

THIS AGREEMENT made this 29th day of November, 1972, by and between Vacanti & Randazzo Construction Company, a Nebraska corporation, hereinafter referred to as "Vacanti", Western Securities Company, Omaha, Nebraska, hereinafter referred to as "Western", Nebraska Savings and Loan Association, Omaha, Nebraska, hereinafter referred to as "Nebraska", and State Federal Savings and Loan Association, Beatrice, Nebraska, hereinafter referred to as "State Federal";

WITNESSETH:

WHEREAS, Vacanti is the owner of an apartment complex known as the Florentine located on Lots 209, 210, 211, 212 and 213, Benson Gardens, an Addition to the City of Omaha, as surveyed, platted and recorded, Douglas County, Nebraska, and is the owner of property legally described as Lots 214 and 215, Benson Gardens, an Addition to the City of Omaha, as surveyed, platted and recorded, Douglas County, Nebraska, which latter two lots are contiguous to the Florentine already built and existing; and

WHEREAS, Western proposes to commit financing for the construction of 60 apartment units on Lots 214 and 215, which latter construction does not encompass swimming pool nor club room facilities on the said Lots 214 and 215; and ,

WHEREAS, the parties wish to reduce to writing an agreement concerning the use of existing swimming pool facilities and club room facilities by the tenants and for the benefit of the now or future owners of the apartment complex to be built on Lots 214 and 215, Benson Gardens; and

WHEREAS, there has been constructed on Lots 209 and 210, Benson Gardens, an apartment project upon which State Federal has a first mortgage;

WHEREAS, there has been constructed on Lots 211, 212 and 213, Benson Gardens, an apartment project upon which Nebraska has a first mortgage;

NOW, THEREFORE, in consideration of the mutual promises and benefits and other valuable consideration, it is agreed as follows:

1. That this Agreement shall become valid, binding and effective upon the execution by Vacanti of note and mortgage and the right to disbursement of construction funds from Western; provided, that upon the nonexecution by December 29, 1972, thereof, this agreement shall be null and void.
2. That Vacanti grants to tenants and future owners of the apartments constructed on Lots 214 and 215, Benson Gardens, commonly known as Phase III Florentine Apartments, the rights and privileges for the use of the club room and swimming pool on Phase I of the Florentine on Lots 211, 212 and 213, Benson Gardens, an Addition to City of Omaha, as surveyed, platted and recorded, Douglas County, Nebraska, and the use of any future common amenities on Phases I or II, together with convenient rights of way to said facilities over the intervening land of Vacanti, said rights being granted subject to the rules and regulations for the use of said pool, club room facilities and other amenities as are in existence and as may be reasonably promulgated from time to time.
3. That the cost of maintenance and operation of the club room facilities and the swimming pool facilities shall be borne 27% by the owner or owners of Lots 209 and 210, 39% by the owner or owners of Lots 211, 212 and 213, and 34% by the owner or owners of Lots 214 and 215, except that cost of taxes and insurance applicable to club room and swimming pool facilities shall be borne by the owner or owners of Lots 211, 212 and 213. Proration of maintenance and operating costs shall be computed annually following an itemization of the annual expenses with the first year commencing on the date the first apartment in Phase III, located on Lots 214 and 215, Benson Gardens is rented and on the anniversary date thereof. An itemization of maintenance and operating costs and demand for the pro-rata share shall be prepared and made by Vacanti or its assigns or successors and presented to the then owner of Phase III and Phase II, and the said costs shall be paid within ten days after presentation of the itemized statement and demand for pro-rate payment.

This agreement shall run with the land and inure to the benefit of and bind the successors and assigns of all of the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands this 29th day of November, 1972, and bind their executors, administrators and assigns by this agreement.

Attest: [Signature]
Alfred J. Vacanti, Secretary

VACANTI & RANDAZZO CONSTRUCTION COMPANY
By [Signature]
Milo P. Vacanti, President
"Vacanti"

Attest: [Signature]
Ass't Secretary

WESTERN SECURITIES COMPANY
By [Signature]
C. A. Rasmussen, Vice President
"Western"

Attest: [Signature]
Kathryn M. Duffy Secretary

NEBRASKA SAVINGS AND LOAN ASSOCIATION OF OMAHA, NEBRASKA
By [Signature]
James P. Duff, President
"Nebraska"

Attest: [Signature]
W. R. Arpke, Secretary

STATE FEDERAL SAVINGS AND LOAN ASSOCIATION
By [Signature]
L. E. Whittaker, President
"State Federal"

STATE OF NEBRASKA,)
) SS.
COUNTY OF DOUGLAS,)

On this 29th day of December, 1972, before me, a Notary Public, duly commissioned and qualified in and for said County and State, personally came the above named Milo P. Vacanti, President and Alfred J. Vacanti, Secretary of VACANTI & RANDAZZO CONSTRUCTION COMPANY, who are personally known to me to be the identical persons whose names are affixed to the above Agreement as the President and Secretary of said Corporation, and they acknowledged the instrument to be their voluntary act and deed, and the voluntary act and deed of the said Corporation; and also came C. A. Rasmussen, Vice President, and L. M. Ansorge, Assistant Secretary of WESTERN SECURITIES COMPANY, who are personally known to me to be the identical persons whose names are affixed to the Agreement as Vice President and Assistant Secretary of said Corporation, and they acknowledged the instrument to be their voluntary act and deed, and the voluntary act and deed of the said Corporation.

WITNESS my hand and official seal, at Omaha, in said County, the date aforesaid.

[Signature]
Notary Public

My commission expires April 9, 1975.

STATE OF NEBRASKA,)
) SS
COUNTY OF DOUGLAS,)

On this 10th day of ~~December, 1972~~ January, 1973, before me, a Notary Public, duly commissioned and qualified in and for said County and State, personally came the above named James P. Duff, President, and Kathryn M. Duffy, Secretary of NEBRASKA SAVINGS AND LOAN ASSOCIATION OF OMAHA, NEBRASKA, who are personally known to me to be the identical persons whose names are affixed to the above Agreement as the President and Secretary of said Corporation, and they acknowledged the instrument to be their voluntary act and deed, and the voluntary act and deed of the said Corporation.

WITNESS my hand and official seal, at Omaha, in said County, the date aforesaid.

[Signature]
Notary Public

My commission expires February 14, 1973.

STATE OF NEBRASKA,)
) SS.
COUNTY OF GAGE ,)

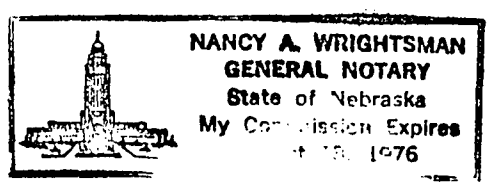
January, 1973

On this 4th day of ~~December, 1972~~, before me, a Notary Public, duly commissioned and qualified in and for said County and State, personally came the above named L. E. Whittaker, _____, President, and W. R. Arpke, _____, Secretary of STATE FEDERAL SAVINGS AND LOAN ASSOCIATION, who are personally known to me to be the identical persons whose names are affixed to the above Agreement as the _____ President, and _____ Secretary of said Corporation, and they acknowledged the instrument to be their voluntary act and deed, and the voluntary act and deed of the said Corporation.

WITNESS my hand and official seal, at Beatrice, in said County, the date aforesaid.

Nancy A. Wrightsman
Notary Public

My commission expires 8/13/76.



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ENTERED IN NUMERICAL INDEX AND RECORDED IN THE REGISTER OF DEEDS OFFICE IN DOUGLAS COUNTY, NEBRASKA
DAY OF January 1973 AT 3:57 P
C. HAROLD OSTLER, REGISTER OF DEEDS
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