

K-50867

DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS

Recitals

Whereas, this Declaration of Covenants, Restrictions, and Easements (hereinafter "Declaration") is made by The Nature Conservancy, a District of Columbia nonprofit corporation (hereinafter "Declarant"); and

Whereas, Declarant is the owner, in fee simple estate, of three parcels of real property situated in Klamath County, Oregon, which are legally described on Exhibit A attached hereto. The three parcels are generally depicted on Exhibit B attached hereto, but Exhibit B is not drawn to scale. The three parcels are hereinafter individually referred to as Parcel 1, Parcel 2, and Parcel 3; all Parcels are hereinafter collectively referred to as "Property"; and

Whereas, Declarant deems it desirable, for the preservation of the value, desirability, development, and enjoyment of the Property to subject the Property to the covenants, restrictions, and easements set forth in this Declaration;

Now, therefore, Declarant hereby declares that the Property, and all portions of the Property, shall hereafter be sold, conveyed, owned and occupied subject to the provisions of this Declaration; The Declarant and each successive person or entity that accepts a deed or land sale contract or otherwise comes into ownership of the Property, or any portion thereof, shall be bound by and shall comply with the provisions of this Declaration.

SECTION A.
ROAD EASEMENTS

1. Exhibit B generally depicts three existing roads labelled "main road", "cabin road", and "dock access road". Exhibit B further depicts an area (hereinafter referred to as the "connection road") which lies within thirty feet of the southern boundary of Parcel 1 and which connects the "main road" to the "dock access road".

The "main road" is thirty feet in width and generally runs north and south; it commences on the southern boundary of Parcel 3, then travels northeasterly across Parcel 3, then travels along the boundary between Parcel 2 and Parcel 3, then travels across the northerly portion of Parcel 2, and then travels onto Parcel 1 and terminates at the intersection with the western terminus of the "connection road".

The "cabin road" branches off easterly from the "main road" and generally runs north and south; it travels across Parcel 3 to the northerly boundary of Parcel 3, and then travels across the northeasterly portion of Parcel 2 to the northerly boundary of Parcel 2.

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The "dock access road" is fifteen feet in width; it commences on the southerly portion of Parcel 1 at the intersection with the eastern terminus of the "connection road", then loops southerly across the northeasterly portion of Parcel 2, and then travels northerly across the easterly portion of Parcel 1 to Shoalwater Bay.

The owners of Parcels 2 and 3 shall have a perpetual nonexclusive access easement across the "connection road", together with the right to construct and maintain a roadway fifteen feet in width to serve as the "connection road"; the specific location of the "connection road", within the southerly thirty feet of Parcel 1, shall be approved by the owner of Parcel 1 prior to commencement of construction of the "connection road". The easement is for the benefit of the owners of Parcel 2 and 3 and for the benefit of said owners' invitees; the owner of Parcel 1, and said owner's invitees, shall also have the right to use the "connection road".

There shall be a perpetual nonexclusive access easement on all portions of the "main road". The easement is for the benefit of the owners of Parcels 1, 2, and 3 and for the benefit of said owners' invitees.

There shall be a perpetual nonexclusive access easement on all portions of the "dock access road" for the benefit of the owners of Parcels 1, 2, and 3 and for the benefit of said owners' invitees.

The owner of Parcel 3 shall have the exclusive right to use all portions of the "cabin road" that are situated on Parcel 3, but shall have no right to use the portion of the "cabin road" situated on Parcel 2. The owner of Parcel 2 shall have the exclusive right to use all portions of the "cabin road" situated on Parcel 2.

2. The provisions of ORS 105.170 through 105.185 shall govern maintenance of the road easements.

3. No owner shall be liable for claims or injuries arising from use of the roads merely by virtue of the fact that the road is situated on said owner's land.

SECTION B. DOCK EASEMENT

1. The owners of Parcels 2 and 3 each shall have a perpetual nonexclusive easement on Parcel 1 for the purpose of constructing, maintaining, and using non-commercial dock facilities, at or near the northerly terminus of the "dock access road", on the shore of Shoalwater Bay. The easement shall be for the benefit of said owners and said owners' invitees.

2. The owner of each Parcel shall have the exclusive right to use his own dock facility and shall be solely responsible for maintaining his own dock facility in reasonably safe condition.

3. The owner of Parcel 1 shall not be liable for claims or injuries arising from use of dock facilities belonging to the owners of Parcel 2 or 3.

SECTION C. USE OF WELL

1. Exhibit B generally depicts the location of an existing well on the southerly portion of Parcel 1. There shall be a perpetual easement and right to use the existing well for the benefit of the owners of Parcels 1, 2, and 3, and for the benefit of said owners' invitees. Each owner shall have the right to install, maintain, and use underground conduits as reasonably necessary to bring water from the well to the respective owner's parcel.
2. Each owner may use water from the well for domestic household use (including a swimming pool), for stock watering, and for irrigation of yards and gardens not exceeding five acres. No owner shall use water from the well for irrigation of crops or other commercial uses.
3. The owners shall maintain the well, the well pump, and other well equipment (collectively, the "well facility") in reasonably safe condition. The cost of maintaining and repairing the well facility shall be shared equally by the owners. Each owner shall, at his own expense, maintain his own conduits from the well to said owner's parcel.
4. The electricity for operation of the well facility is separately metered. The cost of such electricity shall be shared among the owners as follows: each separate dwelling (including any guest quarters that contain toilet, bath/shower, and kitchen facilities) and each swimming pool on a Parcel shall constitute a "water use" in this paragraph. Each owner shall be obligated to pay a share of the electricity for operation of the well facility according to a fraction, the numerator of which is the number of "water uses" on said owner's Parcel and the denominator of which is the total number of "water uses" on the Property, at any given point in time.

SECTION D. UTILITY EASEMENTS AND USE

1. To the extent septic drain fields and conduits for telephone and electricity serving one Parcel are situated on or run across another Parcel as of the date of this Declaration, there shall be perpetual nonexclusive easements, for the benefit of the owner of the Parcel which such drain fields and conduits serve and for said owner's invitees, to maintain, repair, use, and reconstruct said drain fields and conduits.
2. Each owner shall have a perpetual nonexclusive easement within and along the "main road" for the purpose of installing, maintaining, repairing, and using underground

conduits for sewer, water, electricity, telephone, and other utilities.

3. Each owner shall maintain drain fields and conduits situated on or crossing another Parcel in reasonably good repair. To the extent portions of conduits serve more than one Parcel, the owners of the Parcels so served shall share in the cost of maintenance of said portions of conduits.

SECTION E.
RESTRICTIONS ON SUBDIVISION OR PARTITION
RESTRICTIONS ON DWELLINGS

1. No Parcel shall be further subdivided, partitioned, or made into a condominium or time share estate.

2. All dwelling structures, including guest quarters, shall be constructed on site on the Property. No mobile or manufactured homes shall be permitted on the Property; provided, that mobile trailers and similar recreational vehicles may be parked on the Property for temporary use.

3. Storage sheds and other accessory buildings may be pre-fabricated.

SECTION F.
MISCELLANEOUS PROVISIONS

1. This Declaration shall run with the land described on Exhibit A, and shall be binding upon and inure to the benefit of the Declarant and all successive owners of any portion of the Property. In this Declaration, the "owner" shall mean the owner of the fee simple estate; however, in the event an owner sells pursuant to a land sale contract, the "owner" shall be the vendee.

2. The provisions of this Declaration may be enforced by any owner of any portion of the Property. Failure by an owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to enforce the covenant or restriction thereafter.

3. This Declaration may be amended by an instrument signed by all owners of the Property, which instrument shall be effective when recorded in the records of Klamath County, Oregon.

4. In the event suit or action is filed to interpret or enforce this Declaration, including actions under ORS 105.180, the prevailing party or parties shall be entitled to their

reasonable attorney's fees as set by the court or courts at trial, on appeal, in arbitration, and in any other proceeding.

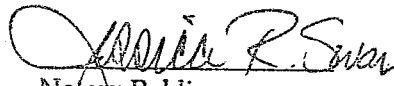
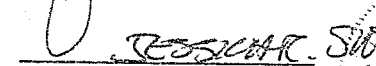
In witness whereof, the Declarant has caused this Declaration to be executed and made this 12 day of JUNE, 1997.

The Nature Conservancy,
a District of Columbia nonprofit corp.

By: Ray M. Cutler
Title: Vice President

Commonwealth of Virginia)
) ss.:
County of Arlington)

On this 12th day of June, 1997, before me personally came Ray Culter,
to me known, who being duly sworn, did depose and he resides at
Falls Church, Virginia; that he is a Vice President of The Nature
Conservancy, Inc., the corporation described in and which executed the
foregoing instrument; that he knows the seal of said corporation; that the
seal affixed to said instrument is such corporate seal; that it was so affixed
by order of the Board of Governors of said corporation, and that he signed
his name thereto by like order.


Notary Public


my commission expires:
April 30, 1998

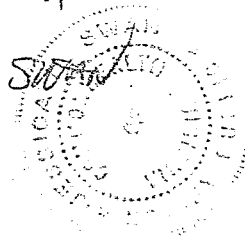


EXHIBIT A

PARCEL 1

That certain parcel of land in Klamath County, Oregon, described as Parcel 1 containing 13.23 acres, on that certain Map of Partition No. 19-97 for The Nature Conservancy, prepared by Adkins Consulting Engineers, Inc., recorded on June 12, 1997 in the office of the Recorder for Klamath County, Oregon.

PARCEL 2

That certain parcel of land in Klamath County, Oregon, described as Parcel 2 containing 14.76 acres, on that certain Map of Partition No. 19-97 for The Nature Conservancy, prepared by Adkins Consulting Engineers, Inc. recorded on June 12, 1997 in the office of the Recorder for Klamath County, Oregon.

PARCEL 3

That certain parcel of land in Klamath County, Oregon, described as Parcel 3 containing 143.04 acres, on that certain Map of Partition No. 19-97 for The Nature Conservancy, prepared by Adkins Consulting Engineers, Inc., recorded on June 12, 1997 in the office of the Recorder for Klamath County, Oregon.

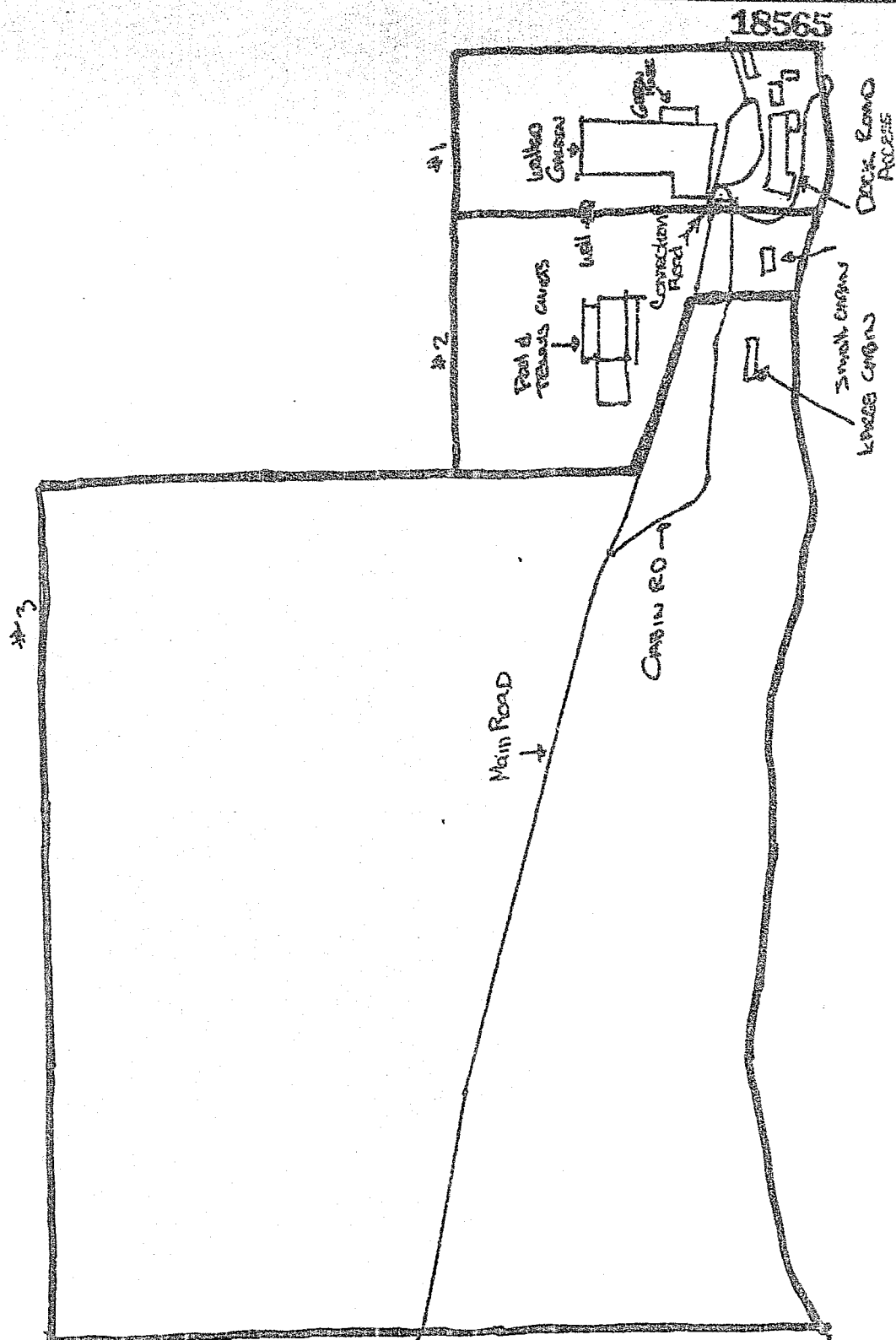


Exhibit B

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title the 16th day
of June A.D., 19 97 at 3:59 o'clock P.M., and duly recorded in Vol. M97
of Deeds on Page 18558.

FEE \$45.00

By Bernetha G. Leitch, County Clerk
Bernetha G. Leitch