

PRIVATE ROADWAY AND CROSSING AGREEMENT

EXISTING CROSSING:

Transfer: CX86-17004 02/03/86

AGREEMENT made this 30th day of JUNE, 1989, between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, hereinafter called "Burlington", whose post office address is 2000 First Interstate Center, 999 Third Avenue, Seattle, WA 98104-1105, and

L. R. and MARY JEAN PUTNAM, whose post office address is P.O. Box 940, 2704 Summers Lane, Klamath Falls, OR 97601, hereinafter called "Permittee",

WITNESSETH:

WHEREAS, Permittee desires for Permittee's use the construction and maintenance upon the right-of-way of Burlington of an existing private 25' Crossing, hereinafter sometimes referred to as the "Crossing", to access Tax Lot #3909-8-1300 with said Crossing located at Survey Station 80+21.5, White Yard/White Line Spur at or near KLAMATH FALLS, County of Klamath, Oregon, and Burlington agrees to the construction and maintenance thereof and the use thereof by Permittee upon the following terms and conditions:

1. Permittee shall, at their own cost and expense, do all required grading and maintenance of the roadway approaches and furnish, install, and maintain necessary drainage facilities.

Permittee shall at their own cost and expense, obtain and furnish to Burlington a policy of Public Liability and Property Damage Insurance as set out in Addendum attached hereto and made a part hereof.

Burlington shall maintain said Crossing at Permittee's cost and expense.

Burlington reserves the right at any time and is presently permitting other parties to use said road crossing in common with Permittee herein. Said other parties will be required to execute a permit similar to the permit executed by Permittee herein; and all responsibilities required by the terms, conditions and provisions of this permit shall be borne equally by Permittee and said other parties.

2. Permittee shall, upon execution hereof, pay to Burlington for the license and permission hereby granted the sum of ONE HUNDRED DOLLARS, (\$100.00) for the five-year period commencing as of the date first hereinabove written. In addition, Permittee hereby agrees to pay Burlington's standard license and permission charge as may be in effect from time to time for periods subsequent to such initial five-year period.

3. Permittee shall pay to Burlington from time to time the cost of the maintenance, additions and betterments done by Burlington herein agreed to be borne by Permittee, within twenty (20) days after bills are rendered therefor.

4. Should the right-of-way be now or hereafter fenced at the location described, Permittee shall construct, maintain, and keep repaired at Permittee's expense, farm crossing gates in a manner satisfactory to the General Manager of Burlington, and said gates shall be kept closed, except when necessary to be open for travel. Permittee agrees to assume all damages of every kind whatsoever resulting from Permittee's failure to keep gates closed, or for failure to keep the same in proper repair, as agreed in this paragraph.

5. Permittee shall at all times keep the flangeways of said crossing free and clear of all snow, dirt or any other obstructions whatsoever which may accumulate by virtue of vehicles or farm machinery crossing thereover or otherwise.

6. Permittee shall not permit said crossing to be used as a public crossing nor shall Permittee authorize others to use said crossing without Burlington's written consent. Provided, however, written consent shall not be required for occasional guests of Permittee. Permittee further agrees that upon

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the lease, sale, devise or conveyance of the property being served by this crossing that the Permittee shall notify Burlington of such lease, sale, devise or conveyance and shall require that the lessee, grantee, receiver or purchaser make application for a private crossing with Burlington.

7. Permittee, at Permittee's own expense, shall remove and keep removed any vegetation at said crossing which may interfere with the view of trains approaching in either direction.

8. The permission hereby granted shall neither be or be deemed or construed to be a grant of land nor shall it constitute ownership by Permittee of the roadway or that portion of the right-of-way of Burlington upon which the Crossing is located. It is also specifically understood by Permittee that cables and other electric and/or fiber optic transmission lines may be on, about, along, or under Burlington's property and Permittee agrees and warrants that under NO CIRCUMSTANCES will Permittee dig in or disturb the surface of Burlington's property.

9. Permittee shall and hereby does release and discharge Burlington of and from any and all liability for damage to or destruction of the said Crossing, or any property of Permittee thereon; and shall and hereby does assume any and all liability for injury to or death of persons, or loss of or damage to property in any manner arising from or during the use, maintenance, repair or removal of said Crossing, however such injury, death, loss, damage or destruction aforesaid may occur or be caused; and shall and hereby does indemnify and save harmless Burlington of and from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs or expenses arising or growing out of or in connection with any such injury, death, loss, damage or destruction aforesaid. Permittee further agrees to appear and defend in the name of Burlington any suits or actions at law brought against it on account of any such personal injuries, death or damage to property, and to pay and satisfy any final judgment that may be rendered against the Burlington in any such suit or action. THE LIABILITY ASSUMED BY PERMITTEE SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE LOSS, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BURLINGTON, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, OR OTHERWISE.

10. It is agreed that the provisions of paragraph 9 are for the equal protection of any other railroad company or companies, including National Railroad Passenger Corporation (Amtrak), heretofore or hereafter granted the joint use of Burlington's property, of which said premises are a part.

11. In the event Burlington shall require the use of its premises occupied by the said Crossing or any part thereof for any purpose whatsoever, or if Permittee shall fail to keep and perform any of the terms and conditions of this agreement herein agreed by Permittee to be kept and performed, Burlington shall have the right to terminate this agreement at any time upon giving to Permittee thirty (30) days' written notice of its intention so to do and shall, upon expiration of said thirty (30) days, have the right to remove said Crossing and barricade said Crossing at the cost and expense of Permittee. Said notice shall be good if served personally upon Permittee or posted upon the premises or deposited postpaid in a United States Postal Service, addressed to Permittee at Permittee's post office address above stated. No portion of any payments made hereunder will be refunded upon termination of this agreement.

12. Permittee shall not assign or transfer this agreement without first having obtained the written consent of Burlington.

13. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, successors and assigns.

14. Nothing herein contained shall imply or import a covenant on the part of Burlington for quiet enjoyment.

ADDENDUM TO BURLINGTON NORTHERN RAILROAD COMPANY
PERMIT NO. CX89-16029 DATED JUNE 30, 1989
LONG-TERM PRIVATE CROSSING

The Permittee shall, at its own expense, obtain and maintain in force during the term of Permit No. CX89-16029, together with a Contractual Liability Endorsement attached thereto, under the terms of which the insuring agreements of the policy are extended to cover the liability assumed by the Permittee hereunder. The form of said Endorsement is hereto attached, marked Exhibit "B".

The Permittee shall carry General Liability Insurance against claims arising out of bodily injury, illness and death and from damage to or destruction of property of others, including loss of use thereof, and including liability of Burlington, Permittee and all subcontractors, and each of them, with a minimum limits for bodily injury and property damage of ONE MILLION DOLLARS (\$1,000,000) each occurrence. This policy shall be in broad form and shall include the following coverages:

- (1.) Premises and operations
- (2.) Independent Contractors
- (3.) Contractual liability - Exhibit "B"
- (4.) Products and completed operations
- (5.) Bodily injury to include personal injury
- (6.) Broad form property damage

Burlington Northern Railroad Company shall not be a named insured under such policy(s).

Such policy or certificate with respect thereto, together with said Contractual Liability Endorsement attached thereto, shall be submitted to the Burlington for approval as to the insurance company writing same, the amount and the form, and, upon approval and prior to commencement of any work to be performed under this agreement, the Permittee shall deposit the Certificate of Insurance with CX89-16029, Permit Number shown in 'Description of Operation' on said Certificate of Insurance, with the Burlington.

It is understood and agreed that the Permittee's policy is primary and not contributory and releases Burlington as to payments of any earned premium. The insurance certificate provided by Permittee must be satisfactory to Burlington as to insurance carriers covering the risk and must bear a cancellation clause providing that such insurance may not be cancelled, amended, or allowed to lapse until the expiration of at least (30) days advance written notice to Burlington.

Crossing shall not be constructed until Permittee furnishes to Burlington for approval, the original Certificate of Insurance, certified copy of policy(s), or other satisfactory evidence that all the insurance which Permittee is obliged to furnish under the foregoing provisions has been obtained and is being maintained.

Questions or clarification of insurance requirements may be directed to:

Risk Management Analyst
Burlington Northern Railroad Company
777 Main
Ft. Worth, TX 76102
Phone: 1-817-878-2374

23112

ISSUE DATE (MM/DD/YY)

1/12/90

ACORD CERTIFICATE OF INSURANCE

PRODUCER

Lenhardt & Associates Ins.Inc.
720 E. Jackson
Medford, OR 97504

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

COMPANIES AFFORDING COVERAGE

CODE

SUB-CODE

INSURED

Cascade Timber Co., Inc.
P.O. Box 940
Klamath Falls, OR 97601

COMPANY LETTER A

USF&G

COMPANY LETTER B

COMPANY LETTER C

COMPANY LETTER D

COMPANY LETTER E

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS
	GENERAL LIABILITY				
	X COMMERCIAL GENERAL LIABILITY				GENERAL AGGREGATE \$ 2,000,
	CLAIMS MADE X OCCUR.	#1MP 078603503 01	5/11/89	5/11/90	PRODUCTS-COMP/OPS AGGREGATE \$ 2,000,
A	OWNER'S & CONTRACTOR'S PROT.				PERSONAL & ADVERTISING INJURY \$ 1,000,
					EACH OCCURRENCE \$ 1,000,
					FIRE DAMAGE (Any one fire) \$ 50,
					MEDICAL EXPENSE (Any one person) \$ 5,
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT \$ 500,
A	X ANY AUTO	#1MP 078603503 01	5/11/89	5/11/90	BODILY INJURY (Per person) \$
	ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	SCHEDULED AUTOS				PROPERTY DAMAGE \$
	HIRED AUTOS				EACH OCCURRENCE \$
	NON-OWNED AUTOS				AGGREGATE \$
	GARAGE LIABILITY				STATUTORY \$
	EXCESS LIABILITY				(EACH ACCIDENT)
	OTHER THAN UMBRELLA FORM				(DISEASE-POLICY LIMIT)
	WORKER'S COMPENSATION				(DISEASE-EACH EMPLOYEE)
	AND				
	EMPLOYERS' LIABILITY				
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

Permit CX 89-16029

CERTIFICATE HOLDER

Risk Management Analyst
Burlington Northern Railroad Co.
777 Main
Ft. Worth, TX 76102

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Phyllis White

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IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

By G. E. Hargis Jr
Title DIVISION ENGINEER

L.R. and MARY JEAN PUTNAM

In presence of:

Walter Y
(Witness)

Walter Y
(Witness)

L. R. PUTNAM

Mary Jean Putnam
MARY JEAN PUTNAM

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title Co. the 19th day
of Nov. A.D., 19 90 at 12:23 o'clock P M., and duly recorded in Vol. M90,
of Miscellaneous on Page 23109.
Evelyn Biehn County Clerk
By Debbie Muelendore

FEE \$25.00

Return: ATC