

LAW OFFICES OF  
**TIMMERMAN & KRATZER**

216 SOUTH MARKET  
WICHITA, KANSAS 67202  
TELEPHONE (316) 262-1847

LEWIN E. TIMMERMAN  
JOHN L. KRATZER, JR.

November 19, 1981

Ms. Louise Olivarez, Senior Planner  
Metropolitan Area Planning Department  
City Hall - 10th Floor  
455 North Main Street  
Wichita, Kansas 67202

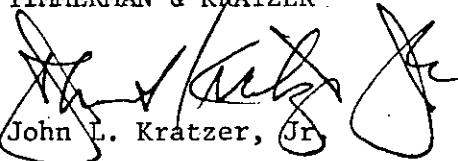
Re: Retention Pond in Vilm Gardens 2nd Addition

Dear Ms. Olivarez:

I am enclosing herein a copy of a proposed Maintenance Agreement regarding the above retention pond. Would you please advise if the same will be acceptable to satisfy option number 3 set forth in your letter of October 21, 1981, to Mr. Charles L. Stein.

Very truly yours,

TIMMERMAN & KRATZER

  
John L. Kratzer, Jr.

JLK:bk  
enclosure

cc: Mr. Charles L. Stein  
6057 South Seneca  
Wichita, Kansas 67217

**RECEIVED**

NOV 20 1981

METROPOLITAN PLANNING  
ROUTE  \_\_\_\_\_  
 \_\_\_\_\_

RMB

MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1981, by and between ERROL WAYNE WILLIAMS and CHARLES L. STEIN, "First Parties," and the CITY OF WICHITA, "Second Party."

WHEREAS, Second Party is the owner of a Floodway Easement over, across and upon the following described real property, to wit:

Lots 3 through 7, inclusive, Block E, Vilm Gardens 2nd Addition, Wichita, Sedgwick County, Kansas,

said easement being for the sole purpose of constructing a pond that will store storm water runoff from the surrounding areas, and

WHEREAS, as a condition precedent to the approval of adjoining subdivision development by First Parties, Second Party has required First Parties to assume responsibility for the upkeep, care and maintenance of the retention pond located upon said Floodway Easement;

NOW THEREFORE, in consideration of the premises, and for other valuable considerations, the receipt of which is herewith acknowledged, the parties hereto agree as follows:

1. First Parties herewith assume full responsibility for the upkeep, care and maintenance of the retention pond located upon the above-described real property. Such obligation for upkeep, care and maintenance shall include, but not be limited to, keeping the banks and any ditches and swales mowed and free from debris, as well as any other upkeep, care and maintenance required in order to maintain the retention pond in a first class condition.
2. In the event that First Parties should fail to fulfill their obligations hereunder, the City of Wichita may serve written notice upon First Parties and the owners of the residential lots hereinafter described setting forth the manner in which First Parties have failed to fulfill their obligation. Such notice shall include a statement describing the obligation that has not been fulfilled and shall grant sixty (60) days within which First Parties may fulfill the obligation. If said obligation is not fulfilled within the time specified, Second Party, in order to preserve the taxable values of the properties within said additions and to prevent the Floodway Easement and retention pond thereon from becoming nuisances, may enter thereon and perform the obligations listed in the notice. All costs incurred by Second Party in carrying out the obligations of First Parties shall be assessed equally among all the residential lots within Lots 4 through 6, inclusive, Block A, Lots 4 through 9, inclusive, Block B, Lots 1 through 7, inclusive, Block C, Lots 1 and 2, Block E, in Vilm Gardens 2nd Addition, Wichita, Sedgwick County, Kansas, and Lots 1 through 3, inclusive, Block A, Stein 2nd Addition, Wichita, Sedgwick County, Kansas, and Lots 1 through 3, inclusive, Block A, Stein Fifth Addition, Wichita, Sedgwick County, Kansas, and may be established as liens thereon in the same manner as special assessments. Should First Parties, upon receipt of said notice, feel that the obligations listed in said notice are not proper for any reason, First Parties may, within sixty (60) days from the date of said notice apply for a hearing before the Board of City Commissioners of the City of Wichita to appeal said notice and any further proceedings under the notice shall be delayed pending the outcome of any proceedings on appeal.
3. In the event storm sewers or other means of handling storm water runoff are provided in said area, and the Floodway Easement is vacated, this Maintenance Agreement shall become null and void.
4. This agreement shall be binding upon the heirs, devisees, successors and assigns of the parties to this agreement.

IN WITNESS WHEREOF, the undersigned have caused this agreement to be executed the day and year first above written.

\_\_\_\_\_  
ERROL WAYNE WILLIAMS

\_\_\_\_\_  
CHARLES L. STEIN

STATE OF KANSAS, SEDGWICK COUNTY, ss.:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1981, by Errol Wayne Williams.

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

STATE OF KANSAS, SEDGWICK COUNTY, ss.:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1981, by Charles L. Stein.

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

FLOODWAY EASEMENT

THIS EASEMENT made this 7th day of October, 1981,

by and between Wayne Williams, Inc., Erroll Wayne Williams, Pres., of the first part and the City of Wichita on the second part.

WITNESSETH: That the said first party, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the said second party a perpetual right-of-way and easement for the purpose of constructing, maintaining, and repairing a drainage system, over, along and under the following described real estate situated in Sedgwick County, Kansas; to wit:

Lots 3 through 7 in Block E, Vilm Gardens 2nd Addition to Wichita, Sedgwick County, Kansas.

And said second party is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such drainage system.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first written.

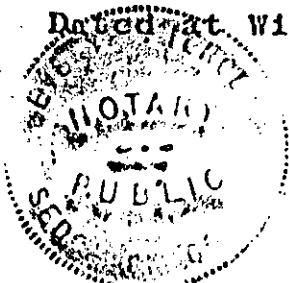
Wayne Williams, Inc.
Errol Wayne Williams, President

STATE OF KANSAS)
SEDGWICK COUNTY) SS

Personally appeared before me, a notary public, in and for the County and State aforesaid Errol Wayne Williams

to me personally known to be the same person who executed the foregoing instrument of writing and said person duly acknowledged the execution thereof.

Dated at Wichita, Kansas, this 13th day of October, 1981.



Paula Pierce
Notary Public

My Commission Expires April 11, 1984

FLOODWAY EASEMENT

505 #193  
468-76-245-80959-000-000-00  
Approved by Board of Commissioners  
this DEC 8 1981

THIS EASEMENT made this 13th day of October, 1981

FILE 511 PAGE 1225

by and between Wayne Williams, Inc., Erroll Wayne Williams, Pres., of the first part and the City of Wichita on the second part.

WITNESSETH: That the said first party, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the said second party perpetual right-of-way and easement for the purpose of constructing, maintaining, and repairing a drainage system, over, along and under the following described real estate situated in Sedgwick County, Kansas; to wit:

Lots 3 through 7 in Block E, Vilm Gardens 2nd Addition to Wichita, Sedgwick County, Kansas.

MICROFILMED OF RECORD

STATE OF KANSAS  
SEDGWICK COUNTY  
FILED FOR RECORD AT  
8:00 P.M.

JAN 12 1982  
5 68464

NO. BETTE F. MCCART  
REGISTER OF DEEDS

Lat Kettler Deputy

And said second party is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such drainage system.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first written.

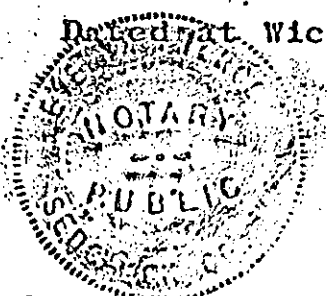
Wayne Williams, Inc.  
*Erroll Wayne Williams*  
Erroll Wayne Williams, President

STATE OF KANSAS)  
SEDGWICK COUNTY) SS

Personally appeared before me, a notary public, in and for the County and State aforesaid Erroll Wayne Williams

to me personally known to be the same person who executed the foregoing instrument of writing and said person duly acknowledged the execution hereof.

Dated at Wichita, Kansas, this 13th day of October, 1981.



*Evelyn Pierce*  
Notary Public  
EVELYN PIERCE

Commission Expires April 11, 1984

5.00 City Clerk

MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this 24th day of September, 1982, by and between ERROL WAYNE WILLIAMS and CHARLES L. STEIN, "First Parties," and the CITY OF WICHITA, "Second Party."

WHEREAS, a floodway easement has been granted to Second Party over, across and upon the following described real property, to wit:

Lots 3 through 7, inclusive, Block E, Vilm Gardens 2nd Addition, Wichita, Sedgwick County, Kansas,

said easement being for the sole purpose of constructing a pond that will store storm water runoff from the surrounding areas, and

WHEREAS, as a condition precedent to the approval of adjoining subdivision development by First Parties, Second Party has required First Parties to assume responsibility for the upkeep, care and maintenance of the retention pond located upon said floodway easement;

NOW THEREFORE, in consideration of the premises, and for other valuable considerations, the receipt of which is herewith acknowledged, the parties hereto agree as follows:

1. First Parties herewith assume full responsibility for the upkeep, care and maintenance of the retention pond located upon the above-described real property. Such obligation for upkeep, care and maintenance shall include, but not be limited to, keeping the banks and any ditches and swales mowed and free from debris, as well as any other upkeep, care and maintenance required in order to maintain the retention pond in a first-class condition.

2. In the event that First Parties should fail to fulfill their obligations hereunder, the City of Wichita may serve written notice upon First Parties and the owners of the residential lots hereinafter described setting forth the manner in which First Parties have failed to fulfill their obligation. Such notice shall include a statement describing the obligation that has not been fulfilled and shall grant thirty (30) days within which First Parties may fulfill the obligation. If said obligation is not fulfilled within the time specified, Second Party, in order to preserve the taxable values of the properties within said additions and to prevent the floodway easement and retention pond thereon from becoming nuisances, may enter thereon and perform the obligations listed in the notice. All costs incurred by Second Party in carrying out the obligations of First Parties shall be assessed equally among those residential lots now owned by First Parties in Vilm Gardens 2nd Addition, Stein 2nd Addition, and Stein Fifth Addition, all in Wichita, Sedgwick County, Kansas, which drain into said retention pond, and may be established as liens thereon in the same manner as special assessments. The lots owned by First Parties which may be subjected to said liens are identified as follows:

- |  |   |                                    |
|--|---|------------------------------------|
| Lots 4, 5 and 6, Block A                   | ) |                                    |
| Lots 4, 5, 6, 7, 8 and 9, Block B          | ) |                                    |
| Lots 1, 2, 3, 4, 5, 6 and 7, Block C       | ) | Errol Wayne Williams               |
| Lots 3, 4, 5, 6 and 7, Block E             | ) | <i>and/or Charles D. Shepard ?</i> |
| Vilm Gardens 2nd Addition                  | ) |                                    |
| <del>Lots 1, 2 and 3, Block A,</del>       | ) |                                    |
| <del>Stein 2nd Addition</del>              | ) | Charles L. Stein, <i>et ux</i>     |
| Lots 1, 2 and 3, <sup>and 4</sup> Block A, | ) |                                    |
| Stein Fifth Addition                       | ) | Charles L. Stein, <i>et ux</i>     |
| (A replat of <del>Lot 4</del> , Block A,   | ) |                                    |
| Stein 2nd Addition)                        | ) |                                    |

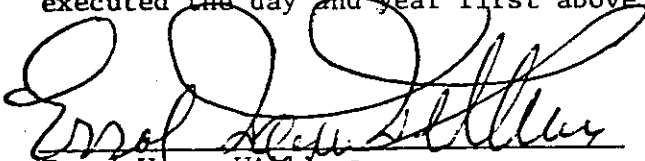
Should First Parties, upon receipt of said notice, feel that the obligations listed in said notice are not proper for any reason, First Parties may, within thirty (30)

days from the date of said notice apply for a hearing before the Board of City Commissioners of the City of Wichita to appeal the same and any further proceedings under the notice shall be delayed pending the outcome of any proceedings on appeal.

3. In the event storm sewers or other means of handling storm water runoff are provided in said area, and the floodway easement is vacated, this Maintenance Agreement shall become null and void.

4. This agreement shall be binding upon the heirs, devisees, successors and assigns of the parties to this agreement.

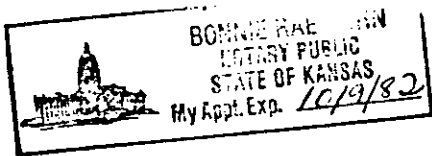
IN WITNESS WHEREOF, the undersigned have caused this agreement to be executed the day and year first above written.

  
Errol Wayne Williams

  
Charles L. Stein

STATE OF KANSAS, SEDGWICK COUNTY, ss:

The foregoing instrument was acknowledged before me this 24th day of September, 1982, by Errol Wayne Williams.



  
Notary Public

STATE OF KANSAS, SEDGWICK COUNTY, ss:

The foregoing instrument was acknowledged before me this 24th day of September, 1982, by Charles L. Stein.



  
Notary Public

MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this 4th day of November, 1982, by and between ERROL WAYNE WILLIAMS and CHARLES T. STEIN, "First Parties," and the CITY OF WICHITA, "Second Party."

WHEREAS, a floodway easement has been granted to Second Party over, across and upon the following described real property, to wit:

Lots 3 through 7, inclusive, Block E, Vilm Gardens 2nd Addition, Wichita, Sedgwick County, Kansas,

said easement being for the sole purpose of constructing a pond that will store storm water runoff from the surrounding areas, and

WHEREAS, as a condition precedent to the approval of adjoining subdivision development by First Parties, Second Party has required First Parties to assume responsibility for the upkeep, care and maintenance of the retention pond located upon said floodway easement;

NOW THEREFORE, in consideration of the premises, and for other valuable considerations, the receipt of which is herewith acknowledged, the parties hereto agree as follows:

1. First Parties herewith assume full responsibility for the upkeep, care and maintenance of the retention pond located upon the above-described real property. Such obligation for upkeep, care and maintenance shall include, but not be limited to, keeping the banks and any ditches and swales mowed and free from debris, as well as any other upkeep, care and maintenance required in order to maintain the retention pond in a first-class condition.

2. In the event that First Parties should fail to fulfill their obligations hereunder, the City of Wichita may serve written notice upon First Parties and the owners of the residential lots hereinafter described setting forth the manner in which First Parties have failed to fulfill their obligation. Such notice shall include a statement describing the obligation that has not been fulfilled and shall grant thirty (30) days within which First Parties may fulfill the obligation. If said obligation is not fulfilled within the time specified, Second Party, in order to preserve the taxable values of the properties within said additions and to prevent the floodway easement and retention pond thereon from becoming nuisances, may enter thereon and perform the obligations listed in the notice. All costs incurred by Second Party in carrying out the obligations of First Parties shall be assessed equally among those residential lots now owned by First Parties in Vilm Gardens 2nd Addition, Stein 2nd Addition, and Stein Fifth Addition, all in Wichita, Sedgwick County, Kansas, which drain into said retention pond, and may be established as liens thereon in the same manner as special assessments. The lots owned by First Parties which may be subjected to said liens are identified as follows:

Lots 4, 5 and 6, Block A	)	
Lots 4, 5, 6, 7, 8 and 9, Block B	)	Wayne Williams, Inc.
Lots 1, 2, 3, 4, 5, 6 and 7, Block C	)	Errol Wayne Williams,
Lots 3, 4, 5, 6, and 7, Block E	)	President
Vilm Gardens 2nd Addition	)	

Lots 1, 2 and 3, Block A,  
Stein 2nd Addition )

Charles L. Stein (Husband and  
Helen L. Stein Wife)

Lots 1, 2, 3 and 4 )  
Stein Fifth Addition )  
(A Replat of Lots 1, 2 and 3 )  
Block A, Stein 2nd Addition )

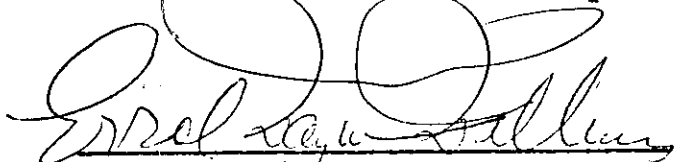
Charles L. Stein (Husband and  
Helen L. Stein Wife)

Should First Parties, upon receipt of said notice, feel that the obligations listed in said notice are not proper for any reason, First Parties may, within thirty (30) days from the date of said notice apply for a hearing before the Board of City Commissioners of the City of Wichita to appeal the same and any further proceedings under the notice shall be delayed pending the outcome of any proceedings on appeal.

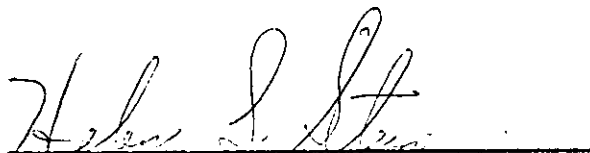
3. In the event storm sewers or other means of handling storm water runoff are provided in said area, and the floodway easement is vacated, this Maintenance Agreement shall become null and void.

4. This agreement shall be binding upon the heirs, devisees, successors and assigns of the parties to this agreement.

IN WITNESS WHEREOF, the undersigned have caused this agreement to be executed the day and year first above written.

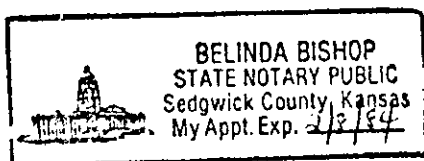
  
Wayne Williams, Inc.  
Errol Wayne Williams, President

  
Charles L. Stein

  
Helen L. Stein

STATE OF KANSAS, SEDGWICK COUNTY, ss:

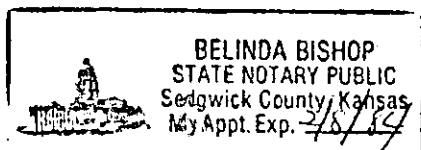
The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of November, 1982, Wayne Williams, Inc., by Errol Wayne Williams, President.



  
Notary Public

STATE OF KANSAS, SEDGWICK COUNTY, ss:

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of November, 1982, by Charles L. Stein, and Helen L. Stein, Husband and Wife.



  
Notary Public

March 25, 1982 *MSJ*

## METROPOLITAN AREA PLANNING DEPARTMENT

John Dekker, Director of Law

TO

Louise Olivarez, Senior Planner

FROM

Retention pond maintenance agreement associated with  
 SUBJECT Stein 5th Addition

RECEIVED

MAR 26 1982

Dept. of Engineering

Attached is a copy of a maintenance agreement for a retention pond prepared by Jack Kratzer for Messrs. Stein and Williams. This agreement was a requirement of approval of the proposed Stein 5th Addition plat. There is a long history involved with this particular retention pond. I will outline briefly what has occurred.

In 1979, the plats of Stein 1st and 2nd Additions were approved and a homeowners' association was formed to maintain the retention pond which was to be constructed on a portion of one of the lots (designated as a floodway). Before the pond was constructed, arrangements were made with the Engineering Department to locate the pond further south on some Vilm Gardens lots so that it would provide drainage for Vilm Gardens, as well as the Stein Additions. Wayne Williams is the owner of the Vilm Gardens lots draining into the pond. Maintenance covenants for this new pond were drafted but never recorded. Many of the lots subjected to those covenants were subsequently sold. The retention pond in Vilm Gardens was constructed in early 1981.

In July, 1981, Mr. Stein submitted a replat of the original Stein Addition lot which had the floodway on it. The replat, of course, proposed to vacate the floodway. As a condition of approval of this replat (Stein 5th Addition), Mr. Stein was required to submit acceptable covenants for maintaining the newly-built pond in Vilm Gardens.

The attached maintenance agreement is the latest version to be submitted. It provides for Mr. Stein and Mr. Williams and their heirs to maintain the pond. All attempts at getting these two men to form a homeowners' association to provide the maintenance have been unsuccessful.

Would you please review the proposed maintenance agreement and let me know if it is acceptable? I have attached a map of the area showing the locations of the existing pond (and floodway), the original floodway, and the lots which drain into the pond. Also shown are the lots no longer owned by Mr. Stein or Mr. Williams. If additional information is needed, please call me at Centrex 4421.

*Louise Olivarez*  
 Louise Olivarez  
 Senior Planner

APPROVED:

*Robert A. Lakin*  
 Robert A. Lakin  
 Director of Planning

LO:bh

cc: R. W. Bruggeman, Director of Engineering

*MSJ*  
*RWB*

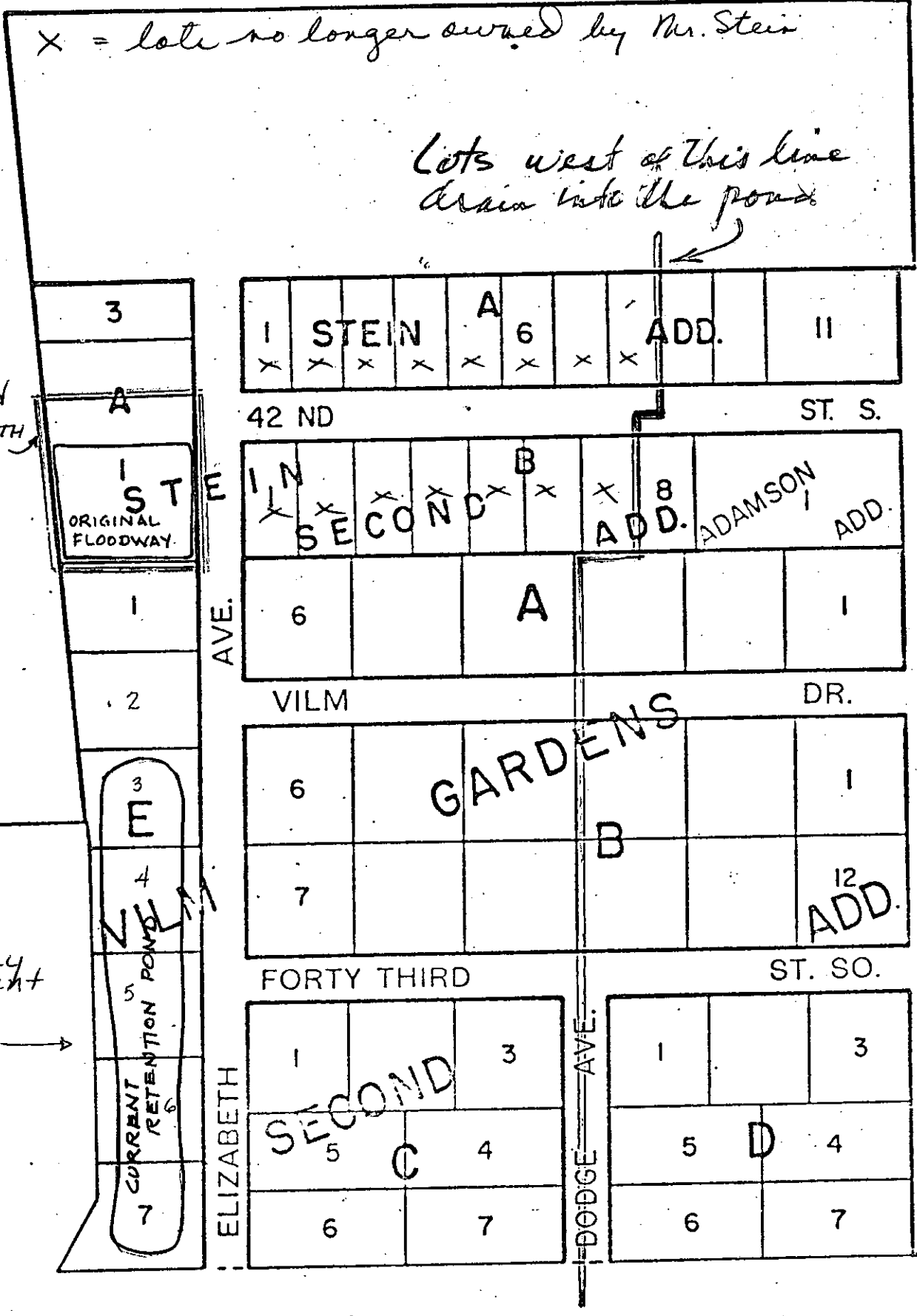
X = lots no longer owned by Mr. Stein

Lots west of this line  
drain into the pond

Proposed  
STEIN 5TH

ADD.

(Floodway  
Easement  
on Lots  
3-7)



ORIGINAL FLOODWAY

CURRENT RETENTION POND

1 STEIN 6 ADD. II

1 STEIN 6 ADD. II

6 A 1

6 B 1

6 B 1

1 3

5 D 4

6 7

1 18

1 18

1 18

1 18

ST. SO.

SENECA

MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this 19th day of March, 1982, by and between ERROL WAYNE WILLIAMS and CHARLES L. STEIN, "First Parties," and the CITY OF WICHITA, "Second Party."

WHEREAS, a Floodway Easement has been granted to Second Party over, across and upon the following described real property, to wit:

Lots 3 through 7, inclusive, Block E, Vilm Gardens 2nd Addition, Wichita, Sedgwick County, Kansas,

said easement being for the sole purpose of constructing a pond that will store storm water runoff from the surrounding areas, and

WHEREAS, as a condition precedent to the approval of adjoining subdivision development by First Parties, Second Party has required First Parties to assume responsibility for the upkeep, care and maintenance of the retention pond located upon said Floodway Easement;

NOW THEREFORE, in consideration of the premises, and for other valuable considerations, the receipt of which is herewith acknowledged, the parties hereto agree as follows:

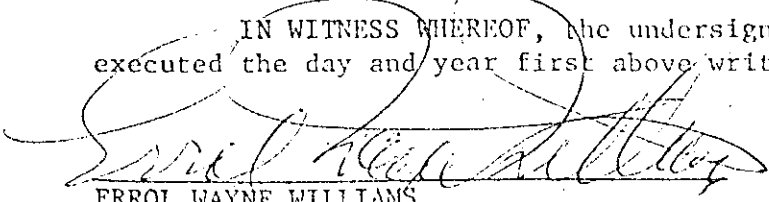
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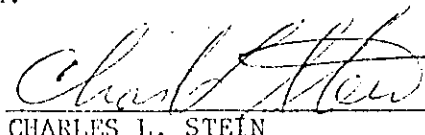
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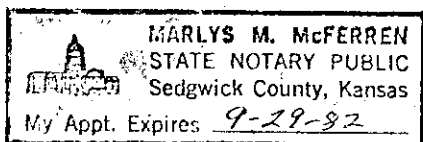
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ERROL WAYNE WILLIAMS

  
CHARLES L. STEIN

STATE OF KANSAS, SEDGWICK COUNTY, ss.:

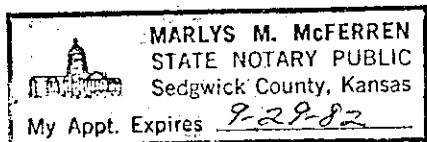
The foregoing instrument was acknowledged before me this 19th day of  
March, 1982, by Errol Wayne Williams.



*Marlys M. McFerren*  
Notary Public  
Marlys M. McFerren

STATE OF KANSAS, SEDGWICK COUNTY, ss.:

The foregoing instrument was acknowledged before me this 19th day of  
March, 1982, by Charles L. Stein.



*Marlys M. McFerren*  
Notary Public  
Marlys M. McFerren

MAINTENANCE AGREEMENT

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Lots 4, 5 and 6, Block A	)	
Lots 4, 5, 6, 7, 8 and 9, Block B	)	Wayne Williams, Inc.
Lots 1, 2, 3, 4, 5, 6 and 7, Block C	)	Errol Wayne Williams,
Lots 3, 4, 5, 6, and 7, Block E	)	President
Vilm Gardens 2nd Addition	)	

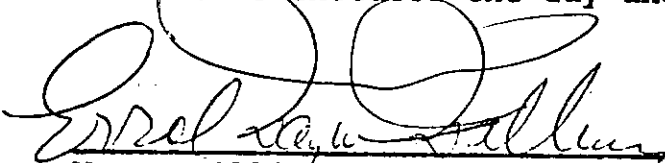
Lots 1, 2 and 3, Block A, Stein 2nd Addition	)	Charles L. Stein	(Husband and
	)	Helen L. Stein	Wife)
Lots 1, 2, 3 and 4 Stein Fifth Addition (A Replat of Lots 1, 2 and 3 Block A, Stein 2nd Addition	)	Charles L. Stein	(Husband and
	)	Helen L. Stein	Wife)

Should First Parties, upon receipt of said notice, feel that the obligations listed in said notice are not proper for any reason, First Parties may, within thirty (30) days from the date of said notice apply for a hearing before the Board of City Commissioners of the City of Wichita to appeal the same and any further proceedings under the notice shall be delayed pending the outcome of any proceedings on appeal.

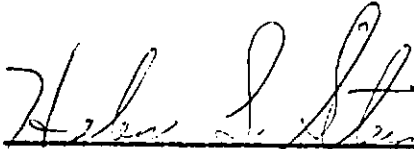
3. In the event storm sewers or other means of handling storm water runoff are provided in said area, and the floodway easement is vacated, this Maintenance Agreement shall become null and void.

4. This agreement shall be binding upon the heirs, devisees, successors and assigns of the parties to this agreement.

IN WITNESS WHEREOF, the undersigned have caused this agreement to be executed the day and year first above written.

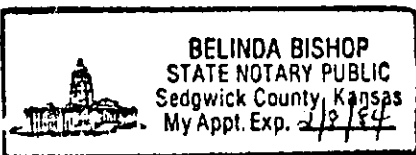
  
 Wayne Williams, Inc.  
 Errol Wayne Williams, President

  
 Charles L. Stein

  
 Helen L. Stein

STATE OF KANSAS, SEDGWICK COUNTY, ss:

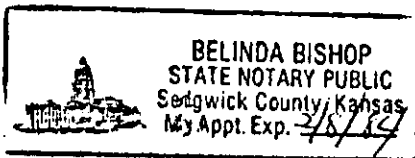
The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of November, 1982, Wayne Williams, Inc., by Errol Wayne Williams, President.



  
 Notary Public

STATE OF KANSAS, SEDGWICK COUNTY, ss:

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of November, 1982, by Charles L. Stein, and Helen L. Stein, Husband and Wife.



  
 Notary Public