

This Instrument Drafted By
And To Be Returned To: **(E)**
Right-of-Way Department
Northern Natural Gas Company
P.O. Box 3330
Omaha, Nebraska 68103-0330

REGISTRATION NUMBER
95-18951
95 OCT 30 PM 1:16

75-18951
Counter Phil C
Verify W
D.E. M
Proof J
Fee \$ 15.50
Ck Cash Chg

Glenn D. [Signature]
REGISTRAR OF DEEDS
AGREEMENT

Line No.: 493-1-53

This instrument made and entered into this 25th day of September 1995, by and between NORTHERN NATURAL GAS COMPANY, a Delaware corporation, (hereinafter referred to as "Northern"), with principal offices at P.O. Box 3330, Omaha, Nebraska, and FAIRACRES DEVELOPMENT L.L.C., a Nebraska Limited Liability Company (hereinafter referred to as "Owner").

WITNESSETH THAT:

WHEREAS, Northern is the holder of an Easement granted by Mary Mowinkel, on the 30th day of January, 1962, covering the following described premises in Sarpy County, Nebraska:

The Northeast Quarter of Section 28, Township 14 North, Range 11 East;

which Easement was recorded the 9th day of March, 1962, in Book 29 of Miscellaneous at Page 453, in the Office of the County Clerk for Sarpy County, Nebraska (hereinafter referred to as "Easement"); and

WHEREAS, said Easement was modified by Modification and Amendment of Easement granted to Continental Western Corporation on the 18th day of June, 1974, and recorded on the 27th day of January, 1976, in Book 49 of Miscellaneous at Page 49, releasing all of the land therein except a strip of land 66 feet in width, upon which strip said Easement shall remain in full force and effect; and

WHEREAS, pursuant to the authority contained in said Easement, Northern has constructed and currently operates and maintains a 16-inch pipeline along with the right to install additional pipelines and facilities from time to time (hereinafter referred to as "Pipeline Facilities"), across and through the above described premises; and

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"):

Units 28 and 29, Tiburon Pointe Condominiums, a Condominium organized under the Laws of the State of Nebraska, pursuant to Master Deed filed August 21, 1995, as Instrument No. 95-13731 of the Records of Sarpy County, Nebraska, being a part of Lot 399, in the Northeast Quarter of Section 28, Township 14 North, Range 11 East.

WHEREAS, Owner plans to install or construct a certain wood deck (hereinafter referred to as "Encroachment") upon and within a portion of the confines of Northern's 66-foot right-of-way width (hereinafter referred to as "Easement Area"), with this written consent; and

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

WHEREAS, Owner has requested permission from Northern to maintain, use, and enjoy the above-described Encroachment upon a portion of Northern's above-mentioned Easement Area 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 below.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions hereinafter set forth, the parties hereto agree as follows:

95-18951 A

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 Area and in any way associated with said Encroachment.

B. That the permission granted herein is limited exclusively to the proposed Encroachment upon the Owned Premises within the Easement Area of Northern's Pipeline Facilities; nor shall Owner 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.

C. That Owner shall at all times conduct all its activities on said Easement Area in such a manner as not to interfere with or impede the operation of Northern's Pipeline Facilities and activities in any manner whatsoever.

D. That Owner shall not plant any trees or shrubs within the confines of Northern's Easement Area without the prior express written consent of Northern. Said trees and shrubs shall not exceed an eventual growth height of six (6) feet.

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 with and upon the Easement Area, or from the operation, maintenance, use or presence of Northern's Pipeline Facilities upon or in the vicinity of the Easement Area except where such loss, cost, liability, or expense was proximately caused solely by the gross negligence of Northern or its employees. It is understood and agreed by the parties that under this Agreement, 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 Area in order to construct, maintain, operate, repair, remove, or resize Northern's existing or additional Pipeline Facilities, Owner or its respective heirs, successors, and assigns shall pay the cost of removing and replacing or reinstalling said Encroachment. In addition, all repair and maintenance work performed by Northern, on its existing or additional Pipeline Facilities located on the Owned Premises, shall be performed in a reasonable workmanlike manner and Northern shall restore the surface and grade of Owned Premises where the work is performed, but shall not be liable for loss, damage, or replacement to Owner's said Encroachment or any associated equipment and facilities that exist within the Easement Area, and in this regard, Owner hereby releases Northern, its employees, agents, officers, and directors from any and all liability for any such loss or damage.

5. The Parties hereto understand that this Agreement in no way constitutes a waiver by Northern of its rights to enjoy its Easement unencumbered by the construction of said Encroachment within Northern's Easement Area.

6. It is expressly agreed to by and between the parties hereto that if 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 Area, 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, 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 with any laws, regulations and orders applicable to the ownership or the operation and maintenance of the said Encroachment on the Owned Premises described herein, and (2) any incidents, acts, releases, negligence, transactions or omissions, or conditions on or affecting the Easement Area that would (i) contribute to or constitute a violation of any local, state or federal environmental rule, regulation, law or judicial order, (ii) result, in whole or in part, in any requirement to clean up or otherwise remedy or remediate a condition, (iii) give rise to any lien, liability, injunction, order, restriction, claim, expense, damage, fine or penalty, or (iv) adversely affect human health or the environment at or near the Easement Area.

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

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

"NORTHERN"
NORTHERN NATURAL GAS COMPANY
By: David W. Sinclair
Title Agent and Attorney-in-Fact

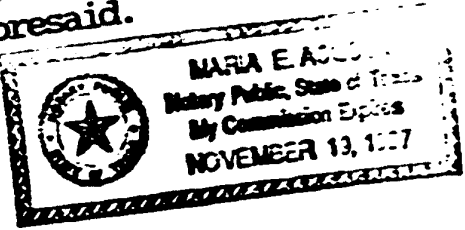
"OWNER"
FAIRACRES DEVELOPMENT, L.L.C.
By: Alan Heney
Title Managing Member

STATE OF TEXAS)
COUNTY OF HARRIS)SS

On this 20th day of October, 1995, before me a Notary Public duly commissioned and qualified in and for said county and state, personally came David W. Sinclair, the Agent and Attorney-in-Fact of Northern Natural Gas Company, who is personally known to me to be the identical person whose name is affixed to the above instrument in the capacity stated, and he acknowledged the said instrument to be his free and voluntary act and deed and the free and voluntary act and deed of said corporation.

WITNESS my hand and official seal at Houston, in said county and state, the date aforesaid.

(SEAL)



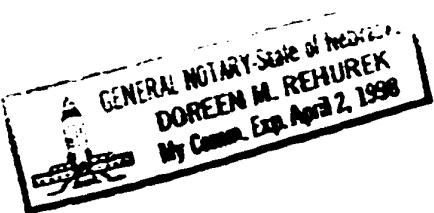
Maria E. Acosta
Notary Public
My Commission Expires 11-13-97

STATE OF)
COUNTY OF)SS

On this 25th day of September, 1995, before me a Notary Public duly commissioned and qualified in and for said county and state, personally appeared Alan Heney to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her voluntary act and deed.

WITNESS my hand and official seal at Omaha, in said county and state, the date aforesaid.

(SEAL)



Doreen M. Rehurek
Notary Public
My Commission Expires _____

7. The provisions of the Easement, and all rights, powers, privileges, 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 Area that would (i) contribute to or constitute a violation of any local, state or federal environmental rule, regulation, law or judicial order, (ii) result, in whole or in part, in any requirement to clean up or otherwise remedy or remediate a condition, (iii) give rise to any lien, liability, injunction, order, restriction, claim, expense, damage, fine or penalty, or (iv) adversely affect human health or the environment at or near the Easement Area.

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

"NORTHERN"
NORTHERN NATURAL GAS COMPANY

"OWNER"
FAIRACRES DEVELOPMENT, L.L.C.

By: David W. Sinclair

By: Alan Henry

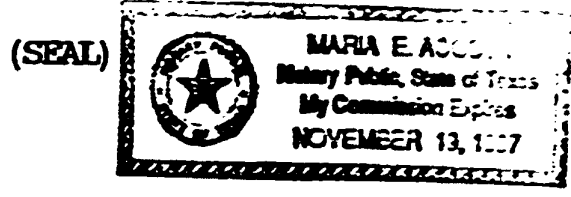
Title Agent and Attorney-in-Fact

Title Managing Member

STATE OF TEXAS)
)SS
COUNTY OF HARRIS)

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WITNESS my hand and official seal at Houston, in said county and state, the date aforesaid.

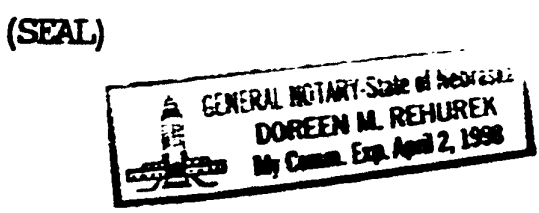


Maria E. Acosta
Notary Public
My Commission Expires 11-13-97

STATE OF)
)SS
COUNTY OF)

On this 25th day of September, 1995, before me a Notary Public duly commissioned and qualified in and for said county and state, personally appeared Alan Henry to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her voluntary act and deed.

WITNESS my hand and official seal at Omaha, in said county and state, the date aforesaid.



Doreen M. Rehurek
Notary Public
My Commission Expires _____