

'03 DEC 10 PM2:20

**RESTRICTIVE COVENANT  
LOCAL IMPROVEMENT CONTRACT**  
*City of Klamath Falls, Oregon*

State of Oregon, County of Klamath  
Recorded 12/10/03 2:20 p m  
Vol M03 Pg 90253-54  
Linda Smith, County Clerk  
Fee \$ 26.<sup>00</sup> # of Pgs 2

This Agreement is entered into this 10<sup>th</sup> day of December 2003, by and between the City of Klamath Falls (City) and Christopher T. & Catherine D. Cook (Owner):

WHEREAS, Owner is the legal owner of the following described real property ("Property"): Lots 6 S 39', 7-10, 15-18 and Vac. Alley, Block 206 of the Mills 2<sup>nd</sup> Edition Subdivision to Klamath Falls,

Map and Tax Lot Number: R-3809-33DC-14800; and

WHEREAS, Owner desires to develop the Property, which will contribute to the need for, as well as benefit from, the following improvements:

Construction, to City design standards, of street curbs, gutters and sidewalks along Owens Street and Shasta Way; and

WHEREAS, a condition of the Owner's land use approval from City for the development of the Property (City file: 30-DR-02) is Owner's agreement to participate in the cost of said future improvements; and

WHEREAS, a condition of the Owner's land use approval from City for the development of the Property (City file: 30-DR-02) is agreement to bring the portion of the Property that abuts the Owens Street right-of-way into conformance with Community Development Ordinance (CDO) Section 14.040, at the time the construction of street curbs, gutters and sidewalks along Owens Street is completed. CDO Section 14.040 reads:

*All areas used for off-street parking and maneuvering of vehicles, including driveways and truck loading areas, shall have either concrete or asphalt surfaces, constructed in a manner approved by the City Engineer, in conformance with Sections 14.005 to 14.045 and drained so as to avoid flow of water across sidewalks.*

NOW THEREFORE, In consideration of the foregoing recitals and the conditions and obligations set forth herein:

**THE PARTIES HERETO AGREE AS FOLLOWS:**

1. City agrees not to require Owner to improve the right-of-way at this time. In the event and at such time as the City initiates the formation of a Local Improvement District (LID) for the funding and construction of the improvements designated above, Owner hereby waives any and all right to remonstrate against formation of a Local Improvement District (LID) by the City for the purpose of improving Owens Street and Shasta Way and assessing the proportionate cost to benefited properties pursuant to the City's right-of-way improvement regulations in effect at the time of such improvement.

The phrase "right to remonstrate against the formation of an LID" refers solely to a property owner's right under the City Charter Section 38 to be counted as part of an extraordinary majority of property owners that can, in certain circumstances, suspend proceedings on formation of an LID for six months. The waiver of this right does not limit or otherwise restrict the ability of a property owner bound by this covenant to appear at any of the required public hearings and testify regarding formation of the LID, whether the boundaries include all benefited property, the equity of the assessment formula, the scope and nature of the project or of the final assessment, or any other issue regarding the LID.

2. City agrees that a LID assessment levied against Owner's Property shall not exceed the benefit conferred upon the Property.

3. At the time that the construction of street curbs, gutters and sidewalks along Owens Street is completed, Owner agrees to improve that portion of the Property abutting Owens Street to meet the criteria of CDO Section 14.040.
4. In the event that a suit or action is instituted to enforce the terms of this covenant, the prevailing party shall be entitled to recover reasonable attorneys fees and all other fees, costs and expenses incurred in connection with the suit or action, including any appeals, in addition to all other amounts allowed by law,
5. This agreement shall run with the Property and shall be binding upon and inure to Owner and Owner's successors in interest to the Property.

CITY OF KLAMATH FALLS

By: [Signature] SAG  
 Attest: [Signature]  
 Dated: 12/10/03

OWNER

[Signature]  
Catherine Cook  
 Dated: Dec 10, 2003

STATE OF OREGON)

) ss.

County of Klamath )

This instrument was acknowledged before me this 10 day of December 2003, by

[Signature]

NOTARY PUBLIC FOR OREGON

My commission expires: May 4, 2004

After Recording Return to:  
 City Planning Department  
 226 South 5th Street  
 Klamath Falls, OR 97601

