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DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
CATALINA BAY

THE STATE OF TEXAS §  
  §  
COUNTY OF HOOD §

**DECLARATION OF COVENANTS, RESTRICTIONS AND  
EASEMENTS**

This document, titled **DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS** (this "Instrument") is made and executed on the 10th day of July, 2003 by Catalina Bay Owners Association, Inc. (the "Association") and MW Catalina Ltd. ("MWC").

**BACKGROUND AND RECITALS**

MW Catalina Ltd. is developing a residential addition to the City of Granbury, Hood County, Texas, upon the property described on Exhibit "A" attached hereto.

Recognizing that it is desirable and necessary to agree and cooperate with respect to the operation and maintenance of the land which is described on Exhibit "A" hereto (the "Subject Property"), the Association, MWC and MWC intend under this instrument to grant to each other and/or to the owners of lots in the Subject Property certain easements and rights. The Association and MWC also intend to provide herein for certain obligations and restrictions with respect to the operation, use, maintenance, and appearance of the Subject Property. Such easements, obligations, covenants, conditions, and restrictions shall run to the benefit of and bind the Association, MWC and their respective successors in ownership of lots within the Subject Property from time to time, and shall constitute covenants running with the land.

**NOW, THEREFORE**, in consideration of the mutual grants, covenants, and agreements made herein, the Association, and MWC hereby grant, covenant, and agree as follows:

**ARTICLE 1.  
DEFINITIONS**

1.1 "Assessment" means regular and special assessments levied for the maintenance, administration repair, and replacement of Common Property, as provided in Article VI, and individual assessments levied pursuant to Article VI.

1.2 "Association" means Catalina Bay Owners Association Inc., a Texas corporation whose members are the owners of the Lots.

1.3 "Common Property" means the following areas or improvement in the Subject Property whether or not they are so designated on any deed, plat, map, survey, or recorded instrument:

- 1) any modification, replacement, addition, or improvement to the Private Streets, (including any gates, guard stations adjacent to gates, fountains, and landscaped islands); and

- 2) other areas labeled "Canal Area" or labeled "easement" on the map attached as part of Exhibit "A" hereto;
- 3) the area labeled "Greenbelt Area" on the map attached as Exhibit "A" hereto and any walkways, jogging trails, bicycle trails and other improvements and any landscaping located therein;
- 4) bulkheads, breakwaters, navigation buoys located on the shoreline or in the waterways adjacent to any one or more of the Lots; and
- 5) other areas or structures declared to be Common Property by means of a duly approved and executed amendment to this Instrument.

1.4 "Developer" means MW Catalina Ltd., a Texas limited partnership.

1.5 "Lot" means a portion of the Subject Property intended for independent ownership and improved or to be improved with a single family residence (a "House"). Where the context indicates, Lot includes any structure on the Lot. For purposes of this instrument, the term "Lot" does not include the Common Property located within the Subject Property.

1.6 "Owner" means a person or persons who collectively own a 100% fee interest in a Lot, but does not include a person who holds a lien on a Lot as security for performance of an obligation.

1.7 "Private Streets" means the eleven (11) private streets that lie within the Subject Property, as more particularly described on Exhibit "A" thereto, including without limitation any cul-de-sac portions thereof.

## ARTICLE II. SUBJECT PROPERTY

The Subject Property, as shown on Exhibit "A" hereto, including every Lot, building, and all Common Property, are and shall be held, transferred, sold, conveyed, leased, and occupied subject to the provisions of this instrument, and any rules promulgated pursuant to this instrument, as either may be amended from time to time. By accepting a deed to a Lot, every Owner agrees to be responsible to the other Owners and to the Association for his conduct and compliance with this instrument and the rules promulgated pursuant to Article IX. Further, each Owner agrees to be responsible for the conduct and compliance of his tenants, and of his and his tenant's family, guests, employees, agents, and contractors. Nothing contained in this instrument shall be understood or construed to prohibit or interfere with any rights, reservations, or easements expressly granted herein to Developer or the Association.

## ARTICLE III. ARCHITECTURAL CONTROL

3.1 Architectural control of construction of houses and all other improvements within the Subject Property shall be vested in an Architectural Control Committee (sometimes referred to

herein as the "Committee") consisting of either the Construction Group, as hereinafter described, or the Board, in the following manner:

- (a) The Construction Group shall consider and may act as the Committee only with respect to requests for approvals or variances made by or on behalf of Class B Members. Any requests for approvals or variances made by or on behalf of Class A Members must be considered and acted upon only by the Board, under which circumstances, the Board will be acting as the Committee. Provided, however, that for purposes of this Section, a Class B Member shall be treated as a Class A Member commencing upon occupancy of the house constructed on such Class B Member's Lot (with respect to such Lot only).

The Construction Group shall be composed of three (3) or more individuals selected and appointed by Developer. The Construction Group shall use its best efforts to promote and ensure a high level of quality, harmony and conformity throughout the Subject Property.

A majority of Construction Group's members may act on behalf of the entire Construction Group. In the event of the death or resignation of any member of Construction Group, Developer shall have full authority to designate and appoint a successor. No member of the Construction Group shall be entitled to any compensation for services performed hereunder and neither the Construction Group nor any of its members shall be liable to any Owner, for any claims, causes of action or damages of what every kind (except where occasioned by gross negligence) arising out of service performed, actions taken, or inaction in connection with any undertaking, responsibility, or activity hereunder or request for same.

The Board shall function as the representative of the Owners of the Lots for the purposes herein set forth, as well as for all other purposes consistent with the creation and preservation of a first-class residential development. The Board shall use its best efforts to promote and ensure a high level of quality, harmony and conformity throughout the Property.

A majority of the members of the Board may act on behalf of the entire Board or the Board may appoint an advisory committee to act on behalf of the Board. No member of the Board or of any advisory committee shall be entitled to any compensation for service performed hereunder and neither the Board, any of its members, nor the members of any advisory committee shall be liable to any Owner, for any claims, causes of action or damages of what ever kind (except where occasioned by gross negligence) arising out of service performed, actions taken, or inaction in connection with any undertaking, responsibility, or activity hereunder or request for same.

- (b) No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Lot until all plans and specifications and a plot plan have been submitted which the Committee finds adequate with respect to the following matters:

- (i) quality of workmanship and materials; adequacy of site dimensions; adequacy of structural design; proper facing of main elevation with respect to nearby streets;
  - (ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
  - (iii) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and improvements situated thereon, and the impact of any drainage arrangements;
  - (iv) the other standards set forth within this Instrument (and any amendments hereto) or as may be set forth within bulletins promulgated by the Committee, or matters in which the Committee has been vested with the authority or render a final interpretation and decision.
- (c) Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved" and returned to the Owner or his designated representative marked "Approved," and accompanied by a statement of complete approval or approval based on certain conditions and specifications. If found not to be in compliance with this Instrument, one set of such plans and specifications shall be returned marked "Disapproved," accompanied by a reasonable statement of items found not to comply with (as it may be amended from time to time). Any modification or change to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval. The approval or disapproval of the Committee, as required herein, shall be narrative and in writing. If the Committee, or its respective designated representative, fails to approve or disapprove such plans and specifications within thirty (30) days after the date of submission, then approval shall be presumed; provided, however, that no such approval shall be presumed if the request is submitted by or on behalf of a Class B Member to the Board as the Committee or if the request is submitted by or on behalf of a Class A Member to the Construction Group as the Committee. Further provided, however, that nothing in this paragraph shall affect in any way the method for seeking or granting variances, as described in the following paragraph, nor shall any failure of the Committee to act on a variance request within any particular period of time constitute the granting or approval of any such variance request.
- (d) Upon submission of a written narrative request for same, the Committee may, from time to time, in its sole discretion, permit Owners to construct, erect, or install improvements which are at variance from the requirements and restrictions of this Instrument or which may be promulgated in the future. In any case, however, such requested variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community. No member of the Committee shall be liable to any Owner or other person

claiming by, through, or on behalf of any Owner, for any claims, causes of action, or damages arising out of the granting or denial of, or other action or failure to act upon, any variance request by any Owner or any person acting for or on behalf of any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Committee's right to strictly enforce this Instrument and any amendments hereto against any other Owner. Each such written request must identify and set forth in narrative detail the specific restriction or standard from which a variance is sought and describe in complete detail the exact nature of the variance sought. Any grant of a variance by the Committee must be in writing and must identify in narrative detail both the standard from which a variance is being sought and the specific variance being granted. Any variance granted by the Committee shall be considered a rule made under this Declaration.

- (e) The Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Instrument; provided, however, that the Construction Group may publish such bulletins only with respect to Class B Members and the Board may do so only with respect to Class A Members. Such bulletins shall supplement this Instrument and are incorporated herein by reference. Although the Committee shall not have unbridled discretion with respect to taste, design and any absolute standards specified herein, the Committee shall be responsive to technological advances or general changes in architectural designs and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand).

#### ARTICLE IV. CONSTRUCTION RESTRICTIONS

4.1 In addition to the Initial Rules and Regulations attached as Exhibit "B" hereto, all Lots within the Subject Property shall be subject to the following restrictions:

- (a) Building Envelopes. Each house must be placed within the building envelope established per the Committee and complying with building setback lines shown established per the plat of subdivision for the Subject Property.
- (b) Minimum Square Footage. Minimum square footage of houses shall be as follows: 3,000 square feet (houses on Lots 1 through 16); 2,500 square feet (houses located on Lots 17 through 54, Lots through Lots 93, Lots 101 through 132, and Lots 139 through 194)); 2,200 square feet (houses located Lots 55 through 72, Lots 94 through 100, and Lots 133 through 138). Computation of minimum square footage shall be done excluding porch and garage square footage.
- (c) Exterior Siding. Each house shall have exterior siding which is at least 80% composed of brick, masonry, or a combination of brick and masonry. Windows and doors shall be excluded in determining compliance with this restriction.

- (d) Maintenance. Each house shall be maintained in good condition and repair.
- (e) Structural Changes. No change to structural portions of a house (whether interior or exterior) shall be made without the prior written consent of the Association.
- (f) Exterior Changes. No change to exterior portions of the house (whether structural or non-structural) should be made without the prior written consent of the Association. A change to the color of wood trim, brick, or roof shingles, or the placement of any air conditioning units, evaporative coolers, solar equipment, or other fixtures or equipment on the roof, is a change to an exterior portion of a house which requires the prior written approval of the Association.
- (h) Structures Other Than Houses. No buildings or other improvements (such as mailboxes, fences, swimming pools, children's swings or other play equipment) shall be placed on a Lot without the prior written consent of the Association. Below-ground swimming pools may be installed only with the prior written approval of the Association.
- (i) Roofs. All roofs shall be (i) approved by the Architectural Control Committee and (ii) otherwise be in compliance in all respects with applicable City of Granbury ordinances. The roof pitch of any structure shall be eight (8) feet by twelve (12) feet minimum and twelve (12) feet by twelve (12) feet maximum. Asphalt composite shingles and wood shake shingles shall not be permitted.
- (j) Building Lines. All residences or dwellings erected or placed on any Lot shall face the road or street adjacent to the Lot as shown on the recorded plat of the Subject Property. No portion of such dwelling or residence shall be nearer to the front property line of said Lot than as designated on the recorded plat of the Subject Property or the attached Site Plan. No structure or improvement of any kind shall be nearer to the side property line of any Lot or the rear property line of any Lot than as designated on the recorded plat of the Subject Property or the attached Site Plan. Regardless of setback lines applicable to rear property lines and designated on the recorded plat, in no event will any dwelling or other type of building or structure (including swimming pools) be erected within 20 feet of the rear property line of any Lot, or within 20 feet of any waterway abutting any Lot. No structure or improvement of any kind shall be constructed or placed upon any Lot outside any perimeter fencing upon such Lot. In addition to the foregoing restrictions, Lots 56, 57, 58 and 59 are subject to wider rear yard set back lines, and Lot 1 is subject to a wider side yard set back line, than those referenced on the Site Plan. Such additional set back line restrictions are set forth on the page labelled "Rider 3" attached to this Instrument and made a part hereof.
- (k) Fences. All fences shall be subject to the prior written approval of the Architectural Control Committee. No chain link fences or other wire type fences shall be erected or located on any Lot so as to be visible from the front, side or rear of the Lot. No fence wall or hedge shall be erected, or placed on any Lot nearer to any street than the minimum building setback line indicated on the recorded plat of the Subject Property or the attached Site Plan. No fence, wall or hedge shall exceed six (6) feet in height. Any fencing, wall or hedge of a Lot

(perpendicular to front property line) shall comply with any supplemental Rules and Regulations hereafter enacted by the Board. Finally, no chain link fences will be allowed, and no fences or walls constructed of wood will be allowed.

- (l) Signs. No sign or signs shall be displayed to the public view on any Lot without the prior written approval of the Architectural Control Committee. There shall be no signs which are temporary in nature, (i.e. political or "garage sale" signs).
- (m) Reserved Easements; Installation of Utilities. All Private Streets, Canal Areas, Greenbelt Areas and easements shown or established per the recorded plat of the Subject Property or on the Site Plan attached hereto have been reserved for the purposes indicated. No Owner may erect any structure of any type whatsoever in these areas, nor may an Owner use the surface of such an area for any private use. With respect to easement areas, as well as any other areas described within recorded easement documents, and also with respect to all of the Common Property, any and all bona fide public utility service companies shall have the right of access, ingress, egress, regress and use of the surface estate for the installation and maintenance of underground utility facilities, provided the Association has first issued written approval to such public utility companies.

No microwave tower, cellular towers, telephone poles, or other aerial utility facilities of any type (except meters, risers, service pedestals and other surface installations not exceeding four feet in height necessary to maintain or operate appropriate underground facilities) shall be erected or installed within the Subject Property, whether upon Lots, easements, Private Streets, or rights-of-way of any type, either by a utility company or by any other person or entity (including by not limited to any person owning or acquiring any part of the Subject Property) and all utility service facilities (including but not limited to water, sewer, gas, electricity, cable and telephone) shall be buried underground under Common Property for the purpose of serving any structure located on any part of the Subject Property.

4.2 No buildings or other above-ground improvements will be constructed by Developer or the Association upon any Common Property, except that the Association may, at the Association's cost and expense, develop and construct bulkheads, navigational buoys, off-shore breakwaters and groins, street lighting, pedestrian pathways, signage, and security gates within the Common Property (as and when constructed, such improvements shall constitute a portion of the Common Property, with the Association responsible for repair and maintenance of same.

4.3 Additional restrictions are set forth in Exhibit "E" attached hereto and made a part hereof.

#### ARTICLE V. GRANT OF STREET EASEMENT AND WATERWAYS EASEMENT TO ASSOCIATION

5.1 Subject to the provisions of this instrument, Developer hereby GRANTS AND CONVEYS to the Association, for the use and benefit of the Association and all present and

future Owners: (a) a non-exclusive and perpetual easement (the "Street Easement") over and across the Private Streets situated within the Subject Property, and all improvements thereon, to use same for purposes of ingress, egress, passage, and delivery by vehicles and pedestrians to and from the Subject Property and the placement of underground utility lines; and (b) a non-exclusive and perpetual easement (the "Waterways Easement") to utilize that portion of any Lot which may be submerged beneath waters of any area labeled "Canal Area" (same being shown on the site plan), for the purpose of navigation, dredging, placement of navigational buoys, and installation of any anti-erosion improvements the Association may in the future deem appropriate.

5.2 The Street Easement and Waterways Easement shall be deemed appurtenant to and run with the ownership of Lots until terminated per Section 15.7 hereof.

5.3 The Association may in its sole discretion permit the benefit of such Easements to run to the Owners, tenants and other occupants of Lots for the duration of such occupancy; but any such permissive use is not intended nor shall it be construed as creating any third-party beneficiary or other types of rights in or for the benefit of any person or persons, nor, in any event, shall any amendment of this Instrument ever require the consent or joinder of any person who is not an Owner.

5.4 The Street and Waterways Easements are granted subject to those matters of record in the Public Records of Hood County, Texas as of the date of this instrument. In particular, the plat of subdivision for the Subject Property imposes restrictions on the Street Easement.

## ARTICLE VI. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

6.1 **Membership.** Every Owner of a Lot shall automatically be and must remain a member of the Association (a "Member") in good standing. The Board of Directors of the Association may declare that an Owner is not a Member in good standing because of past unpaid assessments, fines, late charges, interest and legal fees. The Board of Directors may temporarily suspend the voting rights of any Member who is not in good standing until such past unpaid amounts are paid in full.

6.2 **Voting Rights.** The Association shall have three classes of voting membership:

**CLASS A:** Class A Members shall be all Members other than Class B and Class C Members. Class A Members shall be entitled to one (1) vote for each Lot which they own. When more than one person holds an ownership interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

**CLASS B:** Class B Members shall be any Owner who acquires a Lot for the purpose of construction or causing to be constructed a home thereon, for sale or lease to a third-party. Class B Members shall be non-voting members of the Association.

CLASS C: The Class C Member shall be Developer. The Class C Member shall be entitled to five (5) votes for each Lot which it owns and five (5) votes for each Lot owned by all Class B Members, until such time as Developer and the Class B Members collectively own less than 156 Lots, at which point the Developer shall cease to be a Class C Member and shall become a Class A Member.

6.3 Quorum, Notice and Voting Requirements. The quorum, notice and voting requirements of and pertaining to the Association are set forth within the Articles of Incorporation and Bylaws of the Association, as same may be amended from time to time.

#### ARTICLE VII. GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS

7.1 Powers and Duties. The affairs of the Association shall be conducted by its Board of Directors (hereinafter referred to as the "Board"). The Board shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association. The Board, for the benefit of the Common Property and the Owners, shall provide, and shall pay for out of available Association funds, the following.

- a. Care and preservation of the Common Property and the furnishing and upkeep of any desired personal property for use in the Common Property;
- b. Any private trash and garbage collection service and security arrangements;
- c. Taxes, insurance and utilities (including, without limitation, electricity for operation of street lighting, and water and sewer charges) which pertain to the Common Property only;
- d. The services of a person or firm (including Developer and any affiliates of Developer) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by a manager designated by the Board;
- e. Legal and accounting services; and
- f. Any other materials, supplies, furniture, labor and services obtained in connection with maintenance, repairs, structural alterations or new construction of buildings and other structures, which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

The Board shall have the following rights, powers and duties:

- (i) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Property;

- (ii) To enter into agreements or contracts with insurance companies, taxing authorities and the holders of first mortgage liens on the individual Lots with respect to: (i) taxes on the Common Property; (ii) insurance coverage (if any) on Common Property; and (iii) utility installation, consumption and service matters;
- (iii) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit or secured by such other assets of the Association as are as deemed appropriate by the lender and the Association;
- (iv) To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
- (v) To protect or defend the Common Property from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements;
- (vi) To make reasonable rules and regulations for the operation of the Common Property and the Lots and to amend them from time to time;
- (vii) To make available to each owner within ninety days (90) days after the end of each year an annual report;
- (viii) To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency;
- (ix) To enforce the provisions of this Declaration and any rules made hereunder and to fine, enjoin and/or seek damages from any Owner for violation of such provisions or rules.

7.2 Board Powers, Exclusive. The Board shall have the exclusive right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein. In the event or if for any reason the Board is not deemed authorized to act for and on behalf of the Association and the Members, then Developer shall have the power and authority to act for and on behalf of the Association and the Members, and the Association shall reimburse Developer for any and all reasonable expenses incurred in so acting.

7.3 Contract with Owners. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner (including, without limitation, Developer) for the performance, on behalf of the Association, of services which the Board is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for any consideration as the Board may deem proper, advisable and in the best interest of the Association.

7.4 Reserve Funds. The Board may establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and

may establish separate, trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and not net income to the Association.

#### ARTICLE VIII. ADMINISTRATION OF COMMON PROPERTY

8.1 Policy. The Common Property shall be administered for the benefit of the Owners of Lots.

8.2 Management. All decisions relating to the Common Property shall be vested in the Association. The Association shall have all powers and duties necessary for the administration, management, maintenance, operation, and regulation of Common Property, including but not limited to the following.

- a. To delegate the exercise of some or all of its powers and duties, from time to time, to one or more agents.
- b. To prepare, adopt, and amend budgets for revenues, expenditures, and reserves relating to Common Property.
- c. To maintain adequate reserves for periodic repair or replacement of Common Property elements, based on age, remaining useful life, quantity, and replacement cost.
- d. To levy and collect Common Property assessments.
- e. To hire and terminate agents, employees, and contractors, and to make contracts and incur liabilities.
- f. To adopt, amend, and enforce reasonable rules regulating the use, maintenance, repair, replacement, modification, improvement, and appearance of Common Property.
- g. To cause to be constructed buildings, structures and other improvements on the Common Property.
- h. To grant easements, leases, licenses, and concessions through or over Private Streets and any other portion of the Common Property.
- i. If notice and an opportunity to be heard are given, to impose reasonable fines for violations of rules regulating use of Common Property.
- j. To adopt, enforce, and amend rules regulating the collection of delinquent assessments and the application of payments. Also, to impose interest and late charges for late payment of assessments, and to levy returned check charges.
- k. To purchase insurance and bonds it considers appropriate or necessary.
- l. To remove anything that, in the opinion of the Association, reduces visibility on Private Streets, interferes with the use or maintenance of Common Property, or

detracts from the appearance of Common Property, including, if necessary, the removal of items located on individual Lots facing the Private Streets and Canal Area, or Lake Granbury.

- m. To tow or cause the removal of vehicles improperly parked on the Private Streets.
- n. To do anything necessary or desirable, and reasonably related to the functions, powers, and duties of the Association under this Article.
- o. To accept a conveyance of fee title in and to the Common Property, if and when Developer wishes to make such a conveyance.

#### ARTICLE IX. ASSESSMENTS

9.1 Purpose of Assessments. All Lots and Owners shall be subject to assessments which shall be the Owner's personal obligation and shall be supported by an assessment lien against the Owner's Lot as provided in this Article. Assessments shall be used (i) to improve, maintain, insure, repair, and restore Common Property, (ii) to finance the exercise of its powers and duties under this instrument, (iii) to fund reserve accounts, and (iv) to pay for any real estate taxes, insurance, utility bills, and other expenses which it is required by law or this instrument to secure or pay, or which in the opinion of the Association shall be necessary or proper for the operation and maintenance of Common Property or for the enforcement of the restrictions contained in this instrument. The decision of the Association with respect to the use of Assessments shall be final so long as made in good faith.

9.2 Basis of Assessments. Assessments for the Common Property shall be fixed at a uniform rate for all Lots, regardless of size, value, or location, except that any Lot owned by a Class B Member shall not be liable for regular or special Assessments until the earlier to occur of (i) the issuance of a City of Granbury certificate of occupancy for a home constructed on such Lot, or (ii) the date one (1) year after the closing of the sale of such Lot by the Developer, and no lot owned by the Class C Member (Developer) shall ever be liable for any regular or special assessments.

9.3 Payment. Each Owner shall make payment to the Association and its principal office or at such other place as the Association may otherwise direct. Payments shall be made in full regardless of whether an Owner has any dispute with the Association, another Owner, or any other person regarding any matter to which this instrument relates. No Owner may exempt himself from his assessment liability by waiver of the use or enjoyment of Common Property or by abandonment of his Lot. Payment of assessments shall be both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot. Each Owner, and each prospective Owner, is hereby placed on notice that such provision may operate to place upon him the responsibility for payment of assessments attributable to a period prior to the date he purchased his or her Lot.

9.4 Annual Budget. The Association shall prepare and approve an annual budget for the Common Property, taking into account the estimated income and expenses for the year, including contributions to reserve funds. The Association shall make a copy of the budget available to each Owner, although an Owner's failure to receive a copy of the budget shall not affect his liability for payment of any existing or future assessments.

9.5 Regular Assessments. Regular assessments shall be determined by reference to the annual budget. If the Association does not approve an annual budget or fails to determine new regular assessments for any year, or shall be delayed in doing so, each Owner shall continue to pay

the regular assessment as last determined. The regular assessment shall be paid in monthly installments.

9.6 Initial Rate. Effective as of the earlier to occur of (a) the date of the closing of the sale of a newly constructed home to a homebuyer or (b) the date one hundred eighty (180) days subsequent to the date of issuance of a certificate of occupancy for a newly constructed home, or (c) the date of sale of a Lot by Developer to a person or entity who is not in the business of constructing houses for sale to third parties, an initial regular assessment of \$3,000.00 shall be assessed and paid to the Association. Additionally, each Lot subject to regular assessment per Section 9.2. above shall pay \$75.00 per month through June 30, 2003. The monthly assessment shall be due on the first day of each calendar month.

9.7 Special Assessments. In addition to regular assessments, the Association may levy, in any calendar year, one or more special assessments for the purpose of defraying in whole or in part, expenses not anticipated by the annual budget or reserve funds, or to cover shortages in the annual budget if regular assessments prove insufficient. Special assessments shall be levied against all Lots in the same manner as regular assessments.

9.8 Individual Assessments. An individual assessment is any assessment levied against one or more, but fewer than all, of the Lots and their respective Owners. Individual Assessments may include, but are not limited to: interest, late charges and collection costs on delinquent Assessments; court costs and attorneys' fees; reasonable fines for violations of rules adopted pursuant to this instrument; reimbursement of damage caused to Common Property, if such damage was caused by the willful or negligent act of an Owner or a person for whom the Owner is responsible; reimbursement for costs incurred by the Association in bringing an Owner and his Lot into compliance with the provisions of this instrument; and any charge payable by an Owner pursuant to the terms of this instrument.

9.9 Reserve Funds. The Association shall establish and maintain in one or more separate interest-bearing accounts reserves for maintenance emergencies, and for repair and replacement of Common Property.

9.10 Control of Assessments.

- a. Assessment Increases. At least 60 days prior to the effective date of any proposed special Assessment or proposed increase in regular Assessments (collectively, "such increase"), the Association shall notify in writing the Owner of each Lot of the amount of the budgetary basis for, and the effective date of such increase. Such increase shall automatically become effective unless disapproved prior to its effective date by Owners of at least ninety percent (90%) of the Lots at a special meeting of the Association called for that purpose. If Owners so disapprove such increase, then and until such time as a revised budget shall have been determined, the budget in effect for the then-current year shall continue for the succeeding year.
- b. Improvements. Notwithstanding anything herein to the contrary, the Owners of at least a majority of the Lots must give their prior approval to expenditures for construction of any new improvements to the Common Property, the cost of which exceeds one-third of the then-annual budget.

ARTICLE X. ASSESSMENT LIEN

10.1 Assessment Lien. A lien in favor of the Association is created by recordation of this instrument, which constitutes record notice and perfection of the lien. The Association may, but shall not be required to, record a notice of lien. Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed or other conveyance, is deemed to covenant and agree to pay to the Association regular Assessments, special Assessments, and individual Assessments as described in the preceding Article. All Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the Lot and shall be secured by a continuing lien upon the Lot against which such Assessment is made.

10.2 Priority of Assessment Lien. The Association's Assessment lien against a Lot is superior to all other liens and encumbrances on such Lot, except only for (i) a lien for real property taxes and other governmental assessments or charges against the Lot; (ii) any lien or encumbrance recorded before this instrument is recorded; and (iii) a first vendor's lien, purchase money deed of trust lien, or home improvement lien recorded of record in the Real Property Records of Hood County, Texas before the date on which the Assessment sought to be enforced becomes delinquent.

10.3 Power of Sale. By acquiring an interest in a Lot, an Owner expressly grants to the Association a private power of nonjudicial sale in connection with the Assessment lien, whether it was so expressed in a deed or instrument or conveyance. By written resolution, the Association may appoint, from time to time, an agent, attorney-in-fact, or attorney at law to exercise the power of sale on behalf of the Association.

10.4 Notice and Release of Lien. To evidence the Assessment lien, the Association may, but shall not be required to, prepare written notice setting forth (i) the amount of any unpaid indebtedness; (ii) the name of the Owner of the Lot; and (iii) a sufficient legal description of the Lot. Such notice may be filed with the Hood County Clerk for recording in the Real Property Records of Hood County, Texas. After a cure or discharge of the default for which the notice was filed by the Association, the Association may cause to be recorded a release of such notice. The cost of preparing and recording a notice of lien or release of notice of lien shall be the expense of the defaulting Owner.

10.5 Foreclosure of Lien. The Association has the right to foreclose its Assessment lien judicially or by nonjudicial foreclosure pursuant to the power of sale created by this Article. Costs of foreclosure may be added to the amount owed by the Owner to the Association except that the Association may not foreclose a lien for Assessments consisting solely of fines and/or late charges. An Owner may not petition a court to set aside a sale solely because the purchase price at the foreclosure sale was sufficient to fully satisfy the Owner's debt. At any time before a nonjudicial foreclosure sale, an Owner may avoid foreclosure by paying all amounts due to the Association. A foreclosure sale by the Association shall be conducted in accordance with the provision of State law applicable to the exercise of powers of sale to foreclose contract liens, including Section 51.002 to the Texas Property Code. The Association may bid for and purchase the Lot (including any structures located thereon) at a foreclosure sale as a common expense of

the Association. The Association may own, lease, encumber, develop, exchange, sell, and convey any Lot so purchased.

#### ARTICLE XI. EFFECT OF NONPAYMENT OF ASSESSMENTS

11.1 Default in Payment of Assessment. Any regular, special or individual Assessment not received by the Association within 10 days from the due date of such Assessment shall be delinquent.

11.2 Remedies of the Association. Each Owner vests in the Association the right and power to bring all rights and remedies the Association may have hereunder and by law against an Owner delinquent in the payment of Assessments. The Association shall have the responsibility for prompt action to collect any and all delinquent Assessments. Under no circumstances, however, shall the Association be liable to any Owner, or any other person for failure or inability to enforce collections of an Assessment.

- a. Interest. In the event of default in the payment of an Assessment, the defaulting Owner shall be obligated to pay interest on the principal amount, from the due date thereof, at a per annum rate of interest to be determined by the Association, which rate may not exceed the maximum permitted by law. If the Association does not establish a rate from time to time, the rate shall be 10 percent.
- b. Late Charges. In addition to interest, the Association may levy reasonable late charges, in an amount to be determined by the Association and which may not exceed \$50.00 for each month the Owner's account is delinquent.
- c. Collection Expenses. An Owner in default shall reimburse costs, including attorneys' fees, incurred by the Association in collecting that Owner's debt.
- d. Acceleration. If an Owner is in default in payment of an installment of an Assessment, the Association may accelerate the remaining installments upon 10 days' prior written notice, whereupon the entire unpaid balance of the Assessment shall become due on the date stated in such notice. The Association may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law.
- e. Money Judgment. A suit to recover a money judgment for delinquent amounts may be maintained by the Association against the Owner without foreclosing or waiving the lien securing same. Hood County, Texas, shall be the venue for any such suit.
- f. Notice to Mortgagees. If an Owner defaults in payment of Assessments, the Association may notify other lienholders of the default and the Association's

intent to foreclose its lien. The Association shall notify any holder of a recorded lien against a Lot who has given the Association a written request for notification of the Owner's default of the Association's intent to foreclose its lien.

- g. Cumulative Remedies. The preceding remedies shall be in addition to and not in substitution for all other rights and remedies which the Association may have hereunder and by law, including the Assessment lien and the rights to foreclosure provided in the preceding Article.

ARTICLE XII. INSURANCE; REPAIR AND RESTORATION;  
SECURITY ARRANGEMENTS

12.1 Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Property, and any improvements thereon or appurtenant thereto, for the interest of the Association and of all Members thereof, in such amounts and with such endorsements and coverage as shall be considered good sound insurance coverage for properties similar in construction, location, and use to the Subject Property. Such insurance may include, but need not be limited to:

- a. Insurance against loss or damage to Common Property improvements by fire and other hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier;
- b. Public liability insurance on a broad form basis;
- c. Fidelity bond coverage for all officers and employees of the Association having control over the receipt or disbursement of funds; and
- d. Officers' and directors' liability insurance.

12.2 Insurance Proceeds. The Association and the Members shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association, as required in this Article XI remaining after satisfactory completion of repair and replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Property.

12.3 Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special assessment to cover the deficiency.

12.4 Security Arrangements. Developer and the Association may arrange for the utilization of a security gate at one or more entry points to the Subject Property. Developer and the Association hope that the security gate and private streets concept will discourage unauthorized vehicular and pedestrian traffic within the Subject Property and foster a higher degree of peace and tranquillity.

Although Developer and the Association reasonably believe that the existence and visibility of controlled access point(s) may discourage the commission of criminal acts (e.g.,

burglary, theft, etc.) within the Subject Property, nevertheless neither Developer nor the Association warrant or guarantee that: (a) such security arrangements are sufficient and adequate to diminish or eliminate the commission of crimes against persons or property; or (b) criminal acts will not be attempted or actually occur within the Subject Property. These security arrangements are not designed or intended to replace the conventional police and fire protection and paramedical services available for resident of the City of Granbury.

The Association may at its option carry public liability insurance generally covering bodily injury and property damage arising out of negligent acts by employees, or authorized representatives of the Association. The Association will not carry any insurance pertaining to, nor does it assume any liability or responsibility for, the real or personal property of the Owners (and their respective family members and guests).

Each Owner expressly understands, covenants and agrees with Developer and the Association that:

- a. neither Developer nor the Association has any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of each Owner;
- b. each Owner shall, from time to time and at various times, consult with reputable insurance industry representatives of each Owner's own selection to select, purchase, obtain and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner covering his or her real and personal property;
- c. each Owner releases and holds Developer and the Association harmless from any uninsured liability, claims, causes of action or damages of any kind or character whatsoever arising out of or related (directly or indirectly) to any and all aspects of the security system and private streets within the Subject Property, including, without limitation:
  - (i) the interviewing, hiring, training, licensing, bonding and employment of security personnel;
  - (ii) the instructions, directions and guidelines issued to or by the security personnel; and
  - (iii) the duties, performance, actions, inactions or omissions of or by the security personnel;
- d. each Owner will cooperate with Developer, the Association and the Architectural Control Committee in connection with the establishment, evolution and maintenance of reasonable controls on the pedestrian and vehicular traffic into and within the Subject Property and abide by any and all rules and regulations of the Association, as adopted and promulgated from time to time, related to the entry upon and use of any private streets and other Common Property, Subject Property, including without limitation those set forth herein.

**ARTICLE XIII. RULES AND REGULATIONS FOR  
COMMON PROPERTY AND LOTS**

13.1 Rules and Regulations. Use and enjoyment of the Subject Property is subject to the right of the Association to establish reasonable Rules and Regulations, and penalties for infractions thereof, governing without limitation the following matters:

- a. The use of the Private Streets by pedestrians and vehicles, including speed limits and parking restrictions;
- b. Signs on or visible from any of the Private Streets, including but not limited to the right to limit or prohibit leasing and for sale signs, and the right to regulate subdivision name signs and directional signs;
- c. The use and maintenance of a private patrol or limited access gate system for any of the Private Streets;
- d. Hazardous, illegal, or annoying materials or activities in and upon Common Property;
- e. Anything that interferes with the use, operation, or maintenance of Common Property or the administration of this instrument; and
- f. Liability of Owners to the Developer and/or the Association for damage done to any portion of the Common Property.

13.2 Drainage Restrictions. Neither the Association nor any Owner shall materially adversely affect the established pattern or volume of flow of surface water drainage over and across the Lots and Common Property unless an adequate alternative provision for proper drainage has been approved in writing by the Association.

13.3 Lots Rules and Regulations. Attached as Exhibit "B" hereto and made a part hereof are Initial Rules and Regulations imposing restrictions on use of Lots. Such Initial Rules and Regulations may also to some degree impose additional restrictions on the use of the Common Property.

#### ARTICLE XIV. AMENDMENT & TERMINATION

14.1 Termination. Termination means the termination of the term of this instrument and the easements, rights, and obligations created herein, and the subsequent distribution of any assets relating to Common Property in possession of the Association. Termination shall occur:

- a. In the event of eminent domain or condemnation, which results in the taking of all Lots;
- b. In the event of substantially total damage or destruction of improvements within the Subject Property, followed by a decision by Owners of at least two-thirds of the Lots to not repair or restore; or
- c. In all other circumstances, the decision to terminate must be approved by Owners of at least 90 percent of the Lots;

provided, however, the Street Easement granted to the Association in Article IV shall continue in full force and effect for so long as needed to provide vehicular access to any Lot benefited by such Easement.

14.2 Termination Agreement. Any decision by the Owners to terminate shall be evidenced by the execution of a termination agreement, as provided by Paragraph 13.4 below. Such termination agreement shall provide for the use and distribution of assets held by the Association in accordance with the Association's Articles of Incorporation.

14.3 Amendment. This Instrument may be amended from time to time by the affirmative vote, written consents, or any combination thereof, of Owners of at least ninety percent of the Lots; provided, however, that if the amendment affects fewer than all of the Lots or Owners in a subdivision, the amendment must also be approved by all of the Owners of the affected Lots. Notwithstanding the preceding sentence, rules and regulations in addition to those set forth in Exhibit "B" may be enacted from time to time solely by vote of the Board of Directors of the Association, and such additional rules and regulations need not be recorded in the Real Property Records of Hood County, Texas.

14.4 Effective Amendment or Termination. To be effective, each amendment to this Instrument and any termination agreement must:

- a. Reference the name of the subdivision and Association;
- b. Reference the recording date, volume, and page numbers of this Declaration and any amendments thereto;
- c. Be signed and acknowledged by an officer of the Association, certifying the requisite approvals of Owners, and the date or dates upon which same were obtained; and
- d. Be recorded in the Real Property Records of Hood County, Texas.

#### ARTICLE XV CERTAIN RIGHTS OF DEVELOPER

15.1 Construction Period. To ensure a complete and orderly build-out and sellout of the Lots, Developer will have the rights and privileges contained in this Article for a period ("Construction Period") not to exceed the earlier of: (i) the date five years from the date of the recording of this instrument, or (ii) the date 120 days after 80 percent of the Lots have been improved with single-family homes and conveyed to Owners other than home builders. In exercising its rights under this Article, Developer shall use its best efforts to minimize the negative effects of construction and marketing activities on Owners and residents.

15.2 Rights of Use. Subject to the limitation in the preceding paragraph.

- a. Developer shall have an easement and right to erect, construct, and maintain on any Lot or Common Property it owns whatever improvements Developer determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of Lots.

- b. Developer shall have an easement and right of ingress and egress in and over the Common Property for purposes of constructing improvements upon and maintaining the Common Property.
- c. For purposes of promoting, identifying, and marketing the Subject Property, Developer shall have an easement and right to place or install signs, banners, flags, display lighting, and seasonal landscaping on Common Property. Developer shall have the right to maintain, relocate, replace, or remove same from time to time.

## ARTICLE XVI. GENERAL PROVISIONS

16.1 General Enforcement. The Association shall have the right to enforce by legal means the provisions of this instrument, and the rules and regulations adopted pursuant to this instrument, and shall have the right to institute legal proceedings on behalf of or against the Owners.

16.2 Severability. Whenever possible, each provision of this instrument shall be interpreted in such manner as to be effective and valid. However, if the application of any provision of this instrument to any person or property shall be prohibited or held invalid by court order or otherwise, then such prohibition or invalidity shall not affect any other provision or the application of such provision to other circumstances and, to this end, the provisions of this instrument are severable.

16.3 Construction. The captions of articles and sections are inserted only for convenience and are in no way to be constructed as defining or modifying the text to which they refer. The singular shall be construed to mean the plural, when applicable, and the use of masculine or neuter pronouns shall include the feminine.

16.4 Examination of Books and Records. Each Owner, each mortgagee of a Lot, and the Association shall be permitted to examine the books and records relating to the Common Property at reasonable times on business days, after five (5) business days prior written notice.

16.5 Headings. The headings contained in this Instrument are for reference purposes only and shall not in any way affect the meaning or interpretation of this Instrument.

16.6 Notices; Record of Owners. Any notice required to be given to any Owner or to the Association under the provisions of this Instrument shall be deemed to have been properly delivered on the third business day following deposit in the United States mails, postage prepaid, certified or registered mail, addressed to the last known address of the person who appears as an Owner on the records of the Association at the time of such mailing. If the Association is uncertain as to which of several addresses an Owner desires to be used for notices from the Association, the Association shall send notices to both the street address of the Owner's Lot and to one (but not more than one) other address. Each and every Owner shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within thirty (30) days after a material change has occurred, various items of information helpful the Association such as: (a) the full name and address of the Owner; (b) the business address, occupation and telephone numbers of each Owner; (c) the description and license plate number of each

automobile owned or used by Owner and regularly kept at the Subject Property; (d) the name, address and telephone numbers of other local individuals who can be contacted (in the event the Owners cannot be located) in case of an emergency; (e) a statement as to whether the Association should send notices to the Owner at the address of his Lot or to his or her business address.

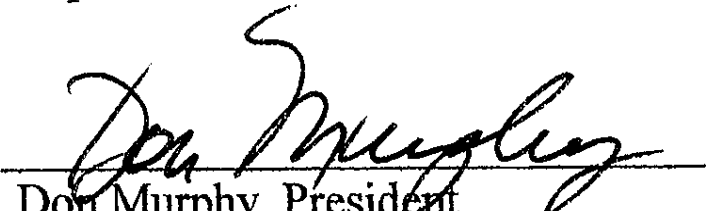
16.7 Duration. This Instrument and the Covenants, Conditions and Restrictions herein contained shall run with and bind the Subject Property Declaration, and shall inure to the benefit of and be enforceable by the Association, its legal representatives, successors, and assigns, for a term ending January 1, 2050, after which time this Instrument shall be automatically extended for two (2) successive periods of ten (10) years each unless a document signed by not less than seventy-five percent (75.0%) of the then Owners has been recorded in the Official Real Property Records of Hood County, Texas, expressly providing that this Instrument is terminated in whole or in part; provided, however, that no such document shall be effective unless made and recorded thirty (30) days in advance of the effective date of such change.

IN WITNESS WHEREOF, Catalina Bay Owners Association, Inc. and MW Catalina Ltd. have caused this instrument to be executed by their authorized representatives to be affective on the date first written above. By signing below, the President of Catalina Bay Owners Association Inc. acknowledges that this instrument was approved by owners of at least 70 percent of the Lots at a special meeting of the Association on July 10th, 2003, called for that purpose.

MW CATALINA LTD.

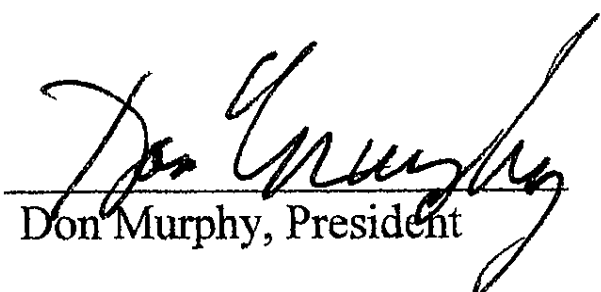
By: GRANBURY/MW DEVELOPMENT CORP.,  
its equal partner

By:

  
Don Murphy, President

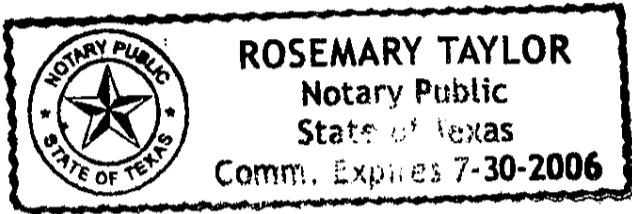
CATALINA BAY OWNERS ASSOCIATION, INC.

By:

  
Don Murphy, President

THE STATE OF TEXAS §  
  §  
COUNTY OF HOOD §

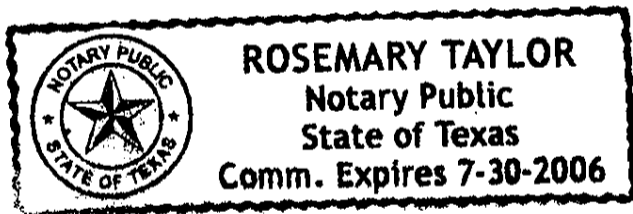
This instrument was acknowledged before me on this 10<sup>th</sup> day of July, 2003, by Don Murphy, President of Granbury/MW Development Corp, a Texas corporation and general partner of MW Catalina Ltd., a Texas limited partnership, on behalf of said corporation and partnership.



Rosemary Taylor  
Notary Public, State of Texas

THE STATE OF TEXAS §  
  §  
COUNTY OF HOOD §

This instrument was acknowledged before me on this 10<sup>th</sup> day of July, 2003, by Don Murphy, President of CATALINA BAY OWNERS ASSOCIATION, INC., a Texas nonprofit corporation, on behalf of said corporation.



Rosemary Taylor  
Notary Public, State of Texas

**EXHIBIT "A"**  
PAGE 1 OF 17

The legal description of the Subject Property is:

Lots 1 through 194, Catalina Bay II Addition, an addition to the City of Granbury, Hood County, Texas, per the plat recorded at Slide B-236, Plat Records of Hood County, Texas.

A metes and bounds description of the Subject Property is set forth on the above-referenced recorded plat. A metes and bounds description of the Subject Property is set forth on page 2 of this Exhibit "A".

EXHIBIT "B"  
INITIAL RULES AND REGULATIONS

Section 1.1. General Restriction. Use of Lots and Common Property will be subject to the restrictions set forth in this Exhibit "B".

Section 1.2. Motorized Vehicles. No trucks, trail bikes, recreational vehicles, motor homes, motor coaches, campers, trailers, boats or boat trailers, or similar vehicles other than passenger automobiles or pickup or utility trucks with a capacity of three-quarters of a ton or less shall be parked, stored, or in any manner kept or placed on any portion of the Subject Property except in an enclosed garage attached to a house. This restriction, however, shall not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing service to the Subject Property or for the initial construction by Developer or other Owners.

Section 1.3. Excavation, Swimming Pools. No excavation shall be made except in connection with improvements to the Subject Property approved as provided in the Project Documents. For purposes of this Section, "excavation" shall mean any disturbance of the surface of the land (except to the extent reasonably necessary for approved landscape planting) which results in a removal of earth, rock, or other substance a depth of more than 18 inches below the natural surface of the land. Prior to construction of a below-ground swimming pool, an Owner should contact the Association to coordinate the point of construction access and assure that damage is not done to Common Property. Pools may not be backwashed into drainage ditches, drainage-ways, streets, any Canal Areas, or other portions of the Common Property. All backwash water is to be retained on the Owner's Lot. If necessary, a hole should be dug and filled with rocks ("French drain") to provide for the needed on-site water drainage capacity. Swimming pool construction and fencing requirements may also be regulated by the City of Granbury. The City should be contacted by the Owner to determine safety requirement for the pool. Pool plans will require the prior written approval of the Association. Above ground pools are expressly prohibited.

Section 1.4. Electrical and Telephone Service. All electrical and telephone service installation will be placed underground.

Section 1.5. Water and Sanitation. Each structure designed for occupancy or use by human beings shall connect with water and sanitation facilities as shall be made available from time to time by the City of Granbury, Texas.

Section 1.6. Wells. No well from which water, oil, or gas is to be produced shall be dug, nor shall storage tanks, reservoirs, or any installation of power, telephone, or other utility lines (wire, pipe, or conduit) be made or operated anywhere on the Subject Property except in connection with water works operated by public agencies or duly certified public utility companies.

Section 1.7. Flagpoles, Signs. No flagpoles or signs of any kind shall be displayed to the public view on or from any portion of the Property except those flagpoles or signs approved by the Association, signs of Developer or its affiliates or assigns or Developer's realtors, or signs required by law.

Section 1.8 Pets. No animals, livestock, or poultry of any kind shall be kept, raised, or bred on any portion of the Subject Property, except dogs, cats, caged birds and aquarium fish (the kind and number of which may be regulated or prohibited from time to time by the Association in its sole discretion). It is expressly understood that goats, chickens, guinea hens, peacocks, lamas, alpacas, rabbits, pigeons, pigs, snakes, sheep, ducks and horses are not permitted pets, and shall not be kept on any portion of the Subject Property. All other types of animals may not be kept on any portion of the Subject Property without the prior written permission of the Association.

Section 1.8.1. Pet Housing Permitted pets must be housed at all times within an Owner's home or attached enclosed garage, and may not be permitted to run at large at any time. No outdoor houses or shelters for pets may be placed on any Lot.

Section 1.8.2. Pooper Scooper. No resident may permit his pet to relieve itself on any portion of the Common Property. The Association may levy a fine against a Lot and its owner each time feces is discovered on the Common Property which is from an animal in the custody of such Lot's resident or owner.

Section 1.9 Drainage. No Owner shall do or permit any work, construct any improvements, place any landscaping, or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Subject Property, except to the extent such alteration and drainage pattern is approved in writing by the Association and except for rights reserved to Developer to alter or change drainage patterns.

Section 1.10 Trash. No trash, ashes, garbage or other refuse shall be thrown or dumped on any area within the Subject Property. There shall be no outdoor burning or other disposal of refuse. Each Owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and from the wind and protected from animal and other disturbances. Owners and their tenants and guests shall not put out trash, ashes, garbage or other refuse for pick-up prior to 5:00 p.m. on the calendar day preceding the day upon which same is to be picked up and removed. The Association encourages Owners to arrange for neighbors to assist them in complying with this Section 1.10 if they plan to leave on vacation or for other extended periods of time.

Section 1.11 Construction Regulation Guidelines. All Owners and contractors shall comply with construction regulations enacted from time to time by the Association. Such regulations may affect, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors, and Owners' representatives on the Subject Property at any time; the conservation of landscape materials; and fire protection.

Section 1.12 Temporary Structures. No temporary structures shall be permitted except as may be determine to be necessary during construction and as are specifically authorized in writing by the Association.

Section 1.13. Compliance with Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances,

and other governmental or quasi-governmental regulations with respect to all or any portion of the Subject Property.

Section 1.14. No Outside Clotheslines. No laundry or wash shall be dried or hung outside any house.

Section 1.15. Parking and Auto Repair. No automobiles or other vehicles shall be parked in any street or upon any portion of the Subject Property except within garages or paved driveways. No work on automobiles or other vehicle repair shall be performed in any visible or exposed portion of the Subject Property except in emergencies, and no vehicles of any kind are to be parked overnight in any of the Private Streets or any other portion of the Common Property.

Section 1.16. Abandoned, Inoperable or Oversized Vehicles. No abandoned or inoperable automobiles or oversized vehicles shall be stored or parked on any portion of the Subject Property. "An abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of three weeks or longer; provided, however, this shall not include vehicles parked by an Owner while on vacation. "Oversized" vehicle, for purposes of this Section, shall be vehicle which is too high to clear the entrance to a residential garage. A written notice describing the abandoned or inoperable vehicles and requesting its removal may be personally served upon the Owner or posted on the unused vehicle. If such vehicle has not been removed within 72 hours after notice has been given, the Association shall have the right to remove the vehicle without liability, and the expense of removal shall be charged against the Owner.

Section 1.17 Antennae. No exterior radio, television, ham radio, microwave or other antenna or antenna dish or electric signal capture distribution device shall be permitted without the prior written consent to the Association and appropriate screening, except a antenna that (i) is one meter (39.37 inches) or less in diameter or diagonal measurement, and (ii) either (a) is affixed to the rear wall (not roof) of a home, not more than ten feet above the ground, or (b) is placed on the ground in the rear yard of a home, with the maximum elevation of the antenna being five (5) feet above ground level.

Section 1.18. Outside Burning. There shall be no exterior fires, except barbecues, outside fireplaces, braziers, and incinerator fires contained within facilities or receptacles and in areas designated and approved by the Association. No Owner shall permit any condition upon its portion of the Subject Property which creates a fire hazard or is in violation of fire prevention regulations.

Section 1.19 Noise. No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Subject Property, shall be placed or used on any portion of the Subject Property. No pet will be permitted on the Subject Property if its barking, whining, screeching or other noise is audible to residents during extended or repeated periods of time.

Section 1.20 Obstructions. There shall be no obstruction of any Common Property walkways or interference with the free use of those walkways except as may be reasonably required in connection with repairs. The Owners, their family, tenants, guests, and invitees, are

granted nonexclusive easements to use the Common Property pedestrian walkways within the Subject Property. That use shall be subject to the Association Rules and Regulations adopted from time to time. The Association shall promptly take such action as may be necessary to abate or enjoin any interference with or obstruction of pedestrian walkways, and the Association may specially assess a penalty fee against the Owners or other person responsible for the interference.

Section 1.21 Camping and Picnicking. No camping shall be allowed within the Subject Property. The Association, in its discretion, may ban or permit public assemblies and rallies within the Subject Property.

Section 1.22 House Numbers. Each home shall have a house number with a design and location established by the Association.

Section 1.23 Construction by Owner. All construction of improvements commenced by an Owner (other than Developer) on the Subject Property shall be prosecuted diligently to completion and shall be completed within 12 months of commencement, unless an exception is granted in writing by the Association. If an improvement is commenced and construction is then abandoned for more than 90 days, or if construction is not completed within the required 12-month period, then after notice and hearing as provided in the Bylaws, the Association may impose a fine of not less than \$50 per day on the Owner of the Lot until construction is resumed, or the improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Board of Directors that such abandonment is due to circumstances beyond the Owner's control.

Section 1.24. Nuisance. No obnoxious or offensive activity shall be carried on within the Subject Property, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate upon the Subject Property so as to be offensive or detrimental to any other part of the Subject Property or its occupants.

Section 1.25. Association Does Not Insure. Each Owner is solely responsible for insuring the home, Lot, and all personal property located within the home or otherwise located on the Lot, including home furnishings and motor vehicles. Personal property placed in or on the home or Lot shall be solely at the risk of the resident and the owner of such personal property. **The Association urges owners and residents to purchase insurance on their home, Lot, and personal belongings.**

Section 1.26. Prohibited Construction Practices. The following practices are prohibited:

1.26.1. Allowing concrete suppliers and contractors to clean their equipment other than at a location designated for that purpose by the Association;

1.26.2. Removing any rock, plant material, top soil or similar items from any property of others; or

1.26.3. Use of surface water for construction.

Section 1.27. Leasing. Any Owner shall have the right to lease its home, subject to the following conditions.

1.27.1. All leases shall be in writing.

1.27.2. The lease shall be specifically subject to this Instrument, and the Association Articles of Incorporation, Bylaws, and Rules and Regulations, as same may be amended from time to time (collectively, the "Property Documents")

1.27.3 An Owner shall be liable for any violation of the Property Documents committed by the Owner's tenant or guest, without prejudice to the Owner's right to collect any sums paid by the Owner on behalf of the tenant or guest.

Section 1.28. Landscaping - Trees. Weather permitting, landscaping on Lots where a house is being constructed shall be completed within ninety (90) days following the earlier to occur of (i) the date one hundred eighty days following the date of issuance of a certificate of occupancy, or (ii) the date ninety (90) days after the date the home is first occupied. The utilization of non-living objects such as ornaments in the landscape must be harmonious with the character of the neighborhood and must be approved by the Association. Individual expression is permissible so long as it does not detract from this goal. Temporary holiday decoration are permitted so long as they are removed after not more than 15 days following the holiday. All landscaping shall be maintained in a neat and attractive condition. Maintenance requirements of the Common Property which may be performed by the Association at the Association's cost and expense include watering, mowing, edging, pruning, removal and replacement of dead or dying plants, and removal of weeds and noxious grasses.

- (a) The lot must have three trees with a caliper equal to or exceeding three inches. At least two of these trees must be located in the front yard.
- (b) The trees must be species listed in the Approved Tree List attached as Rider "I."
- (c) The trees may be located in the public right-of-way provided that all private licensing requirements of the city code and charter are met.
- (d) Required trees may be existing trees on the lot if the following provisions are met.
  - (i) they are of the correct species, size, and location
  - (ii) they were protected during construction
  - (iii) they are in a healthy growing condition at the time of inspection

Section 1.29. Driveways. Driveways may not be expanded without prior approval of the Association. All driveways must be kept clean and clear of debris, oil, rust and other stains.

Section 1.30. Window Covering Criteria. No reflective materials, including, but not limited to, aluminum foil, reflective screen or glass, mirrors or similar type items, or temporary window coverings such as newspapers or bed sheets shall be installed or placed upon the outside or inside of any windows of any home without the prior written approval of the Association. No drapes, blinds,

shades, screens, awnings or other items affecting the exterior appearance of a home shall be constructed or installed in any home without the prior

written consent of the Association. The Association has given blanket approval to all off-white or white shutters, mini-blinds, and vertical blinds installed on the interior of windows.

1.31 Waterways. The site plan and plat of subdivision for the Subject Property shows waterways labeled "Canal Area" and "Lake Granbury" adjacent to some but not all of the Lots (the "Waterways"). While ownership of a portion of the bed of the Waterways abutting a Lot may be vested in the Owner of Lot under applicable Texas law (Developer and Association making no representations or warranties, however, that this is now or will hereafter be the case), an Owner may utilize such abutting portions of the Waterways only as follows:

- (a) subject to any rules or regulations imposed by the U.S. Army Corps of Engineers or by any other federal government department or agency acting in accordance with to applicable federal law;
- (b) subject to any rules or regulations imposed by the Brazos River Authority or by any other authority or agency established pursuant to Texas statute, acting in accordance with to applicable Texas law.
- (c) subject to any rules or regulations imposed by the City of Granbury, acting in accordance with to applicable Texas law and City of Granbury ordinances.
- (d) Subject to any rules or regulations hereafter enacted by the Association, and to all restrictions imposed pursuant to the Declaration of Covenants, Restrictions and Easements of which this Exhibit "B" forms a part.

1.32 Existing Bulkheads. Developer has constructed bulkheads at the shorefront of various Lots abutting Waterways, as an erosion control device. Such bulkheads shall not be removed, modified or altered in any way without the prior written consent of the Association, as such actions may cause substantial damage to other Lots and to the Common Property. The Association shall have the obligation to repair and maintain, at its sole cost and expenses, such existing bulkheads.

1.33 Permitted Structures in Waterways. The only permitted structure which an Owner may construct within Waterways is one boat dock per Lot, to be placed upon open spaced pilings, and one-story boat lift per dock. The specific dimensions, permitted square footage and construction criteria for boat piers, boat lifts and pilings will be hereafter promulgated by the Architectural Control Committee. Boat docks may not be used for commercial purposes, such as the sale of gasoline, foods and beverages, or nautical supplies. No marina may be operated by an Owner with the Subject Property. Any Owner desiring to construct a structure within or abutting a Waterway must submit plans and specifications in writing to the Architectural Control Committee as provided in this instrument. The determination of such Committee to allow or disallow such a structure may be based in part upon its proposed location and the visibility of such structure from nearby Lots. Notwithstanding anything to the contrary contained in this Exhibit "B" or elsewhere in this Declaration of Covenants, Restrictions and Easements, the dimensions and locations of boat docks for the Lots are as set forth on Rider "2" attached hereto and made a part hereof. No change in any boat dock dimensions or locations referenced on Rider "2" shall occur except by means of a duly enacted amendment to the Declaration of Covenants, Conditions and Restrictions. Boat dock-related restrictions and requirements (other than dimensions and locations set forth on Rider "2") shall continue to be matters promulgated, enforced and approved by the Architectural Control Committee or, in its absence, the board of directors of the Association (the "Board").

1.34 Prohibited Structures in Waterways. No breakwaters, rip-wrap, groins, boat ramps, boat houses, marinas, freestanding pilings, buoys, or any other structures (other than a permitted boat dock/boat lift) shall be placed or caused to be placed by an Owner within or abutting any Waterways.

1.35 No Dredging. No Owner shall dredge or cause to be dredged any portion of the Waterways.

1.36 Tennis Courts and Basketball Goals. Tennis courts are not expressly prohibited by the Committee, but shall only be allowed on certain Lots. The determination by the Committee to allow a tennis court on a Lot shall be based on factors such as the size of the Lot, the desired placement of the tennis court and the visibility of such tennis court from any Adjoining Lot. Any Owner desiring to construct a tennis court on his Lot must submit plans and specification in writing to the Committee as provided in this Instrument. Basketball goals, backboards and nets shall only be permitted if they are not visible from any Private Street and are freestanding and portable (attachment of same to walls or roofs of any structures is expressly prohibited).

1.37 Restrictions on External Lighting. No lights will be permitted on the external walls of garages, boat docks (unless limited to 100 watts and shielded so that all light is reflected downward), roofs, eaves, external walls, porches, or other external areas of any house unless limited to 100 watts and recessed under roofs or eaves or shielded so that light does not shine on neighbor's Lots and houses. Also, all exterior lights must be noted on building plans and specifications submitted to the Association or any of its committees or boards, and must be switch operated. No mercury or halogen lights will be permitted.

1.38 Orientation of Garages Absent the issuance of a written waiver by the Architectural Control Committee or the Board, each garage shall be oriented on a Lot so that the garage door does not face the street or streets which abut the Lot.”

**RIDER "I"**  
**APPROVED TREE LIST**

Trees used to satisfy the landscape requirements listed in Exhibit "B" must be on of the following species:

1. Caddo Maple
2. Bigtooth Maple
3. Trident Maple
4. Chittumwood or Gum Bumelia
5. Pecan
6. Redbud
7. Desert Willow
8. Texas Persimmon
9. Common Persimmon
10. White Ash
11. Kentucky Coffeetree
12. Possumhaw or Deciduous Holly
13. Youpon Holly
14. Texas Black Walnut
15. Ashe Juniper
16. Eastern Red Cedar
17. Southern Magnolia
18. Afgan Pine
19. Austrian or Black Pine
20. Japanese Black Pine
21. Durand Oak

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- 22. Live Oak
- 23. Bur Oak
- 24. Chinkapin Oak
- 25. Shumard Oak
- 26. Live Oak
- 27. Western Soapberry
- 28. Eve's Necklace
- 29. Pond Cypress
- 30. Bald Cypress
- 31. Cedar Elm
- 32. Laceback Elm

RIDER "2"  
TO FIRST AMENDMENT  
(Page 1 of 10)

1. BOATHOUSE "A" (30' LENGTH ABUTS LOT)

LOT NOS. 22, 23, 24, 25, 26, 36, 37, 38, 39, 40, 41, 54, 73, 74, 75, 76, 77, 104, 105, 106, 114, 115, 116, 117, 118, 126, 127, 128, 129, 130, 131, 141, 142, 143, 144, 156, 157, 158, 159, 167, 168, 169, 170, 171, 177, 178, 179

2. BOATHOUSE "B" (40' LENGTH ABUTS LOT)

LOT NOS. 12, 13, 14, 33, 34, 35, 45, 46, 47, 48, 81, 82, 83, 84, 85, 110, 111, 112, 113, 119, 120, 121, 122, 123, 124, 125, 132, 139, 140, 147, 148, 149, 150, 152, 153, 154, 155, 160, 161, 162, 163, 164, 166, 172, 173, 175, 176, 184, 185, 186, 187, 192, 193, 194

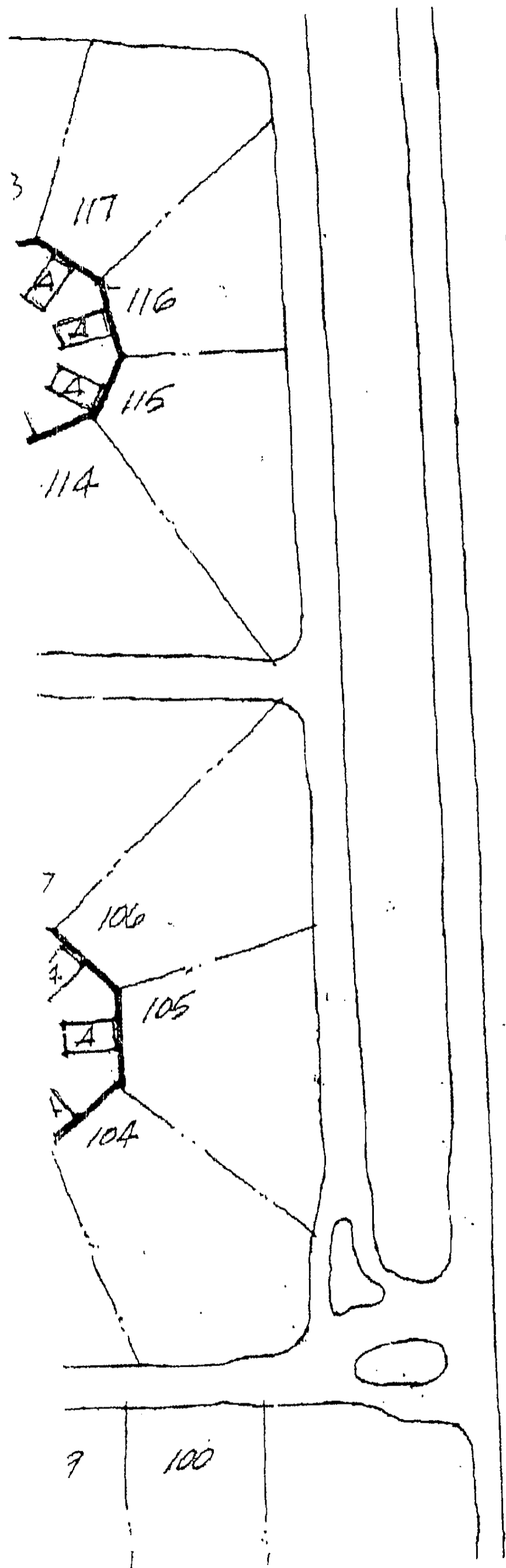
3. BOATHOUSE "C" (30' LENGTH ABUTS LOT)

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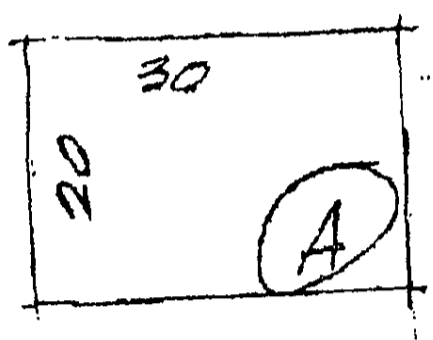
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# BOATHOUSES

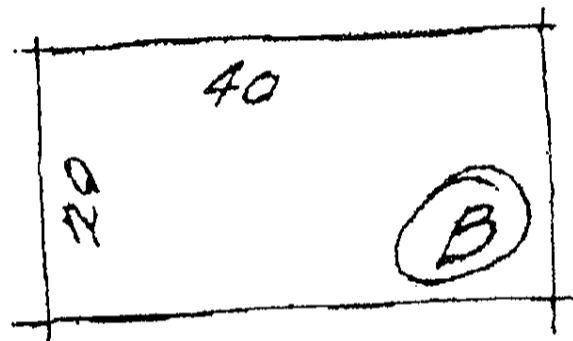
TYPES "A," "B" and "C"



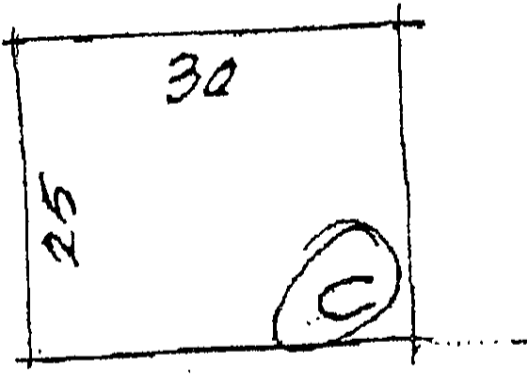
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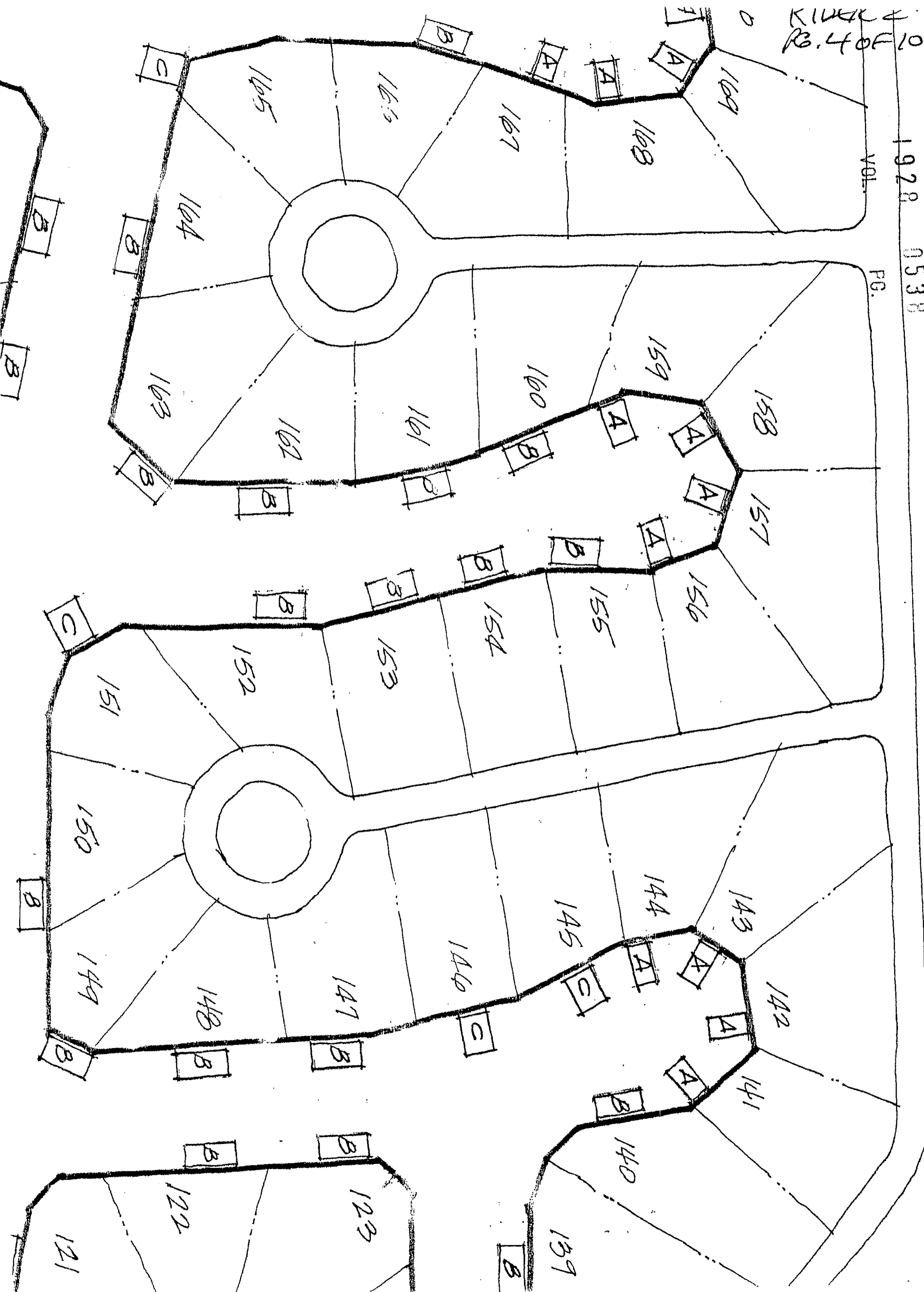
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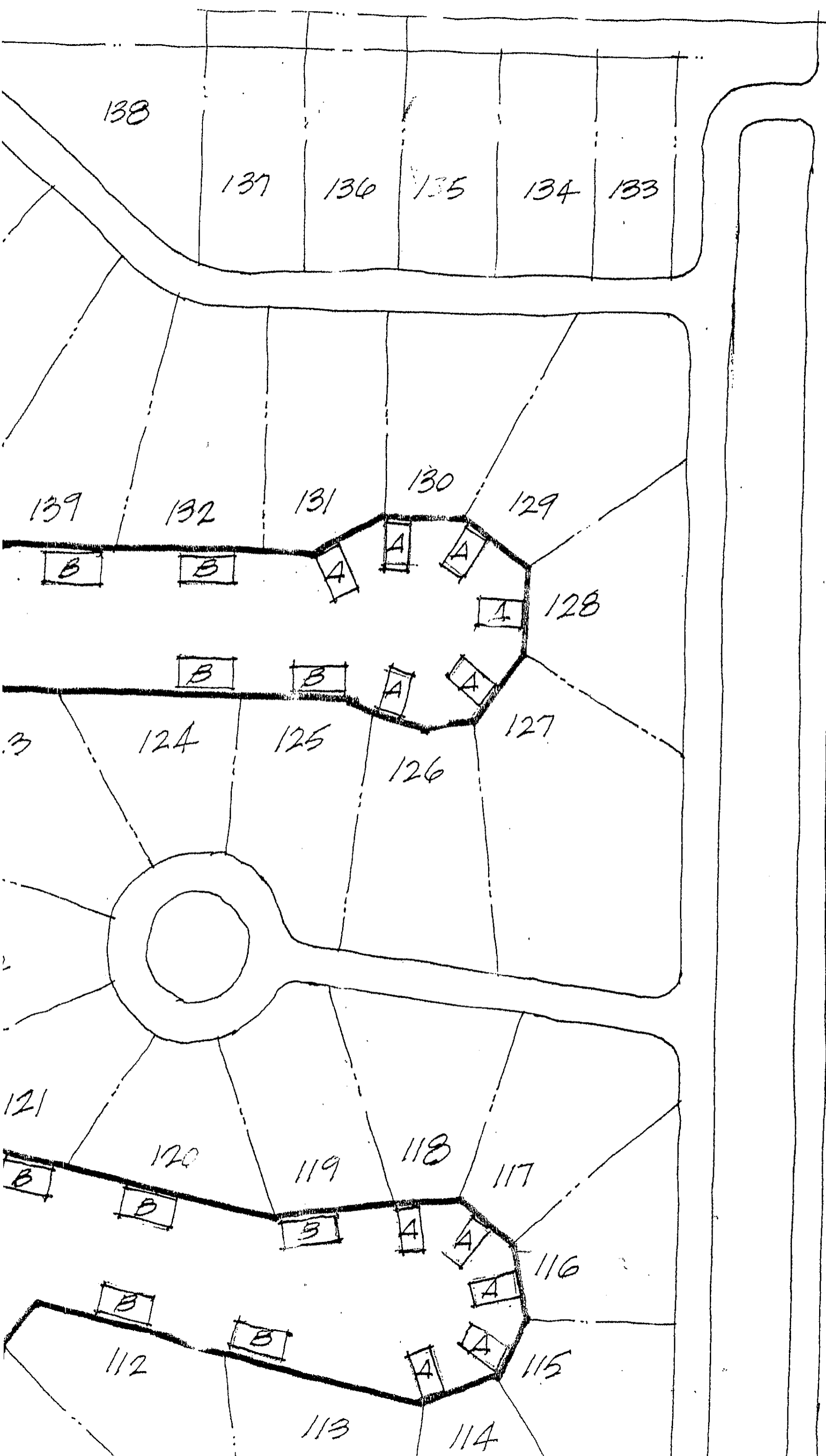


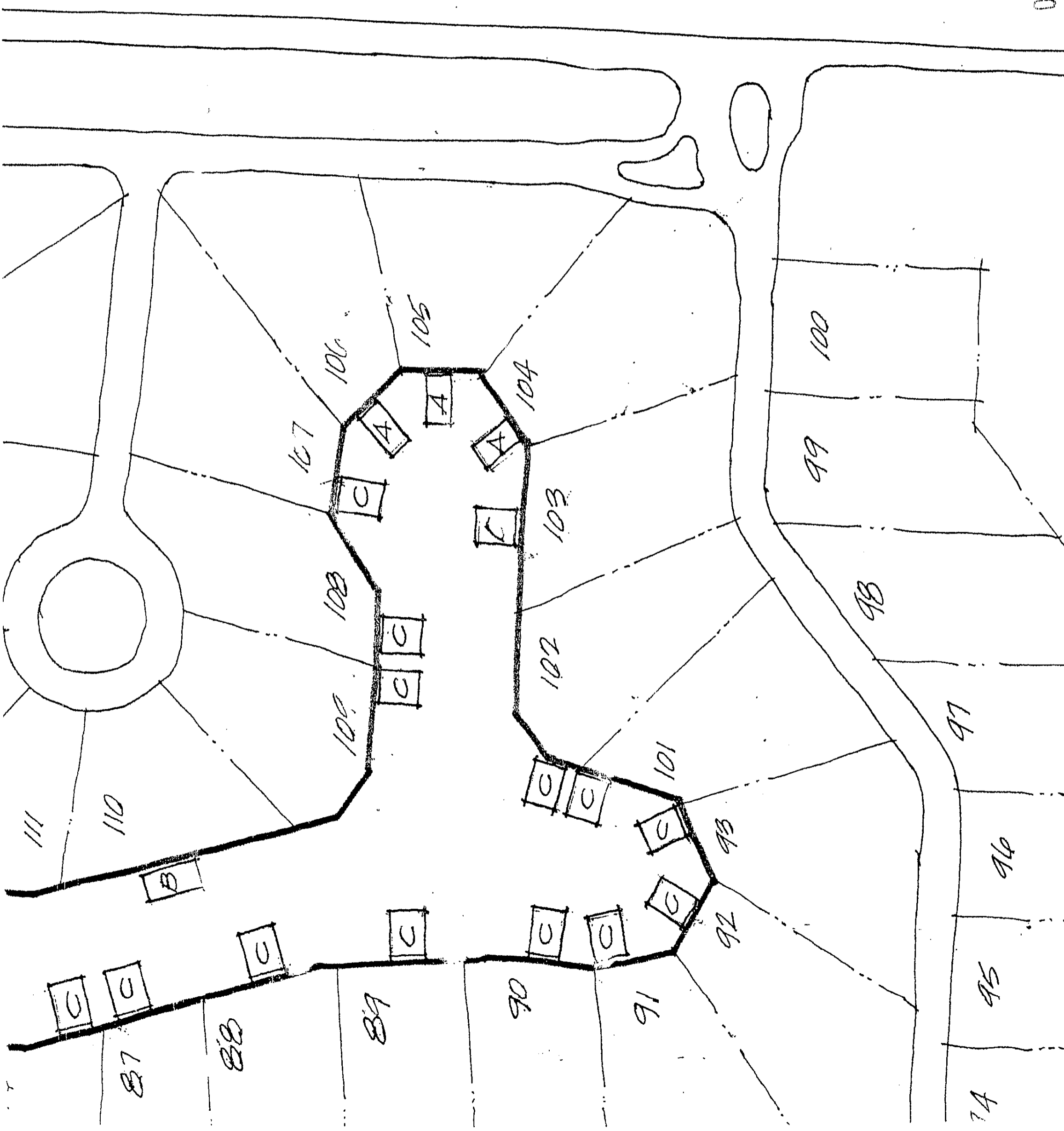
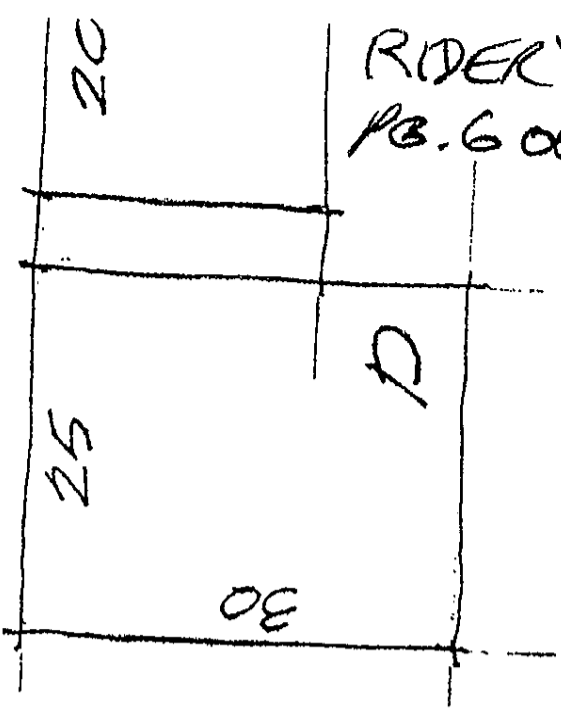
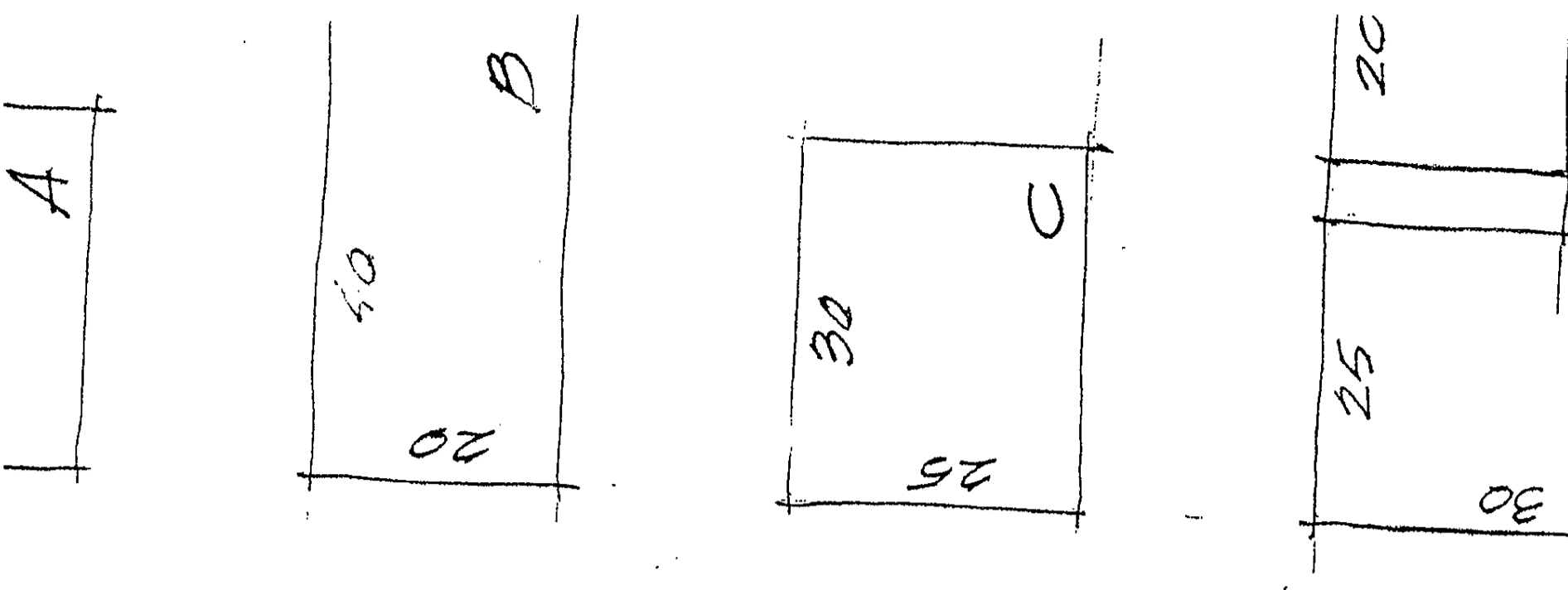
50' LENGTH ABUTS LOT











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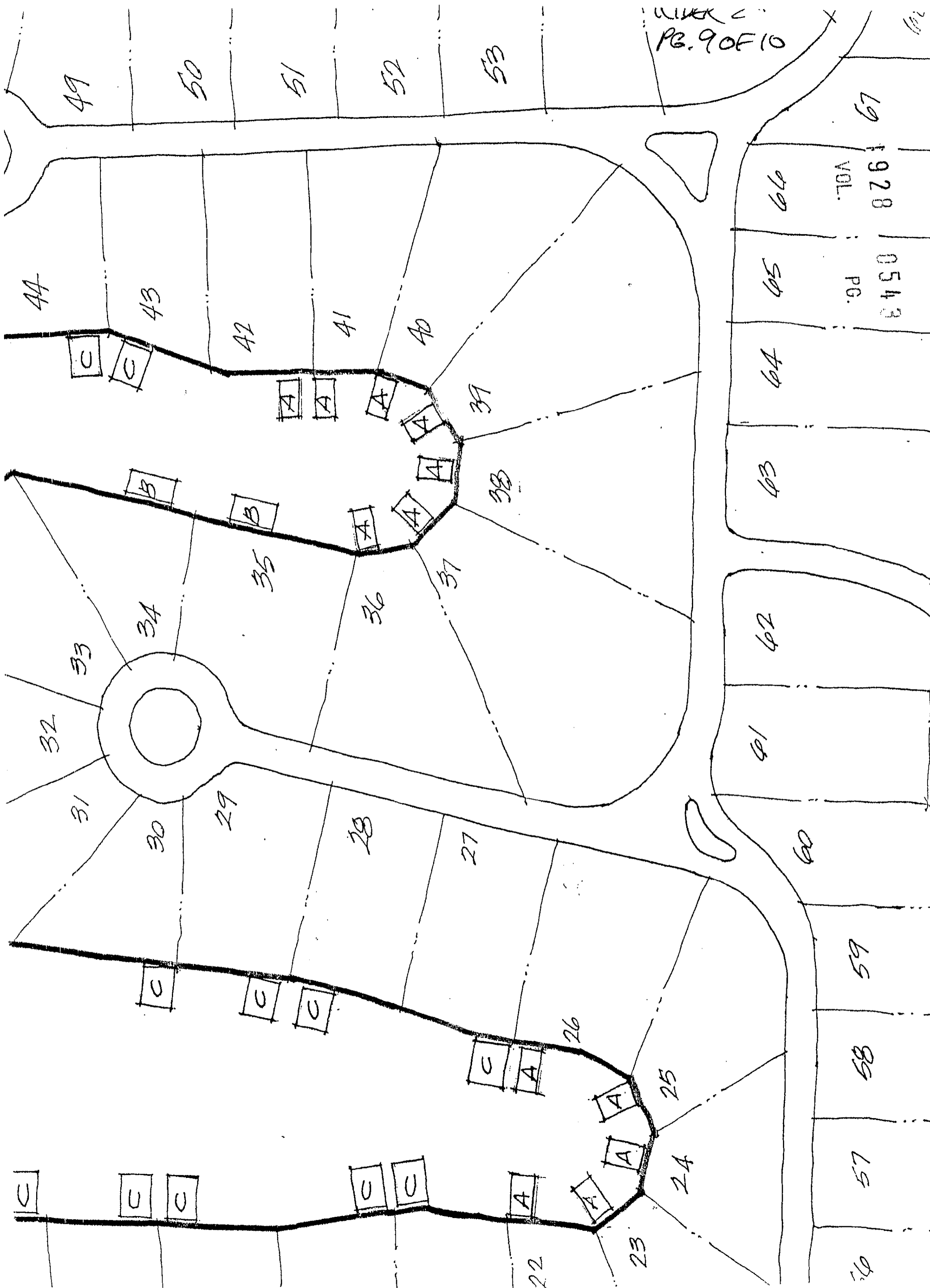
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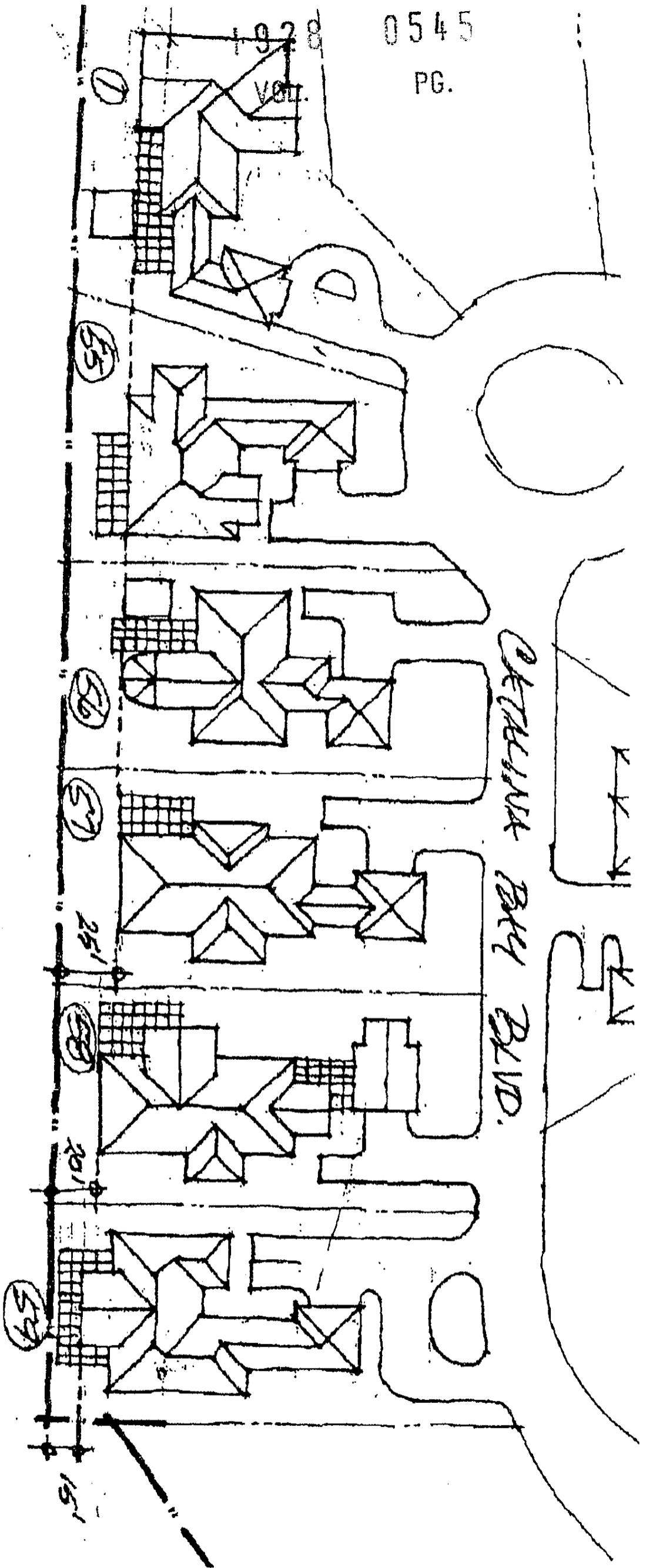
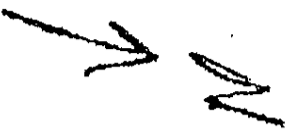
B

B

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C





1. Detachable parallel to green belt

2. 20' New space - lot 58

3. 25' New space - lots 57, 56 & 57

4. 25' SIDE YARD - LOT 1  
(ADJACENT TO BEARBER)  
(SOUTH PROPERTY LINE)

RIDER "2"  
TO FIRST AMENDMENT  
(Page 1 of 10)

1. BOATHOUSE "A" (30' LENGTH ABUTS LOT)

LOT NOS. 22, 23, 24, 25, 26, 36, 37, 38, 39, 40, 41, 54, 73, 74, 75, 76, 77, 104, 105,  
106, 114, 115, 116, 117, 118, 126, 127, 128, 129, 130, 131, 141, 142, 143, 144, 156,  
157, 158, 159, 167, 168, 169, 170, 171, 177, 178, 179

2. BOATHOUSE "B" (40' LENGTH ABUTS LOT)

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113, 119, 120, 121, 122, 123, 124, 125, 132, 139, 140, 147, 148, 149, 150, 152, 153,  
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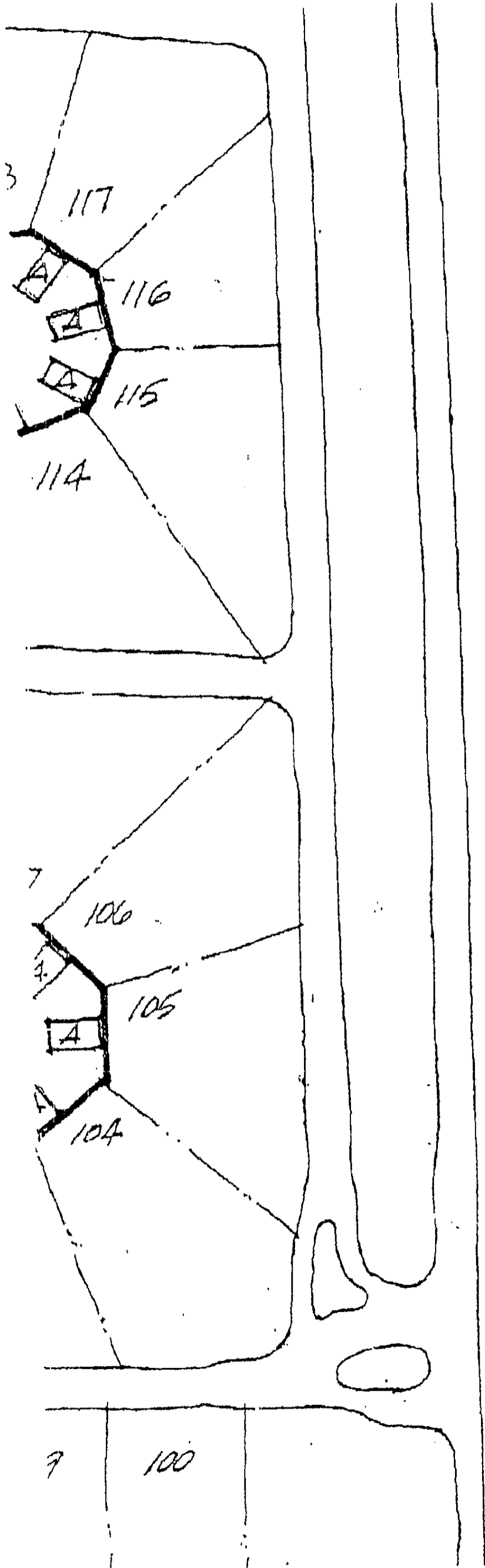
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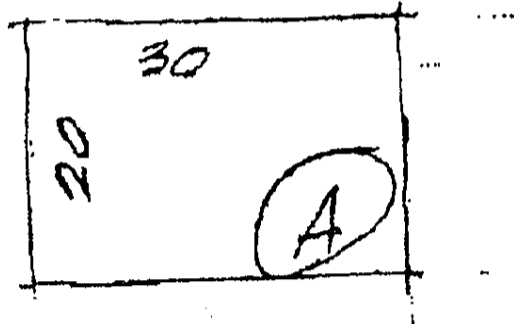
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# BOATHOUSES

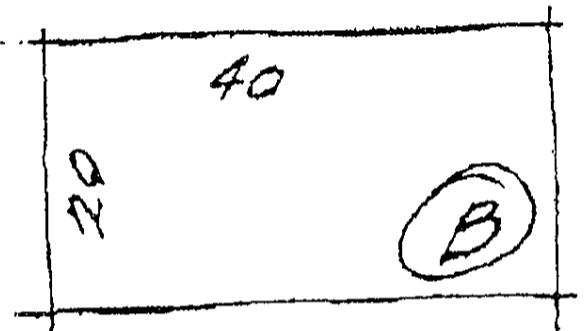
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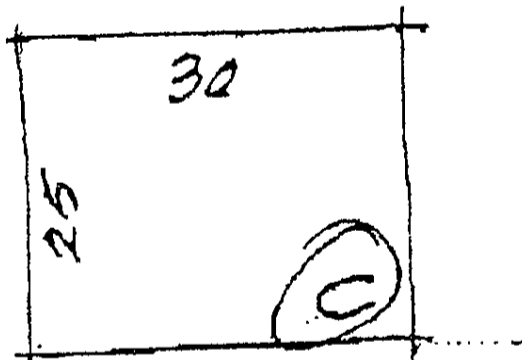
30' LENGTH ABUTS LOT



40' LENGTH ABUTS LOT



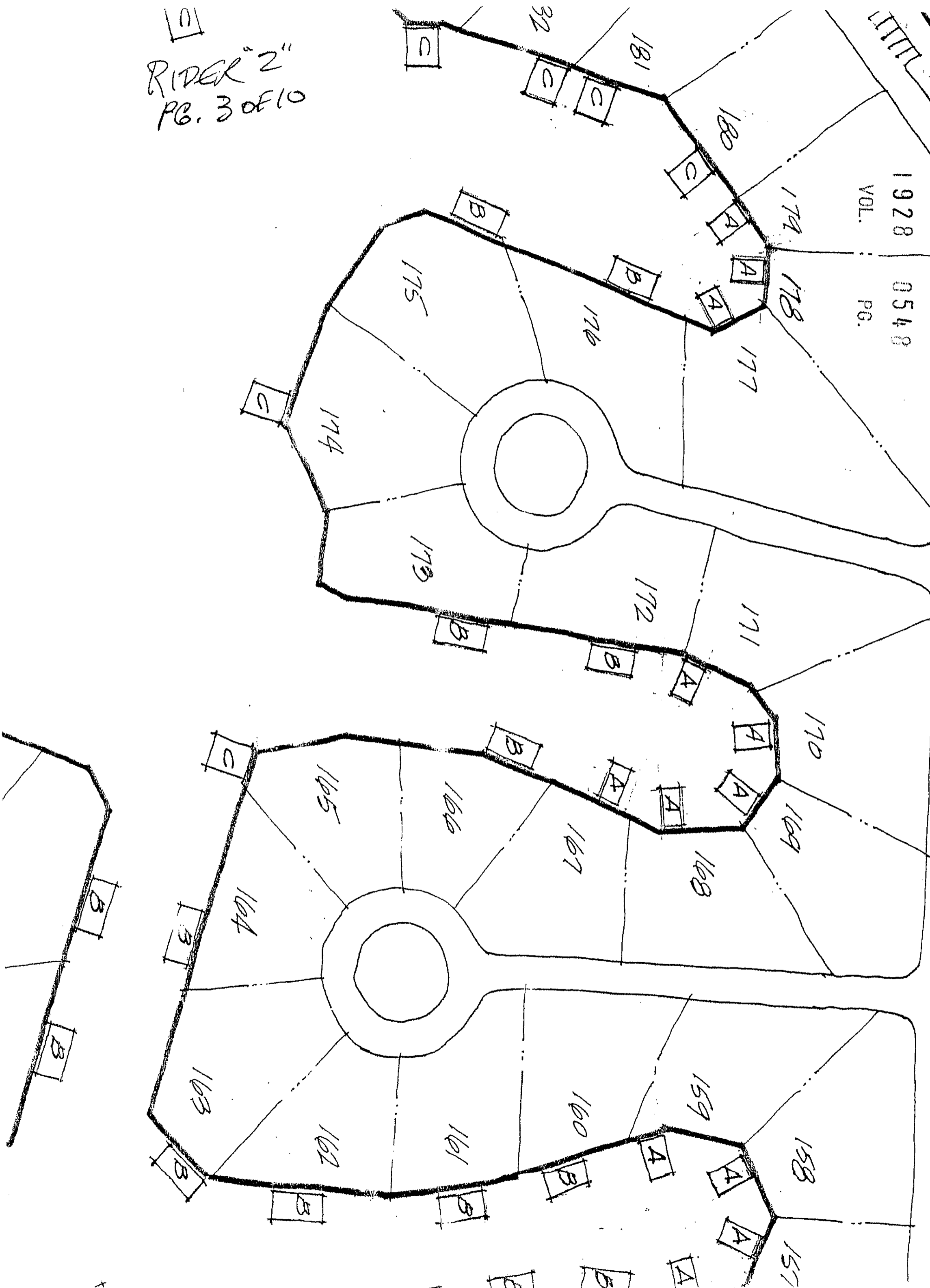
50' LENGTH ABUTS LOT

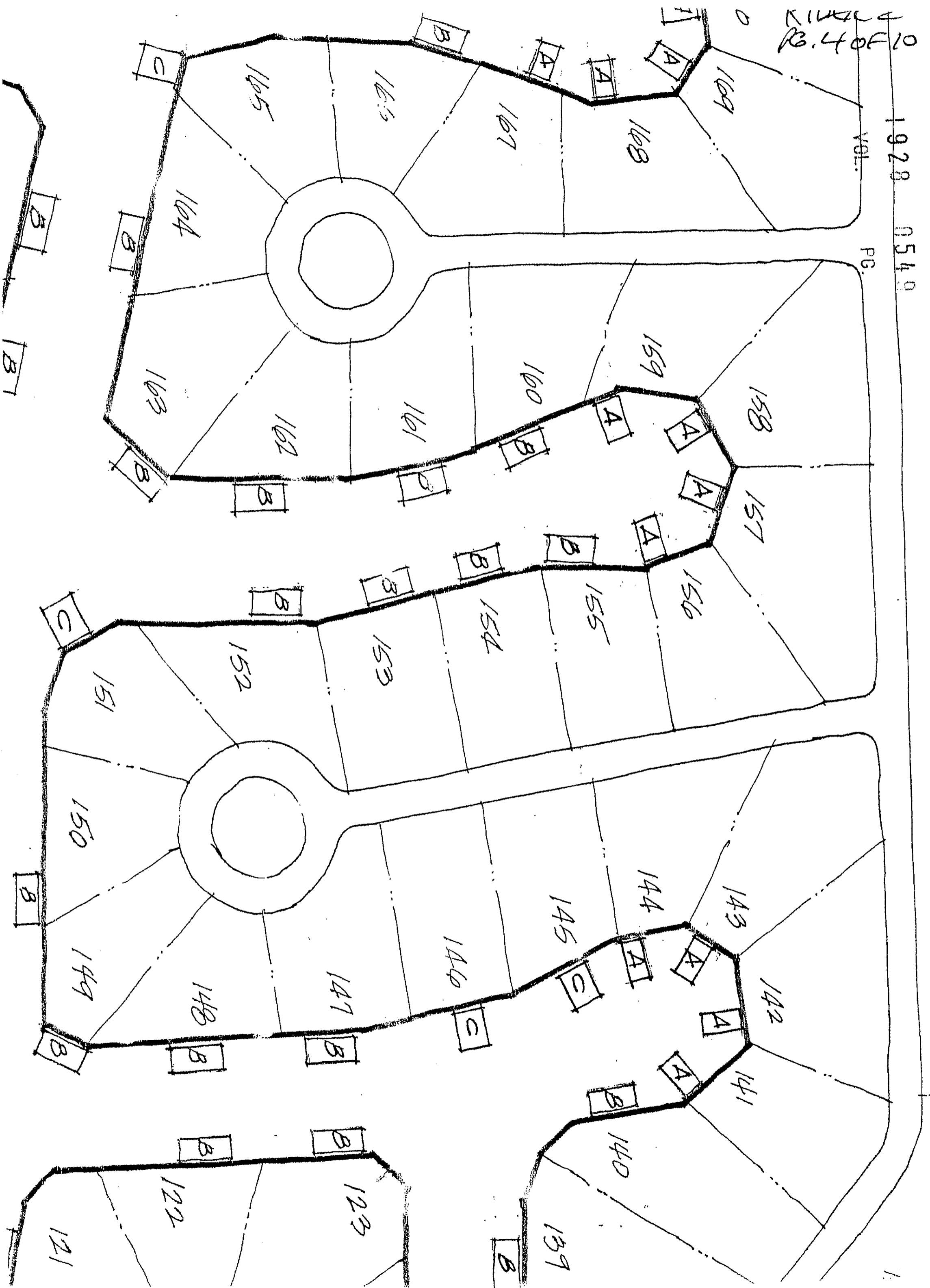


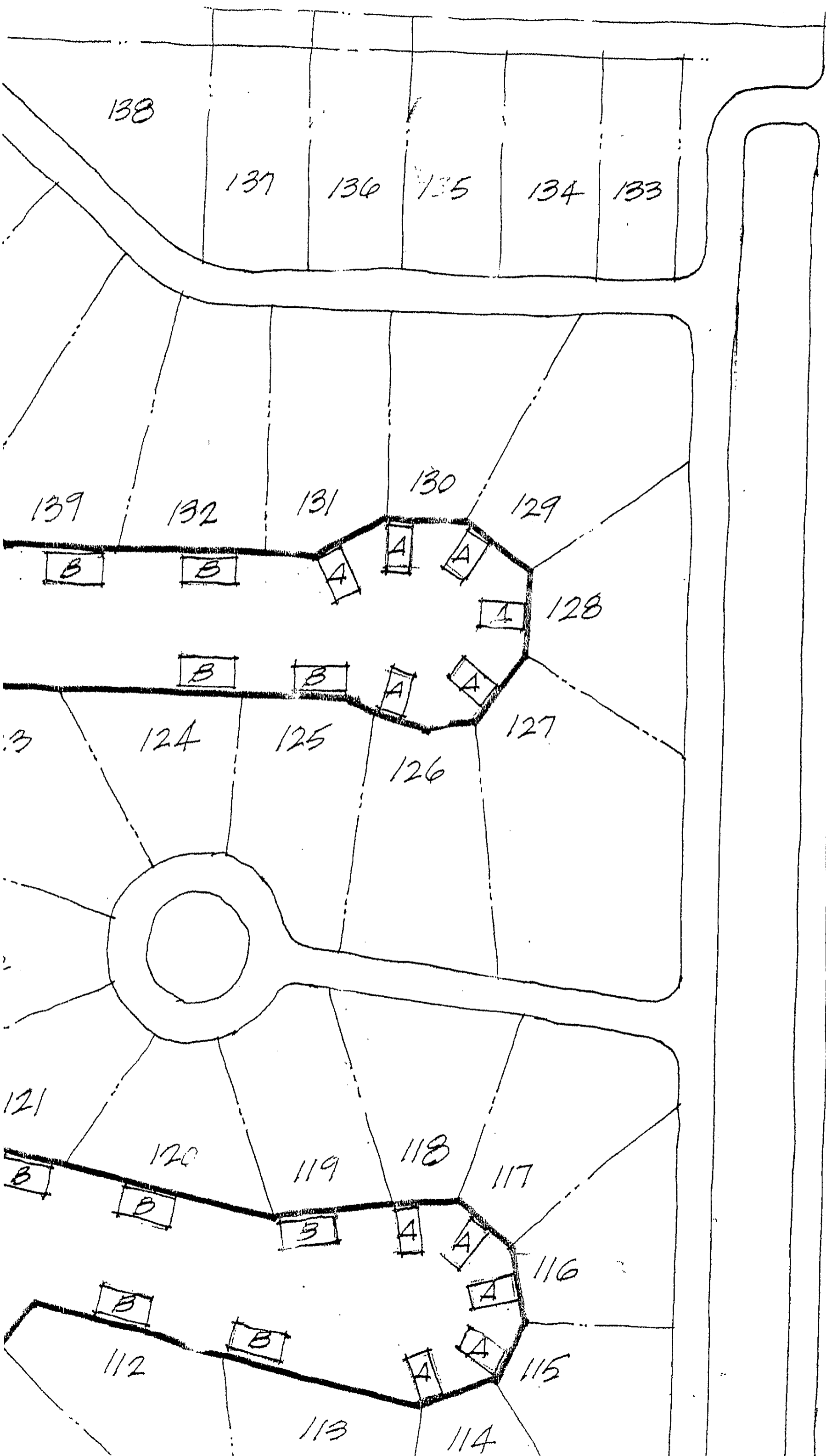
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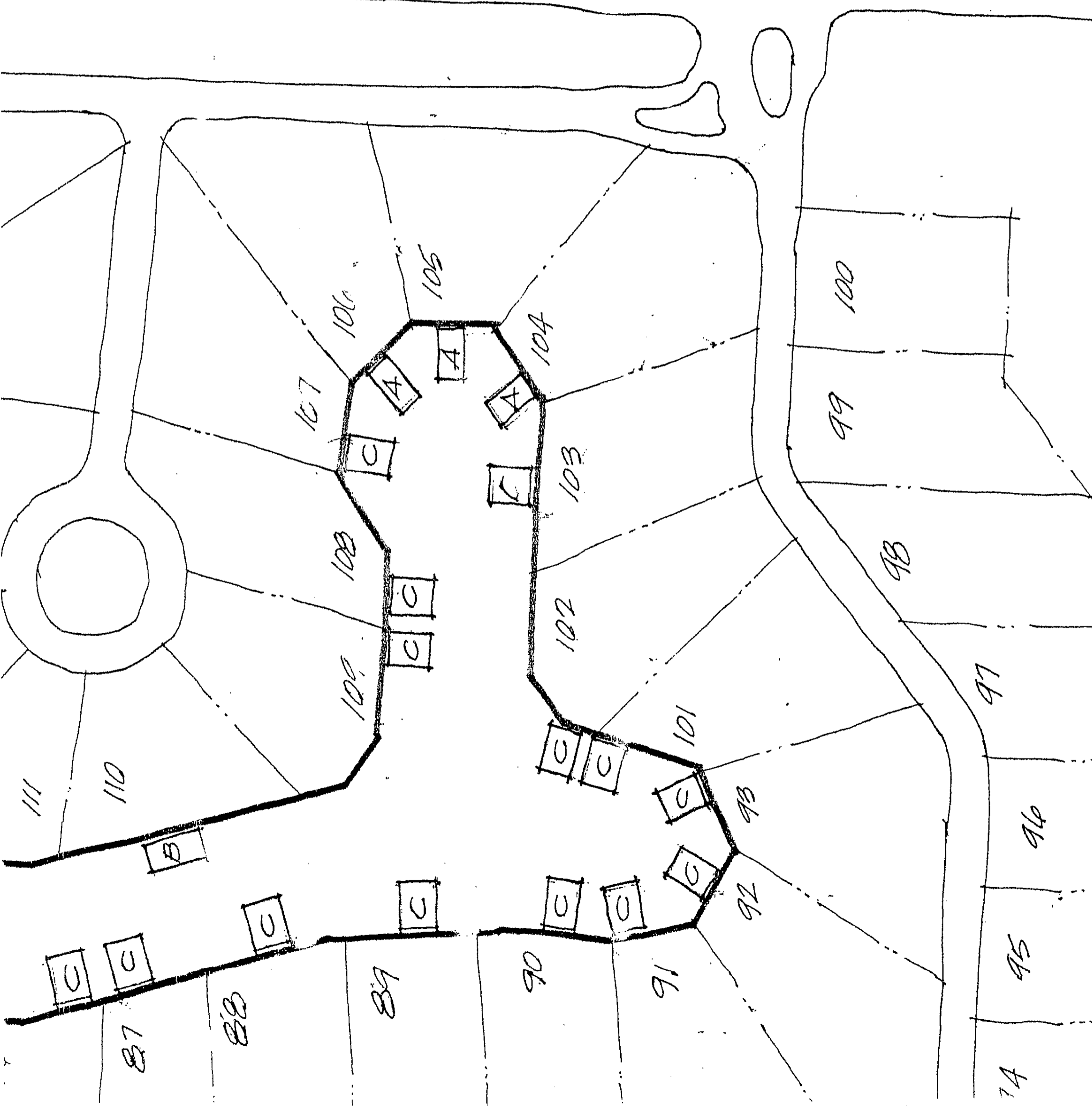
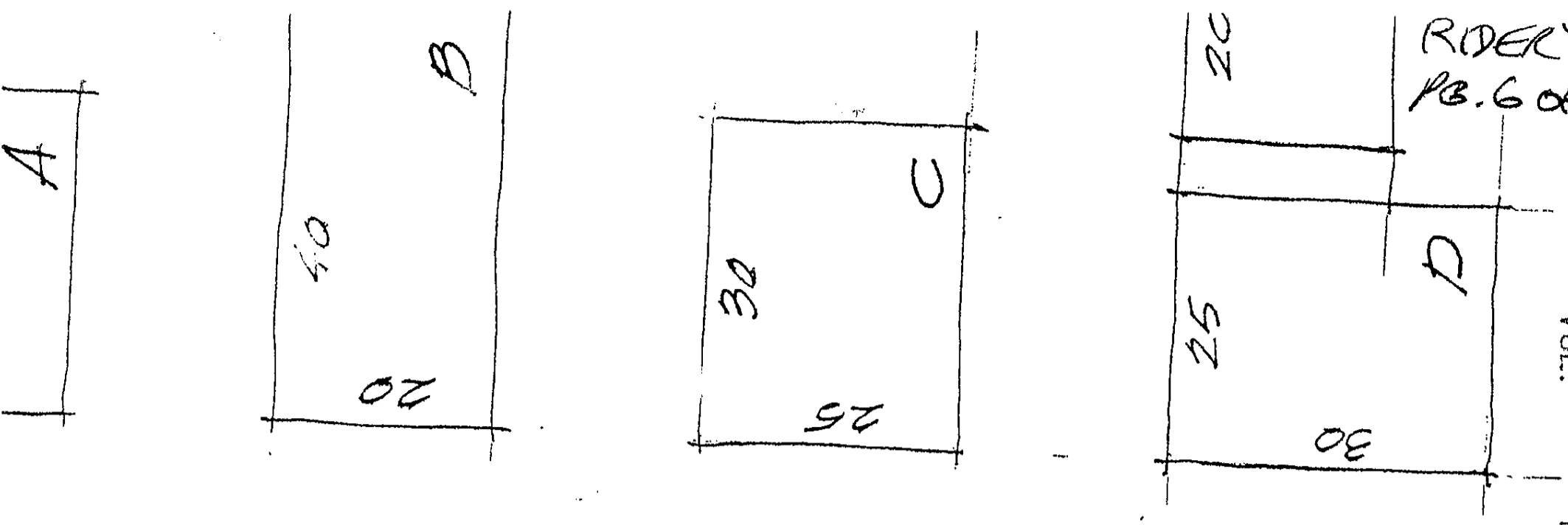
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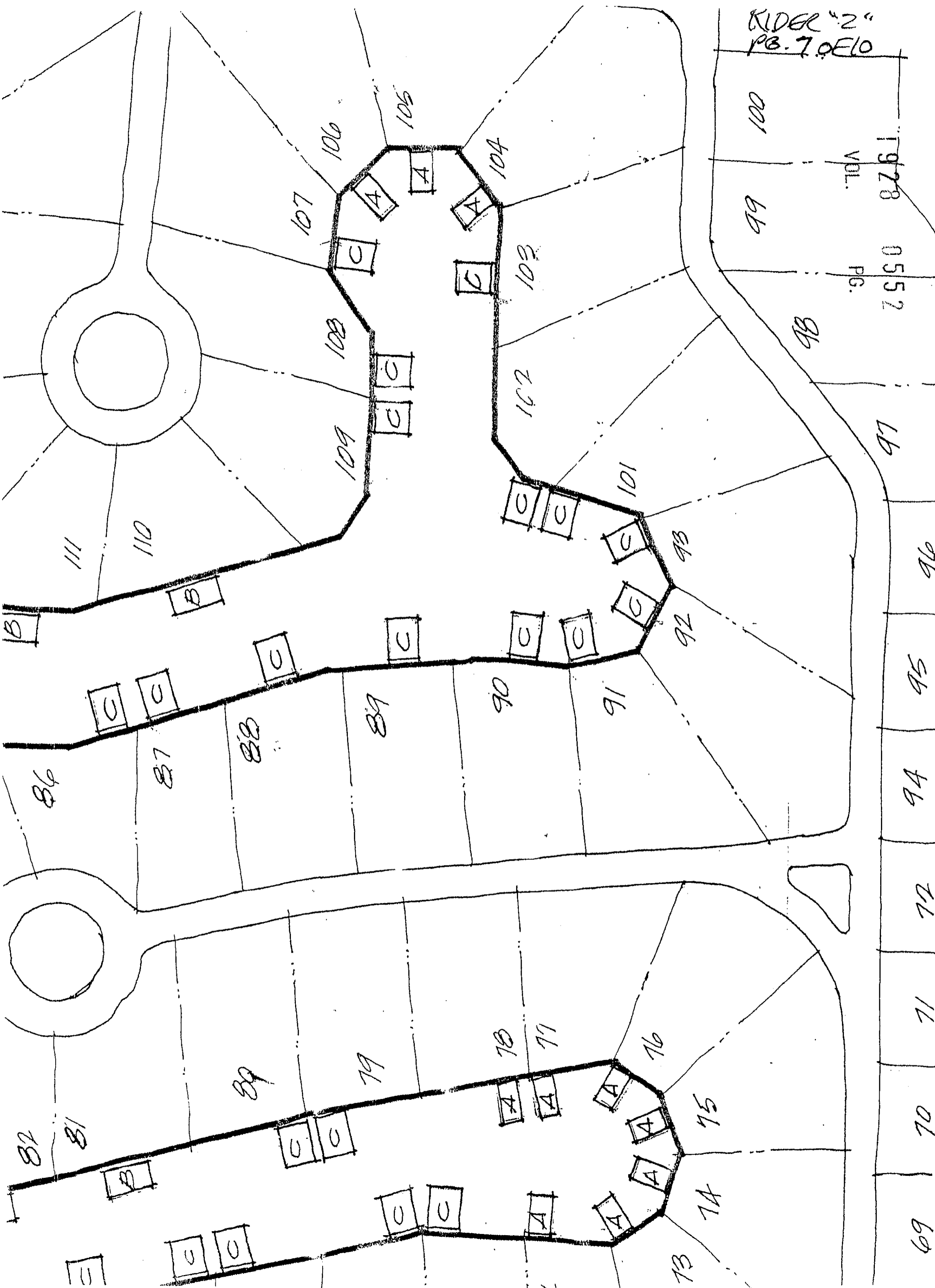








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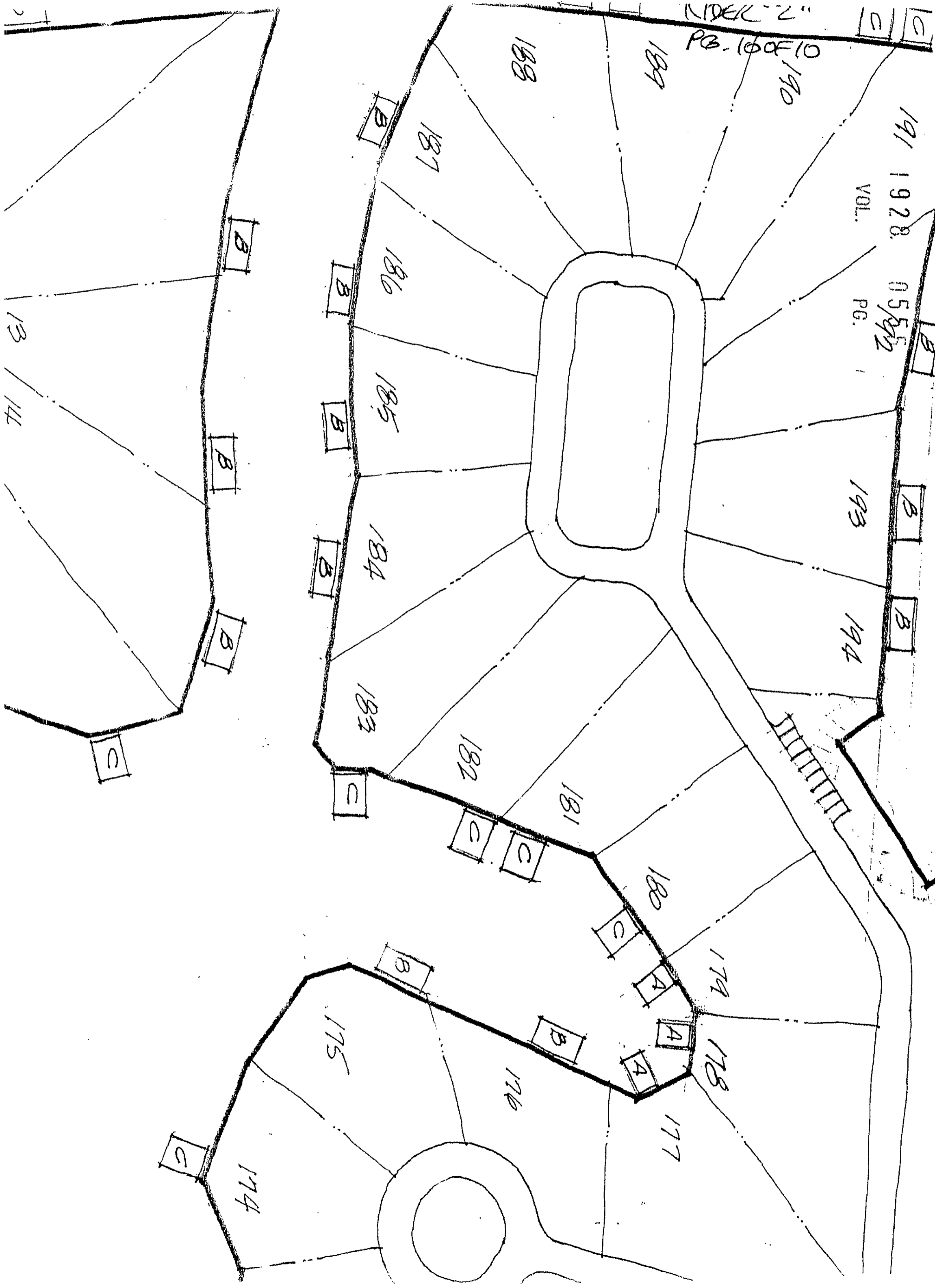
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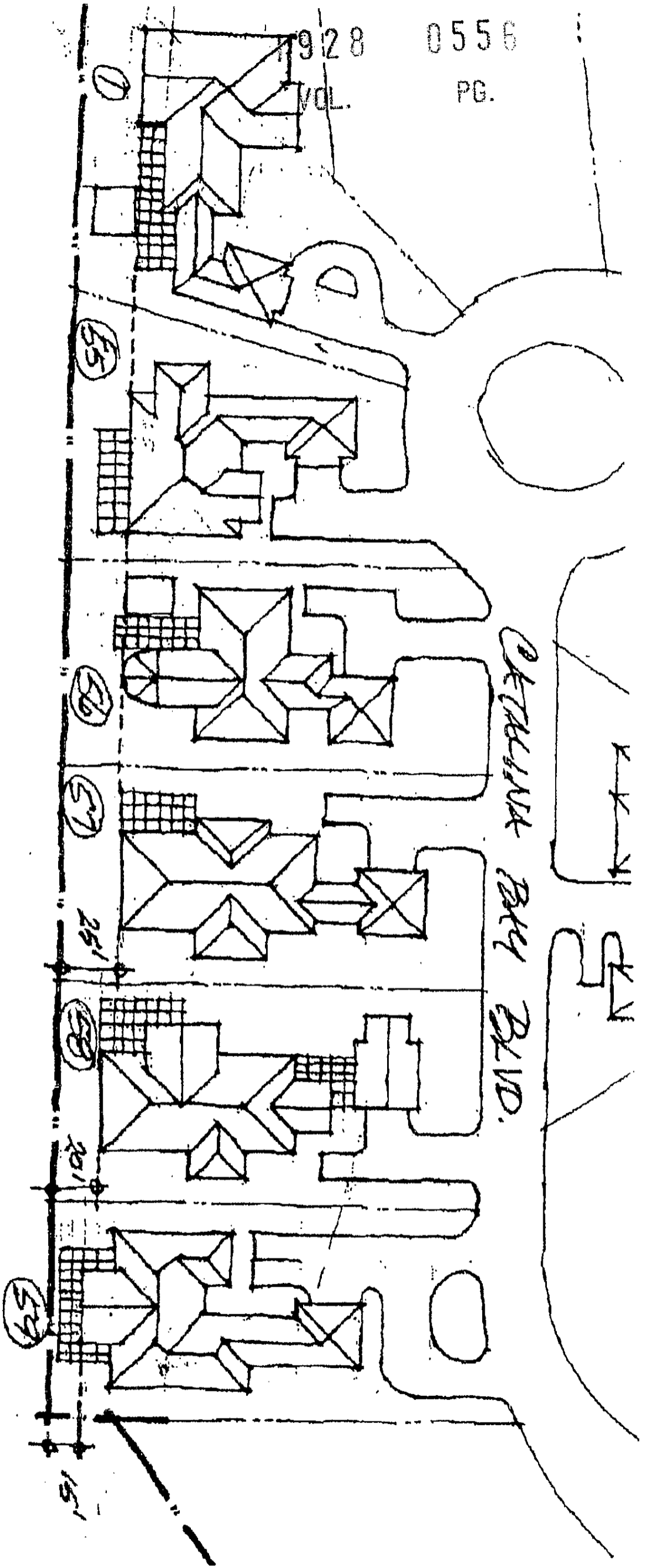
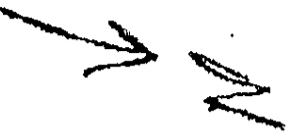
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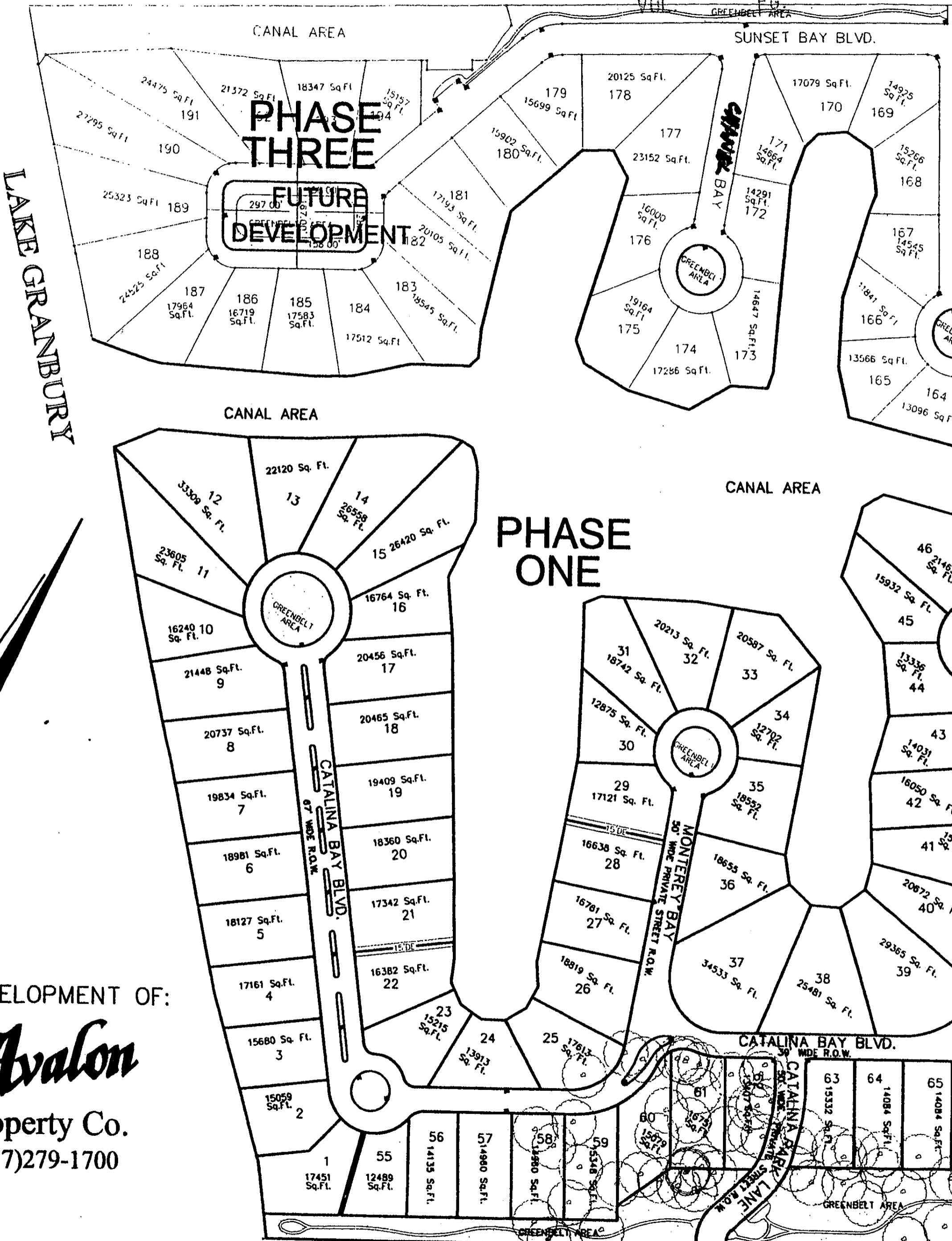


Detmunt parallel to Green  
belt

1. 20' New Spand - Lot 58

2. 25' New Spand - Lots 57, 52  
& 57

3. 25' SIDE YARD - LOT 1  
(ADJACENT TO GREENBELT)  
(SOUTH PROPERTY LINE)

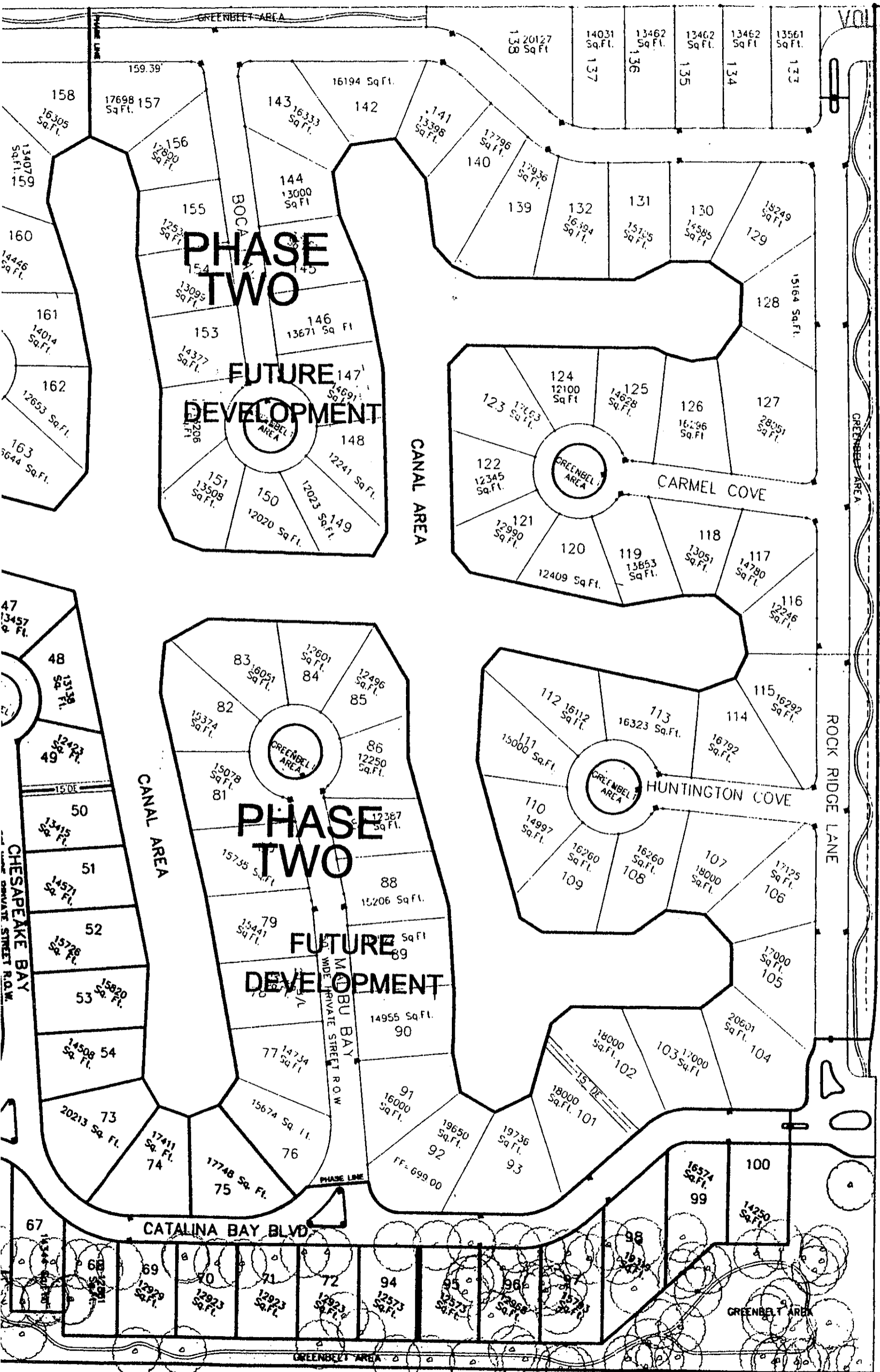


**PHASE THREE**  
**FUTURE DEVELOPMENT**

**PHASE ONE**

A DEVELOPMENT OF:

**Avalon**  
 Property Co.  
 (817)279-1700



# PHASE ONE

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under Federal law.  
STATE OF TEXAS COUNTY OF HOOD  
I hereby certify that this instrument was filed on the date and at the time stamped hereon by me and was duly RECORDED in the OFFICIAL PUBLIC RECORDS OF HOOD COUNTY TEXAS, in the Volume and Page as shown hereon.



*Sally Oubre*  
SALLY OUBRE, County Clerk  
Hood County, Texas

FILED FOR RECORD  
AT \_\_\_\_\_ 10:25 A.M.

JUL 10 2003

*Sally Oubre*  
County Clerk, Hood County, TX