

ABC

RETURN TO:

**LAW OFFICE**  
of

BRADFORD E. FURLONG, P.S.  
825 CLEVELAND AVENUE  
MOUNT VERNON, WASHINGTON 98273  
(360) 336-6508

Document Title: Rights of First Offer and First Refusal Agreement  
and Grant of Option

Reference number of documents assigned or released: N/A

Grantor(s): RYAY, LLC

Grantee(s): Shared Healthcare Systems (d/b/a SHS.com)

Partial Legal Description (full legal description on Exhibit 1 attached):

Ptn of Lot 2 Short Plat No. ANA-98-003 Vol 14 of Short Plats, pgs 5 & 6 AFN 9902170072

Assessor's Parcel/Tax I.D. Number: 350219-0-040-0008/P32948



200104040039

, Skagit County Auditor

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**RIGHTS OF FIRST OFFER  
AND FIRST REFUSAL AGREEMENT  
and  
GRANT OF OPTION**

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**THIS AGREEMENT and GRANT** is made this 29<sup>th</sup> day of March 2001, by and between the Shared Healthcare Systems, Inc. (d/b/a SHS.com), a Delaware corporation (hereinafter referred to as the "Optionee" and/or "Grantee"), and RYAY, L.L.C., a Washington Limited Liability Company (hereinafter referred to as the "Optionor" and/or "Grantor").

1. **Property:** The Property subject to this Right of First Offer and First Refusal/Option Agreement are all improvements owned by Optionor located on or under the premises legally described in Exhibit 1 hereto (the "Property").

2. **Consideration:** Consideration for this agreement is the sliding rental rate agreed to by Optionee in the Lease Agreement executed on even date ("Lease"), the adequacy and sufficiency of which are acknowledged by Optionor.

**RIGHTS OF FIRST OFFER and FIRST REFUSAL**

3. **Right of First Offer:** Should Grantor decide to sell the Property, Grantor shall first, in writing, offer the Property for sale to Grantee. Throughout this agreement, the word "sell" shall include any transfer or conveyance of all or any portion of the Property or Grantor's interest in the Property, except for a conveyance or transfer by gift, bequest, inheritance or hypothecation, mortgage or pledge as security. Grantor and Grantee shall attempt in good faith to negotiate a purchase and sale agreement for no less than thirty days from the date of written notice from Grantor. If no such agreement is reached after such thirty days, Grantor may list the improvements for sale to third persons subject to Grantee's rights of first refusal and the option otherwise set forth herein and the Lease between Grantor and Grantee.

4. **Grant of Right of First Refusal:** Grantor shall not sell or agree to sell any or all of the Property described in Exhibit 1 without first offering any or all of the Property for sale to Grantee. The word "sell" shall include any transfer or conveyance of all or any portion of the



Property or Grantor's interest in the Property, except for a conveyance or transfer by gift, bequest, inheritance or hypothecation, mortgage or pledge as security.

5. **Notice of Exception:** Prior to the occurrence of a conveyance or transfer by gift, bequest, inheritance or hypothecation, mortgage or pledge as security, Grantor shall provide to Grantee notice thereof together with a declaration or affidavit describing the event to establish that an exception contained in Paragraph No. 3 applies. Such declaration or affidavit shall be delivered pursuant to Paragraph No. 29 below and shall be deemed conclusive on their face for both parties. The Grantee shall be deemed to have conclusively agreed that an exception as set forth in Paragraph No. 3 has been met unless it provides to Grantor within five (5) days of its receipt of the aforementioned declaration or affidavit its notice of the Grantee's position that the declaration or affidavit does not meet any of the exceptions set forth above.

6. **Offer Prior to Sale - Notice:** Before Grantor sells or agrees to sell any or all of the Property, Grantor shall first offer to sell said portion of the Property to Grantee. Such offer shall be in writing and on terms and conditions substantially identical to those proposed for the sale of the Property to the third party. Upon receipt of a bona fide offer to purchase, including an option to purchase the Property from a third party, Grantor shall, within seven (7) days forward to Grantee, via certified mail, return receipt requested, a written copy ("Notice of Offer") of the actual offer.

7. **Content of Notice:** The Notice of Offer shall, at a minimum, include the following information:

- a. the purchase price proposed for the sale to the third party;
- b. the method of purchase price payment;
- c. the amount and terms of any proposed Grantor financing in connection with the proposed purchase;
- d. the amount of any earnest money deposit;
- e. the time and location for the close of escrow;
- f. the name, telephone number and business address of the proposed purchaser; and
- g. any other material terms and conditions of the proposed sale of the Property. A copy of the third party purchase and sale agreement shall accompany the Notice of Offer.

8. **Grantee's Response:** Grantee shall have fifteen (15) days ("Acceptance Period") from the date of receipt from Grantor of either the Notice of Offer or all of the required documentation, whichever occurs last, in which to accept Grantor's offer. Acceptance shall be made by delivering to Grantor a letter of acceptance in writing on or before 5:00 pm. on the last day of the Acceptance Period. If Grantee fails to accept the offer on or before the last day of the Acceptance Period, the offer shall be deemed rejected.

9. **Counteroffer:** During the Acceptance Period, Grantee may propose one or more counteroffers to the Grantor. None of these counteroffers shall terminate or shorten the Acceptance Period.

10. **Provisions Applying to Sale to Grantee:** If Grantee gives notice that it will accept Grantor's offer, then Paragraphs 13 through 30 shall apply with those provisions applicable to Grantor and Grantee to Grantor and Grantee respectively, except that the closing date, set forth in Paragraph 7, shall be within sixty (60) days of "acceptance by Grantee."

11. **Term:** Grantee's right of first offer and first refusal shall begin with the date of this Agreement and continue until waived or exercised. Grantee's failure to exercise either right shall not terminate the right in the future.

## GRANT OF OPTION

12. **Right to Purchase:** Optionor hereby conveys and grants to Optionee the right to purchase all improvements on or within the premises set forth in Exhibit 1 on the Seventh Anniversary of the Commencement Date ("Seventh Anniversary") of the Lease on the following terms and conditions:

a. **Exercise of Option on Seventh Anniversary:** Optionee may exercise its option by giving written notice thereof to Optionor at any time prior to or upon the Seventh Anniversary date. Upon such notice, the parties shall agree to and hire appraisers within thirty (30) days of the notice pursuant to Paragraph 3(b) of the Lease. The appraisal shall be completed within ninety (90) days of the notice.

b. **Purchase Price:** The purchase price on the Seventh Anniversary shall be determined by:

i. an appraisal of fair market value of the improvements completed pursuant to Paragraph 3(b) of the Lease; or

ii. an amount equal to the full Project costs incurred by Optionor (as defined in the Lease), plus three percent (3%) per year for the first five (5)



years after the Commencement Date of the Lease term and two percent (2%) per year thereafter;

iii. whichever is less.

c. Exercise of Option after Seventh Anniversary: After the Seventh Anniversary date, Optionee may exercise its option by giving written notice thereof to Optionor at any time. Upon such notice, the parties shall agree to and hire - appraisers pursuant to Paragraph 3(b) of the Lease. The appraisal shall be completed within ninety (90) days of the notice.

d. Purchase Price: The purchase price after the seventh anniversary of the Commencement Date shall be determined by an appraisal of fair market value of the improvements completed pursuant to Paragraph 3(b) of the Lease.

e. Exercise of Option: If the option is exercised, the purchase and sale transaction shall be governed by paragraphs 13 – 30.

#### **PROVISIONS APPLICABLE TO ENTIRE AGREEMENT**

13. Title: Unless otherwise specified in this Agreement, title to the Property shall be marketable at closing. Rights, reservations, covenants, conditions, and restrictions, presently of record, easements, and encroachments, not materially affecting the value of the Property or unduly interfering with Optionee's intended use of the Property shall not cause the title to be considered unmarketable. Optionee shall conclusively be deemed to have accepted the condition of title unless Optionor receives notice of Optionee's objections within ten (10) days after the preliminary commitment for title insurance is received by or made available to Optionee. Encumbrances not assumed in writing by Optionee shall be paid by Optionor on or before closing.

14. Title Insurance: Optionor authorizes closing agent, at Optionor's expense, to apply for a standard form owner's policy of title insurance, with homeowner's additional protection and inflation protection endorsements, if applicable and available at no additional cost, to be issued by Land Title Insurance Company. The title policy shall contain no exceptions other than those contained in said standard form and those not inconsistent with this Agreement. If title is not so insurable and cannot be made so insurable prior to closing, Optionee may elect either to waive such encumbrances or defects, or to terminate this Agreement and receive a refund of the earnest money.

15. Conveyance: Title shall be conveyed by statutory warranty deed free of encumbrances and defects except those included in this Agreement or otherwise accepted by Optionee in writing.



16. **Closing**: Closing agent shall be the Law Office of Bradford E. Furlong, P.S., 825 Cleveland Avenue, Mount Vernon, Washington, 98273. This sale shall be closed within sixty (60) days from the date the Optionee gives notice of acceptance of terms pursuant to paragraphs 3 or 8 or the appraisal is provided to the parties pursuant to paragraph 12. "Closing" means the date on which all documents are recorded and the sale proceeds are available for disbursement to Optionor. Optionee and Optionor shall deposit with closing agent all documents and monies required to complete this sale in accordance with this Agreement.

17. **Closing Costs & Proration**: Optionor and Optionee shall each pay  $\frac{1}{2}$  of the escrow fee. Optionor shall pay real estate excise tax. Taxes for the then current year shall be prorated as of closing.

18. **Possession**: Optionee shall be entitled to possession on closing.

19. **Casualty Loss**: If prior to closing, improvements on the Property are destroyed or materially damaged by fire or other casualty, Optionee may elect to terminate this Agreement and the earnest money shall be refunded to Optionee.

20. **FIRPTA Compliance**: If Optionee does not intend to use the Property as a principal residence, or if the purchase price exceeds \$300,000, then this sale may be subject to the withholding and reporting requirements of the Foreign Investment in Real Property Tax Act (FIRPTA), unless Optionor furnishes to Optionee an affidavit of nonforeign status. Optionor and Optionee agree to comply with FIRPTA, if applicable.

21. **Notices**: Unless otherwise specified in this Agreement, any and all notices required or permitted to be given under this Agreement must be given in writing. All notices must be signed by an authorized representative of party giving the notice. Notices shall be deemed to be given when actually received by or at the residence of the intended recipient.

22. **Hazardous Substances**: Optionor shall disclose to Optionee, at least thirty (30) days prior to closing whether the Property has been affected by the presence of, or there is oil, hazardous waste, toxic substances or other pollutants or material ("Supplemental Contaminants") present that could be a detriment to the Property or in violation of any local, state or federal law or regulation, and whether there are potentially hazardous environmental conditions which would affect the Property any of which first came to the Property or occurred during the term of the Lease in any manner differing or which are in excess of contamination disclosed in or in documents listed in Exhibits B and C of the Lease. Optionor shall certify that neither Optionor nor any other user or occupant of any part of the Property known to Optionor has ever been cited for violating any federal, state or local environmental law or regulation with respect to operations or activities on or about the Property during the term of the Lease; and all reports, test results, and other documents relating to the presence or absence of hazardous materials on or about the



Property shall be delivered to Optionee. If Optionee shall receive information that the Property has been affected with environmental contaminants during the term of the Lease, Optionee, at its discretion, may delay closing up to twenty-four (24) months to investigate environmental conditions and may terminate its obligation to purchase the Property at any time therein.

23. **Hold Harmless:** In the event it is determined, after this transaction closes, that due to any act or omission of Optionor or its Subtenant during the term of the Lease, there is a presence of oil, hazardous waste, toxic substances or other pollutants or material that could be a detriment to the Property or in violation of any local, state or federal law or regulation, then, and in that event, Optionor agrees to pay, be responsible for and hold Optionee harmless from any remedial action to either remove or repair the cause of said substance, waste or other pollutants or material that renders the Property in violation of any local, state or federal law or regulation or constitutes a health hazard to any life form. This Paragraph 23 shall survive closing and shall bind and inure to the benefit of the parties' successors and assigns.

24. **Computation of Time:** Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 9:00 p.m. of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday, or legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 9:00 p.m. of the next business day. Any specified period of five (5) days or less shall include business days only.

25. **Termination:** In the event of termination of a purchase and sale pursuant to this Agreement, any costs authorized under this Agreement shall be paid by the party responsible therefor. All provisions of this Agreement shall remain in full force and effect after termination of a purchase and sale transaction between the parties unless waived by both parties. In the event that Optionee or Optionor shall commence proceedings or institute action to enforce any rights hereunder, the prevailing party shall be entitled to costs and reasonable attorney's fees, including those for appeals. Venue shall be in Skagit County.

26. **General Provisions:** Time is of the essence. There are no verbal agreements which modify this Agreement. This Agreement constitutes the full understanding between Optionor and Optionee.

27. **Litigation, Costs:** If any legal action or any other proceeding, including an arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which the prevailing party may be entitled. "Prevailing party" shall include without limitation:

- a. a party dismissing an action in exchange for sums allegedly due;



b. a party receiving performance from the other party of an alleged breach of covenant or a desired remedy where the performance is substantially equal to the relief sought in an action; or

c. the prevailing party as determined by a court of law.

28. **Successors and Assigns:** This Agreement shall inure to the benefit of and be binding on the parties and their respective successors, heirs, assigns, mortgagee and/or beneficiaries. All references to "Grantor" and "Grantee" include respective successors, heirs, assigns, mortgagees and/or beneficiaries of each.

29. **Notices:** All notices required or permitted to be given under this Agreement shall be in writing and mailed, postage prepaid, by certified or registered mail, return receipt requested, or by personal delivery, to the addresses indicated below or at other places that Grantor or Grantee may, from time to time, designate by written notice given to the other.

30. **Time of Essence:** Time is of the essence in this Agreement.

31. **Survival:** This agreement shall survive the termination of the Lease between Optionor and Optionee.

Optionee's address shall be: SHS.com, 1601 "R" Avenue, Anacortes, Washington 98221, email: Leo.Watterson@shs.com, facsimile: 360-299-0329.

Optionor's address shall be: RYAY, L.L.C., 3501 West Second Street, Anacortes, Washington 98221 email:ryoungb@attglobal.net, facsimile: 360-293-2787.

32. **Recordation:** This Agreement may be recorded at Grantee's option and expense.

33. **Quitclaim Deed:** Upon termination of this Agreement in accordance with its terms, Grantee shall deliver to Grantor a signed and acknowledged Quitclaim Deed in the appropriate form. Grantor may record the Quitclaim Deed following the termination of this Agreement.

34. **Exhibits:** All exhibits and any others referred to in this Agreement are incorporated into this Agreement by reference.

35. **Captions:** Captions and headings in this Agreement, including the title of this Agreement, are for convenience only and are not to be considered in construing this Agreement.



36. **Lease and Integration Agreement.** This Agreement is incorporated into the Lease between the parties which is one of three agreements subject to an "Integration Agreement" executed of even date. The provisions of the Integration Agreement are incorporated herein as if set forth in full. The integrated agreements express the full intent of the parties, there are no oral promises and any statements made in negotiation of the agreements not included therein shall be disregarded in interpreting the agreements. In the event that the Lease between RYAY, LLC and AHC, LLC of March 29, 2001 is in effect at the closing of a sale to SHS per this agreement, the lease between RYAY, LLC and AHC shall apply to SHS and AHC, as Lessor and Lessee, respectively except that provisions of the SHS-RYAY lease shall be substituted therefore as set forth in the Table attached as Exhibit 2 hereto.

37. **Modification and Amendment:** This Agreement may not be modified or amended except in writing signed by Grantor and Grantee.

38. **Governing Law and Venue:** This Agreement shall be governed by Washington law, venue for any action shall be in Skagit County Superior Court. This Agreement is not subject to the dispute resolution requirements in the Lease unless consented to by both parties.

SKAGIT COUNTY WASHINGTON Shared Healthcare Systems, Inc.  
Real Estate Excise Tax (d/b/a SHS.com)

APR 04 2001

Amount Paid \$  
By Skagit Co. Treasurer  
By Deputy

Leo Watterson  
Leo Watterson, CFO Date 3/29/01

STATE OF WASHINGTON )  
COUNTY OF Skagit ) SS.

On this 29 day of March 2001 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Leo Watterson to me known to be the CFO of Shared Healthcare Systems, Inc. (d/b/a SHS.com) the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Elizabeth A. Sims  
Notary Public in and for the State of Washington,  
Residing at Anacortes  
My commission expires: 01/11/03

Print Name: Elizabeth A. Sims



RYAY, L.L.C.

MARC Youngberg <sup>POA</sup> 3/29/01  
Date

STATE OF WASHINGTON )  
COUNTY OF Skagit ) SS.

On this 29 day of March 2001 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Marc Youngberg to me known to be the POA for CEO of RYAY, L.L.C. the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Elizabeth A. Sims  
Notary Public in and for the State of Washington,  
Residing at Anacortes  
My commission expires: 01/11/03  
Print Name: Elizabeth A. Sims

## Exhibit 1

### Legal Description

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The South 218.6 feet, less the Southerly 18.6 feet thereof, of the west 150 feet of Lot 2, Short Plat No. ANA-98-003, approved February 8, 1999, recorded February 17, 1999 in Volume 14 of Short Plats, pages 4 and 5, under Auditor's File No. 9902170072, and being a portion of Government Lots 1 and 2, Section 19, Township 35 North, Range 2 East, W.M., and of Lots 15, 16 and 17, "PLATE NO. 10. TIDE AND SHORELANDS OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M. ANACORTES HARBOR," according to the official map thereof on file with the State Land Commissioner at Olympia, Washington.

SUBJECT TO: Any lien or liens that may arise or be created in consequence of or pursuant to an act of the legislature of the State of Washington entitled, "An act prescribing the ways in which waterways for the uses of navigation may be excavated by private contract, providing for liens upon lands belonging to the state, granting rights of way across lands belonging to the state," approved March 9, 1893; Said land or a portion thereof may lie beneath navigable waters. Any portion of said land which lies or which may in the future lie beneath navigable waters is subject to rights of navigation, together with incidental rights of fishing, boating, swimming, water-skiing and other related recreational purposes generally regarded as corollary to the right of navigation and the use of public waters. See Wilbour vs. Gallagher 77 Washington Decision 2<sup>nd</sup>, page 307; Consent and Dedication contained on the face of Short Plat No. ANA.98.003; Notes contained on the face of Short Plat No. ANA.98.003; Easement for Esplanada as disclosed by Short Plat; Easement for drainage as disclosed by Short Plat; Easement for utilities as disclosed by Short Plat; Utility easement as disclosed by Short Plat; Encroachment of Concrete Dumpster Pad and Kayak Storage as shown on the face of the Short Plat; Easement for surface water drainage dated February 12, 1999, recorded February 17, 1999, under Auditor's File No. 9902170073; Declaration of covenants, conditions, easements, restrictions and reservations dated March 2, 1999, recorded March 2, 1999, under Auditor's File No. 9903020007.

Situate in the City of Anacortes, County of Skagit, State of Washington.



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, Skagit County Auditor

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## Exhibit 2

Table of Sections Substituted  
into  
RYAY-AHC Lease<sup>1</sup>  
from  
SHS-RYAY Lease  
upon purchase by  
SHS  
of  
RYAY Building

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RYAY-AHC PROVSIONS DELETED FROM RYAY AHC LEASE	SHS-RYAY LEASE PROVISIONS TO APPLY TO SHS-AHC LEASE
Sec. 1 Sec. 3A (Sec. 3B shall apply immediately; Sec. 3C per its terms) Sec. 6 Sec. 7 Sec.17 & 19 Sec. 20 Sec. 22 Sec. 24E None	None Sec. 4 (only to establish "pass-through" amount in remaining Sec. 3B of RYAY (SHS)/AHC Lease.) & 6 Sec 22 Sec. 2 Sec. 15, 16,17,18, 19 Sec. 27 Sec. 35 Sec. 38 Sec. 7 (only equation re proration of land taxes) 9, 12, 13, 23, 24, 29 through 32

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<sup>1</sup> To become SHS-AHC Lease Upon such purchase.



200104040039  
, Skagit County Auditor