

RESOLUTION NO. 5702

A RESOLUTION ACCEPTING THE FOLLOWING EASEMENT:

Grantor

Purpose

George K. Koos and Cory H. Koos

Access/maintenance easement along the Santiam-Albany Canal and Burkhart Creek northwest of Lebanon

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that it does hereby accept this easement.

DATED AND EFFECTIVE THIS 12th DAY OF November 2008.



Mayor

ATTEST:



City Clerk



Grantor:
George and Cory Koos
33953 Langmack Rd.
Lebanon, OR 97355

Grantee:
City of Albany
333 Broadalbin St.
P.O. Box 490
Albany, OR 97321

After Recording, Return To:
Same As Above Grantee

LINN COUNTY, OREGON 2008-13161
E:EAS 06/30/2008 03:55:25 PM
Clt=1 SIn=1 COUNTER \$41.00
\$20.00 \$11.00 \$10.00



I, Steve Druckenmiller, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.



Steve Druckenmiller - County Clerk

EASEMENT AGREEMENT

RECITALS:

WHEREAS, Grantor owns real property in Linn County, Oregon, which contains portions of the Albany-Lebanon canal and Burkhart Creek; and

WHEREAS, Grantee needs an easement on the South side of the Albany-Lebanon canal for purposes of maintaining the canal.

AGREEMENT:

NOW THEREFORE, in partial consideration for Grantor's purchase of real property, commonly known as the Archibald Property, from Grantee, George K. and Cory H. Koos (Grantor), grant to the City of Albany and its successors (Grantee), a nonexclusive easement over Grantor's Property for access, that easement being more particularly described in Exhibit "A" attached hereto.

1. This Easement is perpetual.
2. Grantee shall remove no vegetation, particularly trees, from this Easement unless absolutely necessary for the use of this Easement. A substantial number of trees have been nurtured along the watercourses on Grantor's property for purposes of acting as a buffer between farm uses and the watercourses. It is the intent of the parties to avoid destroying those buffers. The parties agree that there will be no clear-cutting of trees from within the easement and Grantee shall replace any trees that are removed from this Easement with similar trees in a location intended to replace resulting gaps in the buffer between farm use and watercourse.
3. Grantee acknowledges that Grantor's property is farm property and is subject to common, customary and accepted farm or forest management activities for the operation of a commercial farm or forest. These practices ordinarily and necessarily produce noise, dust, smoke and other types of visual, odor, or noise impacts which Grantee accepts as normal and necessary farming or forestry management activities and holds Grantor harmless for any such use of Grantor's property that is conducted in accordance with federal and state laws.
4. Grantee shall compensate Grantor for any damage to Grantor's crops or property that may result from Grantee's use of this Easement.
5. The parties in no way intend this Easement to allow public access to Grantor's property, the Albany-Lebanon canal, or Burkhart Creek.
6. This easement is intended only to provide pedestrian and ATV access by Grantee. Larger vehicles may only make use of this easement with prior written approval of the Grantors.
7. In the event suit or action is instituted by either party to enforce any of the terms or conditions of this Easement, the prevailing party shall be entitled to recover their reasonable

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IS RECORDING THIS DOCUMENT AS AN
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AS TO ITS VALIDITY.

First American Title 1204947 (Acco)

attorney fees and costs in such suit, action or appeal. Costs shall include costs as allowed by law and such other costs as are reasonably required, including, but not limited to, the cost of taking and transcribing depositions and procuring of any expert testimony.

8. If any clause, phrase, or paragraph, or any part thereof, of this Easement is found to be unenforceable, that clause, phrase, or paragraph, or any part thereof, shall be deemed severed, and the remainder of this Easement shall continue in full force and effect.

IN WITNESS WHEREOF the parties have executed this Easement as of the 26 day of June, 2008.

GRANTOR:

GRANTEE:

[Signature]
George K. Koos
[Signature]
Cory H. Koos

CITY OF ALBANY
[Signature]
By: _____
Its: _____

STATE OF OREGON)
County of Linn) ss.

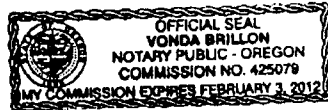
On this 26 day of June, 2008, personally appeared before me the above-named George K. Koos and Cory H. Koos, husband and wife, and acknowledged the foregoing to be their voluntary act and deed.



[Signature]
NOTARY PUBLIC FOR OREGON
My Commission Expires: 6-6-12

STATE OF OREGON)
County of Linn) ss.

On this 25th day of June, 2008, personally appeared before me Wes Hare as City Manager of the City of Albany, and acknowledged the foregoing to be his/her voluntary act and deed.



[Signature]
NOTARY PUBLIC FOR OREGON
My Commission Expires: 2/3/12

K & D ENGINEERING, Inc.

Engineers • Planners • Surveyors

Exhibit "A"
(Easement South of Canal)

A tract of land lying in the East 1/2 of Section 32, Township 11 South, Range 2 West, Willamette Meridian, Linn County, Oregon, said tract being a portion of that property conveyed to George K. Koos and Cory H. Koos by deed recorded in Vol. 360, Pg. 489, Linn County Deed Records, said tract being more particularly described as follows:

Commencing at the Southeast corner of said Koos property, said corner being coincident with the South line of the John Settle Donation Land Claim No. 64; thence North 88°02'47" West, on said South line, a distance of 41.83 feet to the **TRUE POINT OF BEGINNING**; thence leaving said South line, North 56°36'32" West 15.48 feet to the South line of the Albany-Santiam canal right of way as recorded in Book L, Page 499, Linn County Deed Records, and located on the ground by County Survey No. 22134 and also by County Survey No. 24536; thence continuing on said South right of way line the following courses: North 56°36'32" West 322.89 feet; thence North 52°43'34" West 1583.61 feet to a point coincident with the East right of way line of Langmack Road (County Rd. No. 662); thence leaving said South line, South 01°55'25" West, on said East right of way line, a distance of 12.26 feet to a point 10.00 feet distant, when measured at right angles, to the previously described South line of the Albany-Santiam canal right of way; thence running parallel and 10.00 feet distant therefrom said right of way line the following two courses: 1.) South 52°43'34" East 1576.36 feet; 2.) thence South 56°34'18" East 51.93 feet; thence discontinuing said parallelism, South 17°39'01" East, a distance of 150.00 feet to a point on the South line of said Koos property; thence South 88°02'47" East, a distance of 200.00 feet to the Point of Beginning.

The bearings used for this description were based on County Survey No. 24536. The easement contained herein contains 31,882 square feet (0.73 acres), more or less.

March 4, 2008
EXHIBIT "A"
BURKHART CREEK EASEMENT
(08-27-A) JSM:nm
File: T:\as\projects\2008\08-27-a\canal\east.doc

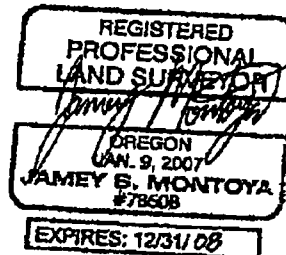
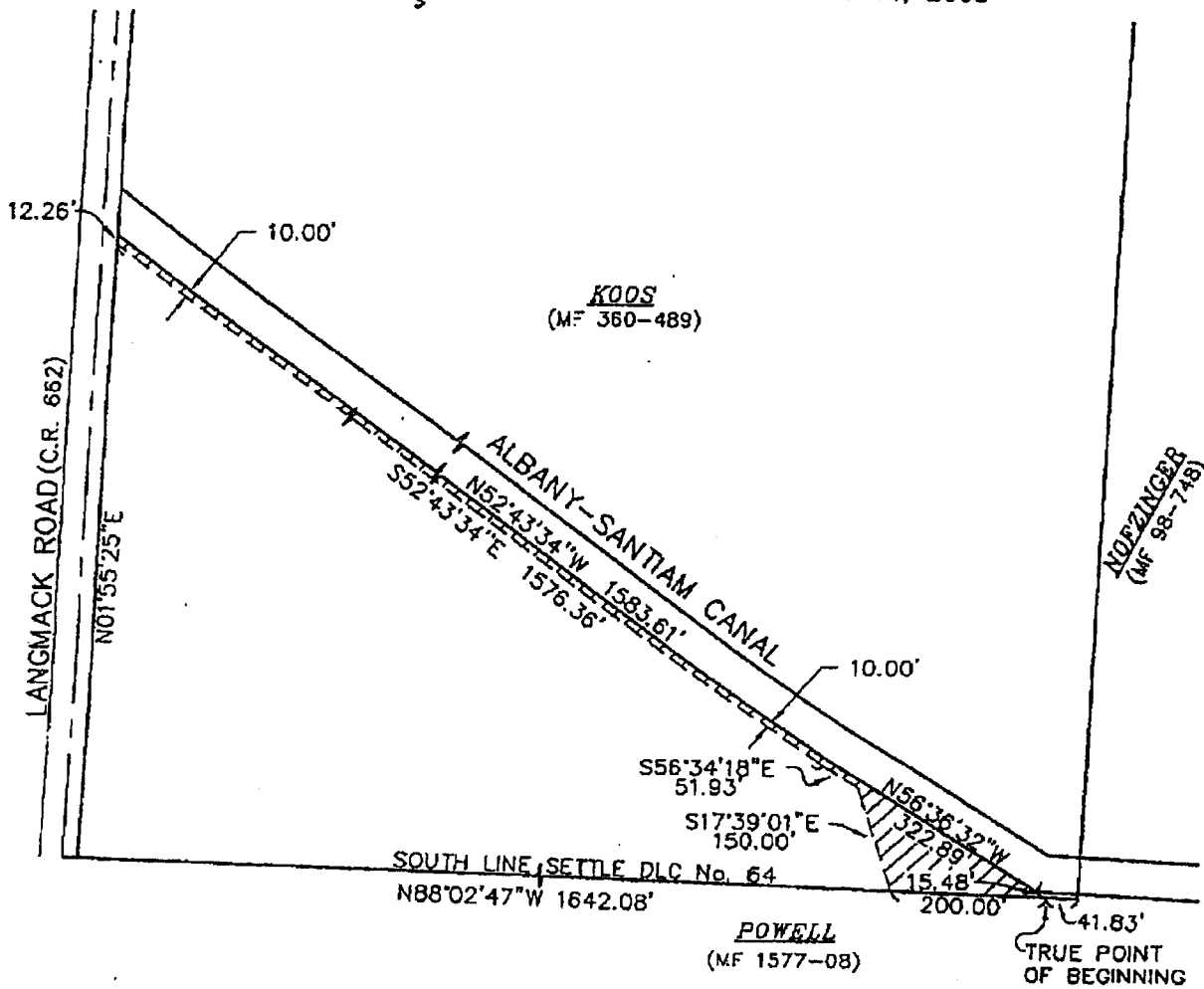
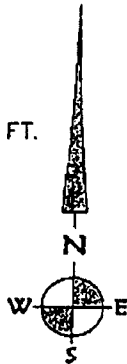
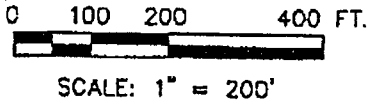


EXHIBIT "B" ACCESS/MAINTENANCE EASEMENT FOR CITY OF ALBANY

LOCATED IN
E 1/2 SEC. 32, T. 11 S., R. 2. W., W.M.,
LINN COUNTY, OREGON

FEBRUARY 14, 2008



Date: 2/14/2008 Time: 16:16
 Scale: 1=200(PS)
 File: dwg\2008\08-27-A\27-a exh.dwg (Jeff D)



K & D ENGINEERING, Inc.
 276 N.W. Hickory Street P.O. Box 786
 Albany, Oregon 97321
 (541) 928-2583

Resolution No. 5702

Recorded Document Recorder File No. 5132