



200703130113

Skagit County Auditor

3/13/2007 Page

1 of 13 2:08PM

Document Title: Easement

Reference Number :

Grantor(s):

additional grantor names on page ___

1. Ware, Kenneth E.

2.

Grantee(s):

additional grantee names on page___

1. David Alan Development, LLC

2.

Abbreviated legal description:

full legal on page(s) ___

PTN. SE 1/4 of SW 1/4 15/34/4

Assessor Parcel / Tax ID Number:

additional tax parcel number(s) on page ___

P24880

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is entered into this 5 day of March 2007, between KENNETH E. WARE (hereafter "Grantor"), and DAVID ALAN DEVELOPMENT LLC, an Arizona Limited Liability Company registered in the State of Washington (hereafter "Grantee").

RECITALS

- A. Grantor owns the real property in Mount Vernon, Washington, which is legally described as set forth in Exhibit A – Grantor's Property.
- B. Grantee own the real property in Mount Vernon, Washington legally described as set forth in Exhibit B – Grantee's Property.
- C. Grantee desires an easement across Grantor's Property for ingress and egress and Grantor is willing to grant such an easement to Grantee on certain agreed terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises, benefits, burdens and terms herein, the parties agree as follows:

1. Grant of Easement Rights. Grantor grants to Grantee and its successors in title and assigns a perpetual, non-exclusive Easement across Grantor's Property as more fully described in this Agreement.

2. Location, Purpose and Access. The Easement is and shall be situated on Grantor's Property in such location as is specifically described and depicted on *attached Exhibit C for the purpose of ingress and egress to and from Grantee's Property.* The use and scope of this Easement shall not be expanded to allow usage for ingress and egress to and from other properties excepting Grantor's Property and Grantee's Property unless such expansion is approved in advance in writing by Grantor.

3. Maintenance, Repair, and Replacement. The responsibility for the cost of the construction of any improvements to the Easement and, in turn, the maintenance and repair of the Easement and the improvements to the Easement and the costs of the same shall be borne solely by Grantee. Prior to the construction of any improvements to the Easement and any subsequent *maintenance, repair, construction, alteration, or replacement* of the improvements by Grantee, written notification and plans for the same shall be submitted to Grantee. No such work shall be commenced without the prior written approval of Grantee, which approval shall not be unreasonably withheld.

Grantor grants and conveys to Grantee at any time and from time to time the right to enter upon Grantor's property for the purpose of such approved construction, maintenance, repair and replacement of improvements to the Easement.



4. **Interference with Grantor's Use of Property.** There shall be no use of the Easement by Grantee beyond that specifically described in this Agreement that unreasonably interferes with or restricts the use and enjoyment by Grantor of Grantor's Property.

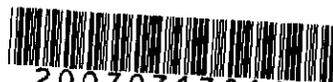
5. **Use by Grantor.** The Grantor shall have the ongoing and perpetual right to use the land on which the Easement is located and shall likewise have the right to the full use, benefit and enjoyment of the Easement, provided any such use by the Grantor does not unreasonably interfere with the rights of the Grantee as set forth in this Agreement.

6. **Public Access.** This Easement is intended to allow the dedication and construction by Grantee of a public right of way - public street. All costs, fees, and improvements required by applicable law in order to create a public right of way - public road shall be borne solely by Grantee and all work performed shall be in strict conformance with all requirements of applicable governmental agencies. In addition, the plans and specifications of any such public right of way - public road shall be subject to the prior written approval of Grantor, which approval shall not be unreasonably withheld.

7. **Certificate of Compliance.** Upon written request of the owner of either Grantor's Property or Grantee's Property, the then owner of the Property, shall execute and deliver, within ten (10) days after receipt of such request, a certificate certifying that there are no known defaults on the part of either party to this Agreement or, if there are such defaults, specifying the particulars of such defaults and the action required to remedy the same and certifying that there are no setoffs or defenses to the enforcement of the terms of this Agreement, or if there are, specifying the particulars of such setoffs or defenses.

8. **Covenants Run with the Land.** The Easement and rights, duties and responsibilities as set forth in this Agreement shall run with the land and shall constitute benefits to and burdens upon Grantor's Property and Grantee's Property. The Easement and rights, duties and responsibilities shall inure to the benefit of and be binding upon the respective successors, successors-in-title, assigns, and heirs of each party and shall remain in full force and effect and shall be unaffected by any change in ownership of the Properties.

9. **General Indemnity.** Grantee agrees to fully and completely defend and hold the Grantor harmless from and against any and all claims, demands, actions, lawsuits, fines, or penalties (including but not limited to those relating to death or personal injury or loss of or damage to property) arising out of or in any way related to the use of the Easement by Grantee and by others. This agreement by Grantee to fully and completely defend and hold Grantor harmless shall include all costs and attorney fees incurred in connection with the defense of such claims.



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Grantor and Grantee acknowledge that Grantor is not responsible in any way for the condition, maintenance, repair or reconstruction of the Easement and agree on behalf of themselves and their heirs, successors and assigns that any and all risk of loss, damage or injury associated with the use and operation of the Easement shall be borne solely by Grantee.

10. Recording. The parties agree that this Agreement shall be recorded immediately after execution.

11. Effective Date. The easement, restrictions, rights of use, burdens and agreements provided for by this instrument shall be effective upon execution of this Agreement by the parties.

12. Attorney Fees and Costs. In the event of a lawsuit regarding the enforcement or applicability and use of any of the terms, rights, obligations and burdens of this Agreement, the prevailing party shall be entitled to recover his or its reasonable attorney fees and costs for trial and for appeals.

13. Good Faith/Non-Impairment. A party shall not act or conduct itself in any way which impairs the purposes and intent of this Agreement. Each party shall always endeavor and act in good faith to foster and protect all rights and benefits of all the parties hereunder, making his/its best efforts to do so.

14. Counterparts. This Agreement may be executed in multiple counterparts, all of which, when taken together, shall constitute one and the same Agreement.

15. Non-Assignability. Because the terms of this Agreement are covenants running with the land of the described real properties, the rights and interests in this Agreement may not be assigned or alienated separate and apart from such real properties, except as expressly provided in this Agreement.

16. Modification. This Agreement may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

17. Governing Law/Venue/Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of Washington. Further, should civil suit be filed by either party, venue and jurisdiction may lie and be proper in Skagit County, Washington, regardless of business or resident address of the parties at the time of filing and regardless of where this document was executed.

18. Meaning of Words. Unless some other meaning and intent are apparent from the context, the parties intend that the plural shall include the singular and vice versa, and that masculine, feminine and neuter words shall be used interchangeably.



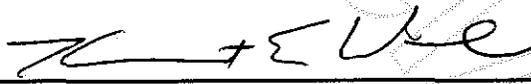
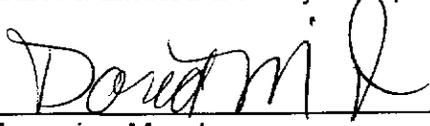
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19. **Paragraph Headings.** The paragraph headings herein are inserted only for convenience of reference and are in no way to be construed as part of this Agreement or a limitation of the scope of the particular paragraphs to which they refer.

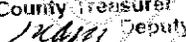
20. **Severability.** In case any one or more of the provisions contained in this Agreement shall be held invalid by a court of competent jurisdiction, that shall in no way affect the legality and enforceability of the remaining provisions contained herein.

Executed by the undersigned parties effective as of the date first above-written.

GRANTOR:  KENNETH E. WARE	GRANTEE: DAVID ALAN DEVELOPMENT LLC An Arizona Limited Liability Company By:  Managing Member Name: <u>David Milne</u> Print Name
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Easement
SKAGIT COUNTY, WASHINGTON
Real Estate Excise Tax

MAR 13 2007

Amount Paid \$0
Skagit County Treasurer
By:  Deputy



200703130113
Skagit County Auditor

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that KENNETH E. WARE is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

DATED this 13 day of March, 2007.



Deborah Matson
Type/Print Name: Deborah L. Matson
NOTARY PUBLIC in and for the State of
Washington, residing at Mt. Vernon
My Commission expires: 3-2-08

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that David Milne is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledge it as the Managing Member of DAVID ALAN DEVELOPMENT LLC, an Arizona limited liability company, to be the free and voluntary at of such party for the uses and purposes mentioned in the instrument.

DATED March 6, 2007



Steven P. Barrett
Type/Print Name: Steven P. Barrett
NOTARY PUBLIC in and for the State of
Washington, residing at Edmonds
My Commission expires: 9/15/07



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Skagit County Auditor

3/13/2007 Page 6 of 13 2:08PM

AGREEMENT RE: ROAD CONSTRUCTION

THIS AGREEMENT is entered into this 5 day of March 2007, between KENNETH E. WARE (hereafter "Grantor"), and DAVID ALAN DEVELOPMENT LLC, an Arizona Limited Liability Company registered in the State of Washington (hereafter "Grantee").

RECITALS

- A. Grantor owns the real property in Mount Vernon, Washington, which is legally described as set forth in Exhibit A – Grantor's Property.
- B. Grantee own the real property in Mount Vernon, Washington legally described as set forth in Exhibit B – Grantee's Property.
- C. Grantee desires an easement across Grantor's Property for ingress and egress and Grantor is willing to grant such an easement to Grantee on certain agreed terms and conditions.
- D. Grantee also desires to dedicate and construct a public right of way -- public roadway across the easement.

NOW, THEREFORE, in consideration of the mutual promises, benefits, burdens and terms herein, the parties agree as follows:

1. Grant of Easement Rights. Grantor has agreed to grant to Grantee and its successors in title and assigns a perpetual, non-exclusive Easement across Grantor's Property as more fully described in a separate Easement Agreement, attached marked Exhibit A.

2. Public Access. By the terms of the Easement Agreement and this Agreement, Grantee agrees to dedicate and construct a public right of way - public street across the Easement. All costs, fees, and improvements required by applicable law in order to create the public right of way - public road shall be borne solely by Grantee and all work performed shall be in strict conformance with all requirements of applicable governmental agencies. In addition, the plans and specifications of any such public right of way – public road shall be subject to the prior written approval of Grantor, which approval shall not be unreasonably withheld.

3. Performance Bond. Prior to the construction of any improvements on the easement Grantee shall, in addition to submitting plans and specifications to Grantor for written approval as described above in section 2, arrange for the issuance of a performance bond in such an amount and on such terms as shall be approved by Grantor. At a minimum, the performance bond shall guaranty the full, complete and



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timely performance of all approved work in completing the improvements necessary to dedicate and create a public right of way -- public road on the Easement.

4. **General Indemnity.** Grantee agrees to fully and completely defend and hold the Grantor harmless from and against any and all claims, demands, actions, lawsuits, fines, or penalties (including but not limited to those relating to death or personal injury or loss of or damage to property) arising out of or in any way related to the construction of improvements on the Easement by Grantee and by others. This agreement by Grantee to fully and completely defend and hold Grantor harmless shall include all costs and attorney fees incurred in connection with the defense of such claims.

5. **No Liens.** Grantee shall not allow the recording of any liens against title to Grantor's property in connection with any work performed by or at the direction of Grantee on the Easement. The recording of any such lien against title to Grantor's property shall constitute a material breach by Grantee of this Agreement and, without limiting other remedies available to Grantor, Grantee shall be responsible for the payment of all attorney fees and costs incurred by Grantor in seeking and arranging for the removal of such lien.

6. **Attorney Fees and Costs.** In the event of a lawsuit regarding the enforcement or applicability and use of any of the terms, rights, obligations and burdens of this Agreement, the prevailing party shall be entitled to recover his or its reasonable attorney fees and costs for trial and for appeals.

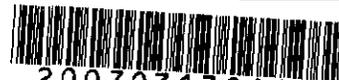
7. **Counterparts.** This Agreement may be executed in multiple counterparts, all of which, when taken together, shall constitute one and the same Agreement.

8. **Modification.** This Agreement may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

9. **Governing Law/Venue/Jurisdiction.** This Agreement shall be governed by and construed under the laws of the State of Washington. Further, should civil suit be filed by either party, venue and jurisdiction may lie and be proper in Skagit County, Washington.

Executed by the undersigned parties effective as of the date first above-written.

GRANTOR:  KENNETH E. WARE	GRANTEE: DAVID ALAN DEVELOPMENT LLC An Arizona Limited Liability Company By:  Managing Member Name: <u>David Milor</u> Print Name
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Skagit County Auditor

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that KENNETH E. WARE is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

DATED this 13 day of March, 2007.



Deborah Matson
Type/Print Name: Deborah L. Matson
NOTARY PUBLIC in and for the State of
Washington, residing at Mr. Vernon
My Commission expires: 3-2-08

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that David Milne is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledge it as the Managing Member of DAVID ALAN DEVELOPMENT LLC, an Arizona limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED March 6, 2007.



Steven P. Barrett
Type/Print Name: Steven P. Barrett
NOTARY PUBLIC in and for the State of
Washington, residing at Edmonds
My Commission expires: 9/15/07



200703130113

Skagit County Auditor

EXHIBIT "A"

(Ware Property)

Tract B of Mount Vernon Short Plat No. MV-9-86, approved December 31, 1986, recorded December 31, 1986, in Volume 7 of Short Plats, pages 157 and 158, under Auditor's File No. 8612310108, records of Skagit County, Washington; being a portion of the Southeast 1/4 of the Southwest 1/4 of Section 15, Township 34 North, Range 4 East, W.M.



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Skagit County Auditor

EXHIBIT "B"

PARCEL A:

That portion of the Southeast Quarter of the Northwest Quarter and the Northeast Quarter of the Northwest Quarter of Section 22, Township 34 North, Range 4 East, of the Willamette Meridian, being more particularly described as follows:

Beginning at the Northeast corner of Tract 4 of Short Plat No. 42-83, approved March 14, 1984 and filed March 19, 1984 in Book 6 of Short Plats, page 127, under Auditor's File No. 8403190045, records of Skagit County, Washington, said point being on the East line of the Southeast Quarter of the Northwest Quarter of said subdivision;
thence North $88^{\circ}23'52''$ West along the North line of said Short Plat, a distance of 679.16 feet to the Northwest corner of Tract 3 of said Short Plat;
thence North $01^{\circ}20'17''$ East, a distance of 648.89 feet;
thence North $21^{\circ}10'00''$ West, a distance of 1,070.00 feet;
thence North $60^{\circ}33'00''$ West, a distance of 289.66 feet to the West line of the Northeast Quarter of the Northwest Quarter of said subdivision;
thence North $01^{\circ}30'33''$ East along said West line, a distance of 200.00 feet to the Northwest corner of the Northeast Quarter of the Northwest Quarter of said subdivision;
thence South $88^{\circ}27'44''$ East along the North line of the Northeast Quarter of the Northwest Quarter of said subdivision, a distance of 1,343.62 feet to the Northeast corner of the Northeast Quarter of the Northwest Quarter of said subdivision;
thence South $01^{\circ}20'17''$ West along the East line of said subdivision, a distance of 1,972.34 feet to the point of beginning.

Situated in Skagit County, Washington.

PARCEL B:

Non-exclusive easement for ingress, egress, roadway and utilities over, under and across a strip of land 60 feet in width, lying within the Northwest Quarter of Section 22, Township 34 North, Range 4 East, of the Willamette Meridian, said easement lying 30 feet on each side of the following described centerline:

Beginning at the intersection of the centerline of Waugh Road and the North line of the plat of Hilltop Haven, according to the plat thereof recorded in Volume 12 of Plats, page 49, records of Skagit County, Washington;
thence North $01^{\circ}30'23''$ East, a distance of 489.74 feet;
thence South $88^{\circ}29'37''$ East, a distance of 845.90 feet to the terminus of said centerline.

EXCEPT those portions of said easement lying within the Waugh Road and Lupine Drive, as shown on the plat of Hilltop Haven No. 2, according to the plat thereof recorded in Volume 14 of Plats, pages 2 and 3, records of Skagit County, Washington.

Situated in Skagit County, Washington.



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Skagit County Auditor

EXHIBIT "C"

**EASEMENT FOR THE CREEK AT PARKWOOD
IN TRACT "B", MOUNT VERNON SHORT PLAT NO. MV-9-86**

A 50 foot Easement (for stated purposes) over a portion of Tract "B", Mount Vernon Short Plat No. MV-9-86, approved December 31, 1986, recorded December 31, 1986, in Volume 7 of Short Plats, pages 157 and 158, under Auditor's File No. 8612310108, records of Skagit County, Washington; being a portion of the Southeast ¼ of the Southwest ¼ of Section 15, Township 34 North, Range 4 East, W.M., said Easement being 25 feet to the left and right of the following described centerline:

Beginning at a point on the South Line of said Tract "B", Mount Vernon Short Plat No. MV-9-86, that is 136.23 feet westerly of the Southeast corner of said Tract "B"; thence North 16°49'04" West 315.77 feet parallel with the Easterly line of said Tract "B" and the Westerly line of Skagit Highlands Division II, as recorded under Auditor's File No. 200604040052, records of said Skagit County; thence North 73°10'56" East 77.78 feet to a point of curvature; thence along the arc of said curve to the right having a radius of 130.00 feet, through a central angle of 23°40'34", an arc distance of 53.72 feet to a point on said Easterly line of Tract "B", and said Westerly line of Skagit Highlands Division II at the centerline of Mt. Baker Loop as shown on said Skagit Highlands Division II, said point also being the terminus of said Easement centerline.

(The side lines of said 50 foot Easement shall be extended or shortened to coincide with said South and Easterly lines of Tract "B")

Containing 0.51 acres, more or less

Situated in Skagit County, Washington



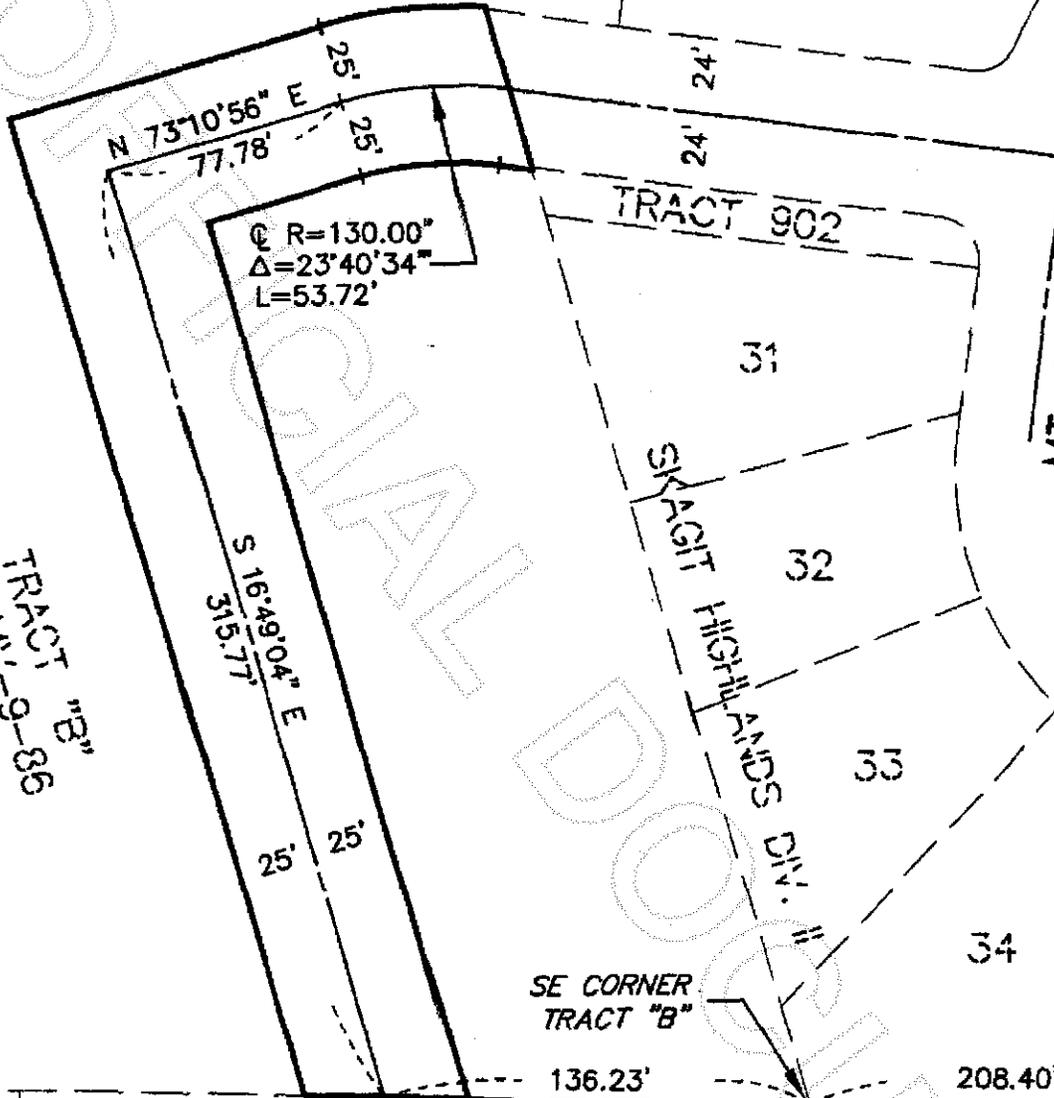
EASEMENT



TRACT 900

TRACT 901

TRACT "B"
SP. W. 9-86



MT. BAKER LOOP

TRACT 902

Q R=130.00'
Δ=23°40'34"
L=53.72'

SKAGIT HIGHLANDS DR. "H"

SE CORNER
TRACT "B"

34

35

136.23'

208.40'



1/4 CORNER

THE CREEK AT PARKWOOD

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SEMRAU ENGINEERING & SURVEYING, PLLC
 CIVIL ENGINEERING • LAND SURVEYING • PLANNING
 2118 RIVERSIDE DRIVE - SUITE 208
 MOUNT VERNON, WA 98273
 360-424-9566

DRAWING: 4529LOT.DWG
 JOB NO.: 4529
 12/1/06



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