

\$35.50

INST. NO 99

033647

REGISTER OF DEEDS  
JUN 17 P 1:51

BLOCK

CODE

CHECKED

ENTERED

EDITED

This Instrument Drafted By  
And To Be Returned To:  
Right of Way Department  
Northern Natural Gas Company  
PO Box 3330  
Omaha, NE 68330

Line No. : NEB 51501  
File No. : 34

AGREEMENT

This instrument made and entered into this 12<sup>th</sup> day of August, 1998, by and between NORTHERN NATURAL GAS COMPANY, a Delaware corporation, with principal offices at 1111 South 103rd Street, Omaha, Nebraska 68124 (hereinafter referred to as "Northern"), and PINE LAKE DEVELOPMENT, L.L.C., a Nebraska limited liability company (hereinafter referred to as "Owners").

WITNESSETH THAT:

WHEREAS, Northern is the holder of an Easement granted by Carl Mortensen and Mary Mortensen, husband and wife on April 17, 1968, covering the following described premises in Lancaster County, Nebraska:

THE NORTHEAST QUARTER (NE ¼) AND THE EAST HALF  
OF THE NORTHWEST QUARTER (E ½ NW ¼), SECTION  
FOURTEEN (14), TOWNSHIP 9 NORTH, RANGE 7 EAST.

which Easement was recorded June 5, 1968 in Book 112 of Miscellaneous at Page 383, in the Office of the County Recorder for Lancaster 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 14-inch pipeline (hereinafter referred to as "Pipeline Facilities"), across and through the above described premises; and

WHEREAS, Owners are the present Owners of the following described real property, with Pipeline Facilities situated upon the following described land in Lancaster County, Nebraska (hereinafter referred to as the "Owned Premises"):

X  
Northern Nat Gas Co.  
PO Box 3330  
Omaha 68330  
m

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

WHEREAS, Owners plan to construct storm sewers, sanitary sewers, water mains and paved roads as described in Exhibit "B" attached hereto (hereinafter referred to as "Encroachment") upon and within a portion of the confines of Northern's 60-foot right-of-way width (hereinafter referred to as "Easement Area"), with this written consent; and

WHEREAS, Owners have 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, Owners have requested permission from Northern to maintain, use, and enjoy the above-described Encroachment upon a portion of Northern's above-mentioned 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 Owners 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 Owners assume all risks for damages, injuries, or loss to either property or persons, which may be incurred by Owners 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 Owners alter the grade or permit such alteration anywhere on the land upon which Northern has reserved its easement right, without the prior express written consent of Northern.

C. That Owners 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 Owners 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.

E. That Owners shall comply with Department of Transportation (D.O.T.) standards and requirements for any and all crossings of Northern's pipeline facilities.

F. That Owners shall not place any hydrants or storm water outfall within the Easement Area.

G. That all utilities placed in the Easement Area shall be buried to a minimum depth of 74-inches for the full width of Northern's 60-foot Easement Area.

2. Owners agree 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 Owners 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, Owners shall be jointly and severally liable.

3. Owners agree that protection of Northern's Pipeline Facilities will be maintained at all times.

4. Should Northern need to remove any of Owners' said Encroachment within its Easement Area in order to construct, maintain, operate, repair, remove, or resize Northern's existing or additional Pipeline Facilities, Owners 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 Owners' said Encroachment or any associated equipment and facilities that exist within the Easement Area, and in this regard, Owners hereby release 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 Owners are 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 Owners. In the event of such termination, Owners shall immediately remove any and all of said Encroachment which may be situated on the Easement Area, or if Owners fail to remove any and all of said Encroachment, Northern may, at

its option, remove said Encroachment at the expense of owners 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. Owners agree 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.

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"

"OWNER"

NORTHERN NATURAL GAS COMPANY

PINE LAKE DEVELOPMENT, L.L.C.

By *Dennis D. Werkmeister*

*Robert D. Hampton*

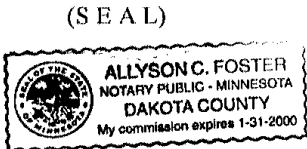
Print Name: Dennis D. Werkmeister

Print Name: Robert D. Hampton

Title: Agent and Attorney-in-Fact

STATE OF MINNESOTA )  
  )SS  
COUNTY OF HENNEPIN )

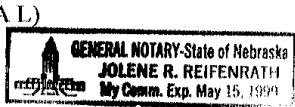
The foregoing instrument was acknowledged before me, a Notary Public duly commissioned and qualified in and for said county and state, on this 20<sup>th</sup> day of August, 1998, by Dennis D. Werkmeister, the Agent and Attorney-in-Fact of Northern Natural Gas Company.



Allyson C. Foster  
Notary Public  
My Commission Expires 1-31-2000

STATE OF NEBRASKA )  
  )SS  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me, a Notary Public duly commissioned and qualified in and for said county and state, on this 12<sup>th</sup> day of August, 1998, by Robert D. Hampton, Managing Partner.



Jolene R. Reifenth  
Notary Public  
My Commission Expires May 15, 1999

STATE OF \_\_\_\_\_ )  
  )SS  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me, a Notary Public duly commissioned and qualified in and for said county and state, on this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_

**EXHIBIT "A"**

***Agreement Between Northern Natural Gas Company  
AND  
Pine Lake Development Company***

LAND IN SECTION FOURTEEN (14), TOWNSHIP NINE (9) NORTH, RANGE SEVEN  
(7) EAST OF THE 6<sup>TH</sup> P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA,  
KNOWN AS VINTAGE HEIGHTS 2<sup>ND</sup> and 3<sup>RD</sup> ADDITIONS.

**EXHIBIT "B"**  
*AGREEMENT BETWEEN NORTHERN NATURAL GAS COMPANY  
AND  
PINE LAKE DEVELOPMENT COMPANY  
VINTAGE HEIGHTS 2<sup>ND</sup> AND 3<sup>RD</sup> ADDITION*

**Encroachment #1:**

Curb and Pavement for South 88<sup>th</sup> Street crossing Northern's 14-inch pipeline, perpendicularly, in Section 14, Township 9 North, Range 7 East, Lancaster County, Nebraska

**Encroachment #2:**

375 mm Sanitary Sewer crossing Northern's 14-inch pipeline (perpendicularly) west of the centerline of South 88<sup>th</sup> Street in Section 14, Township 9 North, Range 7 East, Lancaster County, Nebraska

**Encroachment #3:**

150 mm Water Main crossing Northern's 14-inch pipeline (perpendicularly) east of the centerline of South 88<sup>th</sup> Street in Section 14, Township 9 North, Range 7 East, Lancaster County, Nebraska

**Encroachment #4:**

Curb and Pavement for South 90<sup>th</sup> Street crossing Northern's 14-inch pipeline, perpendicularly, in Section 14, Township 9 North, Range 7 East, Lancaster County, Nebraska

**Encroachment #5:**

150 mm Water Main crossing Northern's 14-inch pipeline (perpendicularly) east of the centerline of South 90<sup>th</sup> Street in Section 14, Township 9 North, Range 7 East, Lancaster County, Nebraska

**Encroachment #6:**

Curb and Pavement for South 91<sup>st</sup> Street crossing Northern's 14-inch pipeline, perpendicularly, in Section 14, Township 9 North, Range 7 East, Lancaster County, Nebraska

**Encroachment #7:**

525 mm Storm Sewer crossing Northern's 14-inch pipeline (perpendicularly) west of the centerline of South 91<sup>st</sup> Street in Section 14, Township 9 North, Range 7 East, Lancaster County, Nebraska

**Encroachment #8:**

150 mm Water Main crossing Northern's 14-inch pipeline (perpendicularly) east of the centerline of South 91<sup>st</sup> Street in Section 14, Township 9 North, Range 7 East, Lancaster County, Nebraska

**Encroachment #9:**

Curb and Pavement for Foxtail Drive crossing Northern's 14-inch pipeline, perpendicularly, in Section 14, Township 9 North, Range 7 East, Lancaster County, Nebraska

**Encroachment #10:**

750 mm Storm Sewer crossing Northern's 14-inch pipeline (perpendicularly) along the centerline of Foxtail Drive in Section 14, Township 9 North, Range 7 East, Lancaster County, Nebraska