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WHEN RECORDED MAIL TO:

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 OREGON DEPARTMENT OF TRANSPORTATION
 RIGHT OF WAY SECTION
 355 CAPITOL STREET NE, ROOM 420
 SALEM, OR 97301-3871

State of Oregon, County of Klamath
 Recorded 07/29/05 8:18 PM
 Vol M05 Pg 58809-14
 Linda Smith, County Clerk
 Fee \$ 46.00 # of Pgs 10

TEMPORARY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that **BNSF RAILWAY COMPANY**, (formerly known as The Burlington Northern and Santa Fe Railway Company and formerly known as Burlington Northern Railroad Company), a Delaware corporation, whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort. Worth, Texas 76131, Grantor, for Ten and No/100 dollar (\$10.00) to it paid by, **STATE OF OREGON by and through its Department of Transportation**, its successor and assigns, 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 **TEMPORARY EASEMENT** for the construction, operation and maintenance of a roadway cul-de-sac, hereinafter called Cul-de-Sac, over, upon and across the following described premises, situated in Klamath Falls, Klamath County, State of Oregon, at Railroad Mile Post 0.39, project #US DOT No. 066879W Project Key #12413, being more particularly described on Exhibit "A", attached hereto and by this reference made a part hereof.

Temporary Easement herein is granted for the duration of said project and until such time as final court judgment is issued as to whether crossing No.s ODOT 10B-000/US DOT No. 066 879 W may be permanently closed and until such time as permanent cul-de-sac location is constructed.

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 Cul-de-Sac, 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 Cul-de-Sac 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 cul-de-Sac 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 cul-de-Sac 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 cul-de-Sac on said premises.
5. Grantor and Grantee have entered into that certain Letter Agreement For Longitudinal Easements between the Grantor and the Grantee signed by Grantee on June 16, 2005, and accepted by Grantor on July 18, 2005, concerning the Premises (the "Agreement"). The terms of the Agreements are incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the Agreements are, for whatever reason, no longer in effect..
6. 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.

7. 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.
8. If during the construction or subsequent maintenance of said Cul-de-Sac, 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.
9. 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.
10. 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 releases Grantor from 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 Grantee's facility by Grantee; 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 negligence of Grantee. 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 the Oregon Tort Claims Act, ORS Chapter 30 and to the extent applicable, the limitations stated in the Constitution of the State of Oregon, Article XI, Section 7.

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 **BNSF RAILWAY COMPANY** has caused this instrument to be signed by its authorized officer, and the corporate seal affixed on the 12th day of JULY, 2005.

BNSF RAILWAY COMPANY

Accepted on behalf of the
Oregon Department of Transportation

Howard Bugstion

By: Dalen E. Wintermute
Dalen E. Wintermute
Manager-Land Revenue Management



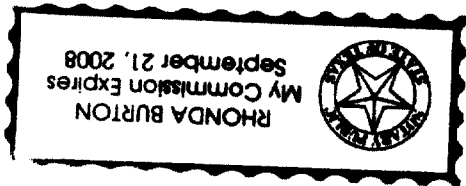
ATTEST:

By: Patricia Zbichorski
Patricia Zbichorski
Assistant Secretary

58813

STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

On this 18th day of July, 2005, before me personally appeared Dalen E. Wintermute and Patricia Zbichorski, who, being duly sworn, each for himself and not one for the other, did say that the former is the Manager-Land Revenue Management and the latter is the Assistant Secretary of **BNSF 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: *Rhonda Burton*
Notary Public for State of Texas
My commission expires: 9/21/2008

FORM APPROVED BY LAW

58814

EXHIBIT A-1 - Page 1 of 1

File 6007331

1R-4-996

12/14/2004

Temporary Easement for Detour (3 years or duration of Project, whichever is sooner)

A parcel of land lying in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9, Township 39 South, Range 9 East, W.M., Klamath County, Oregon, and being a portion of that property described as the Burlington Northern Santa Fe Railway Right of Way in Book M - 321 Page 327 of the Klamath County Record of Deeds; the said parcel being that portion of said property described as follows:

Beginning at a point on the Southerly line of the Midland Highway, said point being South 89° 59' 36" West a distance of 2603.43 feet from the East quarter corner of Section 9, Township 39 South, Range 9 East, W.M.; thence South 00° 22' 20" West 137.80 feet; thence South 89° 37' 40" East 111.55 feet; thence North 00° 22' 20" East 137.80 feet to said Southerly line; thence North 89° 37' 40" West along said Southerly line a distance of 111.55 feet to the point of beginning.

Bearings are based on County Survey No. 6819, filed October 24, 2002, Klamath County, Oregon.

This parcel of land contains 15371 square feet, more or less.