

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 Dollars (**\$10.00**) to it paid by the **CITY OF MINOT, a municipal corporation and political subdivision of the State of North Dakota**, 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 the Anne Street pedestrian viaduct over and across Grantor's property at Mile Post 202.88, hereinafter called pedestrian viaduct, over, upon and across the following described premises, situated in Minot, Ward County, State of North Dakota, being more particularly described on Exhibit "A" and shown on Exhibit "B", attached hereto and by this reference made a part hereof, to-wit:

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 pedestrian viaduct, 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 pedestrian viaduct 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 pedestrian viaduct 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 pedestrian viaduct purposes.
4. 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 pedestrian viaduct purposes.
5. Grantor and Grantee have entered into that certain Agreement dated as of December 19, 2003, and that certain Letter Agreement for Longitudinal Easements, accepted by Grantee on May 3, 2004, and signed by Grantor on August 5, 2004, concerning the Premises (the "Agreements"). The terms of the Agreements 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 Agreements are, for whatever reason, no longer in effect.
6. If during the construction or subsequent maintenance of said pedestrian viaduct, soils or other materials above applicable regulatory standards are discovered within the easement area, Grantee will give Grantor immediate notice and at Grantee's sole cost, remove and safely dispose of said contaminated soils or materials in accordance with applicable environmental law and without restricting land use. Grantee shall indemnify, protect and defend the Grantor from any and all liability, claims or demands, if any, which arise as a result of exposure and/or removal of said contaminated soils or materials. In the event of a determination or adjudication by an environmental agency or authority that contaminated soils or materials beyond the easement area must be removed or disposed of or otherwise addressed, as part of the removal of contaminated soils or materials from within the easement area pursuant to this paragraph, the parties agree that they shall share ratably the total costs of such removal and disposal.



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7. Grantee on behalf of itself, its successors 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 pedestrian viaduct located on the premises is/are at any time in the future removed, raised, relocated, no new structure will be built or rebuilt on these premises.
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 applicable laws and regulations and abate any and all hazard of fire.
9. Prior to beginning any work on the premises, 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.
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, and invitees, 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 pedestrian viaduct upon the herein described premises or otherwise.
11. 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 purpose whatsoever, shall immediately cease and the said Railroad, 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 Railroad 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.
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.



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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 5th day of AUGUST, 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



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STATE OF TEXAS

)

) ss.

COUNTY OF TARRANT

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On this SUN day of AUGUST, 2004, before me, Janet E. Brune, a Notary Public in and for said County and State, 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**, a Delaware corporation, the corporation that is described in and that executed the foregoing instrument and acknowledged to me that such corporation executed the same.



Janet E. Brune
 Notary Public

My commission expires: 9/02/05

"THE LEGAL DESCRIPTION WAS PREPARED BY CITY OF MINOT ENGINEERING DEPARTMENT,
 MINOT, NORTH DAKOTA."

FORM APPROVED BY LAW

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EXHIBIT "A"

✓ An easement for the existing Anne Street Bridge through The Burlington Northern and Santa Fe Railway Company's (BNSF) property in the NW¼NW¼, Section 24, Township 155 North, Range 83 West of the 5th Principal Meridian, Ward County, North Dakota, which is more particularly described as follows:

An easement 50.0 feet wide centered on the centerline of the North-South portion of the existing Anne Street Bridge from its intersection with a line parallel with and distant 150.0 feet Southeasterly, measured at right angles, from the centerline of the main track of the BNSF's , as originally located on the Plat of Minot Original Addition, which is on file at the Ward County Recorder's office, Ward County, North Dakota; thence North along said bridge centerline to the center of the Mouse River and a strip of land 10.0 feet wide through Lots 37, 38 and 39, Block 19 of said Original Minot Addition, from the East right of way line of Main Street North to the West line of the previously described 50.0 foot wide portion of the easement, the Southerly line of which is the previously described line which is 150.0 feet Southeasterly of the centerline of the main track of the BNSF and all of Lot 2 of said Block 19, said easement containing 0.94 acres more or less. Said easement is shown on the attached said Exhibit "B".



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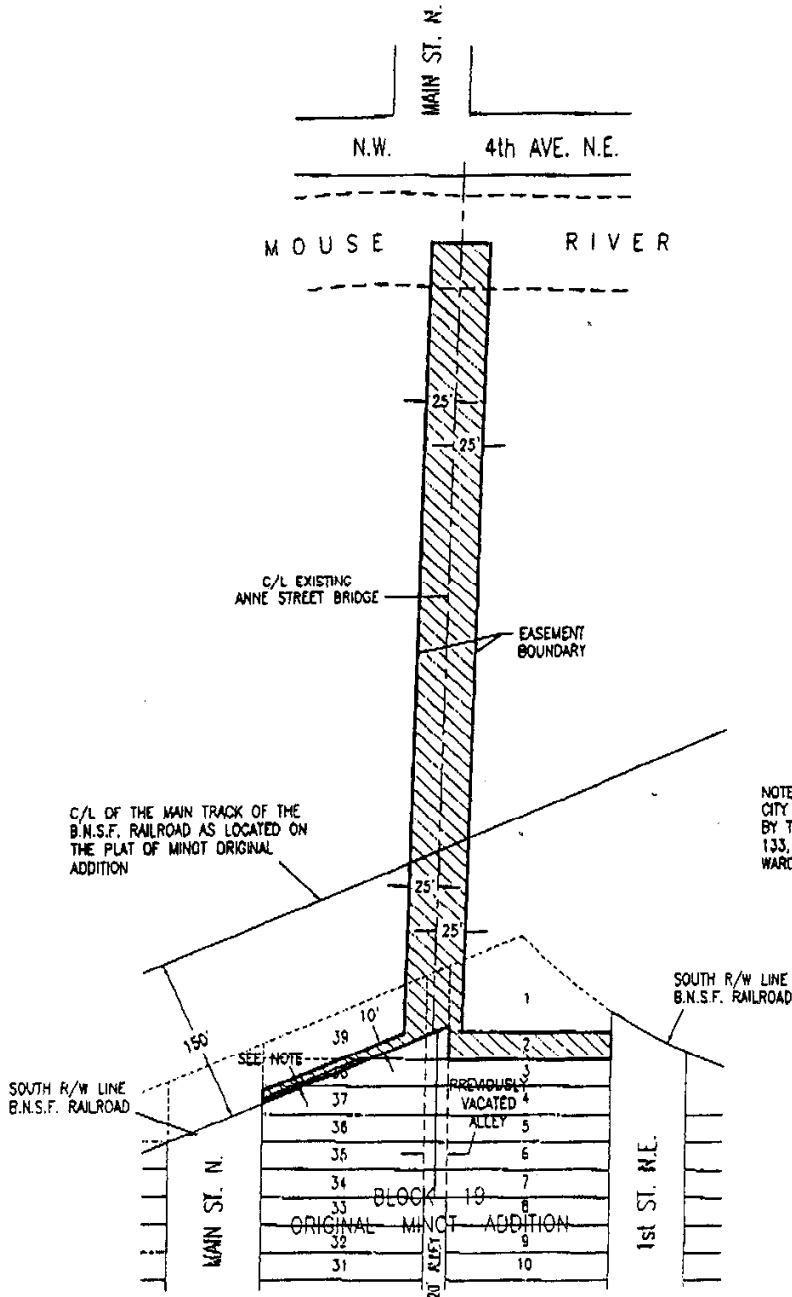
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EXHIBIT "B"

A BRIDGE EASEMENT TO THE CITY OF MINOT FROM THE BURLINGTON NORTHERN SANTA FE RAILROAD THROUGH RAILROAD PROPERTY IN THE NW1/4NW1/4, SECTION 24, TWP 155 N, R 83 W, WARD COUNTY, NORTH DAKOTA



SCALE:
1" = 150'

NOTE: AN EXISTING SIDEWALK EASEMENT GRANTED TO THE CITY OF MINOT FROM THE RAILROAD TO BE RE-DEDICATED BY THIS DOCUMENT, SAID EASEMENT BEING ON FILE IN BOOK 133, PAGE 593 AT THE WARD COUNTY RECORDER'S OFFICE, WARD COUNTY, NORTH DAKOTA.

DATE: 8/27/03

PREPARED BY:
CITY OF MINOT
ENGINEERING DEPT.
MINOT, NORTH DAKOTA



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RECORDER'S OFFICE, WARD COUNTY, ND 08/12/2004 10:00AM
I certify that this instrument was filed for record this date.
Sheila K. Dalen, County Recorder

by  2835366

