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**NOTE: SUBSTANTIAL REWORDING OF ENTIRE DECLARATION. SEE ENTIRE ORIGINAL DECLARATION FOR PRESENT TEXT.**

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OF PORPOISE BAY VILLAS, A CONDOMINIUM, PREVIOUSLY KNOWN AS PORPOISE BAY VILLAS PHASES I, II, III, IV-A AND IV-B A/K/A BUILDING 5, CONDOMINIUMS**

KNOW ALL PERSONS BY THESE PRESENTS:

THE AMENDED DECLARATIONS OF CONDOMINIUM MERGING PORPOISE BAY VILLAS, a Condominium, previously known as PORPOISE BAY VILLAS PHASES I, II, III, IV-A and IV-B a/k/a BUILDING 5, CONDOMINIUMS were recorded at Official Record Book 0697, Page 1760, Public Records of Indian River County, Florida. The Amended Declarations of Condominium are hereby amended in part and restated in its entirety.

**Section 1. SUBMISSION TO CONDOMINIUM OWNERSHIP.** This Amended and Restated Declaration of Condominium is made by the Porpoise Bay Villas Condominium Association, Inc., a Florida corporation not for profit. The land described in this Declaration and the improvements located on the land have already been submitted to condominium ownership and use pursuant to the Florida Condominium Act. No additional property is being submitted to condominium ownership by this Declaration.

**Section 2. NAME AND ADDRESS.** The name of the Condominium subject to this Amended and Restated Declaration is Porpoise Bay Villas, a Condominium. The mailing address for this condominium is c/o Vista Property Management, Inc., 100 Vista Royale Boulevard, Vero Beach, Florida 32962.

**Section 3. DEFINITIONS.** The following definitions shall apply in these Declaration and in the Articles of Incorporation and By-Laws, unless the context otherwise requires:

3.1 "Articles" means the Amended and Restated Articles of Incorporation, as amended from time to time.

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3.2 "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the Units. Assessments shall be levied against each Owner in a percentage, equal to that Owner's undivided share in the common elements and common surplus.

3.3 "Association" means Porpoise Bay Villas Condominium Association, Inc., a Florida corporation not for profit, its successors, assigns and legal representatives.

3.4 "Association Certificate" means a certificate of the Association in recordable form signed by the president or vice-president and secretary or assistant secretary of the Association.

3.5 "Association Property" means all property, real or personal, owned or leased by the Association, or dedicated by a recorded subdivision plat to the Association for the use and benefit of the Owners.

3.6 "Building and Improvements" means the structures and improvements on the Properties, but does not include any improvements added by Owners after the original construction of the building.

3.7 "Board of Directors" or "Board" means the representative body which is responsible for the administration of the Association's affairs.

3.8 "By-Laws" mean the Amended and Restated By-Laws, as amended from time to time.

3.9 "Common Elements" means all portions of the condominium property of each Condominium not included within the Units, but not Association property, including landscaping, vehicle parking areas, swimming pool, recreational building, a manager's apartment, walkways, entranceways, and waterways including docks.

3.10 "Condominium" mean Porpoise Bay Villas Phases I, II, III, IV-A and IV-B, A Condominium.

3.11 "Condominium Act" means the condominium act in existence on the date of recording of this Declaration, unless the context states otherwise.

3.12 "Condominium Documents" means and includes this Declaration and all recorded exhibits, including Amended and Restated Articles of Incorporation and By-Laws, as amended from time to time.

3.13 "County" means Indian River County, Florida.

3.14 "Declaration" means this Amended and Restated Declaration of Porpoise Bay Villas Phases I, II, III, IV-A and IV-B, A Condominium, as amended from time to time.

3.15 "Fixtures" means those items of tangible personal property which by being physically annexed or constructively affixed to the Unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

3.16 "Guest" means any person who: (a) is physically present in, or occupies the Unit at the invitation of the Owner or other legally permitted occupant, without requirement to contribute money, perform services or provide any other consideration to the Owner or lessee in connection with such presence of occupancy; (b) is not the Owner or lessee of the Unit on which he or she is present; and (c) is not a member of the family of the Owner or lessee of the Unit on which he or she is present. Notwithstanding the foregoing, an Owner or lessee of the Unit on which he or she is present shall be considered a Guest if he or she is not a permanent occupant of that Unit. Furthermore, a member of the family of the Owner or lessee of a Unit shall be considered a Guest unless he or she is a permanent occupant of such Unit.

3.17 "Institutional Mortgagee" means the holder (or its assignee) of a mortgage against a Unit, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers

to any holder of a mortgage against a Unit which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns. "Institutional First Mortgagee" means the foregoing, but is limited to the holder of a first mortgage. "Institutional Mortgage" means a mortgage held by an Institutional Mortgagee.

3.18 "Lease" means the grant by an Owner of a temporary right of use of the Owner's Unit for valuable consideration.

3.19 "Limited Common Elements" means and refers to those common elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units, as specified in this Declaration.

3.20 "Member" or "Member of the Association" means a record Owner of a Unit, subject to the provisions of Section 14.1.B below, but shall not include persons who hold an interest merely as security for the performance of an obligation.

3.21 "Occupy" shall mean and refer to the act of being physically present in a Unit for any period of time. "Occupant" is a person who occupies a Unit. A "permanent occupant" means an Owner or lessee of a Unit or a member of such Owner's or lessee's family who regularly resides in such Unit.

3.22 "Original Declaration" shall mean and refer to the Amended Declarations of Condominium Merging Porpoise Bay Villas Phases I, II, III, IV-A and IV-B, Condominiums, as recorded at Official Record Book 0697, Page 1760, Public Records of Indian River County, Florida; as amended prior to this date.

3.23 "Owner" or "Unit Owner" means the record Owner, whether one or more persons or entities, of the fee simple title to any Unit, but excludes those having such interests merely as security for the performance of an obligation.

3.24 "Phase(s)" means any one or more of those condominiums which separately existed prior to the merger accomplished pursuant to the Original Declaration, previously known as follows: Porpoise Bay Villas Phase I, according to

the Declaration of Condominium recorded in Official Record Book 581, Page 1292, Public Records of Indian River County, Florida; Porpoise Bay Villas Phase II, according to the Declaration of Condominium recorded in Official Record Book 593, Page 1534, Public Records of Indian River County, Florida; Porpoise Bay Villas Phase III, according to the Declaration of Condominium recorded in Official Record Book 633, Page 2349, Public Records of Indian River County, Florida; Porpoise Bay Villas Phase IV-A, according to the Declaration of Condominium recorded in Official Record Book 613, Page 440, Public Records of Indian River County, Florida; and Porpoise Bay Villas Phase IV-B, according to the Declaration of Condominium recorded in Official Record Book 609, Page 2164, Public Records of Indian River County, Florida.

3.24 "Plans and Specifications" means the plans and specifications prepared for the Buildings and Improvements.

3.25 "Properties" means the Condominium Property (Units, common elements and limited common elements) and Association property.

3.26 "Rules and Regulations" means those rules and regulations promulgated from time to time by the Board of Directors, governing the use of the Properties, including the Units, and the operation of the Association.

3.27 "Unit" means and refers to that portion of the Condominium property which is subject to exclusive ownership.

3.28 "Voting Interest" means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one vote in Association matters.

#### **SECTION 4. DESCRIPTION OF CONDOMINIUM PROPERTY AND IMPROVEMENTS; SURVEY AND PLANS.**

4.1 Entire Condominium. This Condominium consists of that property legally described in Exhibit "A" attached to and made a part of this Declaration. There are twenty-four one story buildings containing two units each (which is sometimes hereinafter referred to as "duplexes") for a total of forty-eight units, and eight two

story buildings containing six units each (sometimes hereinafter referred to as "townhouses") containing a total of forty-eight units, which when combined totals ninety-six units.

4.2 Survey and Plot Plans. Attached to this Declaration as Exhibit "B" is a survey of the land and plot plans, which graphically describe the improvements in which Units are located, and which show all the Units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements; along with which was attached a certificate of a surveyor. Together with this Declaration, the foregoing are in sufficient detail to identify each Unit, the common elements and limited common elements and their relative locations and dimensions.

4.3 Unit Boundaries.

A. Upper and Lower Boundaries. The upper and lower boundaries of the Units shall be the following boundaries, extended to an intersection with the perimetrical boundaries:

1. Upper Boundary - there shall be no upper boundary, and the Unit shall extend upward from the lower boundary indefinitely along the planes of the perimetrical boundaries.
2. Lower Boundary - the plane of the lower surface of the foundation beam.

B. Perimetrical Boundaries. The perimetrical boundaries of the Units will be the following boundaries extended to an intersection with the upper and lower boundaries:

1. Exterior building walls - the intersecting vertical planes of the undecorated and unpainted exterior wall surfaces of a building, provided that, where there is appurtenant to a Unit a balcony or terrace the base of which is an

extension of the floor system constituting the lower boundary of the Unit and such balcony or terrace is vertically bounded by an extension of a building wall which is a part of the Unit's perimetrical boundary, the perimetrical boundaries of the Unit shall be extended to include such balcony or terrace.

2. Interior building walls - the vertical plane of the longitudinal center line of the concrete block interior wall which bounds the Unit and separates such Unit from an adjoining Unit (or Units), extended to intersections with the other perimetrical boundaries of such Units.
- C. Apertures. Where there are apertures in the boundaries, to include the balcony or terrace as the boundary, including, without limitation, windows, doors and shutters, the boundaries shall extend to and include the entirety of same, including framing, casing, posts, threshold, hardware and glass.
- D. Proviso. Notwithstanding the foregoing to the contrary, the perimetrical and lower boundaries of the Units are represented by the dark solid lines on the floor plans and elevations shown on Exhibit "B" attached to and made a part of this Declaration. In the event of any conflict between that exhibit and this Section 4.3, Exhibit "B" shall control and govern, except that the provisions of Section 4.3.C above shall control and govern.
- E. Exclusion. The Unit shall exclude pipes, wires, conduits or other public utility transmission devices running through any Unit which are utilized for or serve more than one Unit or the common elements, which shall be common elements.
- F. Personal Property of the Owners. Any improvement added to the common elements, limited common elements or building exteriors

which is not part of the original construction of the building shall retain the character of personal property of the particular Owner.

**SECTION 5. EASEMENTS.** Each of the easements and easement rights referred to in this Section 5, is reserved through the Properties and is a covenant running with the land in the Condominium, and notwithstanding any other provisions of this Declaration, shall survive the removal of any of the Properties from the Condominium. None of the easements specified in this Section 5 may be encumbered by any leasehold or lien other than those on the Units. Any lien encumbering these easements shall automatically be subordinate to the rights of the Owners with respect to such easements. The following easements lie in addition to those provided for in the Condominium Act:

**5.1 Encroachments.** If any Unit encroaches upon any of the common elements or Association property for any reason other than the intentional act of an Owner, or if any common elements or Association property encroaches upon any Unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

**5.2 Ingress and Egress.** Easements over the common elements and Association property for ingress and egress, to Units and public ways, to the Condominium, and to and from garden areas, recreational and plaza areas. The existence of speed bumps and any additional ones later installed shall not be deemed to unreasonably impair these easements rights.

**5.3 Maintenance, Repair and Replacement.** Easements through the Units, common elements and Association property for maintenance, repair and replacements.

**5.4 Utilities.** Easements through the common elements and Association property and Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of services to other Units and the common elements.

5.5 Public Services. Emergency, regulatory, law enforcement and other public services in the lawful performance of their duties upon the Condominium and Association property.

**SECTION 6. CONDOMINIUM PARCELS; APPURTENANCES AND USE.**

6.1 Condominium Parcels. Each Unit is described and located on Exhibit "B" to this Declaration. The Owner(s) of each Unit shall own a 1/96 undivided share in the common elements and the common surplus.

6.2 Appurtenances to Each Unit. The Owner of each Unit shall have certain rights and own a certain interest in the Condominium property, including without limitation the following:

- A. An undivided ownership share in the land and other common elements and the common surplus, as specifically set forth in Section 6.1 above.
- B. Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Amended and Restated Articles of Incorporation and By-Laws of the Association, attached to this Declaration as Exhibits "C" and "D", respectively.
- C. The exclusive right to use the limited common elements reserved for the Unit, and the right to use the common elements.
- D. An exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- E. Other appurtenances as may be provided in this Declaration and its exhibits.

Each Unit and its appurtenances constitute a "Condominium Parcel".

6.3 Use and Possession. An Owner is entitled to exclusive use and possession of his Unit. He is entitled to use the Properties in accordance with the purposes for which they are intended, but no use of the Unit or of the Properties may unreasonably interfere with the rights of other Owners of other persons having rights to use the Properties. No Unit may be divided or any fractional portion sold, leased or otherwise transferred. The use of the Properties, including the Units, shall be governed by the Condominium Documents as they may be amended from time to time and by the Rules and Regulations promulgated from time to time by the Board of Directors.

6.4 Special Provision Regarding Use When the Unit is Leased. When a Unit is leased, a tenant shall have all use rights Association property and common elements otherwise readily available for use generally by Owners, and the Owners shall not have such rights except as a Guest. Nothing in this Section 6.4 shall interfere with the access rights of the Owner as a landlord pursuant to Chapter 83, Florida Statutes. The Board of Directors of the Association shall have the right to adopt Rules and Regulations to prohibit dual usage by an Owner and a tenant of the Association property and common elements otherwise readily available for use generally by Owners.

## **SECTION 7. COMMON ELEMENTS.**

7.1 Common Elements Defined. The common elements are as defined in Section 3.9 above.

7.2 Restraint Upon Separation and Partition of Common Elements. The undivided share of ownership in the common elements and common surplus appurtenant to a Unit cannot be conveyed or encumbered separately from the Unit and shall pass with the title to the Unit, whether or not separately described. No action shall lie for partition of the common elements.

## **SECTION 8. LIMITED COMMON ELEMENTS.**

**8.1      Description of Limited Common Elements.** Certain common elements have been designated as limited common elements, reserved for the use of a particular Unit or Units, to the exclusion of the other Units. The limited common elements and the Units to which their use has been designated are as described in this Declaration. The following common elements are hereby designated as limited common elements:

- A.   Parking Spaces.** There are forty-eight separate and designated covered parking spaces adjacent to the townhouse building, as specifically identified on Exhibit "B" attached to this Declaration; each of same is a limited common element of the Unit so designated within the townhouse building. Furthermore, that portion of the common elements consisting of uncovered separate, designated and numbered parking spaces as specifically identified and numbered on Exhibit "B" attached to and made a part of this Declaration, is a limited common element of the Unit so designated and numbered. Limited common element parking spaces may be transferred from one Unit to another upon the recording of an assignment of parking space in the public records of the County, executed by all Owners of the affected Units. Upon such recordation, the limited common element parking space appurtenant to the transferring Unit shall no longer be a limited common element of that Unit and shall be transferred to and become a limited common element of the Unit to which the limited common element parking space has been assigned. No amendment to Exhibit "B" shall be required. Upon such recordation, the Owner of the Unit to which the limited common element parking space has been assigned shall provide a photocopy of the recorded assignment to the Association for its records; the failure of the Association to receive such assignment shall not invalidate the assignment of parking space.
- B.   Specific Porches.** Each of the thirty-two porch areas adjacent and connected to the Units 101A, 101B, 101E, 101F, 105A, 105B, 105E, 105F, 201A, 201B, 201E, 201F, 205A, 205B, 205E,

205F, 301A, 301B, 301E, 301F, 308A, 308B, 308E, 308F, 401A, 401B, 401E, 401F, 501A, 501H, 501E, and 501F, is a limited common element of the Unit served thereby.

- C. Airconditioning/Heating Equipment and Lines; Attic and Roof Exhaust Fans. The airconditioning/heating equipment, including compressor equipment, connections and lines servicing only one Unit, and the attic and roof exhaust fans, which are situated within the common elements, are a limited common element of the Unit served thereby.

8.2 Exclusive Use; No Transfer of Use Rights. The exclusive use of a limited common element is an appurtenance to the Unit or Units to which it is designated or assigned. The right of exclusive use to each limited common element passes with title to the Unit(s), whether or not separately described, and cannot be separated from it/them.

**SECTION 9. ASSOCIATION.** The operation of the Condominium is by the PORPOISE BAY VILLAS CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, which shall perform its functions pursuant to this Declaration and the following:

9.1 Articles of Incorporation. The Articles of Incorporation of the Association shall be the Amended and Restated Articles of Incorporation attached as Exhibit "C", as amended from time to time.

9.2 By-Laws. The By-Laws of the Association shall be the Amended and Restated By-Laws attached as Exhibit "D", as amended from time to time.

9.3 Membership and Voting Rights. The membership of the Association shall be as provided in the Articles of Incorporation and By-Laws. The Owners of each Unit shall collectively be entitled to that vote as more fully provided in the Articles of Incorporation and By-Laws.

**9.4     Limitation on Liability.**

- A. Notwithstanding its duty to maintain and repair certain Properties, the Association shall not be liable to the Owners for injury or damage caused by Properties which the Association has responsibility to maintain. In the event that any portion of the Properties for which the Owner has maintenance responsibility under this Declaration, or any real or personal property of the Owner, shall be damaged in the course of the Association's maintenance, repair or replacement of those Properties for which the Association has responsibility, the Owner shall bear the full risk of loss. The only exception under this Section 9.4.A is where the Association (whether for itself or its contractor) is guilty of gross negligence or intentional misconduct which causes the loss, in which case the Association bears the risk of loss created by same (with any available contribution from the contractor or others). This Section 9.4.A shall also apply where the loss results in the course of the Association's reconstruction and repair after casualty.
- B. The Association shall in no event be liable for any damages resulting from an Owner's breach of his maintenance, repair and replacement responsibility under this Declaration.

**9.5     Purchase, Conveyance, Leasing and Mortgaging of Real Property.** The Association shall be permitted to acquire title to real property (exclusive of Units in the Condominium) and convey same upon the prior vote of a majority of the entire voting interests of the Members of the Association. The authority of the Association to purchase Units is as set forth in the Articles of Incorporation. The Association shall be permitted to lease real property, with the approval of the Board of Directors only. The Association may mortgage real property subject to the limitations of Section 3.2.C.2 of the Articles of Incorporation, which section is for this purpose incorporated herein by reference.

**SECTION 10. ASSESSMENTS, CHARGES AND LIENS.** The Association has the power to levy and collect assessments against each Unit and Owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association, including both annual assessments for each Unit's share of the common expenses as set forth in the annual budget, and special assessments for any proper common expenses. The Association may also levy Charges against individual Unit(s) and Owner(s) for any amounts, other than for common expenses, which are properly chargeable against such Unit and Owner under the Condominium Documents.

**10.1 Common Expenses.** Common expenses include all expenses of the operation, maintenance, repair, replacement, protection or insurance of the Properties, the expenses of operating the Association, fines levied by governmental authority, and any other expenses properly incurred by the Association for the Condominium, including any amounts budgeted for the purpose of funding reserve accounts. Common expenses may include the cost of cable television and telecommunication services, such pest control in the Units as the Board may provide from time to time.

**10.2 Share of Common Expenses.** Each Owner (collectively) and each Unit in each Condominium shall be liable for that share of the common expenses equal to each Owner's share of ownership of the common elements as stated in Section 6.1 above.

**10.3 Ownership.** Assessments collected by or on behalf of the Association become the property of the Association. No Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Unit. No Owner has the right to withdraw or receive distribution of his share of the common surplus, except as otherwise provided in the Condominium Documents or by law.

**10.4 Who is Liable for Assessments.** The Owner of each Unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the Owner. Multiple Owners are jointly and severally liable. Except as otherwise provided in Section 10.8.A below, whenever title to a Unit is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments against the transferor, regardless of when incurred, without

prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee.

10.5 No Waiver or Excuse From Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common element, by abandonment of the Unit on which the assessments are made, by interruption in the availability of the Unit or the common elements or Association property for any reason whatsoever, or by dissatisfaction with the Association and/or its operation and policies. No Owner may be excused from payment of his share of the common expenses unless all Owners are likewise proportionately excused from payment, except as otherwise provided by the Condominium Act.

10.6 Application of Payments; Failure to Pay; Interest; Late Fees. Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law on open accounts at the particular time, calculated from the date due until paid; and shall result in the imposition of a late fee equal to the maximum amount permitted by the Condominium Act from time to time. (Currently, the maximum is the greater of \$25.00 or five (5%) percent of the late payment). Assessments and installments thereon shall become due, and the Owner shall become liable for the assessments or installments, on the date established in the By-Laws or otherwise set by the Board of Directors of the Association for payment. All payments on account shall be applied in the following order irrespective of any restrictive endorsement, designation or instruction placed on or accompanying any payment: To interest, late fees, costs and attorneys' fees, and annual and/or special assessments first due and owing. If payment is made by check which fails to clear, then the Owner shall be considered not to have made payment.

10.7 Liens. The Association has a lien on each Unit securing payment of past due assessments, including late fees so long as not prohibited by the Condominium Act at the particular time, and including interest and attorneys' fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit or other lawsuit. Any claim of lien recorded shall state the legal description of the Unit, the name of the record Owner, the assessments past due and the due dates. The claim

of lien is effective from and has those priorities as stated in the Condominium Act as amended from time to time and is in effect until barred by law. The claim of lien secures all unpaid assessments, applicable late fees, interest, costs and attorneys' fees coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien. The Association is empowered through the Board to assign its lien rights for recovery of unpaid assessments to a third party, to secure repayment of a loan entered into by the Association.

**10.8 Priority of Lien; Liability of Mortgagees and Other Lienholders; Leases.**

- A. Rights of Mortgagees and Other Lienholders. The liability and priority of mortgagees and other lienholders and successors in title to Units as result of a mortgage or lien foreclosure shall be as provided in the Condominium Act as amended from time to time.
- B. Leases. Any lease of a Unit shall be subordinate and inferior to any claim of lien of the Association, regardless of when the lease was executed.

**10.9 Foreclosure of Lien; Action at Law.** The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided for in the Condominium Act and may also bring an action to recover a money judgment for unpaid assessments without waiving any lien rights. In addition to any assessments due, the Association shall be entitled to recover interest, and all costs of collection, including court costs and paralegal and attorneys' fees. Late fees are recoverable at law, and as part of the claim of lien unless prohibited by the Condominium Act from time to time. Whenever the Association shall bring a lien foreclosure action, the Association shall be entitled to the appointment of a receiver, which may be the Association, to collect the rent. Such receiver shall be appointed pursuant to a court order in the foreclosure action. If some person other than the Association acts as receiver, then the cost of the receiver shall be borne by the party which did not prevail in the lawsuit. Homestead shall not be a defense to a mortgage foreclosure action.

**10.10 Certificate As To Assessments.** The Association shall provide a certificate stating whether all assessments and other monies owed to the Association by the Owner with respect to the Unit have been paid, within fifteen (15) days after request by an Owner or mortgagee. Any person other than the Owner who relies upon such certificate shall be protected thereby.

**10.11 Charges.**

- A. **Defined.** Each Unit and Owner shall be liable for Charges levied by the Association against the Unit and Owner, with the due date as per invoice from the Association. Charges shall be deemed to include but not be limited to: maintenance or other services furnished by the Association for the benefit of an Owner; damages; and any other sums other than assessments which are referred to as Charges in the Condominium Documents. At no time shall a Charge be deemed an assessment under the Condominium Act or under the Condominium Documents.
- B. **Who is Liable for Charges.** The Owner of each Unit, regardless of how title was acquired, is liable for all Charges coming due while he is the Owner. Multiple Owners are jointly and severally liable.
- C. **Application of Payments; Failure to Pay; Late Fees; Interest.** Charges paid on or before the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law on open accounts at the particular time, calculated from the date due until paid; and shall result in the imposition of a late fee equal to the greater of \$25.00 or five (5%) percent of the late payment. All payments on account shall be applied in the following order irrespective of any restrictive endorsement, designation or instruction placed on or accompanying any payment: To interest, late fees, costs and attorneys' fees, Charges, first due and owing. If payment is made by check

which fails to clear, then the Owner shall be considered not to have made payment.

- D. Collection of a Charge. The Association may bring an action to recover a money judgment for the unpaid Charges and shall be entitled to recover interest, late fees, and all costs of collection, including court costs and attorneys' fees, including those incurred in connection with appellate, bankruptcy and administrative proceedings.

**SECTION 11. MAINTENANCE, REPAIR AND REPLACEMENT; MAINTENANCE STANDARDS; ALTERATIONS AND IMPROVEMENTS.** Responsibility for the protection, maintenance, repair and replacement of the Properties, and maintenance standards shall be as follows:

11.1 Association Maintenance. In addition to other provisions contained elsewhere in this Declaration, the following Properties shall be protected, maintained, repaired and replaced by the Association at the expense of the Association, as an item of common expense:

- A. Units. Exterior painting of the building, to include the painting of the exteriors of any screen or glass enclosures.
- B. Common Elements and Association Property. All common elements and Association property.
- C. Limited Common Elements. Only the following limited common elements:
1. Parking Spaces (Section 8.1.A above): The entirety of the parking spaces.
  2. Porches (See Section 8.1.B above): Only the exterior painting of the screen and glass enclosures.

- D. Exterminating. The Association shall be responsible to provide pest control to the common elements. In the event that in order for the Association to discharge its duty under this Section 11.1.D, the building must be "tented", the Association shall be responsible only for the cost of the actual tenting, and not for an Owner's or occupant's incidental expenses such as food and lodging, and not for any losses to property within the Unit due to the tenting process. All Owners and Occupants shall be responsible to remove themselves, their pets and their perishable items upon reasonable notice by the Association, in order for tenting to be effected. Any Owner (for himself and/or for his tenants and other occupants) who fails to so cooperate shall be liable to the Association for damages caused by delays and otherwise. The Association shall be entitled to a preliminary injunction order requiring compliance with this Section 11.1.D.
- E. Shutters. The Association shall paint the exterior of any shutters installed as part of the original construction of the building.

11.2 Owner Maintenance. Each Owner is responsible, at his own expense, for the maintenance, repair, and replacement of the following Properties:

- A. Units. All portions of the Unit, whether the maintenance, repair or replacement is ordinary or extraordinary; except as otherwise provided to be the responsibility of the Association under Section 11.1.A above.
- B. Limited Common Elements; Owners' Personal Property.
1. All portions of the limited common elements which are not the responsibility of the Association under this Declaration, including the porches referred to in Section 8.1.B above, and whether or not they are enclosed or unenclosed.

2. All exterior improvements and landscaping installed by an Owner after the original construction of the building shall be viewed as the personal property of the Owner. The Owner shall be responsible to maintain, repair and replace all portions of same, except as otherwise provided in this Declaration to be the responsibility of the Association.

**C. Miscellaneous Covenants and Understandings of Each Owner.**

1. Each Owner must perform promptly all maintenance, repairs and replacement which is necessary to ensure a high quality condition and appearance and/or which if not performed would affect any of the Properties, including any Unit(s) belonging to any other Owner(s).
2. Each Owner shall be liable for any damages or costs incurred which arise due to his/her failure to perform the maintenance, repair and replacement responsibilities under this Section 11.
3. Each Owner shall promptly report to the Association or its agents any defect or need for repair on the Properties for which the Association is responsible to maintain, repair and replace under this Declaration.
4. No Owner shall do anything which would adversely affect the safety or soundness or cause damage to the common elements or any other portion of the Properties for which the Association is obligated to maintain under this Declaration. The opinion of the Board of Directors shall control in determining whether the safety or soundness of the Properties is adversely affected or damage might be caused to such Properties.

5. Any Owner wishing to install any hard surface flooring materials (including but not necessarily limited to ceramic tile, marble and wood) in areas other than the kitchen and baths, is required to insure that a sound control underlayment system is used which insulates against noise transmission. Installation of the sound control underlayment system shall include provisions for a perimeter isolation material which will insure that impact noises are not transmitted into other Unit(s) either directly through the floor or by planking through the surrounding walls.
6. Each Owner is responsible for the expense of all decorating within his own Unit, including painting, wall papering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other interior furnishings and interior decorating.

11.3 Maintenance Standards for Owners and Residents. The maintenance obligations of the Owners and residents under this Declaration shall be performed to ensure a first class and high quality appearance of the Condominium at all times. Each Owner must perform promptly all maintenance, repairs and replacement for which the Owner is responsible, which are necessary to ensure such first class and high quality appearance. No Owner or resident shall impede or otherwise perform or interfere with the maintenance responsibilities of the Association under this Declaration. Each Owner and resident shall be governed by maintenance standards which may be adopted from time to time by the Association. The following constitutes maintenance standards for the Owners and residents, which the Board of Directors of the Association is empowered to supplement from time to time without having to amend this Declaration:

- A. Windows and Glass Doors. Broken or cracked glass shall be immediately replaced for safety concerns as well as cosmetic reasons.

- B. Screens and Screen Frames. Torn, cut or otherwise damaged screening and damaged screen frames shall be replaced with new materials as reasonably soon as possible after the damage occurs. Screen frames shall remain freshly painted at all times.
- C. Hurricane Shutters. Hurricane shutters shall be fully operative at all times and shall not appear broken or inoperative, nor shall they appear substantially worn, discolored or faded.

11.4 Alterations and Improvements by the Owners and Residents.

- A. Limited Rights of Owners and Residents. A uniform scheme and appearance of the buildings has been established. The Association desires to uphold this uniform scheme and appearance. Therefore, the rights of the Owners and residents to make alterations and improvements to the exteriors of the building; and outside of the building; and alterations, improvements, decorations and changes on the interiors of the Units which can be viewed from outside of the Units; are very limited. **THEREFORE, IF THIS DECLARATION FAILS TO PERMIT AN OWNER OR RESIDENT TO MAKE AN ALTERATION OR IMPROVEMENT WHICH FALLS WITHIN THE SCOPE OF THE IMMEDIATELY PRECEDING SENTENCE, THEN SAME SHALL NOT BE PERMITTED. IF IT DOES FALL WITHIN THE SCOPE, SAME SHALL BE PERMITTED ONLY IF THE ALTERATION OR IMPROVEMENT FALLS WITHIN THE GUIDELINES REFERRED TO IN SECTION 11.4.C BELOW (AS AMENDED BY THE BOARD OF DIRECTORS FROM TIME TO TIME [AND WHICH ARE CONSISTENT WITH SECTION 11.4.C BELOW]), AND UNLESS OTHERWISE STATED, ONLY UPON THE PRIOR WRITTEN APPROVAL OF THE BOARD OF DIRECTORS.**

- 1. Proviso: No Owner shall be required to obtain the approval of the Association for the installation of any antenna or satellite dish which is protected by federal

law. The guidelines for permitted antenna and satellite dish installations are set forth in Section 11.4.C.7 below.

**B. Removal of Interior Partition Wall; Other:**

1. Interior Partition Wall. If any Owner desires to remove any interior partition wall, same shall be permitted so long as the removal would not materially affect or interfere with the utility services constituting common elements, if any, located therein. However, if a permit from a governmental entity is required, the Owner shall provide a copy of same to the Association prior to the start of the work; it is understood that the Association is not liable for an Owner's non-compliance with the permit(s) or any building codes.
2. Interiors. Board approval is required as to any alteration, improvement, decoration or change on the interior of the Unit which cannot be viewed from the outside of the Units to the extent that same materially affects or interferes with the structural integrity of a load bearing wall or column.
3. Combination of Units. More than one Unit may be combined to create one usable Unit, provided that the structural integrity of any load bearing wall or column is not impaired and no utility services serving the common elements or Association property or any units other than the combined Units shall be affected. Approval by the Board of Directors is required for same. Any Units so combined shall remain separate Units for all purposes under the Condominium Documents other than the fact that the combined Units may be usable as one Unit.

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C. **Architectural Standards.** The following constitute architectural standards for the Condominium, applicable to the Owners and Occupants. **THE FOLLOWING ARE THE ONLY PERMITTED ALTERATIONS AND IMPROVEMENTS AS REFERRED TO IN SECTION 11.4.A ABOVE, WHICH UNLESS OTHERWISE STATED, MUST RECEIVE THE PRIOR WRITTEN APPROVAL OF THE BOARD OF DIRECTORS:**

1. **Shutters.** The only type of shutter allowed is for hurricane protection. The color shall be of a neutral color which matches the exterior color of the building. Should an Owner install laminated glass or window film which is architecturally designed to function as hurricane protection, the frames shall be limited to bronze in color.
2. **Windows.** Reflective material/window tinting is/are permitted on the windows so long as the color is clear, smoked brown or gray. At no time shall aluminum foil be permitted on the inside or outside of the windows. Window treatments must be white, off-white or beige when viewed from the outside.
3. **Airconditioning/Heating Units.** Wall airconditioning and heating units are prohibited.
4. **Patios, Terraces, Porches:**
  - (a) Patio, terrace and porch enclosures are permitted, as are prevailing in the Condominium as of the Effective Date of this Declaration.
  - (b) Outside and to the rear of each type C and type D townhouse Unit is situated a concrete patio pad. An Owner may cover same, but only with tile, terrazzo, coating, paint or pavers. Such covering shall be the personal property of the Owner and not part of the common elements.

5. Screen Doors. Screen doors in Phase II shall have black trim, and in all other Phases, white trim, unless otherwise decided by the Board of Directors without the need to amend this Declaration.
6. Signs. No signs of any type shall be maintained, kept or permitted on any of the Properties, including Unit (interior or exterior) such that they may be viewed from the common elements, limited common elements or other Units. Exceptions: The following shall not violate this Section 11.4.C.6:
- (a) Official notices of the Association.
  - (b) Signs on permitted vehicles under Sections 12.4.B.1, 2, 3 and 4 below.
  - (c) One security sign in the window of the Unit.
  - (d) One handicap sign in the window of the Unit.
7. Antennae and Satellite Dishes. The only antennae and satellite dishes permitted shall be those that are protected by federal law. In no event shall any restrictions imposed in this Section 11.4.C.7 impair a viewer's ability to receive an acceptable signal or impose any unreasonable delay or expense, as recognized by the administrative rules adopted from time to time by the Federal Communications Commission ("FCC") and any applicable cases or administrative rulings as exist from time to time. Until federal law or the applicable FCC cases and rulings change, which changes are automatically incorporated into this Declaration without the need to amend in the future, a satellite dish or

antenna installation must be situated entirely within the boundaries of the Unit or limited common elements. Notwithstanding any provision contained in this Declaration to the contrary, the approval of the Board of Directors of the Association will not be required for installations referred to under this Section 11.4.C.7. No other satellite dishes or antennae are permitted.

8. Flags. Flags attached to the building shall be permitted only as allowed by the condominium statute.
9. Hanging and Potted Plants. Hanging and potted plants are permitted, but same must be removed when the Owners or lessee leaves the Unit for any extended period.
10. Pools and Spas. Pools and spas are prohibited.
11. Garage Removable Ventilating Screen. Garage removable ventilating screens shall be permitted.
12. Holiday Decorations. Holiday decorations and lighting shall be permitted on shrubbery, trees or buildings, but only during the particular holiday season.
13. Landscaping. The planting of annual flowers in suitable planters and containers placed on the front or back porches is permitted provided that they are removed when the Owner or lessee leaves the Unit for any extended period. Moderate planting of annuals in the ground immediately outside of the Unit is permitted provided that same does not encroach on lawns or other plantings. No other landscaping shall be added. The foregoing shall retain the character of the personal property of the owner installing same.

11.5. **Alterations and Improvements by the Association.** Subject to the provisions of Sections 16 and 17 below, the following shall apply: The Association shall have the right to make or cause to be made alterations or improvements to the common elements or Association property which are approved by the Board of Directors. However, if the cost of same shall exceed 2% of the annual budget cumulatively in a budget year, then the alteration or improvement may not be made unless approved by the vote of a not less than a majority of the voting interests of the members.

- A. **Proviso.** Notwithstanding the foregoing to the contrary, in the event any alteration or improvement is also necessary or beneficial in the maintenance, repair, replacement or protection of the Properties or Owners or Occupants, then such alteration or improvement shall not require the approval of the Owners. Furthermore, the Board may approve changing of the color of the exteriors of the buildings without the need for membership approval, nor shall the cost of same be counted toward the 2% limitation referred to above.

**SECTION 12. USE RESTRICTIONS.** The use of the Properties shall be in accordance with the following provisions as long as the Condominium exists:

12.1 **Occupancy of Units.**

- A. **General.** Each Unit shall be occupied by Owners and tenants and their family members and Guests, invitees and servants, as a residence and for no other purpose, subject to any other provision in this Declaration and in the Rules and Regulations relating to use of the Unit.
- B. **Guest Use in the Absence of the Owner or Lessee.** No Guest shall be entitled to gain admittance to any Unit during the absence of its Owner or lessee as host unless the Association receives from the Owner or lessee authorization in advance of the intended stay, advising the Association of the relationship of the Guest and

the date of arrival and departure. The foregoing applies even though the Guest seeking to gain admittance possesses a key to the Unit. An Owner or lessee shall be deemed "absent" where the Owner or lessee does not stay overnight with the Guest. The Board of Directors is authorized to develop forms for use in connection with notification for use of the Unit by the Owner's or lessee's Guests.

12.2 Subdivision. No Unit may be subdivided into more than one Unit. Only entire Units may be sold, leased or otherwise transferred.

12.3 Pets and Animals.

A. No tenant or guest may have any pet or animal reside or visit any Unit. Owners are permitted to have pets and animals as a privilege, only as follows:

1. Animals and pets shall be restricted to two dogs or two cats, or one of each, not to exceed twenty pounds when measured at maturity, birds in cages in reasonable numbers and fish in tanks. No such pet or animal shall be bred or kept for commercial purposes. No other pets shall be permitted, except that any pet permitted by the Original Declaration coupled with the Rules and Regulations as of the Effective Date of this Declaration but prohibited by this Declaration shall be grandfathered but shall not be replaced.
2. When outside of the Unit, all dogs and cats must be accompanied by an attendant who shall have such dog or cat firmly held by collar and leash. No dogs or cats shall be permitted to run at large outside the Unit.

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3. The owner/custodian of each animal and pet and/or the individual walking same, shall be required to clean up after the pet/animal.
  4. The pet/animal owner and the Owner of the Unit involved shall be strictly liable for damages caused by the pet/animal to the Properties.
  5. Any pet/animal owner's privilege to have a pet/animal reside in the Condominium shall be revoked if the pet/animal shall create a nuisance or shall become a nuisance.
  6. There shall be no feeding of any animals or birds, whether a pet or not, anywhere on the common elements or Association property.
- B. Exception. The provisions of this Section 12.3 shall yield where necessary to meet the needs of handicapped persons pursuant to fair housing laws.

**12.4 Vehicles and Parking.**

- A. Prohibited Vehicles or Items. This Subsection A lists prohibited vehicles or items ("Prohibited Vehicles"), which are prohibited anywhere on the Properties, unless such vehicle or item is also listed in Subsection B below, in which case it shall then be permitted: Dirt bikes, motorcycles, mopeds or other self-powered bicycles; trucks, including pick-up trucks, whether or not a camper top exists, except as otherwise allowed under Subsection B.6 below; agricultural vehicles; dune buggies, swamp buggies and all terrain and off-road vehicles; any trailer or other device transportable by vehicular towing; semis, tractors or tractor trailers; buses; limousines; travel trailers; commercial vehicles as defined below; vehicles which are an eyesore; motorcycle delivery

wagons; campers; recreational vehicles; motor homes or mobile houses; truck mounted campers attached or detached from the truck chassis; motor homes or motor houses; motor vehicles not having any bodies whatsoever, or incomplete bodies; passenger automobiles that have been converted to a different type of motor vehicle by replacing the original body or by modifying the exterior of the vehicle; vehicles that are noisy, unsightly or junkers, or which have flat or missing tires; vans and sports utility vehicles, except as otherwise allowed under Subsection B.5 below; and boat and boat trailers; and other such motor vehicles.

B. Exceptions to A above. The following shall not be considered Prohibited Vehicles, subject to other provisions in this Declaration or in the Rules and Regulations of the Association not inconsistent with this Section 12.4, and only provided that the vehicle can fit totally within the confines of the parking space.

1. Moving vans for the purpose of loading and unloading, and only during reasonable hours.
2. Vehicles, regardless of classification, necessary for the maintenance, care or protection of the Properties, during regular business hours, and only for the time period during which the maintenance, care or protection is being provided.
3. Service and delivery vehicles, servicing the Properties, regardless of classifications, during regular business hours and only for that period of time to render the service or delivery in question.
4. Police and Emergency vehicles.
5. Certain vans and sports utility vehicles which are permitted. A two-axle van or two-axle sports utility

vehicle which is not a commercial vehicle as defined below; which contains windows on the rear of the vehicle, on both sides of the vehicle adjacent to the first row of seating, and (if any) also at least one set of windows on each side of the vehicle beyond the windows adjacent to the first row of seating, which fits wholly within the confines of a parking space.

6. Certain pick-up trucks which are permitted. A two-axle pick-up truck up to but not exceeding one-half ton carrying capacity which is not a commercial vehicle as defined below, which fits wholly within the confines of a parking space.

C. Classifications and Definitions.

1. The most current edition of the N.A.D.A. Official Used Car Guide ("Guide") shall determine the classification of whether a vehicle is in fact a truck, van or sports utility vehicle. If the Guide does not contain reference to a particular vehicle, then the manufacturer's classification shall control. If publication of the Guide shall be discontinued, an equivalent publication shall be selected by the Board of Directors to be used to determine vehicle classifications hereunder. Except as otherwise provided as to certain vans and sports utility vehicles under Subsection B.5 above, a State registration or title classification shall have no bearing on determination of the classifications under this Section 12.4.
2. A "commercial vehicle" shall mean any motor vehicle which has an outward appearance of being used in connection with business, (e.g., the vehicle displays work equipment to view and/or is commercially lettered or contains a commercial or business logo). Actual use

of the vehicle shall yield to its outward appearance. A vehicle with a covered sign or logo shall still be considered to be a commercial vehicle. A vehicle with a removable sign or logo shall not, with the sign/logo removed, be considered to be a commercial vehicle unless it meets the definition of "commercial vehicle" even without the sign or logo.

**D. The following additional regulations apply:**

- 1. No repair (including changing of oil) of a vehicle shall be made within the Condominium except for minor repairs necessary to permit removal of a vehicle. However, washing, waxing, or the changing of tires of a vehicle are permitted.**
- 2. No motor vehicle which is of the type of vehicle which is unregistrable or which is not currently registered and licensed shall be driven or operated on any of the Properties at any time for any reason.**
- 3. No motor vehicle, including moving vans, shall be parked at any time on the grass/swales within the Condominium (except for landscaping equipment at the direction of the Board of Directors).**
- 4. Except where safety dictates otherwise, horns shall not be used or blown while a vehicle is parked, standing in or driving through parking areas. Racing engines and loud exhausts shall be prohibited.**
- 5. No vehicle may be parked such that it blocks any sidewalk, except where otherwise necessary by moving vans and only for loading and unloading.**

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6. Vehicles must be parked head-in, only, completely to bumper stops.
  7. All vehicles must appear in working order; no vehicles on blocks, jacks or ramps, shall be permitted.
  8. There will be times where vehicles must be removed from the parking areas to accommodate maintenance, repairs or replacement of the parking areas in the Condominium. Upon reasonable notice from the Association that the foregoing will occur, each Owner shall remove his/her vehicle for the time period requested, or become in violation of this Section 12.4. A vehicle which is not removed as required by this subsection shall be considered a Prohibited Vehicle under this Section 12.4.
  9. Vehicle washing is permitted only in designated areas, with water restriction rules imposed by governmental authority to be observed.
  10. No Owner or lessee, or their family members, Guests and invitees shall park in a limited common element parking space assigned to another Unit.
  11. Vehicle protective covers are prohibited.
- E. Alternative/Concurrent Remedies. Whether or not the Association exercises its right to have the vehicle so towed, the Association shall nonetheless have the right to seek compliance with this Section 12.4 by injunctive and other relief through the courts; and/or any other remedy conferred upon the Association by law or the Condominium Documents. The Association's right to tow shall in no way be a condition precedent to any other remedies

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available to the Association incident to the enforcement of this Section 12.4.

- F. Grandfather Provision. Any vehicle which was allowed by the Declaration prior to the recording of this Amended and Restated Declaration which is now prohibited by this amendment is grandfathered in and shall not be considered a Prohibited Vehicle under this Section 12.4. However, no such vehicle may be modified or replaced with a vehicle which fails to comply with this Section 12.4.
- G. Remedy of Towing. If upon the Association's compliance with Section 715.07, Florida Statutes and applicable County Ordinances, as amended from time to time, an offending vehicle owner does not remove a Prohibited Vehicle or improperly parked vehicle from the Condominium, the Association shall have the option and right to have the vehicle towed away at the vehicle owner's expense. In the event that the Association incurs an expense with the tow and the vehicle owner fails to pay such costs upon demand, the Owner for himself/ herself as the owner of the vehicle or for his/her family, lessees, guests, employees, visitors, etc. as owner(s) of the vehicle shall be liable for the costs as a Charge, which shall be collectible by the Association as Charges are collected under this Declaration.

12.5 Nuisances, Ordinances and Laws. No Owner, occupant or Guest shall use any of the Properties, or permit same to be used, in any manner which is unreasonably disturbing, detrimental or a nuisance to the Owner(s), occupant(s) and Guest(s) of other Unit(s), or which would not be consistent with the maintenance of the highest standards for a first class residential development, nor permit the Properties to be used in a disorderly or unlawful way, nor which will produce an insurance risk for the Association or other Owners or occupants. The use of each Unit shall be consistent with existing ordinances and laws and the Condominium Documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner. No instrument, stereo, radio or television shall be played between

the hours of 11:00 p.m. and 8:00 a.m. if same can be heard by any other Owners or occupants.

**12.6    Use of Decks, Terraces, Porches and Patios.**

- A. Nothing shall be placed in or on the decks, terraces, porches and patios that could fall or cause injury.
- B. Nothing shall be swept, poured, tossed or shaken from any deck, terrace, porch or patio, nor shall dirt or refuse be swept or thrown from any portion of same. No deck, terrace, porch or patio shall be hosed or scrubbed in such a manner as to cause water to drain from same to another deck, terrace, porch or patio of another Unit.
- C. Beginning with a hurricane watch and ending when the storm danger is passed, all movable objects shall be cleared from decks, terraces, porches and patios. Furthermore, Owners and Occupants must remove all furniture, movable objects from decks, terraces, porches or patios prior to their leaving for the season or for any extended period. Any Owner who fails to abide by the foregoing shall entitle the Association to enter upon the deck, terrace, porch or patio and remove same, whereupon the Association shall levy a Charge against the Owner concerned, which Charge shall be collectible as Charges are collected under this Declaration.

**12.7    Use and Care of Commonly Used Areas by Owners and Residents.**

The following shall apply to Owners and Residents:

- A. Public passage ways shall not be obstructed nor used for any purpose other than for ingress to or egress from Units and common elements and Association property. Bicycles, shopping carts, baby carriages, scooters or similar vehicles shall not be placed in or allowed to stand in commonly used areas within the

common elements and Association property, except that bicycles may be stored in areas designated from time to time by the Board of Directors.

- B. No garbage or trash containers, supplies, milk containers or other articles shall be placed in passage ways.

**12.8    No Business Activity.** No business or commercial activity or enterprise of any kind whatsoever shall be erected, maintained, operated, carried on, permitted or conducted on the Properties, including Units. Provisos. Notwithstanding the foregoing to the contrary:

- A. Any business which qualifies as a home occupation under the Indian River County Code in effect on the Effective Date of this Declaration shall be permitted, except that a daycare or childcare facility or operation of group home (all regardless of age) shall be prohibited irrespective of whether same is viewed as a home occupation or otherwise.
- B. The practice of leasing Units shall not be considered as a business activity under this Section 12.8.
- C. The business of operating the Association shall not be considered as business activity under this Section 12.8.

**12.9    Trash and Garbage.** No trash shall be discarded on any part of the common elements or Association property except in dumpsters supplied by the Association. All garbage and rubbish (excluding glass bottles, newspapers) must be securely tied in plastic bags. Aluminum and other recyclables, including glass shall be rinsed and then placed in receptacles made available by collection authorities and if not then made available by the Association. Bulk trash shall never be allowed to remain on any of the common elements or Association property. The foregoing is subject to any regulations and policies of the collection authorities and Rules and Regulations of the Association.

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**12.10 No Solicitation.** No business solicitation whatsoever is permitted in the Condominium, whether or not such solicitation is for the benefit of a non-profit organization, whether in person or by hand delivery of letters, without the permission of the Association. This shall not preclude an Owner from inviting a person or firm to enter the Condominium for the purpose of contracting business with the Owner.

**12.11 Loitering.** Loitering on the Properties shall be prohibited and shall constitute a nuisance.

**12.12 Garage Use.** Garages shall not be converted into or used as living quarters. Garage doors must be closed to within twelve inches for ventilation except for ingress and egress.

**SECTION 13. LEASING OF UNITS.** An Owner may lease only his entire Unit, and then only in accordance with the Declaration, after receiving the approval of the Association as provided for in this Section 13. Reference to "leasing" in this Section 13 shall also include rental. Prior approval is also required in connection with any lease renewal and in connection with any change in occupancy under, during or along with a lease. A lease or rental shall exist if any form of consideration (whether for services, employment or otherwise) is paid or exchanged. Any lease, lease renewal or change in occupancy under, during or along with a lease is referred to in this Section 13 as a "Transfer".

**13.1 Procedures.**

- A. **Notice by the Owner.** An Owner shall give to the Board of Directors or its designee written notice of an intended Transfer at least thirty (30) days prior to the proposed Transfer and occupancy thereunder, together with the name and address of the proposed lessee(s), an executed copy of the proposed lease, and such other information as the Board may reasonably require. The Board may require the personal appearance of any lessee(s), and his/her spouse and any other intended occupants, as a condition of approval.

B. Approval. After the required notice and all information, transfer fee, and appearances requested have been provided, the Board shall approve or disapprove the proposed Transfer within thirty (30) days. If the Board neither approves nor disapproves within this time period, such failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a letter of approval to the Owner.

C. Disapproval. A proposed Transfer shall be disapproved only if a majority of the whole Board so votes, and in such case the Transfer shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, any one or more of the following:

1. The Owner is delinquent in the payment of assessments at the time the application is considered, and the Owner does not bring the delinquency current (with any interest, late fees, costs and attorneys' and paralegal fees also due and owing) within a time frame required by the Board of Directors;
2. The Owner has a history of leasing his/her Unit to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his Unit;
3. The real estate company or agent handling the leasing transaction on behalf of the Owner has a history of screening lessee applicants inadequately or recommending undesirable lessees;
4. The application on its face appears to indicate that the person seeking approval and/or intended occupants intend(s) to conduct himself/themselves in a manner inconsistent with the covenants and restrictions

applicable to the Condominium and/or Rules and Regulations of the Association;

5. The prospective lessee or other intended occupants have been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;
6. The prospective lessee or other intended occupants have a history of conduct which evidences disregard for the rights and property of others;
7. The lessee or other intended occupants, during previous occupancy, have evidenced an attitude or disregard for the covenants and restrictions applicable to the Condominium and/or Rules and Regulations of the Association;
8. The lessee(s) or intended occupants have failed to provide the information or appearances required to process the application in a timely manner, or provided false information during the application process; or the required transfer fee is not paid; or
9. The Owner fails to give proper notice of his intention to lease his Unit to the Board of Directors.

Notice of disapproval shall be sent or delivered in writing to the Unit Owner.

- D. Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board at its election may approve or disapprove the lease.

- E. Unapproved Transfers. Any Transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration, shall be void unless subsequently approved in writing by the Board of Directors. The Association shall have the right to remove any occupant(s) and personal belongings by injunctive relief or by other means provided in this Declaration should this Section 13 be violated.
- F. Application Form. The Association is vested with the authority to prescribe an application form such as may require specific personal, social, and other data relating to the intended lessee(s), and occupants, as may reasonably be required by the Association in order to enable the Association to reasonably investigate the intended lessee(s), and occupants within the time limits extended to the Association for that purpose as set forth in this Section 13. The application shall be complete and submitted to the Association along with and as an integral part of the notice of intended Transfer.
- G. Transfer Fee. The Board of Directors is empowered to charge a fee in connection with and as a condition for the approvals set forth in this Section 13; in the amount not to exceed the maximum allowed by applicable law from time to time. So long as and only so long as prohibited by law at the particular time, there shall be no transfer fee in connection with the renewal of a lease, with the same lessee, if the renewed lease term immediately follows the expiration of the previous lease term.
- H. Certain Exceptions. Section 13.1 shall not apply to a transfer to or purchase by an Institutional Mortgagee that acquires its title as the result of owning a mortgage upon the Unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings; nor shall such Section 13.1 apply to a transfer, sale or lease by an Institutional Mortgagee that so acquires its title.

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Nor shall such Section require the approval of a purchaser who acquires title to a Unit at a duly advertised public sale with open bidding provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

1. Proviso. This Section 13.1.H shall not be construed to exempt the foregoing from compliance or permit the foregoing to be in noncompliance with the Condominium Act and all other provisions of the Condominium Documents and Rules and Regulations of the Association; nor shall the grantee (other than another Institutional Mortgagee) of the foregoing be exempt from the requirements of this Section 13.1.

13.2 Contents in Lease Agreement. Every lease as of the Effective Date of this Declaration, whether oral or written shall contain, and if it does not contain, shall automatically be deemed to contain, the following:

- A. The lessee and all occupants shall abide by all provisions of the Condominium Documents and reasonable Rules and Regulations, as amended from time to time, the failure of which shall constitute a material default and breach of the lease.
- B. Any assessments or Charges, together with interest, late fees, costs and attorneys' fees, due and owing by the Owner/landlord shall be paid by the lessee directly to the Association, so long as the Association notifies the Owner/landlord and lessee of such sums due and owing, and lessee shall not be in breach of the lease for making such payments and deducting same from the rent due and owing to the landlord; the foregoing shall not change the fact that the Owner shall remain primarily liable for the payment of any and all such sums to the Association until same are paid in full.
- C. The parties recognize that the Association, as agent for the landlord/Owner, has the power to evict the tenants and

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occupants under Chapter 83, Florida Statutes, for violations of the Condominium Documents and reasonable Rules and Regulations, as amended from time to time.

13.3 Minimum and Maximum Terms. The minimum term for any lease shall be thirty (30) consecutive days and the maximum term for any lease shall be twelve (12) consecutive months.

13.4 Subleasing; Renting Rooms. Subleasing of a Unit shall be absolutely prohibited. Furthermore, no rooms shall be rented in any Unit. The intention is that only entire Units may be rented, and Units may not be sublet.

**SECTION 14. OWNERSHIP AND TRANSFER OF OWNERSHIP OF UNITS.** In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the Units, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of the ownership of a Unit shall be subject to the following provisions so long as the Condominium exists, which provisions each Owner of a Unit agrees to observe.

14.1 Forms of Ownership.

- A. General. No corporation, company or business named partnership shall be permitted to own a Unit in the Condominium. To the extent that a Unit was owned by a corporation, company or business named partnership prior to the Effective Date of this Declaration, then the Owner must seek approval from the Association of a person who shall be viewed as the primary occupant who shall also be responsible for compliance with all provisions in the Condominium Documents and Rules and Regulations.
- B. Life Estate. A Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under Section 14.2 below. In that event, the life tenant shall be the

only Association member from such Unit, and the occupancy of the Unit shall be as if the life tenant was the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and Charges against the Unit. Any consent or approval required of Association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as coowners.

**14.2    Transfer of Ownership of Units.**

**A.    Transfers Subject to this Section 14.2**

1.        Sale or Gift. No Owner may dispose of a Unit or any interest in the Unit by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.
2.        Devise or Inheritance. If any Owner acquires his title by devise or inheritance, his/her right to occupy or use the Unit shall be subject to the approval of the Board of Directors.
3.        Other Transfers. If any person acquires title in any manner not considered in the foregoing sections (1) or (2), his right to occupy or use the Unit shall be subject to the approval of the Board of Directors (that person having no right to occupy or use the Unit before being approved by the Board of Directors) under the procedures outlined in Section 14.2.B below.

The foregoing is sometimes referred to in this Section 14 as a "Transfer".

**B. Procedures.**

**1. Notice to Association.**

- (a) Sale or Gift. An Owner intending to make a sale or gift of his Unit or any interest in the Unit shall give to the Board of Directors or its designee written notice of such intention at least thirty (30) days prior to the intended closing date, together with the name and address of the proposed purchaser or donee, an executed copy of the sales contract, if any, and such other information as the Board may reasonably require. The Board may require the personal appearance of any purchaser (s) or donee(s) and his/her spouse and other intended occupants, as a condition of approval.
- (b) Devise, Inheritance or Other Transfers. The transferee(s) must notify the Board of Directors of his/her ownership and submit a certified copy of the instrument evidencing his/her ownership and such other information as the Board may reasonably require. The transferee(s) shall have no occupancy or use rights unless approved by the Board.
- (c) Demand. With the notice required in Subsection (1)(a) above, the Owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser upon the same price and terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the Unit determined as provided below. This obligation of the Association exists only if the written demand is

made by the Owner or transferee along with and at the same time as the provision of the Subsection (1)(a) notice.

- (d) Failure to Give Notice. If no notice is given, the Board of Directors, at its election, may approve or disapprove at the time it learns of the transfer. If any Owner fails to obtain the Association's approval prior to selling an interest in a Unit, or making a gift of the Unit, such failure shall create a rebuttable presumption that the seller and the purchaser, or Owner making the gift, intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

- 2. Approval. Within thirty (30) days of receipt of the required notice, transfer fee, personal appearances and information requested, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in an Association Certificate in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within this thirty (30) day time limit, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue an Association Certificate to the transferee.

- 3. Disapproval.

- (a) With Good Cause. Approval of the Association shall be withheld if a majority of the whole Board so votes. Only the following may be deemed to constitute good cause for disapproval:

- (i) The person seeking approval or intended occupants have been convicted of a felony

involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;

- (ii) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
- (iii) The application for approval on its face indicates that the persons seeking approval or intended occupants intend(s) to conduct himself/themselves in a manner inconsistent with the covenants and restrictions applicable to the Condominium and/or the Rules and Regulations of the Association;
- (iv) The person seeking approval or intended occupants have a history of disruptive behavior or disregard for the rights or property of others;
- (v) The person seeking approval or intended occupants have evidenced an attitude of disregard for covenants or restrictions applicable to the Condominium and/or Rules and Regulations of the Association, by his conduct in the Condominium as a tenant, Owner or occupant of a Unit, or such attitude at the personal appearance before the Board or its designee; or
- (vi) The person seeking approval has failed to provide the information, fees or appearances required to process the application in a timely

manner, or provided false information during the application process.

- (b) Without Good Cause. If the Board disapproves without good cause, and if the Owner or transferee has made the demand set forth in Section 14.2.B(1)(c) above, then within ninety (90) days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the Owner or transferee (hereafter "the seller") the name of an approved purchaser who will purchase the Unit upon substantially the same price and terms as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two MAI appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing; real property taxes and Condominium assessments and Charges shall be prorated for the year of closing and the parties shall bear their own attorneys' fees, if any. The closing shall take place no longer than ninety (90) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure to close by the seller

shall constitute a breach of contract and shall entitle the purchaser to specific performance or damages.

- (c) Automatic Approval. If the Board fails to deliver the name of the approved purchaser within ninety (90) days as required above, or if the approved purchaser defaults in his/her purchase, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval, and upon demand an Association Certificate shall be issued.

14.3 General Provisions.

- A. Unapproved Transfers. Any Transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration, shall be void unless subsequently approved in writing by the Board of Directors. The Association shall have the right to remove any occupant(s) and personal belongings by injunctive relief or by other means provided in this Declaration should this Section 14 be violated.
- B. Application Form. The Association is vested with the authority to prescribe an application form such as may require specific personal, social, financial, and other data relating to the intended purchasers or new owners, and occupants, as may reasonably be required by the Association in order to enable the Association to reasonably investigate the intended purchasers, new owners and occupants within the time limits extended to the Association for that purpose as set forth in this Section 14. The application shall be complete and submitted to the Association along with and as an integral part of the notice of intended Transfer.
- C. Transfer Fee. The Board of Directors is empowered to charge a fee in connection with and as a condition for the approvals set

forth in this Section 14; in the amount not to exceed the maximum allowed by applicable law from time to time.

- D. Certain Exceptions. Section 14.2 shall not apply to a transfer to or purchase by an Institutional Mortgagee that acquires its title as the result of owning a mortgage upon the Unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings; nor shall such Section 14.2 apply to a transfer, sale or lease by an Institutional Mortgagee that so acquires its title. Nor shall such Section require the approval of a purchaser who acquires title to a Unit at a duly advertised public sale with open bidding provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

1. Proviso. This Section 14.3.D shall not be construed to exempt the foregoing from compliance or permit the foregoing to be in noncompliance with the Condominium Act and all other provisions of the Condominium Documents and Rules and Regulations of the Association; nor shall the grantee (other than another Institutional Mortgagee) of the foregoing be exempt from the requirements of Section 14.2 above.

**SECTION 15. INSURANCE.** The insurance, other than title insurance, that shall be carried upon the Condominium and Association property and the property of the Owners shall be governed by the following provisions:

15.1 Authority to Purchase. All insurance policies (except as hereinafter allowed) shall be purchased by the Association for itself and as agent for the Owners and their mortgagees as their interests may appear.

15.2 Owners. Each owner may obtain insurance at his or her own expense, affording coverage upon his or her personal property and for his or her personal liability, for owner or mortgagee title insurance, and as may be required by law.

**15.3 Coverage:**

A. Casualty. The Building and Improvements and all personal property owned by the Association (exclusive of personal property, additions and/or alterations installed by the Owners and exclusive of wall, floor and ceiling coverings) shall be insured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations) as determined by the insurance company affording such coverage. Such coverage shall afford protection against:

1. Loss or damage by fire, windstorm and other hazards covered by a standard extended coverage endorsement.
2. Such other risks as from time to time customarily covered with respect to buildings similar in construction, location and use of the buildings, including but not limited to vandalism and malicious mischief.

B. Public liability and property damage in such amounts and in such forms as shall be required by the Association, including but not limited to legal liability, hired automobile, non-owned automobile, and off-premises employee coverages.

C. Worker's compensation and unemployment compensation to meet the requirements of law.

**15.4 Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as common expenses. Deductibles shall be permitted.

**15.5 All insurance policies purchased** by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their respective interests may appear.

## **SECTION 16. RECONSTRUCTION OR REPAIR AFTER CASUALTY.**

16.1 If any part of the common elements or Units shall be damaged or destroyed by casualty, the same shall be repaired or replaced unless such damage rendered 75% or more of the Units in the Condominium untenable ("major damage"), and 75% of the voting interests of the Owners, voted at a meeting called and held within the later of sixty (60) days of the casualty or thirty (30) days after all of the Association's insurance claims are adjusted, vote against such repair or replacement, in which event the proceeds shall be distributed to the Owners in the Condominium and their mortgagees, as their interests may appear, and the Condominium shall be terminated as provided in Section 18 below. No such termination shall be effective without the written consent of all Institutional First Mortgagees.

16.2 Any such reconstruction or repair shall be substantially in accordance with the original plans and specifications utilized in construction.

16.3 Estimates of Costs. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property, insofar as reasonably possible, in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires.

16.4 Assessments. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction and repair by the Association (including the aforesaid fees and premium, if any) special assessments shall be made against the Owners in sufficient amounts to provide funds to pay the estimated costs of reconstruction and repair.

16.5 Construction Funds. The funds for payment of costs of reconstruction and repair after casualty shall be disbursed in the following manner:

- A. Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with

an Owner to such contractors, suppliers and personnel as do the work or supply the materials or services required for such reconstruction or repair, in such amounts and at such times as the Owner may direct, or if there is a mortgagee endorsement, then to such payees as the Owner and the first mortgagee jointly direct. Nothing contained herein, however, shall be construed as to limit or modify the responsibility of the Owner to make such reconstruction or repair.

- B. Association. The balance shall be retained by the Association to pay for the reconstruction or repair and all associated costs.

16.6 Insurance Adjustments. Each Owner shall be deemed to have delegated to the Board of Directors his or her right to adjust with insurance companies all losses under policies purchased by the Association except in any case where all responsibility of reconstruction and repair lies with the Owner, subject to the rights of mortgagees of such Owners.

## **SECTION 17. CONDEMNATION OR EMINENT DOMAIN:**

17.1 Deposit of Awards with Association. The taking of all or any part of the Properties by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to Owners, the Owners shall deposit the awards with the Association; and if any fail to do so, a Charge shall be made against a defaulting Owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that Owner; the Charge shall be collected as provided for in this Declaration.

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the same manner provided for determining whether damaged property will be reconstructed and repaired after a casualty, except that any condemnation of any portion of a Unit must be approved by all Owners of the Unit.

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**17.3 Disbursement of Funds.** If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be Condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced, the Owners of condemned Units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

**17.4 Association as Agent.** The Association is hereby irrevocably appointed as each Owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation.

**17.5 Taking of Common Elements and Association Property.** Awards for the taking of common elements and Association property shall be used to make the remaining portion of the common elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the Owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation, if any. If a Unit is mortgaged, the remittance shall be paid jointly to the Owner and the mortgagee(s) of the Unit.

**17.6 Priority-Conflict.** In the event of any conflict between Section 16 and this Section 17, the provisions of this Section 17 shall control and govern.

**SECTION 18. TERMINATION.** The Condominium shall be terminated, if at all, in the following manner:

**18.1** By the written agreement of one hundred percent (100%) of the Owners, which agreement shall be evidenced by an instrument or instruments executed in the manner required for conveyance of land. The termination shall become effective when such agreement has been recorded according to law. In the event of damage or destruction by casualty as set forth in Section 16.1 of this

Declaration, the required vote of the Owners shall be as provided for in that section. Any termination must also be approved in writing by all Institutional First Mortgagees.

18.2 Shares of Owners after Termination. After termination of the Condominium, the Owners in the Condominium shall own the property as tenants in common in undivided shares and the holders of mortgages and liens against the Unit or Units formerly owned by such Owners shall have mortgages and liens upon the respective undivided shares of the Owners. Such undivided shares of the Owners shall be as by the percentage of ownership of the common elements. All funds held by the Association, except for the reasonably necessary expenses of winding up, shall be disbursed to the Owners in said shares. The costs incurred by the Association in connection with a termination shall be a common expense.

18.3 Following Termination. The property may be partitioned and sold upon the application of any Owner in the Condominium. Provided, however, that if the Board of Directors following a termination by unanimous vote, determines to accept an offer for the sale of the property as a whole, each Owner shall be bound to execute such deeds and other documents reasonably required to effect such sale at such times and in such forms as the Board of Directors directs. In such event, any action for partition or other division of the property shall be held in abeyance pending such sale, and upon the consummation thereof shall be discontinued by all parties thereto.

18.4 The Members of the Last Board of Directors shall continue to have such powers as in this Declaration are granted, notwithstanding the fact that the Association itself may be dissolved upon a termination.

## **SECTION 19. COMPLIANCE AND DEFAULT; REMEDIES.**

### **19.1 Duty to Comply; Right to Sue.**

- A. Each Owner, each tenant and other invitee, and the Association, shall be governed by and shall comply with the provisions of the Condominium and Corporate Acts, the Condominium Documents, and the Rules and Regulations. Actions for damages, for

injunctive relief, and/or for declaratory relief, for failure to comply may be brought by the Association, by an Owner or by a tenant or other invitee occupying a Unit against:

1. The Association;
  2. An Owner;
  3. Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.
  4. Any tenant leasing a Unit, and any Guest or other invitee occupying a Unit.
- B. Any Owner prevailing in an action between the Association and the Owner and if entitled to recover attorneys' fees, may recover additional amounts determined by a court to be necessary to reimburse him for his share of assessments levied by the Association to fund its expenses of the litigation.
- C. The Association shall also have any other remedies provided for in the Condominium Documents and law.
- D. The mandatory non-binding arbitration procedures of F.S. 718.1255, as amended from time to time, and the applicable Administrative Rules, shall be followed and shall apply so long as they exist and apply.

**19.2 Association Notice to Correct.** Should any Owner fail to properly discharge his/her maintenance, repair and replacement obligations as provided for in Section 11 above; or shall fail to make and pay for maintenance, repair or replacement as provided for in Section 11 above; and in the judgment of the Board of Directors, same shall result in a condition of unsightliness tending to adversely affect the value or enjoyment of neighboring Owners and residents; or should any Owner violate Sections 11.2, 11.3 or 11.4 above; or should the neglect or the willful

misconduct of Owner(s) cause damage which then requires maintenance, repair or replacement by the Association; then the following shall apply:

A. The Board may (but shall not be required to) provide notice of such condition(s) to the proper Owner(s), demanding that the condition(s) be corrected within thirty (30) days from the date the notice was sent. In the event that the Owner does not rectify the condition at the end of this period, then the Association shall be entitled to contract to have the necessary work performed (and entry onto the Unit), whereupon the cost of this work shall become a Charge against the Owner and Unit concerned (solely or proportionately as the Board shall determine) and collectible as Charges are collected under this Declaration.

B. Provisos. Notwithstanding any provision to the contrary in this Section 19.2, the following shall apply:

1. The thirty (30) day notice period may be shortened or eliminated if the Board determines that an emergency exists to effect correction.
2. The thirty (30) day notice shall not apply to Section 19.3 below.

**19.3 Negligence; Damage Caused by Condition in Unit.** Each Owner shall be liable to the Association for the expenses of any maintenance, repair or replacement of common elements, limited common elements and Association property made necessary by his act, inaction or negligence, or by that of any member of his family or his Guests, invitees, employees, agents, or lessees. If any condition, defect or malfunction existing in a Unit or other portions of the Properties for which the Owner has maintenance, repair or replacement responsibility under this Declaration, whether caused by the Owner's negligence or otherwise, shall cause damage to the Properties, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged areas, including all real and personal property, for all costs of repair or replacement not paid by insurance. If the Association effects

correction, the cost shall be levied as a Charge against the Owner and Unit and collectible as Charges are collected under this Declaration; the Association may, but is not required to, provide notice to the Owner prior to effecting correction.

**19.4 Association's Access onto the Properties.** The Association, by and through the Board of Directors, officers, or the agents or employees of the Association, has an irrevocable right of access onto the Properties including the Units:

- A. For the purposes of protection, maintenance, repair and replacement of those Properties for which the Association is obligated to protect, maintain, repair and replace.
- B. For the purposes of preventing damage to the common elements or to a Unit or Units.
- C. In the event that an unsanitary or other condition exists which threatens the health or safety of other residents or any condition exists which will cause disrepair or damage to the Properties.

In connection with this Section 19.4, each Owner shall provide the Association with a current workable key(s) and security code(s) if any and new keys and code(s), as necessary. This Section 19.4 is in addition to that access referred to in Sections 16.7 and 16.8 above.

**19.5 Owners Responsible.** Owners are strictly responsible to ensure that their family members, Guests, agents, lessees, servants, etc. or any occupants of their Units comply with the Condominium Documents and Rules and Regulations; as amended from time to time; and the Statutes which apply; and as such, are responsible and liable to the Association for violations of same by their family members, Guests, agents, lessees, servants, etc. or any occupants of their Units.

**19.6 Waiver of Rights.** The failure of the Association or of an Association member to enforce any right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the

Association or member to enforce such right, provision, covenant or condition in the future.

**19.7 Costs and Attorneys' Fees.** In any legal proceeding arising out of an alleged failure of an Owner (for himself/herself or for his/her family members, Guests, agents, lessees, servants, etc. or any Occupants of the Unit), or the Association to comply with the Condominium Documents, or the Rules and Regulations, as amended from time to time, or Law, the prevailing party shall be entitled to recover the costs of the proceedings and attorneys' fees, including those incurred in appellate, bankruptcy and administrative proceedings.

**19.8 No Election of Remedies.** All rights, remedies and privileges granted to the Association or Owners under any terms, provisions, covenants, or conditions of the Condominium Documents or Rules and Regulations of the Association, or law, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the Condominium Documents, Rules and Regulations, or at law or in equity.

**19.9 Eviction of Tenants and Occupants.** The Association possesses all rights and remedies of the lessor/Owner under Chapter 83 of the Florida Statutes for the purposes of enforcing against violations of the Condominium Documents and Rules and Regulations, as amended from time to time. The foregoing includes the right of the Association to institute eviction proceedings in Court against the lessees as agent for and on behalf of the lessor/Owner, based on the non-compliances mentioned above. The Association may exercise its rights and remedies under this Section 19.9 without any liability to the lessor/Owner or lessees/ occupants (including, but not limited to, the loss of rent to the lessor/Owner and loss of possession by the lessees/ permanent occupants), except as may be provided for in Chapter 83, Florida Statutes. The lessees and the Owner shall be jointly and severally responsible for the costs and paralegal and attorneys' fees incurred by the Association in connection with this matter, including those incurred in appellate, bankruptcy and administrative proceedings.

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**SECTION 20. RIGHTS OF MORTGAGEES.** The following rights shall apply to certain or all mortgagees, in addition to those rights contained elsewhere in the Condominium Documents:

**20.1 Association Lien Foreclosure.** Certain named mortgagees have certain rights in connection with Association lien foreclosure actions, as provided for in Section 10.8.A above.

**20.2 Redemption.** If proceedings are instituted to foreclose any mortgage or lien on any Unit, the Association, on behalf of one or more Owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the Unit at the foreclosure sale. Any mortgagee shall have the right to accept title to the Unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the Unit at the foreclosure sale. If the Association or any of its members redeem the mortgage or cure the default, it or they shall have a lien against the Unit for all sums expended in connection therewith, and shall have the same rights to collect such sums as in the case of a past due assessment.

**20.3 Right to Inspect Books.** The Association shall make available to Institutional Mortgagees requesting same current copies of the Condominium Documents and Rules and Regulations of the Association, and the official records of the Association which by the Condominium Act, are inspectable by the Owners. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be provided at the expense of the person requesting them.

**20.4 Financial Statement.** Any Institutional Mortgagee is entitled, upon written request, to a copy of the financial statement of the Association for the immediately preceding fiscal year.

**20.5 Lender's Notices.** Upon written request to the Association, any Institutional Mortgagee shall be entitled to timely written notice of:

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- A. Any 60-day or longer delinquency in the payment of assessments or charges owed by the Owner of any Unit on which the mortgagee holds a mortgage; and any 30-day or longer default of any other provision in the Condominium Documents by an Owner of any Unit on which the mortgagee holds a mortgage.
- B. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- C. Any condemnation or casualty loss that affects a material portion of the Condominium or any Unit.
- D. Any proposed action that requires the consent of a specified percentage of mortgage holders.
- E. Outstanding assessments unpaid with respect to the Unit on which the Institutional Mortgagee holds a mortgage.
- F. Notice of Association meetings.

**20.6 Access.** All Institutional Mortgagees shall specifically have a complete right of access to all of the common elements and Association property, for the purpose of inspection, maintenance, repair or replacement of any portions of the Unit (and its limited common elements) upon which they have a mortgage loan. Any Institutional Mortgagee shall be entitled to attend meetings of the Association.

**20.7 Priority.** All provisions of an Institutional Mortgage shall take precedence over the provisions of this Declaration, unless and to the extent that same is viewed to be contrary to or prohibited by applicable law from time to time. No breach of any of the provisions contained in the Declaration shall defeat or adversely affect the lien of any institutional mortgage at any time made in good faith and for a valuable consideration upon any Unit.

**20.8 Presumption.** Where an Institutional first Mortgage, by some circumstance fails to be a first mortgage but it is evident that it is intended to be a

first mortgage, it shall nevertheless, for the purpose of the Condominium Documents deemed to be an Institutional First Mortgage.

## **SECTION 21. AMENDMENT OF DECLARATION.**

**21.1 Proposal.** Amendments to this Declaration may be proposed by a majority of the entire membership of the Board of Directors or by written petition signed by at least twenty-five percent (25%) of the voting interests of the members of the Association. Only one co-owner of a Unit need sign the petition for that Unit.

**21.2 Procedure; Notice and Format.** In the event that any amendment is proposed by the Board of Directors, then the Board may propose the amendment to be considered at the annual or a special members' meeting. In the event that any amendment was proposed by written petition of the members, then the Board shall have forty (40) days from its receipt of the petition or ten (10) days after its next regular meeting, whichever time period is greater, to certify that the proper number of owners executed the petition. Once certified, the Board shall call a meeting of the members to vote on the amendments within sixty (60) days after certification of the signatures. An amendment may be considered at the annual or a special members' meeting. The full text of any amendment to the Declaration shall be included in the notice of the members' meeting of which a proposed amendment is considered by the members. New words shall be inserted in the text by underlining and words to be deleted shall be lined through with hyphens; however, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision \_\_\_\_ for present text."

**21.3 Vote Required.** Except as otherwise provided by Florida law, or by specific provision of this Declaration, this Declaration may be amended by concurrence of not less than a majority of the entire membership of the Board of Directors then serving, and not less than two-thirds of the voting interests of the entire membership of the Association. If the amendments were proposed by a written

petition signed by the members pursuant to Section 21.1 above, then the concurrence of the Board of Directors shall not be required.

**21.4 Certificate; Recording.** A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by any officer of the Association with the formalities of a deed. The Certificate of Amendment shall on the first page state the book and page of the public records where the Declaration is recorded. The amendment shall be effective when the certificate and copy of the amendment are recorded in the public records of the County.

**21.5 Provisos.** Notwithstanding any provision contained in the Condominium Documents to the contrary:

- A. No amendment shall operate to unlawfully discriminate against any Unit or class or group of Units.
- B. No amendment shall diminish or impair any of the rights, privileges, powers and/or options provided in this Declaration in favor of or reserved to record owners of any Institutional Mortgagees unless the particular mortgagee(s) shall join and consent in the execution of the amendment.
- C. No amendment shall change a Unit's proportionate share of the common expenses or common surplus, nor the voting rights or any other appurtenance to any Unit, unless the vote and approvals required by F.S. 718.110(4) are obtained.

## **SECTION 22. MISCELLANEOUS PROVISIONS.**

**22.1 Severability.** The invalidity or unenforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any exhibit attached thereto, shall not affect the remaining portions thereof.

**22.2 Priorities in Case of Conflict.** In the event of conflict between or among the provisions of any of the following, the order of priorities shall be from highest priority to lowest:

- A. The Condominium Act which applies.
- B. Other Florida Statutes which apply.
- C. This Declaration.
- D. The Articles of Incorporation.
- E. The By-Laws.
- F. The Rules and Regulations and architectural guidelines promulgated by the Board of Directors.

**22.3 Invalidity.** In the event any Court shall hereafter determine that any provisions of this Declaration as originally drafted, or as amended, violates the rule against perpetuities or any other rules of law because of the duration of the period involved, the period specified in the Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rules of law, and for such purpose measuring lives shall be that of the (original) incorporators of the Association.

**22.4 Captions.** The captions in the Condominium Documents are inserted only as a matter of convenience and for ease of reference and in no way define or limit any provision in the Condominium Documents.

**22.5 Gender; Plurality.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

**22.6 Owners' Affirmative Duties.** All Owners are charged with the affirmative duty to keep the Association advised, in writing, of any mailing addresses,

as they change from time to time, including a second address for emergency in the event of a catastrophic event. The Owner shall also notify the Association of the name and address of any mortgagees. The Association shall be permitted to rely on the information supplied by Owners in writing.

**22.7 Covenant Running with the Land.** All provisions of the Declaration and its Exhibits and Rules and Regulations shall, to the extent applicable be perpetual and be construed to be covenants running with the Properties in the Condominium, and all of the provisions of the Condominium Documents and Rules and Regulations shall be binding upon and enure to the benefit of the Owners, Association and their respective heirs, personal representatives, successors and assigns, and shall be binding on all residents, occupants, Guests and invitees to the Properties.

**SECTION 23. EFFECTIVE DATES.** The Effective Date of the provisions of this Amended and Restated Declaration with Exhibits, including Articles of Incorporation and By-Laws, shall be the date on which this Declaration with Exhibits, including Articles of Incorporation and By-Laws, is recorded in the Public Records of the County. Provided however, that to the extent that any provision in this Declaration contains a use restriction which is in effect the same or similar to that contained in the Original Declaration or any amendment to the Original Declaration, then the Effective Date of such use restriction is the date of recording of the Original Declaration or amendment, as applicable. Further provided however, that if an earlier Effective Date is referenced in this Declaration, then that earlier date shall control as the Effective Date. Finally, an easement created by any Original Declaration which is stated in this Declaration shall have as an Effective Date, the date of recording of the Original Declaration.

OR 1451 PG 08 nn

**CERTIFICATE OF ADOPTION OF AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM**

THE UNDERSIGNED, being the duly elected and acting president and secretary of PORPOISE BAY VILLAS CONDOMINIUM ASSOCIATION, INC., hereby certify that the foregoing was approved by not less than a majority of the entire membership of the Board of Directors, obtained at a meeting held on Feb 26, 2001, with quorum present; and was approved by not less than two-thirds of the voting interests of all members of the Association obtained at a meeting of the members held on March 26, 2001, called for the purpose, with quorum present.

IN WITNESS WHEREOF, the Association has caused these presents to be executed in its name and its corporate seal to be affixed by its president on the 9 day of April, 2001.

WITNESSES:

PORPOISE BAY VILLAS  
CONDOMINIUM ASSOCIATION, INC.

Sign Nikki Monahan

Print Nikki MONAHAN

Sign Amy Cavasinni

Print Amy Cavasinni

Sign Nikki Monahan

Print Nikki MONAHAN

Sign Amy Cavasinni

Print Amy Cavasinni

BY: Sign Jeffrey Lockhart  
PRESIDENT

Print Jeffrey Lockhart  
300 Harbour Dr, 205D

Current Address  
Vero Beach, FL 32963

BY: Sign Doris A. Drake  
SECRETARY

Print Doris A. Drake

Current Address 300 Harbour Dr, #510  
Vero Beach, FL 32963

081451PG0801

STATE OF FLORIDA )  
 ) ss  
COUNTY OF INDIAN RIVER )

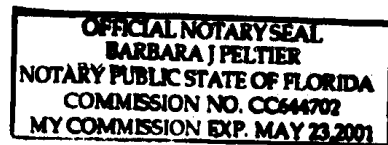
I HEREBY CERTIFY that on this 9<sup>th</sup> day of April, 2001, before me personally appeared Jeffrey Lockhart, President and Doris A. Drake, Secretary, of PORPOISE BAY VILLAS CONDOMINIUM ASSOCIATION, INC., a Florida corporation, who is personally known to me or who has produced N/A (if left blank, personal knowledge existed) as identification and who did not take an oath and who executed the aforesaid as their free act and deed as such duly authorized officers; and that the official seal of the Corporation is duly affixed and the instrument is the act and deed of the Corporation.

WITNESS my signature and official seal at Vero Beach in the  
County of Indian River, State of Florida, the day and year last aforesaid.

**NOTARY PUBLIC:**

Sign: Barbara J Peltier

Print: BARBARA J PELTIER



OR 145160802

EXHIBIT "A"

PORPOISE BAY VILLAS  
COMBINED DESCRIPTION

COMMENCE AT THE NORTHEAST CORNER OF GOVERNMENT LOT 3, SECTION 21, TOWNSHIP 33 SOUTH, RANGE 40 EAST, INDIAN RIVER COUNTY, FLORIDA, THENCE RUN NORTH 89°58'02" WEST, 84.11 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°58'02" WEST, 598.00 FEET; THENCE SOUTH 50°42'36" WEST, 759.03 FEET TO THE SHORE OF THE INDIAN RIVER; THENCE RUN ALONG THE SHORE OF THE INDIAN RIVER THE FOLLOWING COURSES AND DISTANCES: SOUTH 83°06'02" EAST, 287.23 FEET; THENCE SOUTH 61°39'12" EAST, 442.09 FEET; THENCE SOUTH 78°22'22" EAST, 530.60 FEET; THENCE LEAVING THE SHORE OF THE INDIAN RIVER, RUN NORTH 81°15'58" EAST, 297.19 FEET; THENCE NORTH 16°32'22" WEST, 329.45 FEET; THENCE NORTH 00°01'58" EAST, 261.90 FEET; THENCE NORTH 89°58'02" WEST, 208.71 FEET; THENCE NORTH 00°01'58" EAST, 208.71 FEET TO THE POINT OF BEGINNING. LESS AND EXCEPTING FROM THE ABOVE THE FOLLOWING PARCELS (AS DESCRIBED IN OFFICIAL RECORD BOOK 654, PAGES 2491 THROUGH 2493, PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA).

PARCEL 1

COMMENCE AT THE NORTHEAST CORNER OF GOVERNMENT LOT 3, SECTION 21, TOWNSHIP 33 SOUTH, RANGE 40 EAST, INDIAN RIVER COUNTY, FLORIDA, THENCE RUN NORTH 89°58'02" WEST ALONG THE NORTH LINE OF GOVERNMENT LOT 3 A DISTANCE OF 84.11 FEET; THENCE RUN SOUTH 00°01'58" WEST A DISTANCE OF 208.71 FEET; THENCE RUN SOUTH 89°58'02" EAST A DISTANCE OF 208.71 FEET; THENCE RUN SOUTH 00°01'58" WEST A DISTANCE OF 261.90 FEET; THENCE RUN SOUTH 16°32'22" EAST A DISTANCE OF 329.45 FEET; THENCE RUN SOUTH 81°15'58" WEST A DISTANCE OF 43.60 FEET TO A POINT ON THE CENTERLINE OF A 60-FOOT EASEMENT KNOWN AS HARBOUR DRIVE, AS RECORDED IN OFFICIAL RECORD BOOK 564, PAGE 1843, INDIAN RIVER COUNTY PUBLIC RECORDS; THENCE RUN NORTH-WESTERLY ALONG THE CENTERLINE OF AFORESAID HARBOUR DRIVE ON A CHORD BEARING OF NORTH 29°57'20" WEST AND BEING A CURVE CONCAVE TO THE LEFT HAVING A RADIUS OF 560.00 FEET AND RUN AN ARC DISTANCE OF 406.49 FEET TO THE POINT OF BEGINNING; FROM THE POINT OF BEGINNING CONTINUE ALONG THE SAME CURVE CONCAVE TO THE LEFT HAVING A RADIUS OF 560.00 FEET AND RUN AN ARC DISTANCE OF 10.01 FEET; THENCE LEAVING AFORESAID CENTERLINE OF HARBOUR DRIVE RUN SOUTH 41°23'34" WEST A DISTANCE OF 121.14 FEET; THENCE RUN SOUTH 48°36'26" EAST A DISTANCE OF 64.00 FEET; THENCE RUN NORTH 41°23'34" EAST A DISTANCE OF 65.92 FEET TO THE 25-FOOT SETBACK LINE WHICH IS 35 FEET SOUTH AND PARALLEL WITH THE CENTERLINE OF AFORESAID HARBOUR DRIVE; THENCE RUN NORTHWESTERLY ALONG A 25-FOOT SETBACK LINE ON A CHORD BEARING OF NORTH 47°55'32" WEST AND BEING A CURVE CONCAVE TO THE LEFT HAVING A RADIUS OF 505.00 FEET AND RUN AN ARC DISTANCE OF 54.03 FEET; THENCE RUN NORTH 41°23'34" EAST A DISTANCE OF 55.04 FEET TO THE POINT OF BEGINNING. SUBJECT TO THAT EASEMENT RECORDED IN OFFICIAL RECORD BOOK 564, PAGE 1843, INDIAN RIVER COUNTY PUBLIC RECORDS.

PARCEL 2

COMMENCE AT THE NORTHEAST CORNER OF GOVERNMENT LOT 3, SECTION 21, TOWNSHIP 33 SOUTH, RANGE 40 EAST, INDIAN RIVER COUNTY, FLORIDA, THENCE RUN NORTH 89°58'02" WEST A DISTANCE OF 682.11 FEET; THENCE RUN SOUTH 50°42'36" WEST A DISTANCE OF 65.60 FEET TO THE CENTERLINE OF A 60-FOOT INGRESS AND EGRESS (HARBOUR DRIVE) AND UTILITY EASEMENT; THENCE TURN TO THE LEFT AND RUN SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTH A DISTANCE OF 224.41 FEET TO A POINT. SAID CURVE HAS A RADIUS OF 380 FEET, A CHORD BEARING OF SOUTH 36°26'13" EAST AND A CHORD DISTANCE OF 221.16 FEET. FROM SAID POINT CONTINUE SOUTHEASTERLY ALONG THE

EXHIBIT "A"

Page 1

EXHIBIT "A"

BOOK 0697 PAGE 1787

AFOREMENTIONED CENTERLINE OF THE 60-FOOT INGRESS AND EGRESS (HARBOUR DRIVE) AND UTILITY EASEMENT ON AN EXTENSION OF THE SAME CURVE A DISTANCE OF 195.62 FEET; THENCE RUN ON A CURVE CONCAVE TO THE SOUTH A DISTANCE OF 78.80 FEET. SAID CURVE HAS A RADIUS OF 900.00 FEET, A CHORD LENGTH OF 78.77 FEET AND A CHORD BEARING OF SOUTH 80°20'36" EAST; THENCE RUN SOUTH 18°10'57" WEST A DISTANCE OF 465.23 FEET; THENCE RUN NORTH 78°22'22" WEST A DISTANCE OF 108.0 FEET; THENCE RUN NORTH 61°39'12" WEST A DISTANCE OF 327.61 FEET; THENCE RUN NORTH 50°42'36" EAST A DISTANCE OF 55.0 FEET; THENCE RUN NORTH 37°03'55" EAST A DISTANCE OF 139.95 FEET TO THE POINT OF BEGINNING; FROM SAID POINT OF BEGINNING RUN SOUTH 52°56'05" EAST A DISTANCE OF 33.00 FEET; THENCE RUN NORTH 37°03'55" EAST A DISTANCE OF 100.00 FEET; THENCE RUN NORTH 52°56'05" WEST A DISTANCE OF 55.0 FEET; THENCE RUN SOUTH 37°03'55" WEST 100.0 FEET; THENCE RUN SOUTH 52°56'05" EAST A DISTANCE OF 22.0 FEET TO THE POINT OF BEGINNING.

### PARCEL 3

COMMENCE AT THE NORTHEAST CORNER OF GOVERNMENT LOT 3, SECTION 21, TOWNSHIP 33 SOUTH, RANGE 40 EAST, INDIAN RIVER COUNTY, FLORIDA, THENCE RUN NORTH 89°58'02" WEST ALONG THE NORTH LINE OF GOVERNMENT LOT 3 A DISTANCE OF 84.11 FEET; THENCE RUN PERPENDICULAR TO THE AFORESAID NORTH LINE OF GOVERNMENT LOT 3, SOUTH 00°01'58" WEST A DISTANCE OF 204.91 FEET; THENCE RUN SOUTH 33°39'58" WEST A DISTANCE OF 51.95 FEET; THENCE RUN SOUTH 63°25'05" WEST A DISTANCE OF 47.41 FEET; THENCE RUN SOUTH 12°04'34" WEST A DISTANCE OF 61.90 FEET TO THE NORTH LINE OF A 60-FOOT INGRESS AND EGRESS EASEMENT, AS RECORDED IN OFFICIAL RECORD BOOK 364, PAGE 1841, OF INDIAN RIVER COUNTY PUBLIC RECORDS, TO BE KNOWN AS HARBOUR DRIVE; THENCE RUN SOUTH 23°09'03" WEST A DISTANCE OF 30.00 FEET TO THE CENTERLINE OF AFORESAID HARBOUR DRIVE; THENCE RUN NORTHWESTERLY ALONG THE CENTERLINE OF HARBOUR DRIVE ON A CURVE CONCAVE TO THE LEFT HAVING A RADIUS OF 900.00 FEET AND RUN AN ARC DISTANCE OF 251.36 FEET; THENCE CONTINUE ALONG THE CENTERLINE ON A CURVE CONCAVE TO THE RIGHT HAVING A RADIUS OF 380.00 FEET AND RUN AN ARC DISTANCE OF 26.00 FEET TO THE POINT OF BEGINNING. FROM THE POINT OF BEGINNING, RUN NORTH 11°40'23" EAST A DISTANCE OF 117.00 FEET; THENCE RUN NORTH 78°19'37" WEST A DISTANCE OF 58.00 FEET; THENCE RUN SOUTH 11°40'23" WEST A DISTANCE OF 66.00 FEET; THENCE RUN SOUTH 78°19'37" EAST A DISTANCE OF 44.00 FEET; THENCE RUN SOUTH 13°26'08" WEST A DISTANCE OF 50.87 FEET TO THE CENTERLINE OF AFORESAID HARBOUR DRIVE, THENCE RUN SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE LEFT, HAVING A RADIUS OF 380.00 FEET AND RUN AN ARC DISTANCE OF 15.57 FEET TO THE POINT OF BEGINNING, LESS ALL EASEMENTS OF RECORD AND CONTAINING 0.11 ACRES MORE OR LESS.

### PARCEL 4

COMMENCE AT THE NORTHEAST CORNER OF GOVERNMENT LOT 3, SECTION 21, TOWNSHIP 33 SOUTH, RANGE 40 EAST, INDIAN RIVER COUNTY, FLORIDA, THENCE RUN NORTH 89°58'02" WEST ALONG THE NORTH LINE OF GOVERNMENT LOT 3 A DISTANCE OF 84.11 FEET TO THE POINT OF BEGINNING; FROM THE POINT OF BEGINNING RUN PERPENDICULAR TO THE AFORESAID NORTH LINE OF GOVERNMENT LOT 3, SOUTH 00°01'58" WEST A DISTANCE OF 204.91 FEET; THENCE RUN SOUTH 33°39'58" WEST A DISTANCE OF 5.42 FEET; THENCE RUN NORTH 89°58'02" WEST AND PARALLEL TO THE NORTH LINE OF GOVERNMENT LOT 3, A DISTANCE OF 61.03 FEET; THENCE RUN NORTH 39°48'32" WEST A DISTANCE OF 271.82 FEET TO THE NORTH LINE OF GOVERNMENT LOT 3; THENCE RUN SOUTH 89°58'02" EAST ALONG THE NORTH LINE OF GOVERNMENT LOT 3, A DISTANCE OF 238.18 FEET TO THE POINT OF BEGINNING, CONTAINING 0.72 ACRES MORE OR LESS.

SAID COMBINED DESCRIPTION BEING SUBJECT TO EASEMENTS OF RECORD.

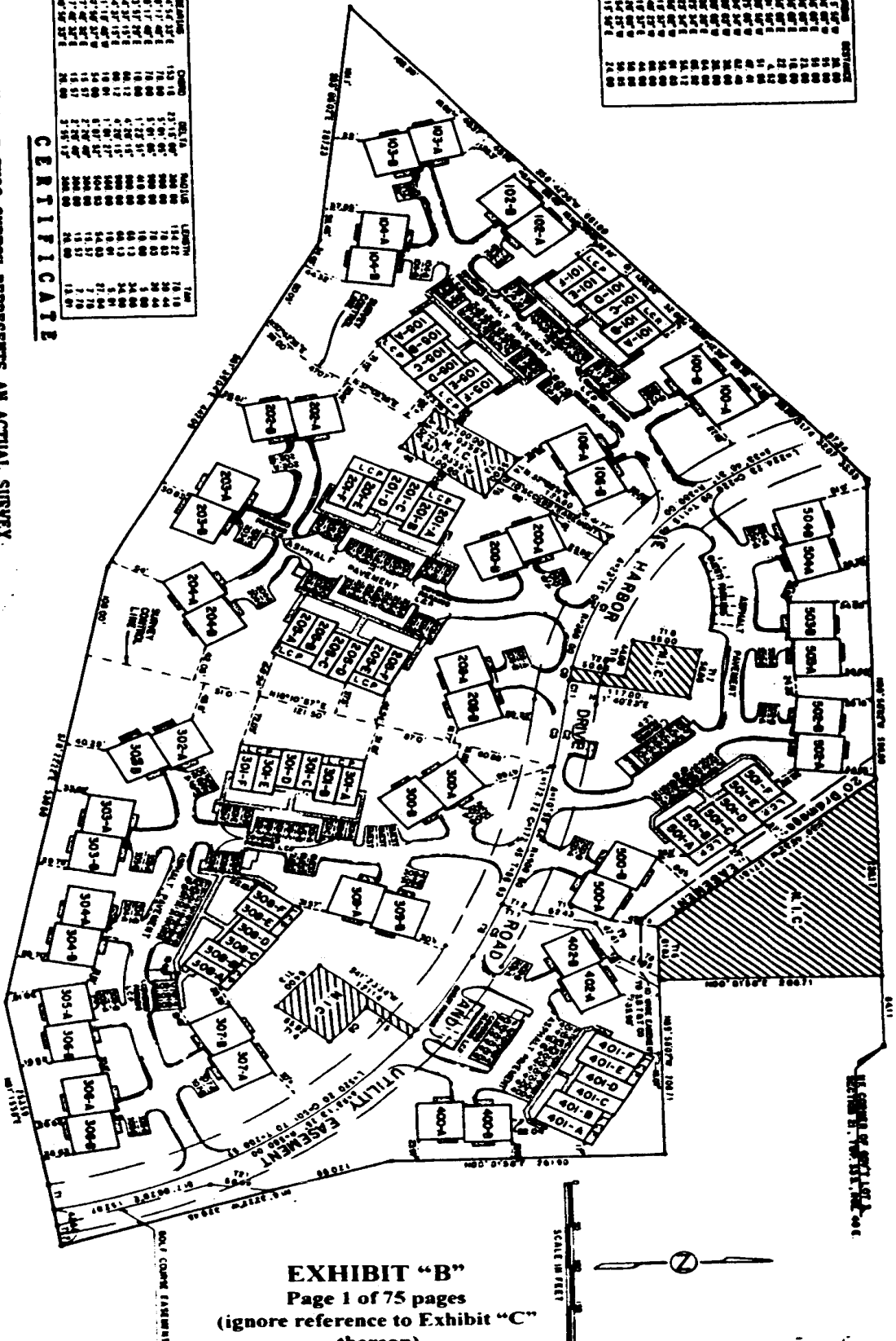
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60	54.00	47.00	50.00	6.00	1.00

WE HEREBY CERTIFY THAT THIS SKETCH REPRESENTS AN ACTUAL SURVEY MADE UNDER OUR DIRECTION, AND THAT IT IS CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF AND THAT THERE ARE NO ENCROACHMENTS EXCEPT AS SHOWN ON THE ABOVE SKETCH.

James J. Buckley  
JAMES J. BUCKLEY, R.L.S. NO. 921

~~A: /~~  
~~J.P. MUSTICK, R.L.S. NR 1192~~



**EXHIBIT "B"**  
**Page 1 of 75 pages**  
**(ignore reference to Exhibit "C"**  
**thereon)**

**EXHIBIT "B"**

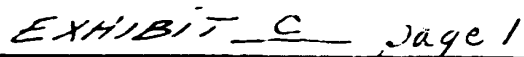
**NOTE: SEE EXHIBIT A-1 & A-2 FOR LEGAL DESCRIPTION.**

**HOW TO GET INSTANT CREDIT ON MORTGAGE**

**LOREN**  
**TRON** COMPANY, INC.  
**L.C.P.** LIMITED COMPANY PROPERTY  
**A.I.C.** NOT SOLID

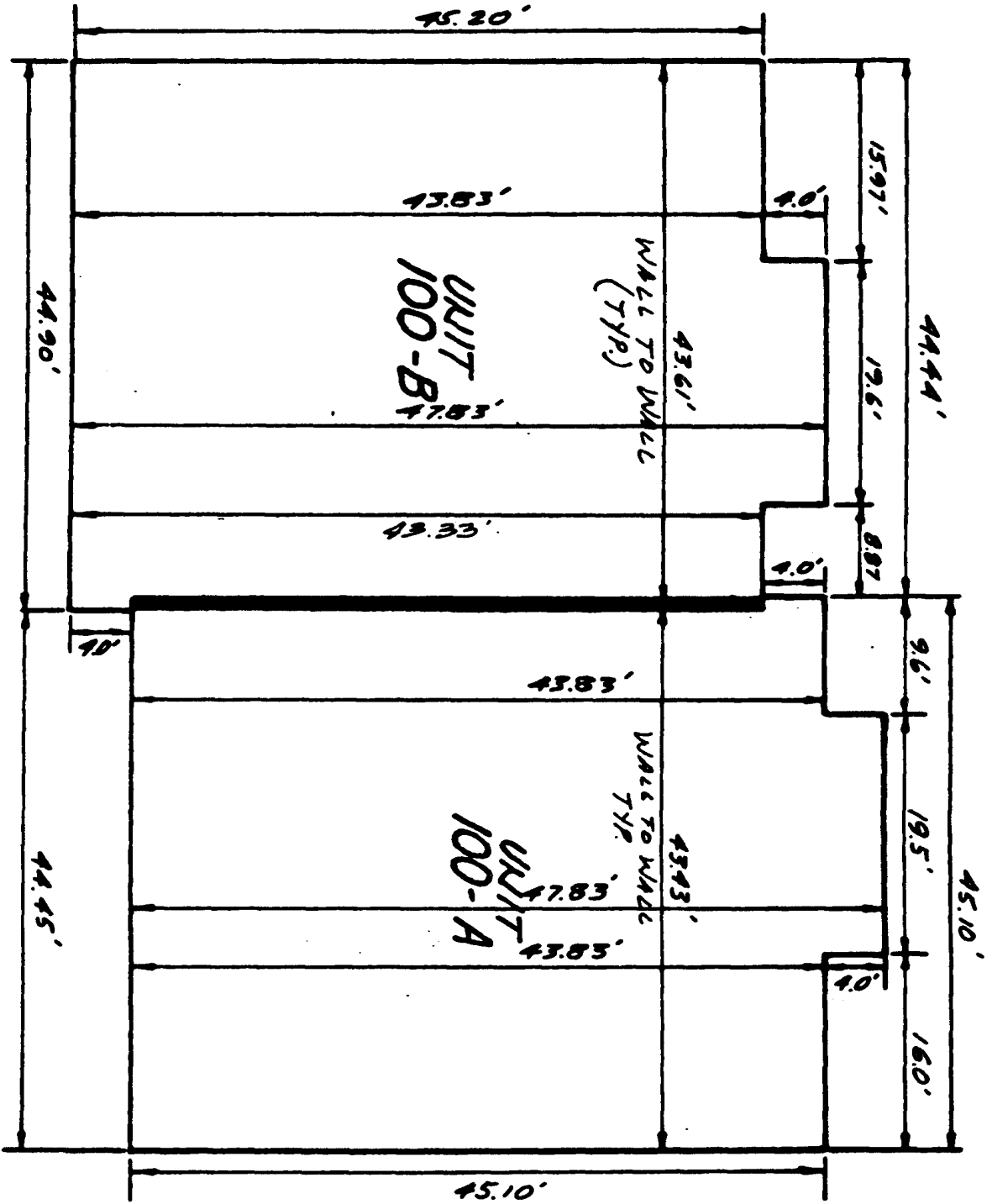
**BENDIS AND ASSOCIATES, INC.**  
CONSULTING ENGINEERS  
600-789-7200 • FAX 600-789-7201  
**PORPOSE BAY VILLAS**  
"B"  
SUBMITTAL  
BOUNDARY & SITE PLAN  
MEDIAN RIVER COUNTY, FLA

REFERENCE BENCH MARK-ELEVATION 8.012  
NGS BRONZE DISC IN CONCRETE -500± NORTH  
OF N. ENTRANCE TO THE MOORINGS ON EAST  
ROW OF S.R. A-1-A B.M. N= H-307.



# PARPOISE BAY VILLAS

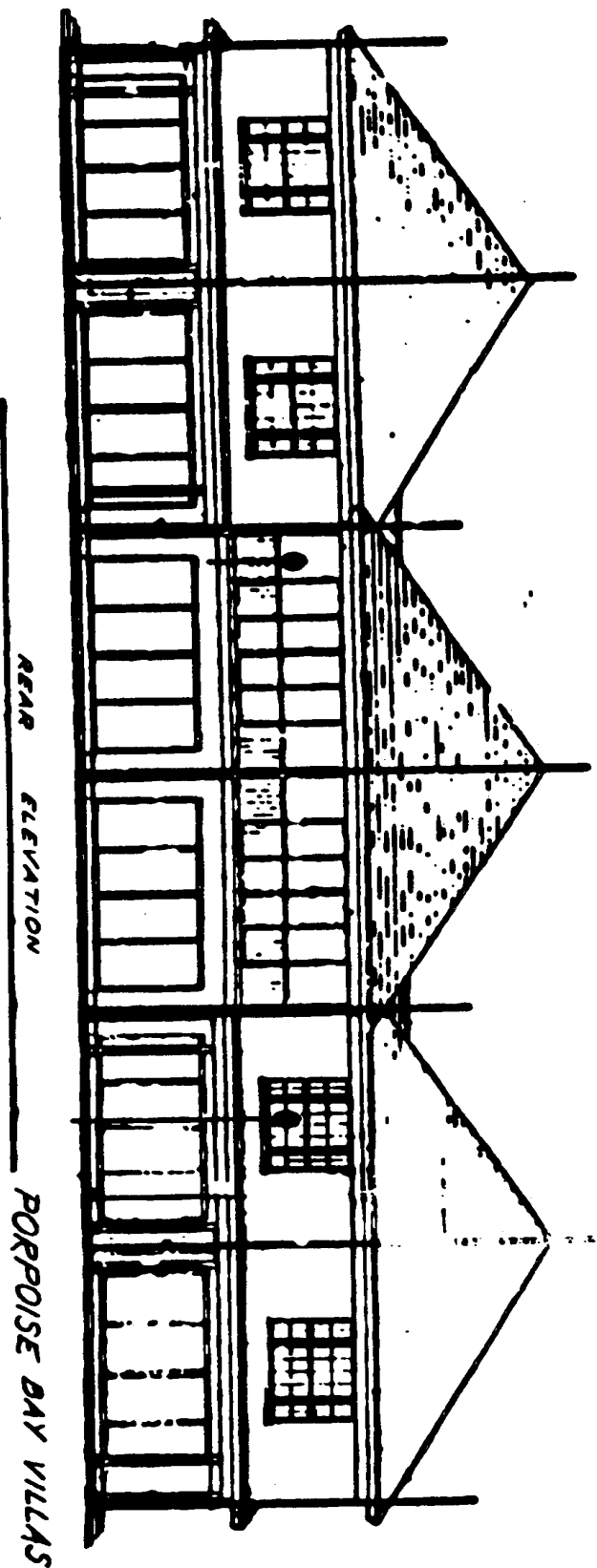
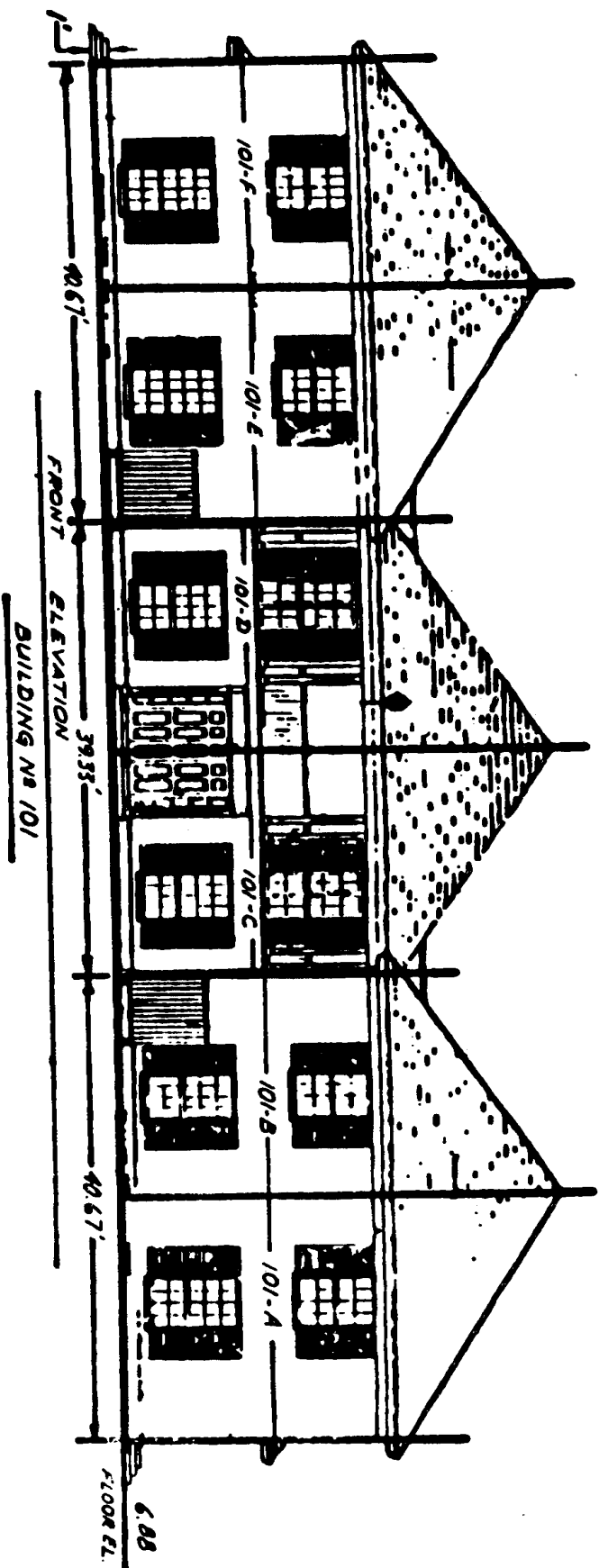
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PORPOISE BAY VILLAS

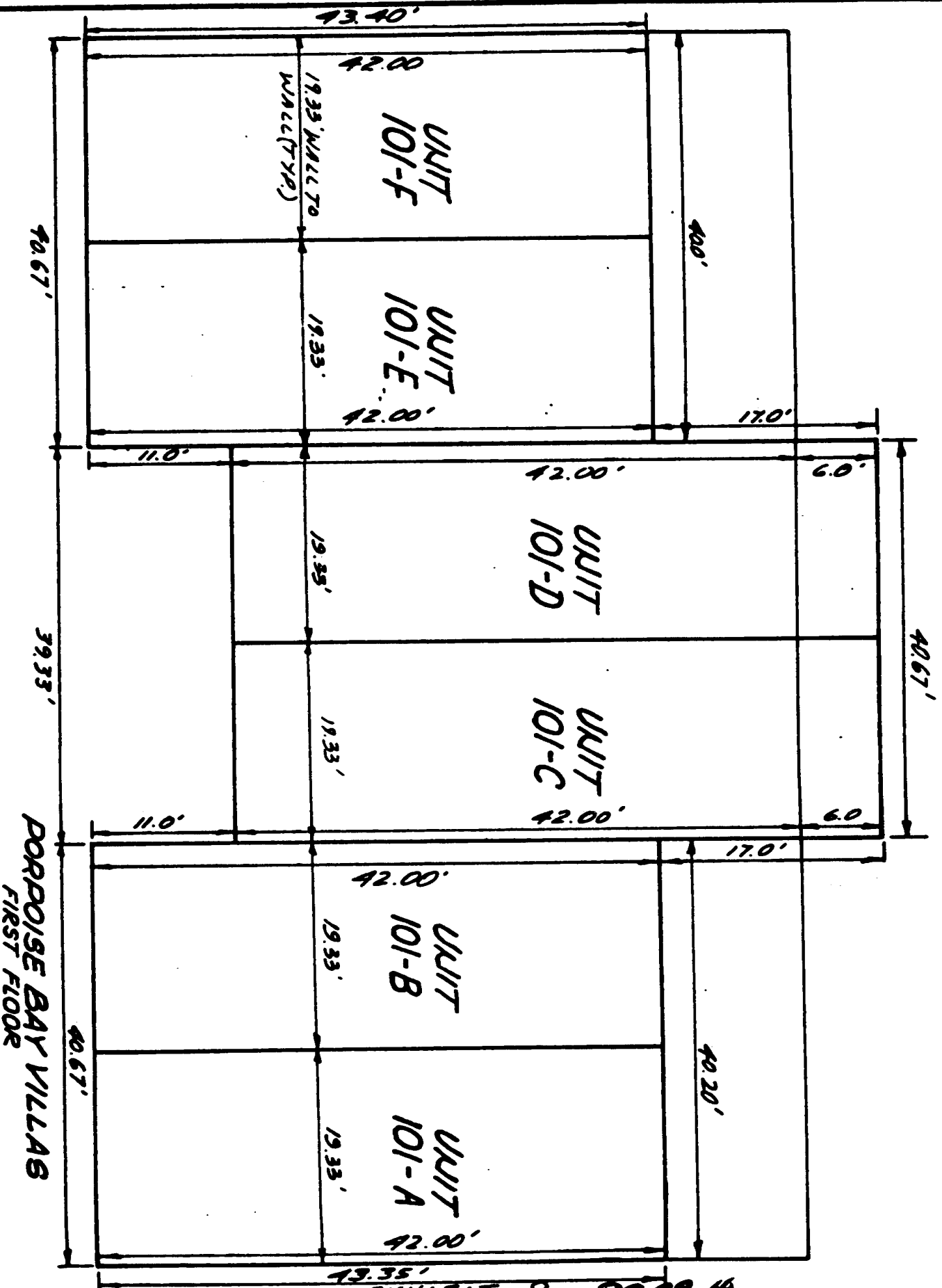
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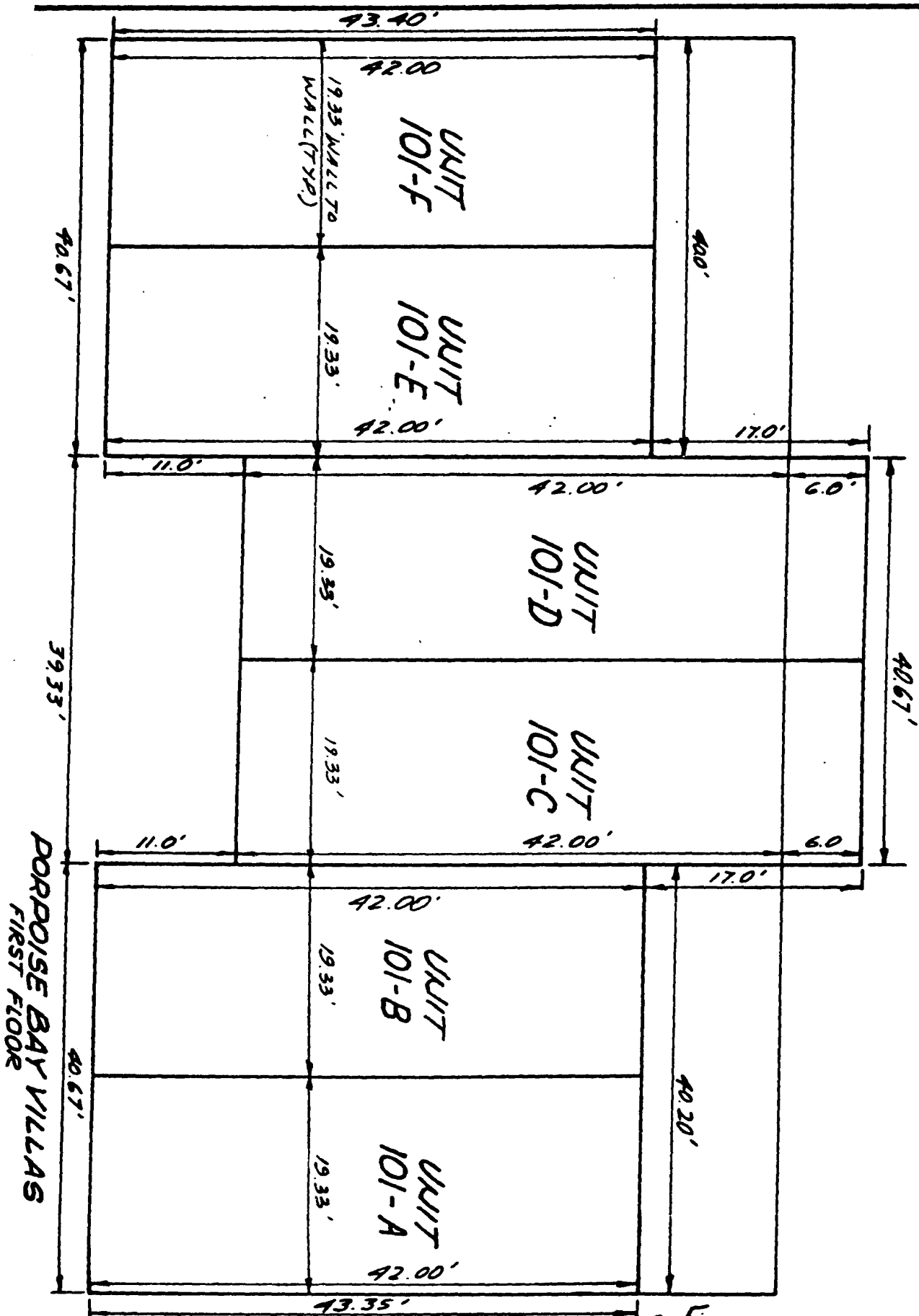
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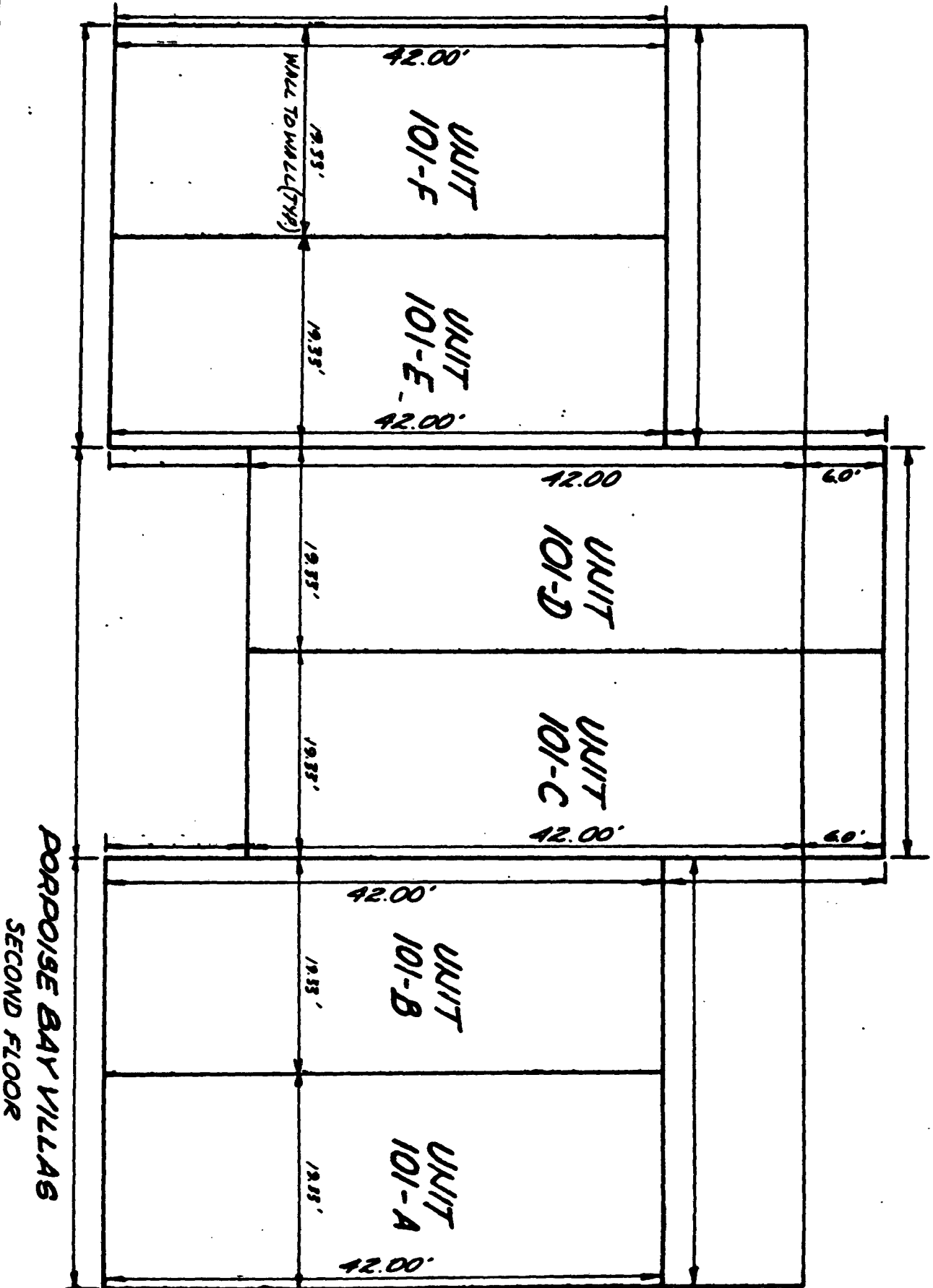
EXHIBIT C, page 3.3



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2014 JUN 16 9:00 AM





PORPOISE BAY VILLAS  
SECOND FLOOR

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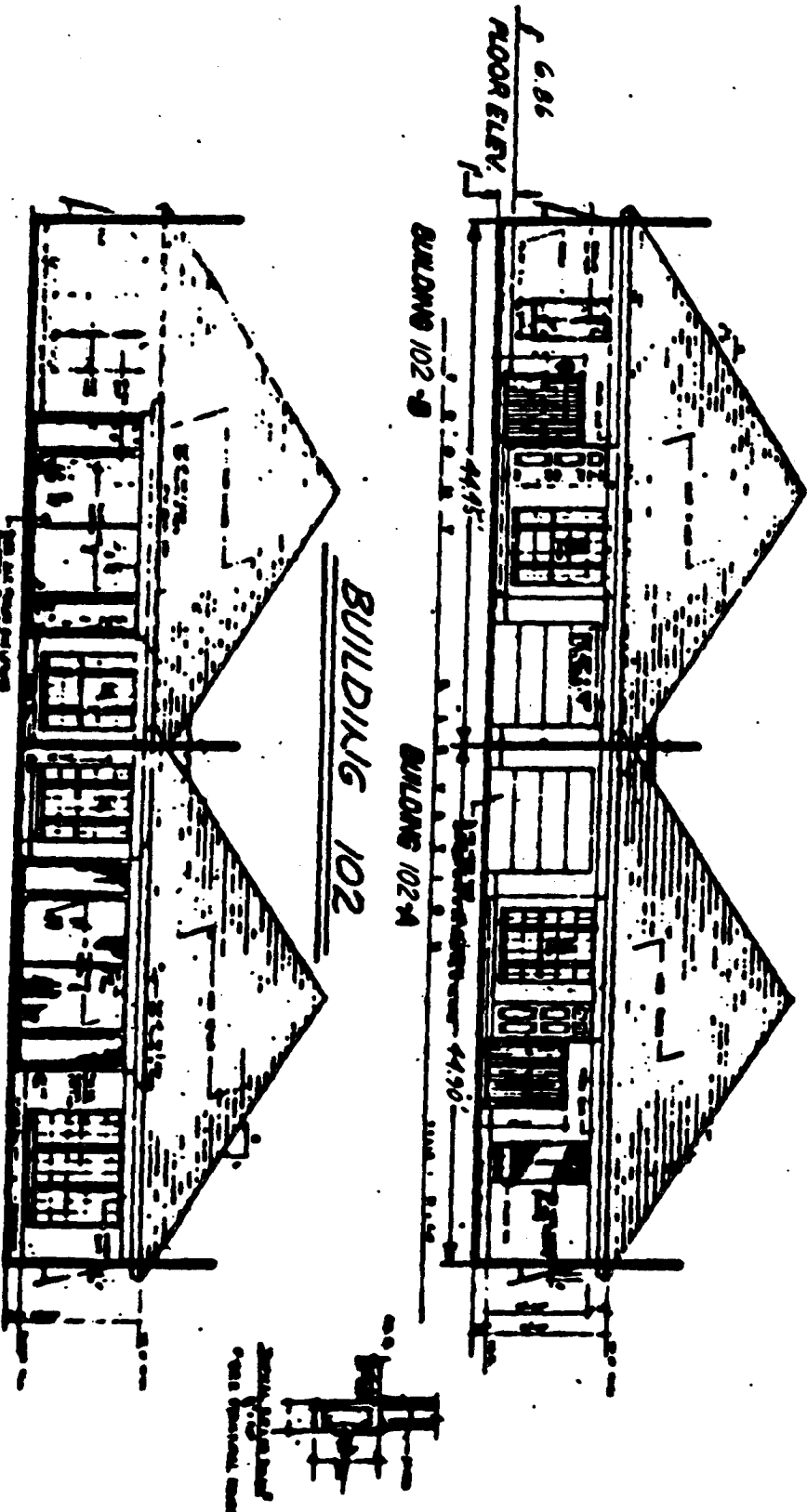
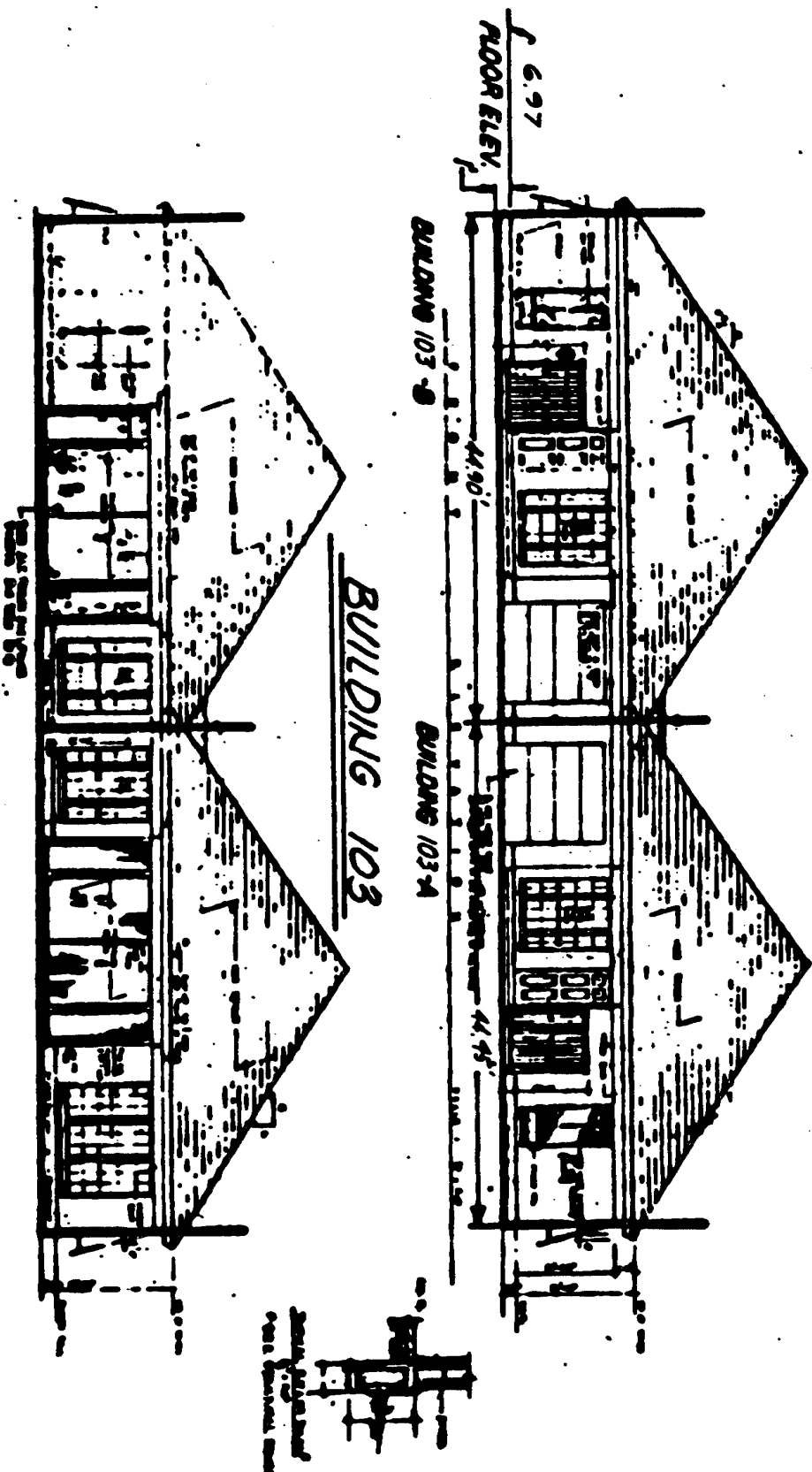


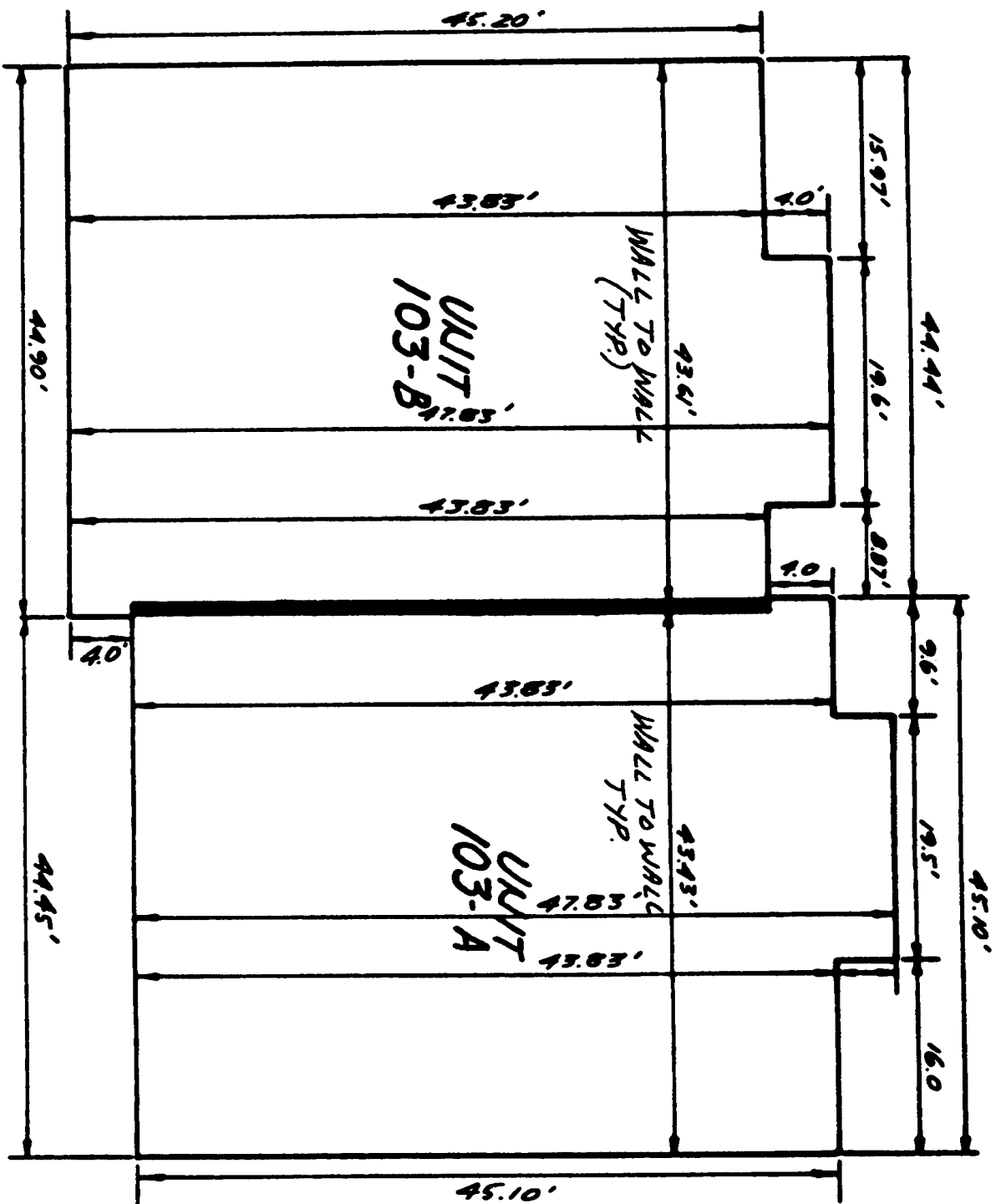
EXHIBIT C page 7

PARROISE BAY VILLAS



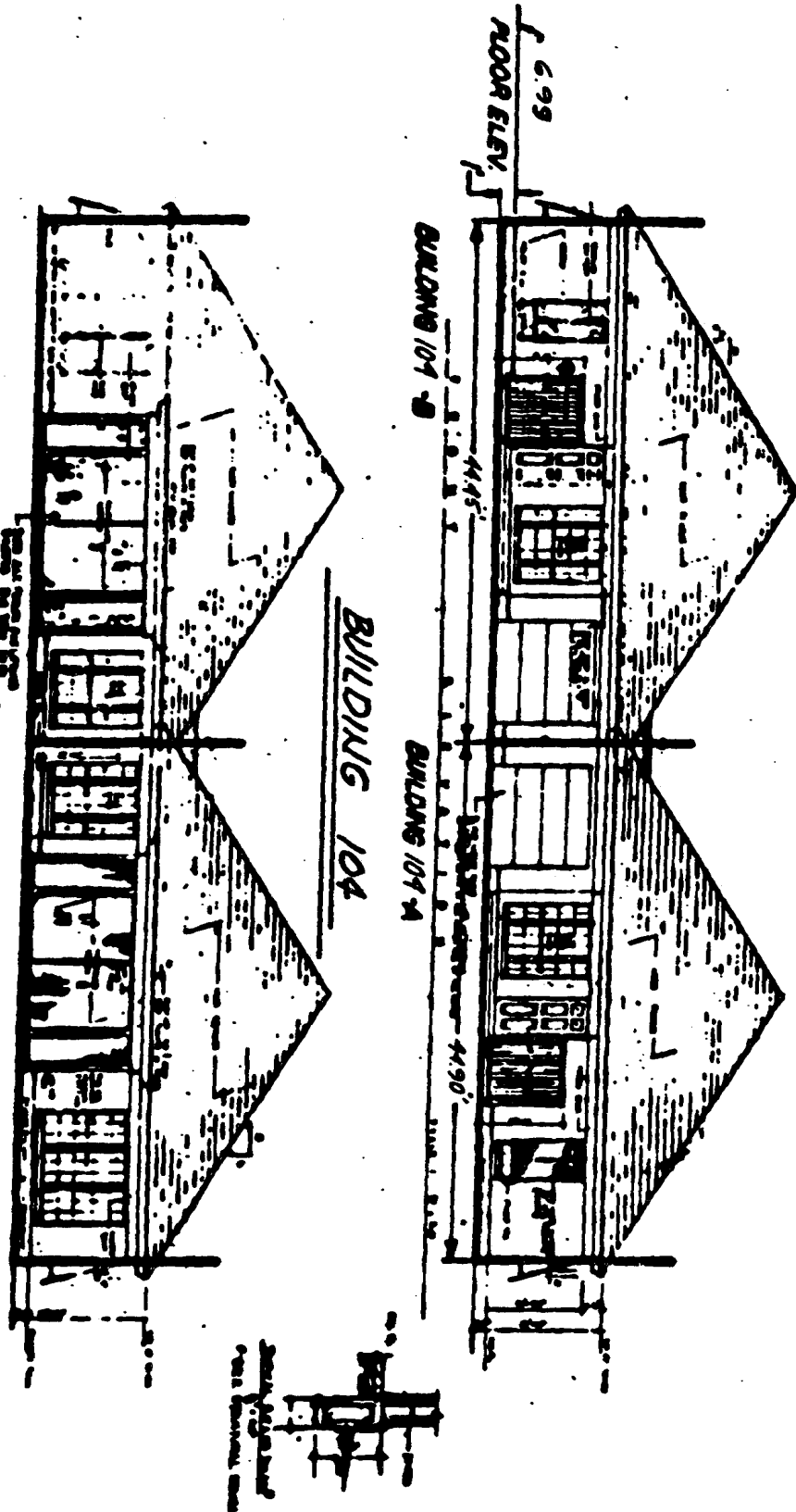


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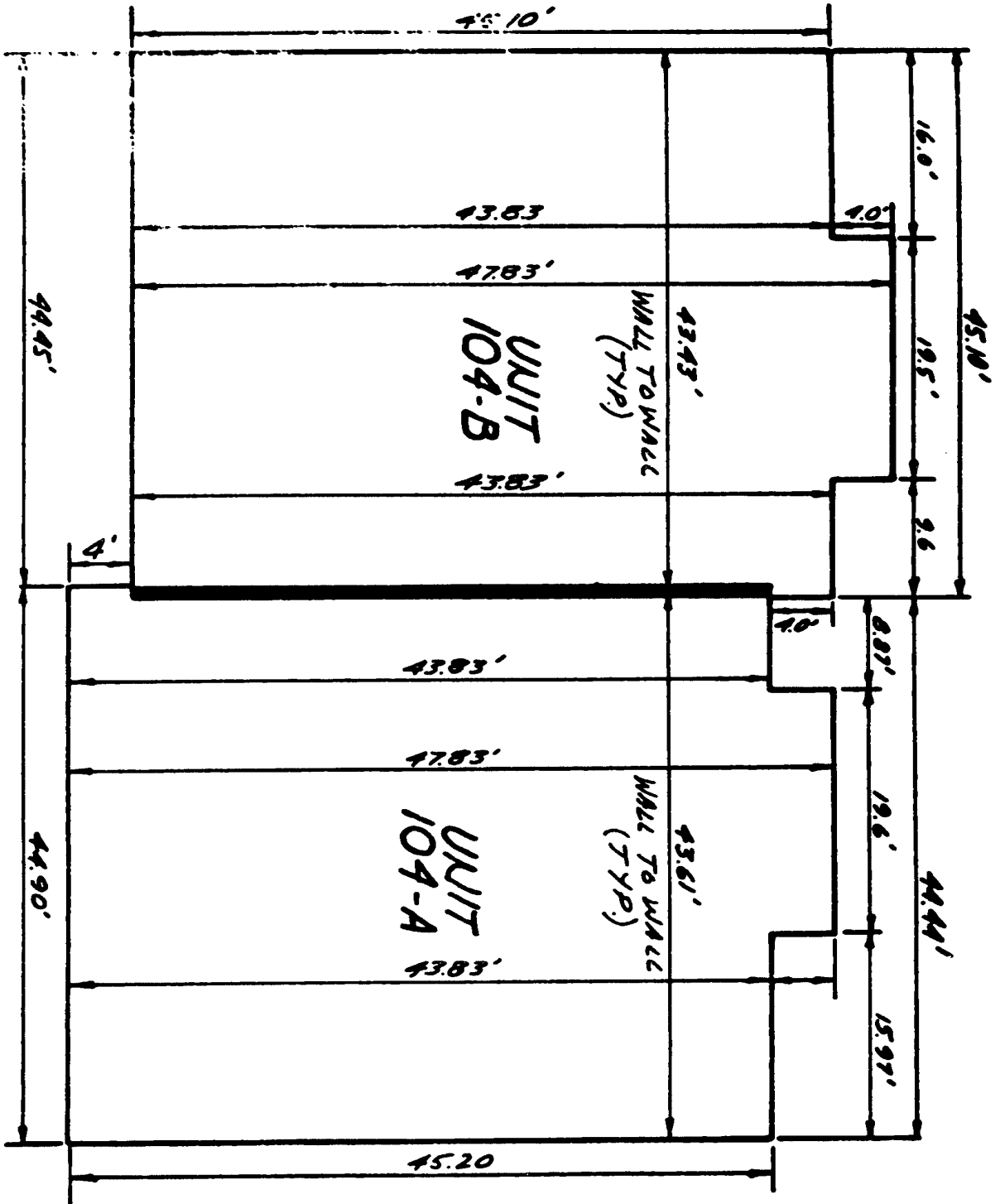
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PARROISE BAR VILLAS

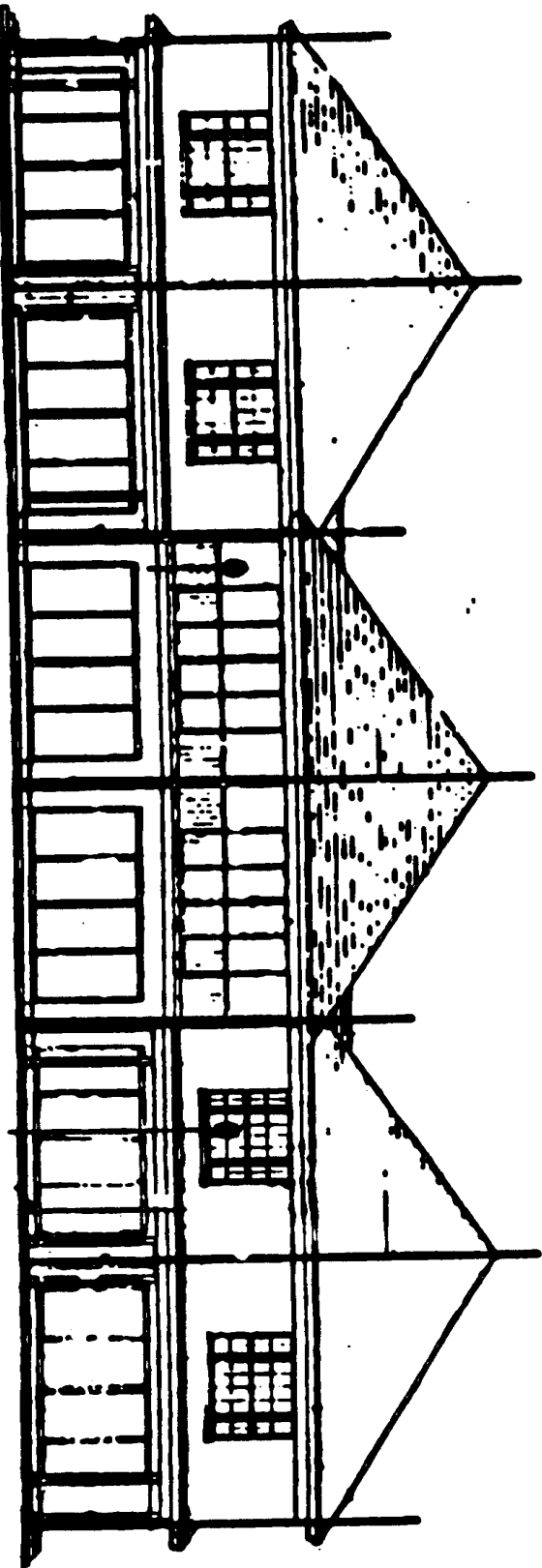
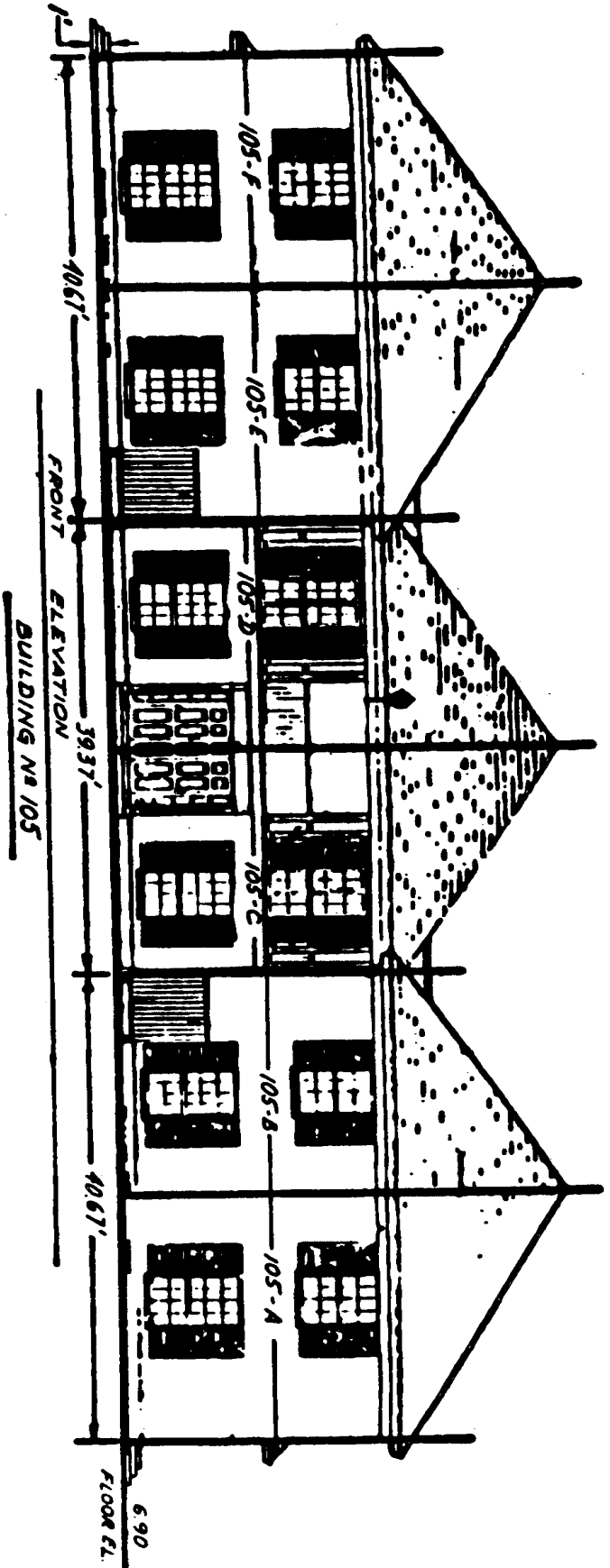
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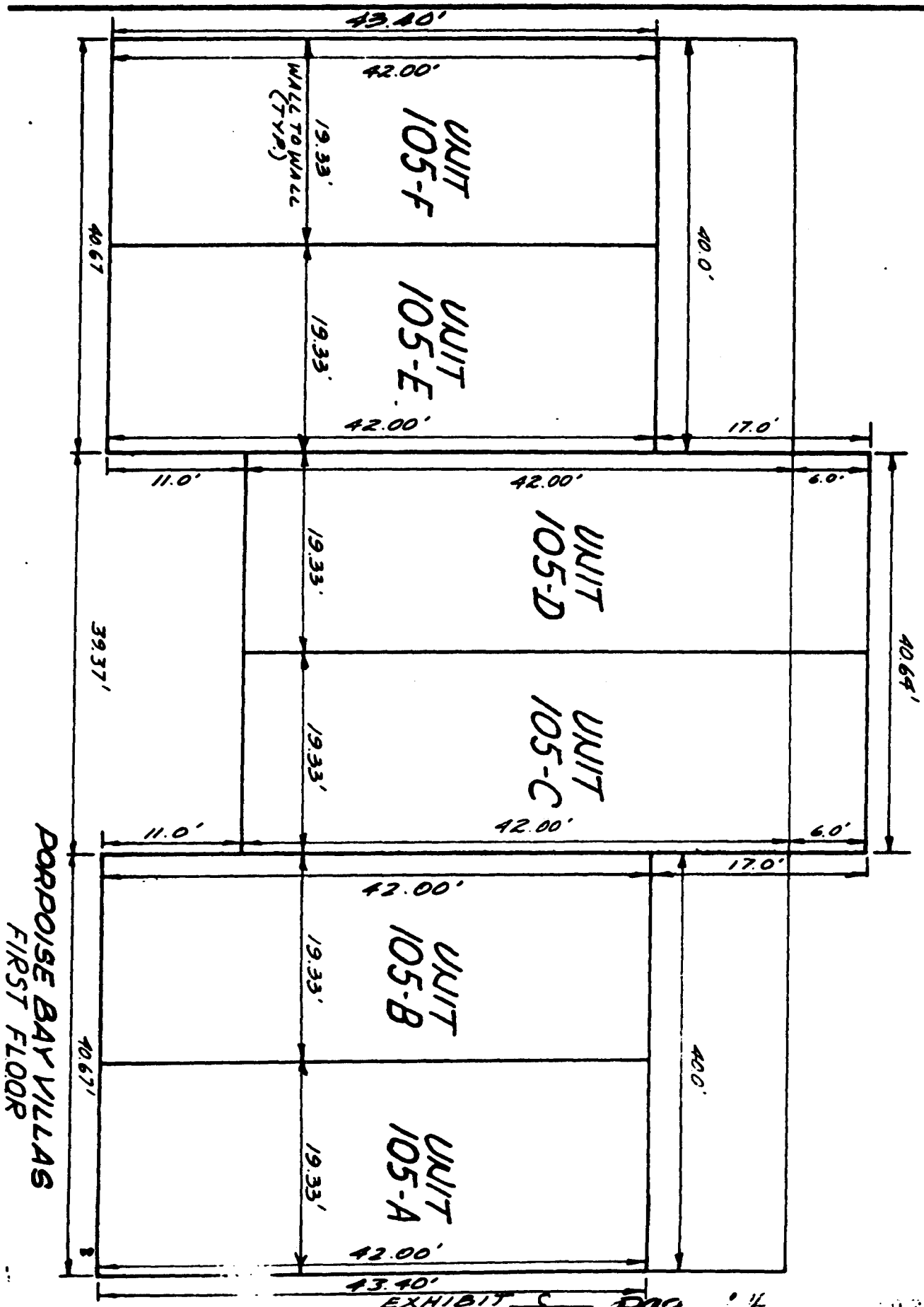
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NOTE: ELEVATION AS PER II. S. MODSTAL DEANSTIN, SIBUIEV

REAR ELEVATION

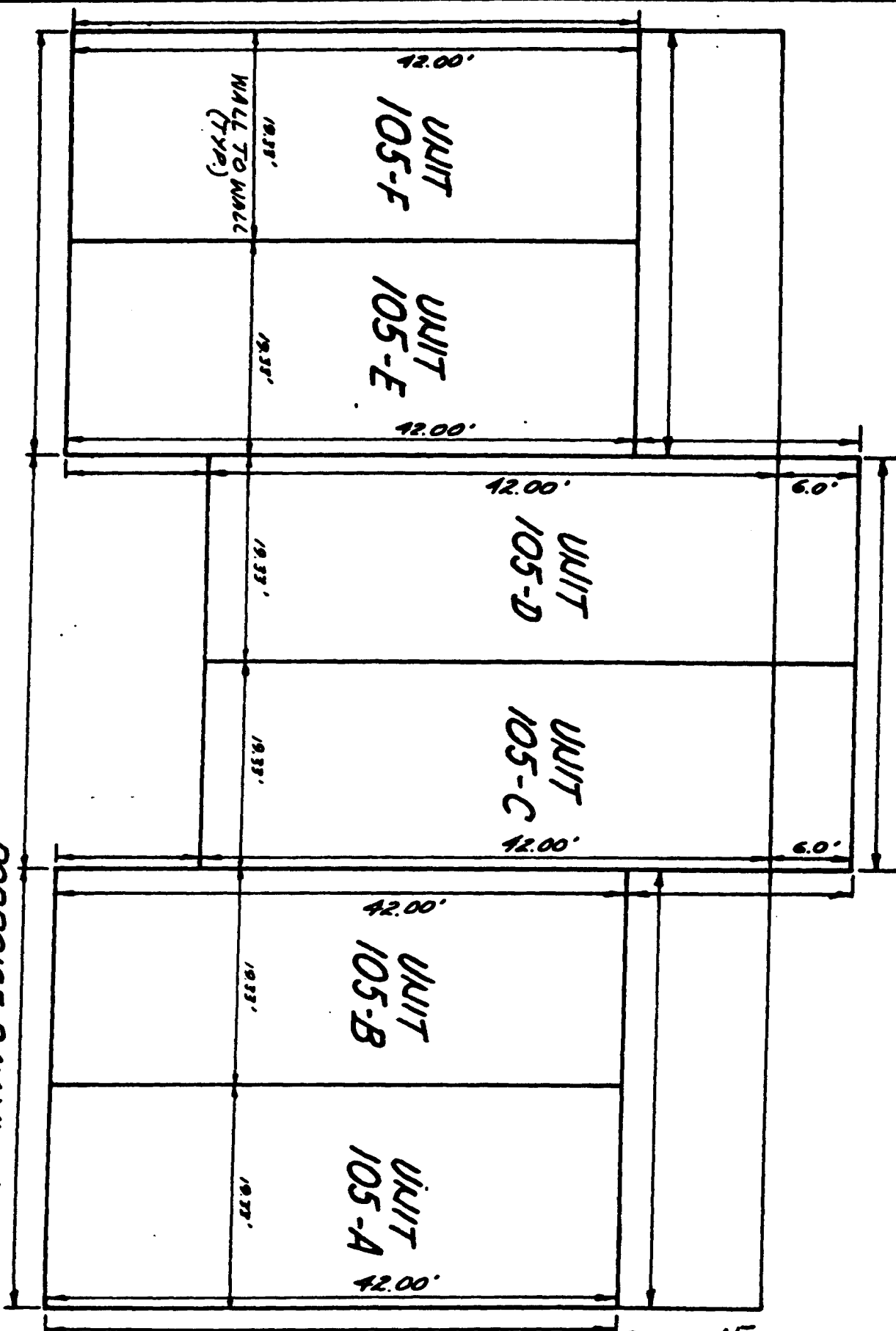
PORPOISE BAY VILLAS



DARPOISE BAY VILLAS  
FIRST FLOOR

OR 1451 PG 0829

DORPOISE BAY VILLAS  
SECOND FLOOR



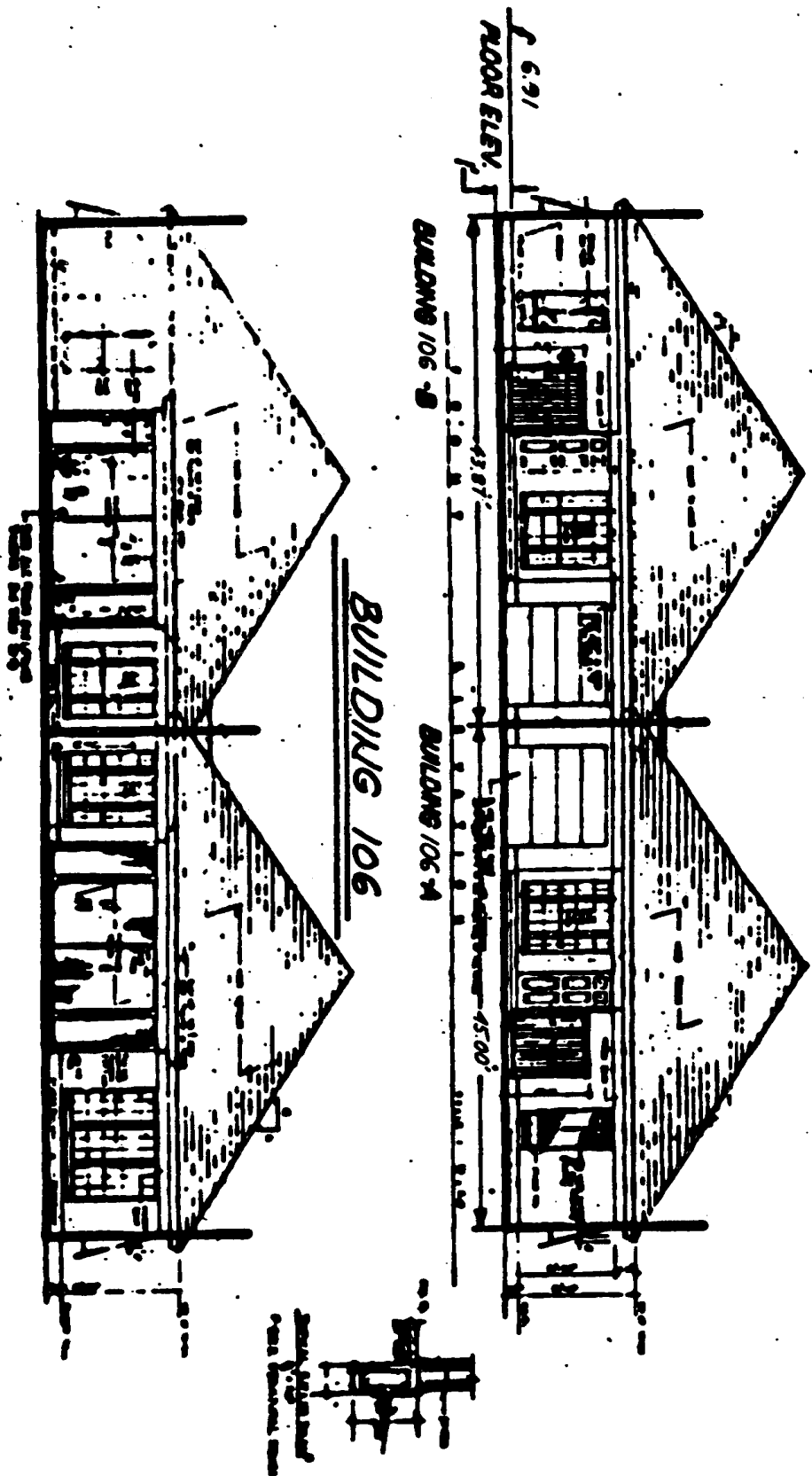


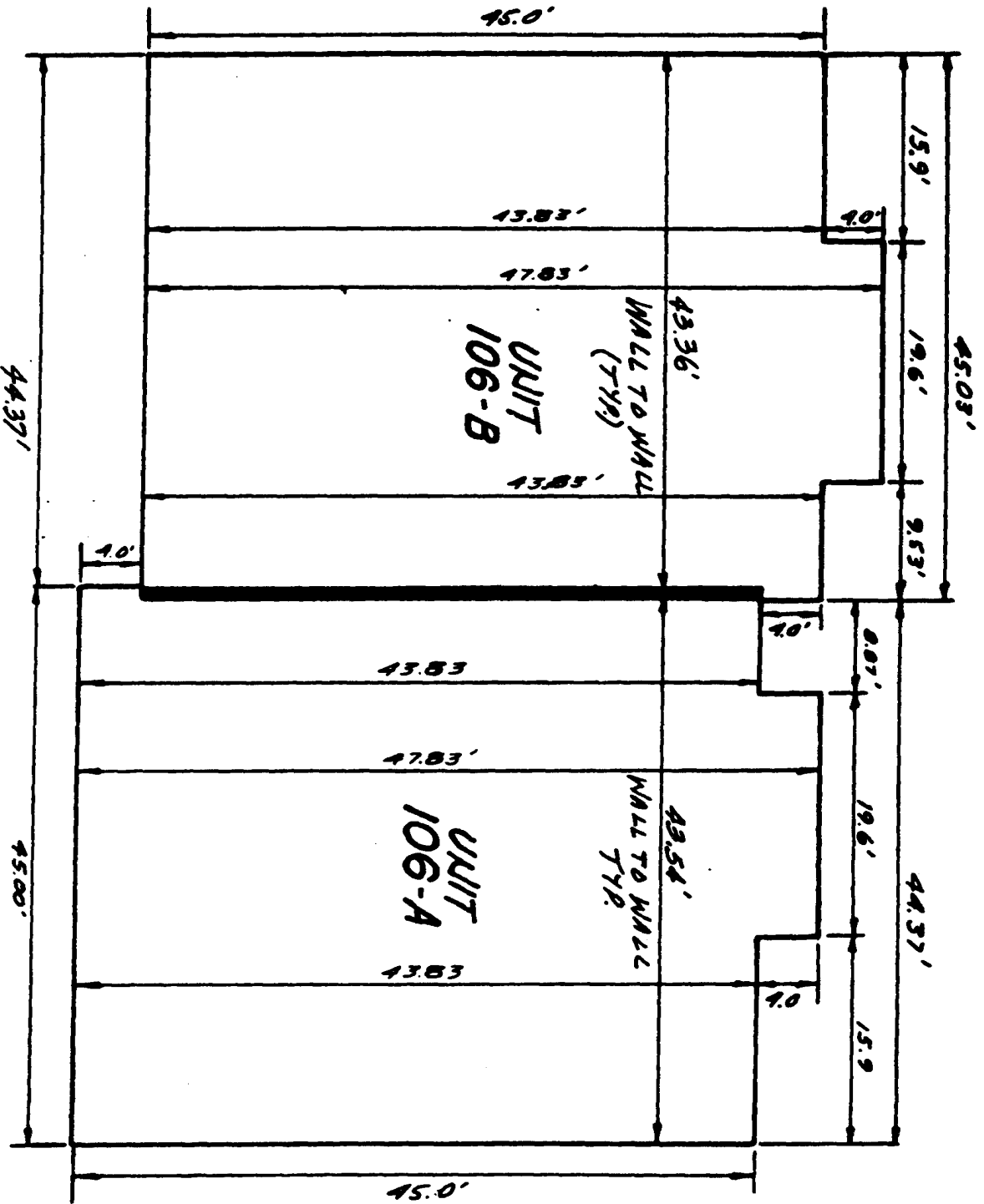
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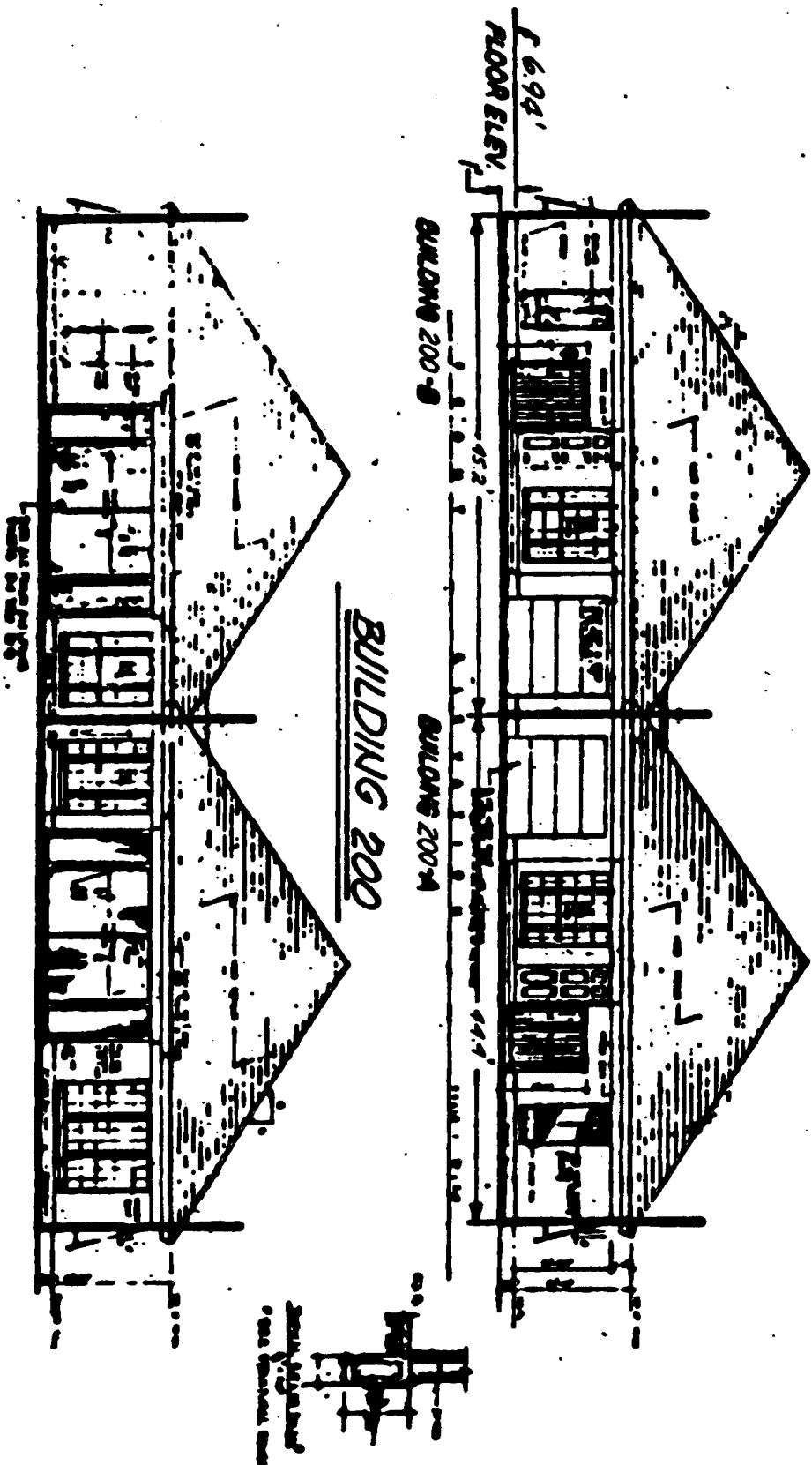
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PORPOISE BAY VILLAS

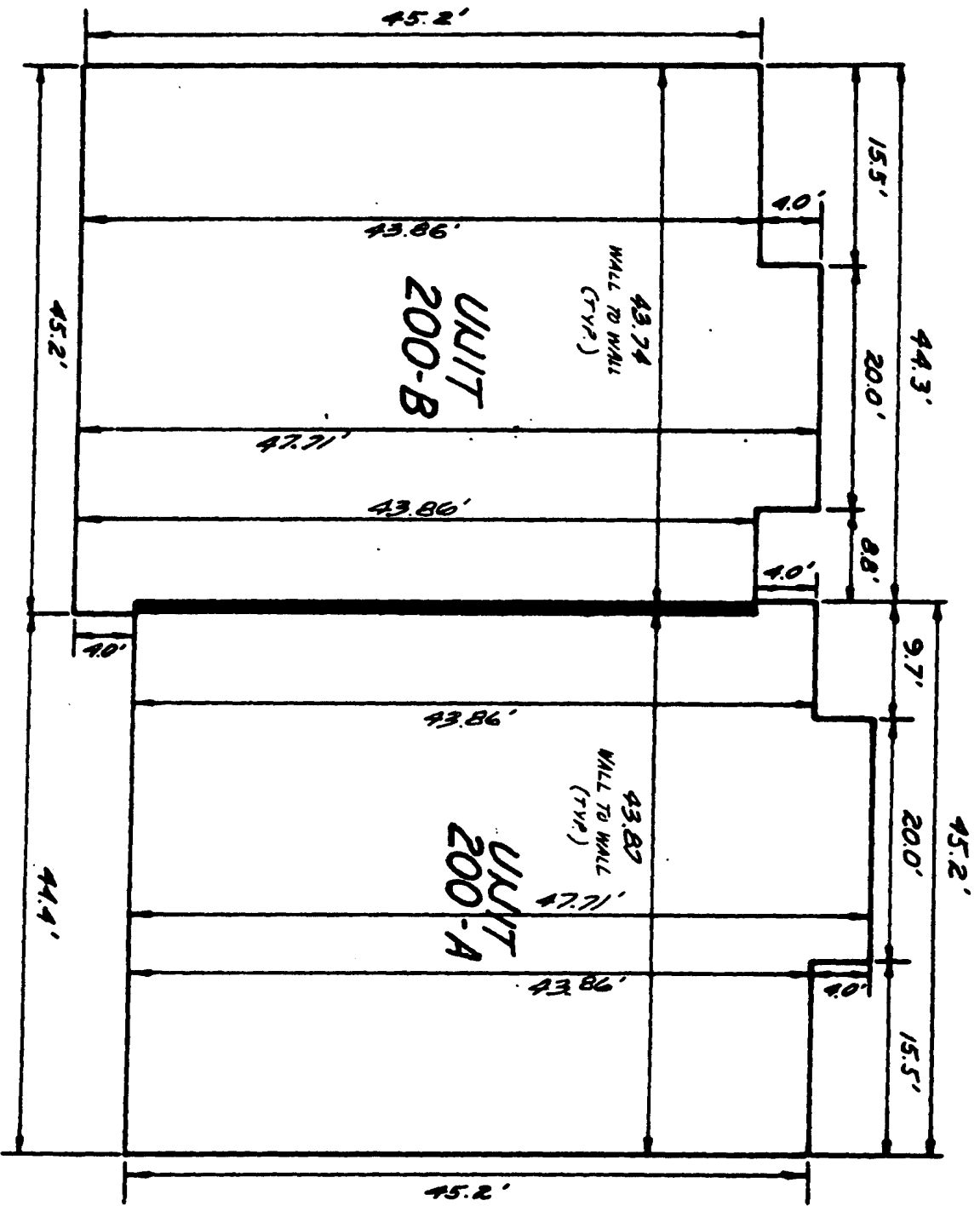


NOTE: ELEVATIONS AS PER U.S. COASTAL GEODETIC SURVEY

PARROISE BAY VILLAS

DR 1451 PG0824

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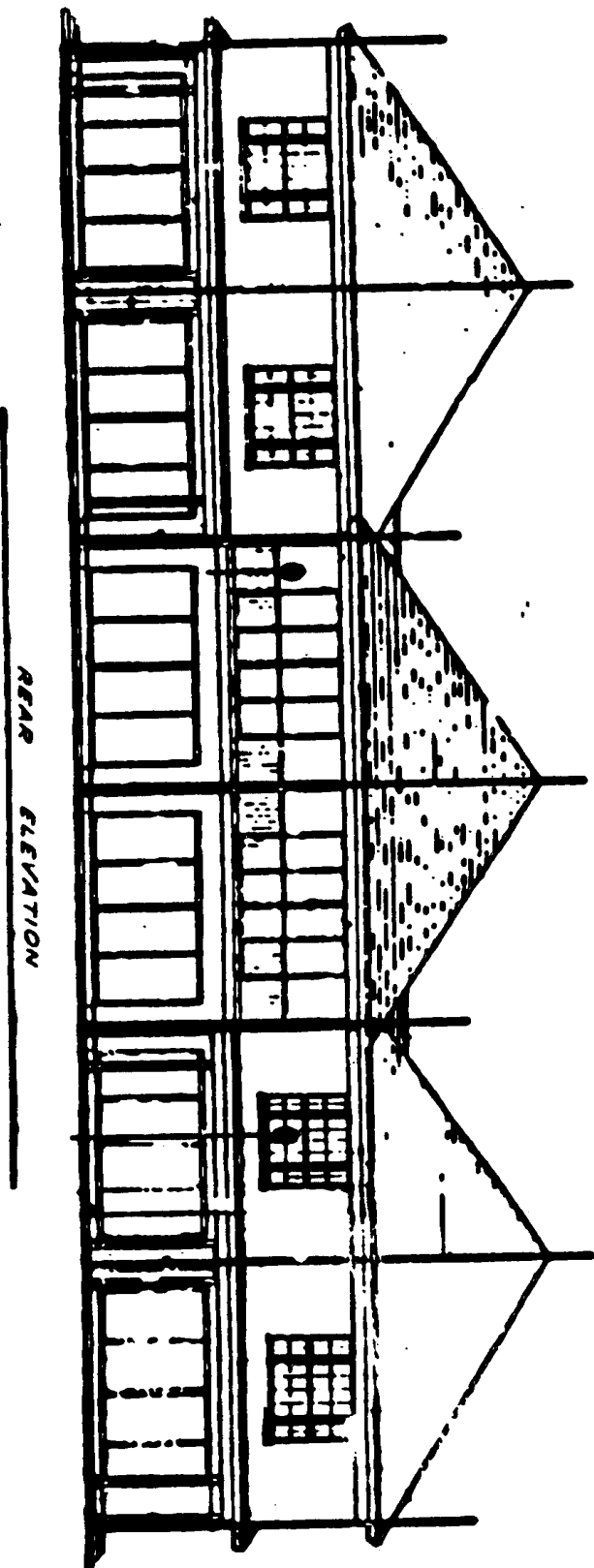
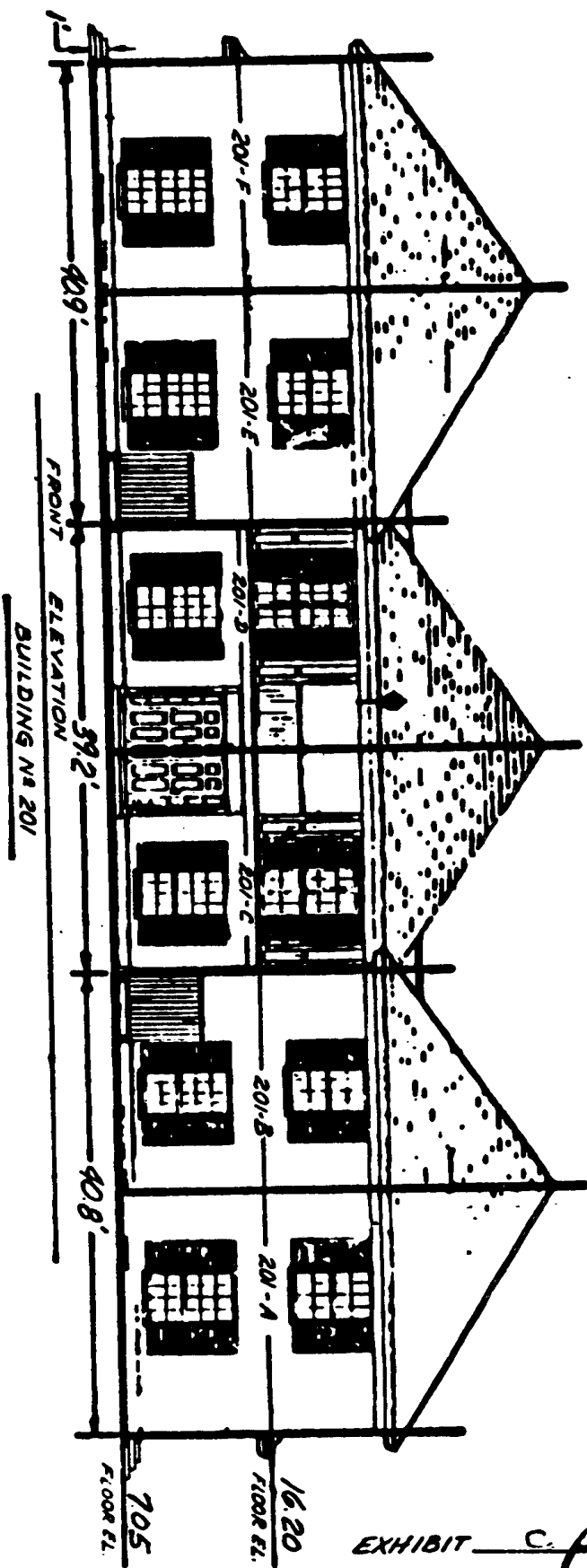


PORPOISE BAY VILLAS

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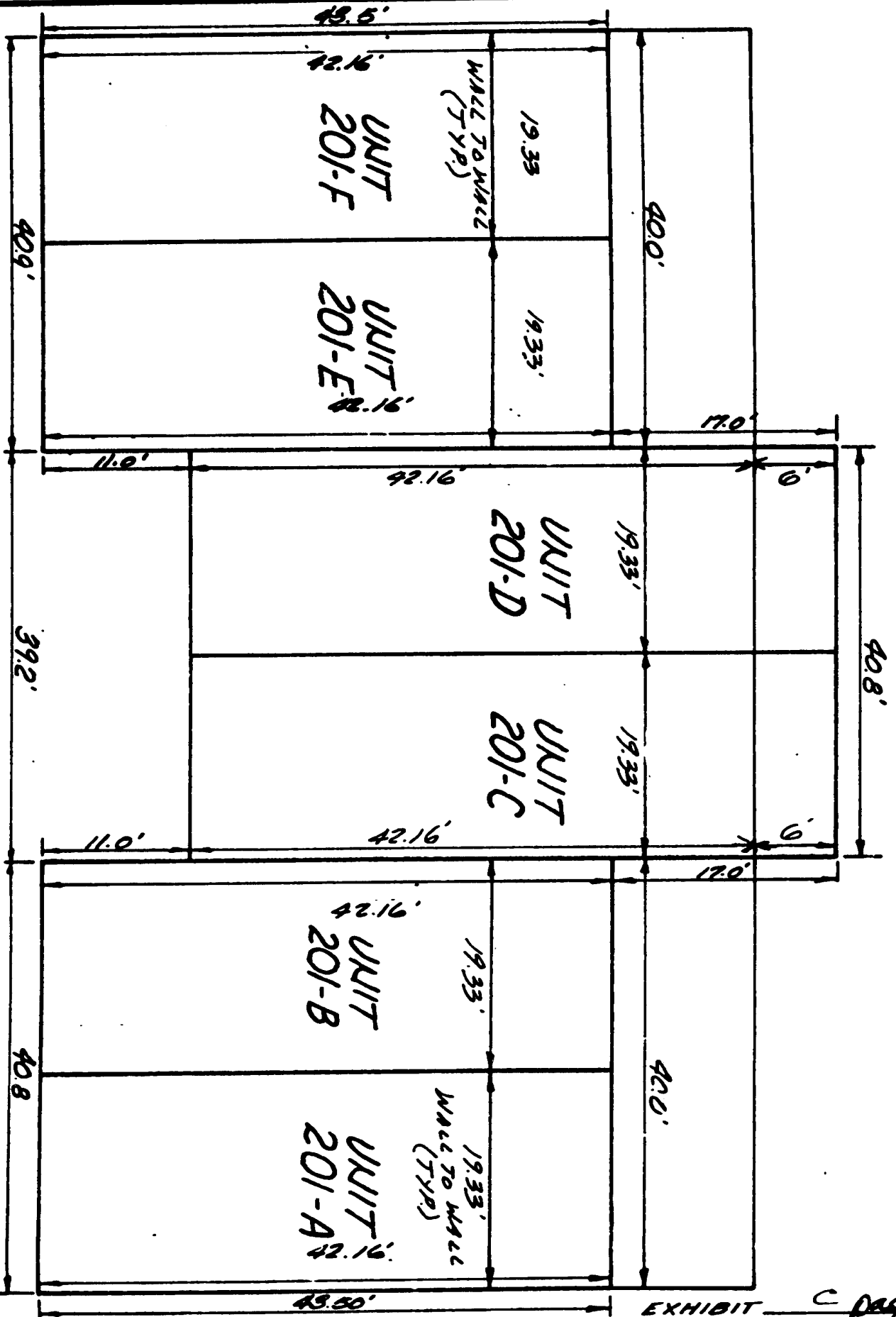
EXHIBIT C. page 20

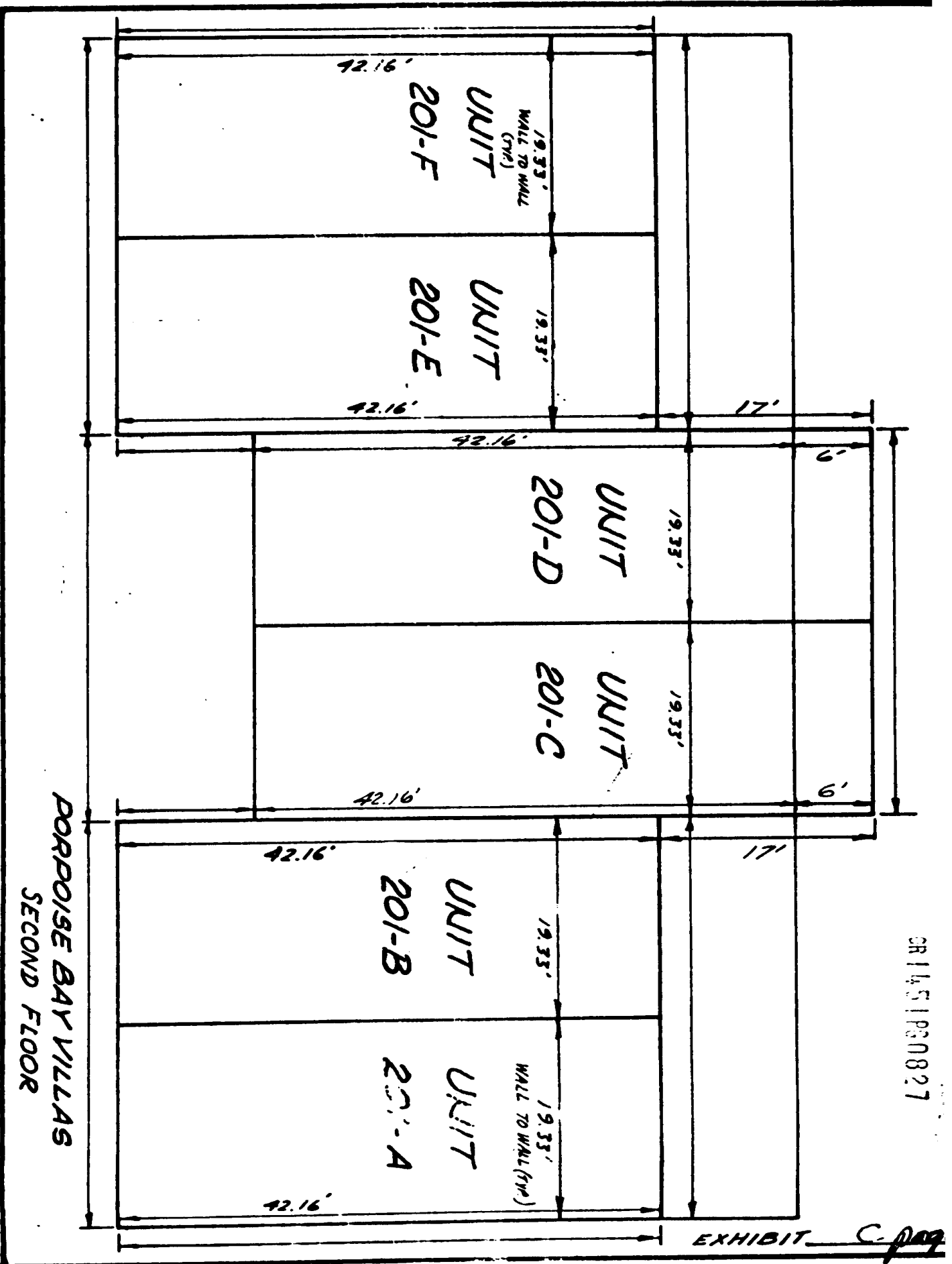


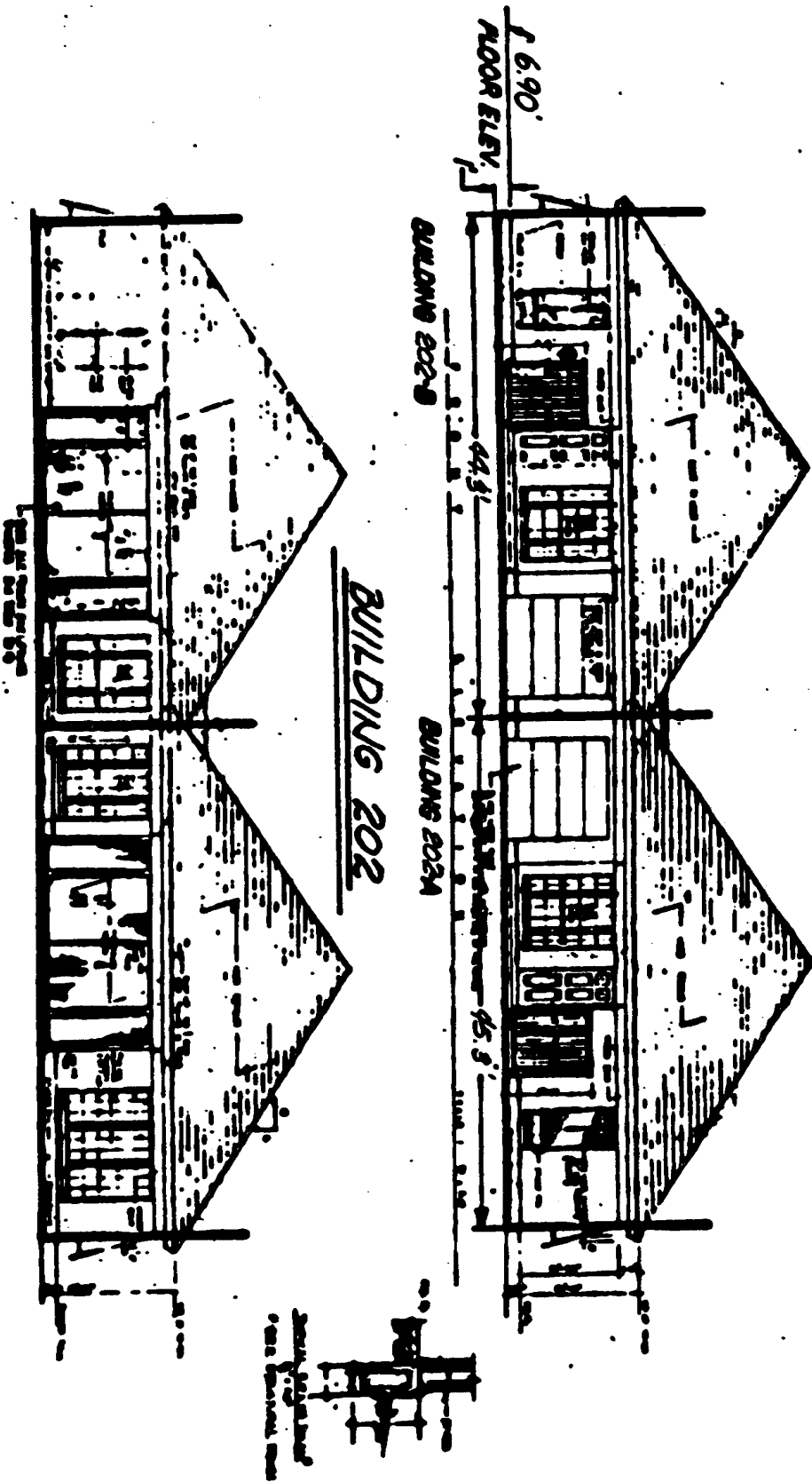
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FIRST FLOOR

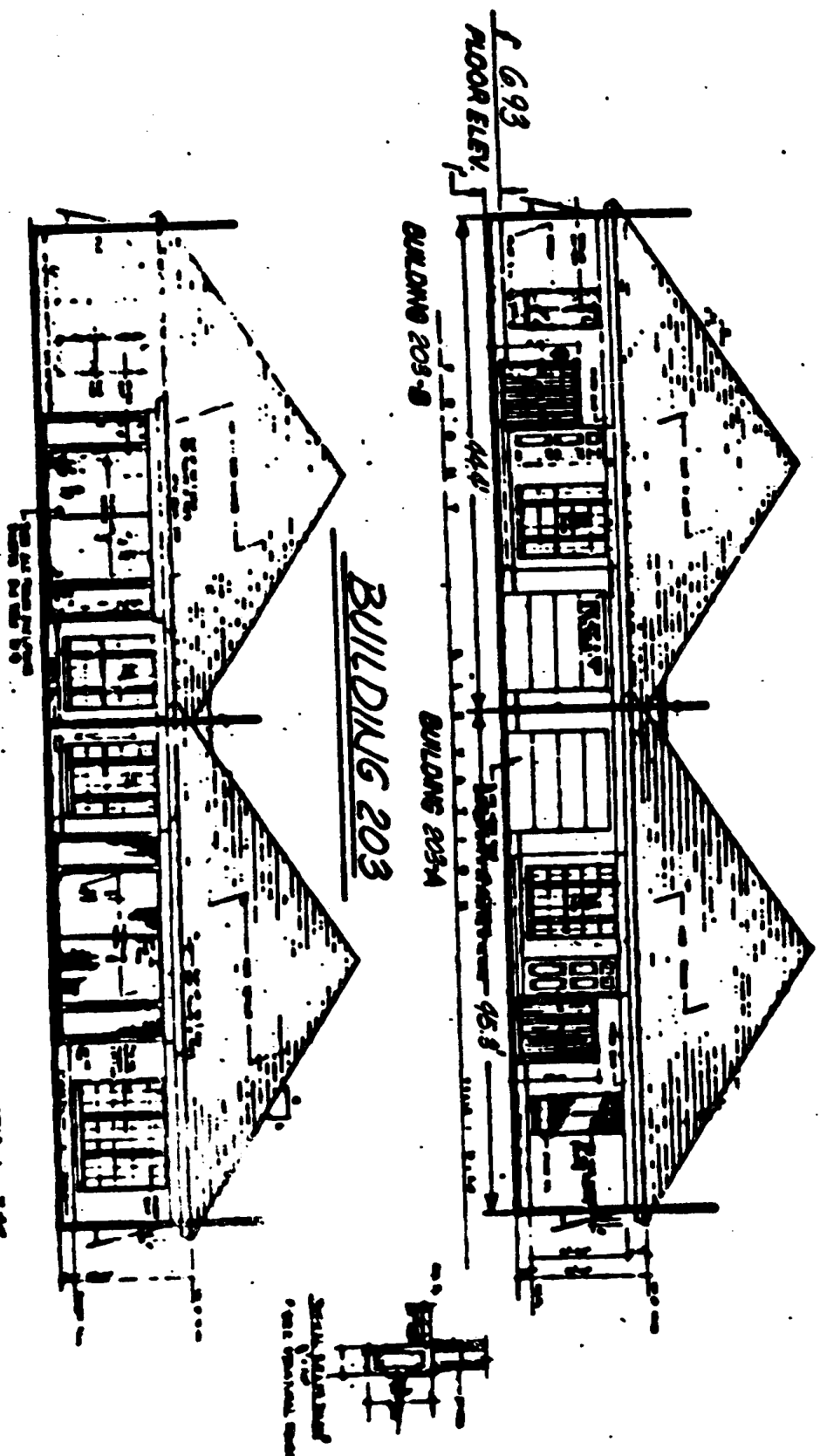






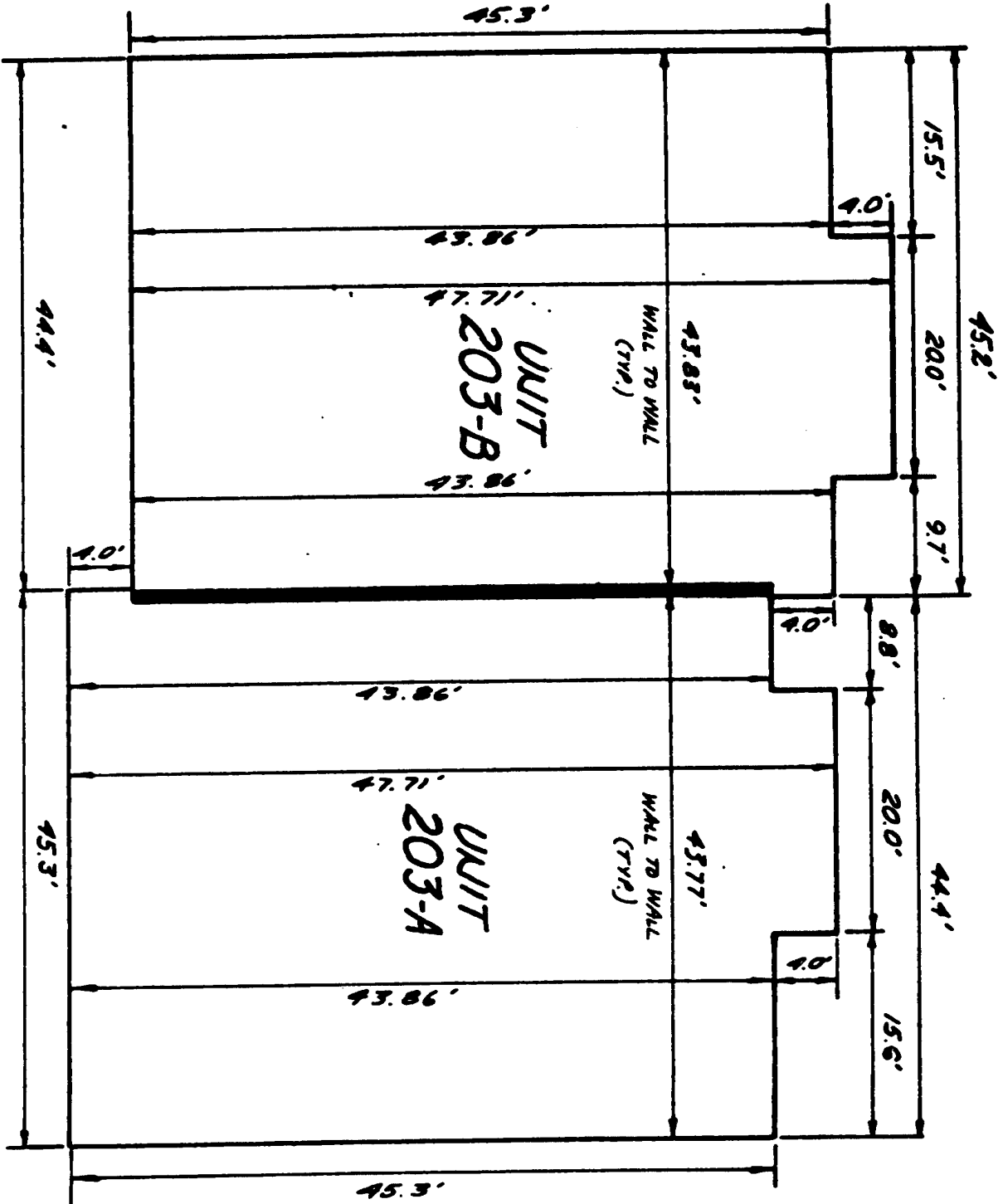
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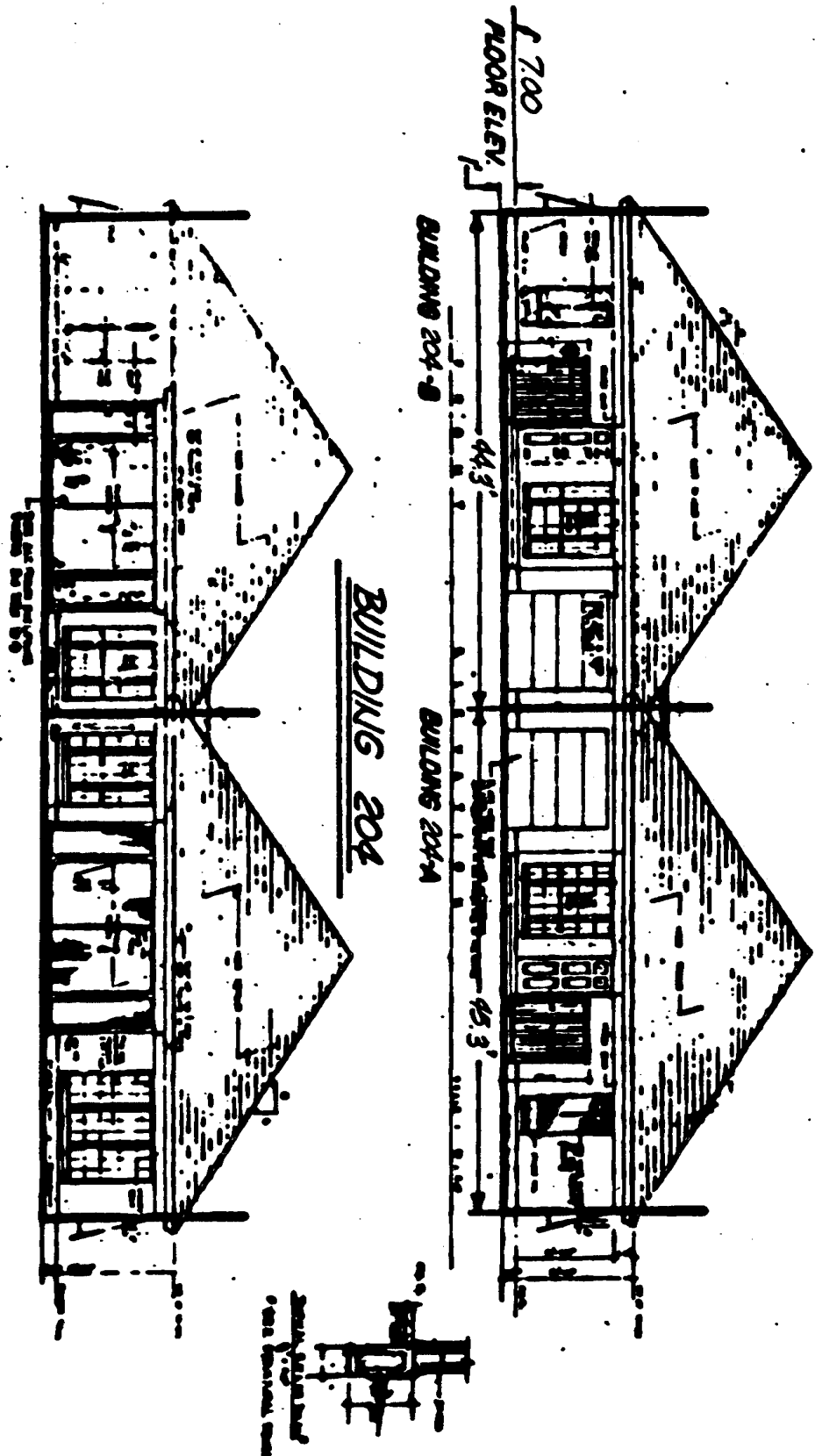
NOTE: ELEVATION AS PER U.S. COAST AND GEODETIC SURVEY

PORPOISE BAY VILLAS



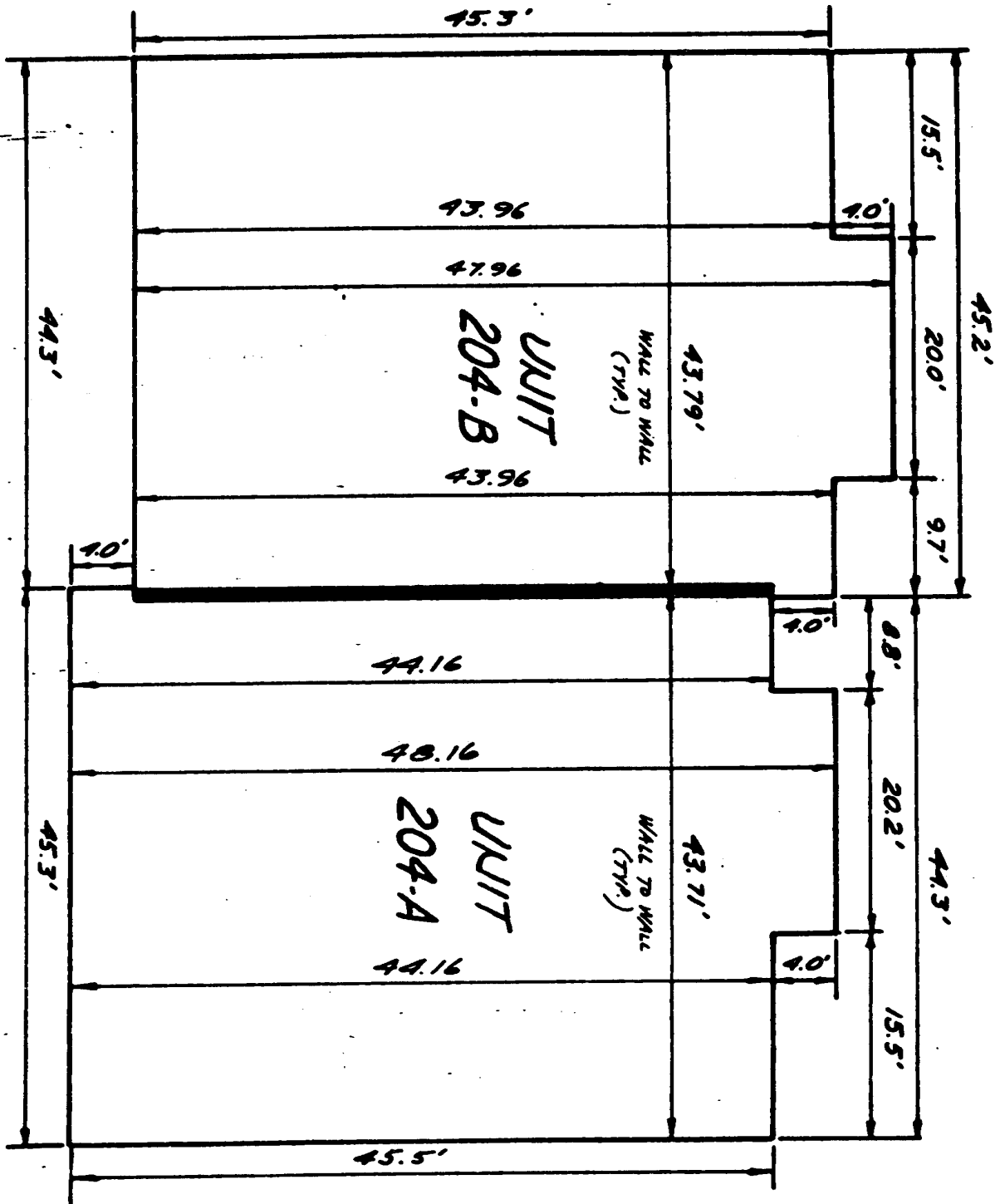
PORPOISE BAY VILLAS

EXHIBIT C *page 27*



NOT TO SCALE AS PER U.S. COASTAL GEODETIC SURVEY

PARPOISE BAY VILLAS



PORPOISE BAY VILLAS

DR 1451091834

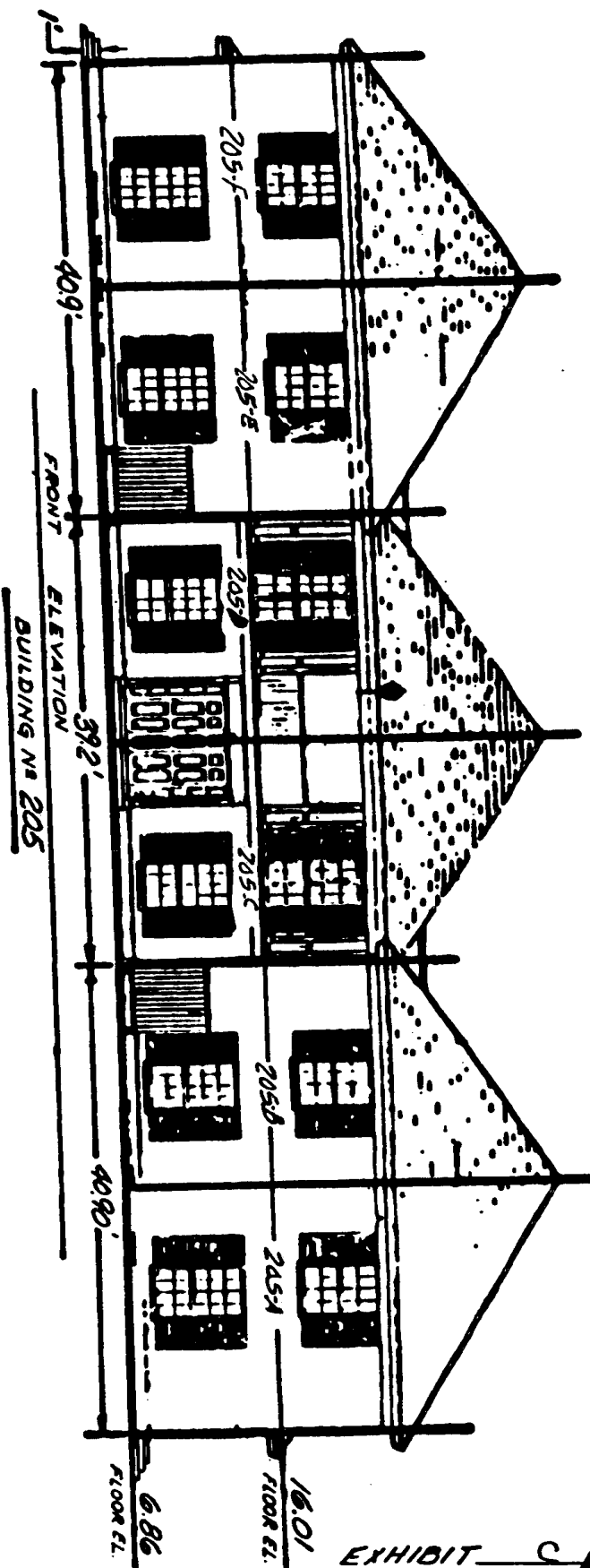
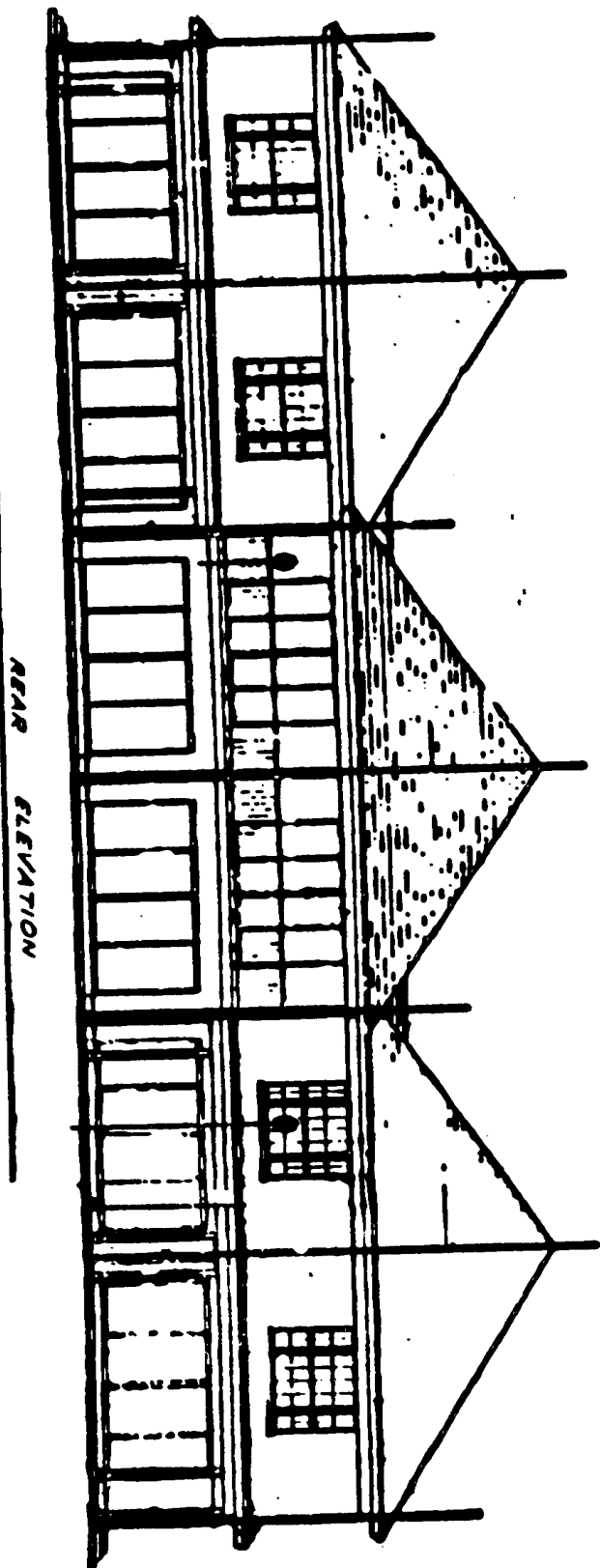
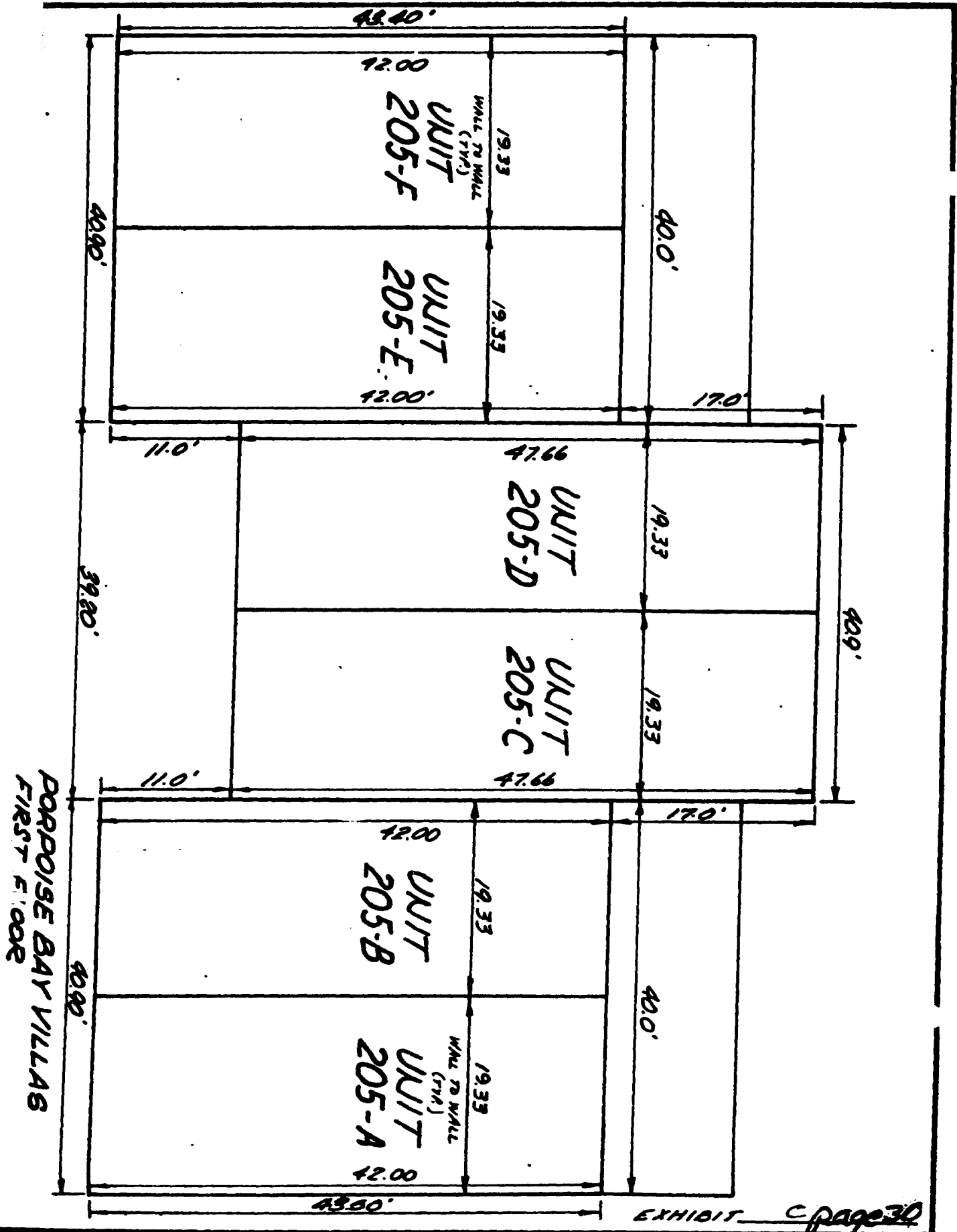


EXHIBIT C page 2

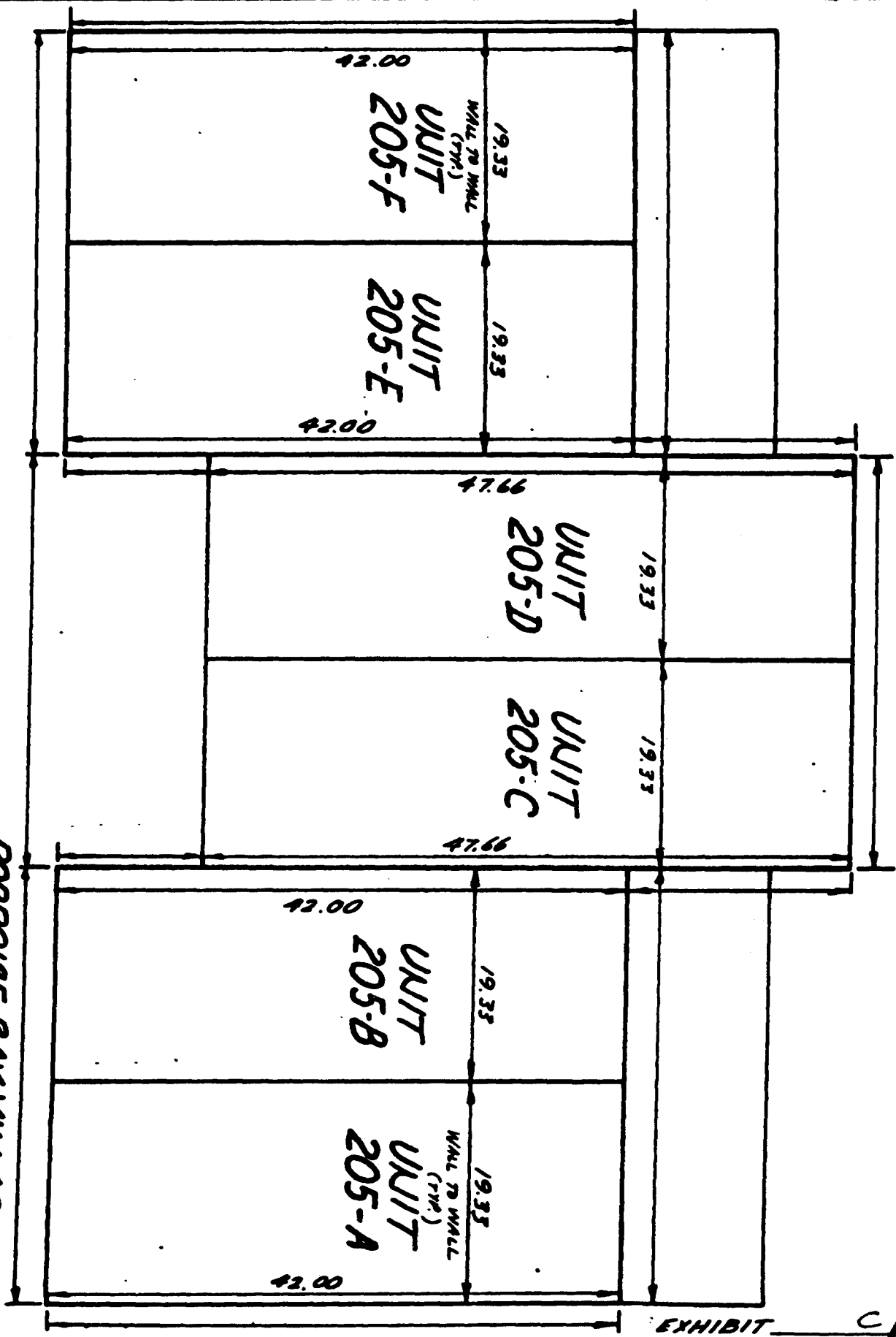


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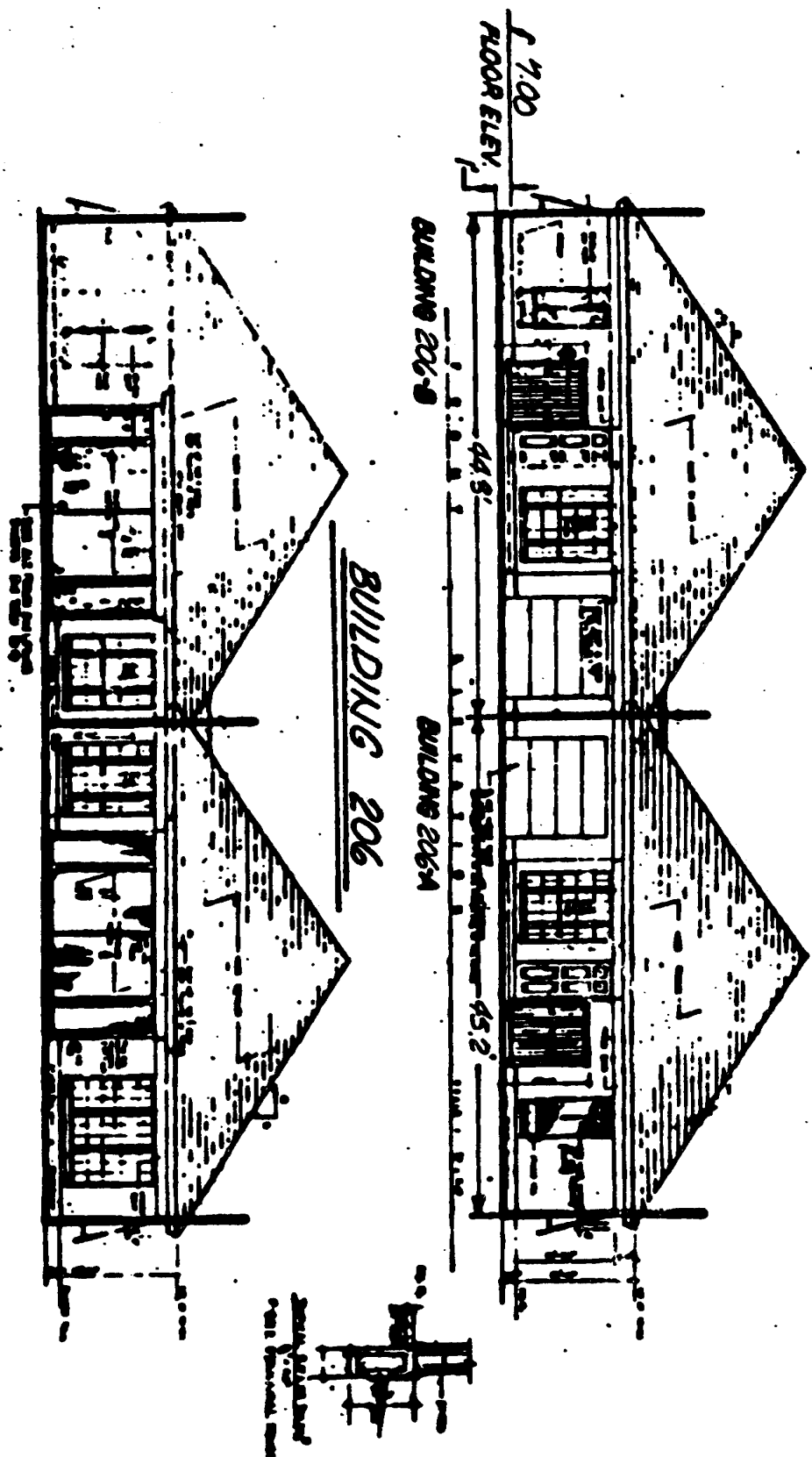


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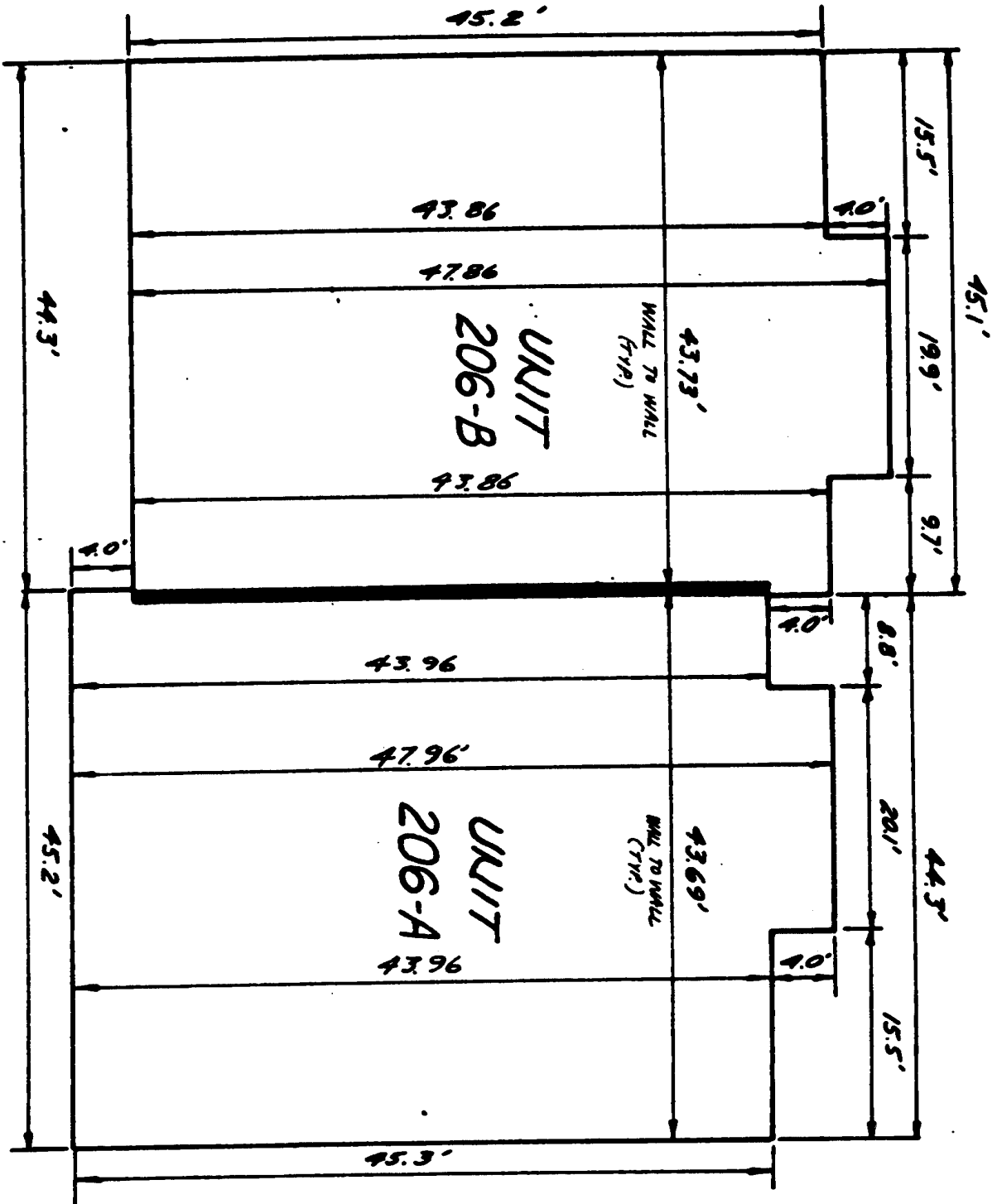
EXHIBIT

C page 3



NOTE: ELEVATION AS PER U.S. COASTAL GEODETIC SURVEY

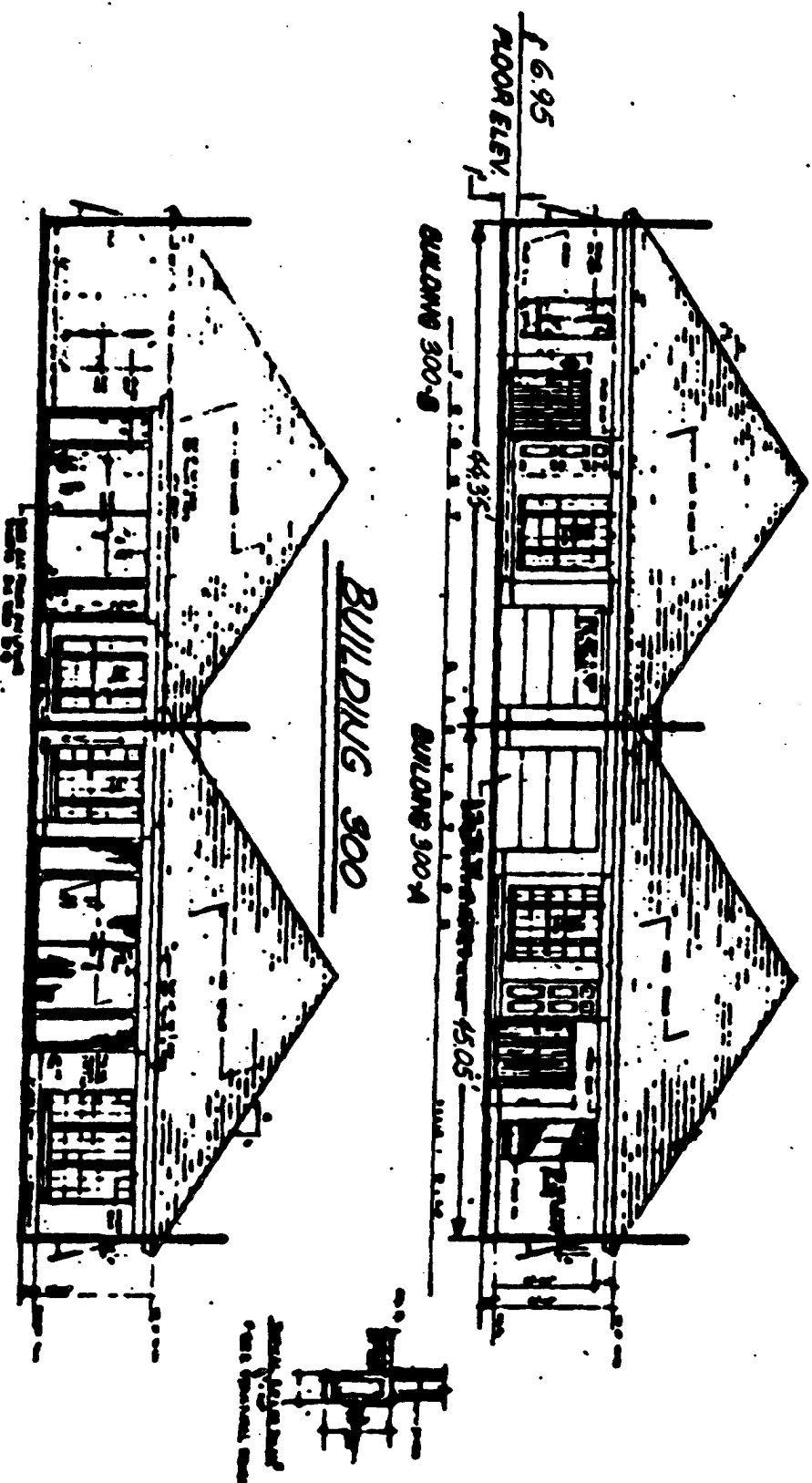
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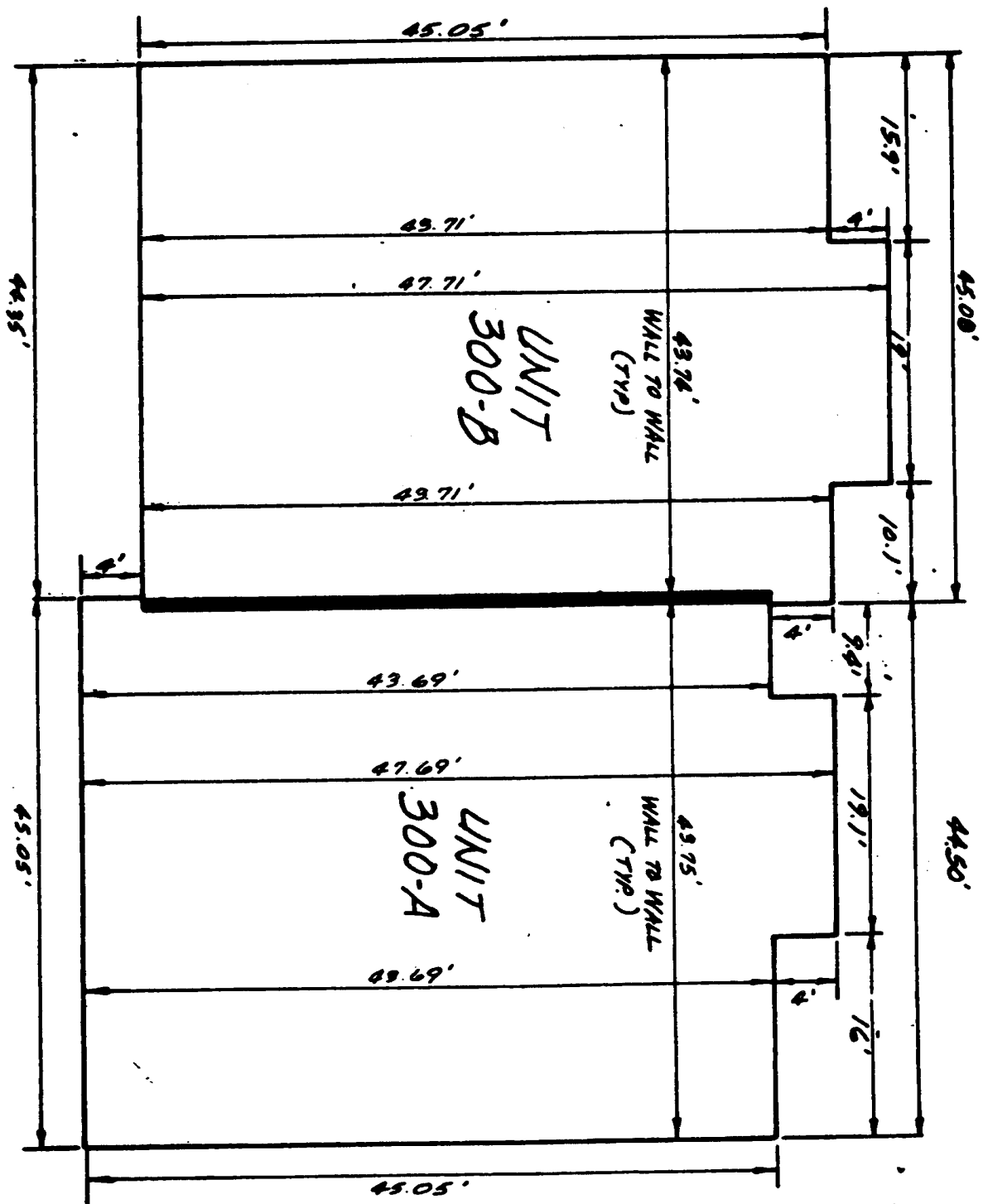
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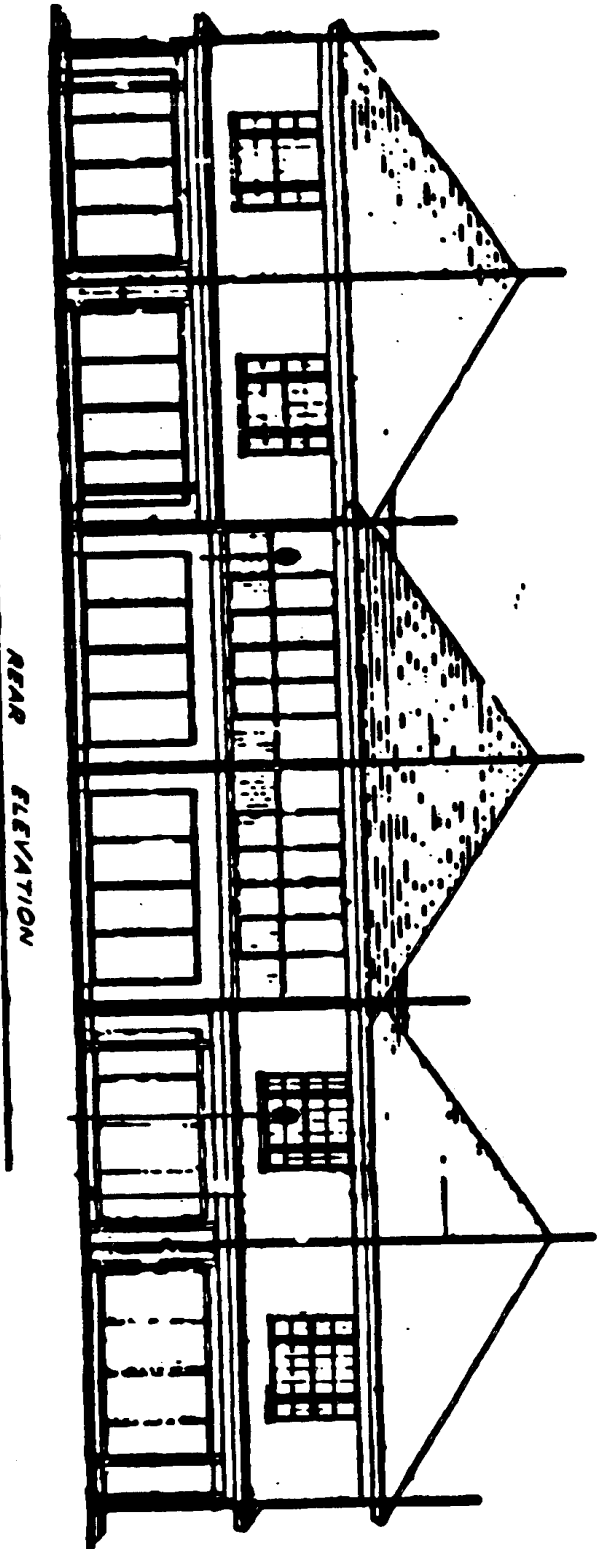
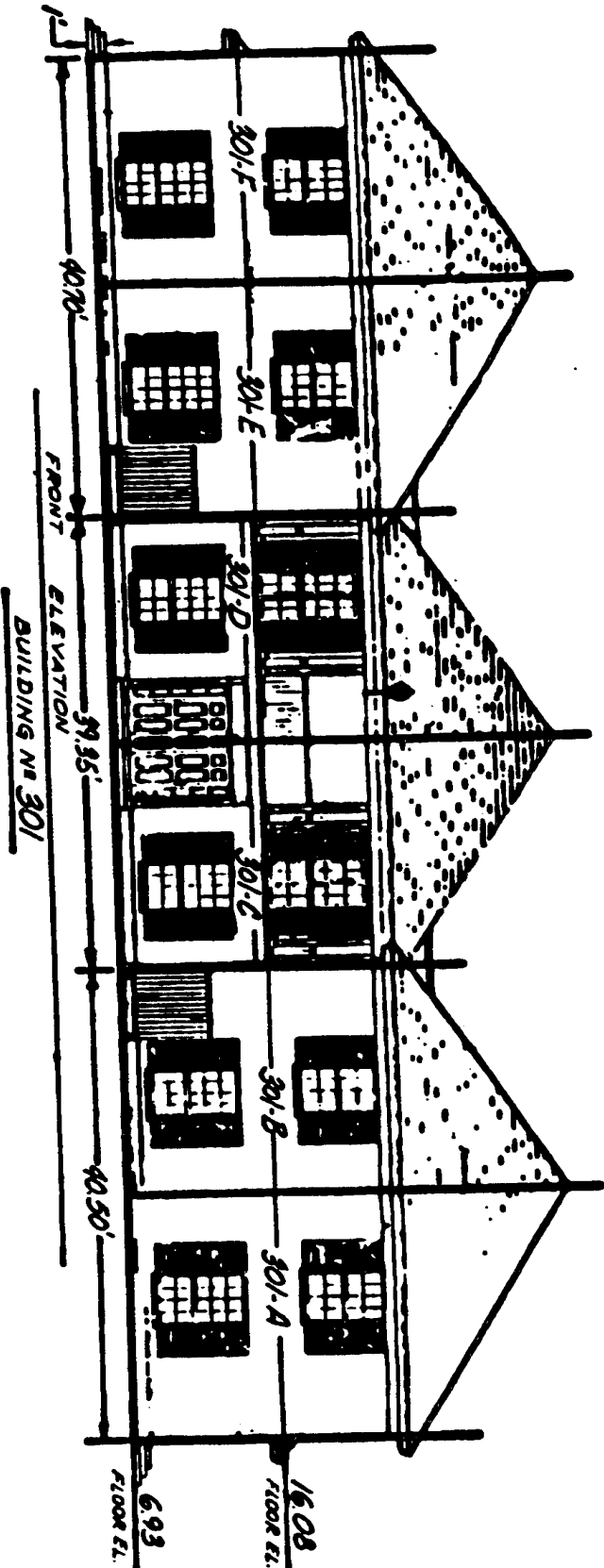
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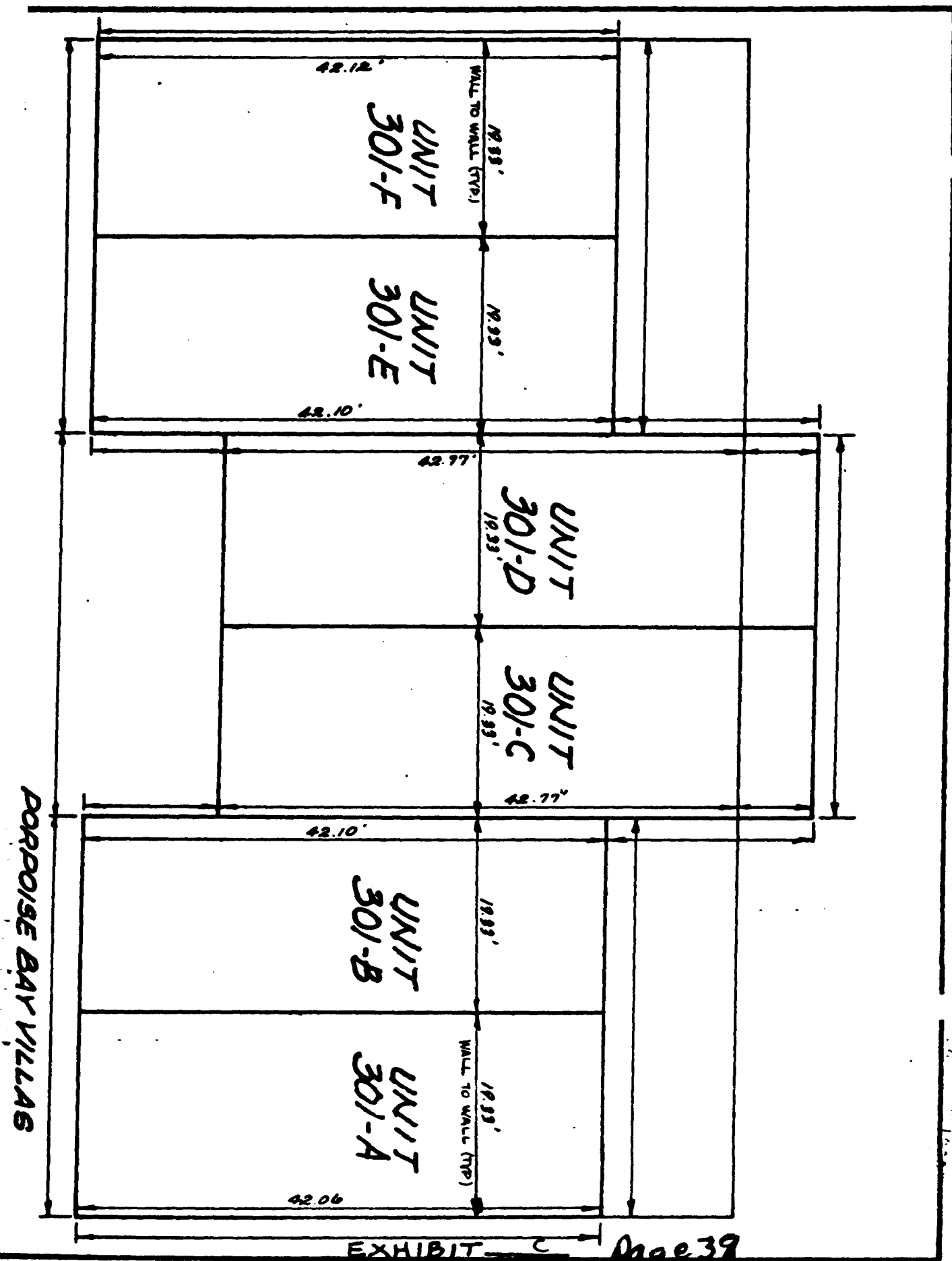
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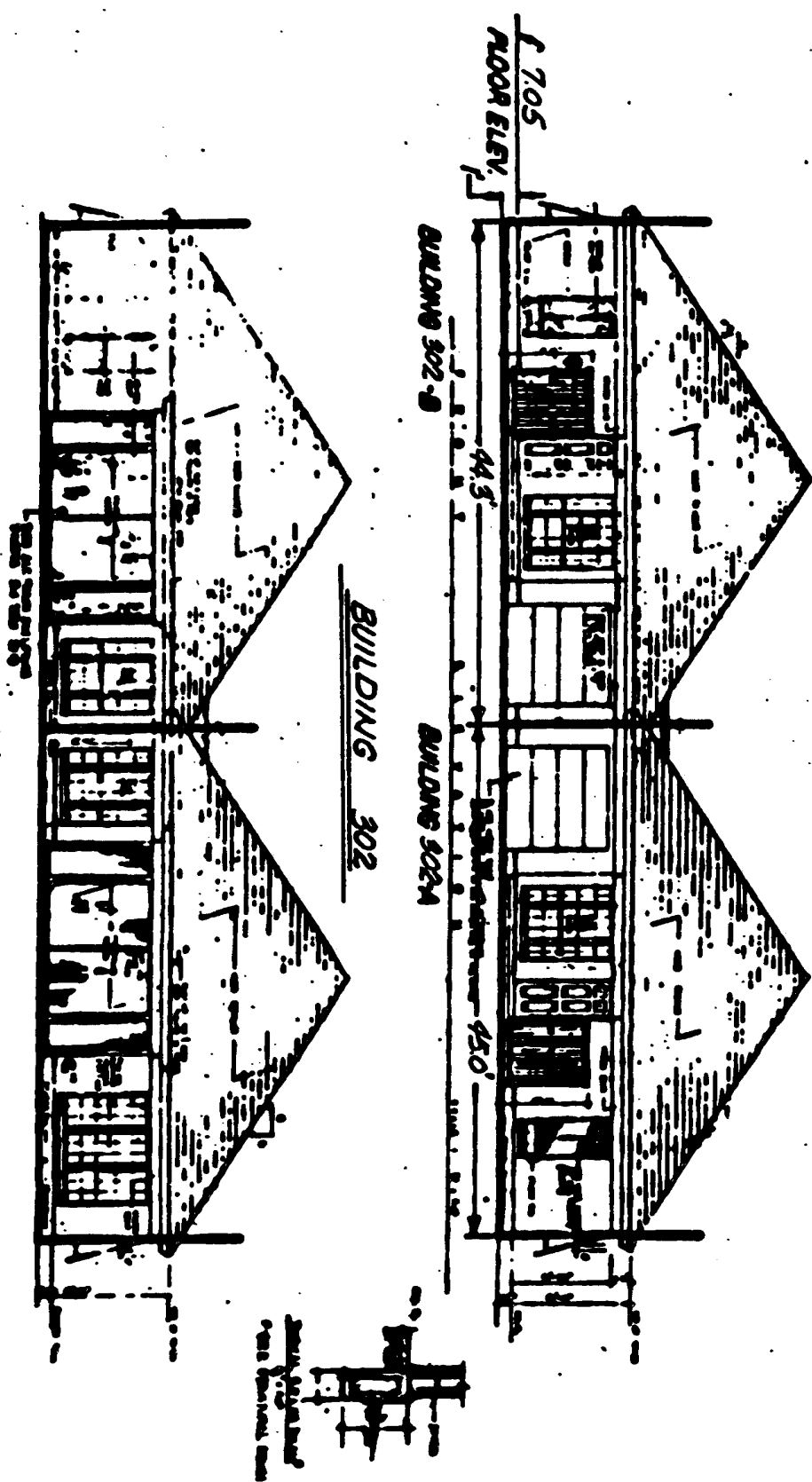
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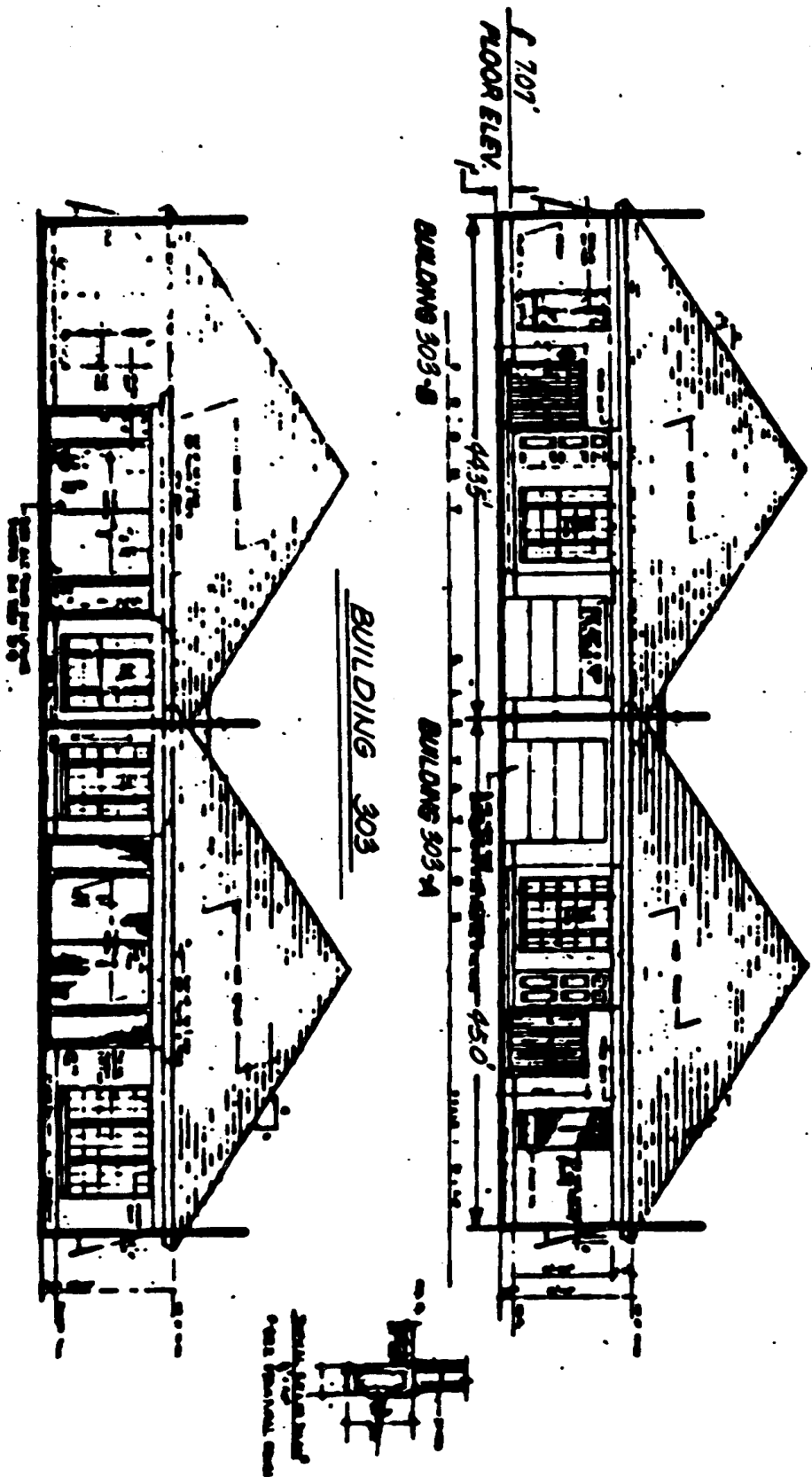


PARROISE BAY VILLAS

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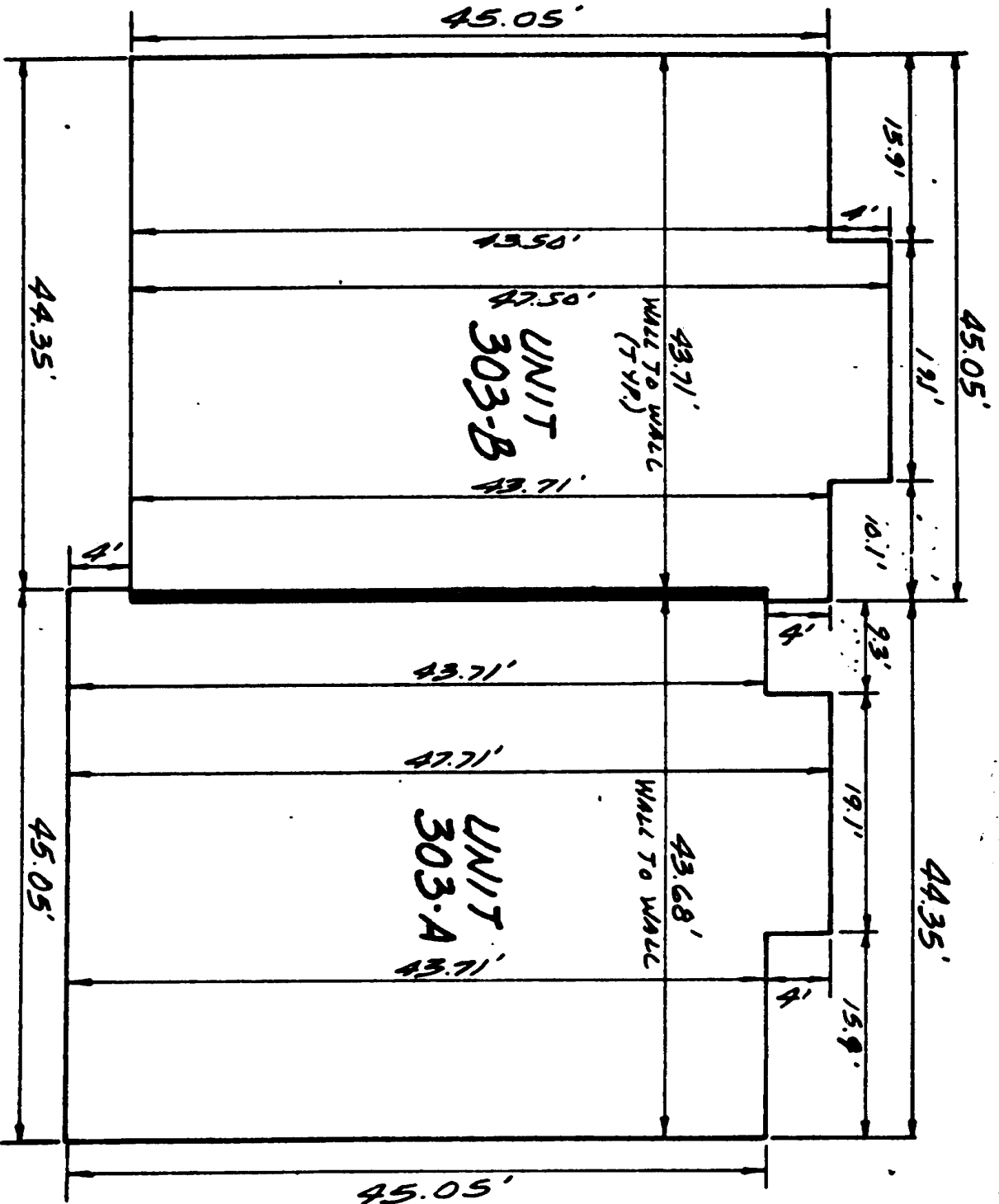
**PORPOISE BAY VILLAS**



NOTE: ELEVATIONS AS PER U.S. COASTAL GEODETIC SURVEY

PARROUSE BAY VILLAS

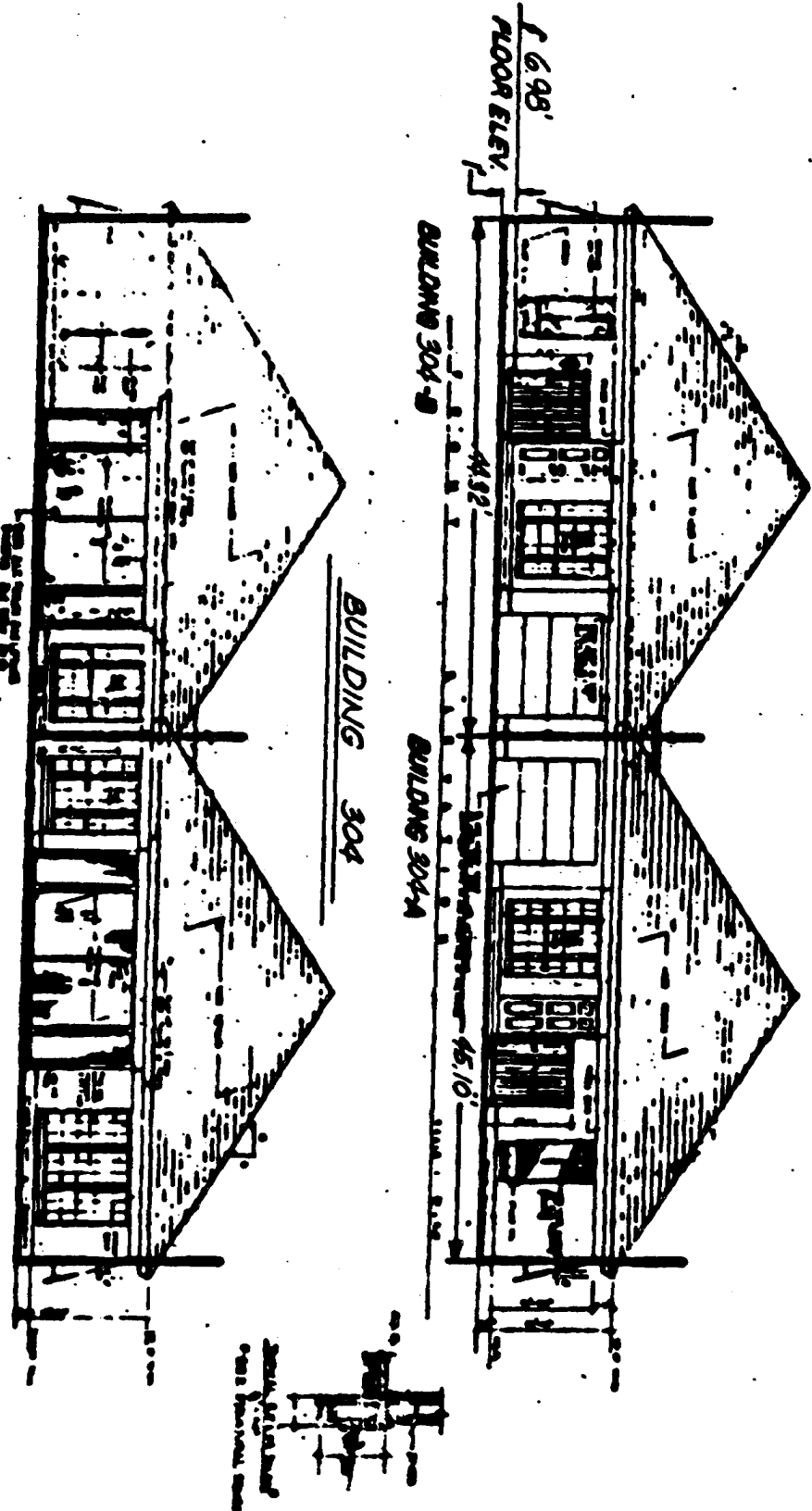
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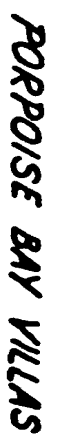
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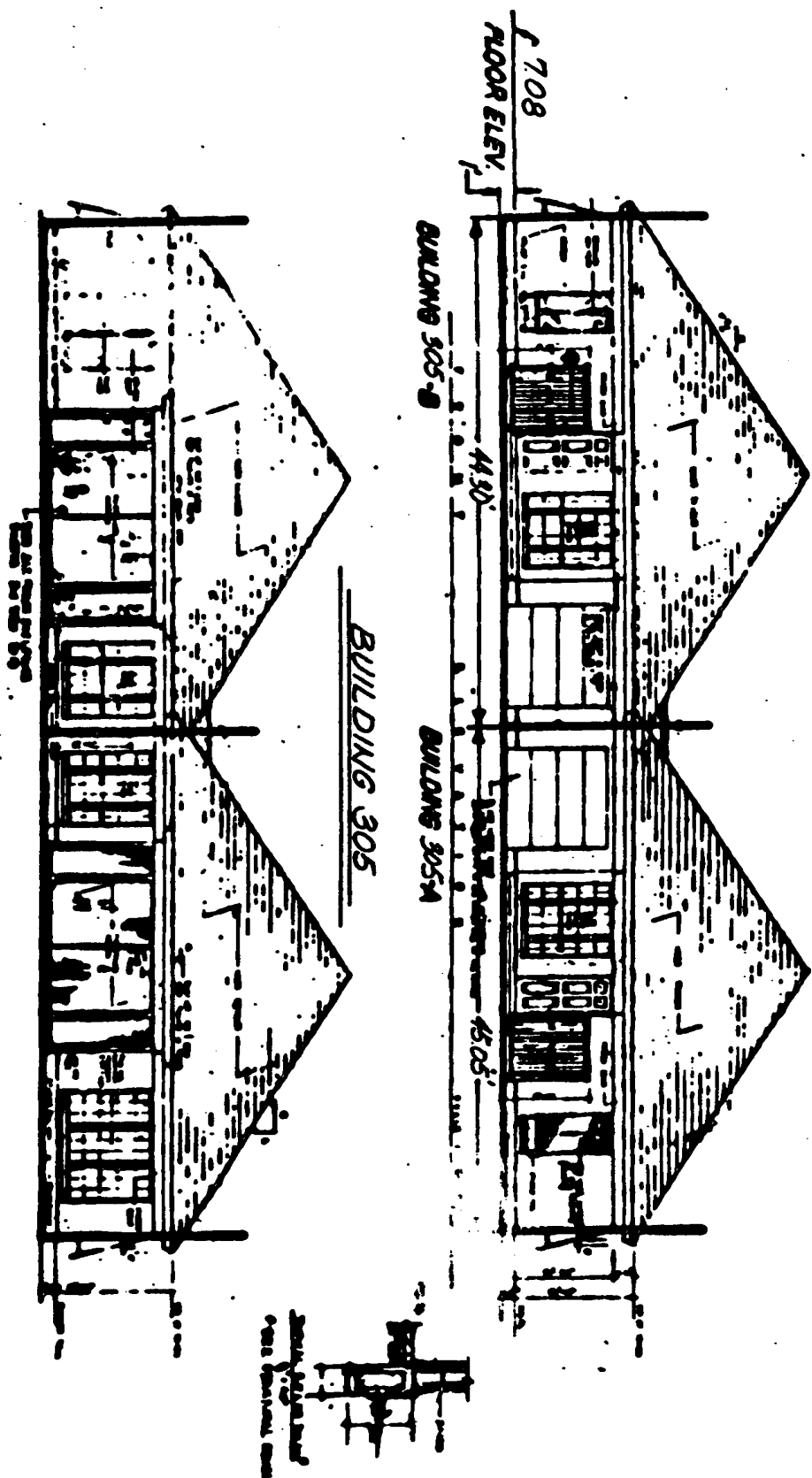
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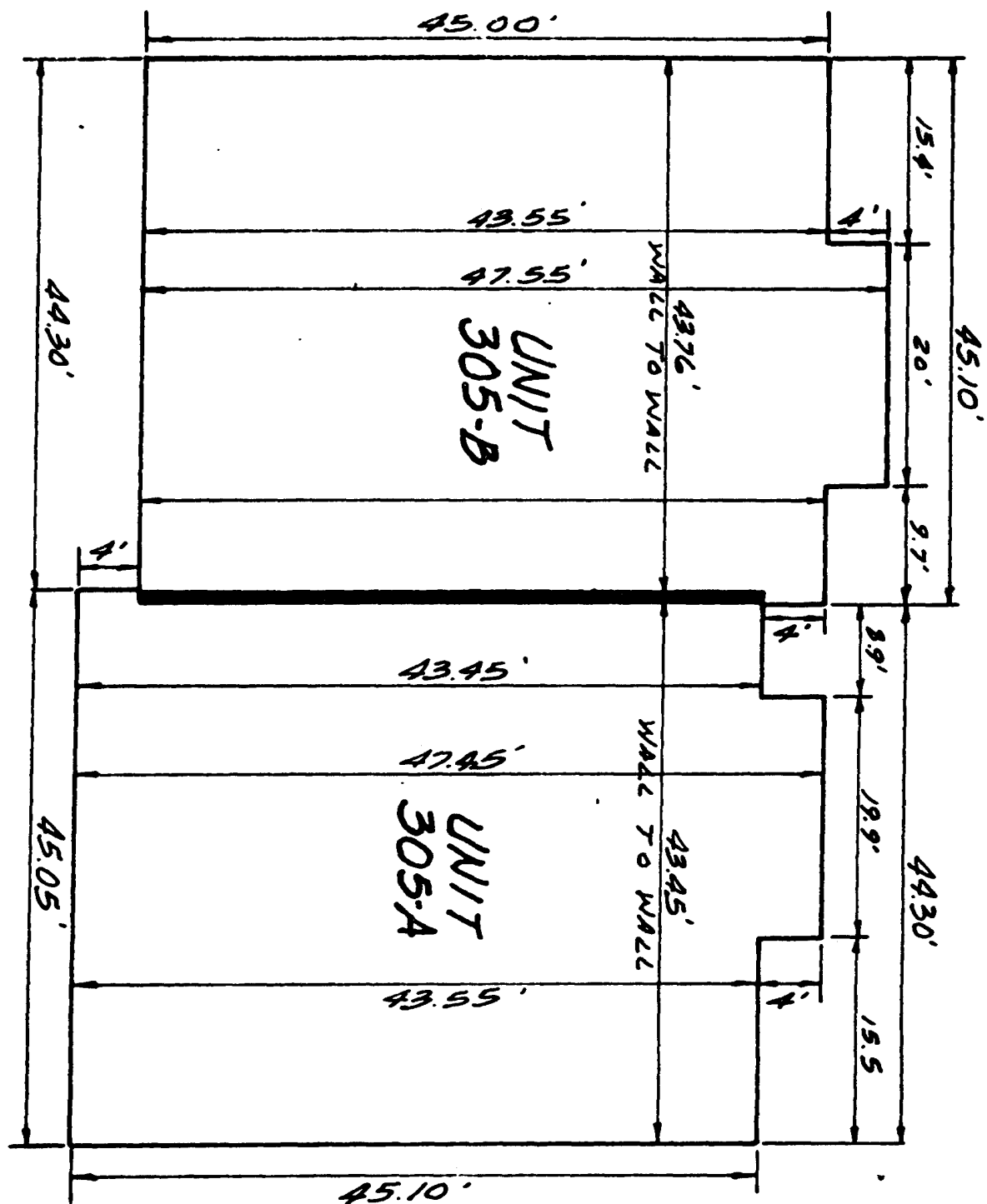
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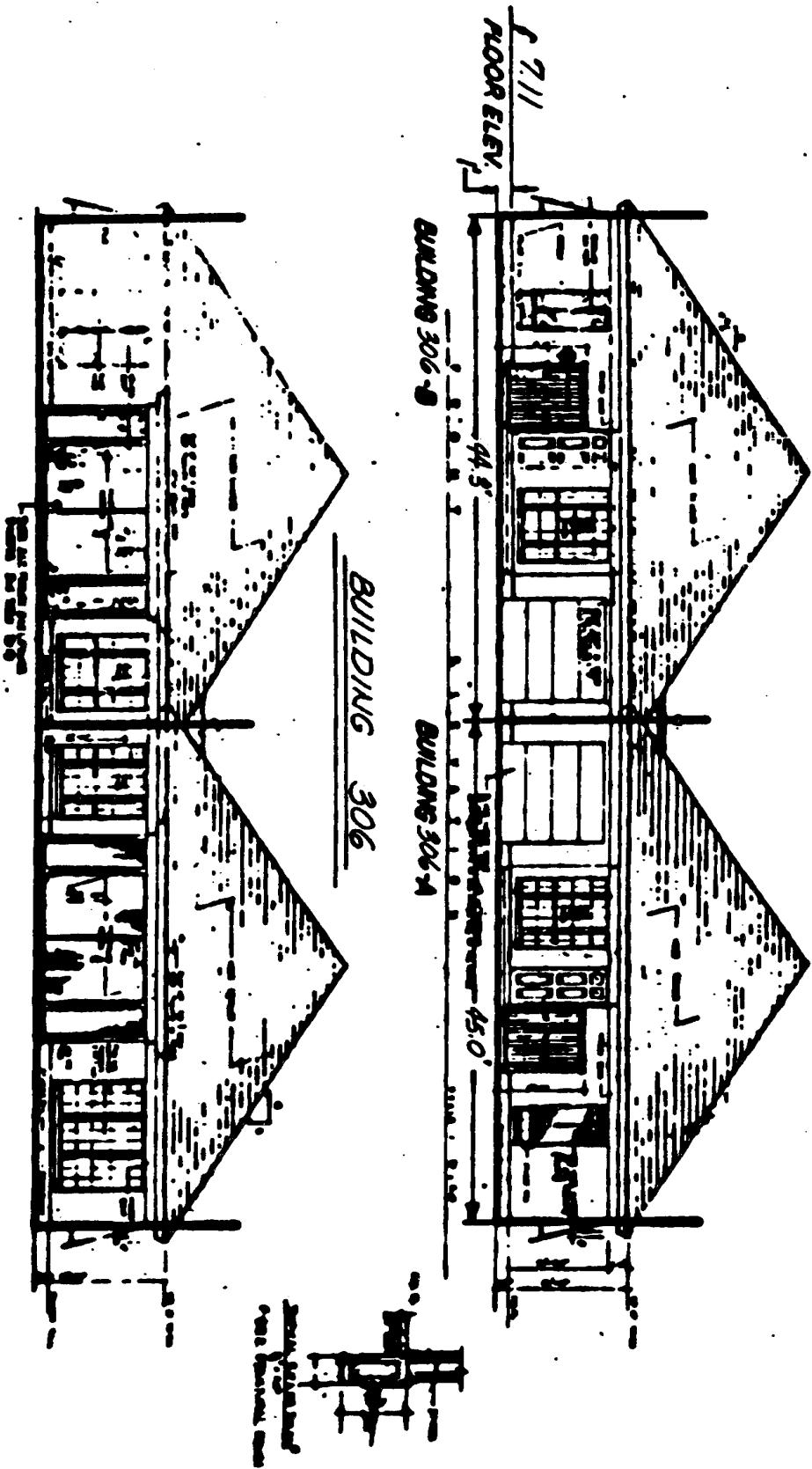


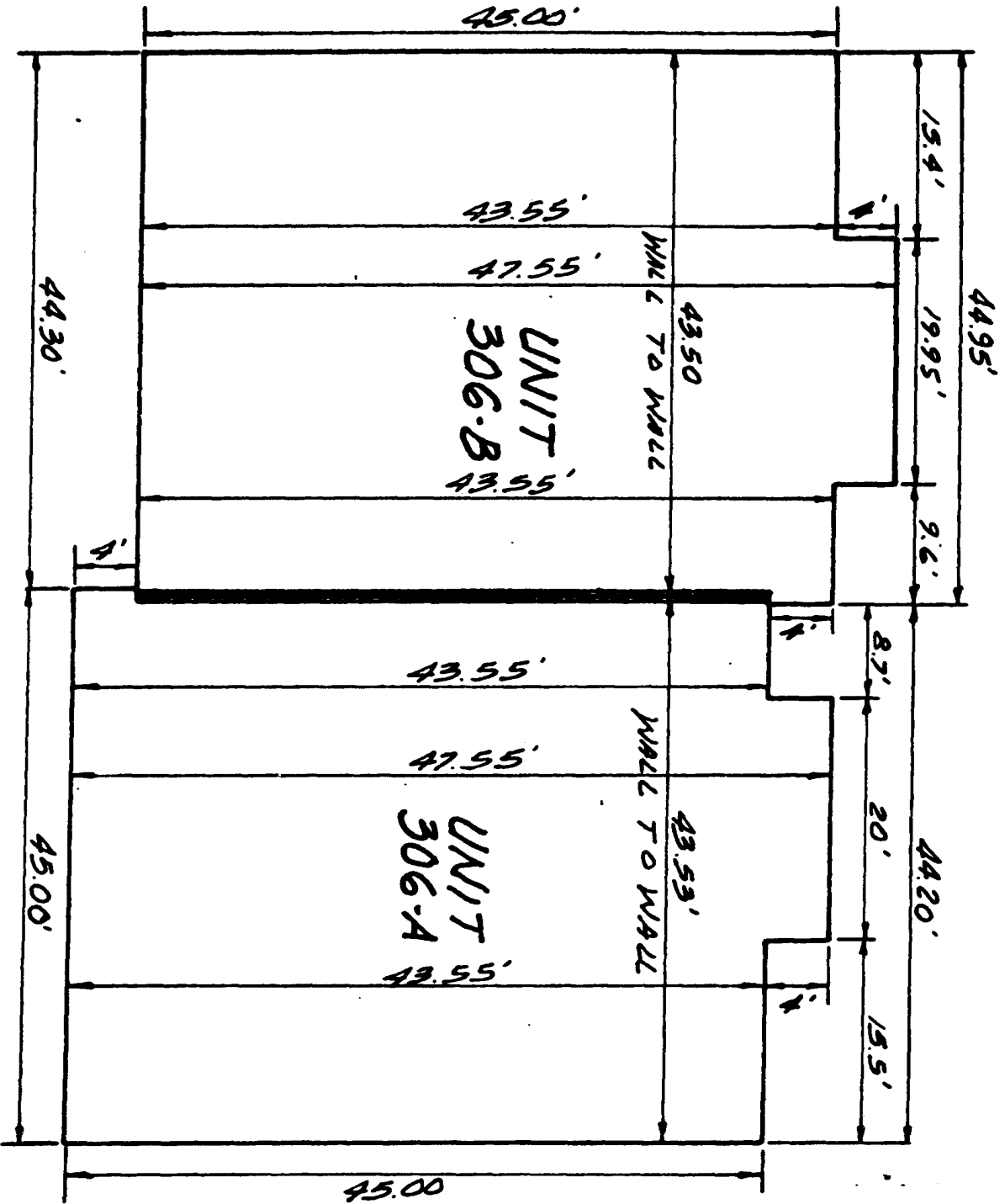
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PARPOISE BAY VILLAS

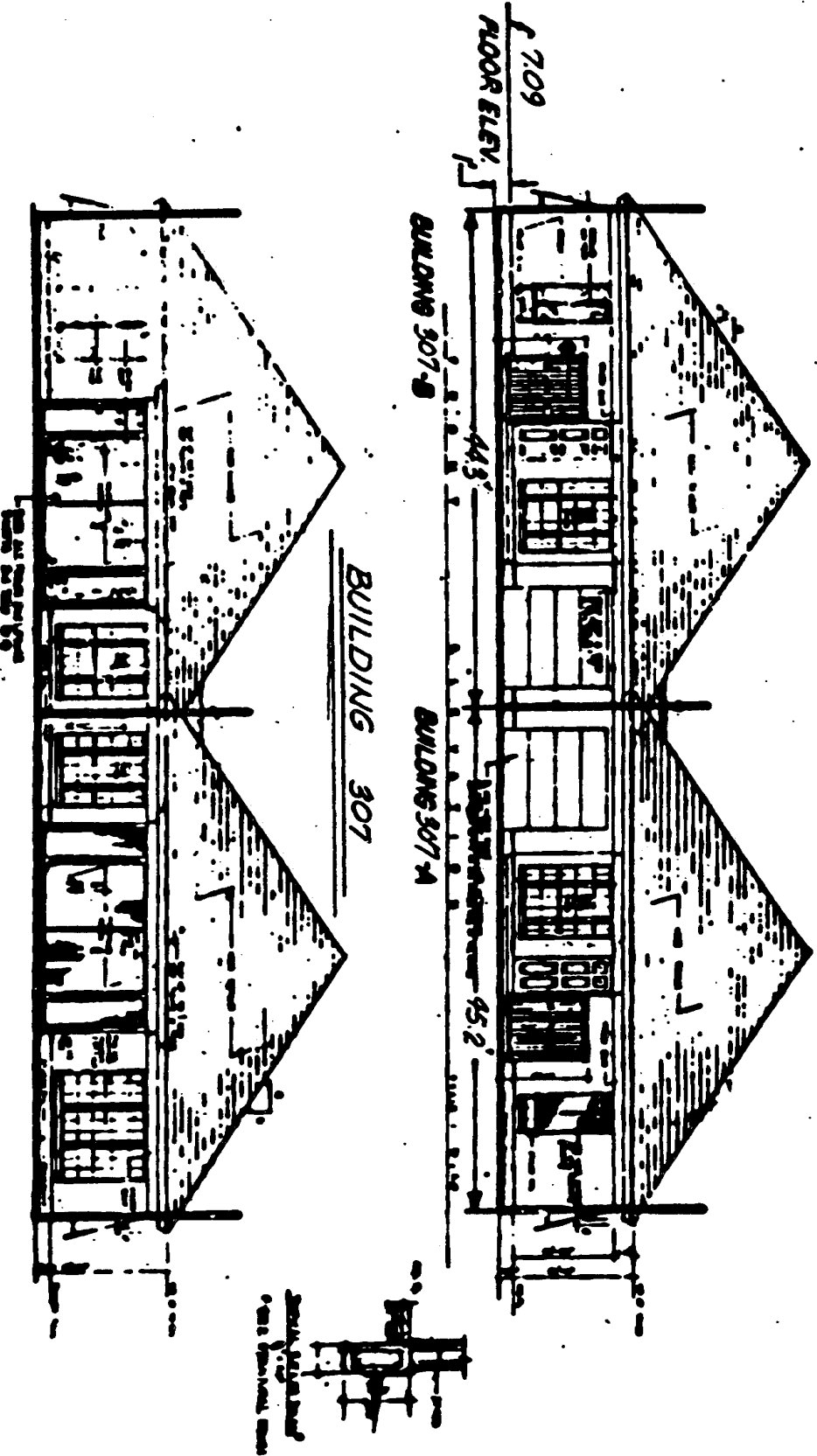


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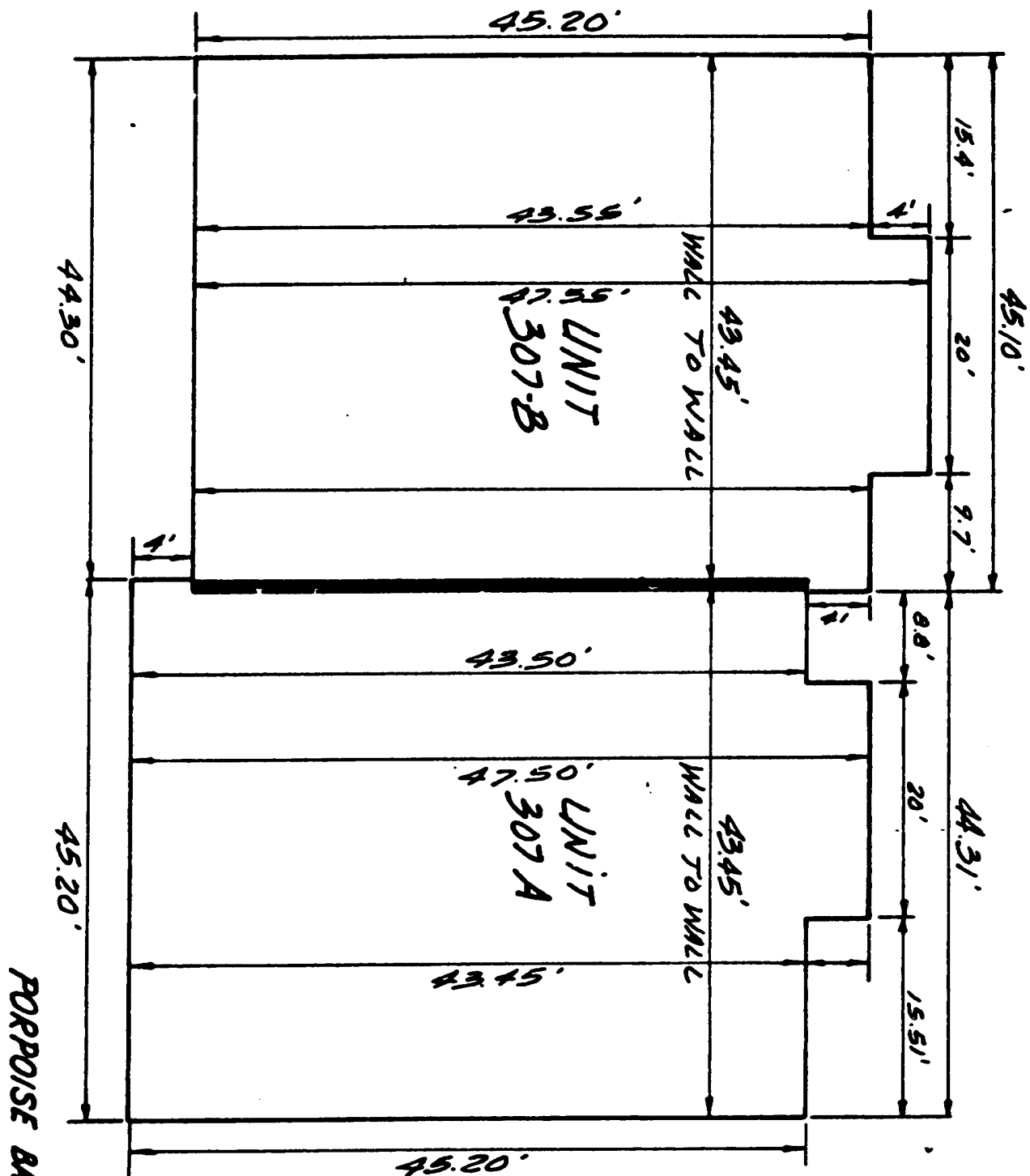


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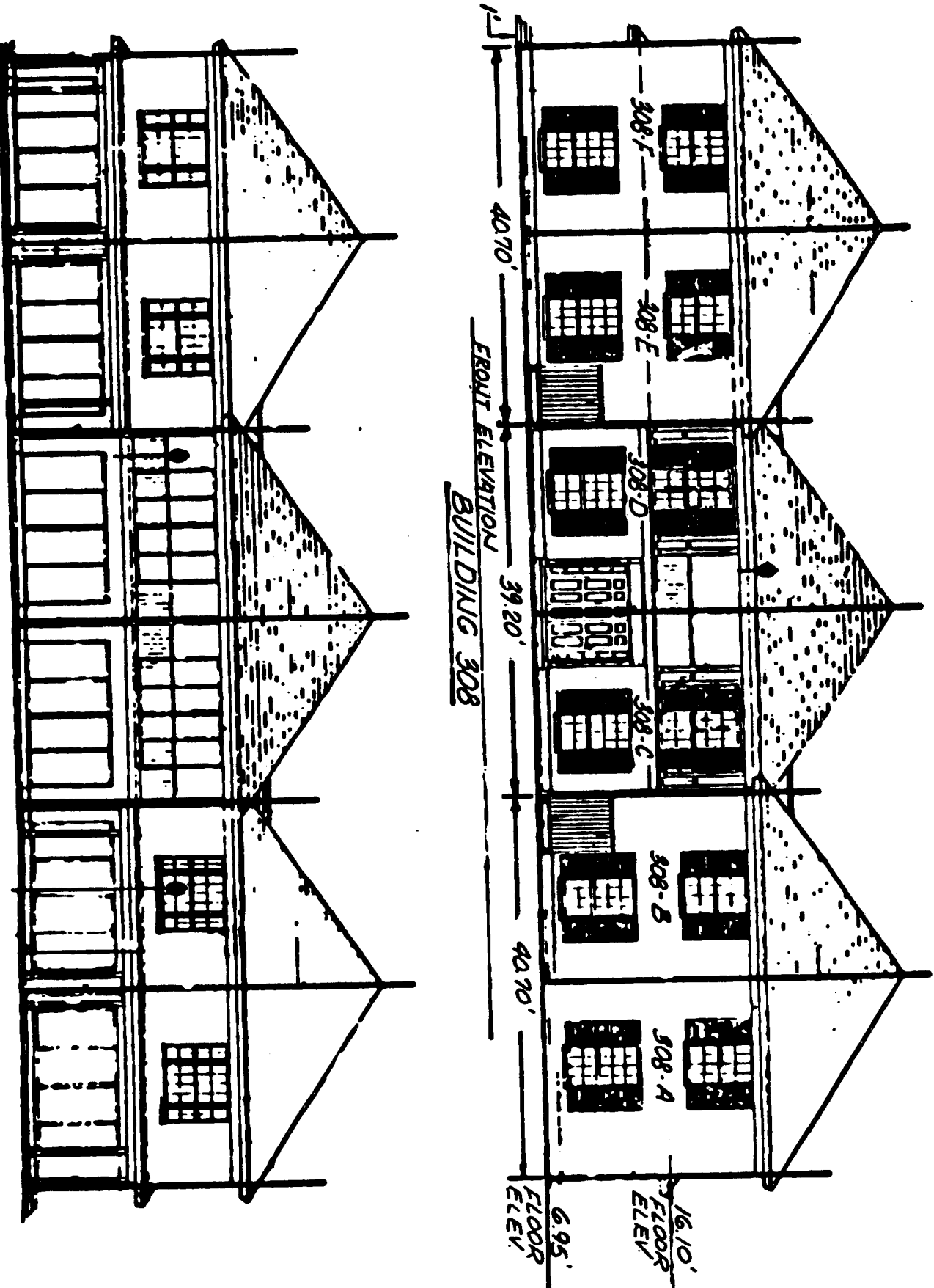
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PARPOISE BAY VILLAS

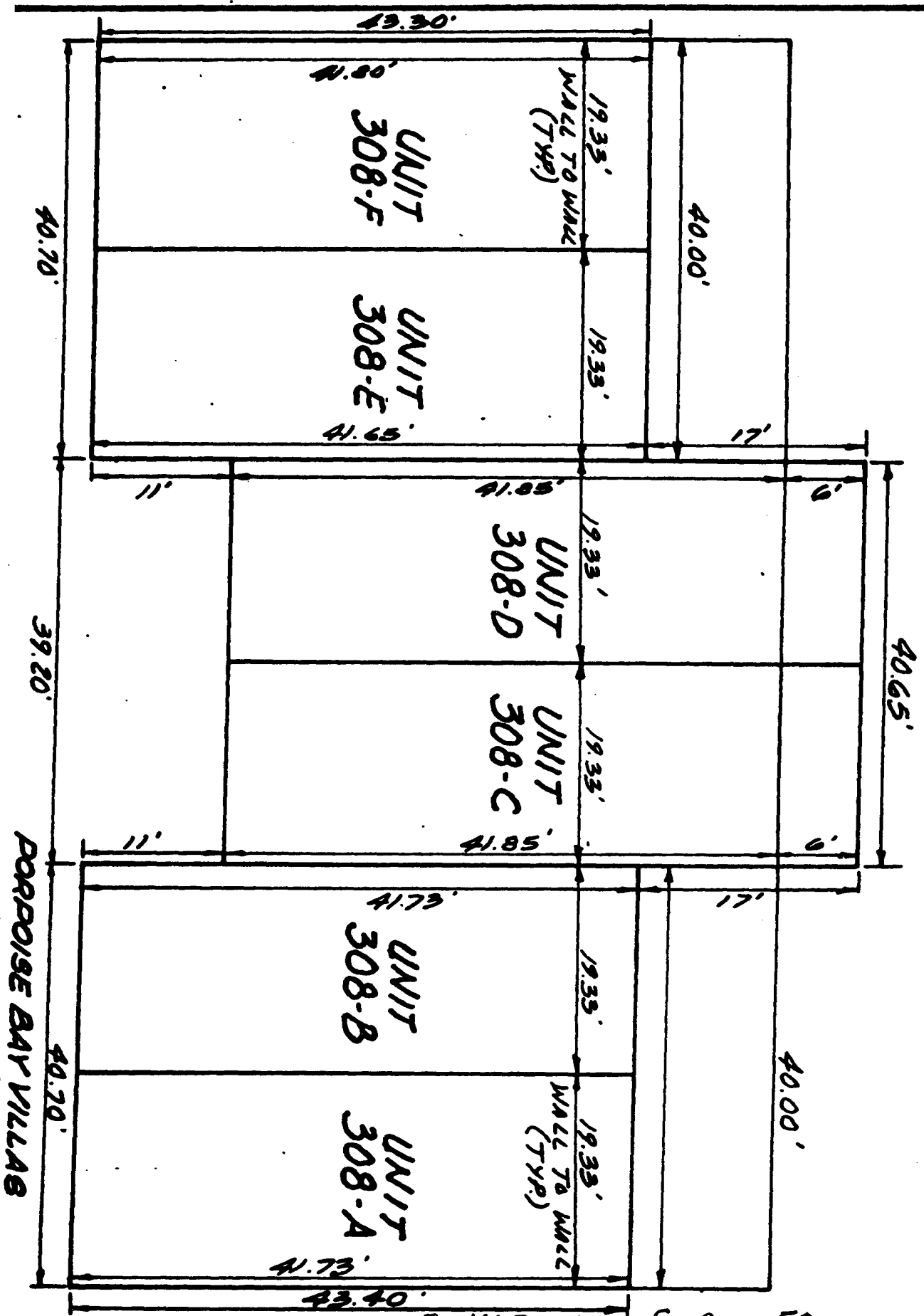


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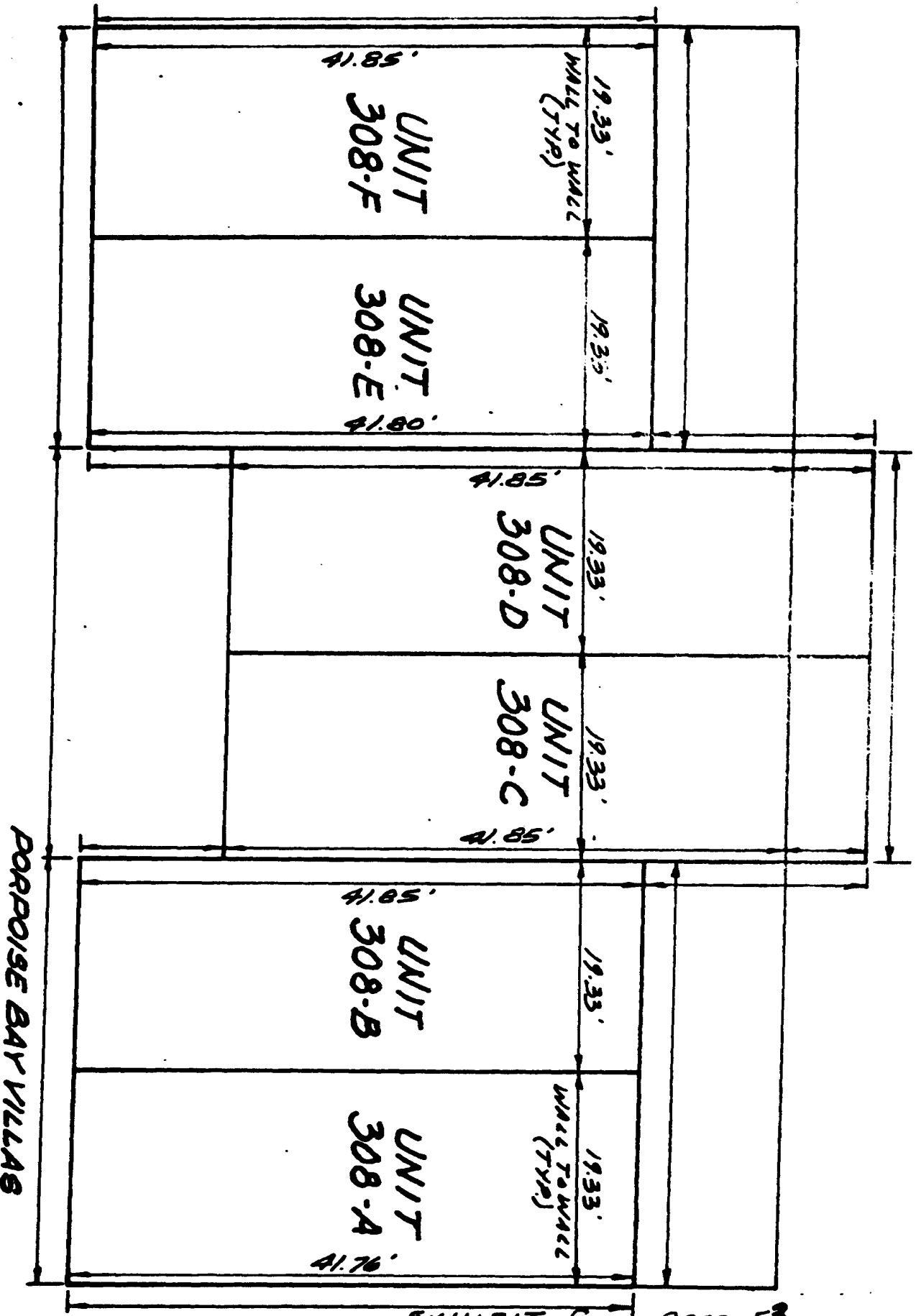


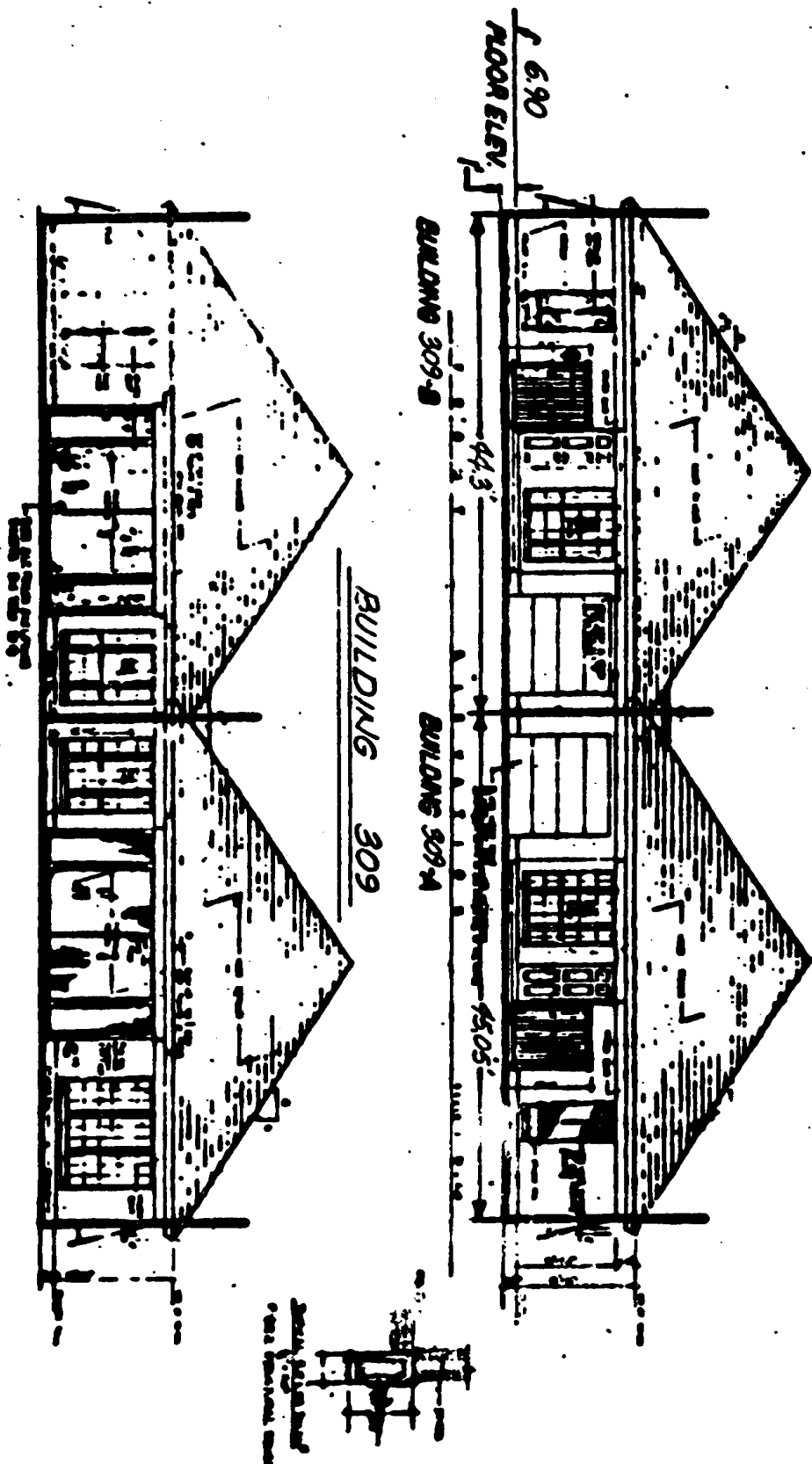
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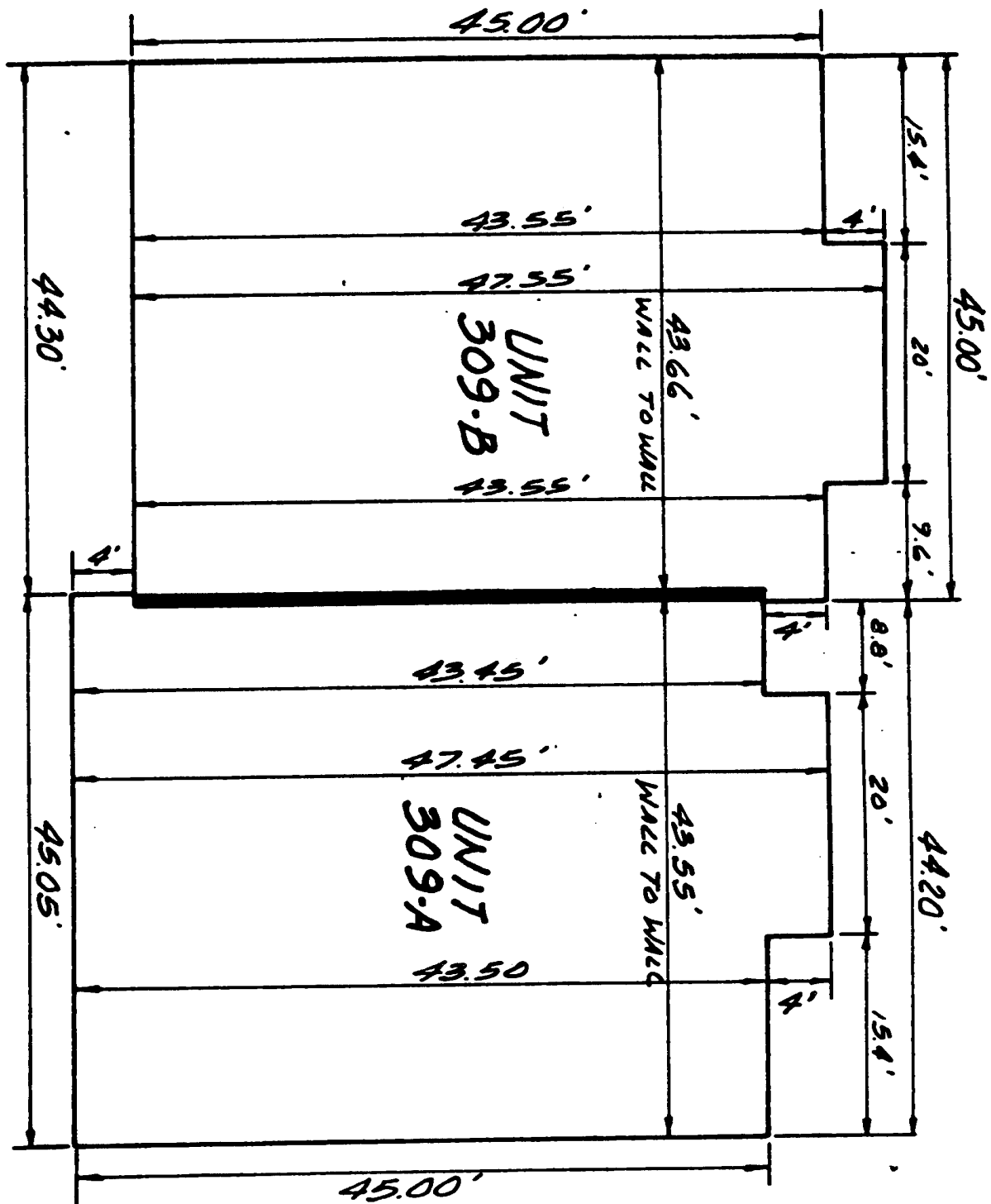
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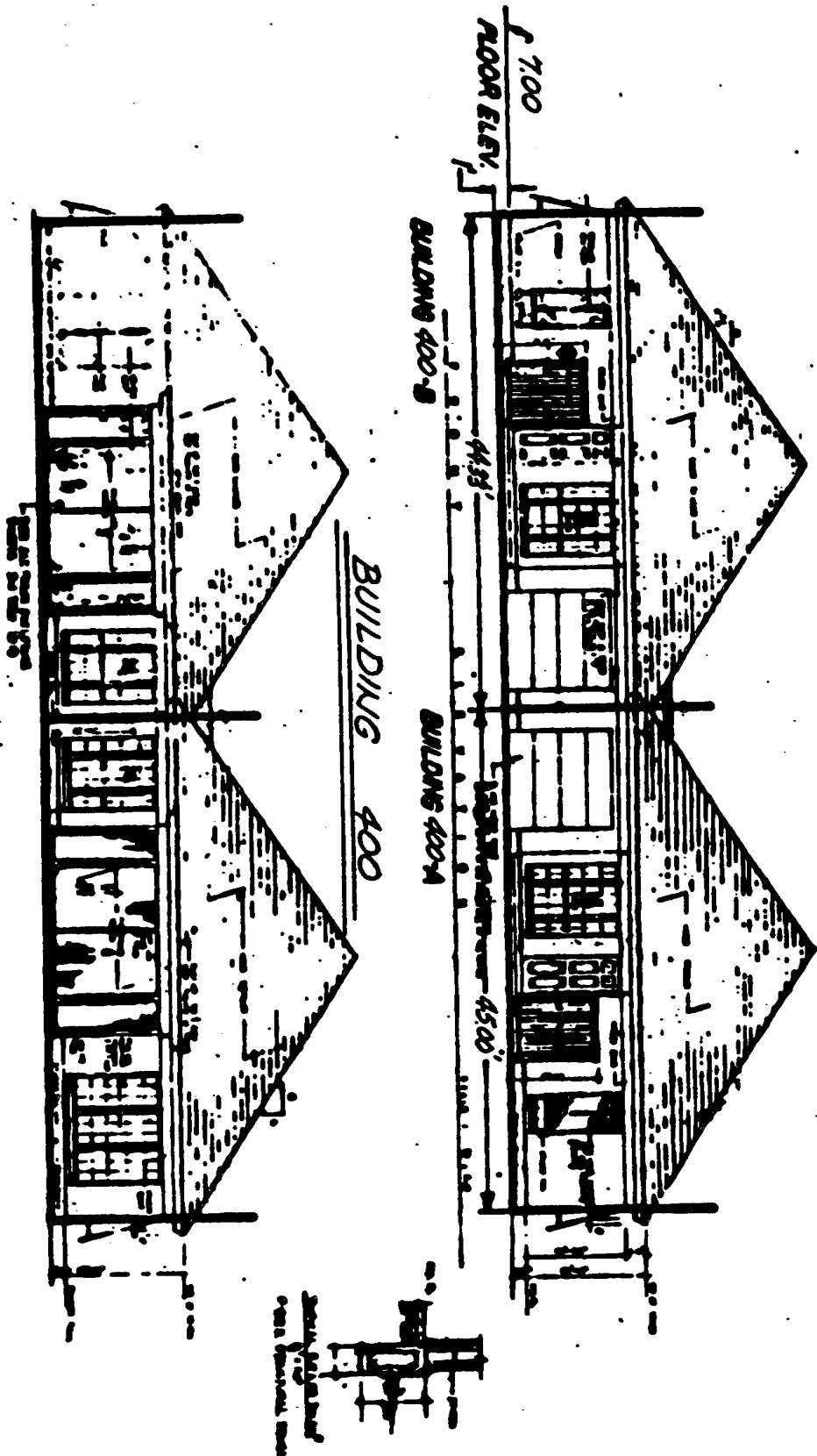


NOT TO SCALE AS PER U.S. COASTAL GEODETIC SURVEY

PORPOISE BAY VILLAS



PORPOISE BAY VILLAS



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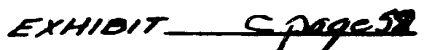
NOTE: ELEVATION VIEWS ARE FOR INFORMATION ONLY - NOT TO SCALE

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EXHIBIT C page 57.

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**NOTE: EVAPORU AS PER U.S. TQASTA GEO ITT.**

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PORPOISE BAY VILLAG

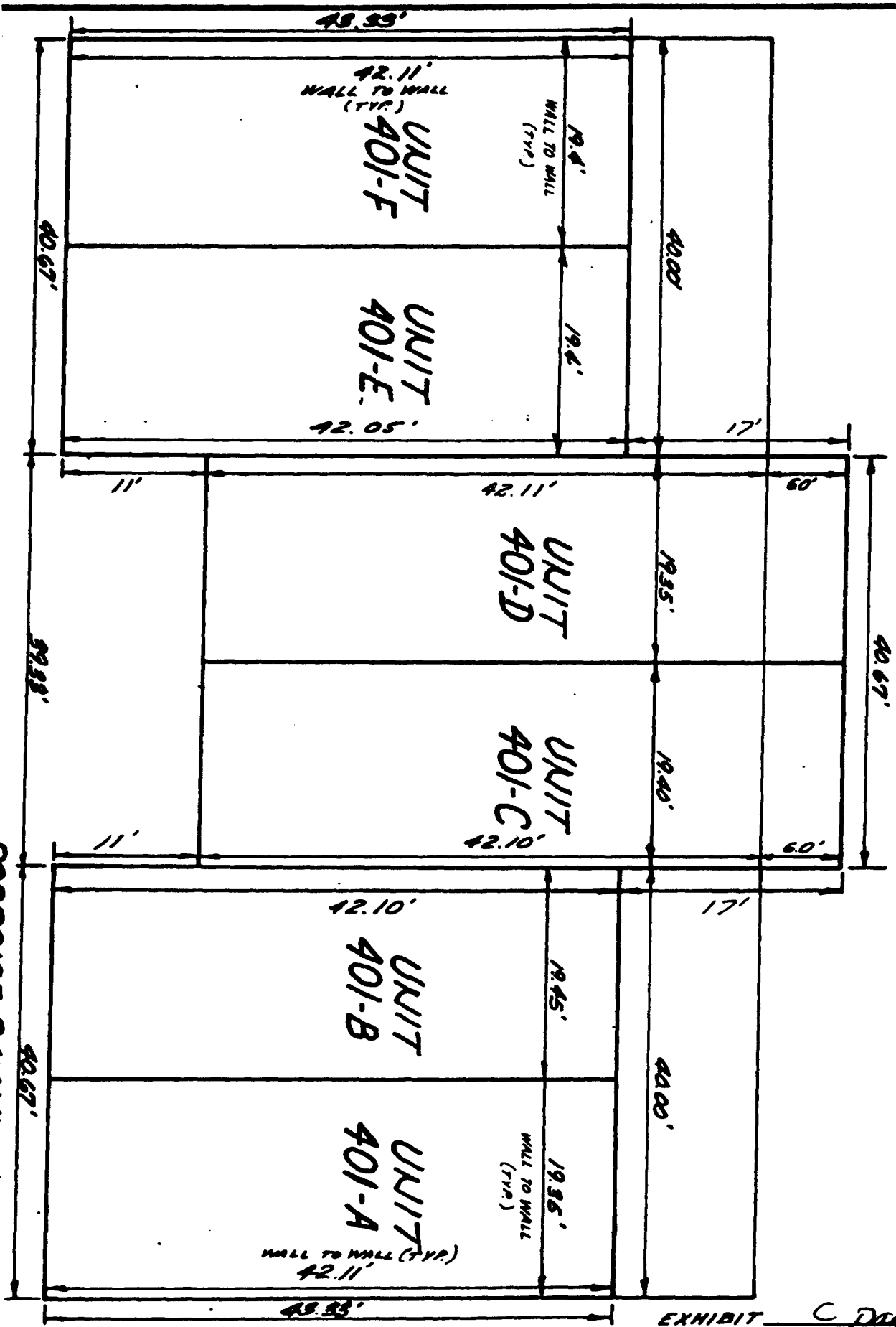


EXHIBIT C page 59

PORPOISE BAY VILLAS  
SECOND FLOOR

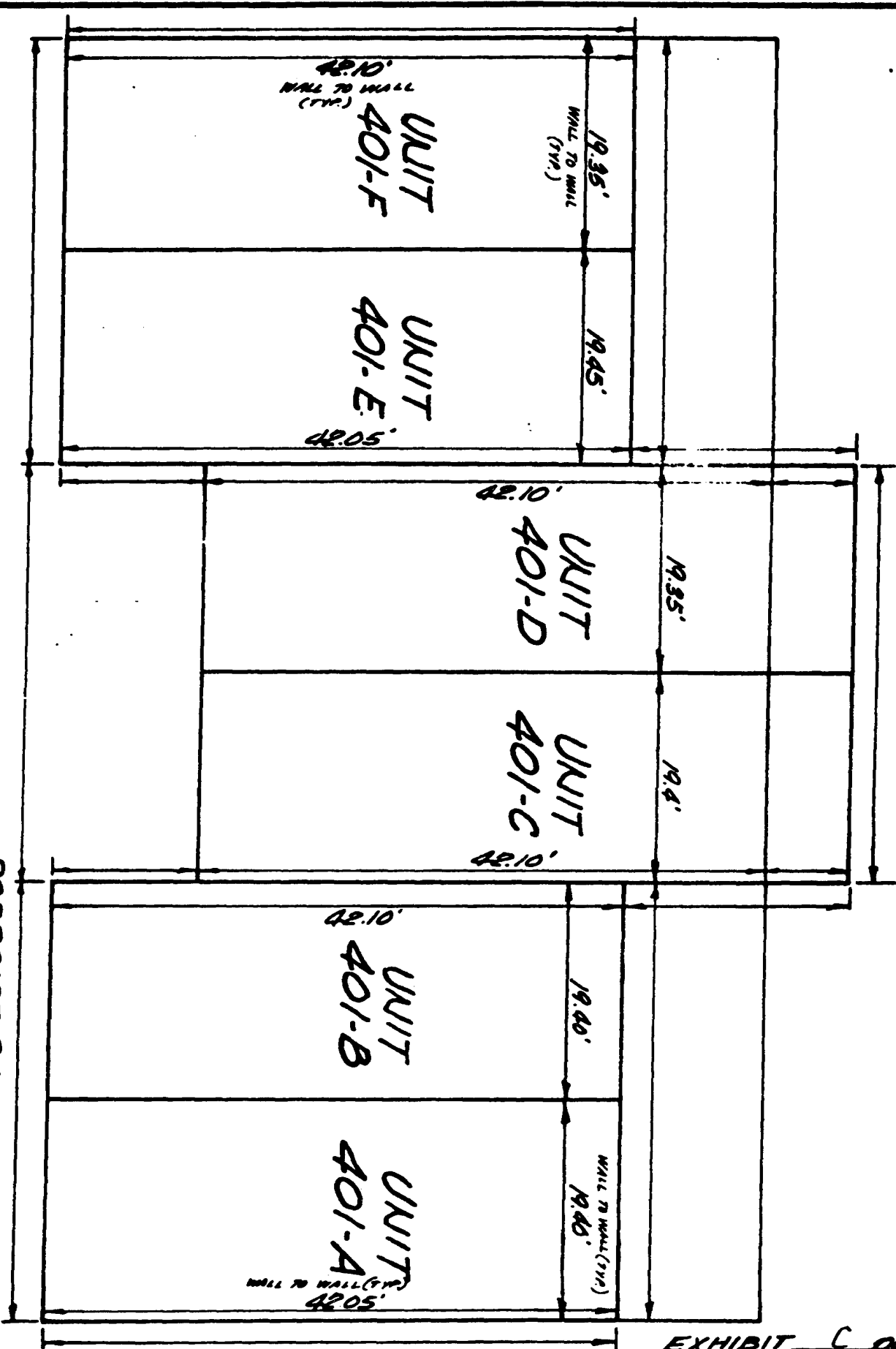
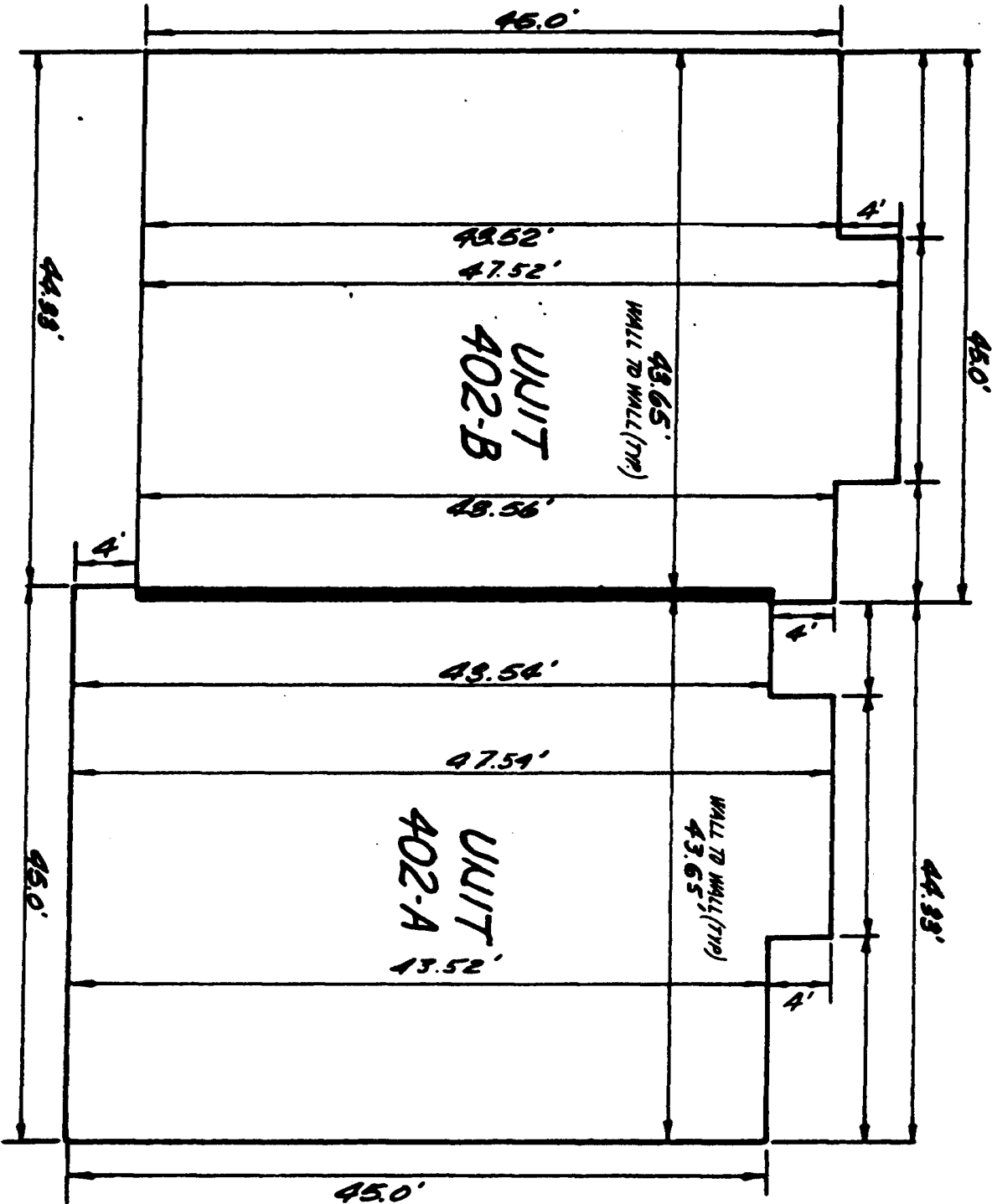


EXHIBIT C page 69

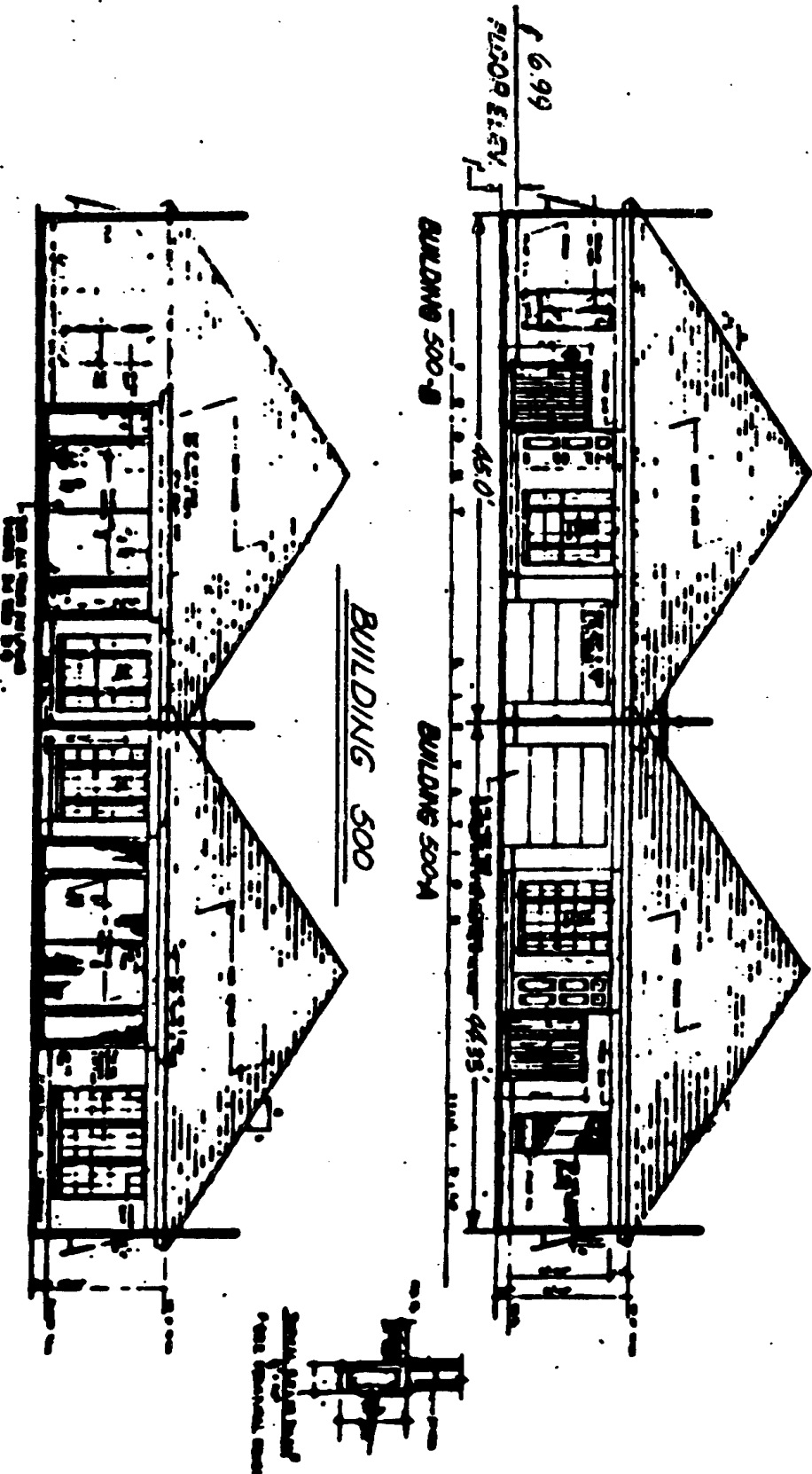
**PARROISE BAY VILLAS**

PORPOISE BAY VILLAS



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EXHIBIT C page 63



PARROISE BAY VILLAS

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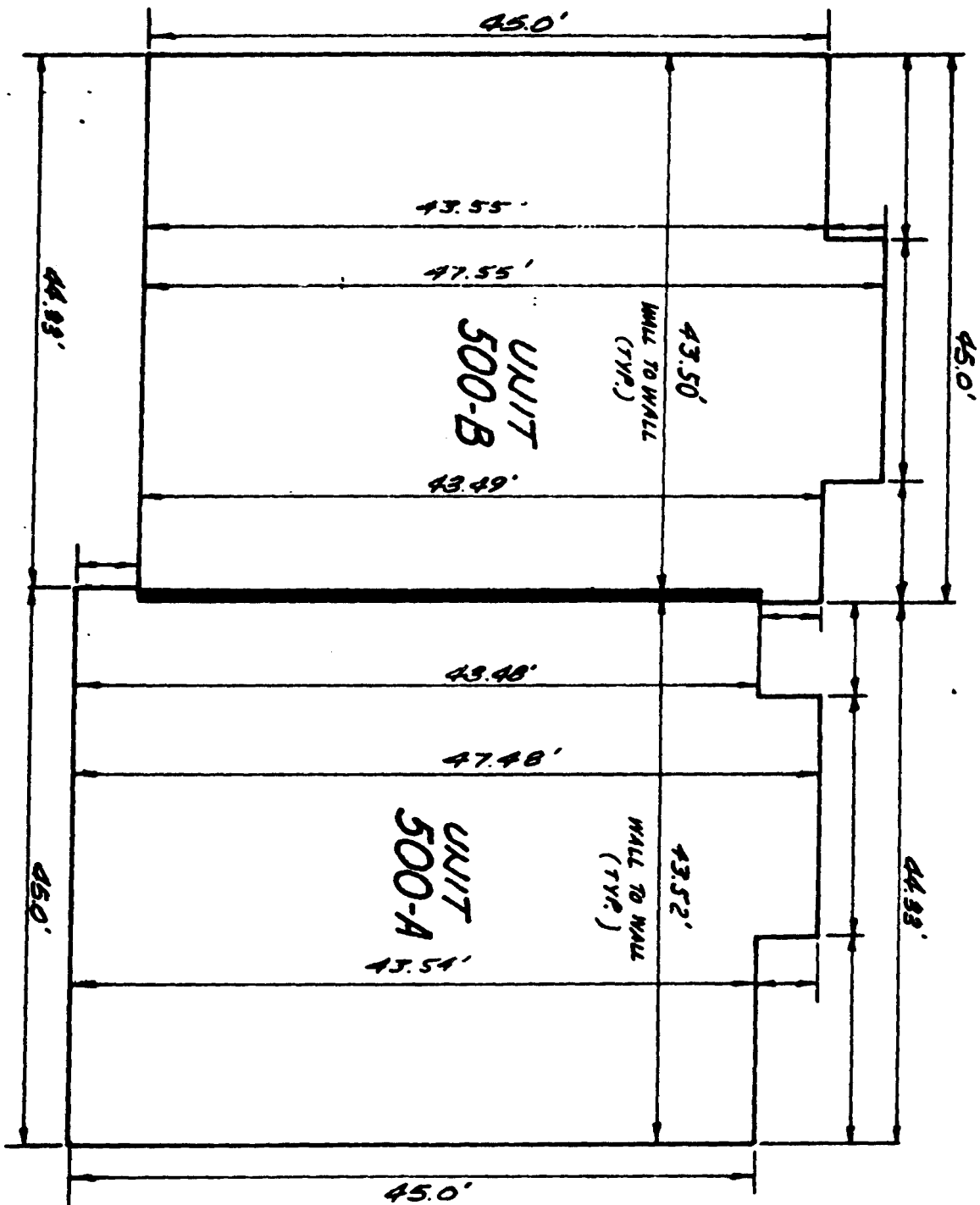


EXHIBIT C page 64

PORPOISE BAY VILLAS

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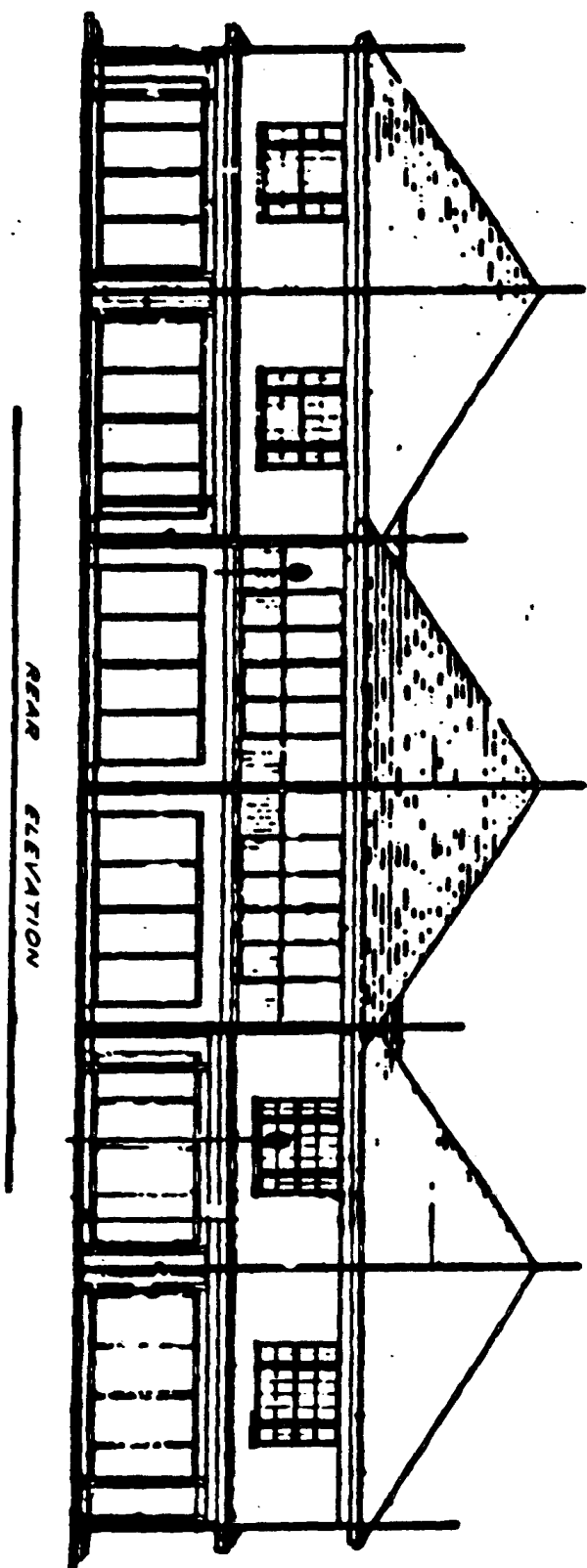
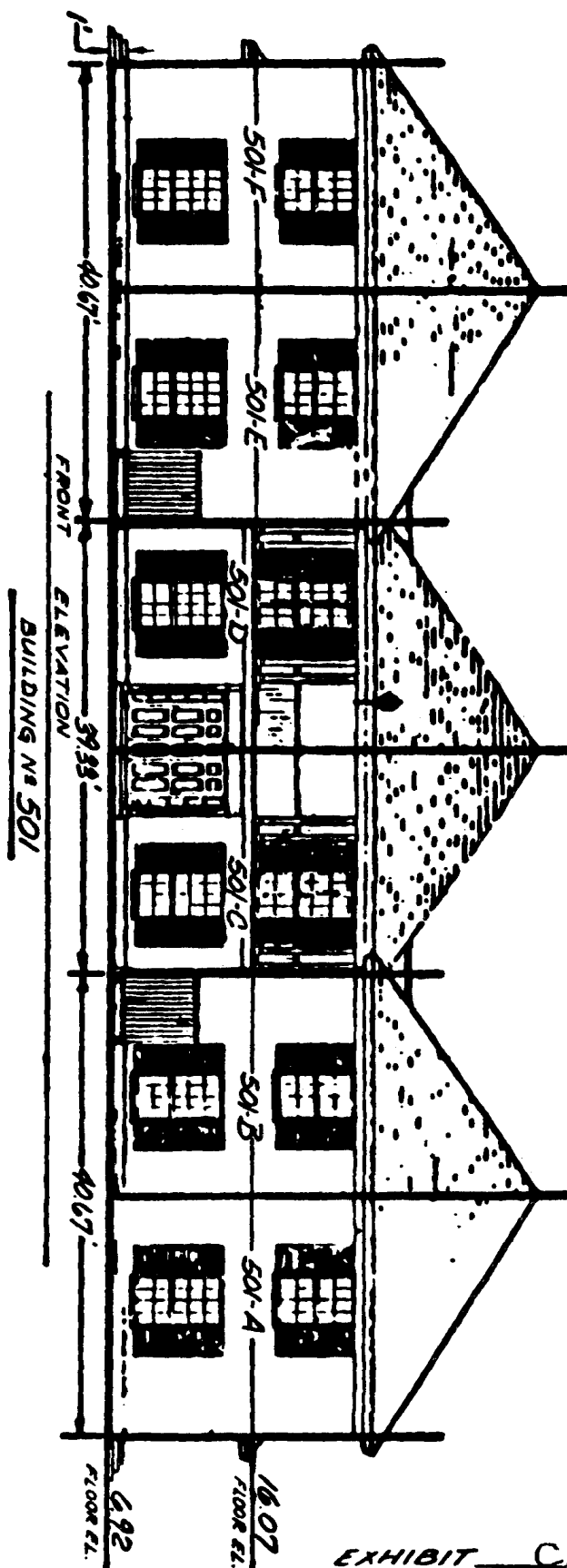
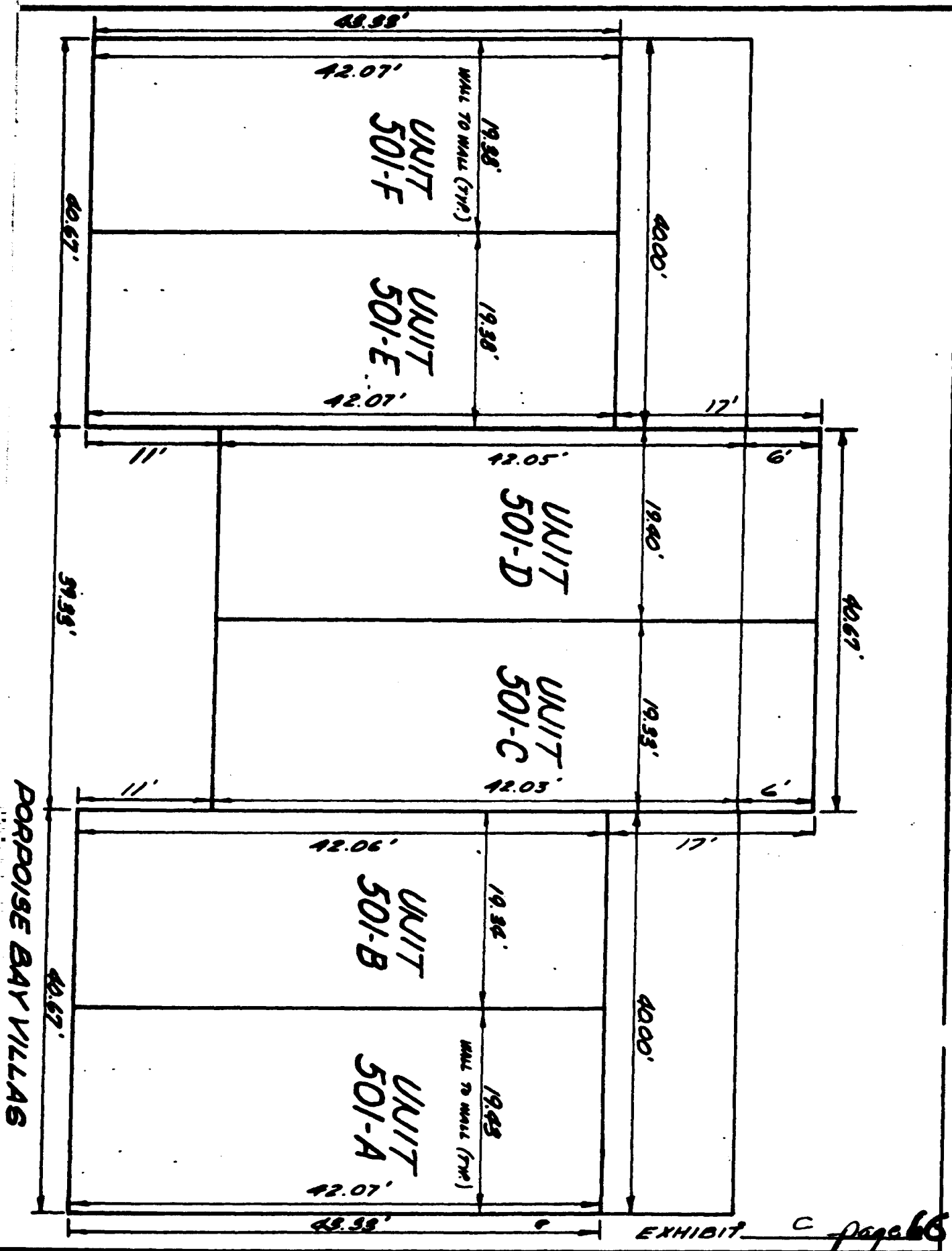
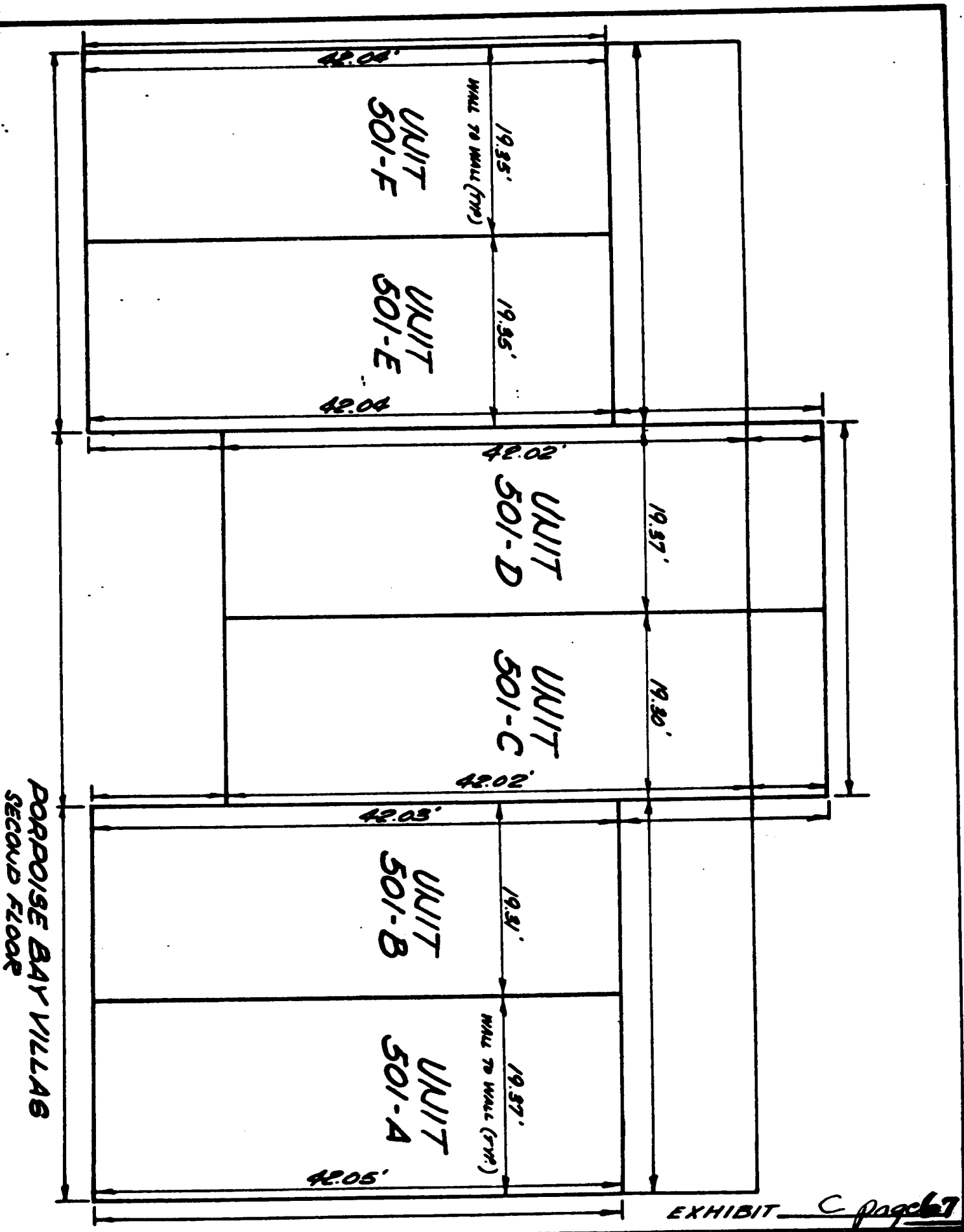


EXHIBIT C page 65

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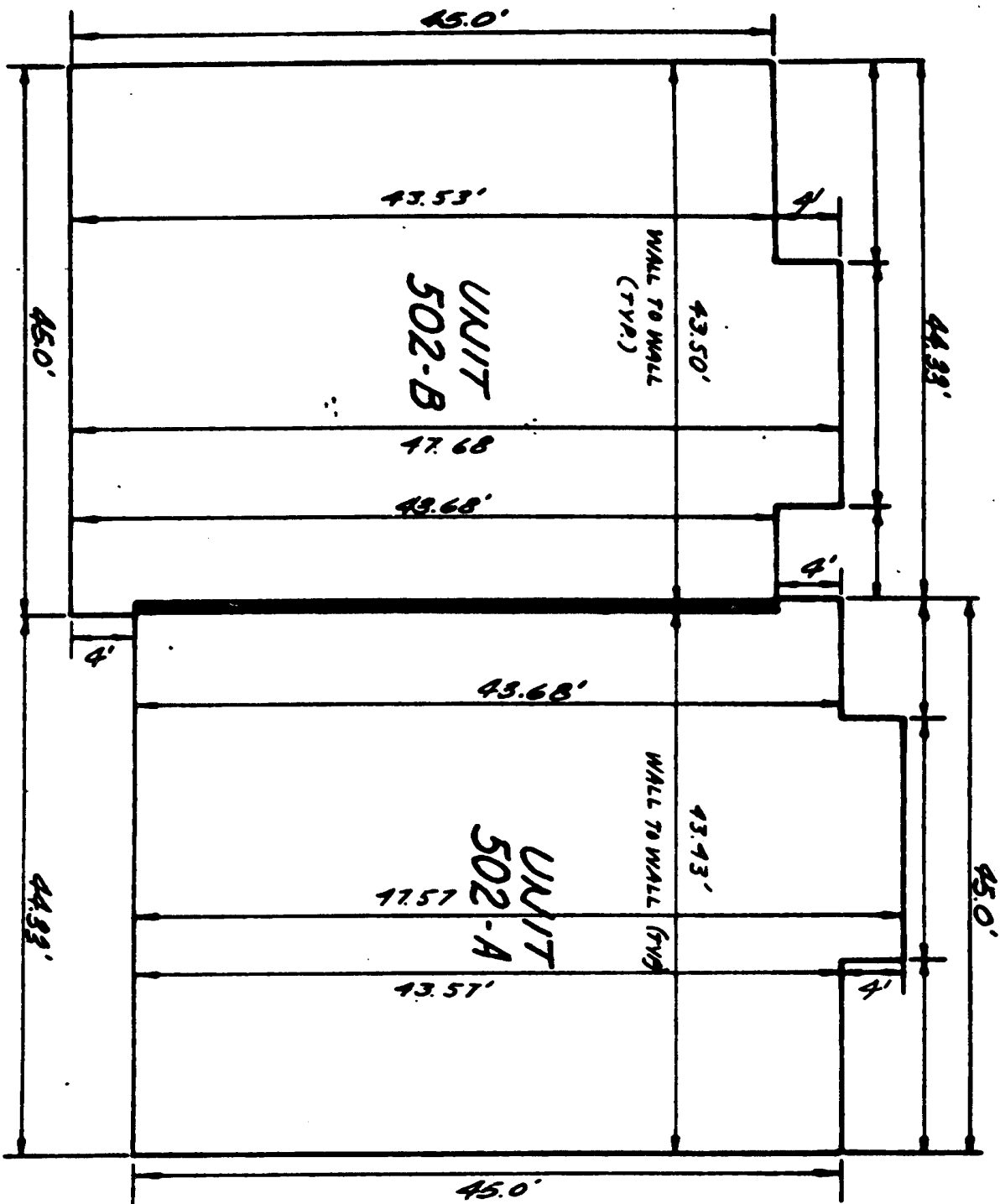
Architectural drawing of Building 502, showing a side elevation and a floor plan. The side elevation is labeled "BUILDING 502-A" and "BUILDING 502". The floor plan is labeled "BUILDING 502-B". The drawing includes dimensions: 46'0" for the width of the side elevation and 44'53" for the width of the floor plan. The floor plan is labeled "FLOOR ELEV." and "F. 7.01".

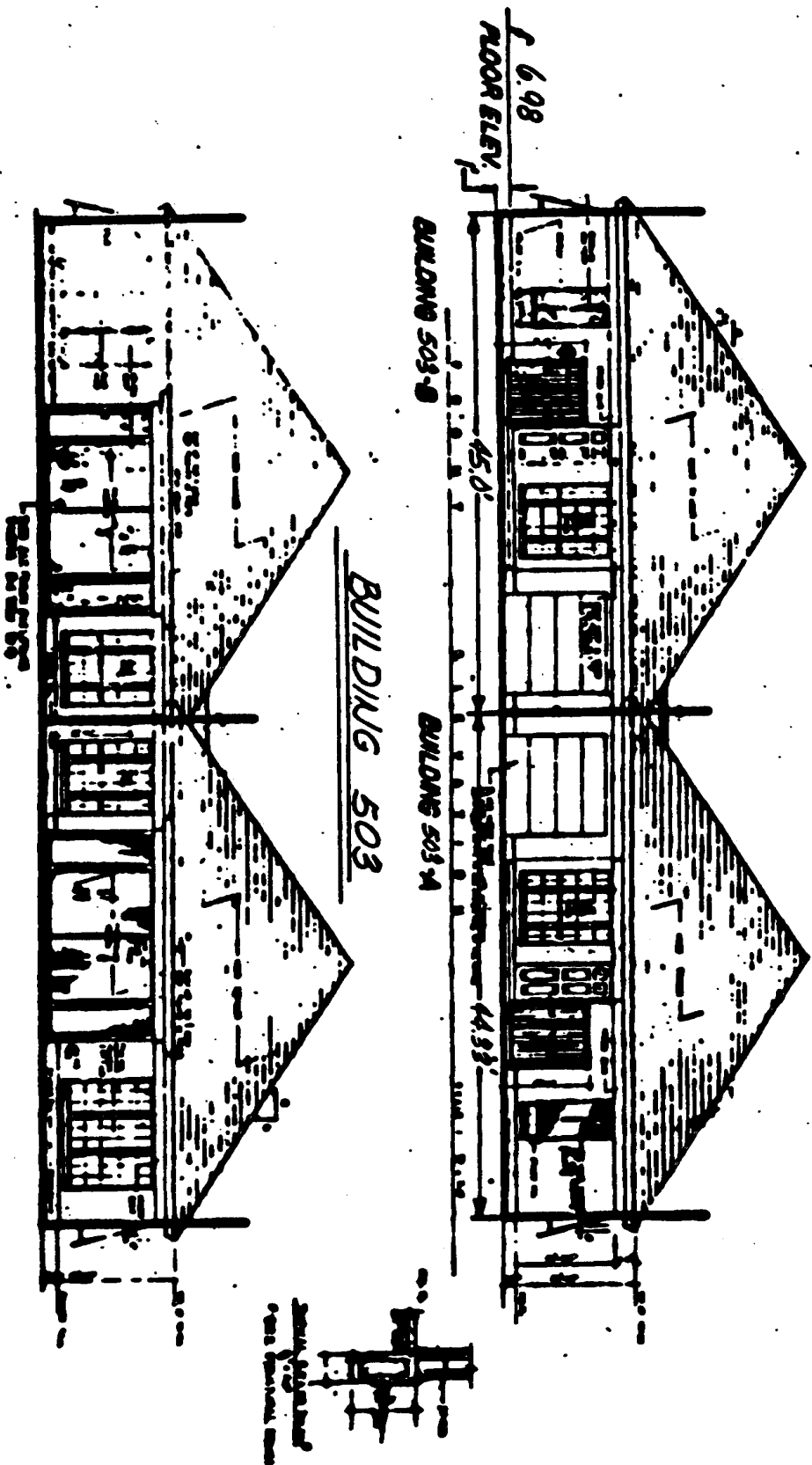
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EXHIBIT C page 69

PORPOISE BAY VILLAS





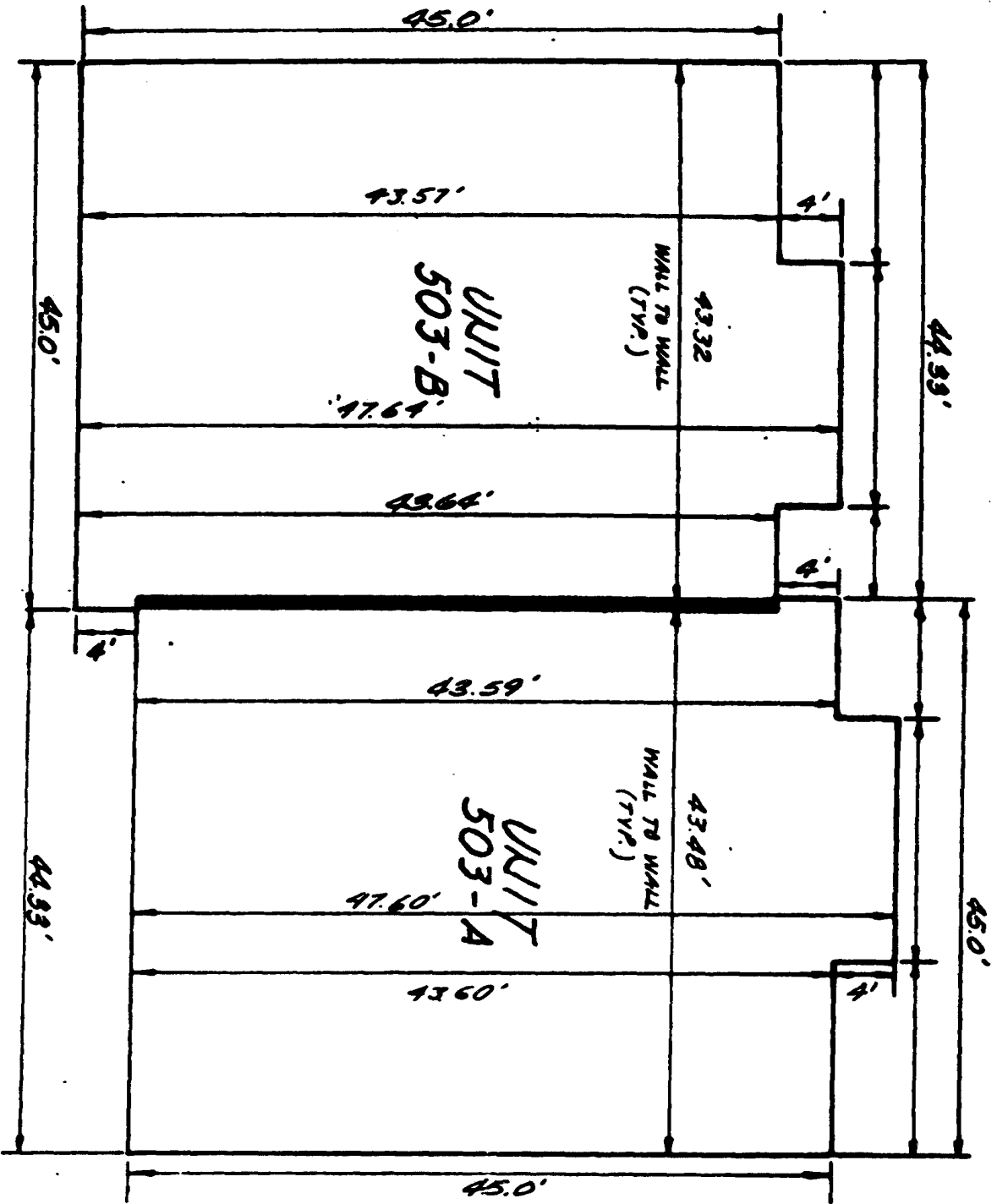
PARROISE BAY VILLAS

NOTE: ELEVATION 4.5' IS 17'11" ABOVE FINISHED GRADE

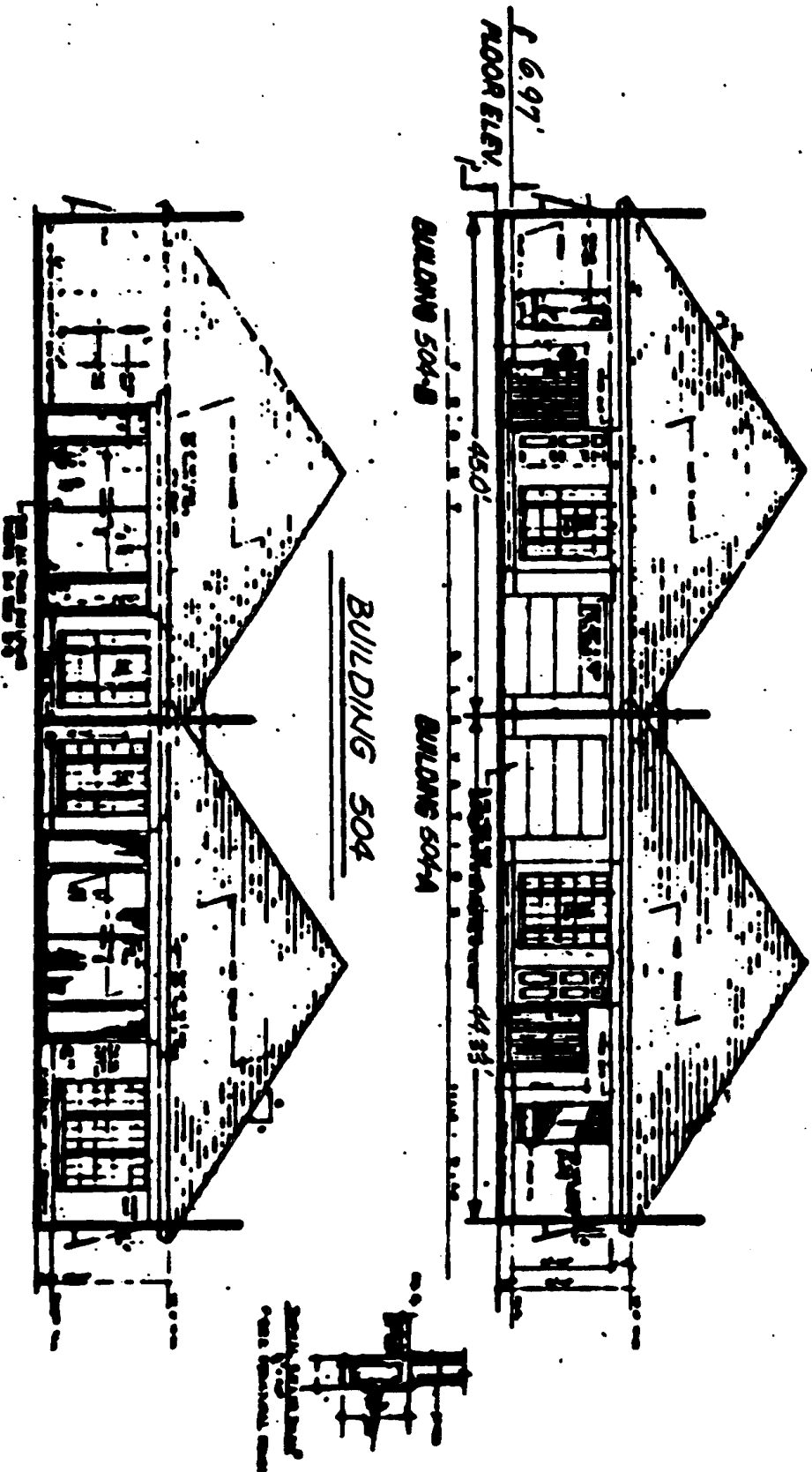
OR 1451060876

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EXHIBIT C page 71



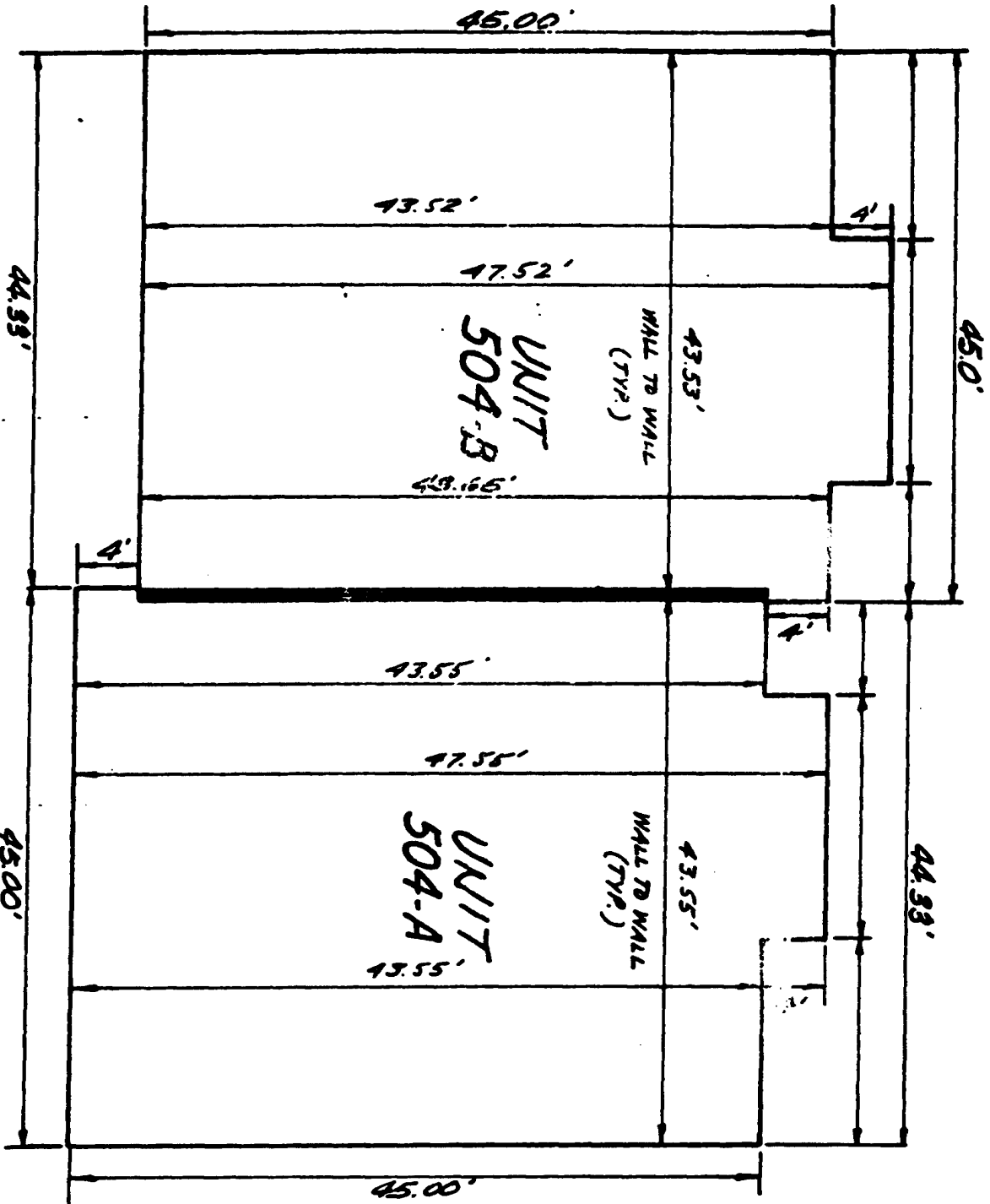
PORPOISE BAY VILLAS



NOTE: ...

PARROISE BAY VILLAS

OR 1451 PG 0878



PORPOISE BAY VILLAS

EXHIBIT C page 72

BOOK 0697 PAGE 1882

PORPOISE BAY VILLAS, PHASES I, II, III, IV-A and IV-B

CONDOMINIUMS

300 Harbour Drive

Vero Beach, FL 32963


EXHIBIT D

I, JAMES L. BEINDORF, of 3885 20th Street, Vero Beach, Florida 32960, certify as follows:

1. That I am a land surveyor, duly authorized to practice in the State of Florida, having Certificate of Registration No. 921, State of Florida.

2. That this certificate is made as to Units 200-A and 200-B through and including Units 504-A and 504-B of Porpoise Bay Villas, a Condominium, located at 300 Harbour Drive, Vero Beach, Florida 32963, and in compliance with Chapter 718, Florida Statutes.

3. That the construction of the improvements described in the foregoing Declaration of Condominium is substantially complete so that with the survey of the land as set forth in Exhibit "B" attached hereto, together with the plot plans as set forth in Exhibit "C" attached hereto, showing the apartment buildings and common elements, together with the wording of the foregoing Declaration of Condominium, there can be determined therefrom the identification, location and dimensions of each unit, the common elements and limited common elements, and that the aforementioned material is an accurate representation of the location and dimensions of the improvements.

  
James L. Beindorf, Land Surveyor  
Certificate of Registration No. 921  
State of Florida

Sworn to and subscribed before me,  
this 24<sup>th</sup> day of July,  
1984.

  
Notary Public, State of Florida at  
Large. My Commission Expires: 4-21-86

(NOTARY SEAL)

LAW OFFICES

MCKINNON & STEWART  
CHARTERED

VERO BEACH, FLORIDA

BOOK 0697 PAGE 1863

OR 145160879

**EXHIBIT "C"**

**AMENDED AND RESTATED ARTICLES OF INCORPORATION**

**OF**

**PORPOISE BAY VILLAS CONDOMINIUM ASSOCIATION, INC.**

Pursuant to Section 617.1007(4), Florida Statutes, the Articles of Incorporation of PORPOISE BAY VILLAS CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, which was originally incorporated under the same name in on Dec. 7, 1978 are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.1007(4), Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation and the provisions of these Amended and Restated Articles other than the inclusion of amendments adopted pursuant to Section 617.1007(4) and the omission of matters of historical interest. The Amended and Restated Articles of Incorporation of PORPOISE BAY VILLAS CONDOMINIUM ASSOCIATION, INC. shall henceforth be as follows:

**ARTICLE I**

**NAME AND ADDRESS**

The name of the corporation is PORPOISE BAY VILLAS CONDOMINIUM ASSOCIATION, INC., and its mailing address is c/o Vista Property Management, Inc., 100 Vista Royale Boulevard, Vero Beach, Florida 32962.

**ARTICLE II**

**DEFINITIONS**

For convenience, the corporation shall be referred to in this instrument as the "Association"; the Amended and Restated Declaration of Condominium, as the "Declaration"; these Amended and Restated Articles of Incorporation as the "Articles"; and the Amended and Restated By-Laws of the Association as the "By-Laws". All other definitions contained in the Amended and Restated Declaration are incorporated by reference into these Articles.

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THIS INSTRUMENT PREPARED BY:  
JAY STEVEN LEVINE, P.A.  
3300 PGA Boulevard, Suite 970  
Palm Beach Gardens, FL 33410

FILED  
01 MAY -4 PM 3:56  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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(561) 627-3585

OR 1451 PG 0881

### ARTICLE III

#### PURPOSE AND POWERS

**Section 3.1. Purpose.** The purpose for which the Association is organized is to provide an entity pursuant to the condominium and corporate statutes for the operation of Porpoise Bay Villas, A Condominium located in Indian River County, Florida. The Association is organized and shall exist on a non-stock basis as a corporation not for profit under the laws of the State of Florida. No portion of any earnings of the Association shall be distributed or inure to the private benefit of any Member, Director or officer.

**Section 3.2 Powers and Duties.**

- A. **General.** For the accomplishment of its purposes, the Association shall have all the common law and statutory powers and duties of a corporation not for profit under the laws of the State of Florida, except as limited or modified by the Declaration, the By-Laws or the Condominium Act and corporate act and such powers as limited or modified by the provisions of Section 3.2.C below. The powers of the Association shall also be as set forth in the Declaration and By-Laws, which shall include the promulgation of rules and regulations with respect to the property in the Condominium, the Units included, and Association property.
- B. **Powers.** The Association shall have all of the powers reasonably necessary to operate the Condominium pursuant to the Declaration and By-Laws as they may hereafter be amended, including, but not limited to:
  - 1. To make and collect annual and special assessments against members of the Association to defray the costs, expenses and losses of the Condominium and the Association, and to use the funds in the exercise of its powers and duties.
  - 2. To protect, maintain, repair, replace and operate the property in the Condominium pursuant to the Condominium Documents.
  - 3. To purchase insurance upon the Condominium for the protection of the Association and its members, as required by law.
  - 4. To make improvements of the property in the Condominium, subject to any limitations contained in the Declaration.

5. To reconstruct improvements after casualty.
  6. To make, amend, and enforce reasonable rules and regulations governing the use of the Condominium and Association property, inclusive of the Units, the operation of the Association, and including the frequency, time, location, notice and manner of the inspection and copying of official records.
  7. To contract for the management and maintenance of the Condominium, and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Association.
  8. To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium and Association property.
- C. Limitation on Corporate Powers. The following limitations on the following powers of the Association as set forth in the corporate statute, shall apply:
1. No Directors, officers or committee members shall receive compensation for their services as Directors, officers and committee members. The foregoing shall not preclude Directors, officers and committee members from being (and who shall be) reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.
  2. The Association may borrow money with the following limitations: The Association shall have the right to borrow money upon the approval by the Board of Directors alone up to an amount which is 20% of the annual budget, cumulatively in a budget year. However, if the amount of same shall exceed 20% of the annual budget, cumulatively in a budget year, then the loan may not be made unless approved by not less than a majority of the voting interests of those Owners present in person and by proxy at an Owners' meeting.
  3. All funds and the title to all property acquired by the Association and their proceeds shall be held for the benefit and use of the Owners in accordance with the provisions of the Declaration, these Articles, and the By-Laws.

OR 14510893

All powers of the Association conferred by the Declaration and By-Laws are incorporated into these Articles by reference.

**D. Duties.**

1. The Association shall adopt a Rule and Regulation concerning the posting of notices of Board meetings and the annual meeting.
2. The Association shall prepare a Question and Answer Sheet and shall update it at least annually if and as required by the Condominium Act and Administrative Rules as amended from time to time.
3. The Association shall maintain an adequate number of copies of the Condominium Documents and Rules and Regulations, and all amendments to the foregoing, as well as the Question and Answer Sheet referred to above, and the most recent year-end financial report, on the Condominium or Association property, to ensure their availability to Owners. The Association may charge its actual costs for preparing and furnishing the foregoing to those requesting same.
4. The Association shall ensure that the following contracts shall be in writing:
  - (a) Any contract for the purchase, lease or renting of materials or equipment, which is not to be fully performed within one year from the date of execution of the contract.
  - (b) Any contract, regardless of term, for the provision of services; other than contracts with employees of the Association, and contracts for attorneys and accountants services, and any other service contracts exempted from the foregoing requirement by the Condominium Act or Administrative Rules as amended from time to time.
5. The Association shall obtain competitive bids for materials, equipment and services where required by the Condominium Act and Administrative Rules as amended from time to time. This provision shall not require the Association to accept the lowest bid.
6. The Association shall obtain and maintain fidelity bonding as required by the Condominium Act and Administrative Rules.

7. The Association shall keep a roster of Owners and their addresses and mortgagees and their addresses based on information supplied in writing by the Owners from time to time to the Association.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING IN THE ASSOCIATION

Section 4.1. Membership. The members of the Association shall be as provided in Section 2.1 of the By-Laws.

Section 4.2. Voting. The Owners of each Unit, collectively, shall be entitled to that vote as set forth in the By-Laws. Fractional voting is absolutely prohibited. The manner of exercising voting rights shall be as set forth in the By-Laws.

#### ARTICLE V

##### DIRECTORS

Section 5.1. Number and Qualifications. The property, business and affairs of the Association shall be managed by a Board in the manner and accordance with the relevant provisions specified in the By-Laws. Qualifications of Directors are contained in the By-Laws.

Section 5.2. Duties and Powers. All of the duties and powers of the Association existing under Chapters 718 and 617, Florida Statutes and the Condominium Documents shall be exercised exclusively by the Board of Directors, its agents, contractors, or employees, subject only to:

- A. approval by Owners, when such approval is specifically required in the Law or Condominium Documents; and/or
- B. action by the Executive Committee, if any.

Section 5.3. Election; Removal. Director(s) of the Association shall be elected in the manner determined by and subject to the terms and provisions set forth in the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

OR 1451860895

## ARTICLE VI

### OFFICERS

Section 6.1. Offices. The affairs of the Association shall be administered by the Officers holding the offices designated in the By-Laws.

Section 6.2. Duties and Powers. The powers and duties of the officers are as provided in the By-Laws.

Section 6.3. Election; Removal. The Officers shall be elected by the Board of Directors of the Association at its first meeting after the election meeting of the members of the Association and shall serve at the pleasure of the Board of Directors.

## ARTICLE VII

### BY-LAWS

The Amended and Restated By-Laws of the Association are as approved by the membership of the Association, and may be altered, amended or rescinded by the vote of both the Board of Directors and members of the Association in the manner provided in the By-Laws; with the vote of the Board alone permitted only if and as permitted in the By-Laws.

## ARTICLE VIII

### AMENDMENTS TO THE ARTICLES OF INCORPORATION

Amendments to these Articles shall be proposed and adopted in the following manner:

Section 8.1. Proposal. Amendments to these Articles may be proposed by a majority of the entire membership of the Board of Directors or by written petition signed by at least twenty-five percent (25%) of the voting interests of the members of the Association. Only one co-owner of a Unit need sign the petition for that Unit.

Section 8.2 Procedure; Notice and Format. In the event that any amendment is proposed by the Board of Directors, then the Board may propose the amendment to be considered at the annual or a special members' meeting. In the event that any amendment was proposed by written petition of the members, then the Board shall have forty (40) days from its receipt of the petition or ten (10) days after its next regular meeting, whichever time

ARTICLE IX

TERM

The term of the Association shall be perpetual.

ARTICLE X

REGISTERED AGENT AND REGISTERED OFFICE

As of the date of the filing of these Amended and Restated Articles, the Registered Agent for the Association has been Jay Steven Levine, Esquire, and the Registered Office of the Registered Agent has been Jay Steven Levine, P.A., 2500 North Military Trail, Suite 275, Boca Raton, Florida 33431. The Registered Agent remains unchanged. The Registered Office is the same except that the suite number is now Suite 490.

CERTIFICATE OF ADOPTION OF THE AMENDED  
AND RESTATED ARTICLES OF INCORPORATION

THE UNDERSIGNED, being the duly elected and acting president of PORPOISE BAY VILLAS CONDOMINIUM ASSOCIATION, INC. hereby certifies that the foregoing was approved by not less than a majority of the entire membership of the Board of Directors on FEBRUARY 26, 2000, at a special board meeting called for the purpose, with quorum present; and was approved by not less than two-thirds of the voting interests of all the members of the Association accomplished at an Owners' meeting, held on MARCH 26, 2000, called for the purpose, with quorum present. The number of votes was sufficient for approval.

The foregoing both amend and restate the Articles of Incorporation in their entirety.

EXECUTED this 9th day of APRIL, 2000.

WITNESSES:

Sign Nikki Monahan  
Print Nikki Monahan  
Sign Amy Carasini  
Print Amy Carasini

PORPOISE BAY VILLAS  
CONDOMINIUM ASSOCIATION, INC.

BY: Sign Jeffrey Lockhart  
PRESIDENT

Print Jeffrey Lockhart  
Current Address 301 Harbor Dr, 205  
Vero Beach, FL 32963

OR 1451960887

Sign Nikki Morahan  
Print Nikki Morahan  
Sign Amy Cavasini  
Print Amy Cavasini

BY: Sign Doris A. Drake  
SECRETARY  
Print Doris A. Drake  
Current Address 300 Herbare Drive # 30  
Vero Beach, FL 32963

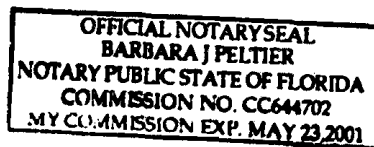
STATE OF FLORIDA )  
 ) ss  
COUNTY OF INDIAN RIVER )

I HEREBY CERTIFY that on this 9<sup>th</sup> day of April, 2001, before me personally appeared Jeffrey Lockhart, President and Doris Drake, Secretary of PORPOISE BAY VILLAS CONDOMINIUM ASSOCIATION, INC., a Florida corporation, who is personally known to me or who has produced N/A (if left blank, personal knowledge existed) as identification and who did not take an oath and who executed the aforesaid as their free act and deed as such duly authorized officers; and that the official seal of the Corporation is duly affixed and the instrument is the act and deed of the Corporation.

WITNESS my signature and official seal at Vero Beach in the County of Indian River, State of Florida, the day and year last aforesaid.

NOTARY PUBLIC:

Sign: Barbara J. Peltier  
Print: BARBARA J. PELTIER



**NOTE: SUBSTANTIAL REWORDING OF ENTIRE BY-LAWS. SEE ENTIRE ORIGINAL BY-LAWS FOR PRESENT TEXT.**

**EXHIBIT "D"**

**AMENDED AND RESTATED BY-LAWS**

**OF**

**PORPOISE BAY VILLAS CONDOMINIUM ASSOCIATION, INC.**

(A Corporation not-for-profit under the laws of the State of Florida)

Section 1. GENERAL. These are the Amended and Restated By-Laws of PORPOISE BAY VILLAS CONDOMINIUM ASSOCIATION, INC., hereinafter the "Association", a corporation not for profit organized under the laws of Florida.

1.1 Seal. The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "not for profit". The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.

1.2 Definitions. The definitions set forth in the Amended and Restated Declaration of Condominium of Porpoise Bay Villas I, II, III, IV-A and IV-B, A Condominium, and in the Amended and Restated Articles of Incorporation shall apply to terms used in these By-Laws.

Section 2. MEMBERSHIP AND VOTING RIGHTS.

2.1 Qualifications. The members of the Association shall be all record Owners of Units in the Condominium, subject to the provisions of Section 14.1.B of the Declaration.

2.2 Change in Membership. A change of membership shall be established and become effective by recording in the public records of the County, a deed or other similar instrument and by delivery to the Association of a copy of such instrument. The failure of

a new record owner to deliver a copy of such instrument to the Association shall not deprive the new record owner of membership in the Association.

2.3 Termination of Membership. The termination of membership in the Association does not relieve or release a former member from liability or obligation incurred in, or in any way connected with, the Condominium during the period of his or her membership, nor does it impair any rights or remedies which the Association may have against any former Owner arising out of, or in any way connected with, such ownership and membership and the covenants and obligations incident to same.

2.4 Voting Interests; Votes. Each Member of the Association is entitled to one (1) vote for each Unit owned by him/her. The vote of a Unit is not divisible. Votes may be cast in person or by proxy, but proxies may not be used for the election of Directors.

2.5 Approval or Disapproval of Matters. Whenever the decision or approval of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such Unit if in an Association meeting, unless the joinder of record owners is specifically required.

### Section 3. MEMBERS MEETINGS.

3.1 Annual Meeting. The annual meeting shall be held in the County in the month of March of each year, at a day, place and time designated by the Board of Directors.

3.2 Election Meeting. The election meeting shall be held in the County each year as part of the annual meeting, for the purpose of electing Directors.

3.3 Special Meeting. Special members meetings must be held whenever called by the president or by a majority of the Board of Directors, and must be promptly called by the president upon the president's or secretary's receipt of a written petition signed and dated by at least one third (1/3) of the voting interests of the membership. Such petition shall state the purpose(s) of the meeting. The business at any special meeting shall be limited to the items specified in the petition, and contained in the notice of meeting.

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- A. The calling of a special meeting for recall of Directors is governed by Section 4.4.B below and by applicable Administrative Rules, and not by the provisions of this Section 3.3.
- B. The calling of a meeting pursuant to F.S. 718.112(2)(e) requires only the application of 10% of the voting interests of the Members.

**3.4 Court-Ordered Meeting.** The circuit court of the County may, after notice to the Association, order a meeting of the members to be held:

- A. On application of any member of the Association entitled to vote in an annual meeting if an annual meeting has not been held within any 13-month period; or
- B. On application of a member who signed a demand for a special meeting valid under Section 3.3 above, if:
  - 1. Notice of the special meeting was not given within sixty (60) days after the date the demand was delivered to the Association's secretary or president; or
  - 2. The special meeting was not held in accordance with the notice.

The court may fix the time and place of the meeting, determine the members entitled to participate in the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, and enter other orders as may be appropriate.

**3.5 Notice of Members' Meetings.**

- A. Election Meeting. Notice of the election meeting shall be as provided for in Section 4.2 below.
- B. Annual and Special Meetings. Notice of all annual and special members meetings must state the time, date, and place of the

meeting. Notice of all annual and special meetings shall be sent by first class mail to each Member at his address as it appears on the books of the Association. The officer, manager or other person making such mailing shall provide an affidavit as to the mailing, which shall be retained as part of the official records of the Association. Notice of an annual or special members meeting may, alternatively, be delivered in person if a written waiver of mailing is obtained. The notice must be mailed or delivered at least fourteen (14) days, but not more than sixty (60) days, prior to the date of the meeting, and must also state the intended agenda for the meeting.

1. Notice of the annual meeting shall be posted in a conspicuous place on the Condominium or Association property at least fourteen (14) continuous days prior to the annual meeting; no such posting is required in connection with special meetings of the membership.

3.6 Waiver of Notice. A member's attendance at a meeting, either in person or by proxy:

- A. Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; or
- B. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

3.7 Members' List for Meeting.

- A. After the mailing of notice of any meeting, the Association shall prepare an alphabetical list of the names and addresses of all its members who were mailed notice of the meeting. This list shall be updated as memberships change up to the date of the meeting.

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- B. The members' list must be available for inspection by any member for a period of ten (10) days prior to the meeting and continuing up to the start of the meeting at the Association's principal office or at a place identified in the meeting notice in the city/town where the meeting will be held. A member or his agent or attorney is entitled on written demand to inspect the list during regular business hours and at his expense, during the period it is available for inspection.
- C. The Association shall make the members' list available at the meeting, and any member or his agent or attorney is entitled to inspect the list at any time up to the start of the meeting or any adjournment.
- D. The members' list is prima facie evidence of the identity of members entitled to examine the members' list or to vote at meeting of members.
- E. If the requirements of this Section 3.7 have not been substantially complied with or if the Association refuses to allow a member or his agent or attorney to inspect the members' list before or at the meeting, the following shall apply: The meeting shall be adjourned until such requirements are complied with on the demand of any member in person or by proxy who failed to get such access, or, if not adjourned upon such demand and such requirements are not complied with, the circuit court of the County on application of the member, may summarily order the inspection or copying at the Association's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.
- F. Refusal or failure to comply with the requirements of this Section 3.7 shall not affect the validity of any action taken at the meeting.

**3.8 Proxies.** A proxy may be given by any person entitled to vote, and shall be valid only for the specific meeting for which it was originally given and/or any lawful adjournment of that meeting. No proxy shall be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be

revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, and signed by the person authorized to cast the vote for the Unit, and must be delivered to the secretary at or before the adjournment of the particular meeting. The proxy form must conform to any requirements of the Condominium Act and applicable Administrative Rules. An executed original, an executed telegram or cablegram appearing to have been transmitted by the authorized person, or a photographic, photostatic, facsimile or equivalent reproduction of a proxy form are all valid. Holders of proxies need not be members. The holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy. The proxy may name the Board of Directors as the proxy holder, in which case the proxy shall be voted in the manner determined by resolution of the Board. Subject to Section 3.9 of these By-Laws and to any express limitation on the proxy's authority appearing on the face of the proxy form, the Association is entitled to accept the proxy's vote or other action as that of the member appointing the proxy. Notwithstanding the foregoing to the contrary, except as otherwise permitted by the applicable Administrative Rules as to filling of vacancies by the membership after recall, no proxies may be used for the election of Directors.

### **3.9 Association's Acceptance of Votes.**

- A.** If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the Association if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.
- B.** If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its member, the Association if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:
  - 1.** The name signed purports to be that of an administrator, executor, guardian, personal representative, or conservator representing the member and, if the Association requests, evidence of fiduciary status acceptable to the Association has been presented with respect to the vote, consent, waiver, or proxy appointment;

2. The name signed purports to be that of a receiver, trustee in bankruptcy, or assignee for the benefit of creditors of the member and, if the Association requests, evidence of this status acceptable to the Association has been presented with respect to the vote, consent, waiver, or proxy appointment;
  3. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and, if the Association requests, evidence acceptable to the Association of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; or
  4. Two or more persons are the member as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.
- C. The Association is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.
- D. The Association and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this Section 3.9 are not liable in damages to the member for the consequences of the acceptance or rejection.
- E. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this Section 3.9 is valid unless a court of competent jurisdiction determines otherwise.

**3.10 Vote Required, Membership Participation.** If a quorum exists, action on a matter (other than the election of Directors) by the members is approved if approval is

received from not less than a majority of those voting interests present in person and by proxy at the meetings, unless the Condominium Documents or applicable law require a greater number of affirmative votes. Any member may speak with reference to all designated agenda items, subject to reasonable written Rules and Regulations adopted by the Board of Directors governing the frequency, duration and manner of members' statements; any of such Rules and Regulations shall yield for a particular meeting to the extent that a majority of the voting interests at the meeting determine so. An Owner shall have the right to tape record or videotape a Members' meeting, subject to any applicable Administrative Rules and written Board rules on the subject. Notwithstanding the foregoing to the contrary, no Owner may videotape or tape record at any Members' meeting unless the Member provides written notice of his or her intention to do so, which notice is received by the Association no later than twenty-four (24) hours prior to the scheduled time and date for the meeting.

**3.11 Quorum; Election Ballot Return.**

- A. **Annual and Special Members Meetings.** The quorum for the annual and special members' meetings shall be a majority of the voting interests of the entire membership of the Association. After a quorum has been established at a members' meeting, the subsequent withdrawal of members, so as to reduce the number of voting interests entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment.
- B. **Election Meeting.** Not less than twenty (20%) percent of the eligible voters must cast a ballot in order to have a valid election, even though there might not be a quorum at the annual meeting.

**3.12 Adjournment of the Meeting.** Any duly called meeting of the members may be adjourned to a later date by the vote required under Section 3.10 of these By-Laws, regardless of whether a quorum has been attained. A new notice of the adjourned meeting shall be given. Any business which might have been conducted at the meeting as originally scheduled may be conducted at the continued meeting.

**3.13 Order of Business.** The order of business at members meetings shall be substantially as follows:

- A. Call to order by the president (or other officer in the absence of the president)
- B. Appointment of a chairperson, only if the president is absent; otherwise, the president chairs the meeting
- C. Appointment of a parliamentarian, if so desired by the membership at the meeting.
- D. Call of the roll or certification of quorum
- E. Proof of notice of meeting or waiver of notice
- F. Minutes of last members meeting - read or waive reading
- G. Reports of officers
- H. Reports of Committees
- I. Election of Directors (where appropriate)
- J. Unfinished business
- K. New business
- L. Adjournment

**3.14 Minutes of Meetings.** The minutes of all meetings of the membership shall be kept in a book available for inspection by members and/or their authorized representatives at any reasonable time. Member(s) of the Association and their authorized representatives shall have the right to make handwritten notations from the minutes, and to receive photocopies of the Minutes at the cost of the member(s) concerned. The Board of Directors shall establish such cost, not to exceed the limitations imposed by law from

time to time. Minutes shall be retained for a period of not less than seven (7) years after the date of the meeting.

#### **Section 4. BOARD OF DIRECTORS; COMMITTEES.**

The administration of the affairs of the Association shall be by a Board of Directors, with each Director having a fiduciary relationship with the Owners. All powers and duties granted to the Association by law, as modified and explained in the Condominium Documents, shall be exercised by the Board, subject to approval or consent of the Owners only when such is specifically required. An Owner does not have the authority to act for the Association by reason of being an Owner.

##### **4.1 Number and Term of Service; Qualifications.**

- A. **Number.** The number of Directors which shall constitute the whole Board of Directors shall be seven (7) persons.
- B. **Term.** To ensure continuity of service, a staggered Board system was previously created. Four Directors shall be elected in odd numbered years and three Directors in even numbered years. A Director shall be elected to serve for a term of two years, until his or her successor is duly elected, unless he or she sooner resigns, or is recalled.
- C. **Qualifications.** A Director shall be a member of the Association or his or her spouse; and in the event of a trust as Owner, then any trustee; the Association shall be permitted to obtain reasonable documentation from an Owner whose Unit is owned in the foregoing names, indicating that the individual in question has the representative capacity as just stated. To the extent provided by the Condominium Act, as amended from time to time, a person who has been convicted of a felony in the United States and has not had his or her voting rights restored in the jurisdiction of his or her residency is not eligible to serve on the Board of Directors.

**4.2 Election of Directors.** At each election meeting, the members shall elect as many Directors as there are regular terms of Directors expiring and other vacancies to be

filled. Not less than sixty (60) days before the scheduled election meeting, the Association must send notice to each Owner of the date. Not less than forty (40) days prior to the date of the election meeting, eligible candidates must deliver to the Association, written notice of his or her desire to run for the Board of Directors in order to be eligible to be placed on the election ballot. Any candidate may furnish the Association with an information sheet which shall be no larger than 8 ½ inches by 11 inches. The candidate's information sheet, if any, must be received by the Association by no later than thirty-five (35) days prior to the meeting, unless a later date is permitted by the Administrative Rules or Condominium Act as amended from time to time. The Association shall have no liability for the contents of this information sheet prepared by the candidate. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper. The Association shall provide that notice to all Members required by Section 3.5.B above, reminding them of the date, time and place of the election meeting, together with a ballot listing all eligible candidates and any information sheets received from same. No Owner shall permit any other person to cast his ballot, and any such ballots improperly cast shall be deemed invalid. The Association shall follow any Administrative Rules applicable to safeguarding the secrecy of ballots. In the election of Directors, there shall be appurtenant to each Unit as many votes as there are Directors to be elected. No voting representative of any Unit may cast more than one vote for any candidate, it being the intent that casting ballots in the election of Directors shall be non-cumulative. The candidates receiving the highest number of ballots cast shall be declared elected, except that any tie(s) shall be decided as permitted by the applicable Administrative Rules. A newly elected Director shall take office immediately upon the adjournment of the election meeting, provided that the ballot return in Section 3.11.B above is achieved, and notwithstanding that there may not be a quorum for the annual meeting.

A. Provisos. Notwithstanding the foregoing to the contrary, the following shall apply:

1. An election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board to be filled. In that event, the Association shall announce the new Directors at the annual meeting, and all candidates take office as Directors immediately following the adjournment of the annual meeting.

2. In the event that the membership fills vacancies after recall pursuant to Section 4.5.B.2 below, then the election of Directors to fill the vacancies shall be governed by the procedures set forth in the applicable Administrative Rules.
3. In the event that there are an insufficient number of candidates during a particular year to fill all vacancies such that there are fewer than seven (7) Directors on the Board, the shortage in the number of Directors shall be considered a vacancy on the Board, which may be filled by the Directors pursuant to Section 4.5.A below.

**4.3 Resignation of Directors.** A Director may resign at any time by delivering written notice to the Board of Directors or to the president or secretary. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date, the vacancy may be filled before the effective date if it is provided that the successor does not take office until the effective date. A written resignation once tendered cannot be rescinded. Oral resignations shall not be considered effective.

**4.4 Removal of Directors (Recall).** Any or all Directors may be removed with or without cause by a majority of the voting interests, either by a written agreement or at any meeting called for that purpose.

- A. **By Written Agreement.** If a proposed recall is sought by written agreement, a separate agreement is required for each member of the Board being recalled. All requirements imposed by the Administrative Rules as amended from time to time shall be followed.
- B. **By Special Meeting.** A special meeting for the purpose of recall may be called by ten percent (10%) of the voting interests of all Members. The proposed recall of more than one member of the Board shall require a separate vote for each member sought to be recalled. All requirements imposed by the Administrative Rules as amended from time to time shall be followed.

- C. Re-election. Any Director recalled shall not be eligible for re-election until the next regular election meeting.

4.5 Vacancies on the Board.

- A. A Vacancy Other than in Connection with Recall. If the office of any Director or Directors becomes vacant for any reason, other than recall as provided for in Section 4.4.A or 4.4.B above, a majority of the Directors, though less than a quorum, shall choose a successor or successors who shall hold office for the unexpired term of his predecessor in office. A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date) may be filled before the vacancy occurs but the new Director may not take office until the vacancy occurs.

B. Vacancy In Connection with Recall.

1. If a vacancy occurs on the Board as a result of a recall and less than a majority of the existing Board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors, for such term as mandated by applicable law as amended from time to time.
2. If vacancies occur on the Board as a result of a recall and a majority or more of the existing Board members are removed, the vacancies shall be filled in accordance with applicable Administrative Rules, for such term as mandated by applicable law as amended from time to time.
3. The term "existing Board members" refers to those existing on the date of the recall meeting or date of certification of a recall by written agreement, as applicable.
4. The conduct of the recall election as well as the operation of the Association during the period after a recall but prior to the

recall election, shall be as set forth in applicable Administrative Rules.

**4.6 Meetings of the Board of Directors.**

- A. **Organizational Meeting.** The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors, at such place and time as may be fixed by the Directors at the annual meeting at which they were elected.
- B. **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors.
- C. **Special Meetings.** Special meetings of the Directors may be called by the president, and must be called by the president or secretary at the written request of a majority of the Directors.
- D. **Adjourned Meetings.** Any duly called meeting of the Board of Directors may be adjourned to a later date by a vote of the majority of the Directors present, regardless of whether a quorum has been attained. No notice of adjournment is required to be given to any Director who was not present at the time of adjournment. Any business which might have been conducted at the originally scheduled meeting may be conducted at its continuance.
- E. **Telephone Conference.** The Board of Directors may permit any or all Directors to participate in a regular or special meeting by, or conduct the meetings through the use of a telephone conference so long as it complies with the requirements of the applicable Administrative Rules, as amended from time to time. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

**4.7 Notice of Board Meetings; Agenda.**

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- A. Notice to Directors. Notice of the time and place of meetings shall be given to each Directors, personally or by mail, telephone or telegraph, and shall be transmitted three (3) days prior to the meeting; notwithstanding the foregoing to the contrary, no notice need be given to Directors of a meeting if it is a regular meeting which is held on the same date of each month. Notice of all meetings shall state the agenda for the meeting, including any details of any (annual or special) assessment which will be discussed, considered or approved.
- B. Waiver of Notice by Directors. Notice of a meeting of the Board of Directors need not be given to any Director who signs a waiver of notice either before or after the meeting. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened; except when a Director states, at the beginning of the meeting or promptly upon arrival at the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened.
- C. Notice to Members.
1. Posting. Notices of all Board meetings shall be posted conspicuously on the Condominium or Association property at least forty-eight (48) continuous hours in advance, except in an emergency.
  2. Mail or Delivery. Written notice of any Board meeting at which non-emergency special assessments, or at which Rules and Regulations regarding use of the Units will be proposed, discussed or approved shall be mailed or delivered to the Members and posted conspicuously on the Condominium or Association property not less than fourteen (14) days prior to the Board meeting. Evidence of compliance with this fourteen (14) day notice requirement shall be made by an affidavit

executed by those persons specified in the Condominium Act as amended from time to time, and filed among the official records of the Association.

- D. Agenda. The notice of any Board meeting shall identify all agenda items and when the annual budget shall be considered, the notice must state that the annual assessment will be considered.

4.8 Quorum and Voting.

- A. Quorum. A quorum at a Board meeting shall be attained by the presence in person of a majority of the entire Board of Directors then serving.
- B. Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum has been attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Condominium Documents or by applicable statutes. Directors may not vote by proxy or by secret ballot at Board meetings, except that Directors may vote by secret ballot for the election of officers. So long as required by the Condominium Act as amended from time to time, a vote or abstention for each Board member present shall be recorded in the minutes of the Board meeting.
- C. Presumption of Assent. A Director who is present at a meeting of the Board, inclusive of the president, shall be deemed to have voted in favor of any action taken, unless:
1. He objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting specified business at the meeting; or
  2. He votes against or abstains from the action taken due to an asserted conflict of interest. An abstention for any other reason shall be considered an affirmative vote.

- D. Agenda. No item not on the posted agenda may be taken up by the Board at a Board meeting unless same is an emergency item and the necessary vote is obtained as set forth in the Condominium Act and Administrative Rules as amended from time to time. Such vote must be ratified by the Board as provided for in the Condominium Act and Administrative Rules as amended from time to time.

4.9 Members Participation at Board Meetings. Meetings of the Board of Directors shall be open to all Members to attend and observe. The right to attend Board meetings includes the right to speak with reference to all designated agenda items, subject to reasonable written Rules and Regulations adopted by the Board of Directors governing the frequency, duration and manner of Members' statements. Any Member may tape record or videotape meetings of the Board of Directors, subject to any applicable Administrative Rules, and written Rules and Regulations adopted by the Board of Directors. Notwithstanding the foregoing to the contrary, no Member may videotape or tape record at any Board meeting unless the Member provides written notice of his or her intention to do so, which notice is received by the Association no later than twenty-four (24) hours prior to the scheduled time and date for the meeting.

4.10 The Presiding Officer. Except as otherwise provided for by the Administrative Rules regarding a meeting for the recall of Directors, the president of the Association, or in his absence, the vice-president, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of those Directors present.

4.11 Order of Business. The order of business at meetings of the Directors, as appropriate, shall be:

- A. Calling of roll
- B. Proof of notice of meeting or waiver of notice
- C. Reading and disposal of any unapproved minutes of Board meetings
- D. Reports of officers and committees
- E. Election of officers (if any)
- F. Unfinished business
- G. New business
- H. Adjournment

**4.12 Joinder in Meeting by Approval of Minutes.** A Director may join in the action of a meeting by signing and concurring in the minutes of that meeting. That concurrence, however, shall not constitute the presence of that Director for the purpose of determining a quorum.

**4.13 Minutes of Meeting.** The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by members of the Association and/or their authorized representative(s) at any reasonable time. These individuals shall have the right to make written notations from the minutes, and to receive photocopies thereof at the cost of the member concerned. The Board of Directors shall establish such cost, not to exceed the limitations imposed by law from time to time. Minutes shall be retained for a period of not less than seven (7) years after the date of the meeting.

**4.14 Failure to Elect Director Quorum.** If the Association or the Board of Directors fails to fill vacancies on the Board of Directors sufficient to constitute a quorum, any member of the Association may apply to the circuit court of the County for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the circuit court, the member shall mail to the Association and post conspicuously on the Condominium property, a notice describing the intended action, giving the Association time to fill the vacancies. If during such time the Association fails to fill the vacancies, the Member may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver and reasonable court costs and reasonable attorneys' fees incurred by the petitioner(s). The receiver shall have all the powers and duties of a duly constituted Board of Directors and shall serve as such until the Association fills vacancies on the Board sufficient to constitute a quorum.

**4.15 Committees.** The notice, conduct and participation in voting, and keeping and maintenance of minutes of Committees as defined by the Condominium Act as amended from time to time, shall be governed by the provisions contained in the Condominium Act and Administrative Rules as amended from time to time. Meetings of Committees which do not take final action on behalf of the Board or do not make recommendations to the Board regarding the annual budget are exempt from compliance with F.S.718.112(2)(c).

## **Section 5. OFFICERS.**

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**5.1 Officers - Required; Appointment; Removal; Resignation; Vacancies.** The executive officers of the Association shall be a president, and a vice-president, who shall be Directors, and a treasurer and a secretary, who need not be Directors, all of whom shall be elected annually by a majority vote of the entire Board. The Board of Directors may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one vice-president. Any officer may be removed with or without cause by vote of a majority of the entire Board at any Board meeting. An officer may resign at any time by delivering notice to the Association. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the Association accepts the future effective date, the Board of Directors may fill the pending vacancy before the effective date if the Board of Directors provides that the successor does not take office until the effective date.

**5.2 President.** The president shall be the chief executive officer of the Association. He shall preside at all meetings of the members and Directors, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors. He shall execute bonds, mortgages, and other contracts requiring seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

**5.3 Vice-Presidents.** The vice-presidents, in the order of their seniority shall, in the absence or disability of the president, perform the duties and exercise the power of the president, and shall perform such other duties as the Board of Directors may prescribe. "Absence" or "disability" shall be viewed on a case by case, duty by duty basis, and as used herein, shall mean incapability of the president to effect a particular duty under question, incident to the office of the president.

**5.4 Secretary.** The secretary shall attend all meetings of the Board of Directors and all meetings of the members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for the standing committees and Executive Committee when required.

He shall maintain an accurate and up-to-date roster of Owners and their addresses. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the seal to any instrument requiring it. The secretary shall be responsible for the proper recording of all duly adopted amendments to the Condominium Documents. Any of the foregoing duties may be performed by the Assistant secretary, if one has been designated.

5.5 Treasurer. The treasurer shall have responsibility for the custody of Association funds and securities and the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association. He shall cause all monies and other valuable effects to be deposited in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall oversee disbursement of the funds of the Association, making proper vouchers for such disbursements, and shall render to the president and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as treasurer and of the financial condition of the Association. Any of the foregoing duties may be performed by an assistant treasurer, if any has been designated.

5.6 Special Duty. The Board shall from time to time delegate to one of its officers, the responsibility for preparing minutes of Directors' and members' meetings and for authenticating records of the Association. Should or to the extent that the Board shall fail to delegate same, the responsibility shall lie with the secretary.

Section 6. COMPENSATION OF DIRECTORS, OFFICERS AND COMMITTEE MEMBERS. Neither Directors, officers, nor (statutory and non-statutory) committee members shall receive compensation for their services as Directors, officer or committee member (as applicable). Directors, officers and committee members shall be entitled to reimbursement for all actual and proper out-of-pocket expenses, relating to the proper discharge of their respective duties.

Section 7. FISCAL MATTERS. The provisions for fiscal management of the Association set forth in Section 10 of the Declaration shall be supplemented by the following provisions:

7.1 Annual Budget.

- A. The Board of Directors shall adopt an annual budget for common expenses for each budget year, which shall run from January 1st through December 31st of each year, unless the Board votes otherwise. A copy of the proposed budget and a notice stating the date, time and place of the Board meeting shall be mailed to or served on the Owner of each Unit not less than fourteen (14) days prior to the date of that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications. The annual budget shall include all estimated expenses or expenditures including the categories set forth in F.S. 718.504(20)(c), only if applicable, as more fully set forth in the Condominium Act and Administrative Rules as amended from time to time. The failure of the Association to adopt a budget prior to the commencement of the new budget year shall not invalidate the budget or the annual assessments due pursuant to the untimely adopted budget. The Board of Directors further has the power to amend (increase) the annual budget should same be necessary to pay for valid common expenses, or to amend (decrease) the annual budget should same be warranted, all in the discretion of the Board of Directors.
- B. If an adopted budget requires assessments against the Owners in any budget year which exceed 115% of the assessments for the preceding year, the Board, upon written application of ten percent (10%) of the voting interests received by the Board within twenty-one (21) days after the adoption of the annual budget, shall call a special meeting of the Owners within sixty (60) days after adoption of the annual budget, upon not less than fourteen (14) days prior notice to the Owners. At the special meeting, the Owners shall consider and enact a budget, provided that not less than a majority of the voting interests of the entire membership vote to do so. If a quorum is not attained at the special meeting or a substitute budget is not adopted by the Owners at the special meeting by the majority vote just mentioned, the budget adopted by the Board of Directors shall go into effect as scheduled. In determining whether assessments exceed 115% of similar assessments in prior years, any authorized provisions

for reasonable reserves for repair or replacement of the property in the Condominium, anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, or assessments for betterment to the Properties shall be excluded from the computation.

## 7.2 Reserves.

- A. Statutory Reserves for Capital Expenditures and Deferred Maintenance. In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance and shall list the information as required by the Condominium Act and applicable Administrative Rules as amended from time to time. These accounts shall include, but are not limited to, roof replacement, building painting and pavement resurfacing, and all other building components required by the Condominium Act and applicable Administrative Rules as amended from time to time. The amount to be reserved shall be computed by a formula based upon the remaining estimated life and replacement cost of each item, in the manner required by any applicable Administrative Rules as amended from time to time. These reserves shall be fully funded unless a majority of the voting interests of those Members present in person and by proxy at a Members' meeting vote to fund no reserves or less than adequate reserves for a budget year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the Members as required in 7.1 above. Reserves funded under this Section 7.2 and any interest accruing thereon shall be used only for the purposes for which they were reserved, unless their use for other purposes is first approved by the same vote of voting interests mentioned in the preceding sentence, or unless their use is otherwise permitted by the Condominium Act and Administrative Rules as amended from time to time. Such reserves shall be segregated from operating funds of the Association to the extent required by the Condominium Act and Administrative Rules as amended from time to time.

- B. Other Reserves. In addition to the statutory reserves provided in 7.2.A above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts for contingencies, operating expenses, repairs, permitted improvements or deferred maintenance. The purpose of the reserves is to provide financial stability and to avoid or minimize the need for special assessments. The amounts proposed to be so reserved shall be shown in the proposed annual budget each year, subject to advice from the Association's accountant as to tax consequences of same. Any reserves which are not to be restricted must be shown in the operating portion of the budget.

7.3 Annual Assessments. Annual assessments based on the adopted budget shall be paid in twelve (12) installments, in advance, due on or before the first day of each and every month of each and every year, unless otherwise specified by the Board of Directors. One written notice of the annual assessment shall be provided to all members, prior to the start of the particular budget year; no other notices need be given by the Association. Failure to send or receive such notice shall not excuse the obligation to pay. If an annual budget for a new budget year has not been adopted at the time the first installment for that year is due, it shall be presumed that the amount of such installment is the same as the previous installment, and shall be continued at such rate until a budget is adopted and pro rata assessments are calculated, at which time any overage or shortage calculated shall be added or subtracted from each Unit's next due installment. In the event that the annual budget is amended, the overage or shortage calculated shall be added or subtracted equally over the balance of the annual assessment installments due for the year.

7.4 Special Assessments. Special assessments may be imposed by the Board of Directors when needed to meet any proper common expense(s) for which there is/are not sufficient funds in the annual budget and annual assessments. Special assessments are due on the date(s) specified in the resolution of the Board approving such assessment. The applicable provisions of Section 4.7.C.2 above shall apply. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in the notice of the special assessment. In the event that the funds are used for the specific purpose or purposes, and excess funds remain, the excess funds will be retained by the Association as part of the common surplus, and may, at the discretion of

the Board, be returned to the Owners or applied as a credit toward future assessments.

**7.5 Acceleration of Assessments.** If any annual or special assessment installment as to a Unit becomes more than thirty (30) days past due, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Unit's annual assessment for that fiscal year and/or special assessment, as applicable. The accelerated assessment shall be due and payable on the date on which the claim of lien is recorded. Once the claim of lien is recorded, the Association shall send the delinquent owner a notice that the right of acceleration has been exercised, which notice may be given as part of the notice of intent to foreclose as required by F.S. 718.116, or may be sent separately.

**7.6 Depository.** The Association shall maintain its accounts in such financial institutions or funds as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such person(s) as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles, except that all accounts shall be governmentally insured.

- A. **Proviso.** Notwithstanding the foregoing to the contrary, statutory reserve funds shall be maintained differently if so required by the Condominium Act or Administrative Rules as amended from time to time.

**7.7 Financial Reporting.** The Board of Directors shall have performed and shall provide such form of accounting as required by applicable provisions of the Condominium Act as amended from time to time. The Board of Directors shall mail or hand deliver the form of accounting to each Owner as required by the Condominium Act as amended from time to time.

**7.8 Fiscal Year.** The fiscal year for the Association shall be from January 1st through December 31st, unless otherwise voted by the Board of Directors from time to time.

**7.9 Annual Election of Income Reporting Method.** Based on competent advice, the Board of Directors shall make a determination annually of the method by which the

Association's income shall be reported to the Internal Revenue Service, based upon the method which yields the lowest tax liability.

**Section 8. SYSTEM OF FINES FOR NON-COMPLIANCE.**

**8.1 Authority and Scope.** The Committee referenced below may impose fines on any Owner and Unit for any violations of the Declaration, By-Laws and Rules and Regulations; as amended from time to time; and/or violations of the law; by Owners or the Owners' tenant(s); and/or their family members, agent(s), guest(s), visitor(s), servant(s), etc.

**8.2 Owner is Liable.** Each and every such violation shall be the responsibility of and attributed to the Owner (and his Unit) regardless of whether the offending party is in fact the Owner or the Owner's tenant(s), or their family, agent(s), guest(s), visitor(s), servant(s), etc. As such, the Owner is responsible for the actions of the Owner's tenant(s) and family, agent(s), guest(s), visitor(s), servant(s), etc.

**8.3 Written Notice Required; Contents.** No fine shall be imposed against an Owner for any violation unless and until the offending party or parties (which always shall include the Owner) has/have been given not less than fourteen (14) days written notice of the following:

- A. The Owner responsible for the violation(s).
- B. The nature of the violation and the name(s) of the violator(s), if known.
- C. The maximum amount of fine for each violation of the particular provision of the Condominium Documents, and/or Rules and Regulations and/or law.
- D. The date, time and place of a meeting, at which meeting the Committee referred to in Section 8.6 below shall determine whether the Owner (for himself/herself, family guests, servants, agents, etc., or other occupants of the Unit) and his Unit, is guilty of the violation, and if so, shall impose a fine for the violation.

- E. The Association shall be permitted to include in the Committee meeting notice, information that each day that the violation continues shall constitute a separate violation resulting in a separate fine.

8.4 Level of Fines. A fine for each violation shall be in amount(s) as set by the Committee not to exceed the maximum amount permitted by the Condominium Act as amended from time to time. This fine may be levied at the particular rate for each day or other period that the violation occurs, on a running per day/periodic basis, so long as the Committee's notice informs the offending party or parties of this possibility. The maximum total fine shall be as provided for in the Condominium Act as amended from time to time.

8.5 Record Keeping. The Association shall maintain a file of all notices issued and findings of the Committee in order that a record of offenses and offenders may be kept.

8.6 Hearing Before Committee of Owners.

- A. A party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, to have counsel present, and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association.
- B. Failure of the Owner and the violator in question to appear at the scheduled hearing may result in the automatic vote by the Committee that the Owner is in violation, whereupon the fine may be levied without further advance warning.
- C. The Committee shall be comprised of such members as provided for in the Condominium Act and Administrative Rules, as amended from time to time and in the absence of such provision, then as selected by the Board of Directors.

8.7 Collection of the Fine. Once a fine is deemed to be due and owing, the Association shall provide written notice to the Owner of the fine due and owing, with due date for payment.

**8.8 Concurrent Remedies.** The fine system may be invoked independently of or concurrently with any other remedies provided for in the Condominium Documents or Law. As such, the fine system is not a condition precedent to the Association's pursuit of other remedies available to it under the Condominium Documents or under the law. Also, the fact that a fine is levied and/or paid does not constitute compliance with the Condominium Documents, Rules and Regulations and law, if in fact the violation(s) remain(s).

**8.9 Late Fees.** The imposition of late fees shall not be subject to the notice and procedural provisions of this Section 8.

**Section 9. PARLIAMENTARY RULES.** ROBERTS' RULES OF ORDER (latest edition) shall govern the conduct of meetings of the membership and Board of Directors when not in conflict with the Condominium Documents or applicable Law.

**Section 10. EMERGENCY BY-LAWS.** The following shall apply to the extent not prohibited by the Condominium Act.

**10.1** The Board of Directors may adopt By-Laws to be effective only in an emergency defined in Section 10.5 below. The emergency By-Laws, which are subject to amendment or repeal by the members, may make all provisions necessary for managing the Association during an emergency, including:

- A. Procedures for calling a meeting of the Board of Directors;
- B. Quorum requirements for the Meeting; and
- C. Designation of additional or substitute Directors.

**10.2** The Board of Directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the Association are for any reason rendered incapable of discharging their duties.

**10.3** All provisions of the regular By-Laws consistent with the emergency By-Laws remain effective during the emergency. The emergency By-Laws are not effective after the emergency ends.

10.4 Corporate action taken in good faith in accordance with the emergency By-Laws:

- A. Binds the Association; and
- B. May not be used to impose liability on a Director, officer, employee, or agent of the Association.

10.5 An emergency exists for purposes of this Section 10 if a quorum of the Association's Directors cannot readily be assembled because of some catastrophic event.

Section 11. AMENDMENT OF THE BY-LAWS. All amendments to the By-Laws shall be proposed and adopted in the following manner:

11.1 Proposal. Amendments to these By-Laws may be proposed by a majority of the entire membership of the Board of Directors or by written petition signed by at least twenty-five percent (25%) of the voting interests of the members of the Association. Only one co-owner of a Unit need sign the petition for that Unit.

11.2 Procedure, Notice and Format. In the event that any amendment is proposed by the Board of Directors, then the Board may propose the amendment to be considered at the annual or a special members' meeting. In the event that any amendment was proposed by written petition of the members, then the Board shall have forty (40) days from its receipt of the petition or ten (10) days after its next regular meeting, whichever time period is greater, to certify that the proper number of owners executed the petition. Once certified, the Board shall call a meeting of the members to vote on the amendments within sixty (60) days after certification of the signatures. An amendment may be considered at the annual or a special members' meeting. The full text of any amendment to the By-Laws shall be included in the notice of the members' meeting of which a proposed amendment is considered by the members. New words shall be inserted in the text by underlining and words to be deleted shall be lined through with hyphens; however, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of By-Laws. See provision \_\_\_\_\_ for present text."

**11.3 Vote Required.** Except as otherwise provided by Florida law, or by specific provision in these By-Laws, these By-Laws may be amended by concurrence of not less than a majority of the entire membership of the Board of Directors then serving and not less than two-thirds of the voting interests of all members of the Association. If the amendments were proposed by a written petition signed by the members pursuant to Section 11.1 above, then the concurrence of the Board of Directors shall not be required.

**11.4 Certificate; Recording; Effective Date.** A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the By-Laws, which certificate shall be in the form required by law and shall be executed by any officer of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the public records of the County. The Certificate of Amendment shall, on the first page, state the book and page of the public records where the Declaration is recorded.

**11.5 Provisos.** Notwithstanding any provision in these By-Laws to the contrary:

- A. No amendment shall operate to unlawfully discriminate against any Owner or Unit or class or group of Units.
- B. An Amendment to these By-Laws that adds, changes, or deletes a greater or lesser quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.
- C. Any emergency By-Laws adopted pursuant to Article 10 of these By-Laws may be adopted or amended by the vote of a majority of the entire Board of Directors at the time there is no emergency, or by a lesser vote as determined by the Board in the event of an emergency; such By-Laws must be recorded, and shall become effective as resolved by the Board of Directors. This Section 11.5.C of the By-Laws shall not preclude the members from amending or repealing such emergency By-Laws as provided in Sections 11.1 through 11.4 above. No emergency By-Laws amended or repealed by the members shall be amended by the Board of Directors, without

following the procedures set forth in Sections 11.1 through 11.4 above.

**Section 12. INDEMNIFICATION.**

12.1 To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director, every officer, and every member of a committee of the Association against all expenses and liabilities, including attorneys' fees, actually and reasonably incurred by or imposed on him/her in connection with any legal proceeding for settlement or appeal of such proceeding (and including administrative proceeding) to which he/she may be a party because of his/her being or having been a Director, officer or member of a committee of the Association. Indemnification of Directors and Officers shall also be that provided for in Section 617.028, Florida Statutes, as amended from time to time. Indemnification shall include an advance of the Director's, officer's or committee member's attorneys' fees and defense costs, provided that the Director or officer provides the undertaking assurance required by F.S. 607.0850(6); the foregoing is conditioned upon the Director, officer or committee member agreeing to use counsel of the Association's choosing, if the Association so conditions. In the event of a conflict between this Section 12 and said statute, the conflict shall be resolved in favor of providing the broadest protection possible to Directors, officers and committee members. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his/her actions or omissions to act were material to the cause adjudicated and involved:

- A. Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor; or
- B. A violation of criminal law, unless the Director, officer or committee member had no reasonable cause to believe his/her action was unlawful or had a reasonable cause to believe his action was lawful; or
- C. A transaction from which the Director, officer or committee member derived an improper personal benefit.

In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.

12.2 Insurance. The Association is empowered to purchase directors, officers and other insurance to provide protection to persons covered by this Section 12.

CERTIFICATE OF ADOPTION OF THE  
AMENDED AND RESTATED BY-LAWS

THE UNDERSIGNED, being the duly elected and acting president and secretary of PORPOISE BAY VILLAS CONDOMINIUM ASSOCIATION, INC. hereby certifies that the foregoing was approved by not less than a majority of the entire membership of the Board of Directors on February 26, 2000, at a special board meeting called for the purpose, with quorum present; and was approved by not less than two-thirds of the voting interests of all the members of the Association accomplished at an Owners' meeting, held on MARCH 26, 2000, called for the purpose, with quorum present.

The foregoing both amend and restate the By-Laws in their entirety.

EXECUTED this 9th day of April, 2001.

WITNESSES:

Sign Nikki Monahan

Print Nikki Monahan

Sign Amy Cavasini

Print Amy Cavasini

PORPOISE BAY VILLAS  
CONDOMINIUM ASSOCIATION, INC.

BY: Sign Jeffrey Lockhart  
PRESIDENT

Print Jeffrey Lockhart  
Current Address 300 Harbour Dr. #205D  
Vero Beach, FL 32963

OR 1451 PG 0919

Sign Nikki Monahan

Print Nikki Monahan

Sign Amy Cavasinni

Print Amy Cavasinni

BY: Sign Dois A. Dalue  
SECRETARY

Print Dois A. Dalue  
Current Address 300 Harbor Dr. #510  
Vero Beach, FL 32963

PORPOISE BAY VILLAS CONDOMINIUM AMENDED BY-LAWS