

FILED SARPY CO. NE.  
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2008-06173

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

48001-29B

**ENCROACHMENT AGREEMENT**

This instrument made and entered into this 17 day of December, 2007, 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, and WEST 25TH PLAZA, INC. (hereinafter referred to as "Lessor") and ~~SIMONDS RESTAURANT MANAGEMENT~~ (hereinafter referred to as "Lessee") (the Lessor and Lessee hereinafter jointly referred to as "Owners"). *\*Simmonds Properties, Ltd*

WITNESSETH THAT:

WHEREAS, Northern is the holder of an easement granted by West 25th Plaza, Inc., a Nebraska corporation, on the 27th day of October, 1995, 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 the 2nd day of November, 1995, as Document No. 95-19346, 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 16-inch pipeline (NEB48001), 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, Owners are the present owners 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 4, Cornhusker Plaza, a subdivision located in the Northwest Quarter (NW $\frac{1}{4}$ ) of Section 27, Township 14 North, Range 13 East.

WHEREAS, Owners plan to construct a sidewalk, landscaping, trash containment, driveway, and curbing (hereinafter referred to as "Encroachment") upon and within a portion of the confines of Northern's Easement as depicted on Exhibit "B", with this written consent; and

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 hereby grants permission to Owners 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 Owners assume 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 or in the vicinity of the Easement and in any way associated with said Encroachment.

B. That 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.

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

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 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, or from the operation, maintenance, use or presence of Northern's Pipeline Facilities upon or in the vicinity of the Encroachment except where such loss, cost, liability, or expense was proximately caused by the negligence of Northern or its employees. It is understood and agreed by the parties that under this Agreement, Owners shall be jointly and severally liable.

3. Owners agree that protection of Northern's Pipeline Facilities will be maintained at all times.

4. Should Northern need to remove any of Owners said Encroachment within its Easement in order to construct, maintain, operate, repair, remove, or resize Northern's existing or additional Pipeline Facilities, Owners 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 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.

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.

6. 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, at its option, may terminate this Agreement upon ten (10) days' notice to the Owners. In the event of such termination, Owners shall immediately remove any and all of said Encroachment which may be situated on the Easement, or if Owners fail to remove any and all of said Encroachment, Northern may, at its option, remove said Encroachment at the expense of Owners and without any liability whatsoever. 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.

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. 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: (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 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.

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  
Glen R. Hass  
Agent and Attorney in Fact

"OWNERS"  
"LESSOR"  
WEST 25TH PLAZA, INC.

By Edward F. Gilbert  
Title owner / mgr.

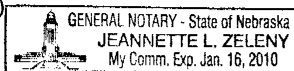
"LESSEE" Simmonds Properties, Ltd.  
SIMOND'S RESTAURANT  
MANAGEMENT

By PK Gissman  
Title CFO

STATE OF Nebraska )  
 )SS  
COUNTY OF SARPY )

The foregoing instrument was acknowledged before me this 3rd day of March, 2008, by Edward F. Gilbert, owner / manager, for West 25th Plaza, Inc., a Nebraska corporation, on behalf of the corporation.

(S E A L)



Jeannette L. Zeleny  
Notary Public  
My Commission Expires 1/16/10

C

STATE OF Nebraska )  
 )SS  
COUNTY OF Douglas

The foregoing instrument was acknowledged before me this 17 day of December, 2007, by Paulak, Glissman, CFO, for Simond's Simmond's Properties Ltd Restaurant Management, a Nebraska Limited Partnership, on behalf of the lessee.  
(S E A L)



Juice Wilcox  
Notary Public  
My Commission Expires 5-30-08

STATE OF NEBRASKA )  
 )SS  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 4th day of March, 2008, 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 6/8/11

R+R

Attn: Josh Kritenbrink

Right-of-Way Department  
Northern Natural Gas  
P. O. Box 3330  
Omaha, NE 68103-0330

Exhibit "A"

16" NEB48001 PIPELINE  
EASEMENT DESCRIPTION

A PIPELINE EASEMENT OVER, UNDER, AND ACROSS LOT THREE (3) AND LOT FOUR (4) IN CORNHUSKER PLAZA, A SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA, SAID EASEMENT BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE N85°41'48"W THIRTY-NINE (39) FEET ALONG THE SOUTH LINE OF SAID LOT 4; THENCE N5°23'01"E SIXTEEN AND SIXTY-TWO HUNDREDTHS (16.62) FEET; THENCE S88°56'52"E TEN AND FOUR HUNDREDTHS (10.04) FEET; THENCE N01°03'08"E THIRTY-SIX AND ONE TENTH (36.1) FEET; THENCE N88°56'52"W SEVEN AND THIRTY-ONE HUNDREDTHS (7.31) FEET; THENCE N05°23'01"E THIRTY-THREE AND SIXTY-ONE HUNDREDTHS (33.61) FEET; THENCE N01°12'52"E THIRTY-SIX AND ONE TENTH (36.1) FEET TO A POINT ON THE NORTH LINE OF SAID LOT 4; SAID POINT BEING THIRTY-SIX AND EIGHTY-SIX HUNDREDTHS (36.86) FEET WEST OF THE NORTHEAST CORNER OF LOT 4; THENCE CONTINUING N01°12'52"E ONE HUNDRED EIGHTEEN AND NINE HUNDREDTHS (118.09) FEET; THENCE N88°35'06"W ONE HUNDRED SEVENTY-FOUR AND NINETY-THREE HUNDREDTHS (174.93) FEET; THENCE N00°18'06"E TWENTY-FIVE AND TWENTY-SIX HUNDREDTHS (25.26) FEET TO A POINT ON THE NORTH LINE OF SAID LOT 3; SAID POINT BEING TWENTY-FOUR AND THIRTY-NINE HUNDREDTHS (24.39) FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 3; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 3 TO THE NORTHEAST CORNER THEREOF; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID LOT 3 AND SAID LOT 4 TO THE POINT OF BEGINNING (SOUTHEAST CORNER OF SAID LOT 4).

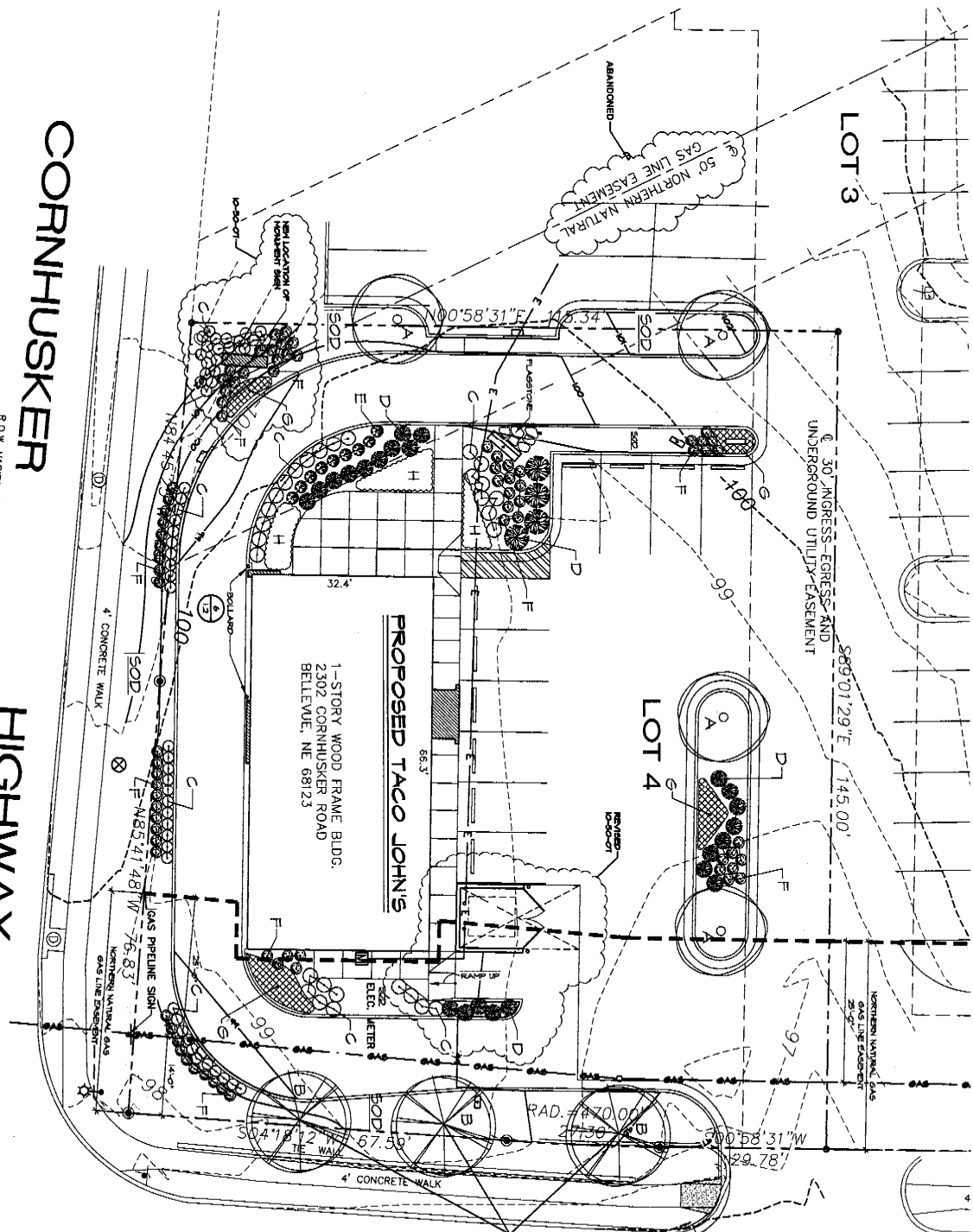
SUBJECT TO VALID EASEMENTS, IF ANY.

NOTE: THE NORTH LINE OF SAID LOT 3 IS ASSUMED TO BEAR S89°01'29"E FOR THE PURPOSE OF THIS DESCRIPTION.

2008-06173 E

Exhibit "B"

**CORNHUSKER HIGHWAY**  
R.O.W. VARIES / WESTBOUND LANE 28' CONCRETE PAVEMENT



**23rd STREET**  
60' R.O.W. / 32' CONCRETE PAVEMENT

**STREET**