

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2006-12896

2006 APR 18 P 2:37 PM

*Sharon J. Dowling*

REGISTER OF DEEDS

COUNTER *PM SE*  
VERIFIED *PM SE*  
PROOF *PM SE*  
FEES \$ 42.50  
CHECK# 15792  
CHG \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_

*pre* Document Prepared by/Return to: Josh Kritenbrink 402-398-7618  
Northern Natural Gas Company, 1111 South 103rd Street, Omaha, NE 68124-1000

48601-1

**ENCROACHMENT AGREEMENT**

This instrument made and entered into this 14th day of April, 2006, by and between NORTHERN NATURAL GAS COMPANY, a Delaware corporation, (hereinafter referred to as "Northern"), with principal offices at 1111 South 103rd Street, Omaha, Nebraska 68124-1000, and MARKET POINTE, LLC, a Missouri limited liability company ("Owner A") and WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust ("Owner B") (Owner A and Owner B are hereinafter referred to as "Owners").

WITNESSETH THAT:

WHEREAS, Northern is the holder of an Easement granted by Owners on the 14th day of April, 2006, covering the following described premises in Sarpy County, Nebraska:

See Exhibit "A" attached hereto and by this reference made part hereof; and

which Easement was recorded contemporaneously herewith in the Office of the Register of Deeds for Sarpy County, Nebraska (hereinafter referred to as "Easement"); and

WHEREAS, pursuant to the authority contained in said Easement, Northern has constructed and currently operates and maintains a 4-inch pipeline (NEB48601), along with the right to install additional facilities from time to time (hereinafter referred to as "Pipeline Facilities"), across and through the above described premises; and

WHEREAS, Owner A is the present owner of the following described real property, with Pipeline Facilities situated upon the following described land in Sarpy County, Nebraska:

Lots 2 thru 14 and Outlot "A", Market Pointe Addition, a subdivision located in the Northwest Quarter (NW¼) of Section 24, Township 14 North, Range 12 East, and

WHEREAS, Owner B is the present owner of the following described real property, with Pipeline Facilities situated upon the following described land in Sarpy County, Nebraska:

Lot 1, Market Pointe Addition, a subdivision located in the Northwest Quarter (NW¼) of Section 24, Township 14 North, Range 12 East, and

(Owner A's and Owner B's properties hereinafter collectively referred to as the "Owned Premises"); and

WHEREAS, Owners plan to construct electrical conduit, telecommunications conduit, gas lines, sanitary sewer lines, storm sewer lines, sprinkler system, water main lines, paving, landscaping and other items identified on Exhibit "B" as the same may be replaced from time to time upon and within a portion of the confines of Northern's 70-foot wide Easement as depicted on Exhibit "B" (hereinafter referred to as "Encroachment"), with this written consent; and

*RECORDER NOTE: No page 2 included in document 4-18-06 PC*

A

WHEREAS, Owners have been advised by Northern that Northern is a natural gas transmission company and that Northern operates a high pressure underground natural gas pipeline through the Owned Premises; and

WHEREAS, Owners have requested permission from Northern to maintain, use, and enjoy the Encroachment upon a portion of Northern's Easement and in close proximity to Northern's Pipeline Facilities; and

WHEREAS, Northern is willing to grant such permission upon the terms and conditions set forth as follows.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. Northern agrees that Owner A's liability under this Agreement shall be limited to occurrences on Owner A's property only, and Owner B's liability under this Agreement shall be limited to occurrences on Owner B's property only.

2. Northern hereby grants a permanent license to Owners to construct, maintain, operate, repair, replace, use and remove upon the Owned Premises and in close proximity to Northern's Pipeline Facilities, the said Encroachment, subject to the following conditions:

A. Owners agree to install leak detection ports as required by Northern.

B. Owners assume all risks for damages, injuries, or loss to either property or persons, which may be incurred by Owners or their respective agents, invitees, or licensees present on the Easement and arising from the use of the Encroachment, except for damages, injuries, or loss to either property or persons proximately caused by the willful misconduct or negligence of Northern or its employees, agents or representatives.

C. The permission granted herein is limited exclusively to the proposed Encroachment within Northern's Easement. Owners shall not alter the grade or permit such alteration anywhere on the land upon which Northern has reserved its easement rights, without the prior express written consent of Northern, which consent shall not be unreasonably withheld.

D. Owners shall at all times conduct all their activities on said Easement in such a manner as not to interfere with or impede the operation of Northern's Pipeline Facilities and activities in any manner whatsoever.

E. Owners shall not plant any additional trees or shrubs within the confines of Northern's Easement without the prior express written consent of Northern, but may replace diseased, dead or damaged landscaping.

2. Owners agree to indemnify, protect, and hold Northern, its parent, affiliates, subsidiaries, and their directors, officers, employees, representatives, and agents harmless from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage, injury, suit, proceeding, judgment, cost, or expense of whatever kind or nature, including but not limited to reasonable attorneys' fees, arising from or as a result of any incident, act, action, cause of action, negligence, transaction or omission of Owners arising from the construction, operation, maintenance, or use of the said Encroachment within, upon or in the vicinity of the Easement Area except where such loss, cost, liability, or expense was proximately caused by the willful misconduct or negligence of Northern or its employees, agents or representatives. Northern agrees to indemnify, protect, and hold Owners, their parent, affiliates, subsidiaries, and their directors, officers, employees, representative and agents harmless from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage, injury, suit, proceeding, judgment, cost, or expense of whatever kind or nature, including but not limited to reasonable attorneys' fees, arising from or as a result of any incident, act, action, cause of action, negligence, transaction or omission of Northern in connection with, or incidental with the construction, operation, maintenance or use of Northern's Pipeline Facilities within, upon or in the vicinity of the Easement Area, except where such loss, cost, liability, or expense was proximately caused by the willful misconduct or negligence of Owners or their employees, agents or representatives.

3. All repair and maintenance work performed by Northern on its existing or additional Pipeline Facilities located on the Owned Premises shall be performed in a reasonable workmanlike manner and Northern shall restore the surface and grade of the Owned Premises where the work is performed, but shall not be liable for loss, damage, or replacement to Owners' said Encroachment or any associated equipment and facilities that exist within the Easement, and in this regard, Owners hereby release Northern, its employees, agents, officers, and directors from any and all liability for any such loss or damage, except with respect to loss or damage proximately caused by the willful misconduct or negligence of Northern or its employees.

4. It is expressly agreed to by and between the parties hereto that if Owners are in violation of any terms or conditions set forth in this Agreement, Northern shall, as a condition precedent to exercising its remedies, provide Owners written notice of the default in accordance with the notice requirements of Section 7. Owners shall have ten (10) days from receipt of notice to cure such default and if the default is not timely cured, Northern may, at its option, seek its remedies at law or equity. It is further agreed that the failure by Northern to exercise such option as to any such violation shall not constitute a waiver of Northern's future right to exercise such option as to the same or any future violation.

5. The provisions of the Easement, and all rights, powers, privileges, and duties, obligations, and liabilities created thereby, remain in full force and effect and are not affected hereby except to the extent and in the manner set forth above.

6. Owners agree to indemnify, defend and hold Northern, its parent and affiliated companies, and the directors, officers and employees of any such corporate entities harmless from and against any liability, damage, claims, loss, cause of action, suit, proceeding, judgment, cost (including the cost or expense of environmental response, removal or remediation activities), fees or expense, including reasonable attorney's fees arising from Owners': (1) non-compliance with any laws, regulations and orders applicable to the ownership or the operation and maintenance of the said Encroachment on the Owned Premises described herein, and (2) any incidents, acts, releases, negligence, transactions or omissions, or conditions by Owners on or affecting the Easement that would (i) constitute a violation of any local, state or federal environmental rule, regulation, law or judicial order, (ii) result, in whole or in part, in any requirement to clean up or otherwise remedy or remediate a condition, (iii) give rise to any lien, liability, injunction, order, restriction, claim, expense, damage, fine or penalty, or (iv) adversely affect human health or the environment at or near the Easement. Northern agrees to indemnify, defend and hold Owners, their parent and affiliated companies, and the directors, officers and employees of any such corporate entities harmless from and against any liability, damage, claims, loss, cause of action, suit, proceeding, judgment, cost (including the cost or expense of environmental response, removal or remediation activities), fees or expense, including reasonable attorney's fees arising from Northern's: (1) non-compliance with any laws, regulations and orders applicable to the ownership or the operation and maintenance of the Pipeline Facilities on the Owned Premises described herein, and (2) any acts, negligence, or omissions of Northern on or affecting the Easement that would (i) contribute to or constitute a violation of any local, state or federal environmental rule, regulation, law or judicial order, (ii) result, in whole or in part, in any requirement to clean up or otherwise remedy or remediate a condition, (iii) give rise to any lien, liability, injunction, order, restriction, claim, expense, damage, fine or penalty, or (iv) adversely affect human health or the environment at or near the Easement.

7. All notices and communications required or permitted to be given hereunder shall be in writing and hand delivered or mailed by certified or registered mail, posted prepaid, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

If to Northern:

Northern Natural Gas Company  
1111 South 103rd Street  
Omaha, NE 68124-1000

If to Owner A:

c/o the R.H. JOHNSON COMPANY  
Attn: Owen Buckley  
801 WEST 47th Street, Suite 219  
Kansas City, MO 64112



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STATE OF ARKANSAS )  
 )SS  
COUNTY OF BENTON )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of March, 2006, by Shannon Letts, Assistant Vice President, for Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.

(S E A L)



Gina Norton  
Notary Public  
My Commission Expires 7/16/2011

STATE OF NEBRASKA )  
 )SS  
COUNTY OF DOUGLAS )

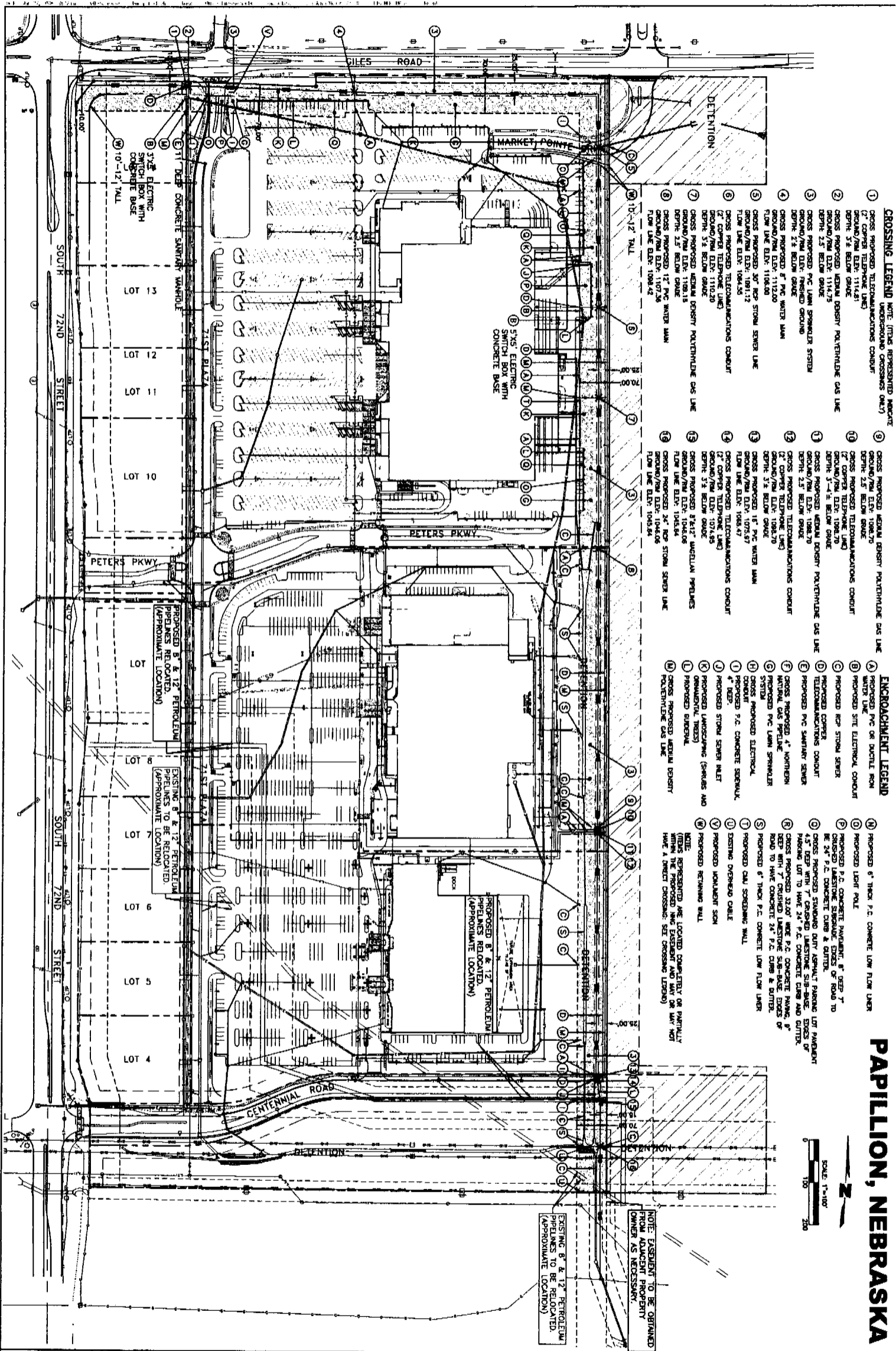
The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of April, 2006, by **Glen R. Hass**, Agent and Attorney-in-Fact, for Northern Natural Gas Company, a Delaware corporation, on behalf of the corporation.

(S E A L)

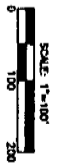


Gail L. Spevak  
Notary Public  
My Commission Expires 6-28-07





PAPILLION, NEBRASKA



NOTE: EASEMENT TO BE OBTAINED FROM ADJACENT PROPERTY OWNER AS NECESSARY.

SHEET 1 OF 1	NORTHERN NATURAL GAS EASEMENT ENCROACHMENT & CROSSING EXHIBIT	REVISIONS		THE R.H. JOHNSON COMPANY	OLSSON ASSOCIATES ENGINEERS • PLANNERS • SCIENTISTS • SURVEYORS
		MARKET POINT ADDITION	DATE		
2006	PAPILLION, NEBRASKA	2006	MARKET POINT ADDITION	2006	2006