

FILED FOR RECORD  
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FILED FOR RECORD 4-18-90 AT 408 PM INSTRU. 90-05013

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REGISTER OF DEEDS, SARPY COUNTY, NE

**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 One Thousand and No/100 Dollars (\$1,000.00) to it paid by The CITY OF OMAHA, for its Public Works Department, 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 permanent EASEMENT for construction and maintenance of an underground sanitary sewer line crossing at Railroad M.P. 31.63, to include manholes and other necessary related appurtenances, hereinafter called sewer line, upon and across the following described premises, situated in Sarpy County, State of Nebraska, to-wit:

A 20 foot wide strip of land across Burlington Northern Railroad Company station ground property at Chalco, NE., situated in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 14, T14N, R11E, 6th P.M. in said Sarpy County, said 20 foot strip being centered on the following described line:

Commencing at the Southwest corner of the said NW $\frac{1}{4}$ , Sec. 14; thence N 88° 01' 37" E, along the South line of said NW $\frac{1}{4}$ , a distance of 644.78 feet; thence N 9° 57' 26" W, a distance of 126.81 feet to the Southerly margin of said Railroad right of way and the True Point of Beginning; thence continuing N 9° 57' 26" W, a distance of 203.17 feet to the Northerly margin of said Railroad right of way and end of this line description. Easement herein as shown crosshatched on attached Exhibit "A", which by this reference is made a part hereof.

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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 sewer line 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 sewer line 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

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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 sewer line 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 sewer line on said premises.

5. 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 highway 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 lines 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. 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 anyone located on or near Grantors premises, and shall and hereby assumes any and 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 the construction, any reconstruction, use, maintenance, repair or removal of said facility, however such injury, death, loss, damage or destruction aforesaid may occur or be caused: and shall and hereby does indemnify and save harmless the Grantor from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs or expenses arising or growing out of or in connection with any such injury, death, loss, damage or destruction aforesaid. The Grantee and its contractors further agree to appear and defend in the name of the Grantor any suits or actions at law brought against it on account of any such personal injuries, death or damage to property, and to pay and satisfy any final judgment that may be rendered against the Grantor in any such suit or action. Notwithstanding the foregoing, nothing herein contained is to be deemed or construed as an indemnification against the sole or contributory negligence of the Grantor, its officers, employees or agents.

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.

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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.

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 11<sup>th</sup> day of APRIL, 1990.

ACCEPTED:  
CITY OF OMAHA

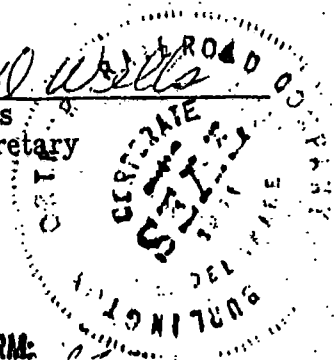
BURLINGTON NORTHERN  
RAILROAD COMPANY

BY Larry L. Herrmann  
Title City Engineer Transp. Serv.  
LARRY L. HERRMANN, CITY ENGINEER  
TRANSPORTATION SERVICES

BY J. H. Ilkka  
J. H. Ilkka  
Director - Title Services

BY Lou E. Lamberty  
Title Public Works Director  
LOU E. LAMBERTY, PUBLIC WORKS DIRECTOR

ATTEST:  
BY Anita D. Wells  
Anita D. Wells  
Assistant Secretary



APPROVED AS TO FORM:  
[Signature]  
ASSISTANT CITY ATTORNEY

BN 9579

505,4859

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me,  
the undersigned, a Notary Public in and for said County, personally came \_\_\_\_\_  
and \_\_\_\_\_

of The City of Omaha (a municipality), to me personally known to be the \_\_\_\_\_  
and \_\_\_\_\_  
and the identical person(s) whose name(s) is(are) affixed to the above conveyance,  
and acknowledged the execution thereof to be his(their) voluntary act and deed as  
such officer(s) and the voluntary act and deed of said municipality and that the  
official seal of the said municipality was thereto affixed by its authority.

Witness my hand and Notarial Seal at \_\_\_\_\_  
in said county the day and year last above written.

\_\_\_\_\_  
Notary Public.

My commission expires the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_.

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 11<sup>th</sup> day of APRIL, 1990, before me,  
the undersigned, a Notary Public in and for said County, personally came J. H.  
Ilkka, Director - Title Services of Burlington Northern Railroad Company (a  
corporation), to me personally known to be the Director - Title Services and the  
identical person whose name is affixed to the above conveyance, and acknowledged  
the execution thereof to be his voluntary act and deed as such officer and the  
voluntary act and deed of said corporation and that the Corporate seal of the said  
corporation was thereto affixed by its authority.

Witness my hand and Notarial Seal at Seattle in said county the day and year  
last above written.



Allen A. Uyeda  
Notary Public.

My commission expires the 9<sup>th</sup> day of January, 1993.

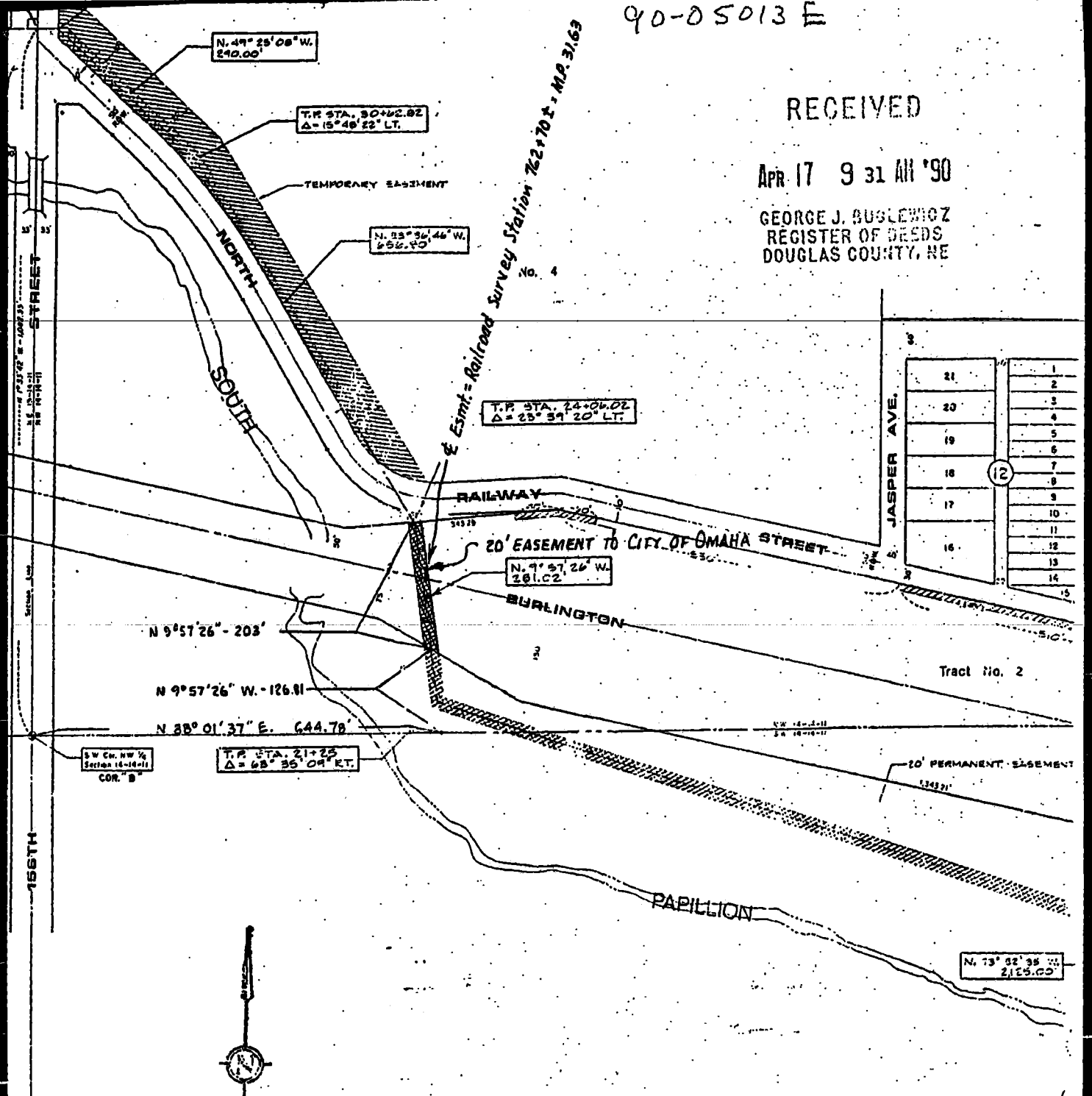
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GEORGE J. BUSLEWICZ  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

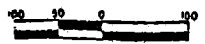


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OWNERSHIPS		
TRACT NO.	NAME	ADDRESS
1	Regina L. Miller	P.O. Box 37423 Omaha, Nebraska 68137
2	Burlington Northern Railroad Co. Jim Eggen, Area Engineer	103 N. 17th Street P.O. Box 43010 Lincoln, Nebraska 68504
3	Judith S. & Allen Leroy Frederickson	6413 E. Geneva Lincoln, Nebraska 68510
4	Watkiss Farm Co.	1501 Harrison Street Omaha, Nebraska 68102

EXHIBIT "A"

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Legend

- PERMANENT EASEMENT
- TEMPORARY EASEMENT

REVISED 12/21/66 M.L.