

Dixon & Dixon P.C.  
One First National Center, Ste. 1800  
Omaha, NE 68102

## MASTER DEED AND DECLARATION

FOR

CHERRY GARDEN CONDOMINIUM PROPERTY REGIME

Nov 17 2 58 PM '93

GEORGE L. H. 1992  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

This Declaration, made by Cherry Garden Apartments, Inc., a Nebraska corporation, hereinafter referred to as the "Declarant".

## WITNESSETH:

Whereas, Declarant is the owner of real estate located in the County of Douglas, State of Nebraska, more particularly described as:

Lots 5, 8 and 9, in Cherry Garden, an addition to the City of Omaha, Douglas County, Nebraska ("the Parcel");

Whereas, there are located on the Parcel four Buildings commonly known as the Cherry Garden Apartments which Buildings are two (2) story multi-family structures with basement levels containing 18 apartment units, laundry facilities, storage spaces and other amenities, said Buildings being constructed principally of concrete, concrete blocks, bricks, structural steel, wood, glass, plaster and wall board;

Whereas, said Declarant intends to and does hereby submit the Parcel, together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in anywise pertaining thereto (hereinafter called the "Property"), to a condominium regime pursuant to the Nebraska Condominium Act; and

Whereas, said Declarant further desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of the Property or any part thereof, and intends that all future owners, occupants, mortgagees, and any other persons hereafter acquiring any interest in the Property shall hold said interest subject to certain rights, easements and privileges in, over and upon said premises and certain mutually beneficial restrictions, obligations and liens are declared to be in furtherance of a plan to promote and protect the co-operative aspects of residence on the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property;

Now, therefore, said Declarant, as the owner of the real estate hereinbefore described, and for the purposes above set forth, declares as follows:

UM 4737 1965 17-569 20-06320  
440-735 New# 20-06322  
deed 46-179 COMP SCAN  
18050 deed 77-1 PG MC FV

1. Definitions. As used herein, unless the context otherwise requires:
  - (a) "Act" means the Nebraska Condominium Act.
  - (b) "Apartment" means an enclosed space consisting of one or more rooms occupying all or part of a floor or floors in one of the Buildings, which enclosed space is not owned in common with the Owners of the other Apartments. Each Apartment is numbered as shown on the Plat, and the boundaries of each Apartment shall be and are the interior surface of its perimeter walls, floors, and ceilings; and an Apartment includes both the portion of the Building so described and the air space so encompassed, excepting Common Elements. Any Apartment may be jointly or commonly owned by more than one person.
  - (c) "Apartment Owner" means the person or persons having fee simple ownership of an Apartment and of the undivided interest in the Common Elements appurtenant thereto, but shall not include those having an interest in an Apartment merely as security for the performance of an obligation.
  - (d) "Association" means the Cherry Garden Condominium Association, a Nebraska non-profit corporation.
  - (e) "Board" means the Board of Directors of the Association.
  - (f) "Building" means one of the structures located on the Parcel forming part of the Property and containing Apartments.
  - (g) "By-Laws" mean the By-Laws of the Association, as amended from time to time.
  - (h) "Common Elements" mean all of the Property except for the Apartments, and, without limiting the generality of the foregoing, shall include those items defined as "general common elements" in the Act, including but not limited to the following:
    - (1) The Parcel;
    - (2) All foundations, floors, bearing walls and columns, exterior walls of each apartment and of the buildings, ceilings and roofs, halls, lobbies, stairways, and entrances and exits or communication ways;

- (3) The outside parking areas, and basements, except as otherwise herein provided or stipulated.
  - (4) All compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, central air conditioning and central heating (including, without limitation, the convectors located within the Apartments), reservoirs, water tanks and pumps, and the like;
  - (5) All devices or installations existing for common use; and
  - (6) All other elements of the Property desirably or rationally of common use or necessary to the existence, upkeep and safety of the condominium regime established by this Declaration.
- (i) "Common expenses" mean and includes:
- (1) All sums lawfully assessed against the Common Elements by the Board.
  - (2) All expenses of the administration and management, maintenance, operation, repair or replacement of and additions to the Common Elements;
  - (3) Expenses agreed upon as a common expense by the Apartment Owners; and
  - (4) Expenses declared to be common expenses by this Declaration or by the By-Laws.
- (j) "Council of Co-Owners" means all of the Apartment owners, which Council of Co-Owners has been incorporated as the Association.
- (k) "Declarant" means Cherry Garden Apartments, Inc., a Nebraska corporation, its successors and assigns, provided such successors or assigns are designated in writing by Declarant as a successor or assign of the rights of Declarant set forth herein.
- (l) "Declaration" means this instrument, by which the Property is submitted to the provisions of the Act as hereinafter provided, as amended from time to time.

- (m) "Limited Common Elements" means all Common Elements serving exclusively a single Apartment or one or more adjoining Apartments as an inseparable appurtenance thereto, the enjoyment, benefit or use of which is reserved to the lawful Occupants of such Apartment or Apartments either in this Declaration, on the Plat or by the Board. Limited Common Elements shall include, but shall not be limited to, convectors, pipes, ducts, electrical wiring and conduits located entirely within an Apartment or adjoining Apartments and serving only such Apartment or Apartments.
- (n) "Majority" or "majority of the Apartment Owners" means the owners of more than fifty percent (50%) of the undivided ownership of the Common Elements. Any specific percentage of Apartment Owners means that percentages of Apartment Owners who in the aggregate own such specified percentage of the entire undivided ownership of the Common Elements.
- (o) "Occupant" means a person or persons in possession of an Apartment, regardless of whether said person is an Apartment Owner.
- (p) "Parcel" means the parcel or tract of real estate described above in this Declaration, submitted to the provisions of the Act.
- (q) "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.
- (r) "Plat" means the floor and elevation plans and drawings of the Buildings, attached hereto as Exhibit "A" and by this reference made a part hereof.
- (s) "Property" means all the land, property and space comprising the Parcel, and all improvements and structures erected, constructed or contained therein or thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and all furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Apartment Owners.
- (t) "Record" or "Recording" refers to the record or recording in the Office of the Register of Deeds, Douglas County, Nebraska.

2. Submission of Property to the Act. Declarant is the legal and equitable title holders of the fee simple title to the Parcel, and expressly intends to, and by recording this Declaration does hereby, submit the Property to the provisions of the Act; said Property and said Condominiums to be known as "Cherry Garden Condominium Property Regime".
3. Plat. The Plat sets forth the descriptions, locations and other data, as required by the Act. The Plat shows graphically all particulars of the Buildings including, but not limited to the following:
  - A. The location, approximate area, number of rooms, and designated apartment number of each Apartment;
  - B. The dimensions, area and location of common elements affording access to each Apartment;
  - C. The other common elements, both limited and general, insofar as possible.
4. Apartments. The legal description of each Apartment shall consist of the identifying number of such Apartment as shown on the Plat. Every deed, lease, mortgage or other instrument shall legally describe an Apartment by its identifying number as shown on the Plat and every such description shall be deemed good and sufficient for all purposes, as provided in the Act. Except as provided in this Declaration and in the Act, no Apartment Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause his Apartment to be separated into any tracts or parcels different from the whole Apartment as shown on the Plat.
5. No Partition. The Common Elements shall remain undivided and shall not be the object of an action for partition or division of the co-ownership thereof so long as suitable for a condominium regime, and, in any event, all Mortgages must be paid in full prior to bringing an action for partition or the consent of all Mortgagees must be obtained.
6. (a) Association of Apartment Owners and Administration and Operation of the Property. There has been formed an Association having the name Cherry Garden Condominium Association, Inc., a Nebraska non-profit corporation, which Association shall be the governing body for all of the Apartment Owners, for the maintenance, repair, replacement, administration and operation of the Property, as provided in the Act,

this Declaration and the By-Laws. The Board of Directors of the Association (also called the Board of Administrators of the Condominiums) shall be elected and shall serve in accordance with the provisions of the By-Laws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Apartment Owners, and all funds received by the Association shall be held and applied by it for the use and benefit of Apartment Owners in accordance with the provisions of this Declaration and By-Laws. Each Apartment Owner shall be a member of the Association so long as he is an Apartment Owner. An Apartment Owner's membership shall automatically terminate when he ceases to be an Apartment Owner. Upon the conveyance or transfer of an Apartment Owner's ownership interest to a new Apartment Owner, the new Apartment Owner shall simultaneously succeed to the former Apartment Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be eighteen (18) and shall be divided among the respective Apartment Owners in accordance with their respective percentages of ownership interest in the Common Elements as set forth in Exhibit "B" hereto. The By-laws of said Association are attached hereto and they shall also constitute the By-Laws of this Condominium Property Regime.

(b) Management of Property. The Board shall have the authority to engage the services of an agent (herein sometimes referred to as the "Managing Agent") to maintain repair, replace, administer and operate the Property or any part thereof, to the extent deemed advisable by the Board. The Board shall also have the authority (but shall not be obligated) to engage, supervise, and control such employees as the Board deems advisable to clean and maintain all or any part of the Apartments to the extent the Board deems it advisable to provide such services for all or any portion of the Apartment Owners. The cost of such services shall be a common expense.

(c) Non-Liability of the Directors and Officers. Neither the directors nor officers of the Association shall be personally liable to the Apartment Owners for any mistake in judgment or for any acts or omissions of any nature whatsoever except such acts or omissions found by a court to constitute gross negligence or fraud. The Association shall indemnify and hold

harmless each of the directors and officers and their respective heirs, personal representatives, successors and assigns in accordance with the provisions of the By-Laws.

(d) Board's Determination Binding. In the event of any dispute or disagreement between any Apartment Owners relating to the Property, or any questions of interpretation or application of the provisions of the Declaration or By-Laws, such dispute or disagreement shall be submitted to the Board. The determination of such dispute or disagreement by the Board shall be binding on each and all such Apartment Owners, subject to the right of Apartment Owners to seek other remedies provided by law after such determination by the Board.

7. Ownership of the Common Elements. Each Apartment Owner shall be entitled to the percentage of ownership in the Common Elements allocated to the respective Apartment owned by such Apartment Owner, as set forth in Exhibit "B" attached hereto and by this reference made a part hereof. Said ownership interest in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Apartment Owners as tenants in common in accordance with their respective percentages of ownership. The undivided percentage of ownership in the Common Elements corresponding to any Apartment shall be deemed conveyed or encumbered with that Apartment, even though the legal description in the instrument conveying or encumbering said Apartment may refer only to the title to that Apartment or may refer to an incorrect percentage for that Apartment.
8. Use of the Common Elements. Each Apartment Owner shall have the right to use the Common Elements (except the Limited Common Elements and portions of the Property subject to leases made by or assigned to the Board) in common with all other Apartment Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the respective Apartment owned by such Apartment Owner. Such right to use the Common Elements shall extend to not only each Apartment Owner, but also to his agents, servants, tenants, family members, customers, invitees and licensees. However, each Apartment Owner shall have the right to the exclusive use and possession of the Limited Common Elements serving such Apartment alone. Such rights to use the Common Elements, including the Limited Common Elements, shall be subject to and governed by the provisions of the Act,

Declaration, By-Laws and rules and regulations of the Association. In addition, the Association shall have the authority to rent, lease, grant concessions or grant easements with respect to parts of the Common Elements, subject to the provisions of the Declaration and By-Laws. All income derived by the Association from leases, concessions or other sources shall be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

Parking areas shall also be part of the Common Elements, and may be allocated and re-allocated, from time to time, to the respective Apartment Owners, and shall be used by such Apartment Owners in such manner and subject to such rules and regulations as the Board may prescribe, and parking spaces not so used by Apartment Owners otherwise may be used in such manner as the Board may prescribe.

9. Storage Areas. The storage areas on the Property, outside of the Apartments, shall be part of the Common Elements and shall be allocated and re-allocated, from time to time, to the respective Apartment Owners in such manner and subject to such rules and regulations as the Board may prescribe, and storage areas not so allocated may be rented in such manner as the Board may prescribe.
10. (a) Common Expenses. Each Apartment Owner shall pay his proportionate share of the common expenses. Such proportionate share of the common expenses for each Apartment Owner shall be in accordance with his percentage of ownership in the Common Elements. Payment of common expenses, including any prepayment thereof required by contract for sale of an Apartment, shall be in such amounts and at such times as determined in the manner provided in the By-Laws. No Apartment Owner shall be exempt from payment of his proportionate share of the common expenses by waiver or non-use or enjoyment of the Common Elements or Limited Common Elements or by abandonment of his Apartment. If any Apartment Owner shall fail or refuse to make any such payment of the common expenses when due, the amount thereof together with interest thereon at the maximum rate as may then be permitted under the laws of the State of Nebraska, accruing from and after the date that said common expenses become due and payable, shall constitute a lien on the interest of such Apartment Owner in the Property and his Apartment.



(b) Enforcement of Lien. The Board may bring an action at law against the Apartment Owner personally obligated to pay the same, for collection of his unpaid proportionate share of the common expenses, or foreclose the lien against the Apartment or Apartments owned by such Apartment Owner, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Apartment Owner, by his acceptance of a deed to an Apartment, hereby expressly vests in the Board or its agents the right and power to bring all actions against such Apartment Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens. The lien provided for in this section shall be in favor of the Association and shall be for the common benefit of all Apartment Owners. The Board acting on behalf of the Apartment Owners shall have the power to bid upon an interest foreclosed at foreclosure sale and to acquire and hold, mortgage and convey the same.

(c) Mortgage Protection. The lien for common expenses payable by an Apartment Owner shall be subordinate to the lien of a prior recorded first Mortgage or Deed of Trust on the interest of such Apartment Owner, except for the amount of the proportionate share of common expenses which become due and payable from and after the date on which the Mortgagee thereunder either takes possession of the Apartment encumbered thereby, accepts a conveyance of any interest therein (other than as security) or files suit to foreclose its Mortgage and causes a receiver to be appointed. This subparagraph (c) shall not be amended, changed, modified or rescinded without the prior written consent of all Mortgagees of record holding a lien against all or part of the Property.

11. Mortgages and Deed of Trust. Each Apartment Owner shall have the right, subject to the provisions herein, to give separate Mortgages or Deeds of Trust on his respective Apartment together with his respective ownership interest in the Common Elements. No Apartment Owner shall have the right or authority to make or create or cause to be made or created from the date hereof any Mortgage or other lien on or affecting the Property or any part thereof, except only to the extent of his own Apartment and the respective percentage interest in the Common Elements appurtenant thereto.

12. Separate Real Estate Taxes. Taxes, assessments and other charges of any taxing or assessing authority shall be separately assessed to each Apartment Owner for his Apartment and his corresponding percentage of ownership in the Common Elements as provided in the Act. In the event that such taxes or assessments for any year are not separately assessed to each Apartment Owner, but rather are assessed on the Property as a whole, then each Apartment Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Elements, and, in said event, such taxes or assessments shall be a common expense. Without limiting the authority of the Board provided for elsewhere herein, the Board shall have the authority to collect from the Apartment Owners their proportionate share of taxes or assessments for any year in which taxes are assessed on the Property as a whole.
13. Insurance. The Board shall have the authority to and shall obtain insurance for the Property, exclusive of decorating of and improvements to the Apartments or Limited Common Elements by the Apartment Owners, against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions, for the full insurable replacement cost of the common Elements and the Apartments, and against such other hazards and for such amounts as the Board may deem advisable. Insurable replacement cost shall be deemed the cost of restoring the Common Elements, Apartments or any part thereof to substantially the same condition in which the existed prior to damage or destruction. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association as the trustee for each of the Apartment Owners in proportion to said Apartment Owner's respective percentage of ownership in the Common Elements, as set forth in the Declaration, and for the holders of Mortgages or Deeds of Trust on his Apartment, if any. Such policies of insurance should also contain, if possible, a waiver of subrogation rights by the insurer against individual Apartment Owners. The premiums for such insurance shall be a common expense.

The Board shall also have authority to and shall obtain comprehensive public liability insurance, in such amounts as it deems desirable, and worker's compensation insurance and other liability insurance as it deems desirable, insuring each Apartment Owner,

Mortgagee of record, if any, the Association, its officers, directors, and employees and the Managing Agent, if any, from liability in connection with the Common Elements. The premiums for such insurance shall be a common expense.

Each Apartment Owner shall be responsible for obtaining his own insurance on the improvements and betterments to his Apartment and on the contents of his Apartment and the Limited Common Elements serving his Apartment, as well as his decorations, furnishings and personal property therein, and his personal property stored elsewhere on the Property. In addition, in the event an Apartment Owner desires to insure against his personal liability and loss or damage by fire or other hazards above and beyond the extent that this liability, loss or damage is covered by the liability insurance and insurance against loss or damage by fire and such other hazards obtained by the Board for all of the Apartment owners as part of the common expenses as above provided, said Apartment Owner may, at his option and expense, obtain additional insurance.

14. Damage and Destruction. In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the Buildings, shall be applied to such reconstruction. Reconstruction of the Buildings, as used in this paragraph, means restoring the Buildings to substantially the same condition in which they existed prior to the fire, casualty, or other disaster with each Apartment and the Common Elements having the same vertical and horizontal boundaries as before. Such reconstruction shall be directed by the Managing Agent or Board.

If insurance proceeds are insufficient to reconstruct the Buildings, damage to or destruction of the Buildings shall be promptly repaired and restored by the Managing Agent or Board, using proceeds of insurance, if any, on the Buildings for that purpose, and all the Apartment Owners shall be liable for assessment for any deficiency. However, if three-fourths or more of the Buildings are destroyed or substantially damaged and if the Apartment Owners, by a vote of at least three-quarters of the voting power, do not voluntarily, within one hundred days after such destruction or damage, make provision for reconstruction, the Association shall record with the County Register of Deeds a notice setting forth such facts, and upon the recording of such notice:

- A. The Property shall be deemed to be owned in common by the Apartment Owners.
- B. The undivided interest in the Property owned in common which shall appertain to each Apartment Owner shall be the percentage of undivided interest previously owned by such Apartment Owner in the Common Elements.
- C. Any liens affecting any of the Apartments shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Apartment Owner in the Property; and
- D. The Property shall be subject to any action for partition at the suit of any Apartment Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Apartment Owners in a percentage equal to the percentage of undivided interest owned by each Apartment Owner in the Common Elements, after first paying out of the respective shares of the Apartment Owners, to the extent sufficient for the purposes, all liens on the undivided interest in the Property owned by each Apartment Owner.

Notwithstanding all provisions hereof, the Apartment Owners may, by an affirmative vote of at least three-fourths of the voting power, at a meeting of Apartment Owners duly called for such purpose, elect to sell or otherwise dispose of the Property. Such action shall be binding upon all Apartment Owners and it shall thereupon become the duty of every Apartment Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale.

- 15. Maintenance, Repairs and Replacements. Except to the extent the Board provides (at its option and discretion) maintenance of the Apartments for Apartment Owners, each Apartment Owner, at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within his own Apartment. Maintenance of, repairs to and replacements within the Common Elements shall be the responsibility of and shall be furnished by the Association. The cost of maintenance of, repairs to and replacements within the Apartments to the extent the Board elects to provide such service and within the Common Elements shall be part of the common

expenses, subject to the By-Laws, rules and regulations of the Association. However, at the discretion of the Board, maintenance of, repairs to and replacements within the Limited Common Elements may be provided and assessed in whole or in part to Apartment Owners benefited thereby, and, further, at the discretion of the Board, the Board may direct Apartment Owners who stand to be benefited by such maintenance of, repairs to and replacements within the Limited Common Elements to arrange for such maintenance, repairs and replacements in the name and for the account of such benefited Apartment Owners, pay the cost thereof with their own funds, and procure and deliver to the Board such lien waivers and contractor's and subcontractors sworn statements as may be required to protect the Property from all construction lien claims that may arise therefrom.

In addition to the discretionary authority provided herein for maintenance of all or any portion of the Apartments, the Board shall have the authority to maintain and repair any Apartments, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Elements or preserve the appearance and value of the Property, and the Apartment Owner of said Apartment has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board, and the Board shall levy a special assessment against the Apartment Owner for the cost of said necessary maintenance or repair.

If, due to the act or neglect of an Apartment Owner, or his agent, servant, tenant, family member, invitee, licensee or household pet, damage shall be caused to the Common Elements or to an Apartment or Apartments owned by others, or maintenance, repair or replacement are required which would otherwise be a common expense, then such Apartment Owner shall pay for such damage or such maintenance, repair and replacements as may be authorized by the Association, subject to the provision of paragraph 13 hereof providing for waiver of subrogation rights with respect to casualty damage insured under the policies of insurance maintained by the Board.

The authorized representatives of the Association or Board, or the Managing Agent with approval of the Board, shall be entitled to reasonable access to the individual Apartments and Limited Common Elements as may be required in connection with the preservation of

any individual Apartments or Limited Common Elements in the event of any emergency, or in connection with maintenance of, repairs or replacements within the Common Elements, Limited Common Elements or any equipment, facilities or fixtures affecting or serving other Apartments, Common Elements and Limited Common Elements to make any alteration required by any governmental authorities.

16. Alterations, Additions or Improvements. Except as provided in this paragraph 16, no alteration of any Common Elements and no additions or improvements thereto shall be made by any Apartment Owner without the prior written approval of the Board. The Board may authorize and charge as common expenses, alterations, additions and improvements of the Common Elements as provided in the By-Laws. Any Apartment Owner may make alterations, additions, or improvements within his Apartment (including minor alterations to the perimeter walls of his Apartment caused by nails, screws, staples and the like) without the prior written approval of the Board, but such Apartment Owner shall be responsible for any damage to other Apartments, the Common Elements, the Property, or any part thereof, resulting from such alterations, additions or improvements.
17. Decorating. Each Apartment Owner, at his own expense, shall furnish and be responsible for all decoration within his own Apartment and Limited Common Elements serving his Apartment, as may be required from time to time, including painting, wall papering, panelling, floor covering, draperies, window shades, curtains, lighting and other furnishings and decorating. Each Apartment Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings of his Apartment, and such Apartment Owner shall maintain said interior surfaces in good condition at his sole expense, as may be required from time to time. Said maintenance and use of interior surfaces shall be subject to the rules and regulations of the Association, but each such Apartment Owner shall have the right to decorate such interior surfaces from time to time as he may see fit and at his sole expense. Decorating of the Common Elements (other than interior surfaces within the Apartments as above provided and other than of Limited Common Elements) and any redecorating of Apartments, to the extent such redecorating of Apartments is made necessary by damage to Apartments caused by maintenance, repair or replacement of the Common Elements by the Association, shall be furnished by the

Association as part of the common expenses. The interior surfaces of all windows forming part of a perimeter wall of an Apartment shall be cleaned and washed at the expense of the Owner of that Apartment.

18. Encroachments. If any portions of the Common Elements shall actually encroach upon any Apartment, or if any Apartment shall actually encroach upon any portions of the Common Elements, or if any Apartment shall actually encroach upon another Apartment, as the Common Elements and Apartments are shown by the Plat, there shall be deemed to be mutual easements in favor of the owners of the Common Elements and the respective Apartment Owners involved, to the extent of such encroachments, so long as the same shall exist.
19. Use and Occupancy Restrictions. Subject to the provisions of this Declaration and By-Laws, no part of the Property may be used for purposes other than housing and the related common purposes for which the Property was designed.

The Common Elements shall be used only by the Apartment Owners and their agents, tenants, family members, invitees and licensees for access, ingress to and egress from the respective Apartments and for other purposes incidental to use of the Apartments; provided, however, the laundry rooms, receiving rooms storage areas and other areas designed for a specific use shall be used for the purposes approved by the Board. The use, maintenance and operations of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Apartment Owner, and shall be subject to any lease, concession or easement, presently in existence or entered into by the Board at some future time, affecting any part of all of said Common Elements.

Without limiting the generality of the foregoing provisions of this paragraph 19, use of the Property by the Apartment Owners shall be subject to the following restrictions:

- (a) Nothing shall be stored in the Common Elements without prior consent of the Board except in storage areas or as otherwise herein expressly provided;
- (b) Nothing shall be done or kept in any Apartment or in the Common Elements which will increase the rate of insurance for the Property without the prior written consent of the Board. No Apartment

Owner shall permit anything to be done or kept in his Apartment or in or on the Common Elements which will result in the cancellation of insurance on any Apartment, or any part of the Common Element, or which will be a violation of any law;

- (c) No waste shall be committed in or on the Common Elements;
- (d) No sign of any kind shall be displayed to the public view on or from any Apartment or the Common Elements without the prior written consent of the Board or the written consent of the Managing Agent acting in accord with the Board's direction;
- (e) No noxious or offensive activity shall be carried on in any Apartment or on or in the Common Elements nor shall anything be done therein which may be or become any annoyance or nuisance to the other Apartment Owner;
- (f) Except as expressly provided hereinabove, nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board;
- (g) No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuildings shall be permitted on the Property at any time temporarily or permanently, except with the prior written consent of the Board;
- (h) Outdoor drying of clothes shall not be permitted;
- (i) Parking of vehicles in driveways and parking areas shall be subject to the rules and regulations of the Board applicable thereto;
- (j) Except within individual Apartments, no planting, transplanting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Property, except as approved by the Board.
- (k) Motorcycles, motorbikes, motor scooters or other similar vehicles shall not be operated within the Property except for the purpose of transportation directly from a parking space to a point outside the Property, or from a point outside the Property directly to a parking space.



20. Remedies. In the event of any violation of the provisions of the Act, this Master Deed, By-Laws or rules and regulations of the Board or Association by any Apartment Owner (either by his own conduct or by the conduct of any other Occupant of his Apartment) the Association, or its successors or assigns, or the Board, or its agent, shall have each and all of the rights and remedies which may be provided for in the Act, this Master Deed, By-Laws, or said rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceedings against such defaulting Apartment Owner and/or others for enforcement of any lien and the appointment of a receiver for the Apartment and ownership interest of such Apartment Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief.

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained shall give the Board the right, in addition to any other rights provided for in this Declaration, (a) to enter upon the Apartment, or any portion of the property upon which, or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Apartment Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, or its employees or agents, shall not thereby be deemed guilty in any manner of trespassing; or (b) to enjoin, abate or remedy by appropriate legal proceedings either at law or in equity, the continuance of any breach; or (c) to take possession of such Apartment Owner's interest in the property and to maintain an action for possession of such Apartment in the manner provided by law.

If any Apartment Owner (either by his own conduct or by the conduct of any Occupant of his Apartment) shall violate any provision of the Act, this Declaration or the regulations of the Association, and if such default or violation shall continue for ten (10) days after notice to the Apartment Owner in writing from the Board, or shall occur repeatedly during any ten (10) day period after such written notice or request to cure such violation from the Board, then the Board shall have the power to issue to said defaulting Owner a notice in writing terminating the rights of the said defaulting Owner to continue as an Apartment Owner and

to continue to occupy, use or control his Apartment, and thereupon an action in equity may be filed by the Board against said defaulting Owner for a decree of mandatory injunction against said defaulting Owner or Occupant, or in the alternative, for a decree declaring the termination of said defaulting Owner's right to occupy, use or control the Apartment owned by him on account of said violation, and ordering that all the right, title and interest of said defaulting Owner in the Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the Court shall determine, except that the Court shall enjoin and restrain the said defaulting Owner from reacquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge Court costs and all other expenses of the proceeding and sale, and all such items shall be taxed against said defaulting Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to said defaulting Owner. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Apartment and the Apartment Owner's corresponding percentage of ownership in the Common Elements, and to immediate possession of the Apartment sold and may apply to the Court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the Apartment sold subject to this Declaration.

21. Amendment. (a) Subject to the requirements of this paragraph 21, and of paragraph 10, subparagraph C, the provisions of this Declaration may be amended, modified or rescinded by a resolution setting forth such amendment, modification or rescission and duly adopted by the affirmative vote of not less than seventy-five percent (75%) of the Apartment Owners, or by an instrument in writing setting forth such amendment, modification or rescission and signed by not less than seventy-five percent (75%) of the Apartment Owners and duly acknowledged before a notary public. All holders of a recorded mortgage encumbering any one or more Apartments in the Buildings shall be notified by certified mail of any such amendment, modification or rescission and an affidavit by the secretary of the Association certifying to such mailing shall be made a part of any instrument effecting such amendment, modification, or rescission. No such amendment, modification or rescission shall change the boundaries of any

Apartment, the undivided interest in the Common Elements appurtenant to any Apartment, the number of votes in the Association allocated to any Apartment, or the liability for Common Expenses appertaining to any Apartment, except to the extent authorized by this Declaration or by the Act.

(b) If the Act, this Declaration, or the By-Laws require the consent or agreement of all Apartment Owners or of all holders of a recorded mortgage encumbering any one or more Apartments in the Buildings, or both, for any action specified in the Act or in this Declaration, then any instrument amending, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all Apartment Owners or all such lien holders, or both, as the case may be, as required by the Act, this Declaration or the By-Laws.

(c) Any amendment, modification or rescission of this Declaration pursuant to this paragraph 21 or any other provision of this Declaration or of the Act shall be valid and effective only upon the recording thereof, together with an amended Plat if required hereby or by the Act, in the office of the Register of Deeds of Douglas County, Nebraska. This Declaration may not be amended, modified or rescinded so as to conflict with the provisions of the Act.

22. Notices. Notices provided for in the Act, Declaration or By-Laws shall be in writing, and shall be addressed to the Association or Board, or to any Apartment Owner, as the case may be at the current address of such party appearing on the records of the Association or at such other address as hereinafter provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address or addresses to all Apartment Owners. Any Apartment Owner may designate a different address for notices to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States mail with postage prepaid, or when delivered in person.

Upon written request to the Board, the holder of any recorded Mortgage encumbering any Apartment shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose Apartment is subject to such Mortgage.

23. Severability. If any provision of the Declaration or By-Laws, or any section, sentence, clause, phrase, word or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the By-Laws and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration or the By-Laws shall be construed as if such invalid part was never included therein.
24. Perpetuities and Restraints on Alienation. 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, then such provisions shall continue only until expiration of the period of time permitted by said rule.
25. Rights and Obligations. Each grantee of the Declarant, by the acceptance of the deed of conveyance from the Declarant, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any times any interest or estate in said land, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

Made and signed this 3rd day of November, 1993.

CHERRY GARDEN APARTMENTS, INC.,  
a Nebraska Corporation  
"Declarant"

By Anthony C Thraen  
President


ATTEST:

[Signature]  
Secretary

STATE OF NEBRASKA )  
                          ) ss:  
COUNTY OF DOUGLAS )

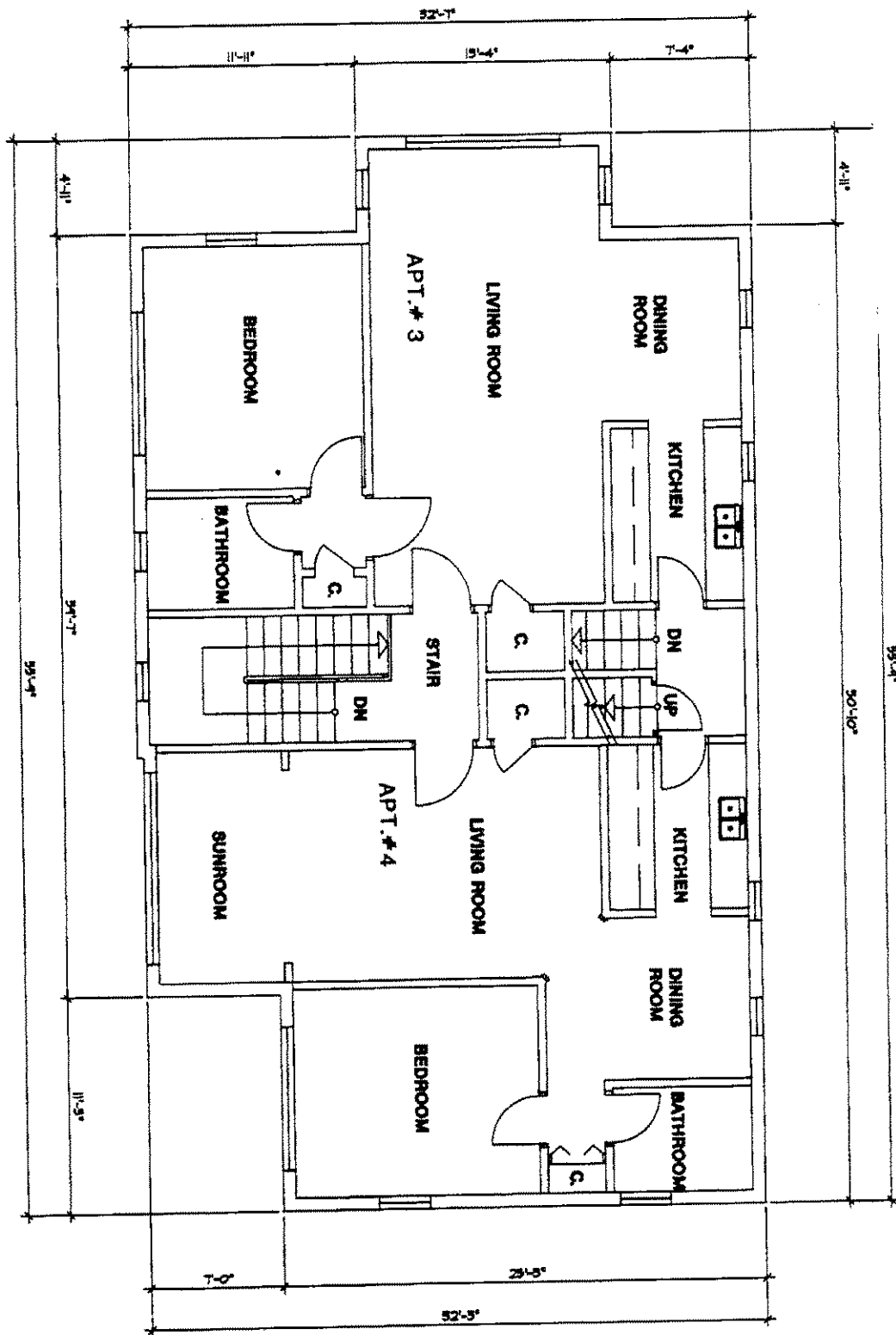
Before me, a notary public, in and for said county and state, personally came Anthony C Thraen, President and Stephen J. Kneip, Secretary of CHERRY GARDEN APARTMENTS, INC., a Nebraska corporation known to me to be the identical persons who executed the above instrument and acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of said corporation.

Witness my hand and Notarial Seal this 3rd day of November, 1993.

 GENERAL NOTARY-State of Nebraska  
PEGGY J. CARLIN  
My Comm. Exp. Oct. 12, 1994

Peggy J. Carlin  
Notary Public

2511u/1-21



# **SECOND FLOOR PLAN** **813 SOUTH 38TH STREET • OMAHA, NEBRASKA**

AUGUST 13, 1993

SCALE IN FEET



EXHIBIT "A"  
 Page 1 of 12

I the undersigned, J. Michael West, an architect, authorized and licensed to practice in the State of Nebraska do hereby certify that the plan attached here to, shows the actual layout of the existing apartment building.

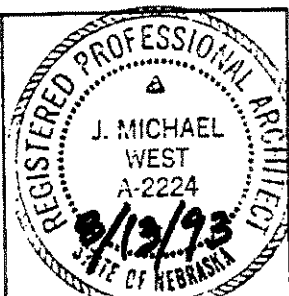
J. MICHAEL WEST

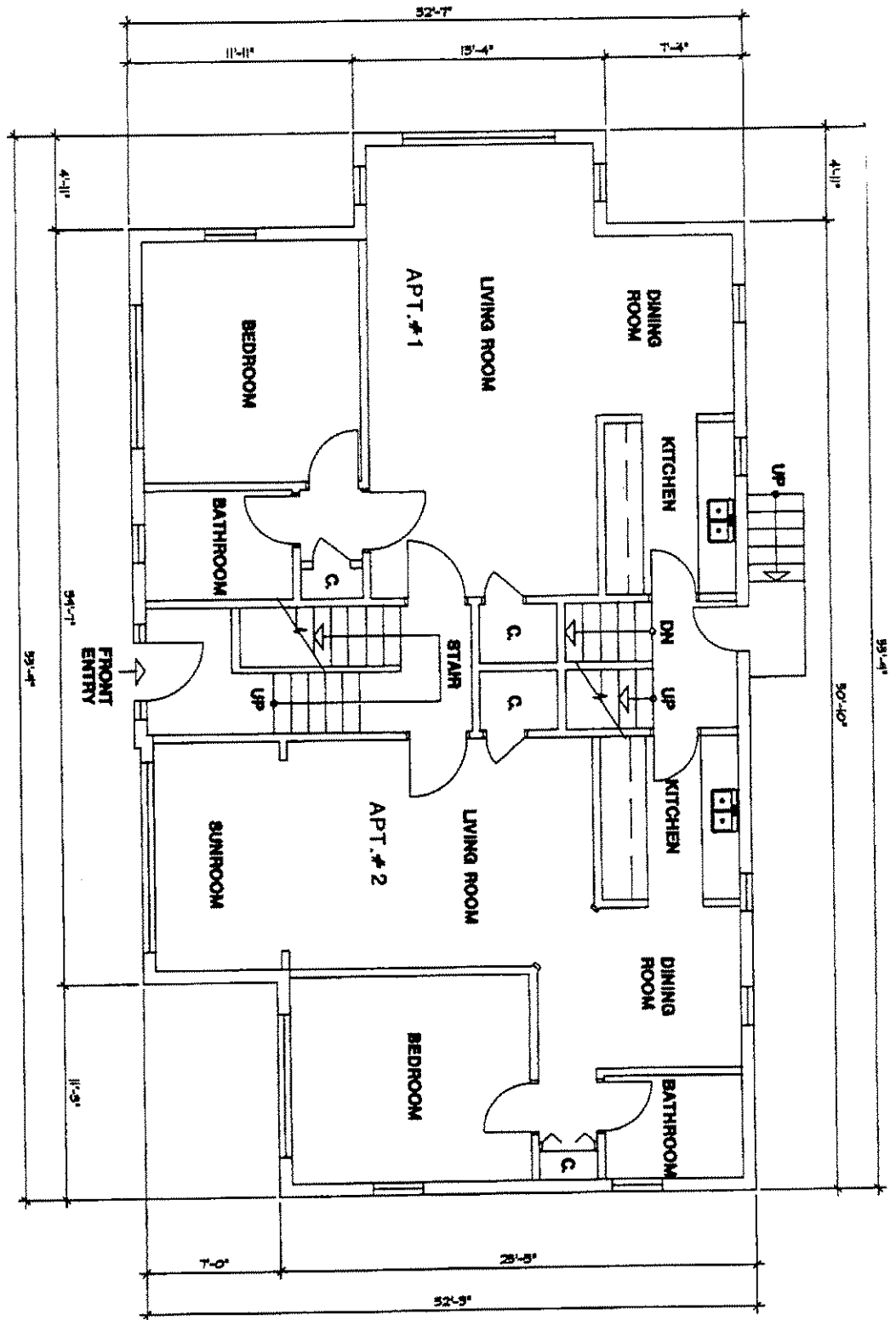
Printed or typed name

Signature

Date issued:

*J. Michael West*  
 8/13/93





# FIRST FLOOR PLAN

813 SOUTH 38TH STREET • OMAHA, NEBRASKA

AUGUST 13, 1993

SCALE IN FEET



I the undersigned, J. Michael West, an architect, authorized and licensed to practice in the State of Nebraska do hereby certify that the plan attached here to, shows the actual layout of the existing apartment building.

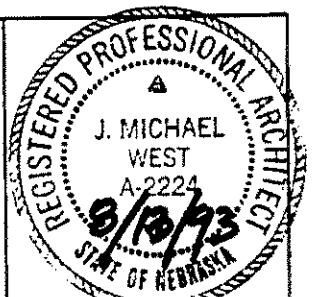
J. MICHAEL WEST

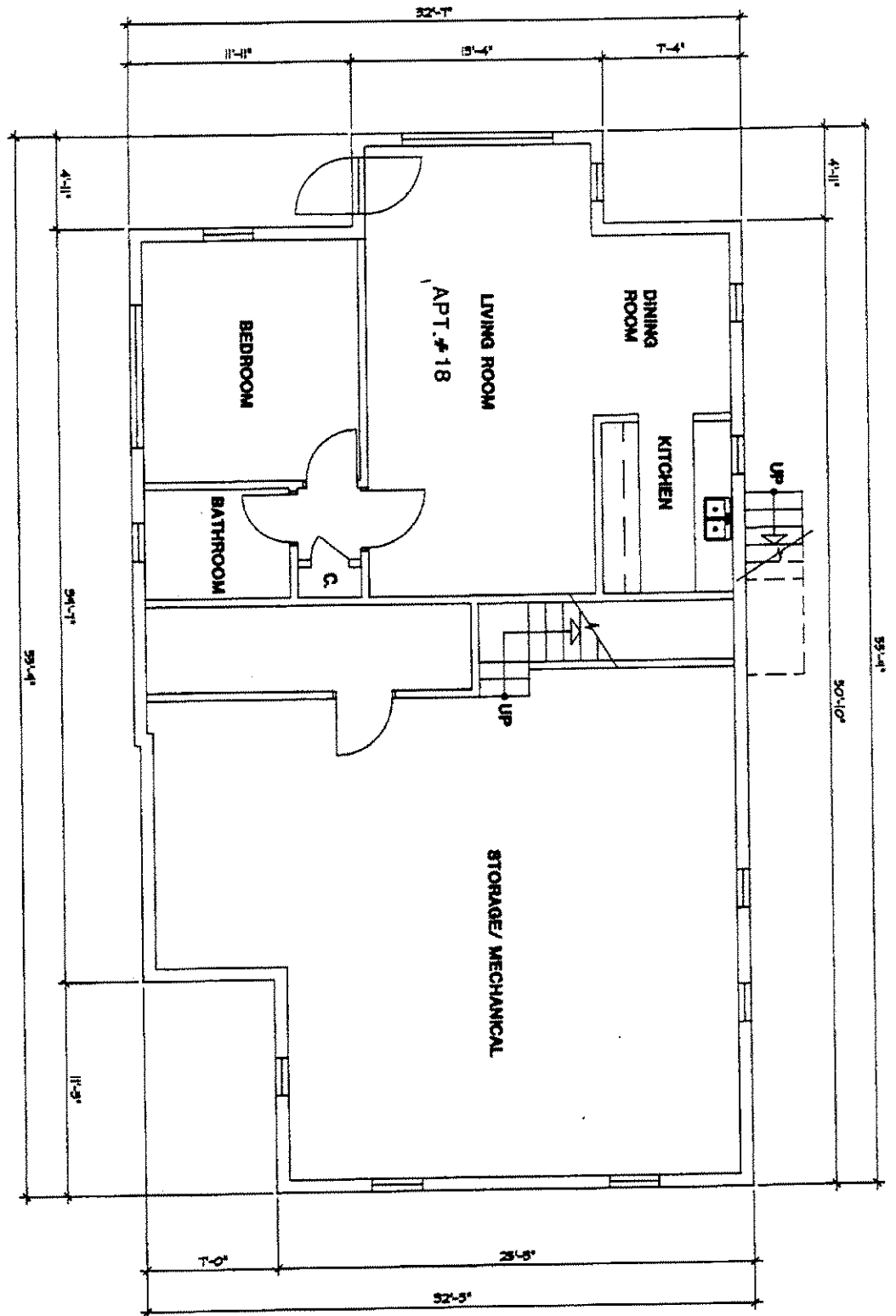
Printed or typed name

Signature

Date issued:

*J. Michael West*  
8/13/93





**BASEMENT FLOOR PLAN**  
**813 SOUTH 38TH STREET • OMAHA, NEBRASKA**

AUGUST 13, 1993

0 5 10 15  
 SCALE IN FEET



EXHIBIT "A"  
 Page 3 of 12

I the undersigned, J. Michael West, an architect, authorized and licensed to practice in the State of Nebraska do hereby certify that the plan attached here to, shows the actual layout of the existing apartment building.

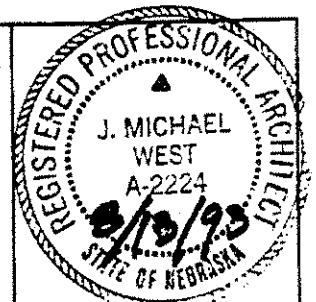
J. MICHAEL WEST

Printed or typed name

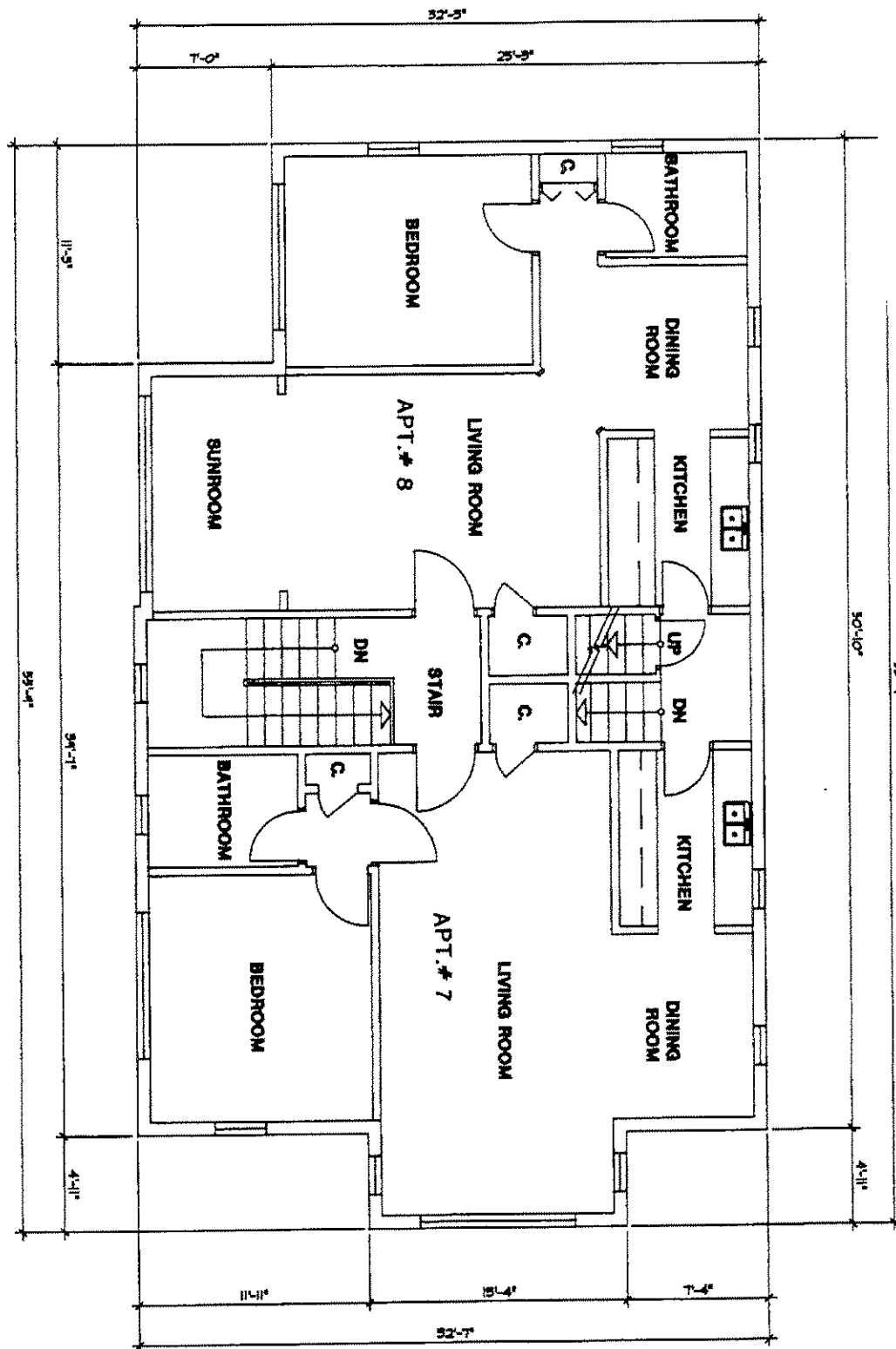
Signature

Date issued:

*J. Michael West*  
 8/13/93







# SECOND FLOOR PLAN

814 SOUTH 37TH AVENUE • OMAHA, NEBRASKA

AUGUST 13, 1993

0 5 10 15  
SCALE IN FEET



EXHIBIT "A"  
Page 4 of 12

I the undersigned, J. Michael West, an architect, authorized and licensed to practice in the State of Nebraska do hereby certify that the plan attached here to, shows the actual layout of the existing apartment building.

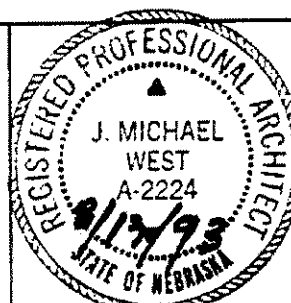
J. MICHAEL WEST

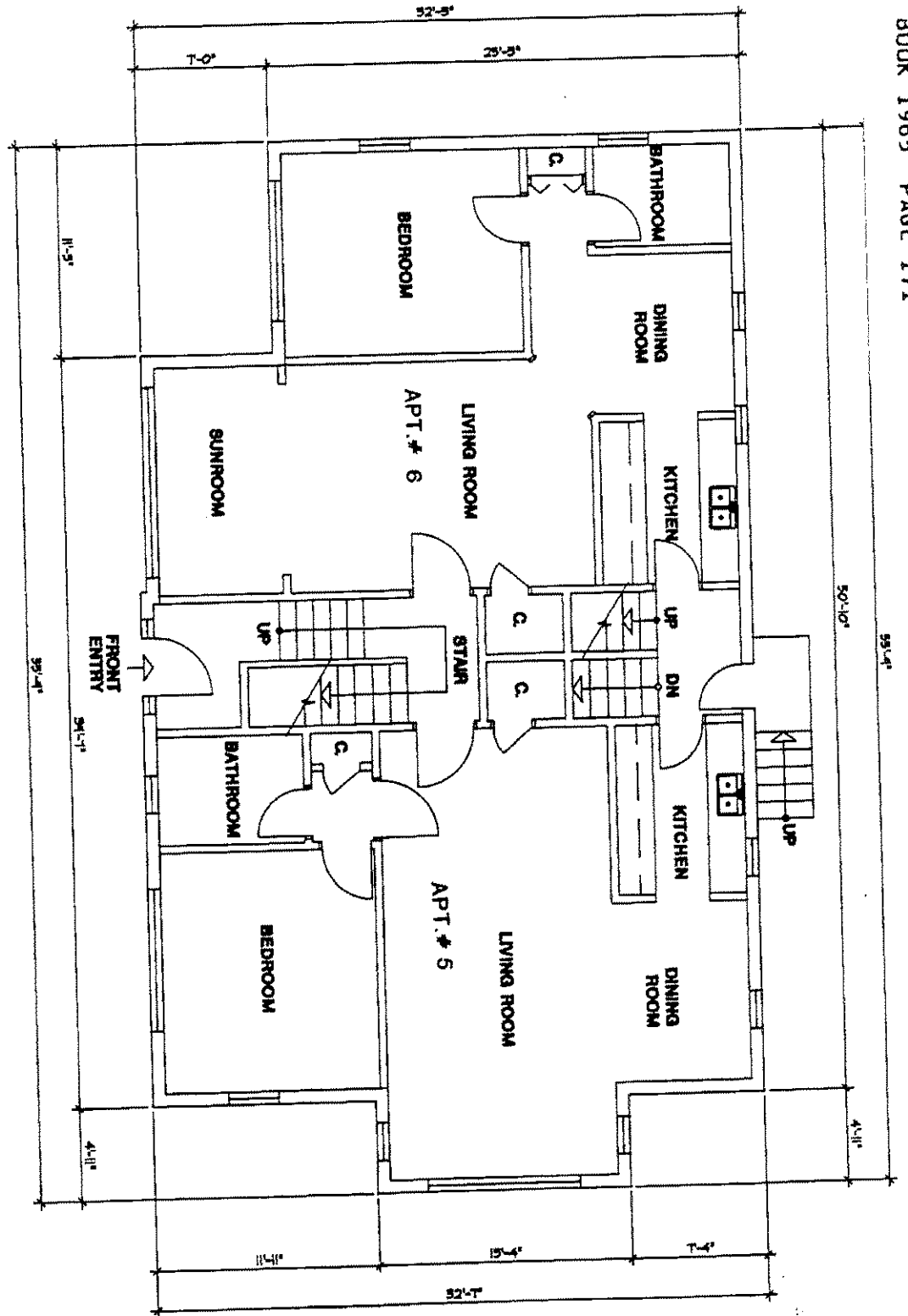
Printed or typed name

Signature

Date issued:

*J. Michael West*  
8/13/93





# FIRST FLOOR PLAN

814 SOUTH 37TH AVENUE • OMAHA, NEBRASKA

AUGUST 13, 1993



EXHIBIT "A"  
Page 5 of 12

I the undersigned, J. Michael West, an architect, authorized and licensed to practice in the State of Nebraska do hereby certify that the plan attached here to, shows the actual layout of the existing apartment building.

J. MICHAEL WEST

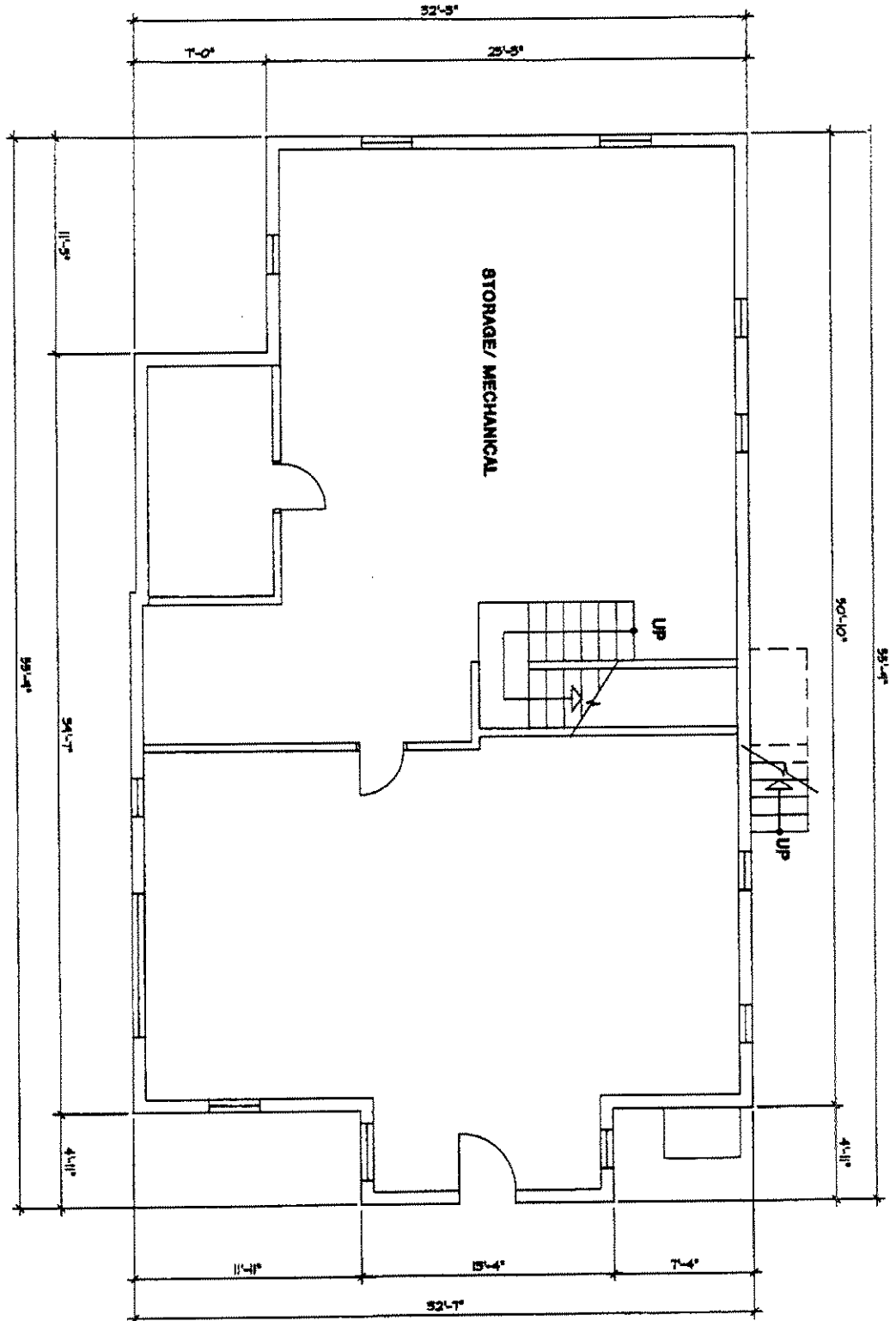
Printed or typed name

Signature

Date issued:

*J. Michael West*  
8/13/93





# **BASEMENT FLOOR PLAN**

**814 SOUTH 37TH AVENUE • OMAHA, NEBRASKA**

AUGUST 13, 1993



EXHIBIT "A"  
Page 6 of 12

I the undersigned, J. Michael West, an architect, authorized and licensed to practice in the State of Nebraska do hereby certify that the plan attached here to, shows the actual layout of the existing apartment building.

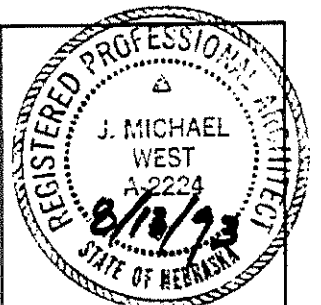
J. MICHAEL WEST

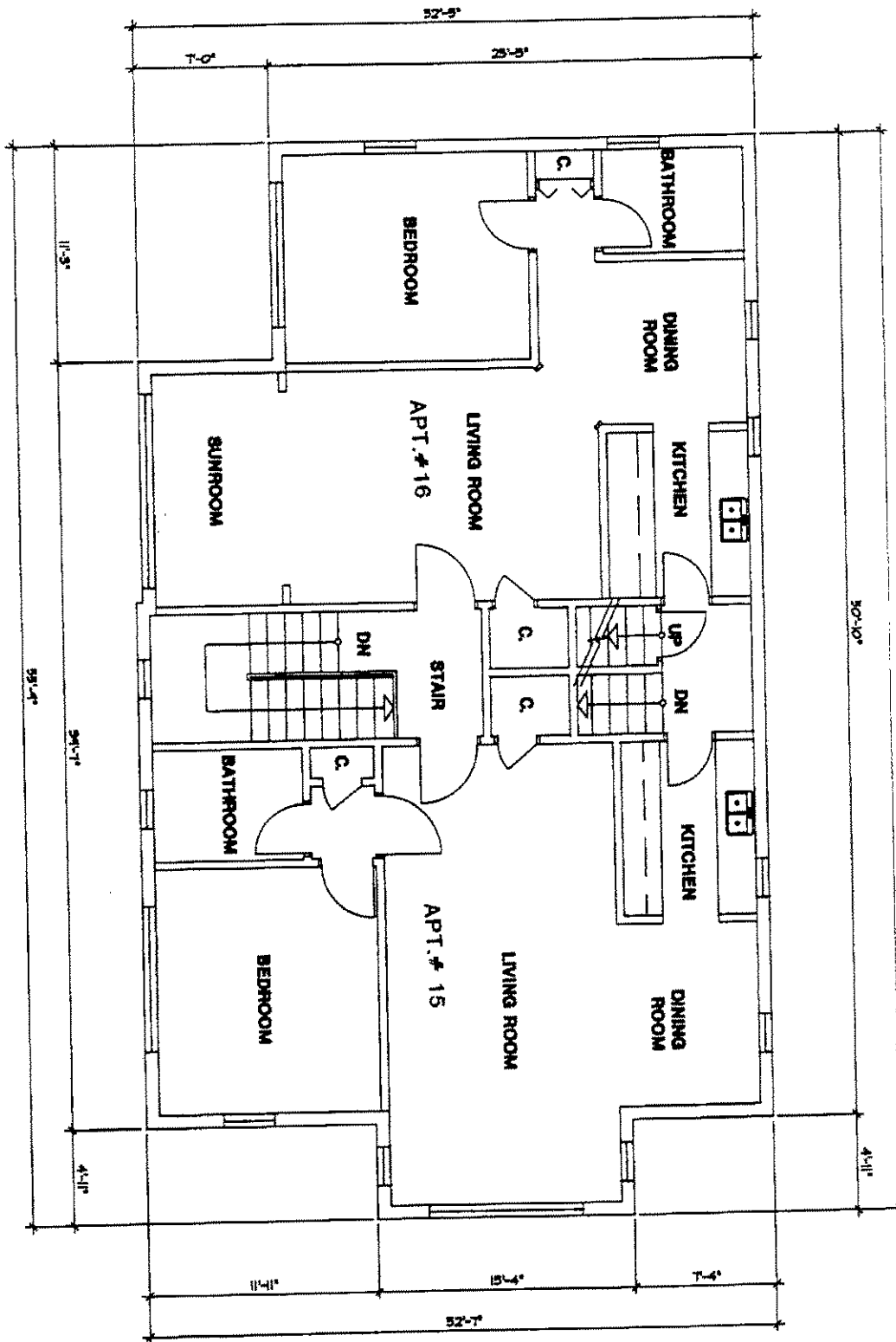
Printed or typed name

Signature

Date issued:

*J. Michael West*  
8/13/93





# SECOND FLOOR PLAN

817 SOUTH 38TH STREET • OMAHA, NEBRASKA

AUGUST 13, 1993



EXHIBIT "A"  
Page 7 of 12

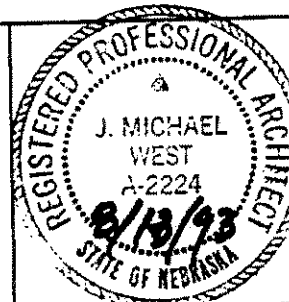
I the undersigned, J. Michael West, an architect, authorized and licensed to practice in the State of Nebraska do hereby certify that the plan attached here to, shows the actual layout of the existing apartment building.

J. MICHAEL WEST

Printed or typed name

Signature

Date issued:



0 5 10 15  
SCALE IN FEET



AUGUST 13, 1993

# FIRST FLOOR PLAN 817 SOUTH 38TH STREET • OMAHA, NEBRASKA

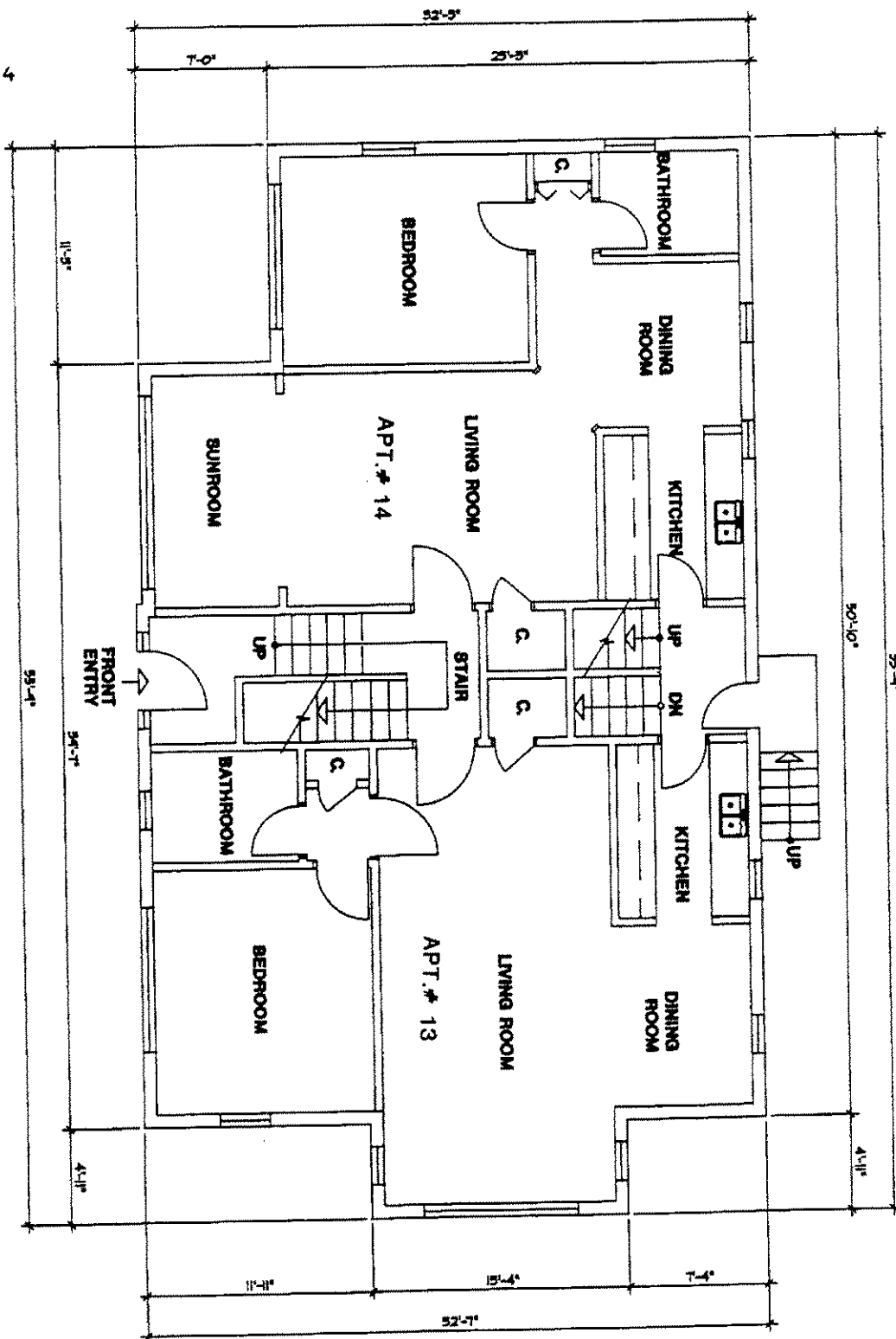


EXHIBIT "A"  
Page 8 of 12

I the undersigned, J. Michael West, an architect, authorized and licensed to practice in the State of Nebraska do hereby certify that the plan attached here to, shows the actual layout of the existing apartment building.

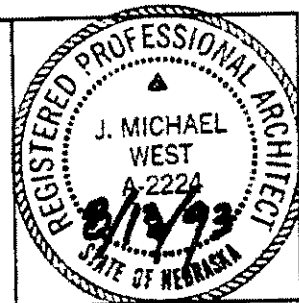
J. MICHAEL WEST

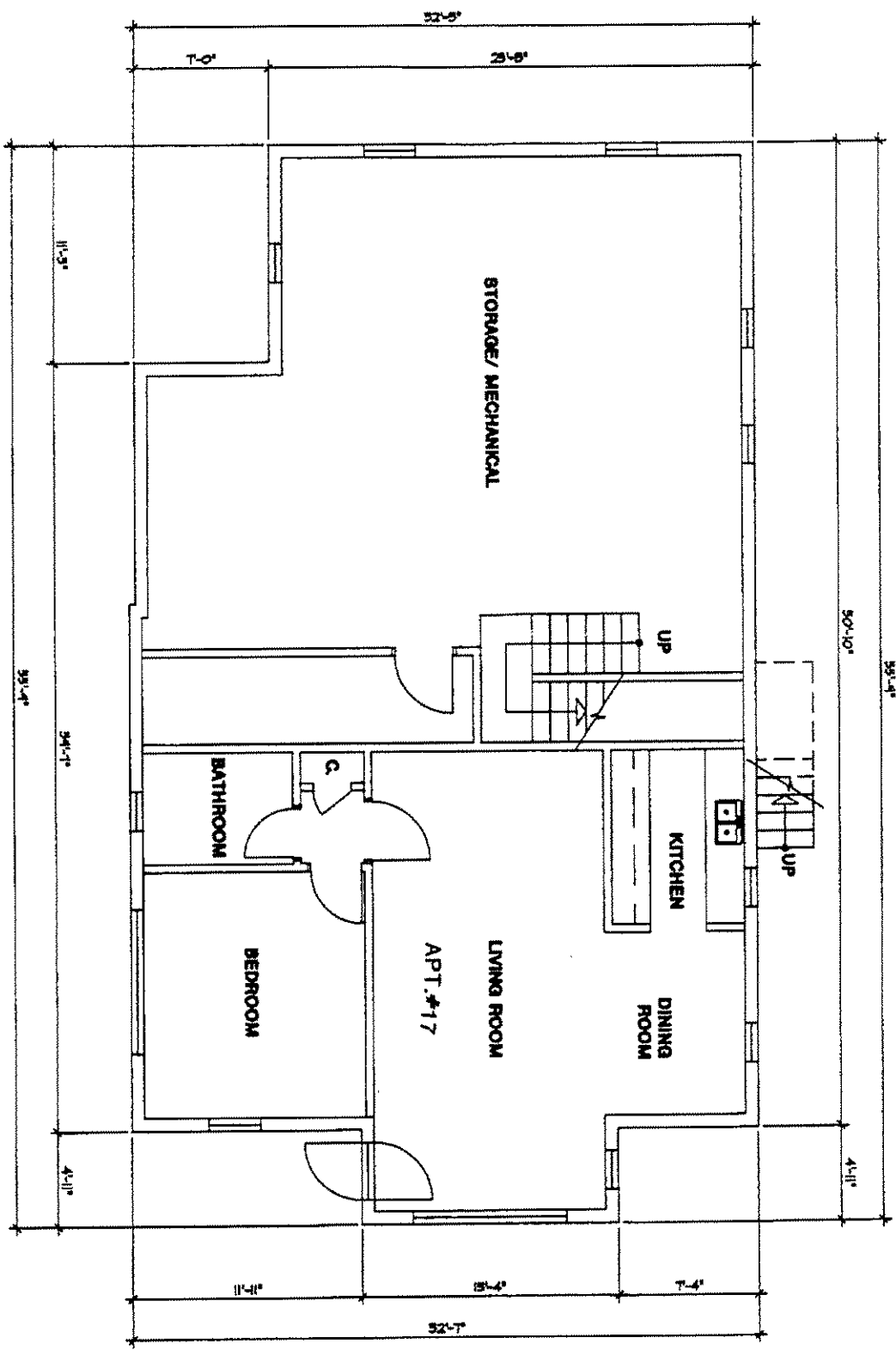
Printed or typed name

Signature

Date issued:

*J. Michael West*  
8/13/93





**BASEMENT FLOOR PLAN**  
**87 SOUTH 38TH STREET • OMAHA, NEBRASKA**

AUGUST 13, 1993



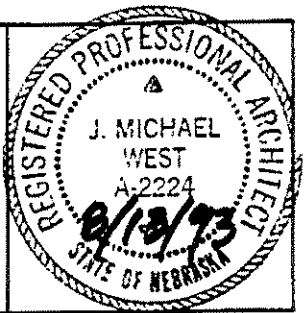
EXHIBIT "A"  
Page 9 of 12

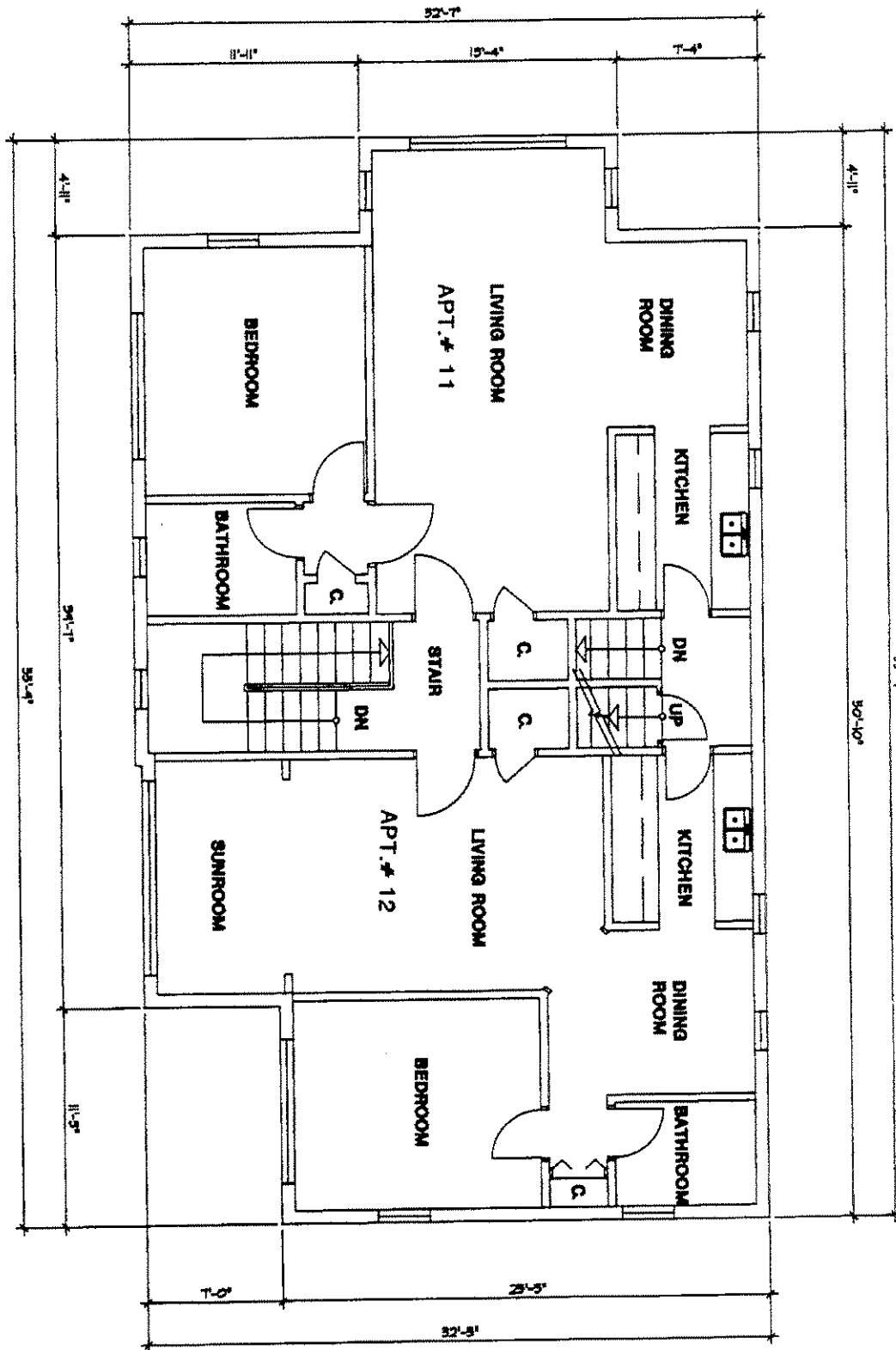
I the undersigned, J. Michael West, an architect, authorized and licensed to practice in the State of Nebraska do hereby certify that the plan attached here to, shows the actual layout of the existing apartment building.

J. MICHAEL WEST  
Printed or typed name

*J. Michael West*  
Signature

8/13/93  
Date issued:





# **SECOND FLOOR PLAN** **818 SOUTH 37TH AVENUE • OMAHA, NEBRASKA**

AUGUST 13, 1963

0 5 10 15  
 SCALE IN FEET



EXHIBIT "A"  
 Page 10 of 12

I the undersigned, J. Michael West, an architect, authorized and licensed to practice in the State of Nebraska do hereby certify that the plan attached here to, shows the actual layout of the existing apartment building.

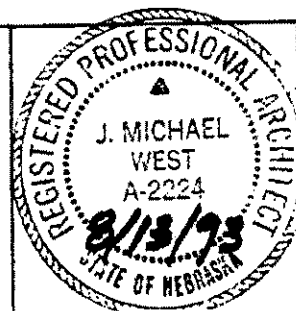
J. MICHAEL WEST

Printed or typed name

Signature

Date issued:

*J. Michael West*  
 8/13/93

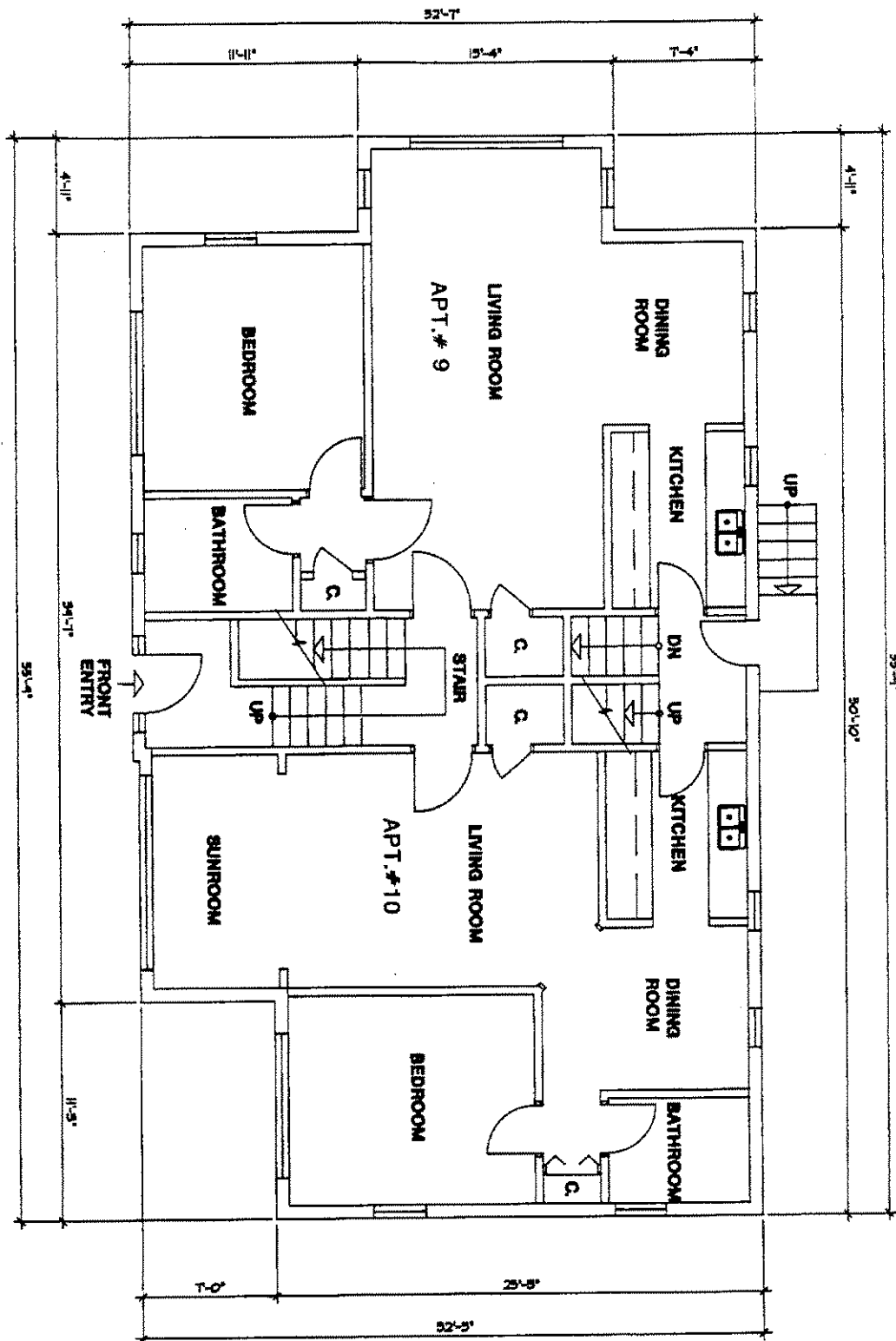


## AUGUST 13, 1963

0 6  
SCALE IN FEET



BOOK 1965 PAGE 177

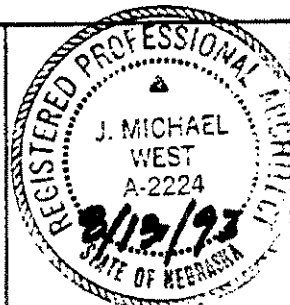


I the undersigned, J. Michael West, an architect, authorized and licensed to practice in the State of Nebraska do hereby certify that the plan attached here to, shows the actual layout of the existing apartment building.

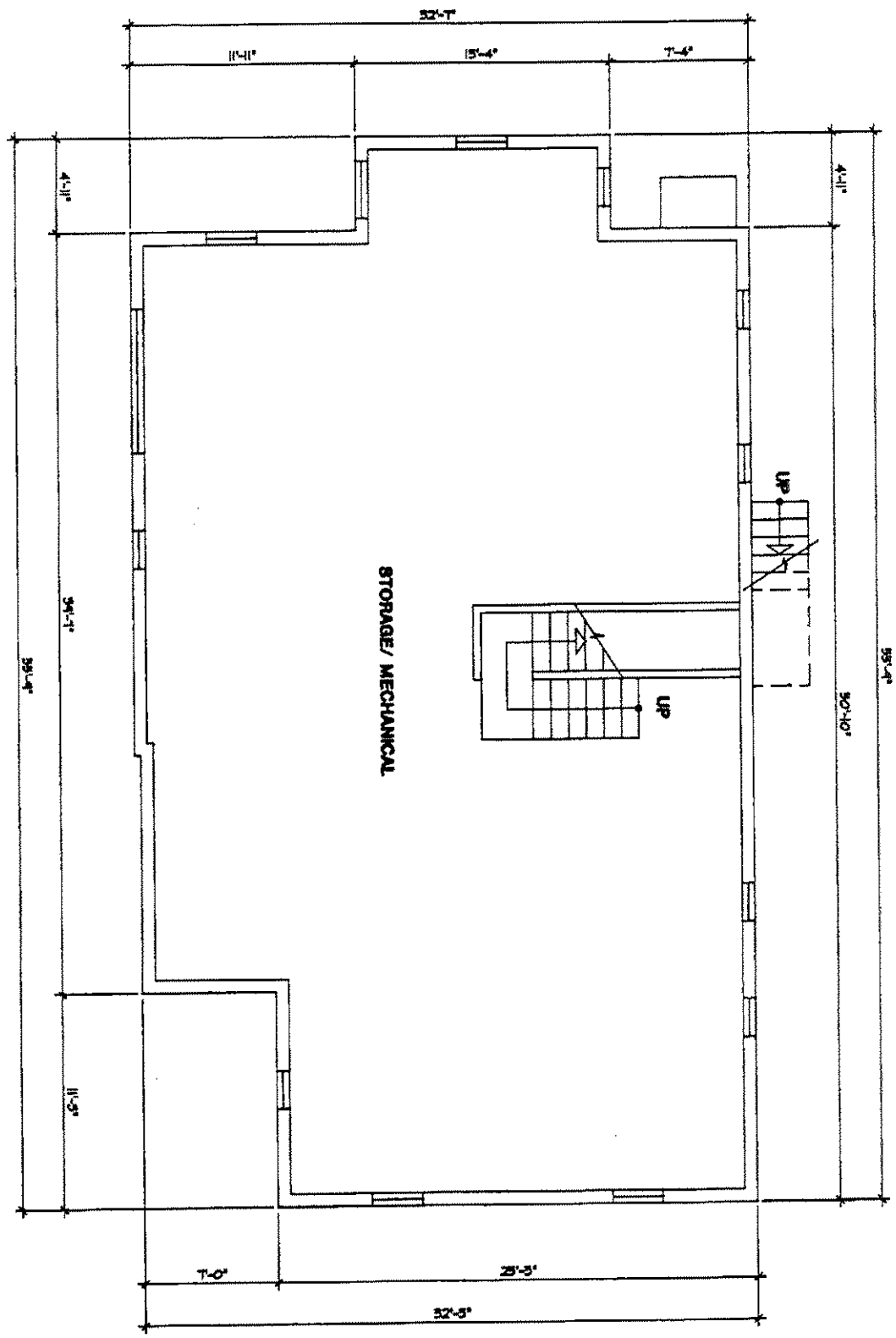
Printed or typed name

**Signature:**

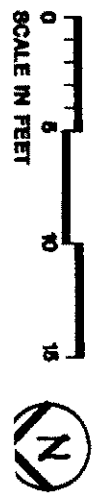
Date issued:







**BASEMENT FLOOR PLAN**  
**818 SOUTH 37TH AVENUE • OMAHA, NEBRASKA**  
AUGUST 13, 1993



BOOK 1965 PAGE 178

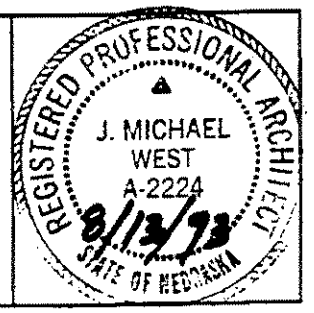
EXHIBIT "A"  
Page 12 of 12

I the undersigned, J. Michael West, an architect, authorized and licensed to practice in the State of Nebraska do hereby certify that the plan attached here to, shows the actual layout of the existing apartment building.

J. MICHAEL WEST  
Printed or typed name

*J. Michael West*  
Signature

8/13/93  
Date issued:



# CHERRY GARDEN APARTMENTS, INC. OWNERS OF RECORD

OWNER	PHONE #	ADDRESS
1. Martha L. Johnson	346-3145	813 So. 38th St. 68105
2. Dale O. Hines	393-6645	8820 BLONDO 68134
3. Thomas O. Moeller	341-8710	813 So. 38th St. 68105
4. <del>Mar</del> Shirley Maples		
5. Tom Cannon	No Phone	814 So. 37th Ave. 68105
6. Margaret E. Emery	341-0143	814 So. 37th Ave. 68105
7. Stephen J. Kneip	341-2907	814 So. 37th Ave. P.O. BOX 3382 68103-0382
8. Sandra J. Besch	342-3020	3424 Jackson St. 68105
9. Joan Carrubba	346-8984	818 So. 37th Ave. 68105
10. Lisa L. Gutschenritter	553-1849	4678 poppleton Avenue 68106
11. Laurence A. Lanphier Jr.	554-1108	5302 Izard St. 68132
12. Mary L. Hofer	323-9910	2121 AVE A COBIA 51501
13. Eudell O. Remmereid	344-0625	817 So. 38th St. 68105
14. Clare R. Fleming	341-4499	817 So. 38th St. 68105
15. Patricia Q. Lanphier	1-484-8925	925 Piedmont Rd.; Lincoln, NE 68510
16. Anthony C. Thraen	359-5848	RR 1 BOX 70e 68064 TIMBER LODGE LAKE LOG HOME #3

AUGUST 25, 1993