

NO EXCISE TAX
REQUIRED

JUN 04 2003

BOB DANTINI, Snohomish County Treasurer

By BOB DANTINI

WHEN RECORDED MAIL TO:

CITY OF ARLINGTON
PUBLIC WORKS DEPARTMENT
238 NORTH OLYMPIC AVENUE
ARLINGTON, WASHINGTON 98223



200306041343 6 PGS
06-04-2003 04:16pm \$24.00
SNOHOMISH COUNTY, WASHINGTON

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, (formerly 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 the CITY OF ARLINGTON, a municipal corporation of the State of Washington, 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 for the widening and improvement of the 67th Avenue NE at grade crossing at Railroad Mile Post 5.17, hereinafter called highway over, upon and across the following described premises, situated in the City of Arlington, Snohomish County, State of Washington, to-wit:

That portion of The Burlington Northern and Santa Fe Railway Company's 100.00 foot wide right of way in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15, and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 14, all in Township 31 North, Range 5 East, Willamette Meridian, Snohomish County, Washington, being more particularly shown shaded on Page 6, as Exhibit "A" consisting on one page, attached hereto and by this reference made a part hereof.

Assessor's Property Tax Parcel Account Number(s):

None - Railroad Right of Way

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 highway, 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 highway 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 highway 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 highway 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 highway on said premises.

5. This instrument is granted according to the terms and conditions of that certain Construction and Maintenance Agreement between the Grantor and the Grantee dated January 14, 2002, and made subject to the term and conditions contained therein.
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. 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.
9. On condition that Grantee(s) on behalf of its self, its Successor(s) 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 agrees that if the present highway located on the premises is/are 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.
10. Grantee shall indemnify and save harmless Grantor, its agents, and employees, against all liability, claims, demands, damages, or costs for (a) death or bodily injury to persons including, without limitations, the employees of the parties hereto, (b) injury to property including, without limitation, the property of the parties hereto, (c) design defects, or (d) any other loss, damage or expense arising under either (a), (b) or (c), and all fines or penalties imposed upon or assessed against Grantor, and all expenses of investigating and defending against same, arising in any manner out of (1) activities, use or presence, or

negligence of Grantee, or Grantee's employees, or Grantee's contractors, subcontractors, agents, invitees or any of their employees, in, on, or near Grantor's right of way, or, (2) the performance, or failure to perform, by the Grantee, its contractors, subcontractors, or agents, its work or any obligation under this easement.

12. 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.
13. 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 **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 18th day of December, 2002.

**THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY
COMPANY**

By: *D. P. Schneider*

D. P. Schneider
General Director Real Estate

ATTEST:

By: *Patricia Zbichorski*

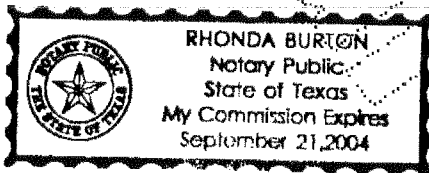
Patricia Zbichorski
Assistant Secretary



STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

On this 18th day of December, 2002, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared D. P. Schneider and Patricia Zbichorski, to me known to be the General Director Real Estate, and Assistant Secretary, respectively, of The Burlington Northern and Santa Fe Railway 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.



Rhonda Burton
Notary Public in and for the State of Texas
Residing at Carrollton, Texas
My appointment expires: 9/21/2004

FORM APPROVED BY LAW:

RECORDER'S NOTE:
PORTIONS OF THIS DOCUMENT
ARE POOR QUALITY FOR SCANNING.

TRACKING NO. _____

EXHIBIT "A"

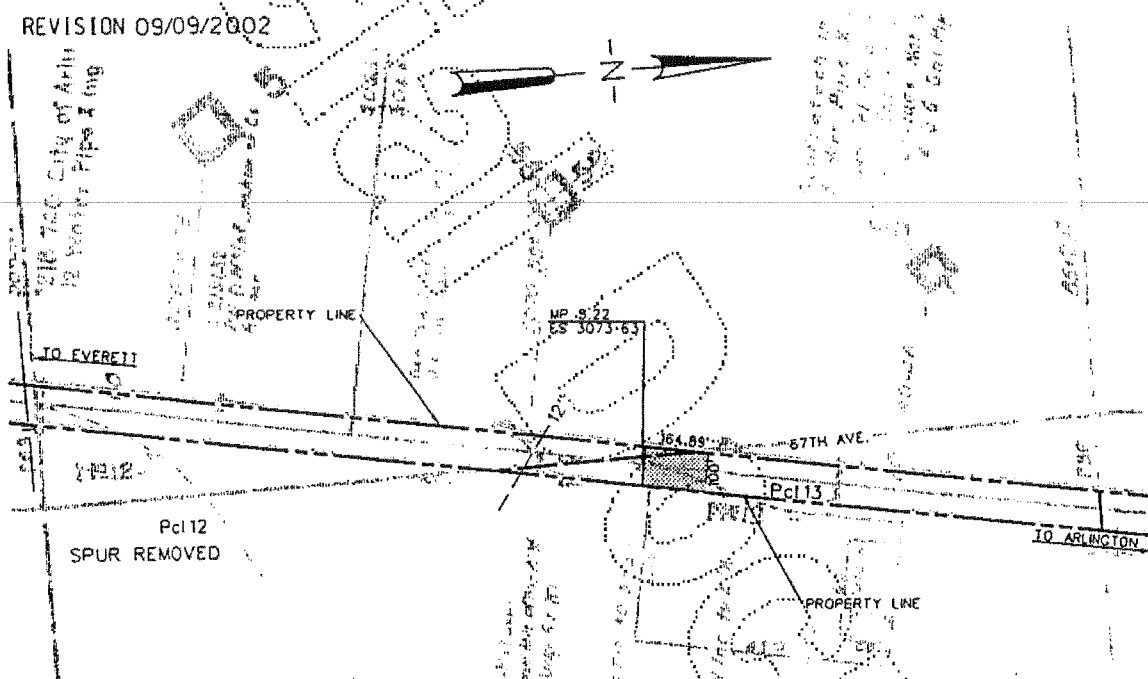
ATTACHED TO CONTRACT BETWEEN
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
AND
CITY OF ARLINGTON

FORT WORTH, TEXAS
SCALE: 1 IN. = 400 FT.
NORTHWEST DIV.
BELLINGHAM SUBDIV. L.S. 0406
DATE 07/17/2002
REVISION 09/09/2002

SECTION: 14&15
TOWNSHIP: 31N
RANGE: 5E

V- WA-9
MAP 9
PARCEL 13

MAP REF. R52398



DESCRIPTION:
A PARCEL OF LAND CONTAINING A TOTAL OF
16,489 SQ.FT. (.3785 AC.) MORE OR LESS SHOWN
SHADED, FOR HIGHWAY RE-ALIGNMENT/CONSTRUCTION.

NEAR ARLINGTON
COUNTY OF SNOHOMISH

STATE OF WA

THM

DRAWING NO. 1-28296