

**Avista Corp.**  
1411 East Mission PO Box 3727  
Spokane, Washington 99220-3727  
Telephone 509-489-0500  
Toll Free 800-727-9170



January 19, 2006

Oregon Public Utility Commission  
Ms. Vikie Bailey-Goggins  
Administrator, Regulatory Operations  
550 Capitol St. NE, Suite 215  
Salem, OR 97301-2551

RE: Avista Corp.'s Application for an Order Approving Sale of Property

Please find enclosed one original and one copy of Avista Corp.'s Application requesting approval to sell the Ashland property formerly used as a regulator station, located in Ashland, Oregon.

An electronic copy of this application has also been filed pursuant to OAR 860-011-0012.

Please direct any questions regarding this filing to Liz Andrews at (509) 495-8601.

Sincerely,

A handwritten signature in cursive script that reads "Kelly O. Norwood".

Kelly O. Norwood  
Vice President, State and Federal Regulation

enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

IN THE MATTER OF THE APPLICATION)  
OF AVISTA CORPORATION, DBA            )  
AVISTA UTILITIES, FOR APPROVAL    )  
TO SELL THE ASHLUND FORMER        )  
REGULATOR STATION PROPERTY      )  
LOCATED IN ASHLAND, OREGON        )

DOCKET \_\_\_\_\_

Pursuant to ORS 757.480 and OAR 860-027-0025, Avista Corporation, doing business as Avista Utilities, (“Avista,” “Company” or “Applicant”) respectfully requests the OPUC provide authorization to sell the Ashland property formerly used as a regulator station, located in Ashland, Oregon.

The applicant respectfully represents that:

**OAR 860-027-0025 (1):**

- (a) The applicant's exact name and the address of its principal business office:**

Avista Corporation  
1411 E. Mission  
PO Box 3727  
Spokane, Washington 99220

- (b) The state in which incorporated, the date of incorporation, and the other states in which authorized to transact utility business:**

The Applicant was incorporated in Washington Territory (now the State of Washington) on March 15, 1889. The term of incorporation is perpetual. The Applicant is a public utility, which currently owns and operates property in eastern Washington, northern Idaho, western Montana, and central & southwest Oregon.

**(c) Name and address of persons authorized, on behalf of applicant, to receive notices and communications in respect to application:**

David J. Meyer, Esq. Chief Counsel for Regulatory and Governmental Affairs Avista Corporation P.O. Box 3727 1411 East Mission Avenue, MSC-13 Spokane, Washington 99220-3727 Phone: (509) 495-4316 Fax: (509) 495-8851	Kelly Norwood Vice President – State and Federal Regulation Avista Corporation P.O. Box 3727 1411 East Mission Avenue, MSC-13 Spokane, Washington 99220-3727 Phone: (509) 495-4267 Fax: (509) 495-8851
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**(d) The names and titles of the principal officers of the Applicant:**

Each officer listed below maintains an office at 1411 East Mission Avenue, Spokane, Washington 99220:

Gary G. Ely	Chairman of the Board, President & CEO
Malyn K. Malquist	Senior Vice President, Chief Financial Officer
Scott L. Morris	Senior Vice President
Marian Durkin	Senior Vice president, General Counsel & Chief Compliance Officer
Karen S. Feltes	Senior Vice President & Corporate Secretary
Christy M. Burmeister-Smith	Vice President & Treasurer
Don F. Kopczynski	Vice President
David J. Meyer	Vice president & Chief Counsel for Regulatory & Governmental Affairs
Kelly O. Norwood	Vice President
Ronald R. Peterson	Vice President
Roger D. Woodworth	Vice President
Ann M. Wilson	Vice President, Controller
Susan Y. Miner	Assistant Corporate Secretary
Diane C. Thoren	Assistant Treasurer
Robert R. Hanson	Assistant Controller

**(e) A description of the general character of the business done and to be done, and a designation of the territories served, by counties and states.**

Applicant is engaged in the generation, transmission, distribution and sale of electric energy, which it sells at retail to approximately 332,000 residential, commercial, and industrial customers in eastern Washington and northern Idaho, and at wholesale to public utilities, municipalities and others. Its electric properties are operated as a unified system and are interconnected with adjacent electric utilities. The electric energy sold by the Applicant is

generated in power stations, which it owns in whole or in part or obtained by purchase or exchange from other utilities and governmental agencies.

Applicant is also engaged in the distribution and sale of natural gas to approximately 298,000 residential, commercial and industrial customers in eastern Washington, northern Idaho, and central & southwest Oregon.

Maps of Avista Corp.'s service territories and State counties are included as **Exhibit L**.

**(f) The Applicant's capital stock as of September 30, 2005 was as follows (Dollars in thousands):**

	<u>Shares</u>	<u>Outstanding Amount</u>
<b>Preferred Stock</b> (10,000,000 shares authorized)		
Subject to Mandatory Redemption \$6.950 Series K (\$100 stated value)	280,000	\$28,000
 Total Preferred Stock	 <u>280,000</u>	 <u>\$28,000</u>
 <b>Common Stock</b> (200,000,000 shares authorized)		
No Par Value	48,561,216	\$630,542
Capital Stock Expense		<u>(10,364)</u>
Total Common Stock	<u>48,561,216</u>	<u>\$620,178</u>

None of the capital stock is held as reacquired securities, pledged, held by affiliated corporations, or held in any fund, except as noted above.



**(g) The Applicant's long-term debt as of September 30, 2005 was as follows:**

<u>Description</u>	<u>Authorized</u> <u>(\$000s)</u>	<u>Outstanding</u> <u>(\$000s)</u>
First Mortgage Bonds		
Secured Medium-Term Notes, Series A	\$ 250,000	\$ 72,000
Secured Medium-Term Notes, Series B	250,000	51,000
Secured Medium-Term Notes, Series C	250,000	88,850
7 ¾% Series Due 1-1-2007	150,000	150,000
6.125% Series Due 9-1-2013	150,000	45,000
5.45% Series Due 12-1-2019	150,000	90,000
Pollution Control Bonds		
Series due October 1, 2032	66,700	66,700
Series due March 1, 2034	17,000	17,000
Series Due 2032	4,100	4,100
Unsecured Medium-Term Notes		
Series A	200,000	3,000
Series B	150,000	17,000
Series D	400,000	0
Trust Preferred Notes		
Capital I & II	150,000	113,403
Senior Corporate Notes		
9.75% Coupon	<u>400,000</u>	<u>280,613</u>
 Total Long Term Debt	 \$ <u>2,437,800</u>	 \$ <u>998,666</u>

None of the long-term debt is held as reacquired securities, pledged, held by affiliated corporations, or held in any fund, except as noted above.

**(h) Whether the application is for disposition of facilities by sale, lease, or otherwise, a merger or consolidation of facilities, or for mortgaging or encumbering its property, or for the acquisition of stock, bonds, or property of another utility, also a description of the consideration, if any, and the method of arriving at the amount thereof:**

Applicant is requesting approval from the Commission to sell the Ashland storage yard, located in Ashland, Oregon. Applicant will apply any gain realized by the sale of this asset against the Oregon acquisition adjustment as ordered by OPUC Order No. 91-671 (Docket UP63/UA39, Washington Water Power Company's acquisition of CP National's Oregon National Gas Service Territory), dated May 16, 1991 (Appendix A-Stipulation, page 2, lines 3-8):

“If Water Power sells all or any portion of the operating systems acquired from CP National, Water power will apply any gain realized above the sum of the net book value and any acquisition adjustment assigned to such systems so as to proportionately reduce any remaining acquisition adjustment allocated among the jurisdictions.”

The proposed application of the gain against the Company’s Oregon acquisition adjustment is consistent with previous orders received from the OPUC regarding sale of property in Avista’s Oregon service territory (see 1994 OPUC Order No.’s 94-354 and 94-1327).

- (i) **A statement and general description of facilities to be disposed of, consolidated, merged, or acquired from another utility, giving a description of their present use and of their proposed use after disposition, consolidation, merger, or acquisition. State whether the proposed disposition of facilities or plan for consolidation, merger, or acquisition includes all the operating facilities of the parties to the transaction:**

Avista maintained a regulator station at “B” and Water Street in Ashland, Oregon since 1991 when the property was purchased from CP National Corporation. The property is adjacent to Ashland creek that runs through the city of Ashland. The city of Ashland approached Avista late in 2004 to remove a portion of the fence and property in order to reconstruct the bridge on Water Street, spanning Ashland creek. The corner of the property contained a regulator station that serves the Avista customers in Ashland. In order to grant the city access, Avista relocated the regulator station and coordinated an agreement with the city of Ashland to grant the request in exchange for an easement on City property approximately one block away in order to reconstruct the regulator station.

Genesis Construction has offered to purchase the property from Avista for use as a construction storage yard. The property is no longer required as operating property to serve Avista customers in Ashland.

- (j) **A statement by primary account of the cost of the facilities and applicable depreciation reserve involved in the sale, lease, or other disposition, merger or consolidation, or acquisition of property of another utility.**

Applicant’s estimated journal entries for the sale of the former regulator station property located in Ashland, Oregon are attached hereto as **Exhibit J**. The property and depreciation reserve balances shown are as of November 30, 2005. The final journal entries or balances recorded will vary depending on date of sale and transfer of property and final closing costs. All records associated with the cost of the Ashland property, applicable depreciation reserve, and the sale will be held by the Applicant and available for review upon request.

- (k) A statement as to whether or not any application with respect to the transaction or any part thereof, is required to be filed with any federal or other state regulatory body.**

None required.

- (l) The facts relied upon by applicant to show that the proposed sale, lease, assignment, or consolidation of facilities, mortgage or encumbrance of property, or acquisition of stock, bonds, or property of another utility will be consistent with the public interest.**

Applicant believes that the sale of the Ashland property formerly used as a regulator station, is consistent with the public interest since the property is no longer necessary or useful in the performance of Applicant's service to its customers.

- (m) The reasons, in detail, relied upon by each applicant, or party to the application, for entering into the proposed sale, lease, assignment, merger, or consolidation of facilities, mortgage or encumbrance of property, acquisition of stock, bonds, or property of another utility, and the benefits, if any, to be derived by the customers of the applicants and the public.**

As indicated above, Applicant determined that the Ashland property formerly used as a regulator station, is no longer necessary for Applicant's ongoing operations.

- (n) The 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.

- (o) A brief statement of franchises held, showing date of expiration if not perpetual, or, in case of transfer, that transferee has the necessary franchises.**

Not applicable.

**OAR 860-027-0025 (2):**

**Submitted herewith are the following exhibits as required:**

- (a) **EXHIBIT A.** The Applicant's Articles of Incorporation
- (b) **EXHIBIT B.** The Applicant's Bylaws
- (c) **EXHIBIT C.** A copy of the resolution adopted by the Applicant's Board  
(Not applicable to this application)
- (d) **EXHIBIT D.** The Applicant's mortgage securing the guarantee or obligation  
(Not applicable to this application)
- (e) **EXHIBIT E.** Applicant's balance sheet as of September 30, 2005
- (f) **EXHIBIT F.** Applicant's statement of contingent liabilities as of September 30, 2005
- (g) **EXHIBIT G.** Applicant's income statement for the 9 months ended September 30, 2005
- (h) **EXHIBIT H** Applicant's analysis of retained earnings for the 12 months ended December 31, 2004 (currently available)
- (i) **EXHIBIT I.** A copy of each contract or written instrument entered into or proposed to be entered into by the parties to the transaction in respect to the sale.
  - (1) Real Estate Appraisal of Ashland property;
  - (2) Buyer Purchase-Offer of Ashland property;
  - (3) Applicant Counter-Offer to sell Ashland property. *Entered into subject to final OPUC approval.*
- (j) **EXHIBIT J.** A copy of each proposed journal entry to be used to record the transaction. (Amounts will vary depending on date of sale and final closing costs.)
- (k) **EXHIBIT K.** A copy of each supporting schedule showing the benefits, if any, relied upon to support the facts as required by subsection (1)(l) of this rule and the reasons as required by subsection (1)(m) of this rule.  
(Not applicable to this application)

**Additional Attachment:**

**EXHIBIT L.** Map of Avista's service territories located in Oregon, Washington and Idaho. Map of counties in each State.

**EXHIBIT M.** Order No. 91-671 (Docket UP63/UA39, Washington Water Power Company's acquisition of CP National's Oregon National Gas Service Territory), dated May 16, 1991

WHEREFORE, the Applicant respectfully requests the Public Utilities Commission of Oregon to enter a written order authorizing approval to sell the Ashland former regulator station property, located in Ashland, Oregon as described in this Application.

DATED this 19<sup>th</sup> day of January 2006.

Respectfully submitted,

AVISTA CORPORATION

By Kelly O. Norwood

Kelly O. Norwood  
Vice President, State and Federal Regulation

VERIFICATION

STATE OF WASHINGTON )  
 )  
County of Spokane )

Kelly O. Norwood, being first duly sworn on oath, deposes and says: That he is Vice President, State and Federal Regulation of Avista Corporation and makes this verification for and on behalf of said corporation, being thereto duly authorized;

That he has read the foregoing Application, knows the contents thereof, and believes the same to be true.

*Kelly Norwood*  
\_\_\_\_\_

SIGNED AND SWORN to before me this 19<sup>th</sup> day of January 2006, by Kelly O. Norwood.



*Patty Olsness*  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington, residing at Spokane.

Commission Expires: 2/22/06

## **EXHIBIT A**

RESTATED ARTICLES  
OF INCORPORATION  
OF  
AVISTA CORPORATION

As Amended November 1, 1999



**RESTATED  
ARTICLES OF INCORPORATION OF  
AVISTA CORPORATION**

Know all men by these presents that we have this day voluntarily associated ourselves together for the purpose of forming, and we do hereby form and agree to become a Corporation, under and by virtue of the laws of the Territory of Washington, and for such purpose we do hereby certify:-

FIRST: That the name of said Corporation is Avista Corporation.

SECOND: The objects and purposes for which the Corporation is formed are:

To acquire, buy, hold, own, sell, lease, exchange, dispose of, finance, deal in, construct, build, equip, improve, use, operate, maintain and work upon:

- (a) Any and all kinds of plants and systems for the manufacture, production, storage, utilization, purchase, sale, supply, transmission, distribution or disposition of electric energy, natural or artificial gas, water or steam, or power produced thereby, or of ice and refrigeration of any and every kind;
- (b) Any and all kinds of telephone, telegraph, radio, wireless and other systems, facilities and devices for the receipt and transmission of sounds and signals, any and all kinds of interurban, city and street railways and bus lines for the transportation of passengers and/or freight, transmission lines, systems, appliances, equipment and devices and tracks, stations, buildings and other structures and facilities;
- (c) Any and all kinds of works, power plants, manufactories, structures, substations, systems, tracks, machinery, generators, motors, lamps, poles, pipes, wires, cables, conduits, apparatus, devices, equipment, supplies, articles and merchandise of every kind pertaining to or in anywise connected with the construction, operation or maintenance of telephone, telegraph, radio, wireless and other systems, facilities and devices for the receipt and transmission of sounds and signals, or of interurban, city and street railways and bus lines, or in anywise connected with or pertaining to the manufacture, production, purchase, use, sale, supply, transmission, distribution, regulation, control or application of electric energy, natural or artificial gas, water, steam, ice, refrigeration and power or any other purpose;

To acquire, buy, hold, own, sell, lease, exchange, dispose of, transmit, distribute, deal in, use, manufacture, produce, furnish and supply street and interurban railway and bus service, electric energy, natural or artificial gas, light, heat, ice, refrigeration, water and steam in any form and for any purposes whatsoever; and any power or force, or energy in any form and for any purposes whatsoever;

To manufacture, produce, buy or in any other manner acquire, and to sell, furnish, dispose of and distribute steam for heating or other purposes, and to purchase, lease or otherwise acquire, build, construct, erect, hold, own, improve, enlarge, maintain, operate, control, supervise and manage and to sell, lease or otherwise dispose of plants, works and facilities, including distribution systems, mains, pipes, conduits and meters, and all other necessary apparatus and appliances used or useful or convenient for use in the business of manufacturing, producing, selling, furnishing, disposing of and distributing steam for heating or for any other purposes;

To acquire, organize, assemble, develop, build up and operate constructing and operating and other organizations and systems, and to hire, sell, lease, exchange, turn over, deliver and dispose of such organizations and systems in whole or in part and as going organizations and systems and otherwise, and to enter into and perform contracts, agreements and undertakings of any kind in connection with any or all of the foregoing powers;

To do a general contracting business;

To purchase, acquire, develop, mine, explore, drill, hold, own, sell and dispose of lands, interest in and rights with respect to lands and waters and fixed and movable property;

To plan, design, construct, alter, repair, remove or otherwise engage in any work upon bridges, dams, canals, piers, docks, wharfs, buildings, structures, foundations, mines, shafts, tunnels, wells, waterworks and all kinds of structural excavations and subterranean work and generally to carry on the business of contractors and engineers;

To manufacture, improve and work upon and to deal in, purchase, hold, sell and convey minerals, metals, wood, oils and other liquids, gases, chemicals, animal and plant products or any of the products and by-products thereof or any article or thing into the manufacture of which any of the foregoing may enter;

To manufacture, improve, repair and work upon and to deal in, purchase, hold, sell and convey any and all kinds of machines, instruments, tools, implements, mechanical devices, engines, boilers, motors, generators, rails, cars, ships, boats, launches, automobiles, trucks, tractors, airships, aeroplanes, articles used in structural work, building materials, hardware, textiles, clothing, cloth, leather goods, furs and any other goods, wares and merchandise of whatsoever kind;

To construct, erect and sell buildings and structures in and on any lands for any use or purpose; to equip and operate warehouses, office buildings, hotels, apartment houses, apartment hotels and restaurants, or any other buildings and structures of whatsoever kind;

To guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of the state of Washington or of any other state or government, and, while the owner of such stock, to exercise all the rights, powers and privileges of individual ownership with respect thereto, including the right to vote thereon, and to consent and otherwise act with respect thereto;

To aid in any manner any corporation or association, domestic or foreign, or any firm or individual, any shares of stock in which or any bonds, debentures, notes, securities, evidence of indebtedness, contracts or obligations of which are held by or for the Corporation or in which or in the welfare of which the Corporation shall have any interest, and to do any acts designed to protect, preserve, improve or enhance the value of any property at any time held or controlled by the Corporation, or in which it may be interested at any time; and to organize or promote or facilitate the organization of subsidiary companies;

To purchase from time to time any of its stock outstanding (so far as may be permitted by law) at such price as may be fixed by its Board of Directors or Executive Committee and accepted by the holders of the stock purchased, and to resell any stock so purchased at such price as may be fixed by its said Board of Directors or Executive Committee;

In any manner to acquire, enjoy, utilize and to sell or otherwise dispose of patents, copyrights and trademarks and any licenses or other rights or interests therein and thereunder;

To purchase, acquire, hold, own and sell or otherwise dispose of franchises, concessions, consents, privileges and licenses;

To borrow money and contract debts, to issue bonds, promissory notes, bills of exchange, debentures and other obligations and evidences of indebtedness payable at a specified time or times or payable upon the happening of a specified event or events, whether secured by mortgage, pledge or otherwise or unsecured, for money borrowed or in payment for property purchased or acquired or any other lawful objects; all as may be determined from time to time by the Board of Directors or Executive Committee of the Corporation, pursuant to the authority hereby conferred;

To create mortgages or deeds of trust which shall cover and create a lien upon all or any part of the property of the Corporation of whatsoever kind and wheresoever situated, then owned or thereafter acquired, and to provide in any such mortgage or deed of trust that the amount of bonds or other evidences of indebtedness to be issued thereunder and to be secured thereby shall be limited to a definite amount or limited only by the conditions therein specified and to issue or cause to be issued by the Corporation the bonds or other evidences of indebtedness to be secured thereby; all as may be determined from time to time by the Board of Directors or Executive Committee of the Corporation pursuant to the authority hereby conferred;

To do all and everything necessary and proper for the accomplishment of the objects enumerated in these Articles of Incorporation or any amendment thereof or necessary or incidental to the protection and benefit of the Corporation, and in general to carry on any lawful business necessary or incidental to the attainment of the objects of the Corporation whether or not such business is similar in nature to the objects set forth in these Articles of Incorporation or any amendment thereof;

To do any or all things herein set forth, to the same extent and as fully as natural persons might or could do, and in any part of the world, and as principal, agent, contractor or otherwise, and either alone or in conjunction with any other persons, firms, associations or corporations;

To conduct its business in any or all its branches in the state of Washington, other states, the District of Columbia, the territories and colonies of the United States, and any foreign countries, and to have one or more offices out of the state of Washington.

THIRD:

- (a) The amount of capital with which the Corporation will begin to carry on business hereunder shall be FIVE MILLION FIVE HUNDRED DOLLARS (\$5,000,500).
- (b) The aggregate number of shares of capital stock which the Corporation shall have authority to issue is 210,000,000 shares, divided into 10,000,000 shares of Preferred Stock without nominal or par value, issuable in series as hereinafter provided, and 200,000,000 shares of Common Stock without nominal or par value.
- (c) A statement of the preferences, limitations and relative rights of each class of capital stock of the Corporation, namely, the Preferred Stock without nominal or par value and the Common Stock without nominal or par value, of the variations in the relative rights and preferences as between series of the Preferred Stock insofar as the same are fixed by these Articles of Incorporation, and of the authority vested in the Board of Directors of the Corporation to

establish series of Preferred Stock and to fix and determine the variations in the relative rights and preferences as between series insofar as the same are not fixed by these Articles of Incorporation and as to which there may be variations between series is as follows.

(d) The shares of the Preferred Stock may be divided into and issued in series. Each series shall be so designated as to distinguish the shares thereof from the shares of all other series of the Preferred Stock and all other classes of capital stock of the Corporation. To the extent that these Articles of Incorporation shall not have established series of the Preferred Stock and fixed and determined the variations in the relative rights and preferences as between series, the Board of Directors shall have authority, and is hereby expressly vested with authority, to divide the Preferred Stock into series and, within the limitations set forth in these Articles of Incorporation and such limitations as may be provided by law, to fix and determine the relative rights and preferences of any series of the Preferred Stock so established. Such action by the Board of Directors shall be expressed in a resolution or resolutions adopted by it prior to the issuance of shares of each series, which resolution or resolutions shall also set forth the distinguishing designation of the particular series of the Preferred Stock established thereby. Without limiting the generality of the foregoing, authority is hereby expressly vested in the Board of Directors so to fix and determine, with respect to any series of the Preferred Stock:

- (1) the rate or rates of dividend, if any, which may be expressed in terms of a formula or other method by which such rate or rates shall be calculated from time to time, and the date or dates on which dividends may be payable;
- (2) whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;
- (3) the amount payable upon shares in event of voluntary and involuntary liquidation;
- (4) sinking fund provisions, if any, for the redemption or purchase of shares; and
- (5) the terms and conditions, if any, on which shares may be converted.

All shares of the Preferred Stock of the same series shall be identical except that shares of the same series issued at different times may vary as to the dates from which dividends thereon shall be cumulative; and all shares of the Preferred Stock, irrespective of series, shall constitute one and the same class of stock, shall be of equal rank, and shall be identical except as to the designation thereof, the date or dates from which dividends on shares thereof shall be cumulative, and the relative rights and preferences set forth above in clauses (1) through (5) of this subdivision (d), as to which there may be variations between different series. Except as may be otherwise provided by law, by subdivision (j) of this Article THIRD, or by the resolutions establishing any series of Preferred Stock in accordance with the foregoing provisions of this subdivision (d), whenever the written consent, affirmative vote, or other action on the part of the holders of the Preferred Stock may be required for any purpose, such consent, vote or other action shall be taken by the holders of the Preferred Stock as a single class irrespective of series and not by different series.

(e) Out of any funds legally available for the payment of dividends, the holders of the Preferred Stock of each series shall be entitled, in preference to the holders of the Common Stock, to receive, but only when and as declared by the Board of Directors, dividends at the rate or rates fixed and determined with respect to each series in accordance with these Articles of Incorporation, and no more, payable as hereinafter provided. Such dividends shall be cumulative



so that if for all past dividend periods and the then current dividend periods dividends shall not have been paid or declared and set apart for payment on all outstanding shares of each series of the Preferred Stock, at the dividend rates fixed and determined for the respective series, the deficiency shall be fully paid or declared and set apart for payment before any dividends on the Common Stock shall be paid or declared and set apart for payment; provided, however, that nothing in this subdivision (e) or elsewhere in these Articles of Incorporation shall prevent the simultaneous declaration and payment of dividends on both the Preferred Stock and the Common Stock if there are sufficient funds legally available to pay all dividends concurrently. Dividends on all shares of the Preferred Stock of each series shall be cumulative from the date of issuance of shares of such series. If more than one series of the Preferred Stock shall be outstanding and if dividends on each series shall not have been paid or declared and set apart for payment, at the dividend rate or rates fixed and determined for such series, the shares of the Preferred Stock of each series shall share ratably in the payment of dividends including accumulations, if any, in accordance with the sums which would be payable on such shares if all dividends were declared and paid in full. As to all series of Preferred Stock, the dividend payment dates for regular dividends shall be the fifteenth day of March, June, September and December in each year, unless other dividend payment dates shall have been fixed and determined for any series in accordance with subdivision (d) of this Article THIRD, and the dividend period in respect of which each regular dividend shall be payable in respect of each series shall be the period commencing on the next preceding dividend payment date for such series and ending on the day next preceding the dividend payment date for such dividend. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments which may be in arrears.

- (f) Subject to the limitations set forth in paragraph (e) or elsewhere in these Articles of Incorporation (and subject to the rights of any class of stock hereafter authorized), dividends may be paid on the Common Stock when and as declared by the Board of Directors out of any funds legally available for the payment of dividends, and no holder of shares of any series of the Preferred Stock as such shall be entitled to share therein.
- (g) In the event of any voluntary dissolution, liquidation or winding up of the Corporation, before any distribution or payment shall be made to the holders of the Common Stock, the holders of the Preferred Stock of each series then outstanding shall be entitled to receive out of the net assets of the Corporation available for distribution to its shareholders the respective amounts per share fixed and determined in accordance with these Articles of Incorporation to be payable on the shares of such series in the event of voluntary liquidation, and no more, and in the event of any involuntary dissolution, liquidation or winding up of the Corporation, before any distribution or payment shall be made to the holders of the Common Stock, the holders of the Preferred Stock of each series then outstanding shall be entitled to receive out of the net assets of the Corporation available for distribution to its shareholders the respective amounts per share fixed and determined in accordance with these Articles of Incorporation to be payable on the shares of such series in the event of involuntary liquidation, and no more. If upon any dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, the net assets of the Corporation available for distribution to its shareholders shall be insufficient to pay the holders of all outstanding shares of Preferred Stock of all series the full amounts to which they shall be respectively entitled as aforesaid, the entire net assets of the Corporation available for distribution shall be distributed ratably to the holders of all outstanding shares of Preferred Stock of all series in proportion to the amounts to which they shall be respectively so entitled. For the purposes of this and the next succeeding subdivision, and without limiting the right of the Corporation to distribute its assets or to dissolve, liquidate or wind up in connection with any sale, merger or consolidation, the sale of all or substantially all of the property of the

Corporation, or the merger or consolidation of the Corporation into or with any other corporation or corporations, shall not be deemed to be a distribution of assets or a dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary.

- (h) Subject to the limitations set forth in subdivision (g) of this Article THIRD or elsewhere in these Articles of Incorporation (and subject to the rights of any class of stock hereafter authorized) upon any dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, any net assets of the Corporation available for distribution to its shareholders shall be distributed ratably to holders of the Common Stock.
- (i) The Preferred Stock may be redeemed in accordance with the following provisions of this subdivision (i):
  - (1) Each series of the Preferred Stock which has been determined to be redeemable as permitted by subdivision (d) of this Article THIRD may be redeemed in whole or in part by the Corporation, at its election expressed by resolution of the Board of Directors, at any time or from time to time, at the then applicable redemption price fixed and determined with respect to each series, subject however, to any terms and conditions specified in respect of any series of the Preferred Stock in accordance with subdivision (d) of this Article THIRD. If less than all of the shares of any series are to be redeemed, the redemption shall be made either pro rata or by lot in such manner as the Board of Directors shall determine.
  - (2) In the event the Corporation shall so elect to redeem shares of the Preferred Stock, notice of the intention of the Corporation to do so and of the date and place fixed for redemption shall be mailed not less than thirty nor more than ninety days before the date fixed for redemption to each holder of shares of the Preferred Stock to be redeemed at his address as it shall appear on the books of the Corporation, and on and after the date fixed for redemption and specified in such notice (unless the Corporation shall default in making payment of the redemption price), such holders shall cease to be shareholders of the Corporation with respect to such shares and shall have no interest in or claim against the Corporation with respect to such shares, excepting only the right to receive the redemption price therefor from the Corporation on the date fixed for redemption, without interest, upon endorsement, if required, and surrender of their certificates for such shares.
  - (3) Contemporaneously with the mailing of notice of redemption of any shares of the Preferred Stock as aforesaid or at any time thereafter on or before the date fixed for redemption, the Corporation may, if it so elects, deposit the aggregate redemption price of the shares to be redeemed with any bank or trust company doing business in the City of New York, New York, or Spokane, Washington, having a capital and surplus of at least \$5,000,000, named in such notice, payable on the date fixed for redemption in the proper amounts to the respective holders of the shares to be redeemed, upon endorsement, if required, and surrender of their certificates for such shares, and on and after the making of such deposit such holders shall cease to be shareholders of the Corporation with respect to such shares and shall have no interest in or claim against the Corporation with respect to such shares, excepting only the right to exercise such redemption or exchange rights, if any, on or before the date fixed for redemption as may have been provided with respect to such shares or the right to receive the redemption price of their shares from such bank or trust company on the date fixed for redemption, without interest, upon endorsement, if required, and surrender of their certificates for such shares.

- (4) If the Corporation shall have so elected to deposit the redemption moneys with a bank or trust company, any moneys so deposited which shall remain unclaimed at the end of six years after the redemption date shall be repaid to the Corporation, and upon such repayment holders of Preferred Stock who shall not have made claim against such moneys prior to such repayment shall be deemed to be unsecured creditors of the Corporation for an amount, without interest, equal to the amount they would theretofore have been entitled to receive from such bank or trust company. Any redemption moneys so deposited which shall not be required for such redemption because of the exercise, after the date of such deposit, of any right of conversion or exchange or otherwise, shall be returned to the Corporation forthwith. The Corporation shall be entitled to receive any interest allowed by any bank or trust company on any moneys deposited with such bank or trust company as herein provided, and the holders of any shares called for redemption shall have no claim against any such interest.
- (5) Nothing herein contained shall limit any legal right of the Corporation to purchase or otherwise acquire any shares of the Preferred Stock.
- (j) The holders of the Preferred Stock shall not have any right to vote for the election of Directors or for any other purpose except as otherwise provided by law and as set forth below in this subdivision of this Article THIRD or elsewhere in these Articles of Incorporation. Holders of Preferred Stock shall be entitled to notice of each meeting of shareholders at which they shall have any right to vote but except as may be otherwise provided by law shall not be entitled to notice of any other meeting of shareholders.
- (1) Whenever and as often as, at any date, dividends payable on any shares of the Preferred Stock shall be in arrears in an amount equal to the aggregate amount of dividends accumulated on such shares of the Preferred Stock over the eighteen-month period ended on such date, the holders of the Preferred Stock of all series, voting separately and as a single class, shall be entitled to vote for and to elect a majority of the Board of Directors, and the holders of the Common Stock, voting separately and as a single class, shall be entitled to vote for and to elect the remaining Directors of the Corporation. The right of the holders of the Preferred Stock to elect a majority of the Board of Directors shall, however, cease when all defaults in the payment of dividends on their stock shall have been cured and such dividends shall be declared and paid out of any funds legally available therefor as soon as in the judgment of the Board of Directors is reasonably practicable. The terms of office of all persons who may be Directors of the Corporation at the time the right to elect Directors shall accrue to the holders of the Preferred Stock as herein provided shall terminate upon the election of their successors at a meeting of the shareholders of the Corporation then entitled to vote. Such election shall be held at the next Annual Meeting of Shareholders or may be held at a special meeting of shareholders but shall be held upon notice as provided in the Bylaws of the Corporation for a special meeting of the shareholders. Any vacancy in the Board of Directors occurring during any period when the Preferred Stock shall have elected representatives on the Board shall be filled by a majority vote of the remaining Directors representing the class of stock theretofore represented by the Director causing the vacancy. At all meetings of the shareholders held for the purpose of electing Directors during such times as the holders of the Preferred Stock shall have the exclusive right to elect a majority of the Board of Directors of the Corporation, the presence in person or by proxy of the holders of a majority of the outstanding shares of Preferred Stock of all series shall be required to substitute a quorum of such class for the election of Directors, and the presence in person or by proxy of the holders of a majority of the outstanding shares of Common Stock shall be required to constitute a quorum of such

class for the election of Directors; provided, however, that the absence of a quorum of the holders of stock of either class shall not prevent the election at any such meeting, or adjournment thereof, of Directors by the other class if the necessary quorum of the holders of stock of such class is present in person or by proxy at such meeting; and provided further, that, in the absence of a quorum of the holders of stock of either class, a majority of those holders of such stock who are present in person or by proxy shall have the power to adjourn the election of those Directors to be elected by that class from time to time without notice, other than announcement at the meeting, until the requisite amount of holders of stock of such class shall be present in person or by proxy.

- (2) So long as any shares of the Preferred Stock shall be outstanding, the Corporation shall not, without the affirmative vote of the holders of at least a majority of the shares of the Preferred Stock at the time outstanding, adopt any amendment to these Articles of Incorporation if such amendment would:
  - (i) create or authorize any new class of stock ranking prior to or on a parity with the Preferred Stock as to dividends or upon dissolution, liquidation or winding up;
  - (ii) increase the authorized number of shares of the Preferred Stock; or
  - (iii) change any of the rights or preferences of the Preferred Stock at the time outstanding provided, however, that if any proposed change of any of the rights or preferences of any outstanding shares of the Preferred Stock would affect the holders of shares of one or more, but not all, series of the Preferred Stock then outstanding, only the affirmative vote of the holders of at least a majority of the total number of outstanding shares of all series so affected shall be required; and provided further, that nothing herein shall authorize the adoption of any amendment to these Articles of Incorporation by the vote of the holders of a lesser number of shares of the Preferred Stock, or of any other class of stock, or of all classes of stock, than is required for such an amendment by the laws of the state of Washington at the time applicable thereto.
- (3) So long as any shares of the Preferred Stock shall be outstanding, the Corporation shall not, without the affirmative vote of the holders of at least a majority of the shares of the Preferred Stock at the time outstanding, issue any shares of the Preferred Stock, or of any other class of stock ranking prior to or on a parity with the Preferred Stock as to dividends or upon dissolution, liquidation or winding up, unless the net income of the Corporation available for the payment of dividends for a period of twelve consecutive calendar months within the fifteen calendar months immediately preceding the issuance of such shares (including, in any case in which such shares are to be issued in connection with the acquisition of new property, the net income of the property so to be acquired, computed on the same basis as the net income of the Corporation) is at least equal to one and one-half times the annual dividend requirements on all shares of the Preferred Stock, and on all shares of all other classes of stock ranking prior to or on a parity with the Preferred Stock as to dividends or upon dissolution, liquidation or winding up, which will be outstanding immediately after the issuance of such shares, including the shares proposed to be issued; provided, however, that if the shares of any series of the Preferred Stock or any such prior or parity stock shall have a variable dividend rate, the annual dividend requirement on the shares of such series shall be determined by reference to the weighted average dividend rate on such shares during the twelve-month period for which the net income of the Corporation available for the payment of dividends shall have been determined; and



provided, further, that if the shares of the series to be issued are to have a variable dividend rate, the annual dividend requirement on the shares of such series shall be determined by reference to the initial dividend rate upon the issuance of such shares. In any case where it would be appropriate, under generally accepted accounting principles to combine or consolidate the financial statements of any parent or subsidiary of the Corporation with those of the Corporation, the foregoing computation may be made on the basis of such combined or consolidated financial statements.

- (k) Subject to the limitations set forth in subdivision (j) of this Article THIRD (and subject to the rights of any class of stock hereafter authorized), and except as may be otherwise provided by law, the holders of the Common Stock shall have the exclusive right to vote for the election of Directors and for all other purposes. At each meeting of shareholders, each holder of stock entitled to vote thereat shall be entitled to one vote for each share of such stock held by him and recorded in his name on the record date for such meeting, and may vote and otherwise act in person or by proxy; provided, however, that at each election for Directors every shareholder entitled to vote at such election shall have the right to vote the number of shares held by him for as many persons as there are Directors to be elected and for whose election he has the right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such Directors multiplied by the number of his shares shall equal, or by distributing such votes on the same principle among any number of such candidates.
- (l) Subject to the limitations set forth in subdivision (j) of this Article THIRD (and subject to the rights of any class of stock hereafter authorized), and except as may be otherwise provided by law, upon the vote of a majority of all of the Directors of the Corporation and of the holders of record of two-thirds of the total number of shares of the Corporation then issued and outstanding and entitled to vote (or, if the vote of a larger number or different proportion of shares is required by the laws of the state of Washington, notwithstanding the above agreement of the shareholders of the Corporation to the contrary, then upon the vote of the holders of record of the larger number or different proportion of shares so required) the Corporation may from time to time create or authorize one or more other classes of stock with such preferences, designations, rights, privileges, powers, restrictions, limitations and qualifications as may be determined by said vote, which may be the same or different from the preferences, designations, rights, privileges, powers, restrictions, limitations and qualifications of the classes of stock of the Corporation then authorized and/or the Corporation may increase or decrease the number of shares of one or more of the classes of stock then authorized.
- (m) All stock of the Corporation without nominal or par value whether authorized herein or upon subsequent increases of capital stock or pursuant to any amendment hereof may be issued, sold and disposed of by the Corporation from time to time for such consideration in labor, services, money or property as may be fixed from time to time by the Board of Directors and authority to the Board of Directors so to fix such consideration is hereby granted by the shareholders. The consideration received by the Corporation from the issuance and sale of new or additional shares of capital stock without par value shall be entered in the capital stock account.
- (n) No holder of any stock of the Corporation shall be entitled as of right to purchase or subscribe for any part of any stock of the Corporation authorized herein or of any additional stock of any class to be issued by reason of any increase of the authorized capital stock of the Corporation or of any bonds, certificates of indebtedness, debentures or other securities convertible into stock of the Corporation but any stock authorized herein or any such additional authorized issue of any stock or of securities convertible into stock may be issued and disposed of by the Board of Directors to such persons, firms, corporations or associations upon such terms and conditions as

the Board of Directors in their discretion may determine without offering any thereof on the same terms or any terms to the shareholders then of record or to any class of shareholders.

- (o) (1) **Series I.** There is hereby established a ninth series of the Preferred Stock of the Corporation which shall have, in addition to the general terms and characteristics of all of the authorized shares of Preferred Stock of the Corporation, the following distinctive terms and characteristics:
- (a) The ninth series of Preferred Stock of the Corporation shall consist of 500,000 shares and be designated as "\$8.625 Preferred Stock, Series I."
  - (b) Said ninth series shall have a dividend rate of \$8.625 per share per annum.
  - (c) The amount payable upon the shares of said ninth series in the event of dissolution, liquidation or winding up of the Corporation shall be \$100.00 per share plus an amount equivalent to the accumulated and unpaid dividends thereon, if any, to the date of such dissolution, liquidation or winding up.
  - (d) (i) As and for a sinking fund for the redemption of shares of said ninth series, on June 15, 1996 and each June 15 thereafter until all shares of said ninth series shall have been retired, the Corporation shall redeem 100,000 shares of said ninth series at the price of \$100.00 per share plus an amount equivalent to the accumulated and unpaid dividends thereon, if any, to the date fixed for redemption. The Corporation shall be entitled, at its option, on June 15, 1996 and each June 15 thereafter, to redeem up to 100,000 shares of said ninth series, in addition to the shares otherwise required to be redeemed on such date, at \$100.00 per share plus an amount equivalent to the accumulated and unpaid dividends thereon, if any, to the date fixed for redemption; provided, however, that the option of the Corporation to so redeem up to 100,000 additional shares of the ninth series on each such sinking fund redemption date shall not be cumulative and shall not reduce the sinking fund requirements of this subparagraph (d) in any subsequent year. In the case of any redemption pursuant to this paragraph (d), the shares to be redeemed shall be selected by lot among the holders of the shares of said ninth series then outstanding in such manner as the appropriate Officers of the Corporation shall determine to result in a random selection. The shares of said ninth series shall not be redeemable at the option of the Corporation except as set forth in this subparagraph (d).
  - (ii) The sinking fund requirement of the Corporation to redeem shares of said ninth series pursuant to this subparagraph (d) shall be subject to any applicable restrictions of law and such redemption shall be made only out of funds legally available therefor.
  - (iii) The sinking fund requirement of the Corporation to redeem shares of said ninth series pursuant to this subparagraph (d) shall be cumulative. If at any time the Corporation shall not have satisfied in full the cumulative sinking fund requirement to redeem shares of said ninth series, the Corporation shall not pay or declare and set apart for payment any dividends upon, or make any other distribution with respect to, or redeem, purchase or otherwise acquire

any shares of, the Common Stock or any other class of stock ranking as to dividends and distributions of assets junior to the Preferred Stock.

- (iv) If at any time the Corporation shall not have satisfied in full the cumulative sinking fund requirement to redeem shares of said ninth series pursuant to this subparagraph (d), and if at such time the Corporation shall be required pursuant to a sinking or similar fund to redeem or purchase shares of any other series of the Preferred Stock or any other class of stock ranking as to dividends and distributions of assets on a parity with the Preferred Stock, any funds of the Corporation legally available for the purpose shall be allocated among all such sinking or similar funds for series of the Preferred Stock and such parity stock in proportion to the respective amounts then required for the satisfaction thereof.
  - (e) The shares of said ninth series shall not, by their terms, be convertible.
- (2) **Series K.** There is hereby established an eleventh series of the Preferred Stock of the Corporation which shall have, in addition to the general terms and characteristics of all of the authorized shares of Preferred Stock of the Corporation, the following distinctive terms and characteristics:
- (a) The eleventh series of Preferred Stock of the Corporation shall consist of 350,000 shares and be designated as "\$6.95 Preferred Stock, Series K."
  - (b) Said eleventh series shall have a dividend rate of \$6.95 per share per annum.
  - (c) The amount payable upon the shares of said eleventh series in the event of dissolution, liquidation or winding up of the Corporation shall be \$100.00 per share plus an amount equivalent to accumulated and unpaid dividends thereon, if any, to the date of such dissolution, liquidation or winding up.
  - (d) (i) As and for a sinking fund for the redemption of shares of said eleventh series, on September 15, 2002, and on each September 15 thereafter to and including September 15, 2006, the Corporation shall redeem 17,500 shares of said eleventh series, and on September 15, 2007, the Corporation shall redeem all of the shares of said eleventh series then outstanding, in each case at the price of \$100.00 per share plus an amount equivalent to the accumulated and unpaid dividends thereon, if any, to the date fixed for redemption. The Corporation shall be entitled, at its option, on September 15, 2002, and on each September 15 thereafter to and including September 15, 2006, to redeem up to 17,500 shares of said eleventh series, in addition to the shares otherwise required to be redeemed on such date, at the price of \$100.00 per share plus an amount equivalent to the accumulated and unpaid dividends thereon, if any, to the date fixed for redemption; provided, however, that the option of the Corporation to so redeem up to 17,500 additional shares of the eleventh series on each such sinking fund redemption date shall not be cumulative and shall not reduce the sinking fund requirements of this subparagraph (d) in any subsequent year. The Corporation shall be entitled, at its option, to credit against any sinking fund redemption requirement any shares of said eleventh series theretofore purchased or otherwise acquired by the Corporation and not theretofore credited against any other sinking fund redemption requirement. In the case of

any redemption pursuant to this subparagraph (d), the shares to be redeemed shall be selected by lot among the holders of the shares of said eleventh series then outstanding in such manner as the appropriate Officers of the Corporation shall determine to result in a random selection. The shares of said eleventh series shall not be redeemable at the option of the Corporation except as set forth in this subparagraph (d).

- (ii) The sinking fund requirement of the Corporation to redeem shares of said eleventh series pursuant to this subparagraph (d) shall be subject to any applicable restrictions of law and such redemption shall be made only out of funds legally available therefor.
  - (iii) The sinking fund requirement of the Corporation to redeem shares of said eleventh series pursuant to this subparagraph (d) shall be cumulative. If at any time the Corporation shall not have satisfied in full the cumulative sinking fund requirement to redeem shares of said eleventh series, the Corporation shall not pay or declare and set apart for payment any dividends upon, or make any other distribution with respect to, or redeem, purchase or otherwise acquire any shares of, the Common Stock or any other class of stock ranking as to dividends and distributions of assets junior to the Preferred Stock.
  - (iv) If at any time the Corporation shall not have satisfied in full the cumulative sinking fund requirement to redeem shares of said eleventh series pursuant to this subparagraph (d), and if at such time the Corporation shall be required pursuant to a sinking or similar fund to redeem or purchase shares of any other series of the Preferred Stock or any other class of stock ranking as to dividends and distributions of assets on a parity with the Preferred Stock, any funds of the Corporation legally available for the purpose shall be allocated among all such sinking or similar funds for series of the Preferred Stock and such parity stock in proportion to the respective amounts then required for the satisfaction thereof.
  - (e) The shares of said eleventh series shall not, by their terms, be convertible.
- (3) **Series L.** There is hereby established a twelfth series of the Preferred Stock of the Corporation which shall have, in addition to the general terms and characteristics of all of the authorized shares of Preferred Stock of the Corporation, the following distinctive terms and characteristics:
- (a) The twelfth series of Preferred Stock of the Corporation shall consist of 1,540,460 shares and be designated as "\$12.40 Preferred Stock, Convertible Series L".
  - (b) Said twelfth series shall have a dividend rate of \$12.40 per share per annum; provided, however, that the amount of the dividend per share payable on December 15, 1998 shall be \$3.10.
  - (c) The shares of said twelfth series shall not, by their terms, be redeemable.
  - (d) The amount payable upon the shares of said twelfth series in the event of dissolution, liquidation or winding up of the Corporation shall be \$182.8125 per share plus an

amount equivalent to accumulated and unpaid dividends thereon, if any, to the date of such dissolution, liquidation or winding up.

- (e) There shall be no sinking fund for the redemption or purchase of shares of said twelfth series.
- (f) (i) (A) Each share of said twelfth series shall be mandatorily converted on November 1, 2001 (the "Mandatory Conversion Date") into (1) a number of shares of Common Stock determined by reference to the Common Equivalent Rate (as hereinafter defined) then in effect plus (2) the right to receive an amount, in cash, equivalent to the accumulated and unpaid dividends on such share of said twelfth series, if any, to but excluding the Mandatory Conversion Date.
  - (B) Each share of said twelfth series shall be convertible, at the option of the Company, at any time on or after December 15, 1998 and prior to the Mandatory Conversion Date, into (1) a number of shares of Common Stock equal to the Optional Conversion Price then in effect, (2) the right to receive an amount, in cash, equivalent to the accumulated and unpaid dividends on the share of said twelfth series to be converted to but excluding the date fixed for conversion plus (3) the right to receive the Optional Conversion Premium; it being understood that the Company may not so convert less than all shares of said twelfth series.
  - (C) Each share of said twelfth series shall be mandatorily converted, at the time of effectiveness of any Extraordinary Transaction, into, or into the right to receive, as the case may be, securities and other property (including cash) of the same character and in the same respective amounts as the holder of such share would have received if such share had been converted pursuant to clause (B) above immediately prior to such time of effectiveness.
- (ii) (A) The "Common Equivalent Rate" shall be initially ten shares of Common Stock for each share of said twelfth series; provided, however, that the Common Equivalent Rate shall be subject to adjustment from time to time as provided below. All adjustments to the Common Equivalent Rate shall be calculated to the nearest 1/100th of a share of Common Stock. Such rate, as adjusted and in effect at any time, is herein called the "Common Equivalent Rate."
  - (B) If the Corporation shall do any of the following (each, an "Adjustment Event"):
    - (1) pay a dividend or make a distribution with respect to Common Stock in shares of Common Stock,
    - (2) subdivide, reclassify or split its outstanding shares of Common Stock into a greater number of shares,
    - (3) combine or reclassify its outstanding shares of Common Stock into a smaller number of shares, or



- (4) issue by reclassification of its shares of Common Stock any shares of Common Stock other than in an Extraordinary Transaction (as hereinafter defined),

then the Common Equivalent Rate in effect immediately prior to such Adjustment Event shall be adjusted so that on the Mandatory Conversion Date each share of said twelfth series shall be converted into the number of shares of Common Stock that the holder of such share would have owned or been entitled to receive after the happening of the Adjustment Event had such share been mandatorily converted immediately prior to the record date, if any, for such Adjustment Event or, if there is no record date, immediately prior to the effectiveness of such Adjustment Event. In case the Adjustment Event is a dividend or distribution, the adjustment to the Common Equivalent Rate shall become effective as of the close of business on the record date for determination of shareholders entitled to receive such dividend or distribution and any shares of Common Stock issuable in payment of a dividend shall be deemed to have been issued immediately prior to the close of business on the record date for such dividend for purposes of calculating the number of outstanding shares of Common Stock under clauses (C) and (D) below; and, in case the Adjustment Event is a subdivision, split, combination or reclassification, the adjustment to the Common Equivalent Rate shall become effective immediately after the effective date of such subdivision, split, combination or reclassification. Such adjustment shall be made successively.

In the event that Rights are separated from the outstanding shares of the Common Stock in accordance with the provisions of the Rights Agreement such that holders of shares of said twelfth series would not be entitled to receive any Rights in respect of the shares of Common Stock issuable upon conversion of the shares of said twelfth series, the Common Equivalent Rate shall be adjusted by multiplying the Common Equivalent Rate in effect on the Distribution Date (as defined in the Rights Agreement) by a fraction (1) the numerator of which shall be the Current Market Price per share of the outstanding shares of Common Stock on the Trading Date next preceding the Distribution Date and (2) the denominator of which shall be such Current Market Price less the fair market value (as determined by the Board of Directors of the Company, whose determination shall be conclusive, final and binding on the Corporation and all shareholders of the Corporation) as of such Distribution Date of the portion of the Rights allocable to one share of Common Stock. Such adjustment shall become effective on the opening of business on the business day next following the Distribution Date and will remain in effect unless and until (A) the Company (i) amends the Rights Agreement to provide that upon conversion of the shares of said twelfth series the holders thereof will receive, in addition to the shares of Common Stock issuable upon such conversion, the Rights which would have attached to such shares of Common Stock if the Rights had not become separated from the Common Stock pursuant to the Rights Agreement and (ii) converts the Preferred Stock into shares of Common Stock with such Rights or (B) the Rights expire, terminate or are redeemed, in which case appropriate adjustments, if any, shall be made to the Common Equivalent Rate consistent with the provisions of this subparagraph (f)(i). Notwithstanding the foregoing, in the event the aforesaid fair market value of the portion of the

Rights allocable to one share of Common Stock is equal to or greater than the Current Market Price per share of Common Stock on the Trading Date mentioned above, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of shares of said twelfth series shall have the right to receive upon conversion the number of shares of Common Stock such holder would have received had the shares of said twelfth series been mandatorily converted immediately prior to the Distribution Date.

- (C) If the Corporation shall, after the date of the initial issuance of shares of said twelfth series, issue rights or warrants to all holders of the Common Stock entitling them for a period not exceeding 45 days from the date of such issuance to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price of the Common Stock (as hereinafter defined), on the record date for the determination of shareholders entitled to receive such rights or warrants, then in each case the Common Equivalent Rate shall be adjusted by multiplying the Common Equivalent Rate in effect immediately prior to the date of issuance of such rights or warrants by a fraction (1) the numerator of which shall be the number of shares of Common Stock outstanding on the date of issuance of such rights or warrants, immediately prior to such issuance, plus the number of additional shares of Common Stock offered for subscription or purchase pursuant to such rights or warrants and (2) the denominator of which shall be the number of shares of Common Stock outstanding on the date of issuance of such rights or warrants, immediately prior to such issuance, plus the number of shares of Common Stock which the aggregate offering price of the total number of shares of Common Stock so offered for subscription or purchase pursuant to such rights or warrants would purchase at such Current Market Price (determined by multiplying such total number of shares by the exercise price of such rights or warrants and dividing the product so obtained by such Current Market Price). Such adjustment shall become effective as of the close of business on the record date for the determination of shareholders entitled to exercise such rights or warrants. To the extent that shares of Common Stock are not delivered after the expiration of such rights or warrants, the Common Equivalent Rate shall be readjusted to the Common Equivalent Rate which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made upon the basis of delivery of only the number of shares of Common Stock actually delivered. Such adjustment shall be made successively.
- (D) If the Corporation shall pay a dividend or make any other distribution to all holders of its Common Stock of evidences of its indebtedness or other assets (including shares of capital stock of the Corporation (other than Common Stock) but excluding any distributions and dividends referred to in clause (B) above or any cash dividends), or shall issue to all holders of its Common Stock rights or warrants to subscribe for or purchase any of its securities (other than those referred to in clause (C) above), then, in each such case, the Common Equivalent Rate shall be adjusted by multiplying the Common Equivalent Rate in effect on the record date for the determination of shareholders entitled to receive such dividend or distribution mentioned below by a fraction (1) the numerator of which shall be the Current Market Price of the Common Stock on such record date and (2) the denominator of

which shall be such Current Market Price per share of Common Stock less the fair market value (as determined by the Board of Directors of the Corporation, whose determination shall be conclusive, as final and binding upon the Corporation and all shareholders of the Corporation) as of such record date of the portion of the assets or evidences of indebtedness so distributed, or of such subscription rights or warrants, allocable to one share of Common Stock. Such adjustment shall become effective on the opening of business on the business day next following the record date for the determination of the shareholders entitled to receive such dividend or distribution. Notwithstanding the foregoing, in the event the portion of the assets or other evidences of indebtedness so distributed allocable to one share of Common Stock has a value equal to or greater than the Current Market Price per share of Common Stock on the record date mentioned above, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of shares of said twelfth series shall have the right to receive upon conversion assets or other evidences of indebtedness having a value in the amount such holder would have received had the shares of said twelfth series been mandatorily converted immediately prior to the record date for such dividend or distribution.

- (E) If the Corporation shall pay a dividend or make any other distribution to all holders of its Common Stock exclusively in cash (excluding any quarterly cash dividend on Common Stock in any quarter to the extent it does not exceed \$.16 per share (as adjusted to reflect subdivisions or combinations of Common Stock)) the Common Equivalent Rate shall be adjusted by multiplying the Common Equivalent Rate in effect on the record date for the determination of the shareholders entitled to receive such dividend or distribution by a fraction (1) the numerator of which shall be such Current Market Price per share of the Common Stock on such record date and (2) the denominator of which shall be such Current Market Price less the amount of cash so distributed (and not excluded as provided above) allocable to one share of Common Stock. Such adjustment shall become effective immediately prior to the opening of business on the business day next following record date. Notwithstanding the foregoing, in the event the portion of the cash so distributed allocable to one share of Common Stock is equal to or greater than the Current Market Price per share of Common Stock on the record date mentioned above, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of shares of said twelfth series shall have the right to receive upon conversion the amount of cash such holder would have received had the shares of said twelfth series been mandatorily converted immediately prior to the record date for such dividend or distribution. If an adjustment is required to be made pursuant to this clause (E) as a result of a distribution that is a quarterly dividend, such adjustment shall be based upon the amount by which such distribution exceeds the amount of the quarterly cash dividend permitted to be excluded as provided above; and an adjustment is required to be made pursuant to this clause (E) as a result of a distribution that is not a quarterly dividend, such adjustment shall be based upon the full amount of the distribution.
- (F) Anything herein to the contrary notwithstanding, the Corporation may, at its option, make such upward adjustment in the Common Equivalent Rate, in



addition to the adjustments specified above, as the Corporation in its sole discretion may determine to be advisable, in order that any stock dividends, subdivision of shares, distribution of rights to purchase stock or securities, or a distribution of securities convertible into or exchangeable for stock (or any transaction that could be treated as any of the foregoing transactions pursuant to Section 305 of the Internal Revenue Code of 1986, as amended) hereafter made by the Corporation to its shareholders shall not be taxable. Any such adjustment shall be made effective as of such date as the Board of Directors of the Corporation shall determine. The determination of the Board of Directors of the Corporation as to whether or not such an adjustment to the Common Equivalent Rate should be made and, if so, as to what adjustment should be made and when, shall be conclusive, final and binding on the Corporation and all shareholders of the Corporation.

- (G) As used herein, the "Current Market Price" of a share of Common Stock on any date shall be, except as otherwise specifically provided, the average of the daily Closing Prices (as hereinafter defined) for the five consecutive Trading Dates (as hereinafter defined) ending on and including the date of determination of the Current Market Price; provided, however, that if the Closing Price of the Common Stock on the Trading Date next following such five-day period (the "next-day closing price") is less than 95% of such average Closing Price, then the Current Market Price per share of Common Stock on such date of determination will be the next-day Closing Price; and provided, further, that with respect to any conversion or antidilution adjustment, if any event that results in an adjustment of the Common Equivalent Rate occurs during the period beginning on the first date of the applicable determination period and ending on the applicable conversion date, the Current Market Price as determined pursuant to the foregoing will be appropriately adjusted to reflect the occurrence of such event.
  - (H) In any case in which an adjustment as a result of any event is required to become effective as of the close of business on the record date for such event and the Mandatory Conversion Date occurs after such record date but before the occurrence of such event, the Corporation may in its sole discretion elect to defer the following until after the occurrence of such event (but shall be under no obligation to do so): (1) issuing to the holder of any converted shares of said twelfth series the additional shares of Common Stock issuable upon such conversion as a result of such adjustment and (2) paying to such holder any amount in cash in lieu of a fractional share of Common Stock as hereinafter provided.
- (iii) Whenever the Common Equivalent Rate is adjusted as herein provided, the Corporation shall:
- (A) forthwith compute the adjusted Common Equivalent Rate in accordance herewith and prepare a certificate signed by the President, any Vice President or the Treasurer of the Corporation setting forth the adjusted Common Equivalent Rate, the method of calculation thereof in reasonable detail and the facts requiring such adjustment and upon which such adjustment is based, which certificate shall be conclusive, final and binding evidence of the correctness of the adjustment, and file such certificate forthwith with the

transfer agent or agents for the shares of said twelfth series and for the Common Stock; and

- (B) mail a notice stating that the Common Equivalent Rate has been adjusted, the facts requiring such adjustment and upon which such adjustment is based and setting forth the adjusted Common Equivalent Rate to the holders of record of the outstanding shares of said twelfth series at or prior to the time the Corporation mails an interim statement to its shareholders covering the fiscal quarter during which the facts requiring such adjustment occurred, but in any event within 45 days of the end of such fiscal quarter.
- (iv) No fractional shares or scrip representing fractional shares of Common Stock shall be issued upon the conversion of any shares of said twelfth series. Instead of any fractional interest in a share of Common Stock which would otherwise be deliverable upon the conversion of a share of said twelfth series, the Corporation shall pay to the holder of such share an amount in cash (computed to the nearest cent) equal to the same fraction of the Current Market Price of the Common Stock determined as of the second Trading Date immediately preceding (i) the day on which the Company gives notice of an option conversion, (ii) in the event of an Extraordinary Transaction, the effective date of such transaction or (iii) in the event of a mandatory conversion, the Mandatory Conversion Date. If more than one share of any holder shall be converted at the same time, the number of full shares of Common Stock into which such shares shall be converted shall be computed on the basis of the aggregate number of shares so converted.
- (v) Definitions. As used with respect to the shares of said twelfth series:
  - (A) the term "business day" shall mean any day other than a Saturday, Sunday or a day on which banking institutions in the State of Washington or the State of New York are authorized or obligated by law or executive order to remain closed or are closed because of a banking moratorium or otherwise;
  - (B) the term "Closing Price" on any day shall mean the reported last sale price on such day, or, in case no such sale takes place on such day, the average of the reported last bid and asked prices on such day, in either case as reported on the Consolidated Tape maintained by the Consolidated Tape Association, or, if the Common Stock is not listed or admitted to trading on any securities exchange which participates in the Consolidated Tape Association, the average of the reported last bid and asked prices regular way (with any relevant due bills attached) of the Common Stock on the over-the-counter market on the day in question as reported by the National Association of Securities Dealers Automated Quotation System, or a similar generally accepted reporting service, or if no information of such character shall be available, as determined in good faith by the Board of Directors on the basis of such relevant factors as the Board of Directors in good faith considers appropriate, (such determination to be conclusive, final and binding upon the Corporation and all shareholders of the Corporation);
  - (C) the term "Extraordinary Transaction" shall mean a merger or consolidation of the Corporation, a share exchange, division or conversion of the Corporation's

capital stock or an amendment of the Restated Articles of Incorporation of the Corporation that results in the conversion or exchange of Common Stock into, or the right of the holders thereof to receive, in lieu of or in addition to their shares of Common Stock, other securities or other property (whether of the Corporation or any other entity);

- (D) the term "Notice Date" with respect to any notice given by the Corporation in connection with a conversion of any of the Shares of said twelfth series shall be the date of the commencement of the mailing of such notice to the holders of such shares as specified herein;
  - (E) the term "Optional Conversion Premium" shall mean, in respect of each share of said twelfth series converted at the option of the Company, an amount, in cash, initially equal to \$20.90, declining by \$.02111 for each day following December 15, 1998 to and including the optional conversion date (computed on the basis of a 360-day year consisting of twelve 30-day months) and equal to \$0 on and after September 15, 2001; provided, however, that in lieu of delivering such amount in cash, the Company may, at its option, deliver a number of shares of Common Stock equal to the quotient of such amount divided by the Current Market Price on the second Trading Date immediately preceding (1) the date on which the Company gives notice of such conversion or (2) in the event of an Extraordinary Transaction, the effective date of such transaction;
  - (F) the term "Optional Conversion Price" shall mean, in respect of each share of said twelfth series converted at the option of the Company, a number of shares of Common Stock equal to the lesser of (1) the amount of \$24.00 divided by the Current Market Price as of the second Trading Date immediately preceding (a) the date on which the Company gives notice of such conversion or (b) in the event of an Extraordinary Transaction, the effective date of such transaction, multiplied by ten and (2) the number of shares of Common Stock determined by reference to the Common Equivalent Rate;
  - (G) the term "Rights Agreement" shall mean the Rights Agreement, dated as of February 16, 1990, between the Company and The Bank of New York, successor Rights Agent, as amended; and the term "Rights" shall mean the "Preferred Share Purchase Rights" established under the Rights Agreement; and
  - (H) the term "Trading Date" shall mean a date on which the New York Stock Exchange (or any successor to such Exchange) is open for the transaction of business.
- (vi) (A) Unless otherwise required by applicable law, notice of any conversion shall be sent to the holders of the shares of said twelfth series to be converted at the addresses shown on the books of the Corporation by mailing a copy of such notice not less than fifteen (15) days nor more than sixty (60) days prior to the conversion date. Each such notice shall state (1) the conversion date, (2) the total number of shares of said twelfth series to be converted (being the total number of shares outstanding), (3) the conversion price, (4) the place or

places where certificates for such shares are to be surrendered in exchange for certificates and/or cash representing the conversion price and (5) that dividends on the shares to be converted will cease to accrue on such conversion date. Notwithstanding the foregoing, the failure so to mail any such notice of mandatory conversion or any defect therein or in the mailing thereof shall not prevent the occurrence of such conversion or impair the validity thereof.

- (B) The shares of said twelfth series shall, on the date fixed for conversion, be deemed to have been converted; from and after such conversion date dividends shall cease to accrue on such shares; and all rights of the holders of such shares (except only rights as holders of securities into which such shares shall have been converted and the right to receive certificates representing such securities and the right to receive an amount equal to dividends accrued on such shares to the date fixed for such conversion) shall terminate.
- (vii) Upon the surrender by a holder of converted shares of said twelfth series of certificates representing such shares in accordance with the notice of conversion on or after the conversion date, the Corporation shall deliver to or upon the order of such holder:
  - (A) certificates representing whole units of the securities into which such shares of said twelfth series have been converted, such certificates to be registered in such name or names, and to be issued in such denominations, as such holder shall have specified;
  - (B) an amount, in cash, in lieu of fractional shares, as hereinbefore provided;
  - (C) an amount, in cash, equivalent to accumulated and unpaid dividends on such shares of Series A Preferred Stock to the conversion date;
  - (D) an amount, in cash, securities or other property, representing any other consideration to be delivered upon such conversion; and
  - (E) a certificate representing any shares of said twelfth series which had been represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.
- (viii) The Corporation shall pay any and all documentary, stamp or similar issue or transfer taxes payable in respect of the issue or delivery of shares of Common Stock or other securities on the conversion of shares of said twelfth series; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any registration of transfer involved in the issue or delivery of shares of Common Stock or other securities in a name other than that of the registered holder of the shares converted, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

FOURTH: The duration of the Corporation shall be perpetual.

FIFTH: The number of Directors of the Corporation shall be such number, not to exceed eleven (11), as shall be specified from time to time by the Board of Directors in the Bylaws; provided, however, that if the right to elect a majority of the Board of Directors shall have accrued to the holders of the Preferred Stock as provided in paragraph (1) of subdivision (j) of Article THIRD, then, during such period as such holders shall have such right, the number of directors may exceed eleven (11). The Directors shall be divided into three classes, as nearly equal in number as possible. Commencing with the directors elected at the 1987 Annual Meeting of Shareholders, the term of office of the first class shall expire at the 1988 Annual Meeting of Shareholders, the term of office of the second class shall expire at the 1989 Annual Meeting of Shareholders and the term of office of the third class shall expire at the 1990 Annual Meeting of Shareholders. At each Annual Meeting of Shareholders thereafter, Directors elected to succeed those Directors whose terms expire shall be elected for a term of office to expire at the third succeeding Annual Meeting of Shareholders after their election. Notwithstanding the foregoing, Directors elected by the holders of the Preferred Stock in accordance with paragraph (1) of subdivision (j) of Article THIRD shall be elected for a term which shall expire not later than the next Annual Meeting of Shareholders. All Directors shall hold office until the expiration of their respective terms of office and until their successors shall have been elected and qualified.

Subject to the provisions of paragraph (1) of subdivision (j) of Article THIRD, (a) any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the Board of Directors and any director so elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office and (b) any directorship to be filled by reason of an increase in the number of Directors may be filled by the Board of Directors for a term of office continuing only until the next election of Directors by the shareholders.

No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Subject to the provisions of paragraph (1) of subdivision (j) of Article THIRD and the provisions of the next preceding paragraph of this Article FIFTH, any Director may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least a majority of the voting power of all of the shares of capital stock of the Corporation entitled generally to vote in the election of directors (such stock being hereinafter in these Articles of Incorporation called "Voting Stock"), voting together as a single class, at a meeting of shareholders called expressly for that purpose; provided, however, that if less than the entire Board of Directors is to be removed, no one of the directors may be removed if the votes cast against the removal of such director would be sufficient to elect such director if then cumulatively voted at an election of the class of Directors of which such director is a part.

Notwithstanding anything contained in these Articles of Incorporation to the contrary, the provisions of this Article FIFTH shall not be altered, amended or repealed, and no provision inconsistent therewith shall be included in these Articles of Incorporation or the Bylaws of the Corporation, without the affirmative vote of the holders of at least eighty percent (80%) of the voting power of all of the shares of the Voting Stock, voting together as a single class.

SIXTH: That the principal place of business of said Corporation shall be Spokane, Spokane County, Washington.

SEVENTH: The corporate powers shall be exercised by the Board of Directors, except as otherwise provided by statute or by these Articles of Incorporation. The Board of Directors shall have power to authorize the payment of compensation to the Directors for services to the Corporation, including fees for attendance at meetings of the Board of Directors and other meetings, and to determine the amount of such compensation and fees.



The Board of Directors shall have power to adopt, alter, amend and repeal the Bylaws of the Corporation. To the extent provided under the laws of the state of Washington, any Bylaws adopted by the Directors under the powers conferred hereby may be repealed or changed by the shareholders.

An Executive Committee may be appointed by and from the Board of Directors in such manner and subject to such regulations as may be provided in the Bylaws, which committee shall have and may exercise, when the Board is not in session, all the powers of said Board which may be lawfully delegated subject to such limitations as may be provided in the Bylaws or by resolutions of the Board. The fact that the Executive Committee has acted shall be conclusive evidence that the Board was not in session at the time of such action. Additional committees may be appointed by and from the Board of Directors in such manner and subject to such regulations as may be provided in the Bylaws. Any action required or permitted by these Articles of Incorporation to be taken by the Board of Directors of the Corporation may be taken by a duly authorized committee of the Board of Directors, except as otherwise required by law.

No Director shall have any personal liability to the Corporation or its shareholders for monetary damages for his or her conduct as a Director of the Corporation; provided, however, that nothing herein shall eliminate or limit any liability which may not be so eliminated or limited under Washington law, as from time to time in effect. No amendment, modification or repeal of this paragraph shall eliminate or limit the protection afforded by this paragraph with respect to any act or omission occurring prior to the effective date thereof.

The Corporation shall, to the full extent permitted by applicable law, as from time to time in effect, indemnify any person made a party to, or otherwise involved in, any proceeding by reason of the fact that he or she is or was a Director of the Corporation against judgments, penalties, fines, settlements and reasonable expenses actually incurred by him or her in connection with such proceeding. The Corporation shall pay any reasonable expenses incurred by a Director in connection with any such proceeding in advance of the final determination thereof upon receipt from such Director of such undertakings for repayment as may be required by applicable law and a written affirmation by such director that he or she has met the standard of conduct necessary for indemnification, but without any prior determination, which would otherwise be required by Washington law, that such standard of conduct has been met. The Corporation may enter into agreements with each Director obligating the Corporation to make such indemnification and advances of expenses as are contemplated herein. Notwithstanding the foregoing, the Corporation shall not make any indemnification or advance which is prohibited by applicable law. The rights to indemnity and advancement of expenses granted herein shall continue as to any person who has ceased to be a Director and shall inure to the benefit of the heirs, executors and administrators of such a person.

A Director of the Corporation shall not be disqualified by his office from dealing or contracting with this Corporation either as a vendor, purchaser or otherwise, nor shall any transaction or contract of the Corporation be void or voidable by reason of the fact that any Director, or any firm of which any Director is a member, or any corporation of which any Director is a shareholder or Director, is in any way interested in such transaction or contract, provided that such transaction or contract is or shall be authorized, ratified, or approved, either (1) by vote of a majority of a quorum of the Board of Directors or of the Executive Committee without counting in such majority or quorum any Directors so interested, or a member of a firm so interested, or a shareholder or Director of a corporation so interested; or (2) by the written consent or by vote at a shareholders' meeting of the holders of record of a majority in number of all the outstanding shares of capital stock of the Corporation entitled to vote; nor shall any Director be liable to account to the Corporation for any profits realized by and from or through any such transaction or contract of the Corporation authorized, ratified, or approved as aforesaid by reason of the fact that he, or any firm of which he is a member, or any corporation of which he is a shareholder or a Director, was

interested in such transaction or contract. Nothing herein contained shall create any liability in the events above described or prevent the authorization, ratification or approval of such transaction or contract in any other manner approved by law.

Shareholders shall have no rights, except as conferred by statute or by the Bylaws, to inspect any book, paper or account of the Corporation.

Any property of the Corporation not essential to the conduct of its corporate business may be sold, leased, exchanged, or otherwise disposed of, by authority of its Board of Directors and the Corporation may sell, lease, exchange or otherwise dispose of, all of its property and franchises, or any of its property, franchises, corporate rights, or privileges, essential to the conduct of its corporate business and purposes upon the consent of and for such consideration and upon such terms as may be authorized by a majority of all of the Directors and the holders of two-thirds of the issued and outstanding shares of the Corporation having voting power (or, if the consent or vote of a larger number or different proportion of the Directors and/or shares is required by the laws of the state of Washington, notwithstanding the above agreement of the shareholders of the Corporation to the contrary, then upon the consent or vote of the larger number or different proportion of the Directors and/or shares so required) expressed in writing, or by vote at a meeting of holders of the shares of the Corporation having voting power duly held as provided by law, or in the manner provided by the Bylaws of the Corporation, if not inconsistent therewith.

Upon the affirmative vote of the holders of two-thirds of the issued and outstanding shares of the Corporation having voting power given at a meeting of the holders of the shares of the Corporation having voting power duly called for that purpose or when authorized by the written consent of the holders of two-thirds of the issued and outstanding shares of the Corporation having voting power and upon the vote of a majority of the Board of Directors, all of the property, franchises, rights and assets of the Corporation may be sold, conveyed, assigned and transferred as an entirety to a new company to be organized under the laws of the United States, the state of Washington or any other state of the United States, for the purpose of so taking over all the property, franchises, rights and assets of the Corporation, with the same or a different authorized number of shares of stock and with the same preferences, voting powers, restrictions and qualifications thereof as may then attach to the classes of stock of the Corporation then outstanding so far as the same shall be consistent with such laws of the United States or of Washington or of such other state (provided that the whole or any part of such stock or of any class thereof may be stock with or without a nominal or par value), the consideration for such sale and conveyance to be the assumption by such new company of all of the then outstanding liabilities of the Corporation and the issuance and delivery by the new company of shares of stock (any or all thereof either with or without nominal or par value) of such new company of the several classes into which the stock of the Corporation is then divided equal in number to the number of shares of stock of the Corporation of said several classes then outstanding. In the event of such sale, each holder of stock of the Corporation agrees so far as he may be permitted by the laws of Washington forthwith to surrender for cancellation his certificate or certificates for stock of the Corporation and to receive and accept in exchange therefor, as his full and final distributive share of the proceeds of such sale and conveyance and of the assets of the Corporation, a number of shares of the stock of the new company of the class corresponding to the class of the shares surrendered equal in number to the shares of stock of the Corporation so surrendered, and in such event no holder of any of the stock of the Corporation shall have any rights or interests in or against the Corporation, except the right upon surrender of his certificate as aforesaid properly endorsed, to receive from the Corporation certificates for such shares of said new company as herein provided. Such new company may have all or any of the powers of the Corporation and the certificate of incorporation and bylaws of such new company may contain all or any of the provisions contained in the Articles of Incorporation and Bylaws of the Corporation.

Upon the written assent, in person or by proxy, or pursuant to the affirmative vote, in person or by proxy, of the holders of a majority in number of the shares then outstanding and entitled to vote (or, if the assent or vote of a larger number or different proportion of shares is required by the laws of the state of Washington notwithstanding the above agreement of the shareholders of the Corporation to the contrary, then upon the assent or vote of the larger number or different proportion of the shares so required) (1) any or every statute of the state of Washington hereafter enacted, whereby the rights, powers or privileges of the Corporation are or may be increased, diminished, or in any way affected, or whereby the rights, powers or privileges of the shareholders of corporations organized under the law under which the Corporation is organized are increased, diminished or in any way affected or whereby effect is given to the action taken by any part less than all of the shareholders of any such corporation shall, notwithstanding any provision which may at the time be contained in these Articles of Incorporation or any law, apply to the Corporation, and shall be binding not only upon the Corporation but upon every shareholder thereof, to the same extent as if such statute had been in force at the date of the making and filing of these Articles of Incorporation and/or (2) amendments to said Articles authorized at the time of the making of such amendments by the laws of the state of Washington may be made; provided, however, that (a) the provisions of Article THIRD hereof limiting the preemptive rights of shareholders, requiring cumulative voting in the election of Directors and regarding entry in the capital stock account of consideration received upon the sale of shares of capital stock without nominal or par value and all of the provisions of Article FIFTH hereof shall not be altered, amended, repealed, waived or changed in any way, unless the holders of record of at least two-thirds of the number of shares entitled to vote then outstanding shall consent thereto in writing or affirmatively vote therefor in person or by proxy at a meeting of shareholders at which such change is duly considered.

Special meetings of the shareholders may be called by the President, the Chairman of the Board of Directors, a majority of the Board of Directors, any Executive Committee of the Board of Directors, and shall be called by the President at the request of the holders of at least two-thirds (2/3) of the voting power of all of the shares of the Voting Stock, voting together as a single class. Only those matters that are specified in the call of or request for a special meeting may be considered or voted upon at such meeting.

Notwithstanding anything contained in these Articles of Incorporation to the contrary, the paragraph in this Article SEVENTH relating to the adoption, alteration, amendment, change and repeal of the Bylaws of the Corporation, the paragraph in this Article SEVENTH relating to the calling and conduct of special meetings of the shareholders and this paragraph, and the provisions of the Bylaws of the Corporation relating to procedures for the nomination of Directors, shall not be altered, amended or repealed, and no provision inconsistent therewith shall be included in these Articles of Incorporation or the Bylaws of the Corporation, without the affirmative vote of the holders of at least eighty percent (80%) of the voting power of all the shares of the Voting Stock, voting together as a single class.

EIGHTH:

- (a) In addition to any affirmative vote required by law or these Articles of Incorporation, and except as otherwise expressly provided in subdivision (b) of this Article EIGHTH:
  - (1) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (a) any Interested Shareholder (as hereinafter defined) or (b) any other corporation (whether or not itself an Interested Shareholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Shareholder;  
or



- (2) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Shareholder or any Affiliate of any Interested Shareholder of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value of \$10,000,000 or more; or
- (3) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Shareholder or any Affiliate of any Interested Shareholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of \$10,000,000 or more; or
- (4) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of an Interested Shareholder or any Affiliate of any Interested Shareholder; or
- (5) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Shareholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Shareholder or any Affiliate of any Interested Shareholder;

shall require the affirmative vote of the holders of at least 80% of the voting power of all of the shares of the Voting Stock, voting together as a single class. Such affirmative vote shall be required notwithstanding the fact that no vote may be required or that the vote of a lower percentage may be specified, by law or in any agreement with any national securities exchange or otherwise. The term "Business Combination" as used in this Article EIGHTH shall mean any transaction which is referred to in any one or more of paragraphs (1) through (5) of this subdivision (a).

- (b) The provisions of subdivision (a) of this Article EIGHTH shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote, if any, as is required by law and any other provision of these Articles of Incorporation, if all of the conditions specified in either paragraph (1) or paragraph (2) below are met:

- (1) The Business Combination shall have been approved by a majority of the Continuing Directors (as hereinafter defined); or
- (2) All of the following conditions shall have been met:
  - (A) The aggregate amount of the cash and the Fair Market Value (as hereinafter defined) as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of Common Stock in such Business Combination shall be at least equal to the highest of the following:
    - (i) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Shareholder for any shares of Common Stock acquired by it (x) within the two-year period immediately prior to the date of the first public announcement

- of the proposal of the Business Combination (the "Announcement Date") or (y) in the transaction in which it became an Interested Shareholder, whichever is higher;
- (ii) the Fair Market Value per share of Common Stock on the Announcement Date or on the date on which the Interested Shareholder became an Interested Shareholder (the "Determination Date"), whichever is higher; and
  - (iii) (if applicable) the price per share equal to the Fair Market Value per share of Common Stock determined pursuant to clause (A)(ii) above, multiplied by the ratio of (x) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Shareholder for any shares of Common Stock acquired by it within the two-year period immediately prior to the Announcement Date to (y) the Fair Market Value per share of Common Stock on the first day in such two-year period upon which the Interested Shareholder acquired any shares of Common Stock.
- (B) The aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of shares of each class of outstanding Voting Stock (other than Common Stock and Institutional Voting Stock [as hereinafter defined]) shall be at least equal to the highest of the following (it being intended that the requirements of this subparagraph (B) shall be required to be met with respect to every class of outstanding Voting Stock (other than Institutional Voting Stock), whether or not the Interested Shareholder has previously acquired any shares of a particular class of Voting Stock):
- (i) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Shareholder for any shares of such class of Voting Stock acquired by it (x) within the two-year period immediately prior to the Announcement Date or (y) in the transaction in which it became an Interested Shareholder, whichever is higher;
  - (ii) (if applicable) the highest preferential amount per share to which the holders of shares of such class of Voting Stock are entitled in the event of any voluntary or involuntary dissolution, liquidation or winding up of the Corporation;
  - (iii) the Fair Market Value per share of such class of Voting Stock on the Announcement Date or on the Determination Date, whichever is higher; and
  - (iv) (if applicable) the price per share equal to the Fair Market Value per share of such class of Voting Stock determined pursuant to clause (B)(iii) above, multiplied by the ratio of (x) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Shareholder for any shares of such class of Voting Stock acquired by it within the two-year period immediately prior to the Announcement Date to (y) the Fair Market Value per share of such class of Voting Stock on the first day in such two-year period upon which the Interested Shareholder acquired any shares of such class of Voting Stock.

- (C) The consideration to be received by holders of a particular class of outstanding Voting Stock (including Common Stock) shall be in cash or in the same form as the Interested Shareholder has previously paid for shares of such class of Voting Stock. If the Interested Shareholder has paid for shares of any class of Voting Stock with varying forms of consideration, the form of consideration for such class of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class of Voting Stock previously acquired by it.
  - (D) After such Interested Shareholder has become an Interested Shareholder and prior to the consummation of such Business Combination:
    - (i) except as approved by a majority of the Continuing Directors, there shall have been no failure to declare and pay at the regular date therefor full dividends (whether or not cumulative) on the outstanding shares of stock of all classes ranking prior as to dividends to the Common Stock;
    - (ii) there shall have been (x) no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Continuing Directors, and (y) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure to so increase such annual rate is approved by a majority of the Continuing Directors; and
    - (iii) such Interested Shareholder shall not have become the beneficial owner of any additional shares of Voting Stock except as part of the transaction which results in such Interested Shareholder becoming an Interested Shareholder.
  - (E) After such Interested Shareholder has become an Interested Shareholder, such Interested Shareholder shall not have received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation, whether in anticipation of or in connection with such Business Combination or otherwise.
  - (F) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to shareholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions).
- (c) For the purposes of this Article EIGHTH:

The terms "Affiliate" and "Associate" have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on January 1, 1987.

A person shall be deemed to be a "beneficial owner" of any Voting Stock:

- (i) which such person or any of its Affiliates or Associates beneficially owns, directly or indirectly, or;
- (ii) which such person or any of its Affiliates or Associates has (a) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (b) the right to vote pursuant to any agreement, arrangement or understanding; or
- (iii) which is beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Voting Stock.

For the purposes of determining whether a person is an Interested Shareholder the number of shares of Voting Stock deemed to be outstanding shall include all shares of which such person is the beneficial owner in accordance with the foregoing definition but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

The term "Continuing Director" means any member of the Board of Directors of the Corporation who is unaffiliated with the Interested Shareholder and was a member of the Board of Directors prior to the time that the Interested Shareholder became an Interested Shareholder, and any successor of a Continuing Director who is unaffiliated with the Interested Shareholder and is recommended to succeed a Continuing Director by a majority of Continuing Directors then on the Board of Directors.

The term "Fair Market Value" means (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934, as amended, on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by the Continuing Directors in good faith; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by a majority of the Continuing Directors in good faith.

The term "Interested Shareholder" shall mean any person (other than the Corporation or any Subsidiary) who or which:

- (i) is the beneficial owner, directly or indirectly, of more than 10% of the voting power of the outstanding Voting Stock; or

- (ii) is an Affiliate of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding Voting Stock; or
- (iii) is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the two-year period immediately prior to the date in question beneficially owned by any Interested Shareholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933, as amended.

The term "Institutional Voting Stock" shall mean any class of Voting Stock which was issued to and continues to be held solely by one or more insurance companies, pension funds, commercial banks, savings banks or similar financial institutions or institutional investors.

The term "person" shall mean any individual, firm, corporation or other entity.

The term "Subsidiary" shall mean any corporation of which a majority of any class of equity security is owned, directly or indirectly, by the corporation; *provided, however*, that for the purposes of the definition of Interested Shareholder set forth above, the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

The term "Voting Stock" has the meaning ascribed to such term in Article FIFTH.

In the event of any Business Combination in which the Corporation survives, the phrase "consideration other than cash to be received" as used in paragraphs 2(A) and 2(B) of subdivision (b) of this Article EIGHTH shall include the shares of Common Stock and/or the shares of any other class of outstanding Voting Stock retained by the holders of such shares.

- (d) The Directors of the Corporation shall have the power and duty to determine for the purposes of this Article EIGHTH, on the basis of information known to them after reasonable inquiry, (A) whether a person is an Interested Shareholder, (B) the number of shares of Voting Stock beneficially owned by any person, (C) whether a person is an Affiliate or Associate of another person, (D) whether a class of Voting Stock is Institutional Voting Stock, and (E) whether the assets which are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of \$10,000,000 or more.

Nothing contained in this Article EIGHTH shall be construed to relieve any Interested Shareholder from any fiduciary obligation imposed by law.

Notwithstanding anything contained in these Articles of Incorporation to the contrary, the provisions of this Article EIGHTH shall not be altered, amended or repealed, and no provision inconsistent therewith shall be included in these Articles of Incorporation or the Bylaws of the Corporation, without the affirmative vote of the holders of at least eighty percent (80%) of the voting power of all of the shares of the Voting Stock, voting together as a single class.



IN WITNESS WHEREOF, we have set our hands and seals under these presents, this 18<sup>th</sup> day of February 1999.

*T. M. Matthews*

T. M. Matthews, *Chairman of the Board, President and Chief Executive Officer*

ATTEST:

*T. L. Syms*

T. L. Syms, *Vice President and Corporate Secretary*

(SEAL)

STATE OF WASHINGTON  
County of Spokane

ss.

T. M. MATTHEWS and T. L. SYMS, being first duly sworn on oath, depose and say:

- (a) That they have been authorized to execute the within Restated Articles of Incorporation by resolution of the Board of Directors adopted on the 12<sup>th</sup> day of February 1999;
- (b) That these Restated Articles of Incorporation correctly set forth the text of the Articles as amended and supplemented to the date of the Restated Articles of Incorporation; and
- (c) That these Restated Articles of Incorporation supersede the original Articles of Incorporation and all amendments thereto and restatements thereof.

*T. M. Matthews*

T. M. Matthews, *Chairman of the Board, President and Chief Executive Officer*

*T. L. Syms*

T. L. Syms, *Vice President and Corporate Secretary*

SUBSCRIBED AND SWORN to before me this 18<sup>th</sup> day of February 1999.

*Sue Miner*

Notary Public in and for the state of Washington, residing in the County of Spokane. My commission expires 10.14.99.



(SEAL)



# STATE of WASHINGTON



## SECRETARY of STATE

I, RALPH MUNRO, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

### CERTIFICATE OF AMENDMENT

to

### AVISTA CORPORATION

a Washington Public Utilities Corporation. Articles of Amendment were filed for record in this office on the date indicated below.

Restarting Articles

UBI Number: 328 000 223

Date: February 25, 1999



*Given under my hand and the Seal of the State of Washington at Olympia, the State Capital*

Ralph Munro, Secretary of State

2-001505-0

SECRETARY  
of STATE



FILED  
STATE OF WASHINGTON *li*

ARTICLES OF CORRECTION

RCW 23B.01.240

FILING FEE \$30.00

NOV 01 1999

Pursuant to RCW 23B.01.240 of the Washington Corporation Act, the undersigned corporation hereby submits Articles of Correction for the purpose of correcting a document filed in the Corporations Division of the Office of the Secretary of State.

1. The name of the corporation is: Avista Corporation (formerly known as  
The Washington Water Power Company)

2. The document to be corrected is: \_\_\_\_\_  
(Example: Article of Incorporation; Articles of Amendment; Application for Certificate of Authority, etc.)

(A copy of the document to be corrected (showing the Secretary of State file stamp) may be attached instead of completion of item 2.)

3. The document was filed on: November 30, 19 98

4. The document was incorrect in the following manner: (specify the incorrect statement or manner of defective execution and the reason for it).

(Example: Article 3 incorrectly lists number of shares as 660-typing error)

Article Third (2)(a) lists number of shares as 1,540,086 - calculation error

5. The corrected statement or corrected execution of the document is as follows:

1,540,460 shares

Date: October 28, 19 99

*T. L. Syms*  
(Signature of Person Authorized to Sign)

T. L. Syms  
Vice President and Corporate Secretary

\_\_\_\_\_  
(Type or Print Name and Title)

SEE REVERSE SIDE FOR GENERAL INSTRUCTIONS

## **EXHIBIT B**

BYLAWS  
OF  
AVISTA CORPORATION

As Amended August 13, 2004

**BYLAWS  
OF  
AVISTA CORPORATION  
\*\*\*\*\***

**ARTICLE I.  
Offices**

The principal office of the Corporation shall be in the City of Spokane, Washington. The Corporation may have such other offices, either within or without the State of Washington, as the Board of Directors may designate from time to time.

**ARTICLE II.  
Shareholders**

**Section 1. Annual Meeting.** The Annual Meeting of Shareholders shall be held on such date in the month of May in each year as determined by the Board of Directors for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the Annual Meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.

**Section 2. Special Meetings.** Special meetings of the shareholders may be called by the President, the Chairman of the Board, the majority of the Board of Directors, or the Executive Committee of the Board, and shall be called by the President at the request of the holders of not less than two-thirds (2/3) of the voting power of all shares of the voting stock voting together as a single class. Only those matters that are specified in the call of or request for a special meeting may be considered or voted at such meeting.

**Section 3. Place of Meeting.** Meetings of the shareholders, whether they be annual or special, shall be held at the principal office of the Corporation, unless a place, either within or without the state, is otherwise designated by the Board of Directors in the notice provided to shareholders of such meetings.

**Section 4. Notice of Meeting.** Written or printed notice of every meeting of shareholders shall be mailed by the Corporate Secretary or any Assistant Corporate Secretary, not less than ten (10) nor more than fifty (50) days before the date of the meeting, to each holder of record of stock entitled to vote at the meeting. The notice shall be mailed to each shareholder at his last known post office address, provided, however, that if a shareholder is present at a meeting, or waives notice thereof in writing before or after the meeting, the notice of the meeting to such shareholders shall be unnecessary.

**Section 5. Voting of Shares.** At every meeting of shareholders each holder of stock entitled to vote thereat shall be entitled to one vote for each share of such stock held in his name on the books of the Corporation, subject to the provisions of applicable law and the Articles of Incorporation, and may vote and otherwise act in person or by proxy; provided, however, that in elections of directors there shall be cumulative voting as provided by law and by the Articles of Incorporation.

**Section 6. Quorum.** The holders of a majority of the number of outstanding shares of stock of the Corporation entitled to vote thereat, present in person or by proxy at any meeting, shall constitute a quorum, but less than a quorum shall have power to adjourn any meeting from time to time without notice. No change shall be made in this Section 6 without the affirmative vote of the holders of at least a majority of the outstanding shares of stock entitled to vote.

**Section 7. Closing of Transfer Books or Fixing of Record Date.** For the purposes of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the Board of Directors of the Corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty (50) days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than seventy (70) days and, in case of a meeting of shareholders, not less than ten (10) days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

**Section 8. Voting Record.** The officer or agent having charge of the stock transfer books for shares of the Corporation shall make, at least ten (10) days before each meeting of shareholders, a complete record of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which record, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office of the Corporation. Such record shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof.

**Section 9. Conduct of Proceedings.** The Chairman of the Board shall preside at all meetings of the shareholders. In the absence of the Chairman, the President shall preside and in the absence of both, the Executive Vice President shall preside. The members of the Board of Directors present at the meeting may appoint any officer of the Corporation or member of the Board to act as Chairman of any meeting in the absence of the Chairman, the President, or Executive Vice President. The Corporate Secretary of the Corporation, or in his absence, an Assistant Corporate Secretary, shall act as Secretary at all meetings of the shareholders. In the absence of the Corporate Secretary or Assistant Corporate Secretary at any meeting of the shareholders, the presiding officer may appoint any person to act as Secretary of the meeting.

**Section 10. Proxies.** At all meetings of shareholders, a shareholder may vote in person or by proxy. A shareholder or the shareholder's duly authorized agent or attorney-in-fact may appoint a proxy by (i) executing a proxy in writing or (ii) transmitting or authorizing the transmission of an electronic proxy in any manner permitted by law. Such proxy shall be filed with the Corporate Secretary of the Corporation before or at the time of the meeting.



**Section 11. Advance Notice of Business to be Presented at Annual Meeting.** (a) Shareholders may propose business to be brought before the Annual Meeting of Shareholders only if (i) such business is a proper matter for shareholder action under the Washington Business Corporation Act and (ii) the shareholder has given timely notice in proper written form of such shareholder's intent to propose such business; (b) to be timely, a shareholder's notice relating to the Annual Meeting shall be delivered to the Corporate Secretary at the principal executive offices of the Corporation not less than 120 or more than 180 days prior to the first anniversary (the "Anniversary") of the date on which the Corporation first mailed its proxy materials for the preceding year's Annual Meeting of Shareholders. However, if the date of the Annual Meeting is advanced more than 30 days prior to or delayed by more than 30 days after the Anniversary of the preceding year's Annual Meeting, then notice by the shareholder to be timely must be delivered to the Corporate Secretary at the principal executive offices of the Corporation not later than the close of business on the later of (i) the 90<sup>th</sup> day prior to such Annual Meeting or (ii) the 15<sup>th</sup> day following the day on which public announcement of the date of such meeting is first made. In no event shall an adjournment of an Annual Meeting, or any announcement or notice of such an adjournment, commence a new time period for the giving of a shareholder's notice as set forth above; (c) to be in proper form a shareholder's notice to the Corporate Secretary shall be in writing and shall set forth (i) the name and address of the shareholder who intends to make the proposal and the classes and numbers of shares of the Corporation's capital stock owned of record by such shareholder, (ii) a representation that the shareholder intends to vote such stock at such meeting, (iii) a description of the business the shareholder intends to bring before the meeting, including such information as would be required to be included in a proxy statement filed pursuant to Regulation 14A promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), had the matter been proposed, or intended to be proposed, by the Board of Directors of the Corporation, (iv) the name and address of any beneficial owner(s) of the Corporation's stock on whose behalf such business is to be presented and the class and number of shares beneficially owned by each such beneficial owner (beneficial ownership to be determined pursuant to Rule 13d-3 under the Exchange Act) and (v) any material interest in such business of such shareholder or any such beneficial owner; (d) only such business as shall have been brought before the meeting in accordance with the procedures set forth in this Section 11 shall be conducted at an Annual Meeting of Shareholders. The Chairman of the meeting shall have the power and the duty to determine whether any business proposed to be brought before a meeting was proposed in accordance with the procedures set forth in this Section 11, and, if any business is not in compliance with this Section, to declare that such defective proposal shall be disregarded. The determination of the Chairman shall be conclusive; (e) notwithstanding the foregoing provisions of this Section 11, a shareholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 11. Nothing in this Section shall be deemed to expand or diminish any rights of a shareholder under Rule 14a-8 under the Exchange Act, or any successor rule to request inclusion of a proposal in the Corporation's proxy statement or to present for action at an Annual Meeting any proposal so included; and (f) only such business as shall have been brought before the meeting pursuant to the Corporation's notice of meeting shall be conducted at a special meeting of shareholders.

**ARTICLE III.**  
**Board of Directors**

**Section 1. General Powers.** The powers of the Corporation shall be exercised by or under the authority of the Board of Directors, except as otherwise provided by the laws of the State of Washington and the Articles of Incorporation.

**Section 2. Number, Tenure and Eligibility.** The number of directors of the Corporation shall be eleven (11); provided, however, that if the right to elect a majority of the Board of Directors shall have accrued to the holders of the Preferred Stock as provided in paragraph (1) of subdivision (j) of Article THIRD of the Articles of Incorporation, then, during such period as such holders shall have such right, the number of directors may exceed eleven (11). Directors shall be divided into three classes, as nearly equal in number as possible. At each Annual Meeting of Shareholders, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding Annual Meeting of Shareholders after their election. Notwithstanding the foregoing, directors elected by the holders of the Preferred Stock in accordance with paragraph (1) of subdivision (j) of Article THIRD of the Articles of Incorporation shall be elected for a term, which shall expire not later than the next Annual Meeting of Shareholders. All directors shall hold office until the expiration of their respective terms of office and until their successors shall have been elected and qualified. No person may be elected or re-elected as a director if at the time of their election or re-election, such person shall have attained the age of seventy (70) years. Any director who attains such age while in office shall retire from the Board of Directors effective at the Annual Meeting of Shareholders held in the year in which their then current term expires, and any such director shall not be nominated or re-elected as a director.

**Section 3. Regular Meetings.** The regular Annual Meeting of the Board of Directors shall be held immediately following the adjournment of the Annual Meeting of the shareholders or as soon as practicable after said Annual Meeting of Shareholders. But, in any event, said regular Annual Meeting of the Board of Directors must be held on either the same day as the Annual Meeting of Shareholders or the next business day following said Annual Meeting of Shareholders. At such meeting the Board of Directors, including directors newly elected, shall organize itself for the coming year, shall elect officers of the Corporation for the ensuing year, and shall transact all such further business as may be necessary or appropriate. The Board shall hold regular quarterly meetings, without call or notice, on such dates as determined by the Board of Directors. At such quarterly meetings the Board of Directors shall transact all business properly brought before the Board.

**Section 4. Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the Chairman of the Board, the President, the Executive Vice President or any three (3) directors. Notice of any special meeting shall be given to each director at least two (2) days in advance of the meeting.

**Section 5. Emergency Meetings.** In the event of a catastrophe or a disaster causing the injury or death to members of the Board of Directors and the principal officers of the Corporation, any director or officer may call an emergency meeting of the Board of Directors.

Notice of the time and place of the emergency meeting shall be given not less than two (2) days prior to the meeting and may be given by any available means of communication. The director or directors present at the meeting shall constitute a quorum for the purpose of filling vacancies determined to exist. The directors present at the emergency meeting may appoint such officers as necessary to fill any vacancies determined to exist. All appointments under this section shall be temporary until a special meeting of the shareholders and directors is held as provided in these Bylaws.

**Section 6. Conference by Telephone.** The members of the Board of Directors, or of any committee created by the Board, may participate in a meeting of the Board or of the committee by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation in a meeting by such means shall constitute presence in person at a meeting.

**Section 7. Quorum.** A majority of the number of directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The action of a majority of the directors present at a meeting at which a quorum is present shall be the action of the Board.

**Section 8. Action Without a Meeting.** Any action required by law to be taken at a meeting of the directors of the Corporation, or any action which may be taken at a meeting of the directors or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. Such consent shall have the same effect as a unanimous vote.

**Section 9. Vacancies.** Subject to the provisions of paragraph (1) of subdivision (j) of Article THIRD of the Articles of Incorporation, (a) any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors and any director so elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office and (b) any directorship to be filled by reason of an increase in the number of directors may be filled by the Board of Directors for a term of office continuing only until the next election of directors by the shareholders.

**Section 10. Resignation of Director.** Any director or member of any committee may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein. If no time is specified, it shall take effect from the time of its receipt by the Corporate Secretary, who shall record such resignation, noting the day, hour and minute of its reception. The acceptance of a resignation shall not be necessary to make it effective.

**Section 11. Removal.** Subject to the provisions of paragraph (1) of subdivision (j) of Article THIRD of the Articles of Incorporation, any director may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least a majority of the voting power of all of the shares of capital stock of the Corporation entitled generally to vote in the election of directors voting together as a single class, at a meeting of shareholders called expressly for that purpose; provided, however, that if less than the entire Board of Directors is to be removed, no one of the directors may be removed if the votes cast against the removal of such director would be sufficient to elect such director if then cumulatively voted at an election of the

class of directors of which such director is a part. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**Section 12. Order of Business.** The Chairman of the Board shall preside at all meetings of the directors. In the absence of the Chairman, the officer or member of the Board designated by the Board of Directors shall preside. At meetings of the Board of Directors, business shall be transacted in such order as the Board may determine. Minutes of all proceedings of the Board of Directors, or committees appointed by it, shall be prepared and maintained by the Corporate Secretary or an Assistant Corporate Secretary and the original shall be maintained in the principal office of the Corporation.

**Section 13. Nomination of Directors.** Subject to the provisions of paragraph (1) of subdivision (j) of Article THIRD of the Articles of Incorporation, nominations for the election of directors may be made by the Board of Directors, or a nominating committee appointed by the Board of Directors, or by any holder of shares of the capital stock of the Corporation entitled generally to vote in the election of directors (such stock being hereinafter in this Section called "Voting Stock"). However, any holder of shares of the Voting Stock may nominate one or more persons for election as directors at a meeting only if written notice of such shareholder's intent to make such nomination or nominations has been given, either by personal delivery or by United States mail, postage prepaid, to the Corporate Secretary not later than (i) with respect to an election to be held at an Annual Meeting of Shareholders, ninety (90) days in advance of such meeting and (ii) with respect to an election to be held at a special meeting of shareholders for the election of directors, the close of business on the seventh day following the date on which notice of such meeting is first given to shareholders. Each such notice shall set forth: (a) the name and address of the shareholder who intends to make the nomination and of the person or persons to be nominated; (b) a representation that such shareholder is a holder of record of shares of the Voting Stock of the Corporation and intends to appear in person or by proxy at the meeting to nominate the person or persons identified in the notice; (c) a description of all arrangements or understandings between such shareholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by such shareholder; (d) such other information regarding each nominee proposed by such shareholder as would be required to be included in a proxy statement under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (or any subsequent revisions replacing such Act, rules or regulations) if the nominee(s) had been nominated, or were intended to be nominated, by the Board of Directors; and (e) the consent of each nominee to serve as a Director of the Corporation if so elected. The Chairman of the meeting may refuse to acknowledge the nomination of any person not made in compliance with the foregoing procedure.

**Section 14. Presumption of Assent.** A director of the Corporation who is present at a meeting of the Board of Directors, or of a committee thereof, at which action on any corporate matter is taken, shall be presumed to have assented to the action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Corporate Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.



**ARTICLE IV.**  
**Executive Committee**  
**and**  
**Additional Committees**

**Section 1. Appointment.** The Board of Directors, by resolution adopted by a majority of the Board, may designate three or more of its members to constitute an Executive Committee. The designation of such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed by law.

**Section 2. Authority.** The Executive Committee, when the Board of Directors is not in session, shall have and may exercise all of the authority of the Board of Directors including authority to authorize distributions or the issuance of shares of stock, except to the extent, if any, that such authority shall be limited by the resolution appointing the Executive Committee or by law.

**Section 3. Tenure.** Each member of the Executive Committee shall hold office until the next regular Annual Meeting of the Board of Directors following his designation and until his successor is designated as a member of the Executive Committee.

**Section 4. Meetings.** Regular meetings of the Executive Committee may be held without notice at such times and places as the Executive Committee may fix from time to time by resolution. Special meetings of the Executive Committee may be called by any member thereof upon not less than two (2) days notice stating the place, date and hour of the meeting, which notice may be written or oral. Any member of the Executive Committee may waive notice of any meeting and no notice of any meeting need be given to any member thereof who attends in person.

**Section 5. Quorum.** A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business at any meeting thereof. Actions by the Executive Committee must be authorized by the affirmative vote of a majority of the appointed members of the Executive Committee.

**Section 6. Action Without a Meeting.** Any action required or permitted to be taken by the Executive Committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the Executive Committee.

**Section 7. Procedure.** The Executive Committee shall select a presiding officer from its members and may fix its own rules of procedure, which shall not be inconsistent with these Bylaws. It shall keep regular minutes of its proceedings and report the same to the Board of Directors for its information at a meeting thereof held next after the proceedings shall have been taken.

**Section 8. Committees Additional to Executive Committee.** The Board of Directors may, by resolution, designate one or more other committees, each such committee to consist of two (2) or more of the directors of the Corporation. A majority of the members of any such committee may determine its action and fix the time and place of its meetings unless the Board of Directors shall otherwise provide.

## **ARTICLE V. Officers**

**Section 1. Number.** The Board of Directors shall appoint one of its members Chairman of the Board. The Board of Directors shall also appoint a Chief Executive Officer and a President, one of whom may also serve as Chairman, one or more Vice Presidents, a Corporate Secretary, and a Treasurer. The Board of Directors may from time to time appoint such other officers as the Board deems appropriate. The same person may be appointed to more than one office. The Chief Executive Officer shall have the authority to appoint such assistant officers as might be deemed appropriate.

**Section 2. Election and Term of Office.** The officers of the Corporation shall be elected by the Board of Directors at the Annual Meeting of the Board. Each officer shall hold office until his successor shall have been duly elected and qualified.

**Section 3. Removal.** Any officer or agent may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

**Section 4. Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

**Section 5. Powers and Duties.** The officers shall have such powers and duties as usually pertain to their offices, except as modified by the Board of Directors, and shall have such other powers and duties as may from time to time be conferred upon them by the Board of Directors.

## **ARTICLE VI. Contracts, Checks and Deposits**

**Section 1. Contracts.** The Board of Directors may authorize any officer or officers or agents, to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**Section 2. Checks/Drafts/Notes.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.



**Section 3. Deposits.** All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors by resolution may select.

**ARTICLE VII.  
Certificates for Shares and Their Transfer**

**Section 1. Certificates for Shares.** Certificates representing shares of the Corporation shall be in such form as shall be determined by the Board of Directors and shall contain such information as prescribed by law. Such certificates shall be signed by the President or a Vice President and by either the Corporate Secretary or an Assistant Corporate Secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the Corporation. All certificates surrendered to the Corporation for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms and indemnity to the Corporation as the Board of Directors may prescribe.

**Section 2. Transfer of Shares.** Transfer of shares of the Corporation shall be made only on the stock transfer books of the Corporation by the holder of record thereof or by his legal representative, who shall furnish proper evidence of authority to transfer, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Corporate Secretary of the Corporation, and on surrender for cancellation of the certificate for such shares. The person in whose name shares stand on the books of the Corporation shall be deemed by the Corporation to be the owner thereof for all purposes. The Board of Directors shall have power to appoint one or more transfer agents and registrars for transfer and registration of certificates of stock.

**ARTICLE VIII.  
Corporate Seal**

The seal of the Corporation shall be in such form as the Board of Directors shall prescribe.

**ARTICLE IX.  
Indemnification**

**Section 1. Indemnification of Directors and Officers.** The Corporation shall indemnify and reimburse the expenses of any person who is or was a director, officer, agent or employee of the Corporation or is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, or agent of another enterprise or employee benefit plan to the extent permitted by and in accordance with Article SEVENTH of the Company's Articles of Incorporation and as permitted by law.

**Section 2. Liability Insurance.** The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the laws of the State of Washington.

**Section 3. Ratification of Acts of Director, Officer or Shareholder.** Any transaction questioned in any shareholders' derivative suit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or shareholder, nondisclosure, miscomputation, or the application of improper principles or practices of accounting may be ratified before or after judgment, by the Board of Directors or by the shareholders in case less than a quorum of directors are qualified; and, if so ratified, shall have the same force and effect as if the questioned transaction had been originally duly authorized, and said ratification shall be binding upon the Corporation and its shareholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

## **ARTICLE X. Amendments**

Except as to Section 6 of Article II of these Bylaws, the Board of Directors may alter or amend these Bylaws at any meeting duly held, the notice of which includes notice of the proposed amendment. Bylaws adopted by the Board of Directors shall be subject to change or repeal by the shareholders; provided, however, that Section 2 of Article III, (other than the provision thereof specifying the number of Directors of the Corporation), and Sections 9, 11 and 13 of Article III and this proviso shall not be altered, amended or repealed, and no provision inconsistent therewith or herewith shall be included in these Bylaws, without the affirmative votes of the holders of at least eighty percent (80%) of the voting power of all the shares of the Voting Stock voting together as a single class.

**EXHIBIT C**  
**(NOT APPLICABLE TO THIS APPLICATION)**

**EXHIBIT D**  
**(NOT APPLICABLE TO THIS APPLICATION)**

## **EXHIBIT E**

# CONSOLIDATED BALANCE SHEETS

(Unaudited)

Avista Corporation

Dollars in thousands

	September 30, 2005	December 31, 2004
<b>ASSETS:</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents.....	\$62,965	\$88,317
Restricted cash.....	39,466	26,175
Accounts and notes receivable-less allowances of \$44,447 and \$44,193, respectively.....	334,845	308,459
Energy commodity assets.....	1,522,517	284,231
Current utility energy commodity derivative assets.....	139,794	12,557
Deposits with counterparties.....	26,329	30,667
Materials and supplies, fuel stock and natural gas stored.....	50,013	43,404
Deferred income taxes.....	13,094	12,288
Assets held for sale.....	12,970	28,479
Other current assets.....	86,053	68,123
Total current assets.....	<u>2,288,046</u>	<u>902,700</u>
<b>NET UTILITY PROPERTY:</b>		
Utility plant in service.....	2,776,895	2,666,445
Construction work in progress.....	83,113	51,260
Total.....	<u>2,860,008</u>	<u>2,717,705</u>
Less: Accumulated depreciation and amortization.....	780,033	761,642
Total net utility property.....	<u>2,079,975</u>	<u>1,956,063</u>
<b>OTHER PROPERTY AND INVESTMENTS:</b>		
Investment in exchange power-net.....	34,096	35,933
Non-utility properties and investments-net.....	77,790	78,564
Non-current energy commodity assets.....	583,796	254,657
Investment in affiliated trusts.....	13,403	13,403
Other property and investments-net.....	18,594	19,721
Total other property and investments.....	<u>727,679</u>	<u>402,278</u>
<b>DEFERRED CHARGES:</b>		
Regulatory assets for deferred income tax.....	121,151	123,159
Other regulatory assets.....	22,061	43,428
Non-current utility energy commodity derivative assets.....	108,835	55,825
Power and natural gas deferrals.....	139,600	148,206
Unamortized debt expense.....	48,647	53,413
Other deferred charges.....	23,041	21,109
Total deferred charges.....	<u>463,335</u>	<u>445,140</u>
<b>TOTAL ASSETS.....</b>	<u><u>\$5,559,035</u></u>	<u><u>\$3,706,181</u></u>

*The Accompanying Notes are an Integral Part of These Statements.*



CONSOLIDATED BALANCE SHEETS (continued)

(Unaudited)

Avista Corporation

Dollars in thousands

	September 30, 2005	December 31, 2004
<b>LIABILITIES AND STOCKHOLDERS' EQUITY:</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable.....	\$358,757	\$325,194
Energy commodity liabilities.....	1,511,624	253,527
Deposits from counterparties.....	31,741	6,015
Current portion of long-term debt.....	51,516	85,432
Current portion of preferred stock-cumulative (17,500 shares outstanding).....	1,750	1,750
Short-term borrowings.....	157,498	68,517
Interest accrued.....	24,074	18,632
Current regulatory liability for utility derivatives.....	132,034	4,486
Other current liabilities.....	104,347	112,845
Total current liabilities.....	<u>2,373,341</u>	<u>876,398</u>
LONG-TERM DEBT.....	<u>844,291</u>	<u>901,556</u>
LONG-TERM DEBT TO AFFILIATED TRUSTS.....	<u>113,403</u>	<u>113,403</u>
PREFERRED STOCK-CUMULATIVE (subject to mandatory redemption):		
10,000,000 shares authorized: \$6.95 Series K		
262,500 and 280,000 shares outstanding (\$100 stated value).....	<u>26,250</u>	<u>28,000</u>
OTHER NON-CURRENT LIABILITIES AND DEFERRED CREDITS:		
Non-current energy commodity liabilities.....	559,631	215,055
Regulatory liability for utility plant retirement costs.....	184,021	175,575
Non-current utility energy commodity derivative liabilities.....	41,212	33,490
Non-current regulatory liability for utility derivatives.....	67,623	22,335
Deferred income taxes.....	498,612	488,471
Other non-current liabilities and deferred credits.....	96,693	98,693
Total other non-current liabilities and deferred credits.....	<u>1,447,792</u>	<u>1,033,619</u>
TOTAL LIABILITIES.....	<u>4,805,077</u>	<u>2,952,976</u>
COMMITMENTS AND CONTINGENCIES (See Notes to Consolidated Financial Statements)		
STOCKHOLDERS' EQUITY:		
Common stock, no par value; 200,000,000 shares authorized;		
48,561,216 and 48,471,511 shares outstanding.....	630,542	629,056
Note receivable from employee stock ownership plan.....	-	(495)
Capital stock expense and other paid in capital.....	(10,364)	(10,677)
Accumulated other comprehensive loss.....	(21,486)	(20,533)
Retained earnings.....	155,266	155,854
TOTAL STOCKHOLDERS' EQUITY.....	<u>753,958</u>	<u>753,205</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY.....	<u>\$5,559,035</u>	<u>\$3,706,181</u>

*The Accompanying Notes are an Integral Part of These Statements.*

**EXHIBIT F**

exercise price of the stock options was higher than the average market price of Avista Corp. common stock during each quarter.

## **NOTE 12. COMMITMENTS AND CONTINGENCIES**

In the course of its business, the Company becomes involved in various claims, controversies, disputes and other contingent matters, including the items described in this Note. Some of these claims, controversies, disputes and other contingent matters involve litigation or other contested proceedings. With respect to these proceedings, the Company intends to vigorously protect and defend its interests and pursue its rights. However, no assurance can be given as to the ultimate outcome of any particular matter because litigation and other contested proceedings are inherently subject to numerous uncertainties. In addition to issues specifically identified in this Note and with respect to matters that affect the regulated utility operations, the Company intends to seek, to the extent appropriate, regulatory approval of recovery of incurred costs through the ratemaking process.

### ***Federal Energy Regulatory Commission Inquiry***

On April 19, 2004, the Federal Energy Regulatory Commission (FERC) issued an order approving the contested Agreement in Resolution of Section 206 Proceeding (Agreement in Resolution) reached by Avista Corp. doing business as Avista Utilities, Avista Energy and the FERC's Trial Staff with respect to an investigation into the activities of Avista Utilities and Avista Energy in western energy markets during 2000 and 2001. In the Agreement in Resolution, the FERC Trial Staff stated that its investigation found: (1) no evidence that any executives or employees of Avista Utilities or Avista Energy knowingly engaged in or facilitated any improper trading strategy; (2) no evidence that Avista Utilities or Avista Energy engaged in any efforts to manipulate the western energy markets during 2000 and 2001; and (3) that Avista Utilities and Avista Energy did not withhold relevant information from the FERC's inquiry into the western energy markets for 2000 and 2001. As part of the Agreement in Resolution, Avista Utilities agreed to continue to record conversations of energy traders for two years and to improve its account settlement process. Avista Utilities and Avista Energy agreed to maintain an annual training program on the applicable FERC Code of Conduct for all employees engaged in the trading of electric energy and capacity. The Agreement in Resolution imposes no monetary remedies or penalties against Avista Utilities or Avista Energy. On May 19, 2004, the City of Tacoma and California Parties (the Office of the Attorney General, the California Public Utilities Commission (CPUC), and the California Electricity Oversight Board, filing jointly) filed requests for rehearing with respect to the FERC's April 19, 2004 order. On September 28, 2004, the State of Montana filed a motion to intervene in these proceedings. On April 19, 2005, the FERC denied the rehearing requests of the City of Tacoma and California Parties, and denied the State of Montana's motion to intervene. On April 28, 2005 and June 14, 2005, the California Parties and the City of Tacoma, respectively, filed appeals with the United States Court of Appeals for the Ninth Circuit in response to the FERC's denial of rehearing requests. Based on the FERC's order approving the Agreement in Resolution and the FERC's denial of rehearing requests and motion to intervene, the Company does not expect that this proceeding will have any material adverse effect on its financial condition, results of operations or cash flows.

### ***Class Action Securities Litigation***

On September 27, 2002, Ronald R. Wambolt filed a class action lawsuit in the United States District Court for the Eastern District of Washington against Avista Corp., Thomas M. Matthews, the former Chairman of the Board, President and Chief Executive Officer of the Company, Gary G. Ely, the current Chairman of the Board, President and Chief Executive Officer of the Company, and Jon E. Eliassen, the former Senior Vice President and Chief Financial Officer of the Company. In October and November 2002, Gail West, Michael Atlas and Peter Arnone filed similar class action lawsuits in the same court against the same parties. On February 3, 2003, the court issued an order consolidating the complaints under the name "In re Avista Corp. Securities Litigation," and on February 7, 2003 appointed the lead plaintiff and co-lead counsel. On August 19, 2003, the plaintiffs filed their consolidated amended class action complaint in the same court against the same parties. In their complaint, the plaintiffs continue to assert violations of the federal securities laws in connection with alleged misstatements and omissions of material fact in documents filed with the Securities Exchange Act of 1934. The plaintiffs allege that the Company did not have adequate risk management processes, procedures and controls. The plaintiffs further allege that the Company engaged in unlawful energy trading practices and allegedly manipulated western power markets. The plaintiffs assert that alleged misstatements and omissions regarding these matters were made in the Company's filings with the Securities and Exchange Commission and other information made publicly available by the Company, including press releases. The class action complaint asserts claims on behalf of all persons who purchased, converted, exchanged or otherwise acquired the Company's common stock during the period between November 23, 1999 and August 13, 2002. The Company filed a motion to dismiss this complaint in October 2003 and the plaintiffs filed an answer to this motion in January 2004. Arguments before the Court on the motion were held on March 19, 2004.

## ***AVISTA CORPORATION***

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On April 15, 2004, the Court called for additional briefing on what effect, if any, the FERC proceedings (see “Federal Energy Regulatory Commission Inquiry” above) have on this case. On July 30, 2004, the Court denied the Company's motion to dismiss this complaint, holding, among other things, that the FERC proceedings may ultimately have some evidentiary value relevant to the disclosure issues raised in this case, but they do not preclude the resolution of those issues by the Court. In November 2004, the Company filed its answer to the complaint denying the plaintiffs' allegations. On June 13, 2005, the Company filed a motion for reconsideration of its earlier motion to dismiss this complaint, based, in part, on a recent United States Supreme Court decision with respect to the pleading requirements surrounding a sufficient showing of loss causation. On October 19 2005, the Court granted the Company's motion for reconsideration and granted the Company's motion to dismiss. The order to dismiss was issued without prejudice, and the Court has allowed the plaintiffs until November 10, 2005 to amend their complaint. Because the resolution of this lawsuit remains uncertain, legal counsel cannot express an opinion on the extent, if any, of the Company's liability. However, based on information currently known to the Company's management, the Company does not expect that this lawsuit will have a material adverse effect on its financial condition, results of operations or cash flows. It is possible that a change could occur in the Company's estimates of the probability or amount of a liability being incurred. Such a change, should it occur, could be significant.

### ***Counterparty Defaults***

In 2001, Pacific Gas & Electric (PG&E) and Southern California Edison (SCE) defaulted on payment obligations to the California Power Exchange (CalPX) and the California Independent System Operator (CalISO). As a result, the CalPX and the CalISO failed to pay various energy sellers, including Avista Energy. Both PG&E and the CalPX declared bankruptcy in 2001. In March 2002, SCE paid its defaulted obligations; however the funds SCE paid to the CalPX have yet to be released to energy sellers. In April 2004, PG&E paid its defaulted obligations into an escrow fund in accordance with its bankruptcy reorganization. Funds held by the CalPX and in the PG&E escrow fund are not subject to release until the FERC issues an order directing such release in the California Refund Proceeding (see discussion below). As of September 30, 2005, Avista Energy's accounts receivable outstanding related to defaulting parties in California were fully offset by reserves for uncollected amounts and funds collected from defaulting parties. Avista Energy continues to defend itself in the California Refund Proceeding and pursue recovery of the defaulted obligations. Because the resolution of these defaulted obligations by counterparties remains uncertain, legal counsel cannot express an opinion on the extent, if any, of the Company's liability for potential refunds beyond the defaulted obligations. However, based on information currently known to the Company's management, the Company does not expect that the resolution of these defaulted obligations will have a material adverse effect on its financial condition, results of operations or cash flows. It is possible that a change could occur in the Company's estimates of the probability or amount of a liability being incurred. Such a change, should it occur, could be significant.

### ***California Refund Proceeding***

In July 2001, the FERC ordered an evidentiary hearing to determine the amount of refunds due to California energy buyers for purchases made in the spot markets operated by the CalISO and the CalPX during the period from October 2, 2000 to June 20, 2001 (Refund Period) in the California spot power market. The refunds were based on the development of a mitigated market clearing price methodology. If the refunds required by the formula would cause a seller to recover less than its actual costs for the refund period, the FERC has held that the seller would be allowed to document these costs and limit its refund liability commensurately. The FERC administrative law judge's findings were certified in December 2002. In March 2003, the FERC reviewed the administrative law judge's rulings, adopting many of his findings. The CalISO continues its efforts to prepare revised settlement statements based on newly recalculated costs and charges for spot market sales to California during the refund period and currently estimates that it will make its compliance filing showing “who owes what to whom” in 2006. In September 2005, Avista Energy submitted its cost filing claim pursuant to the FERC's August 2005 order and demonstrated an overall revenue shortfall for sales into the California spot markets during the Refund Period after the mitigated market clearing price methodology is applied to its transactions. In October 2005, the California Parties protested Avista Energy's filing and Avista Energy subsequently responded to those issues. Avista Energy believes that its cost filing claim is within a reasonable range in comparison to the California Parties subsequent response. The FERC has previously indicated that it may act on Avista Energy's cost claim by the end of 2005.

In addition, in June 2003, the FERC issued an order to review bids above \$250 per MW made by participants in the short-term energy markets operated by the CalISO and the CalPX from May 1, 2000 to October 2, 2000. Market participants with bids above \$250 per MW during the period described above have been required to demonstrate why their bidding behavior and practices did not violate applicable market rules. If violations were found to exist, the FERC would require the refund of any unjust profits and could also enforce other non-monetary penalties, such as the revocation of market-based rate authority. Avista Energy was subject to this review. In May 2004, the FERC



provided notice that Avista Energy was no longer subject to this investigation. In March and April 2005, the California Parties and PG&E, respectively, appealed the FERC's decision before the United States Court of Appeals for the Ninth Circuit. In addition, many of the other orders that the FERC has issued in the California refund proceedings are now on appeal before the Ninth Circuit. Some of those issues have been consolidated as a result of a case management conference conducted in September 2004. In October 2004, the Ninth Circuit ordered that briefing proceed in two rounds. The first round is limited to three issues: (1) which parties are subject to the FERC's refund jurisdiction in light of the exemption for government-owned utilities in section 201(f) of the Federal Power Act (FPA); (2) the temporal scope of refunds under section 206 of the FPA; and (3) which categories of transactions are subject to refunds. Oral argument on those issues took place in April 2005. In September 2005, the Ninth Circuit held that the FERC did not have the authority to order refunds for sales made by municipal utilities in the California Refund Case; no decision has yet been issued on the other issues argued in April 2005. The second round of issues and their corresponding briefing schedules have not yet been set by the Ninth Circuit Court of Appeals. Because the resolution of the California refund proceeding remains uncertain, legal counsel cannot express an opinion on the extent, if any, of the Company's liability. However, based on information currently known to the Company's management, the Company does not expect that the California refund proceeding will have a material adverse effect on its financial condition, results of operations or cash flows. It is possible that a change could occur in the Company's estimates of the probability or amount of a liability being incurred. Such a change, should it occur, could be significant.

***Pacific Northwest Refund Proceeding***

In July 2001, the FERC initiated a preliminary evidentiary hearing to develop a factual record as to whether prices for spot market sales in the Pacific Northwest between December 25, 2000 to June 20, 2001 were just and reasonable. During the hearing, Avista Utilities and Avista Energy vigorously opposed claims that Pacific Northwest markets were dysfunctional, that rates for spot market sales were unjust and unreasonable and that the imposition of refunds would be appropriate. In September 2001, the FERC's Administrative Law Judge presiding over the evidentiary hearing issued a decision favorable to the Company's position and recommended that the FERC not order refunds and instead dismiss the entire proceeding. In June 2003, the FERC terminated the Pacific Northwest refund proceedings, after finding that the equities do not justify the imposition of refunds. In November 2003, the FERC affirmed its order. Seven petitions for review, including one filed by Puget Sound Energy, Inc. (Puget), are now pending before the United States Court of Appeals for the Ninth Circuit. Opening briefs were filed in January 2005. Petitioners other than Puget challenged the merits of the FERC's decision not to order refunds. Puget's brief is directed to the procedural flaws in the underlying docket. Puget argues that because its complaint was withdrawn as a matter of law in July 2001, the FERC erred in relying on it to serve as the basis to initiate the preliminary investigation into whether refunds for individually negotiated bilateral transactions in the Pacific Northwest were appropriate. In February 2005, intervening parties, including Avista Energy and Avista Utilities, filed in support of Puget and also filed in opposition to the other six petitioners. Briefing was completed in May 2005. Oral arguments are expected, but have not yet been set. Because the resolution of the Pacific Northwest refund proceeding remains uncertain, legal counsel cannot express an opinion on the extent, if any, of the Company's liability. However, based on information currently known to the Company's management, the Company does not expect that the Pacific Northwest refund proceeding will have a material adverse effect on its financial condition, results of operations or cash flows. It is possible that a change could occur in the Company's estimates of the probability or amount of a liability being incurred. Such a change, should it occur, could be significant.

***Reliant Energy, Inc. and Duke Energy Corporation Cross-Complaints***

In April 2002, several subsidiaries of Reliant Energy, Inc. (Reliant) and Duke Energy Corporation (Duke) filed cross-complaints against Avista Energy and numerous other participants in the California energy markets. The cross-complaints seek indemnification for any liability that may arise from original complaints filed against Reliant and Duke with respect to charges of unlawful and unfair business practices in the California energy markets under California law. In June 2002, Avista Energy filed motions to dismiss the cross-complaints. In the meantime, the U.S. District Court remanded the case to California State Court, which remand was itself the subject of an appeal to the United States Court of Appeals for the Ninth Circuit. In December 2004, the Ninth Circuit issued its opinion affirming the U.S. District Court's remand of these cases to California State Court, and a rehearing request was denied on March 3, 2005. In April 2005, the Ninth Circuit denied Powerex Corp.'s motion to recall mandate, and the case was remanded to the California State Court. On July 15 2005, Powerex Corp. filed a petition for a writ of certiorari, seeking United States Supreme Court review of the remand of this matter to state court. In June 2005, the cross-defendants, including Avista Energy, filed a petition to dismiss (demurrer) in the California State Court seeking to dismiss the Duke and Reliant cross-complaints. Further briefing and hearing on the demurrer is currently set for December 23, 2005. On October 3, 2005, the Court preliminarily agreed to take Duke's and Reliant's demurrers to the Plaintiff's Master Complaint off calendar, pending approval of the proposed settlements between

## **EXHIBIT G**



# CONSOLIDATED STATEMENTS OF INCOME

(Unaudited)

Avista Corporation

For the Nine Months Ended September 30

Dollars in thousands, except per share amounts

	<u>2005</u>	<u>2004</u>
OPERATING REVENUES.....	\$901,175	\$811,172
OPERATING EXPENSES:		
Resource costs.....	520,157	434,761
Operations and maintenance.....	103,874	106,919
Administrative and general.....	72,490	76,745
Depreciation and amortization.....	65,462	58,770
Taxes other than income taxes.....	51,072	49,638
Total operating expenses.....	<u>813,055</u>	<u>726,833</u>
GAIN ON SALE OF UTILITY PROPERTIES.....	4,093	-
INCOME FROM OPERATIONS.....	<u>92,213</u>	<u>84,339</u>
OTHER INCOME (EXPENSE):		
Interest expense.....	(64,723)	(65,584)
Interest expense to affiliated trusts.....	(4,548)	(4,399)
Capitalized interest.....	979	1,393
Net interest expense.....	<u>(68,292)</u>	<u>(68,590)</u>
Other income - net.....	7,173	6,728
Total other income (expense)-net.....	<u>(61,119)</u>	<u>(61,862)</u>
INCOME BEFORE INCOME TAXES.....	31,094	22,477
INCOME TAXES.....	<u>11,338</u>	<u>9,443</u>
NET INCOME BEFORE CUMULATIVE EFFECT OF ACCOUNTING CHANGE.....	19,756	13,034
CUMULATIVE EFFECT OF ACCOUNTING CHANGE (net of tax).....	<u>-</u>	<u>(460)</u>
NET INCOME.....	<u>\$ 19,756</u>	<u>\$ 12,574</u>
Weighted-average common shares outstanding (thousands), Basic.....	48,508	48,384
Weighted-average common shares outstanding (thousands), Diluted.....	49,046	48,899
EARNINGS PER COMMON SHARE, BASIC (Note 11):		
Earnings per common share before cumulative effect of accounting change.....	\$ 0.41	\$ 0.27
Loss per common share from cumulative effect of accounting change.....	-	(0.01)
Total earnings per common share, basic.....	<u>\$ 0.41</u>	<u>\$ 0.26</u>
EARNINGS PER COMMON SHARE, DILUTED (Note 11):		
Earnings per common share before cumulative effect of accounting change.....	\$ 0.40	\$ 0.27
Loss per common share from cumulative effect of accounting change.....	-	(0.01)
Total earnings per common share, diluted.....	<u>\$ 0.40</u>	<u>\$ 0.26</u>
Dividends paid per common share.....	<u>\$ 0.405</u>	<u>\$ 0.385</u>

*The Accompanying Notes are an Integral Part of These Statements.*

## **EXHIBIT H**

Name of Respondent Avista Corporation	This Report is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 04/25/2005	Year/Period of Report End of 2004/Q4
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**STATEMENT OF RETAINED EARNINGS**

1. Do not report Lines 49-53 on the quarterly version.
2. Report all changes in appropriated retained earnings, unappropriated retained earnings, year to date, and unappropriated undistributed subsidiary earnings for the year.
3. Each credit and debit during the year should be identified as to the retained earnings account in which recorded (Accounts 433, 436 - 439 inclusive). Show the contra primary account affected in column (b)
4. State the purpose and amount of each reservation or appropriation of retained earnings.
5. List first account 439, Adjustments to Retained Earnings, reflecting adjustments to the opening balance of retained earnings. Follow by credit, then debit items in that order.
6. Show dividends for each class and series of capital stock.
7. Show separately the State and Federal income tax effect of items shown in account 439, Adjustments to Retained Earnings.
8. Explain in a footnote the basis for determining the amount reserved or appropriated. If such reservation or appropriation is to be recurrent, state the number and annual amounts to be reserved or appropriated as well as the totals eventually to be accumulated.
9. If any notes appearing in the report to stockholders are applicable to this statement, include them on pages 122-123.

Line No.	Item (a)	Contra Primary Account Affected (b)	Current Quarter/Year Year to Date Balance (c)	Previous Quarter/Year Year to Date Balance (d)
	UNAPPROPRIATED RETAINED EARNINGS (Account 216)			
1	Balance-Beginning of Period		80,306,798	58,838,025
2	Changes			
3	Adjustments to Retained Earnings (Account 439)			
4				
5	Stock Options Exercised		-408,940	( 144,553)
6	ESOP and other adjustment		155,137	170,109
7	Dividends received from Subsidiaries		2,499,315	9,990,037
8				
9	TOTAL Credits to Retained Earnings (Acct. 439)		2,245,512	10,015,593
10				
11				
12				
13				
14				
15	TOTAL Debits to Retained Earnings (Acct. 439)			
16	Balance Transferred from Income (Account 433 less Account 418.1)		31,772,432	35,347,468
17	Appropriations of Retained Earnings (Acct. 436)			
18				
19				
20				
21				
22	TOTAL Appropriations of Retained Earnings (Acct. 436)			
23	Dividends Declared-Preferred Stock (Account 437)			( 1,155,438)
24				
25				
26				
27				
28				
29	TOTAL Dividends Declared-Preferred Stock (Acct. 437)			( 1,155,438)
30	Dividends Declared-Common Stock (Account 438)			
31			-24,923,827	( 23,633,569)
32				
33				
34				
35				
36	TOTAL Dividends Declared-Common Stock (Acct. 438)		-24,923,827	( 23,633,569)
37	Transfers from Acct 216.1, Unapprop. Undistrib. Subsidiary Earnings		693,255	894,719
38	Balance - End of Period (Total 1,9,15,16,22,29,36,37)		90,094,170	80,306,798
	APPROPRIATED RETAINED EARNINGS (Account 215)			

**STATEMENT OF RETAINED EARNINGS**

1. Do not report Lines 49-53 on the quarterly version.
2. Report all changes in appropriated retained earnings, unappropriated retained earnings, year to date, and unappropriated undistributed subsidiary earnings for the year.
3. Each credit and debit during the year should be identified as to the retained earnings account in which recorded (Accounts 433, 436 - 439 inclusive). Show the contra primary account affected in column (b)
4. State the purpose and amount of each reservation or appropriation of retained earnings.
5. List first account 439, Adjustments to Retained Earnings, reflecting adjustments to the opening balance of retained earnings. Follow by credit, then debit items in that order.
6. Show dividends for each class and series of capital stock.
7. Show separately the State and Federal income tax effect of items shown in account 439, Adjustments to Retained Earnings.
8. Explain in a footnote the basis for determining the amount reserved or appropriated. If such reservation or appropriation is to be recurrent, state the number and annual amounts to be reserved or appropriated as well as the totals eventually to be accumulated.
9. If any notes appearing in the report to stockholders are applicable to this statement, include them on pages 122-123.

Line No.	Item (a)	Contra Primary Account Affected (b)	Current Quarter/Year Year to Date Balance (c)	Previous Quarter/Year Year to Date Balance (d)
39			1,548,121	1,548,121
40				
41				
42				
43				
44				
45	TOTAL Appropriated Retained Earnings (Account 215)		1,548,121	1,548,121
	APPROP. RETAINED EARNINGS - AMORT. Reserve, Federal (Account 215.1)			
46	TOTAL Approp. Retained Earnings-Amort. Reserve, Federal (Acct. 215.1)			
47	TOTAL Approp. Retained Earnings (Acct. 215, 215.1) (Total 45,46)		1,548,121	1,548,121
48	TOTAL Retained Earnings (Acct. 215, 215.1, 216) (Total 38, 47) (216.1)		91,642,291	81,854,919
	UNAPPROPRIATED UNDISTRIBUTED SUBSIDIARY EARNINGS (Account Report only on an Annual Basis, no Quarterly			
49	Balance-Beginning of Year (Debit or Credit)		64,022,832	65,750,804
50	Equity in Earnings for Year (Credit) (Account 418.1)		3,381,428	9,156,784
51	(Less) Dividends Received (Debit)		2,499,315	9,990,037
52	Subsidiary expense in Account 417.12		-693,255	( 894,719)
53	Balance-End of Year (Total lines 49 thru 52)		64,211,690	64,022,832

# **EXHIBIT I**



REAL PROPERTY  
CONSULTANTS  
GRANTS PASS

PAUL V. ZACHA, MAI

POST OFFICE BOX 312 • GRANTS PASS, OR 97528  
REAL ESTATE APPRAISERS & COUNSELORS

541/474-2541  
E-Mail: paulzacha@juno.com

August 9, 2005

Mr. Ted Baker  
MSC-25, Avista Corporation  
P. O. Box 3727  
Spokane, Washington 99021-3727

Re: Appraisal of a 0.28-acre commercial-light industrial site located at the northeast corner of Water Street and "B" Street, Ashland, Oregon.

Dear Mr. Baker:

In accordance with your instructions, I have completed an appraisal of the above referenced property. Based on my investigations and analyses, the market value of the subject's fee simple interest as of August 2, 2005, is estimated to be:

**TWO HUNDRED SIXTY THOUSAND DOLLARS  
(\$260,000).**

The above value estimate assumes completion of construction of public improvements to Water Street and the Ashland Creek Bridge and restoration of the temporary construction easement area to a condition at least as good as existed prior to construction. Estimated date of completion of construction is November 15, 2005.

The following Restricted Use Appraisal Report presents only limited discussion or no discussion of the factual data and reasoning upon which this estimate is based. Supporting documentation concerning the data, reasoning and analyses is retained in my files. Your attention is directed to the Certification and Assumption of Limiting Conditions, which are made a part hereof.

Sincerely,

Paul V. Zacha, MAI

**REAL PROPERTY CONSULTANTS, INC.**

AFFILIATE OFFICES:

Real Property Consultants Portland  
Real Property Consultants Salem  
Real Property Consultants Medford  
Real Property Consultants Grants Pass  
Real Property Consultants Klamath Falls

*Each office is independently owned and operated.*



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**Addenda**

- Easements Descriptions and Survey
- Floodplain Map

RESTRICTED USE APPRAISAL REPORT

This is a Restricted Use Appraisal Report, which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(c) of the Uniform Standards of Professional Appraisal Practice (USPAP) for a Restricted Use Appraisal Report. As such, it presents little or no discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's file (No. 172-05). The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below. The appraiser is not responsible for unauthorized use of this report.

In accordance with prior agreement between the client and the appraiser, this report is the result of a complete appraisal process. However, the subject is vacant land. The best method of estimating land value is the sales comparison approach. Therefore, only the sales comparison approach was used in this analysis.

**CLIENT:** Mr. Ted Baker, MSC-25, Avista Corporation, P. O. Box 3727, Spokane, Washington 99021-3727.

**APPRAISER:** Paul V. Zacha, MAI, Real Property Consultants Grants Pass, P. O. Box 312, Grants Pass, Oregon 97528.

**SUBJECT:** An unimproved 0.285-acre, commercial site at the northeast corner of Water Street and "B" (Spring) Street, Ashland, Jackson County, Oregon.

**OWNERSHIP:** Washington Water Power Company d.b.a. Avista Corporation, P. O. Box 3727, Spokane, Washington 99021-3727.

**PURPOSE OF THE APPRAISAL:** The purpose of the appraisal is to estimate the market value of the subject's fee simple interest as of the effective date of the appraisal.

**DEFINITION OF MARKET VALUE:** Market value is defined by the federal financial institutions regulatory agencies as follows:

Market value is the most probable price, which a property should bring in a competitive and open market under all conditions requisite to a fair sale. The buyer and seller are each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- A. Buyer and seller are typically motivated,
- B. Both parties are well informed or well advised and each acting in what they consider their own best interest,
- C. A reasonable time is allowed for exposure in the open market,
- D. Payment is made in terms of U.S. dollars or in terms of financial arrangements comparable thereto,
- E. The price represents a normal consideration for the property sold unaffected by special financing or creative financing or concessions granted by anyone associated with the sale.

**INTENDED USE OF THE REPORT:** This restricted use appraisal will be used by the client as the basis for establishing a sale price for potential sale of the subject property.

**INTENDED USER OF THE REPORT:** The intended user of the report is the client, Ted Baker, MSC-25, Real Estate Department, Avista Corporation, P. O. Box 3727, Spokane, Washington 99021-3727.

**INTERESTS VALUED:** Fee simple

**EFFECTIVE DATE OF VALUE:** August 2, 2005

**DATE OF REPORT:** August 9, 2005

**APPRAISAL DEVELOPMENT AND REPORTING PROCESS:** The scope of this appraisal involved the process of collecting, confirming, analyzing, and reporting data relative to the subject in order to arrive at an estimate of market value. Where necessary, investigation of data included the immediate subject area along with the general and regional areas surrounding the subject that influence its value.

A complete analysis and investigation of data considered applicable to the subject property was made. This included, but was not limited to, research of courthouse information (assessed values, real estate taxes, legal description, ownership history), neighborhood characteristics, review and analysis of comparable sales, supply and demand considerations and absorption of general commercial land. An on-site physical inspection of the property was made on August 2, 2005.

The sales comparison approach was the only approach used to estimate the value of the subject. subject. The appraiser verified all of the comparable sales used in this analysis with, either the buyer, the seller, their property manager, agent or broker, and/or through public records.

This Restricted Use Appraisal Report sets forth only the appraiser's conclusions. Supporting documentation is retained in the appraiser's file (No. 172-05).

**EXPOSURE TIME AND ESTIMATED MARKETING PERIOD:** Six months to one year.

**SALES HISTORY:** The subject property has not sold during the past three years. However, a potential buyer is reportedly interested in purchasing the subject property.

**REAL ESTATE APPRAISED:** A 0.28-acre general commercial-light industrial site with residential overlay, located at the northeast corner of Water Street and "B" (Spring) Street, Ashland, Jackson County, Oregon. The subject is legally described in the official records of the Jackson County Assessor's Office as Map 39-1E-04-CC Tax Lot 6800.

**NEIGHBORHOOD DESCRIPTION:** A mixed use commercial, light industrial, and residential neighborhood located one block north of the Ashland central business district.

**SITE DESCRIPTION:** 0.28 acres, 12,402 square feet, more or less; rectangular shaped corner parcel with basically level topography. The site has 72 feet of frontage along the south line of "B" Street (aka Spring Street) and 172.25 feet of frontage along the west line of Water Street. Ashland Creek borders the subject property on the north. The zoning is E-1, Employment District with a Residential Overlay, by the City of Ashland. The E-1, Employment District zoning permits a variety of retail, professional office, service commercial, light industrial or light manufacturing uses. The residential overlay permits an apartment or apartments in conjunction with the commercial or light industrial uses. Access to the subject is via a driveway from "B" Street. As of the date of this report, Water Street and the Ashland Creek Bridge are currently being reconstructed. Water Street in the vicinity of the subject is closed until completion of the project. The estimated date of completion of the construction project is November 15, 2005. Water, sewer and all other normal public utilities are available or in use at the site. Approximately 1,800 square feet located in the northwest corner of the site lies within the City of Ashland Modified Floodplain. A permanent easement over, under and across the subject in favor of the City of Ashland for the construction, use, operation, inspection, repair, maintenance, removal, replacement, and upgrading of storm water drainage structures

and appurtenances runs along the north property line and a portion of the northwest corner of the subject. The total area encumbered by the easement is approximately 1,614 square feet. Most of the permanent easement area lies within the floodplain. A temporary construction easement runs diagonally across the northwest corner of the property. It has an average width of 28.84 feet. The temporary easement area totals approximately 1,025 square feet. The temporary construction easement expires upon completion of construction. The City of Ashland shall restore the temporary construction easement area to a condition at least as good as existed prior to using the area for access and construction. The easement prohibits construction of a building in the easement area but permits parking and set back uses. A copy of the easements and a floodplain map are included in the Addendum of the report.

**IMPROVEMENTS DESCRIPTION:** The subject property is improved with a fair quality Class C (concrete block construction) shed-warehouse with a gross building area of 1,060 square feet. The building has a shed roof design. There is one man-door and a 3-foot dock height overhead loading door. There are no windows. The building is not plumbed. It has electrical service and an older gas fired furnace. The exact date of construction is not known, however, the building is at the end of its economic life. The yard is seal coat or gravel surface. The site is fenced with chain link fencing. Approximately half of the fencing is 12-foot height (west and north sides) and the south and east sides are 6-foot height chain link fence with three-strand barbed wire. The improvements do not contribute significantly to value. The improvements are an interim use until demolition and redevelopment of the site occurs.

The northeast corner of the site is improved with a gas regulatory station consisting of gas lines and valves for distribution of natural gas. The area around the piping and valve is fenced. There is a 4-inch plastic gas line and a 6-inch lead pipe gas line



running north from "B" Street across the subject to the gas regulatory station. There is also a buried anode bed located near the central portion of the subject. Depth of the anode bed is approximately six to seven feet. Avista is decommissioning the regulatory station and moving it off the subject to another site located on the north side of Ashland Creek. The piping and fencing for the gas regulatory station will be removed and the area will be usable.

**HIGHEST AND BEST USE:**

**Current Use:** Genesis Construction, a subcontractor of Avista Utilities Corporation, currently uses the subject as a storage yard.

**Highest and Best Use as Vacant:** General commercial or light industrial development that could include an apartment(s).

**Highest and Best Use as Improved:** Continued interim use as a storage yard until demolition of the existing improvements and redevelopment of the site with a general commercial or light industrial use that could include an apartment(s).

VALUATION ANALYSIS

The subject property is essentially vacant land. The existing improvements are interim use until redevelopment of the site to its highest and best use.

The best method of estimating the market value of vacant land is the sales comparison approach. This approach is predicated upon prices paid other general commercial-light industrial sites.

A comprehensive search revealed four sales of E-1, Employment District zoned sites in the subject neighborhood for comparison with the subject property. A summary of those judged most helpful is presented on the following page. A sales map showing their location in relation to the subject follows the sales summary.

The unit of comparison used in this analysis is the price per square foot of site area. This is the unit of comparison most used by market participants.

The primary elements of comparison between the subject and the comparable sales include financing terms, conditions of sale, market appreciation (dates of sale), location and physical characteristics such as size, access, topography, parcel shape, the availability of utilities, and demolition costs necessary to make the site vacant.

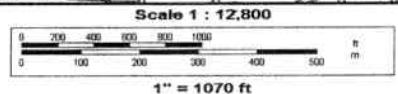
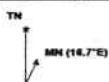
Adjustments were made for differences between the subject and the comparable sales. Quantifiable adjustments, where possible, were based on paired sales analysis. A relative comparison analysis was used for adjustments that were qualitative but not quantifiable. The sales were ranked as superior, inferior, or similar to the subject. Superior characteristics required downward adjustments and inferior characteristics required upward adjustments.

The comparable sales occurred between January 2004 and April 2005. During this time prices for general commercial-light industrial sites in the Ashland area have been appreciating. The one comparable

COMPARABLE LAND SALES

<u>Sale</u>	<u>Location</u>	<u>Date</u>	<u>Sales Price</u>	<u>Size-SF</u> <u>Size-AC.</u>	<u>Price</u> <u>Per SF</u>	<u>Zone</u>
1	S. line Clear Crk Dr. Ashland, OR	4/05	\$255,000	11,604 SF 0.27 Ac.	\$21.68	E-1
2	125-127 Clear Crk Dr. Ashland, OR	1/04	\$180,000	9,243 SF 0.21 Ac.	\$19.68	E-1
3	430 N. Main Street Ashland, OR	3/05	\$270,000	12,023 SF 0.28 Ac.	\$22.14	E-1
4	S. Line Van Ness St. Adj. East 160 Helman Ashland, OR	2/05	\$100,000	6,392 SF 0.13 Ac.	\$15.64	E-1
	Subject: NEC Water St. & B St. Ashland, OR	8/05		12,402 SF 0.23 Ac.		E-1

# COMPARABLE LAND SALES



sale that occurred prior to 2005 has been adjusted upward 10 percent for market appreciation.

All of the comparable sales were unimproved at the time of sale. The subject is improved with a 1,060 square foot Class C (masonry construction) warehouse-storage building, two buried gas lines and an anode bed that do not contribute to overall property value. The improvements are an interim use until demolition and redevelopment of the site occurs.

Based on the Marshall Swift cost data publication and known historical costs, demolition costs for the subject improvements including removal of the buried gas lines and anode bed are estimated at approximately \$5,000 (1,060 SF x \$3.93/SF building demolition, plus \$1,000 demolition costs for excavation and removing the lines and anode bed).

**Sale 1** (\$21.68/SF) is located just north of the subject in a developing commercial subdivision. It was purchased for development of a mixed-use facility (commercial and residential). The site is 11,604 square feet with level topography and all utilities at the site. No demolition costs were incurred with this development.

The primary adjustment to Sale 1 is downward \$0.43 per square foot to reflect the subject's estimated demolition costs ( $\$5,000 \div 11,604$  SF). Analysis of Sale 1 indicates a value for the subject of \$21.25 per square foot.

**Sale 2** (\$19.68/SF) is located just west of Sale 1. It was purchased for development of the Dreamsacks furniture manufacturing and retail sales facility. It is 9,234 square feet, or 0.21-acre. It was unimproved at the time of sale. No demolition costs were incurred with this development.

Sale 2 was adjusted upward ten percent for market appreciation and downward \$0.54 per square foot to reflect the subject's demolition costs ( $\$5,000 \div 9,234$  SF).

After adjustments, Sale 2 indicates a value for the subject of \$21.11 per square foot ( $\$19.68/\text{SF} \times 1.1 = \$21.65/\text{SF} - \$0.54/\text{SF}$ ).

**Sale 3** (\$22.14/SF) is located several blocks west of the subject property at 430 N. Main Street. It is a 12,023 square foot site that was purchased by the City of Ashland in March 2005. The sale was negotiated between buyer and seller without threat of condemnation. The site is unimproved. No demolition costs will be incurred with development.

North Main Street is a commercial arterial street with exposure to some of the heaviest traffic volumes in Ashland. It is slightly superior to the subject in this regard.

The primary adjustment to Sale 3 is downward \$0.42 per square foot to reflect demolition costs necessary to make the subject site vacant ( $\$5,000 \div 12,023$  SF).

Analysis of Sale 3 indicates a value for the subject of \$21.72 per square foot. Sale 3 is considered an upper value limit indicator for the subject due to superior site identity and exposure to traffic volumes.

**Sale 4** (\$15.64/SF) is located one block north of the subject. It is a 6,392 square foot parcel. The site is a 28.85-foot wide strip of land that was formerly used as a railroad spur to serve the subject site. The spur was abandoned and removed. It has been in private ownership for many years. It was recently purchased by the westerly adjacent landowner for assemblage with his property. The topography is gently to moderately sloping hillside. It is inferior to the subject as to physical characteristics and utility. The price paid reflects value in assemblage.

The primary adjustments to Sale 4 are upward approximately \$6.00 per square foot for conditions of sale, inferior physical and functional characteristics, and downward \$0.78 per square foot to reflect demolition costs necessary to make the subject vacant ( $\$5,000 \div 6,392$  SF).

After adjustments, Sale 4 indicates a value for the subject of \$20.86 per square foot.



The comparable sales indicate a range of value for the subject of \$20.86 per square foot to \$21.72 per square foot. The mean (average) of the range is \$21.24 per square foot and the median (mid-point) is \$21.18 per square foot. The sales bracket an appropriate value for the subject.

Considering the preceding comparative analysis the market value of the subject's fee simple interest is estimated to be:

$$12,402 \text{ Square Feet} \times \$21.00/\text{SF} = \$260,442$$

**Rounded = \$260,000.**

The preceding value estimate assumes that the City of Ashland restores the temporary construction easement area to a usable condition as agreed. Completion of construction is estimated to be November 15, 2005. Because of the relatively short time period (approximately three months) between the effective date of the appraisal and the estimated date of completion of construction of public improvements, the subject's value was not discounted. It is unlikely that any prospective purchaser of the subject property would discount the value for such a short time period. The value estimate further assumes that Avista Corporation completes removal of the gas regulatory station improvements.

ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal is subject to the following assumptions and conditions:

This is a Restricted Use Appraisal Report that is intended to comply with the reporting requirements set forth under Standard Rule 2-2(c) of the Uniform Standards of Professional Appraisal Practice for a Restricted Use Appraisal Report. As such, it does not include full discussion of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning and analyses is retained in the appraiser's file. The information contained in this report is specific to the needs of the client and for the intended use stated in this report. The appraiser is not responsible for unauthorized use of this report.

The title to the property is good and marketable.

A survey of the property was provided to the appraiser. Data, maps, dimensions and descriptive data furnished by the client or the client's representative, are assumed to be accurate and correct.

No responsibility is assumed for matters of law or legal interpretation.

No conditions exist that are not discoverable through normal, diligent investigation, which would affect the use and value of the property.

The valuation is based on information and data from sources believed reliable and correct, but I assume no responsibility for its accuracy.

The value estimate is made subject to the purpose, date, and definition of value.

The value estimate assumes that the City of Ashland shall restore the temporary construction easement area to a condition that is at least as good as existed prior to construction. It further assumes

that Avista Corporation shall remove the existing improvements for the natural gas regulator station.

The appraisal is to be considered in its entirety and use of only a portion thereof will render the appraisal invalid.

This appraisal was made on the premise that there are no encumbrances prohibiting utilization of the property under the appraiser's estimate of highest and best use.

Possession of this report or a copy thereof does not carry with it the right of publication nor may it be used for any purpose by any other than the client without the previous written consent of the appraiser and then only with proper qualifications.

Neither all nor any part of the contents of this report shall be conveyed to the public through advertising, public relations, news, sales, or other media without the written consent and approval of the authors, particularly as to valuation conclusions, the identity of the appraiser or firm with which he is connected or any reference to the Appraisal Institute or the MAI designation.

The appraiser shall not be required to give testimony or appear in court by reason of this appraisal with reference to the property described herein unless prior arrangements have been made.

No responsibility is assumed for building permits, zone changes, engineering or any other services or duty connected with legally using the subject property.

It is understood that compensation for the appraisal services is in no way contingent upon the value reported and is dependent only upon delivery of this report.

No engineering soil report has been furnished to the appraiser. Value estimates contained herein assume that the soil is of adequate quality to properly support the improvements or any proposed improvements. The appraiser makes no representations as to actual soil stability.

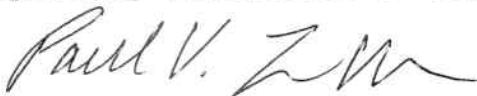
The appraiser has no knowledge of the existence of hazardous materials, which may or may not be present on or in the subject

property. However, the appraiser is not qualified to detect such substances. The presence of potentially hazardous materials would adversely affect the value of the subject. No responsibility is assumed for any possible hazardous waste condition. If the client or any other party interested in the property is concerned about hazardous waste, they are advised to seek independent, competent counsel.

CERTIFICATION OF APPRAISAL

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analysis, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analysis, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- The compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Uniform Standards of Professional Practice (USPAP).
- I certify that to the best of my knowledge and belief, the reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, Paul V. Zacha, MAI, has completed the requirements of the continuing education program of the Appraisal Institute.
- I have made a personal inspection of the subject on August 2, 2005. I have inspected all of the comparable sales used in this analysis.
- No one provided significant real property appraisal assistance to the person signing this certification.
- Paul V. Zacha is licensed as a State Certified General Appraiser (No. C000323, expiration November 30, 2006) by the State of Oregon Appraiser Certification and Licensure Board.



Paul V. Zacha, MAI  
August 9, 2005

**PAUL V. ZACHA, MAI  
QUALIFICATIONS**

Paul V. Zacha is a professional appraiser/consultant in our Grants Pass office. He conducts real estate appraisals plus market, economic feasibility, and highest and best use studies. Prior to joining Real Property Consultants in 1992, Mr. Zacha was the Commercial/Industrial Appraisal Supervisor with the Josephine County Assessor's Office.

Mr. Zacha was awarded the MAI designation by the Appraisal Institute on August 31, 1998.

Mr. Zacha's appraisal experience includes a wide variety of commercial, industrial and multi-family properties in southern Oregon. His private appraisal experience includes professional office buildings, community shopping centers, restaurants, motels, subdivision analysis, industrial buildings, service stations, and apartment complexes, both private and government subsidized. Mr. Zacha has also conducted condemnation appraisals of both partial and complete takings. Additional assignments include market analysis and feasibility studies for professional office building development, single-family residential subdivisions and multiple family residential developments.

A partial list of clients for whom Mr. Zacha has performed appraisals includes U. S. Bank, Bank of America, Bank of Southern Oregon, Valley of the Rogue Bank, Community Bank, Umpqua Bank, Douglas National Bank, Liberty Federal Bank, Klamath First Federal Bank, Evergreen Federal Bank, Premier West Bank, Home Valley Bank, Bank of the Cascades, The Mortgage Professionals, Asante Health Systems, Inc., Pacific Corporation (Pacific Power and Light Company), Pacific Gas and Transmission Company, Rail Tex, Parametrix, Inc., Superior Lumber Company, the U. S. Department of Housing and Urban Development, the U. S. Department of Veterans Affairs, Rogue Community College, the City of Grants Pass, Josephine County, the City of Medford, Jackson County, the Oregon Department of Justice and the Oregon Department of Revenue, various law firms and individual private investors in both Josephine and Jackson Counties.

Mr. Zacha holds a Certified Appraiser's License from the State of Oregon's Appraiser Certification and Licensure Board.

Mr. Zacha was appointed as a member of the State of Oregon Certification and Licensure Board by Governor Kitzhaber in June 1996. He was reappointed for a second four-year term by Governor Kitzhaber in June 2000. His duties included serving as Vice-Chair of the Board and Chair of the Board's Enforcement Committee. The Board is charged with creating and adopting the administrative rules and procedures to



enforce the State of Oregon's appraisal law and the Uniform Standards of Professional Appraisal Practice.

Mr. Zacha has qualified and testified as an expert witness before the Josephine County Circuit Court, the Oregon Department of Revenue, the Oregon Tax Court, the Josephine County Board of Equalization, and the U. S. District Court.

Mr. Zacha earned a Bachelor of Science degree in Economics from the University of Oregon in June 1971. Some additional real estate appraisal courses, seminars and examinations that he has completed are as follows:

Appraisal Institute

- Real Estate Appraisal Principles
- Basic Valuation Procedures
- Uniform Standards of Professional Appraisal Practice
- Basic Income Capitalization
- Advanced Income Capitalization
- Report Writing and Valuation Analysis
- Advanced Applications
- Demonstration Narrative Appraisal Report
- Comprehensive Examination
- Experience Credits for Levels 1, 2, and 3
- Condemnation Appraising, Basic and Advanced Principles
- Separating Real & Personal Property from Intangible Assets
- Analyzing Distressed Real Estate
- Valuation of Detrimental Conditions in Real Estate
- Understanding Rates, Ratios, GIMs, and DCFs Seminar
- Scope of Work Seminar

American Society of Appraisers

- Industrial Seminars 1989, 1990 and 1991

The Comprehensive Appraisal Workshop, Five-Day Format,

- by Ted R. Whitmer, MAI, CCIM, Attorney, August 1997

Attacking and Defending an Appraisal in Litigation,

- by Ted R. Whitmer, MAI, CCIM, Attorney, May 2001

Mr. Zacha is also active in community service. He is a past president and current member of the Grants Pass Active Club. This organization historically has organized community activities to raise and donate over \$70,000 annually to local children's charities.

Mr. Zacha is also a fund-raiser for the University of Oregon Duck Athletic Fund. This volunteer organization helps raise funds to provide scholarships for student athletes at the University of Oregon.

# **ADDENDA**



01112041200500286180060069

I, Kathleen S. Beckett, County Clerk for Jackson County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.  
Kathleen S. Beckett - County Clerk

Return Address

Avista Corporation  
Real Estate Dept MSC-25  
P.O. Box 3727  
Spokane, Washington 99220-3727

**RIGHT OF WAY EASEMENT AGREEMENT**

This easement agreement entered into this 3rd day of May, 2005, by and between AVISTA CORPORATION, A Washington corporation ("Avista"), formerly The Washington Water Power Company, and the CITY OF ASHLAND, OREGON, A Municipal corporation of the State of OREGON ("CITY"), for and in consideration of Mutual Benefits the receipt of which is hereby acknowledged, hereby agree and create an easement in favor of CITY on AVISTA'S Ashland Service Center lands, upon certain terms, conditions and restrictions herein, over, under, and across a tract of land situate in Lots 1 & 2 of Block 15 in the City of Ashland, Jackson County, Oregon, and being legally described in the attached Exhibit "A"- Legal Description and illustrated in the attached Exhibit "B"- Plat of the Easement Area, herein referred to as the "Easement Area."

1. PURPOSE. CITY shall have the right of construction, use, operation, inspection, repair, maintenance, removal, replacement and upgrading of storm water drainage structures, and appurtenances within the Easement Area.

2. ACCESS. CITY shall have temporary right of access to the Easement Area over and across the adjoining portion of the lands owned by AVISTA, herein referred to as the "Temporary Construction Area", as identified in the attached Exhibits A & B to enable CITY to exercise its rights hereunder, provided that CITY shall restore the Temporary Construction Area used for access to a condition at least as good as existed prior to using the area for access. There shall be no access to the easement area from the west. The use of the Temporary Construction Area shall terminate with the completion of the work or on April 1, 2005, which ever occurs first.

Avista Corporation Document No. A-289

Page 1 of 6

3. RIGHT OF WAY CLEARING AND MAINTENANCE. CITY shall have the right to cut, trim and remove any and all brush, branches and trees located within the Easement area. CITY shall also control on a continuing basis and by any prudent, environmentally friendly, and reasonable means, the growth of noxious weeds and the establishment and growth of trees, brush and other vegetation located within the Easement Area, as further set forth in Section 8 of this agreement.

4. EXISTING STRUCTURES. CITY is aware that AVISTA operates a Service Center, Gas Regulator Station and Natural gas pipe and related facilities adjacent to the Easement Area, and has existing structures and facilities within the Easement Area. CITY, for itself and on behalf of its employees, contractors, subcontractors, agents, licensees and invitees, agrees that no exercise of the rights herein granted will commence without first contacting AVISTA no less than 3 business days in advance to determine the impacts on AVISTA's existing facilities. Activities conducted by the City shall be done in such a manner as to not interfere with or endanger any part of the existing Avista facilities in the easement area. The City shall construct it's facilities to all allow for the surface use of the Easement Area by vehicles and other equipment of Avista and it's agents or assigns.

If, in AVISTA's sole judgment, the rights granted to CITY under this agreement may or could in any way impact the structural integrity, reliability, safety, stability or in any way may cause damage to AVISTA's facilities now or in the future, then at the expense of the CITY, AVISTA or its designated contractors, subcontractors, employees, licensees or agents shall be allowed to perform whatever is requisite and necessary to protect and/or restore such affected AVISTA facilities, after first giving the CITY written notice providing a reasonable time to cure.

5. AVISTA'S USE OF EASEMENT AREA. The rights of the CITY in the Easement Area are subject to the rights of AVISTA to construct, reconstruct, operate and maintain its Service Center, Gas Regulator Stations and natural gas lines, and appurtenances. AVISTA reserves the right to the use and enjoyment of the Easement Area, to the extent such use does not conflict or interfere with the CITY's rights as granted hereby within the Easement Area. Vehicle use of the surface of the Easement Area by Avista will not be a conflicting use of the Easement Area.

6. INDEMNITY. CITY, for itself and on behalf of its employees, contractors, subcontractors, agents, licensees, guests and invitees, indemnifies and holds harmless AVISTA from any and all claims for injury or damage to persons or property suffered by AVISTA including AVISTA's agents, guests and invitees, which may be caused by CITY's negligence in the exercise of the rights herein granted, provided, that CITY shall not be responsible to AVISTA or AVISTA's employees, contractors, subcontractors, agents, guests or invitees for any damages or injury to any person or property caused by the acts or omissions of AVISTA.

Avista Corporation Document No. \_\_\_\_\_

Page 2 of 6

2

CITY is aware of the potential dangers inherent to working within close proximity to AVISTA's natural gas facilities and structures, and agrees to abide by all safety codes whether, national, regional or local. CITY, and on behalf of its employees, contractors, subcontractors, licensees, agents and invitees, releases and holds harmless AVISTA from any liability or claims for damage or injury or death to persons and/or damage to or loss of property that occur upon or about the Easement Area arising out of the CITY's use of the Easement Area

7. LAWS AND REGULATIONS. CITY is responsible for assuring that any activities approved by this easement agreement are in compliance with any and all applicable Federal, State and Local government requirements, laws and regulations.

8. NOXIOUS WEEDS / HAZARDOUS MATERIALS. The CITY shall be responsible, per the terms of this agreement, for controlling any noxious weeds on the Easement Area, which result from CITY's use, activities and occupancy of the Easement Area. CITY shall not allow the dumping of any hazardous chemicals or materials to occur in or about the Easement Area, and shall be responsible and liable for all costs of cleaning and disposing of any environmentally damaging materials, chemicals or deposits from the Easement area, which are the result of the rights exercised by the CITY hereunder. CITY, its employees, contractors, subcontractors, licenses, agents and invitees shall comply with all applicable federal, state and local laws regarding hazardous materials. Solely for the purposes of this easement agreement, what constitutes hazardous chemicals or materials shall be at AVISTA's sole determination.

9. SUCCESSORS AND ASSIGNS. The rights and obligations of the parties shall inure to the benefit of and be binding upon their respective successors, heirs and assigns.

AVISTA CORPORATION

By: Donald J. Malisani  
Its: Manager Real Estate Dept.

CITY OF ASHLAND

By: John W. Morrison  
Its: Mayor

Avista Corporation Document No. \_\_\_\_\_

Page 3 of 6

3

STATE OF WASHINGTON )  
 )  
 ) ss.  
County of Spokane )

On this 26 day of April, 2005, before me, personally appeared Donald J. Malisani, to me known to be the Manager, Real Estate Department of AVISTA CORPORATION, the corporation that executed the within and foregoing instrument, and acknowledged 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 he is authorized to execute the said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.



Priscilla L. Sprague  
Notary's printed name: PRISCILLA L. SPRAGUE  
Notary Public in and for the State of Washington,  
residing at Spokane  
My Commission expires: Sept 16, 2006

STATE OF OREGON )  
 )  
 ) ss.  
County of Jackson )

On this day personally appeared before me John W. Morrison, known to be the to be the Mayor of the City of Ashland, Oregon and who executed the within and foregoing instrument and acknowledged that he signed the same as a free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 3rd day of May, 2005.



James H. Olson  
Notary Public in and for the State of Oregon,  
residing at Ashland  
My Commission Expires Dec. 8, 2006

Avista Corporation Document No. \_\_\_\_\_

Page 4 of 6

4



EXHIBIT 'A'

RIGHT-OF-WAY AND CONSTRUCTION EASEMENTS

A permanent right-of-way easement lying over and across Lot 2 of Block 15 in the City of Ashland, Oregon, and being more particularly described as follows:

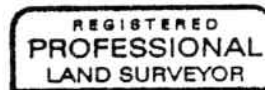
Beginning at the northwesterly corner of Lot 2, Block 15, in the City of Ashland, Jackson County, Oregon, according to the 1888 Map thereof; thence along the northerly line of said Lot 2, South 64° 39' 19" East, 72.00 feet to the northeasterly corner of that certain tract described as Parcel 5 in Document Number 91-23654, Official Records, Jackson County, Oregon; thence along the easterly line of said tract, South 23° 43' 00" West, 9.76 feet; thence, leaving said easterly line, North 68° 16' 39" West, 50.00 feet; thence South 67° 19' 43" West, 31.87 feet to the easterly line of Water Street in said City of Ashland; thence along said easterly line, North 23° 43' 00" East, 36.64 feet to the Point of Beginning.

ALSO: a temporary construction easement lying over and across Lot 2 of Block 15 in the City of Ashland, Oregon, and being more particularly described as follows:

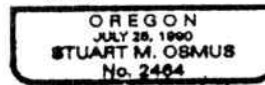
Commencing at the northwesterly corner of Lot 2, Block 15, in the City of Ashland, Jackson County, Oregon, according to the 1888 Map thereof; thence along the northerly line of said Lot 2, South 64° 39' 19" East, 72.00 feet to the northeasterly corner of that certain tract described as Parcel 5 in Document Number 91-23654, Official Records, Jackson County, Oregon; thence along the easterly line of said tract, South 23° 43' 00" West, 9.76 feet; thence, leaving said easterly line, North 68° 16' 39" West, 21.14 feet to the Point of Beginning; thence South 67° 34' 01" West, 73.38 feet to the easterly line of Water Street in said City of Ashland; thence along said easterly line, North 23° 43' 00" East, 28.82 feet; thence, leaving said easterly line, North 67° 19' 43" East, 31.87 feet; thence South 68° 16' 39" East, 28.86 feet to the Point of Beginning.

February 14, 2005

pg 576  
5



*S.M.*

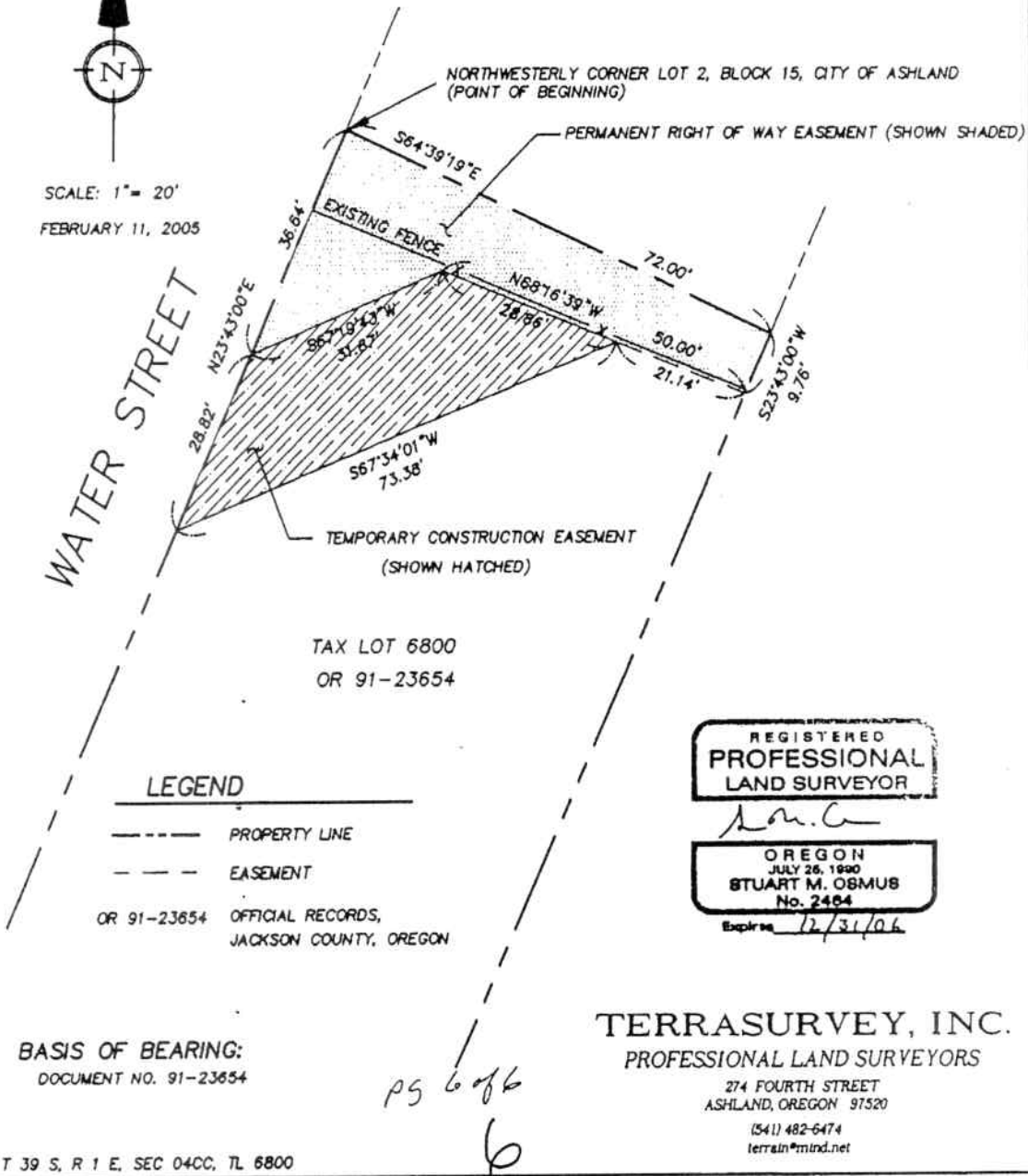


Expires 12/31/06

**EXHIBIT B**  
**MAP OF EASEMENTS**  
 ACROSS PARCEL OWNED BY  
 AVISTA CORPORATION  
 FOR  
 CITY OF ASHLAND, OREGON



SCALE: 1" = 20'  
 FEBRUARY 11, 2005



TAX LOT 6800  
 OR 91-23654

**LEGEND**

- PROPERTY LINE
- EASEMENT
- OR 91-23654 OFFICIAL RECORDS,  
 JACKSON COUNTY, OREGON

REGISTERED  
**PROFESSIONAL**  
 LAND SURVEYOR

*Stuart M. Osmus*

OREGON  
 JULY 26, 1890  
**STUART M. OSMUS**  
 No. 2464

Expires 12/31/06

**BASIS OF BEARING:**  
 DOCUMENT NO. 91-23654

**TERRASURVEY, INC.**  
 PROFESSIONAL LAND SURVEYORS  
 274 FOURTH STREET  
 ASHLAND, OREGON 97520  
 (541) 482-6474  
 terrain@mind.net

T 39 S, R 1 E, SEC 04CC, TL 6800





*ps 6 of 6*  
*6*

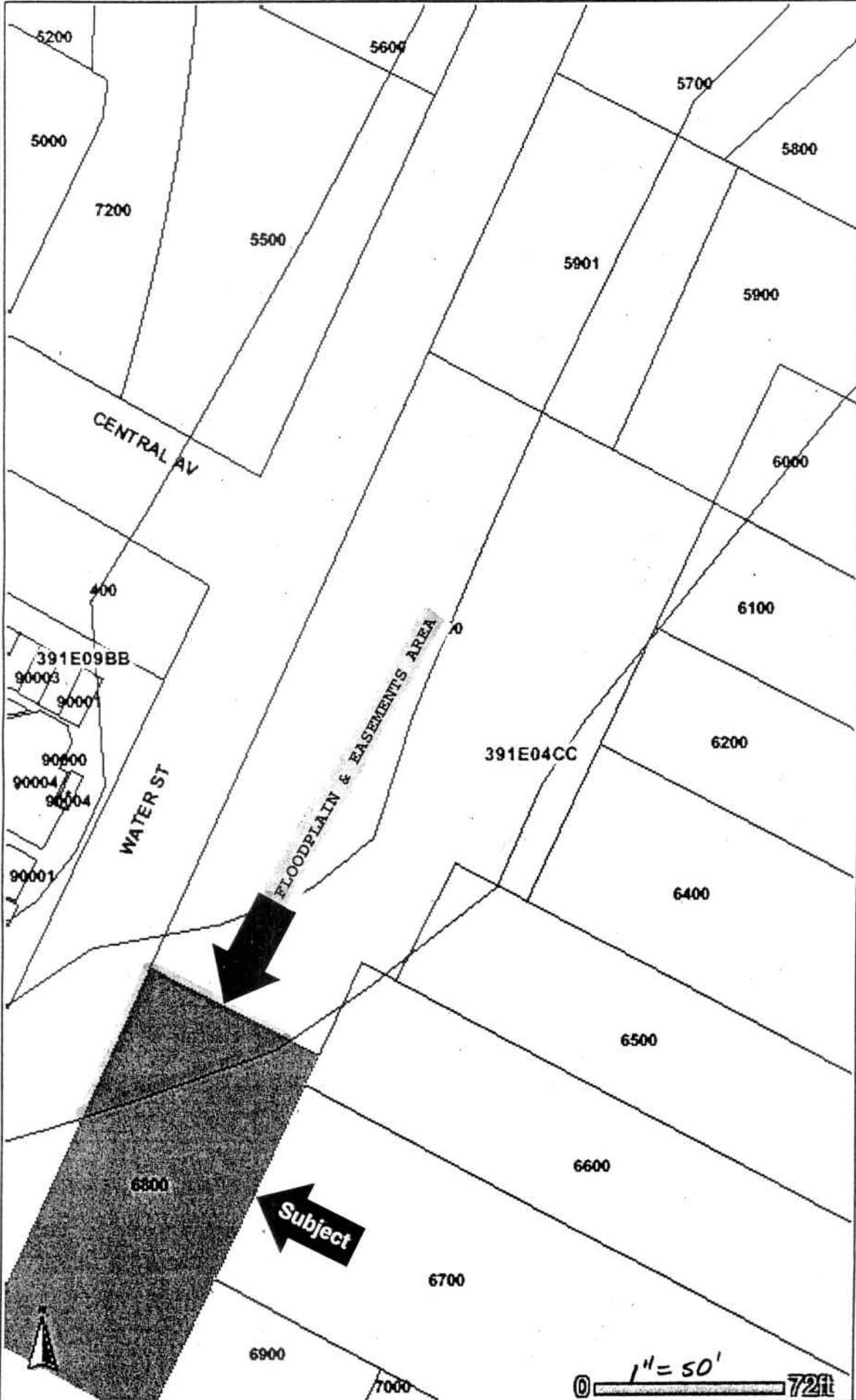
SMARTMAP

JACKSON COUNTY  
GEOGRAPHIC INFORMATION SYSTEM

AVISTA LOT/WATER  
ST & B ST

Front Counter Legend

-  Highlighted Feature
-  Tax Lot Outlines
-  Taxlot Numbers
-  FEMA Flood Plain



**JACKSON  
COUNTY**  
Oregon

This map is based on a digital database compiled by Jackson County From a variety of sources. Jackson County cannot accept responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied.

1" = 50'  
72ft

<http://www.smartmap.org/jca/index.cfm>

Map created on 8/2/2005 3:05:23 PM using www.smartmap.org

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Michael H. Young  
Jacquelyn Young  
930 Beverly Way  
Jacksonville, OR 97530  
(541) 899-4012

August 24, 2005

Avista Corp.  
P.O. Box 3727  
Spokane, WA 99220

ATTENTION: Ted Baker  
Real Estate Dept.

RE: Sale of property located at corner of Water & 'B' St. in Ashland, OR.

Dear Mr. Baker,

I am writing you to express our interest in purchasing the above referenced property. We are the owners of Genesis Construction Services, Inc. which has been Avista's (and it's predecessors) contractor in the Ashland area for over 20 years.

I believe that working together in the sale/purchase of this property would serve both of our interests. We are prepared to make a cash offer to Avista Corp. in the amount of \$250,000.00 for the aforementioned property and are also able to do a quick close if necessary. If our offer is acceptable, we would further request time of approximately 30 days for due diligence in order to check boundaries, zoning, etc.

Please do not hesitate to contact either of us to discuss this matter further. We look forward to hearing from you.

Sincerely,



Jacquelyn Young

AUG 29 2005

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## REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS CONTRACT CONTROLS THE TERMS OF THE SALE OF REAL PROPERTY. THIS IS A LEGALLY BINDING CONTRACT. READ CAREFULLY BEFORE SIGNING.

Ashland, Oregon

December 12, 2005

Received from MICHAEL H. YOUNG and JACQUELYN J. YOUNG, husband and wife, hereinafter called Buyer, an offer to purchase with Earnest Money, the following described real estate, which Buyer agrees to buy and AVISTA CORPORATION, formerly The Washington Water Power Company, (dba WP Natural Gas), a Washington corporation authorized to do business in the State of Oregon, herein "Seller", agrees to sell real estate located in the City of Ashland, County of Jackson, State of Oregon, and legally described as follows:

(As on the Attached Exhibit "A", attached hereto and made a part hereof. Herein the "Premises".)

Purchase Price. The total price is TWO HUNDRED FIFTY FIVE THOUSAND AND NO/100THS DOLLARS (\$255,000.00) payable as follows:

\$ 5,000.00 Earnest Money

\$ 250,000.00 Cash at Closing, certified/cashier's check only.

### Contingencies.

A) Buyer and Seller agree that title insurance is to be provided by Seller. Seller shall have ten (10) days from the date of notification by Seller to Buyer of the Oregon Public Utilities Commission approval for the sale of the Premises, in which to secure an Owner's Standard Coverage Preliminary Commitment for Title Insurance. Buyer shall have ten (10) days from receipt of the commitment for title insurance in which to notify Seller of any matter, as disclosed by such report, which matter is unacceptable to Buyer. Unless Seller is able to cure or correct such matter to buyer's satisfaction within five (5) days prior to closing, then Buyer's obligation to close shall terminate and Buyer shall be entitled to a refund of any Earnest Money and this agreement shall thereupon be at an end, unless Buyer elects to waive such objection and proceed to close not later than the Closing Date.

B) Seller obtaining approval of the sale of the Premises from the Oregon Public Utilities Commission.

1. Title. Seller states that it has good and marketable title to the Premises, and Buyer agrees to buy the Premises on the promise that Seller has good and marketable title. The following shall not be deemed encumbrances or defects: Rights reserved in federal patents or

state deeds; building or use restrictions consistent with current zoning, other than government platting and subdivision requirements; utility easements; other easements not inconsistent with Buyer's intended use; and reserved oil and/or mineral rights. Seller agrees to secure a release of the Premises from the general Trust Indenture within one (1) year of closing, which is acceptable to Buyer. Seller is to reserve on the Deed, an easement to construct, reconstruct, locate, relocate, operate and maintain its existing utility facilities on the Premises. Seller to transfer title by Special Warranty Deed.

2. Closing Costs, Pro-Rations and Reservations. Closing shall take place at \_\_\_\_\_, (to be determined), or at a location mutually acceptable to the parties hereto. The closing agent's costs shall be shared equally between Buyer and Seller. Taxes owing for the current year, if any, rent due at closing, interest, and water and other utilities constituting liens, shall be pro-rated as of closing/possession. Seller shall pay costs to record the deed conveying title to Buyer.

3. Closing of the Sale. WITH THE UNDERSTANDING THAT TIME IS OF THE ESSENCE FOR THIS AGREEMENT, this sale shall be closed thirty (30) days from the date of notification by Seller to Buyer of the Oregon Public Utilities Commission approval for the sale of the Premises. The closing shall take place at the closing office set forth in 2 above, or at a location mutually acceptable to both parties. Closing, for the purpose of this agreement, is defined as the date that all documents are recorded. Buyer is given the opportunity to have the documents reviewed by legal counsel, at Buyer's sole expense.

4. Possession. Buyer shall be entitled to possession on closing.

5. Inspection. Buyer is now, and has been for many years prior hereto, the occupant of the premises as Contractor for Seller. Seller states that it has had performed an environmental site assessment on the Premises, and it has been found there are no contaminants or hazardous materials exceeding safe levels. Buyer states it has had ample opportunity to view and inspect the Premises prior to closing and accepts same "as is with all faults". Seller herein holds Buyer harmless from any and all liability resulting from environmentally hazardous contamination of the Premises as a direct and proximate result of Seller's use or ownership of the Premises. Buyer hereby accepts the Premises in "as is condition with all faults", and holds Seller harmless from and against any and all liability from contaminants introduced to the Premises by Buyer, their employees, employer, contactors, invitees or agents, in, on or around the Premises.

6. Agreement to Purchase. Buyer's decision to purchase is not based upon statements of fact by either Seller or Closing Agent concerning the Premises unless the facts have been either (1) included as contingencies for the purchase or (2) independently verified as true to the complete satisfaction of the Buyer. EXCEPT FOR CONDITIONS AND CONTINGENCIES SPECIFICALLY NOTED ELSEWHERE IN THIS AGREEMENT, BUYER ACCEPTS THE PREMISES, IN ITS PRESENT CONDITION, "AS IS WITH ALL FAULTS". Buyer hereby acknowledges receipt of copy of this agreement. Buyer offers to purchase the above Premises on the above terms and conditions.

7. Financing. This agreement is not conditioned upon Buyer obtaining financing, which may or may not be secured by the Premises. The Premises is being sold for cash/certified check/cashier's check.

8. Due Diligence. Buyer shall have thirty (30) days from the date of this agreement in which to perform due diligence investigation. In the absence of any written notice delivered from Buyer to Seller to the contrary, closing shall be deemed an acknowledgment by Buyer that due diligence has been performed and Buyer is satisfied that the property meets their requirements.


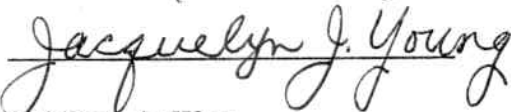
9. Acceptance. Buyer agrees to buy and Seller agrees to sell the Premises on the terms and conditions specified herein.

10. Forfeiture of Earnest Money. In the event Buyer fails to close this transaction through no fault of Seller, and all terms, contingencies and conditions of this Purchase and Sale Agreement having been met, then the Earnest Money shall be deemed forfeited by Buyer, and retained by Seller as liquidated damages.

Dated December 12, 2005.

BUYER:  
Michael H. Young and Jacquelyn J. Young

SELLER:  
Avista Corporation

By: 

Its: VP OPERATIONS

930 Beverly Way

Attn: Real Estate Dept., MSC-25

Jacksonville, OR 97530

P.O. Box 3727

Phone: 1-541-899-4012

Spokane, WA 99220-3727

Phone: 1-(509)-495-4845

# EXHIBIT "A"

File No. 22078

## DESCRIPTION

A strip of land 72 feet in width off the Westerly end of Lots 1 and 2, Block 15, in the City of Ashland, Jackson County, Oregon, according to the Official Map of the City of Ashland for 1888, described as follows:

Beginning at a point 16 feet Northerly on the East line of Water Street, from the Southwesterly corner of Lot 1, Block 15, in the City of Ashland, Jackson County, Oregon; thence North  $23^{\circ} 43'$  East, along the Easterly line of Water Street, 172.25 feet, to the Northwesterly corner of Lot 2, said Block 15; thence Southeasterly, along the North line of Lot 2, a distance of 72 feet; thence South  $23^{\circ} 43'$  West, 172.25 feet, to the North line of Spring Street ("B" Street), as established by the City Council in November of 1905; thence Northwesterly, along said Northerly side of Spring Street ("B" Street), 72 feet, to the point of beginning.

(39-1E-4CC, TL 6800)

## **EXHIBIT J**

**EXHIBIT J**

**Preliminary GL Entry for the Disposition of NW'ly 71' Lots 1 & 2, Block 15, Ashland Property in Jackson County Oregon**

<u>FERC</u>	<u>ACCOUNT</u>	<u>Debit</u>	<u>Credit</u>	<u>Comment</u>
121000	NONUTILITY PROPERTY	1,554.28		Transfer Ashland Land from Utility to Non-utility
101000	PLANT IN SERVICE OWNED		1,554.28	Transfer Ashland Land from Utility to Non-utility
121000	NONUTILITY PROPERTY	16,909.16		Transfer Ashland Struct & Improve from Utility to Non
101000	PLANT IN SERVICE OWNED		16,909.16	Transfer Ashland Struct & Improve from Utility to Non
108000	ACCUMULATED PROVISION DEPRECIATION	10,046.85		Transfer Ashland Accum Depr on Struc to Non-utility
122000	ACC DEPR NONUTILITY PROPERTY	250,000.00		Transfer Ashland Accum Depr on Struc to Non-utility
184057	CLEARING ACCT-ENERGY DELIVERY ACCT			Proceeds from sale of Ashland Property
121000	NONUTILITY PROPERTY		1,554.28	Sale of Ashland Land
121000	NONUTILITY PROPERTY		16,909.16	Sale of Ashland Structures & Improvements
122000	ACC DEPR NONUTILITY PROPERTY	10,046.85		Total Accum Depr on Ashland Property
114000	PLANT ACQUISITION ADJUSTMENT	288,557.14	241,583.41	Gain on sale of Ashland Property
			288,557.14	

Note: Depreciation calculated through 11/30/2005

**Ashland Oregon - Net Book Plant As of 11/30/2005**

Account 375000 - Distribution Plant Structures & Improvements

Rate: 3.00%

<u>Vintage</u>	<u>Additions To Plant</u>	<u>Accumulated Depreciation As of 11/30/2005</u>
1996	3,948.30	1,115.39
1997	5,140.96	1,298.09
TOTAL	9,089.26	2,413.49
		6,675.77

Account 390100 - General Plant Structures & Improvements

Rate: 2.80%

<u>Vintage</u>	<u>Additions (1) To Plant</u>	<u>Accumulated Depreciation As of 11/30/2005</u>
1957	4,625.68	4,625.68
1969	2,604.51	2,604.51
1981	589.71	403.17
TOTAL	7,819.90	7,633.36
	16,909.16	186.54
		10,046.84

(1) Original cost of plant at time of purchase, recorded on WWP's books and records in 1991.

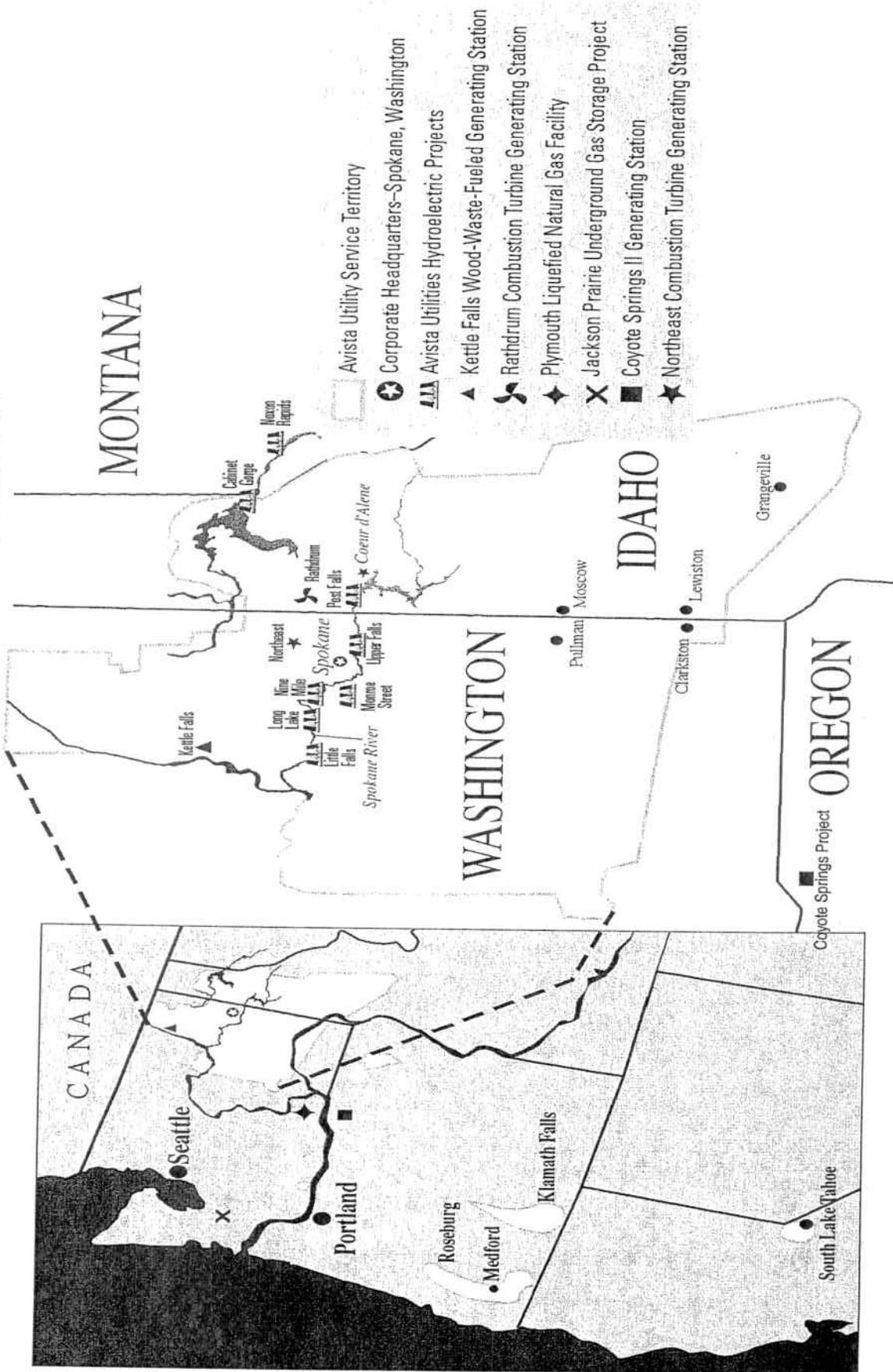
<u>Net Book Value Breakdown:</u>	<u>Account #</u>	<u>Account Descrip</u>	<u>Net Book Value</u>
	375000	GAS DISTRIBUTION PLANT-STRUCT & IMP	6,675.77
	390100	GAS GENERAL PLANT-STRUCT & IMP	186.54
	389200	LAND	1,554.28
			8,416.60

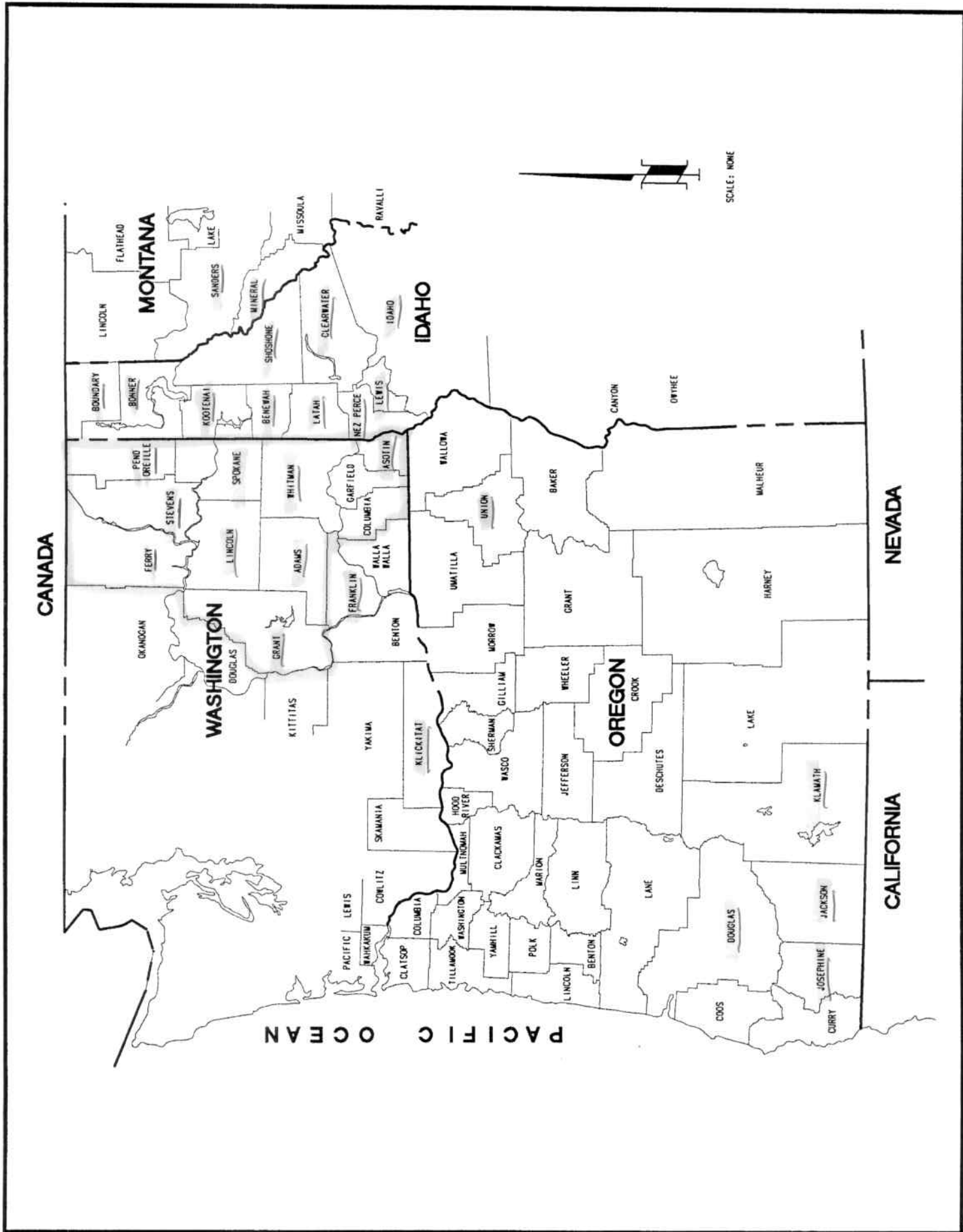


**EXHIBIT K**  
**(NOT APPLICABLE TO THIS APPLICATION)**

## **EXHIBIT L**

# Avista Utilities Service Area





**EXHIBIT M**

ORDER NO. 91-671

ENTERED MAY 16 1991

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UA 39/UP 63

In the Matter of the Application )  
of CP NATIONAL CORPORATION and )  
THE WASHINGTON WATER POWER )  
COMPANY for approval of the sale of )  
natural gas utility assets and the )  
transfer of allocated service territory. )

ORDER

DISPOSITION: APPLICATION GRANTED

On January 7, 1991, CP National Corporation (CP National) and The Washington Water Power Company (Water Power) applied to the Public Utility Commission of Oregon for an order authorizing CP National to sell its Oregon natural gas utility assets to Water Power and to transfer its Oregon allocated natural gas service territory to Water Power.

The Commission held public comment hearings on this matter in La Grande, Klamath Falls, Medford, and Roseburg in February and March 1991. Representatives of PUC staff and the two companies appeared at these hearings to describe the application and to respond to questions. Members of the public were invited to make oral comments and were also permitted to file written comments following the public comment hearings.

On April 19, 1991, staff and Water Power filed a stipulation in this matter with the Commission. The stipulation addresses some specific issues and recommends that the Commission approve the application.

A hearing to receive evidence in this matter was held before Allen Scott, a Hearings Officer for the Commission, on April 24, 1991, in Salem, Oregon. The stipulation and supporting evidence were offered and admitted.

The appearances made at the hearing were as follows:

For PUC staff:

Philip Schradle  
Assistant Attorney General  
Salem, Oregon

For CP National Corporation:

Marvin Fjordbeck  
Attorney at Law  
Portland, Oregon

For Washington Water Power:

David Meyer  
Attorney at Law  
Spokane, Washington

For Northwest Industrial Gas Users:

Edward A. Finklea  
Attorney at Law  
Portland, Oregon

### **The Companies**

CP National is currently authorized to provide public utility service to natural gas and telephone customers in Oregon, California, and Nevada. Through its subsidiary, Great Southwest Telephone Corporation, CP National operates telephone utilities in Arizona, New Mexico, Texas, and Utah. CP National and its subsidiaries also engage in nonutility businesses involving manufacturing and investing.

CP National's natural gas service area in Oregon includes all or portions of Baker, Douglas, Jackson, Josephine, Klamath, and Union counties. CP National will wholly discontinue natural gas service in Oregon upon the closing of the proposed sale and approval of the application.

Water Power has its principal business office in Spokane, Washington. It is an investor-owned electric and natural gas utility serving a 26,000 square mile area in Eastern Washington and Northern Idaho, with an estimated population base of 700,000. Water Power provides electric service to approximately 250,000 customers and natural



gas service to approximately 93,000 customers located within 37 different communities throughout its service area.

### **The Transaction**

The application seeks approval from the Commission of the sale and transfer of CP National's Oregon natural gas operations to Water Power. The assets to be sold include all assets directly employed in the operation of CP National's natural gas distribution system in Oregon, California, and Nevada. Water Power intends to assume all obligations and duties of CP National in regard to leases, contracts, and other agreements that are incidental to the provision of natural gas service within CP National's allocated territory. The contracts and agreements to be assumed by Water Power include gas supply contracts, gas transportation contracts, end user supply agreements, end user transportation agreements, real estate leases, equipment leases, software license contracts and other miscellaneous contracts.

The agreed purchase price for CP National's complete gas distribution business serving customers in California, Oregon, and Nevada is \$85 million, payable in cash in full on the closing date set forth in the Asset Purchase Agreement. The purchase price is subject to adjustment following the closing date.

CP National proposes to sell its natural gas system to continue its long-term business strategy of divesting energy operations and reallocating corporate resources to telephone operations, telephone-related services and non-regulated operations. This divestiture strategy includes concurrent divestiture of natural gas distribution systems in California and Nevada.

Water Power proposes to purchase CP National's Oregon natural gas distribution system because ownership of an expanded distribution system will enhance Water Power's ability to acquire competitively priced natural gas supplies and may enable Water Power to realize additional economies and efficiencies in the operation of its expanded distribution system.

### **The Issues**

#### **Application to Sell Utility Assets**

ORS 757.480 requires a utility proposing to sell, lease, assign, or otherwise dispose of property necessary or useful to the performance of its duties to obtain approval from the Commission for the transaction. OAR 860-25-025 requires that utilities applying for such approval show that the transaction will be consistent with the public interest.

### **Application to Transfer Allocation Rights**

ORS 758.460 requires Commission approval for assignment or transfer of territorial allocation. The statute conditions approval by the Commission on a finding that the assignment or transfer "is not contrary to the public interest."

### **The Stipulation**

Staff and Water Power have submitted a stipulation. Staff and CP National provided testimony to support the stipulation.

The stipulation addresses the general issues set out above as well as several specific issues raised by staff during the pendency of the hearing or raised as a result of the public comment hearings held in this matter.

The Commission has examined the stipulation, the supporting testimony, and the material filed in connection with the application. It is the Commission's conclusion that the stipulation should be adopted in its entirety.

### **Public Comment**

Approximately 100 members of the public attended the four public comment hearings held throughout the relevant service area. Most of those attending sought information about the proposed transfer of service. Very little opposition to the applications was expressed. Concerns about main extension policy and loss of gas service in the winter of 1990 were expressed. These matters were addressed by the parties and are examined later in this order.

### **Adequate and Safe Service**

Washington Water Power is a long-time provider of natural gas and electric utility service in the Northwest. It has had a long-term commitment to adequate and efficient service. It has a demonstrated record of providing good service. It intends to retain personnel familiar with CP National's Oregon operations. All of these factors indicate that the service level provided to customers following the acquisition should be equal to or superior to that now provided.

### **Rates**

When the transaction involved in this matter is completed, Water Power will immediately reduce rates for all customers by 1/2 of 1 percent. The company has also committed itself not to request an increase in revenue requirements for nongas costs to become effective before December 31, 1995, except in the event of extraordinary

circumstances. There will therefore be no increase in rates, except for possible changes in gas costs or other extraordinary costs, for at least four and one half years following the acquisition by Water Power of the business.

This commitment provides a sound basis for concluding that ratepayers will probably be better off following the acquisition. We also note that CP National had planned to file for a general rate increase for Oregon prior to its decision to sell the business. That fact increases the likelihood that the acquisition will provide short-term rate benefits to the ratepayers.

Other factors are important in determining the likelihood of a long-term rate benefit. Water Power has agreed to pass through to its Oregon customers unamortized deferrals in various deferred accounts. Staff also performed an incremental cost/benefit analysis to estimate the cost-savings which might be realized by Water Power over the next ten years compared to the estimated costs under continued operation by CP National. The factors involved included nongas cost savings from various operating economies and efficiencies as well as minor cost savings. Staff concluded that the net present value of the cost savings expected to be realized is approximately \$3.9 million. These savings should have a long-term impact on the rates that Oregon customers will pay and indicate that rates will be lower than they would otherwise have been. The evidence also indicates that Water Power may realize savings in the future related to purchased gas costs. After the present CP National gas supply contracts expire, the economies of scale and diversity of supplies may enable Water Power to supply gas to its Oregon service area at a relatively lower cost.

We also note that Water Power's gas service rates are well below those charged by other natural gas utilities in the Pacific Northwest. The factors that contribute to those lower rates, including low employee/customer ratios, high volume residential and commercial usage, and operational synergies associated with the fact that the company is a combination gas/electric utility, will help Water Power keep its rates relatively lower than CP National's would have been in the future.

The Commission concludes that future rates for Water Power's customers should be at least as low as they would have been under continued service by CP National.

#### **Other Issues**

##### **Acquisition Adjustment**

The cost to Water Power of acquiring CP National's operations in excess of the net book value of the properties is approximately \$33 million. The portion of this acquisition adjustment allocated to Oregon gas operations is approximately \$24 million. According to the stipulation, Water Power will be allowed to amortize the acquisition

adjustment "above-the-line" for accounting purposes. During the "rate cap" period, that is the four and one half year period during which the company has agreed to stabilize rates, staff will propose no rate reduction related to nongas costs unless Water Power's normalized earnings--including amortization and rate base treatment of the acquisition adjustment--exceed a reasonable return. Water Power will thus be able to recover the acquisition adjustment during the "rate cap" period if the company can achieve enough operating efficiencies.

This treatment varies from the Commission's typical policy, according to which acquisition adjustments have not been recognized for rate-making purposes. However, because the projected net cost savings described above will permit customers of Water Power in Oregon to pay lower rates over a ten-year period than if CP National had continued to serve the area, even after amortization of the \$24 million acquisition adjustment allocated to Oregon, the Commission concludes that this treatment is reasonable.

#### **Main Extension Policy**

At the public comment hearings, members of the public suggested that a more aggressive main extension policy be adopted to provide expanded gas service in Southern and Northeastern Oregon.

To address this issue, the stipulation requires Water Power to file a study evaluating the main extension policy within 90 days after the Commission's order approving the sale and transfer is issued. The study will describe Water Power's proposal for a revised main extension or will indicate the reasons why the existing policy should be continued.

#### **Gas Outages**

At the public comment hearing in Medford, members of the public commented on the loss of gas service last winter in Southern Oregon.

According to the staff testimony, steps are already being taken to reduce the likelihood of a recurrence of this problem. The CP National transmission line south of Grants Pass is being uprated to hold more pressure pack for peak consumption hours. Also, another feeder main will be added to the Grants Pass distribution system. In addition, the Northwest Pipeline Corporation has applied to the Federal Energy

Regulatory Commission to build a new compressor station near Sutherlin, Oregon, as part of their overall system expansion. That step would improve pressure reliability in Grants Pass. Finally, to serve future load growth, CP National has reserved about 50 percent additional capacity to Grants Pass from the Northwest Pipeline expansion project.

The Commission concludes that the steps promise to reduce the likelihood of recurrence of the serious problem faced last year by some customers of CP National in Southern Oregon.

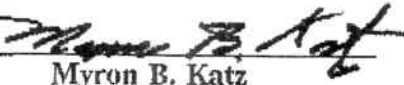
### CONCLUSIONS

1. The Public Utility Commission of Oregon has jurisdiction over this application pursuant to Oregon Revised Statutes Chapter 756 and 757.
2. The sale of natural gas utility assets by CP National Corporation to The Washington Water Power Company is consistent with the public interest and should be granted.
3. Transfer of allocated service territory by CP National Corporation to The Washington Water Power Company is not contrary to the public interest and should be granted.
4. The stipulation reached by staff and Water Power, attached as Appendix "A," is approved in its entirety.

**ORDER**

The application of CP National Corporation and The Washington Water Power Company for approval of the sale of natural gas utility assets and the transfer of allocated service territory is granted.

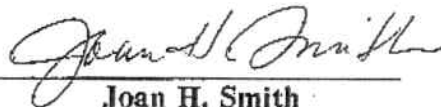
Made, entered, and effective **MAY 16 1991**



Myron B. Katz  
Chairman



Ron Eachus  
Commissioner



Joan H. Smith  
Commissioner

A party may request rehearing or reconsideration of this order within 60 days from the date of service pursuant to ORS 756.561. A party may appeal this order pursuant to ORS 756.580.

nz/UA39.ord

## BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UP 63/UA 39

In the Matter of the application of )  
 CP NATIONAL CORPORATION and the )  
 WASHINGTON WATER POWER COMPANY for ) STIPULATION  
 approval of the sale of natural gas )  
 utility assets and the transfer of )  
 allocated service territory. )

The Staff of the Public Utility Commission (Staff), appearing by and through Philip Schradle, Assistant Attorney General, of its attorneys, and Washington Water Power Company (Water Power), appearing by and through David Meyer, Attorney at Law, hereby stipulate as follows:

1. On January 7, 1991, CP National Corporation and Water Power filed a joint application for approval of the sale of natural gas utility assets and the transfer of allocated service territory (Sale and Transfer).

2. Water Power's cost of acquiring CP National's operations in excess of the net book value of the properties is approximately \$33,000,000. The portion of this acquisition adjustment allocated to Oregon gas operations is approximately \$24,090,000, or 73 percent of the total acquisition adjustment for all of CP National's system gas properties.

3. Water Power may account for the acquisition adjustment in Account 114, Gas Plant Acquisition Adjustments. Water Power may amortize this amount in equal charges over 20 years, or

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APPENDIX "A"  
Page 1 of 4



more rapidly in Water Power's discretion, to Account 406, Amortization of Gas Plant Acquisition Adjustments.

4. If Water Power sells all or any portion of the operating systems acquired from CP National, Water Power will apply any gain realized above the sum of the net book value and any acquisition adjustment assigned to such systems so as to proportionately reduce any remaining acquisition adjustment allocated among the jurisdictions.

5. Within 30 days of completing the Sale and Transfer, Water Power will reduce gas rates for its Oregon customers by one-half of one percent (.5%) on all gas service rate schedules. Furthermore, Water Power agrees not to request an increase in rates to cover an increased revenue requirement associated with non-gas costs for which rates would be effective on or before December 31, 1995 ("rate cap" period); provided, however, that nothing shall prevent Water Power from petitioning the Commission for rate relief to become effective prior to December 31, 1995, should extraordinary circumstances or events beyond Water Power's control warrant.

6. For its Semi-annual Adjusted Results of Operations Reports to the Commission, Water Power will show separately the amortization expense associated with the acquisition adjustment. During the "rate cap" period ending December 31, 1995, Staff will propose no rate reduction relating to non-gas costs unless Water Power's normalized earnings -- including amortization and rate base treatment of the acquisition

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adjustment -- exceed a reasonable rate of return. This provision does not apply to ratemaking policies adopted by the Commission with respect to Ballot Measure 5 (property tax limitation). This provision shall terminate at the end of the "rate cap" period, unless Water Power applies for an extension which is subsequently approved by the Commission.

7. Within 90 days after the Commission's order approving the Sale and Transfer, Water Power will provide a study on main extension policy issues. This study will include an informal proposal for a revised main extension policy <sup>or</sup> reasons why the existing policy should be continued.

*4/18/91  
for DM 4/18/91*

8. Water Power and Staff recommend that the Commission issue an Order in this docket adopting this settlement Stipulation in its entirety and approving the Sale and Transfer. If the Commission does not accept the Stipulation in its entirety, either party may withdraw from the Stipulation.

*Philip Schradle*  
Philip Schradle  
Assistant Attorney General  
Of Attorneys for PUC

DATED April 18, 1991.

*David Meyer*  
David Meyer  
Attorney For The Washington  
Water Power Company

DATED April 15, 1991.

PS:gcp/0720G

CERTIFICATE OF SERVICE

I certify that I have, this day, served the foregoing document upon all parties of record in this proceeding by mailing a copy properly addressed with first class postage prepaid to all parties or attorneys of parties.

Dated at Salem, Oregon, this 19<sup>th</sup> day of April, 1991.



Philip Schradle  
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of Attorneys for Public Utility  
Commission's Staff  
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Salem, Oregon 97310  
Telephone: (503) 378-6986

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