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2005146451

PARTIAL RELEASE AND GRANT OF RIGHT OF WAY

This *Partial Release and Grant of Right of Way* (hereinafter "**Agreement**") is made and entered into by and between Magellan Pipeline Company, L.P. (formerly known as Magellan Pipeline Company, LLC prior to name change effective September 9, 2004, and, formerly known as "Williams Pipe Line Company, LLC" prior to a name change effective as of September 1, 2003), a Delaware limited partnership, whose address is P. O. Box 22186, Tulsa, Oklahoma 74121-2186 (hereinafter called "**MPL**") and **Hearthstone Homes, Inc.**, a Nebraska corporation, whose address is 810 N. 96th Street, 3rd Floor, Omaha, Nebraska, 68114, it's successors, grantees and assigns (hereinafter called "**Owner**", whether one or more).

WITNESSETH:

WHEREAS, **Owner** represents and warrants that **Owner** owns all of the following described tract of land located in Douglas County, Nebraska (which land is hereinafter referred to as "**Owner's Land**") and has full right and power to make this **Agreement**:

A tract of land located in part of Tax Lot 4 and the North Half of the Southeast Quarter (N/2 SE/4) West of Little Papillion Creek and the Northeast Quarter of the Southwest Quarter (NE/4 SW/4), all in Section 27, T-116-N, R-12-E of the 6th P.M., Douglas County, Nebraska, described as follows:

Beginning at the center of Section 27;

Thence North 87°10'32" East (assumed bearing), along the North line of the Southeast Quarter (SE/4) of said Section 27, said line also being the South line of the Northeast Quarter (NE/4) of said Section 27, a distance of 1334.51 feet to a point on the center line of the Little Papillion Creek;

Thence along the center line of the Little Papillion Creek on the following described courses, South 48°35'27" East, a distance of 68.21 feet;

Thence South 37°26'11" East, a distance of 59.24 feet;

Thence South 27°23'01" East, a distance of 141.59 feet;

Thence South 22°02'27" East, a distance of 39.04 feet;

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Thence South 26°07'55" West, a distance of 55.00 feet;
 Thence South 29°36'19" West, a distance of 40.45 feet;
 Thence South 35°55'59" West, a distance of 64.78 feet;
 Thence South 12°49'33" West, a distance of 48.92 feet;
 Thence South 21°02'19" West, a distance of 18.20 feet;
 Thence South 25°43'08" West, a distance of 33.62 feet;
 Thence South 11°02'38" West, a distance of 23.38 feet;
 Thence South 33°39'01" East, a distance of 61.44 feet;
 Thence South 39°37'22" East, a distance of 71.00 feet;
 Thence South 19°31'53" East, a distance of 37.93 feet;
 Thence South 30°32'12" East, a distance of 31.57 feet;
 Thence South 00°36'11" East, a distance of 34.94 feet;
 Thence South 22°21'37" East, a distance of 79.94 feet;
 Thence South 31°58'36" East, a distance of 51.05 feet;
 Thence South 33°01'56" East, a distance of 39.22 feet;
 Thence North 76°28'41" East, a distance of 22.15 feet;
 Thence North 24°52'40" East, a distance of 39.83 feet;
 Thence North 53°15'28" East, a distance of 67.39 feet;
 Thence North 87°56'30" East, a distance of 21.88 feet;
 Thence South 66°14'53" East, a distance of 34.34 feet;
 Thence South 29°18'19" East, a distance of 95.07 feet;
 Thence South 46°22'13" East, a distance of 79.79 feet;
 Thence South 06°09'09" East, a distance of 76.41 feet;
 Thence South 26°13'44" West, a distance of 60.69 feet;
 Thence South 05°07'30" West, a distance of 49.98 feet;
 Thence South 29°03'11" East, a distance of 47.50 feet;
 Thence South 43°06'37" East, a distance of 47.91 feet;
 Thence South 34°49'27" East, a distance of 80.52 feet;
 Thence South 47°00'29" East, a distance of 48.44 feet;
 Thence South 30°02'48" East, a distance of 43.96 feet;
 Thence South 19°57'36" East, a distance of 66.82 feet;
 Thence South 22°46'23" East, a distance of 153.77 feet;
 Thence South 29°19'35" East, a distance of 54.95 feet;
 Thence South 35°51'46" East, a distance of 55.21 feet;
 Thence South 42°02'09" East, a distance of 46.53 feet;
 Thence South 35°03'44" East, a distance of 48.67 feet;
 Thence South 27°10'12" East, a distance of 44.66 feet;
 Thence South 13°11'28" East, a distance of 35.92 feet;
 Thence South 02°13'39" East, a distance of 24.20 feet to a point on the North line of
 Outlot "A" of Double "D" Industrial Park, a subdivision located in said SE/4 of
 Section 27, said line also being the South line of Tax Lot 4;
 Thence South 87°18'11" West along said North line of Double "D" Industrial Park,
 said line also being said South line of Tax Lot 4, a distance of 739.93 feet to a

point on the North right-of-way line of 87th Street said point also being on said South line of Tax Lot 4;

Thence South 87°15'04" West along said South line of Tax Lot 4, a distance of 1397.28 feet to a point on the West line of said SE/4 of Section 27, said point also being on the East line of the SW/4 of said Section 27;

Thence North 02°40'35" West along the said West line of said SE/4, said line also being said East line of said SW/4 of Section 27, a distance of 513.64 feet to the Northwest corner of said SE/4 of Section 27, said point also being the Northeast corner of said SW/4 of Section 27;

Thence North 87°09'54" West along the North line of the SE/4 of said SW/4 of said Section 27, said line also being the South line of the NE/4 of the SW/4 of Section 27, a distance of 1120.55 feet to the Center Section of the SW/4 of Section 27;

Thence South 87°09'54" West along the North line of the SW/4 of said SW/4 of Section 27, said line also being the South line of the NW/4 of said SW/4 of Section 27, a distance of 588.92 feet;

Thence North 51°45'25" West, a distance of 50.22 feet;

Thence North 87°09'54" East, a distance of 424.74 feet to a point on the West line of said NE/4 of the SW/4 of Section 27, said point also being on the East line of said NW/4 of the SW/4 of Section 27:

Thence North 02°31'09" West along said east line of the NW/4 of the SW/4 of Section 27, said line also being said West line of the NE/4 of the SW/4 of Section 27, a distance of 1286.29 feet to a point on the North line of said SW/4 of Section 27, said point also being on the South line of the NW/4 of said Section 27;

Thence North 87°09'52" East along said North line of the SW/4 of Section 27, said line also being the said South line of the NW/4 of Section 27, a distance of 1321.90 feet to the Point of Beginning.

Said Tract of Land contains an area of 4,837,721 square feet or 111.059 acres, more or less; and

WHEREAS, MPL owns certain easement rights by virtue of its interest in the following described instruments (hereinafter referred to as the "**Easement**", whether one or more):

A Right of Way Agreement executed by Carl Camenzind and Mary Camenzind, Co-administrators with Will annexed of the estate of John Camenzind, deceased, on the 16th day of May, 1941, and filed for record in the office of the Register of Deeds of Douglas County, Nebraska on the 27th day of May, 1941, in Book 155 of Misc., Page 643; and,

WHEREAS, MPL owns certain pipelines and related facilities and appurtenances located in, on or under **Owner's Land** (which such pipelines, facilities and related appurtenances are hereinafter referred to as the "**MPL Facilities**"); and,

WHEREAS, Owner has requested that **MPL** provide a more definite and specific description of its **Easement** in a minimum width for that portion of **Owner's Land** currently utilized and to be utilized in the future by **MPL** for its exercise of the rights granted in the **Easement**.

NOW THEREFORE, for and in consideration of One Dollar (\$1.00) in hand paid by **Owner** and the covenants contained herein, **MPL** hereby releases and forever quitclaims to **Owner**, all of **MPL's** right, title and interest in, and all obligations with respect to, the **Easement** (except as specified in the exceptions and reservations set forth below), **INSOFAR AS AND ONLY TO THE EXTENT** that the **Easement** affects **Owner's Land**.

EXCEPTING AND RESERVING, however, unto **MPL** and its successors and assigns: (1) all of **MPL's** rights, title, uses and interests acquired or permitted by virtue of the **Easement** in and to the parcel or strip of land described in **EXHIBIT "A"** attached hereto (hereinafter called the "**MPL Easement Tract**") and (2) the right of ingress and egress to the **MPL Easement Tract** and the **MPL Facilities**, and the right, from time to time, to use temporary work space as reasonably necessary, on, over and across **Owner's Land**. **Owner** and **MPL** agree that their mutual intent is the **MPL Easement Tract** shall contain within its described boundaries, all of the **MPL Facilities** existing on **Owner's Land** as of this date (except those **MPL Facilities**, if any, which are the subject of a separate written agreement). If, however, it is determined in the future that all or any part of such **MPL Facilities** are not contained within the **MPL Easement Tract**, **Owner** and **MPL** shall amend the description of the **MPL Easement Tract** and shall make any conveyance as may be necessary to encompass such **MPL Facilities** so that the outside edge of the **MPL Easement Tract** will not be less than a minimum distance of twenty-five (25) feet from the outside edge of such **MPL Facilities**, while at a minimum maintaining the overall width of the **MPL Easement Tract**.

In further consideration of the releases, promises and mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **Owner** and **MPL** agree that this **Agreement** shall provide, and the **Easement** is hereby amended to the extent necessary to provide the following and **Owner** hereby grants, sells and conveys to **MPL** the following rights:

1. **Owner** further covenants and agrees that **Owner** will not place, create, erect or construct any building, improvement, road, driveway, structure, fence, water impoundment, waterway or obstruction of any kind, either on, above or below the surface of the ground on the **MPL Easement Tract**, or change the grade or elevation of, or conduct any activities (including mining) that would endanger lateral support for the ground within, the **MPL Easement Tract**, or plant any trees, bushes or shrubs thereon or cause or permit any of these aforementioned things to be done by others, without the prior written permission of **MPL**. **Owner** shall

assume all liability for and shall indemnify and save harmless **MPL** and its affiliates, and their members, partners, directors, officers, employees and agents and their successors and assigns, from all liabilities (including, without limitation, claims and damages) of any nature arising from **Owner's** breach of or failure to comply with its foregoing covenants and agreements in this paragraph.

2. **MPL** shall have the free, uninterrupted, perpetual and commercial right, privilege and easement to lay, construct, maintain, inspect, operate, repair, replace, change the size of, protect and remove:
 - (a) existing and future pipelines for the transportation of liquids, gases or other materials which can be transported through a pipeline, along with appurtenances and related facilities, including, but not limited to fittings, valves and cathodic protection equipment; and
 - (b) existing and future lines, cables, conduits and related equipment and appurtenances for telecommunications or other purposes, whether or not related to pipelines;

over, through, under and across the **MPL Easement Tract**, together with 1) the right of reasonable ingress and egress over and across those portions of **Owner's Land** that are not at the time of such use occupied by buildings or other such substantial improvements, 2) the right from time to time to use temporary work space, as reasonably necessary on, over and across those portions of **Owner's Land** that are not, at the time of such use occupied by buildings or other such substantial improvements, 3) the right from time to time to clear the **MPL Easement Tract** of any trees, undergrowth, brush, other obstructions or non-permitted encroachments located on, under or overhanging the **MPL Easement Tract**, and 4) the right to remediate and/or remove contaminants or contaminated soil on or under **Owner's Land** resulting from the **MPL Facilities**, and the right to place on **Owner's Land** incidental equipment to facilitate the exercise of the aforesaid rights.

3. No additional compensation shall be payable to **Owner** for the exercise of the aforesaid rights or for any damage(s) resulting to the property of **Owner** except where expressly provided for in the **Easement** as amended by this **Agreement**.

TO HAVE AND TO HOLD unto said **MPL** and **Owner**, as their interests are herein expressed, and to inure to the benefit of and be binding upon their heirs, successors, grantees and assigns forever.

The terms and conditions of this **Agreement** shall constitute covenants running with the land. **MPL** shall have the right to assign the rights granted herein and held by it in the **MPL Easement** in whole or in part. 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: 11-14, 2005

Name: Richard A. Olson

Title: Vice President

Authorized Signatory for Company

Owner:

HEARTHSTONE HOMES, INC.

A Nebraska corporation

By: 

Date: 11/2, 2005

John J. Smith
President

STATE OF OKLAHOMA)
)
 COUNTY OF TULSA) SS

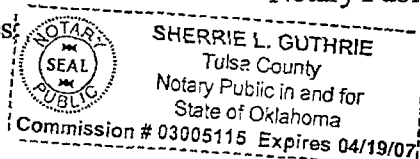
Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 14th day of November, 2005, personally appeared Richard A. Olson, to me personally known to be the Authorized Signatory for MAGELLAN PIPELINE GP, LLC, a Delaware limited liability company, who being duly sworn did acknowledge to me that he/she 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:

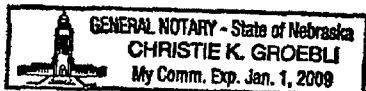
4-19-07



STATE OF NEBRASKA)
)
 COUNTY OF Douglas) SS

Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 2nd day of November, 2005, personally appeared JOHN J. SMITH to me known personally to be the President of HEARTHSTONE HOMES, INC., a Nebraska corporation, who being duly sworn did acknowledge to me that he executed the foregoing instrument on behalf of said Hearthstone Homes, 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.



Christie K. Groebli
 Notary Public

My Commission Expires:

1-1-09

EXHIBIT "A"
TO PARTIAL RELEASE AND GRANT OF RIGHT OF WAY
{being a portion of Magellan Pipeline Company, L.P. Tract number 116-DO-33}

MPL Easement Tract Description

The **MPL Easement Tract** crosses **Owner's land** which is situated in part of Tax Lot Number Four in the Southeast Quarter (SE/4) Section 27 and part of the North Half of the Southeast Quarter (N/2 SE/4) Section 27 and part of the Northeast Quarter of the Southwest Quarter (NE/4 SW/4) of Section 27, all located in T-16-N, R-12-E of the 6th P.M., Douglas County, Nebraska. The **MPL Easement Tract** is described as being 75 feet in width, being 45 feet on the Northwestern side and 30 feet on the Southeasterly side of the line described below, which is along the axis of the **MPL Omaha Jct.-Omaha 6"** pipeline:

Commencing at the Southwest corner of the Southeast Quarter (SE/4) of said Section 27;
 Thence South 87°09'55" West (assumed bearing) along the South line of said Section 27, line also being the North line of Section 34, a distance of 1020.46;
 Thence North 02°50'05" West a distance of 940.28 feet to a point on the Easterly line of Lot 10, Evergreen Place, a subdivision located in the SE/4 of the SW/4 of said Section 27, and the Point of Beginning of the centerline to be described;
 Thence North 58°10'40" East, along said centerline, a distance of 768.11 feet;
 Thence North 62°11'13" East, along said centerline, a distance of 56.17 feet;
 Thence North 78°40'04" East, along said centerline, a distance of 43.59 feet;
 Thence North 87°13'21" East, along said centerline, a distance of 2117.61 feet to the Point of Termination located on the centerline of the Little Papillion Creek.

The sidelines of said **MPL Easement Tract** shall be shortened or lengthened to terminate on the East line of Lots 9 and 10, Evergreen Place subdivision and the center of Little Papillion Creek.