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 WOODBURY COUNTY, IOWA Filed by Record
 At 4:45 AM on Dec 12 Day 12 Yr. 1995
 DONALD E. LINDUSKI, Auditor & Recorder
 by B. Blaine Deputy

WHEN RECORDED, PLEASE RETURN TO:
 Joseph Polack, Esquire
 Polack, Woolley & Forrest, P.C.
 11404 West Dodge Road, Suite 420
 Omaha, Nebraska 68154

DECLARATION OF EASEMENT

This Declaration of Easement is executed this 5th day of December, 1995, by and between Howard M. Kooper, Trustee ("Kooper, Trustee") and Sioux City Apartments, Ltd., a Nebraska limited partnership (the "Phase I Partnership"), the address of both being c/o Broadmoor Development Company, 801 N. 96th Street, Omaha, Nebraska 68114,

W I T N E S S E T H :

WHEREAS, Glen Oaks Apartments is a multi-family residential complex comprised of the following:

Phase I, owned by the Phase I Partnership, consisting of, inter alia, three three-story multi-family residential apartment buildings, containing a total of 72 apartment units, and recreational facilities consisting of a fitness center and swimming pool (the "Phase I Recreational Facilities"), all of which is owned by the Phase I Partnership and legally described as:

All that part of the Southwest Quarter of the Southwest Quarter and of the Southeast Quarter of the Southwest Quarter of Section 10, Township 89 North, Range 47 West of the Fifth P.M., Sioux City, Woodbury County, Iowa, described as follows:

Commencing at the Northwest corner of the said Southeast Quarter of the Southwest Quarter; thence East along the North line thereof for 401.09 feet to the place of beginning, thence with an angle to the right of 73°52'10" for 272.92 feet; thence with an angle to the left of 37°46'45" for 203.60 feet; thence with an angle to the right of 74°04'24" for 120.20 feet to a point 10 feet Northerly of the Northwest corner of Lot 8, Pawnee 7th filing, an Addition to Sioux City, Iowa; thence with an angle to the left of 90°54'43" for 149.9 feet, parallel to the North line of said Lot 8, to the Westerly line of Mohave Drive of said Addition; thence with an angle to the right of 90°00' for 10 feet along said Drive to the Northeast corner of said Lot 8; thence with an angle to the right of 90°00' for 150 feet along the North line of said lot; thence

with an angle to the left of 89°05'17" for 56.04 feet along the Westerly line of Lot 8; thence with an angle to the right of 73°24'20" for 534.93 feet to the Easterly line of Glen Oaks Boulevard; thence with an angle to the right of 53°32'38" for 248.05 feet along said Boulevard, thence with an angle to the right of 90°14'15" for 584.90 feet to the Point of Beginning; and

WHEREAS, Kooper, Trustee, is the owner of the following described tract of land located adjacent thereto on the south (the "Kooper, Trustee Parcel"), which is not presently improved, except by a tennis court and a sand volleyball court ("Kooper, Trustee Recreational Facilities"):

All that part of the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 10, Township 89, North, Range 47, West of the 5th P.M., Sioux City, Woodbury County, Iowa, described as follows: Commencing at the Northwest corner of the said SE $\frac{1}{4}$ of the SW $\frac{1}{4}$; thence East along the North line thereof for 401.09 feet; thence with an angle to the right of 73°52'10" for 272.92 feet; thence with an angle to the left of 37°46'45" for 203.60 feet; thence with an angle to the right of 74°04'24" for 120.20 feet to a point 10 feet Northerly of the Northwest corner of Lot 8, PAWNEE 7TH FILING, an Addition to Sioux City, Iowa; thence with an angle to the left of 90°54'43" for 149.9 feet, parallel to the North line of said Lot 8, to the Westerly line of Mohave Drive of said Addition; thence with an angle to the right of 90°00' for 10 feet along said Drive to the Northeast corner of said Lot 8; thence with an angle to the right of 90°00' for 150 feet along the North line of said lot; thence with an angle to the left of 89°05'17" for 56.04 feet to the Point of Beginning; thence continuing Southerly along the same line for 229.56 feet and along the Westerly line of Lots 8 to 11 inclusive, of said Addition to the Southwest corner of said Lot 11, Pawnee 7th Filing; thence with an angle to the right of 73°24'20" for 306.84 feet to the Easterly line of Glen Oaks Boulevard; thence with an angle to the right of 53°32'38" for 273.53 feet along said Boulevard; thence with an angle to the right of 126°27'22" for 534.93 feet to the Westerly line of Pawnee 7th Filing and the Point of Beginning; and

WHEREAS, the location of the Kooper, Trustee Recreational Facilities and access thereto over, upon and across the Kooper, Trustee Parcel are legally described and shown on Exhibit "A" attached hereto and by this reference incorporated herein (the "Kooper, Trustee Easement Area"); and

WHEREAS, Kooper, Trustee, as Declarant, wishes to establish and create a nonexclusive access and recreational easement (the "Access and Recreational Easement") over, upon and across the Kooper, Trustee Easement Area as the servient estate, for the benefit of the Phase I Partnership and any future owners of Phase I, as the dominant estate (the "Phase I Easement Grantees").

NOW, THEREFORE:

A. Declaration of Access and Recreational Easement. Kooper, Trustee, as Declarant, does hereby declare, adopt and establish a nonexclusive access and

recreational easement over, upon and across the Kooper, Trustee Easement Area, as follows:

1. Purposes of Easement.

The purposes of the easement hereby declared shall be to provide the Phase I Easement Grantees, for the benefit of those persons who are, from time to time, residents of Phase I and their invitees, nonexclusive pedestrian access between the Kooper, Trustee Recreational Facilities and Phase I and to provide for the use of the Kooper, Trustee Recreational Facilities by such persons.

2. Conditions and Limitations.

- a. The easement hereby declared shall not become effective unless and until the Phase I Partnership obtains and delivers to Kooper, Trustee, evidence of liability insurance in an amount of not less than \$1,000,000.00 respecting liability arising out of the use of the Access and Recreational Easement and naming Kooper, Trustee, as an additional insured (the "Phase I Partnership Liability Insurance").
- b. The Phase I Partnership covenants to continuously maintain the Phase I Partnership Liability Insurance in full force and effect during the term of this Declaration of Easement.
- c. In the event of any destruction of, loss or damage to, the Kooper, Trustee Recreational Facilities, whether by insured or uninsured casualty, the Phase I Partnership shall be required to rebuild, restore, repair or replace any such destroyed, lost or damaged Kooper, Trustee Recreational Facilities to substantially the same condition that such facilities were in immediately prior to such event. Phase I Partnership agrees that it shall, at all times, maintain in full force and effect adequate policies of property damage insurance in an amount equal to the full replacement value of the Kooper, Trustee Recreational Facilities.
- d. Kooper, Trustee reserves the right, from time to time, to relocate within the Kooper, Trustee Parcel, the Access and Recreational Easement, provided the accessibility and utility of the easement are not materially and adversely affected and the relocated Access and Recreational Easement are within the relocated Kooper, Trustee Easement Area.
- e. Kooper, Trustee may establish, in the exercise of his sole and exclusive discretion, such reasonable rules and regulations as he shall deem necessary or appropriate to govern the operation of the Kooper, Trustee Recreational

Facilities and provided, further, that any and all such rules and regulations shall be applied uniformly to all and shall not discriminate between the users of the Kooper, Trustee Recreational Facilities.

f. Kooper, Trustee shall have the right, from time to time, to assess the Phase I Partnership, and the Phase I Partnership shall be responsible for, the payment to Kooper, Trustee of all costs, direct and indirect, for the maintenance, operation (which shall include, but not by way of limitation, liability and hazard insurance), repair and replacement of the Kooper, Trustee Recreational Facilities. However, Kooper, Trustee shall not be entitled to reimbursement for the cost to rebuild, restore, repair or replace the Kooper, Trustee Recreational Facilities to the extent that any such loss was covered by hazard insurance maintained by the Phase I Partnership, or which would have been covered by hazard insurance, if the Phase I Partnership had secured and maintained such insurance (with no deductible). Real estate taxes for the Kooper, Trustee Recreational Facilities shall be paid by the Phase I Partnership.

B. No Vesting of Title. This Declaration shall not be construed to vest any right, title or interest in the public or in any one or more of the present or future residents of Glen Oaks Apartments or their invitees. The easement herein declared shall be binding upon, and inure to the benefit of, Declarant and Phase I Partnership, and the respective successors and assigns of said parties.

C. Invalidation. Invalidation of any provision of this Declaration, by judgment, court order or otherwise, shall in no way affect any one or more of the remaining provisions hereof, which shall remain in full force and effect.

D. Covenants Run With the Land. The rights and benefits, as well as the duties and burdens created hereunder, shall be deemed to be covenants running with the land.

SIOUX CITY APARTMENTS, LTD., a Nebraska limited partnership

By: Howard M. Kooper
Howard M. Kooper - Partner

By: Thomas H. Fellman
Thomas H. Fellman - Partner

By: Broadmoor Development Co., Inc. - Partner

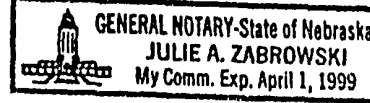
By: Thomas H. Fellman
Thomas H. Fellman - President

Howard M. Kooper
HOWARD M. KOOPER, Trustee

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

sth The foregoing instrument was acknowledged before me, a Notary Public, this day of December, 1995, by Thomas H. Fellman and Howard M. Kooper, General Partners of Sioux City Apartments, Ltd., a Nebraska limited partnership, on behalf of said limited partnership.

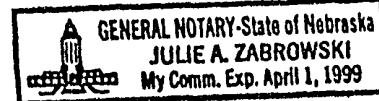
Julie A. Zabrowski
Notary Public



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

sth The foregoing instrument was acknowledged before me, a Notary Public, this day of December, 1995, by Thomas H. Fellman, President of Broadmoor Development Co., Inc., a Nebraska corporation, on behalf of said corporation, General Partner of Sioux City Apartments, Ltd., a Nebraska limited partnership, on behalf of said limited partnership.

Julie A. Zabrowski
Notary Public



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

sth The foregoing instrument was acknowledged before me, a Notary Public, this day of December, 1995, by Howard M. Kooper, Trustee.

Julie A. Zabrowski
Notary Public

