

State of Oregon, County of Klamath
 Recorded 09/02/04 2:14 p m
 Vol M04 Pg 58883-8
 Linda Smith, County Clerk
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SUBDIVISION AGREEMENT FOR SOUTHVIEW

Agreement made effective this 25th day of August, 2004, between Southview Properties, LLC, an Oregon Limited Liability Company, and the City of Klamath Falls, an Oregon Municipal Corporation.

The parties recite and declare as follows:

- A. Southview Properties LLC (hereinafter "Southview") is the owner of a parcel of real property situated in the City of Klamath Falls, County of Klamath, State of Oregon, and described as The Woodlands: Phase 1.
- B. The City of Klamath Falls (hereinafter "City") has jurisdiction over land use planning and public facilities in the City of Klamath Falls.
- C. Southview Water Services, Inc. (hereinafter "SWS") operates a water system serving the Woodlands, Phase 1.
- D. Southview has obtained Tentative Subdivision Plan Approval for The Woodlands: Phase 1 ("Phase 1"), and now desires to obtain final plat approval and building permits for structures within the bounds of the approved tentative subdivision prior to completion of various public facilities within the project, all of which will be privately owned and operated.
- E. Southview, or its agent, will post performance bonds to guarantee completion of water, sanitary sewer, storm water, streets, sidewalks and street lighting simultaneous with the construction of residences.
- F. The City desires that Southview guarantee performance of certain matters prior to granting final plat approval or planning review of residential review permits.

In consideration of the above recitals and the terms and covenants of this agreement, the parties agree as follows:

General.

1. City and Southview hereby acknowledge and agree that, except as otherwise specifically provided herein, this Agreement shall apply only to Phase 1.
2. City and Southview shall enter into an Operating Agreement for the sanitary sewer system prior to connection to City-owned sewer facilities.
3. Southview, or its agent, will post performance bonds, in favor of City and in a form approved by the City, to assure completion of all public facilities described in this Agreement. The bonds shall be provided to the City within seven(7) calendar days

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following execution of this Agreement by the parties. The amount of the bond(s) shall be one hundred twenty percent (120%) of the total remaining cost of the public facilities, as reasonably determined in the sole discretion of City. The total remaining cost shall be reasonably determined by City based on Southview's engineer's estimate of cost, or in the alternative, on the costs set forth in the executed contracts for the construction and installation of the public facilities.

4. Southview shall complete, to the reasonable satisfaction of City, all public facilities described in this Agreement by June 15, 2005.
5. Southview, or its agent(s), successor(s) or assigns, shall be responsible for construction, maintenance, repair and operation of all public facilities and infrastructure within the Southview PUD, including, but not limited to water, sanitary sewer, storm water, streets, sidewalks and street lighting. This provision shall apply to all future Southview PUD phases.
6. City and Southview acknowledge that a Homeowner's Association will be formed in accordance with Oregon law at some future date, and except for domestic water service which shall remain the responsibility of "SWS," that Association, or some other agent, successor or assign of Southview, will ultimately assume all duties and responsibilities for all public facilities and infrastructure for which Southview accepts responsibility in this Agreement.
7. City will not accept dedication of any Southview public facilities or infrastructure unless such acceptance occurs within 10 years of the issuance of the approval of the final plat of Phase 1 and the system has been built in conformance with the City engineering standards in effect at the time of the dedication. Any future acceptance by City of responsibility for any such system shall be in the sole discretion of City.

Covenant Not To Close.

1. Southview shall execute and record with the Final Plat for The Woodlands: Phase 1 a "Covenant Not to Close Real Estate Transactions" in the form attached as Exhibit B, hereto.
2. As required by the Phase 1 Conditional Use Permit, Condition 13, applicable Systems Development Charges are to be paid at time of residential permit review.
3. Upon completion of those items specified in the "Covenant Not to Close Real Estate Transactions" the City shall execute and record, at Southview's expense, a document releasing the covenant.

Sanitary Sewer.

1. The sanitary sewer system for Phase 1 shall include the following:
 - a. The sanitary sewer conveyance system within the bounds of the Southview PUD, including service laterals from the main lines to the right-of-way clean-out for each lot;

- b. The sanitary sewer conveyance line commencing at a manhole located within the bounds of the Southview Planned Unit Development at Engineer's Station 0+51.73 – 51.73 Left (See: The Woodlands: Phase 1 sanitary design drawings), crossing State Highway 140 and ending at a manhole located within the Oregon Department of Transportation right of way, Engineer's Station 0+33.07 – 24.62 Right, also noted as State Highway 140 Engineer's Station 368+76.59 (See: Orindale Sewer Extension design drawings); and;
- c. The sanitary sewer conveyance system commonly referred to as the Orindale Road Sewer Extension from State Highway 140 to an existing manhole located approximately 4,777 feet southwest of State Highway 140 as shown on the Orindale Sewer Extension design drawings in the City Engineering Office.

For the purposes of this Agreement, Item 1.a is hereinafter referred to as the Southview Sanitary Sewer Conveyance System, and Items 1.b and 1.c are hereinafter referred to as the "City Sewer System."

2. Southview shall apply for, and City shall process for council approval an Advanced Financing Reimbursement District wherein Southview shall be entitled to receive prorated reimbursement for subsequent connections to the Orindale Sewer by other landowners. Reimbursement shall be limited to 10 years from completion of the facility.
3. The City Sewer System shall be constructed in accordance with the approved plans on file in the City Engineering Office. Upon and after dedication of the City Sewer System as described above, and its acceptance by the City, the City shall be the owner of City Sewer System and shall be responsible for the operation and maintenance of said system. Southview, or its agent(s), successor (s) or assigns, shall be responsible for the remainder of the Phase I sanitary sewer system.
4. Southview shall grant an Irrevocable Service and Maintenance Easement to the City over any real property upon which the City Sewer Line crosses that is not within a public right of way.
5. The City shall bill Southview, or the designated agent, successor or assign of Southview, for sanitary sewer services on a monthly basis. The billing shall be based on a flat rate per Equivalent Residential Unit ("ERU") as determined by the number of residential sewer connections in Phase I and the proportionate composition of single-family and multi-family dwellings being serviced. Southview shall provide the city with reports on the number and type of connections to the Southview water system. ("usage reports"). Usage reports shall show the date of any new connections or disconnections from the water system, and shall be submitted no less frequently than each calendar quarter. The City may bill Southview retroactively for any connection not reported when made. No commercial or industrial connections are permitted for Phase I. The flat rate charged will be equivalent to the City-wide average monthly billing per ERU as determined by the City, with an 8% reduction to reflect billing and collection system savings, and will be adjusted annually and as otherwise required to coincide with City-wide sewer rates. The City-wide average will be recalculated by the City every three (3) years. The City may at any time elect to audit the number and types of connections serviced within the Southview PUD.

6. City and Southview specifically agree that the operational provisions in subsections 4 and 5 of this Sanitary Sewer section shall apply to all future Southview phases. Southview acknowledges and agrees that City acceptance of sewage for future Southview phases is subject to available capacity. Nothing in this agreement constitutes a guarantee that sewer capacity will be available for future phases. The availability of sewer capacity shall be reasonably determined in the first instance by the City, subject to the laws in effect at the time of the determination.

Stormwater Facilities.

1. Southview, or its agent(s), successor(s) or assigns, shall be responsible for the operation and maintenance of all portions of the stormwater conveyance system, along with all detention facilities, ponds and drainage ways.
2. In the event the City creates a stormwater utility, Southview homeowners may be subject to a stormwater utility assessment consistent with that charged to other similarly situated properties.

Streets and Sidewalks.

1. Upon completing construction of the streets & sidewalks for Phase 1, Southview, or its agent(s), successor(s) or assigns, shall be responsible for the operation and maintenance of all portions of the streets & sidewalks.

Street Lighting.

1. Upon completing construction of the street lighting system for Phase 1, Southview, or its agent(s), successor(s) or assigns, shall be responsible for the operation and maintenance of all portions of the system.

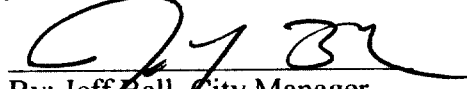
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Domestic Water Service.

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The owner and operator of the water system serving Phase 1 shall be SWS, a wholly owned subsidiary of Southview. In order to more accurately gauge Southview PUD flows into the sewer system, SWS shall provide City with water consumption information during the months of November through March of each year, at no cost to City.

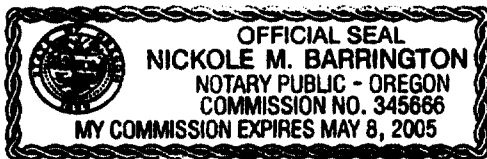
City of Klamath Falls:

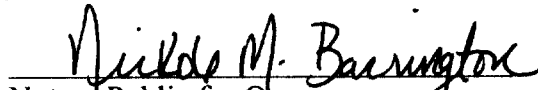

By: Jeff Ball, City Manager

Attest:

City Recorder

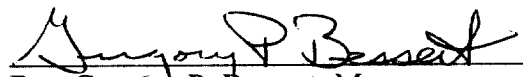
STATE OF OREGON)
COUNTY OF KLAMATH) ss:

The foregoing instrument was acknowledged before me this 25th
day of August, 2004, by Jeff Ball, City Manager of The City of
Klamath Falls, on its behalf.




Notary Public for Oregon
My Commission Expires: 5-8-2005

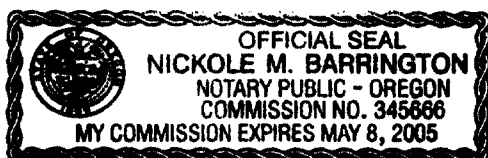
Southview Properties, LLC

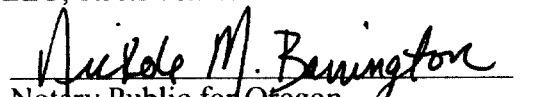

By: Gregory P. Bessert, Manager

Date: Aug 24, 2004

STATE OF OREGON)
COUNTY OF KLAMATH) ss:

The foregoing instrument was acknowledged before me this 24th
day of August, 2004, by Gregory P. Bessert, Manager of
Southview Properties, LLC, on its behalf.




Notary Public for Oregon
My Commission Expires: 5-8-2005

