



**DEPARTMENT OF
NATURAL RESOURCES**

**OFFICE OF THE
COMMISSIONER OF PUBLIC LANDS**
1111 WASHINGTON ST SE
MS 47001
OLYMPIA, WA 98504-7001

February 17, 2023

The Honorable Bernard Dean
Chief Clerk of the House
338B Legislative Building
Olympia, WA 98504

The Honorable Sarah Bannister
Secretary of the Senate
312 Legislative Building
Olympia, WA 98504

Dear Chief Clerk Dean and Secretary Bannister:

In 2022, the Washington State Legislature amended [RCW 79.13.060](#) through HB 1430 to provide longer terms for specific types of leases from a maximum of 55 years to 99 years. As part of this extension, the statute requires the Department of Natural Resources (DNR) to report to the Office of Financial Management (OFM) and appropriate committees of the legislature within 30 days of the date of execution of the lease. The report must include a financial analysis that justifies the financial benefit for the added term and schedule for periodic rental adjustment.

DNR's Commercial Real Estate staff received a request from one of our commercial lessees in compliance with RCW 79.13.060 (b) (ii and iii). Below is a short summary justifying the financial benefit for the added terms and schedule for periodic rental adjustments.

Lowes/Pasco

This ground lease was originally entered into on September 30th, 2005 with a 55 year term set to expire September 30, 2060. A lease extension has been granted for an additional 44 years now set to expire on September 30, 2104. This particular ground lease is not yet fully developed, but has building pads that lessee has not been able to sublease due to the amount of lease term being required by lenders. In addition, sub lessees need to be able to renew their subleases to justify remodeling and refinancing of their buildings and improvements. Without an extended term, sublessees will vacate their buildings which will then remain vacant for the remaining term of the master ground lease. This will lead to deteriorated buildings, increases in costs to DNR and a decrease in asset value. With the lease extension for another 44 years, landlord is able to retain existing sub lessees, sub lessees are willing and able to make continued building improvements, DNR's asset value increases, and the economy is able to grow.

The current annual lease rate for Black Road 68, LLC is \$528,000. The next rent adjustment is due 9/30/2025 to be at a lease specified 10% increase to \$580,000 (annual). The following lease rate increase shall be on 9/30/30 to be determined by a FMV appraisal with increases in five (5) year increments thereafter at the rate of 10% through 9/29/60. Commencing in 9/30/2060 and for every five (5) year increment thereafter annual rent will be established by either FMV or CPI increase at Lessor's (State's) sole discretion.

Should you have any questions, please contact me at 360-486-3469 or Brian.Considine@dnr.wa.gov.

Sincerely,



Brian Considine
Legislative Director
Office of the Commissioner of Public Lands

Enclosed: First Amendment to Ground Lease (DNR Lease #39-077755)

Cc: House Rural Development, Agriculture, & Natural Resource Committee
Senate Agriculture, Water, Natural Resources, & Parks Committee
Jim Cahill, Senior Budget Assistant, Natural Resources, OFM
Lisa Borkowski, Budget Assistant, Natural Resources, OFM
Brian Considine, Legislative Director, Office of the Commissioner of Public Lands
Todd Welker, Deputy Supervisor, State Lands, Dept. of Natural Resources
Michael Kearney, Division Manager, Product, Sales, and Leasing, Dept. of Natural Resources
Kari Fagerness, Commercial Real Estate Program, Dept. of Natural Resources



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

DNR Lease #39-077755

FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE is made this 1 February day of January 2023 by and between State of Washington, by its Department of Natural Resources ("State/Lessor"), and Pasco Road 68, LLC, a Washington limited liability company ("Lessee").

WHEREAS, Lessor and Lessee entered into a Ground Lease (Lease) dated September 30, 2005, located in Franklin County as more fully described in the Lease and the attached Exhibit A, Legal Description; and

WHEREAS, Lessee desires to extend the Lease term as permitted by and subject to the conditions of RCW 79.13.060, and Lessor is agreeable to these modifications of the Lease, and the parties desire to modify the Lease accordingly;

NOW THEREFORE, in consideration of the covenants and agreements contained herein, the parties hereby mutually agree as follows:

1. Extension Term and Expiration Date: The term of the Lease, as set forth in Section 2 of the Ground Lease shall be amended to extend the term by forty-four (44) years, commencing on September 30, 2060 and expiring on the new Expiration Date of September 29, 2104 (the "Extension Term").
2. Annual Rent: Section 3.1. of the Lease is hereby amended to add the following language as new subsection 3.1(d): Commencing on September 30, 2060, and at intervals of five (5) years thereafter, a new annual rental will be established as specified in attached Exhibit B, Rental Adjustment, and by reference incorporated herein.

DNR Lease #39-077755

Pasco Road 68, LLC
First Amendment to Ground Lease

All other terms and conditions of said Ground Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first written above.

LESSOR:
STATE OF WASHINGTON BY THE WASHINGTON
STATE DEPARTMENT OF NATURAL RESOURCES

By: Kathryn W. Taylor

Its: Chief Operating Officer

LESSEE:
PASCO ROAD 68, LLC

By: David Black

Its: manager David R. Black for Lincoln Hts Syndicate.

Acknowledgements follow on next pages.

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

On this 8 day of February, 2023, personally appeared before me Kathryn W. Taylor, to me known to be the DNR, COO for the State of Washington, that she executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

DIANA BLAIR
Notary Public
State of Washington
Commission # 107467
Commission Expires 3/10/2025

Diana Blair
Notary Public in and for the State of Washington,
residing at Onalaska
My commission expires: 3/10/2025
Diana Blair
[Type or Print Notary Name]

(Use This Space for Notarial Seal Stamp)

LESSEE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF Thurston)

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

On this 1 day of February, 2023, before me personally appeared David Black, to me known to be the Manager of Pasco Road 68, LLC, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that (s)he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Kelli Pinchak

KELLI PINCHAK
Notary Public
State of Washington
Commission # 22032957
Commission Expires 10/26/2026

Notary Public in and for the State of Washington,
residing at 1111 Washington Street, Olympia
My commission expires: 10/26/2026
Kelli Pinchak
[Type or Print Notary Name]

(Use This Space for Notarial Seal Stamp)

EXHIBIT A
Legal Description

Binding Site Plan No. 20001-04

City of Pasco, Franklin County, Washington

Portion of N1/2 Sec.16, T9N,R29E

That portion of the N1/2 of Section 16, Township 9 North, Range 29 East, Willamette Meridian, Franklin County, Washington, included within Binding Site Plan No. 2001-04, recorded July 11, 2001 in Volume 1 of Binding Site Plans, at Page 55, under Auditor's Fee No. 1592535, Franklin county records, and described thereon as "Entire Parcel", EXCEPTING THEREFROM that portion of said Binding Site Plan shown and described thereon as "Burden Road".

Said parcel contains a nominal area of 30.89 acres, as computed from data shown on the referenced Binding Site Plan.

Said lands subject to all easements, encumbrances and rights of way of public record, and the Binding Site Plan reveals easements, conditions and restrictions.

EXHIBIT B
RENTAL ADJUSTMENT

Beginning on September 30, 2060, the fifty-sixth anniversary of the Commencement Date, and at intervals of five (5) years thereafter, a new annual rental will be established (the "Adjustment Date"). Failure on the part of State to establish a new rental on any anniversary of the Commencement Date of this Lease on which adjustment is to be made shall not preclude State from doing so anytime thereafter, and the new rental shall be due retroactive to the Adjustment Date. The new annual rental shall be established by the State using either one of the following two methods selected by State in State's sole and absolute discretion:

METHOD A - CPI With No Maximum.

When the annual rent is to be adjusted based on the CPI, the annual rent shall be the sum computed by increasing the annual rent paid during the prior five (5) year period by the percentage increase in the United States Department of Labor, Bureau of Labor Statistics, "All Items" Consumer Price Index for All Urban Consumers ("CPI"), United States City Average (1982-84=100) from the level of said CPI five years prior to the Adjustment Date to the level of the CPI as of the Adjustment Date, or as a formula:

$$\text{New annual rent} = \text{previous annual rent} \times \frac{(\text{CPI as of Adjustment Date})}{(\text{CPI five years prior to Adjustment Date})}$$

In the event the change in the CPI for such period is a negative value, the annual rent shall in no event be less than the annual rent for the preceding five year period. In the event such price index ceases to be published, the most nearly comparable price index then published by the United States Government shall be substituted in its place. If State and Lessee cannot agree as to a substitute index, then a new index shall be determined through arbitration in accordance with Section 14 above. In the event a computation of an adjustment in the annual rent requires the use of published information which is not available as of the effective date of such rental adjustment, the adjustment shall be determined as soon as practical after the adjustment date, and Lessee shall continue to make periodic rental payments equal to the annual rent previously applicable. Any adjustment in such payments shall be paid by Lessee within thirty (30) days after a determination of the proper adjustment has been made.

METHOD B - Periodic Reappraisal.

When the annual rent is to be adjusted based on appraisal, the new annual rental shall be the appraised fair market value of the Property multiplied by the then current 5-Year Treasury Note Rate plus 275 basis points (5-Year Treasury Note Rate + 2.75%). The term "5-Year Treasury Note Rate" shall mean the interest rate on 5-year promissory notes issued by the United State Treasury, any change in such 5-Year Treasury Note Rate to effect a change in the rate charged hereunder on the date of each such change. If the United States Treasury ceases to issue such 5-year Treasury Notes, then State shall designate another comparable index rate which, in the reasonable opinion of State, represents a comparable financial instrument as the "5-Year Treasury Note Rate" as defined herein.

In no event will the adjusted annual rental be less than the previous annual rental. The fair market value will be determined, exclusive of Lessee's improvements and as though the ownership were in fee simple, by State's appraiser. The fair market value will be established as of the beginning of the rental adjustment period. In the event that agreement cannot be reached between the parties on the fair market value of the Property, such valuation shall be submitted to a panel of three appraisers (qualified as defined in Section 14 above). One

appraiser shall be selected by Lessee and this expense shall be borne by Lessee; one appraiser shall be selected by State and this expense shall be borne by State; these appraisers so selected shall mutually select a third appraiser and such expenses shall be shared equally by Lessee and State. The majority decision of this panel of appraisers shall be binding and conclusive upon State and Lessee. Notwithstanding submission of the evaluation to the appraisers, Lessee shall pay the rental amount as proposed by State on the due dates as required if no decision by the panel of appraisers has been made or if the panel has not yet been formed. If additional payments or refunds are required as a result of this review, such monies shall be due and payable within thirty (30) days after such decision.

On those Adjustment Dates that State notifies Lessee of a rent adjustment based on Method A (CPI index) above, Lessee shall have the right to notify State that Lessee desires that the new Rent be established by appraisal of the Property in accordance with Method B. Lessee must notify State in writing within 5 business days after receipt of State's notification of a rent adjustment. Lessee shall pay the cost of said appraisal and such appraisal shall establish the new annual rent for the next 5-year period. In no event will the adjusted annual rental be less than the previous annual rent.