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## RECORDING COVER SHEET

THIS COVER SHEET HAS BEEN PREPARED  
BY THE PERSON REPRESENTING THE  
ATTACHED INSTRUMENT FOR RECORDING.  
ANY ERRORS IN THIS COVER SHEET DO NOT  
AFFECT THE TRANSACTION(S) CONTAINED  
IN THE INSTRUMENT ITSELF.

State of Oregon, County of Klamath  
Recorded 06/03/05 10:52Am  
Vol M05 Pg 41363  
Linda Smith, County Clerk  
Fee \$ 36.00 # of Pgs 4

### After Recording, Return To:

**John Dey**  
**17356 Hill Road**  
**Klamath Falls, Oregon 97603**

- 1. Name(s) of the Transaction(s): Release Agreement**
- 2. Direct Party (Grantor): W.C. Ranch, Inc., an Oregon Corporation**
- 3. Indirect Party (Grantee): The Burlington Northern and Santa Fee Railway Company, a Delaware Corporation**
- 4. True and Actual Consideration Paid: .00**
- 5. Legal Description:**

**All that part of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 21,  
Township 40 South, Range 10 East, lying southwesterly of a line parallel  
with and distant seventy-five feet north easterly of the center line of the  
railroad of said Great Northern Railway Company as now definitely  
established and extending across said land.**

3:00 AM

**RELEASE AGREEMENT**

This Release Agreement ("Agreement") is entered into this 9<sup>th</sup> day of March, 2005, at Klamath County, Oregon by and between the W.C. Ranch, Inc., an Oregon corporation, ("Releasor") and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("BNSF").

**RECITALS**

This Agreement is entered into with reference to the following facts:

A. By those certain Right of Way Contracts dated March 11, 1931 and May 4, 1931, and recorded in the records of Klamath County, Oregon, on May 9, 1931, in Book 95 of Deeds, page 242, William F. Nieman, a widower, conveyed to the Great Northern Railway Company ("Railroad") a right-of-way across a certain parcel of real property more particularly described as ("Railroad Property"):

All that part of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 21, Township 40 South, Range 10 East, lying southwesterly of a line parallel with and distant seventy-five feet north easterly of the center line of the railroad of said Great Northern Railway Company, as now definitely established and extending across said land.

B. Pursuant to said Right of Way Contracts, Railroad did covenant to, among other things, provide a grade crossing across the Railroad Property.

C. There exists a private crossing, DOT #066908E, Milepost 11.09, Gateway Subdivision, Northern California Division, Line Segment 55, Klamath County, Oregon ("Crossing") across the Railroad Property which Releasor uses to access its real property adjacent to the Railroad Property.

D. Releasor has succeeded to the interest of William F. Nieman under said Right of Way Contracts and BNSF has succeeded to the interest of Railroad under said Right of Way Contracts.

E. Releasor has alternate access to its property located adjacent in Klamath County, Oregon.

F. Releasor warrants that he has authority to execute this Release Agreement.

G. BNSF currently has a program of eliminating all unnecessary at-grade road crossings on its right-of-way.

H. Releasor is willing to release BNSF from its obligation to construct and maintain the Crossing and any and all future crossings across the Railroad Property, upon the terms and conditions set forth below.

**TERMS OF RELEASE**

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. Releasor warrants and represents to BNSF that he has succeeded to the interest of William F. Nieman reserved in the aforementioned Right of Way Contracts to require the construction and maintenance of a grade crossing across the Railroad Property.
2. Releasor shall deliver to BNSF a quitclaim deed of the rights reserved in the aforementioned Right of Way Contracts to require the construction and maintenance of a grade crossing across the Railroad Property.
3. BNSF agrees not to remove the private crossings located at Milepost 10.98 and MP 11.74, Gateway Subdivision, Northern California Division, Line Segment 55, Klamath County, Oregon.
4. Releasor, on behalf of itself and its successors and assigns, hereby releases and forever discharges BNSF from the obligations set forth in said Right of Way Contracts to construct and maintain a grade crossing across the Railroad Property. *Releasor, for itself and its successors and assigns, further waives its right to require the construction of fences, future farm crossings, or cattle guards across the Railroad Property as provided for by O.R.S. 608.310 or by any contract, common law or other right.*
5. Releasor hereby grants permission to BNSF to remove the existing private crossing designated as DOT #066908E, Milepost 11.09, Gateway Subdivision, Northern California Division, Line Segment 55, Klamath County, Oregon ("Crossing").
6. This Agreement contains the entire understanding between the parties concerning the release of rights to require the construction and maintenance of crossings across the Property. Any and all prior negotiations that are not contained in this Agreement are superseded and are of no force or effect. Each party represents and warrants that no promise or inducement to enter into this Agreement has been made to either party that is not set forth herein.
7. Releasor covenants and agrees to execute such further documents and perform such further acts as may be reasonable and necessary to effectuate the purposes of this Agreement.
8. This Agreement shall be interpreted in accordance with the laws of the State of Oregon. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder shall be construed and enforced so as to best effectuate the intention of the parties at the time this Agreement was entered into.

9. This Agreement may not be orally superseded, modified, or amended. No waiver, modification, or amendment shall be valid unless signed by all parties.

10. This Agreement shall be binding not only upon Releasor but its heirs, assigns, successors in interest and legal representatives.

DATED:

W. C. RANCH, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

THE BURLINGTON NORTHERN AND SANTA  
FE RAILWAY COMPANY

By \_\_\_\_\_

Its \_\_\_\_\_