

**EASEMENT**

**KNOW ALL MEN BY THESE PRESENTS**, that **BN LEASING CORPORATION**, a Delaware corporation, whose address for purposes of this instrument is 2650 Lou Menk Drive, Fort. Worth, Texas 76131, Grantor, for Two Thousand and No/100 (\$2,000.00) to it paid by **KLAMATH COUNTY**, a political subdivision of the State of Oregon, Grantee, and the promises of the Grantee hereinafter specified, does hereby remise, release and quitclaim unto the Grantee, subject to the terms and conditions hereinafter set forth, an **EASEMENT** for the construction, maintenance and improvement of Bristol Avenue public grade crossing, hereinafter called highway, over, upon and across the following described premises, situated in Klamath County, State of Oregon, to-wit:

That portion of Tract 13 of Altamont Ranch Tracts located in the N $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, Township 39 South, Range 9 East, W. M., City of Klamath Falls, Klamath County, Oregon, described as follows, to-wit:

**Beginning** at the intersection of the South right of way line of Bristol Avenue (6th Avenue), according to the recorded plat of said Altamont Ranch Tracts, and a line drawn parallel with and distant 25.0 feet Westerly, as measured at right angles from The Burlington Northern and Santa Fe Railway Company's (formerly Great Northern Railway Company) centerline of the Interchange Track with the Southern Pacific (formerly Oregon, Central and Eastern), as now located and constructed; thence Southerly parallel with said track centerline to the intersection with a line drawn parallel with and distant 10.0 feet Southerly, as measured at right angles from the said South right of way line of Bristol Avenue (6th Avenue); thence Westerly along the last described parallel line to the intersection with a line drawn parallel with and distant 500.0 feet Westerly, as measured at right angles from the East line of said Tract 13; thence Northerly along the last described parallel line 10.0 feet to the said South right of way line of Bristol Avenue (6th Avenue); thence Easterly along said South right of way line to the **Point of Beginning**.

**RESERVING**, however, unto the Grantor, its successors and assigns, the right to construct, place, operate, maintain, alter, repair, replace, renew, improve and remove communication lines above, below and on the surface of the premises, including, without limitation, transmission by conduit, fiber optics, cable, wire or other means of electricity, voice data, video, digitized information, or other materials or information, pipelines, utility lines, track and facilities including the right of ingress and egress in any such manner as does not unreasonably interfere with Grantee's use of the premises for said highway, and further reserving unto Grantor, its successors and assigns, all right and privilege of ingress and egress to said premises as Grantor, its successors and assigns may require to investigate and remediate environmental contamination and hazards, and further reserving the right and privilege to use said land for any and all purposes not inconsistent with the use thereof for said highway purposes.

The foregoing easement is made subject to and upon the following express conditions:

1. To existing interests in the above-described premises to whomsoever belonging and of whatsoever nature and any and all extensions and renewals thereof, including but not limited to underground pipe line or lines, or any type of wire line or lines, if any.
2. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of said highway shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing.
3. The Grantee shall bear the cost of removal, relocation or reconstruction of any and all right of way fences, telephone or telegraph poles, or other facilities, the removal, relocation or reconstruction of which may be made necessary by reason of the use of said premises for said highway purposes.
4. The Grantee shall, at its own cost and expense, make adjustment with industries or other lessees of Grantor for buildings or improvements that may have to be relocated, reconstructed or destroyed by reason of the construction and maintenance of said highway on said premises.
5. This instrument is granted according to the terms and conditions of that certain Construction and Maintenance Agreement between the Grantor and the Grantee dated July 16, 1997, and made subject to the terms and conditions contained therein.

6. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.
7. The Grantee or its contractor(s) shall telephone Grantor's Communication Network Control Center at (800) 533-2891 (a 24 hour number) to determine if fiber optic cable is buried anywhere on the premises; and if so, the Grantee or its contractor(s) will contact the Telecommunications Company(ies) involved, and make arrangements with the Telecommunications Company(ies) for protection of the fiber optic cable prior to beginning any work on the premises.
8. If during the construction or subsequent maintenance of said Encroachment, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Grantee shall indemnify, protect and defend the Railroad from any and all liability, claims or demands, if any, which arise as a result of exposure and/or removal of said contaminated soils or materials. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.
9. Grantee, in its acceptance hereof, hereby agrees to indemnify and save harmless said Grantor, from and against all lawful claims, demands, judgments, losses, costs and expenses, for injury to or death of the person or loss or damage to the property of any person or persons whomever, including the parties hereto, in any manner arising from or growing out of the acts of omissions, negligent or otherwise of Grantee, its successors, assigns, licensees and invitees or any person whomsoever, in connection with the entry upon, occupation or use of the said premises herein described, including but not limited to that of the location, construction, operation, restoration, repair, renewal, or maintenance of said highway upon the herein described premises or otherwise.
10. If said described premises, or any part thereof, shall at any time cease to be used by said Grantee, or by the public, for the purpose, as aforesaid, or should they be converted to any other use whatsoever, or should the Grantee fail to perform any of the conditions herein expressed, then and in any such event, all the right, title, interest, benefits and enjoyment of said Grantee, or of the public, in and to said premises, for any purposes whatsoever, shall immediately cease and the said Grantor, its successors and assigns, may, at its or their option, re-enter, retake and hold said described lands and premises as of the present estate of said Grantor without compensation to said Grantee, the public, or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of, or damage to any premises or the improvements thereon abutting on said easement area or any part thereof.

11. The Grantor does not warrant its title to said premises nor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interest of others, including the tenants and licensees of the Grantor.
12. This easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee.

**TO HAVE AND TO HOLD THE SAME**, together with all the hereditaments and appurtenances thereunto belonging to Grantee for public use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

IN WITNESS WHEREOF, the said BN Leasing Corporation has caused this instrument to be signed by its authorized officer, and the corporate seal affixed on the 23<sup>rd</sup> day of JANUARY, 1998

**BN LEASING CORPORATION**

By: *D. P. Schneider*

D. P. Schneider  
General Director Real Estate



**ATTEST:**

By: *Margaret H. Aclin*

Margaret H. Aclin  
Assistant Secretary

**BNL 0093 Klamath Falls, Or**



ACCEPTED:

KLAMATH COUNTY

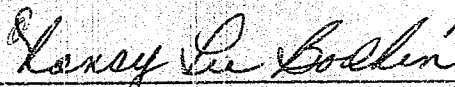
By: 

STATE OF OREGON )

) ss.

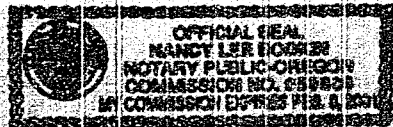
COUNTY OF KLAMATH )

On this 23<sup>rd</sup> day of December, 1997, before me personally appeared Al Switzer, who, being duly sworn, each for himself and not one for the other, did say that he is the Chairman of the Board of County Commissioners of Klamath County, a political subdivision, and that the seal affixed to the foregoing instrument is the seal of said subdivision and that said instrument was signed and sealed in behalf of said subdivision, and that he acknowledged said instrument to be his voluntary act and deed.



Before me: Nancy Lee Bodkin

Notary Public for State of Oregon

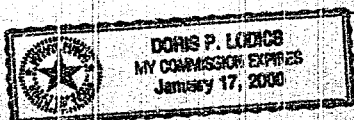
My commission expires: Feb 8, 2001

STATE OF TEXAS

ss.

COUNTY OF TARRANT

On this 28th day of JANUARY, 1998, before me personally appeared D. P. Schneider and Margaret R. Aclin, who, being duly sworn, each for himself and not one for the other, did say that the former is the General Director Real Estate and the latter is the Assistant Secretary of BN Leasing Corporation, a Delaware corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.



*Doris P. Lodice*

Before me:

Notary Public for State of Texas

My commission expires: 1-17-2000

BNL 0093 Klamath Falls, OR

APPROVED BY LAW:

APPROVED LEGAL	X
APPROVED FORM	FEW
APPROVED	FEW

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 4th day  
of February A.D. 19 98 at 11:57 o'clock A.M. and duly recorded in Vol. M98  
of Deeds on Page 3568

FEE

No Fee

Return: Public Works

By Bernetha G. Leisch, County Clerk  
*Bernetha G. Leisch*