

11-07-94A11:27 RCVD

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STREET OR HIGHWAY EASEMENT

THIS INDENTURE, made this 25th day of October, 1994, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, herein called "Railroad," and STATE OF OREGON, DEPARTMENT OF TRANSPORTATION, herein called "Grantee";

WITNESSETH:

1. That Railroad hereby grants to Grantee the right to construct, reconstruct, maintain and use a street or highway, by means of an overpass, 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 herein. There is reserved unto Railroad, its successors and assigns the right to construct, reconstruct, maintain and use and remove existing and future transportation, communications, 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. Railroad's title to underlying property shall not be affected.

4. The rights herein granted shall lapse and become void if the construction or reconstruction of said highway is not commenced within two (2) years from the date first herein written.

5. 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

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Transportation Bldg.
Salem, Or. 97310

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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.

6. 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 Right of Entry agreement prior to commencing any work on Railroad's premises.

7. 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 rail of each track located thereon. Should Railroad abandon tracks leading to said highway, Railroad may leave the rails, ties and appurtenant materials located therein or thereon in place. In such event, Railroad shall not be liable for maintenance of the portion of said highway specified above.

8. As part consideration hereof, Grantee agrees to pay Railroad an amount equal to all assessments levied by order of any lawful body against the subject property of Railroad (and which may have been paid by 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.

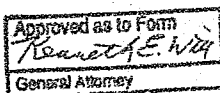
9. Should Grantee at any time abandon the use of said property or any part thereof, or fail to use the same or said purpose for a continuous period of one (1) year, the rights granted shall cease to the extent of the use so abandoned or discontinued, and Railroad shall at once have the right, in addition 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 to pay to Railroad upon demand.

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10. The parties intend that the promises and obligations of this indenture shall constitute covenants running with the land so as to bind and benefit their respective successors and assigns.

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



SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: James L. Mollen
(Title) Manager ContractsAttest: B. J. Medina
Assistant SecretarySTATE OF OREGON,
DEPARTMENT OF TRANSPORTATIONBy: Deborah H. Lopez
(Title) Right-of-Way ManagerBy: _____
(Title)

EXHIBIT A

File R6076020
 Southern Pacific
 Transportation Company
 CLM 6-10-92
 9B-36-19 and 10B-1-9

Survey Approval Project
 Section: Green Springs Hwy. - Midland Hwy. Jct.
 Highway: The Dalles - California
 Throughway

Permanent Easement for Highway Right of Way Purposes

A parcel of land lying in Lots 16 and 17, MIDLAND TRACTS, Klamath County, Oregon and being a portion of the Southern Pacific Transportation Company right of way; the said parcel being that portion of said right of way included in a strip of land variable in width, lying on each side of the center line of the relocated The Dalles - California Highway, which center line is described as follows:

Beginning at Engineer's center line Station 320+92.19, said station being 5439.35 feet North and 385.33 feet West of the Northeast corner of Section 30, Township 39 South, Range 9 East, W.M.; thence South 4° 48' 06" West 4533.62 feet; thence on a spiral curve right (the long chord of which bears South 6° 11' 26" West 499.88 feet) 500.00 feet; thence on a 3437.75 foot radius curve right (the long chord of which bears South 21° 14' 22" West 1461.30 feet) 1472.53 feet; thence on a spiral curve right (the long chord of which bears South 36° 17' 18" West 499.88 feet) 500.00 feet; thence South 37° 40' 38" West 2079.02 feet to Engineer's center line Station 411+77.36.

The widths in feet of the strip of land above referred to are as follows:

Station to	Station	Width on Easterly Side of Center Line	Width on Westerly Side of Center Line
357+00	366+25.81	125	110 in a straight line to 115
366+25.81	371+25.81	125	115 in a straight line to 110

EXCEPT therefrom that property described in that agreement between Southern Pacific Company, Central Pacific Railway Company, and the State of Oregon, by and through its State Highway Commission, recorded November 6, 1935 in Book 105, Page 342 of Klamath County Record of Deeds.

Bearings are based upon the Oregon Coordinate System of 1927, south zone.

EXHIBIT A CONTINUED - Page 2

File R6076020

The parcel of land to which this description applies contains 0.73 acre, more or less.

clm

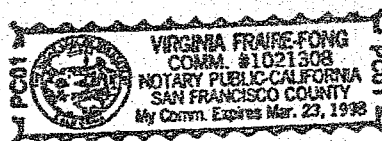
10JUN92

NOTE: Prior file: RR179.

State of California
County of San Francisco

On October 25, 1994, before me Virginia Fraire-Fong, Notary personally appeared Janie L. Moeller, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Virginia Fraire-Fong

CAPACITY CLAIMED BY SIGNER

X Corporate Officer:

DESCRIPTION OF ATTACHED DOCUMENT

Indenture with the State of
Oregon

Manager of Contracts
(Title)

Number of Pages: 3

Date of Document: October 25, 1994

SIGNER IS REPRESENTING: Southern Pacific Transportation Company

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Oregon Dept. of Transportation the 7th day of 7th A.D., 19 94 at 11:27 o'clock A.M., and duly recorded in Vol. M94 of Deeds on Page 34349

FEE \$35.00

Evelyn Biehn County Clerk

By William Millender