

WHEN RECORDED RETURN TO:
CITY CLERK
CITY OF CALISTOGA
1232 WASHINGTON STREET
CALISTOGA, CALIFORNIA 94515

Exempt from filing fees: G.C. §27383

Space Above This Line For Recorder's Use

APN:

"MILLS ACT" HISTORIC PROPERTY PRESERVATION AGREEMENT
(Government Code Sections 50280 *et seq.*)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into this ____ day of _____ ("Effective Date"), by and between Robert A. Fiddaman and Susan L. Hoffman, ("Owners"), and the CITY OF CALISTOGA, a municipal corporation ("City").

RECITALS

WHEREAS, California Government Code Sections 50280 *et seq.* authorize cities to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such property to retain its characteristics as property of historical significance;

WHEREAS, Owner possesses fee title in and to that certain historic real property located at 1300 Cedar Street in the City of Calistoga ("Property"), more particularly described in Exhibit "A," attached hereto and made a part hereof;

WHEREAS, the Property was added to the National Register of Historic Places in 1979 and qualifies as a "historic property" in accordance with state law; and

WHEREAS, City and Owners, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the historical significance of the Property and to qualify the Property for an assessment of valuation in accordance with Revenue and Taxation Code Sections 439 *et seq.*

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and conditions of the parties set forth herein, and the substantial public benefit derived therefrom, City and Owners agree as follows:

1. Authority. This Agreement is made under authority of Government Code Sections 50280 *et seq.*

2. Term. This Agreement shall be effective and commence on the Effective Date and shall remain in effect for a period of ten (10) years. Each year upon the anniversary of the Effective Date, the initial ten (10) year term will automatically be extended for one year ("Renewal Date") unless the Agreement is not renewed or cancelled as provided below.
3. Renewal. If in any year either City or Owner desires not to renew this Agreement, that party shall serve written notice of non-renewal on the other party in accordance with this section.
 - 3.1. Notice. If Owner desires not to renew the Agreement, Owner must serve written notice of non-renewal on City at least ninety (90) days before the next annual Renewal Date. If City desires not to renew the Agreement, City must serve written notice of non-renewal on Owner at least sixty (60) days before the next Renewal Date.
 - 3.2. Effect. In the event of non-renewal by either party, the Agreement shall remain in effect for the balance of the term then remaining since the original execution of the Agreement or the last renewal of the Agreement, as the case may be.
 - 3.3. Protest. In the event of non-renewal by City, Owner may make a written protest of City's notice of non-renewal. The City may, at any time before the annual Renewal Date of the Agreement, withdraw its notice of non-renewal by giving a notice of revocation to Owner.
4. Limitations of Land Use. During the term of this Agreement, the Property shall be subject to the following provisions, requirements, and restrictions:
 - 4.1. Owner shall preserve and maintain the historical structures and land as a qualified historic property in the same or better condition than as of the Effective Date.
 - (a) A Site Plan and Elevations detailing the location and configuration of all buildings on the Property and all major landscaping features is detailed in Exhibit "B," attached hereto and made a part hereof. Any changes requested for the Property is subject to review and approval by the Director of Planning and Building, or if determined to be necessary by the Director of Planning and Building, the Calistoga City Council.
 - (b) Owner shall, when necessary, restore and rehabilitate the Property to conform to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Standards for Rehabilitation and the State Historical Building Code (as applicable). Additionally, Owner shall provide whatever information

shall be required by the City to determine the Property's continuing eligibility as a qualified historic property.

- 4.2. All buildings, structures, yards and other improvements shall be maintained in a manner that does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:
 - (a) Dilapidated, deteriorating, or unrepaired structures and components, such as fences, roof, doors, walls and windows:
 - (b) Scrap lumber, junk, trash or debris:
 - (c) Abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, can containers or similar items;
 - (d) Stagnant water or excavations, including pools or spas; and
 - (e) Any device, decoration, design, structure or vegetation that is unsightly by reason of its height, condition, or its inappropriate location.
- 4.3. Owner shall provide for the periodic examinations of the interior and exterior of the Property by the County Assessor, the Department of Parks and Recreation, the State Board of Equalization, and the City or its agent as may be necessary to determine the Owner's compliance with the Agreement.
- 4.4. Alterations. Owner may not materially alter the Property without the prior approval of City, which approval shall not be unreasonably withheld or delayed. Before performing any work requiring the approval of City, Owner shall give at least sixty (60) days' written notice to City describing the work to be done.
5. Indemnity. Owner hereby agrees to defend, indemnify and hold harmless the City, its officers, agents, employees and servants, from any actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state or local governmental agency, arising out of or incident to (i) the direct or indirect use operation, or maintenance of the Property by Owner or any contractor, subcontractor, employee, agent, lessee, licensee, invitee, or any other person; (ii) Owner's activities in connection with the Property; and (iii) any restrictions on the use or development of the Property, from application or enforcement of the City's Municipal Code, or from the enforcement of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, employees, and/or agents for all legal expenses and costs incurred by

each of them. Owner's obligation to indemnify shall survive the termination, cancellation, or expiration of this Agreement and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, employees, or agents.

6. Successors in Interest. All of the agreements, rights, covenants, reservations, and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties to the Agreement, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Property, whether by operation of law or in any manner whatsoever.
7. Cancellation. Following a noticed public hearing as required by Government Code Section 50285, City may cancel this Agreement if it determines that Owner has breached any of the conditions of the Agreement or has allowed the Property to deteriorate to the point that it no longer meets the standards for a qualified historic property. If the City determines that performance of the Agreement has become infeasible due to damage to the Property caused by earthquake, fire, flood or other natural disaster, the Agreement may be cancelled upon the Owner's application without payment of the cancellation fee to the extent that non-payment is permitted by law.
 - 7.1. Cancellation Notice. If City determines to cancel this Agreement as specified in Paragraph 7, it shall provide Owner with written notice of its intent to cancel, and such notice must specify in detail the reasons for the cancellation and the steps that Owner must take to cure any deficiencies. If City determines in its reasonable discretion that Owner has not cured such deficiency within ninety (90) days of such notice (or if curing such problems will reasonably take longer than ninety (90) days and Owner has not commenced diligent efforts to cure such deficiencies within ninety (90) days), then City shall proceed with cancellation of the Agreement.
 - 7.2. Cancellation Fee. If this Agreement is cancelled pursuant to Paragraph 7 above, Owner shall pay a cancellation fee equal to twelve and one-half percent (12½ %) of the current fair market value of the Property, as determined by the County Assessor as though the Property were free of the contractual restriction. The cancellation fee shall be paid to the County Auditor, at the time and in the manner that the County Auditor shall prescribe, and shall be allocated by the County Auditor to each jurisdiction in the tax rate area in which the Property is located in the same manner as the Auditor allocates the annual tax increment in that tax rate area in that fiscal year.
8. Notice and Recordation.
 - (a) All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communication shall be deemed to be effective upon

the first to occur of: (a) actual receipt by a party, (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. Either party may modify its respective contact information identified in this section by providing notice to the other party.

To: City

To: Owner

City Manager
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Robert A. Fiddaman
Susan L. Hoffman
1300 Cedar Street
Calistoga, CA 94515

- (b) No later than 20 days after City enters into this Agreement with Owner, the City Clerk shall cause this Agreement to be recorded in the office of the County Recorder of the County of Napa.
 - (c) Owner shall provide written notice of this Agreement to the Office of Historic Preservation within six months of entering into this Agreement.
9. No Compensation. Owner shall not receive any payment from City in consideration of the obligations imposed under this Agreement. Owner and City acknowledge and agree that the primary consideration to City for the execution of this Agreement is the substantial benefit to the citizens of Calistoga accruing from the rehabilitation and/or maintenance of the Property, and the primary consideration to Owner is the economic advantage that may accrue to Owner.
10. Binding Effect of Agreement. By this Agreement, Owner subjects the Property to the covenants, reservations, and restrictions set forth in this Agreement. City and Owner declare their specific intent that the covenants, reservations, and restrictions set forth in this Agreement shall be deemed covenants running with the land and shall pass to and be binding upon Owner's successors and assigns in title or interest to the Property. Each and every contract, deed or other instrument which shall be executed, covering or conveying the Property, or any portion of it, shall conclusively be held to have been executed, delivered, and accepted subject to the covenants, reservations, and restrictions expressed in this Agreement regardless of whether such covenants, reservations, and restrictions are set forth in such Agreement or in a deed or other instrument.
11. Prevailing Party. The prevailing party in any action to interpret or enforce this Agreement shall be entitled to recover its reasonable attorney's fees.

12. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.
13. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.
14. Merger. This Agreement constitutes the complete and exclusive statement of the agreement between City and Owner and shall supersede all prior negotiations, representations, or agreements, either written or oral.
15. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that the party was solely or primarily responsible for drafting the language to be interpreted.
16. Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.
17. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this Agreement on behalf of the respective legal entities of City and Owner.

IN WITNESS WHEREOF, City and Owner have hereunto executed this contract the day and year first above written.

CITY OF CALISTOGA

OWNER(S)

ROBERT A. FIDDAMAN

Interim City Manager

By: _____
(Signature)

Approved as to form:

SUSAN L. HOFFMAN

Michelle Kenyon, City Attorney

By: _____
(Signature)

Address: 1300 Cedar Street
Calistoga, CA 94515

Telephone: (707) 942-1555

SUBROGATION

We, the undersigned, trust deed or other encumbrance holders, do hereby agree to, and agree to be bound by, the terms of this Agreement.

Name	Nature of Interest of Encumbrance
_____	_____
_____	_____
_____	_____
_____	_____

MAYOR, City of Calistoga

(NOTE: All holders of a fee interest and all holders of a security interest in the subject property, as of the date of approval by City, shall join in the execution of this Agreement. All such signatures must be acknowledged by a Notary).

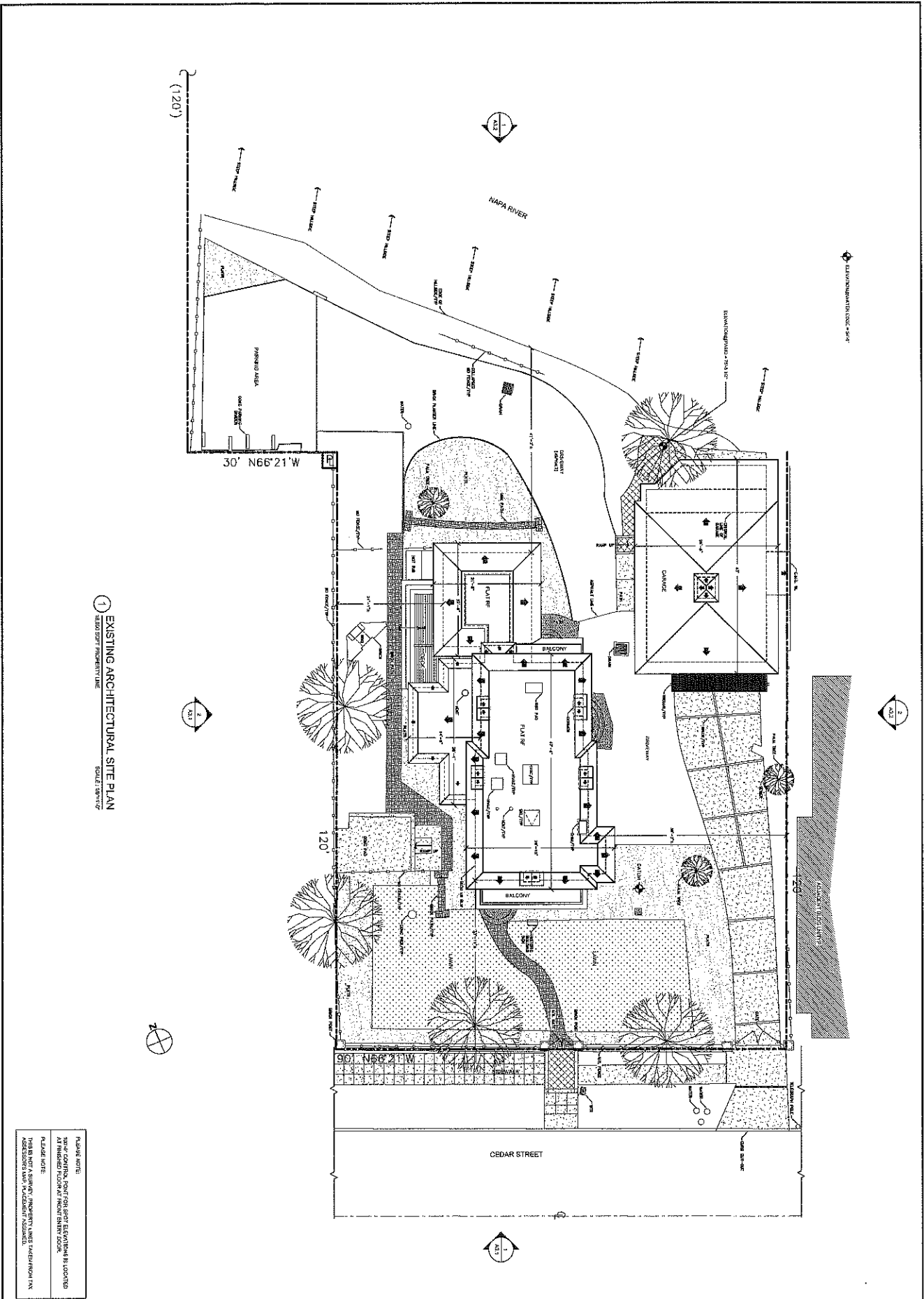
EXHIBIT "A"

COMMENCING at a point on the Northern line of Cedar Street, distant thereon 120 feet Westerly from the point of intersection thereof with the Western line of Lincoln Avenue, according to map hereinafter referred to, said point of commencement being further described as being the Southwest corner of lands described in Deed from Mrs. M.J. Simmons to R.B. Hayes and Cora E. Hays, his wife, of record in Book 129 of Deeds at page 17, said Napa County Records; running thence from said point of commencement Westerly along said Northern line of Cedar Street, 90 feet; thence at right angles Northerly 120 feet; thence at right angles Westerly 30 feet; thence at right angles Northerly to the center of Napa River; thence Southeasterly down the center of said Napa River, to the Western line and production thereof of lands described in said Deed of record in Book 129 of Deeds at page 17, said Napa County Records; and thence Southerly along said last described line, to the point of commencement.

Being a portion of Block "Q" as the same is shown upon a certain map entitled, "Map of Calistoga showing its extensions, surroundings and the Hot Sulphur Springs, Napa County, Cal.", filed March 1, 1871 in the office of the County Recorder of said Napa County, said Block "Q" as herein referred to being in that portion of the City of Calistoga commonly known as "Middle Addition".

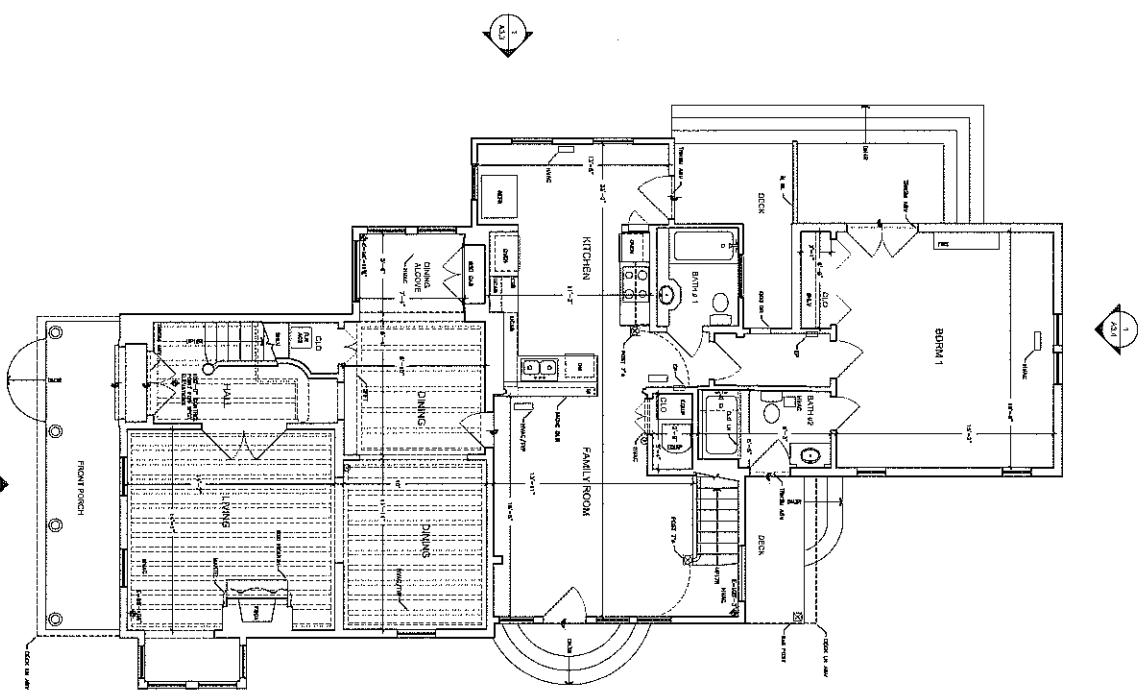
APN 011-223-002

EXHIBIT "B"

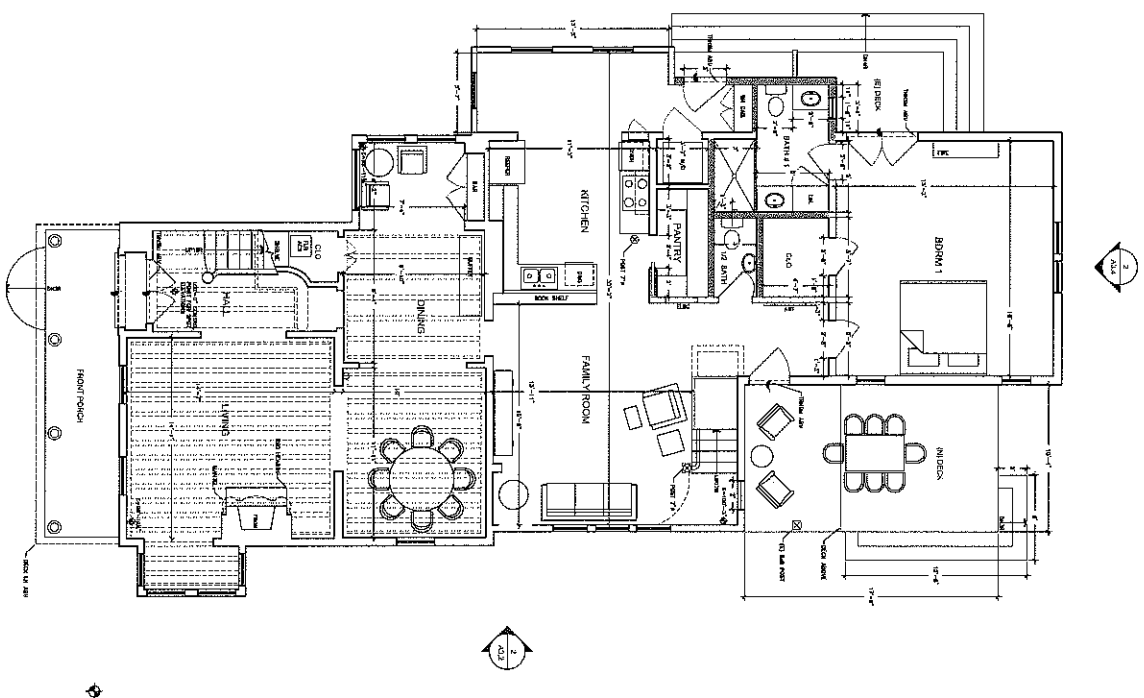


1 EXISTING ARCHITECTURAL SITE PLAN
 1/8" = 1'-0" (1/4" = 1'-0")
 SCALE: 1/8" = 1'-0"

PLANNING NOTE:
 SHOWS EXISTING STRUCTURE AND EXISTING LANDSCAPE
 AT FINISHED FLOOR LEVEL FROM FINISH FLOOR.
 PLANTING NOTE:
 SHOWS EXISTING PLANTING AND PROPOSED PLANTING
 BASED UPON A LANDSCAPE CONSULTANT'S RECOMMENDATION.



1 EXISTING ENTRY LEVEL FLOOR PLAN
 1/4" = 1'-0" INTERIOR
 1/8" = 1'-0" EXTERIOR
 SCALE: 1/8" = 1'-0"



2 PROPOSED ENTRY LEVEL FLOOR PLAN
 1/4" = 1'-0" INTERIOR
 1/8" = 1'-0" EXTERIOR
 SCALE: 1/8" = 1'-0"

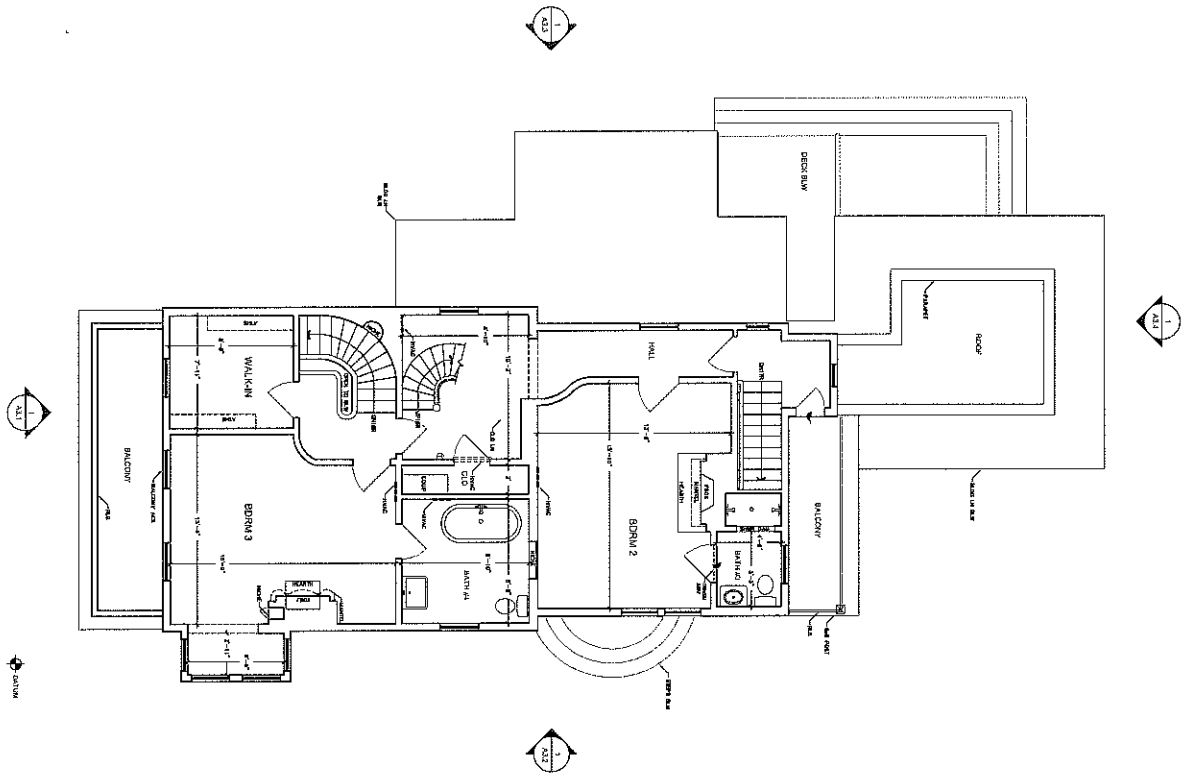
DATE	12-14-2008
PROJECT	FIDDAMAN/HOFFMAN RESIDENCE
SCALE	1/8" = 1'-0"
NO.	A2.1

FIDDAMAN/HOFFMAN RESIDENCE
 1300 CEDAR STREET, CALISTOGA, CA 94515

Juliana Inman
 ARCHITECT
 2133 FIRST STREET, NAPA, CA 94659
 (707) 220-6304 FAX: (707) 266-7572

DATE	
PROJECT	
SCALE	
NO.	

1 EXISTING SECOND LEVEL FLOOR PLAN (NO WORK)
 1/8" = 1'-0" INTERIOR
 1/8" = 1'-0" EXTERIOR
 SCALE: 1/8" = 1'-0"



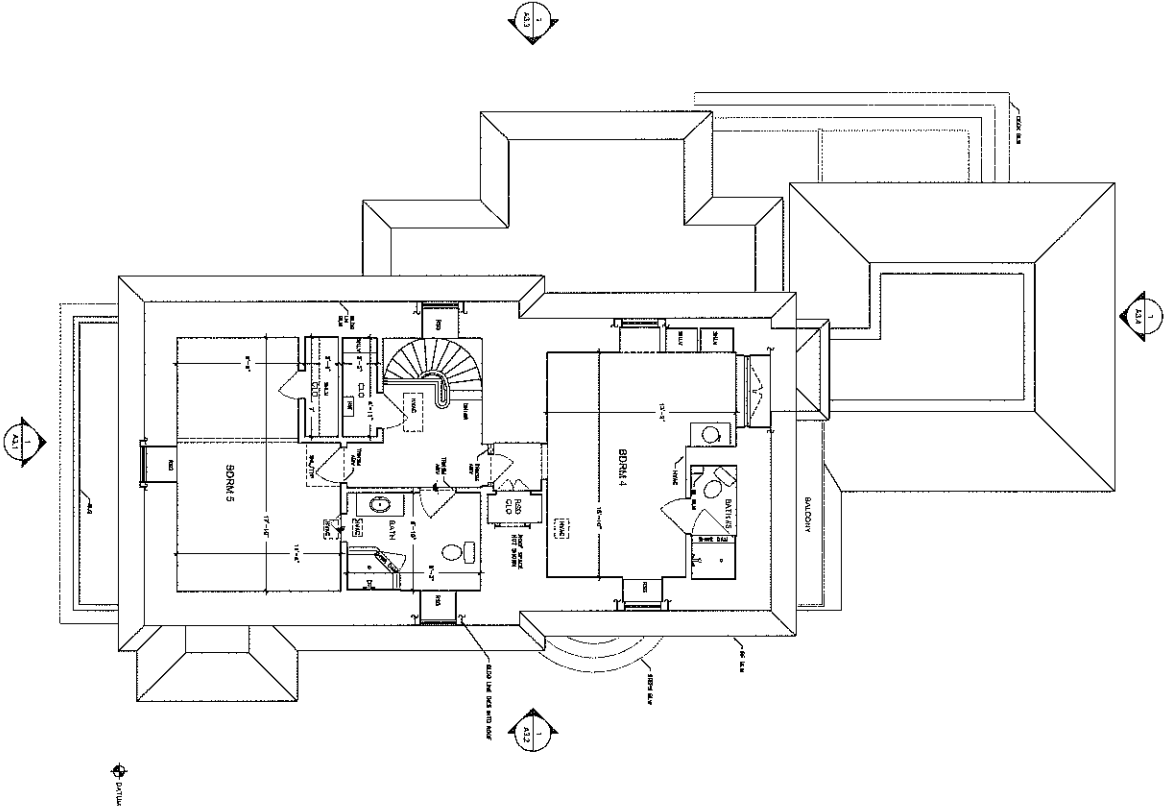
DATE	12-11-2008
SCALE	AS SHOWN
PROJECT	FIDHAMAN/HOFFMAN RESIDENCE
NO.	1

FIDHAMAN/HOFFMAN RESIDENCE
 1300 CEDAR STREET, CALISTOGA, CA 94515

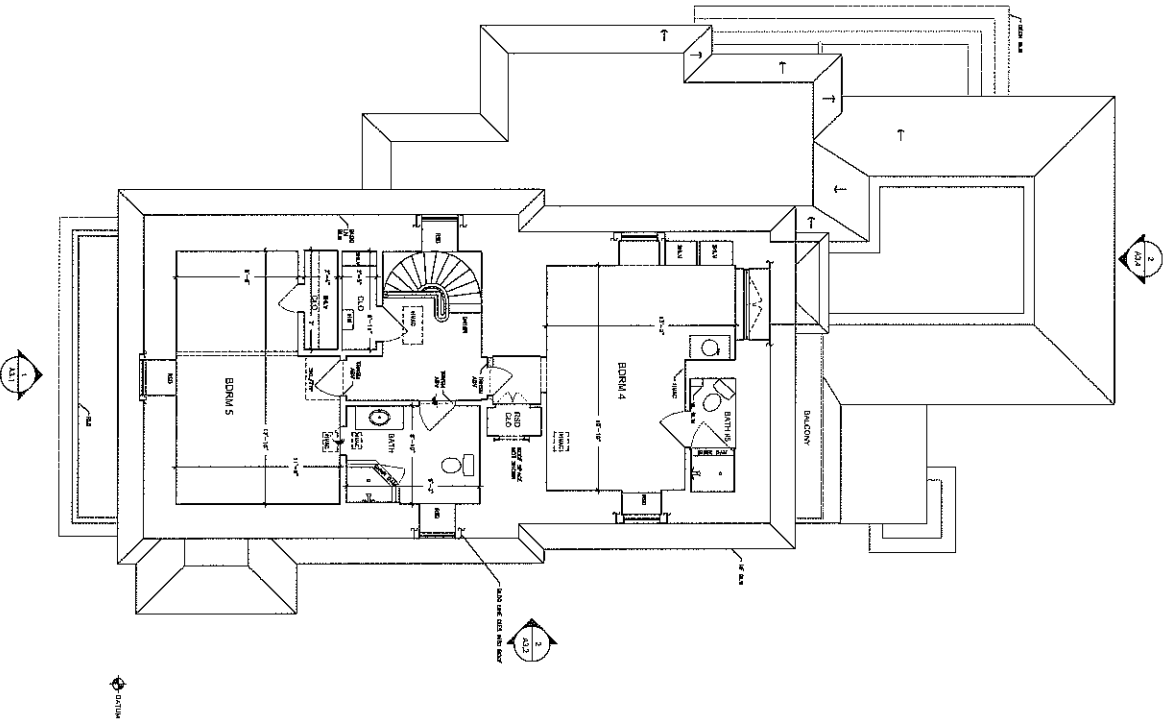
Juliana Inman
 ARCHITECT
 2133 FIRST STREET, NAPA, CA 94659
 (707) 226-6304 FAX: (707) 266-7672

REVISIONS	NO.	DATE	DESCRIPTION

1 EXISTING UPPER LEVEL/ROOF FLOOR PLAN
 1/8" = 1'-0" INTERIOR SCALE 1/8" = 1'-0"

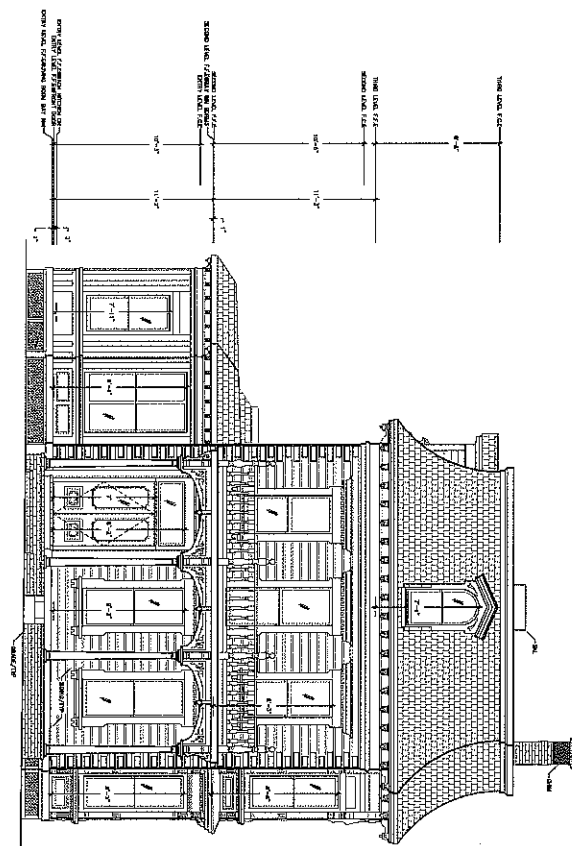


2 PROPOSED UPPER LEVEL/ROOF FLOOR PLAN
 1/8" = 1'-0" INTERIOR SCALE 1/8" = 1'-0"



DATE	10/14/2009
ISSUE NO.	001
BY	MM
CHECKED BY	
DATE	

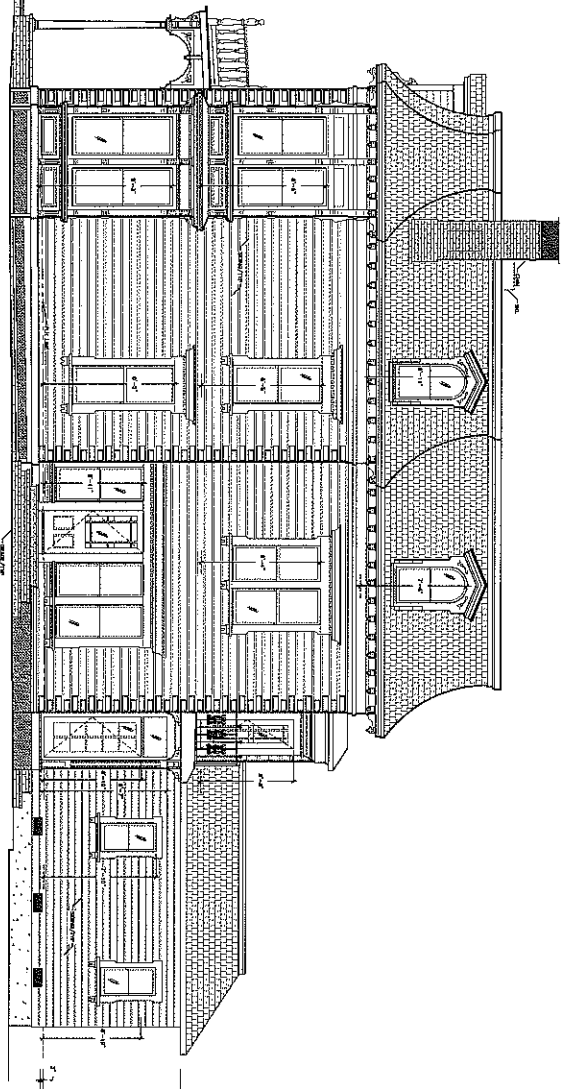
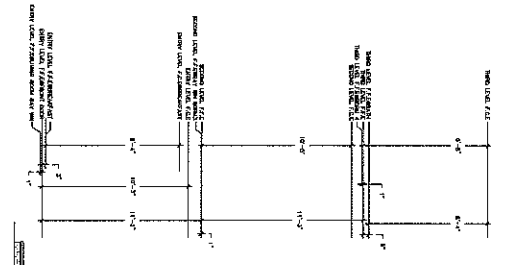
NO.	DESCRIPTION
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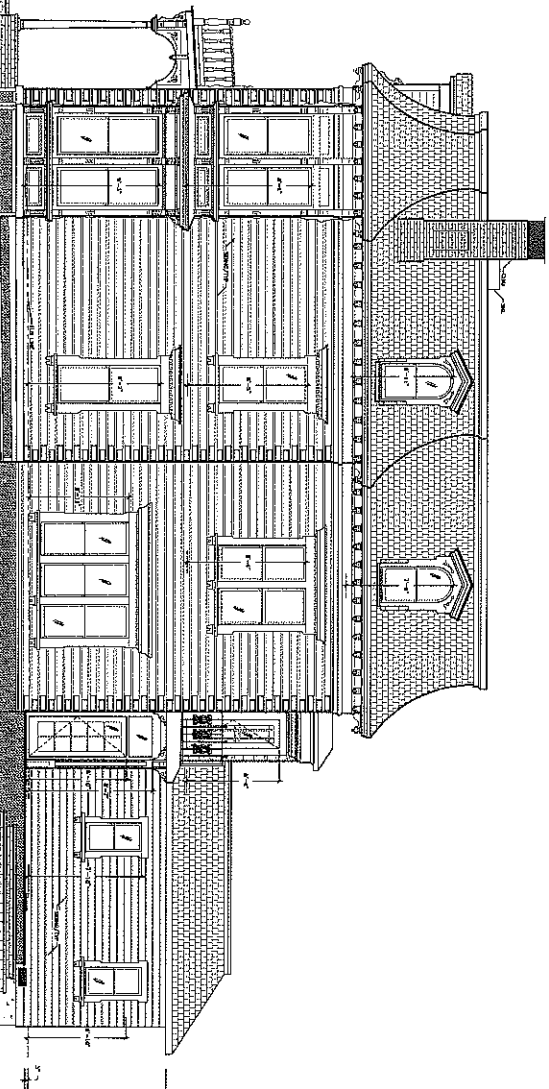
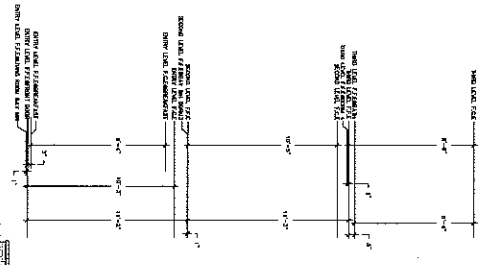
1 EXISTING SOUTH ELEVATION (NO WORK)
SCALE: 1/8"

PLEASE NOTE:
 THIS DRAWING HAS BEEN PREPARED WITHOUT SURVEYING THE
 EXISTING CONDITIONS IN THE FIELD. PLEASE DO NOT CONSIDER THIS
 DRAWING AS A BASIS FOR CONSTRUCTION. THE ARCHITECT ASSUMES NO
 LIABILITY FOR ANY ERRORS OR OMISSIONS. THE ARCHITECT ASSUMES NO
 LIABILITY FOR ANY CONFLICTS BETWEEN THIS DRAWING AND ANY OTHER
 DRAWINGS OR DOCUMENTS. THE ARCHITECT ASSUMES NO LIABILITY
 FOR ANY ACTUAL MEASUREMENTS TAKEN ON SITE.



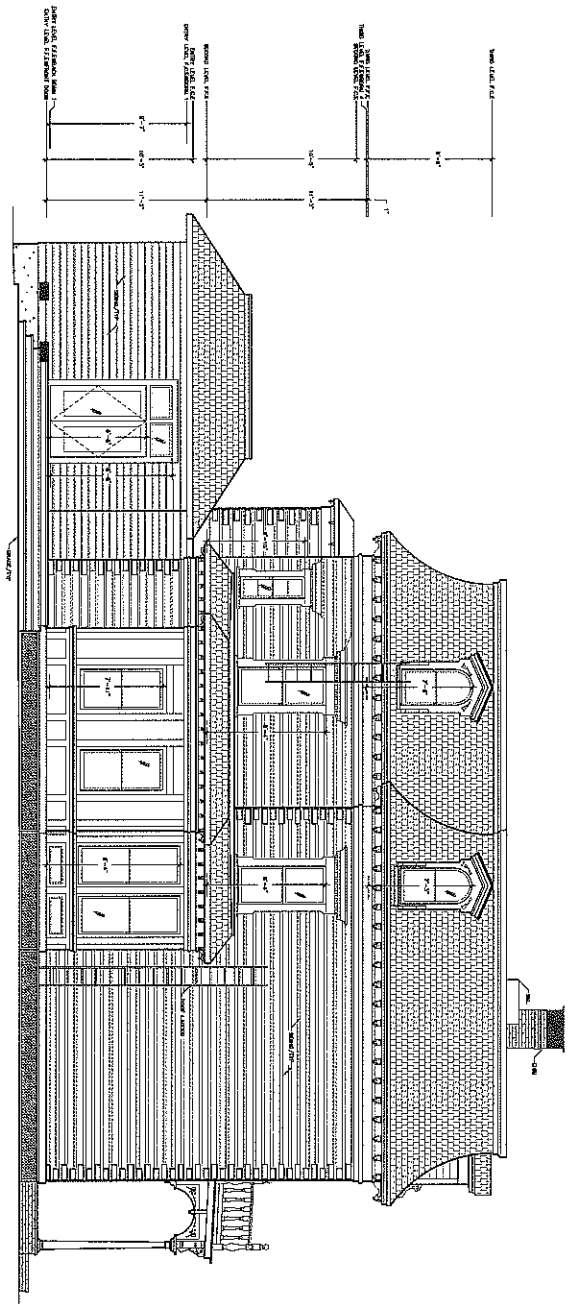


1 EXISTING EAST ELEVATION
SCALE: 1/8"=1'-0"

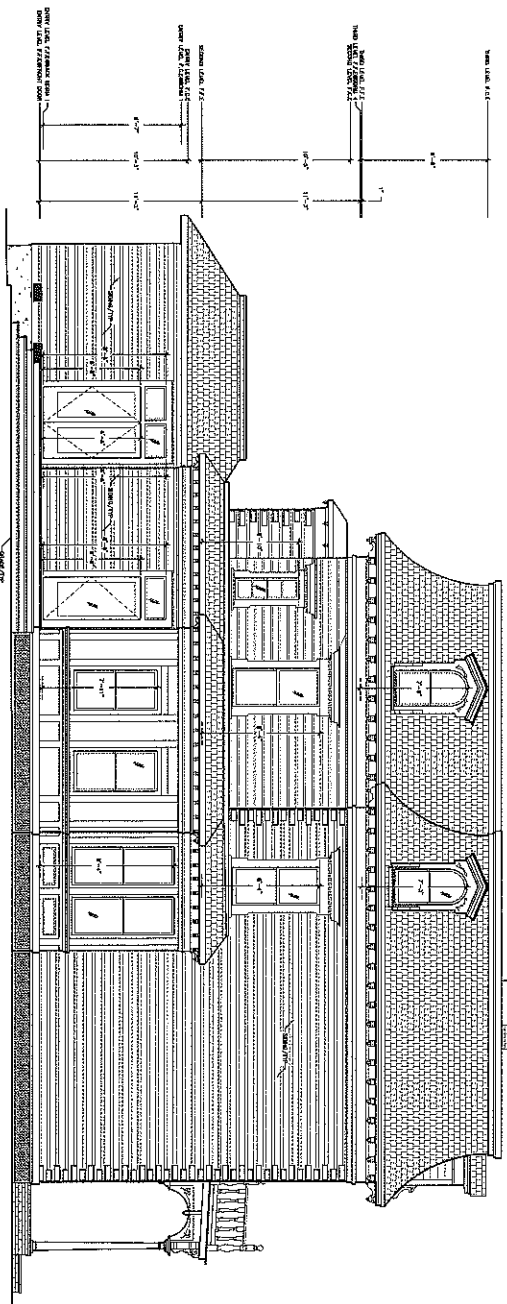


2 PROPOSED EAST ELEVATION
SCALE: 1/8"=1'-0"

IN CASE NOTE:
 DRAWING HAS BEEN DRAWN WITHOUT SHOWING THE
 CONSTRUCTION OF THE FOUNDATION AND THE
 FOUNDATION CONSTRUCTION SHALL BE THE RESPONSIBILITY
 OF THE ARCHITECT AND SHALL BE IN ACCORDANCE WITH
 ALL APPLICABLE CODES AND REGULATIONS.

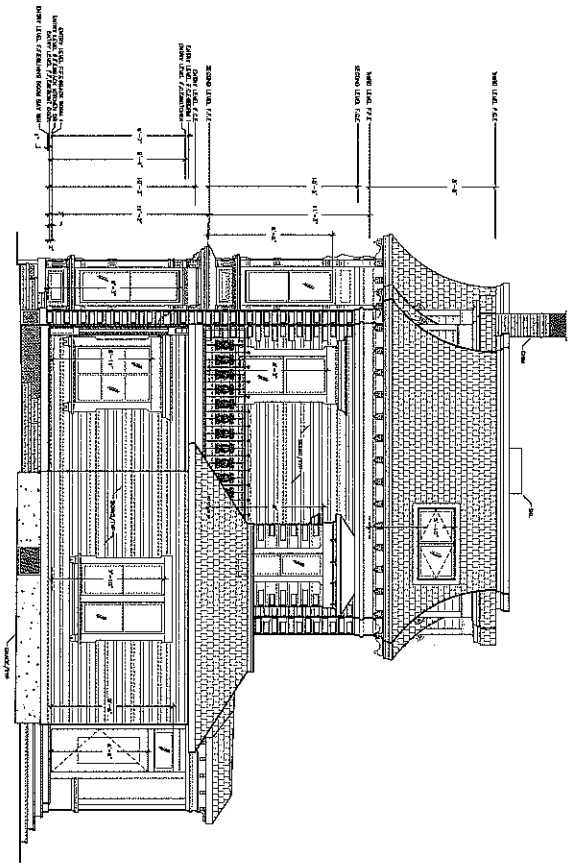


1 EXISTING WEST ELEVATION
SCALE: 1/8"=1'-0"



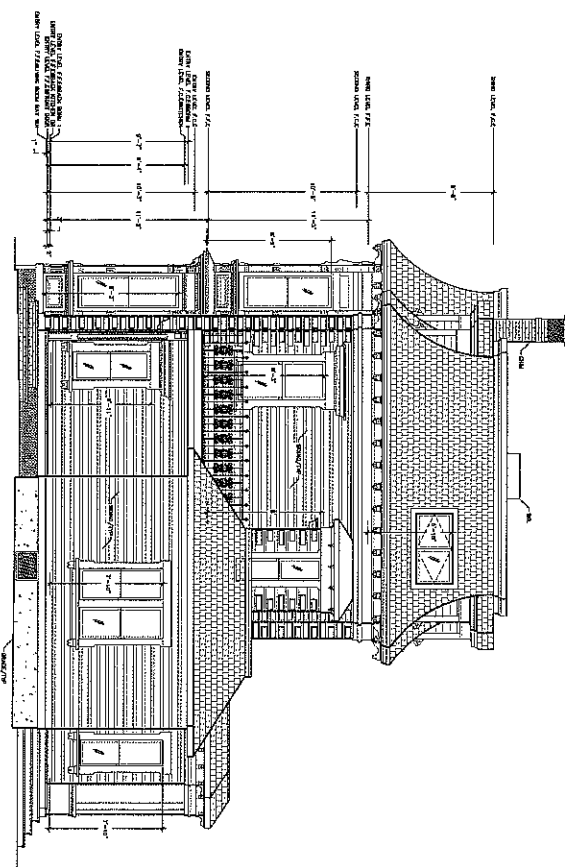
2 PROPOSED WEST ELEVATION
SCALE: 1/8"=1'-0"

PLEASE NOTE:
BUILDING WAS RECONSTRUCTED WITHOUT SAVING THE
EXISTING WEST ELEVATION. THIS DRAWING IS A
RECONSTRUCTION OF THE EXISTING WEST ELEVATION AS
RECORDED IN THE COUNTY RECORDS. THIS DRAWING IS
FOR INFORMATION ONLY AND DOES NOT REPRESENT THE
ACTUAL BUILDING. ANY DISCREPANCIES SHOULD BE
RESOLVED WITH THE ARCHITECT'S OFFICE.



1 EXISTING NORTH ELEVATION
SCALE: 1/8"=1'-0"

DISCLAIMER NOTE:
 DRAWING HAS BEEN PREPARED WITHOUT SHOWING THE
 EXISTING CONDITIONS. CONSULT THE ARCHITECT FOR AN
 ON-SITE VISUAL VERIFICATION OF THE EXISTING CONDITIONS.
 ANY CHANGES TO THE EXISTING CONDITIONS SHOULD BE
 INDICATED BY DIMENSIONS AND LOCATIONS. SOME ELEMENTS AND THEIR
 MATERIALS AND FINISHES MAY VARY FROM THE DRAWING.



2 PROPOSED NORTH ELEVATION
SCALE: 1/8"=1'-0"