

FILED SARPY CO. NE.
INSTRUMENT NUMBER
98-032350
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Sharon J. Dawkins
REGISTER OF DEEDS

98-32350

Counter *KAK*
Verify *DJS*
D.E. *W*
Proof *W*
Fee \$ 35.50
Chk Cash Chg

RGR

This Instrument Drafted By
And To Be Returned To:
Right of Way Department
Northern Natural Gas Company
PO Box 3330
Omaha, NE 68330

Line No. : NEB 48701
Tract No. : 44

AGREEMENT

This instrument made and entered into this 25th day of September, 1998, by and between NORTHERN NATURAL GAS COMPANY, a Delaware corporation, with principal offices at 1111 South 103rd Street, Omaha, Nebraska 68124 (hereinafter referred to as "Northern"), and SOUTHWIND LAND CORP., a Nebraska corporation (hereinafter referred to as "Owners").

WITNESSETH THAT:

WHEREAS, Northern is the holder of an Easement granted by Elizabeth Fricke, covering the following described premises in Sarpy County, Nebraska:

THE SOUTHWEST QUARTER (SW ¼) OF SECTION 15,
TOWNSHIP FOURTEEN (14) NORTH, RANGE TWELVE (12)
EAST.

which Easement was recorded February 21, 1951 in Book 15 of Miscellaneous at Page 44, 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, along with the right to install additional pipelines and facilities from time to time (hereinafter referred to as "Pipeline Facilities"), across and through the above described premises; and

032350

98-30350A

Line No. : NEB 48701
Tract No. : 44

WHEREAS, Owners are the present Owners 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"):

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

WHEREAS, Owners plan to construct paved roads and associated driveways (hereinafter referred to as "Encroachment") upon and within a portion of the confines of Northern's 86-foot right-of-way width (hereinafter referred to as "Easement Area") as depicted in Exhibit B, with this written consent; and

WHEREAS, Owners have been advised by Northern that Northern is a natural gas transmission company; that Northern operates a high pressure underground natural gas pipeline through the Owned Premises; and

WHEREAS, Owners have requested permission from Northern to maintain, use, and enjoy the above-described Encroachment upon a portion of Northern's above-mentioned Easement and in close proximity to Northern's Pipeline Facilities; and

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 Owners 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 Owners assume all risks for damages, injuries, or loss to either property or persons, which may be incurred by Owners or its respective agents, invitees, or licensees present on or in the vicinity of the Easement Area and in any way associated with said Encroachment.

B. That the permission granted herein is limited exclusively to the proposed Encroachment upon the Owned Premises within the Easement Area of Northern's Pipeline Facilities; nor shall Owners alter the grade or permit such alteration anywhere on the land upon which Northern has reserved its easement right, without the prior express written consent of Northern.

C. That Owners shall at all times conduct all its activities on said Easement Area 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 Owners shall not plant any trees or shrubs within the confines of Northern's Easement Area without the prior express written consent of Northern. Said trees and shrubs shall not exceed an eventual growth height of six (6) feet.

98-32350B

Line No. : NEB 48701
Tract No. : 44

2. Owners 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 Owners in connection with, or incidental to the construction, operation, maintenance, or use of the said Encroachment with and upon the Easement Area, or from the operation, maintenance, use or presence of Northern's Pipeline Facilities upon or in the vicinity of the Easement Area except where such loss, cost, liability, or expense was proximately caused solely by the gross negligence of Northern or its employees. It is understood and agreed by the parties that under this Agreement, Owners shall be jointly and severally liable.

3. Owners agree 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 Area 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 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 Area, 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 Area.

6. It is expressly agreed to by and between the parties hereto that if Owners are 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 Owners. In the event of such termination, Owners shall immediately remove any and all of said Encroachment which may be situated on the Easement Area, or if Owners fail to remove any and all of said Encroachment, Northern may, at its option, remove said Encroachment at the expense of owners 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.

98-32350C

Line No. : NEB 48701
Tract No. : 44

8. Owners agree 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 Area 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 Area.

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 *Dennis D. Werkmeister*
Print Name: Dennis D. Werkmeister

Title: Agent and Attorney-in-Fact

"OWNERS"

SOUTHWIND LAND CORP.

By *John C. Allen*
Print Name: John C. Allen

Title: Chairman / President

98-32350E

EXHIBIT "A"

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SAID SOUTHWEST QUARTER OF SECTION 15; THENCE NORTH 89°55'43" EAST FOR 60.00 FEET ALONG THE NORTH LINE OF THE SAID SOUTHWEST QUARTER OF SECTION 15 TO THE EAST RIGHT OF WAY LINE OF 96TH STREET AND THE TRUE POINT OF BEGINNING; THENCE NORTH 89°55'43" EAST FOR 2556.97 FEET ALONG SAID NORTH LINE OF THE SOUTHWEST QUARTER TO THE NORTHEAST CORNER THEREOF, SAID LINE ALSO BEING THE SOUTH LINE OF S & S's HARVEST HILL, A SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA AND SAID CORNER ALSO BEING THE SOUTHEAST CORNER OF LOT 1, S & S's HARVEST HILL AND THE NORTHWEST CORNER OF LOT 46, PARKVIEW HEIGHTS IV, A SUBDIVISION AS SURVEYED, PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA; THENCE SOUTH 00°00'56" EAST FOR 1384.06 FEET ALONG THE EAST LINE OF THE SOUTHWEST QUARTER AND THE WEST LINE OF PARKVIEW HEIGHTS IV TO THE NORTHEAST CORNER OF LOT 2, METRO LA VISTA ADDITION, A SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA; THENCE NORTH 89°51'41" WEST FOR 740.91 FEET TO THE NORTHWEST CORNER OF LOT 2, METRO LA VISTA ADDITION; THENCE SOUTH 00°00'56" EAST FOR 761.79 FEET ALONG THE WEST LINE OF LOTS 1 AND 2, METRO LA VISTA ADDITION; THENCE SOUTH 04°35'23" EAST FOR 250.80 FEET ALONG THE WEST LINE OF LOT 1, METRO LA VISTA ADDITION; THENCE SOUTH 00°00'56" EAST FOR 179.54 FEET TO THE SOUTHWEST CORNER OF LOT 1, METRO LA VISTA ADDITION AND THE NORTH RIGHT OF WAY LINE OF GILES ROAD; THENCE WEST ALONG THE NORTH RIGHT OF WAY LINE OF GILES ROAD FOR THE NEXT ELEVEN COURSES: 1) THENCE NORTH 88°05'39" WEST FOR 99.68 FEET; 2) THENCE NORTH 73°18'15" WEST FOR 52.20 FEET; 3) THENCE SOUTH 87°08'03" WEST FOR 100.13 FEET; 4) THENCE SOUTH 80°20'55" WEST FOR 202.87 FEET; 5) THENCE NORTH 83°09'38" WEST FOR 201.44 FEET; 6) THENCE SOUTH 78°41'12" WEST FOR 50.99 FEET; 7) THENCE NORTH 87°08'28" WEST FOR 100.13 FEET; 8) THENCE NORTH 73°18'15" WEST FOR 52.20 FEET; 9) THENCE SOUTH 79°30'19" WEST FOR 137.30 FEET; 10) THENCE NORTH 77°00'31" WEST FOR 66.71 FEET; 11) THENCE NORTH 84°17'34" WEST FOR 10.26 FEET; THENCE NORTH 00°01'21" EAST FOR 180.00 FEET; THENCE NORTH 09°37'14" EAST FOR 120.00 FEET; THENCE NORTH 00°02'19" EAST FOR 67.80 FEET; THENCE ALONG A CURVE TO THE RIGHT (HAVING A RADIUS OF 225.00 FEET AND A LONG CHORD BEARING NORTH 14°28'56" EAST FOR 112.24 FEET) FOR AN ARC LENGTH OF 113.44 FEET; THENCE NORTH 61°04'27" WEST FOR 149.34 FEET; THENCE NORTH 09°42'51" WEST FOR 154.08 FEET; THENCE NORTH 04°56'58" EAST FOR 241.21 FEET; THENCE NORTH 15°18'09" EAST FOR 120.00 FEET; THENCE NORTH 00°23'07" EAST FOR 268.00 FEET; THENCE NORTH 24°01'04" WEST FOR 83.00 FEET; THENCE SOUTH 65°36'35" WEST FOR 172.18 FEET; THENCE ALONG A CURVE TO THE RIGHT (HAVING A RADIUS OF 1051.04 FEET; AND A LONG CHORD BEARING SOUTH 77°53'25" WEST FOR 447.11 FEET) FOR AN ARC LENGTH OF 450.55 FEET; THENCE NORTH 89°49'45" WEST FOR 96.52 FEET TO THE EAST RIGHT OF WAY LINE OF 96TH STREET; THENCE NORTH 02°18'35" WEST FOR 37.11 FEET ALONG SAID EAST RIGHT OR WAY LINE; THENCE NORTH 04°56'15" EAST FOR 300.86 FEET ALONG SAID EAST RIGHT OF WAY LINE; THENCE NORTH 04°35'24" WEST FOR 301.22 FEET ALONG SAID EAST RIGHT OF WAY LINE; THENCE NORTH 00°10'15" EAST FOR 693.09 FEET TO THE POINT OF BEGINNING.

