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INDEXING**

**PAGE DOWN FOR BALANCE OF INSTRUMENT**

*Releases  
ease  
@ 378/59  
except over  
exhibit  
(not lot 99)*

Return to:  
Robert L. Freeman, Esq.  
500 Energy Plaza  
409 S. 17 Street  
Omaha, NE 68102

## MODIFICATION AND PARTIAL RELEASE OF EASEMENT

THIS AGREEMENT is made and entered into by and between CHILDRENS HOSPITAL FOUNDATION, a Nebraska not-for-profit corporation ("Foundation") and NORTHERN NATURAL GAS COMPANY, a Delaware corporation ("Northern").

WHEREAS, Northern is the holder of an Easement granted by Frank Stepanek and Martha Stepanek on the 5th day of January, 1962, covering the following described premises in Douglas County, Nebraska:

The Northwest Quarter (NW¼) of Section 33, Township 15, Range 11;

which Easement was recorded the 21st day of March, 1962, in Book 378 at Pages 59 and 60 in the Office of the Register of Deeds for Douglas County, Nebraska ("Easement"); and

WHEREAS, pursuant to the authority contained in the Easement, Northern has constructed and currently operates and maintains a Pipeline System through and across the premises above-described; and

WHEREAS, of the premises described in the Easement, the Foundation is the present owner of the followed described premises ("Current Easement Area"):

See Exhibit "A" attached hereto and by reference made a part hereof;

WHEREAS, Northern desires to release and discharge only the lands described below from the operation and effect of said Easement and the parties hereto desire to modify and amend the Easement in certain respects.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, it is agreed by and between the parties hereto as follows:

1. Northern does hereby quit claim and release unto the Foundation any and all rights or interest it may have pursuant to the above said Easement in and to the following described premises only ("Released Easement"):

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GEORGE J. BUKLEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

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FEE 50.50 R FB  
DEL. C/O COMP WP  
LEGAL PG SCAN FV

See Exhibit "B" attached hereto and by this reference made a part hereof.

2. Northern shall, and by these presents does, retain in full force and effect under the Easement and this Agreement the following described premises ("Permanent Fixed Easement"):

See Exhibit "C" attached hereto and by this reference made a part hereof.

3. In exercising its rights under the Easement and this agreement, Northern shall pay for any harm to the Foundation's property caused by Northern. The Foundation shall have the right to recover from Northern as provided in Paragraph 7 any and all losses, damages, costs and expenses incurred by or caused to the Foundation or the Current Easement Area by reason of such harm.

4. Northern shall at all times maintain the Pipeline System in good repair, order and condition in accordance with applicable federal, state and local statutes and regulations. The Foundation, its successors and assigns shall not be required to make any alterations, repairs or replacements, whether foreseen or unforeseen, or to maintain any of the Pipeline System.

5. The Foundation, its successors and assigns shall have the right at any time upon giving Northern sixty (60) days' prior written notice to relocate, at Foundation's cost, all or any portion of the Pipeline System providing any such relocation shall be effected so as not to unreasonably interfere with the normal operation of the Pipeline System and provided that the Foundation, its successors and assigns, shall grant or cause to be granted to Northern without charge or fee a permanent nonexclusive easement upon terms consistent with the Easement and this Agreement over the real property in which the Pipeline System is relocated by Northern. The Foundation covenants and agrees to indemnify and hold harmless Northern from and against any all liability, losses, damages, costs and expenses caused to Northern by such relocation.

6. Northern agrees to pay, protect, indemnify, save and hold harmless the Foundation and its successors and assigns from and against any and all liabilities, losses, damages, penalties, costs and expenses (including all reasonable attorney fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever, howsoever caused, arising from:

- (a) any matter pertaining to the use of the Permanent Fixed Easement by Northern or the operation, condition, design, construction, maintenance, repair, replacement or renewal of the Pipeline System by Northern, including any injury to or death of any person or any loss of or damage to any property;
- (b) any violation by Northern of any provision of this agreement; or
- (c) the deposit, storage, disposal, burial, dumping, injecting, spilling, leaking or any other placement or release by Northern in or on the Permanent Fixed Easement or any hazardous or toxic substance, matter or waste as defined in any law, rule, regulation, statute or ordinance.

The parties agree that the foregoing indemnity shall not apply to any liabilities, losses, damages, penalties, costs and expenses, causes of action, suits, claims, demands or judgments arising from the negligence or willful misconduct of the Foundation, its successors and assigns or their employees or agents. In case any action or proceeding is brought against the Foundation by reason of any such claim, Northern covenants upon notice from the Foundation to resist or defend such action or proceeding by counsel reasonably satisfactory to the Foundation, and the Foundation will cooperate and assist in the defense of such action or proceeding if reasonably requested to do so by Northern.

7. The parties acknowledge that time is of the essence in the performance of all obligations under this agreement. No failure of either party to insist at any time upon strict performance of any provision of this agreement by the other party, or to exercise any option, right or remedy contained in this agreement, shall be construed as a waiver, modification, or relinquishment thereof by either party.

8. All notices, demands, requests, approvals, consents, offers, statements, and other instruments of communication required or permitted to be given pursuant to the provisions of this agreement, shall be in writing and shall be deemed to have been given when deposited in the United States Mail by certified mail, return receipt requested, postage prepaid, addressed to the other party at its address hereinbelow set forth:

(1) IF TO NORTHERN: Northern Natural Gas Company  
P.O. Box 3330  
Omaha, Nebraska 68103-0330  
ATTN: Right-of-Way Dept.

WITH A COPY TO: Northern Natural Gas Company  
P.O. Box 1188  
Houston, Texas 77251-1188  
ATTN: Senior Counsel

(2) IF TO THE FOUNDATION: Childrens Hospital Foundation  
8301 Dodge  
Omaha, Nebraska 68114  
ATTN: President

WITH A COPY TO: Fraser, Stryker, Vaughn, Meusey,  
Olson, Boyer & Bloch, P.C.  
500 Energy Plaza  
409 S. 17th Street  
Omaha, Nebraska 68102  
ATTN: John K. Boyer

For the purposes of this paragraph, any party may substitute its address by giving fifteen (15) days' notice to the other party in the manner provided above.

9. The Foundation, its successors and assigns hereby reserve the right to construct or cause to be constructed above or within the Permanent Fixed Easement such roads, streets, parking areas or other pavement or concrete improvements, any gas, water, storm sewer, telephone, cable or any other type of utility lines, pipes, conduits or systems, and such landscaping, as Foundation may deem necessary or appropriate (collectively, the "Foundation Improvements"). Any construction of Foundation Improvements shall be effected so as not to interfere with the normal

operation of the Pipeline. The Foundation shall give Northern reasonable advance written notice (but in no event less than 21 days) of its intention to commence construction of any Foundation Improvements and Northern shall have the opportunity to approve of the Foundation Improvements (which approval shall not be unreasonably withheld). Notwithstanding the foregoing, Foundation may not place any electric utility lines parallel to the Pipeline System except at a distance of not less than twenty (20) feet from such Pipeline. In the event Northern shall determine to make repairs or improvements to its Pipeline System within the Permanent Fixed Easement, it shall be responsible only for restoring the natural condition of the land above and around the area affected, but shall in no event be liable for damage to or restoration costs for improvements constructed by Foundation within the Permanent Fixed Easement.

10. Northern may assign its rights and obligations hereunder to any entity which succeeds to Northern's operation and maintenance of the Pipeline. However, acknowledging the substantial planned development of the property surrounding the Permanent Fixed Easement, Northern agrees not to permit any other party (including but not limited to utilities) to license, occupy or in any manner use all or any part of the Permanent Fixed Easement without the express written permission of Foundation (which consent may be granted or withheld in its sole and absolute discretion), it being acknowledged that Foundation is receiving no consideration from Northern for the continued grant of easement rights as reflected herein.

11. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees, and permitted assigns.

12. The Permanent Fixed Easement and the covenants, restrictions, reservations and agreements herein provided shall be considered and construed as perpetual easements, restrictions, and covenants running with the real property herein described as the Permanent Fixed Easement and shall inure to the benefit of and extend to and be binding upon the invitees, licensees, lessees, agents, employees and visitors of each of the parties hereto and their successors, transferees and assigns, the same as if they were in every case named and expressed and shall perpetually continue in full force and effect until modified or finally terminated and annulled in

accordance with this agreement. Any grantee, by accepting a conveyance of any portion of the real property described herein <sup>accepts</sup> ~~except~~ the same subject to the permanent easement and the covenants, restrictions, reservations, and agreements herein contained and agrees for itself, its heirs, personal representatives, successors, transferees, and assigns to be bound by the Permanent Fixed Easement and each of the covenants, restrictions, and reservations and agreements herein contained. CML  
HLL  
AKC

13. To the extent not modified by this Agreement, the terms, conditions, rights and obligations under the Easement shall remain in full force and effect, except that the provisions of Paragraph 2 of the Easement which refer to the procedure for settling disputes not mutually agreed upon are hereby revoked and shall have no further force or effect.

IN WITNESS WHEREOF, the parties have executed this agreement on the 23rd day of Sept., 1994.

CHILDRENS HOSPITAL FOUNDATION

By Phyllis Young Cook  
Title: President

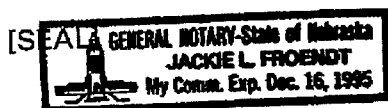
NORTHERN NATURAL GAS COMPANY

By David W. Smiley BML  
Title: Agent & Attorney in Fact

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF DOUGLAS )

On this 23<sup>rd</sup> day of September, 1994, before me, a notary public in and for said county and state, personally came ABIGAIL YOUNG KOCH, of CHILDRENS HOSPITAL FOUNDATION, known to me to be the identical person who signed the foregoing Agreement and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said Foundation.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.



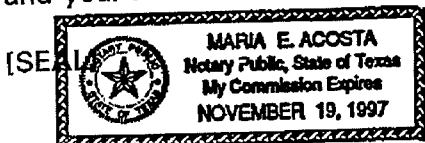
Jackie L. Froendt  
Notary Public

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

TEXAS  
STATE OF ~~NEBRASKA~~ )  
 HARRIS ) ss:  
COUNTY OF ~~DOUGLAS~~ )

On this 5<sup>th</sup> day of October, 1994, before me, a notary public in and for said county and state, personally came David W. Sinclair, Agent & Attorney in Fact of NORTHERN NATURAL GAS COMPANY, known to me to be the identical person who signed the foregoing Agreement and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said Foundation.

WITNESS my hand and notarial seal at Houston, in said county and state, the day and year last above written.



Maria E. Acosta  
Notary Public

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

Exhibit "A" - Current Easement Area  
Exhibit "B" - Released Easement  
Exhibit "C" - Permanent Fixed Easement

MLB/mdm  
32808



EXHIBIT A

NE $\frac{1}{4}$  NW $\frac{1}{4}$   
NW $\frac{1}{4}$  NW $\frac{1}{4}$   
SE $\frac{1}{4}$  NW $\frac{1}{4}$

The Northwest Quarter (NW $\frac{1}{4}$ ) of Section 33, Township 15 North, Range 11 East of the Sixth P.M., Douglas County, Nebraska, except that part described as follows:

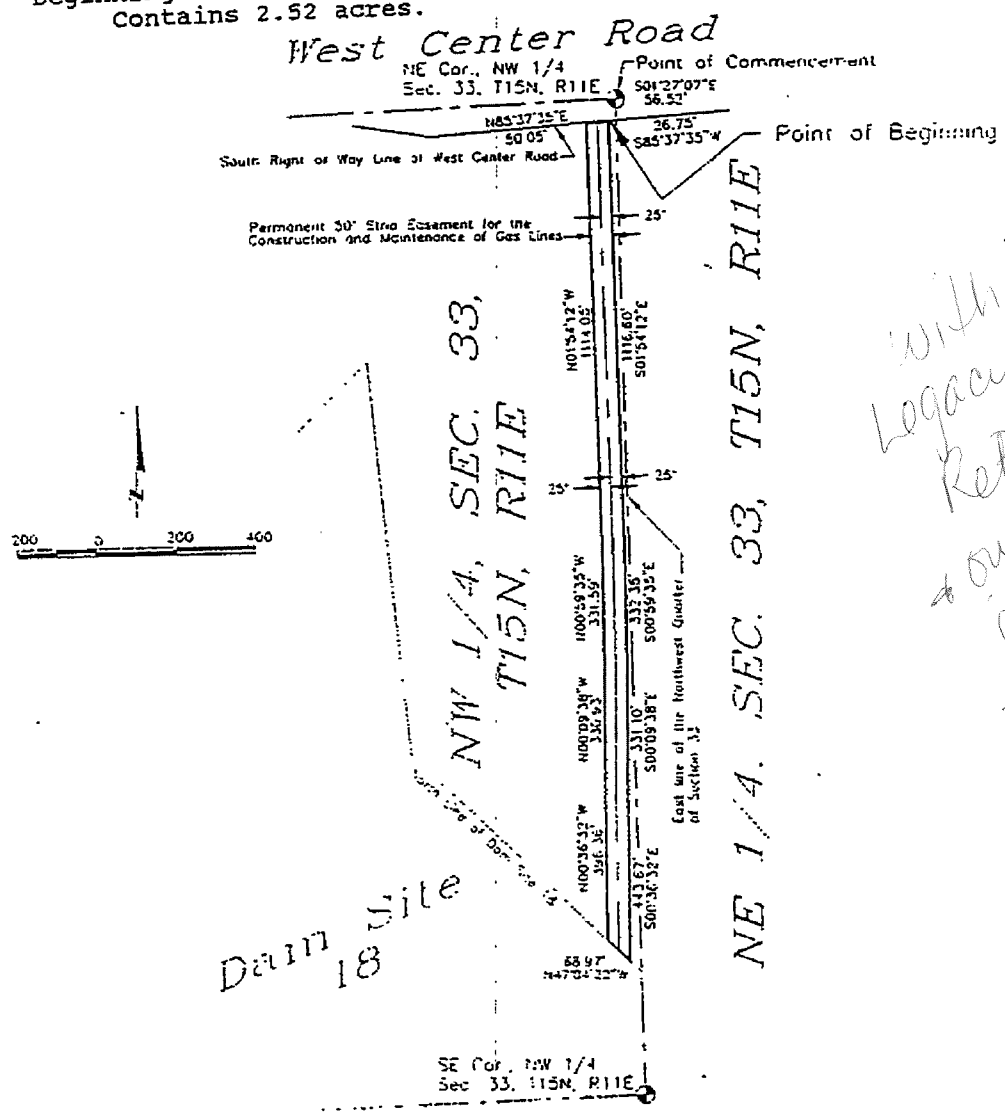
Beginning at the Southeast corner of said Northwest Quarter; thence Northerly along the East line of said Northwest Quarter, 330.00 feet; thence Northwesterly to a point, said point being 590.00 feet West of and 925.00 feet North of said point of beginning; thence Northwesterly to a point, said point being 660.00 feet West of and 1,980.00 feet North of said point of beginning; thence Southwesterly to a point, said point being 1,320.00 feet West of and 1,350.00 feet North of said point of beginning; thence Northwesterly to a point, said point being 1,980.00 feet West of and 2,310.00 feet North of said point of beginning; thence Northwesterly to a point on the North line of said Northwest Quarter, said point being 540.00 feet Easterly of the Northwest corner thereof; thence Westerly along said North line of the Northwest Quarter, 100.00 feet; thence Southwesterly to a point, said point being 2,310.00 feet West of and 2,310.00 feet North of said point of beginning; thence Southeasterly to a point, said point being 1,980.00 feet West of and 1,350.00 feet North of said point of beginning; thence Southwesterly to a point, said point being 2,310.00 feet West of and 1,020.00 feet North of said point of beginning; thence Westerly parallel with said North line of the Northwest Quarter to the West line thereof; thence Southerly along said West line of the Northwest Quarter to the Southwest corner thereof; thence Easterly along the South line of said Northwest Quarter to the point of beginning.

33-15-11  
01-60000

EXHIBIT C

A permanent fifty foot (50') strip easement for the construction and maintenance of gas lines over that part of the Northwest Quarter of Section 33, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, described as follows:

Commencing at the northeast corner of the said Northwest Quarter of Section 33;  
Thence South 01°27'07" East (assumed bearings) for 56.52 feet along the east line of the said Northwest Quarter of Section 33 to the south right of way line of West Center Road;  
Thence South 85°37'35" West for 26.75 feet along said south right of way line to the TRUE POINT OF BEGINNING;  
Thence South 01°54'12" East for 1116.60 feet;  
Thence South 00°59'35" East for 332.35 feet;  
Thence South 00°09'38" East for 331.10 feet;  
Thence South 00°36'32" East for 443.67 feet to the north line of Dam Site 18;  
Thence North 47°04'22" West for 68.97 feet along said north line of Dam Site 18;  
Thence North 00°36'32" West for 396.36 feet;  
Thence North 00°09'38" West for 330.93 feet;  
Thence North 00°59'35" West for 331.59 feet;  
Thence North 01°54'12" West for 1114.05 feet to the said south right of way line of West Center Road;  
Thence North 85°37'35" East for 50.05 feet to the Point of Beginning.  
Contains 2.52 acres.



## EXHIBIT B

SW 1/4 NW 1/4

The Northwest Quarter (NW $\frac{1}{4}$ ) of Section 33, Township 15 North, Range 11 East of the Sixth P.M., Douglas County, Nebraska, except that part described as follows:

Beginning at the Southeast corner of said Northwest Quarter; thence Northerly along the East line of said Northwest Quarter, 330.00 feet; thence Northwesterly to a point, said point being 590.00 feet West of and 925.00 feet North of said point of beginning; thence Northwesterly to a point, said point being 660.00 feet West of and 1,980.00 feet North of said point of beginning; thence Southwesterly to a point, said point being 1,320.00 feet West of and 1,350.00 feet North of said point of beginning; thence Northwesterly to a point, said point being 1,980.00 feet West of and 2,310.00 feet North of said point of beginning; thence Northwesterly to a point on the North line of said Northwest Quarter, said point being 540.00 feet Easterly of the Northwest corner thereof; thence Westerly along said North line of the Northwest Quarter, 100.00 feet; thence Southwesterly to a point, said point being 2,310.00 feet West of and 2,310.00 feet North of said point of beginning; thence Southeasterly to a point, said point being 1,980.00 feet West of and 1,350.00 feet North of said point of beginning; thence Southwesterly to a point, said point being 2,310.00 feet West of and 1,020.00 feet North of said point of beginning; thence Westerly parallel with said North line of the Northwest Quarter to the West line thereof; thence Southerly along said West line of the Northwest Quarter to the Southwest corner thereof; thence Easterly along the South line of said Northwest Quarter to the point of beginning; except for:

A permanent fifty foot (50') strip easement for the construction and maintenance of gas lines over that part of the Northwest Quarter of Section 33, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, described as follows:

Commencing at the northeast corner of the said Northwest Quarter of Section 33;

Thence South 01°27'07" East (assumed bearings) for 56.52 feet along the east line of the said Northwest Quarter of Section 33 to the south right of way line of West Center Road;

Thence South 85°37'35" West for 26.75 feet along said south right of way line to the TRUE POINT OF BEGINNING;

Thence South 01°54'12" East for 1116.60 feet;

Thence South 00°59'35" East for 332.35 feet;

Thence South 00°09'38" East for 331.10 feet;

Thence South 00°36'32" East for 443.67 feet to the north line of Dam Site 18;

Thence North 47°04'22" West for 68.97 feet along said north line of Dam Site 18;

Thence North 00°36'32" West for 396.36 feet;

Thence North 00°09'38" West for 330.93 feet;

Thence North 00°59'35" West for 331.59 feet;

Thence North 01°54'12" West for 1114.05 feet to the said south right of way line of West Center Road;

Thence North 85°37'35" East for 50.05 feet to the Point of Beginning.

Contains 2.52 acres.