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*Lloyd J. Dowding*

REGISTER OF DEEDS

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**THIS PAGE ADDED FOR RECORDING INFORMATION**

**LLYD J. DOWDING**  
Sarpy County Register of Deeds

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THESE DECLARATIONS, made on the date shown on the close of this instrument, by the party or parties hereto who are, at the close of this instrument, described as "Declarant",

**WITNESSETH:**

WHEREAS, Declarant, whether one or more, is the owner of certain property in Sarpy County, Nebraska, more particularly described as follows:

Lots 1 through 9, inclusive, Wiltham Place Replat 1, a subdivision located in Sarpy County, Nebraska, as surveyed, platted and recorded (hereinafter referred to as Wiltham Place Replat); and

WHEREAS, Declarant desires to make the above- described property subject to the covenants, conditions and restrictions hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the property hereinabove described shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, all of said real property and shall be binding on all parties having any right, title or interest in said properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

SECTION 1. "Association" shall mean and refer to Wiltham Place Merchants Association, Inc., a Nebraska nonprofit corporation, its successors and assigns.

SECTION 2. "Owner" shall mean and refer to:

- (a) The record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation or as an encumbrance upon the interest of the beneficial owner, and
- (b) The purchaser, whether one or more persons or entities, under a recorded contract for the sale and purchase of a Lot, under which the Seller retains title solely as security for the performance of the purchasers obligation under the contract.

SECTION 3. "Properties" shall mean and refer to:

Lots 1 through 9, inclusive, of Wiltham Place Replat I, a subdivision located in Sarpy County, Nebraska, as surveyed, platted and recorded,

together with any such additions thereto as may hereafter be brought within the jurisdiction of the Association.

SECTION 4. "Lot" or "Lots" shall mean and refer to any platted Lot shown upon any recorded subdivision map of the Properties or each of the two parcels resulting from a Lot split.

SECTION 5. "Declarant" shall mean and refer to all persons and entities signing this instrument, their successors and assigns.

SECTION 6. "Common Area" shall mean and refer to all property owned by the Association and the roadway and utility improvements within the public easements that serve the Properties.

**ARTICLE II  
PROPERTY RIGHTS**

SECTION 1. The Association may suspend the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid, and for any period not to exceed 60 days for any infraction by any such Owner, or invitees of such Owner's, or guests or tenants of such Owner, of the published rules and regulations of the Association.

**ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS**

SECTION 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Each Lot Owner is empowered to enforce the covenants. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to any assessment.

SECTION 2. Members holding 4/10th of the votes entitled to be cast represented in person or by proxy shall constitute a quorum.

SECTION 3. The Association shall have two classes of voting members, Class A Members and Class B Members, defined as follows:

CLASS A: Class A Members shall be all Owners, with the exception of the Declarant. Each Class A Member shall be entitled to one vote for each Lot owned. When there

shall be more than one person or entity holding an interest in any Lot, all such persons or entities or both, shall be Members; provided however that the vote for such Lot shall be exercised as such persons or entities or both, shall determine, but in no event shall more than one vote be cast with respect to any one Lot.

CLASS B: Class B Members shall be the Declarant or its successors and assigns which shall be entitled to three votes for each Lot owned by the Declarant or his successors or assigns. The Class B membership shall terminate and be converted into Class A membership (with the Declarant or its successors and assigns then entitled to one vote for each Lot owned by the Declarant or his successors and assigns) upon the occurrence of the first of the following dates:

- (a) The date on which the total votes outstanding in the Class A membership shall equal the total votes outstanding in the Class B membership, or
- (b) January 1, 2001.

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants for each Lot and for each Owner of any Lot, by acceptance of a deed therefore or by entering into a contract for the purchase thereof, whether or not it shall be so expressed in such deed or in such contract, that it is, and shall be, deemed to covenant and agree to pay to the Association;

- (1) Special assessments for capital improvements, and
- (2) Periodic assessments for exterior maintenance and other operational expenses with respect to each Lot as deemed necessary by the Association, and

as such assessments shall be established and collected as hereinafter provided. The special assessments and periodic assessments together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be continuing lien upon the property against which each such assessment shall be made. Each such assessments, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person, persons, or entity who, or which, was the Owner of the property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title, unless expressly assumed by them.

SECTION 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, recreation and welfare of the owners and tenants of the Properties for the maintenance, construction, reconstruction and repair of the

roadway, utilities and improvements within or which comprise the Common Area, and other matters as more fully set out in Article V herein.

SECTION 3. Periodic Assessments. The Board of Directors shall have the authority to levy and assess from time to time against a Lot or Lots periodic maintenance assessments for the purpose of meeting the requirements of Section 1 of Article V herein for exterior maintenance.

SECTION 4. Special Assessment for Capital Improvements. The Association may levy special assessments from time to time against a Lot or Lots for the purpose of meeting the requirements of Section 2 of Article V herein for the costs of any construction, reconstruction, repair or replacement of any capital improvements within or which comprise the Common Area, provided that any such assessment shall have the consent of 51 percent or more of the votes the voting members, who shall vote in person or by proxy at a meeting duly called for such purpose.

SECTION 5. Notice and Quorum for Any Action Authorized Under Section 1. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article IV shall be sent to all Members not less than 10 days nor more than 50 days in advance of such meeting. At such meeting, the presence of Members, in person or by proxy, entitled to cast forty percent (40%) of all the votes of the voting members shall constitute a quorum.

SECTION 6. Rate of Assessment. The periodic assessments shall be paid by the Owners of all Lots based upon the following percentages:

<u>Lot #</u>	<u>% of Periodic Assessments to be Paid</u>
1, Wiltham Place Replat I	12%
2, Wiltham Place Replat I	13%
3, Wiltham Place Replat I	14%
4, Wiltham Place Replat I	16%
5, Wiltham Place Replat I	10.5%
6, Wiltham Place Replat I	8%
7, Wiltham Place Replat I	8%
8, Wiltham Place Replat I	8%
9, Wiltham Place Replat I	10.5%
	100%

Notwithstanding the foregoing, the Board of Directors of the Association may equitably adjust such prorations if it determines that certain Lots on which all of the improvements are not yet completed do not receive all of the benefits for which such assessments are levied. The periodic assessments may be collected on a monthly or other periodic basis by the Association. The Board

of Directors of the Association shall fix the amount of the periodic assessments against each Lot. Written notice of the assessment shall be sent to every Owner subject thereto. The dates payments are due shall be established by the Board of Directors. The special assessments for capital improvements shall only be assessed against the Lot for which the costs of such construction, reconstruction, repair or replacement of any capital improvements occurs. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether or not all assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments, on a particular Lot shall be binding upon the Association as of the date of its issue by the Association.

**SECTION 7. Effect of Nonpayment of Assessment: Remedies of the Association.**

Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and shall bear interest at the maximum legal rate allowable by law in the State of Nebraska, which at the time of the execution of these Declarations, is sixteen percent (16%) per annum. Should any assessment remain unpaid more than sixty (60) days after the due date, the Association may declare the entire unpaid portion of said assessment for said year to be immediately due and payable and thereafter delinquent. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien of such assessment against the property through proceedings in any Court having jurisdiction of actions for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provided herein by abandonment or title transfer of such Owner's Lot.

**SECTION 8. Subordination of the Lien to Mortgages.** The lien on the assessments provided for herein shall be subordinate to the lien of any first mortgage, first deed of trust, or other initial purchase money security device, and the holder of any first mortgage, first deed of trust, or other initial purchase money security device, on any Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Association. Sale or transfer of any Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Association, if authorized by its Board of Directors, may release the lien of any delinquent assessments on any Lot as to which the first mortgage, first deed of trust or initial purchase money security device thereon is in default, if such Board of Directors determines that such lien has no value to the Association. No mortgagee shall be required to collect any assessments due. The Association shall have the sole responsibility to collect all assessments due.

**ARTICLE V  
COMMON AREA MAINTENANCE**

The Association shall provide for the maintenance, repair, snow removal and reconstruction to and for the roadway and utility improvements within or which comprise the Common Area.

**SECTION 1. Periodic** assessments may be assessed for, but not limited to, the following:

- (a) Maintenance of trees and shrubs, lawns, and other exterior landscaping improvements as originally installed by the Declarant, except such improvements within any Lot or installed by or at the direction of the Owner, which improvements shall be the responsibility of the Owner.
- (b) Maintenance, repair, snow removal, street lighting and reconstruction for the roadway, grounds, improvements, and utility improvements within or which comprise the Common Area.
- (c) Management, insurance, accounting, legal and other fees and expenses which are ordinary and necessary in order to properly maintain the Common Area and enforce the Covenants.

SECTION 2. Special assessments may be assessed for, but are not limited to, the following:

- (a) Maintenance, repair, snow removal, street lighting and reconstruction for the grounds, improvements, roadway and utility improvements within or which comprise the Common Areas.

#### ARTICLE VI ARCHITECTURAL CONTROL

No building, fence, wall, sign or other structure shall be installed, commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration therein be made, nor shall any trees, shrubs, or plantings be planted or maintained upon the Properties, until the plans and specifications therefor, showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography, and in relation to other signs, trees, shrubs and plantings, by the Declarant. Failure of the Declarant to act on such plans as submitted within 30 days after the date of submission shall be deemed to be approval of such plans, and the Owner may proceed in accordance with such plans and specifications.

#### ARTICLE VII GENERAL RESTRICTIONS AND OTHER PROVISIONS

SECTION 1. Restrictions. Every Owner shall have full rights of ownership and full use and enjoyment of his Lot, subject to the following restrictions:

- (a) No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on any Lot within the Properties, unless such fences or enclosures shall have first been authorized in writing by the Declarant. No exterior television or radio antenna shall be erected on any Lot within the Properties; provided however, that with the written approval of the Association, one or more master television antenna towers may be erected for the benefit and use of all or part of the Owners of the Properties.
- (b) No noxious, offensive, or illegal activity shall be carried on upon the Properties, nor shall any trash, ashes or other refuse be thrown, placed, or dumped upon any Lot, nor shall anything ever be done which may be or become an annoyance or nuisance to Wiltham Place.

#### **ARTICLE VIII INSURANCE**

SECTION 1. The Association may purchase and provide insurance of the type(s) and in the amounts that the Board of Directors deem necessary.

#### **ARTICLE IX ACCESS**

The Association, its officers, employees and agents, and contractors and repairmen designated by the Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair, making inspections and performing the duties of the Association hereunder, and the Association is hereby granted a specific easement for such purposes.

#### **ARTICLE X GENERAL PROVISIONS**

SECTION 1. Enforcement. The Association, Declarant, City of LaVista, Nebraska, or any Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Association, Declarant, City of LaVista, Nebraska, or of any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.



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SECTION 2. Severability. Invalidation of any one or more of these covenants or restrictions, by judgment or court Order, shall in no way affect any other provisions, which other provisions shall remain in full force and effect.

SECTION 3. Amendment. These Declarations may be amended at any time during the initial twenty (20) year term referred to in Section 4, hereafter, by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots then covered by these Declarations, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots then covered by these Declarations. The Declarant shall have the right to amend or release all or a part of these Declarations for any reason during the initial term of five (5) years from the date these Declarations are recorded.

SECTION 4. Term. These covenants and restrictions contained in this Declaration shall run with the land, and shall be binding for an initial term of twenty (20) years from the date these Declarations are recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless seventy percent (70%) of the then Lot Owners execute and record a written release or termination of these covenants within six (6) months prior to the end of the applicable term.

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have executed these Declarations of Covenants, Conditions and Restrictions this 5th day of September, 1996.

THE DECLARANT:

WILTHAM PLACE LIMITED  
PARTNERSHIP, a Nebraska limited  
partnership

By: Willard Construction Co., Inc.,  
a Nebraska corporation, General  
Partner

By: Willard I. Friedman  
Willard I. Friedman, President

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS ) SS.

Before me the undersigned, a notary public in and for said county and state, personally came WILLARD I. FRIEDMAN, the President of Willard Construction Co., Inc., a Nebraska corporation, on behalf of such corporation, as General Partner of Wiltham Place Limited Partnership, a Nebraska limited partnership, to me personally known to be the Declarants, and that he acknowledged the execution of the above to be his voluntary act and deed.

WITNESS my hand and notarial seal this 5<sup>th</sup> day of September 1996.

*Donna E. Williamson*  
Notary Public

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