

Lease of Premises  
for Highway Purposes  
near Klamath Falls, Klamath Co., Oregon

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ODOT ROW FILE NO R6324001

✓  
RETURN TO & TAX STATEMENT TO  
OREGON DEPT. OF TRANSPORTATION  
RIGHT OF WAY SECTION  
417 TRANSPORTATION BLDG.  
SALEM, OR 97310

Folder 1697-49  
Audit No.:

210009

99 JUL 11 P2:26  
THIS AGREEMENT, made and entered into as of the 19<sup>th</sup> day  
of MAY, 1999, by and between UNION PACIFIC RAILROAD COMPANY a  
Delaware corporation (hereinafter the Lessor), and STATE OF OREGON ACTING BY  
AND THROUGH ITS DEPARTMENT OF TRANSPORTATION, HIGHWAY DIVISION to be  
addressed at Transportation Building, Salem, Oregon 97310 (hereinafter the  
Lessee),

WITNESSETH:

IT IS MUTUALLY COVENANTED AND AGREED BY AND BETWEEN THE PARTIES  
HERETO AS FOLLOWS:

Section 1. LEASE; TERM.

The Lessor hereby leases to the Lessee for an indefinite term  
effective as of the date first herein written, unless sooner terminated in  
accordance with the terms hereof, the premises shown on the print dated June  
17, 1998 marked Exhibit A, hereto attached.

Section 2. RENTAL; TAXES; ASSESSMENTS; CONSTRUCTION; LIABILITY.

As a consideration for this Lease the Lessee agrees to pay a one  
time fee of Eight Thousand Nine Hundred (\$8,900.00) Dollars and to assume all  
taxes and assessments levied upon the leased premises during the continuance  
of this Lease, not including taxes or assessments levied against the leased  
premises as a component part of the railroad property of the Lessor in the  
state as a whole; to construct and maintain the highway on the leased  
premises in accordance with plans and profiles submitted to and approved by  
the Chief Engineer of the Lessor before the work is commenced; to keep the  
leased premises free from combustible material; to plant no trees or  
shrubbery thereon with the previous written consent of the Lessor, and to  
erect no structures thereon except such as may be necessary for highway pur-  
poses; to put nothing upon the leased premises which might obstruct or  
interfere with the view; to provide, in locations and in accordance with  
plans approved by the Lessor before the work is commenced, such ditches,  
culverts, bridges and other structures as may be necessary properly to care  
for the drainage from the leased premises and the adjoining right of way of  
the Lessor; and to hold the Lessor harmless from any and all damages to any  
of such structures on the leased premises arising from fire caused directly  
or indirectly by sparks or fire emitted from the engines or trains of the  
Lessor; and further to hold the Lessor harmless from any damages to the  
highway upon the leased premises which may result from the construction or  
maintenance of drainage ditches or waterways by the lessor.

The Lessee shall, in the construction, maintenance and im-  
provement of the highway on the leased premises, take every precaution to  
prevent damage to, or the impairment of the stability of, the poles in any

pole line of the Lessor or of its tenants; and the Lessee shall, at its own expense, reset or relocate, at and under the direction of the Lessor any pole or poles that are, or are likely to be, damaged or weakened because of the construction of such highway or the maintenance or improvement of the same, or shall reimburse the Lessor for the cost of resetting or relocating any such pole or poles if the Lessor elects to do the work itself.

### Section 3. COST OF CHANGES.

In connection with the construction of the highway on the leased premises the Lessee shall assume the cost of any necessary changes within the limits of the right of way of the Lessor in the construction, grade or drainage of highways or other roadways crossing the Lessor's right of way.

### Section 4. SUBJECT TO MINERAL DEED DATED AS OF APRIL 1, 1971.

This Lease is made subject to deed dated as of April 1, 1971, whereby lessor conveyed to Union Pacific Land Resources Corporation all minerals and mineral rights of every kin and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of, such minerals by any means or methods suitable to Union Pacific Land Resources Corporation, its successors and assigns, but without entering upon or using the surface of the lands hereby leased, and in such manner as not to damage the surface of such lands or to interfere with the use thereof by the Lessor, its successors and assigns.

### Section 5. RESERVATION OF RIGHT TO CROSS LEASED PREMISES WITH RAILROAD TRACKS.

The Lessor reserves the right to cross the leased premises with such railroad tracks as may be required for its convenience or purposes in such manner as not unreasonably to interfere with their use as a public highway. In the event the Lessor shall place tracks upon the leased premises in accordance with this reservation, it shall, upon completion of such tracks, restore the highway across the same to its former state of usefulness.

### Section 6. USE OF LEASED PREMISES.

The Lessee shall not use the leased premises or permit them to be used except for the usual ordinary purposes of a street or highway, and it is expressly understood and agreed that such purposes shall not be deemed to include the use by the Lessee, or by others, of the leased premises for railroad, street or interurban railway or other rail transportation purposes or for the construction or maintenance of electric power transmission lines, gas, oil or gasoline pipe lines.

### Section 7. SUPERIOR RIGHTS.

This Lease is subject to all outstanding superior rights (including those in favor of licensees and lessees of the Lessor's property, and others) and to the right of the Lessor to renew and extend the same; and it is understood that nothing in this Lease contained shall be construed as a covenant to put the Lessee into possession or to protect the Lessee in the peaceable possession of such premises.

#### Section 8. SPECIAL ASSESSMENTS.

No special assessments for establishing or improving the highway located upon the leased premises are to be made against the adjacent railroad right of way of the Lessor, and the Lessee agrees to protect the Lessor against and save it harmless from such special assessments.

#### Section 9. CONSTRUCTION, MAINTENANCE AND RELOCATION OF FENCES AND BARRIERS.

The Lessee agrees that, at points where the Lessor at the date hereof maintains a fence on its right of way between its track and the inner margin of the leased premises, the Lessee will, at its own cost and expense, move such fence to the inner margin of the leased premises, and that, at points where the Lessor does not maintain a fence in such location, the Lessee will construct a fence on the inner margin of the leased premises when and where requested in writing by the Lessor. The Lessee further agrees to assume the responsibility of constructing or of making such arrangements as may be necessary with owners or lessees of property abutting upon the right of way along the line of such highway for constructing, maintaining and repair fences on the outer margin of the Lessor's right of way, and to relieve the Lessor of all obligation, if any there be, to establish or maintain fences upon the outer margin of its right of way and of all expense incident to the construction, maintenance and repair of such fences. In the relocation of existing fences and in the construction of new fences in accordance with the provisions of this section, the Lessee shall, at its own cost and expense, also relocate or construct such wing fences that may be necessary and also any necessary connections with existing fences of the Lessor. All fences shall be in accordance with the standards of the Lessor and all work of relocating and constructing fences shall be done in a manner satisfactory to the Lessor.

At points where the highway is higher than or on the same level as or less than two (2) feet below the level of tracks of the Lessor and forms a curve convex to such tracks, the Lessee, at its expense, shall construct and thereafter maintain substantial barriers on the track side of the highway so as to prevent vehicles moving from such highway or being overturned or thrown therefrom across the roadbed or tracks of the Lessor, and such barriers shall be of such nature, material, dimensions and strength as shall be approved by the Chief Engineer of the Lessor.

#### Section 10. PROTECTION OF REVERSIONARY INTERESTS.

For the purpose of protecting the reversionary interests of the Lessor against the assertion of adverse rights, the Lessee agrees to prevent encroachments upon the leased premises, and to this end will, at its own expense, take all necessary action, including as far as practicable the building of its ditches on and the borrowing of earth from the outer margin of the leased premises.

#### Section 11. TERMINATION ON DEFAULT.

If the Lessee should breach or fail to keep any of the covenants or conditions hereof, or fail to perform such covenants or conditions, or to remedy the same for ninety (90) days after written notice of such failure or breach on the part of the Lessee, given by the Lessor to the Lessee, then this Lease shall be null and void.

#### Section 12. TERMINATION ON NONUSER.

Nonuser by the Lessee of the leased premises for highway

purposes continuing at any time during the term hereof for a period of eighteen (18) months shall, at the option of the Lessor, work a termination of this Lease and of all rights of the Lessee hereunder, and nonuser by the Lessee of a portion of the leased premises continuing for a like period shall, at the option of the Lessor, work a termination of all rights and interests of the Lessee with respect to such portion.

#### Section 13. RAILROAD PROTECTIVE LIABILITY INSURANCE.

The Lessee agrees that any contractor performing work contemplated hereunder shall be required to procure for and on behalf of the Lessor and to keep in effect, during the entire period of the operations of such contractor or any subcontractor, insurance of the kinds and amounts stated in the Railroad Protective Liability Form, marked Exhibit B, attached hereto, such insurance to be acceptable to the Lessor and to be in addition to any other forms of insurance or bonds required under the terms of any contracts between the Lessee and such contractor or subcontractors.

The originals of all policies of insurance required under Exhibit B shall be furnished to the Lessor and shall be acceptable to and approved by the Lessor as to form, substance and execution and as to the insurer issuing such policy or policies. Such insurance shall be kept in effect until all of the work to be performed by such contractor or subcontractors shall have been completed and formally accepted by the Lessee.

#### Section 14. PROTECTION OF FIBER OPTICS

Fiber optic cable systems may be buried on the Lessor's property. Lessee shall telephone the Lessor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Premises. If it is, Lessee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Premises.

In addition to the liability terms elsewhere in this Lease, the Lessee shall, to the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, indemnify and hold the Lessor harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of the Lessee, its contractor, agents and/or employees, that causes or in any way or degree contributed to (a) any damage to or destruction of any telecommunications system by the Lessee, and/or its contractor, agents and/or employee; on Lessor's property, (b) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Lessor's property, and/or © any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

#### Section 15. LESSEE NOT TO ASSIGN OR SUBLET.

This Lease is not to be assigned, nor is any portion of the leased premises to be sublet, without the written consent of the Lessor. The Lessee will surrender peaceable possession of the leased premises at the expiration of this Lease.

## Section 16. SUCCESSORS AND ASSIGNS.

All covenants and agreements herein recited are made by the parties hereto for, and shall be binding upon, themselves and for their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in duplicate as of the date first herein written.

Witness:

Mark C West

UNION PACIFIC RAILROAD COMPANY

R. J. [Signature]  
Sr. Manager - Real Estate

Witness:

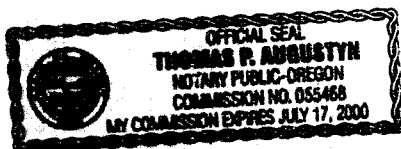
x [Signature]

STATE OF OREGON, acting by and through  
the DEPARTMENT OF TRANSPORTATION,  
HIGHWAY DIVISION

x Michael L. Kirby  
Title ASST. RIGHT OF WAY MANAGER

STATE OF OREGON, County of Marion

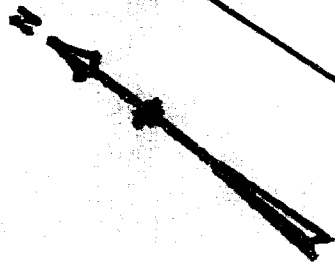
June 8 1999. Personally appeared Michael L. Kirby for Deolinda G. Jones, who being sworn, stated that he is the Assistant Right of Way Manager for the State of Oregon, Department of Transportation, and that this document was voluntarily signed on behalf of the State of Oregon by authority delegated to her. Before me:



Thomas P. Augustyn  
Notary Public for Oregon

My Commission expires 7/17/2000

23147



90+05 BEGIN SALE 160' LT.

851.00±  
1300'

500'

1600'

← TO KLAMATH FALLS

S 88° 16' E

Nº1

PARCEL #1

26° 15'

Nº2

6' of A-3-M Canal Sec. Line

351.77  
91+170 36" Nº10 Ga. Cor. Iron Pipe 390 ft long  
551.76  
91+440 24" Nº12 Ga. Cor. Iron Pipe 400 ft long

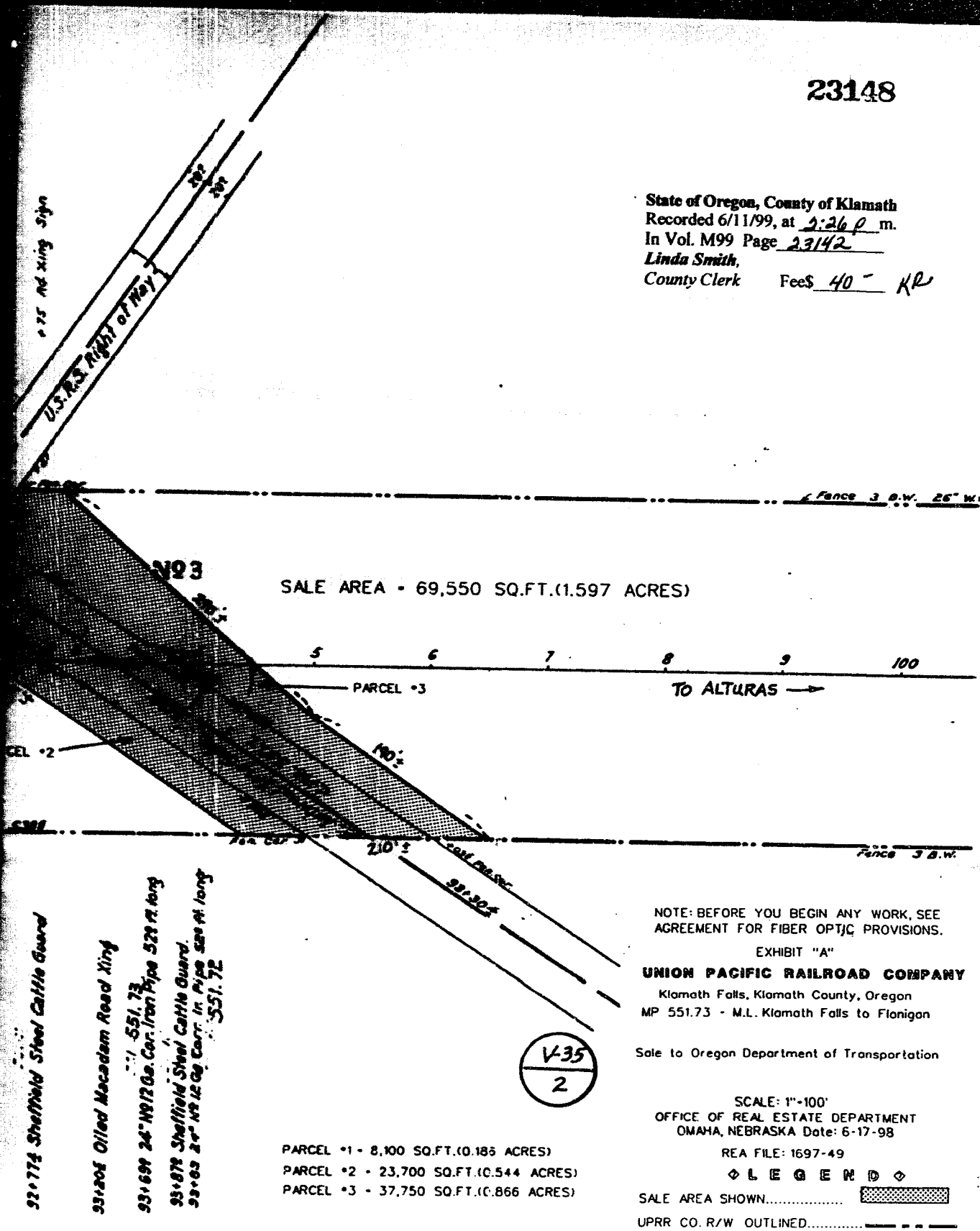
23148

State of Oregon, County of Klamath  
Recorded 6/11/99, at 2:26 p m.  
In Vol. M99 Page 23142

Linda Smith,

County Clerk

Fee \$ 40 KR



SALE AREA - 69,550 SQ.FT.(1.597 ACRES)

PARCEL #3

TO ALTURAS →

CEL #2

Fence 3 B.W.

NOTE: BEFORE YOU BEGIN ANY WORK, SEE  
AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

Klamath Falls, Klamath County, Oregon

MP 551.73 - M.L. Klamath Falls to Flanigan

Sale to Oregon Department of Transportation

SCALE: 1"=100'

OFFICE OF REAL ESTATE DEPARTMENT  
OMAHA, NEBRASKA Date: 6-17-98

REA FILE: 1697-49

◊ L E G E N D ◊

SALE AREA SHOWN.....

UPRR CO. R/W OUTLINED.....

PARCEL #1 - 8,100 SQ.FT.(0.185 ACRES)

PARCEL #2 - 23,700 SQ.FT.(0.544 ACRES)

PARCEL #3 - 37,750 SQ.FT.(0.866 ACRES)

V-35  
2

52+77.4 Sheffield Steel Cattle Guard

93+20.6 Oiled Macadam Road Xing

93+69.9 24" N9120.6 Cor. Iron Pipe 522 ft. long

93+87.8 Sheffield Steel Cattle Guard.  
93+82.2 24" N9120.6 Cor. In Pipe 522 ft. long

551.72