

May 3, 2018

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-3398

Attn: Filing Center

RE: UP ___ —PacifiCorp's Application for Approval of a Lease Agreement

PacifiCorp d/b/a Pacific Power encloses for filing its Application for Approval of a Lease Agreement with Draper Square, LC.

As described in the enclosed application, PacifiCorp respectfully requests approval by June 30, 2018, to facilitate full execution of the proposed agreement.

PacifiCorp respectfully requests that all information requests regarding this matter be addressed to:

By E-Mail (preferred): datarequest@pacificorp.com

By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah Street, Suite 2000
Portland, Oregon, 97232

Please direct any informal inquiries regarding this filing to me at (503) 813-6583.

Sincerely,



Natasha Siores
Manager, Regulatory Affairs

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UP _____

In the Matter of

PACIFICORP d/b/a PACIFIC POWER

Application for Approval of a Lease Agreement
with Draper Square, LC.

**PACIFICORP’S APPLICATION
FOR APPROVAL**

Under ORS 757.480(1)(a) and in accordance with OAR 860-027-0025, PacifiCorp d/b/a Pacific Power seeks approval from the Public Utility Commission of Oregon (Commission) of the proposed Lease Agreement between PacifiCorp and Draper Square, LC (Draper Square), a non-affiliate, for Draper Square’s use of a portion of PacifiCorp’s 90th – Camp Williams transmission corridor real property located in Salt Lake County, Utah.

Draper Square intends to use the real property for temporary parking of tenant, invitee, customer, or employee vehicles, landscaping, and drainage.

Draper Square and PacifiCorp wish to execute the Lease Agreement by July 1, 2018, therefore it is respectfully requested that the Commission approve the transaction by June 30, 2018.

I. BACKGROUND

PacifiCorp owns property in Salt Lake County, Utah, on which the 90th – Camp Williams transmission corridor runs. Draper Square is developing vacant land into office buildings and parking lots, which are operated on property adjacent to a portion of PacifiCorp’s 90th – Camp Williams transmission corridor property (Camp Williams Property). PacifiCorp proposes leasing a certain 6.02 acre portion of the Camp Williams Property (the Leased Property) that is adjacent to Draper Square’s property for the purpose of

employee and customer vehicle parking, landscaping and drainage. Draper Square's use of the Leased Property will not interfere with PacifiCorp's ability to operate and maintain its transmission assets located in the Camp Williams Property.

The parties have negotiated a proposed lease of the Leased Property with a 40-year term (Lease) commencing January 1, 2019. The value of the Lease over its term is \$3,063,370 (\$57,600 for the first year, with an increase of eight percent every five years thereafter). The Leased Property is classified as transmission property and is system-allocated. The value of the Lease to Oregon will be approximately \$798,000 over the 40-year term of the Lease. As more fully explained below, this transaction will not affect PacifiCorp's ability to perform its public duties.

II. COMPLIANCE WITH OAR 860-027-0025(1) FILING REQUIREMENTS

A. Name and Address

PacifiCorp's exact name and address of its principal business office are:

PacifiCorp
825 NE Multnomah Street
Portland, OR 97232

B. State in which incorporated; date of incorporation; other states in which authorized to transact utility business

PacifiCorp is a corporation organized and existing under and by the laws of the State of Oregon. PacifiCorp's date of incorporation is August 11, 1987. PacifiCorp is authorized to provide retail electric service in Oregon, California, Idaho, Utah, Washington, and Wyoming.

C. Communications and notices

All notices and communications with respect to this Application should be addressed to:

Robert Betcone Jr.
Senior Attorney
825 NE Multnomah Street, Suite 1800
Portland, OR 97232
Telephone: 503.813.5620
Email: bob.betconejr@pacificorp.com

PacifiCorp Oregon Dockets
825 NE Multnomah Street, Suite 2000
Portland, OR 97232
Email: OregonDockets@pacificorp.com

Additionally, PacifiCorp respectfully requests that all data requests regarding this matter be addressed to:

By e-mail (**preferred**) datarequest@pacificorp.com

By regular mail
Data Request Response Center
PacifiCorp
825 NE Multnomah St., Suite 2000
Portland, OR 97232

Informal inquires may also be directed to Natasha Siores, Manager, Regulatory Affairs at (503) 813-6583.

D. Principal officers

NAME	TITLE
William H. Fehrman	Chairman of the Board & Chief Executive Officer of PacifiCorp
Cindy A. Crane	President & Chief Executive Officer, Rocky Mountain Power
Stefan Bird	President & Chief Executive Officer, Pacific Power
Nikki L. Kobliha	Vice President, Chief Financial Officer & Treasurer

E. Description of business; designation of territories served

PacifiCorp engages in the generation, purchase, transmission, distribution, and sale of electric energy in Benton, Clackamas, Clatsop, Coos, Crook, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wallowa, Wasco, and Washington Counties in Oregon. PacifiCorp also engages in the generation, purchase, transmission, distribution, and sale of electric energy in the states of California, Idaho, Utah, Washington, and Wyoming.

F. Statement showing for each class and series of capital stock: brief description; amount authorized; amount outstanding; amount held as required securities; amount pledged; amount owned by affiliated interests; amount held in any fund

Not applicable. This transaction does not involve the sale of financial instruments or PacifiCorp capital stock.

G. Statement showing for each class and series of long-term debt and notes: brief description of amount authorized; amount outstanding; amount held as required securities; amount pledged; amount held by affiliated interests; amount in sinking and other funds

Not applicable. This transaction does not involve the sale of long-term debt or notes.

H. Purpose of application; description of consideration and method of arriving at amount thereof

The purpose of this application is to satisfy ORS 757.480 and OAR 860-027-0025.

Draper Square would like to use the Leased Property to park customer and employee vehicles from its adjacent office building. The leased property will not interfere with utility operations. PacifiCorp determined the value of the Lease by using the value identified in recent comparables in the area, which took into account the many restrictions placed on the development of the subject property. PacifiCorp will collect \$3,063,370 over the life of the 40-year Lease. PacifiCorp files this Application to obtain Commission approval of the Lease.

I. Statement of facilities to be disposed of; description of present use and proposed use; inclusion of all operating facilities of parties to the transaction

As described above, this transaction involves lease of certain PacifiCorp real property that supports the 90th – Camp Williams transmission corridor in Utah. Draper Square intends to use the Leased Property for vehicle parking for its adjacent office buildings. This use will not interfere with PacifiCorp’s operation and maintenance of the 90th – Camp Williams transmission corridor.

J. Statement by primary account of cost of the facilities and applicable depreciation reserve

The applicable book value included in FERC account 35010 (transmission lands) is \$5,819.25.

K. Required filings with other state or federal regulatory bodies

This transaction does not require approvals from any other state or federal regulatory bodies.

L. Facts relied upon by applicant to show transaction is in the public interest

ORS 757.480 requires Commission pre-approval for sales of property necessary and useful in the performance of a utility's duties to the public with a value in excess of \$100,000. OAR 860-027-0025(1)(l) requires PacifiCorp to show that such a proposed sale is "consistent with the public interest." The Commission has previously held that this standard requires a "no harm" showing.¹ The proposed transaction will not harm customers. The portion of the property on which Draper Square intends to park vehicles does not contain any PacifiCorp facilities or transmission assets, and PacifiCorp maintains access to its nearby transmission facilities. Additionally, Draper Square's use will not interfere with PacifiCorp's ability to operate and maintain the 90th – Camp Williams transmission corridor or any other facilities in the area. PacifiCorp will continue to access the 90th – Camp Williams transmission corridor as needed.

¹ See, e.g., *In the Matter of a Legal Standard for Approval of Mergers*, Docket No. UM 1011, Order No. 01-778 (Sept. 4, 2001) ("The remainder of the statutory scheme, those statutes governing transfer, sale, affiliated interest transactions, and contracts, either expresses no standard (for instance, ORS 757.480, .485) and has been read to require a no harm standard, or contains a 'not contrary to the public interest' standard (ORS 757.490, .495.)") (emphasis added); *In the Matter of the Application of PacifiCorp*, Docket No. UP 168, Order No. 00-112, at 6 (Feb. 29, 2000) (regarding the sale of the Centralia generating plant); *In the Matter of Portland General Electric*, Docket No. UP 158, Order No. 00-111, at 2 (Feb. 29, 2000) (regarding the sale of the Colstrip generating units); *In the Matter of the Application of Portland General Electric*, Docket Nos. UP 165/UP 170, Order No. 99-730, at 7 (Nov. 29, 1999) (regarding the sale of the Centralia generating plant).

M. Reasons relied upon for entering into the proposed transaction; benefits to customers

Please refer to sections I. and L. above, as well as the background section.

N. Amount of stock, bonds, or other securities, now owned, held or controlled by applicant, of the utility from which stock or bonds are proposed to be acquired

Not applicable. This transaction does not involve the sale of stock or other financial instruments.

O. Statement of franchises held; date of expiration; facilities of transferees

Not applicable. This transaction will not affect PacifiCorp's service territory.

**III. COMPLIANCE WITH OAR 860-027-0025(2)
FILING REQUIREMENTS**

A. Exhibit A—Articles of Incorporation

Not applicable. Review of the Articles of Incorporation would not advance the Commission's analysis of this Application because the subject transaction involves the conveyance of utility property and does not affect PacifiCorp's corporate structure or governance.

B. Exhibit B—Bylaws

Not applicable. Review of PacifiCorp's bylaws would not advance the Commission's analysis of this Application because the subject transaction involves the conveyance of utility property and does not affect PacifiCorp's corporate structure or governance.

C. Exhibit C—Resolution of directors authorizing transaction

This transaction did not require approval from the company's board of directors.

D. Exhibit D—Mortgages, trust, deeds or indentures securing obligation of each party

Not applicable.

E. Exhibit E—Balance sheet showing booked amounts, adjustments to record the proposed transaction and pro forma, with supporting fixed capital or plant schedules in conformity with the forms in the annual report

Not applicable. This transaction will not materially affect PacifiCorp's balance sheet.

F. Exhibit F—Known contingent liabilities

There are no known contingent liabilities associated with this transaction.

G. Exhibit G—Comparative income statements showing recorded results of operations, adjustments to record the proposed transaction and pro forma, in conformity with the form in the annual report

Not applicable. The transaction will not materially affect the company's income statement.

H. Exhibit H—Analysis of surplus for the period covered by income statements referred to in G

Not applicable. The transaction will not materially affect the company's income statement.

I. Exhibit I—Copy of contract for transaction and other written instruments

Included with this Application as Attachment A is a copy of the Lease Agreement, by and between PacifiCorp and Draper Square, which will be executed by the parties upon receipt of the Commission's approval of the transaction.

J. Exhibit J—Copy of each proposed journal entry to be used to record the transaction

At the time of invoicing for the rent due, PacifiCorp will debit the Lessee's Accounts Receivable account (FERC Account 1720000 Rents Receivable Current Asset) for the appropriate rental amount and credit to Rent Revenue Transmission Lands (FERC Account 4541000 Rents-Common Other Revenue) the same amount. After PacifiCorp receives payment from the Lessee, Lessee's Accounts Receivable account will be credited the

payment amount and a debit will be made to Main Depository-Deposit Clearing Account (FERC Account 1310000 Cash Current Asset) in the same amount.

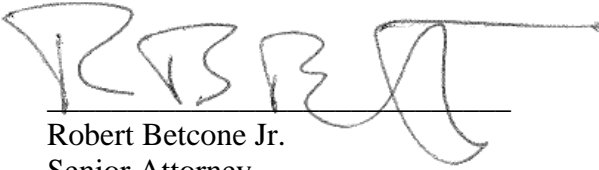
K. Exhibit K—Copy of each supporting schedule showing the benefits, if any, which each applicant relies upon to support the facts required by (1)(l) of this rule and reasons as required by (1)(m)

This Application and attachments contain the necessary information to demonstrate the benefits of this transaction and for the Commission to base its decision. However, PacifiCorp is prepared to provide additional information as requested by the Commission.

IV. PRAYER FOR RELIEF

PacifiCorp respectfully requests a Commission order (1) finding that the leasing of certain real property in Salt Lake County, Utah as described herein, will not harm PacifiCorp's customers and is consistent with the public interest; and (2) granting other such relief as the Commission deems necessary and proper. Approval of this transaction is requested by June 30, 2018, to allow Draper Square and PacifiCorp to fully execute the Lease by July 1, 2018.

Respectfully submitted this 3rd day of May, 2018,

By: 
Robert Betcone Jr.
Senior Attorney
PacifiCorp

ATTACHMENT A

Lease Agreement

LEASE AGREEMENT

This Lease Agreement (“Lease”) is entered into by and between PACIFICORP, an Oregon corporation (“Lessor”) and Draper Square, LC (“Lessee”).

RECITALS

A. Lessee desires to lease from Lessor that portion of Lessor’s Property (“Premises”) more particularly described on **Exhibit A** attached hereto and incorporated into this Lease by this reference containing approximately 6.02 acres.

B. Lessee owns that certain real property located in Salt Lake County, State of Utah and more particularly described on **Exhibit B** attached to and incorporated into this Lease by reference (“Lessee’s Property”).

C. Lessor has used and will continue to use the Premises for the construction, operation, maintenance, repair, and replacement of transmission and distribution lines and other facilities and equipment normally associated with the generation and distribution of power and/or the use or leased use of the Premises for communication structures and facilities. Lessor also uses and will continue to use the Premises to access adjoining properties and facilities, including properties and facilities that may be used in the future. The uses described in this paragraph, as they may be limited or further specified in this Lease, are referred to collectively as “Lessor’s Permitted Uses.”

D. Lessee desires to use the Premises in connection with Lessee’s business, for such uses more particularly described in Paragraph 6 of this Lease, and for such other purposes as do not unreasonably interfere with or impair Lessor’s Permitted Uses of the Premises.

TERMS AND CONDITIONS

IN CONSIDERATION of the mutual promises and subject to the conditions set forth below, Lessor and Lessee agree as follows:

1. Lease. Lessor hereby leases the Premises to Lessee for the specific purposes specified in this Lease subject to Lessor’s Permitted Uses and further subject to all other terms and conditions set for herein.

2. Term. The term of this Lease shall be forty (40) years, commencing on January 1, 2019 or upon purchase of the first building permit for construction, whichever occurs first (the “Commencement Date”), unless earlier terminated as provided in herein.

3. Rent. Commencing on the Commencement Date, Lessee shall pay Lessor as rent for the Premises (“Rent”) the monthly amount of Four Thousand Eight Hundred **and 00/100_Dollars (\$4,800)** each month in advance during the first five years of this Lease. Each monthly Rent payment shall be paid to Lessor at the address indicated for

notice to Lessor, unless otherwise specified by Lessor in writing. Monthly Rent shall be due on or before the first day of each monthly anniversary of the Commencement Date and shall be increased every 5 years on the yearly anniversary date throughout the remaining term of this Lease by 8.0% of the prior rental amount. In addition, any increase in taxes, impositions, and/or assessments related to the Premises which are due to any of Lessee's commercial use of or improvements made to the Premises will be paid for and borne solely by Lessee.

4. Lessee's Use of the Premises. Subject to the terms and conditions of this Lease, the Premises may be used by Lessee for the temporary parking of tenant, invitee, customer, or employee vehicles, landscaping and drainage ("Lessee's Permitted Uses") and for no other purposes whatsoever. Notwithstanding Lessee's Permitted Uses, Lessee's use of the Premises shall be done in such a manner so as to not interfere with or impair Lessor's use of the Premises for Lessor's Permitted Uses. The Premises are leased to Lessee and accepted by Lessee in their present condition without warranty by Lessor as to present or future condition. Provided Lessor shall have the right to maintain the power lines and associated equipment and facilities which are now or hereafter constructed and operated by Lessor on the Premises, Lessor is under no obligation to repair, maintain, or improve the Premises. Nothing in this Agreement shall be construed as to give Lessee any right to use the Premises or other property or facilities except for Lessee's Permitted Uses.

5. Improvements.

(a) Lessee may make improvements or changes to the Premises, including changing existing ground elevation, excavating, constructing any structure or lighting structure, or landscaping to the Premises, only with Lessor's prior written consent, which consent shall not be unreasonably withheld, provided that normal and ordinary maintenance and repairs may be made without such consent. If Lessee desires to make any improvements or changes whatsoever to the Premises, or proposes any maintenance or repair in excess of normal and ordinary maintenance and repair, Lessee shall provide Lessor with detailed plans and specifications for the proposed change or improvement at least thirty (30) days in advance, for Lessor's approval. Lessor shall have the right to approve, modify or deny the plans and specifications if Lessor determines that it is likely to unreasonably interfere with or impair Lessor's Permitted Uses. Lessee shall not begin any improvements until grading is complete and approved by Lessor.

(b) All improvements shall be made in a good and workmanlike manner. Any improvement that violates building codes or the laws or ordinances of any governing jurisdiction, or that harm Lessor's power lines and related equipment or the Premises in any manner, shall be timely cured by Lessee at Lessee's expense and in a manner reasonably satisfactory to Lessor.

(c) All improvements made by Lessee shall be and remain the property of Lessee and may be removed upon the expiration or termination of this Lease. If, upon the expiration or termination of the Lease, Lessor is required to dispose of improvements made by Lessee which are not affixed to the real property, or which have not been

consented to in writing by Lessor, then Lessee agrees to reimburse Lessor for the reasonable costs of such removal.

6. Additional Restrictions On Use and Improvements. Lessee shall not place or store any flammable material, including but not limited to chemical solvents, fuels, rubbish piles, haystacks, or lumber products, on the Premises, excluding from this prohibition, however, motor vehicle fuels and lubricants properly and normally contained in vehicles coming on to the Premises. Lessee shall not cause any structure, building, or equipment to be placed, erected, or stored on the Premises, except such as may be (i) used in connection with Lessee's Permitted Uses, and (ii) approved by Lessor prior to any construction thereof in accordance with the terms of this Lease. Lessee's use of the Premises shall not involve placing persons or objects within twenty feet of Lessor's electrical and/or power lines on the Premises. In addition, Lessee shall advise all persons to remain at least twenty feet from such power lines. Lessee understands the risk of injury or death associated with Lessor's power lines and that electricity can arc between lines and persons or objects within twenty feet of the lines. Lessee assumes all risks related thereto.

7. Leasehold Mortgages.

(a) **Lessee's Right to Encumber.** Lessee may hypothecate, encumber, pledge or mortgage its interest in the Lease or the leasehold estate in the Premises to any party or number of parties only with the prior written approval of Lessor (which approval shall not be unreasonably withheld, and shall include, without limitation, the review and approval of all documentation related to such hypothecation, encumbrance, pledge or mortgage). Notwithstanding the foregoing, Lessor grants Lessee the right, without Lessor's prior written consent, but with written notice, to hypothecate, pledge, encumber, or mortgage its interest in this Lease or the leasehold estate in the Premises created hereby, under one (but not more than one) leasehold mortgage in favor of a lender ("Leasehold Mortgage") and to assign such interest as collateral security for such Leasehold Mortgage provided all of the following conditions are met: (1) all rights acquired under such Leasehold Mortgage shall be subject and subordinate to all rights and interests of Lessor herein, (2) any and all documentation of any kind recorded or filed against the Premises relating to such Leasehold Mortgage shall (i) be subject to Lessor's prior review and approval before recordation thereof, and (ii) affirm in writing the complete subordination of the Leasehold Mortgage to Lessor's superior rights; (3) no such Leasehold Mortgage shall be cross-defaulted with any other loan of any kind, and (4) the lender must be a reputable banking institution which (i) is federally insured by the Federal Deposit Insurance Corporation (or other similar agency or institution acceptable to Landlord), (ii) is organized as a bank under applicable federal and/or state law, and (iii) has total deposits over \$5 billion dollars. The holder of any Leasehold Mortgage, or a party that has been approved in writing by Lessor to hold or receive a pledge, hypothecation, encumbrance or mortgage of the Lease or the leasehold estate in the Premises, shall be referred to herein as the "Leasehold Mortgagee". Lessee agrees to pay Lessor \$1,500.00 in advance.

(b) **Notices of Default.** Provided that a Leasehold Mortgagee shall have notified Lessor in writing of its status as a Leasehold Mortgagee and its name and address, Lessor thereafter shall give to such Leasehold Mortgagee a copy of each notice of default required to be given by Lessor to Lessee under this Lease, such copy to be addressed to Leasehold Mortgagee at the address last furnished to Lessor. In the event the Lease

provides a period to cure any such default, Lessor shall not serve a notice of cancellation or termination on Lessee until Leasehold Mortgagee has been provided with the same cure period.

(c) **Right to Cure.** Lessor will accept any cure by a Leasehold Mortgagee of any default by Lessee; provided, however, such cure must be timely performed within the applicable notice, cure, or grace period granted under the Lease (if any).

(d) **Transfer In and After Foreclosure.** In the event it should become necessary to foreclose the Leasehold Mortgage or Leasehold Mortgagee should otherwise come into possession of the Premises through Lessee's rights under the Lease, Lessor will not disturb the use and occupancy of Leasehold Mortgagee under the Lease so long as there is not an uncured default under any of the terms, covenants, or conditions of the Lease. Lessor agrees that in the event (i) Leasehold Mortgagee shall acquire the interest of Lessee under the Lease by reason of the exercise of any right in the Leasehold Mortgage (including taking a deed in lieu of foreclosure), or (ii) any actual purchaser of Leasehold Mortgagee's interest in a foreclosure proceeding (each under (i) or (ii), a "Successor Lessee"), then Successor Lessee shall be substituted as Lessee under the Lease, and Successor Lessee agrees to attorn to Lessor without the necessity of any other act or agreement, and the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor Lessee and Lessor. Successor Lessee shall be deemed for all purposes to have assumed and agreed to be bound, as Lessee, by the terms and conditions of the Lease. No Successor Lessee shall have the right to transfer this Lease to any other party, without first obtaining the prior written consent of Lessor as set forth in Section 10 below.

8. No Assignment and Subletting. Except as expressly set forth in Section 9, or in the event of a transfer of all, but not less than all, of Lessee's Property, this Lease may not be transferred or assigned in whole or in part and may not be sublet without the express written approval of Lessor, which approval shall not be unreasonably withheld, conditioned or delayed (provided, however, all parties agree that reasonable circumstances for denying any such transfer, assignment or subletting shall include, without limitation, (i) financial stability and security of the new proposed lessee (to at least the same level as Lessee), or (ii) any past or present relationship, whether business or otherwise, between the new proposed lessee and Lessor, (which reasonable circumstances are hereby given as examples only and are not intended by the parties to limit in any way which other circumstances are deemed reasonable or unreasonable). In the event Lessee makes a request for transfer, assignment or sublet, Lessee agrees to pay Lessor \$1,000.00 in advance. In the event Lessee shall transfer or assign all of its right, title, and interest under this Lease in and to the Premises pursuant to the applicable provisions of this Section 10 and such transferee or assignee shall, in a writing reasonably acceptable to Lessor, assume all duties, responsibilities and obligations of Lessee under this Lease and agree to be bound by all provisions contained herein, such transferring Lessee shall be released from all rights, duties, and obligations of Lessee under this Lease, except with respect to any rights, duties, responsibilities, and/or obligations which accrued during the period such transferring Lessee was the Lessee hereunder.

9. No Liens, Encumbrances or Claims. In the event any lien, encumbrance, or claim not previously approved in writing by Lessor is filed or recorded against the Premises

as a result of any action or inaction by Lessee, the Lessee shall immediately remove same, unless previously agreed to by Lessor.

10. Lessor's Use. It is understood and agreed upon that Lessor reserves the right to access the Premises at any time for Lessor's Permitted Uses, including the maintenance or repair of its existing power lines and associated equipment and facilities and the placement of additional lines and equipment upon the Premises. It is further understood and agreed upon that Lessor shall reserve the right to add to, change, or enlarge its power lines and associated facilities and structures on the Premises, including such equipment and facilities of others, including fiber optic and cable lines ("Lessor Alterations"). In no event shall Lessor have any obligations, duties, or liabilities to Lessee with respect to loss or diminution of use caused thereby to Lessee or the Premises. However, if such Lessor Alterations require Lessee to make changes to any of Lessee's structures or other improvements located on the Premises, Lessor shall give Lessee at least thirty (30) days advance written notice and thereafter work cooperatively with Lessee to allow Lessee to make reasonable changes or additions (subject to Lessor's reasonable approval) to the parking improvements as necessary to mitigate any adverse affects of the Lessor Alterations. Lessee acknowledges that future power lines may be constructed within the Premises which may result in some disruption, displacement, or temporary loss of access during the time of construction. Placement of any such future power lines shall be made after consultation with Lessee. Lessee shall not be entitled to any loss or damage due to the above maintenance or new improvements to the Premises by Lessor. However, in the event the Lessor's alterations or improvements prevent or substantially limit Lessee's Permitted Uses, as determined in Lessee's reasonable discretion, Lessee may terminate this Lease upon ninety (90) day's written notice to Lessor.

11. Compliance With Law. Lessee shall, at all times, comply with all laws, ordinances, and regulations affecting or pertaining to Lessee's use or occupation of the Premises, including environmental laws and regulations. Lessee shall indemnify, defend, and hold harmless Lessor from loss, cost, or damage by reason of any actual or alleged violation by Lessee thereof, and from any liability, including fines, penalties and other costs, arising out of Lessee's failure to so comply. Lessee shall at all times keep the Premises in a neat and orderly manner reasonably satisfactory to Lessor. Lessee shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may disturb adjoining land owners or which may violate the law. The parties agree not to take any action that will seek to void or invalidate this Lease, or otherwise participate in any challenge to the validity or enforceability of this Lease, on the basis that this Lease, or any of its terms or conditions, may violate any laws, ordinances or regulations relating to the division or subdivision of land.

12. Other Indemnification. Lessee shall release, indemnify defend, and hold Lessor harmless from any and all liability, claim, loss, costs, damages, or expenses (collectively, "Liabilities") arising by reason of any personal injury, including death, or property damage, including Lessee's property and the property of all other persons, occurring on or about the Premises, or arising in connection with Lessee's use or occupation of the Premises. Lessee covenants and agrees to, at all times, protect Lessor and the Premises, including Lessor's improvements or property on the Premises, from any and all injury, damage, or loss by reason of Lessee's occupation of the Premises or from any cause whatsoever growing out of or related to Lessee's use thereof. The indemnification

obligations of Lessee described herein shall include, without limitation, any Liabilities of Lessor relating to the Lease and/or any rights set forth herein (as described in Section 16 below).

13. Insurance. Without limiting any liabilities or any other obligations of Lessee, Lessee shall procure and continuously maintain for the duration of this Lease, with insurers having an A.M. Best's rating of A/VII or better, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Lease or Lessee's use or occupancy of the Premises as follows:

(a) **Workers' Compensation.** Coverage as required by law. Lessee shall furnish proof thereof satisfactory to Lessor within 14 days prior to commencing any work on the Premises. All Workers' Compensation policies shall contain provisions that the insurance companies will have no right of recovery or subrogation against Lessor, its parent, divisions, affiliates, subsidiary companies, co-lessees, co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the Lessor and Lessee that the insurance as effected shall protect all parties. Notwithstanding the foregoing, if Lessee does not have employees of any kind, then Lessee shall not have to maintain the workers' compensation coverage described herein (unless required by applicable law); provided, however, any property manager of Lessee; contractor of Lessee; subcontractor of Lessee; or tenant or occupant of the Adjacent Property (to the extent any of same have employees) that uses or enters onto the Premises shall be required to obtain and maintain the foregoing worker's compensation insurance.

(b) **Employers' Liability.** Insurance with a minimum single limit of \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit. Notwithstanding the foregoing, if Lessee does not have employees of any kind, then Lessee shall not have to maintain the workers' compensation coverage described herein (unless required by applicable law); provided, however, any property manager of Lessee; contractor of Lessee; subcontractor of Lessee; or tenant or occupant of the Adjacent Property (to the extent any of same have employees) that uses or enters onto the Premises shall be required to obtain and maintain the foregoing employers' liability insurance.

(c) **Commercial General Liability.** The most recently approved ISO (Insurance Services Office) policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate (on a per location basis) to protect against and from any and all loss by reason of bodily injury or property damage on or about the Premises, including the following coverages:

- (i) Bodily injury, property damage, and personal injury coverage, including damage to Lessor's power lines and other improvements, facilities and equipment as a result of Lessee's, its contractors', subcontractors' or agents' negligence;
- (ii) Contractual Liability;
- (iii) Premises and Products/Completed Operations; and
- (iv) Independent Contractors.

(d) **Automobile Liability.** The most recently approved ISO policy, or

its equivalent, with a minimum single limit of \$1,000,000 for bodily injury and property damage including sudden and accidental pollution liability, with respect to Lessee's vehicles whether owned, hired or non-owned, assigned to or used in any way on the Premises.

(e) **Umbrella Liability.** Insurance with a minimum limit of \$5,000,000 each occurrence/aggregate where applicable to the excess of the coverages and limits required in Employers' Liability, Commercial General Liability, and Automobile Liability insurance in Sections 15(b), 15(c), and 15(d) above. Such insurance policies shall be maintained to cover any liability arising from Lessee's use of the Premises and any and all indemnifications by Lessee hereunder.

(f) **Certificate of Insurance.** Lessee shall provide to Lessor, upon Lessor's request, a certificate of insurance evidencing its insurance coverage. The policies required herein, except Workers' Compensation and Employers' Liability, shall include provisions or endorsements naming Lessor, its parent, affiliates, subsidiaries, its officers, directors, agents, employees or servants as additional insured.

(g) **Lessee's Insurance Primary.** To the extent of Lessee's negligent acts or omissions, all policies required under this Lease shall include provisions that such insurance is primary with respect to the interest of Lessor and that any other insurance maintained by Lessor is excess and noncontributory insurance with the insurance required hereunder.

(h) **No Right of Recovery or Subrogation.** Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against the Lessor, its parent, divisions, affiliates, subsidiaries companies, co-lessees, or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the Lessor and Lessee that the insurance as affected shall protect all parties.

(i) **Notice Prior to Change or Cancellation.** Lessee's insurance required under this Section 15 shall contain provisions that such policies cannot be cancelled or their limits of liability reduced without (i) thirty (30) calendar days' prior written notice to Lessor if cancelled for nonpayment of premium, or (ii) thirty (30) calendar days' prior written notice to Lessor if cancelled for any other reason.

(j) **Adequate Coverage.** Lessor does not represent that the insurance coverage specified herein (whether in scope of coverage or amounts of coverage) are adequate to protect the obligations of the Lessee, and Lessee shall be solely responsible for any deficiencies thereof.

14. Termination. This Lease may be terminated prior to the expiration of its initial term or any additional term upon the happening of any of the following events:

(a) Any failure by Lessee to pay Rent, or any other monetary sums required to be paid under this Lease, where such failure continues for thirty (30) days after written notice thereof by Lessor to Lessee; or

(b) A failure by Lessee to observe and perform any other material term, covenant, or condition of this Lease to be observed or performed by Lessee where such failure continues for forty (40) days after written notice thereof by Lessor to Lessee; provided, however, that if the nature of the default cannot reasonably be cured within the forty (40) day period, Lessee shall not be deemed to be in default if Lessee shall within the forty (40) day period commence action to cure the default and thereafter diligently prosecute the same to completion.

15. Events Upon Termination. Upon termination of this Lease as a result of a default by Lessee, Lessee shall not be entitled to damages of any kind, including lost profits or relocation costs or expenses. If, upon the expiration or termination of the Lease, Lessor is required to dispose of improvements made by Lessee which are not affixed to the real property or which have not been consented to in writing by Lessor, then Lessee agrees to reimburse Lessor for the reasonable costs of such removal.

16. Lessor's Other Rights. In addition to all other rights provided herein or by law, Lessor shall have the right to enter upon and inspect the Premises at all reasonable times, to show or sell the Premises to prospective Lessees (during the last 90 days of the term of the Lease) or purchasers, to assign its rights under this Lease, or to mortgage or pledge the Premises as security to a lender, in which event the Lessee will subordinate its rights as may be reasonably necessary to accommodate the security interest of lender. In any event, this Lease shall continue in full force and effect unless terminated according to the terms hereof.

17. Miscellaneous.

17.1. **Notice.** Any notice, consent or request under this Lease shall be made and in writing and is considered given under this Lease when actually received, either as a result of: (i) personal delivery to the recipient named below, or (ii) delivery by United States mail, either registered or certified, as evidenced by return receipt, addressed by name and address to the party or person intended, or by electronic email. All notices shall be given to the following:

LESSOR: PacifiCorp
c/o Rocky Mountain Power
Property Management Department
1407 West North Temple
Salt Lake City, Utah 84116

LESSEE: Draper Square LC.
920 E. Woodoak Lane, suite 200
Salt Lake City, UT 84117

With a copy to:
Bruce J. Nelson, Esq.
5292 South College Drive, Suite 203

Upon written notification, any party may designate a different individual or address for notices.

17.2. **Titles and Captions.** Section titles and captions to this Lease are for convenience only and shall not be deemed part of this Lease and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part or subparts of this Lease.

17.3. **Applicable Law.** This Lease shall be construed in accordance with and governed by the laws of the state of Utah.

17.4. **Binding Effect Upon Successors.** This Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, legal representatives, and assigns; provided that this provision shall not be construed as permitting assignment, substitution, delegation, or other transfer of rights or obligations except strictly in accordance with the provisions of this Lease.

17.5. **Integration.** This Lease constitutes the entire agreements between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto. No covenant, representation, or condition not expressed in this Lease shall affect or be deemed to interpret, change, or restrict the express provisions hereof.

17.6. **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement term, or condition. Any party may, by notice delivered in the manner provided in this Lease, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation, or covenant of any other party. No waiver shall affect or alter the remainder of this Lease but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other breach.

17.7. **Rights and Remedies.** The rights and remedies of any of the parties shall not be mutually exclusive, and the exercise of one or more of the provisions of this Lease shall not preclude the exercise of any other provisions. Each of the parties confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other parties for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

17.8. **Severability.** In the event any condition, covenant, or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Lease and shall in no way effect any other covenant or condition contained herein. If such condition, covenant, or other provisions shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

17.9. **Enforceability and Litigation Expenses.** If any action, suit, or proceeding is brought by a party hereto with respect to a matter or matters covered by this Lease or if a party finds it necessary to retain an attorney to enforce its rights under this Lease, all costs and expenses of the prevailing party incident to such proceeding or retention, including reasonable attorney's fees, shall be paid by the non-prevailing party.

17.10. **Authorization.** Each individual executing this Lease represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the party for which he signs to execute and deliver this Lease in the capacity and for the entity set forth where he signs and that as a result of his signature, this Lease shall be binding upon the party for which he signs.

17.11. **Recordation.** This Lease may not be recorded on behalf of either party, but in lieu thereof, Lessor and Lessee agree that each will, upon execution of this Lease, execute, in recordable form, a "short form" of the Lease, which shall contain a description of the Premises, the term of the Lease, and the parties to the Lease. The short form of the Lease shall not modify the terms of the Lease or be used in interpreting the Lease and in the event of any inconsistency between this Lease and the short form of the Lease, the terms and conditions of this Lease shall be controlling.

17.12. **Jury Waiver.** To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Lease Agreement on the day and year last below written.

LESSOR:

PACIFICORP, an Oregon corporation

BY: _____

Printed Name and Title: _____

Date: _____

LESSEE:

Draper Square, LLC

BY: _____

Printed Name and Title: _____

Date: _____

EXHIBIT A
Legal Description
Premises

EXHIBIT B

Legal Description

Lessee's Property