

DESCHUTES COUNTY OFFICIAL RECORDS  
NANCY BLANKENSHIP, COUNTY CLERK

2003-67768



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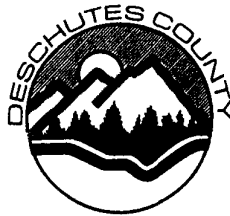
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# DESCHUTES COUNTY CLERK

## CERTIFICATE PAGE



**This page must be included  
if document is re-recorded.  
Do Not remove from original document.**

## **DECLARATION OF COVENANTS AND RESTRICTIONS**

**After recording return to:**

**Sharon R. Smith  
Bryant Lovlien & Jarvis, PC  
P.O. Box 1151  
Bend, OR 97709**

**Until a change is requested, all  
statements should be sent to:**

**Todd Haaby  
62030 Dean Swift Road  
Bend, OR 97701**

**THIS DECLARATION** is made this 26 day of September, 2003, by Tumac Mtn. Development, LLC, and Todd Haaby ("Declarant").

### **RECITALS**

**A.** Declarant has submitted an application (the "Application") with the City of Bend seeking approval for a zone change and tentative subdivision plan for a residential subdivision called "Poplar Subdivision" on a 8.11-acre parcel of land more particularly described on the attached Exhibit "A" (the "Property").

**B.** With this Declaration, the Declarant intends to bind itself, and any successor, to comply with the terms of the Covenants and Restrictions set forth below.

**C.** The purpose of the Covenants and Restrictions is to provide privacy and a buffer for adjoining landowners in the area of the proposed subdivision.

**D.** This document is also a settlement agreement to resolve differences between the signatories regarding the Application.

### **TERMS OF COVENANTS AND RESTRICTIONS**

**1.** This Declaration and the Covenants and Restrictions herein apply to the Property described in Exhibit "A."

**2.** Declarant represents that it has fee ownership of the Property in Exhibit "A." The terms, conditions and covenants contained in this instrument shall bind the Declarant and its successors, assigns and grantees in Exhibit "A." Any instrument of transfer, conveyance, or encumbrances affecting all or any part of Exhibit "A" shall reference this Declaration.

**3.** The height of the homes on Lots 19-25 (see Exhibit "B") will be restricted to a single story with a maximum 20-foot height, which is the vertical distance from the average contact ground level of the building to the highest point of the building.

**4.** Lots 19-25 will have a minimum rear setback of 20 feet from the east property line. The term "setback" means the minimum allowable horizontal distance from a given point or line of reference, such as a property line, to the nearest vertical wall or other element of a

building or structure as defined herein. The term "building" means any structure built and maintained for support, shelter or enclosure of persons, animals, chattels, or property of any kind. The term "structure" means anything constructed or built, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which requires location on the ground or is attached to something having a location on the ground, including swimming and wading pools and covered patios, excepting outdoor areas such as paved areas, driveways or walks. A structure is allowed within the setback if located 10-20' from the east property line and if the overall height of the structure (including grade and any foundation) is less than the height of the fence along the east property line with the Neighbors (see paragraphs 5 and 6).

5. Declarant will build a six foot cedar privacy fence (solid with no gaps between the boards) at the east boundary of the property prior to construction on Lots 19-25.

6. Howard and Dianne Reingold and Greg and Arlene Gannon, their successors, assigns and grantees (hereinafter "Neighbors") shall have the right to enforce the Covenant and Restrictions created herein. In the event of any violation or threatened violation of the Covenants and Restrictions created herein, the Neighbors shall, in addition, have the right to seek damages and/or seek to enjoin the violation or threatened violation in a court of competent jurisdiction. In the event a suit, action, arbitration, or other proceeding, or the services of an attorney are retained, to interpret or enforce any provision of this Declaration, or with respect to any dispute relating to this Declaration, then the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on the count of such enforcement or establishment of rights hereunder, including, without limitation, arbitration costs, court costs, and reasonable attorney fees and disbursements.

7. Failure of the Neighbors, in any one or more incidences, to enforce strict performance of the obligations or restrictions created herein or to exercise any remedy contained herein shall not be construed as a waiver or a relinquishment for the future of the Declarant's obligations or the enforcement rights.

8. This Declaration, and any term, restriction, or covenant contained herein, may be terminated, amended, modified, or revoked only upon the written approval of the Neighbors, which approval shall be witnessed, authenticated, and recorded pursuant to Oregon law.

9. If any term of this Declaration becomes illegal, null, or void for any reason, or is held by any court of competent jurisdiction to be so, the remaining portions of this Declaration shall remain in full force and effect.

10. The Neighbors agree not to object in writing or in person to an approval of the Application. The Neighbors also agree not to institute an appeal to the Bend City Council or to the Land Use Board of Appeals opposing the Application.

11. Declarant agrees to record this Declaration by September 26, 2003.

TUMAC MTN. DEVELOPMENT, LLC

By:

TODD HAABY

TODD HAABY, Individually

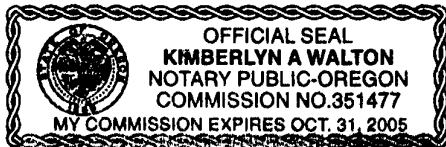
STATE OF OREGON )

County of Deschutes ) ss.

Personally appeared **TODD HAABY** this 26<sup>th</sup> day of September, 2003, who, being first duly sworn, did sign individually as the owner of the Property and of **TUMAC MTN. DEVELOPMENT, LLC**, and acknowledges that instrument to be his voluntary act and deed.

Before me:

Subscribed and sworn to before me this 26<sup>th</sup> day of September, 2003.



Kimberlyn A. Walton  
NOTARY PUBLIC FOR OREGON

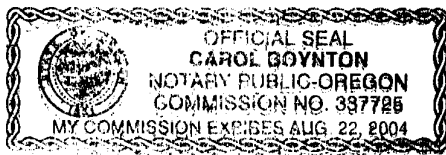
STATE OF OREGON )

County of Deschutes ) ss.

Personally appeared **HOWARD REINGOLD** this 23<sup>rd</sup> day of September, 2003, who, being first duly sworn, acknowledges that instrument to be his voluntary act and deed.

Before me:

Subscribed and sworn to before me this 23<sup>rd</sup> day of September, 2003.



Carol Boynton  
NOTARY PUBLIC FOR OREGON

STATE OF OREGON )  
 ) ss.  
County of Deschutes )

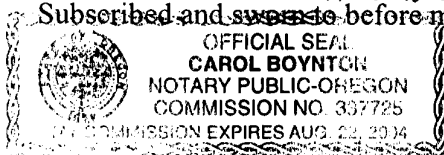
Dianne Reingold

Personally appeared **DIANNE REINGOLD** this 23<sup>rd</sup> day of September, 2003, who, being first duly sworn, acknowledges that instrument to be her voluntary act and deed.

Before me:

~~Subscribed and sworn to before me~~

Subscribed and sworn to before me this 23<sup>rd</sup> day of September, 2003.



Carol Boynton  
NOTARY PUBLIC FOR OREGON

STATE OF OREGON )  
 ) ss.  
County of Deschutes )

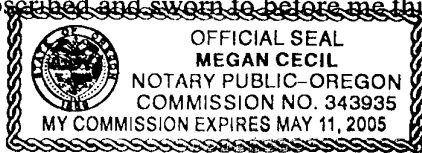
Personally appeared **GREG GANNON** this 24<sup>th</sup> day of September, 2003, who, being first duly sworn, acknowledges that instrument to be his voluntary act and deed.

Before me:

Megan Cecil, Notary

~~Subscribed and sworn to before me this~~

Subscribed and sworn to before me this 24<sup>th</sup> day of September, 2003.



Megan Cecil  
NOTARY PUBLIC FOR OREGON

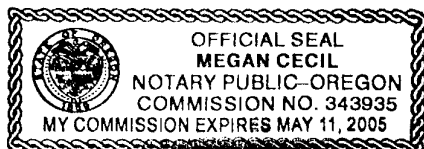
STATE OF OREGON )  
 ) ss.  
County of Deschutes )

Personally appeared **ARLENE GANNON** this 24<sup>th</sup> day of September, 2003, who, being first duly sworn, acknowledges that instrument to be her voluntary act and deed.

Before me:

Megan Cecil, Notary

Subscribed and sworn to before me this 24<sup>th</sup> day of September, 2003.



Megan Cecil  
NOTARY PUBLIC FOR OREGON

EXHIBIT "A"

Parcel I:

The West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter (W1/2SW1/4SW1/4SW1/4) of Section Eighteen (18), Township Eighteen (18) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon.

Parcel II:

A portion of Tract One (1) of WAYWEST PROPERTIES, Deschutes County, Oregon, described as follows:

Beginning at the Southwest corner of Section 18, Township 18 South, Range 12 East of the Willamette Meridian; thence North 00°20' East 660.00 feet to the point of beginning; thence North 00°20' East 420.00 feet; thence North 89°26'33" East 330.00 feet; thence South 00°20' West 420.00 feet; thence South 89°26'33" West 330.00 feet to the point of beginning.

EXCEPTING therefrom the North 30.00 feet dedicated for road purposes.

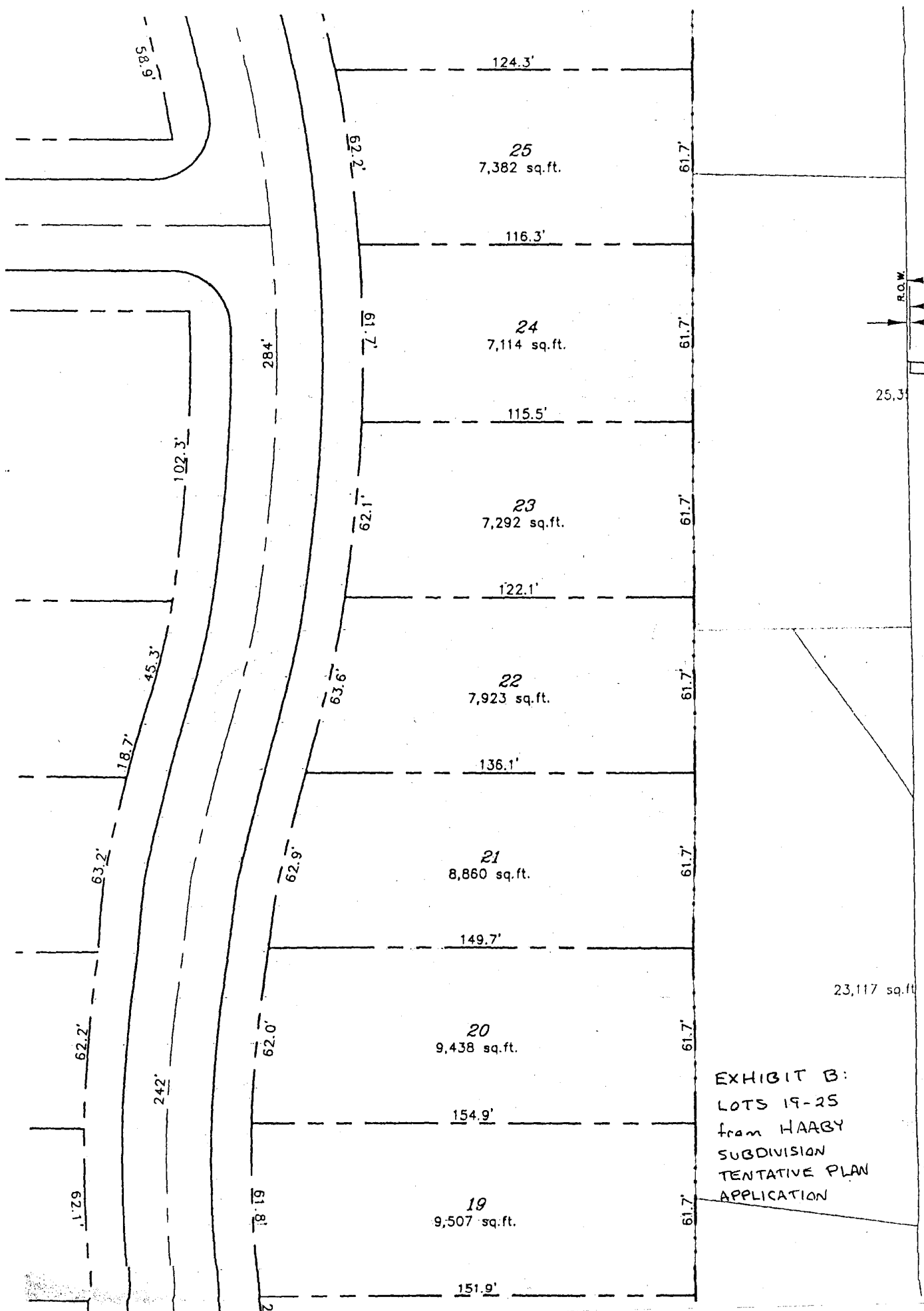


EXHIBIT B:  
LOTS 19-25  
from HAABY  
SUBDIVISION  
TENTATIVE PLAN  
APPLICATION