

Return Address:

Port of Anacortes

P.O. Box 297

First Street and Commercial Ave

Anacortes, WA 98221



200408200044

Skagit County Auditor

8/20/2004 Page

1 of

8 9:33AM

Document Title:

Environmental Remediation Agreement

Reference Number:

N/A.

Grantor(s)

1. Port of Anacortes

2.

☐ Additional grantor names on page ____.

Grantee:

1. Anacortes Concept, LLC

2.

☐ Additional grantee names on page ____.

Abbreviated legal description:

Lot 2B, in portion of Government Lots 1 and 2,
Section 19, Township 35 North, Range 2 East,
W.M., and of Plate No. 10, Section 19, Township
35 North, Range 2 East, W.M., together with a
portion of Lot 2A.

☒ Full legal on page(s) 6.

Assessor Parcel/ Tax ID Number:

P118625 and a portion of P32948.

☒ Additional tax parcel number(s) on page ____.

Environmental Remediation Agreement

This Environmental Remediation Agreement is entered into by and between the Port of Anacortes, a Washington municipal corporation ("Port") and Anacortes Concept, LLC, a Washington limited liability company ("AC") on this 6th day of JUNE, 2003.

The Port is the owner and former owner of certain parcels of land located in Anacortes, Skagit County, Washington, legally described as Lots 1, 2 and 3 of Short Plat No. ANA-98-003, recorded in the official records of Skagit County under Auditor's File No. 9902170072, along with some associated tidelands (the "Covered Property").

In March, 1999, the Port sold Lot 2 of the Covered Property (the "Sold Property") to Sun Healthcare Systems, Inc. now Shared Healthcare Systems, Inc. ("SHS"). SHS subsequently subdivided the Sold Property into four (4) lots.

AC is purchasing that portion of the Sold Property legally described on Exhibit A attached hereto (the "AC Property").

AC and the Port wish to confirm certain agreements regarding the environmental conditions of the Covered Property and AC Property and responsibility for environmental remediation of the Covered Property and AC Property.

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement and the mutual covenants contained in this Agreement, the Port and AC hereby agree as follows:

1. **Definitions.**

(a) **Environmental Soil Conditions.** Environmental Soil Conditions shall mean any actual or potential hazardous substance contamination contained with the soils, wood waste, or other solid materials on the Sold Property.

(b) **Environmental Groundwater Conditions.** Environmental Groundwater Conditions shall mean any actual or threatened hazardous substance contamination in the ground water on or off the Sold Property.

(c) **Environmental Off Site Conditions.** Environmental Off Site Conditions shall mean any actual or threatened hazardous substance contamination existing on or under the Covered Property, but off the Sold Property, including Environmental Soil Conditions or Environmental Groundwater Conditions that have migrated, or may in the future migrate, from the Sold Property.



(d) Environmental Remediation. Environmental Remediation shall mean the investigation, testing, removal, monitoring or treatment of hazardous substances as may be required to comply with Environmental Laws.

(e) Hazardous Substances. As used herein, "hazardous substance" shall mean any substance, material, waste, pollutant, or contaminant that is defined as a "hazardous waste", "extremely hazardous waste", "restricted hazardous waste", "hazardous substance" or "dangerous waste" under Environmental Laws.

(f) Environmental Laws. As used herein, Environmental Laws shall mean: RCW Chapter 70.105 (Hazardous Waste Management Act) or RCW Chapter 70.105D (Hazardous Waste Cleanup—Model Toxics Control Act "MTCA"), or their implementing regulations; the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101); the National Contingency Plan published by the Environmental Protection Agency (40 CFR Parts 300 and 302); the Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. §6901; or the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") 42 USC 9601 et seq., all as amended, replaced or succeeded.

2. Responsibility for Environmental Soil Conditions. AC shall be solely responsible for Environmental Soil Conditions on or under the AC Property. The Port bears no responsibility or liability for Environmental Soil Conditions on the Sold Property.

3. Environmental Groundwater and Environmental Off Site Conditions. The Port agrees to indemnify, defend and hold AC and any party taking a security interest in the AC Property harmless from any and all claims, demands or causes of action for Environmental Remediation arising out of Environmental Groundwater Conditions or Environmental Off Site Conditions. This indemnity shall not apply to the release or any hazardous substance first brought onto the AC Property after the date of this Agreement, or to releases caused by AC or any user or occupant of the AC Property. This indemnity is expressly conditioned upon AC's compliance with Sections 5, 6, 7 and 8 of the Agreement; provided that nothing contained in Section 5 hereof shall prevent the parties from enforcing the terms of this Agreement.

(a) Indemnity Process. At any time AC receives any notice of a claim, demand or potential cause of action which may be subject to the Port's indemnity obligations under this paragraph 3, AC shall provide notice to the Port concerning the demand or claim as soon as reasonably possible, but in no event later than 30 days from receipt. Upon receipt of notice of the claim, the Port shall have the right, in its sole discretion, to defend and appoint defense counsel for the AC. In the event the Port elects to appoint defense counsel, AC agrees to the appointment of joint defense counsel and to waive the potential conflict of interest in appointment of joint defense counsel. If the Port elects not to appoint defense counsel or if an actual conflict of



interest prevents appointment of joint defense counsel, the Port shall reimburse AC for its reasonable attorney fees occurred in the defense of any indemnified demand or claim. Nothing contained in this Section shall provide the Port with the right to compromise or settle any claim affecting AC or the Sold Property without the prior written consent of AC, which consent shall not be unreasonably withheld, conditioned or delayed.

4. Release of Certain Claims. AC agrees to release and waive any and all claims against the Port for business interruption, lost profits, added costs of development or similar damages caused by the Environmental Soil Conditions Environmental Groundwater Conditions and Environmental Off Site Conditions. This release does not limit the Port's obligation to indemnify AC under Section 3 above.

5. Covenant not to Pursue Groundwater and Off Site Claims. AC further covenants not to sue the Port or any other party for any Environmental Groundwater Conditions or Environmental Off Site Conditions, nor to petition, request or initiate any action through the Department of Ecology or other government agency for the clean up of Environmental Groundwater Conditions or Environmental Off Site Conditions. In the event that any third party initiates or contacts AC regarding such actions, AC shall immediately notify the Port and tender the defense of such actions to the Port as provided in Section 3.

6. Post-Closing Access to AC Property. AC agrees to allow the Port post-Closing access to the AC Property to investigate, monitor or remediate any Environmental Groundwater Condition. Access will be provided upon reasonable terms and the Port shall take all reasonable steps to minimize the impact of any such activities on AC's use of the AC Property.

7. Limitation on Subsurface Development. AC agrees that, other than utility corridors, footings, foundation slabs, pilings and other incidental subsurface structures, AC will not undertake subsurface development on the AC Property.

8. Cooperation with Cleanup Activities. The AC shall cooperate with the Port in the Port's effort to complete cleanup activities on the Covered Property, including supporting the Port's efforts under the Consent Decree (Skagit County Superior Court Cause No. 032004921) but excluding undertaking or paying for Environmental Remediation. AC shall further cooperate with the Port in obtaining a revised "No Further Action" letter from the Department of Ecology concerning the Sold Property as called for in the Consent Decree.

9. NFA Requirements. AC acknowledges that it has received the October 26, 2000, Ecology No Further Action letter addressed to Shared Healthcare Systems, Inc. AC agrees that it shall be responsible for complying with the requirements of the No Further Action and the Restrictive Covenant with respect to the AC Property (except



as applied to Environmental Groundwater Conditions, which shall be the responsibility of the Port as provided in this Agreement).

10. Disclosure of Environmental Conditions. AC agrees and acknowledges that, in connection with its purchase of the AC Property, the AC has received the environmental information and reports described on Exhibit B to this Agreement.

11. Assignment. The rights and obligations under this Agreement may be assigned by AC to a purchaser of the AC Property upon written notice to the Port and receipt of written consent from the Port. Such written notice shall be provided no less than sixty (60) days prior to any proposed transfer. The Port's consent to the assignment shall not be unreasonably withheld, conditioned, or delayed.

12. Entire Agreement. This Agreement contains the entire understanding of the parties and supercedes all prior agreements and understandings among the parties related to the subject matter of this Agreement.

13. Notices. All notices and other communications regarding this Agreement shall be in writing and communicated by mail, electronic communication, personal delivery or facsimile to:

Port of Anacortes:
c/o Lynda Brothers
Sonnenschein Nath & Rosenthal
685 Market Street, 10th Floor
San Francisco, California 94105
LBrothers@sonnenschein.com
Phone: (415) 882-0344
Fax: (415) 543-5472

AC:
Anna and Marc Youngberg
1609 R Avenue
Anacortes, WA 98273
email: AKJ@EWJLaw.com &
Marco@valley2.valleyint.com
Phone: 360-299-2180
Fax: 360-299-8386

14. Attorney Fees. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees.

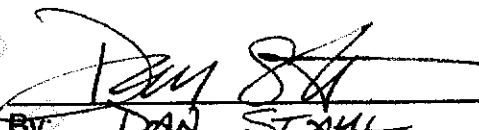


15. Counterparts. This Agreement may be executed in two (2) counterparts, each of which shall have the signature of both parties and each of which shall be deemed an original, all of which when taken together shall be deemed to be a single agreement among the participants.

16. Applicable Law. The parties agree that this Agreement and the contents hereof shall be interpreted and enforced pursuant to the laws of the State of Washington.

17. Mutual Representations. The individuals signing on behalf of each of the Port and AC represent and warrant that they are the authorized signatory of their respective party and that all acts necessary to enter into this Agreement have been taken by such party.

PORT OF ANACORTES

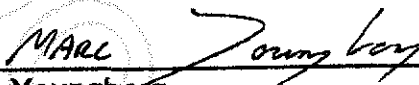


By: DAN STAHL

Title: Exec. Dir.

Dated: 09 June 2003

ANACORTES CONCEPT, LLC



By: Marc Youngberg

Title: Managing Member

Dated: 6/6/03



By: Anna Youngberg

Title: Managing Member

Dated: 6/6/03



EXHIBIT A

AC PROPERTY LEGAL DESCRIPTION

Exhibit A

Lot 2B, "Seafarer's View", as recorded under Auditor's File No. 200112030101, records of Skagit County, Washington, being in portions of Government Lots 1 and 2, Section 19, Township 35 North, Range 2 East, W.M., and of "Plate No. 10 Tide and Shore Lands 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,
TOGETHER WITH that portion of Lot 2A, said "Seafarer's View", lying Southerly and Westerly of the following described line:

Commencing at the Northwest corner of said Lot 2B; thence North 00° 00' 25" East, along the West line of said Lot 2A, 52.70 feet to the TRUE POINT OF BEGINNING of said described line; thence South 79° 00' 24" East along said line, 201.32 feet to an angle point thereon; thence South 00° 53' 55" West along said line, 232.95 feet to the South line of said Lot 2A and the end of said described line.

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



EXHIBIT B

Environmental Documents Received

- | | | |
|----|------------------|---|
| 1) | March 24, 2003 | Consent Decree between Port and DOE |
| 2) | October 26, 2000 | NFA letter with declaration of restrictive covenants |
| 3) | August 14, 2000 | Notice of PLP from DOE with response letter |
| 4) | May 18, 2000 | Completion Report by Thermo Retec |
| 5) | August 20, 1999 | Progress Report by Thermo Retec |
| 6) | March 22, 1999 | Interim action Work Plan by Landau (For Port) |
| 7) | January 12, 1999 | Clean Up Action Plan by Thermo Retec |
| 8) | January 8, 1999 | RIFS by Thermo Retec |
| 9) | 1998 & prior | One box of old miscellaneous reports and documents related to the site from the Port of Anacortes. Date is approximate. |

