

**VARIANCE  
EVIDENCE TO SUPPORT OF FINDINGS OF FACT**

**NATURE OF VARIANCE REQUEST:**

Variance to 10-foot side yard setback to allow replacement/reconstruction of original raised decks.

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**FINDINGS OF FACT:**

The Planning Commission may authorize variances from the requirement of Ordinance No. 84-02 (as amended) where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of the ordinance would cause an undue or unnecessary hardship. No variances shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Commission may attach conditions that it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of the ordinance.

**A VARIANCE MAY BE GRANTED ONLY IN THE EVENT THAT ALL THE FOLLOWING CIRCUMSTANCES EXIST:**

1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape legally existing prior to the date of the ordinance, topography, or other circumstances over which the applicant has not control.

See attached Narrative.

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2. The variance is necessary for the preservation of a property right of the applicant which is substantially the same as owners of other property in the same zone or vicinity possess.

See attached Narrative.

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3. The variance should not be materially detrimental to the purposes of the ordinance, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city planning policy.

See attached Narrative.

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4. The variance requested is the minimum variance that would alleviate the hardship.

See attached Narrative.

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THE FOLLOWING ATTACHMENTS SHALL ACCOMPANY THE FILING OF A VARIANCE REQUEST APPLICATION:

- SITE PLAN AND/OR ELEVATIONS. (Or other depiction or documents indicating the nature of variance request).
- LEGAL DESCRIPTION OF PROPERTY SUBJECT TO VARIANCE REQUEST.
- EVIDENCE IN SUPPORT OF REQUISITE FINDINGS OF FACT.

This application is hereby submitted, and the statements and information are true and complete to the best of my/our knowledge.

      1-28-2022  
APPLICANT'S SIGNATURE      DATE

**NOTE TO APPLICANT:** Since the burden of presenting evidence to support the request rests with the applicant at the public hearing, your attendance and participation at this public meeting, or that of your representative, is respectfully requested.

## NARRATIVE FOR APPLICATION FOR VARIANCE

### **Nature of Application**

The applicants are requesting a variance to the side setback for their property in the R-1-RE zone to allow them to retain a raised deck that was part of the original construction, was removed before they acquired the property, and which the applicants later reconstructed.

### **Background**

The applicants recently acquired a property located at 6245 NW Logan Road. The lot was improved with a single-family dwelling that was constructed in about 1997, when the property was under the jurisdiction of Lincoln County. The house fronts onto NW Logan Road. As approved and constructed, the house had a raised deck that extended around the entire house. The west side (rear) portion of the deck was wide and allowed room for sitting and other activities. The deck on the north, south, and east elevations was narrow, about five feet wide. We included copies of elevation plans that were part of the approved plan set and photographs that depict the house as it was constructed. The rear portion of the deck had support posts, but the rest of the deck was cantilevered.

The prior owner completely removed the deck on the east side (front) and north side of the house. They removed the eastern half of the deck on the north side. They either repaired or replaced other portions of the deck. The applicants were never told directly why the decks were removed but have come to understand that there may have been issues with decay and water intrusion relating to the manner in which the decks were constructed (cantilevering). In any event, because the decks were part of the approved construction and an important aesthetic feature of the house, the applicants restored the decks on the south and east sides that had been removed. Subsequently, city employees advised the applicants that the setback standards in the R-1-RE zoning that the city adopted in October 2017, would not accommodate the decks and because they had been removed for more than two years, the restoration could not be considered a replacement of a non-conforming development. The city cited the applicants for zoning code violations.

In the course of the code compliance case, an issue arose over how to determine the front setback using the averaging text in section 17.17.070.D for lots on Logan Road. The applicants believed, and still believe, that using properties only on the west side of the street, the side where the front yard setback for their house applies, their front raised deck is compliant with the setback. Staff did not necessarily agree with the applicants' interpretation and made calculations using all lots within 100 feet of the applicants' lot on both sides of the street.

The applicants and city staff reached an agreement to resolve the citation and one component of the agreement was to allow the applicants until April 15, 2022, to process an application for a

zoning ordinance text amendment that if approved would resolve the front yard setback issue. Staff was gracious enough to offer some suggested text that would allow raised decks in the R-1-RE zone to encroach into the 20-foot front yard setback as long as a minimum 15-foot front yard setback is maintained. Staff included in its suggested text a clarification on how the averaging of the front yard setback is to be calculated along NW Logan Road and a provision allowing raised decks supported by posts in addition to cantilevered decks. Staff (Planning Director and City Attorney) advised that they support the amendment to allow post supported decks. They have no objection to any of the proposed amendments.

If the requested amendment is approved, it will resolve the front setback issue. However, it will leave a section of the north and south side decks encroaching into the side yard setback, which in the R-1-RE zone is 10 feet for a two-story house. The applicants included a document prepared by city staff that illustrates staff's determination on what portions of the deck encroach into the side setbacks. The issue with the south side deck is significant because as the house was constructed, the only way one can access the east side (front) deck is to exit the house on the rear deck and walk on the south side deck around to the front. Without the deck on the south side of the house, to access the front portion of the deck (assuming the code amendment is approved) is to reconstruct the front of the house to add a new door.

### **Relevant Approval Criteria**

Based upon the City's Variance Application form the applicants believe the criteria for a variance to a setback is as follows:

- 1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape legally existing prior to the date of the ordinance, topography, or other circumstances over which the applicant has no control.**

#### Applicants' Response:

The lot upon which the house is constructed existed in its current size and configuration before 1997. At that time, the property was under the jurisdiction of Lincoln County. In or about 1997, the then owners constructed the house meeting all applicable setbacks. The original design and construction included the raised deck that ran around the entire house. As noted, the deck was an integral part of the aesthetic design. It was a design feature that broke of the otherwise flat facade of the structure. The side deck was the only means for people to access the east side (front) deck. The house was legally existing with the decks as it was constructed.

In 2017, the city had jurisdiction over the property and adopted standards in the R-1-RE zone that made the house non-conforming. The side yard setback for a two-story house was 10 feet. Both the north and south walls of the house are within that setback. Thus, under the new ordinance, the owners could never have the original design of the house that was approved in

1997. With the new setbacks, to restore the house to that design with the decks, the owners will have to completely demolish the house and construct a new, much thinner house to keep the decks out of the 10-foot side setback.

The applicants believe the circumstances that led to the decks being disallowed are exceptional. They do not believe other houses in the area are prevented from being used as they were originally approved. The new setbacks render it impossible for the applicants to ever restore the original aesthetic features of the house and to have what other owners in the area have.

**2. The variance is necessary for the preservation of a property right of the applicant which is substantially the same as owners of other properties in the same zone or vicinity possess.**

The applicants submit that other owners in the area who have non-conforming structures retain the right to replace non-conforming development that may be within the new setbacks. Without a variance, the applicants will lose that right. Because the city acquired jurisdiction over the property and adopted new setbacks two years after the deck was removed, the applicants lost the right to replace the non-conforming deck.

It was not foreseeable in 1997, when the original owners constructed the house with the decks that someday in the future the city would have jurisdiction over the lot and would impose a significantly greater side setback. Thus, the original owners did not accommodate the ability of a future owner to replace the decks in a situation where the decks had been removed for more than two years.

Furthermore, it was not foreseeable in 2015, that if those owners removed portions of the decks, that a future owner could not restore them. The 2015 owners would not have known that jurisdiction over the property would change and that new setbacks would be imposed without exceptions for houses approved under the prior standards.

Finally, it was not foreseeable that portions of the decks had to be removed in 2015. As applicants understand, weather and natural forces created issues with the decks and then it appears the cost to replace all of them was too high, so the 2015 owners were forced to reduce the scope.

The variance will allow the applicants to restore, not expand, the house that was constructed in 1997, and at that time, met all codes.

**3. The variance should not be materially detrimental to the purposes of the ordinance, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city planning policy.**

The applicants appreciate that a legitimate purpose of a setback is to create separation of structures for privacy and to create a sense of openness for light and air. The requested variance in the vicinity of the property will not be detrimental to that purpose.

The Roads End area near where the applicants' property is located consists of relatively smaller lots that were developed long before the current setbacks were applicable. A high percentage of the existing houses and structures are constructed close to property lines and encroach into the current setbacks. Thus, owners already live in close proximity to their neighbors.

Another key factor is that the original decks existed around the house from 1997 to 2015. Thus, for approximately 18 years, the properties on each side of the subject property had decks on the north and south sides. One has to conclude that the decks were not materially disruptive to those owners. Furthermore, on the subject property, the west portions of the side decks will remain regardless. They were either not removed in 2015 or were legally restored at that time. Consequently, there will always be raised decks in the side setback. The additional sections extending east will not materially affect the current situation making the situation worse.

The decks that were reconstructed recently and that are the subject of the application for a code amendment and this variance request, are not solid but have open slats on the side. They were constructed to blend into the existing house as much as possible reducing any visual impact. On the north side, the deck section that was deemed to encroach into the side setback extends no further than the north wall of the house. In that regard, the portion of the east (front) deck that encroaches into the side setback is less than the original deck. It encroaches less than two feet. If the entire north wall of the house is already encroaching into the 10-foot setback, the applicants submit that allowing a small section of the front deck to also encroach to the same point, will not increase any impacts or defeat the purpose of the setback.

**4. The variance requested is the minimum variance that would alleviate the hardship.**

The applicants are not requesting the right to expand the previously existing decks; they simply want the right to restore what was there for many years on the south side. The applicants are not requesting a variance to allow them to reconstruct the portion of the north side deck that was removed in 2015. However, as noted above, for aesthetic reasons, the applicants would like to retain the small section of the front deck that encroaches into the north side setback.

As to that north segment of the front deck, it will not encroach any further than the north wall of the main structure. Thus, it will have no greater impact on the neighboring property or the purpose of the setback.

As to the south side deck, the original deck was the same width as the deck portion the applicants reconstructed. At five feet wide, it is the minimum width that will permit persons to walk past each other without creating a conflict and a potential safety issue. Moreover, that south side deck section, assuming the code amendment is approved, is the only means people have to

access the front deck. There was never any direct access from the front of the house. Thus, if the front deck is allowed to remain, and the variance is not granted, the front deck loses function, unless the applicants reconstruct the front of their house to install a new door.

**Related Application**

This application addresses only the north and south side yard setbacks. As noted above, to address the east side (front) deck, the applicants, with staff's encouragement, applied for an amendment to the zoning ordinance text, specifically to LCMC 17.17.070.D.

GRADE 1 - CEDAR  
SHINGLE SIDING

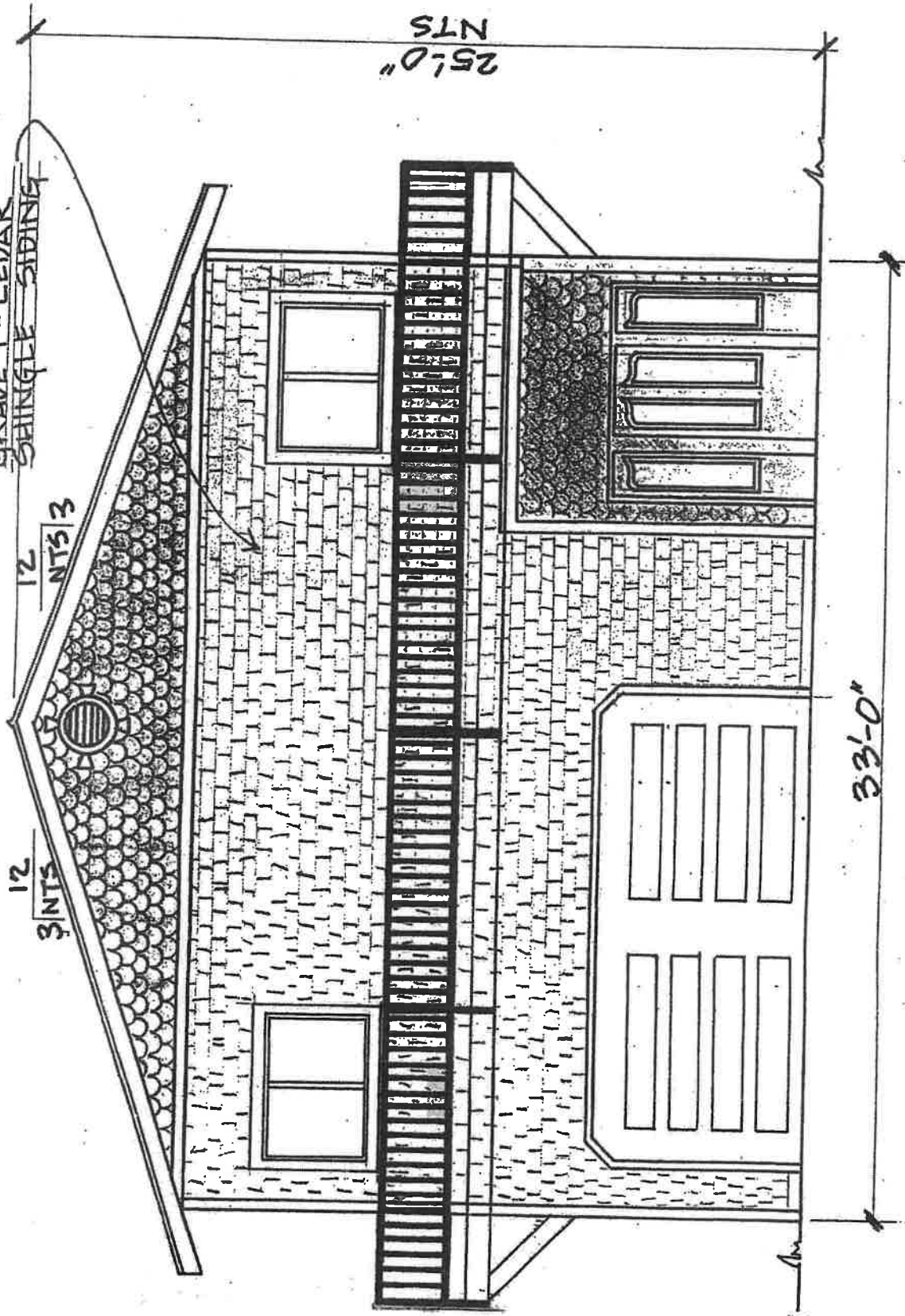
12  
3 NTS

12  
NTS 3

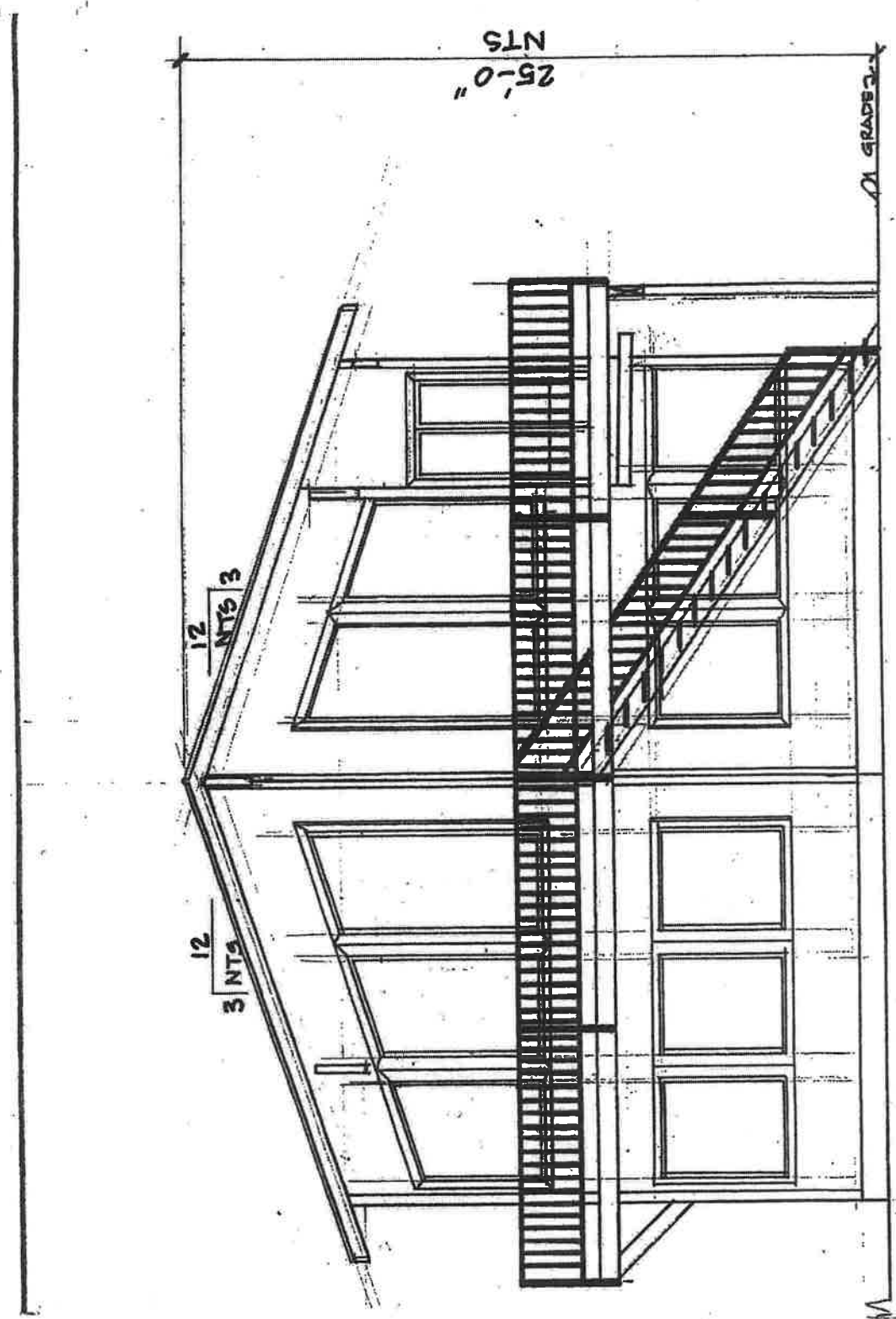
25'-0"  
NTS

33'-0"

EAST ELEVATION



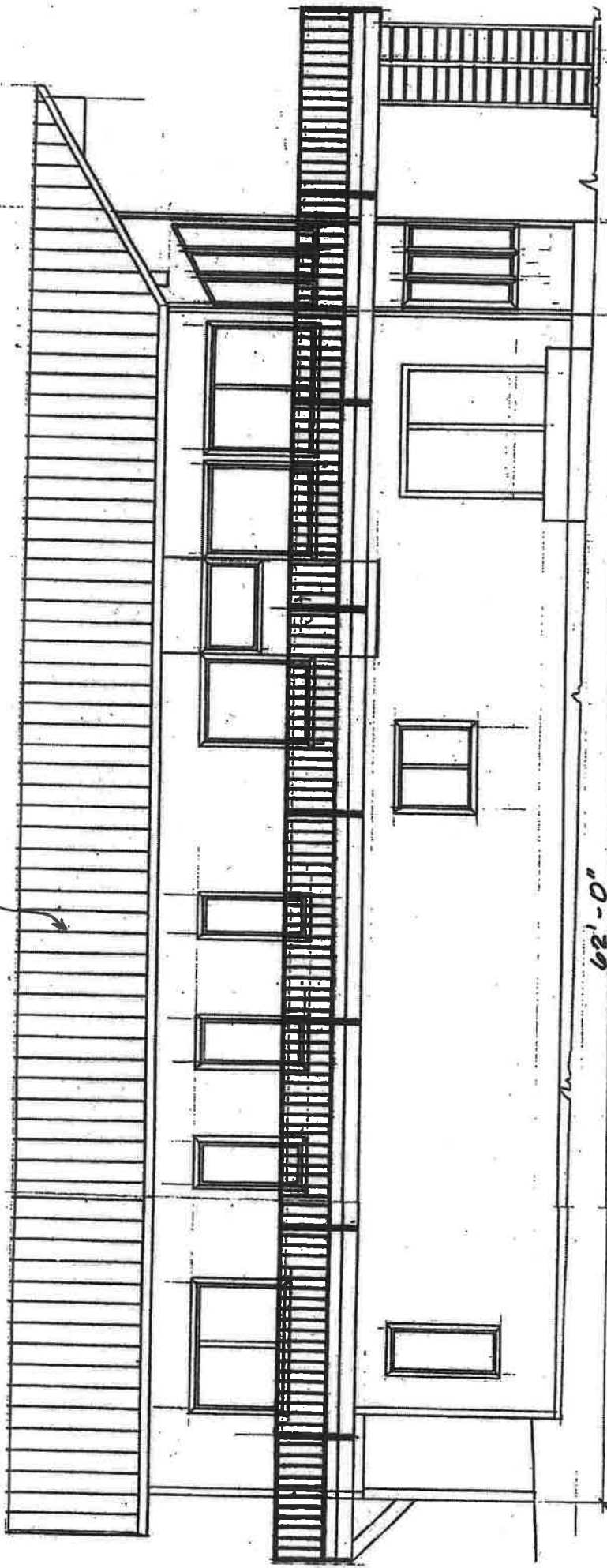




WEST ELEVATION

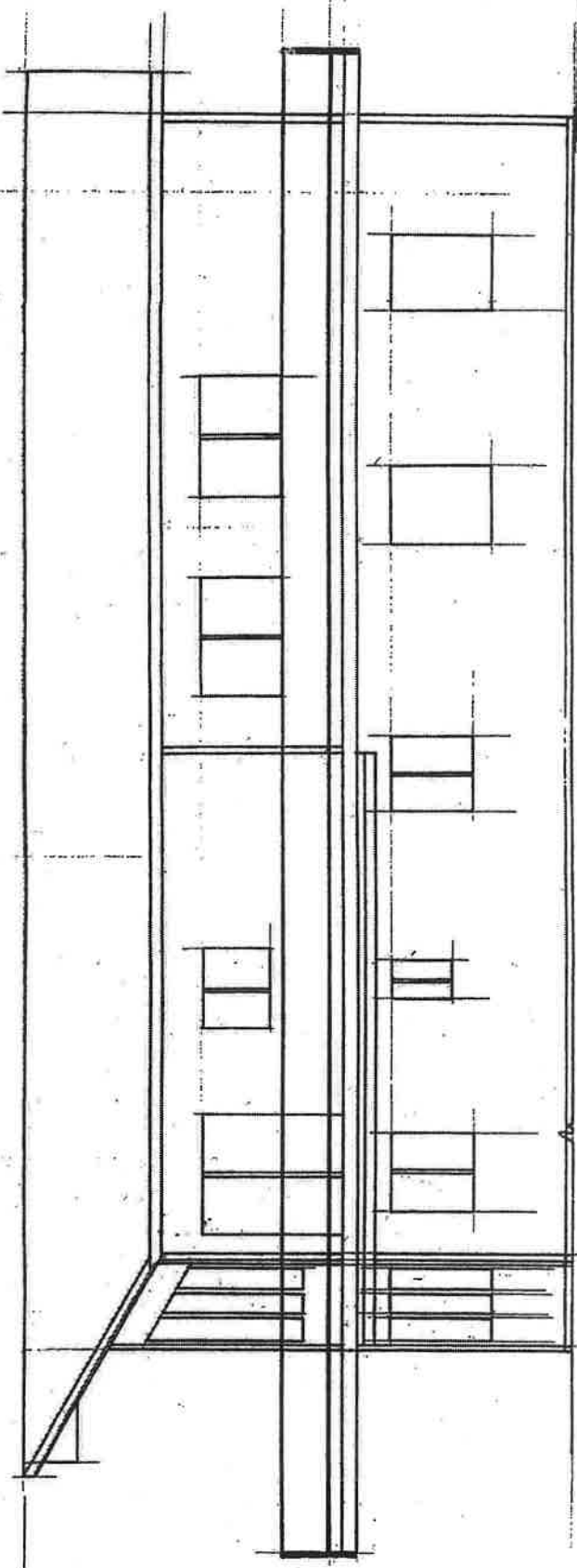
01 GRADE

TAYLOR METAL-STANDING SEAM ROOF



62'-0"

NORTH ELEVATION



SOUTH ELEVATION

**IST**  
**Industrial Systems Technology, Inc.**  
 P.O. Box 12-97 LINCOLN CITY, OR. 97367  
 (503) 395-2242

**VISTA CONSTRUCTION**

TITLE: **KENNEDY RESIDENCE**  
 6245 LOGAN RD., STS. CR.

DATE: 11-10-96

DESIGNED BY: LBS APPROVED BY: DATE: DATE:

096-5500-A1

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# Google Maps 6245 NE Logan Rd

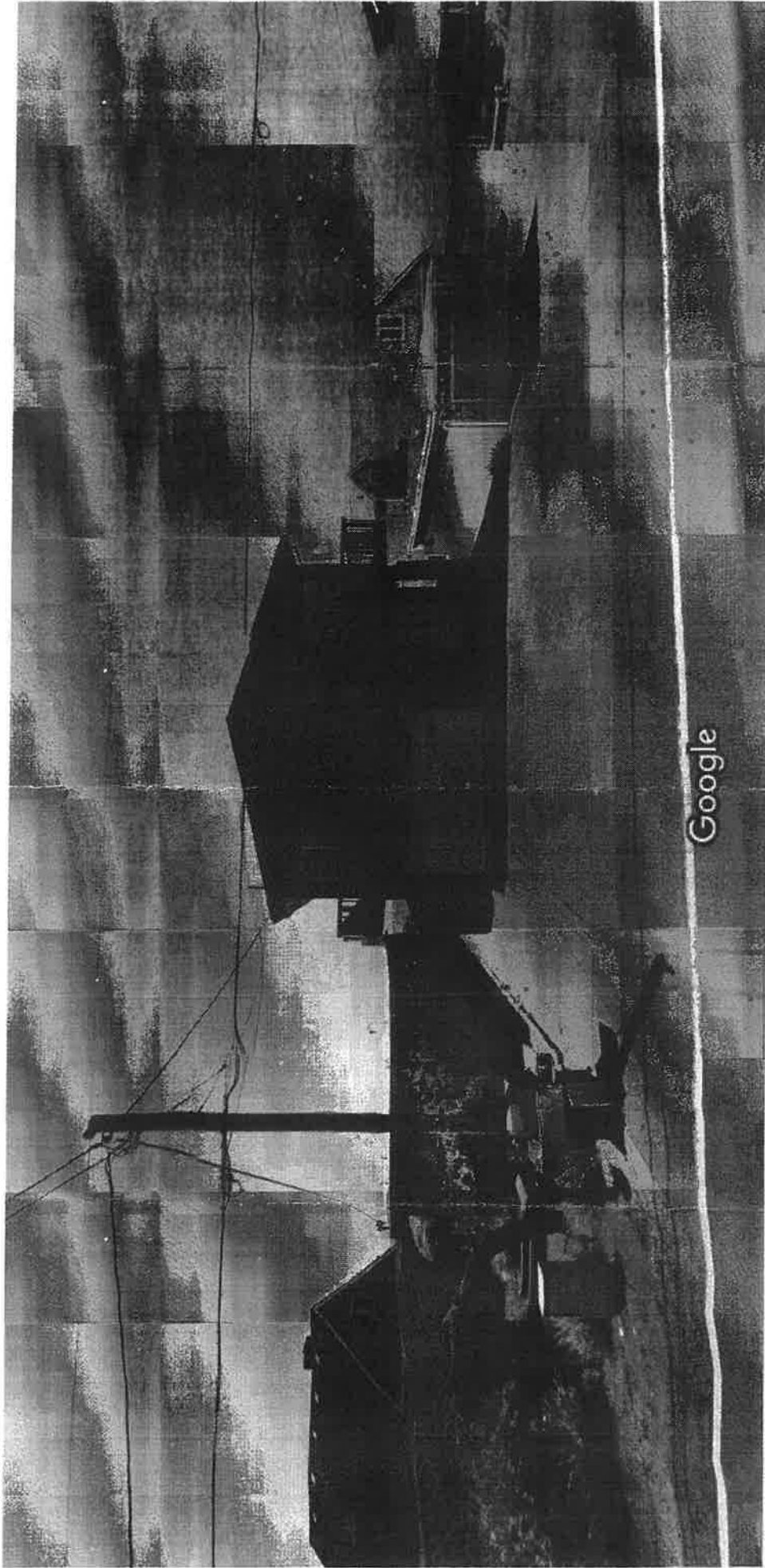


Image capture: Jul 2012 © 2021 Google

Lincoln City, Oregon



Street View

The Thun

# 6248 NE Logan Rd

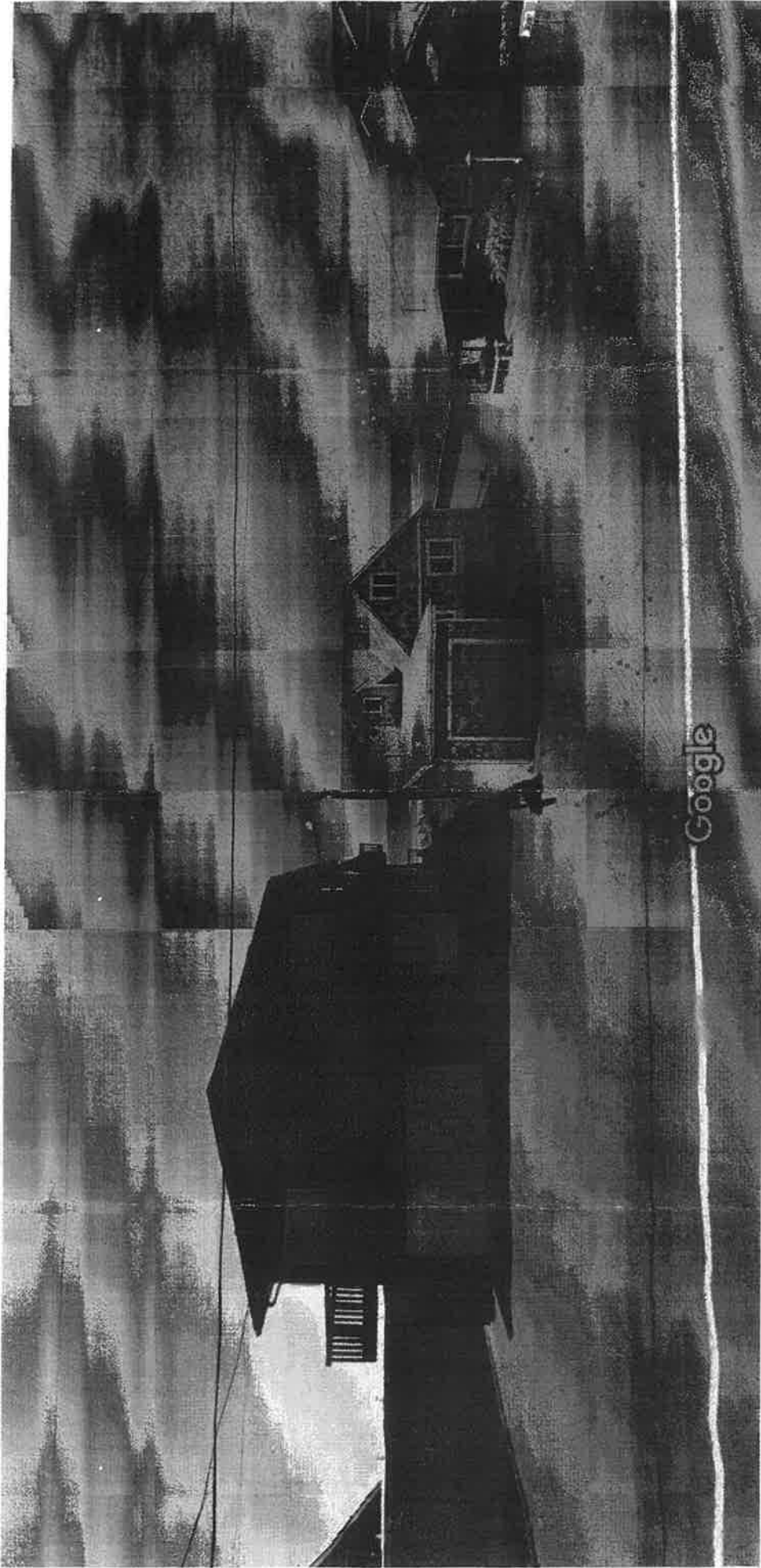


Image capture: Jul 2012 © 2021 Google

Lincoln City, Oregon

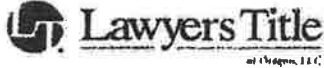


Street View

The  
Thun

Exhibit B-1

RECORDING REQUESTED BY:



9755 SW Barnes Road, Ste 105  
Portland, OR 97225

AFTER RECORDING RETURN TO:

Order No.: 902001360-KH  
Jay B. Weston and Helen Weston, as tenants by the entirety  
6245 NW Logan Road  
Lincoln City, OR 97367


SEND TAX STATEMENTS TO:


Jay B. Weston and Helen Weston  
6245 NW Logan Road  
Lincoln City, OR 97367

APN: R352288  
Map: 06 11 34 AD 01600  
6245 NW Logan Road, Lincoln City, OR 97367

Lincoln County, Oregon	<b>2020-08854</b>
08/28/2020 03:04:02 PM	Cnt=1 Pgs=4 Stn=20
DOC-WD	\$108.00
\$20.00 \$11.00 \$10.00 \$60.00 \$7.00	

I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

  
Dana W. Jenkins, Lincoln County Clerk



SPACE ABOVE THIS LINE FOR RECORDER'S USE

**STATUTORY WARRANTY DEED**

William R. Davis and Rosemari J. Davis, as tenants by the entirety, Grantor, conveys and warrants to Jay B. Weston and Helen Weston, as tenants by the entirety, Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Lincoln, State of Oregon:

Lot 49, FIRST ADDITION TO ROADS END, County of Lincoln and State of Oregon, according to the official plat thereof recorded April 7, 1932 in Plat Book 7, page 49, Plat Records.

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00). (See ORS 93.030).

Subject to:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

WTD 194880

**STATUTORY WARRANTY DEED**  
(continued)

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated: 8/25/2020

William R. Davis  
William R. Davis

Rosemari J. Davis  
Rosemari J. Davis

State of OR  
County of YAMHILL

This instrument was acknowledged before me on 25 August 2020 by William R. Davis and Rosemari J. Davis.

[Signature]  
Notary Public - State of Oregon  
My Commission Expires: 11-21-23

