

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

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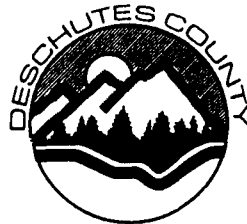
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DESCHUTES COUNTY CLERK

CERTIFICATE PAGE



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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR A PART OF THE SUMMERHILL SUBDIVISION

These Covenants, Conditions and Restrictions are created by Ronald and Jennifer Schirm, hereinafter referred to as "Declarant", as owner of the real property in the City of Bend, County of Deschutes, State of Oregon, described herein as of the date of recording of this document.

The property described herein is hereby subject to these Covenants, Conditions and Restrictions and will be known as and herein after referred to as SUMMERHILL. The burden property includes most, but not all, real property located in the Summerhill Subdivision Phases 1 and 2.

SUMMERHILL is being developed as a residential community. This Declaration shall be binding upon all real property and all persons holding a legal interest in any part of the real property subject to this Declaration. In the event any of the development standards or use restrictions of this Declaration should conflict with a more restrictive standard or requirement set by an applicable zoning ordinance of the City of Bend or other legal requirement of any governmental authority, the more restrictive standard or requirement of the applicable law shall apply.

Section 1. DEFINITIONS:

1.1 Adjacent: When referring to land, the term "adjacent" means to touch at any point, including at a corner point. Property on either side of street is also adjacent if the property would touch if the street were vacated.

1.2 Block: The term "block" shall mean those areas designated as blocks on subdivision or partition maps according to the records of Deschutes County.

1.3 Declarant: The term "Declarant" shall mean Ronald and Jennifer Schirm, or their successors in interest.

1.4 Declaration: The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for SUMMERHILL.

1.5 Extended Parking: The term "extended parking" means parking on a street or lot for a period of three consecutive days or for a period of 7 days in any one month.

1.5 Homesite: "Homesite" shall mean a lot as defined herein.

1.6 Improvements: The term "improvements" shall include, but not be limited to, any buildings, outbuildings, private roads, driveways, parking areas, fences and barriers, retaining walls and stairs, decks, hedges, windbreaks, landscaping, plant material, lawns, planted trees and shrubs, signs, storage areas and all other structures or exterior landscaping, vegetation or ground cover of every type and every kind above the land surface.

Recorded by AmeriTitle as an accommodation only. No liability is accepted for the condition of title or for the validity, sufficiency, or effect of this document.

1.7 Lot: The term "lot" shall mean each lot described on a subdivision plat or partition map to any alteration thereof as may be made by a valid lot line adjustment.

1.8 Owner: "Owner" shall mean and refer to either all holders of fee title to any lot or any other person or persons entitled to possession of the lot pursuant to a contract or lease.

1.9 Streets: The term "street" or "streets" shall mean any street, highway or other thoroughfare within or adjacent to SUMMERHILL on any recorded subdivision or partition map, or survey map of record, whether designated thereon as a street, boulevard, place, drive, road, terrace, way, lane, circle or otherwise.

1.10 SUMMERHILL: The term "SUMMERHILL" shall mean all of the real property now or hereafter made subject to this Declaration, including the platted Summerhill Subdivision.

1.11. Transient Occupancy: Occupancy of a part of a lot or structure for a period of less than 30 consecutive days.

Section 2. PROPERTY SUBJECT TO THE SUMMERHILL COVENANTS, CONDITIONS AND RESTRICTIONS:

2.1 General Declaration Creating SUMMERHILL Covenants, Conditions and Restrictions: Declarant hereby declares that all of the following real property located in Deschutes County, Oregon, is and shall be hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part in compliance with the covenants, conditions and restrictions of this Declaration:

Lots 1 and 3 through 13, Summerhill Phase 1; and
Lots 14 through 39, Summerhill Phase 2.

All Restrictions contained within this Declaration are declared and agreed to be established with the purpose of protecting the desirability and attractiveness of said real property and every part thereof. All of the Covenants, Conditions and Restrictions of SUMMERHILL run with said real property and shall be binding upon and inure to the benefit of Declarant and all owners and their successors in interest as set forth in this Declaration.

2.2 Right to Add Real Property. The Applicant has sold Lot 2, Summerhill Phase 1, Deschutes County, Oregon. The applicant retains the right, but not the obligation, to seek the consent of the owner of said lot to apply these Covenant, Conditions and Restrictions to said Lot 2.

Section 3. ARCHITECTURAL CONTROLS:

3.1 Approval Required: No improvement, including antennas or other receiving devices, shall be erected, placed, altered, maintained, remodeled, expanded or permitted to remain on any land subject to this Declaration until final plans and specifications of the improvement have been submitted to and approved in writing by Declarant.

3.2 Procedure: Any owner proposing to construct any improvements within SUMMERHILL (including any exterior alteration, addition, destruction or modification to any such improvements) shall follow the procedures and shall be subject to the approvals required by Paragraphs 3.3 and 3.7 below. A failure to obtain said approval, when required, shall be deemed a breach of the Declaration.

3.3 Required Documents: Any owner proposing to utilize, improve or develop real property within SUMMERHILL shall submit the following items for review:

(a) A professionally prepared site plan showing the location, size, configuration and layout of any building, structure, or improvement (or, where applicable, any alteration, addition, modification, or destruction thereof) including appurtenant facilities for parking, storage, fences and vehicular and pedestrian traffic and circulation.

(b) Professionally prepared architectural plans and drawings showing the nature, style and dimensions of any building, structure, fence, wall, barrier or deck (or, where applicable, any alteration, additional modification or destruction thereof), including the exterior material types, colors and appearance. The scale of plans shall be one inch = 20 feet or larger.

(c) A professionally prepared landscape plan showing the nature, type, size, location and layout of all proposed landscaping, vegetation, ground cover, landscape and site lighting, walkways, major existing vegetation and irrigation systems proposed to be planted or installed (or, where applicable, removed or destroyed). All lots must have a minimum of 500 square feet of lawn. In addition to the 500 square feet of lawn, all owners shall be responsible for maintaining the landscape strip between the curb and sidewalk with lawn grass or other Declarant approved landscaping.

3.4 Review: All plans and drawings identified in Paragraph 3.3 above, shall be submitted to Declarant for review prior to the performance of any proposed work on an improvement. The plans and drawings shall be accompanied with a check made payable to Declarant in the amount of \$100.00. No plans shall be reviewed until the architectural review fee is paid in full and all items specified in this Section are submitted to Declarant.

Within 60 days following receipt of said plans and drawings and the full architectural review fee, Declarant shall review the plans and inform the owner in writing whether the plans conform to the development concept for SUMMERHILL, as determined in the sole discretion of Declarant, and any design regulations adopted by Declarant for SUMMERHILL. In the event the Declarant fails to approve or reject properly filed plans within the 60-day review period, the plans will be conclusively presumed to be approved as submitted, with the exception that such an approval will not allow Improvements to be constructed in violation of any clear and objective provision of this Declaration or of any design regulations adopted by Declarant.

3.5 Plan Denial: In the event plans are not approved by Declarant, the owner may either (a) submit a new application and pay the \$100 plan review fee; or (b) revise the denied plan to

make the changes requested by Declarant, and no other changes, resubmit the plans for a second review and pay a review fee of \$50.

3.6 Partial Approval Not Authorization to Proceed: No work may be performed relating to any improvement unless and until all aspects of all plans required under Paragraph 3.3 above have been approved by Declarant.

3.7 Declarant Signature on City Plans: Any building permit site plans, construction plans or similar plans and drawings submitted to the City of Bend for review and approval in connection with the construction of any improvement in SUMMERHILL must bear the prior written approval of Declarant.

3.8 Issuing Decisions: All decisions of the Committee shall be in writing, and shall be deemed to have been taken when a written decision is deposited for delivery with the United States Postal Service as Certified Mail, with a return receipt requested, or by personal delivery to the applicant. A majority of the Committee may render a binding decision. Notice of all Committee decisions shall be provided to all adjoining Lot Owners. Committee decisions shall be binding upon all Owners, once final.

3.9 Final Authority re Interpretations: Interpretations and the application of the provisions of the Architectural Regulations and the provisions of this Declaration that relate to the making of Improvements are to be made within the sole and exclusive discretion of the Committee. Said interpretations and applications of rules are to be the final determination of the legal propriety of the Improvements proposed. The intention of this provision is to assure that Declarant decisions relating to Improvements within the subdivision will be accorded deference by reviewing courts, using the legal standard prescribed by the holding of *Valenti v. Hopkins*, 324 Or 324, 926 P2d 813 (1996). In the event a property owner proceeds to make Improvements, without first submitting Improvement plans, the Declarant may, in its sole discretion, choose to issue a decision determining whether the development complies with the Declaration and architectural rules before proceeding to enjoin the construction or to compel the Lot owner to file for architectural review approval. The *Valenti* standard of review shall apply to any such decision.

3.10 The Declarant is hereby granted the authority to enter any Lot where Improvements are being constructed, during daylight hours, to inspect the property and document the work on Improvements to assure compliance with its decisions, then review the work being conducted and issue a decision determining whether the work complies with Declarant's architectural review decisions, whether Improvements require Declarant approval or any other matter reasonably related to the exercise of Declarant's rights and responsibilities under this Declaration.

3.11 Legal Challenges to Declarant Decisions: Notwithstanding any other provision of these Restrictions or Oregon law, the sole and exclusive procedure and remedy for any challenge to a decision of the Declarant shall be as follows:

3.11.1 Lot Owners are the only persons who may challenge Declarant decisions.

- 3.11.2 A Lot Owner may, in addition to the actions allowed by Section 3.5, request that the Declarant reconsider its decision. Such request must be made in writing and filed with the Declarant and the Applicant, if the person requesting reconsideration is not the Applicant.
- 3.11.3 A request for reconsideration shall be filed no later than 10 days following the mailing of the decision to the Applicant.
- 3.11.4 If a request for reconsideration is filed, the Declarant shall have 30 days to review its decision and to issue a decision on reconsideration. The decision on reconsideration may uphold, modify or vacate the prior decision, in whole or in part.
- 3.11.5 The Applicant and the Owner requesting reconsideration may submit written information regarding the request for reconsideration to the Declarant at any time, up to the time when a decision on reconsideration is issued, provided that a copy of the written material is provided to the Applicant and any person requesting reconsideration prior to or concurrent with filing of the information with the Declarant.
- 3.11.6 A copy of the decision on reconsideration shall be provided the Lot Owner(s) who requested reconsideration and to the Applicant by first class mail or personal delivery.
- 3.11.7 Any judicial action or proceeding brought to challenge a decision of the Committee shall be commenced within thirty days after mailing of the Committee decision on reconsideration. In such an action or proceeding, the court shall defer to Declarant's interpretations of the meaning of the Restrictions and Architectural Regulations.
- 3.11.8 An action to challenge the Declarant's decision as set forth in this section, shall be the sole and exclusive judicial remedy available to any Owner to challenge any decision of the Declarant or the construction of an Improvement in accordance with Committee approved plans. No such action to challenge the Declarant's decision shall be commenced by any person who has not requested reconsideration of the Declarant's decision, within the time limits specified in these Restrictions. Additionally, once SHARC assumes responsibility for making architectural review decisions, a legal action regarding any SHARC decision may be filed against the entity only and not against any individual member of SHARC.
- 3.12 Improvements must be constructed in accordance with the plans and specifications approved by the Committee. Approval of plans and specifications may be withdrawn by the Declarant in the event Improvements are not constructed in substantial conformance to the plans and specifications approved thereof.

- 3.13 A suit seeking an injunction against the construction of an Improvement that requires Deschutes County building permit approval that has not received Committee approval or that is being constructed in violation of Committee approved plans, may be brought by Declarant or a Lot Owner, provided that the suit is commenced prior to the completion of the Improvement for which an injunction is sought and issuance of a final occupancy permit by the Deschutes County Building Department. If an improvement does not require a building permit, the suit must be filed no later than thirty days following completion of the improvement. If a suit is not commenced within this time period, the provisions of these Restrictions shall be deemed to have been fully complied with. Any person bringing an injunction action will be barred from raising any objections to any Improvements that are being constructed in accordance with Declarant approved plans unless said person has also filed a challenge to the Declarant's decision regarding the plan in the manner specified in Section 3.11, above.

Section 4. RESTRICTIONS ON USE OF PROPERTY:

4.1 Occupancy: No owner shall occupy, use or permit his lot or any part thereof to be used for any purpose other than as a single-family residence or a duplex, on lots where duplex development is allowed by City zoning regulations.

4.2 Improvements: Each lot within SUMMERHILL shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard.

4.3 Appearance: All garbage, trash, yard debris and cuttings, refuse, garbage and refuse containers, inoperable vehicles, clothes drying apparatus and other service facilities located on the lot shall be screened from view from ground level view from adjoining properties and shall be maintained so as not to create a fire hazard.

4.4 Offensive or Commercial Activity: No offensive or commercial activity shall be carried on nor shall anything be done which may become an annoyance or nuisance to the other owners.

4.5 Signs: No sign of any kind shall be displayed to public view on or from any lot without the Declarant's prior written consent, with the following exceptions: (1) not more than one (1) "for sale" sign per lot; (2) temporary political campaign signs; and (2) house numbers may be displayed on mailboxes and on houses provided the numbers do not exceed four inches in height or width.

4.6 Exterior Lighting or Noise Making Device: No exterior lighting or noise-making device shall be placed on a lot or any portion thereof without the Declarant's prior written consent. All exterior lighting shall be directed to cast light downward onto the lot where is it installed, rather than onto adjoining lots.

4.7 Limitation of Transfer: No owner shall transfer either by conveyance, contract of sale or lease any interest in his lot which would result in ownership of such lot or of the leasehold rights being held by more than ten (10) persons.

4.8 Mobile Homes: No house trailer, mobile home, recreational vehicle, tent, shack, barn or other similar outbuilding or structure, whether permanent or temporary shall be erected or placed on any lot.

4.9 Utilities: No above-ground utilities, pipes, or wires shall be used to connect improvements with utility facilities or municipal services.

4.10 Parking: A minimum of two enclosed garage parking places must be provided for each lot in SUMMERHILL. No extended parking shall be allowed by any detached trailer, house trailer, travel trailer, boat trailer, recreational vehicle, motor home, camper, commercial trucks or incapacitated motor vehicle on any lot or on subdivision streets. Said vehicles or trailers may, however, be stored on a lot for an extended period if completely and effectively screened from view from the street and adjoining lots, at ground level, by a six (6) foot fence or enclosure that has received design review approval from the Declarant and has been constructed in compliance with the plans approved by the Declarant.

4.13 Transient Rental Use: No owner or owners of any unit within SUMMERHILL shall rent their lot or residence, or part thereof, to any person or persons for transient occupancy. The term "rent" means the use or possession or the right to use or possess the lot or its structures for lodging or sleeping purposes. Rent shall mean the consideration charged, whether or not received by the owner, for the occupancy of the unit, including, but not limited to the payment or exchange of money, goods, labor, credits, property or other consideration that can be valued in money, without any deduction.

4.14 Minimum Square Footage of Home: Any single-family residence shall be a minimum of 1,400 square feet in size, not including any garage or shop.

Section 5. DETERMINATION OF DECLARANT'S ROLE:

5.1 Declarant's Control: At such time as the Declarant shall no longer desire to exercise the architectural, landscaping, signing and lighting controls over any lots within SUMMERHILL, Declarant shall cause to be recorded in the records of the Deschutes County Clerk, a declaration stating that Declarant no longer desires to exercise control over development in SUMMERHILL. Recordation of such a declaration shall formally terminate Declarant's rights and duties under this Declaration. The Declarant's rights and duties under these covenants shall, thereafter, be exercised by the SUMMERHILL Architectural Review Committee (SHARC) described in Section 5.2, below.

5.2 Formation of SHARC:

(a) Prior to formal termination of Declarant's control, Declarant shall form an Oregon nonprofit organization called the SUMMERHILL Architectural Review Committee (SHARC). The SHARC shall be governed by a three-person board of directors. SHARC shall succeed to all powers, responsibilities and rights of Declarant under this Declaration.

(b) The Declarant may select the initial members of the first board of directors of the SHARC. The initial members of the SHARC shall adopt By-laws that provide for the operation of the SHARC and the election of future board members. No later than one year following formation, the SHARC shall conduct an election to allow lot owners in SUMMERHILL to select members of the board of directors. Persons eligible for service on the Board of Directors' are persons who reside in a residence on a SUMMERHILL lot or who own property in SUMMERHILL.

(c) The total number of votes entitled to be cast for each director's position shall be based upon the total number of lots within SUMMERHILL. Each lot is entitled to one vote. Each lot owner shall have the right to cast one vote for each lot owned. In the event a lot is owned by more than one owner, the votes will be prorated between the owners to equal, together, one vote (4 owners vote, each vote = .25). The initial board of directors shall meet ten (10) days after their selection and may, at that time, adopt any governing documents, including bylaws, guidelines, procedures, rules and regulations, relating to the architectural, landscaping, signing and lighting controls within SUMMERHILL.

5.3 Failure to Organize: In the event Declarant is unsuccessful in organizing the board of directors of SHARC within the 30-day organizational period specified above, Declarant shall have no further responsibilities relating to SHARC and the SHARC board of directors shall be organized exclusively by the owners of lots within SUMMERHILL. Such failure of organization of the SHARC board of directors shall not affect the existence of SHARC or the effectiveness of this Declaration.

Section 6. DURATION AND AMENDMENT OF THIS DECLARATION:

6.1 Duration: The Covenants, Conditions and Restrictions of SUMMERHILL shall continue to remain in full force and effect at all times with respect to all property, and each part thereof, now or hereafter made subject thereto (subject however, to the right to amend and repeal as provided for herein) for a period of thirty years from the date this Declaration is recorded. The Covenants shall be continued automatically without further notice for an additional period of ten years and thereafter for successive periods of ten years unless, within one year prior to the date set for expiration, the Covenants, Conditions and Restrictions for SUMMERHILL are terminated as set forth above in this Section. Termination shall occur if, within one year of the termination date, an instrument directing termination of this Declaration signed by owners of not less than two-thirds of the lots then subject to the Declaration, record a Notice of Termination with that plainly states its intention to terminate the Declaration.

6.2 Amendment: This Declaration or any provision thereof, or any Covenant, Condition or Restriction contained herein, may be extended, modified, or amended, as to the whole of said property or any part thereof with a written consent of the owners of fifty-one percent (51%) of the lots subject to these Restrictions; provided that the provisions of Article 4 hereof shall inure to the benefit of and be enforceable solely by Declarant. The provision of Article 4 shall be capable of being amended by Declarant without the consent of any other owner, person or entity. The act of amendment shall not give any third party any right or cause of action based on the

impacts caused by the amendment or on account of the parties reliance on the present terms of this Declaration. Additionally, no amendment which enlarges or diminishes the powers and responsibilities of the Declarant shall be effective without the written consent of the Declarant.

6.3 Recording: Any change, amendment or termination of this Declaration shall not become effective until recorded in the Official Records of Deschutes County, Oregon.

Section 7. ENFORCEMENT:

7.1 This Declaration shall be specifically enforceable by Declarant or by any owner of any lot in SUMMERHILL, except to the extent limited by Section 3, above. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal or the injunction against any offending improvement or condition, except to the extent limited by Section 3, above.

7.2 In the event that legal suit or action is instituted for the enforcement of this Declaration or for any remedy for the breach of this Declaration, the prevailing party shall recover that party's reasonable attorney fees incurred in such suit or action or in any appeal therefrom as adjudged by the trial or appellate court.

Section 8. EFFECT OF DECLARATION:

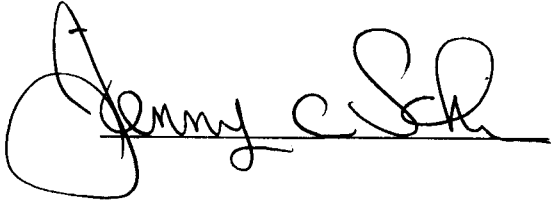
The Covenants, Conditions and Restrictions of this Declaration shall run with the land included in SUMMERHILL and shall bind, benefit and burden each lot in SUMMERHILL, including any additions thereto. The terms of this Declaration shall inure to the benefit and shall bind Declarant, all successors and assigns of Declarant and all owners of any lot in SUMMERHILL, their successors, assigns, heirs, administrators, executors, mortgagees, lessees, invitees or any other party claiming or deriving any right, title or interest or use in or to any real property in SUMMERHILL. The use restrictions and regulations set forth in Sections 4 and 5 of this Declaration shall be binding upon all owners, lessees, licensees, occupants and users of the property known as SUMMERHILL and their successors in interest as set forth in this Declaration, including any person who holds such interest as security for the payment of any obligation, including any mortgagee or other security holder in actual possession of any lot by foreclosure or otherwise and any other person taking title from such security holder.

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CONSENT TO CREATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

We, the owners of the property described on herein adopt the above-referenced Covenants, Conditions and Restrictions to apply to development on any lot described herein.

JENNIFER C. SCHIRM



RONALD L. SCHIRM

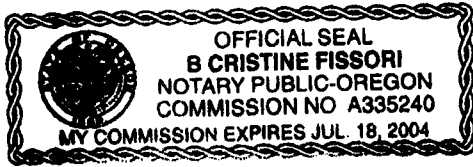


State of Oregon

County of Deschutes)

ss.

This instrument was acknowledged before me on August 25, 2003 by
Jennifer C. and Ronald L. Schirm.



B. Cristine Fissori

Notary Public for the State of Oregon

My Commission Expires: 7/18/04

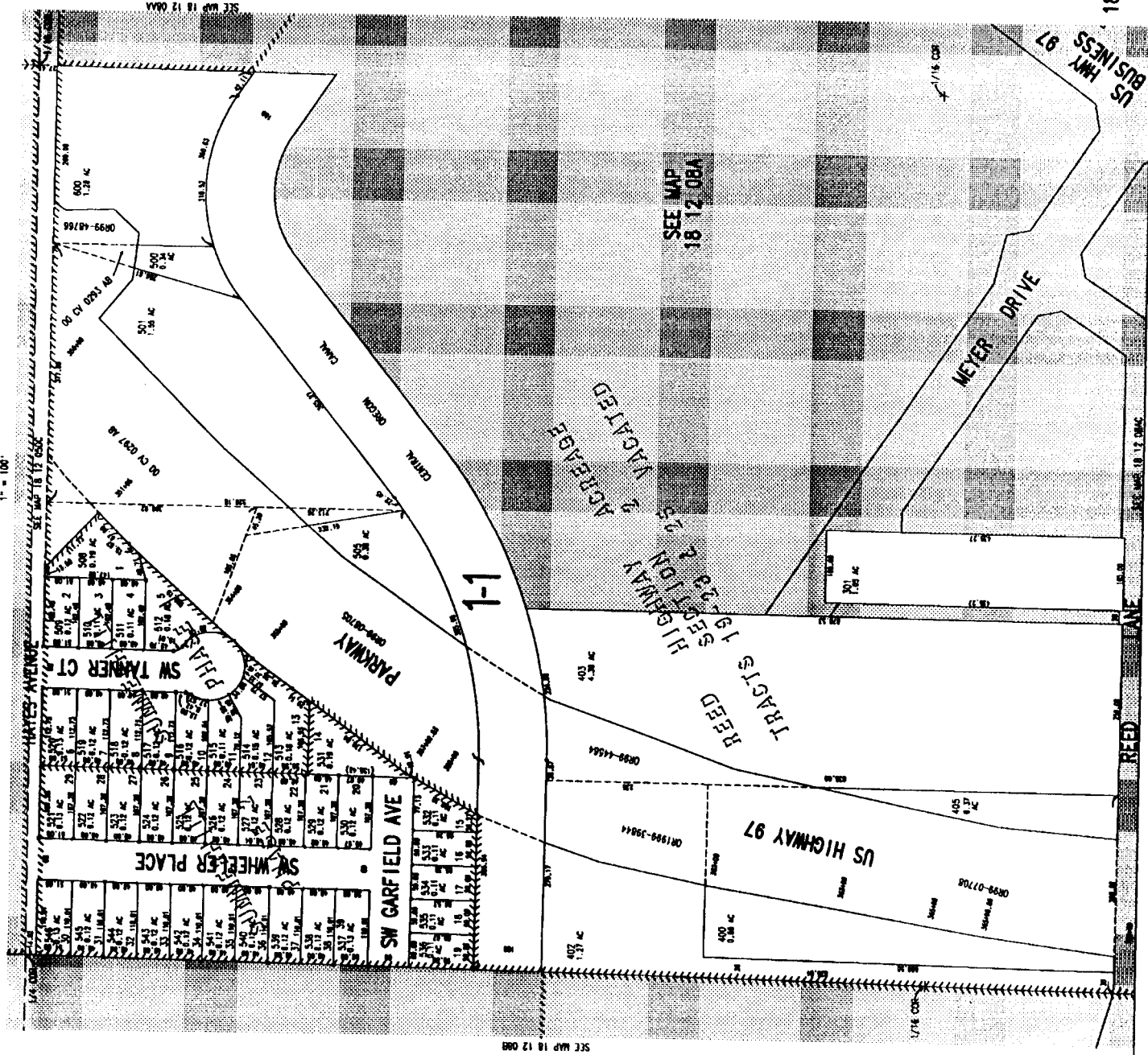
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