

RESOLUTION NO. 5534

A RESOLUTION ACCEPTING THE FOLLOWING EASEMENT:

Grantor

D. R. Horton, Inc.-Portland

Purpose

A public storm drainage easement over 2 wetland/detention tracts in Benton Woods subdivision.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that it does hereby accept this easement.

DATED AND EFFECTIVE THIS 10TH DAY OF DECEMBER 2007.

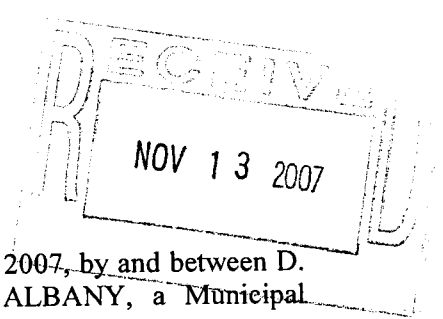
  
Council President

ATTEST:

  
City Clerk

## EASEMENT FOR PUBLIC UTILITIES

THIS AGREEMENT, made and entered into this 8<sup>th</sup> day of November, 2007, by and between D. R. Horton, Inc.-Portland, hereinafter called Grantor, and the CITY OF ALBANY, a Municipal Corporation, herein called "City."



### WITNESSETH:

That for and in consideration of the total compensation to be paid by the City, the grantor has this day bargained and sold and by these presents does bargain, sell, convey, and transfer unto the City of Albany, an easement and right-of-way, including the right to enter upon the real property hereinafter described, and to maintain and repair drainage facilities for the purpose of conveying and detaining stormwater over, across, through, and under the lands hereinafter described, together with the right to excavate and refill ditches and/or trenches for the location of the said stormwater facilities and the further right to remove trees, bushes, under-growth, and other obstructions interfering with the location and maintenance of the said public utilities.

This agreement is subject to the following terms and conditions:

1. The right-of-way hereby granted consists of - A public storm drainage easement over 2 wetland/detention tracts in Benton Woods subdivision. The tracts are identified as Tracts B and D in Benton Woods subdivision, located in the SE  $\frac{1}{4}$  of Section 26 and the NE  $\frac{1}{4}$  of Section 35, Township 10 South, Range 4 West, W.M., City of Albany, Benton County, Oregon. As shown the attached map labeled Exhibit A.
2. The permanent easement described herein grants to the City, and to its successors, assigns, authorized agents, or contractors, the perpetual right to enter upon said easement at any time that it may see fit, for construction, maintenance, evaluation and/or repair purposes. The easement granted is in consideration of \$1.00, receipt of which is acknowledged by the Grantor.
4. The Grantor does hereby covenant with the City that they are lawfully seized and possessed of the real property above-described and that they have a good and lawful right to convey it or any part thereof and that they will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.
5. D.R. Horton, Inc.-Portland shall be responsible for maintenance of the wetland/detention tracts for the 5 year wetlands monitoring period as defined by the permitting agencies, after which the maintenance responsibility shall transfer to the Benton Woods Homeowners Association.
6. The City of Albany shall only perform storm drainage maintenance on the tracts if D.R. Horton, Inc.-Portland and/or the Benton Woods Homeowners Association fails to maintain the originally designed stormwater carrying capacity or the originally designed stormwater detention capacity of the tracts. Any maintenance by the City within the easement area must be preceded by Notice providing 90 days for D.R. Horton, Inc.-Portland and/or the Benton Woods Homeowners Association to cure unless the failure to maintain is an emergency.
7. Any acts of the City within the easement area will not violate the terms of the DEQ Wetlands Permit.
8. If the City performs any maintenance, D.R. Horton, Inc.-Portland (during the five-year maintenance period) and the Benton Woods Homeowners Association (after the five-year maintenance period) shall reimburse the City of Albany for the maintenance performed. Any reimbursement for maintenance will be for reasonable costs only.

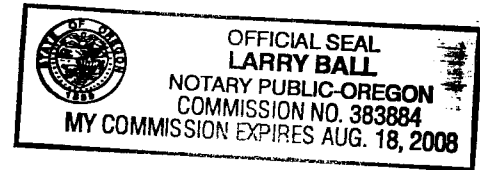
IN WITNESS WHEREOF, the Grantor has hereunto fixed their hand and seal the day and year written below.

GRANTOR:

*Ryan M. Selby*  
Ryan M. Selby, Division President of the  
Portland Division, D.R. Horton, Inc.-Portland

STATE OF OREGON )  
County of ~~Linn~~ PORTLAND ) ss.  
City of ~~Albany~~ MULTNOMAH)

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of NOVEMBER, 2007, by Ryan M. Selby, Division President of the Portland Division, D.R. Horton, Inc.-Portland as his/her voluntary act and deed.



*Larry Ball*  
Notary Public for Oregon  
My Commission Expires: AUGUST 18, 2008

CITY OF ALBANY:

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

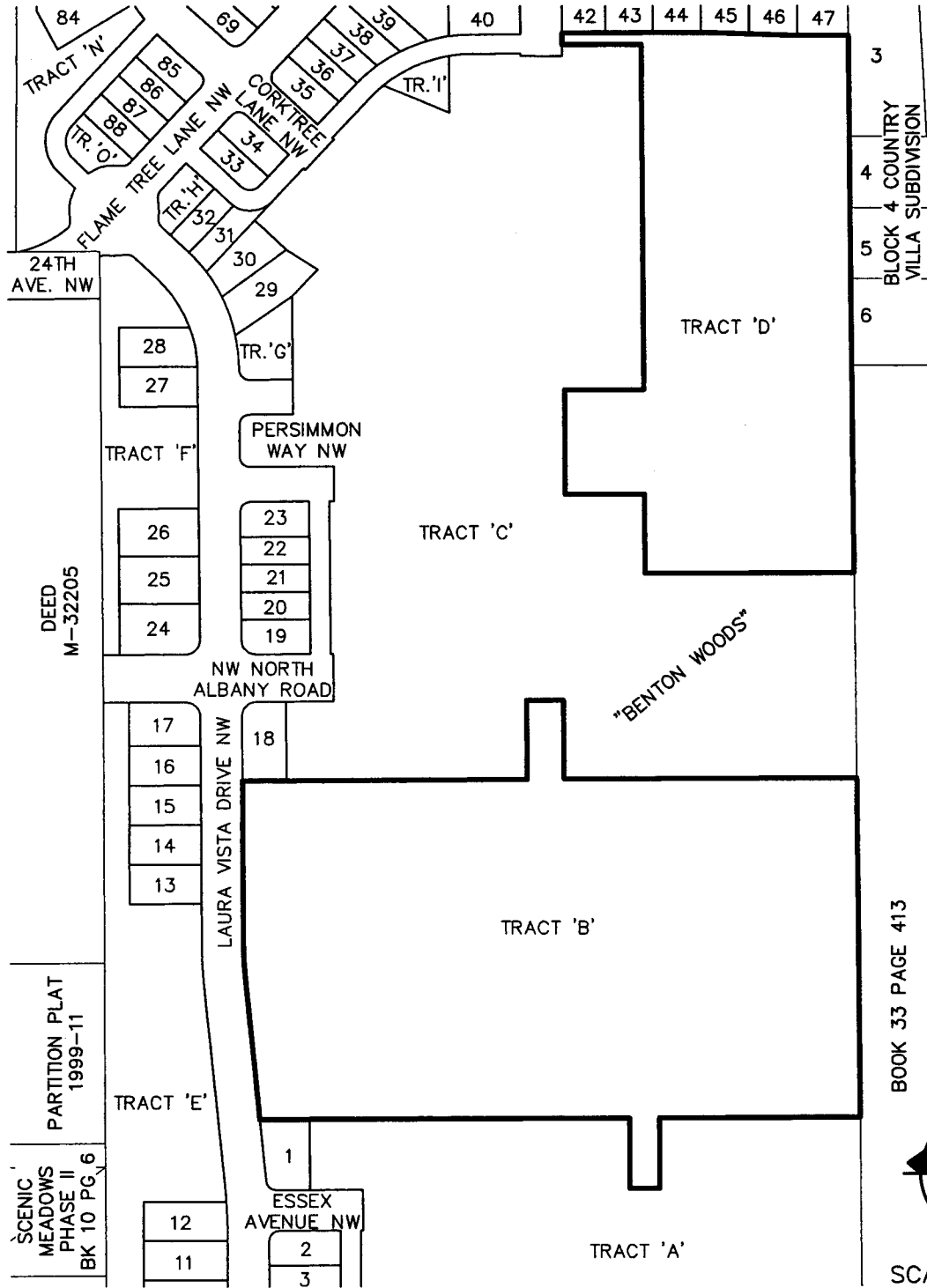
I, Wes Hare as City Manager of the City of Albany, Oregon, pursuant to Resolution Number 5534, do hereby accept on behalf of the City of Albany, the above instrument pursuant to the terms thereof this 10<sup>th</sup> day of December 2007.

*Wes Hare*  
City Manager

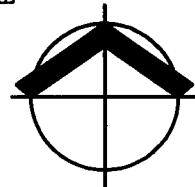
ATTEST:

*Betty Langness*  
City Clerk

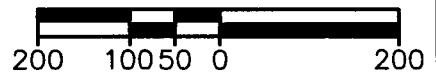
EXHIBIT 'A'



BOOK 33 PAGE 413



SCALE: 1" = 200'



**W R G**  
DESIGN INC.

5415 SW Westgate Dr,  
Ste 100 / Portland, OR  
97221 / Tel. 503.419.2500

**TRACTS 'B' AND 'D'**  
**'BENTON WOODS'**

SE 1/4 OF S 28, NE 1/4 OF S 35, T 10 S, R 4 W, WILLAMETTE MERIDIAN  
CITY OF ALBANY, BENTON COUNTY, OREGON

PROJECT NO. DRH5847  
DATE: 11/07/07  
BY: TLB  
SCALE: 1"=200'  
SHEET NO. 1 OF 1

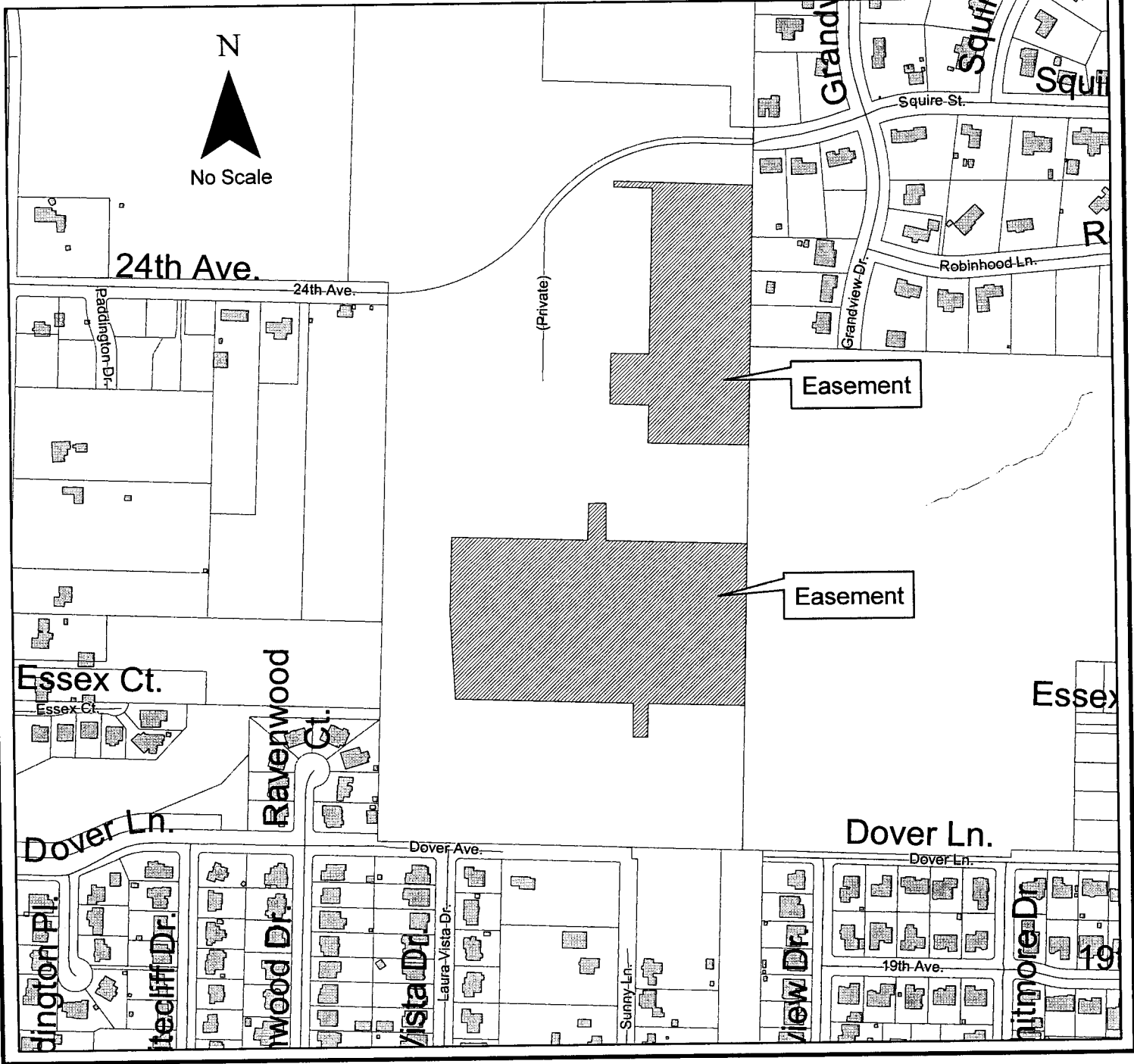
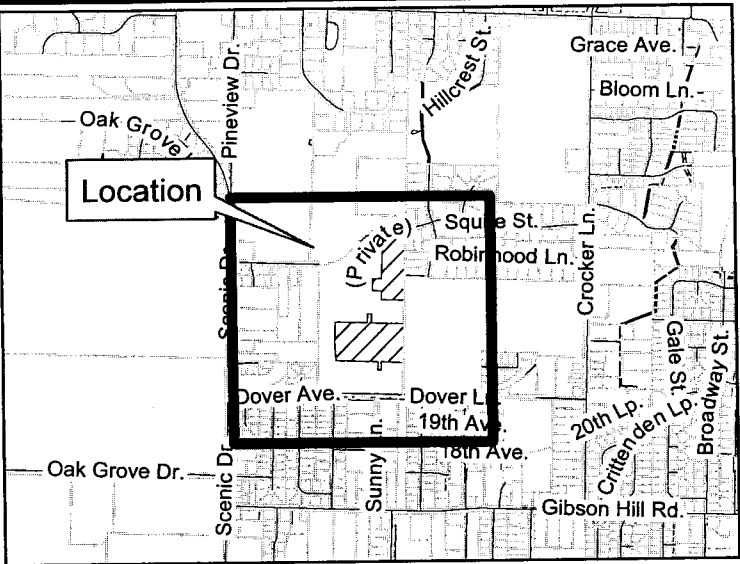
# EXHIBIT B

10S04W35 00200

A public storm drainage easement  
over two wetland/detention tracts  
in Benton Woods subdivision.



Geographic Information Services



**RECORDING COVER SHEET (Please Print or Type)**

This cover sheet was prepared by the person presenting the instrument for recording. The information on this sheet is a reflection of the attached instrument and was added for the purpose of meeting first page recording requirements in the State of Oregon, ORS 205.234, and does NOT affect the instrument.

BENTON COUNTY, OREGON **2008-434154**  
DE-EAS  
Cnt=1 Stn=5 MR **03/03/2008 01:11:42 PM**  
\$25.00 \$11.00 \$10.00 \$15.00 **\$81.00**



I, James V. Morales, County Clerk for Benton County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.



James V. Morales - County Clerk

**AFTER RECORDING RETURN TO:**

✓ City of Albany Recorder  
PO Box 490  
Albany, OR 97321

All Tax Statements Should Be Sent To:

Government Agency - Exempt  
\_\_\_\_\_  
\_\_\_\_\_

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

EASEMENT FOR PUBLIC UTILITIES

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

D.R. Horton, Inc. - Portland

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

\$1.00

Resolution No. 5534

Recorded Document Recorder File No. 5045