

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that BURLINGTON NORTHERN RAILROAD COMPANY (formerly named Burlington Northern Inc.), a Delaware corporation, whose address for purposes of this instrument is 2100 First Interstate Center, 999 Third Avenue, Seattle, Washington 98104, Grantor, for Seven Thousand Five Hundred and no/100 Dollars (\$7,500.00) to it paid by THE PORT OF SKAMANIA COUNTY, 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, an EASEMENT to construct, operate, maintain, replace, repair and remove a public roadway between Railroad M.P. 54.2 and 54.4, hereinafter called roadway, over, upon and across the following described premises, situated in Skamania County, State of Washington, to-wit:

A 35.0 foot wide strip of land being the Southeasterly 35.0 feet of Burlington Northern Railroad Company's 200.0 foot wide Kennewick to Vancouver Main Line right of way, lying between the centerline of Kanaka Creek (Easterly city limit of Stevenson, Washington) and a line drawn at right angles to said Railroad's Main Track centerline, 950.0 feet Northeasterly from said Kanaka Creek centerline, as measured along said Main Track centerline, situated in the Henry Shephard D.L.C. #43, T3N, R74E, W.M., in said Skamania County, as shown on Exhibit "A" attached hereto and being a part hereof.

RESERVING, however, unto the Grantor, its successors and assigns, the right to construct, maintain, use, operate, relocate, reconstruct and renew such tracks and facilities as it may at any time, and from time to time, desire within the limits of the land hereinbefore described, including the right and privilege to use said land for any and all purposes, not inconsistent with the use thereof for 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, 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 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.

REAL ESTATE EXCISE TAX

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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 roadway 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 roadway on said premises.
5. For any work performed in the State of Washington, nothing in this agreement is intended to be construed as an indemnification against the sole negligence of the Grantor, its officers, employees or agents. Moreover, for any work performed in the State of Washington, the Grantee specifically and expressly agrees to indemnify the Grantor against all loss, liability and damages, including environmental damage, hazardous materials damage, or penalties or fines that may be assessed, caused by or resulting from the concurrent negligence of (a) the Grantor or the Grantor's agents or employees, and (b) the Grantee or the Grantee's agents or employees, to the extent of the Grantee's negligence.

For any work performed in the State of Washington, the Grantee specifically and expressly waives any immunity it may have under Washington Industrial Insurance, Title 51 RCW, and acknowledges that this waiver was mutually negotiated by the parties hereto.

The Grantee further agrees that it has a duty to defend at its own expense, in the name and on behalf of the Grantor, all claims or suits for injuries or death of persons or damage to property arising or growing out of the work carried on under this contract, for which the Grantor is liable, or is alleged to be liable. However, upon a final determination in a court of law in which a percentage of negligence is attributed to the Grantor, the Grantor agrees to reimburse the Grantee in the same percentage for the costs involved in defending the suit.

For so long as this easement shall survive, all contracts between the Grantee and its contractor, for either the construction herein provided for or maintenance work on the roadway within any easement area described herein or shown on the exhibit attached hereto, shall 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 shall further provide that the contractor shall:

A. Furnish to the Grantor a railroad protective liability policy in the form provided by FHPM 6-6-2-2, or as such form may be hereafter amended or supplanted, and any other pertinent instructions issued by the Federal Highway Administration, Department of Transportation. The combined single limit of said policy shall not be less than Two Million Dollars (\$2,000,000.00) for all damages arising out of bodily injuries to or death of any person or persons and for all damages arising out of loss or destruction of or injury or damage to property in any one occurrence, and, subject to that limit a total (or aggregate) limit of not less than Six Million Dollars (\$6,000,000.00), for all damages arising out of bodily injuries to or death of any person or persons and for all damages arising out of or loss or destruction of or injury or damage to property

during the policy period. Said insurance policy executed by a corporation qualified to write the same in the State in which the work is to be performed, shall be in the form and substance satisfactory to the Grantor and shall be delivered to and approved by the Grantor's Regional Chief Engineer prior to the entry upon or use of its property by the contractor. This being a potentially perpetual easement, Grantor reserves the right to require higher limits of insurance in the future as may be commercially reasonable at the time.

B. Carry regular Contractor's Public Liability and Property Damage Insurance as specified in FHPM 6-6-2-2, or as such form may be hereafter supplanted or amended, and any other pertinent instructions issued by the Federal Highway Administration, Department of Transportation, providing for a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for all damages arising out of the bodily injuries to or death of one person, and, subject to that limit for each person, a total limit of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of bodily injuries to or death of two or more persons in any one accident; and providing for a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for all damages to or destruction of property in any one accident and subject to that limit a total (or aggregate) limit of not less than One Million Dollars (\$1,000,000.00) for all damages to or destruction of property during the policy period. A certified copy of the policy providing said Contractor's Public Liability and Property Damage Insurance executed by a corporation qualified to write the same in the State in which the work is to be performed, in form and substance satisfactory to the Grantor, shall be delivered to and approved by the Grantor's Regional Chief Engineer prior to the entry upon or use of the Grantor's property by the contractor. This being a potentially perpetual easement, Grantor reserves the right to require higher limits of insurance in the future as may be commercially reasonable at the time.

If the Grantee, its contractor, subcontractors or agents, in the performance of the work herein provided or by the failure to do or perform anything for which it is responsible under the provisions 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.

6. 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.
7. All construction, maintenance and improvements of said roadway shall be done at no expense to the Grantor.

8. The Grantee shall, or shall require its contractor to, notify the Grantor's Regional Chief Engineer a sufficient time in advance whenever the Grantee or its contractor is about to perform work on or adjacent to Grantor's right of way and tracks to enable Grantor to furnish flagging and such other protective service as might be necessary and Grantee shall reimburse Grantor for the cost thereof.
9. 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.
10. The Grantee shall construct and maintain a 6 foot high cyclone type fence along the common boundary between the parties hereto, which lies Northeasterly from easement herein. Location of said fence is approximately as shown on said Exhibit "A".

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 RAILROAD COMPANY has caused this instrument to be signed by its authorized officers, and the corporate seal affixed on the 28th day of NOVEMBER, 1990.

ACCEPTED:
THE PORT OF SKAMANIA COUNTY

BY Judy K. Tietzel
Title

BY Elmer L. Staley
Title

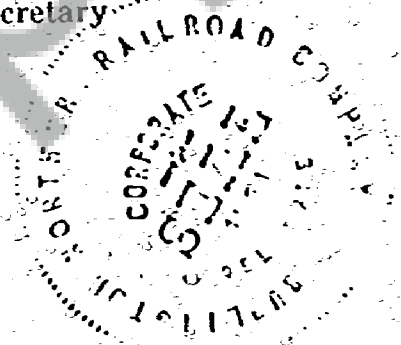
BURLINGTON NORTHERN
RAILROAD COMPANY

BY J. H. Ilkka
Director - Title Services

ATTEST:

BY Anita D. Wells
Assistant Secretary

W. K. Kipinski & Lawrence
DEC 12 10 30 AM '90
Lawrence

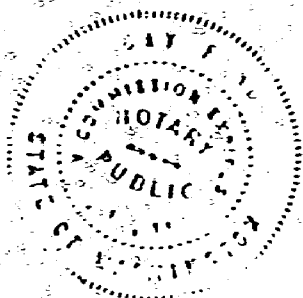


BN 9776 Stevenson, WA

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAMANIA)

On this 22nd day of August, 1990, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Judy Teitzel and Elmer Stacy, to me known to be ~~the~~ one of the Commissioners of the Port, and the Manager, respectively, of THE PORT OF SKAMANIA COUNTY, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

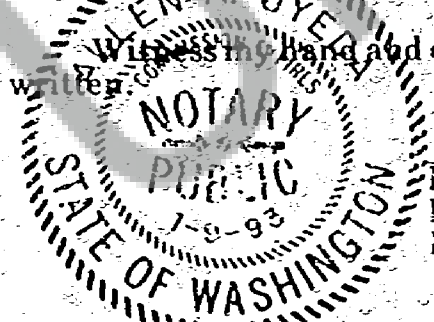


Gay Ford
Notary Public in and for the
State of Washington
Residing at: Carson,
My appointment expires: 8-15-93

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 28th day of November, 1990, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared J. H. Ilkka and Anita D. Wells, to me known to be the Director - Title Services, and Assistant Secretary, respectively, of Burlington Northern Railroad Company, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.



Allen A. Uppala
Notary Public in and for the State of Washington
Residing at: Seattle, Washington
My appointment expires: January 9, 1993

BN 9776 Stevenson, WA

