

RESOLUTION NO. 5700

A RESOLUTION ACCEPTING THE FOLLOWING EASEMENT:

Grantor

George K. Koos and Cory H. Koos

Purpose

Construction Easement for the purpose of constructing a diversion structure near the intersection of Burkhart Creek and the Albany-Lebanon canal

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 **2008-13159**
E-EAS
Cnt=1 SIn=1 COUNTER 06/30/2008 03:55:25 PM
\$25.00 \$11.00 \$10.00 **\$48.00**



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



CONSTRUCTION EASEMENT

RECITALS:

WHEREAS, Grantor owns real property in Linn County, Oregon, commonly known as 33953 Langmack Rd., which contains portions of the Albany-Lebanon canal and Burkhart Creek; and

WHEREAS, Grantee needs a temporary easement for purposes of constructing a diversion structure near the intersection of Burkhart Creek and the Albany-Lebanon 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. During those years in which the Easement remains in effect, this Easement may be used by Grantee only for access to construct a diversion structure. Such access shall only be allowed between September 1 and November 1.

2. This Easement shall terminate on November 1, 2012. However, if substantial work towards construction of a diversion structure near the confluence of Burkhart Creek and the Albany-Lebanon canal has not begun by November 1, 2010, this Easement shall terminate on November 1, 2010.

3. Grantee shall remove no vegetation, particularly trees, from this Easement unless absolutely necessary for the use of the 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 this 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.

4. 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.

5. Grantee shall compensate Grantor for any damage to Grantor's crops or property that may result from Grantee's use of this Easement.

NOTE: FIRST AMERICAN TITLE
IS RECORDING THIS DOCUMENT AS AN
ACCOMMODATION TO CLIENT ONLY AND
WILL NOT ASSUME ANY RESPONSIBILITY
AS TO ITS' VALIDITY.

1204947 (Acc) First American Title

6. Grantee assumes all liability for the transfer of water between the Albany-Lebanon canal and Burkhart Creek.

7. The parties in no way intend this Easement to allow public access to Grantor's property, the Albany-Lebanon canal, or Burkhart Creek.

8. 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 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.

9. 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.

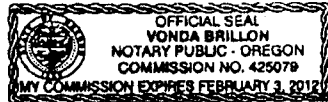
On this 26 day of June, 2008, personally appeared before me the above-named George K. Koos and Cory H. Koos, husband and wife, and acknowledged the foregoing to be their voluntary act and deed.



[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"**
(Temporary Easement)

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 a strip of land 20 feet in width, lying 10 feet on each side of the following described centerline:

Commencing at the Southeast corner of the Gideon Backus Donation Land Claim No. 60 in said Township and Range; thence North $88^{\circ}14'26''$ West, on the South line of said land claim, a distance of 683.38 feet; thence leaving said line, South $01^{\circ}45'34''$ West 25.00 feet, to the South right of way line of KGAL Drive (County Rd. No. 661), and the **TRUE POINT OF BEGINNING** for this description; thence leaving said right of way, South $27^{\circ}09'35''$ East 888.95 feet; thence South $10^{\circ}17'18''$ East 859.30 feet; thence South $09^{\circ}02'39''$ West 71.86 feet to a point designated as Point "A" for the purpose of this description, said point bears North $02^{\circ}03'30''$ East 251.32 feet, and North $87^{\circ}56'30''$ West 74.31 feet, from the Southeast corner of the previously described Koos property, said Point "A" also being the southerly terminus of described centerline, the sidelines of which to be lengthened or shortened on the North end to terminate at the South right of way line of KGAL Drive.

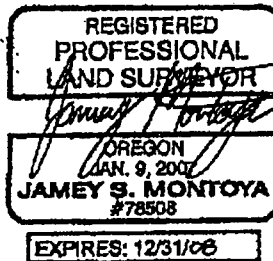
TOGETHER WITH:

Beginning at Point "A", as previously described above; thence South $56^{\circ}29'05''$ East 87.11 feet to the East boundary line of said Koos property; thence South $02^{\circ}03'30''$ West, on said East line, a distance of 138.77 feet to a point 10.00 feet distant, when measured at right angles, to the Northerly 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 North $87^{\circ}00'45''$ West, parallel with said right of way, a distance of 37.78 feet; thence continuing parallel, North $56^{\circ}36'32''$

Exhibit "A" Temporary Easement
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West 69.48 feet; thence North 20°00'00" East 40.93 feet; thence North 00°41'15"
West 54.27 feet; thence North 18°17'52" West 85.79 feet; thence South
56°29'05" East 50.00 feet to the Point of beginning.

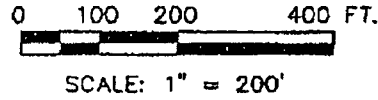
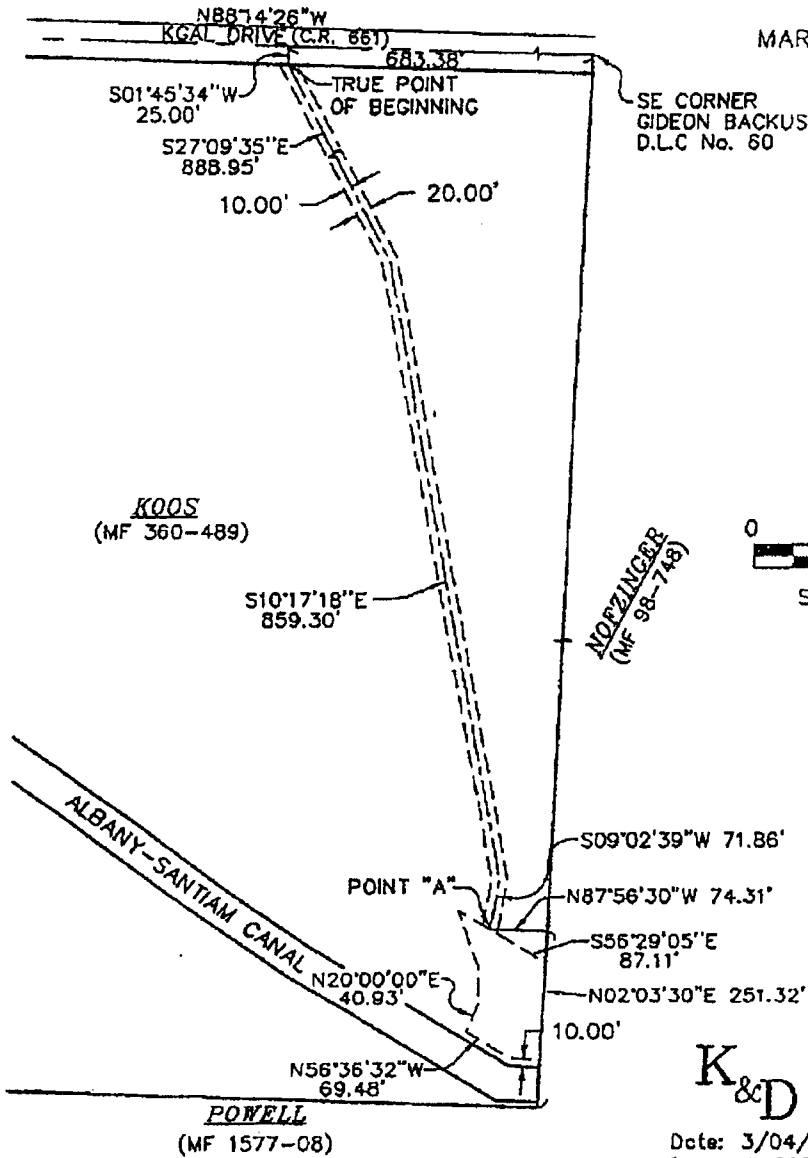
The bearings used for this description were based on County Survey No. 24536. The easement described herein contains 51,063 square feet (1.17 acres), more or less.



March 4, 2008
EXHIBIT "A"
TEMPORARY EASEMENT
(08-27-A) JSM:nm
File: Titan/projects/2008/08-27-a/tempease2.doc

EXHIBIT "B"
TEMPORARY CONSTRUCTION EASEMENT
FOR
CITY OF ALBANY
 LOCATED IN
 E 1/2 SEC. 32, T. 11 S., R. 2. W., W.M.,
 LINN COUNTY, OREGON

MARCH 4, 2008



K & D ENGINEERING, Inc.
 276 N.W. Hickory Street P.O. Box 725
 Albany, Oregon 97321
 (541) 928-2583

Date: 3/04/2008 Time: 13:30
 Scale: 1=200(PS)
 File: dwg\2008\08-27-A\27-a exh.dwg (Jamey M

Resolution No. 5700

Recorded Document Recorder File No. 5132