

Prepared by:  
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STATE OF SOUTH DAKOTA } SS.  
County of Jonas

Filed for record this 1 day of  
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*William* Register of Deeds

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### **EASEMENT AND RIGHT-OF-WAY AGREEMENT**

This nonexclusive Easement and Right-of-Way Agreement (this "**Agreement**") is made, dated and effective as of this 1<sup>st</sup> day of November, 2010 (the "**Effective Date**"), between Dahlke Family Limited Partnership (50% undivided interest) Mann Family Limited Partnership (50% undivided interest), (hereafter "**Grantor**"), and **TransCanada Keystone Pipeline, LP**, a limited partnership, organized under the laws of the State of Delaware, (hereafter "**Grantee**"), in light of the following recitals:

#### **RECITALS**

WHEREAS, Grantor owns certain real property located in Jones County, State of South Dakota (the "**Property**"), as more particularly described on Exhibit B, attached hereto and by this reference made a part hereof;

WHEREAS, Grantee is proposing to construct and operate a pipeline extending from Hardisty, Alberta, Canada, to the Port Arthur and east Houston areas of Texas in the United States; and

WHEREAS, Grantee desires to obtain certain easements and rights over the Property, and Grantor desires to grant such easements and rights, on the terms and conditions set forth herein.

#### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual obligations and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Grantor and Grantee (each, a "**Party**" and together, the "**Parties**") agree as follows:

1. **Grant of Easement.**



**1.1. Grant.** Grantor does hereby grant, sell, and convey unto Grantee a nonexclusive easement, right-of-way, and right of entry (the "**Easement**") solely for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, and removing or abandoning in place (to the extent abandonment in place is allowed by then applicable law) one 36-inch diameter pipeline, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment, devices, and appurtenances reasonably incidental to the construction, operation, marking, and maintenance thereof (the "**Pipeline**"), for the transportation of crude oil, , petroleum products or by-products thereof, upon, over, across and under the Property, on the terms provided herein.

**1.2. Width of Easement.** The Easement shall be no greater than fifty (50) feet in width, as more particularly described on Exhibit A attached hereto and by this reference made a part hereof (the "**Easement Area**").

**1.3. Single Pipeline.** Grantee shall install no more than one pipeline upon or within the Easement Area.

**1.4. Construction Right of Way.** During the construction of the Pipeline, the easement and right-of-way granted herein shall include areas necessary for construction, construction operations, equipment and materials, as more particularly defined and set forth on Exhibit A (the "**Temporary Work Space**"). The combined width of the Easement Area and any Temporary Work Space shall be no greater than one-hundred ten (110) feet unless otherwise agreed to by the Parties. Grantee shall stake the outside boundary of the Temporary Workspace during construction. The stakes shall be located at a distance consistent with standard construction practices and at all times within a line of sight and at points of intersection. No construction or installation of the Pipeline, nor any other activities or operations of Grantee, including pipe storage, shall occur beyond or outside the boundaries of the Temporary Workspace and the Easement Area, unless otherwise agreed to by the parties. Use of the Temporary Workspace shall permanently expire upon completion of construction of the Pipeline and reclamation of the Temporary Workspace.

**1.5. Notice of Location.** Following completion of construction, Grantee may, and shall upon Grantor's request, further define the location of the Easement Area by recording a Notice of Location referring to this instrument and setting forth a legal description of the Easement Area and locating the pipeline contained therein, which description may be set forth by map attached to the Notice of Location. A copy of the Notice of Location shall be delivered to the Grantor.

**1.6. Entry onto Land.** Prior to entry upon Grantor's land, Grantee shall make reasonable attempts to notify Grantor. To minimize risk of damages or operational impacts, Grantee shall provide as much advance notice to Grantor

as is practicable. During continuous work activities such as construction projects, continuous notification is not required. Grantee shall notify Grantor upon completion of construction.

**1.7. Access to Easement Area.** After construction of the pipeline and the reclamation is complete, except in cases of emergency, Grantee shall not enter upon the lands of Grantor beyond the boundaries of the Easement Area without Grantor's prior consent. The determination of what constitutes an emergency is within Grantee's absolute discretion, but is subject to Grantor's right to compensation for all damages suffered as a result thereof. Grantee shall make reasonable efforts to advise Grantor of the emergency circumstances within twenty-four (24) hours following entry upon such lands.

**1.8. Change of Location of Pipeline.** Grantor and Grantee acknowledge that the actual location of the Easement Area may change because of various engineering and construction factors. Grantor shall execute and deliver to Grantee and, if necessary, in recordable form, any additional documents needed to correct the legal description of the Easement Area to conform with the actual location of the pipeline. Grantee need not obtain Grantor's permission to alter the location of the Easement Area or Temporary Work Space so long as the change of location is no greater than fifty (50) feet in any direction. In the event the Easement Area must be moved more than fifty (50) feet in any direction, Grantee shall obtain written approval from Grantor, which approval shall not be unreasonably withheld. Additional compensation shall be due only if the acreage encumbered increases. Any change in the location of the Pipeline that results in a decrease in the acreage encumbered by the Easement Area shall not result in Grantor being required to reimburse Grantee for any payments already made.

**2. Grantor's Reserved Rights.** Provided it does not in any manner materially interfere with or prevent the exercise by Grantee of its rights hereunder or create an actual or potential hazard to the Pipeline or its appurtenances, Grantor reserves for himself, his successors, heirs and assigns, the right to use the Property for any purpose, including agriculture, ranching, farming, grazing of livestock, or any other use which is necessary and incidental to ranching and other agricultural activities; developing surface or subsurface mineral, oil, or gas resources, or any other use which is necessary and incidental thereto; cutting timber; drilling and development of water for commercial or private use; hunting, fishing, and other recreational activities; and to otherwise fully use and enjoy the Property.

Grantor shall not drill wells, excavate, alter the ground elevation, construct any dam, or otherwise create a water impoundment within or over the Easement Area without prior written authorization of Grantee. Any existing structures and improvements located on the Property as of the Effective Date of this Agreement shall be allowed to remain or Grantee shall reasonably compensate Grantor for their replacement. Grantee shall make reasonable efforts not to disturb Grantor's

activities on the Property to the extent such activities are consistent with Grantee's rights under this Agreement.

Grantee hereby grants permission to Grantor to cross the Easement Area and Pipeline at any time with agricultural equipment necessary to carry out normal and customary cultivation of the Property. Grantee shall, if requested, implement measures so as to ensure the safe crossing of Grantor's farming equipment and livestock over the Easement Area and the Pipeline.

**3. Grantee's Inspection.** Grantee represents and warrants to Grantor that it and its representatives and employees have made or shall make their own independent inspection and investigation of Grantor's existing uses of the Property. Grantee acknowledges and agrees that Grantor's use of the Property, existing as of the Effective Date, is compatible and will not interfere with Grantee's intended use of the Property, subject to the provisions hereof.

**4. Payments to Grantor.** In consideration of the Easement and rights granted in this Agreement, Grantee shall pay to Grantor those amounts set forth in that certain Payment Addendum between Grantor and Grantee, dated as of the Effective Date (the "**Payment Addendum**"), which shall not be recorded herewith.

**5. Liability for Improvements.** Grantor shall have no liability for any costs or expenses incurred in connection with the siting, testing, construction, operation, maintenance, or removal of the Pipeline, or any other improvements of any kind made on the Property by Grantee. The rights granted to Grantee hereunder shall not be construed to create any responsibility on the part of Grantor to pay for any improvements, alterations or repairs occasioned by Grantee.

**6. Grantee's Obligations.**

**6.1 Contact Information.** Before, during, and after construction Grantee will provide Grantor contact information for the appropriate employees of Grantee with whom to discuss questions about the Pipeline, including its construction and operation.

**6.2 Construction Liens.** Grantee shall, at all times, keep the Property free and clear of all claims for and/or liens for labor and services performed, and materials, supplies or equipment furnished in connection with Grantee's use of the Property; *provided, however*, that if such a lien is filed against the Property, Grantee shall indemnify and hold Grantor harmless against the consequences thereof.

### 6.3 Compensation and Indemnity

(a) Grantee shall reasonably compensate Grantor for loss or damage to crops, pastures, fences, structures, improvements, waterlines, diversions, irrigation ditches, terraces, tile lines, tanks, timber, or any other damages to the Property, improvements, personal property or livestock caused by or resulting from Grantee's use or occupancy of the Easement Area and the Temporary Work Space, including damages due to installation, construction, operation, location, use, testing, repair, maintenance, removal or abandonment of the Pipeline.

(b) Grantee shall defend, protect, indemnify, and hold harmless Grantor, and pay all costs and expenses, including reasonable attorney's fees actually incurred by Grantor, from and against any and all judgments, fines, claims, actions, causes of action, penalties, costs, damages, injuries, expenses, or other liability of any kind arising from, out of, or as a result of any construction or operations, activities (including removal or abandonment of the Pipeline), actions or inactions of Grantee, its parent, subsidiary, and related companies and their officers, directors, employees, shareholders, agents, successors, assigns, attorneys, insurers, contractors, subcontractors, consultants, or any other person or entity acting through or under them, or any of them, including but not limited to the negligent, intentional, willful, or wanton exercise of the rights and privileges herein granted.

(c) Grantee shall promptly pay for all damage to any personal property, whether owned by Grantor or any successor, employee, agent, representative, assign, contractor, sublessee, grantee, licensee, invitee, guest, or permittee of Grantor, or any other person or entity that has obtained or hereafter obtains rights or interests from Grantor, which was caused by the operations, activities, actions or inactions of Grantee on the Easement Area or on Grantor's Property.

(d) The indemnity provisions herein shall survive the expiration or termination of this Agreement and/or the surrender of the Easement Premises to Grantor, shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy, and shall inure to the benefit of Grantor and any successor and assignee of Grantor and shall be binding upon Grantee and its successors and assigns.

**6.4 Crop Damage.** Should a growing crop, hay, grass or forage or rangeland be damaged or destroyed by Grantee during the construction, installation, use, operation, maintenance, or replacement of the Pipeline, including any damage resulting from the temperature of the Pipeline, Grantor shall be compensated at the then current market price based on the average production from the Property during the preceding five years.

**6.5 Livestock.** Grantee shall compensate Grantor for any injury or loss to Grantor's livestock resulting from construction or Grantee's operations and/or activities on the Property, at the then current market price for such livestock.

**6.6 Conservation Reserve Program.** Grantor agrees to timely notify the appropriate governmental agency of this Easement and its effect on any of Grantor's property enrolled in the Conservation Reserve Program. To the extent Grantee's construction of the Pipeline requires the removal of any of the Property from participation in the Conservation Reserve Program or any substantially similar government program in which it was enrolled and qualified on the Effective Date of this Agreement, Grantee shall reimburse Grantor for any penalties and reimbursement obligations levied against Grantor by the agency administering the program as a consequence of such removal. Grantor reserves the right to enroll in the Conservation Reserve Program, or any substantially similar program, or renew its enrollment, with regard to the Property. Grantor's failure to timely notify the appropriate governmental agency of entry into this agreement relieves Grantee of any liability under this paragraph.

**6.7 Construction and Reclamation.** Grantee shall, at a minimum and unless otherwise provided herein or by any more stringent applicable law, regulation, permit, or permit condition, whether promulgated now or in the future, comply with all provisions and requirements in the Grantee's Construction, Mitigation and Reclamation Plan ("CMR Plan") in the form incorporated into the Presidential Permit required under federal law.

By this reference, the CMR Plan incorporated into the Presidential Permit is incorporated herein; provided that in those instances in which the CMR Plan affords Grantee discretion to make a decision that impacts the interests of Grantor, Grantee shall have consulted with the Grantor and secured Grantor's consent.

Parties will enter into a Construction Agreement before construction begins on the Property, which, taking into account the provisions of the CMR Plan, this Agreement, and any applicable law, regulation, or permit condition, will address site-specific conditions and necessary modifications to anything contained in the CMR Plan.

Following the completion of construction, or upon removal of the Pipeline at the expiration, termination, or surrender of this Agreement, Grantee shall remediate the area disturbed by construction as best as practicable to its original preconstruction condition, in accordance with the CMR Plan, all applicable permits, laws and regulations. Reclamation and clean-up along the Easement Area shall be accomplished in a timely manner, as conditions permit.

Following is a non-exclusive list of the construction and reclamation obligations of the Grantee provided for in the CMR Plan, included in this Agreement for ease of reference, with modifications to those provisions made as necessary:

(a) Irrigation and Drainage. CMR Plan section 4.1. In addition, all existing irrigation, drainage and erosion control structures such as diversions, irrigation ditches, terraces, and tile lines shall be avoided by Grantee or in the alternative, appropriate measures shall be taken by Grantee to maintain the design and effectiveness of the existing structures. Where the Pipeline crosses agricultural drainage ditches, Grantee shall install the Pipeline in a manner that allows for ongoing operation and maintenance of all drainage ditches. After the Pipeline is installed, each drainage ditch shall be restored to its preconstruction configuration with erosion controls as needed, unless Grantor consents to alternative arrangements.

(b) Trash Cleanup. See CMR Plan sections 2.6, 2.10 and 4.12.

(c) Open Trench. Grantee shall use reasonable efforts to minimize the length of time that any section of pipeline trench is open.

(d) Erosion. See CMR Plan section 4.5 and 6.4. Grantee shall take reasonable steps to control erosion on the Property during construction and reclamation.

(e) Pipeline Depth. See CMR Plan section 2.9.

(f) Waterlines. If the Pipeline crosses a waterline, Grantee shall, at its expense, ensure that the waterline's depth is either maintained or the line is lowered and protected in a manner reasonably acceptable to Grantor. Grantee shall move waterlines that are parallel with the Pipeline out of the Easement Area, if Grantee requests, but shall not be responsible to compensate Grantor for damages to the Property that occur as a result thereof. If waterlines are interrupted, Grantee, at its expense, shall immediately supply water to Grantor until the original water supply has been restored. Before backfilling, Grantee shall determine whether any waterlines crossed during trenching were damaged during construction. Grantee shall use appropriate technology to probe open ends of lines, shall repair any damage, and prevent settling. If damage is extensive, broken lines shall be removed and replaced with new lines. Waterlines damaged during construction must be repaired to their preconstruction condition or better. If waterline relocation is necessary, Grantee shall work directly with Grantor to determine proper location.

(g) Gates and Fences. See CMR Plan sections 4.11.6 and 4.12. In addition, when reasonably possible, Grantee shall provide Grantor with forty-eight (48) hours notice to Grantor, before removing all fences from the Easement Area and the Temporary Work Space, as required for the construction of the Pipeline. If the work conducted by Grantee temporarily divides a livestock

pasture so that livestock are separated from the water supply, Grantee shall, at its expense, immediately provide an adequate water source for the livestock or alternatively compensate Grantor for providing water for livestock until such time the original source is restored.

(h) Removal of Trees. Grantee shall use reasonable efforts to avoid locating the Pipeline such that removal of mature trees shall be required.

(i) Topsoil. See CMR Plan sections 4.2 through 4.15.

(j) Seeding. See CMR Plan section 4.11.4.

(k) Revegetation. See CMR Plan sections 4.11 to 4.16. Grantee agrees to consult with Grantor to take such precautions as necessary to protect new vegetation, including in those instances where there is no reasonable alternative, fencing out of livestock; *provided that* Grantor's concerns such as livestock access to water or movement within a pasture shall be incorporated as necessary, and Grantee agrees to provide temporary water to livestock where temporary fencing has cut off the normal supply of water.

(l) Uneven Settling. If uneven settling occurs, sinking of topsoil, cracks in the surface, or surface water drainage problems develop as a result of Pipeline construction, Grantee, at its expense, shall provide corrective action to Grantor's reasonable satisfaction, or initiate negotiations for reasonable compensation to Grantor in lieu of additional work, all within forty-five (45) days of receiving Grantor's written notice, weather and soil conditions permitting.

(m) Dust Abatement. Grantee shall use dust abatement techniques on unpaved and unvegetated surfaces to minimize airborne dust. Grantee shall have a water truck on the Property at all times during construction to reduce dust generated by construction. Grantee shall cover open-bodied dump trucks carrying sand, soil, gravel, or other materials having the potential to be expelled out of the truck where necessary to prevent such materials from being expelled.

(n) Non-Crop Land Reclamation. Reclamation on non-crop land shall be deemed to be complete when: (1) the perennial species Grantor seeds on the reclaimed land are self-renewing under natural conditions prevailing at the site; (2) the total vegetation cover of perennial species (excluding noxious weed species) and any species in the approved seed mix is at least equal to the total vegetation cover of perennial species (excluding noxious weed species) on the reclaimed land before execution of this Agreement; (3) the species diversity and composition are suitable for the proposed post-construction land uses; and (4) the requirements in (1), (2) and (3) are achieved during one growing season, no earlier than the third full growing season on the reclaimed lands.

(o) Cropland Reclamation. Reclamation on land used for production of crops shall be deemed complete when the land is tillable.

(p) Noxious Weeds Management. See CMR Plan section 2.13.

(q) Rock Removal. See CMR Plan sections 4.7, 4.9, and 4.11.2.

(r) Decompaction. See CMR Plan section 4.6 and 4.11.1.

**6.8 Location of Pipeline**. Grantee will abide by all applicable laws and regulations with respect to siting its Pipeline. Grantee agrees to make reasonable efforts to locate aboveground installations (other than pipeline markers, corrosion protection test lead posts, and appropriate safety signage) adjacent to lot lines and as near as practicable to public road allowances, and in any event will comply with all applicable laws and regulations.

**6.9 Water Wells**. Should a water well be contaminated or its production be diminished in quantity and/or quality from Pipeline installation, operations, and/or removal, an equivalent water supply shall be immediately provided to Grantor and the water well shall be restored or replaced at Grantee's expense.

**6.10 Cultural, Archaeological, or Paleontological Resources**. Grantee acknowledges that, except as disclosed in writing by Grantor, neither Grantor nor any of its employees, agents, officers, directors or representatives has made any representations, warranties, or agreements to or with Grantee as to the location of any gravesite, cultural, archaeological, or paleontological resources on the Property. Grantee represents and warrants to Grantor that it has made or shall make its own independent paleontological inspection and investigation of the Property before construction begins to the extent it deems necessary. Grantee shall, at its expense, conduct a pre-construction field survey of each area identified by such inspection and investigation as a known site or high probability area. To the extent lawfully required, Grantee shall consult with the federal or state authorities regarding the existence of cultural, archaeological, or paleontological resources located on the Property. Grantee shall comply in all material respects with all laws, ordinances, statutes, orders and regulations of any governmental agency with regard to the location, identification, excavation, removal, disposition, or disturbance of any cultural, archaeological, or paleontological resources. If any cultural, archaeological, or paleontological resources are discovered by Grantee, Grantee shall promptly notify Grantor and, to the extent lawfully required, all appropriate governmental agencies. All construction and operations shall cease on that portion of the Easement Area and Temporary Work Space until any required approvals to recommence construction are obtained from the governmental agency with jurisdiction over the affected resource. Grantee shall make reasonable efforts to avoid the removal, excavation, or disturbance of any cultural, archaeological, and paleontological resources on the Property. Grantee acknowledges that any

cultural, archaeological, and paleontological resources discovered on the Property are not the property of the Grantee and shall be delivered to Grantor unless delivery would violate applicable local, state and federal law. Information concerning the nature and location of any cultural, archaeological, and paleontological resources shall remain confidential between Grantor and Grantee, to the extent permissible under applicable laws and regulations. Grantee shall be responsible for any costs that Grantor is legally obliged to incur as a consequence of the disturbance of a protected cultural, archaeological, or paleontological resource resulting from Grantee's construction or maintenance activities.

**6.11 Hazardous Materials.** Grantee at its expense shall comply with all applicable federal, state, and local laws, regulations, and ordinances governing Hazardous Materials. Hazardous Materials shall mean hazardous or toxic materials, wastes, substances, and/or pollutants, as defined or identified in federal, state, or local laws, rules, or regulations, whether now existing or hereinafter enacted. Grantee shall not use the Property or the Easement Area for treatment, emission, release, discharge, or disposal of Hazardous Materials. In the event of any emission, discharge, or release of any Hazardous Materials within the Easement Area, Grantee shall promptly undertake all environmental remediation required by applicable laws, rules, and/or regulations, and comply with orders, directives, or mandates of any local, state, or federal governmental or quasi governmental authority having jurisdiction over pollution, the protection or regulation of human health, natural resources, or the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, regulated, toxic, or hazardous substances into the environment (including, without limitation, ambient air, surface water, ground water or land or soil). Grantee's obligations under this Section shall survive the expiration or termination of this Agreement and/or the Easement.

**6.12 Easement Area Maintenance.** Grantee shall have the right to cut, keep clear, and remove all trees, brush, or shrubbery in the Easement Area that are reasonably deemed by Grantee to injure, endanger, or interfere in any manner with the efficient construction, operation, use, inspection, or maintenance of the Pipeline, or fittings, cathodic protection equipment, and other appurtenances thereto; *provided further*, that if Grantee either mows or cuts grass or crops of Grantor, Grantee is responsible for and shall compensate Grantor for such loss.

**6.13 Notice to Grantor of Suits and Actions.** Grantee agrees to promptly notify Grantor of any and all threatened, pending, or completed actions, suits, or proceedings, whether civil, criminal, administrative, or investigative in nature, involving or with regard to any activity or operation of Grantee on the Property.

**6.14 Aerial Patrols.** Aircraft owned or operated by Grantee shall maintain altitude in compliance with applicable laws and regulations.

Helicopters shall, except during emergencies, potential integrity or safety related situations, take reasonable care when hovering or landing near livestock.

7. **Assignment.**

7.1 **Assignment by Grantor.** Grantor, as used herein, shall mean, Dahlke Family Limited Partnership (50% undivided interest) Mann Family Limited Partnership (50% undivided interest), together with his/her/its heirs, executors, personal representatives, successors and assigns. With respect to Grantor's covenants and agreements under this Agreement, the term Grantor shall be limited to mean and include only the owner or owners of the fee title to the Property at the time in question and any successors, assigns or heirs.

7.2 **Assignment by Grantee.** Grantee may assign this Agreement and all rights hereunder without restriction. Notwithstanding any provision to the contrary contained herein, in no case shall the rights granted or conveyed to an assignee encumber Grantor's interest in this Agreement or Grantor's fee interest in the Property, other than the encumbrance resulting from this Agreement.

8. **Termination and Removal.**

8.1 **Removal.** Upon the termination or surrender of the rights and privileges provided for in this Agreement, Grantee shall, as soon as practicable thereafter, or within any period prescribed by applicable law or regulation, unless otherwise mutually agreed upon, (a) remove from the Property all above grade improvements and other personal property owned, located, installed or constructed by or on behalf of Grantee, (b) leave the surface of the Property free from debris arising from the foregoing or from the operations or activities of Grantee, and (c) otherwise reclaim any portion of the Property disturbed by Grantee to a condition reasonably similar to its original condition.

8.2 **Quitclaim Deed.** Upon the termination or surrender of the rights and privileges provided for in this Agreement, Grantee shall, at Grantor's request, execute, acknowledge, and record a quitclaim deed conveying all of Grantee's right, title, and interest in and to the Property, or to that part thereof as to which this Agreement has been terminated, to Grantor or Grantor's successor in interest, as the case may be. In the event that Grantee fails to execute and record a quitclaim deed as provided for in this Section within thirty (30) days of the Grantor's request, Grantor may either (i) evidence the termination of this Agreement by filing an affidavit with the county recorder or registrar of deeds attesting to the termination of this Agreement, or (ii) seek action against Grantee in a court of competent jurisdiction in order to obtain a release or termination of this Agreement and quiet title to the Property or portion thereof for which this Agreement has been terminated.

**8.3 Abandonment of Pipeline.** Abandonment of the Pipeline and the Easement shall occur if Grantee ceases to operate or maintain the Pipeline for the transportation of crude oil, natural gas, petroleum products or by products thereof, for a period of 5 consecutive years. Abandonment of the Pipeline shall not under any circumstance entitle Grantee to a refund of all or part of any compensation previously paid to Grantor. Upon the abandonment of the Pipeline, Grantee shall either:

(a) Remove the Pipeline from the lands, with full reclamation of the Easement Area on the Property; or

(b) Abandon the Pipeline in place in accordance with applicable regulations and law.

(c) The indemnity provisions hereof shall survive the expiration or termination of this Agreement and shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy and shall inure to the benefit of Grantor and any successor and assignee of Grantor and shall be binding upon Grantee and its successors and assigns.

**9. Grantor's Liability.** Grantor's liability for damaging the Pipeline shall be determined according to applicable law. Grantor shall not be liable or responsible for any damage to or release from the Pipeline that occurs as a result of normal and customary farming or livestock management practices, including damage to Grantee's machinery and equipment.

Grantor may limit his liability by obtaining an insurance policy that insures and indemnifies Grantor from and against claims, actions, demands, lawsuits, judgments, and payments of any kind arising from damage to the Pipeline. The policy shall have liability limits of not less than Two Million Dollars (\$2,000,000). If Grantor maintains such a policy in full force and effect during the term of this Agreement, Grantor's liability to Grantee shall be limited to the coverage limits of the policy.

However, if Grantor's acts or omissions (or the acts or omissions of persons for whom Grantor is legally responsible) are reckless, grossly negligent, willful or intentional, or if Grantor (or persons for whom the Grantor is legally responsible) did not comply with the statutory requirements of the one call notification or similar underground facilities locator program, or failed to timely request that Grantee locate the Pipeline, and doing so would have avoided the occurrence that resulted in the damages, the limitations on Grantor's liability provided for in this section of the Agreement shall not apply.

If Grantee determines, based on changes to the Consumer Price Index as published by the United States Department of Labor, Bureau of Labor Statistics, that the limits of Grantor's insurance policy should be increased because of the changed value of the dollar, it will accordingly give notice to Grantor, but not

more than once every five years. If Grantor fails to increase coverage to the limits provided for in the notice within ninety (90) days of receipt thereof, the limitations on Grantor's liability provided for in this section of the Agreement shall not apply.

**10. All Other Applicable Regulations.** Grantee shall comply with all applicable local, state, and federal permits, conditions, rules, and regulations relating to the Pipeline siting, construction, reclamation, operation, and/or decommissioning and abandonment, whether now existing or enacted, imposed or granted in the future. To the extent that such laws, rules, regulations and/or permits or permit conditions impose more stringent standards or a greater standard of protection than as set forth in this Agreement such laws, rules, regulations and/or permits shall govern the relationship of the Parties. Such permits, conditions, rules, and regulations shall not abrogate anything required by this Agreement, but are in addition to the terms hereof. Nothing herein constitutes a waiver of Grantor's rights and protections under any applicable permit, law, or regulation, in force now or in the future.

**11. Miscellaneous.**

**11.1 Notice.** All notices or other communications required or permitted hereunder, shall, unless otherwise provided herein, be in writing, and shall be delivered personally, by reputable overnight courier, or sent by registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

If to Grantor:

Dahlke Family Limited Partnership  
HC 74 Box 75  
Murdo, SD 57559

Mann Family Limited Partnership  
HC 74 Box 74  
Murdo, SD 57559

If to Grantee:

Tim M. Irons, Senior Land Coordinator  
TransCanada Keystone Pipeline  
717 Texas Street  
Houston, TX 77002-2761  
832-320-5294 (Phone)  
832-320-6294 (Fax)  
[tim\\_irons@transcanada.com](mailto:tim_irons@transcanada.com)

Notice personally delivered shall be deemed given the day so delivered. Notice given by overnight courier shall be deemed given on the first business day following the date received by the owner. Notice mailed as provided herein shall be deemed given on the third business day following the postmarked date. Any Party may change its address for purposes of this subsection by giving written notice of such change to the other Party in the manner provided in this subsection.

**11.2 Entire Agreement.** Except to the extent otherwise provided herein, this Agreement constitutes the entire agreement between the Parties. No other agreements have been made modifying, adding to, or changing the terms

hereof. This Agreement may not be abrogated, modified, rescinded, or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and, when appropriate, duly recorded in the appropriate real property records. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party.

**11.3 Force Majeure.** If performance of this Agreement or of any obligation hereunder (other than an obligation to pay any compensation as set forth in the Payment Addendum) is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, Grantee, upon giving written notice to Grantor, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. Grantee shall continue performance hereunder whenever such causes are removed. Force Majeure shall mean causes beyond the reasonable control of and without the fault or negligence of Grantee, including but not limited to acts of God, flood, earthquake, storm, fire, lightning, explosion, power failure or power surge, vandalism, theft, epidemic, war, revolution, riot, civil disturbance, sabotage, and action or inaction by any federal, state or local legislative, executive, administrative agency or body which in any of the foregoing cases, by exercise of due foresight Grantee could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

**11.4 Governing Law.** This Agreement shall be governed by the laws of the State of South Dakota, and the venue of any action brought concerning the interpretation or enforcement of this Agreement shall be proper in the County in which the Property is located or the appropriate district court of the United States.

**11.5 No Waiver.** The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under this Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity. No waiver of any right under this Agreement shall be effective for any purpose unless it is in writing and is signed by the Party hereto possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Agreement.

**11.6 Interpretation.** The Parties agree that the terms and provisions of this Agreement embody their mutual intent and that such terms and conditions are not to be construed more liberally in favor of, or more strictly against, either Party.

**11.7 Other General Provisions.** The covenants contained herein are made solely for the benefit of the Parties and their respective successors and

assigns, and shall not be construed as benefiting any person or entity who is not a Party to this Agreement, or otherwise give rise to any cause of action in any person or entity not a Party hereto. The duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Neither this Agreement nor any agreements or transactions contemplated hereby shall be interpreted as creating any partnership, joint venture, association or other relationship between the Parties, other than that of landowner and easement grantee, or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party.

**11.8 Counterparts.** This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; *provided, however,* that all such counterparts shall together constitute one and the same instrument.

**11.9 Submission of Agreement.** The submission of this Agreement for examination does not constitute an offer to grant the easement contemplated herein, and this Agreement becomes effective only upon the full execution of this Agreement by the Parties.

**11.10 Invalidity.** If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement.

**11.11 Warranty.** Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

**11.12 Relationship of Parties.** Grantee and Grantor shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

**11.13 Grantee's Employees.** Grantee shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform Grantee's obligations under this Agreement, including all federal, state, and local income, social security, payroll, and employment taxes, and statutorily mandated workers' compensation coverage. None of the persons employed by Grantee, or any successor, employee, agent, representative, assign, contractor, sublessee, grantee, licensee, invitee, guest, or permittee of Grantee, shall be considered employees of Grantor for any purpose; nor shall Grantee represent to any person or entity that Grantee shall become an employee or agent of Grantor.

**11.14 Good Faith, Fair Dealing and Reasonableness.** The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) wherever the Agreement requires the consent, approval, or similar action by a Party, such consent, approval, or similar action shall not be unreasonably withheld or delayed, and (ii) wherever this Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

**11.15 Cooperation.** The Parties agree to reasonably cooperate with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.

[remainder of page intentionally left blank]

1st IN WITNESS WHEREOF, Grantee has executed this Agreement as of the  
day of December, 2010.

GRANTEE:  
Sign: *A.C. Osborne*  
Print: Alex Osborne  
Authorized Signatory  
Its: \_\_\_\_\_

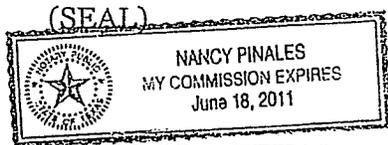
GRANTEE:  
Sign: *Tim M. Irons*  
Print: Tim M. Irons  
Authorized Signatory  
Its: \_\_\_\_\_

STATE OF TEXAS \_\_\_\_\_ :  
SS  
COUNTY OF HARRIS \_\_\_\_\_ :

On this the 1st day of December, 2010, before me, the undersigned officer, personally appeared Alex Osborne, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that s/he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Nancy Pinales*  
Notary Public



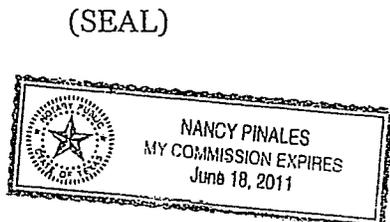
My Commission Expires: June 18, 2011

STATE OF TEXAS \_\_\_\_\_ :  
SS  
COUNTY OF HARRIS \_\_\_\_\_ :

On this the 1st day of December, 2010, before me, the undersigned officer, personally appeared Tim Irons, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that s/he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Nancy Pinales*  
Notary Public



My Commission Expires: June 18, 2011

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the  
12<sup>th</sup> day of November, 2010.

GRANTOR:

Mann Family Ltd Prtisbp  
Betty Lou Mann

Print: Dahlke Family L.T.#

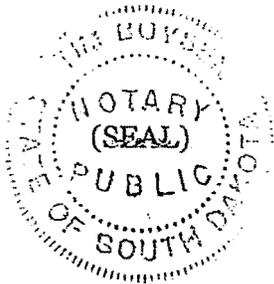
Sign: Earl Dahlke

Its: \_\_\_\_\_

STATE OF South Dakota  
SS  
COUNTY OF Jones

On this the 12<sup>th</sup> day of November, 2010, before me, the undersigned officer, personally appeared Betty Lou Mann & Earl Dahlke, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that s/he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



\_\_\_\_\_  
Notary Public

My Commission Expires: 12/26/15