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CASS COUNTY, NE.

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David John

REGISTER OF DEEDS

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COMPASS

After recording, return to:  
Jerry M. Slusky, Esq.  
17445 Arbor Street, Suite 300  
Omaha, Nebraska 68130

[For Recording Purposes]

**DECLARATION AND GRANT OF EASEMENTS, COVENANTS AND RESTRICTIONS**  
**WILES CROSSING, A SUBDIVISION IN CASS COUNTY, NEBRASKA**

THIS DECLARATION AND GRANT OF EASEMENTS WITH COVENANTS AND RESTRICTIONS ("Declaration") is made as of this 3 day of October, 2007, by WILES BROS., Inc., a Nebraska corporation, referred to as a Grantor or Declarant herein.

**RECITALS:**

WHEREAS, Crossing is the sole owner of certain real property situated in the County of Cass, State of Nebraska, legally described on Exhibit "A" attached hereto and incorporated herein by this reference ("the Lots").

WHEREAS, Declarants desire to establish for their own benefit and for the mutual benefit of all future Owners and Occupants of the Lots (as defined below), or any part thereof, certain mutually beneficial restrictions and obligations with respect to the use, operation and maintenance thereof consistent with a first class retail, commercial, and office development.

WHEREAS, by virtue of the recording of this Declaration, the Lots shall be owned, held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of this Declaration and every grantee of any interest in any Lot or any portion thereof, by acceptance of a deed or other conveyance of such interest, and every Owner of a Lot or any portion thereof, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of this Declaration and shall be deemed to have consented to the terms hereof; and

WHEREAS, each Declarant does hereby specify, agree, designate and direct that this Declaration and all of its provisions shall be and are covenants to run with the Lots and shall be binding on the present owners of the Lots and all of its successors and assigns and all subsequent owners of the Lots and

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Improvements (as defined below), together with their grantees successors, heirs, executors, administrators, devisees and assigns.

NOW, THEREFORE, Declarants hereby impose the following covenants, conditions and restrictions on the Lots which shall run with the equitable and legal title to the land and shall be for the benefit or burden, as the case may be, of the Owners and Occupants of the Lots or any portion thereof within the Development, their respective heirs, legal representatives, successors and assigns, and any mortgagees.

ARTICLE 1  
Definitions

Definitions. The following words and phrases shall have the following meanings:

1.1 "Architectural Design Committee" means the Architectural Design Committee established pursuant to the provisions of Section 4.1 hereof.

1.2 "Association" means THE WILES CROSSING OWNERS ASSOCIATION, LLC, a Nebraska limited liability company, its successors and assigns, and unless the context otherwise requires, shall mean and include its board of directors, officers and other authorized agents.

1.3 "Common Areas" means those portions of the Lots, and any improvements thereon, designated from time to time by a Declarant, its successors or assigns, to be used for the common benefit of all or certain Owners and/or Occupants of the Lots. Those areas which are not from time to time used or cannot, under the terms of this Agreement or otherwise, be used for buildings shall become part of the Common Areas for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

1.4 "Development" means, in the aggregate, all of the Lots, including all of the improved areas, all Common Areas and all Common Facilities (as defined herein), which area may be expanded or contracted at the Association's option.

1.5 "Improvements" means any building, structure, tunnel, drainage way, driveway, walkway, fence, wall, trellis, lake, water feature, landscaping, sprinkler system, sign, and any other building, structure or improvement of every kind and nature whatsoever now or hereafter located on any Lot.

1.6 "Lot" or "Lots" means the real estate lots described above or any subsequent administrative subdivision, replat, revision or amendment thereof, all of which are part of the Development. If any Lot is hereafter lawfully subdivided, by administrative lot split, lot line adjustment, lot combination, or otherwise, the Owner of the effected Lot shall record an instrument, which shall serve as an amendment to this Declaration, with copies attached thereto of the Land Surveyor's Certificates or Replat recorded in the records of Cass County, Nebraska, showing such subdivision.

1.7 "Mortgage" means any instrument recorded or filed in the records encumbering a Lot or any portion thereof as security for the performance of an obligation given in good faith and for valuable consideration which is not a fraudulent conveyance under Nebraska law, including, without limitation, a deed of trust, but does not mean any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code or an encumbrance affecting any leasehold interest in a Lot (such as leasehold mortgage).

1.8 "Occupant" means any person or legal entity, other than the owner of record, who is entitled to the exclusive use or occupancy of any building or portion thereof, or in rightful possession of, any Lot, building, or portion thereof located within the Development under rights contained in any deed, lease or similar agreement, including, but not limited to, tenants of an Owner and the agents, employees, customers, contractors, licensees, or invitees of an Owner or its tenant(s).

1.9 "Owner" means the owner of record, whether one or more, of the fee simple title, whether or not subject to any Mortgage, to any Lot, any purchaser of fee simple title under a land contract of record, and any tenant or Occupant of a Lot pursuant to a ground lease for the Lot for a continuous period of no less than twenty (20) years; but does not mean those having such interest merely as security for the performance of an obligation or a seller under a land contract or record.

1.10 "Permittees" means any Declarant, any Owner, any Occupant and any officer, director, employee, agent, contractor, customer, invitee, licensee, vendor, subtenant, mortgagees or concessionaire of Declarant or any Owner or Occupant insofar as their activities relate to the intended use or enjoyment of the Development.

1.11 "Subdivision Agreement" means the certain Commercial Subdivision Agreement dated \_\_\_\_\_ by and between the City of Plattsmouth and Developer setting forth certain agreements, terms, conditions and covenants running with the land in respect to the development of land including the Lots, and any and all subsequent amendments thereto relating to the Development, copies of which are available from the City of Plattsmouth, Nebraska. The Subdivision Agreement includes, without limitation, use, specific improvements and other requirements for the Development.

## ARTICLE 2 Use Restrictions

No Owner or Occupant shall permit any use or condition of any Lot that is inconsistent with a comparable first class commercial, business and retail center. Without limiting the generality of the foregoing, the following requirements shall apply to all Lots; and the following uses or services shall not be inconsistent with the concept of a first class retail, commercial, and office development:

2.1 Zoning Compliance. All uses must conform to the Subdivision Agreement and any subsequent amendments thereto, and to all applicable zoning regulations of any municipal body or agency with jurisdiction over the Lots.

2.2 No Interference. No Owner or Occupant shall keep or maintain anything or shall permit any condition to exist upon such Owner's or Occupant's Lot or cause any other condition on any Lot which materially impairs or interferes with any easement or right of the Association, of any other Owner or Occupant, or otherwise materially impairs or interferes with the use and enjoyment of the Association or the other Owners or Occupants of the Common Areas. No Owner or Occupant shall engage in or permit any activity which interferes with the reasonable enjoyment of any other Owner or Occupant within the Development.

2.3 Parking Restrictions. Each Owner or Occupant shall use reasonable efforts to ensure that its Permittees do not park or block the Common Area or public streets.

2.4 Uses. Except as otherwise provided for in this Declaration, as may be amended from time to time, no Lot within the Development shall (i) be used in violation of any applicable federal, state or local laws, ordinances, rules or regulations; (ii) be used, operated or maintained in a dangerous or

hazardous condition; (iii) constitute a nuisance or be used, operated or maintained in an obnoxious manner by reason of unsightliness or excess emission or odors, dust, fumes, smoke, liquid waste, noise, glare, vibration or radiation; (iv) be used for the operation or maintenance of a circus, carnival, bowling alley, roller rink, skating rink, auction house, flea market, unemployment office, bingo or other game room, teen club, gambling enterprise, warehouse operation or manufacturing or assembling operation, storage facility (except incidental to the primary commercial use), facility where auction sales are conducted, establishment selling or exhibiting pornographic materials or striptease clubs; or (v) be used for any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation, provided that any Owner or Occupant that goes out of business shall be entitled to hold one going out of business sale not exceeding four (4) weeks in duration.

2.5 Storage and Loading Areas. No materials, supplies or equipment shall be stored in or allowed to remain in any area on any Lot except inside a closed building. Notwithstanding the foregoing, during the construction of any building on a Lot, construction materials may be stored on such Lot provided such storage is lawful and accomplished in a manner reasonably designed to minimize any interference with the use and enjoyment of any existing building and Common Areas by any Owner(s) and Occupant(s) thereof. The foregoing shall also not apply to retail inventory of equipment, vehicles, nursery stock or similar large outdoor items that are traditionally displayed commercially outside of a closed building.

2.6 Water Flow. Each Owner shall be responsible for the flow of surface water over, across and off its Lot. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of improvements (including without limitation building and building expansion, curbs, drives and paving) shall be permitted. At all times, Owners and Occupants shall take reasonable steps to control the surface water drainage and prevent damage resulting from surface water flowing from Owner's Lot onto any Common Area or adjoining Lot.

2.7 Private Use Restrictions. Any Declarant and/or its successors and assigns may, from time to time, enter into purchase agreements and/or deed restrictions, and/or leases, which may contain certain use or occupancy restrictions. Prior to any Owner or Occupant changing any prior use of any Lot or a Portion thereof from one use to another such Owner or Occupant shall advise Declarant of such event and obtain Declarant's prior written approval of such change.

### Article 3 Design Regulations and Performance Standards

3.1. All Improvements will be designed and built so as to present an appearance on all sides consistent with that of a first class retail, commercial, and office development and shall be designed so that the exterior elevations of Improvements shall be architecturally and aesthetically compatible with Improvements to be constructed on other Lots in the Development, as determined by the Declarant in its sole discretion. Exterior materials of any building shall consist of brick, marble, granite or other natural stone, architectural concrete, EIFS, materials having the appearance of these items, glass, or any combination of these. No pre-engineered metal buildings will be permitted.

3.2. Height limits, required minimum building setbacks, and other basic development standards may be established by the Declarant and/or the Subdivision Agreement from time to time.

3.3. The Owner or Occupant of each Lot will make provisions for adequate off-street parking to serve the Lot. Such parking shall be in the form of hard-surfaced parking lots and may include parking available as the result of the cross-parking provisions of this Declaration or as allowed by the applicable

zoning ordinance of the applicable local governing body. No on-street parking will be permitted except as provided for in the Subdivision Agreement. All Lots shall provide at least the minimum number of parking areas or spaces for private passenger vehicles required by the applicable zoning ordinance of the applicable local governing body.

3.4. All loading areas, docks, antennae, and exterior mechanical equipment, including rooftop equipment, must be screened when viewed from adjacent streets, and at ground level along an adjacent Owner's Lot lines. Such screening will consist of permitted building materials or landscaping. No radio, television, satellite reception dish or any other device for the reception or transmission of television, radio, microwave or any other form of electromagnetic radiation shall be placed or maintained upon any Lot, building or other improvement which are visible from any other Lot, building or Common Areas, except as expressly permitted in writing by the Architectural Design Committee.

3.5. Immediately upon completion of building construction, or at the next available planting season, the Owner shall install and maintain permanent landscaping. Such landscaping will consist of plant materials, paving materials, ground cover, and other landscaped features consistent with the overall development theme of the Development. All permanent landscaping will include automatic underground irrigation systems sufficient to support the living plant materials used.

3.6. All exterior signs or graphics of any kind or nature on the Lots or in the Development shall contribute to the overall cohesiveness and attractiveness of the Development. To this end, all signs, permanent or temporary, and all graphics of any kind or nature which are visible from the exterior of any building or are located on any Lot shall in all respects be in conformity with the requirements of the Subdivision Agreement and shall require the written approval the Architectural Design Committee as to design, color, size and location before erection or placement. Any sign or graphic erected without such written approval shall be removed by the Association or its designee at the Owner's expenses if the violator fails to do so within fifteen (15) days after written notification that the Owner or Occupant is in violation of the Declaration. No outdoor advertising signs or billboards, and no signs incorporating flashing, pulsating, or rotating lights will be permitted in the Development.

3.7. No Owner shall place or permit any materials, supplies, equipment, garbage, debris or refuse in any kind or nature to be placed on or to accumulate in any areas on, in or adjacent to any Lot or building that are visible from any other Lot within the Development. All garbage, debris and refuse shall be placed in a dumpster or similar receptacle on or about the loading dock servicing such building, or if no loading dock is in existence, shall be screened behind from the view of all adjoining Lots and streets and removed at regular intervals. All dumpsters or garbage containers shall be completely enclosed by fencing, architectural features or landscaping approved by the Architectural Design Committee and designed to preclude public view. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. Each Owner, at its expense, shall cause the windows and exterior surfaces of any building on the Owner's Lot to be washed or cleaned regularly.

3.8. During any building construction or renovation on a Lot, the Owner of such Lot shall insure that such construction is carried out in a good and workman like manner and completed in a timely fashion. Owner's agents, contractors, and employees shall insure that the construction site is maintained in an orderly appearance, trash and debris is contained on-site, building materials are stored in an orderly manner, and that no debris, soil erosion, or building materials are permitted to leave the Lot or adversely affect other Lots, Common Areas, public streets or Common Facilities. No unused building material, junk or rubbish shall be left exposed on any Lot except during actual construction operations.

3.9. Landscaping shall not materially obstruct, in the sole judgment of the Association (either

through original planting or through untrimmed growth), the view of the buildings constructed from time to time on any Lot. Landscaping standards may be established by the Declarant and/or the Subdivision Agreement from time to time and shall conform with the requirements of the applicable zoning ordinance of the applicable local governing body. All trees shall be of an ornamental, low-growing type.

3.10. Until such time as a Lot is developed and improved by its Owner, such Owner shall keep the same planted with grass, mowed and in a clean and sightly condition. This provision may be waived by the Association in its sole discretion.

3.11. No outdoor satellite receiving dish, exterior television, radio antenna, or antenna of any type shall be installed on the roof of any building or within or on any portion of any Lot, without prior consent of Association, to be granted or withheld at Association's sole option and discretion.

3.12. Lots may not be subdivided in any manner without the prior written consent of the Association which may be withheld in its sole option and discretion.

3.13. Without the prior written consent of the Association, no barricades, fences or other dividers will be constructed at or near the property lines of a Lot and nothing shall be done to prohibit or discourage the free and uninterrupted flow of pedestrian or vehicular traffic within a Lot in the areas designated for such purpose by the Owner of such Lot except for curbing reasonably designed and installed to assist traffic control; provided that each Owner will have the right to erect barriers, once each year for a period not exceeding 24 hours, to avoid the possibility of dedicating such areas for public use or creating prescriptive rights thereon.

3.14. No unused building material, junk or rubbish shall be left exposed on any Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

3.15. No camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot. No motor vehicle may be parked or stored outside on any Lot for more than 36 hours. No grading or excavating equipment, tractors or semi tractors/trailers shall be stored, parked, kept or maintained on any Lot, and in any yards, driveways or streets. However, this subsection shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of a building during the period of construction. This subsection may be waived by the Association at its sole option and discretion.

3.16. Except as installed by a Declarant or as subsequently approved by the Architectural Design Committee, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any building which in any manner will allow light to be directed or reflected on the Common Areas, any adjoining Lot or any part thereof. All exterior lighting to be installed upon the Development, including all street lighting, shall conform to the standards set forth in requirements adopted by the Architectural Design Committee, as authorized in Article 4 hereof. All such exterior lighting shall also comply in all respects with the Subdivision Agreement, zoning regulations and any other applicable ordinances, rules and regulations of the City of Plattsmouth, Nebraska, as the same may be amended from time to time.

3.17. Construction of any Improvement shall be completed within one and one-half (1½) years from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot without the prior express written consent of such Lot's Owner, to be granted in its sole and absolute discretion. As much as possible during the construction process, root zone areas will be barricaded to

prevent contractors from compacting the soil by driving vehicles beneath trees or by piling dirt or other construction material on top of roots. If retaining walls prove necessary, underground aeration systems will be installed to maintain a reasonable amount of oxygen to the affected roots.

3.18. All electrical lines, communication lines, and other utility service lines servicing a Lot or any improvement thereon shall be buried underground except temporary above-ground service shall be permitted when necessary, but only during construction of any improvement on a Lot.

3.19. Declarant does hereby reserve unto the Association the right to require the installation of siltation fences or erosion control devices and measures in such locations, configurations, and designs as it may determine appropriate in its sole and absolute discretion.

#### Article 4

##### Architectural and Landscape controls

4.1. Architectural Design Committee. The Association shall maintain an Architectural Design Committee consisting of not less than three (3) nor more than seven (7) members selected by and as determined from time to time by the Association. The Association shall have the power to remove any member of the Architectural Design Committee with or without cause at any time and appoint new members in the event of such removal or a resignation from the Architectural Design Committee. Persons appointed to the Architectural Design Committee must be Owner or, subject to such requirements as may be adopted by the Association, the authorized agents or representative of an Owner or Owner.

4.2. The Architectural Design Committee shall be authorized to employ architects, engineers, and other consultants to assist it in performing any of its review functions herein. The approval by the Architectural Design Committee of any plans and specifications submitted for approval in accordance with this Declaration shall not constitute any representation or warranty as to the adequacy, sufficiency, performance, compliance with laws and regulations, or desirability of such plans and specifications or any improvements constructed in accordance therewith. The review, approval or disapproval by the Architectural Design Committee of any plans and specifications hereunder shall not impose on the Architectural Design Committee, the members thereof, or the architects, engineers and other consultants employed by the Committee the Association or the Declarant, any liability for any defect or inadequacy in any improvements constructed in accordance with such plans and specifications. Neither the Declarant, the Association, the Architectural Design Committee, any member of the Architectural Design Committee, any member of the Association nor any officer, director, agent or representative thereof, shall be personally liable to any Owner or other person for any action or inaction taken with respect to any matter submitted for approval or reconsideration, or for the adoption of any rules, regulations or restrictions or covenants contained in this Declaration. By accepting a deed for a Lot, each Owner hereby knowingly and expressly waives and releases any and all causes of action for any matters referenced herein.

4.3. Before commencing any work regulated by the Design Regulations and Performance Standards contained in Article 3, including but not limited to excavation, fill, grading or other alteration of the topography or drainage of any Lot, or the construction, installation or alteration of any building, enclosure, landscaping, fence, parking facility, parking garage, sign, light pole, fence, bench or fixture of any nature or kind, or any other structure or temporary or permanent improvements on or to any Lot or portion thereof, the Owner of such Lot shall first submit site plans, grading and utility plans, landscaping plans, sign and sign allocation plans, floor plans, and building elevations and materials plans, together with applicable specifications, to the Architectural Design Committee for its written approval. The Architectural Design Committee will have the right to establish procedures for submission and review of

plans and to charge reasonable fees for its review including, but not limited to, the fees charged by architects and engineers employed by the Architectural Design Committee to review such plans and specifications. The address for giving notices to the Architectural Design Committee shall be the place for the submittal of plans and specifications.

4.4. The Architectural Design Review Committee will be guided by the standards set forth herein, the Subdivision Agreement, and such reasonable rules, regulations, restrictions, architectural standards and design guidelines as are established from time to time pursuant hereto. Except as set forth below, any site plans, grading and utility plans, landscaping plans, sign and sign allocation plans, floor plans and building elevations, materials plans, or specifications submitted to the Architectural Design Committee shall not be deemed approved unless approval is granted by at least two (2) members of the Architectural Design Committee. In the event that the Architectural Design Committee, or its designated representative, shall fail to approve or disapprove the site plans, grading and utility plans, landscaping plans, sign and sign allocation plans, floor plans and building elevations, materials plans, or specifications within sixty (60) days after they have been received by the Architectural Design Committee, the approval will be deemed to have been given. Disapproval shall be deemed to have occurred if a majority of the members of the Architectural Design Committee vote against a plan or proposal. Notice shall be given to the Owner in the event of disapproval.

4.5. The Architectural Design Committee may delegate its responsibility to review plans and specifications to one or more of its members or consultants retained by the Architectural Design Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be deemed to be the approval or disapproval by the Architectural Design Committee.

4.6. The approval by the Architectural Design Committee of any plans or specifications submitted for approval in accordance with this Declaration shall not constitute any representation or warranty as to the adequacy, efficiency, performance, or desirability of such plans or specifications or any improvements constructed in accordance therewith. The review by the Architectural Design Committee of any plans or specifications hereunder shall not impose on the Architectural Design Committee or the members thereof any liability for any defect or inadequacy in any improvements constructed in accordance with such plans or specifications, or compliance with any municipal code, regulation or law.

4.7. The Association or the Architectural Design Committee may, from time to time, establish reasonable rules, regulations, restrictions, architectural standards and design guidelines with respect to the exterior (but not the interior) of any Improvements on the Lots, which it may from time to time, in its sole discretion, amend, repeal or augment, including, without limitation, regulations in conjunction with the construction of a building on a Lot, the regulation of all landscaping (including, without limitation, absolute prohibition of certain types of landscaping, trees and plants) and regulation of all construction, reconstruction, exterior additions, changes or alterations to or maintenance of any building or Improvement, including, without limitation, the exterior nature, kind, shape, height, material, color, surface texture and location thereof.

4.8. The Association may from time to time enter into agreements, by lease, purchase agreement, deed restrictions or other agreements, with Owners or Occupants regarding design restrictions, sign restrictions, site planning, or other architectural standards affecting the Development or any portion thereof.



Article 5  
Owner and Association Duties and Obligations

5.1 Maintenance and Taxes of Owners. Each Owner and Occupant shall maintain its Lot in good and clean condition and repair, such maintenance to include, but not be limited to, the following:

- (a) removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent necessary to keep the area in a clean and orderly condition, and removal of snow and ice from sidewalks;
- (b) maintain all signage in proper working order and appearance;
- (c) maintain all perimeter walls in good condition and state of repair; and
- (d) each Owner shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authority all real property taxes and assessments which are levied against its Lot and that part of the Common Areas located on its Lot.

5.2 Maintenance and Taxes of the Association. The Association shall be responsible for:

- (a) maintaining the surface of the roadways, parking areas and sidewalks in a level, smooth and evenly covered condition with the type of surface material originally installed or such substitutes as shall in all respects be equal or superior in quality, use and durability;
- (b) removing all snow, papers, debris, filth and refuse and thoroughly sweeping roadways and parking areas to the extent necessary to keep those area in a clean and orderly condition;
- (c) placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines;
- (d) repairing and replacing when necessary such artificial lighting facilities as shall be reasonable required;
- (e) maintaining all landscaped areas and making replacement of shrubs and other landscaping as is necessary;
- (f) maintain all general Development signage (but not including signage dedicated to a specific Lot, Owner or Occupant) in proper working order and appearance;
- (g) maintain all detention or retention ponds as is necessary;

5.3 Indemnification/Insurance.

- (a) Indemnification. Each Owner and/or Occupant shall indemnify and hold the Association and all other Owners and/or Occupants harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Lot, except if caused by the act of negligence of another Owner and/or Occupant of another Lot.

(b) Insurance.

(i) Each Owner shall procure and maintain in full force and effect throughout the term of this Declaration, general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its Lot, Owner's insurance to afford protection to the limit of not less than \$1,000,000 for any one occurrence, and to the limit of not less than \$3,000,000 for property damage. Each Owner shall provide the Association with certificate of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance which may cover other property in addition to the Lot covered by this Declaration. Such insurance shall provide that the same may not be cancelled without thirty (30) days prior written notice to the Association.

(ii) At all times during the term of this Declaration, each Owner shall keep Improvements on its Lot insured against loss or damage by fire and other perils and events as may be insured against under the "all-risk" policy broad form of Uniform Extended Coverage Clause in effect from time to time in the State of Nebraska, with such insurance to be for the full replacement value of the insured Improvements.

5.4 Obligation To Rebuild or Restore. In the event that any Improvement on a Lot shall be damaged or destroyed (whether partially or totally) by fire, the elements or any other casualty, the Owner of such building shall, at its expense, within a reasonable time after such destruction, and with due diligence, repair, rebuild or restore the same as nearly as practical to the condition existing just prior to such damage or destruction, or, alternatively, if such building is totally destroyed, the Owner of such building shall be required to clear, clean and rebuild and/or restore the damaged building and either landscape or pave the damaged area. The Owner of such damaged or destroyed building shall have the right to make reasonable alterations as part of the reconstruction. Any rebuilding or restoration shall comply with this Declaration

5.5 Enforcement and Remedies. If any Owner defaults in any of its obligations or covenants hereunder, any Declarant, the Association, or its authorized agents or representatives shall have the right, but not the obligation, to enforce this Declaration by entering any Lot upon which a violation of such rules and regulations or the restrictions set forth in this Declaration exists and may summarily correct, abate or remove such violation at the expenses of the Owner of such Lot, if such Owner does not correct such violation within fifteen (15) days after the Association sends notice to such Owner specifying the nature of such violation. Any such entry and abatement, correction or removal shall not be deemed a trespass. The costs and expenses of such abatement, removal or correction shall be a lien against the Owner's Lot and may be foreclosed by the Association as provided in this Declaration.

In addition to all other remedies available at law or in equity, if any Owner defaults in any of its obligations or covenants hereunder, the Association shall have the right, but not the obligation, to perform such defaulting Owner's obligations hereunder and thereafter all costs and expenses incurred by the Association in performing such obligations, plus a service charge of 20% of the cost of the same shall be a personal obligation of the Owner of such Lot, together with costs, reasonable attorneys' fees, and interest at the rate of 1.5% per month thereon shall also be a charge and continuing lien upon such

Owner's Lot or Lots. Any lien filed by the Association shall be subject to foreclosure action by the Association in its sole discretion.

5.6 Eminent Domain.

(a) Owner's Right to Award. Nothing herein shall be construed to give an Owner of any Lot in the Development any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting another Lot or granting the public or any government any rights in such Lot. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas, the award attributable to the land and improvement of such portion of the Common Areas shall be payable only to the Owner thereof.

(b) Tenant's Claim. Nothing in this Article shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between such tenant and such Owner for all or a portion of any such award or payment.

(c) Restoration of Common Areas. The Owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective Lot as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer and without contribution from any other Owner.

5.7 Fire Protection. Any Improvements constructed on any Lot shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other Improvements in the Development.

ARTICLE 6  
Grant of Easements

6.1 Easements. Declarant and Owners hereby grant and create the following described perpetual easements, the benefits of which shall be appurtenant to and run with title to the Lot(s) benefited thereby and the burdens of which shall run with title as an encumbrance against the Lot(s) burdened thereby:

(a) Pedestrian Access. A nonexclusive easement for pedestrian passage, ingress and egress, over and across all sidewalks, paths and bridges, parking areas, private roadways, and those Common Areas located on any Lot that are designated from time to time by the Association for the use and enjoyment of pedestrians, including all Permittees. This easement shall be appurtenant to every Lot, and shall be for the benefit of every Lot Owner and Occupant. This easement shall also be for the purpose of providing pedestrian ingress to and egress from each Lot to other portions of the Development, and for the use and enjoyment by each Lot Owner and Occupant of those Common Areas located on each Lot designated by the Association from time to time for the use and enjoyment of pedestrians in the manner and at the times prescribed by the reasonable rules and regulations of the Association. Notwithstanding the foregoing, the Association shall have the right at all times to designate, construct, install and maintain sufficient Common Area improvements available for the use by pedestrians and Permittees under the foregoing easement to provide pedestrian access twenty-four (24) hours per day between each building, all other buildings constructed in the Development from time to time, and between each building and a public right of way.

(b) **Vehicular Access.** A nonexclusive easement over and across those Common Areas located on any Lot that are designated from time to time by the Association as roadways, drives, parking areas, or otherwise for use by motor vehicles. This easement shall be appurtenant to every Lot, shall be for the benefit of every Owner and Occupant, and shall be for the purpose of providing vehicular access over and across those Common Areas located on any Lot designated by the Association from time to time for such purpose and in the manner and at the times prescribed by the reasonable rules and regulations of the Association. Notwithstanding the foregoing, the Association shall have the right at all times to designate sufficient Common Area improvements available for use under the foregoing easement to provide twenty-four (24) hour per day vehicular ingress to and egress from the Development.

(c) **Parking.** A nonexclusive easement for access to and use of all parking spaces on all Common Areas and all Lots whether or not such areas are identified specifically as a Common Area. Parking shall be restricted to non-commercial vehicles, except in those areas specifically designated for loading, unloading, and deliveries. This easement is for temporary parking only by Permittees. Any vehicle occupying space for more than twenty-four (24) hours may be towed and impounded at the vehicle owner's expense.

(d) **Utilities.** A nonexclusive easement over, upon and across the Common Areas for the installation, use, testing, connection to, operation, maintenance, repair, replacement and removal of: water lines and systems; telephone lines and systems; gas lines and systems; sanitary sewer lines and systems; storm sewers, drainage lines and systems; electrical lines and systems; and other utility lines or systems developed to serve one or more of the Lots; provided, however, that all pipes, wires, lines, conduits, mains, sewers, systems and related equipment will be installed underground or otherwise enclosed and will be installed, operated and maintained in a manner which will not unreasonably interfere with the use of any other Lot or Improvements.

(e) **Temporary Encroachment for Construction.** Nonexclusive temporary easements to use and encroach over and across so much of the Common Areas as may be reasonably necessary at any time and from time to time for the purpose of constructing, repairing, replacing, or maintaining any Improvements on any Lot or Common Area. Any Owner or Occupant taking advantage of the construction easement granted herein shall pay all costs associated with such use, including without limitation, restoration of the utilized portion of the Common Areas to the condition in which it existed immediately prior to such exercise, and shall indemnify and hold Declarants, the Association and all other Owners and Occupants harmless from all loss, cost and expenses in connection with the use of such easement.

(f) **Fire, Emergency and Access.** Nonexclusive easements for the purpose of fire protection and emergency access, and for pedestrian and vehicular access, ingress and egress over, across, on and through the Common Areas and Common Facilities on each Lot.

(g) **Surface Water Drainage.** Nonexclusive easements over, across and under the Common Areas for the flow of a reasonable volume of surface water to the nearest storm sewer or surface water inlet, drainage catch basins, or waterway; provided all surface water drainage from any Lot shall be consistent with an overall surface water drainage plan for the Development.

(h) **Self Help Easements.** Nonexclusive rights of entry and easements in favor of the Association over, across and under each Lot in the Development for all purposes reasonably necessary to enable the Association to perform any of the provisions of this Declaration which a defaulting Owner has failed to perform.

(i) Use of Easements. Subject to the reasonable rules and regulations established by the Association or the Declarants for the use of each Lot, the use of all easements created by this Declaration will, in each instance, be nonexclusive and for the use and benefit of all Permittees and the Association.

(j) Maintenance of Easement Areas and Common Areas. Except to the extent that such areas might be operated and maintained by public authorities or utilities and except as otherwise specifically provided in this Declaration, the Association will operate, maintain and replace all Common Areas of the Development, except parking areas, which are subject to the easements created in this Declaration. All costs associated with such operation, maintenance and replacement shall be paid for either through Association dues, *provided, however*, if such maintenance or replacement is due to the misuse, negligence, or exclusive or near-exclusive use of a Lot Owner or its Occupants the costs for such maintenance or replacement shall be specially assessed against the Lot and shall be the sole obligation of the Owner. Additionally, the Owner of any Lot in the Development, at its own expense, shall maintain, repair and replace the parking areas on such Owner's Lot. Any Owner may at any time repair, maintain and replace other Common Areas or Improvements located within or upon on such Owner's Lot provided the repair, maintenance or replacement conforms to the design and quality standards established by the Association, and further provided the Owner shall first have obtained the consent of the Architecture Design Committee if any repair or replacement deviates in any manner from the original design and materials of the Common Area or Improvement being repaired or replaced.

Repairs, replacements and maintenance shall include, but shall not be limited to:

(i) maintenance, repair and replacement of the surface and subsurface of any parking areas, drives, roadways, and other vehicular ingress, egress and access portions of the Development so as to maintain level, smooth and evenly surfaced parking and vehicular traffic areas with the type of materials originally installed or used thereon or such substitutes as will in all material respects be equal or superior to such materials in quality, appearance, use and durability;

(ii) maintenance, repair and replacement of all buildings and other Improvements;

(iii) maintenance and care of all grass, shrubs and landscaping, including, but no limited to, the fertilizing, weeding, watering, mowing and trimming thereof and the making of such replacements of shrubs, trees and other landscaping as it necessary to maintain the same in first-class condition;

(iv) removal from the Common Areas of papers, debris, ice, snow, refuse, filth and any hazards to persons using such areas, and washing or thoroughly sweeping paved areas as required to keep such areas in a clean and orderly condition;

(v) maintenance of such appropriate parking area entrance, exit and directional signs, markers and lights as may be reasonable required from time to time;

(vi) such painting and repainting as may be required to maintain the parking areas and equipment installed thereon in good condition and repair; and

(vii) maintenance and replacement of all lighting equipment, facilities and identification signs.

The standard of care applicable to repairs and maintenance required under this Declaration shall be that of a first class retail, commercial, and office development.

(j) Maintenance of Sewers and Utilities. The Owner of each Lot will operate, maintain, repair and replace all sewers and utilities located within the boundaries of such Lot in sound structural and operating condition (except to the extent that such operating and maintenance is performed by public authorities or utilities) and will pay all costs associated with the consumption of utility services which relate to the Improvements located on such Owner's Lot and no other Owner will have any liability with respect thereto. The Owner of each Lot shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Development.

(k) Impositions Prohibited. Nothing in this Declaration shall be interpreted to permit, nor shall the Owner of any Lot impose, any charge or cost for the use of any of the Common Areas, excepting to the extent such Owner may legally include such charges in a lease agreement with a tenant relating to such Owner's Lot.

#### 6.2 Nature of Easements and Rights Granted.

(a) Easements Appurtenant. Each and all of the easements and rights granted or created herein are appurtenances to the Lots and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such Lots.

(b) Nature and Effect. Each and all of the easements, covenants, restrictions and provisions contained in this Declaration:

- (i) Are made for the direct, mutual and reciprocal benefit of the Declarants, the Association, the Owners, Occupants and Permittees of the Lots;
- (ii) Create mutual equitable servitudes upon each Lot in favor of the other Lots;
- (iii) Constitute covenants running with the land; and
- (iv) Shall bind every person or entity having any fee, leasehold or other interest in any portion of the Development at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction, or provision in question, or to the extent that such easement, covenant restriction or provision is to be performed on such portion.

(c) Transfer of Title. The acceptance of any transfer or conveyance of title from a Declarant, any Owner or Occupant or their respective heirs, representatives, successors or assigns of all or

any part of its interest in its Lot, or ground lease, or in any portion thereof, shall be deemed to:

- (i) Require the prospective grantee to agree not to use or occupy, or permit any other party to use or occupy, its Lot or Improvements in any manner which would constitute a violation or breach of any of the easements, covenants or restrictions contained herein; and
- (ii) Require any prospective ground lease assignee to assume and agree to perform each and all of the obligations of the conveying party under this Declaration with respect to the Lot, Improvements or interest to be conveyed.

#### ARTICLE 7

##### Amendments, Duration and Termination

7.1 Amendment, Modification. The Declarant shall have the right to amend this Declaration at any time, without notice to or the approval of any other Owner, by recording the amendment in the office of the Register of Deeds in Cass County, Nebraska. This Declaration may also be amended by Association, or any person, firm, corporation, partnership, or entity designated in writing by Association, in any manner which it may determine in its full and absolute discretion for a period of ten (10) years from the date hereof. Any such amendment recorded pursuant to this Section 7.1 shall not materially alter the rights, benefits or duties of any other Owner or Occupant in control of a Lot at that time. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than sixty-six percent of the land area covered by this Declaration. All such amendments or waivers must be in writing and recorded in the Register of Deeds of Sarpy County, Nebraska, as a modification to this Declaration.

7.2 Assignments by Declarant. All rights which are specified in this Declaration to be rights of the Declarant are mortgageable, pledgeable, assignable or transferable. Any successor to, or assignee of, the rights of the Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Declarant hereunder as fully as if named as such party herein. No party exercising rights as Declarant hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

7.3 Termination. The Declaration herein shall not be terminated except with the written acknowledgment and consent of the Owners of not less than sixty-six percent of the land area covered by this Declaration, and such termination shall be effective when duly recorded in the office of the Register of Deeds of Sarpy County, Nebraska. Notwithstanding the foregoing, this Declaration may only be terminated by the Association for a period seven (7) years from the date hereof.

7.4 Duration. Unless otherwise canceled or terminated, this Declaration and all of the easements, covenants, restrictions, rights, and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof or such earlier date as may be required in order that this Declaration shall be invalidated or be subject to invalidation by reason of a limitation imposed by law or the duration thereof.

#### ARTICLE 8

##### Miscellaneous

8.1 Effective Covenants. Each grantee of the Declarants, their successors and assigns, by the acceptance of a deed of conveyance, accepts the same subject to all easements, covenants and restrictions

granted or reserved by this Declaration or to which this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any Owner or Occupant having at any time any interest on any Lot, and shall inure to the benefit of such Owners or Occupants in like manner as though the provisions, terms and restrictions of this Declaration were received and stipulated at length in each and every deed of conveyance.

8.2 Waiver. No easement, covenant or restriction of this Declaration shall be deemed to have been abrogated or waived by reason on any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.

8.3 Dedication. Nothing contained in this Declaration shall not be deemed to create a gift of all or any portion of the Development to the general public or as a dedication for public use or public purpose it being the intention of each Owner that this Declaration shall be for the exclusive benefit of the Development, or any portion thereof, the Owner and its mortgagees; provided, however, that dedication shall be made by an Owner for any public rights of way, utilities or other public improvements reasonably deemed necessary by the City of Plattsmouth, Nebraska, to serve the Lots as contemplated by the Subdivision Agreement, as amended from time to time.

8.4 Savings Clause. If any easement, covenant or restriction or any other provision of this Declaration or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Declaration and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

8.5 Successors and Assigns. Each and all of the easements, covenants or restrictions contained in this Declaration shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Declaration and by applicable law, their respective heirs, legal representatives, successors, and assigns.

8.6 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision thereof.

8.7 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

8.8 Benefit. This Declaration shall inure to the benefit of, and be binding upon, the Declarants, the Association, the Owners and Occupants, and there respective heirs, executors, administrators, representatives, successors and assigns.

8.9 Notice. All notices and demands to be given by one party to another party under this Declaration shall be given in writing to the following:

If to Declarants:           Wiles Bros., Inc.  
                                  2713 Lakeview Circle  
                                  Plattsmouth, Nebraska 68048

With Copies to:           Jerry M. Slusky Esq.  
                                  Slusky Law, LLC



Suite 300  
 17445 Arbor Street  
 Omaha, Nebraska 68130

If to Owner/Occupant: To the party at the street address of the Lot owned or occupied.

All notices and demands shall be delivered by United States mail, postage prepaid, certified or registered with return receipt requested; or by hand delivery; or by nationally recognized overnight courier service which provides evidence of delivery. Notices shall be considered to have been given upon the earlier to occur of actual receipt or two business days after posting in the United States mail, or one business day after deliver to a nationally recognized courier for overnight delivery. Notice sent by certified mail which is refused shall be effective upon attempted delivery. Any change of address shall be sent in accordance with this section, and shall not be effective until ten (10) days after receipt as provided herein.

ARTICLE 9  
Owner's Association

9.1 The Association. Declarant has caused the incorporation of Wiles Crossing Owners Association, LLC, a Nebraska limited liability company (the "Association"), which shall administer, insure, operate, manage, control, maintain, repair, rebuild and restore all of the Common Areas, including all common surface improvements constructed by the Association on the common areas for the benefit of the Association and the benefit of the Owners, so that the Common Areas stay clean, safe, in good repair and operating order, and consistent with the overall quality of the Development. The Association shall have the authority to provide special services affecting portions of the Common Areas consistent with the overall character and use of the Development, or to grant licenses or concessions for the provision of such services, and to charge reasonable fees for such services, licenses or concessions. Any amounts received by the Association from fees, licenses, concessions and other sources shall be held and used by the Association for the benefit of the Owners pursuant to such rules, resolutions or regulations as the Association may adopt. The Association shall have the right to charge annual dues, assess fees and penalties, impose liens for delinquent payments, and take any and all such other actions as may be reasonably appropriate to protect the overall quality of the Development and the interests of the Owners and Occupants.

9.2 By the Declarants. One or more of the Declarants shall be solely responsible, at its expense, for the initial construction and installation of certain Improvements on certain portions of the Development which may include, but are not necessarily limited to, a water feature, signage, landscaping, sprinkler systems, private roadways, lighting poles, berms, fixtures, and sculptures and landscaping in the medians. After the initial construction and installation, Declarants shall have no continuing liability or obligation for any repair, maintenance, operating, insuring, replacement or restoration of any of the foregoing Common Improvements, all of which shall be the continuing obligation and liability of the Association in accordance with the provisions of this Declaration.

9.3 The Declarants and each Lot Owner shall be a member of the Association (a "Member"). The Association has as its purpose the maintenance of the Common Facilities (as defined herein) and the health, safety, recreation, welfare and enjoyment of the Owners and Occupants of the Lots, including, but not limited to:

- (a) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Association Members. Common Facilities may include, but are not limited to,

recreational facilities, dedicated and nondedicated roads, paths, ways and green areas, water features, and signs and entrances for Wiles Crossing (collectively the "Common Facilities"). Common Facilities may be situated on property owned or leased by the Association or its Members, on public property, or on private property subject to an easement in favor of the Association.

(b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members.

(c) The exercise, promotion, enhancement and protection of the privileges and interests of the Owners and Occupants of the Development; and the protection and maintenance of the character of the Development.

(d) All promotional and advertising activities, special events, celebrations, dedications, and other opportunities of the Development as a whole.

(e) All of the duties, obligations and rights of the Association shall be subject to the maintenance standards and the other duties, obligations and rights contained in Articles 1 through 5 of this Declaration.

9.4 Membership and Voting. Declarants and each Owner shall be a Member of this Association. The Association may include further phases of Wiles Crossing as may be developed by any Declarant. Membership shall be appurtenant to ownership of any Lot, and may not be separated from ownership of each Lot.

Each Member, whether one or more persons and entities, shall have a number of votes equal to the ratio such Owner's Lot or Lots represents in relation to the land area of the Development, as adjusted from time to time (i.e., the Owner of 5% of the land area of the Development shall be entitled to 5 votes), on each matter properly coming for a vote before the Members of the Association.

9.5 Association Managers. The Declarants select Bruce Wiles to serve as the initial Manager of the Association until such time as seventy-five percent (75%) of the Lots have been developed. At such time, the Owners and the Declarants may elect the Board of Managers of the Association pursuant to the operating agreement of the Association.

9.5 Purposes and Responsibilities. The Association shall have the powers conferred upon limited liability companies by the Limited Liability Company Act and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Managers, and upon authorization of the Board of Managers by one or more Managers or Members, shall include by shall not be limited to the following:

(a) The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

(b) The landscaping, mowing, watering, repair and replacement of parks and other public property and Improvements on parks or public property, all within the Common Facilities, or within or near the Development.

(c) The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

(d) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment and purchase of insurance covering any Common Facilities against property damage and casualty, and purchase of liability insurance coverages for the Association, the Managers of the Association, if any, and the Members.

(e) The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

(f) The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

(g) The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

(h) The employment of professionals and consultants to advise and assist the Managers of the Association in the performance of their duties and responsibilities for the Association.

(i) General administration and management of the Association, execution of such documents, and doing and performance of such acts as may be necessary or appropriate to accomplish such administration, management, or purposes of the Association.

9.4 Mandatory Duties of Association. The Association shall operate, maintain and repair the Common Facilities as well as any boundary fence, entrance monuments, and signs which have been installed by the Association, all in generally good and neat condition. The Association shall also provide those services to Members as set forth in the operating agreement of the Association as it may be amended from time to time.

9.5 Common Fees and Expenses. Each Lot shall be subject to an assessment for, and each Owner shall be obligated to pay its pro rata share of all expenses incurred by the Association in administrating, operating, managing, maintaining, repairing, rebuilding, replacing, restoring and insuring the Common Facilities as provided herein (including a service charge of no more than 10% of said expenses) ("Common Facilities Charge"). Each Lot Owner's proportionate share of Common Facilities Charge for each calendar year (or portion thereof) shall be reasonably estimated in advance by Association, and such estimate shall be paid in equal monthly installments on or before the first day of each calendar month. Each Owner shall pay to the Association, on demand the amount, if any, equal to the amount by which the Owner's proportionate share of the actual expenses in any particular month exceeds the Owner's proportionate share of the estimated expenses. Any excess amounts paid during a calendar year shall be credited towards the amounts payable in the following year. After all Lots are sold or developed by Declarants, the proportionate share of the total Common Facilities' expenses to be borne by each Owner for any year shall be that percentage equal to the ratio such Owner's Lot or Lots represents in relation to the land area of the Development, as adjusted from time to time.

Prior to the sale or development of all Lots, the pro rata share of fees and expenses shall be the percentage determined by taking the land area of an Owner's Lot or Lots divided by the total land area of all Lots within the Development which have been sold or upon which Improvements have been completed.

9.6 Accounting. The Owner of a Lot may, upon not less than twenty (20) days prior written notice to the Association, inspect the Association's records for all Common Facilities' maintenance and insurance expenses incurred during the preceding calendar year at the Association's offices or at such other location reasonably designated by the Association at any time during reasonably business hours within one (1) year after the end of said calendar year. The Association's expenses for any calendar year shall be deemed correct if the Owner of a Lot does not give the Association written notice of any such overpayment or underpayment within the one (1) year period provided.

9.7 Abatement of Assessments. Notwithstanding any other provision of this Declaration, the Managers may abate all or part of the Common Facilities Charge due in respect to any Lot.

9.8 Liens. The Common Facilities Charge together with interest thereon, costs and reasonable attorneys' fees shall be the personal obligation of each Member at the time when the Common Facilities Charge first becomes due and payable. The Common Facilities Charge, together with interest at the rate of 1.5% per month thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot against which the Common Facilities Charge are charged. The personal obligation for delinquent Common Facilities Charges shall not pass to the successor in title to the Member at the time the Common Facilities Charge become delinquent unless such Common Facilities Charge are expressly assumed by the successors. All successors shall take title to a Lot subject to the lien for such Common Facilities Charge, and shall be bound to inquire of the Association as to the amount of any unpaid Common Facilities Charge which shall be paid either by the transferring Owner or the successor in interest to the Owner at the time that title to the Lot transfers.

9.9 Assessments and Extraordinary Costs. In addition to the Common Facilities Charge, the Managers may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any of the Common Facilities, including fixtures and personal property related thereto, and related facilities ("Assessments"). The aggregate assessments in calendar year shall be determined annually by the Managers and shall be allocated among the Lots on a pro rata basis equal to the ratio such Owner's Lot or Lots represents in relation to the land area of the Development, except the extent that any Assessment shall be determined to be special obligation of a specific Lot or Owner, in which case the Assessment shall not be proportionately distributed but shall be specially assessed against the Lot and shall be due and payable immediately upon notice to the Owner.

9.10 Excess Common Facilities Charge. With the approval of sixty-six and two-thirds percent (66 2/3%) of the Members of the Association, the Managers may establish dues and/or assessments in excess of the maximums established in the bylaws of the Association.

9.11 Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided herein.

9.12 Certificate as to Common Facilities Charge. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Common Facilities Charge on a specified Lot have been paid to the date of the request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or

installment thereof. The Common Facilities Charge shall be and become a lien as of the date such amounts first become due and payable.

9.13 Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of Common Facilities Charge or Assessments which are not paid when due shall be delinquent. Delinquent Common Facilities Charges and Assessments shall bear interest from the due date at the rate of 1.5% per month. The Association may bring an action at law against any Member personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as part of the action, and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Member may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Facilities or abandonment of its Lot. The mortgagee of any Lot shall have the right to cure any delinquency of a Member by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

9.14 Subordination of the Lien to Mortgagee. The lien of any Common Facilities Charge or Assessment provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the Common Facilities Charge or Assessment lien.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on the day and year set forth above.

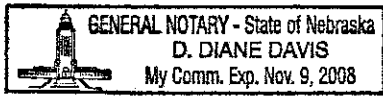
DECLARANTS:

WILES BROS., INC.

*Marvin C. Wiles*  
Marvin C. Wiles, President

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF CASS        )

The foregoing instrument was acknowledged before me this 3 day of October 2007, by MARVIN C. WILES, who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing this instrument above, and upon oath states that his execution hereof is his authorized act on behalf of WILES BROS., Inc.



*D. Diane Davis*  
Notary Public

#6031

EXHIBIT "A"

LEGAL DESCRIPTION

A PARCEL OF LAND BEING ALL OF LOT 54 IN THE SW 1/4 OF SECTION 24, TOWNSHIP 12 NORTH, RANGE 13 EAST OF THE 6TH P.M. AND ALL OF LOTS 6 AND 7 IN THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 12 NORTH, RANGE 13 EAST OF THE 6TH P.M., CASS COUNTY, NEBRASKA AND MORE FULLY DESCRIBED AS FOLLOWS:  
COMMENCING AT THE SOUTHEAST CORNER OF THE OF THE SOUTHWEST QUARTER OF SAID SECTION 24; THENCE: S88°40'30"W, (ASSUMED BEARING), ON THE SOUTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 471.42 FEET TO THE POINT OF BEGINNING; THENCE: S00°40'58"E, ON THE EAST LINE OF SAID LOT 6, A DISTANCE OF 959.88 FEET; THENCE: S88°45'02"W, ON THE SOUTH LINE OF SAID LOT 6 AND 7 AND THE NORTH RIGHT-OF-WAY LINE OF EAST WILES ROAD, A DISTANCE OF 1998.43 FEET; THENCE: N01°10'56"W, ON THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 75, A DISTANCE OF 788.90 FEET, TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 04°49'42", A RADIUS OF 11,299.16', AN ARC LENGTH OF 952.21 FEET, A CHORD LENGTH OF 951.93 FEET AND A CHORD BEARING N02°08'00"E, THENCE: ON SAID CURVE, A DISTANCE OF 952.21 FEET TO THE POINT OF TANGENCY; THENCE: N03°43'10"E, ON SAID LINE, A DISTANCE OF 557.90 FEET; THENCE: N88°43'10"E, ON THE NORTH LINE OF SAID LOT 54, A DISTANCE OF 1906.15 FEET; THENCE: S01°05'32"E, ON THE EAST LINE OF SAID LOT 54, A DISTANCE OF 1326.18 FEET TO THE POINT OF BEGINNING AND CONTAINING A CALCULATED AREA OF 103.77 ACRES MORE OR LESS.

#12947