

FILED SARPY CO. NE  
INSTRUMENT NUMBER  
2005-15447

2005 MAY 12 AM 11:29

*Greg G. Dowling*  
REGISTER OF DEEDS

COUNTER 44 C.E. NS  
VERIFY ch D.E. NS  
PROOF P  
FEES \$ 27.50  
CHECK# 3677 + 98642  
CHG \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_

*RJK*

This instrument was drafted by Enterprise Products Operating LP - Operator of Magellan pipeline- 2727 North Loop West - Houston, TX 77008

### ENCROACHMENT AGREEMENT

This Encroachment Agreement ("Agreement") is made and entered into by and between Magellan Pipeline Company, L.P. (formerly known as Magellan Pipeline Company, LLC prior to name change effective September 9, 2004, and, formerly known as "Williams Pipe Line Company, LLC" prior to a name change effective as of September 1, 2003), a Delaware limited partnership, whose address is P. O. Box 22186, Tulsa, Oklahoma 74121-2186 (hereinafter called "MPL"), and GORDO-79, L.L.C., a Nebraska limited liability company, whose address is 12925 Dodge Road, Omaha, Nebraska 68154(hereinafter referred to as "Landowner"),

#### WITNESSETH:

WHEREAS, MPL is the owner of certain pipelines and appurtenances, (hereinafter referred to as "Facilities") and the right for future Facilities by virtue of an easement covering tracts of land as described on the following instruments:

By virtue of a certain Right of Way Agreement from Mary E. Schneekloth and Fred Schneekloth, her husband, Fred J. Hagedorn and Antonette E. Hagedorn, his wife, dated March 3, 1941, filed for record on March 11, 1941, and recorded in the Register of Deeds Office of Sarpy County, Nebraska in Book 10 at Page 464, and by Right of Way Agreement from Annie Peters and Fred Peters, her husband, dated March 11, 1941, filed for record on March 11, 1941 and recorded in the Register of Deeds Office of Sarpy County, Nebraska in Book 10 at Page 467, and by Right of Way Agreement from Fred Peters and Annie Peters, his wife, dated July 17, 1941, filed for record July 24, 1941 and recorded in the Register of Deeds Office of Sarpy County, Nebraska in Book 10 at page 616, and by Assignment of Agreement filed for record on June 14, 1960 and Recorded in the Register of Deeds Office of Sarpy County, Nebraska in Book 26 at Page 126, and by Assignment of Agreement dated October 31, 1983, filed for record on January 18, 1984, and Recorded in the Register of Deeds Office of Sarpy County, Nebraska in Book 57 at Page 31, and by Partial Release and Encroachment Agreement dated April 24, and June 28, 1999, filed for

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record on September 27, 1999, and Recorded in the Register of Deeds Office of Sarpy County, Nebraska, Instrument Number 99-030111 (hereinafter referred to as "Easement"); and

WHEREAS, LANDOWNER <sup>AL</sup> has represented to MPL that it owns a tract of land described as follows:

Lots 1, 2, 3 and 4 <sup>24</sup> in Brook Valley II Business Park, a Subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska

WHEREAS, LANDOWNER desires to construct paved parking, sidewalks, curbing and landscaping, which shall encroach on the Easement, (herein "Encroachment") and

WHEREAS, MPL and LANDOWNER agree that the existence of the Encroachment: (a) conflicts with the purpose and character of the Easement; and (b) unreasonably interferes with and obstructs MPL's rights, obligations and abilities to operate, maintain, re-lay and access the Pipeline; and

WHEREAS, LANDOWNER desires to obtain MPL's consent to encroach on the Easement and Pipeline; and

WHEREAS, MPL, under the terms hereinafter stated, is willing to permit the Encroachment.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, MPL hereby agrees to accommodate the Encroachment subject to the following terms and conditions:

1. Construction parameters: Construction activity of any kind, including but not limited to equipment movement, materials storage and digging, which take place within the easement will require 48 hours prior notice to Nebraska One Call @ 1-800-331-5666. A MPL representative must be present during any of the aforementioned construction activities to ensure the safety of the Pipeline. The presence of MPL's representative shall not relieve LANDOWNER of any liability under this Agreement. A minimum of 4' of cover and a maximum of 8 feet of cover must be maintained over MPL's pipeline(s).
2. Trees shall not be permitted on the Easement. Only small shrubs, that when mature are no taller than 3' tall shall be permitted on the Easement. Shrub height shall not obstruct the view of the marker posts. Irrigation systems shall cross pipeline as close to 90 degrees as possible, but no let than 45 degrees.
3. LANDOWNER shall indemnify, save, hold harmless, and at MPL's option, defend MPL, its parent and affiliated companies and their directors, officers, employees, and agents of each such company from any and all claims, demands, costs (including

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without limitation, reasonable attorneys and expert witnesses fees and court costs), expenses, losses, causes of action (whether at law or in equity), fines, civil penalties and administrative proceedings for injury or death to persons or damage or loss to property, real or personal, environmental damages, or other business losses, including those made or incurred by MPL or its parent or affiliated companies and their directors, officers, employees, or agents of each such company, or third parties, or governmental agencies in any way arising from or connected with the existence, construction, operation, maintenance, relocations, or removal of the Encroachment, except those arising from MPL's sole negligence.

4. In the event that the existence, construction, operation, maintenance, relocation, or removal of the Encroachment causes MPL to incur any cost that in any manner relates to MPL's operation, maintenance, removal, repair, replacement, protection, construction, alteration, relocation, changing the size of, addition to and/or inspection of the Pipeline, or the clean up or handling of any spills of petroleum products, LANDOWNER, its successors or assigns, agrees to reimburse MPL for any and all such costs that would not have been incurred but for the existence of the Encroachment. LANDOWNER hereby agrees that MPL will not be held liable for any damages to the Encroachment arising from MPL's operation, maintenance, removal, repair, replacement, protection, construction, alteration, relocation, changing the size of, addition to and/or inspection of the Pipeline.
6. MPL and LANDOWNER agree that the existence of the Encroachment does not constitute a waiver of MPL's express rights under the aforesaid Easement or any other rights which may be implied at law or equity.
7. Except as herein provided, LANDOWNER will not at any time erect, construct, or create any additional buildings, improvements, structures, or obstructions of any kind, including but not limited to, privacy or chain-link fences, water wells, and septic systems, either on, above, or below the surface of the Easement, or change the grade thereof, or cause or permit these things to be done by others, without the express prior written permission of MPL.
8. In the event that LANDOWNER breaches any of the terms, covenants or provisions of this Agreement, and MPL commences litigation to enforce any provisions of this Agreement and prevails, the cost of attorneys' fees and the attendant expenses will be payable to MPL by LANDOWNER upon demand.
9. The terms and conditions of this Agreement shall constitute covenants running with the land and shall be binding upon and inure to the benefits of the parties hereto, their successors and assigns.

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IN WITNESS WHEREOF, we have hereunto set our hands on the day and year below.

(MPL)

 **MAGELLAN PIPELINE COMPANY, L.P.**  
A Delaware limited partnership,  
By: Magellan Pipeline GP, LLC, its General Partner

By: 

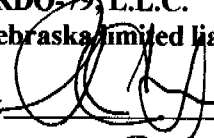
Name: Richard A. Olson

Title: Vice President

Date: 3-23-05

(LANDOWNER)

**GORDO-79, L.L.C.**  
A Nebraska limited liability company

By: 

Name: Ray Trimble

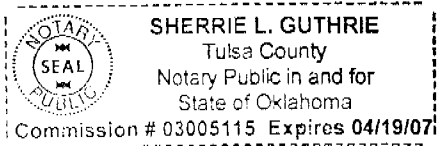
Title: President

Date: 03-07-05

2005-15447D

STATE OF )  
 )SS  
COUNTY OF )

Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 23<sup>rd</sup> day of March, 2004, personally appeared Richard Olson, to me personally known to be the Vice President of **MAGELLAN PIPELINE GP, L.L.C.**, Delaware limited liability company, who being duly sworn did acknowledge to me that he executed the foregoing instrument on behalf of said limited liability company as the free and voluntary act and deed, for the uses, purposes and consideration therein set forth.

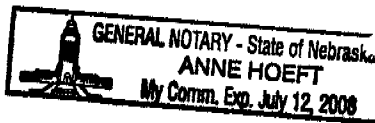


Sherrie L. Guthrie  
Notary Public

My commission expires:  
4-19-07

**SHERRIE L. GUTHRIE**

STATE OF Nebraska )  
 )SS  
COUNTY OF Douglas )



Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 7<sup>th</sup> day of March, 2005 personally appeared Ray Nimbler, to me personally known to be the President of **GORDO-79, L.L.C.**, Nebraska limited liability company, who being duly sworn did acknowledge to me that he executed the foregoing instrument on behalf of said limited liability company as the free and voluntary act and deed, for the uses, purposes and consideration therein set forth.

Anne Hoeft  
Notary Public

My commission expires:  
July 12, 2008