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Skagit County Auditor

6/12/2012 Page 1 of 22 10:32AM

Filed for Record at Request of:

CHMELIK SITKIN & DAVIS P.S.
1500 Railroad Avenue
Bellingham, WA 98225
(360)671-1796

DOCUMENT TITLE(S):

SETTLEMENT AND INTERLOCAL COOPERATION AGREEMENT

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

N/A

GRANTOR(S) (Last name, First name and MI):

**PORT OF ANACORTES, a Washington municipal corporation
NORTHWEST EDUCATIONAL SERVICE DISTRICT #189, a political subdivision of the State of
Washington**

GRANTEE(S) (Last name, First name, and MI):

**PORT OF ANACORTES, a Washington municipal corporation
NORTHWEST EDUCATIONAL SERVICE DISTRICT #189, a political subdivision of the State of
Washington**

ABBREVIATED LEGAL DESCRIPTION (Lot, block, plat or section, township, range):

LOT 2A OF THAT CERTAIN BOUNDARY LINE ADJUSTMENT SURVEY RECORDED JUNE 6, 2003 UNDER AUDITOR'S FILE NO. 200306060196, BEING A REVISION OF LOTS 2A, 2B, 2C AND 2D, "SEAFARER'S VIEW," AS RECORDED UNDER AUDITOR'S FILE NO. 200112030101, AND THAT CERTAIN BOUNDARY LINE ADJUSTMENT SURVEY RECORDED APRIL 29, 2003, UNDER AUDITOR'S FILE NO. 200304290104, RECORDS OF SKAGIT COUNTY, WASHINGTON (THE "BLA SURVEYS");

LOT 3 OF SHORT PLAT #ANA-98-003, AS RECORDED ON FEBRUARY 17, 1999 UNDER AUDITOR'S FILE NO. 9902170072, RECORDS OF SKAGIT COUNTY

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER(S):

**P32948
P32960**

SETTLEMENT AND INTERLOCAL COOPERATION AGREEMENT

THIS SETTLEMENT AND INTERLOCAL COOPERATION AGREEMENT (the "**Agreement**") is made and entered into by and between the PORT OF ANACORTES, a Washington municipal corporation (the "**Port**") and the NORTHWEST EDUCATIONAL SERVICE DISTRICT NO. 189, a political subdivision of the State of Washington (the "**NWESD**"), as of the date of the last authorized signature below.

WHEREAS, since 1997, the Port has operated Seafarer's Memorial Park on real property commonly described as Lot 3 of Short Plat #ANA-98-003, recorded under Skagit County Auditor's File No. 9902170072 (the "**Park**");

WHEREAS, since at or near the opening of the Port Park, the Port has maintained a one story building (the "**Park Building**") at the Port Park;

WHEREAS, on March 2, 1999 the Port Park property and the NWESD Property became subject to those covenants, conditions and reservations recorded under Skagit County Auditor No. 200006290013 (the "**CC&Rs**");

WHEREAS, in or about 2003, the NWESD purchased that real property and building commonly referred to as that Portion of Lot 2A of Boundary Line Adjustment Survey for Shared Healthcare Systems, Inc., recorded under Skagit County Auditor's File No. 200306060196 (the "**NWESD Property**");

WHEREAS, in June 12, 2009 the Port executed a Consent Decree with the Washington State Department of Ecology which was entered under Skagit County Superior Court under cause no. 09-2-01247-7 (the "**Consent Decree**");

WHEREAS, pursuant to the terms of the Consent Decree the Port undertook a \$30 million environmental remediation of the Port Park property and portions of the NWESD Property. This remediation resulted, *inter alia*, in (i) the temporary relocation of the Park Building off-site, (ii) the excavation of substantial amounts of contaminated soils on the Port Park property and the NWESD Property, (iii) an increase in final grade of the Port Park property of approximately three (3) feet which matched the grade of the NWESD Property and (iv) the relocation of the Park Building to the southern edge of the Port Park property;

WHEREAS, the NWESD worked cooperatively with the Port during the remediation process and provided a representative to the construction management team for coordination with the NWESD;

WHEREAS, on January 27, 2011 in support of the remediation, the NWESD and the Port executed an Easement Agreement recorded under Skagit County Auditor No. 201104120159 (the "**Easement**") facilitating relocation of the Park Building to its current location and granting NWESD parking rights on newly constructed Port Park public parking;



WHEREAS, pursuant to the Easement, the Port constructed improvements on the Easement including, but not limited to, a sidewalk, parking lot, boat storage and landscaping; and

WHEREAS, a disagreement has arisen between the NWESD and the Port concerning the application of the certain terms of the CC&Rs and certain terms of the Easement. The NWESD has invoked an arbitration proceeding concerning alleged violations of the CC&Rs under AAA Case No. 75-115-00409-11-HIIB (the "**Arbitration**") and brought an action in Skagit County Superior Court concerning the Easement under Skagit County cause no. 12-2-00049-5 (the "**Litigation**").

NOW, THEREFORE, pursuant to chapter 39.34 RCW the NWESD and the Port wish to document the terms and conditions under which they have resolved their disagreements as follows:

1. **Easement Amendment.** Upon mutual execution of this Agreement, NWESD and the Port shall execute the Amended Easement Agreement in the form attached hereto as Exhibit A (the "**Amended Easement**"). The purpose of the Amended Easement is to (i) expand the purposes of the Easement to include those portions of the Park Building's eaves which encroach onto the Easement Area, (ii) enlarge the Easement Area adjacent to and south of the sidewalk to encompass the entire grassy area south of the Park Building sidewalk and north of the dune/berm on the NWESD Property, (iii) expand the purposes of the Easement to include Park uses described in section 3.1 of the Amendment Easement executed concurrently herewith, (iv) enlarge the easement area to encompass the entire Port small boat storage area and sidewalks as currently installed, (v) allow the NWESD to enter upon the expanded Easement Area to seek the public's cooperation in limiting noise and disruptions as discussed in Section 2 below and (vi) reserves the right of the NWESD to contact law enforcement to remove those causing a disruption or disturbance when an event is underway in the NWESD's nearby conference room.

1.1 *Shared Survey Costs.* NWESD shall contract with a surveyor to develop a revised legal description and map of the Easement Area for the Amended Easement. The Port shall reimburse the NWESD for one-half the costs of the survey and its recording within thirty (30) days after receiving an invoice for the same. NWESD shall be responsible for recording the Amended Easement.

2. **Use of the Grassy Area.** The Port and the NWESD share an interest in minimizing the impact on the NWESD operations of the public's use of the grassy area. In this regard the Port shall install surface level monument style signs asking for the public cooperation to minimize noise and to reserve the grassy area for users of small boats at no cost to the public. In addition, the NWESD may interact directly with the public and may place sandwich board – type signs on the grassy area and/or the sidewalk advising the public on behalf of the Port and NWESD that an event is underway in the NWESD conference room and seeking the public's cooperation in minimizing any disruption.

3. **Event Communication.** The Port Park is a public park and has been and will continue to be used as a public park, including for public events such as concerts, community gatherings and

the like. Occasionally, the Park Building is leased for private events such as meetings, weddings, reunions or festivals. The NWESD hosts various conferences and training events and occasionally the NWESD's meeting areas are leased for private events such as meetings, weddings and reunions. The persons named below shall be the Port's and the NWESD's primary and backup contact persons who shall act as the official point of contact between the two parties to coordinate and/or communicate issues as they arise. The Port and the NWESD contact persons will use their respective best efforts to notify each other as soon as possible after events are scheduled that might reasonably be expected to significantly impact the other party's use of their respective property and work to minimize the respective impacts. The contact persons may be updated at any time by providing written notice to the other party.

Port Primary Contact: Christine Timmerman - christine@portofanacortes.com
360-299-1818

Port Secondary Contact: Julie Johnson Lindsay - julie@portofanacortes.com
360-299-1804

NWESD Primary Contact: Joni Morell - jmorrell@nwesd.org
360-299-4002

NWESD Secondary Contact: Jerry Jenkins - jjenkins@nwesd.org
360-299-4003

4. Temporary Concert Stage. The NWESD on behalf of itself and its successors agrees that it will not contest as a violation of the CC&Rs the erection of a temporary concert stage on the Port Park property for events including, but not necessarily limited to, a summer concert series so long as (i) the concert stage risers do not extend more than ten (10) feet above the stage platform for more than twenty-four (24) hours before the concert or stage event is held and are removed no later than twenty-four (24) hours after the concert or stage event is held and (ii) the concert stage risers do not extend more than ten (10) feet above the stage platform more than once per week.

4.1 Limited Exception for Multiple Events in One Week. Notwithstanding Section 4, the Port and the NWESD agree that once per calendar month, if multiple events requiring the stage are scheduled within the same seven (7) day period, the erection of a temporary concert stage with concert stage risers extending more than ten (10) feet above the stage platform shall not be contested as a violation of the CC&Rs so long as the concert stage risers are left extending more than ten (10) feet above the stage platform for no more than seven (7) consecutive days once per calendar month.

5. Port Temporary Dumpsters and Portable Toilets. The NWESD on behalf of itself and its successors will not contest as a violation of the CC&Rs the Port bringing temporary dumpsters and/or portable toilets onto the Port Park property for use during events including, but not necessarily limited to, a summer concert series so long as these temporary items are not placed within the Easement Area and are placed out of the view of the NWESD Building viewscape (which is defined as being visible from any portion of the interior of the NWESD Building). The NWESD shall further support the Port's efforts to secure future modification of the CC&Rs designed to relax refuse collection requirements to better address this need.



6. **Port and NWESD Temporary Signage.** The Port and the NWESD on behalf of themselves and their respective successors will not contest as a violation of the CC&Rs the placement by the Port or the NWESD of (i) temporary signage advertising and/or providing information about significant public or private events and (ii) directional parking signs. The NWESD and the Port shall reasonably cooperate in efforts to secure future modification of the CC&Rs designed to relax signage requirements.

7. **Port Park Parking.** Except as provided herein, the Port and the NWESD and their respective successors will not contest as a violation of the CC&Rs parking issues. The Port and NWESD agree to work cooperatively to minimize negative impacts resulting from Park Building renters using the NWESD parking lot for overflow parking by taking the following actions:

7.1 *Port Parking Instructions.* The Port shall include parking instructions and a parking map in its Park Building rental procedures pamphlet and Park Building rental contract which indicates permissible parking areas for Park Building renters and explicitly states that the NWESD parking lot is unavailable for parking. At or prior to the time rental contracts are signed for the Park Building, Port staff shall orally instruct the Park Building renter that the NWESD parking lot is unavailable for parking;

7.2 *Event Monitors.* If the Port authorizes the use of the Park or Park Building for an event or organizes an event itself to take place on the Park Property that the Port reasonably expects more than 125 people to attend, the Port shall provide or require event organizers to provide event monitors who shall undertake reasonable efforts to direct event attendees away from the NWESD parking lot. The parties recognize that the provision of event monitors and the monitors' reasonable efforts to direct event attendees away from the NWESD parking lot does not, and cannot, guarantee that all unauthorized use of the NWESD parking lot by event attendees will be prevented.

7.3 *Use of NWESD Parking Lot for Park Events.* The Port may, but is not obligated to, request, on a case-by-case basis, use of the NWESD parking lot as overflow parking for the Port's summer concert series. Any such use will be conditioned upon compliance with the NWESD's normal facilities use application process, including providing an additional insured certificate naming NWESD as an additional insured to the Port's insurance policy for the date of any such use.

7.4 *Parking Lot Separation Fence.* Without impacting the use of the Port small boat storage area installed on the Easement Area, the NWESD is permitted to install and maintain a fence in the planter between the NWESD parking lot and the Park Building parking lot from the edge of the Port small boat storage area to the edge of the NWESD's enclosed boat storage area in the planter at a location mutually agreed to by the Port and the NWESD. The fence may include gating the walkways which directly or indirectly connect the two parking lots. NWESD shall be entitled, at its discretion, to secure the gates as it deems appropriate. NWESD is authorized to connect the parking lot separation fence to the Port's boat storage enclosure fencing so long as the use of the boat storage enclosure is not impacted by the connection or fence installation.



7.4.1 **Fence Costs.** The NWESD has in its possession a length of fencing (the "**Existing Fencing**") it will use as the primary component of the parking lot separation fence to separate the NWESD parking lot from the Park property to the east. The NWESD may need to purchase more fence to complete the project. The Port shall reimburse the NWESD for fifty percent (50%) of the added cost of purchasing more fence/gate materials due to its greater length and the need for multiple gates within thirty (30) days after receiving an invoice for the same. With regard to the procurement and installation NWESD shall comply with all procurement laws and public works laws applicable to the NWESD in this circumstance.

7.5 **Future Issues.** NWESD and the Port are hopeful and anticipate that the remedial measures set forth in this Section 7 will minimize and/or eliminate parking related issues experienced by the NWESD or the Port. In the event that the remedial measure set forth in this Section do not resolve parking related issues, NWESD and the Port (i) shall attempt to resolve continuing parking related problems first through discussions between each other and if resolution is not reached then (ii) either party may use the CC&R dispute resolution process to seek reasonable limitations or restrictions on special events based upon the parking related issues arising from the use of the respective properties for special events. The term "special event" shall mean events where the parking demand unreasonably interferes with the other party's parking such as (i) the rental of the respective facilities or (ii) Park events such as concerts, community events and the like.

8. **Building Height.** NWESD on behalf of itself and its successors hereby consents to the current location and current height of the existing Park Building under the terms of the CC&Rs and shall not contest as a violation of the CC&Rs the current location and current height of the existing Port Park Building.

9. **Future CC&R Modification.** As provided herein the NWESD shall support the Port's efforts to secure future modifications of the CC&Rs; however, NWESD shall not be obligated to support any modifications to Section 3.2 – Height Restrictions, 3.5 – Parking and 4.2 Uses Not Permitted.

10. **Arbitration and Litigation Claims.** The Port and the NWESD forever release and waive any and all claims related to or arising out of the CC&Rs (i) the alleged violation of which occurred on or before the date of this Agreement that either were brought or could have been brought at or as part of the Arbitration or Litigation or (ii) any claims for future violation specifically addressed in this Agreement only to the extent the other party is in compliance with the terms and conditions of this Agreement.

11. **Preservation of CC&Rs and CC&R Defenses.** Except as specifically provided in this Agreement, the Port and NWESD hereby reserve all rights that they now have to enforce any term or condition of the CC&Rs and/or to contest the enforcement of any term or condition of the CC&Rs for issues arising after the date of this Agreement and not addressed in this Agreement. This Agreement and the issues settled herein shall not be the basis for any claim of waiver to later enforcement of any provisions of the CC&Rs for issues arising after the date of this Agreement.

12. **Dismissal of Arbitration and Lawsuit.** Upon mutual execution of this Agreement, the parties shall take any and all actions necessary to dismiss the Arbitration and the Lawsuit with prejudice and without an award of attorneys' fees or costs to either party.

13. **Notice.** All notices which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return-receipt requested, postage prepaid to:

Port: Executive Director
Port of Anacortes
100 Commercial Avenue
Anacortes, WA 98221

NWESD: Superintendent
Northwest Educational Service District No. 189
1601 R Avenue
Anacortes, WA 98221

or to such other address as either party hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery.

14. **Separate Enforceability.** This Agreement shall be separately enforceable as a contract.

15. **Amendment.** No modification, termination or amendment of this Agreement may be made except by written agreement signed by all parties.

16. **Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute one agreement.

17. **Neutral Authorship.** Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

18. **Successors and Assigns/Covenant Running With the Land.** This Agreement does not modify the CC&Rs. However, this Agreement is binding on the successors or assigns of the NWESD Property and the Park Property where specifically stated herein and those provisions that are binding on the successors and assigns shall be deemed a covenant running with the NWESD Property and the Park Property.



19. **No Third Party Beneficiaries.** Except for successors and to the extent stated herein, this Agreement has no third party beneficiaries.

20. **Entire Agreement.** The entire agreement between the parties hereto is contained in this Agreement and the exhibits hereto; and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction.

21. **Authority.** Each individual signing this Agreement affirms that the execution of this Agreement has been approved by his or her governing Commission or Board of Directors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of the last authorized signature below.

PORT OF ANACORTES


By: Robert W. Hyde
Its: Executive Director

Date: June 8, 2012

**NORTHWEST EDUCATIONAL
SERVICE DISTRICT NO. 189**


By: Dr. Gerald Jenkins
Its: Superintendent

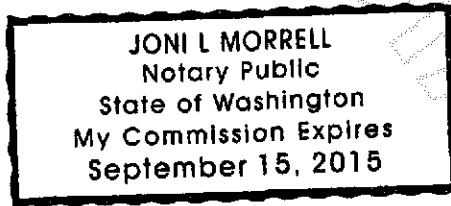
Date: June 6, 2012



STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this 16th day of June, 2012, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Dr. Gerald W. Jenkins** to me known to be a Executive Director of **Northwest Educational Services District No. 189**, the educational service district that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said district, for the uses and purposes therein mentioned, and on oath stated that he/she is duly authorized to execute the same.

GIVEN under my hand and official seal this 16th day of June, 2012.



Joni L. Morrell
Print Name: Joni L. Morrell
NOTARY PUBLIC in and for the
State of Washington, residing at Anacortes, WA
My commission expires: 09/15/2015

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this 8th day of June, 2012, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Robert W. Hyde**, to me known to be the **Executive Director** of the **Port of Anacortes**, the municipal corporation that executed the foregoing instrument, and acknowledged 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 duly authorized to execute the same.

GIVEN under my hand and official seal this 8th day of June, 2012.



Julie M. Lindsey
Print Name: Julie M. Lindsey
NOTARY PUBLIC in and for the
State of Washington, residing at Anacortes
My commission expires: 07-24-12



EXHIBIT "A"
FORM OF AMENDED EASEMENT

SETTLEMENT AGREEMENT - 10



201206120011
Skagit County Auditor

Filed for Record at Request of:

CHMELIK SITKIN & DAVIS P.S.
1500 Railroad Avenue
Bellingham, WA 98225
(360) 671-1796

DOCUMENT TITLE(S):

EASEMENT AGREEMENT

REFERENCE NUMBER(S) OF DOCUMENTS AMENDED, ASSIGNED AND/OR RELEASED:

N/A

Additional reference numbers found on page N/A of document.

GRANTOR(S) (Last name, First name and MI):

NORTHWEST EDUCATIONAL SERVICE DISTRICT #189

Additional grantors found on page N/A of document.

GRANTEE(S) (Last name, First name, and MI):

PORT OF ANACORTES

Additional grantees found on page N/A of document.

ABBREVIATED LEGAL DESCRIPTION (Lot, block, plat or section, township, range):

LOT 2A OF THAT CERTAIN BOUNDARY LINE ADJUSTMENT SURVEY RECORDED JUNE 6, 2003 UNDER AUDITOR'S FILE NO. 200306060196, BEING A REVISION OF LOTS 2A, 2B, 2C AND 2D, "SEAFARER'S VIEW," AS RECORDED UNDER AUDITOR'S FILE NO. 200112030101, AND THAT CERTAIN BOUNDARY LINE ADJUSTMENT SURVEY RECORDED APRIL 29, 2003, UNDER AUDITOR'S FILE NO. 200304290104, RECORDS OF SKAGIT COUNTY, WASHINGTON (THE "BLA SURVEYS");

LOT 3 OF SHORT PLAT #ANA-98-003, AS RECORDED ON FEBRUARY 17, 1999 UNDER AUDITOR'S FILE NO. 9902170072, RECORDS OF SKAGIT COUNTY

Additional legal is on pages 8, 9 of document.

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER(S):

P32948

P32960

EASEMENT AGREEMENT - 1



201206120011

Skagit County Auditor

**EASEMENT AGREEMENT
(AMENDED)**

THIS EASEMENT AGREEMENT (the "**Agreement**") is made this 7 day of June, 2012 (the "**Commencement Date**"), by and between NORTHWEST EDUCATIONAL SERVICE DISTRICT #189, a political subdivision of the State of Washington (hereinafter "**Grantor**"), and PORT OF ANACORTES, a Washington municipal corporation (hereinafter "**Grantee**").

WHEREAS, Grantor is the fee owner of a certain parcel of real property situated in Skagit County, Washington, as legally described in Exhibit "A" hereto (the "**Servient Estate**");

WHEREAS, Grantee is the fee owner of a certain parcel of real property situated in Skagit County, Washington, as legally described in Exhibit "B" hereto (the "**Dominant Estate**");

WHEREAS, Grantee desires to construct and maintain a public sidewalk, a public parking lot and associated landscaping, a private boat storage enclosure, and utilities over, under, upon and across portions of the Servient Estate; and

WHEREAS, Grantor desires to grant an easement to Grantee to construct and maintain a public sidewalk, a public parking lot and associated landscaping, a private boat storage enclosure, a small boat staging area, to allow existing roof and gutter encroachments, and utilities over, under, upon and across portions of the Servient Estate pursuant to the terms and conditions contained herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor grants an easement to Grantee as follows:

1. **Grant of Easement**. Grantor hereby grants and conveys to Grantee a perpetual, exclusive easement (hereafter the "**Easement**") for the construction, use and maintenance of a public sidewalk, a public parking lot with associated landscaping, a private boat storage enclosure, a grassy area, to allow existing roof and gutter encroachments and utilities over, under, upon and across that portion of the Servient Estate legally described and depicted in Exhibit "C" hereto (the "**Easement Area**"). The sidewalk, the grassy area and parking lot shall be open to use by any and all members of the public including, but not limited to, Grantor and its invitees and licensees.

2. **Commencement/Termination of Easement**. This Agreement shall commence upon the Commencement Date. This Agreement and all rights and obligations of Grantor and Grantee under this Agreement shall terminate:

a) If Grantee, its successors and/or any subsequent lessee of the Dominant Estate re-develops the Dominant Estate and/or no longer utilizes the Easement for the Sidewalk, Parking Lot, Boat Storage, Grassy Area as described herein and/or Utilities (defined below); or



b) If at any time Grantee or its successors or assigns of the Dominant Estate records a relinquishment of easement that terminates the Easement granted under Section 1 above.

2.1 If this Agreement terminates pursuant to Section 2, above, after development of the Easement, the Grantee or its successors shall remove all hard surfaces such as sidewalks and parking areas and extend the landscape in the Easement Area to a condition reasonably similar to the adjacent landscaping within six (6) months after termination of the Agreement. This obligation shall survive termination of the Agreement.

3. **Easement Area Development.** Grantee shall be entitled to construct, operate and maintain a public sidewalk (the "**Sidewalk**"), a public parking lot with associated landscaping (the "**Parking Lot**"), a private boat storage enclosure including, but not limited to, an open-air six foot (6') tall chain link fence storage enclosure (the "**Boat Storage**"), a grassy area which includes use as a small boat staging area ("**Grassy Area**"), associated sidewalks and to allow existing roof and gutter encroachments, and utilities (the "**Utilities**") within the Easement Area. Grantee's development, operation and maintenance of the Sidewalk, Parking Lot, Boat Storage and Grassy Area, to allow existing roof and gutter encroachments, and Utilities within the Easement Area shall be at Grantee's sole cost and expense. Upon completion, Grantee shall maintain all improvements and landscaping within the Easement in good condition and repair and meeting all requirements imposed under (a) that certain Declaration of Covenants, Conditions, Easements, Restrictions and Reservations for South Harbor Center, Anacortes Washington, recorded under Skagit County Auditor's Filing No. 9903020097, including any amendments thereto, and (b) any other document of record affecting the Servient Estate.

3.1 *Grassy Area.* That portion of the Easement Area identified in Exhibit "C" being south of the concrete sidewalk and identified as being "grass" shall be preserved by Grantee for use as (i) a no cost to the public small boat staging area allowing operators of small sailing craft to prepare their vessels for launching from the Port Park and then disassembly of such craft at the conclusion of use, (ii) pedestrian uses, and (iii) relaxing, picnicking and other non-intensive relaxation. No commercial activity of any kind is allowed in this area.

3.2 *Grantor Rights to Regulate Noise and Activity.* Grantor and Grantee share an interest in minimizing the impact on Grantor's operations from the public's use of the Grassy Area. In this regard the Grantee shall post surface level monument style signs asking for the public cooperation to minimize noise and to reserve the grassy area for users of small boats. In addition, the Grantor may place sandwich board signs on the grassy area and/or the sidewalk advising the public on behalf of the Grantor and Grantee that an event is underway in the Grantor's nearby conference room and seeking the public's cooperation in minimizing any disruption. Grantor may also directly request individuals to refrain from noise or disruptive activities when an event is underway in the Grantor's nearby conference room. The Grantor reserves the right of the NWESD to contact law enforcement to remove those causing a disruption or disturbance when an event is underway in the NWESD's nearby conference room.



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Skagit County Auditor

3.3 **Indemnification.** To the extent permitted by law, Grantee agrees to indemnify, defend and hold harmless Grantor, its officers, employees, agents and representatives from all claims, actions, suits, losses, harm, liabilities, damages, costs and expenses, including but not limited to, reasonable attorneys' fees, arising in any way out of the use of the easement rights granted to Grantee pursuant to this Easement. Notwithstanding the foregoing, Grantor shall be liable for any such claims in proportion to Grantor's respective fault arising out of or related to Grantor's negligent, grossly negligent, intentional or willful acts or omissions.

4. **Grantor's Parking Easement.** As consideration for the Easement rights granted herein, Grantee hereby grants to Grantor a perpetual non-exclusive easement (hereafter the "**Grantor's Parking Easement**") to park standard passenger automobiles on and within any of the developed and delineated parking spaces located on the Dominant Estate's park building parking lot (the "**Park Building Parking Lot**") or the Parking Lot on a 1st come 1st serve basis.

4.1 Grantor agrees to indemnify, defend and hold harmless the Grantee, its officers, employees, agents and representatives from all claims, actions, suits, losses, harm, liabilities, damages, costs and expenses, including but not limited to, reasonable attorneys' fees, arising in any way out of the provision of Grantor's Parking Easement rights granted to Grantor pursuant to this Section 4. Notwithstanding the foregoing, Grantee shall be liable for any such claims in proportion to Grantee's respective fault arising out of or related to Grantee's negligent, grossly negligent, intentional or willful acts or omissions.

5. **Binding Effect.** This Agreement, and all rights associated therewith, shall be perpetual in existence and duration and considered and construed as covenants running with the land, and shall be binding upon and inure and extend to the benefit of the successors and assigns of the parties hereto.

6. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7. **Jurisdiction and Venue.** Jurisdiction for any action to enforce the terms of this Agreement shall be in the Superior Court for the State of Washington. Venue for any such action shall be in Skagit County.

8. **Captions.** The captions and paragraph headings contained in this Agreement are for the convenience of the parties and for reference only, and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

9. **Waiver.** No failure by either party hereto to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term or condition.



10. **Neutral Authorship.** Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

11. **Amendments.** Except as otherwise set forth herein, this Agreement may not be modified, amended or terminated except by the written agreement of all parties or their successors and assigns.

12. **Notices.** All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Grantor: Northwest Educational Service District #189
Attn: Superintendent
1501 R Avenue
Anacortes, WA 98221

Grantee: Port of Anacortes
Attn: Robert W. Hyde
100 Commercial Avenue
Anacortes, WA 98221

13. **Counterparts – Authority.** This Agreement may be executed in counterparts and each executed counterpart shall have the same force and effect as the original instrument and as if all of the parties to the counterparts had signed the same instrument. Electronic facsimile signatures and/or electronically scanned signatures shall be sufficient to demonstrate a party's assent to this Agreement. Each individual signing this Agreement on behalf of either the Grantor or the Grantee represents that they have the authority to bind the party on who's behalf they are signing and that all steps necessary for their respective entity to execute this Agreement have been taken.

14. **Entire Agreement.** This Agreement supersedes the terms and conditions of that certain Easement Agreement recorded under Skagit County Auditor's File No. 201104120159 and contains the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes and replaces all written and oral agreements previously made or existing with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date set forth above.



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Skagit County Auditor

GRANTOR:

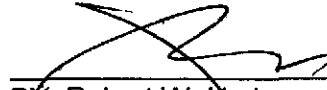
**NORTHWEST EDUCATIONAL
SERVICE DISTRICT #189**



BY: Dr. Gerald W. Jenkins
TITLE: Superintendent

GRANTEE:

PORT OF ANACORTES



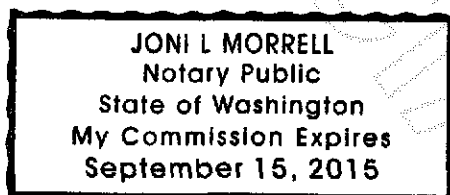
BY: Robert W. Hyde
TITLE: Executive Director



STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this 6th day of June, 2012, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Dr. Gerald W. Jenkins to me known to be a Executive Director of **Northwest Educational Services District No. 189**, the educational service district that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said district, for the uses and purposes therein mentioned, and on oath stated that he/she is duly authorized to execute the same.

GIVEN under my hand and official seal this 6th day of June, 2012.

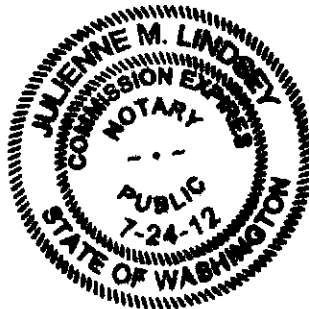


Joni L. Morrell
Print Name: Joni L. Morrell
NOTARY PUBLIC in and for the
State of Washington, residing at Anacortes, WA
My commission expires: 09/15/2015

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this 8th day of June, 2012, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Robert W. Hyde**, to me known to be the **Executive Director** of the **Port of Anacortes**, the municipal corporation that executed the foregoing instrument, and acknowledged 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 duly authorized to execute the same.

GIVEN under my hand and official seal this 8th day of June, 2012.



Julianne M. Lindsey
Print Name: Julianne M. Lindsey
NOTARY PUBLIC in and for the
State of Washington, residing at Anacortes
My commission expires: 07-24-12



EXHIBIT "A"
SERVIENT ESTATE LEGAL DESCRIPTION

LOT 2A OF THAT CERTAIN BOUNDARY LINE ADJUSTMENT SURVEY RECORDED JUNE 6, 2003 UNDER AUDITOR'S FILE NO. 200306060196, BEING A REVISION OF LOTS 2A, 2B, 2C AND 2D, "SEAFARER'S VIEW," AS RECORDED UNDER AUDITOR'S FILE NO. 200112030101, AND THAT CERTAIN BOUNDARY LINE ADJUSTMENT SURVEY RECORDED APRIL 29, 2003, UNDER AUDITOR'S FILE NO. 200304290104, RECORDS OF SKAGIT COUNTY, WASHINGTON (THE "BLA SURVEYS"); 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.

SITUATE IN THE CITY OF ANACORTES, COUNTY OF SKAGIT, STATE OF WASHINGTON.

SKAGIT COUNTY ASSESSOR PARCEL NO. P32948.



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Skagit County Auditor

EXHIBIT "B"
DOMINANT ESTATE LEGAL DESCRIPTION

LOT 3 OF SHORT PLAT #ANA-98-003, AS RECORDED ON FEBRUARY 17, 1999 UNDER AUDITOR'S FILE NO. 9902170072, RECORDS OF SKAGIT COUNTY, WASHINGTON, AND BEING LOCATED IN THE NW ¼ OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST OF THE W.M.

SITUATE IN SKAGIT COUNTY, STATE OF WASHINGTON.

SKAGIT COUNTY ASSESSOR PARCEL NO. P32960.



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Skagit County Auditor

EXHIBIT "C"
EASEMENT AREA

EASEMENT AGREEMENT - 10



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Skagit County Auditor

6/12/2012 Page

20 of

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SOUND DEVELOPMENT GROUP, LLC.

Engineering, Surveying, GPS Construction Modeling and Land Development Services

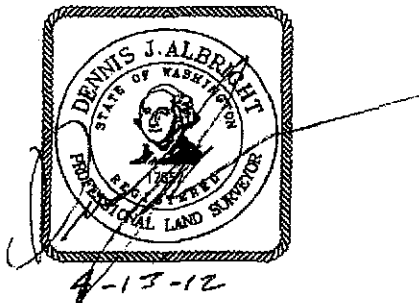
4-13-12

Legal Description for Northwest Educational Service District

That portion of Lot 2A of that certain Boundary Line Adjustment for Shared Healthcare Systems, Inc, located in the City of Anacortes. Approved June 6, 2003 and recorded June 6, 2003 under Auditors File No. 200306060196, records of Skagit County Washington, being in a portion of Government Lots 1 and 2 of Section 19, Township 35 North, Range 2 East, WM lying Northerly and Easterly of the following described line:

Commencing at the most Easterly corner of said Lot 2A: Thence South $89^{\circ} 26' 06''$ West along the North line of said Lot 2A a distance of 94.81 feet to a point which lies 110.55 feet Easterly of an angle point in said Lot 2A and the **TRUE POINT OF BEGINNING** of this line description: Thence South $17^{\circ} 55' 42''$ West 6.91 feet; Thence South $47^{\circ} 44' 46''$ West 16.22 feet; Thence South $76^{\circ} 33' 48''$ West 53.74 feet; Thence South $84^{\circ} 51' 53''$ West 19.21 feet; Thence South $67^{\circ} 47' 37''$ West 10.77 feet; Thence South $24^{\circ} 17' 55''$ West 8.52 feet; Thence South $3^{\circ} 38' 57''$ East 7.56 feet; Thence North $82^{\circ} 29' 30''$ West 21.93 feet; Thence North $64^{\circ} 05' 11''$ West 7.55 feet; Thence North $30^{\circ} 00' 09''$ West 6.21 feet; Thence North $53^{\circ} 02' 55''$ West 15.89 feet; Thence North $21^{\circ} 43' 13''$ West 36.47 feet; Thence North $70^{\circ} 03' 34''$ East 2.65 feet; Thence North $21^{\circ} 52' 57''$ West 76.57 feet; Thence North $0^{\circ} 34' 57''$ West 90.50 feet to a point on the Northerly line of said Lot 2A and the terminus of said line description.

Situate in the County of Skagit, State of Washington



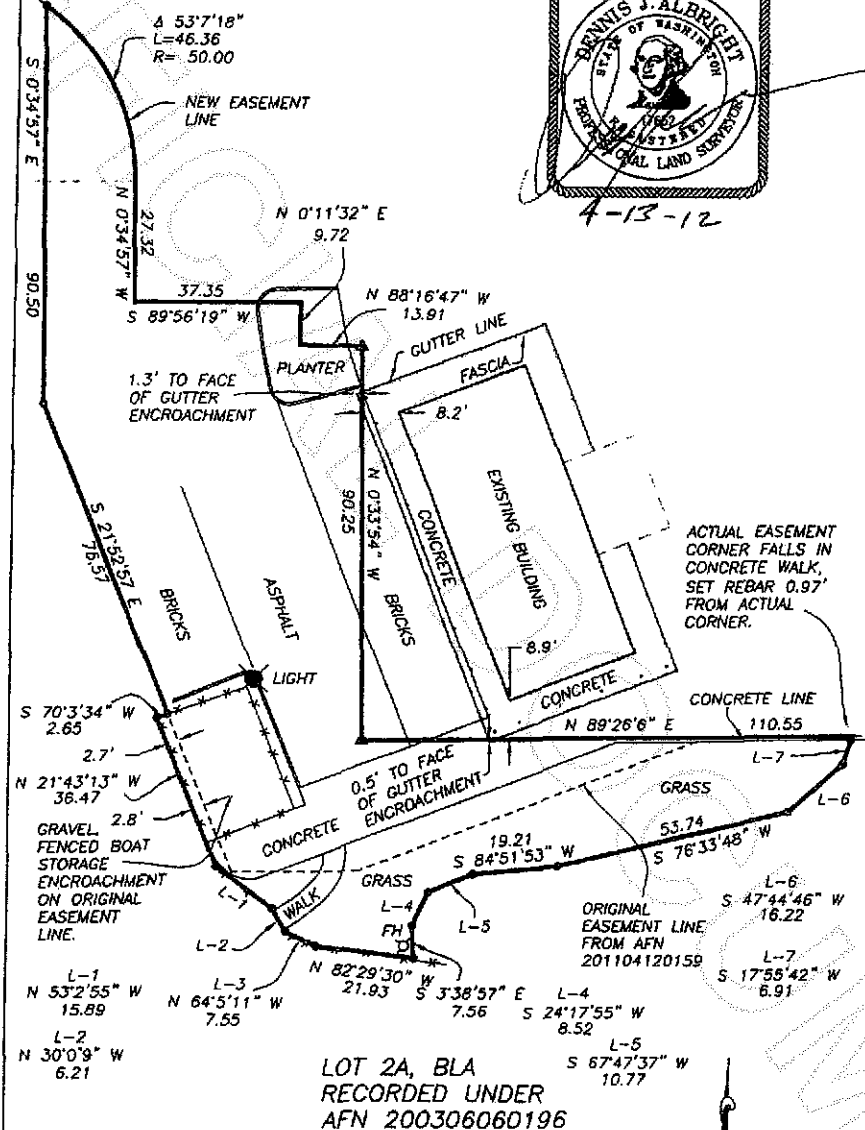
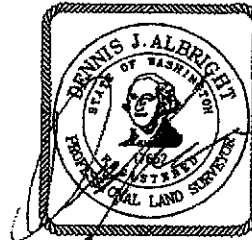
P.O. Box 1705 • 1111 Cleveland Avenue, Suite 202, Mount Vernon, WA 98273
Phone (360) 404-2010 • Fax (360) 404-2013 • office@sdg-llc.com



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Skagit County Auditor

6/12/2012 Page 21 of 22 10:32AM

PORTION OF GOV'T LOTS 1 AND 2 SECTION 19, T. 35 N., R. 2 E., WM

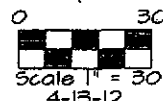


LEGEND

- SET 5/8" REBAR WITH CAP STAMPED "LS 17652"
- ▲ SET NAIL AND WASHER STAMPED "LS 17652"
- x- FENCE LINE

Sound Development Group

ENGINEERING, SURVEYING & LAND DEVELOPMENT SERVICES



11058, 11058EXHIBIT.DWG



201206120011
Skagit County Auditor