

After recording please return to: ROBERT L. FREEMAN, ESQ.  
509 S. 17th St. 500 Energy Plaza  
Omaha, NE 68102

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT is made and entered into this 19th day of August, 1993, by and between CHILDRENS MEMORIAL HOSPITAL FOUNDATION ("Grantor") and SANITARY AND IMPROVEMENT DISTRICT NO. 367 OF DOUGLAS COUNTY, NEBRASKA ("Grantee").

1. **Easement Areas.** Grantor is the owner of the real estate described on Exhibit "A" attached hereto (the "Permanent Easement Area") and the real estate described on Exhibit "B" attached hereto (the "Temporary Easement Area", and with the Permanent Easement Area, the "Easement Areas").

2. **Sewer System.** Grantee covenants and agrees to construct and/or install upon the Permanent Easement Area, at Grantee's cost, a sanitary sewer system and related improvements and landscaping (the "Sewer System"), all as specified in, and in accordance with, those certain plans and specifications prepared by Elliott & Associates (civil and structural) and Ferris Engineering (mechanical and electrical) more particularly described on Exhibit "C" attached hereto (the "Plans and Specifications"). Grantee agrees to fully complete the construction and/or installation of the Sewer System in accordance with the Plans and Specifications and this Agreement on or before April 15, 1994, free and clear of all liens, claims and encumbrances. Grantee acknowledges and agrees that the Plans and Specifications provide for stub-ins to the Sewer System which shall benefit other real estate owned by Grantor and as more fully hereinafter set forth.

3. **Temporary Easement.** Subject to the terms and conditions set forth herein, Grantor grants to Grantee a nonexclusive temporary construction easement (the "Temporary Easement") over the Temporary Easement Area for, and only for, the purpose of Grantee's construction and installation of the Sewer System within the Permanent Easement Area.

4. **Permanent Easement.** Subject to the terms and conditions set forth herein, Grantor grants to Grantee a nonexclusive permanent easement (the "Permanent Easement") over the Permanent Easement Area for, and only for, the purpose of operating, maintaining, repairing and replacing the Sewer System.

5. Title and Condition. Grantee's use of the Easement Areas as permitted herein is and shall be subject to the existing state of title, including any and all other easements now or hereafter existing across or through the Easement Areas, and all covenants, restrictions and conditions of record, any state of facts which an accurate survey or physical inspection of the Easement Areas may show, and all present and future laws which may be applicable to the Easement Areas or to the use, operation, maintenance, repair or replacement of the Sewer System, and including but not limited to, all zoning laws, ordinances and buildings codes (collectively the "Legal Requirements"). Without limiting the foregoing, Grantee acknowledges that Grantor has not made and will not make, and shall not ever be deemed to have made, any warranty or representation, express or implied, with respect to any of the Easement Areas or the Sewer System, including any warranty or representation as to fitness, design, condition for any particular use or purpose, value, quality of material or workmanship, existence of any defect, compliance with the Plans and Specifications, merchantability, durability or operation, and all risks incident thereto shall be borne by Grantee.

6. Termination. Notwithstanding the foregoing, the Temporary Easement shall terminate and be of no force or effect on the thirtieth day following completion of the Sewer System. The Temporary Easement and the Permanent Easement shall terminate and be of no force or effect if the Sanitary Sewer is not fully completed by Grantee in accordance with the Plans and Specifications and this Agreement on or before April 15, 1994. The parties specifically agree that the provisions of paragraphs 8, 9, 10 and 12 shall survive any termination of this Easement Agreement.

7. Consideration. In consideration of the grant of the Temporary Easement and the Permanent Easement, Grantee hereby pays to Grantor the sum of \$16,445.00, receipt of which is hereby acknowledged by Grantor; such sum shall be nonrefundable notwithstanding any termination of the Temporary Easement and the Permanent Easement as provided herein.

8. Grantor Improvements. Upon completion of construction of the Sewer System, Grantor, its successors and assigns shall have the right to construct or cause to be constructed upon or within the Easement Areas, or grant easements, licensors or other rights respecting the Easement Areas so as to permit such roads, streets, parking areas or other pavement or concrete improvements, any gas, electric, water, storm sewer, telephone, cable, or any other type of utility lines, pipes, conduits or systems, and such landscaping as Grantor may deem necessary or appropriate in its sole discretion (collectively the "Grantor Improvements"). Any construction of Grantor Improvements shall be effected so as not to unreasonably interfere with the normal operation of the Sewer System. Upon the termination of the Temporary Easement, Grantor, its successors and assigns may construct or cause to be constructed upon that portion of the Temporary Easement Area not included within the Permanent Easement Area any buildings, structures, fixtures or other improvements, including any exterior improvements, as Grantor may deem necessary or appropriate in its sole discretion.

9. Maintenance and Repair. Grantee shall at all times maintain the Sewer System in good repair, order and condition. Without limiting the foregoing, Grantee shall promptly make all alterations, repairs or replacements of every kind and nature, whether foreseen or unforeseen, which may be required to be made upon or in connection with the Sewer System in order to keep the Sewer System fit for its intended use. Grantor, its successors and assigns shall not be required to make any alterations, repairs or replacements, whether foreseen or unforeseen, or to maintain any of the Sewer System in any way.

10. Relocation. Grantor, its successors and assigns shall have the right at any time to relocate, at its cost, all or any portion of the Sewer System provided any such relocation shall be effected so as not to unreasonably interfere with the normal operation of the Sewer System and provided that Grantor (or its successors and assigns) shall grant or cause to be granted to Grantee a permanent non-exclusive easement upon terms consistent herewith over the property in which the Sewer System is relocated.

11. Construction Covenants. In connection with construction, operation, repair, maintenance and/or replacement of the Sewer System, Grantee covenants and agrees that, prior to April 15, 1994:

- (a) prior to commencement of the construction, Grantee shall obtain the written consent of any other holder(s) of easements on, across or through the Easement Areas to the construction of the Sewer System, all in form acceptable to Grantor;
- (b) the Sewer System shall be constructed and installed by Grantee in a good and workmanlike manner and in accordance with all legal requirements;
- (c) all embankment placed within fill areas shall be placed in accordance with Section 203.04 entitled "Compaction of Embankments" of the City of Omaha Specifications for Public Works Construction (1989 Ed.) effecting a ninety percent maximum density as determined by ASTM D698;
- (d) immediately following completion of construction of the Sewer System, Grantee shall seed the Easement Areas in accordance with Section 803 of the City of Omaha Specifications for Public Works Construction (1989 Ed.) using Type "B" mix and applied at a minimum rate of 200 pounds pure live seed per acre;
- (e) for each existing tree four inches in diameter or smaller damaged or destroyed by Grantee as a result of, or in connection with, the construction of the Sewer System, Grantee shall plant a one inch to two inch diameter tree of like species at a location designated by Grantor and for each existing tree greater than four inches in diameter damaged or destroyed by Grantee as a result of, or in connection with, the construction of the Sewer System, Grantee shall plant three (3) one inch to two inch diameter trees of like species at locations designated by Grantor;
- (f) Grantee shall exactly replace (using identical products and quality) any chain link fence or other fencing removed or damaged by Grantee as a result of, or in connection with, its construction of the Sewer System, including but not limited to, replacement of all below grade concrete; and
- (g) Grantee shall erect and continuously maintain a well-staked snow fence during construction of the Sewer System and shall, upon completion of construction, remove such snow fence as well as all other trash, rubbish, debris and construction

materials from the Easement Areas and any adjacent property of Grantor.

- (h) Grantor (and its successors and assigns) shall have the right to use the Sewer System to tie into and make appropriate discharges into the Sewer System; and to have its discharges occupy and use the Sewer System without any further consents, licenses, easements or other permissions being required and without any fees, costs or charges to Grantee of any kind; and Grantee (and its successors and assigns) covenant and agree that they shall execute any documents and take such further actions as shall be reasonably required to enable Grantor to enjoy the benefits of free use of the Sewer System as set forth in this paragraph.
- (i) Grantee shall be responsible for, and timely remedy, any problems related to erosion which are to any extent caused by Grantee or its agents. Grantee shall take all steps reasonably required to alleviate erosion problems during the construction of the Sewer System, and to completely eliminate such problems following completion of the Sewer System (except to the extent any such erosion problems existing prior to the date of this Agreement).

12. Indemnification. Grantee agrees to pay, protect, indemnify, save and hold harmless Grantor and its successors and assigns from and against any and all liabilities, losses, damages, penalties, costs and expenses (including all reasonable attorney fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever, howsoever caused, arising from:

- (a) any matter pertaining to the use of the Easement Areas by Grantee or the operation, condition, design, construction, maintenance, repair or replacement of the Sewer System by Grantee, including any injury to or death of any person or any loss of or damage to any property;
- (b) any violation by Grantee of any provision of this Agreement; or
- (c) the deposit, storage, disposal, burial, dumping, injecting, spilling, leaking or any other placement or release by Grantee in or on the Easement Areas of any hazardous or toxic substance, matter or waste as defined in any law, rule, regulation, statute or ordinance.

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In case any action or proceeding is brought against Grantor by reason of any such claim, Grantee covenants upon notice from Grantor to resist or defend such action or proceeding by counsel reasonably satisfactory to Grantor, and Grantor will cooperate and assist in the defense of such action or proceeding if reasonably requested to do so by Grantee. The obligations of Grantee under this paragraph shall survive any termination of this Agreement.

13. **Default.** The occurrence of any one or more of the following shall constitute an "Event of Default" under this Agreement:

- (a) any failure by Grantee to complete the construction and/or installation of the Sewer System in accordance with the Plans and Specifications and this Agreement and fulfill each of the covenants of paragraph 11 on or before April 15, 1994;
- (b) any failure by Grantee to duly perform and observe, or a violation or breach of, any of the provisions hereof not otherwise specifically described in this paragraph, and the continuation of such failure, violation or breach for a period of thirty (30) days after written notice from Grantor to Grantee (provided that if the nature of such failure, violation or breach is such that it cannot be cured within such thirty day period, then such failure, violation or breach shall not be considered an Event of Default if Grantee commences the cure of same within such thirty day period and thereafter proceeds diligently and in good faith with such cure to the satisfaction of Grantor).

Upon the occurrence of an Event of Default, Grantor shall have the right, at its option and in addition to any and all other remedies allowed by law, to terminate the Temporary Easement and the Permanent Easement and all rights of Grantee to the Easement Areas.

14. **Time of Performance.** Grantee acknowledges that time is of the essence in the performance of its obligations under this Agreement. No failure of Grantor to insist at any time upon strict performance of any provision of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall be construed as a waiver, modification or relinquishment thereof.

15. **Notices.** All notices, demands, requests, approvals, consents, offers, statements, and other instruments of communication required or permitted to be given pursuant to the provisions of

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this Agreement, shall be in writing and shall be deemed to have been given when delivered in person, by Federal Express or other 24-hour delivery service, or three (3) business days after being deposited in the United States mail by certified mail, return receipt requested, postage prepaid, addressed to the other party at its address hereinbelow set forth:

IF TO GRANTEE: Sanitary and Improvement District  
No. 367 of Douglas County, Nebraska  
1231 GOLDEN GATE DRIVE  
PAPILLION, NE 68046  
Attn: MR. JAMES CRIPE

IF TO GRANTOR: Childrens Memorial Hospital  
8301 Dodge  
Omaha, Nebraska 68114  
Attn: President

WITH A COPY TO: FRASER, STRYKER, VAUGHN, MEUSEY,  
OLSON, BOYER & BLOCH, P.C.  
500 Energy Plaza  
409 South 17th Street  
Omaha, Nebraska 68102  
Attn: Robert L. Freeman

For the purposes of this paragraph, any party may substitute its address by giving fifteen (15) days notice to the other party in the manner provided above.

16. Binding Effect. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

CHILDRENS MEMORIAL HOSPITAL  
FOUNDATION

By 

Title:

SANITARY AND IMPROVEMENT DISTRICT NO.  
367 OF DOUGLAS COUNTY, NEBRASKA

By 

Title: CHAIRMAN

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

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On this 20<sup>th</sup> day of August, 1993, before me, a notary public in and for said county and state, personally came W. Fonda Chairman of Childrens Memorial Hospital Foundation, known to me to be the identical person who signed the foregoing Agreement and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said Foundation.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.

[SEAL]



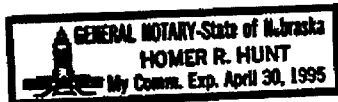
Robert L. Freeman  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

On this 19<sup>th</sup> day of AUG., 1993, before me, a notary public in and for said county and state, personally came JOHN C. ALLEN CHAIRMAN of SANITARY AND IMPROVEMENT DISTRICT NO. 367 OF DOUGLAS COUNTY, NEBRASKA, known to me to be the identical person who signed the foregoing Agreement and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said S.I.D. 367.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.

[SEAL]



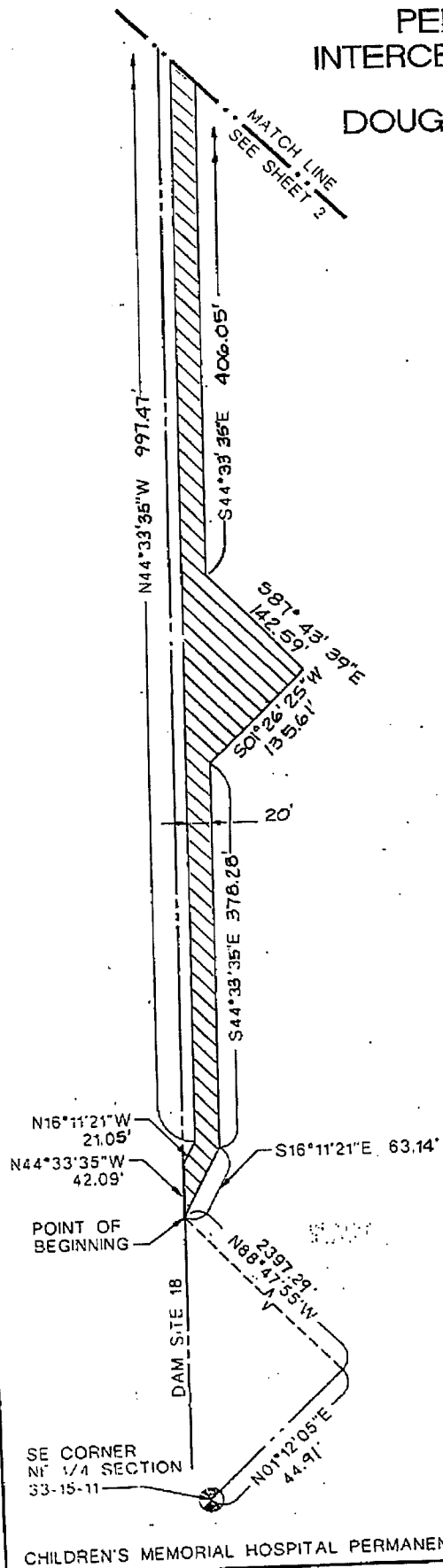
Homer R. Hunt  
Notary Public

RWR:ces

Exhibit "A" - Legal Description - Permanent Easement  
Exhibit "B" - Legal Description - Temporary Easement  
Exhibit "C" - Plans and Specifications (Recordable Summary)

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

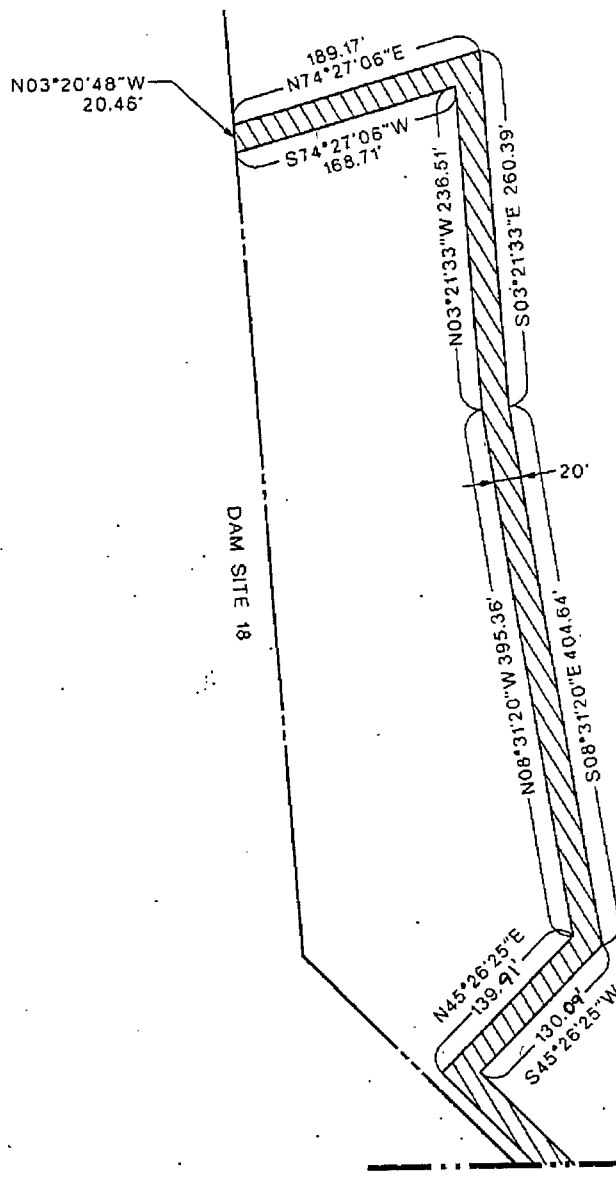
EXHIBIT "A"  
PERMANENT SANITARY  
INTERCEPTOR SEWER EASEMENT  
PARCEL "A"  
DOUGLAS COUNTY, NEBRASKA



EAST +  
SOUTH

EXHIBIT "A"  
 PERMANENT SANITARY  
 INTERCEPTOR SEWER EASEMENT  
 PARCEL "A"  
 DOUGLAS COUNTY, NEBRASKA

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*Easterly  
 part Released  
 2003/132078*



SCALE: 1" = 100'-0"  
 SHEET 2 OF 2  
 #85063.10  
 3-23-93

SW 1/4 NE 1/4  
SE 1/4 NW 1/4

LEGAL DESCRIPTION  
SANITARY INTERCEPTOR SEWER EASEMENT - PARCEL "A"  
CHILDREN'S MEMORIAL HOSPITAL PROPERTY

A permanent sanitary interceptor sewer easement located in the North half of Section 33, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the Southeast corner of the Northeast 1/4 of said Section 33; thence N01°12'05"E (assumed bearing) along the East line of said Section 33, a distance of 44.91 feet; thence N88°47'55"W, a distance of 2397.29 feet to the point of beginning; thence N44°33'35"W, a distance of 42.09 feet; thence N16°11'21"W, a distance of 21.05 feet; thence N44°33'35"W, a distance of 997.47 feet; thence N45°26'25"E, a distance of 139.91 feet; thence N08°31'20"W, a distance of 395.36 feet; thence N03°21'33"W, a distance of 236.51 feet; thence S74°27'06"W, a distance of 168.71 feet; thence N03°20'48"W, a distance of 20.46 feet; thence N74°27'06"E, a distance of 189.17 feet; thence S03°21'33"E, a distance of 260.39 feet; thence S08°31'20"E, a distance of 404.64 feet; thence S45°26'25"W, a distance of 130.09 feet; thence S44°33'35"E a distance of 406.05 feet; thence S87°43'39"E, a distance of 142.59 feet; thence S01°26'25"W, a distance of 135.61 feet; thence S44°33'35"E, a distance of 378.28 feet; thence S16°11'21"E, a distance of 63.14 feet to the point of beginning.

The above-described tract of land contains an area of 49,557 square feet or 1.138 acres, more or less.

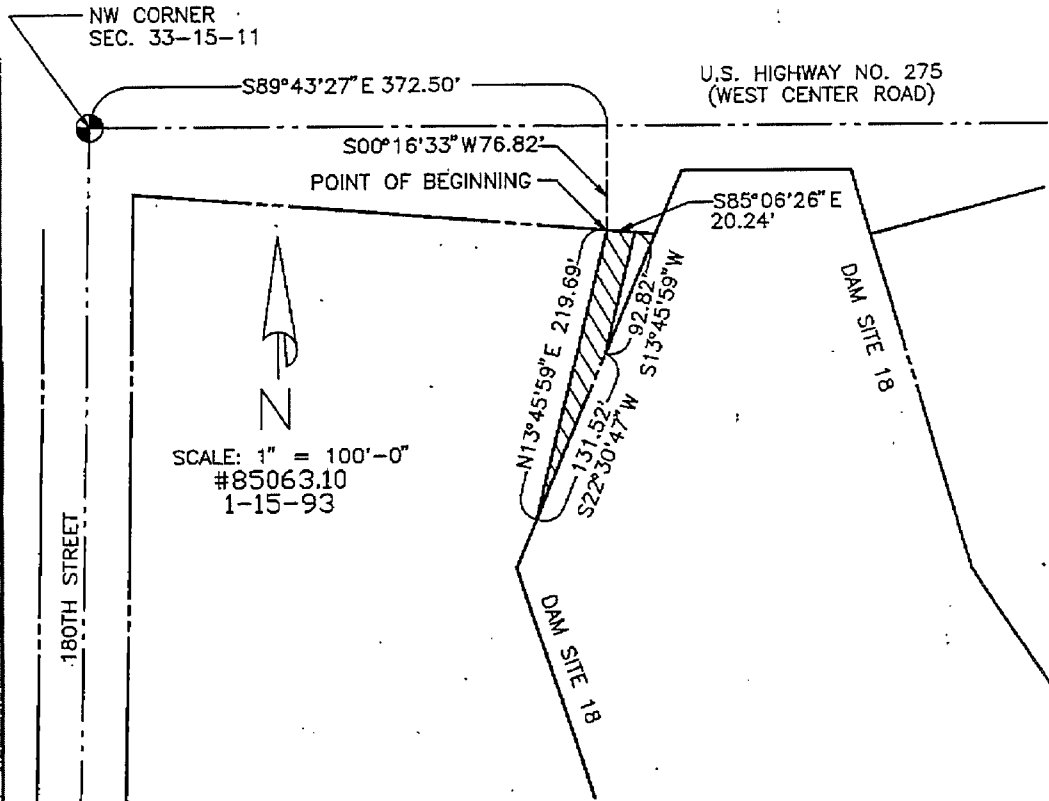
#85063.10  
January 18, 1993  
Revised March 22, 1993

ELLIOTT & ASSOCIATES  
5316 SOUTH 132ND STREET  
OMAHA, NE 68137

# EXHIBIT "A" PERMANENT SANITARY INTERCEPTOR SEWER EASEMENT PARCEL "B" DOUGLAS COUNTY, NEBRASKA

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Lot 96



CHILDREN'S MEMORIAL HOSPITAL PERMANENT EASEMENT PARCEL "B"

NW 1/4 NW 1/4

LEGAL DESCRIPTION  
PERMANENT SANITARY INTERCEPTOR SEWER EASEMENT - PARCEL "B"  
CHILDREN'S MEMORIAL HOSPITAL PROPERTY

A permanent sanitary interceptor sewer easement located in the northwest quarter of Section 33, Township 15 North, Range 11 East of the Sixth Principal Meridian, Douglas County, Nebraska, more particularly described as follows:

Commencing at the northwest corner of said Section 33; thence S89°43'27"E (assumed bearing), along the north line of said Section 33, a distance of 372.50 feet; thence S00°16'33"W, a distance of 76.82 feet to a point on the south right-of-way line of U.S. Highway No. 275, said point also being the Point of Beginning; thence S85°06'26"E, along said south right-of-way line of U.S. Highway No. 275, a distance of 20.24 feet; thence S13°45'59"W, a distance of 92.82 feet; thence S22°30'47"W, a distance of 131.52 feet; thence N13°45'59"E, a distance of 219.69 feet to the Point of Beginning.

The above described tract of land contains an area of 3,125 square feet or 0.072 acres, more or less.

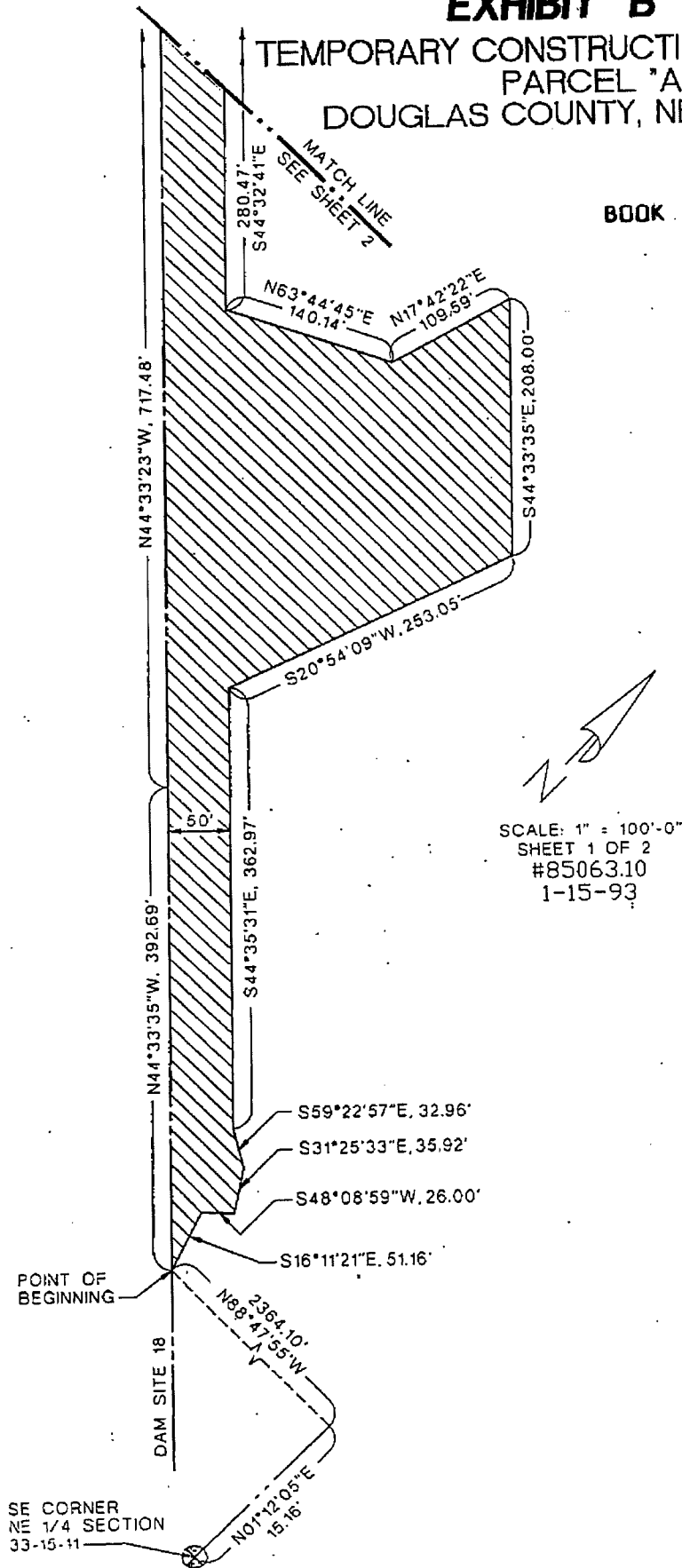
#85063.10  
January 18, 1993

Prepared By:  
Elliott & Associates  
5316 South 132nd Street  
Omaha, Nebraska, 68137

# EXHIBIT "B"

## TEMPORARY CONSTRUCTION EASEMENT PARCEL "A" DOUGLAS COUNTY, NEBRASKA

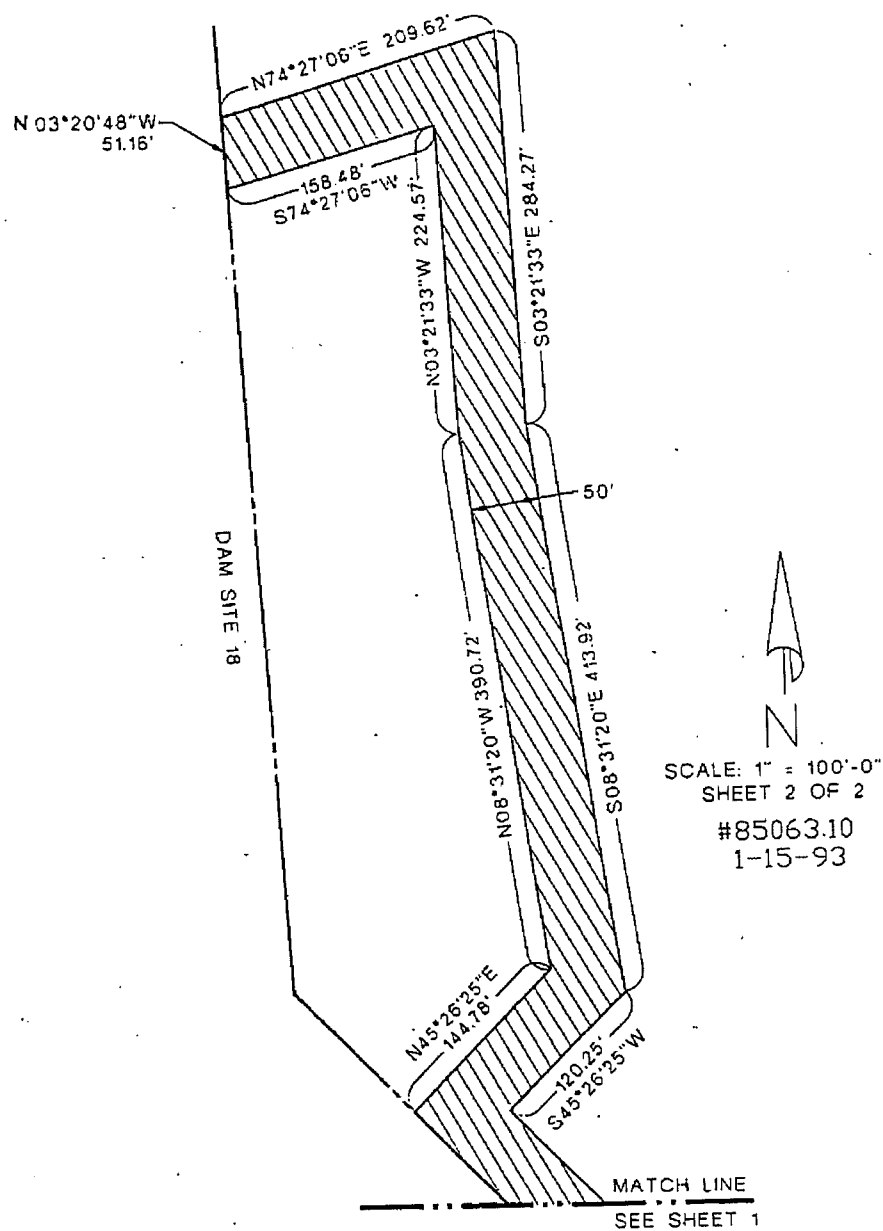
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CHILDREN'S MEMORIAL HOSPITAL TEMPORARY EASEMENT, PARCEL "A"

SHEET 1

**EXHIBIT "B"**  
**TEMPORARY CONSTRUCTION EASEMENT**  
**PARCEL "A"**  
**DOUGLAS COUNTY, NEBRASKA**



LEGAL DESCRIPTION  
 TEMPORARY CONSTRUCTION EASEMENT - PARCEL "A"  
 CHILDREN'S MEMORIAL HOSPITAL PROPERTY

SW 1/4 NE 1/4  
 SE 1/4 NW 1/4

A temporary construction easement located in the north half of Section 33, Township 15 North, Range 11 East of the Sixth Principal Meridian, Douglas County, Nebraska, more particularly described as follows:

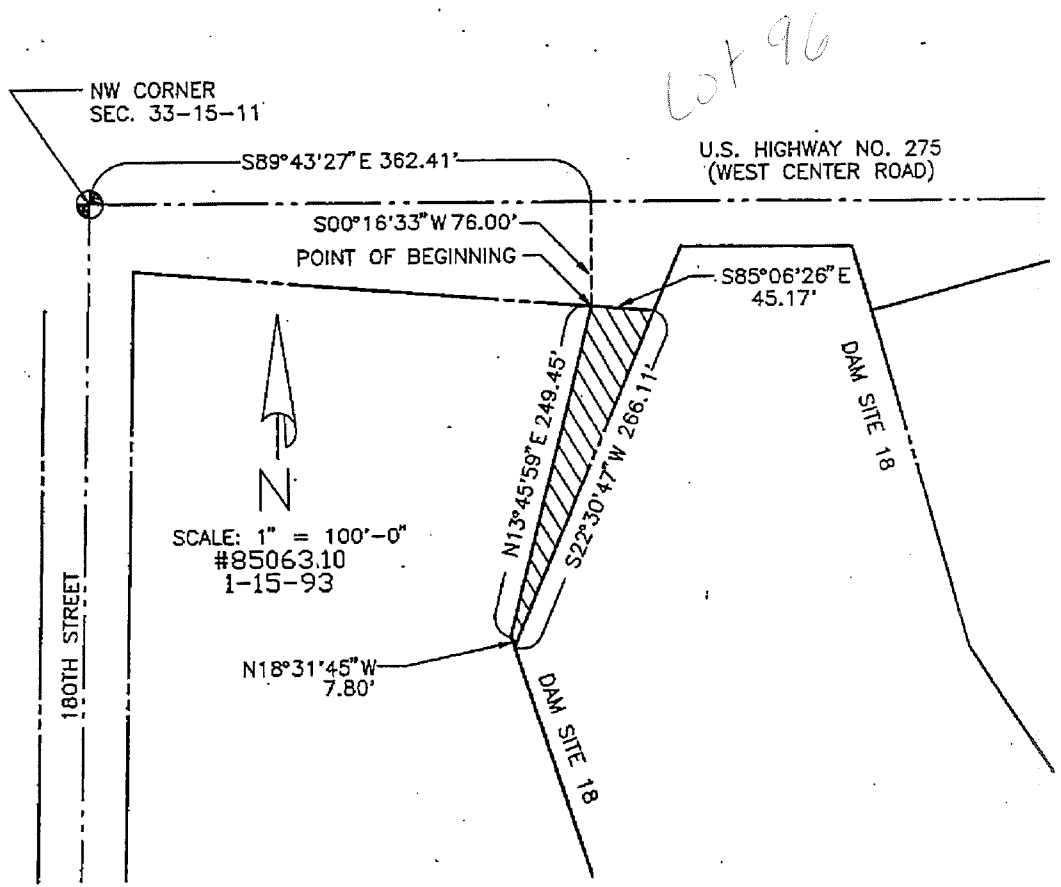
Commencing at the southeast corner of the northeast quarter of said Section 33; thence N01°12'05"E (assumed bearing), along the east line of said Section 33, a distance of 15.16 feet; thence N88°47'55"W, a distance of 2364.10 feet to the Point of Beginning; thence N44°33'35"W, a distance of 392.69 feet; thence N44°33'23"W, a distance of 717.48 feet; thence N45°26'25"E, a distance of 144.78 feet; thence N08°31'20"W, a distance of 390.72 feet; thence N03°21'33"W, a distance of 224.57 feet; thence S74°27'06"W, a distance of 158.48 feet; thence N03°20'48"W, a distance of 51.16 feet; thence N74°27'06"E, a distance of 209.62 feet; thence S03°21'33"E, a distance of 284.27 feet; thence S08°31'20"E, a distance of 413.92 feet; thence S45°26'25"W, a distance of 120.25 feet; thence S44°32'41"E, a distance of 280.47 feet; thence N63°44'45"E, a distance of 140.14 feet; thence N17°42'22"E, a distance of 109.59 feet; thence S44°33'35"E, a distance of 208.00 feet; thence S20°54'09"W, a distance of 253.05 feet; thence S44°35'31"E, a distance of 362.97 feet; thence S59°22'57"E, a distance of 32.96 feet; thence S31°25'33"E, a distance of 35.92 feet; thence S48°08'59"W, a distance of 26.00 feet; thence S16°11'21"E, a distance of 51.16 feet to the Point of Beginning.

The above described tract of land contains an area of 3.560 acres, more or less.

#85063.10  
 January 18, 1993

Prepared By:  
 Elliott & Associates  
 5316 South 132nd Street  
 Omaha, Nebraska, 68137

**EXHIBIT "B"**  
**TEMPORARY CONSTRUCTION EASEMENT**  
**PARCEL "B"**  
**DOUGLAS COUNTY, NEBRASKA**



CHILDREN'S MEMORIAL HOSPITAL TEMPORARY EASEMENT PARCEL "B"

NW 1/4 NW 1/4

LEGAL DESCRIPTION  
TEMPORARY CONSTRUCTION EASEMENT - PARCEL "B"  
CHILDREN'S MEMORIAL HOSPITAL PROPERTY

A temporary construction easement located in the northwest quarter of Section 33, Township 15 North, Range 11 East of the Sixth Principal Meridian, Douglas County, Nebraska, more particularly described as follows:

Commencing at the northwest corner of said Section 33; thence S89°43'27"E (assumed bearing), along the north line of said Section 33, a distance of 362.41 feet; thence S00°16'33"W, a distance of 76.00 feet to a point on the south right-of-way line of U.S. Highway No. 275, said point also being the Point of Beginning; thence S85°06'26"E, along said south right-of-way line of U.S. Highway No. 275, a distance of 45.17 feet; thence S22°30'47"W, a distance of 266.11 feet; thence N18°31'45"W, a distance of 7.80 feet; thence N13°45'59"E, a distance of 249.45 feet to the Point of Beginning.

The above described tract of land contains an area of 6,248 square feet or 0.143 acres, more or less.

#85063.10  
January 18, 1993

Prepared By:  
Elliott & Associates  
5316 South 132nd Street  
Omaha, Nebraska, 68137

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## EXHIBIT "C"

PLAN AND SPECIFICATION SUMMARY

The project plans and specifications are entitled "Sanitary Sewer Outfall, SOS 5114" consisting of sheets 1 through 17, prepared by Elliott & Associates, 5316 South 132nd Street, Omaha, NE, dated December 10, 1992 including all revisions, amendments, and additions thereto including but not limited to revised Sheet 5 of 17 dated July 28, 1993. The plans and specifications generally detail the construction of a 30" RCP sanitary interceptor sewer from approximately 168th and "B" Streets to 187th and West Center Road. The plans and specifications have been reviewed and approved by the City of Omaha Public Works Department and a full set of documents is on file.

RECEIVED

Aug 20 3 14 PM '93

GEORGE J. DOUGLAS  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

CASH 23954 BK 1091 R 33-15-11 FB 01-60000  
 TYPE MISC PG 202-220 C/O COMP SCAN re  
 FEE 95.50 OF MISC LEGL PG 212 MC FV