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Skagit County Auditor

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3/25/2015 Page

1 of

4 8:47AM

Return Address:

Land Title - Anacortes

Document Title:

Environmental Agreement LAND TITLE OF SKAGIT COUNTY

Reference Number (if applicable):

150939-SAG

Grantor(s):

additional grantor names on page ___

1) TS Anacortes Enterprises LLC

Land Title and Escrow

2) _____

Grantee(s):

additional grantor names on page ___

1) Port of Anacortes

2) _____

Abbreviated Legal Description:

full legal on page(s) ___

Lots 1-20 Blk. 31 Anacortes

Assessor Parcel /Tax ID Number:

additional parcel numbers on page ___

P55040, P55039, P55038, P55037, P55036, P55035

UNOFFICIAL DOCUMENT

ENVIRONMENTAL AGREEMENT

THIS ENVIRONMENTAL AGREEMENT (the "Environmental Agreement") is made and entered into this 24th day of March, 2015 by and between **TS ANACORTES ENTERPRISES, LLC** a Washington limited liability company ("Seller") and the **PORT OF ANACORTES**, a Washington municipal corporation (the "Port").

I. RECITALS

WHEREAS, on November 6, 2014, the parties entered into a Real Property Purchase and Sale Agreement (the "PSA") for parcels of property (the "Property") legally described as:

Lots 1-20 of Block 31, Map of Anacortes, According to the Plat thereof recorded in Volume 2 of Plats, pages 4 -7, records of Skagit County, Washington; and

WHEREAS, pursuant to the PSA and as part consideration of the same, the parties agreed to enter into this Environmental Agreement.

II. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and the other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Definitions.**

a. "Hazardous Substances" means any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 *et seq.*; the Clean Air Act, 42 U.S.C. § 2001 *et seq.*; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*; or the Model Toxics Control Act, RCW 70.105D *et seq.*, all as amended and subject to all regulations promulgated thereunder ("Environmental Laws").

b. "Release" means any intentional or unintentional entry of any Hazardous Substance into the environment, including but not limited to the abandonment or disposal of containers of Hazardous Substances.

2. **Seller's Representations and Warranties.** Seller represents and warrants that neither it nor its members have knowledge of any Release of Hazardous Substances in, on, under, or emanating from the Property.

3. **Judgment Limitation.** In the event that Hazardous Substances are discovered in, on, under, or emanating from the Property, the Port agrees to not collect a judgment against Seller or its members concerning liability for a Release that occurred or was contributed to prior to the effective date of this Environmental Agreement (a "Past Release"), to the extent the judgment exceeds payment from any of Seller's or its members' applicable insurance policies. This provision does not prohibit the Port from collecting a judgment against Seller and/or its members for a Past Release to the extent the judgment does not exceed payment from any

applicable insurance policies. Furthermore, this provision does not affect the Port's ability to collect a judgment against Seller and/or its members for a Release that (i) has occurred after the effective date of this Environmental Agreement and (ii) occurred on a portion of the Property that at the time of the Release was licensed to the Seller pursuant to the License executed as part of the Port's purchase of the Property.

4. **Seller's Assistance.** In the event that Hazardous Substances are discovered in, on, under, or emanating from the Property, Seller will reasonably, consistent with and subject to any obligations or duties owed by Seller to any insurer, cooperate with the Port in locating insurance coverage provided by any applicable insurance policies.

5. **Policy Assignment.** In the event that Hazardous Substances are discovered in, on, under, or emanating from the Property, consistent with and subject to any obligations or duties owed by Seller to any insurer, Seller will assign any applicable insurance policies to the Port if so requested by the Port.

6. **Attorneys' Fees.** Each party shall bear the cost of their own attorney fees for the review of this document. If any lawsuit arises in connection with the performance of this Environmental Agreement, the substantially prevailing party therein shall be awarded and recover from the other party the substantially prevailing party's costs and expenses, including reasonable attorneys' fees, incurred in connection therewith, in preparation thereof and on appeal therefrom, which amounts shall be included in any judgment entered therein.

7. **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 mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

The Port at: John Hachey
Interim Executive Director
Port of Anacortes
100 Commercial Avenue
Anacortes, WA 98221

Seller at: TS Anacortes Enterprises LLC
Attn: Steve Demopoulos
202 Commercial 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. Facsimile or e-mail transmission of any signed original document, and retransmission of any signed facsimile or e-mail transmission shall be the same as delivery of an original document.

8. **Assignment.** No assignment of this Environmental Agreement may be made except by written agreement signed by all parties hereto.

9. **Survival.** All provisions of this Environmental Agreement which involve obligations, duties or rights and all representations, warranties, and indemnifications made in or to be made pursuant to this Environmental Agreement shall survive the Closing Date as defined in the PSA and incorporated here by reference and/or the recording of the Deed defined in the PSA and shall be separately enforceable as a contract.

10. **Counterparts.** This Environmental 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 but one agreement.

11. **Neutral Authorship.** Each of the provisions of this Environmental 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 Environmental 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 Environmental Agreement.

12. **Governing Law.** This Environmental Agreement and the right of the parties hereto shall be governed by and construed in accordance with the laws of the State of Washington without regard to its choice of law provisions and the parties agree that in any such action venue shall lie exclusively in Skagit County, Washington.

13. **Entire Agreement.** The entire agreement between the parties hereto is contained in this Environmental Agreement; and this Environmental Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. Neither the Seller nor the Port shall be liable to the other for any representations made by any person concerning the Property or regarding the terms of this Environmental Agreement except to the extent that the same are expressed in this Environmental Agreement. This Environmental Agreement may be amended only by written instrument executed by the Seller and the Port subsequent to the date hereof.

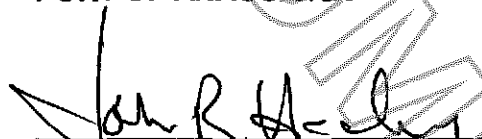
IN WITNESS WHEREOF, the parties have executed this Environmental Agreement as of the day and year first above written.

TS ANACORTES ENTERPRISES LLC



By: Steve Demopoulos
Its: Manager/Member

PORT OF ANACORTES



By: John Hachey
Its: Interim Executive Director

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