

Schacht & Hicks  
1603 South Third  
Mt. Vernon, WA  
98273

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

SKAGIT COUNTY WASHINGTON  
Real Estate Excise Tax

JAN 22 1993

T-70303

LAND TITLE COMPANY OF SKAGIT COUNTY

AQUATIC LANDS LEASE NO. 22-002661

9301220088

Amount Paid \$ - 0 -  
Skagit Co. Treasurer  
By *Lp* Deputy

BY THIS LEASE, by and between the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, hereinafter called the Lessor, and MARGARET AND JAMES L. COLLINGE, a Washington marital community, hereinafter called the Lessee, the Lessor leases to the Lessee on the terms and conditions as hereinafter set forth, the following described aquatic lands situate in Skagit County, Washington, to wit:

The Harbor Area in front of a portion of Tract 9, Corrected Supplement to Plate 18, La Conner Tide Lands (and as revised by the 1986 Supplemental Map of La Conner Harbor) being more particularly described as follows:

Beginning at a point which bears N 31° 13' E 28.81' and N 58° 47' W 30.00' from the Southeast corner of said Tract 9; thence N 58° 47' W 71.00'; thence N 31° 13' E 44.19'; thence S 58° 47' E 71.00'; thence S 31° 13' W 44.19' to said point of beginning and terminal point of this description; all as shown on the official map of La Conner Tide-lands on file in the Office of the Commissioner of Public Lands at Olympia, Washington, and further as shown on Exhibit A attached hereto; the above described Harbor Area contains 3,138 square feet.

3,137.49 #

*Description OK except S.E. Corner Tract 9 should be shown 12.0' (S 58° 47' E) from where shown*

SECTION 1 OCCUPANCY

1.1 Term. This lease shall commence on the 24th day of May 1986 and continue to the 24th day of May 2016.

SECTION 2 USE OF PREMISES

2.1 Permitted Use. The Lessee shall have use of the leased premises for the purposes of a restaurant and cocktail lounge on a piling pier structure as shown on the attached Exhibit A, and approved by the Lessor.

SECTION 3 PAYMENT

3.1 Rent.

(1) Annual Rent. The annual rent for the initial four year rent period of this lease is as follows: 1st year \$550.70, 2nd year \$1,101.40, 3rd year \$1,652.10, 4th year \$1,652.10. These rents 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.

(2) Inflation Adjustment. After payment of the initial rent, annual rent shall be adjusted each year thereafter, exclusive of the years in which rent is revalued under Clause 3.3 hereof, 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 Lessor, from 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

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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.

On May 24, 1990, and at intervals of not less than four (4) years thereafter, a new annual rental will be established. The new annual rental will be based on the fair market value of the Property times the Lessor's current capitalization rate used in other ground lease transactions at the date of reappraisal. The fair market value will be determined, exclusive of the Lessee's improvements, by the Lessor's appraiser. The fair market value will be appraised within ninety (90) days of a rental adjustment period. The appraisal shall consider the economic impacts associated with a historic district designation and other unusual maintenance costs unique to the leased premises. In the event that agreement cannot be reached between the parties on the fair market value of the Property, such valuation shall be submitted to a panel of three qualified appraisers (as defined in Section 3.4 below). One appraiser is to be selected by the Lessee and his expense shall be borne by the Lessee; one appraiser is to be selected by the Lessor and his expense shall be borne by the Lessor; these appraisers so selected shall mutually select a third appraiser and his expenses shall be shared equally by the Lessee and the Lessor. The majority decision of this panel of appraisers shall be binding on both parties. Notwithstanding submission of the evaluation to the appraisers, the Lessee shall pay the rental amount as proposed by the Lessor on the due dates as required if no decision by the panel of appraisers has been made. If additional payments or refunds are required as a result of this review, such monies shall be due and payable within thirty (30) days after such decision.

3.4 Qualified Appraiser Defined. A "qualified appraiser" shall mean a real estate appraiser who has a professional designation as an "MAI" or "SREA," or is a member of a similarly recognized professional organization.

## 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. No improvement in addition to those authorized by the Permitted Use clause herein, shall be placed upon the leased premises 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 therein, 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, expiration, or cancellation of this lease, shall be the property of the Lessor.

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 unauthorized 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.

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.

## 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.

5.3 Condition of Premises and Liability. The premises have been inspected by the Lessee and are accepted in their present condition. Lessee will protect, save and hold harmless the Lessor, its authorized agents and employees, from all claims, costs, damages, or expenses of any nature whatsoever arising out of or in connection with the use of the site. Further the Lessee will be responsible for the payment of any fines or penalties charged against the site as a result of its action in not complying with laws or regulations affecting the site. Prior to starting developmental work on the site, the Lessee shall at Lessee's expense, obtain and keep in force during the term of this lease a policy of Combined Single Limit Bodily Injury and Property Damage Insurance insuring Lessor and Lessee against any liability arising out of the ownership, use, occupancy, or maintenance of the site and all areas appurtenant thereto. Such insurance shall be a combined single limit policy in an amount not less than \$1,000,000. The policy shall contain gross liability endorsements and shall insure performance by Lessee of the indemnity provisions of this section. The limits of the required insurance shall not limit potential liability of the Lessee pursuant to the terms of this lease. An insurance certificate evidencing such amount shall be sent to the Lessor. If Lessee shall fail to procure and maintain the required insurance, the Lessor may, but is not required, to procure and maintain said insurance but may be reimbursed for such costs by the Lessee. The amount of insurance required may hereafter be increased or decreased, at the option of the Lessor, at the time that rental adjustments are made after reappraisal pursuant to Clause 3.3. Certificates evidencing such insurance which require a minimum of thirty (30) days' written notice to the Lessor prior to any change in the amount of coverage, expiration, or cancellation of said policies shall be furnished as herein provided. All policies of insurance to be provided by Lessee under this lease shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility (Best's Guide A-AAAA) which are authorized to do business in the state of Washington.

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 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 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 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. The amount of the surety bond as of the date of this lease shall be \$3,300.00.

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 10<sup>th</sup> day of April, 1989.

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

James A. Stearns  
JAMES A. STEARNS, Supervisor

Signed this 2<sup>nd</sup> day of March, 1989.

Margaret Collinge  
MARGARET COLLINGE

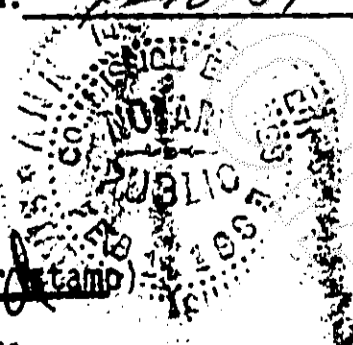
James L. Collinge  
JAMES L. COLLINGE  
1520 Snee - Oosh  
La Conner, Wa 98257

CERTIFICATE OF ACKNOWLEDGEMENT  
JAMES A. STEARNS

STATE OF WASHINGTON )  
County of Shuckton ) ss.

I certify that I know or have satisfactory evidence that James A. Stearns  
JAMES A. STEARNS  
signed this instrument, and oath stated that he was authorized to execute the instrument and acknowledged it as the Supervisor of the Department of Natural Resources, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 4-10-89



Ann M. Reeta  
Notary Public in and for the  
State of Washington

My appointment expires 2-1-93

22-002661  
VM 65

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CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF WASHINGTON )  
County of Skagit ) ss.

I certify that I know or have satisfactory evidence that James + Margaret Challenge  
name of person

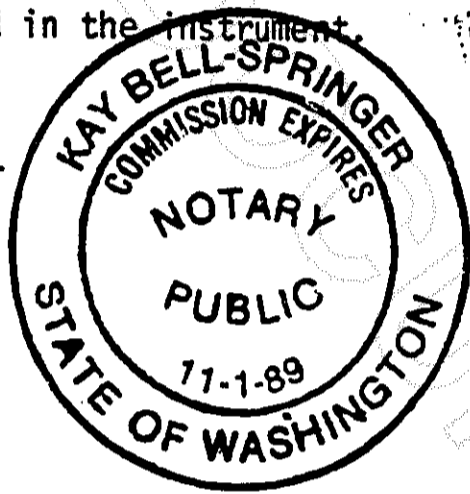
signed this instrument, and oath stated that (he/she/they) (was/were) authorized to execute the instrument and acknowledged it as the \_\_\_\_\_  
(type of authority, e.g., officer, trustee,

partner, marital community, etc.) of \_\_\_\_\_  
(name of party (ies) on behalf of whom instrument was

\_\_\_\_\_ to be the free and voluntary act of such party (ies) for the instrument was executed)

uses and purposes mentioned in the instrument.

Dated: 3-15-89



Kay Bell Springer  
Notary Public in and for the State of Washington

My appointment expires 11-1-89

(Seal or stamp)

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF WASHINGTON )  
County of \_\_\_\_\_ ) ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
name of person

signed this instrument, and oath stated that (he/she/they) (was/were) authorized to execute the instrument and acknowledged it as the \_\_\_\_\_  
(type of authority, e.g., officer, trustee,

\_\_\_\_\_ of \_\_\_\_\_  
partner, marital community, etc.) (name of party (ies) on behalf of whom instrument was

\_\_\_\_\_ to be the free and voluntary act of such party (ies) for the instrument was executed)

uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the State of Washington

My appointment expires \_\_\_\_\_

(Seal or stamp)

PROOF READ  
22-002661

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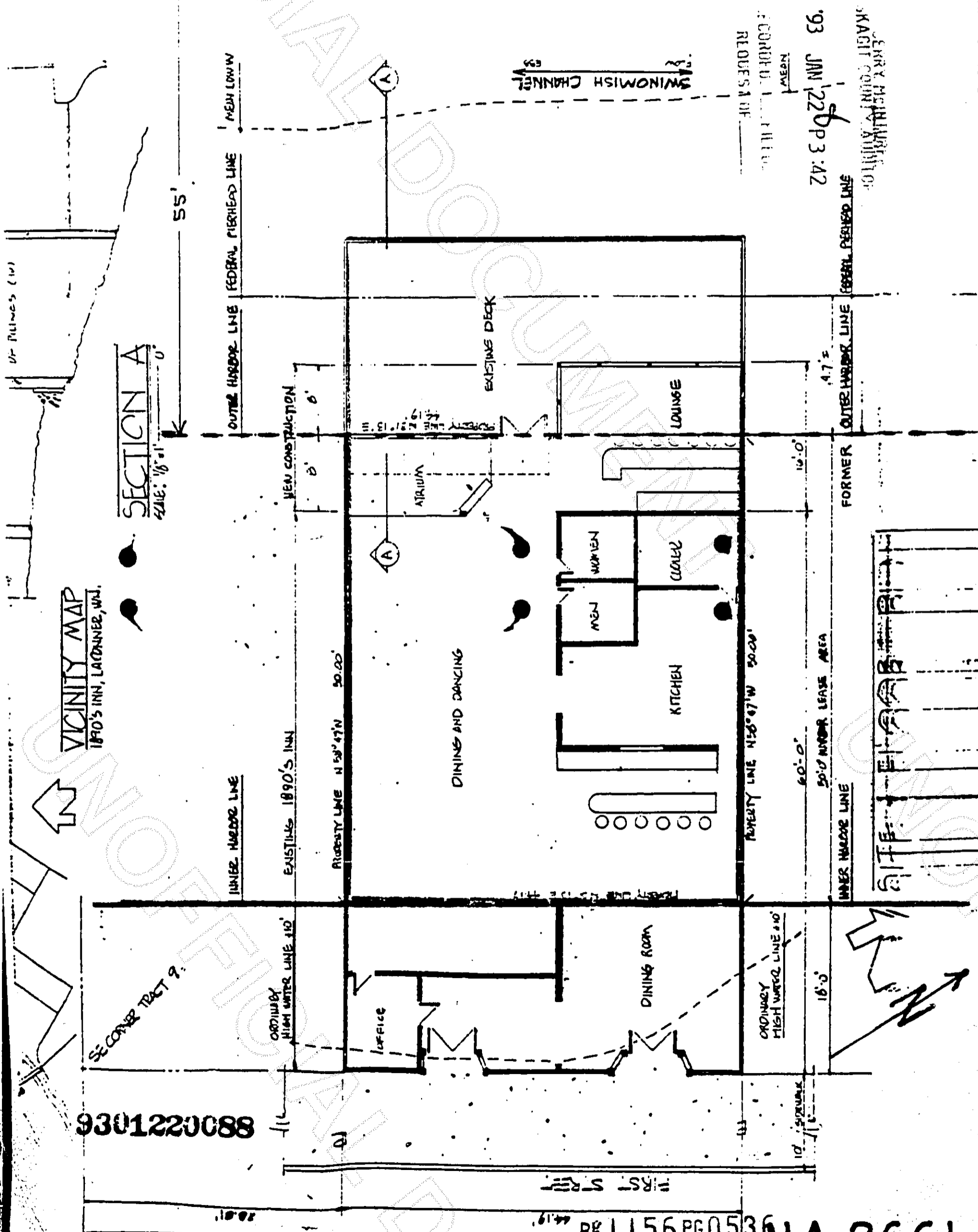
BK 1156 PG 0535

SCALE: 1 IN. = 12.8 FT.

- HARBOR LINES
- - - - - FORMER OUTER HARBOR LINE
- PRESENT LEASE BOUNDARY
- LIMIT OF IMPROVEMENTS

N. 31° 13' E. 410.00

OUTER HARBOR LINE



GENERAL MEASUREMENTS  
 SKAGIT COUNTY, WASH. OF  
 93 JAN 22 9 3:42  
 RECORD FILED  
 REQUEST OF

SECTION A  
 SCALE: 1/8" = 1'-0"

VICINITY MAP  
 1870'S INN, LACANER, WA.

9301220088

BR 156 PG 0536 HA 2661