

88-15525

REVIEWED

LEGAL COUNSEL

CONSERVATION EASEMENT

167 - 0279

STAGE STOP, INC. dba RIVER MEADOWS, hereinafter referred to as "Grantor", conveys to DESCHUTES COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as "Grantee", a conservation easement over, across, through, and above the following described real property:

An easement located between an existing bike path and the Deschutes River, and being not more than ten (10) feet in width where no bike path exists, lying westerly and northerly of the Deschutes River, within the Southeast one-quarter of the Southeast one-quarter (SE1/4 SE1/4) of Section 23 and the West one-half of the Southwest one-quarter (W1/2 SW1/4) of Section 24, all in Township 20 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon.

Together with an easement, including all elements of this easement with the exception of paragraph four (4) below described as that portion of said Section 24 lying between the Deschutes River and the boat basin and its inlet and outlet channels, but not including the banks of said boat basin and its channels.

1. This conservation easement is a non-possessory interest of Grantee imposing limitations and affirmative obligations as set out herein. Grantor retains all rights and interests in the property subject to the easement that are not expressly conveyed to Grantee as a part of this easement.
2. Grantor and its successors and assigns shall retain and protect the natural, scenic and open space values of the easement area. Any uses within the conservation easement shall protect natural resources, maintain or enhance air and water quality and preserve any historical, architectural, archaeological and cultural aspects of the real property.
3. Grantor agrees to clean up any trash, debris or garbage which may be found within the easement area.
4. Grantor shall allow public access as part of this conservation easement. Such public access shall be subject to the following conditions:
  - A. Public access shall be limited to foot traffic for recreational purposes and the putting in or taking out of boats by persons on foot.

- B. Unless otherwise permitted by the affected property owner, public access does not allow public passage through other private property to gain access to the property subject to the conservation easement.
  - C. Unless otherwise permitted by state law, county ordinances or the property owner, no person on the subject property as a result of this public access requirement shall deposit solid waste, damage or remove any property (including wildlife and vegetation), maintain or ignite fires or fireworks, discharge firearms or camp.
5. After consultation with and reasonable advance notice to Grantor, Grantee may enter upon the easement for the following purposes:
- A. To inspect for violations and to administer the easement.
  - B. To implement erosion prevention measures.
  - C. To plant trees or perform restoration work as deemed necessary to protect, restore or enhance the scenic view.
  - D. To protect and restore historic or archaeological sites which may exist within the easement area.
  - E. To take all measures deemed necessary to prevent or suppress forest fires.
  - F. To implement disease prevention measures to protect the scenic quality of the river setting.
  - G. To selectively cut or prune brush.
  - H. To mark, prune, cut, remove or otherwise dispose of all dead, dying, diseased or insect-infested live or other trees which, in the judgment of Grantee, endanger the public safety or detract from the aesthetics of the above-described area.
6. Nothing herein shall be construed as creating any duty on the part of the Grantee to undertake any of the above enumerated activities.
7. The following are restrictions on use of the easement area by Grantor:

- A. No structure of any kind, including house trailers or mobile homes, shall be placed, used, erected or maintained upon the easement area, except as permitted by Grantee.
- B. Grantor shall not use or occupy any portion of the easement area in a manner which would degrade or diminish the natural, scenic and open space values of the real property.
- C. The construction, placement or exterior alteration of any structure or facility may be undertaken only after obtaining prior written approval of architectural and site plans from Grantee.
- D. There is specifically retained by the Grantor the right to perform ordinary maintenance on all existing buildings and structures, together with the right to replace, rebuild or substitute any building or structure now existing with a similar building or structure in substantially the same location; however, the replacement, rebuilding or substitution of any building or structure may be undertaken only after obtaining prior written approval of architectural and site plans from Grantee.
- E. Except as provided herein, no other new structure of any kind shall be placed on or erected upon the easement area.
- F. No tents, travel trailers, or camping facilities of any kind shall be placed or erected upon the easement area, except as approved in writing by Grantee.
- G. No new installation of above-ground utilities, structures or lines shall be made upon or within the easement area without prior written approval of Grantee.
- H. No changes in the general topography or land surface (including excavation, road construction and the quarrying or removing of rocks, sand, dirt, gravel or other material) are permitted within the easement area without the prior written approval of Grantee.
- I. No dumping of trash, debris or garbage shall be allowed upon the easement area.

- J. Grantor shall retain title to all trees, standing or downed, within the easement area provided, however, that the cutting or removal of vegetation shall be limited to that needed to maintain an orderly appearance around the structures. Cutting of trees to provide view corridors for lots may be undertaken by Grantor only after obtaining prior written approval from Grantee. In determining whether to grant such approval, Grantee may consult with other entities, such as the Oregon Department of Fish and Wildlife and the Oregon Division of State Lands.
- K. No water pumping facilities shall be placed in the easement area without prior written approval of Grantee. Approval of such facilities shall be contingent upon the proposed location, pumping facility design and the inclusion of adequate visual and sound reducing screening for the protection of natural qualities in and along the river.
- L. Grantor shall take all necessary precautions to avoid damage to fish habitat and exercise such precautions as are reasonably necessary to prevent muddying or silting of the river or stream.
- M. Grantor shall not allow oil or greasy substances originating from construction operations to enter or be placed where they may later enter the river or stream.
8. This conservation easement may be enforced by Grantee and by any third party governmental body, private non-profit corporation or charitable trust which, although eligible to be a holder of this conservation easement, is not a holder. However, any third party, other than a governmental body, wishing to enforce this easement shall first petition Grantee to take enforcement action. If Grantee declines to undertake enforcement action, such third party may do so.

DATED this 20<sup>th</sup> day of July, 1988.

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

Lois Bristow Prante  
LOIS BRISTOW PRANTE, Commissioner

Tom Theop  
TOM THEOP, Commissioner

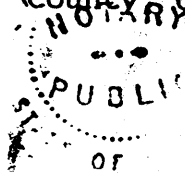
Dick Maudlin  
DICK MAUDLIN, Chairman

ATTEST:

Janet L. Covert  
Recording Secretary

STATE OF OREGON )  
 ) SS.  
 County of Deschutes )

Before me, as Notary Public, personally appeared LOIS BRISTOW BRANTE, TOM THROOP and DICK MAUDLIN, the above-named Board of County Commissioners of Deschutes County, Oregon, and acknowledged the foregoing instrument on behalf of Deschutes County Oregon, this 20<sup>th</sup> day of July, 1988.



William J. Courtain  
 Notary Public for Oregon

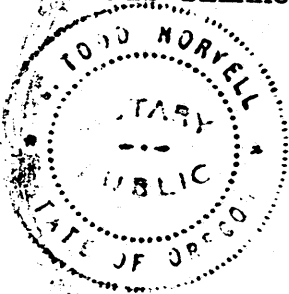
My Commission Expires 4-13-91

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1988.

Dennis Delahunt  
 DENNIS DELAHUNT

STATE OF OREGON )  
 ) SS.  
 County of Deschutes )

The foregoing instrument was acknowledged before me by DENNIS DELAHUNT this 16<sup>th</sup> day of July, 1988.



Todd Norvell  
 Notary Public for Oregon

My Commission Expires: 12/4/89

## MILLER, NASH, WIENER, HAGER &amp; CARLSEN

ATTORNEYS AND COUNSELORS AT LAW

111 S.W. FIFTH AVENUE

PORTLAND, OREGON 97204-3699

TELEPHONE (503) 224-5858

July 18, 1968

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P  
Y

Ms. Karen H. Green  
Deschutes County Counsel  
Courthouse Annex  
Bend, Oregon 97701

Subject: Stage Stop, Inc., v. The Deschutes  
County Board of Commissioners  
Deschutes County Circuit Court  
Case No. 87-CV-0076-WE

P  
Dear Karen:

Enclosed are the two originals of the conservation  
easement that have been executed by Dennis DeLaHunt.

Y The legal description in the enclosure is flawed  
because it does not state that the real property covered by the  
easement begins at the ordinary high water mark of the  
Deschutes River and continues away from the river to the  
nearest edge of the existing bike path or, in areas where the  
bike path has not been constructed, then the property continues  
away from the river for a distance of 10 feet. In other  
words, the description does not tell the reader exactly where  
the property covered by the easement actually begins, so it is  
meaningless to state that the area covered by the easement is  
10 feet wide.

If Deschutes County agrees that the legal description  
in the easement should be clarified by means of this letter,  
please execute the enclosed receipt copy of this letter and  
return it to me, together with one of the fully executed  
originals of the enclosure.

167 - 0285

Ms. Karen H. Green

- 2 -

July 18, 1988

If the County is unwilling to correct the above-noted problem by means of this supplementary letter, please telephone me.

Very truly yours,

Rece Bly

C  
O  
P  
Y

Deschutes County hereby agrees that the legal description in the easement should be clarified by means of this letter.

Deschutes County

By

Karen H. Green  
Karen H. Green

STATE OF OREGON )  
COUNTY OF DESCHUTES ) SS.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND  
RECORDER OF CONVEYANCES, IN AND FOR SAID  
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN  
INSTRUMENT WAS RECORDED THIS DAY:

88 JUL 20 PM 1:06

MARY SUE PENHOLLOW  
COUNTY CLERK

BY B. Beck DEPUTY

NO. 88-15525

FEE

DESCHUTES COUNTY OFFICIAL RECORDS

County File