

AFTER RECORDED RETURN TO:

Department of Natural Resources  
1111 Washington St. SE  
Olympia, WA 98501



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**COPY**

CHICAGO TITLE  
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**DOCUMENT TITLE(s)** LEASE (Aquatic Lands Commercial Lease 22-A02661)

**Reference numbers:** None

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

**GRANTOR:**

State of Washington Department, acting through the Department of Natural Resources (Landlord)

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

**GRANTEE:**

James and Mary Lou Caudill (Tenant)

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

**ABBREVIATED LEGAL:** Portion Harbor Area established by the Harbor Line Commission as shown on the Map of La Conner Harbor dated 1892 located in front of Section 36-34-2E

**ACCOUNT NUMBER(S):** None

Additional legal description is on the last page of the document

x Melody Demossett for Brenda Treadwell

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document. The Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
DOUG SUTHERLAND, Commissioner of Public Lands**

**AQUATIC LANDS COMMERCIAL LEASE**

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STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
DOUG SUTHERLAND, Commissioner of Public Lands

AQUATIC LANDS LEASE  
(Commercial)

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

NOV 13 2015

AQUATIC LANDS LEASE NO. 22-A02661

Amount Paid \$  
Skagit Co. Treasurer  
By *M. M. M.* Deputy

THIS LEASE is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and JAMES AND MARY LOU CAUDILL, a Marital Community ("Tenant").

**BACKGROUND**

Tenant desires to lease the aquatic lands commonly known as LaConner Harbor Area, which are Tidelands and Bedlands located in Skagit County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease.

THEREFORE, the parties agree as follows:

**SECTION 1 PROPERTY**

**1.1 Property Defined.** State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property"). This Lease is subject to all valid interests of third parties noted in the records of Skagit County, or on file in the office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude, and treaty rights of Indian Tribes. Not included in this Lease are any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable materials. 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 unreasonably interfere with Tenant's Permitted Use.

**1.2 Survey, Maps, and Plans.** In executing this Lease, State is relying on the surveys, plats, diagrams, and/or legal descriptions provided by Tenant. Tenant is not relying upon and State is not making any representations about any survey, plat, diagram, and/or legal description provided by State.

**1.3 Inspection.** State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property or the existence of hazardous substances on the Property. Tenant has inspected the Property and accepts it "AS IS."

## SECTION 2 USE

**2.1 Permitted Use.** Tenant shall use the Property for a Commercial Building, currently being used as a restaurant and lounge (the "Permitted Use"), and for no other purpose. The Permitted Use is described or shown in greater detail in Exhibit B, the terms and conditions of which are incorporated by reference and made a part of this Lease. The parties agree that this is a nonwater-dependent use.

**2.2 Restrictions on Use.** Tenant shall not cause or permit any damage to natural resources on the Property. Tenant shall also not cause or permit any filling activity to occur on the Property. This prohibition includes any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, or other matter in or on the Property, except as approved in writing by State. Tenant shall neither commit nor allow waste to be committed to or on the Property. If Tenant fails to comply with all or any of the restrictions on the use of the Property set out in this Subsection 2.2, State shall notify Tenant and provide Tenant a reasonable time to take all steps necessary to remedy the failure. If Tenant fails to do so in a timely manner, then State may take any steps reasonably necessary to remedy this failure. Upon demand by State, Tenant shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Property. This section shall not in any way limit Tenant's liability under Section 8, below.

**2.3 Conformance with Laws.** Tenant shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its use or occupancy of the Property.

**2.4 Liens and Encumbrances.** Tenant shall keep the Property free and clear of any liens and encumbrances arising out of or relating to its use or occupancy of the Property.

## SECTION 3 TERM

**3.1 Term Defined.** The term of this Lease is Thirty (30) years (the "Term"), beginning on the 24th day of May, 2005 (the "Commencement Date"), and ending on the 23rd day of May, 2035 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

**3.2 Renewal of the Lease.** Tenant shall have the option to renew this Lease for zero (0) additional terms of zero (0) years each. The initial Term of this Lease, and all

renewal terms, shall not exceed Thirty (30) years in the aggregate. Tenant shall exercise this option by providing written notice of its election to renew at least ninety (90) days prior to the Termination Date of the initial Term or any renewal term of this Lease. Tenant shall not be entitled to renew if it is in default under the terms of this Lease at the time the option to renew is exercised. The terms and conditions of any renewal term shall be the same as set forth in this Lease, except that rent shall be recalculated, the required amounts of financial security may be revised, and provisions dealing with hazardous waste or impacts to natural resources may be changed at the time of the renewal.

**3.3 Delay in Delivery of Possession.** If State, for any reason whatsoever, cannot deliver possession of the Property to Tenant on the Commencement Date, this Lease shall not be void or voidable, nor shall State be liable to Tenant for any loss or damage resulting from the delay in delivery of possession. In such event, the date of delivery of possession shall be the Commencement Date for all purposes, including the payment of rent. In the event Tenant takes possession before the Commencement Date, the date of possession shall be the Commencement Date for all purposes, including the payment of rent. If the Lease Term commences earlier or later than the scheduled Commencement Date, the Termination Date shall be adjusted accordingly.

**3.4 End of Term.** Upon the expiration or termination of the Term or extended term, as applicable, Tenant shall surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

**3.5 Hold Over.** If Tenant remains in possession of the Property after the Termination Date, the occupancy shall not be an extension or renewal of the Term. The occupancy shall be a month-to-month tenancy, on terms identical to the terms of this Lease, which may be terminated by either party on thirty (30) days written notice. The monthly rent during the holdover shall be the same rent which would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms. If State provides a notice to vacate the Property in anticipation of the termination of this Lease or at any time after the Termination Date and Tenant fails to do so within the time set forth in the notice, then Tenant shall be a trespasser and shall owe the State all amounts due under RCW 79.01.760 or other applicable law.

## SECTION 4 RENT

**4.1 Annual Rent.** Until adjusted as set forth below, Tenant shall pay to State an annual rent of Three Thousand Two Hundred Two Dollars and 78/100 (\$3,202.78) related to non water-dependent use. The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), shall be due and payable in full on or before the Commencement Date and on or before the same date of each year thereafter.

**4.2 Payment Place.** Payment is to be made to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

**4.3 Adjustment Based on Use.** Annual Rent is based on Tenant's Permitted Use of the Property, as described in Section 2 above. If Tenant's Permitted Use changes, the Annual Rent shall be adjusted as appropriate for the changed use.

**4.4 Rent Adjustments for Nonwater-Dependent Uses.**

- (a) **Inflation Adjustment.** Except in those years in which the rent is revalued under Subsection 4.4 (b), below, State shall adjust the nonwater-dependent rent annually on the anniversary of the Commencement Date by an amount equal to the percentage increase in the most recently published Consumer Price Index, All Urban Consumers, for the Seattle-Everett SMSA, over the Consumer Price Index for the preceding anniversary of the Commencement Date. All items 1982-84 = 100, as published by the US Department of Labor, Bureau of Labor Statistics. If publication of the Consumer Price Index is discontinued, a reliable governmental or other nonpartisan publication evaluating the information used in determining the Consumer Price Index shall be used.
- (b) **Revaluation of Rent.** State shall, at the end of the first four-year period of the Term, and at the end of each subsequent four-year period, revalue the nonwater-dependent Annual Rent to reflect the then-current fair market rent. In the event that agreement cannot be reached between State and Tenant on the fair market rental value, the valuation shall be submitted to a review board of appraisers. The board shall consist of three members, one selected by and at the cost of Tenant; a second member selected by and at the cost of State; and a third member selected by the other two members with the cost shared equally by State and Tenant. The decision of the majority of the board shall be binding on both parties. Until the new rent is established by agreement or by the review board, Tenant shall pay rent in the same amount established for the preceding year. If additional rent is required as a result of this review, Tenant shall pay the additional rent within ten (10) days of the board's decision. If a refund is required as a result of this review, State shall pay the refund within ten (10) days of the board's decision.

**4.5 Rent Adjustment Procedures.**

- (a) **Notice of Rent Adjustment.**  
Notice of any adjustments to the Annual Rent that are allowed by Subsection 4.4 (b) shall be provided to Tenant in writing no later than ninety (90) days after the anniversary date of the Lease.
- (b) **Procedures on Failure to make Timely Adjustment.**  
In the event the State fails to provide the notice required in Subsection 4.5 (a), it shall be prohibited from collecting any adjustments to rent only for the year in which it failed to provide notice. No failure by State to adjust



Annual Rent pursuant to Subsection 4.5 (a) shall affect the State's right to establish Annual Rent for a subsequent lease year as if the missed or waived adjustment had been implemented. The State may adjust, bill, and collect Annual Rent prospectively as if any missed or waived adjustments had actually been implemented. This includes the implementation of any inflation adjustment and any rent revaluations that would have been authorized for previous lease years.

## SECTION 5 OTHER EXPENSES

During the Term, Tenant shall pay the following additional expenses:

**5.1 Utilities.** Tenant shall pay all fees charged for utilities in connection with the use and occupancy of the Property, including but not limited to electricity, water, gas, and telephone service.

**5.2 Taxes and Assessments.** Tenant shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges, of any kind whatsoever, applicable or attributable to the Property, Tenant's leasehold interest, the improvements, or Tenant's use and enjoyment of the Property.

**5.3 Right to Contest.** Tenant may, in good faith, contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against any loss or liability by reason of such contest.

**5.4 Proof of Payment.** Tenant shall, if required by State, furnish to State receipts or other appropriate evidence establishing the payment of any amounts required to be paid under the terms of this Lease.

**5.5 Failure to Pay.** If Tenant fails to pay any of the amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with the provisions of Section 6.

## SECTION 6 LATE PAYMENTS AND OTHER CHARGES

**6.1 Late Charge.** If any rental payment is not received by State within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the amount of the payment or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

**6.2 Interest Penalty for Past Due Rent and Other Sums Owed.** If rent is not paid within thirty (30) days of the date due, then Tenant shall, in addition to paying the late charges determined under Subsection 6.1, above, pay interest on the amount outstanding at the rate of one percent (1%) per month until paid. If State pays or advances any amounts for or on behalf of Tenant, including but not limited to leasehold taxes, taxes,

assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Section 2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance.

**6.3 No Accord and Satisfaction.** If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. In the absence of an election, the payment or receipt shall be applied first to accrued taxes which State has advanced or may be obligated to pay, then to other amounts advanced by State, then to late charges and accrued interest, and then to the earliest rent due. State may accept any payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment shall constitute or be construed as accord and satisfaction.

**6.4 No Counterclaim, Setoff, or Abatement of Rent.** Except as expressly set forth elsewhere in this Lease, rent and all other sums payable by Tenant pursuant to this Lease shall be paid without the requirement that State provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement.

## SECTION 7 IMPROVEMENTS

**7.1 Existing Improvements.** On the Commencement Date, the following improvements are located on the Property: Two story restaurant building, built on pilings. The improvements are not owned by State "Lessee Owned Improvements."

**7.2 Tenant-Owned Improvements.** So long as this Lease remains in effect, Tenant shall retain ownership of Existing Improvements, and all authorized improvements and trade fixtures it may place on the Property (collectively "Tenant-Owned Improvements"). Tenant-Owned Improvements shall not include any construction, reconstruction, alteration, or addition to any Unauthorized Improvements as defined in Subsection 7.5 below. No Tenant-Owned Improvements shall be placed on the Property without State's prior written consent.

**7.3 Construction.** Prior to any construction, alteration, replacement, removal or major repair of any improvements (whether State-Owned or Tenant-Owned), Tenant shall submit to State plans and specifications which describe the proposed activity. Construction shall not commence until State has approved those plans and specifications in writing and Tenant has obtained a performance and payment bond in an amount equal to 125% of the estimated cost of construction. The performance and payment bond shall be maintained until the costs of construction, including all laborers and material persons, have been paid in full. State shall have sixty (60) days in which to review the proposed plans and specifications. The plans and specifications shall be deemed approved and the requirement for State's written consent shall be treated as waived, unless State notifies

Tenant otherwise within the sixty (60) days. Upon completion of construction, Tenant shall promptly provide State with as-built plans and specifications. State's consent and approval shall not be required for any routine maintenance or repair of improvements made by the Tenant pursuant to its obligation to maintain the Property in good order and repair that does not result in the construction, alteration, replacement, removal, or major repair of any improvements on the Property.

**7.4 Removal.** Tenant-Owned Improvements shall be removed by Tenant by the Termination Date unless State notifies Tenant that the Tenant-Owned Improvements may remain. If the State elects for the Tenant-Owned Improvements to remain on the Property after the Termination Date, they shall become the property of State without payment by State (if the provisions of RCW 79.94.320 or RCW 79.95.040 apply, Tenant shall be entitled to the rights provided in the statute). To the extent that Tenant-Owned Improvements include items of personal property which may be removed from the leasehold premises without harming the Property, or diminishing the value of the Property or the improvements, the State asserts no ownership interest in these improvements unless the parties agree otherwise in writing upon termination of this Lease. Any Tenant-Owned Improvements specifically identified as personal property in Exhibit A or B shall be treated in accordance with this provision. Tenant shall notify State at least one hundred eighty (180) days before the Termination Date if it intends to leave the Tenant-Owned Improvements on the Property. State shall then have ninety (90) days in which to notify Tenant that it wishes to have the Tenant-Owned Improvements removed or elects to have them remain. Failure to notify Tenant shall be deemed an election by State that the Tenant-Owned Improvements will remain on the Property. If the Tenant-Owned Improvements remain on the Property after the Termination Date without State's actual or deemed consent, they still will become the property of the State but the State may remove them and Tenant shall pay the costs of removal and disposal upon State's demand.

**7.5 Unauthorized Improvements.** Improvements made on the Property without State's prior consent pursuant to Subsection 7.3 or which are not in conformance with the plans submitted to and approved by State ("Unauthorized Improvements") shall immediately become the property of State, unless State elects otherwise. Regardless of ownership of Unauthorized Improvements, State may, at its option, require Tenant to sever, remove, and dispose of them, charge Tenant rent for the use of them, or both. If Tenant fails to remove an Unauthorized Improvement upon request, State may remove it and charge Tenant for the cost of removal and disposal.

## **SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION**

**8.1 Definition.** "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42

U.S.C. 9601 *et seq.*, and Washington's Model Toxics Control Act ("MTCA"), RCW 70.105D.010 *et seq.*

**8.2 Use of Hazardous Substances.** Tenant covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, under, or above the Property, except in accordance with all applicable laws.

**8.3 Current Conditions, Duty of Utmost Care, and Duty to Investigate.**

- (a) State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property. With regard to any Hazardous Substances that may exist in, on, under, or above the Property, State disclaims any and all responsibility to conduct investigations, to review any State records, documents or files, or to obtain or supply any information to Tenant.
- (b) Tenant shall exercise the utmost care with respect to both Hazardous Substances in, on, under, or above the Property as of the Commencement Date, and any Hazardous Substances that come to be located in, on, under, or above the Property during the Term of this agreement, along with the foreseeable acts or omissions of third parties affecting those Hazardous Substances, and the foreseeable consequences of those acts or omissions. The obligation to exercise utmost care under this Subsection 8.3 includes, but is not limited to, the following requirements:
- (1) Tenant shall not undertake activities that will cause, contribute to, or exacerbate contamination of the Property;
  - (2) Tenant shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Property or undertake activities that result in human or environmental exposure to contaminated sediments on the Property;
  - (3) Tenant shall not undertake any activities that result in the mechanical or chemical disturbance of on-site habitat mitigation;
  - (4) If requested, Tenant shall allow reasonable access to the Property by employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, or other similar environmental agencies; and
  - (5) If requested, Tenant shall allow reasonable access to potentially liable or responsible parties who are the subject of an order or consent decree which requires access to the Property. Tenant's obligation to provide access to potentially liable or responsible

parties may be conditioned upon the negotiation of an access agreement with such parties, provided that such agreement shall not be unreasonably withheld.

- (c) It shall be Tenant's obligation to gather sufficient information concerning the Property and the existence, scope, and location of any Hazardous Substances on the Property, or adjoining the Property, that allows Tenant to effectively meet its obligations under this lease.

#### 8.4 Notification and Reporting.

- (a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:
  - (1) A release or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
  - (2) Any problem or liability related to, or derived from, the presence of any Hazardous Substance in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
  - (3) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
  - (4) Any lien or action with respect to any of the foregoing; or,
  - (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.
- (b) Upon request, Tenant shall provide State with copies of any and all reports, studies, or audits which pertain to environmental issues or concerns associated with the Property, and which were prepared for Tenant and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System Permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

**8.5 Indemnification.**

- (a) Tenant shall fully indemnify, defend, and hold State harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs, and expenses (including attorneys' fees and disbursements), that arise out of, or are in any way related to:
- (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, during the Term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property.
  - (2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination, in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, which release, threatened release, or exacerbation occurs or occurred during the Term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property, and as a result of:
    - (i) Any act or omission of Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates; or,
    - (ii) Any foreseeable act or omission of a third party unless Tenant exercised the utmost care with respect to the foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions.
- (b) In addition to the indemnifications provided in Subsection 8.5(a) Tenant shall fully indemnify State for any and all damages, liabilities, costs or expenses (including attorneys' fees and disbursements) that arise out of or are in any way related to Tenant's breach of the obligations of Subsection 8.3(b). This obligation is not intended to duplicate the indemnity provided in Subsection 8.5(a) and applies only to damages, liabilities, costs, or expenses that are associated with a breach of Subsection 8.3(b) and which are not characterized as a release, threatened release, or exacerbation of Hazardous Substances.

**8.6 Cleanup.** If a release of Hazardous Substances occurs in, on, under, or above the Property, or other State-owned property, arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Tenant shall, at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances. Cleanup actions shall include, without limitation, removal, containment and remedial actions and shall be performed in accordance with all applicable laws, rules, ordinances, and permits. Tenant's obligation to undertake a cleanup under this Subsection 8.6 shall be limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards. Tenant shall also be solely responsible for all cleanup, administrative, and enforcement costs of governmental agencies, including natural resource damage claims, arising out of any action, inaction, or event described or referred to in Subsection 8.5, above. Tenant may undertake a cleanup pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that: (1) Any cleanup plans shall be submitted to State (DNR) for review and comment at least thirty (30) days prior to implementation (except in emergency situations), and (2) Tenant must not be in breach of this lease. Nothing in the operation of this provision shall be construed as an agreement by State that the voluntary cleanup complies with any laws or with the provisions of this Lease.

**8.7 Sampling by State, Reimbursement, and Split Samples.**

- (a) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances on the Property, any adjoining property, any other property subject to use by Tenant in conjunction with its use of the Property, or any natural resources. If such Tests, along with any other information, demonstrates the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Tenant shall promptly reimburse State for all costs associated with such Tests.
- (b) State's ability to seek reimbursement for any Tests under this Subsection shall be conditioned upon State providing Tenant written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, unless such Tests are performed in response to an emergency situation in which case State shall only be required to give such notice as is reasonably practical.
- (c) Tenant shall be entitled to obtain split samples of any Test samples obtained by State, but only if Tenant provides State with written notice requesting such samples within twenty (20) calendar days of the date Tenant is deemed to have received notice of State's intent to conduct any non-emergency Tests. The additional cost, if any, of split samples shall be borne solely by Tenant. Any additional costs State incurs by virtue of Tenant's split sampling shall be reimbursed to State within thirty (30)

calendar days after a bill with documentation for such costs is sent to Tenant.

Within thirty (30) calendar days of a written request (unless otherwise required pursuant to Subsection 8.4(b), above), either party to this Lease shall provide the other party with validated final data, quality assurance/quality control information, and chain of custody information associated with any Tests of the Property performed by or on behalf of State or Tenant. There is no obligation to provide any analytical summaries or expert opinion work product.

**8.8 Reservation of Rights.** The parties have agreed to allocate certain environmental risks, liabilities, and responsibilities by the terms of Section 8. With respect to those environmental liabilities covered by the indemnification provisions of Subsection 8.5, that subsection shall exclusively govern the allocation of those liabilities. With respect to any environmental risks, liabilities, or responsibilities not covered by Subsection 8.5, the parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, that either party may have against the other under federal, state, or local laws, including but not limited to, CERCLA, MTCA, and the common law. No right, claim, immunity, or defense either party may have against third parties is affected by this Lease and the parties expressly reserve all such rights, claims, immunities, and defenses. The allocations of risks, liabilities, and responsibilities set forth above do not release either party from, or affect either party's liability for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

## SECTION 9 ASSIGNMENT AND SUBLETTING

**9.1 State Consent Required.** Tenant shall not sell, convey, mortgage, assign, pledge, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or the Property without State's prior written consent, which shall not be unreasonably conditioned or withheld.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, 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 tenant of the Property. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.
- (b) State reserves the right to condition its consent upon: (1) changes in the terms and conditions of this Lease, including the Annual Rent and other terms; and/or (2) the agreement of Tenant or transferee to conduct Tests



for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.

- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.

**9.2 Event of Assignment.** If Tenant is a corporation, a dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant shall be deemed to be an assignment of this Lease. If Tenant is a partnership, a dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant shall be deemed an assignment of this Lease.

**9.3 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.

**9.4 Terms of Subleases.** All subleases shall be submitted to State for approval and shall meet the following requirements.

- (a) The sublease shall be consistent with and subject to all the terms and conditions of this Lease;
- (b) The sublease shall confirm that if the terms of the sublease conflict with the terms of this Lease, this Lease shall control;
- (c) The term of the sublease (including any period of time covered by a renewal option) shall end before the Termination Date of the initial Term or any renewal term;
- (d) The sublease shall terminate if this Lease terminates, whether upon expiration of the Term, failure to exercise an option to renew, cancellation by State, surrender or for any other reason;
- (e) The subtenant shall receive and acknowledge receipt of a copy of this Lease;
- (f) The sublease shall prohibit the prepayment to Tenant by the subtenant of more than one month's rent;
- (g) The sublease shall identify the rental amount to be paid to Tenant by the subtenant;
- (h) The sublease shall confirm that there is no privity of contract between the subtenant and State;

(i) The sublease shall require removal of the subtenant's improvements and trade fixtures upon termination of the sublease; and,

(j) The subtenant's permitted use shall be within the Permitted Use authorized by this Lease.

**9.5. Routine Subleasing of Moorage Slips.** In the case of routine subleasing of moorage slips to recreational and commercial vessel owners for a term of one year or less, Tenant shall not be required to obtain State's written consent or approval pursuant to Subsection 9.1 or Subsection 9.4. Tenant shall be obligated to ensure that these moorage agreements conform to the sublease requirements in Subsection 9.4.

## SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

**10.1 Indemnity.** Tenant shall indemnify, defend, and hold harmless State, its employees, officers, and agents from any and all liability, damages (including bodily injury, personal injury and damages to land, aquatic life, and other natural resources), expenses, causes of action, suits, claims, costs, fees (including attorneys' fees), penalties, or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Property by Tenant, its subtenants, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Tenant shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence. Tenant's liability to State for hazardous substances, and its obligation to indemnify, defend, and hold the State harmless for hazardous substances, shall be governed exclusively by Section 8.

### 10.2 Financial Security.

(a) At its own expense, Tenant shall procure and maintain a corporate surety bond or provide other financial security satisfactory to State (the "Bond") in an amount equal to Ten Thousand Dollars (\$10,000), which shall secure Tenant's full performance of its obligations under this Lease, with the exception of the obligations under Section 8 (Environmental Liability/Risk Allocation) above. The Bond shall be in a form and issued by a surety company acceptable to State. State may require an adjustment in the amount of the Bond:

- (1) At the same time as revaluation of the Annual Rent;
- (2) As a condition of approval of assignment or sublease of this Lease;
- (3) Upon a material change in the condition of any improvements; or,
- (4) Upon a change in the Permitted Use.

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

(b) Upon any default by Tenant in its obligations under this Lease, State may collect on the Bond to offset the liability of Tenant to State. Collection on the Bond shall not relieve Tenant of liability, shall not limit any of State's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

**10.3 Insurance.** At its own expense, Tenant shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in Subsections 10.3(a) and (b) below. This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Insurers must have a rating of B+ or better by "Best's Insurance Reports," or a comparable rating by another rating company acceptable to State. If non-admitted or non-rated carriers are used, the policies must comply with Chapter 48.15 RCW.

(a) Types of Required Insurance.

(1) Commercial General Liability Insurance. Tenant shall procure and maintain Commercial General Liability insurance and, if applicable, Marina Operators Legal Liability insurance covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's operations. If necessary, commercial umbrella insurance covering claims for these risks shall be procured and maintained. Insurance must include liability coverage with limits not less than those specified below:

Description	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000

State may impose changes in the limits of liability:

- (i) As a condition of approval of assignment or sublease of this Lease;
- (ii) Upon any breach of Section 8, above;
- (iii) Upon a material change in the condition of the Property or any improvements; or,
- (iv) Upon a change in the Permitted Use.

New or modified insurance coverage shall be in place within thirty (30) days after changes in the limits of liability are required by State.

(2) Property Insurance. Tenant shall procure and maintain property insurance covering all real property located on or constituting a part of the Property in an amount equal to the replacement value of all improvements on the Property. Such insurance may have commercially reasonable deductibles.

(3) Worker's Compensation/Employer's Liability Insurance. Tenant shall procure and maintain:

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

Employers Liability or "Stop Gap" insurance coverage with limits not less than those specified below. Insurance must include bodily injury coverage with limits not less than those specified below:

<u>By Accident</u>	<u>Each Employee By Disease</u>	<u>Policy Limit By Disease</u>
\$1,000,000	\$1,000,000	\$1,000,000

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

(4) Builder's Risk Insurance. As applicable, Tenant shall procure and maintain builder's risk insurance in an amount reasonably satisfactory to State during construction, replacement, or material alteration 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 State.

(5) Business Auto Policy Insurance. As applicable, Tenant shall procure and maintain a business auto policy. The insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	<u>Each Accident</u>
Bodily Injury and Property Damage	\$1,000,000

(b) Terms of Insurance. The policies required under Subsection 10.3 shall name the State of Washington, Department of Natural Resources as an

UNNOTIFIED DOCUMENT

additional insured (except for State of Washington Worker's Compensation coverage, and Federal Jones' Act and Longshore and Harbor Worker's Act coverages). Furthermore, all policies of insurance described in Subsection 10.3 shall meet the following requirements:

- (1) Policies shall be written as primary policies not contributing with and not in excess of coverage that State may carry;
- (2) Policies shall expressly provide that such insurance may not be canceled or nonrenewed with respect to State except upon forty-five (45) days prior written notice from the insurance company to State;
- (3) To the extent of State's insurable interest, property coverage shall expressly provide that all proceeds shall be paid jointly to State and Tenant;
- (4) All liability policies must provide coverage on an occurrence basis; and
- (5) Liability policies shall not include exclusions for cross liability.

Proof of Insurance. Tenant shall furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the State accompanied by a checklist of coverages provided by State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements described in section 10, and, if requested, copies of policies to State. The Certificate of Insurance shall reference the State of Washington, Department of Natural Resources and the lease number. Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies. Tenant acknowledges that the coverage requirements set forth herein are the minimum limits of insurance the Tenant must purchase to enter into this agreement. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these limits of coverage does not relieve the Tenant from liability for losses and settlement expenses greater than these amounts.

**10.4 State's Acquisition of Insurance.** If Tenant fails to procure and maintain the insurance described above within fifteen (15) days after Tenant receives a notice to comply from State, State shall have the right to procure and maintain comparable substitute insurance and to pay the premiums. Tenant shall pay to State upon demand the full amount paid by State, together with interest at the rate provided in Subsection 6.2 from the date of State's notice of the expenditure until Tenant's repayment.

## SECTION 11 MAINTENANCE AND REPAIR

**11.1 State's Repairs.** State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

### **11.2 Tenant's Repairs, Alteration, Maintenance and Replacement.**

- (a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all improvements (regardless of ownership) in good order and repair, in a clean, attractive, and safe condition.
- (b) Tenant shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any improvements on the Property which may be required by any public authority.
- (c) All additions, repairs, alterations, replacements or changes to the Property and to any improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.

## SECTION 12 DAMAGE OR DESTRUCTION

- (a) In the event of any damage to or destruction of the Property or any improvements, Tenant shall promptly give written notice to State. Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and any improvements as nearly as possible to its condition immediately prior to the damage or destruction.
- (b) Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any improvements on the Property shall not be conditioned upon the availability of any insurance proceeds to Tenant 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 damage or destruction shall be first used to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.
- (e) In the event Tenant 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 then have the right to retain any and all insurance proceeds payable as a result of the damage or destruction.

## SECTION 13 CONDEMNATION

### 13.1 Definitions.

- (a) **Taking.** The term "taking," as used in this Lease, means the taking of all or any portion of the Property and any improvements thereon under the power of eminent domain, either by judgment or settlement in lieu of judgment. Taking also means the taking of all or a portion of the Property and any improvements thereon to the extent that the Permitted Use is prevented or, in the judgment of State, the Property is rendered impractical for the Permitted Use. A total taking occurs when the entire Property is taken. A partial taking occurs when the taking does not constitute a total taking as defined above.
- (b) **Voluntary Conveyance.** The terms "total taking" and "partial taking" shall include a voluntary conveyance, in lieu of formal court proceedings, to any agency, authority, public utility, person, or corporate entity empowered to condemn property.
- (c) **Date of Taking.** The term "date of taking" shall mean the date upon which title to the Property or a portion of the Property 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.

**13.2 Effect of Taking.** If during the Term there shall be a total taking, the leasehold estate of Tenant in the Property shall terminate as of the date of taking. If this Lease is terminated, in whole or in part, all rentals and other charges payable by Tenant to State and attributable to the Property taken shall be paid by Tenant up to the date of taking. If Tenant has pre-paid rent, Tenant will be entitled to a refund of the pro rata share of the pre-paid rent attributable to the period after the date of taking. In the event of a partial taking, there shall be a partial abatement of rent from the date of taking in a percentage equal to the percentage of Property taken.

**13.3 Allocation of Award.** State and Tenant agree that in the event of any condemnation, the award shall be allocated between State and Tenant based upon the ratio of the fair market value of Tenant's leasehold estate and Tenant-Owned Improvements on the Property and State's interest (a) in the Property, (b) in the reversionary interest in Tenant-Owned Improvements, and (c) in 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 Tenant 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.

## SECTION 14 DEFAULT AND REMEDIES

- (a) Tenant shall be in default of this Lease on the occurrence of any of the following:
- (1) Failure to pay Annual Rent or other expenses when due;
  - (2) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
  - (3) Failure to comply with any other provision of this Lease;
  - (4) Two or more defaults over a period of time, or a single serious default, that demonstrates a reasonable likelihood of future defaults in the absence of corrective action by Tenant; or
  - (5) Proceedings are commenced by or against Tenant under any bankruptcy act or for the appointment of a trustee or receiver of Tenants' property.
- (b) A default shall become an event of default ("Event of Default") if Tenant fails to cure the default within the applicable cure period after State provides Tenant with written notice of default, which specifies the nature of the default.
- (c) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise. State may also, without terminating this Lease, relet the Property on any terms and conditions as State in its sole discretion may decide are appropriate. If State elects to relet, rent received by it shall be applied: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and, (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. Any balance shall be held by State and applied to Tenant's future rent as it becomes due. Tenant shall be responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly. State's reentry or repossession of the Property under this subsection shall not be construed as an election to terminate this Lease or cause a forfeiture of rents or other charges to be paid during the balance of the Term, unless State gives a written notice of termination to Tenant or termination is decreed by legal proceedings. State may at any time after reletting elect to terminate this Lease for the previous Event of Default.



## SECTION 15 ENTRY BY STATE

State shall have the right to enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease.

## SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

As indicated in Section 1.1, this Lease is subject to all valid recorded interests of third parties, as well as rights of the public under the Public Trust Doctrine or federal navigation servitude, and treaty rights of Indian Tribes. State believes that its grant of the Lease is consistent with the Public Trust Doctrine and that none of the identified interests of third parties will materially and adversely affect Tenant's right of possession and use of the Property as set forth herein, but makes no guaranty or warranty to that effect. Tenant and State expressly agree that Tenant shall be responsible for determining the extent of its right to possession and for defending its leasehold interest. Consequently, State expressly disclaims and Tenant expressly releases State from any claim for breach of any implied covenant of quiet enjoyment with respect to the possession of the Property. 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, including rights under the Public Trust Doctrine; rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands, navigable waters, bedlands, tidelands, and shorelands. In the event Tenant is evicted from the Property by reason of successful assertion of any of these rights, this Lease shall terminate as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations 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.

## SECTION 17 NOTICE

Any notices required or permitted under this Lease may be personally delivered, delivered by facsimile machine, or mailed by certified mail, return receipt requested, to the following addresses or to such other places as the parties may direct in writing from time to time:

State: DEPARTMENT OF NATURAL RESOURCES  
Northwest Region  
919 North Township Street  
Sedro-Woolley, WA 98284

Tenant: JAMES & MARY LOU CAUDILL  
PO Box 577  
LaConner, WA 98257

A notice shall be deemed given and delivered upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after being mailed as set forth above, whichever is applicable.

## SECTION 18 MISCELLANEOUS

**18.1 Authority.** Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant will provide evidence satisfactory to State confirming these representations. This Lease is entered into by State pursuant to the authority granted it in Chapters 79.90 to 79.96 RCW and the Constitution of the State of Washington.

**18.2 Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the parties, their successors and assigns.

**18.3 Headings.** The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

**18.4 Entire Agreement.** This Lease, including the exhibits and addenda, if any, contains the entire agreement of the parties. All prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property, if any, are merged into this Lease.

**18.5 Waiver.** The waiver by State of any breach or default of any term, covenant, or condition of this Lease shall not be deemed to be a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a rental payment shall not be construed to be a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.

**18.6 Cumulative Remedies.** The rights and remedies of State under this Lease are cumulative and in addition to all other rights and remedies afforded to State by law or equity or otherwise.

**18.7 Time is of the Essence.** TIME IS OF THE ESSENCE as to each and every provision of this Lease.

**18.8 Language.** The word "Tenant" as used in this Lease shall be applicable to one or more persons, as the case may be. The singular shall include the plural, and the neuter shall include the masculine and feminine. If there is more than one Tenant, their obligations shall be joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations.

**18.9 Invalidity.** If any provision of this Lease shall prove to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Lease.

**18.10 Applicable Law and Venue.** This Lease shall be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute shall mean that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this Lease shall be in the Superior Court for Thurston County, Washington.

**18.11 Recordation.** Tenant shall record this Lease or a memorandum documenting the existence of this Lease in the county in which the Property is located, at Tenant's sole expense. The memorandum shall, at a minimum, contain the Property description, the names of the parties to the Lease, the State's lease number, and the duration of the Lease. Tenant shall provide State with recording information, including the date of recordation and file number. Tenant shall have thirty (30) days from the date of delivery of the final executed agreement to comply with the requirements of this subsection. If Tenant fails to record this Lease, State may record it and Tenant shall pay the costs of recording upon State's demand.

**18.12 Modification.** Any modification of this Lease must be in writing and signed by the parties. State shall not be bound by any oral representations or statements.

THIS AGREEMENT requires the signature of all parties and is executed as of the date of the last signature below.

JAMES and MARY LOU CAUDILL,  
a Marital Community

Dated: 8-4-04, 20

By: *James R Caudill*  
JAMES CAUDILL

Dated: 8/4/04, 20

By: *Mary Lou Caudill*  
MARY LOU CAUDILL

Address: PO Box 577  
LaConner, WA 98257

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL  
RESOURCES

Dated: August 25, 2004

By: *Bonnie Breming for*  
DOUG SUTHERLAND

Title: Commissioner of Public Lands



Standard Commercial Lease  
Approved as to Form July, 2003  
by Mike Grossmann  
Assistant Attorney General  
State of Washington



STATE ACKNOWLEDGMENT

STATE OF WASHINGTON )

)ss

County of Thurston )

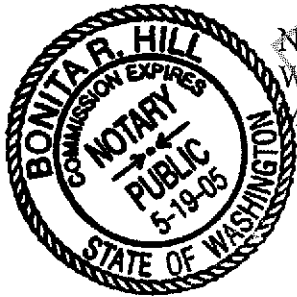
On this 25<sup>th</sup> day of August, 2004, personally appeared before me DOUG SUTHERLAND, to me known to be the ~~Commissioner of~~ Senior Public Public Lands of the Department of Natural Resources, State of Washington, who to have designated signature authority executed the within and foregoing instrument 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 he 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 seal the day and year first above written.

DATED: August 25, 2004 Bonita Hill  
Bonita Hill

(Type/Print Name)

Notary Public in and for the State of  
Washington, residing at Olympia  
My appointment expires 5-19-05





Doug Sutherland  
Commissioner of Public Lands

## MEMORANDUM

**TO:** Bonnie Bunning, Executive Director of Policy and Administration

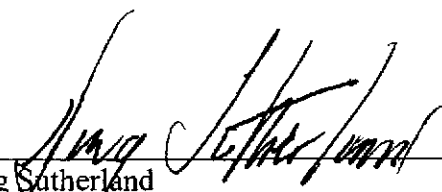
**FROM:** Doug Sutherland, Commissioner of Public Lands

**DATE:** August 23, 2004

**SUBJECT:** Delegation of Signature Authority

During my intermittent absence as needed beginning August 23, 2004 through September 3, 2004, I hereby appoint you the authority to sign all documents for the Washington State Department of Natural Resources on my behalf as Commissioner of Public Lands.

Thank you.

  
\_\_\_\_\_  
Doug Sutherland  
Commissioner of Public Lands

cc: Bruce Mackey, Lands Steward  
Pat McElroy, Executive Director of Regulatory Programs  
Fran McNair, Aquatics Steward

**RECEIVED**

SEP 02 2004

**AUDITOR'S CERTIFICATE**

Filed for the record at the request of LERO & ASSOCIATES



4/27/2004 Page 2 of 2

N. Projected  
Sagit County Auditor  
Sagit County Auditor  
Depository

**LEASE DESCRIPTIONS**

PARCEL "A", Aquatic Lease No. 22-A02661

The portion of the Harbor Area established by the Harbor Line as shown on the map of La Conner Harbor dated 1892 located in front of Section 36, Township 34 North, Range 2 East, W.M., described as follows:

Commencing at the intersection of the North right-of-way line of Benton Street projected Westward and the Inner Harbor Line as depicted by Detail upon the 1993 Supplemental Map of La Conner Harbor, as recorded on June 28, 1994, under Auditor's File Number (AFN) 9406280056 and placed in the overall map file of Skagit County Auditor records; thence S 32°32'17" W along said Inner Harbor Line, a distance of 205 feet to the Northwest corner of that tract of land conveyed from James L. Collins and Margaret Collins, husband and wife, to James R. Caudill and Mary Lou Caudill, husband and wife, recorded April 1, 1993, under AFN 9304010088, records of Skagit County, Washington and which point is the True Point of Beginning of this lease description; thence N 57°27'43" W along a line drawn perpendicular to said Inner Harbor Line, a distance of 72.61 feet, more or less, to the point of intersection with the outer (Northwesterly) edge of an existing deck; thence S 32°24'28" W along the outer edge of said deck, a distance of 44.02 feet, more or less, to a point which bears N 57°27'43" W, along a line drawn perpendicular to and a distance of 72.51 feet, more or less, from said Inner Harbor Line of the most Southwesterly corner of said tract of land conveyed to James R. Caudill and Mary Lou Caudill, husband and wife by AFN 9304010088; thence S 57°27'43" E, a distance of 72.51 feet, more or less, to said Inner Harbor Line; thence N 32°32'17" E along said Inner Harbor Line and the most Northwesterly boundary of said Caudill property, a distance of 44.02 feet, more or less, to the True Point of Beginning, and containing 3,184 square feet (0.073 acres), more or less.

(Lease Descriptions Continued upon Sheet 2)

**LEGEND**

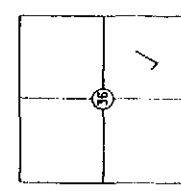
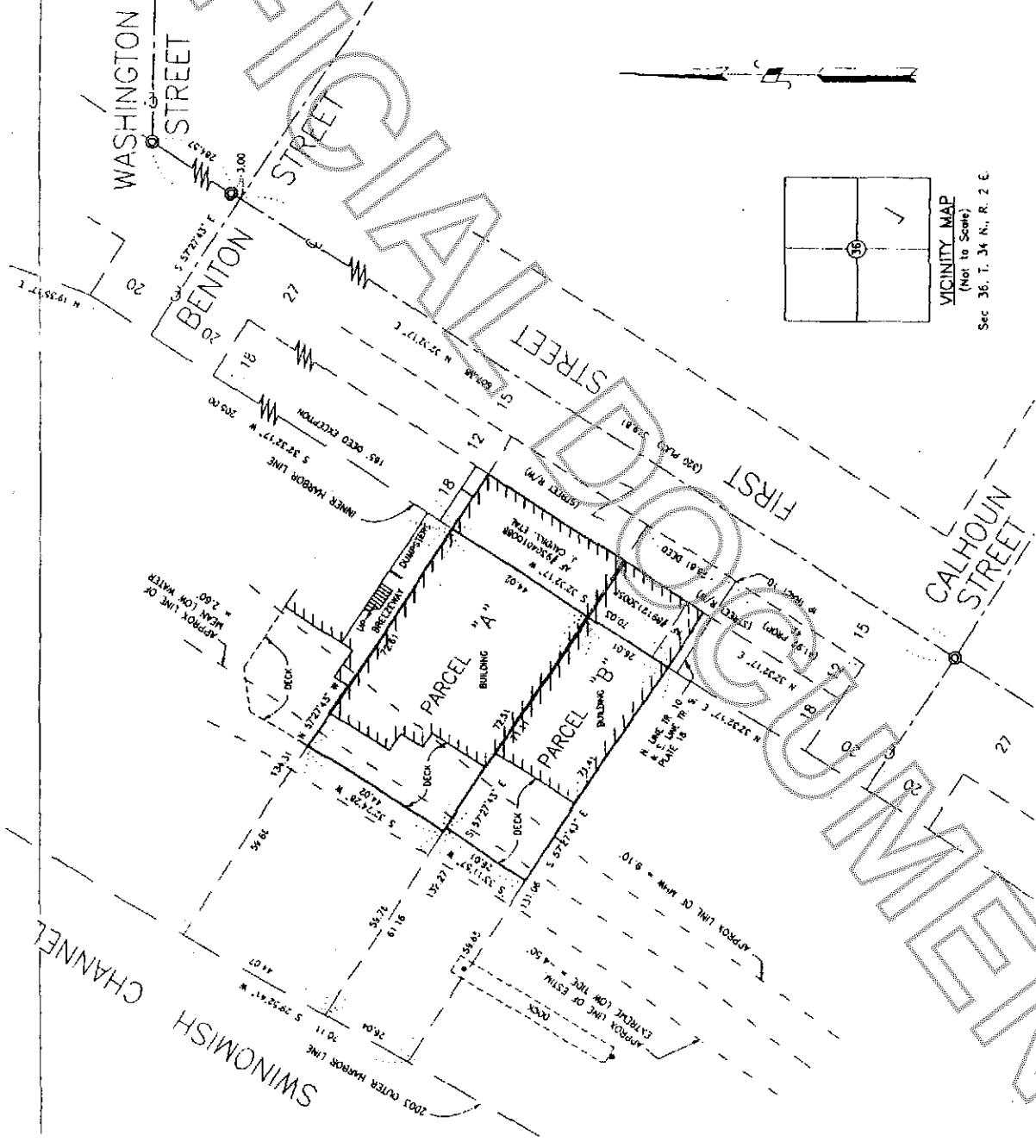
Found Brass Disk in Concrete Monument - Coasec

Sheet: 1 of 2

**RECORD OF SURVEY**

**JAMES R. CAUDILL AQUATIC LAND LEASE SURVEY**  
LOCATED IN LA CONNER HARBOR ADJACENT  
TRACT 9 CORRECTED SUPPLEMENT TO  
PLATE NO. 18, MAP OF LA CONNER TIDE LANDS  
SEC. 36, T. 34 N., R. 2 E., W.M.

L. CHAUDET, SURVEYOR



**VICINITY MAP**  
(Not to Scale)  
Sec 36, T. 34 N., R. 2 E.

**SURVEYOR'S CERTIFICATE**

This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act in February 2004 at the request of James Caudill

**LERO & ASSOCIATES**  
Engineer & Land Surveyors  
815 Cleveland Avenue  
Mount Vernon, WA 98722  
Phone (360) 318-3772

**DAVID D. LERO**  
Registered Professional  
Surveyor No. 1000  
Date: 4-7-04



**PLAN**





2003 Supplemental Map of La Conner Harbor  
Skiagit County Auditor  
471,700 sq. ft. 2 of 2

NOTES

- Legal Descriptions for this survey have been based upon the State of Washington Department of Natural Resources 2003 Supplemental Map of La Conner Harbor by that instrument recorded February 6, 2003 under Auditor's File No. 200302060018, records of Skagit County, Washington; the Statutory Warranty Deeds from Malcolm Moron and Jodi Maron, h & w, and from James L. Collinge and Margaret Collinge, h & w, to James R. Caudill and Mary Lou Caudill, h & w, by those instruments recorded under Auditor's File Numbers 8912130058 and 9304010088, records of Skagit County, Washington; and by topographic survey verifying that those improvements depicted are situated within those areas as described herein.
- For additional survey information refer to the State of Washington Department of Natural Resources 1993 Supplemental Map of La Conner Harbor as recorded under Auditor's File Number 9406280056, records of Skagit County, Washington.
- Basis of Bearing: The centerline of First Street based upon existing monumentation and the Inner Harbor Line as depicted by Delet upon said DNR 1993 Supplemental Map of La Conner Harbor as being N 32°32'17" E per Washington Coordinate System, North Zone, NAD 83/91 as derived from ties to HPN Stations "Cap Sante" and "Stonewood" by note thereon.
- Survey Method: Field Traverse  
Instrumentation: TOPCON GTS-28(20)  
Theodolite: Min. Horiz. Circle Reading of 20"  
E.D.M.: Accuracy ± (5mm + 3ppm)
- Vertical Datum established from Tidal Bench Mark No. 7: A standard disk stamped "Tidal 1972" set in concrete loading ramp at U.S. Post Office at First Street and Washington Street in La Conner. Top of disk elevation = 13.31 feet above MLLW.
- Tidal datum lines (MHW, MLW and Extreme Low Water) have been determined by topographic survey and from Tidal Datum for La Conner, Whidbey Island Region, Strait of Juan de Fuca, prepared by the US Army Corps of Engineers and NOAA/NOCS.
- Extreme Low Tide (-1.50' ±0.5'), Mean Low Water (2.80') and Mean High Water (9.10') were established by information provided from the USACE Tidal Datum Region: Whidbey Island Region: 108 - La Conner based upon MLLW.
- Decks and buildings shown upon this Survey map are constructed upon pilings.
- Based upon existing improvements, an area reserved for non-water dependent uses upon each aquatics lease site has been determined as follows:

Parcel "A":	
Building:	2485 sq. ft.
Deck:	705 sq. ft.
Total:	3194 sq. ft.
Parcel "B":	
Building:	1217 sq. ft.
Deck:	637 sq. ft.
Total:	1854 sq. ft.

EASE DESCRIPTION

PARCEL "B": Aquatic Lease No. 22-A02639

That portion of the Harbor Area established by the Harbor Line Commission as shown on the right of La Conner Harbor dated 1992 located in Tract 9, Section 36, Township 34 North, Range 2 East, W.M., described as follows:

Commencing at the intersection of the north right-of-way line of Easton Street projected westerly and the Inner Harbor Line as described by Delet upon the 1993 Supplemental Map of La Conner Harbor, as recorded on June 28, 1994 under Auditor's File Number AFN 9406280056; also placed in the oversize map file of Skagit County Auditor records; thence S 32°32'17" W along said Inner Harbor Line, a distance of 249.02 feet to the Southwest corner of that tract of land conveyed from James L. Collinge and Margaret Collinge, husband and wife, Grantor's to James R. Caudill and Mary Lou Caudill, husband and wife, Grantee's by that instrument dated April 1, 1993 and recorded April 1, 1993 under AFN 9304010088, records of Skagit County, Washington and which point is the True Point of Beginning of this lease description; thence N 57°27'43" W along a line drawn perpendicular to said Inner Harbor Line, a distance of 71.11 feet, more or less, to the point of intersection with the outer (Northwesterly) edge of an existing deck; thence S 13°11'57" W along the outer edge of said deck, a distance of 26.01 feet, more or less, to a point which bears N 57°27'43" W, along a line drawn perpendicular to and a distance of 71.41 feet, more or less, from said Inner Harbor Line at the most Southwesterly corner of that tract of land conveyed from Malcolm Moron and Jodi Maron, husband and wife, Grantor's to James R. Caudill and Mary Lou Caudill, husband and wife, Grantee's by that instrument dated December 12, 1989 and recorded December 13, 1989 under AFN 8912130058, records of Skagit County, Washington; thence S 57°27'43" E, a distance of 71.41 feet, more or less, to said Inner Harbor Line; thence N 32°32'17" E along said Inner Harbor Line and the most Northwesterly boundary of said Caudill property, a distance of 26.01 feet, more or less, to the True Point of Beginning, and containing 1,854 square feet (0.0437 acres), more or less.

All situate in the County of Skagit, State of Washington.

Sheet: 2 of 2

RECORD OF SURVEY

JAMES R. CAUDILL AQUATIC LAND LEASE SURVEY  
LOCATED IN LA CONNER HARBOR ADJACENT  
TRACT 9 CORRECTED SUPPLEMENT TO  
PLATE NO. 18, MAP OF LA CONNER TIDE LANDS  
SEC. 36, T. 34 N., R. 2 E., W.M.  
LA CONNER, WASHINGTON



## **Exhibit "B"**

### **Aquatic Lease Number 22-A02661**

#### **Maintenance and Operation Plan**

The leasehold consists of a portion of the Harbor Area, which is located in downtown LaConner Washington. On the site is a 100+-year-old building that is now being used as a restaurant. Portions of the building are built on pilings and located over partially filled State Owned Aquatic Lands (SOAL). The building is part of the historical section of LaConner and has restrictions on restoration and use.

The use of the building requires that the Lessee pays non-water dependent rent, however the water-dependent rate of return will be used. The purpose of the use of the water-dependent capitalization rate is to recognize the economic impacts of the historic district designation and the maintenance costs associated with piling-supported structures. To off set some of the expense of keeping up the structure it is agreed that the rent will be calculated by using the assessed value per square feet that the Skagit County Assessors uses to calculate the property value in this area. At the time of this lease the value is \$17.50 per square foot. The \$17.50 will be multiplied by the number of square feet leased (3,194), and that total will be multiplied by the water-dependent rate of return (rate for 2004 is 5.73%) for that year.

The building is inspected on a regular basis and minor repairs are completed at that time. Major repairs are completed when required permits have been issued.