

Island Title Company

P. O. BOX 1228
ANACORTES, WA. 98221

SA-11537

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
Brian J. Boyle
Commissioner of Public Lands
Olympia, Washington 98504

RECEIVED

MAY 25 1998

DEPARTMENT OF
NATURAL RESOURCES

9207240213

HARBOR AREA LEASE NO. 22-002664

BY THIS LEASE, by and between the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, hereinafter called the Lessor, and CITY OF ANACORTES, hereinafter called the Lessee, the Lessor leases to the Lessee on the terms and conditions as hereinafter set forth, the following described harbor area situate in Skagit County, Washington, to wit:

For the period of time from October 3, 1986 to December 30, 1987 the lease area is described as follows:

That portion of the harbor area in front of Tracts 3 to 9, inclusive, Anacortes Tide Lands (Plate 11) included within the limits of the following described tract:

Beginning at a point on the inner harbor line which is South 29° 47' 00" East 1048.40 feet from the northeast corner of Tract 1, Anacortes Tide Lands (plate 11), this being the true point of beginning, thence North 76° 14' 48" East 209.0 feet, thence North 06° 00' 00" West 420.0 feet, thence South 89° 23' 00" East 263.0 feet across the harbor area to a point on the outer harbor line, thence South 29° 47' 00" East along said outer harbor line 2,498.523 feet, thence North 89° 34' 00" West across the harbor area 690.946 feet to a point on the inner harbor line, thence North 29° 47' 00" West along said inner harbor line 1,957.80 feet to the true point of beginning as shown on the attached Exhibit A, having an area of 36.00 acres.

For the period of time from December 31, 1987 to October 1, 2016 the lease area is described as follows:

That portion of the harbor area in front of Tracts 1 through 9, Anacortes Tide Lands (Plate 11) included within the limits of the following described tract:

Beginning at a point on the inner harbor line which is the northeast corner of Tract 1, Anacortes Tide Lands (Plate 11), the true point of beginning thence South 89° 23' 00" East 689.01 feet across the harbor area to a point on the outer harbor line, thence South 29° 47' 00" East along said outer harbor line 3,008.563 feet, thence North 89° 34' 00" West across the harbor area 690.946 feet to a point on the inner harbor line, thence North 29° 47' 00" West 3,006.20 feet to the true point of beginning, as shown on the attached Exhibit A, having an area of 47.63 acres.

SECTION 1 OCCUPANCY

1.1 Term. This lease shall commence on the 3rd day of October 1986 and continue to the 1st day of October 2016.

SECTION 2 USE OF PREMISES

2.1 Permitted Use. The Lessee shall have use of the leased premises for the purposes of constructing, operating, and maintaining structures for commerce and navigation consisting of mooring, piling, boat launch facilities, etc., as shown on the attached exhibit and approved by the Lessor: Exhibit A - plat. Future construction projects will be identified on updated exhibits.

SECTION 3 PAYMENT

3.1 Rent.

(1) Annual Rent. Initial annual rent in the amount of \$23,522.40, and subsequent annual rent, as determined by the Lessor in accordance with Chapter 221, Laws of 1984 (RCW 79.90.450 - .902), or as amended by subsequent legislation, is due and payable in advance by the Lessee to the Lessor and is the essence of this lease, and is a condition precedent to the continuance of this lease or any rights thereunder. Payment is to be to the Department of Natural Resources, Olympia, Washington 98504.

SKAGIT COUNTY WASHINGTON
Real Estate Excise Tax
PAID

9207240213

-1-

BK1098FG0603

JUL 24 1992

Amount Paid \$
Skagit County Treasurer
By: Deputy

(2) Inflation Adjustment. After payment of the initial rent, annual rent shall be adjusted each year thereafter according to the change in the Producer Price Index, as provided by regulations of the Department of Natural Resources.

(3) Interest Penalty for Past Due Rent Balances. A one percent charge, per month, shall be due to the Lessor, from the Lessee, on any rent balance which is more than thirty days past due.

3.2 Leasehold Tax. The Lessee shall pay to the Lessor at Olympia, Washington 98504, the leasehold tax, if applicable, as set forth in chapter 61, Laws of 1976, 2nd Ex. Sess., or as may be amended. The tax shall be due and payable at the same time the rental charged herein is due and payable. Failure to pay said tax when due and payable shall be considered a breach of the provisions of this lease and the Lessor shall be entitled to all remedies they are entitled to by law, and the remedies provided herein for a breach of a provision of this lease. Any delinquent taxes shall be a debt to the Lessor and in the event the Lessor is subject to any penalties or interest because of the failure of the Lessee to pay such taxes, such penalties and interest shall be payable by the Lessee to the Lessor and shall be considered a debt to the Lessor. In the event the Lessor suffers any costs of whatsoever nature, including attorney fees, or other costs of litigation in collecting said tax, such costs shall be payable by the Lessee and shall be considered a debt due and owing to the Lessor by the Lessee.

3.3 Revaluation of Rent. The Lessor shall at the end of the first four year period of the lease term and at the end of each subsequent four year period of the lease term, determine the annual rental in accordance with RCW 79.90.480 or as amended by subsequent legislation.

SECTION 4 RESERVATIONS AND CONDITIONS OF USE

4.1 Discrimination. The Lessee covenants and agrees that in the performance of this lease agreement, the Lessee shall conduct its activities in a manner that will assure fair, equal and non-discriminatory treatment of all persons regardless of race, creed, sex, marital status or ethnic origin. Notwithstanding any exemption contained in state or federal law, the Lessee shall comply with all federal and state laws, rules or regulations concerning hiring and employment and assuring the service of all patrons, customers, members or invitees without discrimination as to any person's race, creed, sex, marital status or ethnic origin.

4.2 Improvements.

(1) No improvement in addition to those authorized by the Permitted Use clause herein, shall be placed upon the harbor area without the prior written authorization of the Lessor. Authorized improvements constructed or placed on the leased premises during the term of this lease by the Lessee, unless otherwise specified, are the property of the Lessee. Upon the cancellation or expiration of this lease, the Lessee agrees to sever, remove and dispose of those improvements on the premises designated by the Lessor within six months from date of termination or expiration. In those cases where the Lessor requires removal of improvements and such action is not taken by the Lessee, the Lessee agrees that the Lessor may remove such improvements and charge the Lessee for cost of removal and disposal. All improvements allowed to remain on the area herein described, upon termination or expiration of this lease, shall be the property of the Lessor.

(2) The Lessee shall erect within a reasonable time (according to the plan of development) the improvements authorized by the Permitted Use clause herein, and continuously operate the improvements during the term of this lease.

4.3 Unauthorized Improvements. All improvements made on or to the premises without the written consent of the Lessor shall immediately become the property of the Lessor. The Lessor may, at its option, require the Lessee to remove and dispose of any or all improvements, and in those instances where such action is not taken by the Lessee, the Lessor may remove such improvements, charging the Lessee for the cost of the removal and disposal, and cancel the lease.

4.4 Entry. The Lessor shall have access to the premises at all reasonable times for the purpose of securing compliance with the terms and conditions of this lease.

4.5 Access. The Lessor reserves the right of access to and across the leasehold premises for all purposes and further reserves the right to grant easements and other land uses on the premises to others when the easement or other land uses applied for will not unduly interfere with the use to which the Lessee is putting the premises or interfere unduly with the approved plan of development for the premises. No easement or other land uses shall be granted to third parties until payment for damages to the leasehold have been paid to the Lessee or a waiver of damages is signed by the Lessee.

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4.6 Restrictions on Use. In connection with use of the premises, the Lessee shall:

(1) Conform to applicable laws, regulations, permits, or order of any public authority affecting the premises and the use thereof, and correct at the Lessee's own expense any failure of compliance created through the Lessee's fault or by reason of the Lessee's use.

(2) Remove no valuable material without prior written consent of the Lessor.

(3) Not make, or suffer to be made, any filling in of the leased area or any deposit of rock; earth; ballast; refuse; garbage; waste matter; chemical, biological or other toxic wastes; hydrocarbons, any other pollutants; or other matter within such area except as approved in writing by the Lessor.

4.7 Regulations. The Lessor shall have the right to regulate, under rules established by it, maintenance and design requirements of all improvements, rates of wharfage, dockage and other tolls to be imposed by the Lessee upon commerce for any of the purposes for which leased harbor areas may be used, and to change such regulations and rates from time to time.

SECTION 5 REQUIREMENTS

5.1 Assignment and Sublease. This lease, or any portion thereof, may not be assigned, mortgaged, sublet or otherwise transferred without the prior written consent of the Lessor. In granting such consent the Lessor reserves the right to change the terms and conditions of this lease as it may affect the assignee. Further, if the Lessee is a corporation or partnership and if at any time during the term of this lease any part or all of the corporate shares or partnership interests of the Lessee shall be transferred by sale, assignment, bequest, inheritance, operation of law, or other disposition so as to result in a change in the present control of the corporation or partnership by the person or persons now owning a majority of the shares, or change in the holding of the corporate or partnership interest, the same shall constitute an assignment of this lease and as such shall require prior written consent of the Lessor. Failure to obtain written approval of any assignment defined in this lease shall be grounds for cancellation.

5.2 Maintenance.

(1) The Lessee, at its sole cost and expense, shall at all times keep, or cause all improvements regardless of ownership to be kept, in as good condition and repair as originally constructed or as hereafter put, except for reasonable use.

(2) The Lessee shall not allow debris or refuse to accumulate on the leased premises, caused either by itself or any person on the premises. Failure to comply with this provision shall be cause to permit the Lessor to remove the debris and refuse and collect the cost of such removal from the Lessee and/or cancel this lease.

(3) The Lessee may, following thirty days' notice to the Lessor, and after obtaining any required federal, state, or local permits, dredge the leased area as needed to maintain the water depths normal to the property. Specific written approval by the Lessor and payment for material is required for improvement dredging. In the event materials from improvement dredging are sold or deposited on privately owned property for improvement purposes, such material shall be paid for at the Lessor's appraisal.

5.3 Condition of Premises and Liability. The premises have been inspected by the Lessee and are accepted in their present condition. The Lessee agrees to defend and hold Lessor harmless from any and all claims suffered, or alleged to be suffered on the premises, or arising out of operations on the premises.

5.4 Assessments. The Lessee shall pay all the annual payments on all assessments that may be legally charged, whether or not such assessments have been levied against the leasehold or the Lessor by the assessing agency.

5.5 Insolvency of the Lessee. If the Lessee becomes insolvent, bankrupt, a receiver appointed, or his interest is transferred by operation of law, the Lessor may cancel this lease at its option. Insolvency as used herein, will mean the inability of the Lessee to meet obligations as they come due.

SECTION 6 MISCELLANEOUS

6.1 No Partnership. The Lessor is not a partner nor a joint venturer with the Lessee in connection with the business carried on under this lease and shall have no obligation with respect to the Lessee's debts or other liabilities.

6.2 Non-Waiver. Waiver by either party of strict performance of any provisions of this lease shall not be a waiver of, nor prejudice the party's right to require strict performance of the same provision or of any other provision in the future.

6.3 Attorneys' Fees. If suit or action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorneys' fees.

6.4 Succession. Subject to the limitations as stated in paragraph 5.1 on transfer of the Lessee's interest, this lease shall be binding upon, and inure to the benefit of the parties, their respective successors and assigns.

6.5 Notices. Any notice required or permitted under this lease shall be given when actually delivered or when deposited in the United States mail addressed as follows: To the Lessor: Department of Natural Resources, Mail Stop QW-21, Olympia, Washington 98504. To the Lessee: At the address given by the Lessee in the signature block, or as shown on later official documents of record with this lease.

6.6 Liens.

(1) No person shall have the right to file or place any lien of any kind or character upon the land or improvements within the leasehold premises without the prior written consent of the Lessor.

(2) In the event unauthorized liens or other charges are placed on the leasehold premises, including land or improvements, arising out of the Lessee's actions directly or indirectly, the Lessee shall immediately cause such liens or charges to be discharged. The Lessor may forthwith cancel this lease if the Lessee fails to discharge such liens or charges after ten days' notice to do so by the Lessor. The Lessee shall pay and indemnify the Lessor for all costs, damages or charges of whatsoever nature, including attorneys' fees necessary to discharge such liens or charges, whether such costs, damages or charges are incurred prior or subsequent to any cancellation of this lease.

6.7 Default. If the Lessee shall violate or default any of the covenants and agreements contained herein, including the obligation to pay rent, then the Lessor may cancel this lease provided that the Lessee has been notified of the violation or default thirty days prior to such cancellation and such violation or default has not been corrected within such time. In the event the Lessor elects to cancel this lease, all improvements located thereon shall become the property of the state of Washington.

6.8 Lessor's Right to Cure Defaults.

(1) If the Lessee fails to perform any requirements or obligations under this lease, the Lessor shall have the option to correct any default of this lease by the Lessee after thirty days' written notice to the Lessee. All of the Lessor's expenditures to correct the default shall be reimbursed by the Lessee on demand, with interest at the rate of one percent per month accrued from the date of expenditure by the Lessor.

(2) In the event any violation or breach of the provisions of this lease is causing damage to the leasehold premises or the Lessee is utilizing the leasehold premises in a manner not permitted by the provisions of this lease, or in any case damages are occurring to the leasehold premises, the Lessor may immediately enter upon the leasehold premises and take such action as necessary to cease such damages or use. In the event the damage to the leasehold is occurring the Lessee shall be liable for all costs incurred by the Lessor if the Lessor acts to cure such damages. The Lessor, at its option may send notice to the Lessee of such violations and the Lessee shall immediately cease such use or violation and correct and remedy such violations.

6.9 Security. The Lessee shall furnish a surety bond in such amount as may be determined by the Lessor from time to time in accordance with Title 79 RCW, as amended, as a guarantee of the faithful performance of the conditions and terms prescribed in this lease. Security other than a surety bond may be substituted if first approved in writing by Lessor. No bond is currently required.

6.10 Litigation. In the event this lease, its terms, its use, its occupation or it in any way becomes a matter of litigation, the Lessor shall be notified of such litigation within fifteen days after such litigation is begun. Failure to notify the Lessor of such action shall be cause for cancellation or termination of this lease.

The Lessee expressly agrees to all covenants herein, and binds himself for the payment hereinbefore specified.

Executed this 18th day of August, 1987.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

James A. Stearns
JAMES A. STEARNS, Supervisor

Signed this 10 day of AUGUST, 1987.

CITY OF ANACORTES

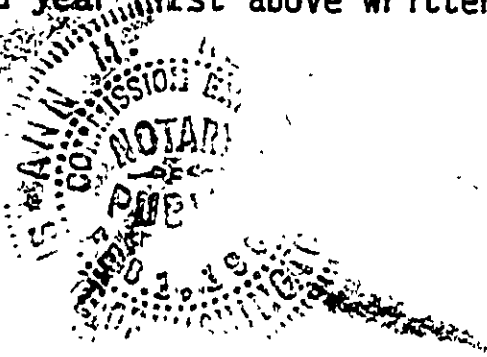
James Rice
PO BOX 547
Anacortes, WA 98221

CERTIFICATE OF
DEPARTMENTAL ACKNOWLEDGMENT

STATE OF WASHINGTON)
COUNTY OF THURSTON) ss

On this 18th day of August, 1987, before me personally appeared James A. Stearns, to me known to be the Supervisor of the Department of Natural Resources that executed the within and foregoing instrument, No. 22-002664, and he acknowledged said instrument to be the free and voluntary act and deed of the department for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Ann M. Reita
Notary Public in and for the state of
Washington

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2634 24 29

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CERTIFICATE OF
CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
COUNTY OF SKAGIT) ss

On this 10 day of AUGUST, 19 87, before me personally appeared JAMES RICE

to me known to be the MAYOR of the corporation that executed the within and foregoing instrument, Lease No. 22-002664, and acknowledged said instrument to be the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned, and on oath stated that (he was) (they were) authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

George K. Kanan 8/10/87
Notary Public in and for the state of
Washington



BAV

92 JUL 24 P 3:38

RECORDED _____ FILED _____
REQUEST OF _____

EXHIBIT A
HA2664

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