



## LICENSE FOR USE OF LAKE TAPPS RESERVOIR

This LICENSE FOR USE OF LAKE TAPPS RESERVOIR (“**License**”), made as of the last date written below (the “**Effective Date**”), is by and between CASCADE WATER ALLIANCE, a Washington municipal corporation under Chapter 39.106 RCW (“**Cascade**”), and John Doe (the “**Licensee**”). Cascade and Licensee are sometimes referred to individually as a “**Party**”, and collectively as the “**Parties**”.

### 1 GRANT OF LICENSE

- 1.1 **License Term.** Cascade hereby grants to Licensee a nonexclusive license to use a portion of the Premises (defined in Section 1.2) for the purposes and under the terms and conditions set forth below. The License shall become effective as of the Effective Date, and shall continue unless terminated pursuant to Section 4.5.1 (the “**Term**”).
- 1.2 **Premises.** Cascade owns certain real property commonly known as the Lake Tapps Reservoir, including, but not limited to, the lake-bed, as well as the lands surrounding the shore of the Lake Tapps Reservoir and the islands therein, from the waterline up to the 545-foot contour line (collectively, “**Lake Tapps Reservoir**”), said real property being more particularly described by reference to the reservation of fee ownership therein set forth in that certain Deed dated June 22, 1954, recorded under Auditor’s No. 1686523, Volume 1063 of Deeds, Pages 485-495, records of Pierce County, Washington (the “**Deed**”). The area subject to this License (the “**Premises**”) is that portion of Lake Tapps Reservoir as: (1) may abut the Licensee Property (defined in Section 1.3), (2) lies below the 545-foot contour line (as said contour line may be determined by reference to the bronze plaque embedded in the concrete floor of the gate house, more particularly described in the Deed), and (3) is further defined by extension of the lot lines of the Licensee Property into the Lake Tapps Reservoir. For any Improvements that extend below the 545-foot contour line, the extent of the Premises shall be described and depicted in Exhibit A of this License.
- 1.3 **Licensee Property.** This License is for the benefit of the following described real property (the “**Licensee Property**”): Parcel No. XXXXXXXXXX and legal description.
- 1.4 **Compensation; Leasehold Excise Tax.** No compensation or leasehold excise tax is due at this time. Cascade reserves the right in the future to charge fair market value and/or leasehold excise tax if Cascade determines, in its sole discretion, that: (i) the rights granted under this License prevent Cascade from using the Premises, or (ii) Licensee is not being assessed for the Improvements, defined in Section 1.5.1, as

part of Licensee's real or personal property taxes. If payment is required, payment shall be sent to Cascade at the address set forth in Section 4.2.

## 1.5 Approved Use; Initial Construction; Conditions and Limitations.

- 1.5.1 Subject to Cascade's Approval defined in Section 1.5.4, the Licensee, its employees, agents, contractors, consultants, invitees, volunteers, or other persons associated with or acting on behalf of Licensee ("Invitees"), shall have the nonexclusive right to use the Premises, during the Term of this License, for the construction, maintenance and use of: bulkhead, dock, and boatlift, together with the right, if necessary, to deposit fill material behind said Improvements and to conform such area to be filled, as nearly as practicable, to the existing contours of Lake Tapps Reservoir and of Licensee's Property in the area as shown on Exhibit A; together with the right to establish landscaping thereon consistent with the character of the area; together with the right to make recreational use thereof as such use is normal and incidental to the use of Licensee's Property for residential purposes (collectively, the "Approved Use").
- 1.5.2 No other improvements are permitted without an additional license from Cascade. This License is not to be construed to allow any use of the Premises not related to the Approved Use described in Section 1.5.4.
- 1.5.3 The Licensee is responsible for meeting all applicable Federal, State and local safety and other codes. This License is valid so long as Licensee obtains and continues to maintain all applicable Federal, State and local permits, licenses, or other authorizations required for the construction and use of the Improvements on the Premises (including, but not limited to, such laws or permits as may pertain to building, zoning, shoreline regulation, environmental protection or other matters pertaining to the general public health, safety and welfare). **Cascade makes no representation or warranty as to any other permits, licenses or other authorizations that may be required for the Approved Use.**
- 1.5.4 Licensee shall provide to Cascade a copy of Licensee's plans and specifications, including, if necessary, any plans for removing or placing fill materials prior to undertaking the initial construction of the Improvements or the initial placement of any fill materials upon the Premises. Cascade may inspect the area where the work is to be done and review Licensee's plans and specifications to ensure that the plans and specifications are consistent with Exhibit A, and do not interfere with Cascade's use of Lake Tapps Reservoir as an operating utility property ("Approval"). **Cascade makes no warranty, express or implied, as to the suitability for the Premises for the Licensee's intended use or purpose, or the correctness or accuracy of Licensee's plans, and expressly disclaims any such warranties.** Cascade reserves the right to require Licensee, now or in the future, to provide Cascade with any professional opinions, at Licensee's

expense, to evidence that the Approved Use does not create an operational danger or other concern for Cascade (e.g., issues relating to dike or reservoir integrity, water quality, or recreational safety).

- 1.5.5 Licensee shall cause all construction and fill activities upon or within the Premises to be done in a safe, careful and workmanlike manner so as to prevent bodily harm to persons and damage to property. Licensee shall ensure that all labor, services, materials, equipment, supplies or other items employed or provided in connection with the Approved Use are of good quality and suitable for the intended purpose. Licensee shall maintain the Premises and any Improvements located thereon in good repair and in a neat, clean and safe condition. Licensee shall promptly pay (and shall secure the discharge of any liens asserted by) all persons or entities furnishing any labor, services, materials, equipment, supplies or other items to or upon the Premises for the benefit of Licensee.
- 1.5.6 The bulkhead should not extend beyond the Premises and Cascade recommends that the vertical height of the bulkhead should, at all points along the bulkhead, be constructed and maintained to an elevation of not less than 544 feet (said elevation being determined by reference to the 545-foot contour line, described in Section 1.2).
- 1.5.7 *In connection with construction*, any and all proposed placement of fill material shall be included in the plans and specifications required under Section 1.5.4. Without separate written authorization from Cascade, Licensee may only remove, replace or place fill material from that portion of Lake Tapps Reservoir, which is within the Premises and lying below the 545-foot contour line, and from no other area, including from an offsite source. Prior to removing such fill, Licensee shall consult with Cascade to confirm the location and amount of fill to be removed. Upon removal of such fill material, Licensee shall cause the portion of Lake Tapps Reservoir disturbed by the removal of such fill to be leveled and graded so as to leave no depressions or water retention areas. If for any reason Licensee shall be unable to utilize such fill material for construction of the Improvements and for filling the Premises, Licensee shall obtain Cascade's written permission and approval prior to depositing any other fill material upon the Premises. **Cascade's Approval described herein is in addition to any other jurisdictional approvals or authorizations that may be required for the removal or placement of fill material within Lake Tapps Reservoir.**
- 1.5.8 Licensee acknowledges that the Premises is part of an operating utility property of Cascade and the use includes, but is not limited to, the operation of a reservoir to serve Cascade's municipal water supply. Notwithstanding the rights granted to Licensee set forth in this License, Cascade may use the Premises during the Term of this License for purposes of its utility operations as fully as if

this License had not been given. Licensee shall not, at any time, undertake any activities which interfere with or otherwise impair the safe and reliable operation of the Premises as an operating utility property.

- 1.5.9 Licensee acknowledges that this License and the Premises are further subject to any and all restrictions, reservations, limitations or other matters of record, including, but not limited to, those matters set forth in the Deed. Licensee acknowledges that Cascade's rights under the Deed are in no way affected by the granting of this License, including, but not limited to, the right to raise the waters within Lake Tapps Reservoir at any time and from time to time up to the 545-foot contour line.

## 2 LICENSEE'S OBLIGATIONS

- 2.1 **Licensee Authority.** Licensee warrants and covenants that: (a) Licensee has the power and the right to enter into this License and that Licensee shall peaceably and quietly enjoy the use of the Premises upon the terms, covenants, and conditions set forth in this License throughout the Term of the License; and (b) no other person, other than the individual(s) executing this License, have a fee ownership interest in the Licensee Property.
- 2.2 **Costs and Expense.** Except as otherwise provided herein, Licensee shall be solely responsible for all of its costs incurred by or associated with the Approved Use.
- 2.3 **Insurance.** Licensee shall carry and maintain liability insurance written on an occurrence basis with available limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage combined. Such insurance shall be in a form and with insurers acceptable to Cascade, acting reasonably, and shall contain coverage for all premises and operations, broad form property damage and contractual liability. Unless otherwise agreed, insurance policies shall be obtained and maintained with companies rated A- or better by Best's Key Rating Guide. Any policy which provides the insurance required under this paragraph shall:
- (a) be endorsed to name Cascade, its affiliated entities and their respective directors, officers, employees, and agents as additional insureds (the "**Additional Insureds**") with respect to any liability arising out of Licensee's or any contractor's presence on or about the Premises;
  - (b) be endorsed to be primary and noncontributory to any insurance maintained by the Additional Insureds;
  - (c) contain a severability of interest provision in favor of the Additional Insureds; and
  - (d) contain a waiver of any rights of subrogation against the Additional Insureds.

If vehicles will be used in connection with this License, Licensee shall carry and maintain, and shall ensure that any contractor who uses vehicles in connection with this License carries and maintains, Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed or otherwise, with limits of liability of not less than One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage. Licensee shall cover or maintain, contain a waiver of any rights of subrogation against the Additional Insureds, and shall require any contractor to cover or maintain, insurance in accordance with the applicable laws relating to workers' compensation, with respect to all of their respective employees working on or about the Premises, regardless of whether such coverage of insurance is mandatory or merely elective under the law. **Licensee shall not access the Premises for Approved Uses under this License unless Licensee shall have first provided to Cascade, a certificate of insurance reflecting full compliance with the requirements set forth in this Section.** The limits of insurance carried by Licensee and its contractors and subcontractors shall in no way diminish Licensee's indemnification obligations to Cascade set forth in this License.

2.3.1 In the event Cascade requests in writing, within ten (10) days of such request, Licensee shall provide Cascade with a copy of the insurance policy and applicable endorsements effecting coverage reflecting full compliance with the requirements set forth herein. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received, approved and updated once a year on the anniversary of the Effective Date. However, failure to do so shall not operate as a waiver of these insurance requirements. Such certificate and policy shall list Cascade as a certificate holder and shall be kept current and in compliance throughout the period of this License and shall provide for thirty (30) days' advance written Notice to Cascade in the event of cancellation.

2.3.2. Licensee shall carry and maintain Insurance provided for herein for the Term of this License.

2.3.3 Licensee's contractors shall carry and maintain Commercial General liability insurance under the terms provided above for the Licensee until any and all final approved inspection(s) have been received from the authority having jurisdiction over the Improvement and all equipment is removed.

2.4 **Non-Assignment.** Licensee shall not sublet or assign any rights or obligations under this License; provided, however, this License shall inure to the benefit of any purchaser or tenant of the Licensee Property.

2.5 **Hazardous Substances.** Licensee agrees that it will not use, generate, store, or dispose of or otherwise allow or cause the release or migration of any Hazardous Substances on, under, about, or within the Premises. Licensee represents and warrants to Cascade

that its intended exercise of the rights hereunder will not involve the use, production, disposal or bringing onto the Premises any Hazardous Substances.

- (a) As used herein, the term “**Hazardous Substances**” includes any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, state or local statute, regulation, rule or ordinance now or hereafter in effect, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, or the Washington Model Toxics Control Act, RCW 70.105D.010 *et seq.*
- (b) Licensee shall comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of Hazardous Substances in, on, or under the Premises or any adjacent property to the extent the Licensee is responsible for the use, collection, treatment, disposal, storage, control, removal or clean-up of such Hazardous Substances, or its incorporation in any Improvements, at the Licensee’s expense.
- (c) Licensee shall notify Cascade immediately of any release or migration of any Hazardous Substances in, on, to, under or from its Property onto the Premises. Licensee shall indemnify, defend and hold harmless Cascade against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, cleanup costs, remedial actions, costs and expenses (including, without limitation, consultant fees, attorneys’ fees and disbursements) which may be imposed on, incurred or paid by, or asserted against Cascade or its Premises by reason of, or in connection with: (i) any misrepresentation, breach of warranty or other default by the Licensee under this License, (ii) the acts or omissions by the Licensee under this License, or (iii) the acts or omissions of the Licensee or Invitees, or other person for whom would otherwise be liable, resulting in the release or migration of any Hazardous Substances. This indemnity shall survive the termination of this License.

2.6 **Water Quality.** Licensee agrees that it will use best management practices regarding its presence on the Premises, which, in Cascade’s sole determination, may affect water quality, including, but not limited to, meeting all regulatory requirements applicable to Licensee’s activities.

### 3 LIABILITY

3.1 **Release.** Cascade is not responsible for injuries incurred by Licensee or Invitees while on the Premises (including injuries incurred due to the accidental acts of Cascade or its representatives). By signing below, Licensee agrees not to sue Cascade for any injuries incurred on the Premises during the Term (regardless of their cause), and if Cascade is sued for any injuries during this Term, Licensee shall hold Cascade and its employees,

contractors, directors, officers, agents, volunteers, and representatives (“**Cascade’s Employees**”) harmless and defend and indemnify Cascade’s Employees in all respects from any and all claims, causes of action, judgments, costs, expenses, attorney’s fees, and liabilities, whatsoever, arising in any way in connection with Licensee’s entry and use of the Premises. Licensee’s obligations set forth in this Section shall survive the Termination of this License.

3.2 **Indemnification.** Licensee shall indemnify, defend and hold Cascade and Cascade’s officers, directors, shareholders, beneficiaries, elected representatives, members, partners, agents, employees and attorneys, and their respective successors and assigns from and against all claims, actions, losses, liabilities, damages, costs, obligations of any nature, and any and all expenses of any nature (including, but not limited to, all losses, damages, judgments, and reasonable attorneys’ fees and costs) incurred, suffered by, or claimed against Cascade arising from any property damage to the Premises of any kind whatsoever or injury to persons caused by Licensee, including from or related to the actions or inactions of Licensee’s employees or Invitees, and arising out of or in any way connected with Licensee’s or Invitees’ entry and use of the Premises. The obligations in this paragraph shall not include such claims, costs, damages, or expenses to the extent caused by the acts of Indemnitee or its authorized agents or employees; provided that, if the claims or damages are caused by or result from the concurrent acts of (a) Cascade, its agents, contractors, or employees and (b) the Licensee, its agents, contractors, or employees, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the acts of the Licensee’s agents, contractors or employees. Licensee’s obligations set forth in this Section shall survive the Termination of this License.

3.3 **Attorneys’ Fees.** In the event that either Party shall be required to bring any action to enforce any of the provisions of this License, or shall be required to defend any action brought by the other Party with respect to this License, and in the further event that one Party shall prevail in such action, the losing Party shall, in addition to all other payments required therein, pay all of the prevailing Party’s actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys’ fees in the trial court and in any appellate court.

#### 4 OTHER TERMS

4.1 **Contractors.** Licensee is responsible for all actions of its contractors, if any, in execution of work under this License and shall require its contractors to comply with the terms and conditions provided herein including the provision for a certificate of insurance reflecting full compliance with the requirements set forth herein. Contractors shall specifically and expressly waive any immunity granted under the Washington Industrial Insurance Act, Title 51 RCW and shall be licensed and bonded in the State of Washington.

- 4.2 **Notices.** All notices or requests required by this License, or by law, shall be in writing and deemed given: (a) when delivered in person; (b) when deposited with a reputable overnight courier service, provided that any such Notice shall not be deemed received until the next business day after deposit; or (c) by electronic mail if a copy of the Notice is also sent by overnight courier, in which case Notice shall be deemed delivered on transmittal by electronic mail before 5:00 p.m. on a business day (otherwise, any Notice sent after 5:00 p.m. shall be deemed received on the next business day). All Notices must be properly addressed to the Parties as follows:

Cascade:

Paula Anderson  
Land Use Administrator  
Cascade Water Alliance  
520 112th Avenue NE, Suite 400  
Bellevue, WA 98004  
Email: panderson@cascadewater.org  
Telephone: 425-283-4294

Licensee:

**Jane Doe**  
Lake Tapps Address and Contact Information

- 4.3 **Modification.** This License may only be amended or modified by a written instrument executed by both parties.
- 4.4 **Non-Waiver.** The failure of Cascade to insist upon the strict performance of any provision of this License or to exercise any rights under this License shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect..
- 4.5 Termination.
- 4.5.1 In the event of (i) a breach of the terms and conditions of this License by Licensee, or (ii) a determination by Cascade, in its sole discretion, that termination of this License is necessary for the use of Lake Tapps Reservoir for the operation as a municipal water supply, then Cascade may terminate this License upon sixty (60) days' written notice pursuant to the notice provision in Section 4.2 ("**Termination Notice**"). For a termination because of operational reasons as described in Section 4.5.1(ii), Cascade may exercise its right of termination notwithstanding Licensee's full compliance with the terms and conditions of this License. In the event Cascade elects to exercise its right of



termination in connection with the failure of Licensee to fully comply with the terms and conditions of this License as described in Section 4.5.1(i), such right of termination shall be in addition to (and not a limitation of) any and all other rights and remedies afforded to Cascade for such noncompliance arising under this License or otherwise by law (“**Termination**”).

4.5.2 Unless otherwise instructed by Cascade to leave the Improvements in place, Licensee shall remove or otherwise dispose of the Improvements constructed on the Premises pursuant to this License, and the Licensee shall conduct its removal of such Improvements in a reasonable and safe manner prior to the expiration of sixty (60) days from the date of the Termination Notice described in Section 4.5.1 (the “**Termination Date**”). In addition, prior to the Termination Date, Licensee shall restore the Premises to the condition it existed prior to the construction of any Improvements. If, by the Termination Date, Licensee has not restored the Premises to the condition it was in prior to the construction of the Improvements, then Licensee shall be deemed to have abandoned the Improvements made to the Premises. Cascade shall thereafter have the right to keep, remove or otherwise dispose of such Improvements as Cascade shall determine, in its sole judgment, and Licensee shall reimburse Cascade for any expenses it incurs relating to such removal or disposal.

4.5.3 All of Licensee’s obligations arising under this License which may reasonably be deemed to survive the Termination of this License (including, but not limited to, those obligations arising under Sections 2.5, 3.1 and 3.2) shall survive the Termination of this License.

4.6 **Binding Agreement.** This License, subject to Cascade’s termination rights under Section 4.5, shall run with the Licensee Property and the Premises, and shall bind, and inure to the benefit of, the Parties and their respective successors and assigns.

4.7 **Severability.** If any term or provision of this License is held invalid or unenforceable, the remainder of this License shall not be affected thereby and each term and/or provision hereof shall be valid and enforced to the fullest extent permitted by law.

4.8 **Governing Law and Stipulation of Venue.** This License shall be governed by the laws of the State of Washington. The Parties stipulate that any lawsuit regarding this License must be brought in Pierce County, Washington.

4.9 **Entire Agreement.** This License and its exhibits, upon execution, contain the entire agreement of the Parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of this License. Furthermore, the Parties agree that this License supersedes any prior license or other authorization, if any, granted by Cascade or its predecessors in interest.

4.10 **Recording; Notice to Jurisdiction.** Licensee agrees that Cascade may, at its discretion, record this License with the Pierce County Auditor to encumber the Licensee Property. Cascade may also provide a copy of this License to any jurisdiction having regulatory authority over the Premises or Licensee's Property.

4.11 **Incorporation of Exhibits.** All exhibits referred to in this License are incorporated herein by such reference and made a part of this License.

4.12 **Counterparts.** This License may be executed and acknowledged in counterparts as may be necessary for the convenience of the Parties, which together shall constitute one document. The original counterpart signature pages may be detached from counterpart copies and re-attached to a single original copy.

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SAMPLE

**CASCADE:**

CASCADE WATER ALLIANCE,  
a Washington municipal corporation

\_\_\_\_\_  
By: Ray Hoffman  
Its: Chief Executive Officer

Date: \_\_\_\_\_

**LICENSEE:**

\_\_\_\_\_  
By: Jane Doe

Date: \_\_\_\_\_

SAMPLE

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Chief Executive Officer of CASCADE WATER ALLIANCE, a Washington municipal corporation, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Name (typed or printed): \_\_\_\_\_  
NOTARY PUBLIC in and for the State of WA  
Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_



**EXHIBIT A**

*[Legal description and depiction of the Premises]*

SAMPLE