

FILED SARPY CO. NE.
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2004-14105

2004 APR 22 A 11: 14 8

Glenn J. Dowling
REGISTER OF DEEDS

COUNTER LM C.E. nk
VERIFY Jan D.E. D
PROOF Jan
FEES \$ 26.00
CHECK# 13129
CHG _____ CASH _____
REFUND _____ CREDIT _____
SHORT 1.50 NCR _____

pk

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

49301-52

ENCROACHMENT AGREEMENT

This instrument made and entered into this 19th day of April, 2004, 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 FRONTIER CONSTRUCTION INC. (hereinafter referred to as "Owner").

WITNESSETH THAT:

WHEREAS, Northern is the holder of counterpart Easements dated the 12th day of February, 1962, and the 9th day of July, 1962, covering the following described premises in Sarpy County, Nebraska:

Southeast Quarter (SE $\frac{1}{4}$) Section Twenty-eight (28), Township Fourteen (14) North, Range Eleven (11) East; and

which Easements were recorded the 9th day of March, 1962, in Book 29 of Miscellaneous Records, at Page 451, and the 15th day of August, 1962, in Book 30 of Miscellaneous Records, at Page 274, respectively, and defined to a 66-foot wide strip by a Modification and Amendment of Easement Grant on the 18th day of June, 1974, recorded the 27th day of January, 1976, in Book 49 of Miscellaneous Records, at Page 50, all 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 (NEB49301-52), 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 6, Ballena, a Subdivision located in Southeast Quarter (SE $\frac{1}{4}$) Section Twenty-eight (28), Township Fourteen (14) North, Range Eleven (11) East in Sarpy County, Nebraska

WHEREAS, Owner plans to construct a concrete patio and deck with concrete footings (hereinafter referred to as "Encroachment") upon and within a portion of the confines of Northern's 66-foot Easement as depicted on Exhibit "A", with this written consent; and

WHEREAS, Owner 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, Owner 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

14105

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 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 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. 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.

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.

2. Owner 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 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, 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, Owner shall be jointly and severally liable.

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

4. Should Northern need to remove any of Owner 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 said Encroachment or any associated equipment and facilities that exist within the Easement, and in this regard, Owner 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.

C

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 19th day of April, 2004 by Glen R. Hass, the Agent and Attorney-in-Fact of ~~Frontier Construction Inc.~~ Northern Natural Gas Company.

(SEAL)



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

2004-14105D

BALLENA
LOT 6

6

60' PERMANENT
GAS EASEMENT

CENTERLINE OF GAS EASEMENT

NER49301-52

Footings

OUTRACK
SHOWN
TYPICAL

PERMISSION REQUESTED FOR PORTION
DECK INSIDE EASEMENT.



SQUARE FOOTAGE	
PICTURE	3077 0
VEHICLE	826 0
WALK	332 0
RD	100 0
AL	487 0
AL PREVIOUS	1900 0
AL IMPROVISED	487 0
NO TOTAL	14948 0

ADDITIONAL SQUARE FOOTAGES	
AL SOG	5392 0
AL CONCRETE	1672 0

LOT PLAN



11004 SOUTH 173RD STREET

RESIDENCE PLOT PLAN

FINAL DRAFT 09/20/04

Part of SE 1/4 Sec.28, T14N, R11E, Sarpy Co., NE