

04 OCT 12 PM 11:16

After recording return to:

D. Daniel Chandler
Attorney at Law
1010 Esther St.
Vancouver, WA 98660

Vol M04 Page 69088

State of Oregon, County of Klamath
Recorded 10/12/04 11:16 a m
Vol M04 Pg 69088-90
Linda Smith, County Clerk
Fee \$ 3.00 # of Pgs 3

**RESTATED
COVENANT NOT TO CLOSE**

Agreement made effective this 11th day of October, 2004, between Southview Properties Development, LLC, an Oregon Limited Liability Company ("Southview") and the City of Klamath Falls, an Oregon Municipal Corporation ("City").

City and Southview acknowledge that on August 25th, 2004, Southview executed a Covenant Not to Close in favor of the City (the "August Covenant"), that was recorded in Klamath County Deed Records at M04 Page 58888. City and Southview agree that the August Covenant does not adequately address a number of issues of concern to both parties, and they further agree that the August Covenant should be rescinded and restated to adequately address the issues of mutual concern.

In consideration of the terms and covenants of a Subdivision Agreement dated August 25, 2004 with the City ("Subdivision Agreement"), the terms of which are incorporated herein by this reference, the Southview agrees and covenants in favor of the City as follows:

- A. City and Southview agree that the August Covenant is hereby rescinded and restated with the following terms and conditions.
- B. Southview shall not close any real estate transactions for the purchase and sale of real property in Phase 1 until such time as the following conditions are met:
 1. The City has approved and accepted the City Sewer System, as defined in said Subdivision Agreement, which shall be constructed in accordance with the approved plans on file with the City.
 2. Southview's engineer has certified in writing that the facilities and infrastructure for the Phase 1 sanitary sewer system, the Phase 1 stormwater facilities, the Phase 1 streets and the Phase 1 domestic water system are substantially complete. For purposes of this agreement, substantially complete shall mean:
 - a) Sanitary Sewer System: Southview's engineer certifies in writing that the Southview Sewer System, as such term is defined in the Subdivision Agreement, is complete in all respects, is constructed in compliance with engineered design plans and specifications and is fully functional.
 - b) Stormwater Conveyance and Detention Facilities: Southview's engineer certifies in writing that the Southview Stormwater Conveyance and Detention Facilities are complete in all respects, are constructed in compliance with engineered design plans and specifications and are fully functional.

Returned @ Counter
City of Klamath Falls

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- c) Streets & Roads: Written certification by Southview's engineers that the Phase 1 street and road construction is complete and in compliance with the specified design and specification criteria, provided, however that Southview may delay placement of the finish asphalt lift until such time as 80% of the residential units in Phase 1 have been substantially completed. Southview shall maintain an appropriate Performance Bond for placement of the finish lift until such time that Southview has placed the finish lift and a Southview engineer has certified in writing that the street and road construction is complete and is constructed in compliance with engineered design plans and specifications.
 - d) Domestic Water System: Southview's engineer certifies in writing that the Southview Water Services Water System is complete in all respects, is constructed in compliance with engineered design plans and specifications and is fully functional, and Southview has provided the City with evidence of approval of the public water system by the Oregon Health Department.
3. City has received payment for all SDC's applicable to the parcel(s) being purchased/sold.
 4. Streets, sidewalks, lighting, stormwater and sanitary sewer systems shall be covered by a performance bond.

IN WITNESS WHEREOF, the parties hereto have caused this Restated Covenant to be executed on the date(s) set forth below.

CITY OF KLAMATH FALLS

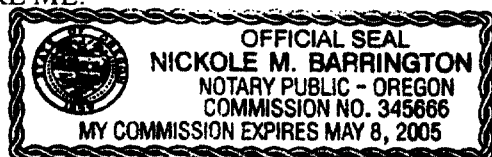
By: [Signature]
City Manager

Attest: [Signature]
City Recorder

STATE OF OREGON)
)ss.
County of Klamath)

On the 11th day of October, 2004, personally appeared Jeffrey D. Ball and Elisa D. Olson, who, each being first duly sworn, did say that the former is the City Manager and the latter is the City Recorder of the City of Klamath Falls, an Oregon municipal corporation, and that the instrument was signed on behalf of said municipal corporation; and each of them acknowledged said instrument to be its voluntary act and deed.

BEFORE ME:



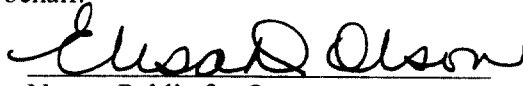
[Signature]
Notary Public for Oregon
My Commission Expires: 5/8/2005


By: Gregory P. Bessert, Manager

STATE OF OREGON)
COUNTY OF KLAMATH) ss:

The foregoing instrument was acknowledged before me this 8 day
of Oct, 2004, by Gregory P. Bessert, Manager of Southview
Properties, LLC, on its behalf.




Notary Public for Oregon
My Commission Expires: 6-25-05