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Scott County Iowa  
Rita A. Vargas Recorder  
File **2006-00038862**

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AMENDED AND RESTATED  
DECLARATION OF SUBMISSION OF PROPERTY  
TO HORIZONTAL PROPERTY REGIME FOR  
MISSISSIPPI LOFTS

Declarant: RCPA Development Co., L.L.C.  
Legal Description: See Page 1 of Declaration

# MISSISSIPPI LOFTS

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Exhibit "A" -- Unit Description

Exhibit "B" -- Articles of Incorporation of Mississippi Lofts Condominium Owners Association, Inc.

Exhibit "C" -- Bylaws of Mississippi Lofts Condominium Owners Association, Inc.

Exhibit "D" -- Percentage Interest in Common Elements

Exhibit "E" -- Emergency Easement Description and Grid Iron Easement Description

Exhibit "F" -- Easement to Public Access Areas of the RiverCenter

AMENDED AND RESTATED  
DECLARATION OF SUBMISSION OF PROPERTY  
TO HORIZONTAL PROPERTY REGIME  
FOR  
MISSISSIPPI LOFTS

This Amended and Restated Declaration is made on the 15 day of December, 2006 by RCPA Development Co., L.L.C., an Iowa limited liability company, Mississippi Retail Partners, L.P. and Mississippi Housing Partners, L.P., being the owners of all units in the regime and collectively referred to herein as Owners.

1. RECITALS

1.01. Description of Real Estate and Building. The Owners are the legal titleholders of the following described real estate (the "Real Estate") located in Davenport, Scott County, Iowa:

Lots 1, 2 and 3 in Block 57, in LeClaire's Second Addition to the Town (now City) of Davenport, Scott County, Iowa.

Also described as the Adler Theatre unit, the Mississippi Hotel unit and the Mississippi Retail unit in Mississippi Lofts, a condominium, in the City of Davenport, Scott County, Iowa, as shown and as legally described in Declaration of Submission of Property to Horizontal Property Regime of Mississippi Lofts, recorded as Document No. 2006-00003341 in the office of the recorder of Scott County, Iowa, on January 31, 2006, including an undivided interest in and to the general common elements and facilities of the condominium regime.

The Real Estate consists of land and improvements.

1.02. The Owners desire to continue to submit the Real Estate, including the Building, structures, improvements, and fixtures thereon or hereafter to be erected, and all rights and privileges belonging or in any way pertaining thereto to a condominium regime (the "Regime") pursuant to the Horizontal Property Act of the State of Iowa and which will be known as Mississippi Lofts.

1.03. The Owners desire to establish for their benefit and for the mutual benefit of all future owners or occupants of the Regime, or any part thereof, and intend that all

future owners, occupants, mortgagees, and any other persons acquiring any interest in the Regime shall hold such interest subject to certain rights, easements, and privileges in, over, and upon the Regime and certain mutually beneficial restrictions, obligations, and liens with respect to the use, conduct, and maintenance of the Property. All such rights, easements, privileges, restrictions, obligations, and liens are in furtherance of a plan to promote and protect the cooperative aspects of occupancy in the Regime and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Regime.

## 2. DEFINITIONS

2.01. Definitions. The terms used in this Declaration shall have the following meanings, unless the context clearly requires another meaning:

- a. "Act" means the Horizontal Property Act of the State of Iowa, as amended from time to time.
- b. "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association attached as Exhibit "B", as amended from time to time.
- c. "Association" means Mississippi Lofts Owners Association, Inc., an Iowa nonprofit corporation.
- d. "Board" means the Board of Directors of the Association.
- e. "Building" means the structural improvements located on the land forming part of the Real Estate and containing Condominium Areas and as more particularly described on Exhibit "A".
- f. "Bylaws" means the Bylaws of the Association, attached as Exhibit "C", as amended from time to time.
- g. "Common Area" means the areas designated as "Common Area" in Exhibit "A".
- h. "Common Expenses" means and includes:
  - (1) All sums lawfully assessed against the General Common Elements by the Managing Agent or Board.
  - (2) All expenses of administration, management, maintenance, operation, repair, replacement, and betterment of the General Common

Elements and those parts of the Condominium Areas that the Association is responsible to maintain, repair and replace.

(3) Expenses agreed upon as Common Expenses by the Condominium Area Owners.

(4) Expenses declared to be Common Expenses by this Declaration or by the Bylaws.

(5) Any valid charge against the Regime as a whole.

i. "Condominium Area" means the space between (a) the lower unfinished surface of the ceiling, (b) the upper surface of the base floor material, excluding any floor coverings, (c) where walls are shown on Exhibit "A" and subsequent amendments thereto as the boundary of a Condominium Area, and the interior unfinished surface of such walls (including the interior surfaces of all windows and doors and the walls in the closed position) and (d) where the boundary as shown on Exhibit "A", as amended from time to time, is a line or lines and not walls, and the vertical plane where the base of the plane is on the boundary line.

j. "Corporation" means and is interchangeable with the Association.

k. "Council of Co-Owners" means all the Condominium Area Owners, which Council of Co-Owners has been incorporated as the Association.

l. "Declaration" means this instrument including all Exhibits by which the Real Estate is submitted to the provisions of the Act and such Declaration as amended from time to time.

m. "Developer" means RCPA Development Co., L.L.C., its successors and assigns, provided such successors or assigns are designated in writing by the Developer as successors or assigns of the rights of the Developer set forth in this Declaration and such designation is recorded in the Scott County Recorder's Office.

n. Intentionally left blank.

o. "Managing Agent" means the person to whom the Board delegates, at its option, certain powers and duties to manage and operate the affairs of the Association.



p. "Mortgage" means a security interest, mortgage, or lien granted by a Condominium Area Owner in, to, or against a Condominium Area to secure payment of an indebtedness and duly recorded in the Scott County Recorder's office.

q. "Mortgagee" means a Person who holds a Mortgage as security for payment of an indebtedness.

r. "Occupant" means a Person or Persons in possession of a Condominium Area, regardless of whether the person is a Condominium Area Owner.

s. "Percentage Interest" means the undivided interest to the General Common Elements associated with and appurtenant to each Condominium Area, as set forth on Exhibit "D". Expense and assessment obligations paid, incurred, or levied will be determined based on the Percentage Interest in effect at the time such payments become due and payable.

t. "Person" means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

u. "Property" includes the land and Building described in paragraph 1.01, all other improvements located on the land, any building or improvement constructed on the land in the future, and all easements, rights and appurtenances belonging thereto.

v. "Regime" means the Property which includes all Condominium Areas and General Common Elements.

w. "Unit" shall have the same meaning as the term "Condominium Area" as defined in paragraph 2.01 (i) herein.

x. "Upscale Food and/or Beverage Establishment" shall include trendy, sophisticated coffee shops such as Starbucks, restaurants providing cuisine in a quiet, refined dining atmosphere, and/or a bar or nightclub provided that the same is quiet and refined and appropriate measures are taken to ensure that noise and/or patrons will not interfere with other Units.

y. "Owners" means the Person or Persons who individually or collectively own or are purchasing by recorded contract the aggregate fee simple title to a Condominium Area or a part of a Condominium Area and the undivided interest in the Common Elements appurtenant thereto but shall not include those

having an interest in a Condominium Area merely as security for the performance of an obligation. The term "Condominium Area Owner" shall have the same meaning as the term "owner" as used in the Act.

2.02. Other Definitions. The following terms are defined in the following paragraphs:

- a. "General Common Elements," paragraph 4.01.

### 3. IDENTIFICATION OF PROPERTY

3.01. Submission to Act. The Owners by recording this Declaration submits the Property to the Act.

3.02. Location of Property. The Property submitted to the Regime is located on 3<sup>rd</sup> Street between Brady Street and Perry Street in Davenport, Scott County, Iowa.

3.03. Building. The Building is an eleven story structure with a basement containing three (3) Condominium Areas designated the Adler Theatre Unit, the Mississippi Hotel Unit and the Commercial Space Unit. The Building is constructed principally of steel, concrete, mortar and brick. Exhibit "A" shows each Condominium Unit location and approximate area and proximity of each Unit to Common Areas.

3.04. Condominium Area and Partitioning. The location, dimensions and configuration of each Condominium Area and approximate areas of each Condominium Area are shown on Exhibit "A".

### 4. COMMON ELEMENTS, OWNERSHIP AND APPURTENANCES

4.01. Definition of General Common Elements. General Common Elements are the land described in paragraph 1.01 and all improvements, including the Building and facilities situated on the land, except the Condominium Areas. The General Common Elements include but are not limited to:

- a. Landscaping and plantings, sidewalks, outside lighting system and fixtures, exterior sign and the exterior transformers.

- b. All structural elements of the Building, including the foundation, slab, exterior walls, doors and windows, roof or roofs, fire escapes, interior load-bearing walls, and walls, doors and windows separating Condominium Areas from Common Areas (as defined at 4.01f) and all structural elements of the Building not reserved to a Condominium Area.

c. All ventilation and exhaust systems, lighting systems and fixtures , chimneys and the heating and air-conditioning systems and equipment that service the Common Areas.

d. All sewer, water, electrical, gas, telephone and other utility or service lines, wiring, ducts, conduits, piping, facilities or systems serving more than one Condominium Area, notwithstanding the same are located in part within a Condominium Area.

e. Easements to the Condominium Areas for all such lines, wiring, ducts and the like referred to in paragraph 4.01.d. for the furnishing of utility and other services or systems to the Condominium Areas and to the Property and shall include easements of support in every portion of a Condominium Area which contributes to the support of the improvements.

f. The areas designated as "Common Area" on Exhibit "A".

g. Condominium Areas which may at any time be acquired and held by the Association on behalf of all Condominium Area Owners.

h. Other parts of the Regime determined by the Association to be necessary to the existence, maintenance or safety of the Regime.

4.02. Exclusive Ownership of Condominium Areas. A Condominium Area Owner shall be entitled to exclusive ownership and possession of his or her Condominium Area. A Condominium Area Owner shall not be deemed to own the undecorated or unfinished interior surfaces of the perimeter walls, floors, ceilings, and doors bounding his or her Condominium Area nor shall a Condominium Area Owner be deemed to own any General Common Elements within his or her Condominium Area notwithstanding the fact that such elements are within the perimeter of such Condominium Area. A Condominium Area Owner, however, shall have the exclusive right to paint, repaint, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the perimeter walls, floors, ceilings, and doors bounding his or her Condominium Area and also shall have such exclusive rights with respect to General Common Elements which are within his or her Condominium Area, including specifically the right to hang customary pictures, mirrors and like wall decorations thereon.

4.03. Appurtenances. There shall pass with the ownership of each Condominium Area, whether or not separately described, all appurtenances to the Condominium Area (whether such appurtenance is described in this Declaration or in the Bylaws).

4.04. Percentage of Ownership and Liabilities. A Condominium Area Owner shall own as an appurtenance thereto a percentage of the General Common Elements. Each Condominium Area Owner's Percentage Interest shall be as set forth on Exhibit "D" to this Declaration. Each Condominium Area Owner shall be liable for a proportional share of the Common Expenses corresponding to the Condominium Area Owner's Percentage Interest.

4.05. Use of General Common Elements. Unless otherwise provided, each Condominium Area Owner shall have the right to use General Common Elements of the Regime, subject to leases made by or assigned to the Board, in common with all other Condominium Area Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of the respective Condominium Area owned by such Owner. The right to use the General Common Elements shall extend not only to each Condominium Area Owner, but also to his or her agents, tenants, family members, invitees, and licensees. The Association shall have the authority to rent, lease, and grant concessions or easements with respect to parts of the General Common Elements, subject to the provisions of this Declaration and the Bylaws. All income derived by the Association from leases, concessions, or other sources shall be held and used for the benefit of the Association, pursuant to such rules, resolutions, or regulations as the Board may adopt or prescribe. The Board shall have the express authority to designate specific parking places for the exclusive use of individual Condominium Area Owners.

4.06. Assignment or Transfer of Appurtenances. No part of the appurtenant interest of any Condominium Area may be sold, transferred or otherwise disposed of except in connection with the sale, transfer or other distribution of the Condominium Area.

4.07. Modification of the Size of Condominium Areas. A Condominium Area Owner may with the written consent of the Board transfer and convey a part or all of his or her Condominium Area to the Association which shall then become part of the General Common Elements. The Association may transfer and convey an area comprising a part of the general common areas to a Condominium Area Owner, provided (a) all other Condominium Area Owners have access to a hall or stairwell that will permit a Person ingress and egress to a Building exit and (b) the transfer and conveyance will not violate any applicable Building Codes and Fire Codes in effect in Davenport, Iowa. Upon any modification of the total number of square feet comprising any Condominium Area pursuant to this paragraph 4.07, the Board shall file an amendment to the Declaration showing the modifications of the attached Exhibits and amending the other Exhibits that are affected based on the change of square footage. Such modification shall not change the Percentage Interests or modify Exhibit "D" unless such change in Percentage Interests or modification of Exhibit "D" is approved by 67% of the Unit Owners.

4.08. Encroachment Easements. If any portion of the General Common Elements encroaches upon any Condominium Area, or if any Condominium Area encroaches upon any other Condominium Area or upon any portion of the General Common Elements, or if any of such encroachments shall occur later as a result of shifting or settling of the Building or from alteration, repair or improvement to the General Common Elements or as a result of repair or restoration of the General Common Elements or a Condominium Area after damage by fire or other casualty, or as a result of condemnation or of eminent domain proceedings, then in each of such events a valid easement shall exist for such encroachment and for the maintenance thereof so long as the Building, General Common Elements and Condominium Areas exist. Such encroachments shall not be considered to encumber the General Common Elements and Condominium Areas encroached upon. The easement shall exist only as long as there is an encroachment.

4.09. Cross Easements. Appurtenant to each Condominium Area shall be easements from each Condominium Area Owner to each other Condominium Area Owner and to the Association and from the Association to the respective Condominium Area Owners as follows:

- a. For ingress and egress through the Common Areas and for maintenance, repair, and replacement or reconstruction as authorized;
- b. Through the Condominium Areas and General Common Elements and Common Areas for maintenance, repair and replacement or reconstruction of General Common Elements, but access to Condominium Areas shall be only during reasonable hours except in case of emergency; and
- c. Through the Condominium Areas and General Common Elements for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility or other services to the other Condominium Areas and the General Common Elements.
- d. The Adler Theatre Unit shall have and is hereby granted an easement to allow for emergency ingress and egress across the Mississippi Hotel Unit as shown by arrows on Exhibit "E". Owners of the Mississippi Hotel Unit shall maintain the easement area shown on Exhibit "E" and no obstructions shall be permitted. The owner of the Adler Theatre Unit shall have the right to remove obstructions and to maintain the easement in the event the Mississippi Hotel Unit fails to discharge its duties after notice from the Adler Theatre Unit is received in writing and 15 days have passed. The owner of the Mississippi Hotel Unit shall be liable to the Adler Theatre Unit for any and all reasonable costs incurred. Costs incurred shall be submitted by the Adler Theatre Unit to the Homeowners Association and shall be treated similar to Common Expenses (i.e. the Adler

Theatre Unit shall be reimbursed by the Homeowners Association and the Homeowners Association shall treat the amount due as unpaid Common Expenses of the Mississippi Hotel Unit for which a lien can be filed and further remedies sought.)

e. The Adler Theatre Unit shall have and is hereby granted an easement to keep and maintain its marquis, signage and decorations on the exterior of the building which includes the right to change and update said marquis, signage and decorations in its discretion without the need for consent or approval of the other Units so long as the exterior area affected is not increased in size.

f. The Adler Theatre Unit shall have and is hereby granted an easement through the Mississippi Hotel Unit for access to the grid iron on the 7<sup>th</sup> floor. Specifically such easement shall be as set forth on Exhibit E. It is understood that the Mississippi Hotel Unit has the right to monitor and control use of the easement by the Adler Theatre Unit and that Adler Theatre Unit must notify and obtain the consent of the Mississippi Hotel Unit prior to use of the easement right granted hereunder. The Mississippi Hotel Unit may not unreasonably withhold consent to any request by the Adler Theatre Unit to use its easement and shall cooperate to provide the Adler Theatre Unit with access as needed.

g. The Mississippi Hotel Unit shall have and is hereby granted an easement for access into the public access areas of the RiverCenter on the 2<sup>nd</sup> floor of the Building, which access shall be established either through Option 1 or Option 2 as more fully described on attached Exhibit "G". If requested by the Mississippi Hotel Unit, Option 2 shall be used if reasonably practical, or if Option 1 would be unreasonable. Option 2 shall only be allowed if the Mississippi Hotel Unit prepares and provides design plans which would, at all times, reasonably protect and maintain the security of the Building, and the Adler Theatre Unit specifically. It is understood that Option 2 will allow access of skywalk traffic through the Adler Theatre Unit to the Mississippi Hotel Unit and that Mississippi Hotel Unit will be required, at its own cost and expense, to provide walls, security and/or security devices in its designs to reasonably ensure that no public traffic could access beyond the limited area reasonably necessary to allow for the access shown on Option 2. Option 2 shall require the consent of the Adler Theatre Unit to the designs/plans of the Mississippi Hotel Unit for its creation, and the Adler Theatre Unit shall not unreasonably withhold its consent. If the Mississippi Hotel Unit elects not to use Option 2, or if Option 2 proves unreasonable, then Option 1 shall be used if reasonably practicable. The other Units consent to the Mississippi Hotel Unit, under Option 1, making such connection or opening through the wall of its Unit and the Building to access the public access areas of the River Center, provided such access does not damage the structural integrity of the Building or

otherwise interfere with utilities or other Building necessities which cannot be restored immediately.

h. The Units hereby agree to cooperate and grant to each other such easements as may be necessary and reasonably required in the future due to City of Davenport building or fire code requirements related to ingress and egress. It is understood and agreed that to the extent an easement becomes necessary due to changes in City of Davenport code requirements, that the parties shall operate through the Association to make such accommodations and grant such easements as may be reasonably necessary to allow all Units to continue to operate.

i. The Units hereby grant to each other such easement rights as are necessary to allow access to and from work areas which cannot otherwise be established through the Common Areas and/or owner's own Unit and shall further be limited in time and scope so as to be reasonable.

4.10 Right of First Refusal. The Commercial Unit shall be subject to a Right of First Refusal held by the City of Davenport, an Iowa governmental subdivision. The specific terms of the Right of First Refusal are as set forth in a separate document.

## 5. RESERVED RIGHTS AND POWERS

5.01. INTENTIONALLY LEFT BLANK

## 6. MANAGEMENT OF THE REGIME

6.01. The Association. The Association shall be the governing body for all Condominium Area Owners for the maintenance, repair, replacement, administration, and operation of the Regime, as provided in the Act, this Declaration, the Articles, and the Bylaws.

6.02. Management of Regime. The Board shall have the authority to engage the services of a Managing Agent to maintain, repair, replace, administer, and operate the Regime, or any part thereof, to the extent deemed necessary by the Board. Each Condominium Area Owner hereby agrees to be and is hereby bound by the terms and conditions of all management agreements entered into by the Association. The term of a management agreement shall not exceed one year, and the agreement may be terminated by the Association for cause upon 30 days' written notice, but in no event shall such management agreement be cancelled prior to the negotiation by the Association or its Board of Directors of a new management agreement, which new management agreement will become operative immediately upon the cancellation of the preceding management agreement.

6.03. Board's Determination Binding. In the event of any deadlock in voting by the Unit Owners, dispute or disagreement between any Condominium Area Owners relating to the Regime or any questions of interpretation or application of the provisions of the Declaration or Bylaws, the deadlock in voting by the Unit Owners, dispute or disagreement shall be submitted to the Board. The determination of the deadlock in voting by the Unit Owners, dispute or disagreement by the Board shall be binding on each and all Condominium Area Owners, subject to the right of Condominium Area Owners to seek other remedies provided by law after such determination by the Board.

6.04. Agreements and Compliance. All Condominium Area Owners, tenants, families, guests and other persons using or occupying the Regime shall be bound by and strictly comply with the provisions of this Declaration and the Bylaws as amended, and all agreements, rules, regulations, and determinations lawfully made by the Association and its Board, officers or agents shall be binding on all such Condominium Area Owners and other Persons. A failure to comply with the Declaration and the Bylaws as amended or any agreement or determination lawfully made shall be grounds for an action to recover sums due for damages on the part of the Association or any Condominium Area Owner, as applicable, and for mandatory or other injunctive relief without waiving other remedies.

6.05. Included Powers; Foreclosures of Lien; Waiver of Partition. Each Condominium Area Owner agrees that the Association has and shall exercise all powers, rights and authority granted unto it by the Act and by Chapter 504 Code of Iowa, and as more particularly set forth in the condominium documents, including but not limited to the making of assessments chargeable to Condominium Area Owners and the creation of a lien on Condominium Areas, and the right, acting on behalf of the Condominium Area Owners, to foreclose the lien and acquire a Condominium Area at foreclosure sale and to hold, lease, mortgage or convey the same; all Condominium Area Owners shall be deemed to have waived all rights of partition, if any, in connection with such acquisition.

6.06. Association as Attorney-in-Fact for Condominium Area Owners. The Association is hereby irrevocably appointed attorney-in-fact for the Condominium Area Owners of each and every Condominium Area to manage, control and deal with the interest of the Condominium Area Owners in the General Common Elements so as to permit the Association to fulfill all of its duties and obligations and to exercise all of its rights, to deal with Persons upon the Regime's destruction or obsolescence, and to deal with and handle insurance and insurance proceeds and condemnation and condemnation awards. The acceptance by any Person of any interest in any Condominium Area shall constitute an appointment of the Association as an attorney-in-fact as provided above.



6.07. No Avoidance by Waiver of Use: Right of Entry. Each Condominium Area Owner shall be liable for all assessments made by the Association against his or her Condominium Area for Common Expenses and liabilities of the Association and the Regime. The liability of a Condominium Area Owner for all assessments made by the Association may not be avoided by a waiver of the use or enjoyment of any General Common Element or by abandonment of a Condominium Area for which an assessment is made. The Association shall have the right exercisable at reasonable times to enter a Condominium Area as may be necessary or advisable to carry out its responsibilities .

6.08. Discharge of Liability. A Condominium Area Owner shall promptly discharge any lien other than Mortgage liens which may be filed against his or her Condominium Area.

6.09. Subordination of Assessment Liens. If any Condominium Area subject to a lien created by any provision in this Declaration shall be subject to the lien of a first mortgage of record:

a. The foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and

b. The foreclosure of the lien of such Mortgage or the acceptance of a deed in lieu of the foreclosure by the Mortgagee, shall not operate to affect or impair the lien except that assessment liens, if any, as shall have come due up to the time of foreclosure or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the time of the foreclosure or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the foreclosure or deed given in lieu of foreclosure. All assessment liens as shall have come due up to foreclosure or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect the delinquent sums from the defaulting Condominium Area Owner personally.

6.10. Limitation Upon Liability. Notwithstanding the duty of the Association to maintain and repair parts of the Regime, the Association shall not be liable to Condominium Area Owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the Property to be maintained and repaired by the Association, or caused by other Owners or Persons.

6.11. Arbitration. In the event that the Board is unable to reach a majority decision on any issue whatsoever, of any kind or nature which the Board shall have the

authority to decide, the issue shall be submitted by the Board to binding arbitration. All Unit Owners and Board Members hereby agree to submit to the arbitration provided for in this paragraph and will faithfully observe the rules of arbitration set forth herein, abide by and perform any award rendered by the arbitrator(s), and further agree that a judgment of any court having jurisdiction may be entered on the award. Arbitration shall be administered by the American Arbitration Association under its Arbitration Rules for the Real Estate Industry, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, if deemed necessary by the arbitrator to enforce such decision. The Board shall select the arbitrator or if the Board cannot reach a majority to select one arbitrator, one arbitrator shall be appointed by the American Arbitration Association under its Arbitration Rules for the Real Estate Industry. The decision of the arbitrator shall determine the issue, allocate costs if needed among Unit Owners and shall also provide for which Unit Owner(s) shall be responsible for the costs of arbitration and in what proportions. The Unit Owners and Board Members acknowledge and agree that any and all arbitration procedures shall be held in Davenport, Iowa and each hereby waives any objection to that locale. The Board shall immediately upon receipt of the decision of the arbitrator, issue a Board decision adopting the determination of the arbitrator and shall immediately after issuance of the Board decision, fully enforce that Board decision as provided under this Declaration, the By-Laws and Articles of the Association. Any costs of arbitration determined by the arbitrator as payable by a Condominium Area, or other costs, fees or expenses assessed by the arbitration decision against a Condominium Area or Areas, shall be paid by the Condominium Area Owner within ten (10) days from the date of the decision of the arbitrator or the same shall be treated as an unpaid assessment hereunder.

## 7. MAINTENANCE, ALTERATION AND IMPROVEMENT

7.01. Terms. Although the use of one shall not be deemed to exclude the applicability of another unless specifically so stated or required by the context, certain terms not susceptible to precise delineation are employed in this Article as follows:

- a. Maintenance is used generally to include repair, renovation, restoration, reconstruction, rebuilding or replacement as may be necessary to maintain the Regime in the same condition as when constructed;
- b. Alteration relates to changes from such state other than maintenance;
- c. Improvement as distinguished from alteration relates generally to the addition of new and different structures, elements or facilities other than those referred to in this Declaration.

The provisions of this Article are applicable where the work done or required is not caused by a specific casualty or event but shall also apply in the event of maintenance, alteration or improvement necessitated by a specific casualty or event unless different provisions are specifically made in this Declaration dealing with such contingencies.

7.02. Maintenance by Association. The Association shall:

a. Maintain all General Common Elements and shall make assessments therefor as a Common Expense except where maintenance has been specifically made the responsibility of each Condominium Area or certain Condominium Areas, in which case the assessment will be made to the owner of that certain area or owners of those Condominium Areas.

b. Repair incidental damage caused to a Condominium Area through maintenance by the Association and shall assess the cost thereof as a Common Expense.

c. If a Condominium Area Owner defaults in his or her responsibilities of maintenance, or such Condominium Area Owner, clients, customers, employees, invitees or lessee causes damage to the General Common Elements, the Association may assume the same as a Common Expense and levy a special assessment against the Condominium Area Owner collectible as other assessments. To the extent that such maintenance responsibilities are assumed by the Association in a situation involving more than one Condominium Area, the allocation by the Association of such costs between and against the respective Condominium Area Owners by special assessment shall be binding upon the respective Condominium Area Owners.

d. In its discretion, assume responsibility for any maintenance project which requires landscaping reconstruction, repair, rebuilding, renovation, restoration or similar work to more than one Condominium Area and the cost thereof may be in the discretion of the Association either assessed against each Condominium Area on which such costs were incurred or assessed against all Condominium Areas as a Common Expense according to the circumstances.

7.03. Maintenance by Condominium Area Owner. Each Condominium Area Owner shall at his or her expense:

a. Maintain the interior of his or her Condominium Area, including maintenance of non-load-bearing partitions, any floors, which define the Condominium Area, and of any finished or additional surfaces of materials installed by the Developer or the Condominium Area Owner, such as carpets,

wallpapering, painting or staining, or other covering of any kind, and the equipment and other personal property of any kind within the Condominium Area.

- b. The interior surfaces of all doors within the Condominium Area.
- c. Maintain any plumbing fixtures, lighting fixtures, wiring, conduits and service elements in or connected with such Condominium Area and for its exclusive use.
- d. Maintain any fixtures and their connections required to provide water, light, power, telephone, sewage and sanitary service exclusively to the Condominium Area.
- e. Maintain any improvement or other alteration made to the Condominium Area.
- f. Not change the appearance of any portion of the exterior of his or her Condominium Area, through paint or other decoration, without the consent of the Association.

7.04. Prompt Notice. A Condominium Area Owner shall promptly report to the Association any defects or other maintenance needs which are the responsibility of the Association or which the Association has the authority to perform.

7.05. Rights of Others. Mechanical equipment and the installation of such equipment shall be such that its operation will not cause annoyance to the occupants of other Condominium Areas. All maintenance, alteration and improvements shall be done without unreasonably disturbing the rights of other Condominium Area Owners.

7.06. Alterations or Improvements by the Association. No alterations or improvements during a fiscal year costing in excess of \$3,000.00 shall be made to the Regime without the approval of 67 percent of the voting interests of Condominium Area Owners; provided, upon the question being put to a vote by referendum ballot or membership meeting as provided in the Bylaws, any such alteration or improvement may be done if 67 percent of the total number of votes outstanding and entitled to be cast are voted in favor thereof. Bids shall be taken and the cost accurately estimated before such vote is conducted. Any alterations or improvements during a fiscal year costing \$3,000.00 or less may be made by the Board without the approval of Condominium Area Owners, and the cost thereof shall constitute part of the Common Expenses. An alteration or improvement pursuant to this paragraph shall not alter the Percentage Interest appurtenant to each Condominium Area and such interest shall remain as before irrespective of whether the Owner voted in favor of or against the alteration or improvement. The cost of

such work shall not be assessed against a Mortgagee that acquires its title to a Condominium Area as a result of a deed from the Mortgagor in lieu of foreclosure or through foreclosure proceedings, unless such Mortgagee shall approve the alteration or improvement. The share of any cost not so assessed shall be assessed to the other Condominium Area Owners in the shares that their Percentage Interests bear to each other's Percentage Interests and there shall be no change in the interests and rights of a Condominium Area Owner (i.e., a Mortgagee that acquires title as described herein) in the General Common Elements, nor in its share of Common Expenses, whether or not such Condominium Area Owner is hereby required to contribute to the cost of such alteration or improvement. The \$3,000.00 limit may be increased by the Association as needed to adjust for inflationary factors, provided 67 percent of the total number of votes outstanding and entitled to be cast are voted in favor thereof.

7.07. Alterations or Improvements by Owner. No Owner shall make or permit to be made any structural alteration to a Condominium Area, the Building or any of the General Common Elements, without first obtaining written consent of the Board which shall determine the proper insurance for such improvement or alteration and which shall arrange with such Condominium Area Owner for the payment of the cost of any additional insurance thereby required. In the case of alterations within a Condominium Area the consent required by the preceding sentence shall be immediately granted upon agreement of the Owner to pay the cost of such additional insurance, and a determination that such alteration will not impair the structural soundness of the Building or safety of the Regime or impair use of other units or the Common Areas. Alterations and improvements to the exterior of the Building or General Common Elements shall not be made, if, in the opinion of the Board, such alteration would harm the integrity and appearance of the Regime as a whole. Such Condominium Area Owner shall do no act or work which will impair the structural soundness or integrity of the Building or safety of the Regime or impair any easement. The improvement or alteration of a Condominium Area shall not cause any increase in the owner's Percentage Interest. Any acquiescence or approval by the Association as to the safety of any proposed action hereunder by a Condominium Area Owner shall not render the Association responsible to any party in the event the Association's judgment proves erroneous. The Board may permit Condominium Area Owners to install doors or entryways in common walls provided the Condominium Area Owners comply with this paragraph.

7.08. Emergency Repairs. To the extent conditions arise which require immediate repair or action in order to prevent damage, further damage and/or destruction of part or all of the Units, Unit or Common Areas (i.e. burst water pipe, etc.), the Unit Owners agree that each shall be allowed the discretion to take action to remedy and repair those conditions where time will not permit the Unit Owners to obtain written consents from other Unit Owners or submit the issue to the Association. To the extent a majority of the Unit Owners consent in writing to a repair the same shall be deemed to have been

approved by the Association. The consent shall clearly state the repair to be made, the estimated cost of the repair and shall further direct the Association on which Unit or Units should bear the cost of the repair and in what proportion. If consents cannot be obtained, the cost of the repair shall be submitted to the Association which shall then vote on the reasonableness of the repair and determine whether or not the same shall be paid and how and to which Unit or Units the cost will be assessed. A majority vote of the Association shall be determinative.

## 8. CONDITIONS AND RESTRICTION ON OWNERSHIP, USE AND ENJOYMENT

8.01. Use of Property. The use and occupancy of the Property shall be in accordance with and subject to the following provisions:

a. Use of Condominium Area. Each Condominium Area shall be used or occupied only for a theatre, hotel/housing or commercial retail or Upscale Food and/or Beverage Establishments permitted under the Davenport zoning district applicable to the Real Estate. If a bar or nightclub is proposed as an Upscale Food and/or Beverage Establishment, the same shall not be an allowed use unless the Unit proposing such use, at its own expense, provides for sound-proofing and for a separate entrance for bar/nightclub patrons to prevent any disturbances of or interferences with uses of the other Units. The following uses shall be prohibited:

- (i) Adult video, adult entertainment or adult establishment of any kind.
- (ii) Fast food establishments of any kind, including as example but not limited to, McDonald's, Wendy's, Long John Silvers or Taco Bell.
- (iii) Noxious or offensive activity or trade or anything which may be or become an unreasonable annoyance or nuisance to other Unit Owners or materially affect the value or use of other Units.

Each Condominium Area shall be used and/or improved only in such a manner as will not negatively impact the other Condominium Areas. Specifically, it is noted that the Commercial Unit is directly above the basement level of the Adler Theatre Unit and certain activities within the Commercial Unit with respect to plumbing and drainage may cause noise and/or other issues for the basement level of the Adler Theatre Unit. To the extent that any use of a Condominium Area should cause a material negative impact on another Unit, the negatively impacted Unit may request the intervention of the Association to cause abatement or cessation of such activity by the other Unit. The Association may take such action as needed to

remedy the situation and may assess the costs against the owner of the offending Unit in the same manner as for the assessment of charges for common elements and may enforce the same in a like manner.

b. Lease of Condominium Area. No lease shall relieve the Condominium Area Owner as against the Association and other Condominium Area Owners from any responsibility or liability imposed by the Declaration. The lessee under every such lease shall be bound by and subject to all of a Condominium Area Owner's obligations under the Declaration and the lease shall expressly so provide. If a Condominium Area Owner is not occupying his or her Condominium Area, no occupant shall be allowed to occupy or use the Condominium Area, except pursuant to a written lease complying with this subparagraph.

c. Nuisance Prohibited. No noxious or offensive activity shall be carried on in any Condominium Area, nor shall anything be done or be permitted to remain in any Condominium Area which may be or become a nuisance or annoyance to occupants.

d. Obstructions. There shall be no obstruction of any Common Elements. Nothing shall be stored upon any Common Elements without the approval of the Board.

e. Signs. No signs shall be placed in windows of any Condominium Area. The Board shall have the right to set specifications for designating the names of Occupants on the interior doors (if permitted), the exterior sign and building directory. This provision is subject to the Adler Theatre Unit's right to keep and maintain its current exterior marquis and signage and to the right of the Commercial Space Unit to place reasonable business signage in its window as approved by the Board.

f. Use of Entrances. The entrances shall be used only for ingress and egress.

g. Trash and Garbage. No burning of any trash and no unreasonable or unsightly accumulation or storage of litter, new or used materials, or trash of any other kind shall be permitted within any Condominium Area or be permitted to remain in public view.

h. Exterior Installations. No Condominium Area Owner or other Person shall install any electrical or telephone wire, television antenna, or other antenna,

air conditioning unit or other machine or device on the exterior of the building without written permission from the Board.

i. General Common Elements. Nothing shall be altered in, constructed in, or removed from the General Common Elements, except upon written consent of the Board which may be given through regulations of the Association, and further provided that any holder of a first Mortgage which acquires possession of a Condominium Area by foreclosure or by deed in lieu of foreclosure shall have the right to post signs for the sale or rental of such Condominium Area until such Condominium Area is sold or a lease is executed.

j. Peaceful Possession. No activity shall be allowed which unduly interferes with the peaceful possession and use of the Property by the occupants.

k. Insurance Rates. Nothing shall be done or kept in any Condominium Area or in the Common Areas which will increase the rate of insurance on the Common Areas, without the prior written consent of the Board. No Condominium Area Owner shall permit anything to be done or kept in his or her Condominium Area or in the Common Areas which will result in the cancellation of insurance on any Condominium Area or any part of the Common Areas, or which would be in violation of any law.

l. Entry of Condominium Areas. Agents of or contractors hired by the Board may enter any Condominium Area when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the occupants as practicable.

m. Notice of Liens. A Condominium Area Owner shall give notice to the Association of every lien against his or her Condominium Area other than permitted Mortgages, taxes, and Association assessments, and of any suit or other proceeding which may affect the title to his or her Condominium Area, within ten days after the lien attaches or the Condominium Area Owner receives notice of such suit.

n. Condominium Area Owner Liability. A Condominium Area Owner shall be liable to the Association for the expense of any maintenance, repair, or replacement rendered necessary by his or her act, neglect, or carelessness, or by that of his or her family, guests, employees, agents, or lessees, which liability shall include any increase in insurance rates resulting therefrom.



o. Alteration and Repair. Work inside a Condominium Area is to be coordinated with the Association before proceeding. No work of any kind is to be done by Condominium Area Owners upon the exterior Building walls or upon interior boundary walls or doors without first obtaining the written approval of the Board unless otherwise set forth herein.

p. Decorations. No common exterior door shall be decorated or furnished by any Person in any manner without first obtaining written approval of the Board.

q. Condominium Area Cleanliness. Each Condominium Area Owner occupant shall keep his or her Condominium Area in a good state of presentation and cleanliness, and shall not sweep or throw or permit to be swept or thrown from, or from the doors, windows, of the Condominium Area, any dirt or other substance.

r. Vehicle Parking. No vehicle belonging to a Condominium Area Owner occupant or to a member of his or her family or guest, tenant or employee shall be parked in such a manner as to impede or prevent ready access to any entrance to or exit from a Building.

s. Service Requests. Requests regarding the services of the Building shall be made in writing to the Board or to the Managing Agent.

t. Rules and Regulations. The Association shall have the authority to amend and adopt reasonable rules and regulations governing the use of the Property and such rules shall be observed and obeyed by the Condominium Area Owners, their guests, employees and licensees.

u. Uses by Tenants and Purchasers. Each Condominium Area Owner shall upon request notify the secretary of the Association of all tenants of such Condominium Area. Any delegated rights of use and enjoyment are subject to suspension to the same extent as the right of Condominium Area Owners.

8.02. No Waiver. Failure of the Association or any Condominium Area Owner to enforce any covenant, condition, restriction, or other provision of the Act, this Declaration, the Articles or Bylaws, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same later.

## 9. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

9.01. Responsibility. The responsibility for reconstruction and repair after casualty shall be the same as for maintenance and repair of the Regime as provided in Article 7.

9.02. Caliber of Work. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvement unless a change is permitted by the unanimous consent of all Condominium Area Owners voting thereon at a meeting of the Association called for such purpose.

9.03. Payment of Costs. If a Condominium Area Owner does not within 15 days of the date of the damage or destruction to such Condominium Area advise the Association in writing of the Condominium Area Owner's determination to repair, reconstruct or rebuild the Association may, in the following manner determine to so repair, reconstruct or rebuild, as the case may be, and in such event:

- a. The resulting insurance proceeds shall be utilized by the Association and the Condominium Area Owner to defray the expenses thereof; and
- b. To the extent that such insurance proceeds applicable to the reconstruction and repair are inadequate to defray the expense for which the Condominium Area Owner is liable, the Association shall assess against the Condominium Area Owner, in proportion to that Condominium Area Owner's Percentage Interest sufficient amounts to provide funds for payment of such costs, the provisions of paragraph 7.06 being inapplicable in this situation.

In the event the Association proceeds with repair, reconstruction or rebuilding as contemplated, the determination of the Board as to what constitutes adequate repair, reconstruction or rebuilding shall be binding on the Condominium Area Owner and the Condominium Area Owner shall have no claim of any kind against the Association or any of its officers, Directors or representatives arising out of such repair, reconstruction or rebuilding or any claimed failure in that regard.

9.04. Initial Determination by Association. Substantial damage to or destruction of all or any part of the Regime that is to be or may be repaired, reconstructed or rebuilt by the Association shall be repaired, reconstructed or rebuilt, as the case may be, unless at least 75 percent of the total number of votes outstanding and entitled to be cast are voted against such repair, restoration, rebuilding or reconstruction. If at least 75 percent of such votes are cast against any such actions, the outcome of the vote taken shall automatically constitute a determination that the entire Regime be owned in common by the Condominium Area Owners and subject to partition and sale with each Condominium Area Owner being entitled to possession of his or her Condominium Area until such sale.

9.05. Reconsideration of Initial Determination. A vote and determination to repair, rebuild, restore, or reconstruct made pursuant to paragraph 9.04 (but not a presumed determination pursuant to paragraph 9.06) may be recalled and superseded as follows: After the bids for the necessary work have been taken and the amount of insurance proceeds or other funds available for the work are known and if the total amount of the resulting assessment as will be required to finance the work exceeds 10 percent of the pre-casualty value of the entire Regime at the time of the casualty, then the Board shall call a special meeting of the members of the Association to consider under such circumstances whether or not the property in question shall be restored, rebuilt, repaired or reconstructed; the work shall in such event be done unless at least 75 percent of the total number of votes outstanding and entitled to be cast are cast against the proposed action, and if the work is not thus authorized, the original determination shall stand rescinded and superseded and the entire Regime shall be deemed to be owned in common by the Condominium Area Owners with the same effect as in the case of a negative vote pursuant to paragraph 9.04.

9.06. Minor Damage or Destruction. All damage or destruction of a minor character shall be repaired, rebuilt, reconstructed or restored by the Board or a Condominium Area Owner, as applicable, without necessity of formal vote or determination. Minor damage or destruction shall include, but not be limited to, such as can be reasonably repaired, restored, rebuilt or reconstructed within 30 days after the applicable occurrence (exclusive of delays or interruptions resulting from lack of available contractors, labor, materials, or funds). In the event of doubt whether damage or destruction is minor, or in any case, either one-third of the Board, or Condominium Area Owners who are entitled collectively to cast at least 25 percent of the total number of votes outstanding and entitled to be cast, may call for a special meeting or referendum for a vote and determination of whether to repair, and the like, pursuant to paragraph 9.04, and the determination thus made shall control irrespective of whether the damage or destruction might have otherwise been treated as minor, provided in all cases, that if no formal vote and determination has been taken and made within 30 days of the date of the damage or destruction in question, it shall be conclusively presumed and in particular for purposes of Section 16 of the Act that the Association and Condominium Area Owners have in fact determined to rebuild, repair, restore or reconstruct, as the case may be.

9.07. Construction Fund. In the event of reconstruction or repair, the insurance proceeds shall constitute a construction fund for the costs of reconstruction and repair, and shall be paid to and held by the Association or the Insurance Trustee, whichever shall apply, for that purpose. Excess insurance funds, if any, shall be disbursed to the Condominium Area Owner (and his Mortgagee) suffering the damage, notwithstanding any provisions to the contrary contained in Article 10.

9.08. Limitation. The provisions of this Article are intended to govern in the event of damage or destruction resulting from an occurrence or casualty which although to be broadly construed may be distinguishable from maintenance in the sense of remedying ordinary wear and tear, and in any event, the provisions of this Article shall not govern in the event of reconstruction, rebuilding, or restoration necessitated on account of long-term obsolescence or condemnation of any Condominium Area within the Regime.

## 10. INSURANCE

### 10.01. Purchase, Named Insured.

a. Purchase. All insurance policies upon the Regime shall be purchased by the Association and shall be written with a company or companies licensed to do business in the State of Iowa and holding a rating of "A-XI" or better, by Best's Insurance Reports and a policy holder's rating of "A" or better.

b. Named Insured. The named insured shall be the Association, individually and as agent for the Condominium Area Owners without naming them, and shall include the Mortgagees of Condominium Areas which are listed in the roster of Mortgagees. Such policies shall provide that payments for losses thereunder by the insurer shall be paid to the Insurance Trustee hereinafter designated, or, if none, to the Association, and all policies and endorsements thereon shall be deposited with the Insurance Trustee.

c. Additional Insurance. Any Condominium Area Owner and Mortgagee may obtain additional insurance (including a "Condominium Owner's Endorsement" for improvements and betterments to the Condominium Area made or acquired at the expense of the Condominium Area Owner) at his or her own expense. Such insurance shall be written either by the same carrier as that purchased by the Association pursuant to this Article or if written by another carrier, shall provide that it shall be without contribution as against the same. Such insurance shall contain the same waiver of subrogation provisions as set forth in paragraph 10.02. The Developer recommends that each Condominium Area Owner in the Regime obtain, in addition to the insurance hereinabove provided to be obtained by the Association, a "Tenant's Policy," or equivalent, to insure against vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a "Condominium Area Owner's Endorsement" covering losses to improvements and betterments to the Condominium Area made or acquired at the expense of the Condominium Area Owner. Copies of such personal coverage policies shall be filed with the Association.

d. Copies to Mortgagees. One copy of each insurance policy and of all endorsements thereon shall be furnished by the Association to each Mortgagee included in the list of Mortgagees roster. Such copies shall be furnished not less than 10 days prior to the beginning of the term of the policy or not less than 10 days prior to the expiration of each preceding policy which is being renewed or replaced, whichever date shall first occur.

10.02. Coverage.

a. Casualty. All Buildings and improvements upon the land shall be insured in an amount equal to at least 100 percent insurance replacement value, excluding foundation and excavation costs, and all personal property included in the General Common Elements shall be insured for its value, all as determined annually by the Board, but subject to such deductible clauses as are required in order to obtain coverage at reasonable costs. Such coverage shall afford protection against:

- (i) loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and
- (ii) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the Buildings on the land, including, but not limited to, vandalism and malicious mischief, windstorm and water damage.

The policies shall state whether the following items are included within the coverage in order that Condominium Area Owners may insure themselves if the items are not insured by the Association: air handling equipment for space cooling and heating; service equipment, interior fixtures such as electrical and plumbing fixtures; floor coverings except the floor itself; inside paint and over inside wall finishes.

b. Public Liability. The Board shall obtain public liability insurance coverage as determined by it, including, but not limited to, water damage, off premises employee coverages, hired automobile and non-owned automobile coverages, and with cross-liability endorsement to cover liabilities of the Condominium Area Owners as a group to a Condominium Area Owner.

c. Worker's Compensation. The Board shall obtain sufficient worker's compensation insurance to meet the requirements of law.

d. Other Insurance. The Board shall acquire such over insurance as it deems from time to time to be desirable.

e. Provisions in Policies. If agreeable to the insurer, the policies procured by the Association shall include provisions that they shall be without contribution or proration and that the doctrine of "no other insurance" shall not apply with respect to insurance procured by Condominium Area Owners or their Mortgagees; that the conduct or default of any one or more Condominium Area Owners will not constitute grounds for avoiding liability under doctrines or warranties, conditions or forfeiture with respect to increase in hazard or vacancy clauses or over conditions or warranties purporting to relieve a carrier of its obligations; for payment of Common Expenses with respect to damaged Condominium Areas during the period of reconstruction patterned after "use and occupancy" riders; for sub-policies specifying the portion of a master policy earmarked for each Condominium Area Owner's interest; that improvements made to Condominium Areas by Condominium Area Owners shall not affect the valuation of the Property for purposes of co-insurance; and for waiver of rights of subrogation with respect to any claims against Condominium Area Owners, the Association and their respective invitees, agents or guests or for the naming of such parties as additional insured (independent contractors shall not be considered agents, employees or invitees of the Association or of the respective Condominium Area Owners within the meaning of said waiver). Reference to all or any of the foregoing provisions is for the purpose of providing flexibility and certainty and is not to be interpreted as constituting an admission that any of the doctrines or rights referred to are applicable or would exist in the absence of a specific provision or waiver referring to the same.

10.03. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase in the premium occasioned by alterations or improvements within a Condominium Area or by use for other than a commercial office, misuse, occupancy or abandonment of a Condominium Area or its appurtenances or of the General Common Elements by a Condominium Area Owner shall be assessed against that Owner. Not less than 10 days prior to the date when a premium is due, evidence of such payment shall be furnished by the Association to each Mortgagee listed with the Association.

10.04. Insurance Trustee: Shares of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Condominium Area Owners and their Mortgagees as their interests may appear. The Board may provide that all proceeds covering property losses shall be paid to such bank in Iowa with trust powers as may be designated as Insurance Trustee by the Board, which Trustee is herein referred to as the "Insurance Trustee." The Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds

as are paid and hold the same in trust for the purposes stated in this Declaration and for the benefit of the Condominium Area Owners and their Mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee:

a. Condominium Area Owners. An undivided share for each Condominium Area Owner, such share being the same as the Percentage Interest for his or her Condominium Area pursuant to Exhibit "D" as amended from time to time.

b. Mortgagees. In the event a Mortgagee endorsement has been issued as to a Condominium Area, the share of the Condominium Area Owner shall be held in trust for the Mortgagee and the Condominium Area Owner as their interests may appear; provided, however, that no Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a Mortgage debt any insurance proceeds except distributions thereof made to the Condominium Area Owner and Mortgagee pursuant to the provisions of this Declaration.

10.05. Distribution of Proceeds. Proceeds of insurance policies received by the Association or Insurance Trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

a. Expense of the Trust. All expenses of the Insurance Trustee, if any, shall be first paid or provisions made therefor.

b. Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the remaining proceeds shall be paid to defray the cost as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to Condominium Area Owners and their Mortgagees being payable jointly to them.

c. Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to Condominium Area Owners and their Mortgagees being payable jointly to them.

d. Certificate. The beneficial owners as used in this paragraph 10.05 are the Condominium Area Owners and their respective Mortgagees as their interest may appear. The amount of insurance proceeds paid to each beneficial owner shall be calculated using the following proportion: each such Condominium Area

Owner's Percentage Interest to the percentage interests of all other Condominium Area Owners entitled to the insurance proceeds. In making distribution to Condominium Area Owners and their Mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary as to the names of the Condominium Area Owners, Mortgagees and their respective shares of the distribution.

10.06. Proceeds Payable to Association. The Board may, rather than utilizing an Insurance Trustee as provided in paragraph 10.04, provide that all proceeds concerning property losses shall be paid to the Association. If such proceeds are payable to the Association, the same shall be held and disbursed in the same manner as provided with respect to an Insurance Trustee.

10.07. Association as Agent. The Association is irrevocably appointed agent for each Condominium Area Owner and for each Mortgagee or other lienholder upon a Condominium Area and for each Condominium Area Owner of any other interest in the Regime to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

10.08. Enforcement by Mortgagees. Certain provisions in this Article are for the benefit of Mortgagees, and all of such provisions are covenants for the benefit of any Mortgagee and may be enforced by such Mortgagee.

10.09. Insurer's Right to Restore; Conflict. All fire and other hazard insurance policies shall provide that, notwithstanding any provisions hereof which give the carrier the right to erect or restore damage in lieu of making a cash settlement, such option shall not be exercisable when in conflict with the provisions of the Declaration.

## 11. EXPENSES AND ASSESSMENTS

11.01. Share of Common Expense. Each Condominium Area Owner shall be liable for his or her Percentage Interest of the Common Expenses.

11.02. Payments by Association. During any period of time the taxes and special assessments for improvements levied by governmental bodies against the Regime or any part thereof are not assessed to the respective Condominium Areas, those taxes and assessments shall be paid by the Association and assessed against the respective Condominium Areas responsible for such tax or special assessment in accordance with their Percentage Interests.

11.03. Assessment Lien. Unpaid assessments shall constitute a lien against the Condominium Area and appurtenances. The lien for unpaid assessments shall also secure



reasonable attorneys' fees incurred by the Association incident to the collection of such assessment or enforcement of such lien.

11.04. Rental Pending Foreclosure. In any foreclosure of a lien for assessments against a Condominium Area, the Condominium Area Owner shall be required to pay a reasonable rental for the Condominium Area and the Association shall be entitled to the appointment of a Receiver to collect the same.

## 12. AMENDMENTS

12.01. Procedure. Except as otherwise provided in this Declaration, this Declaration may be amended and such amendment shall be made in the following manner:

- a. In the case of an amendment to this Declaration by reason of an amendment to the Bylaws, then in the manner specified in the Bylaws.
- b. In the case of an amendment to this Declaration to allow for the subdivision of Units, such Condominium Area Owner who wishes to subdivide shall be allowed to unilaterally on 15 days advance written notice to all other Unit Owners, without further approval, file an amendment for the subdivision of their own Unit or Units. Such amendment filed by the Condominium Area Owner shall provide in detail a description regarding the subdivision of their Unit into sub-units and the square footage of each sub-unit. Such amendment shall further provide for the subdivision of their Percentage Interest and voting interest as they may determine. The ability to unilaterally amend the Declaration shall only be applicable if the subdivision is not unreasonably detrimental to the other Condominium Area Owners. In the event that any Unit Owner within the 15 day notice period advises the subdividing Owner the subdivision is unreasonably detrimental, the Condominium Area Owner that wishes to subdivide shall comply with Subsection (c) of this Section 12.01.
- c. In the case of all other amendments to this Declaration:
  - (1) by the unanimous written agreement of all Condominium Area Owners and their Mortgagees or
  - (2) subject to the restrictions of paragraph 12.03 by the Condominium Area Owners acting through the Association and in accordance with the procedures of the Bylaws at a regular or special membership meeting to which notice of the proposed amendment has been given and upon the favorable vote of 75 percent of the total number of

votes outstanding and entitled to be cast. However, no amendment shall be adopted at variance with that proposed in the notice, but the notice may contain more than one proposed amendment. Approval of the Board is not required of an amendment thus adopted.

12.02. Effectiveness. Upon its recordation at the Scott County Recorder's Office an amendment adopted in the manner specified in this Article shall be effective against any Persons having an interest in a Condominium Area or the Regime regardless of whether the Persons had such interest at the time said amendment was adopted.

12.03. Ownership of Condominium Areas. No amendment shall change the number of appurtenances to a Condominium Area, nor the share of the General Common Elements appurtenant to it, nor change the Percentage Interest, nor increase a Condominium Area Owner's share of the Common Expense, unless the Condominium Area Owner concerned and all his or her Mortgagees shall affirmatively join in the adoption of such amendment.

12.04. INTENTIONALLY LEFT BLANK

12.05. Cooperation. Unit Owners shall cooperate with each other to accommodate reasonable requests of other Unit Owners to amend this Declaration to accommodate lending or financing.

### 13. GENERAL PROVISIONS

13.01. Effective Date of Percentage Interest. The Percentage Interest of Condominium Areas shall take effect when this Declaration is recorded and shall exist as provided herein for all purposes irrespective of any actual occupancy or use.

13.02. Possession of General Common Elements. Each Condominium Area Owner and the Association may use the General Common Elements for the purposes for which they are maintained, but without hindering or encroaching upon the lawful rights of over users.

13.03. Condemnation and Obsolescence. The contingencies of condemnation and long-term obsolescence have not been provided for in this Declaration and may be governed by appropriate amendments to this Declaration or the Bylaws as the case may be.

13.04. Partition. The General Common Elements shall remain undivided and not only no Condominium Area Owner, but no other Person may bring an action for the partition or division of the same or any part thereof with or without sale, except in

connection with removal of all of the property from the Regime pursuant to the Act, or a specific determination not to repair, reconstruct or rebuild with the consequences set forth in the Act.

13.05. Inspection: Waiver. Each purchaser of a Condominium Area shall have full opportunity and shall be under a duty to inspect and examine the Condominium Area to be purchased prior to closing of the transaction and agrees that the Condominium Area is purchased as it actually and physically exists. By recording a deed or purchase contract, each purchaser of a Condominium Area agrees that the square footage, size, and dimensions of each Condominium Area and each area constituting any part of the General Common Elements as set out in this Declaration are based upon relative percentages and square footages which have been assigned and agreed upon solely for this purpose and do not necessarily reflect or represent the precise percentage of square footage of any specific portion of the Regime. The Developer does not warrant, guarantee, or represent that any Condominium Area or any area constituting any part of the General Common Elements contains precisely the area, square footage, or dimensions shown by the site plan. Each purchaser of a Condominium Area expressly waives any claims or demand of any kind or nature against the Developer or any Person on account of dimensions actually and physically existing and the size, square footage, and dimensions shown in this Declaration. In interpreting deeds, Mortgages, deeds of trust, and other instruments for any purpose, the existing physical boundaries of any Condominium Area shall be conclusively presumed to be the boundaries regardless of settling, rising, or lateral movements of the Building and regardless of variances between boundaries shown on the plat in this Declaration and the actual boundaries of the Building.

13.06. Perpetuities. If any of the options, privileges, covenants, or rights created by this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, such provisions shall continue only until 21 years after the death of the survivor of the now living descendants of the Governor of Iowa, Thomas Vilsack.

13.07. Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Condominium Area Owner to comply with the terms of the Declaration, Bylaws or the rules and regulations adopted pursuant thereto, and as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the court.

13.08. No Waiver of Rights. The failure of the Association or any Condominium Area Owner to enforce any covenant, restriction or over provision of the Act, this Declaration, the Articles, the Bylaws or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

13.09. Severability. The invalidity of any covenant, restriction, agreement, undertaking or other provisions of this Declaration, the Articles, Bylaws or the rules and regulations shall not affect the validity of the remaining portions thereof.

13.10. Construction. The article and paragraph headings of this Declaration are merely for convenience and shall not be considered in any question of construction and interpretation of this Declaration.

13.11. Successors Grantees and Assigns. Reference to Developer, Condominium Area Owner, the Association, or any Person or entity shall include the respective successors, grantees and assigns thereof.

13.12. Plural and Gender. Whenever the context so permits or requires, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

13.13. Incorporation. Attached exhibits are made a part of this Declaration with the same force and effect as over provisions of this Declaration.

13.14. Chapter 499B and 504 Code of Iowa. Wherever herein reference is made to Chapter 499B or any section thereof, or Chapter 504, or any section thereof, of the Code of Iowa, it is intended that such reference shall include the provisions of such code sections as they now exist or are hereinafter amended, and if a question arises thereunder at some time in the future, the specific section of the Code in its form at that time shall be applied.

DATED at Davenport, Iowa, the 15<sup>m</sup> day of December, 2006.

**RCPA DEVELOPMENT CO., L.L.C.**

By [Signature]

**MISSISSIPPI RETAIL PARTNERS, L.P.**

By [Signature]

**MISSISSIPPI HOUSING PARTNERS, L.P.**

By [Signature]

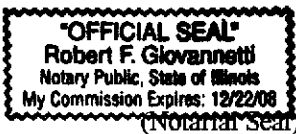
On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, to me known, who, being by me duly sworn, did say that he is the Manager of RCPA Development Co., L.L.C.; and that the instrument was signed on behalf of RCPA Development Co., L.L.C., and \_\_\_\_\_ acknowledged the execution of the instrument to be his voluntary act and deed and the voluntary act and deed of RCPA Development Co., L.L.C., by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for said County and State

(Notarial Seal)

On this 13 day of December, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Jay Trevor, to me known, who, being by me duly sworn, did say that he is the Manager of Mississippi Retail Partners, L.P.; and that the instrument was signed on behalf of Mississippi Retail Partners, L.P., and \_\_\_\_\_ acknowledged the execution of the instrument to be his voluntary act and deed and the voluntary act and deed of Mississippi Retail Partners, L.P., by it voluntarily executed.

[Signature]  
Notary Public in and for said County and State Cook, IL

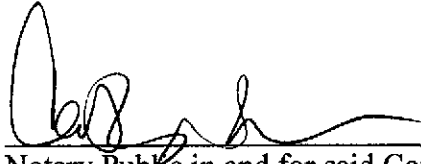


On this 13 day of December, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Jay Trevor, to me known, who, being by me duly sworn, did say that he is the Manager of Mississippi Housing Partners, L.P.; and that the instrument was signed on behalf of Mississippi Housing Partners, L.P., and \_\_\_\_\_ acknowledged the execution of the instrument to be his voluntary act and deed and the voluntary act and deed of Mississippi Housing Partners, L.P., by it voluntarily executed.

[Signature]  
Notary Public in and for said County and State Cook, IL



On this 14<sup>th</sup> day of December, 2006, before me, the undersigned a Notary Public in and for said State, personally appeared, Gregory P. Schermer, to me known and who, being by me duly sworn did say that he is the President of River Center for the Performing Arts, Inc., the sole member of River Center for the Performing Arts Manager, L.L.C, the manager of RCPA Development Co., L.L.C.; and that he acknowledged the execution of the instrument to be his voluntary act and deed and the voluntary act and deed of RCPA Development Co., L.L.C., by it voluntarily executed.



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Notary Public in and for said County and State



**EXHIBIT A**  
**UNIT DESCRIPTION**

- Common Areas

- Mississippi Hotel Unit

- Adler Theatre Unit

- Commercial Unit

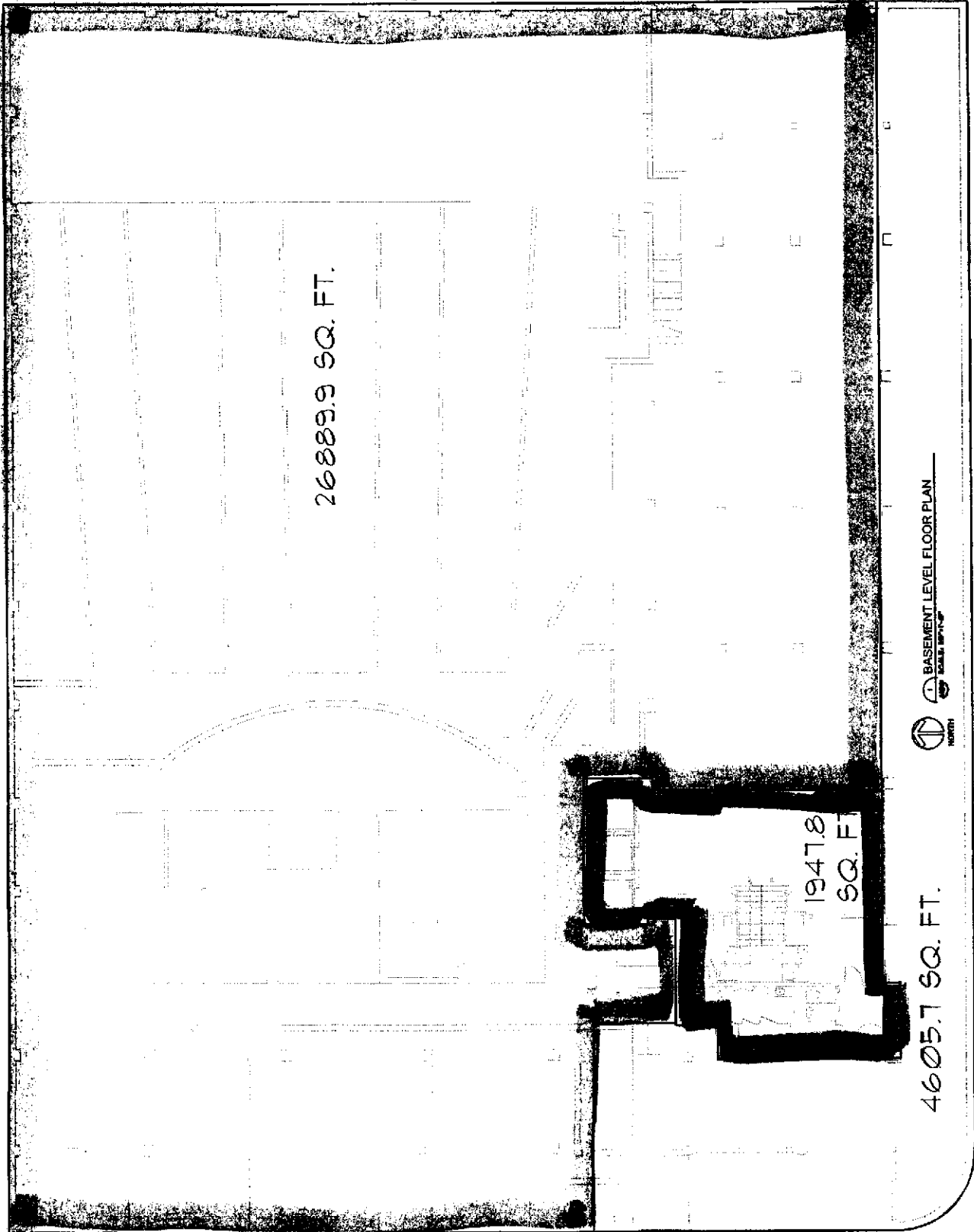
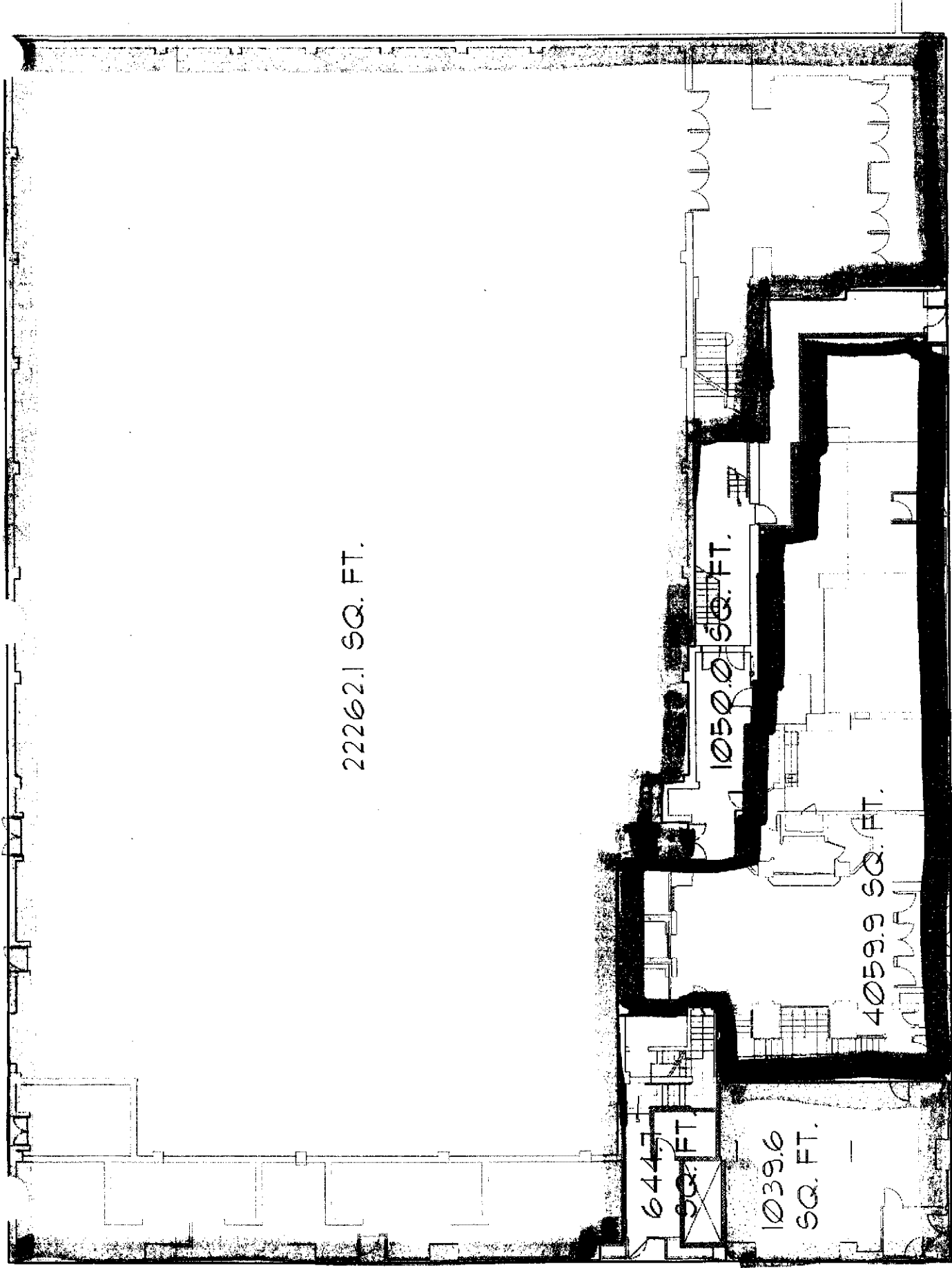


EXHIBIT A





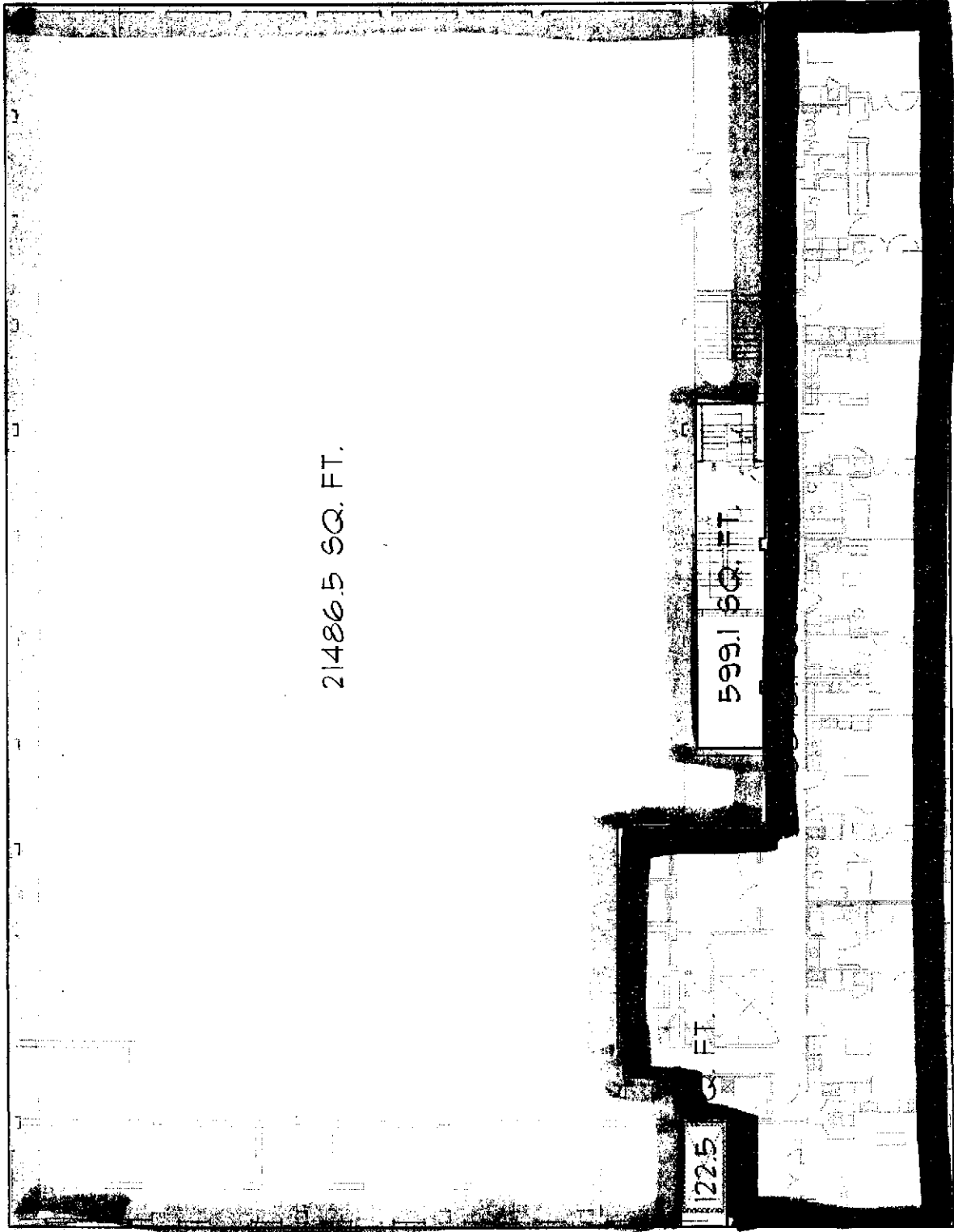
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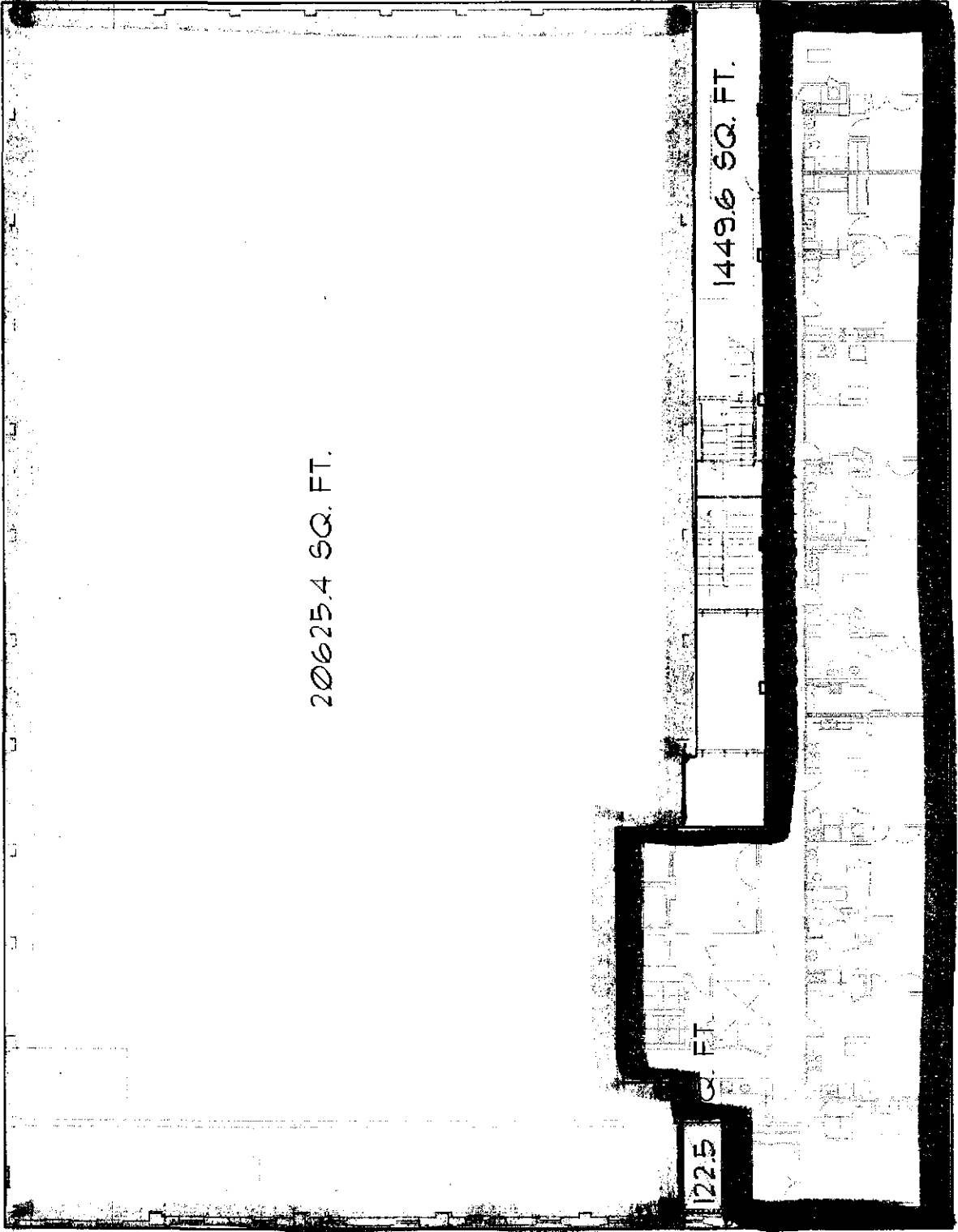
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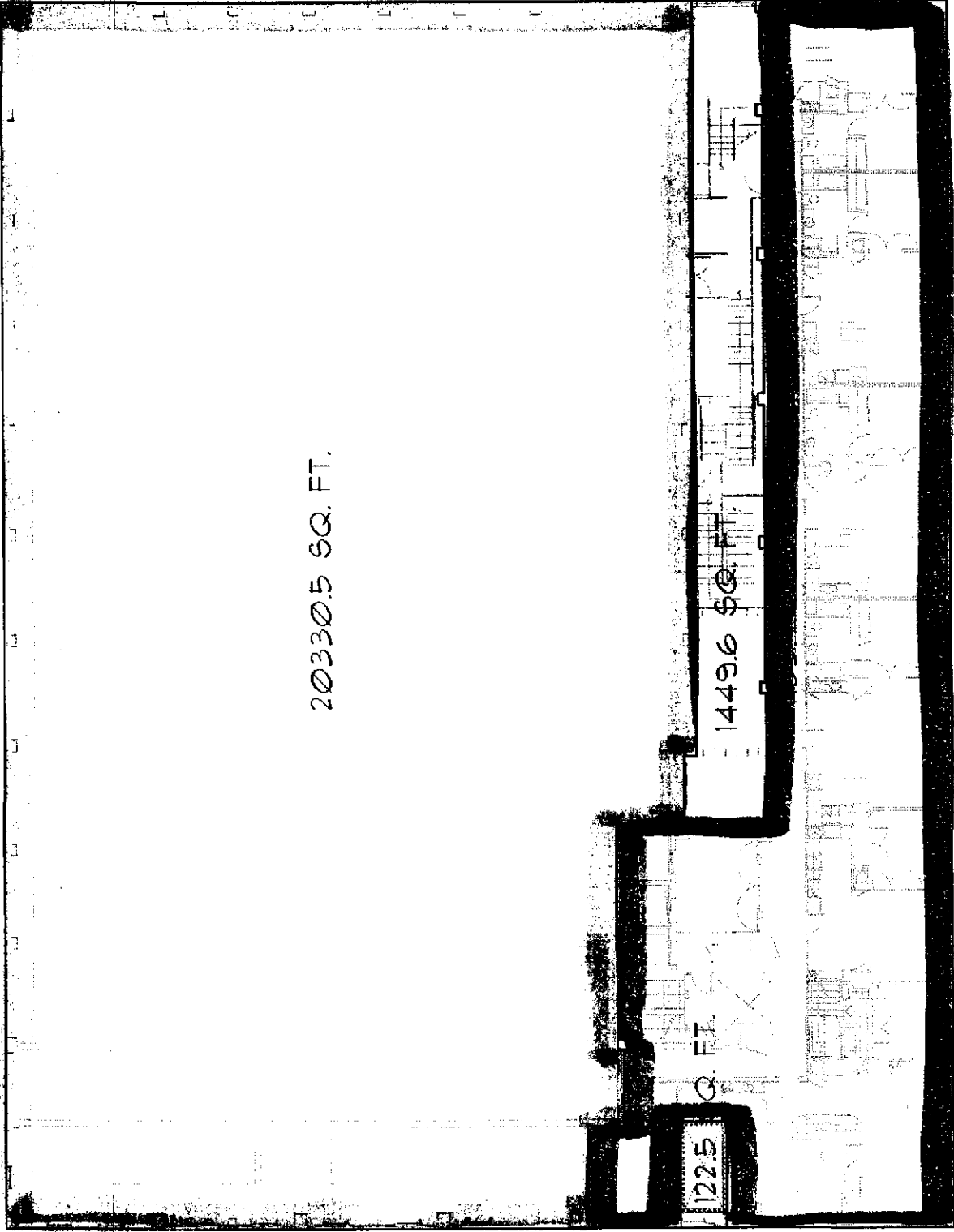
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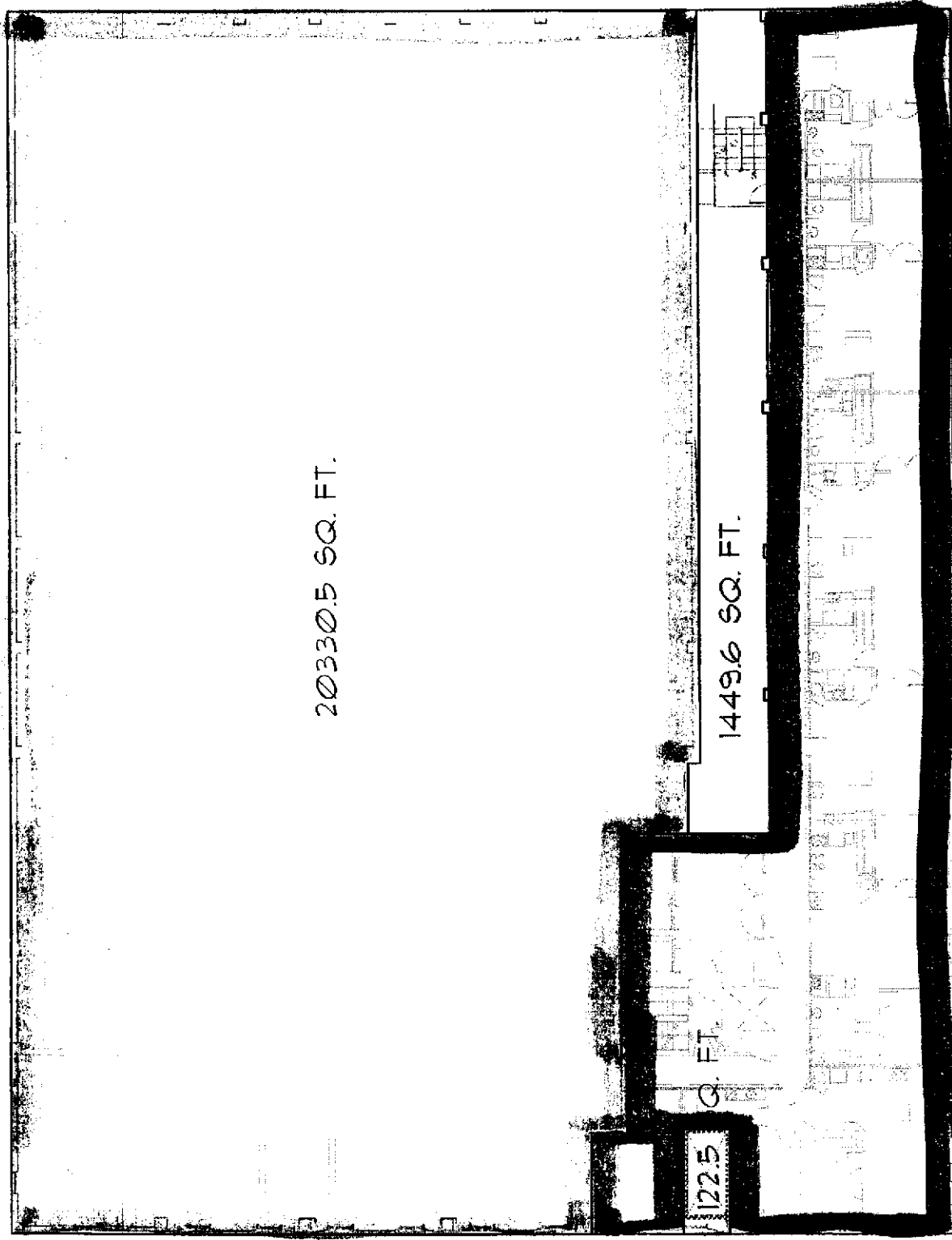
4059.9  
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 NORTH  
THIRD LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"





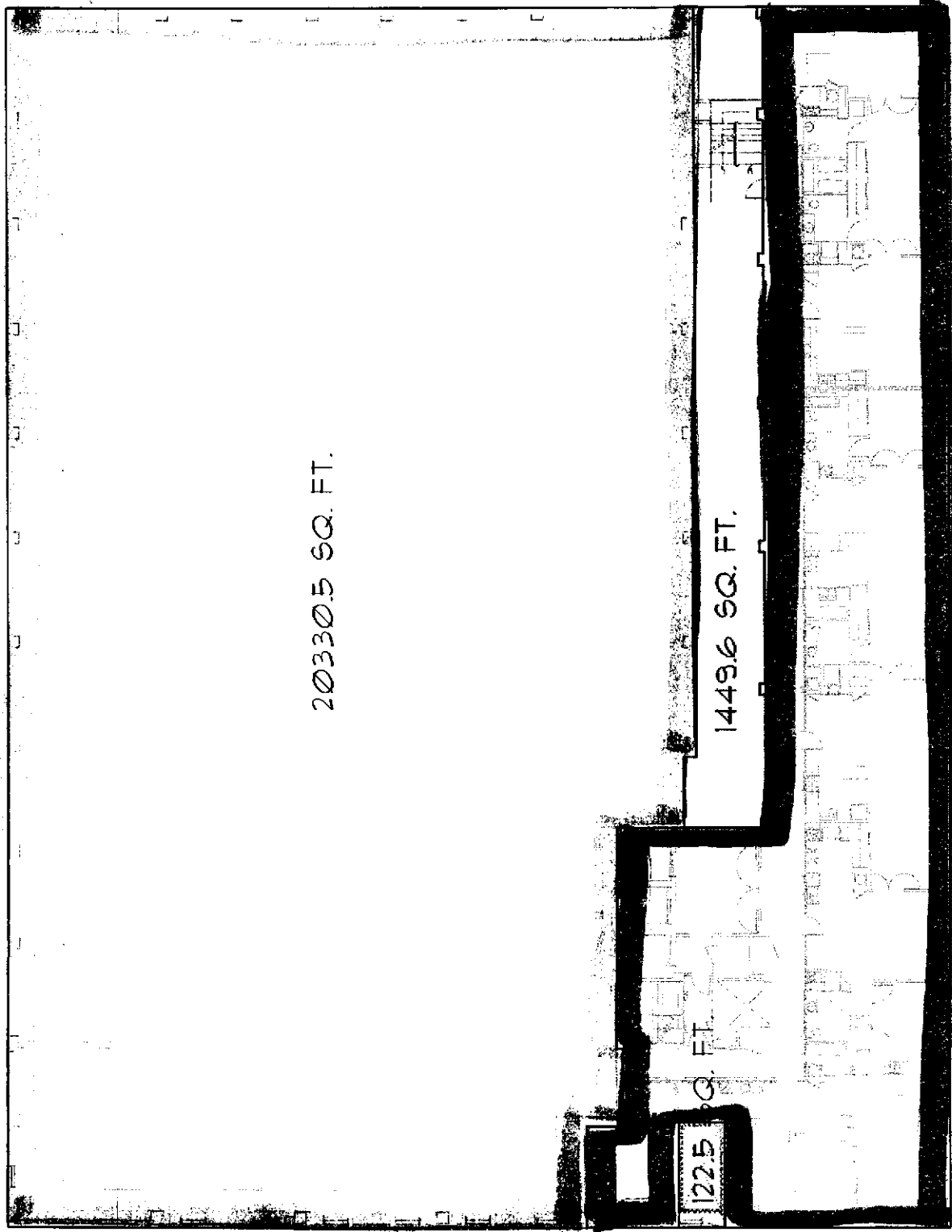
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1449.6 SQ. FT.

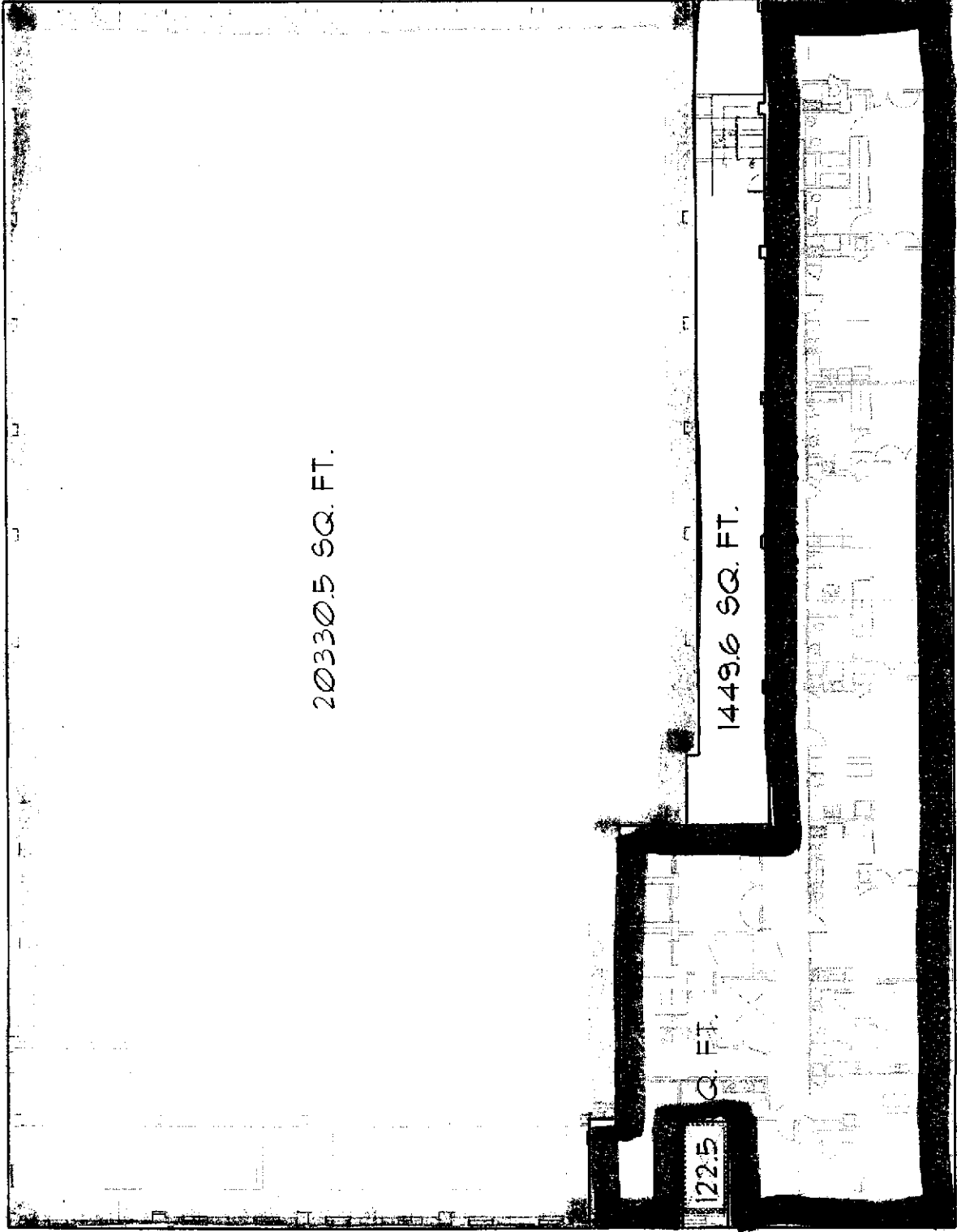
9. FT.

122.5

 NORTH  
FIFTH LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"



 NORTH  
SIXTH LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"

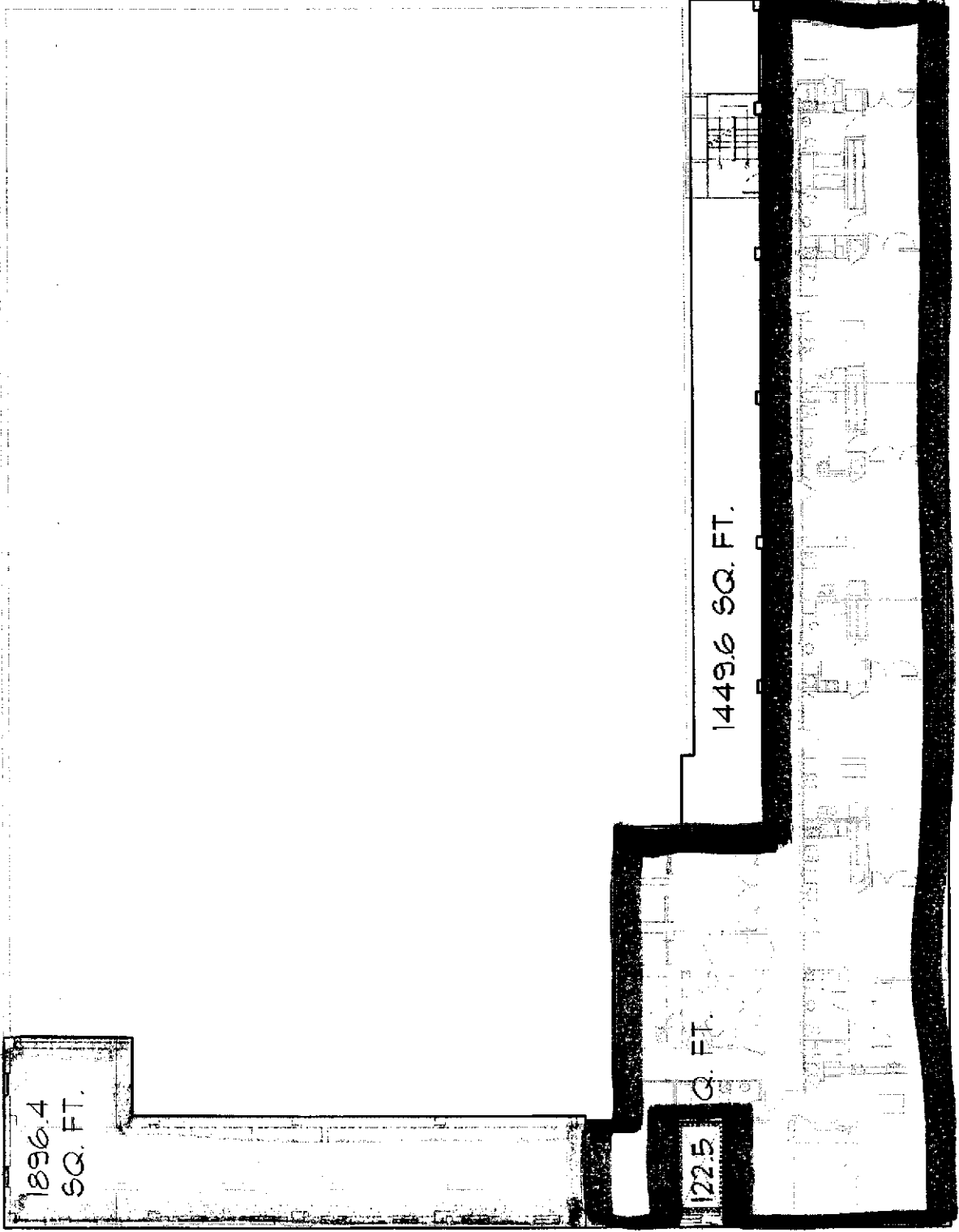


20330.5 SQ. FT.

1449.6 SQ. FT.

122.5

 NORTH  
SEVENTH LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"



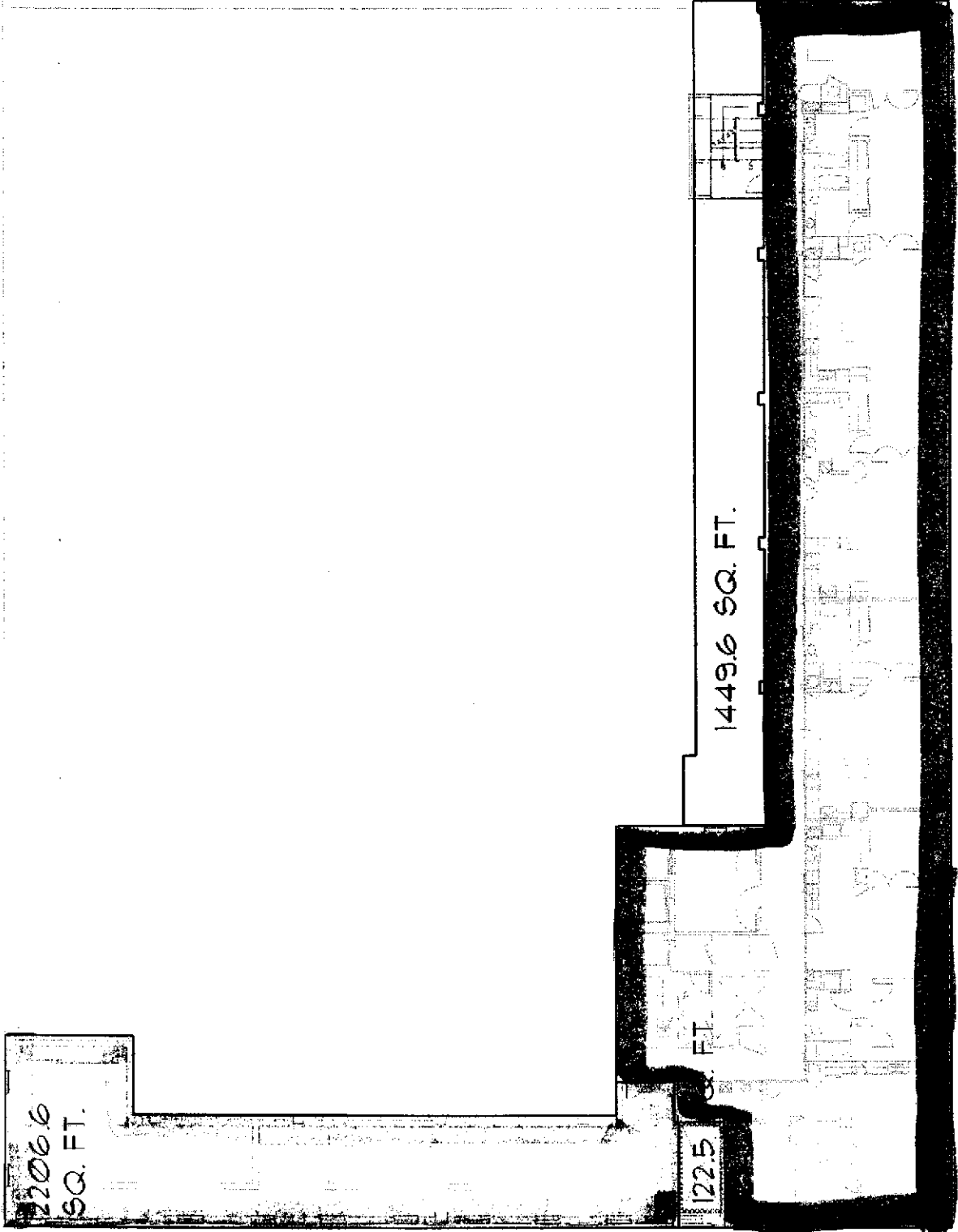
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SQ. FT.

122.5  
SQ. FT.

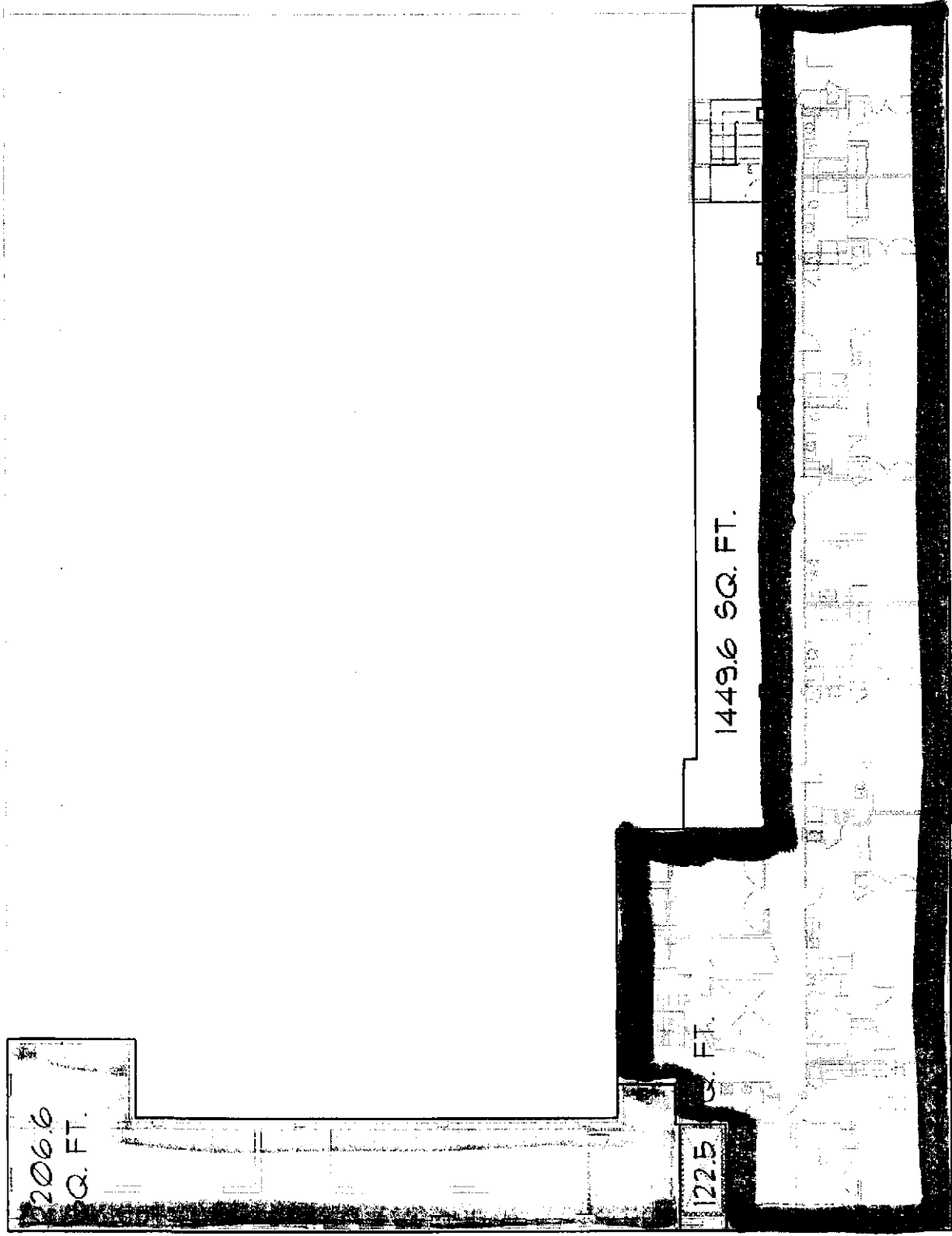
1449.6 SQ. FT.

⬆ NORTH  
EIGHTH LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"





 NORTH  
NINTH LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"



206.6  
SQ. FT.

122.5  
SQ. FT.

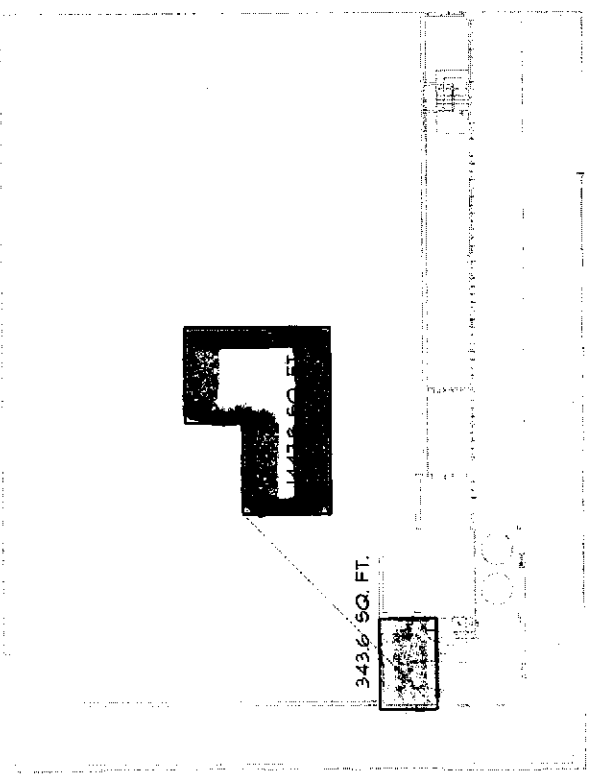
1449.6 SQ. FT.



TENTH LEVEL FLOOR PLAN  
SCALE 1/4" = 1'-0"



11 ELEVENTH LEVEL PENTHOUSE PLAN  
SCALE: 1/8" = 1'-0"



12 TWELFTH LEVEL PENTHOUSE / ROOF PLAN  
SCALE: 1/8" = 1'-0"



**EXHIBIT B**

**ARTICLES OF INCORPORATION OF  
MISSISSIPPI LOFTS CONDOMINIUM OWNERS  
ASSOCIATION, INC.**

**ARTICLES OF INCORPORATION  
OF  
MISSISSIPPI LOFTS  
OWNERS ASSOCIATION, INC.**

TO THE SECRETARY OF STATE OF THE STATE OF IOWA:

The undersigned, acting as incorporator of the Corporation under the Revised Iowa Nonprofit Corporation Act, Chapter 504 of the Code of Iowa, hereby adopts the following Articles of Incorporation for such Corporation:

**ARTICLE I**

**NAME.** The name of the corporation is MISSISSIPPI LOFTS OWNERS ASSOCIATION, INC.

**ARTICLE II**

The period of existence of the Corporation is perpetual.

**ARTICLE III**

**PURPOSE, POWERS AND RESTRICTIONS.** The purpose of the corporation is to provide an entity to acquire, manage, construct, maintain, and care for the corporation's property and to act as the council of co-owners for the horizontal property regime created and submitted pursuant to the provision of Chapter 499B, of the Code of Iowa, known as "Mississippi Lofts", a Condominium, sometimes referred to as the Regime. The corporation shall have all powers and purpose granted to or implied to a council of co-owners under the provisions of Chapter 499B of the Code of Iowa and amendments thereto, as granted in Chapter 504 of the Code of Iowa and amendments thereto, and as are granted or implied by the Declaration of Condominium for "Mississippi Lofts", and all of such powers shall likewise constitute lawful purpose of the corporation.

In managing the affairs of said Regime, the corporation may join with the management of any other corporation(s) managing one or more horizontal property regimes in securing or providing services or facilities common in whole or in part to both or all, and in discharging the expense thereof.

The purpose of the corporation is not for private profit or gain, and no substantial part of the activities of the corporation shall consist of carrying on political propaganda or

otherwise attempt to influence legislation and the corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaigns on behalf of or in opposition to any candidate for public office. The corporation is expressly prohibited from making any distributions of income, dividend or compensation to its members, directors or officers, although members, directors or officers may be reimbursed for expenses and for personal services actually rendered and authorized to be incurred while conducting the affairs of the corporation.

#### **ARTICLE IV**

**INITIAL REGISTERED OFFICE AND AGENT.** The name of the corporation's initial registered agent, and the address of the initial registered office are:

Catherine E. Hult  
Lane & Waterman LLP  
220 N. Main Street, Ste. 600  
Davenport, IA 52801-1987

#### **ARTICLE V**

**INITIAL BOARD OF DIRECTORS.** The number of directors constituting the initial Board of Directors of the corporation is one (1). The name and address of the person who is to serve as initial director is:

Gregory P. Schermer  
201 N. Harrison Street, Ste. 600  
Davenport, IA 52801

#### **ARTICLE VI**

**INCORPORATOR.** The name and address of the incorporator of this corporation is:

Catherine E. Hult  
Lane & Waterman LLP  
220 N. Main Street, Ste. 600  
Davenport, IA 52801-1987

## **ARTICLE VII**

**MEMBERS.** The Bylaws of the corporation shall state the Members and their interests in the corporation.

## **ARTICLE VIII**

**INDEMNIFICATION.** A director of this corporation shall not be personally liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director, except for liability to the extent provided by applicable law (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, (iii) for any transaction from which the director derived an improper personal benefit, or (iv) under the Iowa Business Corporation Act. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

The Corporation shall indemnify any present or former director, officer, employee, member or volunteer of this Corporation, and each such person who is serving or who has served as a director, officer or committee member, except that the mandatory indemnification required by this sentence shall not apply (i) to a breach of a duty of loyalty to the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or (iii) for a transaction from which such person derived an improper personal benefit.

The directors of this corporation have agreed to serve as directors in reliance upon the provisions of this Article.

## **ARTICLE IX**

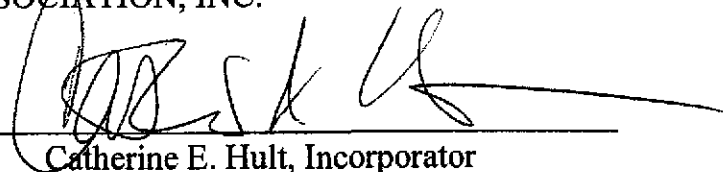
The initial Bylaws of the corporation shall be adopted by its initial Board of Directors and thereafter, the power to alter, amend or repeal the Bylaws or adopt new Bylaws is reserved to the members of the corporation.

## **ARTICLE X**

Upon dissolution, the assets of the corporation shall be distributed among the Unit Owners as defined in the By-Laws of the corporation, after paying or accounting for the debts and liabilities of the corporation.

MISSISSIPPI LOFTS OWNERS  
ASSOCIATION, INC.

By



Catherine E. Hult, Incorporator



**EXHIBIT C**

**BYLAWS OF MISSISSIPPI LOFTS CONDOMINIUM  
OWNERS ASSOCIATION, INC.**

**BYLAWS  
OF  
MISSISSIPPI LOFTS  
OWNERS ASSOCIATION, INC.**

ARTICLE I  
NAME, SEAL AND OFFICES

Section 1. Name: The name of the corporation is MISSISSIPPI LOFTS OWNERS ASSOCIATION, INC. (the "Association").

Section 2. Seal: The Association shall have no seal.

Section 3. Offices: The principal office of the Association shall be located in the City of Davenport, County of Scott, State of Iowa, or at such other place as the Board of Directors may from time to time designate.

ARTICLE II  
PLAN OF UNIT OWNERSHIP

Section 1. Unit Ownership: The Property described as:

Lots 1, 2 and 3 in Block 57, in LeClaire's Second Addition to  
the Town (now City) of Davenport, Scott County, Iowa.

which has been submitted to the provisions of the Horizontal Property Act of the State of Iowa by the Declaration of Mississippi Lofts, LLC, recorded in the office of the Recorder of Scott County, Iowa ("Declarant") simultaneously herewith, and shall hereafter be known as "Condominium".

Section 2. Applicability of Bylaws: The provisions of these Bylaws are applicable to the Property of the Condominium, and to the use and occupancy thereof.

Section 3. Personal Application: All present and future Unit Owners, mortgagees, lessees, and occupants of the Units and their employees, and any other person who may use the facilities of the Condominium in any manner are subject to these Bylaws, the Declaration, the Rules and Regulations established by the Board of Directors as hereinafter set forth and the Articles and Bylaws. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that these Bylaws, the Rules and Regulations and the provisions of the Declaration, as they may be amended from time to time are accepted, ratified and will be complied with.

Section 4. Definitions: The definitions of words and terms contained in the Declaration, Article 2, shall apply to those words and terms as used in the Bylaws. The term "Unit" as used in the Bylaws, shall have the same meaning as the term "Condominium Area" defined in the Declaration, Article 2.

### ARTICLE III BOARD OF DIRECTORS

Section 1. Number and Qualifications: The affairs of the Condominium will be operated by the Association, which in turn shall be governed by a Board of Directors consisting of one (1) person, and to be increased to two (2) at the first meeting of the Unit Owners, each of whom shall have one vote. Until the first meeting at which the Unit Owners may vote, the Board of Directors shall consist of one (1) person who shall be designated or removed at the will of the Declarant. From and after the first meeting at which the Unit Owners may vote, the Board of Directors shall be composed of two (2) persons being a representative of the Adler Theatre Unit and a representative of the Mississippi Hotel Unit and Commercial Unit. For electing the representative of the Mississippi Hotel Unit and Commercial Unit, the Mississippi Hotel Unit shall designate the representative.

Section 2. Powers and Duties: The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and shall do all such acts and things as are not by law or by the Bylaws directed to be exercised and done by the Unit Owners. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

(a) Operation, care, upkeep and maintenance of the General Common Elements.

(b) Determination of the Common Expenses required for the affairs of the Condominium.

(c) The collection of the Common Expenses and administrative penalties as provided in the Declaration from the Unit Owners.

(d) The employment and dismissal of the personnel necessary for the maintenance, repair, replacement and operation of the Common Areas.

(e) Opening of bank accounts in the name of the Association and designating the signatories required therefor.

(f) Purchasing or leasing or otherwise acquiring in the name of the Association or its designee, on behalf of all Unit Owners, Units offered for sale or lease, or surrendered by their Unit Owners to the Association.

(g) Purchasing of Units at foreclosure or other judicial sales or in the name of the Association, or its designee, on behalf of all Unit Owners.

(h) Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board of Directors) or otherwise dealing with Units acquired by, and sub-leasing Units leased by the Association or its designee, on behalf of all Unit Owners.

(i) Organizing corporations to act as designees of the Association in acquiring title to or leasing Units on behalf of all Unit Owners.

(j) Granting of licenses over the General Common Elements.

(k) Obtaining insurance on the Condominium, including Units.

(l) Making of repairs, additions and improvements to General Common Elements and other facilities for the benefit of Unit Owners.

(m) Leasing or otherwise acquiring the right to use, either exclusively or in common with others, Units and other facilities for the benefit of Unit Owners.

(n) Adopting and amending reasonable Rules and Regulations governing the conduct of all people on the Property and the operation and use of the Condominium. The Board of Directors shall have the power to levy fines against the Unit Owners for violation thereof, for which they are responsible, provided that no fine may be levied for more than \$100.00 for any one violation; but for each day a violation continues after notice, it shall be considered a separate violation. Collection of fines may be enforced against the Unit Owner or Owners responsible as if the fines were a Common Expense owed by the particular Unit Owner or Owners.

(o) The Board of Directors, on behalf of the Association, may enforce, by any legal means, the provisions of the Horizontal Property Act, the Declaration and the Bylaws.

**Section 3. Removal of Directors:** At any time after the first meeting of Unit Owners at which they may vote as hereafter provided in Article IV, Section 2, at any regular or special meeting of the Unit Owners, any member of the Board of Directors may be removed by the Unit or Units which elected that Director at any time either with

or without cause and a successor may then and there or thereafter be elected by that Unit or Units to fill the vacancy thus created.

Section 4. Vacancies: Vacancies on the Board of Directors caused by any reason other than the removal of a member thereof by a vote of the Unit Owners, shall be filled by appointment of a new director by the applicable unit promptly after the occurrence of any such vacancy with or without meeting and each person so elected shall be a member of the Board of Directors for the remainder of the term of the director so replaced, and until his or her successor shall be duly elected.

Section 5. Organization Meeting: The first regular meeting of the Board of Directors following a meeting of the Unit Owners at which Directors are elected, shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Unit Owners at such meeting. No notice shall be necessary to the members of the Board of Directors in order legally to constitute such a meeting, providing a quorum shall be present at such first regular meeting.

Section 6. Regular Meetings: Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one (1) such meeting shall be held during each fiscal year. Notice of the regular meeting of the Board of Directors shall be given by the secretary/treasurer to each Director personally or by mail or telephone facsimile at least three (3) days prior to the day named for the meeting.

Section 7. Special Meetings: Special meetings of the Board of Directors may be called by the president on three (3) days' notice to each director, given personally or by mail or telephone facsimile, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the president in like manner and on like notice on the written request of at least one (1) member of the Board of Directors.

Section 8. Waiver of Notice: Any member of the Board of Directors may at any time waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at any meeting of the Board shall constitute a waiver of notice by him or her of the time and place thereof. If all members of the Board are present at any meeting of the Board, no notice shall be required and any business may be transacted at such a meeting.

Section 9. Quorum of Board of Directors - Tie Votes/Arbitrator: Except as otherwise set forth below, at all meetings of the Board of Directors, a majority of directors shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board of Directors present at a meeting at which a

quorum is present shall constitute the decision of the Board of Directors except when a higher percentage is required by these Bylaws, the Declaration or by law. If at any meeting of the Board of Directors there shall be less than a quorum present, the meeting shall be adjourned. In the event of a tie vote by the Board of Directors, either Director may request the appointment of a certified arbitrator. Both directors shall agree on the appointment of the individual arbitrator. If they cannot agree on an individual arbitrator, they shall agree upon an association of arbitrators who shall select the individual arbitrator. The fees and expenses of the arbitrator shall be paid by the Association. The decision of the arbitrator shall be final.

Section 10. Compensation: No member of the Board of Directors shall receive any compensation from the Association for acting as a director.

Section 11. Liability of the Board of Directors: The members of the Board of Directors shall not be liable to the Association or to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless, to the extent permitted by law, each of the members of the Board of Directors against all liability arising out of their conduct on behalf of the Association, unless such conduct shall have been in bad faith. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association (except as Unit Owners). It is also intended that the liability of any Unit Owner arising out of any contract made by the Association or out of the aforesaid indemnity in favor of the Board of Directors shall be limited to such proportion of the total liability thereunder as his or her interest in the Common Areas bears to the interest of all Unit Owners in the Common Areas.

Section 12. Fiscal Year: The fiscal year of the Association shall be January 1 to December 31.

#### ARTICLE IV UNIT OWNERS AS MEMBERS

Section 1. Eligibility: Any person who acquires title to a Unit in the Regime shall be a member of the Association. There shall be one membership for each Unit owned within the Regime. Such membership shall be automatically transferred upon the conveyance of any such Condominium Unit. Until the first meeting at which Unit Owners may vote, the Association shall act without vote of the Unit Owners and the Declarant's representative shall be deemed to possess all the voting rights in the Association.

Section 2. Voting: At and after the first meeting at which Unit Owners may vote, voting on all matters presented to the Unit Owners shall be on the basis of one vote per

Unit, the value of which shall equal the Percentage Interest allocated to such Unit in the Declaration, as the same may be amended from time to time. At and after the first meeting at which Unit Owners may vote, a majority in value of the total votes cast at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except when a higher percentage is required by these Bylaws, the Declaration or by law.

Section 3. Votes in the Event of Multiple Ownership of a Unit: In the event a Unit is owned by more than one person, if such persons cannot agree upon the exercise of their right to vote pursuant to these Bylaws, each person shall have a fractional vote based upon that person's fractional share of ownership of the Unit. A co-owner of a Unit may permit the other co-owner of the Unit to vote the co-owner's interest by furnishing the other co-owner with a proxy. A vote for a whole Unit cast by a co-owner shall be held to be by valid proxy of the other co-owners, unless challenged at the time the vote is cast.

Section 4. First Meeting at Which Unit Owners May Vote: The first meeting at which members may vote shall be within thirty (30) days after the filing of the Declaration of Submission Of Property To Horizontal Property Regime.

Section 5. Annual Meetings: An Annual meeting shall be held during the first quarter of each fiscal year. Subject to Section 4 of this Article, at such meetings there shall be elected by ballot, a Board of Directors in accordance with the provisions of Article III, Section 1 of these Bylaws. There may also be transacted such business at such meeting as may properly come before it.

Section 6. Place of Meetings: Meetings of the Unit Owners shall be held at the principal office of the Association or such other suitable place convenient to the Unit Owners as may be designated by the president.

Section 7. Special Meetings: At and after the first meeting at which Unit Owners may vote, it shall be the duty of the president to call a special meeting of the Unit Owners when so directed by resolution of the Board of Directors or upon the petition signed by not less than twenty-five percent (25%) voting interest in the aggregate of Unit Owners. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 8. Notice of Meetings: It shall be the duty of the secretary/treasurer to mail a notice of each annual or special meeting of the Unit Owners, at least ten (10) days but not more than twenty (20) days prior to such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Unit Owner as recorded on the records of the Association, at the Unit address or at such other address as such Unit Owner shall have designated by notice in writing to the secretary/treasurer. The mailing

of a notice of meeting in the manner provided in this section shall be considered service of notice.

Section 9. Waiver of Notice: Any Unit Owner may at any time waive notice of any meetings of the Unit Owners in writing, and such waiver shall be deemed equivalent to the giving of such notice.

Section 10. Adjourned Meetings: If any meeting of Unit Owners cannot be held because a quorum has not attended, the Unit Owners present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 11. Order of Business: The order of business at all meetings of the Unit Owners shall be as follows, to the extent required:

- (a) Roll call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Report of Board of Directors.
- (f) Report of Committees.
- (g) Election of members of the Board of Directors.
- (h) Unfinished Business.
- (i) New Business.
- (j) Adjournment.

Section 12. Parliamentary Procedure: At all meetings of the Unit Owners or of the Board of Directors, Roberts' Rules of Order as to such date amended, shall be followed, except in the event of conflict, these Bylaws or Declaration, as the case may be, shall prevail.

Section 13. Quorum: As otherwise provided in these Bylaws, the presence, in person or by proxy, of persons having a majority of the total authorized votes shall constitute a quorum at any meeting.

Section 14. Proxies: Votes may be cast in person or by proxy. Proxies must be filed with the secretary/treasurer at or before the time of each meeting. A Unit Owner may designate any person, who need not be an owner, to act as proxy. The designation of any such proxy shall be made revocable at any time by written notice to the secretary/treasurer by the Unit Owner designating the proxy.



ARTICLE V  
OFFICERS

Section 1. Designation: The principal officers of the Association shall be the president and the secretary/treasurer, both of whom shall be elected by the Board of Directors. Any officer or employee of a corporate, partnership or fiduciary Unit Owner or of the Declarant when it is a Unit Owner, shall be eligible for such election, as well as any duly appointed representative of a Unit Owner. The president shall be elected from among the members of the Board of Directors. The Board of Directors may appoint such other officers as in its judgment may be necessary, who need not be Unit Owners.

Section 2. Election of Officers: The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board of Directors and shall hold office at the pleasure of the Board.

Section 3. Removal of Officers: Upon the affirmative vote of a majority of members of the Board of Directors, any officer may be removed, either with or without cause and his or her successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purposes.

Section 4. President: The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Unit Owners and of the Board of Directors. He or she shall have all the general powers and duties which are usually vested in the office of president of a corporation, organized under the laws of the State of Iowa, including but not limited to the power to appoint committees from time to time as he or she may, in his or her discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. Secretary/Treasurer: The secretary/treasurer shall keep the minutes of all meetings of the Unit Owners and of the Board of Directors; he or she shall have charge of such books and papers as the Board of Directors and these Bylaws may direct; he or she shall give all notices required by the Bylaws unless otherwise provided. Further, the secretary/treasurer shall have responsibility for Association funds and securities and shall keep the financial records and books of account in books belonging to the Association. He or she shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association, in such depositories as may from time to time be designated by the Board of Directors; and he or she shall, in general, perform all the duties incident to the office of secretary/treasurer of a corporation organized under the laws of the State of Iowa.

Section 6. Signatories to Documents: All agreements, contracts, deeds, leases, checks and other documents of the Association shall be executed by any officer of the Association or by such other person or persons as may be designated by the Board of

Directors. Vouchers for the payment of Association funds shall be approved by the secretary/treasurer before payment.

Section 7. Compensation of Officers: No officer shall receive any compensation from the Association for acting as such.

ARTICLE VI  
OPERATION OF THE CONDOMINIUM

Section 1. Determination of Common Expenses: The Board of Directors shall, from time to time, and at least annually, prepare a budget for the Association, determine the amount of the Common Expense payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such Common Expenses among the Unit Owners according to their percentage of undivided ownership, as set forth on Exhibit E of the Declaration. The Board of Directors shall advise all Unit Owners promptly, in writing, of the amount of Common Expenses payable by each of them, respectively, as determined by the Board of Directors, as aforesaid, and shall furnish copies of each budget on which such Common Expenses are based to all Unit Owners and to their mortgagees upon request. The Common Expenses shall include, among other things:

(a) the cost of repairs and maintenance of the General Common Elements, including but not limited to the costs of the following: utilities, yardcare, snow removal, parking lot maintenance, storm drainage maintenance, surface repair and replacement, regime management, irrigation, common area lighting, common signage, refuse enclosures and pickup;

(b) the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Directors pursuant to the Declaration;

(c) such amounts as the Board of Directors may deem proper for the operation of the Regime, including, without limitation, an amount for its working capital, a general operating reserve, a reserve fund for replacements, and sums necessary to make up any deficit in the Common Expenses for any prior year; and

(d) such other expenses as set forth in Declaration.

Section 2. Payment of Common Expenses: All Unit Owners shall be obligated to pay the Common Expenses assessed by the Board of Directors quarterly or at such other time or times as the Board of Directors shall determine.

Section 3. No Waiver of Liability for Common Expenses: No Unit Owner may exempt himself or herself from liability for his or her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the General Common Elements or by abandonment of his or her Unit.

Section 4. Non-Liability After Conveyance: No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his or her Unit subsequent to a sale, transfer or other conveyance made pursuant to the provisions of these Bylaws.

Section 5. Successor's Liability for Common Expenses: Subject to Section 6.09 of the Declaration, a grantee who acquires a Unit shall be liable for, and the Unit conveyed shall be subject to a lien for, any unpaid assessments against the Unit, but not in excess of the amount set forth in a statement provided under Section 6 herein.

Section 6. Statement of Common Expenses: The Association shall promptly provide any Unit Owner or grantee or prospective grantee so requesting in writing, a written statement of all unpaid Common Expenses or other assessments due from such Unit Owner.

Section 7. Collection of Assessments: The Board of Directors shall assess Common Expenses against the Unit Owners from time to time at least annually, and shall take prompt action to collect any Common Expenses due from any Unit Owner which remain unpaid for more than thirty (30) days, being in default, from the due date for payment thereof. Payment of Common Expenses may be in the form of credit for duly authorized services performed by Unit Owners, evidenced by executed vouchers therefor. Authorization for services and execution of vouchers shall be by the Board of Directors.

Section 8. Default in Payment of Common Expenses: In the event of default by any Unit Owner in paying to the Association Common Expenses or any other assessment as determined by the Board of Directors, such Unit Owners shall be obligated to pay interest at the rate of ten percent (10%) per annum on such Common Expenses from the due date thereof, together with all expenses, including attorneys' fees incurred by the Association in any proceeding brought to collect such paid expenses. The Association shall attempt to recover such Common Expenses, together with interest thereon, and the expenses of the proceeding including such attorneys' fees, in any action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit under powers granted by the Horizontal Property Act.

Section 9. Foreclosure of Liens for Unpaid Common Expenses: In any action brought by the Association to foreclose a lien on a Unit because of any unpaid Common Expenses or other assessment, the Unit Owner shall be required to pay reasonable rental for the use of his or her Unit and the plaintiff in such foreclosure action shall be entitled

to the appointment of a receiver to collect the same. The Association acting on behalf of all Unit Owners, shall have power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant thereto (other than for the election of members of the Board of Directors) convey or otherwise deal with the same. A suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the liens securing the same.

Section 10. Violations by Unit Owners: The violation of any Rule or Regulation adopted by the Association, or the breach of any Bylaws, or the breach of any provisions of the Declaration, shall give the Board of Directors the right, in addition to any other rights set forth in these Bylaws:

(a) To enter the Unit upon reasonable knowledge of imminent danger or other emergency in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass.

(b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

(c) Upon failure to abate upon prior written notice, to levy charges against any Unit Owner in the amount equal to damages sustained by virtue of such Unit Owner's violation of the intent and meaning of the provisions of the Bylaws or of the Rules and Regulations promulgated hereunder, or that of guests or tenants under his or her control upon finding thereof by the Board.

(d) If the Association has adopted and published Rules and Regulations governing the use of the Common Areas and facilities, and the personal conduct of any person thereon is conduct not reasonable to expect in a professional office space and violates those Rules and Regulations, the Board may, in its discretion, suspend such use of any such person for violation of such Rules and Regulations for a period not to exceed thirty (30) days.

Section 11. Maintenance, Repair and Replacement of Common Areas: The Association shall maintain, repair and replace all of the General Common Elements and those elements within the Units as required by the Declaration and in the event that such maintenance, repair or replacement was caused by the negligence or misuse of a Unit Owner, such expense shall be charged to such Unit Owner. Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of said Owner's Unit, except the portions thereof to be maintained, repaired and replaced by the Association. Each Unit Owner shall be responsible for consequential damages to any other Unit or to

the General Common Elements caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements to his or her Unit.

**Section 12. Additions, Alterations or Improvements by Board of Directors:** Whenever, in the judgment of the Board of Directors, the Common Areas shall require additions, alterations or capital improvements costing more than Three Thousand (\$3,000.00) Dollars in the aggregate in any one year, which are not to be at the expense of an individual Unit Owner for his or her own benefit, and the making of such additions, alterations or improvements shall have been approved by 67 percent of votes outstanding at an annual or special meeting of the Unit Owners, the cost thereof shall be deemed a Common Expense. Any additions, alterations or improvements costing Three Thousand (\$3,000.00) Dollars or less may be made by the Board of Directors without further approval of the Unit Owners, and the costs thereof will constitute part of the Common Expense. The \$3,000 limit may be increased to adjust for inflationary factors, provided 67 percent of the total number of votes outstanding and entitled to be cast are voted in favor thereof.

**Section 13. Additions, Alterations or Improvements by Unit Owners:** No Unit Owner shall make any structural addition, alteration or improvement (which shall include but is not limited to plumbing, electrical or duct work) in or to any of the Buildings, nor shall a Unit Owner paint or otherwise decorate or change the appearance of any portion of the exterior of the Buildings, without prior written consent of the Board of Directors. The Board of Directors shall answer any written request for such approval within thirty (30) days after the receipt thereof, and failure to do so within such time shall constitute a consent by such Board of Directors to the proposed addition, alterations or improvement. Any application to any department or to any governmental authority for a permit to make any addition, alteration or improvement described in the first sentence of this section shall be executed by the Association only, without, however, incurring any liability on the part of the Association or any of them to any contractor, sub-contractor, or material supplier on account of such additions, alteration or improvement or to any person having any claim for injury to person or damage to property arising therefrom. Further, the Unit Owner making such structural addition, alteration or improvement in or to the Building shall indemnify, defend and hold harmless such other Unit Owner from any claim by any contractor, sub-contractor, or material supplier on account of such additions, alteration or improvement or to any person having any claim for injury to person or damage to property arising therefrom.

**Section 14. Water Charges:** Water shall be supplied by the public utility company serving the area directly to each Unit through a separate meter, and each Unit Owner shall be required to pay the bill for water consumed or used in his or her Unit. The water serving the remaining General Common Elements shall be separately metered, and the Association shall pay all bills for water consumed in such portions of the General Common Elements as a Common Expense.

Section 15. Electricity: Electricity shall be supplied by the public utility company serving the area directly to each Unit through a separate meter, and each Unit Owner shall be required to pay the bill for electricity consumed or used in the Unit of such Owner. The electricity serving the remaining General Common Elements shall be separately metered, and the Association shall pay all bills for electricity consumed in such portions of the General Common Elements as a Common Expense.

Section 16. Gas: Gas shall be supplied by the public utility company serving the area directly to each Unit through a separate meter, and each Unit Owner shall be required to pay the bill for gas consumed or used in his or her Unit.

Section 17. Right of Access: Each Unit Owner shall grant a right of access to any person authorized by the Association for the purpose of making inspections or for the purpose of correcting any condition originating in his or her Unit and threatening another Unit, General Common Element or Property, or repairs to the mechanical or electrical services or General Common Elements, access to which is reached through his or her Unit, provided that requests for entry are made in advance and that any such entry be at a time reasonably convenient to the Unit Owner. In case of an emergency or other imminent danger of damage occurring, such right of entry shall be immediate, whether the Unit Owner is present at the time or not.

## ARTICLE VII USE OF PROPERTY

Section 1. Restrictions on the Use of Units: In order to provide for congenial occupancy of the Property and for the protection of the values of the Unit, the use of the Property shall be restricted to and shall be in accordance with the provisions set forth in the Declaration.

Section 2. Rules and Regulations: Rules and Regulations concerning the use of the Units and the General Common Elements may be made and amended from time to time by the Association. Copies of such Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner prior to the time the same become effective.

Section 3. Abatement and Enjoyment of Violations by Unit Owners: The violation of any Rule or Regulation adopted by the Association, or the breach of any Bylaws, or the breach of any provisions of the Declaration, shall give the Board of Directors the right, in addition to any other rights set forth by these Bylaws, to take those actions set forth in Article VI, Section 10.

ARTICLE VIII  
INSURANCE

The Association shall obtain insurance as provided for in the Declaration.

ARTICLE IX  
RECORDS

Section 1. Records and Audits: The Association shall keep detailed records of the actions of the Board of Directors, minutes of the meetings of the Board of Directors, minutes of the meetings of the Unit Owners, names of the Unit Owners and financial records and books of account for the Association and Regime, including chronological listing of receipts and expenditures, as well as a separate account for each Unit, which, among other things, shall contain the amount of each assessment of Common Expenses against such Unit, the date when due, the amount paid thereon, and the balance remaining unpaid. Unless the Unit Owner notifies the Association of change in ownership, the Association may rely on the names of Unit Owners appearing on the county tax assessor's list as of the last municipal assessment date.

Section 2. Annual Report: An Annual Report of the receipts and expenditures of the Association shall be rendered by the Board of Directors to all Unit Owners promptly after the end of each fiscal year.

Section 3. Examination of Records: Each Unit Owner shall be permitted to examine the books of account of the Association at reasonable times on business days, but not more than once a month.

ARTICLE X  
MISCELLANEOUS

Section 1. Notices: All notices hereunder shall be sent by mail to the Association at its office in Davenport, Iowa and to Unit Owners at their Unit, or to such other address as may have been designated by such Unit Owner from time to time in writing to the Association. All notices from or to the Association shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

Section 2. Captions: The captions herein are inserted as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws or the intent of any provision thereof.

Section 3. Gender: The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, and the use of singular shall be deemed to include the plural, when the context so requires.

ARTICLE XI  
INVALIDITY, CONFLICT AND WAIVER

Section 1. Invalidity: The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws.

Section 2. Conflict: These Bylaws are set forth to comply with the requirements of the Horizontal Property Act and the Iowa Business Corporation Act. In the event of any conflict between these Bylaws and the provisions of such acts or the Declaration, the provisions of such acts and the Declaration, as the case may be, shall control.

Section 3. Waiver: No restriction, condition, obligation, or covenant contained in these Bylaws shall be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the violations or breaches thereof which may occur.

ARTICLE XII  
AMENDMENTS TO BYLAWS

Section 1. Method of Amendment: These Bylaws may be altered, amended or added to at any duly called meeting of the Unit Owners, provided:

- (a) that the notice of the meeting shall contain a substantial statement of the proposed amendment;
- (b) that the amendment shall be approved by the Unit Owners;
- (c) that the amendment not be unreasonable, arbitrary or capricious in its impact upon any Unit Owner; and
- (d) that said amendment shall be fully set forth in a duly recorded amendment to the Declaration.

Section 2. Effect of Amendments Upon Encumbrances: No amendment or modification of the Bylaws will affect or impair the validity or priority of any mortgage encumbering a Unit or Units, nor the validity or priority of any other proper lien.

Dated: January 13, 2006



**EXHIBIT D**

**PERCENTAGE INTEREST IN COMMON ELEMENTS**

Adler Theatre Unit	50%
Mississippi Hotel Unit	46%
Commercial Unit	4%

**EXHIBIT E**

**EMERGENCY EASEMENT DESCRIPTION AND  
GRID IRON EASEMENT DESCRIPTION**

ADLER  
THEATRE  
FIRE/EMERGENCY  
EXITING

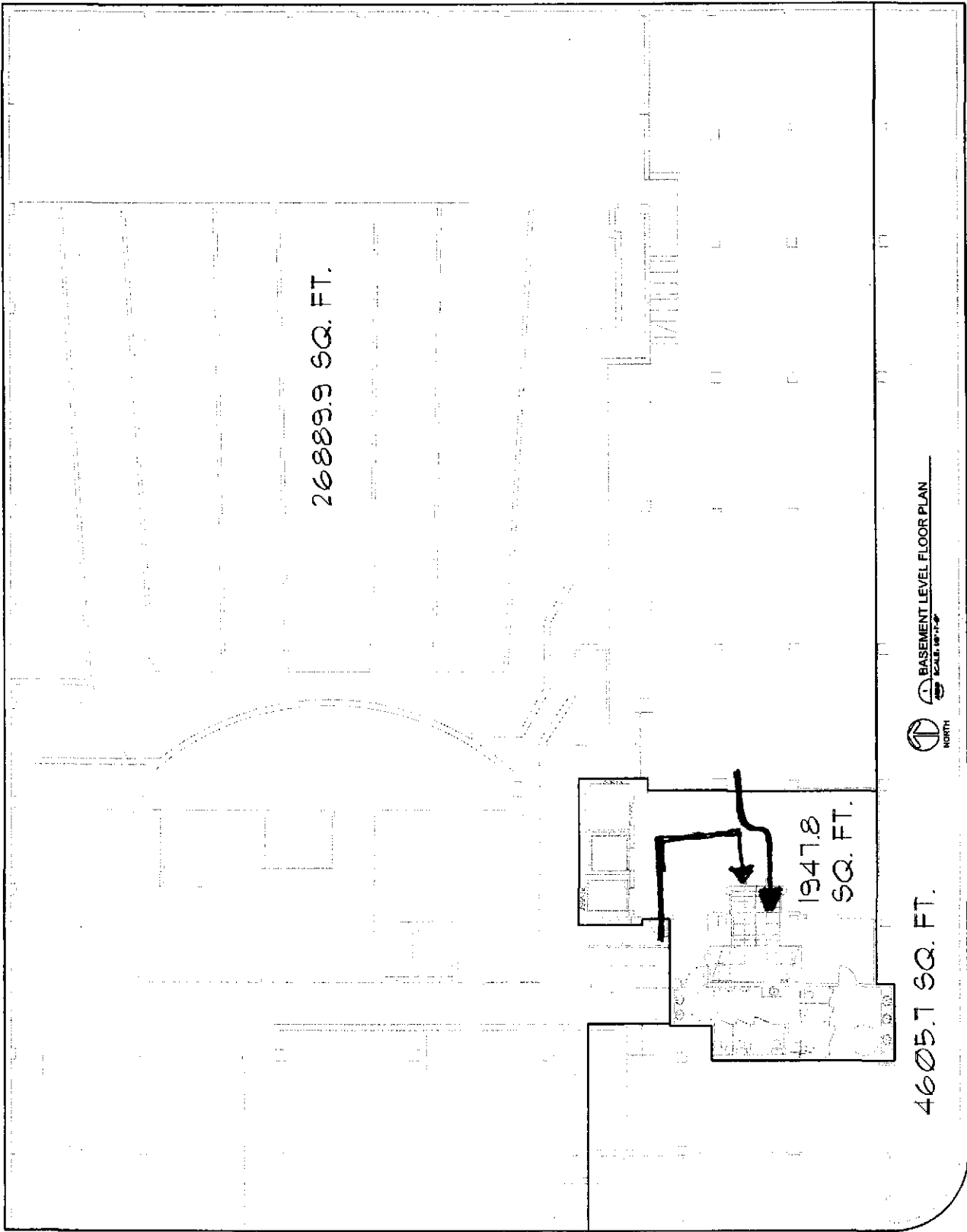
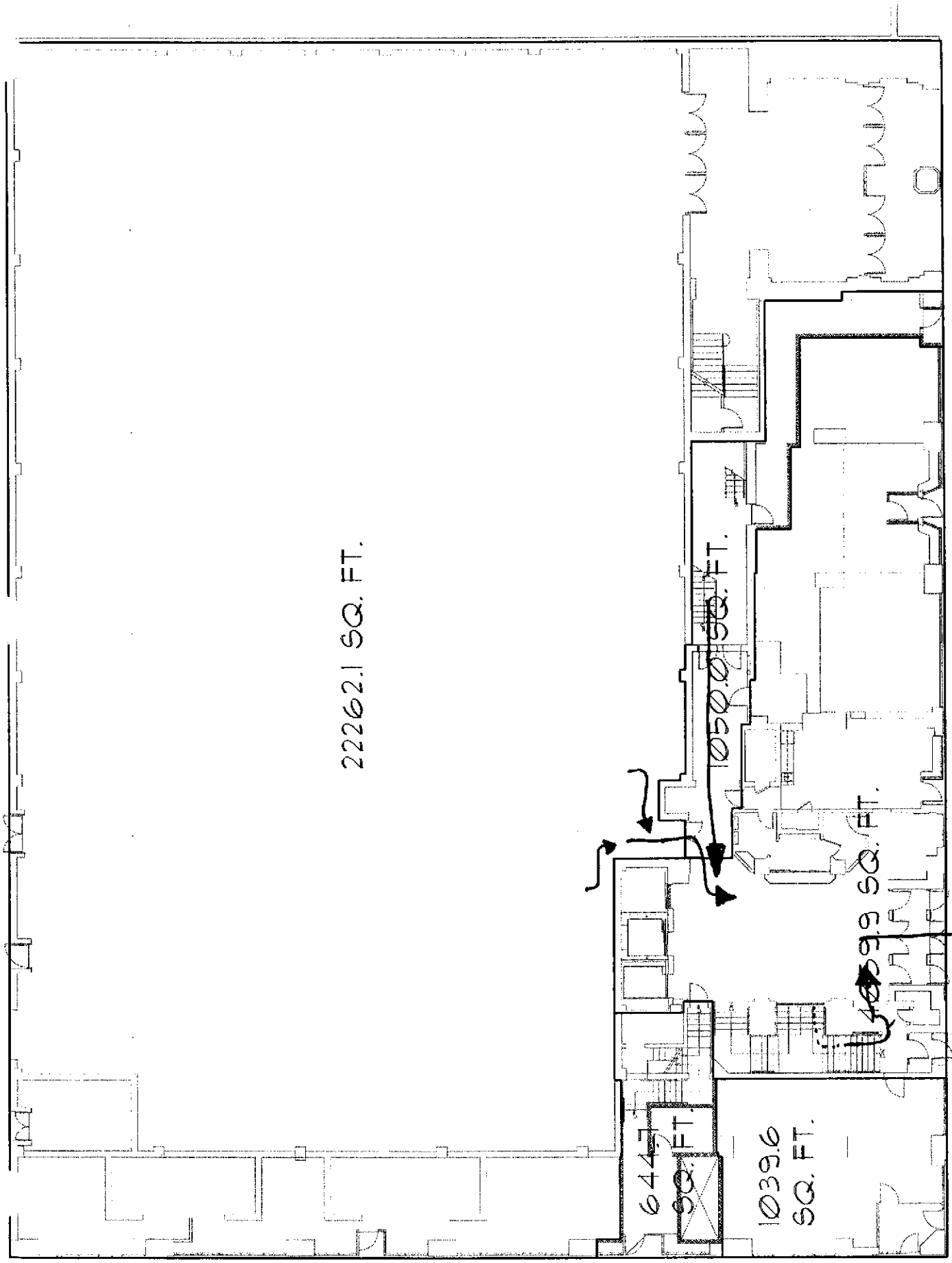


EXHIBIT E



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644.7  
SQ. FT.

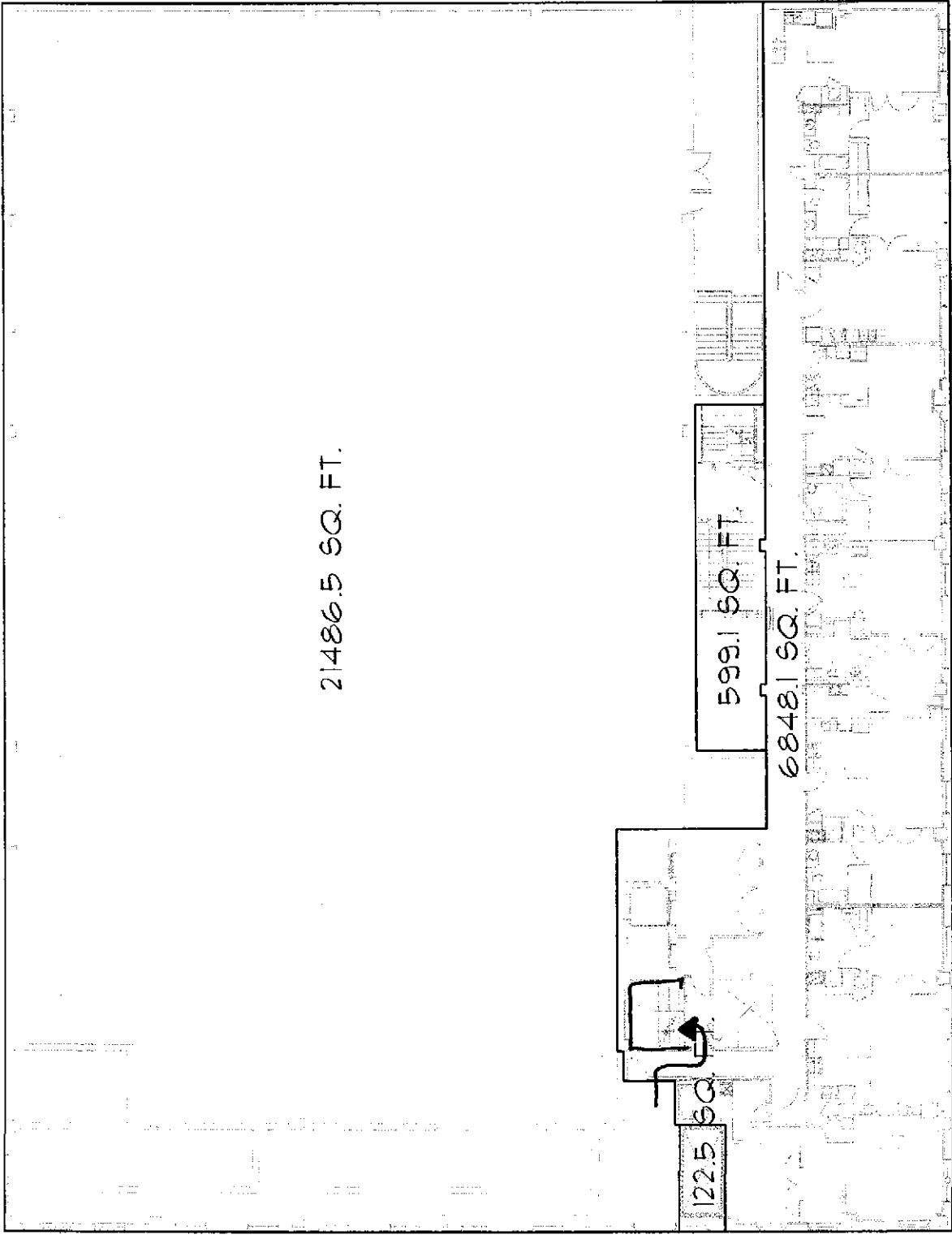
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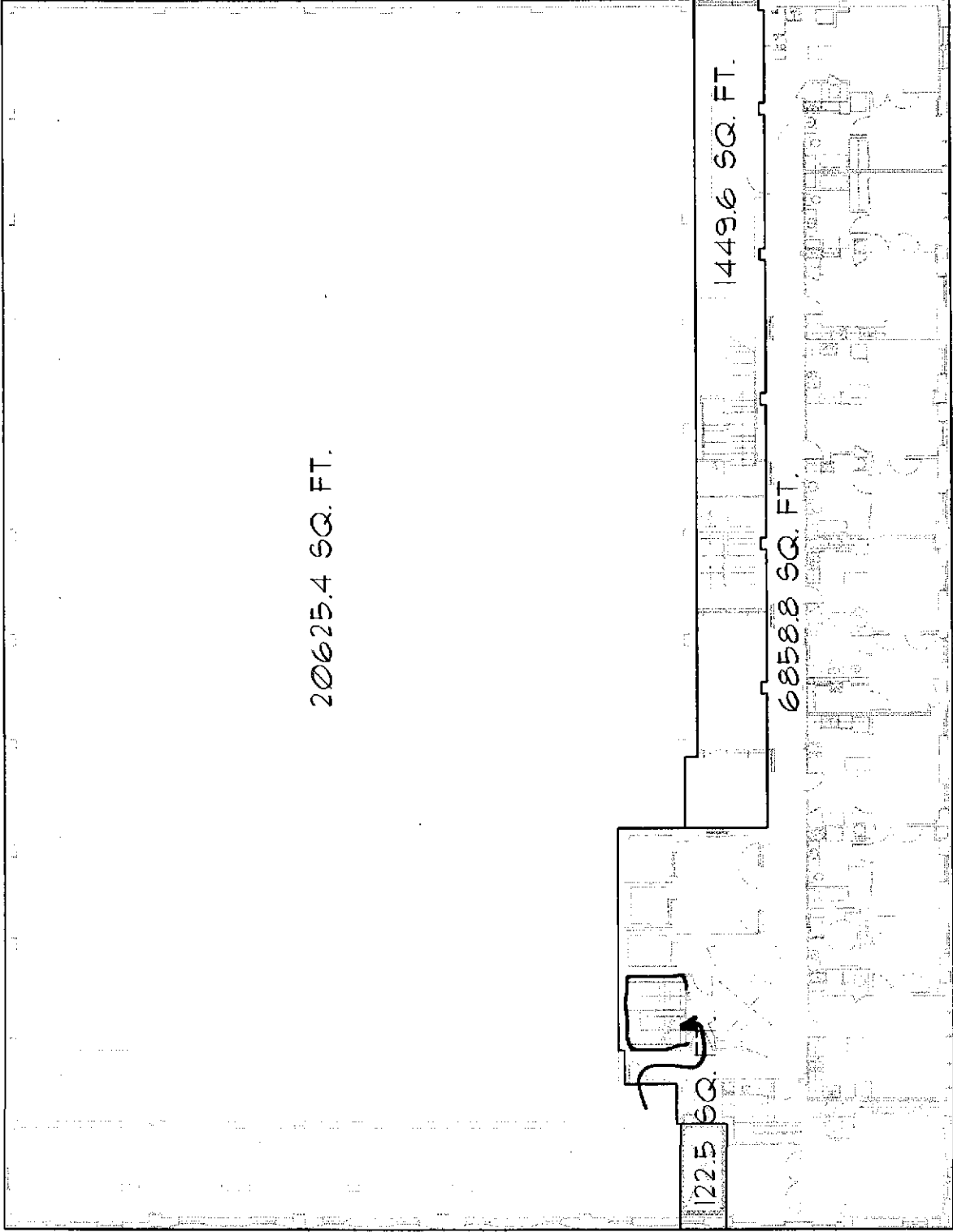
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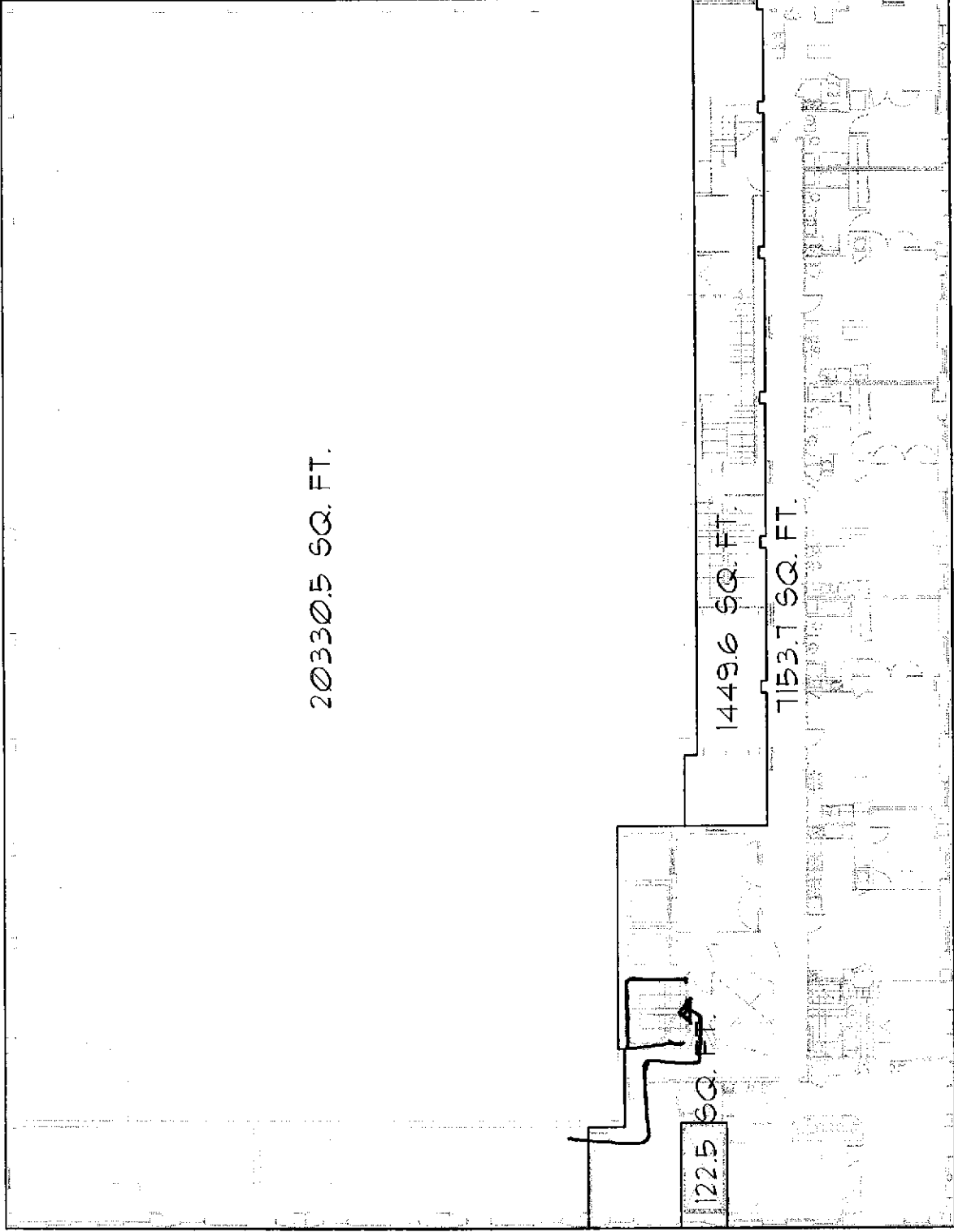
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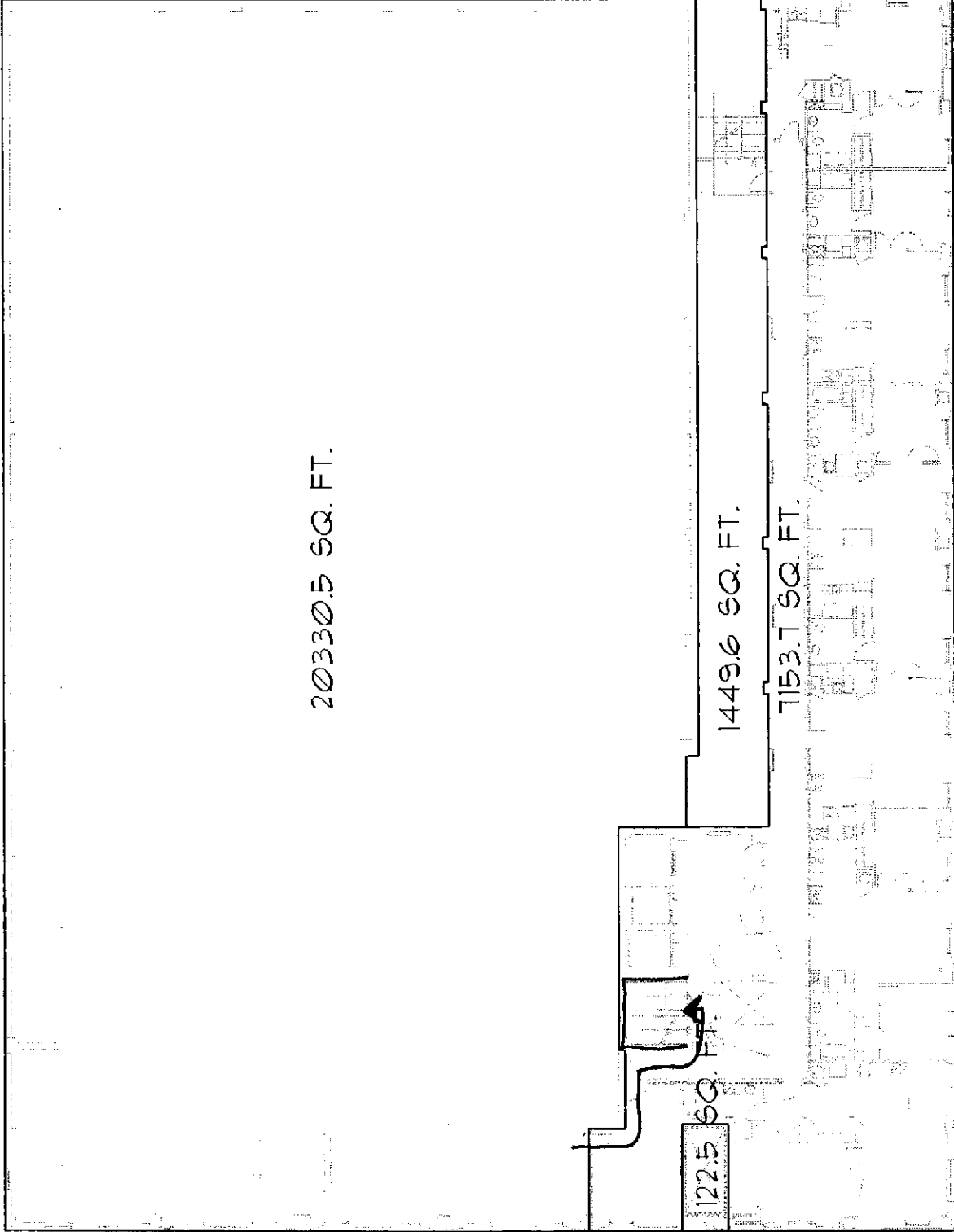
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SCALE: 1/8"=1'-0"





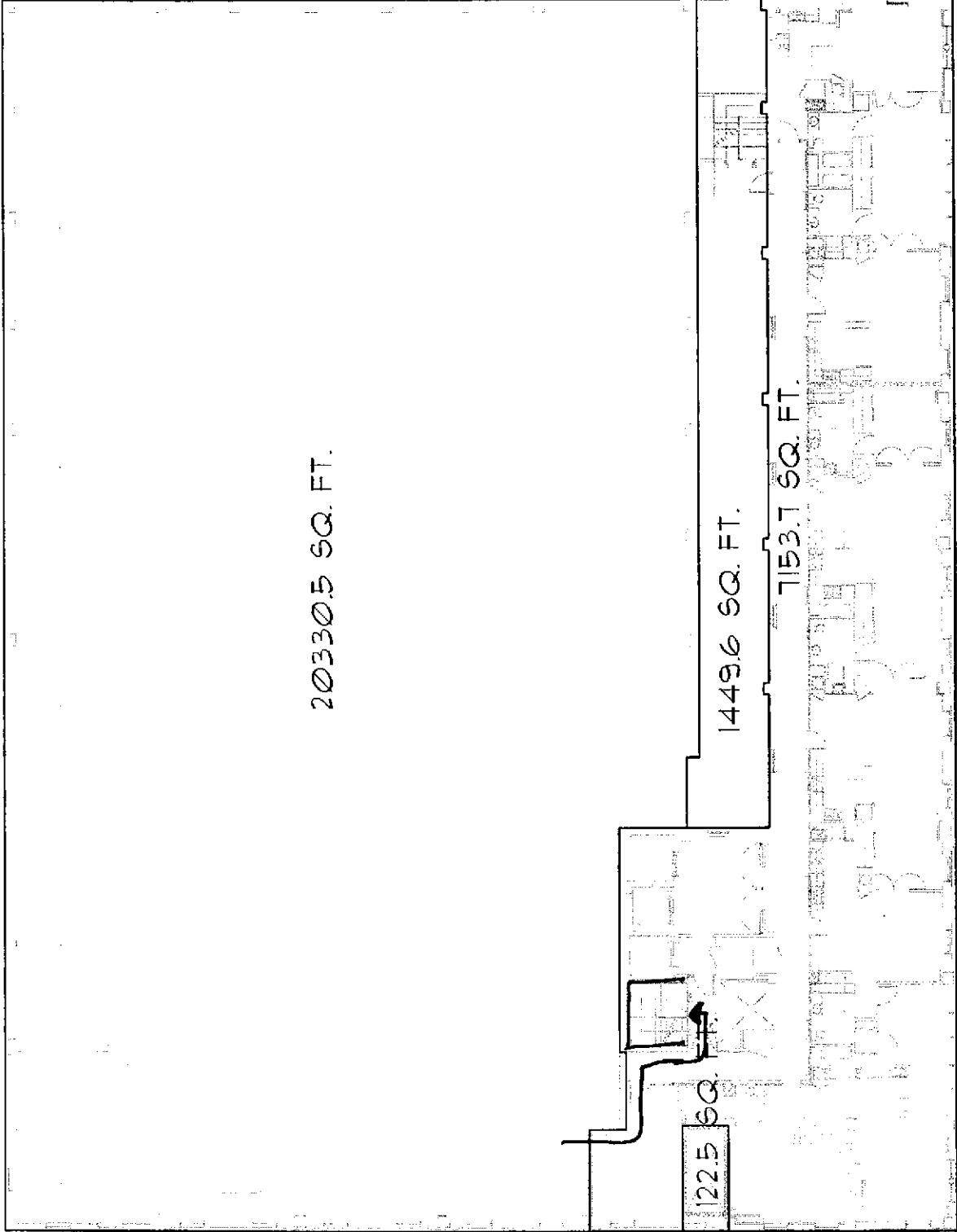



 NORTH  
FOURTH LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"

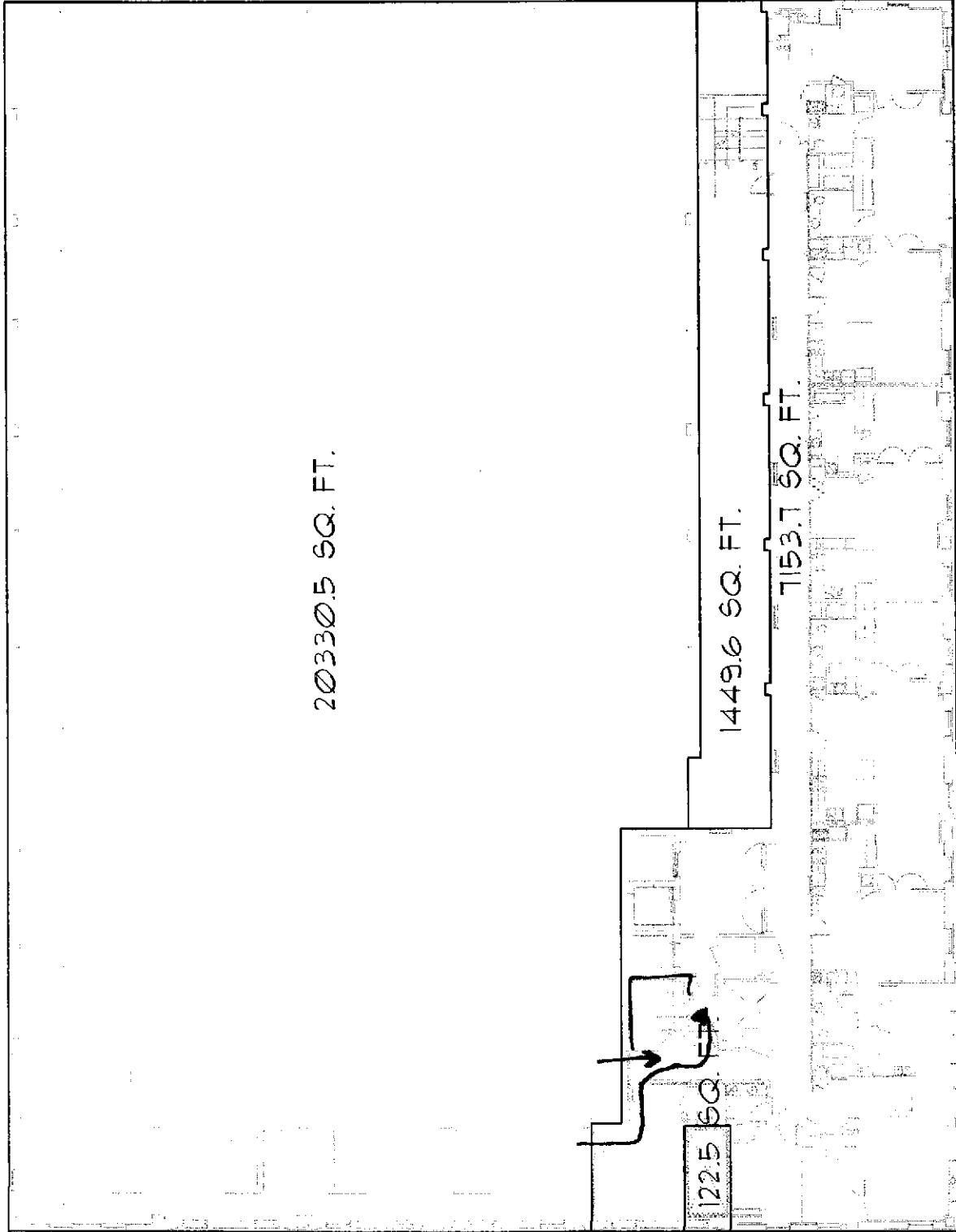


 NORTH  
FIFTH LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"

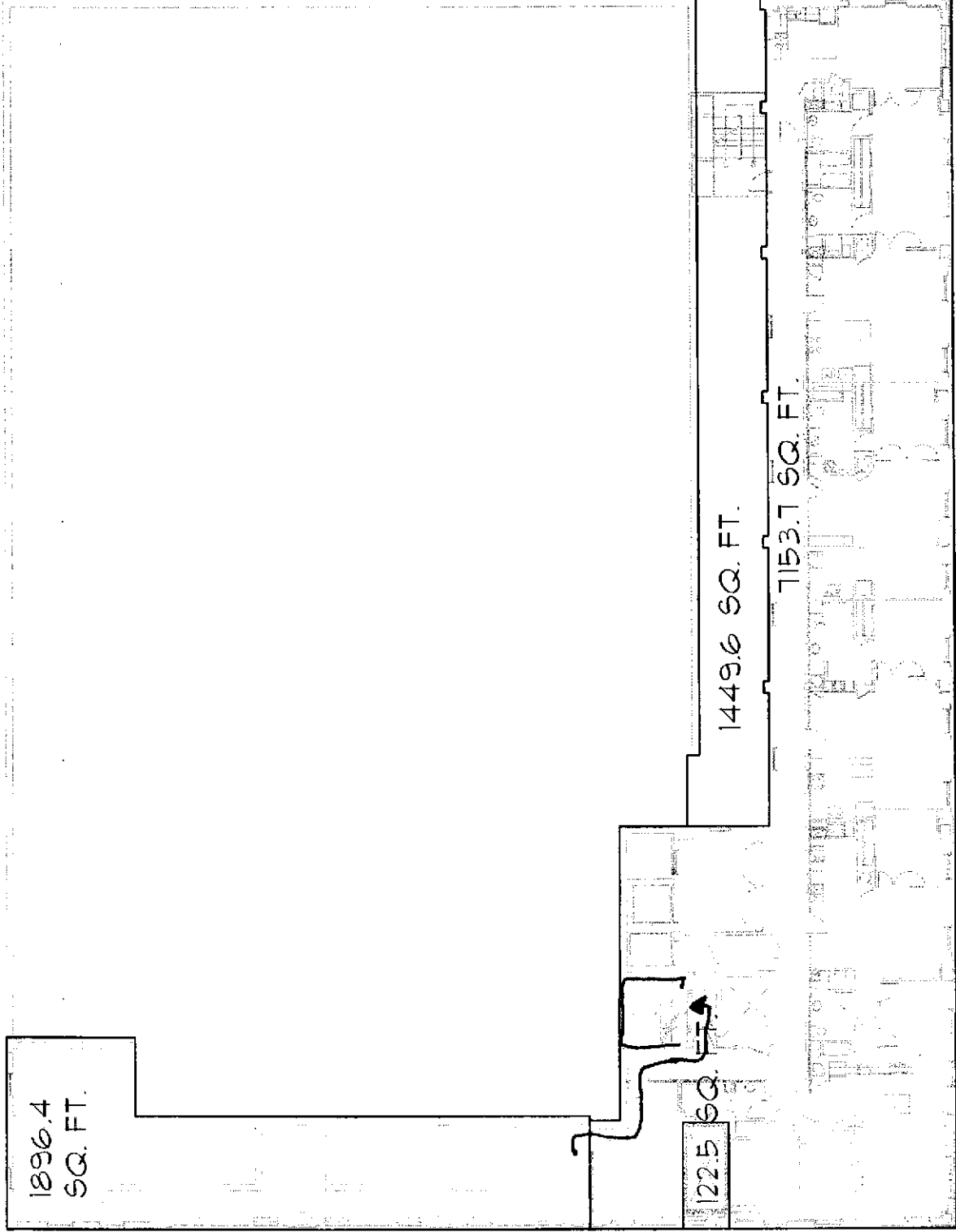




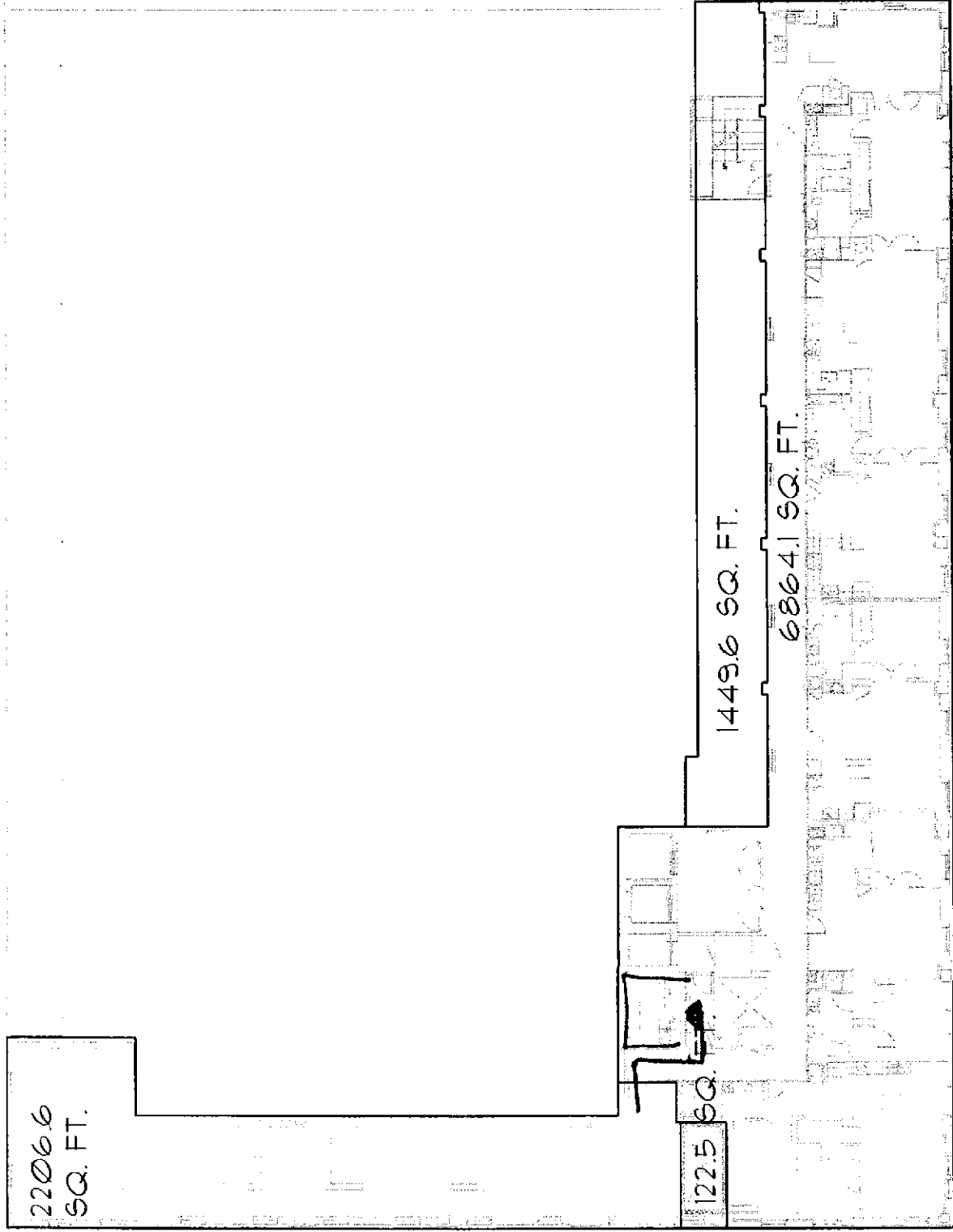
 NORTH  
SIXTH LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"



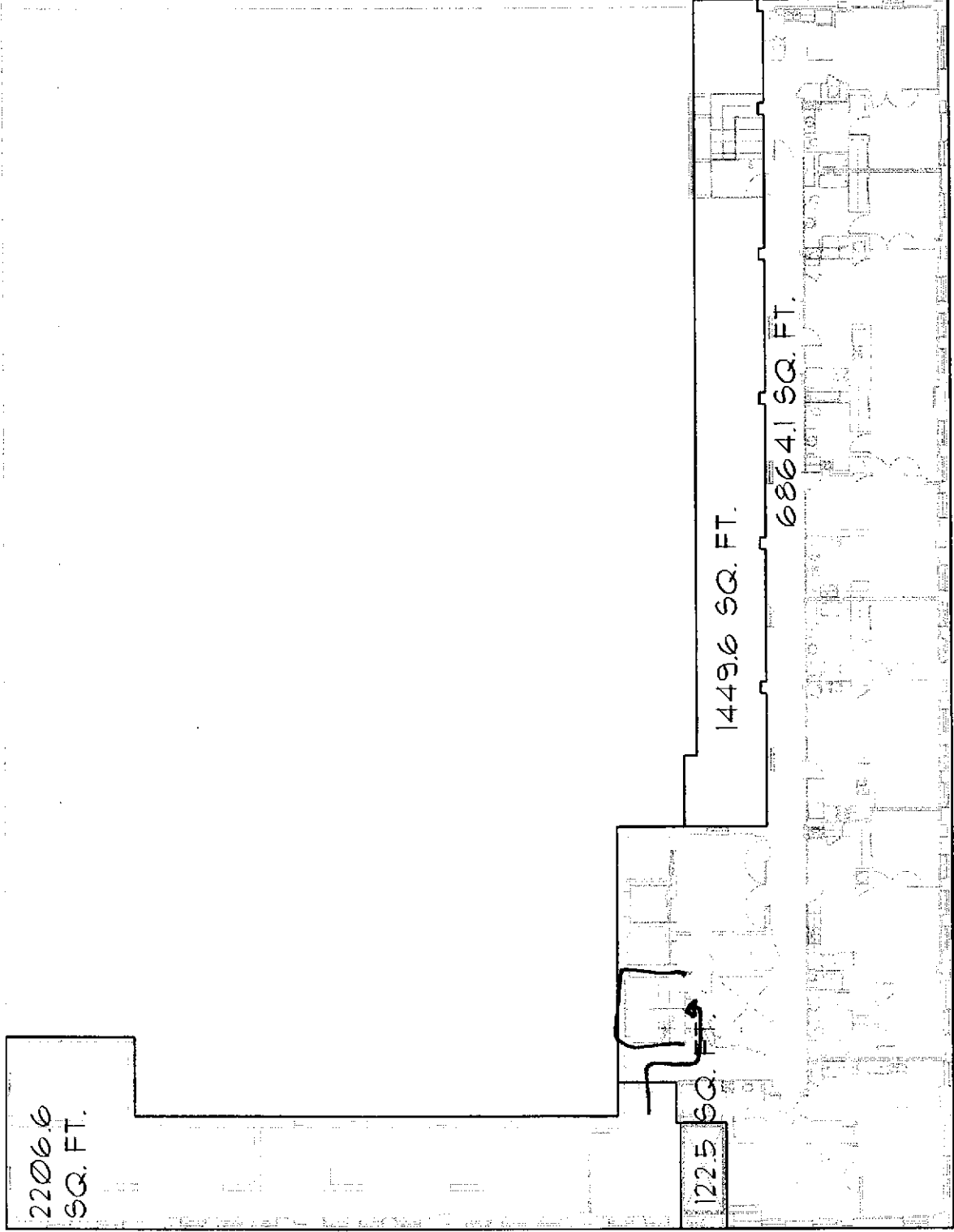
SEVENTH LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"



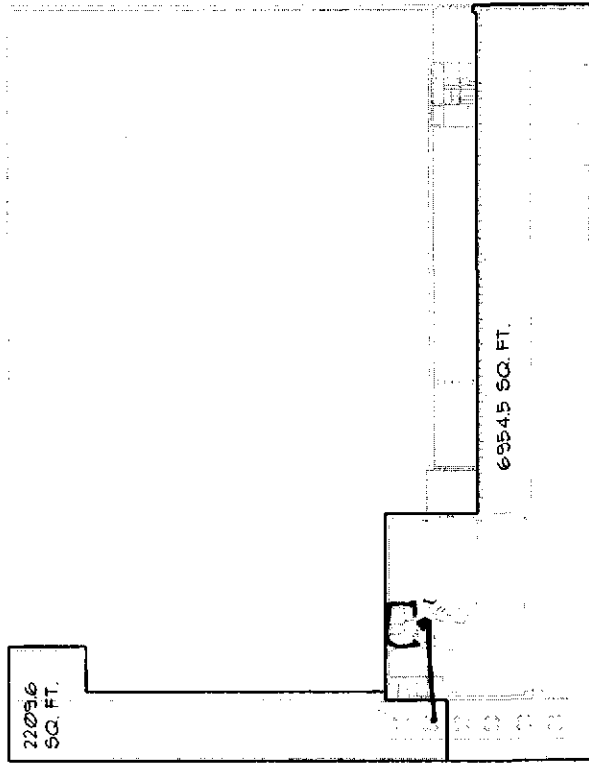
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EIGHTH LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"



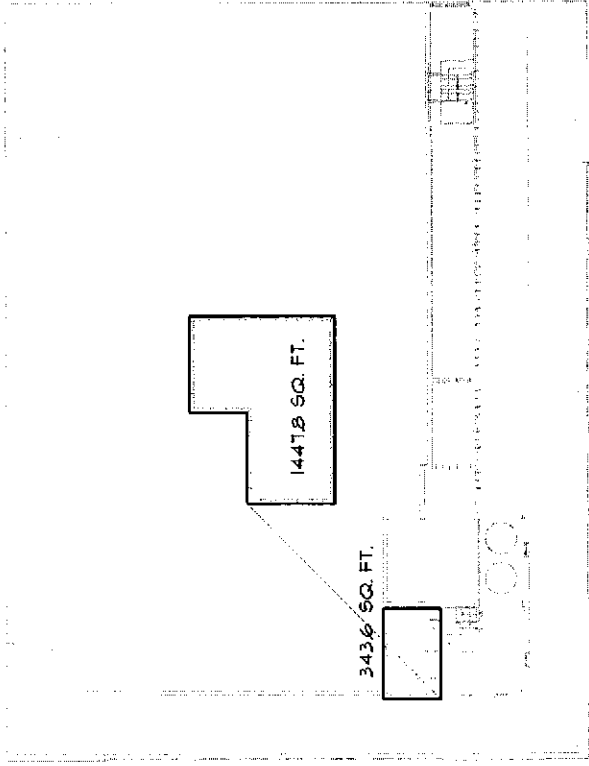
 NORTH  
1. NINTH LEVEL FLOOR PLAN  
2. SCALE 1/4" = 1'-0"



TENTH LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"  
NORTH



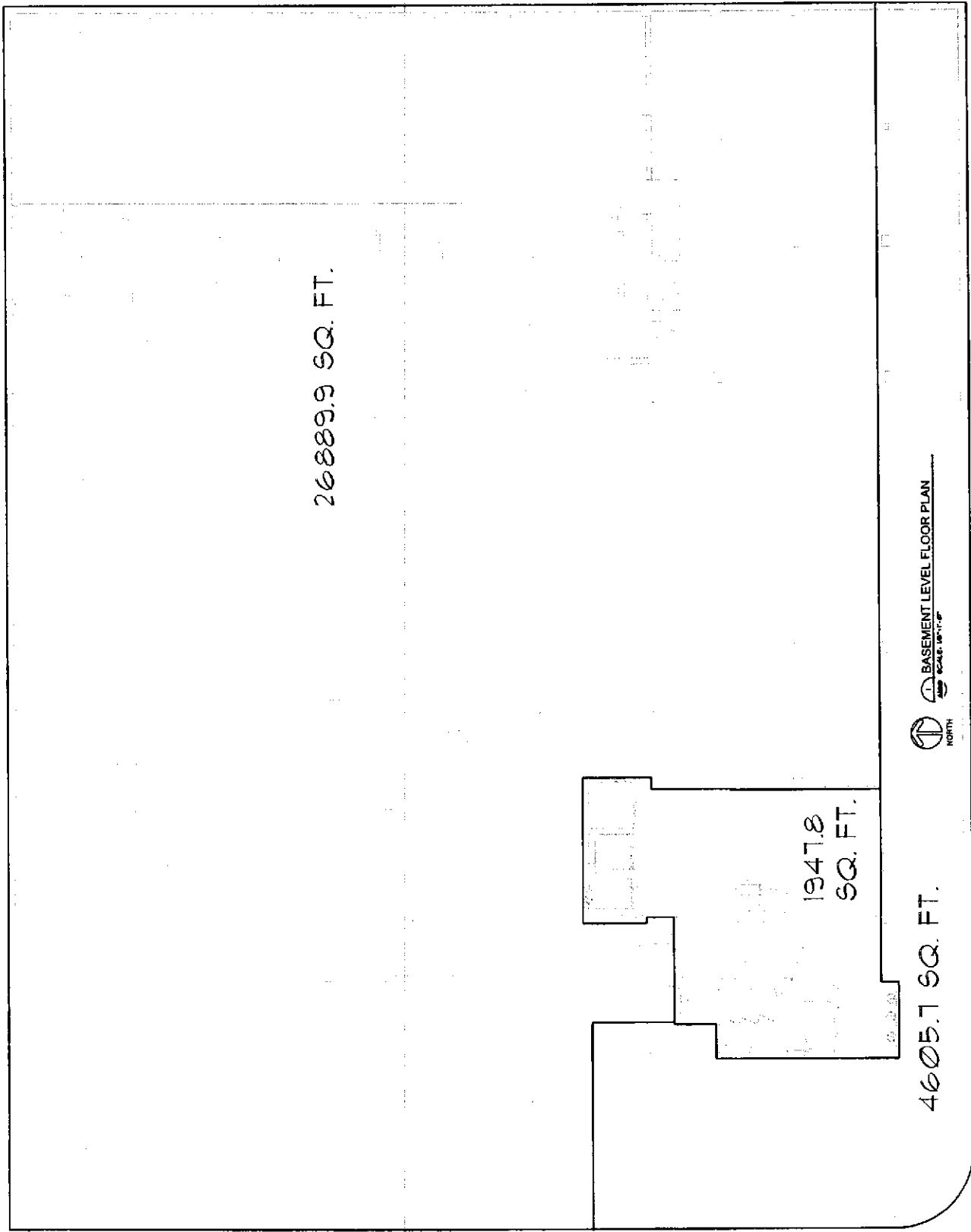
11 ELEVENTH LEVEL PENTHOUSE PLAN  
SCALE: 1/8" = 1'-0"

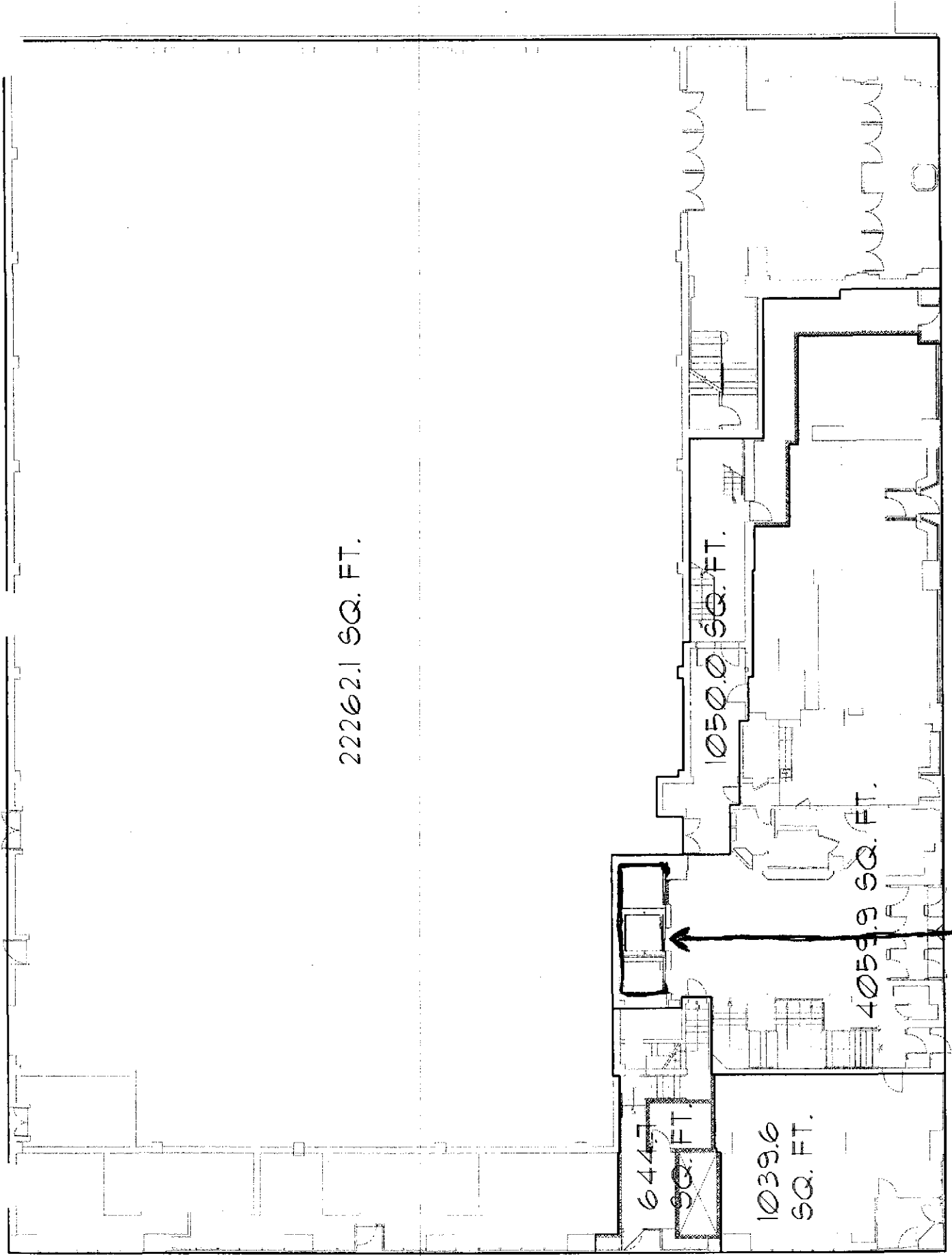


12 TWELFTH LEVEL PENTHOUSE / ROOF PLAN  
SCALE: 1/8" = 1'-0"

GRID  
IRON  
EASEMENT  
DESCRIPTION

Access via  
Mississippi Hotel  
Unit lobby on  
1<sup>st</sup> floor, use of  
elevators to reach  
7<sup>th</sup> floor, use of  
corridors to  
access grid iron.  
Use for both  
exit from and  
access to grid  
iron as needed.



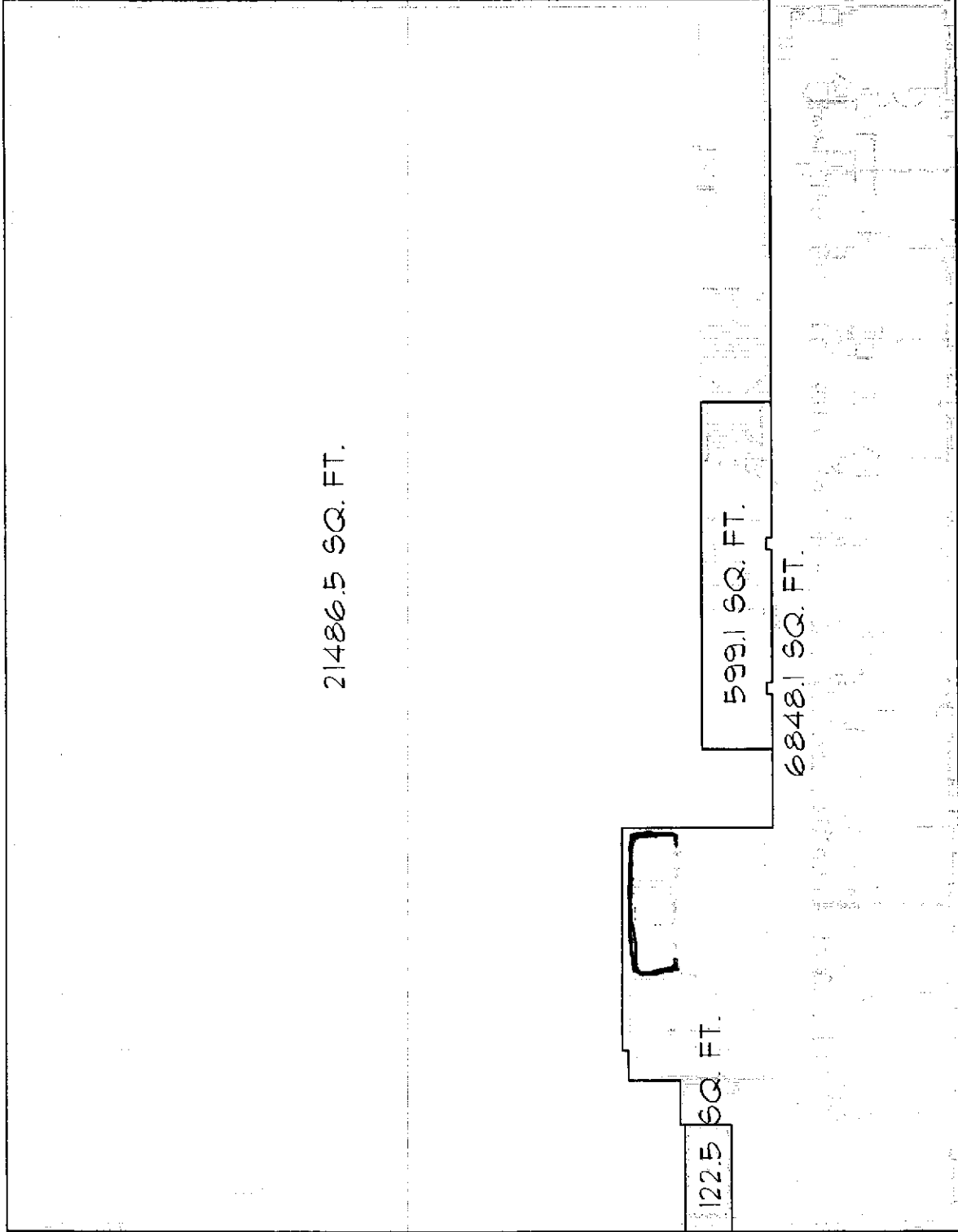


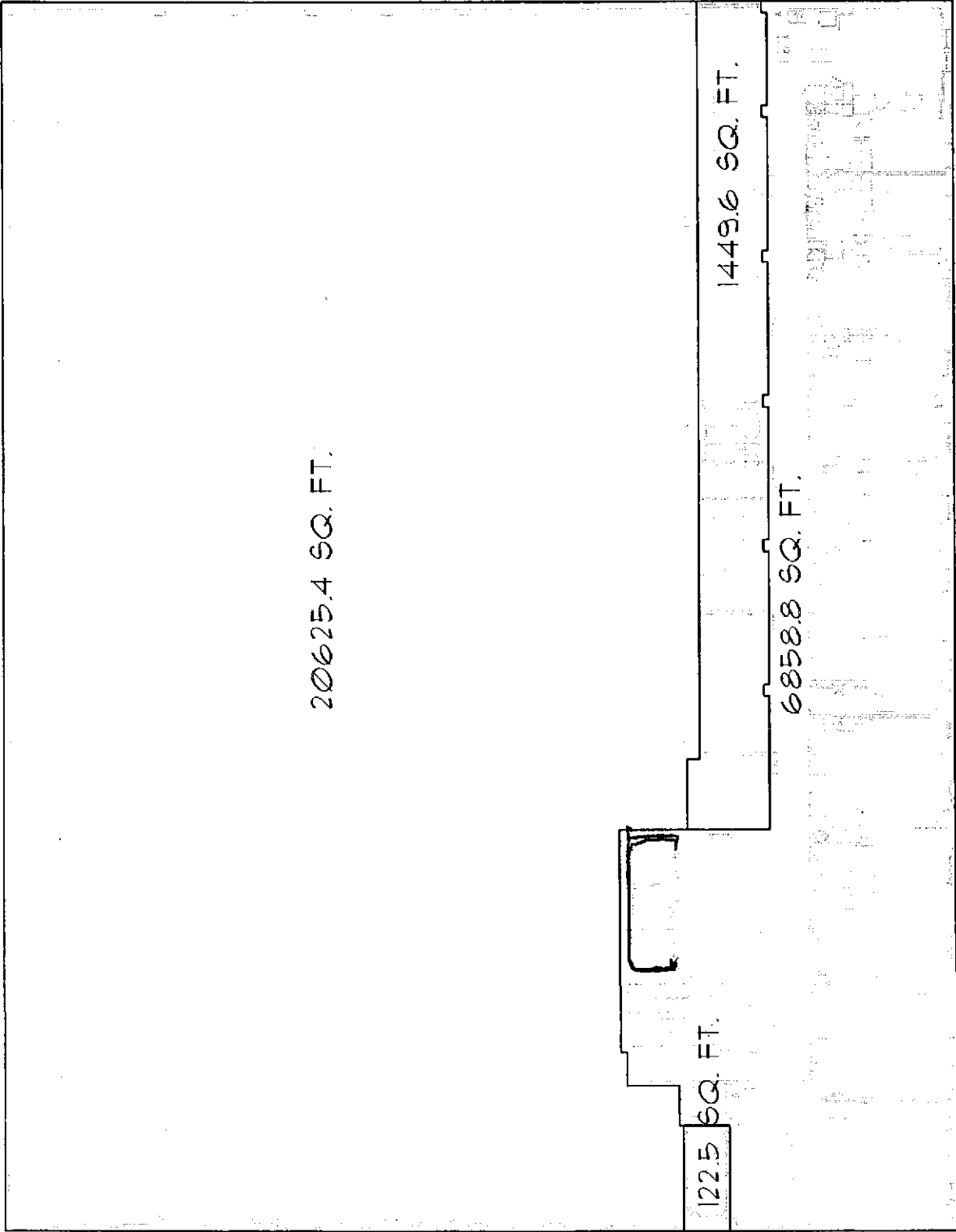
NORTH

FIRST LEVEL FLOOR PLAN

SCALE: 1/8" = 1'-0"

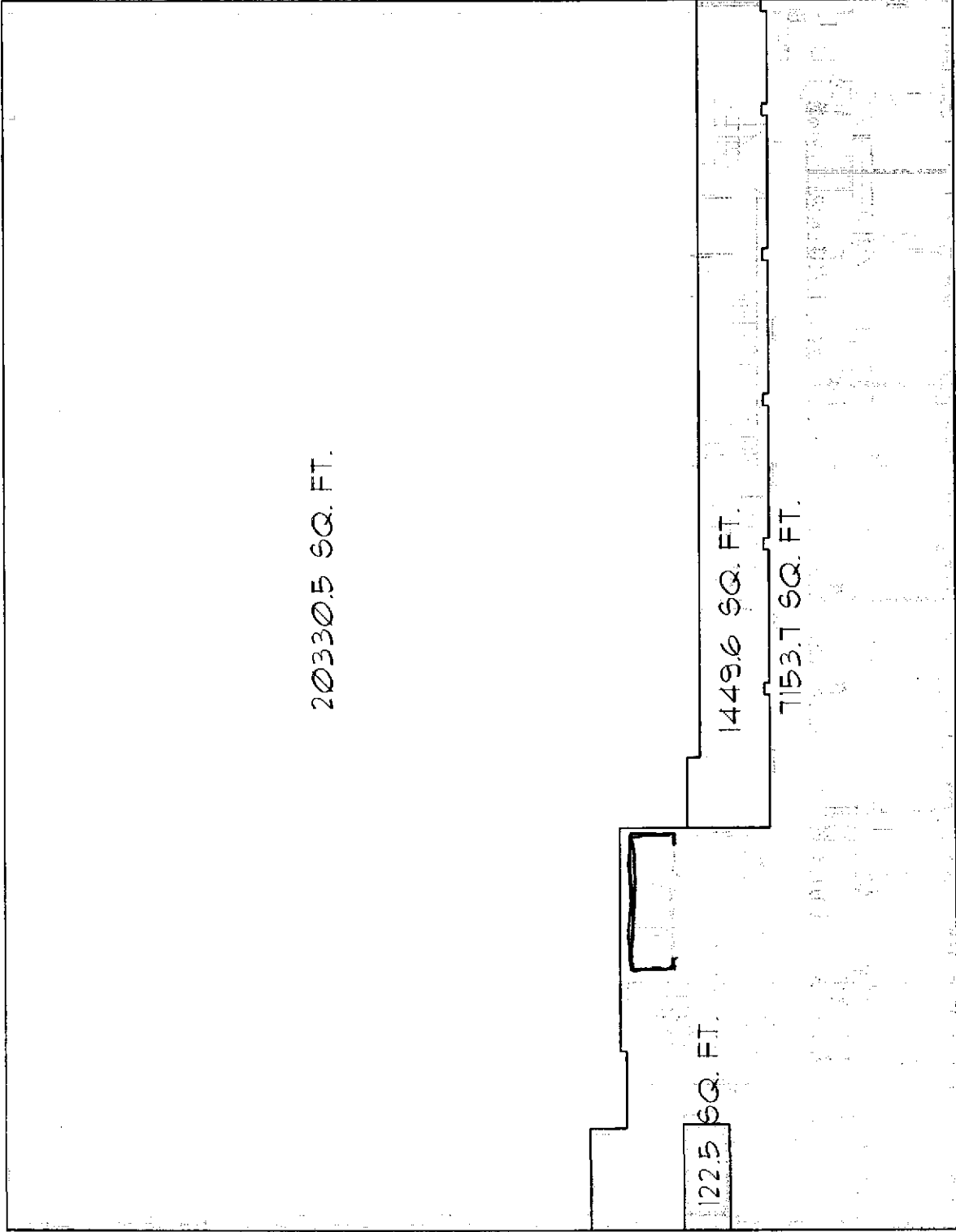




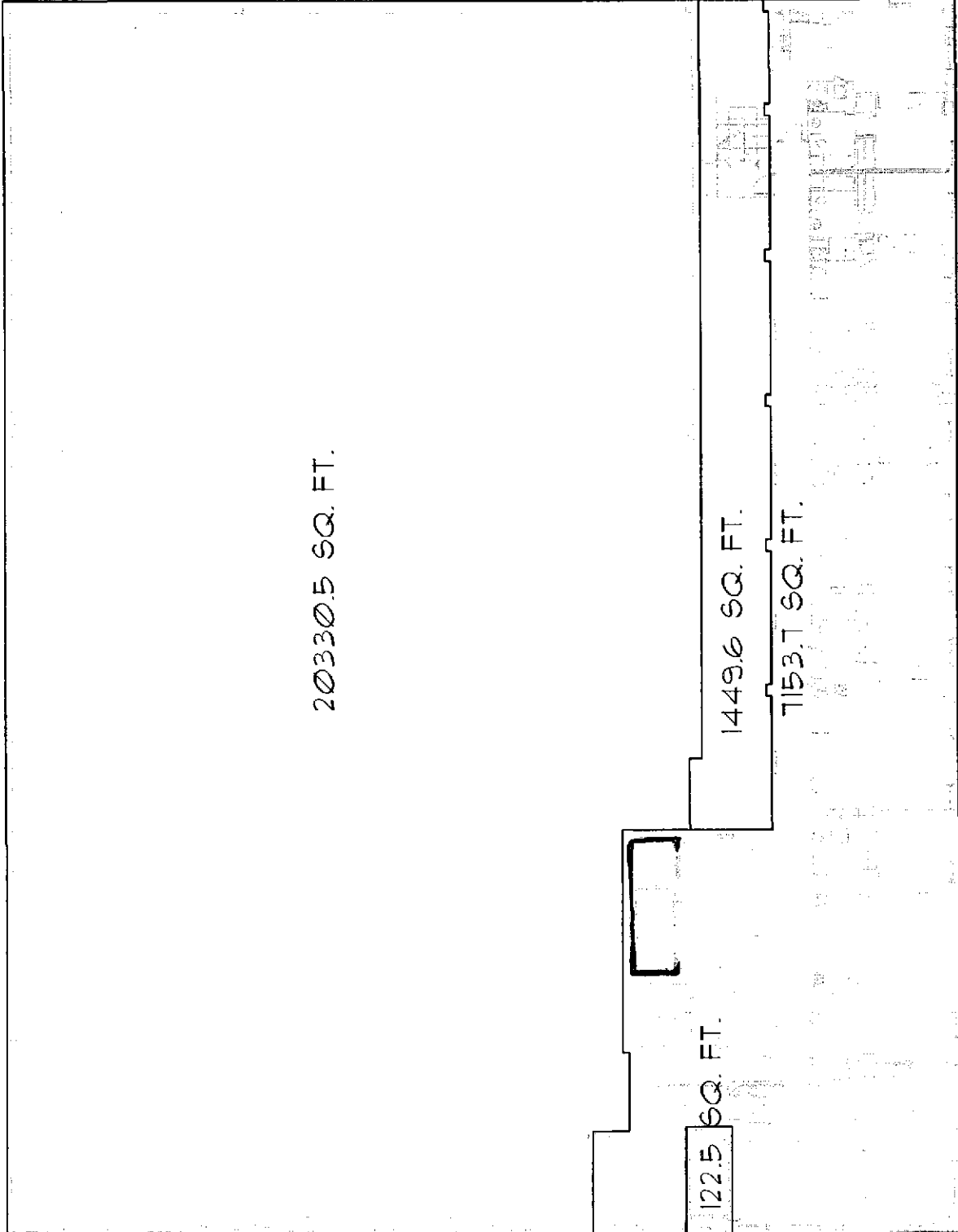


THIRD LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"

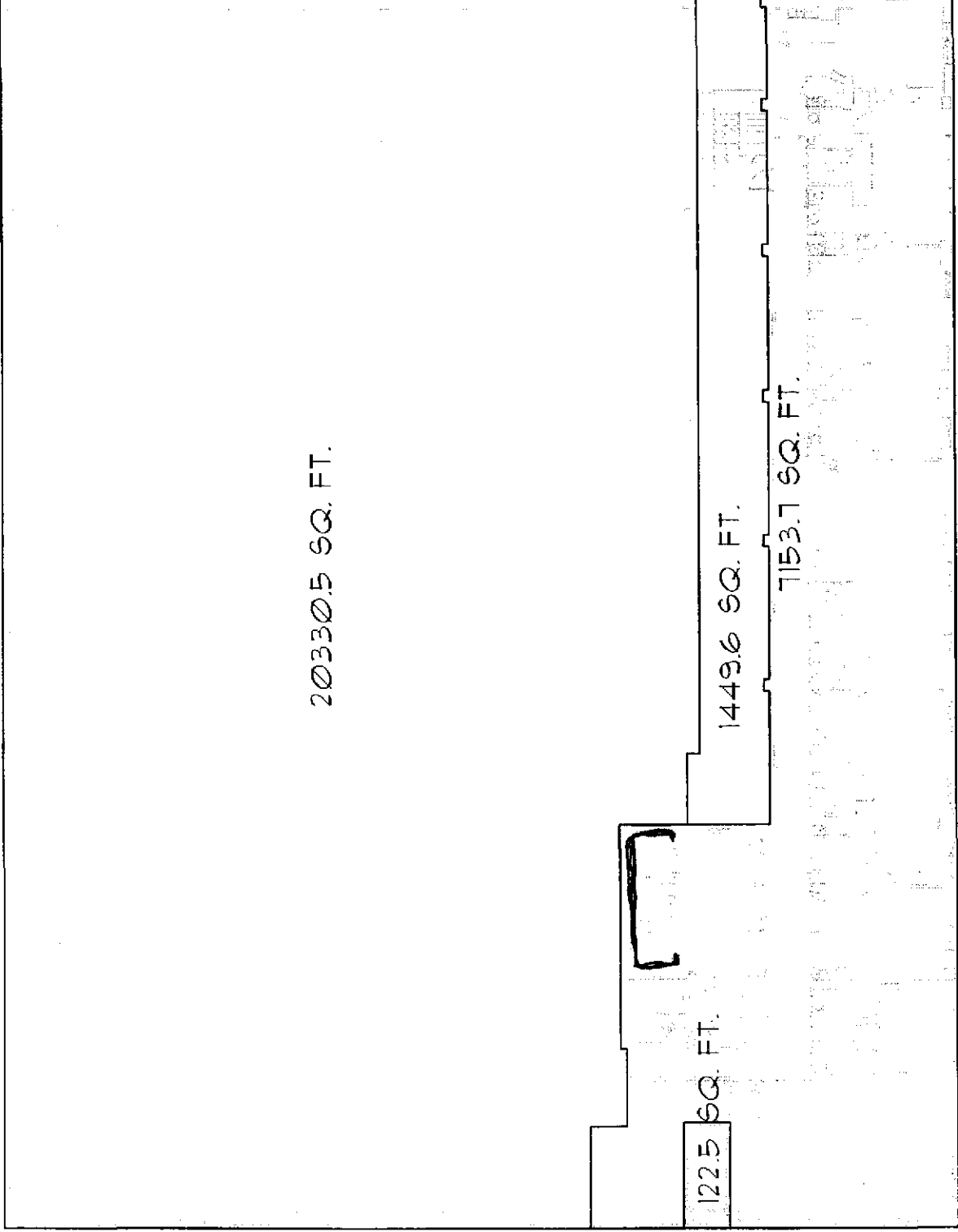




 NORTH  
FOURTH LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"

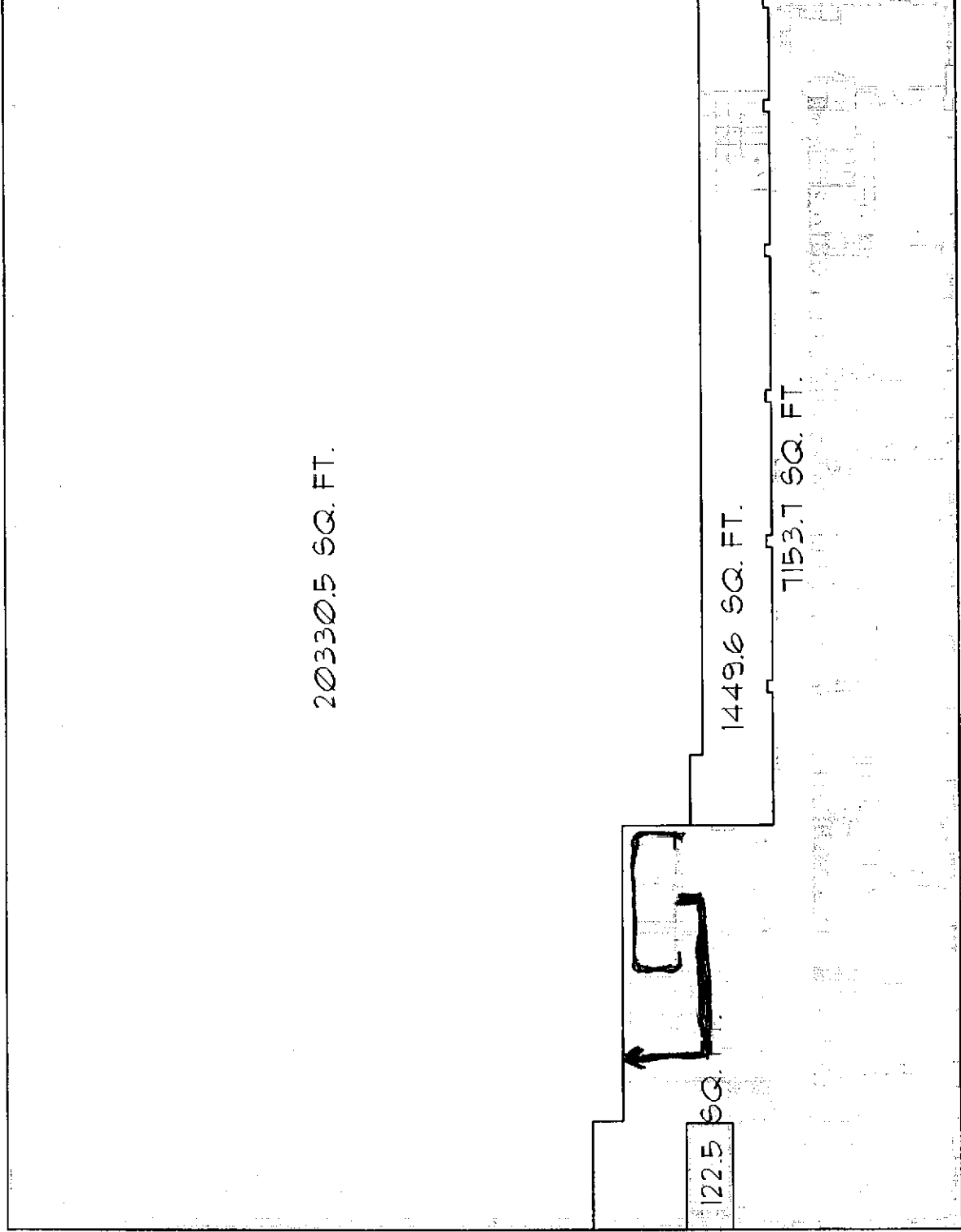


 NORTH  
FIFTH LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"



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

SIXTH LEVEL FLOOR PLAN



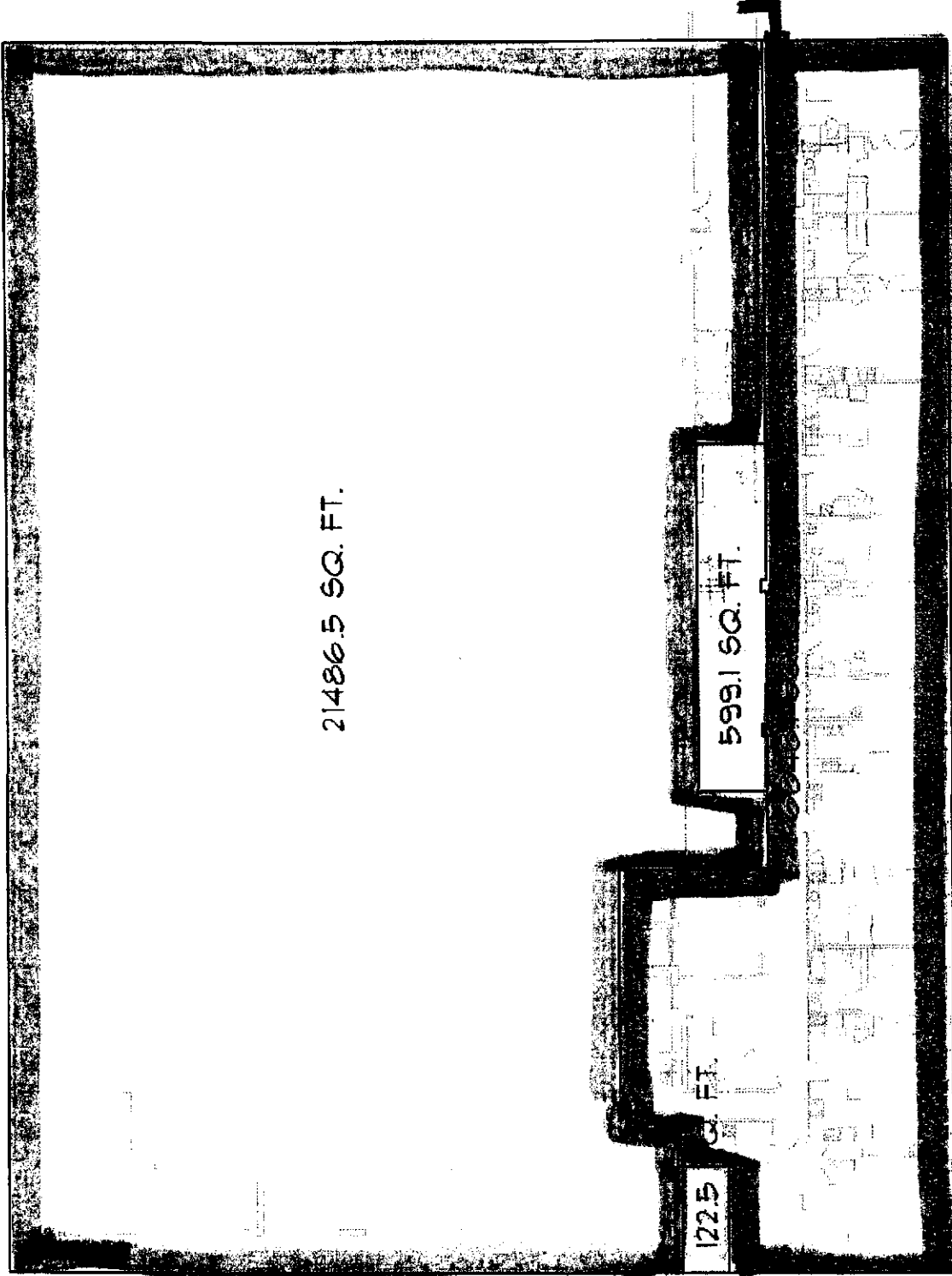
SEVENTH LEVEL FLOOR PLAN  
SCALE: 1/8" = 1'-0"



**EXHIBIT F**  
**EASEMENT**

Exhibit "F"

Option 1



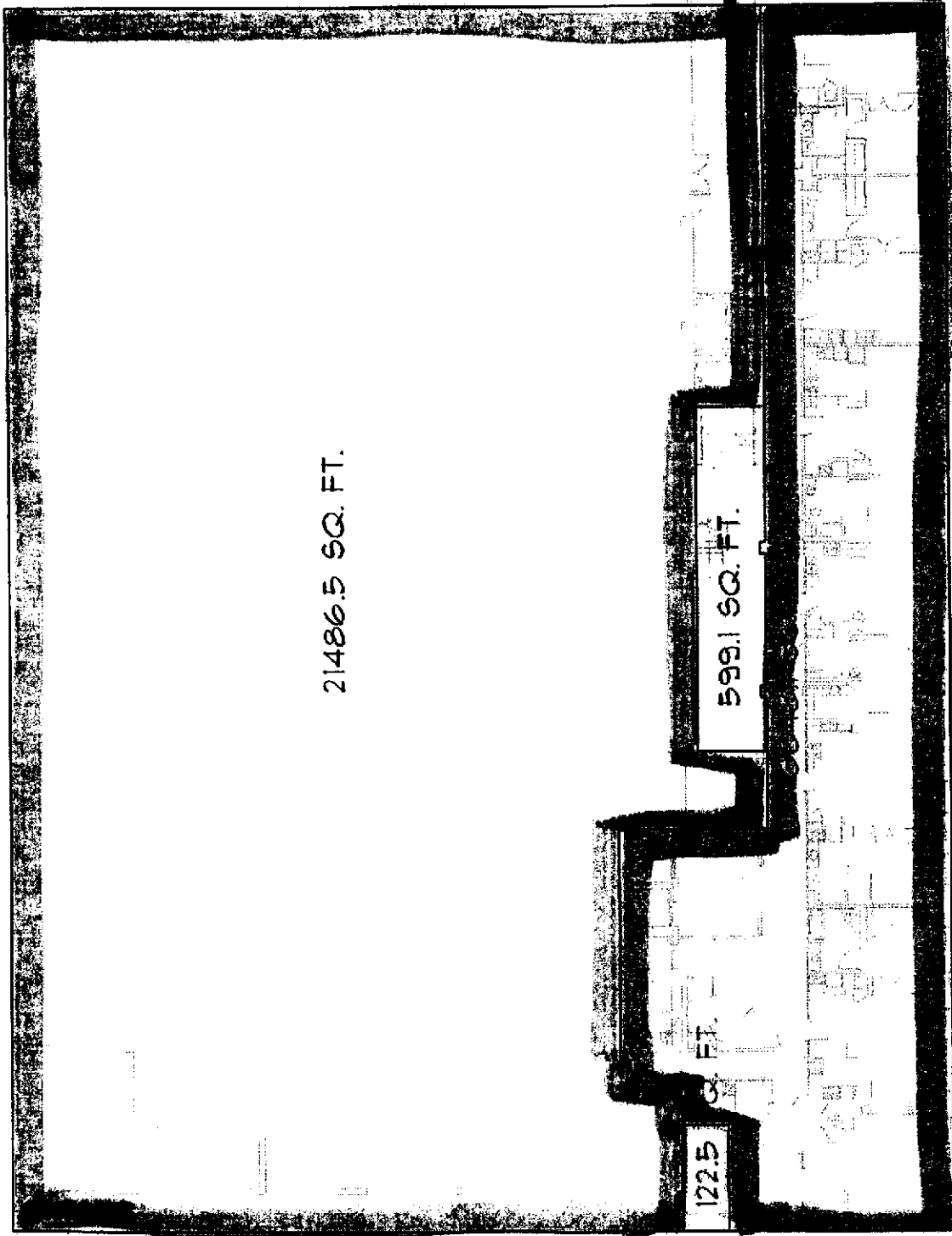
Sky walk  
connection  
towards  
River Center

① SECOND LEVEL FLOOR PLAN



Exhibit "F"

Option 2



① SECOND LEVEL FLOOR PLAN