

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
~~2006~~ 02433

2006 JAN 24 P 3:41 8

*Glenn J. Dowling*  
REGISTER OF DEEDS

COUNTER Jim C.E. SM  
VERIFY Jim D.E. AR  
PROOF 98.00  
FEES \$ 98.00  
CHECK# 72088  
CHG 50.48 NCT CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_

**STORM WATER DRAINAGE FACILITIES EASEMENT AGREEMENT**  
**("Common G")**

**THIS STORM WATER DRAINAGE FACILITIES EASEMENT AGREEMENT**  
(the "Agreement") is made as of the 23rd day of Jan, 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 Wal-Mart Real Estate Business Trust ("Wal-Mart") with a mailing address of Wal-Mart Stores, Inc., 2001 S.E. 10<sup>th</sup> Street, Bentonville, AR 72716-0550, Attention: Legal Department - Nebraska (Market Pointe and Wal-Mart may each herein be individually referred to as the "Grantee" and collectively referred to as the "Grantees"), 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 (the "Grantor") with a mailing address of Attn: Ms. Kae Pavlik, 1717 County Road 6, Yutan, NE 68073.

02433



A

**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; and

WHEREAS Wal-Mart is the owner of that certain land situated in 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 B-1; and

WHEREAS Grantor is the owner of that certain land situated in 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.

Grantor, 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 Grantees, their successors and assigns, and their transferees, tenants and authorized agents 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 "Facilities") 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 (the "Easement Area"). THE EASEMENT IS GRANTED SUBJECT TO THE FOLLOWING:

1. Grantor agrees that it will not construct nor permit to be constructed any buildings or other structures of a permanent nature upon or over the Easement Area without the written consent of Grantees which consent may be withheld in each Grantee's sole discretion. Grantor shall not disturb the Facilities (or its functions) on the Easement Area in a manner that would adversely affect the Facilities without the prior written consent of Grantees, which may be withheld in each Grantee's sole discretion.
2. Provided Grantor complies with the Grading Prerequisites (as hereinafter detailed) and the other terms and conditions of this Agreement, the Grantor shall have the temporary right to enter upon that portion of the Easement Area cross-hatched on the Site Plan to grade the land

within said portion of the Easement Area 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) Grantor shall pay for the cost of the grading, (ii) Grantor 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 pond will not be comprised by such grading, (and provides a copy of the same to Grantees), (iii) Grantor shall provide copies of its grading plans to Grantees and Grantees shall approve the same, (iv) the grading in the Easement Area is otherwise approved by applicable governmental authorities, (v) the grading does not compromise the integrity, capacity or the function of the retention pond, and (vi) Grantor shall cause to be performed and shall pay for the costs of the resodding or reseeding of the Easement Area. Grantor hereby indemnifies and holds the Grantees harmless from any claims for damages or injuries arising out of or connected directly or indirectly with the use by Grantor of the easement granted in this Section 2, except with regard to the negligent acts or omissions of Wal-Mart or Market Pointe, their successor or assigns.

3. All work conducted by Grantees within the Easement Area shall be done at Grantees' sole cost and expense. Market Pointe shall be responsible for installation, construction, repair and maintenance of the Facilities.

4. Grantees agree to use reasonable care in any use of the Easement Area and in the construction, installation, repair, replacement and maintenance of either the Facilities or the Easement Area as provided for herein so as not to unreasonably disturb Grantor's use of its adjacent property.

5. 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.

6. Grantor and Market Pointe acknowledge and agree that Market Pointe, its successors, nominees, or assigns, shall purchase the Easement Area as hereinafter provided. Market Pointe

C

shall purchase the Easement Area 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 Grantor in writing at such time as it is prepared to close on the purchase of the Easement Area. 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 Grantor for the purpose of notifying Grantor 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 Grantor as shall be determined by Market Pointe after reasonable notice to Grantor (hereinafter the "Closing Date"). At the Closing, Grantor shall (i) deliver to the title company a warranty deed for the Easement Area and any affidavits or other documents required by the title company to delete the standard title exceptions; authorize the execution and delivery by Grantor 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 the Easement Area 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 Easement Area in Market 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. Grantor 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 Grantor 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.

7. Insurance. Market Pointe shall maintain casualty insurance for the Easement Area 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 Grantor 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 the Easement Area shall name Grantor as additional insureds thereunder so long as Grantor shall be the owner of the Easement Area.
8. Taxes. Market Pointe, its successors and assigns, shall pay before delinquent for all costs and expenses relating to real property taxes (the "Taxes") assessed for any reason and levied on improvements and land comprising the Easement Area.
9. This Agreement contains all of the agreements and stipulations between the Grantor and Grantee with respect to the granting of said easement, and the same shall inure to the benefit of and be binding upon the Grantor and Grantees and their respective successors and assigns and the third party beneficiaries of Grantees.
10. The laws of the State of Nebraska shall apply to the Agreement.
11. 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.
12. The terms hereof shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.
13. 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.

E

14. 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.

15. All exhibits referred to herein and attached hereto shall be deemed part of the Agreement.

16. 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]

F

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. Carlson  
Name:  
[Signature]  
Name:

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

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

WITNESS:

Cynthia E. Carlson  
Name:  
[Signature]  
Name:

By: [Signature]  
Kae S. Pavlik, Trustee

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

WITNESS:

Cynthia E. Carlson  
Name:  
[Signature]  
Name:

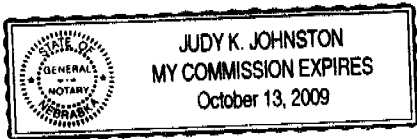
By: [Signature]  
Kae S. Pavlik, Trustee

STATE OF NEBRASKA )  
 )ss.

COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 21 day of December, 2005, by Kac 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.

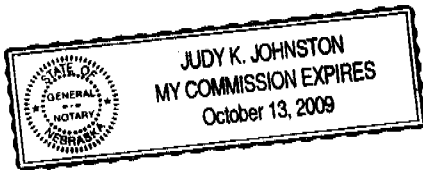
Judy K Johnston  
\_\_\_\_\_, Notary Public  
Douglas County, NE  
My Commission Expires: 10-13-09



STATE OF NEBRASKA )  
 )ss.  
COUNTY OF Douglas )

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

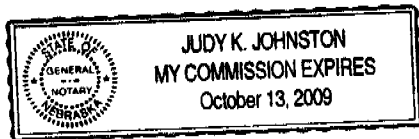
Judy K Johnston  
\_\_\_\_\_, Notary Public  
Douglas County, NE  
My Commission Expires: 10-13-09



STATE OF NEBRASKA )  
 )ss.  
COUNTY OF Douglas )

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

Judy K Johnston  
\_\_\_\_\_, Notary Public  
Douglas County, NE  
My Commission Expires: 10-13-09





M

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

WITNESS:

[Signature]  
Name: \_\_\_\_\_  
[Signature]  
Name: \_\_\_\_\_

By: [Signature]  
Name: Managing  
Its: Member

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.

[Signature]  
, Notary Public  
County, \_\_\_\_\_

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

"NOTARY SEAL"  
Melissa A. Goodson, Notary Public  
Clay County, State of Missouri  
My Commission Expires 8/25/2009  
Commission Number 05506588

I

WAL-MART REAL ESTATE BUSINESS TRUST,  
a Delaware statutory trust, GRANTEE:

WITNESS:

[Signature]  
Name: \_\_\_\_\_

[Signature]  
Name: \_\_\_\_\_

By: [Signature]  
Name: Shannon Letts

Its: Assistant Vice President

STATE OF ARKANSAS )  
) ss.  
COUNTY OF BENTON )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of January, 2005, by SHANNON LETTS, Assistant Vice President of Wal-Mart Real Estate Business Trust, a Delaware statutory trust.

[Signature]  
\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
BENTON County, ARKANSAS

My Commission Expires: 09 27 2014

BOBBI KAY MATZ  
NOTARY PUBLIC-STATE OF ARKANSAS  
BENTON COUNTY  
My Commission Expires 9-27-2014

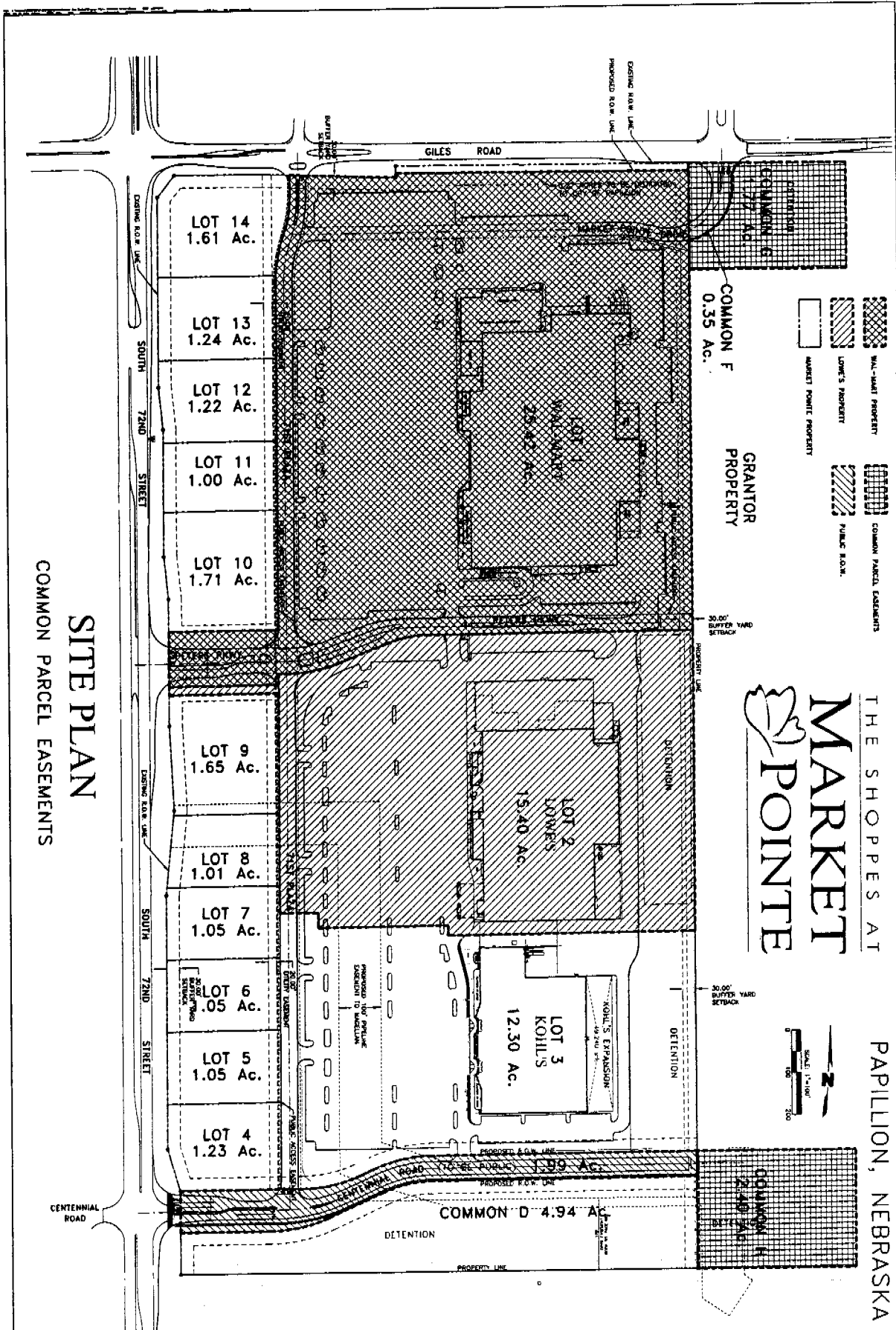
Approved as to legal terms only  
by [Signature]  
WAL-MART LEGAL DEPT.  
Date: 1/19/06

7

**EXHIBIT A**

Site Plan

K



SITE PLAN  
COMMON PARCEL EASEMENTS

THE SHOPPES AT  
**MARKET**  
POINTE

PAPILLION, NEBRASKA

- HALF-ACRE PROPERTY
- LOT'S PROPERTY
- MARKET POINTE PROPERTY
- COMMON PARCEL EASEMENTS
- PUBLIC ROAD



REVISIONS	
NO.	DESCRIPTION



**OLSSON ASSOCIATES**  
 ENGINEERS • PLANNERS • SCIENTISTS • SURVEYORS  
 1111 LEXINGTON AVENUE, SUITE 1200, NEW YORK, NY 10017-4802  
 PH: (212) 850-4400 • FAX: (212) 850-4401 • WWW.OLSSONASSOCIATES.COM

<p> <b>SITE PLAN</b>            COMMON PARCEL EASEMENTS            MARKET POINTE ADDITION            PAPILLION, NEBRASKA         </p>	<p>2005</p>
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SHEET  
1 OF 1

L

**EXHIBIT B**

Legal Description for Market Pointe Parcel

Lots 2 through 14 and Outlot "A", all in MARKET POINTE ADDITION, FINAL PLAT, a subdivision in Papillion, Sarpy County, Nebraska according to the recorded plat thereof.

M

**EXHIBIT B-1**

Legal Description for Wal-Mart Parcel

Lot 1, MARKET POINTE ADDITIONAL, FINAL PLAT, a subdivision in Papillion, Sarpy County, Nebraska according to the recorded plat thereof.

N

**EXHIBIT C**

Legal Description for Grantor Parcel

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

0

EXHIBIT D

Legal Description for Easement Area

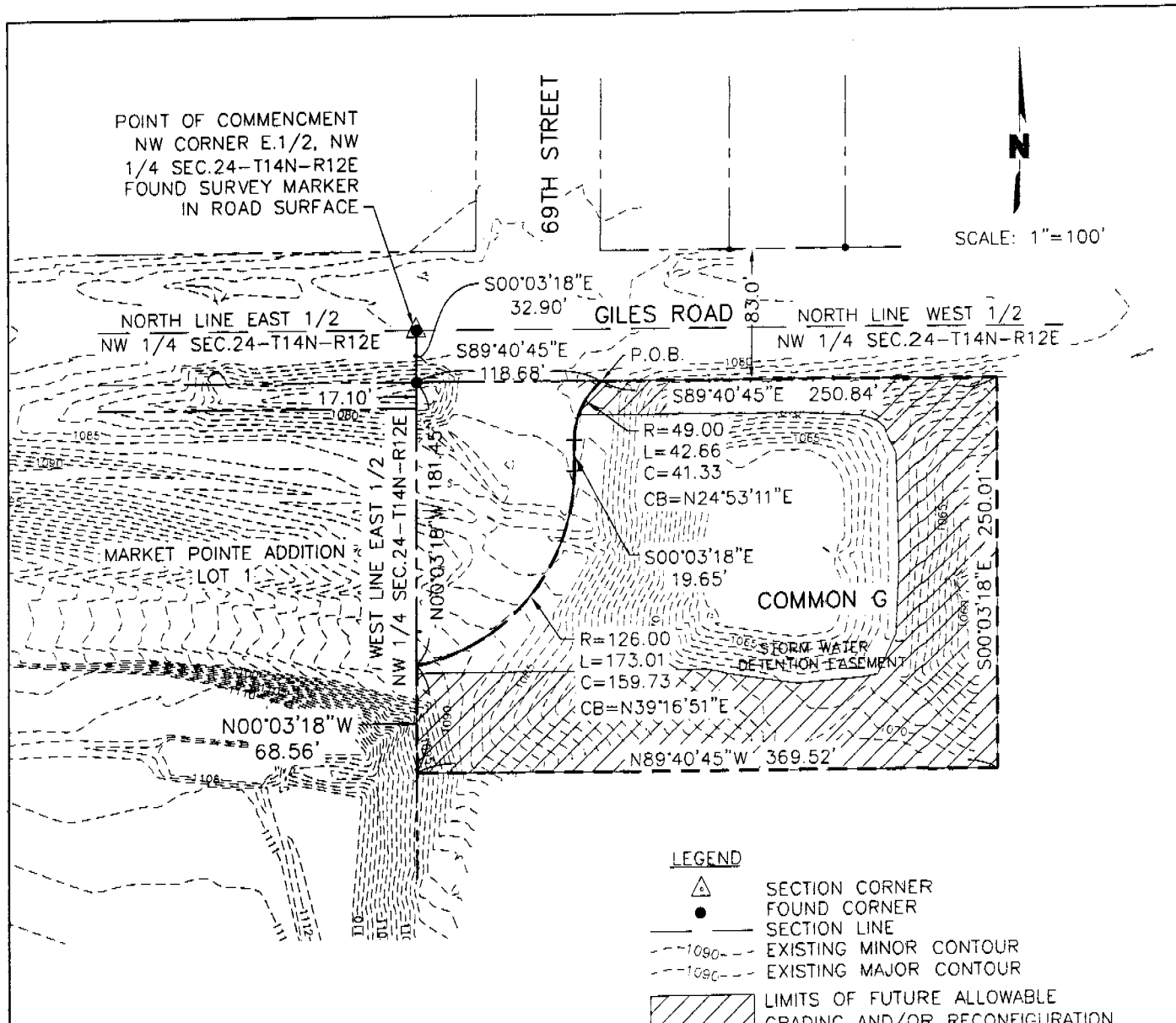
A tract of land more particularly described below located the Northwest  $\frac{1}{4}$  of Section 24, Township 14 North, Range 12, East of the 6<sup>th</sup> P.M. in Sarpy County, Nebraska:

**COMMON G:**

Commencing at the Northwest Corner of the East Half of said Northwest Quarter, thence on an assumed bearing of South 00 Degrees 03 Minutes 18 Seconds East along the West line of the East Half of said Northwest Quarter, a distance of 32.90 feet to a point of intersection with the South line of Giles Road right-of-way, thence South 89 Degrees 40 Minutes 45 Seconds East along said South line, a distance of 105.25 feet to a point, said point being the True Point of Beginning, thence continuing South 89 Degrees 40 Minutes 45 Seconds East along said South line, a distance of 264.26 feet to a point, thence South 00 Degrees 03 Minutes 18 Seconds East, a distance of 250.01 feet to a point, thence North 89 Degrees 40 Minutes 45 Seconds West, a distance of 264.26 feet to a point, thence North 00 Degrees 03 Minutes 18 Seconds West, a distance of 250.01 feet to the Point of Beginning, said Tract contains a calculated area of 66,066.14 square feet, or 1.5167 acres more or less.



P



SCALE: 1"=100'

LEGEND

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

**LEGAL DESCRIPTION (COMMON G)**  
STORM WATER DETENTION EASEMENT

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, SARYPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID EAST HALF OF SECTION 24, THENCE S00°03'18"E (ASSUMED BEARING), 32.90' TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF GILES ROAD RIGHT-OF-WAY; THENCE S89°40'45"E ALONG SAID SOUTH RIGHT OF WAY LINE, 118.68 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING S89°40'45"E ALONG SAID SOUTH LINE, 250.84 FEET; THENCE S00°03'18"E, 250.01 FEET; THENCE N89°40'45"W, 369.52 FEET TO THE WEST LINE OF THE EAST HALF OF SAID SECTION 24; THENCE N00°03'18"W ALONG SAID EAST LINE, 68.56 FEET TO A POINT OF CURVATURE ON A NON-TANGENT CURVE, THENCE ALONG SAID CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 126.00 FEET, AN ARC LENGTH OF 173.01 FEET, A CHORD BEARING OF N39°16'51"E AND A CHORD LENGTH OF 159.73 FEET TO A POINT OF TANGENCY; THENCE N00°03'18"W, 19.65 FEET TO A POINT OF CURVATURE, THENCE ALONG SAID CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 49.00 FEET, AN ARC LENGTH OF 42.66 FEET A CHORD BEARING OF N24°53'11"E AND A CHORD LENGTH OF 41.33 FEET TO THE POINT OF BEGINNING AND CONTAINING A CALCULATED AREA OF 1.77 ACRES (76,979 S.F.), MORE OR LESS.

USER: bethan  
 DATE: Dec 08, 2005 12:48pm  
 C:\p\p\p\1\20051108\Survey\Map\COMMON G.dwg  
 PLOTS: eprint

SHEET 01 COMMON G MARKET POINTE ADDITION PAPIILLION, NEBRASKA	REVISIONS NO. DATE DESCRIPTION		 GLESSON ASSOCIATES ENGINEERS - PLANNERS - SURVEYORS 718 SOUTH 74TH ST. SUITE 100 - OMAHA NE 68114 PHONE: 402-426-8800 FAX: 402-426-8801 WWW: WWW.GLESSONASSOCIATES.COM
	2005	1	

2006-02433 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 from Market Pointe, LLC, a Missouri limited liability company, dated \_\_\_\_\_ and recorded on \_\_\_\_\_ in Book \_\_\_\_\_, Page \_\_\_\_\_, of Sarpy County in the Register of Deeds (the "Deed of Trust"). The Deed of Trust encumbers Lots \_\_\_\_\_ 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 Wal-Mart Real Estate Business Trust, a Delaware statutory trust, its successors and assigns, under this Agreement in the event of foreclosure of the Deed of Trust, and Wal-Mart Real Estate Business Trust, as well as its successors and assigns, shall continue to enjoy all rights and privileges granted it under this Agreement provided that Wal-Mart Real Estate Business Trust is not in default under the terms of this Agreement. Wal-Mart Real Estate Business Trust, 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: 1-19-06

STATE OF Kansas  
COUNTY OF Johnson ss.

The foregoing instrument was acknowledged before me this 19 day of January, 2006, by J. Craig Nichols, the Senior Vice President of the First National Bank of Kansas, a national banking association, on behalf of the First National Bank of Kansas.

[SEAL]



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