

After recording return to:

Greg Bessert
Southview Properties
22101 NE 150th Ave
Battleground, WA 98604

2008-014454

Klamath County, Oregon



10/23/2008 11:46:17 AM

Fee: \$41.00

1st 2008 - 350

RESTRICTIVE COVENANT AND AGREEMENT FOR THE DEFERRAL OF
SIDEWALK CONSTRUCTION PERFORMANCE BONDS FOR
THE SOUTHVIEW PLANNED UNIT DEVELOPMENT RELATING TO THE WOODLANDS PHASE 3, THE
GARDENS PHASE 1 (EXCEPTING LOT 3), AND THE GARDENS PHASE 4

This agreement is made effective as of this 16th day of October, 2008, between Southview Properties, I.L.C (hereinafter referred to as "Southview"), an Oregon Limited Liability Company and the City of Klamath Falls (hereinafter referred to as the "City"), an Oregon Municipal Corporation.

RECITALS

Southview is in the business of developing residential and commercial properties in the State of Oregon. Southview is the developer of the development commonly referred to as the Southview Planned Unit Development ("Southview PUD") located in the City of Klamath Falls, Klamath County, Oregon.

Except for Lot 3 of The Gardens Phase 1, Southview holds a 100% ownership interest in all of the real property located in the following phases of residential development in the Southview PUD: The Woodlands Phase 3; The Gardens Phase 1; and The Gardens Phase 4. Southview has completed all infrastructure work in these three phases, except installation of sidewalks, and has delivered or caused to be delivered to the City certificates of completion, signed and stamped by a civil engineer licensed by the State of Oregon, for the remainder of the infrastructure in each phase.

City has approved the final plats for The Woodlands Phase 3 and The Gardens Phase 1, and those plats have been recorded with Klamath County, on the condition that Southview agreed to provide a performance bond for the infrastructure work that was not complete at the time of the City's approval. Southview has failed to provide that bond as of the date of this agreement. Southview now also desires to complete the process of filing the final plat for The Gardens Phase 4. City rules require as a condition of approving the referenced plats that Southview post a construction performance bond with the City equal to 120% of the cost of installing the sidewalks those phases.

Southview has made a good faith effort to secure the construction performance bonds needed to satisfy the condition placed by the City for final plat approval and filing. However, due to conditions that currently exist within the national financial markets, Southview has not been able to secure the performance bonds requested by the City. Specifically, many bonding companies have refused to write residential construction performance bonds unless a cash deposit equal to 100% of the performance bond is deposited with the bonding company. As of the effective date of this agreement, it is unclear when the bond companies will again write residential construction performance bonds without the cash deposit.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and covenants set forth herein, the parties agree as follows:

- A. This Restrictive Covenant and Agreement shall apply to all lots in The Woodlands Phase 3, The Gardens Phase 4 and The Gardens Phase 1, excepting Lot 3, of the Southview PUD.
- B. Southview agrees to construct the segment of sidewalk adjoining each building in the referenced Phases at the time of constructing each building and shall obtain written acceptance by City before the building on the developed lot is occupied. For corner lots, Southview further agrees to construct the ADA ramp associated with such corner lot.
- C. On or before the 30th day of September, 2010, Southview hereby agrees to either:
 1. Complete construction of all remaining sidewalks and ADA ramps located within The Woodlands Phase 3, The Gardens Phase 1, and The Gardens Phase 4 and provide the City with a Certificate of Completion (in substantially the form attached as Exhibit A) signed and stamped by a civil engineer licensed by the State of Oregon; or

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2. a) Enter into an Infrastructure Improvements Agreement and Assurance of Performance with the City in a form acceptable to City; b) deliver a construction performance bond with the City for an amount equal to 120% of the cost to complete by September 30, 2011 all remaining sidewalks and ADA ramps in The Woodlands Phase 3, The Gardens Phase 1, and The Gardens Phase 4; and c) provide the City with a Certificate of Completion (in substantially the form attached as Exhibit A) together with a Schedule of Remaining Costs for Completion, signed and stamped by a civil engineer licensed by the State of Oregon, wherein the engineer sets forth the amount of work remaining and the cost to complete such work.

D. In the event Southview fails to do either C.1. or C.2. above, Southview agrees that the City may, in its sole discretion:

1. Place a lien against any or all of the undeveloped parcels in The Woodlands Phase 3, The Gardens Phase 1, and The Gardens Phase 4 owned by Southview, or any successor developer of these Phases, in an amount equal to the City Engineer's estimate of the total cost to complete all remaining sidewalk and ADA ramp work in the referenced Phases; and
2. Place a lien against any or all of the undeveloped parcels in The Woodlands Phase 3, The Gardens Phase 1, and The Gardens Phase 4, regardless of ownership, in an amount equal to each parcel's equitable portion of the City Engineer's estimate of the cost to complete all remaining sidewalk and ADA ramp work in the referenced Phases; and
3. Complete any or all of the remaining sidewalk and ADA ramp work at the property owners' expense.

E. In consideration for Southview's covenants set forth above, the City agrees as follows:

1. To defer, in compliance with the terms of this Agreement, the delivery of a construction performance bond for the installation of sidewalks in The Woodlands Phase 3 and The Gardens Phase 1, and to waive its current condition requiring the delivery, prior to final approval and filing of the plat, of a construction performance bond for the installation of sidewalks in The Gardens Phase 4.
2. To execute a Release of Restrictive Covenant and Satisfaction of Agreement For The Deferral Of Sidewalk Construction Performance Bonds (in substantially the form attached as Exhibit B) upon receipt of:
 - a. An engineer's Certificate of Completion (in substantially the form attached as Exhibit A) of all remaining sidewalks and ADA ramps located within The Woodlands Phase 3, The Gardens Phase 1, and The Gardens Phase 4; or
 - b. An Infrastructure Improvements Agreement and Assurance of Performance, in a form acceptable to the City, signed by Southview, together with an engineer's Certificate of Completion, an engineer's Schedule of Remaining Costs for Completion and a Construction Performance Bond; or
 - c. An engineer's or contractor's Certificate of Completion (in substantially the form attached as Exhibit A) as to any individual lots within The Woodlands Phase 3, The Gardens Phase 1, and The Gardens Phase 4 for which the adjoining sidewalks have been satisfactorily completed and accepted by the City.

F. Any notice to be given either party hereunder shall be given in writing and shall be sufficient if sent by mail:

If to City:

City Manager
City Hall Annex
500 Klamath Avenue
Klamath Falls, OR 97601

With a required copy to:

City Attorney
City Hall Annex
500 Klamath Avenue
Klamath Falls, OR 97601

If to Southview:

Southview Properties, LLC
Gregory P. Bessert
22101 NE 150th Ave
Battleground, WA 98604

G. This agreement sets forth the entire understanding of the parties and shall be governed by the laws of the State of Oregon.

H. Any dispute or controversy arising out of this agreement or out of a party's refusal to perform the whole or any part of this agreement shall be subject to resolution only through final and binding arbitration pursuant to the procedures set forth in ORS 36.600, *et seq.*

I. City and Southview agree that the terms and provisions of this Agreement shall be binding on the heirs, successors, assigns and legal representatives of the parties as to all parcels in the following Phases of the Southview PUD: The Woodlands Phase 3; The Gardens Phase 1 (except Lot 3); and The Gardens Phase 4. To assure that subsequent purchasers, property owners and successors of the parties are aware of this agreement, Southview hereby grants a restrictive covenant against the referenced Phases embodying the terms and conditions of this agreement, and hereby consents to the recording of the agreement as a restrictive covenant in the Deed Records of Klamath County, Oregon.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective duly authorized persons as of the dates below stated.

Southview Properties, LLC

City of Klamath Falls


By: Gregory P. Bessert, Manager

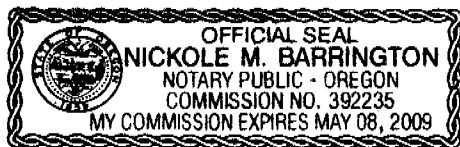

By: Jeff Ball, City Manager

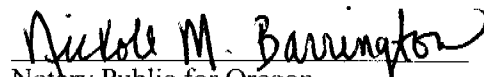
Date: Oct 16, 2008

Date: 10/20/08

STATE OF OREGON)
COUNTY OF KLAMATH) ss:

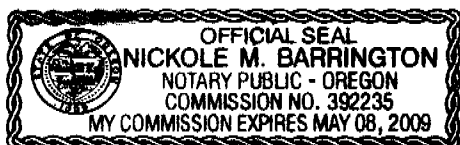
The foregoing instrument was acknowledged before me this 20th day of October, 2008, by Jeff Ball, City Manager for the City of Klamath Falls, Oregon, on its behalf.





Notary Public for Oregon
My Commission Expires: 5-8-2009

STATE OF OREGON)
COUNTY OF KLAMATH) ss:

The foregoing instrument was acknowledged before me this 16th day of October, 2008, by Gregory P. Bessert, Manager of Southview Properties, LLC, on its behalf.




Notary Public for Oregon
My Commission Expires: 5-8-2009

**CERTIFICATE OF COMPLETION
SOUTHVIEW PLANNED UNIT DEVELOPMENT
- SIDEWALK CONSTRUCTION -**

**THE WOODLANDS PHASE 3
THE GARDENS PHASE 1
THE GARDENS PHASE 4**

In compliance with the conditions and covenants set forth in that certain Restrictive Covenant and Agreement for the Deferral of Sidewalk Construction Bonds dated the ____ day of October, 2008, the undersigned hereby certifies: a) that sidewalk construction has been completed within the right(s)-of-way adjacent to the following real property (check 1 and note Lot number); and b) that such construction is fully compliant with all Southview Development Standards and applicable City of Klamath Falls requirements:

- ☐ TRACT 1461 - The Woodlands Phase 3 Lot ____, in the City of Klamath Falls, according to the official plat thereof on file in the Office of the County Clerk of Klamath County, Oregon.
- ☐ TRACT 1508 - The Gardens Phase 1 Lot ____, in the City of Klamath Falls, according to the official plat thereof on file in the Office of the County Clerk of Klamath County, Oregon.
- ☐ TRACT ____ - The Gardens Phase 4 Lot ____, in the City of Klamath Falls, according to the official plat thereof on file in the Office of the County Clerk of Klamath County, Oregon.

Dated this ____ day of ____, 200__.

Contractor
Print Name: _____
CCB#: _____

OR

Registered Professional Engineer
Print Name: _____
Lic. #: _____

[Seal]

After recording return to:

Greg Bessert
Southview Properties
22101 NE 150th Ave
Battleground, WA 98604

**PARTIAL RELEASE OF RESTRICTIVE COVENANT AND SATISFACTION OF AGREEMENT FOR THE
DEFERRAL OF SIDEWALK CONSTRUCTION PERFORMANCE BONDS**

On the ____ day of October, 2008 the City of Klamath Falls (hereinafter the "City") and Southview Properties, LLC (hereinafter "Southview") entered into an agreement, such agreement being recorded with the County Clerks Office, Klamath County on the ____ day of October, 2008, Document _____, wherein the City deferred certain sidewalk construction bonding requirements for The Woodlands Phase 3, The Gardens Phase 1 and The Gardens Phase 4 located within the Southview Planned Unit Development, in exchange for certain restrictive covenants granted by Southview, and binding on its successors and assigns. The agreement is referred to herein as the "Restrictive Covenant."

On or about the ____ day of _____, 200__, the City received a Certificate of Completion for sidewalk construction for the real property described below. Based upon the Certificate of Completion included herewith, and in compliance with the terms and conditions of the Restrictive Covenant, the City hereby releases the following described real property from the Restrictive Covenant:

- ☐ TRACT 1461 - The Woodlands Phase 3 Lot _____, in the City of Klamath Falls, according to the official plat thereof on file in the Office of the County Clerk of Klamath County, Oregon.
- ☐ TRACT 1508 - The Gardens Phase 1 Lot _____, in the City of Klamath Falls, according to the official plat thereof on file in the Office of the County Clerk of Klamath County, Oregon.
- ☐ TRACT _____ - The Gardens Phase 4 Lot _____, in the City of Klamath Falls, according to the official plat thereof on file in the Office of the County Clerk of Klamath County, Oregon.

Dated this ____ day of _____, 200__.

Rick Whitlock, City Attorney

STATE OF OREGON)
County of Klamath)

Personally appeared before me, Rick Whitlock, who being duly sworn, stated that he is the City Attorney for the City of Klamath Falls, Oregon, and that this instrument was signed on behalf of the City of Klamath Falls by authority of its City Attorney and he acknowledged said instrument was its voluntary act and deed.

Oregon Notary Public