

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: KARL KLEIN
DEPUTY ATTORNEY GENERAL

DATE: AUGUST 19, 2016

SUBJECT: TENANT ESTOPPEL CERTIFICATE FOR 472 W. WASHINGTON

The Land Board's commercial real estate agent has asked the Commission to sign a Tenant Estoppel Certificate to assist the agent in marketing 472 W. Washington before auction. A working copy of the Certificate is attached to this memo. By way of background, a Tenant Estoppel Certificate is commonly used in commercial real estate transactions to assist potential buyers and lenders in performing due diligence on the property. The Commission's lease for 472 W. Washington specifically requires the Commission to sign such a Certificate upon the Lessor's request:

22.2 ESTOPPEL CERTIFICATE. Lessee shall at any time upon not less than ten (10) days prior written notice from Lessor execute, acknowledge and deliver to Lessor a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (b) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder, or specifying such defaults if they are claims, and (c) acknowledging and certifying such other and further facts in connection with this Lease as may be reasonably requested by Lessor or a prospective purchaser or lender of the Facility or any part thereof. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises or Facility. Lessee's failure to deliver such statement within such time shall be conclusive upon Lessee (a) that this lease is in full force and effect, without modification except as may be represented by Lessor, (b) that there are no uncured defaults in Lessor's performance, and (c) that not more than an amount equal to one (1) month's rent has been paid in advance. If Lessor desires to finance, refinance or sell its interest in the Premises or property on which the Premises are located, or any part thereof or in the Facility, Lessee hereby agrees to deliver to any lender or purchaser designated by Lessor such financial statements of Lessee as may be reasonably required by such lender or purchaser. All such financial statements shall be received by Lessor in confidence and shall be used only for the purpose herein set forth.

COMMISSION DECISION

Does the Commission authorize its President to sign the Tenant Estoppel Certificate (or a substantially similar one) on the Commission's behalf?



Karl T. Klein
Deputy Attorney General

TENANT ESTOPPEL CERTIFICATE

This **TENANT ESTOPPEL CERTIFICATE** ("Certificate") is executed by **State of Idaho Public Utilities Commission** ("Tenant"), who is the current tenant of record of certain leased premises ("**Leased Premises**") located on real property located at **Central Washington Place, 472 W. Washington Street, Boise, ID 83702** ("**Property**"), under that certain lease dated **February 11, 2008** and amended on **August 5, 2013** ("**Lease**" – a true, correct and complete copy of which is attached hereto as Exhibit "A" and "B"). This Certificate regarding the **Leased Premises** is provided to, and at the request of, the **IDAHO DEPARTMENT OF LANDS**, working for and on behalf of, the **STATE BOARD OF LAND COMMISSIONERS** ("**Landlord**").

Tenant hereby certifies, represents, and warrants to Landlord that:

1. There are no amendments or modifications or agreements, oral or in writing, relating to the Lease that are not attached to the Lease. The Lease contains the complete agreement between Landlord and Tenant with respect to the Lease and the Leased Premises.
2. There are no known defaults or breaches of any covenant, condition, warranty, obligation or deficiencies of any kind under the Lease that give rise to a default or breach by Landlord or Tenant. Both Tenant and Landlord are currently in full compliance with all terms, conditions and covenants of the Lease.
3. All payments owing by Tenant to Landlord under the Lease are current as of the date of this Certificate.
4. There is no unredeemed abated rent or any other Landlord concession due or owing under the Lease, including, but not limited to, any Landlord-obligated improvement or allowance, unless otherwise specified as follows: None.
5. The monthly rent is presently **\$25,491.83** for Office and **\$363.59** for Storage, and is due and payable on or before the first day of each month. Tenant has paid Landlord prepaid rent, with a 3% discount, for July 2016-May 2017 in the amounts of: Rent **\$280,410.13**; Storage **\$3,999.49**; and Car Park **\$5,945.50**. Tenant paid Landlord the amount of **\$0.00** as a security deposit in accordance with the terms of the Lease.
6. As of the date of this Certificate, Tenant is current on any and all taxes and assessments related to Tenant's leasehold interest in the Lease and trade fixtures, if any.
7. The Lease expires on **May 31, 2019**. There are no options to extend the term of this Lease that are not contained in the Lease. Any extension provided for in the Lease, if any, is expressly set forth as follows: **One (1) six-year option to renew**.
8. As of the date of this Certificate, Tenant has no defenses or offsets to the enforcement of the Lease.
9. Tenant currently has every intention of, and is capable of, maintaining its interest in the Lease in accordance with the terms thereof.
10. Neither Tenant, nor any guarantor of Tenant, is presently the subject of any proceeding pursuant to the United States current Bankruptcy law.
11. Tenant disclaims any and all right, title and interest to the Leased Premises or Property except those rights specifically granted and provided for by the Lease.
12. Tenant has no right under the terms of the Lease to purchase the Leased Premises or the Property.
13. Tenant acknowledges that: (a) a potential buyer and its lender will rely on the statements of Tenant herein in making a decision to purchase the Property from Landlord; (b) this Certificate shall inure to the benefit of Landlord and Landlord's lenders and their respective successors and assigns; and, (c) Landlord may transfer or assign its interest in the Lease; and, subject to Idaho Code 67-1027 and the approval of the State Board of Examiners, Tenant agrees that upon notice of any such transfer or assignment, that Tenant will attorn to and acknowledge any such transferee or assignee, and shall perform all of Tenant's obligations

under the Lease in favor of any such transferee or assignee, including, without limitation, the payment of rent, to be paid directly to any such transferee or assignee.

14. The person(s) signing this Certificate on behalf of Tenant warrants that it is fully and duly authorized on behalf of Tenant, and to bind Tenant, upon the execution of this Certificate.

TENANT:

STATE OF IDAHO PUBLIC UTILITIES COMMISSION

By: _____

Name: Paul Kjellander

Title: _____

[Attach complete copy of the Lease and any extension or amendment thereto]