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Blair J. Dowling
REGISTER OF DEEDS

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WELLHEAD LEASE

This Wellhead Lease (the "Lease") entered into this 12th day of April, 2006, by Sarpy County School District 77-0037 a/k/a Gretna Public Schools, a political subdivision ("School District") and City of Gretna, Sarpy County, Nebraska, a political subdivision of the State of Nebraska ("City").

WITNESSETH:

1. **Demise and Description of Premises.** In consideration of the mutual rents, promises, and covenants contained herein, School District hereby grants a lease to City and City hereby accepts such lease from School District for a portion of the Gretna Middle-School site located 11335 South 204th Street, Gretna, Nebraska, owned by the School District for the purpose of the installation, operation and use of a wellhead, wellhouse, and 12-inch water main to serve the City of Gretna, such portion of the school site subject to the Lease being hereinafter referred to as the "Wellhead Lease", and is legally described as follows:

PART OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6TH PRINCIPAL MERIDIAN, SARPY COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 31, THENCE N87°24'44"E A DISTANCE OF 1,189.40 FEET ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 31; THENCE N02°35'16"W A DISTANCE OF 160.43 FEET TO THE POINT OF BEGINNING; THENCE N03°01'03"W A DISTANCE OF 34.00 FEET; THENCE N87°36'44"E A DISTANCE OF 45.58 FEET; THENCE S02°23'16"E A DISTANCE OF 34.00 FEET; THENCE S87°36'44"W A DISTANCE OF 45.20 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 0.04 ACRES MORE OR LESS.

2. **Term.** The initial term of this Lease shall be for thirty (30) years ("Initial Term"), commencing on November 1, 2003, and ending on October 31, 2033, unless sooner terminated as hereinafter provided. As used herein, the expression "term hereof" refers to such Initial Term and to any renewal thereof as hereinafter provided. School District grants to the City, subject to the conditions set forth below, the right and option to renew this Lease for a period of thirty (30) years, which option shall begin on November 1, 2033, and shall expire on October 31, 2063, unless sooner terminated as hereinafter provided at the rental determined as provided in Paragraph 3 hereof and otherwise subject to and on all of the applicable terms and conditions contained herein. City's option must be exercised by giving School District on or before June 1, 2013, a written notice of the exercise thereof by City. In no event shall City be entitled to renew the term hereof, even though such notice is timely given, unless City shall have timely performed all its obligations hereunder as of the date of the expiration of the Initial Term hereof. Unless otherwise expressly stated to the contrary or unless obviously mandated by the context, all provisions of the Lease shall be applicable to any such option period.

3. **Rent.** The City shall pay to the School District basic rent ("Rent") to be paid to School District by City, in addition to all other expenditures required to be made by City pursuant to this Lease, shall be in the amount of One Dollar (\$1.00) per year to be paid at such time and at such place as School District may designate from time to time, and other good and valuable consideration. As additional consideration for the lease to the Premises, the City shall be responsible for the general upkeep of the Wellhead Lease area, including any wellhouse, and shall pay the cost of repair or reconstruction of any structures on the school district sight damaged as a result of the installation, maintenance and/or repair of the well, wellhead, wellhouse, or any other permissible use of the property under this Lease.

4. **Warranties of Title and Quiet Possession.** School District covenants that School District is seized of the leased area in fee simple and has a full right to make this Lease subject to easements of record,

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Perry, Guthrie, Haase & Bessford

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including the Easement of the Northern Natural Gas Company recorded at Book 29 of Miscellaneous, at Page 551, and defined to a 70 foot wide strip at Document No. 93-0025981, all in the Office of the Register of Deeds for Sarpy County, Nebraska, and the terms hereof, and City shall have quiet and peaceable possession of the Wellhead Lease against the acts of all parties claiming title to or a right to the possession of the Premises through or under School District, with the exception, however, of the following:

- a. Conditions, restrictions, and limitations, if any, now appearing of record;
- b. Building and zoning laws, ordinances, state and federal regulations, provided they do not adversely affect City's intended use of the Wellhead Lease; and,
- c. Any defects that may be disclosed by an accurate survey.

5. **School District's Right of Entry.** City shall permit School District and the agents and employees of School District to enter into and on the Wellhead Lease at all reasonable times for the purpose of using the Wellhead Lease area during the school day or for extracurricular activities, for purpose of inspecting them, for the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to City for any loss of occupation or quiet enjoyment of the Wellhead Lease thereby occasioned.

6. **Notices.** All communications, demands, notices, or objections permitted or required to be given or served under this Lease shall be in writing and shall be deemed to have been duly given or served if delivered in person to the other party or its authorized agent or if deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, or if telegraphed by prepaid telegram, and addressed to the other party to this Lease, to the address set forth next to such party's signature at the end of this Lease or if to a person not a party to this Lease, to the address designated by a party to this Lease in the foregoing manner. Any party may change its address by giving notice in writing, stating its new address, to any other party as provided in the foregoing manner. Commencing upon receipt of notice, such newly designated address shall be such party's address for the purposes of all communications, demands, notices, or objections permitted or required to be given or served under this Lease.

7. **Construction and Maintenance of Facilities.** During the period of construction of the wellhead and wellhouse and water main from the wellhead to the City water main located in the right-of-way of 204th Street to the City of Gretna, Sarpy County, Nebraska, to be constructed on the Property, the School District shall make available to the City, its contractors, subcontractors, and agents, without charge, such vacant adjacent land owned by the School District as the City considers useful and necessary to provide for the construction of such wellhead and wellhouse, and the installation of the water main from the wellhead to the City water system, and ingress and egress and to provide for staging of construction, including temporary parking facilities and temporary storage space for building materials and equipment. Upon completion of construction of the wellhead and wellhouse, and attendant facilities, the City shall remove the temporary construction facilities, if any, and all debris, and level off leased and adjacent areas, returning such areas to a clean and useful condition in as near as possible the same condition as such land existed prior to the initiation of construction by the City. The City shall be liable to the School District for any damage arising out of the use of the temporary area by it or its agents, contractors, or subcontractors. Further, City agrees to indemnify the School District against all claims of third persons any judgments and cost obtained against the School District by reason of such use.

- a. **Alterations, improvements, and changes permitted.** City shall have the right to make such alterations, improvements, and changes to any building or improvement which may from time to time be on the Wellhead Lease as City may deem necessary or to replace

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any such building or improvement with a new one of at least equal value, provided that prior to making any structural alterations, improvements, or changes, or prior to replacing any such building, City shall obtain School District's written approval of plans and specifications therefor. School District shall not unreasonably withhold or delay such approval, provided that the value of any such building or improvement shall not be diminished and the structural integrity of any such building shall not be adversely affected by any such alterations, improvements, or changes, or provided that any proposed new building or improvement is at least equal in value to the one which it is to replace, as the case may be. The plans shall be deemed to have been approved by School District unless it gives to City an itemized statement of objections thereto and the reasons therefor within forty (40) days of the receipt of the plans and specifications. City will in no event make any alterations, improvements, or other changes of any kind to any building or improvement on the Wellhead Lease that will decrease the value of such building or improvement or that will adversely affect the structural integrity of such building or improvement.

b. **Ownership of new improvements.** Upon completion of construction of the wellhead, wellhouse, and all fixtures and appurtenances thereto, shall become the sole property of the School District subject to the leasehold interest and responsibilities of the City.

c. **Access to Wellhead and Wellhouse:** The City shall have the right of ingress and egress to the wellhead and wellhouse over and across the School District's property to the extent such access is not available by way of the public roads, provided that the City shall be liable to the School District for any damage arising out of the exercise of such right of ingress and egress by it or its agents, contractors, or subcontractors.

8. **Repairs and Destruction of Improvements.**

a. **Maintenance of improvements.** The City shall, at its own cost and without any expense to School District, keep and maintain the improvements constructed and installed in the Wellhead Lease area, including any well, wellhead and wellhouse, and all appurtenances thereto, in good, sanitary, lawful, and neat order, condition, and repair and, except as specifically provided herein, shall restore and rehabilitate any improvements of any kind which may be destroyed or damaged by ordinary use, fire, casualty, or any other cause whatsoever. City shall maintain all landscaped and planted areas in a condition which is reasonably acceptable to School District and in conformity with such reasonable guidelines as School District may from time to time establish. School District shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Wellhead Lease or any buildings or improvements thereon. However, City shall not be responsible for the cost of restoring or rehabilitating any improvements that are destroyed or damaged during, or as a result of, School District's use of the premises.

b. **Damage to and destruction of buildings or improvements.** The damage or destruction or partial destruction of any building or other improvement which is constructed or installed in the Wellhead Lease area shall not release City from any obligation hereunder, except as hereinafter expressly provided, and in case of damage to or destruction of such building or improvement, City shall at its own expense promptly repair and restore the same to a condition as good or better than that which existed prior to such damage or destruction. Except as otherwise provided in this section, and without limiting such obligations of City, it is agreed that the proceeds of any insurance covering such damage or destruction shall be made available to City for such repair or replacement.

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9. **Construction Liens.** City hereby covenants and agrees that City will not permit or allow any construction liens to be placed on School District's interest in the Wellhead Lease during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on School District's interest, City shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that City may contest any such lien provided City first posts a surety bond, in favor of and insuring School District, in an amount sufficient to remove the lien pursuant to the Nebraska Construction Lien Act.

10. **Indemnification of School District.** At all times during the drilling of test wells, and the construction, installation, and maintenance of the 12-inch water main, well head, and wellhouse, and the operation of the water wells and well house, the School District shall not be liable to the City and City shall indemnify, save, hold harmless, and defend School District for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by City or by any person whosoever may at any time have an interest in structures, utilities, pipelines or appurtenances thereto also located in the Wellhead Lease area, or may be using, occupying, or visiting the Wellhead Lease, or be in, on, or about the Wellhead Lease, whether such loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, negligence, or intentional misconduct of City or of any occupant, visitor, or user of any portion of the Wellhead Lease or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and City shall indemnify School District against all claims, liability, loss, or damage whatsoever on account of any such loss, injury, death, or damage, including any claims of Northern Natural Gas Company arising out of the Encroachment Agreement executed between the School District and Northern Natural Gas Company for the benefit of the City, a copy of which is attached hereto as Appendix "1" and incorporated herein by this reference. City hereby waives all claims against School District for damages to any building, landscaping, or improvement which is now on or hereafter placed or built on the Wellhead Lease and to the property of City in or about the Wellhead Lease, from any cause arising at any time.

11. **Notice of Default.** If City shall be deemed to be in default hereunder in the payment of rent or the payment of any other monies as herein required or in the furnishing of any bond or insurance policy when required herein, City shall have thirty (30) days following written notification by School District within which to cure such default and in the event of such default, no further notice of default is required to be given to City by School District.

12. **Default.** In the event of any default of this Lease by City which is not cured within thirty (30) days after written notice to City, School District, in addition to the other rights or remedies it may have, shall have the immediate right of reentry and may remove all persons and property otherwise from the Wellhead Leasehold, in accordance with Nebraska law. Further, in the event of default, School District may terminate this Lease and recover possession of the Wellhead Leasehold.

Should School District at any time terminate this Lease for any breach, in addition to any other remedy it may have, School District may recover from City all damages incurred by reason of such breach, including the cost of recovering the Wellhead Leasehold, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term, all of which amounts shall be immediately due and payable from City to School District.

13. **School District's Right to Perform.** In addition to any other provision contained herein, City shall be in default hereunder by failing or neglecting to do or perform any act or thing herein provided by it to be done or performed, and such failure shall continue for a period of thirty (30) days after written notice from School District thereof. School District may at School District's option do or perform, or cause to be done or performed, such act or thing, and School District shall not be liable, or be held liable or in any way responsible for any loss, inconvenience, annoyance, or damage resulting to City on account thereof. City shall

repay to School District on demand the entire expense thereof, including compensation to the agents and employees of School District. School District shall be permitted to enter the Wellhead Leasehold while exercising any right given to it by the terms of this paragraph. Any act or thing done by School District pursuant to the provisions of this section shall not be or be construed to be a waiver of any such default by City, or as a waiver of any covenant, term, or condition herein contained or the performance thereof, or of any other right or remedy of School District, hereunder or otherwise.

14. **Amendment, Modification, and Waiver.** No amendment, modification, or waiver of any condition, provision, or term of this Lease shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or its duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.

15. **Effect of City's Holding Over.** Any holding over after the expiration of the term of this Lease with consent of School District shall be construed to be a tenancy from month-to-month at the same monthly rental as required to be paid by City for the period immediately prior to the expiration of the term hereof and shall otherwise be on the terms and conditions herein specified, so far as they are applicable.

16. **Parties Bound.** This Lease shall be binding on and inure to the benefit of the parties hereto and their respective assigns, executors, heirs, personal representatives, and successors.

17. **Time of Essence.** Time is of the essence of this Lease, and of each and every covenant, term, condition, and provision hereof.

18. **Captions.** All captions, headings, or titles in the paragraphs or sections of this Lease are inserted for convenience of reference only and shall not constitute a part of this Lease as a limitation of the scope of the particular paragraphs or sections to which they apply.

19. **No Partnership, Joint Venture, or Fiduciary Relationship Created Hereby.** Nothing contained in this Lease shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between School District and City, it being understood that the sole relationship created hereby is one of School District and City. All laws and statutes of the City of Gretna and State of Nebraska relative to School District and City relationships shall be applicable to the parties hereto.

20. **Cumulative Rights.** Except as otherwise expressly stated herein, no right or remedy herein conferred on or reserved to City or School District is intended to be exclusive of any other right or remedy hereof provided by law, but each shall be cumulative in, and in addition to, every other right or remedy given herein or not or hereafter existing at law, in equity, or by statute.

21. **Reasonable Consent.** Whenever School District's or City's consent shall be required herein, such approval or consent shall not be arbitrarily or unreasonably conditioned, delayed, or withheld. School District or City as appropriate sends written notice to the requesting party that School District or City as appropriate is denying such approval or consent, stating in such notice the reasonable grounds therefor.

22. **Severable Provisions.** Each provision, section, sentence, clause, phrase, and word of this Lease is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Lease.

23. **Entire Agreement.** This Lease contains the entire understanding of the parties hereto with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter. No representations, warranties, undertakings, or

