

original 5/11/09 & 3/27/07

**PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES**

IN THE MATTER OF:

Bonita Springs Fire Control and Rescue District
(NAME OF PETITIONER)

Case No.: 104163-09-FM

PETITION FOR DECLARATORY STATEMENT

**IMPORTANT: BEFORE FILING, PLEASE READ RULE 69A-60.007(5),
ON PAGE 5 OF THIS PETITION FORM**

Petitioner, **Bonita Springs Fire Control and Rescue District**, pursuant to Section 120.565, Florida Statutes, Rule Chapter 28-105, Florida Administrative Code, and Rule 69A-60.007, the Florida Fire Prevention Code, hereby requests a declaratory statement from the Florida Department of Financial Services and as grounds therefore states the following:

In 2008, the **Bonita Springs Fire Control and Rescue District Fire Inspector, John Dahlgren** signed the certificate of occupancy of a newly constructed three-story business occupancy within the **Bonita Springs Fire Control and Rescue District; Waldrop Center Office Building, 28100 Bonita Grande Drive**. This is a three-story building with a mansard roof that is open in the middle (Exhibit A). Prior to this building being finished, the Fire Marshal, Timothy Fernandez discovered the attic area (within the mansard) had been modified to allow storage, thus becoming a fourth floor. The owner/builder was told the area could not be used as storage because construction documents stated that it was a three-story building, and other fire codes applicable to a fourth floor would need to be addressed. The owner/builder agreed that he would not use the space for storage, (Exhibit B) and provided that in writing.

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In January 2009, the owner/builder met with the Fire Marshal to explore the idea of converting the attic space into storage. The Fire Marshal explained that he needed another means of egress (a stair) because he only had a single means of egress (stair) with two exit doors, and other fire codes applicable to a fourth floor would need to be addressed; i.e ordinary group 2 fire sprinkler design, fire alarm, standpipe, etc.

The owner/builder disagrees with the Fire Marshals interpretation of the code. His position is that Bonita Springs Fire Control and Rescue District has the power to issue a variance because of an "undue

hardship" on him, the owner/builder. (Exhibit C) Bonita Springs Fire Control and Rescue District disagrees. The code clearly says "Any requirements that are essential...and that are not specifically provided for by this Code shall be determined by the authority having jurisdiction." These items are specifically provided by Code, so no interpretation would be needed by the Fire Marshal. The specific provisions of the Code that apply in this case are:

- FFPC NFPA 101 4.6.1 thru 4.6.1.3
- FFPC NFPA 101 38.2.4.1
- See section three of this petition

The builder may convert the attic into a fourth floor. What is required however is that BSFCRD firefighters are able to get anyone, including firefighters safely down from that area if it is converted into a fourth floor. The owner/builder has made argument within his written response. However, Bonita Springs Fire Control and Rescue District believes it has interpreted the appropriate sections of the Code in the correct manner. Therefore, the owner/builder must provide a second stairway from the fourth floor. (Exhibit D & E - letters)

In closing, the Bonita Springs Fire Control and Rescue District petition the State Fire Marshal for a declaratory statement that will be the final interpreting authority in regards to the following questions:

1. Can the local authority having jurisdiction waive code safety requirements that are specifically provided by Code? FFPC NFPA 101 4.6.1 thru 4.6.1.3
2. From a review of Exhibit A, does the single stair (means of egress) with two exit doors comply with code section FFPC NFPA 101 38.2.4.1?

1. Petitioner's Name and Address:^{1*}

Name Bonita Springs Fire Control & Rescue District
Address 27701 Bonita Grande Dr., Bonita Springs, FL 34135
Telephone Number 239-949-6200, cell 239-209-7128
Facsimile Number 239-949-6216
e-mail address (if any) TimmyF@bonitafire.org

2. Name and Address of Petitioner's Attorney or Qualified Representative, if any:

Name, (Attorney/Qualified Representative): Terry E. Lewis, Lewis, Longman & Walker, PA
Address 1700 Palm Beach Lakes Blvd. Suite 1000, West Palm Beach, FL 33401

^{1*} NOTICE: If this form is completed by an authority having jurisdiction for a county, municipality, or special firesafety district, it must be signed by the senior administrative firesafety official of the authority having jurisdiction, such as the fire marshal or a similarly situated or designated person or a fire chief. Only the senior administrative firesafety official or a fire chief has standing to petition for a declaratory statement on behalf of an authority having jurisdiction.

Telephone Number 561-840-0820
Facsimile Number 561-840-8202
e-mail address (if any) tlewis@llw-law.com

3. Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on Which the Declaratory Statement is Sought (Please Include Specific Subsections, if any):

FFPC NFPA 101, 4.6.1.2 Any requirements that are essential for the safety of building occupants and that are not specifically provided for by this Code shall be determined by the authority having jurisdiction.

FFPC NFPA 101, 4.6.1.3 Where it is evident that a reasonable degree of safety is provided, any requirement shall be permitted to be modified if, in the judgment of the authority having jurisdiction, its application would be hazardous under normal occupancy conditions.

FFPC NFPA 101 1.3.6.3 Repairs, renovations, alterations, reconstruction, change of occupancy, and additions to buildings shall conform with NFPA 101 and the building code.

**FFPC NFPA 101 Chapter 43 Building Rehabilitation (43.1.1)
Classification of Rehabilitation Work Categories - Rehabilitation work on existing buildings shall be classified as one of the following work categories: (1) Repair (2) Renovation (3) Modification (4) Reconstruction (5) Change of use or occupancy classification (6) Addition**

**FFPC NFPA 101 43.1.2.3
Any building undergoing addition (see 43.2.2.1.7) shall comply with the requirements of Section 43.8**

**FFPC NFPA 101 43.2.2.1.7 Addition.
An increase in the building area, aggregate floor area, height, or number of stories of a structure.**

**FFPC NFPA 101 43.8.1.1
Where an addition, as defined in 43.2.2.1.7, is made to a building, both of the following criteria shall be met:**

- (1) The addition shall comply with other sections of this Code applicable to new construction for the occupancy.**
- (2) The existing portion of the building shall comply with the requirements of this Code applicable to existing buildings for the occupancy.**

**FFPC NFPA 101 43.8.1.2
An addition shall not create or extend any non-conformity with regard to fire safety or means of egress in the existing building for which the addition is constructed.**

FFPC NFPA 101 Chapter 38 New Business Occupancy

FFPC NFPA 101 38.2.4 Number of Exits.

**FFPC NFPA 101 38.2.4.1
Exits shall comply with the following, except as otherwise permitted by 38.2.4.2 through 38.2.4.6:**

- (1) The number of means of egress shall be in accordance with Section 7.4**
- (2) Not less than two separate exits shall be provided on each story.**
- (3) Not less than two separate exits shall be accessible from every part of every story.**

FFPC NFPA 101 Chapter 3 Definitions

FFPC NFPA 101 3.3.151* Means of Egress.

A continuous and unobstructed way of travel from any point in a building or structure to a public way consisting of three separate distinct parts: (1) the exit access, (2) the exit, and (3) the exit discharge.

A.3.3.151 A means of egress comprises the vertical and horizontal travel and includes intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, elevators, enclosures, lobbies, escalators, horizontal exits, courts, and yards.

FFPC NFPA 101 7.4 Number of Means of Egress.

FFPC NFPA 101 7.4.1.1 The number of means of egress from a balcony, mezzanine, story, or portion thereof shall be not less than two, except under one of the following conditions:

- (1) Where a single means of egress is permitted in Chapter 11 through Chapter 42
- (2) Where a single means of egress is permitted for a mezzanine or balcony and the common path of travel limitations of Chapter 12 through Chapter 42 are met.

4. Description of How the Statute(s), Agency Rule(s), Agency Order(s), and/or Code Section(s) May Substantially Affect the Petitioner in the Petitioner's Particular Set of Circumstances:

The State Fire Marshal's decision, and will either authorize Bonita Springs Fire Control and Rescue District to impose the provisions of the Code as it interprets them, or possibly grant a waiver or variance to the owner/builder.

5. Address of The Building or Structure, or Proposed Building or Structure, Affected by this Petition, if applicable:

Waldrop Center Office Building – 28100 Bonita Grande Dr. Bonita Springs, FL 34135

6. If this Petition Involves a Ruling of an Authority Having Jurisdiction, the Name, Address and Phone Number of the Authority Having Jurisdiction:

Timothy A. Fernandez, Fire Marshal – Bonita Springs Fire Control and Rescue District 27701 Bonita Grande Dr. Bonita Springs, FL 34135 239-949-6200

7. Please Check the Box Indicating Whether You Filed an Appeal of a Ruling of the Authority Having Jurisdiction, if applicable:

PLEASE NOTE: Rule 69A-60.007(5), Florida Administrative Code, on the last page of this document, requires that a person having a dispute with a local fire official must complete the local appeal process PRIOR to filing a petition for declaratory statement. Therefore, if your circumstances involve a dispute with a local fire official and you have not appealed the decision of the local fire official, this petition will be dismissed until the local appeal process has been completed and you have received an adverse ruling by the local appeals board, commission, or council.

Yes, Appeal Filed No, Appeal Not Filed Not Applicable

8. If an Appeal Was Filed, Please State the Response or Outcome of the Appeals Board and Attach a Copy Of All Official Orders or Notices:

Not Applicable

9. Have You Filed or Do You Plan to File this or a Similar Question with any Other State or Local Agency?

Yes No

10. If Yes, Please State the Name of Each State or Local Agency:

Not Applicable

11. Are you involved in any litigation related to the question(s) presented in this case? Yes No

12. If yes, please describe briefly

Not Applicable

13. QUESTION(S) (Please be Specific):

1. Can the local authority having jurisdiction waive code safety requirements that are specifically provided by Code? FFPC NFPA 101 4.6.1 thru 4.6.1.3

2. From a review of Exhibit A, does the single stair (means of egress) with two exit doors comply with code section FFPC NFPA 101 38.2.4.1?

Respectfully submitted this 28 day of April, 2009

#1 No 633.029(4)
Permits alternatives arising out of
special situations arising from
unusual conditions:

T. H. Hardy 2*
Petitioner (or Attorney or Qualified Representative for Petitioner)

Mail original to:
General Counsel Acting as Agency Clerk
Department of Financial Services
612 Larson Building
200 East Gaines Street
Tallahassee, Florida 32399-0300

(Send this three page form only. You need not send the accompanying rules or statutes on the next page which are provided for your information and convenience.)

Please note that the use of this form containing the information in it is neither solicited nor required; however, if used, it complies in all respects with the requirements of the law and all rules pertaining to declaratory statements, and will assist the division in expediting the proceeding.

#2
38.2.4.1 (1) does design meet 7.4? 7.4.1.1 No
(2) 2 separate exits
(3) accessible from every part

2* Please see footnote 1 relating to the authorized signature for an authority having jurisdiction.

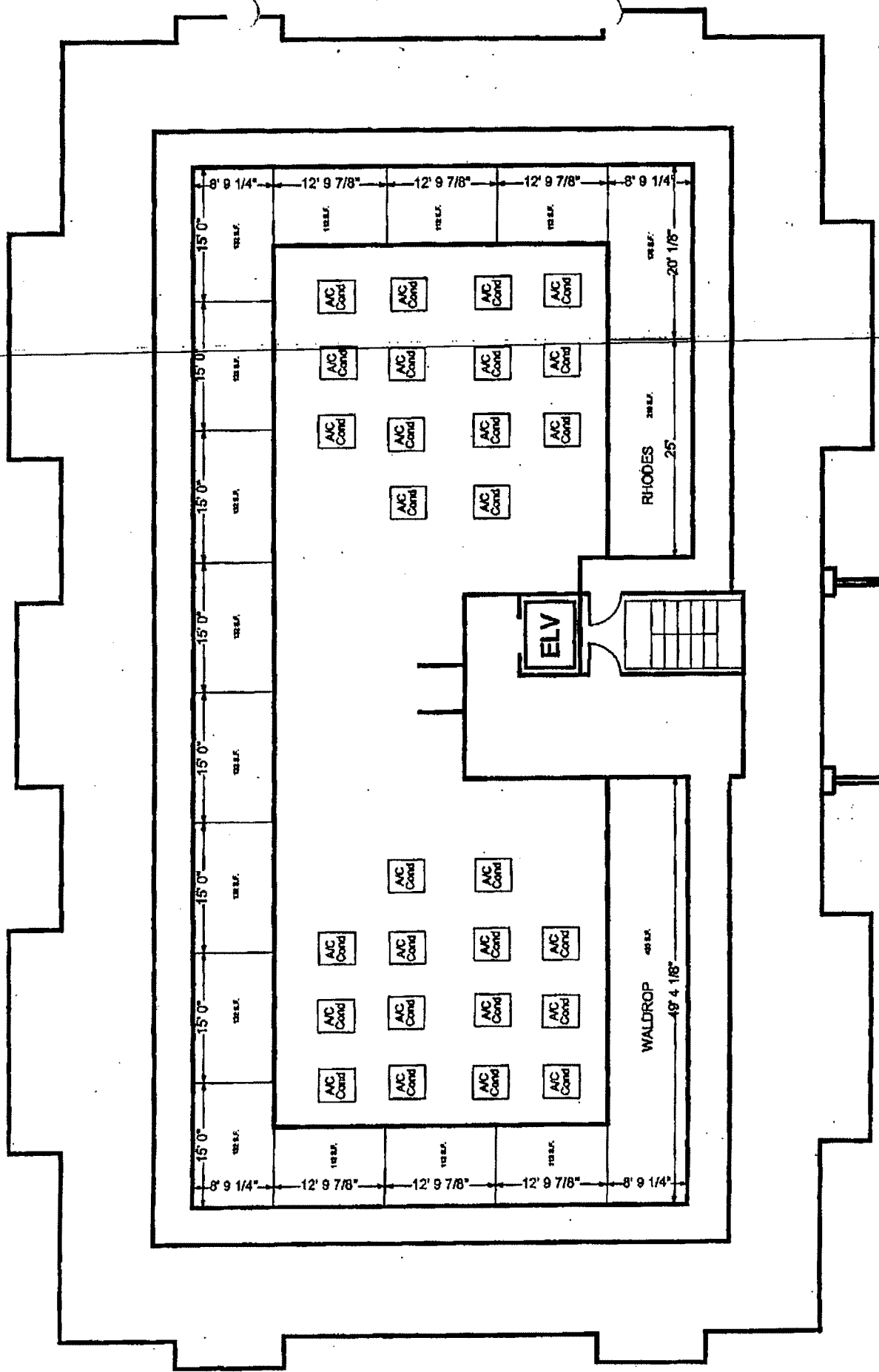


Exhibit A 1-1

Exhibit B

1-1

AUSTIN DEVELOPERS, LLC

2107 Isla de Palma Cir, Naples, FL 34119 (339) 596-9191

September 2, 2008

Bonita Springs Fire and Rescue
27701 Bonita Grande Dr.
Bonita Springs, FL 34135

**Subject: Waldrop Center
28100 Bonita Grande Dr.
Bonita Springs, FL 34135**

To Whom It May Concern:

It is understood that storage or any other unauthorized use in the attic area is not allowed at the Waldrop Center without prior authorization from the Bonita Springs Fire Control District.

Sincerely,

Austin Developers, LLC



Ronald Waldrop
Managing Member

OK \$
9-3-08

Exhibit C 1-6

Fernandez Tim

From: Bill Moore [bill@waldropgroup.com]
Sent: Wednesday, April 01, 2009 8:20 PM
To: Fernandez Tim
Cc: Spangler, Vaughn; Ron Waldrop
Subject: Waldrop Center Attic
Attachments: BSFD attic 3-31-09.doc

Gentlemen,

Please review the attached document and respond as soon as you can.

04/27/09

Exhibit C
2-6

GARY D. WALDROP, INC.

12060 Fairway Isles Dr. Ft Myers, Fl. 33913
239-851-5670 239-949-3158 Fax

To: Bonita Springs Fire Dept.
Re: Waldrop Center
28100 Bonita Grande Dr.

April 1, 2009

Attn: Tim Fernandez, Vaughn Spangler

Gentleman,

You both are comfortably aware of the entire construction of the Waldrop Center; a three-story office building in Bonita Springs. The walls are mostly block but many partition walls, and some fire walls, are made from metal studs. The stairs are all enclosed inside block walls and the stairs themselves are precast concrete. The doors leading to and from the stairs are all three-hour self-closing doors. Each floor is separated by 8" precast concrete. The roof of the building is also constructed of 8" precast concrete. The common area floors are either concrete, or, stone mud-set with concrete. The entire building has fire sprinklers and also a monitored fire alarm system.

The air conditioning condensing units are centrally located above the precast concrete roof, atop a built-up insulated roofing system that will allow for drainage. A mansard wood truss decorated with concrete tile and metal roofing material is built on top of the concrete roof of the building. This is to hide the air conditioning units and serves as an attic for items such as wires, ducts, conduit etc. that need to extend from the roof to the floors below.

It is here, in this attic, that we would like to have storage available. You are aware that the elevator extends all the way to the roof but, only with a special key. You are also aware that the front stairs of the building extend all the way to the roof but, the two, three-hour fire doors here have storage locks and self-closing hardware that are always locked—from the stair side. These too only open with a different, special key. Therefore, no one has the ability to even get to the roof, or this attic, without one of these special keys. This includes the general public, existing tenants, potential tenants, maintenance workers...anybody.

This attic we want to use as storage is a small portion of the roof area. The storage area circles around the perimeter of the outside air conditioning units. A four-foot wide hallway circles the perimeter of the storage area, allowing access, and egress. The trusses continue down toward the outside of the building toward the outside walls of the building. The area past the hallway, towards the outside of the building, will not be used as anything but attic space. There will be no storage here. The entire existing trussed attic is fully sprinklered and protected. The sprinkler subcontractor, Central Fire Systems, has researched and concluded that the existing heads, pipe size, and flow are sufficient for storage in this attic. The current fire alarm subcontractor, EPS, has recommended additional devices—including horn-strobes and pull stations—to provide for the requirements of storage in these areas. I have documentation from both subcontractors stating this, and although I have not officially submitted these to you, you are aware that they exist. You have been given a floor plan showing our intentions.

The stairs leading to the roof have two fire doors—one leading west, one leading east. Their arrangement meets the requirements of NFPA 101, 4.5.3.1, requiring two means of egress minimizing the possibility that both might be rendered impassable by the same emergency condition. And NFPA 1, the Uniform Fire Code (and the first half of the 2007 edition of the Florida Fire Prevention Code) states in 4.2.1.1 "the fire protection methods of this Code shall assume that multiple simultaneous fire

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incidents will not occur." NFPA 101 also assumes a single fire source only (see 4.3). Therefore, a possibility of two or more fires cannot, and should not, be considered.

And there are some requirements regarding distances between two means of egress, specifically stated in NFPA 1, the uniform Fire Code, 2007 Edition, and chapter 14.10.4.2. However, these stipulations do not apply under our circumstances. Chapter 14.10.4.2.2 clearly trumps this requirement by stating "~~the requirement of 14.10.4.2 shall not apply to buildings protected throughout~~ by an approved, supervised automatic sprinkler system in accordance with Section 13.3 [101:7.5.4.2.2]. We have such a fire sprinkler system in our building so the proximity of our two means of egress is not an issue.

Also, the arrangement, in conjunction with the hall and storage layout, is such that the Code is met for common path of travel (NFPA 101 38.2.5.3.1 and NFPA 101 39.2.5.3.1) and travel distance to exits (NFPA 101 38.2.6.1 and NFPA 101 39.2.6.1). NFPA 1, the uniform Fire Code, 2007 Edition, describes this in great detail in its Annex under A.14.10.1.5.

The storage area on the roof is not large and meets the qualification of "incidental storage" to the overall occupancy of the building (Business Occupancy). The roof area is roughly 13,000 square feet. The storage area is roughly 2500 square feet. The hallway is roughly 1400 square feet. And the overall square footage of the building—not including the roof at all—is over 38,000 square feet. Therefore, the Occupancy of the building does not change. Clarification of this can be found in the Annex of NFPA 1, the uniform Fire Code, 2007 Edition, in A.6.1.14.1.3.

The storage area will be generally unoccupied. And as stated previously, access to the attic, or roof, is, and will continue to be, Extremely Limited. Again, No One will be able to access these areas without either a Specific key to the stair doors or a Specific key to the elevator. The storage area will be occupied with the same regularity of the roof in general—perhaps even less so. Access to the attic and the roof is required by several people already including:

- * Electricians servicing all circuits, lights, breakers, etc,
- * Air conditioning personnel replacing, repairing, or generally maintaining equipment,
- * Video experts servicing security cameras and/or low voltage wiring or wiring connections,
- * Roofers for general maintenance and repairs to the concrete roof tile, the metal roofing or the built-up roofing system,
- * Plumbers insuring proper drainage of roof or to maintain water lines such as hose bibs,
- * Specialist required for general cleaning and maintenance,
- * Painters that insure proper aesthetics, and to properly maintain all caulking joints preventing leaks,
- * Fire sprinkler maintenance personnel, to check all lines and heads as required by law,
- * Fire alarm servicemen checking all devices as required by law, including general maintenance,
- * Fire extinguisher representative to service or replace the extinguisher by law,
- * Satellite installation/repair specialist to install/ repair/adjust the existing or new satellites,
- * Elevator servicemen to insure proper operation of our elevator, and
- * Any other persons cleared by the owner or owner's representative for specific and legitimate business requiring access to the attic or roof.

This does not mean the above individuals will be given a key(s). They will have access only by the owner or owner's representative that will physically unlock the doors for them. However, this restriction is something the owner mandated himself, not because there was a Code telling him to do so. The Code cannot restrict those personnel from access. And the Fire Department has to assume

Exhibit C
4-6

GARY D. WALDROP, INC.

12060 Fairway Isles Dr. Ft Myers, Fl. 33913

239-851-5670 239-949-3158 Fax

there will be person(s) occupying this attic, or the roof, in the event a fire occurs anywhere in the building. This assumption is critically important now because of the following reasons:

- a) There exists a vast variety of service personnel occupying the space throughout the course of the year. At any given time, there is a probability that someone may be either in the attic, or on the roof, in the event of a fire. There may also be more than one person here.
- b) The roof does not have, nor is it required to have, any fire alarm device, notifying a service person that a fire is presently occurring. Assumption by the Fire Response Team has to be made that a person(s) is on the roof but is NOT aware of a fire.
- c) The attic does not have, nor is it required to have, any fire alarm device, notifying a service person that a fire is presently occurring. Assumption by the Fire Response Team has to be made that a person(s) is in the attic but is NOT aware of a fire.
- d) The roof does not have two means of egress, nor is it required to. But if there is a fire that actually cuts off the single means of egress, the possibility exists people might be trapped outside. It is therefore necessary for the Firemen to check the roof.

The storage areas will not be accessible because of these same locks—one for the elevator and one for the two fire doors. Therefore, the storage area will be limitly occupiable under strict conditions. First, any person(s) in the storage area not mentioned above, will be there removing, adding, or viewing their own ordinary storage materials. At no time will they be there conducting business, loitering, or wandering around. They will be there for a specific purpose, and then leave promptly. It is fair to say that it is probable those storing, viewing or removing materials from storage will actually occupy the space for Less time than those others listed above that would have to "occupy" the attic and roof during the course of the year. And all of the listed tradesmen, servicemen, and specialists are not held to any special provision of the code that would limit the frequency or time allowed to occupy such space.

Since the storage space is not accessible to the general public, nor to tenants, nor prospective tenants under normal occupation of the building, it should not be held under the same stubborn criteria that the remainder of the building is. There is a vast difference between inaccessible, locked down storage and office space occupied during normal business hours. Or even after hours. There are several tenants right now working after hours. Some work late into the night because of the time difference around the world. After hours (sometimes well after midnight) the cleaning crews visit the building to clean the floors, take out the trash, etc. This means that all offices and common areas of the building have the potential of being occupied by several people twenty-four hours a day. However, the after hours occupants are those that are familiar with the layout of the building. Their evacuation time would not be hindered like those of the general public, during normal business hours, due to unfamiliarity with exit locations, number of exits, etc. Those servicemen mentioned above, with access to the roof and attic, would most likely be there during normal business hours. If not, then the owner, or owner's representative, would be there with them. Therefore, all safeguards to protect the elderly, the infirm, the handicapped, the young, and so forth, that would probably apply during normal hours, would most likely not apply after hours—and definitely would not apply to areas they could not get to during regular business hours, or any hour of the day or night.

GARY D. WALDROP, INC.

12060 Fairway Isles Dr. Ft Myers, Fl. 33913

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By allowing storage in the attic we have insured prompt notification of a fire by those on the roof and attic that would not have it otherwise. Once attic storage is allowed, fire alarm devices such as pull stations and horn-strobes will be installed. Therefore, anyone in the attic or on the roof (such as the listed tradesman mentioned above) would be immediately aware of a fire occurring anywhere else in the building. There could be a fire in the attic or roof, where there are no notification devices now. Allowing storage in the attic as proposed actually increases safety of other occupants by notifying them sooner that a fire is occurring in the building. This will provide faster evacuation time, not only from the attic and the roof but, for the entire building on all remaining floors. It will also help the Fire Response Team. They will be able to clear the building of all people faster because most evacuation will have taken place before the Firemen even arrive. This will help them in extinguishing the fire, in the event that the fire sprinkler system fails to operate properly, by giving them the ability to address the actual fire sooner. Time saved will be lives and property saved.

And although the Life Safety Code implies that the Code is not concerned with protection of property, NFPA 1, the uniform Fire Code, 2007 Edition does. Specifically, 4.1.1 states "the goals of this Code shall be to provide a reasonable level of safety, property protection, and public welfare from the hazards created by fire, explosion, and other hazardous conditions." This means that protection of property is an important goal that should not be ignored. If the Fireman could address the actual fire faster, or even turn the fire sprinklers off sooner—because of the added notification devices allowing faster evacuation—less property will be damaged thereby fulfilling more than one goal of the Code. And the faster the Fire Response Team can clear the building, the safer the firemen will be.

NFPA 101 of the Florida Fire prevention Code, 2007 Edition, also lists appropriateness of Safeguards. Specifically, in 4.5.2, it states "Every building or structure shall be provided with means of egress and other fire and life safety safeguards of the kinds, numbers, locations, and capacities appropriate to the individual building or structure, with due regard to the following:

- 1) Character of the occupancy, including fire load
- 2) Capabilities of the occupants
- 3) Number of persons exposed
- 4) Fire protection available
- 5) Capabilities of response personnel
- 6) Height and type of construction of the building or structure
- 7) Other factors necessary to provide occupants with a reasonable degree of safety."

In regards to this newly proposed storage space in the attic:

- 1) The occupancy of the building remains Business. The fire load is addressed with existing fire sprinklers and proposed fire alarm device installation.
- 2) The "occupants" of the storage area are familiar with the building and well capable.
- 3) The number of persons in the storage area is quite minimal with very little exposure.
- 4) The protection available is tremendous with Sprinklers, Alarms, and extinguishers.
- 5) Proximity to Fire department two blocks away allows immediate response.
- 6) Block, concrete, metal studs, drywall, stone floors, precast stairs, 3-hour fire doors, precast concrete separating roof from attic. 3-story building with attic.
- 7) Storage access is locked at all times, inaccessible from anyone without key(s).

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In summary, the building is built soundly and safely. It is safe for tenants, the general public, and for responding Fire or Emergency Response Teams. Allowing the storage as proposed does not diminish the safety of this building whatsoever. In fact, it has enhanced the safety of the building by the addition of the aforementioned fire alarm pull stations and horn-strobe notification devices.

The only item that has arisen is the absence of two exits from the storage area. I have detailed to you the two means of egress from the storage area. But they both lead down the same stairs. This brings up the possibility that, in the event that these stairs become compromised (by the unlikely event that there is a fire in the stairs?) someone trying to escape the storage area cannot. But I submit to you, you have this same scenario right now, as the building is currently constructed. If these stairs are compromised, any one of the many different people I have listed for you would be in this very situation. And VERY LIKELY I would be the person there with them. However, we could simply exit the door leading to the outside of the roof. True, we do not have escape stairs or a ladder that extends up the metal roof of the attic, over the tile of the mansard roof, then down the façade of the building. But, we would be out of immediate danger from smoke inhalation and death by fire. Since the stairs are all block and offer (at least) a two-hour rating, and the fire doors offer a three-hour rating, I feel extremely comfortable being outside looking up at the blue sky until the troops arrive. And we would welcome the quick response team with bright smiles, knowing that the fire department is only two blocks away.

The Code also strives to avoid undue hardship on the Contractor/and or Owner. A second exit cannot be constructed because of the 8" precast concrete roof covering the secondary rear stairs. Simply "cutting this open" affects other parts of the roof and building structurally. Not to mention the exorbitant costs one would incur on redesigning, reengineering, and reconstructing most of the roof in order to have another stair available to the roof/attic area. This is not feasible.

Installing a roof ladder is not a solution either. Not only would it also qualify as an undue hardship, it would completely destroy the aesthetics of our beautiful building. It would also be unsafe. Again, one would have to climb up the side of the attic, traverse the inclined, metal roofing material to the apex of the attic roof, then climb down the very steep incline of the concrete tiled roof leading to the edge of the overhang that extends three feet past the walls of the building, and then somehow climb to the ground. It would be safer to simply wait for the Fire Response Team. Even in the rare instance that they needed a ladder truck. Or a helicopter. Either way it would be safer and faster than an escape stair/ladder concoction.

NFPA 101, Life Safety Code, 2007 Edition, in 4.6.1.1 states that the authority having jurisdiction shall determine whether the provisions of this Code are met. It also allows the AHJ some latitude to modify some provisions of the Code if he deems fit. One such provision is stated in 4.6.1.3: "where it is evident that a reasonable degree of safety is provided, any requirement shall be permitted to be modified if, in the judgment of the authority having jurisdiction, its application would be hazardous under normal occupancy conditions."

This gives you both the authority and reason to allow this storage area as proposed.

Bill R. Moore,
Director of Construction,
Waldrop Group,
Gary D. Waldrop, Inc.
Austin Development, LLC

Exhibit D 1-2

BONITA SPRINGS FIRE CONTROL & RESCUE DISTRICT
FIRE PREVENTION DIVISION: Office of the Fire Marshal



Timothy A. Fernandez,
Fire Marshal
27701 Bonita Grande Dr.
Bonita Springs, FL 34135

☎ 239-949-6200 ☎ 239-949-6216

www.bonitafire.org, TimmyF@bonitafire.org

April 2, 2009

Bill R. Moore
Director of Construction
Waldrop Group
12060 Fairway Isles Dr.
Ft. Myers, Florida 33913

RE: Waldrop Center Office Building, 28100 Bonita Grande Drive, three-story building

Mr. Bill Moore,

We have had several discussions or meetings in regards to the attic area being converted into a fourth floor and used as incidental storage to a "Business Occupancy." Each time, you've made your argument, and have not got the answer that you wanted to hear. Each time at those meetings or discussions you have been told that we would research your argument, and again we returned with an answer that you did not want to hear. At our last meeting, Asst. Fire Marshal Spangler requested that you submit your argument in writing to us, and we would respond. My response is as follows:

Your interpretation and methods of applying the Code is wrong. You state that the AHJ has "some latitude to modify some provisions of the Code if he deems fit." The FFPC NFPA 101 states, "The authority having jurisdiction shall determine whether the provisions of this Code are met." And, "Any requirements that are essential for the safety of building occupants and that are not specifically provided for by this Code shall be determined by the authority having jurisdiction." And, "Where it is evident that a reasonable degree of safety is provided, any requirement shall be permitted to be modified if, in the judgment of the authority having jurisdiction, its application would be hazardous under normal occupancy conditions." The Code is clear and precise (black & white), so I will follow the Code.

FFPC NFPA 1 1.3.6.3 Repairs, renovations, alterations, reconstruction, change of occupancy, and additions to buildings shall conform with NFPA 101 and the building code.

*FFPC NFPA 101 Chapter 43 Building Rehabilitation (43.1.1)
Classification of Rehabilitation Work Categories - Rehabilitation work on existing buildings shall be classified as one of the following work categories:
(1) Repair (2) Renovation (3) Modification (4) Reconstruction (5) Change of use or occupancy classification
(6) Addition*

*FFPC NFPA 101 43.1.2.3
Any building undergoing addition (see 43.2.2.1.7) shall comply with the requirements of Section 43.8*

*FFPC NFPA 101 43.2.2.1.7 Addition.
An increase in the building area, aggregate floor area, height, or number of stories of a structure.*

*FFPC NFPA 101 43.8.1.1
Where an addition, as defined in 43.2.2.1.7, is made to a building, both of the following criteria shall be met:
(1) The addition shall comply with other sections of this Code applicable to new construction for the occupancy.*

- (2) The existing portion of the building shall comply with the requirements of this Code applicable to existing buildings for the occupancy.

FFPC NFPA 101 43.8.1.2

An addition shall not create or extend any non-conformity with regard to fire safety or means of egress in the existing building for which the addition is constructed.

FFPC NFPA 101 Chapter 38 New Business Occupancy

FFPC NFPA 101 38.2.4 Number of Exits.

FFPC NFPA 101 38.2.4.1

Exits shall comply with the following, except as otherwise permitted by 38.2.4.2 through 38.2.4.6:

- (1) The number of means of egress shall be in accordance with Section 7.4
- (2) Not less than two separate exits shall be provided on each story.
- (3) Not less than two separate exits shall be accessible from every part of every story.

FFPC NFPA 101 Chapter 3 Definitions

FFPC NFPA 101 3.3.151* Means of Egress.

A continuous and unobstructed way of travel from any point in a building or structure to a public way consisting of three separate distinct parts: (1) the exit access, (2) the exit, and (3) the exit discharge.

A.3.3.151 A means of egress comprises the vertical and horizontal travel and includes intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, elevators, enclosures, lobbies, escalators, horizontal exits, courts, and yards.

FFPC NFPA 101 7.4 Number of Means of Egress.

FFPC NFPA 101 7.4.1.1 The number of means of egress from a balcony, mezzanine, story, or portion thereof shall be not less than two, except under one of the following conditions:

- (1) Where a single means of egress is permitted in Chapter 11 through Chapter 42
- (2) Where a single means of egress is permitted for a mezzanine or balcony and the common path of travel limitations of Chapter 12 through Chapter 42 are met.

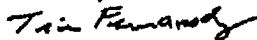
FFPC NFPA 101 38.2.4.2 through 38.2.4.6 Are not applicable because the described conditions do not apply or exists.

The attic area is only accessible to one means of egress (stair), and not two separate means of egress as required by Code. The two doors on the existing stair does not count as two separate means of egress as defined by FFPC NFPA 101 3.3.151, but would be two separate exit doors into one means of egress that discharges out of the building.

The Code requires two Means of Egress that are continuous and discharges to the public way. Therefore, in order to convert the attic space into another floor that would be used for incidental storage to the Business Occupancy, another separate Means of Egress needs to be provided. Also, please keep in mind that there other applicable Fire or Building Codes that would apply here if the attic space is converted into another floor.

Your argument that we would cause undue hardship is unfounded because there is no hardship to address. The attic being used as storage does not exist at this time, nor would it be in the future until you provide an additional separate Means of Egress (stair). In closing, I underlined a section of the Code within my letter that I think clearly address my authority on how the Code shall be used. The Code specifically and clearly provides the answer, so no AHJ modifications are needed. If there are any other questions, please ask.

Sincerely,



Tim Fernandez
Fire Marshal

cc. Fire Chief P.H. Kinsey, Jr.

Exhibit E
1-5

Fernandez Tim

From: Bill Moore (bill@waldropgroup.com)
Sent: Thursday, April 02, 2009 7:53 PM
To: Fernandez Tim
Cc: Spangler, Vaughn; Ron Waldrop; Kinsey Phillip
Subject: RE: Waldrop Center Attic

Tim,

I am very disappointed with your response.

It is true that we have had several meetings discussing this issue. I would like to clarify something. It was my intention, as I stated to you in the beginning, to have a preliminary meeting discussing what we wanted to do and how we were going to do it.

First, I was told by BSFD that the sprinkler system needed to be redesigned and the heads would have to be changed. (So, I had the subcontractor verify that. The existing system does not have to change, including the heads. I also met with the Fire Alarm subcontractor and discussed applicable codes regarding storage, hallways, exits, pull stations, etc. He then provided me with the layout I showed you.)

Then you stated that the hallway had too much travel distance and I couldn't get to the exit. (I researched the Code & showed you how the Code book differentiated between common path of travel and travel distance.)

Then you told me I needed two means of egress, standpipes, and many specific signs for stairs, floor levels, etc. (I did more research, then showed you how our layout provides the two means of egress, and included the scenario of how anyone could exit, in the event that one mean of egress was cut off by a fire. I also commented that the Code requires standpipes for New buildings four or more stories in height; and ours is an Existing Building. Also, the Code requires the special signage to which you were referring in Buildings with 5 or more stories in height; again that wouldn't apply to us.)

04/27/09

Exhibit 2

You then told me I couldn't use these two means of egress because they were too close to one another—you mentioned the "diagonal rule." (I researched this and learned that this rule does not apply to our situation because our building is sprinkled. I showed you in the Code Book where it states this.) 2-5

You then told me you needed another week to research this. I left follow-up e-mails to you, twice, asking if we were ready to go. I did not receive any response so I came into your office again to follow up. You said that you would get to me soon. ~~I did receive a call from your office to set up another meeting which was our latest~~ (on Tuesday). That is when you told me that although I have two means of egress, they empty into the same exit. And you stated that I need two exits, not just the one. (I tried to explain to you why ours was a specific case not addressed in the Code. I reiterated that we are locking down the roof and attic from anyone without special keys, thereby eliminating many situations that would require a second exit from the attic. I stated that I believe that our situation warrants special consideration because of our special circumstances. I also tried to show you, on your dry-eraser board in your conference room, how this would be as safe, or safer, than our current situation inside the building, in the common corridors. I even suggested that even though the roof doesn't have an exit directly to the ground, one could still go there in the event that the stairs were somehow compromised, until help arrived.)

You stated I couldn't have storage without the second exit. Then Vaughn requested that I write down what we wanted to do so that you could officially respond to it, in writing.

The more I thought about it, the more the second exit didn't make any sense to me. You are quoting the Code as if I wanted an entire fourth floor of office space, open to the public such as the other three floors. This simply isn't the case. So I gathered my thoughts, used specific quotes from the Code Book, and tried to summarize much of what was already discussed, plus my new thoughts we hadn't yet discussed, such as undo hardship.

I'm confused on your answer. You wrote that there's no hardship to address because there is no storage. Yet to have storage, I would have to incur undo hardship to install such a stair. How can you not understand that the very thing you are requiring mandates an undo hardship?

I've stated to you several times that you and I only want the same thing--a safe

Exhibit E
3-5

building.

This storage issue will not go away. Not only do I have the owner of the building wanting storage, but one other tenant needs some space too. There's a possibility for a third.

What is it, exactly, do you want me to do? Do you want me to tear apart the roof structure? Do you want me to install a fire escape ladder to the back of the building? I have read some of the fire escape ladder requirements in the Code and, quite frankly, it's confusing. Some places it tells me I can have one only if it's approved by the AHJ. So please respond, in writing, what exactly you will approve, regarding a fire escape from the roof.

You also mentioned in your response to "keep in mind that there are other applicable Fire or Building Codes that would apply here..." What other Fire codes are you referring to? The frustrating thing for me is that just when I think we've covered all the bases, something else pops up.

Regards,

Bill R. Moore,

Director of Construction,

Waldrop Group

--- On Thu, 4/2/09, Fernandez Tim <timmyf@bonitafire.org> wrote:

From: Fernandez Tim <timmyf@bonitafire.org>
Subject: RE: Waldrop Center Attic
To: "Bill Moore" <bill@waldropgroup.com>
Cc: "Spangler, Vaughn" <vaughns@bonitafire.org>, "Ron Waldrop" <ronw@waldropengineering.com>, "Kinsey Philip" <Philk@bonitafire.org>
Date: Thursday, April 2, 2009, 2:50 PM

04/27/09

Exhibit E
4-5

From: Bill Moore [mailto:bill@waldropgroup.com]
Sent: Wednesday, April 01, 2009 8:20 PM
To: Fernandez Tim
Cc: Spangler, Vaughn; Ron Waldrop
Subject: Waldrop Center Attic

Gentlemen,
Please review the attached document and respond as soon as you can.

BONITA SPRINGS FIRE CONTROL & RESCUE DISTRICT
FIRE PREVENTION DIVISION: Office of the Fire Marshal



Timothy A. Fernandez,
Fire Marshal
27701 Bonita Grande Dr.
Bonita Springs, FL 34135

☎ 239-949-6200 📠 239-949-6216

www.bonitafire.org, TimmyF@bonitafire.org

April 3, 2009

Bill R. Moore

Director of Construction
Waldrop Group
12060 Fairway Isles Dr.
Ft. Myers, Florida 33913

RE: Waldrop Center Office Building, 28100 Bonita Grande Drive, three-story building (written response #2)

Mr. Bill Moore,

The attic space of your building cannot be used for incidental storage to business occupancy (your building) because there are not two separate means of egress (stairs) provided on that level. If you decide to add another separate means of egress (stair), then I will discuss the other applicable Fire Codes that will apply. Please keep in mind that the Building Code has applicable codes that would also apply, and can only be enforced by the Building Official.

I feel I have been very clear with my answer, and I'm sorry that you disagree with me. There is no need for additional discussion because this matter is closed.

Sincerely,

Tim Fernandez

Tim Fernandez
Fire Marshal

cc. Fire Chief P.H. Kinsey, Jr.

Georgia Dowell

From: Jackie Price
Sent: Wednesday, May 06, 2009 10:39 AM
To: Georgia Dowell
Cc: Lesley Mendelson
Subject: Petition for Declaratory Statement

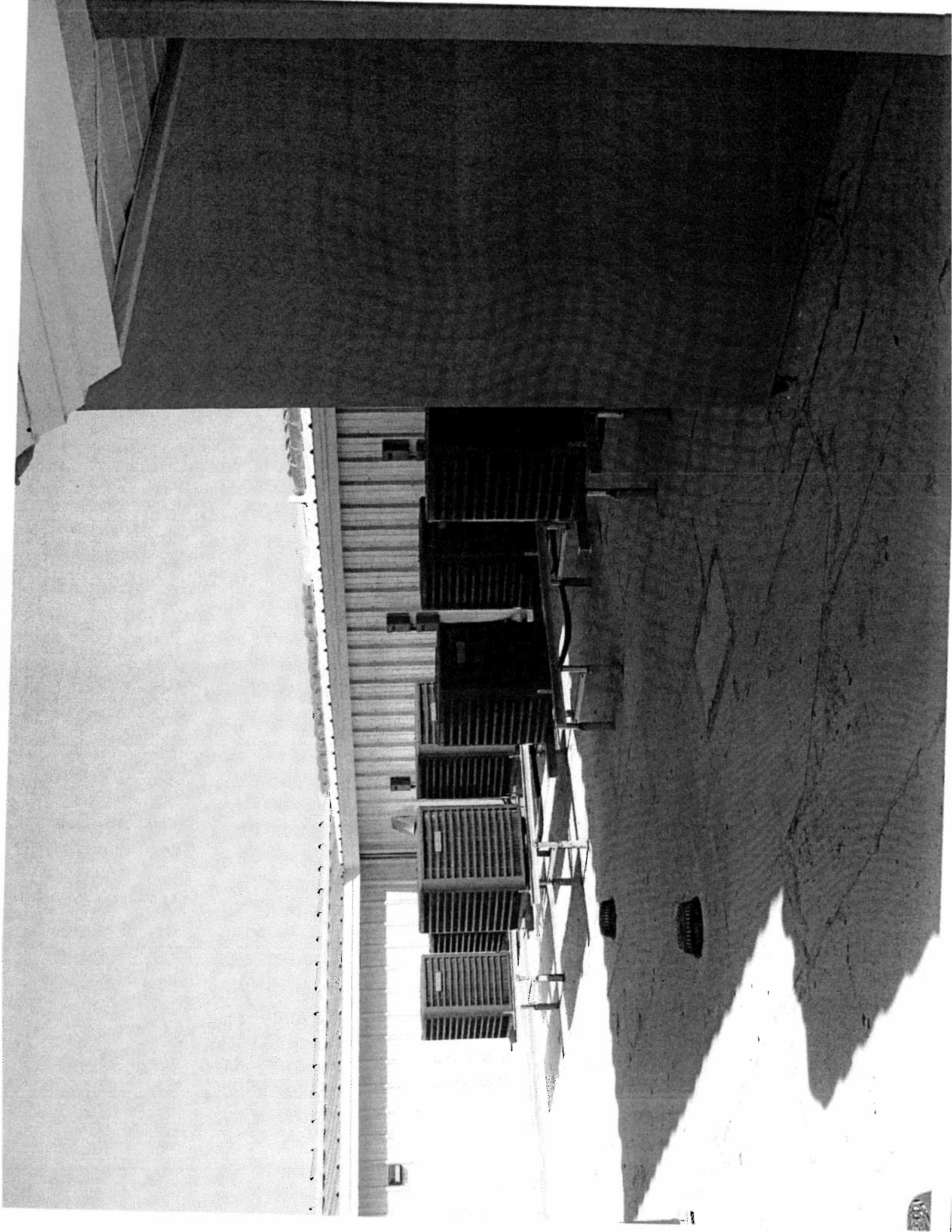
Importance: High

Attachments: DOC050609.pdf

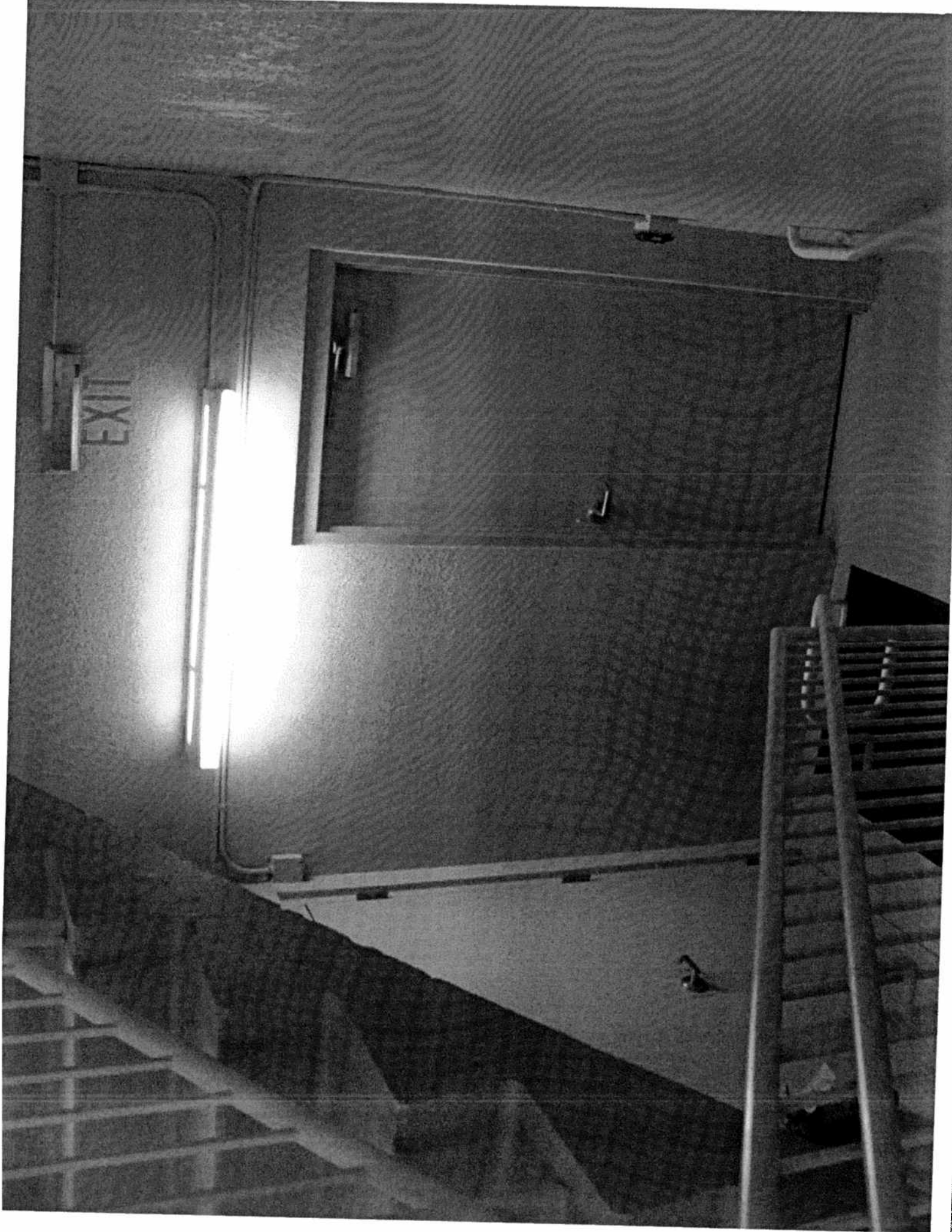


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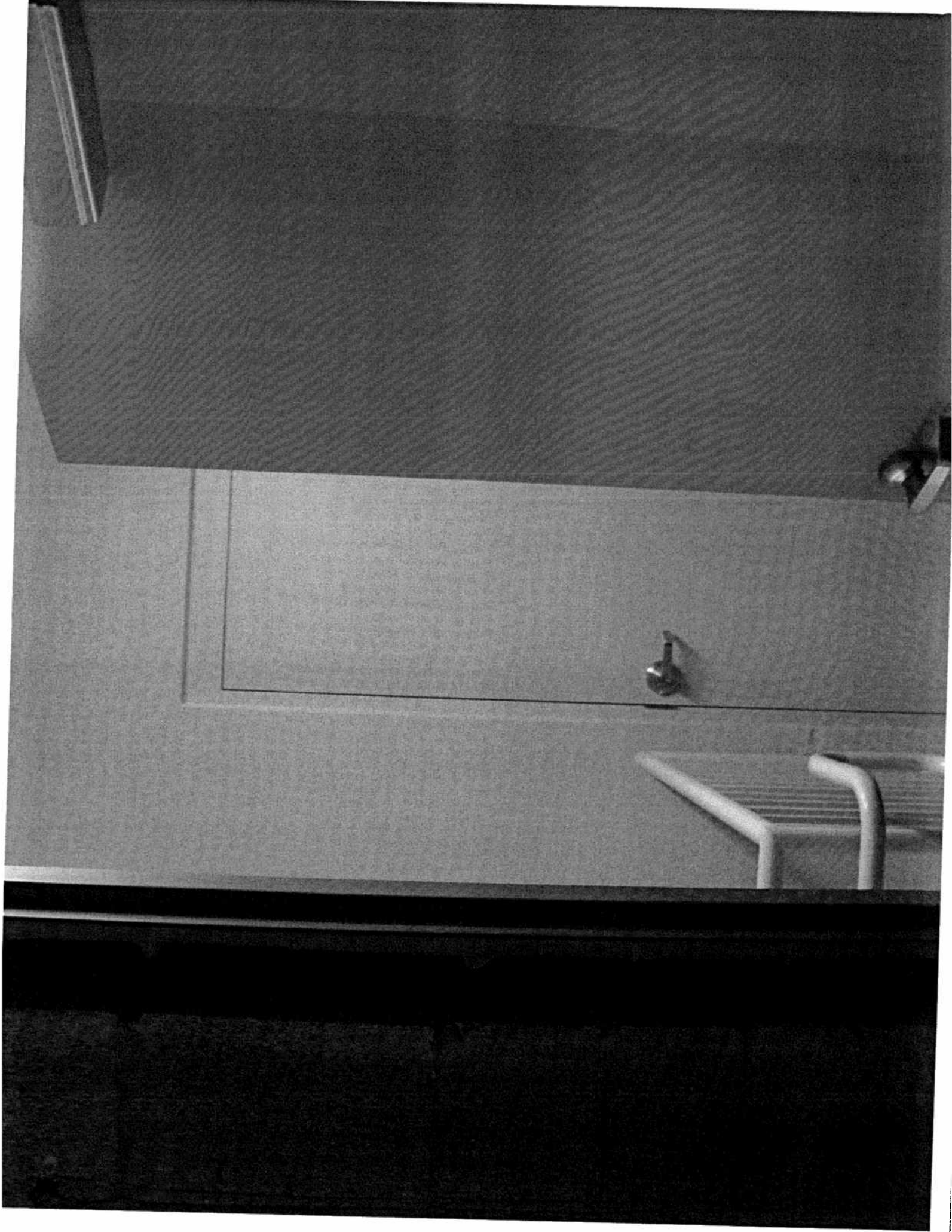
I already sent the notice of petition to the FAW to be published on 5/15/09 in Volume 35/19 and mailed the letter to JAPC with a copy of the petition. I wrote the case number on the petition.



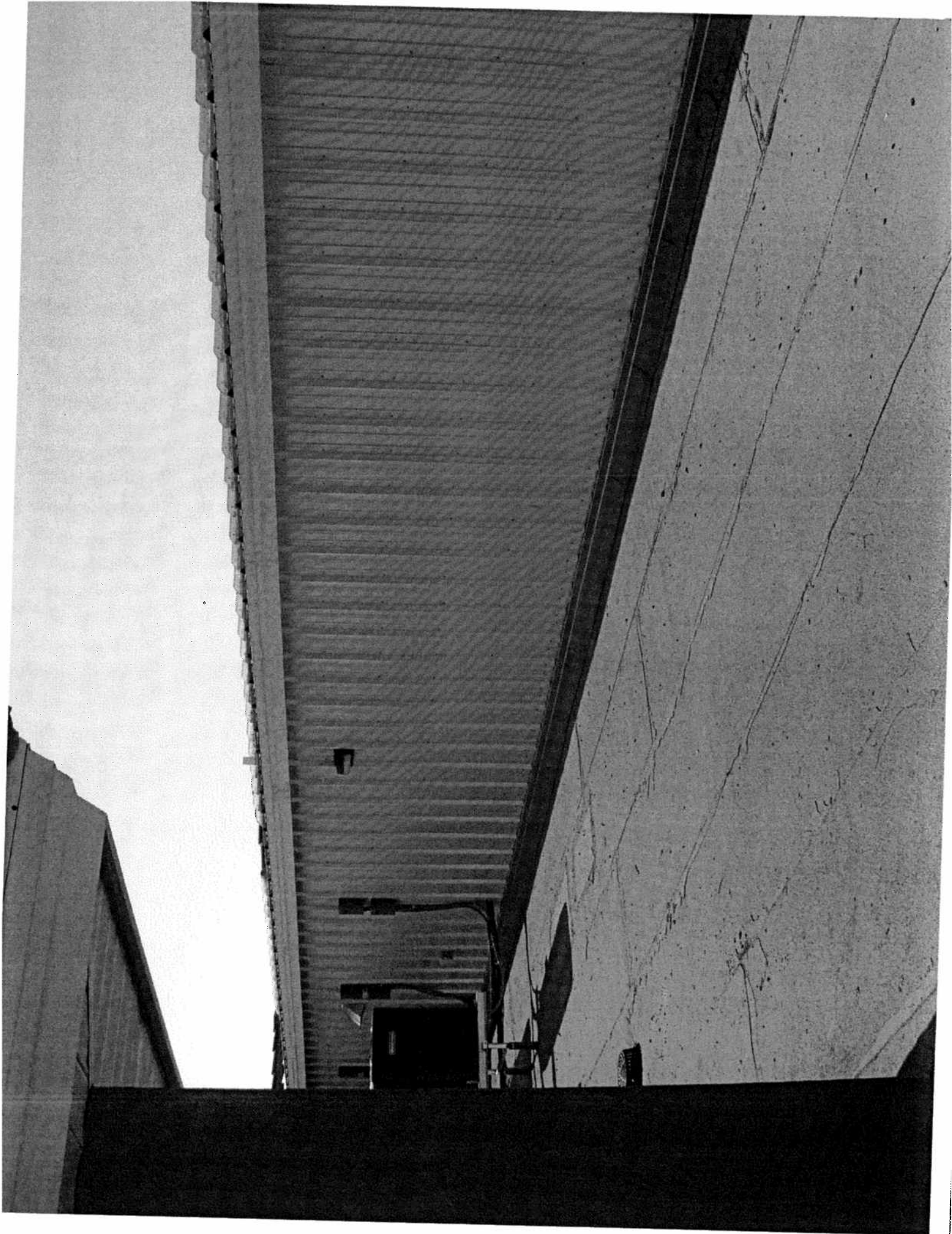


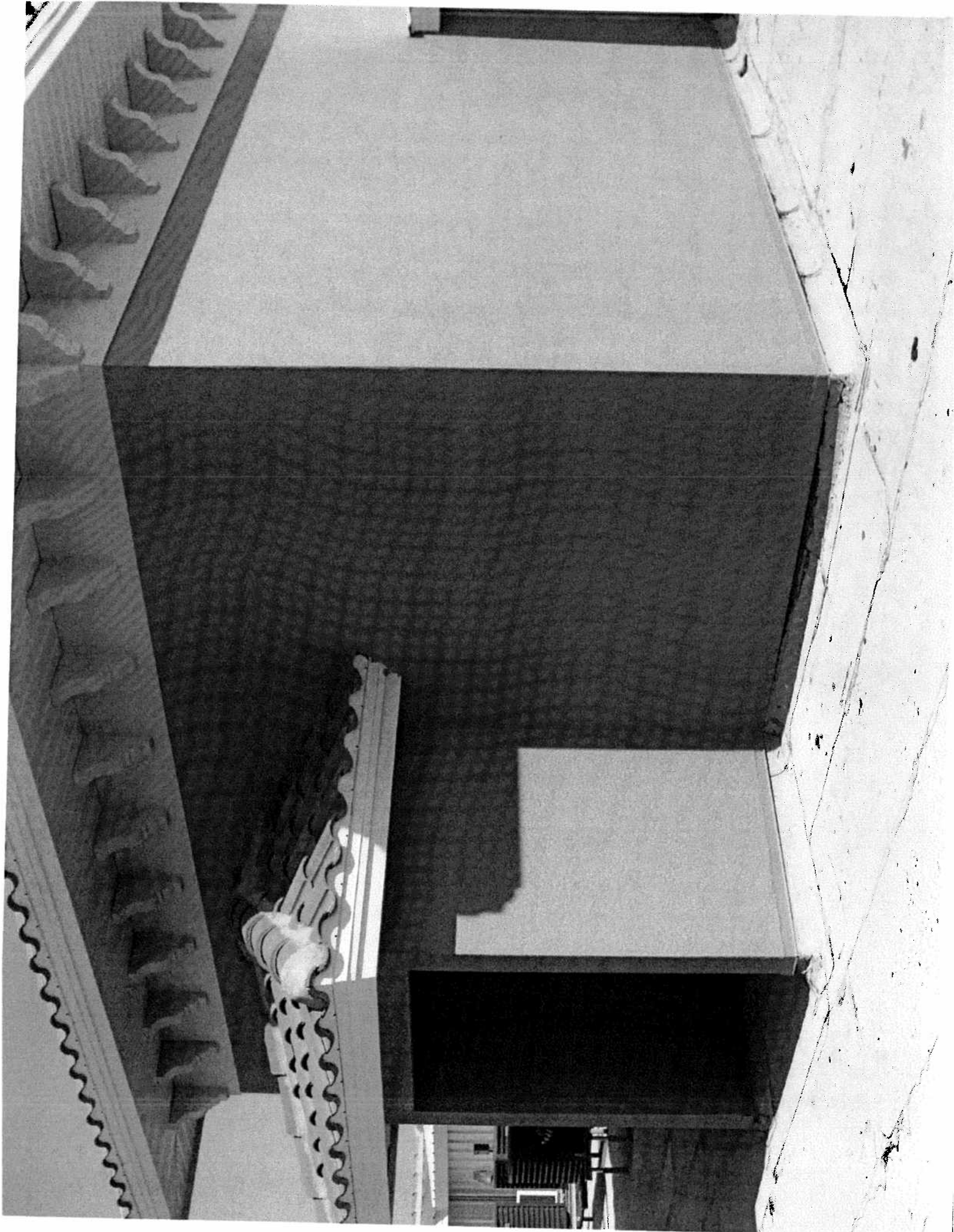


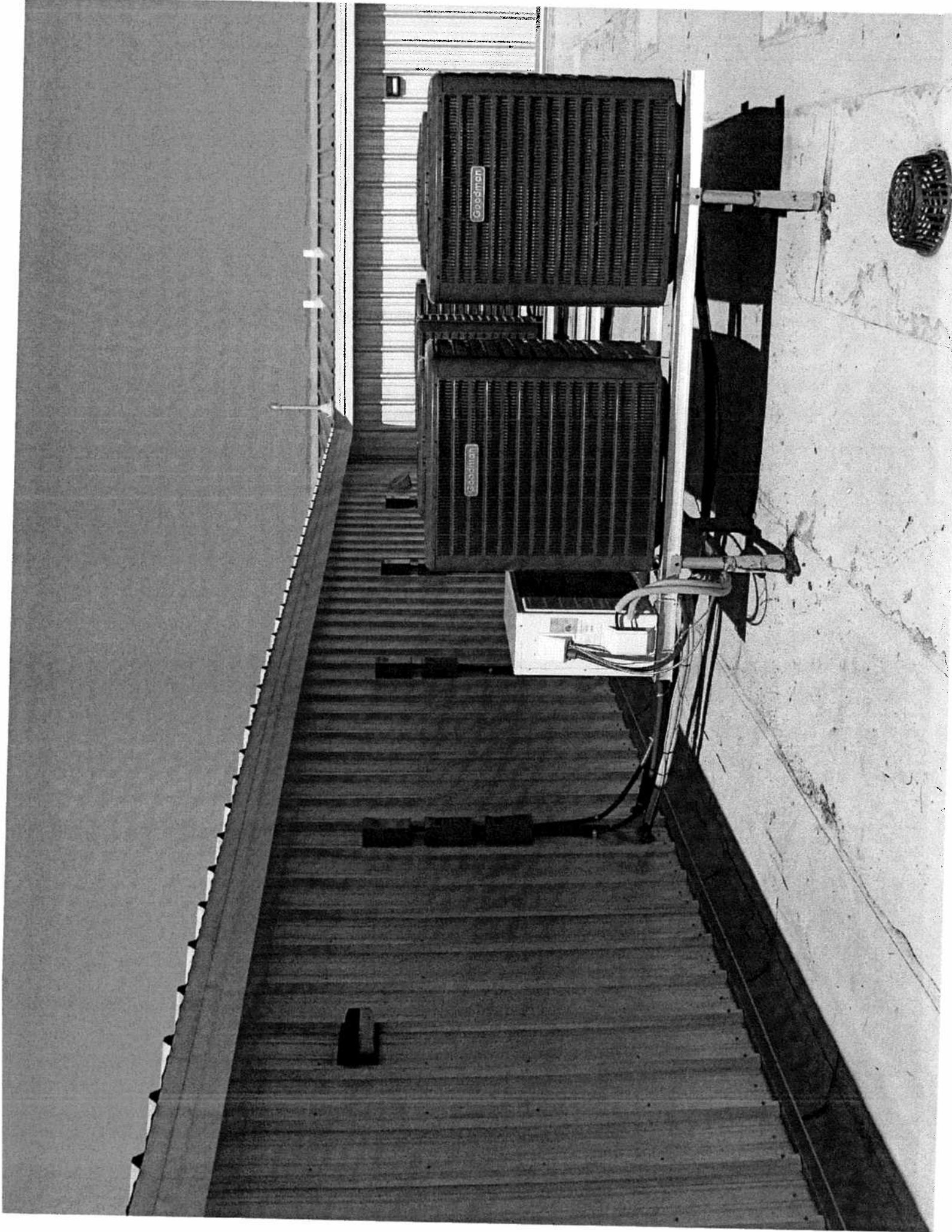








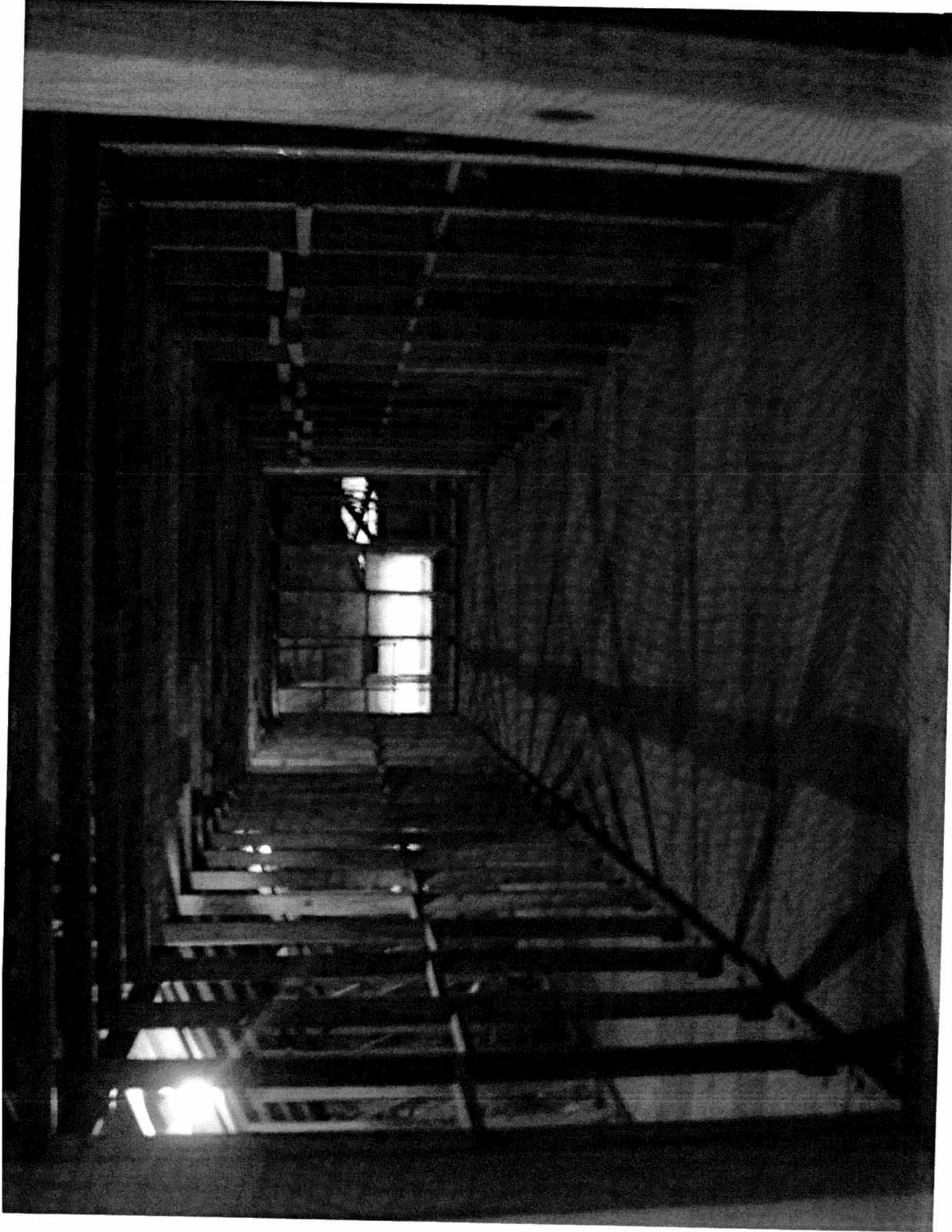














WALDROP CENTER

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