



200102280172

Skagit County Auditor

2/28/2001 Page 1 of 11 3:41:06PM

Return Address:

LAND TITLE COMPANY OF SKAGIT COUNTY

PA95334

Document Title(s) (or transactions contained therein):

- 1. Third Amendment to lease
- 2.
- 3.
- 4.

Reference Number(s) of Documents assigned or released:

on page of _____ of document

Grantor(s) (Last name, First, Middle Initial)

- 1. Port of Anacortes
- 2.
- 3.
- 4. _____ Additional names on page _____ of document.

SKAGIT COUNTY WASHINGTON
Real Estate Excise Tax
PAID

FEB 28 2001

Amount Paid \$ 0
Skagit County Treasurer
By: DC Deputy

Grantee(s) (Last name, First, Middle Initial)

- 1. Rhodo Drona LLC
- 2.
- 3.
- 4. _____ Additional names on page _____ of document.

Legal description: (Lot, block, plat name, section-township-range)

Block 288, 289 City of Anacortes

_____ Additional legal is on page _____ of document.

Assessor's Property Tax Parcel Account Number(s):

L 6272

THIRD AMENDMENT TO LEASE

IT IS HEREBY MUTUALLY AGREED, by and between the PORT OF ANACORTES, a Washington municipal corporation, hereinafter referred to as "Lessor", and RHODO-DRONA LLC, a Washington limited liability company, hereinafter referred to as "Lessee", that this agreement amends the LEASE AGREEMENT (concerning the real property first above referenced) dated the 15th day of January, 1997, by and between the PORT OF ANACORTES, a municipal corporation of Anacortes, Washington as Lessor, and W. Inc., a Washington corporation as Lessee, as subsequently amended by FIRST AMENDMENT TO PORT OF ANACORTES/W.INC. LEASE AGREEMENT dated March 4, 1997 and SECOND AMENDMENT TO LEASE AGREEMENT dated June 15, 1997, and is subject to ASSIGNMENT OF LEASE and CONSENT TO SUBLEASE dated 2-18-99, wherein Daniel R. Bolster as sole shareholder of W. Inc., a dissolved Washington corporation, as Assignor assigned its interest in the LEASE AGREEMENT as amended to Assignee, RHODO-DRONA LLC, and the PORT OF ANACORTES consented thereto, as well as, consented to RHODO-DRONA LLC subletting the leased premises to Pier 61 Inc., a Washington corporation. This THIRD AMENDMENT TO LEASE replaces the SECOND AMENDMENT TO LEASE AGREEMENT in its entirety.

WITNESSETH:

In consideration of the mutuality of benefit inherent hereto, the parties hereto do mutually agree as follows:

1. The legal description of the leased premises in the Lease and Exhibit "A" of the Lease, which is a sketch of the leased premises, are hereby replaced in their entirety by that which is set forth on attachments hereto marked Exhibits "1" and "A" respectively, and are incorporated herein as though fully set forth here.
2. Paragraph 2. of the Lease is hereby replaced in its entirety by the following:

TERM. The term of this Lease shall be for thirty (30) years and shall be deemed to have been in effect on January 1, 1997 and shall terminate at 12:00 midnight on December 31, 2026. Lessee is granted the right to extend the term of the Lease for one (1) consecutive ten (10) year option period by giving written notice of said intention to Lessor not less than five (5) years prior to the expiration of the initial term, conditioned upon the fact that Lessee is not in default under this Lease at the time of giving notice or at the time of commencement of said option period. All terms, conditions, covenants and provisions of the Lease shall continue during the option period and the rental for said option period shall be adjusted as herein provided.



3. Paragraph 3.1 of the Lease is hereby replaced in its entirety by the following:

The initial base minimum rental shall be EIGHT HUNDRED FORTY and 44/100 DOLLARS (\$840.44) per month. This base minimum rent shall be subject to annual rental adjustments as set forth in the following paragraph titled "RENTAL ADJUSTMENTS". An additional rental amount shall be assessed of one and one half percent (1.5%) on the gross annual sales (January 1st through December 31st) if said sales exceed the sum of One Million Dollars (\$1,000,000) from business conducted on or from the leased property, and as reported monthly to the State of Washington Department of Revenue.

4. Paragraph 6 of the Lease is hereby replaced in its entirety by the following:

USE OF PROPERTY. The property and building shall be used for the purposes of conducting a restaurant and catering business, to specifically include pull tab operations. Lessee agrees not to conduct on said property any other business without the prior written approval of the Lessor. Lessee shall conduct the foregoing business activity for at least five (5) days per week except for closures for such periods as may be reasonably necessary for repairs or decorating or for reasons beyond Lessee's reasonable control. The failure to remain open as herein provided shall constitute a material default; provided however, that in the event that a lender of Lessee keeps the payment current and is otherwise in full compliance with this Lease, Lessee shall be considered to be in full compliance with the provisions of this paragraph.

5. Paragraph 8.2 of the Lease is hereby replaced in its entirety by the following:

8.2 If, at any time during the time of this lease, one-half (1/2) or more of the ownership and/or control of Lessee is vested and/or in control of someone other than Jennifer L. Wingett or Randolph H. Barrett, such change shall be deemed to be an assignment of this lease within the meaning of this paragraph. In the event Lessor in the future approves the assignment or subletting of any interest in this lease to a partnership or corporation, any change thereafter in the ownership of the partnership, or in the ownership and/or controlling interest of fifty percent (50%) or more in the corporation, shall also be deemed to be an assignment of this lease requiring the approval of Lessor. The failure to obtain written approval of any assignment or sublease of this lease shall be a material default of this lease.

6. Paragraph 16. of the Lease is hereby deleted in its entirety.

- 7. Paragraph 24. of the Lease is hereby deleted in its entirety.
- 8. The parties agree that the terms and conditions of Paragraph 27 of the Lease do not apply to Rhodo-Drona LLC.
- 9. Paragraph 31. of the Lease is hereby replaced in its entirety by the following:

31. **PERSONAL GUARANTEE.** By her signature below, Jennifer L. Wingett, confirms and represents that she is the sole member of Rhodo-Drona LLC and has controlling interest in said limited liability company. By their signatures below, Jennifer L. Wingett and Randolph H. Barrett, hereby personally guarantee full performance and/or any and all payments and indemnities on the part of Lessee provided for in this Lease.

- 10. Paragraph 32.8 of the Lease is hereby replaced in its entirety by the following:

32.8. **NOTICES.** The parties hereto agree that all notices and payments hereunder are to be delivered or mailed according to that which is hereinafter set forth. If delivered by messenger, courier (including overnight air courier) or facsimile transmittal, the same shall be deemed delivered when received at the street addresses or facsimile numbers listed below. All notices and payments mailed, whether sent by regular post or by certified or registered mail, shall be deemed to have been given on the second business day following the date of mailing, if properly mailed to the mailing addresses provided below. The parties may designate new or additional addresses for mail or delivery by providing notice to the other party as provided in this section.

| | | |
|--------------------------|--|---|
| <u>To Lessor:</u> | Street Address: Port of Anacortes First and Commercial Avenue Anacortes, WA 98221 Phone No.: (360)293-3134 | Mailing Address: Port of Anacortes Post Office Box 297 Anacortes, WA 98221 Fax No.: (360)293-9608 |
|--------------------------|--|---|

| | | |
|--------------------------|--|---|
| <u>To Lessee:</u> | Street Address: 209 "T" Avenue Anacortes, WA 98221 Phone No.: (360)293-5108 | Mailing Address: 209 "T" Avenue Anacortes, WA 98221 Fax No.: (360)293-7513 |
|--------------------------|--|---|

11. Paragraph 32.11 is hereby added to the Lease and reads as follows:

32.11 RIGHT OF FIRST REFUSAL.

(a) Lessee hereby grants to Lessor the right to purchase the Restaurant (defined below) upon the terms and conditions set forth in this Section 32.11 if, at any time during the term of this Lease, including any option or extension period, Lessee elects to sell the Restaurant. The term "Restaurant" as used in this Section 32.11 shall mean the 4936 square foot building, identified on the Skagit County Tax Assessor's personal property tax rolls as Acct. No. 5002027, Property ID No. L6272, together with fixtures, furnishings and equipment installed therein, and personal property used in connection with operation of the restaurant business and located within the building.

(b) Upon Lessee's receipt of any offer which Lessee is willing to accept for purchase of the Restaurant from a bona fide third party or for conveyance of the Restaurant to a partnership, corporation or entity other than Lessee (except an entity owned or controlled by Lessee), the Lessee shall deliver to Lessor a copy of such offer (hereafter "Offer to Purchase"). To exercise its right of first refusal, Lessor must give notice to Lessee within sixty (60) days after Lessor receives the copy of the Offer to Purchase. If Lessor fails to exercise its right of first refusal within the 60-day period, the Lessee shall thereafter be free to sell the Restaurant to the offeror specified in Lessee's notice free and clear of the restrictions of this Section 32.11. If the sale is not consummated with the offeror as aforesaid, any future Offer to Purchase shall remain subject to the terms hereof.

(c) The parties agree Lessor may accept the Offer to Purchase by reasonable satisfaction of the terms and conditions of the offer. If the offer presented to Lessor involves an exchange of property owned by a third party or otherwise involves terms and conditions which may be reasonably met only by a third party, then Lessee shall accept from Lessor substantially equivalent performance of the terms and conditions of any Offer to Purchase.

12. All other terms and conditions of the Lease first above referenced, except as herein amended to the contrary, are confirmed, ratified and continued in all respects and are to remain in full force and effect. This agreement shall bind and inure to the benefit of the successors and assigns of the Lessor and the successors and assigns of the Lessee.



UNOFFICIAL

IN WITNESS WHEREOF, the parties hereto have set their hand and seals to this agreement. This agreement shall be effective between the parties upon execution of the last party.

LESSEE:

RHODO-DRONA LLC

By: Jennifer L. Wingett
Jennifer L. Wingett, Member

LESSOR:

PORT OF ANACORTES

By: [Signature]

GUARANTOR:

By: _____

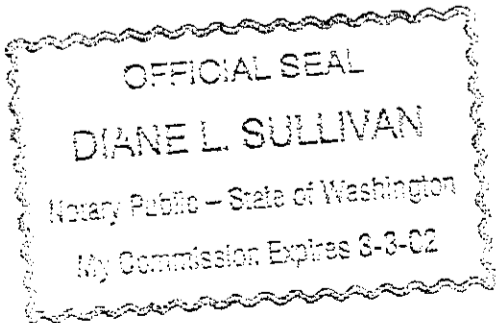
Jennifer L. Wingett
Jennifer L. Wingett, Individually and as to her marital community

Randolph H. Barrett
Randolph H. Barrett, Individually and as to his marital community

STATE OF WASHINGTON)
 :SS
COUNTY OF SKAGIT)

On this 18 day of Feb, 1999, before me, personally appeared JENNIFER L. WINGETT, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged she signed and sealed the same as her free and voluntary act and deed for the uses and purposes herein mentioned.

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



Diane Sullivan
(Signature)
Diane L. Sullivan
(Print Name)
Notary Public in and for the State of
Washington, residing at Anacortes
My Commission expires: 3-3-02



UNOFFICIAL

STATE OF WASHINGTON)
: SS
COUNTY OF SKAGIT)

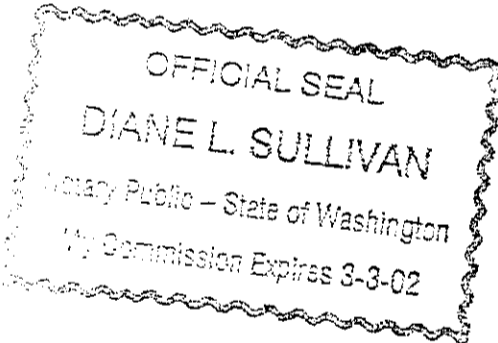
On this 18 day of Feb, 1999, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Richard Halmeris and [Signature], to me known to be the Executive Director and Secretary, respectively, of the Port Commission of the **PORT OF ANACORTES**, a municipal corporation, the corporation that executed the 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 they were duly authorized to execute the same 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.

[Signature]
(Signature)

Diane L. Sullivan
(Print Name)

Notary Public in and for the State of Washington, residing at Anacortes
My Commission expires: 3-3-02



(ACKNOWLEDGMENT FOR GUARANTOR)

STATE OF WASHINGTON)
: SS.
COUNTY OF SKAGIT)

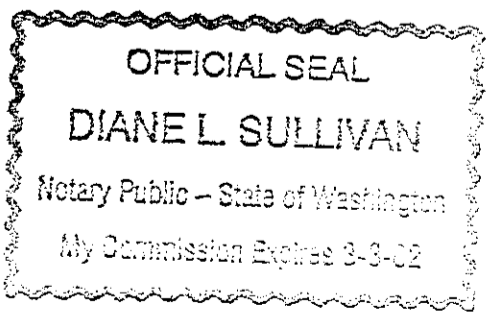
On this 18 day of Feb, 1999, before me personally appeared Jennifer L. Wingett, to me known to be the individual acting as the GUARANTOR, described in and who executed the within instrument and acknowledged she signed and sealed the same as her free and voluntary act and deed for the uses and purposes herein mentioned.

WITNESS my hand and official seal hereto the day and year in this certificate first above written.

[Signature]
(Signature)

Diane L. Sullivan
(Print Name)

Notary Public in and for the State of Washington, residing at Anacortes
My appointment expires 3-3-02



(ACKNOWLEDGMENT FOR GUARANTOR)

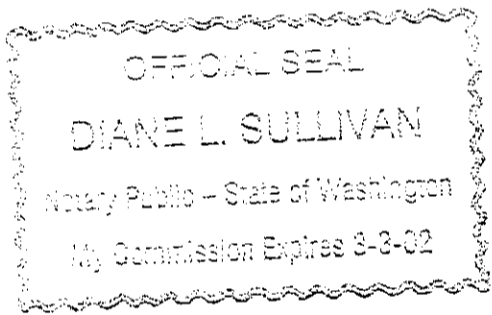
STATE OF WASHINGTON)

: SS.

COUNTY OF SKAGIT)

On this 18 day of Feb, 1999, before me personally appeared Randolph H. Barrett, to me known to be the individual acting as the GUARANTOR, described in and who executed the within instrument and acknowledged he signed and sealed the same as his free and voluntary act and deed for the uses and purposes herein mentioned.

WITNESS my hand and official seal hereto the day and year in this certificate first above written.



Diane L. Sullivan
(Signature)

Diane L. Sullivan
(Print Name)

Notary Public in and for the State of
Washington, residing at Anacortes
My appointment expires 3-3-02

C:\JOHNSON\POA\FORMS\THRD3.AMD



February 12, 1999

LEGAL DESCRIPTION FOR: Port of Anacortes Pier 61

Those portions of Block 288, 289, vacated 2nd Street and a portion of vacated "T" Avenue, within the Plat of the City of Anacortes, according to the Plat recorded in Volume 2 of Plats, page 4, records of Skagit County, Washington, and a portion of Tract 8, of Plate 9, Anacortes Tide and Shorelands, being in a portion of Section 18, Township 35 North, Range 2 East, more particularly described as follows:

Commencing at the intersection of "T" Avenue and 6th Street, within the Plat of the City of Anacortes; thence North 0° 35' 27" East, along the centerline of "T" Avenue, 591.17 feet, to the intersection of 4th Street and "T" Avenue, in said Plat; thence continue North 0° 35' 27" East, 452.00 feet to a point of intersection with the North line of the 16 foot alley within said Block 288, produced Westerly; thence South 89° 24' 51" East, along said line, a distance of 15.29 feet to the **TRUE POINT OF BEGINNING**; thence North 0° 35' 27" East, 243.07 feet; thence South 89° 18' 26" East, 109.61 feet; thence South 0° 35' 27" West, 242.86 feet to the North line of said alley; thence North 89° 24' 51" West, along said line and said line extended a distance of 109.60 feet to the **TRUE POINT OF BEGINNING**.

Containing 26,630 square feet.

Situate in the County of Skagit, State of Washington.

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Exhibit "1"



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Skagit County Auditor

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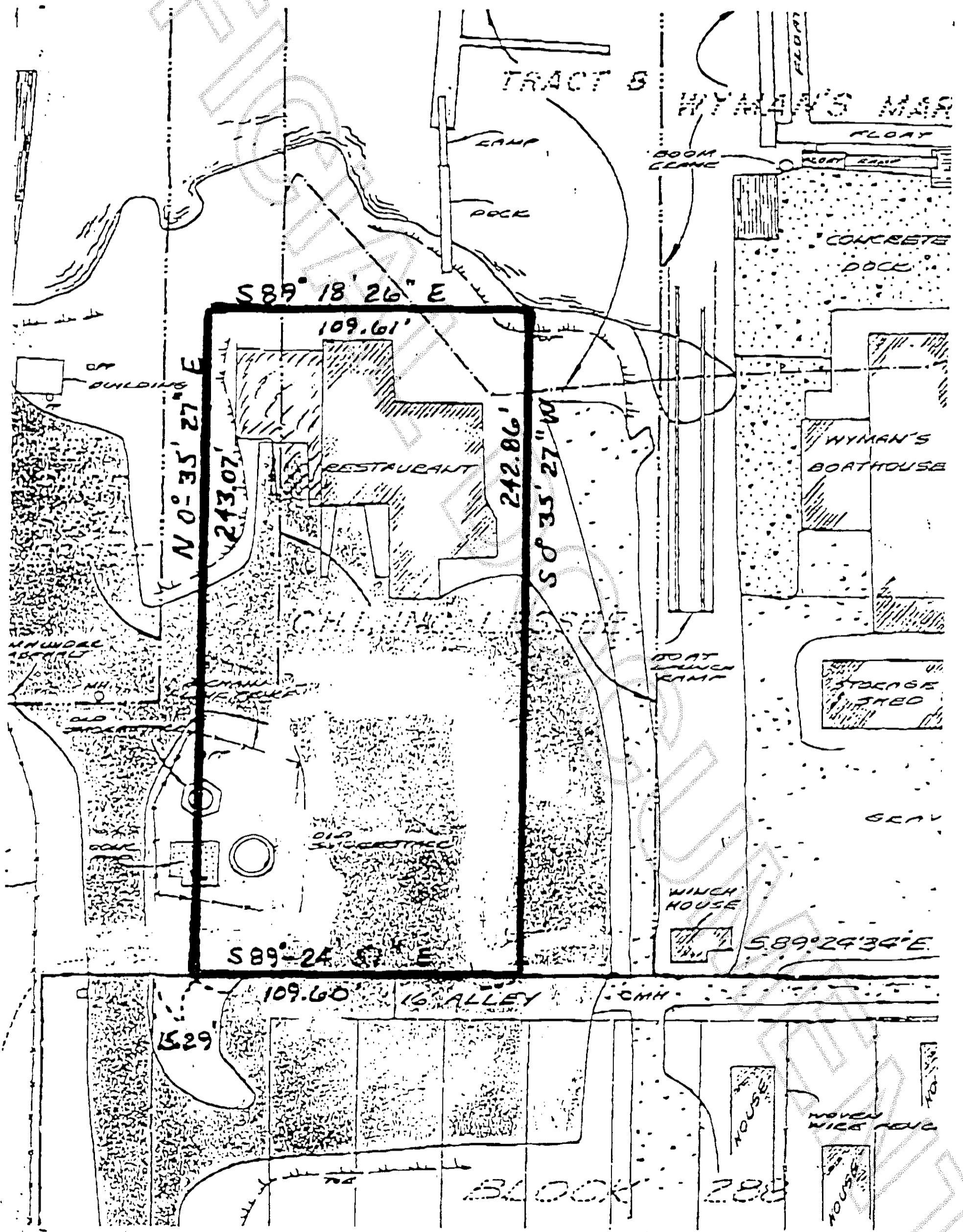
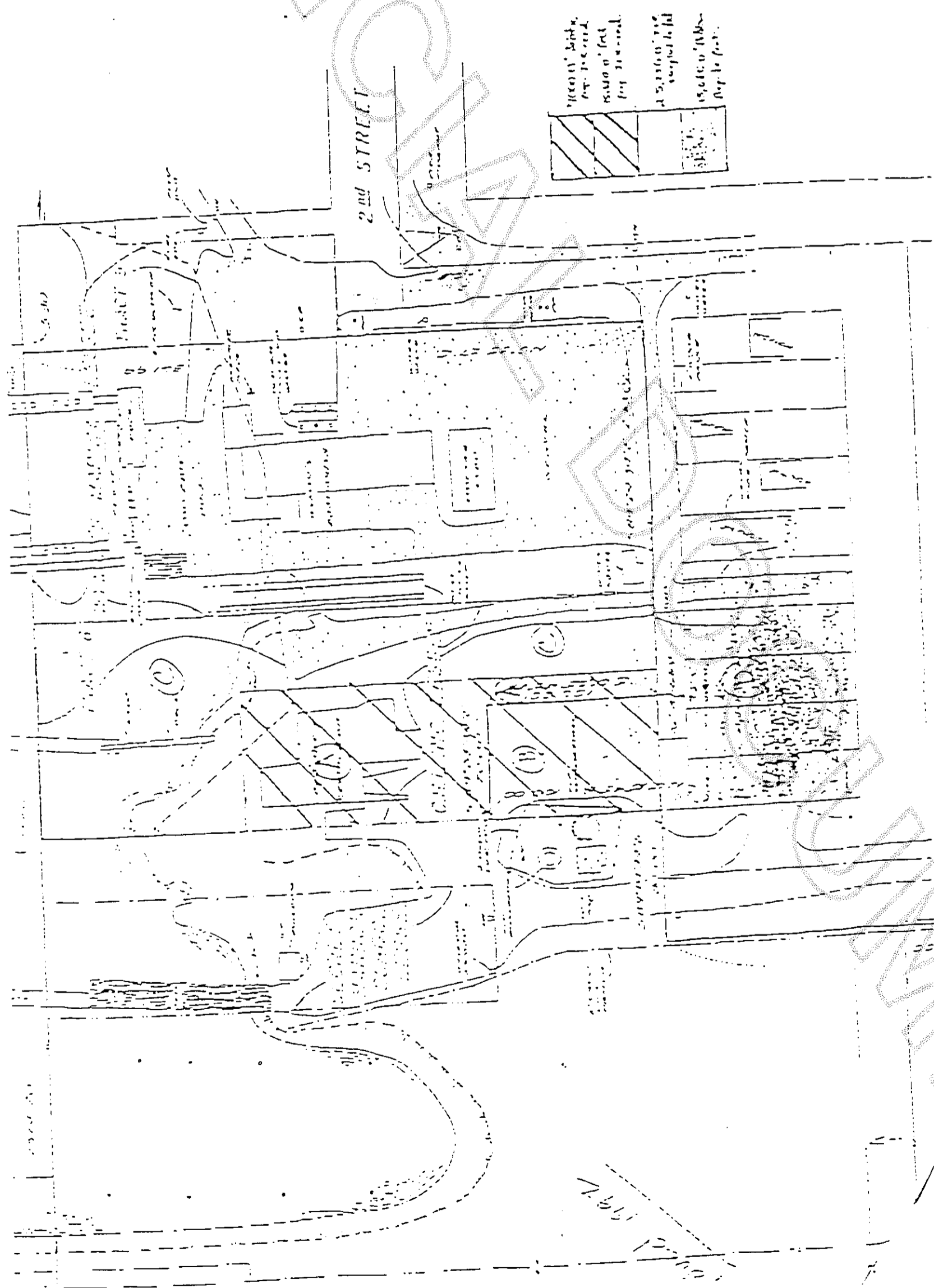


Exhibit "7"



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 , Skagit County Auditor