

LAND USE RESTRICTION

THIS GRANT OF DEED RESTRICTIONS is made this 24<sup>th</sup> day of June, 1992 by KMB Enterprises, an Oregon partnership, (Grantor), in favor of Deschutes County, a political subdivision of the State of Oregon, and any member of the public whose interest in real property is or may be affected by violation of these restrictions.

WHEREAS, Grantor is the sole owner of certain property in Deschutes County, including land platted in the Rim at Aspen Lakes subdivision, recorded on March 19, 1990 in Plat Cabinet C, Page 388 of Deschutes County Records, which plat constitutes a portion of a residential cluster development approved under conditional use permit No. 89-070, covering approximately 1084 acres formerly platted as the Wild Horse Plains subdivision and the Wild Horse Meadows subdivision; and

WHEREAS the plat of the Rim at Aspen Lakes shows two tracts, Tract A and Tract B, which pursuant to the approval process for said plat are required to remain in open space pursuant to County ordinances; and

WHEREAS said approvals require that Tracts A and B be bound by restrictive covenants to ensure that said tracts remain in open space in perpetuity;

NOW THEREFORE, Grantor hereby agrees to place, and Deschutes County agrees to accept, restrictive covenants, as set forth herein, on Tract A and on Tract B, as described on the plat known as The Rim at Aspen Lakes, referred to above. Said Tracts A and B (hereafter collectively known as the Property, except where referred to as individual tracts) are shown on Exhibit A, attached hereto and made a part hereof.

1. Purpose. The purpose of the deed restrictions contained herein is to assure that the Property is maintained as open space in a manner consistent with the requirements of the Deschutes County zoning ordinance and land use decisions made thereunder with respect to the Rim at Aspen Lakes subdivision.

2. General Restriction. Any activity on or use of the Property not explicitly provided for herein is prohibited, unless the area is brought within an urban growth boundary.

3. Restrictions on Tract A. Grantor agrees with respect to Tract A to the following deed restrictions. These restrictions shall burden Tract A, shall be perpetual, and shall run with Tract A.

3.1. Subject to the limitations set forth herein, Grantor may use Tract A for recreational purposes, for placement of the community water system serving The Rim at Aspen Lakes, and generally for preservation of open space values.

3.2. Grantor shall not place, use, erect, or maintain any structure of any kind on Tract A, including house trailers or mobile homes, except for fences and corrals and similar non-structural agricultural improvements, except for irrigation equipment, and except for placement of a community water system serving The Rim at Aspen Lakes subdivision as further detailed under paragraph 3.7.

3.3. Grantor shall not locate tents, travel trailers or camping facilities of any kind upon Tract A.

3.4. Grantor shall not install aboveground utilities or lines upon Tract A.

3.5. Grantor shall not materially alter the general topography or land surface, including excavation, road construction, quarrying or removal of rocks, sand, gravel, or oil, except as necessary for the construction of portions of a golf course. Nothing contained in this paragraph shall be construed as a waiver of any site plan approval required for any golf course that might be proposed for Tract A or as a waiver or relaxation of any site plan standards applicable to consideration of a golf course for this Tract A. Any portions of a golf course proposed for Tract A shall maximize compatibility with the natural landscape and any site plan submitted for portions of a golf course on Tract A shall be reviewed in that light.

3.6. Grantor shall not dump trash, debris, garbage or other unsightly or offensive material on Tract A.

3.7. Grantor and the Rim at Aspen Lakes Home Owner's Association or any assignee of either shall be permitted to construct, repair and maintain a community water system as approved by the County in SP 90-100. Grantor retains the right to perform ordinary maintenance on any such system, together with the right to replace, rebuild, or substitute any

such structures or equipment now existing or permitted with a similar structure or similar equipment in substantially the same location. Any such replacement, rebuilding, or substitution of any structures or equipment associated with said community water system may be undertaken only after obtaining site plan approval from the County.

4. Restrictions on Tract B. Grantor agrees with respect to Tract B to the following deed restrictions. These restrictions as set forth herein shall burden Tract B, shall be perpetual, and shall run with Tract B.

4.1. With respect to that portion of Tract B that lies to the west of Squaw Creek (referred to as wildlife area) the following deed restrictions shall burden the land:

4.1.1. Subject to the limitations set forth herein, Grantors may use the wildlife area for preservation of wildlife habitat and passive recreational activities, such as hiking, horseback riding or wildlife observation.

4.1.2. Grantor shall not place, use, erect, or maintain any structure of any kind, including house trailers or mobile homes, upon the wildlife area.

4.1.3. Grantor shall not locate tents, travel trailers or camping facilities of any kind upon the wildlife area.

4.1.4. Grantor shall not install aboveground utilities or lines upon the wildlife area.

4.1.5. Grantor shall not materially alter the general topography or land surface, including excavation, road construction, quarrying or removal of rocks, sand, gravel, or oil, except such trails as may be constructed in a manner consistent with preservation of wildlife habitat values.

4.1.6. Grantor shall not dump trash, debris, garbage or other unsightly or offensive material upon the wildlife area.

4.1.7. Grantor shall not operate or permit to be operated any motorized vehicles, except for emergency vehicles upon the wildlife area.

4.2. With respect to all that portion of Tract B lying to the east of Squaw Creek, excluding that portion adjacent to Camp Polk Road described in Paragraph 4.3 (hereinafter referred to as flood plain area) the following deed

restrictions shall burden the land. These restrictions shall burden the flood plain area, shall be perpetual, and shall run with the flood plain area.

4.2.1. Subject to the limitations set forth herein, Grantor may use the flood plain area for agricultural purposes (including grazing), wildlife habitat, and passive recreational activities, such as hiking, horseback riding, or wildlife observation.

4.2.2. Grantor shall not place, use, erect, or maintain any structure of any kind on the floodplain area, including house trailers or mobile homes, except for fences, corrals, watering troughs, feed bins and similar non-structural agricultural improvements, and except for irrigation equipment as further specified in paragraph 4.2.7.

4.2.3. Grantor shall not locate tents, travel trailers or camping facilities of any kind upon the flood plain area.

4.2.4. Grantor shall not install aboveground utilities or lines upon the flood plain area.

4.2.5. Grantor shall not materially alter the general topography or land surface, including excavation, road construction, quarrying or removal of rocks, sand, gravel, or oil, except for a small pond for livestock watering and irrigation purposes and except as may specifically be provided for under Paragraph 4.2.7. of these restrictions. However, this provision shall not prevent such activities for the purpose of flood restoration, fire restoration or erosion control if carried out under required federal, state or local permits.

4.2.6. Grantor shall not dump trash, debris, garbage or other unsightly or offensive material upon the flood plain area.

4.2.7. Grantor shall be permitted to construct, repair and maintain an irrigation system, including pumping facilities and other irrigation equipment of a nature customarily provided in conjunction with agricultural use.

4.3. With respect to all that portion of Tract B described as follows:

An 11.57 acre parcel being a portion of Tract B in the plat of THE RIM AT ASPEN LAKES

located in Section 35 in Township 14 South and Range 10 East of the Willamette Meridian in Deschutes County, Oregon, shown on the attached Exhibit A, and being fully described as follows:

Commencing at the southwest corner of the northwest quarter of said Section 35; thence North 00°37'12" West 1239.29 feet along the west line of said Section 35 to the point of beginning; thence North 00°37'12" West 562.99 feet to a 5/8" iron rod on the southerly right-of-way of Camp Polk Road; thence leaving said west line 669.80 feet along the arc of a 686.20 foot radius curve right (the long chord of which bears South 67°20'40" East 643.52 feet) to a 5/8" iron rod; thence South 39°22'45" East 115.89 feet to a 5/8" iron rod; thence 174.30 feet along the arc of an 895.40 foot radius curve left (the long chord of which bears South 44°57'27" East 174.03 feet) to a 5/8" iron rod; thence South 50°32'03" East 446.11 feet to a 5/8" iron rod at the northerly most corner of Tract C in said plat; thence leaving said southerly right-of-way South 39°37'38" West 20.00 feet to a 5/8" iron rod and the northerly most corner of Lot 19 in said plat; thence South 40°03'12" West 309.81 feet to a 5/8" iron rod at the westerly most corner of said Lot; thence leaving said Lot, South 40°03'06" West 55.21 feet; thence North 25°14'31" West 253.89 feet; thence North 63°26'06" West 281.97 feet; thence North 67°11'44" West 140.46 feet; thence North 49°23'49" West 74.43 feet; thence North 87°01'34" West 335.01 feet to the point of beginning.

(hereafter stable area) the following deed restrictions shall burden the land. These restrictions shall burden the stable area, shall be perpetual, and shall run with the stable area.

4.3.1. Subject to the limitations set forth herein, Grantor may, if it so chooses, use the stable area for a horse stable and recreational activities related thereto, the purpose of which shall be in part to serve the residents of the residential cluster development approved under County Conditional Use Permit No. 89-070, and collectively platted or to be platted as the Rim at Aspen Lakes subdivision and the Golf Course Estates at Aspen Lakes subdivision (hereafter referred to as residents) and their guests.

4.3.2. Any stable facility shall be operated to benefit only Grantor and residents of the associated cluster development and their guests. Any stable facility shall stable only horses owned by the Grantor or Grantor's agent and, subject to the limitations set forth herein, by the residents of the development. Boarding or stabling of other horses is prohibited. Residents of the development shall be entitled to the use of a maximum of 25% of the stalls for boarding of resident-owned horses under such other conditions as Grantor may reasonably prescribe. Horse shows may be conducted only insofar as they do not adversely affect the neighbors or public safety, giving consideration to traffic, parking, noise and safety of travel along Camp Polk Road. Horseshows shall not involve the use of loudspeakers. Breeding of horses shall be allowed but shall be limited to those horses that are boarded at the stable facility or grazed on the Property. No breeding of horses outside the stable facility shall be allowed.

Grantor may use the stable area to support agricultural uses on the flood plain area only insofar as such agricultural uses are necessary to support an ongoing recreational horse stable operation. Grantor is specifically restricted from using the stable area to support general agricultural uses on the flood plain area, such as hay or livestock production, except as such haying operation is directly and completely related to supporting the forage needs of an ongoing recreational horse stable operation. All use of the stable area to support agricultural uses, including storage of equipment, shall cease if the stable area ceases (except for ordinary seasonal shutdowns) to be used for the purposes specified herein.

4.3.3. Grantor shall not place, use, erect, or maintain any structure of any kind, except for a stable facility (including horse barn, corral, associated feed and watering equipment, and associated storage for forage and farm equipment, subject to the limitations set forth in paragraph 4.3.8).

4.3.4. Grantor shall not locate tents, travel trailers or camping facilities of any kind upon the stable area.

4.3.5. Grantor shall not install aboveground utilities or lines upon the stable area.

4.3.6. Grantor shall not materially alter the general topography or land surface, including excavation, road construction, quarrying or removal of rocks, sand,

gravel, or oil, except as may be necessary to construct the stable referred to herein and related parking areas.

4.3.7. Grantor shall not dump trash, debris, garbage or other unsightly or offensive material upon the stable area.

4.3.8. Any stable built by Grantor or its assigns shall be limited in scale and scope to that necessary to serve the residents. The stable facility may allow for feed storage, not to exceed 50 tons of hay. The stable facility may have sufficient storage area to allow for storage of such farm equipment as is necessary to provide for the forage needs of the horses stabled at the recreational horse facility. Any stable built on the stable area shall maximize compatibility with the natural landscape.

4.3.9. Grantor shall place signs on the stable area only as allowed under this section. One sign may be allowed, not to exceed 20 square feet, for the purpose of identifying the facility and not for advertising what activities take place on the premises. Such sign may either be mounted on the wall of the stables or on a fence and may not be illuminated. Owner shall, subject to these limitations, be required to apply for a sign permit as part of site plan review for the horse stable facility. This provision shall not limit signs required for emergency identification.

4.3.10. Unless and until a stable facility is built, the stable area shall be subject to the deed restrictions set forth under Paragraph 4.2 herein.

4.3.11. If Grantor or its assignees decides to construct the stable, Grantor shall apply for site plan approval from the County. The restrictions contained herein, as a part of the Conditional Use Permit No. 89-070 approval, shall be applicable to site plan approval. Nothing contained in this paragraph shall be construed as a waiver or relaxation of any site plan standards applicable under the Deschutes County Zoning Ordinance to consideration of a stable for the stable area.

4.3.12. Any lighting placed within the stable area shall be limited to that necessary to reasonably conduct ongoing stable operations and any such lighting shall be shielded so as not to be directly visible from adjacent property. Lighting standards shall otherwise be subject to site plan review.

4.4. The deed restrictions burdening Tract B shall be cumulative and in addition to any restrictions, obligations and responsibilities imposed upon Grantors by virtue of that certain conservation easement covering a portion of Tract B granted by Grantors to Deschutes County and recorded in Book 209, Page 1935, Deschutes County Records.

4.5. No portion of Tract B shall be conveyed separately from any other portion of Tract B.

5. Affirmative Obligations. Grantor shall have the following affirmative obligations with respect to the Property:

5.1. Grantor shall manage the Property in conformance with prescriptions set forth in the Management Plan.

5.2. Grantor shall keep the Property free of garbage, trash, debris or other unsightly or offensive material.

5.3. Grantor shall retain all responsibilities and bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

6. Management Plan. The activities and uses allowed herein shall be subject to a Management Plan for the Property approved by the County in consultation with the Oregon Department of Fish and Wildlife.

6.1. Said Management Plan may place limitations upon the extent to which activities and uses otherwise allowed herein may be engaged in on the Property. Where the Management Plan is more restrictive than the restrictions contained herein, the Management Plan shall control. Restrictions and obligations set forth in the management plan shall be deemed to be fully stated herein and are to be enforceable as if fully stated herein.

6.2. Said Management Plan may place affirmative duties upon the Grantor. Affirmative duties set forth in the management plan shall be deemed to be fully stated herein and are to be enforceable as if fully stated herein.

6.3. A copy of the Management Plan shall be recorded in the Deschutes County Board of County Commissioner's Journal. A memorandum referring to said management plan shall be recorded in the Deschutes County deed records.

6.4. The Management Plan may be revised to reflect changed natural conditions, such as due to flood or drought, to reflect new management techniques or to reflect changes amongst the uses allowed under this restriction.

7. Remedies for Violation. The restrictions set forth herein are enforceable by Deschutes County and, pursuant to ORS 215.185 (1991 Oregon Revised Statutes) or any similar state statute, by any member of the public whose interest in real property is or may be affected by a violation of these restrictions (hereafter "Interested Party"). If Deschutes County or any Interested Party determines that Owners are in violation of the terms of this restriction or that such a violation is threatened, then Deschutes County and/or Interested Party shall give written notice to Grantor of such violation and demand corrective action to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this restriction, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Deschutes County, or under circumstances where the violation cannot reasonably be cured with a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Deschutes County and/or Interested Parties may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this restriction, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to abate any condition created on the Property in violation of this restriction.

7.1. Enforcement of the terms of this Restriction shall be at the discretion of Deschutes County and/or Interested Parties, and any forbearance by Deschutes County and/or Interested Parties to exercise its rights under this Restriction in the event of the violation of any terms of this Restriction shall not be deemed or construed to be a waiver by Deschutes County and/or Interested Parties of such terms or any subsequent breach of the same or any other term of this Restriction. No delay or omission by Deschutes County and/or Interested Parties 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.

7.2. Deschutes County shall have the right, in connection with enforcement of these Restrictions, to enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Restriction; provided that such entry shall be upon prior reasonable notice to Grantor and Deschutes County shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

7.3. Enforcement actions under this Restriction may be taken only against an Owner having fee title to the Property, any person having a possessory right under an Owner, and any agent, operator or contractor acting under the authority of such Owner or holder of such possessory rights.

7.4. In addition to the remedies set forth under Paragraph 7 above, Deschutes County and/or any Interested Parties may treat any violation of this Restriction as a nuisance under current § 18.144.040 of the Deschutes County Code (or any comparable successor provision of the Deschutes County Code) and a violation under current § 18.144.050 (or any comparable successor provision of the Deschutes County Code).

8. Recordation. Grantor shall record this instrument and any addendum, memorandum or agreement contemplated herein in a timely fashion in the official records of Deschutes County, Oregon.

9. Mortgage Subordination. Grantor agrees to secure a subordination agreement from J.C. Compton Company of that certain trust deed recorded in Book 187, Page 2702 of the Deschutes County Deed Records and any other similar encumbrance of record subjecting and subordinating said interests, and any rights and remedies arising therefrom at all times to the rights of Deschutes County and/or any Interested Parties to enforce the provisions of this Restriction. Grantor specifically agrees that any subordination agreement entered into pursuant to this paragraph shall provide that this Restriction shall not be extinguished in the event that any Mortgagee whose interest is subject to subordination takes title by foreclosure or otherwise.

10. Assignment. Deschutes County may assign any right or interest it may have in this Restriction only upon consent of the Grantor.

11. Subsequent Transfers. Grantors agree to incorporate the terms of this Restriction in any deed or legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. The failure of Grantor to perform any act required by the paragraph shall not impair the validity of this Restriction or limit its enforceability in any way.

12. Extinguishment. Except as provided for in Paragraph 13, the restrictions contained herein shall be extinguished only in the event that Grantor chooses to abandon the land use approval, of which this Restriction is a condition. No abandonment can be deemed to occur once Grantor has sold any of the lots described in plat known as The Rim as Aspen Lakes.

13. Modification. In the event that the Property is brought within an urban growth boundary, Grantor or its successors in interest may seek from the County a modification of these restrictions to allow for development of the Property.

14. General Provisions.

14.1 Controlling Law. The interpretation and performance of this Restriction shall be governed by the laws of the State of Oregon.

14.2. Liberal Construction. Any general rule of construction shall be liberally construed in favor of Deschutes County to effect the purposes of this Restriction and the policies and purpose of § 18.128.040(P)(b) (as codified in December 1991) of the Deschutes County Code.

14.3. Severability. If any provision of this Restriction, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Restriction, or the application of such provisions 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 thereby.

14.4. Entire Agreement. This instrument and the Management Plan referred to in Paragraph 5 above set forth the entire terms of the Restriction burdening the Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property.

14.5 Successors. The covenants, terms, conditions, and restrictions of this Restriction shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns, and all who take through them, whether by voluntary or involuntary transfer, and shall continue as a servitude running in perpetuity with the Property.

14.6 Termination of Rights and Obligations. Grantor's rights and obligations under this Restriction terminate upon transfer of Grantor's entire interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer. The rights and obligations of any party having a right of possession to the Property shall be extinguished upon going out of possession of the Property, except that liability for acts or omissions occurring prior to going out of possession shall survive transfer.

TO HAVE AND TO HOLD unto Deschutes County, its successors, and assigns forever.

IN WITNESS WHEREOF Owner and Deschutes County have set their hands on the day and year first above written.

DATED this 7<sup>th</sup> day of June, 1992.

KMB Enterprises,  
an Oregon Partnership

By: Keith Cyrus  
KEITH CYRUS, Managing Partner

STATE OF OREGON )  
                          ) ss.  
County of Deschutes )

I certify that I know or have satisfactory evidence that Keith Cyrus managing partner of KMB Enterprises, an Oregon general partnership, is the person who appeared before me, and said person acknowledged that he signed this instrument on behalf of the partnership, acknowledged it to be the free and voluntary act of the partnership for the uses and purposes mentioned in this instrument, and on oath stated that he was authorized to execute this instrument on this 7<sup>th</sup> day of June, 1992.

[Signature]  
Notary Public for Oregon  
My Commission Expires: 10-9-92

DATED this 24<sup>th</sup> day of June, 1992.

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

[Signature]  
TOM THROOP, Commissioner  
[Signature]  
NANCY POPE SCHLANGEN, Commissioner  
[Signature]  
DICK MAUDLIN, Chairman

ATTEST:  
Andrea L Blum  
Recording Secretary

STATE OF OREGON )  
                          ) ss.  
County of Deschutes )

Before me, a Notary Public, personally appeared TOM THROOP, NANCY POPE SCHLANGEN 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.

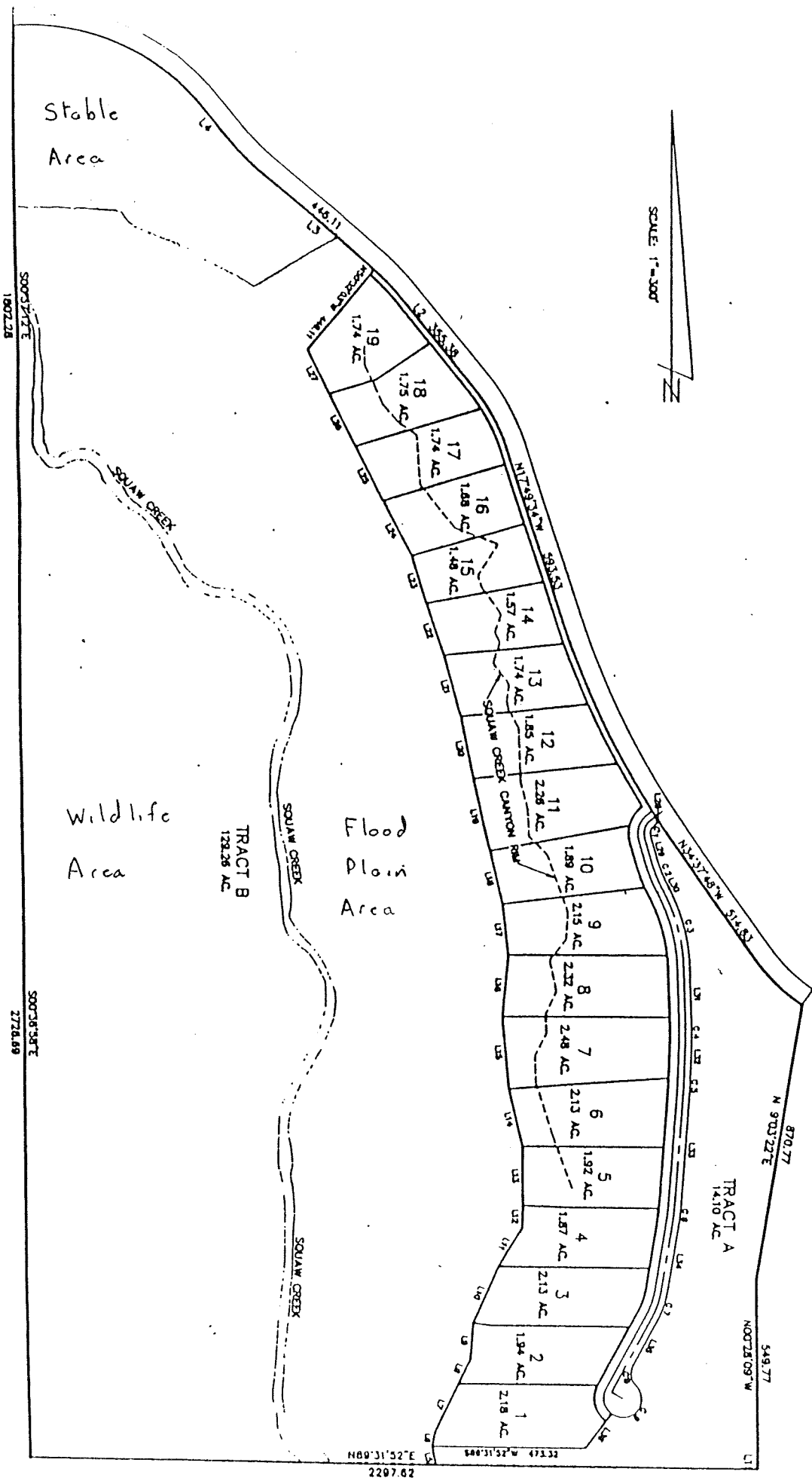
DATED this 24<sup>th</sup> day of June, 1992.

Andrea L Blum  
Notary Public for Oregon  
My Commission Expires: 10-9-92

contra\restr.cyr

1	17304.48'	60.00	181.25	992.29	119.78	54006.02'
2	1832.20'	50.00	84.73	57.80	60.50	5 9721 09'E
3	508.55'	120.00	91.86	45.86	91.63	5 6737 18'W
4	724.02'	2020.00	84.84	42.32	84.63	5 2301 47'W
5	735.07'	1020.00	68.78	34.89	48.73	5 0078 47'E
6	2443.03'	620.00	267.47	135.85	265.40	5 1437 52'E
7	1020.00	48.00	93.49	46.86	91.34	5 774 33'E
8	17304.48'	60.00	181.25	992.29	119.78	54006.02'W
9						

SCALE: 1"=300'



N 89°31'52"E 2207.62'  
 S 88°31'52"W 473.32'

S 00°37'02"E 1607.28'

S 00°38'38"E 2774.69'

N 90°32'22"E 870.77'

TRACT A  
1410 AC

S 49°37'7"N 549.77'

N 00°28'09" W 1410 AC

TRACT B  
128.26 AC

Stable Area

Wildlife Area

Flood Plain Area