

UNRECORDED
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AUDIT DOCUMENT



199909100131
Kathy Hill, Skagit County Auditor
9/10/1999 Page 1 of 23 3:57:06PM

RETURN TO:

Island Title Co.
P.O. Box 1228
Anacortes WA 98221

DOCUMENT TITLE(S) (or transactions contained herein):

LEASE AGREEMENT

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

[] ADDITIONAL REFERENCE NUMBERS ON PAGE _____ OF DOCUMENT.

GRANTOR(S) (Last name, first name and initials):

- 1. STATE OF WASHINGTON
- 2.
- 3.
- 4.

[] ADDITIONAL NAMES ON PAGE _____ OF DOCUMENT.

GRANTEE(S) (Last name, first name and initials):

- 1.
- 2. TRIDENT SEAFOODS ~~XXXXXXXXXX~~
- 3.
- 4.

[] ADDITIONAL NAMES ON PAGE _____ OF DOCUMENT.

LEGAL DESCRIPTION (Abbreviated: i.e., lot, block, plat or quarter, quarter, section, township and range):

ANACORTES TIDELANDS, ptn Plate 8
13-35-1

[] ADDITIONAL LEGAL(S) ON PAGE _____ OF DOCUMENT.

ASSESSOR'S PARCEL/TAX I.D. NUMBER: R55367

[] TAX PARCEL NUMBER(S) FOR ADDITIONAL LEGAL(S) ON PAGE _____ OF DOCUMENT.



AQUATIC RESOURCES LEASE NO. 22-002706

ISLAND TITLE COMPANY
SA-19081

THIS LEASE AGREEMENT ("Lease") is made and entered into by and between the STATE OF WASHINGTON, acting in its proprietary capacity by and through the Department of Natural Resources (collectively referred to as "State"), and Trident Seafoods, a Washington Corporation ("Lessee").

WHEREAS, State is the owner of that certain real property consisting of aquatic lands located in Skagit County, Washington, the survey and/or legal description of which are set forth in Exhibit A and B, attached hereto and incorporated herein;

WHEREAS, Lessee desires to lease the Property from State, and State desires to lease the Property to Lessee, pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, the parties hereto agree as follows:

SKAGIT COUNTY WASHINGTON
Real Estate Excise Tax

SEP 10 1999

Amount Paid \$ 0
Skagit County Treasurer
By: *Jp* Deputy

1. PROPERTY

1.1 Property.

(a) For and in consideration of Lessee's covenant to pay the Rent and other sums for which provision is made in this Lease, and the performance of the other covenants and obligations of Lessee hereunder, State leases to Lessee and Lessee leases from State that certain real property described in Exhibit A and B, including all improvements thereon.

(b) The real property which is leased includes public aquatic land together with the right to occupy the water column and water surface in accordance with Subsection 5.3, for Lessee, its customers, invitees, approved sublessee, and employees. Said real property and rights leased thereby are herein referred to as the "Property."

(c) Except as is necessary to carry out Lessee's permitted use under Subsection 5.3, State does not convey: any right to disturb, alter, or modify the aquatic land; any right to harvest or collect any sea life or living plants from the aquatic land, the water column, or water surface; any right to excavate or withdraw sand, gravel, minerals, gas, oil or other material; any water rights; or any mineral rights.

(d) Lessee's rights are subject to all rights of the public, including all rights of the public which State holds in trust, under the public trust doctrine.

(e) Lessee's rights are further subject to valid easements and encumbrances of record as of the date of execution hereof as noted in the records of Skagit County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington.

(f) In executing this Lease, State is relying on a survey and/or legal description provided by the Lessee. The Lessee expressly assumes all liability for the correctness thereof and expressly agrees to indemnify and save harmless State, its employees, officers, and agents for all liability, damages (including damages to land, aquatic life and other natural resources), expenses, causes of action, suits, claims, costs, fees (including attorneys' fees and costs), penalties (civil and criminal) or judgments arising out of State's use of or reliance on the Lessee's survey and/or legal description.

1.2 Replacement of Prior Leases. This lease replaces and cancels Lease No. 22-002706, having a commencement date of April 7, 1988.

2. TERM

2.1 Term. The term of this Lease is thirty (30) years, commencing on April 1, 1995, which date shall be referred to as the "Commencement Date" of the term of this Lease, and ending on March 31, 2025. The date upon which this Lease terminates, whether at the end of the above stated term or upon such earlier date in the event the Lease is terminated, or canceled for any reason prior to the end of said period, shall be referred to as the "Termination Date." The period between the Commencement Date and Termination Date is referred to herein as the "Term" of this Lease. Pursuant to RCW 79.92.070 or as amended, the State will grant lessee an option to renew this lease for an additional term of thirty (30) years upon such terms and conditions as State and Lessee deem appropriate.

2.2 Authority. This lease is entered into by State pursuant to the authority granted in Chapter 79.90 RCW et seq. and the Constitution of the state of Washington.

3. RENT

3.1 Annual Rent.

(a) Lessee agrees to pay an initial rent in the amount of \$69,462.84 for the period January 7, 1991 to April 1, 1996 based on an annual rent of \$25,364.00, and subsequent rent, as determined by State in accordance with RCW 79.90.450 - .902, or such laws as hereafter shall be applicable ("Rent").

(b) Rent is due and payable by Lessee to State and is the essence of this Lease, and is a condition precedent to the continuance of this Lease or any rights thereunder.

3.2 Revaluation of Rent. State shall, April 1, or at the end of the first four-year period of the Term and at the end of each subsequent four-year period of the Term, revalue the annual rental in accordance with RCW 79.90.450 - .902 or such other laws and regulations of the Department of Natural Resources as are now or hereinafter shall be applicable. State shall not waive its right to revalue rent under this section by any failure to revalue at the end of a particular four-year period and shall retain the authority to revalue Lessee's rent and to bill Lessee retrospectively based on that revalued rent at any point subsequent to any four-year anniversary date.

3.3 Inflation Adjustment. After the initial four years of the Term, State will adjust each years Rent thereafter, exclusive of the years in which Rent is revalued under Subsection 3.2 hereof, in accordance with RCW 79.90.450 - .902 and such other laws and regulations of the Department of Natural Resources as are now or hereinafter shall be applicable.

3.4 Interest Penalty for Past-Due Rent and Other Sums Owed. Lessee shall pay interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute subsequent to the Commencement Date hereof), until paid, on Rent or other sums owing under the terms of this Lease commencing the next day after the date such Rent or other sum is due and payable. In the event State pays any sum or incurs any expense which Lessee is obligated to pay under this Lease, or which is made on behalf of Lessee, State shall be entitled to receive reimbursement thereof from Lessee upon demand, together with interest thereon from the date of expenditure at the rate stated above.

3.5 Allocation of Rent. The Rent for the first year has been established based upon the use of the Property as described in Subsection 5.3 below. In the event Lessee changes the use of any portion of the Property, which change must be approved by State under Subsection 5.3 below, the rental rate to be paid for that portion of the area affected by such change of use shall be subject to adjustment to the then effective rental rate for the changed use for that portion of the Property.

3.6 Rent for Improvements.

(a) In Section 6, Lessee and State have determined ownership of improvements on the Property. In accord with RCW 79.90.515, the Rent set forth in Subsection 3.1 above includes no rental charge for improvements on the Property at this time. The State does reserve the right to charge rent for state-owned improvements in accord with RCW 79.90.515.

(b) In the event the restrictions on State's ability to charge rent for improvements contained in RCW 79.90.515 are removed in whole or in part, State reserves the right to increase the rent during any portion of the Term after such removal, to the extent then allowed based upon the then fair market value of such improvements owned by State.

4. OTHER EXPENSES

4.1 Utilities. From and after the Commencement Date, Lessee shall pay all expenses incurred in the use, enjoyment, and operation of the Property, including, but not limited to all charges for electricity, water, gas and telephone and all other utility services used on the Property. Lessee shall indemnify and hold State harmless against and from any loss, liability, or expense resulting from any failure of Lessee to pay all charges when due.

4.2 Leasehold Taxes. From the Commencement Date and continuing throughout the Term, Lessee, unless exempt, shall pay to State the "Leasehold Tax" established and defined in Chapter 82.29A RCW. The Leasehold Tax shall be due and payable at the same time the rental charged herein is due and payable. Payment is to be made to the Department of Natural Resources, Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, Washington 98504-7041. Any delinquent Leasehold Tax shall be a debt to State, and in the event any penalties or interest are due because of the failure of Lessee to timely pay the Leasehold Tax, such penalties shall be payable by Lessee to State.

4.3 Other Taxes and Assessments.



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(a) The term "Taxes," as used herein, shall mean all taxes and other governmental charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Property, Lessee's leasehold interest therein, improvements thereon, or Lessee's use and enjoyment thereof, excluding Leasehold Taxes, defined in Subsection 4.2, and Assessments as defined below. Unless exempt, Lessee shall pay when due all Taxes commencing with the Commencement Date and continuing throughout the Term.

(b) The term "Assessments," as used herein, shall mean all assessments for public improvements or benefits which heretofore or during the Term shall be assessed, levied, or imposed upon, or become due and payable, or become a lien upon the Property, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof. Lessee shall not cause or suffer the imposition of any Assessment upon the Property, without the prior written consent of State. In the event any Assessment is proposed which affects the Property, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof, Lessee shall promptly notify State of such proposal after Lessee has knowledge or receives notice thereof. Any Assessment upon the Property shall be made in compliance with all applicable statutes, including, but not limited to, Chapter 79.44 RCW. Lessee shall pay the total amount of all Assessments levied. In no event shall State be obligated to pay any Assessment or any portion thereof levied or created during the Term, irrespective of whether such Assessment or any portion thereof was specifically allocated to the Property or State's reversionary interest therein. No Assessment shall be payable in installments without State's prior written consent, which State may condition upon the posting by Lessee of a satisfactory bond guaranteeing the payment of such installments as they become due.

4.4 Payment Date and Proof. Lessee shall pay all payments for Taxes and Assessments at the time due. Lessee shall, if required by State, furnish to State receipts or other appropriate evidence establishing the payment of such amounts. Lessee may comply with this requirement by retaining a tax service to notify State when the taxes have been paid.

4.5 Failure to Pay.

(a) In the event Lessee fails to pay any of the expenses or amounts specified in this Section 4, State may, but shall not be obligated to do so, pay any such amount and the amounts so paid shall immediately be due and payable by Lessee to State and shall thereafter bear interest at the rate specified in Subsection 3.4 above.

(b) Any failure to pay any expense or amount specified in this Section 4 or any other amount to be paid by Lessee under the term of this Lease shall be a material breach hereunder by Lessee and such breach shall entitle State to pursue all remedies specified in this Lease, and all remedies otherwise available to it in law or equity, including the rights to terminate this Lease and to pursue the remedies available pursuant to Chapter 59.12 RCW.

4.6 No Counterclaim, Setoff, or Abatement of Rent. Rent and all other sums payable by Lessee hereunder shall be paid without the requirement of prior notice or demand by State, and shall not be subject to any counterclaim, setoff, deduction or defense and without abatement. The obligations and liabilities of Lessee hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of:

(a) Any damage to, or destruction of, or any taking of the Property, or improvements on the Property, or any part thereof (except as allowed in Section 11 or 12);

(b) Any restriction of, or prevention of, or interference with any use of the Property, improvements, or any part thereof, which does not result in the eviction of Lessee therefrom (except as allowed in Section 10);

(c) Any title defect or encumbrance upon the Property or any part thereof which does not result in the eviction of Lessee therefrom;

(d) Any claim which Lessee has or might have against State;

(e) Any failure on the part of State to perform or comply with any of the terms hereof or of any other agreement with Lessee so long as such failure to perform or comply does not have the result of eviction of Lessee from the Property.

4.7 Right to Contest. Lessee may contest the basis or amount of any Leasehold Taxes, Taxes, or Assessments at its sole cost and expense so long as Lessee shall furnish State with a bond or other security reasonably acceptable to State, and otherwise in compliance with law. in the full amount of such amount contested.



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5. POSSESSION AND USE

5.1 Possession at Commencement Date. If for any reason whatsoever State does not deliver possession of the Property or a portion thereof at the Commencement Date, Rent shall be abated until such date as

possession of the Property is tendered by State, and in all other respects this Lease shall remain in full force and effect and the Term shall not be extended thereby. If in the interim, Lessee shall take possession of any portion of the Property, Lessee shall pay the full Rent specified herein reduced pro rata for the portion of the Property not available for possession by Lessee. In no event shall State be liable for damages caused by failure to deliver possession of the Property.

5.2 Inspection. Lessee has inspected and made an independent investigation of the Property and has had the opportunity to evaluate surrounding land and aquatic uses. Lessee accepts the Property on the Commencement Date in its present condition.

5.3 Permitted Use. Lessee shall have use of the Property only for the specified purposes of construction of and maintenance of a fish processing building and wharf for the loading and unloading of seafood products, and the non-residential moorage of commercial fishing vessels including the transfer or repair of commercial fishing gear from the wharf to the vessel, and internal vessel repair, as further described in the attached Exhibit C, which includes a written description of the permitted use, and/or written plan of development and operation on the Property, and/or a diagram of the Property which identifies the portion of the Property used for water-dependent or water-oriented and nonwater-dependent uses and for no other purpose whatsoever. State's prior written consent shall be required for any change in use of the Property or any portion thereof.

5.4 Entry.

(a) State shall have access to the Property at all reasonable times for the purpose of inspecting the Property and securing compliance with the terms and conditions of this Lease. State shall exercise its right of access in a manner that will not unreasonably interfere with Lessee's permitted use of the Property.

(b) The right reserved in Subsection 5.4(a) above includes the right to perform or have performed such environmental tests, audits, surveys or investigations as State, in its sole discretion, deems appropriate. Such tests, audits, surveys, or investigations may include, but shall not be limited to, the determination of whether Lessee is improperly storing, handling or disposing of Hazardous Substances, as defined in Subsection 5.6(d) below, or of refuse, as defined in Subsection 5.6(b) below.

(c) This reserved right imposes no obligation upon State to make inspections, tests, audits, surveys, or investigations and shall impose no liability upon State for failure to do so. This reserved right is in addition to and separate from Lessee's obligation to test under Subsection 5.6(d)(4) below.

5.5 State's Right to Grant Easements. State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not unduly interfere with Lessee's permitted use under Subsection 5.3. State will notify Lessee of any proposed easement or other land use request by third parties. No easement or other land uses shall be granted to third parties until payment for any damages to the leasehold have been paid to Lessee by the third party or a waiver of damages is signed by Lessee.

5.6 Restrictions on Use.

(a) Conformance With Laws.

1. Lessee shall, at its own expense, conform to all applicable laws, regulations, permits, orders or other directives of any public authority affecting the Property or Lessee's use or occupation of the Property.

2. Lessee shall, at its own expense, obtain all regulatory or proprietary consents or approvals required to be obtained from any public authority or third party in connection with any work on the Property (including, but not limited to, the construction, repair, or replacement of any improvements) or Lessee's use or occupation of the Property.

3. Upon the State's request, Lessee shall provide, at its own expense, evidence of compliance with Subsections 1 and 2 above (including, but not limited to, copies of permits, licenses, or orders).

4. Lessee shall correct, at Lessee's own expense, any failure of compliance with the terms of Subsections 1 through 3 above.

(b) Refuse. Lessee shall not make, or suffer to be made, any filling in of the Property or any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, or other matter within or upon the Property, except as approved in writing by State. If Lessee shall fail to remove all nonapproved fill material, refuse, garbage, wastes or other of the above materials from the Property and restore the Property to its condition immediately prior to the deposition of the unauthorized material, Lessee agrees that State may remove such materials and charge Lessee for the cost of removal and disposal together with interest thereon from the date of expenditure at the rate specified in Subsection 3.4 above.

(c) Waste. At all times during the Term, Lessee shall neither commit nor suffer waste to be committed to the Property.



(d) Hazardous, Toxic, or Harmful Substances.

1. Definitions.

a. For purposes of this agreement, "Claims" mean actions, administrative proceedings (including both formal and informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims or potential claims), interest or losses (including loss of natural resource services), attorneys' and paralegals' fees and expenses (including any such fees and expenses incurred in enforcing this Agreement or collecting any sums due hereunder).

b. For purposes of this agreement the term "Costs" mean consultants' fees, expert fees, capital, operating and maintenance costs, including contractor(s), environmental engineering fees, consulting engineer(s)' fees, and State's reasonable attorneys' and paralegals' fees and costs incurred in connection with the operation, maintenance, monitoring or review of any work performed in connection with the removal, remediation for hazardous substances on the Property and restoration or mitigation for injuries to natural resources on the Property.

c. For purposes of this agreement, the terms "Hazardous Substance" mean any hazardous, dangerous, or toxic substances, including but not limited to

(a) those substances listed in the United States Department of Transportation Hazardous Materials Table (see e.g., 49 C.F.R. § 172.101), the Environmental Protection Agency as hazardous substances (see e.g., 40 C.F.R. Part 302) and amendments thereto;

(b) such substances that are or may become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which contains (i) petroleum or its distillates; (ii) natural gas or its derivatives; (iii) asbestos; (iv) polychlorinated biphenyls;

(c) defined as a hazardous waste, extremely hazardous waste, restricted hazardous waste or hazardous substance under RCW chapter 70.105 (Hazardous Waste Management), WAC 173-30-090 *et seq.* (Dangerous Waste Regulations), RCW chapter 70.105D (Model Toxics Control Act), or WAC 173-340-200 (MTCA Regulations);

(d) designated as a "hazardous substance" pursuant to section 311 of the Clean Water Act, (33 U.S.C. § 1321) or listed pursuant to section 307 of the Clean Water Act (33 U.S.C. § 1317);

(e) defined as a "hazardous waste" pursuant to section 1004 of the Resource Conservation and Recovery Act, (42 U.S.C. § 6903);

(f) waste or solid waste identified in § 3001 of the Resource Conservation and Recovery Act;

(g) defined as a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601;

(h) defined as "Oil" as defined by the Oil and Hazardous Substance Spill Prevention and Response Act, RCW 90.56.010 *et seq.*, all as amended, replaced or superseded.

d. For purposes of Section 5.6, the term "Lessee" means the Lessee, its sublessees, agents, general partners, co-venturers, contractors, invitees, licensees and permittees.

e. For purposes of this agreement, the term "remedial work" means investigation or monitoring of any site conditions; cleanup, containment, restoration, removal, remediation, mitigation of the property, and any property affected by a release of hazardous substance from the property.

2. Compliance With Hazardous Laws and Regulations.

a. In addition to the requirements of Section 5.6, Lessee hereby agrees, at its own expense, that all activities upon, or any use or occupancy of the Property, or any portion thereof, by Lessee, or by any other occupant or other user shall throughout the term of the lease be in full compliance with all state, federal and local laws, regulations and permits governing the generation, handling, manufacturing, treatment, storage, use, transportation, release, discharge or disposal of any Hazardous Substance. A finding by any judicial, administrative, legislative, or other regulatory entity that Lessee has failed to comply with any state, federal or local laws relating to hazardous substances shall constitute a breach of this lease.

b. If applicable, Lessee shall comply with all requirements of Laws of 1991, Chapter 200, including, but not limited to, operation in accordance with the required plan of operations and maintenance of concurrent plan of operation.

c. Lessee further agrees to exercise due care with respect to any hazardous substance and take sufficient precautions against foreseeable acts or omissions of any person not an agent or employee of Lessee.

3. Notification Lessee shall promptly notify State of all spills or releases of any Hazardous Substances, which are otherwise required to be reported to any federal, state, or local regulatory agency and, upon notice thereof, shall promptly notify State of all failures to comply with any federal, state, or local law, regulation or ordinance, as now enacted, or as subsequently enacted or amended, all inspections of the Property by any regulatory entity concerning the same, all regulatory orders or fines, and all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party on the Property.

4. Surveys, Tests Audits and Investigations. Lessee agrees to conduct, at its own expense, all tests, audits, surveys, or investigations requested by State, in writing, during the Term of the Lease as are reasonable and necessary to ascertain the existence, scope, or effects of Hazardous Substances



on the Property, adjacent property, or associated natural resources where State has reason to believe the Hazardous Substances result from or are associated with Lessee's use, occupation, or control of the Property or adjacent property by Lessee, any predecessor-in-interest of Lessee, or any entity related to Lessee, and to provide the results of such tests, audits, surveys, or investigations to State. Lessee further agrees to conduct sediment and water column testing, satisfactory to State, upon the renewal, assignment, or expiration of this lease. If Lessee fails to conduct such tests, State may conduct such tests and State shall be entitled to receive full reimbursement from Lessee upon demand, together with interest thereon from the date of expenditure at the rate stated above.

5. Hazardous Waste Indemnification. In addition to the indemnification provided in Section , Lessee, and each general partner, co-venturer or successor of Lessee, jointly and severally (collectively, the "Indemnitors"), agree to indemnify, defend (with counsel satisfactory to state) and hold harmless the State and the directors, officers, employees, agents, contractors, sublessee, invitees, licensees and permittees of State from any Claims and Costs (1) that arise directly or indirectly out of Indemnitor's failure to comply with Section 5.6, and (2) which arise, directly or indirectly out of Indemnitor's operation, use, occupation, and control of the Property or the air, soil, sediments, groundwater or surface water at, on, about, above, under or within the Property, or any portion thereof. The indemnification provided in this paragraph shall specifically apply to and include Claims or actions brought by or on behalf of employees of Lessee.

6. Remedial Work. (a) In the event any investigation or monitoring of site conditions or any cleanup, containment, restoration, mitigation, removal, remediation or other remedial work (collectively, the "Remedial Work") is required under any applicable federal, state or local law or regulation, by any judicial order, or by any regulatory governmental entity, or in order to comply with any agreements affecting the Property in connection with the presence of hazardous substances on or near the Property, Lessee shall perform or cause to be performed the Remedial Work in compliance with such law, regulation, order or agreement. Copies of any studies, testing results or reports shall be provided to the State.

(b) All Remedial Work shall be performed by one or more contractors, selected by Lessee under the supervision of a consulting engineer, selected by Lessee and approved in advance by State, which application shall not be unreasonably withheld. All Costs of such Remedial Work shall be paid by Lessee. In the event Lessee fails to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, State may, but shall not be required to, cause such Remedial Work to be performed, and all Costs incurred in connection therewith shall be due and payable upon demand and shall thereafter accrue interest at rate specified in Section 3.4 above, until paid in full.

(c) A failure to pay State said Costs upon demand, shall be a material breach by Lessee. Such breach shall entitle State to pursue all remedies specified in this lease and all remedies otherwise available to it in law or equity.

7. Condition Precedent. Lessee's duties under Section 5.6(d)(5) and 5.6(d)(6) shall arise upon notification of State or Lessee that it is a Potentially Liable Person or Potentially Responsible Party with respect to the presence of hazardous substance at, on, or about the Property; State or Lessee receive a formal notice of the Violation; Lessee enters into a Consent Decree with the Washington Department of Ecology or U.S. Environmental Protection Agency; or Lessee or the State receive a third party demand letter for contribution to cleanup costs associated with the Property.

(e) Marine Plastics Act. Lessee shall, in addition to compliance with all other applicable laws and regulations, comply with the Marine Plastic Pollution Research and Control Act of 1987 (Public Law 100-220). Under that Act, Lessee may be required among other things to provide waste reception facilities, permit Coast Guard inspection of the adequacy of these facilities, and provide for waste handling and disposition.

(f) Lessee to Take Corrective Action. The parties expressly agree that Lessee will, at its own expense, upon any failure to comply with the above Subsections 5.6(a)-(e), and upon direction to do so by State, take corrective or remedial action measures satisfactory to State to restore the Property, as nearly as possible, to the condition the Property would have been in absence of such failure to comply (with lack of or failure to expend funds not to adversely affect the possibility of restoration). If Lessee fails to do so, Lessee agrees that State may take such corrective action and State shall be entitled to receive full reimbursement therefore from Lessee upon demand, together with interest thereon from the date of expenditure at the rate in Subsection 3.4 above.

5.7 Development Rights. Lessee shall not undertake development of the Property except in accordance with Subsection 5.3 above. Lessee shall not represent to any person, governmental body, or other entity, that Lessee is the fee owner of the Property, nor shall Lessee execute any petition, application, permit, plat, or other document on behalf of State as the "owner" of the Property without State's express written consent which may be withheld for any reason whatsoever. Lessee, in its own name and as Lessee under this Lease, may execute and apply for permits, petitions, or applications in connection with work allowed pursuant to Subsection 5.3 above. Lessee shall notify State in writing of any proposed or pending governmental action



of which Lessee receives written notice which affects the Property, its zoning or the right to develop the Property for any future use.

5.8 Reports. Lessee shall:

(a) Submit a written report upon the State's request, to State prior to April 1 of each calendar year in which Lessee shall summarize and describe all uses which have occurred upon the Property during the preceding calendar year including a list of hazardous substances as defined by subsection 5.6(d)(1) used or generated on the property and measures taken to ensure adequate storage, transport, and disposal of the hazardous substances.

(b) Provide copies to State of all monitoring reports prepared and submitted by Lessee as required by any federal, state or local permit, including but not limited to any NPDES Permit, Army Corps of Engineer Permit, State Hydraulics Permit, State Water Quality Certification, or Substantial Development Permit, where such reports concern water quality or sediment quality.

6. IMPROVEMENTS.

6.1 Authorized Improvements.

(a) Existing Improvements. There are constructed upon the Property as of the date of this Lease, the following Improvements: (see exhibits A and B). The improvements on the Property as of the date of this Lease shall be considered to be the property of Lessee ("Lessee-owned Improvements"). Lessee acknowledges ownership of, and responsibility for, all Lessee-owned Improvements.

(b) New Improvements.

1. Any improvements made to the Property during the Term, subject to the exclusion below, shall be referred to herein as "New Improvements." New Improvements shall not include: any construction, reconstruction, alteration, or addition to the existing Improvements on the Property made by Lessee pursuant to its obligation to maintain the Property in good order and repair, including, without limitation, repairs, replacements, reconstruction, alterations, or additions made pursuant to Subsections 9.2 or 11.1 below; or any unauthorized improvements made to the Property. New Improvements shall include any material changes, alterations, or modifications to the Existing Improvements, not excluded by the preceding sentence.

2. No New Improvements shall be placed on the Property without the prior written consent of State. There are authorized to be constructed upon the Property, as of the date of this Lease, the following improvements: (see exhibit A and B exhibit C construction, maintenance and operation plan). Construction, reconstruction, alteration, or additions to the Existing Improvements on the Property made by Lessee pursuant to its obligation to maintain the Property in good order and repair may be undertaken by Lessee after written notice to State and State's prior written consent shall not be required.

3. All improvements, repairs, alterations, maintenance, and replacements to the Property shall be made in a good and workerlike manner and in compliance with all applicable building and zoning codes, shorelines management, health, safety, and environmental laws and other legal requirements.

4. The plans and specifications for any and all New Improvements including amendments of such plans and specifications, shall be submitted to State for its prior approval, which approval will not be unreasonably withheld.

5. No New Improvements shall be made except under the supervision of an architect or engineer selected by Lessee and approved in writing by State, which approval will not be unreasonably withheld.

6. Upon completion of any improvements, repairs or alterations to the Property, the Lessee shall furnish State with a certificate of substantial completion of such work executed by the Lessee or its architect or engineer, and a complete set of "as built" plans showing all changes or alterations. The Lessee shall also furnish to State copies of certificates of occupancy or other similar documents issued to certify completion of construction in compliance with applicable requirements.

(c) Ownership. All new improvements authorized under Subsection 6.1(b) made to the Property or installed thereon by Lessee during the Term, and all lessee owned improvements, shall remain the property of Lessee until the Termination Date, whether such date occurs at the end of the stated term of this Lease or upon earlier cancellation, termination, or surrender, at which time ownership of said improvements shall, at State's option, revert to and become immediately vested in State, without payment therefor by State. Lessee hereby conveys and quitclaims to State as of the Termination Date, all interest in and to all New Improvements and lessee owned improvements, contingent upon State's exercise of its option.

(d) Removal of Certain Improvements. Lessee agrees to sever, remove, and dispose of all New Improvements and lessee owned improvements to which State does not elect to claim title by the Termination Date. If such action is not taken by Lessee, Lessee agrees that State may remove such improvements and charge Lessee for the cost of removal and disposal, together with interest thereon from the date of expenditure at the rate stated above. It shall be the duty of Lessee to inquire of State as to whether State will



exercise its option to take ownership of all, or a portion of, the New Improvements: and lessee owned improvements sufficiently, but in no event less than sixty (60) days, in advance of the Termination Date to permit Lessee, in the event State declines to claim title, to sever, remove, and dispose of the unclaimed improvements by the Termination Date.

6.2 Unauthorized Improvements.

(a) Improvements made on or to the Property without State's prior written consent or not in conformance with the approved plan of development (not including repairs, maintenance or replacements due to ordinary wear) ("Unauthorized Improvements"), shall immediately become the property of State, unless State elects otherwise.

(b) State may, at its option, require Lessee to sever, remove and dispose of any or all Unauthorized Improvements, or, in addition to any other remedy State may have for such breach of the Lease, State may charge Lessee Rent for the use of such improvements based upon the value thereof, which Rent shall be due and payable together with all installments of Rent due hereunder. If Lessee fails to sever and complete removal of such Unauthorized Improvements within thirty (30) calendar days of request for removal by State, State may (i) remove and dispose of such Unauthorized Improvements at Lessee's expense; (ii) cancel this Lease; or (iii) pursue any other remedies for default provided that all such severance and completion of removal must be accomplished by the Termination Date. Any cost of removal and disposal borne by State shall become an obligation of Lessee due and owing under this Lease together with interest thereon from the date of expenditure at the rate stated above.

6.3 Trade Fixtures.

(a) All trade fixtures brought onto the Property by Lessee shall remain the property of Lessee. Lessee agrees to sever and remove those fixtures by the Termination Date.

(b) All trade fixtures allowed to remain on the Property thereafter shall, at State's option, become the property of State. If State does not elect to claim title to said trade fixtures, Lessee agrees that State may remove and dispose of such trade fixtures. Any costs of removal and disposal borne by State shall become an obligation of Lessee due and owing under this Lease together with interest thereon from the date of expenditure at the rate stated above.

6.4 Mechanics, Liens, Labor Liens, and Project Completion.

(a) Mechanics and Labor Liens. Lessee agrees that it will not permit any claim of lien made on any mechanic, materialperson, laborer, or other similar liens to stand against the Property, any improvements or trade fixtures located thereon, or Lessee's leasehold, for work, labor, services, or materials furnished to Lessee or its sublessee in connection with any construction, improvements, alterations, maintenance, or repair thereof made by Lessee or its agents or sublessee upon the Property. Lessee further agrees to cause any such claim of lien to be fully discharged within thirty (30) calendar days after the date of filing thereof. In the event Lessee in good faith disputes the validity or amount of any such claim of lien, and Lessee shall, at Lessee's expense, give to State such security as State may reasonably require, indemnifying State, the Property, improvements and trade fixtures on the Property, and Lessee's leasehold against all liability, costs and expenses, including attorneys' fees, which State may incur as a result of the lien, then Lessee shall not be deemed to be in breach of this Subsection 6.4 so long as:

1. Lessee is diligently pursuing a resolution of such dispute;
2. At no time is the Property, any improvements or trade fixtures located thereon, or Lessee's leasehold in any danger of being sold, forfeited or lost; and
3. Upon entry of final judgment resolving the dispute if litigation or arbitration results therefrom, Lessee discharges said lien within the time limits specified above. Nothing contained in this section shall be deemed a waiver of any provision of Washington law which exempts property owned by State from any such lien claims.



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7. ASSIGNMENT AND SUBLETTING

7.1 Assignment and Subletting.

(a) State Consent Required. Lessee shall not hypothecate, mortgage, assign, encumber, transfer, sublease or otherwise alienate this Lease, or any interest therein or engage in any other transaction which has the present effect or future possibility of transferring the right of enjoyment of the Property without the prior written consent of State, which shall not be unreasonably withheld or delayed. In granting such consent, State reserves the right to: (1) Change the terms and conditions of this Lease, including the rental terms, as it may affect the transferee; (2) Consider, among other items, the proposed transferee's financial condition, business reputation, the nature of the proposed transferee's business, the then current value of the Property,

and such other factors as may reasonably bear upon the suitability of the transferee as a lessee of the Property; and, (3) Require Lessee or transferee to conduct such tests, audits, surveys, or investigations as are identified in Subsection 5.6(d)(3). Lessee shall submit information regarding any proposed transferee or assignee under this Subsection 7.1 to State at least thirty (30) days prior to the date of the proposed transfer or assignment. Consent of State to any one transfer shall not constitute a waiver of State's right to approve subsequent transfers.

(b) Rent Payments Following Assignment. The acceptance by State of the payment of Rent following an assignment or other transfer shall not constitute consent to any assignment or transfer, and State's consent shall be evidenced only in writing.

(c) Terms of Subleases. Lessee agrees that all subleases submitted to State for its approval shall include the following terms:

1. The sublease shall be consistent with and subject to all the terms and conditions of this Lease.
2. If the sublease conflicts with the terms and conditions of this Lease, this Lease shall govern.
3. The term of the sublease (including any period of time covered by a renewal option) shall end before the Termination Date of this Lease.
4. The sublessee shall receive and acknowledge receipt of a copy of this Lease.
5. The sublease shall terminate if this Lease terminates, whether upon expiration of the Term or earlier cancellation, surrender or termination for any reason.
6. The sublease shall prohibit the prepayment of Rent to the Lessee by the sublessee.
7. The sublease shall identify the rental amount to be paid to the Lessee by the sublessee.
8. The sublease shall confirm that there is no privity of contract between the sublessee and the State.
9. The sublease shall require removal of the sublessee's trade fixtures and improvements upon termination of the sublease as provided under Subsection 7.1(c)5 above.
10. The sublessee's permitted use shall be within the scope of the use authorized in Subsection 5.3 above.

7.2 Corporations, General Partnerships, Limited Partnerships.

(a) Corporations. If Lessee is a corporation, any merger, consolidation, liquidation, or any change in ownership of, or the power to vote the majority of its outstanding voting stock, shall constitute an assignment of this Lease which requires prior approval of State, whether the result of a single transaction or a series of transactions.

(b) General Partnerships. If Lessee is a general partnership, the death, withdrawal or expulsion of a partner or partners owning, or transfer or interests representing, in the aggregate more than fifty percent (50%) of the partnership profits or capital shall constitute an assignment of this Lease which requires prior approval of State, whether as the result of a single transaction or a series of transactions.

(c) Limited Partnerships. If Lessee is a limited partnership, the death, withdrawal or expulsion of any general partner shall constitute an assignment of this Lease which requires prior approval of State.

(d) Marital Communities. If Lessee is a marital community, the dissolution of the marital community shall constitute an assignment of this Lease which requires prior approval of State.

7.3 Assignee Obligations. Each permitted assignee, or transferee, other than State, shall assume and be deemed to have assumed all obligations under this Lease and shall become liable for all payments and for the due performance and satisfaction of all provisions, covenants, and conditions herein contained. Notwithstanding any such assignment or transfer, Lessee shall be and remain jointly and severally liable with the assignee or transferee for all obligations under this Lease, unless released, in writing, by State.

7.4 Copies of Instruments. In connection with any assignment, sublease, or transfer, Lessee shall, at State's option, provide State with copies of all assignments, subleases, assumption instruments or other documentation.

7.5 Assignment by State. State may, if legally permissible, assign its interest in this Lease.

7.6 Assignment of Right to Receive Rentals. Lessee hereby assigns to State for the purpose of securing all Lessee's obligations under this Lease the right to receive all rentals reserved under any sublease executed with respect to the Property. This Lease shall constitute a security agreement with respect to the rentals to be received thereunder, and Lessee shall execute such further documents as may be required to perfect such security interest including but not limited to UCC financing statements.

8. LESSEE'S INDEMNITY, FINANCIAL SECURITY



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Indemnity.

(a) Lessee shall indemnify and save harmless the State, its employees, officers, and agents from any and all liability, damages (including damages to land, aquatic life, and other natural resources), expenses, causes of action, suits, claims, costs, fees (including attorneys' fees and costs), penalties (civil, administrative, and criminal), or judgments, by any reason whatsoever caused, arising out of the use, occupation, or control of the Property by Lessee, its sublessee, invitees, agents, employees, licensees, or permittees during the term of this lease, except as may arise out of the willful or negligent act of the State or the State's elected officials, employees, or agents. This indemnification is in addition to those assurances and indemnities provided in subsections 5.6(d)(5).

(b) Plans, Specifications, Repairs. The State shall have no liabilities, obligations or responsibilities whatsoever with respect to any plans or specifications submitted to State pursuant to this Lease. State's approval or disapproval of any such plans and specifications or improvements shall not render State liable therefore. Nor shall the State have any liabilities, obligations or responsibility for repair or for improvements made to the Property or any activity conducted thereon.

(c) To the extent that RCW 4.24.115 is applicable to any indemnification provision of this Lease, the State and Lessee agree that this provision shall not require Lessee to indemnify and save the State harmless from the State's sole or concurrent negligence.

8.2 Bond or Other Security.

(a) At its own expense Lessee shall procure and maintain a corporate surety bond or provide other financial security satisfactory to the State (the "Bond") in an amount equal to \$50,000.00, which shall secure the full performance by Lessee of its obligations under this Lease. The Bond shall be in a form and issued by a surety company acceptable to the State. The amount of the Bond may be adjusted by the State:

1. At the same time as revaluation of the Rent,
2. As a condition of approval of assignment or sublease of this Lease,
3. Upon any breach of Subsections 5.6(a)-(d) above,
4. Upon a change in the condition of any improvements, or
5. Upon a request by Lessee for a change in the Permitted Use.

A new or modified Bond shall be delivered to the State within thirty (30) calendar days after adjustment by the State of the amount of the Bond.

(b) Upon any default by Lessee in its obligations under this Lease, any or all of the Bond may be appropriated by the State to offset the liability of Lessee to the State. The State's appropriation shall in no way limit the liability or other security or obligations of Lessee or the rights or remedies of the State nor shall such appropriation in any manner reinstate, cure or relieve Lessee from a termination of its rights under this Lease.

(c) Lessee's failure to have a Bond in force at all times during the Term in the full amount as required by this paragraph shall constitute a breach of this Lease.

8.3 Acquisition of Insurance Policies. At its own expense Lessee shall procure and maintain during the Term of this Lease, the insurance described in Subsections 8.3(a) and (b) below. This insurance shall be issued by an insurance company or companies licensed to do business in the state of Washington reasonably satisfactory to the State.

(a) Types of Required Insurance.

1. Comprehensive General Liability Insurance. Comprehensive General or Commercial liability insurance covering all claims with respect to injuries to persons or damage to property sustained in or about the Property and any improvements. Limits of liability shall be not less than \$1,000,000 for each occurrence and not less than \$2,000,000 annual aggregate. Such limits may be achieved through the use of umbrella liability insurance. The limit of liability may be adjusted by the State:

- (i) At the same time as revaluation of the Rent,
- (ii) As a condition of approval of assignment or sublease of this Lease,
- (iii) Upon any breach of Subsections 5.6(a)-(d) above,
- (iv) Upon a change in the condition of any improvements, or
- (v) Upon a request by Lessee for a change in the Permitted Use.

New or modified insurance coverage shall be in place within thirty (30) calendar days after adjustment by the State of the limit of liability.

2. Physical Property Damage Insurance. Physical property damage insurance covering all real and personal property, excluding property paid for by sublessee or paid for by Lessee for which sublessee have reimbursed Lessee, located on or constituting a part of the Property in an amount equal to at least one hundred percent (100%) of replacement value of all such property, with commercially reasonable deductibles.

3. Worker's Compensation Insurance.

(i) State of Washington Worker's Compensation coverage, as applicable, with respect to any work by employees of Lessee on or about the Property and any improvements.



(ii) Longshore and Harbor Worker's Act and Jones Act coverage, as applicable, with respect to any work by employees of Lessee on or about the Property and any improvements.

4. Builder's Risk Insurance. Contingent liability and all builder's risk insurance in an amount reasonably satisfactory to the State during construction, or replacement or during material repair, alteration, maintenance, of the Property or improvements on the Property. Coverage shall be in place until such work is completed and evidence of completion is provided to the State.

(b) Terms of Insurance. The policies required under Subsection 8.3 shall name the State as an additional insured (except for State of Washington Worker's Compensation coverage). Lessee shall provide certificates of insurance and, if requested, copies of policies to the State. Receipt of such certificates or policies by the State does not constitute approval by the State of the terms of such policies. Further, all policies of insurance described in Subsection 8.3 shall:

1. Be written as primary policies not contributing with and not in excess of coverage that the State may carry;

2. Expressly provide that such insurance may not be materially changed, amended or canceled with respect to State except after forty-five (45) calendar days prior written notice from the insurance company to State;

3. In regard to physical property damage and builder's risk coverage, have an endorsement containing an express waiver of any right of subrogation by the insurance company against the State and the State's elected officials, employees or agents;

4. In regard to physical property damage and builder's risk coverage, expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Lessee which might otherwise result in a forfeiture of said insurance;

5. Expressly provide that the State shall not be required to give notice of accidents or claims and that the State shall have no liability for premiums;

6. In regard to physical property damage and builder's risk coverage, expressly provide that all proceeds shall be paid jointly to the State and Lessee.

8.4 State's Acquisition of Insurance. If Lessee fails to procure and maintain the insurance described above, the State shall have the right to procure and maintain substitute insurance and to pay the premiums thereon. Lessee shall pay to the State upon demand the full amount paid by the State, together with interest thereon at the rate provided in Subsection 3.4 from the date of such expenditure by the State until repayment thereof by Lessee.

9. REPAIRS

9.1 State's Repairs. State shall not be required or obligated to make any repairs, alterations, maintenance, replacements or repairs in, on, or about the Property, or any part thereof, during the Term of this Lease.

9.2 Lessee's Repairs, Alteration, Maintenance and Replacement.

(a) Lessee shall, at its sole cost and expense, keep and maintain the Property and all improvements thereon and all facilities appurtenant thereto (regardless of ownership) in good order and repair and safe condition, sufficient for the safe conduct of any activities or enterprises conducted on the Property pursuant to this Lease and keep and maintain the whole of the Property, including all improvements in a clean, sanitary and attractive condition.

(b) Lessee shall, at its sole cost and expense, make any and all additions to: repairs, alterations, maintenance, replacements or changes about and to the Property, which may be required by any public authority affecting the Property and its use.

(c) Ownership of Repairs.

1. All repairs, alterations, maintenance to, or replacement of the Property, including any state-owned improvements, as defined in Subsection 6.1, shall immediately become the property of State.

2. All repairs, alterations, maintenance to, or replacement of New Improvements and lessee owned improvements, as defined in Subsection 6.1, shall remain the property of Lessee subject to the terms of Subsection 6.1.

3. All repairs, alterations, maintenance to, or replacements of any Unauthorized Improvements as defined in Subsection 6.2 shall immediately become the property of State subject to the terms of Subsection 6.2.

9.3 Condition at End of Lease. Upon vacating the Property on the Termination Date, Lessee shall leave the Property and all improvements thereon to which State has elected to claim title in the state of repair and



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cleanliness required to be maintained by Lessee during the Term of this Lease and shall peaceably surrender the same to State.

10. DISCLAIMER OF IMPLIED COVENANTS OF POWER TO LEASE AND QUIET ENJOYMENT

10.1 Power to Lease. State believes that it has full right, power and authority to make this Lease. However, State expressly disclaims and Lessee expressly releases State from any and all claims for breach of any implied covenant of power to lease.

10.2 Quiet Enjoyment. State expressly disclaims and Lessee expressly releases State from any claim for breach of any implied covenant of quiet enjoyment with respect to the possession of the Property during the Term of this Lease or any holdover. This disclaimer includes but is not limited to, interference arising from or in connection with access or other use rights of adjacent property owners or the public over the water surface or in or under the water column, rights held by Indian tribes, and the general power and authority of State and the United States to regulate the use of navigable waters, bedlands, tidelands, and shorelines. In the event that Lessee is evicted from the Property by reason of successful assertion of any such rights, this Lease shall be deemed terminated as of the date of such eviction. In the event of a partial eviction, Lessee's Rental obligations hereunder shall abate as of the date of the partial eviction in direct proportion to the extent of the eviction, but in all other respects, this Lease shall remain in full force and effect.

11. DAMAGE OR DESTRUCTION

11.1 Possible to Repair Within Term.

(a) In the event of any damage to or destruction of the Property or any improvements, Lessee shall promptly give written notice thereof to State. Lessee shall promptly reconstruct, repair or replace the Property as nearly as possible to its condition immediately prior to such damage or destruction. All such reconstruction, repair and replacement shall be performed in accordance with the requirements of Subsection 9.2 above.

(b) Lessee's duty to reconstruct, repair, or replace any damage or destruction of the Property or any improvements thereon shall not be conditioned upon the availability of any insurance proceeds to Lessee from which the cost of repairs may be paid.

(c) Unless this Lease is terminated by mutual agreement, there shall be no abatement or reduction in Rent during such reconstruction, repair and replacement.

(d) Any insurance proceeds payable by reason of the damage or destruction shall be made available to pay the cost of the reconstruction.

(e) In the event Lessee is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State shall thereafter have the right to retain any and all insurance proceeds payable as a result of such damage or destruction.

(f) Upon completion of reconstruction, repair or replacement by Lessee, any insurance funds in excess of the cost of such reconstruction, repair or replacement shall be paid to Lessee provided, however, State shall have a lien on Lessee's share of such proceeds to the extent Lessee has failed to pay any moneys to State under the terms of this Lease.

11.2 Not Possible to Repair Within Term.

If such damage or destruction cannot be substantially repaired within the time remaining in the Term, this Lease shall terminate as of the date of such damage or destruction. Any insurance proceeds shall be divided between State and Lessee prorated based upon the unexpired Term of the Lease, with Lessee receiving a fraction thereof which is equal to the then remaining Term divided by the original Term, and State receiving the remainder.



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12. CONDEMNATION

12.1 Definitions.

(a) Total Taking. The term "total taking," as used in this Lease, means the taking of the entire Property and any improvements thereon under the power of eminent domain either by judgment or settlement in lieu of judgment, or the taking of so much of the Property and improvements as to prevent the use thereof by Lessee or, in the judgment of State, renders the Property impractical to operate for the uses and purposes hereinabove provided.

(b) Partial Taking. The term "partial taking" means the taking of a portion only of the Property which does not constitute a total taking as defined above.

(c) Voluntary Conveyance. The terms "total taking" and "partial taking" shall include a voluntary conveyance to any agency, authority, public utility; person or corporate entity empowered to condemn property in lieu of formal court proceedings.

(d) Date of Taking. The term "date of taking" shall mean the date upon which title to the Property or a portion thereof passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.

12.2 Effect of Taking. If during the Term hereof there shall be a Total Taking under the power of eminent domain, then the leasehold estate of Lessee in and to the Property shall cease and terminate as of the Date of Taking. If this Lease is so terminated, in whole or in part, all Rentals and other charges payable by Lessee to State hereunder and attributable to the Property taken, shall be paid by Lessee up to the Date of Taking by the condemnor, and the parties thereupon shall be released from all further liability in relation thereto. If Lessee has pre-paid Rent, Lessee will be entitled to a refund of the pro rata share of this pre-paid Rent attributable to the period after the Date of Taking. In the event of a Partial Taking, such that Lessee is no longer able to use a portion of the Property, there shall be a partial abatement of Rent in a percentage equal to the percentage of Property taken.

12.3 Allocation of Award. State and Lessee agree that in the event of any condemnation, the award shall be allocated between State and Lessee based upon the ratio of the Fair Market Value of Lessee's Leasehold Estate and Lessee-owned Improvements and New Improvements on the Property and State's interest in the Property, including State's landlord interest in the Leasehold reversionary interest in Lessee-owned Improvements and New improvements, and ownership of State-owned Improvements. In the event of a Partial Taking, this ratio will be computed on the basis of the portion of Property or improvements taken. If Lessee and State are unable to agree on the allocation, it shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association.

13. INSOLVENCY

13.1 Insolvency May Constitute Default. If a receiver or trustee is appointed to take possession of all or substantially all of the assets of Lessee, or if any action is taken or suffered by Lessee pursuant to an insolvency, bankruptcy or reorganization act, including the filing of a petition in bankruptcy, or if Lessee makes a general assignment for the benefit of its creditors, and if such appointment or assignment continues for a period of thirty (30) calendar days, it shall, at State's option, constitute a default by Lessee and State shall be entitled to the remedies set forth in Section 14 below, which may be exercised by State without prior notice or demand upon Lessee. In the event that any provision of this Section 13 is contrary to any applicable law, such provision shall have no force or effect.

13.2 Notice of Insolvency. Lessee shall be required to notify State, within ten (10) days of filing, that it has filed a petition for relief under the bankruptcy code.



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14. BREACH BY LESSEE

14.1 Breach and Default.

(a) Any breach of any provision of this Lease by Lessee, shall be deemed a default after State has delivered to Lessee notice of the alleged breach and demand that the breach be remedied immediately. Such a default entitles State to the remedies set forth in this Lease or otherwise available at law or in equity. If Lessee shall promptly commence to cure the default and shall cure the default within sixty (60) calendar days after receipt of the notice; or within sixty (60) calendar days after receipt of the notice if the default pertains to the payment of rent, the breach shall no longer constitute a default.

(b) In the event State deems the breach to constitute a threat to safety, life, or property it may elect to intervene immediately without notice to remedy the breach and Lessee hereby agrees to repay State for all costs in remedying the breach upon demand, together with interest thereon from the date of expenditure at the rate set forth in Subsection 3.4 above. Alternatively, State may require Lessee itself to act immediately to remedy the breach, should State deem it a threat to safety, life, or property.

14.2 Reletting in the Event of Default.

(a) State's Right to Relet. In the event of a default, State, in addition to any other rights or remedies that it may have, shall have the immediate right of re-entry. Should State elect to re-enter or take possession of the Property, it may either terminate this Lease or, from time-to-time without terminating this Lease, relet the Property or any part thereof, for any term or terms and conditions as State in its sole discretion may deem advisable with the right to complete construction of or make alterations and repairs to the improvements. Lessee shall pay to State the cost and expenses incurred by State in such reletting, completion of construction, or in making such alterations and repairs.

(b) Allocation of Rentals. Rentals received by State from reletting shall be applied: first, to the payment of any indebtedness, other than Rent, due hereunder from Lessee to State; second, to the payment of Rent due and unpaid hereunder; and the residual, if any, shall be held by State and applied in payment of

future rent or damages as the same may become due and payable hereunder. The balance, if any, at the end of the Term shall belong to State. Should such rentals received from time-to-time from reletting during any month be less than the Rent agreed to be paid during that month by Lessee, Lessee shall pay the deficiency to State. The deficiency shall be calculated and paid monthly. At the option of State following Lessee's default, State may accelerate and demand as immediately due the difference between (i) all Rent reserved for the unexpired portion of the Term following the event of Lessee's default, and (ii) the fair market rental value of the Property for the unexpired portion of the Term reduced by any costs of State in reletting the Property.

(c) Exercise of Right Not an Election. No such reletting of the Property by State shall be construed as an election on its part to terminate Lessee's obligations under this Lease unless a notice of such intention be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, State may at any time thereafter elect to terminate this Lease for such previous breach, provided that it has not been cured. Should State at any time terminate this Lease for any breach, in addition to any other remedy it may have, it may recover from Lessee all damages it may incur by reason of such breach.

15. HOLDING OVER AND EXPIRATION

15.1 Unapproved Holdover. Any holding over by Lessee without the express written consent of State shall not constitute a renewal or extension of this Lease or give Lessee any rights in or to the Property and this Lease shall terminate without further notice at the Termination Date. Such occupancy shall be subject to the same terms and conditions as set forth herein. At State's option, Rent may be charged for each month of occupancy, or any portion thereof, on a prorated basis, equal to one hundred sixty percent (160%) of the amount of full fair market Rent due for the last month of the term of this Lease.

15.2 Approved Holdover. If Lessee shall, with the written consent of State, holdover after the Termination Date, the resulting tenancy shall, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. During such month-to-month tenancy, Lessee shall pay State Rent as provided herein, unless a different rate shall be agreed upon, and shall be bound by all the terms of this Lease.

16. NOTICE

16.1 Procedure. Any notice required or desired to be given under this Lease shall be in writing with copies directed as indicated herein and shall be personally served or sent by mail. Any notice given by mail shall be deemed to have been received when seventy-two (72) hours have elapsed from the time when such notice was deposited in the United States mails, correctly addressed to the party to be served at the last address given by that party to the other party under the provisions of this Section 16. At the date of the execution of this Lease, the address of State is:

DEPARTMENT OF NATURAL RESOURCES
Aquatic Resources Division
PO Box 47027
Olympia, WA 98504-7027

and the address of Lessee is:

TRIDENT SEAFOODS CORPORATION
5303 Shilshole Avenue
Seattle, WA 98107

16.2 Change of Address. Lessee shall notify State immediately of any change of address.

17. SUCCESSORS

17.1 Successors and Assigns Bound. The covenants and agreements contained in this Lease shall be binding on the parties hereto and on their respective successors and assigns, to the extent the Lease is assignable, and upon any person, firm, or corporation coming into ownership or possession of any interests in the Property or improvements on the Property by operation of law or otherwise, and shall be construed as covenants running with the land.

18. TERMINATION



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18.1 Lessee's Rights Cease Upon Lease Termination. Upon the termination of this Lease by expiration of time or otherwise, the rights of Lessee and of all persons, firms, corporations, and entities claiming under Lessee in and to the Property and all improvements hereon, unless specified otherwise in this Lease, shall cease.

19. MISCELLANEOUS

19.1 Headings. The Section and Subsection headings used in this Lease are for convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.

19.2 Amendments. Any amendments or additions to this Lease shall be made in writing executed by the parties hereto, and neither State nor Lessee shall be bound by verbal or implied agreements.

19.3 Waiver. The waiver by State of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance by State of Rent or any other sum owing, following a breach by Lessee of any provision of this Lease shall not constitute a waiver of any right of State with respect to such breach. State shall be deemed to have waived any right hereunder only if State shall expressly do so in writing.

19.4 Cumulative Remedies. Each right, power and remedy of State provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the commencement of the exercise by State of any one or more of the rights, powers, or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute, or otherwise, shall not preclude the simultaneous or later exercise by State of any or all such other rights, powers or remedies.

19.5 Time of Essence. Time is expressly declared to be of the essence of this Lease and each and every covenant of Lessee hereunder.

19.6 Entire Agreement. This Lease contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

19.7 Language. The word "Lessee" when used herein, shall be applicable to one (1) or more persons, as the case may be, and if there be more than one (1), the obligations hereof shall be joint and several. The words "Persons" whenever used shall include individuals, firms, associations and corporations. This Lease, and its terms, have been negotiated by State and Lessee. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against State or Lessee.

19.8 Invalidity. If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent prove to be invalid, unenforceable, void or illegal, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced as written to the fullest extent permitted by law.

19.9 Applicable Law and Venue. This Lease shall be interpreted and construed under and pursuant to the laws of the state of Washington. Any reference to a statute enacted by the state of Washington shall refer to that statute as presently enacted and any subsequent amendments thereto, unless the reference to said statute specifically provides otherwise. The parties agree that venue for any action arising out of or in connection with this Lease shall be in the Superior Court for Thurston County, Washington.

19.10 Authority. Persons executing this Lease on behalf of Lessee represent that they are authorized to do so and represent and warrant that this Lease is a legal, valid and binding obligation on behalf of Lessee, and is enforceable in accordance with its terms.

19.11 Date of Execution. The date this Lease is executed shall be deemed to be the day and year when executed by State.

19.12 Survival. All obligations of Lessee to be performed after the Termination Date shall not cease upon the Termination of this Lease, and shall continue as obligations until fully performed. All clauses of this



Lease which require performance beyond the Termination Date shall survive the Termination Date of this Lease. All obligations to perform remedial work and/or operation and maintenance on the property shall continue as obligations until fully performed.

19.13 Recordation. Lessee shall record this Lease in the county in which the Property is located at Lessee's sole expense. Lessee shall provide State with recording information including the date of recordation and file number. Lessee shall have thirty (30) days from the Commencement Date of the Lease to comply with the requirements of this paragraph.

19.14 Discrimination. Lessee shall not conduct or suffer any business upon the Property which unlawfully discriminates against any person on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.

OFFICIAL DOCUMENT



199909100131

Kathy Hill, Skagit County Auditor

9/10/1999 Page 17 of 23 3:57:06PM

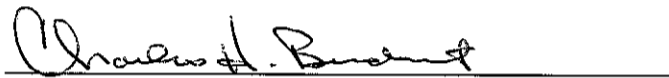
IN WITNESS WHEREOF, this Lease Agreement is executed on the day and year when executed by the state of Washington.

STATE:
STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES


KALEEN COTTINGHAM, Supervisor

Date 11/16/95

LESSEE:
Trident Seafoods Corporation
A Washington Corporation



5303 Shilshole Ave NW
Seattle, WA 98107

Date Sept 18, 1995

mkm7/ji/22002706.lse



199909100131
Kathy Hill, Skagit County Auditor
9/10/1999 Page 18 of 23 3:57:06PM

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF WASHINGTON)

) ss.

County of Thurston)

On this 16th day of November, 1995, personally appeared before me KALEEN COTTINGHAM, to me known to have signature authorization delegated to her to sign for JENNIFER M. BELCHER, the Commissioner of Public Lands, and ex officio administrator of the Department of Natural Resources of the state of Washington, the department that executed the within and foregoing instrument on behalf of the state of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the state of Washington for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the state of Washington.

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

SEAL



Barbara J. Goody

NOTARY PUBLIC in and for the state of Washington

My commission expires May 30, 1998

CERTIFICATE OF ACKNOWLEDGMENT

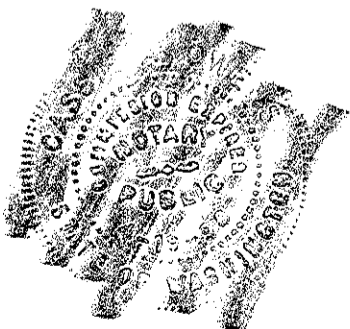
STATE OF *Washington*)

) ss.

County of *King*)

On this 18 day of September, 1995, personally appeared before me Charles H. Bundeant, to me known to be the President of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that (he/she was) (they were) authorized to execute said instrument for said corporation and that the seal affixed is the corporate seal of said corporation.

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



Cassie C. Adams

NOTARY PUBLIC in and for the state of Washington

My commission expires 4-19-98



Kathy Hill, Skagit County Auditor

9/10/1999 Page 19 of 23 3:57:06PM

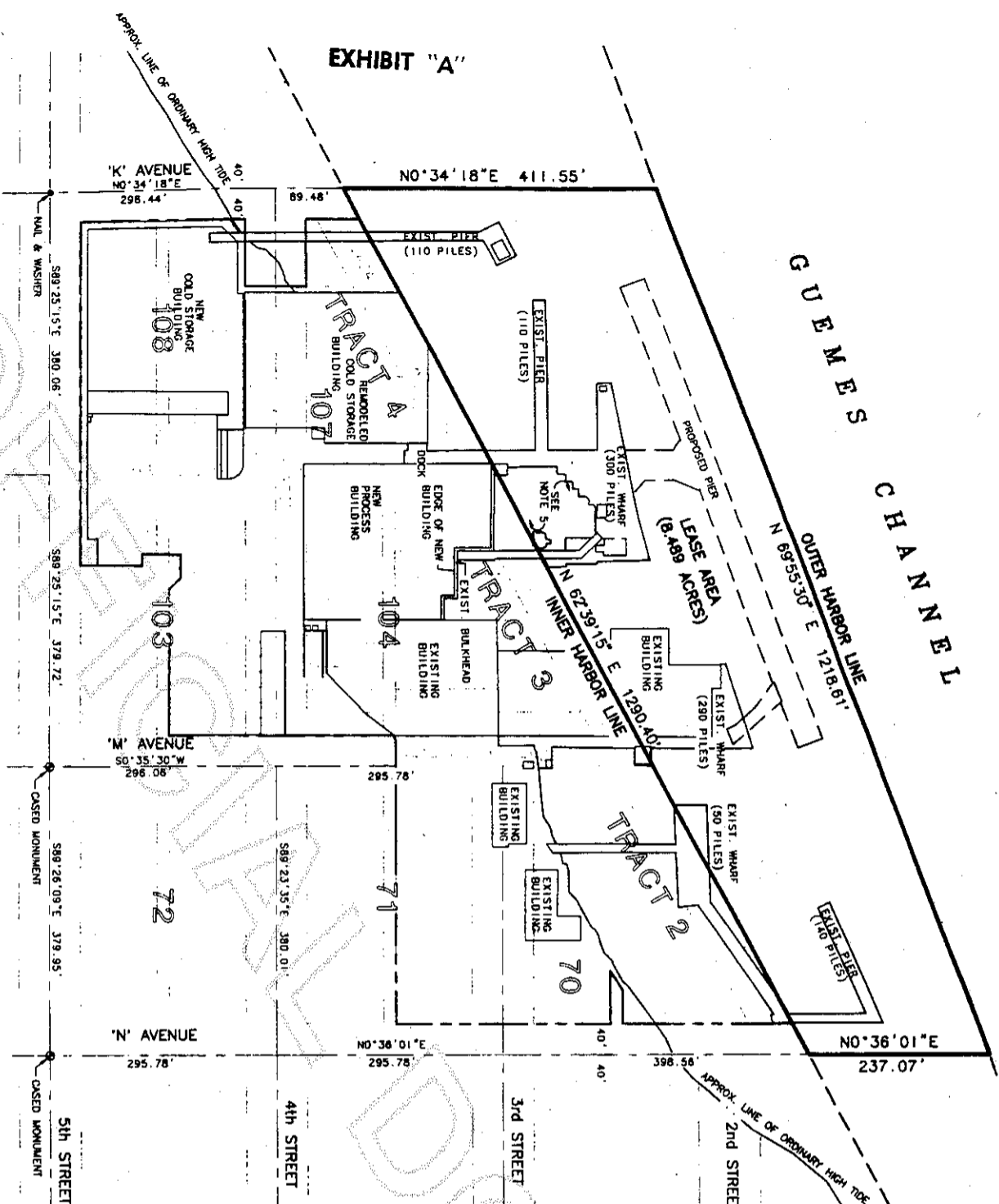
UNOFFICIAL DOCUMENT



199909100131

Kathy Hill, Skagit County Auditor
9/10/1999 Page 20 of 23 3:57:06PM

EXHIBIT "A"



G U E M E S
C H A N N E L
OUTER HARBOR LINE
N 69°53'30" E 1218.61'
INNER HARBOR LINE
N 67°39'15" E 1290.40'



No. 1	Revision/Issue	Date

PRINTED
OCT 7 1992
REID MIDDLETON

PROPOSED LEASE AREA—EXHIBIT "A"
FOR
TRIDENT SEAFOODS CORPORATION

SEC. 13, T. 35 N., R. 1 E., W.M.
SKAGIT COUNTY, WASHINGTON

REID MIDDLETON
18031 3rd Ave. W., Suite 301
Lynnwood, WA 98038-6638
206/775-3434

Drawn	RMJ,JK	DATE	SEPTEMBER, 1992
Checked	KJC	DATE	24-89-001

SCALE: 1" = 100'

SHEET 1 OF 1

NOTES

- EXISTING WHARVES AND PIERS ARE SUPPORTED ON TREATED TIMBER PILES.
- PILES ARE UNIFORMLY DISTRIBUTED AT APPROXIMATELY 10'-0" CENTERS IN EACH DIRECTION.
- PILE COUNTS SHOWN ABOVE ARE THE APPROXIMATE NUMBER OF VERTICAL SUPPORT PILES AND FENDER STRINGERS, SUPPORTED BY 12x12" TIMBER PILE-CAPS, SUPPORTED ON TIMBER PILES.
- TIMBER STRUCTURES GENERALLY CONSIST OF 4x12" TIMBER DECKING, SUPPORTED BY 4x12" TIMBER STRINGERS, SUPPORTED BY 12x12" TIMBER PILE-CAPS, SUPPORTED ON TIMBER PILES.
- AREA OF EXISTING TIMBER WHARF PREVIOUSLY DESTROYED BY FIRE.

LEGAL DESCRIPTION

ALL OF THE HARBOR AREA LYING IN FRONT OF TRACTS NO. 2, 3 AND 4, THE EAST HALF OF "K" AVENUE, ALL OF VACATED "L" AVENUE, ALL OF VACATED "M" AVENUE AND THE WEST HALF OF "N" AVENUE AS SHOWN ON PLATE 8 OF ANACORTES TIDELANDS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS ON THE NORTH, THE BOUNDARY OF THE PROPOSED LEASE AREA ON THE SOUTH, THE CENTERLINE OF "M" AVENUE EXTENDED NORTHERLY ON THE WEST AND THE CENTERLINE OF "K" AVENUE EXTENDED NORTHERLY ON THE EAST.

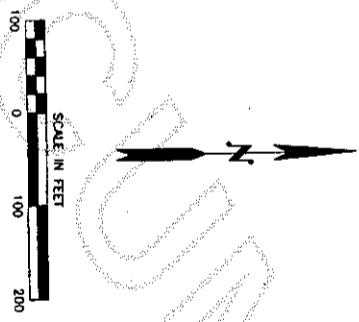
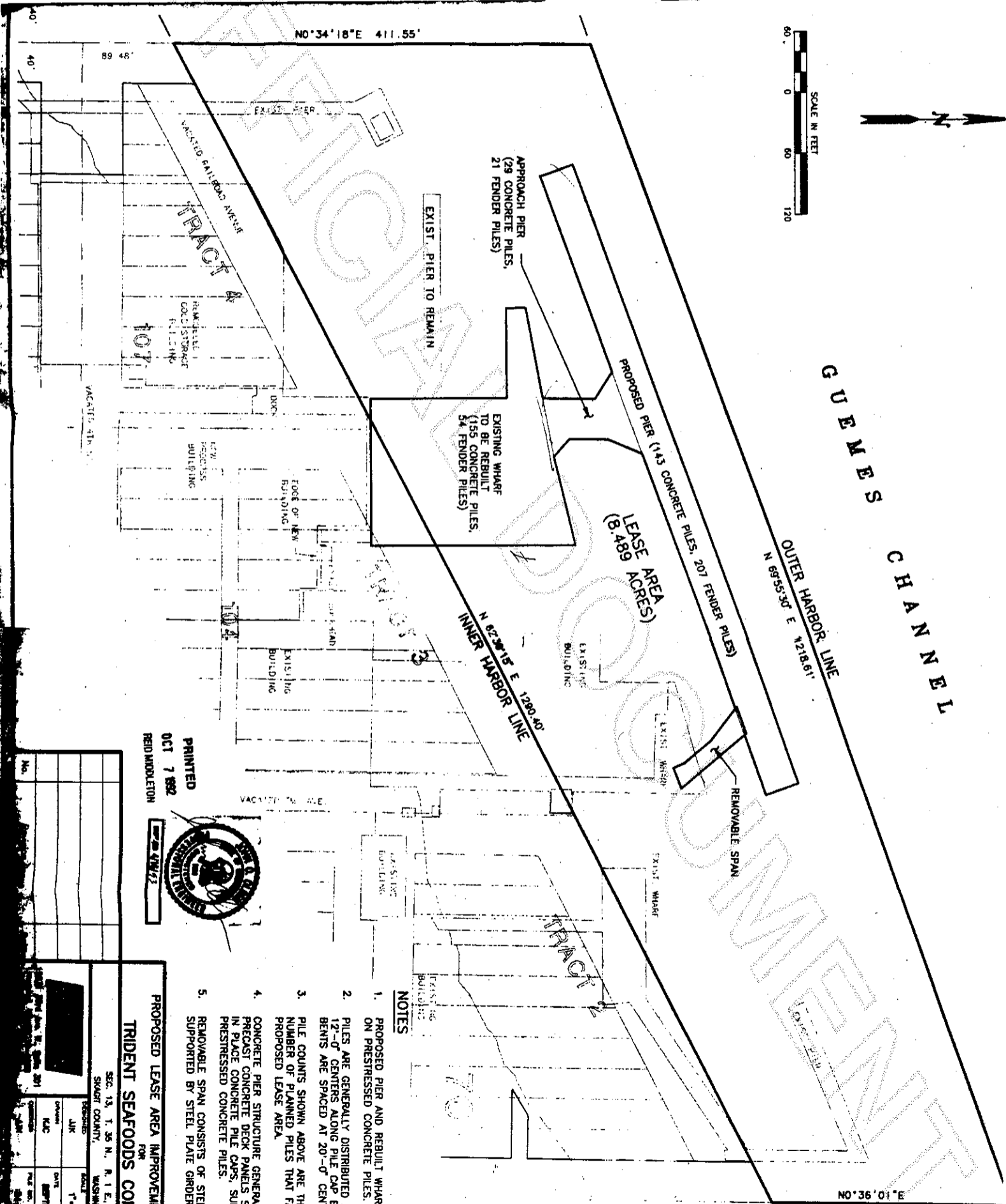
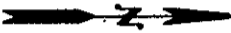
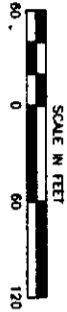


Exhibit B



GUEMES CHANNEL
OUTER HARBOR LINE
N 69°55'36" E 1218.61'

INNER HARBOR LINE
N 82°36'15" E 1280.40'

PRINTED
OCT 7 1992
RED MIDDLETON



NOTES

1. PROPOSED PIER AND REBUILT WHARF TO BE SUPPORTED ON PRESTRESSED CONCRETE PILES.
2. PILES ARE GENERALLY DISTRIBUTED AT APPROXIMATELY 12'-0" CENTERS ALONG PILE CAP BENTS. BENTS ARE SPACED AT 20'-0" CENTERS.
3. PILE COUNTS SHOWN ABOVE ARE THE APPROXIMATE NUMBER OF PLANNED PILES THAT FALL WITHIN THE PROPOSED LEASE AREA.
4. CONCRETE PIER STRUCTURE GENERALLY CONSISTS OF PRECAST CONCRETE DECK PANELS SUPPORTED BY CAST IN PLACE CONCRETE PILE CAPS, SUPPORTED BY PRESTRESSED CONCRETE PILES.
5. REMOVABLE SPAN CONSISTS OF STEEL GRATING SUPPORTED BY STEEL PLATE GIRDERS.

PROPOSED LEASE AREA IMPROVEMENTS - EXHIBIT 'B'
FOR
TRIDENT SEAFOODS CORPORATION

SEC. 13, T. 35 N., R. 1 E., WA1.
SKAGIT COUNTY, WASHINGTON

No.	DATE	BY	REVISIONS



SA-19081

EXHIBIT "C"

All of the Harbor area lying in front of Tracts 2, 3, and 4, the East Half of "K" Avenue, all of vacated "L" Avenue, all of vacated "M" Avenue, and the West Half of "N" Avenue as shown on Plate 8 of Anacortes Tidelands on file in the Office of the Commissioner of Public Lands in Olympia, Washington; bounded by the outer Harbor line on the North, the inner Harbor line on the South, the centerline of "K" Avenue extended Northerly on the West and centerline of "N" Avenue extended Northerly on the East.

Situate in Skagit County, Washington.

- END OF EXHIBIT "C" -

