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RICHARD N. TAKECHI  
REGISTER OF DEEDS  
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**ST. JOSEPH HIGH RISE  
CONDOMINIUM PROPERTY REGIME**

**FIRST AMENDMENT TO THE MASTER DEED AND DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATIONS OF EASEMENTS**

THIS FIRST AMENDMENT TO THE MASTER DEED AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATIONS OF EASEMENTS (the "Master Deed and Declaration") of the St. Joseph High Rise Condominium Property Regime dated August 14, 1998 and recorded on October 19, 1998 in Book 2104 at Page 216 of the Deed Records of Douglas County, Nebraska (the "Initial Master Deed and Declaration") is made this 15<sup>th</sup> day of May, 1999, by ST. JOSEPH HIGHRISE LIMITED LIABILITY COMPANY, a Nebraska limited liability company, (hereinafter referred to as "Declarant") for the purpose of replacing and superseding the Initial Master Deed and Declaration effective as of the date hereof.

**WITNESSETH:  
PREAMBLE**

1. **The Property.** Declarant is the record fee simple titleholder of the real property located in Omaha, Douglas County, Nebraska, more particularly described on Exhibit "A" attached hereto ("Property") and incorporated herein by this reference.

2. **Submission of the Property.** Declarant by the Initial Master Deed and Declaration and by this Master Deed and Declaration does hereby submit the Property and Improvements located thereon, to the provisions of §76-801 to 76-894, Neb. Rev. Statutes of 1943 (R.S. Supp., 1997) (known as the Nebraska Condominium Act), and pursuant thereto does hereby establish a condominium property regime for the aforesaid property, the existing building and other improvements, consisting of Units 1 and 2, St. Joseph High Rise Condominium Property Regime, and the common elements as defined herein and described in Exhibit "B" attached hereto.

3. **Covenants, Conditions and Restrictions.** The Covenants, conditions and restrictions relating to the condominium regime and which will run with the property and bind all owners, tenants of such owners, employees and any other persons who use the property are as set out in Article I through Article XV of this Master Deed and Declaration, and in the Bylaws of the Association.

**ARTICLE I.  
DEFINITIONS**

1.01. "Capital Improvement Assessment" shall mean a charge against each owner and his unit or units, representing a portion of the cost to the Association for installation or construction of any capital improvements on any portion of the common elements which the Association may from

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time to time authorize, which charge shall be levied among all owners in the condominium regime as provided herein.

1.02. "Common Assessment" shall mean a charge against each owner and his unit or units, representing a portion of the total cost to the Association of maintaining, improving, repairing and managing the common elements, and a portion of all other common expenses which are to be paid by each owner to the Association, as provided herein.

1.03. "Reconstruction Assessment" shall mean a charge against each owner and his unit or units, representing a portion of the cost to the Association for reconstruction of any portion or portions of the common elements pursuant to the provisions of Article IV and Article XI hereof. Said charge shall be levied among all owners in the condominium regime in the percentages as provided for assessments herein.

1.04. "Special Assessment" shall mean a charge against a particular owner and his unit or units, directly attributable to and reimbursable by the owner, equal to the cost incurred by the Association for corrective or other action performed pursuant to the provisions of this Master Deed and Declaration, plus interest and other amounts thereon as provided herein.

1.05. "Association" shall mean the St. Joseph High Rise Association, Inc., a Nebraska nonprofit corporation formed pursuant to the Nebraska Nonprofit Corporation Act, its successors and assigns.

1.06. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

1.07. "Common element(s)" shall mean all portions of the condominium regime other than the units. Common elements shall include the land on which the building stands, the land surrounding the building, the building's foundation, exterior walls and the roof, levels 1, 3 and 4 of the New Elevator, certain portions of the stairways and corridors described as Common Elements in the Floor Plan for the units as shown on Exhibit "B" attached hereto.

1.08. "Common Expenses" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the common elements (including unpaid special assessments, reconstruction assessments, and capital improvement assessments); the costs of maintaining any and all utilities located in the common elements; the costs of furnishing utilities to the common elements to the extent such utilities may not be separately metered to the units; the costs of any trash collection and removal for the benefit of the common elements, the costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities, custodial and other services benefiting the common elements; the costs of bonding of the members of the management body; any and all taxes paid by the Association on the common elements; amounts paid by the Association for discharge of any lien or encumbrance levied against the common elements; and the costs of any other item or items designated by or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the common elements for the benefit of all owners.

1.09. "The Property" shall mean all the real property described on Exhibit "A" attached hereto, and any additions which may be annexed thereto.

1.10. "Declarant" shall mean ST. JOSEPH HIGHRISE LIMITED LIABILITY COMPANY, a Nebraska limited liability company, and its successors and assigns.

1.11. "Master Deed and Declaration" shall mean the within First Amendment to the Master Deed and Declaration of Covenants, Conditions and Restrictions and Reservations of Easements, and any and all amendments thereto.

1.12. "Member" shall mean every person or entity who or which holds a membership in the Association as provided in Article III hereof.

1.13. "Mortgage, Mortgagee, Mortgagor". Reference herein to a mortgage shall be deemed to include a deed of trust; reference herein to a mortgagee shall be deemed to include insurers of first mortgages, in addition to first mortgage holders, and the beneficiary or beneficiaries of a deed of trust; and reference herein to a mortgagor shall be deemed to include the trustor of a deed of trust.

1.14. "Owner" shall mean the record owner, whether one or more persons or entities, or the fee simple interest in a unit, including Declarant with respect to each unit owned by Declarant and including sellers under executory contracts of sale, but excluding those persons holding title as security for the performance of an obligation.

1.15. "Person" shall mean a natural individual, a corporation, or other entity with a legal right to hold title to real and personal property.

1.16. "Unit" shall mean and include all structural, functional and decorative building components of the building improvements which are located within each respective physical portion of the condominium designated for separate ownership or occupancy and are described as units on Exhibit "B" hereto, including any space within such physical portion and forming a single, usable unit with facilities which are used or intended to be used for office, residential, or other business or commercial purposes consistent with the ordinances, rules and regulations to which the property is subject. The boundaries of each unit are as depicted on the Floor Plan for each unit and the Building Cross Section as shown on the plans attached hereto as Exhibit "B" and are as described in Neb. Rev. Statute §76-839.

1.17. "Unit 1" shall mean levels 1, 3 and 4 as shown on Exhibit "B" attached hereto. Unit 1 shall be used for general office purposes and for any lawful purpose allowed by the applicable zoning and use regulations which relate to such unit.

1.18. "Unit 2" shall mean levels 2 and 5-15, inclusive, as shown on Exhibit "B" attached hereto, the New Elevator subject to the Common Element for levels 1, 3 and 4 as shown on Exhibit "B" attached hereto, the Unit 2 Mechanical as shown on sheet nos. 4 through 8, inclusive, on Exhibit "B" attached hereto, and the Unit 2 Water Heater Room as shown on sheet 4 of Exhibit "B" attached hereto. Unit 2 shall be used for residential assisted living purposes pursuant to the applicable zoning and use regulations applicable to this unit.

**ARTICLE II.**

**RIGHTS OF OWNERS IN COMMON ELEMENTS**

2.01. **Easements of Enjoyment.** Every owner shall have the right and easement of enjoyment, including without limitation the right and easement of ingress in, to and over the common elements which shall be appurtenant to and shall pass with title to every unit, subject to the following provisions:

(a) The right of the Association to establish uniform rules and regulations pertaining to the use of the common elements and limited common elements and the facilities thereof, including but not limited to the right and obligation of the Association to enforce all parking restrictions within the common elements and limited common elements.

(b) The right of the Association, in accordance with its Articles of Incorporation, Bylaws, and this Master Deed and Declaration, to borrow money for the purpose of improving the common elements and, with the assent of the votes of at least two-thirds (2/3) of members of the Association, to mortgage, pledge, deed in trust, or hypothecate any or all of the common elements as security for money borrowed or debts incurred;

(c) The right of the Association to suspend the voting rights of an owner for any period during which any assessment against his unit remains unpaid and delinquent and, for a period not to exceed sixty (60) days, for any single infraction of the published rules and regulations of the Association. Any suspension of such voting rights shall be made only by the Board of Directors of the Association or a duly appointed committee thereof, after an opportunity for notice and hearing has been afforded the owner in accordance with the Bylaws of the Association.

2.02. **Delegation of Use.** Any owner may delegate, in accordance with the Association's Bylaws, his right of enjoyment to the common elements and facilities to the members of his family, tenants, or contract purchasers who use his unit, subject to reasonable regulation by the Board of Directors.

2.03. **Easements for Parking.** Parking shall be permitted for each unit at any space designated for general parking within the common elements. The Association, through its officers, committees and agents, is hereby empowered to establish "parking" and "no parking" areas in accordance with state law, as well as to enforce such parking limitations by all means lawful for such enforcement on city streets, including the removal of any vehicle parked in violation of those restrictions, by those so empowered and the right of the police to ticket such vehicle. The Association, through its officers, committees and agents, shall have the right to reserve up to 26 parking spaces for Unit 2 by designating such spaces with the appropriate painting, marking, signage or otherwise.

2.04. **Easements for Vehicular Traffic.** In addition to the general easements for use of the common elements reserved herein, there shall be, and Declarant hereby reserves and covenants for itself and all future owners, nonexclusive easements appurtenant for vehicular traffic over all drives or streets within the condominium regime necessary for ingress and egress, subject to the parking provisions set forth herein.

2.05 **Easements for City Public Service Use.** In addition to the foregoing easements over the common elements, there shall be, and Declarant hereby reserves and covenants for itself and all future owners, easements for city public service use, including but not limited to the right of the police to enter upon any part of the common elements for the purpose of enforcing the law.

2.06 **Waiver of Use.** No owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the unit or units owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the common elements and facilities thereon or by abandonment of his unit.

2.07. **Partition Forbidden.** The common elements and facilities thereon shall remain undivided and no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of owners with respect to the operation and management of the property.

**ARTICLE III.  
OPERATION OF THE ASSOCIATION**

3.01. **Organization.** The Association is organized as a Nebraska nonprofit corporation under the Nebraska Nonprofit Corporation Act. The Association is charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation and Bylaws of the Association and this Master Deed and Declaration. Neither the Articles of Incorporation nor Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Master Deed and Declaration.

3.02. **Membership Eligibility.** Every owner, including Declarant, shall automatically become a member of the Association upon becoming the owner of a unit. Such owner shall remain a member of the Association until such time as his ownership of the unit ceases for any reason, at which time his membership in the Association shall automatically cease. Ownership of a unit shall be the sole qualification for membership in the Association. If title to a unit is held by more than one person, the membership appurtenant to that unit shall be shared by all such persons in the same proportionate interest as hold title to such unit. An owner shall have one vote allocated to his unit for each square foot of enclosed floor space within his unit or units.

3.03. **Transfer of Membership.** The membership held by any owner in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of his unit and then only to the purchaser or mortgagee of such unit. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the owner of any unit should fail or refuse to transfer the membership registered in his name to the purchaser of such unit upon transfer of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association. The Board of Directors shall have the right to charge a reasonable special assessment against any owner and his unit equal to the cost to the Association of effectuating any such transfer of his membership upon the books of the Association.

3.04. **Duties and Powers.** The duties and powers of the Association are those set forth in its Articles of Incorporation and Bylaws, together with its general and implied powers of a nonprofit corporation, generally to do any and all things which a corporation organized under the laws of the state of Nebraska may lawfully do in operating for the benefit of its members, subject only to the limitations upon the exercise of such powers as are expressly set forth in its Articles of Incorporation, Bylaws, and this Master Deed and Declaration.

3.05. **Association Actions.** All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Master Deed and Declaration or in the Bylaws shall be deemed to be binding upon all owners of units, their successors and assigns.

3.06. **Limitation on Association's Liability.** Notwithstanding the duty of the Association to maintain and repair parts of the property, the Association shall not be liable for any failure of water service or other service to be obtained and paid for by the Association hereunder, or for injury or damage to person or property caused by the elements or by another owner or person in the condominium regime, or resulting from electricity, water, rain, snow, or ice which may leak or flow from outside or from any parts of the property, or from any of its pipes, drains, conduits, appliances or equipment, or from any other place unless caused by the gross negligence of the Association. No diminution or abatement of any assessments under this Master Deed and Declaration shall be

claimed or allowed for inconvenience or discomfort arising from the making of repairs, maintenance or improvements to the property or any part thereof, or from any action taken to comply with any law, ordinance or order of any governmental authority.

**ARTICLE IV.**

**COVENANT FOR MAINTENANCE ASSESSMENTS**

4.01 **Creation of Lien and Personal Obligations for Assessments.** Declarant, for each unit owned by it, hereby covenants and agrees to pay, and each owner, by acceptance of the deed to a unit whether it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual common assessments for common expense; (2) reconstruction assessments; (3) capital improvement assessments; and (4) special assessments, each of such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs and reasonable attorneys' fees, shall be the separate, distinct and personal obligations of the person who was the owner of such unit at the time the assessments fell due, and shall bind his heirs, devisees, personal representatives and assigns. These personal obligations cannot be avoided by abandonment of the unit or by an offer to waive use of the common elements or any facilities thereon.

4.02 **Maintenance Funds of Association.** The Board of Directors of the Association shall establish no fewer than two (2) separate accounts into which shall be deposited all monies paid to the Association and from which disbursements shall be made as provided herein, in the performance of functions by the Association under this Master Deed and Declaration. Each of such accounts shall be established as separate, irrevocable trust savings or trust checking accounts at a banking or savings institution. The accounts shall include: (1) an operating fund account for current common expenses of the Association; (2) a reserve fund account for capital improvements, replacements, painting and repairs of the common elements; and (3) any other funds or accounts which the Board of Directors may establish to the extent necessary under the provisions of this Master Deed and Declaration. The Board of Directors shall not commingle any amounts deposited into any of the funds with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional funds by the Association, so long as the amounts assessed to, deposited into, and disbursed from any such fund are earmarked for specified purposes authorized by this Master Deed and Declaration.

4.03 **Purpose of Assessments.** The assessments levied by the Board of Directors on behalf of the Association shall be used exclusively to promote the convenience, health, safety and welfare of the owners of the units and for the operation, replacement, improvement and maintenance of the common elements. All amounts deposited into the operating fund account must be used solely for the common benefit of all owners for purposes authorized by this Master Deed and Declaration, as the same may be amended from time to time. Disbursements from the operating fund account shall be made by the Board of Directors for such purposes as may be necessary for the discharge of its responsibilities herein for the common benefit of all owners, other than those purposes for which disbursements from the reserve fund account are to be used. Disbursements from the reserve fund account shall be made by the Board of Directors for the respective purposes specified in this Article.

4.04 **Determination of Common Assessments.** The Board of Directors shall authorize and levy the amount of common assessments upon each unit as provided herein by majority vote of the Board. All common assessments shall be borne by the owners in proportion to their allocated

interest, which proportionate interest shall be as follows:

<u>Unit Number</u>	<u>Proportionate Interest</u>
Unit 1	35%
Unit 2	65%

provided, however, that any common expense or portion thereof benefiting fewer than all units shall be assessed exclusively against the units benefited. If any common expense is caused by the misconduct of any unit owner, the Association may assess such expense exclusively against such unit. Not later than thirty (30) days prior to the beginning of each fiscal year, the Board of Directors shall prepare and distribute to the membership of the Association a written, itemized estimate (budget) of the total common expenses to be incurred by the Association during such year in performing its functions under this Master Deed and Declaration. The estimate should include a reasonable provision for contingencies and deposits into the reserve fund account, less any expected income, and should also account for any surplus from previous years. Written notice of annual common assessments shall be sent to every member of the Association subject thereto. Written notice of any change in the amount of common assessments levied by the Association through the Board of Directors shall be given to all members not less than thirty (30) days prior to the effective date of such change. Each member shall thereafter pay to the Board of Directors his annual common assessments in installments at such frequency and in such amounts as shall be established by the Board of Directors. Each common assessment may be paid by a member to the Association in one check or in separate checks as payments attributable to the deposits under the operating fund and the reserve fund. In the event that any installment of an annual common assessment payment is less than the amount assessed and the payment does not specify the fund or funds into which it should be deposited, the receipt by the Association from that owner shall be credited in order of priority, first to the operating fund account until that portion of the common assessment has been satisfied, second to the reserve fund account until that portion of the common assessment has been satisfied, and third to any other funds created by the Board of Directors.

**4.05 Collection of Common Assessments.** From and after the first day of the first month following the date of recordation of a deed for the first purchaser of a unit, the Board of Directors shall fix and collect from each member his prorata share of the common assessments. Common assessments for fractions of any month involved shall be prorated. The Board of Directors shall present to the members and to any institutional holder of a first mortgage on a unit which has filed a written request with the Board of Directors, a written financial statement reflecting income and expenditures of the Association, including deposits in and withdrawals from the reserve fund account from the date of establishment thereof, as provided in the Bylaws of the Association. The Board of Directors may cause such statement to be distributed to all members in such greater frequency and at such further intervals as may be deemed appropriate by the Board of Directors. At the end of any fiscal year of the Association, the membership may determine that all excess funds remaining in the operating fund account, over and above the amounts used for the operation of the Association, may be returned to the members in a proportion equal to their individual contributions, or may be retained by the Association and used to reduce the following year's common assessments. In a voluntary or involuntary conveyance of a unit, the new owner ("purchaser") shall be jointly and severally liable with the previous owner ("seller") for all unpaid assessments levied by the Board of Directors against the seller for his share of the common expenses until the date on which the deed to the unit

is recorded, without prejudice to the right of the purchaser to recover from the seller the amounts paid by the purchaser therefor. However, any such purchaser shall be entitled to a statement from the Board of Directors of the Association setting forth the amount of the unpaid assessments against the seller due to the Association and such purchaser shall not be liable for, nor shall the unit conveyed be liable for any unpaid assessments levied by the Board of Directors against the seller in excess of the amount set forth in such statement; **provided, however**, that the purchaser shall be liable for any assessment becoming due after the date of the statement. Any first mortgagee or other good faith purchaser for value who obtains title to a unit pursuant to the remedies provided in a mortgage or deed of trust shall not be liable for unpaid assessments or charges against the mortgaged unit which accrue prior to the time such mortgagee acquires title to the unit. Such unpaid assessments or charges shall be deemed to be common expenses collectible from all unit owners.

4.06 **Capital Improvement Assessments.** Should the Board of Directors determine the need for a capital improvement or other such expenditures, the cost of which is in excess of Five Thousand Dollars (\$5,000), then a vote of members representing a two-thirds (2/3) majority in voting interest of the membership of the Association shall be required to approve and render effective a capital improvement assessment to be levied by the Board of Directors to cover the cost of such expenditure.

#### **ARTICLE V.**

#### **NONPAYMENT OF ASSESSMENTS**

5.01 **Delinquency.** Any installment of an assessment provided for in this Master Deed and Declaration shall become delinquent if not paid on the due date as established by the Board of Directors of the Association. With respect to each installment of an assessment not paid within ten (10) days after its due date, the Board of Directors may, at its election, require the delinquent owner to pay a late charge not to exceed Five Dollars (\$5) or five percent (5%) of the amount of the delinquent installment, whichever is greater. If any installment of an assessment is not paid within thirty (30) days after its due date, the Board may mail a notice to the owner and to each first mortgagee of a unit which has requested a copy of such notice. Such notice shall specify: (1) the fact that the installment is delinquent; (2) the action required to cure the delinquency; (3) the date, not less than thirty (30) days from the date the notice is mailed to the owner, by which such delinquency must be cured; and (4) that failure to cure such delinquency on or before the date specified in the notice may result in acceleration of the balance of the installments of the assessment for the then current fiscal year and sale of the unit. The notice shall further inform the owner of his right to cure after acceleration and to bring a court action to assert the nonexistence of a default or any defense of the owner to acceleration and sale. If the delinquent installments of the assessment and any charges thereon are not paid in full on or before the date specified in the notice, the Board of Directors, at its option, may declare all of the unpaid balance of the annual assessment for the then current fiscal year attributable to that owner and his unit to be immediately due and payable without further demand, and may enforce the collection of the full assessment and all charges thereon in any manner authorized by law, this Master Deed and Declaration, and the Bylaws of the Association.

5.02 **Liens and Enforcement.** All sums assessed by the Association but unpaid for the share of common expenses chargeable to any unit shall constitute a lien on such unit prior to all other liens, except only: (1) tax liens on the unit in favor of any governmental assessing unit or special



district; and (2) all sums unpaid on the first mortgage of record. Such assessment liens may be foreclosed by suit of the Board of Directors of the Association acting on behalf of the owners of the other units, in like manner as a mortgage of real property. In any such foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the Bylaws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board of Directors acting on behalf of the owners of the other units shall have the power to bid in the unit at a foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. Any recovery resulting from a suit in law or equity initiated pursuant to this article may include reasonable attorneys' fees as fixed by the court.

#### ARTICLE VI.

##### EASEMENTS AND RIGHTS OF ENTRY

6.01. **Easements in General.** All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding upon Declarant, its successors and assigns, and any owner, purchaser, mortgagee or other person or entity having an interest in the property or any part or portion thereof.

6.02 **Easements and Common Elements.** Declarant expressly reserves for the benefit of all owners reciprocal, non-exclusive easements of access, ingress and egress over all common elements. Such easements may be used by Declarant, its successors and assigns, purchasers and all owners, and their guests, tenants and invitees residing on or temporarily visiting the property for walkways, vehicular access, use of all facilities as the same from time to time may exist upon the common elements, and such other purposes as may be reasonably necessary for use and enjoyment of a unit in the condominium regime. Declarant expressly reserves for the benefit of the Board of Directors and all agents, officers, directors and employees of the Association non-exclusive easements over the common elements as may be necessary to maintain and repair the common properties and to perform all other tasks in accordance with the provisions of this Master Deed and Declaration. Declarant expressly reserves for the benefit of the Association the right of access to the roof through the New Elevator shown on Exhibit "B" attached hereto for the limited purpose of repairing and maintaining the roof. Declarant expressly reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the common elements to utility companies and public agencies as may be necessary. The Board of Directors of the Association shall have the right to grant such other easements and rights-of-way over the common elements as may be necessary or desirable.

6.03 **Easements and Encroachment.** The owners of the respective units agree that if any portion of the common elements and facilities thereon encroaches upon the units, or any of them, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist.

6.04 **Easement of Unintentional and Non-negligent Encroachments.** If a unit shall encroach upon any common element or upon any other unit by reason of original construction or the non-purposeful or non-negligent act of the unit owner, then an easement appurtenant to such encroaching unit, to the extent of such encroachment, shall exist so long as such encroachment shall exist. If any original construction or non-purposeful or non-negligent act of the Association shall encroach upon any common element, then an easement appurtenant to such common element, to

the extent of such encroachment, shall exist so long as such encroachment shall exist.

6.05 **Easements and Maintenance.** Every unit owner shall have a perpetual easement in, upon, through and over the property to keep, maintain, use, operate, repair and replace: (1) his unit, in its original position and in every subsequent position to which it changes by reason of the gradual forces of nature and of the elements, whether such subsequent position be, in whole or in part, adjacent, subjacent or superjacent to said original position; (2) every chimney, stack or vent, from his unit; (3) every threshold, screen door, storm window, shutter, awning and all hardware pertaining thereto; and (4) every exterior wall fixture.

6.06 **Easements and Utilities.** Every unit owner shall have a perpetual easement in, upon, through and over the property for the subterranean installation, maintenance and repair of any pipe, cable, wire or other conduit of liquids or energy supplying water, sewerage, telephone, radio, television, electricity, heat, steam or other similar service to the unit owned by him; subject, however, to the provisions that the work of installation or repair shall be performed by the Association or an agent of the Association.

6.07 **Rights of Entry.** The Board of Directors shall have a limited right of entry in and upon the exterior of all units for the purpose of inspecting the property and taking whatever corrective action may be deemed necessary or proper by the Board of Directors, consistent with the provisions of this Master Deed and Declaration. However, nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any property to be maintained or repaired by the owner. In the event any unit owner sustains any damage as a result of such entry, such damage shall be repaired and the premises restored to its condition prior to such entry. Nothing in this article shall in any manner limit the right of the owner to exclusive occupancy and control over his unit. However, each owner hereby grants a right of entry to the Board of Directors in case of any emergency originating in or threatening his unit, whether such owner is present or absent.

**ARTICLE VII.**

**OCCUPANCY AND USE RESTRICTIONS**

7.01 **Occupancy and Use.** The units shall be occupied and used by their respective owners and their tenants only for office, residential, or business or commercial purposes permitted by the City of Omaha, Nebraska, and for no other purpose.

7.02 **Rentals.** Owners of the respective units shall have the absolute right to lease the same, provided that said lease is made subject to the covenants and restrictions contained in this Master Deed and Declaration, and subject to the Bylaws of the Association attached hereto.

7.03 **Obstructions and Maintenance.** There shall be no obstruction of the common elements nor shall anything be stored in or on the common elements without the prior consent of the Board of Directors except as herein expressly provided. No waste shall be committed in the common elements. Each unit owner shall be obligated to maintain and keep his own unit, including all components thereof, its windows, doors and any patio or balcony which forms part of such unit, in good, clean order and repair.

7.04 **Insurance Rates.** Nothing shall be done or kept in any unit or in the common elements which may increase the rate of insurance on the buildings or contents thereof, applicable for standard commercial use, without the prior written consent of the Board of Directors. No unit owner shall permit anything to be done or kept in his unit or in the common elements which may result in the cancellation of insurance on the units or contents thereof or which would be in violation

of any law.

7.05 **Machinery and Appliances.** No unit owner shall overload the electrical wiring in the buildings or operate any machines, appliances, accessories or equipment in a manner so as to cause, in the judgment of the Board of Directors, an unreasonable disturbance to others, or connect any machines, appliances, accessories or equipment to the heating system or plumbing system without the prior written consent of the Board of Directors.

7.06 **Signs and Sales Activities.** No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the property except at such location and in such form as shall be determined by the Board of Directors. The right is reserved by Declarant or its agent or agents to place "For Sale" or "For Rent" signs on any unsold or unoccupied units and on any part of the common elements, and the right is hereby given to any mortgagee who may become the owner of any unit to place such signs on any unit owned by such mortgagee.

7.07 **Unit Exteriors.** Unit owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the buildings and no sign, awning, canopy, shutter, radio or television antennae (except as constructed by Declarant) shall be affixed to or placed upon the exterior walls or roof or any part thereof without the prior consent of the Board of Directors.

7.08 **Animals.** No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept in any unit or in the common elements for any private or commercial purpose.

7.09 **Noxious Activities.** No noxious or offensive activity shall be carried on in any unit or in or on the common elements which may impair the structural integrity of the buildings or which would structurally alter the buildings except as otherwise expressly provided herein.

7.10 **Structural Integrity.** Nothing shall be done in any unit or in, on or to the common elements or which may impair the structural integrity of the buildings or which would structurally alter the buildings except as otherwise expressly provided herein.

7.11 **Common Elements.** The common elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for enjoyment of the units.

7.12 **Limitation on Mortgagee Liabilities.** Where the mortgagee of the first mortgage of record or the purchaser or purchasers of a unit obtains title to such unit as a result of foreclosure of the first mortgage or by voluntary conveyance in lieu of foreclosure, said mortgagee shall not be liable for the shares of common expenses or assessments by the Association pertaining to such unit or chargeable to the former owner of such unit which became due prior to acquisition of title by said mortgagee or purchaser as a result of the foreclosure or voluntary conveyance in lieu of foreclosure. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all owners of units, including a successor or assignee of the mortgagee. The waiver of liability granted herein for the payment of past-due expenses or assessments shall not apply to the owner who takes back a purchase money mortgage.

7.13 **Unauthorized Transactions.** Any sale or mortgage not authorized pursuant to the terms of this Master Deed and Declaration shall be void unless subsequently approved by the Board of Directors of the Association.

7.14 **Alteration of Units and Common Elements.** Notwithstanding anything to the contrary contained herein, a unit owner may not change the appearance of the common elements or the exterior appearance of his unit or any other portion of the property without the prior written

consent of the Board of Directors. A unit owner may subdivide his unit into two or more units subject to other provisions of law and, upon the application of a unit owner, the Association shall prepare, execute and record an amendment to this Master Deed and Declaration, including the plats and plans subdividing that unit, at the owner's cost and expense.

### **ARTICLE VIII.**

#### **ARCHITECTURAL AND LANDSCAPING PROVISIONS**

Except as otherwise expressly provided herein and excepting the interiors of a unit, no replacement, addition or alteration of a building, structure, fence, drainage facility, landscaping or planting on any portion of the property shall be carried out, other than by Declarant or the Board of Directors, except upon the prior written consent of the Board of Directors.

### **ARTICLE IX.**

#### **REPAIRS AND MAINTENANCE**

9.01 **Duties of Association.** Subject to the provisions of Article VII pertaining to each owner's duties, Article XI pertaining to destruction of improvements, and Article XII pertaining to eminent domain, the Association shall paint, maintain, repair and make necessary improvements to the common elements or shall contract for such maintenance, repairs and improvements to assure the maintenance of the common elements in first-class condition and repair. Such maintenance, repairs and improvements shall include, without limitation: all corrective architectural, janitorial and landscaping work; repairs and payment for all master, centrally metered utilities and mechanical and electrical equipment in the common elements; payment of all common expenses and charges for utilities serving all common walkways, streets and other means of ingress and egress within the common elements and repair and maintenance of all common walkways, streets and other means of ingress and egress within the common elements. All such maintenance, repairs and improvements to the common elements shall be paid for as common expenses out of the funds as provided in this Master Deed and Declaration. All work performed for and on behalf of an owner shall be charged to such owner as a special assessment as provided herein. To the extent not assessed to or paid by the owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the common elements. It shall further be the affirmative duty of the Board of Directors to require strict compliance with all provisions of this Master Deed and Declaration and the Bylaws of the Association.

9.02 **Duties of Owners.** Each owner shall maintain, repair, replace, paint, paper, plaster, tile, finish and restore, or cause to be maintained, repaired, replaced and restored, all structural, functional and decorative building components appurtenant to his unit at such owner's sole cost and expense. Additionally, each owner shall be further responsible as follows:

(a) To maintain, repair and replace at his expense the air conditioning and heating equipment serving his unit, including any portion thereof which may be located upon the roof, and all appliances and fixtures located in his unit;

(b) To promptly report to the Association any defect or need for repairs, the responsibility for the remedying of which is that of the Association. Any such repairs shall be done without disturbing the rights of other unit owners.

9.03 **Alteration and Improvement of Common Elements.** There shall be no alteration

or further improvement of common elements without prior approval in writing of the record owners of the units; provided, however, that any alteration or improvement of the common elements bearing the approval in writing of the record owners of not less than seventy-five percent (75%) of the common elements and which does not interfere with the rights of any owners without their consent, may be done if the owners who do not approve are relieved of the initial cost thereof. The share of any cost not so assessed shall be assessed to the other unit owners in the same ratio as their shares in the common elements bear to each other. There shall be no adjustment in the shares and rights of a unit owner in the common elements which are altered or further improved, regardless of the unit owners' contributions to the cost thereof.

9.04 **Interior of Units.** Each owner shall have the exclusive right to alter, subdivide, refurbish, paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors within his unit.

#### **ARTICLE X. INSURANCE**

10.01 **Duty to Obtain Insurance; Types.** The Board of Directors of the Association shall maintain, to the extent reasonably available:

(a) Property insurance on the common elements (and, if agreed to by all unit owners, the units themselves) insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be the fair market value of the replacement cost of the insurance property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the Board of Directors, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership and maintenance of the common elements.

10.02 **Premiums.** Insurance premiums for any public liability insurance coverage and any casualty insurance coverage on the common elements shall be a common expense to be paid by assessments levied by the Association. Payment of such assessments shall be held in a separate escrow account of the Association and used solely for the payment of the liability and property insurance premiums and other insurance premiums as such premiums become due. In the event that insurance is obtained insuring any of the units themselves, the cost of such insurance shall be borne by those benefited directly by such insurance.

10.03 **Proceeds; Deficiency.** The proceeds of insurance policies shall be used to promptly repair or restore any property covered by insurance which is damaged or destroyed. In the event the insurance proceeds are insufficient to cover the cost of repair, restoration or reconstruction of the common elements; then all owners shall be liable for the assessment for any deficiency in proportion to the allocation interest of their respective units. In the event insurance proceeds are insufficient to cover the cost of repair, restoration or reconstruction, of any unit, then the owner shall alone bear the cost of such deficiency.

10.04 **Insurance Policies.** Insurance policies carried pursuant to this Article X must provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of his or her interest in the common elements or membership in the Association;

(b) The insurer waives its right to subrogation under the policy against any unit owner;

(c) No act or omission by any unit owner, unless acting within the scope of his or her authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy there is other insurance in the name of a unit owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

**ARTICLE XI.**

**DESTRUCTION OF IMPROVEMENTS**

In the event the property subject to this Master Deed and Declaration is totally or substantially damaged or destroyed, it shall be promptly repaired and restored by the Board of Directors, using proceeds of insurance for that purpose; provided, however, that each unit owner shall restore his respective unit.

**ARTICLE XII.**

**EMINENT DOMAIN**

**12.01 Definitions - Total Taking, Partial Taking, Special Partial Taking.** The term "taking" as used in this article shall mean condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. A "total taking" shall occur if there is a permanent taking by eminent domain of an interest in all or part of the common elements, such that the operation and use of the common elements in accordance with the provisions of this Master Deed and Declaration is substantially and adversely affected, and within one hundred twenty (120) days after the effective date of the taking the owners do not by affirmative vote of a majority of their entire voting power approve the repair, restoration and replacement to the extent feasible of the common elements not taken or only so partially taken. A "partial taking" shall occur if there is any other permanent taking of the common elements. Following any taking which, in the opinion of a majority of the Directors, would constitute a total taking in the absence of the affirmative vote of the owners by the foregoing provisions, the Board of Directors shall call a special meeting of the Association membership to be promptly held and in any event within sixty (60) days after the effective date of such taking to determine if such owners will or will not decide to repair the common elements or as provided herein.

**12.02 Awards - Repair, Restoration and Replacement.**

(a) In the event of a total taking of the common elements, the Board of Directors shall, subject to the right of all first mortgagees of record who have requested the right to join them in the proceedings and except as provided in paragraph 12.03, represent all owners in an action to recover all awards remaining from the total award. The net proceeds thereof, after deducting incidental fees and expenses, shall be distributed by the Board of Directors to the owners and mortgagees as their interests shall then appear.

(b) In the event of a partial taking of the common elements, the provisions of

the first sentence of the preceding subparagraph (a) shall be applicable, provided, however, that the net proceeds of the total award, after deducting related fees and expenses and the portions of the award attributable to the taking proceedings, or failing such attribution, attributable by the Board of Directors, shall be held by the Board of Directors and applied to the repair, restoration and replacement of the common elements to as nearly their condition prior to the taking as may be feasible, in the same manner and under the same provisions applicable to the proceeds of insurance as set forth in Article X hereof, except for any provisions relating to owners' personal property. Any funds held for restoration by the Board of Directors following completion thereof shall be disposed of in each case in the same manner as provided in paragraph 12.02(a) of this article. In the event that the funds held for restoration by the Board of Directors are less than the cost of restoration and repair, a reconstruction assessment of the owners, with each owner contributing equally with regard to common elements, may be levied by the Board of Directors to provide the necessary additional funds for such reconstruction. Following any partial taking, the Association shall continue, subject to and with the benefit of all provisions of this Master Deed and Declaration so far as applicable to the remaining units and common elements. In the event of a temporary taking of common elements, the Board of Directors shall have exclusive rights to prosecute the proceedings for the respective taking awards and shall apply the proceeds thereof to reduce common expenses.

(c) In the event of a total or partial taking of any of the units the remedies to be exercised in view of such taking shall be exercised by the unit owners and their respective mortgagees and tenants as their interests may appear; provided, however, that in the event of a partial taking the unit owner may, subject to the owner's agreement with its mortgagee, repair, restore and replace the unit so partially taken to as nearly its condition prior to the taking as may be feasible.

**12.03 Awards for Owners' Personal Property and Relocation Allowances.** Where all or part of the property is taken by eminent domain, each owner shall have the exclusive right to claim all of the award made for such owner's personal property and any relocation or moving expense or other allowance of a similar nature designed to facilitate relocation.

**12.04 Notice to Owners and Listed Mortgagees.** The Board of Directors, immediately upon having knowledge of any taking by eminent domain of the property or any portion thereof or any threat thereof, shall promptly notify all owners in writing, as well as those mortgagees who have filed a written request for such notice with the Board of Directors.

### **ARTICLE XIII.**

#### **RIGHTS OF MORTGAGEES**

**13.01 First Mortgage Not Defeated.** A breach of any of the provisions, covenants, restrictions or limitations hereof, or the recordation of any lien for assessments hereunder, or the pursuit of any remedy hereunder, shall not defeat or render invalid the lien of any first mortgage of record (meaning any recorded mortgage taken in good faith and for value upon the unit of an owner). The owners and their first mortgagees may examine the books and records of the Association during normal business hours, upon serving written notice of such examination to the Board of Directors.

**13.02 Provisions Binding.** All of the provisions herein shall also be binding upon and

effective against any owner whose title to a unit is hereafter acquired through foreclosure or trustee's sale.

**13.03 Approval Required.** Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage owned) of the units have given their prior written approval, neither the Association nor the owners shall by act or omission: (1) abandon or terminate the regime, except for abandonment or termination provided by law in the case of substantial destruction by fire; (2) seek to abandon, partition, subdivide, encumber, sell, convey, transfer, deed in trust, or mortgage any portion of the common elements, including the improvements thereon; **provided, however,** that the granting of easements for public utilities or for other public purposes consistent with the intended use of the property by the owners and the Association shall be deemed a transfer within the meaning of the foregoing clause; (3) waive, abandon or change any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of the property, the exterior maintenance of the property, or the upkeep of lawns, plantings, driveways and other improvements on the property; or (4) change the prorata interest or method of determining the obligations of any unit or owner for purposes of levying assessments, obligations, dues or other charges, or for purposes of determining the prorata share of ownership of the common elements and proceeds of the Association.

**13.04 Request for Notification.** The holder of any first mortgage of record on a unit may file with the Board of Directors a written request for written notification from the Association in the event of any default by the mortgagor of such unit in the performance of such mortgagor's obligations under this Master Deed and Declaration which is not cured within thirty (30) days, and the Board of Directors shall provide each such mortgagee notice thereof.

**ARTICLE XIV.  
AMENDMENT**

**14.01 Amendment by Owners.** Subject to the rights of Declarant reserved in this Master Deed and Declaration, notice of the subject matter of a proposed amendment hereto in reasonably detailed form shall be included with the notice of any meeting of the Association at which a proposed amendment is to be considered. A resolution adopting a proposed amendment may be offered by a member at a meeting of the Association. Adoption of the resolution shall require approval by at least seventy-five percent (75%) of the votes of the entire membership of the Association. A copy of each amendment shall be certified by at least two officers of the Association and the amendment shall become effective on the date the Certificate of Amendment is recorded with the office of the Register of Deeds of Douglas County, Nebraska.

**14.02 Proviso.** Unless said amendment hereto includes the retained development rights of Declarant, no amendment shall discriminate against any owner or any unit unless the owners so affected shall consent, and no amendment shall change any unit or its share in the common elements appurtenant to it, nor increase the owner's share of the common expenses unless the record owner of the unit concerned shall join in the execution of the amendment.

**14.03 Mortgagees' Agreement.** Notwithstanding any other provision of this Master Deed and Declaration, any of the following amendments, to be effective, must be approved in writing by record holders of seventy-five percent (75%) of the first mortgages on all units at the time of such amendment, based upon one vote for each mortgage owned:

- (a) Any amendment which affects or purports to affect the validity or priority



of encumbrances of the rights or protection granted to mortgagees as provided in this Master Deed and Declaration including, without limitation, Article XIII hereof;

(b) Any amendment which would necessitate a mortgagee, after it has acquired a unit through foreclosure, to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure;

(c) Any amendment which would or could result in an encumbrance being canceled by forfeiture, or in the individual units not being separately assessed for tax purposes;

(d) Any amendment relating to the insurance provisions as set forth in Article X hereof, or to the application of insurance proceeds as set forth in Article XI hereof, or to the disposition of any monies received in any taking under condemnation proceedings;

(e) Any amendment which would or could result in termination of the condominium regime or abandonment of the property or partition or subdivision of a unit in any manner inconsistent with the provisions of this Master Deed and Declaration; or

(f) Any amendment which would subject any owner to a right of first refusal or other such restriction in favor of the Association, in the event such owner exercises his right to sell, transfer or otherwise convey his unit.

**14.04 Certification.** A certificate, signed and sworn to by record holders of at least seventy-five percent (75%) of the first mortgages on all units at the time of amendment, that such members have either voted for or consented in writing to any amendment adopted as above provided, when recorded, shall be conclusive evidence of such fact. The Association shall maintain in its files the record of all such votes or written consent of any record holders or mortgagees.

**14.05 Protection of Declarant.** Notwithstanding any other provision in this Master Deed and Declaration, the prior written consent of Declarant shall be required before any amendment may become effective which would impair or diminish the rights of Declarant to complete the development and sales of all units.

**14.06 Amendment by Declarant.** Notwithstanding the foregoing, until the close of the sale of the first unit, Declarant shall have the right to terminate or modify this Master Deed and Declaration by recordation of a supplement hereto setting forth such termination or modification. For purposes of this Master Deed and Declaration, the close of the sale of the first unit shall be deemed to be the date upon which a deed conveying said unit is recorded in the office of the Douglas County Register of Deeds.

## **ARTICLE XV.**

### **GENERAL PROVISIONS**

**15.01 Legal Proceedings.** Failure to comply with any of the terms and provisions of this Master Deed and Declaration and the Articles of Incorporation or Bylaws of the Association and regulations adopted pursuant thereto by any owner, his family, guests, employees, invitees or tenants, after compliance with the administrative procedure and remedies set forth herein and in the Bylaws of the Association (except for the nonpayment of any assessments as provided for herein), shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, which relief may be

sought by Declarant, the Board of Directors, or, if appropriate, an aggrieved owner. Any owner (not at the time in default hereunder) or Declarant shall be entitled to bring an action for damages against any defaulting owner and, in addition, may enjoin any violation of this Master Deed and Declaration. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in such amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, plus interest thereon, costs of collection and court costs. Each remedy provided for in this Master Deed and Declaration shall be cumulative and not exclusive or exhaustive.

**15.02 Failure to Enforce.** No terms, obligations, covenants, conditions, restrictions or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce the same, no matter how many violations or breaches may occur.

**15.03 Hold Harmless and Indemnification.** Each owner shall be liable to the Association for any damage to the common elements of any type or to any equipment or facilities thereon which may be sustained by reason of the negligence of said owner, his guests, tenants, employees or invitees, to the extent that any such damage shall not be covered by insurance.

**15.04 Use of Facilities.** The Board of Directors shall have the right to establish reasonable restrictions on the time and manner of use of facilities available for use by the owners, their guests, tenants, employees or invitees.

**15.05 No Representations or Warranties.** No representatives or warranties of any kind, express or implied, have been given or made by Declarant, its agents or employees, in connection with the property or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as an integrated development or otherwise, except as specifically and expressly set forth herein.

**15.06 Non-liabilities and Indemnification.** No right or power conferred upon the Board of Directors by virtue of this Master Deed and Declaration or by the Articles of Incorporation or Bylaws of the Association shall be construed as a duty, obligation or disability charged upon the Board of Directors or upon any individual member thereof, and except for injuries arising out of malicious acts of any Director, no such Director or member shall be liable to any person for his decisions or failure to act in making decisions as a Director. The Association shall pay all expenses incurred by and satisfy any judgment or fine rendered or levied against any person who is or has been a Director, officer, employee or committee member of the Association in any action brought by a third party against such person (whether or not the Association is joined as a party defendant) to impose a liability or penalty on such person while a Director, officer, employee or committee member of the Association; provided, however, that the Board of Directors of the Association determines in good faith that such Director, officer, employee or committee member was acting in good faith within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interests of the Association or its members. Payments include amounts paid and expenses incurred in settling any such action or threatened action. This provision shall be construed to provide for such payments and indemnification to the fullest extent permitted by the provisions of applicable laws.

**15.07 Notices.** Notices required or permitted to be given to the Board of Directors or any owner may be delivered to any member of the Board or such owner either personally or by mail,

addressed to such Board member or owner at his unit. Notices required to be given to any devisee or personal representative of a deceased owner may be delivered either personally or by mail to such party at his address appearing in the records of the court wherein the estate of such deceased owner is being administered.

**15.08 Severability.** The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof as may be determined by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

**15.09 Termination.** The condominium regime may be terminated in the following manner, in addition to the manner provided by the Nebraska Condominium Act: the condominium regime may be terminated at any time by approval in writing of all record owners of units and all record owners of mortgages on units. If the proposed termination is submitted to a meeting of the members of the Association, the notice of the meeting giving notice of the proposed termination, and if the approval of owners of not less than seventy-five percent (75%) of the common elements and of record owners of all mortgages upon the units are obtained in writing not later than thirty (30) days from the date of such meeting, then the approving owners shall have an option to buy all of the units of the other owners for the period ending on the 60th day from the date of such meeting. Such approvals shall be irrevocable until the expiration of the option and, if the option is exercised, the approvals shall be irrevocable. The option shall be upon the following terms:

(a) **Exercise of Option.** The option shall be exercised by delivery or mailing by registered mail to each of the record owners of the units to be purchased an agreement to purchase signed by the record owners of such units who will participate in the purchase. Such agreement shall indicate which units shall be purchased by each participating owner and shall require the purchase of all units owned by owners not approving the termination, but the agreement shall effect a separate contract between each seller and purchaser.

(b) **Price.** The sale price for each unit shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the date of delivery or mailing of such agreement and, in the absence of agreement as to price, it shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisal of the unit, and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(c) **Payment.** The purchase price shall be paid in cash.

(d) **Closing.** The sale shall be closed within ten (10) days following the determination of the sale price.

The termination of the condominium regime in either manner set forth above shall be evidenced by a certificate of the Association executed by its president and secretary certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the public records of Douglas County, Nebraska. After termination of the condominium regime, the unit

owners shall own the property and all assets of the Association as tenants in common in undivided shares which shall be the same as the undivided shares in the common elements and appurtenant to the owners' units prior to the termination. This action concerning termination cannot be amended without the consent of all unit owners and of all record owners of mortgages upon the units.

IN WITNESS WHEREOF, Declarant has executed this Master Deed and Declaration of Covenants, Conditions and Restrictions and Reservation of Easements as of the date first above written.

ST. JOSEPH HIGHRISE LIMITED LIABILITY COMPANY, a Nebraska limited liability company,

By: James B. O'Brien  
JAMES B. O'BRIEN, a member

By: Stephen L. Coffey  
STEPHEN L. COFFEY, a member

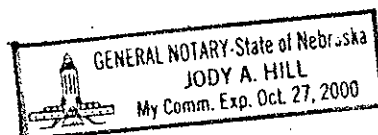
By: Boyd F. Lauritsen  
BOYD F. LAURITSEN, a member

STATE OF NEBRASKA ]  
COUNTY OF DOUGLAS ] SS.

On this 15<sup>th</sup> day of June, 1999, before me, the undersigned, a notary public in and for said county and state personally came JAMES B. O'BRIEN, STEPHEN L. COFFEY, and BOYD F. LAURITSEN, members of ST. JOSEPH HIGHRISE LIMITED LIABILITY COMPANY, a Nebraska limited liability company, and they acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of the limited liability company.

WITNESS my hand and notarial seal the day and year last above written.

Jody A Hill  
Notary Public



**CONSENT**

First Westroads Bank, Inc., a corporation, who is the Trustee and Beneficiary under a Deed of Trust recorded in Book 4375 at Page 376 of the Mortgage Records of Douglas County, Nebraska hereby consents to the formation of the St. Joseph High Rise Condominium Property Regime as set forth above in the Master Deed and Declaration.

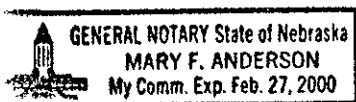
Dated this 7th day of JUNE, 1999.

First Westroads Bank, Inc., a corporation

By: James W. Kresha  
Its SR. VICE PRESIDENT

STATE OF NEBRASKA)  
COUNTY OF ) SS.

The foregoing instrument was acknowledged before me this 7th day of JUNE, 1999, by JAMES W. KRESHA the SR. VICE PRESIDENT of the First Westroads Bank, Inc., a corporation on behalf of the corporation.



Mary F. Anderson  
Notary Public

Prepared on May 26, 1999 by Mark L. Laughlin, Esq. Telephone 402-330-1900, Fax 402-330-0936  
Laughlin, Peterson & Lang, Attorneys 11306 Davenport St., Omaha, Nebraska 68154-2630

## EXHIBIT A

Units 1 and 2, in ST. JOSEPH HIGH RISE CONDOMINIUM PROPERTY REGIME, a condominium property regime in the City of Omaha, Douglas County, Nebraska, as established by Master Deed and Declaration of Covenants, Conditions and Restrictions and Reservation of Easements dated August 14, 1998 and recorded October 19, 1998, in Book 2104 at Page 216 of the Deed Records of Douglas County, Nebraska.

**LEGAL DESCRIPTION**

Unit 1 and Unit 2 in ST. JOSEPH HIGH RISE CONDOMINIUM PROPERTY REGIME, a condominium property regime in the City of Omaha Douglas County Nebraska, as established by Master Deed and Declaration of Covenants and Restrictions and Reservations of Easements dated August 14, 1998 and recorded October 19, 1998, in Book 2104 at Page 216 of the Deed of Records of Douglas County, Nebraska, as amended by the First Amendment to the Master Deed and Declaration Dated May 10, 1999

10th Street

Dorcas Street

Lot 2

Lot 1

Lot 3



SAINT JOSEPH TERRACE

SAINT JOSEPH TERRACE

ST. JOSEPH HIGH RISE  
SECTION A  
CONDOMINIUM PROPERTY REGIME

SECTION B

SECTION A

**LEGEND**

- △ CORNERS SET (STAR DRILL HOLE)
- CORNERS FOUND
- M MEASURED DIMENSIONS
- P PLAT DIMENSIONS
- PT PINCH TOP
- OT OPEN TOP
- SB SOLID BAR

**LAND SURVEYOR'S CERTIFICATION**

I hereby certify that the foregoing map, survey or report was made by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.



Sheet 1 of 9  
Revision Date: May 10, 1999  
Revision Date: May 5, 1999  
Revision Date: March 18, 1999  
Revision Date: February 8, 1999  
Revision Date: August 6, 1998

981231-A.Dwg

Book 96-2

Page 38-47

Date June 20, 1996

Dwn.By JHVD

Job Number 981231



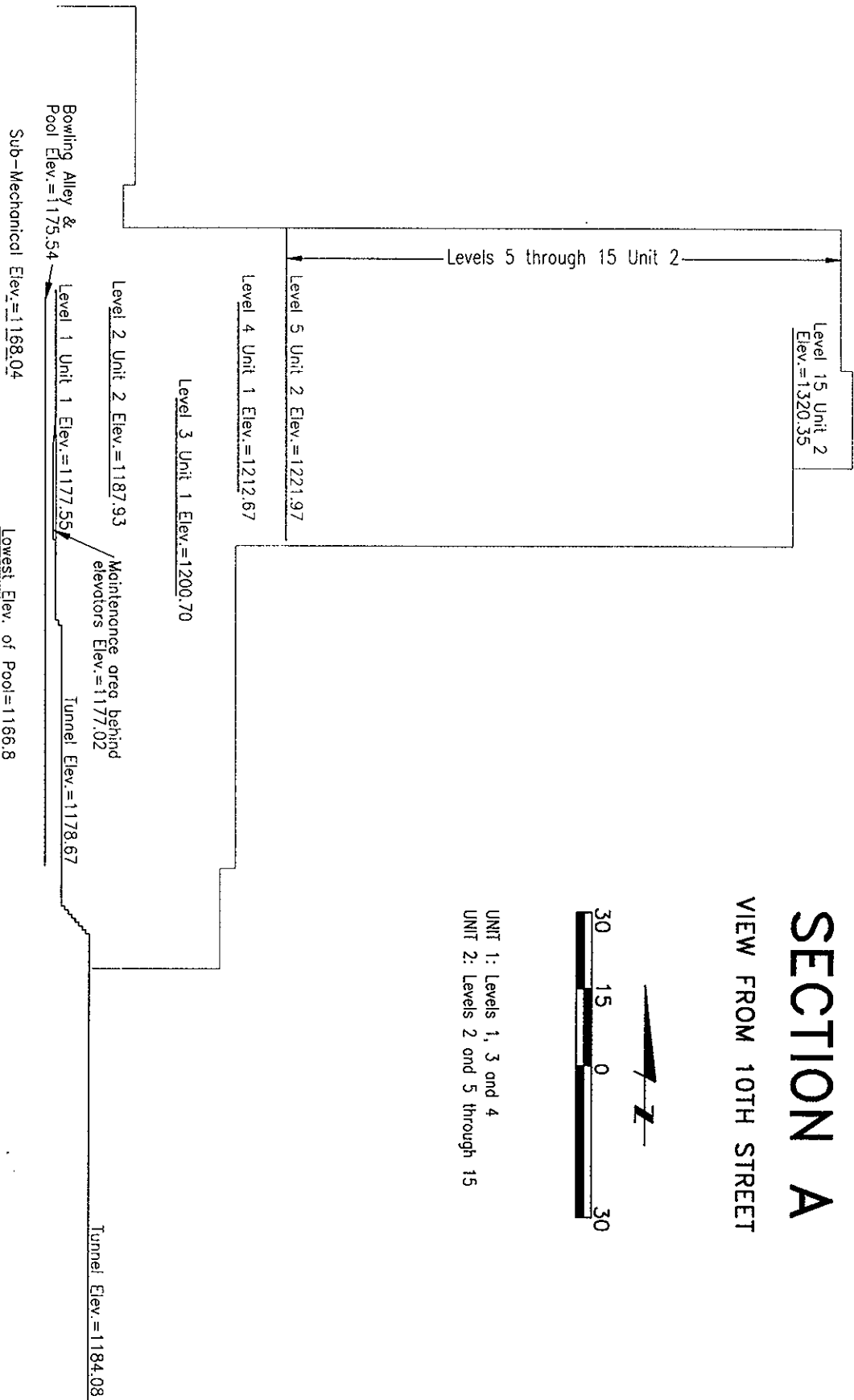
**lamp, rynearson & associates, inc.**  
engineers                      surveyors                      planners

14710 west dodge road, suite 100  
omaha, nebraska 68154-2029

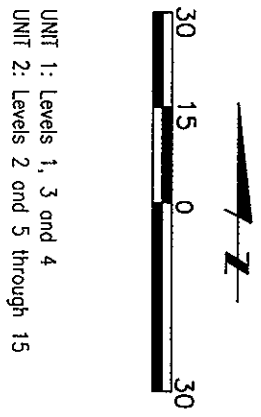
ph 402-496-2498  
fax 402-496-2730

**BENCH MARK**

U.S.G.S Monument Brass Cap at 58.2 feet North from the north curb of Castelar Street,  
16.0 feet East from the east curb of 10th Street, 3.0 feet East from old concrete  
curbing and 0.1 foot below ground. Monument in poor condition and leaning to the North.  
Stamped V253 ELEVATION = 1204.12 Mean Sea Level Datum 1929



**SECTION A**  
VIEW FROM 10TH STREET



UNIT 1: Levels 1, 3 and 4  
UNIT 2: Levels 2 and 5 through 15

Sheet 2 of 9  
Revision Date: May 10, 1999  
Revision Date: February 8, 1999  
Revision Date: August 6, 1998

**lamp, rynearson & associates, inc.**  
engineers surveyors planners  
14710 west dodge road, suite 100 omaha, nebraska 68154-2029  
ph 402-496-2498 fax 402-496-2730



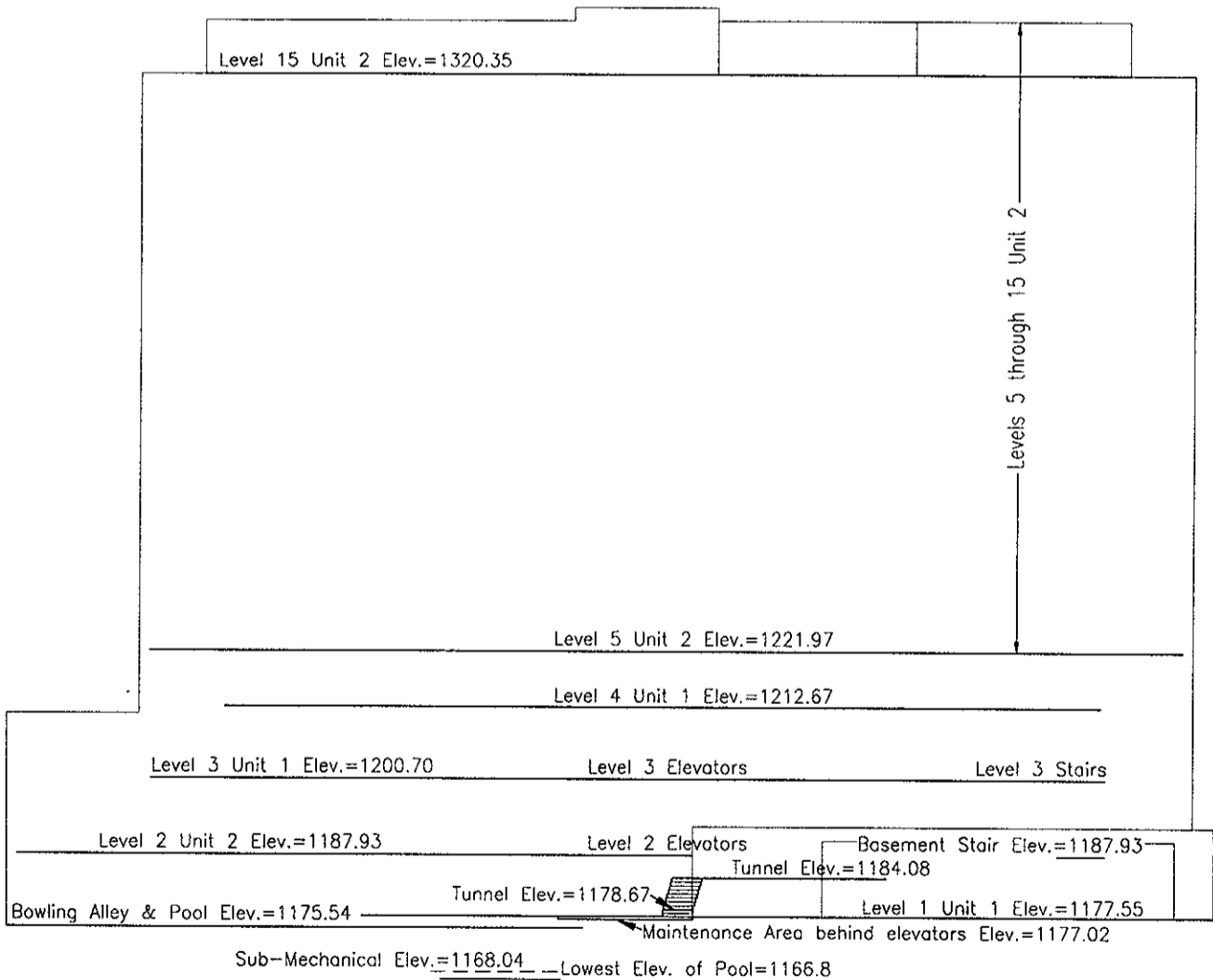
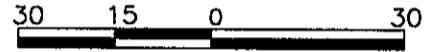
# SECTION B

## VIEW FROM DORCAS STREET

UNIT 1: Levels 1, 3 and 4  
UNIT 2: Levels 2 and 5 through 15

### BENCH MARK

U.S.G.S Monument Brass Cap at 58.2 feet North from the north curb of Castelar Street, 16.0 feet East from the east curb of 10th Street, 3.0 feet East from old concrete curbing and 0.1 foot below ground. Monument in poor condition and leaning to the North. Stamped V253 ELEVATION = 1204.12 Mean Sea Level Datum 1929



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Revision Date: February 8, 1999  
Revision Date: August 6, 1998

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Date June 20, 1996

Dwn.By JHVD

Job Number 981231



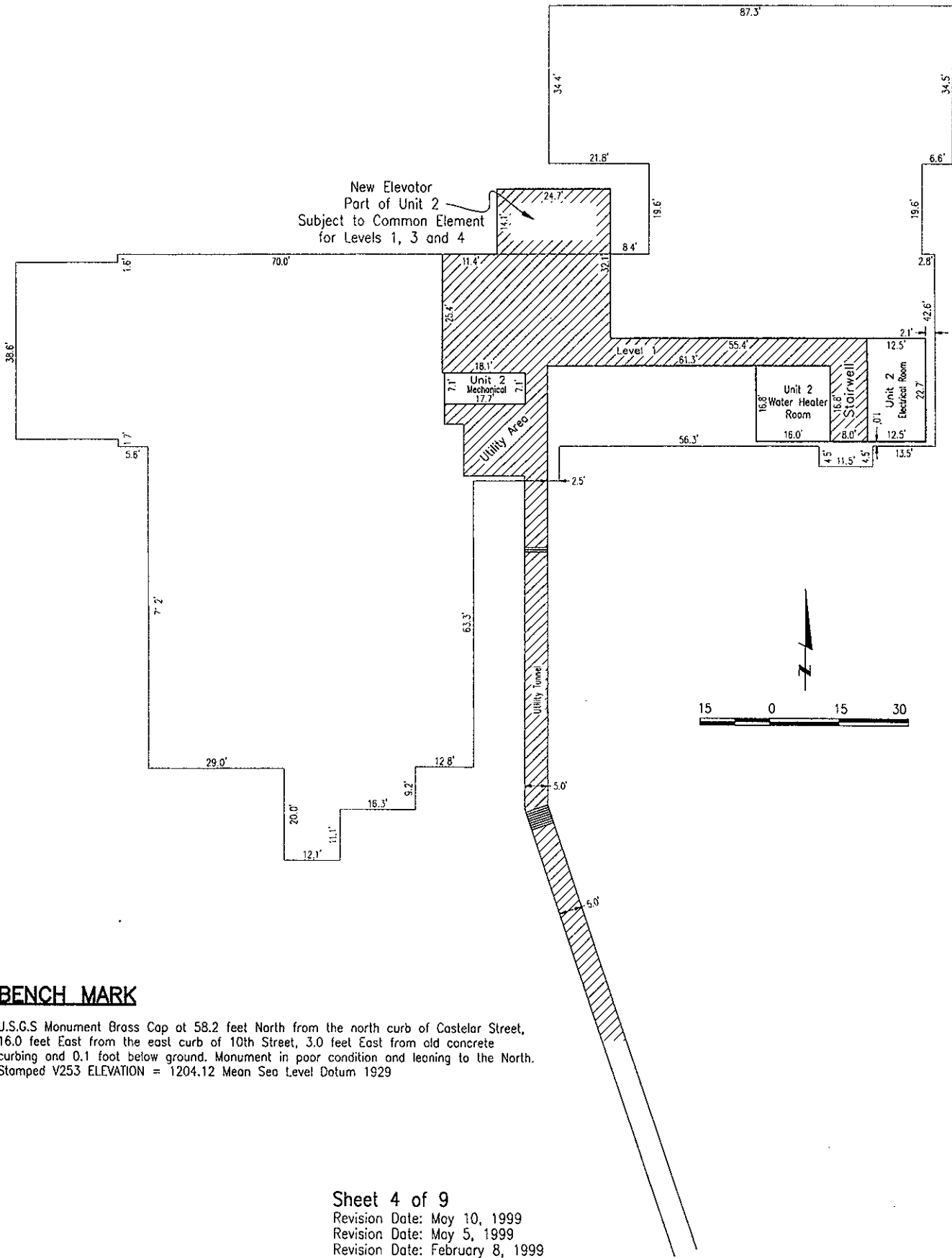
**lamp, rynearson & associates, inc.**  
engineers                      surveyors                      planners

14710 west dodge road, suite 100  
omaha, nebraska 68154-2029

ph 402-496-2498  
fax 402-496-2730

# FLOOR PLAN FOR LEVEL 1, UNIT 1, SHOWING COMMON ELEMENTS

FLOOR ELEVATION = 1177.55



### BENCH MARK

U.S.G.S Monument Brass Cap at 58.2 feet North from the north curb of Castelar Street, 16.0 feet East from the east curb of 10th Street, 3.0 feet East from old concrete curbing and 0.1 foot below ground. Monument in poor condition and leaning to the North. Stamped V253 ELEVATION = 1204.12 Mean Sea Level Datum 1929

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# FLOOR PLAN FOR LEVEL 2, UNIT 2, SHOWING COMMON ELEMENTS

FLOOR ELEVATION = 1187.93

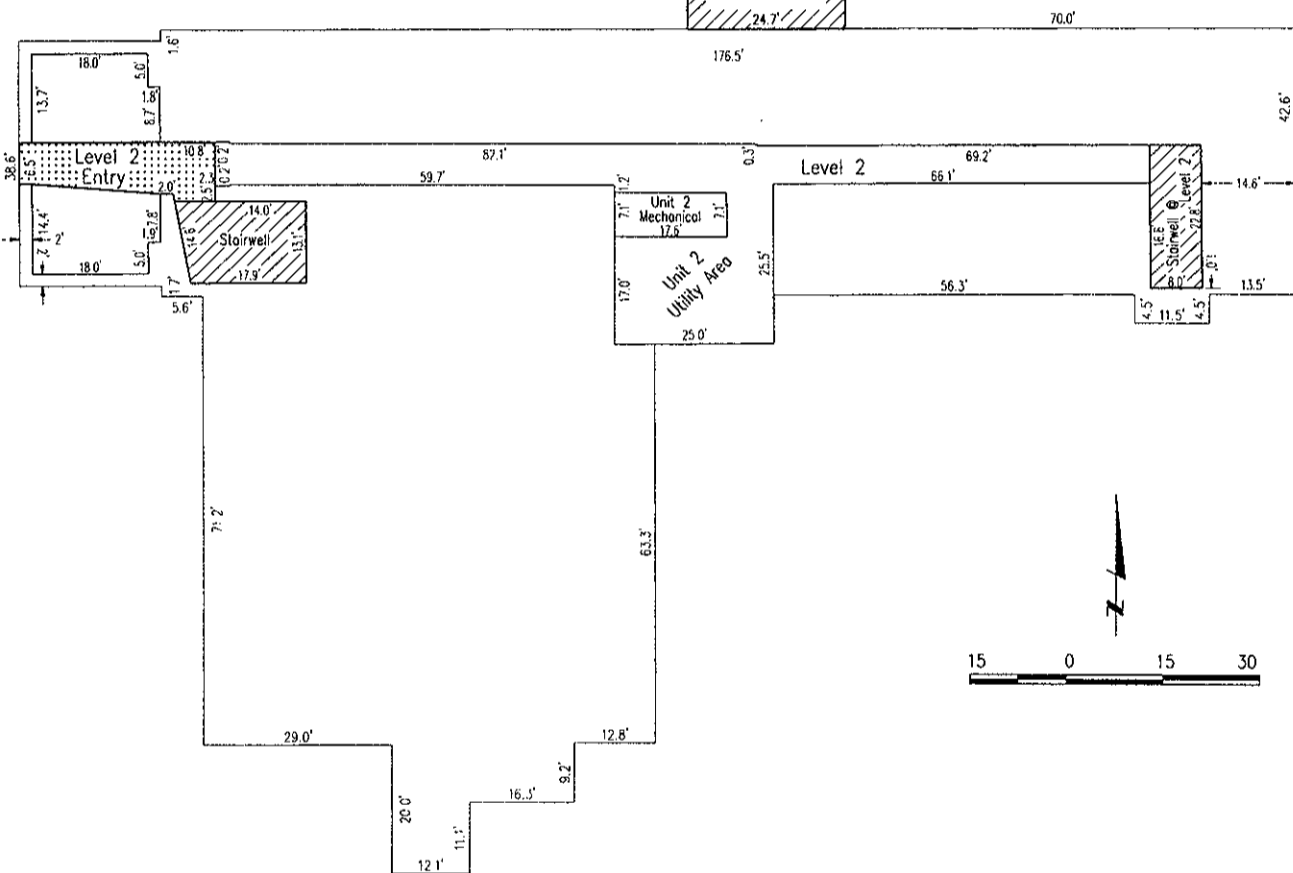
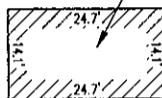


COMMON ELEMENT



UNIT 1 SHALL HAVE ACCESS TO LEVEL 2  
ENTRY FOR EMERGENCY USE ONLY.

New Elevator  
Part of Unit 2  
Subject to Common Element  
for Levels 1, 3 and 4



## BENCH MARK

U.S.G.S Monument Brass Cap at 58.2 feet North from the north curb of Castelar Street,  
16.0 feet East from the east curb of 10th Street, 3.0 feet East from old concrete  
curbing and 0.1 foot below ground. Monument in poor condition and leaning to the North.  
Stamped V253 ELEVATION = 1204.12 Mean Sea Level Datum 1929

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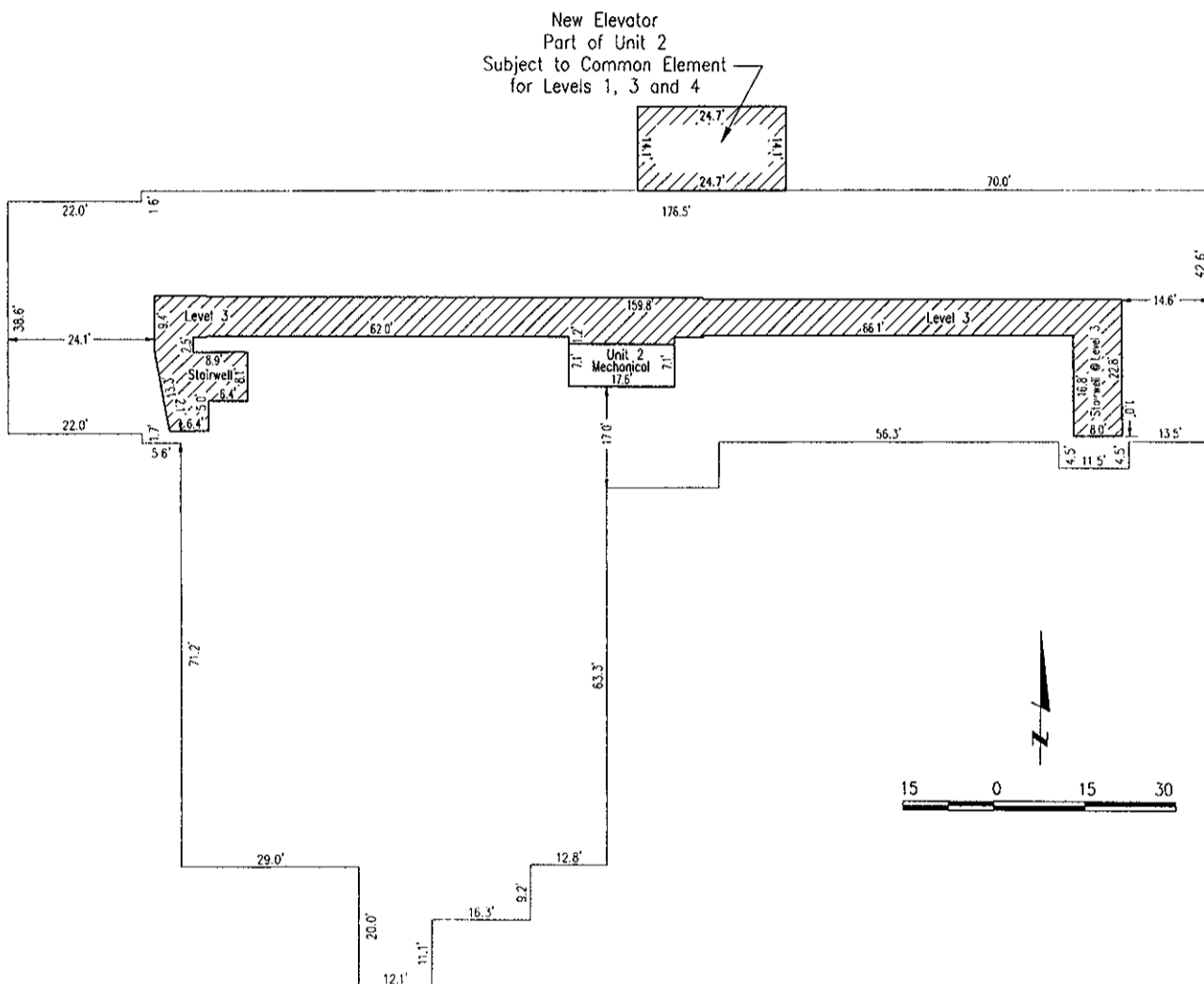
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# FLOOR PLAN FOR LEVEL 3, UNIT 1, SHOWING COMMON ELEMENTS

FLOOR ELEVATION = 1200.70



### BENCH MARK

U.S.G.S Monument Brass Cap at 58.2 feet North from the north curb of Costelar Street, 16.0 feet East from the east curb of 10th Street, 3.0 feet East from old concrete curbing and 0.1 foot below ground. Monument in poor condition and leaning to the North. Stamped V253 ELEVATION = 1204.12 Mean Sea Level Datum 1929

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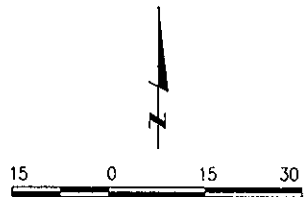
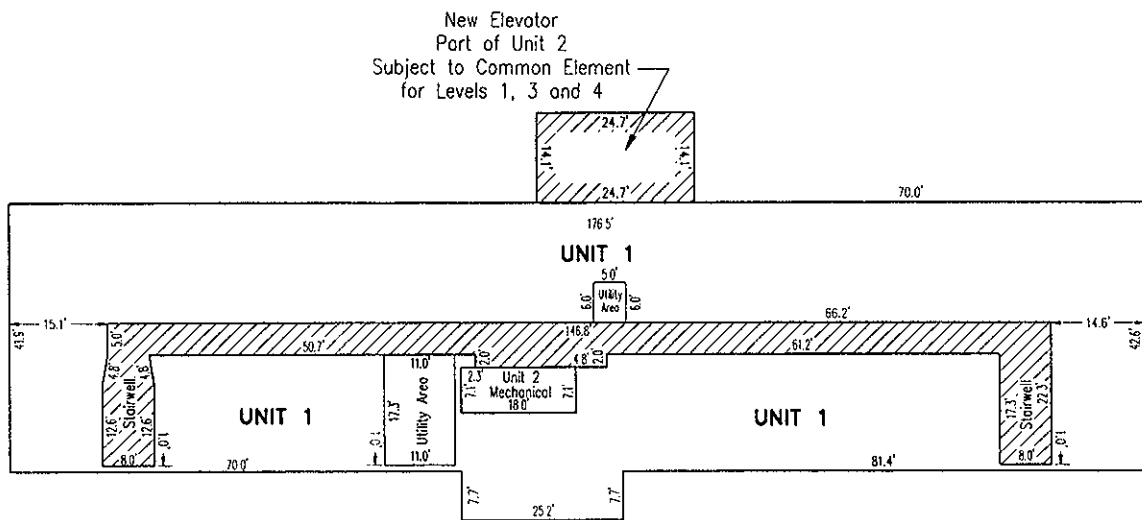
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# FLOOR PLAN FOR LEVEL 4, UNIT 1, SHOWING COMMON ELEMENTS

FLOOR ELEVATION = 1212.67



### BENCH MARK

U.S.G.S Monument Brass Cap at 58.2 feet North from the north curb of Castelar Street, 16.0 feet East from the east curb of 10th Street, 3.0 feet East from old concrete curbing and 0.1 foot below ground. Monument in poor condition and leaning to the North. Stamped V253 ELEVATION = 1204.12 Mean Sea Level Datum 1929

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Revision Date: May 10, 1999  
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Revision Date: August 6, 1998

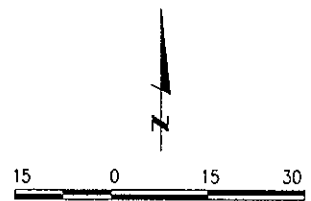
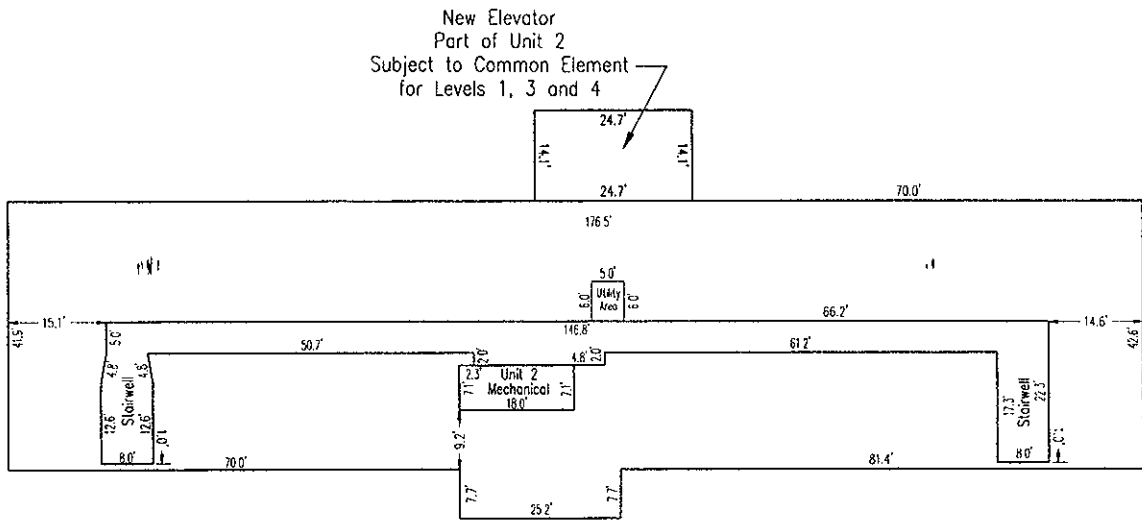
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# TYPICAL FLOOR PLAN FOR UNIT 2 LEVELS 5 THROUGH 14, INCLUSIVE



### BENCH MARK

U.S.G.S Monument Brass Cap at 58.2 feet North from the north curb of Castelar Street, 16.0 feet East from the east curb of 10th Street, 3.0 feet East from old concrete curbing and 0.1 foot below ground. Monument in poor condition and leaning to the North. Stamped V253 ELEVATION = 1204.12 Mean Sea Level Datum 1929

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Job Number 981231



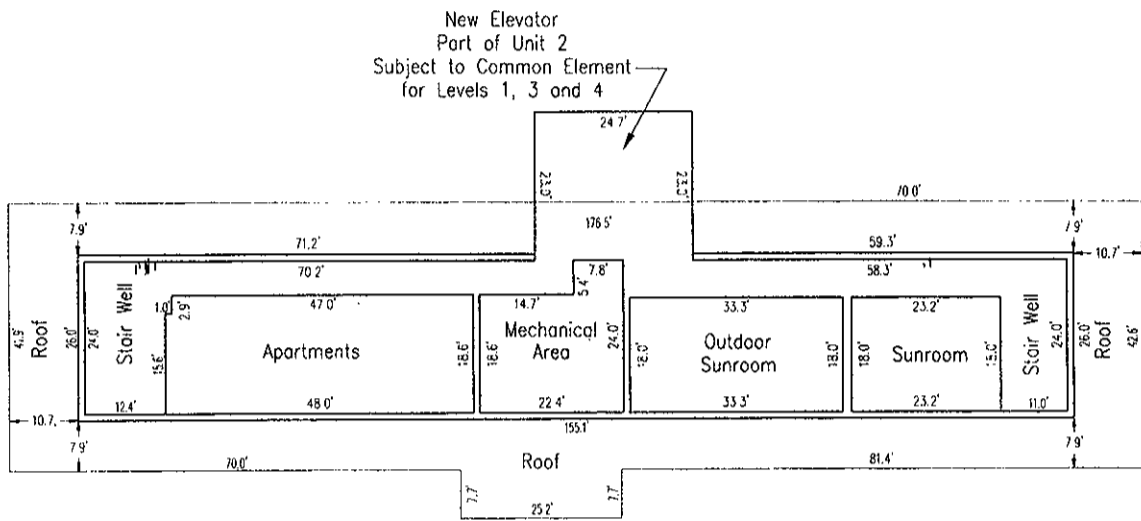
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# LEVEL 15, UNIT 2

FLOOR ELEVATION = 1320.35



### BENCH MARK

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