

**NON-EXCLUSIVE  
ACCESS ROADWAY EASEMENT**

**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 Meak Drive, Fort Worth, Texas 76131-2830, Grantor, for **TEN AND HUNDREDTHS DOLLARS (\$10.00)** to it paid by **THE BARNETT GROUP OREGON, LLC**, a Washington limited liability company, whose address for purposes of this instrument is 19567 27<sup>TH</sup> Avenue NW, Seattle, Washington 98177, 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, a **NON-EXCLUSIVE EASEMENT** to construct, maintain, replace, and remove an ingress and egress driveway and roadway, hereinafter called **ROADWAY**, over, upon and across the following described premises, situated in Klamath County, State of Oregon, to-wit:

**A 60 FOOT WIDE INGRESS-EGRESS EASEMENT SITUATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, THE CENTERLINE OF WHICH BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF LAVERNE AVENUE, FROM WHICH THE EAST QUARTER CORNER OF SAID SECTION 9 BEARS NORTH 00°34'25" EAST 50.00 FEET AND SOUTH 89°25'35" EAST 1424.04 FEET; THENCE SOUTH 00°34'25" WEST 46.00 FEET; THENCE SOUTH 89°25'35" EAST 93.25 FEET, MORE OR LESS, TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 9, WITH BEARINGS BASED ON RECORD OF SURVEY 5000 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.

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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 Grantee on behalf of itself, its 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 and further agree that if the present structure, if any, located on the premises is at any time in the future removed, raised, relocated or destroyed by an act of man or nature, no new structure will be built or rebuilt on these premises.
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. 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.

9. 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.

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

11. All contracts between the Grantee and its contractor, for the construction provided for, or maintenance work on the highway within the Grantor right-of-way, will require the contractor to protect and hold harmless the Grantor and any other railroad company occupying or using the Grantor'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 Grantor, 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 Grantor 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 Oregon 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 Grantor, if within 50 feet of the centerline of any Grantor Trackage, prior to commencement of work, the Grantor shall not be named insured under the above policies.

If the Grantee, 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 Grantor, such damage or destruction shall be corrected by the Grantee in the event its contractor or the insurance carriers fail to repair or restore the same.

12. 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.

The parties to this agreement acknowledge that the Grantee cannot, by Oregon State Law, enter into an unqualified indemnity or hold harmless clause and therefore agree that the conditions of this document are subject to the provisions of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300.

13. 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.

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14. 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.

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 THE 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 16<sup>th</sup> day of July, 2003.

ACCEPTED:

THE BURLINGTON NORTHERN  
AND SANTA FE RAILWAY  
COMPANY

THE BARNETT GROUP  
OREGON, LLC

By:

Dan E. Burns  
Title MANAGER

By:

W. P. Schneider

ATTEST:

By:

Title

By:

Patricia Zychorski  
Assistant Secretary



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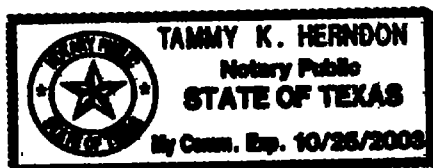
STATE OF WASHINGTON )  
COUNTY OF KING ) §

On this 16 day of July, 2003, before me personally appeared DAVID E. BARNETT and \_\_\_\_\_, who, being duly sworn, each for himself and not one for the other, did say that the former is the MANAGER and the latter is the \_\_\_\_\_ of THE BARNETT GROUP OREGON, LLC, a 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.

Before me: Linda L. OwensNotary Public for: WASHINGTONMy commission expires: May 16, 2007

STATE OF TEXAS )  
COUNTY OF TARRANT ) §

On this 19th day of August, 2003, before me personally appeared D.P. Schneider and Patricia Zichorski, 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 The Burlington Northern and Santa Fe Railway Company, a 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.

Before me: Tammy K. HerndonNotary Public for State of TexasMy commission expires: 10/25/03

o/c: Gary Davis