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WHEN RECORDED MAIL TO:



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05-27-2004 10:48am \$25.00
SNOHOMISH COUNTY, WASHINGTON

CITY OF ARLINGTON
DEVELOPMENT SERVICES
238 NORTH OLYMPIC AVENUE
ARLINGTON, WASHINGTON 98223

No. 2578151 5/25/2004 10:35 AM
Thank you for your payment.
PAT

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 Twenty Five Thousand Eight Hundred Thirty and No/100 dollar (\$25,830.00) 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 construction and maintenance of slope improvements located at Railroad Mile Post 5 00, hereinafter called slope improvements 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 E½SE¼SE¼ of Section 15, in Township 31 North, Range 5 East, Willamette Meridian, Snohomish County, Washington, being more particularly described on Page 7, as Exhibit "A" consisting on one page, attached hereto and by this reference made a part hereof

APN: 00000000000100

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 slope improvements, 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 slope improvements 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 slope improvements 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 slope improvements 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 slope improvements on said premises

5 The Grantor and Grantee have entered into that certain Letter Agreement For Longitudinal Easements signed by Grantee on November 7, 2003 and accepted by Grantor on February 3, 2004, concerning the Premises (the "Letter Agreement") The terms of the Letter Agreement 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 Letter Agreement is, 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 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 slope improvements 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, in its acceptance hereof, hereby agrees to indemnify and save harmless said Grantor, from and against all lawful claims, demands, judgments, losses, costs and expenses, for injury to or death of the person or loss or damage to the property of any person or persons whomever, including the parties hereto, in any manner arising from or growing out of the acts of omissions, negligent or otherwise of Grantee, its successors, assigns, licensees and invitees or any person whomsoever, in connection with the entry upon, occupation or use of the said premises herein described, including but not limited to that of the location, construction, operation, restoration, repair, renewal, or maintenance of said slope improvements upon the herein described premises or otherwise

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 agreement, 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

Nothing in this indemnity provision shall be construed to require Grantee to indemnify Grantor against any claims for which indemnity by Grantee is precluded by law

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 **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 3rd day of February, 2004

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

By *D P Schneider*
D P Schneider
General Director Real Estate



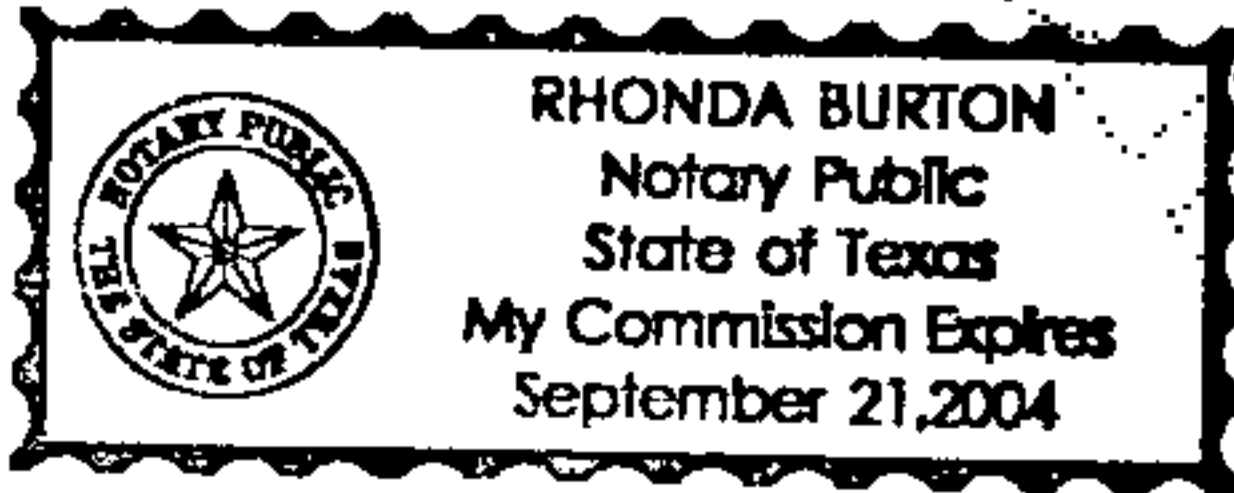
ATTEST

By *Patricia Zbichorski*
Patricia Zbichorski
Assistant Secretary

STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

On this 3rd day of February, 2004, 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:

EXHIBIT "A"

The Easterly 250 feet of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) 1000 foot wide Kruse Jct to Arlington, Washington Branch Line right of way, being 500 feet wide on each side of said Railway Company's Main Track centerline, as now located and constructed upon, over and across the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, Township 31 North, Range 5 East, W M, Snohomish County, Washington, lying between two lines drawn parallel with and distant, respectively, 250 feet and 500 feet Easterly, as measured at right angles from said Main Track centerline, bounded between two lines drawn at right angles to said Main Track centerline distant, respectively, 2750 feet and 6850 feet Northerly of the South line of said Section 15, as measured along said Main Track centerline.