

Recording Requested By and
When Recorded Mail To:

Stuart Kelley, Managing Director
PacifiCorp
825 NE Multnomah Street, Suite 1700
Portland, OR 97232

RECORDING COVER SHEET
Aquatic Lands Lease No. 20-083761

1. If the document you are recording is an assignment, amendment, termination, or re-recording of a document, the Auditor's reference number of the related document is *N/A*.
2. Grantor:
 - a. **Washington State Department of Natural Resources**
 - b. **Aquatic Resources Division/Rivers District**
PO Box 280
Castle Rock, WA 98611
3. Grantee:
 - a. **PacifiCorp**
 - b. **825 NE Multnomah Street, Suite 1700**
Portland, OR 97232
4. Additional Grantee names on page *N/A* of document.
5. Legal Descriptions:
 - a. Abbreviated legal description **Section 29, Township 7 North, Range 5 East, W.M.** *adj*
 - b. Additional legal description is on page *N/A* of document.
6. DNR Document No.: **20-083761**
7. Duration of **Aquatic Lands Lease No. 20-083761: Thirty (30) Years.**
8. Assessor's Property Tax Parcel Account Number(s): *N/A*

When recorded return to:
Stuart Kelley, Managing Director
PacifiCorp
825 NE Multnomah Street, Suite 1700
Portland, OR 97232



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

AQUATIC LANDS LEASE

Lease No. 20-083761

THIS LEASE is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and PACIFICORP, an Oregon Corporation ("Tenant").

BACKGROUND

Tenant desires to lease the aquatic lands commonly known as Lewis River, which is shorelands located in Skamania 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.

- (a) 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").
- (b) This Lease is subject to all valid interests of third parties noted in the records of Skamania 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.

- (c) This Lease does not include 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, except to the extent expressly permitted in Exhibit B.
- (d) 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 interfere unreasonably with the Permitted Use.

1.2 Survey and Property Descriptions.

- (a) Tenant prepared Exhibit A, which describes the Property. Tenant warrants that Exhibit A is a true and accurate description of the Lease boundaries and the improvements to be constructed or already existing in the Lease area.
- (b) Tenant shall not rely on any written legal descriptions, surveys, plats, or diagrams ("property description") provided by State. Tenant shall not rely on State's approval or acceptance of Exhibit A or any other Tenant-provided property description as affirmation or agreement that Exhibit A or other property description is true and accurate. Tenant's obligation to provide a true and accurate description of the Property boundaries is a material term of this Lease.

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 inspected the Property and accepts it "AS IS."

SECTION 2 USE

2.1 Permitted Use. Tenant shall use the Property for side channel enhancement for fish habitat improvement, and for no other purpose. This is water-dependent use. Exhibit B describes the Permitted Use in detail.

2.2 Restrictions on Use.

- (a) Tenant shall not cause or permit any damage to natural resources on the Property, except to the extent expressly permitted under the mitigation plan incorporated in Exhibit B.
- (b) Unless approved by State in writing, Tenant shall not cause or permit any filling activity to occur on the Property or adjacent state-owned aquatic land, except to the extent such damage is expressly permitted under the mitigation plan incorporated in Exhibit B. This prohibition includes any deposit of rock, earth, ballast, wood waste, refuse, garbage, waste matter including chemical, biological, or toxic wastes, hydrocarbons, any other pollutants, or other matter.
- (c) Tenant shall not cause or permit waste of the Property or adjacent state-owned aquatic land.

- (d) Failure to Comply with Restrictions on Use.
 - (1) Tenant's failure to comply with the restrictions on use under this Subsection 2.2 is a default subject to Section 14, Default and Remedies. Tenant shall cure the default by taking all steps necessary to remedy the failure and restore the Property to the condition before the failure occurred within the time for cure provided in Subsection 14.2.
 - (2) If Tenant fails to cure the default in the manner described in this Paragraph 2.2(d), the default becomes an Event of Default subject to Subsection 14.3, Remedies. In addition, the State may (1) restore the Property and charge Tenant remedial costs and/or (2) charge Tenant natural resource damages. On demand by State, Tenant shall pay all costs and/or damages.
- (e) State's failure to notify Tenant of Tenant's failure to comply with all or any of the restrictions set out in this Subsection 2.2 does not constitute a waiver of any remedies available to State.
- (f) This Section 2.2 does not 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, unless expressly authorized by State in writing.

SECTION 3 TERM

3.1 Term Defined. The term of this Lease is thirty (30) years (the "Term"), beginning on the 1st day of May, 2009 (the "Commencement Date"), and ending on the 30th day of April, 2039 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

3.2 Renewal of the Lease. Tenant may renew this Lease for one (1) additional term of twenty (20) years each. The initial Term of this Lease, and all renewal terms, is fifty (50) years in the aggregate. Tenant must file with State a written request to renew at least one (1) year prior to the Termination date and State will respond with consent or denial within ninety (90) days. Renewal will be effective upon State's agreement. State may deny the renewal request if Tenant is in default at the time. The terms and conditions of any renewal term will be the same as this Lease, except that State may recalculate fees, revise required amount of financial security, and modify the provisions dealing with hazardous waste or impacts to natural resources.

3.3 End of Term.

- (a) Upon the expiration or termination of this Lease, Tenant shall remove Improvements in accordance with Section 7, Improvements, and surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

- (b) Definition of Reasonable Wear and Tear.
 - (1) Reasonable wear and tear is deterioration resulting from the Permitted Use that has occurred without neglect, negligence, carelessness, accident, or abuse of the Property by Tenant or any other person on the premises with the permission of Tenant.
 - (2) Reasonable wear and tear does not include any deposit of material prohibited under Paragraph 2.2(b) unless expressly permitted by State in writing and regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.
- (c) If Property is in worse condition, excepting for reasonable wear and tear, on the surrender date than on the Commencement Date, the following provisions apply.
 - (1) State shall provide Tenant a reasonable time to take all steps necessary to remedy the condition of the Property. State may require Tenant to enter into a right-of-entry or other use authorization prior to the Tenant entering the Property to remedy any breach of this Subsection 3.3.
 - (2) If Tenant fails to remedy the condition of the Property in a timely manner, then State may take any steps reasonably necessary to remedy Tenant's 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, lost revenue resulting from the condition of the Property prior to and during remedial action, and any administrative costs associated with the remedial action.

3.4 Holdover.

- (a) If Tenant remains in possession of the Property after the Termination Date, the occupancy will not be an extension or renewal of the Term. The occupancy will be a month-to-month tenancy, on terms identical to the terms of this Lease, which either Party may terminate on thirty (30) days' written notice.
 - (1) The monthly rent during the holdover will be the same rent that would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms.
 - (2) Payment of more than the monthly rent will not be construed to create a periodic tenancy longer than month-to-month. If Tenant pays more than the monthly rent and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Tenant ceases occupation of the Property.
- (b) If State notifies Tenant to vacate the Property and Tenant fails to do so within the time set forth in the notice, Tenant will be a trespasser and shall owe the State all amounts due under RCW 79.02.300 or other applicable law.

SECTION 4 RENT

4.1 Annual Rent.

- (a) Until adjusted as set forth below, Tenant shall pay to State an annual rent of Seventy-Nine Dollars and Ninety-Four Cents (\$79.94) related to water-dependent use.
- (b) The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent") is due and payable in full on or before the Commencement Date and on or before the same date of each year thereafter. Any payment not paid by State's close of business on the date due is past due.

4.2 Payment Place. Tenant shall make payment 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 Adjustment Procedures.

- (a) Notice of Rent Adjustment. State shall provide notice of any adjustments to the Annual Rent allowed under Paragraphs 4.5(b) 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. If the State fails to provide the notice required in Paragraph 4.4(a), State shall not collect the adjustment amount for the year in which State failed to provide notice. Upon providing notice of adjustment, State may adjust and prospectively bill Annual Rent as if any missed or waived adjustments had been implemented at the proper interval. This includes the implementation of any inflation adjustment.

4.5 Rent Adjustments for Water-Dependent Uses.

- (a) Inflation Adjustment. State shall adjust water-dependent rent annually pursuant to RCW 79.105.200-.360, except in those years in which State revalues the rent under Paragraph 4.5(b) below. This adjustment will be effective on the anniversary of the Commencement Date.
- (b) Revaluation of Rent. At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the water-dependent Annual Rent in accordance with RCW 79.105.200-.360.
- (c) Rent Cap. State shall increase rent incrementally in compliance with RCW 79.105.260 as follows: If application of the statutory rent formula for water-dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year, State shall limit the actual increase implemented in such year to fifty percent (50%) of the then-existing rent. In subsequent, successive years, State shall increase the rental amount incrementally until the State implements the full amount of increase as determined by the statutory rent formula.

SECTION 5 OTHER 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. If in good faith, Tenant may 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 resulting from such contest.

5.4 Proof of Payment. If required by State, Tenant shall furnish to State receipts or other appropriate evidence establishing the payment of any amounts this Lease requires Tenant to pay.

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 Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Late Charge. If State does not receive any rental payment 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. Failure to pay rent constitutes a default by the Tenant and State may seek remedies under Section 14 as well as late charges and interest as provided in this section.

6.2 Interest Penalty for Past Due Rent and Other Sums Owed.

- (a) Tenant shall pay interest on the past due rent at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Subsection 6.1, above.
- (b) If State pays or advances any amounts for or on behalf of Tenant, 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. This includes, but is not limited to, State's payment of taxes of any kind, assessments, insurance premiums, costs of removal and disposal of materials or Improvements under any provision of this Lease, or other amounts not paid when due.

6.3 Referral to Collection Agency and Collection Agency Fees. If State does not receive payment within thirty (30) days of the due date, State may refer the unpaid amount to a

collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Tenant shall pay collection agency fees in addition to the unpaid amount.

6.4 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. 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 constitutes accord and satisfaction.

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

SECTION 7 IMPROVEMENTS

7.1 Improvements Defined.

- (a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.
- (b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property or Improvements or (2) diminishing the value or utility of the Property or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Tenant.
- (d) "Tenant-Owned Improvements" are Improvements made by Tenant with State's consent or acquired by Tenant from former tenant in accordance with RCW 79.125.300 or 79.130.040.
- (e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by the State.

7.2 Existing Improvements. On the Commencement Date, the following Improvements are located on the Property: Large woody debris and rock boulders. The Improvements are Tenant-Owned.

7.3 Construction, Major Repair, Modification, and Demolition.

- (a) This Subsection 7.3 governs construction, alteration, replacement, major repair, modification, demolition, and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair of Improvements and the Property.
- (b) Except in an emergency, Tenant shall not conduct any Work, except as described in Exhibit B, without State's prior written consent, as follows:

- (1) State may deny consent if State determines that denial is in the best interests of the State. State may impose additional conditions reasonably intended to protect and preserve the Property. If Work is for removal of Improvements at End of Term, State may waive removal of any or all Improvements.
- (2) Except in an emergency, Tenant shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Tenant and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant shall submit plans and specifications at least ninety (90) days before commencement of Work.
- (3) State waives the requirement for consent if State does not notify Tenant of its grant or denial of consent within sixty (60) days of submittal.
- (c) Tenant shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Tenant shall provide State with plans and specifications or as-builts of emergency Work.
- (d) Tenant shall not commence or authorize Work until Tenant has:
 - (1) Obtained a performance and payment bond in an amount equal to Zero percent (0%) of the estimated cost of construction. Tenant shall maintain the performance and payment bond until Tenant pays in full the costs of the Work, including all laborers and material persons.
 - (2) Obtained all required permits.
- (e) Before completing Work, Tenant shall remove all debris and restore the Property, to an orderly and safe condition. If Work is intended for removal of Improvements at End of Term, Tenant shall restore the leasehold Property in accordance with Subsection 3.3, End of Term.
- (f) Upon completing work, Tenant shall promptly provide State with as-built plans and specifications.
- (g) State shall not charge rent for authorized Improvements installed by Tenant during this Term of this Lease, but State may charge rent for such Improvements when and if Tenant or successor obtains a subsequent use authorization for the Property and State has waived the requirement for Improvements to be removed as provided in Subsection 7.4.

7.4 Tenant-Owned Improvements at End of Lease.

- (a) Disposition
 - (1) Tenant shall remove Tenant-Owned Improvements in accordance with Subsection 7.3 upon the expiration, termination, or cancellation of the Lease unless State waives the requirement for removal.
 - (2) Tenant-Owned Improvements remaining on the Property on the expiration, termination or cancellation date shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership. If RCW 79.125.300 or 79.130.040 apply at the time this Lease expires, Tenant could be entitled to payment by the new tenant for Tenant-Owned Improvements.

- (3) If Tenant-Owned Improvements remain on the Property after the expiration, termination, or cancellation date without State's actual or deemed consent, State may remove all Improvements and Tenant shall pay the costs of removal and disposal.
- (b) Conditions Under Which State May Waive Removal of Tenant-Owned Improvements.
 - (1) State may waive removal of any or all Tenant-Owned Improvements whenever State determines that it is in the best interests of the State and regardless of whether Tenant re-leases the Property.
 - (2) If Tenant re-leases the Property, State may waive the requirement to remove Tenant-Owned Improvements. State also may consent to Tenant's continued ownership of Tenant-Owned Improvements.
 - (3) If Tenant does not re-lease the Property, State may waive requirement to remove Tenant-Owned Improvements upon consideration of a timely request from Tenant, as follows:
 - (i) Tenant must notify State at least one (1) year before the Termination Date of its request to leave Tenant-Owned Improvements.
 - (ii) State, within ninety (90) days, will notify Tenant whether State consents to any or all Tenant-Owned Improvements remaining. State has no obligation to grant consent.
 - (iii) State's failure to respond to Tenant's request to leave Improvements within ninety (90) days is a denial of the request.
- (c) Tenant's Obligations if State Waives Removal.
 - (1) Tenant shall not remove Improvements if State waives the requirement for removal of any or all Tenant-Owned Improvements.
 - (2) Tenant shall maintain such Improvements in accordance with this Lease until the expiration, termination, or cancellation date. Tenant shall be liable to State for cost of repair if Tenant causes or allows damage to Improvements State has designated to remain.

7.5 Disposition of Unauthorized Improvements.

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) State may either:
 - (1) Consent to Tenant ownership of the Improvements, or
 - (2) Charge rent for use of the Improvements from the time of installation or construction and
 - (i) Require Tenant to remove the Improvements in accordance with Subsection 7.3, in which case Tenant shall pay rent for the Improvements until removal,
 - (ii) Consent to Improvements remaining and Tenant shall pay rent for the use of the Improvements, or
 - (iii) Remove Improvements and Tenant shall pay for the cost of removal and disposal, in which case Tenant shall pay rent for use of the Improvements until removal and disposal.

7.6 Disposition of Personal Property.

- (a) Tenant retains ownership of Personal Property unless Tenant and State agree otherwise in writing.
- (b) Tenant shall remove Personal Property from the Property by the Termination Date. Tenant is liable for any damage to the Property and Improvements that results from removal of Personal Property.
- (c) State may sell or dispose of all Personal Property left on the Property after the Termination Date.
 - (1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Tenant to the State. State shall pay the remainder, if any, to the Tenant.
 - (2) If State disposes of Personal Property, Tenant shall pay for the cost of removal and disposal.

7.7 Disposition of State-Owned Improvement.

- (a) Tenant shall remove State-Owned Improvements in accordance with Subsection 7.3 by the expiration, termination, or cancellation date of this Lease unless State waives the requirement for removal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION**8.1 Definitions.**

- (a) "Hazardous Substance" means any substance that 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, pollution, or cleanup, including, but not limited to, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et. seq.*, as amended; Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended; Washington's Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW, as amended; and Washington's Sediment Management Standards, WAC Chapter 173-204.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care applicable under MTCA, RCW 70.105D.040.

8.2 General Conditions.

- (a) Tenant's obligations under this Section 8 extend to the area in, on, under, or above:
 - (1) The Property and
 - (2) Adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances may arise from Tenant's use of the Property.
- (b) Standard of Care.

- (1) Tenant shall exercise the utmost care with respect to Hazardous Substances.
- (2) Tenant shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law, including – but not limited to – RCW 70.105D.040.

8.3 Current Conditions 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.
- (b) This Lease does not impose a duty on State to conduct investigations or supply information to Tenant about Hazardous Substances.
- (c) Tenant is responsible for conducting all appropriate inquiry and gathering sufficient information concerning the Property and the existence, scope, and location of any Hazardous Substances on the Property, or adjacent to the Property, that allows Tenant to meet Tenant's obligations under this Lease.

8.4 Use of Hazardous Substances.

- (a) Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Tenant shall not undertake, or allow others to undertake by Tenant's permission, acquiescence, or failure to act, activities that:
 - (1) Result in a release or threatened release of Hazardous Substances, or
 - (2) Cause, contribute to, or exacerbate any contamination exceeding regulatory cleanup standards whether the regulatory authority requires cleanup before, during, or after Tenant's occupancy of the Property.
- (c) If use of Hazardous Substances related to Tenant's use or occupancy of the Property results in violation of law:
 - (1) Tenant shall submit to State any plans for remedying the violations, and
 - (2) Tenant shall implement any remedial measures State may require in addition to remedial measures required by regulatory authorities.

8.5 Management of Contamination.

- (a) Tenant shall not undertake activities that:
 - (1) Damage or interfere with the operation of remedial or restoration activities;
 - (2) Result in human or environmental exposure to contaminated sediments;
 - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation.
- (b) If requested, Tenant shall allow reasonable access to:
 - (1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and

- (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Tenant may negotiate an access agreement with such parties, but Tenant may not unreasonably withhold such agreement.

8.6 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;
 - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of any Hazardous Substance;
 - (3) Any lien or action arising from the foregoing;
 - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
 - (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) Tenant's duty to report under Paragraph 8.6(a) extends to the Property, adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances could arise from the Tenant's use of the Property, and any other property used by Tenant in conjunction with Tenant's use of the Property where a release or the presence of Hazardous Substances on the other property would affect the Property.
- (c) Tenant shall provide State with copies of all documents concerning environmental issues associated with the Property, and submitted by Tenant to any federal, state or local authorities. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits; Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality certification; Substantial Development permit; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

8.7 Indemnification.

- (a) "Liabilities" as used in this Subsection 8.7 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.
- (b) Tenant shall fully indemnify, defend, and hold State harmless from and against any Liabilities that arise out of, or relate to:
 - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees occurring anytime Tenant occupies or has occupied the Property;
 - (2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination resulting from

any act or omission of Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates occurring anytime Tenant occupies or has occupied the Property.

- (c) Tenant shall fully indemnify, defend, and hold State harmless for any Liabilities that arise out of or relate to Tenant's breach of obligations under Subsection 8.5.
- (d) Third Parties.
 - (1) Tenant has no duty to indemnify State for acts or omissions of third parties unless Tenant fails to exercise the standard of care required by Paragraph 8.2(b)(2). Tenant's third-party indemnification duty arises under the conditions described in Subparagraph 8.7(d)(2).
 - (2) If an administrative or legal proceeding arising from a release or threatened release of Hazardous Substances finds or holds that Tenant failed to exercise care as described in Subparagraph 8.7(d)(1), Tenant shall fully indemnify, defend, and hold State harmless from and against any liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances. This includes any liabilities arising before the finding or holding in the proceeding.

8.8 Reservation of Rights.

- (a) For any environmental liabilities not covered by the indemnification provisions of Subsection 8.7, 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 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.
- (b) This Lease affects no right, claim, immunity, or defense either Party may have against third parties, and the Parties expressly reserve all such rights, claims, immunities, and defenses.
- (c) The provisions under this Section 8 do not benefit, or create rights for, third parties.
- (d) The allocations of risks, liabilities, and responsibilities set forth above do not release either Party from, or affect the liability of either Party for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

8.9 Cleanup.

- (a) If Tenant's act, omission, or breach of obligation under Subsection 8.4 results in a release of Hazardous Substances, Tenant shall, at Tenant's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law. Cleanup actions shall include, without limitation, removal, containment, and remedial actions.
- (b) Tenant's obligation to undertake a cleanup under Section 8 is limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards.
- (c) At the State's discretion, Tenant may undertake a cleanup of the Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup

Program, provided that Tenant cooperates with the Department of Natural Resources in development of cleanup plans. Tenant shall not proceed with Voluntary Cleanup without the Department of Natural Resources approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Lease. Tenant's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Lease.

8.10 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.
- (b) If such Tests, along with any other information, demonstrate the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.4, above, Tenant shall promptly reimburse State for all costs associated with such Tests.
- (c) State shall not seek reimbursement for any Tests under this Subsection 8.10 unless State provides Tenant written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, except when such Tests are in response to an emergency. Tenant shall reimburse State for Tests performed in response to an emergency if State has provided such notice as is reasonably practical.
- (d) Tenant is 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 Tenant's receipt of notice of State's intent to conduct any non-emergency Tests. Tenant solely shall bear the additional cost, if any, of split samples. Tenant shall reimburse State for any additional costs caused by split sampling within thirty (30) calendar days after State sends Tenant a bill with documentation for such costs.
- (e) Within sixty (60) calendar days of a written request (unless otherwise required pursuant to Paragraph 8.6(c), above), either Party shall provide the other 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 the work product of experts.

SECTION 9 ASSIGNMENT AND SUBLETTING

9.1 State Consent Required. Tenant shall not convey, transfer, or encumber any part of Tenant's interest in this Lease or the Property without State's prior written consent, which State shall not unreasonably condition or withhold.

- (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. State may refuse its consent to any sale, conveyance, mortgage, assignment, pledge, sublet, or other transfer or encumbrance if said transfer will result in one (1) or more sub-Tenants, partial assignees, or sub-divided interest holders. 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, but not limited to, the Annual Rent; 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.
- (d) State's consent under this Subsection 9.1 does not constitute a waiver of any claims against Tenant for the violation of any term of this Lease.

9.2 Rent Payments Following Assignment. The acceptance by State of the payment of rent following an assignment or other transfer does not constitute consent to any assignment or transfer.

9.3 Terms of Subleases.

- (a) Tenant shall submit the terms of all subleases to State for approval.
- (b) Tenant shall incorporate the following requirements in all subleases:
 - (1) The sublease must be consistent with and subject to all the terms and conditions of this Lease;
 - (2) The sublease must provide that this Lease controls if the terms of the sublease conflict with the terms of this Lease;
 - (3) The term of the sublease (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;
 - (4) The sublease must terminate if this Lease terminates for any reason;
 - (5) The subtenant must receive and acknowledge receipt of a copy of this Lease;
 - (6) The sublease must prohibit the prepayment to Tenant by the subtenant of more than the annual rent;
 - (7) The sublease must identify the rental amount subtenant is to pay to Tenant;
 - (8) The sublease must provide that there is no privity of contract between the subtenant and State;
 - (9) The sublease must require removal of the subtenant's Improvements and trade fixtures upon termination of the sublease;
 - (10) The subtenant's permitted use must be within the scope of the Permitted Use; and

- (11) The sublease must require the subtenant to meet all obligations of Tenant under Section 10, Indemnification, Financial Security and Insurance.

9.4 Short-Term Subleases of Moorage Slips. Short-term subleasing of moorage slips for a term of less than one year does not require State's written consent or approval pursuant to Subsections 9.1 or 9.3. Tenant shall conform moorage sublease agreements to the sublease requirements in Subsection 9.3.

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

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity.

- (a) Tenant shall indemnify, defend, and hold State, its employees, officers, and agents harmless from any and all Claims arising out of the use, occupation, or control of the Property by Tenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.
- (b) "Claim" as used in this Subsection 10.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property and damages resulting from loss of use of the Property.
- (c) State shall not require Tenant to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.
- (d) Tenant waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.
- (e) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Tenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.

10.2 Insurance Terms.

- (a) Insurance Required.
 - (1) At its own expense, Tenant shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in this Subsection 10.2 and in Subsection 10.3, Insurance Types and Limits. State may terminate this Lease if Tenant fails to maintain required insurance.
 - (2) Unless State agrees to an exception, Tenant shall provide insurance issued by an insurance company or companies admitted to do business in the

State of Washington and have a rating of A- or better by the most recently published edition of Best's Reports. Tenant may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.

- (3) All general liability, excess, umbrella, property, builder's risk, and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees as an additional insured.
 - (4) All insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
- (1) Tenant waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Lease covers these damages.
 - (2) Except as prohibited by law, Tenant waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this lease.
- (c) Proof of Insurance.
- (1) Tenant shall provide State with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Lease and, if requested, copies of policies to State.
 - (2) The certificate(s) of insurance must reference additional insureds and the Lease number.
 - (3) Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Lease, as follows:
- (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
 - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State thirty (30) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
- (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
 - (2) Tenant shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.

- (f) 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 may either:
 - (1) Deem the failure an Event of Default under Section 14, or
 - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Tenant shall pay to State 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.
- (g) General Terms.
 - (1) State does not represent that coverage and limits required under this Lease are adequate to protect Tenant.
 - (2) Coverage and limits do not limit Tenant's liability for indemnification and reimbursements granted to State under this Lease.
 - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first 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.

10.3 Insurance Types and Limits.

- (a) General Liability Insurance.
 - (1) Tenant shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
 - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
 - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
 - (1) State of Washington Workers' Compensation.
 - (i) Tenant shall comply with all State of Washington workers' compensation statutes and regulations. Tenant shall provide workers' compensation coverage for all employees of Tenant. Coverage must include bodily injury (including death) by accident

or disease, which arises out of or in connection with Tenant's use, occupation, and control of the Property.

- (ii) If Tenant fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Tenant shall indemnify State. Indemnity shall include all fines; payment of benefits to Tenant, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
- (2) Longshore and Harbor Workers' Act. The Longshore and Harbor Workers' Compensation Act (33 U.S.C. Section 901 *et seq.*) may require Tenant to provide insurance coverage for longshore and harbor workers other than seaman. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with this Act. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (3) Jones Act. The Jones Act (46 U.S.C. Section 688) may require Tenant to provide insurance coverage for seamen injured during employment resulting from negligence of the owner, master, or fellow crew members. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with this Act. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employer's Liability Insurance. Tenant shall procure employer's liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident or One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
- (d) Property Insurance.
 - (1) Tenant shall buy and maintain property insurance covering all real property and fixtures, equipment, improvements and betterments (regardless of whether owned by Tenant or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived. The policy must include State as an insured and a loss payee.
 - (2) In the event of any loss, damage, or casualty which is covered by one or more of the types of insurance described above, the Parties shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned on such proceeds, for use according to the terms of this Lease. The Parties shall use insurance proceeds in accordance with Subparagraph 10.2(g)(3).
 - (3) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare

plans and specifications for, and thereafter carry out, all work necessary to:

- (i) Repair and restore damaged Improvements to their former condition, or
- (ii) Replace and restore damaged Improvements with new Improvements on the Lease Property of a quality and usefulness at least equivalent to, or more suitable than, damaged Improvements.

(e) Builder's Risk Insurance.

- (1) Tenant shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project. Such insurance must be written on a completed form and in an amount equal to the value of the completed Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Tenant, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Subparagraph 10.2(a)(3)).
- (2) Insurance described above must cover or include the following:
 - (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
 - (ii) The entire work on the Lease Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
 - (iii) Portions of the work located away from the Lease Property but intended for use at the Lease Property, and portions of the work in transit;
 - (iv) Scaffolding, falsework, and temporary buildings located on the Lease Property; and
 - (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.
- (3) Tenant or Tenant's contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.
- (4) Tenant or Tenant's contractor shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Tenant, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Subparagraph 10.2(a)(3).

(f) Business Auto Policy Insurance.

- (1) Tenant shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than One Million Dollars (\$1,000,000) per accident. Such insurance must cover liability arising out of "Any Auto".

- (2) Business auto coverage must be written on ISO Form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy must be endorsed to provide contractual liability coverages and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

10.4 Financial Security.

- (a) At its own expense, Tenant shall procure and maintain during the Term of this Lease a corporate security bond or provide other financial security that State, at its option, may approve ("Security"). Tenant shall provide Security in an amount equal to Zero Dollars (\$0.00), which is consistent with RCW 79.105.330, and secures Tenant's performance of its obligations under this Lease, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Tenant's failure to maintain the Security in the required amount during the Term constitutes a breach of this Lease.
- (b) All Security must be in a form acceptable to the State.
 - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best's Reports, unless State approves an exception. Tenant may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement.
 - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
 - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
 - (1) State may require an adjustment in the Security amount:
 - (i) At the same time as revaluation of the Annual Rent,
 - (ii) As a condition of approval of assignment or sublease of this Lease,
 - (iii) Upon a material change in the condition or disposition of any Improvements, or
 - (iv) Upon a change in the Permitted Use.
 - (2) Tenant shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any default by Tenant in its obligations under this Lease, State may collect on the Security to offset the liability of Tenant to State. Collection on the Security does not (1) relieve Tenant of liability, (2) limit any of State's other remedies, (3) reinstate or cure the default or (4) prevent termination of the Lease because of the default.

SECTION 11 ROUTINE MAINTENANCE AND REPAIR

11.1 State's Repairs. This Lease does not obligate State 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 and Maintenance

- (a) Routine maintenance and repair are acts intended to prevent a decline, lapse or, cessation of the Permitted Use and associated Improvements. Routine maintenance or repair is the type of work that does not require regulatory permits.
- (b) At Tenant's own expense, Tenant shall keep and maintain the Property and all Improvements in good order and repair and in a safe condition. State's consent is not required for routine maintenance or repair.
- (c) At Tenant's own expense, Tenant shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property that any public authority may require.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

- (a) In the event of any damage to or destruction of the Property or any Improvements, Tenant shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction without Tenant's written notice.
- (b) 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 in accordance with Subsection 7.3, Construction, Major Repair, Modification, and Demolition.

12.2 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Property unless State provides written notice to Tenant of each specific claim waived.

12.3 Insurance Proceeds. Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any Improvements on the Property is not conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Subparagraph 10.2(g)(3).

12.4 Rent in the Event of Damage or Destruction. Unless the Parties mutually agree to terminate this Lease, there is no abatement or reduction in rent during such reconstruction, repair, and replacement.

12.5 Default at the Time of Damage or Destruction. If 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 then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

SECTION 13 CONDEMNATION

13.1 Definitions.

- (a) "Taking" means that an entity authorized by law exercises the power of eminent domain, either by judgment, settlement in lieu of judgment, or voluntary conveyance in lieu of formal court proceedings, over all or any portion of the Property and any Improvements. This includes any exercise of eminent domain on any portion of the Property and Improvements that, in the judgment of the State, prevents or renders impractical the Permitted Use.
- (b) "Date of Taking" means the date upon which title to the Property or a portion of the Property passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

13.2 Effect of Taking. If there is a taking, the Lease terminate proportionate to the extent of the taking as of the date of taking. If this Lease terminates, in whole or in part, Tenant shall pay all rentals and other charges payable by Tenant to State and attributable to the Property taken 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.

13.3 Allocation of Award.

- (a) In the event of any condemnation, the Parties shall allocate the award between State and Tenant based upon the ratio of the fair market value of (1) Tenant's leasehold estate and Tenant-Owned Improvements on the Property and (2) State's interest in the Property; the reversionary interest in Tenant-Owned Improvements, if any; and State-Owned Improvements, if any.
- (b) If Tenant and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 DEFAULT AND REMEDIES

14.1 Default Defined. Tenant is in default of this Lease on the occurrence of any of the following:

- (a) Failure to pay Annual Rent or other expenses when due;
- (b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
- (c) Failure to comply with any other provision of this Lease;
- (d) Proceedings are commenced by or against Tenant under any bankruptcy act or for the appointment of a trustee or receiver of Tenant's property.

14.2 Tenant's Right to Cure.

- (a) A default becomes an "Event of Default" if Tenant fails to cure the default within the applicable cure following State's written notice of default. Upon an Event of Default, State may seek remedies under Subsection 14.3.

- (b) Unless expressly provided elsewhere in this Lease, the cure period is ten (10) days for failure to pay rent or other monetary defaults; for other defaults, the cure period is thirty (30) days.
- (c) State may elect to deem a default by Tenant as an Event of Default if the default occurs within six (6) months after a default by Tenant for which State has provided notice and opportunity to cure. This Paragraph 14.2 is effective regardless of whether the first and subsequent defaults are of the same nature.

14.3 Remedies.

- (a) State may terminate this Lease and remove Tenant by summary proceedings or otherwise.
- (b) Without terminating this Lease, State may relet the Property on any terms and conditions as State may decide are appropriate.
 - (1) State shall apply rent received by reletting to: (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. State shall hold and apply any balance to Tenant's future rent as it becomes due.
 - (2) Tenant is responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.
 - (3) At any time after reletting, State may elect to terminate this Lease for the previous Event of Default.
- (c) State's reentry or repossession of the Property under Paragraph 14.3(b) is not an election to terminate this Lease or cause a forfeiture of rents or other charges Tenant is obligated to pay during the balance of the Term, unless (1) State gives Tenant written notice of termination or (2) a legal proceeding decrees termination.
- (d) The remedies specified under this Subsection 14.3 are not exclusive of any other remedies or means of redress to which the State is lawfully entitled for Tenant's breach or threatened breach of any provision of this Lease.

SECTION 15 ENTRY BY STATE

State may enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease. State will inspect the Property periodically throughout the Term of the Lease. State may coordinate the site inspection with Washington State Department of Ecology or other regulatory authorities, if appropriate. Provision for periodic inspection does not preclude State's option to inspect at other times. State's failure to inspect the Property does not constitute a waiver of any rights or remedies under this Lease.

SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

16.1 No Guaranty or Warranty.

- (a) State believes that this Lease is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Tenant's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.
- (b) State disclaims and Tenant releases State from any claim for breach of any implied covenant of quiet enjoyment. This disclaimer and release includes, but is not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.
- (c) Tenant is responsible for determining the extent of Tenant's right to possession and for defending Tenant's leasehold interest.

16.2 Eviction by Third-Party. If a third-party evicts Tenant, this Lease terminates as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations abate as of the date of the partial eviction, in direct proportion to the extent of the eviction; this Lease shall remain in full force and effect in all other respects.

SECTION 17 NOTICE AND SUBMITTALS

17.1 Notice. Following are the locations for delivery of notice and submittals required or permitted under this Lease. Any Party may change the place of delivery upon ten (10) days written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Aquatic Resources Division/Rivers District
PO Box 280
Castle Rock, WA 98611

Tenant: PACIFICORP
Real Estate Management Department
825 NE Multnomah Street, Suite 1700
Portland, OR 97232

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Lease number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

17.2 Contact Persons. On the Commencement Date, the following persons are designated day-to-day contact persons. Any Party may change the Contact Person upon reasonable notice to the other.

State: Joy Polston-Barnes, Aquatic Restoration Manager
 Telephone: (360) 767-7003
 Fax: (360) 748-2387
 E-mail: joy.polston-barnes@dnr.wa.gov

Tenant: Jordana Taylor, Property Agent
 Telephone: (503) 813-5700
 Fax: (503) 813-6596
 E-mail: jordana.taylor@pacificorp.com

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 shall provide evidence satisfactory to State confirming these representations. State enters into this Lease pursuant to the authority granted to State in RCW Chapters 43.12 and 43.30, RCW Title 79 and the Washington State Constitution.

18.2 Successors and Assigns. This Lease binds and inures 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. This Lease merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property.

18.5 Waiver.

- (a) The waiver of any breach or default of any term, covenant, or condition of this Lease is not 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 is not a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.
- (b) The renewal of the Lease, extension of the Lease, or the issuance of a new lease to Tenant, does not waive State's ability to pursue any rights or remedies under the Lease.

18.6 Cumulative Remedies. The rights and remedies under this Lease are cumulative and in addition to all other rights and remedies afforded 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 applies to one or more persons and regardless of gender, as the case may be. If there is more than one Tenant, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Tenant in the collective. The word "Party" means either or both State and Tenant, depending on the context.

18.9 Invalidity. The invalidity, voidness, or illegality of any provision of this Lease does not affect, impair, or invalidate any other provision of this Lease.

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

18.11 Recordation. At Tenant's expense and within thirty (30) days of receiving the fully-effective Lease, Tenant shall record this Lease or a memorandum documenting the existence of this Lease in the county in which the Property is located. The memorandum must contain, at a minimum, the Property description, the names of the Parties, 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. 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. No modification of this Lease is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

18.13 Survival. Any obligations of Tenant not fully performed upon termination of this Lease do not cease, but continue as obligations of the Tenant until fully performed.

18.14 Exhibits. All referenced exhibits are incorporated in the Lease unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

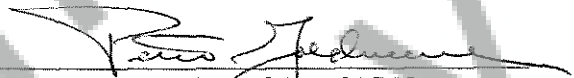
PACIFICORP

Dated: July 7, 2009


By: STUART KELLY
Title: Managing Director of Construction and Support Services
Address: 825 NE Multnomah Street, Suite 1700
Portland, OR 97232

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: July 27, 2009


By: PETER GOLDMARK
Title: Commissioner of Public Lands
Address: 1111 Washington Street SE
Olympia, WA 98504

Approved as to form this
14 day of August, 2008
Janis Snoey, Assistant Attorney General



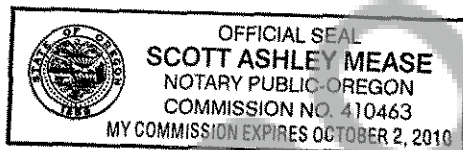
REPRESENTATIVE ACKNOWLEDGMENT

STATE OF OREGON)
) ss
 County of MULTNOMAH)

I certify that I know or have satisfactory evidence that STUART KELLEY is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Managing Director of Construction and Support Services of PacifiCorp to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 7 JULY, 2009

(Seal or stamp)



(Signature)

SCOTT ASHLEY MEASE
 (Print Name)

Notary Public in and for the State of
OREGON Washington, residing at

825 NE MULTNOMAH, PORTLAND

My appointment expires 2 OCTOBER MMX

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
County of Thurston)

I certify that I know or have satisfactory evidence that PETER GOLDMARK is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Commissioner of Public Lands, and ex officio administrator of the Department of Natural Resources of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 7-27, 2009

(Seal or stamp)

Ron Pettit
(Signature)

Roni J. Pettit
(Print Name)

Notary Public in and for the State of
Washington, residing at _____

My appointment expires 6.28.10

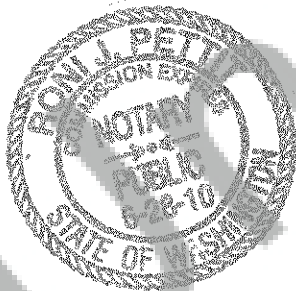


EXHIBIT A
Legal Description of Premises and Encumbrances

PACIFICORP
Lease No. 20-083761

Section 29 and 30, Township 7 North, Range 5 East, W.M., Skamania County,
Washington, containing 24.86 acres, more or less, according to the government survey thereof.

Current Survey recorded with Skamania County
Auditor's File No. 2009172062
February 17, 2009

EXHIBIT B
Plan of Operations and Maintenance

PACIFICORP
Lease No. 20-083761

This agreement contains one site:

The Lewis River in Skamania County between the Swift Reservoir and Yale Reservoir, Section 29 and 30, Township 07 North, Range 05 East, W.M.

Global Positioning System (GPS) information:

GPS points were taken and can be found on the Vicinity Map.

Site background:

The section of canal and historic Lewis River between the dam and the reservoir is part of the PacifiCorp's Lewis River Hydroelectric project and is locally referred to by PacifiCorp as the Swift Bypass reach of the Lewis River. Currently PacifiCorp operates and maintains the Swift No. 1 dam across the Lewis River, located just east of the project site. This dam creates the impoundment that forms the Swift Reservoir. Water released from the Swift Reservoir operates a hydroelectric generating facility below the dam (Swift No. 1 Powerhouse) and is then routed into the Swift No. 2 Power Canal. This canal is a large earthen diversion channel that moves water for hydroelectric power generation from the Swift No. 1 Powerhouse to the Swift No. 2 Powerhouse and it lies parallel to the proposed project site, otherwise known as the historic Lewis River.

The Lewis River Upper Flow Release project site contains a 1,800 foot section of the historic Lewis River channel and a large circular depression referred to as the "Plunge Pool". The existing Swift No. 1 dam (located off-site) includes overflow gates that are used to reroute water during emergency overflow situations into the historic Lewis River channel to bypass the Swift No. 1 Powerhouse at the dam. When the overflow gates are opened, a large volume of water passes through the gates, flows through a spillway channel, cascades down a cliff and enters the plunge pool located in the eastern portions of the project site. The overflow gates are rarely opened with the exception of periodic tests. The result of gate opening is a large short term pulse of water entering the plunge pool and then flowing back into the historic Lewis River channel.

Description of the scheduled plan of development and maintenance:

The Constructed Channel and Upper Release Projects will be constructed from May 1, 2009 to December 31, 2009. PacifiCorp has requested for a revision to the in-water work period from the United States Fish and Wildlife Service (USFWS) and the Washington Department of Fish and Wildlife (WDFW). An In-Water Work Reduction Plan was developed to support the revision request. It describes the sequence for this work. Maintenance of these features within the lease area is not currently anticipated. It is possible that logs, boulders, or gravels may need to be replaced after large flow events.

It is also anticipated that gravels will be added to the lease area in accordance with requirements of the 401 Water Quality Certification. The gravel augmentation work will be performed in accordance with permitting requirements. The gravel quantity is approximately 100 cubic yards and placement will conform to permit requirements. As described in the 401 Water Quality Certification, gravel placement is part of a phased program requiring surveys and additional placement dependent upon flow conditions. It is anticipated that gravel placement activities will occur over a period of several years.

As described in the 401 Water Quality Certification, monitoring of the Constructed Channel, Upper Release, and gravel placement project will occur on a quarterly basis on the first and fourth year after installation, after flows of in excess of 5000 cubic feet per second, and during major milestones of the fish re-introduction program.

The work proposed will have a significant improvement over the current conditions. The consequences of failure to adhere to the approved plan are a possible reduction or delay of the success of the aquatic enhancement measures.

Detailed description of phasing:

See above and attached "In-water Work Reduction Plan".

Description of how the operation will be conducted at the site:

See discussion above.

List and handling procedures of all hazardous materials that may be used on-site:

Fuels will be used on-site during construction. No other hazardous materials will be used once the project is in service. In accordance with PacifiCorp's water quality certification, fueling will occur more the 50 feet from the shoreline, and spill prevention equipment will be on site.

Description of the size of boats, types of equipment, equipment maintenance methods that will be used:

No boats will be used. Construction for the Constructed Channel and Upper Release Projects will be performed with traditional excavation equipment in almost completely dry conditions. Gravel placement will be performed by traditional excavation equipment or helicopter depending on the time of work and permit conditions. Maintenance of these features will occur under watered conditions in accordance with permit requirements.

Identification of any authorized waste discharges:

None

Pollution Control Practices:

A Stormwater Pollution Prevention Plan (SWPPP) and an In-Water Work Protection Plan (IWWPP) are currently being developed to comply with the 401 Water Quality Certification and Construction Stormwater Permit. The primary erosion control measure is to perform almost all of the work in the dry by dewatering the work areas as much as possible. In addition, silt fences, straw barriers, and silt curtains will be used to reduce turbidity impacts. The SWPPP and IWWPP will also include provisions for turbidity monitoring and erosion control inspections.

List of conditions/mitigation requirements imposed by any regulatory agency:

The activities performed in the lease area are mitigation projects associated with licenses to operate the hydroelectric projects on the Lewis River. PacifiCorp considers these projects to be self-mitigating and expects no mitigation requirements from permitting agencies. If mitigation is required, PacifiCorp will implement the necessary mitigation measures.

Operations involving transporting oil and fuel:

There will be no transporting of oil or fuel in the lease area after construction is complete. In accordance with PacifiCorp's water quality certification, fueling will occur more the 50 feet from the shoreline, and spill prevention equipment will be on site.