

COUNTER ah C.E. ah  
VERIFY ah D.E. ah  
PROOF LM  
FEES \$ 85.50  
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SHORT     NCR    

FILED SARPY COUNTY NEBRASKA  
INSTRUMENT NUMBER

2010-05732

03/08/2010 11:21:32 AM

*Lloyd J. Dowding*

REGISTER OF DEEDS



*This instrument  
acknowledges the  
unrecorded deed of date  
4-16-73 to Beacon View  
for the NW 50' of their 200'  
Row (being the outer 50' of  
the 100' NW 1/4 of track)*



**THIS PAGE ADDED  
FOR RECORDING  
INFORMATION.**

**DOCUMENT STARTS ON  
NEXT PAGE.**

**LLOYD J. DOWDING**

SARPY COUNTY REGISTER OF DEEDS

Steven J. Stastny, Deputy

1210 GOLDEN GATE DRIVE, STE 1109

PAPILLION, NE 68046-2895

402-593-5773

A

**EASEMENT AGREEMENT  
FOR Natural Resources District Levy  
(C&M Agreement)**

THIS EASEMENT AGREEMENT FOR Levee Construction ("Easement Agreement") is made and entered into as of the 24 day of FEBRUARY 2010 ("Effective Date"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Grantor"), and **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a Natural Resources District ("Grantee").

A. Grantor owns or controls certain real property situated at or near the vicinity of Ashland, County of Sarpy, State of Nebraska, at Mile Post 44.63, [Project # NRD Levy], as described or depicted on Exhibit "A" attached hereto and made a part hereof (the "Premises").

B. Grantor and Grantee have entered into that certain Agreement dated as of February 8, 2010 concerning improvements on or near the Premises (the "C&M Agreement").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1     Granting of Easement.**

1.1 Easement Purpose. The "Easement Purpose" shall be for the purposes set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "Improvements" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("Easement") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "Laws"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "Lines") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and

B

- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

**Section 2** **Term of Easement.** The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

**Compensation.** Grantee shall pay Grantor, prior to the Effective Date, the sum of Five Thousand and No/100 Dollars (\$5,000.00) as a fee for the Easement transaction.

**Section 3** **No Warranty of Any Conditions of the Premises.** Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this 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 PREMISES, 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 PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES 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 PREMISES. Grantee has inspected or will inspect the Premises, 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 Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

**Section 4** **Nature of Grantor's Interest in the Premises.** GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES 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 Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

**Section 5** **Improvements.** Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the 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. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor

C

property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. 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.

**Section 6      Taxes and Recording Fees.** Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

**Section 7      Environmental.**

7.1      **Compliance with Environmental Laws.** Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2      **Notice of Release.** Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3      **Remediation of Release.** In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4      **Preventative Measures.** Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5      **Evidence of Compliance.** Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

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## **Section 8     Default and Termination.**

8.1     Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2     Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3     Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4     Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

## **Section 9     Surrender of Premises.**

9.1     Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a)     remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b)     repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c)     remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d)     leave the Premises in the condition which existed as of the Effective Date.

9.2     Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

E

**Section 10**    **Liens.**    Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

**Section 11**    **Tax Exchange.**    Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

**Section 12**    **Notices.**    Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

**Section 13**    **Recordation.**    It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. As of the Effective Date, a legal description of the Premises is not available. Grantee and Grantor shall work together in good faith to establish the legal description for the Premises. Once Grantor and Grantee have approved the legal description, Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B" (the "Memorandum of Easement"). The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 10 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

**Section 14**    **Miscellaneous.**

14.1    All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of Texas without regard to conflicts of law provisions.

14.2    In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3    If any action at law or in equity is necessary to enforce or interpret the terms of this 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.

14.4    If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this 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 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.

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14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.


14.6 Time is of the essence for the performance of this Easement Agreement.

14.7 The terms of the C&M 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 C&M Agreement is, for whatever reason, no longer in effect.

Witness the execution of this Easement Agreement as of the date first set forth above.

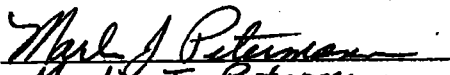
**GRANTOR:**

**BNSF RAILWAY COMPANY**, a Delaware corporation

By:   
Name: Dalen E. Wintermute  
Title: Manager - Land Revenue Management

**GRANTEE:**

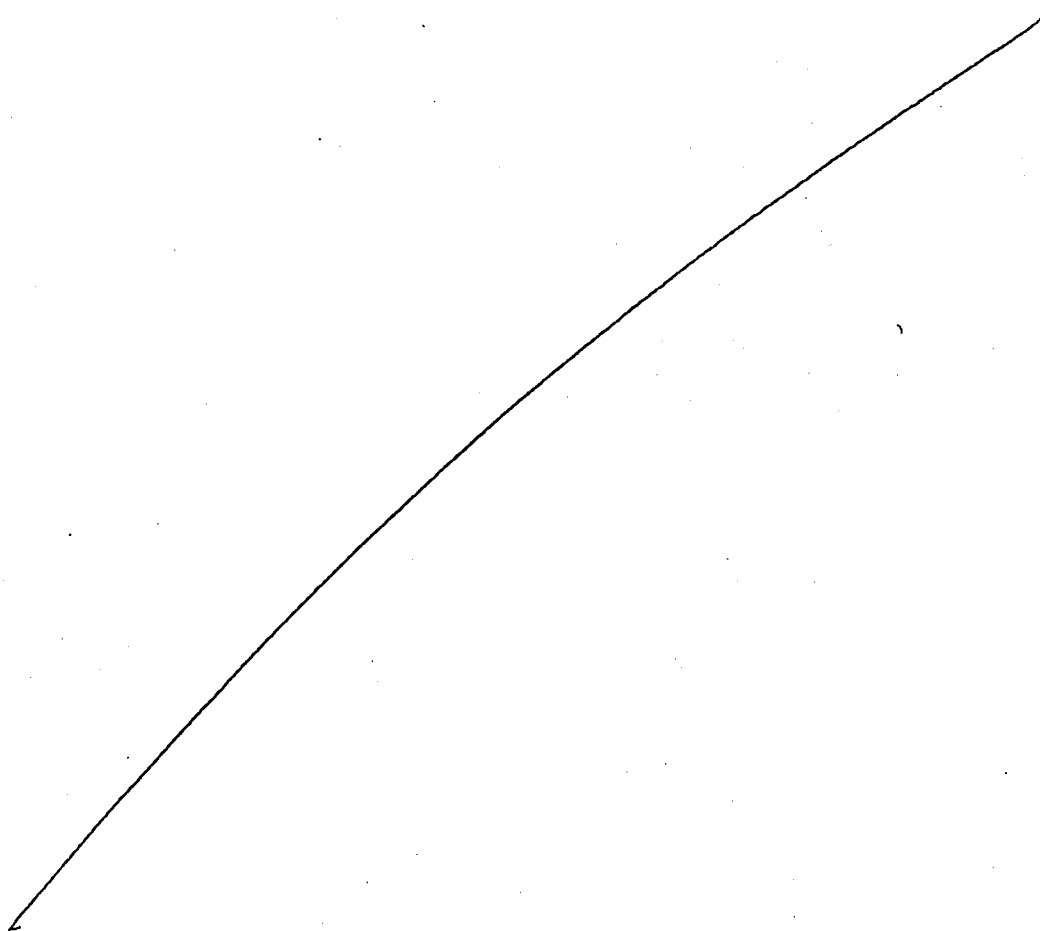
**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a Natural Resources District

By:   
Name: Marlin J. Petermann  
Title: Assistant General Manager

G

**EXHIBIT "A"**

**Premises**





H

EXHIBIT A  
BURLINGTON NORTHERN INC.

A PERMANENT LEVEE EASEMENT IN THE BURLINGTON NORTHERN, INC.  
RAILROAD RIGHT-OF-WAY LOCATED IN THE SW1/4 OF SECTION 29, TOWNSHIP 13  
NORTH, RANGE 10 EAST OF THE 6TH P.M. SARPY COUNTY, NEBRASKA, MORE  
PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 29; THENCE  
N88°01'58"E (ASSUMED BEARING) ALONG THE SOUTH LINE OF SAID SECTION 29,  
A DISTANCE OF 1348.43 FEET; THENCE N01°28'02"W, A DISTANCE OF 962.40 FEET  
TO THE POINT OF BEGINNING, SAID POINT BEING 8.50 FEET NORTHWESTERLY  
OF AND PARALLEL WITH THE CENTERLINE OF THE BURLINGTON NORTHERN  
RAILROAD TRACKS; THENCE N40°30'49"W, A DISTANCE OF 41.50 FEET TO A  
POINT BEING 50.00 FEET NORTHWESTERLY OF AND PARALLEL WITH SAID  
CENTERLINE OF THE BURLINGTON NORTHERN RAILROAD TRACKS, SAID LINE  
BEING DESCRIBED IN QUITCLAIM DEED DATED APRIL 16, 1973, BURLINGTON  
NORTHERN, INC. TO BEACON VIEW INC.; THENCE N49°29'11"E, A DISTANCE OF  
578.00 FEET; THENCE S40°30'49"E, A DISTANCE OF 20.00 FEET TO A POINT BEING  
30.00 FEET NORTHWESTERLY OF AND PARALLEL WITH SAID CENTERLINE OF  
THE BURLINGTON NORTHERN RAILROAD TRACKS; THENCE S49°29'11"W, ALONG  
SAID 1973 DEED LINE, SAID LINE ALSO BEING 50.00 FEET NORTHWESTERLY OF  
AND PARALLEL WITH SAID CENTERLINE OF THE BURLINGTON NORTHERN  
RAILROAD TRACKS A DISTANCE OF 428.00 FEET TO A POINT BEING 30.00 FEET  
NORTHWESTERLY OF AND PARALLEL WITH SAID CENTERLINE OF THE  
BURLINGTON NORTHERN RAILROAD TRACKS; THENCE S26°13'07"W, A DISTANCE  
OF 54.43 FEET TO A POINT BEING 8.50 FEET NORTHWESTERLY OF AND  
PARALLEL WITH SAID CENTERLINE OF THE BURLINGTON NORTHERN RAILROAD  
TRACKS; THENCE S49°29'11"W, A DISTANCE OF 100.00 FEET TO THE POINT OF  
BEGINNING.

SAID PERMANENT LEVEE EASEMENT IN THE BURLINGTON NORTHERN, INC.  
RAILROAD RIGHT-OF-WAY CONTAINS AN AREA OF 14,248 FEET OR 0.327 ACRES,  
MORE OR LESS.

PAGE 2 OF 2 - SEE PAGE 1 FOR DRAWING



**E&A CONSULTING GROUP, INC.**  
ENGINEERING • PLANNING • FIELD SERVICES  
330 NORTH 117TH STREET OMAHA, NE 68154 PHONE (402) 985-0100

PERMANENT LEVEE EASEMENT  
SW1/4 OF SECTION 29, TOWNSHIP 13  
NORTH, RANGE 10 EAST  
SARPY COUNTY, NEBRASKA

Drawn by: FCE Chkd by: TH Chkd by: \_\_\_\_\_

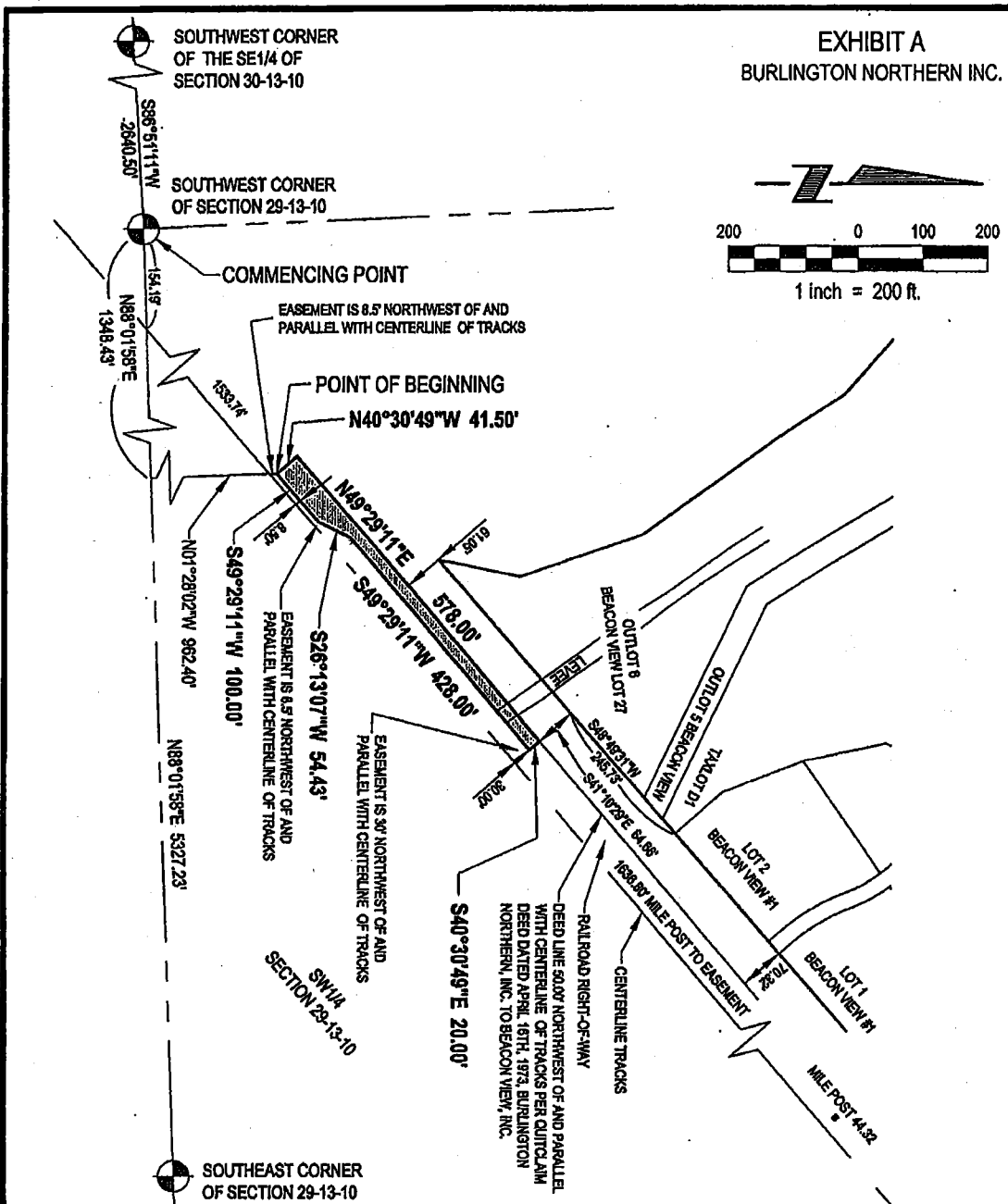
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PAGE 1 OF 2 - SEE PAGE 2 FOR LEGAL DESCRIPTION

<b>e+a</b> E&A CONSULTING GROUP, INC. ENGINEERING • PLANNING • FIELD SERVICES <small>330 NORTH 117TH STREET OMAHA, NE 68154 PHONE (402) 866-4700</small>		
Drawn by: FCE	Chkd by: <u>TH</u>	Chkd by: _____
Job No.: P1994.026.016		Date: 03/04/2010
		Book No.: XXXXX

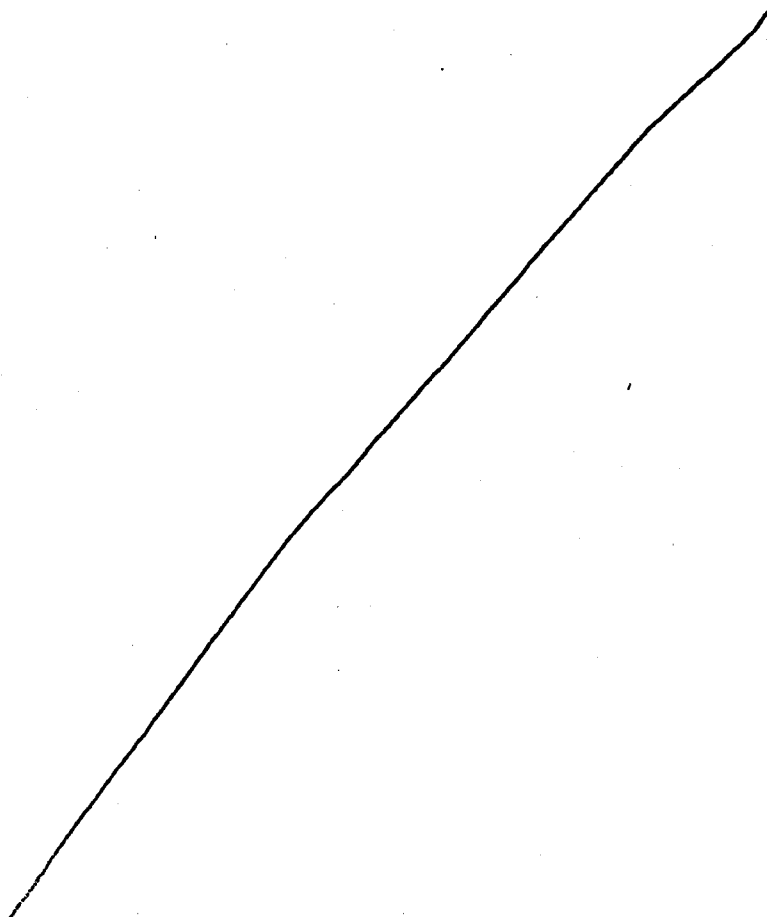
**PERMANENT LEVEE EASEMENT**  
 SW1/4 OF SECTION 29, TOWNSHIP 13  
 NORTH, RANGE 10 EAST  
 SARPY COUNTY, NEBRASKA



K

**EXHIBIT "B"**

**MEMORANDUM OF EASEMENT**



L

**MEMORANDUM OF EASEMENT**

**THIS MEMORANDUM OF EASEMENT** is hereby executed this 8<sup>th</sup> day of FEBRUARY, 2010, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Grantor"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a Natural Resources District ("Grantee"), whose address for purposes of this instrument is 8901 South 154<sup>th</sup> Street, Omaha, Nebraska 68138, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

**WITNESSETH:**

**WHEREAS**, Grantor owns or controls certain real property situated in Sarpy County, Nebraska as described on Exhibit "A" attached hereto and incorporated herein by reference (the "Premises");

**WHEREAS**, Grantor and Grantee entered into an Easement Agreement, dated FEBRUARY 8, 2010 (the "Easement Agreement") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "Easement"); and

**WHEREAS**, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual.

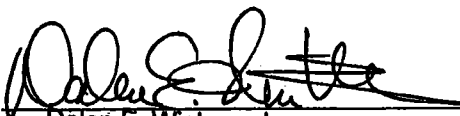
All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

M

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

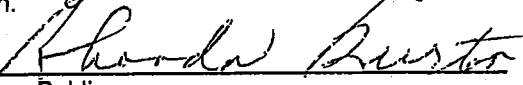
By:   
Name: Dalen E. Wintermute  
Title: Manager - Land Revenue Management

STATE OF TEXAS

§  
§  
§

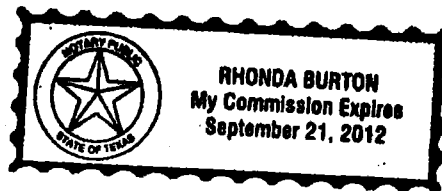
COUNTY OF TARRANT

This instrument was acknowledged before me on the 8<sup>th</sup> day of February, 2010, by Dalen E. Wintermute (name) as Manager - Land Revenue Management (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

  
Notary Public

(Seal)

My appointment expires: 9/21/2012



N

GRANTEE:

Papio-Missouri River  
Natural Resources District

By:

Name:

Title:

Marlin J. Petermann  
Marlin J. Petermann  
Assistant General Manager

STATE OF Nebraska §

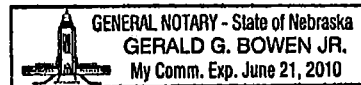
COUNTY OF Douglas §

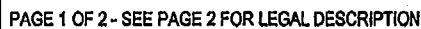
This instrument was acknowledged before me on the 5<sup>th</sup> day of February, 2010, by  
Marlin J. Petermann (name) as Assistant General Manager (title) of  
Papio-Missouri River NRD, a \_\_\_\_\_

Gerald G. Bowen Jr.  
Notary Public

(Seal)

My appointment expires: \_\_\_\_\_





**PERMANENT LEVEE EASEMENT**  
**SW1/4 OF SECTION 29, TOWNSHIP 13**  
**NORTH, RANGE 10 EAST**  
**SARPY COUNTY, NEBRASKA**



2010-05732 P

EXHIBIT A  
BURLINGTON NORTHERN INC.

A PERMANENT LEVEE EASEMENT IN THE BURLINGTON NORTHERN, INC.  
RAILROAD RIGHT-OF-WAY LOCATED IN THE SW1/4 OF SECTION 29, TOWNSHIP 13  
NORTH, RANGE 10 EAST OF THE 6TH P.M. SARPY COUNTY, NEBRASKA, MORE  
PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 29; THENCE  
N88°01'58"E (ASSUMED BEARING) ALONG THE SOUTH LINE OF SAID SECTION 29,  
A DISTANCE OF 1348.43 FEET; THENCE N01°28'02"W, A DISTANCE OF 962.40 FEET  
TO THE POINT OF BEGINNING, SAID POINT BEING 8.50 FEET NORTHWESTERLY  
OF AND PARALLEL WITH THE CENTERLINE OF THE BURLINGTON NORTHERN  
RAILROAD TRACKS; THENCE N40°30'49"W, A DISTANCE OF 41.50 FEET TO A  
POINT BEING 50.00 FEET NORTHWESTERLY OF AND PARALLEL WITH SAID  
CENTERLINE OF THE BURLINGTON NORTHERN RAILROAD TRACKS, SAID LINE  
BEING DESCRIBED IN QUITCLAIM DEED DATED APRIL 16, 1973, BURLINGTON  
NORTHERN, INC. TO BEACON VIEW INC.; THENCE N49°29'11"E, A DISTANCE OF  
578.00 FEET; THENCE S40°30'49"E, A DISTANCE OF 20.00 FEET TO A POINT BEING  
30.00 FEET NORTHWESTERLY OF AND PARALLEL WITH SAID CENTERLINE OF  
THE BURLINGTON NORTHERN RAILROAD TRACKS; THENCE S49°29'11"W, ALONG  
SAID 1973 DEED LINE, SAID LINE ALSO BEING 50.00 FEET NORTHWESTERLY OF  
AND PARALLEL WITH SAID CENTERLINE OF THE BURLINGTON NORTHERN  
RAILROAD TRACKS A DISTANCE OF 428.00 FEET TO A POINT BEING 30.00 FEET  
NORTHWESTERLY OF AND PARALLEL WITH SAID CENTERLINE OF THE  
BURLINGTON NORTHERN RAILROAD TRACKS; THENCE S26°13'07"W, A DISTANCE  
OF 54.43 FEET TO A POINT BEING 8.50 FEET NORTHWESTERLY OF AND  
PARALLEL WITH SAID CENTERLINE OF THE BURLINGTON NORTHERN RAILROAD  
TRACKS; THENCE S49°29'11"W, A DISTANCE OF 100.00 FEET TO THE POINT OF  
BEGINNING.

SAID PERMANENT LEVEE EASEMENT IN THE BURLINGTON NORTHERN, INC.  
RAILROAD RIGHT-OF-WAY CONTAINS AN AREA OF 14,248 FEET OR 0.327 ACRES,  
MORE OR LESS.

PAGE 2 OF 2 - SEE PAGE 1 FOR DRAWING



**E&A CONSULTING GROUP, INC.**  
ENGINEERING • PLANNING • FIELD SERVICES  
333 NORTH 117TH STREET OMAHA, NE 68154 PHONE (402) 895-0700

Drawn by: FCE Chkd by: TH Chkd by: \_\_\_\_\_  
Job No.: P1994.026.016 Date: 03/04/2010 Book No.: XXXXX

PERMANENT LEVEE EASEMENT  
SW1/4 OF SECTION 29, TOWNSHIP 13  
NORTH, RANGE 10 EAST  
SARPY COUNTY, NEBRASKA