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PUSHING  
COPY

1985 TO 2010  
25 year lease for  
Lummi Island  
Ferrydock

L E A S E

THIS LEASE, made and entered into this 12<sup>th</sup> day of May, 1988, by and between the LUMMI INDIAN TRIBE, acting by and through its governing body, the Lummi Indian Business Council (hereinafter the "lessor"), and WHATCOM COUNTY (hereinafter referred to as the "lessee"), and a municipal corporation and political subdivision of the state of Washington, acting through its chief executive officer, the Whatcom County Executive, is for the lease of certain uplands and tidelands title to which is held by the United States of America in trust for, or subject to restrictions on alienation by, the Lummi Indian Tribe. It is entered into pursuant to the provisions of existing law and subject to restrictions on alienation by, the Lummi Indian Tribe. It is entered into pursuant to the provisions of existing law and subject to regulation under the provisions of 25 C.F.R. Section 162 as presently existing or hereafter amended.

WITNESSETH: That for and in consideration of the rents, covenants, and agreements hereinafter provided for, the lessor hereby leases to the lessee the land and premises described as follows, to wit:

Duplicate  
copy of lease  
quit claim  
filed under  
Paw Works

PARCEL NO. 1

All that portion of Govt. Lot 4 in Section 34, Township 38 North, Range 1 East of W.M., and Govt. Lot 2 in Section 3, Township 37 North, Range 1 East of W.M., described as follows:

S 34 T. 38 N  
Range 1 East of W.M.

Commencing at the intersection of Finkbonner Road and Lummi Shore Road, County Road No. 652, marked by a brass plug monument; thence South 71 10' West 156.41 feet; thence South 31.70 feet to the southerly right-of-way line of Lummi Shore Road; thence South 71 10' West along said South right-of-way line 70.78 feet to the point of beginning; thence continuing along said southerly right-of-way line South 71 10' West a distance of 96.48 feet to a point of curvature; thence along the arc of a curve to the left having a radius of 63.53 feet, through a central angle of 23 36'30" a distance of 52.35 feet; thence south 16 17'27" East 332 feet more or less to the extreme low water line of Hale Passage; thence South 73 42'33" West 75.00 feet to a point; thence North 16 17'27" West 514.58 feet more or less to a point on the southerly right-of-way line of Haxton Way, County Road No. 783; thence South 70 36'27" East along said Southerly right-of-way line 267.233 feet to the point of beginning.

This lease shall be for a term of twenty five (25) years, beginning on the 14 day of February, 1985.

The lease premises shall be used only for the purpose of operating a public ferry landing dock or slip together with the approaches, roads, and related facilities necessary for that purpose. In the event the lessee shall discontinue use of the leased premises for the purposes enumerated herein, this lease shall terminate and the leased premises shall revert to the lessor.

The lessee, in consideration of the foregoing covenants, agrees, as full rental for the land and premises over the entire 25 years term of this lease, to take the following actions:

A. Simultaneously with the execution of this lease, the lessee shall convey the below described real property to the United States of America in trust for the Lummi Indian Tribe, free and clear of all liens and encumbrances whatsoever, except for the following: None. The property to be conveyed under this provision is described as follows:

LEGAL DESCRIPTION PARCEL NO. 2  
(Consisting of Parcels A and B):

Parcel A

The North 400 feet of that part of the South 460 feet of Government Lot 5, Section 2, Township 37 North, Range 1 East of W.M., lying Easterly of Lummi View Drive, EXCEPTING THEREFROM so much as may be contained within the following described tract:

Lot 5  
Section 2  
T. 37

A tract of land in Government Lot 5, Section 2, Township 37 North, Range 1 East of W.M., Whatcom County, Washington, described as follows:

Beginning at the Northwest corner of said Section 2; thence South 1 52'30" East along the West line of Section 2, 1,339.35 feet; thence North 87 12'40" East along the North line of said Government Lot 5, 350 feet; thence South 1 52'30" East, 763.3 feet to the true point of beginning; thence North 88 07'30" East, 100 feet; thence South 1 52'30" East, 205.5 feet, more or less, to the Northeasterly line of Lummi Shore Road; thence Northwesterly along the Northeasterly line of said road to a point which bears South 88 07'30" West of the true point of beginning; thence North 88 07'30" East to the true point of beginning, ALSO EXCEPTING THEREFROM, the East 200 feet thereof, LESS roads, situate in Whatcom County, Washington. ALSO EXCEPTING an easement for existing waterline for water purposes only, approximately 3 feet Easterly of Lummi Shore Road to EDITH and VICTOR JONES, Beach Star Road, Bellingham, Washington.

ALSO

Beginning at the Northwest corner of said Government Lot 5; thence North 87 12'40" East along the North line of said Government Lot 5, 350 feet to the true point of beginning; thence South 1 52'30" East, 541 feet; thence North 88 07'30" East, 200 feet; thence South 1 52'30" East to the North line of the South 460 feet of said Government Lot 5; thence along said North line of South 460 feet, to the East line of said Government Lot 5; thence North along said East line to the Northeast corner of said

Government Lot 5; thence West along the North line of said Government Lot 5 to the true point of beginning, situate in Whatcom County, Washington.

PARCEL B

The South 460 feet of Government Lot 5 of Section 2, Township 37 North, Range 1 East of W.M., lying West of the Lummi Shore Road (also known as "Lummi View Road," Whatcom County Road No. 652), situate in Whatcom County, Washington.

B. Simultaneously with the execution of this lease, the lessee shall notify the United States Department of the Interior, Bureau of Indian Affairs that it has no objection to the acceptance of the above described property in trust or restricted status by the United States pursuant to 25 C.F.R. Section 151.10 and any other applicable law or regulation.

C. During the term of this lease, the lessee shall grant free foot passage upon and across the ferry operated by Whatcom County between Gooseberry Point and Lummi Island to all enrolled members of the Lummi Indian Tribe who are issued appropriate identification by the Tribe, or current fishing cards, licenses, or Lummi Indian Business Council ID cards and who have legitimate Tribal business upon Lummi Island, as indicated by the Lummi Tribe.

DEFINITION. As used in this lease the term "Secretary" shall mean the Secretary of the Department of the Interior or his authorized representative.

IMPROVEMENTS. It is understood and agreed that any buildings, docks or other structures or improvements placed upon the leased premises by the lessee shall become the property of the lessor upon termination or expiration of this lease, provided however, that the lessee shall have the right to remove any such improvements at its sole expense prior to the expiration of this lease. If the lessee elects to remove the improvements, it shall return the leased premises to the lessor in good condition and restore the surface of the ground to a smooth condition.

UNLAWFUL CONDUCT. The lessee agrees that it will not use or cause to be used any part of said premises for any unlawful conduct or purpose.

SUBLEASES AND ASSIGNMENTS. No sublease, assignment, or amendment of this lease may be made except with the approval of the Secretary and the written approval of all parties to this lease, including the surety or sureties, if any. Such consent shall not be unreasonably withheld.

INTEREST OF MEMBERS OF CONGRESS. No Member of, or Delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

**VIOLATIONS OF LEASE.** It is understood and agreed that any violations of this lease shall be acted upon in accordance with applicable provisions of law, including, but not limited to, the provisions of 25 C.F.R. Section 162 as presently existing or hereafter modified.

**ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS.** No assent, express or implied, to any breach of the lessee's or lessor's duties or covenants shall be deemed a waiver of any other breach, either former or subsequent, of the lessee's duties or covenants.

**BINDING EFFECT.** It is understood and agreed that the covenants and agreements hereinbefore mentioned shall extend to and be binding upon the heirs, successors, and assigns of the parties to this lease. All of the lessee's obligations under this lease, and the obligations of its sureties, if any, are to the United States as well as to the lessor.

**APPROVAL.** It is further understood and agreed between the parties that this lease shall be valid and binding only after approval by the Secretary.

**RENTAL ADJUSTMENT.** Given the unique nature and present value of the rental consideration under this lease, the rental payments shall not be adjusted periodically, notwithstanding the provisions of 25 C.F.R. Section 162.8. The

parties agree that the land transferred to the Tribe as consideration for this lease has a present appraised value of Three Hundred Thirty Five Thousand Dollars (\$335,000.00), giving an average annual rental of Thirteen Thousand Four Hundred Dollars (\$13,400.00) without taking into consideration the value received by the lessor derived as a result of the paying the entire amount to the lessor at the beginning of the lease.

← BKA

OPTION TO RENEW. In consideration of One Dollar (\$1.00) and other good and valuable consideration in hand paid, the lessee is hereby granted an option to renew this lease for one additional term of not more than twenty five (25) years. This option shall be exercised as follows: Not less than twelve (12) months before the expiration of the initial lease period, Whatcom County shall notify the Lummi Indian Tribe and the Secretary in writing of its intent to exercise its option. Within thirty (30) days of receipt of the notice of intent, the lessor and the lessee shall each appoint one (1) negotiator. Between the time of appointment and six (6) months prior to the expiration of the initial lease period, these negotiators shall meet to arrive at fair consideration for the lease of the land during the option period. The consideration shall be based upon the fair market value of the leased land, and at least one (1) appraisal from a qualified appraiser shall be obtained to assist in the valuation. Costs of all appraisals deemed necessary by the

negotiators jointly shall be borne equally by the lessor and the lessee.

If these negotiators cannot agree upon consideration for the lease, then, prior to six (6) calendar months before the expiration of the initial lease period the lessor and the lessee shall each submit the question of consideration to arbitration under the rules of the American Arbitration Association. The lessor and the lessee shall each select one arbitrator-selector, and these two (2) persons shall select the arbitrator.

The arbitration award shall be enforceable in the courts of the United States and the Tribe shall waive its immunity from suit for the purposes of such enforcement only in these courts. The arbitration award shall apportion cost between the parties in a manner to be determined by the arbitrator.

**BOND.** All notices required to be given under this lease and the identity of the lessee, the bond of the lessee is waived.

**NOTICE.** All notices required to be given under this lease shall be made in writing and mailed or personally delivered to the parties at the following addresses:

LUMMI INDIAN TRIBE  
Office of the Chairman  
2616 Kwina Road  
Bellingham, WA 98226

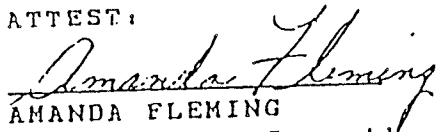
WHATCOM COUNTY  
Office of the County  
Executive  
311 Grand Avenue  
Bellingham, WA 98225

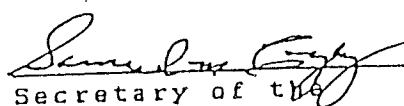
TIME OF ESSENCE. Time is of the essence of this contract, and any duty to be performed shall be promptly and fully performed by the date specified.

RETURN OF PREMISES. The leased premises shall be returned to the lessor at the expiration or termination of the lease in at least as good condition as existing at the commencement of the lease, normal wear and tear excepted.

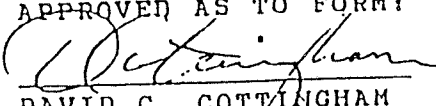
IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTIED THIS LEASE ON THE DAY FIRST ABOVE WRITTEN.

ATTEST:

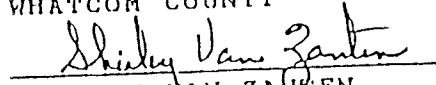
  
AMANDA FLEMING  
Clerk of the Council

  
Secretary of the  
Council

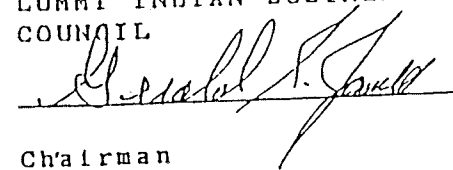
APPROVED AS TO FORM:

  
DAVID C. COTTINGHAM  
Deputy Prosecuting  
Attorney

WHATCOM COUNTY

  
SHIRLEY VAN ZANTEN  
County Executive

LUMMI INDIAN BUSINESS  
COUNCIL

  
Chairman

Approved \_\_\_\_\_, 1988

\_\_\_\_\_  
Superintendent,  
Bureau of Indian Affairs