

RESOLUTION NO. 5761

A RESOLUTION AUTHORIZING ACCEPTANCE OF AN EASEMENT FROM RIVER VIEW PLACE APARTMENTS LIMITED PARTNERSHIP

WHEREAS, the City of Albany and River View Place Apartments Limited Partnership recognize that a public bicycle and pedestrian path along the Calapooia River may create value for the public, the City of Albany, and the River View Apartments Limited Partnership; and

WHEREAS, an easement and right-of-way is necessary for the location, construction, maintenance, and public use of a bicycle and pedestrian path through property owned by River View Place Apartments Limited Partnership; and

WHEREAS, River View Place Apartments Limited Partnership desires to convey to the City Albany an easement for public bicycle and pedestrian path along the Calapooia River as shown on Exhibit "A" and Exhibit "B"; and

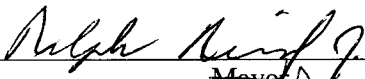
WHEREAS, the City of Albany desires to accept the easement.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that it does hereby accept the easement referred to in the recitals above; and

BE IT FURTHER RESOLVED that the City Manager is authorized to accept conveyance of the above-referenced easement.

DATED AND EFFECTIVE THIS 25TH DAY OF MARCH 2009.

ATTEST:



Mayor
Council President



City Clerk



EASEMENT FOR PUBLIC BICYCLE AND PEDESTRIAN PATH

THIS AGREEMENT, made and entered into this 4th day of March, 2009, by and between River View Place Apartments Limited Partnership, hereinafter called "Grantor," and the CITY OF ALBANY, a Municipal Corporation, herein called "City."

WITNESSETH:

WHEREAS, the City and Grantor recognize that a public bicycle and pedestrian path may create value for the public and Grantor; and

WHEREAS, City seeks an easement and right of way for the location, construction, maintenance, and public use of a bicycle and pedestrian path through property owned by Grantor; and

WHEREAS, this easement agreement is entered between the parties hereto for consideration of \$1.00, receipt of which is acknowledged by Grantor, and in further consideration of public improvements to be placed upon Grantor's property.

NOW, THEREFORE, IT IS MUTUALLY AGREED between the parties hereto as follows:

1. **RECITALS.** The above recitals are incorporated herein by reference.

2. **EASEMENT.** Effective as of the Construction Commencement Date (as hereinafter defined), Grantor hereby grants to City and its successors a non-exclusive easement and right-of-way to enter upon the real property hereinafter described ("the Public Path") to locate, install, maintain and repair a ten-foot wide public bicycle and pedestrian path, together with the right and obligation of the City to excavate and refill ditches and/or trenches within the Public Path (or adjacent thereto along the Calapooia River) as necessary to stop erosion along the Public Path, and to protect users of the Public Path from injury and the further right and obligation of the City to remove trees, bushes, under-growth, and other obstructions within the Public Path which interfere with the location and maintenance of the said Public Path, all of the above at the sole cost and expense of the City. Grantor and its partners, managers, tenants, agents, guests, licensees and contractors have the right to use, maintain, improve and repair the Public Path for all purposes until such time as the City commences to construct the public bicycle and pedestrian path within the Public Path, and thereafter for such purposes which are not inconsistent with the use as a public path. Further, Grantor retains the right to cross the Public Path and/or to temporarily block same, to the extent necessary to address erosion and/or trenching along the Calapooia River on Grantor's property west of the Public Path. The City will give the Grantor not less than 90 days prior written notice prior to commencing to construct the bicycle and pedestrian path within the Public Path, setting forth the date of commencement of construction of the bicycle and pedestrian path (the "Construction Commencement Date"). Notwithstanding anything to the contrary herein, the City has no rights under this Easement until the Construction Commencement Date, and the public has no rights to use or enter onto the Public Path, or any other rights hereunder, until such time following the Construction Commencement Date as the City has fully completed the bicycle and pedestrian path and such path is in good condition and repair for use by pedestrians and bicycle riders. The City agrees to construct, maintain and repair the Public Path in good condition and repair, free from liens and free from trash and refuse. Further use of the Public Path will be subject to such uniform rules and regulations imposed by the Grantor and the City, from time to time, as shall be reasonably required to assure the safety and security of the residents of Grantor's adjacent multi-family housing project and of the public users of the Public Path, all at the City's cost and expense, including without limitation, restricting use to non-motorized bicycles and pedestrian foot travel only, lighting of the path in such a manner so as not to reflect into Grantor's apartments units, fencing to restrict access to any ditches and trenches adjoining the Public Path, security measures and hours of use.

3. **DURATION OF EASEMENT.** Unless and until terminated, as set forth below, the Easement granted herein shall be perpetual. If upon construction, the City shall fail to maintain the Public Path, and adjacent trenches and ditches lien free and in good condition, order and repair, free from refuse, abandons the Public Path, fails to provide necessary fencing, lighting or security, fails to enforce use restrictions within the Public Path, or fails to provide and maintain in force the insurance required hereunder, in each case not cured within 30 days after delivery by Grantor of written notice to the City, then and in that event Grantor shall have the right to terminate this easement by recording a termination of easement in the land records of Linn County, Oregon, whereupon this easement shall be of no further force or effect and any improvements thereon shall thereupon become the sole property of the Grantor.

4. **INDEMNIFICATION.** City hereby agrees to indemnify and hold harmless, Grantor, its partners, agents, contractors, guests, tenants, invitees and assigns, from any and all liability, losses, liens, claims, damages, or demands, of any kind or nature which may result from the construction, maintenance, lack of maintenance, or use of this easement by the City, its agents, employees, contractors, guests invitees and the general public, including, without limitation reasonable attorneys fees and expenses. Further from and after the date on which the City commences to construct and install the path through the Public Path, the City shall provide Grantor with evidence of comprehensive general liability insurance, issued by an insurance company licensed to do business in Oregon and reasonably acceptable to Grantor, which will insure Grantor and its partners as an additional insureds and a certificate holders, entitled to 30 days prior written notice of termination or cancellation, with limits of at least \$1,000,000 per occurrence and \$3,000,000 in the aggregate; providing this insurance is a condition precedent to use of the Public Path.

5. **REPRESENTATIONS OF TITLE.** Grantor does hereby covenant with the City that it is lawfully seized and possessed of the Public Path, subject to encumbrances and other matters of record and that it has a good and lawful right to convey this easement, subject to consent of the holders of financing encumbrances on the Public Path.

6. **ATTORNEY FEES.** Should any party hereto seek judicial enforcement of any of the obligations contained herein, the prevailing party shall be entitled to an award of its reasonable attorneys fees and costs.

7. **EASEMENT DESCRIPTION.** The Public Path is more particularly described in Exhibit "A" attached hereto and on the map attached as Exhibit B, and by this reference incorporated herein.

8. **COVENANT RUNNING WITH THE LAND.** The covenants and obligations over the Public Path shall be covenants running with the land.

9. **BINDING EFFECT.** The terms of this easement shall be binding on and inure to the benefit of the successors, and assigns, of the respective parties hereto; provided that the City shall not have the right to assign this easement without the prior written consent of the Grantor.

10. **RECORDING OF EASEMENT.** This Easement shall be recorded in the deed records of Linn County, Oregon.

11. **CONTRACT CONSTRUCTION.** Because attorneys for both parties have participated in the drafting of this instrument, the customary rule of contractual construction which resolves ambiguities against the drafter shall not apply. This Agreement may be signed in counterpart. This Agreement will be governed by Oregon law.

12. **NOTICE.** All notices required or permitted to be delivered hereunder shall be in writing and shall be given by registered or certified mailed, postage prepaid, return receipt requested or delivered personally with signed receipt to the parties at the following addresses, or such alternate address as a party notifies the other party in accordance with this provision:

If to City: City of Albany
City Manager's Office
333 Broadalbin SW
P.O. Box 490
Albany, Oregon 97321
Attn: Wes Hare

If to Grantor: River View Place Apartments Limited Partnership
c/o Cascade Housing Group, L.L.C.
3300 N.W. 185th Street #222
Portland, OR 97229
Attn: A. Paul Johnson

With a copy to: U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
St. Louis, MO 63103
Attn: Director of Asset Management

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Grantor has hereunto fixed its hand as of the date first above written.

GRANTOR:

River View Place Apartments Limited Partnership

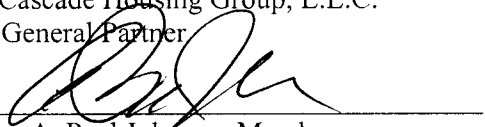
BY: River View Development Partners Limited Partnership

ITS: General Partner

BY: Cascade Housing Group, L.L.C.

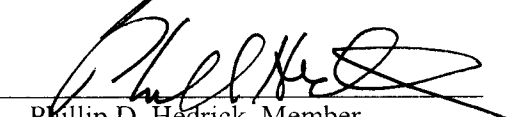
ITS: General Partner

BY: _____



A. Paul Johnson, Member


BY: _____



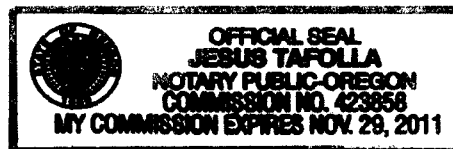
Phillip D. Hedrick, Member

STATE OF OREGON)
County of Linn) ss.
City of Albany)

The foregoing instrument was acknowledged before me this 4th day of March, 2009, by A. Paul Johnson and Phillip D. Hedrick, all of the members of Cascade Housing Group L.L.C., an Oregon limited liability company, as general partner of River View Development Partners Limited Partnership, an Oregon limited partnership, as general partner of River View Place Apartments Limited Partnership, an Oregon limited partnership, as the voluntary act and deed of said limited liability company and limited partnerships.



Notary Public for Oregon
My Commission Expires: Nov. 29th, 2011



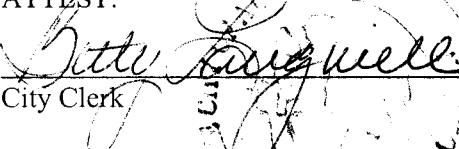
CITY OF ALBANY:

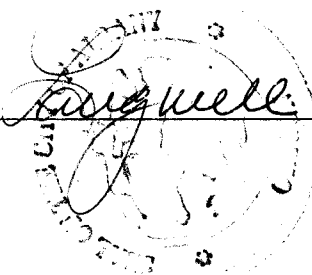
STATE OF OREGON)
County of Linn) ss.
City of Albany)

I, Wes Hare as City Manager of the City of Albany, Oregon, pursuant to Resolution Number 5761, do hereby accept on behalf of the City of Albany, the above instrument pursuant to the terms thereof this 30 day of March, 2009.



City Manager

ATTEST:


City Clerk


Consent

The undersigned, holder of that certain \$5,600,000 Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the "Deed of Trust") which encumbers the Public Path, hereby consents to the above Easement For Public Bicycle and Pedestrian Path (the "Easement"), agrees that said easement shall be a permitted exception under said Deed of Trust.

IN WITNESS WHEREOF, the undersigned has executed this Consent as of this 4th day of March, 2009.

U.S. Bank National Association

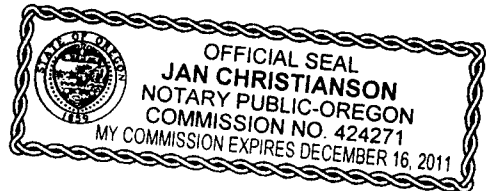
By: Jan M. Clark
Name: Loren M. Clark
Title: Assistant Vice President

STATE OF OREGON)
)ss.
COUNTY OF Multnomah)

The foregoing instrument was acknowledged before me this 4th day of March, 2009 by Loren M. Clark, a AVP of U.S. Bank National Association on behalf of said Bank.

Jan Christianson
Notary Public for Oregon

My Commission expires: 12/16/2011

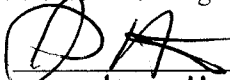


Consent

The undersigned, holder of that certain \$135,000 Trust Deed (the "Deed of Trust") which encumbers the Public Path, hereby consents to the above Easement For Public Bicycle and Pedestrian Path (the "Easement"), agrees that said easement shall be a permitted exception under said Deed of Trust.

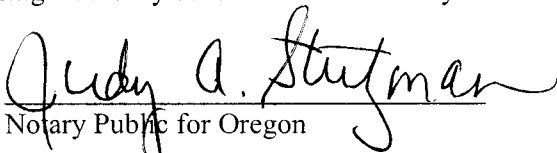
IN WITNESS WHEREOF, the undersigned has executed this Consent as of this 4th day of March, 2009.

Linn-Benton Housing Authority

By: 
Name: James Hackett
Title: Executive Director

STATE OF OREGON)
)ss.
COUNTY OF Linn)

The foregoing instrument was acknowledged before me this 4th day of March, 2009 by James Hackett a Ex. Director of Linn-Benton Housing Authority behalf of said Authority.


Notary Public for Oregon

My Commission expires: March 25, 2009



EXHIBIT A

Public Path

A 10 foot wide public bicycle and pedestrian path easement across that property conveyed to River View Place Apartments Limited Partnership as described in Linn County Clerk Records Document 2007-27095, being located in Section 12 of Township 11 South, Range 4 West of the Willamette Meridian, Linn County, Oregon, said easement being more particularly described as follows and as shown on the attached map labeled "EXHIBIT B":

Beginning at a 5/8 inch iron rod on the south line of Block 13, City of Albany, also being the northerly right-of-way line of 3rd Avenue SW, said 5/8 inch iron rod being located South 81°51'44" West 250.54 feet from a 5/8 inch iron rod at the southeast corner of Block 13, said southeast corner of Block 13 also being the intersection of said northerly right-of-way line with the westerly right-of-way line of Calapooia Street SW; thence leaving said northerly right-of-way line North 7°14'33" East 116.56 feet to a 5/8 inch iron rod on the northerly line of the aforementioned River View Place Apartments Limited Partnership property, said 5/8 inch iron rod being located South 81°51'44" West 38.00 feet from a 5/8 inch iron rod at the northeast corner of said River View Place Apartments Limited Partnership property; thence along said northerly property line North 81°51'44" East 10.37 feet; thence leaving said northerly property line South 7°14'33" West 116.56 feet to the aforementioned northerly right-of-way line of 3rd Avenue SW; thence South 81°51'44" West 10.37 feet to the point of beginning.

EXHIBIT B
EASEMENT SKETCH

OVER PROPERTY COMPRISED OF
LOTS 5, 6, 7, AND 8 AND A PORTION OF
VACATED ALLEY IN BLOCK 13, CITY OF ALBANY,
LOCATED IN THE NORTHEAST 1/4
OF SECTION 12, TOWNSHIP 11 SOUTH,
RANGE 4 WEST OF THE WILLAMETTE MERIDIAN,
CITY OF ALBANY, LINN COUNTY, OREGON

FOR: RIVER VIEW PLACE APARTMENTS LIMITED
PARTNERSHIP, AN OREGON LIMITED PARTNERSHIP

DATE: FEBRUARY 17, 2009

DAVID L. MALONE, P.L.S.
COLE SURVEYING, LLC
6765 S.W. PHILOMATH BLVD.
CORVALLIS, OREGON 97333
(541) 929-5500

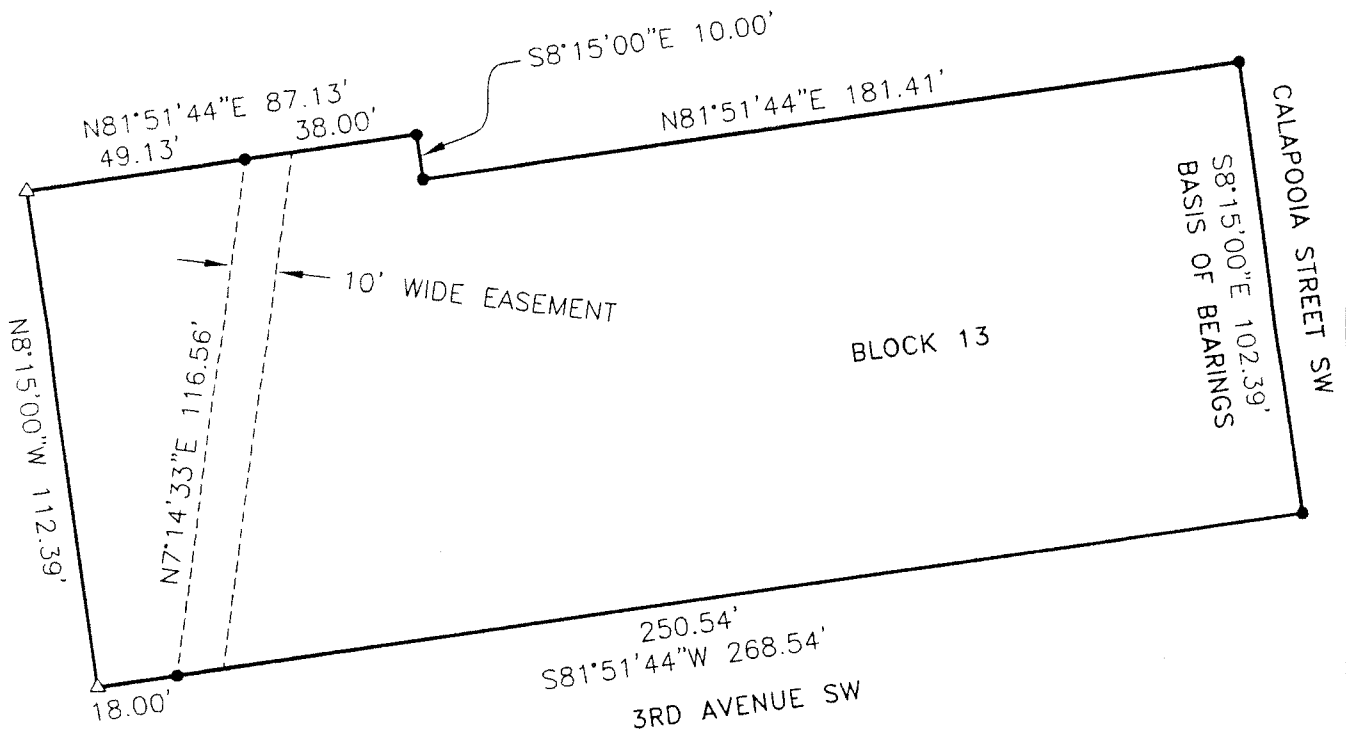


SCALE: 1" = 40'

LEGEND

● FOUND SURVEY MONUMENT

7874CS02



LINN COUNTY
Recording Cover Sheet
All Transactions, ORS: 205.234

LINN COUNTY, OREGON **2009-05807**
E-EAS
Cnt=1 Stn=1 COUNTER **03/31/2009 02:47:40 PM**
\$50.00 \$11.00 \$10.00 **\$71.00**



I, Steve Druckenmiller, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Steve Druckenmiller - County Clerk



After Recording Return To:

City of Albany City Clerk

PO Box 490

Albany, OR 97321

All Tax Statements Should Be Sent To:

NA

1. Name/Title of Transaction - by ORS 205.234 (a)

EASEMENT FOR PUBLIC BICYCLE AND PEDESTRIAN PATH

2. Grantor/Direct Party - required by ORS 205.125(1)(b) and ORS 205.160

River View Place apartments Limited Partnership

3. Grantee/Indirect Party - required by ORS 205.125(1)(a) and ORS 205.160

City of Albany

4. True and Actual Consideration (if there is one), ORS 93.030

\$0.00

Resolution No. 5761

Recorded Document Recorder File No. 5307