

HOUSING AGREEMENT

THIS AGREEMENT DATED FOR REFERENCE the 6TH day of MARCH, 1996.

BETWEEN:

MAYNE COMMUNITY ASSOCIATION, a society incorporated under the *Society Act* of British Columbia (incorporation number S24946) and having its registered office at 360B Georgina Point Road, Mayne Island, B.C. V0N 2J0

(the "Owner")

OF THE FIRST PART

AND:

THE ANGLICAN SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, 912 Vancouver Street, Victoria, B.C., V8V 3V7

(the "Diocese")

OF THE SECOND PART

AND:

MAYNE ISLAND LOCAL TRUST COMMITTEE, a corporation under the *Islands Trust Act* of British Columbia, having an office at 2nd Floor, 1627 Fort Street, Victoria, B.C. V8R 1H8

(the "Trust Committee")

OF THE THIRD PART

WHEREAS:

- A. The Owner has applied to the Trust Committee for certain approvals to permit the construction of a residential development on certain lands, more particularly described in this Agreement; and
- B. The Diocese holds a possibility of reverter in respect of the lands; and

C. The Trust Committee may, pursuant to s. 963.2(1) of the *Municipal Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy of dwelling units located on the lands of the owner; and

D. The Owner, the Diocese and the Trust Committee wish to enter into such a housing agreement with respect to dwelling units located on the lands; and

E. The Trust Committee has, by bylaw, authorized the execution of this Agreement and the Trust Committee entering into this Agreement; and the directors of the Owner have, by resolution, authorized the execution of this Agreement;

THIS AGREEMENT WITNESSES THAT, in consideration of the promises and covenants set out in the Agreement and the sum of ONE DOLLAR (\$1.00) now paid by the Trust Committee to each of the Owner and the Diocese, the receipt and sufficiency of which are hereby acknowledged by the Owner and the Diocese, the parties covenant and agree with each other as follows:

Definitions

1. The following expressions where used in this Agreement shall have the following meanings:

"Dwelling Unit" means one or more habitable rooms used or intended for use as a residence by one or more persons living as a single family unit with self-contained sleeping, living, cooking, and sanitary facilities and direct access to the open air;

"Health Care Practitioner" means a person licensed pursuant to the *Health Professions Act* to provide health care to another person;

"Lands" means Lot B, Section 12, Mayne Island, Cowichan District, Plan VIP61452;

"Owner" means the registered owner of the Lands;

"Senior Citizen" means a person aged 65 years or older.

Occupancy

2. (a) The Owner shall not permit a Dwelling Unit on the Lands to be occupied as a residence by any person other than a Senior Citizen and one other person who may be

(i) a person aged 60 or older; or

- (ii) a housekeeper or Health Care Practitioner employed by the Senior Citizen occupying the same Dwelling Unit.
- (b) Upon the death of the Senior Citizen or the vacating of the Dwelling Unit by the Senior Citizen due to illness, the occupant described in subsection 2(a)(i) of this Agreement may continue to occupy the Dwelling Unit under the authority of that subsection until the occupant reaches the age of 65.
- (c) Upon the death of the Senior Citizen or the vacating of the Dwelling Unit by the Senior Citizen due to illness, the occupant described in subsection 2(a)(ii) of this Agreement may continue to occupy the Dwelling Unit under the authority of that subsection for no more than 30 days following the death or the vacating as the case may be.

Statutory Declaration

3. Upon the written request of the Trust Committee, the Owner shall deliver to the Trust Committee within five days of receiving the request a statutory declaration substantially in the form attached as Appendix "A" to this Agreement, sworn by a director or officer of the Owner, containing all of the information required to complete the declaration. The Trust Committee may request such a declaration in respect of any particular Dwelling Unit up to two times any calendar year.

Order to Comply

4. If the Owner is in default of the performance or observance of paragraph 2 of this Agreement, the Trust Committee may give the Owner a notice of default and if that default is also a breach of the Trust Committee's Zoning Bylaw, the notice of default may contain an order by the Trust Committee, delivered under the signature of the Trust Committee, for the Owner to comply with the Zoning Bylaw.

Relief from Occupancy Restriction

5. If the Owner is in default of the performance or observance of paragraph 2 of this Agreement, the Owner may request to be relieved from its obligations under that paragraph and paragraph 6 with respect to a particular Dwelling Unit for reasons of hardship related directly to the illness or bereavement of the occupier. No such request for relief may be made later than 30 days after the Owner has been given notice by the Trust Committee of a default. Any such request shall be delivered in writing to the Secretary of the Islands Trust, setting out the circumstances and the particular hardship involved, and shall be signed by both the Owner and the occupier concerned. The Owner acknowledges and agrees that the Trust Committee shall be under no obligation to grant any relief, and may proceed with its remedies under this Agreement,

at law and in equity, despite the Owner's request, and that the relief, if any, to be afforded shall be determined by the Trust Committee in its sole discretion.

Damages

6. The Owner agrees that for each day a Dwelling Unit is occupied in breach of paragraph 2 of this Agreement, the Owner shall pay the Islands Trust \$50.00 as liquidated damages and not as penalty. Any such damages are due and payable on a monthly basis at the office of the Islands Trust on the last day of each month, and payment may be enforced by the Islands Trust in a court of competent jurisdiction as a contract debt, which debt does not run with the Lands.

Specific Performance of Agreement

7. The Owner agrees that the Trust Committee is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement. Further, the Owner agrees that the foregoing provision is reasonable given the public interest in restricting the occupancy of each Dwelling Unit on the Lands in accordance with this Agreement.

Indemnification for Costs

8. In the event of proceedings for enforcement of this Agreement commenced by the Trust Committee, the Owner agrees to indemnify the Trust Committee to the full extent of the Trust Committee's actual legal costs in the event that the Owner is held to have been in breach of any provision of this Agreement.

No Public Law Duty

9. Wherever in this Agreement an act, determination, consent, approval or agreement of the Trust Committee is provided for, such act, determination, consent, approval or agreement may be done or made in accordance with the terms of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, shall have any application.

No Waiver

10. No condoning, excusing or overlooking by the Trust Committee of any default under this Agreement, nor any consent, approval or agreement whether written or otherwise shall be taken to operate as a waiver by the Trust Committee of any subsequent default or of the necessity for further consent, approval or agreement in respect of a subsequent matter requiring it under this Agreement, or in any way to defeat or affect the rights or remedies of the Trust Committee.

Arbitration

11. Any matter in dispute between the parties under this Agreement, including any dispute as to whether a particular individual is eligible to occupy a Dwelling Unit under paragraph 2, shall be referred to a single arbitrator if the parties can agree on one, and otherwise to three arbitrators, one to be appointed by each of the parties and the third by those two so appointed, and the matter shall be resolved in accordance with the provisions of the *Commercial Arbitration Act* of British Columbia.

Notice on Title

12. The Owner acknowledges that, pursuant to Section 963.2(5) of the *Municipal Act*, the Trust Committee must file in the Land Title Office a notice that the Lands are subject to this Agreement, and that, once the notice is filed, this Agreement is binding on all persons who acquire an interest in the Lands.

Amendment and Termination

13. This Agreement may not be modified or amended except by bylaw of the Trust Committee, upon an agreement in writing between the Trust Committee, the Diocese, and the Owner. This Agreement may be terminated or discharged by the Trust Committee without the consent or agreement of the Owner or the Diocese.

Notices

14. Any notice required to be given pursuant to this Agreement shall be in writing and shall be given to the Owner, the Diocese or the Trust Committee, as the case may be, at the address first above written, or to any other address of which either the Owner or the Diocese or the Trust Committee may advise the others in writing in accordance with this paragraph. Notice to the Trust Committee must be addressed to the Secretary of the Islands Trust. If given in person or by facsimile transmission, such notice will be deemed to be received when delivered and, if mailed, such notice will be deemed to be received on the tenth business day after the date of mailing except in the event of an interruption of mail service, when such notice will be deemed to be received only when actually received by the party to whom it is addressed.

Enurement

15. This Agreement shall enure to the benefit of and be binding on the Trust Committee and its successors and on the Owner and the Diocese and their heirs, successors, personal representatives, administrators, assignees, and successors in title, including the owners of any strata lot into which any residential apartment building on the Lands may be subdivided. Notwithstanding anything contained herein, neither the Owner named herein nor any future owner of the Lands or any portion thereof shall be liable under any of the covenants and agreements

contained herein where such liability arises by reason of an act or omission occurring after the Owner or the future Owner, as the case may be, ceases to have any further interest in the Lands or portion of them.

Remedies Cumulative

16. The remedies of the Trust Committee specified in this Agreement are cumulative and are in addition to any remedies of the Trust Committee at law or in equity. No remedy shall be deemed to be exclusive, and the Trust Committee may from time to time have recourse to one or more or all of the available remedies specified herein or at law or in equity.

Severability

17. Each covenant and agreement contained in this Agreement is, and shall be construed to be, a separate and independent covenant or agreement and the breach of any such covenant or agreement by the Owner shall not discharge or relieve the Owner from its obligations to perform. If any term or provision of this Agreement or its application to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

Joint and Several

18. In the case of more than one Owner, the grants, covenants, conditions, provisions, agreements, rights, powers, privileges and liabilities of the Owner shall be construed and held to be several as well as joint.

Included Words

19. Wherever the singular or the masculine is used in this Agreement, it shall be deemed to include the plural or the feminine, or the body politic or corporate, where the context or the parties so require.

Governing Law

20. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

Joint Venture

21. Nothing in this Agreement shall constitute the Owner as the agent, joint venturer or partner of the Trust Committee or give the Owner any authority or power to bind the Trust Committee in any way.

Time of Essence

22. Time is of the essence of this Agreement.

Further Assurances

23. The parties shall execute and do all such further deeds, acts, things and assurances as they reasonably require to carry out the intent of this Agreement.

No Fettering of Statutory Discretion

24. No consent or approval given by the Trust Committee under this Agreement shall derogate from or bind the Trust Committee in the exercise of any statutory duty, power or discretion.

The Corporate Seal of MAYNE)
COMMUNITY ASSOCIATION was)
hereunto affixed in the presence of:)

Judy Taylor.)
Judy Taylor, Director)
Carol Kennedy.)
CAROL KENNEDY)
DIRECTOR)

(c/s)

The Corporate Seal of THE)
ANGLICAN SYNOD OF THE)
DIOCESE OF BRITISH COLUMBIA)
was hereunto affixed in the presence of:)

R. Darry Jenks Bishop)
R. Darry Jenks)
John Moran)
DIRECTOR)
John Moran)

(c/s)

The Corporate Seal of MAYNE)
ISLAND LOCAL TRUST)
COMMITTEE was hereunto affixed)
in the presence of:)

Diane Craig)
Chairperson: DIANE CRAIG)



LINDA BROWSE
A COMMISSIONER FOR TAKING
AFFIDAVITS FOR BRITISH COLUMBIA
ISLANDS TRUST
2nd FLOOR, 1627 FORT STREET
VICTORIA, BC V8R 1H8

**APPENDIX "A"
TO HOUSING AGREEMENT**

CANADA) IN THE MATTER OF A
) HOUSING AGREEMENT dated
 PROVINCE OF BRITISH COLUMBIA) the _____ day of
) _____, 1995 between) MAYNE
) COMMUNITY) ASSOCIATION (the "Owner")) and
) MAYNE ISLAND LOCAL) TRUST COMMITTEE (the)
) "Housing Agreement")

I, _____, of _____ in the Province of British Columbia, do solemnly declare:

1. That I am a _____ (director or officer) of the Owner and [make this declaration to the best of my personal knowledge] [have been informed by _____ and believe the statements in this declaration to be true].
2. This declaration is made pursuant to the Housing Agreement in respect of Dwelling Unit No. _____.
3. For the period from _____, _____ to _____, _____ the Dwelling Unit was occupied by the following person whose names and present ages appear below, and by no other persons:

<u>Name of Person</u>	<u>Age of Person</u>
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4. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

SWORN BEFORE ME at _____)
in the Province of British Columbia,)
this _____ day of _____, _____)
_____)
_____)
_____)
_____)
A Commissioner for taking Affidavits)
in the Province of British Columbia)

Signature of Person making
declaration

RECEIVED
LAND TITLE OFFICE
VICTORIA

LAND TITLE ACT
FORM C

(Section 219.81)
Province of British Columbia

GENERAL INSTRUMENT-PART 1

(This area for Land Title Office use) Page 1 of 10 Pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Holmes and Isherwood
Barristers and Solicitors
1190 Fort Street
Victoria, B.C.
V8V 3K8
(604) 383-7157

Constance D. Isherwood

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)	(LEGAL DESCRIPTION)
023-128-224	Lot B, Section 12, Mayne Island, Cowichan District, Plan VIP 61452

3. NATURE OF INTEREST:*

Description	Document Reference (page and paragraph)	Person Entitled to Interest
Section 215 Covenant	Entire Instrument Pages 3 to 8	Transferee

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms	<input type="checkbox"/>	D.F. No.
(b) Express Charge Terms	<input checked="" type="checkbox"/>	Annexed as Part 2
(c) Release	<input type="checkbox"/>	There is no Part 2 of this Instrument.

A selection of (a) include any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

MAYNE COMMUNITY ASSOCIATION (Inc. No. S24946)

THE ANGLICAN SNYOD OF THE DIOCESE OF BRITISH COLUMBIA

6. TRANSFEREE(S): (including postal address(es) and postal code(s))*

MAYNE ISLAND LOCAL TRUST COMMITTEE, a corporation under the *Islands Trust Act* of British Columbia, having an office at 2nd Floor, 1627 Fort Street, Victoria, B.C., V8R 1H8

LAND TITLE ACT
FORM C

(Section 219.81)
Province of British Columbia

GENERAL INSTRUMENT-PART 1

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

8. EXECUTION(S):**This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature	Execution Date	Transferor Signature
	Y M D	
<u>Constance D. Ishenwood</u> Constance D. Ishenwood 1190 Fort Street Victoria, B.C. Solicitor (as to both signatories)	<u>96</u> <u>03</u> <u>08</u>	MAYNE COMMUNITY ASSOCIATION by its authorized signatories <u>Judy Taylor</u> Name: <u>Judy Taylor, Director</u> <u>Carol Kennedy</u> Name: <u>CAROL KENNEDY DIRECTOR</u>

<u>Constance D. Ishenwood</u> Constance D. Ishenwood 1190 Fort Street Victoria, B.C. Solicitor (as to both signatories)	<u>96</u> <u>03</u> <u>07</u>	THE ANGLICAN SYNOD OF THE DIOCESE OF BRITISH COLUMBIA by its authorized signatories <u>R. Barry Jenks, Bishop</u> Name: <u>R. Barry Jenks</u> <u>John Moran</u> DIRECTOR Name: <u>John Moran</u>
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<u>LINDA PROWSE</u> A COMMISSIONER FOR TAKING AFFIDAVITS FOR BRITISH COLUMBIA ISLANDS TRUST 2nd FLOOR, 1627 FORT STREET VICTORIA, BC V8R 1H8 (as to this signature)	<u>96</u> <u>03</u> <u>06</u>	MAYNE ISLAND LOCAL TRUST COMMITTEE by its authorized signatories <u>Diane Cragg</u> Chairperson: <u>DIANE CRAGG</u>
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OFFICER CERTIFICATION:
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1979, c.116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.
* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
** If space insufficient, continue executions on additional page(s) in Form D.

TERMS OF INSTRUMENT - PART 2

**RESTRICTIVE COVENANT
(S. 215 of Land Title Act)**

BETWEEN:

MAYNE COMMUNITY ASSOCIATION, a society incorporated under the *Society Act* of British Columbia (incorporation number S24946) and having its registered office at 360B Georgina Point Road, Mayne Island, B.C. V0N 2J0

(the "Grantor")

OF THE FIRST PART

AND:

THE ANGLICAN SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, 912 Vancouver Street, Victoria, B.C., V8V 3V7

(the "Diocese")

OF THE SECOND PART

AND:

MAYNE ISLAND LOCAL TRUST COMMITTEE, a corporation under the *Islands Trust Act* of British Columbia, having an office at 2nd Floor, 1627 Fort Street, Victoria, B.C. V8R 1H8

(the "Grantee")

OF THE THIRD PART

WHEREAS:

- A. The Grantor is the owner of land on Mayne Island, legally described as Parcel Identifier: 023-128-224, Lot B, Section 12, Mayne Island, Cowichan District, Plan VIP 61452 (the "Lands");
 - B. The Grantor has applied to the Grantee for rezoning of the Lands to permit their development for the purpose of housing for senior citizens;
-

C. The Grantor and the Grantee have entered into a housing agreement pursuant to the *Municipal Act* and wish to further restrict the development of the Lands in accordance with the terms of this Agreement; and

D. The Diocese holds a possibility of reverter in respect of the Lands;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of Ten Dollars (\$10.00) paid by the Grantee to each of the Diocese and the Grantor (the receipt and sufficiency of which are hereby acknowledged by the Diocese and the Grantor) the Diocese and the Grantor hereby grant to the Grantee this Restrictive Covenant on the following terms:

Use of Lands Restricted

1. The Diocese and the Grantor covenant not to construct any building or structure on the Lands except in accordance with the site plan and building design plan attached to and forming part of this Agreement as Schedules "A" and "B".
2. The Diocese and the Grantor covenant not to construct any accessory building on the Lands without providing in connection with such building a visual screen separating the building from adjacent parcels on which residential uses are permitted, such screen to be between 3 feet and 6 feet in height and comprised of a wood, stone or brick fence, natural vegetation or earthen berm.
3. Without limiting the generality of paragraph 1, the Diocese and the Grantor covenant not to utilize in the construction or finishing of any building or structure on the Lands any external finishes except wood siding or any paint colour except earth tones.
4. The Diocese and the Grantor covenant not to place any mobile or premanufactured building or structure on the Lands.

Future Liability

5. Notwithstanding anything contained herein, neither the Diocese nor the Grantor named herein nor any future owner of the Lands or any portion thereof shall be liable under any of the covenants and agreements contained herein where such liability arises by reason of an act or omission occurring after the Diocese or the Grantor named herein or any such future owner ceases to have any further interest in the Lands, and the liability of the Diocese for such acts or omissions shall arise only when and if it becomes an owner of the Lands or any part of them.

Priority

6. The Diocese and the Grantor shall, after execution hereof by them at their expense, do or cause to be done all acts reasonably necessary to grant priority to this Restrictive Covenant over all financial charges and encumbrances which may have been registered against the title to the Lands in the Land Title Office save and except those as have been specifically approved in writing by the Grantee or have been granted in favour of the Grantee.

Interpretation

7. Wherever the singular or masculine or neuter is used in this Restrictive Covenant, the same shall be construed as meaning the plural, the feminine or body corporate where the context or the parties hereto so require.

Further Assurances

8. The parties hereto shall execute and do all such further deeds, acts, things, and assurances as may be reasonably required to carry out the intent of this Restrictive Covenant.

References

9. Every reference to each party is deemed to include the heirs, executors, administrators, successors, assigns, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires.

Severance

10. If any portion of this Restrictive Covenant is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Restrictive Covenant.

Governing Law

11. This Restrictive Covenant shall be governed by and construed in accordance with the laws applicable in the Province of British Columbia.

Enurement

12. This Restrictive Covenant shall enure to the benefit of and be binding on the parties hereto and their respective successors and permitted assigns.

Indemnity

13. The Diocese and the Grantor hereby release, indemnify and save harmless the Grantee from and against any and all manner of actions, causes of action, claims, costs, expenses, debts, demands and promises of whatsoever kind or howsoever arising out of or in any way due to or relating to the granting or existence of this Restrictive Covenant.

Powers Preserved

14. Nothing in this Restrictive Covenant shall limit or derogate from the rights, powers and authority of the Grantee or exempt the Diocese or the Grantor or the Lands from the ordinary jurisdiction of the Grantee or its bylaws, regulations or orders now in force or from time to time enacted or made.

Runs With Lands

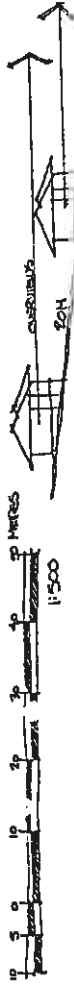
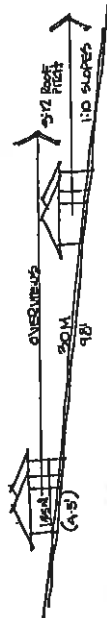
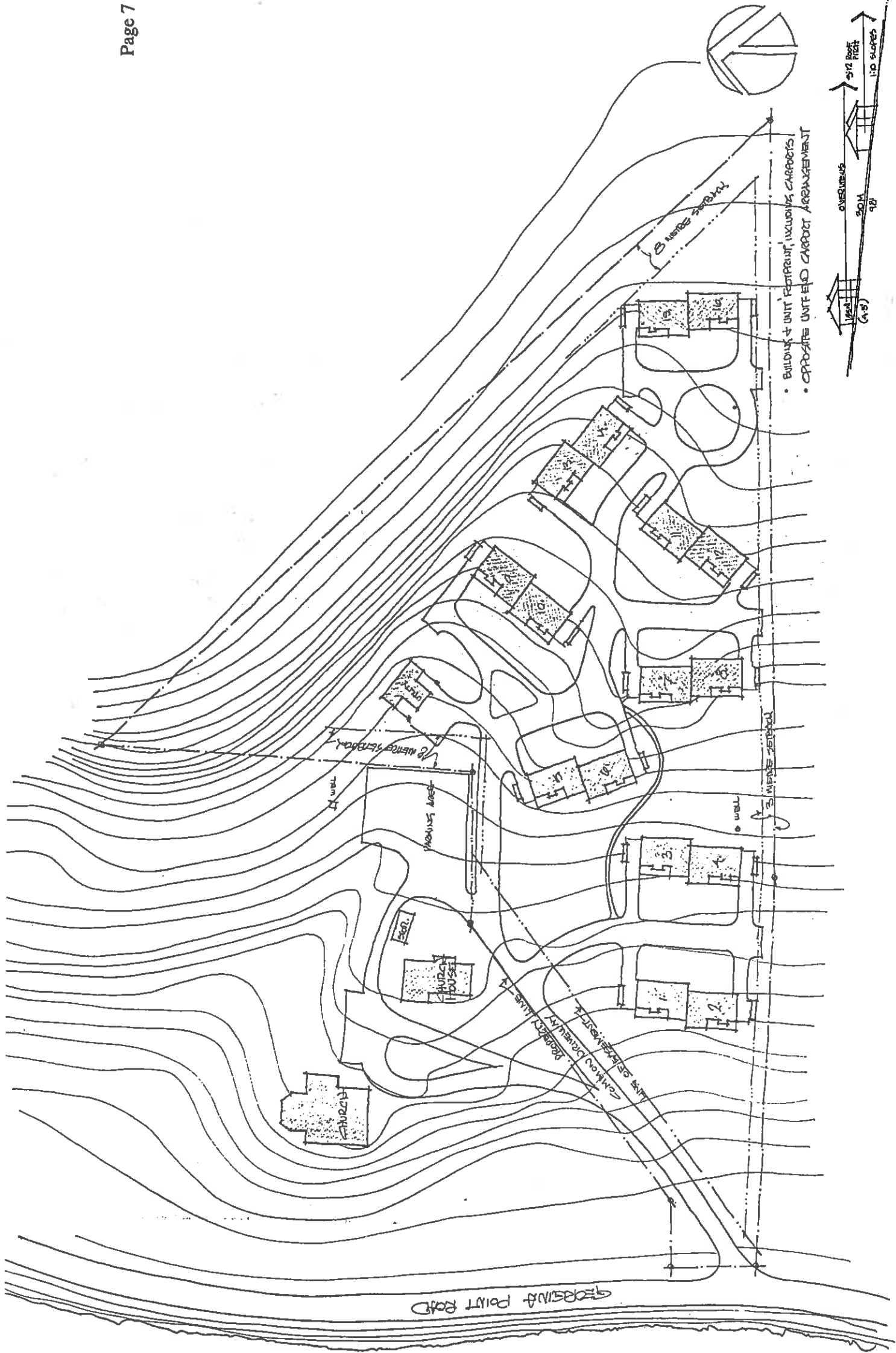
15. This Restrictive Covenant shall run with the Lands and every portion into which they may be subdivided and shall be binding on the Diocese and the Grantor and their successors in title pursuant to S. 215 of the *Land Title Act*, R.S.B.C. 1979, c. 219.

No Public Duty

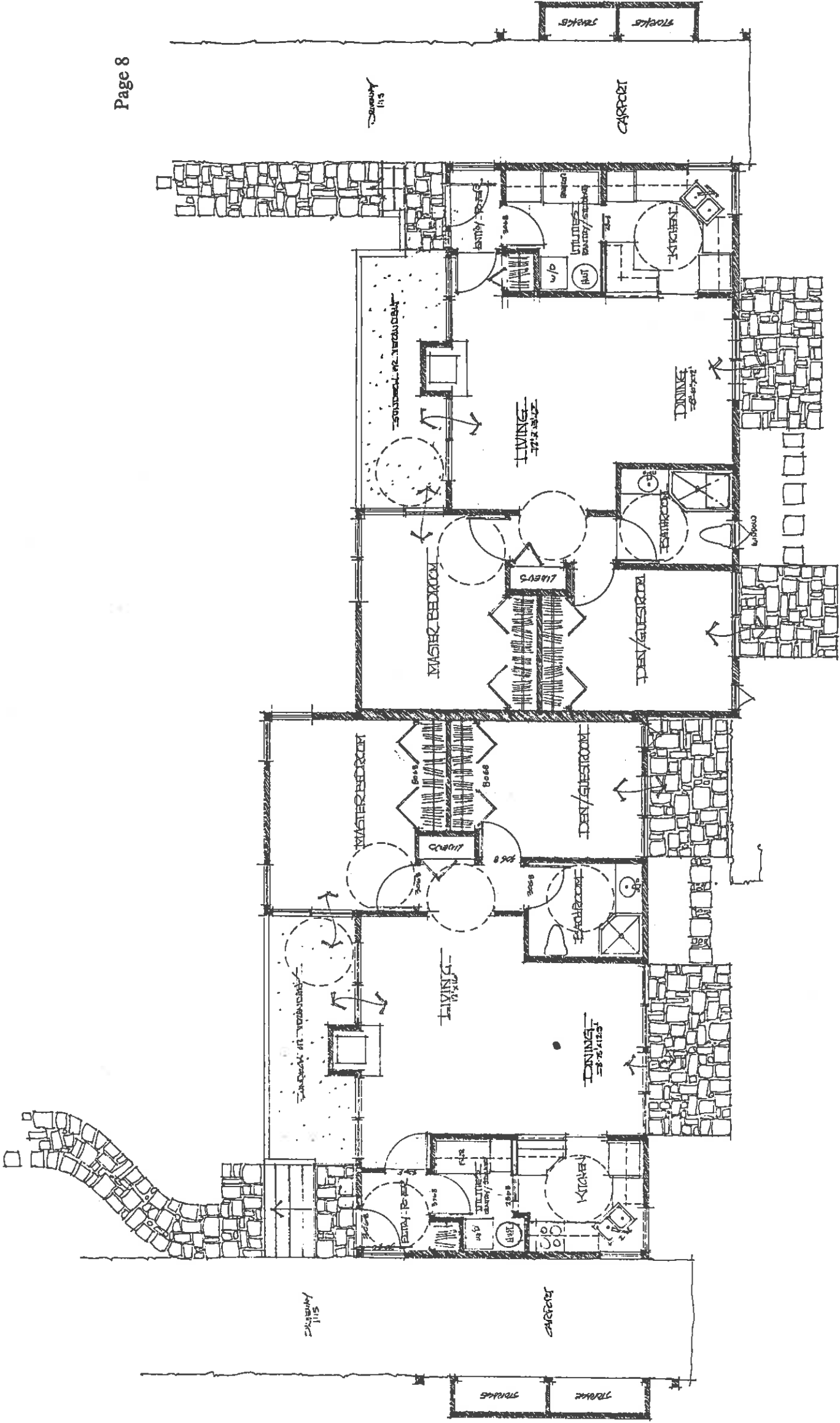
16. Wherever in this Restrictive Covenant an act, determination, consent, approval or agreement of the Grantee is provided to be at the sole discretion of the Grantee:

- (a) such act, determination, consent, approval or agreement shall be construed as wholly contractual in nature and no public law duty whether arising from the principles of procedural fairness or rules of natural justice shall have any application; and
- (b) no condoning, excusing or overlooking by the Grantee on previous occasions of any default, nor any earlier written consent, approval or agreement shall be taken to operate as a waiver by the Grantee of any subsequent default or of the necessity for further consent, approval or agreement in respect of a subsequent matter requiring the same, or in any way to defeat or affect the rights or remedies of the Grantee.

As evidence of their agreement to be bound by the terms of this instrument, the parties hereto have executed the Land Title Office Form C which is attached hereto and forms part of this Agreement.



SCHEDULE A

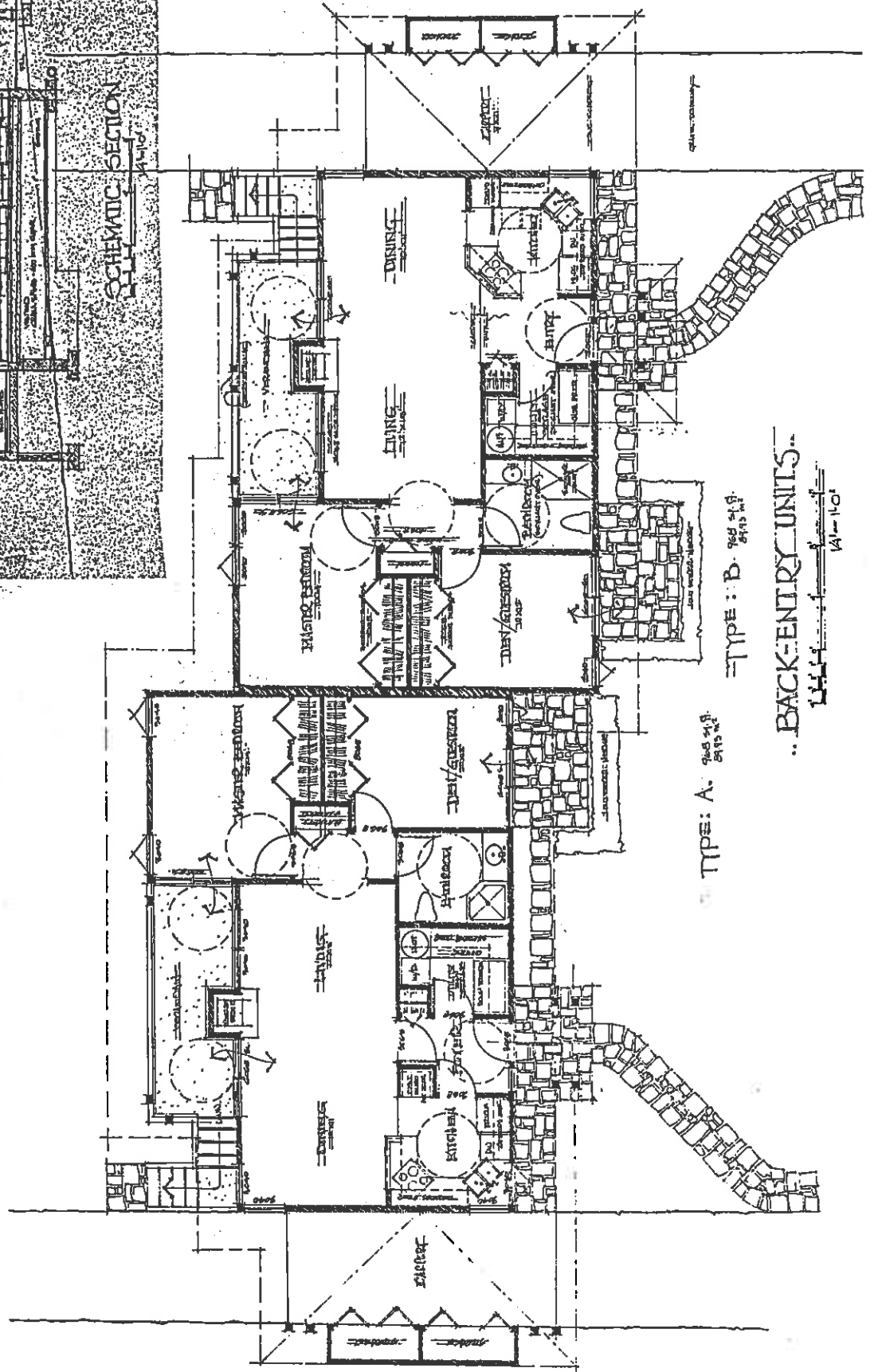
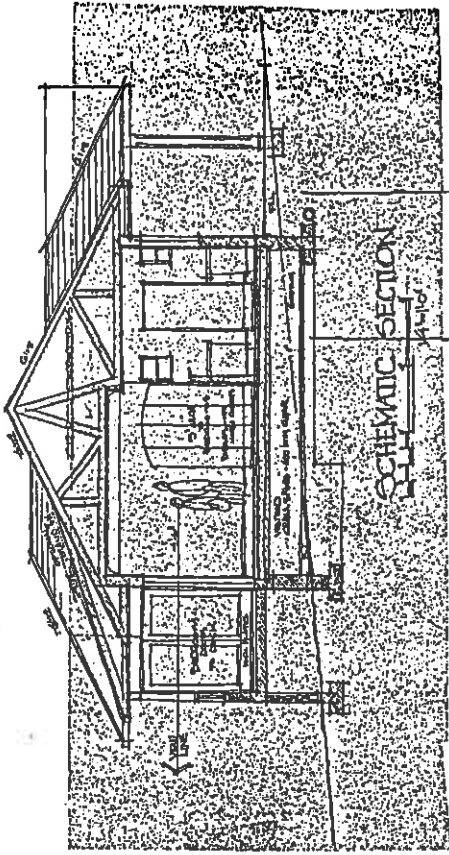


---TYPE C---

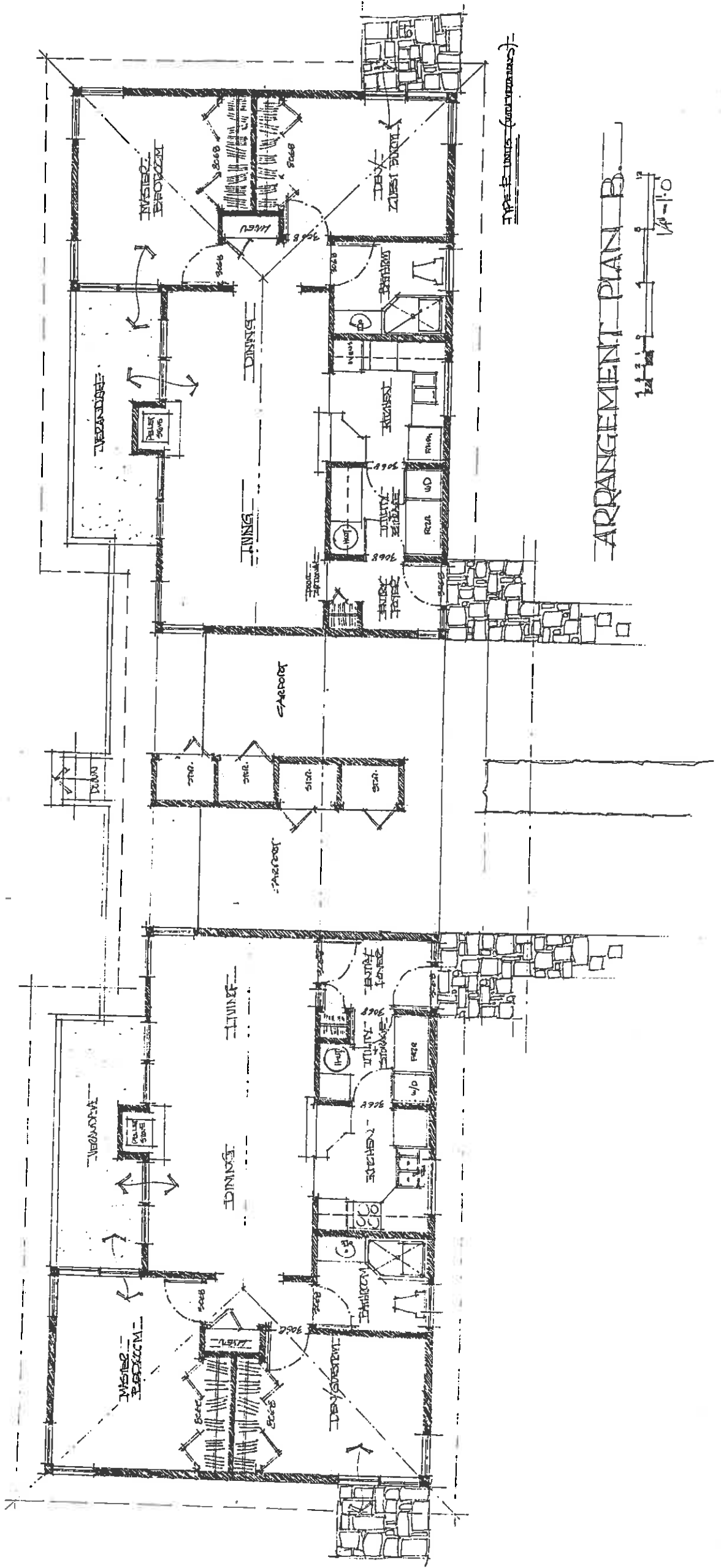
---TYPE D---

FRONT ENTRY UNITS

SCHEDULE B



TYPE: A. 9'-0" x 11'-0"
 TYPE: B. 9'-0" x 11'-0"
 .. BACK-ENTRY UNITS ..
 14'-0"



ARRANGEMENT PLAN B

1/4" = 1'-0"

TYPE B UNITS (Symmetrical)