

REAL ESTATE EXCISE TAX

AFTER RECORDING MAIL TO:

Gary K. Kahn
Reeves, Kahn & Hennessy
PO Box 86100
Portland, OR 97286

MAR - 5 2009

PAID 1267.20 + 247.50 = 1514.70
VICKIE CRILLAN
SKAMANIA COUNTY TREASURER

PEDESTRIAN EASEMENT

Grantor: Stevenson Heirs, Inc.
Grantee: Columbia Gorge Environmental Foundation
Legal Description: Gov't Lot 4, NW¼, S-16, T1N, R5E, W.M (portion)
Assessor's Tax Parcel: 01-05-16-00-2100 (portion) DW

2M 3-5-09

Stevenson Heirs, Inc. (the "Grantor"), the owner of the parcel referred to above (the "subject parcel"), for and in consideration of Ninety Nine Thousand and 00/100's Dollars (\$99,000.00) in hand paid, hereby conveys to the Columbia Gorge Environmental Foundation, its successors and assigns forever, (collectively the "Grantee"), an easement for purposes of ingress and egress, over, under and across that certain parcel of real property, located in Government Lot 4, in the Northwest quarter of Section 10, Township 1 North, Range 5 East of the Willamette Meridian, as described in Exhibit A annexed hereto (the "Easement").

I. PURPOSE

The purpose of this Easement is to assure that recreational access by foot within and across the subject parcel will be permitted by Grantor in perpetuity. This Easement transfers to the Grantee the right to limit any use or activity occurring within the Easement to such uses and activities that the Grantee considers consistent with this purpose, which shall be limited to affording to the general public non-mechanized physical access across the subject parcel.

II. RIGHTS CONVEYED TO GRANTEE

To accomplish the purpose of this Easement, Grantor conveys the following rights to Grantee:

- A. **Identification and Protection.** To maintain the Easement for public access in perpetuity and to enhance the recreation values of the area.

- B. **Control of Access.** Except as expressly described in paragraphs III(B) and (C) below, to maintain complete discretion to permit members of the general public to enter the property on foot, to post signs announcing the intended use of the Easement and restrictions thereon, and to allow construction, improvement, and maintenance of hiking trails, pedestrian walkways, and foot paths within and across the Easement.
- C. **Injunction and Restoration.** To enjoin any use of, or activity on, the Easement or subject parcel that is inconsistent with the Purpose of this Easement by Grantor or any other person and to undertake the restoration of such areas or features of the Easement as may be damaged by uses or activities inconsistent with the provisions of this Easement.
- D. **Enforcement.** To enforce the terms of this Easement.
- E. **Assignment.** To assign, convey, or otherwise transfer Grantee's interest in the Easement in accordance with Section X.

III. USES AND ACTIVITIES ALLOWED TO GRANTOR

General. Grantor reserves for itself and its personal representatives, heirs, successors and assigns, all rights accruing from ownership of the Easement, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Easement that is not inconsistent with the purpose of the Easement and that is not prohibited by this Easement. Grantor specifically reserves for itself and its personal representatives, heirs, successors, and assigns, the following uses and activities:

- A. **Non-Exclusive Recreation.** The undertaking of non-motorized pedestrian recreational activities on the Easement; provided that such activities are conducted in a manner and intensity that does not adversely impact recreational access across the Easement or exclude others from quiet enjoyment of the Easement.
- B. **Traffic Control and Restriction of Access by Motorized Vehicles.** The right to require Grantee at Grantee's expense:
 - i. Post signs indicating that use of the Easement by members of the general public is limited only to those who have not arrived at the lower end of Cape Horn Road by motorized vehicle.

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- ii. For the purpose of preserving the peace, to make goodwill efforts to enforce reasonable requirements upon members of the general public accessing the Easement. These may include efforts to convince local, state, and federal governments to impose restrictions typically established for managing outdoor public recreation resources, so long as such restrictions do not interfere with pedestrian use of Cape Horn Road by the general public between the subject parcel and State Highway 14.

- C. **Placement of Informative Signs.** The placement of up to two signs not more than 15 square feet each in area and not more than eight feet above ground level, designed to inform members of the general public of the history of the Cape Horn area. Design and placement of any signs so placed must be approved by Grantee in advance of installation.
- D. **Protection of Public Health or Safety.** The undertaking of other activities necessary to protect public health or safety on the Easement or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity; provided that any such activity shall be conducted so that interference with recreational access across the Easement is avoided, or, if avoidance is not possible, minimized to the maximum extent possible.

IV. USES AND ACTIVITIES INCLUDED IN RIGHTS CONVEYED TO GRANTEE

General. Any use of, or activity on, the Easement inconsistent with the Purpose of this Easement is prohibited, except as deemed appropriate by Grantee, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity not undertaken under the express direction and written approval of Grantee. Without limiting the generality of this subsection, control of the following uses of, or activities on, the Easement, though not an exhaustive list, is included in the transfer of rights to Grantee, and Grantor no longer has the following rights:

- A. **Exclusion of Access.** Except as expressly described in paragraph III(B) above, the discouragement, interference, or prevention of non-motorized physical access by foot for members of the general public.
- B. **Construction** The placement or construction of any buildings, structures, or other improvements of any kind.
- C. **Alteration of Land.** The alteration of the surface of the land, including, without limitation, excavation, fill or removal of soil, gravel, or rock.
- D. **Signs.** Except as expressly described in paragraph III(C) above, the placement of any signs including Private Property, No Trespassing, and Keep Out signs.

- E. **Mining.** The disturbing or extraction of rock or gravel on or below the surface of the Easement.
- F. **Removal of Trees and Other Vegetation** The pruning, cutting down, or other destruction or removal of live and dead trees, standing or fallen, and other vegetation; except as deemed necessary by Grantee to preserve, protect or enhance recreational access across the Easement.
- G. **Introduced Vegetation.** The introduction of nonnative invasive species on the Easement.

V. NOTICES

Addresses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Stevenson Heirs, Inc.
180 North Pioneer
Yakima, WA 98908

To Grantee:

Columbia Gorge Environmental Foundation
Aubrey Russell: President
4921 SW Hewett Blvd.
Portland, OR 97221

or to such other address as either party designates by written notice to the other.

VI. GRANTEE'S REMEDIES

- A. **Notice of Violation. Corrective Action by Grantee.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Easement resulting from any use or activity inconsistent with the purpose of this Easement, to restore recreational access across the portion of the Easement so injured to its prior condition in accordance with a plan approved by Grantee.
- B. **Grantor's Failure to Respond.** Grantee may bring an action as provided in subsection C if Grantor:
 - 1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from Grantee; or

2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

C. Grantee's Action.

1. **Injunctive Relief.** Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:
 - a. To enjoin the violation, by temporary or permanent injunction; and
 - b. To require the restoration of the Easement to the condition that existed prior to any such injury.
2. **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any recreational access affected by this Easement, including, without limitation, damages, for the loss of recreational, scenic or aesthetic values. Without limiting Grantor's liability in any way, Grantee in its sole discretion, may apply any damages recovered to the cost of undertaking corrective or restoration action on the Easement.

D. Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to recreational access across the Easement, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

E. Scope of Relief. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. Costs of Enforcement. In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. In

the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity. If Grantor ultimately prevails in any judicial proceeding initiated by Grantee to enforce the terms of this Easement, each party shall bear its own costs.

- G. **Grantee's Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- H. **Waiver of Certain Defenses.** Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription.
- I. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Easement or to recover damages for any injury to or change in the Easement resulting from causes beyond Grantor's control, including, without limitation, natural changes, fire, flood, storm, or earth movement, or from acts of trespassers, that Grantor could not reasonably have anticipated or prevented or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.

VII. GRANTOR'S REMEDIES

- A. **Notice of Violation. Corrective Action by Grantor.** If Grantor determines that Grantee is in violation of the terms of paragraph III(B) above or that a violation is threatened, Grantor shall give written notice to Grantee of such violation and demand corrective action sufficient to cure the violation.

B. Grantee's Failure to Respond. Grantor may bring an action as provided in subsection C if Grantee:

1. Fails to cure the violation within thirty (30) after receipt of a notice of violation from Grantor; or
2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

C. Grantor's Action.

1. **Injunctive Relief.** Grantor may bring an action at law or in equity in a court having jurisdiction to enforce the terms of paragraph III(B) above
2. **Reversion of Control of Access** In the event that a ruling court of law finds that Grantee remains in violation of the terms of paragraph III(B) above, all rights to control access by the general public to the Easement shall revert to the Grantor for a period of time not to exceed ninety days, after which period such rights that have reverted shall be restored in full to Grantee.

VIII. SUBSEQUENT TRANSFER

Subsequent Transfers. Grantor agrees to:

1. Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the subject parcel, including, without limitation, a leasehold interest;
2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the subject parcel;
3. Give written notice to Grantee of the transfer of any interest in all or a portion of the subject parcel no later than fifteen (15) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

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IX. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that the amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, and shall be recorded in the official records of Skamania County, Washington, and any other jurisdiction in which such recording is required.

X. ASSIGNMENT AND SUCCESSION

A. **Assignment.** This Easement is transferable, and Grantee may assign all or a portion of its rights and obligations under this Easement to a public or private party. Grantee shall notify Grantor in writing, at Grantor's last known address, at least fifteen (15) days prior to such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

B. **Succession.** If at any time it becomes impossible for Grantee to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement and Grantee has not named a successor individual or organization, then Grantee's rights and obligations under this Easement shall become vested and fall upon another entity or individual with purposes similar to Grantee's.

XI. RECORDATION

Grantee shall record this instrument in a timely fashion in the official records of Skamania County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

XII. INDEMNIFICATION

Indemnification of Grantor. As used herein, the term "Grantor" shall include Grantor's officers, directors, employees, and agents, acting within the scope of their agency or employment. Grantee hereby assumes the risk of all losses, costs, expenses, liabilities, damages and attorneys' fees (collectively the "Liabilities"), and agrees to indemnify and hold Grantor harmless from and against any and all Liabilities which may accrue to, or be sustained by, Grantor on account of any claim, suit or action made or brought against Grantor for the death or injury to any person, or the damage or destruction of any property, sustained in connection with the use of the Easement by Grantee or the public, excepting only such Liabilities which are caused by any act of Grantor or Grantor's guests, invitees and licensees.

XIII. GENERAL PROVISIONS

A. **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Washington.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Grantee to effect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid

C. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and subject parcel and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Affected Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section IX.

E. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.

F. "Grantor" - "Grantee". The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, its personal representatives, heirs, successors and assigns.

G. Successors and Assigns. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Affected Property

H. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or subject parcel, except that liability for acts or omissions occurring prior to transfer, shall survive transfer.

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I. Counterparts. The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 26th day of January, 2009

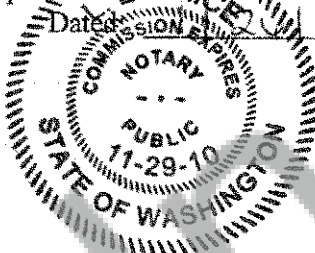
STATE OF WASHINGTON)
COUNTY OF Pacific) ss

STEVENSON HEIRS, INC.

By: Michael B. Stevenson
President

I certify that I know or have satisfactory evidence that Michael B. Stevenson is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the President of Stevenson Heirs, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 1/26/09



L.L. Price
Notary Public
Print Name L.L. Price
My commission expires 11/29/10

STATE OF WASHINGTON)
COUNTY OF Pierce) ss.

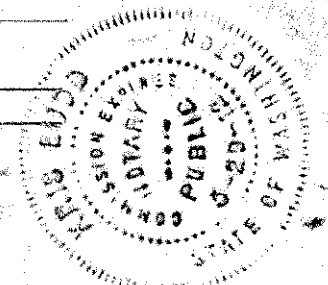
STEVENSON HEIRS, INC.

By: Cathy E. Tellefsen
Secretary

I certify that I know or have satisfactory evidence that Cathy Tellefsen is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Secretary of Stevenson Heirs, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 1/30/09

Ann Budd
Notary Public
Print Name Ann Budd
My commission expires 5/13/2012
LP



IN WITNESS WHEREOF, the undersigned Grantee has executed this instrument this 6th day of February, 2009.

Aubrey Russell, President of Columbia Gorge Environmental Foundation, does hereby accept the above Grant Deed of Easement

Dated: 2/6/09

A. Russell, President

Columbia Gorge Environmental Foundation

Grantee

By: Aubrey Russell

Its: President

STATE OF OREGON)
) ss.

COUNTY OF Multnomah)

I certify that I know or have satisfactory evidence that Aubrey Russell is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of Columbia Gorge Environmental Foundation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: Feb. 6, 2009

Debra S. Plourd

Notary Public

Print Name Debra S. Plourd

My commission expires 5/2/2010

