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 Register of Deeds, Douglas County, NE  
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### ENCROACHMENT AGREEMENT

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 called "Magellan"), and Landmark Enterprises, Inc., a Nebraska corporation, whose mailing address is 4852 South 133<sup>rd</sup> Street, Suite 101, Omaha, Nebraska 68137, its heirs, successors, assigns and grantees (hereinafter called "Owner").

#### WITNESSETH:

WHEREAS, Owner represents and warrants that Owner owns all the certain land (hereinafter "Owner's Land"), described on attached Exhibit "A" and made a part hereof, per the Warranty Deed executed on the 16<sup>th</sup> day of August, 2004 and recorded in the records of Douglas County, Nebraska on the 20<sup>th</sup> day of August, 2004 as Document No. 2004111429; and

WHEREAS, Magellan is the owner of certain pipelines, pipeline facilities and appurtenances (hereinafter referred to as the "Magellan Facilities") and easement rights therefor, (hereinafter referred to as the "Easement", whether or not rights were granted in one or more documents or acquired by operation of law). For purposes of this Agreement only, "Magellan's Easement Tract" shall be considered to be any area within Twenty-five (25) feet of any Magellan pipeline or other Magellan-owned or operated facility or appurtenance, unless a different right of way tract width is specifically described in the Easement, in which case such specified width shall define Magellan's Easement Tract. The land referenced in the Easement includes the West half of the East half of Section 30 and the Northeast Quarter of Section 31, both in T-16-N, R-12-E, Douglas County Nebraska, pursuant to those certain instruments recorded in the records of said county and state and described as follows:

- 1) Right of Way Agreement as to a pipe line or pipe lines dated June 3<sup>rd</sup>, 1941, from Katharine C. Allison, in favor of Socony-Vacuum Oil Company (Magellan's

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predecessor in title), its successors and assigns, and filed for record in Book 156 at Page 171; and

- 2) Agreement dated July 21<sup>st</sup>, 1981 from Abner Rubin and Suzy R. Rubin, husband and wife and Ben Rubin (a/k/a Ben Rubin, Jr.) and Debra I. Rubin, husband and wife and filed for record in Book 660, Page 222; and
- 3) Right of Way Agreement dated May January 27<sup>th</sup>, 1941, from W.W. McCombs and Jennie K. McGowen to Socony-Vacuum Oil Company (Magellan's predecessor in title) it's successor's and assigns, and filed for record in Book 153, Page 401; and
- 4) Agreement dated April 18<sup>th</sup>, 1950 between Albert Kobs Sr. and Sallie Kobs, and filed for record in Book 252, Page 143; and

WHEREAS, for the purposes of this Agreement an "Encroachment" is defined as any use of the land within **Magellan's Easement Tract** by someone other than **Magellan** which could interfere with **Magellan's Easement** rights or which could create safety concerns related to **Magellan's** pipelines and/or facilities located on **Magellan's Easement Tract**, including, but are not limited to placing structures, fences, fixtures, personal property, landscaping, utilities, pipelines, roadways, driveways, parking lots, railroads, waterway crossings, water impoundments, walls, heavy equipment and heavy loads on **Magellan's Easement Tract**, and also any excavation, digging, drilling, tunneling and addition, removal or disturbance of soil or subsoil within **Magellan's Easement Tract**; and

WHEREAS, **Owner** desires to obtain **Magellan's** consent for one or more **Encroachments** on **Magellan's Easement Tract**;

NOW, THEREFORE, in consideration of the covenants and agreements herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **Magellan**, subject to the following terms and provisions, hereby consents to the **Encroachments** listed below as "**Approved Encroachments**" described and limited pursuant to the following-specified plan drawing which was furnished by **Owner** to **Magellan** ("**Plan Drawing**"):

Lot 242-Building Permit Site Utility Plan Drawing Sheet 4, on project number 0312255 by Kirkham Michael Consulting Engineers, dated September 2004

A Reduced photocopy of such **Plan Drawing** is attached hereto as Exhibit "B".

**Terms and Provisions:**

1. **Approved Encroachments.** The Approved Encroachments, as further identified, described and limited in the Plan Drawing in Exhibit "B", are limited to the following:
  - (a) 10-inch PVC sanitary sewer crossing Magellan's Easement Tract and under Magellan's Omaha Jct.-Omaha 6-inch high pressure petroleum products pipeline at approximate pipeline station 13+50 as shown on Exhibit "B".
  - (b) An asphalt road surface crossing Magellan's Easement Tract and Magellan's Omaha Jct.-Omaha 6-inch high pressure petroleum products pipeline at approximate pipeline station 13+50 as shown on Exhibit "B".
  - (c) A paved alleyway encroaches the Southern boundary of Magellan's Easement Tract for approximately 200 feet with a perpendicular distance of 10 feet from Magellan's Omaha Jct.-Omaha 6-inch high pressure petroleum products pipeline as shown on Exhibit "B".
  - (d) 4-foot concrete sidewalks 4 inches thick bordering the proposed asphalt road surface as shown on Exhibit "B".
  - (e) Two concrete driveways 4 inches thick and associated with the units located at the Northeast corner of the proposed development will encroach the Southeastern boundary of Magellan's Easement Tract as shown on Exhibit "B".
  - (f) Clean fill from 2-foot to 6-foot will be added to Magellan's Easement Tract and over Magellan's Omaha Jct.-Omaha 6-inch high pressure petroleum products pipeline. The cover throughout Magellan's Easement Tract must remain shallower than 8-foot.
  
2. **General Encroachment Requirements.** Magellan's *General Encroachment Requirements* are attached as Exhibit "C". Owner agrees to abide by all of the terms and conditions set forth in the *General Encroachment Requirements*. The *General Encroachment Requirements* shall not be interpreted to permit any encroachments not specifically defined in this Agreement as Approved Encroachments. In the event of a conflict between the provisions of the *General Encroachment Requirements* and the specific provisions set forth in this Agreement, the specific provisions of this Agreement shall control.
  
3. **Magellan On Site Representative.** Exclusive of Saturday, Sunday, and legal holidays, Owner shall notify Magellan a minimum of 48 hours in advance of any Encroachment activities on Magellan's Easement Tract so that Magellan may arrange to have a representative present. At Magellan's option and at Owner's sole cost and expense, Magellan's representative may be on site during all Encroachment activities over or within ten feet (10') of the Magellan Facilities to confirm that no damage occurs to the Magellan Facilities. The presence of Magellan's representative or any verbal instructions given by such representative shall not relieve Owner of any liability under the Easement and this Agreement and will not change the terms of the Easement or this Agreement which may only be changed by written agreement by authorized representatives of Owner and Magellan. If pipeline, coating, cathodic protection and/or any other repair of Magellan Facilities is required by Magellan or if the safety of the Magellan Facilities is jeopardized, in Magellan's sole judgment, Owner shall stop all construction activities on Magellan's

Easement Tract until said repairs are completed or until any unsafe construction practices are resolved to the satisfaction of Magellan's on-site representative. Written notification of such construction activity shall be made to **MAGELLAN PIPE LINE COMPANY, Coordinator of Operations & Maintenance, Harold Johnson at 9405 Bennington Road, Omaha, NE 68122, Office:(402) 571-7080, Cell: (402) 677-7108, Fax: (402) 571-4839**, or such other representative of Magellan which Magellan may from time to time designate.

4. **Protection of Magellan Facilities.** Owner shall protect the Magellan Facilities if excavating and backfilling become necessary within Magellan's Easement Tract. If deemed necessary by Magellan's on site representative, Owner shall perform any necessary digging or excavation operations by hand digging. Owner shall reimburse Magellan for all costs of having a representative of Magellan on-site during construction activities related to the **Approved Encroachments**.
5. **No Other Encroachments.** Except for the **Approved Encroachments** as defined in the **Agreement**, Owner shall not create, erect, place or construct any other **Encroachment** on, above or below the surface of the ground on **Magellan's Easement Tract**, or change the grade or elevation of the ground surface within **Magellan's Easement Tract** or at any time plant or allow any trees thereon or cause or permit any of these to be done by others, without the express prior written permission of **Magellan**.
6. **Breach.** If either **Owner** or **Magellan** breaches this **Agreement** and the non-breaching party commences litigation to enforce any provisions of this **Agreement**, the reasonable cost of attorneys' fees and expenses will be payable to the non-breaching party by the breaching party upon demand, for all claims upon which the non-breaching party prevails.
7. **Insurance.** Owner shall procure or cause its contractors and subcontractors to procure and maintain in force throughout the entire term of this **Agreement** insurance coverage described below with insurance companies acceptable to **Magellan** for work performed related to the construction of the **Approved Encroachments**. All costs and deductible amounts will be for the sole account of the **Owner** or its contractors and subcontractors. Prior to commencing any activities related to the construction of the **Approved Encroachments**, the **Owner** must deliver to **Magellan** certificate(s) of insurance. Non-renewal or cancellation of policies must be effective only after **Magellan** receives written notice from the insurance company thirty (30) days in advance of such non-renewal or cancellation. The limits set forth below are minimum limits and will not be construed to limit the **Owner's** liability:
  - (a) Workers' Compensation insurance complying with the laws of the State or States having jurisdiction over each employee and Employer's Liability insurance with limits of \$1,000,000.

- (b) Commercial or Comprehensive General Liability insurance on an occurrence form with a combined single limit of \$5,000,000 each occurrence and project specific annual aggregates of \$5,000,000. Coverage must include premises/operations, independent contractors, blanket contractual liability, and products/completed operations coverage; such coverage must be maintained for two (2) years following completion of work activities related to the construction of the **Approved Encroachments**, broad form property damage, personal injury and sudden and accidental pollution. **Magellan**, its affiliated companies, and its and their respective directors, officers, partners, members, shareholders, employees, agents and contractors shall be included as additional insureds.
- (c) In each of the above policies, the **Owner** or its contractors and subcontractors agrees to waive and will require its insurers to waive any rights of subrogation or recovery either may have against **Magellan** and its affiliated companies.
- (d) Regardless of the insurance requirements above, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for the **Owner** or its contractors and subcontractors, or the failure of any such insurance company to pay claims that occur, such requirements, insolvency, bankruptcy or failure will not be held to waive any of the provisions hereof.
- (e) In the event of a loss or claim arising out of or in connection with the construction of the **Approved Encroachments**, the **Owner** agrees, upon request of **Magellan**, to submit a certified copy of its insurance policies for inspection by **Magellan**.
- (f) The **Owner** shall require all of its contractors and subcontractors for work related to the construction of the **Approved Encroachments** to provide adequate insurance coverage, all to be endorsed with the Waiver of Subrogation wording referenced in Section (c) above; any deficiency in the coverage, policy limits, or endorsements of said contractors and subcontractors, shall be the sole responsibility of the **Owner**.
8. **Indemnification.** **Owner** will indemnify, save, and hold harmless **Magellan**, its affiliated companies and its and their respective directors, officers, partners, members, shareholders, employees, agents and contractors from any and all environmental and non-environmental liabilities, losses, costs, damages, expenses, fees (including reasonable attorneys' fees), fines, penalties, claims, demands, causes of action, proceedings (including administrative proceedings), judgments, decrees and orders resulting from **Owner's** breach of this **Agreement** or caused by or as a result of the construction, use, maintenance, existence or removal of the **Approved Encroachments** and any other encroachments located on the **Magellan Easement Tract**. The presence of **Magellan's** representative or any instructions given by such representative will not relieve **Owner** of any liability under this **Agreement** except to the extent that such liability results from **Magellan's** or its representative's gross negligence or willful misconduct.

9. **Damage or Loss.** Owner covenants that:

- a. If at any time, in the sole opinion of **Magellan**, it becomes necessary for **Magellan**, to cross, occupy, utilize, move or remove all or portions of the **Approved Encroachments** placed on **Magellan's Easement Tract** or constructed pursuant to this **Agreement**, for any purpose, including but not limited to surveying, constructing new facilities, maintaining, inspecting, operating, protecting, repairing, replacing, removing or changing the size of a pipeline(s) and appurtenances on **Magellan's Easement Tract** and such activities by **Magellan** result in damage to or destruction of the **Approved Encroachments**, then repair, replacement or restoration of such **Approved Encroachments** shall be at the sole cost and responsibility of **Owner**.
- b. If at any time, any encroachments belonging to or permitted by **Owner** which are not authorized by this or another written agreement ("**Other Encroachments**") are found to be on **Magellan's Easement Tract**, **Magellan** may at any time request **Owner** to remove such **Other Encroachments**, and if **Owner** refuses or fails to do so within a reasonable time, **Magellan's** may remove them from **Magellan's Easement Tract** to **Owner's Land** at **Owner's** expense, unless they are allowed to remain by a written agreement between **Magellan** and **Owner**. Should such removal activities by **Magellan** result in damage to or destruction of the **Other Encroachments**, then repair, replacement or restoration of such **Other Encroachments** shall be at the sole cost and responsibility of **Owner**, and such **Other Encroachments** may not be repaired, replaced or rebuilt on **Magellan's Easement Tract** without a written agreement between **Magellan** and **Owner**.
- c. If during the exercise of the rights granted by the **Easement** or by this **Agreement**, the **Approved Encroachments** and **Other Encroachments**, if any, are damaged, destroyed or suffer loss of value, **Owner** agrees to release **Magellan**, its affiliates, and its and their respective directors, officers, members, partners, shareholders, employees, agents and contractors from and against any and all liabilities, and damages or losses which may arise as a result of the damage to or loss of use of the **Approved Encroachments** and **Other Encroachments**, if any, caused by **Magellan**, its employees, agents and contractors.

10. **Magellan Rights.** **Magellan** and **Owner** agree that the existence of the **Approved Encroachments** or this **Agreement** does not constitute a waiver of **Magellan's** rights under the **Easement**. **Magellan** hereby reserves and **Owner** hereby grants and confirms all of **Magellan's** rights, title and estate as set forth in the **Easement** including, but not limited to, the rights of ingress and egress across **Owner's Land** and the rights to, lay, maintain, operate, repair, replace, change the size of, protect and remove existing and future pipelines, communication lines and other facilities on **Magellan's Easement Tract**.

11. The terms and conditions of this Agreement will constitute covenants running with the land and be binding upon and inure to the benefit of the parties hereto, their successors, assigns and grantees. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. This Agreement shall become effective upon its complete execution by the parties hereto.

IN WITNESS WHEREOF, the parties have set their hands on the dates expressed below.

**MAGELLAN PIPELINE COMPANY, L.P.**  
A Delaware limited partnership,

By: Magellan Pipeline GP, LLC, its general partner


By: 

Date: 2-1, 2005

Name: Richard A. Olson

Title: Vice President

**LANDMARK ENTERPRISES, INC.**  
A Nebraska corporation

By: 

Date: 12-14, 2004

Name: STEVE FALLER  
Title: PRESIDENT

STATE OF OKLAHOMA )  
 )  
 ) SS  
COUNTY OF TULSA )

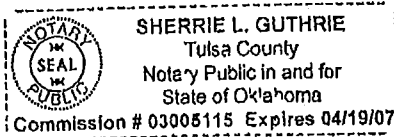
Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 1<sup>st</sup> day of February, 2008 personally appeared Richard A. Olson, to me personally known to be the Vice-President of MAGELLAN PIPELINE GP, LLC, a Delaware limited liability company, who being duly 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.

Witness my hand and official seal.

Sherrie L. Guthrie  
Notary Public **SHERRIE L. GUTHRIE**

My commission expires:

4-19-07



STATE OF NEBRASKA )  
 )  
 ) SS  
COUNTY OF DOUGLAS )

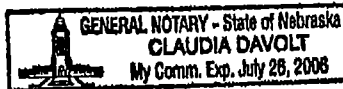
Before me, the undersigned, a Notary Public in and for the County aforesaid, on this 14<sup>th</sup> day of December, 2004, personally appeared STEVE FALLER to me known personally to be the President of LANDMARK ENTERPRISES, INC., a Nebraska corporation, who being duly sworn did acknowledge to me that he executed the foregoing instrument on behalf of said Landmark Enterprises, Inc. as the free and voluntary act and deed of said corporation, for the uses, purposes and consideration therein set forth.

Witness my hand and official seal.

Claudia Davolt  
Notary Public

My Commission Expires:

7-26-06





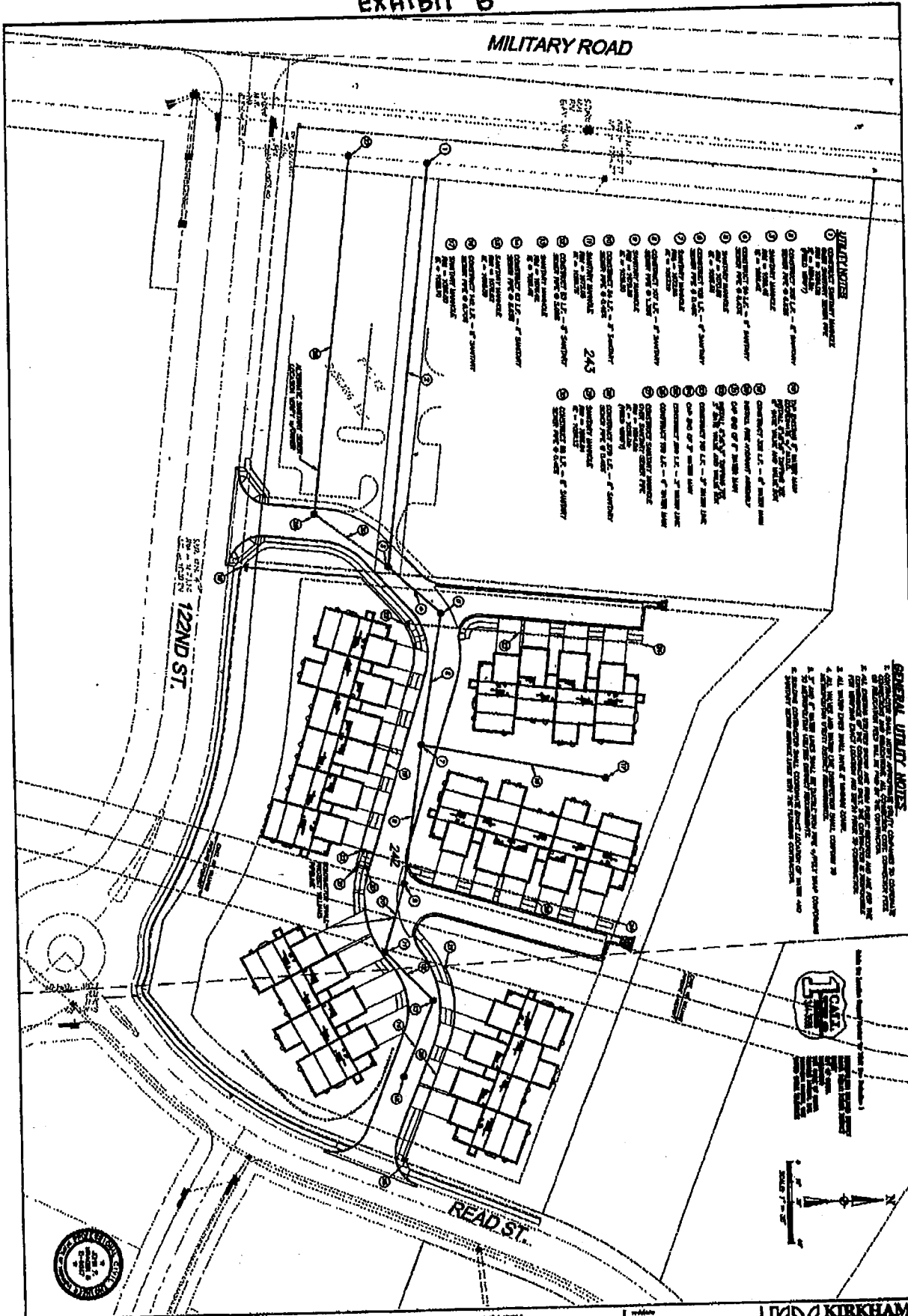
**EXHIBIT "A"**  
**To Encroachment Agreement**

**Description of Owner's Land:**

**Lot 242, Deer Creek, a subdivision in Douglas County, Nebraska.**

# EXHIBIT "B"

MILITARY ROAD



- UTILITY NOTES**
- 1. CONTRACTOR TO VERIFY ALL UTILITIES SHOWN ON THIS PLAN ARE ACCURATE AND TO BE RESPONSIBLE FOR ANY CHANGES TO UTILITIES.
  - 2. CONTRACTOR TO VERIFY ALL UTILITIES SHOWN ON THIS PLAN ARE ACCURATE AND TO BE RESPONSIBLE FOR ANY CHANGES TO UTILITIES.
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**GENERAL UTILITY NOTES**

1. CONTRACTOR SHALL VERIFY ALL UTILITIES SHOWN ON THIS PLAN ARE ACCURATE AND TO BE RESPONSIBLE FOR ANY CHANGES TO UTILITIES.
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SHEET 4

LOT 242 - BUILDING PERMIT  
SITE UTILITY PLAN

DEER CREEK  
NEBRASKA



# EXHIBIT "C" TO ENCROACHMENT AGREEMENT, 1 of 3

<p><b>MAGELLAN PIPELINE COMPANY, L.P.</b></p> <p><b>General Encroachment Requirements</b></p> <p><b>GENERAL</b> - These requirements define the minimum standards of quality for encroachments by a landowner (including any developer, business entity, utility company or individual working for, or on behalf of, or with permission of landowner) (herein referred to collectively as "Owner") to pipeline corridors and rights of way ("Magellan's Easement Tract") owned or operated by Magellan Pipelines Company, L.P. ("Magellan"). Upon written request by Owner, a copy of these minimum requirements must be provided to any developer, business entity, utility company or individual working on behalf of Owner or with the permission of Owner within Magellan's Easement Tract. Magellan's Easement Tract for purposes of these General Encroachment Requirements shall be considered to be any area within fifty (50) feet of any Magellan pipeline or other Magellan-owned or operated facility unless a different right of way width is specified by one or more recorded right of way or easement documents (herein collectively called "Easement", whether one or more) in which case such specified width shall define Magellan's Easement Tract.</p> <p><b>1. Encroachment Definition.</b> An "encroachment" is any use of the land within Magellan's Easement Tract which could interfere with Magellan's Easement rights or which could create safety concerns for Magellan pipelines and/or facilities located on Magellan's Easement Tract. Encroachments include, but are not limited to: structures, fixtures, personal property, landscaping, foreign utilities, foreign pipelines, roadways, railroads, waterway crossings, water impoundments, walls, heavy equipment and heavy loads on Magellan's Easement Tract, and also any excavation, digging, drilling, tunneling and addition, removal or disturbance of soil or subsoil within Magellan's Easement Tract</p> <p><b>2. Magellan Representative Required On-Site.</b> Magellan pipeline systems operate at high pressures, and for safety reasons, Magellan requires its company representatives to be on-site while Owner is performing work on Magellan's Easement Tract. A Magellan representative will be made available upon 48 hours notice to determine the location and approximate depth of any Magellan pipelines. No excavation shall be commenced without prior approval from Magellan and verification by Magellan of the location and approximate depth of its pipelines</p>	<p><b>3. Magellan's Facilities.</b> Magellan's facilities include, but are not limited to, Easement, rights of way, pipelines, meter and valve sites, aboveground piping manifolds and cathodic protection systems.</p> <p><b>4. Land Use Change - Notification.</b> The landowner and tenant, if any, must notify Magellan at any and every time when the land use will be changed for land on or adjacent to Magellan's Easement Tract. Examples of such land use changes are:</p> <ul style="list-style-type: none"> <li>-Change from pasture to cultivation</li> <li>-Change in depth of tilling (e.g. plowing deeper or deep-breaking the land)</li> <li>-Change in that terraces will be cut or re-cut</li> <li>-Change from agricultural use to residential, commercial or industrial use.</li> <li>-Change from residential to commercial or from commercial to industrial.</li> </ul> <p><b>5. Governmental Regulations and Industry Guidelines.</b> Owner must comply with governmental regulations and guidelines outlined in governing industry codes and standards, as well as with Magellan policies.</p> <p><b>MAGELLAN RIGHT OF WAY PRACTICES</b></p> <p><b>1. Personal Property and Fixtures To Be Kept Off of Magellan's Easement Tract.</b> In order to keep Magellan rights of way clear for operations, maintenance, inspection and emergency access, personal property and fixtures shall not be placed, stored or maintained on Magellan's Easement Tract. Personal property and fixtures include, but are not limited to, storage sheds, automobiles, trailers, mobile homes, above-ground swimming pools, business equipment, product inventory, scrap metal, boulders, large rocks, debris, junk and piles of materials.</p> <p><b>2. Encroachments Subject to Being Cleared from Magellan's Easement Tract.</b> Subject to the terms of its Easement (including right of way agreements) and other written agreements, Magellan may keep Magellan's Easement Tract clear of items that may hinder the exercise of Magellan's rights to construct, operate, inspect, maintain, repair and access its pipelines and other facilities. Clearing of the Magellan's Easement Tract shall include, but not be limited to the following: removal of trees, brush, crops, other vegetation and non-permitted encroachments located on or overhanging all or part of any Magellan's Easement Tract. Trees or other vegetation overhanging Magellan's Easement Tract may be side-trimmed.</p>	<p><b>ENCROACHMENT PLANNING.</b></p> <p><b>1. Plan Review Required by Magellan.</b> Magellan must review plans for any encroachment prior to the encroachment occurring.</p> <p><b>2. Submission of Complete Plans.</b> Owner must submit complete plans to Magellan for review. Incomplete plans could delay Magellan's engineering impact study and insufficient information could result in increased costs. Plans must include:</p> <ul style="list-style-type: none"> <li>-A plan view of the project with the pipeline(s) location included.</li> <li>-An illustration in profile of the existing surface elevations, the proposed surface elevations and the elevation of the Magellan pipeline(s).</li> <li>-A comprehensive utility/structure/grading plan depicting the relationship to the pipeline(s).</li> <li>-A proper legal description of the project location.</li> <li>-Complete landscaping plans.</li> <li>-Complete plans for backfilling and completion of backfill material.</li> </ul> <p><b>3. Plans Must Show Magellan's Easement Tract, Pipelines and Facilities.</b> All construction plans (prints) showing lands where all or any part of Magellan's Easement Tract, any Magellan pipeline or facility is located must contain the following:</p> <ul style="list-style-type: none"> <li>-Location and depth of all Magellan pipelines and facilities</li> <li>-The width of Magellan's Easement Tract</li> <li>-A standard warning statement conspicuously displayed containing the following language:</li> </ul> <p style="text-align: center;"><b>WARNING HIGH-PRESSURE PIPELINE(S) Excavation and/or Construction Prohibited Without compliance with State One-Call, AND Without Written Permission From MAGELLAN PIPELINE COMPANY, L.P.</b></p> <p><b>4. Written Encroachment Agreement Required.</b> A written fully executed Encroachment Agreement must be in place between Magellan and Owner before Owner commences work on any encroachment.</p>	<p><b>4. Costs.</b> Unless otherwise agreed in writing, all costs to Magellan that result from any encroachment shall be paid by Owner. Such costs shall include, but not be limited to: modification, replacement, lowering, and protection of pipelines, including engineering evaluation and design, field labor and real estate research and document preparation and handling.</p> <p><b>5. Pipeline Integrity Inspection.</b> Prior to the installation of any structure, parking lot, roadway or other facility which might interfere with or hinder Magellan's inspection of any pipeline or facility, Magellan will perform an integrity review of the pipeline and any other assets which may be affected by the proposed structure, parking lot, roadway or other encroaching facility in order to determine that Magellan's assets comply with integrity requirements.</p> <p><b>6. Soil On Magellan's Easement Tract - Removing and Adding.</b> No soil shall be removed from or added to Magellan's Easement Tract without written authorization from Magellan. Any soil added must be clean (without contaminants, trash or debris) fill dirt and must be limited in amount so that the resulting cover (vertical distance from the surface of the land to the top of Magellan's pipeline) is not greater than eight feet (8').</p> <p><b>7. Erosion Control Materials.</b> Erosion-control materials may be allowed on Magellan's Easement Tract for temporary periods of construction and restoration.</p> <p><b>8. Proof of Title to Property.</b> Magellan may require Owner to provide proof of current ownership of the land where the proposed encroachment is to be located. Such proof may be in the form of a Title Commitment, Title Policy, or a copy of a recorded Warranty Deed.</p> <p><b>9. Subdivision Plat.</b> Magellan requires a copy of the Subdivision Plat, if applicable. If the plat has been recorded, Magellan requires a copy indicating the book and the page of the recording.</p> <p><b>10. Location and Approximate Depth of Pipelines.</b> A Magellan representative is available with 48 hours notice to determine the location and approximate depth of the pipeline(s). No excavation on Magellan's Easement Tract shall take place without approval by Magellan.</p> <p><b>11. Vertical Separation Between Magellan Pipeline or Facility and an Encroaching Object or Structure.</b> Vertical separation is defined in this document as the vertical distance between the outermost part of a Magellan pipeline, facility or appurtenance (for example, the outside of the pipe [for</p>	<p>uncased pipe] or the outside of the pipe casing [for cased pipe]) and the outermost part of the encroaching object (for example, the outside of the encroaching pipeline or the outside of its conduit).</p> <p><b>12. Construction Equipment Information.</b> Owner shall provide to Magellan information as to the type, size, and weight of construction equipment that will be used in the vicinity of the pipeline(s).</p> <p><b>ENCROACHMENT DESIGN REQUIREMENTS &amp; STANDARDS</b></p> <p><b>1. Risk of Loss and Damage.</b> Owner shall bear the risk of loss, damage and/or destruction to any structure, fence, landscaping or improvement placed within the boundaries of Magellan's Easement Tract and shall hold Magellan harmless for damages, destruction of structures and for any consequential damages which may arise out of Magellan or its designees exercising Magellan's Easement rights or arising out of accessing Magellan's Easement Tract, pipelines or facilities</p> <p><b>2. Buildings, Structures and Fences.</b></p> <ul style="list-style-type: none"> <li>a. Buildings and Structures. No buildings, houses, barns, garages, patios, playhouses, sheds, septic systems or drain fields, swimming pools, reinforced concrete slabs or other similar structures will be permitted on the Magellan's Easement Tract.</li> <li>b. Septic System not permitted. No septic system, including any lateral lines will be permitted on Magellan's Easement Tract.</li> <li>c. Retaining Walls. Retaining walls are not permitted on Magellan's Easement Tract</li> <li>d. Fences. No fence shall be constructed or maintained on Magellan's Easement Tract without a written agreement.</li> <li>e. Requirements for Fences. If fencing on Magellan's Easement Tract is authorized by a written agreement with Magellan, the fencing must comply with the following:             <ul style="list-style-type: none"> <li>1) Not Parallel to Pipeline. No fence shall be allowed to be constructed parallel closer than 10 feet to any Magellan pipeline, within the boundaries of Magellan's Easement Tract.</li> <li>2) Fence Posts Location. No fence posts will be allowed to be within five (5) feet of any Magellan pipeline or facility.</li> <li>3) Gates Required. Magellan may require any fence constructed within the boundaries of Magellan's Easement Tract to have gates of such size and suitability as is necessary or convenient for Magellan to access its pipelines and/or facilities for its operations, including</li> </ul> </li> </ul>
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inspections, at each point where the fence crosses a Magellan pipeline or facility boundary. Magellan shall be allowed to put a Magellan lock on such gates, which will allow access to Magellan's Easement Tract and/or facilities through such gates.

4) Angle of Fence Crossing. It is preferred that fence crossings be as close to 90 degrees as possible.

**3. Landscaping, Elevation Changes and Water**

**a. Landscaping Definition.** Landscaping shall include, but not be limited to, trees, shrubs, underground irrigation or sprinkler systems, sidewalks or other paths, retaining walls, terraces or other land grade changes, within Magellan's Easement Tract.

**b. General Landscaping Requirements.** The following are the general rules for landscaping on Magellan's Easement Tract:

- 1) **Written Approval.** Landscaping proposed to be done on Magellan's Easement Tract must be approved by Magellan in a written encroachment agreement. Among other terms, the encroachment agreement will release Magellan from any liability for damages to the landscaping from the exercise of Magellan's Easement rights.
- 2) **Trees Not Permitted.** Trees are not permitted on Magellan's Easement Tract.
- 3) **Shrubs.** Shrubs exceeding 3 feet in height and/or obstructing the view of any Magellan pipeline marker posts are not permitted on Magellan's Easement Tract.
- 4) **Irrigation Systems, Field Drain Liners, and Sidewalks.** Irrigation systems, field drain lines and sidewalks that are to cross a Magellan pipeline must cross such pipeline at an angle as close to 90 degrees as possible, but in no event at an angle less than 45 degrees and must comply with other applicable provisions of this document.

**c. No Water Bodies on Magellan's Easement Tract.** Retention of water, including but not limited to, livestock ponds, lakes, retention ponds, or wetlands may not be constructed or formed on Magellan's Easement Tract.

**d. Surface Grade and Elevation Changes.** Surface grade or elevation changes must be reviewed and approved in writing by Magellan.

**4. Foreign Pipeline & Utility Crossings.**

**a. Minimum Angle for Pipeline/Utility Crossing.** Any foreign pipeline or utility that is proposed to cross a Magellan pipeline must cross the Magellan pipeline at an angle as close to 90 degrees as possible, but in no

event at an angle less than 45 degrees.

**b. Vertical Separation Requirements for Crossing.** Foreign pipeline(s), utilities (except high-voltage lines - see below) or flow lines should cross Magellan pipeline(s) with at least 24 inches of vertical separation. Special written authorization must be given in the event vertical separation is less than that specified in these General Encroachment Requirements. The preferred method for a foreign pipeline or utility to cross a Magellan pipeline is to cross below the Magellan pipeline.

**c. Warning Tape Required.** When any foreign pipeline or utility line is proposed to cross a Magellan pipeline, Owner must place 6" wide McMaster-Carr No. 8288712 or equal within Magellan's Easement Tract in the following manner:

- 1) The tape must be placed directly over (parallel to) and at least 15 inches above the foreign line for the entire distance that it occupies Magellan's Easement Tract. Additionally, the tape must be placed directly over (parallel to) and at least 15 inches above each Magellan pipeline that is crossed for a minimum distance of 20 feet on each side of the Magellan pipeline.
- 2) The placement of warning tape on each side of Magellan pipeline(s) will not be required for utility cables that are installed using the directional drill or jacking method.

**d. Crossings By Metal Pipelines or Conduits.** Metallic pipe crossing Magellan pipeline(s) may require Magellan to perform a cathodic protection interference survey. If interference with Magellan's cathodic protection system is detected and remediation is necessary, Owner agrees to cooperate with Magellan and to make necessary adjustments in Owner's interfering metallic pipe or other remediation to correct such interference problem insure that the Magellan cathodic protection system is operating properly.

**e. Low-Voltage Crossing Requirements.** Low voltage electrical, fiber optic, local service communication, long distance carrier telephone, and low-voltage (12 - 24 volt) utility cable should cross Magellan pipeline(s) with 24 inches of vertical separation. Such cables shall be encased in a rigid, non-metallic conduit when crossing Magellan pipeline(s).

**f. High-Voltage Crossing Requirements.** High-voltage electrical cable (alternating current with voltage of 110 volts and higher) must cross Magellan pipeline(s) with a minimum vertical separation as follows:

- 24-inches for 0 to 600 volts;
- 30-inches for 601 to 22,000 volts;
- 36-inches for 22,001 to 40,000 volts;
- 42-inches for 40,001 volts and above.

In the event a high-voltage electrical cable crosses over a

pipeline, the cable shall be encased in red concrete across the full width of Magellan's Easement Tract.

**g. Utility Poles and Guy Anchors.** Utility poles and guy anchors shall not be placed on Magellan's Easement Tract without a written agreement. With a written agreement, poles and anchors may be placed no closer than 20 feet to any Magellan pipeline.

**5. Roadway, Driveway, Railroad and Equipment Crossings.**

**a. Pipeline Integrity Inspection.** Prior to any road, driveway, rail bed or equipment crossing construction, Magellan will perform an integrity review of its pipeline assets that may be affected by the proposed construction in order to determine that the pipeline assets comply with integrity requirements.

**b. Load Bearing and Stress Limit Requirements.** Prior to any road, driveway, rail bed or equipment crossing construction, Magellan's engineer must determine whether the proposed compacted cover meets load-bearing requirements and provides adequate protection to limit stress on Magellan's pipeline or other facilities and must advise Owner of any additional requirements necessary to provide adequate protection.

**c. No Crossing Over Pipeline Bend.** Paved surfaces or rail beds shall not be allowed to cross a pipeline bend (point of inflection).

**d. Minimum Angle of Crossing.** Crossings should be as close to 90 degrees to Magellan pipeline(s) as possible, but not less than 30 degrees.

**e. Pipeline Casing Issues.** Magellan prefers that cased roadway and railroad crossings no longer be installed. If the carrier pipe under roadways and railroads requires adjustment or relocation, then instead of using casing, the carrier pipe will consist of extra strength material or heavier wall thickness to accommodate the additional longitudinal stress due to external loads. If a road or railroad crossing currently uses casing and the road or railroad is being widened and no other adjustment or relocation of the carrier pipe is required, then Magellan may elect to extend the casing pipe on the existing crossing(s) to accommodate additional road surface. If casing is used, it must not end under the roadway surface or track structure, but must extend across the entire length of the roadway or railroad right of way.

**f. Railroad Crossing Requirements.** Railroads shall be installed with a minimum compacted cover over the carrier pipe, as measured from the base of the rail to the top of the pipe, as follows (see Figures 1 and 3):

Location	Minimum Compacted Cover
• Under track structure proper	6.0 feet
• Under all other surfaces within the Easement Tract or from the bottom of ditches	3.0 feet

**g. Roadway and Driveway Crossings.** Roadways and driveways, shall be installed with a minimum compacted cover over the carrier pipe, as measured from the top of the roadway surface to the top of the pipe, as follows (see Figures 2 and 4):

Location	Minimum Compacted Cover
• Under roadway surface proper	4.0 feet
• Under all other surfaces within the Easement Tract (including parking lots) or from the bottom of ditches	3.0 feet

**h. Crossing Pipelines Transporting Highly Volatile Liquids.** For Magellan pipelines transporting highly volatile liquids, minimum cover for a crossing at a drainage ditch must be 4.0 feet.

**i. When Additional Depth Required.** Depth greater than the minimum depth stated above may be required for a pipeline due to the combined stress of internal pipeline pressure and external loading pressure. Magellan will analyze each proposed crossing based on information provided by Owner to determine any additional depth that may be required for the pipeline for safe operation.

**j. Temporary Roads and Equipment Crossings.** Any such road or crossing must meet the following requirements:

- Must be located at a site approved by a Magellan field representative.
- Must provide adequate protection for Magellan's pipeline and other facilities, as determined by the appropriate Magellan engineer, so that the compacted cover meets load-bearing requirements and provides adequate protection to limit stress on the pipeline or other facilities.

**k. Owner Required to Protect Magellan Pipelines.** Magellan may require Owner to put in place additional cover and/or stabilization (timbers, steel

plate, crushed rock, concrete slab, etc.) at any approved equipment crossing in order to protect Magellan pipelines, taking into account possible effects of weather, pipeline depth, and type of vehicles proposed to cross the pipelines. Magellan will analyze each proposed crossing based on information provided by Owner to determine any additional depth or protection that may be required for the pipeline operates at a safe level.

**l. Heavy Equipment - Definition and Requirements.** Heavy equipment shall be defined as vehicles having a gross weight in excess of 80,000 pounds. Heavy equipment shall be prohibited from working directly on top of the active pipeline. For vehicles having a gross weight of 80,000 pounds or less, the pipeline must have a minimum of 4 feet of cover. Magellan must analyze the additional longitudinal stress due to external loads if the vehicles have a gross weight in excess of 80,000 pounds in order to determine required pipeline depth for safe operation.

**6. Parking Lots and Other Pavement.**

**a. Parking Lot and Pavement Requirements.** All parking lots and other pavement installed on Magellan's Easement Tract shall consist of a flexible surface such as asphalt. No reinforced concrete will be allowed.

**b. Pipeline Depth Under Parking Lot.** The depth of Magellan's pipelines under a parking lot must meet or exceed compacted cover requirements listed in the previous "Roadway, Driveway, Railroad, and Equipment Crossings" section above.

**7. Waterway Crossings.**

**a. Pipeline Depth Requirements.** If Owner proposes to cross a Magellan pipeline with a waterway (river, stream, creek, irrigation canal, or drainage ditch), such crossing must result in Magellan's pipelines meeting or exceeding the minimum depth below the bottom of the waterway for compliance with then current pipeline construction standards and federal, state, and local regulations.

**b. Requirements for Waterway Crossings:**

- 1) **Minimum Angle of Crossing.** Crossings should be as close to 90 degrees to Magellan pipeline(s) as possible, but not less than 45 degrees.
- 2) **Vertical Separation Requirements for Waterway Crossing.** Pipelines to be crossed must have a minimum vertical separation of five (5) feet, as measured from the bottom of the waterway to the outermost part of a Magellan pipeline, facility or appurtenance.
- 3) **Adding Weight to Pipeline for Negative Buoyancy.** Owner shall bear the cost of Magellan adding sufficient weight or mechanical

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devices to any Magellan pipeline crossed by a waterway in order to create negative buoyancy for such pipeline.

**3. Blastings.**

a. **Magellan Written Approval Required - Plan To Be Submitted.** Magellan must approve any proposed blasting operations that could affect its pipelines or facilities. Should blasting be necessary, a comprehensive plan must be submitted to Magellan for review and written approval.

b. **Safety Considerations - Damage Prevention Plan.** For safety and preservation of Magellan assets, all blasting shall be in accordance with federal, state, and local governing agencies and the Magellan's "Damage Prevention Plan for Blasting Near Company Facilities". A copy of said plan will be made available upon request.

**EXCAVATION NEAR MAGELLAN PIPELINES.**

1. **STATE "ONE-CALL" REQUIRED.** No excavation or activity listed in "GENERAL - 1. Encroachment Definition" above shall be performed by Owner in the vicinity of Magellan's facilities or within Magellan's Easement Tract until proper telephone notification has been made to the appropriate "One Call" system and a Magellan representative is on-site to monitor excavation activities. All of the states in which Magellan conducts pipeline operations have "One Call" laws, which require 48-72-hours notification prior to any excavation related activities. After making a One-Call, the state One-Call agency will notify Magellan to mark accurately, in a reasonable and timely manner, the location of the Magellan's pipeline facilities in the vicinity of the proposed encroachment.

2. **ONE-CALL NOTIFICATION.** The following list is provided for convenience, but is not warranted by Magellan to be complete or accurate (telephone numbers were copied from each state's web site on 1/5/2004). Owner is required to acquire and call the appropriate One-Call number(s) for its location of activity.

Current "ONE-CALL" numbers and information can be found on each state's "ONE-CALL" website:

- Arkansas - <http://www.arkonecall.com/>  
- 800 482-8998
- Illinois - [www.illinois1call.com/](http://www.illinois1call.com/)  
- 800 892-0123
- Iowa - [www.iowaonecall.com/](http://www.iowaonecall.com/)  
- 800 292-8989
- Kansas - [www.kansasonecall.com/](http://www.kansasonecall.com/)  
- 800 344-7233
- Minnesota - [www.gopherstateonecall.org/](http://www.gopherstateonecall.org/)  
- 800 252-1166
- Missouri - [www.mo1call.com/](http://www.mo1call.com/)  
- 800 344-7483

Nebraska - [www.ne-diggers.com/](http://www.ne-diggers.com/)  
- 800 331-5666

North Dakota - [www.ndonecall.com/](http://www.ndonecall.com/)  
- 800 795-0555

Oklahoma - [www.callokla.com/](http://www.callokla.com/)  
- 800 522-6543

South Dakota - [www.sdonecall.com/index.asp](http://www.sdonecall.com/index.asp)  
- 800 781-7474

Texas - [www.texasonecall.com/](http://www.texasonecall.com/)  
- 800 245-4545

Wisconsin - [www.diggershotline.com/](http://www.diggershotline.com/)  
- 800 242-8511

Alternatively, the National One-Call number - (888) 258-0808 - may be used to register a proposed excavation and to subsequently notify underground utility operators with assets in the vicinity.

3. **Excavation Plan Approval.** Plans for any excavation on Magellan's Easement Tract must be approved prior to commencing the work and must be in compliance with the Common Ground Alliance Best Practices which can be found on the web site: [www.commongroundalliance.com](http://www.commongroundalliance.com) (See "Program Information" / "Common Ground Best Practices").

4. **Magellan Representative On-Site for Excavation.** A Magellan representative must be on-site when an excavation is occurring on Magellan's Easement Tract.

5. **Removal of Side-Cutting Teeth from Equipment.** Side-cutting teeth shall be removed from buckets of excavating equipment.

6. **Parallel Excavation Required.** When, in preparation for crossing any Magellan pipeline with any other pipeline or with electric line, communication line, roadway or any other structure or facility, Owner needs to locate a Magellan pipeline by use of mechanical means Owner must perform such locating activity by excavating parallel to the Magellan pipeline with such mechanical means, but shall cease using the mechanical means when it reaches a point within two feet of the Magellan pipeline (see next provision).

7. **Exposing Pipeline by Hand.** Excavating within 2 feet of any Magellan pipeline shall be done by hand digging until the pipeline is exposed and its location is accurately known. Then, Owner must position the excavation equipment so that from the point of operations the equipment will not reach within 2 feet of any Magellan pipeline.

