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STATE OF INDIANA  
LAKE COUNTY  
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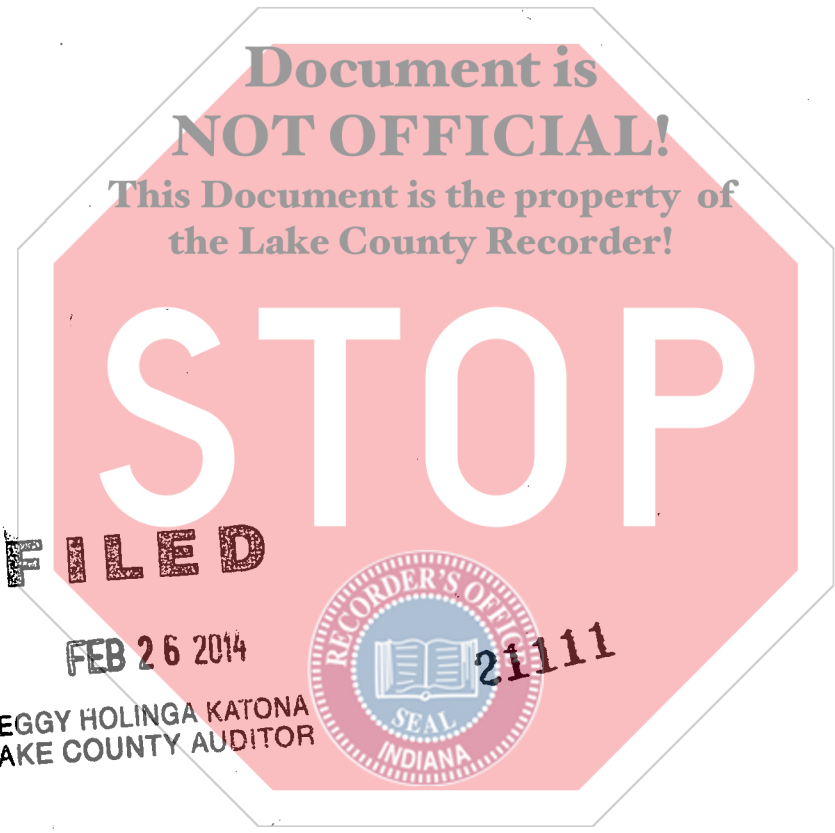
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MICHAEL B. BROWN  
RECORDER

# ENCROACHMENT AGREEMENT

TRACT NO. N-608-4



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**ENCROACHMENT AGREEMENT**

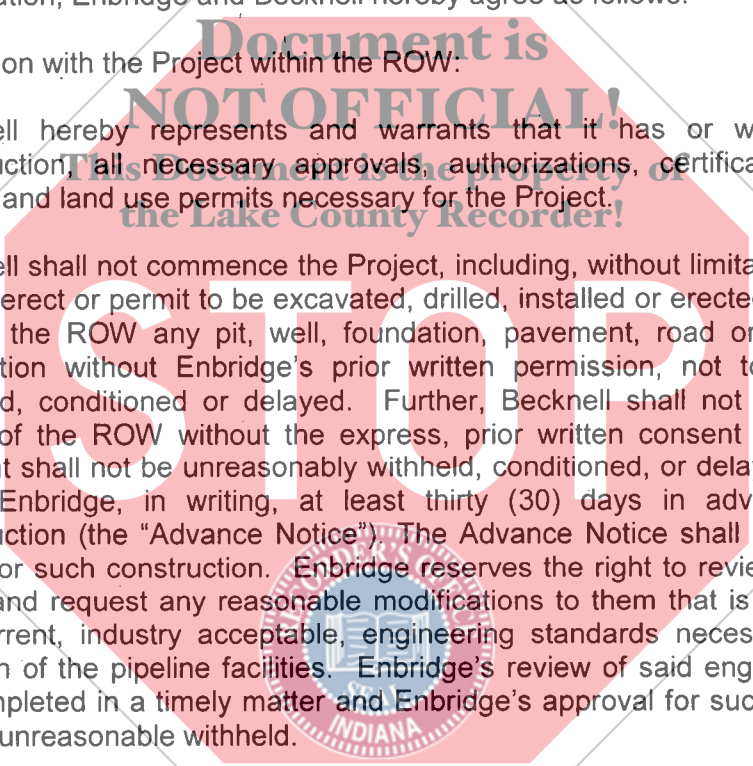
**TRACT NO.: N-608-4**

This Encroachment Agreement ("Agreement") entered into as of the <sup>6<sup>th</sup></sup> day of ~~September~~, 2013, shall constitute an agreement between **ENBRIDGE ENERGY, LIMITED PARTNERSHIP**, a Delaware Limited Partnership, with an office located at 119 N. 25th Street East, Superior Wisconsin 54880 (hereinafter referred to as "Enbridge") and **INDIANA LAND BECKNELL INVESTORS LLC**, a Delaware limited liability company, with an office located at 704 Adams Street, Suite A, Carmel, IN 46032 (hereinafter referred to as "Becknell"), to accommodate the construction, operation and maintenance of heavy equipment crossings and parking lot (hereinafter collectively referred to as the "Project") to be located on, across and adjacent to Enbridge's pipeline right-of-way (hereinafter referred to as the "ROW") located in Lake County, Indiana, further described on attached Exhibit A (the "Premises").

To facilitate the construction, operation, and maintenance of the Project, it will be necessary for Becknell, or its permitted assigns and agents to operate equipment and conduct other activities upon Enbridge's ROW.

Now therefore, in consideration of the mutual covenants of the parties and other good and valuable consideration, Enbridge and Becknell hereby agree as follows:

1. In connection with the Project within the ROW:
  - a. Becknell hereby represents and warrants that it has or will obtain, prior to construction, all necessary approvals, authorizations, certificates, licenses, and zoning and land use permits necessary for the Project.
  - b. Becknell shall not commence the Project, including, without limitation, excavate, drill, install, erect or permit to be excavated, drilled, installed or erected on, over, under or across the ROW any pit, well, foundation, pavement, road or other structure or installation without Enbridge's prior written permission, not to be unreasonably withheld, conditioned or delayed. Further, Becknell shall not materially alter the grade of the ROW without the express, prior written consent of Enbridge, which consent shall not be unreasonably withheld, conditioned, or delayed. Becknell must notify Enbridge, in writing, at least thirty (30) days in advance of any such construction (the "Advance Notice"). The Advance Notice shall include engineering plans for such construction. Enbridge reserves the right to review said engineering plans and request any reasonable modifications to them that is in accordance with the current, industry acceptable, engineering standards necessary to protect the function of the pipeline facilities. Enbridge's review of said engineering plans shall be completed in a timely matter and Enbridge's approval for such construction shall not be unreasonable withheld.
  - c. At least 72 hours before Becknell or its permitted assigns or agents commence the Project, notice shall be given to Enbridge's Chicago Region office located at 1500 West Katonah Street, Griffith, Indiana 46319 Attention: Land Services (telephone number: 219-922-7015). An authorized representative of Enbridge shall be present whenever construction activity is conducted upon the ROW. The presence of



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LAKE COUNTY CLERK

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Enbridge representatives or inspectors at the construction site will not relieve Becknell from liability for any damage or injury that may result from such activity.

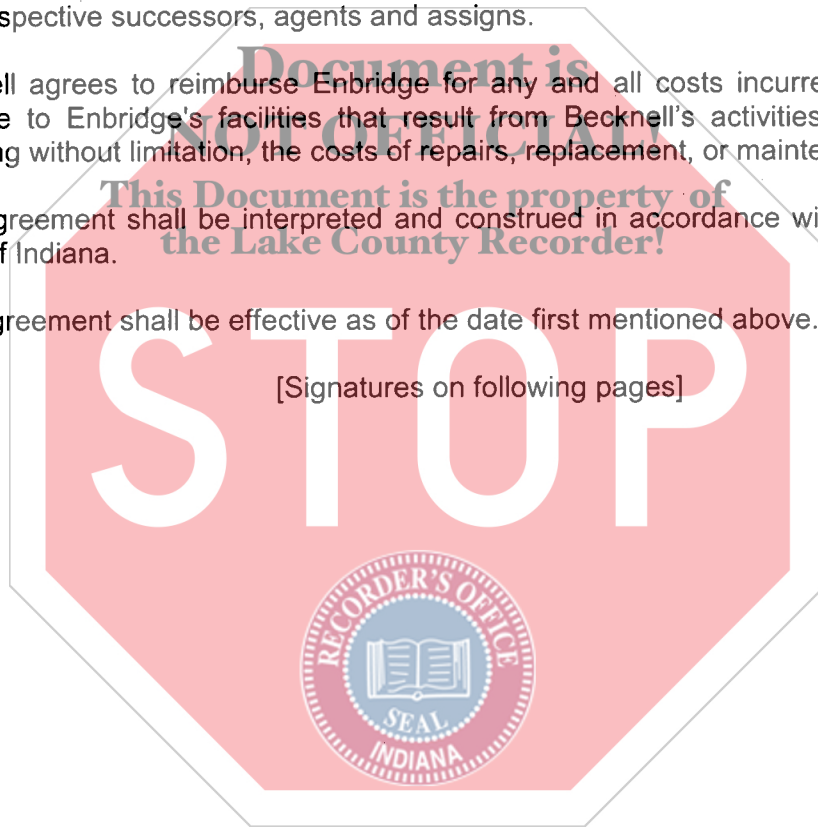
- d. Prior to commencement of construction, Enbridge shall locate and flag its pipelines.
  - e. Becknell shall be responsible for notifying the appropriate One-Call system on a timely basis of its activities upon the ROW.
  - f. Upon completion of the Project, Becknell shall provide Enbridge with "as built" drawings of the Project in .pdf format.
2. Any improvements or changes to the Project that effect the ROW shall require the prior written approval by Enbridge, which approval shall not to be unreasonably withheld, conditioned or delayed.
  3. If, at any time, Enbridge, in its reasonable judgment, believes it is necessary to remove any encroachment or portion thereof on the ROW in order to construct, alter, maintain, protect, repair or replace the pipelines or other associated facilities located within the ROW, then Enbridge shall notify Becknell in writing not later than thirty (30) days prior to commencing any such removal. Enbridge shall complete its work in a timely fashion, and in a good and workmanlike manner. Enbridge further agrees to use reasonable efforts to complete the work using the least invasive and intrusive methods possible so as to not unreasonably interfere with Becknell's use and enjoyment of the Project, and to restore the surface of the Project to its original condition.
  4. Becknell shall bear all expenses incurred in connection with the construction, operation, and maintenance of the Project.
  5. Becknell shall conduct activity upon the ROW in compliance with all applicable federal, state and local statutes, rules and regulations including applicable provisions of 49 CFR 192 and/or 195 (specifically including Operator Qualification Requirements as provided in 192 Subpart N and 195 Subpart G), and shall obtain all permits necessary for compliance with said statutes, rules and regulations.
  6. Becknell and its permitted assigns and agents, shall conduct their activities hereunder in accordance with good standard commercial practices, in a workmanlike manner, in a manner that does not endanger the integrity of Enbridge's pipelines or other facilities nor interfere with the operations of others on the premises.
  7. Becknell shall notify Enbridge (and provide details as requested by Enbridge) as soon as reasonably possible in the event any accident or other event occurs during the course of the work contemplated hereunder that involves non-compliance with any applicable laws, regulations, ordinances, or rules.
  8. Enbridge makes no representation as to any conditions at the site of the work, and Becknell shall rely solely on its own examination and investigation of the surface and subsurface conditions at the site of the work, and all local and general conditions that may affect performance of the work.
  9. Enbridge shall have the right, at any reasonable time and from time to time, to audit any and all records, documents and other data pertaining to this Agreement.

10. **RELEASE AND INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW, BECKNELL AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD ENBRIDGE AND ITS AFFILIATED ENTITIES AND THE OFFICERS AND EMPLOYEES OF ALL OF THEM (COLLECTIVELY, "INDEMNITEES") HARMLESS FROM AND AGAINST ANY LIABILITY, LOSSES, DAMAGES, CAUSES OF ACTION, ADMINISTRATIVE LAW ACTIONS AND ORDERS, PENALTIES, FINES, COSTS (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES), CLAIMS, OR STRICT LIABILITY CLAIMS (COLLECTIVELY, "LIABILITY/CLAIMS") ARISING OUT OF OR IN ANY WAY INCIDENT TO THE WORK PERFORMED HEREUNDER, WHETHER CAUSED BY BECKNELL OR ITS SUBCONTRACTORS OR THE EMPLOYEES OF EITHER, ON ACCOUNT OF PERSONAL INJURIES, DEATH, DAMAGE TO PROPERTY, DAMAGE TO THE ENVIRONMENT, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, OR OTHER PROPERTY RIGHT, REGARDLESS OF WHETHER SUCH HARM IS TO BECKNELL, INDEMNITEES, THE EMPLOYEES OR OFFICERS OF EITHER, OR ANY OTHER PERSON OR ENTITY. BECKNELL'S DUTIES UNDER THIS PARAGRAPH SHALL SURVIVE THE TERMINATION, REVOCATION, OR EXPIRATION OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, BECKNELL SHALL HAVE NO OBLIGATION OR LIABILITY UNDER THIS PARAGRAPH 10 FOR ANY LIABILITY/CLAIMS THAT RESULT FROM THE SOLE ACT, OMISSION OF NEGLIGENCE OF INDEMNITEES.**
11. **INSURANCE.** To support the indemnification provisions in this Agreement but as a separate and independent obligation, Becknell agrees to maintain during the term of this Agreement the following insurance, and Becknell shall provide to Enbridge a certificate of insurance evidencing such insurance prior to commencing work hereunder, and periodically as needed thereafter to show continuing coverage; such insurance coverage's shall be independent of the indemnity provisions of this Agreement, and are not designed solely to guarantee payment of Becknell's indemnity obligations:
- a. **Worker's Compensation and Employer's Liability Insurance** with a minimum limit for the greater of the amount (i) as prescribed by applicable law, or (ii) \$2,000,000 each accident/ \$2,000,000 policy limit/\$2,000,000 for each employee by accident or disease. Such insurance shall contain a waiver of the right of subrogation against Enbridge and an assignment of statutory lien, if applicable.
  - b. **Commercial General Liability Insurance** (including bodily and personal injury, property damage, contractual liability, completed operations liability, and independent contractor's liability) with a minimum limit of \$5,000,000 each occurrence/ \$5,000,000 general aggregate/ \$5,000,000 Products-Completed Operations Aggregate/ \$5,000,000 Personal Injury/ \$5,000,000 Combined Single Limit each accident.
  - c. **Automobile Liability Insurance**, covering all owned, non owned, hired and leased vehicles with a minimum combined single limit for Bodily Injury and Property Damage of \$2,000,000 Combined Single Limit each accident, all with Contractual Liability coverage.
  - d. The limits specified in (a), (b), and (c), above, may be satisfied with a combination of primary and Umbrella/Excess Insurance. The above-described insurance shall include a requirement that the insurer provide Enbridge with thirty (30) days' written

notice prior to the effective date of any cancellation or material change of the insurance; shall be maintained on an occurrence basis; and all liability insurance shall name Enbridge, its parents, subsidiaries, divisions and affiliated companies and its and their officers, directors, employees, agents, heirs, assigns, successors in interest, and representatives as Additional Insureds (for ongoing as well as completed operations) with a waiver of subrogation included in favor of the Additional Insureds. All insurance shall be primary to and not in excess of any other insurance available to Enbridge. Becknell, its contractor or subcontractors performing excavation work on the right-of-way will carry the appropriate limits and XCU insurance coverage. All self-insured retentions ("SIRs") and deductibles shall be the responsibility of and to the account of Becknell. All liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy. All insurance companies providing any of the insurance coverages specified in this Agreement shall have a minimum BEST rating of A- V.

12. Except as specifically provided in this Agreement, nothing contained herein shall be construed to limit or otherwise alter the rights and interests of Enbridge in its ROW grant.
13. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, agents and assigns.
14. Becknell agrees to reimburse Enbridge for any and all costs incurred with respect to damage to Enbridge's facilities that result from Becknell's activities upon the ROW, including without limitation, the costs of repairs, replacement, or maintenance.
15. This Agreement shall be interpreted and construed in accordance with the laws of the State of Indiana.
16. This Agreement shall be effective as of the date first mentioned above.

[Signatures on following pages]





INDIANA LAND BECKNELL INVESTORS LLC

By: Becknell 2004, an Illinois general partnership, its sole member

By: Becknell Industrial Operating Partnership LP, its authorized partner

By: Becknell Industrial Operating Partnership GP LLC, its general partner

By: Hugh V. Hudler Jr.  
(Signature)

HUGH V. HUDLER JR.  
(Printed Name)

Its: \_\_\_\_\_  
Authorized Signatory

Document is NOT OFFICIAL! ACKNOWLEDGEMENT

STATE OF Texas } This Document is the property of  
COUNTY OF Dallas } SS: the Lake County Recorder!

Before me, a Notary Public in and for said County and State, personally appeared Hugh V. Hudler Jr., known to me to be the Authorized Signatory of Becknell Industrial Operating Partnership GP LLC, the general partner of Becknell Industrial Operating Partnership, LP, the authorized partner of Becknell 2004, the sole member of Indiana Land Becknell Investors LLC, who, being duly sworn by me, acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 6<sup>th</sup> day of September 2013.



Carla Nichols  
Notary Public - Signature  
Carla Nichols  
Notary Public - Printed

My Commission Expires:  
June 27, 2017

My County of Residence:  
Dallas



I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Michael D. Hardy, Esq.

This instrument prepared by Michael D. Hardy, Attorney at Law  
Barnes & Thornburg LLP  
600 1st Source Bank Center, South Bend, Indiana 46601

Return Recorded Documents to:  
Enbridge Energy, Limited Partnership  
Attn: Tammy Hedlund  
1409 Hammond Avenue  
Superior, WI 54880



SBDS02 MDH 443231v5



Exhibit "A"

**ENBRIDGE REFERENCE: ROW TRACT N-608-4**

**LEGAL DESCRIPTION:**

LOT 3C IN REPLAT #1 OF NORTH WIND CROSSINGS - UNIT TWO, AN ADDITION TO THE CITY OF HOBART, LAKE COUNTY, INDIANA, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 105, PAGE 73, AS DOCUMENT NUMBER 2012-042272, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.



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