

THIRD LEASE AMENDMENT
ML-1016-S

The parties to this Third Amended Lease are the State of Oregon acting by and through the Division of State Lands, hereinafter referred to as STATE (Lessor), and A P G Co., an Oregon corporation, hereinafter referred to as LESSEE.

WITNESSETH:

WHEREAS, STATE has leased submerged and submersible land to LESSEE by Lease No. ML-1016-S dated August 22, 1977, recorded on January 17, 1978, in Vol. M-78, page 1081, Microfilm Records of Klamath County, Oregon (Lease ML-1016-S);

WHEREAS, the parties agreed to amendment of Lease ML-1016-S by instrument dated February 16, 1983, recorded on April 26, 1984, in Vol. M-84, page 6859, Microfilm Records of Klamath County, Oregon (First Amendment);

WHEREAS, the parties agreed to amendment of Lease ML-1016-S by instrument dated April 20, 1984, recorded April 26, 1984, in Vol. M-84, page 6863, Microfilm Records of Klamath County, Oregon (Second Amendment);

WHEREAS, the parties have this date settled a dispute as to applicability and interpretation of various provisions of Lease ML-1016-S as amended, and desire to further amend lease ML-1016-S to reflect that settlement;

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NOW, THEREFORE, IT IS MUTUALLY AGREED that Lease ML-1016-S is hereby further amended as set forth in this Third Lease Amendment as follows:

1. The amendments contained in this Third Lease Amendment supersede prior amendments to Lease ML-1016-S and are to be construed as though originally contained in Lease ML-1016-S. All covenants, terms, conditions, and provisions of Lease ML-1016-S not expressly amended by this Third Lease Amendment shall remain in full force and effect. Except as otherwise stated in this Third Lease Amendment, all paragraph and page references are to Lease ML-1016-S.

2. The First and Second Amendments are revoked in their entirety.

3. The description of the leased lands contained in Lease ML-1016-S is replaced by the following:

Submerged land 50 feet or more from the line of Ordinary Low Water of Upper Klamath Lake, a navigable lake located in parts of

- a) T 35 S and 36 S, R 6 E, W.M.;
- b) T 34 S, 35 S, 36 S, and 37 S, R 7 E, W.M.;
- c) T 34 S, 35 S and 36 S, R 7 1/2 E, W.M.;
- d) T 37 S and 38 S, R 8 E, W.M.; and
- e) T 38 S, R 9 E, W.M.,

Klamath County, Oregon, including the outlet of said lake commonly known as Link River and lying north of the Link River Bridge located in Section 32, T 38, R 9 E, W.M.; and being covered by the waters of Link River and Upper Klamath Lake including the Northern Arm of Upper Klamath Lake known as Agency Lake. The LEASED PREMISES within said area shall be Parcels 1 and 2, described as follows:

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Parcel 1 is comprised of approximately 1/2 acre of submerged land in the Link River near the mouth of the "A" Canal, as shown on Attachment "1" attached hereto and thereby made a part hereof as though fully set forth in this Third Lease Amendment where reference to the same is made.

Parcel 2 is that portion of the area of submerged land first above described which LESSEE may, from year to year, designate in writing subject to the terms set forth hereat. The site designated shall be comprised of nine-tenths (0.9) acre or less. The site designated shall not be, at the time of selection by LESSEE, under lease to another party. LESSEE shall inform STATE of its selection prior to July 1 of each year. STATE shall promptly advise LESSEE of any conflicting leases affecting the site designated. LESSEE may, from year to year, designate a different site.

4. Article II, page 1, Royalty, shall be delted and replaced with:

RENT AND PAYMENT

Upon execution of this Third Lease Amendment, STATE and LESSEE agree Parcel 1 is approximately 1/2 acre for which the annual rent is fixed at \$1,400.00. LESSEE shall make full payment to STATE annually, in advance. Rent is due on or before the first day of July of each year of the remaining lease term, commencing on July 1, 1989. Payment shall be sent to STATE at the address listed in Article XI, MAILING ADDRESS.

If LESSHE determines that circumstances will prevent LESSHE from using any LEASED PREMISES in a particular year, STATE shall accept a hardship rental of \$200. LESSEE may not claim hardship for more than a total of 6 years during the lease term.

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5. Article III, page 1, shall state:

PURPOSE

The LEASED PREMISES shall be used by LESSEE for removal and processing of algae and other microbiological materials obtained in the harvesting of such algae (hereinafter collectively called "algae") for commercial purposes, and to anchor equipment used in removal and processing of algae. The LEASED PREMISES shall be used for no other purpose.

6. Article IV, page 2, shall be replaced with the following paragraph:

EXCLUSIVITY AND PUBLIC RIGHTS

STATE and LESSEE agree that LESSEE shall have the exclusive use of the LEASED PREMISES, subject to all valid rights of the public to the use of the public waterways above the LEASED PREMISES which do not unreasonably interfere with LESSEE'S use of the LEASED PREMISES.

7. Article VI, page 2, shall be amended as follows:

The word "(novation)" appearing on line 5 is deleted and the phrase "and STATE shall not unreasonably withhold that consent" is inserted in its place.

8. Article XI, page 4, shall be amended to show the mailing address of the Division of State Lands as:

1600 State Street
Salem, Oregon 97310

9. Article XIII, page 5, shall state:

LESSEE shall be responsible and liable for all injuries to persons or property, resulting from product liability claims, negligence or otherwise tortious acts or omissions of LESSEE, its servants, or agents. LESSEE shall indemnify STATE and hold it harmless against any and all claims, demands,

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lawsuits, injuries, damages and costs, including attorney fees and court costs, which STATE may sustain by reason of any such acts or omissions.

LESSEE shall obtain general liability insurance with limits of at least \$500,000 for each occurrence. LESSEE shall provide STATE with a loss payable clause in its favor together with evidence that such insurance is in full force and effect throughout the term of this lease. LESSEE shall be responsible for any liability in excess of the insurance limits.

DATED this 15th day of August, 1989.

LESSOR:

STATE OF OREGON

By:

Janet C. Neuman
Janet C. Neuman, Assistant
Director for Resource Management
Division of State Lands

LESSEE:

A P G Co., an Oregon corporation,

By:

Sydney K. Giacomini
Sydney K. Giacomini, President

AWS:tmt/0246H

After recording return to: APG Co.
635 Main Street
Klamath Falls, Or. 97601

STATE OF OREGON,
County of Klamath ss.

Filed for record at request of:

5 - THIRD LEASE AMENDMENT

on this 23rd day of Aug. A.D., 1989
at 2:21 o'clock P M. and duly recorded
in Vol. M89 of Deeds Page 15748

Evelyn Biehn
County Clerk

By

Pauline Muelender

Fee, \$28.00

Deputy.