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Lakeside Hills.
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d released
by 2003/132078

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EASEMENT AGREEMENT

GEORGE J. BUGLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY

THIS EASEMENT AGREEMENT is made and entered into this 10th day of November, 1994, by and between CHILDRENS MEMORIAL HOSPITAL FOUNDATION, its successors and assigns, ("Grantor") and SANITARY AND IMPROVEMENT DISTRICT NO. 381 OF DOUGLAS COUNTY, NEBRASKA, its successors and assigns, ("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").

2. **Sewer System.** Grantee covenants and agrees to construct and install within 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 Lamp, Rynearson & Associates (Engineers for Grantee) more particularly described on Exhibit "C" attached hereto (the "Plans and Specifications"). Grantee agrees to fully complete the construction and installation of the Sewer System in accordance with the Plans and Specifications and this Agreement on or before December 1, 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 Permanent Easement Area and the Temporary Easement Area (collectively, 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

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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 building codes (collectively the "Legal Requirements"). 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. Without limiting the foregoing, Grantor has made no warranty or representation as to title, location, status, design, condition, fitness for any particular purpose or use, value, quality of material or workmanship, existence of any defect, latent or otherwise, compliance with the Plans and Specifications, merchantability, durability or operation, and all risks incident thereto shall be borne by Grantee.

6. **Termination.** Notwithstanding anything to the contrary contained herein: (a) the Temporary Easement shall terminate and be of no force or effect on the thirtieth day following completion of the Sewer System, and (b) the Temporary Easement and the Permanent Easement shall terminate and be of no force of effect if the Sanitary Sewer is not fully completed by Grantee in accordance with the Plans and Specifications and this Agreement on or before December 1, 1994. Upon the occurrence of either of the foregoing events, Grantee agrees, upon the request of Grantor, to execute a release of easement or quitclaim deed in form acceptable to Grantor.

7. **Consideration.** In consideration of the grant of the Temporary Easement and the Permanent Easement, Grantee hereby pays to Grantor the sum of \$50,826.25, receipt of which is hereby acknowledged by Grantor; such sum shall be nonrefundable notwithstanding any termination of the Temporary Easement and/or the Permanent Easement as provided herein.

8. **Grantor Improvements.** Grantor, its successors and assigns, may at any time following the completion of construction of the Sewer System construct or cause to be constructed upon or within the Permanent Easement Area, or grant easements, licenses or other rights respecting the Permanent Easement Area so as to permit, such roads, streets, parking areas or other pavement or concrete improvements, fencing, entrance markers, any gas, electric, water, storm sewer, telephone, cable or any other type of utility lines, pipes, conduits, ducts, or systems,

and landscaping, all in such manner and to the extent 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 at any time and from time to time 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 of any kind 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. Grantee shall repair, restore and/or replace any and all Grantor Improvements which may be damaged in connection with any maintenance or repair of the Sewer System. 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. **Grantee Covenants.** In connection with construction, operation, repair, maintenance and/or replacement of the Sewer System, Grantee for itself and its successors and assigns covenants and agrees as follows:

- (a) The Sewer System shall be constructed, installed, repaired, maintained and operated by Grantee in a good and workmanlike manner and in accordance with all Legal Requirements.

- (b) 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.
- (c) Grantee shall rebuild and replace any terrace or portion of any terrace disturbed or destroyed during construction, maintenance or repair of the Sewer System. All terrace replacement shall be in accordance with the design of existing terraces and Grantee shall be responsible for obtaining the written approval of the Soil Conservation Service for all such terrace rebuilding and replacement.
- (d) Grantee shall not commence construction and installation of the Sewer System until all crops now growing within the Easement Areas have been harvested unless Grantee shall pay to Grantor an amount equal to the value of all crops damaged, destroyed or otherwise adversely affected by such construction and installation.
- (e) 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.
- (f) 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 other permissions being required and without any fees, costs or charges to Grantor of any kind, except approved City of Omaha Sewer Interceptor Fees; and Grantee (and its successors and assigns) covenant and agree that it 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 herein.
- (g) 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 existed prior to the date of this Agreement).

- (h) Grantee shall be responsible for the stripping, stockpiling and resspreading of the topsoil. A minimum of six inches of topsoil shall be stripped and stockpiled prior to commencement of construction and immediately upon completion of construction the stockpiled topsoil shall be resspread on all disturbed areas.

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 or resulting 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, or any failure by Grantee to observe or perform 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.

In the event any action or proceeding is brought against Grantor by reason of any of the foregoing, 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 installation of the Sewer System in accordance with the Plans and Specifications and this Agreement on or before December 1, 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 the 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 or other instruments of communications required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be deemed to have been given when delivered in person 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. 381 of Douglas County, Nebraska
10330 Regency Parkway Drive
Omaha, Nebraska 68114
Attn: Mr. Dan Kinnamon

IF TO GRANTOR:

Childrens Memorial Hospital
8301 Dodge Street
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. Assignment. Any assignee of Grantor or Grantee hereunder shall, by virtue of such assignment, assume all duties and obligations, and be bound by all of the terms and provisions of this Agreement.

17. 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 successors and assigns.

CHILDRENS MEMORIAL HOSPITAL
FOUNDATION

By:

William D. Hanley
Title: Chairman

SANITARY AND IMPROVEMENT DISTRICT
NO. 381 OF DOUGLAS COUNTY, NEBRASKA

By:

Donald B. Kott
Title: Chairman

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 7th day of November, 1994, before me, a notary public in and for said county and state, personally came William G. Hanley, 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]



Joan M. Sondgeroth
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

On this 3rd day of November, 1994, before me, a notary public in and for said county and state, personally came RANDALL R. KORTH, CHAIRMAN of SANITARY AND IMPROVEMENT DISTRICT NO. 381 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 SANITARY AND IMPROVEMENT DISTRICT NO. 381.

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

[SEAL]



Stephanie J. Goodrich
Notary Public

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

LEGAL DESCRIPTION

A permanent easement for the construction and maintenance of sanitary sewers over that part of the North Half of Section 33, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, described as follows:
SEE ATTACHED SHEET FOR COMPLETE LEGAL DESCRIPTION

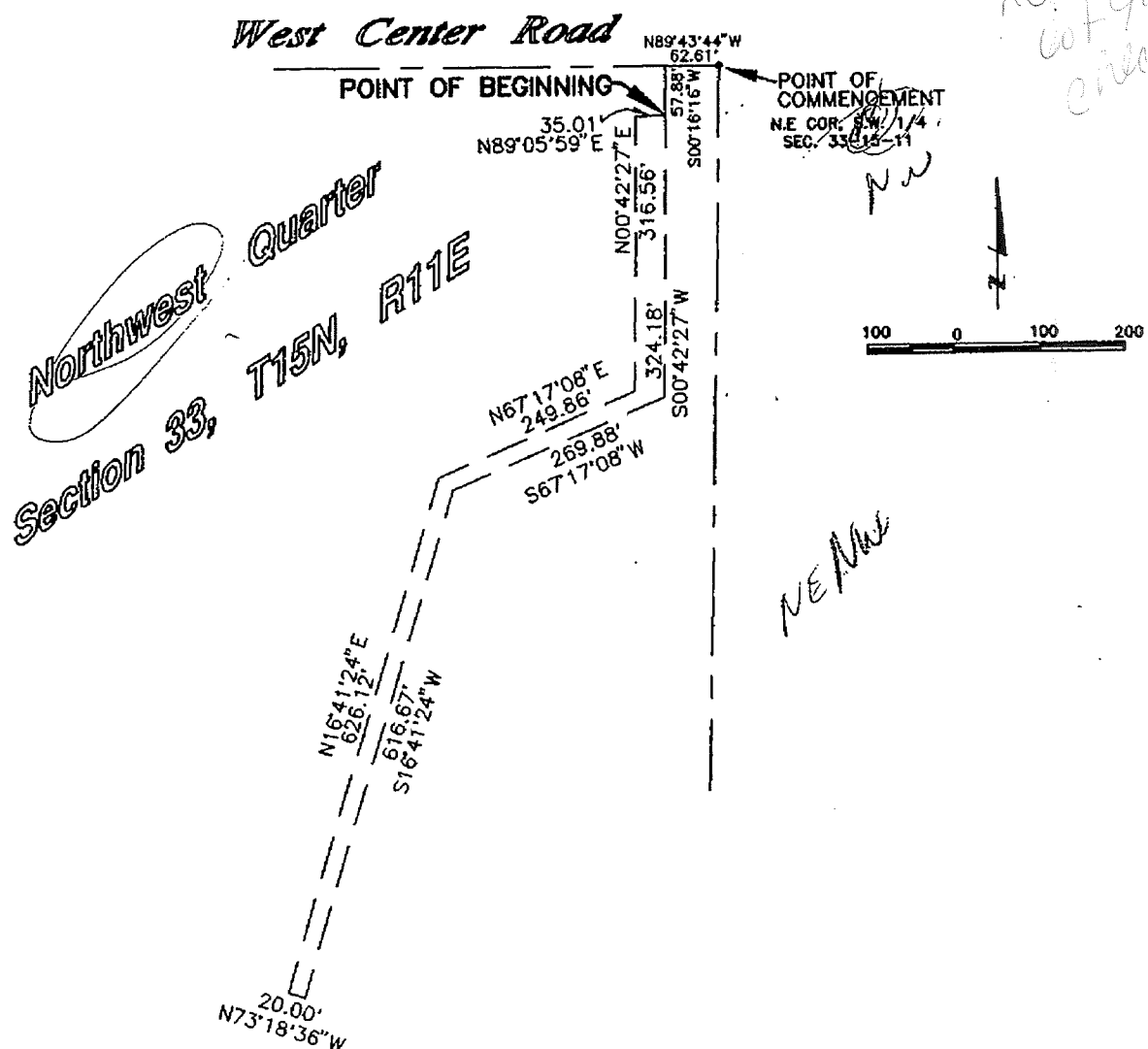


Exhibit A
Page 1 of 2

Book _____ Page _____ Date September 14, 1994 Job Number 89014-6580B



lamp, rynearson & associates, inc.
engineers surveyors planners

14747 california street

omaha, nebraska 68154-1979

402-496-2498
FAX 402-496-2730

LEGAL DESCRIPTION

A permanent easement for the construction and maintenance of sanitary sewers over that part of the North Half of Section 33, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, described as follows:

Commencing at the northeast corner of the Northwest Quarter of Section 33;

Thence North 89°43'44" West (assumed bearings) for 62.61 feet;

Thence South 00°16'16" West for 57.88 feet to the TRUE POINT OF BEGINNING;

Thence South 00°42'27" West for 324.18 feet;

Thence South 67°17'08" West for 269.88 feet;

Thence South 16°41'24" West for 616.67 feet;

Thence North 73°18'36" West for 20.00 feet;

Thence North 16°41'24" East for 626.12 feet;

Thence North 67°17'08" East for 249.86 feet;

Thence North 00°42'27" East for 316.56 feet;

Thence North 89°05'59" East for 35.01 feet to the Point of Beginning.

Contains 0.66 acre.

September 14, 1994

LAMP, RYNEARSON & ASSOCIATES, INC.

89014-6580 (permanent sanitary sewer easement south of West Center Road)

LEGAL DESCRIPTION

A temporary easement for the construction of sanitary sewers over that part of the North Half of Section 33, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, described as follows:

Commencing at the northeast corner of the Northwest Quarter of Section 33;

Thence South 01°06'12" West (assumed bearings) for 56.37 feet along the east line of the said Southwest Quarter of Section 33 to the TRUE POINT OF BEGINNING;

Thence North 88°51'43" East for 10.22 feet;

Thence South 00°42'27" West for 324.26 feet;

Thence South 53°52'56" West for 342.66 feet;

Thence South 16°39'24" West for 478.47 feet;

Thence South 51°40'55" West for 137.19 feet;

Thence North 25°59'34" West for 153.61 feet;

Thence North 53°49'16" East for 53.89 feet;

Thence North 16°41'24" East for 299.54 feet;

Thence North 23°51'31" West for 76.91 feet;

Thence North 16°41'24" East for 159.88 feet;

Thence North 67°17'08" East for 328.83 feet;

Thence North 00°42'27" East for 259.78 feet;

Thence North 88°56'06" East for 131.84 feet to the Point of

Beginning.

Contains 4.41 acres.

September 14, 1994

LAMP, RYNEARSON & ASSOCIATES, INC.

89014-6580

(temporary sanitary sewer construction easement
south of West Center Road)

*Lakeside
Hills*

