

27714

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K-43007

MEMORANDUM OF RESERVATION OF LIFE ESTATE

DATED as of the date set opposite the signatures of the Parties, effective April 1, 1991, regardless of when executed, between VIRGINIA E. ZUMBRUN (Zumbrun) and DOUBLE K RANCH, an Oregon partnership (Ranch);

W I T N E S S E I H:

I. Reservation of Life Estate: Zumbrun has heretofore reserved a life estate of the use and possession of the residence, and contiguous yard, garage, and non-exclusive use of existing roadway for ingress and egress (Premises), by Warranty Deed recorded contemporaneously herewith, on the terms set forth in this Instrument, on the following described real property situate in Klamath County, Oregon, to-wit:

Those portions of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, Township 33 South, Range 7 $\frac{1}{2}$ E.W.M., lying East of Highway No. 62;

EXCEPTING THEREFROM a parcel conveyed to Gordon W. Barrie and Ruth E. Barrie by deed recorded in Volume M-70, Page 9908;

ALSO EXCEPTING a strip of land conveyed to Randy J. Sparacino, et ux, described as follows: Beginning at a point on the East line of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, T. 33 S., R. 7 $\frac{1}{2}$ E.W.M., from which point a 5/8" rebar with aluminum cap marking the SW 1/16 corner of said Section 23 as set during R.O.S. No. 3749 bears North 00°04'11" West 350.00 feet; thence South 89°55'49" West 8.00 feet; thence South 00°04'11" East 338.00 feet; thence North 89°55'49" East 8.00 feet to a point on the East line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$; thence along said East line North 00°04'11" West 338.00 feet to the point of beginning.

II. Termination: The life estate shall terminate upon the earlier of the following events: Zumbrun's death, or abandonment of Premises evidenced either in writing by Zumbrun to Ranch stating an intent to abandon Premises or Zumbrun living off Premises for 12 consecutive months (Termination). Provisions in this Instrument conditioned upon Zumbrun's death shall be effective only upon Ranch receiving notice of Zumbrun's death. The sending of a certified copy of Zumbrun's death certificate to Ranch shall constitute conclusive proof of Zumbrun's death.

III. Effect of Termination Upon the Debt: Contemporaneous with the execution of this Instrument, Ranch has executed and delivered to Zumbrun a promissory note and mortgage securing a deferred balance of \$90,000.00 payable in annual installments of \$12,000.00, including interest at 10% per annum, due on April 1st of each year beginning with April 1, 1992. In the event of Termination of the life estate, the then unmatured balance of the deferred balance (both principal and interest) shall be paid in full by no later than 90 days following the date of termination. Such payment shall include interest to and including the payment date.

IV. Maintenance: Ranch shall maintain Premises except for its interior.

V. Taxes: Ranch shall seasonably pay all real property ad valorem taxes assessed upon Premises by any Governmental Entity. Zumbrun shall reimburse Ranch for the taxes on Premises upon 30 days' notice of the amount of

reimbursement due Ranch. If Zumbrun fails to reimburse Ranch for the taxes on Premises, Ranch may deduct the amount of said reimbursement due from the annual payment by Ranch to Zumbrun.

VI. Insurance: Zumbrun shall insure the buildings on Premises for the amount of \$ 105,000.00 presently maintained with loss payable to Ranch except for contents insurance. A certificate of such insurance shall be delivered to Ranch and shall include acknowledgement by insurance company that the insurance coverage shall not be cancelled without 30 days' notice to Ranch.

VII. Indemnify Ranch: Occupancy of the Premises by Zumbrun shall be at Zumbrun's sole risk with regard to any injury which may be caused to Zumbrun, Zumbrun's family, or Zumbrun's invitees.

VIII. General Provisions: This Instrument shall be subject to the following provisions which shall apply to each portion of it as the circumstances and context may require.

A. Severability: All provisions contained in this Instrument are severable, and in the event any provision contained in it shall be held invalid by any court of competent jurisdiction, this Instrument shall be interpreted as though the invalid provision was not contained in it.

B. Headings: The headings contained in this Instrument are for convenience only and are not to be construed as part of this Instrument.

C. Instrument as Though Prepared by All Parties: This Instrument shall be construed as though prepared by all Parties.

D. Pronouns: Pronouns used in this Instrument shall be construed in accordance with the appropriate gender or neuter, and as either singular or plural, as the context requires.

E. Notice: Any notice, demand, or communication to be given by any Party to the other in connection with this Instrument shall be deemed to have been fully given when written and deposited in a sealed envelope with the United States Postal Service as certified mail, with postage prepaid, and addressed to the Party to receive the same at the address shown in this Instrument. Any Party may change its address by giving the other Party written notice of a new address in the same manner as the giving of notice. Addresses for purpose of giving notice as of the date of execution in this Instrument are:

VIRGINIA E. ZUMBRUN
P.O. Box 433
Fort Klamath, OR 97626

DOUBLE K RANCH
1696 Cove Point Road
Klamath Falls, OR 97601

F. No Conflict of Interest: The Parties do not consider the professional services of Giacomini & Knips in connection with the transaction contemplated by this Instrument to create any conflict of interest. Ranch acknowledges that Ranch has, at all times, been free to consult with an attorney of Ranch's choosing and selection prior to the execution of this Instrument.

G. Attorney Fees: In case suit or action is instituted for declaration of rights hereunder or to foreclose this Instrument, or to enforce any of the provisions hereof, the Parties agree to pay the costs of title reports and such sums as the trial court may judge reasonable as attorney fees and collection costs to be awarded the prevailing Party in that suit or action, and, if any appeal is taken from any judgment or decree, further attorney fees and costs as may be adjudged reasonable by the court to be awarded the prevailing Party.

H. Arbitration: Either Party may require arbitration of any matter arising under or in connection with this Instrument. Arbitration is initiated and required by giving notice specifying the matter to be arbitrated. If a court action is already pending on any matter concerning which the notice is given, the notice is ineffective unless given before expiration of 30 days after service of process on the person giving notice. Arbitration shall be in conformity with and subject to provisions of the Oregon Revised Statutes relating to arbitration as they stand amended at time of notice. Arbitrators shall be bound by this Instrument. Pleadings in any action on the same matter shall, if arbitration is required or consented to, be deemed amended to limit issues to those contemplated by the rules prescribed above. Each Party shall pay half of arbitration including arbitrators' fees. Attorney fees shall be awarded as separately provided herein. Three arbitrators shall be appointed as follows: (a) within 30 days of notice requiring arbitration, each Party shall appoint one arbitrator and give notice of appointment to other Party; (b) the two arbitrators shall choose a third arbitrator within 20 days after appointment of the second; and (c) if either Party fails to appoint an arbitrator, or if the two arbitrators fail to choose a third, appointment shall be made by the then presiding Judge of Circuit Court for Klamath County, Oregon, acting in its individual and non-official capacity on application of either Party and on 20 days' notice to the other Party; provided that either Party may, by notice given before commencement of arbitration hearing, consent to arbitration by the arbitrator appointed by the other Party, in which event, no further appointments of arbitrators shall be made and any other arbitrators previously appointed shall be dismissed.

I. Succession: This Instrument shall inure to the benefit of and be binding upon the respective heirs, executors, administrators, personal representatives, assigns or successors in interest of each Party.

J. Definitions: In addition to definitions contained in the text of this Instrument, the following terms shall have the following meanings:

1. Instrument: The term "Instrument" shall mean this document.
2. Zumbrun: The term "Zumbrun" shall mean Virginia E. Zumbrun.
3. Ranch: The term "Ranch" shall mean Double K Ranch, an Oregon partnership.
4. Party, Party's, or Parties: The terms "Party", "Party's", or "Parties" shall mean Zumbrun and Ranch, as the context and circumstances shall require.

5. Governmental Entity: The term "Governmental Entity" shall mean United States of America, State thereof, or political subdivision of any State, or any quasi-governmental entity, or any agency thereof, or any country other than the United States of America.

DATE

4-2-914-2-91

SIGNATURE

Virginia E. Zumbrun
VIRGINIA E. ZUMBRUN

DOUBLE K RANCH, an Oregon
partnership

By: Kenneth L. Tuttle
Kenneth L. Tuttle

By: Karen L. Tuttle
Karen L. Tuttle

STATE OF OREGON, County of Klamath)ss: April 2, 1991
Personally appeared before me the above named VIRGINIA E. ZUMBRUN and
acknowledged the foregoing instrument to be her voluntary act and deed.

Eda Gilbert
NOTARY PUBLIC FOR OREGON

My Commission Expires: 6-1-93

STATE OF OREGON, County of Klamath)ss: April 2, 1991
Personally appeared before me the above named KENNETH L. TUTTLE and
KAREN L. TUTTLE and acknowledged the foregoing instrument to be their
voluntary act and deed.

Debra Beckman
NOTARY PUBLIC FOR OREGON

My Commission Expires: 12-19-92

WHEN RECORDED MAIL TO:

GIACOMINI & KNIIPS
ATTORNEYS AT LAW
706 MAIN STREET
KLAMATH FALLS, OREGON 97601

STATE OF OREGON

County of Klamath) ss:

I certify that the within
Instrument was received for record
on the 3rd day of April,
1991, at 9:01 o'clock A M., and
recorded in Book M91 on Page
5929 or as filing fee number
27714.

Record of Deeds of said County.

Witness my hand and seal of
County affixed.

Evelyn Biehn

County Clerk

Title

BY: Pauline Muslander Deputy