

AFTER RECORDING PLEASE RETURN TO:



ATTN: John Schroeder
Beacon Development Group
1221 East Pike Street, Ste 300
Seattle, WA 98122-3930



200701080208

Skagit County Auditor

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EASEMENT AGREEMENT

Grantor: THE WILSON HOTEL HOUSING LLC

Grantee: DAVID WEHRLY

Abbreviated

Legal Description: Lots 1-3 & ptn of Lot 4, Blk 37, Anac.

Tax Account No.: 3772-037-004-0008

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

JAN 08 2007

Amount Paid \$
Skagit Co. Treasurer:
By *[Signature]*

THIS EASEMENT AGREEMENT ("Agreement"), dated this 11th of December, 2006, is executed by and between **THE WILSON HOTEL HOUSING LLC**, a Washington limited liability company, as owner of the property identified below as Parcel A ("Owner A") and **DAVID WEHRLY**, as owner of the property identified below as Parcel B ("Owner B"), with respect to the following facts, understandings, and intentions:

RECITALS

- A. Owner A owns certain real property legally described in Exhibit "A" attached hereto and incorporated by reference herein ("Parcel A").
- B. Owner B owns certain real property adjacent to Parcel A legally described in Exhibit "B" attached hereto and incorporated by reference herein, ("Parcel B").
- C. There are gas and sewer lines currently located on Parcel A that run to and benefit Parcel B.

D. Owner A and Owner B (each, an "Owner" and collectively, the "Owners") desire to grant and receive certain easements with respect to Parcels A and B (each, a "Parcel" and collectively, the "Parcels"). The invitees, licensees, agents, employees, and tenants, of any Owner are referred to as that party's "Authorized Users."

AGREEMENTS

For good and valuable consideration, mutually exchanged, the undersigned hereby agree as follows.

1. Easement.

a. **Creation.** Owner A hereby conveys and quitclaims to Owner B a non-exclusive, perpetual easement (the "Easement") under the real property described in Exhibit "C" (the "Easement Area"), subject to the limitations set forth in Section 1.b. hereof, for the sole purposes of (i) maintaining, repairing and using underground gas and sewer lines, and (ii) connecting to underground gas and sewer lines serving Parcel B.

b. **Limitations.** Prior to replacing or connecting to any utility lines, Owner B shall submit to Owner A, for Owner A's review and approval, plans showing in reasonable detail the types and locations of the utility lines. Owner A shall, upon reviewing such plans, give written approval of the plans if the plans disclose that the utility lines will not, in Owner A's reasonable judgment, interfere with the construction or use of any improvements or reasonably contemplated improvements on Parcel A. Owner B may not relocate, replace or connect to utility lines in the Easement Area other than in accordance with plans approved in writing by Owner A with the following exceptions: (1) Emergency repair or replacement of utility lines servicing Owner B require only timely notification of Owner A, (2) Connection, replacement and/or reconnection of existing aboveground gas line ports existing at time of this agreement shall require only timely notification of Owner A, (3) Disconnection and removal of cohabiting aboveground gas line service passing through the property owned by Owner B requires only timely notification.

c. **Use.** Owner B shall use the Easement for its intended purposes in a careful, safe and lawful manner, and subject to the limitations set forth in Section 1.b. hereof.

d. **Installation and Maintenance.** The maintenance, repair and use of, and connection to, utility lines in the Easement Area shall be made and performed in such manner as to minimize interference with the use and enjoyment of Parcel A. Promptly after any maintenance and/or repair of, or connection to, any utility line in the Easement Area, Owner B shall repair the surface of the ground, and any improvements thereon, to the condition preceding the work. The cost of the maintenance and/or repair of, or connection to, any utility line in the Easement Area, including without limitation the cost of repairing the surface of the ground and improvements, shall be fully borne by Owner B.



e. **Duration.** The Easement granted hereunder will be perpetual and will run with the land.

2. **Condition of Easement Area.**

a. Owner B shall use due care to minimize damage to or disruption of Owner A's property (including the Easement Area) and shall repair any damage it may cause by its activities in the Easement Area, and restore the land and improvements to substantially the condition they were in before the commencement of such activities.

b. Owner A makes no warranties of any kind, express or implied, to Owner B concerning the condition of or title to the Easement Area.

3. **Dispute Resolution.**

a. **Mediation.** Any dispute arising out of this Agreement will be submitted to mediation before a neutral third party. If the parties cannot mutually agree upon a mediator, they will ask the presiding judge of Skagit County District Court to appoint one. The parties will attempt in good faith to resolve their dispute through mediation. The parties will participate in mediation no more than fifteen (15) days later than one party provides written notice to the other parties of the nature of the dispute and the desire for mediation. All costs of mediation, if any, will be split equally between the parties involved in such dispute and each party will bear its own attorney fees.

b. **Injunctive and Equitable Relief.** Notwithstanding anything to the contrary in the foregoing, in the event a good faith attempt at mediation is not successful, any party may apply to Skagit County District Court for equitable or injunctive relief. *Provided*, the parties agree that no party will submit nor will the Court have authority to consider any claims for money damages, it being the intent of the parties that all such claims be resolved through mediation. The substantially prevailing party in any Court action for equitable or injunctive relief will be entitled to recover its reasonable costs and attorney's fees from the non-prevailing party.

4. **Indemnity.**

a. Owner B shall defend, indemnify and hold Owner A harmless from any and all liability, loss, damages, claims, demands, suits or expenses, including reasonable attorneys fees, arising out of Owner B's exercise of any rights granted herein, except to the extent caused directly by the negligent acts or omissions of Owner A.

b. Owner B hereby waives any and all claims of any nature whatsoever that it may now or ever have against Owner A for damages or losses of any kind arising from or relating to the grant of the Easement, the use of the Easement or the condition of the Easement Area except for any damage caused by tenants or agents of Owner A that either



interrupt or cause damage to the property of Owner B through negligent or willfully malicious acts

5. **Miscellaneous.**

a. **Entire Agreement.** This Agreement contains the entire agreement and understanding between the parties and supersedes and replaces all other prior negotiation and proposed agreements, written or oral. Each party hereto acknowledges that no other party, nor the agent or attorney of any other party, has made any promise, representation, or warranty, express or implied, not contained in this Agreement concerning the subject matter of this Agreement to induce this Agreement, and the parties acknowledge that they have not executed this Agreement in reliance upon any such promise, representation, or warranty not contained in this Agreement.

b. **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable under law of mandatory application, such invalidity or unenforceability shall not invalidate or render unenforceable the remaining provisions of this Agreement, which shall remain in full force and effect.

c. **Captions.** The captions used in this Agreement are inserted solely for convenience of reference and are not a part of, nor intended to govern, limit or aid in the construction of, any provision hereof.

d. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

e. **Construction.** The number and gender of each pronoun used in this Agreement shall be construed to be such number and gender as the context, circumstances or its antecedent may require.

f. **Modifications/Termination.** No provision of this Agreement may be modified or terminated except by a written agreement of the record owners of Parcels A and B, which modification and/or termination shall be duly recorded in the real property records of Skagit County, Washington.

g. **Third Party Rights.** None of the provisions of this Agreement, including without limitation the easements, covenants, conditions and restrictions, confers any rights or benefits upon the public generally, any person, entity or governmental agency or body not a party hereto that are not already in place, in fact, at the time of this Agreement.

h. **Waiver.** No provision of this Agreement will be deemed to have been



waived unless such waiver is in writing signed by the waiving party. Failure at any time to require performance of any provision of this Agreement will not be a waiver of any succeeding breach or a waiver of any other provision of this Agreement.

i. **Rights Run With Land.** The Easement is perpetual and will run with the land.

j. **Successors and Assigns.** The Agreement will bind and inure to the benefit of the present and future Owners, their respective heirs, representatives, tenants, successors and assigns. All persons acquiring an interest in the Parcels after the recording of this Agreement will acquire their interests subject to the easements, covenants, conditions, restrictions, benefits and obligations contained herein.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement as of the date first written above.

[Signatures located on following pages.]



OWNER A:

THE WILSON HOTEL HOUSING LLC,
a Washington limited liability company

By: Theresa McCallis

Name:

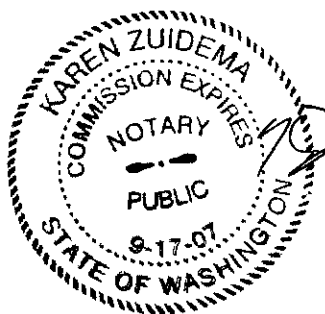
Its:

STATE OF Washington
COUNTY OF Skagit

SS:

I certify that I know or have satisfactory evidence that Theresa McCallis, the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Managing Member of The Wilson Hotel Housing LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/11/06



Karen Zuidema
(Print Name) Karen Zuidema
Residing at Anacortes
My appointment expires: 9/17/07

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OWNER B:

DAVID WEHRLY

By: _____

Name: _____

Its: _____

STATE OF Washington)

COUNTY OF Skagit)

SS:

I certify that I know or have satisfactory evidence that David S. Wehrly is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of _____, a _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/7/06



(Print Name) _____

Residing at _____

My appointment expires: 3-15-07

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EXHIBIT "A"

PARCEL A LEGAL DESCRIPTION

Lots 1, 2, 3, and 4, Block 37, "MAP OF THE CITY OF ANACORTES, SKAGIT COUNTY, WASHINGTON," as per plat recorded in Volume 2 of Plats, page 4, records of Skagit County, Washington.

EXCEPT the West 20 feet of said Lot 4.

Situate in the City of Anacortes, County of Skagit, State of Washington.



EXHIBIT "B"

PARCEL B LEGAL DESCRIPTION

That portion of the following tract lying East of the West line (and said line extended) of a party wall lying approximately on the line between lots 4 and 5.

West 20 feet of lot 4 in Block 37, "MAP OF THE CITY OF ANACORTES", as per plat recorded in Volume 2 of Plats, page 4, records of Skagit County, Washington.

Situate in the City of Anacortes, County of Skagit, State of Washington.



EXHIBIT "C"

EASEMENT AREA DESCRIPTION

Attached is an illustration of the Easement Area. The Easement Area consists of the following:

Gas line: a strip of land from the public alley along the western boundary of Parcel A, measuring four feet wide and forty-eight feet long.

Sewer line: a strip of land measuring four feet wide, lying two feet on either side of the line proceeding from a point eleven feet east of the southwest corner of Parcel A, proceeding north forty-eight feet, angling at a forty-five degree angel to the northwest, and proceeding in a straight line from there to the western property line.



NEW WILSON HOTEL REHABILITATION



200701080208

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