

Magellan - Topeka-Sioux Falls
LID # 6486 (DB#662)

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INSTRUMENT NUMBER
2009-23939
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ENCROACHMENT AGREEMENT

Shirley J. Dowling
REGISTER OF DEEDS

STATE OF NEBRASKA §
 §
COUNTY OF SARPY §

This Encroachment Agreement ("Agreement") is made and entered into by and between Magellan Pipeline Company, L.P., a Delaware limited partnership, whose address is P. O. Box 22186, Tulsa, Oklahoma 74121-2186 (hereinafter referred to as "COMPANY"), and CENTCD 76, LLC, A Nebraska limited liability company, whose address is 13835 Industrial Rd., Omaha, NE 68137, the Grantee (hereinafter referred to as "LANDOWNER"),

WITNESSETH:

WHEREAS, COMPANY is the owner of a certain pipeline and appurtenances (hereinafter referred to as "Facilities" or "Pipeline" or "Pipeline(s)") and the right to future Facilities by virtue of a Right of Way and Easement document(s) covering a tract of land as described in the following instrument:

That 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 and recorded in the Register of Deeds Office of Sarpy County, Nebraska in Book 10, Page 464, and by Partial Release of Encroachment Agreement dated June 28, 1999 and recorded September 27, 1999 in the Register of Deeds Office of Sarpy County, Nebraska, under Instrument Number 99-030111 (hereinafter referred to as "Easement"); and

WHEREAS, LANDOWNER has represented to COMPANY that it owns certain tracts of land located in Sarpy County, Nebraska and more particularly described as follows:

Lot 30 in Brook Valley II Business Park, a Subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska and being further described in that certain Deed of Trust between CENTCD 76 LLC and Mutual of Omaha Bank dated September 30, 2008; and

WHEREAS, LANDOWNER desires to construct one (1) parking lot and two (2) building entrance roads over and across COMPANY'S Pipeline(s), which will encroach on the Easement (hereinafter referred to as "Encroachment"); and

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

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WHEREAS, LANDOWNER desires to obtain COMPANY'S consent to encroach on the Easement and Pipeline; and

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

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, COMPANY 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, boring, and digging that take place within the Easement will require 48 hours prior notice to Nebraska One-Call at (800) 331-5666. A COMPANY representative must be present during any of the aforementioned construction activities. The presence of COMPANY'S representative will not relieve LANDOWNER of any liability under this Agreement. The following language must be conspicuously displayed on all drawings depicting the Pipeline(s):

WARNING!
HIGH PRESSURE PIPELINE(S)

Excavation and/or Construction Prohibited without Prior Written Permission From
Magellan Pipeline Company, L.P.

2. Construction Parameters (continued): No equipment will be allowed to work over COMPANY'S Pipeline(s), unless approved by COMPANY'S representative. Excavators must work/dig parallel to COMPANY'S Pipeline(s), and the buckets must have barred teeth. Any excavation within two feet (2') of COMPANY'S Pipeline(s) will be done by hand. Bores and directional drills installed within ten feet (10') of COMPANY'S Pipeline(s) and Facilities require physical verification of Pipeline location(s) prior to commencement of any work. All crossings of COMPANY'S Pipeline(s) will be constructed as close to ninety (90) degrees as possible to COMPANY'S Pipeline(s), but not less than forty-five (45) degrees. A minimum of four feet (4') of cover and a maximum of eight feet (8') of cover must be maintained over COMPANY'S Pipeline(s).
3. Parking Lot and Entrance Roads: LANDOWNER will maintain a minimum of five feet (5') of cover between the top of COMPANY'S Pipeline(s) and the top of the one (1) parking lot and two (2) building entrance road surface(s). LANDOWNER will maintain a minimum of four feet (4') of cover between the top of COMPANY'S Pipeline(s) and the bottom of any ditches. In any concrete-paved areas, LANDOWNER will install expansion joints at no greater than fifteen foot (15') intervals to aid in removal if necessary.
4. Wherever LANDOWNER will cross COMPANY'S Pipeline(s) and/or Easement with heavy equipment, LANDOWNER will place matting or other suitable material over the Pipeline(s)/Easement as determined by COMPANY'S representative in the field.

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5. Excavated material will not be placed over COMPANY'S Pipeline(s). LANDOWNER agrees to clean up and repair all damages to COMPANY'S Easement resulting from the work on or across COMPANY'S Easement. Any and all damage repairs and cleanup of COMPANY'S Easement will be subject to COMPANY'S acceptance.
6. Large landscaping is not permitted on COMPANY'S Easement, including, but not limited to, trees, shrubs, and large landscaping with a mature untrimmed height greater than thirty-six inches (36"). Fences, utility poles, light poles, buildings, houses, barns, garages, patios, swimming pools, additional reinforced concrete slabs, or other permanent structures are not permitted on COMPANY'S Easement.
7. Within 120 days of the completion of construction of the crossing of COMPANY'S Pipeline(s)/Easement, LANDOWNER will provide to COMPANY at the above address a reproducible as-built drawing of the crossing, which will include a distance of twenty-five feet (25') on each side of said crossing along with the depiction of elevations.
8. LANDOWNER will indemnify, save, hold harmless, and at COMPANY'S option, defend COMPANY, its parent and affiliated companies and their directors, officers, employees, and agents of each such company from any and all claims, demands, costs (including 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 of property, real or personal, environmental damages, or other business losses, including those made or incurred by COMPANY of its parent or affiliated companies and their directors, officers, employees, and agents of each such company, or third parties, or governmental agencies in any way arising from or connected with the existence, construction, operation, maintenance, relocation, or removal of the Encroachment, except those arising from COMPANY'S sole negligence.
9. In the event that the existence, construction, operation, maintenance, relocation, or removal of the Encroachment causes COMPANY to incur any cost that in any manner relates to COMPANY'S operation, maintenance, removal, repair, replacement, protection, construction, alteration, relocation, changing the size of, addition to and/or inspection of the Pipeline(s), or the cleanup or handling of any spills of petroleum products, LANDOWNER, its successors or assigns, agrees to reimburse COMPANY for any and all such costs that would not have been incurred but for the existence of the Encroachment. LANDOWNER hereby agrees that COMPANY will not be held liable for any damages to the Encroachment arising from COMPANY'S operation, maintenance, removal, repair, replacement, protection, construction, alteration, relocation, changing the size of, addition to and/or inspection of the Pipeline(s).
10. COMPANY and LANDOWNER agree that the existence of the Encroachment does not constitute a waiver of COMPANY'S express rights under the aforesaid Easement or any other rights which may be implied by law or equity.

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11. 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, 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 COMPANY. This Agreement is limited to the one (1) parking lot and two (2) building entrance roads, and all future encroachments require COMPANY'S review and consent.
 12. In the event that LANDOWNER breaches any of the terms, covenants, or provisions of this Agreement, and COMPANY commences litigation to enforce any provisions of this Agreement and prevails, the cost of attorneys' fees and the attendant expenses will be payable to COMPANY by LANDOWNER upon demand.
 13. The terms and conditions of this Agreement will constitute covenants running with the land and will be binding upon and inure to the benefits of the parties hereto, their successors and assigns.

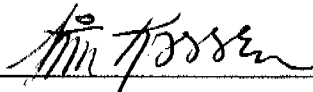
IN WITNESS WHEREOF, we have hereunto set our hands on the day and year below.

(COMPANY)

MAGELLAN PIPELINE COMPANY, L.P.

A Delaware limited partnership,

By: Magellan Pipeline GP, LLC, its General Partner

By: 

Name: TIM KASSEN

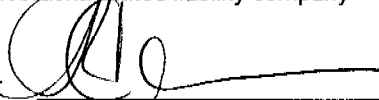
Title: R.E. Rep

Date: 06-01-09

(LANDOWNER)

CENTCD 76, LLC,

A Nebraska limited liability company

By: 

Name: Ray Trimble

Title: President

Date: 01-29-09

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ACKNOWLEDGEMENTS

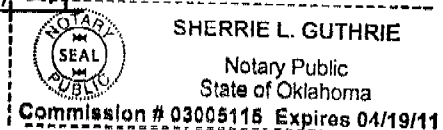
STATE OF OKLA §
COUNTY OF TULSA §

Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 1st day of June, 2009 personally appeared Jim Kason, to me personally known to be the Real Estate Rep. of Magellan Pipeline GP, LLC, a 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.

(seal)

Sherrie L. Guthrie
Notary Public
SHERRIE L. GUTHRIE

My Commission Expires: 4-19-11



STATE OF Nebraska §
COUNTY OF Douglas §

Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 28th day of April, 2009 personally appeared Ray Trimble, to me personally known to be the President of CENTCD 76, LLC., a 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.

(seal)



Christina M. Huss
Notary Public

My Commission Expires: 7-18-11

CONSENT

The undersigned, beneficiary in and under that certain deed of trust dated September 30, 2008, Sarpy County, Nebraska, which is hereinafter referred to as "Deed of Trust" which Deed of Trust is by and between CENTCD 76, LLC, as Trustor and Mutual of Omaha Bank as Beneficiary and Trustee, does hereby consent to the form and substance of this Encroachment Agreement and the entire effect thereof, and to the recordation of this Encroachment Agreement.

MUTUAL OF OMAHA BANK

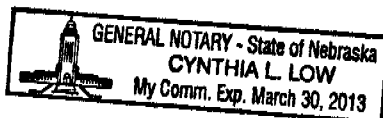
By: Jeff Eikmeier

Name: Jeff Eikmeier

Title: Vice President

STATE OF Nebraska §
COUNTY OF Douglas §

This instrument was acknowledged before me on the 7th day of May, 2009, by Jeff Eikmeier, of Mutual of Omaha Bank, a Bank, on behalf of said Bank.



Cynthia L. Low
Notary Public

Prepared By/Return To:

Magellan Pipeline Company, L.P.
c/o R. Curry – Land Department
P.O. Box 4324
Houston, Texas 77210-4324