



2020-44815

12/28/2020 08:44:51 AM

Recording fees paid:

\$52.00

Pages: 8

Deb Houghtaling

COUNTY CLERK/REGISTER OF DEEDS

By: jby



AGR

Drafted by/Return to: Jeff Larson  
Northern Natural Gas Company, 1111 South 103rd Street, Omaha, NE 68124-1000

**NEB58601  
(300-20)**

**ENCROACHMENT AGREEMENT**

This instrument made and entered into this 28<sup>th</sup> day of December, 2020, by and between NORTHERN NATURAL GAS COMPANY, a Delaware corporation, (hereinafter referred to as "Northern"), with principal offices at 1111 South 103rd Street, Omaha, Nebraska 68124-1000, and MADDAD.LAND, LLC (hereinafter referred to as "Owner" whether one or more).

WITNESSETH THAT:

WHEREAS, Northern is the holder of an easement granted by Harvey Mahloch and Alice Mahloch, his wife, on 24th day of March 1966, covering the following described premises in Sarpy County, Nebraska:

An 80-foot wide strip in the North One-Half of the Northeast Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ ) of Section 23, Township 13 North, Range 11 East; and

which easement was recorded on the 29th day of September, 1966, as Document No. 1569, in Book 37, at Page 306, in Miscellaneous Records, all in the Office of the Recorder 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 2-inch pipeline (NEB58601), along with the right to install additional facilities from time to time (hereinafter referred to as "Pipeline Facilities"), across and through the above described premises; and

WHEREAS, Owner is the present owner 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"):

The North Half of the Northeast Quarter (N $\frac{1}{2}$  NE $\frac{1}{4}$ ) of Section 23, Township 13 North, Range 11 East (See Exhibit "A" for a full legal description of the property).

WHEREAS, Owner plans to construct a retaining wall, perform grading and install a roadway (hereinafter referred to as "Encroachment") upon and within a portion of the confines of Northern's 80-foot wide Easement as depicted on Exhibit "B", with this written consent; and

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

WHEREAS, Owner has requested permission from Northern to maintain, use, and enjoy the Encroachment upon a portion of Northern's 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 Owner 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 Owner assumes all risks for damages, injuries, or loss to either property or persons, which may be incurred by Owner or its respective agents, invitees, or licensees present on or in the vicinity of the Easement and in any way associated with said Encroachment.

B. That the permission granted herein is limited exclusively to the proposed Encroachment within Northern's Easement. Owner shall not alter the grade or permit such alteration anywhere on the land upon which Northern has reserved its easement rights, without the prior express written consent of Northern. Owner shall not alter the grade or permit such alteration anywhere within Northern owned property.

C. That Owner shall at all times conduct all its activities on said Easement 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 Owner shall not plant any trees or shrubs within the confines of Northern's Easement without the prior express written consent of Northern.

E. That Owner agrees that the Encroachment shall be constructed according to the requirements and restrictions set forth on Exhibit "C" attached hereto.

F. That Owner agrees to install the retaining wall a minimum of 8'9" from Northern's Pipeline Facilities. Owner shall be responsible for replacement or repairs of the retaining wall within Northern's Easement due to work or maintenance on Northern's Pipeline Facilities.

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

3. Owner agrees 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 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 the 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, 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.

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

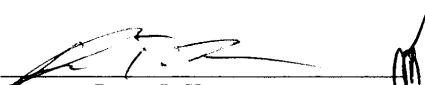
8. Owner agrees to indemnify, defend and hold Northern, its parent and affiliated companies, and the directors, officers and employees of any such corporate entities harmless from and against any liability, damage, claims, loss, cause of action, suit, proceeding, judgment, cost (including the cost or 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 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.

**9. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED, AND AGREES ANY SUCH ACTIONS MAY NOT IN ANY EVENT BE CONSOLIDATED TOGETHER.**

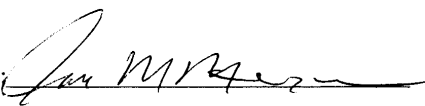
This instrument and the covenants and agreements herein contained shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties and the benefits of this Agreement shall run with the land.

IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

"NORTHERN"  
NORTHERN NATURAL GAS COMPANY

By:   
Bryan P. Kruger  
Attorney-in-Fact

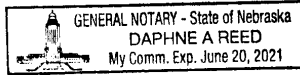
"OWNER"

By:   
Name: Jon M Meyers  
Title: MGR

STATE OF NEBRASKA )  
 )SS  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me, a Notary Public, this 30<sup>th</sup> day of November, 2020, by Bryan P. Kruger, Attorney-in-Fact, for Northern Natural Gas Company, a Delaware corporation, on behalf of the corporation.

(S E A L)

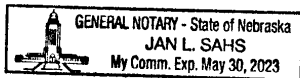


Daphne A Reed  
Notary Public  
My Commission Expires JUNE 20, 2021

STATE OF NEBRASKA )  
 )SS  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of November, 2020, by Jon M. Meyers, Owner, for Maddak Holdings, a Nebraska corporation, on behalf of the corporation.

(S E A L)



Jan L. Saks  
Notary Public  
My Commission Expires May 30, 2023

## EXHIBIT A

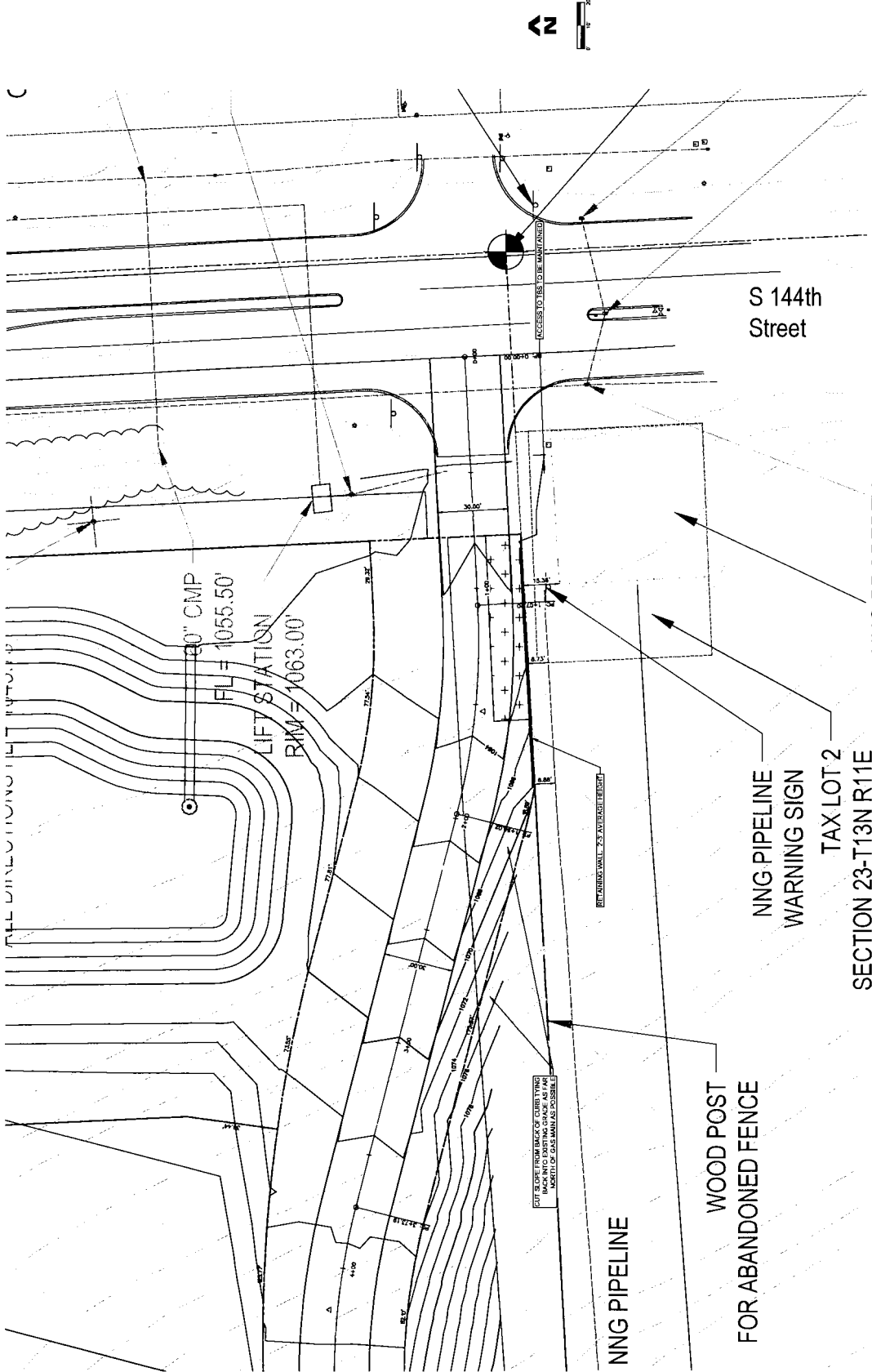
### LEGAL DESCRIPTION

The North 1/2 of the Northeast Quarter of Section 23, Township 13 North, Range 11, East of the 6th P.M., Sarpy County, Nebraska, except that part deeded to the State of Nebraska further described as: A strip of land lying across the eastern part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 13 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska beginning at the Northeast corner of said Section 23; thence Southerly on the East line of the Northeast Quarter of the Northeast Quarter of Section 23 a distance of 1,327.3 feet to the Southeast corner of said Northeast Quarter of the Northeast Quarter; thence Westerly on the South line of said Northeast Quarter of the Northeast Quarter a distance of 51.7 feet; thence Northerly a distance of 1,327.3 feet to a point on the North line of said Northeast Quarter of the Northeast Quarter; thence Easterly on said North line a distance of 58.5 feet to the point of beginning, and except those portions taken for county road right-of-ways by the State of Nebraska set forth in the Return of Appraisers recorded September 24, 1976 in Misc. Book 49 Page 583, records of Sarpy County, Nebraska also described by Survey as follows:

Beginning at the Northwest corner of said NE1/4 of Section 23; thence N89°49'59"E (assumed bearing) along the North line of said NE1/4 of Section 23, a distance of 2130.76 feet to a point on the West Right-of-Way line of Highway 50 (144th Street); thence along said West Right-of-Way line of Highway 50 (144th Street) on the following five (5) courses: thence S03°10'01"E, a distance of 33.00 feet; thence S81°22'22"E, a distance of 205.49 feet; thence N86°49'59"E, a distance of 159.23 feet; thence S06°09'27"E, a distance of 433.70 feet; thence S02°35'19"E, a distance of 818.76 feet to a point on the South line of said N1/2 of the NE1/4 of Section 23; thence S86°52'01"W along said South line of the N1/2 of the NE1/4 of Section 23, a distance of 2520.25 feet to the Southwest corner of said N1/2 of the 1/4 of Section 23; thence N02°31'46"W along the West line of said NE1/4 of Section 23, a distance of 1325.42 feet to the point of beginning;

EXCEPT those parts conveyed to the State of Nebraska, Department of Transportation, by Warranty Deed dated April 20, 2020, recorded July 21, 2020, as Instrument No. 2020-21837 of the Records of Sarpy County, Nebraska.

EXHIBIT "B"



**T02**  
 engineering  
 & surveying  
 Wenzel's, d'Amico & Bernier, Inc.  
 10838 Old Mill Rd  
 Omaha, NE 68154  
 P-402.330.8850 www.t02co.com

Springfield  
 Commerce Grading  
 and Erosion Control

DAMMM Land, LLC

No.	Description	MARK/DRAWN

Drawn By: MEK  
 Job No.: 1758156  
 Date: 3-7-20

Reviewed By: BPH  
 Date: 3-7-20

Park Drive Exhibit

## Exhibit "C"



To: [REDACTED]  
From: [REDACTED]  
CC: [REDACTED]  
Subject: DAMMM Land, LLC Development in Sarpy County, NE  
EATS# 77643

Date: 9/28/20

Northern Natural Gas (NNG) engineering has reviewed the preliminary site plan provided by TD2 Engineering & Surveying, for the proposed Springfield Site development for DAMMM Land, LLC. The developer's plan consists of grading, lot divisions, a retaining wall, and a new roadway. NNG holds a warranty deed for the nearby Springfield NE Town Border Station (TBS) and an 80' wide easement centered on the Springfield Branch Line.

The proposed development will encroach upon an NNG high pressure natural gas branch line, the 2-inch-diameter Springfield branch line (NEB58601) in Section 23, Township 13N, Range 11E of Sarpy County, Nebraska, near pipeline milepost 2.01 to 2.49. The development also encroaches upon the Springfield NE #1 Town Border Station (TBS). The proposed project area is currently a class 1 population density area.

### Pipeline History

The NEB58601 branch line consists of 2.375" outside diameter (OD), 0.154" wall thickness (WT), API-5L, B grade steel pipe. The line was originally installed in 1966 as work order 4241. The pipe was electric resistance welded (ERW) by the manufacturer. XTru-coat was used as the exterior coating on the pipe. The pipeline operates at a 1282 psig maximum allowable operating pressure (MAOP), but typically operates below 800 psig.

### Engineering Notes

Engineering **approves** of the latest plans, received on 8/13/2020, which depict a retaining wall approx. 8'-9" to the north of the NNG pipeline. This 2'-3' retaining wall was approved to eliminate potential grading over the NNG pipeline.

- Should the retaining wall be damaged or need to be removed as a result of future NNG construction or maintenance projects, the developer/owner shall be responsible for replacement or repairs of the retaining wall.
- No grading is permitted within the NNG property limits for the Springfield NE #1 TBS. Please note the NNG property extends beyond the current fence line.
- A smooth transition from the roadway to the TBS access drive and gate shall be maintained and shall remain unobstructed by curbing, gutter, or other raised features that would otherwise increase the difficulty of vehicular travel to the TBS yard. The proposed roadway should be spaced far enough from the TBS main access gate so that the access driveway will retain enough length to allow for a standard equipment pick-up truck to park in the driveway without obstructing passage of vehicles on the proposed roadway.

### Encroachment Guidelines

- An NNG representative shall be present at all times when excavation work is being performed within 25 feet of NNG's pipeline. This requirement is per NNG operating procedure OP 80.102, "Damage Prevention Program." The contractor shall provide NNG a Nebraska utility one call ticket with 48 hour notice prior to excavating in the area.
- Mechanical excavation is allowed up to 24 inches from the NNG pipeline. Hand excavation or hydrovac excavation is required when excavating 24 inches or closer to NNG's pipeline.
- **Permanent Structures:** Any enclosed structure or building permanent in nature regardless of purpose may not be installed inside the NNG easement and should be installed a minimum of 35 feet from NNG facilities.

- **Appurtenances:** All above grade appurtenances shall not interfere with ground patrols or leak surveys. All light poles, manholes, signs, trees, shrubs, etc. must be placed a recommended offset distance of 30 feet from NNG facilities.
- **Fence Posts:** New residential, commercial and industrial fences may not cross pipelines. Fences running parallel to NNG facilities have a minimum recommended offset of 20 feet.
- **Grade Modifications:** Earthwork and other grade modification must maintain a minimum of 36 inches of cover (or existing cover if less than 36 inches) over NNG's pipeline after construction in all locations. Grading modifications shall not be designed to impound water above NNG facilities.
- **Road Crossings:** All road crossings must cross the NNG pipeline at or near a right angle and maintain a minimum of four feet of cover over the pipeline within the roadway and road ditches. Roads running parallel to NNG's facilities must be outside the easement and offset a recommended distance of 25 feet from NNG facilities.
- **Heavy Vehicle Crossings:** As a guideline, all vehicular crossings over the NNG pipeline have the following load restrictions (per wheel) without additional protection:
  - $\geq 36''$  Cover – 24,000 lbs.
- NNG engineering requests vehicle specifications for all construction equipment exceeding 80,000 lbs. gross vehicle weight or exceeding the specified load restrictions that will be anticipated to cross NNG facilities. NNG engineering shall recommend appropriate crossing protection methods, if required. Potential crossing protection methods include: use of timber/steel plate matting, temporary bridge structures or pipeline reinforcement.
- Any damages or modifications to NNG's facilities shall be repaired or modified at the expense of the encroaching party. An estimate can be provided by NNG for any modifications or repairs as required.

NNG requires that the aforementioned encroachment conditions are met to ensure pipeline integrity and safety during and after construction. NNG engineering will continue to review any revised construction plans and new proposals as they are developed.