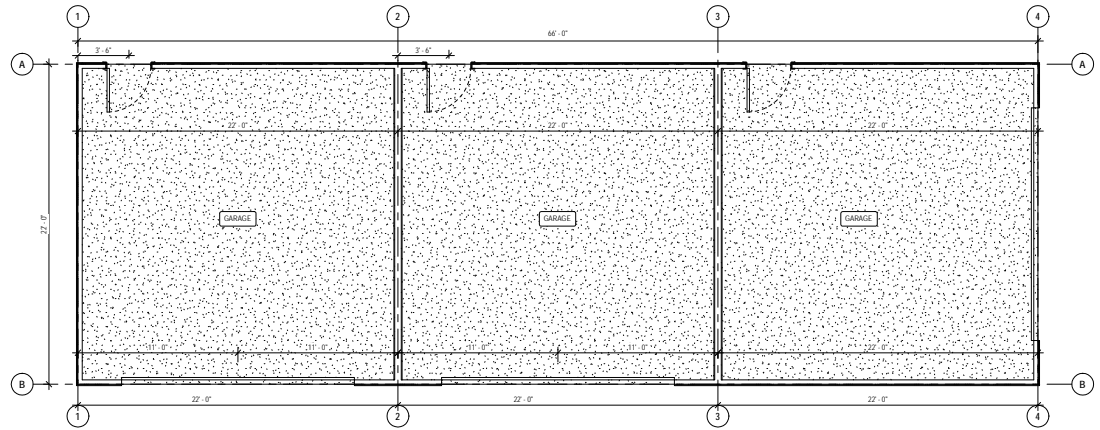
5 | REAR ELEVATION
A1 | NTS



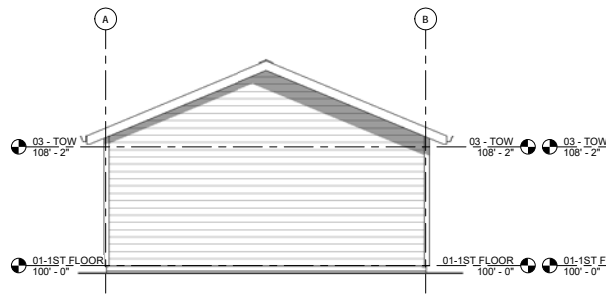
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missoula, montana
59808
Phone: 406.540.4437

HELLGATE VILLAGE

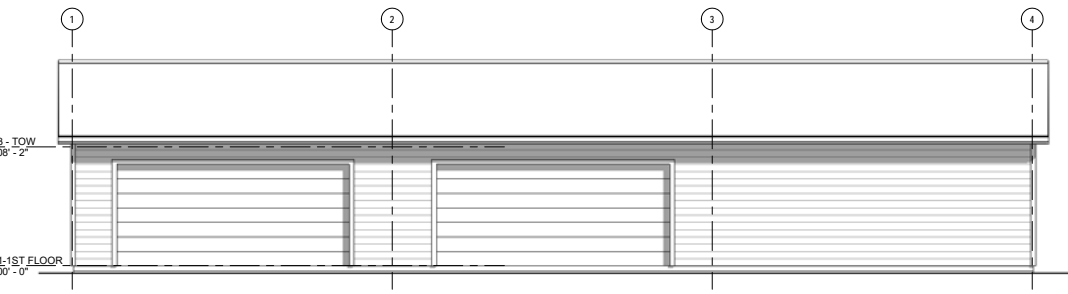
UNHEATED DETACHED 6-CAR GARAGE
MISSOULA MONTANA



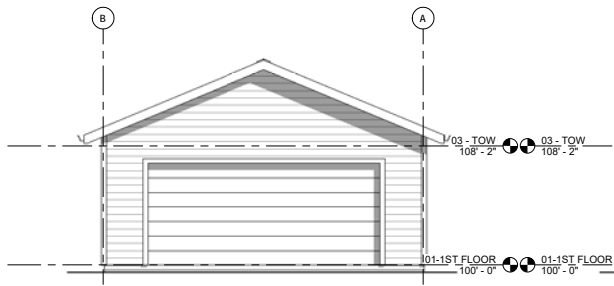
1 | FIRST FLOOR
A1 | NTS



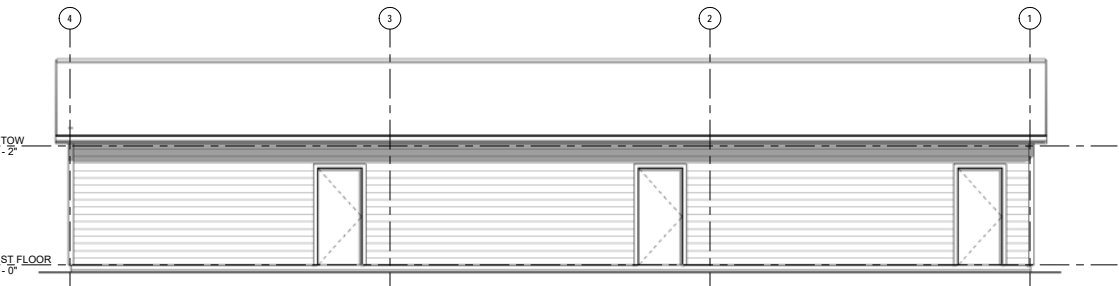
2 | SIDE ELEVATION
A1 | NTS



3 | FRONT ELEVATION
A1 | NTS



4 | SIDE ELEVATION
A1 | NTS



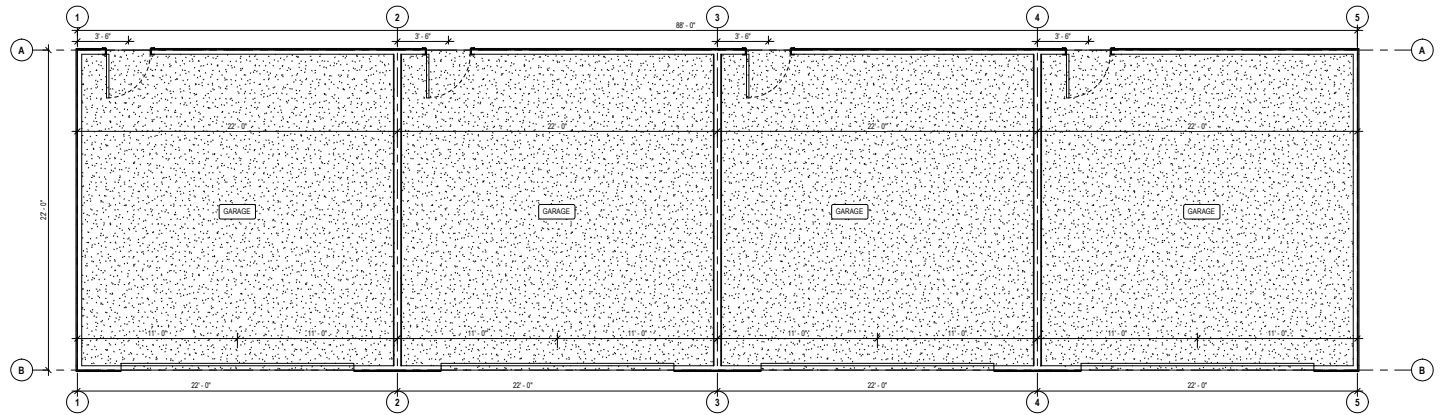
5 | REAR ELEVATION
A1 | NTS



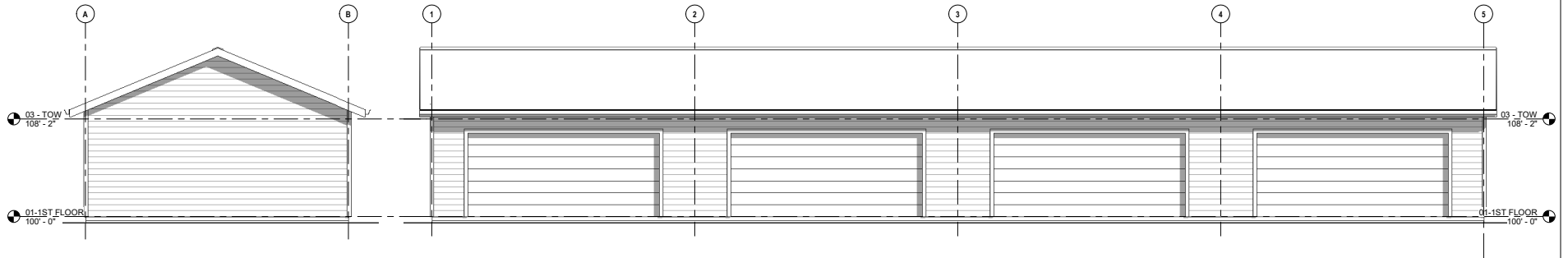
encompass
1535 North line
suite 110b
missoula, montana
59808
Phone: 406.540.4437

HELLGATE VILLAGE

UNHEATED DETACHED 6-CAR GARAGE (U16, U17, U18)
MISSOULA MONTANA

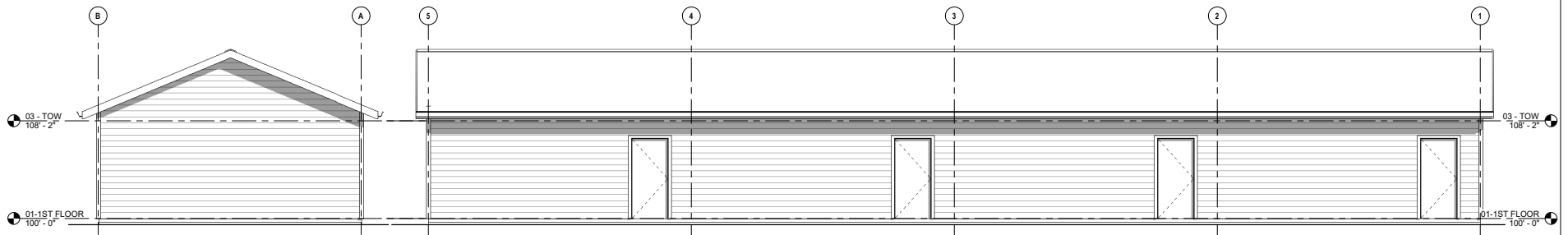


① | FIRST FLOOR
A1 | NTS



④ | SIDE ELEVATION
A1 | NTS

② | FRONT ELEVATION
A1 | NTS



⑤ | SIDE ELEVATION
A1 | NTS

③ | REAR ELEVATION
A1 | NTS



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HELLGATE VILLAGE

UNHEATED DETACHED 8-CAR GARAGE
MISSOULA MONTANA



HELLGATE VILLAGE
EAST TOWNHOMES

Duplex





HELLGATE VILLAGE
EAST TOWNHOMES

Mews





HELLGATE VILLAGE
EAST TOWNHOMES

Mews





HELLGATE VILLAGE
EAST TOWNHOMES

Cottage





HELLGATE VILLAGE
EAST TOWNHOMES

Single Family





HELLGATE VILLAGE
EAST TOWNHOMES

Fourplex





HELLGATE VILLAGE
EAST TOWNHOMES

Triplex

