

**RESOLUTION NO. 2259**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING SKYBRIDGE RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT BETWEEN THE CITY OF WILSONVILLE, THE CITY OF WILSONVILLE URBAN RENEWAL AGENCY, AND CREEKSIDE WOODS LIMITED PARTNERSHIP**

WHEREAS, the City of Wilsonville ("City"), the City of Wilsonville Urban Renewal Agency ("Agency"), and Northwest Housing Alternatives, Inc., an Oregon nonprofit public benefit corporation ("NHA"), entered into that certain Disposition and Development Agreement ("DDA") dated December 15, 2008, for the development of an 84-unit affordable senior housing development to be known as Creekside Woods, and that such development would include a skybridge, as defined in the DDA and the Master Ground Lease referenced below ("Skybridge"), connecting Creekside Woods to the City's Community Center; and

WHEREAS, Creekside Woods Limited Partnership ("Partnership") is NHA's successor in interest to the DDA; and

WHEREAS, NHA, on behalf of the Partnership, secured the necessary development permits and building permits and is in the process of finalizing construction, and the approved permits included the Skybridge; and

WHEREAS, the Agency and the Partnership entered into a Master Ground Lease dated as of December 8, 2009 ("Master Ground Lease"), providing for the Partnership's leasehold interest on the real property for the development of Creekside Woods; and

WHEREAS, Partnership, City, and the Agency desired to provide an agreement that implements the provisions of the DDA and Master Ground Lease for the construction, maintenance, and use of the Skybridge by providing a permanent access easement related to the Skybridge, as well as identifying future maintenance responsibilities of the parties.

**NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:**

1. The above recitals are set forth herein as findings.
2. The City Manager is authorized to execute on behalf of the City of Wilsonville the Skybridge Reciprocal Easement and Maintenance Agreement, attached as Exhibit 1, and incorporated by reference as if fully set forth herein.

3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 15th day of November, 2010, and filed with the Wilsonville City Recorder this date.

  
TIM KNAPP, MAYOR

ATTEST:

  
Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp - Yes

Councilor Kirk - Yes

Councilor Núñez - Yes

Councilor Hurst - Yes

Councilor Goddard - Yes

Attachments:

Exhibit 1 – Skybridge Reciprocal Easement and Maintenance Agreement

AFTER RECORDING RETURN DOCUMENT TO:

Exhibit 1

Waller Taylor  
Kantor Taylor Nelson & Boyd PC  
1501 Fourth Avenue, Suite 1610  
Seattle, WA 98101

### SKYBRIDGE RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT

This SKYBRIDGE RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT ("Agreement") dated \_\_\_\_\_ 2010, is made by the CITY OF WILSONVILLE ("City") and its URBAN RENEWAL AGENCY ("Agency"), an Oregon Municipal Corporation, and CREEKSIDE WOODS LIMITED PARTNERSHIP, an Oregon limited partnership ("Partnership").

#### RECITALS

A. The City, the Agency, and Northwest Housing Alternatives, Inc., an Oregon nonprofit public benefit corporation ("NHA"), entered into that certain Disposition and Development Agreement ("DDA") dated December 15, 2008, for the development of an 84-unit affordable senior housing development to be known as Creekside Woods, within the real property described in **Exhibit A** attached hereto and incorporated by reference herein ("Creekside Woods"), and that such development would include a skybridge, as defined in the DDA and the Master Ground Lease referenced below ("Skybridge"), connecting Creekside Woods to the City's Community Center.

B. NHA, on behalf of the Partnership, secured the necessary development permits and building permits and has begun construction, and the approved permits included the Skybridge, the location of which is set forth on **Exhibit B** and as further depicted on **Exhibit C** (the "Easement Area"), attached hereto and incorporated by reference herein.

C. The Partnership is NHA's successor in interest to the DDA.

D. The City has developed and operates a community center located on land owned by the City, which is adjacent to the westerly line of Creekside Woods.

E. The Agency and the Partnership entered into a Master Ground Lease dated as of December 8, 2009 ("Master Ground Lease"), providing for the Partnership's leasehold interest on the real property described in **Exhibit A**.

F. Partnership, City, and the Agency desired to provide an agreement that implements the provisions of the DDA and Master Ground Lease for the construction, maintenance, and use of the Skybridge by providing a permanent access easement related to the Skybridge, as well as identifying future maintenance responsibilities of the parties.

G. The City and Agency have previously granted to the Partnership, and its contractor, the right to enter upon the City's Community Center to construct the Skybridge over and onto City property and connect to the City's Community Center, pursuant to that certain Right of Entry Agreement dated December 8, 2009.

## **AGREEMENT**

IN CONSIDERATION of the foregoing recitals, the mutual promises delivered herein, and other good and valuable consideration, the parties hereto agree as follows:

1. **Grant of Reciprocal Easement.** The Partnership, City, and Agency reciprocally grant to each other for the benefit of one another, an easement to use, repair, maintain, and patrol the Skybridge located within the Easement Area as a pedestrian and wheelchair accessway from and to the Community Center and from and to Creekside Woods.
  
2. **Terms, Conditions and Right to Use Skybridge.** The Partnership shall set such reasonable rules for access and ingress into Creekside Woods from the Skybridge, including, but not limited to, keyed entry, limitations to hours of operation, and such other safety or convenience rules as the Partnership deems necessary, reasonable, and prudent for a private residential building. The City and Agency shall set such reasonable rules for egress from and ingress into the Community Center, including, but not limited to, keyed entry, limitations to hours of operation, and such other safety or convenience rules as the City and Agency deems necessary, reasonable, and prudent for egress from and ingress into a public building. Although the Partnership, City, and Agency agree that the right to use the Skybridge shall be provided to the residents, guests, invitees, and employees of Creekside Woods, such right to use or access the Skybridge shall also be provided to the officers, employees, contractors, and agents of the Partnership, City, and Agency who shall have the right to use and access the Skybridge from time to time, in connection with its use, repair, maintenance, and patrol, as an accessway between the Community Center and Creekside Woods.
  
3. **Maintenance and Repair.** The Partnership, City, and Agency shall be responsible for maintenance of and Minor and Major repairs to the Skybridge as provided herein. For purposes of this Agreement, "Minor Repairs" shall be defined as any repairs needed to the Skybridge that

do not exceed a cost of \$5,000 in 2011. This figure shall be indexed for inflation at U.S. Bureau of Labor Statistics' Consumer Price Index (Portland-Salem) for each subsequent year. Repairs in excess of this indexed total are "Major Repairs."

The Partnership shall be responsible for taking all necessary steps to initiate and complete regular maintenance, Minor Repairs, and Major Repairs. Agency and/or City shall notice Partnership of any required maintenance or Minor Repair that Partnership has failed to accomplish, after which Partnership shall have thirty (30) days to complete the required maintenance or Minor Repair, unless otherwise agreed to by the parties. The costs of maintenance and Minor Repairs shall be prorated 60% to the Partnership and 40% to the Agency; provided, however, the Agency and City may agree that the Agency's prorated costs be assumed and paid by the City, and in such case, the Agency shall notify Partnership of the same. Upon billing by the Partnership for Minor Repairs or maintenance, the City or Agency, as the case may be, shall pay the Partnership promptly, and not later than 30 days from billing.

Partnership shall notice Agency, or upon receiving notice that City has replaced the Agency in this regard, the City, of Major Repairs to be completed, along with the associated cost. Agency or City shall have twenty-one (21) days to review and accept or reject the scope and cost of Major Repairs proposed by Partnership, unless otherwise agreed to by the parties. Other than Major Repairs resulting from a construction design or defect for which a third party or contractor is responsible, Major Repairs or replacement shall be at Agency expense, unless Agency and City have agreed that City shall pay the same, and in such case, the Agency shall notify the Partnership of the same. Upon billing by the Partnership, the City or Agency, as the case may be, shall pay the Partnership promptly, and not later than 30 days from billing.

4. **Perpetual Rights.** The rights granted herein shall be for the 99-year term of the Master Ground Lease which shall expire on December 7, 2108, or upon earlier termination of the Partnership's leasehold interest under the Master Ground Lease, whichever comes first, or shall terminate if the parties otherwise mutually agree in writing that the Skybridge shall no longer operate as an accessway.

5. **Successors.** The rights hereunder shall inure to the benefit of each of the undersigned parties' successors in interest or assigns.

6. **Mutual Indemnification.** To the extent allowed by law, each of the undersigned parties will indemnify and hold harmless the other, its successors, and/or assigns from claims or injuries to person or property as a result of the negligence of the undersigned party, its agents, or employees in the construction, operation, maintenance, or repair of the Skybridge.

7. **Notice.** Notices will be in writing and will be either given by U.S. registered or certified mail, return receipt requested, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), or sent by telex or facsimile promptly confirmed in

writing, or sent by personal delivery by a nationally recognized courier service for next day delivery. The current addresses and telecopy numbers of the parties to which any notice provided for herein shall be sent are as follows:

If to Agency: City of Wilsonville Urban Renewal Agency  
29799 SW Town Center Loop E.  
Wilsonville, Oregon 97070  
Attention: Kristin Retherford  
Urban Renewal Manager  
Telephone: (503) 682-4960  
Facsimile: (503) 682-7025

If to City: City of Wilsonville Legal Department  
29799 SW Town Center Loop E.  
Wilsonville, Oregon 97070  
Attention: Michael Kohlhoff  
City Attorney  
Telephone: (503) 570-1507  
Facsimile: (503) 682-1015

If to Partnership: Creekside Woods Limited Partnership  
c/o Northwest Housing Alternatives, Inc.  
2316 SE Willard Street  
Milwaukie, Oregon 97222  
Telephone: (503) 654-1007  
Facsimile: (503) 654-1319

With a copy to: NEF Assignment Corporation  
120 South Riverside Plaza  
15th Floor  
Chicago, Illinois 60606

With a copy to: Waller Taylor, Esq.  
Kantor Taylor Nelson & Boyd PC  
1501 Fourth Ave., Suite 1610  
Seattle, WA 98101

Any party may designate another addressee (and/or change its address or telecopy number) for notices hereunder by a notice given pursuant to this section. Notices delivered personally or by facsimile will be effective upon delivery to an authorized representative of the party at the designated address; notices sent by mail in accordance with the above paragraph will be effective upon execution by the addressee of the Return Receipt Requested.

8. **Governing Law; Jurisdiction.** The laws of the state of Oregon shall govern the provisions of this Agreement, and any action or suit brought to enforce the provisions of this

Agreement shall be in the Circuit Court for the State of Oregon, Clackamas County.

9. **Attorney Fees.** The prevailing party in any action, suit, or appeal shall be entitled to be awarded its reasonable attorney fees and costs in accordance with Oregon law.

10. **Further Acts.** The parties shall execute and deliver such further documents and instruments and take such other further actions as may be reasonably necessary to carry out the intent and provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned parties have executed this Skybridge Reciprocal Easement and Maintenance Agreement this \_\_\_\_ day of \_\_\_\_\_, 2010.

PARTNERSHIP:

**CREEKSIDE WOODS LIMITED PARTNERSHIP,**  
an Oregon limited partnership

By: Creekside GP LLC,  
an Oregon limited liability company  
Its: General Partner

By: Northwest Housing Alternatives, Inc.,  
an Oregon nonprofit public benefit corporation  
Its: Manager

By: \_\_\_\_\_  
Martha McLennan, Executive Director

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by Martha McLennan, Executive Director of Northwest Housing Alternatives, Inc., the manager of the general partner of Creekside Woods Limited Partnership.

\_\_\_\_\_  
Notary Public for the State of Oregon  
My Commission Expires: \_\_\_\_\_

AGENCY:

**CITY OF WILSONVILLE** and its **URBAN RENEWAL AGENCY**, an Oregon public body corporate and politic

By: \_\_\_\_\_  
Arlene Loble, City Manager/Executive Director

STATE OF OREGON            )  
  ) ss.  
County of Clackamas        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ as City Manager, on behalf of the City of Wilsonville and its Urban Renewal Agency.

\_\_\_\_\_  
Notary Public for the State of Oregon  
My Commission Expires:



**EXHIBIT A**  
**LEGAL DESCRIPTION OF CREEKSIDE WOODS**

Parcel 2, PARTITION PLAT NO. 2009-072, in the City of Wilsonville, County of Clackamas and State of Oregon.



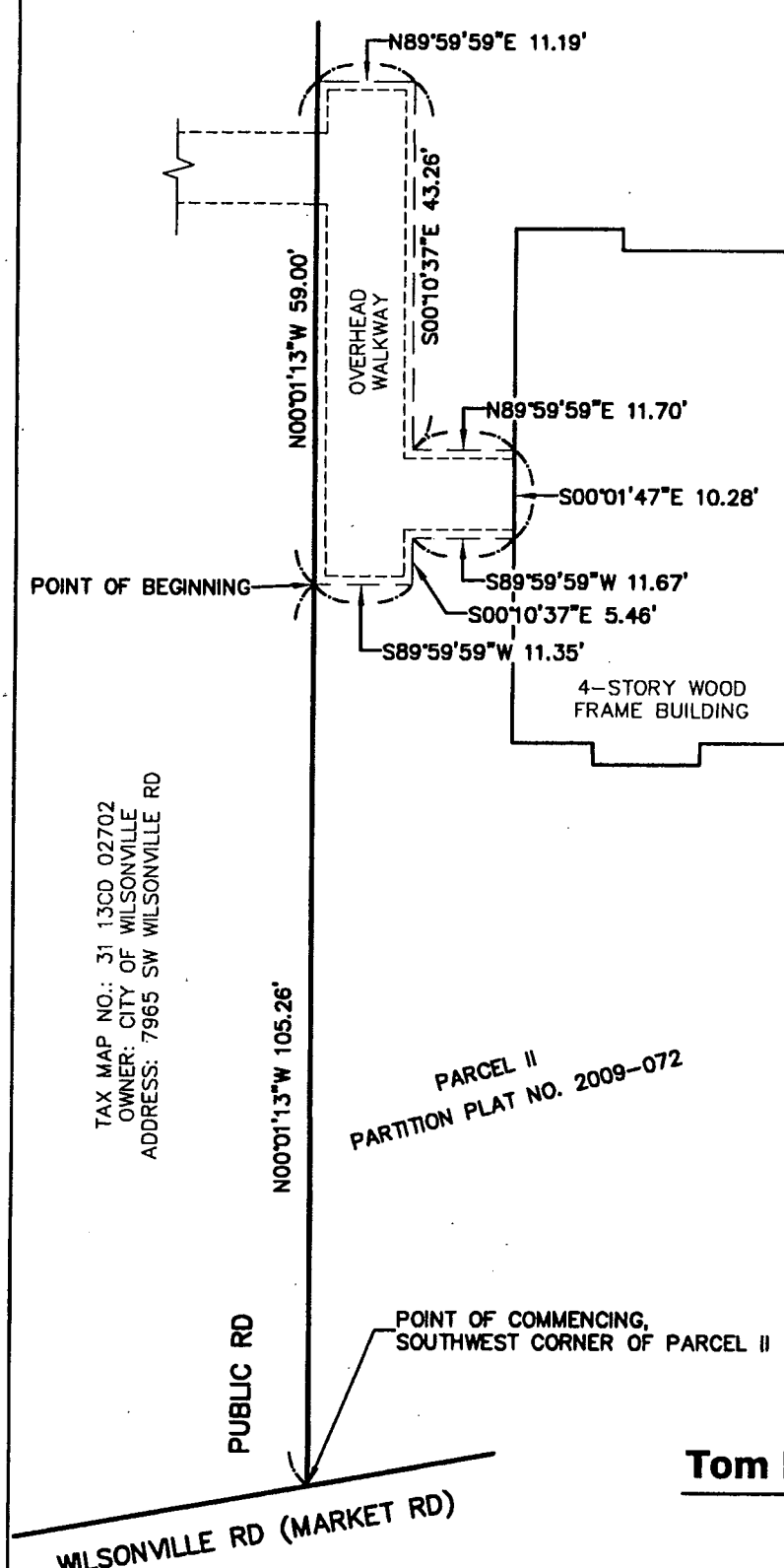
OVERHEAD WALKWAY EASEMENT

A PORTION OF PARCEL II, PARTITION PLAT NO. 2009-072, CLACKAMAS COUNTY PLAT RECORDS, SITUATED IN THE SOUTH HALF OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 1 WEST, WILAMETTE MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL II; THENCE, NORTH 00°01'13" WEST ALONG THE WEST LINE OF SAID PARCEL II A DISTANCE OF 105.26 FEET TO THE POINT OF BEGINNING; THENCE, CONTINUING NORTH 00°01'13" WEST ALONG SAID WEST LINE OF PARCEL II A DISTANCE OF 59.00 FEET; THENCE, NORTH 89°59'59" EAST A DISTANCE OF 11.19 FEET; THENCE, SOUTH 00°10'37" EAST A DISTANCE OF 43.26 FEET; THENCE, NORTH 89°59'59" EAST A DISTANCE OF 11.70 FEET; THENCE, SOUTH 00°01'47" EAST A DISTANCE OF 10.28 FEET; THENCE, SOUTH 89°59'59" WEST A DISTANCE OF 11.67 FEET; THENCE, SOUTH 00°10'37" EAST A DISTANCE OF 5.46 FEET; THENCE, SOUTH 89°59'59" WEST A DISTANCE OF 11.35 FEET TO THE POINT OF BEGINNING.

CONTAINS 785 SQUARE FEET, MORE OR LESS.

**OVERHEAD WALKWAY EASEMENT  
SITUATED IN THE S. 1/2 OF  
SECTION 13, T.3S, R.1W, W.M.  
CITY OF WILSONVILLE,  
CLACKAMAS COUNTY, OREGON**



TAX MAP NO.: 31 13CD 02702  
OWNER: CITY OF WILSONVILLE  
ADDRESS: 7965 SW WILSONVILLE RD

**SURVEYED FOR:  
NORTHWEST HOUSING  
ALTERNATIVES**



SCALE: 1"=20'

**REGISTERED  
PROFESSIONAL  
LAND SURVEYOR**

*Thomas G. Nelson*

**OREGON  
JULY 26, 1988  
THOMAS G. NELSON  
#2351**

RENEWAL 12/31/10

**Tom Nelson & Associates, L.L.C.**

1001 SE WATER AVE, SUITE 390  
PORTLAND, OREGON 97214  
PHONE: (503) 230-1932  
FAX: (503) 230-1962