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EASEMENT

Vol M03 Page 05305
State of Oregon, County of Klamath
Recorded 01/29/2003 10:28 a m.
Vol M03 Pg 05305-10
Linda Smith, County Clerk
Fee \$ 46.00 # of Pgs 6

KNOW ALL MEN BY THESE PRESENTS, THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830, Grantor, for TEN AND NO HUNDREDTHS DOLLARS (\$10.00) to it paid by **TERRY WOODHOUSE** ⁶⁴ AND **JANICE WOODHOUSE**, husband and wife, and their successors and assignees, whose address is P. O. Box 35, Merrill, Oregon 97633 Grantees, and the promises of the Grantees hereinafter specified, does hereby remise, release and quitclaim unto the Grantee, subject to the terms and conditions hereinafter set forth, an **EASEMENT** to construct, maintain, replace, and remove an access roadway, hereinafter called **Roadway**, over, upon and across the following described premises, situated in Klamath County, State of Oregon, to-wit:

A 15 foot wide access easement, being a portion of The Burlington Northern and Santa Fe Railway Company's (formerly Great Northern Railway Company) Station Ground Property at Merrill, Oregon, being of variable width on each side of said Railway Company's Main Track centerline as now located and constructed upon, over and across the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, said 15 foot wide easement being more particularly described as follows:

Beginning at a point on the Southerly Right of Way line of Fourth Street, from which W1/16 corner common to Section 12, T41S, R10E, WM, and said Section 1 bears South 12°58'13" East 1313.48 feet; Thence East along the said Southerly Right of Way line, 15.32 feet; Thence South 11°38'43" East 56.94 feet to a line parallel with and distant Northerly, measured at right angles from said Railway Company's Industrial Track No. 2 centerline, as now located and constructed upon, over and across said SW $\frac{1}{4}$ SW $\frac{1}{4}$; Thence West along said parallel line, 15.32 feet; Thence North 11°38'43" West 56.94 feet to the point of beginning, with bearings based on the line between the said W1/16 corner and the Southwest corner of said Section 1 being East as per the plat of the Original Town of Merrill on file at the office of the Klamath County Surveyor.

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 Roadway, 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 Roadway 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, of any type or 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 Roadway 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. If during the construction or subsequent maintenance of said Roadway, 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 Grantor 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.
4. On condition that Grantees on behalf of themselves, their successors and assigns, by acceptance hereof, covenants and agrees not to construct, without the prior written consent of Grantor, any additional structures on or within the easement herein granted.
5. 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.
6. 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 Roadway purposes.
7. 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 Roadway on said premises.

8. All construction, maintenance and improvements of said Roadway shall be done at no expense to the Grantor.

9. 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.

10. If at any time the use of the premises for the purposes herein should be abandoned or discontinued by the Grantee, the said easement over the herein described premises shall thereupon cease and determine and the Grantee shall surrender or cause to be surrendered to the Grantor or its successors and assigns, the peaceable possession of said described premises, and title to the said premises shall remain in the Grantor, or its successors or assigns, free and clear of all rights and claims of the Grantee and of the public for use and occupancy of the said premises.

11. This easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee.

12. All contracts between the Grantees and its contractor, for the construction provided for, or maintenance work on the highway within the Railroad right-of-way, will require the contractor to protect and hold harmless the Railroad and any other railroad company occupying or using the Railroad's right-of-way or line of railroad against all loss, liability and damage arising from activities of the contractor, its forces or any of its subcontractors or agents, and will further provide that the contractor shall carry insurance of the kinds and amounts hereinafter specified:

A. Commercial General Liability Insurance, to include contractual liability and products completed operations, 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 the Railroad, with minimum limits for bodily injury and property damage or \$2,000,000 for each occurrence with and aggregate of \$4,000,000. This policy shall contain a "Waiver of Transfer Rights" endorsement to waive any right of recovery that the insurance company may have against the Railroad because of payments made for bodily injuries or property damage.

B. Business Automobile Policy Insurance, including owned, non-owned, and hired vehicles with minimum limits for bodily injury and property damage of \$1,000,000 per occurrence on all vehicles used while performing any work pursuant to this agreement.

C. Worker's Compensation Insurance or coverage as required under the Arizona Law. The policy should include occupational disease to required statutory limits, employers liability of \$1,000,000 to include FELA, if appropriate, and an "All States" endorsement.

A certificate of insurance must be provided to the Railroad, if within 50 feet of the centerline of any Railroad Trackage, prior to commencement of work, the Railroad shall

not be named insured under the above policies.

Additionally, the contractor shall furnish to the Railroad:

Railroad Protective Liability Insurance policy with limits of \$2,000,000 per occurrence and \$6,000,000 aggregate for bodily injury and property damage. This policy shall remain in force during the construction phase of the agreement and the Railroad prior to commencement of work.

If the Grantees, its contractor, subcontractors, or agents in the performance of the work herein provided for or by the failure to do or perform anything for which it is responsible under the provision hereof, shall damage or destroy any property of the Railroad, such damage or destruction shall be corrected by the Agency in the event its contractor or the insurance carriers fail to repair or restore the same.

13. Grantee shall and hereby releases and discharges Grantor of and from any and all liability for damage to or destruction of any facility, and any other property of Grantee located at or near Grantor's premises; and hereby assumes any and all liability for injury to or death of any and all persons whomsoever, including officers, employees and agents of the parties hereto, or loss of or damage to property to whomsoever belonging, including property owned by, leased to or in the care, custody and control of the parties hereto, in any manner arising from or during construction, and reconstruction, use, maintenance, repair or removal of said facility, however such injury, death, loss, damage or destruction aforesaid may occur or be caused; and does hereby indemnify and save harmless the Grantor 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. Grantee further agrees to appear and defend in the name of Grantor 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 Grantor in any such suit or action. Notwithstanding the foregoing, nothing herein contained is to be deemed or construed as an indemnification against the sole negligence of the Grantor, its officers, employees or agents.

14. 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.

15. 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 Roadway upon the herein described premises or otherwise.

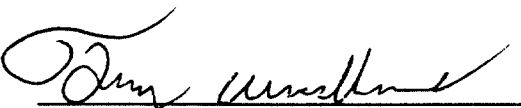
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TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for public use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore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

IN WITNESS WHEREOF, the said **BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY** has caused this instrument to be signed by its authorized officer, and the corporate seal affixed on the 4th day of DECEMBER, 2002.

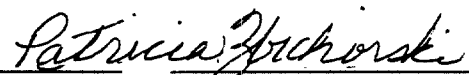
ACCEPTED:

**THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY
COMPANY**

By: 
TERRY WOODHOUSE

By: 
D. P. Schneider
General Director Real Estate

By: 
JANICE WOODHOUSE

ATTEST:
By: 
Patricia Zornowski
Assistant Secretary



BNSF 02000-247, Merrill, OR
ANT #1411

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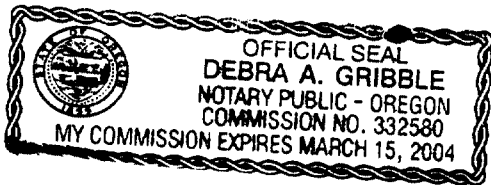
STATE OF OREGON

COUNTY OF

Klamath

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) ss.
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On this day September 24, 2002 personally appeared the above named by TERRY WOODHOUSE and JANICE WOODHOUSE and acknowledged the foregoing instrument to be their voluntary act and deed.



Before me: Debra A. Gribble

Notary Public for: Oregon

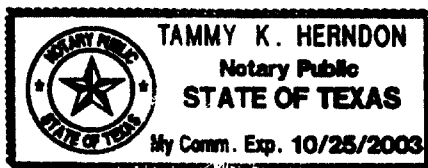
My commission expires: March 15, 2004

STATE OF TEXAS

COUNTY OF TARRANT

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) ss.
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The foregoing instrument was acknowledged before me D. P. Schneider and Patricia Zbichorski, known to me to be the General Director Real Estate and Assistant Secretary, respectively, of The Burlington Northern and Santa Fe Railway Company, a Delaware corporation, this 4th day of December, 2002.



Before me: Tammy K. Herndon

Notary Public for State of Texas

My commission expires: 10/25/03