

2007-001642

Klamath County, Oregon



00014018200700016420120126

01/30/2007 03:44:07 PM

Fee: \$76.00

MTC73911

**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.

**After Recording, Return To:**

AMERITITLE Klamath Avenue Klamath Falls, OR 97601

**1. Name(s) of the Transaction(s):**

Drainage Easement Agreement

**2. Direct Party (Grantor):**

BNSF Railway Company

**3. Indirect Party (Grantee):**

Klamath County, a political subdivision of the State of Oregon

**4. True and Actual Consideration Paid:**

\$10.00

**5. Legal Description:**

A strip of land 10 feet in width & 58 feet in length in the  
NE 1/4 NW 1/4 and NW 1/4 NW 1/4 of Section 10,  
Township 39 South, Range 9 East of the Willamette Meridian,  
Klamath County, Oregon

76<sup>00</sup>

## DRAINAGE EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that BNSF RAILWAY COMPANY (formerly known as The Burlington Northern and Santa Fe Railway Company), a Delaware corporation ("**Grantor**"), for Ten and No/100 Dollars (\$10.00) to it paid by KLAMATH COUNTY, a political subdivision of the State of Oregon ("**Grantee**"), whose address for purposes of this instrument is 305 Main Street, Klamath Falls, Oregon 97601, and the promises of the Grantee hereinafter specified, does hereby GRANT, BARGAIN, SELL AND CONVEY unto the Grantee, subject to the terms and conditions hereinafter set forth, a non-exclusive easement ("**Drainage Easement**") over, upon, across, through and under that certain easement area (the "**Drainage Easement Area**"), situated in Klamath County, State of Oregon, as depicted in on the drawing attached hereto as Exhibit "A", such Drainage Easement to be for the sole purposes of constructing, reconstructing, installing, repairing, and maintaining public drainage and appurtenant connections and related facilities ("**Drainage Facilities**").

The rights granted under this Drainage Easement Agreement are made subject to and upon the following express conditions:

1. Grantee acknowledges that the Drainage Easement granted pursuant to this Drainage Easement Agreement is non-exclusive. Grantor hereby reserves to itself, its successors and assigns, all rights in and to the Drainage Easement Area and the right to use and enjoy the surface and subsurface thereof for any and all purposes whatsoever. Without limitation, Grantor specifically RESERVES AND RETAINS FOR THE BENEFIT OF GRANTOR, ITS SUCCESSORS AND ASSIGNS: (i) the right of passage over the Drainage Easement Area and (ii) the right to use the Drainage Easement Area for the location, construction, reconstruction, relocation and operation of such surface or subsurface pipelines, transmission lines, fiber optics, telecommunications lines, drainage lines and other facilities and improvements as necessary or desired by Grantor. The easement rights granted pursuant to this Drainage Easement Agreement are neither exclusive nor a dedication of the Drainage Easement Area to the public. Grantor agrees that Grantor's and its successors' and assigns' exercise of Grantor's reserved rights pursuant to this Section 1 shall not unreasonably interfere with Grantee's Drainage Facilities.

2. The parties acknowledge and agree that, as a material consideration for the grant of the Drainage Easement by Grantor to Grantee, Grantee is simultaneously herewith granting a franchise ("**Railroad Franchise**") to Grantor over certain property located in Klamath County for the sole purposes of constructing, operating, maintaining, repairing, modifying, reinstalling, relocating, replacing and removing of a rail line and/or other structures for rail movement and operations, all as further described in the Railroad Franchise. The parties further acknowledge and agree that the original fully executed and acknowledged Drainage Easement and the original fully executed and acknowledged Railroad Franchise shall each be promptly delivered by the last party to execute to: LandAmerica American Title Company ("**Title Company**"), 6029 Beltline Road, Suite 250, Dallas, Texas 75254, Attn: Carole Badgett, Senior Vice President, telephone: (972) 789-8426, facsimile (972) 789-8029, e-mail: [Carole.Badgett@LandAm.com](mailto:Carole.Badgett@LandAm.com). Title Company shall hold the originals in escrow and shall not record either the Drainage Easement or the Railroad Franchise until it has received:

a. Immediately available funds in the form of a federal wire transfer, certified or cashier's check, or such other means of funding acceptable to Title Company so as to constitute readily available funds for immediate disbursement by Title Company ("**Readily Available Funds**") from:

i. Grantee in an amount equal to the sum of:

- (1) the cost of the Drainage Easement Title Policy (as hereinafter defined),
- (2) the cost of the Drainage Easement Area Survey (as hereinafter defined),
- (3) one-half of Title Company's escrow fee and
- (4) the cost of recording the Drainage Easement.

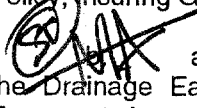
ii. Grantor in an amount equal to the sum of:

- (1) the cost of the Railroad Franchise Title Policy (as defined in the Railroad Franchise),
- (2) the cost of the Railroad Franchise Area Survey (as defined in the Railroad Franchise),
- (3) one-half of Title Company's escrow fee and
- (4) the cost of recording the Railroad Franchise.

b. Such other and further documents as may be reasonably required to consummate the transactions contemplated by this Drainage Easement Agreement and the Railroad Franchise Agreement and for Title Company to: (i) issue the Drainage Easement Title Policy and the Railroad Franchise Title Policy pursuant to this Drainage Easement Agreement and the Railroad Franchise Agreement and (ii) disburse the Readily Available Funds collected under Section 2.a. above to the party(ies) entitled to such disbursements.

3. Within thirty (30) days after the Effective Date, Grantee shall, at its sole cost and expense, obtain:

a. an ALTA Owner's Policy ("**Drainage Easement Title Policy**") issued by Title Company, or a binding commitment by Title Company to issue the Drainage Easement Title Policy, insuring Grantee's interest in the Drainage Easement, and

 a current on-the-ground staked survey ("**Drainage Easement Area Survey**") of the Drainage Easement Area performed by Klamath County ("**Surveyor**"), which Drainage Easement Area Survey must: (i) be certified to Grantor, Grantee and the Title Company, (ii) reflect the actual dimensions of and the total number of gross and net acres within the land described therein, (iii) identify any rights-of-way, easements, or other encumbrances by applicable recording reference, (iv) show the location of all improvements (including, but not limited to, railroad tracks), (v) be conducted in accordance with the Minimum Detail Requirements and Standards for Land Title Surveys of the American Title Association and American Congress on Surveying and Mapping, and (vi) include the Surveyor's registered number and seal, the date of the survey, and a surveyor certificate reasonably acceptable to Grantor, Grantee and the Title Company.

c. Notwithstanding anything contained herein to the contrary, Grantor has no obligation whatsoever, monetary or otherwise, with respect to the Drainage Easement Title Policy, the Drainage Easement Area Survey or any matters disclosed therein.

4. The Drainage Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of record, if any, relating to the Drainage Easement Area and subject to all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including without limitation zoning laws, regulations, and ordinances of municipal and other governmental authorities (collectively, "**Laws**").

5. Unless earlier terminated pursuant to the terms of this Drainage Easement Agreement, the Drainage Easement shall continue to be in effect until Grantee, or its successors and assigns, ceases to use the Drainage Easement Area for the Drainage Facilities. Upon expiration or termination of the Drainage Easement, Grantor has the right to elect, in Grantor's sole discretion, to: (i) require Grantee, at its sole cost and expense, to promptly remove all or any part of the Drainage Facilities from the Drainage Easement Area as Grantor may designate or (ii) require Grantee to execute a bill of sale or other document satisfactory to Grantor conveying title to the Drainage Facilities to Grantor.

6. Grantee shall perform or cause to be performed the construction, reconstruction,

installation, repair and maintenance of the Drainage Facilities in the Drainage Easement Area at Grantee's sole cost and expense: (i) in a good and workmanlike fashion in conformance with sound and acceptable engineering practices and (ii) in strict conformity with the terms and provisions of that certain Construction and Maintenance Agreement between the parties dated February 7, 2006. Grantor shall have no monetary or non-monetary responsibility whatsoever for the Drainage Facilities. Grantee shall in no event construct any structures or grant any additional easements or rights of use within the Drainage Easement Area to any other party. Grantee shall not cause or permit another person to cause any damage to the Property, the Drainage Easement Area or the Drainage Facilities, and Grantee shall be responsible for any such damage which may occur as a result of any action or inaction of any Grantee Party (as hereinafter defined). Grantee shall not permit the existence of any nuisance or the accumulation of junk, debris or other unsightly materials on the Drainage Easement Area and shall keep the Drainage Easement Area in a clean and safe condition.

7. Grantee, at Grantee's sole cost, shall perform all activities and work on or near the Drainage Easement Area and/or Grantor's property adjacent to the Drainage Easement Area ("**Grantor's Adjacent Property**") in such a manner as to preclude injury to persons or damage to the property of Grantor, or any party on or with property on Grantor's Adjacent Property, and shall ensure that there is no interference with the railroad operations or other activities of Grantor, or anyone present on Grantor's Adjacent Property with the authority or permission of Grantor. Grantee shall not disturb any improvements of Grantor or Grantor's existing lessees, grantees, licensees, beneficiaries or lien holders, if any, or interfere with the use of such improvements. If removal, alteration, relocation or reconstruction of any existing right-of-way fences, telephone or telegraph poles, or other facilities, is necessary by reason of the use of the Drainage Easement Area for the purposes permitted hereunder, any such removal, alteration, relocation, or reconstruction shall be at Grantee's sole cost and expense. 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, reconstruction, installation, repair and maintenance of the Drainage Facilities within the Drainage Easement Area.

8. Prior to entering the Drainage Easement Area, and at all times during the term of this Drainage Easement Agreement, Grantee shall comply, and shall cause any Grantee Party performing work on the Drainage Easement Area or entering the Drainage Easement Area on behalf of Grantee: (i) to comply with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including without limitation zoning laws, regulations, and ordinances of municipal and other governmental authorities, if any (collectively, "**Laws**") and (ii) all of Grantor's applicable safety rules and regulations ("**Safety Measures**"). Grantor may direct one of its field engineers to observe or inspect the performance of the Drainage Facilities, or any portion thereof, at any time to ensure such safety and noninterference. If Grantee or its officers, agents, invitees, licensees, employees or contractors (individually, a "**Grantee Party**" and collectively, "**Grantee Parties**") is ordered at any time to leave the Drainage Easement Area or to halt any activity on the Drainage Easement Area, then the party conducting that activity immediately shall cease such activity and leave the Drainage Easement Area, if the order was issued by Grantor's personnel to promote safety or such noninterference with other activities or property. Notwithstanding the foregoing right of Grantor, Grantor has no duty or obligation to observe or inspect, or to halt work on, the Drainage Easement Area, it being solely Grantee's responsibility to ensure that the Drainage Facilities is planted and maintained in strict accordance with all Laws, Safety Measures, such noninterference and in compliance with all terms hereof.

9. Grantee and Grantee Parties must not conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials within twenty-five (25) feet of the centerline of any railroad track located on Grantor's rail corridor or property, except in accordance with the terms and conditions of that certain Construction and Maintenance Agreement ("**C&M Agreement**") for the Drainage Facilities between the parties dated February 7, 2006, including without limitation the terms and provisions Exhibit C and C-1 attached thereto.

10. Grantee and Grantee Parties shall not conduct any activities on, or be present on, any portion of the Drainage Easement Area that is within twenty-five (25) feet of any active railroad track, except in accordance with the C&M Agreement, including without limitation the terms and provisions Exhibit C and C-1 attached thereto.

11. Grantee has the right, at Grantee's expense, to draw electricity and other utilities over, upon, across, through or under the Drainage Easement Area that Grantee, in its sole discretion, considers necessary or convenient for the performance of the Drainage Facilities on the Drainage Easement Area; provided, however, that if such utilities require crossing Grantor's tracks on Grantor's Adjacent Property, Grantee shall first execute Grantor's standard Crossing Agreement prior to any such crossing. The foregoing right does not, by prescription, necessity or otherwise, grant the Grantee the right to place any of the foregoing outside of the Drainage Easement Area or to use property outside of the Drainage Easement Area to access the Drainage Easement Area for any of the foregoing.

12. Any and all cuts and fills, excavations or embankments necessary in the performance of the Drainage Facilities shall be made and maintained by Grantee in such manner, form and to the extent as will provide adequate drainage of and from the Drainage Easement Area; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from the Drainage Easement Area, Grantee shall construct and maintain such culverts or drains within the Drainage Easement Area as may be requisite to preserve such natural and pre-existing drainage. Grantee shall wherever necessary, construct extensions of existing drains, culverts or ditches through or along the Drainage Easement Area, such extensions to be of adequate sectional dimensions to preserve flowage of drainage or other waters, and/or material and workmanship equally as good as those now existing.

13. Grantee shall obtain all necessary or appropriate approvals or authorizations from municipal or other governmental authorities related to the Drainage Facilities and/or its use and occupancy of the Drainage Easement Area for the purposes permitted hereunder.

14. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Drainage Easement Area, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Drainage Easement Area. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Drainage Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE DRAINAGE EASEMENT AREA, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE DRAINAGE EASEMENT AREA, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS DRAINAGE EASEMENT AGREEMENT IN THE DRAINAGE EASEMENT AREA IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE DRAINAGE EASEMENT AREA. Grantee has inspected or will inspect the Drainage Easement Area, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Drainage Easement Area. Grantee acknowledges that this Drainage Easement Agreement does not contain any implied warranties that Grantee or Grantee Parties can successfully construct or operate the Improvements.

15. GRANTOR DOES NOT WARRANT ITS TITLE TO THE DRAINAGE EASEMENT AREA NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Drainage Easement Area, or by the abandonment by

Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

16. Grantee shall, at its sole cost and expense, procure and maintain during the life of this Drainage Easement Agreement the following insurance coverage:

a. Commercial General Liability Insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$2,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage may be included on the policy with regard to the work being performed under this Drainage Easement or otherwise with respect to any obligations under this Drainage Easement.

b. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to, the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

c. Workers Compensation and Employers Liability Insurance. This insurance includes coverage for, but not limited to:

- ◆ Grantee's statutory liability under the worker's compensation Laws of the state(s) in which the work is to be performed. If optional under State Law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

d. Other Requirements. In addition to the foregoing, the following other requirements shall apply to this Section:

i. Where allowable by Law, all policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

ii. Grantee agrees to waive its right of recovery against Railroad for all claims and suits against Railroad resulting from Grantee's willful misconduct or negligent act in its maintenance or use of the Drainage Easement Area. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance must reflect the

waiver of subrogation endorsement. Grantee further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad, for loss of its owned or leased property or property under its care, custody or control.

iii. Grantee's insurance policies, through policy endorsement, must include wording which states that the policy will be primary and non-contributing with respect to any insurance carried by Railroad in regard to any claim that results from Grantee's willful misconduct or negligent act in its maintenance or use of the Drainage Easement Area. The certificate of insurance must reflect that the above wording is included in evidenced policies.

iv. All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and must name Railroad as an additional insured with respect to work performed under this Drainage Easement. Severability of interest and naming Railroad as an additional insured must be indicated on the certificate of insurance.

v. Grantee is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Grantee in lieu of insurance. Any and all Railroad's liabilities that would otherwise, in accordance with the provisions of this Drainage Easement, be covered by Grantee's insurance will be covered as if Grantee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

vi. Prior to commencing work, Grantee must furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. In the event of a claim or lawsuit involving Railroad arising out of this Drainage Easement, Grantee will make available any required policy covering such claim or lawsuit.

vii. Any insurance policy must be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

viii. Grantee represents that this Drainage Easement has been thoroughly reviewed by Grantee's insurance agent(s)/broker(s), who have been instructed by Grantee to procure the insurance coverage required by this Drainage Easement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

ix. Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

x. If any portion of the operation is to be subcontracted by Grantee, Grantee must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured.

xi. Failure to provide evidence as required by this Section will entitle, but not require, Railroad to terminate this Drainage Easement immediately. Acceptance of a certificate that does not comply with this Section will not operate as a waiver of Grantee's obligations hereunder.

xii. The fact that insurance (including, without limitation, self-insurance) is obtained by Grantee will not be deemed to release or diminish the liability of Grantee. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

xiii. For purposes of this Section, "**Railroad**" means "Burlington Northern Santa Fe Corporation", "BNSF Railway Company", and the subsidiaries, successors, assigns, and affiliates of each.

17. Grantee's rights under this Drainage Easement Agreement are and shall be subject and subordinate to any mortgage presently existing, if any, or hereafter placed upon all or any portion of the Drainage Easement Area and any and all matters of record affecting the Drainage Easement Area; provided, however, as a condition to this subordination by Grantee, Grantee's rights under the Drainage Easement shall not be disturbed, nor shall the Drainage Easement be terminated or otherwise affected by Grantor's default under any mortgage.

18. The Drainage Easement shall (a) run with the land, (b) be binding upon Grantor, its successors, legal representatives and assigns, and (c) inure to the benefit of Grantee, its successors, legal representatives and assigns.

19. Grantee shall have the right to assign or transfer this Drainage Easement Agreement without Grantor's consent to any entity owned or controlled by Grantee or any parent or affiliate of Grantee and to any entity that is the successor of Grantee by reason of merger, consolidation or reorganization; provided, however, that the assignee in each instance assumes all of the obligations of Grantee hereunder. With Grantor's consent, which consent shall not be unreasonably withheld, conditioned or delayed, Grantee may assign or transfer a portion of its rights under this Drainage Easement Agreement to third parties, provided such third party assumes a proportional share of the related obligations of the Grantee hereunder.

20. This Drainage Easement Agreement, together with the Railroad Franchise Agreement, represents the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Drainage Easement Area, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Drainage Easement Area as described herein.

21. If any action at law or in equity is necessary to enforce or interpret the terms of this Drainage Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

22. All questions concerning the interpretation or application of provisions of this Drainage Easement Agreement shall be decided according to the substantive Laws of the State where the Drainage Easement Area is located without regard to conflicts of law provisions.

23. If any provision of this Drainage Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Drainage Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Drainage Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.



TO HAVE AND TO HOLD THE ABOVE-DESCRIBED DRAINAGE EASEMENT free and clear of all liens or claims by third parties, together with all the hereditaments and appurtenances thereunto belonging to Grantee for its use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

IN WITNESS WHEREOF, this instrument has been executed to be effective as of the 20<sup>th</sup> day of April, 2006 (the "Effective Date").

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: Blaine Bilderback  
Name: Director - Acquisition & Development  
Title: Blaine Bilderback

GRANTEE:

KLAMATH COUNTY, a political subdivision of the State of Oregon

By: William R. Brown  
Name: Bill Brown  
Title: Commissioner

ACCEPTED AND AGREED AS TO SECTIONS 2 AND 3:

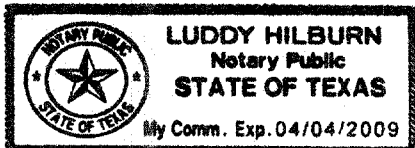
LANDAMERICA AMERICAN TITLE COMPANY, a(n) \_\_\_\_\_

By: Selena Thornton  
Name: Selena Thornton  
Title: Commercial Branch Officer

THE STATE OF Texas  
COUNTY OF Tarrant

§  
§  
§

This instrument was acknowledged before me on the 20<sup>th</sup> day of April, 2008, by Blaine Bilderback of BNSF Railway Company, a Delaware corporation, on behalf of said corporation.



Luddy Hilburn  
Notary Public, State of Texas

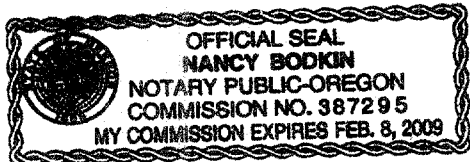
Luddy Hilburn  
Notary's Typed or Printed Name

My Commission Expires 04/04/09

THE STATE OF Oregon  
COUNTY OF Klamath

§  
§  
§

This instrument was acknowledged before me on the 7<sup>th</sup> day of February, 2008, by Chairman William R. Brown of Klamath County, a political subdivision of the State of Oregon, on behalf of said county.



Nancy Bodkin  
Notary Public, State of Oregon

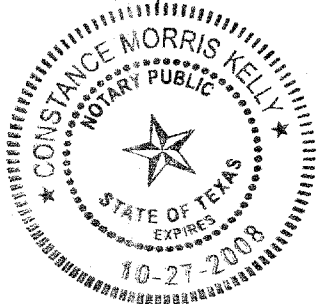
Nancy Bodkin  
Notary's Typed or Printed Name

My Commission Expires Feb 8, 2009

THE STATE OF Texas  
COUNTY OF Dallas

§  
§  
§

This instrument was acknowledged before me on the 14<sup>th</sup> day of August, 2008, by Steve Thornton of LandAmerica Title Company, a(n) title company, on behalf of said



Constance Morris Kelly  
Notary Public, State of Texas

Constance Morris Kelly  
Notary's Typed or Printed Name

My Commission Expires \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

An easement for drainage as granted by that certain instrument recorded \_\_\_ in Volume M\_\_\_, page \_\_\_, Microfilm Records of Klamath County, Oregon, described as follows:

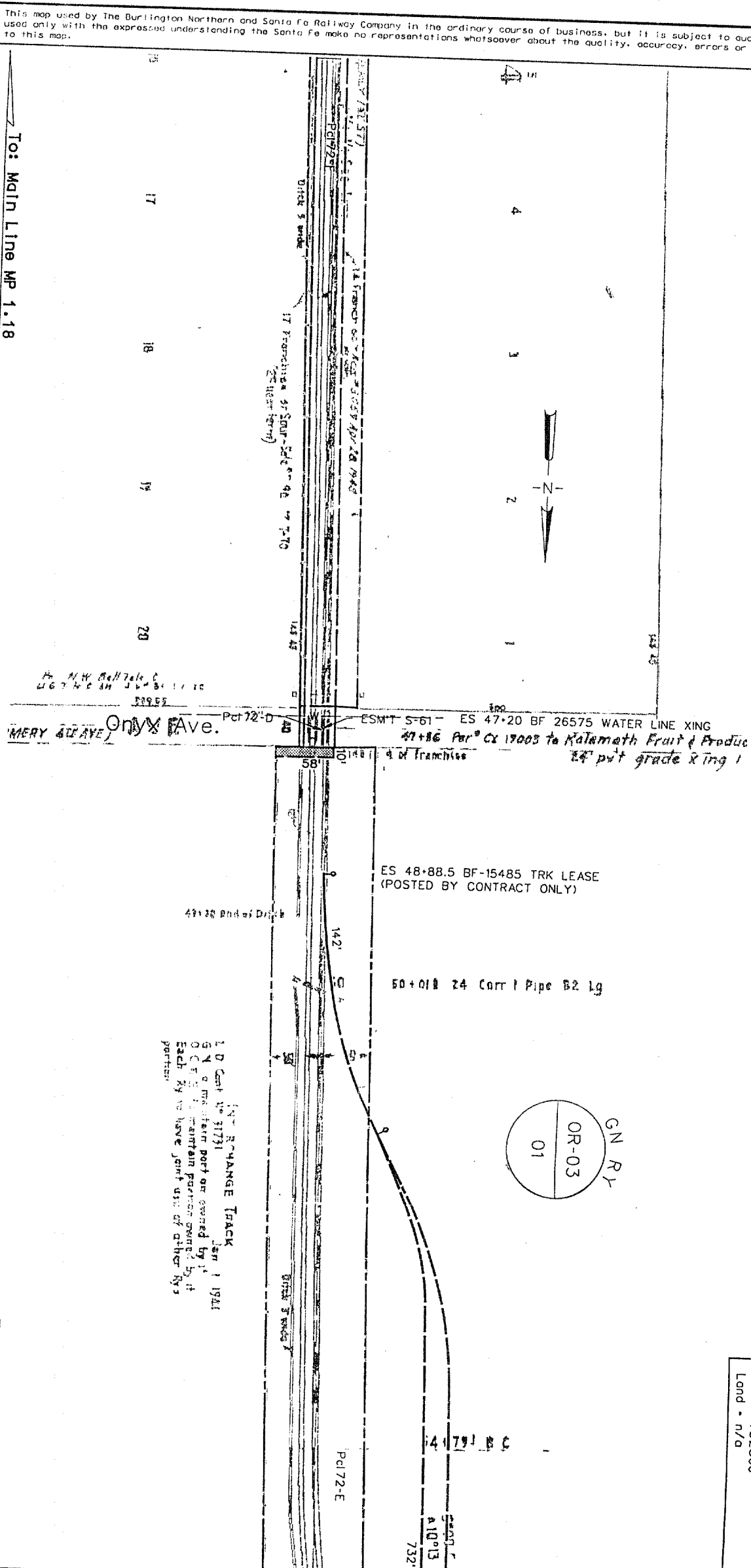
A strip of land 10 feet in width and 58 feet in length in the NE1/4 NW1/4 and NW1/4 NW1/4 of Section 10, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at the NE corner of the easement granted to Klamath County, a municipal corporation, by instrument recorded July 30, 1970 in Volume M70, page 6394, Microfilm Records of Klamath County, Oregon, said point described as follows:

Beginning at the SE corner of the NW NW of Section 10, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon; thence Northerly along the East line of the NW NW of said Section 10, 20 feet; thence N89° 10' West 8 feet; thence North 89° 10' West 42 feet; thence North 0° 10' West 10 feet; thence South 89° 10' East 42 feet to the TRUE POINT OF BEGINNING of this description; thence continuing North 89° 10' East 58 feet; thence South 0° 10' East 10 feet; thence North 89° 10' West 58 feet; thence North 0° 10' West along the East line of said easement granted by that certain instrument recorded July 30, 1970 in Volume M70, page 6394, Microfilm Records of Klamath County, Oregon to the NE corner thereof and the TRUE POINT OF BEGINNING.

EXHIBIT "A"

BNSF File:  
B&W Proj. No.:12196.003  
MAP REFERENCE:  
Sta. - s52187  
R/W - r52566  
Land - n/a



Easm't of +/- .01331 Ac.

To: Klamath County-Public Works Department  
At: Klamath Falls  
Klamath County,  
Oregon

Legend:

☒ Easement Area

Northwest Division  
Oregon Trunk Subdivision - L.S. 0055  
Val. Sec. OR-3 GN RY  
Map S-1  
Sec. 10, T39S, R9E WILLM  
February 25, 2004  
ES 47+62 Opp. M.P. 1.18 THHN

To: end