

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2001-25315

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Steve J. Williams
REGISTER OF DEEDS

Counter *[Signature]*
Verify *[Signature]*
D.E. *[Signature]*
Proof *[Signature]*
Fee \$ 46.50
Ck Cash Chg
112

MODIFICATION OF EASEMENT AND ENCROACHMENT AGREEMENT

This Agreement ("Agreement") is made and entered into by and between WILLIAMS PIPE LINE COMPANY, a Delaware corporation (hereinafter called "WPL"), whose address is P.O. Box 21628, RES-2nd Floor, Tulsa, Oklahoma 74121-1628, and HARRISON I-80 LLC, a Nebraska limited liability company, (hereinafter called "Landowner").

WITNESSETH:

WHEREAS, WPL is the owner of a pipeline(s) with related appurtenances (hereinafter called the "Pipelines") and a pipeline easement and right of way (hereinafter called the "Easement") on, over and through parts of the Northwest Quarter of Section 17, Township 14 North, Range 12 East, Sarpy County, Nebraska, by virtue of that certain Partial Release and Grant of Right of Way recorded in the records of Sarpy County, Nebraska as Instrument Number 99-012291 and that certain Right of Way Agreement recorded in the records of Sarpy County, Nebraska, in Book 10 at Page 455, (hereinafter called the "Right of Way Agreements"), and

WHEREAS, Landowner represents and warrants that it is the current owner of the following described tract of land (hereinafter called "Owner's Land"):

A tract of land in the Northwest Quarter of Section 17, Township 14 North, Range 12 East, Sarpy County, Nebraska, said tract being defined more fully in a Warranty Deed recorded in the records of Sarpy County, Nebraska as Instrument Number 99-032379, and



Tract 116-SA-28
Study 13:899
AFE 008797

L.S. 116- Omaha Jct. to Omaha Term. 6"

1717 S. Boulder
P.O. Box 21628
Tulsa, OK 74121-1628
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WHEREAS, Landowner desires that WPL relocate a portion of the Pipelines and amend the Right of Way Agreements in the following described manner to facilitate the future development of Owner's Land, and WPL is willing to do so under the following described conditions.

NOW, THEREFORE, in reliance on the aforesaid representations and warranties of ownership and in consideration of the conveyances, promises and the mutual covenants herein contained, the Right of Way Agreements are modified as hereinafter described:

- 1. Effective as of the date hereof, all pipelines, valves, cables, conduits, cathodic protection equipment and other appurtenances of WPL heretofore or hereafter constructed on Owner's Land by authority of the Right of Way Agreements and this Agreement shall be confined within a tract of land (hereinafter called the "Easement Strip") extending across Owner's Land being more particularly described as follows:

A 100.00 wide foot pipeline easement being part of the fractional part of the NW/4 of Section 17-T14N-R12E, Sarpy County, Nebraska more fully described as follows:

See Exhibit 'A' Page One and Two attached hereto and made a part hereof.

AND FURTHER EXCEPTING AND RESERVING unto WPL, the right of ingress and egress and the right to use temporary work space as desired, on, over and across Owner's Land.

It is strictly understood Exhibit 'A' defines the Easement Strip after the relocation of the Pipelines. Prior to relocation of the Pipelines Landowner consents to the operation and maintenance of the Pipelines as presently located. It is strictly understood that nothing herein contained shall in anywise diminish WPL's right, title and interest, in and to the Easement Strip described in Exhibit 'A'.

- 2. Landowner acknowledges the transfer to Landowner of the original 6" pipeline across Owner's Land and replacement and relocation of said original 6" pipeline with a new 6" pipeline as shown on said Exhibit 'A' Page Two. WPL shall evacuate the product from said original 6" pipeline, fill said original 6" pipeline with grout and cap the ends of said original 6" pipeline with steel plate. Said original 6" pipeline shall become the property of Landowner and WPL shall not have any further liability for said original 6" pipeline except as follows: Landowner assumes no liability for any contamination arising from said original 6" pipeline which occurred during or as a result of operations by WPL at anytime prior to its transfer to Landowner.

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3. WPL for itself, its future successors and assigns, hereby releases all of its right, title and interest acquired by virtue of the Right of Way Agreements in that portion of Owner's Land, and no other described real estate, not included in the Easement Strip.

4. For and in consideration of the benefits derived herefrom and other valuable consideration paid to Landowner, the receipt and sufficiency of which are hereby acknowledged, Landowner grants, sells and conveys to WPL the free, uninterrupted, perpetual and commercial right, privilege and easement to lay, construct, maintain, inspect, operate, repair, replace, change the size of, protect and remove (a) existing and future pipelines for the transportation of liquids, gases or other materials which can be transported through a pipeline, with fittings, valves, cathodic protection equipment and related appurtenances, and (b) existing and future lines, cables, conduits and related equipment and appurtenances for telecommunications or other purposes, whether or not related to pipelines (all the foregoing being sometimes hereinafter collectively called "WPL's Lines") over, through, under and across the Easement Strip, together with the right of ingress and egress across Owner's Land for all purposes incident to the exercise of the aforesaid rights, the right to environmentally remediate Owner's Land if a discharge should occur from WPL's Lines and the right to place on Owner's Land incidental equipment to facilitate the exercise of the aforesaid remediation rights. No additional compensation shall be payable to Landowner for the aforesaid remediation rights or any damage resulting to the property of Landowner, its successors or assigns, except where expressly provided for in the Right of Way Agreement; provided, however, WPL shall have the right to keep the Easement Strip clear of obstructions, structures, trees, undergrowth, brush, ornamental or other vegetation. To the extent reasonably practical, WPL agrees to use the public streets within the subdivision to access the Pipelines.

5. Landowner shall not erect, construct or create any building, house, improvement, trees, structure or obstruction of any kind either on, above or below the surface of the ground on the Easement Strip, or change the grade thereof, or cause or permit such construction work or acts to be done by others, without the express written permission of WPL, except as specifically permitted as follows:
 - 5.1 Only four-foot tall or shorter picket or chain link fences shall be permitted to run parallel with the Pipelines as long as they are a minimum of ten feet from the Pipelines. Four-foot tall or shorter Picket or chain link fences may be allowed to cross over the Pipelines as long as they extend ten feet beyond the Pipelines. Fence posts shall not be permitted directly above the Pipelines. Privacy fences are strictly prohibited.

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- 5.2 Parking lots shall be permitted providing a minimum of 4 foot of cover is maintained over the Pipelines. At WPL's option, a close interval cathodic protection survey will be performed prior to the parking lot being installed to evaluate the integrity of the pipeline coating. The charges of said cathodic protection survey shall be paid in advance by Landowner.
- 5.3 WPL consents, subject to the hereinafter described conditions, to the construction of 118th Street as shown on plans submitted to WPL and provided Landowner complies with the terms of 5.5 herein.
- 5.4 WPL further consents, subject to the hereinafter described conditions, to the construction by Landowner of (a) sanitary sewer lines and storm sewer lines; (b) cable television, telecommunication lines and natural gas utility lines, and (c) underground electric power-line crossing WPL's pipeline(s) (collectively hereinafter called the "Utility Lines) within and across that portion of the Easement Strip which lies within Owner's Land, provided that Landowner agrees to the following conditions:
 - 5.4.1 Underground Utility Lines shall be constructed in a manner which will provide a minimum clearance of two feet (2') between the Utility Lines and the Pipelines. Utility Lines shall not be permitted to run parallel with the Pipelines on the Easement Strip without the written permission of WPL. Underground fiber optic cable, long distance carrier telephone, and electrical cable shall be cased and concrete coated when crossing WPL's Pipelines and a warning tape shall be placed over the concrete coating. The tape shall extend 20 feet on each side of the Pipelines. Utility poles and guys shall not be placed within 15 feet of the Pipelines. Landowner shall comply with terms of 5.5 herein in the installation of all Utility Lines.
- 5.5 Landowner agrees to perform any grading so that a minimum of three feet (3') and a maximum of eight feet (8') of cover exists over Pipelines, except at street crossings where a minimum of four feet (4') and a maximum of eight feet (8') of cover shall be provided and maintained between the bottom of the Streets' surface and the top of the Pipelines. No sub-cutting by machinery shall be allowed within two feet (2') of the Pipelines. Hand digging shall be required if excavation is necessary within two feet (2') of the Pipelines. No rocks, dirt clods, clay clumps, debris or any other type of fill determined by WPL's on site representative to be unsuitable shall be used as fill over and around the Pipelines.

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- 5.6 WPL's representative shall be contacted a minimum of forty-eight (48) hours prior to construction of 118th Street, Utility Lines, fences, parking lots and any other encroachments (collectively hereinafter referred to as "Encroachments") on the Easement Strip by phoning WPL's Coordinator of Operations & Maintenance, Dan Egner, at 402-342-5476 (Office) or 402-677-2996 (cell phone) or Nebraska One-Call at 800-331-5666 or such other representatives that WPL may from time-to-time appoint. The presence of WPL's representative or any instructions given by such representative shall not relieve Landowner of any liability under the Right of Way Agreement and this Agreement.
6. The covenants contained in this Agreement shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the parties hereto, their personal representatives, heirs, successors and assigns. WPL shall have the right to assign the rights granted herein or in the aforementioned Right of Way Agreement in whole or in part. WPL executes this Agreement solely on its own behalf. WPL does not represent, through this Agreement or otherwise, any other entity other than WPL and its future successors and assigns.
7. Landowner agrees to indemnify, save, hold harmless, and at WPL's option, defend WPL and its affiliated companies and its or their respective directors, officers, employees, and agents from any and all claims, demands, costs (including but not limited to its reasonable attorneys' and expert witness' fees, court costs, and costs of appeal), expenses, losses, causes of action (whether at law or in equity), fines, judgments, civil penalties, and administrative proceedings, if any, arising out of or related to the construction, use and existence of the Encroachments or any other future improvements, or for injury or death to persons or damage or loss to real or personal property or other business losses, including, but not limited to, those made or incurred by Landowner or WPL, their respective directors, officers, employees, or agents; provided that, if the claims referred to in this Section 7.0 arise out of the negligence of either the Landowner or WPL, then they shall only be liable to the other for their respective percentage of negligence as it applies to this Section 7.0. This indemnification specifically includes environmental damage in any way arising from or connected with the performance, non-performance, existence, construction activities, operations, use or any other functions arising from the Encroachments.
8. It is further understood and agreed that WPL is hereby released from the covenants contained in the aforesaid Right of Way Agreement as to the lands herein released from the burdens thereof.

Tract 116-SA-28 - Centerline Description

A 100 foot wide easement description for a pipeline being in the Northwest 1/4 (NW/4) of Section 17, T-14-N, R-12-E, Sarpy County, Nebraska, containing 160 Acres more or less. Said centerline of 100 foot wide easement is described as follows:

Commencing at a point on the East Right of Way Fence of the Union Pacific Railroad in said Section 17, said point being situated S 42°53'04" E a distance of 1,004 feet from the North-South Section Line of Section 17, thence N 47°34'20" E a distance of 55 feet to a point, thence N 41°54'45" W a distance of 403 feet to a point, thence N 51°57'09" E for a distance of 604 feet to a point, thence N 25°49'40" W a distance of 485 feet to a point, , thence N 04°06'54" W a distance of 101 feet to a point, on the East-West Section Line of said Section 17, said point being situated N 87°38'24" E a distance of 736.43 feet from the Northwest Corner of the Northwest 1/4 (NW/4) of said Section 17 and being 99.88 rods, more or less.

