

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2000 06433

2000 MR 22 AM 11:05

Glenn J. Rowland
REGISTER OF DEEDS

Counter SM
Verify AK
D.E. SM
Proof D
Fee \$ 35.50
Ck Cash Chg

Document Prepared by/Return to: Northern Natural Gas Co., ATTN: ROW Dept., P.O. Box 3330, Omaha, NE 68103-0330

Line No. : NEB 48701
Tract No. : 40

AGREEMENT

This instrument made and entered into this 3rd day of February, 2000, by and between NORTHERN NATURAL GAS COMPANY, a Delaware corporation, (hereinafter referred to as "Northern"), with principal offices at P.O. Box 3330, Omaha, Nebraska 68103-0330, and SANITARY AND IMPROVEMENT DISTRICT NUMBER 173 (hereinafter referred to as "S.I.D. No. 173").

WITNESSETH THAT:

WHEREAS, Northern is the holder of an Easement granted by Charles F. Schaab and Emma Schaab, husband and wife on August 23, 1951 covering the following described premises in Sarpy County, Nebraska

The North Sixty Acres (N 60 A.) of the West Half of the Northwest Quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$), Section Thirty-Four (34), and the Southwest Quarter (SW $\frac{1}{4}$) of Section Twenty-Seven (27), all in Township Fourteen North (T14N), Range Twelve East (R12E).

which Easement was recorded August 23, 1951 in Book 15 at Page 40, and was defined by a Modification and Amendment of Easement Grant dated March 13, 1972, recorded April 13, 1972 in Book 45 of Miscellaneous at Page 157, all in the Office of the County 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, along with the right to install additional pipelines and facilities from time to time (hereinafter referred to as "Pipeline Facilities"), across and through the above described premises; and

WHEREAS, S.I.D. No. 173 is planning to develop 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"):

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All of Tax Lot 7A1 in the Northwest Quarter (NW¼) of Section Thirty-Four (34), Township Fourteen North (T14N), Range 12 East (R12E) of the 6th P.M., more particularly described in a Warranty Deed recorded as Document No. 95-0692, Sarpy County Register of Deeds.

WHEREAS, S.I.D. No. 173 plans to construct a hard-surfaced road (Devon Drive), three (3) 72-inch inground benches, each with a 7' x 4' x 4" concrete base, and a 4" thick, 5' wide concrete path (hereinafter referred to as "Encroachment") upon and within a portion of the confines of Northern's 100-foot right-of-way width, as depicted in Exhibit "A" attached hereto (hereinafter referred to as "Easement Area"), with this written consent; and

WHEREAS, S.I.D. No. 173 has been advised by Northern that Northern is a natural gas transmission company; that Northern operates a high pressure underground natural gas pipeline through the Owned Premises; and

WHEREAS, S.I.D. No. 173 has requested permission from Northern to maintain, use, and enjoy the above-described Encroachment upon a portion of Northern's above-mentioned 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 S.I.D. No. 173 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 S.I.D. No. 173 assumes all risks for damages, injuries, or loss to either property or persons, which may be incurred by S.I.D. No. 173 or its respective agents, invitees, or licensees present on or in the vicinity of the Easement Area and in any way associated with said Encroachment.

B. That the permission granted herein is limited exclusively to the proposed Encroachment upon the Owned Premises within the Easement Area of Northern's Pipeline Facilities. S.I.D. No. 173 shall not alter the grade or permit such alteration anywhere on the land upon which Northern has reserved its easement right, without the prior express written consent of Northern.

C. That S.I.D. No. 173 shall at all times conduct all its activities on said Easement Area 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 S.I.D. No. 173 shall not plant any trees or shrubs within the confines of Northern's Easement Area without the prior express written consent of Northern.

2. S.I.D. No. 173 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 S.I.D. No. 173 in connection with, or incidental to the construction, operation, maintenance, or use of the said Encroachment with and upon the Easement Area, or from the operation, maintenance, use or presence of Northern's Pipeline Facilities upon or in the vicinity of the Easement Area except where such loss, cost, liability, or expense was proximately caused solely by the gross negligence of Northern or its employees. It is understood and agreed by the parties that under this Agreement, S.I.D. No. 173 shall be jointly and severally liable.

3. S.I.D. No. 173 agrees that protection of Northern's Pipeline Facilities will be maintained at all times.

4. Should Northern need to remove any of said Encroachment(s) within its Easement Area in order to construct, maintain, operate, repair, remove, or resize Northern's existing or additional Pipeline Facilities, S.I.D. No. 173 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 Owned Premises where the work is performed, but shall not be liable for loss, damage, or replacement to said Encroachment(s) or any associated equipment and facilities that exist within the Easement Area, and in this regard, S.I.D. No. 173 hereby releases 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 Area.

6. It is expressly agreed to by and between the parties hereto that if S.I.D. No. 173 is 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 S.I.D. No. 173. In the event of such termination, S.I.D. No. 173 shall immediately remove any and all of said Encroachment which may be situated on the Easement Area, or if S.I.D. No. 173 fails to remove any and all of said Encroachment, Northern may, at its option, remove said Encroachment at the expense of S.I.D. No. 173 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.

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8. S.I.D. No. 173 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) 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 Area 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 Area.

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"

"S.I.D. NO. 173"

NORTHERN NATURAL GAS COMPANY

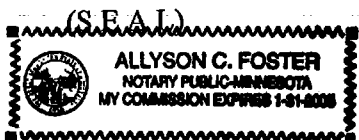
SANITARY AND IMPROVEMENT DISTRICT NUMBER 173

By Dennis D. Werkmeister
Print Name: Dennis D. Werkmeister
Title: Agent and Attorney-in-Fact

By [Signature]
Print Name: BOBIE LARSEN
Title: Chairman

STATE OF MINNESOTA)
)SS
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me, a Notary Public duly commissioned and qualified in and for said county and state, on this 28th day of February, 2000, by Dennis D. Werkmeister, the Agent and Attorney-in-Fact of Northern Natural Gas Company.



Allyson C. Foster
Notary Public
My Commission Expires 1-31-05

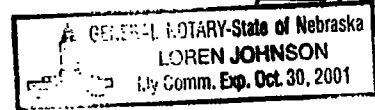
2000-06433 D

STATE OF Nebraska)
)SS
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me, a Notary Public duly commissioned and qualified in and for said county and state, on this 3rd day of ~~February~~ February 2000, by Geoffrey L. Larson, the Chairman of Sanitary and Improvement District Number 173.

(SEAL)

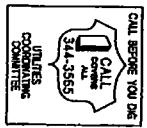
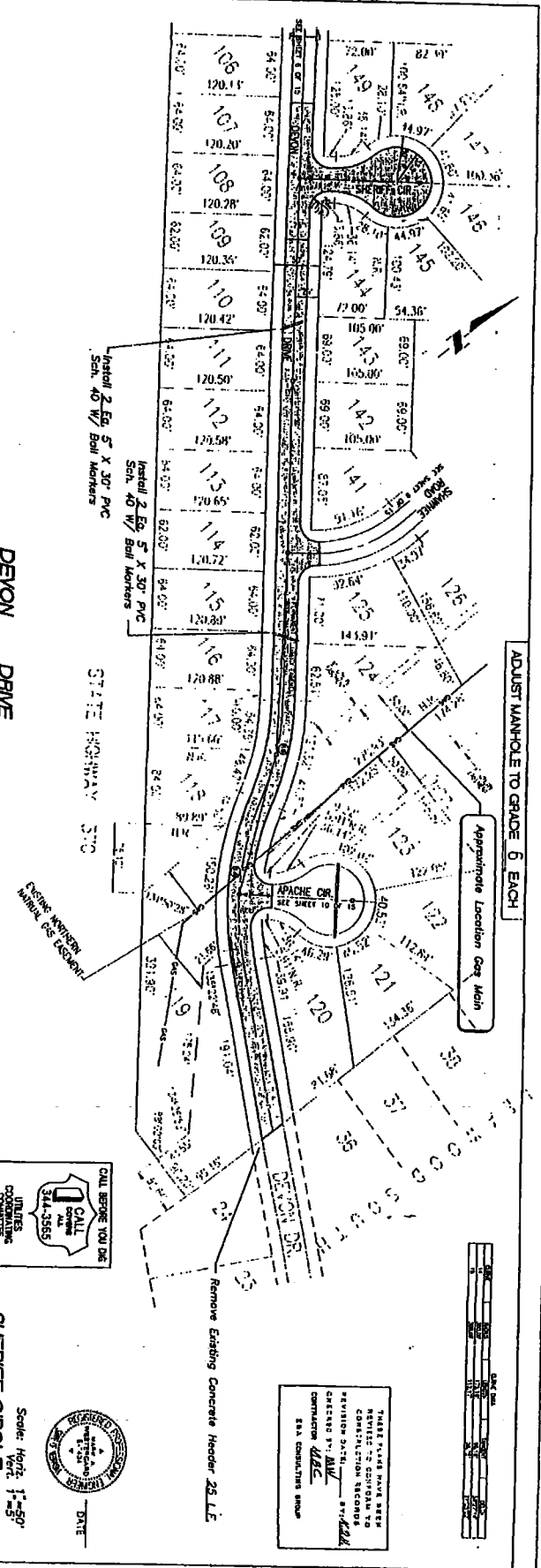
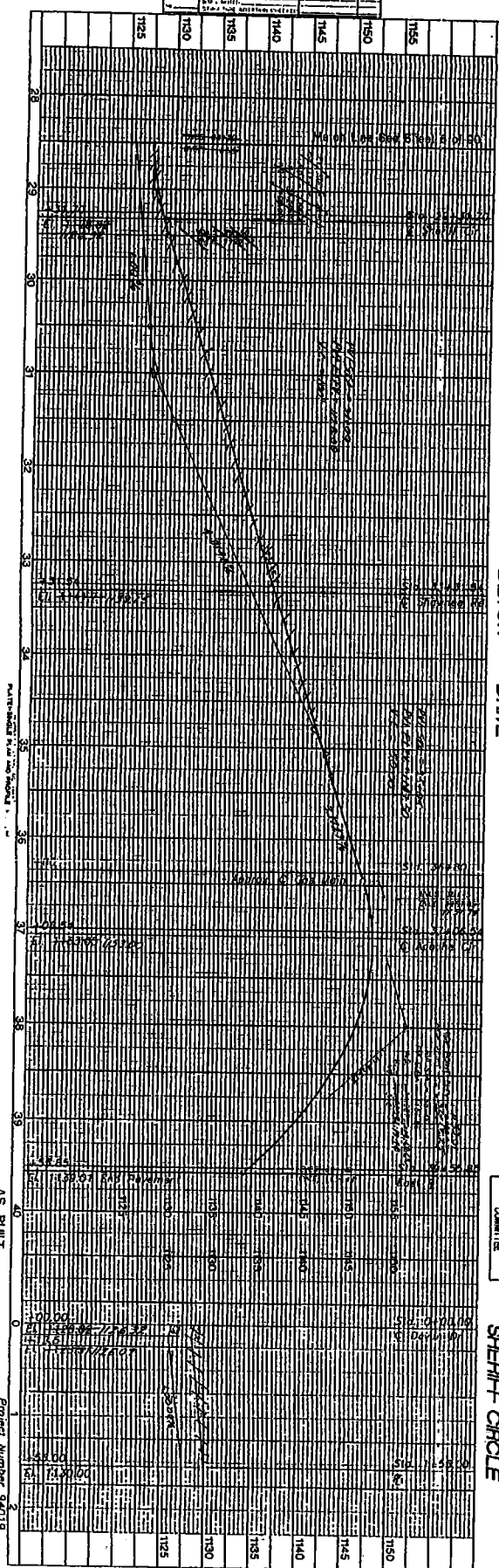
Loren Johnson
Notary Public
My Commission Expires Oct 30, 2001



WORD/ENCROACH.DOC

PROFILE	DATE	BY	CHKD
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PLAN	DATE	BY	CHKD
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Scale: Horiz. 1"=50'
Vert. 1"=5'

DATE

THESE PLANS HAVE BEEN REVIEWED FOR CONFORMANCE WITH THE REQUIREMENTS OF THE ENGINEERING PROFESSION AS SET FORTH BY THE BOARD OF ENGINEERING EXAMINERS OF THE STATE OF TEXAS. ENGINEER M.W. [unreadable] P.E. CONSULTING GROUP

ADJUST MAN-PILE TO GRADE 6 EACH

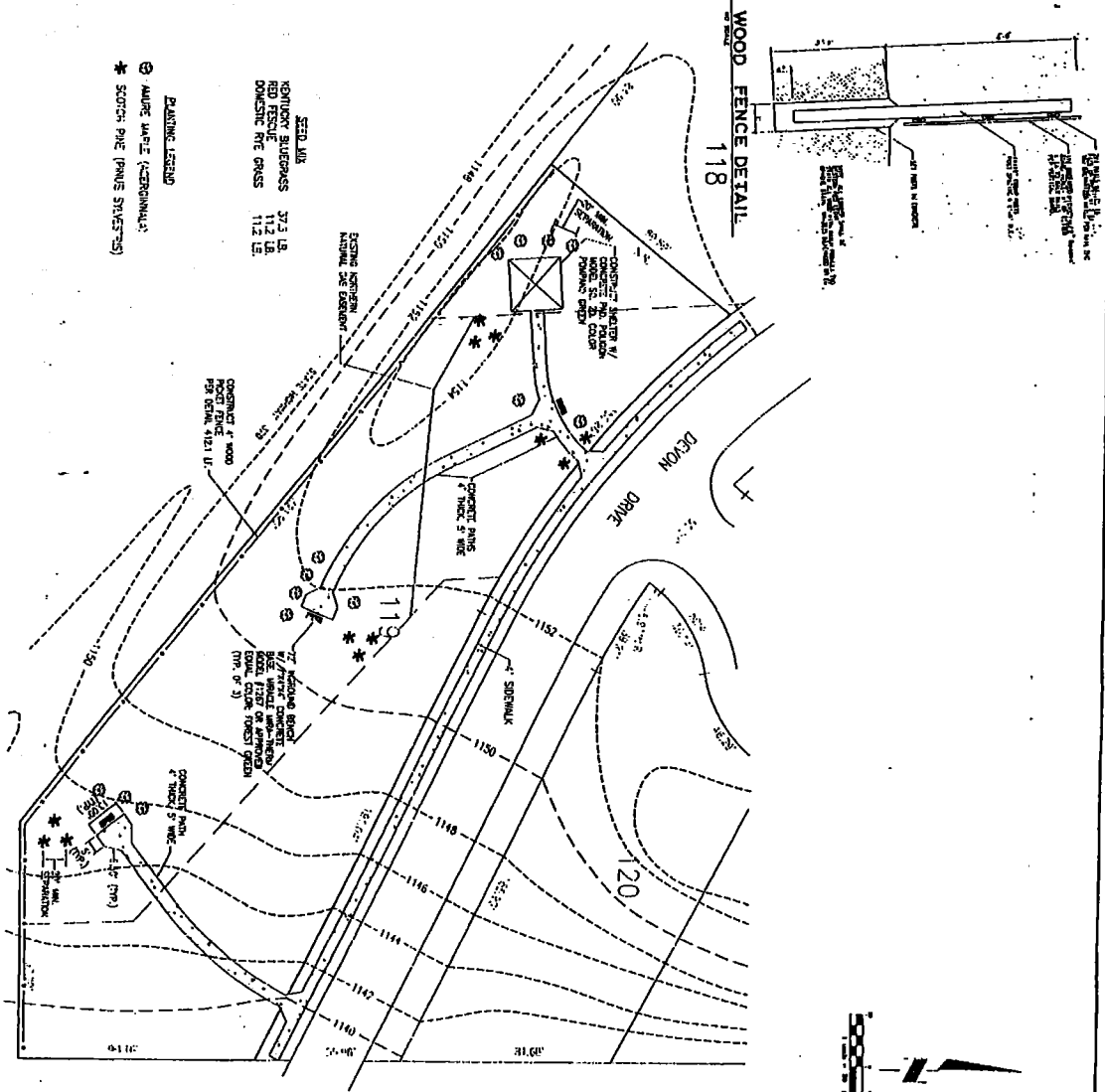


AS BUILT

Project Number 34019

2000-06433 F

DATE PLOTTED: 08/18/00 08:51:11 AM 10/11/00 11:51:11 AM 10/11/00 11:51:11 AM 10/11/00 11:51:11 AM 10/11/00 11:51:11 AM



- PLANTING LEGEND
- ⊙ MAJOR LAWN (ACORN/MAHOG)
 - * SCOTCH PINE (PINE STRIPES)
- SEED MIX
 KENTUCKY BLUEGRASS 37.3 LB
 RED FESCUE 11.2 LB
 DOMESTIC RYE GRASS 11.2 LB
- CONCRETE WALKER W/ CONCRETE AND POLYURETHANE FINISH
 12' x 12' x 12' (12' DIA.)
 12' x 12' x 12' (12' DIA.)
 12' x 12' x 12' (12' DIA.)
- CONCRETE PARK SHELTER W/ CONCRETE AND POLYURETHANE FINISH
 12' x 12' x 12' (12' DIA.)
 12' x 12' x 12' (12' DIA.)
 12' x 12' x 12' (12' DIA.)
- WOOD PICKET FENCE
 12' x 12' x 12' (12' DIA.)
 12' x 12' x 12' (12' DIA.)
 12' x 12' x 12' (12' DIA.)

- APPROXIMATE QUANTITIES
1. 4' P.C. CONCRETE SIDEWALK (AREA)
 2. CONSTRUCT PARK SHELTER W/ CONCRETE AND POLYURETHANE FINISH
 3. CONSTRUCT PARK BENCHES W/ CONCRETE AND POLYURETHANE FINISH
 4. CONSTRUCT 4' WOOD PICKET FENCE
 5. 12' x 12' MAJOR LAWN
 6. 12' x 12' SCOTCH PINE
 7. SEEDING
- 3862 S.F.
 12' x 12' x 12' (12' DIA.)
 420 L.F.
 12' x 12' x 12' (12' DIA.)
 12' x 12' x 12' (12' DIA.)
 500 SQUARE

