

REURNED  
OCT 13 2009

2486857  
BK 4879 PG 1024

WHEN RECORDED, MAIL TO:  
Utah Department of Transportation  
Right of Way, Fourth Floor  
Box 148420  
Salt Lake City, Utah 84114-8420

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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
10/13/2009 03:57 PM  
FEE \$0.00 Rec: 8  
DEP RTT REC'D FOR UTAH DEPARTMENT  
OF TRANSPORTAT

**Easement**  
(PARTNERSHIP)

Davis County

Tax ID. No. 06-048-0123  
Parcel No. 0068:65:E  
Project No. STP-0068(16)68

HRM MONTANA, a Montana general partnership ("Grantor"), whose address for purposes hereof is 100 Crescent Court, Suite 1600, Dallas, Texas 75201-6927, hereby GRANTS AND CONVEYS, without representation or warranty, to the UTAH DEPARTMENT OF TRANSPORTATION ("Grantee"), whose address for purposes hereof is 4501 South 2700 West, Salt Lake City, Utah 84119, for the sum of Ten Dollars (\$10.00), a perpetual easement (the "Easement") upon part of Grantor's property (the "Easement Property") in Davis County, State of Utah, which Easement Property is more fully described below, for the sole purpose of constructing and maintaining thereon underground public utilities and appurtenant parts thereof including, but not limited to ATMS fiber optic conduit, electrical service transmission lines, culinary and closed irrigation water facilities; and traffic information signs (the "Work"). The Easement shall run with the Grantor's property of which the Easement Property is a part (the "Grantor's Property") and shall be binding upon Grantor and Grantor's successors, heirs and assigns.

The boundary of the Easement Property is described as follows:

A part of an entire tract of property defined in that certain Special Warranty Deed, Recorded September 21, 2006, as Entry 2203814, Book 4122 at Page 1119, situate in the NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 25, T.2N., R.1W., S.L.B. & M. The boundaries of said parcel of land are described as follows:

COMMENCING at an existing brass cap monument in the intersection of said 500 South Street and 1100 West Street, which bears North 89°26'14" East, a distance of 2,701.91 feet to a brass cap monument in the intersection of 500 South Street and 800 West Street; Thence, North 89°26'14" East, a distance of 804.15 feet, along the monument line of said 500 South, to a point on the

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westerly boundary line of said entire parcel (and Union Pacific Railroad (UPRR) easement); Thence, North 08°59'12" East, a distance of 50.70 feet, along the westerly boundary line of said entire parcel and UPRR easement, to a point 50.00 feet perpendicularly distant northerly from the monument line of said 500 South and the POINT OF BEGINNING, said point also being South 506.60 feet and East 573.18 feet from the Northwest (NW) Corner of said Section 25 (a computed position North 89°58'26" East, a distance of 242.39 feet from a monumented Witness Corner and North 00°08'59" West, a distance of 2651.58 feet from the monumented West Quarter (W $\frac{1}{4}$ ) Corner of said Section 25) at a point 50.35 feet perpendicularly distant northerly from centerline of said project at Engineering Station 69+48.65; Thence, continuing North 08°59'12" East, a distance of 12.76 feet, along said westerly boundary and UPRR easement line; Thence, North 89°25'12" East, a distance of 168.34 feet to a point on the easterly boundary of said entire parcel and UPRR easement line; Thence, South 08°59'12" West, a distance of 12.81 feet along said easterly boundary and UPRR easement line to a point 50.00 feet perpendicularly distant northerly from the monument line of said 500 South; Thence, South 89°26'14" West, a distance of 168.33 feet, along a line parallel to said monument line, returning to the Point of Beginning.

Said parcel containing 2,122 square feet or 0.049 acres, more or less.

Except in the case of an emergency, Grantee shall notify Grantor not less than ten (10) days in advance of its intent to enter upon the Easement Property. Nothing contained in this agreement shall be deemed or considered to be a dedication of all or any part of the Easement Property or the Grantor's Property for the general public or for any other public purpose whatsoever.

Grantee may not use and enjoy the Grantor's Property or the Easement Property except for purposes of the set forth in this agreement. To the extent reasonably practicable, the Easement Property shall be utilized so as to minimize any unreasonable and material impact on the use, enjoyment or development of Grantor's Property by Grantor. Exclusive use of the Easement Property is expressly not granted, and the right for ingress and egress and other use in common with Grantee hereby is expressly reserved by Grantor, so long as any such use does not unreasonably interfere with the nonexclusive Easement which is herein granted to Grantee and so long as Grantee's rights to use and enjoyment of the Easement Property shall not be adversely affected thereby. Further, except for the Easement Property, and except as may be otherwise agreed, in writing, by the parties, Grantee shall not have any right to use any part or all of the Grantor's Property. Grantee agrees that nothing in this Easement shall be a release or waiver of any right that Grantor has or may come to have to access the Grantor's Property from State Route 68 over the Easement Property except as such access may be temporarily limited in accordance with the terms of this Easement. Grantor acknowledges that Grantee may temporarily limit Grantor's access to the Grantor's Property over the Easement Property during the construction of the State Route 68; provided that (i) Grantee shall verbally notify Lisa Valerio at telephone number 801-558-4274 or such other person as directed by Grantor of such construction at least ten (10) business days prior to limiting Grantor's access over the Easement Property, and (ii) Grantee shall use

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its best efforts to minimize the period that Grantor cannot access the Grantor's Property over the Easement Property. Unless Grantee has a permit from the owner of the railroad and Grantor, Grantee shall not disrupt or interfere with the operation of use of the railroad tracks and related improvements on the Easement Property.

All of the Work shall be conducted at Grantee's sole risk, and further, the Work shall conform to, and shall be conducted in accordance with any and all applicable ordinances, laws, rules and regulations relating to building, fire, sanitary, safety and other relevant matters. The Work, in any event, also shall be performed in a good and workmanlike manner. Further, Grantee shall and hereby agrees:

(a) if, in connection with the use, occupation and enjoyment of the Easement Property hereby granted, landscape, hardscape, sidewalk, existing utilities or other improvements of Grantor are damaged or destroyed by or at the direction of Grantee, then, within thirty (30) days thereafter (or immediately if Grantor's operations of its adjacent refinery are affected due to the damage or destruction of any pipe, oil tank or other structure that substantively affects business operations located on Grantor's Property, including the loss of any utilities or services to Grantor's Property), to repair or replace such damaged or destroyed improvements to a condition substantially similar to that existing before any such damage or destruction; provided that if Grantee damages, destroys any fence or gate surrounding the Grantor's Property, Grantee shall take such actions as are necessary to secure Grantor's Property until such fence or gate is repaired or replaced. Grantee agrees to pay to Grantor, within 90 days after receipt of an invoice therefor from Grantor, the amount of any losses to Grantor or damages to Grantor's Property, which were not remedied by Grantee, arising from or related to Grantee or its contractor performing the Work on Grantor's Property.

(b) to indemnify, defend and hold harmless Grantor from and against any and all losses, claims or damages ("Claims") by a third party arising from or related to Grantee's exercise of the rights and privileges herein granted and agrees to keep and maintain the Grantor's Property free from any liens, Claims, encumbrances and liabilities arising out of work performed, materials furnished or obligations incurred by or at the direction of Grantee; provided that Grantee's obligation to indemnify Grantor with respect to Claims by a third party is limited to the dollar amounts set forth in the Governmental Immunity Act and that nothing in this section shall be deemed a waiver by Grantee of any provisions of the Utah Governmental Immunity Act, Utah Code Title 63G, Chapter 7.

(c) except in exigent circumstances, as otherwise set forth above or to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, not to erect, locate or construct any fence, gate, wall, barricade or other obstruction, which limits or impairs the free and unimpeded use of and access to the Easement Property without Grantor's advance written consent (which may be withheld in Grantor's sole discretion);

(d) not to permit any contamination, dumping or other environmental waste to be left, disposed on or contaminate the Grantor's Property in violation of Applicable Law and, further, shall not create, exacerbate or cause any "**Environmental Condition**" (as defined below) on or about the Grantor's Property (inclusive of the Easement Property); provided that, for purposes hereof, "**Environmental Condition**" means (i) contamination or pollution of soil, air, surface or groundwater in violation of Applicable Law, (ii) the disposal, placement, existence, presence or release or threat of release of a Hazardous Material and the affects thereof, (iii) noncompliance with or violation of Applicable Law including, without limitation, any lack of required governmental permits or approvals; "**Hazardous Material**" means (iv) any substance, the presence of which requires investigation, remediation, or other response or corrective action under

Applicable Law, or (v) any substance which is defined as a hazardous waste, hazardous substance, extremely hazardous substance, hazardous material, hazardous matter, hazardous chemical, toxic substance, toxic chemical, pollutant or contaminant, or other similar term, in or pursuant to Applicable Law, or (vi) any asbestos or asbestos-containing material, PCBs or equipment or articles containing PCBs, petroleum, diesel fuel, gasoline or other petroleum hydrocarbons; and "Applicable Law" means all existing federal, state or local laws, common law, statutes or regulations, including, without limitation, those relating to the protection of human health and safety, protection of the environment, or prevention of pollution. Grantor's Property is in any area historically used for industrial purposes and is included within areas identified by various governmental bodies as areas of actual or potential environmental contamination.

(e) during the course of the Work and thereafter, to take or cause to be taken such actions as may be necessary or appropriate to ensure adequate and sufficient drainage of the Easement Property and to prevent damage to the Grantor's Property as a result of any improvement of the Easement Property and/or any construction or maintenance thereof; and

(f) to pursue any and all of the Work diligently to completion; and to not permit any lien or claim of mechanics, laborers or materialmen to be filed against the Grantor's Property, or any part or parts thereof, for any work, labor or materials furnished, alleged to have been furnished or to be furnished pursuant to any agreement by Grantee; provided that, within thirty (30) days after the date of the filing or recording of any such lien, Grantee shall cause the same to be paid and discharged of record, or, if Grantee contests the amount allegedly due or the right of the lien or to make its lien claim, Grantee shall cause a bond for at least 125% of the amount of the disputed lien claim to be issued in favor of Grantor to protect Grantor from any damage resulting from the lien during the entire time of any proceeding in which Grantee contests the lien.

Grantor shall be permitted to landscape, hardscape and make other improvements on the Easement Property, as may be necessary or appropriate in connection with Grantor's use, enjoyment or development of Grantor's Property, so long as such improvements do not unreasonably interfere with the rights granted to Grantee hereunder.

Grantee may elect to terminate its use of the Easement Property at any time. In connection with any such termination, Grantee shall execute and deliver to Grantor, suitable for recording, a termination of easement. Further, upon termination of the Easement Property, unless and to the extent otherwise requested in writing by Grantor, Grantee shall restore the Grantor's Property to a condition as near as practical to that existing immediately before the exercise by Grantee of its rights hereunder. Any such restoration shall be completed within thirty (30) days, subject to reasonable delays due to weather conditions, following any termination of the Easement Property.

Grantor has not made, and expressly disclaims, any actual or alleged representation or warranty, express or implied, with respect to the Easement Property, including, without limitation, any representation or warranty regarding the fitness or suitability of the Easement Property for Grantee's intended use. The Easement Property shall be delivered by Grantor and accepted by Grantee in its then-existing condition (that is, "as is," "where is," and "with all faults") without any representation or warranty, express or implied, in fact or by law, and without any recourse against Grantor. Grantee waives any claim of liability against Grantor based on any statement, representation, warranty, covenant, undertaking or agreement which may have been made by Grantor or any person representing or purporting to represent Grantor in connection with the Easement Property. Grantee has had an opportunity to, and to have Grantee's engineers and other consultants, inspect the Easement Property, and

Grantee has found the Easement Property to be acceptable in all respects and fit for Grantee's use.

This Easement may not be modified except with the consent of Grantor and Grantee, and, then, only by written instrument duly executed and acknowledged and recorded in the office of the County Recorder of Davis County, State of Utah.

Nothing in this Easement is intended to create an enforceable right, claim or cause of action by any third party against any party to this Easement.

IN WITNESS WHEREOF, the each of the parties hereto has caused this instrument to be executed by its proper officer(s) thereunto duly authorized, this \_\_\_\_\_ day of July, 2009.

## GRANTOR:

HRM MONTANA, a Montana general partnership,

By: Navajo Northern, Inc., general partner

By:

Name: Matthew P. Clifton

Title: Chief Executive Officer

By: Black Eagle, Inc., general partner

By: Bruce R. Shaw

Name: Bruce R. Shaw

Title: Vice President and Chief Financial Officer

## GRANTEE:

UTAH DEPARTMENT OF TRANSPORTATION

By:

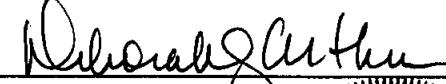
Name: Lyle D. McMillan

Its: Director, Right of Way

STATE TEXAS )  
                  )  
COUNTY OF DALLAS ) ss.  
                  )

On the date first above written, personally appeared before me Matthew P. Clifton, who being by me duly sworn, says that he is the Chief Executive Officer of Navajo Northern, Inc., a general partner of HRM MONTANA, a Montana general partnership, and that the within and foregoing instrument was signed on behalf of said company by authority of its Articles of Organization, and said Matthew P. Clifton acknowledged to me that said company executed the same.

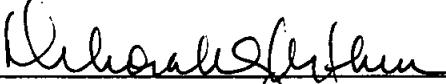
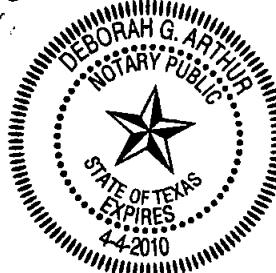
**WITNESS** my hand and official stamp the date in this certificate first above written:

  
\_\_\_\_\_  
Deborah G. Arthur, Notary Public  


STATE TEXAS )  
                  )  
COUNTY OF DALLAS ) ss.  
                  )

On the date first above written, personally appeared before me Bruce R. Shaw, who being by me duly sworn, says that he is the Vice President and Chief Financial Officer of Black Eagle, Inc., a general partner of HRM MONTANA, a Montana general partnership, and that the within and foregoing instrument was signed on behalf of said company by authority of its Articles of Organization, and said Bruce R. Shaw acknowledged to me that said company executed the same.

**WITNESS** my hand and official stamp the date in this certificate first above written:

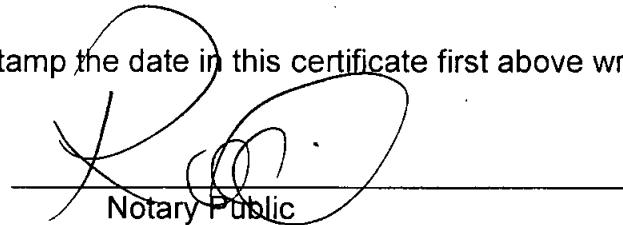
  
\_\_\_\_\_  
Deborah G. Arthur, Notary Public  


STATE OF UTAH)

COUNTY OF Salt Lake )  
                                  )ss.

On the date first above written, personally appeared before me  
Mike D. McMillan, who being by me duly sworn, says that he is the  
PDW Director of the Utah Department of Transportation, and that the within  
and foregoing instrument was signed on behalf of said entity, and said  
PDW Director acknowledged to me that said company executed the  
same.

**WITNESS** my hand and official stamp the date in this certificate first above written:

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