

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
AERIES ON THE BAY

THIS DECLARATION, made on the date hereinafter set forth  
by AERIES ON THE BAY, INC., a Virginia corporation, referred to  
as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in  
the City of Virginia Beach in the State of Virginia which is more  
particularly described as follows:

ALL THOSE certain lots, pieces and parcels of  
land, situate, lying and being in the City of  
Virginia, being known, numbered and designated  
as Lots 92 through 110, inclusive, Block B, as  
shown on that certain plat entitled "AERIES ON  
THE BAY, PHASE TWO, PART 'C', Bayside Borough,  
Virginia Beach, Virginia", which said plat is  
duly recorded in the Clerk's Office of the  
Circuit Court of the City of Virginia Beach,  
Virginia in Map Book 185, at page 6, and Lots  
111 through 120, inclusive, Block B, as shown  
on that certain plat entitled "AERIES ON THE  
BAY, PHASE TWO, PART 'B', AND RESUBDIVISION OF  
LOTS 36-43 BLOCK 'B', PHASE TWO, PART 'A',  
BAYSIDE BOROUGH, VIRGINIA BEACH, VIRGINIA"  
which said plat is duly recorded in the  
Clerk's Office aforesaid in Map Book 186, at  
page 48.

WHEREAS, Declarant intends to develop said lots shown on  
the plat, according to a common scheme of development, and it is  
the purpose of this Declaration to declare and make known the  
easements, covenants, restrictions, conditions and reservations  
to which said lots shall be subject;

NOW, THEREFORE, Declarant hereby declares that all of  
the properties described above shall be held, sold and conveyed  
subject to the following easements, restrictions, covenants, and  
conditions, which are for the purpose of protecting the value and  
desirability of, and which shall run with, the real property and  
be binding on all parties having any right, title or interest in  
the described properties or any part thereof, their heirs, suc-  
cessors and assigns, and shall inure to the benefit of each owner  
thereof.

ARTICLE I

DEFINITIONS

Section 1. "Declarant" shall mean and refer to Aeries  
on the Bay, Inc., its successors and assigns, if such successors  
or assigns should acquire more than one undeveloped lot from  
Declarant for the purposes of development.

Section 2. "Declaration" shall mean the covenants, con-  
ditions and restrictions and all other provisions herein set  
forth in this entire document, as same may from time to time be  
amended and supplemented.

Section 3. "General Plan of Development" shall mean  
that plan encompassing the whole of the property described as lots  
92 through 110, inclusive, Block B, phase Two, part 'C' and lots  
111 through 120, inclusive, Block B on page 1 hereof, will be  
used for the construction of single-family detached dwellings. In  
such plan as may ultimately be approved by the City of Virginia  
Beach, Virginia, Federal Housing Administration ("FHA") and the  
Veterans Administration ("VA"), together with any and all suppl-

mental declarations which may be recorded by Declarant from time to time relating to all or part of the community of Aeries on the Bay. Reference is made to Article III, Section Two hereof for reference to further development.

Section 4. "Aeries on the Bay" shall mean all real property located in the City of Virginia Beach, State of Virginia, which becomes subject to this Declaration, together with such other real property as may from time to time be annexed thereto.

Section 5. "Living Unit" shall mean and refer to any dwelling situated upon the properties designed and intended for use and occupancy as a residence by a single family.

Section 6. "Lot" shall mean any parcel of real property designated as a lot on any recorded subdivision plat within Aeries on the Bay.

Section 7. "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities of any lot. The foregoing does not include persons or entities who hold an interest in any lot merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner" shall not include one who has merely contracted to purchase any property or a lessee or tenant, of any dwelling. The term "Owner" shall not include a developer, who for this Declaration shall be defined as a builder, contractor, investor or other person or entity who purchases a lot in Aeries on the Bay for purpose of resale thereof to a public purchaser, or for the purpose of constructing improvements thereon for resale to a public purchaser. For the purposes of Article IV only, unless the context otherwise requires, "Owner" shall also include the family invitees, licensees and lessees of any owner, together with any other person or parties holding any possessory interest granted by such owner in any lot.

Section 8. "Properties" shall mean and refer to that certain real property heretofore described.

Section 9. "Public Purchaser" shall mean any person or other legal entity who becomes an owner of any lot within Aeries on the Bay.

Section 10. "Section" shall mean all that land area containing lots recorded by subdivision plat for residential purposes encompassed in a specific stage of development as set forth by the City of Virginia Beach as amended from time to time.

Section 11. "Subdivision Plat" shall mean a recorded plat covering any or all of the property referred to in this Declaration.

Section 12. "Visible from Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

Section 13. "FHA" and "VA" shall mean the Federal Housing Administration and the Veterans Administration, respectively.

## PROPERTY SUBJECT TO AERIES ON THE BAY RESTRICTIONS

Section 1. General Declaration Creating Aeries on the Bay. Declarant shall develop Aeries on the Bay by subdivision into various lots. As each is developed, Declarant intends, with respect to particular property to record one or more supplemental

## ARTICLE II

Section 2. Permitted Uses and Restrictions. The permitted uses, easements and restrictions for all property in this classification within series on the Bay covered by this Declaration, shall be as follows:

Section 1. Land Use Classifications. As each tract or portion thereof within Aeries on the Bay is developed and annexed, the use classifications, restrictions, rights of way, and other matters including a difference uses and restrictions therefor, including any number of sub-classifications thereof for any special uses, shall be fixed by Declarant in any supplemental declaration which may be recorded for that tract, subject to the approval of the RHA and VA. In exercising such authority as granted herein, Declarant shall not impose any new land use classifications or new restrictions which are not generally in consonance with existing uses and restrictions applicable to Aeries on the Bay. When property is annexed to Aeries on the Bay for use of classifications thereof shall be established by the supplemental declaration covering said property. No restrictive covenants set forth herein now any other provisions hereof shall in any way apply to land of Declarant not described herein nor annexed by following the procedures set forth herein.

LAND USE CLASSIFICATIONS,  
PERMITTED USES AND RESTRICTIONS

## ARTICLE III

Section 2. Staged Developments. Additional land excluding the area heretofore described may be annexed by the Declarant within eight (8) years of the date of this Declaration provided that the RMA and the VA determine that the annexation is in accord with the general plan heretofore approved by them. Such annexed land may, but shall not necessarily include, additional land for single family residential use and townhouses.

declarations which will incorporate this declaration therein by reference, and which may supplement or modify this declaration with such additional covenants, conditions and restrictions as may be appropriate for that property, subject to the approval of the RHA and VA. Thereafter, Declarant intends to sell and convey to public purchasers, lots in the property so developed subject to both this declaration and the supplemental declarations, if any. Declarant hereby declares that all of the real property within Aeries on the Bay is and shall be held, conveyed, hypotheated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this declaration and any recorded supplemental declarations, as amended or modified from time to time. This declaration and said supplemental declarations are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of said real property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of said real property and every part thereof. All of this declaration shall run with all of said real property for all purposes and shall be binding upon and inure to the benefit of Declarant, all owners and their successors in interest.

B. Improvements and Alterations. Each of said lots shall be used exclusively for residential purposes and no building, wall, fence, color or stain used on said fence, swimming pool, bathhouse, dog house, tool shed, solar panels or other structure shall be placed upon any building or lot unless and until the plans and specifications therefor and the plot plan have been approved in writing by Declarant. No fence will be allowed in front of the front line of any house. No fence shall be more than six (6) feet in height. Barbed wire and chain link fences are specifically prohibited. Only board on board fences built strictly in compliance with the specifications shown by the attached Exhibit 'A' will be allowed. No variation from the type of boards, the spacing of boards or posts will be allowed. Gates are also to be built to the same specifications as the fences. All plans, specifications and plot plans shall be submitted in duplicate, with one set to be retained by the Declarant, if approved, and shall include a floor plan drawn to scale, front elevation, and a landscaping plan providing for a reasonable number of trees and shrubs. Each such building, wall, fence, color or stain used on said fence, or other structure shall be placed on the lot only in accordance with the plans and specifications so approved. Refusal of approval of plans and specifications by Declarant may be based upon any grounds, including purely aesthetic grounds, which in the sole discretion of the Declarant shall be deemed sufficient. (Without in any way limiting the foregoing, plans and specifications providing for cinder block or asbestos siding will be disapproved.) No alteration to the exterior appearance of any structure shall be made without like approval. Declarant reserves the right to designate

C. Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any property within Aeries on the Bay unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures.

D. Antennas. No antenna, aerial or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any property within Aeries on the Bay.

E. Animals. No animals, birds, fowl, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any property within Aeries on the Bay and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be visible from neighboring property. Upon the written request of any owner, the Declarant shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal is a generally recognized house or yard pet, or a nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Declarant shall be enforceable as other restrictions contained herein.

F. Residence. No residence shall be erected on any lot with less than 1940 square feet of living space in the case of a one story building, or less than 1970 square feet of living space in any residence of more than one story. The term "living space" as used herein shall be determined by exterior perimeter measurements exclusive of garages, rooms over garages, porches and breezeways. No dwelling erected upon any lot shall be occupied until it has been substantially completed.

(2) By Declarant. Declarant shall have the right, at any time, to plant, replace, maintain and cultivate shrubs, trees, grass and plantings on any property within Aeries on the Bay other than on a lot, and on such easements over an owner's lot as may have been granted to Declarant, regardless of whether any owner is responsible hereunder for maintenance of such areas. No owner shall remove, alter, injure or interfere in any way with any shrubs, trees, grass or plantings placed upon any such property without the written consent of the Declarant having first been obtained. The Declarant or its authorized agents shall have the right to enter upon any property within such other areas, at any reasonable time, for the purpose of planting, replacing, maintaining or cultivating such shrubs, trees, grass or plantings, and shall not be liable for trespass, for so doing. Anything herein to the contrary notwithstanding, the Declarant or its authorized agents shall enter upon any owner's lot for the purposes set forth in this subsection only when Owner has failed to maintain the shrubs, trees, grass and plantings as required by this Declaration.

(1) By Owner. Each owner of a lot within Aeries on the Bay shall, unless exterior maintenance is otherwise provided for in supplemental Tract Declarations or master deeds, keep all shrubs, trees, grass and plantings of every kind on his property, including set back areas, planted areas between adjacent sidewalks and the street curb, if any, and any other area located between the boundary line of his property and the street or other property (public or private) on which such owner's property abuts, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such owner shall not be responsible for maintenance of any other area to which declarant has assumed responsibility. Should any owner fail to perform the acts required by this sub-section, declarant or its authorized agents shall have the right at any reasonable time to enter upon the lot of such owner to plant, replace, maintain, and cultivate shrubs, trees, grass or other plantings located thereon at cost to owner.

1. Maintenance of Lawns and Plantings.

4. Trailers and Motor Vehicles. Except with approval of the Declarant, no mobile home, trailer of any kind, truck, camper, boat, or permanent tent or similar structure shall be kept or placed for a period of more than forty-eight hours, or maintained, constructed, reconstructed, or repaired, upon any property or street (public or private) within limits on the Bay in such a manner as will be visible from neighboring property; provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvements approved by the Declarant.

6. Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind shall be used at any time for a residence on any property within Aeries on the Bay, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such property shall be removed immediately after the completion of construction.

From time to time one or more individual(s), association(s) or corporation(s) to act in the approval or rejection of such plans and specifications and for the enforcement of the provisions of this Declaration, and each such designee shall have the powers and authority as are reserved to Declarant for the enforcement, and carrying out the provisions of this Declaration. Authority shall continue and remain vested in each such designee until such time as Declarant shall cancel and terminate the designation by an instrument under seal.

J. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property within Aeries on the Bay and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereon unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. The Declarant in his sole discretion shall have the right to determine the existence of any such nuisance.

K. Repair of Buildings. No building or structure upon any property within Aeries on the Bay shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

L. Trash Containers and Collection. No garbage or trash shall be placed or kept on any property within Aeries on the Bay except in covered containers of a type, size and style which are approved by the Declarant. In no event shall such containers be maintained in the front or side yard of any lot so as to be visible from neighboring property except to make the same available for collection and then, only the shortest time reasonably necessary to effect such collection. The Declarant shall have the right, in its sole discretion, to require all owners to subscribe to a specific location for trash service. All rubbish, trash and garbage shall be removed from lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any lot.

M. Clothes Drying Facilities. Outside clothes lines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained in front of the rear foundation line on any property within Aeries on the Bay unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property. On corner lots they shall not be located closer to the side street than the line of the foundation facing said side street.

N. Encroachments. No tree, shrub, or planting of any kind on any property devoted to dwellings within Aeries on the Bay shall be allowed to overhang or otherwise encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of twelve (12) feet, without the prior approval of the Declarant.

O. Right of Way. During the reasonable daylight hours, Declarant, or its authorized representative, shall have the right to enter upon and inspect any property within Aeries on the Bay and the improvements thereon, except for the interior portions of any residence, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespassing by reason of such entry. However, reasonable written notice of the time of such on-site inspection shall be given to owner.

P. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any property within Aeries on the Bay except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence, appurtenant structures, or other improvements, which Declarant may require for the operation and maintenance of Aeries on the Bay.

0. Restriction of Further Subdivision. No lot within Aeries on the Bay shall be further subdivided or separated into smaller lots or parcels by any owner. This provision shall not, in any way, limit Declarant from subdividing or separating into smaller lots or parcels any property owned by Declarant and not yet platted or subdivided into lots. It shall also not limit or prohibit Declarant from subdividing any lots for duplex or cluster-type homes, in accordance with the zoning and subdivision requirements of the City of Virginia Beach. Declarant shall also have the right to re-subdivide lots to accomplish minor adjustments. No portion of a lot but for the entire lot, together with the improvements thereon, may be rented, and only to a single family.

R. Signs. No signs of any kind shall be displayed to the public view on any lot except a sign of not more than ten (10) square feet advertising the property for sale or rent or signs used by the Declarant to advertise the property during the construction or sale period.

S. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development, identification, or sale of property within Aeries on the Bay.

T. Utility Easements. There is hereby created in favor of Declarant a blanket easement upon, across, over and under the above-described premises for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television, cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said property and to affix and maintain wires, circuits and conduits on, in and under the roots and exterior walls of said residences. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said premises except as initially programmed and approved by the Declarant. This easement shall in no way affect any other recorded easements on said premises. This easement shall be limited to improvements as originally constructed.

Each residence shall be subject to an easement for encroachments created by construction, settling and over-hangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event, the residence is partially or totally destroyed, and then rebuilt, the owner agrees that minor encroachments of parts of the adjacent residence due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Anything herein to the contrary notwithstanding, any encroachment shall not exceed two (2) feet.

U. Driveways. No driveway shall be constructed or maintained to or on any of said lots in such manner as to obstruct the normal drainage of the street on which said lot fronts, and to that end, such driveway shall have either an apron of proper design or an adequate drain pipe installed under the driveway for the purpose. No driveway to be altered without approval with site plan submitted.

V. Buffer Zone. As provided in Deed Book 165, page 466, the rear of said lots shall be restricted for use in its natural state as unimproved open spaces wherein no use or facility shall be allowed except those of a passive recreational nature, such as outdoor sitting areas and pedestrian walkways, and for landscaping, and for screening hedges and buffering by

privacy fences and walls, and for trees and shrubbery, and for installation and maintenance where necessary of underground utilities and drainage facilities, but no buildings, parking areas, swimming pools, tennis facilities, playgrounds or other active recreational facilities or uses shall be allowed therein, nor shall trees be destroyed or cut down therein except to the minimal extent necessary for underground utilities and drainage.

#### ARTICLE IV

#### GENERAL PROVISIONS

**Section 1. Enforcement.** The Declarant, or any owner, shall have the right to enforce, by any proceeding at law or in now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect other provisions which shall remain in full force and effect.

**Section 3. Amendment.** Except as otherwise provided herein, the aforesaid covenants, restrictions, conditions and reservations shall run with title to each of said lots and shall be binding upon all parties and all persons claiming under or through Owner for a period of thirty (30) years from the date this Declaration is recorded, after which time said covenants, restrictions, conditions, and reservations shall be automatically extended for successive periods of ten (10) years each, unless owners of said lots, agreeing to modify and/or amend such covenants, restrictions, conditions or reservations, in whole or in part, has been duly recorded in the Clerk's Office of the City of Virginia Beach.

**Section 4. FHA/VA Approval.** Amendments of this Declaration of Covenants, Conditions and Restrictions will require the prior approval of the Federal Housing Administration or the Veterans Administration.

**Section 5. Violations and Nuisance.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, or any owner or owners of lots within Aeries on the Bay.

**Section 6. Violation of Law.** Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within Aeries on the Bay is hereby declared to be a violation of the enforcement procedures set forth in said restrictions.

**Section 7. Remedies Cumulative.** Each remedy provided by the Aeries on the Bay restrictions is cumulative and not exclusive.

**Section 8. Delivery of Notices and Documents.** Any written notice or other documents relating to or required by the Aeries on the Bay restrictions may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed as follows: If to an owner, to the address of any lot within Aeries on the Bay owned, in whole or in part, by him or to any other address last furnished by an owner to the Declarant; and if to Declarant, at Suite 225, Holland Office Park, 4480 Holland Road, Virginia Beach, Virginia 23452; provided however, that any



such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Declarant. Each owner of a lot shall file the correct mailing address of such owner with the Declarant, and shall promptly notify the Declarant in writing of any subsequent change of address.

Section 9. The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself, or itself, his heirs, personal representatives, successors, transferees and assigns, covenants, agrees, and understands that the title is subject to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvements and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

Declarant reserves unto itself the right to assign, alter, release or waive the requirements of any of the covenants, restrictions, conditions and reservations contained herein by an appropriate written instrument executed solely by Declarant (without notice to, or the requirement of the joinder in the execution thereof by any owner of any of said lots) duly recorded in the aforesaid Clerk's Office.

IN WITNESS WHEREOF, the said Aeries on the Bay, Inc. has caused these presents to be executed in its name and behalf by its president duly authorized, this 26th day of August, 1985.

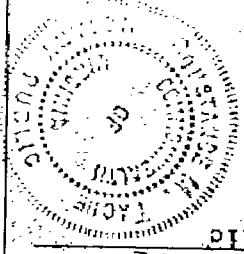
AERIES ON THE BAY, INC.  
By Donald L. Moore  
Donald L. Moore, President

STATE OF VIRGINIA  
CITY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was acknowledged before me this 26th day of August, 1985, by Donald L. Moore, President of Aeries on the Bay, Inc., on behalf of said corporation.

Constance M. Bell  
Notary Public

My Commission Expires: 11-11-85



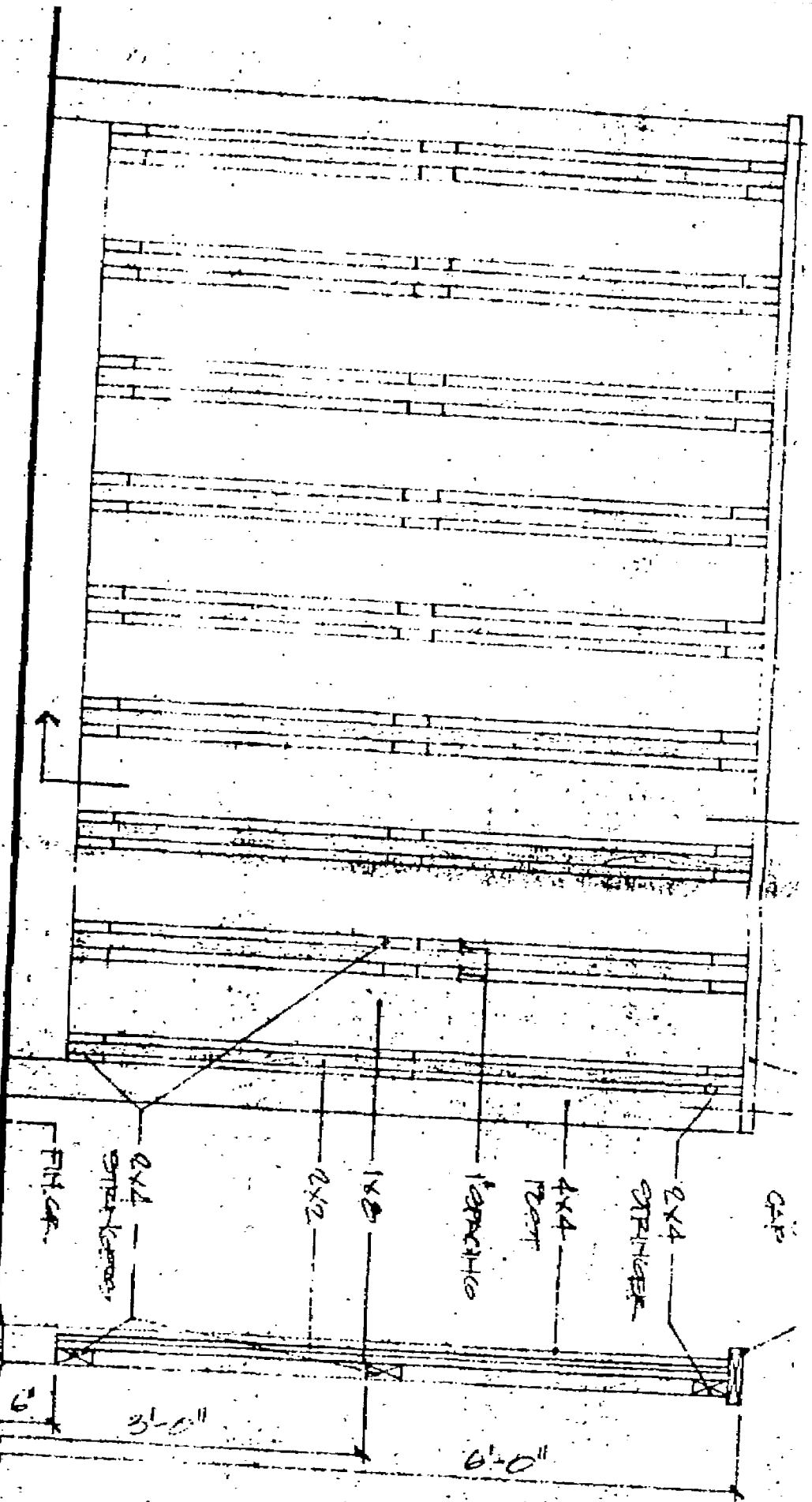
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# ELEVATION

## SIDE PANELS

1" x 8" Board - 1 in spacing  
 2" x 2" Board - 1 in spacing  
 1" x 8" Board nailed on 2 in x 4 in stringer  
 4" x 4" Posts - 6 ft high 2" x 6" cap  
 Gate to be built with same specifications.

CONC. -  
 F.T.C.  
 (Cement)  
 2'-0" (N.T.S.)



E & S: A

BK 2437 PG 1/24

VIRGINIA:

In the Clerk's Office of the Circuit Court of  
Virginia Beach ... day of ...  
this instrument was received and upon the certificate of acknowledgment  
thereto annexed, admitted to record. "The tax imposed by § 58,1-802 of  
the Code, has been paid, in the amount of \$  
TESTE: J. CURTIS FRUIT, Clerk  
By: J. W. Woodard, D.C.