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Ball Janik LLP
15 SW Colorado, Suite K
Bend, OR 97702
Attn: Laura Craska Cooper



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**DECLARATION OF RESTRICTIONS AND
SETTLEMENT AGREEMENT**

THIS DECLARATION OF RESTRICTIONS AND SETTLEMENT AGREEMENT (this "Agreement") is entered into by and between J.T. SMITH COMPANIES ("Applicant"), SUNRISE VILLAGE ASSOCIATION (the "Association"), ROB ROY ("Roy"), ROSEMARIE ROSENFELD ("Rosenfeld") and SISTERS FOREST PLANNING COMMITTEE, INC. ("SFPC"). The Association, Roy, Rosenfeld and SFPC are hereinafter collectively referred to as the "Interested Parties."

WHEREAS, Applicant submitted an application (the "Application") with the City of Bend seeking approval for a zone change and a tentative subdivision plan for a residential planned unit development to be called "River Canyon Estates" on an 88.3 acre parcel of land more particularly described on attached **Exhibit A** (the "Property"). The Application requests are more particularly detailed in the Final Decision of the Hearings Officer on File Numbers PZ-01-174 and PZ-01-175 dated October 10, 2001 (the "Decision").

WHEREAS, each of the Interested Parties appeared in person at a public hearing on the Application and/or submitted written testimony to the City on the Application.

WHEREAS, in the Decision, the Hearings Officer approved the planned unit development and recommended to the Bend City Council that it approve the zone change, both subject to several conditions.

WHEREAS, in order to resolve their differences and to avoid an appeal of the Decision to the City Council or the Oregon Land Use Board of Appeals ("LUBA"), the parties have agreed to a settlement on the terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

- A. Applicant's Obligations. Subject to the condition precedent contained herein, Applicant agrees as follows with respect to the Property:
 1. Any dwellings built upon the lots located along the canyon rim and identified on attached **Exhibit B** as "Rim Lots" (the "Rim Lots") shall be constructed outside the "Building Setback Area" identified on attached **Exhibit B**.

2. There shall be no construction in the "Building Setback Area" as shown on attached **Exhibit B** except for architectural features permitted to encroach on yards and setbacks pursuant to the Bend Zoning Code Section 10-10.27(6).
3. With respect to the Rim Lots, the Applicant shall not remove or alter the natural vegetation or natural features within the "No Disturbance Zone" designated for the Rim Lots and the common areas on attached **Exhibit B**.
4. Any dwelling constructed on the lots identified on attached **Exhibit B** as "Single Story Structure" lots shall be a single story living structure and may not exceed twenty (20) feet in height at the median ridge line.
5. Except for fences constructed by the Applicant for safety purposes or required by the Central Oregon Irrigation District or any governmental entity having jurisdiction over the Property, no fences shall be constructed on any Rim Lots or on the lot identified as "Lot 147" on attached **Exhibit B**.
6. In constructing improvements, or architectural features permitted to encroach on yards and setbacks pursuant to Bend Zoning Code Section 10-10.27(6), on any Rim Lot, no person shall remove any tree from, or disturb any other natural feature, including rock outcroppings in, the area delineated as the "Tree Review Area" on attached **Exhibit B** unless and until approved pursuant to the CC&Rs (as defined herein) by the Architectural Review Board (as defined in the CC&Rs).
7. If the Applicant believes the same can be approved administratively, without the necessity of a public hearing, the Applicant shall make a reasonable effort to seek all necessary approvals to create two legal lots out of those three lots identified on attached **Exhibit B** as "Lots 197, 198 and 199."
8. Prior to recordation of the Declaration of Covenants, Conditions and Restrictions for the Property (the "CC&Rs"), Applicant shall assure that such CC&Rs contain restrictions requiring all construction on the Property to utilize natural earth tones and colors.
9. Applicant shall not appeal the Decision. Applicant shall not object in writing nor in person to the Decision nor seek to persuade the Bend City Council in writing or in person to amend the Decision. At the Bend City Council public hearing on the zone change, the Applicant shall express its support for the Decision. Applicant shall comply with the Decision.

B. Interested Parties' Obligations. The Interested Parties agree as follows:

1. None of the Interested Parties shall institute an appeal of the Decision to the Bend City Council.

2. None of the Interested Parties shall object in writing or in person to the Application or seek to persuade the Bend City Council in writing or in person to deny the Application and/or impose additional conditions other than those imposed in the Decision.
3. In the event that the Bend City Council approves the Application, none of the Interested Parties shall institute an appeal of that decision to LUBA.
4. The Interested Parties shall, prior to the City Council's public hearing on the Application, sign and send a letter to the Bend City Council, which letter shall be in a form reasonably acceptable to the Applicant. Such letter shall indicate that the Interested Parties and the Applicant have worked together extensively since the original public hearings in front of the Hearings Officer in order to satisfy their mutual concerns regarding canyon rim preservation and adjacent property values. Such letter shall note that the Applicant has satisfied the Interested Parties' concerns in this regard and state that the Interested Parties therefore support the Application with the conditions imposed/recommended by the Hearings Officer.

C. Conditions Precedent.

1. Applicant's obligations contained herein are conditioned upon the full performance of the Interested Parties' obligations.
2. Applicant's obligations contained herein are conditioned upon Applicant receiving final approval of its Application from the Bend City Council, subject only to the conditions contained in the Decision, and all applicable appeal periods expiring without any appeals being filed.
3. The Interested Parties' obligations contained herein are conditioned upon the Applicant's compliance with the conditions of approval imposed by the Hearings Officer upon the planned unit development and imposed by the Bend City Council upon the zone change.
4. The Interested Parties' obligations contained herein are conditioned upon the full performance of the Applicant's obligations.
5. Upon the satisfaction of the conditions contained in Sections C.1 and C.2, Applicant shall promptly record this Agreement in the real property records of Deschutes County, Oregon.

D. Miscellaneous.

1. Recitals and Exhibits. The Recitals and the Exhibits attached hereto are hereby incorporated into this Agreement as if set forth fully herein.

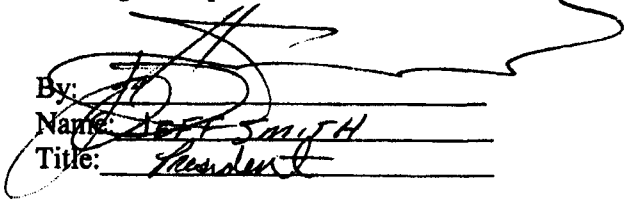
2. Successors and Assigns. This Agreement shall run with the land and shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns. Any instrument of transfer or conveyance affecting all or any part of the property described in attached Exhibit A shall reference this Agreement.
3. Enforcement. The Interested Parties and their successors and assigns shall have the right to enforce the covenants and restrictions created herein. In the event of any violation or threatened violation of the covenants and restrictions created herein, the Interested Parties 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. Failure of the Interested Parties, 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 Applicant's obligations or the Interested Parties' enforcement rights.
4. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
5. Entire Agreement. This Agreement sets forth the entire agreement of the parties regarding to its subject matter and no modification, variation or amendment of this Agreement shall be effective unless embodied in a writing signed by all of the parties hereto.
6. Severability. If any provision of this Agreement or its application to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstance other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.
7. Attorneys' Fees. 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 Agreement or with respect to any dispute relating to this Agreement, then the defaulting party or 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 account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, arbitration costs, court costs and reasonable attorneys' fees and disbursements.

8. Amendment. This Agreement, or any term, restriction, or covenant contained herein, may be amended or modified only upon the written consent of all the parties hereto.
9. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREAS, the parties have executed this Agreement as of this 22nd day of October, 2001.

"APPLICANT":

J.T. SMITH COMPANIES, INC.,
an Oregon corporation

By: 

Name: JEFF SMITH

Title: President

"ASSOCIATION":

SUNRISE VILLAGE ASSOCIATION,
an Oregon nonprofit corporation

By: _____

Name: _____

Title: _____

"ROY":

Rob Roy,
an individual

"ROSENFELD":

ROSEMARIE ROSENFELD,
an individual

By: _____

Aron Yarmo

Attorney for Rosemarie Rosenfeld

"SFPC":

SISTERS FOREST PLANNING
COMMITTEE, INC.,
an Oregon nonprofit corporation

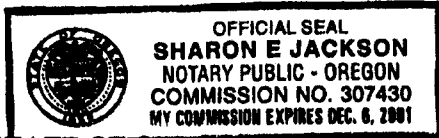
By: _____

Name: _____

Title: _____

STATE OF OREGON)
 CLACKAMAS) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on October 23, 2001, by
JEFF SMITH.



Sharon E. Jackson
Notary Public for Oregon
My commission expires: 12/6/01

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on _____, _____, by
_____.

Notary Public for Oregon
My commission expires: _____

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on _____, _____, by
_____.

Notary Public for Oregon
My commission expires: _____

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on _____, _____, by
_____.

Notary Public for Oregon
My commission expires: _____

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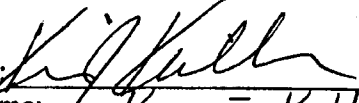
"APPLICANT":

J.T. SMITH COMPANIES, INC.,
an Oregon corporation

By: _____
Name: _____
Title: _____

"ASSOCIATION":

SUNRISE VILLAGE ASSOCIATION,
an Oregon nonprofit corporation

By: 
Name: Karen J. Keillor
Title: President

"ROY":

Rob Roy,
an individual

"ROSENFELD":

ROSEMARIE ROSENFELD,
an individual

By: _____
Aron Yarmo
Attorney for Rosemarie Rosenfeld

"SFPC":

SISTERS FOREST PLANNING
COMMITTEE, INC.,
an Oregon nonprofit corporation

By: _____
Name: _____
Title: _____

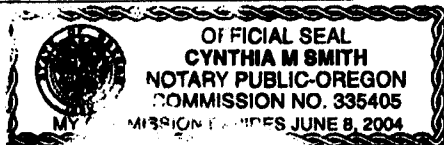
STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

 This instrument was acknowledged before me on _____, _____, by
_____.

Notary Public for Oregon
My commission expires: _____

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

 This instrument was acknowledged before me on October 22, 2001, by
Kevin Keillon.



Cynthia M. Smith

Notary Public for Oregon
My commission expires: June 8, '04

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

 This instrument was acknowledged before me on _____, _____, by
_____.

Notary Public for Oregon
My commission expires: _____

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

 This instrument was acknowledged before me on _____, _____, by
_____.

Notary Public for Oregon
My commission expires: _____

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"APPLICANT":

J.T. SMITH COMPANIES, INC.,
an Oregon corporation

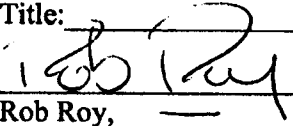
By: _____
Name: _____
Title: _____

"ASSOCIATION":

SUNRISE VILLAGE ASSOCIATION,
an Oregon nonprofit corporation

By: _____
Name: _____
Title: _____

"ROY":


Rob Roy,
an individual

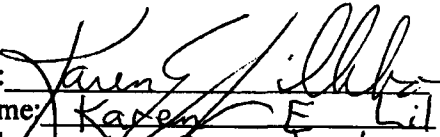
"ROSENFELD":

ROSEMARIE ROSENFELD,
an individual

By: 
Aron Yarmo
Attorney for Rosemarie Rosenfeld

"SFPC":

SISTERS FOREST PLANNING
COMMITTEE, INC.,
an Oregon nonprofit corporation

By: 
Name: Karen E. Lillebo
Title: President

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on _____, _____, by
_____.

Notary Public for Oregon
My commission expires: _____

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

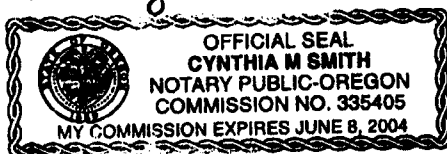
This instrument was acknowledged before me on _____, _____, by
_____.

Notary Public for Oregon
My commission expires: _____

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on October 22, 2001, by

Rob Roy _____.



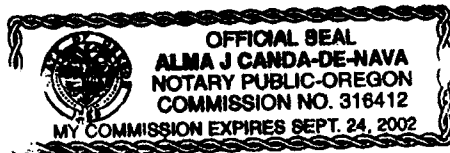
Cynthia M. Smith

Notary Public for Oregon
My commission expires: June 8, '04

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on OCTOBER 22 2001, by

ARON YARMO _____.

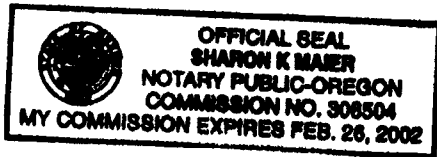


Alma J. Canda-de-Nava

Notary Public for Oregon
My commission expires: 09/24/02

STATE OF OREGON)
) ss
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on October 22, 2001, by
KAREN E. LILIBO.



Sharon K. Maier
Notary Public for Oregon
My commission expires: 2/26/02

Order No. 137478-JH&KA
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Exhibit "A"

PARCEL I:

That portion of the Southeast Quarter of the Northeast Quarter of the Southwest Quarter (SE1/4 NE1/4 SW1/4), the Northwest Quarter of the Southeast Quarter of the Southwest Quarter (NW1/4 SE1/4 SW1/4) and the East Half of the Southeast Quarter of the Southwest Quarter (E1/2 SE1/4 SW1/4) lying South and East of the top of the Canyon Rim as said line is depicted on Minor Partition 89-21, all lying in Section 7, Township 18 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon.

EXCEPTING THEREFROM any portion thereof lying within the boundaries of that certain property conveyed to David Ely and Carol Sanford in Warranty Deed, recorded January 6, 1988 in Book 176, Page 2548, Official Records, Deschutes County, Oregon.

FURTHER EXCEPTING any portion lying in Hollygrape Street.

PARCEL II:

A portion of Tract 16, Waywest Properties, located in the Southwest Quarter (SW1/4) of Section 7, and the Northwest Quarter (NW1/4) of Section 18, in Township 18 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

Beginning at a point on the West line of said Tract 16, which is located South 0°42'46" West, 125.99 feet from the Northwest corner of said Section 18 and with said point being on the Southerly rim of the Deschutes River Canyon; thence along said rim North 72°01'09" East, 265.46 feet; and North 59°45'27" East, 345.78 feet; and North 79°40'13" East, 494.36 feet; and North 71°38'53" East, 182.65 feet; and North 58°07' East, 161.18 feet to a point on the Southerly East line of the aforementioned Tract 16; thence leaving the canyon rim and following said Southerly East line South 0°26'31" East, 252.52 feet to the centerline of Pine Drive; thence along said centerline South 63°45'11" West, 492.79 feet; and South 80°21'11" West, 493.23 feet; and South 60°42'23" West, 487.56 feet to the Southwest corner of the aforementioned Tract 16; thence along the West line of said Tract 16, North 0°42'46" East, 304.37 feet to the point of beginning.

EXCEPTING THEREFROM any portion lying within the right of way of Pine Drive.

Order No. 137478-JB&KA

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PARCEL III:

A portion of the East Half (E1/2) of the Northeast Quarter (NE1/4) of Section 13, Township 18 South, Range 11 East of the Willamette Meridian, Deschutes County, Oregon, being more particularly described as follows:

Beginning at a point on the East line of said East Half of the Northeast Quarter (E1/2 NE1/4) of Section 13, which is located South 0°42'46" West, 125.99 feet from the Northeast corner of said East Half of the Northeast Quarter (E1/2 NE1/4) of Section 13; thence along the East line of said East Half of the Northeast Quarter (E1/2 NE1/4) of Section 13, South 00°42'46" West, 2465.68 feet to the Southeast corner of said East Half of the Northeast Quarter (E1/2 NE1/4) of Section 13, thence along the South line of said East Half of the Northeast Quarter (E1/2 NE1/4) of Section 13, South 89°26'56" West, 1323.03 feet to the Southwest corner of said East Half of the Northeast Quarter (E1/2 NE1/4) of Section 13; thence along the West line of said East Half of the Northeast Quarter (E1/2 NE1/4) of Section 13, North 0°41'47" East, 973.32 feet to the Southerly rim of the Deschutes River Canyon, thence along said Southerly rim North 28°28'24" East, 112.57 feet; and North 34°02'09" East, 695.30 feet; and North 59°10'16" East, 214.34 feet; and North 43°14'03" East, 289.20 feet; and North 7°39'42" East, 165.80 feet; and North 36°14'59" East, 406.25 feet; and North 86°05'39" East, 254.98 feet to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to Deschutes County, Oregon for County Road purposes in Warranty Deed recorded November 4, 1993, in Book 318, Page 233, Official Records.

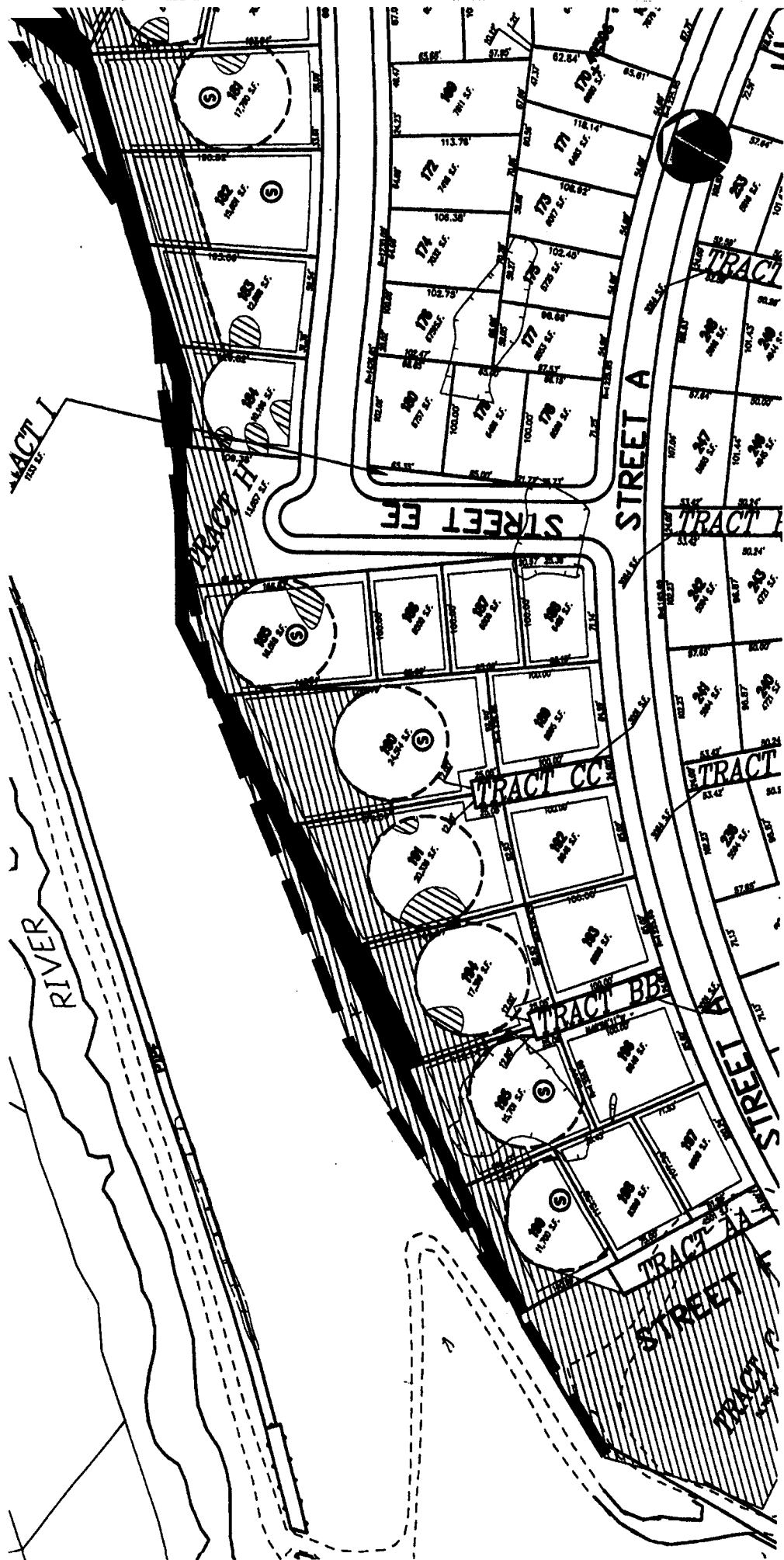
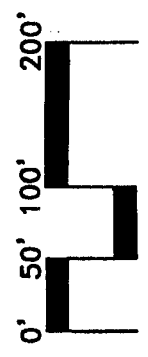


EXHIBIT B-1

LEGEND

- ⑤ SINGLE STORY STRUCTURE ONLY
- 6M PROPERTY LINE
- TOP OF RM LINE
- BUILDING ZONE LIMITS
- SETBACK LINE (PER CITY CODE)
- BUILDING SETBACK AREA
- TREE REVIEW AREA (BY A.R.B.)
- NO DISTURBANCE ZONE
- AREA OF SPECIAL INTEREST



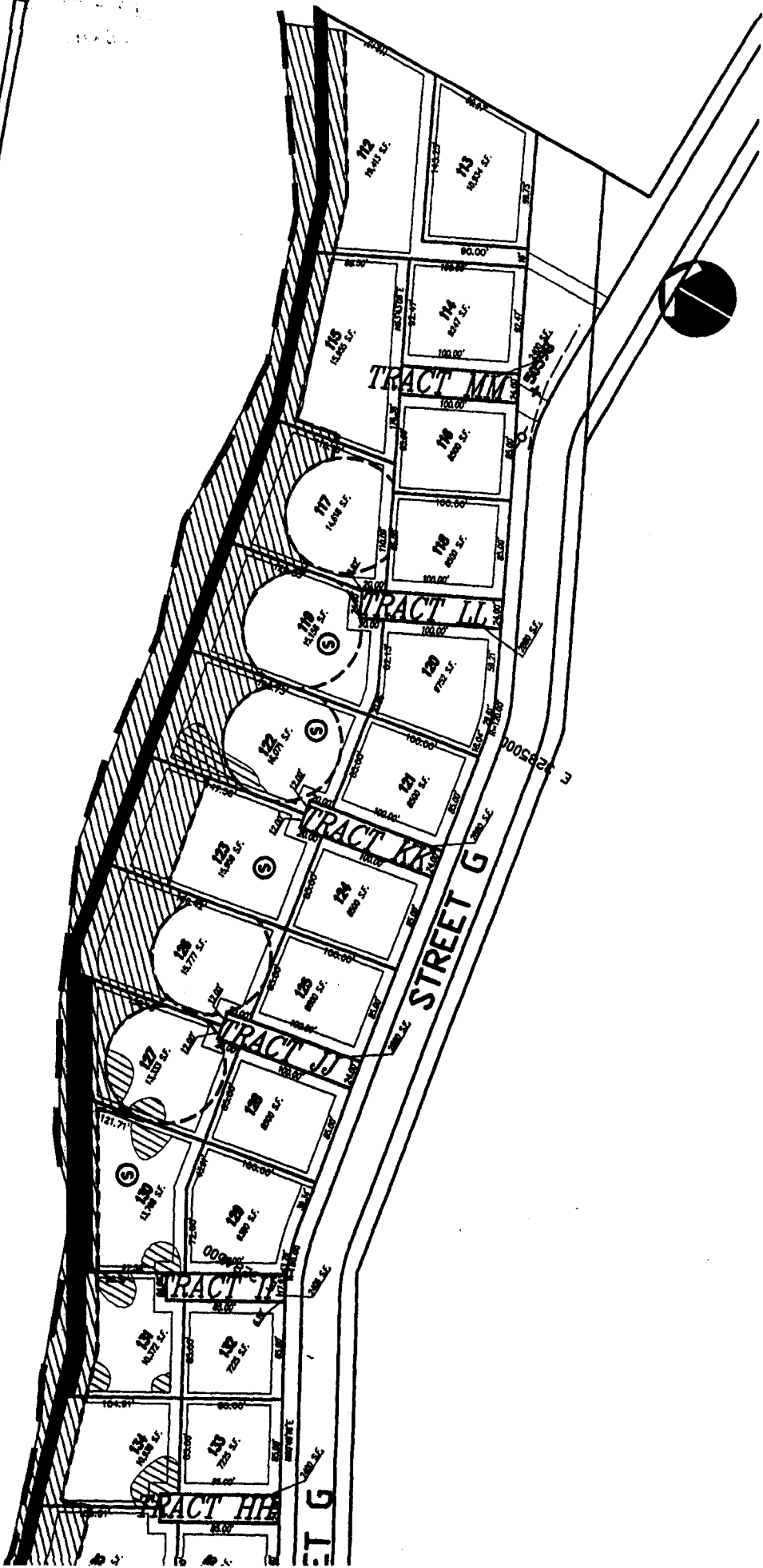


EXHIBIT B-3

EGEND

SINGLE STORY STRUCTURE ONLY	⑤	BUILDING ZONE LIMITS	---	TREE REVIEW AREA (BY ARLB)	▨
R/W PROPERTY LINE	---	SETBACK LINE (PER CITY CODE)	---	NO DISTURBANCE ZONE	---
TOP OF R/W LINE	---	BUILDING SETBACK AREA	▨	AREA OF SPECIAL INTEREST	---



OTAK, Inc. 12345 Main Street, Suite 100, San Francisco, CA 94102