

96-04918

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**SEWER CONNECTION AGREEMENT**

(Private Financing)

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THIS AGREEMENT, made and entered into in La Vista, Nebraska on this 12<sup>th</sup> day of March, 1996, by and between the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska (hereinafter "City"), and WILTHAM PLACE LIMITED PARTNERSHIP, a Nebraska limited partnership, and its assigns (hereinafter referred to as "Developer").

**WITNESSETH:**

WHEREAS, Developer warrants and represents that Developer is the legal and beneficial owner of the land included within the proposed plat attached hereto as Exhibit "A", which parcel of land, hereinafter referred to as the "Subdivision" is within the City's zoning and platting jurisdiction; and

WHEREAS, Developer desires to provide for the flow and handling of sewage collected in or flowing into the sanitary sewer system to be constructed, and has requested the City to permit flowage thereof into the City's sewer system, and to provide for the process of such sewage; and

WHEREAS, City, in consideration of Developer's agreements and covenants herein, is willing to permit such connection; and

WHEREAS, Developer's execution and delivery of this Agreement to City is a condition precedent to City's approval of Developer's Development Plan for the Subdivision.

WHEREAS, the City and Willard I. Friedman, Thama Lee Friedman, Anne Broder, Sue Millward, Howard Friedman and Thomas Friedman, as Developers, entered into a Subdivision and Sewer Connection Agreement dated January 12, 1987 and recorded on January 15, 1987 in Book 60 at Page 141 of the Miscellaneous Records of the Register of Deeds of Sarpy County, Nebraska, relative to Wiltham Place, a subdivision in Sarpy County, Nebraska ("Wiltham Subdivision Agreement"), and as to any matters in the Wiltham Place Subdivision Agreement, which conflict with the terms of this Sewer Connection Agreement, the terms of this Sewer Connection Agreement shall control.

NOW, THEREFORE, in consideration of the mutual agreements and covenants of the parties hereto, it is agreed by and between the parties as follows:

1. **Definitions.** As used herein, the following words and phrases shall have the following meaning:
  - A. "Subdivision" shall mean that area of land to be developed, more specifically described on Exhibit "A" hereto.

- B. "Subdivision Sewer System" shall include all sanitary sewers and appurtenances thereto which are:
- (1) Situated within the boundaries of the Subdivision tract; or
  - (2) Situated outside the boundaries of the Subdivision tract but constructed for purposes of serving land situated within the Subdivision; or
  - (3) Serving as an outfall sewer or other connecting sewer from the boundaries of the Subdivision to the point of connection with the sewer system of the City or any part thereof.
2. Sewer Connection. Subject to the conditions and provisions hereinafter specified, the City hereby grants permission to the Developer to connect the Subdivision Sewer System to the sanitary sewer system of the City at the location designated by City and City agrees to accept and process the sanitary sewage therefrom, provided that the sewage and its discharge are in compliance with this Agreement.
3. Developer's Warranties as to Construction, Operation, Maintenance, Etc. Developer expressly promises, warrants, covenants and agrees:
- A. The Subdivision Sewer System will be constructed and, as required, reconstructed in strict accordance with the plans and specifications and location approved in writing by the City and in strict accordance with the minimum standards and requirements of construction adopted by City and in effect at time of construction; and that upon completion of construction, Developers shall furnish to the City a certificate from their Consulting Engineers so certifying and Developer shall be responsible for inadequacy of plans, designs and specifications, notwithstanding City's approval thereof.
  - B. The Subdivision Sewer System shall be designed and constructed, and as required reconstructed, at the expense of Developer and/or subsequent purchasers of the property located within the Subdivision and at no expense to the City.
  - C. Developer shall cause "As Built Plans," in reproducible form, and specifications for all such improvements that Developer shall have heretofore or hereafter constructed within the area to be developed to be furnished to City, in triplicate, promptly and without cost to the City. all such plans shall be submitted on mylars, except where the City agrees otherwise. Developer shall, prior to commencement of construction of any improvement within the area to be developed, require their Engineers to file with City said Engineers' separate written assurance and agreement that said "As Built Plans" will be prepared and filed with the City upon the completion of each improvement.

- D. All such improvements shall comply with all applicable federal and state laws and regulations in general and with all applicable ordinances and regulations of the City in reference to construction, use, operation and maintenance.
- E. In the event that City's engineers find that there is anything in the construction, maintenance or operation of the Subdivision Sewer System which will, in the opinion of City's engineers, be detrimental to the proper operation of the sewer system of City, or any part thereof, the Developer or its successors in interest will, on notice thereof, promptly correct said defect.
- F. The Subdivision Sewer System shall at all times be properly maintained and kept in good operating order and repair at no cost to City.
- G. At all times all sewage flowing into, passing through or from the Subdivision Sewer System shall be in conformity with the ordinances, regulations and conditions applicable to sewage and sewers within the City.
- H. Developer shall not cause, suffer or permit to be connected to the Subdivision Sewer System any sewer lines or sewers serving, directly or indirectly, any area outside its boundaries, except in strict accordance with prior written consent of City.
- I. That as to any portions of the sanitary sewer system presently situated, or which at time of construction will be situated, on property not owned by Developer, Developer shall, at no expense to City, secure and file of record perpetual easements running with the land, from the owners thereof, providing that the Developer, the City, their employees and agents, shall have the right to enter upon said property to construct, reconstruct, repair, maintain, improve and inspect any sewers and appurtenances thereto situated thereon, and to inspect sewage thereof or therein.
- J. That Developer or its successors in interest shall promptly file all reports, pay all connection fees and sewer use fees, and perform all other obligations undertaken in this Agreement or otherwise required by state statutes or the City's ordinances as may be amended and supplemented from time to time.
4. **Grant of Easements to City.** In consideration of City's entering into this Agreement with Developer on the terms herein provided, Developer agrees that Developer shall, and by these presents does, grant and convey unto City and its successors and assigns:
- A. A perpetual easement and license to transmit through the Subdivision Sewer System sanitary sewage from any area now or hereafter served, directly or indirectly, by the sewer system of the City or any part thereof.

- B. A perpetual easement and license to City, its employees, representatives and agents, to enter upon and into the ingress and egress easements, sewer and sewer easements, for the purpose of surveying, excavating, constructing, reconstructing, replacing, relocating, inspecting, repairing, cleaning out, enlarging, removing, adding to, maintaining, using and/or operating the sewer system serving the land within the Subdivision through which City has been given an easement by Developer, as aforesaid.
- C. A perpetual license to connect the sewer system of the City, or any part thereof, to the Subdivision Sewer System, for which connection or connections City shall not be required to pay any connection fee or connection charge.
5. Covenants Running with the Land. The herein granted easements and licenses to City and the herein contained covenants of perpetual maintenance and repair by Developer shall be perpetual and shall run with the land in perpetuity, unless and until City shall by Resolution of its City Council and written agreement specifically accept maintenance responsibility therefor.
6. Connection Fees, Permits. No connection shall be made to the Subdivision Sewer System until a permit therefor shall have been obtained from City and the appropriate connection fee paid to City. It is expressly agreed as follows:
- A. Any person, firm or entity to whose property the connection is being made shall:
- (1) pay to City the applicable sewer connection fee as prescribed by the ordinances of the City of La Vista in effect at the time of the connection;
  - (2) obtain from the City a permit to so connect, as may be required by the ordinances of the City of La Vista in effect at the time of the connection.
  - (2) The City may require the disconnection of any connection made to the Subdivision Sewer System which shall have been made without the proper permit from the City and payment of connection fees to City.
- B. All connections to the Subdivision Sewer System will be made in accordance with the ordinances, regulations and specifications of City pertaining to sewer connections and any connection not so made may be disconnected at the City's option.
- C. In the event the City disconnects any connection pursuant to this Agreement, the cost of such disconnection shall be payable by the owner of the property upon the demand by the City. If the owner fails to pay such costs within thirty (30) days of notice of receipt thereof, the City shall have the right to levy a lien against the violating property.

7. **Sewerage Treatment Fees.** As compensation for the treatment and disposal of sanitary sewage contributed to the sewer system of City from connections to properties located within the Subdivision, Developer or Developer's successors in interest agree to pay to City any sums which shall be due under the rules and ordinances of the City, and any future amendments, modifications or revisions thereof. In this regard, by way of specification and not by way of limitation, it is mutually agreed that City's temporary inability to receive, transport or treat sewage from the Subdivision Sewer System shall not entitle Developer or their successors or assigns to terminate this Agreement or entitle them to any abatement, refund or reduction of said fee. In the event such temporary inability of City is caused by a defective facility owned by City, City shall use its best efforts to correct such defective facility as soon as practicable.
8. **City's Approval of External Connections.** Upon the written request of City or the joint written request of City and (a) a Sanitary and Improvement District; (b) a sewer district; (c) another person or entity, for permission to connect to the Subdivision Sewer System, the Developer shall allow such connection to be made without charge, provided City Engineer shall have determined that such connection shall not cause an overload of the Subdivision Sewer System.
9. **Developer's Breach.** In the event of a breach of the Developer and/or their successors in interest of any of the terms or conditions hereof or any warranty or covenant herein made, then:
- A. In the case of a breach of any term or condition, warranty or covenant, pertaining to the actual construction, reconstruction, repair, maintenance or operation of the Subdivision Sewer System, Developer and/or their successors in interest shall, within five (5) days from receipt of City's notice of such breach, commence to take corrective measures or such measures as may be reasonably requested by City, and Developer and/or their successors in interest shall pursue with due diligence such corrective measures to completion as soon thereafter as possible to the reasonable satisfaction of City.
- B. In the case of any other type of breach, Developer and/or their successors in interest shall cure said breach to the reasonable satisfaction of City within thirty (30) days from receipt of City's notice of such breach.
- C. In the event any breach of the terms and conditions hereof is not cured within the applicable time and manner afore-prescribed, the City may:
- (1) Upon giving sixty (60) days' notice of City's intent to do so, City may require the Developer and/or their successors in interest to disconnect the offending property or properties themselves from the Subdivision Sewer System or the City may itself cause such disconnection to be made, if at the expiration of said sixty (60) day period the breach is not cured to the reasonable satisfaction of City. Any such disconnection shall be made at the expense of the Developer and/or their successors in interest.

- (2) In the event the breach pertains to the actual construction, reconstruction, repair, maintenance or operation of the Subdivision Sewer System, City shall have the absolute right, at its option, to itself perform the work necessary for the requested corrective measures, or to complete the corrective measures already commenced, as the case may be, in either of which events the parties agree that the City shall have the right to levy a special assessment against the property within the Subdivision for each landowner's proportionate share of such costs and such special assessments shall constitute liens against the various parcels.
- (3) In addition to whatever other remedies are granted to City herein, City may avail itself of all other rights and remedies that City may have pursuant to any statute, law, or rule of law or equity. By way of specification, and not by way of limitation, the parties expressly reserve to City the right to specifically enforce full compliance by Developer of the terms and conditions of this Agreement, including all warranties and covenants and agreements herein made by Developer, by both mandatory and prohibitory injunction.

10. City Not Responsible for Repair, Etc. No provision of this Agreement shall in any event be construed to shift to City any responsibility for the maintenance, repair or reconstruction of the sewer system of the Subdivision or any part thereof, unless and until City shall by Resolution of its City Council and written agreement specifically assume such responsibility.
11. City's Right to Cure, Repair, Etc. In the event any covenant or agreement undertaken herein by Developers is breached or in any way violated, the City shall have the right to take actions necessary to cure such breach or violation and shall have the right to assess the costs thereof against the violating property or properties. Such assessment shall be made by a levy of special assessments against the violating property or properties. Such special assessments shall, in the aggregate, constitute one hundred percent (100%) of the costs of curing such breach or violation. No portion of such costs shall be allocated to the City.
12. Non-Waiver. The failure of City to exercise its right upon any default by Developer shall not constitute a waiver of such rights as to any subsequent default.
13. Covenants Running With Land. The covenants, warranties and representations of Developer and the provisions of this Agreement by Developer to be performed shall constitute covenants running with and against the land and several subdivided parcels thereof. By way of specification, and not by way of limitation, successors in title to the Developer shall include any individual or entity which shall acquire all or any part of Developer's interests in the land located within the Subdivision. Developer hereby warrants and covenants they it will expressly make reference to the existence of this

Agreement in any conveyance of any part of the property located within the Subdivision.

14. **Entire Agreement.** Both parties acknowledge and agree that this written Agreement, including all exhibits hereto, constitutes the entire agreement of the parties and that there are no warranties, representations, terms or conditions other than those set forth herein.

15. **Severability of Provisions.** If any provisions of this Agreement are held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions of this Agreement which can be given effect without the invalid or unconstitutional provision and to this end, each paragraph, sentence and clause of this Agreement shall be deemed severable.

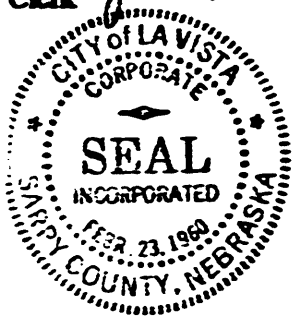
IN WITNESS WHEREOF, we, the parties hereto, by our respective duly authorized agents, hereto affix our signatures and seals at La Vista, Nebraska, the day and year first above written.

ATTEST:

CITY OF LA VISTA, a municipal corporation in the State of Nebraska

*Dorothy McGinnis*  
City Clerk

By *Harold Anderson*  
Mayor



WILTHAM PLACE LIMITED PARTNERSHIP, a Nebraska limited partnership

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

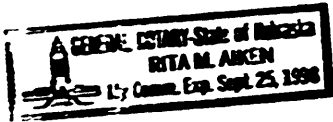
By *Willard I. Friedman*  
Willard I. Friedman, President

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF SARPY     )

On this 12th day of March, 1996, before me, the undersigned, a Notary Public in and for said County, personally came Harold Anderson and Dorothy A. McGinnis, Mayor and City Clerk of the City of La Vista, a municipal corporation in the State

of Nebraska, to me personally known to be the Mayor and City Clerk and identical persons whose names are affixed to the above Sewer Connection Agreement, and acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of said corporation, and that the corporate seal of said City was affixed thereto by its authority.

WITNESS my hand and notarial seal at La Vista, Nebraska, the day and year last above written.

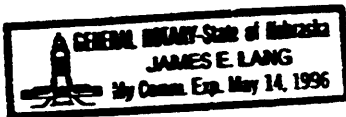


*Rita M. Aiken*  
\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF SARPY    )

On this 8<sup>th</sup> day of March, 1999, before me, the undersigned, a Notary Public in and for said County, personally came Willard I. Friedman, President of Willard Construction Co., Inc., General Partner of Wiltham Place Limited Partnership, a Nebraska limited partnership, to me personally known to be officer and identical person whose name is affixed to the above Sewer Connection Agreement, and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said corporation, and that the corporate seal of said corporation was affixed thereto by its authority.

WITNESS my hand and notarial seal at La Vista, Nebraska, the day and year last above written.



*James E. Lang*  
\_\_\_\_\_  
Notary Public



96-04918 H

# WILTHAM PLACE REPLAT 1

LOTS 1 thru 9, INCLUSIVE  
BEING A PART OF LOTS 2 AND 3, WILHAM PLACE, A SUBDIVISION AS SURVEYED,  
PLATTED AND RECORDED IN SASSY COUNTY, GEORGIA.

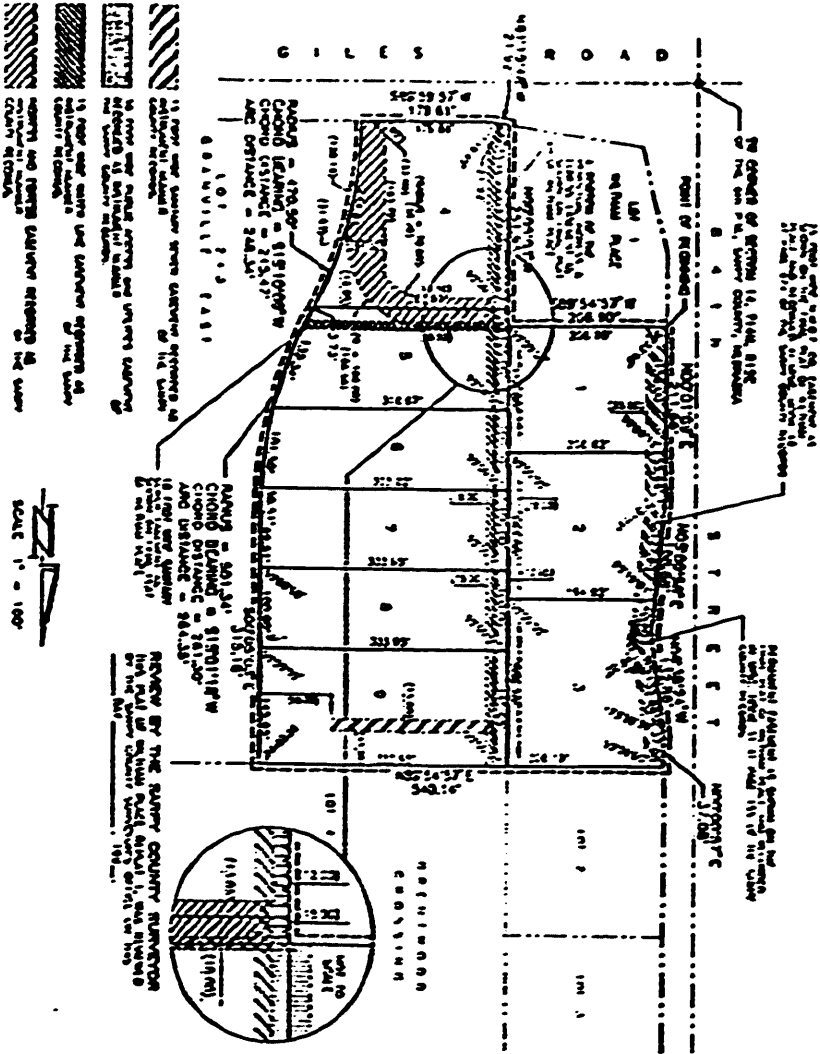


Exhibit "A"

**SUBJECT'S CERTIFICATE**  
 I, the undersigned, a duly licensed and sworn surveyor of the State of Georgia, do hereby certify that I have surveyed and replatted the above described property in accordance with the laws of the State of Georgia, and that the same is a true and correct representation of the actual survey made by me, and that the same has been approved and accepted by the Board of Surveyors of the State of Georgia, and that the same is a true and correct representation of the actual survey made by me, and that the same has been approved and accepted by the Board of Surveyors of the State of Georgia.

**NOTICE**  
 This plat was prepared by me, a duly licensed and sworn surveyor of the State of Georgia, and it is hereby certified that it is a true and correct representation of the actual survey made by me, and that the same has been approved and accepted by the Board of Surveyors of the State of Georgia.

**ACKNOWLEDGMENT OF NOTARY**  
 I, the undersigned, a duly licensed and sworn surveyor of the State of Georgia, do hereby certify that I have surveyed and replatted the above described property in accordance with the laws of the State of Georgia, and that the same is a true and correct representation of the actual survey made by me, and that the same has been approved and accepted by the Board of Surveyors of the State of Georgia.

**APPROVAL OF WILMETH CITY PLANNING COMMISSION**  
 This plat was prepared by me, a duly licensed and sworn surveyor of the State of Georgia, and it is hereby certified that it is a true and correct representation of the actual survey made by me, and that the same has been approved and accepted by the Board of Surveyors of the State of Georgia.

**APPROVAL OF WILMETH CITY COUNCIL**  
 This plat was prepared by me, a duly licensed and sworn surveyor of the State of Georgia, and it is hereby certified that it is a true and correct representation of the actual survey made by me, and that the same has been approved and accepted by the Board of Surveyors of the State of Georgia.

**WILMETH COUNTY TREASURER'S CERTIFICATE**  
 This plat was prepared by me, a duly licensed and sworn surveyor of the State of Georgia, and it is hereby certified that it is a true and correct representation of the actual survey made by me, and that the same has been approved and accepted by the Board of Surveyors of the State of Georgia.

**NOTES**  
 (1) All land shown in this plat is subject to the provisions of the laws of the State of Georgia.  
 (2) All distances are given in feet and fractions of feet.



**THOMPSON, DREESSEN & DORNER, INC.**  
 Consulting Engineers & Land Surveyors

WILTHAM PLACE REPLAT 1	
DATE NOV 27, 1965	FALL PLAT
DRAWN BY LR	
CHECKED BY JC	
SCALE 1" = 100'	

1018-101