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 WOODBURY COUNTY, IOWA - Filed for Record
 At 9:30 AM Mo. Dec Day 9 Yr. 1996
 DONALD E. LINDUSKI, Auditor & Recorder
 By C. Murphy, Deputy

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

DECLARATION OF EASEMENT

This Declaration of Easement is executed this 10 day of December, 1996, by and between Howard M. Kooper, Trustee ("Kooper, Trustee") and Sioux City Apartments II Limited Partnership, a Nebraska limited partnership (the "Phase II 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 II, owned by the Phase II 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 club house and hot tub (the "Phase II Recreational Facilities"), all of which is owned by the Phase II Partnership and legally described as:

All that part of the Northeast 1/4 of the Southwest 1/4, part of the Northwest 1/4 of the Southwest 1/4, part of the Southeast 1/4 of the Southwest 1/4 and part of the Southwest 1/4 of the Southwest 1/4 of Section 10, Township 89 North, Range 47 West of the 5th Principal Meridian, in Sioux City, Woodbury County, Iowa, described as follows:

Commencing at the Southwest corner of the Northeast 1/4 of the Southwest 1/4 of said Section 10; thence North 90°00'00" East on the South line of said Northeast 1/4 of the Southwest 1/4 for 401.09 feet to the point of beginning; thence South 57°23'20" West for 584.90 feet to the Easterly line of Glen Oaks Boulevard; thence North 32°53'32" West on said Easterly line for 116.20 feet; thence Northwesterly 235.26 feet on a curve concave Westerly, having a radius of 1313.24 feet and a chord of 234.95 feet bearing North 38°01'28" West; thence North 57°23'20" East for 207.75 feet; thence North 32°36'40" West for 75.00 feet; thence North 57°23'20" East for 400.00 feet; thence South 32°36'40" East for 425.00 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 II Partnership and any future owners of Phase II, as the dominant estate (the "Phase II 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 II Easement Grantees, for the benefit of those persons who are, from time to time, residents of Phase

II and their invitees, nonexclusive pedestrian access between the Kooper, Trustee Recreational Facilities and Phase II 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 II 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 II Partnership Liability Insurance").
- b. The Phase II Partnership covenants to continuously maintain the Phase II 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 II 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 II 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 II Partnership, and the Phase II 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 II Partnership, or which would have been covered by hazard insurance, if the Phase II 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 II 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 II 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 II LIMITED PARTNERSHIP,
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

EXHIBIT "A"

Legal Description of Kooper, Trustee Easement Area

All that part 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°02'03" measured (74°04'24" record) 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°55'13" measured (90°54'43" record) for 149.90 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°00'00" for 10.00 feet along said Drive to the Northeast corner of said Lot 8, thence with an angle to the right of 90°00'00" for 150.00 feet along the North line of said lot; thence with an angle to the left of 89°04'47" measured (89°05'17" record) for 56.04 feet along the Westerly line of Lot 8; thence with an angle to the right of 73°25'19" measured (73°24'20" record) for 110.91 feet to the Point of Beginning; thence with an angle to the left of 90°00'00" for 35.25 feet; thence with an angle to the left of 37°15'53" for 64.00 feet; thence with angle to the right of 90°00'00" for 61.80 feet; thence with an angle to the left of 90°00'00" for 24.25 feet; thence with an angle to the right of 89°49'58" for 61.00 feet; thence with an angle to the right of 90°06'53" for 121.35 feet; thence with an angle to the right of 90°16'56" for 61.00 feet; thence with an angle to the right of 89°46'13" for 32.68 feet; thence with an angle to the left of 90°00'00" for 49.34 feet; thence with an angle to the left of 52°44'07" for 42.86 feet; thence with an angle to the right of 90°00'00" for 10.00 feet to the Point of Beginning.