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Skagit County Auditor

2/5/2009 Page

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RETURN ADDRESS:

Dale J. Galvin
Galvin Realty Law Group, PS
6100 - 219th Street S.W., Suite 560
Mountlake Terrace, WA 98043

ORIGINAL

COVER SHEET

Document Title(s) (or transactions contained herein):

Storm Water Drainage Easement Agreement

Reference Number(s) of Documents assigned or released:

Grantor(s) (Last name first, then first name and initials):

Karolyne A. DeAtley, a single person

Grantee(s) (Last name first, then first name and initials):

Fidalgo Storage, LLC, a Washington limited liability company

Legal Description (abbreviated: (*i.e.*, lot, block, plat or section, township, range):

Southeast ¼ of the Northwest ¼ of the Southwest ¼ of Section 3, Township 34 North, Range 2 East, W.M., EXCEPT roads. Except that portion conveyed to Skagit County by Deed recorded May 6, 1997, under Auditor's File No. 9705060060

Assessor's Property Tax Parcel/Account Number(s): P19743

STORM WATER DRAINAGE EASEMENT AGREEMENT

This NON-EXCLUSIVE STORM WATER DRAINAGE EASEMENT AGREEMENT ("Agreement") is made and entered into this 29 day of January, 2009, by Karolyne A. DeAtley, a single person ("Grantor") and FIDALGO STORAGE LLC, a Washington limited liability company ("Grantee").

RECITALS

WHEREAS, Grantor owns the improved property commonly known as 12640 Reservation Road, Anacortes, Washington, 98221 and legally described on Exhibit "A", attached hereto and incorporated herein by reference ("Parcel A");

WHEREAS, Grantee owns certain unimproved properties located at 9007 Molly Lane, Anacortes, Washington 98221 and legally described on Exhibit "B" attached hereto and incorporated herein by reference (collectively, "Parcel B");

WHEREAS, Grantee is constructing improvements on Parcel B;

WHEREAS, Grantor and Grantee desire to establish an easement solely for the purpose of constructing and maintaining storm water drainage (the "Easement") under and across that portion of Parcel A legally described in Exhibit "C", attached hereto and incorporated herein by reference, and cross-hatched in Exhibit "D", attached hereto and incorporated herein by reference (the "Easement Property");

WHEREAS, Grantor and Grantee desire to establish terms and conditions for the use and maintenance of the Easement.

NOW, THEREFORE, for the consideration referenced in Paragraph 3, below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. RECITALS.

The recitals set forth above are incorporated herein by reference.

2. GRANT OF EASEMENT.

In exchange for the consideration referenced in Paragraph 3, below, Grantor does hereby grant, declare, convey and establish a non-exclusive easement under and across the Easement Property, legally described on Exhibit "C", attached hereto and incorporated herein by reference, and cross-hatched on Exhibit "D", attached hereto and incorporated herein by reference. Grantor represents and warrants that it has the unrestricted right and authority to convey the Easement Property and all other rights and interests created thereby.

This easement shall remain in full effect until such time as the Systems are no longer needed for the purpose of conveying storm water run-off, at which time the connections to upstream systems will be removed by the Grantee, the



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easement shall be automatically vacated, and ownership of the remaining on-site systems shall revert to the Grantor, her heirs, successors or assigns.

The rights assigned to the Grantee in the document are not transferable to any other agency, corporation or individual not associated with Parcel B without the express consent of the Grantor, except for the Grantee's heirs, successors and assigns.

3. CONSIDERATION.

In exchange for and as a condition to Grantor's granting of the Easement described herein, Grantee shall, at its sole cost, cause to be constructed certain drainage improvements to Grantor's Parcel A, which improvements shall be fully installed and completed by the time the below-described "New System" is hooked up to Parcel B. The improvements shall be as follows:

(a) Grantee shall install an underground "French Drain" along the entire West side of Parcel A, in or near the existing open ditch on Parcel A. This French Drain shall consist of a 6" perforated plastic drain line surrounded by drain rock. This section of the perforated drain line shall terminate in a concrete catch box near the Northwest corner of Parcel A, which shall drain into the perforated drain line described in the following paragraph.

(b) Grantee shall install a French Drain along the entire length of the Easement Area described at Exhibit C, along the North side of Parcel A. This French Drain shall consist of a 6" perforated plastic drain line surrounded by drain rock, parallel to Grantee's main drainage culvert. The outflow for this line shall run into the existing open ditch along Reservation Road at the East End of Parcel A.

(c) Grantee shall install a 20-foot long 24" culvert in the existing ditch along Reservation Road on the East End of Parcel A, near the Northeast corner of Parcel A. Grantee shall construct a gravel entrance from Reservation Road to Parcel A over said culvert.

(d) All the above work shall be performed in a workmanlike manner, in conformity with all applicable governmental codes, and Grantee shall be responsible for the procurement of and payment for all required permits. Grantee shall cover all underground systems with soil, including the French drains described above, and also including all New Systems on Parcel A serving Parcel B. The New Systems serving Parcel B shall not be connected to the French Drain system serving Parcel A.

(e) Grantee additionally agrees to reimburse Grantor for all her attorney fees in negotiating this agreement on her behalf.

4. USE AND PURPOSE.

Grantor hereby establishes the Easement for the purposes of: (a) an underground pipe and appurtenances under the Easement Property designed and



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maintained to adequately convey only storm water run-off and drainage from Parcel B, without limitation upon source, volume or rate of flow; and (b) installing, constructing and/or excavating, operating, maintaining, repairing, inspecting and using the enclosed storm water drainage system ("System") located on the Easement Property with all necessary connections and appurtenances thereto, together with the right of ingress and egress from said described property, for the foregoing purposes.

5. SYSTEMS.

The term "New System" refers collectively to any new storm water drainage system installed or constructed on the Easement Property by Grantee after the Effective Date of this Agreement together with any existing storm water drainage system already in place within the Easement Property on the Effective Date of this Agreement that is thereafter connected to a New System

The term "**Grantor's System**" shall refer to any storm water pipes, ditches, improvements or alterations to the Grantor's Property (e.g.; paving, swales, diversions, subsurface drains, etc.) designed to collect and convey stormwater runoff from the Grantee's property to the New System.

6. OWNERSHIP OF SYSTEMS.

Grantor and Grantee hereby acknowledge that Grantee is and shall be the sole owner of any System located on the Easement Property and all connections and appurtenances thereto. Grantee shall remain the sole owner of the System whether or not the System is modified, or otherwise altered in any way. Grantor and Grantee hereby acknowledge that Grantor is and shall be the sole owner of the Grantor's System located on the Easement Property.

The Grantee, as owner of the New System, shall bear all costs of repair and upgrades necessary for the operation of the System and the protection of the Easement Property from damage resulting from defects in the System.

7. USE OF SYSTEMS.

If either party initiates a change in use ("Change") of the New System or Grantor's System, the party initiating the Change shall pay all costs in connection with said Change and the resulting new use ("New Use"). Any New Use must comply with all applicable laws, ordinances, rules and regulations of governmental authorities and must not restrict the use of any other Systems, Grantor's System, or the Easement Property itself or otherwise restrict or interfere with the other party's rights hereunder.

8. MAINTENANCE OF EASEMENT AREA.

Grantee shall provide 48 hours notice, along with a description of the work to be performed, to Grantor prior to accessing the Easement Area for inspection, maintenance, construction or modification of the System, except in cases of emergency where property damage may result from lack of prompt and immediate action.

The Easement Property shall be maintained by Grantor at Grantor's sole expense. If Grantor fails to maintain the Easement Property, Grantee may perform



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any maintenance necessary for the inspection, maintenance and repair of the System. Grantor shall, promptly upon written notice from the Grantee, remove from the Easement Property any temporary obstruction caused by an act or omission of Grantee which prevents or impedes proper maintenance, construction, installation, use or repair of any New System(s) or Grantor's Systems on the Easement Property, and all connections and appurtenances thereto ("**Removal**").

While Karolyne DeAtley remains the owner of the Parcel A, the cost of Removal of any obstruction or impediment owned by Karolyne DeAtley shall be borne by the Grantee. After Karolyne DeAtley ceases to own the property, the current owner of the property shall bear the cost of removal of any obstruction or impediment owned by them.

If the obstructions or impediments are not owned by Karolyne DeAtley or the current owner (e.g.; renter or lessee), the party who caused the need for Removal or, if both parties caused the need for Removal, a percentage of the cost of Removal shall be assigned to each party on the basis of each party's actions or inactions resulting in the need for Removal. In the event that such a percentage cannot be determined, the parties shall split equally the cost of any Removal.

9. MAINTENANCE OF SYSTEMS.

As described in Section 5 herein, Grantee shall be the sole owner of each and every System located on the Easement Property and Grantor shall be the sole owner of each and every Grantor's System on the Easement Property. Accordingly, Grantee shall bear all costs of ordinary operations and maintenance of Grantee's System(s) and Grantor's System(s) within the Easement Area. The Grantee may select and hire contractors of its choice to perform such ordinary maintenance and repairs.

10. RELOCATION OF SYSTEMS.

Grantor has the unrestricted right and authority to relocate any of Grantee's Systems and any of Grantor's Systems located on the Easement Property to any other area of the Easement Property, provided such relocation does not contravene any applicable laws, ordinances, rules or regulations of governmental authorities and does not affect the use of any other system on the Easement Property or the use of the Easement Property itself. The party initiating the relocation shall pay all costs in connection with the relocation. In no event shall a party be permitted to move the New System or Grantor's System off of the Easement Property. Grantee shall at all times remain the sole owner of all New Systems located on the Easement Property and Grantor shall at all times remain the sole owner of all Grantor's Systems on the Easement Property, regardless of whether said systems are relocated.

11. RESTRICTIONS.

Grantor shall not build, maintain, or allow to be built or maintained any permanent structure or facility that may restrict or interfere with Grantee's rights expressed within this document.

12. COVENANTS RUNNING WITH THE LAND



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The Easement is intended as a covenant running with the land, until such time as the Systems are no longer used by the Grantee at which time the Easement shall be extinguished and vacated.

Until such time the Easement shall be binding on and inure to the benefit of the owners of Parcel A and Parcel B and their respective heirs, successors and assigns, unless the Easement is amended in writing by the owners of Parcel A and Parcel B.

13. ATTORNEY FEES AND COSTS.

In the event that this Easement becomes the subject of mediation, arbitration and/or litigation between the owners of Parcel A and Parcel B, the following shall apply:

- A. Grantee shall bear all costs of such action, plus reasonable attorney fees, until the later of the following: (1) Karolyne DeAtley no longer being the owner of Parcel A or (2) five (5) years from the date of this Agreement.
- B. When Karolyne DeAtley ceases to own Parcel A (or five (5) years from the date of this Agreement, if later), paragraph 12.A shall no longer apply to the then-owner of Parcel A. Thereafter, the prevailing party in any action between the owner(s) of Parcel A and the owner(s) of Parcel B shall be entitled to be reimbursed by the non-prevailing party for the costs of such action plus reasonable attorney fees.

There shall be no liens or claims for reimbursement to new owners for legal costs incurred while Karolyne DeAtley owned the property.

- C. Actions that become the subject of arbitration and/or litigation between the owner of Parcel B and a lessee, renter or other party who enjoys the use of Parcel A but who is not Karolyne DeAtley shall be subject to the conditions of paragraph 12.B above.

Karolyne DeAtley shall be held harmless from any actions between the owner of Parcel B and any lessee.

14. MEDIATION/ ARBITRATION.

- A. Mediation. For disputes subject to mediation/ arbitration that are not resolved by the parties within ten (10) days after either party gives notice to the other of its desire to mediate the dispute, the parties shall submit the question to mediation before Skagit Mediation Services, Mount Vernon, Washington, which mediation shall be confidential, undertaken in good faith by the parties, but non-binding. The costs of the fees of the mediator shall be assigned as described in paragraph 12 above. Mediation shall be held within forty-five (45) days after the party requests mediation in writing of the other. In the event Skagit Mediation Services is unable or unwilling to act as mediator, the Presiding Judge of the Superior Court for Skagit County, Washington shall appoint the mediator.



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B. Arbitration. In the event the parties are unable to resolve their dispute via mediation, as provided in section 12(A), all unresolved matters shall be fully and finally resolved by binding arbitration as follows:

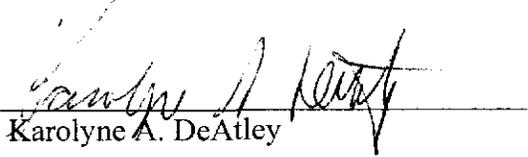
- i. The arbitrator shall be appointed by Skagit Mediation Services, but shall be someone other than the mediator; provided however, if the presiding Judge of the Skagit County Superior Court selected the mediator, then the said presiding Judge shall select the arbitrator;
- ii. The arbitrator's costs and fees shall be paid pursuant to Section 12 above
- iii. The arbitrator shall enter a discovery order, which order shall allow each party reasonable discovery regarding all matters at issue in accordance with Washington State Superior Court rules 26 through 37;
- iv. Arbitration shall be conducted in the offices of Skagit Mediation Services or the offices of the successor arbitrator, at a mutually convenient time, no later than forty-five (45) days following the conclusion of the mediation. The arbitrator may issue subpoenas for attendance in accordance with RCW 7.04.110;
- v. The decision of the arbitrator shall be final, binding and enforceable in accordance with RCW 7.04, and;

C. All disputes arising out of this Agreement are subject to mediation/arbitration.

15. HOLD HARMLESS.

As a further condition to the grant of this Easement, Grantee and its heirs, successors, and assigns, including future owners of Parcel B that are benefited by said Easement, promise to defend, hold harmless, and indemnify the Karoline DeAtley and future owners of Parcel A for any claims based upon the Systems operated on Parcel A, other than claims based on Parcel A's use of the Systems. If the Systems or any portion thereof are required to be removed by a governmental authority court order, the owners of Parcel B shall bear the expense of such removal.

GRANTOR, OWNER OF PARCEL A


Karolyne A. DeAtley



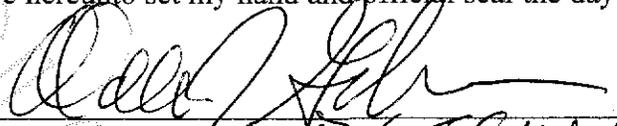
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STATE OF WASHINGTON)
 KING) ss.
COUNTY OF SKAGIT)

This is to certify that on this 29th day of JANUARY 2009, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and qualified, personally appeared Robert Howe, to me known to be the Manager of Howe Anacortes, LLC, the Washington limited liability company that executed the within and foregoing instrument on behalf of Fidalgo Storage LLC, a Washington limited liability company, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.




Printed Name: DALE J GALVIN
Notary Public in and for the State of Washington
Residing at Seattle, WA
My appointment expires 3/1/09



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EXHIBIT A
LEGAL DESCRIPTION- PARCEL A

The North 8 rods (132 feet) of the East $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 3, Township 34 North, Range 2 East, W.M., EXCEPT roads.

Except that portion conveyed to Skagit County by Deed recorded May 6, 1997 under Auditor's file No. 9705060060

Situated in Skagit County, Washington.



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EXHIBIT B
LEGAL DESCRIPTION- PARCEL B

Parcel 1:

The West 297 feet of the Northwest Quarter of the Northwest Quarter of the Southwest Quarter of Section 3, Township 34 North, Range 2 East of the Willamette Meridian, lying South of State Highway No. 1, as conveyed to the State of Washington by deed recorded January 12, 1961, under Auditor's File No. 60301, records of Skagit County, Washington.

Situated in Skagit County, Washington.

Parcel 2:

A non-exclusive easement for ingress and egress reserved in deed to Jerry Smith, et al, recorded on August 16, 1994 under Auditor's File No. 9408160065, records of Skagit County, Washington.



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EXHIBIT C

The north fifteen (15) feet of the following described tract (Parcel A):

The North 8 rods (132 feet) of the East $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 3, Township 34 North, Range 2 East, W.M., EXCEPT roads.

Except that portion conveyed to Skagit County by Deed recorded May 6, 1997 under Auditor's file No. 9705060060

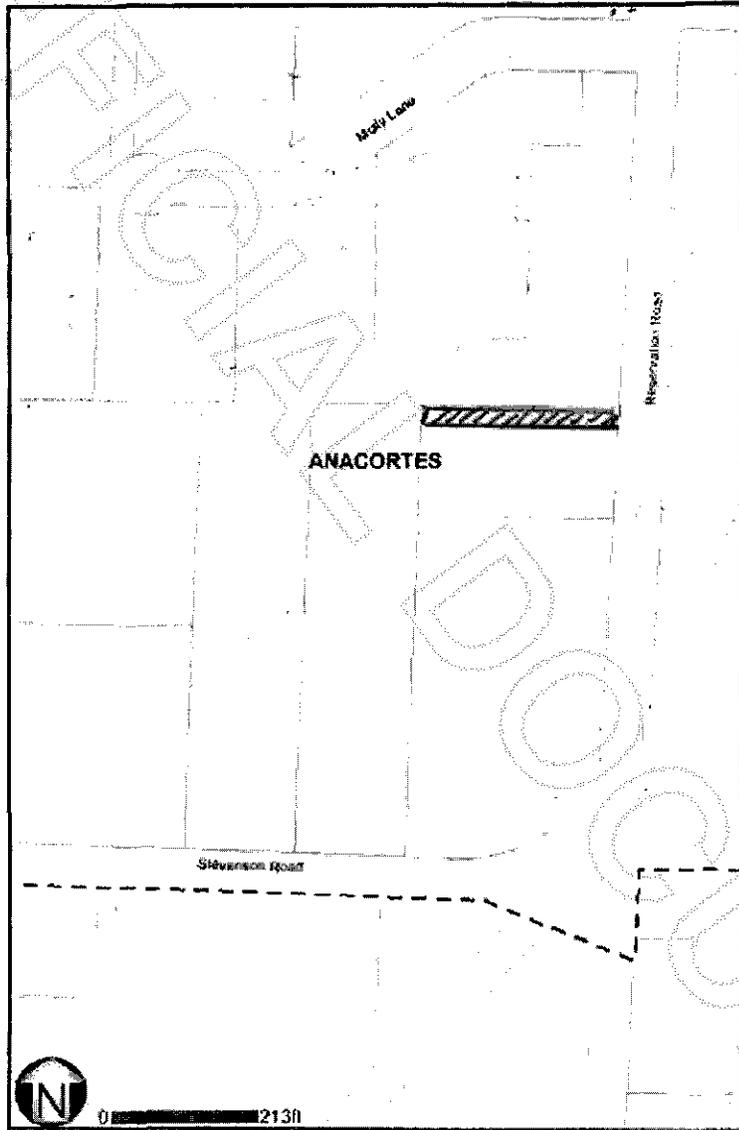
Situated in Skagit County, Washington.



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EXHIBIT D
DRAWING- EASEMENT PROPERTY



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