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BOOK 1999 PAGE

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1999 OCT 12 P 2: 28

DECK EASEMENT

CACHE HOL. RECORDER  
DALLAS COUNTY, IOWA

# OF PAGES

(4) 3000/1.00

Return to:  
Knapp Properties  
5000 Westown Pkwy.  
Suite 100  
WDM, IA 50266-5921

THIS AGREEMENT is made and executed on this 23 day of September, 1999, by and between WEST LAKES DEVELOPMENT COMPANY, an Iowa general partnership ("WLDC") and WEST LAKES OFFICE PARK OWNERS ASSOCIATION, an Iowa non-profit corporation ("WLOPOA").

WITNESSETH:

WHEREAS, WLDC is the owner of certain real estate located in West Des Moines, Polk County, Iowa, legally described as a part of Lot 9 and 13 in WEST LAKES OFFICE PARK PLAT 3, an Official Plat, now included in and forming a part of the City of West Des Moines, Dallas County, Iowa as more completely described on Exhibit "A" that it leases to Sears, Roebuck and Co. under a ten year lease with three five-year options (the "Sears Parcel"); and

WHEREAS, WLOPOA is the owner of all the common areas contained in West Lakes Office Park including the lake that adjoins the Sears Parcel that is legally described as Outlot Z in West Lakes Office Park Plat 3, an Official Plat; West Des Moines, Dallas County, Iowa (the "Lake Parcel"); and

WHEREAS, Sears desires to construct from the building located on the Sears Parcel to the edge of the lake in the Lake Parcel an attractive system of landscaped decks, gazebos and promenades; and

WHEREAS, WLOPOA is given the responsibility in part pursuant to the Declaration of Protective Covenants for West Lakes Office Park dated March 29, 1993, and filed September 9, 1993, with the Dallas County Recorder's Office in Book 749, Page 353 (the "Declaration") to provide easements to insure that the Properties within West Lakes Office Park will be developed and maintained in an attractive, park-like setting for business with ample, landscaped, open areas; and

WHEREAS, WLOPOA has determined that the proposed construction by Sears is in keeping with its responsibilities under the Declaration.

IT IS THEREFORE MUTUALLY AGREED:

1. Grant of Easement by WLOPOA. WLOPOA hereby grants to WLDC an easement for purposes of construction and maintenance of a system of decks, gazebos and promenades to the edge of the lake on the Lake Parcel as described on the plans and specifications to be approved by the Architectural Review Committee of WLOPOA and to be

maintained on file in the office of WLOPOA. WLOPOA hereby grants to WLDC the exclusive right to use such decks and gazebos as it constructs in accordance with approvals granted by the Architectural Review Committee of WLOPOA *provided that*, at all times WLDC will provide access to pedestrian traffic through the easement area and will construct such walkway that connect to such sidewalk as exist around the lake and will allow continuous flow of pedestrian traffic around the lake.

2. **Grant of Easement by WLDC.** WLDC hereby grants to WLOPOA an easement for purposes of pedestrian traffic on such walkway as shall be built on the Sears Parcel.

3. **Reserved Rights.** WLOPOA and WLDC each hereby reserve and retain all other property rights in and to the areas subject to the easement, subject at all times to the terms and conditions hereof including the ability of WLOPOA to enforce the condition of the improvements pursuant to the Declaration.

4. **Permits - Compliance with Law.** At such time as Sears chooses to construct the decks, gazebos and promenades described above, WLDC agrees to obtain such permits, licenses, or other authority that may be required from federal state, county, municipal, or other governmental agency or units exercising jurisdiction over the construction of the improvements before using the Easement or exercising the rights herein provided, and WLDC further agrees to comply with and strictly observe any and all laws, rules and regulations of any such governmental agency or unit.

5. **Compliance with West Lakes Office Park's Design Review Committee.** Prior to construction of the improvements described herein, WLDC agrees to obtain the approval of the WLOPOA's Design Review Committee as to location, elevation, width, depth, preparation of site and materials.

6. **Jurisdiction.** WLDC AND WLOPOA agree that the Iowa District Court for Dallas County shall have exclusive jurisdiction over the subject matter of this Easement, and said party's consent to the jurisdiction of the person being in Dallas County, Iowa.

7. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

8. **No Dedication.** This instrument is not intended to, and should not be construed to, dedicate any of the easement areas to the general public.

9. **Survival.** The easements granted pursuant to the terms of Paragraph 1 shall survive as long as the Sears Parcel contains the existing building recently constructed on it but in no case longer than twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

10. **Estoppel Certificates.** Upon the written request of the other, either party to this Easement Agreement may request that the other execute and deliver within ten (10) days of a receipt of request, a certificate certifying there are no known defaults on the part of any party to

this Agreement, or if there are any defaults, specifying the particulars of such defaults and the action required to remedy it/them.

11. **Notices.** Any notice required or permitted to be given under this Agreement shall be given by hand delivery, or by certified mail, return receipt requested to the parties as follows:

WLDC: 5000 Westown Parkway, Suite 100  
West Des Moines, Iowa 50266

WLOPOA: 5000 Westown Parkway, Suite 100  
West Des Moines, Iowa 50266

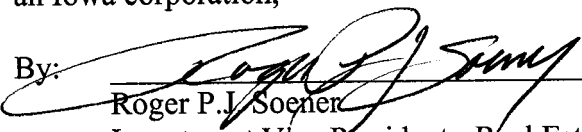
Any party may, by written notice given as aforesaid, change the place for receiving notice under this instrument.

**WEST LAKES DEVELOPMENT COMPANY,**  
an Iowa general partnership

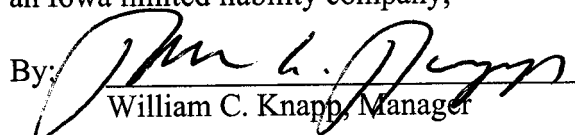
By: **WEST LAKES PROPERTIES, L.C.,**  
an Iowa limited liability company as Managing Partner

By: **FARM BUREAU LIFE INSURANCE COMPANY,**  
an Iowa corporation,

(SEAL)

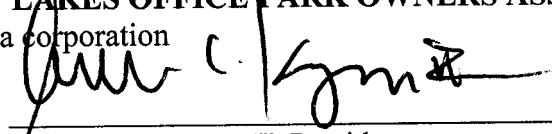
By:   
Roger P.J. Soener  
Investment Vice President - Real Estate

By: **KNAPP DEVELOPMENT, L.C.**  
an Iowa limited liability company,

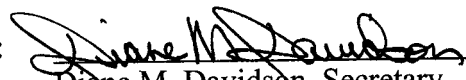
By:   
William C. Knapp, Manager

**WEST LAKES OFFICE PARK OWNERS ASSOCIATION,**  
an Iowa corporation

By:

  
William C. Knapp II, President

By:

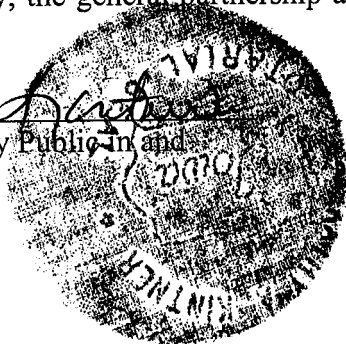
  
Diane M. Davidson, Secretary

ACKNOWLEDGEMENTS

STATE OF IOWA )  
 ) SS:  
COUNTY OF POLK )

On this 23<sup>rd</sup> day of September, 1999, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared **Roger PJ Soener** to me personally known, who, being by me duly sworn, did say that he is the Investment Vice President - Real Estate of **FARM BUREAU LIFE INSURANCE COMPANY**, an Iowa corporation, a member of West Lakes Properties, L.C. an Iowa limited liability company and managing partner of **WEST LAKES DEVELOPMENT COMPANY**, an Iowa general partnership, executing the foregoing instrument, that the seal affixed thereto is the seal of the corporation; that the instrument was signed and sealed on behalf of the corporation as a member of West Lakes Properties, L.C., an Iowa limited liability company and managing partner of West Lakes Development Company, an Iowa general partnership, by authority of its Board of Directors; and that **Roger PJ Soener**, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, limited liability company and general partnership, by the corporation, the limited liability company, the general partnership and by him voluntarily executed.

*Kathy A. Kintner*  
Kathy A. Kintner, Notary Public in and  
for the State of Iowa.



My Commission Expires: 6-2-2000

STATE OF IOWA )  
 ) SS:  
COUNTY OF POLK )

On this 23<sup>rd</sup> day of September, 1999, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared **William C. Knapp** to me personally known, who, being by me duly sworn, did say that he is the Manager of **KNAPP DEVELOPMENT, L.C.**, an Iowa corporation, a member of West Lakes Properties, L.C. an Iowa limited liability company and managing partner of **WEST LAKES DEVELOPMENT COMPANY**, an Iowa general partnership, executing the foregoing instrument, that no seal has been procured by the company; that the instrument was signed on behalf of the company as a member of West Lakes Properties, L.C., an Iowa limited liability company and managing partner of West Lakes Development Company, an Iowa general partnership, by authority of its Members; and that **William C. Knapp**, as manager, acknowledged the execution of the instrument to be the voluntary act and deed of the



## LEGAL DESCRIPTION

A parcel of land within Lots 9 and 13, West Lakes Office Park Plat 3, an Official Plat, City of West Des Moines, Polk County, Iowa, that is more particularly described as follows:

Beginning at the Southwest corner of said Lot 13; thence  $N00^{\circ}00'00''E$ , 1079.94 feet along the West line of said Lot 13 and Lot 9 to a point; then  $S90^{\circ}00'00''W$ , 304.74 feet along the Westerly line of said Lot 9 to a point; thence Easterly along a curve to the left having a radius of 1203.62 feet and a chord bearing of  $N83^{\circ}00'00''E$ , an arc length of 294.10 feet along the Northerly line of said Lot 9 to a point of reverse curvature; thence continuing Easterly along a curve to the right having a radius of 890.00 feet and a chord bearing of  $N83^{\circ}24'43''E$ , an arc length of 230.27 feet along said Northerly line to a point of tangency; thence  $S89^{\circ}10'34''E$ , 85.89 feet along said Northerly line to a point of curvature; thence continuing Easterly along a curve to the right having a radius of 526.16 feet and a chord bearing of  $S82^{\circ}32'06''E$ , an arc length of 121.97 feet along said Northerly line to a point of compound curvature; thence continuing Easterly along a curve to the right having a radius of 900.00 feet and a chord bearing of  $S75^{\circ}20'10''E$ , an arc length of 17.47 feet along said Northerly line to a point; thence  $S00^{\circ}00'00''E$ , 246.68 feet to a point; thence  $S55^{\circ}30'00''E$ , 75.23 feet to a point on the Easterly line of said Lot 9; thence  $S36^{\circ}00'00''W$ , 312.35 feet along said Easterly line to a point; thence  $S04^{\circ}00'00''E$ , 143.55 feet along said Easterly line to a point; thence  $S40^{\circ}46'50''W$ , 155.28 feet to a point; thence  $S00^{\circ}00'00''W$ , 296.31 feet to a point on the Southerly line of said Lot 13; thence  $S82^{\circ}17'06''W$ , 153.68 feet along said Southerly line to a point of curvature; thence Westerly along a curve to the right having a radius of 297.00 feet and a chord bearing of  $S89^{\circ}19'06''$ , an arc length of 72.90 feet along said Southerly line to a point of beginning and containing 8.956 acres more or less.

EXHIBIT "A"