

WHEN RECORDED RETURN TO:

CITY OF ANACORTES  
LEGAL DEPARTMENT  
P.O. BOX 547  
ANACORTES, WA 98221



200403170054

Skagit County Auditor

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**ACCOMMODATION RECORDING**

**Chicago Title Insurance Company**

425 Commercial Street, Mount Vernon, Washington 98273

QB-2467

DOCUMENT TITLE(s)

1. LEASE
- 2.
- 3.

Chicago Title Company has placed  
this document for recording as a  
customer courtesy and accepts no  
liability for its accuracy or validity

REFERENCE NUMBER(s) OF DOCUMENTS ASSIGNED OR RELEASED:

☐ Additional numbers on page \_\_\_\_\_ of the document

GRANTOR(s):

1. CITY OF ANACORTES
- 2.
- 3.

☐ Additional names on page \_\_\_\_\_ of the document

GRANTEE(s):

1. NORTH HARBOR DIESEL, LLC
- 2.
- 3.

☐ Additional names on page \_\_\_\_\_ of the document

ABBREVIATED LEGAL DESCRIPTION:

PTN Sec 30, T35N, R2EWM

☐ Complete legal description is on page \_\_\_\_\_ of the document

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

P119602

☐ (sign only if applicable) I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature \_\_\_\_\_

This cover sheet is for the County Recorder's indexing purposes only.  
The Recorder will rely on the information provided on the form and will not read the document to verify the accuracy or completeness of the indexing information provided herein.

## Association Resolution

Resolved That the Association be authorized to take such action as may be deemed wise and proper in the interest of the Association and its members.

## LEASE

THIS LEASE AGREEMENT is made this 1<sup>st</sup> day of January, 2004, by and between the CITY OF ANACORTES, ("Lessor") and NORTH HARBOR DIESEL, LLC, ("Lessee").

**1. Premises.** Lessor does hereby lease to Lessee those certain premises at Lessor's Industrial Park facility in Anacortes, Skagit County, Washington, being situated upon leased harbor area described in Exhibits 1 and 2 attached hereto and incorporated herein by reference.

**2. Term.** The term of this Lease shall begin on January 1, 2004 and terminate on October 1, 2016 and may be renewed thereafter upon mutual agreement of the Lessor and Lessee.

**2A.** This Lease is in actually a sublease of a master lease between the City of Anacortes and the Washington State Department of Natural Resources (Lease No. 22-002664); the Sublease will terminate if this master lease terminates, whether upon expiration of the term, failure to exercise an option to renew, cancellation by State, surrender or for any other reason.

**2B.** There is no privity of contract between the Sub-lessee (North Harbor Diesel) and the State Department of Natural Resources.

**3. Rent.** Lessee covenants and agrees to pay Lessor at P.O. Box 547, Anacortes, WA 98221, or to such other party or at such other place as the Lessor may hereafter designate, \$500.00 per month beginning January 1, 2004.

Thereafter, the Base Monthly Rent shall be increased or decreased on the second anniversary date of the Lease ("Adjustment Date") for the next successive twenty-four (24) months by the same percentage of increase or decrease reflected by the U.S. Department of Labor's Consumer Price Index ("CPI") for all urban consumers for Seattle measured as the percentage change in the index from the period first proceeding the month the Lease begins and the same period preceding the Adjustment Date. If this statistic is unavailable, a reasonable equivalent as agreed to by Lessor and Lessee shall be utilized. Seller shall exercise its best efforts to cause the DNR Lease to be renewed on substantially similar terms and conditions for a term of thirty (30) years and the Lease to be renewed to Lessee for the term of the new DNR Lease.

**4. Late Payment and Interest.** If any amount due from Lessee is not received in the Lessor's office on or before the tenth (10<sup>th</sup>) day of the month, a late charge of ten dollars (\$10.00) for each day after the tenth of the month shall become immediately due and payable, which late charge Lessor and Lessee agree represents a fair and reasonable estimate of the processing and accounting costs that Lessor will incur by reason of such late payment.



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5. **Use.** Lessee shall use the premises for the purpose of small boat moorage and associated activities and for no other purposes without the prior written consent of Lessor and shall comply with all laws and insurance requirements applicable to Lessee's use of the premises. Lessee shall specifically comply with all environmental laws and regulations and will indemnify and hold Lessor harmless from any liability arising out of Lessee's failure to comply with such laws and regulations. Additionally, Lessee shall specifically comply with all restrictions set-out in DNR Lease #22-002664, or as amended, attached as Exhibit 3 hereto and incorporated herein by reference.

6. **Maintenance.** Lessee agrees by taking possession that the premises are in good condition. Lessee shall at reasonable times perform routine maintenance on the premises.

7. **Taxes.** Lessor shall pay all real estate taxes, with Lessee paying the State Leasehold Tax. Lessee shall pay all assessments including taxes, if any, direct or indirect, in whole or in part, upon the rents of income, if any, lessee derives from the leased premises.

8. **Lessor's Reservations.** Lessor reserves the right without liability to Lessee to inspect the premises at reasonable times and without unreasonable interference to the business of Lessee.

9. **Assignment and Subletting.** Lessee acknowledges that this Lease is in fact a sublease, that Lessor is leasing the premises from the State of Washington Department of Natural Resources and that the State of Washington's approval of this Lease is a condition precedent to its effectiveness. Lessee shall not undertake any activity which could cause Lessor to be in violation of Lease No. 22-002664. Lessee shall neither voluntarily or by operation of law assign, transfer, convey or encumber this lease or its interest under it, or sublet the premises or any part thereof, or allow any other person to occupy or use the premises without the prior written consent of Lessor and the State of Washington. The consent of Lessor and the State of Washington shall not release or discharge Lessee from future liability under this lease and shall not waive the right of Lessor and the State of Washington to consent to any future assignment or sublease. Any assignment or subletting without the consent to Lessor and the State of Washington, shall be void, and shall, at the option of Lessor and the State of Washington, constitutes a default under this Lease.

10. **Alterations.** After prior written consent of Lessor, which consent may not be unreasonably withheld, Lessee may make minor alterations, additions and improvements in the premises at its sole cost and expense beyond those set-out in Lessee's Shoreline Permit. Lessee agrees to save Lessor harmless from any damage, loss, or expense arising therefrom and to comply with all laws, ordinances, utilities and shall be billed directly for such utilities. All improvements made by the Lessee shall be the property of the Lessee and upon termination of this lease Lessee shall promptly remove those additions, alternations, or improvements as may be specified by Lessor, and repair and restore the premises to its original condition.



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**11. Accidents and Liability.** Lessor or its agents shall not be liable for any injury or damage to persons or property sustained by Lessee or others in and about the leased premises. Lessee agrees to defend and hold Lessor and its agents harmless from any claim, accident caused by, or associated with, Lessee's activities on or about or tenancy of the premises and/or judgment for injury or damage to persons or property suffered in or about the premises by any person, firm or corporation. Lessee shall at its expense, carry public liability and contractual liability insurance naming Lessor an additional insured, such insurance to afford minimum protection to the combined limit of not less than One Million Dollars (\$1,000,000) or such other lesser reasonable amount as Lessor may require in respect to injury or damage to persons or property. Lessee shall submit a certificate of such insurance to Lessor and such insurance shall not be cancelable without thirty (30) days prior written notice thereof to Lessor.

**11A. Subrogation Waiver.** Subject to the terms and conditions of insurance policies held by Lessee, and on the condition that the following condition shall not abrogate or avoid any insurance coverage in effect in favor of either Lessor or Lessee, Lessor and Lessee each release and relieve the other and waive its entire right of recovery against the other for loss or damage arising out of or incident to the perils of fire, explosion or any other perils described in the fire or extended coverage insurance endorsement approved for use in the State of Washington, which occurs in, on or about the premises, whether due to the negligence of either party, their agents, employees or otherwise.

**12. Eminent Domain.** If the whole of the premises shall be taken by any public authority under the power of eminent domain, or purchased by the condemner in lieu thereof, then the term of this Lease shall cease as the date possession is taken by such public authority. If only a part of the premises shall be so taken, the lease shall terminate only as to the portion taken, and shall continue in full force and effect as to the remainder of the premises, and the monthly rent shall be reduced proportionately; PROVIDED, however, if the remainder of the premises cannot be made useful for the purposes for which Lessee has been using the premises, either party, by written notice to the other, given at least thirty (30) days prior to the date that possession must be surrendered to the public authority, may terminate this lease effective as of such surrender of possession. In the event of any taking, whether whole or partial, Lessor shall be entitled to all awards, settlements, or compensation which may be given for the leased premises. Lessee shall have a claim against Lessor for the value of any unexpired term of this lease or part thereof. Lessee shall have a second and separate claim for the value of any and all improvements to the premises, made by or on behalf of Lessees, the full use and/or enjoyment of which is denied or diminished as a result of a taking.

**13. Liens and Insolvency.** Lessee shall keep the premises and Lessee's interest under this Lease free from any liens arising out of any work performed for, materials furnished to, or obligations incurred by lessee and shall hold Lessor harmless against the same. If Lessee shall be declared insolvent or bankrupt, or if Lessee's leasehold interest herein shall be levied upon or seized under writ of any court of law, or if a trustee,



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receiver or assignee be appointed for the property of Lessee, whether under operation of state or federal statutes, Lessor may, at its option, immediately, without notice (notice being expressly waived), terminate this lease and take possession of the premises, without, however, terminating Lessee's obligations under this lease.

**14. Default and Re-entry.** If Lessee fails to keep or perform any of the covenants and agreements herein contained, the same shall constitute a breach hereof, and if Lessee has not remedied such breach within ten (10) days after written notice thereof from Lessor if the breach is non-payment of rent or other charges, or within thirty(30) days after written notice thereof from Lessor in the event of the breach of any other covenant provided, however, a breach shall not be deemed to be uncured if Lessee commences to cure within thirty (30) days and for so long as Lessee is diligently attempting to cure, Lessor may, at its option, without further notice or demand:

a. Cure such breach for the account and at the expense of Lessee and such expense shall be deemed additional rent due on the first of the following month; or

b. Re-enter take possession of the premises, remove all property therefrom at Lessee's risk and expense, and (1) terminate this Lease, or (2) without terminating the Lease or in any way effecting the rights and remedies of Lessor or the obligations of Lessee, re-let the whole or any part of the premises as agent for Lessee, upon such terms and conditions as Lessor may deem advisable. In either event, any monies received from Lessee may first be applied by Lessor to any damages suffered by Lessor as a result of such default and the balance of such amounts may be applied toward payment of other sums due to Lessor hereunder. In the event the premises are re-let for Lessee's account, Lessee shall pay to Lessor monthly any deficiency; however, Lessor shall not be required to pay any excess to Lessee.

The above remedies of Lessor are cumulative and in addition to R.C.W. 59.12 or any other remedies now or hereafter allowed by law or elsewhere provided for in this Lease.

**15. Costs and Attorney's Fees.** In the event either party shall commence legal action to enforce any provision of this Lease, the Court shall award to the prevailing party all reasonable attorney's fees and all costs incurred in connection therewith, including fees and costs on appeal. Any action relating to this lease shall be brought in Skagit County.

**16. Holding Over.** If Lessee, with the implied or express consent of Lessor, shall hold over after the expiration of the term of this Lease, Lessee shall remain bound by all the covenants and agreements herein, except that tenancy shall be from month to month.

**17. Surrender of Possession.** Lessee shall, prior to the termination of this Lease or of Lessee's right to possession, remove from the premises all property which Lessee is entitled to remove and those alterations, additions, improvements or signs which may be required by Lessor to be removed and shall repair or pay for all damage to the premises



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caused by such removal. All such property remaining and every interest of Lessee in the same shall be conclusively presumed to have been conveyed by Lessee to Lessor under this Lease as a bill of sale, without compensation, allowance, or credit to Lessee. Lessee shall upon termination of this Lease or of Lessee's right of possession, peacefully quit and surrender the premises without notice, neat and clean, and in as good condition as when Lessee took possession, except for reasonable wear and tear as determined by Lessor.

**18. Notice.** Any notice required to be given by either party to the other pursuant to the provisions of this lease or any law, present or future, shall be in writing and shall be deemed to have been duly given or sent if either delivered personally or deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, addressed to the Lessor at P.O. Box 547, Anacortes, WA 98221, or to Lessee at the following address, or to such other address as either party may designate to the other in writing from time to time:

North Harbor Diesel, LLC.  
720 30<sup>th</sup> Street #A  
Anacortes, WA 98221

**19. No Waiver of Covenants.** Time is of the essence of this Lease. Any waiver by either party of any breach hereof by the other shall not be considered a waiver of any future, similar or other breach.

**20. Entire Agreement.** It is expressly understood and agreed by Lessor and Lessee that there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, express or implied, between them, other than as herein set forth and that this lease shall not be modified in any manner except by an instrument in writing executed by the parties.

**21. Binding on Heirs, Successors and Assigns.** The covenants and agreements of this Lease shall be binding upon the successors and assigns of both parties hereto, except as herein above provided.

Dated this 15 day of March, 2004.

**NORTH HARBOR DIESEL, LLC.**

**CITY OF ANACORTES**

By: Howard M. Ben  
~~President/Owner~~ Member

By: H. Dean Maxwell  
H. Dean Maxwell, Mayor



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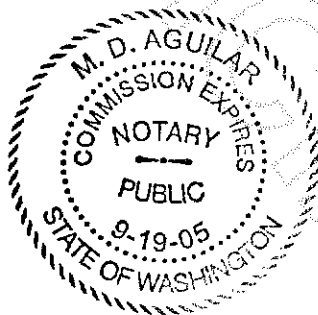
STATE OF WASHINGTON)

SS

COUNTY OF SKAGIT )

On this day personally appeared before me, Howar Bean, to me known to be the individual described in and who executed the foregoing agreement and acknowledged that he/she signed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 15<sup>th</sup> day of March, 2004.



M. D. Aguilar  
(Signature)

Notary Public in and for the State of Washington

M. D. Aguilar  
Print Name)

Residing in Anacortes, Washington.

My commission expires: 9/19/2005

SKAGIT COUNTY WASHINGTON  
Real Estate Excise Tax

**MAR 17 2004**

Amount Paid \$  
Skagit County Treasurer  
By: [Signature] Deputy

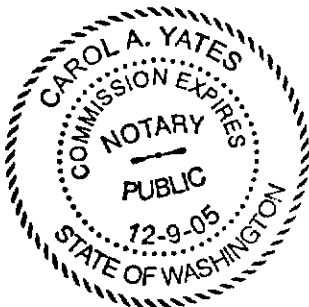
STATE OF WASHINGTON)

SS

COUNTY OF SKAGIT )

On this day personally appeared before me, H. Dean Maxwell, to me known to be the individual described in and who executed the foregoing agreement and acknowledged that he/~~she~~ signed the same as his/~~her~~ free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 15<sup>th</sup> day of March, 2004.



Carol A Yates  
(Signature)

Notary Public in and for the State of Washington

Carol A Yates  
Print Name)

Residing in Anacortes, Washington.

My commission expires: 12/9/05



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**Leonard, Boudinot & Skodje Inc.**  
PROFESSIONAL ENGINEERS & LAND SURVEYORS

EXHIBIT 1

JOHN E. LEONARD, JR., P.E. & P.L.

ROBERT C. BOUDINOT, JR., P.E.

JEFFREY A. SKODJE, P.L.S.

July 29, 1992

LEGAL DESCRIPTION FOR: City of Anacortes

Proposed Lease Site to NORTH HARBOR DIESEL from City of Anacortes

That portion of the Anacortes Harbor area, as shown on Plate No. 11 of the Anacortes Tide and Shorelands Maps in Section 30, Township 35 North, Range 2 East, W.M., records of Skagit County, Washington, being more particularly described as follows:

Commencing at the intersection of "T" Avenue and 30th Street, as shown on the Plat of Anacortes Industrial Park Addition, as per plat filed in Volume 10 of Plats at Pages 19, 20 and 21, records of Skagit County, Washington; thence South  $89^{\circ}59'40''$  East, along the centerline of said 30th Street a distance of 584.25 feet; thence South  $52^{\circ}24'04''$  East 299.52 feet; thence South  $89^{\circ}59'40''$  East a distance of 452 feet more or less to the East line of 30th Street; thence North  $6^{\circ}00'12''$  West a distance of 75 feet to the TRUE POINT OF BEGINNING; thence continue North  $6^{\circ}00'12''$  West a distance of 114 feet more or less to the intersection with the South line of the existing City of Anacortes concrete dock; thence North  $83^{\circ}59'48''$  East along the South edge of said City dock a distance of 95 feet more or less to the Westerly line of the Federal Navigation Channel; thence South  $6^{\circ}00'12''$  East a distance of 114 feet more or less to a point lying North  $83^{\circ}59'48''$  East from the True Point of Beginning; thence South  $83^{\circ}59'48''$  West a distance of 95 feet more or less to the TRUE POINT OF BEGINNING.

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Main Office: 608 South First Street, Anacortes, WA 98221-1100



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