

49893-66

DESCHUTES COUNTY OFFICIAL RECORDS  
NANCY BLANKENSHIP, COUNTY CLERK

2003-53062

Recording requested by and when  
recorded return to:



\$66.00

River Bend Limited Partnership  
15 SW Colorado Avenue, Suite A  
Bend, OR 97702

08/06/2003 10:56:59 AM  
D-COTV Cnt=2 Stn=4 BECKEY  
\$35.00 \$5.00 \$11.00 \$10.00 \$5.00

*Covenants Conditions and  
Restrictions for*  
**SUPPLEMENTAL DECLARATION OF RIVER BEND**

THIS SUPPLEMENTAL DECLARATION is made as of this 1<sup>st</sup> day of  
August, 2003, by RIVER BEND LIMITED PARTNERSHIP, an Oregon limited partnership  
("Declarant").

**BACKGROUND**

A. On June 26, 1998, Declarant recorded an Amended and Restated Master  
Declaration of Covenants, Conditions, and Restrictions for River Bend (the "Declaration") in the  
real property records of Deschutes County, Oregon, at Book 499, Page 2948 submitting certain  
real property known as River Bend to the provisions of the Declaration.

B. Section 2.1.3 of the Declaration permits the Declarant to unilaterally subject  
any property subject to the Declaration to additional covenants and easements.

C. Declarant currently owns the real property on Exhibit A, attached hereto (the  
"Burdened Property"), which is subject to the Declaration.

D. Declarant also currently owns and controls the dam on the Deschutes River  
(the "River") known as the Shevlin Center Dam located in the NW1/4NW1/4 of Section 5,  
Township 18 South, Range 23 East of the Willamette Meridian (the "Dam"). Declarant desires  
to retain the right (but not the obligation) to control the water level in the River that runs through

After recording, return to  
Amerititle  
15 OREGON AVENUE, BEND

the Burdened Property. In this connection, Declarant desires to retain the right, but not the obligation (1) to open and close the Dam, releasing or retaining water in the River above the Dam, and (2) to dredge all or a portion of the River located on the Burdened Property. Declarant desires to retain a perpetual, non-exclusive, assignable easement (the "Water Level Easement") to (a) open and close the Dam, from time to time, as Declarant determines in its absolute discretion and (b) to dredge all or portion of the River located on the Real Property in quantities Declarant determines in its absolute discretion.

E. The Burdened Property is subject to the Mill View Plat (Plat #F-516-519) recorded in the real property records of Deschutes County, Oregon on May 29, 2003, with the recording number of 2003-35894 (the "Plat"). Pursuant to the Plat, there is a 10-foot wide relocatable pedestrian walkway and bicycle path with access for the public subject to the rules of the River Bend Master Association.

F. Declarant desires to construct and maintain the Path and the landscaping between the Path and the River (the "Landscaping") and to retain a perpetual, non-exclusive, assignable easement along the River on the Burdened Property for the purpose of maintaining, repairing, and replacing the Path and the Landscaping (the "Path Easement") on the terms and conditions set forth herein.

### **Easements**

#### **1. Description and Declaration of Easements.**

1.1 **Description of Easements.** The easements hereinafter described shall be perpetual and non-exclusive and for the use and benefit of the Declarant and its successors, assigns, lessees, and invitees. It is the intention for the easements on the Burdened Property to run with the land and bind all future owners of the Burdened Property.

1.2 Declaration of Easement. Declarant hereby declares that the Burdened Property is subject to the Water Level Easement and the Path Easement for the purposes set forth in the recitals above and subject to the terms and conditions in Section 2 below.

2. Provisions of Easements.

2.1 Water Level Easement. The Water Level Easement is subject to the following terms and conditions:

(a) Declarant may exercise its rights under the Water Level Easement at its absolute discretion. Without limiting the foregoing, under no circumstances will Declarant be obligated to open or close the Dam or dredge the River for any reason, including (without limitation) if (i) the water level in the River rises above the 3605' Level naturally and opening the Dam or dredging the River would lower the water level below the 3605' Level and (ii) the water level in the River falls exposing unlandscaped areas along the River and closing the Dam would raise the water level.

(b) Declarant's only restriction with respect to the exercise of (or election not to exercise) the Water Level Easement, is that Declarant may not close the Dam if closing the Dam would cause the water level of the River on the Burdened Property to imminently rise above the 3,605 feet mean sea level as established by the USGS Survey (the "3605' Level"). Declarant is under no obligation to maintain the Dam and may abandon the Dam.

2.2 Path Easement. The Path Easement is subject to the following terms and conditions:

(a) Declarant will construct the Path on or before September 1, 2005.

(b) The Path will be approximately 10-feet wide and constructed of materials selected by Declarant in its absolute discretion. The Landscaping between the Path and the River shall be as selected by Declarant in its absolute discretion.

(c) Declarant will, at its expense, maintain and repair the Path and the Landscaping, but will have no obligation for snow removal. Declarant is not obligated to irrigate the Landscaping.

3. Dispute Resolution. In any dispute arising out of this Easement, the dispute shall be resolved by a single arbitrator selected by the parties or if the parties are unable to agree on the arbitrator following ten days notice by either party to the other, the arbitrator shall be selected by the presiding judge of the Circuit Court of the state of Oregon for Deschutes County.

4. Liability of Declarant. Declarant shall have no liability with respect to the Water Level Easement or the Path Easement, except for Declarant's gross negligence or willful misconduct.

5. Assignment. Declarant may at any time, upon written notice to the Owners of the Burdened Property, assign all or part of its rights or obligations under this Easement. Such assignee may include, without limitation, the River Bend Master Association.

6. Not a Public Dedication. Except to the extent the path is available to the public under the Plat, nothing contained in this instrument shall be deemed to be a gift or dedication of any portion of the Burdened Property to the general public or for the general public or for any public purpose whatsoever, and this Easement shall be strictly limited to and for the purposes expressed herein.

7. Subsequent Conveyances. Each conveyance of a portion of the Burdened Property after the date of recordation of this instrument shall be construed to grant and reserve the easements contained herein, regardless of whether any specific references to such easements appears in the instrument of conveyance.

**RIVER BEND LIMITED PARTNERSHIP**

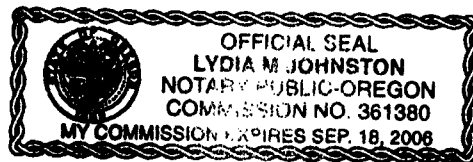
By: The Bend Company, its General Partner

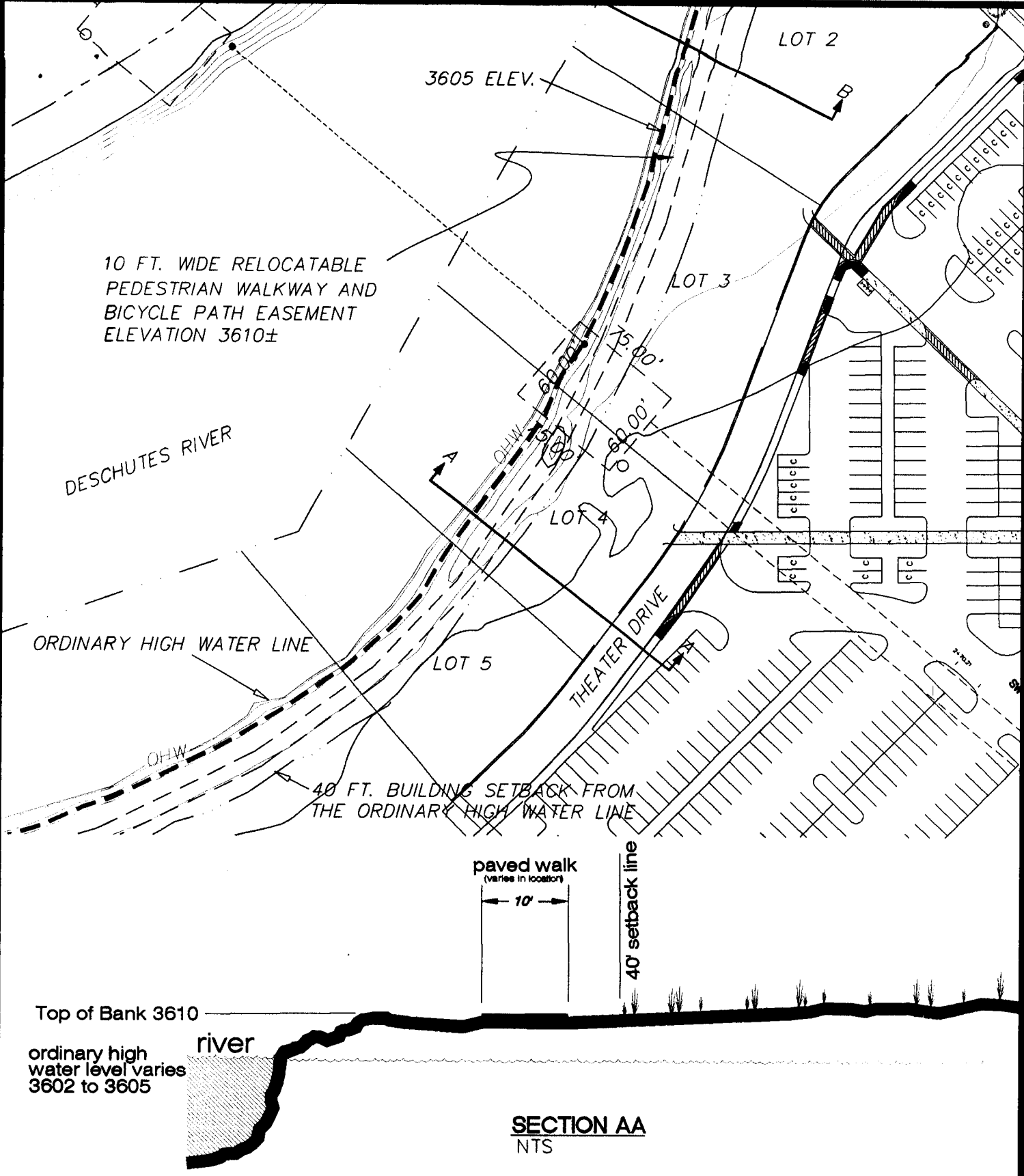
By: *William Smith*  
William Smith, President

STATE OF OREGON                    )  
                                                  ) SS  
COUNTY OF DESCHUTES         )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of August, 2003, by William Smith, as President of The Bend Company, an Oregon corporation, General Partner of River Bend Limited Partnership.

*Lydia M. Johnston*  
Notary Public for Oregon  
My commission expires: September 18, 2006





10 FT. WIDE RELOCATABLE  
PEDESTRIAN WALKWAY AND  
BICYCLE PATH EASEMENT  
ELEVATION 3610±

DESCHUTES RIVER

ORDINARY HIGH WATER LINE

3605 ELEV.

LOT 2

LOT 3

LOT 4

LOT 5

THEATER DRIVE

40 FT. BUILDING SETBACK FROM  
THE ORDINARY HIGH WATER LINE

paved walk  
(varies in location)

10'

40' setback line

Top of Bank 3610

ordinary high  
water level varies  
3602 to 3605

river

SECTION AA  
NTS

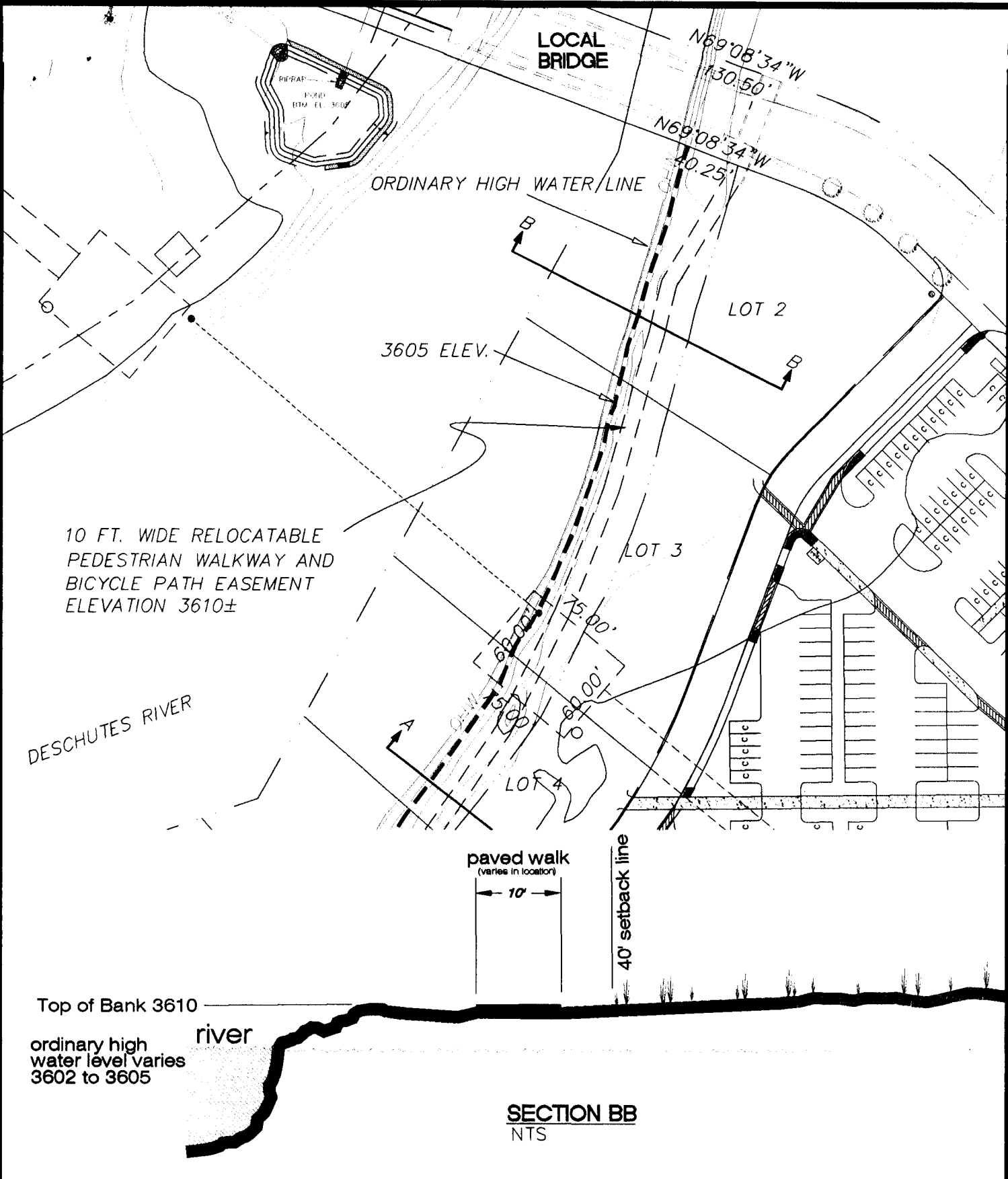


Bussard Engineering, LLC  
16 S.W. Colorado  
Bend, Oregon 97702  
(541) 389-4656 Fax (541) 389-6772

MILL VIEW LOTS 3,4,5  
SITE PLAN

SCALE 1"=80'  
DRAWN BY CAH  
CHECKED BY CAH  
DATE 6/2/03

SHEET NO.  
EX A-1



 **Bussard Engineering, LLC**  
 15 S.W. Colorado  
 Bend, Oregon 97702  
 (541) 389-4858 Fax (541) 389-8772

**MILL VIEW LOT 2  
SITE PLAN**

SCALE 1"=80'  
 DRAWN BY CAH  
 CHECKED BY CAH  
 DATE 6/2/03

SHEET NO.  
**EX A-2**