

## RECIPROCAL EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Easement"), is given as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012, between the **CITY OF SAINT PAUL, MINNESOTA**, a municipal corporation under the laws of the State of Minnesota (the "City"), and **LOWRY COMMERCIAL CONDOMINIUM OWNERS' ASSOCIATION**, a Minnesota nonprofit corporation (the "Lowry").

### RECITALS

A. The City is owner of certain real property located at 25 West Fourth Street, Saint Paul, Minnesota, as legally described in Exhibit A attached hereto (the "City Property").

B. Lowry Redevelopment Partners is owner of certain real property located at 350 Saint Peter Street, Saint Paul, Minnesota, as legally described in Exhibit B attached hereto.

C. The Lowry Commercial Condominium Owners' Association is the owners' association for Lowry Parking Condominium, Common Interest Community No. 751 (the "Parking Condominium"), in Ramsey County, Minnesota and has authority to enter into easement agreements on behalf of Lowry Redevelopment Partners affecting the Parking Condominium, which is located on the basement, first and second floors and part of 3<sup>rd</sup> floor of the building located at 350 Saint Peter Street, Saint Paul, Minnesota.

D. The Lowry Condominium, Common Interest Community No. 587 (the "Residential Condominium"), in Ramsey County, Minnesota is located on part of 3<sup>rd</sup> floor and all of floors 4-13 of the building located at 350 Saint Peter Street, Saint Paul, Minnesota. The Residential Condominium and the Commercial Condominium are referred to in this Easement, jointly, as the "Lowry Property."

E. Located in the basement of the City Property are electrical switch gear panels that serve the Lowry Property.

F. Also located in the basement of the City Property is an 8-inch fire main water line that serves the Lowry Property by providing a water connection from the city water service located in the City Property to the Lowry fire pump also located in the City Property.

G. Located in the basement of the City Property are a sanitary sewer pipe, its supports and other equipment that serve the portion of the first floor of the Lowry Property occupied by the Aroma Pizza restaurant.

H. The Lowry seeks to acquire a permanent easement from the City for access to and maintenance of said electrical switch gear panels, fire main water line and sewer pipes, all within a 1,132 square-foot area in the basement of the City Property.

I. Located on the first floor of the Lowry Property, but accessible only through the City Property, is approximately 200 square feet of office space currently occupied by the Ramsey County Sheriff's Office under a lease agreement with the City.

J. The City seeks to acquire a permanent easement from the Lowry to use and lease the said office space in the Lowry.

K. The City and the Lowry desire to terminate a previous easement agreement affecting the rights of the Lowry, as successor in title to Avex Lowry Limited Partnership, to construct, operate and maintain a Fire Water Main in the City Property. Provisions of this Easement will reestablish the Fire Water Main easement rights in the City Property.

**NOW, THEREFORE**, the City and the Lowry hereby declare that the easements, covenants, conditions and restrictions hereinafter set forth shall be established over certain portions of the City Property and Lowry Property.

## **AGREEMENT**

1. **Grant of Easement – City to Lowry.** The City, for One Dollar (\$1.00) and other good and valuable consideration, to it in hand paid and the sufficiency and receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the Lowry, its members, successors and assigns, a non-exclusive easement (the "Lowry Easement") to access, operate, maintain, repair, replace and remove electrical switch gear panels, fire main water line and sewer pipes and related equipment located in the City Property and benefiting the Lowry Property, as depicted in Exhibit C attached hereto (the "Lowry Easement Area").

To have and to hold the same forever. The City does covenant that it is well seized in fee of the City Property, and has good right to sell and convey the Easement free of all encumbrances.

It is intended and agreed that this Lowry Easement shall be a covenant running with the land and shall be binding to the fullest extent of the law and equity for the benefit of the Lowry, owners of units in the Residential Condominium and their members, successors and assigns.

2. **Grant of Easement – Lowry to City.** The Lowry, for One Dollar (\$1.00) and other good and valuable consideration, to it in hand paid and the sufficiency and receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the City, its successors and assigns, a non-exclusive easement (the "City Easement") to access only through the City Property, occupy, use, maintain, repair and lease the first floor office space located in the Lowry Property and benefiting the City Property, as depicted in Exhibits D1 and D2 attached hereto (the "City Easement Area").

To have and to hold the same forever. The Lowry does covenant that it is well seized in fee of the Lowry Property, and has good right to sell and convey the City Easement free of all encumbrances.

It is intended and agreed that this Easement shall be a covenant running with the land and shall be binding to the fullest extent of the law and equity for the benefit of the City, its successors and assigns.

3. **Termination of Previous Easement.** The Lowry does hereby forever release any and all rights granted to it, as successor in title to Avex Lowry Limited Partnership, by the City in that certain Permanent Easement Agreement executed November 5, 2001 and recorded as Document No. 3464187 in the Office of the Recorder, Ramsey County, Minnesota, on January 29, 2002.

4. **Insurance.** As a condition of the Lowry Easement, the Lowry shall be required to carry insurance of the kind and in the amounts shown below. Lowry Insurance certificates should state that the City of Saint Paul, its officials, employees, agents and representatives are named as Additional Insureds.

A. **General or Business Liability Insurance**

\$1,500,000 per occurrence  
\$2,000,000 aggregate per project  
\$2,000,000 products/completed operations total limit  
\$1,500,000 personal injury and advertising

Policy must include an “all services, products, or completed operations” endorsement when appropriate.

B. **General Insurance Requirements**

i. The policy is to be written on an occurrence basis or as acceptable to the City. Certificate of insurance must indicate if the policy is issued on a claims-made or occurrence basis. Agent must state on the certificate if policy includes errors and omissions coverage.

ii. The Lowry, its employees, agents or contractors, shall not commence work until a Certificate of Insurance covering all of the insurance required for the Lowry Easement is approved.

iii. The City reserves the right to review the Lowry’s insurance policies at any time, to verify that City requirements have been met.

iv. Satisfaction of policy and endorsement requirements for General or Business Liability Insurance, of “each occurrence” and “aggregate” limits, can be met with an umbrella or excess policy with the same minimum monetary limits written on an occurrence basis, providing it is written by the same insurance carrier.

As a condition of the City Easement, the City hereby certifies that it is a duly authorized self-insured entity in accordance with Minnesota state law for purposes of general liability, property damage and workers compensation claims. Furthermore, the City hereby affirms and

maintains its entitlement to all available immunities, defenses and protections to the fullest extent provided by law.

5. **Maintenance and Repairs.** The Lowry shall, at its own cost and expense, be responsible for all repairs, maintenance, and upkeep of its electrical equipment, fire main water line and sewer pipe within the Lowry Easement Area, including but not limited to emergency repairs of any kind, routine maintenance and repair to keep the Lowry Easement Area in good repair, safe, and in compliance with applicable fire, health, and other life safety codes. The foregoing obligations shall bind the Lowry regardless of the damage or condition necessitating the repair and maintenance.

The City shall, at its own cost and expense, be responsible for all repairs, maintenance, and upkeep of its within the City Easement Area, including but not limited to utility expenses, emergency repairs of any kind, routine maintenance and repair to keep the City Easement Area in good repair, safe, and in compliance with applicable fire, health, and other life safety codes. The foregoing obligations shall bind the City regardless of the damage or condition necessitating the repair and maintenance.

6. **Alterations and Access.** In the event the Lowry wishes to perform construction activity within the Lowry Easement Area, or the City wishes to perform construction activity within the City Easement Area, the Lowry and City shall comply with the following requirements:

A. The Lowry shall provide advance written notice to the City of any such alterations, which shall be approved by the City prior to commencement of construction. The City shall provide advance written notice to the Lowry of any such alterations, which shall be approved by the Lowry prior to commencement of construction. All alterations shall be done in a workmanlike manner and in conformance with applicable building codes, and in such a manner so as not to impair the structural integrity and building systems of the City Property or Lowry Property.

B. Contractor signage shall be limited to one sign per general contractor, and if desired all subcontractors may be listed on the same sign. Signage shall be approved by the City prior to any installation.

C. No access to the Lowry Easement Area located in the City Property by employees, agents or contractors for the Lowry shall occur without prior notification to the City, with the exception of the Lowry's property management staff, Fire Department and Xcel Energy (Xcel for emergencies) who have been issued electronic access cards by the City, and who will only access the Lowry Easement Area for purposes described in Section 1 of this Easement.

D. Upon completion of any maintenance or construction activity within the Lowry Easement Area, the Lowry shall remove all construction equipment and debris, and shall completely restore the area to its original condition.

7. **Indemnity.** The Lowry agrees to indemnify, defend, save and hold harmless the City and any agents, officers and employees thereof from all claims, demands, actions or causes

of action of whatsoever nature or character, arising out of or by reason of use of the Lowry Easement by the Lowry, or as a result of the Lowry's operations or business activities taking place within the Lowry Easement Area. It is fully understood and agreed that the Lowry accepts the Lowry Easement Area in its "as is" condition.

The City agrees to indemnify, defend, save and hold harmless the Lowry and any agents, officers and employees thereof from all claims, demands, actions or causes of action of whatsoever nature or character, arising out of or by reason of use of the City Easement by the City, or as a result of the City's operations or business activities taking place within the City Easement Area. It is fully understood and agreed that the City accepts the City Easement Area in its "as is" condition. This agreement to indemnify is not intended to, and does not, limit or waive all immunities granted to the City under Chapter 466, Minn. Statutes, and all laws relating thereto.

8. **Event of Default.** If either party fails to observe and perform any covenant, condition or agreement on its part to be observed or performed as required by this Easement, the party that has defaulted shall be notified by the other party in writing of the default, and the defaulting party shall have thirty (30) days following receipt of such notice to cure such default, provided, however, that if the default is not reasonably capable of being cured within such thirty day period, the defaulting party shall have such additional amount of time as is reasonably necessary to accomplish a cure as long as the defaulting party has promptly commenced and is diligently pursuing a cure.

9. **Cure of Default.** If a default has not been cured within the applicable cure period under Paragraph 6 of this Easement, the non-defaulting party shall have the right to cure the default, the defaulting party shall be obligated to reimburse the non-defaulting party for all direct costs incurred in curing such default, and the non-defaulting party shall have a lien against the defaulting party property (Lowry Commercial Condominium CIC 751 or City Annex to secure such reimbursement obligation.

10. **Default Remedies.** If a default has not been cured within the applicable cure period under Paragraph 6 of this Easement, in addition to the reimbursement and lien rights created by Section 7, above, the non-defaulting party may exercise any one or more of the following remedies:

A. Take whatever additional action at law or in equity may appear necessary or appropriate to enforce the performance and observance of any obligation, agreement or covenant of the defaulting party under this Easement.

B. In exercising any of its remedies set forth in this section, the non-defaulting party may, whether or not the Easement is then in effect, hold the defaulting party liable for the costs for which the defaulting party is responsible.

11. **Compliance with Laws.** The property described herein may be used for only the purposes stated herein. It is the sole and exclusive responsibility of the parties in the use of the Easement Areas to comply with all laws, rules, regulations or ordinances imposed by any jurisdiction affecting the use to which the Easement Areas are being put.

12. **Liens.** Neither party shall permit mechanics liens or other liens to be filed or established or remain against the Easement Areas or Property for labor, materials or services furnished in connection with the either parties maintenance, modification, improvement, repair or replacement of the property within the Easement Areas, and shall either bond over or pay and discharge any lien so attaching promptly after demand by party affected by lien caused by other party.

13. **Rights Reserved.** Except for rights expressly granted to the Lowry herein, the City reserves all rights in and to the Lowry Easement Area and City Property.

14. **Amendment.** This Easement may not be amended or modified without the written consent of the parties hereto.

15. **Entire Agreement.** This Easement embodies the entire agreement and understanding between the parties and supersedes any prior oral or written agreements with respect to the matters stated herein.

16. **Recordable Document.** This Easement shall be recorded in the real estate records of the County Recorder of Ramsey County.

17. **Counterparts.** This Easement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute a single agreement.

18. **Effective Date.** The Effective Date of this Easement shall be the last date signed by either party.

*[Separate Signature Pages Follow.]*

**SIGNATURE PAGE OF  
THE LOWRY COMMERCIAL CONDOMINIUM OWNERS' ASSOCIATION  
FOR EASEMENT AGREEMENT**

**IN WITNESS WHEREOF**, the undersigned has caused this Agreement to be made as of the day and year first above written.

**THE LOWRY COMMERCIAL CONDOMINIUM  
OWNERS' ASSOCIATION**

By: 

Its President

STATE OF MINNESOTA    )  
  ) ss  
COUNTY OF Ramsey     )

The instrument was acknowledged before me this 6 day of December, 2012, by Richard Pakonich, its President, on behalf of The Lowry Commercial Condominium Owners' Association, a Minnesota nonprofit corporation.

  
Notary Public

**SIGNATURE PAGE OF  
CITY OF SAINT PAUL  
FOR EASEMENT AGREEMENT**

**IN WITNESS WHEREOF**, the undersigned has caused this Agreement to be made as of the day and year first above written.

**CITY OF SAINT PAUL, MINNESOTA**

By: \_\_\_\_\_  
Its Mayor or Deputy Mayor

By: \_\_\_\_\_  
Its Director of Financial Services

By: \_\_\_\_\_  
Its City Clerk

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF Ramsey        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, Mayor or Deputy Mayor, \_\_\_\_\_, Director, Office of Financial Services and \_\_\_\_\_, City Clerk of the City of Saint Paul, a Minnesota municipal corporation under the laws of the State of Minnesota.

\_\_\_\_\_  
Notary Public



## **EXHIBIT A**

### Legal Description of the City Property

Fee Owner: City of Saint Paul

Part of Lots 8, 9 & 10 lying southeasterly of a construction building line described as follows; beginning on the westerly line of and 51.5 feet northwesterly from the southwesterly corner of Lot 8; thence northeasterly parallel with the southeasterly line of Block 21 for 51.96 feet; thence northwest at a right angle for 3.5 feet; thence northeasterly at a right angle for 12.4 feet; thence northwesterly at a right angle for 25.75 feet; thence northeasterly at a right angle more or less for 84.96 feet more or less to a point on the easterly line of and 80.7 feet northwesterly from the southeasterly corner of said Lot 10, Block 21.

## **EXHIBIT B**

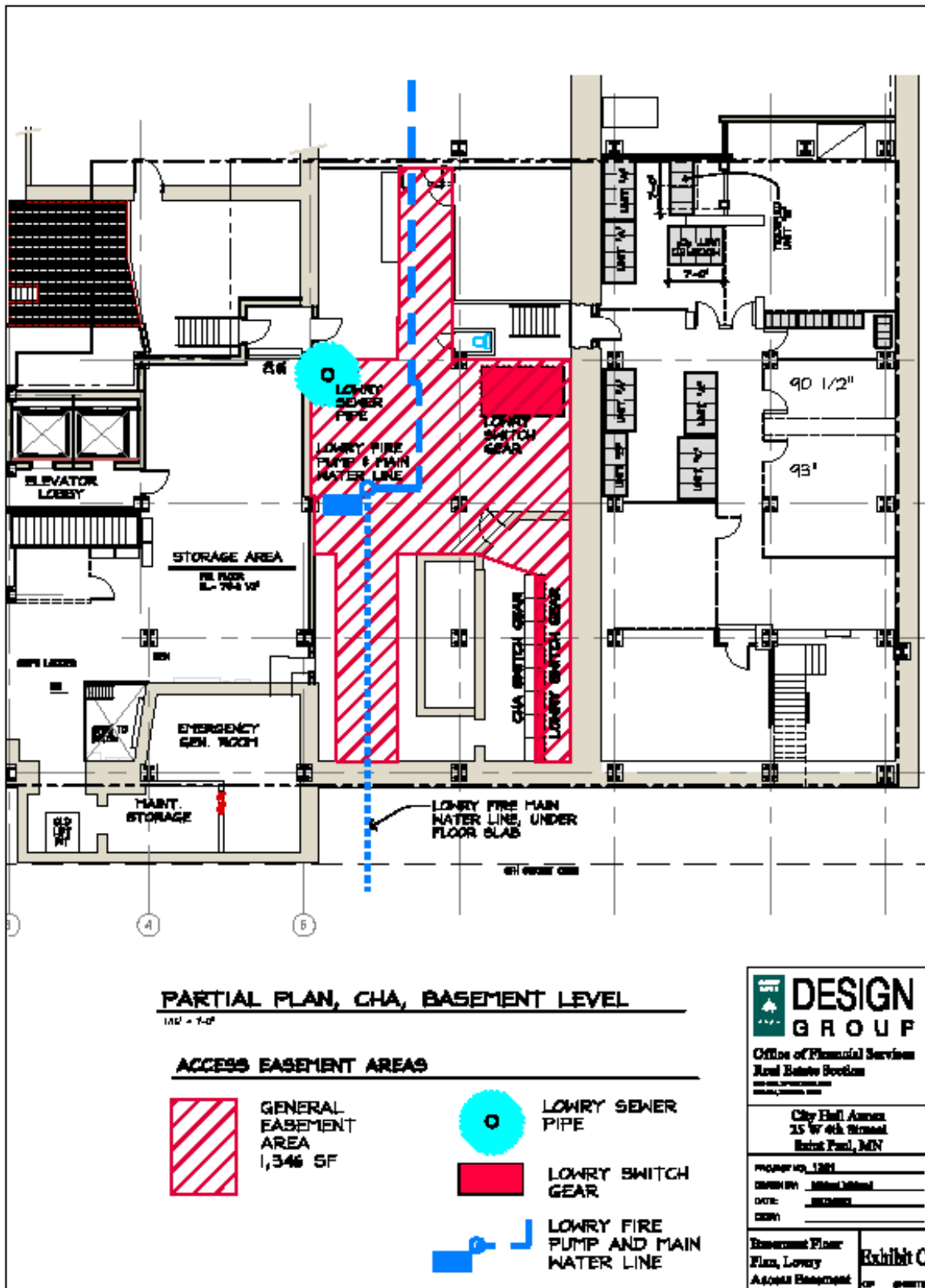
### Legal Description of the Lowry Property

Fee Owner: Lowry Redevelopment Partners

Common Interest Community Number 751, Unit 1

## EXHIBIT C

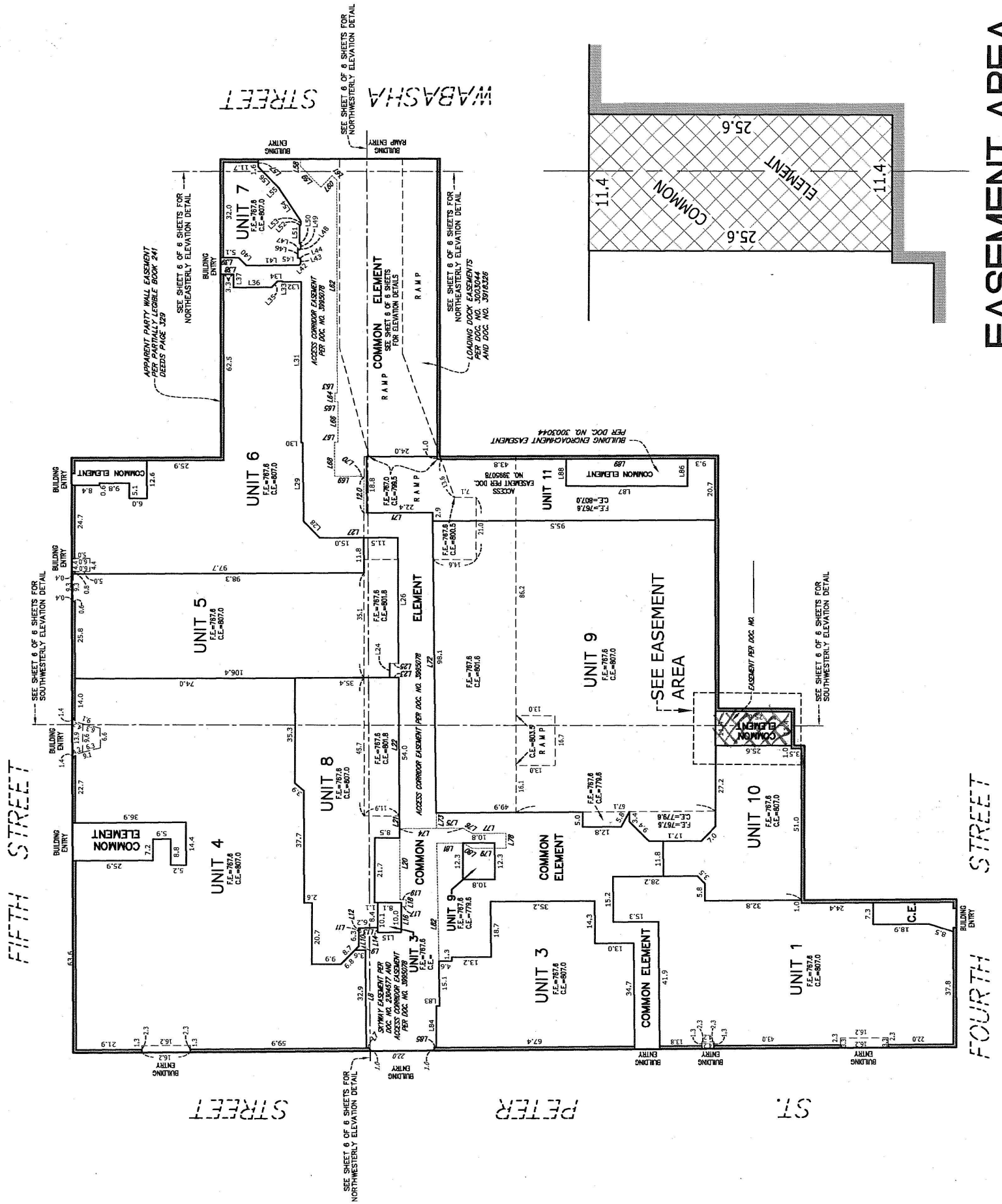
### Depiction of the Lowry Easement Area within the City Property



## **EXHIBIT D1**

Depiction of the City Easement Area within the Lowry Property

# EASEMENT AREA



## **EXHIBIT D2**

Depiction of the use of the City Easement Area

# EXHIBIT D2

