

ORIGINAL

RECORDED AUGUST 19, 1997 BK 387 PG 383 NO 263710 RONALD L. DAILEY, COUNTY CLERK

Form Approved
by VP-Law

Contract No. BF-276
(Co-User with CX85-12005)
Tracking No. PC97-24197

AGREEMENT FOR PRIVATE CROSSING

AGREEMENT, Made this 10th day of July, 1997, subject to the terms and conditions set forth herein between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation (hereinafter called "Licensor"), its successors and assigns, party of the first part; and **JEFF AND JULIE DAVIDSON**, individuals (hereinafter whether one or more persons or corporations called the "Licensee"), party of the second part.

RECITALS:

The Licensee has requested of Licensor permission to cross, for private purposes the rail corridor and tracks of Licensor at or near Licensor's station of Ranchester, County of Sheridan, State of Wyoming, Line Segment 4, Mile Post 716.82, at the location and in the manner shown upon the print hereto attached, dated 3-12-85, marked "Exhibit A," and made a part hereof, which permission Licensor is willing to grant upon conditions hereinafter set forth.

ARTICLE I

AGREEMENT:

In consideration of the covenants of the Licensee hereinafter set forth, Licensor hereby agrees to install and maintain, upon its rail corridor, except as set forth elsewhere herein, at the location shown on Exhibit A, a private road crossing, and gives Licensee a non-exclusive license and permission to enter upon and cross Licensor's rail corridor and tracks. For convenience, said crossing, including crossing surface and all appurtenances thereto between the ends of railroad ties, cattle guards, farm gates or barriers, drainage facilities, traffic signs or devices, cattle guards, farm gates or barriers, drainage facilities, traffic signs or devices, identification signs approved by Licensor, whistling posts, or other appurtenances, if any, are hereinafter collectively referred to as the "Crossing."

This agreement shall be effective AUGUST 6, 1997.

ARTICLE II

In consideration of the foregoing license and permission given by Licensor the Licensee hereby agrees:

1. To pay to Licensor in advance:

(a) Consideration payment in the amount of TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00).

(b) In addition, and in the event if necessary, when in the sole judgment of Licensor it is necessary to provide flagman protection, Licensee shall pay a daily rate of Three Hundred and No/100 Dollars (\$300.00) per eight (8) hour day, and Licensee shall

make payment within thirty (30) days after bills are rendered therefor.

2. To pay to Licensor from time to time within twenty (20) days after bills are rendered therefor the entire cost of maintaining the Crossing, including, but not limited to expense incurred by Licensor resulting from the necessity to remove and replace the Crossing in connection with resurfacing or maintaining Licensor's right of way and tracks.

3. To pay to Licensor the entire cost of constructing, installing, performing, maintaining, repairing, renewing, and replacing any cattle guards, farm gates or barriers, track drainage facilities, traffic signs or devices, whistle posts, stop signs or other appurtenances shown on Exhibit "A", or any such appurtenances or warning signs and devices that may subsequently be required to be upgraded by Licensor, by law, by change of volume and nature of vehicular traffic, or by any public authority having jurisdiction. The Licensee is also responsible for notifying Licensor in writing of any need for upgrading the vehicular traffic control devices or signs at or near the crossing, since the Licensee is most knowledgeable concerning the volume and nature of the vehicular traffic. In addition, Licensee shall notify Licensor if any significant change in volume or nature of traffic at the crossing.

4. Licensee, at its own expense, shall keep the rail flange ways of said Crossing clear of all snow, dirt, or any other obstructions whatsoever, which may accumulate by virtue of vehicles, equipment, or from machinery crossing thereover or otherwise, and shall remove and keep removed any vegetation along the rail corridor on each side of the crossing so that the motorists' line of sight to approaching trains is not impaired or obstructed by vegetation.

5. It is specifically understood that cables, pipelines, and other electric and/or fiber optic transmission lines may be on, about, along, or under Licensor's property and Licensee agrees that under no circumstances will Licensee dig in or disturb the surface of Licensor's property.

6. Licensee shall construct and maintain, at its own expense, a roadway (to end of railroad ties) and related roadway drainage in a manner acceptable to Licensor, and safe for use by any vehicles or equipment.

7. To keep any crossing gates, farm gates or barriers (consisting of a bar, cable gate or chain between posts on both sides of the Railroad rail corridor and straddling the roadway), closed and securely fastened, except when being opened to allow access upon said rail corridor.

8. Prior to installation, five (5) days advance notice must be given to Licensor's Roadmaster, Ron Adler at Sheridan, WY, telephone (307) 673-2235.

9. While this Agreement is personal to Licensee, it is recognized that there is a possibility of the Crossing being used by unauthorized persons, and said Licensee agrees that for the purposes of this agreement all persons using the Crossing shall be deemed the agents of the Licensee.

10. (a) Except as set forth in Section 10 (b), Licensee shall indemnify and hold

harmless Licensor for all losses, damages, injuries, death and expenses, and claims under the Federal Employees' Liability Act, or any applicable safety act, (45 U.S.C. e1 et. seq.), including lost profits, and consultant and attorney fees, arising in any manner out of the failure of Licensee to take any action required by this Agreement, the condition of the Crossing or any equipment or property thereon, or any act or omission of Licensee, its employees, agents or contractors ("Licensee's Invitees"), regardless of whether such loss, damage, injury, death or expense is caused or contributed to by the negligence of Licensor, except to the extent any such loss, damage, injury, death or expense is proximately caused by Licensor's gross negligence or intentional misconduct.

(b) Whenever any Licensee or any of Licensee's Invitees make any claim for personal injury or death against Licensor within the meaning of the Federal Employers' Liability Act, or any applicable safety act, (45 U.S.C. e1 et. seq.) for any incident caused, wholly or in part, by property, equipment or condition belonging to or under the control of Licensee, or claims or alleges that he or she is an employee of Licensor or is furthering the operational activities of Licensor, Licensee agrees to indemnify and hold harmless Licensor for all losses, damages, costs or expenses related to such claim, regardless of Licensor's negligence.

11. In the event of termination of this license as set forth in Article III, Licensor may remove the Crossing and restore the rail corridor to the condition as of the date of this agreement at Licensee's expense and without incurring any liability to the Licensee. Licensee shall within twenty (20) days after bill is rendered therefor, reimburse Licensor for all expense which Licensor may incur in connection therewith.

12. (a) Licensee shall comply with all federal, state and local environmental laws and regulations in its use of Crossing, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA). Licensee shall not release or suffer the release of oil or hazardous substances, as defined by CERCLA, on Crossing. Notwithstanding any other requirements in this Agreement, Licensee assumes all responsibility for the investigation and cleanup of such release and shall indemnify and defend Licensor and its agents for all costs and claims, including consultant and attorney fees, arising in any manner out of such release or Licensee's failure to comply with environmental laws, regardless of Licensor's negligence, except to the extent such costs or claims are proximately caused by Licensor's affirmative negligent act, or its gross negligence or intentional misconduct.

(b) Licensee shall give Licensor timely notice of any release, violation of environmental laws or inspection or inquiry by governmental authorities charged with enforcing environmental laws with respect to Licensor's rail corridor. Licensee also shall give Licensor timely notice of all measures undertaken by or on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

(c) In the event that Licensor receives notice from Licensee or otherwise of a release or violation of environmental laws which occurred or is occurring during the term of this Agreement, Licensor may require Licensee, at Licensee's sole expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation.

13. (a) Licensee shall, at its expense, procure and maintain throughout the term of this Agreement, and thereafter until the Improvements are removed from the Crossing, a comprehensive general form of insurance covering liability, including, but not limited to, Public Liability, Personal Injury and Property Damage, as well as Contractual Liability in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Licensee shall also, at its expense, procure and maintain throughout the term of this agreement, an automobile liability policy with limits of One Million and No/100 Dollars (\$1,000,000.00) covering "any auto". **LICENSOR AND CATELLUS MANAGEMENT CORPORATION SHALL BE NAMED AS AN ADDITIONAL INSURED.**

(b) During the construction phase only, Licensee or its contractors, at their sole cost and expense, shall obtain and keep in force Railroad Protective Liability Insurance in the name of Licensor covering Licensee's liability under Section 7 of this agreement in the amount of not less than \$2,000,000.00 per occurrence and \$6,000,000.00 in the aggregate, covering injury to or death of persons and loss of or damage to property and otherwise guaranteeing performance of all obligations of Licensee under this agreement.

(c) All risk insurance on the equipment of the Licensee, or in Licensee's care, custody and control, shall contain a waiver of subrogation of claims against Licensor. Licensee shall maintain Workers Compensation insurance which shall contain a waiver of subrogation against Licensor.

(d) Licensee hereby agrees to waive any workers compensation subrogation claims, liens, or demands, which could be asserted against Licensor by the Licensee, its employees, or its insurance carrier, and further agrees to indemnify Licensor and its employees, regardless of Licensor's negligence, for any and all workers compensation subrogation claims, liens, or demands, asserted by the Licensee, its employees, or Licensee's insurance carrier.

(e) All insurance shall be placed with insurance companies licensed to do business in the State in which the Crossing is located, with a current Best's Insurance Guide Rating of B and Class X, or better. Licensee shall provide, and thereafter maintain in effect, a current Certificate of Insurance evidencing such insurance. Each policy shall provide that it shall not be canceled or materially changed unless at least thirty (30) days' prior written notice of cancellation or change shall have been mailed by the insurance company to Licensor at the address designated herein.

(f) Licensee shall be allowed to self-insure any or all of the insurance coverages referenced above.

(g) The furnishing of insurance required by this Section shall in no way limit or diminish the liability or responsibility of Licensee as provided under any Section of this Agreement.

ARTICLE III

1. Rights granted to the Licensee are subject and subordinate to the prior and continuing right and obligation of Licensor to use and maintain its entire rail corridor, and

are also subject to the right and power of Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics or other wire lines, pipelines and other facilities upon, along, or across any or all parts of said rail corridor, any of which may be freely done at any time by Licensor without liability to the Licensee or to any other party for compensation or damages.

2. The Licensee's rights are also subject to all outstanding rights (including those in favor of the Licensee and others), and subject to any easements, licenses or easements granted by The Burlington Northern And Santa Fe Railway Company, or of record, so long as such agreements do not interfere with Licensee's ability to use Crossing, and the right of Licensor to renew and extend same, and are granted without covenant of title or quiet enjoyment.

3. It is expressly stipulated that the Crossing is to be a strictly private one, to be solely used for **PRIVATE ACCESS TO RESIDENCE** and is not intended for public use. The Licensee, without expense to Licensor, will take any and all necessary action to preserve the private character of the Crossing and prevent its use as a public road.

4. It is mutually agreed that this Agreement may be terminated by either party upon thirty (30) days' notice in writing to be served upon the opposite party; and upon the expiration of the time specified in such notice this Agreement, and all rights and privileges of the Licensee thereunder shall absolutely cease. No termination hereof shall release the Licensee from any liability or obligation hereunder, 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 the crossing is removed and the rail corridor restored to its condition at the date of this agreement.

5. Any notice to be given by Licensor to the Licensee hereunder shall be deemed to be properly served if the same be deposited in the United States mail, postage prepaid, addressed to the Licensee at P. O. Box 147, Dayton, WY 82836. Any notice to be given by the Licensee to Licensor hereunder shall be deemed to be properly served if it be deposited in the United States mail, postage prepaid, addressed to Catellus Management Corporation, Permit Services, 4545 Fuller Drive, Suite 105, Irving, Texas 75038.

6. In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

7. It is understood and agreed that this Agreement shall not be placed of public record.

8. All the covenants and provisions of this Agreement shall be binding upon the heirs, legal representatives, successors and assigns of Licensee. No assignment by Licensee of any interest in this Agreement shall be binding upon Licensor without the prior written consent of Licensor in each instance.

9. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State in which the Crossing is located.

10. To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.

11. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

12. This Agreement is the full and complete agreement between Licensor and Licensee with respect to all matters relating to use of the Crossing, and supersedes any and all other agreements between the parties hereto relating to use of the Crossing.

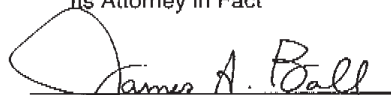
Catellus Management Corporation is acting as agent for The Burlington Northern And Santa Fe Railway Company.

IN WITNESS WHEREOF, the parties have executed this agreement in duplicate the day and year first above written.

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

By: Catellus Management Corporation
Its Attorney in Fact

By:

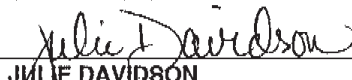

James A. Ball, Manager Contracts

JEFF AND JULIE DAVIDSON
P. O. BOX 147
DAYTON, WY 82836

By:


JEFF DAVIDSON

By:


JULIE DAVIDSON



WORK BY RAILROAD SHOWN ~~BY~~
WORK BY APPLICANT SHOWN ORANGE

RANCHESTER, WYO