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Panda Bear Homes, Inc.  
c/o Jeff's & Jeff's  
90 North 100 East  
Provo, UT 84604

~~ENT 67249:2000 PG 1 of 15~~  
~~RANDALL A. COULING TO~~  
~~UTAH COUNTY RECORDER~~  
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DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS  
RENAISSANCE AT CEDAR HILLS  
A Planned Unit Development  
City of Cedar Hills, Utah County, Utah

This DECLARATION (the "Declaration") is made this 22<sup>nd</sup> day of August, 2000 by Panda Bear Homes, Inc. (the "Declarant"), in its capacity as the owner and developer of Renaissance at Cedar Hills, a Planned Unit Development, in the City of Cedar Hills, Utah.

ARTICLE I

PURPOSE AND EFFECTUATION

1.01 Purposes. The purpose of this Instrument is to provide for the maintenance and preservation of the values of Units and Common Areas within Renaissance at Cedar Hills, a Planned Unit Development in the City of Cedar Hills, Utah (the "Development").

1.02 Effectiveness. From and after the effective date hereof (a) Each part of the Development and each Unit and improvement constructed thereon lying within the boundaries of the Development shall constitute but constituent parts of a single Planned Unit Development; (b) The Development shall consist of the Units and of any Common Areas which are described and depicted on the Plat; (c) The Declaration for the Development shall consist of this document as the same may be modified, amended, supplemented, or expanded in accordance with the provisions hereof, and (d) The Plat of the Development shall consist of the instrument which is identified as Renaissance at Cedar Hills, A Planned Unit Development, City of Cedar Hills, Utah, and filed for record concurrently herewith in the office of the Utah County Recorder, City of Cedar Hills, Utah.

ARTICLE II

DEFINITIONS

When used in this Declaration each of the following terms shall have the meaning indicated:

2.01 Association shall mean Renaissance at Cedar Hills, Inc. a Utah non-profit corporation, and its successors and assigns.

2.02 Board shall mean the Board of Trustees of the Association.

2.03 Common Areas shall mean those roads which are not public roads, and the associated sidewalks, walkways, paths, landscaped entry statements, and those other parcels or common areas, if any so designated on the Plat and owned by Renaissance at Cedar Hills Owner's Association for the common benefit, use and enjoyment of the Owners.

2.04 Declarant shall mean Panda Bear Homes, Inc. and its successors and assigns, if any, as developer of the Development.

2.05 Declaration shall mean this "Declaration of Easements, Covenants, Conditions and Restrictions of Renaissance at Cedar Hills, a Planned Unit Development" as the same may be supplemented or amended from time to time.

2.06 Development shall mean the Planned Unit Development known as Renaissance at Cedar Hills as it exists at any given time.

2.07 Limited Common Areas shall mean (a) any driveway which connects a Unit to the private roads of the Development and (b) that portion of the Common Area lying in the rear yard area of the Unit and which area is bordered by the extensions of the two 67-foot sides of the Unit and which is 12-feet beyond the rear line of the Unit, but only if the Owner shall submit plans to the Committee for and shall thereafter construct vinyl fencing of the Limited Common Area, which vinyl fencing is approved by the Committee and is uniform throughout the development.

2.08 Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Utah County, Utah) of a fee or undivided fee interest in any Unit, and any contract purchaser of any Unit. Notwithstanding any applicable theory relating to mortgages, no mortgagee nor any trustee or beneficiary of a deed of trust or trust deed shall be an owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Unit owned by it. Multiple owners of a particular Unit shall be jointly and severally liable as to all responsibilities of an Owner.

2.09 Plat shall mean and refer to the subdivision plat covering the Property entitled Renaissance at Cedar Hills, a Planned Unit Development, City of Cedar Hills, Utah County, Utah, prepared and certified to by Hubble Engineering (a duly registered Utah Land Surveyor hold Certificate No. \_\_\_\_\_), executed and acknowledged by Declarant, accepted by City of Cedar Hills, and filed for record in the office of the County Recorder of Utah County, Utah concurrently with this declaration.

2.10 Property shall mean all land covered by this Declaration, including any Common Areas and Units.

2.11 Unit shall mean and refer to any separately numbered and individual building pad and the Limited Common Area associated with said pad as designated on the Plat intended for single family use. In the event the residence is not constructed on any portion of the building pad, then the excess portion of the width of the building pad shall cease to be part of the Unit and shall automatically become Common Area and the excess portion of the depth of the building pad shall cease to be part of the Unit and shall automatically become Limited Common Area if fenced as provided in Section 2.07.

### ARTICLE III

#### PROPERTY DESCRIPTION

3.01 Submission. The Property which initially is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property located in City of Cedar Hills, Utah County, State of Utah, and more particularly described on Exhibit "A" attached hereto and by reference incorporated herein.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, whether or not the same are reflected on the Plat.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the said property and any improvements (other than buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete residences and other improvements described in this Declaration or in the Plat recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; (ii) to improve portions of the said property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate; and (iii) to conduct such marketing, sales, management, promotional, or other activities designed to facilitate or accomplish the management of the Common Areas or the sale of the Units. If, pursuant to the foregoing reservations, the said property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

~~ENT 67251:2000 PG 25 of 49~~

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described real property or any portion thereof, including, without limitation, any mortgage (and nothing in this paragraph shall be deemed to modify or amend such mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the said real property at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities; AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS CONTAINED IN THIS DECLARATION.

3.02 Transfer of Common Areas. Declarant shall transfer and convey the Common Areas to the Association on or before the date of conveyance of the first Unit to an Owner.

#### ARTICLE IV

##### BYLAWS

##### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

4.01 Membership. Every Owner upon acquiring title to a Unit shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Unit ceases for any reason, at which time his membership in the Association with respect to such Unit shall automatically cease and the successor Owner shall become a member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Unit.

4.02 Voting Rights. The Association shall initially have two (2) classes of voting memberships, votes of both classes being of equal value as to all matters.

(a) Class A. Each Owner, including Declarant, shall be a Class A member entitled to one (1) vote for each Unit in which such member holds the interest required for such Class A membership.

(b) Class B. Declarant shall be the only Class B member and shall be entitled to one (1) vote for each Association Class A membership outstanding at such time (in addition to any votes to which it is entitled as a Class A member by virtue of each Unit which it owns); provided, however, that such Class B membership shall lapse and become a nullity on the first to happen of the following events:

(i) Ninety (90) days following the date upon which the total outstanding Class A memberships, other than those held by Declarant, equal the total of Class B votes to which Declarant is entitled pursuant to the provisions of Section 4.02(b); or

(ii) On December 31, 2001; or

(iii) Upon surrender of said Class B membership by Declarant in writing to the Association.

Upon the lapse or surrender of the Class B membership, as provided in this Section 4.02(b), Developer shall be and thereafter remain a Class A member as to each and every unit in which Declarant holds the Interest otherwise required for Class A membership.

4.03 Multiple Ownership Interests. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the total number of votes appurtenant to such Unit be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Unit concerned unless an objection is made at the meeting or in writing by another Owner of the same Unit, in which event no vote will be counted with respect to such Unit except to determine the presence or absence of a quorum.

4.04 Records of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance documents (or in the case of contract buyer, a copy of the sales contract or notice of interest) to him of his Unit and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of the Units. The Association may at any time obtain and rely on the information from the Utah County Recorder regarding the Owners of Units.

4.05 Place of Meeting. Meetings of the association shall be held at such suitable place convenient to the Owners as may be designated by the Secretary of the Association in the notice thereof.

4.06 Annual Meetings. Annual meetings of the membership of the Association shall be held in the month of June of each year beginning in the year 2000 on such day and time as is set forth in the notice therefore provided, that after the first such annual meeting, a month other than June may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected trustees of the Board, as needed, pursuant to the provisions of this Declaration and such other business of the Association properly placed before each meeting.

4.07 Special Meetings. The President shall call a special meeting of the Owners as directed by a resolution of the Board or on a petition signed by Owners holding at least thirty percent (30%) of the total votes of the Association and having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by fifty percent (50%) or more of the Owners present, either in person or by proxy.

4.08 Notice of Meetings. The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least ten (10), but not more than twenty (20), days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

4.09 Quorum. Owners present at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Owners collectively be entitled to cast a least fifty percent (50%) of the total Association votes eligible to vote.

4.10 Adjourned Meetings. If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called at which time the requirements for a quorum shall be reduced by one-half that required in Section 4.09.

4.11 Officers. The Association shall have a President, a Vice President and a Secretary/Treasurer all of whom shall be elected by and from the Board. The Board may appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Board in an organizational meeting of the Committee immediately following each annual meeting of Owners at which the new Board has been elected.

4.12 Initial Composition of Board. Declarant alone shall have the right to select the initial Board of Trustees which may be composed of up to five (5) Trustees but not less than three (3), none of whom need be Owners. Such right of the Declarant to appoint the Board shall remain in Declarant until the expiration of three (3) years after the first conveyance of title to any Unit Owner or until Declarant voluntarily waives such right, in whole or in part, in writing and requests the Association to elect members of the Board in accordance with the Association's Bylaws set forth in Section 4.13, whichever event shall first occur.

4.13 Board of Trustees: Composition. Election. Vacancies. The Association, through its Board of Trustees, is responsible for the enforcement of the provisions of this Declaration and, in general, the preservation of the residential quality and character of the Development to the benefit and general welfare of the Owners. Subject to the provisions of Section 4.12, the Board shall be composed of five (5) Trustees, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner). At the first meeting of Owners to elect a Board of Trustees two (2) shall be elected to a three-year term, two (2) to a two-year term, and one (1) to a one-year term. As Trustees' terms expire, new Trustees shall be elected for three-year terms and shall serve on the Board until their successors are elected. Vacancies on the Board shall be filled by the remaining Trustees from among the Owners and such appointees shall

serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the Trustee they were appointed to replace.

4.14 Indemnification of Board. Each of the Trustees shall be indemnified and held harmless by the Unit Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorneys fees reasonably incurred in connection with any proceeding in which such Trustee may become involved by reason of being or having been a member of the Board.

## ARTICLE V

### DUTIES AND POWERS OF THE ASSOCIATION

5.01 Duties of the Association. Without limiting any other duties which may be imposed upon the Association by this Declaration, the Association, working through its Board, shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

(a) The Association shall accept all Owners as members of the Association.

(b) Upon the majority vote of the Association members, the Association shall accept title to any additional Common Areas which in the future may be conveyed to it, whether by Declarant or by others.

(c) The Association shall ensure complete architectural control compliance within the Development pursuant to the applicable provisions of this Declaration.

(d) The Association shall work to ensure that the Development is in complete compliance with the provisions of this Declaration and to which the Development and its Owners are also subject.

(e) Landscaping. The Association shall be responsible for maintaining and repairing all Common Areas within the Development, including the landscaping, except those Limited Common Areas, which are driveways servicing a Unit or which are fenced back yard Limited Common Areas appurtenant to a Unit.

5.02 Powers and Authority of the Association. The Association shall have the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of Common Areas or in exercising any of its rights hereunder, the Association shall have the power and authority to obtain, contract and pay for, or otherwise provide for:

(i) Construction, maintenance, operation, and repair of the Common Areas on such terms and conditions as the Board shall deem appropriate;

(ii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board and the Owners;

(iii) The services of architects, engineers, attorneys and certified public accountants and such other professional or non-professional services as the Board may deem desirable;

(iv) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and

~~ENT 67249:2000 PG 10 of 15~~

- (v) Such materials, supplies, services and labor as the Board may deem necessary.

5.03 Association Rules. The Board from time to time, subject to and not inconsistent with the provisions of this Declaration, may adopt, amend, repeal and enforce reasonable rules and regulations governing all matters concerning the use and enjoyment of the Property and the conduct of Owners and their invitees within the Development.

5.04 Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board or any committee of the Board.

## ARTICLE VI

### DUTIES AND OBLIGATIONS OF OWNERS

6.01 Maintenance and Repairs. Each Owner shall at his own cost and expense maintain his Unit and any improvements, constructed thereon in good repair at all times and in conformity with the architectural control provisions set forth in Article X. In addition each Owner shall be responsible for snow removal from the driveway appurtenant to such Unit and to maintain any driveways or fenced back yards, which are Limited Common Areas appurtenant to such Unit. In the event of the damage or destruction of any residential improvement on a Unit, the Owner of the Unit on which such improvement is situated shall either rebuild the same within reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed Unit in the Development. The painting or repainting, remodeling, rebuilding or modification of any residence exteriors or parts thereof must be submitted to and approved by the Architectural Control Committee pursuant to its procedures.

6.02 Insurance. Each Owner shall obtain and maintain in force such homeowner hazard and liability coverage as is customary in projects such as the Development and which is consistent with each Owner's individual circumstances, mortgage requirements, etc.

6.03 Assessments and Rules Observance. Each Owner shall be responsible for the prompt payment of any assessments provided for in this Declaration and for the observance of the rules and regulations promulgated by the Association from time to time.

6.04 Transfer of Interests. Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Unit to another, either voluntarily or by operations of law, shall be relieved of all obligations under this Declaration, following such transfer.

## ARTICLE VII

### ASSESSMENTS

7.01 Agreement to Pay Assessments. The Declarant for each Unit within the Development, and for and as the Owner of the Property and every part thereof, hereby covenants and each Owner of any Units by the acceptance of a deed, contract or other instrument of conveyance and transfer thereof, whether or not it be so expressed in said deed, contract or other instrument shall be deemed to covenant and agree with each other Owner and with the association to pay to the Association all assessments made by the Association for the purposes of provided in this Declaration, any special assessment for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed established, and collected from time to time as provided in this Article VII.

7.02 Annual Assessments. Annual Assessments shall be computed and assessed against all Units in the Development based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and special assessments on the Common Areas; real property taxes and special assessments levied by governmental authorities against the Units until the same are separately assessed; premiums for all insurance that the Association is required or permitted to maintain hereunder; utility fees for Common Areas; repairs and maintenance of the Common

Areas; wages for Association employees, including fees for a Manager (if any); legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve, major maintenance reserve, and/or surplus or sinking fund; creation of an adequate reserve fund for maintenance repairs and replacement of those Common Areas that must be replaced on a periodic basis, where such reserve is to be funded by monthly payments rather than extraordinary special assessment; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Common Expense, and all funds received from assessments under this Section 7.02 shall be part of the Common Expense Fund.

7.03 Initial Annual Assessment. The initial annual assessment based upon current landscape and improvement estimates shall be Six Hundred Dollars (\$600.00) per Unit. Changes to the initial annual assessment shall be based upon the Common Expenses but shall also be adjusted for current costs and inflation.

7.04 Rate and Date of Assessment. The Common Expenses shall be apportioned and assessed to all Owners at a uniform rate which shall be in proportion to the number of Units in the Development.

7.05 Annual Budget. Annual assessments shall be made on a calendar year basis; provided however that the first annual assessment shall be for the balance of the calendar year remaining after the date fixed by the Association as the date of commencement of the Development. The Association shall give written notice to each Owner as to the proposed budget and the amount of the annual assessment (hereinafter "Annual Assessment") with respect to his or her Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the calendar year. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessments for the upcoming calendar year and the major guideline under which the Development shall be operated during such annual period.

7.06 Payment. Each Annual Assessment shall be due and payable in monthly installments on the 1st day of each and every month and no separate notices of such monthly installment shall be required. Each monthly assessment shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due and payable if not paid within (30) days after such date. In addition, in the event that any installment of the Annual Assessment is not paid within thirty (30) days of the date such installment becomes due, the Association may, at its option, and upon thirty (30) days' prior written notice to the Owner accelerate the due date for all remaining Annual Assessment installments for the calendar year and all accrued but unpaid interest thereon. Payment of the Annual Assessment installments so accelerated shall be due at the expiration of said thirty (30) day notice period and interest shall accrue on the entire sum at the rate of eighteen percent (18%) per annum from such date until paid in full. The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to date thirty (30) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

7.07 Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Section 7.08 below, except that the vote therein specified shall be unnecessary.

7.08 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Board of Trustees on behalf of the Association may, levy, at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the members of the Association, special assessments (hereinafter "Special Assessments"), payable over such periods as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Development or improvements thereon or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including without limitation Common Expenses). This Section shall not be construed as an independent source or authority for the Association to incur expenses, but shall be constructed to prescribe the manner of assessing for expenses authorized by other sections or articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners on the same basis as set forth in Section 7.04 (Namely in proportion to the number of Units in the project). Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been given. All unpaid portion of any

Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date such portions become due if not paid within thirty (30) days after such date.

7.09 Lien for Assessments. All sums assessed to a Unit pursuant to the provisions of this Article VII, together with interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Article VII, the Association may prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner, and a description of the Unit. Such notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Utah County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed under the laws of the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs of expenses of such proceedings, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. Such costs, expenses, and attorney's fees shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Association shall have the right and power to bid an amount equal to its existing lien at any foreclosure sale, and to acquire, hold, convey, lease, rent, mortgage or use the Unit the same as the Owner. A release of lien shall be executed by the Association and recorded in the office of the County Recorder of Utah County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

7.10 Subordination of Liens to First Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or purchaser who comes into possession of or becomes the Owner of a Unit by virtue of the foreclosure of such first Mortgage or the exercise of a power of sale under such first Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment installment which accrues or becomes due prior to the date of the Mortgage was recorded; provided, that to the extent there are any proceeds of the sale on foreclosure of such first Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owned to the holder of such first mortgage, the lien shall apply to such excess. No sale or transfer of a Unit in connection with any foreclosure of a first Mortgage shall relieve any Unit from the lien of any assessment installment thereafter becoming due.

7.11 Certificate of Payment of Assessments. Upon payment of a reasonable fee and upon written request of any Owner or any Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit; the amount of the current yearly assessment and the portion thereof which has heretofore been paid; credit for advanced payments or prepaid items, including, but not limited to, prepaid insurance premiums; and such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within thirty (30) days, all unpaid assessments which become due prior to the making of such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and personal obligations of the purchaser shall be released automatically if the statement is not furnished within the thirty (30) days provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Unit.

7.12 Notice to and Payment by Mortgagee of Unpaid Assessments. The Association shall report to any Mortgagee or other encumbrancer of a Unit any unpaid assessments remaining unpaid for longer than ninety (90) days after the same shall have become due; provided, however, that such Mortgagee or encumbrancer first shall have furnished to the Association written notice of such encumbrance and a request for notice of unpaid assessments. A Mortgagee or other encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Notice, and upon such payment such shall be subrogated to all rights of the Association with respect to such lien, including priority.

7.13 Personal Obligation of Owner. The amount of any Annual or Special Assessment shall be the personal obligation of the Owner to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by



abandonment of his or her Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover or money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection herewith, including reasonable attorneys' fees.

7.14 Personal Liability of Purchaser. Subject to the provision of Section 7.11 a purchaser of a Unit shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Unit up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

## ARTICLE VIII

### PROPERTY RIGHTS AND CONVEYANCES

8.01 Easement Concerning Common Areas. Each Unit shall have appurtenant thereto a nonexclusive right and easement of use and enjoyment in and to the Common Areas and an exclusive right and easement of use and enjoyment in and to the Limited Common Areas appurtenant to such Unit, for their intended purposes. Such right and easement shall be appurtenant to and shall pass with title to each Unit and shall in no event be separated therefrom.

8.02 Form of Conveyancing Leases. Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Unit shall describe the interest or estate. Involved substantially as follows:

Unit No. \_\_\_\_\_ as identified in the Renaissance at Cedar Hills Plat recorded in the office of the Utah County Recorder in Book \_\_\_\_\_, Page \_\_\_\_\_, as Entry No. \_\_\_\_\_.

Renaissance at Cedar Hills, a Planned Unit Development, SUBJECT TO the "Declaration of Easements, Covenants, Conditions and Restrictions of Renaissance at Cedar Hills, A Planned Unit Development" recorded in the office of the Utah County Recorder in Book \_\_\_\_\_, at Page \_\_\_\_\_, as Entry No. \_\_\_\_\_ (As said Declaration may have heretofore been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Easements, Covenants, Conditions and Restrictions (as said Declaration may have heretofore been amended or supplemented).

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

## ARTICLE IX

### USE RESTRICTIONS

9.01 Use of Common Area. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Units and residential improvements set forth herein.

9.02 Residential Use. The Property is restricted to single family residential use pursuant to applicable provisions of City of Cedar Hills Ordinances and each Unit and Owner are subject to the uses and restrictions imposed thereby and no Unit or residence constructed thereon shall be used, occupied, or altered in violation of such ordinances or so as to create a nuisance or to interfere with the rights of any other Owner.

9.03 Prohibited Use and Nuisances. The following uses and practices are specifically prohibited, and any additional prohibitions which may, from time to time, be adopted by the Board pursuant to Section 5.03 of this Declaration:

(a) No Unit or residential improvement thereon or any part thereof shall be used or occupied except as a single family detached residence.

(b) No Unit or residential improvement or any part thereof shall be used or occupied by any persons not coming within the definition of "Family" as such term is defined and intended in the City of Cedar Hills Ordinances as of the date hereof.

- (c) No lease of any Unit or residence shall be for less than the whole thereof.
- (d) No animals, livestock or poultry of any kind shall be permitted on any Unit or within any residential improvement thereon except such domesticated household pets or birds as are allowed pursuant to the rules and regulations, including leash laws, adopted by the Board pursuant to Section 5.03 of this Declaration.
- (e) Parking of recreational vehicles of any kind shall not be permitted on any streets or in the front yard setback of homes within the Development shall be permitted except as set forth in rules and regulations adopted by the Board pursuant to Section 5.03 of this Declaration. All recreational vehicles must be stored at a commercial establishment off site.
- (f) No outside television, satellite or radio aerial or antenna, or other similar device for reception or transmission shall be permitted on any Unit or the exterior of any residential improvement thereon except pursuant to written approval of the Architectural Control Committee pursuant to rules and regulations adopted by it and/or as set forth in this Declaration.
- (g) No residential improvement constructed on any Unit within the Development shall (i) contain any coal or wood-burning fireplace, stove, or other similar device unless the same is EPA approved or unless such fireplace, stove or other device is fueled by natural gas only; or (ii) contain a basement.

## ARTICLE X

### ARCHITECTURAL CONTROL

10.01 Architectural Control Committee. The Board of Trustees of the Association shall appoint a three-member Architectural Control Committee (the "Committee"), the function of which shall be to ensure that all improvements and landscaping within the Development harmonize with existing surroundings and structures. If such a Committee is not appointed, the Board itself shall perform the duties required of a Committee.

10.02 Submission of Committee. No residential improvement, accessory of, or addition thereto shall be constructed or maintained, and no alternation, repairing, or refurbishing of the exterior of any such improvements, accessories or additions shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee.

10.03 Standard. No minimum standards for construction shall be set forth herein although the Committee may adopt basic guidelines for the benefit and aid of Owners to prepare plans and specifications. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee, in its sole discretion and best judgment, shall ensure that all improvements, materials, construction, landscaping, and alternations on Units within the Development are in keeping with a definite, though undefined standard, and that once established, future construction shall conform to and harmonize with existing surroundings and structures. Any structure hereafter constructed on any Unit in replacement of the structure previously located thereon shall be constructed in substantially the same configuration, location, materials and architectural style and be approximately the same size (conforming, nevertheless, to minimum sizes set forth herein) as the prior structure; and if the plans and specifications therefor meet such criteria, the Committee must approve the same. Notwithstanding the foregoing the Committee shall not approve any permanent structures on Units 1 through 9; and Units 1 through 9 cannot build any permanent structures on or within the Easement shown on the Plat along the South Boundary of the Development.

10.04 Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission; provided, however, that plans and specifications for any replacement structure to be constructed in substantially the same configuration, location and architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within ten (10) days after submission. In the event the Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

10.05 Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall proceed diligently to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the Common Areas in the vicinity of the activity provided that they shall promptly restore such areas to their prior condition when the use thereof is no longer required.

10.06 Liability for Damages. Neither the Committee nor any member thereof shall be held liable for damages by reason of any action, inaction, approval, or disapproval taken or given without malice by such member or the Committee with respect to any request made pursuant to this Article X.

10.07 Declarant's Obligation. Declarant hereby covenants in favor of each Owner (a) that all residential improvements to be erected by it and all improvements of the Common Areas to be accomplished by it in the Development will be architecturally compatible with respect to one another and (b) that on the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah, all Units and Common Areas of the Development will be located approximately in the locations shown on the Plat.

## ARTICLE XI

### INSURANCE

11.01 Hazard Insurance. The Association shall procure and maintain, from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports, a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the Common Areas, including common personal property and supplies owned by the Association, with either a Replacement Cost Endorsement or a Guaranteed Replacement Cost Endorsement and an Agreed Amount Endorsement or its equivalent, an Inflation Guard Endorsement, if available, and such other endorsements as the Association shall deem necessary. The Association shall not provide nor be required to provide hazard or liability insurance for any of Owner's improvements or personal property. Such policy or policies shall provide for deductibles which shall not be greater than the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the face amount of the policy. Such insurance policy or policies shall name the Association as insured and shall afford protection against loss or damage by fire and other hazards that are normally covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, and such other risks as are normally covered by the standard "all risk" or Cause of Loss-Broad Form policy of insurance. The Policy shall provide that it may not be canceled or substantially modified by the insurer unless it give at least thirty (30) days' prior written notice thereof to each insured.

11.02 Liability Insurance. The Association shall procure and maintain from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports a policy or policies (herein called the "Policy") of public liability insurance to insure the Association, the Board, the Manager and employees of the Association and the Owners against claims for bodily injury and property damage arising out of the operation, maintenance and use of the Common Areas, any activities thereon, and any conditions of the Common Areas under a Comprehensive General Liability form of policy. Such insurance shall be for such limits as the Association may decide, but not less than \$1,000,000 for personal injury and property damage arising out of a single occurrence which coverage shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use of the Common Areas. The Policy shall contain an endorsement which shall preclude the insurer from denying the claim of any Owner because of the negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds, as between themselves, are not prejudiced. The Policy shall provide that it may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured.

11.03 Fidelity Insurance. The Association may procure and maintain from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports a policy or policies of blanket fidelity insurance or protect against dishonest acts on the part of any trustee, officer, manager, agent, employee or other person who administers, handles, or is otherwise responsible for the funds of the Association. Such policy or policies shall name the Association as the obligee, shall provide coverage for the maximum

sum of funds, including reserves, which will be in the possession or custody of the Association at any time the policy is in force, but in no event less than three (3) months assessment on all Units, plus reserves. The policy or policies shall provide that they may not be canceled or substantially modified by the insurer unless it give at least thirty (30) days prior written notice thereof to each insured. The policy shall contain a waiver of any defense for persons who serve without compensation. In the event the Association shall engage the services of a management agent who shall administer, handle or be responsible for the funds of the Association, then the Association shall require such management agent to provide a policy or policies of fidelity insurance which shall provide the same insurance coverage as required of the Association by this Section.

11.04 Worker's Compensation. The Association shall carry worker's compensation and employer's liability insurance and other similar insurance with respect to all employees of the Association in the amounts and in the forms now or hereafter required by law.

11.05 Additional Insurance. The Association may also procure such additional insurance which shall insure the Common Areas, the Association or the Owners and others against such additional risks as the Association shall deem advisable.

11.06 General Requirements. Each policy of insurance obtained by the Association shall be written by insurers licensed in the State of Utah. If reasonably possible, each policy of insurance to be obtained by the Association shall provide:

- (a) a waiver of the insurer's right of subrogation against the Association, Owners, and their respective trustees, directors, officers, agents, employees, invitees and tenants;
- (b) that it cannot be canceled, suspended or invalidated due to the conduct of any Owner or Owners, but only due to the conduct of the Association, and then only after the Association shall have failed to cure or correct the defect within a reasonable time after a written demand to so cure or correct; and
- (c) that any "no other insurance" clause shall not apply to any insurance maintained individually by any Owner.

11.07 Owners' Insurance. Each Owner shall obtain insurance at his or her own expense, providing coverage on Owner's Unit, Owner's personal property and Owner's personal liability and covering such risks as Owner may deem appropriate. Each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies of the Association, the other Owners, and the trustees, directors, officers, servants, employees, agents, invitees or tenants of any of them, if such insurance can be obtained in the customary practice without substantial additional premium charge for the waiver of rights of subrogation.

## ARTICLE XII

### MORTGAGEE PROTECTION

12.01 Amendment. No amendment to this Declaration shall affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment or any successor or assign thereof, unless such Mortgagee has consented in writing to such amendment.

12.02 Notice of Matters Affecting Security. The Association shall give written notice to any Mortgagee of a Unit requesting such notice whenever:

- (a) there is any material default by the Owner of the Unit subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within ninety (90) days after default occurs; or
- (b) damage to the Common Areas from any one occurrence exceeds \$10,000.00; or
- (c) there is any condemnation or taking by eminent domain of any material portion of the Common Areas.

12.03 Notice of Meetings. Upon request of a Mortgagee, the Association shall give to such Mortgagee of a Unit notice of all meetings of the Association. Each Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

12.04 Right to Examine Association Records. Any Mortgagee, upon request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Unit securing the Mortgage.

12.05 Right to Pay Common Area Taxes and Charges. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on insurance policies pertaining to the Common Areas, or secure new insurance coverage pertaining to the Common Areas on the lapse of a policy; and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

12.06 Insurance and Condemnation Proceeds. No provision of this Declaration shall be deemed to grant any Owner any rights in or to a distribution of insurance proceeds or a condemnation award for the loss to or the taking of a Unit or the Common Areas which are prior to the rights of the Mortgagee under its respective Mortgage to such distribution of insurance proceeds or condemnation award.

### ARTICLE XIII

#### MISCELLANEOUS

13.01 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner at the latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to any officer or Trustee of the Association. Any notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Association or any member of the Architectural Control Committee.

13.02 Amendment. Except as provided below, this Declaration may be amended by, but only by, an instrument recorded in Utah County, Utah, which is executed by Owners (including Declarant) who collectively hold at least seventy-five percent (75%) of the total outstanding votes in the Association. In addition, such right of amendment shall be subject to the following qualification: (1) No amendment to any provision of this Declaration which has the effect to diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant or by such Association, as the case may be. (2) Nor to relinquish responsibility for ownership of common area.

13.03 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 13.03:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.

(b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed.

(c) Any change in ownership of a Unit which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

(d) Unless the consent of all Owners whose memberships are appurtenant to the same Unit are secured, the consent of none of such Owners shall be effective.

13.04 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

13.05 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

13.06 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who heretofore acquired or hereafter acquire any interest in a Unit, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

13.07 Enforcement of Restrictions. The Association or any Owner shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with or to obtain redress for violation of this Declaration as provided herein. The prevailing party in an action for the Interpretation of, the enforcement of or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

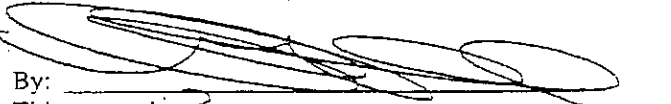
13.08 Duration. This Declaration shall remain in effect for twenty-five (25) years with an automatic extension of ten (10) years. Termination of this Declaration shall be recorded in Utah County, Utah, which is executed by all parties required by Section 11.02 hereof, plus the mortgagee of each and every Unit.

13.09 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah.

EXECUTED by Declarant as of the day and year first above written.

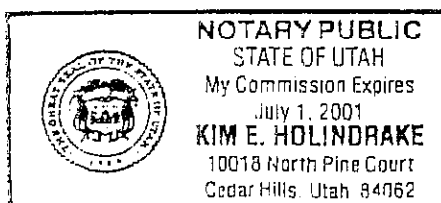
DECLARANT:

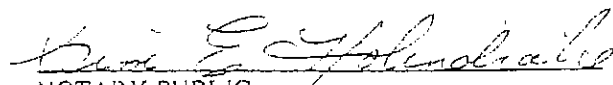
PANDA BEAR HOMES, INC.

By:   
Title: V.P.

STATE OF UTAH           )  
                                  )SS  
COUNTY OF UTAH       )

On this 22<sup>nd</sup> day of August, 2000, personally appeared before me, Glen Arnell, who, being by me duly sworn, did say that he is the Vice President of Panda Bear Homes. That said instrument was signed by him in behalf of said company pursuant to authority; and that said company executed the same.



  
NOTARY PUBLIC

~~EXT 67251:2000 PG 37 of 49~~

## BOUNDARY DESCRIPTION

A PARCEL OF LAND LYING WITHIN THE EAST  $\frac{1}{2}$  AND A PORTION OF THE NW  $\frac{1}{4}$  OF SECTION 8, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SLB&M, UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

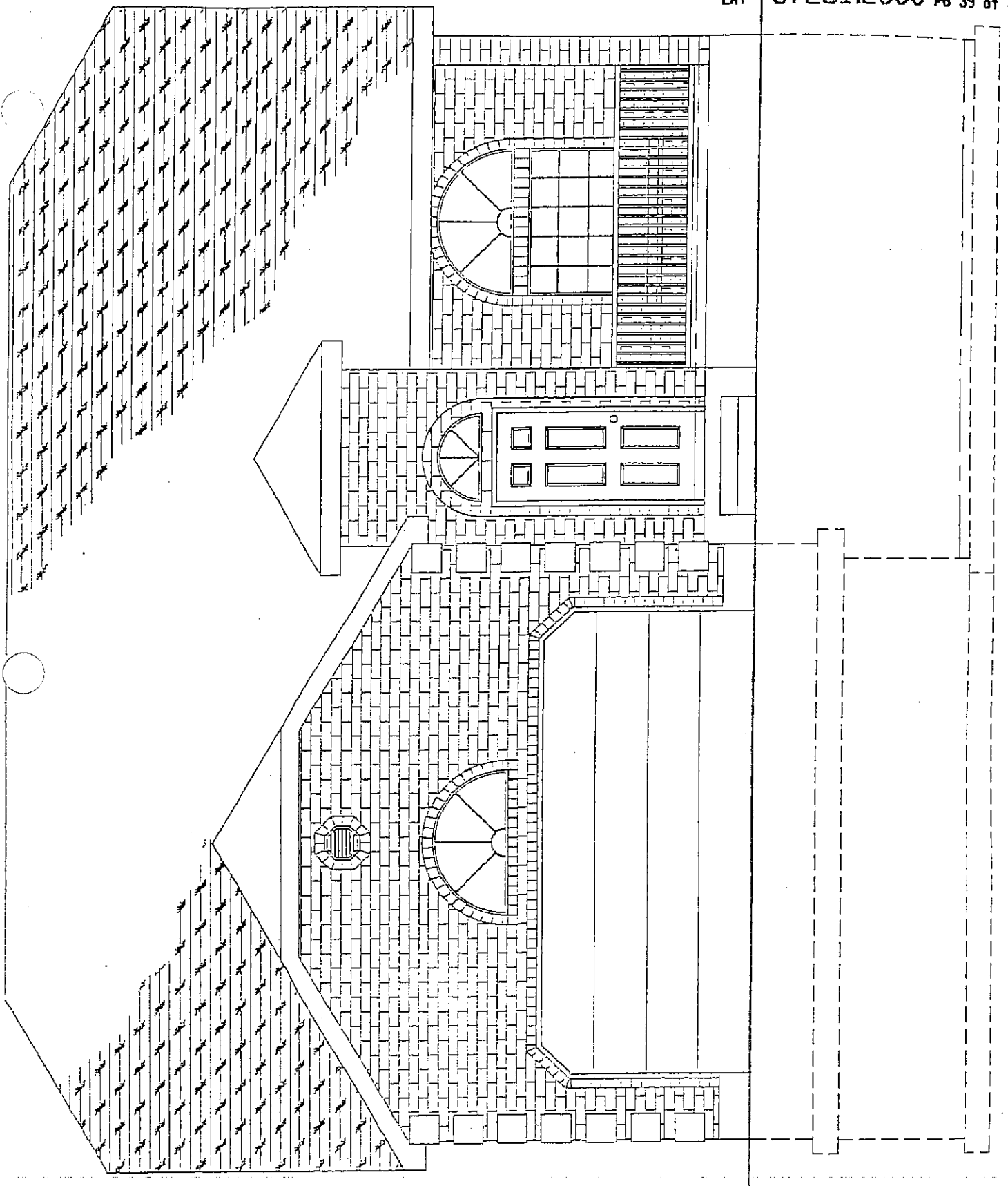
COMMENCING AT A BRASS CAP MONUMENT MARKING THE EAST  $\frac{1}{4}$  CORNER OF SAID SECTION 8; THENCE S89°41'52"W ALONG THE EAST-WEST MID SECTION LINE, A DISTANCE OF 2127.37 FEET TO THE REAL POINT OF BEGINNING.

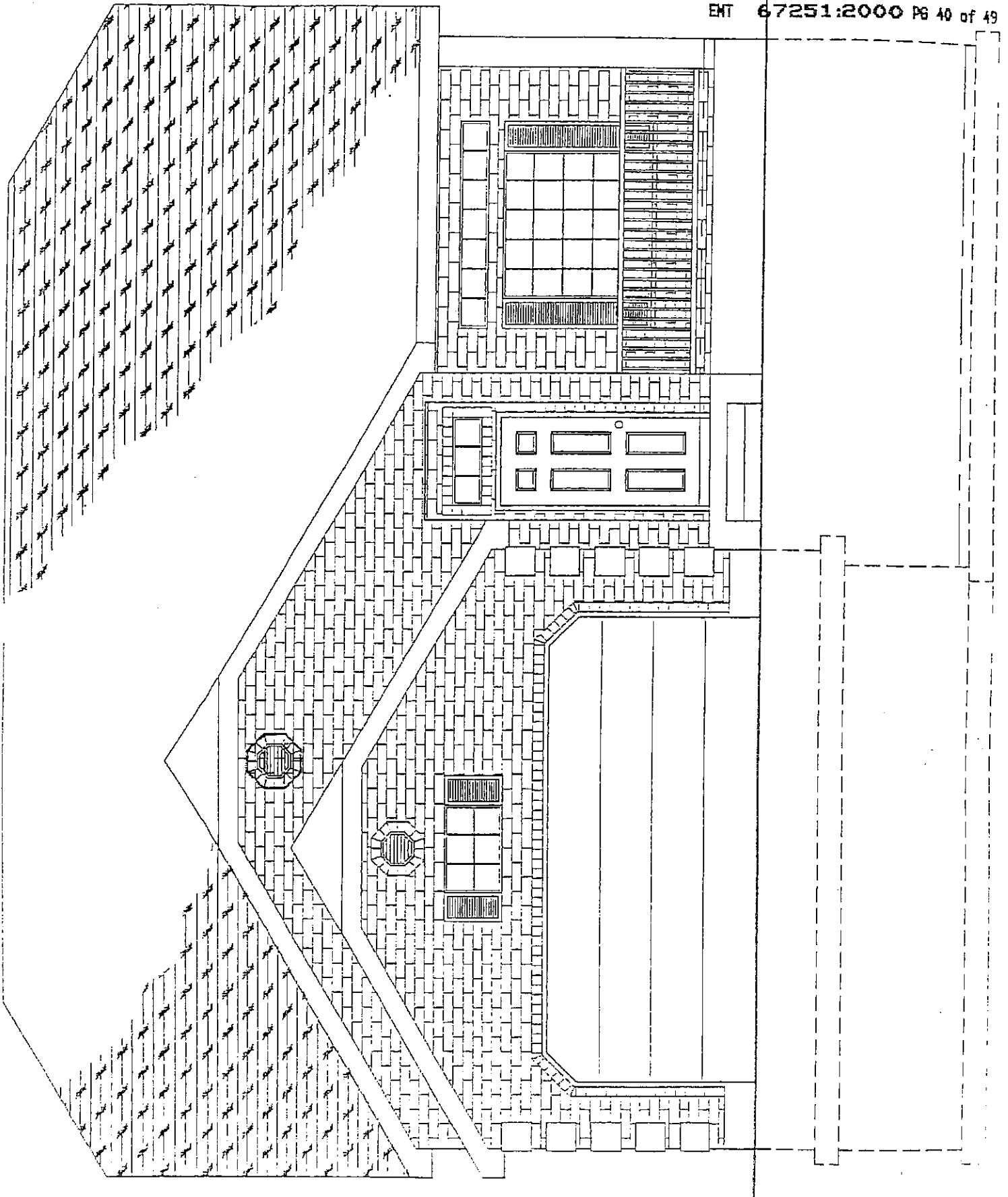
THENCE S00°49'10"E, A DISTANCE OF 829.22 FEET; THENCE S00°34'30"E, A DISTANCE OF 395.72 FEET; THENCE S89°10'50"W, A DISTANCE OF 132.05 FEET; THENCE N44°53'48"W, A DISTANCE OF 352.13 FEET; THENCE N00°49'10"W, A DISTANCE OF 12.03 FEET; THENCE S89°10'55"W, A DISTANCE OF 125.00 FEET; THENCE N00°37'36"W, A DISTANCE OF 503.61 FEET; THENCE S72°18'50"W, A DISTANCE OF 74.17 FEET; THENCE N17°41'10"W, A DISTANCE OF 133.95 FEET; THENCE N72°18'50"E, A DISTANCE OF 114.77 FEET; THENCE N00°49'10"W, A DISTANCE OF 320.89 FEET; THENCE S89°41'52"W, A DISTANCE OF 6.17 FEET TO THE SOUTHEAST CORNER OF MAHOGANY ACRES PLAT B SUBDIVISION AS SHOWN ON THE OFFICIAL PLAT THEREOF; THENCE N00°18'07"W ALONG SAID SUBDIVISION BOUNDARY, A DISTANCE OF 166.98 FEET; THENCE S79°00'53"E, A DISTANCE OF 517.62 FEET; THENCE S00°49'10"E, A DISTANCE OF 65.67 FEET TO THE REAL POINT OF BEGINNING. CONTAINS 14.32 ACRES OF LAND.

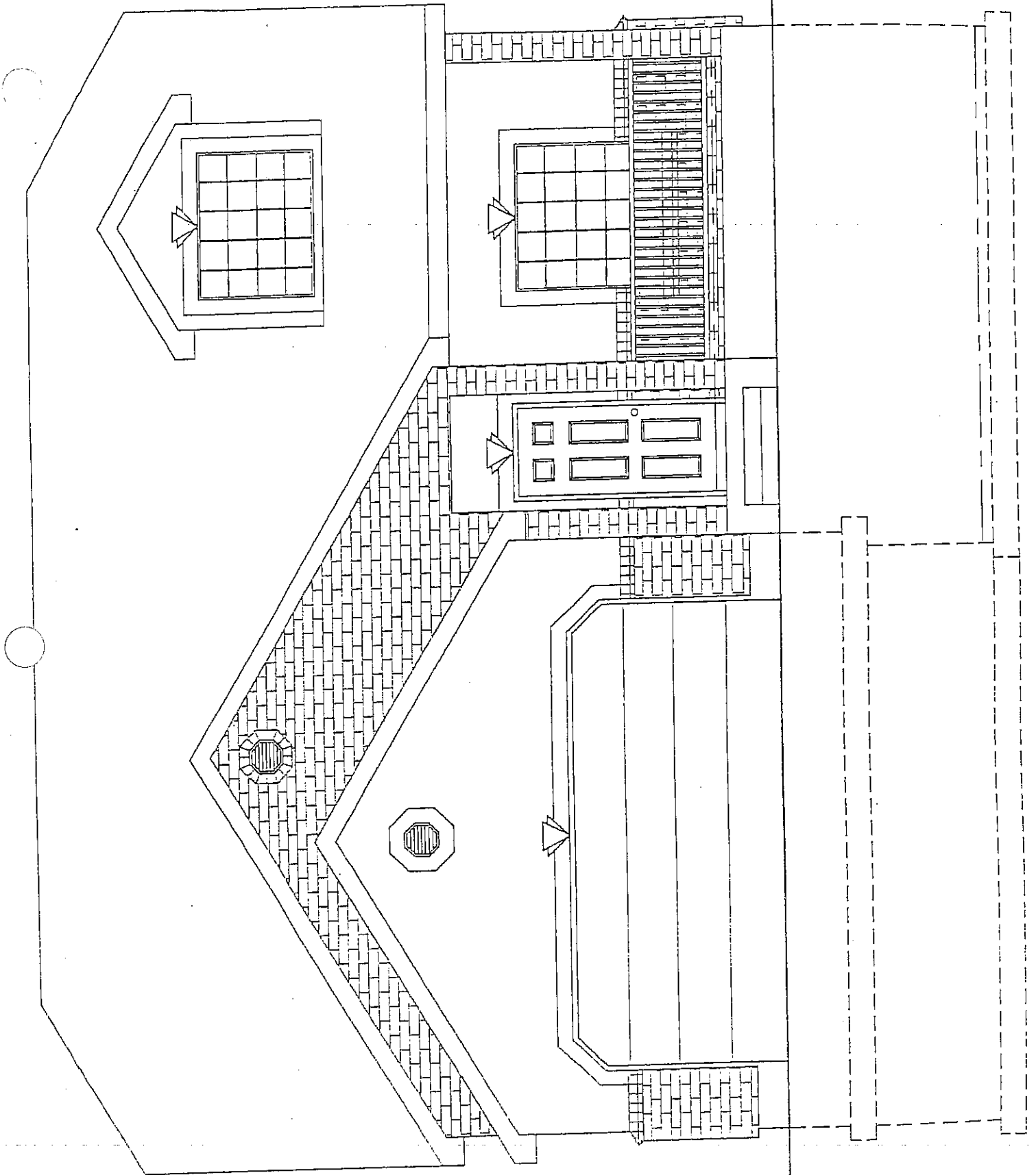
## Exhibit G

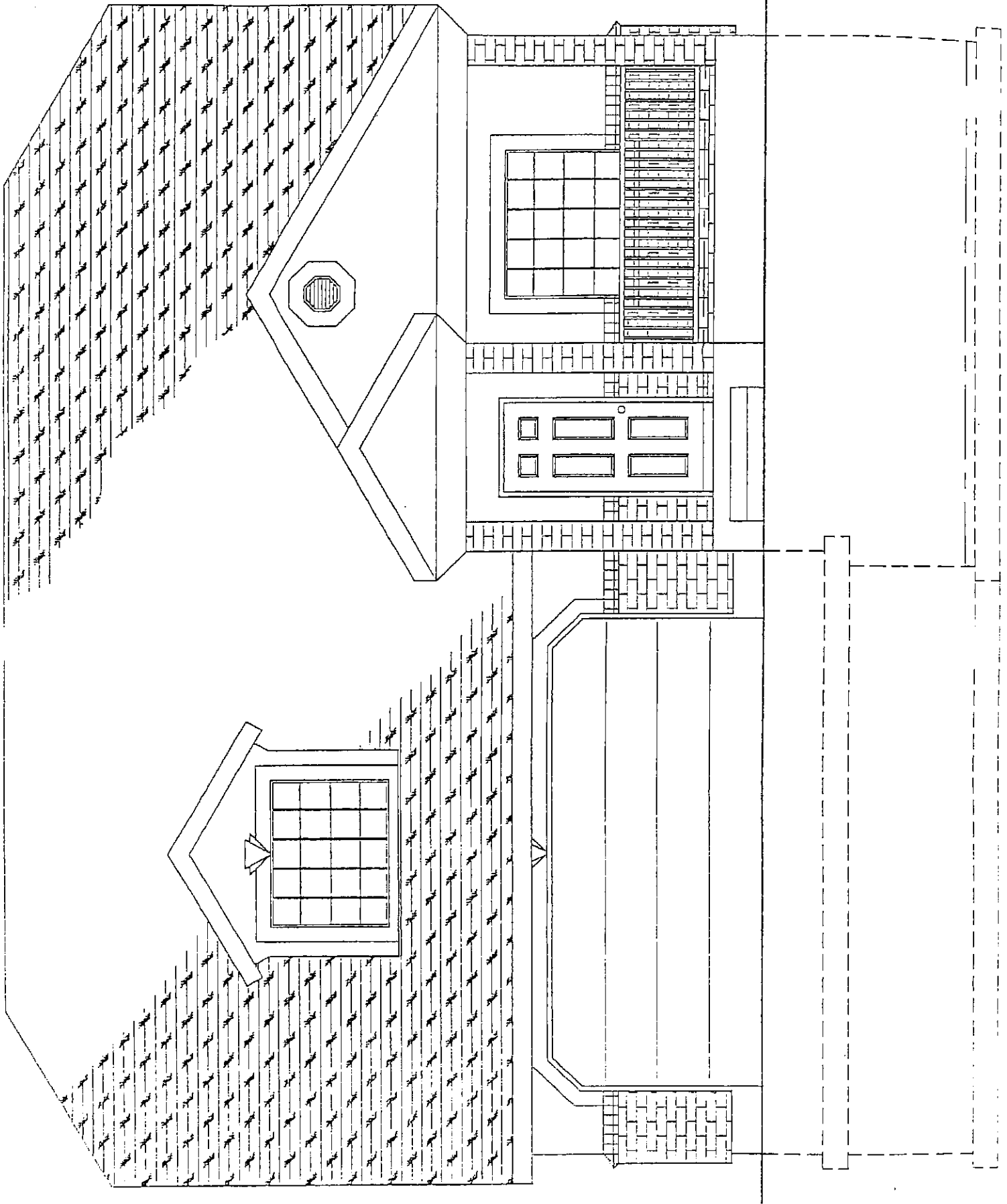
### Approved Renderings for Homes

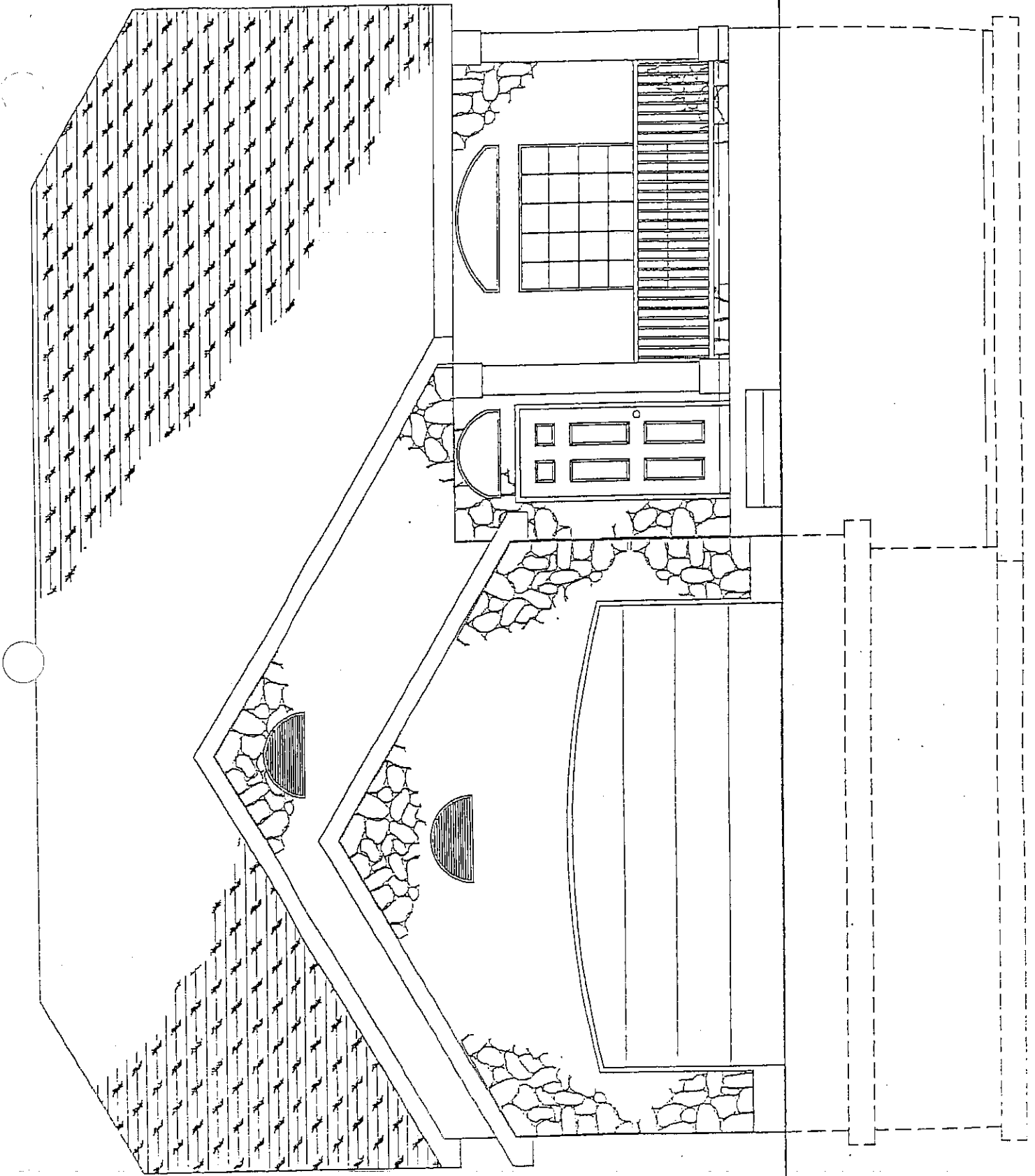


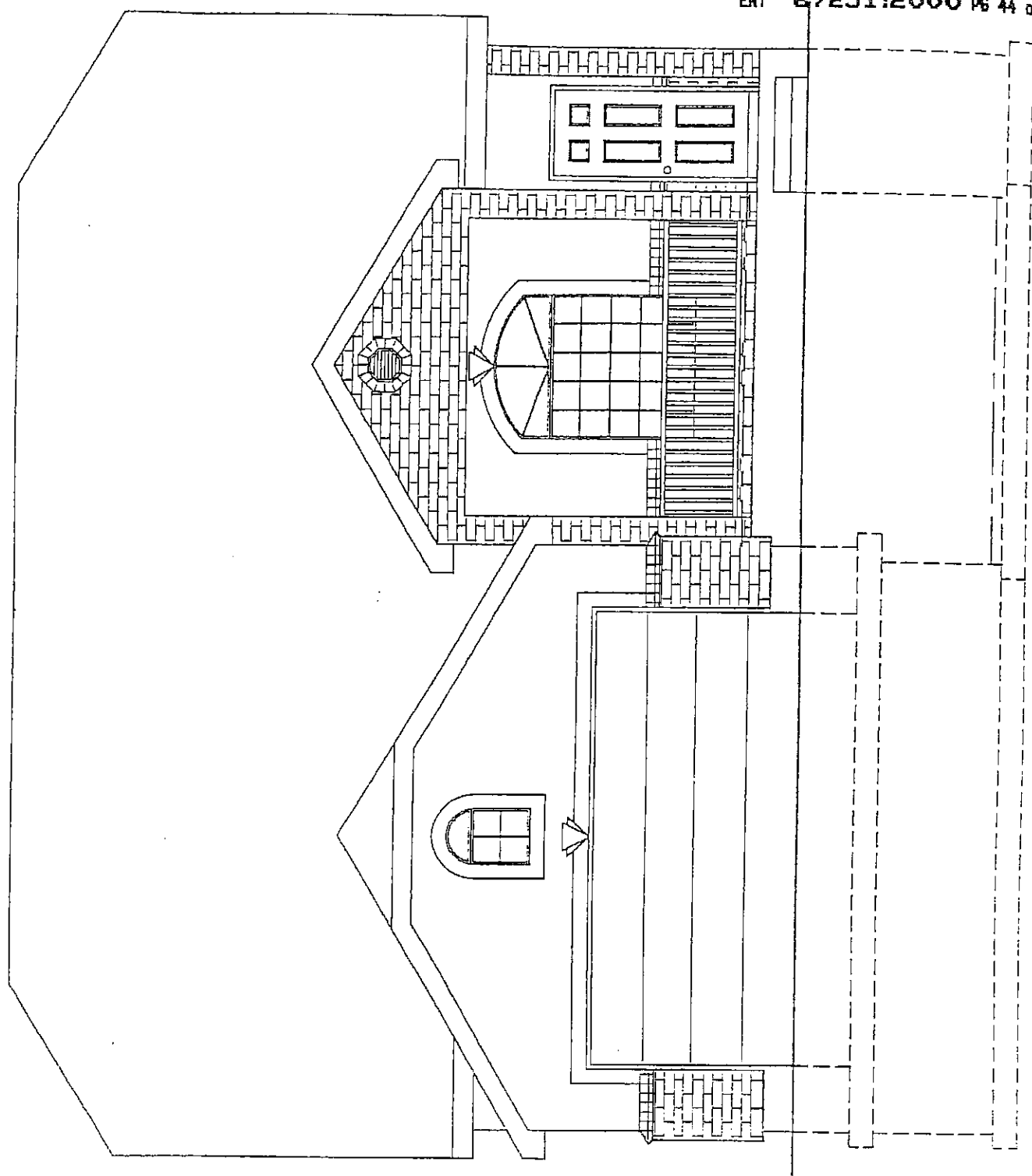


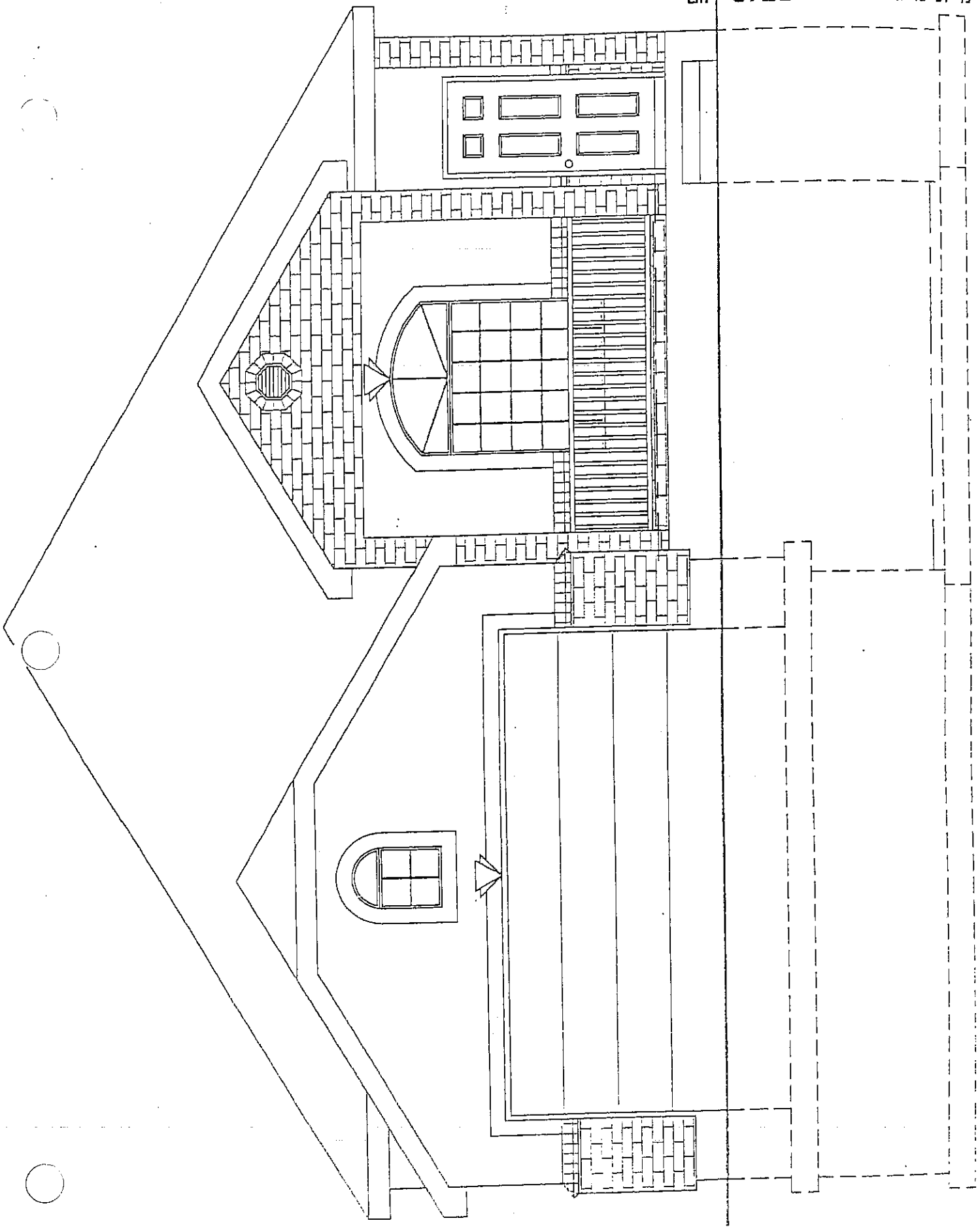


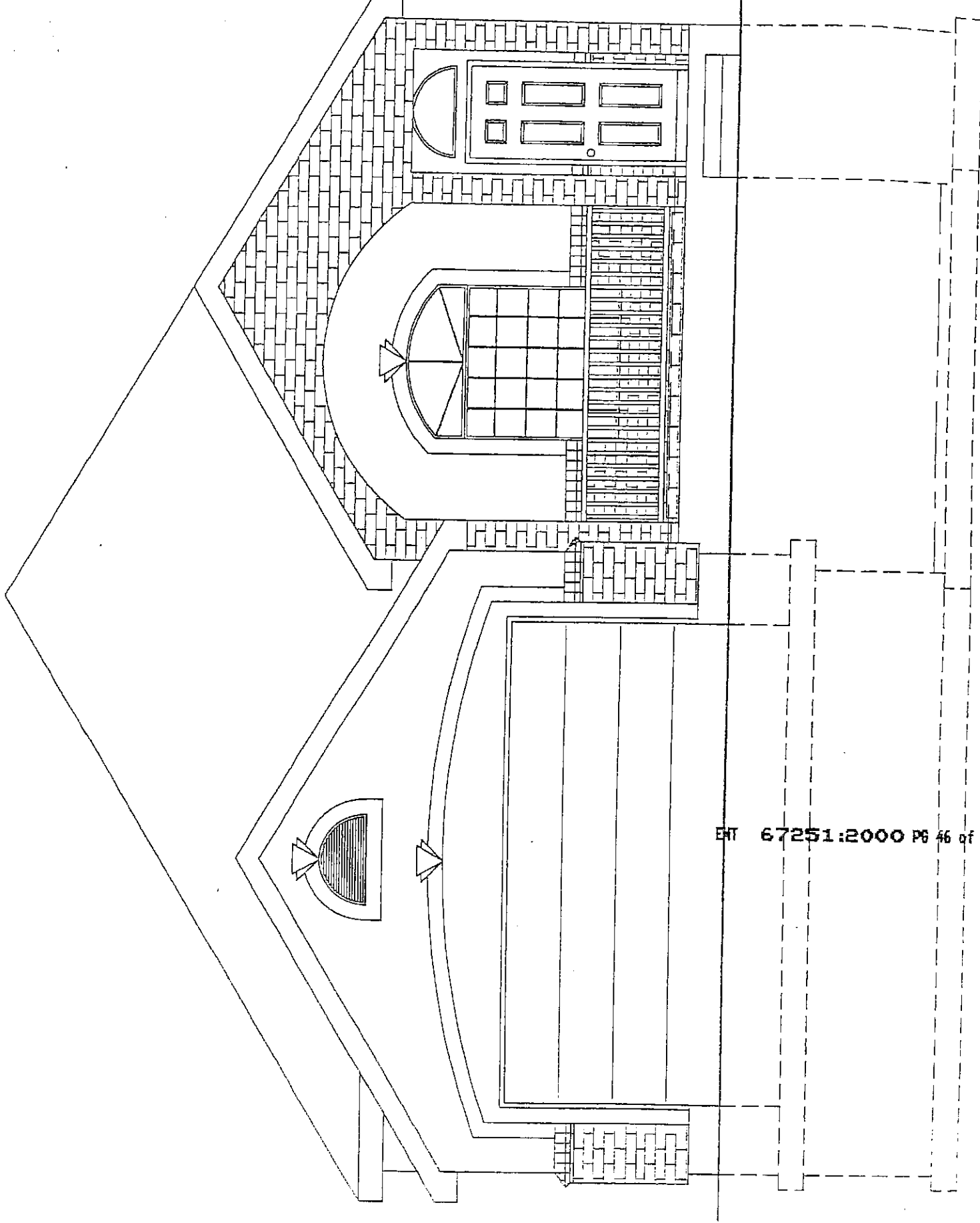






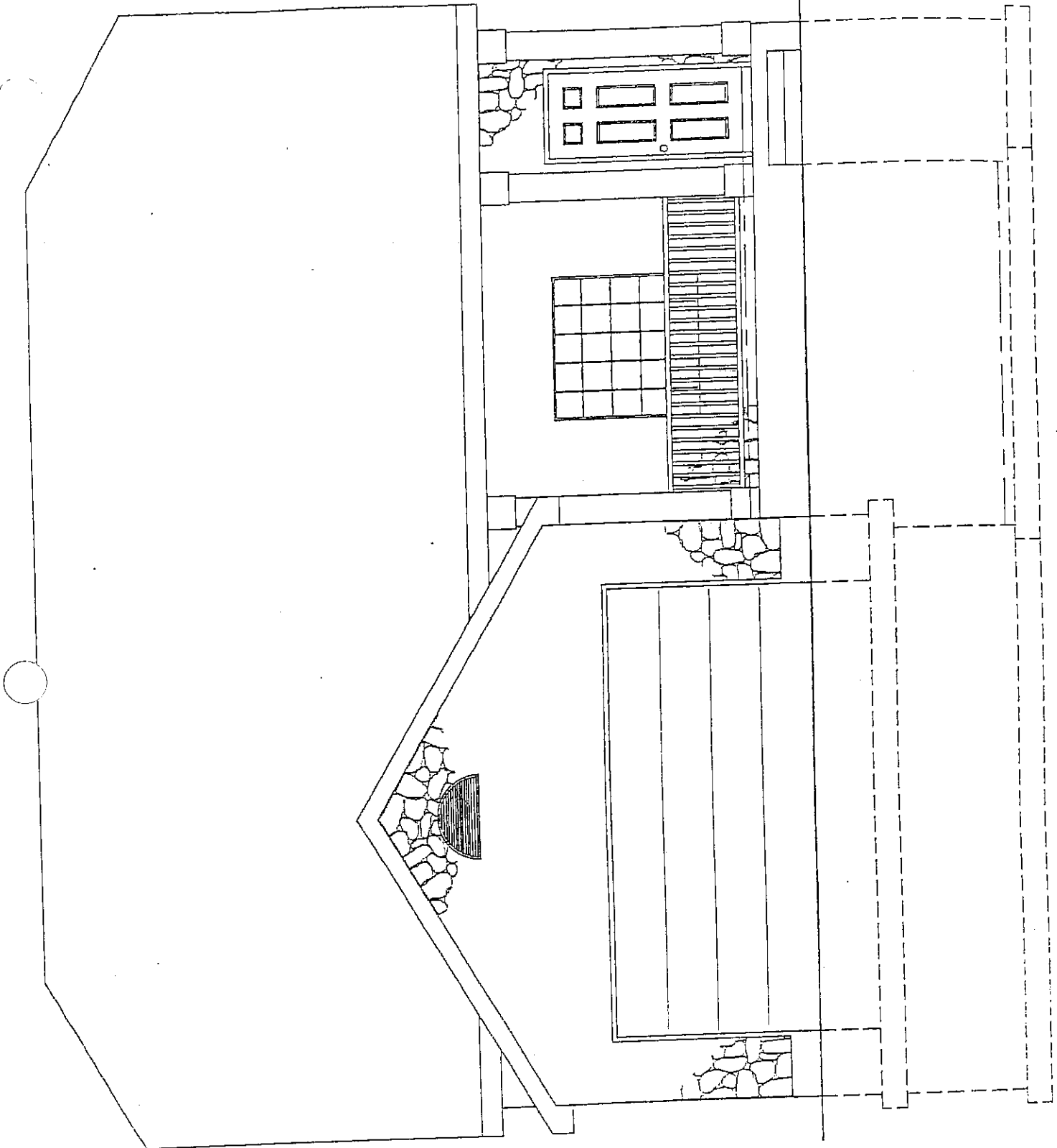


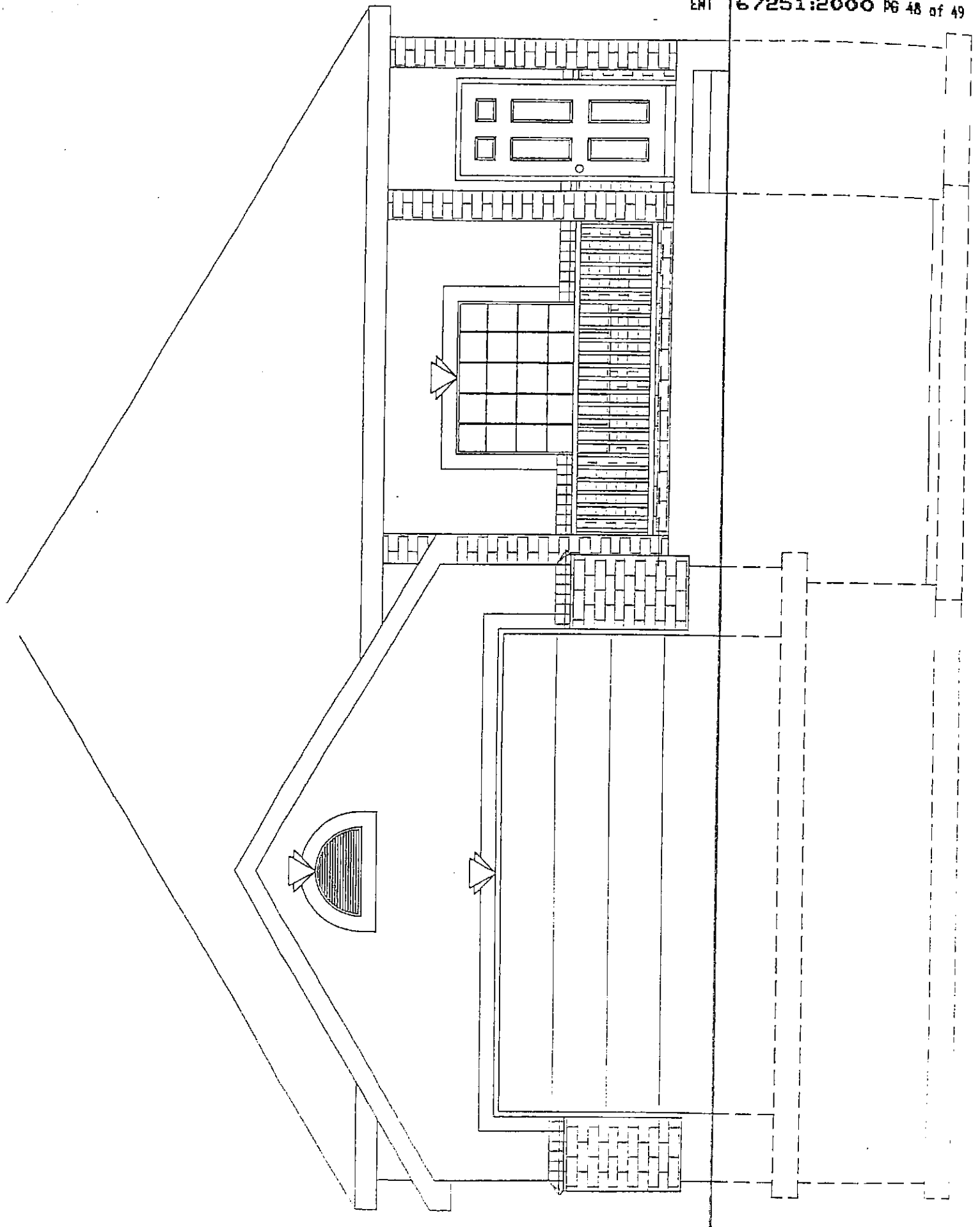




ENT 67251:2000 PG 46 of 49







(2)

DEVELOPMENT AGREEMENT

ENT 67251:2000 Pg 1 of 49  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2000 Aug 28 11:24 am FEE 0.00 BY SS  
RECORDED FOR TOWN OF CEDAR HILLS

This Development Agreement (the "Agreement") is entered into as of this 21<sup>st</sup> day of August, 2000 between Panda Homes, by and through Glen Arnold <sup>Vice</sup> President, (hereinafter the "Developer"), and the City of Cedar Hills, a political subdivision of the State of Utah, by and through the City Council, (the "City").

RECITALS:

WHEREAS, Developer is owner of real property located within the incorporated City of Cedar Hills, Utah (the "Property") described in Exhibit "A" attached hereto, which is located within the City's H-1 Hillside zone.

WHEREAS, Developer is desirous of subdividing and improving the Property for the construction of single family dwellings within a PRD concept managed by a Home-Owners Association, under the City's zoning ordinance and has received conditioned preliminary approval for a development on the site ("Renaissance PRD"), shown on Exhibit "B".

WHEREAS, Due to the nature of the development proposed by the Developer, the City is desirous of insuring, through this agreement, that the health, safety, and general welfare of City residents is protected through aesthetic considerations, adequate transportation development, open space development, and utility line development.

WHEREAS, Acting pursuant to its authority under Utah Code Annotated, §10-9-101, et seq., and after all required public notice and hearings, the City, in the exercise of its legislative discretion, has elected to process Renaissance in a manner resulting in the negotiation, consideration and approval of this Development Agreement and has concluded that the terms and conditions set forth herein serve a public purpose and promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of the City.

NOW, THEREFORE, in consideration of the premises above and the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:

TERMS AND CONDITIONS

1. Density

The City agrees that the Property shall be developed pursuant to the PRD portions of the H-1 zone, whereby density is set based upon a slope analysis. Developer has completed a slope analysis for the property (Exhibit "C") and has determined the overall density to be 40 total units over approximately 14.5 acres, for a total density of 2.75 units/acre.

2. Park and Open Space

2.1 Park Land Dedication. The Developer and City agree that no park land shall be deeded to the City within the project area and that Developer shall satisfy his park land requirements through payment of impact fees pursuant to City ordinances.

2.3 Open Space. The Developer and City agree that the open space provided for within the Plat and included in the Home-Owners Association is adequate to meet City ordinance requirements of a minimum of 30% open space within this phase of the project area. Of this, all areas having a slope of 30% or greater shall be deemed to be in the open space.

2.5 Landscaping at Renaissance. Landscaping for Renaissance PRD shall be bonded for and conform with the submitted and approved landscaping plan (Exhibit "D").

2.6 Landscaping at Project Entrances. Developer agrees to landscape "entry statements" at both access points to the project. The North end to consist of 2 brick pillars and a gate and the South end to consist of landscaped entry monuments. Landscaped improvements shall be bonded for and conform with submitted entry statement designs approved by the Mayor (Exhibit "E"). The North gate shall remain closed.

### 3. Transportation

- 3.1 Private Lanes. Due to the private, gated community nature of Renaissance PRD, Developer and City agree that all streets shall be maintained by a Home-Owners Association for the private use of Renaissance residents. Furthermore, Developer agrees to provide connection at both ends of the development to existing or future public roadways.

### 4. Utilities

- 4.1 Utility Extensions. Developer agrees to attach to existing utilities including water, sewer, and pressurized irrigation, and to make provision for cable utility extension conduiting and City utility conduiting pursuant to City Engineer requirements and City specifications. All extensions are to conform with requirements of the City Engineer.
- 4.2 Sewer Main location. In order to provide sewer service to the Project, Developer agrees to connect the Project to a sewer main that Developer constructs within 9220 North, connecting to the north end of the Project.
- 4.3 Water Main location. In order to provide water service to Project, Developer agrees to attach to the City's existing water system, located at approximately 9300 North, and construct the line within 9220 North to connect to the Project at the north end.
- 4.4 Storm Drainage. Developer agrees to retain all storm-drainage within the project area. Developer and City agree that the Home-Owners Association shall be responsible for maintenance of the storm drain retention areas. The Developer agrees to grant storm drain easements to the City for those storm drain retention areas (Exhibit "F").

### 5. Impact Fees.

Developer agrees to pay all City impact fees, pursuant to City ordinance, as they currently exist or may be amended or added by City ordinance.

### 6. Decorative Barrier.

The Developer agrees to construct a vinyl, split-rail fence along the outside boundary of the Development, as approved by the City.

### 7. Conditions, Covenants, and Restrictions.

The attached CCR's and Home Owners Association Documents for Renaissance PRD (Exhibit "G") have been reviewed and approved by the City and are hereby incorporated into this agreement and will be recorded concurrently with recording of Renaissance PRD.

### 8. Architectural Renderings of Homes.

Approval of the City for Renaissance is based upon construction of homes in substantial conformance with attached architectural renderings. Developer agrees to build all homes in Renaissance in conformance with the following:

- 8.1 Developer has provided exterior elevations for City approval (attached herein as "Exhibit H"). Developer agrees to build all homes in conformance with the approved elevations and, furthermore, agrees that any alteration from the approved elevations shall be subject to City Council approval.
- 8.2 No more than 20% of the homes in Renaissance PRD shall be the same, as determined by the elevations.
- 8.3 Each of the homes constructed within the development shall have a minimum footprint of 1300 ft<sup>2</sup>, a minimum of 10' ceiling construction, 38' minimum width, and 25% full exterior construction of rock or brick.

### 9. Successors and Assigns.

- 9.1 Binding Effect. This Agreement shall be binding on the successors and assigns of Developer in the ownership or development of any portion of the Project. Notwithstanding the foregoing, a purchaser of

the Project or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to the portion of the Project so transferred.

9.2 Transfer of Project. Developer shall be entitled to sell or transfer any portion of the Project subject to the terms of this Agreement upon written notice to and written consent from City, which consent shall not be unreasonably withheld. In the event of a sale or transfer of the Project, or any portion thereof, the seller or transferor and the buyer or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such transfer an agreement satisfactory to the City, delineating and allocating between Developer and transferee a letter (i) acknowledging the existence of this Agreement and (ii) agreeing to be bound thereby. Said letter shall be signed by the buyer or transferee, notarized, and delivered to the City Clerk prior to the transfer or sale. In such event, the buyer or transferee of the parcel so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the parcel so transferred.

9.3 Sale of Platted Lots. Notwithstanding Paragraph 9.2, Developer shall not be required to notify City or obtain City's consent with regard to the sale or transfer to bonafide home buyers lots (i) for which final plats have been approved and recorded in accordance with this Agreement and (ii) which are intended for single family residential use.

## 10. Default

10.1 Events of Default. Upon the happening of one or more of the following events or conditions Developer shall be in default ("Default") under this Agreement:

- (1) A warranty, representation or statement made or furnished by Developer under this Agreement, including any Exhibits attached hereto, is intentionally false or misleading in any material respect when it was made.
- (2) A determination by City made upon the basis of substantial evidence following a periodic review under Paragraph 11.14 that Developer has not complied in good faith with one or more of the material terms or conditions of this Agreement.
- (3) Any other event, condition, act or omission which materially interferes with the intent and objectives of this Agreement.

10.2 Procedure Upon Default.

- (1) Upon the occurrence of Default, City shall give Developer thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said Default must be satisfactorily cured. After proper notice and expiration of said thirty (30) day cure period without cure, City shall hold a public hearing which has been noticed by publication and for which notice has been expressly provided to Developer. Thereafter, City may declare Developer to be in breach of this Agreement and may take the actions specified in Paragraph 10.3 herein. Failure or delay in giving notice of Default shall not constitute a waiver of any Default, nor shall it change the time of Default.
- (2) City does not waive any claim of defect in performance by Developer if on periodic review City does not propose to modify or terminate this Agreement.
- (3) Any Default or inability to cure a Default caused by strikes, lockout, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar cases beyond the reasonable control of the obligation to perform shall excuse the performance by such party for a period during which any such event prevented, delayed or stopped any required performance or effort to cure a Default.
- (4) An express repudiation, refusal or renunciation of this Agreement, if the name is in writing and signed by Developer, shall be sufficient to terminate this Agreement and a hearing on the matter shall not be required.

10.3 Breach of Agreement. Upon Default as set forth in Paragraphs 10.1 and 10.2, City may declare Developer to be in breach of this Agreement and City may (i) withhold approval of any or all

building permits or certificates of occupancy applied for in the Project, (ii) until the breach has been corrected by Developer, shall be under no obligation to approve or to issue any additional building permits or certificates of occupancy for any dwelling withing the Project and (iii) draw upon the developers bond placed with the City. If City draws on the bond it shall not be under obligation to complete the Improvements but may use the proceeds for engineering expenses, consultants, fees and charges, legal fees and costs, subdivision improvements, reimbursements, or other expenses connected with the Project as City may determine in its sole discretion. Notwithstanding the rights guaranteed by this Paragraph 8.3, City may pursue whatever additional remedies it may have at law or in equity. If City brings legal action against Developer or the issuer of the bond, and if City is successful in such litigation, Developer shall pay City's costs and attorneys' fees. The waiver of any one or more breaches of this Agreement shall not constitute a waiver of the remaining terms thereof.

## 11. General Terms and Conditions

- 11.1 Recording of Agreement. This Agreement shall be recorded and shall be a covenant running with the Property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.
- 11.2 Construction of Agreement. This Agreement shall be construed so as to effectuate its public purpose of ensuring Improvements and Facilities are timely provided for the benefit of the ultimate purchasers of lots in the Project and to protect health, safety, and welfare of the citizens of City.
- 11.3 Duration. The terms of this Agreement shall commence on, and the effective date of the agreement shall be, the effective date of the execution of this Agreement. The Term of this Agreement shall extend until the obligations and requirements herein are completed and in conformance with City subdivision, construction, and bonding requirements.
- 11.4 State and Federal Law. The Parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of the Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect.
- 11.5 Enforcement. The parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event that Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after fifteen (15) days written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such fifteen (15) days and is continuing to use its reasonable best efforts to cure such violation, take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer. City shall be free from any liability arising out of the exercise of its rights under this paragraph.
- 11.6 No Waiver. Failure of a party hereto exercise any right hereunder shall not be deemed a waiver of any such right and shall not effect the right of such right and shall not affect the right of such party to exercise at some future time said right or any other right i may have hereunder. Unless this Agreement is amended by vote of the City Council taken with the same formality as the vote approving this agreement, no officer, official or agent of City has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind City by making any promise or representation not contained herein.
- 11.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

- 11.8 Attorneys Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgement based on this Agreement, for any reason or in any legal proceedings whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys fees and all costs and expenses. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein.

- 11.9 Notices. All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

To City:	Mayor 4393 W Cedar Hills Drive Cedar Hills, UT 84062	With copies to:	Stan R. Smith, Esq. P.O. Box 727 American Fork, UT 84003
----------	--	-----------------	--

To Developer: Glen Arnell  
Panda Bear Homes, Inc.  
135 East 800 North  
Orem, UT 84057

- 11.10 Applicable Law. This Agreement is entered into under and pursuant to, and is to be constructed and enforceable in accordance with, the laws of the State of Utah.

- 11.11 Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

- 11.12 Hold Harmless. Developer agrees to and shall hold City, its officers, agents, employees, consultants, special counsel and representatives harmless from liability for damages, just compensation restitution, judicial or equitable relief arising from the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf which relates to the Project.

11.12.1 Exceptions to Hold Harmless. The agreements of Developer in Paragraph 11.12 shall not be applicable to (i) any claim arising by reason of the negligence or intentional actions of City, or (ii) attorneys fees under Paragraph 11.8 herein.

11.12.2 Hold Harmless Procedures City shall give written notice of any claim, demand, action or proceeding which is the subject of Developer's hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Developer shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicate costs and expenses.

- 11.13 Relationship of Parties. The contractual relationship between City and Developer arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third party beneficiary rights. It is specifically understood by the parties that: (i) all rights of action and enforcement of the terms and conditions of this Agreement shall be reserved to City and Developer; (ii) the Project is a private development; (iii) City has not interest in or responsibilities for or duty to third parties concerning any Improvements to the Property unless City accepts the Improvements pursuant to the provisions of this Agreement or in connection with final subdivision plat approval; and (iv) Developer shall have the full power and exclusive control of the Property subject to the obligations of Developer set forth in this Agreement.


- 11.14 Annual Review. City shall review progress pursuant to this Agreement at least once every twelve (12) months to determine if Developer has complied with the terms of this Agreement. If City finds, on the basis of substantial evidence, that Developer has failed to comply with the terms hereof, City may declare Developer to be in Default as provided in Article 8 herein. City's failure to review at

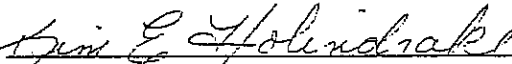
least annually Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by any party as a Default under this Agreement by Developer or City.

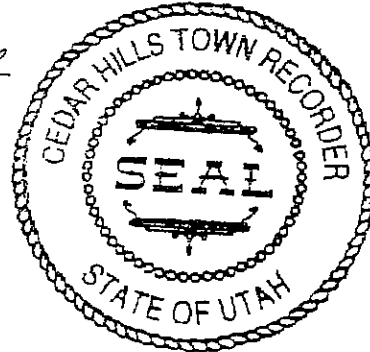
- 11.15 Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in this Agreement or to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fourth District Court, State of Utah, or in the Federal District Court for the District of Utah.
- 11.16 Title and Authority. Developer expressly warrants and represents to City that it is the record owner of the Property constituting the Project, and further represents and warrants, together with the undersigned individual, that the undersigned individual has full power and authority to enter into this Agreement. Developer and the undersigned individual understand that City is relying on such representations and warranties in executing this Agreement.
- 11.17 Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.
- 11.18 Exhibits Incorporated. All exhibits to this Agreement are incorporated herein and made a part hereof as if fully set forth herein.

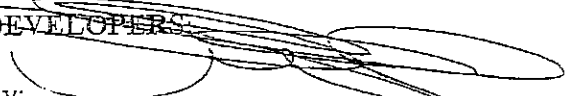
IN WITNESS WHEREOF, this Development Agreement has been executed by City, acting by and through the City Council, pursuant to Council authorization given on July 20, 2000, authorizing such execution, and by a duly authorized representative Developer as of the above-stated date.

City: CEDAR HILLS City COUNCIL

By:   
Brad Sears, Mayor

Attest:   
Kim E. Holindrake, City Recorder

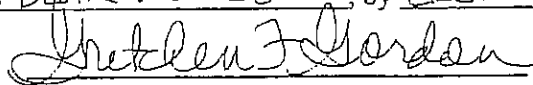


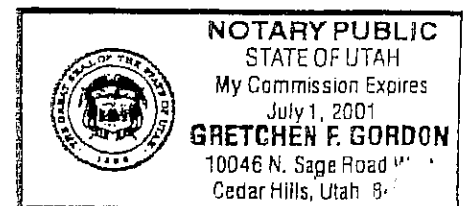
DEVELOPERS:  
By:   
Glen Arnell, President

STATE OF UTAH

COUNTY OF UTAH

The foregoing instrument was acknowledged before me on this 12<sup>th</sup> day of JULY, 2000, for an on behalf of PANDA BEAR HOMES, by GLEN ARNELL Its VICE-PRESIDENT

  
Notary Public  
Residing at: 10046 N SAGE RD WEST  
My Commission Expires: 7-1-2001





Exhibits

ENT 67251:2000 Pg 7 of 49

Exhibit A	Legal Description of Entire Property
Exhibit B	Preliminary Plat for Renaissance
Exhibit C	Slope Analysis.
Exhibit D	Landscaping Plan
Exhibit E	Landscaped entrances
Exhibit F	Storm Drain Retention Basin easements
Exhibit G	CCR's and HOA documents for Renaissance
Exhibit H	Approved renderings for homes.

## DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is entered into as of this 28 day of January, 2004, between Panda Homes, LLC, by and through Glen V. Arnell, Vice President, (hereinafter the "Developer"), and the City of Cedar Hills, a political subdivision of the State of Utah, by and through the City Council, (the "City").

### RECITALS:

**WHEREAS**, Developer is owner of real property located within the incorporated City of Cedar Hills, Utah (the "Property") described in Exhibit "A" attached hereto, which is located within the City's H-1 Hillside zone.

**WHEREAS**, Developer is desirous of subdividing and improving the Property for the construction of single family dwellings within a PRD concept managed by a Home-Owners Association, under the City's zoning ordinance and has received conditioned preliminary approval for a development on the site ("Renaissance PRD"), shown on Exhibit "B".

**WHEREAS**, Due to the nature of the development proposed by the Developer, the City is desirous of insuring, through this agreement, that the health, safety, and general welfare of City residents is protected through aesthetic considerations, adequate transportation development, open space development, and utility line development.

**WHEREAS**, Acting pursuant to its authority under Utah Code Annotated, §10-9-101, et seq., and after all required public notice and hearings, the City, in the exercise of its legislative discretion, has elected to process Renaissance in a manner resulting in the negotiation, consideration and approval of this Development Agreement and has concluded that the terms and conditions set forth herein serve a public purpose and promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of the City.

**NOW, THEREFORE**, in consideration of the premises above and the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:

### TERMS AND CONDITIONS

#### 1. **Density**

The City agrees that the Property shall be developed pursuant to the PRD portions of the H-1 zone, whereby density is set based upon a slope analysis. Developer has completed a slope analysis for the property (Exhibit "C") and has determined the overall density to be 40 total units over approximately 14.5 acres, for a total density of 2.75 units/acre.

#### 2. **Park and Open Space**

- 2.1 Park Land Dedication. The Developer and City agree that no park land shall be deeded to the City within the project area and that Developer shall satisfy his park land requirements through payment of impact fees pursuant to City ordinances.
- 2.2 Open Space. The Developer and City agree that the open space provided for within the Plat and included in the Home-Owners Association is adequate to meet City ordinance requirements of a minimum of 30% open space within this phase of the project area. Of this, all areas having a slope of 30% or greater shall be deemed to be in the open space.

- 2.3 Landscaping at Renaissance. Landscaping for Renaissance PRD shall be bonded for and conform with the submitted and approved landscaping plan (Exhibit "D").
- 2.4 Landscaping at Project Entrances. Developer agrees to landscape "entry statements" at both access points to the project. The North end to consist of 2 brick pillars and a gate and the South end to consist of landscaped entry monuments. Landscaped improvements shall be bonded for and conform with submitted entry statement designs approved by the Mayor (Exhibit "E"). The North gate shall remain closed.

### 3. **Transportation**

- 3.1 Private Lanes. Due to the private, gated community nature of Renaissance PRD, Developer and City agree that all streets shall be maintained by a Home-Owners Association for the private use of Renaissance residents. Furthermore, Developer agrees to provide connection at both ends of the development to existing or future public roadways.

### 4. **Utilities**

- 4.1 Utility Extensions. Developer agrees to attach to existing utilities including water, sewer, and pressurized irrigation, and to make provision for cable utility extension conduiting and City utility conduiting pursuant to City Engineer requirements and City specifications. All extensions are to conform with requirements of the City Engineer.
- 4.2 Sewer Main location. In order to provide sewer service to the Project, Developer agrees to connect the Project to a sewer main that Developer constructs within 9220 North, connecting to the north end of the Project.
- 4.3 Water Main location. In order to provide water service to Project, Developer agrees to attach to the City's existing water system, located at approximately 9300 North, and construct the line within 9220 North to connect to the Project at the north end.
- 4.4 Storm Drainage. Developer agrees to retain all storm-drainage within the project area. Developer and City agree that the Home-Owners Association shall be responsible for maintenance of the storm drain retention areas. The Developer agrees to grant storm drain easements to the City for those storm drain retention areas (Exhibit "F").

### 5. **Impact Fees.**

Developer agrees to pay all City impact fees, pursuant to City ordinance, as they currently exist or may be amended or added by City ordinance.

### 6. **Decorative Barrier.**

The Developer agrees to construct a vinyl, split-rail fence along the north, south and west boundaries of the Development.

### 7. **Conditions, Covenants, and Restrictions.**

The attached CCR's and Home Owners Association Documents for Renaissance PRD (Exhibit "G") have been reviewed and approved by the City and are hereby incorporated into this agreement and will be recorded concurrently with recording of Renaissance PRD.

### 8. **Architectural Renderings of Homes.**

Approval of the City for Renaissance is based upon construction of homes in substantial conformance with attached architectural renderings. Developer agrees to build all homes in Renaissance in conformance with the following:

- 8.1 Developer has provided exterior elevations for City approval (attached herein as "Exhibit H"). Developer agrees to build all homes in conformance with the approved elevations and, furthermore, agrees that any alteration from the approved elevations shall be subject to City

Council approval. Additional home plans may be approved by the City of Cedar Hills, subject to staff approval.

- 8.2 No more than 20% of the homes in Renaissance PRD shall be the same, as determined by the elevations.
- 8.3 Each of the homes constructed within the development shall have a minimum footprint of 1300 ft<sup>2</sup>, a minimum of 9' ceiling construction, 38' minimum width, and 25% full exterior construction of rock or brick.

## 9. Successors and Assigns.

- 9.1 Binding Effect. This Agreement shall be binding on the successors and assigns of Developer in the ownership or development of any portion of the Project. Notwithstanding the foregoing, a purchaser of the Project or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to the portion of the Project so transferred.
- 9.2 Transfer of Project. Developer shall be entitled to sell or transfer any portion of the Project subject to the terms of this Agreement upon written notice to and written consent from City, which consent shall not be unreasonably withheld. In the event of a sale or transfer of the Project, or any portion thereof, the seller or transferor and the buyer or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such transfer an agreement satisfactory to the City, delineating and allocating between Developer and transferee a letter (i) acknowledging the existence of this Agreement and (ii) agreeing to be bound thereby. Said letter shall be signed by the buyer or transferee, notarized, and delivered to the City Clerk prior to the transfer or sale. In such event, the buyer or transferee of the parcel so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the parcel so transferred.
- 9.3 Sale of Platted Lots. Notwithstanding Paragraph 9.2, Developer shall not be required to notify City or obtain City's consent with regard to the sale or transfer to bonafide home buyers lots (i) for which final plats have been approved and recorded in accordance with this Agreement and (ii) which are intended for single family residential use.

## 10. Default

- 10.1 Events of Default. Upon the happening of one or more of the following events or conditions Developer shall be in default ("Default") under this Agreement:
  - (1) A warranty, representation or statement made or furnished by Developer under this Agreement, including any Exhibits attached hereto, is intentionally false or misleading in any material respect when it was made.
  - (2) A determination by City made upon the basis of substantial evidence following a periodic review under Paragraph 11.14 that Developer has not complied in good faith with one or more of the material terms or conditions of this Agreement.
  - (3) Any other event, condition, act or omission which materially interferes with the intent and objectives of this Agreement.
- 10.2 Procedure Upon Default.
  - (1) Upon the occurrence of Default, City shall give Developer thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said Default must be satisfactorily cured. After proper notice and expiration of said thirty (30) day cure period without cure, City shall hold a public hearing which has been noticed by publication and for which notice has been expressly provided to Developer. Thereafter, City may declare Developer to be in breach of this Agreement and may take the actions specified in Paragraph 10.3 herein. Failure or delay in giving notice of Default shall not constitute a waiver of any Default, nor shall it change the time of Default.

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- (3) Any Default or inability to cure a Default caused by strikes, lockout, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar cases beyond the reasonable control of the obligation to perform shall excuse the performance by such party for a period during which any such event prevented, delayed or stopped any required performance or effort to cure a Default.
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10.3 Breach of Agreement. Upon Default as set forth in Paragraphs 10.1 and 10.2, City may declare Developer to be in breach of this Agreement and City may (i) withhold approval of any or all building permits or certificates of occupancy applied for in the Project, (ii) until the breach has been corrected by Developer, shall be under no obligation to approve or to issue any additional building permits or certificates of occupancy for any dwelling within the Project and (iii) draw upon the developer's bond placed with the City. If City draws on the bond it shall not be under obligation to complete the Improvements but may use the proceeds for engineering expenses, consultants, fees and charges, legal fees and costs, subdivision improvements, reimbursements, or other expenses connected with the Project as City may determine in its sole discretion. Notwithstanding the rights guaranteed by this Paragraph 8.3, City may pursue whatever additional remedies it may have at law or in equity. If City brings legal action against Developer or the issuer of the bond, and if City is successful in such litigation, Developer shall pay City's costs and attorneys' fees. The waiver of any one or more breaches of this Agreement shall not constitute a waiver of the remaining terms thereof.

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3925 W Cedar Hills Drive  
Cedar Hills, UT 84062
- To Developer: Glen V. Arnell  
Panda Homes, LLC  
1761 West Business Park Drive  
Orem UT 84058
- 11.10 Applicable Law. This Agreement is entered into under and pursuant to, and is to be constructed and enforceable in accordance with, the laws of the State of Utah.
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- 11.18 Exhibits Incorporated. All exhibits to this Agreement are incorporated herein and made a part hereof as if fully set forth herein.

IN WITNESS WHEREOF, this Development Agreement has been executed by City, acting by and through the City Council, pursuant to Council authorization given on January 20, 2004, authorizing such execution, and by a duly authorized representative Developer as of the above-stated date.

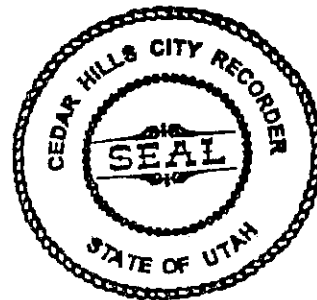
City:

By:

Brad Sears, Mayor

Attest:

Kim E. Holindrake, City Recorder



DEVELOPERS:

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By:

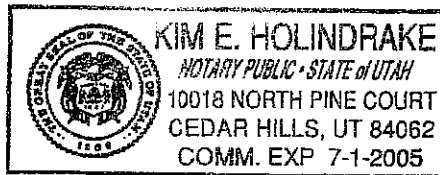
Glen V. Arnell, Member

STATE OF UTAH

COUNTY OF UTAH

The foregoing instrument was acknowledged before me on this 28<sup>th</sup> day of January, 2004 for an on behalf of Panda Homes, LLC, by Glen V. Arnell, Its Member.

(SEAL)



Kim E. Holindrake  
Notary Public