

Highway Division  
File 48945

## STREET OR HIGHWAY EASEMENT

THIS INDENTURE, made this 20 day of March, 1978, by and between OREGON, CALIFORNIA and EASTERN RAILWAY COMPANY, a Nevada corporation herein called "Railroad", and STATE OF OREGON, Department of Transportation, Highway Division, Salem, Oregon 97310, herein called "Grantee";

## WITNESSETH:

1. That Railroad hereby grants to Grantee the right to construct, reconstruct, maintain and use a street or highway, hereinafter termed "highway", upon and across the real property described on the attached Exhibit "A".

2. The rights herein granted are expressly limited vertically and shall not extend beyond a plane parallel with and twenty (20) feet above the roadway surface of the highway as originally constructed, except that lighting fixtures and similar highway appurtenances may extend above said plane, provided that any such facilities will be removed or rearranged within thirty (30) days after notification from Railroad that such facilities interfere with Railroad's intended use of the space above said plane.

3. This grant is subject and subordinate to the prior right of Railroad, its successors and assigns, to use all the property described in the performance of its duty as a common carrier, and there is reserved unto Railroad, its successors and assigns, the right to construct, reconstruct, maintain, use and remove existing and future transportation, communication, power and pipeline facilities in, upon, over, under, across or along said property. In the event Railroad trackage facilities are removed from said property, Railroad shall not be obligated to make any change in the grade of said highway, nor shall such removal affect Railroad's title to the underlying property.

This grant is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word "grant" shall not be construed as a covenant against the existence thereof.

4. This grant shall not be construed as conveying or otherwise vesting in Grantee the right to install or to authorize the installation of any ditches, pipes, drains, sewer or underground structures, or the facilities of any telegraph, telephone or electric power lines in, upon, over, under, across or along said property, except as necessary for maintenance of said highway, and subject to Oregon legislative enactments.

5. Grantee shall obtain any necessary governmental authority to construct, reconstruct, maintain and use said highway. Any contractor performing work on the property herein described shall execute Railroad's standard form of contractor's agreement prior to commencing any work on Railroad's premises.

6. Except as herein otherwise provided, Grantee shall bear the entire expense of constructing, reconstructing, and maintaining said highway. The crossing of said highway over any tracks of Railroad shall be constructed and maintained at the grade of said tracks now or hereafter existing. After the construction or reconstruction of said highway has been completed, Railroad shall maintain the surface of that portion of said highway between lines two (2) feet outside the rails or each track located thereon. Should Railroad abandon tracks leading to said highway, Railroad may abandon its rails, ties and appurtenant materials and leave same in place. In such event, Railroad shall not be liable for maintenance of the portion of said highway specified above.

7. As part consideration herefor, Grantee agrees to pay Railroad an amount equal to all assessments levied by any lawful body against the property of railroad to defray any part of the expense incurred in connection with the construction or reconstruction of said highway commenced within two (2) years from the date first herein written.

8. Should Grantee at any time abandon the use of said property or any part thereof, or fail to use the same for said purpose for a continuous period of one (1) year, the rights granted shall cease to the extent of the use so abandoned or discontinued, and Railroad shall at once have the right, in addition to but not in qualification of the rights hereinabove reserved, to resume exclusive possession of said property or the part thereof the use of which is so discontinued or abandoned. Upon termination of the rights hereby granted, Grantee agrees to remove said highway, including the paving, from said property of Railroad, to restore said property as nearly as practicable to the same state and condition in which it existed prior to construction of said highway, and to bear the expense thereof. Should Grantee in such event fail, neglect or refuse to so remove said highway and restore said property, such removal and restoration may be performed by Railroad at the expense of Grantee, which expense Grantee agrees to pay to Railroad upon demand.

9. This indenture shall inure to the benefit of and be binding upon the successors and assigns, of the parties hereto.

Return to  
Oregon State Hwy. Division  
E/W Section  
State Hwy Bldg Room 119  
Salem, Or 97310

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

OREGON, CALIFORNIA and EASTERN RAILWAY  
COMPANY, a Nevada corporation

By Bernard J. Agnew

Attest Paul W. Boyd  
Secretary

APPROVED AS TO FORM:

Joseph H. Sasser  
Asst. Attorney General and Counsel

STATE OF OREGON, by and through its  
DEPARTMENT OF TRANSPORTATION,  
Highway Division

By J. B. Boyd  
J. B. Boyd, Right of Way Manager

STATE OF Washington, County of King  
March 15, 1978. Personally appeared Bernard J. Agnew  
and Alan P. Vandewent, who, being sworn, stated that they are the  
President and Secretary of grantor corporation and  
that this instrument was voluntarily signed in behalf of the corporation by authority  
of its Board of Directors. Before me:

Beverly E. Knight  
Notary Public

My Commission expires 2/1/81

STATE OF OREGON, County of Marion

March 20, 1978. Personally appeared J. B. Boyd, who being sworn,  
stated that he is the Right of Way Manager for the State of Oregon, Department of  
Transportation, Highway Division, and this document was voluntarily signed on  
behalf of the State of Oregon, by authority delegated to him. Before me:

Adelle L. Egan  
Notary Public for Oregon

My Commission expires Oct. 30, 1980

cnc/tp

2/1/78

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7037

PARCEL 1

EXHIBIT A

A 100 foot parcel of land lying in Enterprise Tracts, Sections 3 and 4, Township 39 South, Range 9 East W.M., Klamath County, Oregon; more particularly described as follows:

The most easterly 50 feet of Section 4 lying between two lines parallel with and distant 50 feet, northerly and southerly as measured at right angles from the center line of the Oregon, California and Eastern Railway as constructed and established in said Section 4 and the most westerly 50 feet of Section 3 lying between two lines parallel with and distant 50 feet, northerly and southerly as measured at right angles from the center line of the Oregon, California and Eastern Railway as constructed and established in said Section 3.

PARCEL 2

A 20 foot strip of right of way in Tract No. 50, Enterprise Tracts, Section 4, Township 39 South, Range 9 East W.M., Klamath County, Oregon; more particularly described as follows:

All that right of way between two lines parallel with and distant 30 feet and 50 feet westerly as measured at right angles from the east line of Section 4, bounded on the south by a line parallel with and distant 50 feet northerly as measured at right angles from the center line of the Oregon, California and Eastern Railway as constructed and established in said Section 4 and bounded on the north by the north line of Tract No. 50, Enterprise Tracts according to the official plat of said Enterprise Tracts.



