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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
07/19/2018 04:05 PM
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DEP RTT REC'D FOR CLEARFIELD CITY CORPORATION

AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
for
WEST SQUARE CONDOMINIUMS
between
CLEARFIELD CITY CORPORATION
and
WEST SQUARE, LLC

12-921-0008 → 0024
0128 → 0140
0221 → 0240
0321 → 0341

THIS AMENDED AND RESTATED AGREEMENT is entered into this 15th day of July 2018, by and between Clearfield City Corporation (the "City"), a Utah Municipal Corporation, and WEST SQUARE, LLC ("Developer").

Reference is made to that certain Development Agreement for West Square Subdivision between Clearfield City Corporation and Ironwood Development Group, L.C., dated as of February 2016 (the "Original Development Agreement") Entry Number: 2943538, Book and Page: 6531-755 The Original Development Agreement contemplated the construction of apartment units for rent on the Property (as defined herein). Developer has elected to construct a condominium project on the Property, and to modify the original drawings for the construction of improvements on the Property. Accordingly, the parties desire to amend and restate the Original Development Agreement in its entirety. Since the execution of the Original Development Agreement, Ironwood Development Group, L.C. has assigned all right, title and interest to the Property to its sister company, West Square, LLC. Accordingly, West Square, LLC is acknowledged to be the Developer hereunder.

RECITALS

- A. Developer intends to develop certain property situated in Clearfield City, Davis County, Utah, located at approximately 875 South Depot Street, Clearfield, Utah more particularly described in the parcel description labeled Exhibit "A" attached hereto and referred to herein as the "Property."
- B. Developer either owns or has a contractual right to purchase the Property.
- C. The City has authorized the negotiation and adoption of development agreements under appropriate circumstances in order to help address the impacts of development on the community, to resolve issues relative to a particular development, to protect both public and private property rights, and to promote the health, safety and welfare of the community.
- D. Developer is willing to develop the Property in a manner that is in harmony with and intended to promote the long-range policies, goals and objectives of the City's General Plan, Land-Use Ordinance and other development regulations and more specific planning issues associated with the Property as more fully set forth below.

E. This Agreement is intended to set forth the agreement between the Developer and the City regarding the development of the Property and place upon the Developer the conditions set forth herein.

F. Developer has indicated a desire to voluntarily enter into and be bound by this Agreement.

G. The Developer desires to develop the Property according to the West Square Amended Subdivision Plat and Improvement Drawings dated June 6, 2018 as well as incorporating any changes thereto as set forth in the approved final subdivision plat to be recorded with the Davis County Recorder's Office, which documents are attached hereto as Exhibit "B" (the "Plat").

H. On May 22, 2018, the City approved the Plat submitted by the Developer for the development of the Property.

I. Developer and City are entering into this Development Agreement as part of the subdivision approval process for the development of the Property.

J. The City, acting pursuant to its authority under Title 10, Chapter 9a of the Utah Code and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations has made certain determinations with respect to the development of the Property, and in the exercise of its legislative discretion has elected to approve this Agreement.

AGREEMENT

The foregoing Recitals are hereby incorporated into this Agreement by this reference.

NOW, THEREFORE, in consideration of the premises and the terms and conditions herein stated and for other valuable consideration, the adequacy of which is acknowledged by the parties hereto, it is agreed as follows:

I. Development of the Property.

A. Developer hereby agrees to construct and to install all improvements described in the Plat. The Plat is an integral part of this Agreement and the City's approval of such is conditioned upon the Property being developed in accordance therewith and as stated in this Agreement. In the event that Developer does not complete such improvements according to the specific plans set forth in the Plat as well as in this Agreement, the City shall have the right to cause such work to be done as is necessary to complete the installation of the improvements specified in the Plat and Developer shall be liable for the cost of such additional work.

In addition, this development requires the installation of sanitary sewer and storm sewer lines on that certain parcel of real property located west of the Property and owned by Joyce Gunderson (Tax Parcel No. 12-066-0133) (the "Gunderson Property"). The Developer shall be responsible for installing those lines, as described and with the cost estimates shown in Exhibit "C" ("City Reimbursements"), in accordance with the City's standards, and at the City's sole cost and expense.

No building permits shall be issued for construction in the subdivision until the City has approved the final Subdivision Plat and the final Site Plan and the Plat has been recorded against the Property along with this Agreement.

- B. Housing units within the development of the Property shall be one-, two-, and three-bedroom condominium units.
- C. Residential units shall have at least 700 square feet of finished floor area above grade. No slab on grade construction without footings is allowed.
- D. Each main building on the Property shall have the setbacks, front yards, back yards and side yards as shown on the approved Final Site Plan.
- E. When building plans are submitted for permit review, the colors and materials shall be consistent with the design presented to and approved by the Clearfield City Council as presented on May 15, 2018 (drawings dated November 6, 2018 and January 5, 2018, and attached as Exhibits "F" and "G"). The exterior finishes of the project shall be stucco and brick veneer, with colors and other materials as presented to the Planning Commission. All exterior finishes must include a combination of architectural metal, brick, stucco, LP Smartside (or substantially similar product), rock, or masonry.
- F. Developer shall construct residential units on the Property in substantial conformance with the plans and elevations presented to the City during the approval process which elevations shall be kept on file in the records of Clearfield City.
- G. Developer agrees to provide at least twenty-five percent (25%) of the newly developed Property to remain as open space. Developer shall construct, install, and pay for all improvements related to the open space and it shall have shrubs, trees and grass covering that shall be mowed, watered and maintained by the owner(s) of the Property.
- H. The Developer shall record this Agreement as covenants running with the lots and land in the Development and indicate on the approved Final Subdivision Plat the existence of this Agreement and the recording data therefore.
- I. The Parties shall, in connection with this Development Agreement, execute that certain Reimbursement Agreement for Project Improvements (the "Reimbursement Agreement"), by which the City shall collect from the owners and developers of the Benefited Properties (as defined in the Reimbursement Agreement) a payment, to be collected at the time of development of the property owned by the Benefited Parties

pursuant to the terms of the Reimbursement Agreement. All such amounts shall be distributed to Developer as reimbursement for costs incurred in making the improvements described in the Reimbursement Agreement. The Reimbursement Agreement shall be in substantially similar form to that attached hereto as Exhibit "D".

K. It is further agreed and understood that the Developer shall be given approval by the city to construct not more than 141 residential units on the Property, as set forth in Exhibit "B", once the Plat and this fully executed Agreement have been recorded at the Davis County Recorder's Office, and building permits have been approved and paid for.

L. The Developer must comply with the City's requirements for guaranteeing the installation and warranty of all subdivision improvements, including landscaping, pursuant to the City's subdivision ordinance and all other applicable laws.

M. City Reimbursements. City shall reimburse Developer 100% of Developer's actual costs incurred for making the following improvements, up to the estimated amounts provided for in Exhibit "C," together with any approved change orders. City shall not reimburse Developer for costs beyond those estimated in Exhibit "C" unless City separately agrees to do so in writing.

1. Sanitary sewer and storm drain running through the Gunderson Property;
2. Storm drain running through the Property from 550 East, including any corresponding incremental costs, if any (including, without limitation, the upsizing of the Depot Street storm drain and/or shifting the high point of Depot Street), together with any expense incurred by Developer in modifying the parking lot (including the modification of elevations) as a result of such storm drain.
3. Storm drain and detention basin collecting storm water generated off-site from properties to the north and east of the Property (Hamblin Park, Meadows Condominiums, Meadows Townhomes, etc.).

N. Purchase of Surplus Property. For the purchase price of \$10,000, Developer shall purchase from the City that certain surplus real property owned by the City and located west and adjacent to the Property (the "Surplus Property"). The Surplus Property is described in Exhibit "E", attached hereto and incorporated herein.

II. Conditions Precedent.

The terms and conditions set forth in this Agreement shall not take effect unless and until the Clearfield City Council has officially approved this Agreement and authorized the Mayor's signature hereto, the Agreement has been fully executed by all parties, and has been recorded against the Property.

III. Preliminary and Final Subdivision Plat Approval.

A. Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all of the applicable requirements for the approval of preliminary and final subdivision plats for all proposed development on the Property which are consistent with the City's existing land use regulations, development standards and the terms of this Agreement.

B. Pursuant to the City's subdivision ordinance, following approval of the final subdivision plat by the City Council, but before approval from the City Attorney or recording of the final plat with the Davis County Recorder's Office, the City will verify that proper assurances (escrow account and agreement, and/or surety bond) are in place to guarantee the satisfactory installation and warranty of the subdivision improvements.

IV. Other Terms and Conditions.

A. Agreement to Run with the Land. This Agreement shall be recorded against the Property in the Office of the Davis County Recorder and is intended to and shall be deemed to run with the land and shall be binding upon all successors and assigns of the Developer in the ownership or development of any portion of the Property.

B. Construction of Agreement. This Agreement shall be construed so as to effectuate the public purpose of implementing long-range planning objectives, obtaining public benefits, and protecting any compelling countervailing public interest.

C. Waiver. The failure of either party at any time to require a performance of any provision of this Agreement shall not limit the party's right to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of any provision or a waiver of the provision itself or any other provision.

D. Relationship of Parties and No Third-Party Rights. This Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the parties hereto nor any rights or benefits to third parties.

E. Integration Clause. This Document and those incorporated by reference constitute the entire agreement between the Parties and may not be amended except in writing signed by the Parties.

F. Exhibits Incorporated. Each exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

G. Counterparts. This Agreement may be executed in multiple counterparts, which together shall constitute one and the same document.

H. Attorneys' Fees. In the event of any action or suit by a party against the other party for any reason of any breach of any of the covenants, conditions, agreements,

provisions on the part of the other part arising out of the Agreement, the prevailing party in such action or suit shall be entitled to have and recover from the other party all costs and expenses incurred therein, including reasonable attorneys' fees.

I. Governing Law and Venue. It is mutually understood and agreed that this Agreement shall be governed by the laws of the state of Utah, both as to interpretation and performance. Any action at law, suit in equity, or other judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the Second Judicial District Court, Farmington Department, State of Utah.

J. Remedies for Breach. In addition to any other remedies allowed under law or equity, the parties shall specifically be entitled to specific performance of the terms and conditions under this Agreement.

K. Successors and Assigns of the Parties. This Agreement shall be binding upon the parties and their successors and assigns, and where the term "Developer", "Party" or "Parties" is used in this Agreement it shall mean and include the successors and assigns of Developer. In addition, Developer may only assign the rights to develop a part or all of the Property to a third party pursuant to the terms of this Agreement if the City provides prior written consent to said assignment, and provided that such third party agrees in writing to be bound by the terms of this Agreement and that such written agreement to be bound has been provided to the City.

L. Headings. The paragraph headings of this Agreement are for the purposes of performance only and shall not limit or define the provisions of this Agreement or any of said provisions.

M. Severability or Partial Validity. If any term, covenant, paragraph, or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each such remaining term, covenant, or condition of this Agreement shall be valid and enforceable to the full extent permitted by law.

N. Warranty of Authority. Each party signing or executing this Agreement warrants that they have full authority to sign this Agreement and by signing said Agreement do bind the parties thereto.

O. Warranty Inspections. The Developer agrees to reimburse the City or pay directly to the City's engineer any costs associated with the intermediate and final warranty inspections that are required prior to acceptance of the subdivision improvements by the City.

P. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environment, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement.

Q. Notices. All notices required or permitted under this Agreement shall be given in writing by certified mail or express courier delivery, at the following addresses:

If to the City: Clearfield City Corporation
Attn: City Manager
55 S. State St., 3rd Fl.
Clearfield, UT 84015

With a copy to: Clearfield City Attorney
55 S. State St., Suite 333
Clearfield, UT 84015

If to the Developer: West Square, LLC
50 E. 2500 N. Suite 101
North Logan, UT 84341

IN WITNESS WHEREOF, the Developer and Clearfield City have executed this Agreement effective as of the date first above written.

CLEARFIELD CITY CORPORATION

By: 

Mark R. Shepherd, Mayor

WEST SQUARE, LLC, a Utah
Limited Liability company

By: 

Jeff Jackson, Manager

ATTEST:

By: 

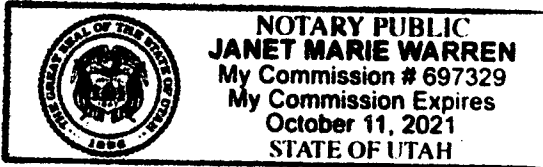
Nancy R. Dean, City Recorder



CORPORATE ACKNOWLEDGMENT

STATE OF UTAH)
 §
COUNTY OF CACHE)

On the 14th day of June 2018 personally appeared before me, Jeff Jackson as signer of the foregoing document, who duly acknowledged to me that he has corporate authority on behalf of West Square, LLC to execute the same, and did so on behalf of the Limited Liability Company.

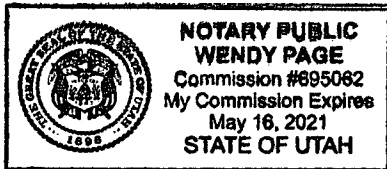


Janet Marie Warren
NOTARY PUBLIC

Residing: Logan, UT

STATE OF UTAH)
 §
COUNTY OF DAVIS)

On the 15th day of June, 2018 personally appeared before me, Mark R. Shepherd and Nancy R. Dean, who being by me duly sworn did say, that they are the Mayor and City Recorder of Clearfield City Corporation, and that the within and foregoing instrument was signed on behalf of said corporation by authority of the City Council and the said, Mark R. Shepherd and Nancy R. Dean, acknowledged to me that said corporation executed the same.



Wendy Page
NOTARY PUBLIC

Residing: West Point, UT

EXHIBIT "A"

PROPERTY

Lot 1, West Square Subdivision according to the official plat recorded in the Davis County Court House under Entry 2943537 on June 6, 2016 also located in Part of the Northwest Quarter of Section 12, Township 4 North, Range 2 West of the Salt Lake Base and Meridian described as follows:

Commencing at a Brass Cap monumenting the North Quarter Corner of Section 12, Township 4 North, Range 2 West of the Salt Lake Base and Meridian from which the Northwest Corner of said Section 12 bears N89°48'25"W 2648.35 feet (Basis of Bearing), thence S00°09'18"W 798.44 feet to the POINT OF BEGINNING and running

thence S 00°09'18" W 631.20 feet;

thence S 89°50'43" E 314.56 feet along the south line of Hamblin Park Townhomes P.U.D.;

thence N 00°09'17" E 19.96 feet along the east line of Hamblin Park Townhomes P.U.D.;

thence S 89°50'43" E 82.41 feet to the west right of way line of 550 East Street;

thence S 01°16'30" W 79.03 feet along said west right of way line;

thence N 89°50'43" W 80.87 feet;

thence N 00°09'17" E 11.61 feet;

thence N 89°50'43" W 82.50 feet;

thence N 00°09'17" E 14.44 feet;

thence N 89°50'43" W 232.06 feet;

thence S 00°09'18" W 283.79 feet;

thence Northwesterly, a distance of 30.79 feet along a non tangent curve to the left of which the radius point lies S 45°44'51" W, with a radius of 230.00 feet, having a central angle of 07°40'14" and a chord that bears N 48°05'16" W 30.77 feet;

thence Northwesterly, a distance of 64.81 feet along a reverse curve to the right having a radius of 170.00 feet and a central angle of 21°50'33" and a chord that bears N 41°00'07" W 64.42 feet;

thence N 30°04'50" W 957.98 feet;

thence Northerly, 133.10 feet along a curve to the right having a radius of 252.00 feet, a central angle of 30°15'46" and a chord that bears N 14°56'57" W 131.56 feet;

thence N 00°10'56" E 396.18 feet;

thence S 89°48'25" E 120.45 feet

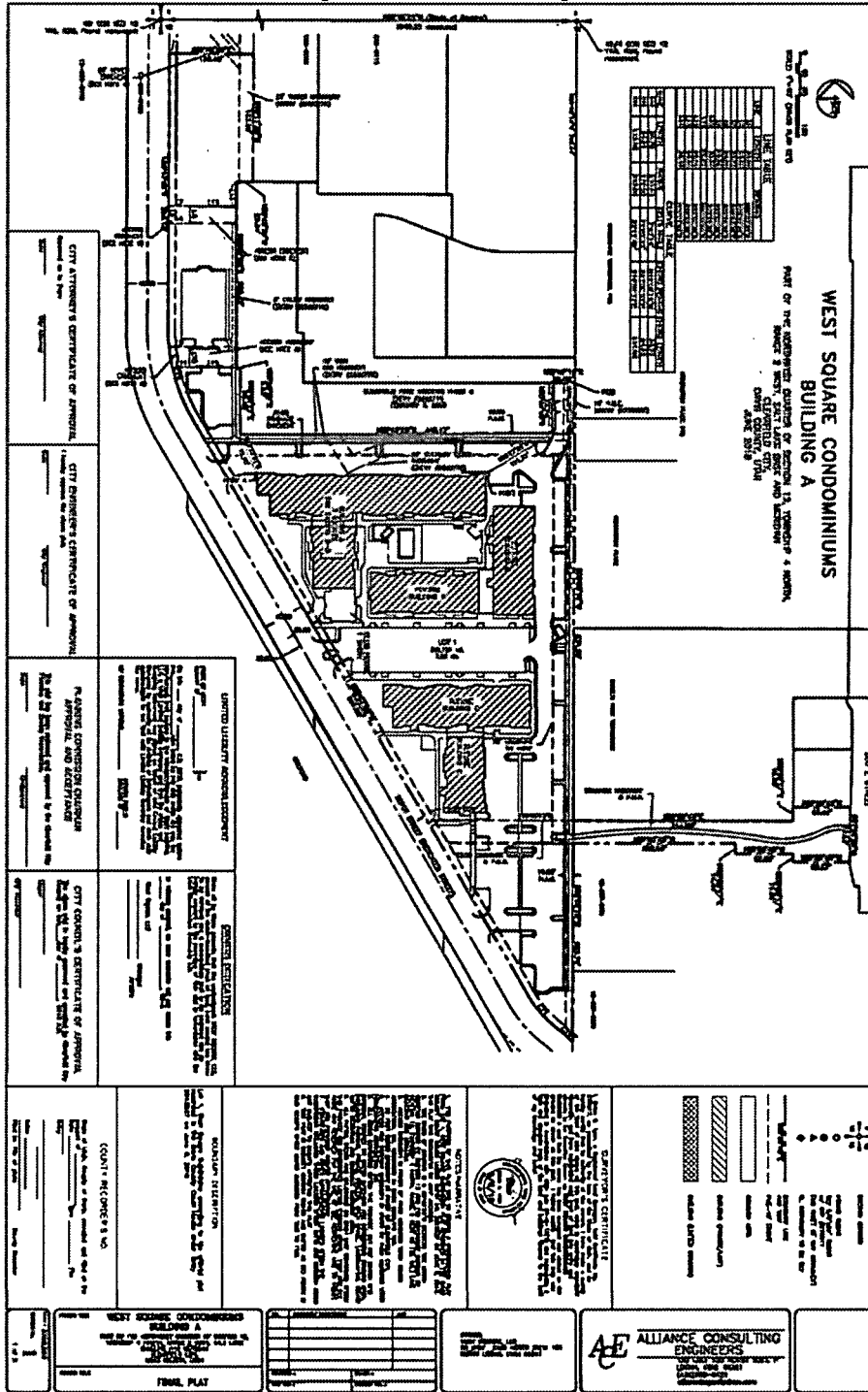
thence S 00°11'35" W 183.00 feet to the boundary line of Clearfield Meadows Phase 5 recorded February 3, 2009 under Entry No. 2420775;
thence along said boundary the next seven courses:

- 1) thence N 89°48'25" W 23.84 feet;
- 2) thence S 00°07'00" E 268.49 feet;
- 3) thence N 89°59'31" E 5.63 feet;
- 4) thence S 00°00'22" E 96.48 feet;
- 5) thence N 89°43'23" E 446.17 feet;
- 6) thence N 00°09'18" E 72.74 feet;
- 7) thence S 89°57'15" E 32.02 feet to the point of beginning,
containing 7.34 acres or 319,731 square feet.

Tax ID No. 12-850-0001

EXHIBIT "B"

AMENDED PLAT (CONDO)
[SEE ATTACHED]



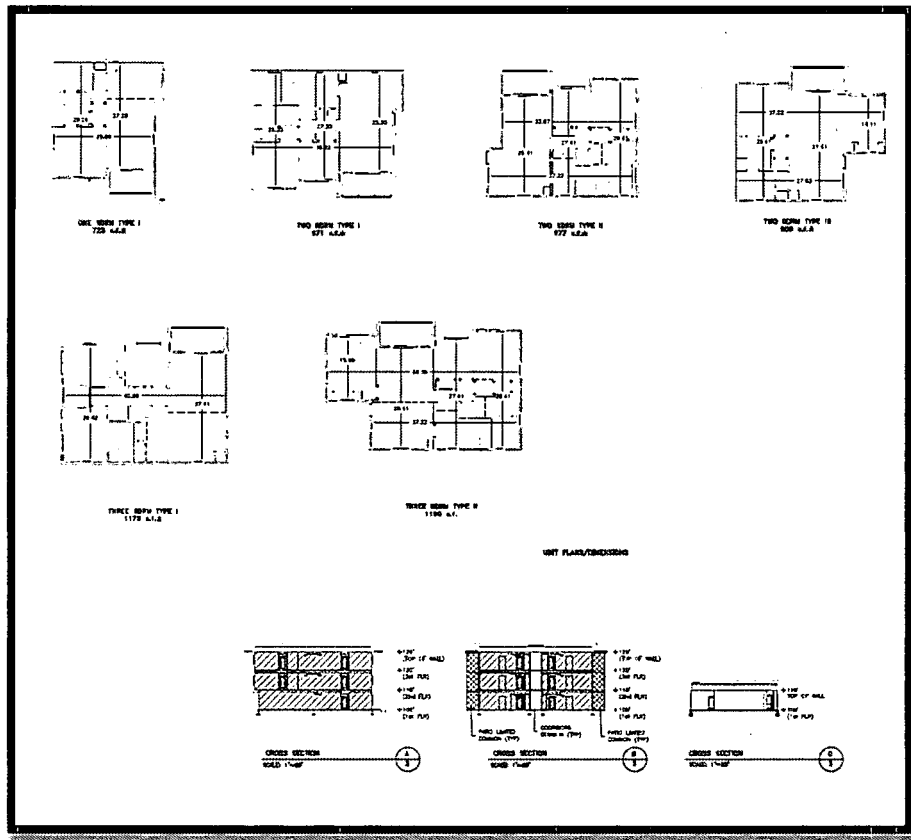
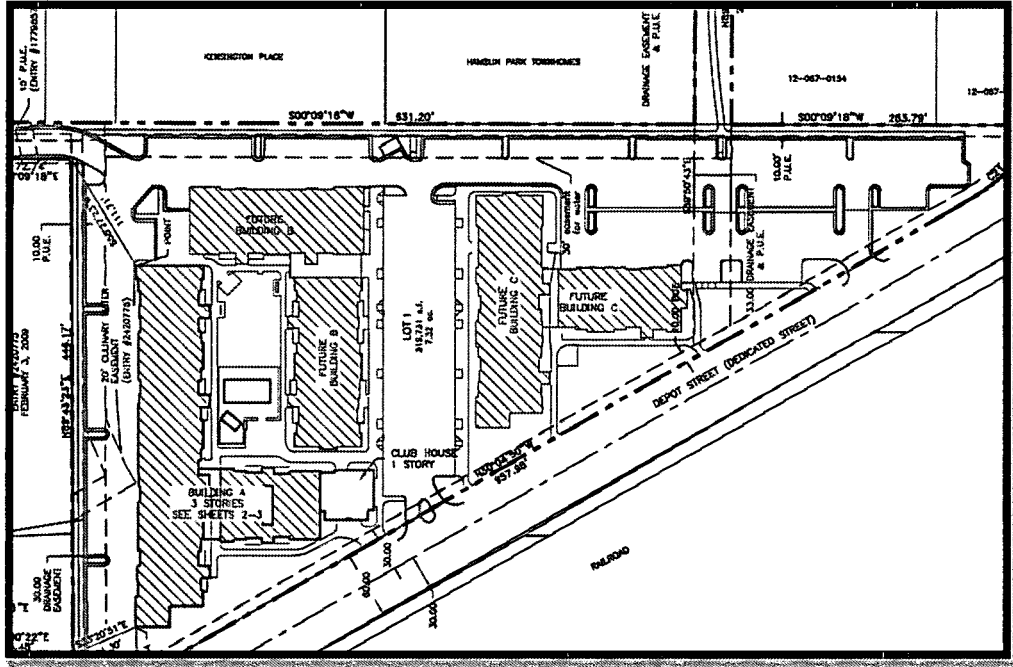
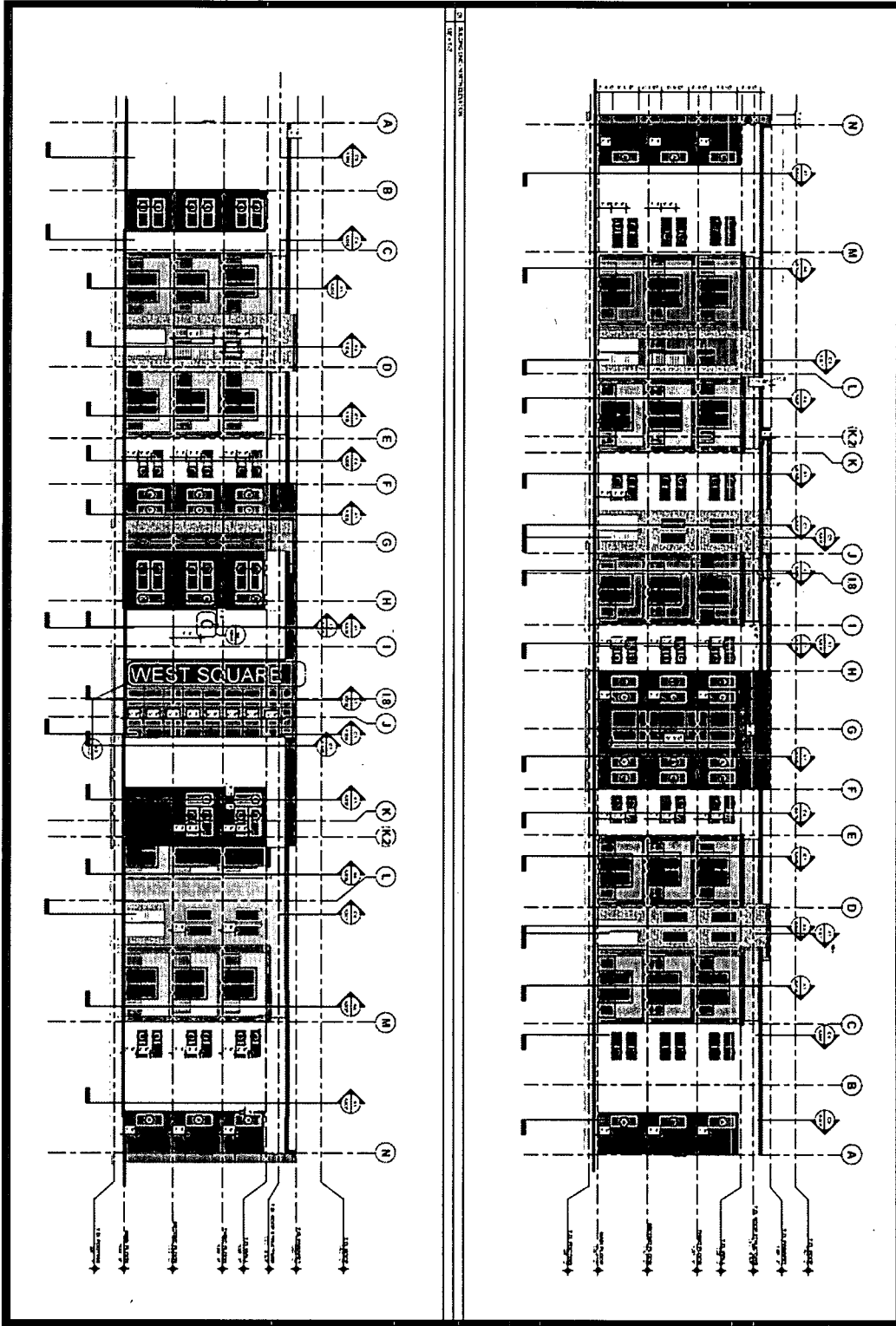
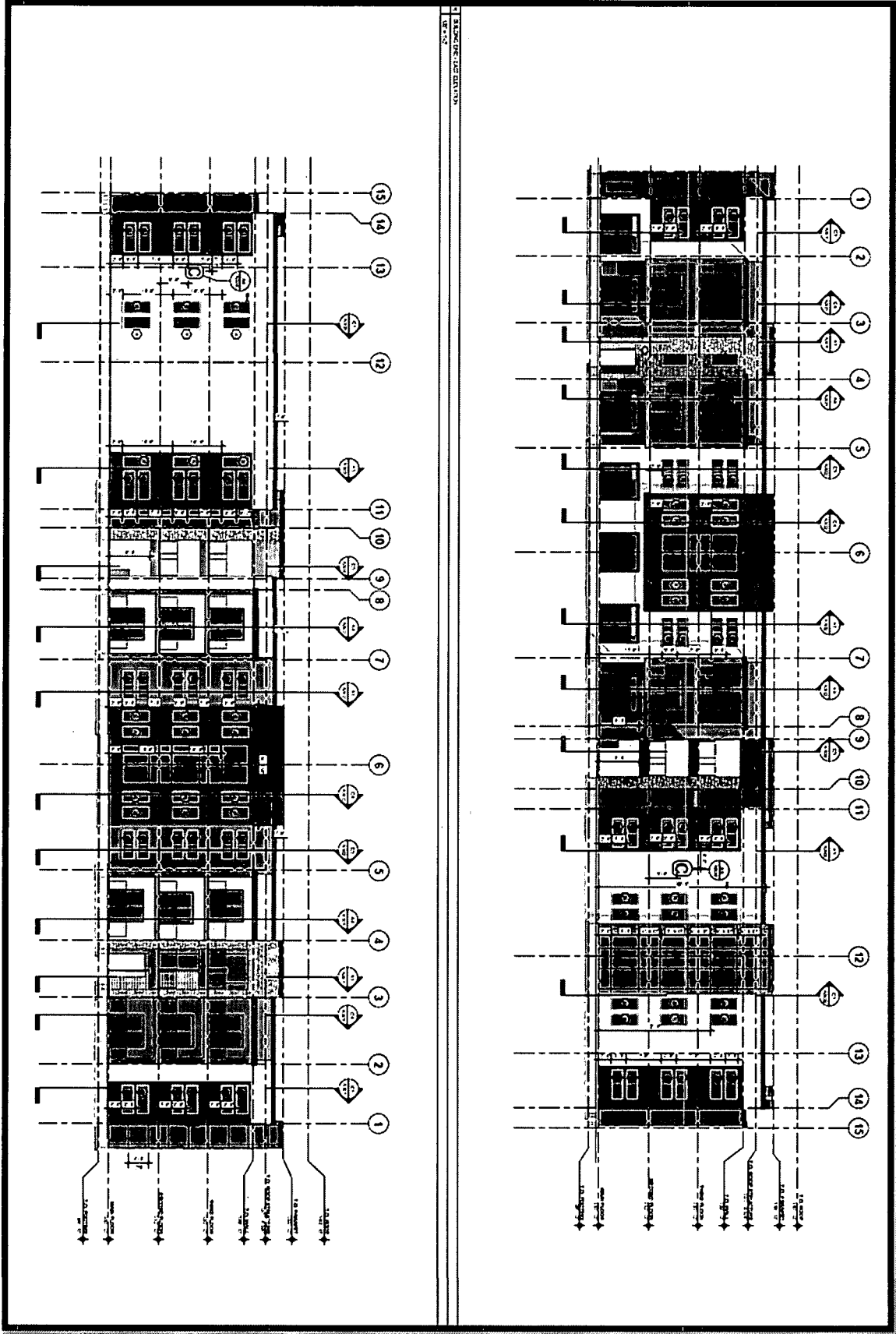
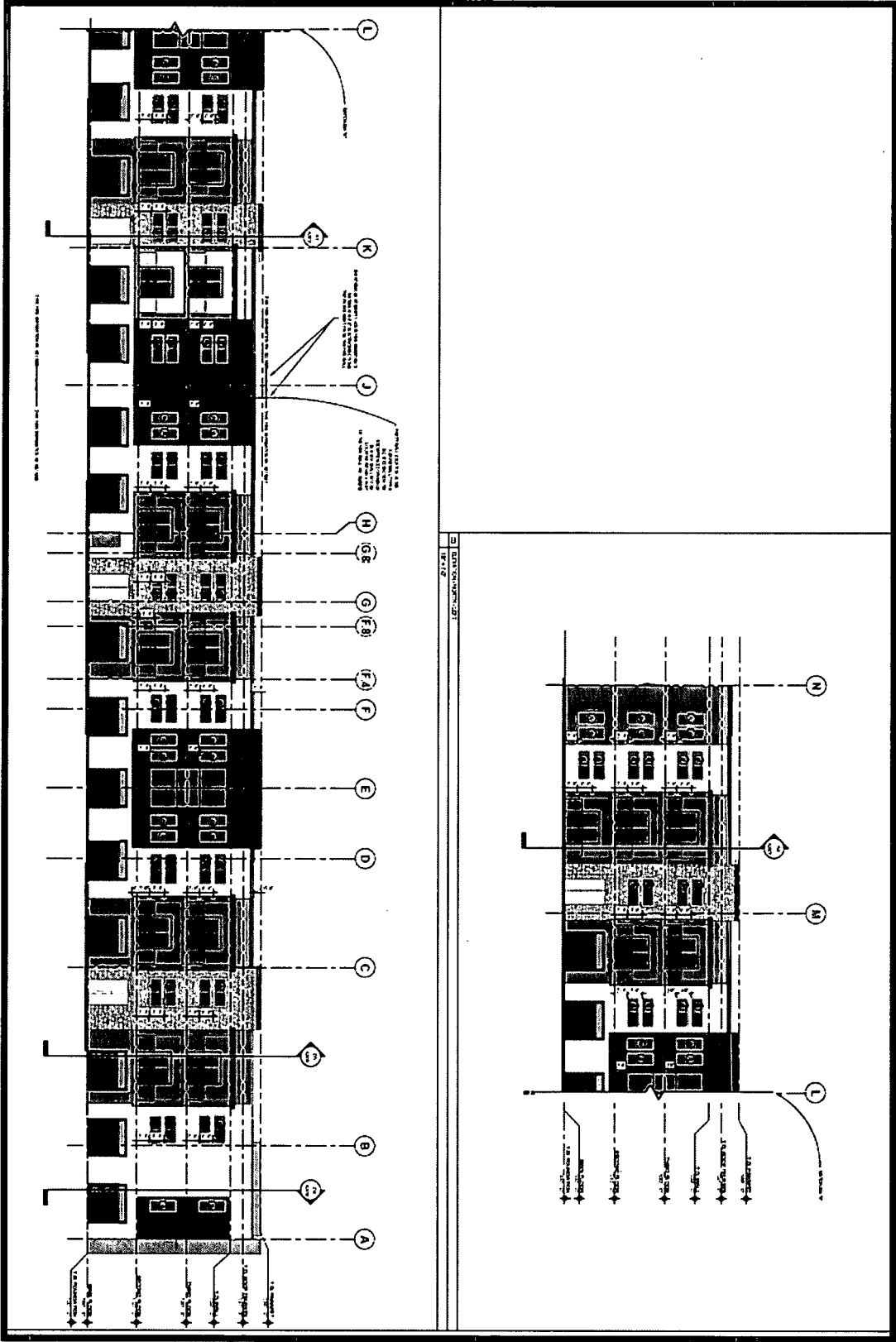


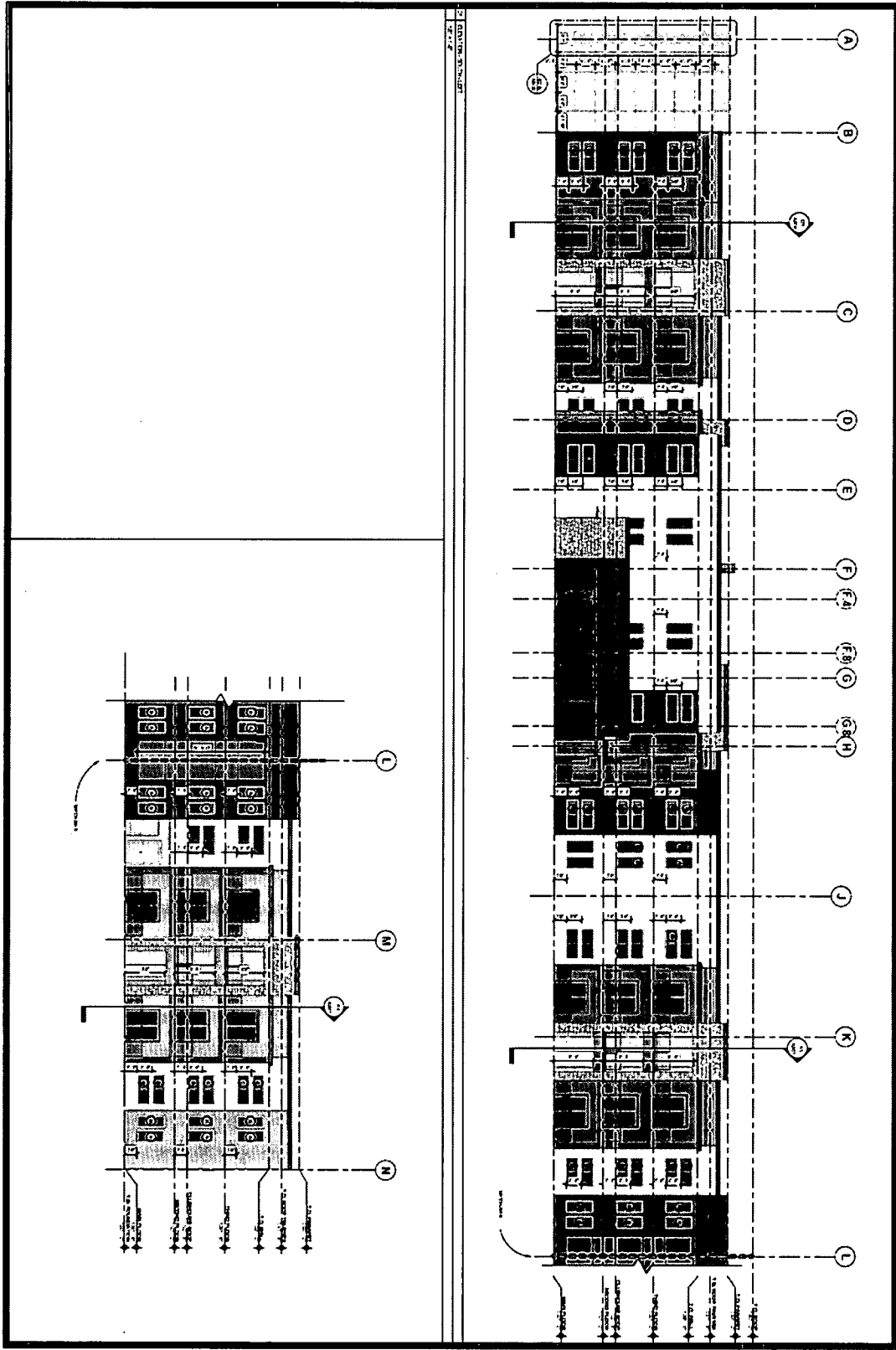
EXHIBIT "F"

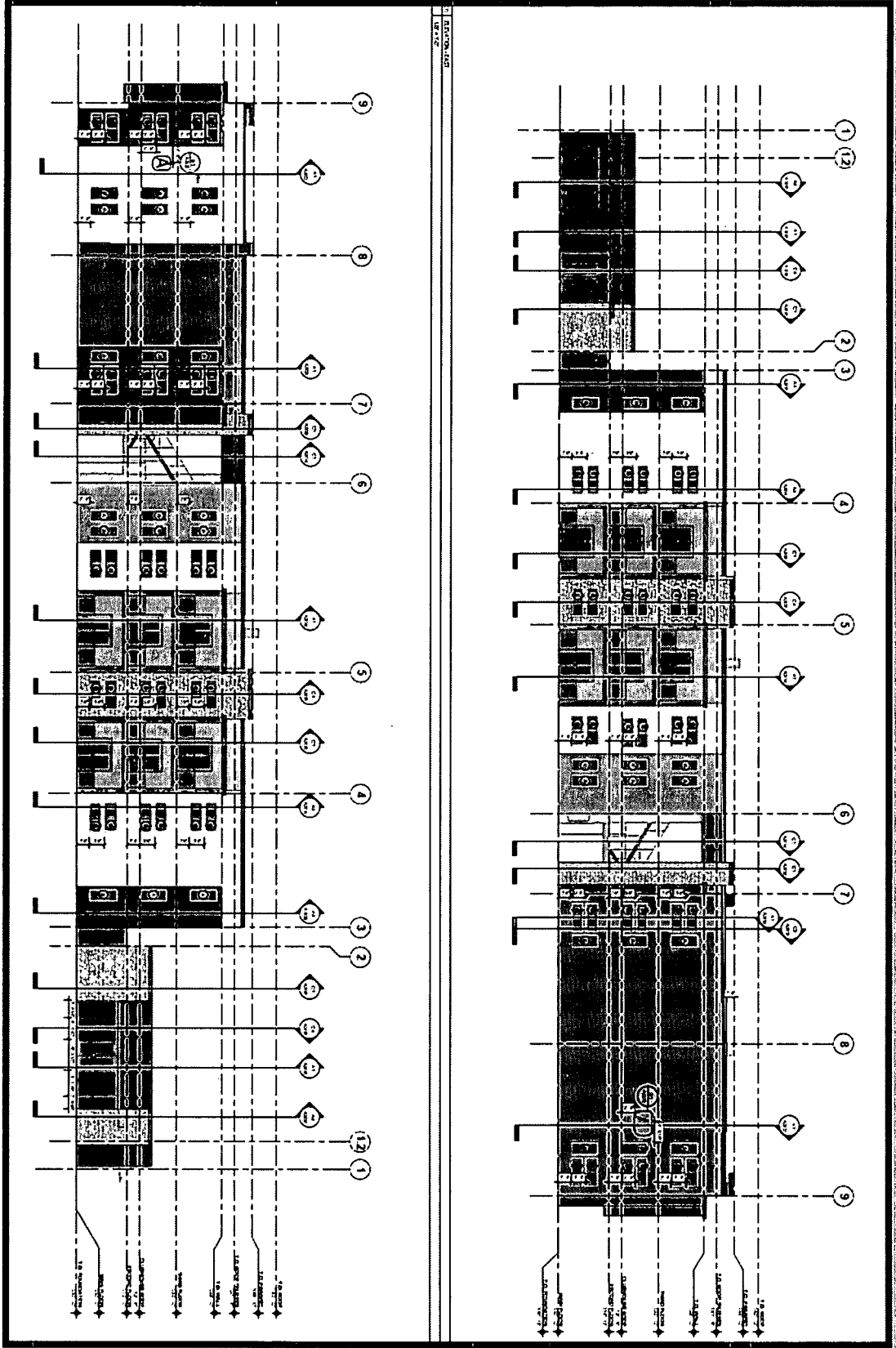
ELEVATIONS DATED November 6, 2017

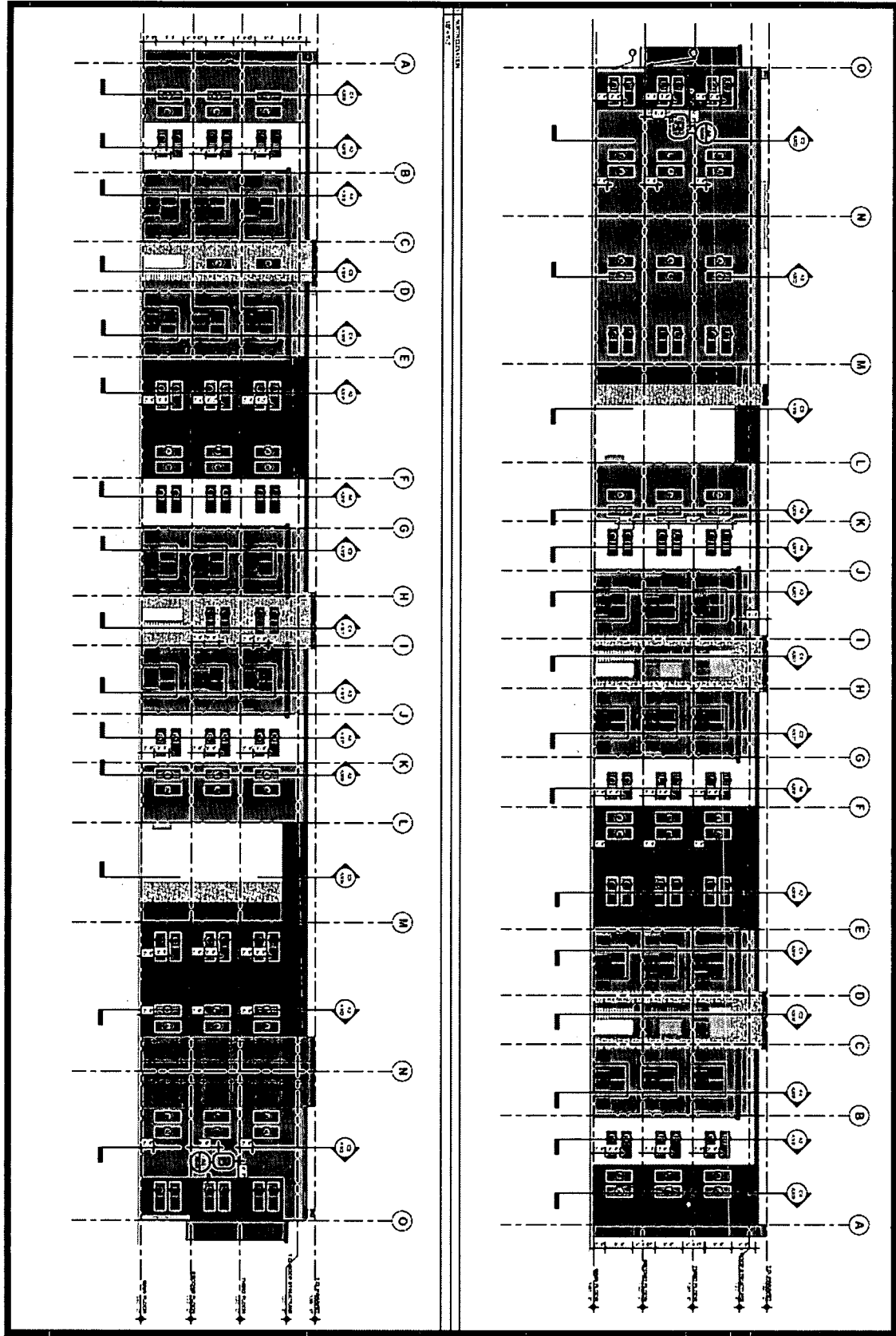












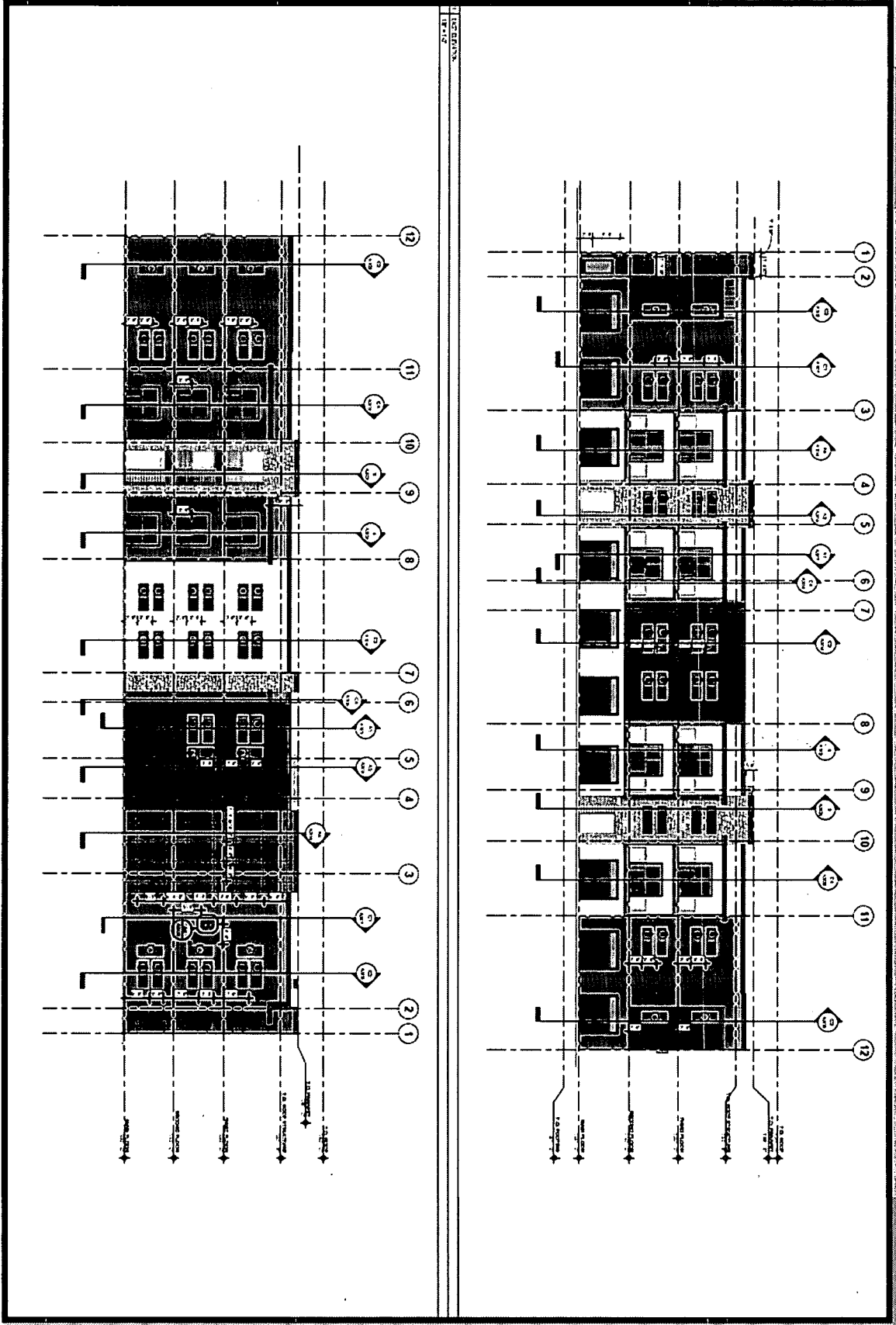
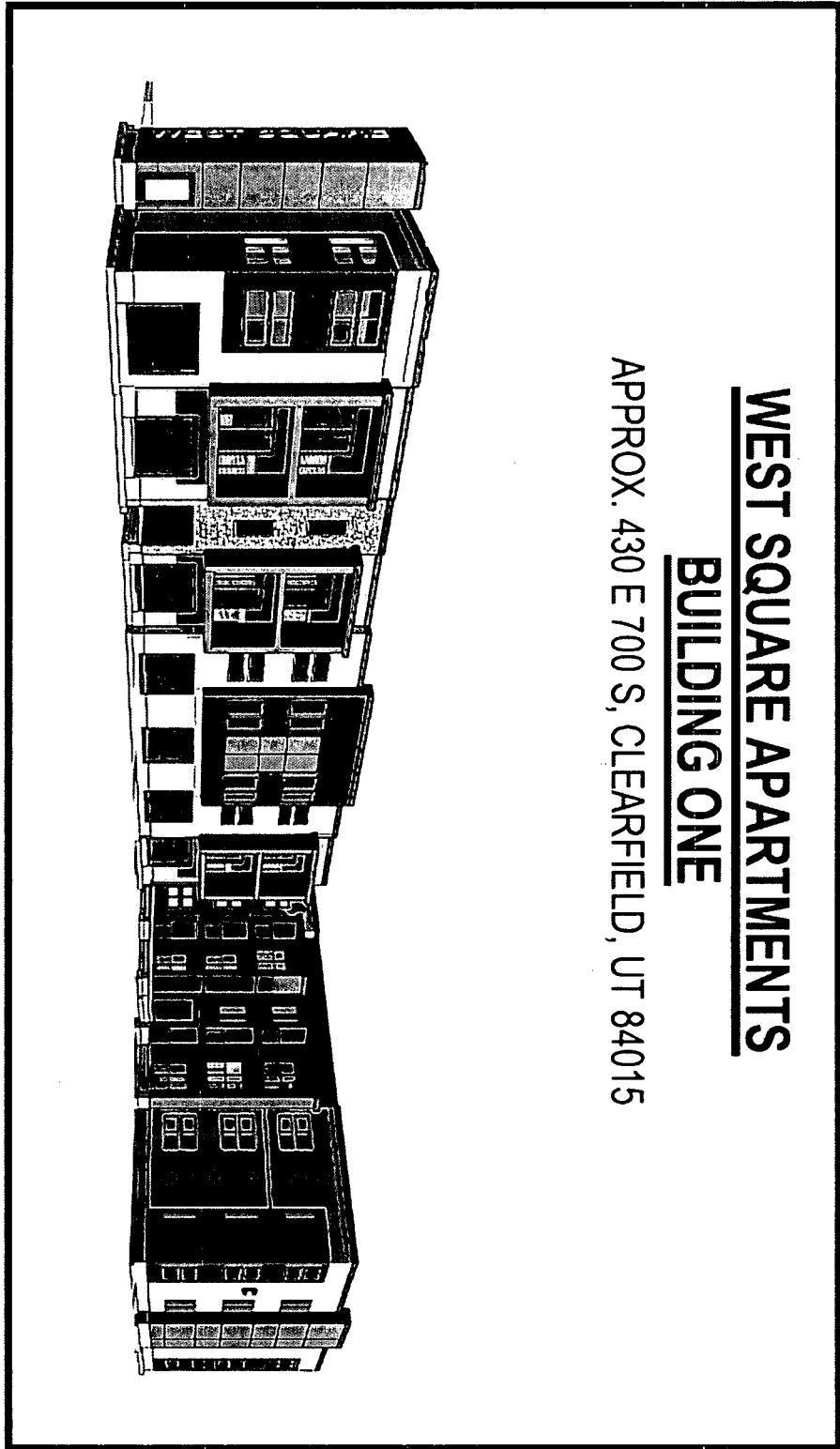
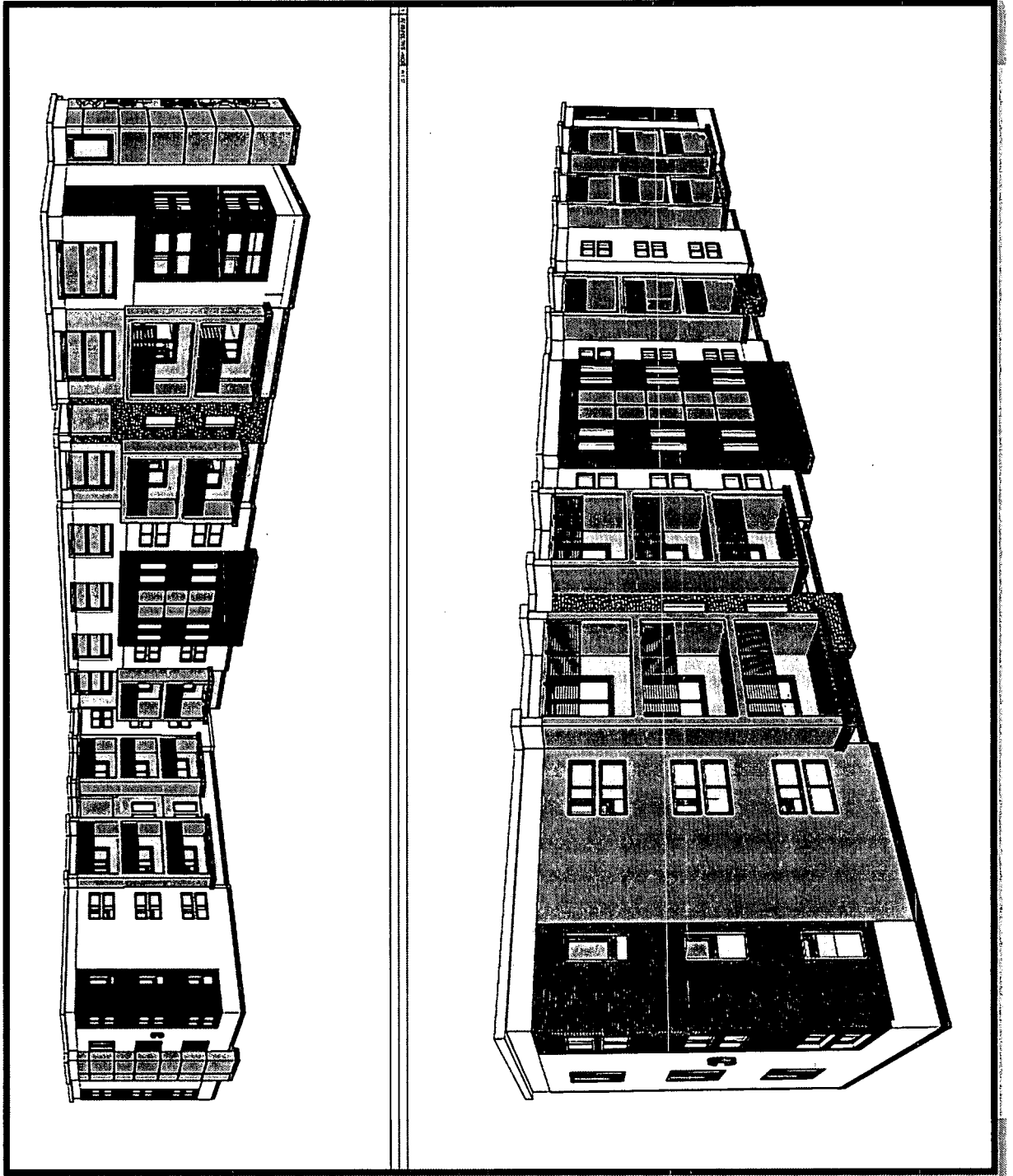
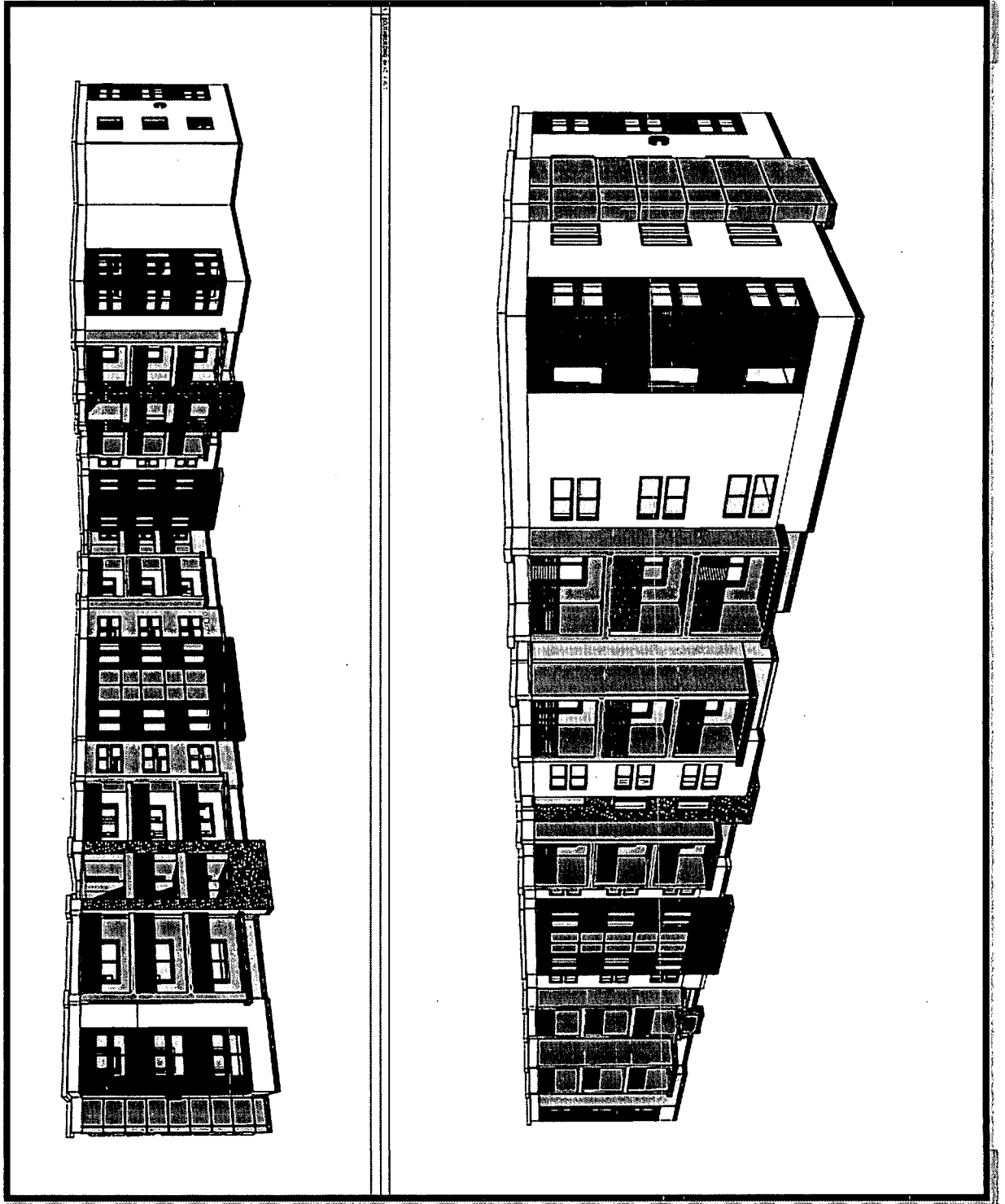


EXHIBIT "G"

ELEVATIONS DATED January 5, 2018

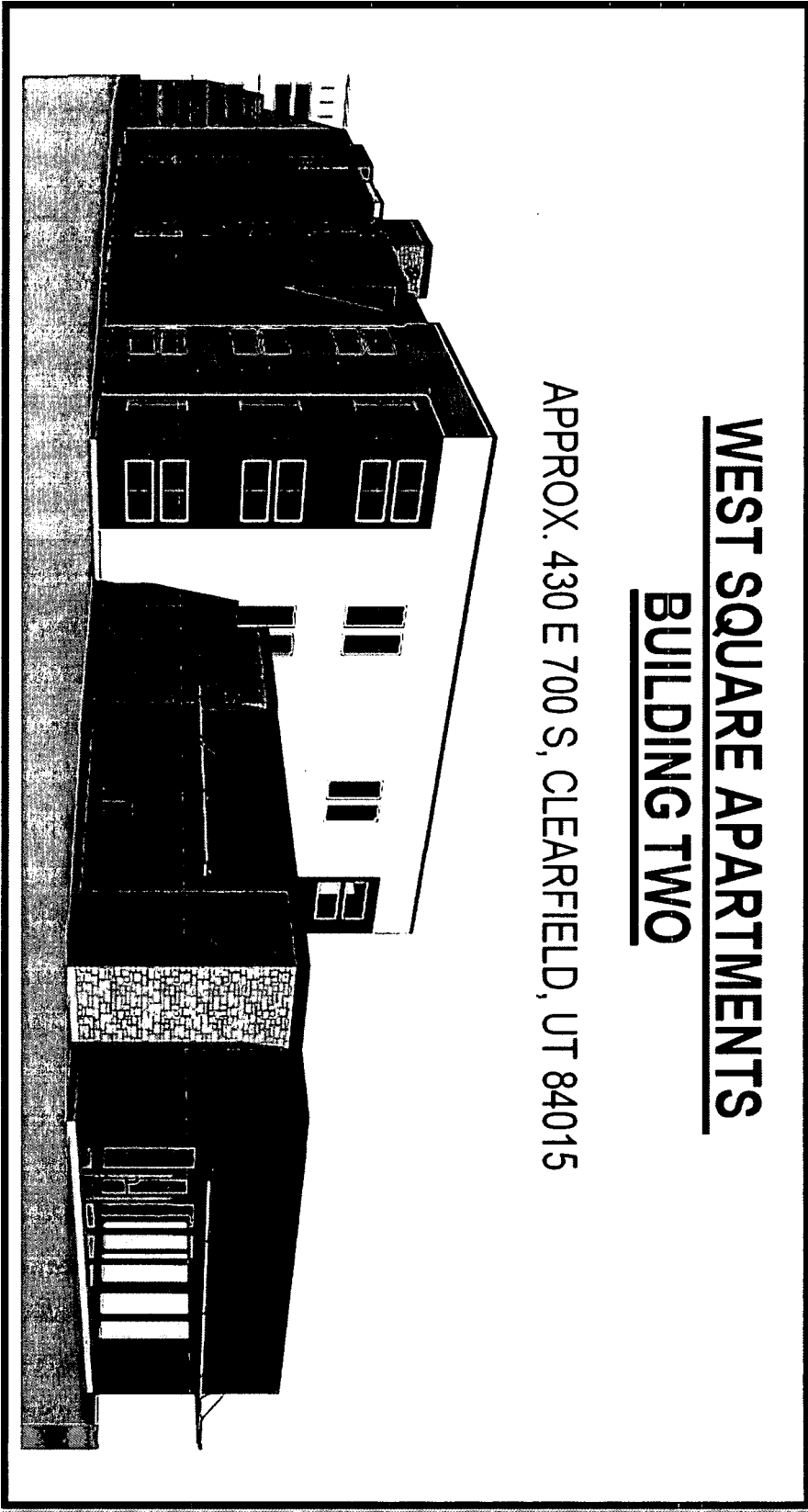


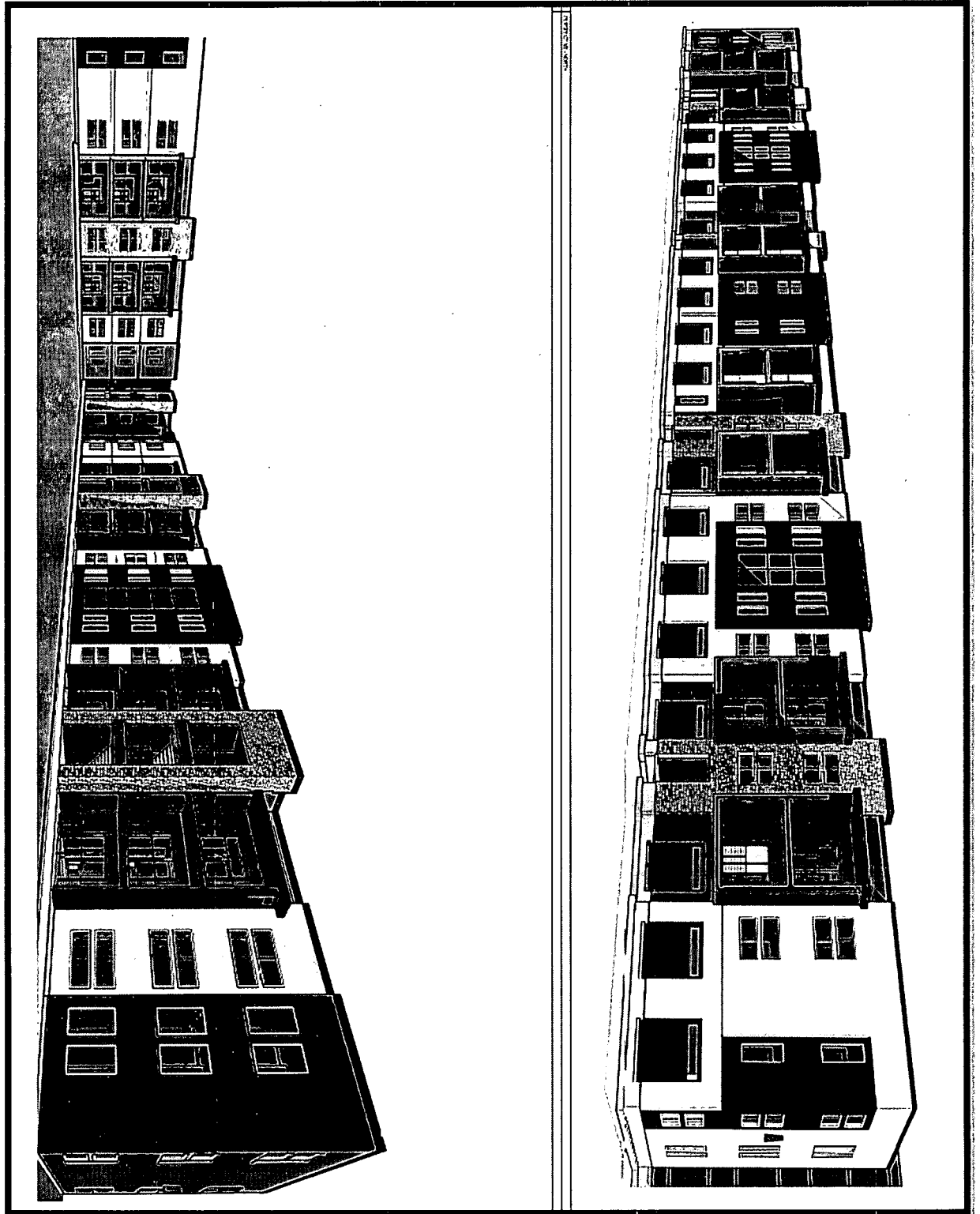


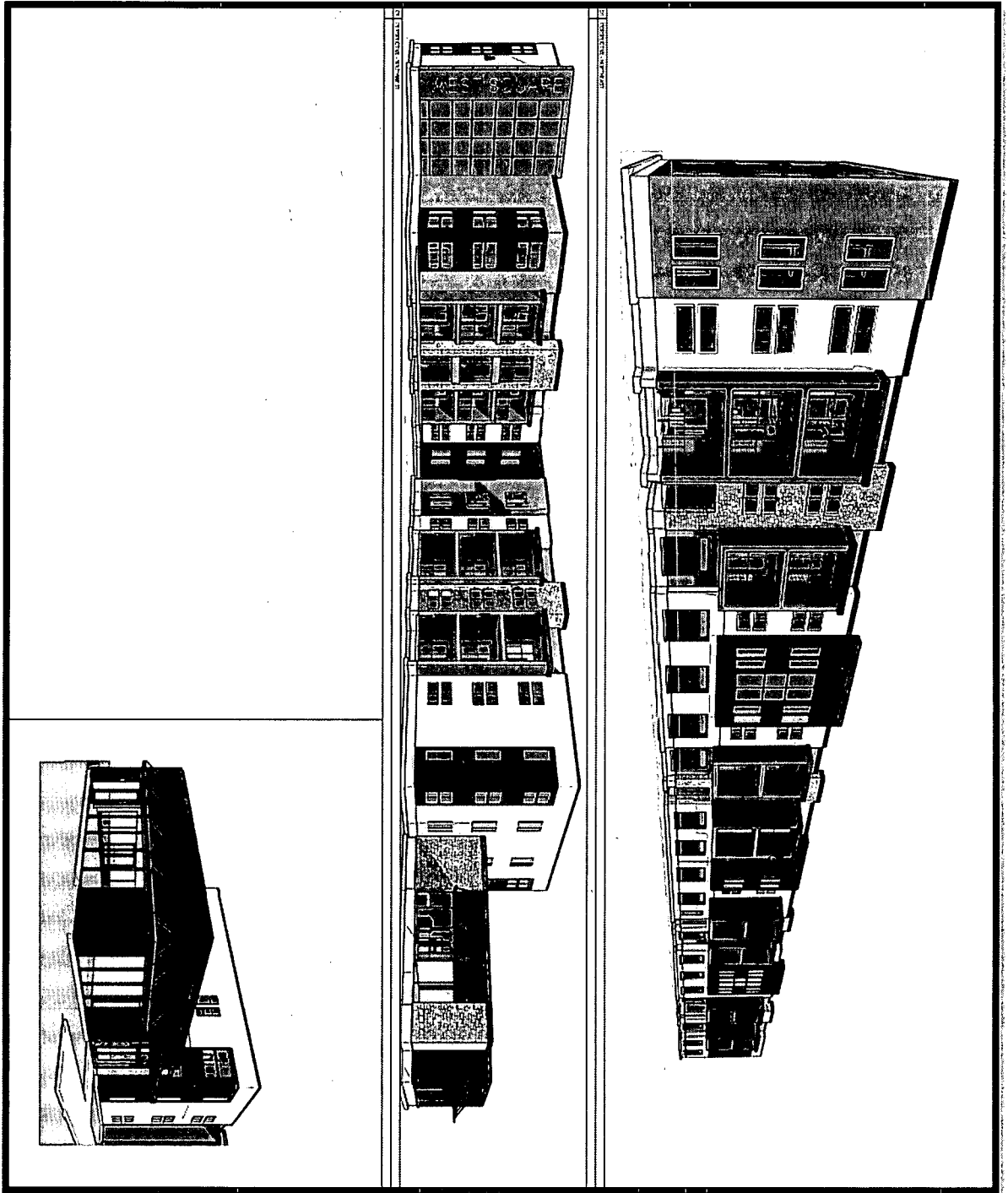


WEST SQUARE APARTMENTS
BUILDING TWO

APPROX. 430 E 700 S, CLEARFIELD, UT 84015







WEST SQUARE APARTMENTS
BUILDING THREE
APPROX. 430 E 700 S, CLEARFIELD, UT 84015

