



200505120060

Skagit County Auditor

5/12/2005 Page

1 of

8 11:22AM

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

**DOCUMENT TITLE(S):**

NON-EXCLUSIVE EASEMENT AND TEMPORARY USE DEED

**REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:**

N/A

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

SEAFARER'S, LLP

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

PORT OF ANACORTES

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

LOT 2D OF SURVEY 200306060196, PTN GL 1 & 2 IN 19-35-2

LOT 3 OF SURVEY 200306060196, PTN GL 1 & 2 IN 19-35-2

LOT 2C OF SURVEY 200306060196, PTN GL 1 & 2 IN 19-35-2

Additional legal is on pages 2 and 4.

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

LOT 2D	-	118627
LOT 3	-	32960
LOT 2C	-	118626

Filed for Record at Request of:  
Port of Anacortes  
P.O. Box 297  
Anacortes, WA 98221-0297  
(360) 293-3134

**NON-EXCLUSIVE EASEMENT  
AND  
TEMPORARY USE DEED**

**Grantor:** SEAFARER'S, LLP  
**Grantee:** PORT OF ANACORTES

---

Seafarer's, LLP, a Washington Limited Liability Partnership (the "Grantor") for good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant to Grantee, the Port of Anacortes, a Washington municipal corporation ("Grantee") a non-exclusive and perpetual easement over the land commonly known as the Strandberg/Woolworth Property and legally described as follows:

**SERVIENT ESTATE:** LOT 2D 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; 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.

For the benefit of the land commonly known as the Seafarers' Memorial Park Property and legally described as follows:

**DOMINANT ESTATE:** LOTS 3 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; 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

In addition, Grantor hereby grants to Grantee the exclusive and temporary use of a portion of the Servient Estate for the purpose of staging and storing equipment and material used in the construction of the Cap Sante Boat Haven fueling facility, the fuel storage facility and associated piping. In granting and accepting this perpetual non-exclusive easement and temporary exclusive use, Grantor and Grantee mutually agree, agree to be bound, and covenant as follows:

## **I. RECITALS**

**WHEREAS**, Grantee is the owner and operator of the marina/moorage facility known as Cap Sante Boat Haven that is adjacent to the dominant estate. Grantee intends on constructing a fuel storage facility on the Dominant Estate for storing fuel for its marine fueling operations for the Cap Sante Boat Haven.

**WHEREAS**, the purpose of this Non-Exclusive and Temporary Use Deed (the "Deed") is to provide Grantee the non-exclusive and perpetual right to use a portion of the Servient Estate for large fuel trucks with trailers to traverse over and across the Servient Estate for ingress and egress to the Dominant Estate by these large fuel trucks with trailers. In particular and without limiting the foregoing, it is the intent of the Grantor and the Grantee that these trucks be provided sufficient space to safely enter and exit the Dominant Estate to deliver fuel without the necessity of stopping and/or backing the truck and trailer. Therefore, the easement may consist of a route through the Servient Estate or a circular route turnaround that is large enough to accommodate the safe turning of the trucks with trailers without stopping and/or backing.

**WHEREAS**, an additional purpose of this Deed is to grant Grantee the temporary and exclusive right to use of a portion of Lot 2D of the Servient Estate as a staging area for equipment and supplies during Grantee's construction of its fuel storage facility on the Dominant Estate and the Cap Sante Boat Haven fueling facility. That portion of Lot 2D that will be used for the exclusive temporary use is depicted on Exhibit "A" and herein incorporated by this reference.

**NOW, THEREFORE**, the parties agree, declare, and provide as follows:

1. Perpetual Grant of Non-Exclusive Easement. Grantor conveys to Grantee a non-exclusive, perpetual easement across, along, in, and upon a portion of the Servient Estate for large fuel trucks with trailers to traverse over and across the Servient Estate for ingress and egress to the Dominant Estate by these large fuel trucks with trailers. In particular and without limiting the foregoing, it is the intent of the Grantor and the Grantee that these trucks be provided sufficient space to safely enter and exit the Dominant Estate to deliver fuel without the necessity of stopping and/or backing the truck and trailer. Therefore, the easement may consist of a route through the Servient Estate or a circular route turnaround that is large enough to accommodate the safe turning of the trucks with trailers without stopping and/or backing

1.1. Location of Easement: Initially, Grantee shall locate the easement on the Lot 2D of the Servient Estate. Grantee may install, at its sole expense, such improvements as may be necessary to utilize the easement for the purposes intended herein. Grantor shall

may be necessary to utilize the easement for the purposes intended herein. Grantor shall have the right to relocate the easement, at its sole expense, to another portion of the Servient Estate so long as the purpose of this easement is not frustrated or unreasonably impaired. In addition, Grantor shall have the right to relocate the easement, in part, to a portion of Lot 2C by recording this easement, in a manner acceptable to Grantor, as a binding obligation of Lot 2C as a portion of the Servient Estate. The legal description of Lot 2C is as follows:

LOT 2C 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; 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.

1.2. Grantor Improvements: In constructing any improvements on the Servient Estate, the Grantor shall not interfere with Grantee's non-exclusive use of the Servient Estate as provided herein. Therefore, any improvements on the Servient Estate will be constructed in such a way as to allow for the safe use of the Servient Estate as provided above.

1.3. Notice of Plans: Grantor shall provide a copy of any plan for development or redevelopment to Grantee thirty (30) days prior to undertaking any development or redevelopment. The plan shall indicate that portion the Servient Estate where the non-exclusive easement will be located.

2. Exclusive Temporary Use: Grantor conveys to Grantee temporary exclusive use of the a portion of Lot 2D of the Servient Estate as depicted on Exhibit "A" for the purpose of staging and storing equipment and supplies during construction of the fueling facility and associated piping.

2.1 Grantee may install, at its sole expense, such improvements as may be necessary for the temporary use intended herein. Upon termination of the exclusive temporary use Grantee shall remove all its improvements and restore the area used to the condition existing prior to the exclusive temporary use. Grantee may leave an improvement if the Grantor accepts the improvement in writing.

3. Compensation for Non-Exclusive Easement and Exclusive Temporary Use. For and in consideration of the easement and the use, Grantee shall provide the following to the Grantor.

3.1. Cash payment: Grantee shall pay Grantor Thirty Thousand Dollars (\$30,000) upon recordation of this Deed subordinate only to the ownership of the Grantor of the Servient Estate.

3.2. Preferential Moorage: In addition, so long as the non-exclusive easement has not been released, abandoned, or extinguished, the Grantee hereby grants Grantor the right of first refusal to lease up to a total of eight (8) available moorage slips, each up to Sixty Six (66) feet in length, located on A-Dock and/or B-Dock of the Cap Sante Boat Haven as depicted on Exhibit "A" subject to the following restrictions:

a. Commercial Marine Moorage Slips: The moorage slips leased to Grantor pursuant to this Deed shall be classified as commercial marine ("C/M") moorage slips and, except as provided herein, subject to all applicable rules, regulations and moorage charges applicable to the commercial marine classification as such rules, regulations and moorage charges now exist or are hereinafter modified or adopted.

b. Subordinate to Commercial Industrial Moorage Customers: Grantor's right of first refusal to lease available slips on A-Dock or B-Dock, is subject to and subordinate to the right of Grantee to lease slips to moorage customers classified as commercial-industrial ("C/I") moorage customers on A-Dock or B-Dock. In this regard, Grantor may be moved off of A-Dock or B-Dock to accommodate the needs of a C/I moorage customer (so long as no other C/M moorage customer remains on A-Dock or B-Dock)..

c. Relocation: If a slip becomes available on A-Dock or B-Dock that is suitable for Grantor and Grantor has not otherwise exercised its right to the eight (8) slips, the Grantor shall have the first right of refusal (other than C/I moorage customers) to lease the moorage slip.. In the event no suitable moorage is available for Grantor on A-Dock or B-Dock and Grantor has not otherwise exercised its right to the eight (8) slips, Grantor's moorage will be reassigned to an available and comparable length slip on C-Dock, D-Dock, E-Dock, or F-Dock. Grantor will thereafter be reassigned to A-Dock or B-Dock, as provided herein, if a moorage slip becomes available. In the event of a reconfiguration of the Cap Sante Boat Haven, Grantor's rights herein shall apply to the commercial marine moorage slips closest to the Servient Estate.

d. Exercising the Right of First Refusal: Grantor's exercise of this right of first refusal shall be subject to availability of slips. If, and when, a slip becomes available, Grantee shall provide the same to Grantor provided Grantor has then on file with Grantee a written request to lease the next available slip. Grantee shall notify Grantor, in writing, of the availability of a slip. Grantor shall notify Grantee within five (5) business days of notification from Grantee of Grantor's desire to exercise the right of first refusal. If Grantor does not provide such a written notice then the Grantor shall be free to offer the slip to another customer.

e. Parking: Grantee shall, in accordance with the rules and regulations of the Cap Sante Boat Haven as amended from time to time, provide one (1) non-exclusive parking space for each slip leased by Grantor. Under no circumstances will Grantor be provided with more than one parking space per marina slip.

f. No Administrative or Wait List Fee: Grantor shall not be charged administrative or wait-list fees for this right of first refusal.



g. Assignability: Grantor's right of first refusal, or portion thereof, shall be assignable to purchasers or lessees of the Servient Estate or Lot 2C as described above. Grantor shall notify the Grantee, in writing, of any such purchase or assignment or the termination of any such assignment.

3. Duration of Easement. The easement shall commence upon the recordation of the Deed and continue in perpetuity unless and until Grantee releases the easement with the recordation of a quit claim deed to Grantor. Grantee may release the easement at any time and without prior written notice to Grantor, its successors or assigns.

3.2 Termination of Preferential Moorage: The termination of the easement shall automatically terminate any further obligation of Grantor to grant any right of first refusal or preferential moorage as provided herein to Grantor, its successors or assigns.

4. Duration of Temporary Use. The temporary use shall commence upon the recordation of the Deed and continue until Grantee completes the construction contemplated herein but in no event later than March 31, 2006.

5. Binding Effect of Deed. This easement and use shall attach to the Servient Estate and the Dominant Estate and run with the Servient Estate and the Dominant Estate. The rights and burdens contained herein shall be binding on the undersigned and all successors, assignees, devisees, or transferees of the parties.

6. Amendment. No changes, modifications or additions to this Deed shall be valid or binding upon either party unless such change, modification or addition is made in writing and executed by authorized representatives of both parties in a manner as required by law.

7. Litigation. If, by any reason of any default or breach on the part of either party in the performance of any of the provisions of this Deed, the losing party agrees to pay all reasonable costs and attorneys' fees in connection therewith.

8. Understanding of Agreement. Each party acknowledges that such party has read this Deed and understands its contents, that such party has had the opportunity to have this Deed reviewed by an attorney of such party's choice, and that such party either has consulted with an attorney or voluntarily has chosen not to consult with an attorney before signing this Deed.

9. Entire Agreement. This Deed contains the entire agreement between the parties hereto and incorporates and supersedes all prior agreements and negotiations. It may not be modified or supplemented in any manner or form whatsoever, either by course of dealing or parol or written evidence of prior agreements and negotiations, except upon the written agreement of both parties.

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

# 2327

MAY 12 2005

Amount Paid \$  
By Skagit Co. Treasurer  
Deputy

-F



200505120060  
Skagit County Auditor

GRANTOR:

SEAFARER'S, LLP

Name:

By: Nels Standerberg

GRANTEE:

PORT OF ANACORTES

Name:

By: DAN STAHL

STATE OF WASHINGTON )

) ss.

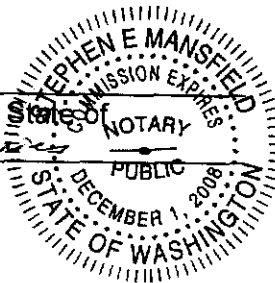
COUNTY OF SKAGIT )

On this 8<sup>th</sup> day of April 2005, before me personally appeared NELS STANDERBERG, to me known to be the MEMBER/MANAGER of SEAFARER'S, LLP, a Washington limited liability partnership that executed the within and foregoing instrument, and acknowledged the same instrument to be the free and voluntary act and deed of said Partnership, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Stephen E. Mansfield

NOTARY PUBLIC in and for the State of  
Washington, residing at Anacortes



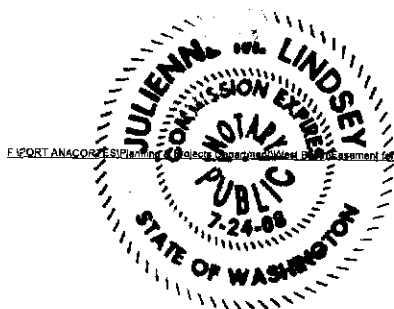
STATE OF WASHINGTON )

) ss.

COUNTY OF SKAGIT )

On this 12<sup>th</sup> day of APRIL 2005, before me personally appeared Dan Stahl to be the Executive Director of the PORT OF ANACORTES, a Washington municipal corporation that executed the within and foregoing instrument, and acknowledged the same instrument to be the free and voluntary act and deed of said Partnership, for the uses and purposes therein mentioned, and on oath stated that he/she 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.



Julianna K. Lindsey  
NOTARY PUBLIC in and for the State of  
Washington, residing at Anacortes

F:\PORT ANACORTES\Planning & Policy\Supplemental\Bids\Assessment of Fuel Trucks\Clean Environment\022805.doc



