

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2006-39090

2006 NOV 17 A 11: 22 8

*Shirley J. Dowling*  
REGISTER OF DEEDS

COUNTER LD B.E. Sm  
VERIFY CM D.E. P  
PROOF an  
FEES \$ 30.50  
CHECK # 17130  
CHG \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_

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

R+R PO Box 3330  
② Omaha NE 68103-0330

48601-1

**ENCROACHMENT AGREEMENT**

This instrument made and entered into this 9th day of November, 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 TRANSWEST PROPERTIES, LLC, a Nebraska limited liability company (hereinafter referred to as "Owner").

WITNESSETH THAT:

WHEREAS, Northern is the holder of an Easement granted by Market Pointe, LLC, a Missouri limited liability company and Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on the 14th day of April, 2006, covering the following described premises in Sarpy County, Nebraska:

Lots 1 through 14 and Outlot "A", Market Pointe, a subdivision located in the Northwest Quarter (NW $\frac{1}{4}$ ) of Section 24, Township 14 North, Range 12 East; and

which Easement was recorded the 18th day of April, 2006, as Document No. 2006-12895, 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 is the present owner of the following described real property, with Pipeline Facilities situated upon the following described land in Sarpy County, Nebraska (hereinafter referred to as the "Owned Premises"):

Lot 13, Market Pointe Addition Replat 1, a subdivision located in the Northwest Quarter (NW $\frac{1}{4}$ ) of Section 24, Township 14 North, Range 12 East.

WHEREAS, Owner plans to construct a parking lot (hereinafter referred to as "Encroachment") upon and within a portion of the confines of Northern's 70 foot Easement as depicted on Exhibit "A", with this written consent; and

WHEREAS, Owner has 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, Owner has 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:

A

1. Northern hereby grants permission to Owner to maintain, operate and use upon the Owned Premises and in close proximity to Northern's Pipeline Facilities, the said Encroachment, subject to the following conditions:

A. That Owner assumes all risks for damages, injuries, or loss to either property or persons, which may be incurred by Owner or its 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.

B. That the permission granted herein is limited exclusively to the proposed Encroachment within Northern's Easement. Owner 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. Northern expressly consents to Owner's alteration of the grade within the Encroachment as depicted on attached Exhibit "B".

C. That Owner shall at all times conduct all its 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.

D. That Owner shall not plant any trees or shrubs within the confines of Northern's Easement without the prior express written consent of Northern.

E. Owner agrees to install leak detection ports as required by Northern.

2. Owner agrees 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 Owner in connection with, or incidental to 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 Owner, its parent, affiliates, subsidiaries, and their directors, officers, employees, representatives and agents harmless from and against any and all 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 to 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. Owner agrees that protection of Northern's Pipeline Facilities will be maintained at all times.

4. Should Northern need to remove any of Owner's said Encroachment within its Easement in order to construct, maintain, operate, repair, remove, or resize Northern's existing or additional Pipeline Facilities, Owner or its respective heirs, successors, and assigns shall pay the cost of removing and replacing or reinstalling said Encroachment. In addition, 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 Owner's said Encroachment or any associated equipment and facilities that exist within the Easement, and in this regard, Owner hereby releases Northern, its employees, agents, officers, and directors from any and all liability for any such loss or damage, except where such loss or damage was proximately caused by the willful misconduct or negligence of Northern or its employees, agents or representatives.

5. The Parties hereto understand that this Agreement in no way constitutes a waiver by Northern of its rights to enjoy its Easement unencumbered by the construction of said Encroachment within Northern's Easement.

B

6. It is expressly agreed to by and between the parties hereto that if Owner is in violation of any terms or conditions set forth in this Agreement, Northern, shall, as a condition precedent to exercising its remedies, provide Owner written notice of the default. Owner shall have ten (10) days from the 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 rights to exercise such option as to the same or any future violation

7. 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.

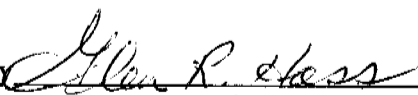
8. Owner agrees to indemnify, defend and hold Northern, its parent and affiliated companies, and the directors, officers and employees of any such corporate entities harmless from and against any liability, damage, claims, loss, cause of action, suit, proceeding, judgment, cost (including the cost or expense of environmental response, removal or remediation activities), fees or expense, including reasonable attorney's fees arising from: (1) Owner's 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 Owner 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. Northern agrees to indemnify defend and hold Owner, its parent, affiliates, subsidiaries, and their directors, officers, employees, representatives and agents 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 attorneys' 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.

9. Northern agrees that Owner's liability under this Agreement shall be limited to occurrences on Owner's property only.


This instrument and the covenants and agreements herein contained shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties and the benefits of this Agreement shall run with the land.

IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

"NORTHERN"  
NORTHERN NATURAL GAS COMPANY

By   
Glen R. Hass  
Agent and Attorney in Fact

"OWNER"  
MARKET POINTE TRANSWEST  
PROPERTIES, LLC

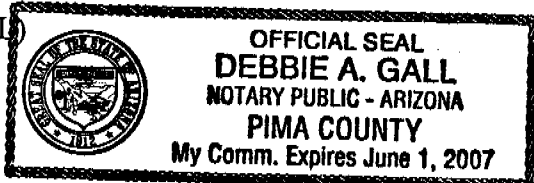
By   
Joshua T. Westling  
Manager

C

STATE OF *ARIZONA* )  
 )SS  
COUNTY OF *PIMA* )

The foregoing instrument was acknowledged before me this 9 day of November, 2006, by Joshua T. Westling, Manager, for Market Pointe Transwest Properties, LLC, a Nebraska limited liability company, on behalf of the company.

(SEAL)

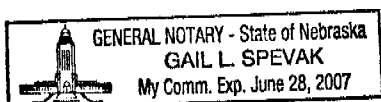


Debbie A. Gall  
Notary Public  
My Commission Expires June 1, 2007

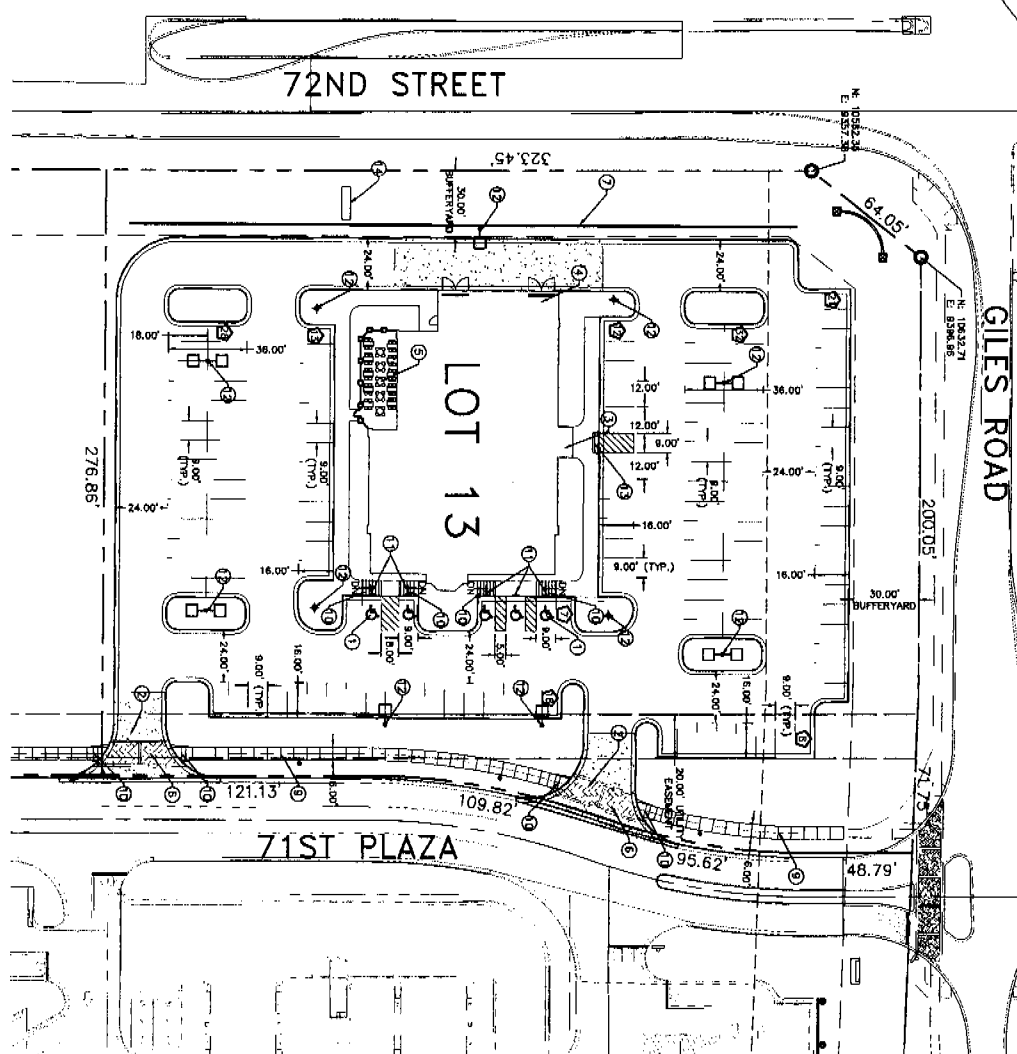
STATE OF NEBRASKA )  
 )SS  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2006, by **Glen R. Hass**, Agent and Attorney-in-Fact, for Northern Natural Gas Company, a Delaware corporation, on behalf of the corporation.

(SEAL)



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



**BENNIGAN'S  
LOT 13 - MARKET POINTE  
SITE PLAN**

**SITE PLAN NOTES**

1. ALL WORK AND UTILITIES SHALL COMPLY WITH ALL CITY/COUNTY ORDINANCES AND STANDARDS.
2. ALL UTILITIES SHALL BE DEPTH MARKED AND CURED WITH A HEAVY SAND OR GRAVEL BED, WHICH AND WATER UNTIL A HEAVY SAND OR GRAVEL IS ESTABLISHED.
3. ALL STAIRS WITH CURB & GUTTER SHALL BE LANDSCAPED THOSE ESTABLISHED.
4. ALL CURB & GUTTER SHALL BE 24" HIGH & 12" WIDE UNLESS OTHERWISE NOTED.
5. ALL DRAINAGE AND RAIN FALL TO THE BACK OF CURB UNLESS OTHERWISE NOTED.
6. REFER TO SITE LIGHTING AND ELECTRICAL PLANS. ALL LIGHT POLE (HULL) FROM PROPOSED BACK OF CURB SHALL BE LOCATED 3.0' FROM PROPOSED BACK OF CURB.
7. CONTRACTOR TO SUBMIT SHOP DRAWINGS FOR RETAINING WALL TO ARCHITECT AND ENGINEER FOR REVIEW PRIOR TO CONSTRUCTION.

**KEY NOTES**

1. ADA ACCESSIBLE PARKING (SEE DETAIL ON SHEET C7.1)
2. PROPOSED SITE ACCESS LOCATION
3. PROPOSED SERVICE YARD/PAVING ENCLOSURE (SEE ARCHITECTURAL PLANS)
4. PROPOSED OUTDOOR SEATING AREA (SEE ARCHITECTURAL PLANS)
5. BRICK PAVEMENT BUILT BY ON-SITE CONTRACTOR
6. CONTRACTOR TO CONSTRUCT RETAINING WALL, APPROXIMATELY 1' TO 4' TALL
7. CONNECTION POINT TO ON-SITE SIDEWALK BUILT BY ON-SITE CONTRACTOR
8. ADA ACCESSIBLE RAMP, MAXIMUM SLOPE = 1:12 (WITH INDICATED DIMENSIONS)
9. ADA ACCESSIBLE SOAK (SEE DETAIL ON SHEET C7.1)
10. PROPOSED LIGHT POLE LOCATION
11. CURB RAMP FOR TO-GO STALLS
12. PROPOSED SIGN LOCATION

**INDEX OF SHEETS**

SITE	DESCRIPTION
C1.1	GRADING PLAN
C2.1	FOUNDATION PLAN
C3.1	PARKING PLAN
C4.1	DRAINAGE PLAN
C5.1	EROSION CONTROL PLAN
C6.1	LANDSCAPE PLAN
S1.1	LANDSCAPE PLAN
S2.1	LANDSCAPE PLAN
L1.1	LANDSCAPE PLAN

**SITE DATA**

ITEM	DESCRIPTION
GROSS SITE AREA	2.47 ACRES
MAIN BUILDING	9,500 SQUARE FEET
BUILDING USE	RESTAURANT
PARKING PROVIDED	139 STALLS
ACCESSIBLE STALLS REQ.	4 STALLS
PARKING RATIO	14.63

**ZONING TABLE**

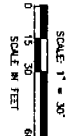
EXISTING	PROPOSED	MADE USE (LNU)	WATER USE (LNU)

**SETBACK/BUFFERYARD LEGEND**

INTERIOR SITE BUFFERYARD (5 FEET)	5 FEET
FRONT YARD BUFFERYARD (GILES ROAD) (15 FEET)	15 FEET
FRONT YARD SETBACK (15 FEET FROM BACK OF CURB OF PRIVATE ROADWAY)	15 FEET

**LEGEND**

- PROPOSED PROPERTY LINE
- PROPOSED WATER MAIN (BY OTHERS)
- PROPOSED SANITARY SEWER (BY OTHERS)
- PROPOSED SANITARY SEWER (BY OTHERS)
- PROPOSED SANITARY MANHOLE
- FIRE HYDRANT
- WATER VALVE
- EXISTING STORM SEWER
- PROPOSED GAS MAIN (BY OTHERS)
- PROPOSED POWER MAIN (BY OTHERS)
- PROPOSED TELEPHONE LINE (BY OTHERS)
- NUMBER OF PROPOSED STALLS
- PROPOSED LIGHT POLE, REF. LIGHTING PLANS



**OLSSON ASSOCIATES**  
 1111 N. 11th Street, Suite 200, Lincoln, NE 68502  
 (402) 441-1111  
 FAX: (402) 441-1112  
 WWW.OLSSONASSOCIATES.COM

REVISIONS	
NO.	DATE / DESCRIPTION

**SITE PLAN**

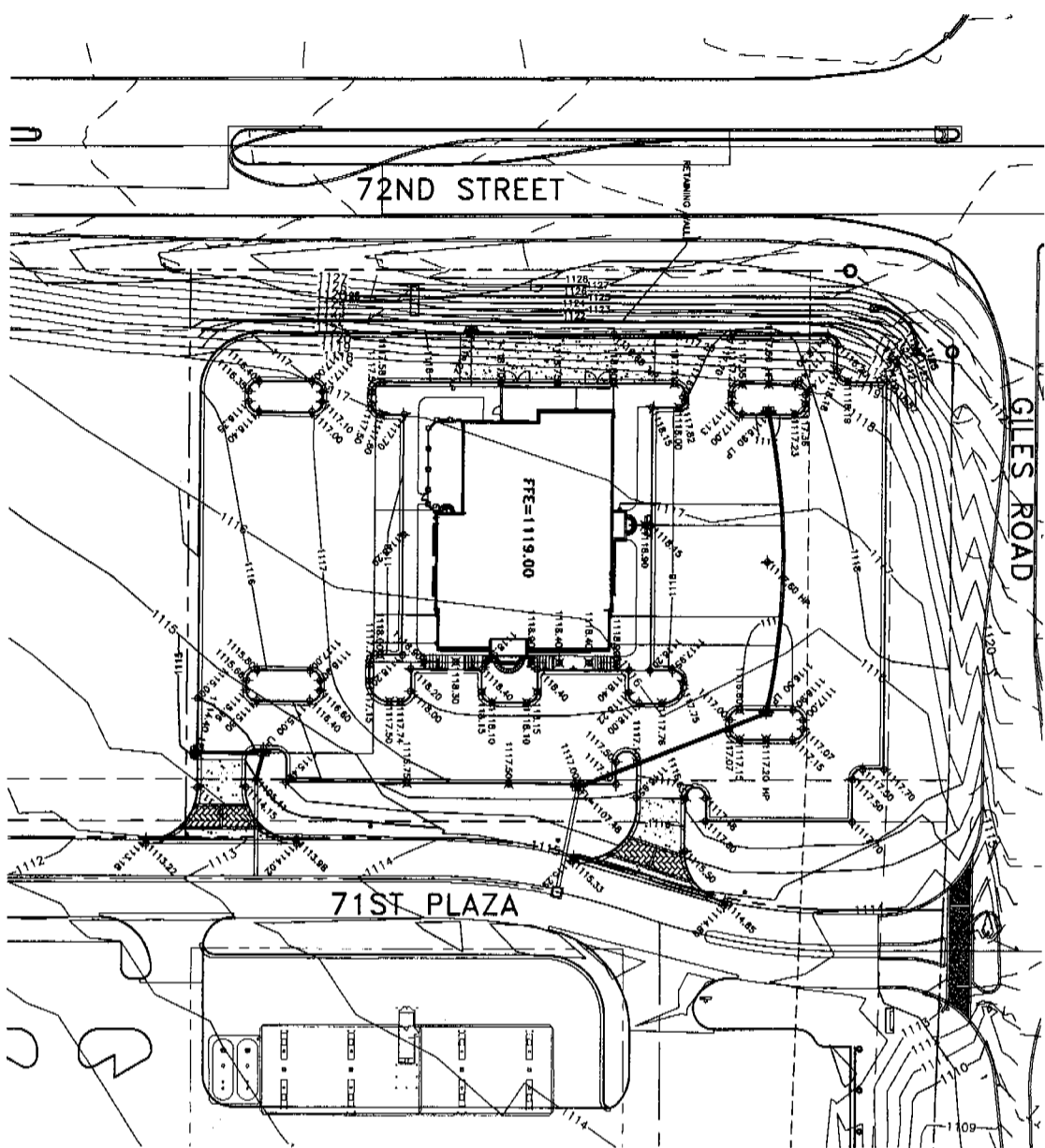
**BENNIGAN'S - MARKET POINTE LOT 13**

**PAPILLION, NEBRASKA**

2006

drawn by: JDL  
 checked by: TML  
 approved by: TML  
 date: 06-23-06

**SHEET C1.1**



BENNIGAN'S  
 LOT 13 - MARKET POINTE  
 GRADING PLAN

**GRADING NOTES**

1. THE PROPOSED CONTRACTOR SHALL REMOVE TOP OF SLAB AT PARKING & BUILDING AT ALL OTHER AREAS. THEY SHALL BE RESPONSIBLE FOR THE PROPER GRADING SURFACE AND SHALL MAINTAIN THE RESPONSIBILITY FOR VERIFYING THE PROPOSED GRADING SURFACE DEPTH AND SHALL MAINTAIN THE SURFACE ELEVATION AND QUANTITIES ACCORDINGLY FROM TO BEGINNING GRADING OPERATIONS.
2. ALL WEEDS/GRASS VEGETATION SHALL BE REMOVED FROM WITHIN THE LIMITS OF THE GRADING OPERATIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE REMOVED GRASS/BURNERS FOR A PERIOD OF 1 YEAR OR UNTIL HE IS RELEASED FROM THIS RESPONSIBILITY BY THE DESIGNER. WHOEVER PERIOD IS SHORTER.
3. SOILS: SET GEOTECH REPORT.
4. FOR PROPER COMPACTION OF FILL MATERIAL, BUILDING PAD PREPARATION, & PAVING.
5. FULL THE OBSERVATION AND TESTING BY A QUALIFIED TESTING LAB OR PROFESSIONAL ENGINEER SHALL BE REQUIRED FOR ALL FOUNDATIONS AND SHALL BE SUBMITTED TO THE ENGINEER AND OWNER.
6. CONTRACTOR SHALL ASSURE POSITIVE DRAINAGE AWAY FROM RETAINING WALL AND BUILDING.
7. FOR ALL NATURAL AND PAVED AREAS.
8. SPECIFICATIONS AND DETAILS SHALL BE SUBMITTED TO THE ENGINEER AND OWNER.
9. CONTRACTOR SHALL ASSURE POSITIVE DRAINAGE AWAY FROM RETAINING WALL AND BUILDING.
10. CONTRACTOR WILL BE HELD RESPONSIBLE FOR SETTLEMENT DUE TO IMPROPER COMPACTION.

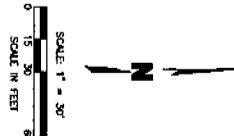
**BENCHMARKS:**

1. BENCHMARK ON CORNER OF SOUTH ISLAND AT 72ND STREET AND GILES ROAD. (ELEV.=1131.8) (NUMBER)
2. BENCH MARK 1/4 CORNER OF SEC.24-114-17E ALSO NEAR 72ND ST AND GILES RD. (ELEV.=1085.51) (NUMBER)
3. SW CORNER OF CONCRETE BASE OF 72ND LIGHT POLE SOUTH OF GILES ROAD. EAST SIDE OF 72ND ST. (ELEV.=1120.88) (NUMBER)

**LEGEND**

- ← DRAINAGE FLOW ARROWS
- PROPOSED SPOT ELEVATIONS
- EXISTING SPOT ELEVATIONS
- FINISHED GRADE
- UNFINISHED GRADE
- 1'-HIGH POINT
- 2'-HIGH POINT

ALL SPOT ELEVATIONS ARE TO TOP OF SLAB UNLESS OTHERWISE NOTED.



NOTE: SPOT ELEVATIONS ARE TO TOP OF SLAB UNLESS OTHERWISE NOTED. FINISHED GRADE SHALL BE MAINTAINED TO THE PROPOSED GRADING SURFACE. ALL SPOT ELEVATIONS ARE TO TOP OF SLAB UNLESS OTHERWISE NOTED.

NOTE: SETTING YOU ARE TO USE FOR THE LOCATION OF THE UTILITY LOCATIONS OF UNDERGROUND TELEPHONE, ELECTRIC, GAS MAINS, CABLE AND OTHER UTILITIES.

<b>GRADING PLAN</b>	
BENNIGAN'S - MARKET POINTE LOT 13	
PAPILLION, NEBRASKA	
2006	

REVISIONS	
A	DATE DESCRIPTION



**OLSSON ASSOCIATES**

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 Omaha, NE 68124-4216

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