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FIRST SUPPLEMENTARY DECLARATION  
LOTS 1 THROUGH 14  
REGENCY PARK VISTA

THIS FIRST SUPPLEMENTARY DECLARATION, made NOVEMBER 8, 1996, by DAN WITT BUILDERS, INC., a Nebraska corporation, hereinafter referred to as "Declarant":

WITNESSETH:

WHEREAS, Declarant has heretofore provided, pursuant to a certain Declaration of Covenants, Conditions, Restrictions and Easements dated August 21, 1996, recorded at Pages 250 through 261 of Book 1186 of the Miscellaneous Records of the Register of Deeds of Douglas County, Nebraska (the "Declaration"), as to Lots 1 through 14 of Regency Park Vista, a cluster subdivision in the City of Omaha, Douglas County, Nebraska, as surveyed, platted and recorded (the "Lots"), that the said Lots are and will be subject to various covenants, conditions and other terms appropriate, convenient or necessary to preserve and promote its clustered private residential character in compatibility and harmony with the general scheme of development in the immediately surrounding area; and

WHEREAS, Declarant desires to adopt and impose this First Supplementary Declaration on the Lots in order to implement and preserve certain landscaping for the benefit of certain of the parcels listed on Exhibit "A", attached hereto and incorporated by reference herein (the "Benefitted Parcels") which adjoin the Lots, and as a condition to approval by the City of Omaha of the Declarant's plat and subdivision of Regency Park Vista;

NOW, THEREFORE, in consideration of the matters herein recited, Declarant does hereby declare are follows:

1. Declarant shall on or before June 1, 1997, (subject to unavoidable delays caused by force majeure), plant all of the trees and shrubs substantially as shown on the landscape plan attached hereto as Exhibit "B" and incorporated by reference herein (the "Landscape Plan"), using the species of trees and shrubs indicated on the Landscape Plan, or a reasonable substitute for the same if they are not readily available locally. To the extent any of said trees and shrubs are located within the Lots, the owner of said Lots shall not remove or destroy said trees and shrubs without the prior written consent of the Regency Park Vista Homeowners Association and the owners of a majority of the Benefitted Parcels, except that the owner of a Lot may remove diseased or dead trees or shrubs, provided they are seasonably replaced with new trees or shrubs of the same species (or a reasonable substitute for such species, if that species is not readily available locally). The owner of each Lot shall exercise reasonable efforts to properly care for and maintain said trees and shrubs on his/her Lot for the duration of the term of this First Supplementary Declaration.

2. To the extent the Landscape Plan calls for landscaping (including the planting of trees and/or shrubs and creation of any berm) on a Benefitted Parcel which is not owned by Declarant, Declarant shall not be responsible for installing any of the landscaping called for in the Landscape Plan on said Benefitted Parcel if its owner declines to give written consent on or before NOVEMBER 29, 1996, for Declarant and Declarant's contractors to enter that owner's property and install said landscaping. To the extent such written consents have not been signed by the relevant owner and recorded by the date set forth in the preceding sentence, the Landscape Plan shall be deemed to have been amended to exclude the landscaping called for on that particular parcel, and that particular parcel shall not be deemed to be a Benefitted Parcel, as defined above. The written consent for Declarant to install such landscaping shall be in the form attached hereto as Exhibit "C" and must be signed and acknowledged by the lawful owner or owners of any interest in the Benefitted Parcel in question and recorded with the Douglas County Register of Deeds on or before the date set forth in the first sentence of this paragraph in order to be valid, time being of the essence. Upon timely execution and recording of such consent as herein provided, Declarant shall be bound by the conditions and restrictions set forth therein and shall comply with the same as respects that Benefitted Parcel and the owner thereof.

3. Each tree or shrub planted by Declarant pursuant to the Landscape Plan shall be healthy when planted. Declarant or its landscaping contractor, Mulhall's Nursery, shall guaranty such trees and shrubs planted on a Benefitted Parcel against death or substantial injury as a result of disease, insects, animal pests or improper or inadequate care for a period of two (2) years after each such tree or shrub is planted, and shall care for and maintain the same during said two (2) year period, provided liability under said guaranty is limited to replacement of any tree or shrub which dies or is materially injured during said period with a tree or shrub of the same species and similar size to what was originally

planted and, provided further, this guaranty shall not cover death or injury of any trees or shrubs caused by the negligent or wrongful acts of someone other than Declarant or its landscaping contractor, such as, but not limited to, vandalism. Except as otherwise specifically provided in the first two sentences of this paragraph, neither Declarant nor Declarant's successors or contractors shall have any liability or responsibility for trees or shrubs planted outside of Regency Park Vista after the same have been planted and, except as provided in paragraph 4, below, shall have no responsibility to care for or otherwise maintain or replace said trees and shrubs thereafter.

4. In consideration for the grant of a certain storm sewer easement and a sanitary sewer easement from the owner of Lot 416, Regency 6th Addition ("Lot 416"), and to help defray certain maintenance costs associated with Lot 416, there is hereby assessed against each of Lots 1 through 14, inclusive, of Regency Park Vista a monthly charge of Ten and No/100 Dollars (\$10.00) per lot (the "Regency Surcharge") which shall be collected by the Regency Park Vista Homeowners Association each month from the owners of Lots 1 through 14, Regency Park Vista, along with and in like manner as the assessments in Article VI of the Declaration, which Regency Surcharge shall be remitted to the Regency Townhomes II Association, or its successor, on a monthly basis, to be applied solely toward maintaining the shrubbery and landscaping on Lot 416 in good and healthy condition. The Regency Surcharge shall not begin accruing or be collectible until the first day of the first calendar month following the second anniversary of the date on which the landscaping called for in paragraph 1, above, has been substantially completed, and shall be collected and remitted thereafter as provided above until this First Supplementary Declaration expires or is terminated.

5. This First Supplementary Declaration shall remain in full force and effect and shall be a covenant running with the Lots for a period of twenty (20) years from the date first written above, at which time it shall expire and be of no further force and effect.

6. The owners of the Benefitted Parcels and their successors shall have the right to enforce the covenants contained in this First Supplementary Declaration and Article VIII, only, of the Declaration by appropriate legal or equitable proceeding. This First Supplementary Declaration and Article VIII, only, of the Declaration, may only be modified or terminated with the consent of the Regency Park Vista Homeowner's Association and the owners of at least three-fourths (3/4) of the Benefitted Parcels. For purposes of this First Supplementary Declaration, an "owner" of a Benefitted Parcel shall be the person, persons, entity or entities who is the lawful holder of fee simple title to the relevant parcel at the time in question.

IN WITNESS WHEREOF, the Declarant has executed this First Supplementary Declaration as of the date first written above.

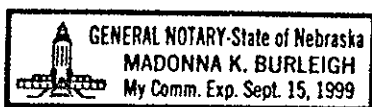
DAN WITT BUILDERS, INC., a Nebraska corporation,  
Declarant

By: *Daniel N. Witt*  
Daniel N. Witt, President

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

On this 8<sup>th</sup> day of November, 1996, before me, a Notary Public duly commissioned and qualified in and for said County, personally came Daniel N. Witt, President of Dan Witt Builders, Inc., to me personally known to be the President and identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation.

Witness my hand and notarial seal the day and year last above written.



*Madonna K. Burleigh*  
Notary Public

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

Exhibit "A"  
(To First Supplementary Declaration)

**Benefitted Parcels**

1. 9706 Nottingham Drive (Lot 397, Regency 6th)
2. 9704 Nottingham Drive (Lot 396, Regency 6th)
3. 9705 Nottingham Drive (Lot 395, Regency 6th)
4. 9756 Ascot Drive (Lot 335, Regency 6th)
5. 318 North 96th Street (The South 320 feet of the North 655 feet of the East 333 feet of the Northeast Quarter of the Northeast Quarter (NE1/4NE1/4) of Section 21, Township 15 North, Range 12 East of the 6th P.M., in the City of Omaha, in Douglas County, Nebraska, subject to the use for street purposes of the following: The West 1/2 of 96th Street.)
6. 312 North 96th Street (Lot 15, Regency Park Vista)
7. Lot 416, Regency 6th

All of the foregoing being in the City of Omaha, as surveyed, platted (if applicable) and recorded in Douglas County, Nebraska.



THIS IS A  
REDUCED COPY

PLAN  
10-10

PROVIDE LOCATION OF  
PROPERTY OWNERS  
PROPERTY 10-10

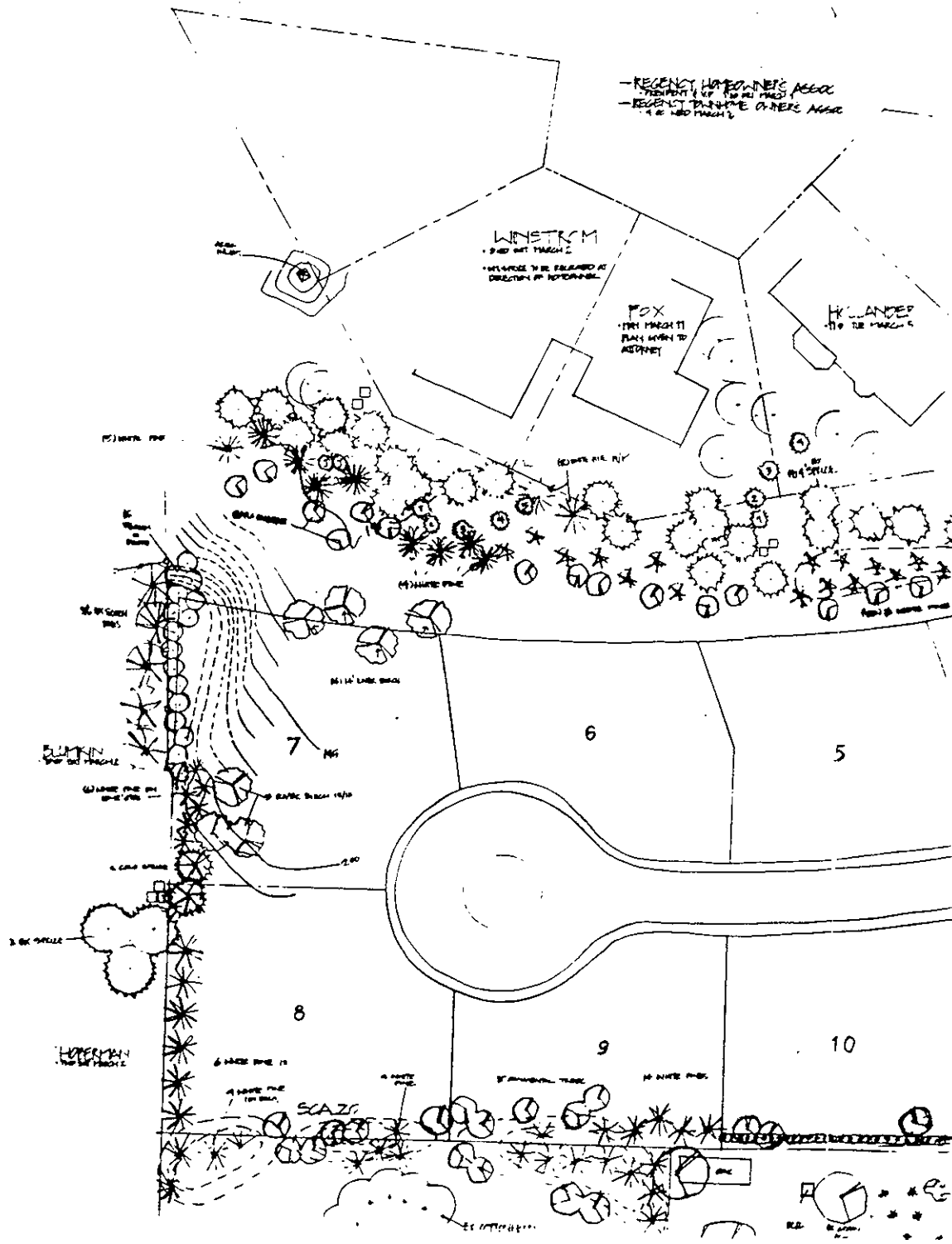


Exhibit "C"  
(To First Supplementary Declaration)

**CONSENT**

COMES NOW the undersigned, being the current owner of fee simple title to the real property described in Exhibit "A" attached hereto and incorporated by reference herein (the "Property"), which Property is a "Benefitted Parcel" under that certain First Supplementary Declaration on Lots 1 through 14, Regency Park Vista, dated \_\_\_\_\_, 1996, and recorded at Page \_\_\_\_\_ in Miscellaneous Book \_\_\_\_\_ of the Register of Deeds of Douglas County, Nebraska, and to the extent said First Supplementary Declaration calls for the planting of trees and/or shrubs or installation of any berm (collectively, "Landscaping") on the undersigned's Benefitted Parcel, hereby consents to the entry upon the Property of the undersigned by the Declarant or its successors under said First Supplementary Declaration, for the sole and limited purpose of installing the Landscaping called for in the "Landscape Plan" as more particularly set out in said First Supplementary Declaration, subject to the following terms and conditions:

1. Declarant shall arrange in advance a mutually convenient time with the undersigned for Declarant and its contractors to enter the Property for purposes of preparing for and installing the Landscaping during the normal business hours of Declarant's contractor.

2. The undersigned agrees to provide Declarant and its contractors with reasonable access across the Property for the necessary personnel, materials and equipment to timely complete the Landscaping, and shall cooperate fully with the Declarant to locate and avoid any underground wires, pipes, sprinklers or other obstructions so as not to damage the same. In the event the existence and location of an underground wire, pipe or other obstruction makes a planting at a particular location impractical, then the undersigned will designate an alternate convenient location on the Property for that planting.

3. It is a condition of this consent that:

- (a) The Declarant and its contractors shall use reasonable care to avoid damage to the undersigned's Property and improvements and, should any such damage occur as a result of the negligence of Declarant or its contractors, the Declarant or its contractors, as the case may be, shall promptly repair and restore the same.
- (b) Declarant also shall indemnify and hold the undersigned harmless from any construction or other lien filed or claimed against the Benefitted Parcel as a result of the Landscaping or related work or materials performed or placed thereon by Declarant, Declarant's Landscaping contractor or anyone duly authorized by either of them.
- (c) Prior to allowing entry on its Benefitted Parcel pursuant to this consent, the undersigned may require Declarant and any of its contractor(s) performing such work to furnish a current, binding certificate of insurance confirming that they carry comprehensive general liability insurance with respect to such activities with minimum combined single limits of coverage against personal injury and property damage of not less than \$1,000,000.

4. The trees and/or shrubs planted by the Declarant or its contractors shall be healthy at the time of planting and taken from good nursery stock. Declarant or its landscaping contractor, Mulhall's Nursery, shall guaranty such trees and shrubs planted on a Benefitted Parcel against death or substantial injury as a result of disease, insects, animal pests or improper or inadequate care for a period of two (2) years after each such tree or shrub is planted, and shall care for and maintain the same during said two (2) year period, provided liability under said guaranty is limited to replacement of any tree or shrub which dies or is materially injured during said period with a tree or shrub of the same species and similar size to what was originally planted and, provided further, this guaranty shall not cover death or injury of any trees or shrubs caused by the negligent or wrongful acts of someone other than Declarant or its landscaping contractor, such as, but not limited to, vandalism. Except as provided in the two preceding sentences, in all other respects, any trees and/or shrubs planted by the Declarant or its contractor are being provided to the undersigned on an "AS IS" basis with no express or implied warranty as to the condition, fitness for any particular purpose or as to the life expectancy of said planting. Neither Declarant nor its contractor shall have any responsibility for watering or caring for any such tree or shrub after the two (2) year period provided above, subject only to the provisions of paragraph 4 of the First Supplementary Declaration.

5. The right of access to the Property provided hereunder to the Declarant and its contractors shall terminate and expire at such time as the Landscaping called for in the Landscape Plan has been completed, and the two (2) year guaranty has expired.

IN WITNESS WHEREOF, the undersigned has caused the foregoing Consent to be executed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

X \_\_\_\_\_

X \_\_\_\_\_

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me a Notary Public in and for said county and state, personally appeared \_\_\_\_\_, known to me to be the identical person(s) who subscribed their name(s) to the foregoing, and acknowledged the execution thereof to be their voluntary act and deed.

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

My Commission Expires: \_\_\_\_\_

Exhibit "A"  
(To Consent)

**Legal Description of Property**

[to be attached]