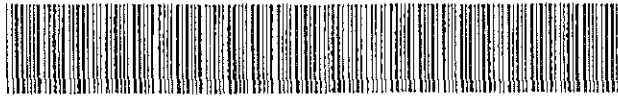




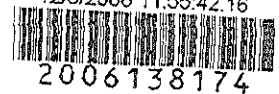
MISC 2006138174



DEC 06 2006 11:55 P 16

[ The Space Above is for Recording Data ]

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
12/6/2006 11:55:42.16



2006138174

### ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT ("Easement") is made and entered into as of this 5<sup>th</sup> day of December, 2006 (the "Effective Date"), by and between The Lutheran Home Foundation, a Nebraska nonprofit corporation ("TLHF") and Behavioral Health Support Foundation, a Nebraska nonprofit corporation ("BHSF").

#### RECITALS

A. TLHF is the owner of Lots 1 and 8 of Lutheran Place, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (Lots 1 and 8 are hereinafter individually referred to as "Lot One" and "Lot Eight" and collectively as "TLHF Parcel"); and

B. BHSF is the owner of Lots 9 and 10 of Lutheran Place, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (Lot 10 is hereinafter individually referred to as "Lot Ten" and, with Lot 9, collectively referred to as "BHSF Parcel"); and

C. The BHSF Parcel is immediately adjacent and contiguous to the TLHF Parcel; and

D. The parties by this instrument intend to create (1) a permanent easement for ingress and egress over a portion of the BHSF Parcel, for the benefit of TLHF, and its successors and assigns, (2) a permanent easement for ingress and egress over a portion of the TLHF Parcel, for the benefit of BHSF, and its successors and assigns, (3) a cross easement for reciprocal ingress and egress over portions of the BHSF Parcel and the TLHF Parcel, for the benefit of BHSF and TLHF, and their respective successors and assigns, and (4) a permanent easement for creation of a court yard over a portion of Lot Eight, for the benefit of BHSF, and its successors and assigns.

NOW, THEREFORE, in consideration of the mutual grants, covenants and promises contained herein, and of the mutual benefits accruing to each of the parties hereto, their respective successors, legal representatives and assigns, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby declare and agree as follows:

16/4 misc  
FER 82.00 FB 16-23316  
BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP   X    
DFL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_

16

TA-52853<sup>sc</sup>

1. **TLHF Parcel Easement**

a. TLHF hereby grants and conveys unto BHSF and its successors and assigns a Non-Exclusive Access Easement ("TLHF Parcel Easement") for purposes of ingress and egress over, across and upon property identified as Vacated 25<sup>th</sup> Avenue, more particularly depicted and legally described on **Exhibit "A"** attached hereto ("TLHF Easement Area"). The TLHF Easement Area is and shall be for the benefit of the BHSF Parcel.

b. The TLHF Parcel Easement is hereby granted to BHSF, its successors and assigns, tenants, agents, employees, business invitees and licensees for purposes of ingress and egress over, across and upon the TLHF Easement Area to and from the public thoroughfare commonly known as 25<sup>th</sup> Avenue to the south and the BHSF Parcel. The TLHF Parcel Easement is a non-exclusive easement subject to use by others, including, but not limited to, TLHF, its successors or assigns, tenants, agents, employees, business invitees and licensees.

c. The term of the TLHF Parcel Easement shall be perpetual. The TLHF Parcel Easement is and shall be deemed to be a covenant running with the land and shall be binding upon the parties hereto and upon their successors and assigns, until released upon the unanimous agreement of the then record owners of the BHSF Parcel, by an instrument duly executed, acknowledged and filed in the proper office of the Register of Deeds of Douglas County, Nebraska.

d. TLHF, its successors and assigns, shall keep and maintain the TLHF Easement Area, at its sole cost and expense, in a condition not less than substantially the condition of the same as of the Effective Date, ordinary wear and tear excluded, including, without limitation, surface and, except as set forth in Section 3.c herein, subsurface repairs and maintenance, lighting, and removal of snow, trash, rubbish or other refuse, if any. Notwithstanding the foregoing, any repaving or resurfacing of the TLHF Easement Area shall be within the sole discretion of TLHF. Neither TLHF, nor any successor or assign, agent, servant or employee thereof, shall create, permit or suffer at any time any obstruction to or interference with ingress and egress over, across and upon the TLHF Easement Area for any purpose nor shall any such party at any time endanger, interfere with, or otherwise obstruct the maintenance, repair, operation or use of the TLHF Easement Area for ingress and egress. BHSF shall be solely responsible for repair of any and all damage to the TLHF Easement Area caused by BHSF, its tenants, agents, employees, business invitees and licensees.

2. **BHSF Parcel Easement**

a. BHSF hereby grants and conveys unto TLHF and its successors and assigns a Non-Exclusive Access Easement ("BHSF Parcel Easement") for purposes of ingress and egress over, across and upon property identified as Vacated 25<sup>th</sup> Avenue and Vacated Dewey Avenue, more particularly depicted and legally described on **Exhibit "B"** attached hereto ("BHSF Easement Area"), for so long as the BHSF Easement Area is operated and maintained by the owner of the BHSF Easement Area as a private, paved roadway. If the owner of the BHSF Easement Area elects, in such owner's sole discretion, to no longer use the BHSF Easement Area as a private, paved roadway, then BHSF may elect to terminate the BHSF Parcel Easement by giving TLHF 60 days written notice prior to the effective date of such termination and recording an instrument declaring such termination in the office of the Register of Deeds of

Douglas County, Nebraska; provided, however, that portion of the BHSF Parcel Easement for purposes of ingress and egress over, across and upon the west 112 feet of Vacated Dewey Avenue may not be terminated absent the recording of a release thereof by the then record owner of Lot One in the office of the Register of Deeds of Douglas County, Nebraska. The BHSF Easement Area is and shall be for the benefit of Lot One.

b. The BHSF Parcel Easement is hereby granted to TLHF, its successors and assigns, tenants, agents, employees, business invitees and licensees for purposes of ingress and egress over, across and upon the BHSF Easement Area to and from the public thoroughfares commonly known as Dewey Avenue and Harney Street and the TLHF Parcel. The BHSF Parcel Easement is a non-exclusive easement subject to use by others, including, but not limited to, BHSF, its successors and assigns, tenants, agents, employees, business invitees and licensees.

c. Subject to the rights of the parties pursuant to Section 2.a., the term of the BHSF Parcel Easement shall be perpetual, and shall be deemed to be a covenant running with the land and shall be binding upon the parties hereto and upon their successors and assigns, until released upon the unanimous agreement of the then record owner of Lot One, by an instrument duly executed, acknowledged and filed in the office of the Register of Deeds of Douglas County, Nebraska.

d. Subject to the rights of the parties pursuant to Section 2.a. above, BHSF, its successors and assigns, shall keep and maintain the BHSF Easement Area, at its sole cost and expense, in a condition not less than substantially the condition of the same as of the date hereof, ordinary wear and tear excluded, including, without limitation, surface and, except as set forth in Section 3.c herein, subsurface repairs and maintenance, lighting, and removal of snow, trash, rubbish or other refuse, if any. Notwithstanding the foregoing, any repaving or resurfacing of the BHSF Easement Area shall be within the sole discretion of BHSF. Neither BHSF nor any successor or assign, agent, servant or employee thereof, shall create, permit or suffer at any time any obstruction to or interference with ingress and egress over, across and upon the BHSF Easement Area for any purpose nor shall any such party at any time endanger, interfere with, or otherwise obstruct the maintenance, repair, operation or use of the BHSF Easement Area for ingress and egress. TLHF shall be solely responsible for repair of any and all damage to the BHSF Easement Area caused by TLHF, its tenants, agents, employees, business invitees and licensees.

### **3. Reciprocal Cross Easement**

a. BHSF and TLHF hereby grant and convey unto the other and their respective agents, contractors, successors and assigns, a Reciprocal Cross Easement for purposes of ingress and egress over, across and upon those portions of the BHSF Parcel and the TLHF Parcel immediately adjacent to the power plant located on Lot Eight and physically attached to improvements located on the BHSF Parcel (the "Power Plant") to obtain access to said Power Plant and access to and within the common tunnel that runs beneath portions of the TLHF Parcel and BHSF Parcel and provides access to the Power Plant (the "Tunnel"), for purposes of maintaining, servicing, repairing and replacing piping, equipment and materials in the Tunnel relating to the provision of utility services (chilled water, steam, condensate, and all other existing building electrical and mechanical services) from the Power Plant to all or portions of the TLHF Parcel and the BHSF Parcel, and to obtain access to utility piping, valves and meters

related to and necessary for the provision of utility services to the Power Plant via the pipelines owned by Energy Systems Company.

b. The Reciprocal Cross Easement shall create mutual and reciprocal benefits and servitudes upon the TLHF Parcel and the BHSF Parcel, and shall be deemed to be a covenant running with the land and shall be binding upon the parties hereto and upon their successors and assigns, until released upon the unanimous agreement of the then record owners of TLHF Parcel and BHSF Parcel, by an instrument duly executed, acknowledged and filed in the proper office of the Register of Deeds of Douglas County, Nebraska.

c. Each party shall keep and maintain that portion of the Tunnel owned by such party and subject to the Reciprocal Cross Easement in good repair at all times, at each party's sole cost and expense, ordinary wear and tear excluded, including, without limitation, all subsurface repairs and maintenance, lighting, sanitary control, and removal of trash, rubbish or other refuse, if any. In addition to that portion of the Tunnel located beneath Lot Ten, the owner of Lot Ten shall also keep and maintain that portion of the Tunnel located beneath Lot Eight and servicing Lot Ten, as more particularly described as commencing at a line from the Northwest Corner of the Tunnel junction for the Power Plant entrance to a point directly opposite said corner on the east wall of the Tunnel and extending north to the property line of Lot Ten, as generally depicted on **Exhibit "C"** attached hereto. To the extent that the owner of Lot Eight and Lot One are not the same party, the then record owner of Lot One shall keep and maintain that portion of the Tunnel located beneath Lot Eight and servicing Lot One commencing at the Power Plant entrance and extending west and southwest to the property line of Lot One, as generally depicted on **Exhibit "C"** attached hereto. Neither party, nor any successor or assign, agent, servant or employee of either party, shall create, permit or suffer at any time any obstruction to or interference with ingress and egress over, across and through the Reciprocal Cross Easement for any purpose nor shall any such party at any time endanger, interfere with, or otherwise obstruct the maintenance, repair, operation or use of the Reciprocal Cross Easement. Each party shall be solely responsible for repair of any and all damage to the Reciprocal Cross Easement caused by any act or omission of that party, its tenants, agents, contractors, employees, business invitees and licensees.

The parties acknowledge that use of and access to the Tunnel is a necessity for both the TLHF Parcel and BHSF Parcel and, as such, the parties shall cooperate in good faith with respect to the maintenance, repair and operation of the Tunnel and their respective facilities located therein. In the event either party needs to access a portion of the Tunnel located beneath real property owned by the other party, or the maintenance of which is the responsibility of the other party, or needs to operate, maintain or repair the Tunnel (or the appurtenances therein) in such a manner as may impact the entire Tunnel or a portion of the Tunnel that services real property owned by the other party, each party agrees to (1) provide notice of such event to the other party, (2) work with the other party to schedule such operation, maintenance or repair so as to minimize, to the extent possible, the impact of same on both parties, and (3) cooperate with the other party's efforts in a prompt and reasonable manner.

#### 4. Court Yard Easement

a. TLHF hereby grants and conveys unto BHSF and its successors and assigns a Non-Exclusive Access Easement ("Court Yard Easement") for purposes of repair,

---

maintenance or demolition of the portion of those certain brick walls located on Lot Eight enclosing the court yard between Lot Eight and Lot Ten, as more particularly depicted on **Exhibit "D"** attached hereto ("Court Yard Easement Area"). TLHF hereby acknowledges that BHSF and its successors and assigns, shall have the right to repair, maintain, or demolish the brick walls in its sole discretion; provided, however, any demolition shall not damage or adversely affect the walls or roof of the Power Plant.

b. The Court Yard Easement is hereby granted to BHSF, its successors and assigns, tenants, agents, employees, business invitees and licensees for purposes of access over, across and upon the Court Yard Easement Area. The Court Yard Easement is a non-exclusive easement subject to use by others, including, but not limited to, TLHF, its successors and assigns, tenants, agents, employees, business invitees and licensees.

c. The term of the Court Yard Easement shall be perpetual; provided, however, the Court Yard Easement shall automatically terminate if BHSF demolishes the brick walls. The Court Yard Easement is and shall be deemed to be a covenant running with the land and shall be binding upon the parties hereto and upon their successors and assigns, until released upon the unanimous agreement of the then record owners of the BHSF Parcel, by an instrument duly executed, acknowledged and filed in the office of the Register of Deeds of Douglas County, Nebraska.

d. BHSF, its successors and assigns, shall keep and maintain the Court Yard Easement Area, at its sole cost and expense, in a condition not less than substantially the condition of the same as of the Effective Date, ordinary wear and tear excluded. Notwithstanding the foregoing, BHSF shall have the right to demolish the brick walls enclosing the Court Yard Easement Area at its sole discretion. Neither BHSF, nor any successor or assign, agent, servant or employee thereof, shall create, permit or suffer at any time any obstruction to or interference with ingress and egress over, across and upon the Court Yard Easement Area for any purpose nor shall any such party at any time endanger, interfere with, or otherwise obstruct the maintenance, repair, operation or use of the Court Yard Easement Area for ingress and egress.

e. The parties acknowledges that a basketball hoop located in the Court Yard Easement Area as of the Effective Date is physically attached to the Power Plant and that BHSF shall continue to be allowed to utilize same after the Effective Date, including the replacement thereof with substantially similar equipment, unless the Court Yard Easement is terminated pursuant to Section 4.c. Notwithstanding the foregoing, BHSF shall not physically attach any other equipment or structures to the Power Plant without the prior written consent of the then record owner of Lot Eight.

## **5. Miscellaneous**

a. Entire Agreement. This Easement contains the entire agreement between the parties hereto, and any agreement hereafter made shall not operate to change, modify, terminate or discharge this Easement in whole or in part unless such agreement is in writing and signed by both TLHF and BHSF, their successors or assigns.

b. Validity and Enforcement of Easement. In the event any provision in this Easement is held invalid by any court of competent jurisdiction, the remaining provisions in this

Easement shall be deemed severable and shall remain in full force and effect. Either party may, at its option, in addition to any of the rights given by this indenture, enforce any provision of this Easement in accordance with the laws of the State of Nebraska or of the United States of America governing the relation of TLHF and BHSF, with the same force and effect as though the right to enforce such provision were herein specifically set forth.

c. Indemnification. Each party (Indemnifying Party) for itself and its successors and assigns hereby agrees to defend, indemnify and hold harmless the other party (Indemnified Party), its successors and assigns and their respective directors, officers, members, employees, invitees, agents, representatives and affiliates from and against any and all claims, obligations, liabilities, losses, damages (including punitive damages), causes of action, suits, demands, claims for indemnity or contribution, penalties, judgments, costs and expenses (including reasonable attorneys' fees and expenses) of every kind and nature whatsoever, including, without limitation, liability for bodily injury (including death), property damage, automobile accident liability or environmental liability, at any time existing or asserted, to the extent such arise out of, are caused or alleged to have been caused by any action or inaction of the Indemnifying Party, its successors and assigns or their respective directors, officers, members, employees, invitees, agents, representatives and affiliates in connection with or related to, directly or indirectly, the use of the TLHF Parcel Easement, BHSF Parcel Easement, or Reciprocal Cross Easement (collectively, "Easement Areas") pursuant to this Easement, unless such claims, obligations, liabilities, losses, damages (including punitive damages), causes of action, suits, demands, claims for indemnity or contribution, penalties, judgments, costs and expenses of every kind and nature whatsoever, without regard to the form of action, are hereinafter suffered or incurred by the Indemnified Party or its directors, officers, members, employees, invitees, agents, representatives and affiliates, and such arise out of, directly or indirectly, (i) the negligence or willful misconduct of the Indemnified Party, its successors and assigns or their respective directors, officers, members, employees, invitees, agents, representatives and affiliates, or (ii) the Indemnified Party's operation or use of real property located adjacent to the Easement Areas that is owned by the Indemnified Party, its successors and assigns, in which case such Indemnified Party, its successors and assigns shall indemnify, defend, save and hold harmless the Indemnifying Party and its directors, officers, members, employees, invitees, agents, representatives and affiliates. The provisions of this subsection shall survive termination of this Easement.

d. Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, by other national overnight courier company, or by personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses of TLHF and BHSF are as follows:

BHSF:

Behavioral Health Support Foundation  
Attn: Kenneth E. Stinson  
Peter Kiewit Sons, Inc.  
1000 Kiewit Plaza  
3555 Farnam Street, 10th Floor  
Omaha, Nebraska 68131-3374

and

Rhonda A. Hawks  
The Hawks Foundation  
1044 N. 115th Street, Suite 400  
Omaha, Nebraska 68154-4446

with a copy to:

Max J. Burbach, Esq.  
Koley Jessen, P.C.  
One Pacific Place, Suite 800  
1125 South 103<sup>rd</sup> Street  
Omaha, Nebraska 68124

TLHF:

The Lutheran Home Foundation  
711 North 108<sup>th</sup> Court  
Omaha, Nebraska 68154

with a copy to:

Kurth A. Brashear, Esq.  
BRASHEAR LLP  
North Old Mill  
711 North 108<sup>th</sup> Court  
Omaha, Nebraska 68154-1714

e. Choice of Law. This Easement shall be governed by and construed in accordance with the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties have set their hands hereto on the day above first written.

**The Lutheran Home Foundation,**  
a Nebraska non-profit corporation

By: 

Kermit A. Brashear, President

**Behavioral Health Support Foundation,**  
a Nebraska non-profit corporation

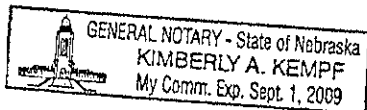
By: 

Kenneth E. Stinson, President

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

Before me, a Notary Public, qualified in and for said County, personally came **Kermit A. Brashear**, President of The Lutheran Home Foundation, a Nebraska nonprofit corporation, known to me to be the identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of said corporation.

WITNESS my hand and notarial seal on this 5<sup>th</sup> day of December, 2006.

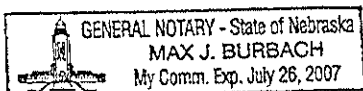


Kimberly A. Kempf  
Notary Public

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

Before me, a Notary Public, qualified in and for said County, personally came **Kenneth E. Stinson**, President of Behavioral Health Support Foundation, a Nebraska nonprofit corporation, known to me to be the identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of said corporation.

WITNESS my hand and notarial seal on this 5 day of December, 2006.

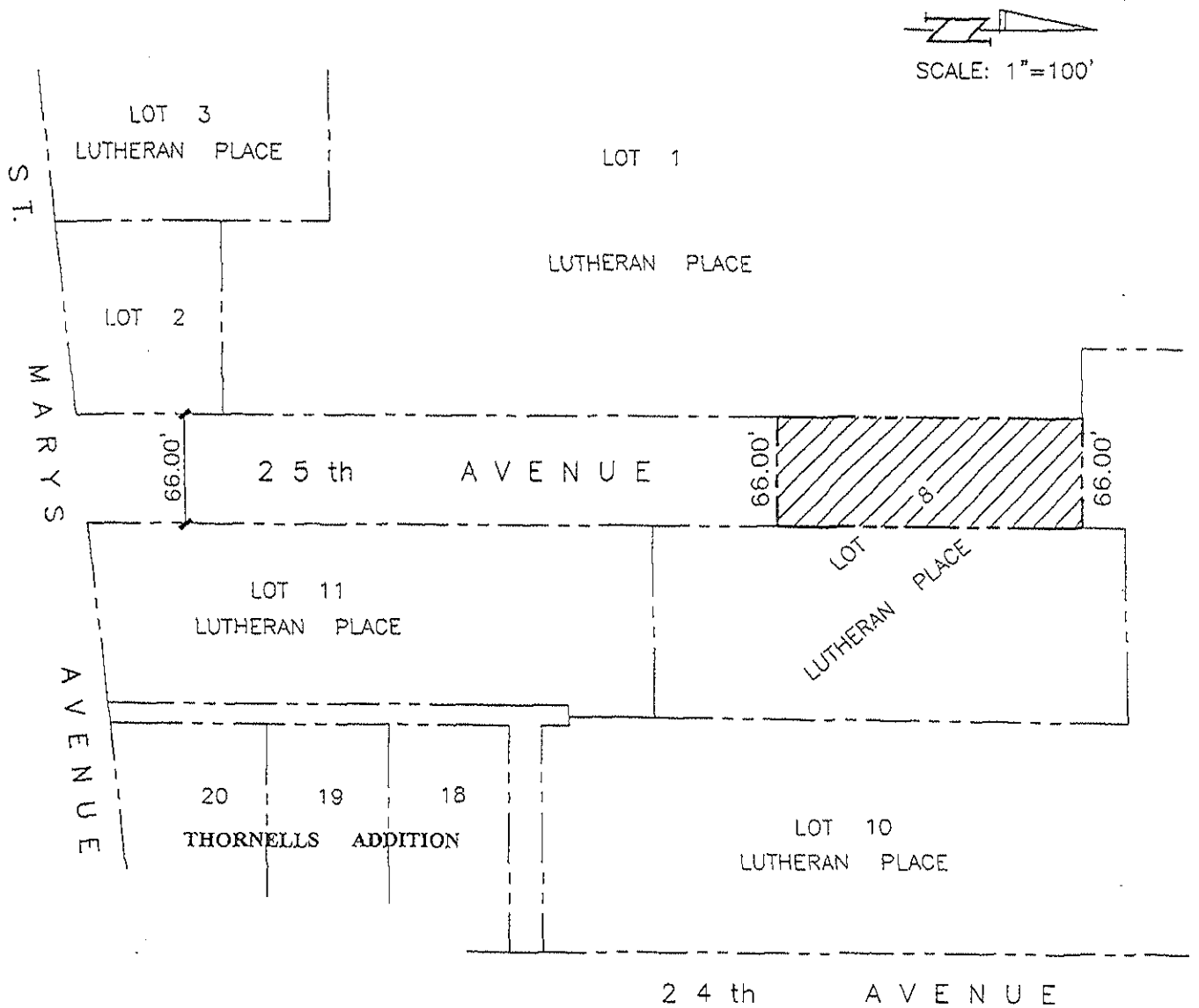


Max J. Burbach  
Notary Public



**EXHIBIT "A"**  
**TLHF EASEMENT AREA**

*[see attached]*



# LEGAL DESCRIPTION

THE WEST 66.00 FEET OF LOT 8, LUTHERAN PLACE, A  
SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA.

## EXHIBIT "A"

THE LUTHERAN HOME FOUNDATION TD2 FILE NO.: 200-341-353-EX1 DATE: NOV. 29, 2006  
THOMPSON, DREESSEN & DORNER, INC., 10836 OLD MILL ROAD, OMAHA, NEBRASKA 68154, 402-330-8860

EXHIBIT "B"

BHSF EASEMENT AREA

[see attached]

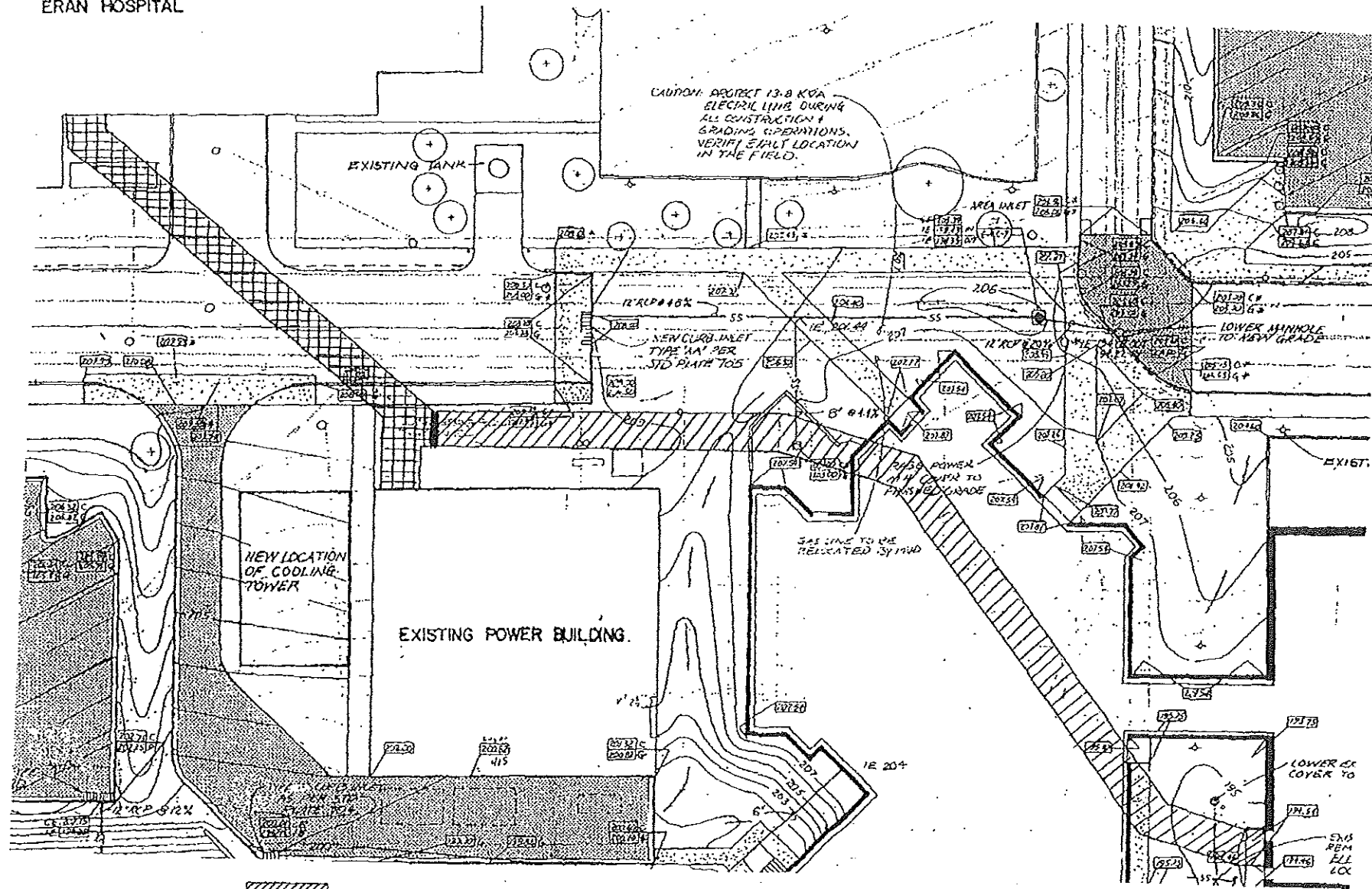
\_\_\_\_\_





EXHIBIT "C"  
RECIPROCAL EASEMENT – TUNNEL DEPICTION

[see attached]

# ERAN HOSPITAL



-  Lot Ten – Tunnel Maintenance and Repair
-  Lot One– Tunnel Maintenance and Repair

➡ North

EXHIBIT "D"  
COURT YARD EASEMENT AREA

*[see attached]*

→ North

