

Recorded Requested by and

When Recorded Mail To:

City of Mount Vernon
PO Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273
Attention: Mount Vernon Public Works Director



200910090077
Skagit County Auditor

10/9/2009 Page 1 of 21 3:25PM

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**FLOOD HAZARD REDUCTION AND PUBLIC TRAIL EASEMENT
AGREEMENT
(City of Mount Vernon/Skagit County Diking District No. 3/REO Family
Properties)
Assessor's Tax Parcel Number(s): Parcel 26644**

Trail Easement

19-34-04 NE

Grantor(s): Skagit County Diking District No. 3; and REO Family Properties, LLC collectively referred to as "Trail Easement Grantors"
Grantee: The City of Mount Vernon or "Trail Easement Grantee"

Flood Hazard Reduction Easement

Grantor: REO Family Properties, LLC or ("Flood Hazard Reduction Easement Grantor")
Grantee: Skagit County Diking District No. 3 ("Flood Hazard Reduction Easement Grantee")

This Flood Hazard Reduction and Trail Easement Agreement ("**Agreement**") is entered into by and between Skagit County **Diking District No. 3**, a special purpose district (hereafter "District" or "Flood Hazard Reduction Easement Grantee" or "Trail Easement Grantor"), the **City of Mount Vernon**, a municipal corporation ("Trail Easement Grantee" or the "City") and **REO Family Properties, LLC**, having an address at 305 Freeway Dr., Mount Vernon, WA 98273 ("Flood Hazard Reduction Easement Grantor", "Trail Easement Grantor" or "REO Family, LLC").

Recitals

A. REO Family Properties, LLC, a Washington limited liability company, and District, holder of an easement by deed recorded under Auditor's File No. 9606110054 are both owners of interest in that certain real property located in the County of Skagit, State of Washington, which is more particularly described in the legal description attached hereto as Exhibit A incorporated herein by this reference (the "**Flood Hazard Reduction Easement Area**").

B. Trail Easement Grantee has completed final design for a downtown flood hazard reduction project ("the Project") consisting of flood walls, stop logs, and levee improvements which will reduce the flood hazard to meet FEMA Flood Insurance Rate Map and national flood insurance program conditions for removing Mount Vernon's historical downtown from the floodplain which has a greater than 1% chance of flooding in any water year and City is acquiring necessary easements to property including the Flood Hazard Reduction Easement Area in order to construct the Project.

C. The Project also calls for a public trail, which is more particularly described in the legal description attached hereto as Exhibit B incorporated herein by this reference (the "**Trail Easement Area**"), within the Flood Hazard Reduction Easement Area which shall be located riverward of the flood wall and stop logs or on top of improved levees and which shall serve as a recreational amenity to the Project attracting economic development.

D. District has entered into an interlocal agreement with the City to permit the City to construct the Project within the Flood Hazard Reduction Easement Area. In return the City will convey land and improvements of the Project flood elements to District upon completion of the Project while City retains non-flood related interests including the public trail subject to the terms of their interlocal agreement.

E. Trail Easement Grantors District and REO Family, LLC desire to grant and Trail Easement Grantee the City desires to obtain a perpetual, non-exclusive easement for public trail passage over, , upon and across the Trail Easement Area.

F. Flood Hazard Reduction Easement Grantor REO Family, LLC desires to grant and Grantee, District desires to obtain a perpetual, exclusive easement for the right to enter upon, over, through, under and across the Flood Hazard Reduction Easement Area to construct, reconstruct, maintain, and repair all flood control works, all appurtenances thereto, included, together with any enlargement or reconstruction thereof, and to trim, cut, fell, and remove all such trees or brush, and other natural growth and obstruction as may be necessary to provide adequate clearance and to eliminate interference with or hazards to the structures, improvements, or utilities placed on, over, or under the Flood Hazard Reduction Easement Area.

Agreement

Section One. Recitals.

The foregoing recitals are incorporated herein as if fully set forth herein.

Section Two. Trail Easement

A. Easement.



200910090077

Skagit County Auditor

Trail Easement Grantors REO Family, LLC and District convey and warrant to Trail Easement Grantee, the City, an easement for public trail passage over, through, upon and across the Trail Easement Area, as legally described on Exhibit "B" attached hereto and incorporated herein by this reference and as shown in the schematic site plan. The Trail Easement shall be subject to terms and conditions expressed here and to any further conditions required by compliance with a Determination of Significance under SEPA Chapter 43.21C RCW or Mitigated Determination of Non-Significance. The Trail Easement is conveyed for the benefit of the Trail Easement Grantee, the Trail Easement Grantee's municipal corporate successors and the public. The Trail Easement shall be revocable for cause by District in the event of Trail Easement Grantee's failure to use good faith efforts regulate and enforce terms and conditions as to purpose, time of use or any limitation to avoid conflict with the diking and drainage use of the Trail Easement. Needs of the District for flood fighting, maintenance and repair, expansion or improvement of the dike or flood damage reduction works and interior drainage of the District shall take priority and temporarily suspend any interest granted to the City when such interest would interfere with any District function. District agrees to notify the City as soon as reasonably possible of its needs in advance except in circumstances justifying emergency use by District in its discretion. In addition to any other remedies to which it is entitled at law or in equity, REO Family Properties, LLC may seek injunctive relief against the Trail Easement Grantee in the event of Trail Easement Grantee's failure to use good faith efforts to regulate and enforce terms and conditions of the Trail Easement as to purpose, time of use or other obligations of Trail Easement Grantee in this Agreement.

B. Scope of Easement- Grantee's Obligations.

For consideration of the conveyance of the Trail Easement Area described in Exhibit "B", Trail Easement Grantee covenants as follows:

1. Use of Trail Easement.

Trail Easement Grantee and the public shall have the right to use the Trail Easement for pedestrian and other non-motorized travel purposes. Motorized use of the Trail Easement shall be prohibited, except when such use is in conjunction with trail construction or maintenance, or in cases requiring emergency evacuation of persons requiring assistance. Notwithstanding the above, Trail Easement Grantee may allow for the use of single-occupant electric wheelchairs on the trail or similar personal ambulatory devices for physically disabled persons. Trail Easement Grantee's use of the Trail Easement shall not extend in any manner to access up and over the slopes of any levee or dike and shall be limited for the purpose of traveling up and over any levee and shall be limited to only the Trail Easement Area and entry at designated points of access.

2. Construction and Maintenance of Trail Easement.

Trail Easement Grantee may delineate and construct a pedestrian trail that is contained within the Trail Easement area, and connected to the City's trail system. In no event shall the trail easement area consist of or include the slopes of a dike nor does Trail Easement



Grantee have access up and over the slopes of a dike except at designated points of access. In the event of the construction of the pedestrian trail, Trail Easement Grantee shall maintain said trail for its intended purpose; provided, that nothing herein shall require Trail Easement Grantors to undertake or perform any particular construction of the trail, or prevent the Trail Easement Grantor District from making improvements to the Trail Easement premises for Diking or flood damage reduction purposes. Trail Easement Grantee shall prepare plans and specifications for the construction of the same and submit same to District's approval which shall not be denied without good cause. Good cause includes but is not limited to plans or specifications that allow a trail which occupies more than the Trail Easement Area or threatens the capacity of the local sponsor to manage flood control works maintenance in keeping with standards published by the U S Army Corps of Engineers, Federal Emergency Management Agency or other agencies with jurisdiction over District or the Trail Easement Area. No construction activity shall commence until said plans and specifications are approved by District. District shall either approve of said plans or reject stating the grounds thereof of said plans within forty-five (45) days of submission by the City. Trail Easement Grantee shall pay for construction and maintenance of the trail including the installation and maintenance of fencing and one secured access point that consists of approximately six net feet of aluminum security picket fence with anti-climb finial integrated within the flood wall on the landward side of the flood structure; provided however, that any fencing or access shall comply with all applicable PL-84-99 eligibility requirements and engineering manuals and applicable FEMA standards as now or hereafter amended in order to receive recognition from FEMA that the Project provides a level of protection sufficient to be remove the area landward of the Project from a Special Flood Hazard Area FEMA delineation- currently set at one hundred year flood protection. During construction, the City agrees to erect temporary fencing in a location landward of the flood easement subject to agreement among the Parties. The City shall have sole discretion in final design and integration of any fencing, gating, and access points within the flood project. Fencing, gating, and access points shall only be allowed upon explicit approval from District which shall review such requests according to all applicable PL-84-99 eligibility requirements and engineering manuals. The City and District shall have the right to enter and utilize the secured access for flood or trail related purposes including possession of any keys, codes or other security measures REO Family, LLC may seek as a means of securing access, but in no event shall the City or the District allow access to such area to members of the public or any person whose presence is not necessary for City or District function. As long as the trail is used for trail purposes, the Trail Easement Grantee will maintain the trail in a condition that allows this use and that does not cause adverse impacts on the levee, floodwall, stop logs, sandbags and other flood works within the Flood Hazard Reduction Easement Area and its interior drainage. Trail Easement Grantee, upon approval of District, which shall not be withheld without good cause, may erect or post signage in the Trail Easement Area relating to the trail and/or its use, provided that the signage will include a flood hazard warning which tells users that they must vacate the trail when the Skagit River reaches or exceeds flood stage as determined by appropriate public officials or Department of Emergency Management subject to liability for trespass and arrest in the event of refusal to comply with emergency incident commander instructions. All work on portions of the trail within the Trail Easement



Area, including all construction, operation, and maintenance activities, shall be conducted in accordance with the trail easement. The trail will be constructed in a manner that creates and maintains a drivable surface. District shall have complete access for ingress and egress over said trail and drivable surface in order to carry out its purposes and functions including but not limited to use by any District equipment, contractors, cooperating agencies, and volunteers when necessary for carrying out its inspection, construction, operation, and maintenance functions.

3. Monitoring of Trail Easement.

Trail Easement Grantee and its designated personnel shall monitor the use of the trail and shall take reasonable action to prohibit, prevent and discourage unauthorized use by means including but not limited to user education, arrest, detention, citation, seizure of unauthorized motor vehicles and their operators when encroachment or trespass on a levee slope or damage to flood hazard reduction works occurs. For areas within and adjoining, but outside the Trail Easement, littering, dumping, destruction of vegetation including vegetation covering a levee slope, unlawful use of alcohol or drugs, loitering or any interference with District functions shall be monitored and controlled actively by the Trail Easement Grantee.

In conjunction with the public's use of the Trail Easement, Trail Easement Grantee shall cooperate with Trail Easement Grantors in establishing and enforcing reasonable hours of use of the Trail Easement; provided, however, that nothing herein shall be considered as requiring Trail Easement Grantee to establish and enforce rules of use which are inconsistent with or impermissible under the City of Mount Vernon's Municipal Code, or ordinances and/or other regulations, state or federal law pertaining to the use of trails.. Nothing in this agreement shall impair or interfere with performance of the diking function of the District. Trail Easement Grantee's exercise of its police powers in adopting, establishing or enforcing any rule or ordinance regarding use of public ways, such as sidewalks, nature paths, shall not obstruct use of the Trail Easement by District personnel monitoring conditions relative to construction, maintenance, and operation of the levee.

4. Right of Ingress/Egress.

Trail Easement Grantee shall have the right, without notice and without the institution of any suit or proceeding at law or equity, at all times as may be necessary to enter the Trail Easement Area for purposes of repairing, maintaining and monitoring the trail; provided however, Trail Easement Grantee's right to access shall be subordinate to the needs of the District for flood fighting, maintenance and repair, expansion or improvement of the dike and interior drainage. In the event of any conflict, District's needs shall take priority and may temporarily suspend any rights of access granted to the City when such interest would interfere with any District function. Trail Easement Grantee shall not access the Trail Easement from any portion of REO Family, LLC real property that is not contained within the Trail Easement unless such access is permitted by existing or future flood damage reduction easements.



C. District's Use of Trail Easement.

The Trail Easement shall not in any way impair the Districts use of the Trail Easement Area necessary for carrying out its purpose and functions required for emergencies, repairs, rebuilding and maintenance to the any flood hazard reduction work, as it is now, or as it may be built to meet higher standards of flood protection (the "Permitted Work"). Any damage or destruction to the trail as a result of the Districts carrying out its purposes and functions in operating, constructing reconstructing or maintaining the dike or flood damage reduction works shall be at the sole cost and expense of the Trail Easement Grantee and shall not impose any liability on the District barring damages that occur as a result of District's negligence. Unless required in the event of emergency, or construction disclosed in advance, the District shall not construct, install or place any permanent structure or obstruction of any kind, including fences and gates, over upon, or within the Trail Easement Area, without approval by the Trail Easement Grantee which shall not be denied absent good cause. All parties to this Agreement agree that nothing in the Flood Damage Reduction Works and Trail Easement agreement shall limit the work to repair, replace, maintain or use of the Flood Damage Reduction Easement Area or Trail Easement Area to fight floods or impair District's ability to perform its duties under the Rehabilitation and Inspection Program, as a local sponsor or eligibility for any federal program including the Flood Control and Coastal Emergency Act (P.L. 84-99 and as amended 33 USC 701n) and the Stafford Disaster and Emergency Assistance Act (P.L. 93-288 and as amended). All parties acknowledge that time is of the essence in the contracting process, and that no relocation liability for trail improvements is assumed by District for the benefit of Trail Easement Grantee, or the public. If building a new project or new flood control work requires destruction of any trail improvements which have been made by the Trail Easement Grantee, then Trail Easement Grantee shall be entitled to recover the fair market value of its interest in the property in the event any new flood control work or new project results in extinguishing or reducing the fair market value of Trail easement Grantee's interest.

D. Default/Remedies

1. Notice/Opportunity to Cure.

If any party (the "Claimant") determines that the other party (the "Breaching Party") is in violation of the terms and covenants in the Agreement or that a violation is threatened, the Claimant shall deliver written notice to the Breaching Party of such violation and demand corrective action sufficient to cure the violation and, where the violation involves damage to the Trail Easement Area, to restore the portion of the Trail Easement Area so damaged unless Paragraph C above of this Agreement applies. If the Breaching Party fails to cure the violation within thirty (30) days after receipt of the notice from the Claimant, or under circumstances where the violation cannot be reasonably cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period and to thereafter diligently pursue such cure to completion, the Claimant may



bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Trail Easement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Trail Easement or by reason of injury to the Trail Easement Area, to require the restoration of the Trail Easement Area to the condition that existed before the damage and to pursue any other remedies provided in this Trail Easement or available at law or in equity. Nothing in this provision prevents any party from taking immediate action to protect the public including but not limited to the removal of unauthorized persons and property from the Trail Easement Area.

2. Costs Advanced by Claimant.

Without limiting the Breaching Party's liability for a violation of the Trail Easement, Claimant, in its sole discretion, may apply any damages recovered to the cost of undertaking corrective action which restores the Trail Easement Area for safe use. If Claimant, in its sole discretion, determines that circumstances require immediate corrective action to prevent injury or mitigate significant damage to or inconvenience to the public using the Trail Easement Area, the Claimant may take such immediate corrective action as it deems appropriate and may pursue its remedies under this paragraph without prior notice to the Breaching Party and without waiting for the period provided for cure to expire. Corrective action shall not change the design characteristics or specifications for construction and maintenance of the dike. or permanently modify points of access used by pedestrians or equipment.

E. Judicial Termination of Easement/Condemnation.

1. The Trail Easement constitutes a subordinated real property interest vested in Trail Easement Grantee. If circumstances arise in the future that render the purpose of the easement impossible to accomplish, notwithstanding compliance with all conditions of the Trail Easement by Trail Easement Grantee, or in the event of condemnation or other exercise of eminent domain by any governmental authority or by voluntary transfer in lieu thereof (collectively "Condemnation") and if by reason of such Condemnation continued use of the Trail Easement for its intended purposes is rendered impossible or impracticable, the Trail Easement may be terminated or extinguished in whole or in part, but only by judicial proceedings in a court of competent jurisdiction. If all or any portion of the Trail Easement Area is taken or lost in Condemnation, then Trail Easement Grantee and Trail Easement Grantors shall share the proceeds from such Condemnation sale, in proportion to their respective interests, as determined by a fair market value appraisal or as otherwise agreed to by the parties.

2. If all or any portion of the Trail Easement Area is taken by Condemnation, the Trail Easement Grantors and Trail Easement Grantee shall act jointly to recover the full fair market value of the portion of the Trail Easement Area so taken or acquired, together with all direct and incidental costs and damages resulting from the taking. All



expenses reasonably incurred by Trail Easement Grantors and Trail Easement Grantee in connection with such taking or voluntary transfer will be reimbursed to them, respectively, out of the amount recovered except appraisal fees and expert consulting fees for the exclusive benefit of one party.

Section Three. Flood Hazard Reduction Easement.

A. Flood and Vegetation Free Easement.

1. Flood Easement.

Flood Hazard Reduction Easement Grantor REO Family, LLC conveys and warrants to Flood Hazard Reduction Easement Grantee, District, a perpetual, exclusive easement for the right to enter upon, over, through, under and across the Flood Hazard Reduction Easement Area set forth in Exhibit "A" to construct, reconstruct, maintain, and repair all flood control works, and all appurtenances thereto, together with any enlargement or reconstruction thereof, and to trim, cut, fell, and remove all such trees or brush, and other natural growth and obstruction as may be necessary to provide adequate clearance and to eliminate interference with or reduce hazards to the structures, improvements, or utilities placed on, over, or under the Flood Hazard Reduction Area.

2. Vegetation Free Easement

Flood Hazard Reduction Easement Grantor REO Family LLC conveys and warrants to Flood Hazard Reduction Easement Grantee, District, a perpetual, exclusive vegetation free easement for the right to enter upon, over, through, under and across the Vegetation Free Zone Easement Area identified in Exhibit "A" and legally described in Exhibit "C" to trim, cut, fell, and remove all such trees or brush, and other natural growth and obstruction as may be necessary to provide adequate clearance and to eliminate interference with inspection, operation and maintenance, or hazards to the structures, improvements, or utilities placed on, over, or under the Flood Hazard Reduction Area, and this Vegetation Free Easement shall not be used for any temporary or permanent structure which interferes with the floodwall or flood hazard reduction work of the District.

B. Scope of Use.

The scope of use of the Flood Hazard Reduction Easement Area is as follows:

1. Use of Flood Hazard Reduction Easement.



It is understood and agreed that Flood Hazard Reduction Easement Grantee, District shall have the right assign or convey the Flood Hazard Reduction Easement defined as consisting of both the Flood Easement and the Vegetation Free Easement to the City in accordance with any terms set forth in agreements made between District and the City or other third party. It is further understood and agreed that either District or the City, their contractors, or agents shall have the right to appropriate from the land within the Flood Hazard Reduction Easement Area such vegetation, trees, rocks, earth, or gravel as may be necessary for the construction, maintenance, or repair of the riverbank and construction, reconstruction, maintenance or repair of any flood control works. As an appurtenance to the Flood Hazard Reduction Easement, Grantor, REO Family, LLC grants to Flood Hazard Reduction Easement Grantee, District, and the City or its agents and contractors a two-year right of entry over contiguous lands owned by REO Family, LLC to commence as of the Effective Date as defined in Section 10 of this Agreement as the parties expect the construction of a flood control work and potential bank improvements to commence within that period.

2. Right of Ingress/Egress.

Flood Hazard Reduction Easement Grantee shall have the right, without notice and without the institution of any suit or proceeding at law or equity, at all times as may be necessary to enter the Flood Hazard Reduction Easement Area for purposes of repairing, maintaining, constructing, reconstructing, inspecting, and monitoring all flood hazard reduction works . and the Vegetation Easement Area to trim, cut, fell, and remove all such trees or brush, and other natural growth and obstruction as may be necessary to provide adequate clearance and to eliminate interference with or hazards to the structures, improvements, or utilities placed on, over, or under the Flood Hazard Reduction Area. Flood Hazard Reduction Easement Grantee's right to access for flood fighting, construction, reconstruction, maintenance and repair, expansion or improvement of the dike or other flood control works and interior drainage of the District shall be superior to the needs of the City's Trails Easement. In the event of any conflict, District's needs shall take priority and may temporarily suspend any rights of access granted to the City when such interest would interfere with any District function.

C. Judicial Termination of Easement/Condemnation.

1. The Flood Hazard Reduction Easement constitutes a real property interest vested in Flood Hazard Reduction Easement Grantee. If circumstances arise in the future that render the purpose of the easement impossible to accomplish, notwithstanding compliance with all conditions of the Flood Hazard Reduction Easement by Grantee, or in the event of condemnation or other exercise of eminent domain by any governmental authority or by voluntary transfer in lieu thereof (collectively "Condemnation") and if by reason of such Condemnation continued use of the Flood Hazard Reduction Easement for its intended purposes is rendered impossible or impracticable, the Flood Hazard Reduction Easement may be terminated or extinguished in whole or in part, but only by



judicial proceedings in a court of competent jurisdiction. If all or any portion of the Flood Hazard Reduction Easement Area is taken or lost in Condemnation, then Flood Hazard Reduction Easement Grantee and Flood Hazard Reduction Easement Grantor shall share the proceeds from such Condemnation sale, in proportion to their respective interests, as determined by a fair market value appraisal or as otherwise agreed to by the parties.

2 If all or any portion of the Flood Hazard Reduction Easement Area or Vegetation Free Zone Easement Area is taken by Condemnation, the Flood Hazard Reduction Easement Grantor and Grantee shall act jointly to recover the full fair market value of the portion of the Flood Hazard Reduction Easement Area so taken or acquired, together with all direct and incidental costs and damages resulting from the taking. All expenses reasonably incurred by Flood Hazard Reduction Easement Grantor and Grantee in connection with such taking or voluntary transfer will be reimbursed to them, respectively, out of the amount recovered except appraisal fees and expert consulting fees for the exclusive benefit of one party

Section Four. Mutual Indemnification.

A. Trail Easement

Notwithstanding its limitation of liability statutorily provided pursuant to RCW 4.24.200; RCW 4.24.210, Trail Easement Grantee, the City agrees to defend, indemnify and hold Trail Easement Grantors District and REO Family LLC harmless from any and all claims, causes of action, damages, liability and expenses, including reasonable attorney's fees arising out of or resulting from: (a) use of the trail or Trail Easement Area by Grantee and/or public; (b) the acts or omissions of the Trail Easement Grantee and or its officials, agents, contractors or employees in exercising any of the rights or obligations set forth within the Trail Easement Area; and/or (c) the creation by Trail Easement Grantee or its employees or agents of conditions within the Trail Easement Area that results in an actual or alleged violation of any federal, state, or local environmental law in any way affecting, involving or relating to the Easement Area; provided, that Trail Easement Grantee's indemnification obligations hereunder shall not extend to claims, damages, liabilities or expenses resulting from or attributable to Trail Easement Grantors negligence or intentional misconduct or third party negligence or intentional misconduct.

District agrees to indemnify, defend and hold Trail Easement Grantee harmless from any and all claims, damages, liability and expenses, including reasonable attorney's fees, arising out of or resulting from (a) any Permitted Work (as defined in Section Two Paragraph C), construction, maintenance, pruning or improvement by Trail Easement Grantor District or District's employees, agents, contractors, subcontractors, or officials on or adjacent to the Trail Easement; (b) the breach of Trail Easement Grantors of any covenant in this Trail Easement; and/or (c) the actual or alleged violation of any federal, state, or local environmental law by any person, in any way affecting, involving or relating to Trail Easement Grantor's property interest; provided, that Trail Easement



Grantor's indemnification obligations hereunder shall not extend to claims, damages, liabilities or expenses resulting from or attributable to Trail Easement Grantee's negligence or intentional misconduct.

B. Flood Hazard Reduction Easement

It is understood that the Flood Hazard Reduction Easement is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture is formed as a result of this Agreement. Each Party hereto agrees to be responsible and to assume liability for its own acts and omissions, and those of its elected officials, officers, agents, employees or volunteers to the fullest extent required by law and agrees to save, indemnify, defend and hold the other Party harmless from any such liability. In the case of negligence of more than one Party, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each Party; and each Party shall have the right to seek contribution from the other Party in proportion to the percentage of negligence attributable to each Party.

C. No Special Duty or Waiver Created

The Parties stipulate that while any flood hazard reduction work including the Project is intended to mitigate potential harm from flooding, the Parties have no control over the nature or severity of flooding. This Agreement shall not serve or be construed to create any specific promise, or warranty, of flood control or protection against all flood risk. This Agreement shall not be construed to induce any detrimental reliance by a party on construction, repair, and maintenance of any flood hazard reduction works. The parties to this Agreement make no indemnification, and do not waive any immunity a party may have under the state, federal or other applicable law including the doctrines of common enemy and public duty. This Agreement shall not serve to create a special relationship, identify or protect a particular class of persons that are owed a special duty of care, or constitute a promise or assurance that the City or District shall provide a greater duty or special duty or gratuitously assume a duty in its emergency response beyond the general directive to protect the public peace, health and safety, and to preserve the lives and property of the people of the state.

Section Five. Notices.

Any notices, demand, request, consent, approval, or communication that either party desires, is required or permitted to give to the other party pursuant to this Trail Easement (collectively, "Communications") shall be in writing and delivered either in person, by private courier or process server, or by certified US mail (postage prepaid) to the address of the receiving party stated in the opening paragraph of this Trail Easement, or to such other address as either party may from time to time designate by written notice to the other. The initial contact information for the respective parties is as follows:

Diking District No. 3

City of Mount Vernon



Skagit County Diking District No. 3
PO Box 324
Conway, WA 98238

With copies to:

Gary Jones, Attorney for District 3
415 Pine Street
Mount Vernon, WA 98273

REO Family Properties, LLC

Randall J. Olson
REO Family Properties
305 Freeway Drive
Mount Vernon, WA 98273

Mount Vernon City Parks Director:
Larry Otos
PO Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273

With copies to:

Kevin Rogerson, City Attorney
PO Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273

SKAGIT COUNTY ASSAULTED
BY ESTATE EXCISE TAX

NOV 10 2009
RECORDED
BY CLERK OF SUPERIOR COURT
CLERK OF SUPERIOR COURT

Section Six. Covenant Running with the Land.

The Flood Hazard Reduction Works and Public Trail Easement Agreement all easements, covenants, terms and conditions contained herein are intended to and shall run with the land and shall be binding upon Grantors and Grantees and their respective successors, heirs and assigns.

Section Seven. Venue and Choice of Law. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the laws of the State of Washington.

Section Eight. Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement is declared severable.

Section Nine. Counterparts. The Parties may execute this Flood Hazard Reduction Works and Public Trail Easement Agreement in one or more counterparts; provided, that all counterparts shall be regarded as one integrated document. Each counterpart shall be deemed an original instrument as against any party who has signed it.

Section Ten. Effective Date. For the purposes of this Agreement, the date on which the last party executes this Agreement and delivers it to the City to be recorded shall hereinafter be the "Effective Date."



STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify on this 8th day of Oct., 2008, that I know or have satisfactory evidence that before me personally appeared Dave & Son Builders and Darin Morrison to me known, respectively, to be the Commissioners of Diking District No. 3, the municipal corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Given under my hand and official seal the day and year last above written.



Gary T. Jones
NOTARY PUBLIC in and for the State of
Washington, residing at Mountain View
My Commission Expires: 3/10/2010

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify on this ___ day of _____, 2008, that I know or have satisfactory evidence that before me personally appeared Randall J. Olson, to me known to be the Manager of REO Family Properties, LLC, that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said company.

Given under my hand and official seal the day and year last above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission Expires: _____



200910090077
Skagit County Auditor

Section Eleven. Dedication. At any time after execution of this Agreement, REO Family, LLC may dedicate all or any portion of REO Family, LLC's interest in the real property constituting the Trail Easement Area to Trail Easement Grantee and Trail Easement Grantee shall accept any such dedication.

DIKING DISTRICT NO. 3
A Washington Municipal Corporation

CITY OF MOUNT VERNON
A Washington Municipal Corporation

By: _____
_____, Commissioner

By: _____
Bud Norris, Mayor

Dated: _____

Dated: _____

By: _____
_____, Commissioner

Attest: _____
Alicia D. Hushcka, Finance Director

Dated: _____

Dated: _____

By: _____
_____, Commissioner

Approved as to Form:

Kevin Rogerson, City Attorney

Dated: _____

REO FAMILY PROPERTIES, LLC
A Washington Limited Liability Company

By: *Randall Olson*
Randall Olson, Manager

Dated: *Sept 30, 2009*



200910090077

Skagit County Auditor

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify on this ___ day of _____, 2009, that I know or have satisfactory evidence that before me personally appeared _____, _____, and _____ to me known, respectively, to be the Commissioners of Diking District No. 3, the municipal corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Given under my hand and official seal the day and year last above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify on this 30th day of September, 2009, that I know or have satisfactory evidence that before me personally appeared Randall J. Olson, to me known to be the Manager of REO Family Properties, LLC, that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said company.

Given under my hand and official seal the day and year last above written.



Virginia S. Voigt
NOTARY PUBLIC in and for the State of
Washington, residing at Mount Vernon, Wa
My Commission Expires: 6/1/13



200910090077
Skagit County Auditor

Easement Agreement Paç

**LEGAL DESCRIPTION
FLOOD PROJECT EASEMENT – PARCEL "A":**

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 34 NORTH, RANGE 04 EAST, W.M., CITY OF MOUNT VERNON, SKAGIT COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF PARCEL "A", AS RECORDED UNDER AUDITOR'S FILE No.9607020044, IN VOLUME 18 OF SURVEYS, PAGES 118 AND 119, RECORDS OF SKAGIT COUNTY, WASHINGTON.

THENCE NORTH 88-24-47 WEST, A DISTANCE OF 43.29 FEET; THENCE SOUTH 04-06-25 EAST, A DISTANCE OF 33.31 FEET; THENCE SOUTH 12-47-59 EAST, A DISTANCE OF 170.73 FEET; THENCE SOUTH 08-20-06 EAST, A DISTANCE OF 126.08 FEET; THENCE SOUTH 05-32-06 EAST, A DISTANCE OF 52.71 FEET TO THE INTERSECTION WITH THE NORTH LINE OF A STATUTORY WARRANTY DEED TO SKAGIT COUNTY DIKING DISTRICT No.3, AS RECORDED UNDER AUDITOR'S FILE No. 8011170032, RECORDS OF SKAGIT COUNTY, WASHINGTON; THENCE SOUTH 88-24-47 EAST, ALONG THE NORTH LINE THEREOF, A DISTANCE OF 45.50 FEET TO THE INTERSECTION OF A POINT ON A CURVE TO THE LEFT WHENCE THE CENTER BEARS SOUTH 84-00-19 WEST, A DISTANCE OF 506.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02-41-11, AN ARC LENGTH OF 23.72 FEET TO THE POINT OF TANGENCY; THENCE NORTH 08-40-52 WEST, A DISTANCE OF 151.24 FEET; THENCE NORTH 10-36-22 WEST, A DISTANCE OF 207.45 FEET TO THE NORTH LINE OF SAID PARCEL "A"; THENCE NORTH 88-24-47 WEST, ALONG THE NORTH LINE THEREOF, A DISTANCE OF 1.74 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 16,725 SQUARE FEET, OR \pm 0.384 ACRES, MORE OR LESS.

EXHIBIT A



04/23/09



200910090077
Skagit County Auditor

LEGAL DESCRIPTION
TRAIL EASEMENT – PARCEL "A":

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 34 NORTH, RANGE 04 EAST, W.M., CITY OF MOUNT VERNON, SKAGIT COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL "A", AS RECORDED UNDER AUDITOR'S FILE No.9607020044, IN VOLUME 18 OF SURVEYS, PAGES 118 AND 119, RECORDS OF SKAGIT COUNTY, WASHINGTON; THENCE NORTH 88-24-47 WEST, A DISTANCE OF 4.40 FEET TO THE TRUE POINT OF BEGINNING;

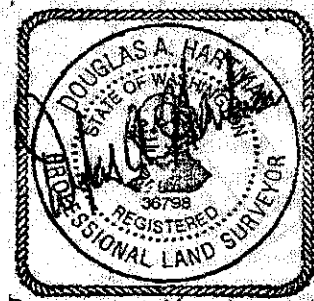
THENCE CONTINUING NORTH 88-24-47 WEST, A DISTANCE OF 16.37 FEET; THENCE SOUTH 10-36-22 EAST, A DISTANCE OF 211.83 FEET; THENCE SOUTH 08-40-52 EAST, A DISTANCE OF 164.50 FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT WHENCE THE CENTER BEARS SOUTH 81-19-08 WEST, A DISTANCE OF 500.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00-42-34, AN ARC LENGTH OF 6.19 FEET TO THE INTERSECTION WITH THE NORTH LINE OF A STATUTORY WARRANTY DEED TO SKAGIT COUNTY DIKING DISTRICT No.3, AS RECORDED UNDER AUDITOR'S FILE No. 8011170032, RECORDS OF SKAGIT COUNTY, WASHINGTON; THENCE SOUTH 88-24-47 EAST, ALONG SAID NORTH LINE, A DISTANCE OF 15.78 FEET TO THE INTERSECTION WITH A POINT ON A CURVE TO THE LEFT WHENCE THE CENTER BEARS SOUTH 83-54-49 WEST, A DISTANCE OF 500.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02-35-41, AN ARC LENGTH OF 22.64 FEET TO THE POINT OF TANGENCY; THENCE NORTH 08-40-52 WEST, A DISTANCE OF 151.13 FEET; THENCE NORTH 10-36-22 WEST, A DISTANCE OF 208.64 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 6,116 SQUARE FEET, OR ± 0.140 ACRES, MORE OR LESS.

EXHIBIT B



200910090077
Skagit County Auditor



LEGAL DESCRIPTION
VEGETATION FREE ZONE – PARCEL "A":

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 34 NORTH, RANGE 04 EAST, W.M., CITY OF MOUNT VERNON, SKAGIT COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL "A", AS RECORDED UNDER AUDITOR'S FILE No.9607020044, IN VOLUME 18 OF SURVEYS, PAGES 118 AND 119, RECORDS OF SKAGIT COUNTY, WASHINGTON; THENCE SOUTH 88-24-47 EAST, ALONG THE NORTH LINE THEREOF, A DISTANCE OF 1.74 FEET TO THE TRUE POINT OF BEGINNING.

THENCE CONTINUING SOUTH 88-24-47 EAST, ALONG THE NORTH LINE THEREOF, A DISTANCE OF 10.23 FEET; THENCE SOUTH 10-36-22 EAST, A DISTANCE OF 205.46 FEET; THENCE SOUTH 08-40-52 EAST, A DISTANCE OF 151.40 FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT WHENCE THE CENTER BEARS SOUTH 81-19-08 WEST, A DISTANCE OF 516.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02-50-03, AN ARC LENGTH OF 25.52 FEET TO THE INTERSECTION WITH THE NORTH LINE OF A STATUTORY WARRANTY DEED TO SKAGIT COUNTY DIKING DISTRICT No.3, AS RECORDED UNDER AUDITOR'S FILE No. 8011170032, RECORDS OF SKAGIT COUNTY, WASHINGTON; THENCE NORTH 88-24-47 WEST, ALONG THE NORTH LINE THEREOF, A DISTANCE OF 10.09 FEET TO THE INTERSECTION OF A POINT ON A CURVE TO THE LEFT WHENCE THE CENTER BEARS SOUTH 84-00-19 WEST, A DISTANCE OF 506.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02-41-11, AN ARC LENGTH OF 23.72 FEET TO THE POINT OF TANGENCY; THENCE NORTH 08-40-52 WEST, A DISTANCE OF 151.24 FEET; THENCE NORTH 10-36-22 WEST, A DISTANCE OF 207.45 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 3,824 SQUARE FEET, OR ± 0.088 ACRES, MORE OR LESS.



200910090077
Skagit County Auditor

10/9/2009 Page 21 of 21 3:25PM

EXHIBIT C



07/01/09