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Skagit County Auditor

2/5/2009 Page

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**RETURN ADDRESS:**

Dale J. Galvin  
Galvin Realty Law Group, P.S.  
6100 219<sup>th</sup> Street SW, Suite 560  
Mountlake Terrace, WA 98043

**COVER SHEET**

**ORIGINAL**

**Document Title(s):**

Storm Water Drainage Easement Agreement

**Reference Number(s) of Documents Assigned or Released:**

**Grantor:** Erik L. Bowman and Dulcie Bowman, husband and wife

**Grantee:** Fidalgo Storage, LLC, a Washington limited liability company

**Legal Description:** (abbreviated) The East Half of the West Half of the Southeast Quarter of the Northwest Quarter of the Southwest Quarter of Section 3, Township 34 North, Range 2 East of the Willamette Meridian, except any portion thereof lying within the county road.

**Assessor's Property Tax Parcel/Account Number(s):** P19745

## STORM WATER DRAINAGE EASEMENT AGREEMENT

This STORM WATER DRAINAGE EASEMENT AGREEMENT (“**Agreement**”) is made and entered into this \_\_\_\_\_ day of January, 2009, by Erik L. Bowman and Dulcie Bowman, husband and wife (“**Grantor**”) and FIDALGO STORAGE LLC, a Washington limited liability company (“**Grantee**”).

### RECITALS

WHEREAS, Grantor owns the real property located on Stevenson Road in Anacortes, Washington, 98221 and legally described on Exhibit “A”, attached hereto and incorporated herein by reference (“**Parcel A**”);

WHEREAS, Grantee owns the property commonly known as located on Molly Lane in Anacortes, Washington and legally described on Exhibit “B” attached hereto and incorporated herein by reference (“**Parcel B**”);

WHEREAS, Grantee is constructing improvements on Parcel B;

WHEREAS, Grantor and Grantee desire to establish an easement for purposes of storm water drainage (the “**Easement**”) over, under, through 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, in consideration of the foregoing, 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 EASEMENTS.

Grantor does hereby grant, declare, convey and establish a non-exclusive, perpetual easement over, under, through 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.



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In the future, Grantee hereby agrees to permit Grantor to relocate the Easement Property to another location on Parcel A, provided Grantor agrees to bear the cost of relocating, constructing, reconnecting and any and all permits and approvals for relocating and redesigning the System (described in Section 3 below) in a manner, design, construction and location acceptable to the City of Anacortes and any other governmental entity having jurisdiction over the System such that the new storm water drainage system meets the then current standards and requirements for the proper and legal drainage of storm water from Parcel B; and, provided further, Grantor grants a new easement and obtains any other easements which may be required for such new storm water drainage system in a location acceptable to the City of Anacortes and any other governmental entity having jurisdiction over the System.

3. USE AND PURPOSE.

Grantor hereby establishes the Easement for the purposes of: (a) discharging onto the Easement Property 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, using an open and/or enclosed storm water drainage system (the "System") with all necessary connections and appurtenances thereto, together with the right of ingress and egress from said described property, for the foregoing purposes.

Grantee also grants permission to Grantor to discharge storm water runoff to the System, provided Grantor has obtained all necessary governmental approvals to do so and, further, that if the additional storm water runoff discharged by Grantor into the System requires or necessitates modifications to the System that Grantor shall bear the cost of such modifications.

4. MAINTENANCE OF EASEMENT.

The Easement Property shall be maintained by Grantee and all such costs of maintenance shall be paid by Grantee. However, Grantor shall, promptly upon written notice from Grantee, remove from the Easement Property any obstruction or improvement which prevents or impedes proper maintenance, construction, installation, use or repair of Grantee's System, and all connections and appurtenances thereto. However, Grantor shall not be required to remove any interferences, such as trees, brush or boulders, that are naturally occurring, but Grantee may permanently remove any such naturally occurring interferences at its own expense.

5. RESTRICTIONS.

Grantor shall not build or maintain or allow to be built or maintained any permanent structure, facility or other improvement anywhere over, under, through or across the Easement Property, or otherwise restrict or interfere with Grantee's rights hereunder.



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6. NEIGHBORS.

Grantor and Grantee acknowledge that the System described herein is not located entirely on the Easement Property. Parts of the System are located on the properties of Grantor's neighbors (collectively, the "Neighbors"). Grantor and Grantee agree to use all reasonable efforts to maintain Parcel A and the Easement Property in such a manner as to not restrict or prevent the use, maintenance, repair or replacement of any part of the System located on the Neighbor's properties. Grantor and Grantee further agree to use professional conduct in their dealings with the Neighbors.

7. COVENANTS RUNNING WITH THE LAND.

The Easement is perpetual, intended as a covenant running with the land, and 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 and by Skagit County or any utility company or district using the Easement Property, and recorded with the appropriate authorities.

8. ATTORNEY FEES AND COSTS.

In the event that this Easement becomes the subject of arbitration and/ or litigation between the owners of Parcel A and Parcel B, the prevailing party shall be entitled to be reimbursed by the non-prevailing party for the costs of such action plus reasonable attorney fees.

9. 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 County Mediation & Facilitation Services, located in Mount Vernon, Washington, which mediation shall be confidential, undertaken in good faith by the parties, but non-binding. The parties shall share the costs of the fees of the mediator equally. Mediation shall be held within forty-five (45) days after the party requests mediation in writing of the other. In the event Skagit County Mediation & Facilitation Services is unable or unwilling to act as mediator, the Presiding Judge of the Superior Court for Skagit County, Washington shall appoint the mediator. Neither party shall be entitled to attorneys' fees for participating in mediation.

B. Arbitration. In the event the parties are unable to resolve their dispute via mediation, as provided in section 7(A), all unresolved matters shall be fully and finally resolved by binding arbitration as follows:

i. The arbitrator shall be from Skagit County Mediation & Facilitation Services but shall be someone other than the mediator; provided however, if the presiding Judge of the Skagit County Superior Court



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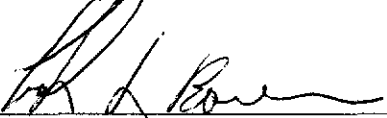
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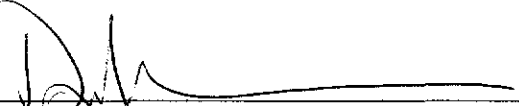
selected the mediator, then the said presiding Judge shall select the arbitrator;

- ii. The arbitrator's costs and fees shall be paid equally by the parties;
- 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 County Mediation & Facilitation 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;
- vi. The prevailing party shall be entitled to recover from the other its actual reasonable attorney's fees incurred therein and costs of arbitration, except as provided in paragraph 7(B)(ii).

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

**GRANTOR, OWNER OF PARCEL A**

  
 BY: Erik L. Bowman

  
 BY: Dulcie Bowman

*Escrow*  
 SKAGIT COUNTY WASHINGTON  
 REAL ESTATE EXCISE TAX

FEB 05 2009

Amount Paid \$ *0*  
 Skagit Co. Treasurer  
 By *MEM* Deputy

**GRANTEE, OWNER OF PARCEL B**

FIDALGO STORAGE, LLC, a Washington limited liability company,  
 BY: Howe Anacortes, LLC, a Washington limited liability company,  
 It's Manager

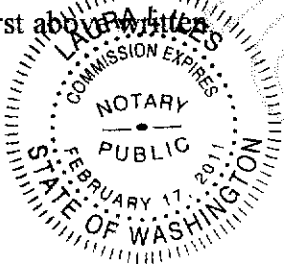
  
 BY: Robert Howe, Managing Member

  
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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

This is to certify that on this 21<sup>st</sup> day of January, 2009, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and qualified, personally appeared Erik L. Bowman, to me known to be party that executed the within and foregoing instrument 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.



Laura L. Iles  
Printed Name: Laura L. Iles  
Notary Public in and for the State of Washington  
Residing at Anacortes  
My appointment expires 2-17-11

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

This is to certify that on this 21<sup>st</sup> day of January, 2009, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and qualified, personally appeared Dulcie Bowman, to me known to be party that executed the within and foregoing instrument 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.



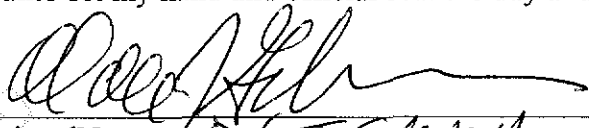
Laura L. Iles  
Printed Name: Laura L. Iles  
Notary Public in and for the State of Washington  
Residing at Anacortes  
My appointment expires 2-17-11



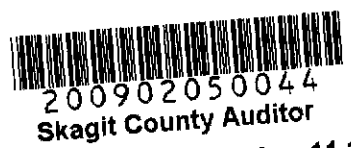
STATE OF WASHINGTON )  
                                  ) *KING* ) ss.  
COUNTY OF ~~SKAGIT~~ )

This is to certify that on this 29<sup>th</sup> 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



**EXHIBIT A**  
**LEGAL DESCRIPTION- PARCEL A**

The East Half of the West Half of the Southeast Quarter of the Northwest Quarter of the Southwest Quarter of Section 3, Township 34 North, Range 2 East of the Willamette Meridian, except any portion thereof lying within the county road.

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 ten (10) feet of the following described tract:

The East Half of the West Half of the Southeast Quarter of the Northwest Quarter of the Southwest Quarter of Section 3, Township 34 North, Range 2 East of the Willamette Meridian, except any portion thereof lying within the county road.

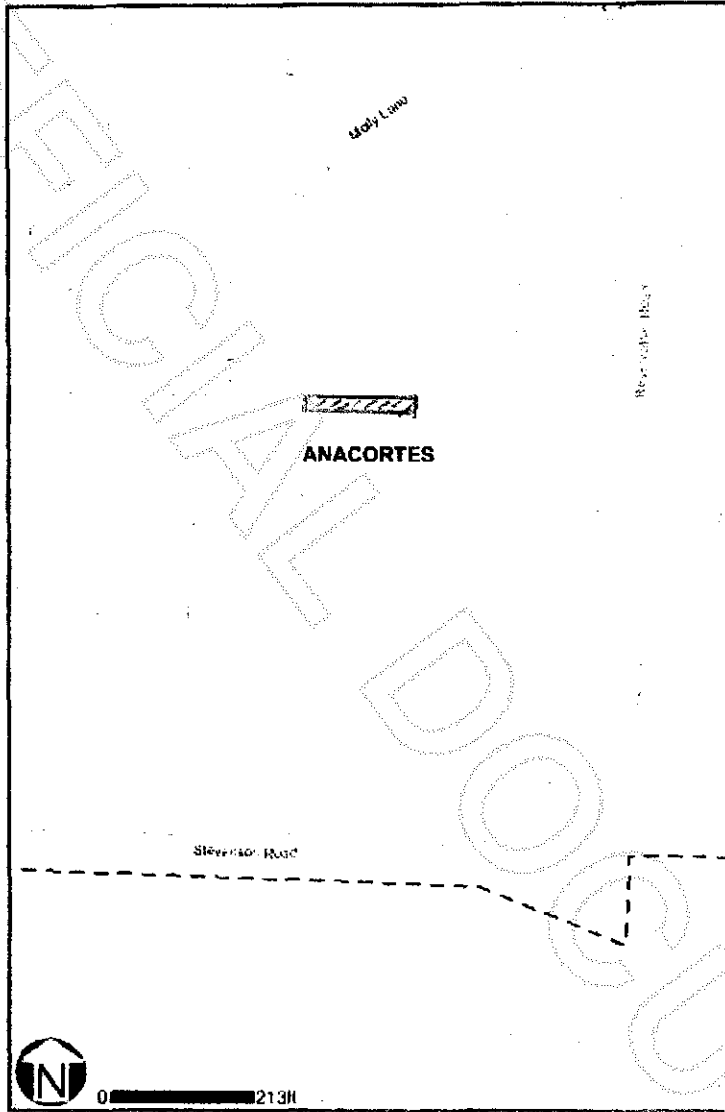
Situated in Skagit County, Washington.



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**EXHIBIT D**  
**DRAWING- EASEMENT PROPERTY**



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