

## BRANDON PARK - WEDGEWOOD AGREEMENT

THIS AGREEMENT, made this 14 day of <sup>November</sup> ~~October~~, 1983, by and between BRANDON PARK PARTNERSHIP, a general partnership organized under the laws of the State of Nebraska ("Partnership"), and WEDGEWOOD OWNERS' ASSOCIATION, INC., a corporation organized under the Nonprofit Corporation Act of the State of Nebraska ("Association").

## WITNESSETH:

A. The Partnership is the owner of a parcel of land consisting of 7.81 acres, more or less, lying adjacent to the south and west of Wedgewood Town Homes Addition, a cluster subdivision in the City of Omaha, Douglas County, Nebraska.

B. The Partnership is in the process of developing the 7.81 acre tract into a cluster subdivision, to be known as "Brandon Park".

C. The Association is the representative of the owners of lots in Wedgewood Town Homes Addition.

D. The Partnership desires to connect its streets to the streets in Wedgewood Town Homes Addition in order to comply with Omaha Planning Board requirements that there be two street accesses to Brandon Park for the use of its residents.

E. The Partnership recognizes that by developing Brandon Park the flow of storm water through Wedgewood Town Homes Addition will be substantially increased and the Partnership proposes to provide for the run-off of such additional storm water through a storm sewer to run under the street known as Mason Plaza in Wedgewood Town Homes Addition to the public sewer located in 120th Street on the west.

F. The Partnership further desires to provide sanitary sewers for Brandon Park and to connect such sanitary sewers to existing private sanitary sewers owned and maintained by the Association at the following locations:

Sewer to serve Lot 1, Brandon Park, to connect at the east edge of Outlot 9, Wedgewood Townhomes Addition.

Sewer to serve Lots 2 through 27, inclusive, Brandon Park, to connect at the existing manhole on the easterly edge of Outlot 8; Wedgewood Town Homes Addition.

G. The Association deems it to be in its best interests and that of its membership to encourage and allow for orderly and proper development of Brandon Park with the necessary street and utility line connections, provided that adequate compensation is made to the Association for the resulting additional maintenance, repair and replacement of the Association's streets and utility lines.

NOW, THEREFORE, it is agreed as follows:

1. STREET EASEMENT.

(a) Grant of Easement. The Association, as Grantor, does hereby grant to the Partnership, its successors and assigns, as Grantee, as an easement appurtenant to Brandon Park, and the lots to be developed therein, a perpetual nonexclusive easement for ingress and egress over, upon and across Outlot 8, Wedgewood Town Homes Addition, an Addition to the City of Omaha, Douglas County, Nebraska, also known as Mason Plaza and Mayberry Plaza (the "Street Easement Area"), for pedestrian and vehicular traffic to and from Brandon Park and 120th Street. The platting of Brandon Park into not more than 30 residential lots shall not be deemed an improper increase or burden upon the easement herein granted.

(b) Maintenance Provision. Grantee covenants to participate in maintenance, repair and replacement expense for the pavement, base and subbase of the Street Easement Area as follows:

(1) For damage resulting from heavy equipment and trucks using the Street Easement Area during subdivision grading, street and utility line construction, the total cost of all needed repair and replacement of pavement and its supporting base and subbase, upon completion of subdivision construction. Required emergency repair and replacement during construction will be made and paid for by the Grantee.

(2) For damage resulting from heavy trucks during construction of homes, \$200.00 per home or residential unit constructed in Brandon Park, due and payable upon filing of each individual building permit. Any surplus remaining after the payment of the foregoing \$200.00 per unit fee shall be refunded to the Grantee upon the issuance of the last certificate of occupancy for Brandon Park.

(3) For clean-up and removal of all dirt, debris and other refuse accumulation on streets in Wedgewood Town Homes Addition as a result of development and construction within Brandon Park, the cost incurred.

(4) For ordinary automobile traffic, the cost of maintenance, repair and replacement, after the amount paid under (1) and (2) above has been subtracted, at the ratio of the number of homes completed in Brandon Park on June 1 of each year divided by the number of homes completed in Wedgewood Town Homes Addition on June 1 of such year.

(c) Running of Benefits and Burdens. All provisions of this easement grant, including the benefits and burdens, run with the land and are binding upon and inure to the successors and assigns of the parties hereto, including the Association and all future owners of lots within Brandon Park.

2. STORM SEWER EASEMENT.

(a) Grant of Easement. The Association, as Grantor, does hereby grant to the Partnership, its successors and assigns, as Grantee, as an easement appurtenant to Brandon Park, and the lots to be developed therein, a perpetual easement to install, repair, replace and maintain a storm sewer in and under Outlot 8, Wedgewood Town Homes Addition, an Addition to the City of Omaha, Douglas County, Nebraska, also known as Mason Plaza and Mayberry Plaza (the "Storm Sewer Area"), the exact location of which shall be more specifically determined and described upon installation thereof by amendment to this Agreement.

(b) Installation, Maintenance and Repair. The Grantee agrees to install, maintain and repair the storm sewer and to furnish the Association the following prior to the commencement of construction:

(1) A complete design drainage analysis upon which the storm sewer design is based.

(2) For approval by the Association - a complete set of construction documents, including:

Plans  
Specifications  
Construction Schedule.

Approval in writing by the Association must be given to each of the foregoing as a condition of this easement grant becoming operable. In the event that such approval is not given by the Association, this easement grant shall be null and void. The specifications will contain, but not be limited to, the following:

a. A dual obligee performance and payment bond in favor of the Association and the Partnership, for the full amount of the construction contract price, shall be required.

b. All construction will be performed in a workmanlike manner and will be performed from commencement to completion in as short a time period as reasonably possible; and the ground surface area subjected to work will be returned to at least the same condition as existed prior to the commencement of work.

c. Abutting property owners will not be denied vehicular access to their garages for a period of more than 24 hours. Each such owner will be notified at least 48 hours prior to blocking his driveway. One lane of traffic will be left clear at all times for emergency vehicular access to all buildings.

(c) Running of Benefits and Burdens. All provisions of this easement grant, including the benefits and burdens, run with the land and are binding upon and inure to the successors and assigns of the parties hereto, including the Association and all future owners of lots within Brandon Park.

### 3. SANITARY SEWER EASEMENT.

(a) Grant of Easement. The Association, as Grantor, does hereby grant to the Partnership, its successors and assigns, as Grantee, as an Easement appurtenant to Brandon Park, and the lots to be developed therein, a perpetual easement to connect the Brandon Park sanitary sewer system to be constructed to the present sanitary sewer system in place, owned and maintained by the Association, the location of such connections to be at the points described in Paragraph F above and shown on Exhibit "A" attached hereto and incorporated herein by reference.

(b) Plans and Specifications. The Grantee agrees to furnish the Association, for its approval prior to the commencement of construction of its sanitary sewer systems, a complete set of construction documents, including:

Plans, specifications and construction schedule.

Specifications shall require that (1) connections be made in a workmanlike manner, (2) all ground surface area subjected to work will be returned to at least the same condition as existed prior to the commencement of work and (3) the Association will be indemnified against any damage or loss which is caused by said construction.

(c) Maintenance and Repair Participation. The Grantee covenants to participate in the maintenance, repair and replacement expense of downstream sanitary sewers within Wedgewood Town Homes Addition on a prorata basis, at the ratio of the number of homes completed in Brandon Park located above the needed work divided by the number of homes completed in Wedgewood Town Homes Addition located above the needed work.

(d) Running of Benefits and Burdens. All provisions of this easement grant, including the benefits and burdens, run with the land and are binding upon and inure to the successors and assigns of the parties hereto, including the Association and all future owners of lots within Brandon Park.

### 4. GENERAL PROVISIONS.

(a) Release of Personal Liability. Notwithstanding anything set forth above, any personal liability upon the Partnership, or any partner thereof, arising out of this Agreement shall terminate at such time as all of the lots within Brandon Park have been conveyed and the improvements on each lot completed. Thereafter, the owners of platted lots in Brandon Park shall be liable to the Association, prorata, for the

obligations of Partnership hereunder, based on the number of lots owned by each in Brandon Park. This provision shall automatically apply to each future owner of a lot in Brandon Park upon recording the title transfer to such owner.

(b) Indemnification. Subject to the provisions in (a) above, Partnership, its successors and assigns, shall indemnify and hold the Association harmless from any and all liabilities, liens, claims or expenses whatsoever in connection with the use by the Partnership, its successors or assigns, of the easements granted hereunder, the utilization of property and/or streets of the Association during the development of Brandon Park or occasioned by the construction activities of the Partnership. Any claim which arose prior to the initial completion of the residential improvements within Brandon Park not presented within one (1) year after completion of all residential improvements shall be deemed barred.

5. NOTICES. All notices required or permitted to be given under this agreement shall be sent by United States mail, postage prepaid, and addressed as follows:

If to Partnership: Brandon Park Partnership  
c/o Mel Strong  
135 South 121st Street  
Omaha, Nebraska 68154

If to Association: Wedgewood Owners' Association, Inc.  
966 Mayberry Plaza  
Omaha, Nebraska 68154

6. PLAN APPROVAL. Any plans, specifications or other documents required to be approved by the Association hereunder shall be deemed approved if notice of disapproval is not given by the Association to the Partnership within ten (10) business days after receipt by the Association of such plans, specifications or other documents.

IN WITNESS WHEREOF, this Agreement has been executed on the date first set forth above.

BRANDON PARK PARTNERSHIP

By Mel Strong  
Partner

WEDGEWOOD OWNERS'  
ASSOCIATION, INC.

By L. R. Stedman  
President

Attest: Don J. Berg  
Secretary

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STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me, a Notary Public, this 14 day of October, 1983, by Neil DeYoung, general partner of Brandon Park Partnership, a Nebraska general partnership, on behalf of said partnership.

CAROLYN S. MARSHALL  
GENERAL NOTARY  
STATE OF NEBRASKA  
My Comm. Exp. April 28, 1987

Carolyn S. Marshall  
Notary Public

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STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me, a Notary Public, this 14 day of October, 1983, by W. P. Stutzman, President of Wedgewood Owners' Association, Inc., a corporation organized under the Nonprofit Corporation Act of the State of Nebraska, on behalf of said association.



RICHARD J. SLABAUGH  
GENERAL NOTARY  
State of Nebraska  
My Comm. Exp. Dec. 16, 1984

Richard J. Slabaugh  
Notary Public

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*Handwritten initials*

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*Handwritten signature: 28 March*