

Evelyn L. Arnold, Auditor, Chelan County, WA. AFN # 2289457 Recorded
09/08/2008 at 04:09 PM, AGMT Page: 1 of 7 Filing Instrument \$48.00
LANDAMERICA TRANSNATION TITLE INS CO

After recording return to:
Cascade and Columbia River Railroad
Company
1355 Central Parkway South
Suite 700
San Antonio, TX 78232

Reference: 20345468- -604- -TM9

DOCUMENT TITLE(S): Grade Crossing Agreement

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

GRANTOR(S): Cascade and Columbia River Railroad Company, a
Delaware Corporation

GRANTEE(S): The John's Retirement Trust, a retirement trust

ABBREVIATED LEGAL DESCRIPTION:

A portion of the Cascade and Columbia River Railroad right of way
located in Section 16 and Section 21, all in Township 26, Range 21

TAX PARCEL NUMBER(S):

GRADE CROSSING AGREEMENT

THIS AGREEMENT, made and entered into this 12th day of August, 2008, by and between the **CASCADE AND COLUMBIA RIVER RAILROAD COMPANY**, a(n) Delaware corporation, hereinafter referred to as Licensor, and **THE JOHNS'S RETIREMENT TRUST**, whose mailing address is 130 Riverview Dr. East Wenatchee WA, hereinafter referred to as Licensee. 98802

WITNESSETH: That the Licensee, is requesting the right or license of constructing, reconstructing and maintaining a private road across the track or tracks and right of way of the Licensor, at or near Winesap, State of Washington, said crossing being 30 feet in width, i.e., 15 feet wide on each side of a line which extends across said right of way in a west/east direction and intersects the center line of Licensor's main track as shown in Exhibit "A", attached hereto and made a part hereof. Said crossing is intended to provide access to and from Highway 97A to lands currently owned by **The John's Retirement Trust**, located east of and adjacent to Seller's active railroad right of way, (collectively the "Accessed Properties").

And the Licensee hereby covenants and agrees in consideration of said license:

1. Except for Licensee's employees and invitees, Licensee will not allow any other person or persons to use the said crossing without the consent in writing of the Licensor.

2. (a) Said crossing (including the usual appurtenances such as approaches, roadway, curbs, gutters, shoulders, slopes, fills and cuts) shall be constructed, reconstructed and maintained by and at the sole cost and expense of the Licensee, but in a manner and of materials satisfactory to the General Manager of the Licensor, and said reconstruction and maintenance shall be performed at such times and in such manner as not to interfere with the movement of Licensor's trains.

(b) The Licensee shall install railroad crossbuck signs, stop signs and signs designated by Licensor identifying the crossing as a "Private Crossing" and that use of such is at user's own risk. Licensee agrees not to make any other improvements, alterations, or additions to the premises of Licensor.

3. Licensee will furnish, place and maintain at Licensee's expense and in a manner satisfactory to said General Manager, necessary drainage pipe underneath said crossing on each side of said track or tracks to take care of drainage of the roadbed and/or right of way of the Licensor.

4. (a) Licensee acknowledges that persons and property on or near the crossing are in constant danger of injury, death or destruction, including damage by fire, incident to the operation of the railroad tracks, whether by Licensor or others, and Licensee accepts this License subject to such dangers.

(b) Licensee hereby assumes all liability and all the risks of injury to or death of himself and of any persons in his or its employ, and of all persons whomsoever, including Licensor, its officers, agents, employees and/or contractors who may be on or about said crossing, or on land adjoining or adjacent thereto, growing out of or incident to, or in any manner resulting from the construction, operation, maintenance and presence of said crossing on Licensor's property, REGARDLESS OF WHETHER caused or contributed to by any acts, omissions, or negligence on the part of Licensor its officers, agents, employees and/or contractors.

c) The risks of injury to or death of persons and loss or damage to property herein assumed by Licensee, as herein defined, shall include, but shall not be limited to, loss or damage to property of either of the parties hereto, and injury to contractors, employees, or invitees of either of the parties hereto, and whether or not such injury to or death of persons shall arise under any Workmen's Compensation Act or Federal Employers' Liability Act.

d) Licensee, for himself, or itself, and for his, or its heirs, successors, assigns, officers, agents, contractors, and employees, does hereby agree to protect defend and indemnify Licensor from, and to reimburse Licensor for, any and all liability and damages arising out of the risks herein assumed by Licensee, including claims, judgments, costs, attorney's fees, and all other expenses, incurred by Licensor in defense of any claims, causes of action, or judgments arising from any liability assumed by Licensee herein.

5. If Licensee fails to keep or perform any of Licensee's covenants herein contained, Licensor has the right to terminate this License upon thirty (30) days written notice to Licensee

6. (a) Licensee, at its sole cost and expense shall maintain Licensor's property in the vicinity of the crossing area in order to keep it free and clear of any and all vegetation, undergrowth or any debris, so as not to obscure approaching trains from the view of vehicles approaching the crossing, unless all or a portion of the affected property is leased to another party who is responsible for maintenance, or the affected area is improved with existing structures. Licensee shall have twenty (20) days after receipt of written notice by Licensor of such obscuration, in which to remedy the same and failure of Licensee to clear said obscuration shall be deemed as default hereunder and Licensor, at its option, may immediately terminate this License and remove and/or barricade said crossing.

(b) Licensee, at its sole cost and expense, shall keep the flange grooves of Licensor's track(s) at said crossing free and clear of any and all dirt, gravel or debris at all times during the term of this License.

7. (a) It is expressly understood and agreed that if, during the continuance of this agreement, the Licensor, or any public entity, should determine that safety requires grade crossing traffic control devices other than that afforded by stop signs, such as watchmen, gates or flashing light signals, Licensor will not be called upon or required to bear the cost or any part of the cost of furnishing, installing or maintaining any such protection; it is further understood and agreed that any such additional crossing protection will be installed without expense to Licensor, and that before providing any such additional crossing protection, Licensee will first obtain approval in writing from Licensor with respect to location and type of protective facility.

(b) In the event flashing light signals are installed at said crossing as set out in the preceding paragraph, it is expressly understood and agreed that, notwithstanding the provisions of Article 5 hereof, this agreement shall remain in full force and effect so long as the remaining covenants and agreements set forth herein are kept and performed by Licensee, and if Licensee fails to keep and perform any of such covenants, terms, or conditions, then the Licensor reserves the right to terminate this agreement upon forty five days' notice to Licensee, during which time Licensee may cure. On termination of this agreement Licensee will, at Licensee's expense, remove said crossing and restore, under supervision of Licensor, the premises to their original condition, if required by Licensor.

(c) After said signals have been placed in service, Licensor will operate and maintain said signals at the expense of Licensee. Rates for signal maintenance will be reviewed periodically, if rate should change, the amount billed will be revised accordingly. In addition to the signal maintenance expenses to be borne by Licensee, the Licensee will be obligated, within sixty (60) days after receipt of itemized bill from Licensor to (i) reimburse Licensor for the cost of upgrading said signals to prevent obsolescence and (ii) reimburse Licensor for the cost of repairing, or replacing, said signals as a result of damages thereto, howsoever resulting.

8. In the event that the use of its right of way by Licensor, or the use of this right of way by Licensor's assignees, (e.g., additional track construction, installation of communication facilities, etc.) shall hereafter make necessary any change in the private road as it crosses Licensor's right of way, Licensee shall be obligated to bear all costs of making and maintaining adjustments to said private road which are deemed necessary by Licensor's Division Engineer.

9. (a) In the event Licensee shall default in the payment of any fee, tax or other reimbursements provided for herein, late payment penalties, return check charges, or other sums due by Licensee, or upon breach or violation of any of Licensee's other covenants, agreements, undertakings, provisions, terms, applicable laws, or conditions herein contained, Licensor may, at Licensor's option, upon forty five days notice, during which Licensee may cure, either immediately terminate this License, and enter into and on and possess the crossing, with or without process of law, and may remove or barricade the crossing or any part thereof, using such force as may be necessary for that purpose; or Licensor may require Licensee to remove and /or barricade crossing. Failure of Licensor to enforce one or more of the remedies herein provided upon an event of default, shall not be construed to constitute a waiver of such default. In addition, Licensor reserves the right to avail itself of any and all rights and remedies available to it by operation of law or equity and any proceeding by the appropriate court action to enforce performance by Licensee at anytime, of the applicable covenants of this License or to secure damages for the breach thereof including reasonable attorney's fees. Licensor may waive any default of Licensee at anytime without affecting or impairing any rights arising from any subsequent default. Licensee agrees to reimburse Licensor for the costs of any claims, suits, judgments, costs, attorney's fees, court costs and all other related expenses incurred by Licensor arising from or growing out of Licensee defaulting in any of the terms of this License. No action or proceeding by Licensor under this paragraph shall in any manner release or discharge the covenants, agreements, and undertakings of Licensee of any of the obligations, risks, or duties herein assumed by Licensee which may have accrued as of the date of any default.

(b) Licensee understands and agrees that Licensor shall not be required to make formal demand or give notice for any due and unpaid fee or for the curing of any default hereunder before declaring this License terminated or before asserting its rights to avail itself of any remedies contained herein, either at law or equity, and Licensee does hereby expressly waive any rights to receive such demand or notice.

10. Licensee waives the right to question the validity of this License or any of the terms and revisions hereof, or the right or power of the Licensor to execute and enforce this License. Licensee waives the right to claim any damages in the event an accident occurs at this crossing. This License is made without covenant on the part of the Licensor to warrant its title to the crossing, or to give or to defend Licensee in the peaceful possession of the crossing and Licensee shall waive all right to claim damages in the event Licensee shall be evicted, ejected or required to surrender possession of the crossing by anyone owning or claiming title to or any interest in the crossing, or by reason of failure of title of Licensor, or for any other cause whatsoever.

11. The term "Licensee" whenever appearing in this instrument shall mean the singular and/or plural, as the case may be, and shall also include the successors, heirs, and assigns of the Licensee.

12. It is agreed by Licensor and Licensee that the use of said crossing for access to any properties other than the Accessed Properties is prohibited, and would result in the termination of Buyer's rights to use said crossing.

13 (a). For the duration of this agreement, the Licensee shall furnish the Licensor a Certificate of Insurance showing that the Licensee carries liability insurance applicable to the job in question (evidencing said applicability by a contractual liability endorsement stating that the insurance is applicable to the obligations assumed by the Licensee under the agreement with Licensor) in the amount of \$1,000,000.00 for all personal injuries, death, or property damage, per occurrence arising during the policy period, with an aggregate of \$2,000,000.00.

(b) The Licensee shall furnish certificates of insurance evidencing the above coverage and the form of the policy (or policies), the carrier and the amount of the coverage shall be subject to the prior approval of the Licensor. Such insurance shall contain a contractual liability endorsement which will cover the obligations assumed under this agreement and such other endorsement or endorsements as, in the opinion of counsel for the Licensor, may be necessary or advisable to fully protect and indemnify the Licensor. In addition, such insurance shall contain notification provisions whereby the insurance company agrees to give thirty (30) days' notice to the Licensor of any change or cancellation of the policy. All of these endorsements and notice provisions shall be stated on the certificate of insurance which is to be provided to the Licensor.

(c). It is understood and agreed that the liability assumed by the Licensee in this agreement shall not be limited to the insurance coverage stipulated herein.

(d). In the event said insurance is canceled, or is allowed to lapse, said crossing shall be subject to immediate removal by Licensor without Licensor being required to notify Licensee in advance

of such removal; in such event, the entire expense borne by Licensor for removing said crossing shall be paid for by Licensee.

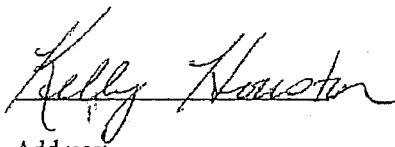
14. Licensee shall be able to use said crossing for access to its **four existing parcels for the purposes allowed by applicable zoning**. In the event Licensee subdivides their existing parcels into additional residential parcels, Licensee shall be allowed to add additional users to this Agreement upon payment of Twenty-Five Thousand and no/100 dollars (\$25,000) per additional user for the first two (2) years following the execution hereof. After said two (2) year period, additional users may be added at a price equal to the \$25,000, as adjusted based on the CPI-All Urban Consumers-All Items for the Seattle-Tacoma-Bremerton, WA area, Base Period 1982-84=100, as compared to the date of this Agreement and the date such additional users are added. Five (5) years following the execution of this Agreement, Licensee's right to add additional users as set forth herein shall expire. All licenses shall attach to the respective parcels for which they were issued and shall not be personal to the owners thereof.

15. Licensor hereby grants in behalf of itself, its successors and assigns, a license to Licensee on the terms and conditions set forth above which said license shall be irrevocable except for default in said terms and conditions.

IN WITNESS WHEREOF, the parties hereto have executed this lease in triplicate as of the day and year first above written.

WITNESSED FOR LICENSOR:

CASCADE AND COLUMBIA RIVER
RAILROAD COMPANY



Address:

By: 

Vice President

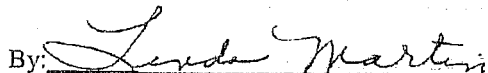
Title

WITNESSED FOR LICENSEE:

THE JOHN'S RETIREMENT TRUST



Address:

By: 

Trustee

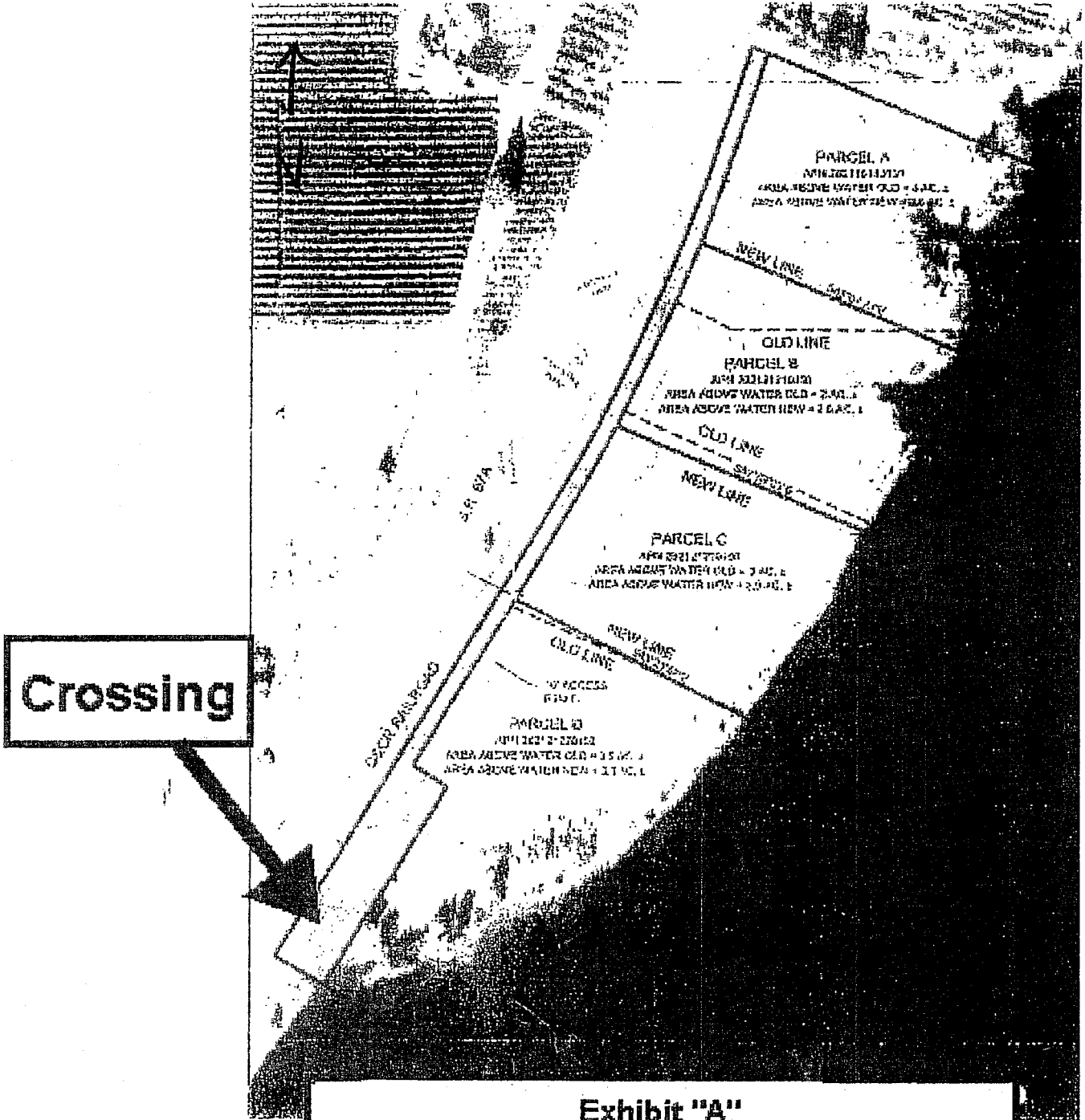


Exhibit "A"
Grade Crossing Agreement between
Cascade and Columbia River Railroad Company
and
The John's Retirement Trust