



MISC 2014018098

MISC 6/1

me

FEE	40.00	FB	01-60000
BNP	16-15-11	C/O	COMP
DEL		SCAN	FY



MAR 12 2014 12:35 P 6

C

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
3/12/2014 12:35:58.58



2014018098

Drafted by/Return to: Greg Cade 402-398-7034  
Northern Natural Gas Company, 1111 South 103rd Street, Omaha, NE 68124-1000  
P.O. box 3330  
Omaha, ne 68103

File: NEB49301-83  
Project: 14-300

**ENCROACHMENT AGREEMENT**

This instrument made and entered into this 4th day of February, 2014, by and between NORTHERN NATURAL GAS COMPANY, a Delaware corporation, (hereinafter referred to as "Northern"), with principal offices at 1111 South 103rd Street, Omaha, Nebraska 68124-1000, and TRIBEDO, LLC, a Nebraska limited liability corporation (hereinafter referred to as "Owner" whether one or more).

WITNESSETH THAT:

WHEREAS, Northern is the holder of an easement granted by John R. Atkins and Mary A. Atkins, husband and wife, January 16, 1962, covering the following described premises in Douglas County, Nebraska:

Southeast Quarter of Section 16, Township 15 North, Range 11 East of the 6th P.M., except for four additional acres of right of way occupied by the UPRR Company and except for state and county roads; and

which easement was recorded March 21, 1962, in Book 378 of Miscellaneous at Page 47 and defined to a 132-foot wide strip by a Modification and Amendment of Easement Grant recorded November 21, 1969, in Book 483 of Miscellaneous at Page 579; all in the Office of the Register of Deeds for Douglas 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) 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 Douglas County, Nebraska (hereinafter referred to as the "Owned Premises"):

See Exhibit A attached hereto and, by this reference, made a part hereof

WHEREAS, Owner plans to construct a parking lot (hereinafter referred to as "Encroachment") upon and within a portion of the confines of Northern's 132-foot wide Easement, as depicted on Exhibit "B", with this written consent; and

WHEREAS, Owner has 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 has 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

✓  
028087

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 agrees 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 agrees that protection of Northern's Pipeline Facilities will be maintained at all times.

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

6. It is expressly agreed to by and between the parties hereto that if Owner is in violation of any terms or conditions set forth in this Agreement, Northern, at its option, may terminate this Agreement upon ten (10) days' notice to the Owner. In the event of such termination, Owner shall immediately remove any and all of said Encroachment which may be situated on the Easement, or if Owner fails to remove any and all of said Encroachment, Northern may, at its

option, remove said Encroachment at the expense of Owner and without any liability whatsoever. It is further agreed that the failure by Northern to exercise such option as to any such violation shall not constitute a waiver of Northern's future right to exercise such option as to the same or any future violation.

7. The provisions of the Easement, and all rights, powers, privileges, and duties, obligations, and liabilities created thereby, remain in full force and effect and are not affected hereby except to the extent and in the manner set forth above.

8. Owner agrees to indemnify, defend and hold Northern, its parent and affiliated companies, and the directors, officers and employees of any such corporate entities harmless from and against any liability, damage, claims, loss, cause of action, suit, proceeding, judgment, cost (including the cost or expense of environmental response, removal or remediation activities), fees or expense, including reasonable attorney's fees arising from: (1) non-compliance with any laws, regulations and orders applicable to the ownership or the operation and maintenance of the said Encroachment on the Owned Premises described herein, and (2) any incidents, acts, releases, negligence, transactions or omissions, or conditions on or affecting the Easement that would (i) contribute to or constitute a violation of any local, state or federal environmental rule, regulation, law or judicial order, (ii) result, in whole or in part, in any requirement to clean up or otherwise remedy or remediate a condition, (iii) give rise to any lien, liability, injunction, order, restriction, claim, expense, damage, fine or penalty, or (iv) adversely affect human health or the environment at or near the Easement.

**9. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED, AND AGREES ANY SUCH ACTIONS MAY NOT IN ANY EVENT BE CONSOLIDATED TOGETHER.**

This instrument and the covenants and agreements herein contained shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties and the benefits of this Agreement shall run with the land.

IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

"NORTHERN"  
NORTHERN NATURAL GAS COMPANY

By: Joseph A. Jessen

Name: Joseph A. Jessen

Title: Agent and Attorney-in-Fact

"OWNER"  
TRIBEDO, LLC

By: [Signature]

Name: Alex Agard

Title: Member



# Exhibit A

## LEGAL DESCRIPTION

### PARCEL 1

A TRACT OF LAND BEING PART OF THE SE1/4 OF SECTION 16, TOWNSHIP 15 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SE1/4 OF SECTION 16; THENCE N03°02'43"W (ASSUMED BEARING) ALONG THE WEST LINE OF SAID SE1/4 OF SECTION 16, A DISTANCE OF 183.18 FEET; THENCE N86°57'17"E, A DISTANCE OF 50.00 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF 174TH STREET (OLD LINCOLN HIGHWAY), SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE N03°02'43"W ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF 174TH STREET (OLD LINCOLN HIGHWAY), A DISTANCE OF 232.32 FEET; THENCE S86°57'17"W ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF 174TH STREET (OLD LINCOLN HIGHWAY), A DISTANCE OF 17.00 FEET; THENCE N03°02'43"W ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF 174TH STREET (OLD LINCOLN HIGHWAY), A DISTANCE OF 1616.01 FEET; THENCE N87°00'15"E, A DISTANCE OF 99.89 FEET; THENCE N03°02'41"W, A DISTANCE OF 76.14 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE S55°45'52"E ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD, A DISTANCE OF 2342.14 FEET; THENCE S50°44'25"W, A DISTANCE OF 865.23 FEET; THENCE S87°12'23"W, A DISTANCE OF 1248.42 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 2,273,859 SQUARE FEET OR 52.201 ACRES, MORE OR LESS.

TOGETHER WITH

### PARCEL 2

A TRACT OF LAND BEING PART OF THE SE1/4 OF SECTION 16, TOWNSHIP 15 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SE1/4 OF SECTION 16; THENCE N87°30'52"E (ASSUMED BEARING) ALONG THE NORTH LINE OF SAID SE1/4 OF SECTION 16, A DISTANCE OF 499.60 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING N87°30'52"E ALONG SAID NORTH LINE OF THE SE1/4 OF SECTION 16, A DISTANCE OF 554.06 FEET; THENCE S03°02'52"E, A DISTANCE OF 730.57 FEET TO A POINT ON SAID NORTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE NORTHWESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD ON THE FOLLOWING 3 DESCRIBED COURSES: THENCE N55°45'52"W, A DISTANCE OF 405.84 FEET; THENCE N34°14'31"E, A DISTANCE OF 250.00 FEET; THENCE N55°45'52"W, A DISTANCE OF 480.84 FEET TO THE POINT OF BEGINNING.

# Exhibit B.

