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2006-02424  
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Steve J. Harding  
REGISTER OF DEEDS

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FEES \$ 97.50  
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**RECIPROCAL STORM WATER DRAINAGE FACILITIES EASEMENT**

**AGREEMENT**

**("Common H and Common D")**

THIS STORM WATER DRAINAGE FACILITIES EASEMENT AGREEMENT (the "Agreement") is made as of the 23rd day of January, 2006, between Market Pointe, LLC, a Missouri limited liability company ("Market Pointe") with a mailing address of c/o The R.H. Johnson Company, Attn: Owen J. Buckley, 801 W. 47th Street, Suite 219, Kansas City, MO 64112, and Ken E. Peters, as to an undivided 1/5 interest; Keith A. Peters and Louise Peters, husband and wife, as to an undivided 1/5 interest; Kon R. Peters, as to an undivided 1/5 interest; Kerel L. Henderson and Carl Henderson, wife and husband, as to an undivided 1/5 interest; Kae S. Pavlik, Trustee of the Kae S. Pavlik Trust dated October 22, 1999 and Kae S. Pavlik, Trustee of Duane M. Pavlik Family Trust dated October 22, 1999, as to an undivided 1/5 interest, all as tenants in common ("Pavlik") with a mailing address of Attn: Ms. Kae Pavlik, 1717 County Road 6, Yutan, NE 68073.

**WITNESSETH:**

WHEREAS Market Pointe is the owner of that certain land situated in the County of Sarpy, State of Nebraska, as shown on the site plan attached hereto as Exhibit A (the "Site Plan") and more particularly described in the legal description attached hereto as Exhibit B (the "Market Pointe Property"); and

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WHEREAS Pavlik is the owner of that certain land the County of Sarpy, State of Nebraska, as shown on the Site Plan and more particularly described in the legal description attached hereto as **Exhibit C** (the "Pavlik Property").

Pavlik, for and in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to Market Pointe, its successors and assigns, and its authorized agents and tenants, the exclusive right and easement to install, construct, repair, maintain, remove and replace storm water drainage facilities and to drain and detain stormwater including but not limited to, pipes, drains, tiles and related appurtenances (collectively, the "Drainage Facilities") and to install, construct, repair, maintain, remove and replace other pipelines, including but not limited to petroleum pipelines, pipeline facilities and related appurtenances ("Pipelines") on, over, across or under a strip of land located in the County of Sarpy, and State of Nebraska as depicted on the Site Plan and more particularly described in **Exhibit D** attached hereto and made a part hereof ("Common H").

Market Pointe, for and in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to Pavlik, its successors and assigns, and its authorized agents the non-exclusive right and easement to drain stormwater from the detention facilities located on Common H on, over, across or under a strip of land located in the County of Sarpy, and State of Nebraska as depicted on the Site Plan and more particularly described in **Exhibit E** attached hereto and made a part hereof ("Common D").

THE EASEMENTS ARE GRANTED SUBJECT TO THE FOLLOWING:

1. Provided that Pavlik complies with all the Use Prerequisites (as hereinafter detailed), Pavlik shall have the right to use and enjoy fully the Drainage Facilities on Common H subject to the rights hereby granted, but Pavlik agrees that it will not construct nor permit to be constructed any buildings or other structures of a permanent

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nature upon or over Common H without the written consent of Market Pointe which consent may be withheld in Market Pointe's sole discretion. Pavlik shall not disturb the Drainage Facilities (or its functions) on Common H in a manner that would adversely affect the Drainage Facilities without the prior written consent of Market Pointe, which may be withheld in Market Pointe's sole discretion. In no event shall Pavlik disturb the Pipelines. For the purpose of this Paragraph 1, the "Use Prerequisites" shall be all of the following: (i) the proposed detention pond user from an adjoining tract (the "User") agrees to pay its reasonable and proportion costs of the maintenance of the retention ponds, (ii) the User shall cause to be performed and pays the costs of an engineering study to assure that the retention ponds have adequate capacity for the additional storm water (and provides a copy of the same to Market Pointe), (iii) if the foregoing engineering study provides that it is necessary for the retention ponds to be enhanced or otherwise changed or enlarged to have the capacity for storm water disposal from both Market Pointe and the User, the User shall pay all costs associated with enlarging or otherwise changing or enhancing the retention ponds to meet the required the capacity, and (iv) the use of the retention ponds are otherwise approved by applicable governmental authorities.

2. Provided Pavlik complies with the Grading Prerequisites (as hereinafter detailed) and the other terms and conditions of this Agreement, Pavlik shall have the temporary right to enter upon that portion of Common H cross-hatched on the Site Plan to grade the land within said portion of Common H subject to the rights hereby granted and the conditions herein set forth. For the purpose of this Paragraph 2, the "Grading Prerequisites" shall be all of the following: (i) Pavlik shall pay for the cost of the grading, (ii) Pavlik shall cause to be performed and pay for the costs of an engineering study to assure that the integrity, capacity, and the function of the retention ponds will not be comprised by such grading, (and provides a copy of the same to Market Pointe), (iii) Pavlik shall provide copies of its grading plans to Market Pointe and Market

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Pointe shall approve the same, (iv) the grading in Common H is otherwise approved by applicable governmental authorities, (v) the grading does not compromise the integrity, capacity, or the function of the retention ponds, and (vi) Pavlik shall cause to be performed and shall pay for the costs of the resodding or reseedling of Common H.

3. Provided Pavlik complies with the Access Prerequisites (as hereinafter detailed) and the other terms and conditions of this Agreement, Pavlik shall have the right to install, construct, repair, maintain, remove and replace an access road ("Access Work") and to the use the same for vehicular and pedestrian ingress and egress on, over, across or under that portion of Common H cross-hatched on the Site Plan as "Limits of Permitted Access". For the purpose of this Paragraph 3, the "Access Prerequisites" shall be all of the following: (i) Pavlik shall pay for the costs of all Access Work, (ii) Pavlik shall cause to be performed and pay for the costs of an engineering study to assure that the integrity, capacity, and the function of the retention ponds will not be compromised by the Access Work, (and provides a copy of the same to Market Pointe), (iii) Pavlik shall provide copies of its construction plans to Market Pointe and Market Pointe shall approve the same, (iv) the Access Work is otherwise approved by applicable governmental authorities, (v) the Access Work does not compromise the integrity, capacity, or the function of the retention ponds, and (vi) Pavlik shall cause to be performed and shall pay for the costs of any resodding or reseedling of Common H necessary as a result of the Access Work.

4. Except as otherwise provided herein, all work conducted by Market Pointe within Common H shall be done at Market Pointe's sole cost and expense.

5. Market Pointe agrees to use reasonable care in any use of Common H and in the construction, installation, repair, replacement and maintenance of the Drainage Facilities, the Pipelines and Common H as provided for herein so as not to unreasonably disturb Pavlik's use of its adjacent property.

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6. The easements, rights and obligations created pursuant to this Agreement are perpetual and shall be appurtenant to and run with and be binding upon the real properties herein identified, including future subdivisions and/or reconfigurations of such properties, and shall be binding on all entities having or acquiring any right, title or interest in such properties and shall inure to the benefit of each owner, tenant, subtenant, employee or invitee thereof.

7. Pavlik and Market Pointe acknowledge and agree that Market Pointe, its successors, nominees, or assigns, shall purchase Common H as hereinafter provided. Market Pointe shall purchase Common H for the purchase price of One and 00/100 Dollars (\$1.00) at any time within one (1) year of the date of this Agreement. Market Pointe shall advise Pavlik in writing at such time as it is prepared to close on the purchase of Common H. The posting of regular or certified mail, the faxing, or the date of delivery to an overnight carrier to the address herein provided, shall be deemed to be delivery to Pavlik for the purpose of notifying Pavlik that Market Pointe is prepared to close. Closing shall occur not later than sixty (60) days after the date Market Pointe provides such written notice to Pavlik as shall be determined by Market Pointe after reasonable notice to Pavlik (hereinafter the "Closing Date"). At the Closing, Pavlik shall (i) deliver to the title company a warranty deed for Common H and any affidavits or other documents required by the title company to delete the standard title exceptions; authorize the execution and delivery by Pavlik of this Agreement; and all other documents necessary or advisable to consummate the transactions contemplated hereby, and (ii) execute and deliver to Market Pointe and the title company affidavits certifying, as of the Closing, that there are no mechanics' liens or other liens from its activities against Common H and such other affirmations as are commonly required by the title company. At Closing, Market Pointe may cause to be furnished, at its cost, an owner's Title Insurance Policy issued by a title company, insuring good and marketable fee simple title as to the conveyed Common H in Market

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Pointe, and containing no exceptions other than exceptions, if any, which Market Pointe may, in its sole discretion, consent to in writing. Market Pointe shall pay the following costs and expenses in connection with the Closing: (a) the costs of the preparation and recording of any loan documents; and (b) the costs of recording the warranty deed, (c) the costs and expenses in connection with the premiums payable for the Owner's Policy of Title Insurance, and (d) any escrow costs and other costs associated with the Closing. Pavlik and Market Pointe agree to perform such other acts, and to execute, acknowledge, and/or deliver subsequent to the Closing such other instruments, documents and other materials as Pavlik or Market Pointe may reasonably request in order to effectuate the consummation of the transactions contemplated herein and to vest title to the Property in Market Pointe, its successors, nominees, or assigns.

8. Insurance. Market Pointe shall maintain casualty insurance for Common H in amounts and coverages as shall reasonably be determined by Market Pointe. Market Pointe agrees that all policies of insurance required under this Section shall be issued by financially responsible insurance companies qualified to do business in the state of Nebraska; certificates of such policies will be delivered to Pavlik upon request for the same; as often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Market Pointe for the same in a like manner and to like extent; and, all public liability. The liability insurance policies carried by Market Pointe for Common H shall name Pavlik as additional insureds thereunder so long as Pavlik shall be the owner of Common H.

9. Taxes. Market Pointe shall pay before delinquent, all costs and expenses relating to real property taxes (the "Taxes") assessed for any reason and levied on improvements and land comprising Common H.

10. This Agreement contains all of the agreements and stipulations between Pavlik and Market Pointe with respect to the granting of said easement, and the same shall

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inure to the benefit of and be binding upon Pavlik and Market Pointe and their respective successors and assigns and the third party beneficiaries of Market Pointe.

11. The laws of the State of Nebraska shall apply to the Agreement.
12. If any term, provision or condition contained in the Agreement shall, to any extent, be invalid or unenforceable, the remainder of the Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by law.
13. The terms hereof shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.
14. No waiver of any one breach of any of the covenants and/or agreements herein contained shall be construed as, or constitute a waiver of, any other breach or a waiver, acquiescence in or consent to any further or succeeding breach of the same or any other covenant and/or agreement.
15. The Agreement, or any easement, covenant, or restriction or undertaking contained herein, may be terminated, extended or amended as to each of the portions of any of the properties subject hereto only by the recording of the appropriate documents in the records of Sarpy County, State of Nebraska, which documents must be executed by all of the parties hereto.
16. All exhibits referred to herein and attached hereto shall be deemed part of the Agreement.
17. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement.

[Remainder of page intentionally left blank; signatures appear on following page]

IN WITNESS WHEREOF, the undersigned have executed this easement agreement the date first written above.

GRANTOR:

Ken E. Peters, Keith A. Peters and Louise Peters, husband and wife, Kon R. Peters, Kerel L. Henderson and Carl Henderson, wife and husband

WITNESS:

Cynthia E. Gustin  
Name:  
[Signature]  
Name:

By: [Signature]  
Kae S. Pavlik, Attorney in Fact

Kae S. Pavlik, Trustee of the Kae S. Pavlik Trust

WITNESS:

Cynthia E. Gustin  
Name:  
[Signature]  
Name:

By: [Signature]  
Kae S. Pavlik, Trustee

Kae S. Pavlik, Trustee of Duane M. Pavlik Family Trust

WITNESS:

Cynthia E. Gustin  
Name:  
[Signature]  
Name:

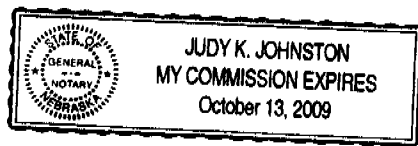
By: [Signature]  
Kae S. Pavlik, Trustee



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STATE OF NEBRASKA )  
 )ss.  
COUNTY OF Douglas )

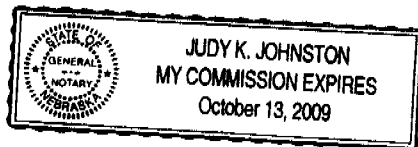
The foregoing instrument was acknowledged before me this 21 day of December, 2005, by Kae S. Pavlik, Attorney in Fact, on behalf of Ken E. Peters, Keith A. Peters and Louise Peters, husband and wife, Kon R. Peters, Kerel L. Henderson and Carl Henderson, wife and husband.



Judy K Johnston  
\_\_\_\_\_, Notary Public  
Douglas County, NE  
My Commission Expires: \_\_\_\_\_

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF Douglas )

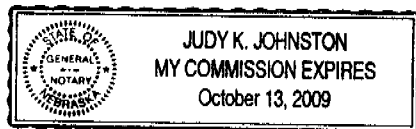
The foregoing instrument was acknowledged before me this 21 day of December, 2005, by Kae S. Pavlik, Trustee, on behalf of the Kae S. Pavlik Trust.



Judy K Johnston  
\_\_\_\_\_, Notary Public  
Douglas County, NE  
My Commission Expires: \_\_\_\_\_

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 21 day of December, 2005, by Kae S. Pavlik, Trustee, on behalf of the Duane M. Pavlik Family Trust.



Judy K Johnston  
\_\_\_\_\_, Notary Public  
Douglas County, NE  
My Commission Expires: \_\_\_\_\_

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MARKET POINTE, LLC, a Missouri Limited Liability Company, GRANTEE:

WITNESS:

*[Handwritten signature]*

Name: \_\_\_\_\_

*[Handwritten signature]*

Name: \_\_\_\_\_

By: *[Handwritten signature]*

Name: *Managing Member*

Its: \_\_\_\_\_

STATE OF Missouri )  
                                  )ss.  
COUNTY OF Jackson )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of December, 2005, by Owen J. Buckley, a Manager of Market Pointe, LLC, a Missouri Limited Liability Company.

"NOTARY SEAL"  
Melissa A. Goodson, Notary Public  
Clay County, State of Missouri  
My Commission Expires 8/25/2009  
Commission Number 05508588

*[Handwritten signature]*, Notary Public  
County, \_\_\_\_\_

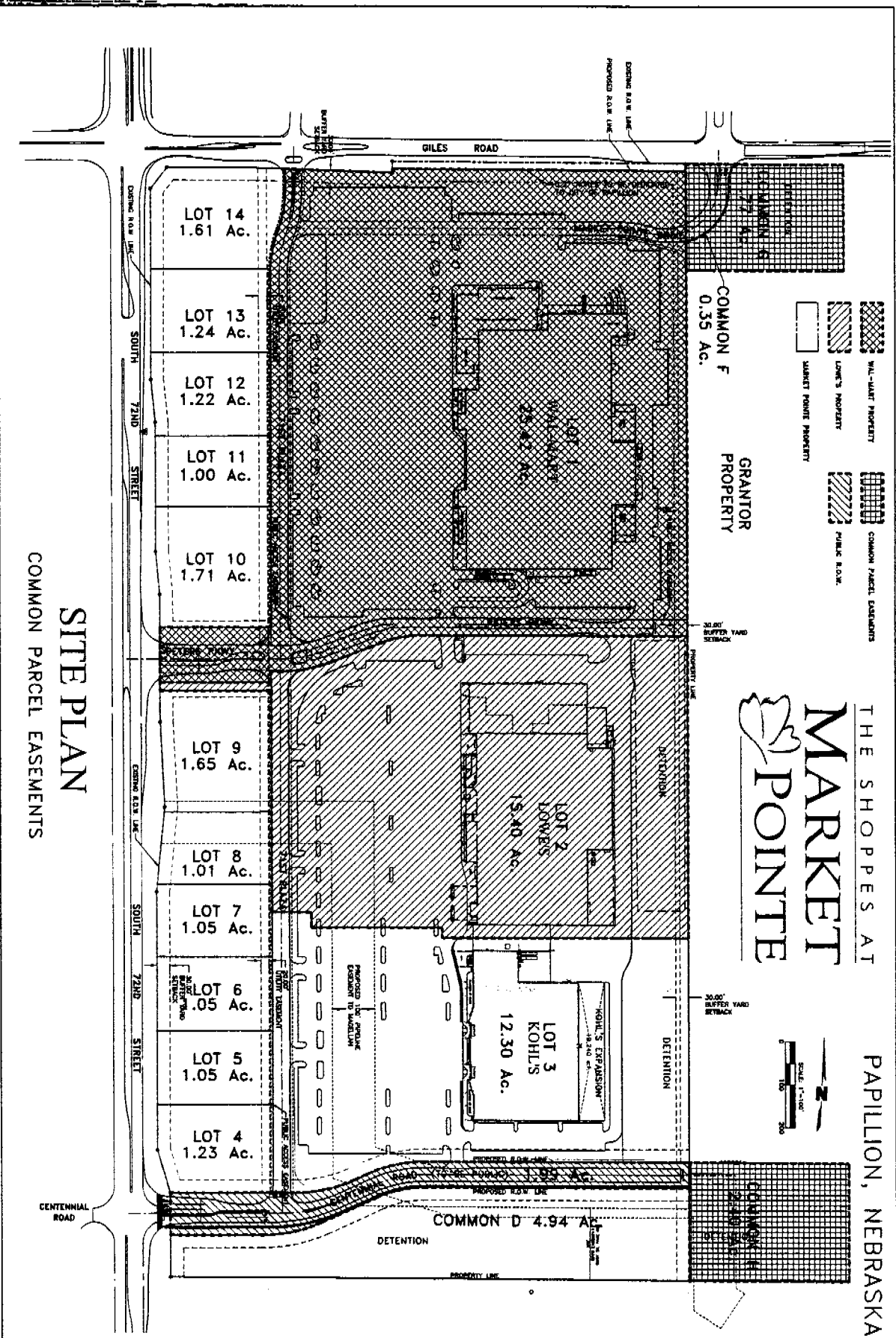
My Commission Expires: \_\_\_\_\_

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**EXHIBIT A**

Site Plan

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**SITE PLAN**  
COMMON PARCEL EASEMENTS

THE SHOPPES AT  
**MARKET**  
POINTE

PAPILLION, NEBRASKA

SHEET 1 OF 1	SITE PLAN COMMON PARCEL EASEMENTS	REVISIONS NO. DATE DESCRIPTION	The R.H. <b>JOHNSON</b> COMPANY	OLESON ASSOCIATES ENGINEERS • PLANNERS • ARCHITECTS • SURVEYORS
	MARKET POINTE ADDITION	2005		
PAPILLION, NEBRASKA		2005		

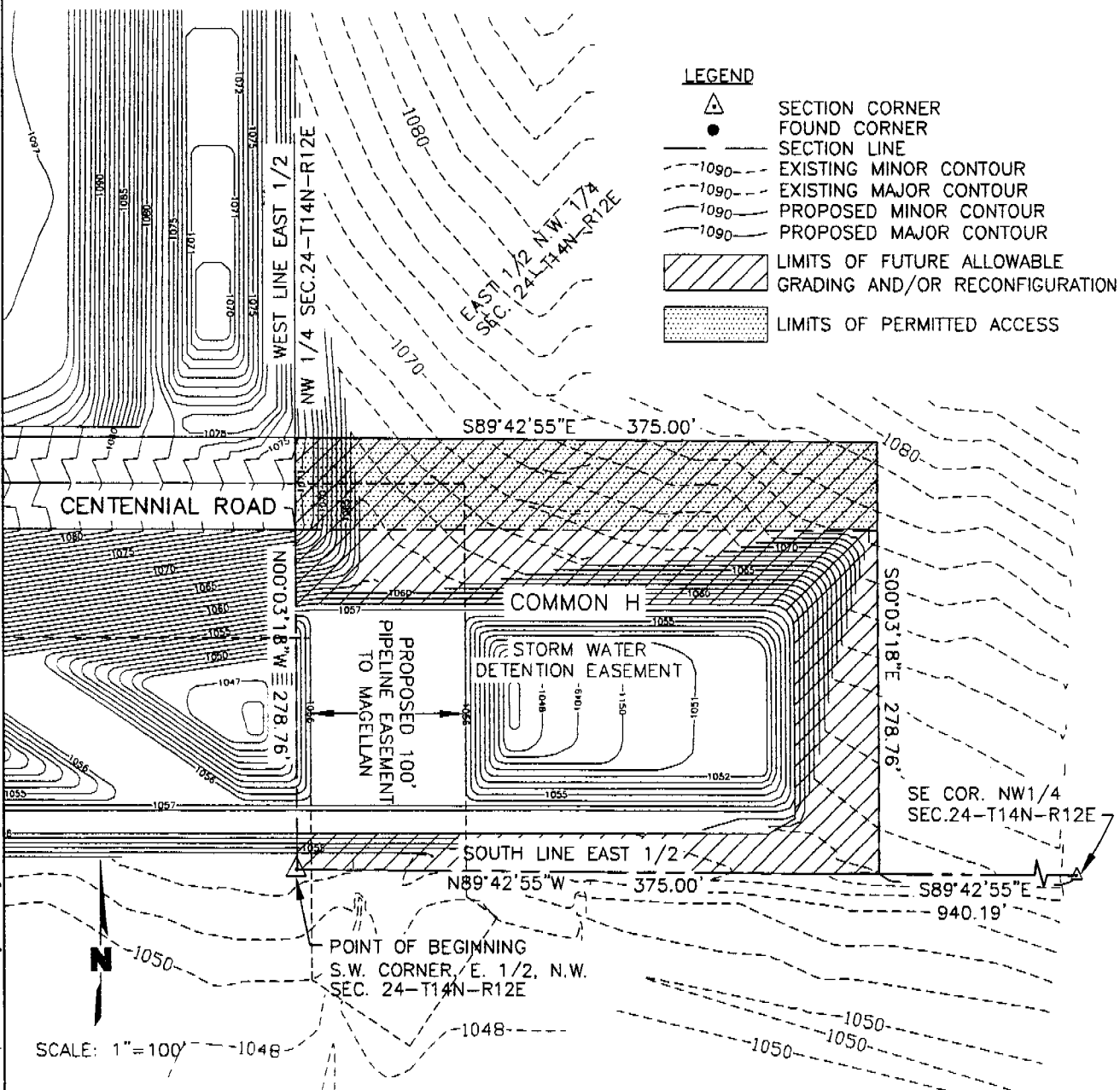
**LEGAL DESCRIPTION (COMMON H)**

**STORM WATER DETENTION EASEMENT**

**LEGAL DESCRIPTION**

A TRACT OF LAND BEING IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., CITY OF PAPIILLION, SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE EAST HALF OF SAID NORTHWEST 1/4, THENCE N00°03'18"W ALONG THE WEST LINE OF SAID EAST HALF, 278.76 FEET; THENCE S89°42'55"E, 375.00 FEET; THENCE S00°03'18"E, 278.76 FEET TO THE SOUTH LINE OF SAID EAST HALF; THENCE N89°42'55"W ALONG SAID SOUTH LINE, 375.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.40 ACRES (104,535 S.F.), MORE OR LESS.



**LEGEND**

- SECTION CORNER
- FOUND CORNER
- SECTION LINE
- EXISTING MINOR CONTOUR
- EXISTING MAJOR CONTOUR
- PROPOSED MINOR CONTOUR
- PROPOSED MAJOR CONTOUR
- LIMITS OF FUTURE ALLOWABLE GRADING AND/OR RECONFIGURATION
- LIMITS OF PERMITTED ACCESS

F:\Projects\2005\1065\Survey\Map\COMMONH.dwg  
 DATE: Dec 14, 2005 12:35pm  
 USER: brtkhen  
 XREF: s: agcont  
 fcont

SCALE: 1" = 100'

COMMON AREA H  MARKET POINTE  PAPIILLION, NEBRASKA	REVISIONS		OLSSON ASSOCIATES ENGINEERS - PLANNERS - SURVEYORS - ENVIRONMENTAL SCIENTISTS - LANDSCAPE ARCHITECTS 2101 South Park Dr., Suite 200 • Omaha, NE 68104 • (402) 421-1111 • www.olsson.com
	2005	2005	

M

**EXHIBIT B**

Legal Description for Market Pointe Parcel

Lots 2 through 14 and Outlot "A", in Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska.

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**EXHIBIT C**

Legal Description for Pavlik Parcel

The East  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of Section 24 Township 14 Range 12 of Sarpy  
County, Nebraska



**EXHIBIT D**

Legal Description for Common H

A tract of land more particularly described below located the Northwest ¼ of Section 24, Township 14 North, Range 12, East of the 6<sup>th</sup> P.M. in Sarpy County, Nebraska:

**COMMON H:**

Beginning at the Southwest Corner of the East Half of said Northwest Quarter of Section 24, , thence on an assumed bearing of North 00 Degrees 03 Minutes 18 Seconds West along the West line of the East Half of said Northwest Quarter, a distance of 278.76 feet to a point, thence South 89 Degrees 42 Minutes 55 Seconds East, a distance of 375.00 feet to a point, thence South 00 Degrees 03 Minutes 18 Seconds East, a distance of 278.76 feet to a point of intersection with the West line of ~~the~~ the East Half of said Northwest Quarter, thence South 89 Degrees 42 Minutes 55 ~~Seconds East~~ <sup>\*</sup>Seconds East along the South line of the East Half of said Northwest Quarter, a distance of 375.00 feet to the Point of Beginning, said Tract contains a calculated area of 104,534.79 square feet, or 2.3998 acres more or less.

RECORDER NOTE

\* Should read

1 \* West  
at South



P

**EXHIBIT E**

Legal Description for Common D

**COMMON D:**

Outlot "A", in Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska..

2006-02424/Q

**CONSENT**

FIRST NATIONAL BANK OF KANSAS, a national banking association ("Mortgagee") is the beneficiary of a Deed of Trust in the principal amount of \$12,500,000.00 from Market Pointe, LLC, a Missouri limited liability company, dated December 23, 2005 and recorded on \_\_\_\_\_ in Book \_\_\_\_\_, Page \_\_\_\_\_, of Sarpy County in the Register of Deeds (the "Deed of Trust"). The Deed of Trust encumbers Lots 2 - 14 in Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska.

Mortgagee hereby consents to this Agreement and agrees that it will not disturb the rights of Pavlik, its successors and assigns, under this Agreement in the event of foreclosure of the Deed of Trust, and Pavlik, as well as its successors and assigns, shall continue to enjoy all rights and privileges granted it under this Agreement provided that Pavlik is not in default under the terms of this Agreement. Pavlik, its successors and assigns, acknowledges that the purchaser at any foreclosure (including Mortgagee), its successors and assigns shall have all the rights of and be recognized as the successor to Market Pointe LLC under this Agreement.

Mortgagee hereby consents to this Agreement and agrees that it will not disturb the rights of Lowe's Home Centers, Inc., a North Carolina corporation, its successors and assigns, under this Agreement in the event of foreclosure of the Deed of Trust, and Lowe's Home Centers, Inc., as well as its successors and assigns, shall continue to enjoy all rights and privileges granted it under this Agreement provided that Lowe's Home Centers, Inc. is not in default under the terms of this Agreement. Lowe's Home Centers, Inc., its successors and assigns, acknowledges that the purchaser at any foreclosure (including Mortgagee), its successors and assigns shall have all the rights of and be recognized as the successor to Market Pointe LLC under this Agreement.

This Consent is effective as of the date and year first written.

**MORTGAGEE:**

FIRST NATIONAL BANK OF KANSAS, a national banking association

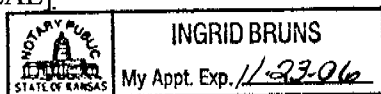
By \_\_\_\_\_  
J. Craig Nichols, Senior Vice President

Date: 12-21-05

STATE OF Kansas  
COUNTY OF Johnson ) ss.

The foregoing instrument was acknowledged before me this 21 day of December, 2005, by J. Craig Nichols, the Senior Vice President of FIRST NATIONAL BANK OF KANSAS, a national banking association, on behalf of the corporation.

[SEAL]



Notary Public Ingrid Bruns  
My Commission Expires 11-23-06